is levitically unclean.

There was a certain garden from which R. Eleazar b. Azariah[11] used to receive the first tithe. R. Akiba went and transferred its gate so that it faced a graveyard.[12] 'Akiba with his bag',[13] the other remarked, 'and I have to live'!

It was stated: Why were the Levites penalized [by being deprived of the] tithe?[14] — R. Jonathan and Sabia [are in dispute on the matter]. One holds: Because they did not go up[15] in the days of Ezra;[16] and the other holds: In order that the priests might depend upon it[17] during the days of their uncleanness.[18]

According to him who holds [that the Levites were deprived of the tithe] because 'they did not go up', one can well understand why they were penalized. According to him, however, who gave as the reason, 'In order that the priests may depend upon it during the days of their uncleanness', were the Levites penalized for the sake of the priests! Rather, all agree[19] that the penalization was due to their not going up in the days of Ezra; they differ, however, on the following point: One is of the opinion that their forfeit belonged to the poor, while the other is of the opinion that priests, during the days of their uncleanness, are also regarded as poor.

Why, then,[20] did R. Akiba[21] transfer the gate so that it faced a graveyard?[22] — It was this that he[23] said to him:[24] If you come [to claim it] as a forfeit, you are entitled to it; but if you come [to demand it] as your share, you have no [claim upon it].

Whence is it deduced that they[25] did not go up in the days of Ezra? — It is written, And I gathered them together to the river that runneth to Ahava; and there we encamped three days,' and I viewed the people and the priests, and found there none of the sons of Levi.[26]

R. Hisda stated: At first, officers were appointed from the Levites only, for it is said, And the officers of the Levites before you;[27] but now, officers are appointed from the Israelites only, for it is said, 'And officers over you shall come from the majority'.[28] MISHNAH. THE DAUGHTER OF AN ISRAELITE WHO WAS MARRIED TO A PRIEST MAY EAT TERUMAH. IF HE DIED AND SHE HAS A SON BY HIM SHE MAY CONTINUE TO EAT TERUMAH. IF SHE WAS [SUBSEQUENTLY][29] MARRIED TO A LEVITE, SHE MAY EAT OF THE TITHE.[30] IF THE LATTER DIED AND SHE HAD A SON BY HIM, SHE MAY CONTINUE TO EAT OF THE TITHE. IF SHE WAS [SUBSEQUENTLY] MARRIED TO AN ISRAELITE SHE MAY EAT NEITHER TERUMAH NOR TITHE. IF THE LATTER DIED AND SHE HAS A SON BY HIM, SHE MAY EAT NEITHER TERUMAH NOR TITHE. IF HER SON BY THE ISRAELITE DIED, SHE MAY AGAIN EAT OF THE TITHE. IF HER SON BY THE LEVITE DIED SHE MAY AGAIN EAT TERUMAH. IF HER SON BY THE PRIEST DIED, SHE MAY EAT NEITHER TERUMAH NOR TITHE.

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(1) Belongs the first tithe. B.B. 81b, Keth. 261, Hul. 13 lb.

(2) Scripture, surely, assigned the tithe to the Levite!

(3) Num. XVIII, 26, referring to tithe.

(4) R. Eleazar b. Azariah. How could he include the priests?

(5) Ezek. XLIV, 15.

(6) That by Levites the priests also were meant.

(7) Num. XVIII, 31.

(8) Which he may not enter owing to the prohibition of defiling himself for the dead. Cf. Lev. XXI, 1ff.

(9) Of In every place (Num. XVIII, 31).

(10) Of Jerusalem, outside of which the eating of certain consecrated foodstuffs was forbidden.

(11) Who was a priest, cf. Ber. 27b.

(12) So that R. Eleazar b. Azariah (v. supra n. 9) was prevented from entering it (cf. supra n. 6).
(13) Reference to the shepherd's wallet. R. Akiba was a herdsman in his early life (cf. Keth. 62b). [Me'iri: Though R. Akiba may have to return to his shepherd's wallet, I can manage to live without his tithe].
(14) A provision was made at some time (v. infra) that tithe shall not be given to the Levites in accordance with the Pentateuchal law but to the priests (cf. Sot. 47b, Hul. 131b).
(15) To Judaea.
(16) Who led some forty thousand exiles from Babylon to Jerusalem. [On the Levites' deprivation of their right to tithe v. Tchernowitz. H. Jewish Studies in Memory of George Alexander Kohut (Hebrew section) p. 47].
(17) The tithe.
(18) When terumah is forbidden to them.
(19) Lit., 'all the world', R. Jonathan and Sabia.
(20) According to the opinion which maintains that the tithe was allotted to the priests in the days of Ezra.
(21) Who lived after Ezra.
(22) R. Eleazar b. Azariah as a priest was surely then entitled to it. Cur. edd. contain in parenthesis, 'According to him who said that the forfeit belonged to the poor, it can well be understood why R. Akiba transferred the entrance so that it faced a graveyard; according to him, however, who stated that it belonged to the priests, why did he transfer the entrance so that it faced a graveyard'. The reading adopted is given in the margin of cur. edd.
(23) R. Akiba.
(24) R. Eleazar b. Azariah.
(25) The Levites.
(26) Ezra VIII, 15. [This is apparently contradicted by the many verses in Ezra and Nehemiah which mention the Levites side by side with the priests, and as Tosaf. already points out (s.v. ומבני) is against the Mishnah in Kid. 69a which includes the Levites among the ten family stocks that came up from Babylon, unless it is to be assumed that the penalty was inflicted on the Levites because they were not among the first to join Ezra].
(27) II Chron. XIX, 11.
(28) Such a text cannot be traced in our Bible and may represent a verse from a lost apocryphal text. Some commentators regard it as a quotation from memory, based on Deut. I, 13, 15; but the respective dates of Ezra and Deut. would create chronological difficulties. (v. Golds.).
(29) After having had a child from the priest.
(30) But not of terumah. Her priestly status is lost.

Talmud - Mas. Yevamoth 87a

THE DAUGHTER OF A PRIEST WHO WAS MARRIED TO AN ISRAELITE MAY NOT EAT TERUMAH.[1] IF HE DIED AND SHE HAD A SON BY HIM SHE MAY NOT EAT TERUMAH. IF SHE WAS [SUBSEQUENTLY] MARRIED TO A LEVITE SHE MAY EAT TITHE. IF THE LATTER DIED AND SHE HAD A SON BY HIM SHE MAY EAT TITHE. IF SHE WAS [SUBSEQUENTLY] MARRIED TO A PRIEST SHE MAY EAT TERUMAH. IF THE LATTER DIED AND SHE HAD A SON BY HIM SHE MAY EAT TERUMAH. IF HER SON BY THE PRIEST DIED SHE MAY NOT EAT TERUMAH. IF HER SON BY THE LEVITE DIED SHE MAY NOT EAT TITHE. IF HER SON BY THE ISRAELITE DIED SHE RETURNS TO THE HOUSE OF HER FATHER; AND IT IS CONCERNING SUCH A WOMAN THAT IT WAS SAID, AND IS RETURNED UNTO HER FATHER'S HOUSE, AS IN HER YOUTH, SHE MAY EAT OF HER FATHER'S BREAD.[2]

GEMARA. IF HER SON BY THE LEVITE DIED SHE MAY AGAIN EAT TERUMAH, because she is again entitled to eat it by virtue of her son;[3] whence is this[4] derived? — R. Abba replied in the name of Rab: [From the use of the expression,] But a daughter[5] [instead of] 'a daughter'.[6] In accordance with whose view?[7] Is it in accordance with that of R. Akiba who bases expositions on Wawin![8] — It may be said [to be in agreement] even [with the view of the] Rabbis, since the entire expression But a daughter[5] is superfluous.[9]

Our Rabbis taught: When she[10] returns,[11] she returns only to [the privilege of eating] terumah, but does not return to [the privilege of eating] the breast and the shoulder.[12] Said R. Hisda in the name of Rabina b. Shila, 'What Scriptural text proves this?[13] — She shall not eat of the terumah of the holy things,[14] she must not eat of that which is set apart[15] from the holy things'.[16] R. Nahman replied[17] in the name of Rabbah b. Abbuha: Of [her father's] bread,[5] but not all [her father's] bread;[18] this excludes the breast and the shoulder.[12] Rami b. Hama demurred: Might it not be suggested that this[19] excludes the invalidation of vows![20] Raba replied: A Tanna of the school of R. Ishmael has long ago settled this difficulty. For a Tanna of the School of R. Ishmael taught: What need was there for Scripture to state, But the vow of a widow, or of her that is divorced . . . shall stand against her?[21] Is she not free from the authority of her father and also from that of her husband![22] The fact is that where the father had entrusted [his daughter] to the representatives of the husband, or where the representatives of the father had entrusted her to the representatives of the husband, and on the way[23] she became a widow or was divorced, [it would not have been known] whether she was to be described as of[24] the house of her father[25] or as of the house of her husband;[26] hence the need for the text[27] to tell you that as soon as she had left her father's authority, even if only for a short while, he may no more invalidate her vows.[28]

R. Safra replied:[29] She may eat of her father's bread,[30] only bread but no flesh.[31] R. Papa replied:[29] She may eat of her father's bread,[30] only the bread which is the property of her father;[32] excluding however, the breast and the shoulder which [priests] obtain from the table of the Most High.[33]

Raba, however, replied:[29] And the breast of the waving and the thigh of heaving shall ye eat . . . thou, and thy daughters with thee,[34] only when they are with thee.[35]

R. Adda b. Ahabah stated that a Tanna taught: When she[36] returns to her father's house, she returns [only to the privilege of eating] terumah, but does not return to [the privilege of eating] the breast and the shoulders. [If she[37] returns, however,] by virtue of her son,[38] she returns also to [the privilege of eating] the breast and the shoulder.[39] R. Mordecai went and recited this traditional statement in the presence of R. Ashi, when the latter said to him, 'Whence [has this case][40] been included?[41] From "But a daughter".[42] Should she, then, be more important than the other!'[43] — There,[43] the excluding texts were written;[44] but here[40] no excluding texts were written.

THE DAUGHTER OF A PRIEST WHO WAS MARRIED TO AN ISRAELITE etc. Our Rabbis taught: And is returned unto her father's house,[42] excludes one who is awaiting the decision of the levir;[45] as in her youth,[42] excludes a pregnant woman.[46] But could not this [law,[47] however, be arrived at by] logical argument: If where a child by a first husband is not regarded as the child by the second husband, in respect of exempting the woman from the levirate marriage,[48] the embryo is nevertheless regarded as a born child,[49] how much more should the embryo be regarded as a born child where a child by the first husband is regarded as the child of the second, in respect of depriving a woman of her right to terumah![50] No; this is no argument.[51] If an embryo was regarded as a born child in respect of the levirate marriage, where the dead were given the same status as the living,[52] should an embryo be regarded as a born child in respect of terumah, where the dead were not given the same status as the living?[53] Consequently Scripture expressly stated, As in her youth,[54] to exclude a pregnant woman.

And it was necessary for Scripture to write, As[55] in her youth, to exclude the pregnant woman; and also[56] And have no child,[54] to[57] exclude one who has a born child. For had the All Merciful written only And have no child,[54] it might have been assumed [that only a woman who has a born child is forbidden to eat terumah, because] at first[58] there was one body and now there are two bodies,[59] but that a pregnant woman, who formed at first[58] one body and is now also one body on]y, may eat, [hence the second text[60] was] required. And had the All Merciful written of the pregnant woman only it might have been assumed [that only she is forbidden to eat terumah] because at first[58]

her body

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(1) She loses through her marriage the right she enjoyed as the daughter of a priest while she was still unmarried.
(2) Lev. XXII, 13.
(3) By the priest.
(4) That her son by the priest enables her again to eat terumah even though she was deprived of that right during the period she lived with the Levite and the Israelite.
(5) Lev. XXII, 13.
(6) From the superfluous Waw in ובת.
(7) Is this deduction made.
(8) And not in accordance with the view of the Rabbis (cf. Sanh. 51b) who are in the majority and differ from R. Akiba. V. supra 68b.
(9) The previous verse (Lev. XXII, 12) also speaking of the priest's daughter it would have been quite sufficient for v. 13 to begin with the personal pronoun, 'But if she be'.
(10) The priest's daughter who was a widow or divorced and have no child. (V. Lev. XXII, 13).
(11) Unto her father's house (v. ibid.).
(12) Which are also among the priestly gifts. Cf. Ex. XXIX, 27, Lev. VII, 34 X, 14.
(13) That the breast and shoulder remain forbidden to her even after she returns to her father's house.
(14) Lev. XXII, 12, where instead of בתרומת הקדשים only בקדשים could have been written.
(15) במורם from the same rt as תרומת (v. supra n. 12).
(16) The sacrifices; reference v to the breast and shoulder. (V. supra n. 10). These are forbidden to her even after she returns to her father's house. (V. supra 68b).
(17) To the enquiry of R. Hisda.
(18) לחם here taken in its wider signification of 'food' (cf. Dan. V, 1). The Mem of מלחם (of but not all food) indicates limitation.
(19) The limitation implied by the Mem. V. supra n. 16.
(20) By her father; even when his daughter returns to his house and resumes her right to eat terumah. Before marriage, a daughter's vows may be invalidated by her father. Cf. Num. XXX, 4ff.
(21) Num. XXX, 10.
(22) And since none of them could in consequence annul her vows, it is obvious that such vows stand against her. What need, then, was there for the text of Num. XXX, 10?
(23) To her husband's home.
(24) Lit., 'how I read about her'.
(25) Since she has not reached the house of her husband and has consequently not yet passed entirely out of her father's authority. Hence her father would still have the power of invalidating her vows.
(26) And her vows, like those of any other widow, could not be invalidated by her father.
(27) Lit., 'but'.
(28) V. Keth. 49a.
(29) To the enquiry of R. Hisda.
(30) Lev. XXII, 13.
(31) The breast and the shoulder.
(32) Terumah which is regarded as the property of the priests.
(33) These are only the remains of certain sacrifices which do not belong to the priests but to the altar, 'the table of the Most High', and are given to the priests as the leavings of His meal.
(34) Lev. X, 14.
(35) I.e., before their marriage to non-priests, may the breast and the shoulder be eaten by them.
(36) A priest's daughter.
(37) V. p. 588, n. 16; or the daughter of an Israelite. (V. next note).
(38) If she was married, for instance, to an Israelite and after his death resumed her right to eat terumah by virtue of a son whom she previously had by a priest.
(39) Since the exclusion of the right to the breast and the shoulder was mentioned in the former case only.
(40) That of the woman who derives her right to terumah from her son.

(41) Among those entitled to eat terumah.
(42) V. Lev. XXII, 13.
(43) The daughter who derives her right to terumah from her father.
(44) V. supra n. 3.
(45) Who is not eligible to eat terumah, because she is not completely returned to her father's house, being still bound to the levir.
(46) Who, being with child, does not return as in her youth.
(47) That a pregnant woman, like one who has a born child, does not regain her right to eat terumah.
(48) A woman whose husband died without issue is not exempt from the levirate marriage, though she may have a son by a former husband.
(49) A pregnant woman is not subject to the levirate marriage.
(50) A priest's daughter whose Israelite husband died without issue is forbidden to eat terumah, just as if she had had a son by him, if she had a son by any former Israelite husband of hers. Now, since the law could be arrived at by inference a minori ad majus, the Scriptural text stating the same law is, surely, superfluous!
(51) Lit., 'what (reasoning) for me'!
(52) A child whose death occurred after the death of his father exempts his mother from the levirate marriage as if he were still alive.
(53) Only a live child deprives his mother, the daughter of a priest who married an Israelite, from her right to eat terumah after the death of her husband. As soon as the child dies his mother regains her lost right.
(54) Lev. XXII, 13.
(55) Cf. Bah. Cur. edd. omit 'As . . . exclude'.
(56) Lit., 'and it was necessary to write'.
(57) So Bah. Cur. edd. omit, 'To exclude . . . child'.
(58) Before her marriage.
(59) Mother and born child.
(60) As in her youth.

Talmud - Mas. Yevamoth 87b

was empty and now it is full, but not [a woman whose child was already born],[1] whose body was at first empty and is now also empty, [hence was the first text[2] also] required.[3]

(Mnemonic.[4] He said to him: Let us not make[5] and make[6] in death; let us make and not make in the child of the levir and terumah.)[7]

Said Rab Judah of Diskarta[8] to Raba: The dead should not be given[9] the same status as the living, in respect of the levirate marriage, by inference a minori ad majus: If where a child by the first husband is regarded as the child of the second husband, in respect of disqualifying the woman from the eating of terumah,[10] the dead were not given the same status as the living,[11] how much less should the dead be given the same status as the living[12] where the child of the first husband is not regarded as the son of the second, in respect of exempting the woman from the levirate marriage![13] It was expressly stated, Her ways are ways of pleasantness, and all her paths are peace.[14]

Then let the dead be given[15] the same status as the living in respect of terumah by inference a minori ad majus: If where a child by the first husband is not regarded as the child of the second In respect of exempting the woman from the levirate marriage,[13] the dead were given the same status as the living,[16] how much more so should the dead be given the same status as the living[17] where a child of the first husband is regarded as the son of the second, in respect of disqualifying the woman from terumah![18] It was expressly stated, And [she] have no child[19] and she, surely, has none.[20]

Let the child of the first husband be regarded as the child of the second husband in respect of the levirate marriage by inference a minori ad majus: If where the dead were not given the same status as

the living, in respect of terumah[21] the child of the first husband is regarded as the son of the second,[22] how much more should the child of the first husband be regarded as the child of the second[23] where the dead were given the status of the living in respect of the levirate marriage![21] — It was expressly stated, And [he] have no child,[24] and this man, surely, has none.

Then let the child of the first husband not be regarded as the child of the second husband, in respect of terumah, by inference a minori ad majus: If where the dead were given the same status as the living, in respect of exempting her from the levirate marriage, the child of the first husband was not regarded as the child of the second,[22] how much less should the child of the first husband be regarded as the child of the second, where the dead were not regarded as the living in respect of eating terumah![21] — It was specifically stated, And [she] have none,[25] but she surely has [one].

CHAPTER X

MISHNAH. A WOMAN WHOSE HUSBAND HAD GONE TO A COUNTRY BEYOND THE SEA AND ON BEING TOLD,[26] 'YOUR HUSBAND IS DEAD', MARRIED, MUST, IF HER HUSBAND SUBSEQUENTLY RETURNED, LEAVE THE ONE AS WELL AS THE OTHER, AND SHE ALSO REQUIRES[27] A LETTER OF DIVORCE FROM THE ONE AS WELL AS FROM THE OTHER. SHE HAS NO [CLAIM TO HER] KETHUBAH, USUFRUCT, MAINTENANCE[28] OR WORN CLOTHES[29] EITHER AGAINST THE FIRST HUSBAND OR AGAINST THE SECOND. IF SHE HAS TAKEN ANYTHING FROM THE ONE OR FROM THE OTHER, SHE MUST RETURN IT. THE CHILD BEGOTTEN BY THE ONE HUSBAND OR BY THE OTHER IS A BASTARD;[30] NEITHER OF THEM[31] MAY DEFILE HIMSELF FOR HER;[32] NEITHER OF THEM HAS A CLAIM TO WHATEVER SHE MAY FIND[33] OR MAKE WITH HER HANDS;[34] AND NEITHER HAS THE RIGHT OF INVALIDATING HER VOWS.[35] IF SHE WAS THE DAUGHTER OF AN ISRAELITE, SHE BECOMES DISQUALIFIED FROM MARRYING A PRIEST; IF THE DAUGHTER OF A LEVITE, FROM THE EATING OF TITHE; AND IF THE DAUGHTER OF A PRIEST, FROM THE EATING OF TERUMAH. NEITHER THE HEIRS OF THE ONE HUSBAND NOR THE HEIRS OF THE OTHER ARE ENTITLED TO INHERIT HER KETHUBAH, AND IF [THE HUSBANDS] DIE, THE BROTHER OF THE ONE AND THE BROTHER OF THE OTHER MUST SUBMIT TO HALIZAH, BUT MAY NOT CONTRACT THE LEVIRATE MARRIAGE. R. JOSE SAID: HER KETHUBAH REMAINS A CHARGE UPON THE ESTATE OF HER FIRST HUSBAND. R. ELEAZAR SAID: THE FIRST HUSBAND IS ENTITLED TO WHATEVER SHE MAY FIND, OR MAKE WITH HER HANDS, AND ALSO HAS THE RIGHT OF INVALIDATING HER VOWS. R. SIMEON SAID: HER COHABITATION OR HALIZAH WITH THE BROTHER OF THE FIRST HUSBAND EXEMPTS HER RIVAL,[36] AND A CHILD BEGOTTEN BY HIM[37] IS NOT A BASTARD. IF SHE MARRIED WITHOUT AN AUTHORIZATION[38] SHE MAY RETURN TO HIM.[37] IF[39] SHE MARRIED WITH THE AUTHORIZATION OF THE BETH DIN,[40] SHE MUST LEAVE,[41] BUT IS EXEMPT FROM AN OFFERING.[42] IF SHE MARRIED, HOWEVER, WITHOUT THE AUTHORIZATION OF THE BETH DIN, SHE MUST LEAVE[41] AND IS ALSO LIABLE TO AN OFFERING. THE AUTHORITY OF THE BETH DIN IS THUS MORE EFFECTIVE IN THAT IT EXEMPTS HER FROM THE OFFERING. IF THE BETH DIN RULED[43] THAT SHE MAY BE MARRIED AGAIN AND SHE WENT AND DISGRACED HERSELF[44] SHE[45] MUST BRING AN OFFERING, BECAUSE THE BETH DIN PERMITTED HER ONLY TO MARRY.[46]

GEMARA. Since in the final clause it was stated, IF SHE MARRIES WITHOUT PERMISSION SHE MAY RETURN TO HIM, [which means obviously], without the authorization of the Beth din but [in reliance on the evidence] of witnesses, the first clause, it is to be inferred, [speaks of a woman who married] with the permission of the Beth din and on the evidence of a sing]e witness.[47] Thus it clearly follows that one witness is trusted. Furthermore, we learned: The practice was adopted of allowing a marriage on the evidence of one witness reporting[48] another single witness, and of a

woman reporting another woman, and of a woman reporting a bondman or a bondwoman;[49] from which it is obvious that one witness is trusted. Furthermore we learned: [The man to whom] one witness said, 'You have eaten[50] suet',[51] and who replied, 'I have not eaten', is exempt.[52] Now the reason [for his exemption is] because he said, 'l have not eaten'; had he, however, remained silent [the witness] would have been trusted.[53] From this it is clearly evident that one witness is trusted in accordance with Pentateuchal law;[54] whence is this[55] deduced? From what was taught: If his sin... be known to him,[56] but not when others have made it known to him. As it might have been assumed that even where he does not contradict the evidence he is exempt, it was expressly stated, If. . . be known to him,[57] in any manner.[58] Now, how is this statement to be understood? If it be suggested [that it refers to a case] where two witnesses appeared, and he does not contradict them, what need then was there for a Scriptural text![59] Must it not then refer to the case of[60] one witness, and yet [we see that] when the accused does not contradict him he is trusted.[61] From this, then, it maybe inferred that one witness is to be trusted.[54] But whence is it inferred that [the reason[62] is] because he is trusted? Is it not possible that it is due to the fact that the other had remained silent, silence being regarded as an admission! You can have proof that this is so,[63] since in the final clause it was stated: [A man to whom] two witnesses said, 'You have eaten[64] suet,[65] and who replied. 'I have not eaten',is exempt; but R. Meir declares him guilty. Said R. Meir: This[66] may be inferred a minori ad majus. If two witnesses may bring upon a man the severe penalty of death, should they not be able to bring upon him the minor penalty of a sacrifice! The others replied: What if he desired to say, 'I have acted presumptuously'![67] Now, in the first clause,[68]

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(1) Lit., 'have no child' (Lev. XXII, 13) i.e., a woman who has a born child and whose case was deduced from this text.

(2) And have no child.

(3) To indicate that a born child also deprives his mother of her right to terumah.

(4) An aid to the memorisation of the following four arguments.

(5) The verb 'to make', עשה is rendered in the following discussions by various equivalents in accordance with the requirements of English idiom.

(6) Cur. edd. 'her deeds', מעשיה, is ap patently a substitute for this reading, ונעשה, which agrees with MS.M.

(7) Cur. edd. repeat, 'levirate marriage and terumah'. MS.M. gives it only once.

(8) [Deskarah, N.E. of Bagdad. Obermeyer. p. 146].

(9) Lit., 'let us not make'. Cf. mnemonic supra.

(10) V. supra p. 589, n. 14.

(11) V. supra p. 590, n. 2.

(12) And consequently not exempt his mother from the levirate marriage.

(13) V. supra p. 589. n. 12.

(14) Prov. III, 17. Were a woman, whose child died after its father, to be subjected to the obligations of the levirate marriage, the peace and the pleasantness of family life might be disturbed where the woman, for instance, happened to have married after the death of her husband and the child died subsequently.

(15) Cf. supra note 3.

(16) Cf. supra p. 590, n. 1.

(17) And consequently disqualify his mother from the right of eating of terumah.

(18) Cf. supra p. 589. n. 14.

(19) Lev. XXII, 13.

(20) Hence the permission to eat terumah.

(21) Cf. supra p. 590, n. 2.

(22) Cf. supra p. 589, n. 12.

(23) And consequently exempt his mother from the levirate marriage.

(24) Deut. XXV, 5.

(25) Lev. XXII, 13.

(26) Lit., 'and they came and said to her'. This, as will be explained infra, refers to evidence given by a single witness.

(27) If she desires to marry again.

(28) Even for the period during which she lived with him.

(29) Neither compensation for those that were entirely destroyed nor the clothes themselves should the tatters still be in existence.
(30) Pentateuchally if begotten by the second husband; Rabbinically if by the first who resumed living with her.
(31) If a priest.
(32) If she died. Cf. Lev. XXI,1ff.
(33) A woman's find belongs to her lawful husband. Cf. B.M. 12a.
(34) To which a lawful husband is entitled in return for her maintenance.
(35) V. Num. XXX. 7ff.
(36) From the levirate marriage and halizah.
(37) Her first husband, after his return.
(38) Of the Beth din; i.e., if she married on the strength of the evidence of two witnesses who testified to her husband's death, in which case no authorization by a court is required.
(39) When only one witness testified to the death of her husband.
(40) And her first husband subsequently returned.
(41) Her second husband.
(42) Since she has acted on a ruling of the Beth din. Cf. Hor. 2a.
(43) Lit., 'they taught her' or 'directed her'.
(44) By immoral conduct. V. infra 922 for fuller explanation.
(45) If her first husband subsequently returns.
(46) I.e., to contract a lawful marriage, not a forbidden one.
(47) Cf. supra p. 593, n. 1.
(48) Lit., 'from the mouth'.
(49) Infra 122a, Shab. 145a, Bek. 46b.
(50) Unwittingly.
(51) חלב forbidden fat.
(52) From bringing a sin-offering (cf. Lev. IV, 27ff), Kid. 65b, Ker. 11b.
(53) And a beast would have been offered as a sin-offering though its sanctity was entirely dependent on one man's word.
(54) Had such evidence been Pentateuchally inadmissible, the sin-offering would consist of a Pentateuchally unconsecrated beast which must not be offered on the altar and is also forbidden to be eaten by the priests.
(55) The admissibility of one man's evidence.
(56) Lev. IV, 28; only then must he bring a sin-offering.
(57) Ibid.
(58) Cf. Ker. 11b.
(59) Two witnesses are, surely, always relied upon.
(60) Lit., 'but not'.
(61) And an offering is brought upon the altar on the basis of his word. Cf. supra n. 7.
(62) For the obligation of an offering.
(63) Lit., 'you may know' that the reason is because silence is regarded as an admission.
(64) Unwittingly.
(65) חלב forbidden fat.
(66) That the evidence of the two witnesses is accepted despite the denial of the accused.
(67) For a presumptuous sin no sin-offering is brought. In such a case the evidence of the witnesses would be of no value. They can only testify to one's action but not to one's motive or state of mind. Since the accused could annul the evidence by such a plea he is also believed when he simply contradicts the evidence.
(68) Where the accusation comes from one witness.

Talmud - Mas. Yevamoth 88a

on what grounds do the Rabbis declare the man liable?[1] If it be suggested: Because he[2] is believed; surely [here it may be objected], even in the case of two witnesses, who in all other cases are trusted though the accused contradicts them, the Rabbis have exempted him![3] The reason[4] must

consequently be[5] because the accused remained silent, and silence is regarded as admission![6]

[The fact], however, [is that this[7] is arrived at] by[8] a logical inference, this case being analogous to that of a piece of fat[9] concerning which there is doubt as to whether it was of the forbidden,[10] or of the permitted kind; if a single witness came and declared, 'l am certain that it was permitted fat', he is trusted.[11] Are [the two cases] similar? There[12] the prohibition[13] was not established; here[14] the prohibition of a married woman is established,[15] and no question of sexual relationship [may be decided on the evidence of] less than two witnesses! This[16] is rather analogous[17] to the case of a piece that was definitely forbidden fat;[18] if a single witness came and declared, 'I am certain that it was permitted fat,' he is not believed.[19] But are these cases, similar? In that case,[20] should even a hundred witnesses come they would not be believed; in this case,[16] however, since should two witnesses come they would be trusted, one witness also should be trusted! This[16] is rather analogous to the cases of tebel,[21] and consecrated and konam[21] objects.[22]

Whose tebel[21] is here to be understood? If his own,[23] [he would naturally be trusted] since it is in his power to make it fit for use;[24] if, however, it is that of another person, [the question may still be urged], what view is here adopted: If it is maintained that a man who sets apart priestly dues for his neighbours' produce out of his own does not require the owner s consent [it is quite obvious why the witness is here trusted] since it is in his power to make it fit for use;[24] and if it is maintained that the owner's consent is required and that the witness declares, 'I know that he has made it fit for use', whence is this very law[25] derived? As regards consecrated objects also, if it was a consecration of the value of an object [it is obvious why one witness is trusted] since it is in his power to redeem it;[26] but if an object has been consecrated,[27] [the objection may still be raised]: If it were his own[23] [he would naturally be trusted] since it is within his right to ask for the disallowance of his vow;[28] if, however, it belonged to another man, and the witness declared, 'I know that its owner has asked for the disallowance of his vow', whence is this very law[29] derived? With reference to konam[30] objects also, if it is maintained that the law of trespass[31] is applicable to konam objects and that the sanctity of their value[32] descends upon them [it is obvious why one witness is trusted] since it is within his power to redeem them;[33] and if it is maintained that the law of trespass[31] is not applicable to konam objects[34] and that it is only a mere prohibition with which he is saddled[35] [the question may be urged]: If any such object was his own [it is natural that he should be trusted] since it is within his power to ask for the disallowance of his vow;[36] if, however, it belonged to another man, and the witness declared, 'I know that its owner has asked for the disallowance of his vow, whence is this very law[37] derived?

R. Zera replied:[38] Owing to the rigidity of the disabilities[39] that were later[40] imposed upon her the law was relaxed in her favour at the beginning.[41] Let there be, however, neither rigid disabilities nor a relaxation of the law! — In order [to avoid] perpetual desertion[42] the Rabbis have relaxed the law in her favour.[43]

MUST . . . LEAVE THE ONE AS WELL AS THE OTHER etc. Rab stated: This was taught only in respect [of a woman] who married on the evidence of a single witness, but if she married on the strength of the evidence of two witnesses, she need not leave.[44] In the West[45] they laughed at him. 'Her husband' [they remarked] comes, and there he stands, and you say: She need not leave!' — This[46] [it may be replied] was required only in the case when the man[47] was not known.[48] If he[49] is unknown, why is she to leave [her second husband] even where she only married on the evidence of a single witness? This is required only in the case where two witnesses came and stated, 'We were with him[49] from the moment he left until now, but you it is who are unable to recognize him';[50] as it is written, And Joseph knew his brethren but they knew him not,[51] on which R. Hisda remarked: This teaches that he went forth without any marks[52] of a beard and now he appeared with a full[52] beard. But, after all, there are two[53] against two

(1) To an offering, if he did not contradict the evidence.
(2) The one witness.
(3) Because his word is more than the evidence of two witnesses. How much more then should he be trusted when the evidence is only that of one witness!
(4) For the obligation of a sin-offering in the first clause.
(5) Lit., 'but not'.
(6) The original question then arises again: Whence is it proved that the evidence of one witness is admissible?
(7) Cf. supra n. 12.
(8) Lit., 'but'.
(9) Which someone has eaten.
(10) For the unwitting eating of which a sin-offering is incurred.
(11) Cf. Git. 2b.
(12) Where the nature of the fat is in doubt.
(13) Of the piece.
(14) The case of the woman spoken of in our Mishnah.
(15) The doubt extending only to the question as to whether by the death of the husband this prohibition had been removed.
(16) The case of the woman spoken of in our Mishnah
(17) Lit., 'this is not like, but'.
(18) Which someone has eaten.
(19) The question, therefore, remains whence is it inferred that the evidence of one witness is admissible.
(20) Where the forbidden nature of the fat is established.
(21) V. Glos.
(22) Where the evidence of a single witness is accepted though the prohibitions were established. From such a case that of the woman in our Mishnah may reasonably be inferred.
(23) That of the witness.
(24) He can at any moment set apart the priestly dues and thus render the produce fit for everybody's consumption Such an argument is, of course, inapplicable to the case in our Mishnah.
(25) That the evidence of a single witness is accepted in such a case.
(26) Objects of which the value only has been consecrated קדושת דמים, completely lose their sanctity on redemption. Cf. supra n. 9.
(27) קדושת הגוף, consecrated for the altar. Such cannot be redeemed.
(28) A learned man may under certain conditions disallow the vow, and the object would consequently lose its sanctity. Cf. supra p. 597, n. 9.
(29) That the evidence of a single witness is accepted in such a case.
(30) V. Glos.
(31) Me'ilah, v. Glos.
(32) Which is consecrated for Temple purposes.
(33) Cf. supra p. 597, n. 9.
(34) Konam being regarded as a vow only, which the man has to fulfil by paying to the Temple treasury the value of the object which itself remains unconsecrated.
(35) Lit. , 'that rides upon his shoulder'.
(36) V. supra note 2.
(37) V. supra note 2.
(38) To the question raised supra to the admissibility of the evidence of a single witness in the case of the woman in our Mishnah.
(39) Loss of kethubah, usufruct, etc.
(40) If her husband returns.
(41) By permitting her to marry on the evidence of a single witness. Knowing the disabilities to which she would be subject should her first husband return, she takes every precaution to verify the evidence of the one witness.
(42) עיגונא lit. , 'holding fast', description of a deserted woman who remains tied to her absent husband.
(43) And allowed her to marry on the strength of the evidence of one witness.

(44) It is now assumed that Rab referred to the second husband,
(45) Palestine.
(46) Rab's ruling.
(47) Her first husband.
(48) To have been her husband.
(49) The first husband.
(50) Because he left while still young and now he has attained to manhood. Such evidence is accepted if the evidence of the husband's death was given by one witness only. It is not accepted, however, where it is contradictory to the evidence of two witnesses on the basis of whose testimony the woman had married her second husband.
(51) Gen. XLII, 8.
(52) Construct of חתימה 'mark' or 'stamp'. חתימת זקן 'The mature manly expression which the beard gives, full manhood' (Jast.).
(53) Witnesses.

Talmud - Mas. Yevamoth 88b

and he who cohabits with her[1] is liable to bring an asham talui![2] R. Shesheth replied:[3] When she was married, for instance, to one of her witnesses.[4] But she herself is liable to an asham talui![5] — Where[3] she states, 'I am certain',[6] If so, what need was there to state [such an obvious ruling], when even R. Menahem son of R. Jose[7] maintained his view only where the witnesses[8] came first and the woman married afterwards, but not[9] where she married first and the witnesses came afterwards! For it was taught: If two witnesses state that he[10] was dead and two state that he was not dead, or if two state that the woman was divorced and two state that she was not divorced, the woman must not marry again, but if she married she need not leave;[11] R. Menahem, son of R. Jose, however, ruled that she must leave.[10] Said R. Menahem son of R. Jose, 'When do I rule that she must leave? Only when witnesses came first and she married afterwards, but where she married first and the witnesses came afterwards, she need not leave!'[12] — Rab also spoke of the case where witnesses came first and the woman married afterwards, [his object being] to exclude the ruling of R. Menahem son of R. Jose.

Another reading: The reason then[13] is because she married first and the witnesses came afterwards,[14] but where witnesses came first and the woman married afterwards, she must leave. In accordance with whose [view is this ruling]? — In accordance with that of R. Menahem son of R. Jose.

Raba raised an objection: Whence is it deduced that if [a priest] refused[15] he is to be compelled?[16] It was expressly stated, And thou shalt sanctify him,[17] even against his will. Now, how is this[18] to be understood?[19] If it be suggested [that it is a case] where she was not married to one of her witnesses[20] and she does not plead 'I am certain',[21] is there any need to state that he is to be compelled?[22] Consequently it must refer to a case[23] where she was married to one of her witnesses[24] and she pleads, 'I am certain'; I and yet it was stated that he was to be compelled;[25] from which it clearly follows that she is to be taken away from him![26] — A priestly prohibition is different.[27] If you prefer I might say,[28] 'What is the meaning of "he is to be compelled"? He is to be compelled by means of witnesses'.[29] And if you prefer I might say:[28] [It is a case] where witnesses came first and she married afterwards, and this represents the view of R. Menahem son of R. Jose.[30] R. Ashi replied. What is meant by the expression, 'She need not leave' which Rab used? She is not to depart from her first state of permissibility.[31] But surely Rab has said this once! For we learned, IF SHE MARRIED WITHOUT AN AUTHORIZATION SHE MAY RETURN TO HIM, and Rab Huna stated in the name of Rab: This is the established law![32] — One was stated as an inference from, the other.[33]

Samuel said: This[34] was taught only in the case where she does not contradict him,[35] but where she contradicts him she need not leave.

What [are the circumstances] spoken of? If it be suggested that there are two witnesses[36] , of what avail is her denial?[37] [It must then deal with the case] of one witness, and the reason[38] is because she contradicts him;[39] had she, however, remained silent, she would have been obliged to leave. But, surely, 'Ulla stated that 'wherever the Torah allows credence to one witness[40] he is regarded as two witnesses, and the evidence of one man[41] against that of two men has no validity!'[42] — Here it is a case of evidence by ineligible witnesses,[43] and [Samuel's statement is] in accordance with the view of R. Nehemiah. For it was taught: R. Nehemiah stated, 'Wherever the Torah allows credence to one witness[40] the majority of opinions is to be followed,[44] and [the evidence of] two women against that of one man is given the same validity as that of two men against one man'.[45]

And if you prefer I might reply: Wherever one eligible witness came first,[46] even a hundred women[47] are regarded as one witness;[48] here, however, we are dealing with a case where a woman witness came in the first instance;[49] and the statement of R. Nehemiah is to be explained thus: R. Nehemiah stated, 'Wherever the Torah allows credence to one witness, the majority of opinions is to be followed, and [the evidence of] two women against that of one woman is given the same validity as that of two men against one man, but that of two women against that of one man is regarded only as that of a half and a half.[50]

SHE ALSO REQUIRES A LETTER OF DIVORCE FROM ONE AS WELL AS FROM THE OTHER. It is quite intelligible that she should require a divorce from the first husband; but why also from the second [when their union was a] mere act of adultery?[51] — R. Huna replied: This[52] is a preventive measure against the possibility of assuming that the first had divorced her and the second had [lawfully] married her, and that consequently[53] a married woman[54] may leave her husband without a letter of divorce. If so[55] , in the latter clause also, where it was stated, 'If she was told "your husband is dead", and she was betrothed, and afterwards her husband came, she is permitted to return to him',[56] might it not be assumed there also that the first husband had divorced her and the other had [lawfully] betrothed her and that consequently a betrothed woman may be released without a letter of divorce! — As a matter of fact she does require a letter of divorce.[57] If so,[58] [it might there also be assumed that] the first had again married his divorced wife after she had been betrothed![59] — [This statement is in] accordance with R. Jose b. Kiper who stated [that remarrying one's divorced wife] after a marriage[60] is forbidden but after a betrothal[60] is permitted.[61] Since, however, it was stated in the final clause, 'Although

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(1) And thus commits a doubtful sin, it being uncertain which pair of witnesses is to be trusted.

(2) V. Glos. Such an offering is brought for the commission of a doubtful sin. How, then, could Rab maintain that she may continue to live with her second husband?

(3) Rab's ruling is applicable.

(4) Who well knows that her first husband is dead.

(5) Since as far as she is concerned her first husband's death is still a matter of doubt.

(6) That the man who claims to be her first husband is a stranger. An asham talui is brought only in cases where a person is himself in doubt as to the propriety of an act he has committed; v. Keth. Sonc. ed., p. 122 notes.

(7) Who in a similar case maintained (v. infra) that the woman must leave her second husband.

(8) Who testified that the first husband was alive.

(9) Lit., 'he did not say'.

(10) The woman's first husband.

(11) Her second husband

(12) V. Keth. 22b. What need, then, was there for Rab's ruling?

(13) Why Rab allowed the woman to remain with her second husband though two witnesses stated that her first husband was still alive.

(14) As in the case in our Mishnah in connection with which Rab's statement was made.

(15) To observe the rules of levitical uncleanness and matrimony prescribed in Lev. XXI, 1ff.

(16) דפנו rt. דפן 'to strike on the side' (cf. דופן 'side', 'wall').
(17) Ibid. 8.
(18) Case of coercion.
(19) Since a Scriptural text was required for the purpose, it could not apply to established or even doubtful prohibitions which a priest must undoubtedly obey and the observance of which is obviously to be enforced.
(20) Who was a priest.
(21) Cf. supra p. 599, n. 16.
(22) V. supra p. 600, n. 13.
(23) Lit., 'but not?'
(24) Who was a priest.
(25) To separate from her if witnesses subsequently came and declared that the first husband was still alive at the time this second marriage with the priest took place.
(26) How then could Rab rule that in the case of contradictory evidence between two pairs of witnesses the second union is not to be severed if it took place prior to the appearance of the second pair.
(27) A priest is subject to greater restrictions which do not apply to others.
(28) In reply to Raba's objection.
(29) Before marriage with the priest is allowed, the court makes every effort to ascertain whether witnesses are available who could contradict the evidence of the first witnesses and thus prevent the marriage. If, however, no such witnesses are available and the marriage has taken place, the union need not be severed though such witnesses subsequently appeared.
(30) With which Rab is in agreement.
(31) She may return to her first husband, because in her second marriage she is a victim of circumstances,It having been contracted on misleading evidence.
(32) Infra 91a; why should the same ruling be stated twice?
(33) Rab, however, gave his ruling only once.
(34) That the woman must . . . LEAVE THE ONE AS WELL AS THE OTHER. (V. our Mishnah).
(35) The man who claims to be her husband.
(36) Who testify to the veracity of the statement of the man who claims to be the first husband.
(37) Lit., 'when she contradicts him, what is?; her word would obviously not be accepted against the word of two witnesses.
(38) Why the woman may continue to live with her second husband.
(39) The evidence that her first husband was alive.
(40) In certain cases of marriage and divorce, testifying, for instance, that a husband was dead.
(41) Who now states that the first husband was not dead.
(42) The previous evidence of the one witness being consequently valid, why should the woman have to leave even when she does not contradict the latter evidence?
(43) Relatives, women or slaves, for instance, two of whom testify that the first husband is alive.
(44) Since one witness is trusted, the accepted law of valid evidence is superseded in such cases and the evidence of any ineligible witnesses (cf. supra n. 8) is equally admissible.
(45) Infra 117b, Sot. 31b. When, therefore, the wife does not contradict the evidence, these otherwise ineligible witnesses are trusted. Where, however, she contradicts them, her evidence is added to that of the one witness who had originally testified that her husband was dead, and the evidence of the second pair of witnesses, being thus contradicted by two, is disregarded. Cf. Maimonides cited by Wilna Gaon, glosses.
(46) And testified that the first husband was dead.
(47) I.e., ineligible witnesses who, after the woman had married, testified that her first husband was alive.
(48) And their evidence, being opposed to that of the first witness, is disregarded, as is the case with all evidence of a single witness, which is opposed to that of a previous witness. The woman need not, therefore, leave her second husband even if she does not contradict the second set of witnesses.
(49) V. supra p. 602, n. 11, and two women subsequently testified that the first husband was alive. If the wife keeps silent, there remains a majority of two against one; if she contradicts the two the majority disappears.
(50) The two together representing one; so that the evidence of the first eligible witness remains unaffected by it, provided the woman remarried, even where she remained silent.

(51) The first husband having been alive when it was contracted.
(52) The requirement of a divorce from the second husband.
(53) Lit., 'and it is found'.
(54) The marriage with the second being assumed to have been valid.
(55) That provision was made against erroneous assumptions.
(56) Infra 92a.
(57) From the second, to whom she was betrothed.
(58) That a letter of divorce is required.
(59) Cf. supra note 6 mutatis mutandis.
(60) With a second husband.
(61) Cf. supra 11b.

Talmud - Mas. Yevamoth 89a

the latter[1] gave her a letter of divorce he has not thereby disqualified her from marrying a priest',[2] it may be inferred that she requires no divorce;[3] for should she require a divorce, why does he not disqualify her from marrying a priest![4] — Rather,[5] in the final clause it will be assumed[6] that the betrothal was an erroneous one.[7] In the first clause also [let it be said that] it would be assumed that the marriage was an erroneous one![8] The Rabbis have penalized her.[9] Then let them penalize her in the final clause also! — In the first clause where she committed a forbidden act[10] they penalized her; in the final clause where she did not commit a forbidden act, the Rabbis did not penalize her.

SHE HAS NO [CLAIM TO HER] KETHUBAH, [because] what is the reason why the Rabbis have provided a kethubah for a woman? In order that it may not be easy for the husband[11] to divorce her![12] But in this case let it be easy for him, to divorce her.[13]

SHE HAS NO [CLAIM TO] . . . USUFRUCT, MAINTENANCE OR EVEN WORN CLOTHES, [because] the conditions[14] entered in the kethubah[15] are subject to the same laws as the kethubah[16] itself. IF SHE HAD TAKEN ANYTHING FROM THE ONE OR FROM THE OTHER,[SHE MUST RETURN IT]. Is this not obvious! — As it might haved been assumed that since she has already seized it, it is not to be taken from her, hence we were taught [that SHE MUST RETURN IT]. THE CHILD . . . .IS A BASTARD. Elsewhere we learned: Terumah[17] from levitically unclean produce may not be set apart for that which is levitically clean[18] . If, however, such terumah has been set apart it is valid if the act was done in error, but if it was done wilfully it is null and void[19] . Now what is meant by 'it is null and void'? — R. Hisda replied: The act is absolutely null and void, even that griva[20] [which has been designated as terumah] returns to its former state of tebel.[21] R. Nathan son of R. Oshaia replied: It is null and void in respect of making the remainder[22] fit for use, but [that which has been set apart] becomes terumah.[23] R. Hisda does not give the same explanation as R. Nathan son of R. Oshaia, for, should it be said [that the portion set apart] is lawful terumah, it might sometimes happen that one would wilfully neglect to set apart the terumah [from the remainder].[24]

But why should this be different from, [the following case concerning] which we learned: If a man has set apart as terumah a cucumber which was found to be bitter, or a melon which turned out to be decayed[25] [the fruit becomes] terumah; but [from the remainder] terumah must again be set apart![26] Do you raise an objection from a case where one has acted unwittingly[27] against a case where one has acted wilfully?[27] Where one has acted unwittingly,[28] no forbidden act has been committed; when, however, one has acted wilfully,[29] a forbidden act has been committed.

A contradiction, however, was pointed out between two acts committed unwittingly: Here[30] it is stated, 'It is lawful terumah if the act was done unwittingly',[31] while there sit was stated, 'Terumah,' but [from the remainder] terumah must again be set apart'! — There,[32] it is an erroneous act

amounting almost[33] to a wilful one, since he should have tasted it .[34]

A contradiction was also pointed out between two cases of wilful action: Here[35] it is stated, 'but if it was done wilfully, it is null and void', while elsewhere we learned: If a man has set apart as terumah [the produce] of an unperforated plant-pot[36] for [the produce of] a perforated pot,[37] [the former becomes] terumah but [from the latter] terumah must again be separated![38] — In [the case of produce grown in] two different vessels[39] a man would obey;[40] in [that of] one vessel[41] he would not obey.[42]

Now according to R. Nathan, son of R. Oshaia, who explained that 'the act is null and void in respect of making the remainder fit for use but [that that which has been set apart] becomes terumah.[43] [

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(1) Who betrothed her.

(2) Infra 92a.

(3) Even Rabbinically; and that, therefore, the letter of divorce given is null and void.

(4) A divorced woman, even if the divorce was given to her in accordance with a Rabbinical and not a Pentateuchal ordinance. is forbidden to be married to a priest. Cf. infra 94a.

(5) The fact is that no divorce is required, as had been first assumed.

(6) Seeing that she is released without any letter of divorce.

(7) Release from which requires no divorce. Hence there is no need to provide against the assumption that 'the first husband had divorced her and the other had lawfully betrothed her etc.', suggested supra.

(8) Cf. supra n. 8. Why then was a letter of divorce required?

(9) For contracting a marriage without first making the necessary enquiries.

(10) Unlawful marriage.

(11) Lit., 'in his eyes'.

(12) Cf. Keth. 11a.

(13) And thus sever a forbidden union.

(14) Such as the undertaking of maintenance etc. which, like the specified amount of the kethubah are entered in the marriage contract.

(15) I.e., the contract. This is one of the meanings of 'kethubah', v. n. 18.

(16) I.e., the specified sum due to the woman on the husband's death or on her divorce.

(17) V. Glos.

(18) Since the former is forbidden to be eaten the priest would thereby suffer a loss.

(19) Lit., 'he did not do, even anything'. Ter. II, 2, Pes. 33a, Men. 25b.

(20) A measure of capacity. V. Glos.

(21) And forbidden to all.

(22) The levitlcally clean produce (Rashi).

(23) And the priest may use it for the purposes for which it is fit such as, for instance, fuel.

(24) V. supra note 6, believing that the portion he had set apart. and which had assumed the name of terumah, had exempted it.

(25) Lit., 'having an offensive smell'.

(26) Ter. III, 1 , Kid. 46b; which proves that the possibility of neglecting this second separation of terumah does not render null and void the whole act.

(27) The case of the cucumber or the melon where the man believed it to be in good condition. (12) The second case in the first Mishnah cited.

(28) The case of the cucumber or the melon where the man believed it to be in good condition.

(29) The second case in the first Mishnah cited.

(30) In the first cited Mishnah.

(31) Implying that no further terumah for the remainder need be set apart.

(32) In the second Mishnah quoted.

(33) Lit., 'near'.

(34) The fruit, before setting it apart as terumah.

(35) V. supra note 3.

(36) Which is not subject to terumah, since it has not grown directly from the ground.

(37) Which is subject to terumah. A plant in a perforated pot is deemed to be growing from the ground since it derives its nourishment through the holes of the pot from the ground itself.

(38) Dem. V, 10; Kid. 46a, Men. 70a. Why is the terumah in this case valid, while in the other it becomes tebel again?

(39) As in the last cited Mishnah where the produce designated as terumah grew in one kind of pot while the other produce grew in another kind of pot.

(40) To give terumah again, though the portion he has set apart is also allowed to remain terumah.

(41) Where the clean and the unclean grew in the same kind of pot or soil.

(42) To give terumah again, were the portion he has set aside allowed to retain the name of terumah. He would argue that, in view of the validity of his act, no further terumah need he given to the priest, whom he would consequently present with unclean terumah. Hence it was ordained that his act is void and that the quantity he has set aside is not to be regarded as terumah.

(43) And the priest may use it for the purposes for which it is fit, such, for instance, as burning.

Talmud - Mas. Yevamoth 89b

, why is this case different from [the following] where we learned [that if a man has set apart as terumah the produce] of a perforated plant-pot[1] for that of an unperforated one,[2] the terumah is valid, but[3] may not be eaten[4] before terumah and tithe from other produce[5] has been set aside for it![6] — Here[7] it is different, since Pentateuchally the terumah is valid, in accordance with the view of R. Elai; for R. Elai stated: Whence is it inferred that if one separates terumah from an inferior quality for a superior quality, his terumah is valid? It is written, And ye shall bear no sin by reason of it, seeing that ye have set apart from it the best thereof.[8] [Now, this implies that if you do not set apart from the best but of the worst you shall bear sin]; if, [however, the inferior quality] does not become consecrated, why [should there be any] bearing of sin?[9] Hence it may be inferred[10] that if one sets apart terumah from an inferior quality for a superior quality, his terumah is valid.[11]

Said Rabbah to R. Hisda: According to you who maintain that 'the act is absolutely null and void' so that 'even that griva [which has been designated as terumah] returns to its former state of tebel', the reason being[12] that this is a preventive measure against the possibility 'that one might wilfully neglect to set apart [the terumah from the remainder]'; is there anywhere [I may ask] a law that terumah which is Pentateuchally valid should, owing to the possibility that one might wilfully neglect his duty, be turned into[13] unconsecrated produce?[14] Could, then, a Beth din lay down a condition that would cause a law of the Torah to be uprooted! — The other replied: And do you not yourself agree with such a ruling? Have we not learned, THE CHILD BY THE ONE HUSBAND OR THE OTHER IS A BASTARD. Now, it is reasonable [that the child] by the second [should be deemed] a bastard,[15] but why [should the child] by the first [be a bastard]? She is, surely, his wife[16] and [the child is consequently] a proper Israelite whom [by regarding him as a bastard] we permit to marry a bastard![17] The first retorted: Thus said Samuel, 'He is forbidden to marry a bastard'. And so said Rabin, when he came,[18] in the name of R. Johanan. 'He is forbidden to marry a bastard'. Why, then,[19] is he called a bastard? — In respect of forbidding him to marry the daughter of an Israelite.[20]

R. Hisda sent to Rabbah through R. Aha son of R. Huna [the following enquiry]: Cannot the Beth din lay down a condition which would cause the abrogation of a law of the Torah? Surely it was taught: 'At what period of her age[21] is a husband entitled to be the heir of his wife [if she dies while still] a minor?[22] Beth Shammai stated: When she attains to womanhood;[23] and Beth Hillel said: When she enters into the bridal chamber.[24] R. Eliezer said: When connubial intercourse has taken place. Then he is entitled to be her heir, he may defile himself for her,[25] and she may eat terumah by virtue of his rights'. (Beth Shammai said, 'When she attains to womanhood',[26] even though she has not entered the bridal chamber![27] — Read, 'When she attains to womanhood and enters the bridal

chamber', and it is this that Beth Shammai said to Beth Hillel: In respect of your statement, 'When she enters the bridal chamber', it is only when she has attained womanhood that the bridal chamber is effective, but otherwise the bridal chamber alone is of no avail. 'R. Eliezer said: When connubial intercourse has taken place'. But, surely, R. Eliezer said that the act of a minor has no legal force![28] — Read, 'After she has grown up and connubial intercourse has taken place'.) At all events it was here stated, 'He[29] is entitled to be her heir'; but, surely, by Pentateuchal law it is her father[30] who should here be her legal heir, and yet it is the husband who is heir in accordance with a Rabbinical ordinance![31] — Hefker[32] by Beth din is legal hefker.[33] for R. Isaac stated: Whence is it deduced that hefker by Beth din is legal hefker? It is said, Whosoever came not within three days, according to the counsel of the princes and the elders, all his substance should be forfeited, and himself separated from the congregation of the captivity.[34] R. Eleazar stated [that the deduction[35] is made] from here: These are the inheritances, which Eleazar the priest. and Joshua the son of Nun, and the heads of the fathers' houses of the tribes of the children of Israel, distributed for inheritance.[36] Now, what relation is there between Heads and Fathers? But [this has the purpose] of telling you that as fathers may distribute as an inheritance to their children whatever they wish, so may the heads distribute as an inheritance to the people whatever they wish.

'He may defile himself for her'. But, surely, by Pentateuchal law it is her father who may here defile himself for her, and yet it is the husband who by a Rabbinical law was allowed to defile himself for her![37] — [This was allowed] because she is a meth mizwah.[38] Is she, however, a meth mizwah?[38] Surely, it was taught. 'Who may he regarded as a meth mizwah? He who has no [relatives] to bury him'. [If, however, he has relatives upon whom] he [could] call and they[39] would answer him, he is not regarded as a meth mizwah![40] — Here also, since they are not her heirs, they would not answer even if she were to call upon them.

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(1) V. supra p. 606, n. 10.

(2) V. supra p. 606, n. 9.

(3) Since it was given for produce which is not subject to terumah, it cannot assume the sanctity of terumah and remains tebel.

(4) Even by a priest.

(5) Lit., 'place'.

(6) Dem. V, 10; Kid. 46b. Why, then, was the terumah in the former case, which is virtually tebel, and is forbidden to be burnt (cf. Shab. 26a), allowed to be used by the priest (v. supra p. 606, n. 16) even though no terumah and tithe have been given for it from other produce?

(7) Where unclean produce was used as terumah for clean.

(8) Num. XVIII, 32.

(9) Surely no wrong has been done where one's action is null and void and other terumah has to he given!

(10) Lit., 'from here'.

(11) Tem. 5a, B.M. 56a, B.B. 84b, 143a, Kid. 46b.

(12) Lit., 'what is the reason'.

(13) Lit., 'they brought it out',

(14) Hullin v. Glos.

(15) Since, owing to the fact that the first husband was still alive, the marriage was unlawful.

(16) The marriage with the second having had no validity at all.

(17) Who is forbidden to an Israelite. As this, however, is permitted it follows that even a law of the Torah may be superseded by an ordinance of the Rabbis.

(18) From Palestine to Babylon.

(19) Since he is accordingly regarded as a proper Israelite.

(20) Such a restriction is no abrogation of a law of the Torah but a reinforcement of it.

(21) Lit., 'from when'.

(22) I.e., at what age may it be definitely assumed that the minor is no longer likely to make a declaration of refusal (v. Glos. s.v. mi'un) and may, consequently. be regarded as one's proper wife.

(23) Lit., ‘when she stands in her height’, the age of puberty.
(24) Huppah (v. Glos.), which is the preliminary to matrimonial cohabitation.
(25) If she died, though he is a priest. V. Lev. XXI, 1f.
(26) The husband may defile himself by her corpse and is also entitled to be her heir.
(27) When she is not yet regarded as his lawful wife (cf. supra 29b) and. according to law, he is entitled to be her heir. This consequently proves that the Beth din does possess the power to abrogate Pentateuchal laws!
(28) Infra 107b, 108a, Keth. 101b.
(29) The husband.
(30) (That is his legal heir (Rashi). Since the reference here is to a fatherless girl who was given in marriage by her mother or brothers. Such a marriage is not valid by Pentateuchal law which vests the right of giving a minor girl in marriage only in the father].
(31) How then could it be maintained that Beth din has no authority to abrogate Pentateuchal laws?
(32) הפקר a declaration that the property of a certain person is ownerless. V. Glos.
(33) The Rabbis have consequently full authority to transfer the property of the minor from her father's heirs to her husband, and such transfer cannot be regarded as an abrogation of the Pentateuchal law. The reading היה ‘was’ for the usual הוה ‘is’ may be a censorial alteration. Cf. Golds. a.l.
(34) Ezra X, 8.
(35) That Beth din is empowered to dispose of an individual's property in accordance with its legal decisions.
(36) Josh. XIX, 51.
(37) How then could it be maintained that Beth din has no authority to abrogate Pentateuchal laws?
(38) Lit., ‘dead of the commandment’, a corpse in which no one is interested and the burial of which is obligatory upon any person who discovers it.
(39) Lit., ‘and others’.
(40) ‘Er. 17b, Naz. 43b. As there are available the heirs of her father upon whom she could call, why is she regarded as a meth mizwah?

Talmud - Mas. Yevamoth 90a

‘And she may eat terumah by virtue of his rights’![1] — Only Rabbinical terumah.[2]

Come and hear: If a man ate[3] levitically unclean terumah, he must pay compensation in clean unconsecrated produce.[4] If he paid unconsecrated produce that was levitically unclean, his compensation, said Symmachus in the name of R. Meir, is valid[5] if it was paid in error,[6] and invalid if paid wilfully.[7] The Sages. however, said: Whether in one case or in the other[8] his compensation is valid, but he must again pay compensation in clean unconsecrated produce.[9] And when, in considering this ruling, the objection was raised, ‘Why should not his compensation be valid if he paid it wilfully? A blessing should come upon him! For he has eaten such of the priest's produce[10] as is not fit for him in the days of his uncleanness[11] and paid him compensation in something[12] that is fit for him in the days of his uncleanness’,[13] Raba, others say, Kadi, replied: [Some words are] missing from the text, the correct reading being the following: ‘If a man ate levitically unclean terumah he may pay compensation In any produce;[14] if he ate levitically clean terumah, he must pay compensation in clean unconsecrated produce; if, however, he made compensation in unconsecrated produce that was levitically unclean, his compensation, said Symmachus in the name of R. Meir, is valid if it was made in error,[15] and his compensation is invalid if it was made wilfully. But the Sages said: His compensation is valid whether he has acted in error or wilfully, but he must again pay compensation in clean unconsecrated produce’. Now here, surely. the compensation is Pentateuchally valid,[16] for were a priest to betroth a wife[17] with it her betrothal would be valid, and yet the Rabbis[18] ruled that ‘his compensation is invalid’,[19] and thus[20] a married woman[21] is permitted to [marry any one in] the world![22] — This was meant by the expression,[23] ‘his compensation is invalid’ which R. Meir used: That he must pay compensation again in clean unconsecrated produce.[24] If so, then Symmachus[25] holds the same view as the Rabbis! — R. Aha son of R. Ika replied: The difference between them is on the question whether one who has acted

unwittingly is to be penalized as a preventive measure against one acting wilfully.[26]

Come and hear: If [sacrificial] blood became levitically unclean and was then sprinkled [upon the altar], it is accepted[27] if [the sprinkling was performed] unwittingly, but it is not accepted [if it was performed] wilfully.[28] Now, according to Pentateuchal law, it is here undoubtedly accepted, for it was taught. 'In respect of what [errors] does the High Priest's front-plate[29] procure acceptance?[30] In respect of the sacrificial blood, flesh or fat that became unclean whether [this was brought about] by one acting in error or wilfully, under compulsion or willingly, and whether [this occurred with the sacrifice] of an individual or with [that of the] congregation',[31] and yet the Rabbis ruled that 'it is not accepted'[32] so that an unconsecrated beast is brought[33] into the Temple court![34] — R. Jose b. Hanina replied: The expression, 'it is not accepted' was used[35] in respect of permitting the flesh to be eaten;[36] the owner, however, obtains atonement through it.[37]

After all, however, the law of eating the flesh [of the sacrifice] would he uprooted, whereas it is written in the Scriptures. And they shall eat those things wherewith atonement was made[38] which teaches that the priests eat [the sacrificial meat] and the owner obtains thereby atonement! — The other replied: With an abstention from the performance of an act[39] it is different.[40]

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(1) Though Pentateuchally she is forbidden to eat terumah! V. supra p. 609. n. 5.

(2) That which is given from fruits of the trees, which is Pentateuchally permitted to non-priests. since the law of terumah is Pentateuchally applicable to corn only.

(3) Unwittingly.

(4) The reason is explained in Pes. 32a.

(5) Assumes the name of terumah.

(6) I.e., if he was unaware that the produce he gave as compensation was levitically unclean.

(7) Since he knew it to be unclean and yet paid it as compensation he is penalized.

(8) Whether the compensation was made in error or wilfully.

(9) Git. 54a.

(10) Lit., 'from him something'.

(11) Levitically unclean terumah may not be eaten by a priest even when he is himself also unclean.

(12) Unconsecrated produce.

(13) Even though it is levitically unclean.

(14) Even unconsecrated produce which is unclean.

(15) V. supra p. 610, n. 10.

(16) Since unconsecrated foodstuffs, though levitically unclean, may be consecrated (cf. supra 89b).

(17) Giving it to her as the token of betrothal (cf. Kid. 2a).

(18) I.e., R. Meir.

(19) If it was made wilfully.

(20) By ruling that the compensation is invalid and, in consequence, is not the property of the priest.

(21) Pentateuchally she should assume this status.

(22) As the compensation is Rabbinically invalid (v. supra n. 11) the betrothal also would be Rabbinically invalid. V. supra p. 609, n. 5.

(23) Lit., 'what'.

(24) The first payment, however, is also valid.

(25) Who reported R. Meir.

(26) According to the Rabbis, an unwitting sin is made punishable in order to prevent thereby a wilful one; hence their ruling that whether the payment of the compensation mentioned was made unwittingly or wilfully a second payment of compensation must be made. According to R. Meir, however, the inadvertent sinner is not to suffer for the sake of the wilful one; hence his ruling that a second payment of compensation is due only in the case of a wilful action.

(27) I.e., the owner obtains atonement and the flesh of the sacrifice may be eaten. הורצה of the same rt. רצה as that of ונרצה and it shall be accepted in Lev. I, 4, q.v.

(28) Pes. 16b.

(29) ציץ v. Ex. XXVIII, 36ff.
(30) Cf. supra n. 2.
(31) Pes. 80b, Yoma 7a, Men. 25b, Zeb. 45a, Git. 54a.
(32) In case of wilful action.
(33) Lit., 'brought again', i.e., the second sacrifice which the Rabbis ordained to be brought in addition to the first whose blood became unclean, remains Pentateuchally an unconsecrated beast, since, according to Pentateuchal law, no second sacrifice is required.
(34) V. supra p. 609, n. 5.
(35) Lit., 'what . . . which he said'.
(36) Only in this respect 'is it not accepted'; and the priest may not eat of such flesh.
(37) And no second sacrifice is required.
(38) Ex. XXIX, 33.
(39) שב ואל תעשה lit., 'sit and do not act', as is the case with the prohibition against eating the sacrificial meat mentioned.
(40) From the case of turning consecrated terumah into unconsecrated produce. The former (v. supra n. 1) involving no action may well be within the jurisdiction of the Rabbis, but not the latter which involves an act uprooting a Pentateuchal law.

Talmud - Mas. Yevamoth 90b

He,[1] [on hearing the last reply] said to him:[2] It was my intention to raise objections against your view[3] from [the Rabbinical laws which relate to] the uncircumcised,[4] sprinkling,[5] the knife [of circumcision],[6] the linen cloak with zizith,[7] the lambs of Pentecost,[8] the shofar[9] and the lulab;[10] now, however, that you taught us that abstention from the performance of an act[11] is not regarded as an abrogation [of the law, I have nothing to say since] all these are also cases of abstention.[12]

Come and hear: Unto him ye shall hearken,[13] even if he tells you. 'Transgress any of all the commandments of the Torah' as in the case, for instance, of Elijah on Mount Carmel,[14] obey him in every respect in accordance with the needs of the hour![15] — There it is different,[16] for it is written, 'Unto him shall ye hearken'. Then let [Rabbinic law] be deduced from it! — The safeguarding[17] of a cause is different.[18]

Come and hear: If he[19] annulled [his letter of divorce][20] it is annulled: so Rabbi. R. Simeon b. Gamaliel, however, said: He may neither annul it nor add a single condition to it,[21] since, otherwise,[22] of what avail is the authority[23] of the Beth din.[24] Now, though here, the letter of divorce may be annulled[25] in accordance with Pentateuchal law, we allow a married woman,[26] owing to the power[27] of Beth din,[24] to marry anyone in the world![28] — Anyone who betroths [a woman] does so in implicit compliance with the ordinances[29] of the Rabbis,[30] and the Rabbis have [in this case][31] cancelled the [original] betrothal.[32]

Said Rabina to R. Ashi: This[33] is a quite satisfactory explanation where betrothal was effected by means of money;[34] what, however. can be said [in a case where betrothal was effected] by cohabitation! — The Rabbis[35] have assigned[36] to such a cohabitation the character of mere prostitution.[37]

Come and hear: R. Eleazar b. Jacob stated, 'I heard that even without any Pentateuchal [authority for their rulings]. Beth din may administer flogging and [death] penalties; not, however, for the purpose of transgressing the words of the Torah but in order to make a fence for the Torah. And it once happened that a man rode on horseback on the Sabbath in the days of the Greeks,[38] and he was brought before Beth din and was stoned; not because he deserved this penalty, but because the exigencies of the hour demanded it. And another incident occurred with a man who had intercourse with[39] his wife under a fig tree, and he was brought before Beth din and flogged; not because he

deserved such a penalty, but because the exigencies of the hour demanded it![40] To safeguard a cause is different.[41]

NEITHER OF THEM MAY DEFILE HIMSELF FOR HER. Whence is this derived? — From what is written in Scripture. Except for his kin that is near unto him,[42] and a Master stated that 'his kin' means his wife;[43] while it was also written, The husband shall not defile himself, among his people, to prof- ane himself;[44] [implying that] there is a husband, then, who may, and there is a husband who may not defile himself; how, then [are these contradictory laws to be reconciled]? He may defile himself for his lawful wife but he may not defile himself for his unlawful wife .[45]

NEITHER OF THEM HAS A CLAIM UPON ANYTHING SHE MAY FIND etc. [because] what is the reason why the Rabbis ruled that a wife's finds belong to her husband? In order that he may bear no hatred against her; but, here, let him bear against her ever so much hatred![46]

OR MAKE WITH HER HANDS, [because] for what reason did the Rabbis rule that the work of her hands belonged to her husband? Because she receives from him her maintenance;[47] but here, since she receives no maintenance, her handiwork does not belong to him.

OR TO THE RIGHT OF INVALIDATING HER VOWS, [since] what is the reason why the All Merciful said that a husband may annul [his wife's vows]? In order that she may not become repulsive; here, however, let her become ever so repulsive![48]

IF SHE WAS THE DAUGHTER OF AN ISRAELITE, SHE BECOMES DISQUALIFIED FROM MARRYING A PRIEST etc.

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(1) R. Hisda.

(2) Rabbah who maintained (supra 89b) that the Rabbis have no power to abrogate a pentateuchal law.

(3) V. supra note 4.

(4) Proselyte, whose circumcision is performed on the Passover Eve and who, by Rabbinic law, is forbidden to participate in the Paschal lamb, though Pentateuchally it is his duty to celebrate the Passover as an Israelite. Cf. Pes. 92a.

(5) On an unclean person, on the Sabbath day, is Rabbinically forbidden (cf. Pes. 66a) though Pentateuchally permitted. Should the Sabbath on which such sprinkling is due happen to be a Passover Eve, the person affected would, owing to the Rabbinical prohibition, remain unclean on that day and would, in consequence, be deprived of participation in the Paschal lamb, which is a Pentateuchal precept.

(6) The carrying of which on the Sabbath is Rabbinically forbidden even along roofs, an act which is Pentateuchally permitted (cf. Shab, 130b). By observing this Rabbinical law it is sometimes necessary to postpone circumcision which is a Pentateuchal commandment.

(7) V. Glos. Pentateuchally it is permitted to insert woollen fringes (v. Num. XV, 38) in a linen garment, despite the prohibition in Deut. XXII, 11 against wearing wool and linen together. Owing, however, to a Rabbinic prohibition, fringes of wool in a linen garment are forbidden, and this prohibition sometimes results in the abrogation of the Pentateuchal commandment of zizith. Cf. Men. 40a.

(8) V. Num. XXVIII, 26ff. If Pentecost fell on a Sabbath day, and these lambs were not offered for the purpose for which they were designated, the sacrificial blood may not, in accordance with a Rabbinical prohibition, be sprinkled upon the altar, though such sprinkling is Pentateuchally permitted. Thus, the Pentateuchal law of the sprinkling of the sacrificial blood, and other laws which are dependent on its performance, are suspended by a Rabbinical ordinance. Cf. Bezah 20b.

(9) The ram's horn used on the New Year festival (cf. Lev. XXIII. 24). If New Year's Day falls on a Sabbath, the Pentateuchal law of Shofar is abrogated by the Rabbis for fear it might be carried from one Sabbatical domain into another. Cf. R.H. 32a.

(10) The branches of palm- trees (Lev. XXIII, 40) which are taken during the Feast of Tabernacles. This Pentateuchal law is abrogated on the Sabbath day, for the same reason as in the case of the Shofar. (Cf. p. 613, n. 1 t).

(11) Cf. supra p. 613. n. 1.

(12) V. last note.
(13) Deut. XVIII, 15, referring to a true prophet.
(14) Where he offered a sacrifice on an improvised altar (v. I Kings XVIII, 31ff) despite the prohibition against offering sacrifices outside the Temple.
(15) Which shews that the word of a prophet, as also that of the Rabbis, may abrogate a Pentateuchal law.
(16) From the teaching of the Rabbis.
(17) Lit., 'making a wall round'.
(18) From an ordinary measure. Elijah, by his act, saved Israel from idolatry and brought them back to the worship of Cod.
(19) A husband who sent a letter of divorce to his wife by the hand of an agent. Cf. Git. 32a.
(20) In the presence of any Beth din, even though the woman was unaware of the fact.
(21) Cf. supra n. 10.
(22) Lit., 'if so were such annulment to he permitted.
(23) Lit., 'power'.
(24) I.e., R. Gamaliel the Elder, who ordained that such an annulment must not be made, since the woman in her ignorance of it might marry again and thus unconsciously give birth to illegitimate children. V. Git. 33a.
(25) So long as it did not reach the woman's hand.
(26) Since the letter of divorce was duly annulled the woman obviously still retains the status of a married woman.
(27) Lit., 'what power', quotation from R. Simeon's exclamation.
(28) Which shews that a Pentateuchal law of marriage is abrogated by a Rabbinic measure!
(29) Lit., 'opinion', 'view'.
(30) The formula being. 'According to the law of Moses and of Israel' (cf. P.B. p. 298), i.e., the Pentateuchal and Rabbinic law.
(31) Where the divorce was annulled.
(32) Transforming retrospectively the money of the betrothal (cf. Kid. 2a) given to the woman at her first marriage into an ordinary gift. Since the hefker of money comes within the power of a legal tribunal the Beth din is thus fully empowered to cancel the original betrothal, and the divorcee assumes, in consequence, the status of an unmarried woman who is permitted to marry any stranger.
(33) The explanation of the retrospective cancellation of the original marriage. V. supra note 3.
(34) A woman may be betrothed by means of money, deed or cohabitation. V. Kid. 2a.
(35) In compliance with whose laws and ordinances all betrothals are implicitly effected.
(36) Lit 'made'.
(37) From the moment a divorce is annulled in such a manner, the cohabitation, it was ordained, must assume retrospectively the character of mere prostitution, and since her original betrothal is thus invalidated the woman resumes the status of the unmarried and is free to marry whomsoever she desires.
(38) While the Greeks were the rulers of the country.
(39) Lit., 'ejaculate in'.
(40) Cf. Sanh. 46a; which shows that the Rabbis may carry out decisions contrary to Pentateuchal law.
(41) Cf. supra p. 614, nn. 7 and 8. The incidents referred to occurred in times of religious laxity when rigid measures were necessary, v Sanh., Sonc. ed., p. 303. n. 8.
(42) Lev. XXI, 2.
(43) Consequently it is permitted for a priest to defile himself for his wife.
(44) Ibid. 4. which, contrary to the interpretation of v. 2, shews that a husband may not defile himself for its wife., 'a husband'. (E.V. chief man).
(45) Who is the subject of our Mishnah, v. supra 22b.
(46) The more he will hate her the sooner will he sever the unlawful union.
(47) Lit., 'eats foods'.
(48) Cf. supra n. 5.

Talmud - Mas. Yevamoth 91a

Is not this obvious![1] — [The statement] IF THE DAUGHTER OF A LEVITE [she becomes

disqualified] FROM THE EATING OF TITHE was required.[2] Does, however, the daughter of a Levite become disqualified by prostitution from the eating of tithe? Surely, it was taught: If the daughter of a Levite was taken into captivity[3] or was subjected to an act of prostitution,[4] she may nevertheless be given tithe and she may eat it![5] — R. Shesheth replied: This[6] is a punitive measure.[7]

IF THE DAUGHTER OF A PRIEST, [she becomes disqualified] FROM THE EATING OF TERUMAH, even Rabbinical terumah.

NEITHER THE HEIRS OF THE ONE HUSBAND NOR THE HEIRS OF THE OTHER ARE ENTITLED TO INHERIT HER KETHUBAH etc. How does the question of kethubah arise here?[8] R. Papa replied: The kethubah of the male children.[9] [Is not this also] obvious![10] — It might have been assumed that the Rabbis had penalized only her, since she had committed the forbidden act, but not her children, hence we were informed [that they also lose the kethubah].

THE BROTHER OF THE ONE AND THE BROTHER OF THE OTHER MUST SUBMIT TO HALIZAH, BUT MAY NOT CONTRACT THE LEVIRATE MARRIAGE. The brother of the first husband submits to halizah in accordance with the Pentateuchal law,[11] and may not contract the levirate marriage in accordance with Rabbinic law;[12] the brother of the second, however, submits to halizah in accordance with Rabbinical law,[13] and may not contract the levirate marriage either in accordance with Pentateuchal, or in accordance with Rabbinical law.[14]

R. JOSE SAID: HER KETHUBAH [REMAINS A CHARGE] UPON THE ESTATE OF HER FIRST HUSBAND etc. Said R. Huna: The latter agree with the former,[15] but the former do not agree with the latter: R. Simeon agrees with R. Eleazar;[16] since he[17] does not penalize [the woman[18] in the case of] cohabitation which constitutes the main prohibition. how much less [would he do so in respect of] what she finds and what she makes with her hands.which are only monetary matters. R. Eleazar, however, does not agree with R. Simeon; [since it is only in respect of] what the woman finds and what she makes with her hands, which are monetary matters, that he does not penalize her, but in respect of cohabitation which is a religious prohibition he does penalize her. And both of them agree with R. Jose; [since they] do not penalize [the woman in respect of] those matters which are applicable while she continues to live with her husband,[19] how much less [would they do so in respect of] the kethubah the purpose of which is[20] [for the woman] to take it and depart.[21] R. Jose, on the other hand, does not agree with them; [since it is only in respect of] the kethubah [the purpose of which is for the woman] to take it and depart,[21] that he does not penalize her, but in respect of those matters which are applicable while she continues to live with her husband,[19] he does penalize her.

R. Johanan stated: The former agree with the latter, but the latter do not agree with the former: R. Jose agrees with R. Eleazar; since he does not penalize [the woman in respect of] the kethubah which has to be taken from the husband and given to the wife,[22] how much less [would be do so in respect of] what she finds and what she makes with her hands which have to be taken from her and given to him.[23] R. Eleazar, however, does not agree with him; [since it is only in respect of] what she finds and what she makes with her hands which have to be taken from the woman and given to the husband,[23] that he does not penalize her, but in respect of the kethubah which has to be taken from him and given to her,[22] he does penalize her. And both of them agree with R. Simeon; since they do not penalize her in respect of matters which [are applicable] while [her first husband] is alive, how much less [would they do so in respect of] cohabitation which takes place after his death. R. Simeon, however, does not agree with them; [since it is only in respect of] cohabitation which [takes place] after [her husband's] death, that he does not penalize her, but [in respect of] those matters which [are applicable] while [he is] alive, he does penalize her.

IF SHE MARRIED WITHOUT AN AUTHORIZATION etc. Said R. Huna in the name of Rab: This is the accepted law.[24] R. Nahman said to him: Why should you indulge in circumlocution![25] If

you hold the same view as R. Simeon, say. 'The halachah is in agreement with R. Simeon' for, indeed, your traditional statement runs on the same lines as that of R. Simeon! And should you reply. 'If I were to say "the halachah is in agreement with R. Simeon", it might be assumed to apply even to his first statement',[26] then say. 'The halachah is in agreement with R. Simeon in his latter statement'![27] — This is a difficulty.

R. Shesheth said: It occurs to me[28] that Rab made this reported statement while he was sleepy and about to doze off.[29] [His statement] 'This is the accepted law' implies that[30] [the Rabbis] differ;[31] but what could she do? She was but the victim of circumstances![32] Furthermore, it was taught: 'None of the women in incestuous marriages forbidden in the Torah, requires a letter of divorce from the man who married her,[33] except a married woman who married again in accordance with a decision of a Beth din'. Only [where she married again] 'in accordance with a decision of a Beth din'[34] does she require a letter of divorce, but where [the marriage took place] in accordance with the evidence of two witnesses she requires no letter of divorce.[35] Now, whose view is here represented?[36] If it be suggested [that it is the view of] R. Simeon, does she [it may be retorted] require a letter of divorce [even where her marriage took place] in accordance with a decision of the Beth din? Surely it was taught: R. Simeon stated, 'If the Beth din acted[37] on their own judgment[34] [the marriage is regarded] as a wilful [act of adultery between] a man and a [married] woman;[38] [if, however, they acted],[30] in accordance with the evidence of [two] witnesses, [the marriage is regarded] as [intercourse between] a man and a woman that was due to error'.[39] In both cases, however,[40] no letter of divorce is thus[41] required.[42] Consequently it must represent the view of the Rabbis![43] The fact is [that it[44] represents the view of] R. Simeon, and you may interpret it as follows. R. Simeon stated: If the Beth din acted[45] on their own judgment, [the marriage is regarded] as intentional [intercourse[46] between] a man and an [unmarried] woman and [the latter][47] consequently requires a letter of divorce; [If, however, they acted],[45] in accordance with the evidence of [two] witnesses [the marriage is regarded] as wanton [intercourse between] a man and an [unmarried] woman[48] and [the latter consequently] requires no letter of divorce.

R. Ashi replied: The statement[49] was mainly concerned with the question of the prohibition,[50] and is to be understood as follows:[51] If the Beth din acted[52] on their own judgment, [the marriage is regarded] as a wilful [act of adultery between] a man and a [married] woman, and [the latter is consequently] forbidden to her [first] husband; [if, however, they acted][49] in accordance with the evidence of [two] witnesses, [the marriage is regarded] as [intercourse between] a man and a woman that was due to error, and [the latter is consequently] not forbidden to her [first] husband.

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(1) Having the status of a harlot she is obviously forbidden to marry a priest. Cf. Lev. XXI, 7.

(2) As this ruling had to be mentioned the other also was included.

(3) Where she is exposed to the dangers of gentiles' outrage.

(4) Cohabitation with a slave, for instance, or a halal. Cf. supra 68a.

(5) Bek. 47a.

(6) The disqualification of the Levite's daughter in our Mishnah.

(7) For not instituting the necessary enquiries before she married her second husband.

(8) Where the woman herself, as stated earlier in our Mishnah, is not entitled to it.

(9) Of the woman. By the insertion of the prescribed clause (v. Keth. 52b), her sons are entitled to receive her kethubah from their father's estate when he dies, even if their mother died first and their father married again and had sons with his second wife. They receive her kethubah in addition to their shares in their father's estate to which the sons of both the first and the second wife are equally entitled. In the case spoken of in our Mishnah, however, the sons of the first wife lose their claim to her kethubah.

(10) If their mother herself is not entitled to it, how much less her sons whose claim is entirely derived from hers.

(11) Since according to Pentateuchal law he is the brother of the proper husband.

(12) As a punitive measure against the woman who did not make sufficient enquiries before contracting her second marriage.

(13) Pentateuchally the widow is not subject to him at all, since her marriage with his brother was invalid. Cf. supra p. 617, n. 11.
(14) Cf. previous two notes.
(15) That in respect of the points they mentioned the woman is regarded as the wife of the first husband.
(16) V. our Mishnah.
(17) Having stated that, HER COHABITATION . . . WITH THE BROTHER OF THE FIRST HUSBAND EXEMPTS HER RIVAL.
(18) In regard to her relationship to her first husband.
(19) Lit., 'when she sits under him', when there is reason to apprehend that she would never be divorced in consequence.
(20) Lit. , 'stands'.
(21) Thus actually beginning the process of separation and final divorce.
(22) Lit., 'which from his to hers'.
(23) Lit., 'which from hers to his'.
(24) Cf. supra 88b.
(25) גנבא גנובי חמה לך (rt. גמב, in Pael 'to go round about'). 'O thou cunning man, what is the use of thy going round about?' (Jast.).
(26) That of cohabitation with the brother of the first husband where her second marriage was contracted on the evidence of one witness only.
(27) IF SHE MARRIED WITHOUT AUTHORIZATION.
(28) Lit., 'I would say'.
(29) Lit., 'dozing and lying down'.
(30) In the final clause, where the woman married on the evidence of two witnesses.
(31) Maintaining that the woman is to be penalized.
(32) מיאנם אנסה from rt. אנם 'to be compelled'. What better proof could she have had than the testimony of two qualified witnesses.
(33) Lit., 'from him'.
(34) I.e., where the evidence as to her first husband's death has been given by one witness only.
(35) Since she was but an unfortunate victim of circumstances.
(36) Lit., 'who is it'.
(37) Permitted the remarriage of a woman whose husband's death has been reported.
(38) And the woman becomes thereby forbidden to her first husband if he returns.
(39) And the return of the woman to her first husband is consequently permitted.
(40) Whether the marriage was on the decision of Beth din or on the evidence of two witnesses.
(41) Since the comparison was made with acts of presumption and error while divorce was not mentioned at all.
(42) The first Baraitha cited, which required a divorce in a case where the woman married in accordance with a decision of the Beth din, cannot therefore represent the view of R. Simeon.
(43) Which proves that they also admit that no divorce is necessary where the marriage was contracted in reliance on two witnesses. Who is it, then, that differs from R. Simeon that it should have been necessary for Rab to declare the halachah to be in agreement with his view?
(44) The first Baraitha under discussion. V. p. 620. n. 13.
(45) V. supra p. 620, n. 8.
(46) For the purpose of betrothal. Cf. Kid. 2a.
(47) Since her marriage was legal.
(48) Which constitutes no legal union.
(49) V. supra note 15.
(50) Lit., 'he taught in respect of prohibition'.
(51) Lit., 'and thus be said'.
(52) V. supra p. 620, n. 8.

Talmud - Mas. Yevamoth 91b

Rabina replied: The statement was mainly dealing with the question of sacrifice,[1] and is to be

understood as follows.[2] If the Beth din acted on their own judgment, [the marriage is regarded] as a wilful [act of adultery between] a man and a [married] woman, and [the latter] does not bring a sacrifice;[3] if, however, they acted] in accordance with the evidence of [two] witnesses, [the marriage is regarded] as [intercourse between] a man and a woman that was due to error and [the latter] has to bring a sacrifice.[4]

If you prefer. however, I might say that the first [Baraitha][5] represents [the view of] the Rabbis, and you may explain it as follows: 'Except a married woman'[6] and one 'who married again in accordance with a decision of a Beth din'.[7]

'Ulla raised an objection: Do we accept the plea[8] 'what could she have done'?[9] Surely we learned: [If a letter of divorce] was dated[10] according to[11] an era that was inappropriate,[12] according to[11] the Median era, or according to[11] the Greek era, according to [the era of] the building of the Temple, or the destruction of the Temple, or if he[13] was in the East and wrote, 'In the West', [or he was] in the West and wrote, 'In the East', she[14] must leave her first and her second husband,[15] and all the disabilities[16] [enumerated,[17] are applicable] to her.[18] But why?[19] Let it be argued. 'What could she have done'![20] — She should have arranged for the letter of divorce to be read.[21]

R. Shimi b. Ashi said, Come and hear: If a levir married his sister-in-law[22] and her rival went and married [another man][23] and then the former[24] was found to be incapable of procreation,[25] [the latter][26] must leave the one and the other[27] and all the disabilities[16] [mentioned[28] apply] to her.[29] But why?[30] Let it be argued. 'What could she have done'![31] — She should have waited.

Said Abaye: Come and hear: If the rivals [of] any of the forbidden relatives concerning whom it has been said[32] that they exempt their rivals went and married, and any such forbidden relatives[33] were found to be incapable of procreation,[34] [every rival] must leave the one and the other,[35] and all the disabilities[36] [mentioned[37] apply] to her.[38] But why?[39] Let it be argued. 'What could she have done'! — She should have waited.

Said Raba. Come and hear: If a scribe wrote a letter of divorce for the husband and a quittance[40] for the wife, and then made a mistake and handed the letter of divorce to the wife and the quittance to the husband, and they[41] gave them to one another,[42] and after a time[43] the letter of divorce was discovered[44] in the possession of the husband and the quittance in the possession of the wife, [the latter][45] must leave the one as well as the other,[46] and all the disabilities[36] [mentioned[47] apply] to her.[38] But why?[48] Let It be argued. 'What could she have done'! — She could have arranged for the letter of divorce to be read.[49]

Said R. Ashi, Come and hear: If he[50] changed[51] his name or her name, the name of his town or the name of her town, she must depart from the one and from the other,[52] and all the disabilities[36] [mentioned[37] apply] to her.[38] But why?[48] Let it be argued. 'What could she have done'! — She should have arranged for the letter of divorce to be read.[53]

Said Rabina, Come and hear: If a man married a woman[54] on [the strength of] a bald[55] letter of divorce she must depart from the one and from the other,[56] etc.! — She should have arranged for the letter of divorce to be read.[57]

R. Papa desired to decide a case on [the principle of] 'What could she have done',[58] Said R. Huna Son of R. Joshua to R. Papa: But surely all those[59] Baraithoth were taught?[60] The other answered him: Were they not explained?[61] 'Shall we then',[62] the former retorted, 'rely on explanations'![63]

R. Ashi said: No regard need be paid[64] to a rumour.[65] What kind of rumour [is here meant]? If it be suggested [that it means] a rumour after marriage.[66] Surely [it may be objected] R. Ashi has said

this once; for R. Ashi stated:

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(1) Cf. supra n. 6, mutatis mutandis.
(2) So Bah. Cf. supra n. 7. Cur. edd. omit, ‘and is . . . follows’.
(3) Since her wilful act was performed in reliance on the ruling of Beth din. V. Hor. 2b.
(4) As for any other similar sin committed in error.
(5) V. supra note 15.
(6) Who married again in accordance with the evidence of two witnesses.
(7) On the evidence of one witness. According to this interpretation, a marriage on the evidence of two witnesses is not excluded (as was originally suggested supra 91a) and it also requires a letter of divorce.
(8) Lit ‘do we say’.
(9) R. Shesheth's objection, supra 91a.
(10) Lit., ‘he wrote’.
(11) Lit., ‘for the name’.
(12) For the place in which, or the time when the document was written.
(13) The scribe (Rashi). It is assumed that the witnesses are from the same place as the scribe. (Cf. Tosaf s.v. הויה a.l.)
(14) The woman who married again after receiving such a defective document from her husband.
(15) Lit ‘from this and from this’.
(16) Lit., ‘these ways’.
(17) Supra 87b and in the Mishnah cited from Gittin (v. infra n. 13), such as the loss of kethubah etc.
(18) Cf. Git., Sonc. ed., p. 282, q. v. notes.
(19) Should the woman be penalized.
(20) She honestly believed the document to be valid.
(21) By an expert who would have detected the irregularities and warned her in good time.
(22) The widow of his brother who died without issue.
(23) Which she is permitted to do, since the levirate marriage of one widow exempts all her rivals from both halizah and the levirate marriage.
(24) Lit ‘this’, the widow who married the levir.
(25) And consequently unable to exempt her rival (cf. supra 12a).
(26) The rival mentioned.
(27) Lit., ‘from this and from this’. She may neither live with the husband she married nor with the levir.
(28) V. supra n. 12.
(29) Git. 80a.
(30) Cf supra n. 14.
(31) She surely could not have anticipated the other's incapability.
(32) Supra 2a.
(33) Lit., ‘these’.
(34) Cf. supra p. 622, n. 20.
(35) V. supra p. 622, n. 22.
(36) Lit., these ways’.
(37) Supra 87b and in the Mishnah cited from Gittin (cf. Git. 79b) such as the loss of kethubah etc.
(38) Git. 80a.
(39) Should the woman he penalized.
(40) Which the wife gives to the husband on the receipt of her kethubah.
(41) Without examining the documents.
(42) Lit., ‘this to this and this to this’; both of them believing that the husband gave to his wife the letter of divorce, and that the wife gave to her husband the quittance.
(43) When the woman had married another man.
(44) Lit., ‘goes out’.
(45) Since her divorce was invalid, the document having been given to her not by her husband as the law requires but by the scribe.
(46) Her second and her first husband.

(47) V. supra note 7.
(48) Should she be subject to the disabilities.
(49) When she would immediately have discovered the scribe's error.
(50) The husband.
(51) In the letter of divorce which he gave to his wife.
(52) Lit., 'from this and from this': from her first, and from her second husband.
(53) And the change of name would have been discovered at once.
(54) Lit., 'he married her'.
(55) קרח i.e., a 'folded document' (cf. B.B. 160a) on one of whose folds a signature is wanting. A valid deed of such a character must bear the signature of a witness on each fold and must he signed by no less than three witnesses. V. Git., Sonc. ed., p. 391.
(56) V. supra p. 623, n. 22.
(57) And the defect would have been discovered forthwith.
(58) It was his intention to allow a woman, whose second marriage was contracted on the evidence of two witnesses who had testified that her first husband was dead, to go back to him when he returned.
(59) Above mentioned.
(60) And in none was the principle of 'what could she have done' acted upon.
(61) Special reasons were given why the principle mentioned was not acted upon. In all other cases, however, it should be taken into consideration.
(62) Lit., 'shall we rise'.
(63) Despite the explanations, the original objections may still be urged. Cur. edd. insert in parenthesis 'and he desisted'. i.e., R. Papa abandoned his contemplated decision.
(64) If a woman was authorized by the Beth din to contract a second marriage.
(65) That her first husband was still alive.
(66) Of the woman with her second husband.

No regard need be paid to a rumour that originated after marriage![1] — It might have been assumed that since she was to appear before the Beth din to obtain the authorization[2] [for her marriage].[3] the rumour is regarded as one [that arose] before marriage[4] and she should in consequence he forbidden,[5] we were, therefore, taught [that even in such circumstances a rumour is disregarded].

IF SHE MARRIED WITH THE AUTHORIZATION OF THE BETH DIN SHE MUST LEAVE etc. Ze'iri said: Our Mishnah cannot be authentic[6] owing to a Baraitha that was recited at the academy. For it was recited at the academy: If the Beth din ruled[7] that the sun had set,[8] and later it appeared, [such a decision] is no ruling[9] but a mere error.[10]

R. Nahman. however, stated: [Such an authorization][11] is [to be regarded as] a ruling.[12] Said R. Nahman: You can have proof[13] that it [is to be regarded as] a ruling. For throughout the Torah a single witness is never believed while in this case he is believed. But why? Obviously[14] because [such an authorization is regarded as] a ruling.[15] Raba said: You can have proof[13] that it[11] is [to be regarded as a mere] error.[16] For were Beth din to issue a ruling in a case of some forbidden fat or blood that it is permitted, and then find a [strong] reason for forbidding it, [their subsequent ruling], should they retract and rule again that it is permitted,[17] would be completely disregarded;[18] whereas here,[19] it should one witness present himself,[20] the woman would be permitted to marry again,[21] and should two witnesses [afterwards] appear[22] the woman would be forbidden to marry again,[23] but should another witness subsequently appear[24] the woman would again be permitted to marry. But why?[25] Obviously[26] because it[19] [is regarded as a mere] error.[27]

R. Eliezer also is of the opinion that it[19] is [to be regarded as a mere] error. For it was taught: R. Eliezer said: Let the law pierce through the mountain[28] and let her[29] bring a fat sin-offering.[30] Now, if it be granted that it[19] is [to be treated as] an error one can well see the reason why she is to bring an offering.[31] If, however, it be contended that it[19] is [to be regarded as] a ruling, why should she bring an offering![32] But is it not possible that R. Eliezer holds the opinion that an individual who committed a sin in reliance on a ruling of the Beth din is liable?[33] — If so, what [could have been meant by] 'Let the law pierce through the mountain'![34]

IF THE BETH DIN DECIDED THAT SHE MAY MARRY AGAIN etc. What is meant by DISGRACED HERSELF? — R. Eliezer[35] replied: She played the harlot. R. Johanan replied: [If being] a widow [she was married] to a High Priest, [or if] a divorcee or a haluzah [she was married] to a common priest. He who stated,'She played the harlot'[36] would, even more so, [subject the woman to a sin-offering. if as] a widow [she was married] to a High Priest.[37] He, however, who stated, '[If being] a widow [she was married] to a High Priest' does not[38] [subject her to a sin-offering if] she played the harlot. What is the reason? — Because she might plead, 'It is you who granted me the status of an unmarried woman'.[39]

It was taught in agreement with the opinion of R. Johanan: If Beth din directed that she may be married again. and she went and disgraced herself, so that, for instance, [being] a widow [she was married] to a High Priest.[or being] a divorcee or a haluzah [she was married] to a common priest. she is liable to bring an offering for every single act of cohabitation;[40] so R. Eleazar. But the Sages said: One offering for all. The Sages, however, agree with R. Eleazar that, If she was married to five men, she is liable to bring an offering for every one, since [here it is a case of] separate bodies.

MISHNAH. IF A WOMAN WHOSE HUSBAND AND SON WENT TO COUNTRY BEYOND THE SEA WAS TOLD,[41] 'YOUR HUSBAND DIED AND YOUR SON DIED AFTERWARDS',[42] AND SHE MARRIED AGAIN,[43] AND LATER SHE WAS TOLD,' IT WAS OTHERWISE'.[44] SHE MUST DEPART;[45] AND ANY CHILD BORN BEFORE OR AFTER[46] IS A BASTARD.[47] IF

SHE WAS TOLD. 'YOUR SON DIED AND YOUR HUSBAND DIED AFTERWARDS',[48] AND SHE CONTRACTED THE LEVIRATE MARRIAGE, AND AFTERWARDS SHE WAS TOLD, 'IT WAS OTHERWISE'[49] SHE MUST DEPART;[50] AND ANY CHILD BORN BEFORE OR AFTER[46] IS A BASTARD.[47]

IF SHE WAS TOLD, 'YOUR HUSBAND IS DEAD, AND SHE MARRIED, AND AFTERWARDS SHE WAS TOLD, 'HE WAS ALIVE[51] BUT IS NOW DEAD', SHE MUST DEPART,[52] AND ANY CHILD BORN BEFORE [THE DEATH OF HER FIRST HUSBAND][53] IS A BASTARD, BUT ONE BORN AFTER IT[54] IS NO BASTARD. IF SHE WAS TOLD, 'YOUR HUSBAND IS DEAD AND SHE WAS BETROTHED, AND AFTERWARDS HER HUSBAND APPEARED, SHE IS PERMITTED TO RETURN TO HIM. ALTHOUGH THE OTHER[55] GAVE HER A LETTER OF DIVORCE HE HAS NOT THEREBY DISQUALIFIED HER FROM MARRYING A PRIEST. THIS R. ELEAZAR B. MATHIA DERIVED BY MEANS OF THE FOLLOWING EXPOSITION: NEITHER [SHALL THEY[56] TAKE] A WOMAN PUT AWAY FROM HER HUSBAND,[57] EXCLUDES ONE PUT AWAY[58] FROM A MAN WHO IS NOT HER HUSBAND.[59]

GEMARA. What is meant by BEFORE[60] and what is meant by AFTER?[61] If it be suggested that BEFORE means before the [second] report and that AFTER means after that report, it should have been stated: The child is a bastard![62] Because it was desired to state in the final clause, IF SHE WAS TOLD, 'YOUR HUSBAND IS DEAD', AND SHE MARRIED, AND AFTERWARDS SHE WAS TOLD, 'HE WAS ALIVE BUT IS NOW DEAD . . . ANY CHILD BORN BEFORE[63] [THE DEATH OF HER FIRST HUSBAND] IS A BASTARD, BUT ONE BORN AFTER IT[64] IS NO BASTARD, the expressions BORN BEFORE OR AFTER IS A BASTARD were used in the first clause also.

Our Rabbis taught: This[65] is the view of R. Akiba who stated: Betrothal with those who are subject [on intercourse] to the penalties of a negative commandment is invalid.[66] The Sages, however, said that [the child] of a sister-in-law[67] is no bastard.[68] Let it be said: The child of a union between those who are subject [on intercourse] to the penalties of a negative precept is no bastard![69] — This Tanna[70] is the following Tanna of the school of R. Akiba, who stated that [only a child] of a union that is subject to the penalties of a negative precept owing to consanguinity is a bastard, but one born from a union that is subject to the penalties of a mere negative precept[71] is no bastard.

Rab Judah stated

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(1) If, for instance, after a priest had married, a rumour arose that before her marriage with him his wife was a divorcee or a harlot. Git. 81a, 88b, 89a.

(2) Lit., 'and we permitted'.

(3) Before it had taken place.

(4) Her appearance before the court implying that, already at that time, the possibility that her husband was still alive was being considered.

(5) To her second husband, as if the rumour had been current before her marriage.

(6) Lit., 'our Mishnah is not'.

(7) On a cloudy day which happened to be the Sabbath day.

(8) And permitted the people to commence their week-day labours which are forbidden on the Sabbath.

(9) Which exempts the individual who acted upon it from a sin- offering and affects the nature of the sin-offering which the congregation who acted upon it has to bring.

(10) Since the erroneous ruling of the Beth din was not due to an oversight on their part of a point of law but to a false assumption of a matter of fact. They assumed that the sun had set, while in fact, it had not. Similarly here, They assumed that the woman's husband was dead when as a matter of fact he was alive. Our Mishnah, therefore, which exempts the woman from a sin-offering cannot be authentic.

(11) The permission to the woman to marry again, spoken of in our Mishnah.
(12) Subject to the same laws as all erroneous rulings issued by a Beth din. Cf. supra 11. 6. and Hor. 2aff.
(13) Lit., 'thou shalt know'.
(14) Lit., 'not?'
(15) The woman did not act on the evidence of the witness which, as is now apparent, was due to an error, but on the ruling of the Beth din who accepted the evidence of this witness. Whatever their reason may have been it was their ruling that was the cause of the woman's marriage.
(16) [They assumed that every woman makes careful investigations before she marries (v. supra 25a) and it has been found that this was not the case].
(17) [Rashi: For a reason not as strong as that which prompted them to prohibit It. Me'iri: For the very same reason which made them permit it at the very first].
(18) Lit., 'we do not look to them'. Once it has been found that their first ruling was erroneous it cannot again be adopted.
(19) v. supra p. 625, n.8.
(20) Testifying that the woman's husband was dead.
(21) Lit., 'we permit'.
(22) Declaring that the husband was still alive.
(23) Lit., 'we forbid'.
(24) Stating that the husband has died since.
(25) If the first authorization is to be regarded as a ruling it should not again be adopted (cf. supra n. 2), once it has been proved (by the testimony of the two witnesses) that it was erroneous.
(26) Lit., 'not'?
(27) It is assumed that though the first witness misled the court the last is speaking the truth.
(28) l.e., one should delve deeper into the subject (cf. Rashi a.l.) 'Justice under all circumstances' (Jast.).
(29) The woman who married by permission of the court on the evidence of one witness.
(30) Cf. Sanh. 6b. Though, if viewed superficially, it would appear that the woman, since she had acted on the decision of a court, is not liable to a sin-offering (cf. Hor. 2a). careful consideration of the case would reveal that she is liable, since the decision was based on the error of the witness and not on a legal oversight of the court. Cf. supra p. 625, n. 7.
(31) Cf. supra note14, second section.
(32) Cf. loc. cit. first section.
(33) To a sin-offering.
(34) Cf. supra note 12 (first interpretation) and supra note 14.
(35) Marg. note, 'Eleazar'.
(36) That even in such a case a sin-offering must be brought.
(37) Since it is obvious that the court's permission did not extend to a marriage which is in any case forbidden to the woman, even if her husband is dead.
(38) Lit. , 'but not'.
(39) And since she acted on a ruling of a court, she is not liable to a sin-offering.
(40) This is further explained in Ker. 15a.
(41) Lit., 'and they came and said to her'.
(42) As the son was alive when his father died the widow is not subject to the levirate marriage or halizah.
(43) A stranger.
(44) Lit., 'the matter was reversed', the son died first, so that when his father died afterwards the widow was subject to halizah or levirate marriage.
(45) From her second husband, since he married her before she had performed the required halizah.
(46) The second report. Lit 'and the first and last child'.
(47) Being the issue of a union forbidden by a negative precept. V. Gemara infra.
(48) V. p. 627. n. 10.
(49) V. supra p. 627, n. 8.
(50) From the levir, to whom, (her husband having had issue from her at the time he died) she is forbidden as 'his brother's wife'.
(51) At the time she married her second husband.

(52) From her second husband who married her while, as a married woman, she was forbidden to him.
(53) Lit., 'and the first child'.
(54) Lit., 'and the last'.
(55) Lit., 'the last, the man who betrothed her.
(56) Priests.
(57) Lev. XXI, 7-
(58) Lit., 'and not'.
(59) The divorce being unnecessary it has no effect on the status of the woman.
(60) In the first clauses of our Mishnah.
(61) Lit., 'what is first and what is last'.
(62) Since the child's legitimacy is not determined by the date of the report but by the facts.
(63) Lit., 'the first'.
(64) Lit., 'and the last'.
(65) The statement in the first clause of our Mishnah that the child is a bastard.
(66) V. supra 10b. And no divorce is consequently required.
(67) Who married a stranger before she had performed halizah with the levir.
(68) Tosef. XI. Since such marriage is forbidden by a negative precept only, and is not subject to kareth.
(69) This more general statement would have also included the particular case of the sister-inlaw mentioned.
(70) Referred to in the Baraitha cited as 'the Sages'.
(71) The marriage, for instance, of the sister-in-law to a stranger. The general statement (v. supra note 7) was consequently inadmissible.

Talmud - Mas. Yevamoth 92b

in the name of Rab: Whence is it deduced that betrothal with a sister-in-law[1] is of no validity?[2] — From the Scriptural text,[3] The wife of the dead shall not be married[4] outside unto one who is not of his kin,[5] there shall be no validity in the betrothal[6] of her by a stranger.[7] Samuel, however, stated: Owing to our [intellectual] poverty[8] it is necessary [that she be given] a letter of divorce; Samuel having been in doubt as to whether the expression,[9] The wife of the dead shall not be,[10] served the purpose of[11] a negative precept[12] or rather indicated[11] that betrothal with such a woman is invalid.

R. Mari b. Rachel said to R. Ashi: Thus said Amemar, 'The law is in agreement with Samuel'. Said R. Ashi: Now that Amemar has said that the law is in agreement with Samuel, her levir,[13] if he was a priest,[14] submits to her halizah and she is permitted to her second husband.[15] He[16] surely benefits[17] thereby.[18] and thus the sinner[19] is at an advantage![20] — Rather [this is the reading]: If her levir[21] was an Israelite, the other[22] gives her a letter of divorce and she is permitted to the levir.[23]

R. Giddal stated in the name of R. Hiyya b. Joseph in the name of Rab: While betrothal with a sister-in-law[24] is invalid, marriage with her is valid.[25] If betrothal, however, is invalid, marriage also should be invalid! — Read: Both betrothal and marriage with her are invalid. And if you prefer I might say. What is meant by 'marriage with her is valid'? — It constitutes an act of[26] harlotry[27] in accordance with the ruling of R. Hamnuna.For R. Hamnuna stated: A woman who, while awaiting the decision of the levir, played the harlot, is forbidden to marry the levir. And if you prefer I might say: [The reading is]. in fact, as has been originally stated, that betrothal with her is invalid but marriage with her is valid,[28] since her case might be mistaken for that of a woman whose husband went to a country beyond the sea.[29]

R. Jannai said: A vote was taken at the college and it was decided that betrothal with a sister-in-law[30] has no validity. Said R. Johanan to him: O Master, is not this [law contained in] a[31] Mishnah? For we have learnt: If a man said to a woman, 'Be thou[32] betrothed unto me after I shall have become a proselyte'. 'after thou shalt have been a proselyte'. 'after I shall have been emancipated'. 'after thou shalt have been emancipated'. 'after thy husband shall have died' , 'after

thy sister shall have died' or 'after thy brother-in-law shall have submitted to thy halizah', the betrothal is invalid![33] — The other replied: Had I not lifted up the sherd, would you have found the pearl beneath it?[34]

Resh Lakish said to him:[35] Had not a great man praised you. I would have told you that the Mishnah [you cited represents the view] of R. Akiba who maintains that betrothal with those who are subject to the penalties of a negative precept is invalid.[36]

If [this Mishnah, however, represents the view of] R. Akiba, betrothal [with the sister-in-law][37] should be valid where [the stranger] said to her, 'after thy brother-in-law shall have submitted to thy halizah', since R. Akiba has been heard to state that one may transfer possession of that which is not yet in existence;[38] for we learned:

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(1) V. supra note 5.

(2) And no divorce is consequently required.

(3) Lit., 'because it is said'.

(4) Lit., 'she shall not be', לא תהיה.

(5) Deut. XXV,5.

(6) Lit., 'being'. הויה, i.e., 'betrothal'.

(7) Lit., 'a stranger shall have no being in her'. הויה (supra n. 15) is of the same rt. היה, as that of תהיה (supra. 13).

(8) Inability to understand the meaning of the Scriptural text mentioned.

(9) Lit., 'that'.

(10) Deut. xxv. .5.

(11) Lit., 'that it came'.

(12) And, as is the case with other unions that are forbidden by negative precepts, the betrothal is valid.

(13) The brother-in-law of the widow, spoken of in the first case of our Mishnah, who married a stranger and from whom, according to Samuel, she requires a divorce.

(14) To whom the sister-in-jaw would thus be forbidden even after she had been divorced by the stranger. A priest is forbidden to marry a divorced woman. V. Lev. XXI, 7.

(15) Lit. , 'to him', the stranger whom she married.

(16) The second husband. v. supra n. 7.

(17) He is permitted to continue to live with his wife.

(18) By the halizah of the levir.

(19) Who contracted a union before instituting the necessary enquiries as to the circumstances of his wife's first husband's death.

(20) Lit., 'gains'.

(21) Cf. supra note 5.

(22) The second husband. Cf. supra note 7.

(23) Lit., 'to him'.

(24) Who, before she performed halizah with the levir had married a stranger.

(25) This validity, it is at present assumed, subjects the woman to the necessity of a letter of divorce.

(26) Lit., 'In'.

(27) By such a marriage she becomes forbidden to marry the levir as if she had played the harlot; but no letter of divorce is required.

(28) In the sense that she requires a letter of divorce. Cf. p. 630, n. 17. and the following note.

(29) And she married in accordance with the decision of a court on the evidence of one witness who testified that her first husband was dead. As the woman in this case requires a letter of divorce, it was ordained, as a preventive measure, that in the case spoken of in our Mishnah also a letter of divorce shall be required. the validity spoken of extending, however, to this requirement and no further. In the case of betrothal no preventive measure was enacted since in this case also no letter of divorce is required.

(30) V. p. 630, n. 16.

(31) Lit., ‘our’.
(32) Lit., ‘behold thou art’. Cf. P.B. p. 298.
(33) Kid. 62a, Keth. 58b. B.M. 16b. Betrothal cannot take effect at once owing to his stipulation and it cannot take place in the future because that which is not yet in existence may not be acquired. From this it follows that before the levir has submitted to halizah betrothal by a stranger is invalid, which is in effect the law reported by R. Jannai.
(34) I.e. , had not R. Jannai stated his ruling it might never have occurred to R. Johanan that the reason for the invalidity of the betrothal in the case of the sister-in- law was the law that betrothal with a sister-in-law by a stranger is never valid before the levir has submitted to halizah. He might have assumed the invalidity in this particular case also to be due to the fact that the man distinctly desired it to take place in the future, and no one can acquire that which is not yet in existence.
(35) R. Johanan.
(36) Marriage of a sister-in-law by a stranger before she has performed halizah with the levir is forbidden by such a negative precept. This Mishnah, therefore, provides no proof, like the statement of R. Jannai, that the Rabbis also admit invalidity in such a case.
(37) Lit ‘with’, or ‘in her’.
(38) Consequently. the betrothal here, though it was dependent on a future event which had not yet taken place. should also be valid.

Talmud - Mas. Yevamoth 93a

[If a woman said to her husband]. ‘Konam,[1] I do aught for your mouth’,[2] he[3] need not annul [her vow].[4] R. Akiba, however, said: He[3] must annul it, since she might do more [work] than is due[5] to him![6] Surely in connection with this it was stated: R. Huna son of R. Joshua said, [This law[7] applies only] where she said, ‘My hands[8] shall be consecrated to Him who made them’, since her hands are in existence.[9]

This[10] differs [from the opinion] of R. Nahman b. Isaac. For R. Nahman b. Isaac stated: R. Huna [holds the same opinion] as Rab,[11] Rab as R. Jannai, R. Jannai as R. Hiyya. R. Hiyya as Rabbi,[12] Rabbi as R. Meir, R. Meir as R. Eliezer b. Jacob. and R. Eliezer b. Jacob as R. Akiba, who stated that a man may transfer possession of a thing that is not yet in existence.

What statement is it [that records the opinion of] R. Huna? It was stated: He who sold the fruit of a date-tree[13] to another may. said R. Huna, withdraw from the sale before they come into existence; but after they have come into existence he may no longer withdraw.[14] R. Nahman, however, stated: He may withdraw even after they have come Into existence.[15] Said R. Nahman: I admit, that if he[16] had already plucked and ate them, [compensation] is not to he extracted from him.[17]

As to Rab?[18] — [In that] which R. Huna stated in the name of Rab: If a man said to another, ‘let this field which I am about to buy be yours as from now the moment I buy it’, [the latter] acquires It.[19]

‘R. Jannai [is of the same opinion] as R. Hiyya’; for R. Jannai had a tenant[20] who used to bring him a basket of fruit every Sabbath Eve. Once as it was growing dark, and [the tenant] did not come, [R. Jannai] took[21] tithe[22] from the fruit which [he had] at home for [the redemption of] those.[23] When he subsequently came before R. Hiyya [the latter] said to him, ‘You have acted well; for it was taught : That thou mayest learn to fear the Lord thy God always[24] refers to Sabbaths and festivals’.[25] Now, in ‘respect of what law?[26] If in respect of giving tithe[27] so that one may be allowed to eat,[28] was it necessary [it may be asked] for a Scriptural text to permit moving,[29] [the prohibition of which is only] Rabbinical![30]

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(1) This is one of the expressions of a vow. V. Glos.
(2) I.e, that her husband be forbidden to eat anything made by her or purchased from the proceeds of her work.

(3) The husband who is empowered to annul his wife's vow. Cf. Num. XXX, 7ff.
(4) A wife's work belongs to her husband and she has, therefore, no right to dispose of it by vow or otherwise. Her vow is consequently null and void and requires on invalidation.
(5) A husband is entitled only to a certain amount of his wife's work (v. Keth. 64b). Any work in excess of that maximum is at the disposal of the wife who, in the opinion of R. Akiba, is entitled to forbid it to her husband by a vow, though that work has not yet been done.
(6) Keth. 59a, 66a, Ned. 85a, Kid. 63a. V. supra note 3.
(7) That a wife may by her vow cause her future work to be forbidden.
(8) And through them the work they will produce.
(9) At the time she made her vow.
(10) The view presented by R. Huna, according to which R. Akiba maintains that a thing that is not yet in existence may not be legally transferred.
(11) From whom he received it as a tradition from his master, R. Jannai. who in turn, received it from his master, R. Hiyya, and so on to R. Akiba.
(12) R. Judah I, the Patriarch or Prince, compiler of the Mishnah.
(13) During the winter, before they blossomed.
(14) Because, according to R. Huna, the kinyan that was arranged before they come into existence takes effect as soon as they come into existence.
(15) In his opinion no kinyan is effective unless the object sold is actually in existence at the time of the sale.
(16) The buyer.
(17) B.M. 66b.
(18) Where was his view expressed?
(19) B.M. 16b; which proves that, in the opinion of Rab, one may transfer possession of a field which one does not yet possess. obviously because he holds that one may transfer possession of that which is not yet in existence.
(20) אריס cf Gr.**, a tenant of a field who in return for his labour receives a share of the field's produce.
(21) Before the Sabbath commenced.
(22) An act which In Rabbinic law it is forbidden to perform on the Sabbath.
(23) The fruit which he expected from the tenant, though at the time the tithe was taken they were still the property of the tenant (v. Tosaf. s.v. מיתי a.l.) and not that of R.Jannai.
(24) Deut.XIV, 23, speaking of the levitical and priestly gifts.
(25) On which enjoyment should not be marred by failure to set apart the prescribed gifts.
(26) Was the Scriptural warning necessary.
(27) On Sabbath or festivals.
(28) Of his produce from which tithe was not taken before the holy day set in.
(29) מחטוה moving the fruit before being tithed. The prohibition to set aside on holy days any of the priestly or levitical gifts is due to the Rabbinical ordinance which is in the same category as the moving from its place, on such days, of articles that are unfit for use. (Cf. Bezah 36b).
(30) Scripture, surely. could not be referring to a prohibition which was not ordained before the Rabbinical period.

Talmud - Mas. Yevamoth 93b

Consequently[1] [it must refer to] an instance like this one.[2] Said the first to him, 'But in my dream[3] they read to me a Scriptural text on the "bruised reed";[4] did they not mean to tell me: Behold, thou trustest upon the staff of this bruised reed'?[5] 'No'. [the other replied], 'It is this that they meant: A bruised reed shall he not break, and the dimly burning wick shall he not quench'.[6]

Rabbi?[7] — Where it was taught: Thou shalt not deliver unto his master a bondman,[8] Rabbi explained that Scripture speaks here of a man who bought a slave on the condition that he would set him free.[9] How is this[10] to be understood?[11] R. Nahman b. Isaac replied: In the case where [the buyer] gave him[12] a written declaration, 'Your person shall become yours as from now as soon as I have bought you'.[13]

R. Meir?[14] — Where it was taught:[15] If a man said to a woman, 'Be thou betrothed to me after I shall have become a proselyte'. 'after thou shalt have become a proselyte'. 'after I shall have been emancipated'. 'after thou shalt have been emancipated'. 'after thy husband shall have died', 'after thy sister shall have died', or 'after thy brother-in- law shall have submitted to thy halizah', the betrothal is invalid; but R. Meir said that her betrothal is valid.[16]

R. Eliezer b. Jacob?[14] — Where it was taught: More than this did R. Eliezer b. Jacob say: Even if a man said, 'The plucked fruit of this bed shall be terumah for the attached fruit of that[17] other bed', or 'The attached fruit of this[17] bed [shall be terumah] for the plucked fruit of that other bed,[17] when it shall have grown[16] to a third [of its maturity] and been plucked'. his words are valid if the fruit has grown to[18] a third [of its maturity] and has been plucked.[19]

R. Akiba?[20] — Where we learned: [If a woman said to her husband]. 'Konam,[21] if l do aught for your mouth',[22] he[23] need not annul [her vow].[24] R. Akiba, however, said: He[23] must annul It, since she might do more [work] than is due[25] to him.[26]

An enquiry was addressed to R. Shesheth: What is [the law in respect of] one witness[27] in the case of a sister-in- law?[28] Is the reason why one witness [is sometimes believed elsewhere][29] because no one would tell a lie which is likely to be exposed. and consequently here also [the witness] would tell no lie;[30] or is the reason why one witness [is believed elsewhere][31] because the woman herself makes careful enquiries and [only then] marries, and consequently here, since she may sometimes be in love with [her brother-in-law]. she might marry him without proper enquiry?[32] — R. Shesheth answered them: You have learned it, IF SHE WAS TOLD, 'YOUR SON DIED AND YOUR HUSBAND DIED AFTERWARDS', AND SHE CONTRACTED THE LEVIRATE MARRIAGE, AND LATER SHE WAS TOLD, 'IT WAS OTHERWISE, SHE MUST DEPART; AND ANY CHILD BORN BEFORE OR AFTER IS A BASTARD.[33] Now, how is this to be understood? If it be suggested [that there were] two witnesses against two,[34] what reason do you see [it may be asked] for relying on the latter? Rely rather on the former! Furthermore. [how could the child be described as] BASTARD [when he is only] an uncertain bastard! And should you reply that he[35] was not exact in his expression. surely [it may be pointed out] since in the final clause he[35] stated, ANY CHILD BORN BEFORE [THE DEATH OF HER FIRST HUSBAND] IS A BASTARD, BUT ONE BORN AFTER IT IS NO BASTARD,[33] it may well be inferred that he was exact In his expressions, Consequently[36] it must be concluded [that the first report was that of] one witness, and that the reason [why he is not believed is] because two witnesses came and contradicted his evidence, but had this not been the case[37] he would have been believed.[38]

Another reading: This question[39] does not arise, since even the woman herself is believed.[40] For we learned: A woman who stated, 'My husband is dead' may be married again.[41] and she may similarly contract levirate marriage [if she stated] 'My husband is dead'.[42] The question arises only in respect of permitting a sister-in-law to marry a stranger.[43] Is the reason why one witness [is elsewhere sometimes believed][44] because no one would tell a lie which is likely to be exposed, and consequently, here also [the witness] would tell no lie;[45] or is the reason why one witness [is elsewhere believed][44] because [the woman] herself makes careful enquiries and [only then] marries, and consequently here she might marry without proper enquiry. since she might fiercely

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(1) Lit. , 'but not'.

(2) That of R. Jannai; the text indicating that tithe may be given for the redemption of fruit which has not yet come into one's possession, in order that thereby a man's enjoyment on Sabbaths and festivals might not be disturbed by his inability to partake of untithed fruit that arrived too late. Thus it follows that R. Jannai received the tradition from R. Hiyya that a man may legally dispose of that which is not yet in existence.

(3) On the evening of the incident with his tithe.

(4) Mentioned in II Kings XVIII, 21 and lsa. XLII, 3.

(5) II Kings XVIII, 21, implying that his action was blameworthy.
(6) Isa. XLII, 3, concluding, He shall make the right to go forth according to the truth, a text suggesting approval.
(7) Where was the view attributed to him, supra 93a, expressed?
(8) Deut. XXIII, 16.
(9) Such a slave shall not be delivered to the bondage of the man who bought him, but must be given his emancipation.
(10) The buyer's undertaking.
(11) It cannot refer to an undertaking given at, or after the time of purchase. Such an undertaking is obviously binding and the ruling of Rabbi in such a case would he superfluous.
(12) The slave.
(13) Kid. 63a, Git. 45a, which shews that, according to Rabbi, one may dispose of what is not yet his
(14) Where was the view attributed to him, supra 93a, expressed?
(15) Cur. edd., 'we learned'.
(16) Kid. 63a, Keth. 58b, B.M. 16b, and supra 92b, q.v. for notes. Though at the time of the stipulation the conditions were not yet fulfilled, R. Meir regards the betrothal as valid. Thus it has been shewn that, according to him, one may effect a kinyan of that which is not yet in existence.
(17) V. Bah,, a.l.
(18) Lit., 'brought'.
(19) Tosef. Ter. II, Kid. 62a, which clearly proves that according to R. Eliezer b. Jacob one may legally dispose of things which are not yet in existence.
(20) V. supra note 1.
(21) Cf. supra p. 632, n. 4.
(22) Cf. supra p. 632 n. 8.
(23) Cf. supra p. 632, n. 6.
(24) Cf. supra p. 632, n. 7.
(25) Cf. supra p. 632, n. 8.
(26) Cf. supra p. 632. n. 9. This proves that, according to R. Akiba, one may legally dispose of work even if It is not yet in existence, and the same naturally applies to other things also.
(27) Who testifies that the husband of the woman is dead.
(28) Whose husband died without issue, and who is in consequence subject to the levirate marriage. Is the witness in such a case believed?
(29) In respect of allowing a woman to marry again if he testified that her husband was dead.
(30) And his evidence is, therefore, accepted.
(31) v. p. 635. n. 16.
(32) And the one witness, therefore, is not to be relied upon.
(33) Supra 92a.
(34) One pair testifying to the veracity of the first report and the other to that of the second.
(35) The author of our Mishnah.
(36) Lit., 'but not'.
(37) Lit., 'not thus'.
(38) Which proves that the evidence of one witness is relied upon in permitting a sister-in-law to marry a levir.
(39) In the case just proved. V. supra note 9.
(40) Much more so a witness.
(41) Where she is not otherwise subject to the levirate marriage.
(42) And was survived by no issue. 'Ed. I, 12, Sheb. 32b, infra 114b. V. p. 636. n. II.
(43) Where one witness testified that her brother-in-law' was dead or that her husband died first and her son died after him.
(44) V. supra p. 635, n. 16.
(45) V. supra p. 636, n.I.

Talmud - Mas. Yevamoth 94a

hate her brother-inlaw?[1] — R. Shesheth answered them: You have learned it, IF A WOMAN.. WAS

TOLD, YOUR HUSBAND DIED AND YOUR SON DIED AFTERWARDS', AND SHE MARRIED AGAIN, AND LATER SHE WAS TOLD, 'IT WAS OTHERWISE', SHE MUST DEPART; AND ANY CHILD BORN BEFORE OR AFTER IS A BASTARD.[2] Now, how is this to be understood? If it be suggested [that there were] two witnesses against two,[3] what reason do you see [it may be asked] for relying on the latter? Rely rather on the former! Furthermore, [how could the child be described as a] BASTARD, [when he is only] an uncertain bastard! And should you reply that he[4] was not exact in his expression. Surely [it may be pointed out] since in the final clause he[4] stated, ANY CHILD BORN BEFORE [THE DEATH OF HER FIRST HUSBAND] IS A BASTARD, BUT ONE BORN AFTER IT IS NO BASTARD,[2] it may be inferred that he was exact in his expressions! Consequently[5] [it must be concluded that the first report was that of] one witness, and that the reason [why he is not believed is] because two witnesses came and contradicted his evidence, but had this not been the case[6] he would have been believed! [No]. In fact [it may be retorted, there may have been] two witnesses against two, and [this is the explanation]: As As R. Aha b. Manyumi stated, 'Where the witnesses have proved an alibi',[7] so here also [It is a case where the second pair of] witnesses have proved an alibi.[8]

Said R. Mordecai to R. Ashi, — others Say. R. Aha said to R. Ashi: Come and hear: A woman is not believed if she says. 'My brother-in-law is dead, and so I may marry again', or, 'My sister is dead, and so I may enter[9] her house'.[10] Only she is not believed but one witness is believed![11] According to your argument, however, [it may be retorted] read the final clause: A man is not believed when he says.'My brother is dead, and so I may contract the levirate marriage with his wife', or, 'My own wife is dead, and so I may marry her sister' —[10] Is it only he who is not believed, but one witness is believed? In the case of a woman[12] one can well understand that in order to prevent her perpetual desertion the Rabbis have relaxed the law in her favour.[13] What, however, can be said in the case of a man! [This statement][14] then [it must be explained] was required in accordance with the view of R. Akiba.[15] It might have been assumed that, since R. Akiba stated that the offspring of a union between those who are subject to the penalty of negative commandments is a bastard, she[16] may be presumed to be desirous of avoiding injury[17] and to institute, therefore, careful enquiries.[18] hence we were taught[19] [that she is not to be believed].[20] Raba said:[21] That one witness is believed in the case of a sister-in-law[22] [may be inferred] a minori ad majus: If you have permitted [a woman to marry again][23] in face of a prohibition involving kareth[24] how much more so in face of a mere prohibitory law.[25] Said one of the Rabbis to Raba: Her own case proves [the contrary]: In face of a prohibition involving kareth[24] you have permitted her [to marry again][26] while in face of a mere prohibitory law[25] you have not permitted her![27] The fact, however, is this:[28] Why is she not believed?[27] Because, as she may sometimes hate the levir, she might marry a stranger without first instituting careful enquiries;[29] so also in the case of one witness, since she may sometimes hate the levir, she might marry [a stranger] without first instituting the necessary enquiries.[29]

THIS DID R. ELEAZAR B. MATHIA DERIVE BY MEANS OF THE FOLLOWING EXPOSITION etc. Said Rab Judah in the name of Rab:[30] R. Eleazar could have produced[31] a pearl and produced but a potsherd. What is meant by 'pearl'? — That which was taught: Neither [shall they take] a woman put away from her husband.[32] even if she was divorced from her husband alone[33] she[34] is disqualified from marrying a priest.[35] And it is this [that was meant by] the 'scent of the divorce'[36] which disqualifies a woman from marrying a priest. MISHNAH. IF A MAN'S WIFE HAD GONE TO A COUNTRY BEYOND THE SEA AND HE WAS TOLD,[37] YOUR WIFE IS DEAD', AND, AFTER HE MARRIED HER SISTER, HIS WIFE CAME BACK, [THE LATTER] IS PERMITTED TO RETURN

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(1) V. supra p. 636. n. 3.

(2) V. supra p. 636, n. 4.

(3) V. supra p. 636,0. 5.

(4) V. supra p. 636,0.6.

(5) Lit., 'but not'.
(6) Lit., 'not thus'. (11) From which it follows that the evidence of one witness is accepted in permitting a sister-in-law to marry a stranger. (12) Why the evidence of the second pair is regarded as more reliable than that of the first pair.
(7) הזמה (rt. זמם, cf. Deut. XIX, 19) 'causing witnesses to be subjected to the law of retaliation' by disproving their evidence. This is effected when a second pair of witnesses testify that the first pair were with them at a certain place at the time when according to their evidence an act had been committed or an event had occurred at another place.
(8) They testified that the former were with them at the time they alleged the death of the husband or that of the son to have occurred. Cf. Mak. 5a. In such a case, the second report is accepted.
(9) To marry her husband. A sister's husband is forbidden while the sister is alive.
(10) V. Infra 118b with slight variants.
(11) Could not then this Mishnah supply the answer to the enquiry addressed to R. Shesheth?
(12) Who is permitted to marry again on the evidence of one witness.
(13) supra n. 6.
(14) In the Mishnah cited, that a woman is not believed.
(15) It Is for this purpose only that was recorded; and no inference, such as those suggested. may be drawn from it.
(16) A woman who is subject to a levir, and marriage with whom by a stranger is forbidden by a negative commandment.
(17) To her person and status. Should the report prove to have been false, she is penalized as stated supra. 'Of the child', In cur. edd. is deleted by Bah.
(18) Before she definitely asserts that her brother-in-law is dead.
(19) Cur. edd. insert in parenthesis: 'That she apprehends her own injury; she does not apprehend the injury of the child' (v. Rashi).
(20) For fear she might hate her levir, v. supra 93b.
(21) In reply to the enquiry addressed to R. Shesheth. supra.
(22) V. supra p. 637, n. 2.
(23) On the evidence of one witness who testified that her husband was dead.
(24) One of the major penalties for connubial intercourse with a married woman.
(25) Marriage of a sister- in-law by a stranger in the circumstances postulated in the enquiry.
(26) If she herself declared that her husband was dead.
(27) To marry a stranger, though she declared that her brother-in-law was dead.
(28) Lit., 'and but'.
(29) As to whether the levir had really died.
(30) Alfasi and Asheri read, 'Rab said'.
(31) Lit., 'expounded'.
(32) Lev. XXI, 7.
(33) If the husband inserted in the letter of divorce a clause forbidding her to marry anyone else, v. Git., 82b.
(34) Though her letter of divorce is, owing to its restrictive clause, of no validity.
(35) Even if her husband died, and she remained a widow.
(36) l.e., even the mere semblance of a divorce, though the document is invalid.
(37) Lit., 'they came and said to him'.

Talmud - Mas. Yevamoth 94b

TO HIM;[1] AND HE IS PERMITTED TO MARRY THE RELATIVES OF THE SECOND WOMAN,[2] AND THE SECOND WOMAN IS PERMITTED TO MARRY HIS RELATIVES. IF THE FIRST DIED HE IS PERMITTED TO MARRY THE SECOND.

IF HE WAS TOLD, HOWEVER, THAT HIS WIFE WAS DEAD, AND HE MARRIED HER SISTER, AND THEN HE WAS TOLD THAT SHE WAS THEN[3] ALIVE BUT HAD SINCE DIED, ANY CHILD BORN BEFORE[4] [HIS FIRST WIFE'S DEATH] IS A BASTARD, BUT ANYONE BORN AFTER THAT[5] IS NO BASTARD.

R. JOSE STATED:[6] WHOSOEVER DISQUALIFIES FOR OTHERS DISQUALIFIES FOR HIMSELF AND WHOSOEVER DOES NOT DISQUALIFY FOR OTHERS DOES NOT DISQUALIFY FOR HIMSELF.

GEMARA. Even though his wife and his brother-in-law[7] went to a country beyond the sea,[8] so that such marriage[9] had the effect of causing the prohibition of the wife of his brother-in-law to his brother-in-law, it is nevertheless the wife of his brother-in-law that is forbidden,[10] while his own wife is permitted.[11] and we do not say that, since the wife of his brother-in-law is forbidden to his brother-in-law, his Own wife also should be forbidden to him.[12]

Are we to assume that our Mishnah does not represent the view of R. Akiba? For if [it be in agreement with] R. Akiba [his wife][13] would be the sister of his divorcee![14] For it was taught: None of the women In incestuous marriages forbidden in the Torah require a letter of divorce,[15] except a married woman[16] who remarried in accordance with the decision of the Beth din.[17] R. Akiba, however, adds[18] also a brother's wife[19] and a wife's sister.[20] Now, since R. Akiba ruled that she[21] requires a letter of divorce, [his first wife] becomes ipso facto forbidden to him because she is the sister of his divorcee![22]

Was not, however, the following statement made in connection with this[23] ruling: R. Giddal said in the name of R. Hiyya b. Joseph in the name of Rab, ‘How is one to understand this "brother's wife"?[24] Where a man's brother, for instance, betrothed a woman and went to a country beyond the sea, and he,[25] on hearing that his brother was dead, married his wife;[26] since people might say[27] that the first[28] had attached a certain condition to the betrothal[29] and that the latter[25] had lawfully married her.[30] And how is one to understand a "wife's sister"?[24] Where a man, for instance, betrothed a woman and she went to a country beyond the sea, and he, on hearing that she died, married her sister;[26] since people might say[31] that he had attached a certain condition to the betrothal[32] of the first[33] and that he, therefore, legally married the other’.[34] In respect of marriage,[35] however, can it be said that one had attached a condition to marriage![36]

Said R. Ashi to R. Kahana: If [our Mishnah represents the view of] R. Akiba, one's mother-in-law[37] should also be mentioned,[38] since R. Akiba was heard to state: [The marriage of] a man's mother-in.law after the death [of his wife] is not punishable by burning![39] For it was taught: They shall be burnt with fire. both he and they,[40] he and one of them;[41] so R. Ishmael. R. Akiba said: He and both of them.[42] This presents no difficulty according to Abaye who explained that the difference between them[43] lies in the interpretation of the text,[40] R. Ishmael maintaining that the text mentioned only one[44] while R. Akiba maintains that the text spoke of two.[45] According to Raba, however, who explained that the difference between them[43] is [the case of marriage of] a man's mother-in-law after the death [of his wife].[46] his mother-in-law should also have been mentioned![47] — The other replied: Granted that Scripture has excluded her[48] from the penalty of burning. has Scripture. however, excluded her from the prohibition?[49]

Let her,[50] however, be forbidden [to her husband] through his cohabitation with her sister, her case being similar to that of a woman whose husband went to a country beyond the sea![51] — [The two cases are] not alike: His wife who, [if she had acted] presumptuously,[52] is forbidden to him by Pentateuchal law, has been forbidden to him, when [she acted] unwittingly, by a preventive measure of the Rabbis;

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(1) Since the marriage with the second was invalid V. infra 95a.

(2) V. infra 97a.

(3) At the time he married her sister.

(4) Lit., ‘the first child’.

(5) Lit.,’and the last’.

(6) His statement is explained infra.
(7) The husband of his wife's sister.
(8) And on the evidence of one witness, who testified that both were dead, the man married his wife's sister; and subsequently both travellers returned.
(9) Of the man with his sister-in-law.
(10) To her husband.
(11) To him
(12) So that the same marriage which results in a prohibition of the one woman does not effect the permissibility of the other.
(13) Who comes back and who, according to our Mishnah, is permitted to return to him.
(14) With whom marital relationship is forbidden. The second wife, according to R. Akiba, as will tentatively be shown anon, must be divorced.
(15) If they were married, such an unlawful marriage being regarded as mere harlotry.
(16) Whose husband is reported, by one witness, to be dead.
(17) Who accepted the evidence; and later the husband returned. In such a case the women requires a divorce from her second husband also. V. infra 88b.
(18) To the women who require a letter of divorce.
(19) Whom a man married on the evidence that her husband (his brother) was dead, and her husband subsequently returned.
(20) Cf. the first case in our Mishnah.
(21) His wife's sister. V. supra n. 8.
(22) How, then, could it be said in our Mishnah that his first wife is PERMITTED TO RETURN TO HIM?
(23) R. Akiba's.
(24) In whose case a letter of divorce is required.
(25) The brother at home.
(26) In such a case a divorce was necessary.
(27) Should the brother return, and the brother at home not give his wife a letter of divorce.
(28) The brother who came back from a country beyond the sea.
(29) A condition which had not been fulfilled and had thus rendered the betrothal invalid.
(30) And so, in order that it be not suspected that a lawful marriage had been dissolved without a letter of divorce, It was enacted, as a preventive measure, that a letter of divorce was in such a case necessary.
(31) Should the woman return, and her sister not be given a letter of divorce.
(32) V. p.641. n.17.
(33) The woman who now returned.
(34) The sister who remained at home. Cf. supra p. 641, n. 18.
(35) The case spoken of in our Mishnah.
(36) [Surely no condition is attachable to marriage; and even on the view that marriage may be contracted conditionally, it is unusual for a person to invalidate a marriage because of the non-fulfilment of a condition attached to it (v. Tosaf. s.v. אלא)]. All would consequently know that the first marriage was a valid one and that the second was, therefore, invalid. No letter of divorce was, therefore, necessary even according to R. Akiba, whose view, contrary to the previous assumption, may well be represented in our Mishnah.
(37) Whom one married on receiving a report that his wife (her daughter) was dead.
(38) In our Mishnah.
(39) And is presumably permitted.
(40) Lev. XX. 14, speaking of a man who take with his wife also her mother (ibid.).
(41) The one whom the man was forbidden to marry, viz., the woman he married last.
(42) Sanh. 76b.
(43) R. Ishmael and R. Akiba.
(44) Forbidden woman (v. supra n. 10). the first having been lawfully married.
(45) Women that were both forbidden to the man; where, for instance, he married his mother-in-law and her mother. According to this explanation of Abaye the question of marrying a mother-inlaw after the death of one's lawful wife did not arise in the dispute, and R. Akiba's opinion on the subject cannot, therefore, be inferred from it.

(46) R. Ishmael maintaining that even when a man had married his mother-in-law after the death of his wife he is to be burned, while R. Akiba maintains that he is burned only if both women were alive.(Cf. Sanh. 76b).
(47) In our Mishnah; since, as has been shewn, according to Raba's explanation, marriage of a mother-in-law after the death of her daughter is, according to R. Akiba, permitted
(48) A mother-in-law that was married by her son-in- law.
(49) Evidently not. Her case, therefore, could not have been mentioned in our Mishnah.
(50) The first wife spoken of in our Mishnah, who IS PERMITTED TO RETURN TO HIM.
(51) And she married a second husband. In both cases the women acted unwittingly. As in the latter case the woman is forbidden to her husband, so should the woman in the case in our Mishnah.
(52) In marrying a second husband.

Talmud - Mas. Yevamoth 95a

with his wife's sister, however, presumptuous [marriage with whom does] not [cause his first wife to be] forbidden [to him] by Pentateuchal law, no preventive measure has been instituted by the Rabbis in her case where [he acted] unwittingly.[1] Whence, however, is it deduced that she[2] is not forbidden?[3] — [From that] which was taught: With her;[4] only cohabitation[5] with her causes her to be prohibited;[3] cohabitation[6] with her sister, however, does not cause her to be prohibited. [This, Scriptural text was required] since [otherwise] It might have been argued [as follows]: If where a man cohabited with [a woman forbidden by] a lighter prohibition.[7] [the person][8] who caused the prohibition [itself][9] is forbidden [to her],[10] how much more should [the person][11] who caused the prohibition become forbidden in the case of cohabiting with [one[12] forbidden by] a heavier prohibition.[13]

R. Judah stated: Beth Shammai and Beth Hillel are agreed[14] that a man who cohabited with his mother-in-law renders his wife unfit [to live with him]; they only differ where a man cohabited with his wife's sister, in which case Beth Shammai maintain that thereby he causes [his wife] to be unfit for him, while Beth Hillel maintain that he does not thereby cause her to be unfit for him.

R. Jose stated: Beth Shammai and Beth Hillel are agreed[14] that a man who cohabits with his wife's sister does not thereby render his wife unfit for him; they differ only where a man cohabited with his mother-in-law, in which case Beth Shammai maintain that thereby he causes [his wife] to be unfit for him, while Beth Hillel maintain that he does not thereby cause her to be unfit for him. [Both agree][15] for the following reason:[16] Originally all the women of the world were permitted to him,[17] and all the men of the world were permitted to her;[18] but when he betrothed her he imposed a prohibition upon her and she imposed a prohibition upon him; the prohibition, however, which he imposed upon her is greater than the prohibition which she imposes upon him, since he caused all the men of the world to be forbidden to her, while she caused her relatives only to be forbidden to him. This,[19] then, may be arrived at by an inference: If she, to whom he[20] caused[21] all the men in the world to be prohibited, is, if she cohabited unwittingly with one who was forbidden to her,[22] not forbidden to the man[23] who was permitted to her,[24] how much more reason is there why he[23] to whom she[25] caused[26] the prohibition of her relatives only, should, if he cohabited unwittingly with one who was forbidden to him,[27] not be forbidden[28] to her[25] who was permitted to him. This argument is applicable to one who acted unwittingly. Whence is it deduced [that the same law[29] is applicable] to one who acted wilfully? It was expressly stated With her,[30] cohabitation[31] with her only causes her to be prohibited;[32] cohabitation[33] with her sister, however, does not cause her to be prohibited.[32]

Said R. Ammi in the name of Resh Lakish: What is R. Judah's reason?[34] — Because it is written, They shall be burnt with fire. both he and they;[35] is the whole household to be burned![36] If this, then, is not a case for burning[36] regard the text as indicating a prohibition.[37]

Rab Judah stated in the name of Samuel: The law is not in agreement with R. Judah.[37]

A man once committed incest with his mother-in-law, and Rab Judah summoned him and ordered him to receive a flogging. 'Had Samuel not stated', he said to him, 'that the law was not in agreement with R. Judah. I would have forbidden [your wife] to you for all time'.

What was meant by a 'lighter prohibition'?[38] — R. Hisda replied: Remarrying one's divorced wife after her marriage to another man —[39] When that man[40] cohabited with her, he caused her to be prohibited to the other,[41] and when the other[41] cohabited with her[42] he caused her to be prohibited to the former.[43] [But, it may be argued,] remarrying one's divorced wife after her marriage to another man is different[44] since her body[45] was defiled and she is[46] prohibited for all time![47] — Rather, said Resh Lakish, [it means] a yebamah.[48]

A yebamah with whom?[49] If it be suggested: With a stranger,[50] [the ruling] being in accordance with R. Hamnuna who ruled[51] that a woman awaiting the decision of the levir who played the harlot is forbidden to the levir,[52] [it may be objected that] a yebamah is different,[44] since her body was defiled and she is prohibited to the majority of men.[53] If, however, [it be suggested that it refers[54] to] a yebamah in relation to [her deceased husband's] brothers: Where one [brother, for instance] addressed to her a ma'amar he caused her to be prohibited to the other,[55] and when the other cohabited with her he caused her to be prohibited to the former.[56] [But in this case] what point is there, [it may be retorted, in stating][57] that the second cohabited with her,[58] [when the same law is applicable] also even where he[59] only addressed to her a ma'amar![60] — This is no difficulty; [a ma'amar could not be postulated], in accordance with R. Gamaliel who ruled: There is no validity in a ma'amar that was addressed after a previous ma'amar.[61] But [still the objection is that the same law is applicable] even if he[59] gave her a letter of divorce and even if he submitted to her halizah! — Rather, said R. Johanan, [it means] a sotah.[62]

A sotah, with whom?[63] If it be suggested: With her husband who, if he cohabited with her,[64] caused her to be prohibited to her seducer,[65] what point is there, [it may be objected, in stating] that he cohabited with her? Even if he[66] only gave her a letter of divorce and even if he only said, 'I am not allowing her to drink',[67] [the same law is applicable]![68] [If it be suggested] however: The sotah with the seducer;[69] is this[70] [it may be objected] a 'lighter prohibition'? It is surely a grave prohibition, since she is a married woman!

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(1) As is the case in our Mishnah.

(2) A wife whose husband has had connubial intercourse with her sister.

(3) To her husband, in accordance with Pentateuchal law.

(4) And a man lie with her, Num. V, 13.

(5) Of a stranger.

(6) Of her husband.

(7) This, as will be explained infra, refers to a married woman, intercourse with whom is regarded as a comparatively lighter prohibition than that of a wife's sister (v. p. 644, n. 5), since it may at any time be raised by means of a letter of divorce severing the relationship between the husband and the wife.

(8) The husband.

(9) The husband causes the prohibition of his wife to all men. It is owing to his marriage with her that she is forbidden to marry any other man.

(10) One must not retain a faithless wife.

(11) I.e., the wife who caused the prohibition of her sister to her husband.

(12) His wife's sister.

(13) Since his wife causes her sister to be forbidden to him during the whole of her lifetime. Hence It was necessary to have a Scriptural text to shew that the law is not so.

(14) Lit., 'did not dispute'.

(15) That cohabitation with his wife's sister does not render his wife unfit to live with him.

(16) Lit., ‘because’.
(17) The husband, before he married his wife.
(18) The wife, before she married her husband.
(19) V. supra n.7.
(20) Her husband.
(21) By marrying her.
(22) If, for instance, she was outraged.
(23) Her husband.
(24) Her husband. Cf. supra 56b.
(25) His wife.
(26) By marrying him.
(27) His wife's sister.
(28) ‘To him’ in cur. edd. is deleted with Bah.
(29) V. supra p. 644, n. 7.
(30) Num. V, 13. V. supra p. 643. n. 10.
(31) Of a stranger.
(32) To her husband.
(33) Of her husband.
(34) For maintaining that both Beth Shammai and Beth Hillel agree that a man's cohabitation with his mother-in-law causes his wife to be prohibited to him.
(35) Lev. XX, 14. Cf. supra p. 642, n. 9.
(36) His first wife, surely, who was lawfully married, should not suffer because her husband bad subsequently contracted an unlawful marriage!
(37) V. supra note 13.
(38) Spoken of supra.
(39) Which is a ‘lighter prohibition’. being only a prohibitory law which involves no kareth. V. infra p. 646, n. I.
(40) Her second husband.
(41) Her first husband.
(42) After her second husband had divorced her.
(43) V. supra p. 645, n. 18, the prohibition being due to the prohibitory law in Deut. XXIV, 4. Thus the second husband ‘who caused the prohibition of his wife is thereby himself forbidden to her’.
(44) From a marriage with one's wife's sister.
(45) That of the divorced woman.
(46) Cur. edd., insert, ‘and she is prohibited to the majority’ which (cf. Rashi a.l.) is to be deleted.
(47) To both husbands. A wife's sister, however, is forbidden only during the lifetime of one's wife but permitted after her death, while furthermore the marriage of a wife's sister does not cause the defilement of the wife's body. The latter case cannot, therefore, be compared to the former. What, then, was meant by the ‘lighter prohibition’?
(48) Marriage with her by a stranger is regarded as a ‘lighter prohibition’.
(49) I.e., with whom did she cohabit that her act should have the result that he ‘who caused the prohibition is thereby himself forbidden to her’?
(50) The prohibition to marry whom, before she had performed the halizah, is only a prohibitory law involving no kareth.
(51) Supra 81a, 92b, Cit. 80b, Sot. 18b.
(52) Thus the levir ‘who caused the prohibition’ of his sister-in-law to others is ‘himself forbidden to her’ by the cohabitation of the stranger.
(53) I.e., to everybody except the levir or levirs. A wife's sister, however, is forbidden to him (her sister's husband) alone, and his wife's body is not defiled by his marriage with her sister. The two cases, therefore, cannot be compared.
(54) Cf. supra note 6.
(55) Brother, this being regarded as a ‘lighter prohibition’, since it is due to a Rabbinic measure only.
(56) Cf. supra note so, mutatis mutandis.
(57) Supra.
(58) I.e., that be prohibits her to the first only because he cohabited with her.

(59) The second brother.

(60) He should still thereby prohibit her to the first brother, in view of the ruling supra 50a that a ma'amar is effective after a ma'amar.

(61) Supra 50a.

(62) V. Glos. Cohabitation with a sotah is regarded as the 'lighter prohibition'.

(63) V. supra p. 646, n. 7.

(64) After she had been warned by him against intimacy with a stranger, and after she had met that stranger privately, when all connubial intercourse between the woman and her husband is forbidden.

(65) Even after his own death or after he had divorced her. Thus, the seducer 'who caused the prohibition' of the woman to her husband becomes 'himself forbidden' to her for all time.

(66) Her husband.

(67) The water of bitterness (cf. Num. V, 18). V. supra n. 6.

(68) She becomes forbidden to the seducer for all time. Cf. supra n' 7.

(69) By his cohabitation the woman becomes prohibited to her husband who was the cause of her prohibition to others.

(70) Cohabitation with a married woman.

Talmud - Mas. Yevamoth 95b

— Rather, said Raba, it means a married woman. Similarly when Rabin came[1] he stated in the name of R. Johanan: A married woman. But why should this[2] be described as 'a lighter prohibition'? — Because [her husband] who causes her to be prohibited [to other men] does not cause her to be so prohibited during the whole of his lifetime.[3]

It[4] was taught likewise: Abba Hanan stated in the name of R. Eleazar: [It means] a married man. [And the argument runs thus:] If where a man cohabits with [a woman forbidden by] a lighter prohibition,[5] in which case he[6] who caused the prohibition of her does not cause her to be prohibited during the whole of his lifetime,[7] [it is nevertheless ruled] that the very person who causes the prohibition becomes prohibited,[8] then, in a case of cohabiting with [one forbidden] by a graver prohibition,[9] where the person, who causes the prohibition of her,[10] prohibits her during the whole of her lifetime,[11] how much more should we rule that the very person who causes the prohibition should become prohibited;[12] hence it was expressly stated, With her,[13] only cohabition[14] with her[15] causes her to be prohibited[16] but cohabitation[17] with her sister does not cause her[18] to be prohibited.[16]

R. JOSE STATED: WHOSOEVER DISQUALIFIES etc. What does R. Jose mean?[19] If it be suggested that while the first Tanna implied that 'Where a man's wife and his brother-in-law[20] went to a country beyond the sea,[21] the wife of his brother- in-law is forbidden,[22] though his own wife is permitted',[23] R. Jose said to him, 'As his own wife is permitted[23] so is the wife of his brother-in-law also permitted';[22] if so, [it may be objected, why the expression] WHOSOEVER DOES NOT DISQUALIFY FOR OTHERS DOES NOT DISQUALIFY FOR HIMSELF[24] where it should have been. 'Whosoever does not disqualify[25] for himself, does not disqualify for others'![26]

If, however, [it be suggested that R. Jose implied]. 'As the wife of his brother-in-law is forbidden,[27] so is his wife also forbidden',[28] [the expression,] WHOSOEVER DISQUALIFIES would be satisfactorily explained; what, however, would be the purport of WHOSOEVER DOES NOT DISQUALIFY?[24] — R. Ammi replied: [He[29] refers] to an earlier clause:[30] 'If she married with the authorization of the Beth din, she must leave, but is exempt from an offering. If she married, however, without the authorization of the Beth din, she must leave and is also liable to an offering, the authorization of the Beth din is thus more effective in that it exempts her from the offering.[31] Concerning this, the first Tanna stated [that his wife may return to him][32] 'irrespective of whether [the marriage[33] took place] on the evidence of two witnesses,[34] where the wife of his brother-in-law is permitted,[35] or whether [it took place] in accordance with a decision of the Beth din,[36] where the

wife of his brother-in- law is forbidden',[35] and [to this] R. Jose replied. '[If the marriage took place] in accordance with a decision of the Beth din,[36] where he DISQUALIFIES FOR OTHERS[37] he DISQUALIFIES FOR HIMSELF;[38] [if, however, it took place] on the basis of the evidence of two witnesses,[34] where he DOES NOT DISQUALIFY FOR OTHERS[39] he DOES NOT DISQUALIFY FOR HIMSELF.[40]

R. Isaac Nappaha replied: [R. Jose may], in fact, refer to the latter clause,[41] one[42] [of his rulings applying] where [the persons who] had gone [were] the man's wife[43] and his brother-in-law. and the other [applying] where his betrothed and brother-in-law had gone. The first Tanna having ruled that 'irrespective of whether it was his wife and his brother-in-law or whether it was his betrothed and his brother-in-law, the wife of his brother-in-law is forbidden[44] while his wife is permitted,'[45] R. Jose said to him, 'In the case of his wife and brother-in-law where no one would assume that he had attached some condition to his marriage[46] and where consequently he does not cause [his sister-in-law] to be prohibited to the other,[47] he does not cause [his first wife] to be prohibited to him either; in the case of his betrothed and his brother-in-law, however, where someone might assume that he had attached some condition to his betrothal[48] and where, in consequence, he causes [his sister- in-law] to be prohibited to the other,[49] he causes [his first wife] also to be prohibited to him.

Rab Judah Stated in the name of Samuel: The halachah is in agreement with R. Jose.

R. Joseph demurred: Could Samuel have said this?[50] Surely it was stated: A yebamah,[51] Rab said, has the status of a married woman; and Samuel said: She has not the status of a married woman. And R. Huna said: Where, for instance, a man's brother betrothed a woman[52] and then went to a country beyond the sea, and he,[53] on hearing that his brother was dead, married his wife. [It is in such a case] that Rab ruled that 'she has the status of a married woman' and is consequently forbidden to the brother-inlaw;[54] and Samuel ruled that 'she has not the status of a married woman' and is, therefore, permitted to him![55] Said Abaye to him:[56] Whence [do you infer] that when Samuel stated that 'the halachah is in agreement with R. Jose', he was referring to R. Isaac Nappaha's interpretation? Is it not possible that he was referring to that of R. Ammi![57] And even if he refers to that of R. Isaac Nappaha, whence the proof that [he referred to the ruling] 'DISQUALIFIED'?[58]

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(1) From Palestine to Babylon.

(2) Illicit intercourse with a married woman.

(3) As soon as be divorces her she is free again. A prohibition of this nature, which may terminate at any time, is regarded as 'lighter' than the prohibition of a man's wife's sister, which remains in force throughout the whole of the lifetime of his wife.

(4) The lighter prohibition referred to.

(5) A married woman. The prohibition is considered light for the reason that follows.

(6) The husband.

(7) The prohibition of a married woman terminates with divorce by her husband.

(8) The woman becomes forbidden to her own husband through illicit intercourse.

(9) His wife's sister.

(10) I.e., the wife who causes her sister to be prohibited to her husband.

(11) The prohibition [If a man's wife's sister remains in force throughout the whole of the lifetime of his wife.

(12) To her own husband.

(13) Num. V, 13.

(14) Of a stranger

(15) His wife.

(16) To her husband.

(17) Of her husband.

(18) The wife.

(19) His statement seems to have no apparent connection with the preceding clause.

(20) His wife's sister's husband.
(21) And they both returned after be had married his wife's sister on the strength of the evidence of one witness who testified that they were both dead.
(22) To her husband, his brother-in-law.
(23) To him.
(24) Cases about which R. Jose, according to this suggestion, did not speak.
(25) His own wife.
(26) His wife's sister to her husband. These last mentioned cases being those of which R. Jose presumably spoke.
(27) To her husband, his brother-in- law.
(28) To him.
(29) R. Jose.
(30) In a previous Mishnah.
(31) V. supra 87b.
(32) V. our Mishnah, first clause.
(33) Of the husband (whose wife had gone away) with his wife's sister (whose husband also bad gone away).
(34) Who testified that both his wife and brother-in-law were dead.
(35) To her husband, if be returned.
(36) On the evidence of one witness. V. supra n. 11.
(37) He causes his wife's sister to be forbidden to return to her husband owing to his illicit marriage with her.
(38) His first wife is forbidden to him also.
(39) His wife's sister being in this case permitted to her husband.
(40) And his first wife may return to him.
(41) I.e., our Mishnah which speaks of a marriage permitted on the evidence of one witness.
(42) Lit., 'that'. Cur. edd. insert in parenthesis 'that, where he married the wife of his brother-in-law; and that, where he married the betrothed of his brother-in-law.'
(43) This is the reading of Rashi (a.l. s.v. ד"ה). Cur. edd., transpose 'wife' and 'betrothed'.
(44) To her husband, if be returned.
(45) To him.
(46) With his first wife; since no condition is admissible in a marriage contract. (V., however, supra p. 642, n. 5).
(47) Her husband, his brother-in-law. His own first marriage being known to be valid it should be obvious to all that his subsequent marriage with his sister-in-law was invalid. Were it even assumed that his brother-in-law had divorced her, the invalidity of his marriage with his sister-in-law would not thereby be affected since even after her divorce she still remains forbidden to him as his wife's sister. This being the case no one will suspect his brother-in-law when his wife returns to him of having remarried his divorcee. Hence R. Jose's ruling that she is not forbidden to her husband.
(48) Which, on non-fulfilment, had rendered the betrothal invalid and thus enabled him lawfully to contract his subsequent marriage; his presumed sister-in-law being to him (owing to the invalidity of her sister's betrothal) no more than a mere stranger.
(49) Her former husband. Were she permitted to return to him it might be assumed that he had divorced her prior to her marriage with her brother-in-law and that the latter had now divorced her; and so it would be concluded that (contrary to Deut. XXIV, 4) a man married again the woman he had once divorced though she had in the meantime been married to another man.
(50) Lit., 'thus', that the halachah is in agreement with the full statement of R. Jose, including the part relating to the marriage with the sister of one's betrothed, it being necessary in case of betrothal to provide against the erroneous assumption that the betrothal was invalid and that consequently a man's divorcee had been married again by him. Cf. p. 650, nn. 8 and 9.
(51) This is explained anon.
(52) Had he married her there would have been no question that she may return to him. Cf. supra p. 650, n. 7.
(53) The brother at home.
(54) I.e., to the man who first betrothed her and then left her and now returned, and who, owing to his brother's marriage with her, has become her brother-in-law. Were she to be permitted to return to him it might be assumed that his original betrothal was invalid owing to some disqualifying condition, that his brother's marriage was, therefore, valid, and that be now married his brother's wife.

(55) Because, in the opinion of Samuel, no provision need be made against the erroneous assumption that the betrothal was invalid (cf. supra n. 5). How, then, could it be said that Samuel adopted the complete statement of R. Jose.
(56) R. Joseph.
(57) So that the question of the assumption of a disqualifying condition in a betrothal would not at all arise.
(58) The case of one's betrothed and brother-in-law.

Talmud - Mas. Yevamoth 96a

Is it not possible [that he referred] to the ruling 'DOES NOT DISQUALIFY'![1] Or else [it might be argued], whence is it proved that R. Huna's explanation[2] is tenable? Is it not possible that R. Huna's explanation is altogether untenable and that they[3] differ on the ruling of R. Hamnuna who stated that 'A woman awaiting the decision of the levir, who played the harlot, is forbidden to her levir';[4] Rab maintaining that she 'has the status of a married woman' and is consequently prohibited[5] by reason of her immoral act,[6] while Samuel maintains that 'she has not the status of a married woman' and does not therefore, become prohibited[5] by reason of her immoral act? Or else [it might be replied] that they[3] differ on the question whether betrothal of a sister-in-law[7] is valid, Rab maintaining that she 'has the status of a married woman' and betrothal[7] with her is, in consequence, invalid, while Samuel maintains that 'she has not the status of a married woman' and betrothal[7] with her is, therefore, valid. But on this question[8] they[3] had already disputed once![9] — The one was stated as an inference from the other.[10]

MISHNAH. IF A MAN WAS TOLD 'YOUR WIFE IS DEAD AND HE MARRIED HER PATERNAL SISTER; [AND WHEN HE WAS TOLD] 'SHE[11] ALSO IS DEAD', HE MARRIED HER MATERNAL SISTER;[12] SHE[13] TOO IS DEAD, AND HE MARRIED HER PATERNAL SISTER;[14] 'SHE[15] ALSO IS DEAD, AND HE MARRIED HER MATERNAL SISTER;[16] AND LATER IT WAS FOUND THAT THEY WERE ALL ALIVE, HE IS PERMITTED TO LIVE WITH THE FIRST,[17] THIRD[18] AND FIFTH,[19] WHO ALSO EXEMPT THEIR RIVALS;[20] BUT HE IS FORBIDDEN TO LIVE WITH THE SECOND OR THE FOURTH,[21] AND COHABITATION[22] WITH ONE OF THESE DOES NOT EXEMPT HER RIVAL. IF, HOWEVER, HE[23] COHABITED WITH THE SECOND AFTER THE DEATH OF THE FIRST,[24] HE IS PERMITTED TO LIVE WITH THE SECOND[25] AND FOURTH,[26] WHO ALSO EXEMPT THEIR RIVALS;[27] BUT HE[23] IS FORBIDDEN TO LIVE[28] WITH THE THIRD AND WITH THE FIFTH, AND COHABITATION[22] WITH ONE OF THESE DOES NOT EXEMPT HER RIVAL.

A BOY OF THE AGE OF NINE YEARS AND ONE DAY RENDERS[29] [HIS SISTER-IN-LAW] UNFIT [FOR MARRIAGE] WITH HIS BROTHERS, AND HIS BROTHERS RENDER HER UNFIT FOR HIM, BUT WHILE HE RENDERS HER UNFIT FROM THE OUTSET ONLY, THE BROTHERS RENDER HER UNFIT BOTH FROM THE OUTSET AND AT THE END. IN WHAT MANNER?[29] A BOY OF THE AGE OF NINE YEARS AND ONE DAY WHO COHABITED WITH HIS SISTER-IN-LAW RENDERS HER UNFIT [FOR MARRIAGE] WITH HIS BROTHERS; THE BROTHERS, HOWEVER, RENDER HER UNFIT FOR HIM WHETHER THEY COHABITED WITH HER, ADDRESSED TO HER A MA'AMAR, GAVE HER A LETTER OF DIVORCE OR SUBMITTED TO HER HALIZAH.

GEMARA. Did not all those [marriages[30] take place] after the death of the first wife![31] — R. Shesheth replied: [By this[32] was meant]. AFTER THE ASCERTAINED[33] DEATH OF THE FIRST WIFE.

A BOY OF THE AGE OF NINE YEARS etc. Does a boy of the age of nine years and one day cause unfitness[34] [only where his act took place] at the outset,[35] but if at the end[36] he causes no unfitness? Surely R. Zebid son of R. Oshaia learnt: If [a brother][37] addressed a ma'amar to his sister-in-law, his brother of the age of nine years and one day, cohabiting with her afterwards, causes

her to be unfit [for marriage with him]![38] — It may be replied: Cohabitation causes unfitness[32] even [if it took place] at the end,[36] while a ma'amar causes unfitness [only if it was addressed] at the outset,[35] but if at the end,[36] it causes no unfitness. But does cohabitation[39] cause unfitness even [if it took place] at the end? Surely it was taught: BUT WHILE HE RENDERS HER UNFIT FROM THE OUTSET ONLY, THEY [RENDER HER UNFIT] BOTH FROM THE OUTSET AND AT THE END. IN WHAT MANNER? A BOY OF THE AGE OF NINE YEARS AND ONE DAY WHO COHABITED WITH HIS SISTER-INLAW etc![40] — Something, indeed, is here missing, and this is the proper reading: 'A BOY OF THE AGE OF NINE YEARS AND ONE DAY RENDERS [HIS SISTER-IN-LAW] UNFIT [FOR MARRIAGE WITH HIS BROTHERS, if his action took place] AT THE OUTSET, but they RENDER HER UNFIT FOR HIM BOTH AT THE OUTSET AND AT THE END. This is applicable only in the case of a ma'amar, but cohabitation[41] causes unfitness even [if it took place] at the end. IN WHAT MANNER? A BOY OF THE AGE OF NINE YEARS AND ONE DAY WHO COHABITED WITH HIS SISTER-IN-LAW[42] RENDERS HER UNFIT FOR MARRIAGE WITH HIS BROTHERS.

His his ma'amar, however, any validity[43] at all?[44] Surely it was taught: A boy of the age of nine years and one day renders [his sister-in-law] unfit for his brothers[45] by one kind of act only, while the brothers render her unfit for him by four kinds of acts. He renders her unfit for the brothers by cohabitation,[46] while the brothers render her unfit for him by cohabitation, by a ma'amar, by a letter of divorce and by halizah![47] — Cohabitation, which causes unfitness both from the outset and at the end, presented to him a definite law,[48] [the law of the] ma'amar, however, which causes unfitness front the outset only but not at the end, could not be regarded by him as definite.[49]

So it was also stated: Rab Judah said in the name of Samuel: He[50] has [the power to give] a letter of divorce.[51] And so said R. Tahlifa b. Abimi: He[50] has [the power to address] a ma'amar.[51]

It was taught likewise: He[50] has [the right to give] a letter of divorce[51] and he has [the right to address] a ma'amar;[51] so R. Meir.

Could R. Meir, however, hold the view [that such a boy] has [the power to give] a letter of divorce?[51] Surely it was taught: Cohabitation with a boy of the age of nine years [and one day] was given the same validity as that of a ma'amar by an adult; and R. Meir said: The halizah of a boy of the age of nine years was given the same validity as that of a letter of divorce by an adult.[52] Now, if that were so,[53] it should have been stated, 'As that of his own letter of divorce'! — R. Huna son of R. Joshua replied: He[54] has [the right],[55] but [his divorce is of a] lesser validity.[56] For according to R. Gamaliel who ruled that there is no [validity in a] letter of divorce after another letter of divorce, his ruling is applicable only [in the case of a divorce] by an adult after that of an adult, or one by a minor after that of a minor, but [a divorce] by an adult after that of a minor is effective,[57] while according to the Rabbis who ruled that a letter of divorce given after another letter of divorce is valid, the ruling applies only to [a divorce] by adult after that of an adult, or one by a minor after that of a minor, but [a divorce by] a minor after [that of] an adult is not effective.[57]

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(1) The case of one's wife and brother-in-law-; Samuel indicating that in this case, and in this case alone, the halachah is in agreement with R. Jose that the sister-in-law is permitted to her first husband contrary to the view of the first Tanna who forbids her.

(2) Supra 95b.

(3) Rab and Samuel.

(4) Cit. 80b, Sot 18b, supra 95a.

(5) To the levir.

(6) As a married woman is prohibited to her husband if she has committed such an act.

(7) To a stranger before she had performed halizah.

(8) The validity of betrothal of a sister- in-law. V. supra n. 7.

(9) Supra 92b. Why should they dispute the same point twice.
(10) By disciples. Rab and Samuel, however disputed the point only once.
(11) His second wife.
(12) Who was thus a perfect stranger to the first wife.
(13) His third wife.
(14) A perfect stranger to the second.
(15) The fourth.
(16) A stranger to the third.
(17) Since his marriage with her was valid.
(18) Who was a complete stranger to him when he married her (V. supra p. 652. n. 12). His previous marriage with her maternal sister (his second wife) had no validity because the latter was a sister of his first wife and was forbidden to him as 'his wife's sister'.
(19) Marriage with whom was valid since the marriage with her sister (the fourth) was invalid. Cf. supra n. 2, mutatis mutandis.
(20) If the man died without issue and one of his surviving brothers contracted the levirate marriage with or submitted to halizah from one of these widows.
(21) The validity of his marriage wife the first and third causes the second and the fourth to be prohibited to him as his wives' respective sisters. Cf. supra note 2.
(22) By one of the levirs. Cf. supra note 4.
(23) The husband.
(24) I.e., it was proved that the first report of her death was true (Rashi).
(25) The death of the first wife has removed from the second the prohibition of wife's sister (since a wife's sister is prohibited only during the lifetime of the wife) marriage with whom becomes valid.
(26) The marriage with the second having become valid (v. supra n. 9), that with the third (being now the man's wife's sister) becomes invalid and, consequently, the marriage with the fourth who is now a perfect stranger becomes valid.
(27) V. supra note 4.
(28) Cf. previous notes, mutatis mutandis.
(29) This will be explained in the Gemara infra.
(30) That were enumerated in the first clause of our Mishnah.
(31) Why then was 'AFTER THE DEATH OF THE FIRST' mentioned only in the second clause in the case where HE COHABITED WITH THE SECOND?
(32) V. supra n. 2.
(33) In the other cases death was only reported.
(34) Of his sister-in-law for his brothers.
(35) Before any of the adult brothers bad addressed a ma'amar to the widow.
(36) After an elder brother had addressed to her a ma'amar.
(37) Of a deceased husband who died without issue.
(38) Which shows that a boy of this age may cause unfitness even 'at the end'.
(39) On the part of the boy of the age of nine years and one day.
(40) Emphasis on COHABITED. Since the illustration is limited to an act of cohabitation only the general statement that the boy RENDERS HER UNFIT FROM THE OUTSET ONLY, on which the illustration apparently hangs must also be limited to cohabitation.
(41) On the part of the boy of the age of nine years and one day.
(42) Even at the end, i.e., after his brothers had addressed to her a ma'amar.
(43) Lit., 'has he a ma'amar'?
(44) Cur. edd. insert 'for the brothers', which, with MS.M. and Pesaro ed. 1509, should be omitted. V. infra n. 5.
(45) The last three words are wanting in cur. edd., but are rightly included in the Pesaro ed. V. supra n. 4.
(46) And by no other act.
(47) How then could it be said that the boy's ma'amar has any validity at all.
(48) **פסיקא** rt. **פסק** 'to cut', 'to decide', i.e., the law relating to cohabitation is definite and absolute. The act is always valid. Hence he mentioned it.
(49) And being undesirous of entering into details of the law he preferred to omit it.

(50) A boy of the age of nine years and one day.

(51) His act is effective and causes his sister-in- law to be unfit for marriage to his brothers.

(52) Cf. Nid. 45a, supra 68a.

(53) That according to R. Meir the letter of divorce of a boy of the age of nine years and one day is valid.

(54) A boy the age of nine years and one day.

(55) To give a letter of divorce. V. supra p. 655. n. 11.

(56) Lit., 'and small'. Hence no comparison could be made between his halizah which is as valid as that of a divorce by on adult, and his own divorce which is not so valid.

(57) Since the divorce of the minor is of lesser validity.

Talmud - Mas. Yevamoth 96b

MISHNAH. IF A BOY OF THE AGE OF NINE YEARS AND ONE DAY COHABITED WITH HIS SISTER-IN-LAW[1] AND THEN HIS BROTHER WHO WAS OF THE AGE OF NINE YEARS AND ONE DAY COHABITED WITH HER, [THE LATTER] RENDERS HER UNFIT[2] FOR [THE FORMER].[3] R. SIMEON SAID: HE DOES NOT RENDER HER UNFIT.[4]

IF A BOY OF THE AGE OF NINE YEARS AND ONE DAY COHABITED WITH HIS SISTER-IN-LAW[5] AND AFTERWARDS HE COHABITED WITH HER RIVAL, HE HAS RENDERED [THEREBY THE FIRST AS WELL AS THE SECOND] UNFIT FOR MARRIAGE WITH HIMSELF.[6] R. SIMEON SAID: HE DOES NOT RENDER [THEM] UNFIT.[7]

GEMARA. It was taught: R. Simeon said to the Sages, 'If the first cohabitation[8] was a valid act,[9] the second cohabitation[10] cannot have any validity;[11] if, the first cohabitation, however, has no validity,[12] the second cohabitation also should have no validity'.[13]

Our Mishnah[14] cannot represent the view of Ben 'Azzai; for it was taught: Ben 'Azzai stated, 'A ma'amar is valid after another ma'amar where it concerns two levirs[15] and one sister-in-law,[16] but no ma'amar is valid after a ma'amar where it concerns two sisters-inlaw and one levir.'[17]

MISHNAH. IF A BOY OF THE AGE OF NINE YEARS AND ONE DAY COHABITED WITH HIS SISTER-IN-LAW[18] AND THEN DIED, SHE MUST PERFORM HALIZAH BUT MAY NOT CONTRACT THE LEVIRATE MARRIAGE.[19] IF HE HAD MARRIED [ANY OTHER] WOMAN AND SUBSEQUENTLY DIED, SHE IS EXEMPT [FROM BOTH].[20]

IF A BOY OF THE AGE OF NINE YEARS AND ONE DAY COHABITED WITH HIS SISTER-IN-LAW, AND AFTER HE HAD COME OF AGE HE MARRIED ANOTHER WOMAN AND SUBSEQUENTLY DIED, IF HE HAD NOT [CARNALLY] KNOWN THE FIRST WOMAN AFTER HE HAD BECOME OF AGE, THE FIRST ONE MUST PERFORM HALIZAH BUT MAY NOT CONTRACT THE LEVIRATE MARRIAGE,[21] WHILE THE SECOND[22] MAY EITHER PERFORM HALIZAH OR CONTRACT LEVIRATE MARRIAGE. R. SIMEON SAID: [THE SURVIVING LEVIR] MAY CONTRACT LEVIRATE MARRIAGE WITH WHICHEVER OF THEM HE MAY DESIRE[23] AND SUBMITS TO HALIZAH FROM THE OTHER.[24] [THE SAME LAW APPLIES] WHETHER HE IS OF THE AGE OF NINE YEARS AND ONE DAY, OR WHETHER HE IS OF THE AGE OF TWENTY YEARS BUT HAD NOT PRODUCED TWO PUBIC HAIRS.[25] GEMARA. Raba stated: With reference to the statement of the Rabbis that in the case of the levirate bond originating from two levirs [the sister-in-law] must perform halizah only but may not contract levirate marriage, it must not be assumed that this is applicable only where there is a rival, because [in that case] a preventive measure was necessary on account of the rival;[26] for here[27] there is no rival and yet [the sister-in-law] must perform halizah only but may not contract the levirate marriage.[28]

IF HE HAD MARRIED [ANY OTHER] WOMAN AND SUBSEQUENTLY DIED etc. Here[27] we learned what the Rabbis taught: If an imbecile or a minor married and then died, their wives are exempt from halizah and from the levirate marriage.[29]

A BOY OF THE AGE OF NINE YEARS etc. AND AFTER HE HAD COME OF AGE etc. Let the cohabitation of the boy of nine[27] be given the same validity as that of a ma'amar by an adult,[30] and so let the rival [here][27] be debarred from the levirate marriage![31] — Now said Rab: The cohabitation of a boy of nine was not given the same validity as that of a ma'amar by an adult. Samuel, however, said: It was certainly given the same validity:[32] and so said R. Johanan: It certainly was given the same validity. Then[33] let the same validity be given here also![34] — This [question is a matter of dispute between] Tannaim. That Tanna [whose ruling is contained in the chapter] of the 'Four Brothers'[35] enacted a preventive measure on account of the rival;[36] and though he stated the law in respect of an adult the same law is applicable to a minor, the reason why he mentioned the adult being only because he was engaged on the question of[37] the adult. The Tanna here[38] however, is of the opinion that they[39] were given the same validity,[40] and he enacted no preventive measure on account of the rival; and though he spoke of the minor the same law applies to an adult, the reason why he spoke of the minor being only because he was dealing with the minor.[37]

R. Eleazar came and reported this statement at the schoolhouse but did not report it in the name of R. Johanan. When R. Johanan heard this he was annoyed.[41] Thereupon R. Ammi and R. Assi came in and said to him: Did it not happen at the Synagogue of Tiberias that R. Eleazar and R. Jose disputed [so hotly] concerning a door bolt which had a knob[42] at one end[43] that they tore a Scroll of the Law in their excitement. 'They tore?[44] Could this be imagined! Say rather 'That a Scroll of the Law was torn[45] in their excitement'. R. Jose b. Kisma who was then present exclaimed, 'I shall be surprised if this Synagogue[46] is not turned into a house of idolatry', and so it happened. [On hearing this] he was annoyed all the more. 'Comradeship too' he exclaimed.[47]

Thereupon R. Jacob b. Idi came in and said to him: 'As the Lord commanded Moses his servant, so did Moses command Joshua, and so did Joshua; he left nothing undone of all that the Lord commanded Moses;[48] did Joshua, then, concerning every word which he said, tell them, "Thus did Moses tell me"? But, the fact is that Joshua was sitting and delivering his discourse without mentioning names, and all knew that it was the Torah of Moses. So did your disciple R. Eleazar sit and deliver his discourse without mentioning names and all knew that it was yours'. 'Why', he[49] chided them,[50] are you not capable of conciliating like the son of Idi our friend?'

Why was R. Johanan so annoyed? — [For the following reason]. For Rab Judah stated in the name of Rab: What is the meaning of the Scriptural text, I will dwell in Thy tent for ever?[51] Is it possible for a man to dwell in two worlds! But [in fact it is this that] David said to the Holy One, blessed be He, 'Lord of the Universe, May it be Thy will

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(1) The widow of his brother who died without issue.

(2) For the levirate marriage.

(3) Because, as in the case of a ma'amar after a ma'amar, the act of either levir is valid and, as no two levirs may marry the same sister-in-law, the latter must divorce her; and a sister-in-law divorced by one of the levirs may never again be married by any of them.

(4) His reason is given in the Gemara, infra.

(5) The widow of his brother who died without issue.

(6) Since levirate marriage may be contracted with one sister-in- law only. The first cohabitation constituting an imperfect kinyan, the second is effective to the extent of necessitating a divorce, and with a sister-in-law that was divorced by a levir, none of the levirs may subsequently contract levirate marriage. Cf. supra p. 656, n. 9.

(7) His reason is given in the Gemara, infra.

(8) Of the first young levir.
(9) Constituting a kinyan of the sister-in-law.
(10) That of the second young levir.
(11) Since there is no validity in an act of cohabitation that follows an act of cohabitation (v. supra 50a), the second act is regarded as irregular intercourse with a stranger; and since it was committed unwittingly, the woman remains permitted to the first levir.
(12) Owing to the levir's tender age.
(13) V. supra n. 8 and cf. supra 51b.
(14) Which regards the cohabitation of a young levir as having the same validity as a ma'amar (cf. supra p. 656, n. 9), and yet rules that an act of cohabitation after another act of cohabitation is legally effective whether in the case of two levirs and one sister- in-law (first case) or two sisters-in-law and one levir (second case).
(15) The one as well as the other having addressed to the widow one ma'amar only.
(16) Because each levir (v. supra 51a) has equally the power to address such a ma'amar.
(17) The second ma'amar having no validity owing to the first ma'amar which had completely effected the kinyan of the first sister-in-law; and no levir is permitted to contract levirate marriage with more than one of the widows of his deceased childless brother.
(18) The widow of his brother who died childless.
(19) The act of the minor, while it is valid enough to subject his sister- in-law to the levirate bond of his surviving brothers, does not sever the first levirate bond which is due to her union with the first deceased brother. Being now subject to the levirate bond originating from two levirs, she is deprived (cf. supra 31b) of her right to the levirate marriage, and must perform halizah only.
(20) Levirate marriage and halizah. The betrothal of a minor having no validity, the woman is not regarded as his wife in respect of the levirate. It is only in the case of a sister-in-law (v. supra n. 2) that his cohabitation is valid enough to subject the woman to the levirate bond.
(21) Because, as the minor did not cohabit with her since he became of age, she remained subject to the levirate bond originating from two levirs (cf. supra note 2).
(22) Being the deceased's lawful wife.
(23) R. Simeon does not admit the ineligibility for levirate marriage of a sister-in- law who is subject to the levirate bond originating from two levirs, V. supra 31b.
(24) Since they cannot be regarded as rivals, the marriage of the one does not exempt the other, Both, however, may not be taken in levirate marriage, as a preventive measure against erroneous comparisons with two sisters-in-law who were lawfully married.
(25) The marks of maturity. So long as these have not appeared he retains the legal status of a minor.
(26) V. supra 31b and cf. supra p. 658, n. 7 end.
(27) In our Mishnah.
(28) Cf. supra p. 658, n. 2.
(29) Supra 69b, infra 112b. A minor and an imbecile have the same legal status, and our Mishnah, speaking of the minor confirms this ruling.
(30) Which (as stated supra 31b) debars the rival of the widow to whom the [ma'amar had been addressed, from the levirate marriage, though the rival's marriage with the deceased was in every respect a lawful union.
(31) Why then was it stated that THE SECOND MAY EITHER PERFORM HALIZAH OR CONTRACT THE LEVIRATE MARRIAGE?
(32) Lit., ‘they made and they made’.
(33) According to Samuel and R. Johanan.
(34) Lit., ‘and let them make’. Cf. supra n. 6.
(35) The chapter which contains the Mishnah referred to is named after the first two words with which it begins. V. supra 260.
(36) Cf. supra 31b.
(37) Lit., ‘stood’.
(38) In our Mishnah.
(39) The cohabitation of a minor and the ma'amar of an adult.
(40) Lit., ‘they made’.

(41) Perhaps because R. Eleazar did not act in accordance with Aboth VI, 6, 'Whosoever reports a thing in the name of him who said it brings deliverance into the world'. V., however, the Gemara's explanation infra.
(42) Or, 'a fastening contrivance' (Jast.).
(43) R. Eleazar forbids its use on the Sabbath because it cannot be regarded as a 'vessel' and is consequently forbidden to be moved from its place; while R. Jose maintains that the knob at its end, whereby the bolt may occasionally be used as a pestle for crushing foodstuffs, imports to it the character of a vessel and it may. therefore. be used and moved on the Sabbath. V. 'Er. 101b.
(44) The active form, קרעו, implies intentionally.
(45) The Niph'al. accidentally.
(46) Which permitted strife among its scholars.
(47) They compared his resentment against his disciple R. Eleazar to a dispute between colleagues, as if he and his disciple were school companions. 'The fellows (my pupils) too, are quoted against me?' (Jast.)
(48) Josh. XI, 15.
(49) R. Johanan.
(50) R. Ammi and R. Assi.
(51) Ps. LXI, 5; עולמים lit., 'worlds'.

Talmud - Mas. Yevamoth 97a

that a traditional statement may be reported in my name in this world'; for R. Johanan[1] stated in the name of R. Simeon b. Yohai: The lips of a [deceased] scholar, in whose name a traditional statement is reported in this world, move gently in the grave. Said R. Isaac b. Ze'ira, or it might be said, Simeon the Nazirite: What is the Scriptural proof of this? And the roof of thy mouth like the best wine that glideth down smoothly for my beloved, moving gently the lips of those who are asleep,[2] like a heated mass of grapes. As a heated mass of grapes, as soon as a man places his finger upon it, exudes[3] immediately so with the scholars as soon as a traditional statement is made in their name in this world, their lips move gently[4] in the grave.

WHETHER HE IS OF THE AGE OF NINE YEARS etc. A contradiction was pointed out: If at the age of twenty he[5] did not produce two [pubic] hairs,[6] they[7] must bring evidence that he is twenty years of age, and he [is then confirmed as a] saris;[8] he may neither submit to halizah nor may he perform the levirate marriage. If a woman[9] at the age of twenty did not produce two [pubic] hairs, they[10] must bring evidence that she is twenty years of age, and she [is then confirmed as a] woman who is incapable of procreation; she may neither perform halizah nor contract levirate marriage![11] — Surely in connection with this Mishnah it was stated: R. Samuel b. Isaac said in the name of Rab that this[12] applies only to the case where [other] symptoms[13] of a saris also appeared on him.[14]

Said Raba: This[15] may also be arrived at by deduction. For it was taught, 'And he [is confirmed as a] saris',[16] from which this[15] may well be deduced.

And where no symptoms of a saris developed, how long [is one regarded as a minor]?[17] — It was taught at the school of R. Hiyya: Until he has passed middle age.[18]

Whenever people came [with such a case][19] before Raba,[20] he used to tell them, if [the youth was] emaciated, 'Let him first be fattened'; and if he was stout, he used to tell them, 'Let him first be made to lose weight'; for these symptoms disappear[21] sometimes as a result of emaciation and sometimes they disappear[21] as a result of stoutness.

CHAPTER XI

MISHNAH. A MAN IS PERMITTED TO MARRY [THE NEAR RELATIVE] OF A WOMAN [WHOM HE HAS] OUTRAGED OR SEDUCED.[22] HE, HOWEVER, WHO OUTRAGED OR

SEDUCED [A RELATIVE] OF HIS MARRIED WIFE, IS GUILTY.[23] A MAN MAY MARRY THE WOMAN WHOM HIS FATHER HAS OUTRAGED OR SEDUCED OR THE WOMAN WHOM HIS SON HAS OUTRAGED OR SEDUCED. R. JUDAH FORBIDS [MARRIAGE] WITH THE WOMAN WHOM ONE'S FATHER HAS OUTRAGED OR SEDUCED.

GEMARA. Here[24] we learn what the Rabbis taught: 'A man who has outraged a woman[25] is permitted to marry her daughter; if, however, he married the woman, he is forbidden to marry her daughter'. A contradiction, however, may be pointed out: A man who is suspected of intercourse with a woman is forbidden to marry her mother, her daughter and her sister![26] — This [prohibition[27] is only] Rabbinical.[28]

Would it be stated, however, where a Rabbinical prohibition exists, that A MAN IS PERMITTED TO MARRY even from the outset! — Our Mishnah refers only to [a marriage] after [the suspected woman's] death.[29]

Whence is this ruling deduced? — From what the Rabbis taught: In the case of all those [illicit relationships][30] Scripture used the expression of 'lying',[31] but here[32] it made use of the expression of 'taking',[33] in order to tell you [that only when intercourse with a woman was in] the manner of 'taking'[34] did the Torah forbid [marriage with her relatives].[35]

Said R. Papa to Abaye: If that is so,[36] then in respect of one's sister, concerning whom it is written, And if a man shall take his sister, his father's daughter, or his mother's daughter;[37] is [intercourse] here also forbidden only [if it is in] the manner of 'taking',[34] but permitted [if it is in] the manner of 'lying'![38] — The other replied: The word 'taking' is used in the Torah without being defined, [so that a text] to which 'taking' is applicable,[39] [signifies] 'taking'[40] while one to which only 'lying' is applicable,[41] [signifies] 'lying'.[42]

Raba stated: [That a man who] outraged a woman is permitted to marry her daughter, [is deduced] from here: It is written, The nakedness of thy son's daughter, or of thy daughter's daughter, thou shalt not uncover;[43] from which it follows[44] that the daughter of her[45] son and the daughter of her[45] daughter may be uncovered; but it is also written in Scripture, Thou shalt not uncover the nakedness of a woman and her daughter; thou shalt not take her son's daughter, or her daughter's daughter![46] How then [are these to be reconciled]? The former[47] refers to cases of outrage and the latter to those of marriage. Might not [the application][48] be reversed? — In respect of forbidden relatives the expression kin[49] is written, and kinship exists only by means of marriage; but no kinship exists by means of outrage.

R. JUDAH FORBIDS MARRIAGE WITH THE WOMAN WHOM ONE'S FATHER HAD OUTRAGED etc. R. Giddal stated in the name of Rab: What is R. Judah's reason? Because it is written, A man shall not take his father's wife, and shall not uncover his father's skirt:[50] the skirt which his father saw[51] he shall not uncover. Whence, however, is it inferred that Scripture speaks of an outraged woman? — From the preceding section of the text where it is written, Then the man that lay with her shall give unto the damsels father fifty shekels of silver.[52] And the Rabbis?[53] — If one text had occurred in close proximity to the other your exposition would have been justified;[54] now, however, that it does not occur in close proximity, the text is required for [an exposition] like that of R. Anan. For R. Anan stated in the name of Samuel that the Scriptural text[50] speaks of a woman awaiting the levirate decision of his father; and the meaning of[55] his father's skirt[50] is: He[56] shall not uncover the skirt which is designated for his father.[57]

[This prohibition,[58] however], might be deduced from the fact that she is his aunt![59] — [The text[50] was necessary] to make him[60] guilty of the transgression of two negative commandments.[61] [The prohibition,[62] however] might be inferred from the fact [that the widow as a] sister-in-law[63] [is

forbidden] to marry any stranger![64] — [The text[50] was necessary] to make him guilty of the transgression of three negative commandments.[65] And if you prefer I might say:[66] After [his father's] death.[67]

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(1) Or Jehozadak (cf. Sanh. 90b).
(2) Cant. VII. 10. דובב moving gently.
(3) דובב.
(4) V. supra n. 5. The rt. דבב signifies both 'to exude' and 'to whisper'.
(5) A levir whose brother died without issue and whose duty it is to marry the widow of the deceased or to submit to her halizah.
(6) The legal signs of maturity.
(7) The relatives of the widow, who are desirous of procuring her exemption from the levirate marriage and the halizah.
(8) One incapable of procreation. V. Glos. He is no longer regarded as a minor for whose maturity the widow must wait.
(9) A widow whose husband died childless. Cf. supra p. 661, n. 8.
(10) The levir's relatives, cf. supra p. 661, n. 10 mutatis mutandis.
(11) Supra 80a, Ned. 57b, Cf, B.B. 155b. From this (cf. p. 661, n. 11) it follows that at the age of twenty a person is considered to have attained legal majority, though his body has not developed any signs of maturity, contrary to our Mishnah which gives such a person the status of a minor.
(12) The law that he is regarded as a saris,
(13) Described supra 80b.
(14) If, however, these additional symptoms of a saris did not appear, he is as stated in our Mishnah regarded as a minor so long as he has not produced two pubic hairs.
(15) That a boy is not regarded as a saris unless apart from the absence of pubic hairs, he has developed also other symptoms of a saris.
(16) Implying that he had already other symptoms of a saris.
(17) If two pubic hairs did not appear.
(18) Lit., 'most of his years', i.e., until he is thirty-six years of age. Man's span of life is taken to be seventy years (cf. Ps. XC, 10).
(19) Of one who reached the age of twenty without having produced two hairs.
(20) Or,'R. Hiyya'. Cf. B.B. 155b and Nid. 47b.
(21) דנתרי (rt. נתר, Pi'el, 'to fall off'). MS.M. reads, דאתו (rt. אתא 'come', 'appear') a reading adopted by Tosaf. in B.B. 155b, s.v. הכי.
(22) Only relatives of a married wife are subject to the law of incest.
(23) And must suffer the prescribed penalties.
(24) In our Mishnah.
(25) By immoral intercourse, whether without, or with her consent.
(26) Tosef. Yeb. IV and supra 262 q.v. for notes.
(27) In the Tosefta cited.
(28) In order that illicit intercourse with the suspected woman may not be facilitated through a marriage with one of her near relatives.
(29) If the woman outraged or seduced is dead the marriage with any one of her relatives would obviously provide no further facilities for illicit intercourse with her (cf. supra n. 7). Hence no preventive measure was instituted.
(30) Such as, e.g., a father's wife, a daughter-in-law and an aunt (v. Lev. XX, 11ff).
(31) E.g., lieth (Lev. XX, 11), lie (ibid. 12).
(32) In respect of a woman and her mother, and similar relatives that are forbidden through one's wife.
(33) E.g., take (lev. XVIII, 17, 18, ibid. XX, 14, 17).
(34) I.e., when the man contracted with her a lawful marriage; cf. Deut. XXIV, 1: 'When a man taketh a wife'.
(35) The relatives of a woman with whom he had illicit intercourse are, therefore permitted.
(36) Lit., 'but now'.
(37) Lev. XX, 17 emphasis on take. Cf. supra n. 6.
(38) This would be absurd.
(39) As in the case of a woman and her mother or two sisters, where marriage with the first is lawful.

(40) Lawful marriage. Only when legal marriage took place with the first is marriage with the second forbidden.
(41) Intercourse, for instance, with one's sister.
(42) Even illicit intercourse.
(43) Lev. XVIII, 10.
(44) Lit., 'thus'.
(45) A wife's.
(46) Lev. XVIII, 17.
(47) Lit., 'here'.
(48) I.e., applying the first text to cases of marriage and the second to those of outrage.
(49) V. Lev. XVIII, 6.
(50) Deut. XXIII, 1.
(51) Even through outrage.
(52) Deut. XXII, 29. a case of outrage.
(53) How can they maintain their view in our Mishnah against the Scriptural text.
(54) Lit., 'as you said'.
(55) Lit., 'and what'.
(56) A son.
(57) Such a woman, unless she has performed halizah with his father, is permitted to marry no one but his father.
(58) To marry the widow who was subject to his father's Ievirate marriage. Cf. supra n. 9.
(59) Having been the wife of his father's brother. V. Lev. XX, 20. What need then was there for the additional text of Deut. XXIII, 1?
(60) The son. v.. supra note 10.
(61) Prescribed in (1) Lev. XX, 20 and (2) Deut. XXIII, 1.
(62) V. supra note 10.
(63) Cf. supra note 9.
(64) Lit., 'to the market', i.e., any man other than the levir. Cf. supra n. 11 second clause.
(65) The two referred to supra p. 665, n. 13 as well as the one last mentioned.
(66) In reply to the last objection.
(67) When marriage with the widow is not subject to the last mentioned prohibition (that of a sister-in-law to a stranger) and only two prohibitions (v. supra p. 665, n. 13) remain.

Talmud - Mas. Yevamoth 97b

'My[1] paternal, but not my maternal brother; and he is the husband of my mother and I am the daughter of his wife'![2] — Rami b. Hama said: Such [a relationship is] not [legally possible] according to the ruling of R. Judah in our Mishnah.[3]

'He[4] whom I carry on my shoulder is my brother and my son and I am his sister'? — This is possible when an idolater cohabited with his daughter'.[5]

'Greetings[4] to you my son; I am the daughter of your sister'? — This is possible where an idolater cohabited with his daughter's daughter.[6]

'Ye[4] water-drawers,[7] we shall ask you[8] a riddle that defies solution: He whom I carry is my son and I am the daughter of his brother'? — This is possible where an idolater cohabited with the daughter of his son.[9]

'Woe,[4] woe, for my brother who is my father; he is my husband and the son of my husband; he is the husband of my mother and I am the daughter of his wife; and he provides no food for his orphan brothers, the children of his daughter'? — This is possible when an idolater cohabited with his mother and begot from her a daughter; then he cohabited with that daughter; and then the grandfather[10] cohabited with her[11] and begot from her sons.[12]

'I[13] and you are brother and sister,[14] I and your father are brother and sister, and I and your mother are sisters'? — This is possible where an idolater cohabited with his mother and from her begot two daughters, and then he cohabited with one of these and begot from her a son. When the sons's mother's sister[15] carries[16] him[17] she addresses him thus.[18]

'I[13] and you are the children of sisters,[14] I and your father are the children of brothers, and I and your mother are the children of brothers'? — This indeed is possible also in the case of a lawful marriage; where, for instance, Reuben had two daughters, and Simeon[19] came and married one of them, and then came the son of Levi[19] and married the other.

The son of Simeon can thus[20] address the son of the son of Levi.[21]

MISHNAH. THE SONS OF A FEMALE PROSELYTE WHO BECOME PROSELYTES TOGETHER WITH HER NEITHER[22] PARTICIPATE IN HALIZAH NOR CONTRACT LEVIRATE MARRIAGE, EVEN IF THE ONE WAS NOT CONCEIVED IN HOLINESS.[23] BUT WAS BORN IN HOLINESS,[24] AND THE OTHER WAS BOTH CONCEIVED AND BORN IN HOLINESS. SO ALSO [IS THE LAW] WHERE THE SONS OF A BONDWOMAN WERE EMANCIPATED TOGETHER WITH HER.

GEMARA. When the sons of the bondwoman Yudan were emancipated. R. Aha b. Jacob permitted them to marry one another's wives.[25] Said Raba to him: But R. Shesheth forbade [such marriages]. The other replied: He forbade, but I allow.

[In respect of proselyte brothers] from the same father and not from the same mother, there is no difference of opinion[26] that this[27] is permitted;[28] [in respect of brothers] from the same mother and not from the same father, there is no difference of opinion[26] that this[27] is forbidden.[29] They differ only [in respect of proselytes whose brotherhood is] both paternal and maternal. He[30] who permits it[27] [does so because children are] ascribed to their father, since they are spoken of as 'the children of such and such a man'.[31] R. Shesheth, however, [holds that they] are also spoken of as 'the children of such and such a woman'.[29]

Another reading: R. Aha b. Jacob disputed [the illegality of marriage][27] even in respect of maternal brothers. And what is his reason? — Because a man who has become a proselyte is like a child newly born.[32]

We learned, THE SONS OF A FEMALE PROSELYTE WHO BECAME PROSELYTES TOGETHER WITH HER NEITHER PARTICIPATE IN HALIZAH NOR CONTRACT THE LEVIRATE MARRIAGE, is not the reason[33] because they are forbidden [to marry a brother's wife]![34] — No; it is because [the widow] is not subject to the law of halizah and levirate marriage.[35] She is permitted, however, to strangers.[36] and the brothers also are permitted[to marry her]. But, surely, it was stated EVEN! Now were you to admit that [the brothers] are forbidden.[37] one could well justify the expression of EVEN: EVEN IF THE ONE WAS NOT CONCEIVED IN HOLINESS BUT WAS BORN IN HOLINESS. AND THE OTHER WAS BOTH CONCEIVED AND BORN IN HOLINESS, [so that the two might well be regarded] as [the sons of] two mothers,[38] they are nevertheless forbidden; if you maintain, however, that they are permitted,[39] what [can be the purport of] EVEN![40] — Even though the birth of both was in holiness, and people might mistake[41] them for Israelites,[42] [the widow] is nevertheless permitted [to marry a stranger].[43]

Others read: Logical reasoning also supports the view that they are permitted,[39] since the expression EVEN was used. For, if you grant that they are permitted[39] it is quite correct to say EVEN: Even though the birth of both was in holiness and people might mistake[41] them for

Israelites.[42] they are nevertheless permitted;[43] if, however, you maintain that they are for bidden[44] what [can be the purport of] EVEN![45] — EVEN IF THE ONE WAS NOT CONCEIVED IN HOLINESS BUT WAS BORN IN HOLINESS, AND THE OTHER WAS BOTH CONCEIVED AND BORN IN HOLINESS [so that they might well be regarded] as [the sons of] two mothers,[46] they are nevertheless forbidden.

Come and hear: Twin brothers who were proselytes, and similarly if they were emancipated slaves,[47] may neither participate in halizah nor contract levirate marriage, nor are they guilty [of a punishable offence] for [marrying] a brother's wife.[48] If however, they were not conceived in holiness but were born in holiness, they neither participate in halizah nor contract levirate marriage[49] but are guilty [of a punishable offence][50] for [marrying] a brother's wife.[51] If they were both conceived and born in holiness, they are regarded as Israelites in all respects. At all events, it was stated that they are not 'guilty [of a punishable offence] for [marrying] a brother's wife'; [from which it follows that] no punishable offence is incurred

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(1) This and the following unlikely propositions are merely riddles on the possible complications of consanguinity.

(2) Such a riddle may be put by a daughter who was born as a result of outrage by his father where the son of the man by another wife has subsequently married her mother.

(3) Since, according to R. Judah, marriage is forbidden with a woman one's father had outraged.

(4) V. supra n. 4.

(5) And a son was born from the union. The mother of the child might put such a riddle.

(6) The son born from such a union, since he is the paternal brother of his mother's mother, might be addressed by his mother in the terms of this riddle.

(7) Lit., 'drawers who draw the bucket'. Men engaged in the irrigation of fields (cf. Rashi and last.); scholars drawing from the fountains of wisdom (cf. Aruk. and Tosaf. s.v. דדלו.

(8) So Aruk. Cur. edd., 'let it fall among you'.

(9) The son born from this union is the paternal brother of his mother's father.

(10) The idolater's father.

(11) The daughter.

(12) The daughter may describe the idolater as her maternal brother, her natural father and her actual husband. Owing to her cohabitation with his father (the grandfather) he is the son of her husband, while through his cohabitation with her mother he is her mother's husband and she is, of course, the daughter of his wife. The children resulting from the union between her and the grandfather are his (the idolater's) paternal brothers and, of course, the children of his daughter.

(13) V. supra p. 666, n. 4.

(14) אחי may be rendered 'brothers', 'brother and sister' and 'sisters'. It sometimes signifies 'relatives' or mere 'friends'.

(15) [MS.M. 'when his sister'].

(16) So MS.M. Cur. edd., 'calls'.

(17) The son.

(18) She and the son are brother and sister, being the offspring of the same father. She and his father are brother and sister from the same mother, while she and his mother are sisters both paternally and maternally.

(19) His brother, Reuben, Simeon and Levi, the sons of Jacob and Leah (v. Gen. XXIX, 32ff) are chosen as an illustration of brotherly relationship.

(20) So Bah a.l. wanting in cur. edd.

(21) He and Levi's grandson are the children of two sisters (Reuben's daughters); he and Levi's son (the grandson's father) are children of two brothers (Simeon and Levi), while he and the grandson's mother are children of the two brothers Reuben and Simeon.

(22) Should one of the brothers die without issue.

(23) I.e., before his mother became a proselyte.

(24) After his mother became a proselyte.

(25) A proselyte having the status of a newly born child, all his previous family relationships are dissolved. The prohibition against marriage with a brother's wife does not, therefore, apply.

(26) Between R. Aba and R. Shesheth.
(27) Marriage of a brother's wife in the case of proselytes.
(28) It is well known that their father was no Israelite, and that it is for this reason that the marriage was permitted. No one would assume that they were the sons of the same father, since idolaters' wives were known to be faithless, and, consequently, no one would erroneously infer that proper Israelites may also marry their brother's wives.
(29) Their mother being known, they might he assumed to be lawful brothers and, should marriage of a brother's wife he permitted in their case, an erroneous conclusion (v. supra note 6) might he formed.
(30) R. Aba.
(31) Cf. supra note 6.
(32) V. supra 22a and cf supra note 3.
(33) Of the prohibition. Lit., 'what is the reason'.
(34) The law of the levirate marriage being inapplicable in their case, the prohibition against marrying a brother's wife remains in force. An objection against R. Aha
(35) The Mishnah implying that the brothers are not obliged to perform the religious rites.
(36) Lit., 'to the world'.
(37) Marriage of a brother's wife in the case of proselytes.
(38) Who may marry one another's wives.
(39) To marry each other's wives.
(40) On the contrary; this should be an additional reason for permissibility.
(41) Lit., 'exchange'.
(42) And so permit a deceased brother's wife to marry a stranger without previous halizah.
(43) Because (cf. Rashi) it is known that the duty of levirate marriage and halizah is determined by paternal brotherhood which is inapplicable in the case of a father who was an idolater (cf. supra p. 668, n. 6.) [They, themselves, would however be forbidden to marry each other's widows where they were both born in holiness. It is only with reference to the first clause of our Mishnah that R. Aha stated supra that they were permitted (Rashi)].
(44) To marry each other's wives.
(45) The fact that they were both born in holiness should be an additional reason for the prohibition.
(46) Who may marry one another's wives.
(47) Though, in the case of twins, paternal brotherhood is certain (cf. infra 89a).
(48) V. supra p. 668, n. 3.
(49) Since the duty of levirate marriage and halizah is dependent on paternal brotherhood. Cf. supra p. 669, n. 3.
(50) Kareth.
(51) Whom even a maternal brother is forbidden to marry.

Talmud - Mas. Yevamoth 98a

but that a [Rabbinical] prohibition is 'nevertheless involved![1] — The law, in fact, is that even a [Rabbinical] prohibition is not involved; only, because it was desired to state in the final clause, 'but are guilty [of a punishable offence]', it was stated in the first clause also, 'they are not guilty [of a punishable offence]'.

Raba stated: With reference to the Rabbinical statement that [legally] an Egyptian has no father,[2] it must not be imagined that this is due to [the Egyptians'] excessive indulgence in carnal gratification, owing to which it is not known [who the father was], but that if this were known[3] it is to be taken into consideration;[4] but [the fact is] that even if this is known it is not taken into consideration. For, surely, in respect of twin brothers, who originated in one drop that divided itself into two, it was nevertheless stated in the final clause,[5] that they 'neither participate in halizah nor perform levirate marriage'.[6] Thus it may be inferred that the All Merciful declared their children to be legally fatherless,[7] for [so indeed it is also] written, Whose flesh is as the flesh of asses, and whose issue is like the issue of horses.[8]

Come and hear what R. Jose related: It once happened with the proselyte Niphates[9] that he

married the wife of his [deceased][10] maternal brother,[11] and when the case was submitted to the Sages their verdict was that the law of matrimony does not apply to a proselyte. But then, should a proselyte betroth a woman, would also the betrothal be invalid? — Say then rather: The prohibition of a brother's wife does not apply to a proselyte. Now does not [this refer to the case] where his brother[11] had married her while he was a proselyte![12] — No; where he married her while he was still an idolater.[13] But if [betrothal took place] while he was still an idolater, what [need is there] to state it?[14] — It might have been assumed that [in the case of a brother's betrothal] while he is still an idolater a preventive measure should be enacted lest [erroneous conclusions be drawn in the case] where he is a proselyte, hence we were taught [that no such measure was enacted].

Come and hear what Ben Yasyan[15] related: When I went to the coastal towns[16] I came across a certain proselyte who had married the wife of his maternal brother. 'Who, my son', I said to him, 'permitted you [this marriage]?' 'Behold', he replied. 'the woman and her seven children;[17] on this bench sat R. Akiba when he made two statements: "A proselyte may marry the wife of his maternal brother", and he also stated, "And the word of the Lord came unto Jonah the second time, saying,[18] only a second time did the Shechinah speak to him; a third time the Shechinah did not speak to him."'[19] At any rate, it was stated here that 'a proselyte may marry the wife of his maternal brother'. Does not [this refer to a case] where his brother married her while he was a proselyte! — No; where he married her while he was still an idolater.[20] What [need then was there] to state [such an obvious law]? — It might have been assumed that [in the case of a brother's betrothal] while he is still an idolater a preventive measure should be enacted lest [erroneous conclusions be drawn in the case] where he is a proselyte. hence we were taught [that no such measure was enacted].

Is he,[21] however, believed? Surely R. Abba stated in the name of R. Huna in the name of Rab: Wherever a scholar gives directions[22] on a point of law and such a point comes up for a practical decision, he is obeyed if he made the statement[23] before the event;[24] but if it was not so made, he is not obeyed![25] — If you wish I might say: The incident occurred after he made his statement. If you prefer, I might say: Because he stated, 'Behold the woman and her seven children'.[26] And if you prefer I might say: Here it is different[27] because with it he related another incident.[28]

The Master said, 'And the word of the Lord came to Jonah a second time, saying,[29] only a second time did the Shechinah speak unto him, a third time the Shechinah did not speak to him'. But surely it is written in Scripture, He restored the border of Israel from the entrance of Hamath unto the sea of the Arabah, according to the word of the Lord, which He spoke by the hand of His servant Jonah the son of Amittai, the prophet![30] — Rabina replied: He[31] referred to the affairs of Nineveh.

R. Nahman b. Isaac replied, It is this that was meant:[32] According to the word of the Lord . . . which He spoke by the hand of his servant, the prophet,[33] as his intention towards Nineveh was turned from evil to good, so was his intention towards Israel, in the days of Jeroboam the son of Joash, turned from evil to good.

Come and hear: A proselyte who was born in holiness[34] but was not conceived in holiness[35] has [legally] maternal consanguinity but no paternal consanguinity. For instance:[36] If he married his maternal sister,[37] he must divorce her;[38] if his paternal one, he may retain her.[39] His father's maternal sister he must divorce;[40]

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(1) Lit., 'guilt there is not but a prohibition there is'. The Rabbis had instituted a preventive measure against the possibility of taking such a marriage as a precedent for allowing similar marriages to proper Israelites. Objection then against R. Aha!

(2) Not only where he became a proselyte himself in which case he is regarded as newly born (v. supra), but even where he was only conceived before his mother became a proselyte and was born subsequently.

(3) If, for instance, his father and mother were confined under lock and key, where it was impossible for any other man

to have had intercourse with the woman.
(4) And, if the child was born after his mother had become a proselyte (v. supra p. 670, n. 10), he is to be regarded legally as having a father.
(5) Which speaks of proselytes who were born after their mother had become a proselyte.
(6) Supra 97b end.
(7) Lit., 'made them free', 'ownerless'.
(8) Ezek. XXIII, 20.
(9) Gr. ** So MS.M. Cur. edd. 'Niphatem'. The suggestion to read Gr.** is rejected by Golds.
(10) V. Rashi, a.l. s.v. דנסבא.
(11) Who was a proselyte.
(12) And yet it was stated that the prohibition of 'brother's wife' does not apply.
(13) When his betrothal has no validity; and after he had become a proselyte he no longer cohabited with her.
(14) The law being self-evident.
(15) MS.M., 'R. Jose b. Yasin'.
(16) Mercantile ports (Jast.).
(17) Proselytes. whom R. Akiba (v. infra) permitted to marry brothers' wives.
(18) Jonah III, 1.
(19) Mekilta, Bo.
(20) V. supra p. 671, n. 11.
(21) A proselyte in the circumstances of the one who reported R. Akiba's ruling.
(22) Basing his ruling on a tradition he received from his teachers.
(23) In the course of his discourses.
(24) Before the law was required in connection with a practical issue.
(25) Much less should an ordinary proselyte be relied upon in a case in which he himself is involved. v. supra 770.
(26) An incident which had obviously occurred 'before he made his statement.
(27) From the case of the scholar's ruling spoken of by Rab.
(28) R. Akiba's discourse on Jonah III, 1 while he was sitting on a certain bench. As the one statement could be safely accepted, the other also was accepted.
(29) Jonah III, 1.
(30) II Kings XIV, 25, which shews that He spoke a third time.
(31) R. Akiba, in stating that the Shechinah spoke to him only twice.
(32) By the text of II Kings cited.
(33) Ibid.
(34) I.e., after his mother became a proselyte.
(35) I.e., before his mother became a proselyte.
(36) Lit., 'how'.
(37) Though she was born while their mother was still an idolatress, and though he, as a proselyte, is regarded as a newly born child.
(38) As a preventive measure against the possibility of marrying a sister, who like himself was born after their mother's conversion. Such a marriage, since brother and sister were born 'in holiness', is punishable by kareth.
(39) No preventive measure in this case is necessary, since, a proselyte having legally no father, any daughter that may be begotten by his father, even after his conversion, would not be legally his sister.
(40) A preventive measure against marriage with his own maternal sister. Cf. supra n. 13.

Talmud - Mas. Yevamoth 98b

his paternal one he may retain. His mother's maternal sister he must divorce. As to her paternal sister, R. Meir said: He must divorce her,[1] and the Sages said: He may retain her;[2] R. Meir maintaining that any woman forbidden on account of maternal consanguinity must be divorced, but if on account of paternal consanguinity he may retain her. He is also permitted [to marry] his brother's wife,[3] and the wife of his father's brother. All other forbidden relatives are also permitted to him, including his father's wife. If [a proselyte][4] married a woman and her daughter[5] she may[6]

retain[7] one, but must release the other.[8] In the first instance he may not marry[7] her.[9] If his wife died, he is permitted to marry his mother-in-law. Another opinion is that he is forbidden to marry his mother-in-law.[10] At all events, it was here stated that he is 'permitted [to marry] his brother's wife'; does not [this apply to a woman] whom his brother had married while he was a proselyte! — No; where he married her while he was still an idolater. What [need was there] to state it?[11] — It might have been assumed that [in the case of a brother's marriage] while he was still an idolater a preventive measure[12] should be enacted to preclude [the same thing being done] where he is already a proselyte, hence were we taught [that in such a case a brother's wife was permitted].

The Master stated, 'If [a proselyte] married a woman and her daughter, he may retain one but must release the other; in the first instance he may not marry her'. Now, if he must even release her, is there any need [to speak of a prohibition to marry her] from the outset?[13] — It refers to a previous clause,[14] and the meaning is this: That [woman]. concerning whom the Rabbis ruled that he[15] may retain her,[16] may nevertheless not be married by him from the outset.

'If his wife died he is permitted to marry his mother-in-law. Another opinion is that he is forbidden to marry his mother-inlaw'. One is in agreement with R. Ishmael and the other is in agreement with R. Akiba. He who forbade the marriage agrees with R. Ishmael who stated: A man's mother-in-law after [his wife's] death retains the former prohibitions;[17] and in respect of a proselyte a preventive measure was enacted.[18] He, however, who permits the marriage follows R. Akiba who stated that the prohibition [to marry] one's mother-in-law is weakened after [one's wife's] death;[19] and, consequently, no preventive measure has been enacted by the Rabbis in respect of a proselyte.

MISHNAH. IF THE [MALE] CHILDREN OF FIVE WOMEN WERE MIXED UP[20] AND, WHEN THESE INTERCHANGED CHILDREN GREW UP, THEY TOOK WIVES AND THEN DIED, FOUR[21] SUBMIT TO HALIZAH FROM ONE [OF THE WIDOWS][22] AND ONE[23] CONTRACTS WITH HER THE LEVIRATE MARRIAGE.[24] [THEN] HE[25] AND THREE [BROTHERS][21] SUBMIT TO HALIZAH FROM ONE [OTHER OF THE WIDOWS]. AND ONE[26] CONTRACTS WITH HER[27] THE LEVIRATE MARRIAGE.[28] THUS[29] EVERY ONE [OF THE WIDOWS] PERFORMS HALIZAH FOUR TIMES AND CONTRACTS THE LEVIRATE MARRIAGE ONCE.

GEMARA. Only the halizah [must take place[30] first] and the levirate marriage afterwards; the levirate marriage, however, must not take place first, since, thereby, one[31] might infringe the prohibition against a sister-in-law's marriage with a stranger.[32]

What [was the object of the statement], HE AND THREE [BROTHERS] SUBMIT TO HALIZAH FROM ONE [OTHER OF THE WIDOWS]?[33] — That it be not suggested that one brother only should contract levirate marriage with all of them. Rather let every brother contract levirate marriage with only one [of the widows], when it is possible his own [sister-in-law] might happen to fall to his lot.

Our Rabbis taught:[34] 'If some of them[35] were brothers[36] and some were no brothers,[36] the brothers submit to halizah while those who are no brothers contract the levirate marriage.' What does this exactly mean? — R. Safra replied. It is this that is meant: If some of them[35] were paternal brothers[36] and some were [also] maternal brothers,[37] the maternal brothers submit to halizah[38] and the paternal brothers may [also] contract levirate marriage.[39] 'If some of them[40] were priests and some were non-priests, the priests submit to halizah[41] and those who are non-priests may [also] contract levirate marriage. If some of them[42] were priests and some maternal brothers, the former as well as the latter submit to halizah but may not contract levirate marriage.'[43]

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(1) The reason is given presently.

(2) No preventive measure being necessary in such a case which is quite unlike that of a maternal sister.
(3) Cur. edd. insert 'from his mother' which is to be deleted with Bah a.l. The proselyte is, in fact, permitted to marry the wife of his paternal brother as well as the wife of his maternal brother if the latter was born before the conversion. A preventive measure (cf. supra p. 673, n. 13) was not instituted in the case of a relationship which is not due to consanguinity but is dependent on betrothal.
(4) Before his conversion. One born 'in holiness' is forbidden to marry a mother and her daughter.
(5) Who were also converted.
(6) After his conversion.
(7) Lit., 'bring in', sc. to his home.
(8) This is a preventive measure against marriage with an Israelitish mother and daughter.
(9) This sentence is explained infra.
(10) V. Sanh., Sonc. ed., p. 394. notes.
(11) The law being so obvious.
(12) Forbidding his wife to his brother.
(13) Why, then, was the superfluous clause, 'In the first instance he may not marry her', inserted.
(14) Lit., 'there he stands'.
(15) The proselyte.
(16) E.g., his paternal sister.
(17) V. supra 94b, Sanh. 76b.
(18) To prevent such a marriage in the case of an Israelite.
(19) It is no longer punishable by the severe penalty of burning. v. supra 94b.
(20) And each woman had also another son who was not involved in the confusion.
(21) Of the five brothers who were not mixed up with these. V. supra note 6.
(22) Since everyone of them might be her brother-in-law.
(23) Of the five brothers (v. supra n. 7) i.e., the fifth who had not submitted to halizah.
(24) As four brothers have, by their halizah, severed their levirate bond with the widow mentioned, the fifth may marry her either as her brother-in-law (in case it was his brother who was her husband) or as a stranger (if her husband was a brother of one of the four who had now set her free).
(25) The brother who contracted the levirate marriage.
(26) Of the brothers (v. supra n. 7) who had submitted to halizah from the first widow.
(27) The second widow.
(28) For reasons similar to those explained supra n. 10.
(29) Lit., 'it is found'. The same procedure being followed in respect of all the five widows.
(30) In our Mishnah, in respect of every widow.
(31) Should a brother happen to marry the widow who was not the wife of his deceased brother.
(32) Lit., 'for he met a sister-in-law for the market'.
(33) The same brother who contracted the first levirate marriage is, surely, entitled to contract similar marriages with all the widows, as soon as the other four brothers had submitted to their halizah.
(34) So Bah. Cur. edd. omit.
(35) Of the brothers who were not involved in the confusion.
(36) Of those who were mixed up and are now dead.
(37) I.e., paternal brother to one and maternal brother to another.
(38) Thereby setting free the widows of their paternal brothers. They may not contract levirate marriage even after the widows had performed halizah with all the other brothers, since, should one of them happen to marry the widow of his maternal brother, he would thereby incur the penalty of kareth.
(39) With any of the widow's, after each of the other brothers had submitted to her halizah.
(40) of the brothers who were not involved in the confusion.
(41) The levirate marriage is forbidden to them because any one of them might happen to marry the widow who was not a sister-in-law to him but to one of the other brothers. and who, by the halizah with her brother-in-law, has become a haluzah whom a priest is forbidden to marry.
(42) Of the brothers who were not involved in the confusion.
(43) Tosef. Yeb. XII. Cf. supra p. 676. n. 9 (re maternal brothers) and supra n. 1 (re priests).

Talmud - Mas. Yevamoth 99a

Our Rabbis taught: A man must sometimes submit to halizah from his mother[1] owing to an uncertainty; from his sister, owing to an uncertainty: and from his daughter, owing to an uncertainty'. For instance?[2] If his mother and another woman had two male children, and then gave birth to two male children[3] in a hiding place;[4] and a son[5] of the one mother[6] married the mother[7] of the other son while the son[8] of the other mother[6] married the mother of the first, and both[9] died without issue, the one[10] must submit to halizah from both women[11] and the other[10] must submit to halizah from both women.[11] Thus it follows that each submits to halizah from his mother owing to an uncertainty. 'From his sister. owing to an uncertainty'; for instance?[2] When his mother and another woman gave birth to two female children[12] In a hiding place,[13] and their brothers[14] who were not from the same mother[15] married them[16] and died without issue, he[17] must submit to halizah from both widows.[18] Thus it follows that a man submits to halizah from his sister owing to an uncertainty. 'From his daughter, owing to an uncertainty'; for instance?[19] When his wife and another woman gave birth to two female children[20] in a hiding place,[21] and their[22] [husbands'] brothers[23] married them[16] and died without issue, the one [father][24] submits to halizah from his daughter[25] owing to the uncertainty and the other [father][24] submits to halizah from his daughter[25] owing to the uncertainty.[26]

It was taught: R. Meir said, A husband and wife may sometimes produce five different castes.[27] How? If an Israelite bought a bondman and a bondwoman in the market, and these had two sons[28] one of whom became a proselyte, the result is that one is a proselyte and the other is an idolater.[29] If [subsequently] he made them[30] perform the prescribed immersion for the purpose of slavery and then they cohabited with one another [and bore a son], behold here we have a proselyte, an idolater and a slave.[31] If he subsequently emancipated the bondwoman[32] and the slave cohabited with her [and had another son], behold here[33] we have a proselyte, an idolater, a slave and a bastard.[34] If he then emancipated both of them[30] and made them marry one another, behold here[35] we have a proselyte, an idolater, a slave, a bastard and an Israelite.[36] What does this teach us? — That when an idolater or a slave cohabits with an Israelitish woman their child is a bastard.[37]

Our Rabbis taught: Sometimes a man sells his father to enable his mother to collect her kethubah. How? If an Israelite bought in the market a bondman and a bondwoman who had a son,[38] and having emancipated the bondwoman he married her and bequeathed, in writing, all his estate to her son, the result is that this son[39] sells his father[40] in order to enable his mother[41] to collect her kethubah.[42] What does this teach us? — That all this [Baraitha[43] represents the views of] R. Meir. and that a slave [is regarded as] movable property, such property being mortgaged for a kethubah![44]

And if you prefer I might say. It is this that we were taught: A slave [is on the same footing as] real estate.[45]

MISHNAH. IF THE CHILD OF A WOMAN WAS INTERCHANGED WITH THE CHILD OF HER DAUGHTER-IN-LAW. AND WHEN THE INTERCHANGED CHILDREN GREW UP THEY TOOK WIVES AND THEN DIED,[46] THE [OTHER] SONS OF THE DAUGHTER-IN-LAW[47] SUBMIT TO HALIZAH[48] BUT MAY NOT CONTRACT LEVIRATE MARRIAGE.[49] FOR [IN THE CASE OF EACH WIDOW AND BROTHER] IT IS UNCERTAIN WHETHER SHE IS THE WIFE OF HIS BROTHER[50] OF THE WIFE OF HIS FATHER'S BROTHER.[51] THE [OTHER] SONS OF THE GRANDMOTHER[52] EITHER SUBMIT TO HALIZAH[53] OR CONTRACT LEVIRATE MARRIAGE,[54] SINCE [IN THE CASE OF EACH WIDOW AND BROTHER] THE ONLY DOUBT IS WHETHER SHE IS THE WIFE OF HIS BROTHER[55] OR THE WIFE OF HIS BROTHER'S SON.[55] IF THE UNTAINTED SONS[56] DIED,[57] THEN THE INTERCHANGED SONS SUBMIT [IN RESPECT OF THE WIDOWS] OF

THE SONS OF THE GRANDMOTHER TO HALIZAH BUT MUST NOT CONTRACT[54] THE LEVIRATE MARRIAGE. SINCE [IN THE CASE OF EACH WIDOW AND BROTHER] IT IS UNCERTAIN WHETHER SHE IS THE WIFE OF HIS BROTHER[55] OR THE WIFE OF HIS FATHER'S BROTHER;[58] [WHILE IN RESPECT OF THE WIDOWS] OF THE SONS OF THE DAUGHTER-IN- LAW ONE[59] SUBMITS TO HALIZAH[60] AND THE OTHER[59] [MAY ALSO] CONTRACT THE LEVIRATE MARRIAGE.[61]

IF THE CHILD OF A PRIEST'S WIFE WAS INTERCHANGED WITH THE CHILD OF HER BONDWOMAN, BEHOLD BOTH MAY EAT TERUMAH[62] AND RECEIVE ONE SHARE AT THE THRESHINGFLOOR[63]

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(1) Though she belongs to one of the fifteen classes of relatives (supra 2a) who are themselves exempt from the levirate marriage and halizah and who also exempt their rivals from these obligations.

(2) Lit., ‘how’.

(3) One child each, he being one of them.

(4) Where the women were sheltering from some enemy and where, owing to the confusion or the darkness of the place, the children were interchanged and it was impossible for either mother to ascertain which was her own child.

(5) Concerning whose motherhood no doubt existed.

(6) And her ‘first husband.

(7) Her husband having died.

(8) Concerning whose motherhood no doubt existed.

(9) These sons, each of whom is paternal as well as maternal brother of one of the interchanged sons.

(10) Of the interchanged, as brother to one of the deceased. V. supra n. 12.

(11) It being unknown which of them is] his mother who is exempt from halizah, he must submit to halizah from the two, one of whom is certainly a stranger to him and subject to his halizah.

(12) Each woman to one child.

(13) V. supra note 7.

(14) The paternal brothers of each of the girls’ maternal brothers. [Rashi, basing himself on the Tosef. (Yeb. XII) from where the passage is taken, reads: And (his) two paternal brothers married them].

(15) But from a former wife of their father, and who are consequently perfect strangers to the girls and their mothers.

(16) The girls.

(17) The maternal brother of one of the girls, who is the paternal brother of both the deceased.

(18) V. supra p. 677. n. 14, mutatis mutandis.

(19) Lit., ‘how’.

(20) Each woman to one child.

(21) V. supra p. 677, n. 7.

(22) The mothers’.

(23) Two brothers, of the one husband or two of the other. An uncle is permitted to marry his niece.

(24) If the interchanged girls were married by his brothers.

(25) V. supra p. 677. n. 14. mutatis mutandis

(26) Tosef. Yeb. XII.

(27) Lit., ‘nations’.

(28) Who are regarded as idolaters but not as slaves. Cf. supra 46a.

(29) Though the sons of the same father and mother.

(30) The slaves he bought.

(31) The son of the slave of an Israelite has the status of a slave. Cf. supra 462.

(32) Who thereby gains the status of an Israelitish woman.

(33) Though sons of the same father and mother.

(34) Being the result of a union between an Israelitish woman (v. supra n. 18) and a slave.

(35) Though sons of the same father and mother.

(36) Tosef. Kid. V; the issue of a union between emancipated slaves has the status of an Israelite.

(37) Cf. supra 16b. 450. Kid. 70a.

(38) Whom he did not buy.
(39) When the Israelite dies.
(40) The slave who forms a part of the Israelite's estate.
(41) Who claims her kethubah from the estate of her deceased husband.
(42) Tosef. Kid. V.
(43) The section dealing with the sale of one's father just cited, as well as the section relating to the five castes cited above.
(44) A view expressed by R. Meir in Keth. 80b.
(45) Which, all agree, is mortgaged for the kethubah.
(46) Without issue.
(47) In respect of whom her motherhood was never in doubt.
(48) From the widows of the deceased.
(49) With the widows.
(50) With whom either halizah or levirate marriage is permitted.
(51) Whom one is forbidden to marry.
(52) In respect of whom her motherhood was never in doubt.
(53) From the widows of the deceased.
(54) With the widows.
(55) With whom either halizah or levirate marriage is permitted.
(56) I.e., those who were never involved in the interchange.
(57) Without issue.
(58) Whom one is forbidden to marry.
(59) Of the two interchanged sons.
(60) From either of the widows. He may not, however, contract levirate marriage since in respect of each widow it might be assumed that she was not his, but the other's brother's wife, and that she is consequently forbidden to him or to anyone else before the other had submitted to her halizah.
(61) For if the widow was his brother's wife he is obviously entitled to marry her, and if she was his brother's son's wife he may also marry her since her deceased husband's brother had already submitted to her halizah and had thereby set her free to marry even a stranger.
(62) A priest's slave also being allowed to eat terumah.
(63) This is explained infra.

Talmud - Mas. Yevamoth 99b

THEY MAY NOT DEFILE THEMSELVES FOR THE DEAD[1] NOR MAY THEY MARRY ANY WOMEN WHETHER THESE ARE ELIGIBLE [FOR MARRIAGE WITH A PRIEST][2] OR INELIGIBLE.[3] IF WHEN THEY[4] GREW UP, THE INTERCHANGED CHILDREN EMANCIPATED ONE ANOTHER THEY MAY MARRY WOMEN WHO ARE ELIGIBLE FOR MARRIAGE WITH A PRIEST[5] AND THEY MAY NOT DEFILE THEMSELVES FOR THE DEAD.[6] IF, HOWEVER, THEY DEFILED THEMSELVES, THE PENALTY OF FORTY STRIPES[7] IS NOT INFLICTED UPON THEM.[8] THEY MAY NOT EAT TERUMAH,[9] BUT IF THEY DID EAT THEY NEED NOT PAY COMPENSATION EITHER FOR THE PRINCIPAL OR [THE ADDITIONAL] FIFTH.[10] THEY ARE NOT TO RECEIVE A SHARE[11] AT THE THRESHING-FLOOR, BUT THEY MAY SELL [THEIR OWN] TERUMAH[12] AND THE PROCEEDS ARE THEIRS.[13] THEY RECEIVE NO SHARE IN THE CONSECRATED THINGS OF THE TEMPLE,[14] AND NO CONSECRATED THINGS[15] ARE GIVEN TO THEM. BUT THEY ARE NOT DEPRIVED OF THEIR OWN.[13] THEY ARE EXEMPT FROM [GIVING TO ANY PRIEST] THE SHOULDER, THE CHEEKS AND THE MAW,[16] WHILE THE FIRSTLING OF EITHER OF THEM MUST REMAIN IN THE PASTURE[13] UNTIL IT CONTRACTS A BLEMISH.[17] THE RESTRICTIONS RELATING TO PRIESTS AND THE RESTRICTIONS RELATING TO ISRAELITES ARE BOTH IMPOSED UPON THEM.[18]

GEMARA. IF THE UNTAINTED SONS DIED etc.; are, then, the others,[19] because they were mixed up, tainted! — R. Papa replied: Read, 'If those [whose parentage was] certain died'.

[IN RESPECT, HOWEVER, OF THE WIDOWS] OF THE SONS OF THE DAUGHTER-IN-LAW ONE SUBMITS TO HALIZAH etc. Only halizah [must take place first] and the levirate marriage afterwards. The levirate marriage, however, must not take place first; since thereby one might infringe the prohibition against a sister-in-law's marriage with a stranger.[20]

[IF THE CHILD OF] A PRIEST'S WIFE WAS INTERCHANGED etc. Obviously only ONE SHARE![21] — Read 'ONE SHARE together'.[22] Here we learn [a thing] which is in agreement with him who ruled that no share of terumah is given to a slave unless his master is with him.[23] For it was taught: No share in terumah is given to a slave unless his master is with him; so R. Judah. R. Jose, however, ruled: The slave[24] may claim, 'If I am a priest, give me for my own sake; and if I am a priest's slave, give me for the sake of my master'. In the place of R. Judah,[men of doubtful status] were raised to the status of priesthood[25] [on the evidence that they received a share] of terumah.[26] In the place of R. Jose, however, no one was raised to the status of priesthood [on the evidence of having received a share] of terumah.[27]

It was taught: R. Eleazar b. Zadok said, 'During the whole of my lifetime I have given evidence but once, and through my statement they raised a slave to the priesthood'. 'They raised'? Is [such an error] conceivable! If through the beasts of the righteous the Holy One, blessed be He, does not cause an offence to be committed, how much less through the righteous themselves! — Rather, read. 'They desired to raise a slave to the priesthood, through my statement'. He witnessed [the occurrence][28] in the place of R. Jose. but went and tendered his evidence in the place of R. Judah.[29]

Our Rabbis taught: Ten [classes of people] must not be given a share of terumah at the threshing-floors. They are the following: The deaf,[30] the imbecile, the minor, the tumtum,[31] the hermaphrodite the slave, the woman,[32] the uncircumcised,[33] the levitically unclean, and he who married a woman who is unsuitable for him.[34] In the case of all these, however, [terumah] may be sent to their houses, with the exception[35] of the one who is levitically unclean and one who married a woman who is unsuitable for him.[36] Now, one can well understand [the prohibition[37] in respect of] the deaf, the imbecile and the minor, since they lack intelligence;[38] [in respect of] the tumtum and the hermaphrodite also,[39]

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(1) Since either of them might be assumed to be the priest (cf. Lev. XXI, 1).

(2) Since such women are forbidden to the slave.

(3) A bondswoman, for instance, who is forbidden to the priest.

(4) The son of the priest and the slave who were interchanged.

(5) Any freed man may marry such a woman.

(6) V. p. 680, n. 13.

(7) 'Forty' is a round number for the penalty of flogging which in fact consisted of thirty-nine stripes only.

(8) Because each of them can plead that he is not the priest.

(9) On account of the slave who, being now a freed man, is, like any Israelite, forbidden to eat terumah.

(10) Which an Israelite must pay (cf. Lev. XXII, 14). Each one of them can plead that he is the priest.

(11) In terumah. Cf supra n. 5'

(12) Of their own produce.

(13) No priest can claim it from either of them since each can reply that it is he who is the priest.

(14) Not even a share in the skins of the sacrifices.

(15) Firstlings, for instance, or herem (v. Glos.). Cf. Num. XVIII, 14f.

(16) Priestly gifts prescribed in Deut. XVIII, 3.

(17) When it is unfit for the altar, and may be eaten by its owner. The reason why an Israelite owner may not eat of the flesh of his firstling, even after it has contracted a blemish, is not because of its sanctity but because its consumption by a

non-priest is regarded as robbing the priests. No such consideration arises in a case where the owner can claim that he himself is a priest. (Cf. supra note 9).

(18) MS.M. and cur. edd. infra 100a. The reading here is 'upon him'.

(19) Lit., 'those'.

(20) Lit., 'because he met a sister-in-law for the market'.

(21) Since no more than one of them can lay claim to the priesthood. Why then was the obvious stated?

(22) Only when the two come together do they receive one share. One without the other receives nothing. The reason is given infra.

(23) As one of the two is obviously a slave neither of them can claim a share unless the other is with him.

(24) In circumstances like those spoken of in our Mishnah, where it is uncertain whether he is a slave or a priest.

(25) Lit., 'genealogical (priestly) records', enabling them to marry women of unblemished and priestly descent. V. Keth,, Sonc. ed., p. 233, n. 4.

(26) Hence no terumah must be given to a slave in the absence of his master.

(27) Tosef. Yeb. Xli, Keth. 28b.

(28) That a slave received a share of terumah.

(29) Cf. Keth., Sonc., ed., p. 156. notes.

(30) Deaf-mute.

(31) V. Glos.

(32) A priest's wife.

(33) A priest whose brothers died as a result of their circumcision, and who, owing to the fatal effect of such an operation on members of his family, is himself exempt from circumcision.

(34) I.e., one whom a priest is forbidden to marry.

(35) The uncircumcised priest is not excluded since his wives and slaves, though not he himself, are permitted to eat terumah.

(36) Tosef. Ter. X end.

(37) To give him a share of terumah at the threshing-floor.

(38) It would be a mark of disrespect were the sacred terumah to be entrusted to the care of persons who are mentally defective, or undeveloped, or in any other way below the normal standard of intellectual or physical fitness.

(39) One can understand the reason for the prohibition.

Talmud - Mas. Yevamoth 100a

since either of them is a peculiar creature; the slave, too, because owing to the terumah[1] he might be raised to the priesthood;[2] the uncircumcised and the unclean also, owing to their repulsiveness; and the priest who married a woman unsuitable for him, as a penalty. But why should not a woman [be given a share of terumah]? — On this question R. Papa and R. Huna son of R. Joshua differ. One explains: Owing [to possible abuse by] a divorced woman;[3] and the other explains: Owing to [the necessity of avoiding] privacy between the sexes.[4] What is the practical difference between them? — The practical difference between them is the case of a threshing-floor that is near a town but is unfrequented by people,[5] or one that is distant [from a town] but frequented by people.[6]

'In the case of all these, however, [terumah] may be sent to their houses, with the exception of the one who is levitically unclean and one who married a woman who is unsuitable for him'. [May terumah], then, be sent to the uncircumcised?[7] What is the reason! [Is it] because he is a victim of circumstances? The man who is levitically unclean is also a victim of circumstances![8] — The force of circumstances in the former case is great;[9] in the latter, the force is not so great.[10]

Our Rabbis taught: Neither to a slave nor to a woman may a share in terumah be given at the threshing-floors. In places, however, where a share is given. It is to be given to the woman first, and she is immediately dismissed. What can this mean?[11] — It is this that was meant: The[12] poor mans tithe which is distributed at home[13] is to be given to the woman first.[14] What is the reason? — That the degradation [of the woman may be avoided].[15]

Raba said: Formerly, when a man and a woman[16] came before me for a legal decision, I used to dispose of the man's lawsuit first, because I thought a man is subject to the fulfilment of all the commandments;[17] since, however, I heard this,[18] I dispose of a woman's lawsuit first. Why? In order [to save her from] degradation.[19]

IF WHEN THEY GREW UP, THE INTERCHANGED CHILDREN etc. [It states] THEY EMANCIPATED. [Implying] only[20] if they wished, but if they did not wish they need not [emancipate one another]! But why? Neither of them could marry either a bondwoman[21] or a free woman![22] Raba replied: Read: Pressure is brought to bear upon them so that they emancipate one another.

THE RESTRICTIONS . . . ARE IMPOSED UPON THEM. In what respect?[23] — R. Papa replied: In respect of their meal-offering. A handful[24] must be taken from it,[25] as of a meal-offering of an Israelite, but it may not be eaten,[26] as is the case with a meal-offering of the priests.[27] But how [is one to proceed]? The handful is offered up separately and the remnants are also offered up separately. But [surely] there is to be applied here the Scriptural deduction that any offering a portion of which had been put on the fire of the altar[28] is subject to the prohibition you shall not burn![29] — R. Judah son of R. Simeon b. Pazzi replied: They are burned as wood,[30] in accordance with a ruling of R. Eleazar. For it was taught: R. Eleazar said, For it sweet savour[31] you may not offer them;[32] you may offer them, however, as mere[30] wood.[33] This is satisfactory according to R. Eleazar, what, however, can be said according to the Rabbis?[34] — One proceeds in accordance with a ruling of R. Eleazar son of R. Simeon. For it was taught: R. Eleazar son of R. Simeon said: The handful is offered up separately and the remnants are scattered over the enclosure of the sacrificial ashes.[35] And even the Rabbis differ from R. Eleazar only in respect of a priestly sinner's meal-offering which is suitable for offering up;[36] but here,[37] even the Rabbis agree.[38]

MISHNAH. IF A WOMAN DID NOT WAIT THREE MONTHS AFTER [SEPARATION[39] FROM] HER HUSBAND, AND MARRIED AGAIN AND GAVE BIRTH [TO A SON], AND IT IS UNKNOWN WHETHER IT IS A NINE-MONTHS CHILD BY THE FIRST HUSBAND OR A SEVEN-MONTHS CHILD BY THE SECOND, IF SHE HAD OTHER SONS BY THE FIRST HUSBAND AND OTHER SONS BY THE SECOND, THESE MUST SUBMIT TO HALIZAH[40] BUT MAY NOT CONTRACT WITH HER LEVIRATE MARRIAGE.[41] AND HE, IN RESPECT OF THEIR WIDOWS,[42] LIKEWISE, SUBMITS TO HALIZAH[43] BUT MAY NOT CONTRACT LEVIRATE MARRIAGE.[44]

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(1) Which he receives.

(2) As was explained supra.

(3) Who might, after her divorce when she is no more permitted to eat terumah. continue to collect it.

(4) Yihud, v. Glos. Cf. supra 86a.

(5) No preventive measure against (a) abuse by a divorced woman is here necessary, since the proximity of the threshing-floor to the town enables its owner to keep in touch with social events in the town. The precautions, however, against (b) privacy, owing to the loneliness of the floor, cannot be neglected.

(6) Cf. supra note 1 mutatis mutandis; (b) has to, but (a) need not be disregarded.

(7) Since he is not included in the exceptions. Cf. supra p. 683, n. 8.

(8) If the latter was not excluded why then was the former?

(9) The uncircumcised cannot help the infirmity of the constitution of the members of his family. It is not through any fault of his that he must remain uncircumcised (v. supra p. 683, n. 6).

(10) By the exercise of due care uncleanness might be avoided.

(11) In the first sentence it was stated that a woman receives no share; and in the following it is tacitly assumed that in certain places she does receive a share!

(12) C;f. Bah. Cur. edd. read, ‘Where the poor man's tithe is distributed’.

(13) In town.
(14) Though privacy between the sexes need not be apprehended there.
(15) It is degrading for a woman to have to wait her turn in a crowd of men.
(16) With different law suits.
(17) While a woman is exempt from certain commandments. Hence it is the man that should receive precedence.
(18) The reason why a woman should be given her share of the poor man's tithe first.
(19) Cf. supra p. 684. n. 11.
(20) Lit., 'yes'.
(21) Owing to the priest.
(22) Since one of them is a slave. How, then, could they ever fulfil the religious duty of propagation which is incumbent upon all?
(23) Lit., for what law'.
(24) V. Lev. II, 2.
(25) Since he might be the Israelite.
(26) As he might also be the priest.
(27) V. Lev. VI, 16.
(28) As was the case here where the handful was offered up.
(29) Lev. II. Once the prescribed portion of an offering had been duly offered up on the altar the remnants of that offering may no longer be burned in the altar. Cf. Zeb 77a. How then could the remnants of the meal-offering be offered up when a portion of the offering (the handful) is also offered up.
(30) Not as an offering.
(31) Lev II, 12.
(32) V. supra note 13.
(33) Yoma 47b, Sot. 23a, Zeb. 76b, Men. 106b.
(34) Who do not permit the offering of the remnants on the altar even as wood.
(35) בית הדשן Sot. 23a, Men. 74a. A place near the altar, where a certain portion of the ashes of the altar was deposited.
(36) In its entirety, as is the case with a priest's voluntary meal-offering.
(37) Where there is the possibility that it is not the offering of a priest at all.
(38) That the remnants are to be scattered in the enclosure of the ashes. V. Sot., Sonc ed., p. 116, notes.
(39) By her hushand's death or by divorce.
(40) From the widow of the son whose father is unknown, if he died childless.
(41) Since it is possible that they are only the maternal brothers of the deceased, whose widow is forbidden to them under the penalty of kareth.
(42) Lit., 'to them'.
(43) From their widows, if they died without issue.
(44) Cf. supra n. 8 mutatis mutandis.

Talmud - Mas. Yevamoth 100b

IF HE[1] HAD BROTHERS BY THE FIRST[2] AND ALSO BROTHERS BY THE SECOND,[2] BUT NOT BY THE SAME MOTHER, HE[1] MAY EITHER SUBMIT TO HALIZAH OR CONTRACT THE LEVIRATE MARRIAGE,[3] BUT AS FOR THEM, ONE[4] SUBMITS TO HALIZAH[5] AND THE OTHER MAY [THEN] CONTRACT LEVIRATE MARRIAGE.[6]

IF ONE OF [THE TWO HUSBANDS] WAS AN ISRAELITE AND THE OTHER A PRIEST, HE[7] MAY ONLY MARRY A WOMAN WHO IS ELIGIBLE TO MARRY A PRIEST.[8] HE[7] MAY NOT DEFILE HIMSELF FOR THE DEAD,[8] BUT IF HE DID DEFILE HIMSELF HE DOES NOT SUFFER THE PENALTY OF FORTY STRIPES.[9] HE MAY NOT EAT TERUMAH,[9] BUT IF HE DID EAT HE NEED NOT PAY COMPENSATION EITHER FOR THE PRINCIPAL OR [FOR THE ADDITIONAL] FIFTH.[10] HE DOES NOT RECEIVE A SHARE[11] AT THE THRESHING-FLOOR, BUT HE MAY SELL [HIS OWN] TERUMAH[12] AND THE PROCEEDS

ARE HIS.[13] HE RECEIVES NO SHARE IN THE CONSECRATED THINGS OF THE TEMPLE,[14] NO CONSECRATED THINGS ARE GIVEN TO HIM,[15] BUT HE IS NOT DEPRIVED OF HIS OWN.[13] HE IS EXEMPT FROM [GIVING TO ANY PRIEST] THE SHOULDER, THE CHEEKS AND THE MAW,[16] WHILE HIS FIRSTLING MUST REMAIN IN THE PASTURE[17] UNTIL IT CONTRACTS A BLEMISH.[18] THE RESTRICTIONS RELATING TO PRIESTS AND THE RESTRICTIONS RELATING TO ISRAELITES ARE IMPOSED UPON HIM.

IF THE TWO [HUSBANDS] WERE PRIESTS, HE[7] MUST MOURN AS ONAN[19] FOR THEM[20] AND THEY MUST MOURN AS ONENIM[21] FOR HIM,[22] BUT HE MAY NOT DEFILE HIMSELF FOR THEM,[23] NOR MAY THEY DEFILE THEMSELVES FOR HIM.[23] HE MAY NOT INHERIT FROM THEM,[24] BUT THEY MAY INHERIT FROM HIM.[25] HE IS EXONERATED[26] IF HE STRIKES OR CURSES[27] THE ONE OR THE OTHER. HE GOES UP [TO SERVE] IN THE MISHMAR[28] OF THE ONE AS WELL AS OF THE OTHER,[29] BUT HE DOES NOT RECEIVE A SHARE [IN THE OFFERINGS].[30] IF, HOWEVER BOTH SERVED IN THE SAME MISHMAR,[28] HE RECEIVES A SINGLE PORTION.[31]

GEMARA. Only the halizah [must take place first][32] and the levirate marriage afterwards; the levirate marriage, however, must not take place first, since, thereby, one[33] might infringe the prohibition against the marriage of a sister-in-law with a stranger.[34]

Samuel said: If ten priests stood together and one of them separated [from the company] and cohabited [with a feme sole]. the child [that may result from the union][35] is a shethuki.[28] In what [respect is he] a shethuki? If it be suggested that he is silenced[36] [when he claims a share] of his father's estate, [is not this, it may be retorted] self-evident? Do we know who is his father! — Rather,[37] he is silenced [if he claims any] of the rights of priesthood.[38] What is the reason? — Scripture stated, And it shall be unto him, and to his seed after him,[39] it is, therefore, required that 'his seed' shall be traced to 'him',[40] but this is not the case here.[41]

R. Papa demurred: If that is so in the case of Abraham where it is written, To be a God to thee and to thy seed after thee,[42] what does the All Merciful exhort him thereby![43] — It is this that he said to him: Marry not an idolatress or a bondwoman so that your seed shall not be ascribed to her.[44]

An objection was raised: The first[45] is fit to be a High Priest.[46] But, surely, it is required that a priest's child shall be traced to his father,[47] which is not the case here![48] — [The requirement that] a priest's child shall be traced to his father[49] is a Rabbinical provision. while the Scriptural text is a mere prop;[50] and it is only in respect of prostitution that the Rabbis have made their preventive measure; in respect of marriage, however, no such measure was enacted by them. But did the Rabbis introduce such a preventive measure in the case of prostitution? Surely we learned: IF A WOMAN DID NOT WAIT THREE MONTHS AFTER [SEPARATION FROM] HER HUSBAND, AND MARRIED AGAIN AND GAVE BIRTH [TO A SON]; now, what is meant by AFTER [SEPARATION FROM] HER HUSBAND? If it be suggested: AFTER the death OF HER HUSBAND, read the final clause: HE MUST MOURN AS ONAN FOR THEM AND THEY MUST MOURN AS ONENIM FOR HIM; one can well understand [the circumstances in which] HE MOURNS AS ONAN FOR THEM, such mourning being possible [even in the case] of marriage with the second [husband, on the occasion of the] collecting of the bones of the first.[51] But how is it possible that they MOURN AS ONENIM FOR HIM, when the first husband is dead![52] If, however, [it be suggested that our Mishnah speaks] of a divorced woman, and that the meaning of AFTER [SEPARATION FROM] HER HUSBAND is AFTER the divorce OF HER HUSBAND, then read the final clause: HE MAY NOT DEFILE HIMSELF FOR THEM, NOR MAY THEY DEFILE THEMSELVES FOR HIM; now, one can understand that THEY MAY NOT DEFILE THEMSELVES FOR HIM as a restrictive measure, [since in respect of every one of them it may be assumed that] he is possibly not his son; but why MAY HE NOT DEFlle HIMSELF FOR THEM?

Granted that he must not defile himself for the second;[53] for the first, however, he should be allowed to defile himself in any case! For if he is his son, then he may justly defile himself for him; and if he is the son of the second[54] he may legitimately defile himself for him since he is a halal![55] Consequently [our Mishnah must refer to a case] of prostitution,[56] and the meaning of AFTER [SEPARATION FROM] HER HUSBAND must be, AFTER [SEPARATION FROM] THE MAN WHO IRREGULARLY COHABITED WITH HER;[57] and yet it was stated in the final clause, HE MAY GO UP [TO SERVE] IN THE MISHMAR OF THE ONE AS WELL AS OF THE OTHER. This, then, presents an objection against the ruling of Samuel![58] — R. Shemaia replied: [Our Mishnah refers] to a minor who made a declaration of refusal.[59] But is a minor[60] capable of propagation? Surely R. Bebai recited before R. Nahman: Three categories of women may use an absorbent in their marital intercourse:[61] A minor, an expectant mother, and a nursing wife. The minor,[62] because she[63] might become pregnant and, as a result, she might die. An expectant mother,[62] because she[63] might cause her foetus to degenerate into a sandal.[64] A nursing wife,[62] because she[63] might have to wean her child [prematurely][65] and this would result in his death. And what is the age of such a minor?[66] From the age of eleven years and one day until the age of twelve years and one day. One who is under,[67] or over this age[68] must carry on her marital intercourse in the usual manner. This is the opinion of R. Meir. The Sages, however, said: The one as well as the other carries on her marital intercourse in the usual manner. and mercy will be vouchsafed from heaven,[69] for it is said in the Scriptures, The Lord preserveth the simple![70] — [The case of our Mishnah] is possible with a mistaken betrothal,[71] and on the basis of a ruling of Rab Judah in the name of Samuel. For Rab Judah stated in the name of Samuel in the name of R. Ishmael: And she be not seized[72] [only then[73] is she] forbidden;[74] if, however, she was seized[75] she is permitted;[74] there is, however, another kind of woman who is permitted[74] even if she was not seized.[76] And who is she? — A woman whose betrothal was a mistaken one,[77] who may, even if her son sits riding on her shoulder, make a declaration of refusal [against her husband] and go away.[78]

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(1) The son whose father is unknown.

(2) Husband of his mother.

(3) If there were no other surviving brothers. The widow is either his sister-in-law with whom levirate marriage is lawful, or a stranger with whom he may contract an ordinary marriage.

(4) Either a son of the first, or a son of the second husband.

(5) From the widow of the son whose father is unknown, if he died childless.

(6) Since the widow is either his sister-in-law and the levirate marriage with her is lawful, or she is a stranger and permitted to marry him because her brother-in-law had submitted to her halizah.

(7) The son whose father is unknown.

(8) It being possible that he is the son of the priest.

(9) Since it is possible that he is the son of the Israelite, Cf. also supra p. 681, n. 3.

(10) V. supra p. 681, n. 6 mutatis mutandis.

(11) In terumah.

(12) Separated from his own produce.

(13) V. supra p. 681, n. 9, mutatis mutandis.

(14) V. loc. cit. n. 10. This reading is that of MSS. and the separate editions of the Mishnah. Cur. edd., ‘in the holy of holies’.

(15) V. supra p. 681, n. 11.

(16) Cf. Deut. XVIII, 3.

(17) V. supra p. 681, n. 9.

(18) V. loc. cit. n. 13.

(19) V. Glos.

(20) On the day of their death; since either of them might have been his father.

(21) Plur. of onan.

(22) Cf. supra n. 16 mutatis mutandis.

(23) Since, in the case of either of them, it is not certain that he is the son of the person concerned. V. Lev XXI, 2.

(24) The heirs of the one husband may refer him to those of the other while the heirs of the other may refer him back to the first, since in either case he has no proof that the deceased in question was his father.
(25) If he has no other heirs. As there is no one to dispute their claim, and since the claim of the one is of equal validity with that of the other, the inheritance is divided between the two groups of brothers.
(26) From the death penalty.
(27) V. Ex XXI. 15, 17 and cf. supra p. 687, n. 19.
(28) V. Glos.
(29) And the other priests of the mishmar have no right to prevent him.
(30) Each mishmar may send him to the others.
(31) Since one of the two is certainly his father.
(32) Where HE HAD BROTHERS IN THE FIRST AND . . . SECOND, BUT NOT BY THE SAME MOTHER . . . ONE SUBMITS TO HALIZAH AND THE OTHER MAY [THEN] CONTRACT LEVIRATE MARRIAGE.
(33) Should that brother not he the son of the father of the deceased.
(34) Lit., 'for he met a sister-in-law for the market'.
(35) Though, as his mother was feme sole, he is no bastard.
(36) Shethuki is derived from שתק which in Pi'el signifies 'to make silent'.
(37) Though he is undoubtedly a priest, since his father, whoever he may have been, was certainly one of the group of priests.
(38) He is not allowed to take part in the Temple service though eligible to marry a woman of pure stock.
(39) Num. XXV, 13, speaking of the priesthood.
(40) Only such a priest can transmit the rights of priesthood to his seed.
(41) Lit 'and it is not'. Since the father of the shethuki is unknown he cannot transmit the rights of priesthood to him.
(42) Gen. XVII, 7.
(43) By the expression. Thy seed after thee, which is analogous to that of Num. XXV, 23. but, referring to Israelites and not to priests. could not bear the same exposition,
(44) The child of any such woman is ascribed to his mother and not to his father. Cf. Kid. 68b.
(45) Child born from a levirate marriage that took place within three months after the death of the deceased brother, when it is doubtful whether the child is the offspring of the deceased or of the levir.
(46) Supra 37a.
(47) Lit., 'that "his seed" shall be traced "to him"'.
(48) Cf. supra n. 7 end.
(49) To be eligible for the rights of priesthood.
(50) Not actual proof.
(51) For the purpose of re-burial. Whenever such collecting takes place, even many years after death, the son must on that day observe the laws relating to an onan (cf. Pes. 91b). Such mourning, therefore, is possible even after the marriage of his mother with her second husband.
(52) Having died, according to the present assumption, before the birth of the son.
(53) Owing to the possibility that he is the son of the first and, consequently, a legitimate priest who is forbidden to defile himself for the corpses of strangers.
(54) Who married his mother while she was a divorced woman.
(55) V. Glos. The child of a union between a priest and a divorced woman is disqualified for the priesthood and may defile himself for the dead.
(56) Where neither of the men had contracted legal marriage with her. Her son, since she has the status of feme sole, has also the status of a legitimate priest who must observe the laws of priestly sanctity, and must not, therefore, defile himself for either of the men. Death and divorce being excluded as factors in the separation of the woman from the first man, it is also possible that the son should he in the position of onan for them and that they should he onenim for him.
(57) בועלה. The consonants בעלה are the same as those of 'her husband', בעלה.
(58) Who disqualified such a child for the priesthood. Cf. supra p. 688, n. 15.
(59) V. Glos. s.v. mi'un. Such a minor requires no letter of divorce. It is, therefore, possible for her to be separated from her first husband and yet remain permitted to marry a priest. Her son would consequently be subject to the restrictions spoken of in our Mishnah. Cf. supra p. 690. n. 6.
(60) Lit., 'a female who refused'.

(61) To prevent conception.
(62) Is permitted the use of an absorbent.
(63) Were she not to use one.
(64) A flat, fish-shaped abortion. V. n. on סנדל supra 12b.
(65) Owing to her second conception.
(66) Who, though capable of conception, is exposed to the danger of death.
(67) When no conception is possible.
(68) When no fatal consequences are involved in conception or birth.
(69) Divine mercy will safeguard her from danger.
(70) Ps. CXVI, 6, those who are incapable of preserving themselves. Tosef. Nid. II. supra 12b q. v. notes. Now, since a minor may not make a declaration of refusal unless she is under the age of twelve years and one day, and since a minor under that age either dies if she conceives, or does not conceive at all if she is younger, how could our Mishnah speak of a minor who made a declaration of refusal and who also had a child?
(71) When a condition which remained unfulfilled was attached to it. In such a case, the woman may leave her husband without a letter of divorce and is, consequently, permitted to marry a priest. Her son who is, therefore, a legitimate priest may well be subject to the restrictions enumerated in our Mishnah. Cf. supra p. 690. n. 6.
(72) Num. V. 13. (E.V., Neither she be taken in the act), referring to a woman who was defiled secretly and there were no witnesses against her.
(73) Only if she was not seized, i.e., she did not act under compulsion but willingly. Cf. supra 56b.
(74) To her husband.
(75) Violated.
(76) Cf. supra n. 2.
(77) Cf. supra p. 691, n. 14.
(78) In any subsequent intercourse, whether lawful or illicit, her status is that of feme sole who had never before been married; v. Keth. Sonc. ed. p. 298, notes.

Talmud - Mas. Yevamoth 101a

IF THE TWO [HUSBANDS] WERE PRIESTS etc. Our Rabbis taught: If he[1] struck one[2] and then struck the other, or if he cursed one[2] and then cursed the other, or cursed them both simultaneously or struck them both simultaneously, he is guilty.[3] R. Judah. however, said: If[4] simultaneously, he is guilty;[5] if[4] successively he is exonerated.[6] But, surely, it was taught: R. Judah stated that he[7] is exonerated [even if his offences were] simultaneous! — Two Tannaim differ as to what was the opinion of R. Judah.

What is the reason of him who exonerated?[8] R. Hanina replied: 'Blessing'[9] is spoken of in Scripture [in respect of parents] on earth[10] and blessing[9] is spoken of [in respect of God] above.[11] As there is no association above so must there be no association below;[12] and striking has been compared to cursing.[13]

HE MAY GO UP [TO SERVE] IN THE MISHMAR etc. Since, however, HE DOES NOT RECEIVE A SHARE why should he go up? — [You ask] 'Why should he go up'; surely. he might say: I wish to perform a commandment![14] — But [this is the difficulty]: It does not say. '[If] he went up'[15] but HE GOES up, implying even against his will![16] — R. Aha b. Hanina in the name of Abaye in the name of R. Assi in the name of R. Johanan replied: In order [to avert any possible] reflection on his family.[17]

IF, HOWEVER, BOTH SERVED IN THE SAME MISHMAR etc. In what respect do two mishmaroth[18] differ [from one] that [in the former case] he should not [receive a share]? [Is it] because when he comes to the one mishmar he is driven away and when he comes to the other mishmar he is again driven away?[19] Then, even in the case of one mishmar also, when he comes to one beth ab[20] he is driven away and[21] when he comes to the other beth ab he is also driven away! —

R. Papa replied: It is this that was meant: IF, HOWEVER, BOTH SERVED IN THE SAME Mlshmar and in the same beth ab, HE RECEIVES A SINGLE PORTION.

CHAPTER XII

MISHNAH. THE COMMANDMENT OF HALIZAH MUST BE PERFORMED IN THE PRESENCE OF THREE JUDGES, EVEN THOUGH ALL THE THREE ARE LAYMEN.[22] IF THE WOMAN PERFORMED THE HALIZAH WITH A SHOE,[23] HER HALIZAH IS VALID,[24] [BUT IF] WITH A SOCK[25] IT IS INVALID; IF WITH A SANDAL[26] TO WHICH A HEEL IS ATTACHED IT IS VALID, BUT [IF WITH ONE] THAT HAS NO HEEL IT IS INVALID. [IF THE SHOE WAS WORN][27] BELOW THE KNEE[28] THE HALIZAH IS VALID, BUT IF ABOVE THE KNEE[28] IT IS INVALID. IF THE WOMAN PERFORMED THE HALIZAH WITH A SANDAL[26] THAT DID NOT BELONG TO HIM,[29] OR WITH A WOODEN SANDAL, OR WITH THE ONE OF THE LEFT FOOT [WHICH HE[29] WAS WEARING] ON HIS RIGHT FOOT, THE HALIZAH IS VALID.

IF SHE PERFORMED THE HALIZAH WITH A SANDAL TOO LARGE [FOR HIM],[29] IN WHICH, HOWEVER, HE IS ABLE TO WALK, OR WITH ONE TOO SMALL WHICH, HOWEVER, COVERS THE GREATER PART OF HIS FOOT, HER HALIZAH IS VALID.

GEMARA. Since even THREE LAYMEN [are sufficient],[30] what need is there for JUDGES? — It is this that we were taught: That three men are required, who are capable of dictating [the prescribed texts][31] like judges.[32] Thus we have learned here what the Rabbis taught: The commandment of halizah is performed in the presence of three men who are able to dictate [the prescribed texts][31] like judges.[32] R. Judah said: In the presence of five.[33]

What is the first Tanna's reason? — Because it was taught: Elders[34] [implies] two; but as no court may be evenly balanced,[35] one man more is added to them; behold here three. And R. Judah?[36] — The elders of[37] [implies] two; and elders[38] [implies another] two; but since no court may be evenly balanced,[35] one man more is added to them; behold here five.

As to the first Tanna, what deduction does he make [from the expression] the elders of?[37] — He requires it for the purpose of including[39] even three laymen. Whence, then, does R. Judah deduce the eligibility of laymen?[39] — He deduces it from Before the eyes of;[40] a Master having said: 'Before the eyes of', excludes blind men. Now, since the expression 'Before the eyes of' is required to exclude blind men it follows that even laymen [are eligible]. For should it be suggested [that only members of] the Sanhedrin[41] are required. what need was there to exclude blind men, [an exclusion which could have been] deduced from that which R. Joseph learnt! For R. Joseph learnt: As the Beth din[42] must be clean[43] in respect of righteousness so must they be clear from all physical defects,[44]

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(1) The son concerning whom it is unknown, as in our Mishnah, which of his mother's two husbands was his father.

(2) Lit., 'this', one of his mother's two husbands.

(3) Since one of the two is certainly his father. As to the necessary caution v. infra nn. 12 and 13.

(4) He struck or cursed.

(5) The specific caution that must precede any forbidden act that is punishable by a court is here effected when the witnesses cautioned the offender by one statement against the striking or the cursing of the two, e.g., 'do not strike them'.

(6) Though he may have been duly cautioned in each particular case, no penalty can be imposed upon him by any court, since each caution was of a doubtful character, it being unknown in each case whether the particular man he was about to strike or curse was his father or not. A caution of a doubtful character is, in the opinion of R. Judah, of no validity. while in the opinion of the first Tanna it is valid.

(7) V. supra note 8.

(8) If the offender struck or cursed simultaneously. One of the victims must surely have been his father!
(9) Euph. for 'cursing'.
(10) Lit., 'below'. V. Ex. XXI. 17.
(11) V. Lev. XXIV, 15.
(12) Only when the curse referred to a single individual is the offender subject to punishment.
(13) Since both acts, in the case of parents. appear in Ex. XXI, in close proximity. vv. 15 (striking) and 17 (cursing). Such proximity, according to the opinion here expressed, serves the purpose of an analogy. According to another opinion, the analogy is disturbed by the intervening v. 16. Cf. Sanh. 85a.
(14) To take part in the Temple service, even though he derives no material benefit from it.
(15) The past tense, implying contingency.
(16) Why should he be compelled?
(17) Should he abstain from the Temple service, rumour might attribute his abstention to some serious disqualification which would bring discredit upon all his family. Its members, therefore, may compel him to join in the service.
(18) Plur. of mishmar.
(19) Each mishmar asserting that he does not belong to them.
(20) V. Glos. A mishmar consisted of six families each of which was described as beth ab, performing service on a different day in the week.
(21) Cf. MS.M. and Bah. Cur. edd. omit to the end of the sentence.
(22) Not professional judges.
(23) Made of soft leather and covering the upper part of the foot (cf. Rashi and Jast.) opp. to sandal (v. infra n. 3).
(24) Though the shoe required for halizah purposes should properly be a sandal made of hard leather and consisting of a sole with straps attached for fastening it to the foot.
(25) אנפיחיא Cf. infilia, shoes or socks made of felt.
(26) סנדה.
(27) Cf. Rashi. According to others the law refers not to the shoe itself but to the sandal straps.
(28) Where, for instance, the levir (according to Rashi) had his foot amputated. According to the other interpretation 'below', and 'above' the knee refers to the position of the straps on the leg.
(29) The levir.
(30) To constitute a tribunal for halizah.
(31) Deut. XXV, 7-9.
(32) The appropriate texts in the original Hebrew are dictated by members of the court to the levir and his sister-in-law, respectively, who must repeat them precisely as they hear them. Cf. Sot. 32a.
(33) Tosef. Yeb. XII. Our Mishnah is in agreement with the first Tanna of this Baraitha.
(34) Deut. XXV, 7.
(35) An even number of judges might, when a difference of opinion arose, be equally divided and this would make a decision by majority impossible.
(36) Why does he require five?
(37) Deut. XXV, 8.
(38) Ibid. 9.
(39) As eligible members of the tribunal.
(40) Deut. XXV, 9 (E.V., In the presence of).
(41) I.e., professional judges.
(42) בית דין, lit, 'house of law' 'court', applied also to the members of the Sanhedrin or of any court engaged in legal decisions or in the administration of the law.
(43) In their character, free from all possible suspicion.
(44) Heb, mum, 'blemish'.

Talmud - Mas. Yevamoth 101b

for it is said in Scripture, Thou art all fair, my love; and there is no spot in thee.[1]

As to the former,[2] however, what deduction does he make from the expression. 'Before the eyes

of'? — That expression serves the purpose of a deduction like that of Raba, Raba having stated: The judges must see the spittle issuing from the mouth of the sister-in-law, because it is written in Scripture, Before the eyes of the elders . . . and spit.[3] But does not the other[4] also require the text[5] for a deduction like that of Raba! — This is so indeed. Whence, then,[6] does he deduce [the eligibility of] laymen?[7] — He deduces it from in Israel[8] [implying] any Israelite whatsoever. As to the former,[9] however, what deduction does he make from 'In Israel'?[10] — He requires it for a deduction like that which R. Samuel b. Judah taught: 'In Israel' [implies that halizah must be performed] at a Beth din of Israelites but not at a Beth din of proselytes.[11] And the other?[4] — 'In Israel' is written a second time.[12] And the former?[9] — He requires it[13] for another deduction in accordance with what was taught: R. Judah stated, 'We were once sitting before R. Tarfon when a sister-in-law came to perform halizah, and he said to us, "Exclaim all of you: The man that had his shoe drawn off"'.[14] And the other? — This is deduced from And [his name] shall be called.[14] If this is so'[15] And they shall call[16] [implies] two;[17] And they shall speak[16] [also implies] two,[17] [so that] here also [one might deduce]: According to R. Judah,[18] behold there are here nine; and according to the Rabbis,[19] behold there are here seven! — That text[16] is required for a deduction in accordance with what was taught: And they[20] shall call him[16] but not their representative; And they shall speak unto him[16] teaches that they give him suitable advice. If he,[21] for instance, was young and she[22] old, or if he was old and she was young, he is told, 'What would you with[23] a young woman?' Or 'What would you[23] with an old woman? Go to one who [is of the same age] as yourself, and introduce no quarrels into your home'.[24]

Raba stated in the name of R. Nahman: The halachah is that halizah is to be performed in the presence of three men, since the Tanna[25] has taught us so[26] anonymously.[27] Said Raba to R. Nahman: If so [the same ruling should apply to] mi'un[28] also, for we learned:[29] Mi'un and halizah [must be witnessed] by three men![30] And should you reply [that the halachah] is so indeed, surely [It may be retorted] it was taught: Mi'un,[31] Beth Shammai ruled, [must be declared before] a Beth din of experts;[32] and Beth Hillel ruled: [It may be performed] either before a Beth din or not before a Beth din. Both, however, agree that a quorum of three is required. R. Jose son of R. Judah and R. Eleazar son of R. Jose[33] ruled: [The mi'un is] valid [even if it was declared] before two.[34] And R. Joseph b. Manyumi reported in the name of R Nahman[34] that the halachah is in agreement with this pair![35] — There,[36] only one anonymous [teaching] is available while here[37] two anonymous [teachings][38] are available.

There[36] also two anonymous [teachings] are available! For we learned: If, however, a woman made a declaration of refusal[39] or performed halizah in his presence, he[40] may marry her,[41] since he [was but one of the] Beth din![42] — But, [the fact is that while] there,[43] only two anonymous [teachings] are available; here,[44] three anonymous [teachings] are available.[45]

Consider! The one[43] is an anonymous [teaching], and the other[44] is an anonymous [teaching]; what difference does it make to me whether the anonymous [teachings] are one, two or three? — Rather, said R. Nahman b. Isaac, [the reason[46] is] because the anonymity[47] occurs in a passage recording a dispute.[48] For we learned: 'The laying on of hands by the elders,[49] and the breaking of the heifer's neck[50] is performed by three elders; so R. Jose,[51] while R. Judah stated: By five elders. Halizah and declarations of mi'un, [however, are witnessed] by three men';[52] and since R. Judah does not express disagreement,[53] it may be inferred that R. Judah changed his opinion.[54] This proves it.

Raba stated: The judges must appoint a place;[55] for it is written, Then his brother's wife shall go up to the gate[56] unto the elders.[57]

R. Papa and R. Huna son of R. Joshua arranged a halizah'[48] in the presence of five. In accordance with whose view?[58] Was it in accordance with that of R. Judah? He, surely, had changed his

opinion![59] [Their object[60] was] to give the matter due publicity.[61]

R. Ashi once happened to be at R. Kahana's, when the latter said to him, 'The Master has come up to us [at an opportune moment] to complete a quorum of five'.[62]

R. Kahana stated: I was once standing in the presence of Rab Judah, when he said to me, 'Come, get on to this bundle of reeds[63] that you may be included in a quorum of five'.[62] On being asked, 'What need is there for five?' he replied, 'In order that the matter be given due publicity'.[61]

R. Samuel b. Judah once stood before Rab Judah when the latter said to him, 'Come, get on to this bundle of reeds[63] to be included in a quorum of five,[62] in order that the matter be thereby given due publicity'.[61] 'We learned', the first remarked, 'In Israel [implies that halizah must be performed] at a Beth din of Israelites but not at a Beth din of proselytes[64] while I am, in fact, a proselyte'. 'On the word[65] [of a man] like R. Samuel b. Judah', Rab Judah said, 'I would withdraw money [from its possessor]'.[66] [You say] 'Withdraw'! Could this be imagined? Surely the All Merciful said, At the mouth of two witnesses![67] — Rather [it is this that he meant]. 'I would on his word[65] impair the validity of a note of indebtedness.[68]

Raba stated:

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(1) Cant. IV, 7.
(2) The first Tanna.
(3) Deut. XXV, 9. Cf. infra 106b.
(4) R. Judah.
(5) Deut. XXV, 9, (E.V., In the presence of).
(6) Since the text of Deut. XXV, 9 is required for Rab's deduction.
(7) As eligible members of the tribunal.
(8) Deut. XXV, 7 (Rash). or ibid. 10 (Golds.).
(9) The first Tanna.
(10) Cf. Bah and supra n. 7.
(11) Cf. Kid. 14a.
(12) Cf. supra n. 7.
(13) The second expression, In Israel.
(14) V. Deut. XXV, 10.
(15) Since deduction has been made from the expression of elders etc.
(16) Deut. XXV, 9.
(17) The plural representing no less than two.
(18) Who deduced from the other texts the number of five judges.
(19) Limiting the number of judges, as deduced supra, to three.
(20) Emphasis on they.
(21) The levir.
(22) The sister-in-law.
(23) Lit., 'what to thee at'.
(24) Supra 44a.
(25) Of our Mishnah.
(26) Lit., 'like him', sc. like the first Tanna of the Baraitha cited, supra 101a.
(27) The halachah is, as a rule, in agreement with the anonymous statements in a Mishnah.
(28) A declaration of refusal to live with her husband made by a minor. V. Glos.
(29) Anonymously.
(30) Sanh. 2a. Cf. infra 107b.
(31) V. supra note 6.
(32) Mumhin, plur. of mumhe. v. Glos.

(33) Or ‘Simeon’ (cf. marg. note in cur. edd. and infra 107b).
(34) Sanh. 2a. Cf. infra 107b.
(35) Who require a quorum of two only, contrary to the anonymous teachings supra which require a quorum of three!
(36) Concerning mi'un.
(37) On halizah.
(38) One here (our Mishnah) and the other in Sanh. 2a.
(39) Mi'un, v. Glos.
(40) A Sage who, if he had previously pronounced the woman forbidden to her husband owing to a vow she had made, would not have been allowed to marry her in order to avoid any suspicion that his motive in forbidding her to her husband was his intention to marry her himself.
(41) In these circumstances.
(42) Bek. 31a, supra 25b. Mi'un and halizah, unlike disallowance and confirmation of vows, must be witnessed by a court, or quorum of three, and three persons would not be suspected of ulterior motives even though one of them subsequently married the woman concerned. This Mishnah, then, adds a second anonymous statement to the one previously mentioned, both requiring a quorum of three for mi'un.
(43) Concerning mi'un.
(44) On halizah.
(45) The Mishnah cited last, which adds one anonymous teaching to the single one of mi'un, also adds one to the two anonymous teachings concerning halizah.
(46) Why the halachah is in agreement with the anonymous teaching in respect of halizah and not with that in respect of mi'un.
(47) In respect of halizah.
(48) In which R. Judah participated.
(49) On the head of a sin-offering of the congregation. V. Lev. IV, 15.
(50) V. Deut. XXI, 4.
(51) ‘Simeon’, according to a marg. note and Sanh. 2a.
(52) Sanh. loc. cit.
(53) With the ruling that a quorum of three only is required for halizah, though in a previous discussion (supra 102a) he maintained that a quorum of five was required.
(54) And agreed with the anonymous teaching. Hence R. Nahman's ruling that as regards the quorum for halizah the halachah agrees with the anonymous teaching. In respect of mi'un, however, the anonymous teaching has not been mentioned in connection with a dispute in which R. Jose and R. Eleazar participated. Hence it must be assumed that they adhered to their first opinions contrary to the anonymous teaching, which consequently does not represent the halachah.
(55) For the performance of the rite of halizah.
(56) I.e., a specified place.
(57) Deut. XXV, 7. (16) Lit., performed an act’.
(58) Did they insist on a quorum of five.
(59) Agreeing that only three are required for a halizah quorum.
(60) In adding to the prescribed quorum.
(61) That it should be widely known that the woman was a haluzah and so no priest would marry her; while prospective husbands, on hearing that she had been freed by halizah from her levirate bond, might begin to woo her (cf. Rashi). The question of R. Judah's first opinion did not at all enter into consideration.
(62) At a halizah ceremonial.
(63) The spot appointed for the performance of the halizah (cf. Raba's ruling supra).
(64) V. supra p. 696.
(65) Lit., ‘mouth’.
(66) Though in such lawsuits the evidence of two witnesses is required.
(67) Deut. XIX, 15. The evidence of one witness is not sufficient. Cf. supra note 9. The numeral ‘two’ which in cur. edd. and some MSS. is given in the absolute form, שנים, appears in M.T. in the construct, שני Cf. ibid. XVII, 6, which, however, refers to evidence in capital cases.
(68) Should he declare that the note was already redeemed the debtor would not be ordered to pay the debt, though the creditor also could not be compelled to destroy the note (cf. Rashi, Keth. 85a). According to some of the Tosafists the

debt may not be collected unless the creditor takes the prescribed oath, as is the case wherever one witness declares a debt recorded on a note of indebtedness to have been paid, v. Keth. 8a. R. Samuel's superiority over the ordinary witness is limited to the following only: While the latter, if a relative, is not believed, to enforce an oath on the creditor, R. Samuel would always be believed (v. Tosaf. s.v. מרעא).

Talmud - Mas. Yevamoth 102a

A proselyte may, according to Pentateuchal law, sit in judgment[1] on a fellow proselyte, for it is said in the Scriptures, Thou shalt in any wise set him king over thee, whom the Lord thy God shall choose; one from among thy brethren shalt thou set king over thee;[2] only when set over thee[2] is he required to be one from among thy brethren;[2] when, however, he is to judge his fellow proselyte he may himself be a proselyte.[3] If his[4] mother was an Israelitish woman he may sit in judgment even on an Israelite.[5] In respect of halizah, however, [no man is eligible as judge] unless both his father and his mother were Israelites for it is said, And his name shall be called in Israel.[6]

Rabbah stated in the name of R. Kahana in the name of Rab: If Elijah should come and declare that halizah may be performed with a foot-covering shoe,[7] he would be obeyed; [were he, however, to declare that] halizah may not be performed with a sandal,[8] he would not be obeyed, for the people have long ago adopted the practice [of performing it] with a sandal.

R. Joseph, however, reported in the name of R. Kahana in the name of Rab: If Elijah should come and declare that halizah may not be performed with a foot-covering shoe,[7] he would be obeyed; [were he, however, to declare that] halizah may not be performed with a sandal,[8] he would not be obeyed, for the people have long ago adopted the practice [of performing it] with a sandal.

What is the practical difference between them?[9] — The practical difference between them is [the propriety of using] a foot-covering shoe ab initio.[10]

According to him, however, who stated [that it was proper to use[11] it] even ab initio, surely, [it may be objected] we learned: IF A WOMAN PERFORMED THE HALIZAH WITH A FOOT-COVERING SHOE, HER HALIZAH IS VALID [which[12] implies validity only] after the action had been performed but not ab initio. — The same law[13] is applicable even [where the shoe was used] ab initio. As, however, it was desired to state in the final clause: BUT IF WITH A SOCK IT IS INVALID, [a law] which applies even after the action had been performed, a similar expression[14] was also used in the first clause.

[On the question of] using a foot-covering shoe[15] ab initio Tannaim differ. For it was taught: R. Jose[16] related, 'I once went to Nesibis where I met an old man whom I asked, "Are you perchance acquainted with R. Judah b. Bathyra?" and he replied, "Yes; and he in fact always sits at my table". "Have you ever seen him arranging a halizah ceremony for a sister-in-law?" [I asked]. "I saw him arranging halizah ceremonies many a time", he replied. "With a foot-covering shoe [I asked] or with a sandal?" — "May halizah be performed", he asked me' "with a foot-covering shoe?" I[17] replied: Were that [not] so, what could have caused[18] R. Meir to state that halizah if performed with a foot-covering shoe is valid, while R. Jacob reported in his[19] name that it was quite proper to perform [even] halizah ab initio with a foot-covering shoe!'

With reference to him who ruled that it was not proper ab initio [to perform halizah with a foot-covering shoe] what could be the reason? If it be suggested: Because [the loosing of] the upper[20] [may be described as] from off[21] and [the loosing of the] thong[22] as 'from off of the from off', [a performance which is not in accordance with] the Torah which said, from off[21] but not 'from off of the from off'; [it could well be retorted that] if such were the reason [the halizah should be invalid] even when actually performed. — This[23] is a preventive measure against the possible use of

a flabby[24] shoe or even half a shoe.[25]

Said Rab: Had I not seen my uncle[26] arranging a halizah with a sandal that had laces I would have allowed a halizah only with an Arabian sandal which can be more firmly fastened. And in respect of our [kind of sandal] though it has a knot,[27] a strap also should be tied to it,[28] so that the halizah may be properly performed.[29]

(Mnemonic: You permitted a sister-in-law a sandal.)[30] Rab Judah reported in the name of Rab: The permissibility of a sister-in-law to marry a stranger takes effect as soon as the greater part of the heel[31] is released.[32]

An objection was raised: If the straps of a foot-covering shoe or of a sandal were untied[33] or if [the levir] slipped [it off from] the greater part of his foot,[34] the halizah is invalid.[35] The reason then[36] is because it was he that slipped it off; had she, however, slipped it off, her halizah would have been valid; [and, furthermore this applies to] the greater part of the foot only[37] but not to the greater part of the heel![38] — The 'greater part of the foot' has the same meaning as 'the greater part of the heel'; [and the reason] why he calls it 'the greater part of the foot' [is] because all the weight of the foot rests on it.

This[39] provides support for R. Jannai. For R. Jannai stated: Whether [the levir] untied [the straps] and she slipped off [the sandal] or whether she untied the straps and he slipped off the sandal, her halizah remains invalid, unless she unties the straps and she slips off the sandal.

R. Jannai enquired: What is the law if she tore it?[40] What if she burnt it?[40] Is the exposure of the foot necessary,[41] and this has here been effected,[42] or is 'taking off' necessary, which has not taken place here?[43] — This remains undecided.[44]

R. Nehemiah enquired of Rabbah: What is the law in the case of two shoes one above the other? — How is this enquiry to be understood? If it be suggested: That she[45] drew off the upper one and the lower one remained, surely, the All Merciful said: From off[46] but not 'from off of the from off'! — Such enquiry is necessary only where she tore the upper one and removed the lower one while the upper one remained [on the levir's foot], the question being whether[47] the requirement is the 'taking off' which has been done[42] , or whether the exposure of the foot is necessary which was not effected here?[48]

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(1) Even in capital cases. In civil matters a proselyte judge has equal rights with an Israelite.

(2) Deut. XVII, 15. The term 'king' is taken to embrace that of judge'. Cf. Prov. XXIX. 4.

(3) Lit., 'but a proselyte judges his fellow a proselyte'.

(4) The proselyte's.

(5) Cf. supra n. 1 .

(6) Deut. XXV, 10, emphasis on the last word.

(7) V. supra p. 694, n. 2.

(8) V. supra p. 694. no. 3 and 5.

(9) Rabbah and R. Joseph. According to either of their reports the practice of using a sandal is not to be altered.

(10) According to Rabbah it is improper to use a foot-covering shoe. Its use would be permitted only if Elijah came and declared it to be permissible. According to R. Joseph, however, its use is and remains permitted unless Elijah should come and declare it to be inadmissible.

(11) A foot-covering shoe.

(12) Since the Perfect in a conditional clause was used.

(13) That the halizah is valid.

(14) Lit., 'which has been done'.

(15) For halizah.

(16) Or ‘Simeon’. V. Tosef. Yeb. XII.
(17) Cut. edd. insert in parenthesis: ‘And the Torah said his shoe נעלו but not his foot-covering shoe מנעל [This is deleted by Rashi since the term מנעה is post-Biblical, occurring nowhere in the Bible in the sense of shoe. v. Rashi].
(18) Lit., ‘he saw’.
(19) R. Meir's.
(20) Of the shoe.
(21) Cf. Deut. XXV, 9. And loose his shoe from off his foot.
(22) Which binds the upper to the foot and rests above it.
(23) The impropriety of using a foot-covering shoe ab initio.
(24) Cf. Jast.; or ‘burst’ (cf. Rashi).
(25) Such are not permitted at all for halizah purposes. Were any foot-covering shoe permitted for use in halizah one might erroneously use such a shoe even when it was burst or when it was flabby or even when half of it was torn away. Hence its entire prohibition. No such measure was necessary in the case of the sandal which, when burst or broken in halves cannot be worn at all.
(26) R. Hiyya.
(27) Which prevents the sandal from falling off the foot.
(28) Round the sandal and the foot, prior to the halizah.
(29) By untying the strap first and then releasing the foot from the shoe, the woman carries out completely the prescribed requirements of the halizah. The rt. חליץ may signify both (a) loosing or untying sc. of the shoe strap, and (b) releasing sc. of the foot from the shoe.
(30) A prominent verb and two prominent nouns in the following three rulings reported by Rab Judah in the name of Rab.
(31) Of the levir.
(32) From the sandal.
(33) By the levir or by themselves, but not by the woman.
(34) And the woman completed the removal.
(35) Tosef. Yeb. XII.
(36) Why the halizah is invalid.
(37) Lit., ‘yes’.
(38) How then could Rab state that permissibility to marry a stranger comes into effect as soon as the greater part of the heel had been released.
(39) The Baraitha cited.
(40) The sandal while on the levir's foot.
(41) For a valid halizah.
(42) Lit., ‘there is’.
(43) Lit., ‘and there is not’. Since she did not take off the sandal.
(44) Teku, v. Glos.
(45) The sister-in-law.
(46) V. supra p. 702, n. 2.
(47) Lit., ‘what’.
(48) Where the upper sandal still remains on the levir's foot.

Talmud - Mas. Yevamoth 102b

Does this, however, ever happen? — Yes; for the Rabbis once saw Rab Judah going out into the street in five pairs of felt socks.

Rab Judah reported in the name of Rab: A sister-in-law who was brought up together with the brothers[1] is permitted to marry any one of the brothers and there is no need to consider the possibility that she[2] might have taken off the sandal [from the foot] of one of them.[3] The reason, then[4] is because we did not actually observe it,[5] had we, however, observed it[5] the possibility [that her halizah was valid] would have had to be taken into consideration.[6] But, surely, it was taught:

Whether he[7] had the intention[8] [of performing the commandment of halizah] and she had no such intention, or whether she had such intention and he did not, halizah is invalid, it being necessary[9] that both shall at the same time have such intention![10] It is this that was meant : Although we observed it[5] there is no need to consider the possibility that they might have intended [to give their action the character of a valid halizah].

Others read: The reason[4] is because we did not see it,[5] had we, however, seen it, the possibility [of a valid halizah] would have had to be considered,[6] the statement that[11] intention[12] is necessary[13] applying only to the permissibility [of the woman] to strangers,[14] but to the brothers she does become forbidden.[15]

Rab Judah stated in the name of Rab: No halizah may be performed with a sandal that was sewn with flax,[16] for it is said in Scripture, And I shod thee with tahash.[17] Might it be suggested that [the skill of] a tahash[18] is admissible[19] but not any other material? — The mention of 'shoe' twice[20] indicates the inclusion [of all kinds of leather]. If the repeated mention of 'shoe' indicates the inclusion [of all kinds of leather] all other materials should also be included! — If that were so,[21] for what purpose was the term tahash used?

R. Eleazar enquired of Rab: [What is the law where] the sandal was made of leather and its straps of [animal] hair? — The other replied: Could we not apply to it, And I shod thee with tahash![22] If so, a shoe all made of hair[23] should also be admissible! — Such is called a slipper.[24]

Said R. Kahana to Samuel: Whence is it derived that the verb in[25] we-halezah[26] his shoe from off his foot[27] signifies taking off? — Because it is written, That they shall take out[28] the stones in which the plague is.[29] But I might suggest that the meaning[30] is that of arming;[31] for it is written in Scripture, Arm[32] ye men from among you for the war![33] — There also,[33] [the underlying meaning is] the slipping out from the house to go to war. But, surely, it is also written in Scripture, He girds[34] the afflicted in his affliction![35] — [The meaning is that] as a reward for his affliction He will deliver[36] him from the judgment of Gehenna. What, however, is the explanation of the Scriptural text,[37] The angel of the Lord encampeth round about them that fear him, and He girds them?[38] — [The meaning is that] as a reward for those who fear him He will deliver them from the judgment of Gehenna.

What explanation is there, however, for the Scriptural text,[39] And He will make strong[40] thy bones,[41] of which R. Eleazar said that this was the best of the blessings,[42] and Raba explained that the meaning[43] was the strengthening of the bones![44] — Yes, it may bear the one meaning and it may also bear the other; but were the meaning here[45] intended to be that of 'tying on',[46] the All Merciful should have written: 'We-halezah his shoe upon his foot'.[47] But [it might be still objected], had the All Merciful written, 'upon his foot' it might have been suggested: Only upon his foot, but not upon his leg;[48] hence the All Merciful wrote From off[49] his foot, [to indicate] that [halizah may be performed] even on the [levir's] leg! — If so, the All Merciful should have written: 'Upon [what is] above his foot'. Why [then did He use the expression] From off his foot? Consequently it must be inferred that the meaning[50] is 'to take off'.

A certain Min[51] once said to R. Gamaliel:[52] You are a people with whom its God has performed halizah,[53] for it is said in Scripture, with their flocks and with their herds they shall go to seek the Lord, but they shall not find him; He hath drawn off[54] [the shoe] from them.[55] The other replied: Fool, is it written: 'He hath drawn off [the shoe] for them'? It is written, 'He hath drawn off [the shoe] from them'; now in the case of a sister-in-law from whom the brother drew off [the shoe] could there be any validity in the act?[56]

BUT IF WITH A SOCK IT IS INVALID etc. This then teaches that a sock is not regarded as a shoe; and so it was also taught: The man who removes [the monies] from the Temple treasury[57] must

not enter with a bordered tunic or with a sock,[58] and there is no need to state [that he must not enter] with a shoe or with a sandal, since no one[59] may enter the Temple court with a shoe or a sandal;[60] but elsewhere the contrary was taught: One must not walk[61] with a shoe, a sandal or a sock either from one house to another or even from one bed to another bed![62] — Abaye replied: [This refers to a sock] which is furnished with pads, [the prohibition] being due to the pleasure [its wearing affords].[63] Said Raba to him: Is [all footwear] forbidden on the Day of Atonement because of the pleasure it affords, even though it cannot be regarded as a shoe? Surely, Rabbah son of R. Huna used to wrap a scarf round his foot and so went out![61] — But [in fact], said Raba,[64] there is no difficulty: The one Baraitha[65] refers to a leather sock; the other[66] to a felt sock. This explanation is indeed reasonable. For were you not to say so, a contradiction [would arise between one statement dealing with] the Day of Atonement and [another statement which also deals with] the Day of Atonement. For it was taught: No man may walk about in slippers in his house,[61] but he may walk about in his house in socks.[67] Consequently[68] it must be inferred that one statement refers to a leather sock and the other to a felt sock. This proves It.

It was taught in agreement with Raba:[69] [If a sister-in-law] performed halizah with a torn shoe which covered the greater part of the [levir's] foot, with a broken sandal which contained the greater part of his foot, with a sandal of cork[70] or of bast, with an artificial foot,[71] with a felt sock, with a support of the feet,[72] or with a leather sock, and also where she performed halizah with an adult

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(1) Of her deceased husband.

(2) In the course of the years they were together.

(3) As a friendly service. It is now assumed that had such an act been performed the removal of the sandal would have been regarded as a valid halizah which would cause the sister-in-law to become forbidden to marry the brothers.

(4) Why halizah is not apprehended.

(5) That she drew off the sandal from the foot of any brother.

(6) And the sister-in-law would be forbidden to marry any of the brothers.

(7) The levir.

(8) Where halizah was performed.

(9) Lit., ‘until’.

(10) Tosef. Yeb. XII, infra 106a. Why then should the removal of a sandal as a mere friendly act ever be regarded as a valid halizah?

(11) Lit ‘and what he taught’.

(12) To perform the commandment of halizah.

(13) On the part of the levir and the sister-in-law.

(14) Lit., ‘to the world’. Only for this purpose is intention a sine qua non.

(15) Even where there was no intention but mere action.

(16) I.e., provided with a flax lining or, according to another interpretation, stitched with a flaxen thread (cf. Rashi).

(17) Ezek. XVI, 10, E.V. sealskin. The tahash, the skin of which was used for one of the coverings of the roof of the Tabernacle made by Moses in the wilderness, formed a class of its own, and the Sages could not determine whether it belonged to the class of wild or of domestic animals (cf. Shab. 28b). The mention in the context of shoeing of tahash, the use of the skin of which only was recorded in the Scriptures, is taken to imply that the shoe spoken of in the Scriptures was invariably made of a material similar to that of the skin of tahash, viz., leather. Hence the inadmissibility in halizah of any shoe that was not wholly made of leather.

(18) Since this animal only was mentioned.

(19) Lit., ‘yes’.

(20) Lit., ‘shoe’ (bis). V. Deut. XXV, 9 and 10.

(21) That all materials are admissible.

(22) Ezek. XVI, 10.

(23) The tahash also had hair on its skin,.

(24) And is not included in the term of ‘shoe’.

(25) Lit., ‘that that’.

(26) חלצה (rt, חלין), E.V. and loose.
(27) Deut. XXV, 9.
(28) וחלצו (rt. חלין), v. supra n. 9.
(29) Lev. XIV, 40.
(30) Of והחצה in Deut. XXV, 9.
(31) I.e., the tying on and not the taking off of the shoe.
(32) החלצו (rt. חלין) v. supra note 9.
(33) Num. XXXI, 3.
(34) יחלין, (rt חלין). V. supra note 9.
(35) Job XXXVI, 15, which shews that the rt. חלין also signifies 'putting on', 'tying on'.
(36) יחלצו cf. E.V. He delivereth the afflicted by His affliction.
(37) Lit., 'but that which it is written'.
(38) Ps. XXXIV, 8. ויחלצם (rt חלין), v. supra p. 705, nn. 9 and 18.
(39) Lit., 'but that which it is written'.
(40) יחליץ(rt. חלין).
(41) Isa. LVIII, 11.
(42) That were enumerated in the context. Cf. ibid. 8-14.
(43) Of יחליץ.
(44) Which shews that the rt. חלין signifies also 'strengthening', 'equipping', 'arming', and thus also 'tying on'.
(45) Deut. XXV, 9.
(46) Lit., 'strengthening', 'arming'.
(47) Instead of 'from off'.
(48) And in case his foot was amputated, no halizah would be possible.
(49) מעל lit., 'from above', i.e., even from that part which is above his foot.
(50) Of וחלצה in Deut. XXV, 9.
(51) V. Glos.
(52) [Probably R. Gamaliel of Jabneh, after the destruction of the Temple in 70 C.E. V. Herford, Christianity in the Talmud p. 355].
(53) I.e., severed his connection with them.
(54) חלין.
(55) E.V. 'He hath withdrawn Himself from them'. Hos. V, 6.
(56) Certainly not. It is the sister-in-law that performs the halizah while the brother-in-law only submits to it. God, in the image of the text quoted, standing towards Israel in the relationship of a Ievir to his sister-in-law, cannot perform the halizah, and his action is, so to speak, invalid, the bond between him and His people remaining in force.
(57) Cur. edd. 'we learned'. Cf. marg. note a.l. and Shek. III, 2.
(58) In order that he may be free from the suspicion that he concealed some money in his socks or in the border of his tunic.
(59) Even when suspicion is out of the question.
(60) Out of respect for the place. Now, since a sock is permitted in the Temple court where a shoe is for. bidden it is obvious that a sock is not included in the category of shoe.
(61) On the Day of Atonement, when as a part of the affliction (cf. Lev. XVI, 29) the wearing of shoes is forbidden.
(62) Which shows that a sock is also regarded as a shoe.
(63) Cf. supra n. 6.
(64) In reply to the contradiction that was pointed out.
(65) Which forbids the wearing of a sock on the Day of Atonement.
(66) That dealing with entry into the Temple court.
(67) Which is contradictory to the Baraitha previously cited there the wearing of socks was forbidden even where one only walked from one bed to another.
(68) Lit., 'but not'?
(69) That a difference is drawn between a sock of felt or cloth and one of leather. While the former is not regarded as a shoe the latter is.
(70) Or, according to others, 'bamboo'.

(71) Of the levir. Lit., 'the hollowed stump of the cripple'.
(72) One of the cushions which a cripple ties to his feet.

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whether he was standing, sitting or reclining, and also if her halizah was performed with a blind man, her halizah is valid. [If her halizah] however, [was performed] with a torn shoe that did not cover the greater part of the [levir's] foot, with a broken sandal which does not hold the greater part of his foot, with a support of the hands,[1] or with a cloth sock, and also where her halizah was performed with a minor, her halizah is invalid.[2]

Whose [view is represented in the first statement mentioning] the artificial foot?[3] — [Obviously that of] R. Meir, for we learned: A cripple may go out [on the Sabbath][4] with his artificial foot;[5] so R. Meir, and R. Jose forbids it;[6] [but the latter statement]: 'With a cloth-sock'[7] can only represent the view of the Rabbis![8] — Abaye replied: Since the latter statement [represents the opinion of] the Rabbis, the first also [must represent the opinion of] the Rabbis, the first [dealing with an artificial foot that was] covered with leather.[9]

Said Raba to him:[10] What, however, [is the law if it[11] was] not covered with leather? Is it then unfit![12] If so, instead of teaching in the latter statement, 'With a cloth sock',[13] a distinction should have been drawn in [respect of the artificial foot] itself: This[14] applies only where it was covered with leather, but if it was not covered with leather it is unfit![12] Rather, said Raba, since the first statement represents the view of R. Meir, the latter also represents the view of R. Meir, the one[11] affording protection[15] while the other[16] affords no protection.[17]

Amemar stated: When a levir submits to halizah he must press down his foot [to the ground]. Said R. Ashi to Amemar: Was it not taught [that the halizah was valid] 'whether he[18] was standing, sitting or reclining'? — Read: And in all these cases, only if he pressed his foot [to the ground].

Amemar further stated: A man who walks on the upper side of his foot[19] must not submit to halizah. Said R. Ashi to Amemar: But, surely, it was taught: 'Supports of the feet';[20] does not [this signify] that such [a cripple][21] may submit to halizah with a support! No; [the meaning is] that he may give it to another person[22] who is allowed to submit to halizah [with it].

Said R. Ashi: According to Amemar's ruling neither Bar Oba nor Bar Kipoi[23] could submit to halizah.

[IF THE SHOE WAS WORN] BELOW THE KNEE etc. A contradiction was pointed out: Regalim,[24] excludes[25] stump-legged cripples![26] — Here[27] it is different since it was written in Scripture, From off his foot.[28] If so, [halizah should be permissible] above the knee also! — From off but not 'from off the from off'.[29]

Said R. Papa: From this[30] it may be inferred that the istewira[31] reaches down to the ground;[32] for were it to be imagined that it is disconnected,[33] it [would be situated] above [the foot], while the leg [would be] above that which is above [the foot].[34] R. Ashi, however, said: It may even be said that it is disconnected, but any part adjacent to the foot is legally regarded as the foot itself.[35]

ABOVE THE KNEE. R. Kahana raised an objection: And against her afterbirth that cometh out from between her feet![36] — Abaye replied: When a woman kneels down to give birth she presses her heels against her thighs and thus gives birth. Come and hear: He had neither dressed his feet nor trimmed his beard![37] — This is a euphemistic expression. Come and hear: And Saul went in to cover his feet![38] — This is a euphemistic expression. Come and hear: Surely he is covering his feet in the

cabinet of the cool chamber![39] — This is a euphemistic expression. Between her feet etc.![40] — This is a euphemistic expression.

R. Johanan Said: That profligate[41] had seven sexual connections on that day;[42] for it is said, Between her feet he sunk, he fell, he lay; at her feet he sunk, he fell; where he sunk there he fell down dead.[43] But, surely she[44] derived gratification from the transgression! R. Johanan replied in the name of R. Simeon b. Yohai: All the favours of the wicked[45]

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(1) Cf. supra n. 6, one of the cushions tied to a cripple's hands.

(2) Thus it has been shown that in respect of halizah a legal distinction is made between the two kinds of sock. Cf. supra n. 3.

(3) Regarding it as a proper shoe. Cf. supra n. 5.

(4) When carrying from one domain into another is forbidden.

(5) Because it is regarded as a shoe which one may wear on the Sabbath.

(6) Shab. 65b, Yoma 78b.

(7) That halizah with it is invalid.

(8) Who differ from R. Meir in regarding neither the artificial foot nor the cloth sock as a shoe. According to R. Meir a cloth sock, like an artificial foot, is regarded as a shoe. Does then the Baraitha represent the contradictory views of R. Meir and the Rabbis!

(9) Hence its admissibility as a shoe for halizah.

(10) Abaye.

(11) The artificial foot.

(12) For halizah.

(13) That halizah with it is invalid.

(14) The admissibility of the artificial foot for halizah.

(15) For the Ieg. Hence it is regarded as a shoe that is admissible for halizah.

(16) A cloth sock.

(17) Hence its unfitness for halizah. It is not the material of which it is made but its unsuitability as a covering of the foot that causes its unfitness.

(18) The levir.

(19) Owing to a deformity in his foot (cf. Rashi). לִיחתָא the ‘fibula’, ‘splint-bone's ‘his feet being turned outward so as to form an obtuse angle’ (Jast.).

(20) Are among the objects that may be used as shoes for the purpose of halizah.

(21) In the conditions just described.

(22) Whose foot is not deformed.

(23) These were men with deformed feet. Cf. M.K. 25b.

(24) רגלים Ex. XXIII, 14 (E.V., times) referring to the Festival pilgrimages to Jerusalem.

(25) Since רגלים may also be taken as the plural of רגל foot.

(26) Hag. 3a. בעלי קבין v. GIos. s.v. kab. As these cripples are deprived of their feet they (v. supra n. 2) are exempt from the duty of the pilgrimages (v. supra n. 1). Thus it follows that the leg is not regarded as a ‘foot’, which is contrary to our Mishnah!

(27) The case of halizah.

(28) Deut. XXV, 9, מעל רגלו, lit., ‘from above his foot’, i.e., any part of the leg.

(29) V. supra n. 5. The part of the leg between the knee and the foot is ‘above the foot’; and the part above the knee is ‘above the above’.

(30) Our Mishnah which permits halizah on any part of the leg below the knee.

(31) [The ankle-bone (talus) v. Katzenelsohn, Talmud und Medizin, p. 384.]

(32) There is legally no division between the foot and this bone.

(33) From the foot.

(34) And halizah on that part would be invalid.

(35) Hence any part between it and the knee may be legally regarded as directly above the foot.

(36) Deut. XXVIII, 57; which shews that the region of the thighs is also included in the term of feet.

(37) II Sam. XIX, 25. Cf. supra n. 13.
(38) I Sam. XXIV, 4, expression for urination.
(39) Judges III, 24. Cf. supra n. 15.
(40) Ibid. V, 27. Cf. supra nn. 13 and 15.
(41) Sisera.
(42) When he fled from Barak and Deborah.
(43) Judges V, 27. Each of the expression he sunk כרע and he fell נפך occurs three times, and he lay שכב occurs once.
(44) Jael.
(45) Which they do for the righteous.

Talmud - Mas. Yevamoth 103b

are evil for the righteous;[1] For it is said, Take heed to thyself that thou speak not to Jacob either good or evil.[2] Now, as regards evil, one can perfectly well understand [the meaning][3] but why not good? From here then it may be inferred that the favour of the wicked is evil for the righteous.

There,[4] one can well see the reason,[5] since he[6] might possibly mention to him the name of his idol;[7] what evil, however, could be involved here?[8] — That of infusing her with sensual lust. For R. Johanan stated: When the serpent copulated with Eve,[9] he infused her[10] with lust. The lust of the Israelites who stood at Mount Sinai,[11] came to an end, the lust of the idolaters who did not stand at Mount Sinai did not come to an end.

IF THE WOMAN PERFORMED THE HALIZAH WITH A SANDAL THAT DID NOT BELONG TO HIM etc. Our Rabbis taught: [From the expression] His shoe[12] I would only know that his own[13] shoe [is suitable];[14] whence, however, is it deduced that anybody's shoe is suitable?[15] Hence was the term 'shoe' repeated,[16] thus indicating the suitability of anyone's shoe.[17] If so, why was the expression, 'His shoe', at all used? — 'His shoe implies one which he can wear, excluding a large one in which he cannot walk, excluding a small one which does not cover the greater part of his foot, and excluding also a sandal which consists of a sole but has no heel.

Abaye once stood in the presence of R. Joseph when a sister-in-law came to perform halizah. 'Give him',[18] he[19] said to him,[20] your sandal', and [Abaye] gave him' his left sandal. 'It might be suggested', he[19] said to him,[20] 'that the Rabbis spoke[21] only of a fait accompli; did they, however, speak also of what is permissible ab initio?' The other[20] replied: If so, in respect of a sandal that is not the levir's own, it might also be suggested that the Rabbis spoke[22] only of a fait accompli; did they, however, speak also of what is permissible ab initio! 'I', the first[19] answered him, 'meant to tell you this: Give it to him and transfer possession to him'.[23]

A WOODEN SANDAL. Who is the Tanna [whose view is expressed in this ruling]?[24] — Samuel replied: The view is that of R. Meir. For we learned: A cripple may go out [on the Sabbath][25] with his wooden stump; so R. Meir,[26] while R. Jose forbids it.[27] Samuel's father explained:[28] With one that is covered with leather, [the ruling representing] the general opinion.[29]

R. Papi stated in the name of Raba: No halizah may be performed with a sandal that is under observation;[30] a halizah, however, that has been performed [with it] is valid. No halizah may be performed with a sandal, the leprous condition of which has been confirmed;[31] and even a halizah that had already been performed [with it] is invalid.[32] R. Papa, however,stated in the name of Raba: No halizah may be performed either with a sandal under observation[30] or with one the leprous condition of which had been confirmed;[31] a halizah, however, that had been performed [with either] is valid.

An objection was raised: A house locked up[33] imparts uncleanness from within,[34] [and a house] confirmed in its leprous condition [imparts uncleanness][34] both within and without. The one as well as the other imparts uncleanness to anyone entering.[35] Now, if it is to be assumed [that an object doomed to destruction is regarded] as already crushed to dust,[36] surely [it may be objected] the requirement [there][37] is that He goeth into the house;[38] but [such a house] is not in existence![39] — There[37] it is different, because Scripture said, And he shall break down the house,[40] even at the time of breaking down it is still called 'house'.

Come and hear: A [leprous] strip of cloth[41] measuring three [finger-breadths] by three,[42] even if [in volume] it does not amount to the size of an olive,[43] causes, as soon as the greater part of it has entered a clean house, the defilement of that house.[44] Does not [this refer to a strip of cloth the uncleanness of which] had been confirmed![45] No; [it refers to] one under observation.[46] But if so, read the final clause: If in volume[47] it constituted the size of many olives[48] , as soon as a portion of it of the size of an olive[49] enters a clean house, it causes the uncleanness of that house.[50] Now, if you grant [that the reference is to a strip] of confirmed leprosy one can well understand why it was compared[51] to a corpse;[52] if, however, you maintain [that the reference is to a strip] under observation[53] why [it may be objected] was it compared to a corpse! — There[54] it is different,[55] for Scripture said, And he shall burn the garment,[56] even at the time of burning it is still called 'garment.'[57] Then let [halizah] be deduced from it![58] — A prohibition cannot be deduced from [the laws of] uncleanness.[59]

Raba stated: The law is that [a sister-in-law] may not perform halizah either with a sandal under observation,[60] or with a sandal of confirmed leprosy, or with a sandal belonging to an idol;[61] if, however, she has performed halizah [with either of these], her halizah is valid.[62] [With a sandal] that was offered to an idol[63]

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(1) Cf. Hor. 10b, Naz. 23b.

(2) Gen. XXXI, 24.

(3) לְחַיֵּי adv. or interr. (lit., 'for life'), 'very well'.

(4) In the warning to Laban.

(5) Why even good should not be spoken.

(6) Laban.

(7) Cf. Gen. XXXI, 30.

(8) In the incident with Jael.

(9) In the Garden of Eden, according to a tradition.

(10) I.e., the human species.

(11) And experienced the purifying influence of divine Revelation.

(12) Deut. XXV, 9.

(13) The levir's.

(14) For his own halizah.

(15) For the halizah of any other person.

(16) Lit., 'it was stated shoe (bis)'.

(17) Lit., 'from any place'.

(18) The levir.

(19) R. Joseph.

(20) Abaye.

(21) In ruling that halizah with a left-foot sandal is valid. V. our Mishnah.

(22) Cf. supra n. 4, mutatis mutandis.

(23) As a gift, so that the shoe might become the levir's property.

(24) Permitting halizah with a wooden sandal.

(25) When carrying from one domain into another is forbidden.

(26) Who regards the cripple's wooden stump as a proper shoe.

(27) Shab. 25b. As in respect of the Sabbath R. Meir regards the stump as a shoe, so also in respect of halizah does he regard it as a shoe.
(28) Our Mishnah. Cf. supra n. 7.
(29) All agree that a wooden stump that is furnished with a leather covering is admissible for halizah.
(30) מוסגר, lit., 'locked up', a sandal that, in accordance with Lev. XIII, 50, is shut up for a certain period so that it may be ascertained whether the plague-spot that appeared on it is of the clean or unclean type. Cf. ibid. 47ff.
(31) מוחלט, rt. חלט, 'to tie up' (Jast.).
(32) Such a sandal, being doomed to destruction by burning (Lev. XIII, 55), is legally regarded as non-existent.
(33) For the purpose of observation. Cf. p. 712, n. 13 and Lev. XIV, 34ff.
(34) By contact.
(35) Neg. XIII, 4 though no contact took place.
(36) And, consequently, as legally non-existent. Cf. supra note 15.
(37) In the case of a leprous house.
(38) Lev. XIV, 46, emphasis on house. Only then is the person unclean.
(39) Since it is condemned to be broken down. V. supra n. 4. How, then, could uncleanness be imparted by that which does not exist?
(40) Lev. XIV, 45.
(41) Cf. ibid. XIII, 47.
(42) These are the minimum measurements required for a piece of cloth to be termed garment.
(43) Which in the case of a corpse is the minimum that may impart uncleanness.
(44) Tosef. Neg. VII. A leprous garment, like a leper, imparts uncleanness to all objects in a house as soon as it is brought into that house, though none of the objects have come in actual contact with it.
(45) In consequence of which it is doomed to destruction by burning. Now, if what is doomed to destruction is legally regarded as non-existent, how could such a strip impart uncleanness?
(46) Cf. supra p. 712, n. 13.
(47) That of a strip of cloth of the size mentioned.
(48) If the material, for instance, was very thick.
(49) Though its measurements were less than the greater part of three finger-breadths by three.
(50) Neg. XIII, 4.
(51) In the fixing of its minimum, in respect of imparting uncleanness, to be that of the size of an olive.
(52) Which also imparts uncleanness if a small part of it of the size of an olive only remained. Confirmed leprosy may well be compared to a corpse. Cf. Num. XII, 22: Let her not . . . be as one dead. The reference is to Miriam who was at the time leprous (v. ibid. 10) and Aaron requested Moses that she may not be confirmed in her leprosy and thus become like a corpse.
(53) V. supra p. 712, n. 13 mutatis mutandis.
(54) The law of uncleanness in respect of the strip of leprous cloth.
(55) From the law of halizah where an object doomed to destruction is regarded as non-existent.
(56) Lev. XIII, 52, emphasis on burn and garment.
(57) Hence it may impart uncleanness even where it is doomed to destruction.
(58) And a sandal of confirmed leprosy should also be admissible for halizah.
(59) Which form a peculiar class of their own.
(60) Cf. supra p. 712, n. 13.
(61) Which is put on the idol when it is moved from place to place (Rashi).
(62) Because the sandal under observation is not doomed to destruction; the sandal of confirmed leprosy is regarded as a garment despite its doom, (as deduced supra from Lev. XIII, 52); while the sandal of the idol, being only an accessory to it, is not doomed to burning. Though no benefit may be derived therefrom it is admissible for halizah, because the fulfilment of a precept is not regarded as a 'benefit'.
(63) As part of its worship, and which must consequently be destroyed.

Talmud - Mas. Yevamoth 104a

or [with one] that belonged to a condemned city[1] or [with one] that was made[2] in honour of a [dead]

elder,[3] no halizah may be performed; and even a halizah that has been performed with it is invalid.

Said Rabina to R. Ashi: In what respect is [the sandal] that was made in honour of a [dead] elder different [from an ordinary sandal]? Is it because it was not made for walking? That of the Beth din also[4] was not made for walking! — The other replied: Should the attendant of the Beth din use it for walking, would the Beth din object![5]

MISHNAH. IF [A SISTER-IN-LAW] PERFORMED THE HALIZAH AT NIGHT, HER HALIZAH IS VALID. R. ELEAZAR, HOWEVER, REGARDS IT AS INVALID. [IF SHE PERFORMED IT] WITH [THE LEVIR'S] LEFT SHOE, HER HALIZAH IS INVALID, BUT R. ELEAZAR DECLARES IT TO BE VALID.

GEMARA. May it be suggested that they[6] differ on the following principle: The one Master[7] holds the opinion that lawsuits are to be compared to plagues,[8] while the other Master[9] holds the opinion that lawsuits cannot be compared to plagues?[10] — No; all agree that lawsuits cannot be compared to plagues; for should they be compared, even the close of a legal process could not have been allowed at night.[11] Here, however, they[12] differ on the following principle: Ones Master[9] holds that halizah is like the commencement of legal proceedings[13] and the other Master[14] holds that halizah is like the close of the proceedings.[15]

Rabbah[16] b. Hiyya of Ktesifon[17] carried out a halizah with a felt sock, with no other men present, at night. Said Samuel: How great is his authority[18] in acting on the view of one individual![19] What [however, could be his] objection?[20] If [against the use of the] felt sock, an anonymous Baraitha[21] [permits it]![22] If [against his acting at] night, our anonymous Mishnah[23] [permits this]![24] — His objection, however, is [that Rabbah acted] alone. How [he objected] could he act alone when it was only one individual who expressed approval of such a procedure![25] For we learned: If [a sister-in-law] performed halizah in the presence of two or three men, and one of them. was discovered to be a relative or in any other way unfit [to act as judge], her halizah is invalid; but R. Simeon and R. Johanan ha-Sandelar declare it valid. Furthermore, it once happened that a man submitted to halizah with none present but himself and herself in a prison, and when the case came before R. Akiba he declared the halizah valid.[26]

And[27] if you prefer I might say: All these [rulings] also are the views of[28] an individual. For it was taught: R. Ishmael son of R. Jose stated, 'I saw R. Ishmael b. Elisha carry out a halizah with a felt sock, with no other men present, and [this occurred] at night'.

WITH [THE LEVIR'S] LEFT SHOE HER HALIZAH etc. What is the Rabbis' reason? 'Ulla replied: [The meaning of] 'foot' [here][29] is deduced from that of foot[30] in the context of the leper. As there[31] it is the right[32] so here[33] also it must be the right. Does not R. Eleazar, then, deduce [the meaning of] foot [here][33] from that of foot[34] in the context of the leper? Surely, it was taught: R. Eleazar stated, Whence is it deduced that the boring [of the ear of a Hebrew slave][35] must be performed on his right ear? — For the term ear was used here[36] and the term 'ear' was also used elsewhere;[37] as there[37] it is the right ear[38] so here also it is the right ear![39] — R. Isaac b. Joseph replied in the name of R. Johanan: The statement is to be reversed.[40]

Raba said: There is, in fact, no need to reverse [the statement,[36] the reply to the objection[41] being that] the terms 'ear'[42] [are both] free [for the deduction];[43] the terms of 'foot,'[44] however, are not free for deduction.[45] But even if [one of the texts] is not free for deduction, what objection can be raised [against the deduction]?[46] — It may be objected: The case of the leper is different,[47] since he is also required [to bring] cedar-wood and hyssop and scarlet.[48] MISHNAH. [IF A SISTER-IN-LAW] DREW OFF [THE LEVIR'S SHOE] AND SPAT,[49] BUT DID NOT RECITE [THE FORMULAE],[50] HER HALIZAH IS VALID.[51] IF SHE RECITED [THE FORMULAE] AND

SPAT, BUT DID NOT DRAW OFF THE SHOE, HER HALIZAH IS INVALID.[52] IF SHE DREW OFF THE SHOE AND RECITED [THE FORMULAE] BUT DID NOT SPIT, HER HALIZAH, R. ELIEZER[53] STATED, IS INVALID; AND R. AKIBA STATED: HER HALIZAH IS VALID.

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(1) All the spoil of which was to be burned. Cf. Deut. XIII, 13ff.

(2) As a part of his shroud.

(3) Not being used for walking it cannot be regarded as a shoe.

(4) The approved sandal kept by a Beth din for the special purpose of halizah ceremonials.

(5) Presumably not. Hence it may well be regarded as a shoe made for the purpose of walking.

(6) The first Tanna and R. Eleazar in our Mishnah.

(7) The first Tanna.

(8) Both having been mentioned in the same Scriptural verse (Deut. XXI, 5). As plagues may be examined by the priest in the daytime only (based on Lev. XIII, 24: 'On the day when raw flesh is seen in him',) so may lawsuits also be dealt with by the court in the daytime only. Halizah involving as it does the question of the widow's kethubah is regarded as coming under the category of lawsuits.

(9) R. Eleazar.

(10) Cf. Sanh. 34b, Nid. 500

(11) But, as a matter of fact, this was explicitly allowed. Cf. Sanh. 32a.

(12) The first Tanna and R. Eleazar in our Mishnah.

(13) Which must take place in the daytime only. Cf. Sanh. 34b.

(14) The first Tanna.

(15) Which is allowed even in the night-time. Cf. p. 715, n. 8.

(16) Others, 'Raba'. Cf. Alfasi and רא"ש.

(17) On the eastern bank of the Tigris in the south of Assyria.

(18) Ironical exclamation.

(19) The ruling of the majority being against this opinion.

(20) Against Rabbah's action.

(21) Lit., 'it was taught'.

(22) Supra 102b. And the halachah, as a rule, is in agreement with the anonymous ruling.

(23) Cf. Rashi, s.v. לילה a.l. Cur. edd., it was taught'.

(24) Cf. supra n. 9.

(25) Lit., 'taught it'.

(26) Thus it is proved that it is an individual opinion, that of R. Akiba, that permits halizah in the absence of witnesses.

(27) Cf. Bah. Cur. edd. insert: 'And R. Joseph b. Manyumi stated in the name of R. Nahman that the halachah is not in agreement with that pair.' This occurs infra 105b, but is irrelevant here.

(28) Lit., 'taught them'.

(29) Deut. XXV, 9, dealing with halizah.

(30) Lev. XIV, 14.

(31) In the case of the leper.

(32) Since the text explicitly mentions it.

(33) In halizah.

(34) Lev. XIV, 14.

(35) Who refuses to go out free. V. Ex. XXI, 5f.

(36) V. previous note.

(37) With the leper. Lev. XIV, 14.

(38) Since the text explicitly mentions it.

(39) Kid. 15a, which shews that R. Eleazar does make deduction from the terms used in the context of the leper.

(40) In our Mishnah. It is R. Eleazar, and not the first Tanna, who ruled that halizah with the left shoe is invalid.

(41) As to why R. Eleazar draws an analogy between the terms of ear and not between those of foot.

(42) Lit., 'ear, ear'.

(43) Both in the case of leper (Lev. XIV, 14 and 17) and in that of the slave (Ex. XXI, 6 and Deut. XV, 17) one of the terms is superfluous and, therefore, free for the deduction that the boring must be performed on the right ear.

(44) Lit., ‘foot, foot’.
(45) Though in the context of the leper the term foot occurs twice (Lev. XIV. 14 and 17), in that of halizah it appears only once (Deut. XXV, 9). As in the latter text it is required for the context itself no deduction can be made from such an analogy unless it is one that is free from all possible objection.
(46) Cf. supra n. 14 final clause. Since no refutation can be advanced, the deduction, though based on texts of which one only is free for the purpose, should hold!
(47) From that of halizah.
(48) On the day of his cleansing. (Cf. Lev. XIV, 4). The laws of the leper, being in this respect more rigid than those of halizah, may also be more rigid in respect of the requirement of the right shoe. Hence R. Eleazar's opinion that no deduction is to be made from the analogous words, and that halizah with the left shoe is, therefore, valid.
(49) Cf. Deut. XXV, 9.
(50) Prior to the halizah she declares (a) ‘My husband's brother refuseth to raise up unto his brother a name in Israel; he will not perform the duty of a husband's brother unto me’ (ibid. 7). After the halizah she exclaims, (b) ‘So shall it be done unto the man that doth not build up his brother's house’ (ibid. 9).
(51) The omission of an act, but not that of a formula, renders a halizah invalid. V. infra.
(52) Cf. supra n. 3.
(53) Cf. marg. note. Cur. edd., ‘Eleazar’.

Talmud - Mas. Yevamoth 104b

SAID R. ELIEZER TO HIM: [SCRIPTURE STATED], SO SHALL BE DONE,[1] ANYTHING WHICH IS A DEED[2] IS A SINE QUA NON.[3] R. AKIBA, HOWEVER, SAID TO HIM, FROM THIS VERY TEXT[4] PROOF [MAY BE ADDUCED FOR MY VIEW]: SO SHALL BE DONE UNTO THE MAN,[5] ONLY THAT WHICH IS TO BE DONE UNTO THE MAN.[6]

IF A DEAI[7] LEVIR SUBMITTED TO HALIZAH, OR IF A DEAF[7] SISTER-IN-LAW PERFORMED HALIZAH, OR IF A HALIZAH WAS PERFORMED ON A MINOR, THE HALIZAH IS INVALID.

[A SISTER-IN-LAW] WHO PERFORMED HALIZAH WHILE SHE WAS A MINOR MUST AGAIN PERFORM HALIZAH WHEN SHE BECOMES OF AGE; AND IF SHE DOES NOT AGAIN PERFORM IT, THE HALIZAH IS INVALID.

IF [A SISTER-IN-LAW] PERFORMED HALIZAH IN THE PRESENCE OF TWO OR THREE MEN AND ONE OF THEM WAS DISCOVERED TO BE A RELATIVE OR ONE IN ANY OTHER WAY UNFIT [TO ACT AS JUDGE], HER HALIZAH IS INVALID; BUT R. SIMEON AND R. JOHANAN HA-SANDELAR DECLARE IT VALID. FURTHERMORE,[8] IT ONCE HAPPENED THAT A MAN SUBMITTED TO HALIZAH PRIVATELY BETWEEN HIMSELF AND HERSELF IN A PRISON, AND WHEN THE CASE CAME BEFORE R. AKIBA HE DECLARED THE HALIZAH VALID.

GEMARA. Raba said: Now that you have stated[9] that the recital [of the formulae][10] is not a sine qua non, the halizah of a dumb man and a dumb woman is valid.

We learned: IF A DEAF LEVlr SUBMITTED TO HALIZAH, OR IF A DEAF SISTER-IN-LAW PERFORMED HALIZAH, OR IF A HALIZAH WAS PERFORMED ON A MINOR, THE HALIZAH IS INVALID. Now, what is the reason?[11] is it not because these are unable to recite [the formulae]![12] — No; because they are not in complete possession of their mental faculties.[13] If so, [the same applies] also to a dumb man and to a dumb woman![14] — Raba replied: A dumb man and a dumb woman are in full possession of their mental faculties, and it is only their mouth that troubles[15] them. But, surely, at the school of R. Jannai it was explained [that the reason why a deaf-mute is unfit for halizah is] because [the Scriptural instruction], He shall say[16] or She shall say[17] is

inapplicable to such a case![18] — [Say] rather, if Raba's statement was ever made it was made in connection with the final clause: IF A DEAF LEVir SUBMITTED TO HALIZAH, OR IF A DEAF SISTER-IN-LAW PERFORMED HALIZAH, OR IF A HALIZAH WAS PERFORMED ON A MINOR, THE HALIZAH IS INVALID. [It is in connection with this that] Raba said: Now that you have stated that the recital of [the formulae][19] is a sine qua non, the halizah of a dumb man or a dumb woman is invalid. And our Mishnah[20] [is based on the same principle] as [that propounded by] R. Zera; for R. Zera stated: Wherever proper mingling[21] is possible actual mingling is not essential,[22] but where proper mingling is not possible[23] the actual mingling is a sine qua non.[24]

[The following ruling] was sent to Samuel's father: A sister-inlaw who spat[25] must perform the halizah.[26] This implies that she is rendered unfit for the brothers;[27] but whose view is this?[28] If it be suggested [that it is that of] R. Akiba, it may be objected:[29] If R. Akiba said that it[30] was not indispensable[31] even where the actual commandment [of halizah is being performed, in which case] it could be argued that it could be given the same force as [the burning] of the altar portions of the sacrifices. which is not an essential [rite] when [the portions] are not available,[32] and yet is a sine qua non when they are available,[33] [would he regard it[30] as a reason for the woman] to become thereby unfit for the brothers! [Should it be suggested], however, [that the view[34] is that] of R. Eliezer,[35] surely [it may be retorted] are two acts which jointly effect permissibility,[36] and any two acts that jointly effect permissibility are ineffective one without the other![37] — Rather, the view[38] is in agreement with that of Rabbi. For it was taught: The Pentecostal lambs[39] cause the consecration of the bread[40] only by their slaughter.[41] In what manner?[42] If they were slaughtered for the purpose of the festival sacrifices[43] and their blood also was sprinkled with such intention,[43] the bread becomes consecrated. If they were not slaughtered for the purpose of the festival sacrifices,[44] though their blood was sprinkled for the proper purpose,[43] the bread does not become consecrated. If they were slaughtered for the purpose of the festival sacrifices[43] and their blood was sprinkled for another purpose,[45] [the bread] is partly consecrated and partly unconsecrated;[46] so Rabbi. R. Eleazar son of R. Simeon, however, stated: [The bread] is never consecrated unless the slaughtering [of the lambs] and the sprinkling of their blood were both intended for the proper purpose of the festival.[47]

Did R. Akiba, however, hold that the act of spitting does not render the woman unfit?[48] Surely it was taught: If she drew off [the levir's shoe] but did not

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(1) Deut. XXV, 9, emphasis on done. יעשה (rt. עשה). V. infra n. 7.

(2) מעשנ (rt. עשה). Cf. supra n. 6.

(3) The omission of any act, therefore, renders the halizah invalid.

(4) Lit., ‘from there’.

(5) Deut. ibid., emphasis on man.

(6) As, e.g., drawing off the shoe which is an act on the body of the levir. Spitting, therefore, is excluded.

(7) The ‘deaf’ spoken of in the Talmud literature is always to be understood as a deaf-mute. Cf. Ter. I, 2.

(8) I.e., not only in a case where there were at least two judges but even where no one beside the levir and the sister-in-law ‘vas present.

(9) In the first clause of our Mishnah.

(10) V. supra p. 718, n. 2.

(11) For the invalidity.

(12) Cf. supra p. 718, n. 12. How then could it be said that recital of the formulae is not an indispensable condition?

(13) The minor because of his immature age, and the deaf and dumb because of his physical defects which adversely affect his mental powers.

(14) Why then is their halizah valid?

(15) Lit., ‘pains

(16) Cf. Deut. XXV, 8.

(17) Cf. ibid. 7 and 9.

(18) How then can halizah of a dumb person be regarded as valid!

(19) V. supra p. 718, n. 2.
(20) Which stated that if she did not recite the formulae the halizah is valid
(21) Of the flour and the oil of a meal-offering. With one log of oil for sixty ‘esronim (v. Glos.) of flour, and a maximum of sixty ‘esronim in one pan, perfect mingling is possible.
(22) Even if no mingling has taken place the meal-offering is acceptable.
(23) Where, e.g., the proportions of the mixture were less than a log for sixty ‘esronim or where more than sixty ‘esronim were placed in one pan.
(24) Men. 18b, 103b. With halizah also, though in the case of persons who are able to recite the prescribed formulae, the omission does not invalidate the halizah, in the case of dumb persons for whom it is physically impossible ever to recite the formulae, the omission of it does render the halizah invalid.
(25) In the presence of the Beth din.
(26) Though her act was not a part of a formal halizah ceremony, she forfeits thereby her right ever to contract levirate marriage with any of the levirs.
(27) V. supra n. 7.
(28) That an informal act of spitting renders the woman unfit for marriage with the brothers.
(29) Lit., ‘now’.
(30) The act of spitting.
(31) Which shews what little significance R. Akiba attaches to this part of the ceremony.
(32) If, for instance, they were lost or became unfit for the altar owing to uncleanness. Cf. Pes. 59b.
(33) So in the case of halizah, R. Akiba might have been expected to regard the spitting, which is an act that can be performed, as an essential.
(34) V. supra note 9.
(35) Cur. edd., ‘Eleazar’ (cf. supra p 718, n. 5); who stated in our Mishnah that the act of spitting was indispensable. (17) Drawing off the shoe and spitting.
(36) Of the sister-in-law to marry a stranger.
(37) Cf. Men. 89a.
(38) V. supra p. 720, n. 9.
(39) V. Num. XXVIII, 26-31.
(40) The two loaves that were also brought to the Temple on Pentecost. V. Lev. XXIII, 17.
(41) The waving of the loaves and the lambs together, which precedes the slaughter of the latter, does not effect the proper consecration of the bread.
(42) Is consecration effected even after slaughtering of the lambs.
(43) Lit., ‘for their name’.
(44) Lit., not for their name’; i.e., if they were intended to be merely sacrifices, not specifically those prescribed for the Pentecost festival.
(45) Cf. supra n. 9.
(46) I.e., it is subject to some, but not to all, of the restrictions of properly consecrated bread.
(47) Cf. supra note 8. Pes. 13b, Men. 47a. Thus it has been shewn that according to Rabbi, where two acts such as proper slaughtering and proper sprinkling are required, consecration is partially effected even though the former act alone was properly performed. Similarly, in respect of halizah, one of the prescribed acts is sufficient to render the woman unfit for the levirate marriage.
(48) For the levirate marriage.

Talmud - Mas. Yevamoth 105a

spit nor recite,[1] her halizah is valid. If she spat but did not draw off the shoe nor recite,[2] her halizah is invalid[3] if she recited[2] but did not spit nor draw off the shoe, there is here no reason whatsoever for apprehension.[4] Now, whose [view is here represented]? If it be suggested [it is that of] R. Eliezer, [how could it be stated that] ‘if she drew off [the levir's shoe] but did not spit nor recite, her halizah is valid’ when, surely, R. Eliezer said: SO SHALL BE DONE, ANYTHING WHICH IS A DEED IS A SINE QUA NON? It is consequently obvious [that it is the view of] R. Akiba; and yet it was stated that ‘if she spat but did not draw off the shoe nor recite, her halizah is invalid’. To whom,

[however, does the invalidity cause her to be forbidden]?[5] If it be suggested, 'To strangers';[6] is not this [it may be retorted] self-evident? Is it a halizah [like this that would enable the sister-inlaw] to become free to marry a stranger![7] It must therefore, be admitted[8] [that the validity refers to her state of prohibition] to the brothers.[9] Thus you have our contention proved.

According to R. Akiba, wherein lies the legal difference between the act of spitting and that of reciting?[10] — Recital[11] that must take place both at the commencement[12] [of the halizah ceremony] and at its conclusion[13] cannot be mistaken;[14] spitting, however, which does not take place at the beginning but only at the end, might be mistaken [for a proper halizah],[15] and thus[16] a proper halizah also would be permitted to marry the brothers.[17]

Others say that the following ruling was sent to him:[18] A sister-in-law who spat[19] may afterwards perform halizah and need not spit a second time.[20] So,in fact,it once happened that a sister-in-law[21] who came before R. Ammi, while R. Abba b. Memel was sitting in his presence, spat prior to her drawing off the shoe. 'Arrange the halizah for her', said R. Ammi to him,[22] 'and dismiss her case'.[23] 'But surely'. said R. Abba to him, 'spitting is a requirement!' — 'She has spat indeed!' 'But let her spit [again]; what could be the objection?' — 'The issue might [morally and religiously] be disastrous; for should you rule that she is to spit again, people might assume that her first spitting was ineffective[24] and thus[25] a proper haluzah also would be permitted to marry the brothers!'[26] 'But is it not necessary. [that the various parts of the halizah] should follow in the prescribed order?' — 'The order of the performances is not essential'. He[22] thought [at the time] that the other[27] was merely shaking him off. When, however, he went out he carefully considered the point and discovered that it was taught: Whether drawing off the shoe preceded the spitting or whether spitting preceded the drawing off, the action performed is valid.[28]

Levi once went out [to visit] the country towns,[29] when he was asked: 'May a woman whose hand was amputated perform halizah?[30] What is the legal position where a sister-in-law spat blood? [It is stated in Scripture]: Howbeit I will declare unto thee that which is inscribed in the Writing of Truth;[31] does this[32] then imply that there exists a [divine] Writing that is not of truth?' He was unable to answer.[33] When he came and asked these questions at the academy. they answered him: Is it written, 'And she shall draw off with her hand'?[34] Is it written, 'And spit spittle'?[34] [As to the question] 'Howbeit I will declare unto thee that which is inscribed in the Writing of Truth,[31] does this then imply that there exists a [divine] Writing that is not of truth'? There is really no difficulty. For the former[35] refers to a [divine] decree that was accompanied by an oath while the latter[36] refers to one that was not accompanied by an oath. [This is] in accordance with a statement of R. Samuel b. Ammi. For R. Samuel b. Ammi stated in the name of R. Jonathan: Whence is it deduced that a decree which is accompanied by an oath is never annulled?[37] — From the Scriptural text, Therefore I have sworn unto the House of Eli, that the iniquity of Eli's house shall not be expiated with sacrifice nor offering for ever.[38] Rabbah said: It will not be expiated 'with sacrifice nor offering', but it will be expiated with the words of the Torah.

Abaye said: It will not be expiated 'with sacrifice nor offering' but it will be expiated with the practice of lovingkindness.

Rabbah and Abaye were both descendants of the house of Eli. Rabbah who engaged in the study of the Torah lived forty years. Abaye, however, who engaged in the study of the Torah and the practice of lovingkindness, lived sixty years.

Our Rabbis taught: There was a certain family in Jerusalem whose members used to die when they were about the age of eighteen. When they came and acquainted R. Johanan b. Zakkai [with the fact,] he said to them: 'perchance you are descendants of the family of Eli concerning whom it is written in Scripture. And all the increase of thy house shall die young men;[39] go and engage in the

study of the Torah, and you will live'. They went and engaged in the study of the Torah and lived [longer lives]. They were consequently called 'The family of Johanan', after him.

R. Samuel b. Unia stated in the name of Rab: Whence is it deduced that a [divine] dispensation against a congregation is not sealed? — [You say] 'Is not sealed'! Surely it is written, For though thou wash thee with nitre, and take thee much soap, yet thine iniquity is marked before Me![40] — But [this is the question]: Whence is it deduced that even if it has been sealed it is torn up? — From the Scriptural text, What . . . as the Lord our God is whensoever we call upon him.[41] But, surely, it is written, Seek ye the Lord while He may be found![42] — This is no contradiction. The latter applies to an individual, the former to a congregation. And[43] when may an individual [find him]? R. Nahman replied in the name of Rabbah b. Abbuha: In[44] the ten days between the New Year and the Day of Atonement.[45]

[The following ruling] was sent to Samuel's father: A sister-inlaw who spat blood shall perform halizah,[46] because it is impossible that blood should not contain some diluted particles of spittle.

An objection was raised: It might have been assumed that blood that issues from his[47] mouth or membrum virile is unclean,[48] hence it was explicitly stated, His issue is unclean,[49] but the blood which issues from his mouth or from his membrum virile is not unclean, but clean![50] — This is no contradiction: The former[51] is a case[52] where she sucks in;[53] the latter,[54] where [the blood] flows gently.

IF A DEAF LEVIR SUBMITTED TO HALIZAH etc.

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(1) The prescribed formulae. V. supra p. 718. n. 2.

(2) V. p. 721, n. 14.

(3) But the woman is rendered unfit for the levirate marriage. V. infra.

(4) I.e., even levirate marriage is permitted.

(5) The expression פסוחה, here rendered 'invalid', bears in the original a double meaning: (a) the halizah itself is invalid and (b) the woman becomes invalid, i.e., unfit to contract a marriage. V. infra note 8.

(6) Lit., 'to the world', i.e., as the halizah is invalid the woman still remains forbidden to all men except the levirs.

(7) Obviously not. Mere spitting could not possibly be regarded as a proper halizah.

(8) Lit., 'but not'.

(9) The second meaning of פסולה (v. supra note 4. (b) being that the woman is forbidden to contract the levirate marriage with any of the brothers. Cf. Git. 24b.

(10) Since both acts are not indispensable, why does the former act according to R. Akiba cause the sister-in-law to be forbidden to the brothers (as has just been proved), while the latter does not (R. Akiba having stated supra that there was 'no reason whatsoever for apprehension')?

(11) Of the prescribed formulae.

(12) V. supra p. 718, n. 2 (a).

(13) V. loc. cit. n. 2 (b).

(14) For a proper halizah. Where the sister-in-law is allowed to marry a levir it is obvious to all who know of the recital that it was only the first formula that was recited and that no halizah had followed it.

(15) Anyone witnessing the spitting would form the opinion that the other parts of the halizah ceremonial had preceded it.

(16) Were she subsequently permitted to marry a levir.

(17) Hence R. Akiba's prohibition. Cf. supra p. 722. n. 9.

(18) To Samuel's father. Cf. supra 104b.

(19) Before Beth din, though her act did not form a part of the formal halizah ceremony.

(20) At the proper time when the formal ceremony is carried out.

(21) Cf. Bah. a.l. wanting in cur. edd.

(22) R. Abba.

(23) I.e., there is no need for her to spit again.
(24) And the woman would consequently be allowed to marry a levir even after she had spat:
(25) By allowing her to contract levirate marriage.
(26) Cf. supra note 1.
(27) R. Ammi.
(28) Cf. infra 106b, Sanh. 49b.
(29) In the course of a lecture tour. According to the Palestinian Talmud and the Midrash Rabbah, Levi was sent by R. Judah the Prince to take up an appointment as teacher and judge in a provincial town. In his excitement and pride he grew so bewildered that he was unable to answer the following three questions.
(30) With her teeth.
(31) Dan. X, 21, taken to refer to divine dispensation.
(32) The adjectival phrase 'of truth'.
(33) Lit., 'it was not in his hand'.
(34) Certainly not.
(35) 'Writing of truth', i.e., 'permanent', 'unalterable'.
(36) The 'writing that is not of truth', i.e., which may be altered or recalled.
(37) Lit 'torn up'.
(38) I Sam. III, 14, emphasis on 'sworn' and 'for ever'.
(39) I Sam. II, 33.
(40) Jer. II, 22, emphasis on 'marked' 'sealed'. The Hebrew equivalent of the former is נכתם which is similar in sound to that of the letters *נחתם.
(41) Deut. IV, 7.
(42) Isa. LV, 6, emphasis on while he may be found, implying that there are times when he may not be found!
(43) Cf. Bah.
(44) Lit., 'these are'.
(45) Known as the 'ten days of penitence', עשרת ימי תשובה ע.
(46) As in the case of ordinary spitting. she may not subsequently contract levirate marriage.
(47) A man who hath an issue, cf. Lev. XV, 2.
(48) As his spittle or issue respectively is unclean.
(49) Ibid., emphasis on issue.
(50) Nid. 56a. Apparently because the blood contains no particle of spittle (cf. supra n. 10), which is contradictory to the previous statement that all blood contains some particles of spittle.
(51) The ruling sent to Samuel's father.
(52) Lit., 'here'.
(53) When it is inevitable that some spittle should be mingled with the blood.
(54) Lit., 'here'.

Talmud - Mas. Yevamoth 105b

Rab Judah stated in the name of Rab:[1] This[2] is the view of R. Meir;[3] but the Sages maintain that the halizah of a minor has no effect at all.[4]

[A SISTER-IN-LAW] WHO PERFORMED HALIZAH WHILE SHE WAS A MINOR etc. Rab Judah stated in the name of Rab: This[5] is the view of R. Meir who stated, 'In the Pentateuchal section [of halizah] the expression man[6] is used,[7] and the woman is to be compared to the man'.[8] The Sages, however, maintain that in the Pentateuchal section 'man' was written;[7] [and as to] a woman, whether she is of age or a minor [her halizah is valid].

Who [is the Tanna here described as the] Sages? — It is R. Jose. For R. Hiyya and R. Simeon b. Rabbi once sat together, when one of them began as follows:[9] A man who offers up his prayers must direct his eyes towards [the Temple][10] below,[11] for it is said, And Mine eyes and Mine heart shall be there perpetually.[12] And the other said: The eyes of him who offers up prayers shall be directed[13]

towards [the heavens] above, for it is said Let us lift up our heart with our hand.[14] In the meanwhile they were joined by R. Ishmael son of R. Jose. 'On what subject are you engaged?' he asked them. 'On the subject of prayer', they replied. 'My father', he said to them, 'ruled thus: A man who offers up his prayers must direct his eyes to the [Sanctuary] below and his heart towards [the heavens] above so that these two Scriptural texts may be complied with.' While this was going on, Rabbi entered the academy.[15] They, being nimble, got into their places quickly. R. Ishmael son of R. Jose, however, owing to his corpulence[16] could only move to his place with slow steps. 'Who is this man, cried Abdan[17] out to him, 'who strides over the heads[18] of the holy people!' The other replied. 'I am Ishmael son of R. Jose who have come to learn Torah from Rabbi'.[19] 'Are you, forsooth, fit', the first said to him, 'to learn Torah from Rabbi?' — 'Was Moses fit', the other retorted, 'to learn Torah from the lips of the Omnipotent!' 'Are you Moses indeed!' the first exclaimed. — 'Is then your Master a god!' the other retorted. R. Jose remarked: Rabbi got what he merited when the one[20] said to the other[21] 'Your Master' and not 'my Master'.[22] While this was proceeding a sister-in-law came before Rabbi.[23] 'Go out', said Rabbi to Abdan, 'and have her examined'.[24] After the latter went out, R. Ishmael said to him:[25] Thus said my father, 'In the Pentateuchal section man[26] is written;[27] [but as to] a woman, whether she is of age or a minor [her halizah is valid]'. 'Come back', he[15] , cried after him,[21] 'you need not [arrange for any examination]; the grand old man[28] has already given his decision [on the subject]'.

Abdan now came back picking his steps,[29] when R. Ishmael son of R. Jose exclaimed, 'He of whom the holy people is in need may well stride over the heads of the holy people; but how dare he of whom the holy people has no need stride over the heads of the holy people!' 'Remain in your place', said Rabbi to Abdan.

It was taught: At that instant Abdan became leprous, his two sons were drowned and his two daughters-in-law made declarations of refusal.[30] 'Blessed be the All Merciful', said R. Nahman b. Isaac, 'who has put Abdan to shame in this world'.[31]

'We may learn from the words of this eminent scholar',[32] said R. Ammi, 'that [a sister-in-law who is] a minor may perform halizah while she is still in her childhood'.[33] Raba said: [She must wait with halizah] until she has reached the age of [valid] vows.[34] The law however, is [that she must not perform halizah] until she has produced two [pubic] hairs.

IF [A SISTER-IN-LAW] PERFORMED HALIZAH IN THE PRESENCE OF TWO etc. R. Joseph b. Manyumi stated in the name of R. Nahman: The halachah is not in agreement with this pair.[35] But, surely. R. Nahman had once stated this; for R. Joseph b. Manyumi stated in the name of R. Nahman: The halachah is that[36] halizah [must be performed] in the presence of three [judges]![37] — [Both are] required: For if the first only had been stated, it might have been assumed [that three judges are required] ab initio only. but that ex post facto even two [judges are enough] hence we were taught that 'the halachah is not in agreement with this pair'.[38] And if we had been taught that 'the halachah is not in agreement with this pair' but in accordance with the ruling of the first Tanna, it might have been assumed [that this applies only] ex post facto,[39] but that ab initio five [judges] are required,[40] [hence the former statement was also] required.[41]

IT ONCE HAPPENED THAT A MAN SUBMITTED TO HALIZAH.[42] etc. PRIVATELY BETWEEN HIMSELF AND HERSELF! How, then, can we know it? — Rab Judah replied in the name of Samuel: When witnesses observed it from without.

The question was raised:[43] Did it happen that the HALIZAH was performed privately BETWEEN HIMSELF AND HERSELF outside, AND THE CASE WAS BROUGHT BEFORE R. AKIBA IN PRISON,[44] or perhaps it happened that the HALIZAH was performed BETWEEN HIMSELF AND HERSELF in prison? — Rab Judah replied in the name of Rab: The incident occurred in prison and

the case also came up for decision in prison.[45] [

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(1) Others, 'Samuel'. Cf. Tosaf. supra 96a, s.v. רבי.

(2) That the halizah of a minor is invalid and that it consequently prohibits the woman from contracting levirate marriage with any of the older brothers.

(3) Who stated (supra 96a) that the halizah of a minor has the same force as that of a divorce by a levir who is of age.

(4) His act is legally null and void. She is not thereby forbidden even to himself.

(5) That a sister-in-law who was a minor may not perform halizah.

(6) V. Deut. XXV, 7.

(7) Which excludes the male minor.

(8) Since both man and sister-in-law (woman) were mentioned in the same verse (ibid.). As the male minor is excluded so is the female minor excluded.

(9) Lit., 'and said'.

(10) In Jerusalem. Cf. Ber. 28b, 30a.

(11) I.e., on this earth, opp. to 'heaven' above.

(12) I Kings IX, 3. Hence it must always form the centre of attraction for all engaged in prayer.

(13) Cf. Bah. Wanting in cur. edd.

(14) Lam. III, 41, emphasis on lift up.

(15) When everyone present was expected to take his usual seat.

(16) Cf. B.M. 84a.

(17) One of Rabbi's disciples. 'Abdan' is a contraction of 'Abba Judan' by which name he is known in the Palestinian Talmud. (Cf. Tosaf. s.v. אבא a.l.).

(18) During the discourses of the Master the disciples were seated on the ground in Eastern fashion; and R. Ishmael, in making his way towards his seat in the front rows, was compelled to stride over the heads of the assembly.

(19) Lit., 'my master', a designation applied to R. Judah the prince who was in his time the Master par excellence.

(20) R. Ishmael.

(21) Abdan.

(22) A slight upon Rabbi's recognized high position but one he well deserved for allowing Abdan publicly to annoy R. Ishmael.

(23) Desiring him to arrange for her a halizah ceremony.

(24) To ascertain whether she has developed the marks of puberty and is consequently eligible to perform halizah.

(25) Rabbi.

(26) Which excludes the male minor.

(27) Deut. XXV, 7.

(28) R. Jose. Thus it is proved that it is R. Jose's view that was presented supra as that of 'the Sages'.

(29) Cf. supra note 4.

(30) V. Glos. s.v. Mi'un. The Talmudic text may imply that the two daughters. in-law, as minors, refused to contract levirate marriage with the brothers of their dead husband, so that the names of the deceased were 'blotted out of Israel' (cf. Golds.). Accordingly the rendering of the text should be 'two (of) his (several) sons were drowned'. The text, however, might also be rendered: 'His two sons were drowned (after) his two daughters-in-law had made declarations of refusal (against them)'.

(31) As an atonement for his ill-treatment of R. Ishmael; thus enabling him to enter the hereafter free from all sin.

(32) R. Jose בי רבי ברבי lit., 'of the school of my master', or 'of Rabbi', was a title of scholastic distinction given to many eminent scholars who were Rabbi's disciples or contemporaries, and similarly also to predecessors as well as to immediate successors among the early Amoraim. V. Nazir, Sonc., ed., p. 64, n. 1.

(33) פעוטות (cf. פטפט פוט, 'to babble') 'talkers', children of six or seven years of age, who may legally purchase or sell movable property. A child at this age, being regarded as sufficiently developed to understand certain commercial transactions, is also regarded as sufficiently developed to perform a halizah.

(34) One year prior to puberty, or the age of eleven years and one day, when her vows and consecrations are valid if on examination she is found to understand their significance and purpose. (Cf. Nid. 45b).

(35) R. Simeon and R. Johanan ha-Sandelar, the halachah being in agreement with the first Tanna who maintains that three judges are required for a halizah.

(36) V. Bah. Cur. edd. omit.

(37) Cf. supra 101b.

(38) Even ex post facto, which is the case spoken of in our Mishnah, halizah is invalid if no three eligible judges were present.

(39) Of which our Mishnah speaks (cf. supra n. 3).

(40) In agreement with R. Judah (cf. supra 101a).

(41) To indicate that even in the dispute between the first Tanna and R. Judah the halachah is in agreement with the former.

(42) Cf. our Mishnah. Cur. edd. read here 'they performed halizah'.

(43) The ambiguity in our Mishnah is due to a reading which omits the Waw in ובא so that it is possible to join 'in prison' either to the previous, or to the following clause (cf. Tosaf. s.v. ובא).

(44) During the revolt of Bar Kokeba (132-135 C.E.) R. Akiba was for a time held by the Romans as a prisoner and was subsequently martyred.

(45) [Tosaf.: Rab Judah had it on tradition that it was so, even as it is related in T.J.: R. Johanan ha-Sandelar passed outside the prison wherein R. Akiba was incarcerated, calling out, 'Who requires needles?', 'Who requires forks?' . . . 'How is it where the halizah was performed between himself and herself?' R. Akiba thereupon looked out through the window and replied: 'Hast thou of needles (kushin)? Hast thou kasher?', thus intimating that it is legal. V. Tosef. quoted in תום" ישנים for a slightly different version].

Talmud - Mas. Yevamoth 106a

Our Rabbis taught: A halizah under a false assumption[1] is valid.[2] What is meant by 'a halizah under a false assumption'? Resh Lakish explained: Where a levir is told, 'Submit to halizah and you will thereby wed her'. Said R. Johanan to him:[3] I am in the habit of repeating a Baraitha, 'Whether he[4] had the intention[5] [of performing the commandment of halizah] and she had no such intention, or whether she had such intention and he had not, her halizah is invalid, it being necessary[6] that both shall at the same time have such intention',[7] and you say that her halizah is valid![8] But [in fact this is the meaning]:[9] When a levir is told, 'Submit to her halizah on the condition that she gives you two hundred zuz'.[10]

So it was also taught [elsewhere]: A halizah under a false assumption is valid; and what is meant by a halizah under a false assumption? One in which the levir is told 'Submit to her halizah on condition that she gives you two hundred zuz'. Such an incident, in fact, occurred with a woman who fell to the lot of an unworthy levir who was told, 'Submit to her halizah on condition that she gives you two hundred zuz'. When this case came before R. Hiyya he ruled that the halizah was valid.

A woman[11] once came before R. Hiyya b. Abba.[12] 'Stand up,[13] my daughter', the Rabbi said to her. 'Her sitting is her standing',[14] replied her mother.[15] 'Do you know this man?'[16] the Rabbi asked. 'Yes', she answered him, 'it is her money that he saw and he would like to it'.[17] 'Do you not like him then?' he asked the woman.[18] 'No', she replied. 'Submit to her halizah', [the Rabbi] said to [the levir], 'and you will thereby wed her'. After the latter had submitted to halizah at her hands he said to him, 'Now she is ineligible to marry you; submit again to a proper halizah that she may be permitted to marry a stranger'.

A daughter of R. Papa's father-in-law fell to the lot of a levir who was unworthy of her.[19] When [the levir] came before Abaye the latter said to him, 'Submit to her halizah and you will thereby wed her'. Said R. Papa to him, 'Does not the Master accept the [relevant] ruling of R. Johanan?'[20] — 'What then could I tell him?' [the other asked]. 'Tell him', the first replied, '"submit to her halizah on condition that she gives you two hundred zuz."' After [the levir] had submitted to halizah at her hand [Abaye] said to her,[18] 'Go and give him [the stipulated sum]'.[21] 'She', R. Papa replied, 'was merely fooling him';[22] was it not, in fact taught: If a man escaping from prison beheld a ferry boat and said [to the ferryman], 'Take a denar and lead me across',[23] [the latter] can only claim his

ordinary fare.[24] From this then it is evident that the one can say to the other, 'I was merely fooling you'; so here also[25] [the woman may say], 'I was merely fooling you'. 'Where is your father?'[26] [Abaye] asked him. — 'In town', the other replied. 'Where is your mother?'[26] — 'In town', the other again replied. He set his eyes upon them and they died.

Our Rabbis taught:[27] A halizah under a false assumption is valid; a letter of divorce [given] under a false assumption is invalid.[28] A halizah under coercion is invalid; a letter of divorce [given] under compulsion is valid. How is this[29] to be understood? If it is a case where the man [ultimately][30] says, 'I am willing', the halizah also [should be valid]; and if he does not say, 'I am willing', a letter of divorce also should not [be valid]! — It is this that was meant: A halizah under a false assumption is always valid, and a letter of divorce [given] on a false assumption is always invalid; but a halizah under coercion and a letter of divorce [given] under coercion are sometimes valid and sometimes invalid, the former when the man [ultimately][30] declared, 'I am willing', and the latter, when he did not declare, 'I am willing'. For it was taught: He shall offer it[31] teaches that the man is coerced.[32] It might [be assumed that the sacrifice may be offered up] against his will, it was, therefore, expressly stated, In accordance with his will.[33] How then [are the two texts to be reconciled]? He is subjected to pressure until he says, 'I am willing'. And so you find in the case of letters of divorce for women: The man[34] is subjected to pressure until he says, 'I am willing'.[35]

Raba reported in the name of R. Sehora in the name of R. Huna: Halizah may be arranged even though [the parties][36] are unknown[37] A declaration of refusal[38] may be arranged even though the parties[39] are unknown.[37] For this reason[40] no certificate of halizah may be written[41] unless the parties are known,[42] and no certificate of mi'un[43] may be written[41] unless the parties are known,[42] for fear of an erring Beth din.[44]

Raba in his own name, however, stated: halizah must not be arranged unless the parties[45] are known,[46] nor may a declaration of refusal[43] be heard unless the parties[47] are known.[46] For this reason[48] it is permissible[49] to write a certificate of halizah[50] even though the parties are not known,[51] and it is also permissible[49] to write a certificate of mi'un[52] even though the parties are not known,[51] and we are not afraid of an erring Beth din.[53]

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(1) מוטעת (rt. טעה Hof.) lit., 'misled'.

(2) Tosef. Yeb. XII, Keth. 74a.

(3) Resh Lakish.

(4) The levir.

(5) When he submitted to halizah.

(6) Lit., 'until'.

(7) Tosef. Yeb. XII, supra 102b.

(8) Even when the levir was misled into thinking that he was performing an act of marriage!

(9) Of 'halizah under a false assumption'.

(10) V. Glos. Even if the promised sum was not forthcoming, the halizah is valid. Any condition in connection with an act which, like halizah. cannot be performed through an agent is illegal and void. Cf. Keth. 74a.

(11) A sister-in-law who fell to the lot of an undesirable levir. (V. infra).

(12) To meet the levir.

(13) I.e., to contract the levirate marriage.

(14) She was lame or suffered from some other chronic disease which disabled her from standing up. Another interpretation: Her 'sitting', i.e., her abstention from the marriage is her 'standing', i.e., salvation.

(15) Cf. Bah.

(16) I.e., did she know why he insisted on marrying a disabled woman? According to the second interpretation the question was whether she knew anything against his character.

(17) After which he would get rid of her. Lit., 'and he desires to eat it from her'.

(18) The sister-in-law.

(19) But who insisted on contracting with her the levirate marriage.
(20) Requiring both the man and the woman to be of the unanimous intention, during the ceremony, of fulfilling the commandment of halizah. V. supra.
(21) Though the halizah was in any case valid, Abaye held that the condition must be complied with.
(22) Lit., '(the trick of) "I fooled with you", she did to him'. Since the halizah is valid, and since it is the levir's duty to perform it, no legal obligation is incurred by promising him an excessive sum for doing that which it was his duty to do.
(23) An excessive fee for crossing a river.
(24) B.K. 116a.
(25) In the case of halizah under discussion.
(26) Abaye's query implied that R. Papa seemed to have all his needs provided for by his parents and that this left him leisure enough to indulge in fine dialectics.
(27) Others read, 'Raba said' (She'iltoth section Ki Theze).
(28) If the condition on which it was given was not fulfilled. A condition in the case of divorce has legal validity, since a divorce may be effected through the agency of witnesses. V. Keth. 74a and cf. supra p. 730, n. 10, final clause.
(29) The second ruling relating to coercion.
(30) After Beth din had brought pressure to bear upon him.
(31) Lev. I, 3.
(32) To carry out his vow if he undertook to bring an offering.
(33) לרצנו ibid., E.V., 'that he may be accepted'.
(34) Who refuses to give a divorce.
(35) Cf. Kid. 50a, B.B. 48a, Ar. 21a.
(36) The levir and his sister-in-law who apply for a halizah to be arranged for them.
(37) To the Beth din.
(38) Mi'un. V. Glos.
(39) The husband and the minor.
(40) Since halizah or mi'un may he arranged even for unknown persons whose declarations might be false.
(41) For a woman who applied for such a certificate to enable her to marry again. even if the usual declaration, that the parties were known to the writers, is omitted. V. infra n. 4.
(42) To the writers who witnessed the ceremony.
(43) Mi'un. V. Glos.
(44) I.e., a second Beth din who might be called upon to deal with the question of the remarriage of the parties and who might be unaware of the law that halizah and mi'un may be arranged even for unknown persons, and who, in their reliance on the written certificate, might permit the woman to marry again; overlooking the fact that the usual declaration that the parties were known to the writers (cf. supra note 1) was wanting from the certificate.
(45) V. supra p. 732, n. 10.
(46) To the Beth din.
(47) The husband and the minor.
(48) Since no Beth din would allow halizah and mi'un unless the parties are known to them.
(49) For witnesses who were present during one or other, as the case may be, of such ceremonies.
(50) To enable the woman to marry again.
(51) To the writers who witnessed the ceremony.
(52) Cf. supra notes 3 and 10.
(53) Cf. supra note 4 mutatis mutandis. Since the first Beth din must know the parties the question of mistaken identity does not arise.

Talmud - Mas. Yevamoth 106b

MISHNAH. [THIS IS THE PROCEDURE IN THE PERFORMANCE OF] THE COMMANDMENT OF HALIZAH: HE[1] AND HIS DECEASED BROTHER'S WIFE COME UNTO THE BETH DIN, AND [THE LATTER] OFFER HIM SUCH ADVICE AS IS SUITABLE TO HIS CONDITION,[2] FOR IT IS SAID IN THE SCRIPTURES, THEN THE ELDERS OF HIS CITY SHALL CALL HIM AND SPEAK UNTO HIM.[3] SHE THEN ANNOUNCES: MY

HUSBAND'S BROTHER REFUSETH TO RAISE UP UNTO HIS BROTHER A NAME IN ISRAEL; HE WILL NOT PERFORM THE DUTY OF A HUSBAND'S BROTHER UNTO ME.[4] THEN HE MAKES THE DECLARATION: I LIKE NOT TO TAKE HER.[5] [THESE FORMULAE] WERE ALWAYS SPOKEN IN THE HOLY TONGUE.[6] THEN SHALL HIS BROTHER'S WIFE DRAW NIGH UNTO HIM IN THE PRESENCE OF THE THE ELDERS AND DRAW[7] HIS SHOE FROM OFF HIS FOOT, AND SPIT BEFORE[8] HIS FACE,[9] SUCH SPITTLE AS THE JUDGES CAN SEE, AND SHE RAISES HER VOICE AND SAYS:[10] SO SHALL IT BE DONE UNTO THE MAN THAT DOTH NOT BUILD UP HIS BROTHER'S HOUSE,[11] THUS FAR[12] USED THEY TO RECITE.[13] WHEN, HOWEVER, R. HYRKANUS, UNDER THE TEREBINTH AT KEFAR ETAM,[14] ONCE DICTATED THE READING AND COMPLETED THE ENTIRE SECTION,[15] THE PRACTICE WAS ESTABLISHED TO COMPLETE THE ENTIRE SECTION.

[THAT] HIS NAME SHALL BE CALLED IN ISRAEL, 'THE HOUSE OF HIM THAT HAD HIS SHOE DRAWN[16] OFF',[17] IS A COMMANDMENT [TO BE PERFORMED] BY THE JUDGES AND NOT BY THE DISCIPLES.[18] R. JUDAH, HOWEVER, RULED: IT IS A DUTY INCUMBENT UPON ALL PRESENT TO CRY '[THE MAN][19] THAT HAD HIS SHOE DRAWN[16] OFF'.[17]

GEMARA. Rab Judah stated: [This is the procedure in the performance of] the commandment of halizah: She recites;[20] he recites;[21] she draws off his shoe, spits and recites.[22] What does he teach us [by this statement]? This is our very Mishnah! — It is this that he teaches us: The prescribed procedure is such, but if the order was reversed, it does not matter. So it was also taught: Whether the drawing off of the shoe preceded the spitting or whether the spitting preceded the drawing off, the act is valid.[23]

Abaye ruled: The man who dictates the halizah formulaє[24] shall not read for the woman [the word] not[25] separately and [the clause] he will perform the duty of a husband's brother unto me[26] separately, since this[27] would convey the meaning, 'He desires to perform the duty of a husband's brother to me'; but [should read without a pause]. He will not perform the duty of a husband's brother unto me. Nor shall he read for the levir [the word] not[28] separately and [the clause] I like[28] separately; for this[27] would convey the meaning. 'I like to take her'; but [he should read without a pause], I like not to take her.[29] Raba, however, stated: This[30] is only the conclusion[31] of a sentence, and in a concluding clause [a pause] is of no consequence.[32]

R. Ashi found R. Kahana making a painful effort to read out for a woman,[33] He will not perform the duty of a husband's brother unto me,[34] [without a pause]. 'Does not the Master,' he asked him, 'accept the ruling of Raba?'[35] — 'Raba', the other replied, 'admits in [the case of the formula] He will not perform the duty of a husband's brother unto me[34] [that no pause is permitted].[36]

Abaye stated: The person who writes a certificate of halizah shall word it as follows: 'We read out for her[37] from My husband's brother refuseth[38] to[39] will perform the duty of a husband's brother unto me;[40] and we read out for him[41] from not[42] to[39] to take her;[43] and we read out for her from So[44] to[45] him that had his shoe drawn off.[46]

Mar Zutra ruled [the paper][47] and copied the full text.[48] Mar b. Idi[49] demurred: But, surely, [a section only of the Pentateuch] is not permitted to be written![50] The law, however, is in agreement with the ruling of Mar Zutra.[51]

Abaye stated: If, when she spat. the wind carried the spittle away,[52] her act is invalid.[53] What is the reason? — It is necessary that she shall spit before[54] his face.[44] If, therefore, he was tall and she was short, and the wind carried the spittle away,[55] her act is deemed to have been[56] before his face.[57] If, however, she was tall and he was short, it is necessary that [the spittle] shall drop to the level of

his face before[58] it disappears.

Raba stated: If she ate garlic and then spat[59] or if she ate a clod of earth and then spat,[59] her act is invalid.[53] What is the reason? — Because it is necessary that she shall spit[44] of her own free will, which is not the case here.[60]

Raba further stated: The judges must see the spittle issuing from the mouth of the sister-in-law, because it is written in Scripture Before the eyes of the elders . . . and spit.[61]

[THAT] HIS NAME SHALL BE CALLED IN ISRAEL, 'THE HOUSE OF HIM THAT HAD HIS SHOE DRAWN OFF' IS A COMMANDMENT [TO BE PERFORMED] BY THE JUDGES AND NOT BY THE DISCIPLES. It was taught: R. Judah stated: We were once sitting before R. Tarfon when a sister-in-law came to perform halizah, and he said to us, 'Exclaim all of you: Haluz ha-na'al,[62] haluz ha-na'al, haluz ha-na'al!' [

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(1) The levir.

(2) As, for instance, whether the respective ages or characters of the parties are likely to be conducive to a happy union. Cf. supra 44a, 101b.

(3) Deut. XXV, 8.

(4) Deut. XXV, 7.

(5) Ibid. 8.

(6) The classical Hebrew in which the formulae appear in the Scripture. Cf. Sot. 32a.

(7) E.V., loose.

(8) E.V., in.

(9) Deut. XXV, 9.

(10) E.V. ' And she shall answer and say.

(11) Ibid.

(12) I.e., to the end of v. 9.

(13) Or 'dictate'. The judges dictated and the parties recited.

(14) [Var. lec. אבום, Cambridge Mishnah M.S. עכו. Krauss MGWf 1907, p. 332 reads כפר עכזם, Capphare Accho in lower Galilee. Etam is mentioned in Judges XV, 8 and 11, I Chron. IV, 32 and II Chron. XI, 6].

(15) To the end of v. 10.

(16) E.V., loosed.

(17) Deut. XXV, 10.

(18) Who happen to be present when the halizah ceremony is being performed.

(19) E.V., him.

(20) The formula prescribed in Deut. XXV, 7.

(21) The formula, ibid. 8.

(22) Ibid. 9. Cf. Sanh. 49b.

(23) Lit., 'what he did is done'. Sanh. 49b, supra 105a.

(24) Lit., 'document', 'deed'.

(25) it:'. (Deut. XXV, 7) which is the first word of the formula.

(26) אבה יבמי ibid.

(27) The severance of the latter clause from the negative particle.

(28) Deut. XXV, 8, cf. supra n. 3.

(29) Ibid.

(30) Each of the clauses mentioned by Abaye.

(31) אסוקי. This is the reading of Alfasi, Asheri and Bah. Cur. edd., אפסוקי 'breaking'. . . pausing'.

(32) Hence it is permitted to make a break between 'not' and the rest of the formula.

(33) A sister-in-law for whom he was arranging a halizah.

(34) The prescribed formula in Deut. XXV, 7.

(35) Supra, that a pause after 'not' is immaterial.

(36) It is only in the formula of the levir, in which the negative particle, 'not', forms the first word and cannot consequently be misunderstood as being connected with any previous word, that a pause does not matter. In the woman's formula, however, where the negative particle occurs in the middle of a clause, a pause after it might imply the connection of the negative with the preceding words, so that the clause following it would assume the meaning of an affirmative statement.
(37) The sister-in-law.
(38) The prescribed formula in Deut. XXV, 7.
(39) The middle portion of the formula is omitted, since it is forbidden to write down more than three consecutive words of the Pentateuch on unruled paper (cf. Git. 6b). The words permitted to be written according to Abaye represent in the Hebrew no more than two consecutive words.
(40) V. supra p. 735, n. 4.
(41) The levir.
(42) לא, the beginning of the levir's first formula.
(43) Ibid.
(44) Deut. XXV, 9.
(45) V. supra note 3.
(46) Ibid. 10, E.V., loosed.
(47) For the halizah certificate, cf. Git. 6b.
(48) Of each formula, not merely, as Abaye taught, its first and last words.
(49) Others, 'Mar b. R. Ashi'. V. Alfasi and Asheri.
(50) The Pentateuch in its entirety only may be copied. Cf. Git. 60a.
(51) The prohibition against copying a section of the Pentateuch being limited to one that is to be used for teaching purposes. One, however, that is to be used as a mere record, as in the case of the Halizah certificate, does not come under the prohibition.
(52) Lit., 'received', 'clutched', 'absorbed'.
(53) L1t., 'she did not do anything'.
(54) E.V., in.
(55) V. supra note 16.
(56) Lit., 'there is'.
(57) lbid., since at the moment the spittle left her mouth it was before the levir's face.
(58) Lit., 'and then'.
(59) Impulsively owing to the unpleasant taste in her mouth.
(60) The garlic or the clod of earth having been the cause of her involuntary or instinctive action.
(61) Deut. XXV, 9.
(62) '(The man) that had his shoe drawn off'. V. Deut. XXV, 10.

C H A P T E R X I I I

MISHNAH. BETH SHAMMAI RULED: ONLY THOSE[1] WHO ARE BETROTHED[2] MAY EXERCISE THE RIGHT OF REFUSAL;[3] BUT BETH HILLEL RULED: BOTH THOSE WHO ARE BETROTHED AND THOSE WHO ARE MARRIED. BETH SHAMMAI RULED: [A DECLARATION OF REFUSAL[3] MAY BE MADE] AGAINST A HUSBAND BUT NOT AGAINST A LEVIR;[4] BUT BETH HILLEL RULED: EITHER AGAINST A HUSBAND OR AGAINST A LEVIR. BETH SHAMMAI RULED: [THE DECLARATION][5] MUST BE MADE IN HIS PRESENCE, BUT BETH HILLEL RULED: EITHER IN HIS PRESENCE OR NOT IN HIS PRESENCE. BETH SHAMMAI RULED: [THE DECLARATION[5] MUST BE MADE] BEFORE BETH DIN, BUT BETH HILLEL RULED: EITHER BEFORE BETH DIN OR NOT BEFORE BETH DIN.

BETH HILLEL SAID TO BETH SHAMMAI: [A GIRL] MAY EXERCISE THE RIGHT OF REFUSAL WHILE SHE IS A MINOR EVEN FOUR OR FIVE TIMES.[6] BETH SHAMMAI, HOWEVER, ANSWERED THEM: THE DAUGHTERS OF ISRAEL ARE NOT OWNERLESS PROPERTY,[7] BUT, [IF ONE] MAKES A DECLARATION OF REFUSAL, SHE MUST WAIT TILL SHE IS OF AGE, AND DECLARE HER REFUSAL[8] AND MARRY AGAIN.

GEMARA. Rab Judah stated in the name of Samuel: What is Beth Shammai's reason?[9] Because no stipulation is attachable to a marriage;[10] and were a married minor to be allowed to exercise the right of refusal, it would come to be assumed[11] that a stipulation is attachable to a marriage.[12] What reason, however, could be advanced[13] where she only entered the bridal chamber[14] and no cohabitation had taken place?[15] Because no condition is attachable to an entry into the bridal chamber.[16] What reason, however, could be advanced[13] where the father[17] entrusted her to the representatives of the husband?[18] — The Rabbis made no distinction.[19] And Beth Hillel?[20] — It is well known that the marriage of a minor is only Rabbinically valid.[21]

Both Rabbah and R. Joseph declared: The reason of Beth Shammai[22] is that no man wishes to treat his cohabitation as mere fornication.[23] What, however, can be the reason[22] where she only entered the bridal chamber and no cohabitation took place?[24] No man would like his bridal chamber to be [an introduction to] a forbidden act.[25] What reason,[22] then, could be advanced where the father[26] had entrusted her to the representatives of the husband?[27] — The Rabbis made no distinction.[28] And Beth Hillel?[29] — Since [a minor's marriage] involves[30] betrothal and kethubah no one would suggest that her husband's cohabitation was an act of fornication.

R. Papa explained: Beth Shammai's reason[31] is because of the usufruct,[32] and Beth Hillel's reason also is because of the usufruct.[32] 'Beth Shammai's reason is because of the usufruct', for should you say that a married minor may exercise the right of refusal, [her husband][33] might [indiscriminately] pluck [the fruit] and consume it, [knowing as he does] that she might leave him at any moment.[34] Beth Hillel, however, [say]: On the contrary; since it is laid down that she may exercise the right of refusal, [her husband] would make every effort to improve her property, fearing that if [he should] not [do this], her relatives might give her their advice [against him] and thus take her away from him.

Raba stated: The real reason[31] of Beth Shammai is because no man would take the trouble to prepare a meal[35] and then spoil it.[36] And Beth Hillel?[37] — Both are pleased [to be married to each other][38] in order that they may be known as married people.[39]

BETH SHAMMAI RULED . . . AGAINST A HUSBAND etc. R. Oshaia stated: She may[40] make a declaration of refusal in respect of his ma'amar[41] but she has no right to make a declaration of

refusal in respect of his levirate bond.[42]

Said R. Hisda: What is R. Oshaia's reason? — She has the power to annul a ma'amar which is effected with her consent; she has no power, however, to sever the levirate bond since it is binding on her against her will.[43] But, surely, [levirate marriage by] cohabitation may be effected against her will[44]

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(1) Young girls who are minors and whose fathers are dead. v. infra n. 2.

(2) With the permission of their mother or brothers into whose charge they pass after the death of their fathers.

(3) Mi'un (v. Glos.) and no divorce is required.

(4) The levirate bond with whom can he severed by halizah only. Bah deletes ‘but not . . . levir’.

(5) Cf. supra n. 3.

(6) And may marry again after each refusal.

(7) To be taken up by man after man without receiving proper divorce from the one before being betrothed or married to the other

(8) This is explained in the Gemara infra.

(9) For ruling that ONLY BETROTHED WOMEN MAY EXERCISE THE RIGHT OF REFUSAL and that consequently a married minor may not exercise the right.

(10) And the validity of the marriage is not in any way impaired even if the condition that was attached to it was not fulfilled. The law assumes that the man tacitly renounces, on cohabitation, the condition.

(11) The invalidity of her marriage being assumed to be due, not to her minority, but to some unfulfilled stipulation that was attached to her marriage.

(12) Even in the case of one who is of age. Hence Beth Shammai's ruling in our Mishnah. Cf. supra note 1.

(13) For the prohibition of mi'un. V. Glos.

(14) Huppah, v. Glos.

(15) In such a case, since consummation of marriage has not taken place, there is, surely, no need to provide against the erroneous assumption of the validity of a stipulation in consummated marriage!

(16) If a minor at such a stage in her marriage were allowed mi'un it might be assumed that the reason why her union was severed without a divorce was not because of her minority but owing to an unfulfilled condition that was attached to her entry into the bridal chamber, and so it would be concluded erroneously that even in the case of one who is of age a condition attached is valid.

(17) I.e., his successors in authority over the minor, after his death, viz., his wife and sons. (Cf. supra p. 738, n. 2). Where a father is alive the law of mi'un (with the exception of the case mentioned supra p. 2, n. 6) does not apply, since he has the right to give her away in perfect and proper marriage while she is a minor.

(18) An act which, though regarded as marriage, is a stage preceding that of entry into the bridal chamber, where a condition is valid, even in the case of a bride who is of age.

(19) Between a marriage fully consummated and one in its earlier stage. Since both are cases of marriage, permissibility of mi'un in the latter might lead to an erroneous conclusion concerning the former.

(20) Why do they not provide against the possibility of erroneous conclusions.

(21) No one would draw comparisons between a marriage the validity of which is only Rabbinical and one which is Pentateuchally binding.

(22) V. Supra p. 739, n. 1.

(23) Which would be the case were a married minor to be allowed to leave her husband by mi'un only without a proper divorce. Mi'un was, therefore, forbidden in order to encourage the marriage of orphan minors who, if they remain unmarried, are subject to the dangers of immorality and prostitution. Cf. infra 112b.

(24) In which case the reason given is inapplicable.

(25) Retrospective prostitution.

(26) V. Supra p. 739, n. 9.

(27) Though such an act on the part of the minor's mother or brothers constitutes marriage in accordance with Rabbinic law, as does such an act on the part of the father even in the case of one who is of age (cf. Keth. 48b), nevertheless the question of fornication does not in such a case arise. Why, then, do Beth Shammai forbid mi'un even at this stage of marriage?

(28) Cf. supra p. 739, n. 11.
(29) How, in view of the reason advanced, could they allow mi'un even in marriage!
(30) Lit., ‘there is’.
(31) V. supra p. 739, n. 1.
(32) Of the minor's melog (v. Glos.) property.
(33) Who after marriage is entitled to the usufruct of his wife's melog property.
(34) Lit., ‘for in the end she stands to go out’.
(35) The wedding feast.
(36) Had mi'un been allowed after a marriage no one would, for this reason, ever marry a minor; and this might lead to immoral consequences. Cf. supra p. 740, n. 2.
(37) v. p. 740, n. 8.
(38) Despite the objections pointed out by Beth Shammai.
(39) The possible loss does not, therefore, prevent a man from marrying a minor.
(40) According to Beth Hillel who allow the right of refusal even against a levir.
(41) If the levir made a ma'amar, she can annul it by mi'un, and no divorce is required.
(42) Only halizah can sever the levirate bond. In ordinary cases where the levir addressed to the yebamah a ma'amar, she requires for her freedom both a divorce to annul the effect of the ma'amar, and halizah to sever the levirate bond.
(43) Because it is due to her marriage with the deceased brother, which, since she did not exercise her right of refusal against him, remained valid.
(44) Cf. supra 53b, 54a.

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and yet she may annul it! — [This,] however, [is really the reason]: She may annul [a kinyan by] cohabitation or by a ma'amar, because it is the levir who effects it; she cannot, however, annul the levirate bond which the All Merciful has imposed upon her.

‘Ulla said: She may exercise her right of refusal even in respect of his levirate bond. What is the reason?[1] [By her refusal] she annuls the marriage of her first husband.[2]

Raba raised an objection against ‘Ulla: The rival of anyone, entitled to make a declaration of refusal,[3] who did not exercise her right, must perform the ceremony of halizah[4] [if her husband died childless] but may not contract levirate marriage.[5] But why? Let her exercise her right of refusal now and thereby annul the marriage of her first husband, and then let her rival[6] contract the levirate marriage![7] — The rival of a forbidden relative is different.[8] For Rami b. Ezekiel learnt: If a minor made a declaration of refusal against her husband she is permitted to marry his father,[9] but if against the levir[10] she is forbidden to marry his father. It is thus evident[11] that at the time she became subject to the levirate marriage she is looked upon as his[12] daughter-in-law;[13] similarly here also[14] [marriage of the rival is forbidden because] at the time of her subjection to the levirate marriage she is looked upon as his daughter's rival.[15] Rab stated: If she[16] made a declaration of refusal against one[17] [of the levirs] she is forbidden [to marry] the others[17] also; her case being analogous to that of the recipient of a letter of divorce.[18] As[19] the recipient of a letter of divorce is forbidden to all [the brothers] as soon as she is forbidden to one[20] so is there no difference here also.[21]

Samuel, however, stated: If she[16] exercised her right of refusal against one[20] [of the levirs] she is permitted [to marry] the others;[17] her case being unlike that of the recipient of a letter of divorce.[18] For with the recipient of a letter of divorce[18] it is he[20] who took the initiative against her;[22] but here it is she who took the initiative against him, declaring, ‘I do not like you and I do not want you; it is you whom I dislike but I do like your fellow’.

R. Assi ruled: If she[16] made a declaration of refusal against one [levir] she is permitted [to marry] even him. May it be assumed that he is of the same opinion as R. Oshaia who maintains that a minor

has no right to make a declaration of refusal in respect of his levirate bond?[23] — In respect of one levir she may well be entitled to annul [the levirate bond]; here, however, we are dealing with two levirs [the reason[24] being] that no declaration of refusal is valid against half a levirate bond.[25]

When Rabin came[26] he reported in the name of R. Johanan: If she[16] exercised her right of refusal against one[17] [of the levirs] she is permitted to marry the other brothers. [They], however did not agree with him. Who [are they who] did not agree with him?

Abaye said: Rab;[27] Raba said: R. Oshaia;[28] and others said: [Even] R. Assi.[29]

BETH SHAMMAI RULED . . . IN HIS PRESENCE etc. It was taught: Beth Hillel said to Beth Shammai, 'Did not the wife of Pishon the camel driver make her declaration of refusal in his absence?' 'Pishon the camel driver', answered Beth Shammai to Beth Hillel, 'used a reversible measure;[30] they, therefore, used against him also a reversible measure'.[31] Since, however, he was eating the usufruct[32] it is obvious that [the minor] was married to him;[33] but [if this was the case] did not Beth Shammai rule [it may be asked] that a married minor may not exercise the right of refusal![34] They bound him with two bonds.[35]

BETH SHAMMAI RULED: . . . BEFORE BETH DIN etc. Elsewhere we learned: Halizah and declarations of mi'un [must be witnessed by] three men.[36] Who is the Tanna?[37] — Rabbah replied: This [ruling is that of] Beth Shammai.[38] Abaye said: You may even say [that it is the ruling of] Beth Hillel. All that[39] Beth Hillel really stated was that no experts[40] are required; three men, however, are indeed required. As it was, in fact, taught: Beth Shammai ruled [that mi'un must he declared] before Beth din,[41] and Beth Hillel ruled: Either before a Beth din or not before a Beth din. Both, however, agree that a quorum of three is required.[42] R. Jose son of R.[43] Judah and R. Eleazar son of R. Simeon[44] ruled: [Mi'un is] valid [even if It was declared] before two.[45] R. Joseph b. Manyumi reported in the name of R. Nahman that the halachah is in agreement with this pair.[46]

BETH SHAMMAI, HOWEVER, ANSWERED . . . AND SHE DECLARES HER REFUSAL etc. But, surely, she has already made a declaration of refusal![47] — Samuel replied: [The meaning is] TILL SHE IS OF AGE and states, 'I am willing to abide by the first declaration of refusal'.[48] 'Ulla replied: Two [different statements] are here made: Either she declares her refusal 'and is betrothed after she is of age,[49] or she declares her refusal, and is married forthwith.[50]

According to 'Ulla one can well understand why the expression, TILL SHE IS OF AGE OR DECLARES HER REFUSAL[51] AND MARRIES AGAIN, was used. According to Samuel, however, it should have been stated 'TILL SHE IS OF AGE and states'.[52] — This is a difficulty. MISHNAH. WHICH MINOR MUST MAKE THE DECLARATION OF REFUSAL?[53] ANY WHOSE MOTHER OR BROTHERS HAVE GIVEN HER IN MARRIAGE WITH HER CONSENT. IF, HOWEVER, THEY GAVE HER IN MARRIAGE WITHOUT HER CONSENT SHE NEED NOT MAKE ANY DECLARATION OF REFUSAL.[54]

R. HANINA B. ANTIGONUS RULED: ANY CHILD WHO IS UNABLE TO TAKE CARE OF HER TOKEN OF BETROTHAL[55] NEED NOT MAKE ANY DECLARATION OF REFUSAL.[54]

R. ELIEZER[56] RULED: THE ACT OF A MINOR HAS NO VALIDITY AT ALL, BUT [SHE[57] IS TO BE REGARDED] AS ONE SEDUCED. IF, THEREFORE, SHE IS THE DAUGHTER OF AN ISRAELITE [AND WAS MARRIED] TO A PRIEST SHE MAY NOT EAT TERUMAH,[58] AND IF SHE IS THE DAUGHTER OF A PRIEST [AND WAS MARRIED] TO AN ISRAELITE SHE MAY EAT TERUMAH.[59]

R. ELIEZER B. JACOB RULED: IN THE CASE OF ANY HINDRANCE [IN

REMARRYING][60] THAT WAS DUE TO THE HUSBAND, [THE MINOR] IS DEEMED TO HAVE BEEN[61] HIS WIFE; BUT IN THE CASE OF ANY HINDRANCE [IN REMARRYING] THAT WAS NOT DUE TO THE HUSBAND SHE IS NOT DEEMED TO HAVE BEEN[62] HIS WIFE.

GEMARA. Rab Judah stated, and others say that it was taught In a Baraitha: Originally, a certificate of mi'un was drafted [as follows]: 'I do not like him and I do not want him and I do not desire to be married to him'. When, however, it was observed that the formula was too long and it was feared that

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(1) How could she annul a bond which the 'All Merciful has imposed upon her'?

(2) The deceased; so that the levirate bond ceases to exist retrospectively as if it had never been in existence.

(3) I.e., a girl who married while she was a minor and whose father did not receive the token of her betrothal. This may occur even during the lifetime of her father if she marries a second time after she had been divorced by her first husband to whom she had been given in marriage by her father. After a divorce the father's right to give his 'minor' daughter in marriage ceases.

(4) With the levir, though he is the father or any other forbidden relative of the minor. It is only the rival of a woman whose marriage is Pentateuchally valid who is exempt from both levirate marriage and halizah with the forbidden relative of that woman. The marriage of a minor, who could exercise her right of refusal at any moment, is only Rabbinically valid.

(5) Supra 2b. Since after all the minor did not exercise her right of refusal her marriage is valid enough to forbid her rival's levirate marriage, as is the case with a Pentateuchally valid marriage.

(6) Who, by the declaration of refusal of the minor, ceases to be her rival.

(7) With the minor's forbidden relative.

(8) From a minor who becomes subject to halizah. While the minor may, by annulling her marriage retrospectively by the exercise of the right of mi'un, procure exemption from the halizah, her rival cannot, through the minor's exercise of this right, obtain the freedom to marry the minor's forbidden relative.

(9) Who, owing to her retrospective annulling by mi'un of her marriage with his son, is to him now a mere stranger.

(10) To whom she has become bound by the levirate obligation when her husband, against whom she did not exercise her right of mi'un, died childless.

(11) Since she is forbidden to marry the levir's father.

(12) The levir's father's.

(13) A status which she retains despite the mi'un.

(14) Though her mi'un which annulled her marriage retrospectively exempted her from halizah.

(15) Her subsequent estrangement, effected by the minor's mi'un, cannot remove her known status of forbidden relative's rival. Cf. supra note 10.

(16) A minor.

(17) Lit., 'this'.

(18) From one of the levirs.

(19) Lit., 'not?'

(20) The levir who gave her the letter of divorce.

(21) The mi'un which causes her to be forbidden to marry one of the brothers causes her, as in the case of divorce, to be equally forbidden to all the other brothers.

(22) And he is presumed to have acted on behalf of all his brothers.

(23) And if she did exercise It she still remains permitted to the levir, v. supra p. 741, n. 8.

(24) For the invalidity of the mi'un.

(25) She is equally bound to the two levirs, and her refusal was declared against one of them only.

(26) From Palestine to Babylon.

(27) Who stated supra that if a minor made a declaration of refusal against one of the brothers she is forbidden to all.

(28) R. Johanan permitted her to marry the brothers only where there were several of them (the reason being the same as that of R. Assi that a part of a levirate bond cannot be severed); where, however, there was only one brother R. Johanan forbids him to marry the minor who made a declaration of refusal against him. This ruling is contrary to that of R.

Oshaia who in all cases regards mi'un against a levirate bond as invalid.
(29) Much more so R. Oshaia (v. supra n. 13). Even R. Assi who, unlike R. Oshaia agrees with R. Johanan in permitting the marriage of a minor, after her mi'un, only where the number of levirs is more than one, differs, nevertheless, from him in allowing the minor to marry the very levir against whom her declaration of refusal was made.
(30) כפושה (rt. כפש 'to bend'cf.מדה כפושה, a measure of capacity having a deep receptacle at one end and a shallow one at the other, to defraud thereby sellers and buyers; 'a false measure'. This is a metaphor expressing Pishon's double dealing with his wife in pretending merely to eat the fruit of her melog property, to which he was in fact entitled, while in reality he was encroaching upon the property itself which belonged to her.
(31) He was paid 'measure for measure', 'tit for tat'. In other cases, however, mi'un must be declared before Beth din only.
(32) Of the minor's melog property.
(33) Not merely betrothed. Before marriage, even if betrothal had taken place, a husband is not entitled to the usufruct of his wife's melog property.
(34) How then could she here at all make such a declaration !
(35) Metaph. He was subjected to two penalties. קיטרי sing.קטרא (Heb. קשר) 'knot', 'bond'.
(36) Supra 101b, Sanh. 2a.
(37) Whose ruling this statement represents.
(38) Who require the presence of a Beth din (v. our Mishnah) which consists of three men.
(39) Lit., 'until here'.
(40) Mumhin, plur. of mumhe, v. Glos.
(41) 'Of experts'. This is the reading supra 101b.
(42) Which confirms Abaye's opinion.
(43) Cur. edd., בר ('son'), is apparently a misprint for בר ('son of R.'), which is the reading supra, loc. cit.
(44) Cf. loc. cit. where the reading is 'Jose'.
(45) Sanh. 2a, supra loc. cit.
(46) Who require a quorum of two only, v. supra loc. cit.
(47) When she was a minor. Why then does our Mishnah speak of a second declaration of refusal after she has become of age?
(48) By the second refusal (cf. supra n. 8) only the confirmation of the first was intended. Without such confirmation it might be possible to assume that she had changed her opinion and withdrawn her first declaration.
(49) When she may no more exercise the right of mi'un even after a betrothal only.
(50) While still a minor. Since, according to Beth Shammai, mi'un after a marriage is invalid she would not be able, once she was married, to exercise that right again. The word ותמאן translated AND DECLARES etc. should be rendered OR DECLARES etc.
(51) 'OR . . . REFUSAL is wanting in cur. edd., but is to be added (cf. our Mishnah).
(52) That she abides by her declaration.
(53) If she desires to leave her husband.
(54) She may leave her husband without any legal formality, and may marry any other man.
(55) The money or object whereby the kinyan of betrothal is effected. Cf. Kid. 2af.
(56) Cf. Bah, Bomb. ed. and separate edd. of the Mishnah; Cur. edd., 'Eleazar'.
(57) If she was given away in marriage.
(58) Her marriage being invalid, she remains in her father's control, and, like any other daughter of an Israelite who never married a priest, is forbidden to eat terumah.
(59) As the daughter of a priest who never married an Israelite. Cf. supra n. 6.
(60) Lit., 'retention (in the house of her husband)'.
(61) Lit., 'as if she was'.
(62) Lit., 'as if she was not'.

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people might mistake it for a letter of divorce,[1] the following formula was instituted: 'On the Nth day, So-and-so the daughter of So-and-so made a declaration of refusal in our presence'.

Our Rabbis taught: What is regarded as mi'un? — If she[2] said, 'I do not want So-and-so my husband', or 'I do not want the betrothal which my mother or my brothers have arranged for me'.[3] R. Judah said even more than this:[4] Even if while sitting in the bridal litter,[5] and being carried[6] from her father's house to the home of her husband, she said, 'I do not want So-and-so my husband', her statement[7] is regarded as[8] a declaration of refusal. R. Judah said more than this:[9] Even if, while the wedding guests were reclining [on their dining couches] in her husband's house and she was standing and waiting[10] upon them , she said to them, 'I do not want my husband So-and-so', her statement[11] is regarded as[12] a declaration of refusal. R. Jose b. Judah said more than this: Even if, while her husband sent her to a shopkeeper to bring him something for himself,[13] she said, 'I do not want So-and-so my husband', you can have no mi'un more valid than this one.[14]

R. HANINA B. ANTIGONUS RULED: ANY CHILD etc. Rab Judah reported in the name of Samuel: The halachah is in agreement with R. Hanina b. Antigonus.

A Tanna taught: If a minor who did not make a declaration of refusal married herself again, her marriage, it was stated in the name of R. Judah b. Bathyra, is to be regarded as her declaration of refusal.

It was asked: What is the law where she[15] was only betrothed?[16] — Come and hear: If a minor who did not make a declaration of refusal betrothed herself [to another man], her betrothal, it was stated in the name of R. Judah b. Bathyra, is regarded as her declaration of refusal.

The question was raised: Do the Rabbis differ from R. Judah b. Bathyra or not? If you can find some ground for holding that they differ, [it may be asked whether only] in respect of betrothal,[17] or even in respect of marriage? And should you find some reason for holding that they differ even in respect of marriage [the question arises whether] the halachah is in agreement with him[18] or not? And if you can find some ground for holding that the halachah is in agreement with him [it may be asked whether only] in respect of marriage or also in respect of betrothal? — Come and hear: Rab Judah stated in the name of Samuel that the halachah is in agreement with R. Judah b. Bathyra;[19] [since it had to be stated that] the halachah [is so] it may be inferred that they differ.[20]

The question, however, still remains [whether the minor spoken of][21] is one who was married in the first instance[22] or perhaps she is one who was only betrothed?[23] — Come and hear: Abdan's[24] daughters-in-law[25] rebelled [against their husbands].[26] When Rabbi sent a pair of Rabbis to interrogate then,[27] some women said to them, 'See your husbands are coming'. 'May they', they replied, 'be your husbands!'[28] and 'Rabbi decided: 'No more significant mi'un than this is required'. Was not this a case of marriage?[29] — No, one of betrothal only. The halachah, however, is in agreement with R. Judah b. Bathyra, even where marriage with the first husband has taken place.

R. ELIEZER[30] RULED etc. Rab Judah stated in the name of Samuel: I have surveyed [the rulings] of the Sages from all aspects and found no man who was so consistent in his treatment of the minor as R. Eliezer.[30] For R. Eliezer[30] regarded her as one taking a walk with [her husband] in his courtyard who, when she rises from his bosom, performs her ritual immersion[31] and is permitted to eat terumah in the evening.[32]

It was taught: R. Eliezer stated: There is no validity whatsoever in the act of a minor, and her husband is entitled neither to anything she may find,[33] nor to the work of her hands,[33] nor may he annul her vows;[34] he is not her heir[33] and he may not defile himself for her.[35] This is the general rule: She is in no respect regarded as his wife, except that it is necessary for her to make a declaration of refusal.[36] R. Joshua stated: Her husband has the right to anything she finds[37] and to the work of her hands,[37] to annul her vows,[34] to be her heir,[37] and to defile himself for her;[38] the

general principle being that she is regarded as his wife in every respect, except that she may leave him[36] by a declaration of refusal.[39] Said Rabbi: The views of R. Eliezer are more acceptable than those of R. Joshua; for R. Eliezer is consistent throughout in his treatment of the minor while R. Joshua makes distinctions. What [unreasonable] distinctions does he make? — If she is regarded as his wife, she should also require a letter of divorce.[40] But according to R. Eliezer also [it may be argued] if she is not regarded as his wife, she should require no mi'un either! — Should she then depart without any formality whatever?[41]

R. ELIEZER B. JACOB RULED: etc. What is to be understood by a HINDRANCE THAT WAS DUE TO THE HUSBAND and a HINDRANCE THAT WAS NOT DUE TO THE HUSBAND? — Rab Judah replied in the name of Samuel: If when she was asked to marry[42] she replied, '[I must refuse the offer] owing to So-and-so my husband'; such a HINDRANCE is one THAT WAS DUE TO THE HUSBAND.[43] [If, however, she refused the offer] 'because', [she said] 'the men [who proposed] are not suitable for me'; such a HINDRANCE is one THAT WAS NOT DUE TO THE HUSBAND.

Both Abaye b. Abin and R. Hanina b. Abin gave the following explanation: If he gave her a letter of divorce, the HINDRANCE IS one THAT WAS DUE TO THE HUSBAND[44] and, therefore, he is forbidden to marry her relatives and she is forbidden to marry his relatives, and he also disqualifies her from marrying a priest.[45] If, however, she exercised her right of refusal against him, the HINDRANCE is one THAT WAS NOT DUE TO THE HUSBAND and, therefore, he is permitted to marry her relatives and she is permitted to marry his relatives, and he does not disqualify her from marrying a priest.[46]

But surely, this[47] was specifically stated below: If a minor made a declaration of refusal against a man, he is permitted to marry her relatives and she is permitted to marry his relatives, and he does not disqualify her from marrying a priest; but if he gave her a letter of divorce he is forbidden to marry her relatives and she is forbidden to marry his relatives, and he also disqualifies her from marrying a priest![48] — The latter[49] is merely an explanation [of the former].[50]

MISHNAH. IF A MINOR MADE A DECLARATION OF REFUSAL AGAINST A MAN, HE IS PERMITTED [TO MARRY] HER RELATIVES AND SHE IS PERMITTED TO [MARRY] HIS RELATIVES, AND HE DOES NOT DISQUALIFY HER FROM [MARRYING] A PRIEST;[51] BUT IF HE GAVE HER A LETTER OF DIVORCE, HE IS FORBIDDEN TO [MARRY] HER RELATIVES AND SHE IS FORBIDDEN TO [MARRY] HIS RELATIVES, AND HE ALSO DISQUALIFIES HER FROM [MARRYING] A PRIEST.[52] IF HE GAVE HER A LETTER OF DIVORCE AND REMARRIED HER AND, AFTER SHE HAD EXERCISED HER RIGHT OF REFUSAL AGAINST HIM, SHE WAS MARRIED TO ANOTHER MAN AND BECAME A WIDOW OR WAS DIVORCED, SHE IS PERMITTED TO RETURN TO HIM.[53] IF, HOWEVER, SHE EXERCISED HER RIGHT OF REFUSAL AGAINST HIM[54] AND HE REMARRIED HER, AND SUBSEQUENTLY GAVE HER A LETTER OF DIVORCE AND THEN SHE WAS MARRIED TO ANOTHER MAN AND BECAME A WIDOW OR WAS DIVORCED, SHE IS FORBIDDEN TO RETURN TO HIM.[55]

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(1) And might consequently include the formula in letters of divorce also.

(2) The minor.

(3) Lit., 'with which they have consecrated me'.

(4) I.e., extended the scope of mi'un still further.

(5) אפריון.

(6) Lit., 'and goes

(7) Though it might be objected that, had she really meant what she said, she would have refused to be carried to her husband.

(8) Lit., ‘it is’.
(9) V. supra note 3.
(10) Lit., ‘and giving drink’.
(11) Though her waiting upon the guests might seem to contradict her declaration, and though no proper Beth din is present.
(12) Lit., ‘behold it’.
(13) Lit., ‘an object of his’.
(14) Tosef. Yeb. XIII. Though her statement might possibly be the result of a mere outburst against her husband for troubling her with his errand, and though no one but the shopkeeper was present when she made the statement.
(15) A minor who did not make her declaration of refusal.
(16) Not married. Has betrothal the same validity as marriage?
(17) Do they require separate mi'un, but not in the case of marriage, where they agree with R. Judah.
(18) R. Judah; though he is in the minority.
(19) In respect of marriage as well as in that of betrothal.
(20) Had they all been of the same opinion there would have been no need to make the statement that the halachah agrees with him.
(21) Concerning whom it was ruled that no mi'un is required.
(22) l.e. , to her first husband.
(23) But if married, specific mi'un is required.
(24) Abdan was one of Rabbi's disciples, who, after an incident with R. Ishmael, lost his two sons the husbands of the young women here mentioned. Cf. supra 105b.
(25) Who were minors.
(26) Refusing to perform their marital obligations.
(27) To ascertain whether their refusal was in earnest.
(28) I.e., you are welcome to them.
(29) Lit ‘what not (but) that she was married’, i.e., each of them was married to her husband, and, since a mere casual remark was nevertheless accepted by Rabbi as mi'un, it may be inferred that an actual marriage with, or a betrothal to another man may even more so be regarded as mi'un.
(30) Cf. supra p. 746, n. 4.
(31) Necessitated by their connubial intercourse.
(32) If her father is a priest, though her husband is an Israelite. R. Eliezer does not regard the minor as a wife either in respect of the requirement of mi'un or in respect of any other restrictions or privileges such as those relating to terumah.
(33) To which a lawful husband is entitled.
(34) Which is the privilege of a husband. Cf. Num. XXX. 71f.
(35) If he is a priest. Only a lawful husband may. Cf. Lev. XXI, 2.
(36) If she wishes to marry another man.
(37) Rabbinic law has conferred upon him the same rights as those of a lawful husband. Cf. supra n. 4.
(38) Even if he is a priest (cf. supra n. 6). She is regarded as a meth mizwah (v. Glos.), hence he may defile himself for her though Pentateuchally she is not his proper wife.
(39) And no letter of divorce is required.
(40) Mi'un should not have been allowed.
(41) Certainly not. Hence the requirement of mi'un.
(42) While she was still living with her first husband.
(43) Since the minor has shewn by her declaration that it was her desire to continue to live with him.
(44) Since she did not exercise her right of refusal it is obvious that as far as she was concerned the union would never have been broken.
(45) Like any other divorced woman.
(46) Since she is not regarded as his wife.
(47) Our Mishnah according to the explanation of Abaye and R. Hanina.
(48) V. Mishnah intro. Why then should the same ruling be recorded twice?
(49) The Mishnah cited.
(50) R. Eliezer b. Jacob's ruling in our Mishnah.

(51) Since she is not regarded as his wife.

(52) Like any other divorced woman.

(53) It is only a divorced woman that must not be remarried by her first husband after she had been married to another (v. Deut. XXIV, 2-4) but not a minor who left her husband by mi'un which even cancels her status of divorcee in which she may find herself after a previous separation from her husband.

(54) Her first husband.

(55) Since her second separation from her first husband was by means of a letter of divorce, she retains the status of a divorcee. Cf. supra n. 6.

Talmud - Mas. Yevamoth 108b

THIS IS THE GENERAL RULE: IF DIVORCE FOLLOWED MI'UN[1] SHE IS FORBIDDEN TO RETURN TO HIM,[2] AND IF MI'UN FOLLOWED DIVORCE[1] SHE IS PERMITTED TO RETURN TO HIM.[3]

IF A MINOR EXERCISED HER RIGHT OF REFUSAL AGAINST A MAN, AND THEN SHE WAS MARRIED TO ANOTHER MAN WHO DIVORCED HER, AND AFTERWARDS TO ANOTHER MAN AGAINST WHOM SHE MADE A DECLARATION OF REFUSAL, AND THEN TO ANOTHER MAN WHO DIVORCED HER,[4] SHE[5] IS FORBIDDEN TO RETURN TO THE MAN FROM WHOM SHE WAS SEPARATED BY A LETTER OF DIVORCE, BUT IS PERMITTED TO RETURN TO HIM FROM WHOM SHE WAS SEPARATED BY HER EXERCISE OF THE RIGHT OF MI'UN.

GEMARA. It is thus[6] evident that mi'un has the power to cancel[7] divorce; but this, surely, is contradicted by the following: IF A MINOR EXERCISED THE RIGHT OF REFUSAL AGAINST A MAN AND THEN WAS MARRIED TO ANOTHER MAN WHO DIVORCED HER, AND AFTERWARDS TO ANOTHER MAN AGAINST WHOM SHE MADE A DECLARATION OF REFUSAL, AND THEN TO ANOTHER MAN WHO DIVORCED HER,[8] SHE[5] IS FORBIDDEN TO RETURN TO THE MAN FROM WHOM SHE WAS SEPARATED BY A LETTER OF DIVORCE, BUT IS PERMITTED TO RETURN TO HIM FROM WHOM SHE WAS SEPARATED BY HER EXERCISE OF THE RIGHT OF MI'UN, from which it is evident that mi'un against his fellow has no power to cancel[7] his own divorce![9] — Rab Judah replied in the name of Samuel: There is a break[10] [in our Mishnah], the one who taught the former[11] did not teach the latter.[11] Raba[12] said: But what contradiction is this? It is possible that mi'un[13] cancels his own divorce, but that the mi'un against his fellow[14] does not cancel his own letter of divorce! But in what way is the mi'un against his fellow different from one against himself] that it should not cancel his own[15] divorce? [Obviously for the reason that] as she is familiar with his[15] hints and gesticulations he[15] might allure her and marry her again.[16] [But if this is the case] mi'un against himself also should not cancel his divorce, [for the same reason] that as she is familiar with his hints and gesticulations he might allure her and marry her again! Surely, he[15] had already tried to allure[17] her but she did not succumb.[18]

If a contradiction, however, [exists it is that between one ruling] concerning his fellow against [another ruling] concerning his fellow: IF, HOWEVER, SHE EXERCISED HER RIGHT OF REFUSAL AGAINST HIM AND HE REMARRIED HER, AND HAVING SUBSEQUENTLY GIVEN HER A LETTER OF DIVORCE SHE MARRIED ANOTHER MAN AND BECAME A WIDOW OR WAS DIVORCED, SHE IS FORBIDDEN TO RETURN TO HIM. The reason [then why she is forbidden to return to him is] because she BECAME A WIDOW OR WAS DIVORCED, but had she exercised her right of refusal[19] she would have been permitted to return to him,[20] from which it is evident that the mi'un against his fellow has the power to cancel[21] his own divorce; but this view is contradictory to the following: IF A MINOR EXERCISED THE RIGHT OF REFUSAL AGAINST HER HUSBAND AND THEN WAS MARRIED TO ANOTHER MAN WHO

DIVORCED HER, AND AFTERWARDS TO AN OTHER MAN AGAINST WHOM SHE MADE A DECLARATION OF REFUSAL, SHE[22] IS FORBIDDEN TO RETURN TO THE MAN FROM WHOM SHE WAS SEPARATED BY A LETTER OF DIVORCE, BUT IS PERMITTED TO RETURN TO HIM FROM WHOM SHE WAS SEPARATED BY HER EXERCISE OF THE RIGHT OF MI'UN. From this, then, it is evident that the mi'un against his fellow has no power to cancel[23] his own divorce! R. Eleazar replied: There is a break[24] [in our Mishnah]; the one who taught the former[25] did not teach the latter.[25] 'Ulla replied: [The latter statement refers to a case where], for instance, she was thrice divorced, so that she appears like a grown up.[26]

Who taught [the two respective statements of our Mishnah]?[27] Rab Judah replied in the name of Rab: To this may be applied the Scriptural text,[28] We have drunk our water for money; our wood cometh to us for price.[29] In the time of proscription[30] the following halachah was inquired for: If a minor left her first husband with a letter of divorce and her second husband through mi'un, may she return to her first husband? They hired a man for four hundred zuz,[31] and [through him] they addressed the enquiry to R. Akiba in prison,[32] and he stated that she was forbidden.[33] R. Judah b. Bathyra [also was asked] at Nesibis and he too forbade her.[33] Said R. Ishmael son of R. Jose: There was no need for us to [ascertain] such [an halachah],[34] For if in a prohibition involving the penalty of kareth[35] he has been permitted[36] how much more so[37] in one [involving only the penalty of] a negative commandment.[38] But the enquiry was in this manner: If [a minor] was the wife of his mother's brother, and consequently forbidden to him as a relative of the second degree,[39] and his paternal brother [subsequently] married her[40] and died,[41] may she now exercise her right of mi'un,[42] and thus annul her first marriage[43] and so be permitted to contract the levirate marriage?[44] Is[45] mi'un valid after [a husband's] death where a religious performance[46] is involved, or not? Two men were hired for four hundred zuz[47] and when they came and asked R. Akiba in prison he ruled [that such levirate marriage was] forbidden; and when R. Judah b. Bathyra [was asked] at Nesibis he also decided that it was forbidden.

R. Isaac b. Ashian stated: Rab, however, admits that she[48] is permitted to marry the brother[49] of the man whom she is forbidden [to remarry].[50] Is not this obvious? For it is only he with whose hints and gesticulations she is familiar but not his brother![51] — It might have been assumed that [marriage with] the one[52] should be forbidden as a preventive measure against the other[52] hence we were taught [that his brother may marry her]. Another reading: R. Isaac b. Ashian stated: As she[53] is forbidden to him[54] so is she forbidden to his brothers. But, surely, she is not familiar with their hints and gesticulations![55] — His brothers were forbidden [marriage with her] as a preventive measure against [marriage] with him.

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(1) Irrespective of the number of times the man married and divorced her and the number of times she exercised the right of mi'un.

(2) Because her last separation was by means of a letter of divorce. Cf. supra. n. 8.

(3) Cf. supra n. 6.

(4) Others insert here, 'to another against whom she exercised her right of refusal' (cf. separate edd. of the Mishnah, Alfasi and Bah).

(5) Cur. edd., 'this is the general rule' is here omitted in accordance with the reading of the separate edd. of the Mishnah and Alfasi.

(6) Since it was ruled that IF MI'UN FOLLOWED DIVORCE SHE IS PERMITTED TO RETURN to her husband, despite the divorce that preceded it. Cf. supra p. 751, 15, 6.

(7) Lit., 'comes . . . and cancels'.

(8) V. supra note 1.

(9) That preceded the mi'un.

(10) תברא (rt. תבר 'to break'). Others 'contradiction' (cf. Rashi, Levy and Jast).

(11) Lit., 'this'.

(12) Others, 'Rabbah'. Cf. Bah.

(13) The case spoken of in the first statement of our Mishnah.
(14) Spoken of in the second statement.
(15) The first husband.
(16) Lit., 'entangle and bring her', i.e., he might take advantage of their earlier familiarity and insidiously ingratiate himself with her, creating dislike between her and her second husband so that she might be led to exercise her right of mi'un against the latter and return to him.
(17) Cf. supra n. 3.
(18) Lit., 'she was not entangled', 'confused'. The fact that she exercised the right of refusal against him after he had married her a second time and presumably made every effort to retain her, may be regarded as proof that she would not be induced to marry him a third time. When the mi'un, however, concerns a second husband. It is quite likely that, as her separation from her first husband was not due to her mi'un but to his divorcing her, she might readily consent to return to him and thus allow him to induce her to exercise her right of mi'un against her second husband.
(19) Against her second husband.
(20) Her first husband.
(21) Lit., 'comes . . . and cancels'.
(22) V. supra p. 752, n. 2.
(23) Lit., 'comes...and cancels'.
(24) V. supra p. 752, n. 7.
(25) Lit., 'this'.
(26) It is in such a case only that she may not he remarried to any of the men, even though her separation from her last husband was by mi'un. If, however, she was divorced once or twice only, the mi'un against her last husband confirms her in the state of her minority, and she may be married again by either of the men who had previously divorced her.
(27) Concerning which it was said supra that they represent the views of different authors.
(28) Lit., 'what (is the meaning) of that which was written'.
(29) Lam. v, 4.
(30) Lit., 'danger': the times of the suppression of the Bar Kokeba revolt in 135 C.E. when the study of the Torah and Rabbinic or oral law was forbidden by the Roman authorities under pain of death,
(31) V. Glos.
(32) The payment of the exorbitant sum of four hundred zuz for obtaining the required ruling recalled to Rab's mind the text of Lamentations quoted.
(33) To return to her first husband.
(34) Since, as is shewn presently, it is obvious that the minor is permitted to marry her first husband again after she has been separated from her second husband by mi'un.
(35) Marriage with a married woman.
(36) In the case of a minor who has exercised the right of mi'un.
(37) Should one be permitted to marry her.
(38) That of again marrying one's divorced wife. Thus it has been shewn that the author of the first statement in our Mishnah was Rab and that the author of the second statement was R. Ishmael son of R. Jose. Rab, though he belonged to the first generation of Amoraim, was also among the last of the Tannaim. Hence he was sometimes described as Tanna.
(39) Forbidden by Rabbinic law. Cf. supra 21a.
(40) After the death of her first husband.
(41) Without issue, so that she became subject to levirate marriage with his paternal brother.
(42) Against her first husband, through marriage with whom she became forbidden to the levir, the man in question.
(43) And remove thereby her forbidden relationship with the levir.
(44) With the levir between whom and herself no forbidden relationship any longer exists owing to her mi'un. Cf. supra notes 7 and 8.
(45) Cur. edd. insert in parenthesis 'her rival'.
(46) That of the levirate marriage (Deut. XXV, 5).
(47) V. Glos.
(48) A divorced minor who may not be married again by the husband who divorced her though she was separated from her second husband by mi'un.
(49) She is not regarded as his brother's divorcee.

(50) Though her mi'un does not alter her status of divorcee in respect of her former husband himself (for the reason stated supra) it does remove it as far as marriage with his brother is concerned. She is, as a result of her mi'un, no longer regarded as his brother's divorcee.
(51) And since it is only this familiarity that is the cause of the prohibition, it is obvious that where it does not apply there should be no prohibition.
(52) Lit., 'this'.
(53) V. p. 755, n. 13.
(54) The husband who divorced her.
(55) Cf. supra p. 755, n. 16. Why then should she be forbidden to marry them?

Talmud - Mas. Yevamoth 109a

MISHNAH. IF A MAN DIVORCED HIS WIFE AND REMARRIED HER, SHE IS PERMITTED TO MARRY THE LEVIR;[1] R. ELEAZAR[2] . HOWEVER, FORBIDS.[3] SIMILARLY, IF A MAN DIVORCED AN ORPHAN[4] AND REMARRIED HER,[5] SHE IS PERMITTED TO MARRY THE LEVIR;[6] R. ELEAZAR, HOWEVER, FORBIDS.

IF A MINOR WAS GIVEN IN MARRIAGE BY HER FATHER AND WAS DIVORCED,[7] [SO THAT SHE IS REGARDED] AS AN 'ORPHAN' IN HER FATHER'S LIFETIME,[8] AND THEN HER HUSBAND REMARRIED HER,[9] ALL AGREE THAT SHE IS FORBIDDEN TO MARRY THE LEVIR.[10]

GEMARA. 'Efa stated: What is R. Eleazar's reason?[11] Because there was a period when she was forbidden to him.[12] Said the Rabbis to 'Efa: If so, halizah also should not be required![13] And should you reply that the law is so indeed; surely [it may be pointed out] it was taught: In the name of R. Eleazar it was stated that she does perform halizah! — In truth, said 'Efa, the reason of R. Eleazar is unknown to me.

Abaye said, This is the reason of R. Eleazar:[11] He was in doubt whether it was death[14] that subjects [the widow to the levirate marriage] or whether it was the marriage that preceded it[15] that subjects her to it. If it is death that subjects her to it, she should be subject to the[16] levirate marriage; and if it is the marriage preceding it[15] that subjects her to it, then there was a period when she was forbidden to him.[17]

Raba said: It was in fact obvious to R. Eleazar that it is death[14] that subjects [the widow to the levirate marriage], but while all well know of the divorce, not all are aware of the remarriage.[18] On the contrary! Remarriage gets noised abroad since the woman dwells with him! — Do we not, however, deal here [even with such a case as] where he remarried her in the evening and died in the morning?[19]

R. Ashi said, This is the reason of R. Eleazar:[20] He forbade [the levirate marriage of] these[21] as a preventive measure against the remarriage of an 'orphan' [minor] in her father's lifetime.[22] This[23] may also be logically supported; for in the final clause it was stated, IF A MINOR WAS GIVEN IN MARRIAGE BY HER FATHER AND SHE WAS DIVORCED [SO THAT SHE IS REGARDED] AS AN 'ORPHAN' IN HER FATHER'S LIFETIME, AND THEN REMARRIED HER HUSBAND, ALL AGREE THAT SHE IS FORBIDDEN TO MARRY THE LEVIR. Now what [need was there] to state [this when it is so] obvious![24] Consequently it must be[25] this that was taught: R. Eleazar's reason[20] is because he forbade [the levirate marriages of] those as a preventive measure against [the levirate marriage of] this one. Thus our case has been proved.

It was taught in agreement with R. Ashi: The Sages agree with R. Eleazar in respect of a minor whom her father had given in marriage and who was divorced [so that she is regarded] as an

'orphan' in her father's lifetime, and who then remarried [her husband], that she is forbidden to [contract the levirate marriage with] the levir, because her divorce was a perfectly legal divorce, whereas her remarriage was not a perfectly legal remarriage. This,[26] however, applies only where he[27] divorced her while she was a minor[28] and remarried her while she was still a minor;[29] but if he[27] divorced her while she was a minor and remarried her when she was of age, and also if he remarried her while she was still a minor and she became of age while she was with him, and then he died,[30] she may either perform halizah or contract the levirate marriage.[31] In the name of R. Eleazar, however, it was stated: She must perform halizah but may not contract the levirate marriage.[32]

Raba enquired of R. Nahman: What is [the law[33] in respect of] her[34] rival?[35] — The other replied: [The prohibition against] herself is a preventive measure;[36] shall we then go so far[37] as to enact a preventive measure[38] against a preventive measure?[39] But, surely, it was taught: It was stated in the name of R. Eleazar, 'She and her rival perform halizah'; Now can it possibly be imagined that she and her rival [are to perform halizah]? Consequently it must mean,[40] 'either she or her rival performs halizah'![41] — Are you not [in any case obliged to] offer an explanation?[42] Explain, then,[42] as follows: She performs halizah while her rival may either perform halizah or contract the levirate marriage.

MISHNAH. WHERE TWO BROTHERS WERE MARRIED TO TWO SISTERS WHO WERE MINORS[43] AND ORPHANS,[44] AND THE HUSBAND OF ONE OF THEM DIED,[45] [THE WIDOW][46] IS FREE[47] AS BEING [THE LEVIR'S] WIFE'S SISTER. SIMILARLY IN THE CASE OF TWO DEAF[48] [SISTERS ONE OF WHOM WAS] OF AGE AND [THE OTHER] A MINOR, IF THE HUSBAND OF THE MINOR DIED, THE MINOR IS FREE[47] AS BEING [THE LEVIR'S] WIFE'S SISTER. IF THE HUSBAND OF THE ELDER SISTER DIED, THE MINOR IS TO BE INSTRUCTED, R. ELIEZER[49] STATED, TO EXERCISE HER RIGHT OF MI'UN AGAINST HIM.[50] R. GAMALIEL SAID: IF SHE[51] EXERCISED HER RIGHT OF MI'UN WELL AND GOOD;[52] BUT IF [SHE DID] NOT, LET HER WAIT[53] UNTIL SHE IS OF AGE[54] WHEN THE OTHER BECOMES FREE[47] AS BEING [THE LEVIR'S] WIFE'S SISTER. R. JOSHUA SAID: WOE TO HIM[55] BECAUSE OF HIS WIFE AND WOE TO HIM BECAUSE OF HIS BROTHER'S WIFE! HE MUST ALLOW HIS WIFE TO GO[56] BY [GIVING HER] A LETTER OF DIVORCE,[57] AND HIS BROTHER'S WIFE[58] BY [SUBMITTING TO HER] HALIZAH.

GEMARA. But is this is permitted? Surely. Bar Kappara taught: A man should always cling to three things and keep away from three things. 'A man should cling to the following three things': Halizah, the making of peace and the annulment of vows; 'and keep away from three things': — From mi'un, from [receiving] deposits and from acting as surety![59] Mi'un [involving the fulfilment] of a commandment[60] is different.[61]

[Reverting to our] previous text, 'Bar Kappara taught: A man should always cling to three things . . . Halizah', in accordance with [a statement of] Abba Saul. For it was taught: Abba Saul said, 'If [a levir] married his sister-in-law on account of her beauty, or in order to gratify his sexual desires 'or with any other ulterior motive, it is as if he has infringed [the law of] incest; and I am even inclined to think that the child [from such a union] is a bastard'.[62]

'The making of peace', for it is written, Seek peace and pursue it[63]

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(1) Though at the time his brother had divorced her she was forbidden to him as 'his brother's divorcee'.

(2) Mishnah edd.: R. Eliezer.

(3) The reason is given infra.

(4) A minor who was given to him in marriage by her mother or brothers, and who is entitled, therefore, to exercise mi'un.

(5) Whether during her minority or after she had attained her majority.

(6) It is the death of her husband, not his marriage with her, that subjects her to the levir; and at the hour of his death she was no longer his divorcee but his wife.
(7) While she was still in her minority, the letter of divorce having been accepted on her behalf by her father (Rashi). (Cf. Keth. 46b) Rashi s.v. ומקבל and Sonc. ed. p. 266, n. 6.
(8) A father, in accordance with Pentateuchal law, is entitled to give his minor daughter in marriage only once. After she has been divorced, therefore, a father has no more right to give her away in marriage than her mother or brothers in the case where the father is dead. As in the latter case mi'un cancels marriage so it does in the former. The minor thus assumes the status of 'orphan' while her father is still alive.
(9) During her minority.
(10) If her husband died during her minority. She has the status of a divorcee because her letter of divorce, having been accepted by her father, is valid, Her subsequent marriage has no validity since her father can no longer act for her (cf. supra p. 756, n. 12) and her own act has no legal force.
(11) For forbidding to the levir his brother's divorced wife despite the fact that at the time of his brother's death she was married to him again.
(12) Lit., 'she stood for him one hour in prohibition'; i.e,, at the time she was divorced she was forbidden to him under the penalty of kareth as his 'brother's divorcee'. Her subsequent remarriage does not alter her status.
(13) As any other 'brother's divorcee'.
(14) Of the childless husband,
(15) Lit.,'the first'.
(16) Lit., 'behold she is thrust before him'.
(17) Cf. supra n. 4. Hence levirate marriage is forbidden (owing to the second possibility), and halizah is necessary (owing to the first).
(18) Should the levir, therefore, be permitted to contract with her the levirate marriage, it might be assumed by those who knew of the divorce and not of the remarriage that he married his brother's divorcee. Hence R. Eleazar's prohibition.
(19) Certainly we do, since the Mishnah applies to all possible cases. In such a case as the one mentioned the remarriage remains unknown.
(20) v. supra p. 757, n. 3.
(21) The remarried women spoken of in our Mishnah.
(22) Who, as stated in our Mishnah, may not be married by the levir because she retains the status of a divorcee.
(23) R. Ashi's explanation.
(24) As her father has no legal authority to give her in marriage, and as the remarriage that has been contracted by herself (a minor) has no validity, it is obvious that her previous legal status of divorcee remains in force and that she is, therefore, forbidden to the levir as 'his brother's divorcee'.
(25) Lit. 'but not'?
(26) That the Sages admit that the minor may not contract the levirate marriage.
(27) Her first husband.
(28) Her father having accepted on her behalf the letter of divorce which is thus valid.
(29) When neither she nor her father had the right to contract the marriage (cf. supra p. 756, n. 12); and where the death of the husband occurred while she was still in her minority, so that there was no cohabitation at all when she was of age.
(30) So that cohabitation between them could take place while she was of age.
(31) Since the final act of cohabitation after she becomes of age constitutes a legal kinyan of marriage.
(32) Keth. 73bf. Since it was stated that 'the Sages agree with R. Eleazar in respect of a minor . . . in her father's lifetime', it is obvious that R. Eleazar himself spoke of this case and presumably made it the cause of the prohibition of the levirate marriages with the others mentioned.
(33) According to R. Eleazar.
(34) A divorced minor whom the husband remarried when she was of age.
(35) Is her rival permitted levirate marriage?
(36) Against the possibility of contracting levirate marriage with an 'orphan' in her father's lifetime.
(37) Lit., 'rise'.
(38) Prohibition of the levirate marriage of the rival.
(39) Cf. supra note 5. Obviously not.
(40) Lit., 'but no?'

(41) How then could it be said supra that, according to R. Eleazar, the rival may contract the levirate marriage?
(42) The statement being obscure, and an explanation being required in any case.
(43) And given in marriage by their mother or brothers.
(44) So in accordance with the separate edd. of the Mishnah, The last two words are wanting in cur. edd.
(45) Without issue.
(46) Cur. edd., הזו 'that', is here omitted, in accordance with the reading of the separate edd. of the Mishnah, and the Palestinian Talmud, Cf. Wilna Gaon.
(47) From levirate marriage and halizah.
(48) Deaf and dumb, whose marriage is valid according to Rabbinic law only.
(49) Others, 'Eleazar'.
(50) Her husband. His marriage with her (a minor) being only Rabbinically valid, his levirate bond with the elder sister renders her forbidden to him. By the mi'un of the minor the levir is able to perform the Pentateuchal law.
(51) The minor.
(52) Lit., 'she refused' and the elder sister is then enabled to contract the levirate marriage.
(53) I.e., she is not forbidden to her husband, despite his levirate bond with her elder sister which his brother's death had created, (Cf. supra 51a).
(54) And her marriage with her husband becomes Pentateuchally binding.
(55) The surviving brother,
(56) He may not retain her owing to the levirate bond (cf. supra note); R. Joshua, contrary to the opinion of R. Gamaliel, holding the view that a levirate bond does cause the prohibition of the widow's minor sister; and since the levirate bond is the result of a Pentateuchally binding marriage, the marriage with the minor, which is only Rabbinically valid, must be dissolved,
(57) Not by mi'un for the reason given in the Gemara infra.
(58) Who is forbidden as the sister of his divorcee. (15) To instruct a minor to exercise her right of refusal.
(59) The reasons are given infra. From this then it is obvious that mi'un is not to be encouraged. Why then is THE MINOR TO BE INSTRUCTED TO EXERCISE HER RIGHT OF MI'UN?
(60) As is the case in our Mishnah, where the exercise of mi'un enables the levir to observe the Pentateuchal commandment of the levirate marriage.
(61) From ordinary mi'un; while the latter is to be avoided the former is to be encouraged.
(62) Supra 39b.
(63) Ps. XXXIV, 15. Pursue it רדפהו (rt. רדף).

Talmud - Mas. Yevamoth 109b

and [in connection with this] R. Abbahu stated that deduction is made[1] by a comparison between the two expressions of 'pursuit':[2] Here it is written, Seek peace and pursue it and elsewhere it is written, He that pursueth[3] after righteousness and mercy findeth life, prosperity and honour.[4]

'The annulment of vows', in accordance with [a statement of] R. Nathan. For it was taught: R. Nathan said, 'If a man makes a vow it is as if he has built a high place[5] and if he fulfils it,[6] it is as if he has offered up a sacrifice upon it'.[7]

'And keep away from three things: From mi'un', since it is possible that when she becomes of age she will change her mind.

'From [receiving] deposits' [applies to deposits made by] his fellow townsman who [regards] his house as his own house.[8]

'From acting as surety [refers to would-be] sureties in Shalzion.[9] For R. Isaac said, 'What was meant by the Scriptural text, He that is surety for a stranger shall smart for it?[10] Evil after evil[11] comes upon those who receive proselytes,[12] and upon the sureties[13] of Shalzion and upon him who rivets[14] himself to the word of the halachah.[15]

That ‘those who receive proselytes’, [bring evil upon themselves, is deduced] in accordance with [a statement of] R. Helbo. For R. Helbo stated: Proselytes are hurtful to Israel as a sore on the skin.[16]

‘The sureties of Shalzion [bring evil upon themselves]’ because [in that place] they practice ‘pull out and thrust in’.[17]

‘Who rivets himself to the word of the halachah’, [brings evil upon himself], for it was taught: R. Jose said, ‘Whosoever says that he has no [desire to study the] Torah, has no [reward for the study of the] Torah’. Is not this obvious? — But [this must be the meaning]: ‘Whosoever says that he has only [an interest in the study of the] Torah[18] has only [reward for the study of the] Torah’. This, however, is also obvious! — But [the meaning really is] that he has no [reward] even [for the study of the] Torah. What is the reason? — R. Papa replied: Scripture said, That ye may learn them and observe to do them,[19] whosoever is [engaged] in observance[20] is [also regarded as engaged] in study, but whosoever is not [engaged] in observance is not [regarded as engaged] in study. And if you wish I may say: [The reading is] in fact, as was said before: ‘Whosoever says that he has only [an interest in the study of the] Torah has only [reward for the study of the] Torah’, yet [the statement] was necessary [in the case] where he teaches others and these go and do observe [the laws of the Torah]. Since it might have been assumed that he also receives reward,[21] hence we were taught [that he does not]. And if you wish I may say [that the statement] ‘who rivets himself to the word of the halachah’ [applies] to a judge who, when a lawsuit is brought before him, and he knows of an halachah [relating to a similar case], compares one case with the other[22] and, though he has a teacher, he does not go to him to inquire.[23] [Such a judge brings evil upon himself] for R. Samuel b. Nahmani stated in the name of R. Jonathan: A judge should always imagine himself as if [he had] a sword lying between his thighs, and Gehenna was open beneath him; as it is said in Scripture, Behold, it is the couch[24] of Solomon; threescore mighty men[25] are about it, of the mighty men of Israel etc. because of the dread in the night:[26] ‘because of the dread of’ Gehenna[27] which is like ‘the night’.

R. GAMALIEL SAID: IF SHE EXERCISED HER RIGHT OF MI'UN etc. R. Eleazar inquired of Rab: What is R. Gamaliel's reason?[28] Is it because he holds the opinion that the betrothal of a minor remains in a suspended condition[29] and as she grows up it grows with her[30] even though no cohabitation has taken place;[31] or is the reason because he is of the opinion that when a man betroths the sister of his sister-in-law the latter procures her exemption thereby, but thereby only,[32] [and consequently] only if cohabitation has taken place is the elder sister exempt,[33] but if no cohabitation has taken place she is not? — The other replied, This is R. Gamaliel's reason: Because he is of the opinion that when a man betroths the sister of his sister-in-law the latter procures her exemption thereby but thereby only[32] [and consequently] only if cohabitation has taken place is the elder sister exempt,[33] but if no cohabitation has taken place she is not.

Said R. Shesheth: It seems[34] that Rab made this statement while he was sleepy and about to doze off;[35] for it was taught: If a man betrothed a minor, her betrothal remains in a suspended condition. Now, what [is meant by] ‘a suspended condition’ ? Obviously[36] that as she grows up it grows up with her[37] even though there was no cohabitation.[38] Said Rabin the son of R. Nahman to him: The matter of the betrothal of a minor[39] remains in a suspended condition. If cohabitation had taken place[40] it is valid, but if no cohabitation had taken place[40] it is not; for [in the absence of such cohabitation] she thinks ‘He has an advantage over me[41] and I have an advantage over him’.[42]

Is Rab, however, of the opinion that only if cohabitation had taken place is the betrothal valid,[43] but if there was no cohabitation it is not? Surely it was stated: Where a minor did not exercise her right of mi'un and, when she became of age, actually[44] married [another man], Rab ruled: She requires no letter of divorce from her second husband, and Samuel ruled: She requires a letter of divorce from her second husband.[45]

(1) As to the greatness of the reward for the propagation of peace. Lit., 'comes'.
(2) Lit., 'pursuing' (bis) rt. רדף.
(3) רודף (rt. רדף), E.V., 'followeth'.
(4) Prov. XXI, 21; the reward for the pursuit of the latter will also be enjoyed by him who pursues the former. Cf. Kid. 40a.
(5) At the time when the erection of such was forbidden; i,e., after the setting up of the Central Sanctuary in Palestine.
(6) I.e., he does not go to the expert Sage to have it annulled.
(7) Git. 46b, Ned. 22a.
(8) Being a constant visitor at his house he may sometimes help himself to the deposited object and, losing or forgetting about it, would claim it again.
(9) Where debts were collected from the guarantors and not from the creditors. שלציון is a place name (Rashi); perhaps Seleucia, or an abbreviation of שלוח דוין v. note 10.
(10) Prov. XI, 15.
(11) The inference is based on the expression רע ירוע (in which the rt. רעע which is also that of רעה 'evil' is repeated).
(12) The original for He that . . . stranger (ibid.) is ערב זר which is interpreted as the mixing of proselytes with Israel. The rt. ערב may bear both meanings.
(13) The E V. reading of the text.
(14) I.e., to the word but not to its practice.
(15) This is deduced from תוקעים (E.V., that strike hands) in the concluding clause of the verse cited. תקע may also bear the meaning of 'stick to', 'nail oneself to'. This will be further explained anon.
(16) In speaking of proselytes (Isa. XIV, 1) the word used is that of ונספחו (E.V., shall join) which is of the same rt. as ספחת (a sore). V. supra 47b.
(17) They 'pull out' the debtor from his obligation and 'thrust in' the creditor.
(18) Not in its observance.
(19) Deut. V, 1.
(20) Of the laws of the Torah.
(21) As if he had himself observed the laws of the Torah.
(22) Following his own conclusions.
(23) In order to obtain definite guidance on the case under consideration. It is a judge of such a character who is described as one 'who rivets himself to the word of the halachah'.
(24) E.V., litter, the seat from which he dispensed justice.
(25) Judges.
(26) Cant. III, 7f.
(27) Should justice be perverted.
(28) For allowing the exemption of the elder when the minor becomes of age.
(29) During her minority.
(30) I.e., becomes retrospectively effective as soon as she attains her majority.
(31) After her majority. As the validity of the original betrothal is thus made retrospective, the provisional levirate bond between the levir and the elder sister may be regarded as never having existed.
(32) Lit.,'and she goes for herself'. Only by the 'betrothal' (i.e.,the cohabitation) that took place when the minor bad attained her majority does the elder procure her exemptions not by the original betrothal of the minor which is ineffective.
(33) Lit., 'yes'. Because it is the 'betrothal' that severs the levirate bond which existed between the levir and the elder sister from the moment his brother died.
(34) Lit., 'I would say'.
(35) Lit., 'while dozing and lying'.
(36) Lit., 'not?'
(37) V. supra p. 763 n, 12.
(38) V. supra p. 63, n. 13.
(39) Lit., 'this matter of a minor'.

(40) After her majority was attained.
(41) He can divorce her at any time against her will.
(42) She may, according to Pentateuchal law, exercise against him her right of mi'un at any moment. Though she cannot do so according to-Rabbinic law after she produces two pubic hairs, (cf. Mid. 52a and Tosaf. s.v. הוא a.l.), the uncertainty in her mind as to the durability of the union causes it to remain in a suspended condition until kinyan by cohabitation, after she becomes of age, has been effected.
(43) Lit., 'yes'.
(44) Lit., 'and stood up'.
(45) Keth. 73a.

Talmud - Mas. Yevamoth 110a

Does not [this refer to a case] where he[1] did not cohabit [with her]?[2] — No; where he[1] did cohabit with her.[3] If, however, he[1] cohabited [with her] what is Samuel's reason?[4] — He holds the view that one Who performs cohabitation does so in reliance on his first betrothal.[5] But surely they[6] once disputed this point! For it was stated: If a man betrothed a woman conditionally,[7] and unconditionally, Rab ruled: She[8] requires from him a letter of divorce; and Samuel ruled: She requires no letter of divorce from him. 'Rab ruled: She requires from him a letter of divorce', because as soon as he marries her he undoubtedly dispenses with his condition.[9] 'And Samuel ruled: She requires no letter of divorce from him', because one who performs cohabitation does so in reliance on his first betrothal![10] — [Both disputes were] necessary. For if the former[11] only had been stated, it might have been assumed that Rab adheres to his opinion there only because no condition[12] was attached [to the betrothal][13] but in the latter case,[14] where a condition was attached to it,he agrees with Samuel.[15] And if the latter case[14] only had been stated, it might have been assumed that there only[16] does Samuel maintain his view[17] but in the former[18] he agrees with Rab.[19] [Hence both were] required.

Did Rab, however, state that only where [the husband] cohabited with her[20] does she require a letter of divorce[21] but that if he did not cohabit with her none is required?[22] Surely it once happened at Naresh that a man betrothed a girl while she was a minor, and, when she attained her majority and he placed her upon the bridal chair,[23] another man came and snatched her away from him; and, though Rab's disciples, R. Beruna and R. Hananel, were present on the occasion, they did not require the girl to obtain a letter of divorce from the second man![24] — R. Papa replied: At Naresh they married[25] first and then placed [the bride] upon the bridal chair.[26] R. Ashi replied: He[27] acted improperly[28] they, therefore, treated him also improperly, and deprived him of the right of valid betrothal.[29] Said Rabina to R. Ashi: [Your explanation is] satisfactory where the man betrothed [her] with money;[30] what [however, can be said where] he betrothed her by cohabitation? — The Rabbis have declared his cohabitation to be an act of mere fornication.[31]

Rab Judah stated in the name of Samuel: The halachah is in agreement with R. Eliezer;[32] and so did R. Eleazar state: The halachah is in agreement with R. Eliezer.[32]

MISHNAH. IF A MAN WAS MARRIED TO TWO ORPHANS WHO WERE MINORS[33] AND DIED, COHABITATION[34] OR HALIZAH[35] WITH ONE OF THEM EXEMPTS HER RIVAL.[36] AND THE SAME LAW IS APPLICABLE TO[37] TWO DEAF[38] WOMEN.[39]

[IF A MAN WAS MARRIED TO] A MINOR AND TO A DEAF[38] WOMAN,[40] COHABITATION WITH ONE OF THEM DOES NOT EXEMPT HER RIVAL.[41] [IF ONE WAS] POSSESSED OF HER FACULTIES AND THE OTHER WAS DEAF,[42] COHABITATION WITH THE FORMER EXEMPTS THE LATTER, BUT COHABITATION WITH THE LATTER DOES NOT EXEMPT THE FORMER. [IF ONE WAS] OF AGE AND THE OTHER A MINOR, COHABITATION WITH THE FORMER EXEMPTS THE LATTER, BUT COHABITATION

WITH THE LATTER DOES NOT EXEMPT THE FORMER.

GEMARA. Is, however, a deaf[42] woman permitted to perform halizah? Surely, we learned: If a deaf levir submitted to halizah or a deaf sister-in-law performed halizah, or if halizah was performed on a minor, the halizah is invalid![43] — R. Giddal replied in the name of Rab: [This[44] applies] to COHABITATION.[45] Raba[46] replied: It[47] may be said to apply even to halizah; one[48] referring to a woman who was originally deaf,[49] and the other[50] referring to a woman who was possessed of hearing[51] and became deaf afterwards. The 'woman who was originally deaf', leaves[52] as she entered,[53] but the 'woman who was possessed of hearing and became deaf afterwards' cannot do so, since her inability to recite [the prescribed formulae][54] acts as an obstacle.[55]

Abaye raised an objection against him: Is, however, one who was originally deaf permitted to perform halizah? Surely, we learned: If two brothers, one of whom was in possession of his faculties and the other deaf,[45] were [respectively] married to two strangers,[56] one of whom was in the possession of her faculties and the other deaf,[57] and the deaf [brother] who was the husband of the deaf woman died, what should [his brother who was] in possession of his faculties, the husband of the woman in possession of her faculties, do? He marries her[58] and if he wishes to send her away,[59] he may do so.[60] If the [brother] who was in possession of his faculties, the husband of the woman who was in possession of her faculties, died, what should the deaf brother, the husband of the deaf woman do? He marries [the widow] and may never divorce her.[61] Does not this apply to a woman who was originally deaf?[62] And yet it was stated that he may only marry

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(1) Her first husband.

(2) After she had attained her majority. And since Rab nevertheless rules that no divorce from the second husband is required it is obvious that he regards her first marriage as valid!

(3) And it is this cohabitation, not their first betrothal, that constitutes the kinyan of the first marriage.

(4) Since cohabitation renders the betrothal of the first husband valid, that of the second must be invalid; why then did Samuel require the woman to be divorced from her second husband!

(5) Which was invalid. The marriage with the second husband is therefore valid and can be annulled by divorce only.

(6) Rab and Samuel.

(7) Stipulating, for instance, that she must have no bodily defect or that she must not be subject to any restrictions due to a vow she may have made.

(8) If it was discovered that she had a defect or that she was subject to the restrictions due to a vow.

(9) And valid kinyan is effected by their first cohabitation.

(10) Which was invalid; v, Keth. 72b. Why then should they dispute the same point again?

(11) Lit., 'that'; the dispute concerning a minor who did not exercise her right of mi'un, cited from Keth. 73a.

(12) This is the reading of Rashi, following the version in Keth. 73a. The reading of cur. edd. is given infra p. 766, n. 6.

(13) And the husband was obviously anxious to give the union all the necessary validity. Being well aware that the betrothal of a minor is Pentateuchally invalid he naturally 'betroths' her again by cohabitation as soon as she becomes of age.

(14) Lit., 'that'; cited from Keth. 72b.

(15) That the original condition remains in force even after consummation of the marriage.

(16) Since the condition was attached to the original betrothal,

(17) That the marriage remains dependent on the original condition and is, therefore, invalid.

(18) v. supra p. 765, n. 13.

(19) Cur. edd. read, 'For if that had been stated, (it might have been assumed that) in that case only did Rab maintain his view, because there existed a condition and as soon as (the man) cohabited with her he dispensed with his condition; but in this case it might have been assumed that he agrees with Samuel; and if this had been stated (it might have been assumed that) in this case only did Samuel maintain his view; but in that, it might have been said, he agrees with Rab'. [Rashi rejects this reading in view of the passage in Keth. 72a which states distinctly that Rab's ruling was not because he held that the man dispenses with the condition on intercourse, but because he renews betrothal at the time to avoid intercourse degenerating into mere fornication. Tosaf. s.v. בהדיא retains the reading of cur. edd., and explains that it

is because no man would render his intercourse mere fornication that we assume that he dispensed with the condition, since he made no mention of the condition at the time. Had he, however, repeated the condition at intercourse, the condition would stand].

(20) The minor who has attained majority.

(21) Lit., 'yes'.

(22) Lit., 'not'.

(23) It is assumed that this was a ceremony similar to ordinary huppah (v. Glos.).

(24) Obviously because they regarded the first marriage. though no cohabitation had taken place (v. supra n. 10), as valid, As the disciples presumably acted in accordance with the ruling of their Master, Rab, how could it be said that Rab requires a divorce only where cohabitation had taken place?

(25) Cohabitation.

(26) And this is the reason why Rab's disciples regarded the marriage with the first husband as valid and, therefore, required no divorce from the second man.

(27) The second man.

(28) In snatching away another man's wife.

(29) All betrothals are made 'in accordance with the law of Moses and Israel' (cf. P.B. p. 298) i.e.. the Pentateuchal, as well as Rabbinic law; hence it is within the power of the Rabbinical authorities to declare certain betrothals, such, for instance, as the present one where the girl was improperly snatched away, to be invalid.

(30) One of the forms of kinyan in marriage (cf. Kid. 2a). Since the Rabbis are empowered to confiscate a man's property they might well dispose of the money of the betrothal by treating it as a mere gift to the girl.

(31) Which has no legal validity to effect a kinyan.

(32) That THE MINOR IS TO BE INSTRUCTED TO EXERCISE HER RIGHT OF MI'UN.

(33) Marriage with whom is only Rabbinically valid.

(34) By the levir, even during her minority, for the purpose of the levirate marriage.

(35) After she has attained her majority.

(36) From levirate marriage and halizah.

(37) Lit., 'and so'.

(38) I.e., deaf.mute.

(39) Marriage with whom, like marriage with a minor, is only Rabbinically valid.

(40) Though the marriage with either, according to Rabbinic law, is of equal validity.

(41) Since it is uncertain, owing to the difference in their physical condition and age, which of them he preferred and which of them has consequently the greater claim to be regarded as his wife.

(42) I.e., deaf-mute.

(43) Supra 104b. How then could it be said in our Mishnah. AND THE SAME LAW IS APPLICABLE TO TWO DEAF WOMEN?

(44) The law in our Mishnah concerning two deaf women. V. supra n. 3.

(45) Not to halizah.

(46) Others, 'Rabbah'. Cf. infra p. 772, n. 8.

(47) V. supra note 4.

(48) Lit. , 'here'; our Mishnah which allows halizah in respect of a deaf woman.

(49) Even before her marriage.

(50) The Mishnah supra 104b which rules the halizah of a deaf woman to be invalid.

(51) At the time she married.

(52) The levir by means of halizah.

(53) The marriage with her husband. As the marriage was performed by means of signs and gestures so also is the halizah.

(54) Cf. supra 106b.

(55) As a deaf-mute she is unable to recite them and is consequently precluded from the performance of halizah.

(56) I.e., women who were not related to one another.

(57) I.e., deaf-mute.

(58) I.e., contracts the levirate marriage by means of signs and gestures. No halizah is permitted since the woman is incapable of reciting the prescribed formulae.

(59) After he has married her.
(60) Divorcing her, as he married her, by the use of signs and gestures.
(61) Infra 112b. The divorce of a man who is not in the possession of all his faculties cannot annul the marriage of his brother who was in the possession of all his faculties and whose marriage, therefore, subjects him to a levirate marriage that can never be annulled.
(62) Probably it does.

Talmud - Mas. Yevamoth 110b

but not submit to halizah![1] — No, this refers to a woman who was capable of hearing[2] and became deaf afterwards.[3]

Come and hear: If two brothers of sound senses were married to two strangers[4] one of whom was of sound senses and the other deaf, and [the brother who was] of sound senses, the husband of the deaf woman, died, what should the [brother who was] of sound senses, the husband of the woman who was of sound senses, do? He marries [the deaf widow], and if he wishes to divorce her he may do so.[5] If [the brother who was] of sound senses, the husband of the woman who was of sound senses, died, what should the [brother who was] of sound senses, the husband of the woman who was deaf, do? He may either submit to halizah or contract levirate marriage.[6] Are we not to assume that[7] as the man was originally[8] of sound senses so was she originally[8] deaf, and nevertheless it was stated that he may only[9] marry her but may not submit to her halizah![10] — Is this an argument? Each one may bear its own meaning.[11]

An objection was raised against him:[12] If two brothers, one of whom was of sound senses and the other deaf, were married to two sisters, one of whom was of sound senses and the other deaf, and the deaf brother, the husband of the deaf sister, died, what should [the brother who was] of sound senses, the husband of [the sister who was] of sound senses, do? — [Nothing, since] the widow is released[13] by virtue of her being [the levir's] wife's sister. If [the brother who was] of sound senses, the husband of [the sister who was] of sound senses, died, what should the deaf brother, the husband of the deaf sister, do? He releases his wife by means of a letter of divorce,[14] while his brother's wife is for ever forbidden [to marry again]![15] And should you reply that here also [it is a case of a man] who was of sound senses and who became afterwards deaf, is [such a man, it may be retorted], in a position to divorce [his wife]? Surely, we learned: If she[16] became deaf, he may divorce her; if she became insane, he may not divorce her.[17] If he became deaf or insane he may never divorce her.[18] Consequently it must be a case of a man[19] who was originally[20] deaf. And since [the man spoken of] is one who was originally deaf, the woman [spoken of in the same context must] also be one who was originally deaf; and, as the sisters were such as were originally deaf, the strangers also [must be such as were] originally deaf; but in the case of the strangers we learned that [the levir] may only marry[21] but may not submit to halizah![22] The other[23] remained silent.

When he[24] visited R. Joseph, the latter said to him: Why did you raise your objections against him[23] from [teachings] which he could parry by replying that the sisters [spoken of are such as were] originally deaf, and that the strangers [are such as were originally] of sound senses who became deaf afterwards? You should rather have raised your objection against him from the following: If two deaf brothers were married to two sisters who were of sound senses, or to two deaf sisters or to two sisters one of whom was of sound senses and the other deaf; and so also if two deaf sisters were married to two brothers who were of sound senses, or to two deaf brothers, or to two brothers one of whom was of sound senses and the other deaf, behold these women[25] are exempt from levirate marriage and from halizah.[26] If [however the women] were strangers[27] [the respective levirs] must marry them,[28] and if they wish to divorce them, they may do so.[29] Now, how [is this ruling][30] to be understood? If it be suggested [that it refers to brothers who were first][31] of sound senses and who became deaf afterwards,[32] could they [it may be asked] divorce [their wives]? Surely, we learned: If

he[33] became deaf or insane he may never divorce her![34] This ruling must consequently refer[35] to [brothers who were] originally[31] deaf; and since they [are such as were] originally deaf, the women [referred to must] also be [such as were] originally[31] deaf; and it was nevertheless taught: 'If [the women, however], Were strangers [the respective levirs] must marry them',[36] they may thus only[37] marry them but may not submit to their halizah. This, then, presents a refutation of Rabbah![38] — This is indeed a refutation.

A MINOR AND A DEAF WOMAN etc. R. Nahman related: I once found R. Adda b. Ahabah and his son-in-law R. Hana sitting in the market place of Pumbeditha and bandying arguments[39] and [in the course of these they] stated: The ruling,[40] [IF A MAN WAS MARRIED TO] A MINOR AND TO A DEAF WOMAN, COHABITATION WITH ONE OF THEM DOES NOT EXEMPT HER RIVAL applies only to a case[41] where [the widows] became subject to him[42] through a brother of his who was of sound senses, since it is not known to us whether he[43] was more pleased with the minor or whether he was more pleased with the deaf woman; 'whether he was more pleased with the minor' because she would [in due course] reach the age of intelligence or 'whether he was more pleased with the deaf woman' because she was fully grown and in a marriageable condition; if [the widows], however, became subject to him[42] through a deaf brother of his, there is no doubt that he[44] was more pleased with the deaf woman, because she was of matrimonial age and of his kind. But I told them: Even if [the widows] became subject to him[45] through a deaf brother of his [the question of his preference still remains] a matter of doubt.

How do they[46] obtain redress?[47] — R. Hisda replied in the name of Rab: [The levir] marries the deaf widow and then releases her by a letter of divorce,[48] while the minor waits until she is of age, when she performs halizah.[49]

From this, said R. Hisda, it may be inferred that Rab is of the opinion that a deaf wife is partially acquired,[50] [while concerning] a minor [it is a matter of doubt whether] she is [properly] acquired,[51] or not acquired [at all];[52] for were it to be suggested that concerning a deaf wife [it is uncertain whether] she is acquired[51] or not acquired [at all and that] a minor is partially acquired,[50] [the question would arise] why [should the levir] marry [the deaf widow] and release her by a letter of divorce?

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(1) Owing to the woman's incapability of reciting the prescribed formulae. How, then, could Raba (or Rabbah) state that in such a case halizah is permissible?

(2) At the time she married.

(3) After he has married her.

(4) I.e., women who were not related to one another.

(5) V. supra n. 5.

(6) Infra 112b.

(7) Lit., 'what not?'

(8) Even before marriage.

(9) Lit., 'yes'.

(10) V. p. 769, n. 8.

(11) Lit., 'that as it is, and that etc.'

(12) Raba (or Rabbah).

(13) From levirate marriage and halizah.

(14) He must not continue to live with her because she is the sister of his zekukah (v. Glos.) the levirate bond with whom is, as was her marriage with her husband, Pentateuchally valid, while his own marriage with his deaf wife, though valid in Rabbinic law, is invalid in Pentateuchal law. A Rabbinically valid marriage cannot override a levirate bond which is Pentateuchal.

(15) Infra 112b. She is forbidden to her brother-in-law since she is (in Rabbinic law) his wife's (or divorcee's) sister, and she is forbidden to other men since, as a deaf-mute who is unable to recite the prescribed formulae, her brother-in-law is

precluded from submitting to halizah from her, and, in consequence, she remains attached to him by the levirate bond. Now, as the levir's deafness is, in this case, an affliction from which he suffered prior to his marriage, the deafness spoken of in the two previously cited cases (since all these appear in the same contexts) must similarly refer to afflictions commenced prior to the marriage. This then presents an objection against Raba (cf. supra p. 769, n. 8)!

(16) One's wife.

(17) In accordance with a Rabbinical provision safeguarding the position of the woman who, were she to be divorced and thus remain unprotected by a husband, would be subject, owing to her mental condition, to serious moral and physical danger.

(18) Infra 112b; because his marriage which took place when he was in full possession of his senses was Pentateuchally valid, while a divorce given by him while deaf or insane would have no Pentateuchal validity.

(19) Lit., 'but not?'

(20) Prior to the marriage.

(21) Lit, , 'yes'.

(22) V. supra p. 769, n. 8.

(23) Raba (or Rabbah).

(24) Abaye.

(25) If their husbands died without issue.

(26) Because all these marriages having been contracted by signs and gestures, are of equal validity. Each widow is, therefore, forbidden to the respective levir as his wife's sister.

(27) To one another.

(28) Halizah is forbidden, since either the levir or the sister-in-law (or both), as the case may be, is unable to recite the prescribed formulae.

(29) Cit. 71b, infra 112b.

(30) Concerning the deaf people spoken of in this context.

(31) Prior to the marriage.

(32) After the marriage.

(33) Cf. Bah. Cur. edd. insert: 'If she became insane he may not divorce'.

(34) Git. 71 b. infra 112b. Cf. supra p. 771, n. 1. How, then, could it be said to be a case of deafness acquired after marriage!

(35) Lit., 'but not?'

(36) Git. 71 b, infra 112b.

(37) Lit., 'yes'.

(38) Or 'Raba'. Cf. supra p. 768, n. 6 and supra p. 769, n. 8.

(39) So Tosaf. and one of Rashi's explanations. וקמקו אקוותא (vb. קהי 'to blunt' and noun אקוא or אקהא 'refutation'). Jastrow renders, 'They were sitting and raising arguments . Another interpretation of Rashi derives the expression from the rt קוה 'to gather'; 'they were gathering round them an assembly of students'.

(40) Lit., 'that which we learned'.

(41) Lit., 'these words'.

(42) Lit., 'she fell'.

(43) The deceased brother.

(44) The deceased brother.

(45) Lit., 'she fell'.

(46) The minor and the deaf wife whose husband died childless and who became subject to a levir.

(47) Since one does not exempt the other (v. our Mishnah) and the deaf woman is incapable of performing halizah. Were the levir to marry the deaf widow and submit to halizah from the minor after she had attained her majority, the former would become forbidden to him by the halizah of her rival ('If a man did not build he must never build' , supra), the marriage of the deaf not being Pentateuchally valid to sever the levirate bond with the minor.

(48) Cf. supra n. 4.

(49) Both widows are thus released from the levir.

(50) By her husband. Lit., 'acquired and left over'; only in a part of her person is she legally regarded as wife, Cf. infra n. 9.

(51) Completely; and she is consequently regarded as the deceased brother's proper wife.

(52) And consequently she is legally no more than a stranger. That the legal condition of relationship between the minor and her husband is different from that between the deaf wife and her husband is fairly obvious. For if they were both regarded as partially acquired, or if the acquisition of either was regarded as doubtful, their legal position would in no way differ from that of two minors or two deaf women, while, in fact, it does. (Cf. our Mishnah and the following one). From Rab's ruling, however, it is inferred that it is the deaf wife who is partially acquired and that it is the minor concerning whom it is uncertain whether she is wholly acquired or not acquired at all.

Talmud - Mas. Yevamoth 111a

Let her[1] continue to live with him in any case. For if [a deaf woman] is acquired[2] then she is of course acquired,[3] and if she is not acquired,[4] then she is a mere stranger.[5] And should you argue, 'why should the minor wait until she grows up and then performs halizah? Let her[6] continue to live with him [for the same reason[7] that] if she is [properly] acquired[4] then she is of course acquired,[8] and if she is not acquired,[4] then she is a mere stranger';[9] if so [it could be retorted] whereby should the deaf [widow] be released![10]

R. Shesheth said: Logical deduction leads also to the interpretation R. Hisda imparted to Rab's ruling.[11] For it was taught: If two brothers were married to two orphan sisters,[12] a minor and a deaf woman, and the husband of the minor died, the deaf widow is released by means of a letter of divorce[13] while the minor waits until she is of age, when she performs halizah.[14] If the husband of the deaf woman dies, the minor is released by a letter of divorce[15] while the deaf widow is forever forbidden [to marry again].[16] If, however, he cohabited with the deaf widow[17] he must give her a letter of divorce and she[18] becomes permitted [to marry any other man].[19] Now, if you grant that a deaf wife is partially acquired[20] [and that concerning] a minor [it is doubtful whether] she is [fully] acquired[21] or not acquired [at all], one can well see the reason why when he cohabited with the deaf widow he gives her a letter of divorce and she becomes permitted [to marry any other man]. For you may rightly claim that in any case [she becomes permitted]. If the minor is acquired,[21] [the deaf widow] is rightly released as his wife's sister;[22] and if she is not acquired [at all] he has quite lawfully contracted with her[23] the levirate marriage.[24] If you contend, however, [that concerning] a deaf woman [it is doubtful whether] she is acquired[19] or not acquired [at all], and that a minor is partially acquired,[20] [the difficulty arises] why should the deaf widow, if he cohabited with her and gave her a letter of divorce, be permitted [to marry again] when the cohabitation with her was unlawful,[25] and an unlawful cohabitation does not release a woman?[26] — It is possible that this statement represents the view of[27] R. Nehemiah who ruled that an unlawful cohabitation exempts [a widow] from halizah.[28]

If [this statement represents the view of] R. Nehemiah read the final clause: 'If a man was married to two orphans,[29] one of whom was a minor and the other deaf, and died 'and the levir cohabited with the minor and then cohabited with the deaf widow, or a brother of his cohabited with the deaf widow,[30] both are forbidden to him.[31] How do they obtain redress? The deaf woman is released by a letter of divorce[31] while the minor waits until she is of age 'when she performs halizah'.[32] Now,if you grant[33] that a deaf wife is partially acquired [and that concerning] a minor [it is doubtful whether she is fully] acquired or not acquired [at all],[34] and [that the opinion in this statement] is that of the Rabbis,[35] one can well understand the reason why[36] 'the minor[37] waits until she is of age, when she performs halizah', since [otherwise][38] he might cohabit with the deaf widow first,[39] and the [subsequent] cohabitation with the minor would [thereby] be rendered an unlawful cohabitation.[40] If you contend, however, [that the opinion in the statement is that of] R. Nehemiah,[41] surely he [it may be objected] ruled that an unlawful cohabitation does exempt![42] Consequently it must be concluded [that the opinion in the statement is that of] the Rabbis. Our point is thus proved.

R. Ashi said: From the first clause[43] also it may be inferred that [the opinion expressed] is that of the Rabbis. For it was stated, 'If,[44] however, he cohabited with the deaf widow he must give her a

letter of divorce and she becomes permitted [to marry any other man]', but it was not stated,[45] 'If he cohabited with the minor, he must give her a letter of divorce and she becomes permitted'![46] — If this is all, there is not much force in the argument; since in respect of the deaf widow for whom no lawful redress is possible[47] mention had to be made of redress obtained through a forbidden act,[48] but concerning a minor, for whom lawful redress is possible,[49] no redress obtainable through a forbidden act was mentioned.

MISHNAH. IF A MAN WHO WAS MARRIED TO TWO ORPHANS WHO WERE MINORS DIED, AND THE LEVIR COHABITED WITH ONE,[50] AND THEN HE ALSO COHABITED WITH THE OTHER,[51] OR A BROTHER OF HIS COHABITED WITH THE OTHER,[51]

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(1) Once the levir married her.

(2) As the legal wife of her husband.

(3) And having been the proper wife of the deceased, her marriage with the levir severs the levirate bond with the minor, the subsequent halizah with whom is null and void and in no way affects the validity of her marriage.

(4) As the legal wife of her husband.

(5) To the minor, halizah with whom does not concern her at all. Consequently it must be inferred that it is the deaf wife who is partially acquired, and that the doubt as to complete acquisition or none exists in the case of the minor.

(6) Once the levir married her.

(7) Given in the case of the deaf woman.

(8) Cf. supra n. 1 mutatis mutandis.

(9) To the deaf woman, marriage with whom does not consequently affect the validity of her marriage.

(10) Of halizah she is incapable, owing to her inability to recite the prescribed formulae; and marriage with her after a marriage had been contracted with the minor is forbidden. Hence the necessity for Rab's ruling which provides redress for the minor as well as the deaf widow.

(11) That a deaf wife is partially acquired and the legality of the acquisition of a minor is altogether doubtful.

(12) Orphan is mentioned on account of the minor.

(13) She is forbidden to live with her husband as the sister of the minor who is now his zekukah (v. Glos.), since she, as a deaf woman, is only partially acquired as wife, while the minor's acquisition by her husband (and consequently her levirate bond with the levir) might possibly have been completely valid.

(14) And is then free to marry any other man.

(15) As it is possible that the minor is not acquired at all as a wife, while the levirate bond with the deaf widow is at all events partially valid, the former is forbidden to her husband as the sister of his zekukah. (V. Glos. and cf. supra n. 11).

(16) She is forbidden to the levir as the sister of his divorcee (it being possible that the minor was completely acquired as his wife), and she is forbidden to any other man since, owing to her inability to recite the required formulae, the levir cannot release her by halizah. Even when the minor dies, and the prohibition of 'divorcee's sister' is lifted, she remains forbidden to the levir as 'brother's wife'. Since at the time she became subject to the levir as his deceased brother's wife she was for some reason unfit to contract the levirate marriage, the prohibition of 'brother's wife' comes again into force.

(17) After he had divorced the minor.

(18) Though the cohabitation was forbidden.

(19) Because (a) if the minor was to be regarded as his legal wife, the deaf woman was all the time permitted to marry a stranger since, as his wife's sister, she was never subject to the levirate obligations; and if (b) the minor was not to be regarded as his legal wife, his marriage with the deaf widow, who accordingly was not his wife's sister, was a valid levirate marriage which was duly and lawfully annulled by the letter of divorce which set her free.

(20) V. supra p. 773, n. 7.

(21) Cf. supra p. 773, n. 8.

(22) Cf. supra n. 3 (a).

(23) The deaf widow.

(24) Cf. supra n. 3 (b).

(25) Since the minor is at least partially his wife and the deaf widow is forbidden to him as his wife's sister.

(26) From the levirate obligations. Since it is possible that the deaf woman was completely acquired as wife by the deceased brother, the levirate bond between her and the levir is also fully valid, and as the partial acquisition of the

minor by her husband (the levir) cannot annul such a possibly fully valid bond, the deaf widow is precluded from marrying either the levir whose partial wife's sister she is (cf. supra n. 9) or from marrying any other man to whom she can be permitted only through halizah with the levir, which she, as a deaf person, is incapable of performing. Had she been permitted to marry the levir, his cohabitation with her would have released her from any further levirate obligation, while his divorce would have set her free to marry any other man. Since, however, cohabitation with the levir is unlawful, she cannot thereby be released from her levirate obligation and should consequently remain forbidden to all men forever!

(27) Lit., 'this, who?'

(28) V. supra 50b. Hence the permissibility for the deaf widow to marry again after she had been divorced.

(29) V. supra p. 774 n. 10.

(30) After the former had cohabited with the minor.

(31) The reason is given infra.

(32) And she is free at all events: If the minor was a lawfully acquired wife the deaf widow is exempt from the levirate marriage by the former's levirate marriage; and if the minor was not a lawfully acquired wife, the deaf widow had performed the levirate obligation by her own cohabitation with the levir through whose divorce she is now free to marry again.

(33) In respect of the two sisters spoken of in the first clause cited.

(34) Cf. supra p. 775, n. 3.

(35) Who maintain that an unlawful cohabitation does not exempt a deceased brother's widow from the levirate marriage and halizah.

(36) In the final clause, relating to a marriage with orphans who were strangers to each other.

(37) Though marriage with her by the levir should in any case be permitted. For if she was fully acquired by her husband the subsequent cohabitation by the levir with the deaf widow who was only partially acquired can have no validity to cause the minor's prohibition to him; and if she was not acquired at all she, as a stranger, should also be permitted to the levir; and in either case her divorce should set her free without the performance of halizah.

(38) If halizah were not imposed upon the minor when she attains her majority.

(39) And the minor, since it is possible that she was fully acquired, would not be exempt by the levir's cohabitation with the deaf widow who was only partially acquired.

(40) Since it followed that of the deaf widow who, having been at least partially acquired, is the minor's rival, and two rivals may not be married. As in such a case the minor could not be free before she became of age and performed halizah, a similar restriction has been imposed in the former case also.

(41) That the minor is partially acquired and that concerning the deaf woman the validity of her acquisition as a wife is in doubt.

(42) Why then should the minor have to wait until she is of age? If the deaf woman is not acquired at all the minor's cohabitation with the levir is, surely, permitted. But even if the deaf woman is acquired, and her levirate bond causes the minor to be forbidden to the levir, there should be no need for the minor to wait until she is of age and able to perform the halizah, while according to R. Nehemiah, an unlawful cohabitation also exempts a woman from the levirate marriage and halizah!

(43) Which deals with the marriage of two sisters.

(44) When the husband of the deaf sister died.

(45) In the case where the husband of the minor died.

(46) Which would be the law according to R. Nehemiah, who ruled that an unlawful cohabitation exempts the woman from the levirate obligations. The statement, consequently, must represent the view of the Rabbis, and the reason why the minor cannot be released by a letter of divorce is because cohabitation with her is unlawful since she is the sister of the levir's partially acquired wife; while she herself, in case she was fully acquired, is subject to the levirate bond, from which the marriage with her deaf sister, whose kinyan was only partial, cannot exempt her.

(47) As she is forbidden to all men including the levir, as shewn supra.

(48) It being the only possible means whereby she could marry again.

(49) She has only to wait until she is of age, when she can lawfully perform halizah and thereby obtain her freedom.

(50) Lit., 'the first'.

(51) Lit., 'the second'.

Talmud - Mas. Yevamoth 111b

HE HAS NOT THEREBY RENDERED THE FIRST INELIGIBLE [FOR HIM];[1] AND THE SAME LAW IS APPLICABLE TO TWO DEAF WOMEN.

[IF ONE WAS] A MINOR AND THE OTHER DEAF, AND THE LEVIR COHABITED WITH THE MINOR AND THEN HE ALSO COHABITED WITH THE DEAF WIDOW, OR A BROTHER OF HIS COHABITED WITH THE DEAF WIDOW, HE HAS RENDERED THE MINOR INELIGIBLE [FOR HIM].[2] IF THE LEVIR COHABITED WITH THE DEAF WIDOW AND THEN HE ALSO COHABITED WITH THE MINOR, OR A BROTHER OF HIS COHABITED WITH THE MINOR, HE HAS RENDERED THE DEAF WIDOW INELIGIBle [FOR HIM].[3]

[IF ONE WAS] OF SOUND SENSES AND THE OTHER DEAF, AND THE LEVIR COHABITED WITH THE FORMER AND THEN HE ALSO COHABITED WITH THE LATTER, OR A BROTHER OF HIS COHABITED WITH THE LATTER, HE DOES NOT RENDER THE FORMER INELIGIBLE [FOR HIM]. IF THE LEVIR COHABITED WITH THE LATTER, AND THEN HE ALSO COHABITED WITH THE FORMER, OR A BROTHER OF HIS COHABITED WITH THE FORMER, HE RENDERS THE LATTER INELIGIBLE [FOR HIM].

[IF ONE WAS] OF AGE AND THE OTHER A MINOR, AND THE LEVIR COHABITED WITH [THE WIDOW] WHO WAS OF AGE, AND THEN HE ALSO COHABITED WITH THE MINOR, OR A BROTHER OF HIS COHABITED WITH THE MINOR, HE DOES NOT RENDER THE ELDER INELIGIBLE FOR HIM. IF THE LEVIR COHABITED WITH THE MINOR, AND THEN HE ALSO COHABITED WITH [THE WIDOW WHO WAS] OF AGE, OR A BROTHER OF HIS COHABITED WITH [THE WIDOW WHO WAS] OF AGE, HE RENDERS THE MINOR INELIGIBLE [FOR HIM].

R. ELEAZAR RULED: THE MINOR IS TO BE INSTRUCTED TO EXERCISE HER RIGHT OF MI'UN AGAINST HIM.[4]

GEMARA. Rab Judah stated in the name of Samuel: The halachah is in agreement with R. Eliezer[5] . So also did R. Eleazar[6] state: The halachah is in agreement with R. Eleazar.[7] And [both statements[8] were] required. For if the statement had been made on the first [Mishnah] only[5] [it might have been assumed that] in that case alone did Samuel hold that the halachah is in agreement With R. Eliezer,[9] since [the levir there] had not fulfilled the commandment of the levirate marriage,[10] but in this case[11] where[12] the commandment of the levirate marriage has been fulfilled, it might have been assumed that both must be released by a letter of divorce.[13] And if the information[14] had been given on the latter[11] only, [it might have been suggested that] only in this case [is the halachah in agreement with him], because the elder is subject to levirate marriage[15] with him, but not[16] in the other case.[17] [Hence both statements were] required.

MISHNAH. IF A LEVIR WHO WAS A MINOR COHABITED WITH A SISTER-IN-LAW WHO WAS A MINOR, THEY SHOULD BE BROUGHT UP TOGETHER.[18] IF HE COHABITED WITH A SISTER-IN-LAW WHO WAS OF AGE, SHE SHOULD BRING HIM UP UNTIL HE IS OF AGE.[19]

IF A SISTER-IN-LAW DECLARED WITHIN THIRTY DAYS [AFTER HER LEVIRATE MARRIAGE], 'HE HAS NOT COHABITED WITH ME',[20] [THE LEVlr] IS COMPELLED TO SUBMIT TO HER HALIZAH,[21] BUT [IF HER DECLARATION WAS MADE] AFTER THIRTY DAYS, HE IS ONLY REQUESTED TO SUBMIT TO HER HALIZAH.[22] WHEN, HOWEVER, HE ADMITS [HER ASSERTION], HE IS COMPELLED, EVEN AFTER TWELVE MONTHS, TO

SUBMIT TO HER HALIZAH.

IF A WOMAN VOWED TO HAVE NO BENEFIT FROM HER BROTHER-IN-LAW, THE LATTER IS COMPELLED TO SUBMIT TO HER HALIZAH, [IF HER VOW WAS MADE] DURING THE LIFETIME OF HER HUSBAND,[23] BUT IF AFTER THE DEATH OF HER HUSBAND,[24] THE LEVlr MAY ONLY BE REQUESTED[25] TO SUBMIT TO HER HALIZAH. IF THIS,[26] HOWEVER, WAS IN HER MIND [EVEN IF HER VOW WAS MADE] DURING THE LIFETIME OF HER HUSBAND, THE LEVIR MAY ONLY BE REQUESTED TO SUBMIT TO HER HALIZAH.[27]

GEMARA. Must it be assumed that our Mishnah[28] is not in agreement with R. Meir? For it was taught: A boy minor and a girl minor may neither perform halizah nor contract levirate marriage;[29] so R. Meir![30] — It may even be said to agree with R. Meir, for R. Meir spoke only [of the levirate marriage of a sister-in-law] who was of age to a minor, and [of one who was] a minor to [a levir that was] of age, since one of these[31] [may possibly be performing] forbidden cohabitation.[32] He did not speak, however, of a boy minor who cohabited with a girl minor, in which case both are in the same position.[33] But, surely, it was stated, IF HE COHABITED WITH A SISTER-IN-LAW WHO WAS OF AGE SHE SHOULD BRING HIM UP UNTIL HE IS OF AGE![34] — R. Hanina of Hozaah replied: If he had already cohabited [the law] is different.[35] But was it not stated: SHE SHOULD BRING HIM UP UNTIL HE is OF AGE,[36] though each act of cohabitation is a forbidden one![37] — The truth is clearly that our Mishnah cannot be in agreement with R. Meir.

Should not the text, To raise up unto his brother a name,[38] be applied here? And this minor,[39] Surely, is not capable of it![40] — Abaye replied: Scripture said, Her husband's brother shall go in unto her,[41] whoever he may be.[42] Raba[43] replied: Without this [text] also you could not say [that a minor may not contract levirate marriage]. For is there any act [in connection with the levirate marriage] which is at one time[44] forbidden and after a time[45] permitted? Surely, Rab Judah stated in the name of Rab: Any sister-in-law to whom the instruction, Her husband's brother shall go in unto her,[41] cannot be applied at the time when she becomes subject to the levirate marriage, is indeed like the wife of a brother who has children, and is consequently forbidden![46] But then might it not be suggested that this same [principle is applicable here] also?[47] — Scripture said, If brethren dwell together,[48] even if [one brother is only] one day old.[49]

IF A SISTER-IN-LAW DECLARED WITHIN THIRTY DAYS etc. Who is it that taught that up to thirty days[50] a man may restrain himself?[51] -R. Johanan replied: It is R. Meir; for it was taught: A complaint in respect of virginity[52] [may be brought] during the first[53] thirty days;[54] so R. Meir. R. Jose said: If [the woman] was shut up [with him, the complaint must be made] forthwith; if she was not shut up [with him], it may be made even after many years.[55] Rabbah stated: It[56] may even be said [to represent the opinion of] R. Jose,[57] for R. Jose spoke there[55] only of one's betrothed with whom one is familiar,[58] but [not of] the wife of one's brother

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(1) As the kinyan of both is of equal validity or invalidity, if the levir's kinyan of the first was valid, that of the other, coming as it does after it, is ineffective, while if his kinyan of the first was invalid, that of the other was equally invalid and both have the same status as strangers whom he never married. He may, therefore, retain the first who is in any case permitted to him, while the second must be released, since it is possible that the kinyan of a minor is valid and both were, therefore, the lawful wives of the deceased brother, who, as rivals, cannot both be married by the levir.

(2) This is a preventive measure against the possibility of marrying the deaf woman first. Cf. Gemara supra 111a — Rashi. Cf. infra p. 779, n. 1. [Mishnayoth edd.: ‘he does not render the minor ineligible’, the reason being if the minor is fully acquired, the act of cohabitation with the deaf-mute that followed has no validity. Should, on the other hand, the kinyan in regard to a minor be of no effect whatsoever, then she could not be considered the wife of the deceased brother, v. Bertinoro a.l.].

(3) Since it is possible that the minor is fully acquired, while in the case of the other it is certain that, as a deaf person,

she is only partially acquired.
(4) Thus annulling her marriage and enabling the levir to retain the elder woman.
(5) With reference to Mishnah 109a which deals with the levirate marriage of two sisters, cf. however supra p. 760, n. 5.
(6) R. Eleazar b. Pedath, one of the Amoraim.
(7) R. Eleazar b. Shammua', the Tanna in our Mishnah.
(8) That (a) the halachah is in agreement with R. Eleazar in our Mishnah and that (b) it is also in agreement with R. Eliezer's view in the Mishnah supra 109a, as stated in the Gemara supra 110a.
(9) V. supra p. 779, n. 3.
(10) There only it is permissible to teach the minor to exercise her right of mi'un, in order that the levir may be enabled to perform the commandment with the elder.
(11) Our Mishnah.
(12) The levir having cohabited with both widows.
(13) And that the minor is not to be taught to exercise her right of mi'un.
(14) That the halachah is in agreement with R. Eleazar.
(15) V. supra note 2.
(16) Cf. supra note 5.
(17) Cf. supra p. 779, n. 3, where, should the minor fail to exercise her right of mi'un, the elder widow would, as his wife's sister, be altogether exempt from the levirate marriage.
(18) Lit., 'this with this'. As the divorce of a minor is invalid, they cannot be separated by a letter of divorce, should they desire to do so, before both have attained their majority.
(19) During his minority he cannot divorce her (cf. supra note 10).
(20) And he denies her statement.
(21) It being assumed that a period of thirty days sometimes elapses before a marriage is consummated, her word is accepted; v. Gemara.
(22) He cannot be compelled, because it is assumed that no one postpones consummation of marriage for a longer period than thirty days. His word is, therefore, accepted. As the woman, however, by her statement, declared herself to be still bound to him by the levirate bond it is necessary that she should perform halizah, to submit to which, however, the levir can only be asked, not compelled.
(23) When she is not likely to have had in her mind the possibility of ever marrying the levir. The vow is, therefore, presumed to have been due to some quarrel or misunderstanding between her and the levir and to be in no way due to a desire on her part to evade the precept of the levirate marriage.
(24) When her intention may have been to avoid marrying the levir.
(25) But may not be compelled.
(26) Avoidance of the levirate marriage.
(27) And if he refuses, the widow, who is alone to blame for the fact that the levirate marriage cannot be contracted with her, is forbidden to marry again; nor is she entitled to her kethubah.
(28) Which allows levirate marriage to a minor.
(29) Since it is possible that on attaining majority they may be found wanting in procreative powers, in consequence of which they will be unfit for the performance of the levirate obligations. As the Pentateuchal law is thus incapable of fulfilment, the sister-in-law remains forbidden to the levir as his brother's wife'.
(30) Supra 61b. (Cf. supra n. 6).
(31) I.e., the party that is of age.
(32) Cf. supra p. 781, n. 7.
(33) Both are not subject to punishment, even if their cohabitation is found to be a forbidden act and consequently may be allowed in a doubtful case such as this; cf. infra 114a.
(34) Which is not a case concerning two minors.
(35) Though the levirate marriage of a minor with one who is of age is forbidden, it is nevertheless valid ex post facto.
(36) Implying permissibility to continue to live with him.
(37) Which proves that our Mishnah permits directly, not only ex post facto, the levirate marriage of a minor.
(38) Deut. XXV, 7.
(39) As he is incapable of procreation.
(40) To raise up unto his brother a name. Why then is he allowed, the levirate marriage?

(41) Deut. XXV. 5.
(42) Even one who is incapable of fulfilling the commandment in its entirety.
(43) Others, 'Rabbah' (cf. Tosaf. supra 20 s,v. ואהות).
(44) Lit., 'now', while one of the parties is a minor.
(45) When majority is attained.
(46) Supra 30a; for all time, even when the cause of her prohibition had ceased to exist. Were not the minor then permitted the levirate marriage, this prohibition would not have been removed even after he had attained majority.
(47) I.e., that a levir who was a minor at the time his brother died may never contract levirate marriage.
(48) Deut. XXV, 5.
(49) Must the levirate marriage he contracted, cf. ibid.
(50) After his marriage.
(51) From cohabitation. This being evidently the reason why in our Mishnah the woman's statement is accepted as true.
(52) A husband's assertion that he found no tokens of virginity (cf. Deut. XXII, 13ff), and that, consequently, his wife is not entitled to her kethubah.
(53) Lit., 'all'.
(54) After marriage; and the husband is believed when he states that he had only just then discovered her defect. If his complaint is made after thirty days, he cannot deprive his wife of her kethubah, it being assumed that her defect, if any, had been discovered by him long ago and that he had acquiesced. His present complaint is regarded as a mere pretext to penalize the woman because of some new quarrel that may have arisen between them.
(55) V. Tosef. Keth. I.
(56) The statement in our Mishnah, which implies that for thirty days after marriage a man may restrain himself. (Cf. supra note 5).
(57) Not only that of R. Meir.
(58) And since he met her in privacy consummation of marriage might well be assumed.

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towards whom one is rather reserved.[1]

Now, instead of being compelled to submit to halizah, let [the levir] be compelled to take [his sister-in-law] in levirate marriage! — Rab replied: [This is a case] where her letter of divorce was produced by her.[2]

An objection was raised: If within thirty days[3] a sister-in-law declared, 'He has not cohabited with me,' he is compelled to submit to halizah from her, whether he says 'I have cohabited' or whether he admits 'I have not cohabited'; if after thirty days, he may only be requested[4] to submit to halizah from her. If she declares,[5] 'He cohabited with me,' and he states, 'I did not cohabit', behold, he may[6] release her by a letter of divorce.[7] If he declares, 'I have cohabited' and she states, 'He has not cohabited with me,' It is necessary for him, even if he withdrew his statement and admitted, 'I have not cohabited', [to give her] a letter of divorce[8] and [to submit to her] halizah![9] — R. Ammi replied: [The meaning is that] she requires halizah together with her letter of divorce.[10]

R. Ashi replied: There[11] the letter of divorce [was given] in respect of his levirate bond;[12] while here[13] the letter of divorce [is required in respect] of his cohabitation.[14]

[A couple] both of whom admitted[15] [that there was no consummation of the levirate marriage] once came before Raba. 'Arrange the halizah for her', said Raba to his disciples, 'and dismiss her case'. 'But, surely', said R. Sherebya to Raba, 'it was taught: She requires[15] both a letter of divorce and halizah!' 'If it was so taught', the other replied, 'well, then it was taught'.

Hon son of R. Nahman enquired of R. Nahman: What [is the law in respect of] her[16] rival?[17] — The other replied: Shall the rival be forbidden [to marry again] because we compel or request [the

levir]![18]

IF A WOMAN VOWED TO HAVE NO BENEFIT etc. We learned elsewhere: At first it was held that [the following] three [classes of] women must be divorced[19] and they also receive their kethubah: One[20] who declares, 'I am unclean for you',[21] or 'heaven is between me and you',[22] or 'May I be kept away from the Jews'.[23] This ruling was afterwards withdrawn[24] in order that a wife might not cast eyes upon another man[25] and thus disgrace her husband;[26] but [instead it was ordained that] one[20] who declared, 'I am unclean for you'[21] must bring evidence in support of her statement;[27] [in respect of a woman who tells her husband] 'heaven is between me and you',[22] [peace] is made between them by way of a request [addressed to the husband]; [and if a woman vowed], 'May I be kept away from the Jews' [the husband] invalidates his part [of the vow][28] and she may continue connubial intercourse with him, though she remains removed from [other] Jews.[29] The question was raised: What [is her relation] to the levir [if a woman had vowed],[30] 'May I be kept from the Jews?' Is [it assumed that][31] it occurred to her that her husband may possibly die[32] and that she might become subject to the levir[33] or not?[34] — Rab replied: The levir has not the same status as the husband;[35] and Samuel replied: The levir has the same status as the husband.

Said Abaye: Logical deduction is in agreement with Rab. For we learned, IF A WOMAN VOWED TO HAVE NO BENEFIT FROM HER BROTHER-IN-LAW, THE LATTER IS COMPELLED TO SUBMIT TO HER HALIZAH [IF HER VOW WAS MADE] DURING THE LIFETIME OF HER HUSBAND. Now, if it is [to be assumed] that it occurred to her'[36]

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(1) Though he was alone with her no cohabitation may have taken place. מיבזז בזיז rt. בזז 'to be shy', 'bashful'. Cf. גזז כזז.

(2) Lit., 'from under her hand'. After a divorce by the levir, the levirate marriage is forbidden. It is now assumed that the letter of divorce spoken of is one by which the levir had severed their union after the consummation of their marriage.

(3) After contracting levirate marriage.

(4) He cannot be compelled.

(5) After thirty days from their marriage.

(6) If they desire their union to be severed.

(7) No halizah is necessary, the woman being believed, since more than thirty days have elapsed after their marriage.

(8) Since after thirty days it is assumed that cohabitation had taken place.

(9) Because she herself by her declaration that no cohabitation had taken place and that the levirate bond was consequently still in force has caused her own prohibition to all other men until she has performed the halizah. Now, as in this case it is specifically mentioned that a letter of divorce is required, it is to be presumed that in all cases spoken of in this Baraitha the woman had no divorce; why then in the absence of a divorce, is the levir in the first case, compelled to submit to halizah and not rather to the performance of the levirate marriage?

(10) Which is already in her possession. The clause 'even if he withdrew' his statement etc,' does not emphasize the necessity of giving a letter of divorce but the ruling that where the levir first declared after thirty days that he consummated the marriage he may only be requested and not compelled to submit to halizah even though he later asserted that no cohabitation had taken place.

(11) In the first clause of the Baraitha under discussion.

(12) And this has caused the woman to be forbidden to the levir, in consequence of which halizah only but no levirate marriage is possible.

(13) In the final clause.

(14) The purport of the clause 'even if he withdrew' his statement etc.' being that although the levir admitted later that no cohabitation had taken place, in consequence of which it might have been presumed that halizah alone is sufficient, a letter of divorce is nevertheless required, because, more than thirty days having elapsed after the marriage, his first statement admitting cohabitation is accepted as the true one.

(15) After the levir had first declared that consummation of marriage had taken place.

(16) A sister-in-law who declared that the levirate marriage had not been consummated.

(17) Is the rival also forbidden to marry again before the other had performed the halizah?

(18) Obviously not. The sister-in-law in question may indeed have placed herself under a prohibition as a result of her own declaration. The rival, however, since every levirate marriage is usually consummated, remains free.
(19) Even if the husband is reluctant.
(20) The wife of a priest.
(21) Through outrage. A priest is forbidden to live with a wife in such circumstances.
(22) A declaration that may be made by a woman whom her husband deprives of her connubial rights. The meaning might be: 'The distance of the heavens lies between us' or 'heaven knows (if no man does) our miserable relationship'.
(23) I.e., a vow to have no sexual intercourse with any of them. Such a vow is assumed to be the result of the pain that connubial intercourse may cause her, and therefore justified.
(24) Lit., 'they returned to say'.
(25) Whom she would arrange to marry in a place where they are unknown.
(26) By inventing the disabilities mentioned.
(27) Otherwise her assertion is disregarded.
(28) That part of the prohibition that concerns himself.
(29) For fuller notes v. Ned., Sonc, ed., pp. 279ff.
(30) During the lifetime of her husband.
(31) Though her husband is alive.
(32) Without issue.
(33) Her vow was consequently meant to include the levir; and, since her husband can only invalidate his own share, she remains forbidden to the levir.
(34) Her vow may have applied to those men only who are otherwise allowed to marry her if her husband divorced her, her object being to convince him that she had no intention of marrying any other man even after she had left him. As the levir remains in any case forbidden to her after her husband had divorced her she could not have had him in mind. Hence he should be permitted to contract levirate marriage with her.
(35) He is excluded from the vow.
(36) Even while her husband was alive, that he might die without issue and that she would, therefore, be subject to the levir.

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it should have been [stated that he is only] to be requested![1] — What we are dealing with here is the case of a woman who has children, so that such a remote possibility[2] does not occur to her.

What, however, [would be the law if] she had no children? [Would the levir in that case have] to be requested! Instead, then, of stating, IF THIS, HOWEVER, WAS IN HER MIND [EVEN IF HER VOW WAS MADE] DURING THE LIFETIME OF HER HUSBAND, THE LEVIR MAY ONLY BE REQUESTED TO SUBMIT TO HER HALIZAH,[3] a distinction should have been made in the very same case:[4] This[5] is applicable only where she has children, but where she has no children he may only be requested!' Consequently[6] it must be inferred that whether[7] she has children or not, the levir is compelled [to submit to halizah], in accordance with the opinion of Rab. Thus our contention is proved.

CHAPTER XIV

MISHNAH. A DEAF[8] MAN WHO MARRIED A WOMAN OF SOUND SENSES OR A MAN OF SOUND SENSES WHO MARRIED A DEAF WOMAN MAY, IF HE WISHES TO RELEASE HER, DO SO;[9] AND IF HE WISHES TO RETAIN HER HE MAY ALSO DO SO. AS HE MARRIES [THE WOMAN] BY GESTURES[10] SO HE DIVORCES HER BY GESTURES.

IF A MAN OF SOUND SENSES MARRIED A WOMAN OF SOUND SENSES AND SHE BECAME DEAF, HE MAY,[11] IF HE WISHES, RELEASE HER;[12] AND IF HE WISHES HE MAY RETAIN HER. IF SHE BECAME AN IMBECILE HE MAY NOT DIVORCE HER.[13] IF HE,

HOWEVER, BECAME DEAF OR INSANE, HE MAY NEVER DIVORCE HER.[14]

R. JOHANAN B. NURI ASKED: WHY MAY A WOMAN WHO BECAME DEAF BE DIVORCED WHILE A MAN WHO BECAME DEAF MAY NOT DIVORCE [HIS WIFE]? THEY[15] ANSWERED HIM: A MAN WHO GIVES DIVORCE IS NOT LIKE A WOMAN WHO IS DIVORCED. FOR WHILE A WOMAN MAY BE DIVORCED WITH HER CONSENT AS WELL AS WITHOUT IT, A MAN CAN GIVE DIVORCE ONLY WITH HIS FULL CONSENT.

R. JOHANAN B. GUDGADA TESTIFIED CONCERNING A DEAF [MINOR] WHO WAS GIVEN IN MARRIAGE BY HER FATHER[16] THAT SHE MAY BE RELEASED BY A LETTER OF DIVORCE.[17] THEY[18] SAID TO HIM:[19] THE OTHER[20] ALSO IS IN A SIMILAR POSITION[21] .

IF TWO DEAF BROTHERS WERE MARRIED TO TWO DEAF SISTERS, OR TO TWO SISTERS WHO WERE OF SOUND SENSES, OR TO TWO SISTERS ONE OF WHOM WAS DEAF AND THE OTHER WAS OF SOUND SENSES; AND SO ALSO IF TWO DEAF SISTERS WERE MARRIED TO TWO BROTHERS WHO WERE OF SOUND SENSES, OR TO TWO DEAF BROTHERS, OR TO TWO BROTHERS ONE OF WHOM WAS DEAF AND THE OTHER OF SOUND SENSES, BEHOLD THESE [WOMEN] ARE EXEMPT FROM HALIZAH AND FROM LEVIRATE MARRIAGE.[22] IF [THE WOMEN, HOWEVER], WERE STRANGERS[23] [THE RESPECTIVE LEVlrs] MUST MARRY THEM,[24] AND IF THEY WISH TO DIVORCE THEM,[25] THEY MAY DO SO.[26]

IF TWO BROTHERS, ONE OF WHOM WAS DEAF AND THE OTHER OF SOUND SENSES, WERE MARRIED TO TWO SISTERS WHO WERE OF SOUND SENSES, AND THE DEAF BROTHER, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DIED, WHAT SHOULD THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE SISTER OF SOUND SENSES, DO? [NOTHING; SINCE HIS SISTER-IN-LAW] IS EXEMPT[27] , AS BEING HIS WIFE'S SISTER. IF THE BROTHER OF SOUND SENSES, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DIED, WHAT SHOULD THE DEAF BROTHER, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DO? HE MUST RELEASE HIS WIFE BY A LETTER OF DIVORCE[28] WHILE HIS BROTHER'S WIFE IS FORBIDDEN FOREVER [TO MARRY AGAIN].[29]

IF TWO BROTHERS OF SOUND SENSES WERE MARRIED TO TWO SISTERS ONE OF WHOM WAS DEAF AND THE OTHER OF SOUND SENSES, AND THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE DEAF SISTER, DIED, WHAT SHOULD THE BROTHER OF SOUND SENSES, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DO? [NOTHING; SINCE HIS SISTER-IN-LAW] IS EXEMPT[30] AS HIS WIFE'S SISTER. IF THE BROTHER OF SOUND SENSES, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DIED, WHAT SHOULD THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE DEAF SISTER, DO? HE MUST DIVORCE HIS WIFE BY A LETTER OF DIVORCE[31] AND [HE RELEASES] HIS BROTHER'S WIFE BY HALIZAH.[32]

IF TWO BROTHERS, ONE OF WHOM WAS DEAF AND THE OTHER OF SOUND SENSES, WERE MARRIED TO TWO SISTERS, ONE OF WHOM WAS DEAF AND THE OTHER OF SOUND SENSES, AND THE DEAF BROTHER, THE HUSBAND OF THE DEAF SISTER, DIED, WHAT SHOULD [THE BROTHER WHO WAS] OF SOUND SENSES, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DO? [NOTHING; SINCE THE WIDOW] IS RELEASED BY VIRTUE OF HER BEING HIS WIFE'S SISTER. IF THE BROTHER OF SOUND SENSES, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DIED, WHAT SHOULD THE DEAF BROTHER, THE HUSBAND OF THE DEAF SISTER, DO? HE

RELEASES HIS WIFE BY A LETTER OF DIVORCE. WHILE HIS BROTHER'S WIFE IS FOREVER FORBIDDEN [TO MARRY AGAIN].[33]

IF TWO BROTHERS, ONE OF WHOM WAS DEAF AND THE OTHER OF SOUND SENSES, WERE MARRIED TO TWO STRANGERS WHO WERE OF SOUND SENSES, AND THE DEAF BROTHER, THE HUSBAND OF [THE WOMAN WHO WAS] OF SOUND SENSES DIED, WHAT SHOULD THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE WOMAN OF SOUND SENSES, DO? — HE EITHER SUBMITS TO HALIZAH OR CONTRACTS LEVIRATE MARRIAGE. IF THE BROTHER OF SOUND SENSES, THE HUSBAND OF [THE WOMAN WHO WAS] OF SOUND SENSES, DIED, WHAT SHOULD THE DEAF BROTHER, THE HUSBAND OF THE WOMAN WHO WAS OF SOUND SENSES, DO? HE MUST MARRY HER AND HE MAY NEVER DIVORCE HER.[34]

IF TWO BROTHERS OF SOUND SENSES WERE MARRIED TO TWO STRANGERS,[35] ONE OF WHOM WAS OF SOUND SENSES AND THE OTHER DEAF, AND THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE DEAF WOMAN DIED, WHAT SHOULD THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE WOMAN OF SOUND SENSES, DO? HE MARRIES [THE WIDOW] AND IF HE WISHES TO DIVORCE HER HE MAY DO SO. IF THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE WOMAN OF SOUND SENSES, DIED, WHAT SHOULD THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE DEAF WOMAN, DO? HE MAY EITHER SUBMIT TO HALIZAH OR CONTRACT LEVIRATE MARRIAGE.

IF TWO BROTHERS, ONE OF WHOM WAS DEAF AND THE OTHER OF SOUND SENSES, WERE MARRIED TO TWO STRANGERS,[35] ONE OF WHOM WAS DEAF AND THE OTHER OF SOUND SENSES, AND THE DEAF BROTHER, THE HUSBAND OF THE DEAF WOMAN, DIED, WHAT SHOULD THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE WOMAN OF SOUND SENSES. DO? HE MUST MARRY [THE WIDOW], BUT IF HE WISHES TO DIVORCE HER HE MAY DO SO.[36] IF THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE WOMAN OF SOUND SENSES, DIED, WHAT SHOULD THE DEAF BROTHER, THE HUSBAND OF THE DEAF WOMAN, DO? HE MUST MARRY [THE WIDOW] AND HE MAY NEVER DIVORCE HER.

GEMARA. Rami b. Hama stated: Wherein lies the difference between a deaf man or a deaf woman [and an imbecile] that the marriage of the former should have been legalized by the Rabbis[37] while that of the male imbecile or female imbecile was not legalized by the Rabbis? For it was taught: If an imbecile or a minor married, and then died, their wives are exempt from halizah and from the levirate marriage![38] — [In the case of] a deaf man or a deaf woman, where the Rabbinical ordinance could be carried into practice,[39] the marriage was legalized by the Rabbis; [in that of] a male, or female imbecile, where the Rabbinical ordinance cannot be carried into practice, since no one could live with a serpent in the same basket,[40] the marriage was not legalized by the Rabbis.

And wherein lies the difference between a minor [and a deaf person] that the marriage of the former should not have been legalized[41] by the Rabbis while that of the deaf person was legalized by the Rabbis? — The Rabbis have legalized the marriage of a deaf person since [Pentateuchally] he would never be able to contract a marriage;[42] they did not legalize the marriage of a minor since in due course he would be able to contract [a Pentateuchally valid] marriage. But, surely, [in the case of] a girl minor, who would in due course be able to contract [a Pentateuchally valid] marriage, the Rabbis did legalize her marriage.[43] — There[44] [it was legalized] in order that people might not treat her as ownerless property.[45] And why is there a difference[46] between a minor [and a deaf woman] that the former should be permitted to exercise the right of mi'un while the deaf woman should not be permitted to exercise the right of mi'un? — Because, if [the latter also were allowed to do] so,

(1) And not compelled; since it is the woman's fault that the levirate marriage cannot be contracted.
(2) Lit., 'that all this', i.e., that all her children as well as her husband would die, and that the death of the former would precede that of the latter.
(3) Which, referring to a case where the woman's intention was known, is altogether different from the previous one.
(4) Spoken of, where it is not definitely known whether the levirate marriage was or was not in her mind.
(5) That the levir is compelled to submit to halizah.
(6) Since no such distinction was drawn.
(7) Lit., 'there is no difference'.
(8) 'Deaf and dumb', as is to be understood throughout by the term 'deaf'. Marriages contracted by parties of whom one is a deaf-mute are only Rabbinically valid.
(9) By a letter of divorce.
(10) Which in the case of a deaf person take the place of the prescribed formulae.
(11) Though her marriage was Pentateuchally valid.
(12) By a letter of divorce, for the reason to be explained infra.
(13) This is a Rabbinic provision, and the reason is given in the Gemara.
(14) Because his marriage was Pentateuchally valid while his divorce, being that of a deaf person, has no such validity.
(15) The Sages. divorce, being that of a deaf person, has no such validity. (8) The Sages.
(16) Such a marriage is Pentateuchally valid since her father is empowered to act on her behalf.
(17) Even after attaining her majority when she is no longer under her father's control.
(18) The Sages.
(19) R. Johanan b. Nuri.
(20) Lit., 'this', one of sound senses that became deaf, who formed the subject of R. Johanan b. Nuri's enquiry in the preceding paragraph.
(21) V. Git. 55a.
(22) As the marriages of both sisters are of equal invalidity in Pentateuchal, and of equal validity in Rabbinic law, their levirate obligations and degree of relationship are also on the same legal level. Each sister, therefore, exempts the other, as in the case of marriages between normal brothers and sisters, from both the levirate marriage and halizah.
(23) To one another; i.e., if they were not sisters or near of kin in any other way.
(24) Since no halizah is possible with a deaf-mute (v. supra p.788, n. 1) who cannot recite the formulae.
(25) After marriage.
(26) By gestures, as they did in the case of the marriages.
(27) From levirate marriage and halizah.
(28) Because the levirate bond with his sister-in-law, whose marriage (as one between normal persons) was Pentateuchally valid, causes his wife whose marriage with him (a deaf person) was only Rabbinically valid, to be forbidden to him as the sister of his zekukah (v. Glos.).
(29) Since, as a deaf man (cf. supra p.789. n. 8), he is incapable of participating in her halizah, while levirate marriage cannot be contracted because she is his wife's, or divorcee's sister.
(30) From levirate marriage and halizah.
(31) Cf. supra n. 1 mutatis mutandis.
(32) Since both he and his sister-in-law are normal persons.
(33) V. supra p.790. 2.
(34) His divorce, which has only Rabbinical, but not Pentateuchal validity, cannot sever the levirate bond between him and his sister-in-law, which arose out of the pentateuchally valid marriage of his brother.
(35) Cf. supra p.789. n. 10.
(36) Cf. supra p.789. n. 10.
(37) As is evident from our Mishnah. Since halizah was required it is obvious that the preceding marriage, without which the question of halizah could never have arisen, is recognized as valid despite the fact that a deaf-mute (cf. supra p.788. n. 1), owing to his inferior intelligence, is elsewhere ineligible to effect a kinyan.
(38) Supra 69b, 96b.
(39) Deaf-mutes might well lead a happy matrimonial life, not only when the husband or wife is deaf, but even where both are afflicted with deafness.

(40) proverb. There can be no happy or enduring matrimonial union between an imbecile and a sane person or between two imbeciles.

(41) As has been stated in the Baraitha just cited.

(42) And were not his marriage recognized as valid, at least in Rabbinic law, marriage for him would have become an impossibility.

(43) Wherein does she differ from the boy minor that she should be subject to a different law?

(44) The case of the girl minor.

(45) Take liberties with her.

(46) Since in the case of either, marriage is Pentateuchally invalid.

Talmud - Mas. Yevamoth 113a

men would abstain from marrying her.[1]

And why is there a difference between a minor [and a deaf woman] that the former should be permitted to eat terumah[2] while a deaf woman[3] may not? For we learned, 'R. Johanan b. Gudgada testified concerning a deaf girl whom her father gave in marriage[4] that she may be dismissed by a letter of divorce,[5] and concerning a minor, the daughter of an Israelite, who was married[6] to a priest, that she may eat [Rabbinical][7] terumah',[8] while the deaf woman may not eat'![9] This[10] is a preventive measure against the possibility that a deaf man might feed a deaf woman [with such terumah]. Well, let him feed her, [since she is only in the same position] as a minor who eats nebelah![11] This[12] is a preventive measure against the possibility that a deaf [husband] might feed a wife of sound senses [with it]. But even a deaf husband might well feed his wife who was of sound senses with Rabbinical terumah![13] — A preventive measure was made against the possibility of his feeding her with Pentateuchal terumah.

And why is the minor different [from the deaf woman] that the former should be entitled to her kethubah while the deaf woman is not entitled to her kethubah? — Because if [the latter also were] so [entitled] men would abstain from marrying her.[14]

Whence, however, is it inferred that a minor is entitled to a kethubah? — From what we learned: A minor who exercised the right of mi'un, a forbidden relative of the second degree,[15] and a woman who is incapable of procreation, are not entitled to a kethubah;[16] but [it follows[17] that one] released by a letter of divorce,[18] though a minor, is entitled to receive her kethubah.

And whence is it inferred that a deaf woman is not entitled to her kethubah? — From what was taught: If a man who was deaf or an imbecile married women of sound senses [the latter], even though the deaf man recovered his faculties or the imbecile regained his intelligence, have no claim whatsoever on [either of] them.[19] But if [the men] wished to retain them [the latter] are entitled to a kethubah of the value of[20] a maneh.[21] If, however, a man of sound senses married a woman who was deaf or an imbecile, her kethubah is valid, even if he undertook in writing to give her a hundred maneh,[22] since he himself had consented to suffer the loss.[23] The reason, then,[24] is because he himself consented; had he not consented, however, she would receive no kethubah,[25] since otherwise[26] men would abstain from marrying her.[27]

If so,[28] a kethubah should have been provided for a woman of sound senses who married a deaf man, since otherwise[29] [women] would abstain from marrying [deaf men]! — More than the man desires to marry does the woman desire to be taken in marriage.[30]

A deaf man once lived in the neighbourhood of R. Malkiu [and the latter] allowed him to take a wife to whom he had assigned in writing a sum of four hundred zuz out of his[31] estate. Raba remarked: Who is so wise as R. Malkiu who is indeed a great man. He[32] held the view: Had he

wished to have a maid to wait upon him, would we not have allowed one to be bought for him?[33] How much more, [then, should his desire be fulfilled] here where there are two [reasons for complying with his request]![34]

R. Hiyya b. Ashi stated in the name of Samuel: For [unwitting intercourse with] the wife of a deaf man[35] no asham talui[22] is incurred.[36] It might be suggested that the following provides support to his[37] view: There are five who may not set apart terumah, and if they did so their terumah is not valid. These are they: A deaf man, an imbecile, a minor, he who gives terumah[38] from that which is not his own, and an idolater who gave terumah from that which belonged to an Israelite; and even [if the latter gave it] with the consent of the Israelite his terumah is invalid![39] — He[40] holds[41] the same view is R. Eleazar. For it was taught : R. Isaac stated in the name of R. Eleazar that the terumah of a deaf man must not be treated[42] as profane, because its validity is a matter of doubt.[43] If he[40] is of the same opinion as R. Eleazar,[44] an asham talui also should be incurred![45] — It is necessary[46] [that the offence should be similar to that of eating] one of two available pieces [of meat].[47] But does R. Eleazar require [a condition similar to that of eating] one of two pieces? Surely, it was taught : R. Eleazar stated: For [eating] the suet of a koy[48] one incurs the obligation of an asham talui![49] — Samuel is of the same opinion as R. Eleazar in one case[50] but differs from him in the other.[51]

Others read: R. Hiyya b. Ashi stated in the name of Samuel: For [unwitting intercourse with] the wife of a deaf man the obligation of an asham talui is incurred.[52] An objection was raised: There are five who may not set apart terumah![53] — He[54] holds the same view as R. Eleazar.[55]

R. Ashi asked: What is R. Eleazar's reason? Is he positive that the mind of a deaf man is feeble but in doubt whether that mind is clear[56]

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(1) Because at any time throughout her life she could leave her husband by merely making her declaration of refusal. This does not apply to a minor who loses her right to mi'un as soon as she becomes of age.

(2) Even if only her mother or brother gave her in marriage to a priest.

(3) Who was not given in marriage by her father. V. infra.

(4) While she was in her minority.

(5) Even after she became of age, when it is she and not her father that receives it.

(6) By her mother or brothers after the death of her father.

(7) Cf. supra 902.

(8) ‘Ed. VII, 9, Git. 53b. Though such marriage is not Pentateuchally valid.

(9) Since only the minor, and not the deaf woman of whom the first clause speaks, was mentioned in this, the second clause.

(10) The prohibition against the eating of terumah by a deaf woman.

(11) V. Glos. Neither he nor she is subject to any punishment for the eating of forbidden food, v. infra 114a.

(12) The prohibition against the eating of terumah by the deaf woman.

(13) Since their marriage is at least Rabbinically valid.

(14) Cf. supra p.793, n. 5, mutatis mutandis. While deafness, as a rule, is an affliction for life, a minor does not forever remain in her minority.

(15) Who is forbidden in Rabbinic, though not in Pentateuchal law. Cf. supra 21a.

(16) Keth. 100b, B.M. 67a. The first mentioned, because her separation from her husband is effected even against his will; the second was penalized for contracting an unlawful marriage (cf. supra 85b); while in the case of the last the marriage is regarded as a contract under false pretenses.

(17) Since the Mishnah cited speaks only of a minor who has exercised the right of mi'un, and whose separation was, therefore, effected even without the husband's consent.

(18) Which is valid only if the husband had consented to the separation.

(19) Because, at the time the marriage had been contracted, the men were not in the possession of all their senses or faculties and were, in consequence, incapable of undertaking any monetary obligations.

(20) V. Bah. Cur. edd. omit to the end of the clause.

(21) V. Glos. [Their marriage is deemed to have taken place when the husband recovers his faculties, and at that time they were no longer virgins. Beth Joseph, Eben ha-Ezer LXVII].
(22) V. Glos.
(23) לזוק בנכסיו, lit., 'to be damaged in his estate'. Bomb. ed. and others (cf. Bah) read לזון 'to be maintained'.
(24) Why the deaf woman is entitled to her kethubah.
(25) Even according to Rabbinic law.
(26) Lit., 'for if so', i.e., if the Rabbis had entitled her to receive a kethubah.
(27) Cf. supra p.793, n. 5 mutatis mutandis.
(28) That eligibility to receive a kethubah is determined by the likelihood of the consent to marry the deaf person.
(29) Cf. supra n. 5, mutatis mutandis.
(30) The lack of a kethubah would not prevent a woman from marrying a man even if he was deaf.
(31) The deaf man's.
(32) R. Malkiu, in allowing the deaf man to accept responsibility for the sum mentioned.
(33) The answer is, of course, in the affirmative.
(34) Matrimony and service.
(35) Though it might be argued that, since the degree of her husband's intelligence or mental capacity cannot be accurately gauged — the validity of her marriage should be deemed doubtful.
(36) Such an offering is due only when the offence is a matter of doubt (cf. infra p.796. n. 10). In this case, however, as the marriage is valid in Rabbinic law only but remains definitely invalid in Pentateuchal law, no offering could be incurred.
(37) Samuel's.
(38) Without the authority of its owner.
(39) Ter. I, 1 Shab. 153b. From this Mishnah, then, it follows, since the terumah of a deaf man is regarded as definitely invalid, that the incapacity of a deaf man is not a matter of doubt; and this apparently provides support to Samuel's view.
(40) Samuel.
(41) In regard to terumah.
(42) Lit., 'go out'.
(43) Shab. 153a. The invalidity of the terumah spoken of in the Mishnah cited may consequently be due to a similar reason. Hence no support for Samuel's view concerning a deaf man's wife may be adduced from it.
(44) That the validity of the deaf man's action, and consequently also his capacity, is a matter of doubt.
(45) In a case of intercourse with his wife. Cf. supra p.795, n. 15, mutatis mutandis.
(46) If an asham talui is to be incurred.
(47) One of which was definitely forbidden and the other definitely permitted, and it is unknown whether a person ate the one or the other. Only in such a case, where the doubt is due to the existence of two objects, is an asham talui incurred. Similarly in the case of intercourse with one of two women, when it is unknown whether the woman affected was his own wife or a forbidden stranger, an asham talui is incurred. If the doubt, however, relates to one object, it being unknown, for instance, whether a piece of fat one has eaten was of the permitted or forbidden kind, no asham talui is involved. Similarly, in the case of the deaf man's marriage, where the doubt relates to one woman, it being uncertain whether she has the status of a married woman or not, no asham talui is incurred.
(48) A kind of antelope,Gr. **, concerning which it was unknown whether it belonged to the genus of cattle whose suet is forbidden or to that of the beast of chase whose suet is permitted. Cf. Hul. 80a.
(49) Though the doubt relates to one object only.
(50) In regard to terumah.
(51) In regard to the liability of an asham talui.
(52) Cf. supra p.795. n. 14 mutatis mutandis.
(53) Cf. supra p.796. n. 2 mutatis mutandis.
(54) Samuel.
(55) V. supra p.796. n.7(mutatis mutandis) and text.
(56) And whatever little his feebleness enables him to do he can do well at all times.

Talmud - Mas. Yevamoth 113b

or not clear,[1] though [in either case] it Is always in the same condition,[2] or is it possible that he has no doubt that the [deaf man's] mind is feeble and that it is not clear,[1] but [his doubt] here is due to this reason: Because [the deaf man] may sometimes be in a normal state[3] and sometimes in a state of imbecility? In what respect would this constitute any practical difference? — In respect of releasing his wife[4] by a letter of divorce.[5] If you grant that his mind is always in the same condition,[6] his divorce [would have the same validity] as his betrothal.[7] If, however, you contend that sometimes he is in a normal state[3] and sometimes he is in a state of imbecility, he would indeed be capable of betrothal; in no way, however, would he be capable of giving divorce.[8] What then is the decision? — This remains undecided.[9]

IF SHE BECAME AN IMBECILE etc. R. Isaac stated: According to the word of the Torah, an imbecile may be divorced,[10] since her case is similar to that of a woman of sound senses [who may be divorced] without her consent. What then is the reason why it was stated that she may not be divorced? — In order that people should not treat her as a piece of ownerless property.[11]

What kind [of imbecile, however, is here] to be understood? If it be suggested [that it is one] who is capable of taking care of her letter of divorce and who is also capable of taking care of herself, would people [it may be asked] treat her as if she were ownerless property! If, however, [she is one] who is unable to take care either of her letter of divorce or of herself, [how could it be said that] in accordance with the word of the Torah she may be divorced? Surely, it was stated at the school of R. Jannai, And giveth it in her hand[12] [only to her] who is capable of accepting her divorce,[13] but this one[14] is excluded since she is incapable of accepting her divorce; and, furthermore, it was taught at the school of R. Ishmael, And sendeth her out of his house,[15] only one who , when he sends her out, does not return, but this one[14] is excluded since she returns even if he sends her out! — This[16] was necessary[17] in respect of one who is capable of preserving her letter of divorce but is unable to take proper care of herself. Hence, in accordance with the word of the Torah , such an imbecile may well be divorced for, surely, she is capable of preserving her letter of divorce; the Rabbis, however, ruled that she shall not be dismissed in order that people might not treat her as a piece of ownerless property.

Abaye remarked: This[18] may also be supported by deduction. For in respect of her[14] it was stated, IF SHE BECAME AN IMBECILE HE MAY NOT DIVORCE HER, while in respect of him[19] [the statement was]. HE MAY NEVER DIVORCE HER. In what respect [it may be asked] does he[20] differ [from her] that the statement [concerning him] is NEVER while in respect of her 'NEVER' is not mentioned?[21] The inference, then, must be that the one is Pentateuchal, the other Rabbinical.

R. JOHANAN B. NURI ASKED etc. The question was raised: Was R. Johanan b. Nuri certain [of the law concerning] the man[22] and his question related to that of the woman , or is it possible that he was certain concerning that of the woman[23] and his question related to that of the man? — Come and hear: Since they answered him: A MAN WHO GIVES A DIVORCE IS NOT LIKE A WOMAN WHO IS DIVORCED. FOR WHILE A WOMAN MAY BE DIVORCED WITH HER CONSENT AS WELL AS WITHOUT IT, A MAN CAN GIVE A DIVORCE ONLY WITH HIS FULL CONSENT, it may be inferred[24] that his question related to the man .[25] On the contrary; since they said to him: THE OTHER ALSO IS IN A SIMILAR POSITION,[26] it may be inferred that his question related to the woman! — But [the fact is this]: R. Johanan b. Nuri was addressing [them[27] in the light] of their own statement. 'According to my view', [he argued], 'as well as a man[28] is incapable of giving a divorce, so also is a woman[25] incapable of receiving a divorce;[29] but according to your view,[30] why should there be a difference between a man and a woman?'[31] [To this] they replied: A MAN WHO GIVES A DIVORCE IS NOT LIKE A WOMAN WHO IS DIVORCED.

R. JOHANAN . . . TESTIFIED etc. Raba stated: From the testimony of R. Johanan b. Gudgada[32] [it may be inferred that if a husband] said to witnesses, 'See this letter of divorce which I am giving

[to my wife]', and to her he said,[33] 'Take this bill of indebtedness', she is nevertheless divorced. For did not R. Johanan b. Gudgada imply that [the woman's] consent was not required?[34] Here also, then, her consent is not required. Is not this obvious![35] — It might have been assumed that since he said to her, 'Take this bill of indebtedness'[36] he has thereby cancelled [the letter of divorce], hence we were taught [that it remains valid, for] had he in fact cancelled it, he would have made his statement to the witnesses. Since, however, he did not make the statement to the witnesses he did not cancel it at all; and the only reason why he made that statement to her was[37] to conceal [his] shame.[38]

R. Isaac b. Bisna once lost the keys of the school house in a public domain[39] on a Sabbath.[40] When he came to R. Pedath[41] the latter said to him, 'Go and

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(1) He cannot do anything rational.

(2) Either always clear or always not clear.

(3) Lit. , 'sound'.

(4) Whom he married when he was already suffering from his infirmity.

(5) This question applies only to the view of R. Eleazar. (Cf. supra p.796. n. 7). According to the Rabbis, as has been stated (supra 112b), a deaf man may divorce his wife, as he marries her, by gestures.

(6) Either always clear or always not clear.

(7) Since his mental powers do not change, he is as capable of giving divorce as contracting a marriage. He was either capable of both transactions or of neither.

(8) It being possible that at the time of the betrothal or marriage he happened to be in a normal state, and his act was consequently valid, while at the time of the divorce he may happen to relapse into imbecility, in consequence of which his act can have no validity.

(9) Teku, v. Glos.

(10) Though it is impossible to ascertain whether she realizes the significance of her action.

(11) Were she left unprotected by a husband, unscrupulous men might take undue advantage of her.

(12) Deut. XXIV, 1 (hand = יד. V. infra note 4).

(13) Lit., 'who has a hand' (v. supra note 3).

(14) The imbecile.

(15) Deut. XXIV, 1 .

(16) The statement of R. Isaac concerning the imbecile.

(17) Lit., 'not required (but)'.

(18) That the divorce of an imbecile is only Rabbinically forbidden but Pentateuchally permitted.

(19) The man who became an imbecile.

(20) Lit., 'here'.

(21) Lit., 'and what is different there that it was not taught forever'.

(22) That if he was deaf he may not divorce his wife.

(23) That if she was deaf she may be divorced.

(24) Since the expression used in the reply was, A MAN . . . IS NOT LIKE A WOMAN.

(25) Had it referred to the woman, the expression in the reply would have been, 'A woman . . . is not like a man'.

(26) The man not having been mentioned at all.

(27) The Rabbis.

(28) Who is deaf.

(29) It was to this statement that the Rabbis replied, THE OTHER ALSO IS IN A SIMILAR POSITION.

(30) Which allows a deaf woman to be divorced.

(31) Why should not a deaf man also be allowed to divorce his wife?

(32) According to which a woman may be divorced without her consent even though her betrothal was Pentateuchally valid.

(33) When handing the letter of divorce to her.

(34) Cf. supra p.799, n. 13.

(35) According to R. Johanan. What need, then, was there for Raba to state the obvious?

(36) Thus describing the document as one which has no relation whatsoever to divorce.

(37) Lit., ‘and that which he said thus, owing to’.

(38) At divorcing her. Or, to save her from the shame of being divorced in public.

(39) Reshuth harabbim רשות הרבים. Glos. [Though the question arose on Sabbath they could not have been lost in a public domain on that day. Bah., therefore, rightly omits ‘on a Sabbath’; nor did Rashi seem to have it, v. 114a s. v. דבר, v.n. 9].

(40) I.e., in a place where, and on a day when carrying of objects is forbidden.

(41) On Sabbath (Rashi). To consult him on the best way of getting the keys to the school house.

Talmud - Mas. Yevamoth 114a

lead forth some boys and girls [to the spot] and let them take a walk[1] there, for if they find [the keys] they will bring them back’. [From this] it is clearly evident that he[2] is of the opinion that if a minor eats nebelah,[3] it is not the duty of the Beth din to take it away from him.[4] May it be suggested that the following provides support for his view? A man must not say to a child, ‘Bring me[5] a key’, or ‘bring me[5] a seal’; but he may allow him to pluck or to throw![6] Abaye replied: ‘To pluck’ [may refer] to a non-perforated plant-pot,[7] and ‘to throw’ [may refer] to a neutral domain,[8] [acts which are no more than prohibitions] of the Rabbis.[9]

Come and hear: If an idolater came to extinguish [a fire],[10] he is not to be told either. ‘Put it out’ or ‘Do not put it out’, because it is not the duty of the Israelites present[11] to enforce his Sabbath rest. If a minor [Israelite], however, came to extinguish [the fire], he must be told, ‘Do not put it out’, since it is the duty of the Israelites present[11] to enforce his Sabbath rest![12] R. Johanan replied: [The child is inhibited only] where he [appears to] act with his father's approval.[13]

Similarly, then, in respect of the idolater,[14] [it is a case] where he acts with the approval of an Israelite? Is this, however, permitted![15] — An idolater acts on his own initiative.[16]

Come and hear: If the child of haber[17] was in the habit of visiting his mother's father who was an ‘am ha-rez,[18] there is no need to apprehend that [the latter] might feed him with [levitically] unprepared foodstuffs;[19] and if fruit[20] was found in his[21] possession, it is not necessary [to take it from] him![22] — R. Johanan replied: The law was relaxed in respect of demai.[23]

The reason, then,[24] is because [the fruit was] demai,[23] but [had its prohibition been] certain[25] it would have been necessary to tithe it;[26] but, surely [it may be objected] R. Johanan said[27] that [a child is inhibited only] where he [appears to] act with his father's approval[28] — But [the fact is that] R. Johanan was in doubt. When, therefore, he dealt with the one subject[29] he rebutted the argument[30] and when he dealt with the other[29] he [again] rebutted the argument.[30]

Come and hear: If the child of a haber[31] who was a priest was in the habit of visiting his mother's father who was a priest and an ‘am ha-arez,[32] there is no need to apprehend that [the latter] might feed him with unclean terumah; and if fruit was found in his[33] possession it is not necessary [to take it away from] him![34] — [This refers only] to Rabbinical terumah.[35]

Come and hear: An [Israelite] child may be regularly[36] breast fed by an idolatress or an unclean beast, and there is no need to have scruples about his sucking from a detestable thing;[37] but he must not be directly fed with nebeloth,[38] terefoth,[39] detestable creatures or reptiles. From all these, however, he may suck, even on the Sabbath,[40] though this is forbidden to an adult.[41] Abba Saul stated: It was our practice to suck from a clean beast on a festival.[42] At any rate it was here stated that ‘there is no need to have scruples about his sucking from a detestable thing’![43] — [The permissibility] there is due to [the presence of] danger.[44]

If so, an adult also [should be permitted]![45] — [Permissibility for] an adult is dependent on

medical opinion.[46] [Permissibility for] a child also should be made dependent on medical opinion![47] — R. Huna son of R. Joshua replied: The ordinary child is in danger when deprived of his[48] milk.

'Abba Saul stated: It was our practice to suck from a clean beast on a festival'. How is one to understand this?[49] If danger was involved, [the sucking should be permitted] even on the Sabbath also; and if no danger was involved, it should be forbidden even on a festival! — This can only be understood as a case where[50] pain[51] was involved, [Abba Saul] being of the opinion [that sucking][52] is an act of indirect[53] detaching.[54] [In respect of the] Sabbath, therefore, where the prohibition[55] [is one involving the penalty] of stoning, the Rabbis have instituted a preventive measure;[56] [in respect of] a festival, however, where the prohibition[55] [is only that of] a negative precept,[57] the Rabbis have not instituted any preventive measure.

Come and hear: These ye shall not eat,[58] for they are a detestable thing[59] [is to be understood[60] as] 'you shall not allow them to eat',[61] this being a warning[62] to the older men concerning the young children. Does not this imply[63] that [minors] must be ordered, you shall not eat [such things']![64] — No; that [adults] may not give them[65] with their own hands.[66]

Come and hear: No soul of you shall eat blood[67] implies[68] a warning[62] to the older men concerning the young children. Does not this signify[63] that [minors] must be told,[69] 'Do not eat [blood]'![70] — No; that [adults] must not give them with their own hands.[66]

Come and hear: Speak . . . and say[71] conveys a warning[62] to the older [Priests] concerning the [priests who are] minors. Does not this imply that minors must be ordered not to defile themselves![72] — No; that [adults] must not defile them with their own hands.[66]

And [all the Scriptural texts cited are] required. For if we had been informed concerning detestable things only,

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(1) Or, 'let them play' (Rashi).

(2) R. Pedath, who saw no objection to the children's desecration of the Sabbath.

(3) V. Glos. Symbolic of any religious transgression.

(4) Lit., 'to separate him'.

(5) On the Sabbath, from a public domain.

(6) If he does that of his own accord. Which proves that though a child may not be ordered to break a religious law he need not he interfered with if he does it on his own account.

(7) The plants in which draw no nourishment from the ground and cannot consequently he regarded as attached to it.

(8) Karmelith כרמלית, neither a public nor a private domain. V. Glos.

(9) In the case of Pentateuchal prohibitions, however, a child must he stopped even if he acts quite innocently.

(10) On the Sabbath when labour is forbidden to an Israelite.

(11) Lit , 'upon them'.

(12) Shab. 121a. Which shews, contrary to the opinion of R. Pedath, that even where a child acts in pure innocence, he must he prevented from transgressing a law.

(13) I.e., if his father is present at the time he commits the transgression. The father's silence is interpreted as approval and encouragement of the child to continue his forbidden act. Hence the rule that he must he prevented from the desecration of the Sabbath. When, however, the child acts in the absence of his father it is no one's duty to restrain him.

(14) Mentioned in the same context (Shab 121a).

(15) Surely not. Whatever an Israelite is forbidden to do on the Sabbath he must not ask an idolater to do for him.

(16) He does not wait for the Israelite's encouragement, since he well knows that after the Sabbath he will he duly rewarded for his labour. Hence it is not necessary for any Israelite to prevent him from acting as he desires.

(17) חבר, lit., 'associate' (v. Glos). One who observes all religious laws including those relating to the priestly and Levitical gifts, which were occasionally neglected by the 'am ha-arez.

(18) עפ האריץ, lit., 'people of the land' (v. supra n. 12).

(19) Produce of the land on which the levitical dues have not been given.
(20) I.e., any land produce, liable to levitical dues.
(21) The child's.
(22) I.e., he may eat of it, though, as the fruit of an ‘am ha-arez, on which the necessary dues may not have been given, it is forbidden for consumption. From this it follows that there is no need to prevent a child from transgression. An objection against those who hold the contrary view!
(23) דמאי, land produce belonging to an ‘am ha-arez (v. Glos.), since the prohibition of such produce is due to suspicion only. It is not certain that the prescribed dues were not given by the ‘am ha-arez.
(24) Why the child is not prevented from the consumption of the fruit mentioned.
(25) If, for instance, it had been definitely known that it had not been tithed.
(26) Before the child could be allowed to eat of it.
(27) Supra, in explanation of the citation from Shab. 121a.
(28) Why, then, should the child, where he acts in all innocence and where his father's approval is not in question, be prevented from eating of the levitically unprepared fruit?
(29) Lit., ‘standing here’.
(30) Lit., ‘thrusts’, thus preventing his disciples from drawing any definite, and possibly erroneous, conclusion,
(31) V. supra p. 801, n. 12.
(32) V. loc. cit. n. 13.
(33) The child's.
(34) Cf. supra note ,. mutatis mutandis. The consumption of unclean terumah is forbidden Pentateuchally (cf. supra 73b)!
(35) That which is given from the fruit of the trees (apart from vine and olive trees) which is Pentateuchally exempt.
(36) Lit., ‘and goes’.
(37) Which is forbidden to adults. Cf. Lev. XI, 10ff.
(38) Plural of nebelah (v. GIos.).
(39) The sing. is terefah q.v. Glos.
(40) When sucking is under certain conditions forbidden, as explained infra.
(41) The milk of an unclean beast is for adults Pentateuchally forbidden. Cf. Bek. 6b.
(42) When the restrictions on work are not as rigid as those of the Sabbath.
(43) Though he is eating a Pentateuchally forbidden food (v. supra n. 6 and cf. supra p. 802, n. 4)!
(44) Without food the child's life is endangered.
(45) When life is in danger any religious law may be infringed.
(46) Lit., ‘requires an estimate’. Before he is allowed to eat of the forbidden food it is necessary to obtain medical opinion that delay until the conclusion of the Sabbath, for instance, would involve him in danger.
(47) Cf. supra n. 11.
(48) Lit., ‘at’.
(49) The circumstances in which Abba Saul and his friends were permitted to commit an apparently forbidden act.
(50) Lit., ‘not necessary (but)’.
(51) Not danger to life.
(52) From the breast.
(53) Or ‘unusual’. כלאחר יד lit., ‘as if by the back of the hand’.
(54) מפרק (rt. פרק in Pi'el, ‘break down’, ‘detach’) Milking an animal with one's hands is regarded as direct detaching which on the Sabbath is Pentateuchally forbidden (cf Shab. 95a); releasing the milk by sucking is an unusual, or indirect unloading and is only Rabbinically forbidden.
(55) For actual unloading.
(56) Forbidding also sucking which is indirect unloading.
(57) Involving no death penalty.
(58) לאכתאכלם (Kal of אכל). V. infra n. 7.
(59) Lev. XI, 42.
(60) Since the prohibition of such food for adults has already been mentioned elsewhere.
(61) לא תאכילום (Hif. of אכל).
(62) Lit., ‘to warn’, ‘caution’, ‘admonish’.
(63) Lit., ‘what not?’

(64) Even if they act on their own. An objection against R. Pedath (cf. supra p. 801, n. 7)!
(65) Bah. Cur. edd., 'him'.
(66) Cf. supra. 801, n. 8, final clause.
(67) Lev. XVII, 12.
(68) V. supra note 6
(69) Lit., 'they say to them'.
(70) Cf. supra p. 801, n. 7.
(71) Lev. XXI, 1, a repetition of the rt. אמר.
(72) Lit., 'he tells them, Do not be defiled'. An objection against R. Pedath (cf. supra p. 801, n. 7)!

Talmud - Mas. Yevamoth 114b

it might have been assumed [that the law[1] applies to them], because their prohibition applies[2] to even the minutest [objectionable creature][3] but not to blood the minimum quantity of which[4] must be no less than[5] a quarter [of a log].[6] And if we had been informed concerning blood only, it might have been assumed [that the law[7] applies to this] because [the eating of it] involves the penalty of kareth, but not to reptiles. And if we had been informed concerning these two,[8] it might have been assumed [that the law[7] applies to these] because their prohibition applies equally to all but not to uncleanness.[9] And had we been informed concerning uncleanness it might have been assumed [that the law[7] applies only here because] priests are different [from other people], since more commandments have been imposed upon them,[10] but not to these.[8] [Hence the three Scriptural texts were] required.

Come and hear: IF TWO BROTHERS ONE OF WHOM WAS OF SOUND SENSES[11] AND THE OTHER DEAF WERE MARRIED TO TWO SISTERS WHO WERE OF SOUND SENSES, AND THE DEAF BROTHER, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DIED, WHAT SHOULD THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE SISTER OF SOUND SENSES, DO? — [NOTHING; SINCE HIS SISTER-IN-LAW] IS EXEMPT AS BEING HIS WIFE'S SISTER. IF THE BROTHER OF SOUND SENSES, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DIED, WHAT SHOULD THE DEAF BROTHER, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DO? HE MUST RELEASE HIS WIFE BY A LETTER OF DIVORCE WHILE HIS BROTHER'S WIFE IS FORBIDDEN FOREVER [TO MARRY AGAIN]. Now, why should he RELEASE HIS WIFE BY A LETTER OF DIVORCE? Let her continue to live with him [since he is only like] a minor who eats nebelah.[12] — On account of the prohibition imposed upon her.

Come and hear: IF TWO BROTHERS OF SOUND SENSES WERE MARRIED TO TWO SISTERS ONE OF WHOM WAS OF SOUND SENSES[13] AND THE OTHER DEAF, AND THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE DEAF SISTER. DIED, WHAT SHOULD THE BROTHER OF SOUND SENSES, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DO? [NOTHING; SINCE HIS SISTER-IN-LAW] IS EXEMPT AS HIS WIFE'S SISTER. IF THE BROTHER OF SOUND SENSES, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES. DIED, WHAT SHOULD THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE DEAF SISTER, DO? — HE MUST DIVORCE HIS WIFE BY A LETTER OF DIVORCE, AND [RELEASE] HIS BROTHER'S WIFE BY HALIZAH. But why MUST HE DIVORCE HIS WIFE BY A LETTER OF DIVORCE? Let her continue to live With him [since she is only like] a minor who eats nebelah![14] — Owing to the prohibition that is imposed upon him.

Raba said, Come and hear: IF TWO BROTHERS, ONE OF WHOM WAS DEAF AND THE OTHER OF SOUND SENSES, WERE MARRIED TO TWO SISTERS, ONE OF WHOM WAS OF SOUND SENSES[13] AND THE OTHER DEAF, AND THE DEAF BROTHER, THE HUSBAND

OF THE DEAF SISTER, DIED, WHAT SHOULD [THE BROTHER WHO WAS] OF SOUND SENSES, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DO? [NOTHING; SINCE THE WIDOW] IS RELEASED BY VIRTUE OF HER BEING HIS WIFE'S SISTER. IF THE BROTHER OF SOUND SENSES, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DIED, WHAT SHOULD THE DEAF BROTHER, THE HUSBAND OF THE DEAF SISTER, DO? HE RELEASES HIS WIFE BY A LETTER OF DIVORCE, WHILE HIS BROTHER'S WIFE IS FOREVER FORBIDDEN [TO MARRY AGAIN]. Now here, surely, no prohibition is involved either for him or for her, and yet it was stated, HE RELEASES HIS WIFE BY A LETTER OF DIVORCE![14] — R. Shemaia replied: This is a preventive measure against the possibility of allowing a sister-in-law to marry a stranger.[15]

C H A P T E R X V

MISHNAH. IF A WOMAN AND HER HUSBAND WENT TO A COUNTRY BEYOND THE SEA [AT A TIME WHEN THERE WAS] PEACE BETWEEN HIM AND HER AND [WHEN THERE WAS ALSO] PEACE IN THE WORLD, AND SHE CAME BACK AND SAID, MY HUSBAND IS DEAD', SHE MAY MARRY AGAIN; AND IF SHE SAID, 'MY HUSBAND IS DEAD [AND HAS LEFT NO ISSUE]' SHE MAY CONTRACT THE LEVIRATE MARRIAGE. [IF, HOWEVER, THERE WAS] PEACE BETWEEN HIM AND HER, BUT WAR IN THE WORLD, [OR IF THERE WAS] DISCORD BETWEEN HIM AND HER, BUT PEACE IN THE WORLD, AND SHE CAME BACK AND SAID, 'MY HUSBAND IS DEAD', SHE IS NOT BELIEVED.[16] R. JUDAH SAID: SHE IS NEVER BELIEVED UNLESS SHE COMES WEEPING AND HER GARMENTS ARE RENT. THEY,[17] HOWEVER, SAID TO HIM: SHE MAY MARRY IN EITHER CASE.[18]

GEMARA. Mention was made of[19] PEACE BETWEEN HIM AND HER[20] because it was desired to speak of[21] DISCORD BETWEEN HIM AND HER, and PEACE IN THE WORLD was mentioned[22] because it was desired to mention[21] WAR IN THE WORLD.

Raba stated: What is the reason [why a wife is not believed in a time] of war? Because she speaks from conjecture. 'Could it be imagined' [she thinks][23] 'that among all those who were killed he alone escaped!' And should it be contended that since there was peace between him and her she would wait until she saw [what had actually happened to him]. it may sometimes happen [It may be retorted] that he was struck by an arrow or spear and she would think that he was certainly dead, while in fact someone night have applied an emollient[24] [to his wound] and he might have recovered

Raba was [at first] of the opinion[25] that famine is not like war, since [in the former case] she does not speak from conjecture. [Later. however]. Raba changed his opinion. stating that famine is like war. For a woman once appeared before Raba and said to him, 'My husband died during a famine'. 'You have acted well', he remarked to her.[26] 'in that you saved your own life,[27] since it could hardly be imagined that he would survive on the little remnant of flour that you left for him'. 'The Master then'. she replied. 'also understands that in such circumstances he could not survive'.[28] After this[29] Raba ruled: Famine[25] is worse than war; for whereas in the case of war it is only when the wife states, 'My husband died in the war', that she is not believed, but [if her statement is that]. 'He died in his bed', she is believed, in the case of famine she is not believed unless she states, 'He died and I buried him'.

A ruin[25] is regarded as war, for [in this case also] she speaks from conjecture. A visitation of serpents or scorpions[25] is regarded as war, for [here also a wife] speaks from conjecture. As to pestilence. some hold that it is like war, while others hold that it is not like war. 'Some hold that it is like war', because a wife, they maintain. speaks from conjecture; while 'others hold that it is not like war' because, they maintain, a wife relies upon the common saying.[30] 'A pestilence may rage for

seven years but none dies before his time' ,[31]

The question was raised:[32] What is the law if it was she who established that there was a war in the world?[33] Do we apply the argument. 'What motive could she have for telling a lie?'[34]

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(1) Which included minors in the prohibition.
(2) To adults.
(3) So according to Tosaf. (s.v. משום a.l.) contrary to Rashi.
(4) Involving a penalty.
(5) Lit., 'until there is'.
(6) V. Glos.
(7) Which included minors in the prohibition.
(8) Reptiles and blood.
(9) Which applies to priests only. Cf. Lev. XXI, 1ff.
(10) As their adults were more restricted than others, greater restriction may have been imposed upon their minors also.
(11) The order in our Mishnah is slightly different.
(12) V. Glos. A deaf-mute is no more responsible for his actions than a minor, and no more punishable than a minor. An objection against R. Pedath (cf. supra p. 801, n. 7)! (10) His wife who, as a woman in the possession of her senses and faculties, is subject to punishment if she continues to live with him.
(13) The order in our Mishnah is slightly different.
(14) Cf. supra p. 805. n. 9. (3) He is of sound senses and in possession of his faculties. Cf. supra p. 805, n. 10, mutatis mutandis.
(15) Were the deaf man and deaf woman allowed to continue living together, those who were unacquainted with the law that deaf-mutes are no more responsible for their actions than minors, might assume that their marriage was a valid one and that the sister-in-law, as the deaf levir's wife's sister, is exempt from the levirate marriage and halizah and, consequently, free to marry again.
(16) The reason why she is not believed in a time of war is given by Raba in the Gemara infra, while in a case of discord between herself and her husband she is suspected of a desire to get rid of him.
(17) The Sages.
(18) Lit., 'whether this or this', whether she shows signs of distress and mourning or not.
(19) Lit., 'he taught'. sc. in our Mishnah.
(20) Though this is superfluous. It being obvious that if a husband and wife lived in peace, her declaration that he is dead should be relied upon.
(21) Lit., 'to teach'.
(22) Cf. supra nn. 4 and 5 mutatis mutandis.
(23) Wanting in cur. edd., and inserted by Bah.
(24) Cf. Jast. 'A plaster'. or 'bandage.' (Rashi).
(25) In respect of accepting a wife's evidence as to the death of her husband in a country beyond the sea.
(26) Desiring to probe whether she had actually witnessed her husband's death or spoke from conjecture only.
(27) Leaving him to his fate in the famine-stricken area.
(28) She thus admitted that she had not actually witnessed her husband's death.
(29) Lit., 'he returned'. Finding that even in the case of famine a wife speaks from conjecture.
(30) Lit., 'on what men say'.
(31) Lit.. and a man without (his full tale of) years does not depart'.
(32) [Rashi v. 215b s.v. דאי reads, He (Raba) raised the question].
(33) [And she stated, 'He died in war' v. Rashi loc. cit.].
(34) Where a person has no benefit from a lie he may obviously be presumed to be speaking the truth.

Talmud - Mas. Yevamoth 115a

since, if she wished, she could have said that there was peace in the world;[1] or, perhaps. since a war was established [by her] she speaks[2] from conjecture.[3] and the argument. 'What motive could she

have for telling a lie'[4] cannot come and impair an established principle? — Come and hear: [If a woman states]. 'They[5] set our house on fire',[6] or 'They filled the cave wherein we sheltered[7] with smoke, and he[8] died while I escaped'. she is not believed![9] There it is different since she can be told,[10] 'As a miracle happened to you. so may a miracle have happened to him[8] also'.[11]

Come and hear: [If a woman states]. 'ldolaters fell upon us , or, 'robbers fell upon us,[12] and he[8] died while I escaped'. she is believed![13] -There[14] [her statement is believed] in accordance with the view of R. Idi. For R. Idi stated: A woman [carries] her weapons about her.[15] There was once a man whose bridal chamber caught fire at the close of his wedding feast, and his wife cried, 'Look at my husband, look at my husband!' When they came near they saw a charred body[16] that was prostrate [on the ground] and the hand [of a man][17] lying [by it]. R. Hiyya b. Abin intended to give his decision [that the law in this case] is the same as [that where a woman stated]. 'They set our house on fire', or 'they filled the cave wherein we sheltered with smoke'. Raba, however, said: Are [the two cases at all] similar? There, she did not say. 'Look at my husband, look at my husband'![18] while[19] here [those present actually saw] the charred body that was prostrate [on the ground] and the hand that was lying by it. And R. Hiyya b. Abin?[20] — As to the charred body[16] that was prostrate [on the ground]. it may be suggested that a stranger[21] came to the rescue of [the burning man] and was himself burned,[22] while the hand which was lying [nearby, might be that of the bridegroom who] having been caught by the fire was mutilated;[23] and[24] in order [to hide his] shame he may have left the place and fled into the wide world.

A question was raised: What is the law in respect of one witness[25] In time of war?[26] Is the reason why one witness is [elsewhere][27] believed because no one would tell a lie which is likely to be exposed[28] and, consequently. here also [the witness] would not tell a lie;[29] or is it possible that the reason why one witness [is believed][27] is because [the woman] herself makes careful enquiries and [only then] marries again. here. therefore.[30] [he would not be believed since a woman][31] does not make sufficient enquiries before she marries again?

Rami b. Hama replied. Come and hear: R. Akiba stated: When I went down to Nehardea to intercalate the year. I met Nehemiah of Beth Deli who said to me, 'I heard that in the Land of Israel[32] no one with the exception of R. Judah b. Baba permits a [married] woman to marry again on the evidence of one witness'. 'That is so', I told him' 'Tell them', he said to me. 'in my name: You know that this country is infested[33] with raiders; I have this tradition from R. Gamaliel the Elder: That a [married] woman may be allowed to marry again on the evidence of one witness'.[34] Now, what was meant by 'This country is infested with raiders'? Obviously that[35] 'although this country is in a state of confusion.[36] I have this tradition: That a [married woman] may be allowed to marry again on the evidence of one witness'! Thus it is evident that one witness is believed.[37] Said Raba: If so,[38] why should 'this country[39] be different?[40] He should [have said]. 'Wherever raiders exist'!-Rather, said Raba, it is this that was meant: 'You know that this country is infested[41] with raiders and it is impossible for me to leave my family and to come before the Rabbis; I have this tradition from R. Gamaliel: That a [married] woman may be allowed to marry again on the evidence of one witness

Come and hear: Two learned men[42] once travelled with Abba Jose b. Simai on board a ship. which sank. And on the evidence of women, Rabbi[43] allowed their wives to marry again. [Now, evidence of death by] water is. surely. like [that of death in] war, and women, even a hundred of them, are legally equal to one witness,[44] and yet it was stated [that Rabbi] 'Allowed . . ' to marry'![45] — And do you understand this?[46] Those[47] were waters without [a visible] end,[48] and [when a man is drowned in] waters without [a visible] end his wife is forbidden [to marry again]![49] How, then, is this to be understood? [Obviously] that they[50] stated, '[The drowned men] were cast up in our presence

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(1) And as no one could have contradicted her, she would have been believed in saying that her husband was dead and

she would have obtained her object; hence she is believed even when she reported that there was a war.
(2) Alfasi: ‘Since it was established that (in time of war) she speaks.....the argument etc.’.
(3) When her husband was involved in a war.
(4) Cf. supra n. 3.
(5) Brigands. in a time of war.
(6) Lit., ‘they caused a house to smoke upon us’.
(7) Lit., upon us’.
(8) Her husband.
(9) This proves that her statement that her husband is dead is not accepted although it was through her that it became known that there ever was a state of war.
(10) As she has not actually seen his death.
(11) It is for this reason, and not because she is suspected of lying. that her evidence is not regarded as sufficient proof for establishing the death of her husband. In the case of a war, however, it may well be assumed that she had actually seen the death of her husband, since, had she desired to deceive, she need not have disclosed the fact that there ever was a war.
(12) Circumstances similar to those of a war.
(13) Which proves that a wife is believed when she states that her husband died in circumstances akin to war if these become known solely through her own evidence.
(14) Since the incident did not happen in war time but only in analogous circumstances.
(15) ‘A.Z 25b; i.e., her sex is her protection against murder. When, therefore, her husband is attacked, unless there was actually a state of war, she does not flee to save her own life, but remains on the spot to the very end. Her evidence that her husband is dead may consequently be accepted as that of an eye witness. This, therefore, provides no proof that a wife is also believed if an actual state of war existed when her husband's death presumably occurred.
(16) Lit., ‘man’.
(17) Who apparently attempted to rescue the bridegroom.
(18) Hence it is possible that her husband did not die at all.
(19) Cf. MS.M. Cur. edd. read ‘and furthermore’.
(20) How could he possibly compare the two cases?
(21) Lit., ‘another man’.
(22) Lit., ‘and the fire consumed him’.
(23) Lit., ‘a blemish was born or produced on him’. He lost his hand.
(24) In explanation of his disappearance.
(25) Whose evidence is relied upon in allowing a married woman to marry again if he testified that her husband was dead.
(26) Is his evidence accepted?
(27) Cf. supra note 10.
(28) Lit., concerning a thing which is likely to be revealed, he does not lie’.
(29) And he is believed.
(30) Cur. edd. insert in square brackets. ‘since she sometimes hates him’. Cf. readings cited by Wilna Gaon, Glosses.
(31) Speaking in time of war from mere conjecture (cf. Rashal's emendation).
(32) Palestine.
(33) Lit., ‘entangled’. confused’.
(34) V. infra 122a.
(35) Lit., ‘not?’
(36) In a condition similar to a state of war.
(37) Even in a time of war.
(38) If one witness is believed even when any part of the world is in actual state of war.
(39) The expression used by R. Nehemiah.
(40) From other countries.
(41) Lit., ‘entangled’. confused’.
(42) V. Glos. s.v. Talmid Hakam.
(43) R. Judah the Prince.

(44) Cf supra 88b.
(45) From which it follows that one witness is believed (cf. supra p. 811, n. 10) even in a time of war.
(46) Rabbi's ruling in the case of the wives of the drowned scholars.
(47) I.e., the sea.
(48) I.e., all the limits cannot he seen from any one point on the shore. Cf. infra 121a.
(49) Even if fully qualified men had witnessed the accident, because it is possible that the man may have swum to, or the waters have cast him upon another part of the shore where he was rescued. As all the shore line cannot be seen from the point where he fell into the waters (v. supra n. 5) his rescue may have been effected, though none of the men of the locality have observed it
(50) The women who gave evidence.

Talmud - Mas. Yevamoth 115b

and we saw then, immediately [afterwards]',[1] and they also mention [his identification] marks. so that we do not rely upon them[2] but on the marks.[3]

A man once deposited some sesame with another, [and when in due course] he asked him, 'Return to me my sesame , the other replied. 'You have already taken it'. 'But, surely'. [the depositor remonstrated, 'the quantity] was such and such and it is [in fact still] lying [intact] in your jar'.[4] 'Yours', the other replied. 'you have taken back and this is different'. R. Hisda at first intended to give his decision [that the law in this case is] the same as that of the two learned men,[5] where we do not assume that those have gone elsewhere and these are others.[6] Raba, however, said to him: Are [the two cases] alike? There, the identification marks were given; but here, what identification marks can sesame have! And in regard to [the depositor's] statement [that their quantity] was such and such, it might be said that the similarity of quantities is a mere coincidence.

Said Mar Kashisha b. R. Hisda to R. Ashi: Do we ever [in such circumstances][7] take into consideration the possibility that [the contents of a vessel] may have been removed?[8] Surely we learned: If a man found a vessel on which was inscribed a Kof it is korban;[9] if a Mem, it is ma'aser;[10] ' if a Daleth it is demu'a'a;[11] if a Teth, it is Tebel;[12] and if a Taw, It is terumah;[13] for in the period of danger[14] they used to write a Taw for terumah![15] — Said Rabina to R. Ashi: Do we not [in such circumstances][16] heed the possibility that [the contents of a vessel] may have been removed? Read, then, the final clause: R. Jose said, Even if a man found a jar on which 'terumah' was inscribed [the contents] are nevertheless regarded as unconsecrated, for it is assumed[17] that though it was in the previous year full of terumah it has subsequently been emptied![18] But the fact is, all agree that the possibility of [the contents] having been removed must be taken into consideration. Here, however, they differ only on the following principle: One Master is of the opinion that had the owner removed [the contents from the jar] he would undoubtedly have wiped [the mark] off, while the other [maintains that] it might be assumed that he may have forgotten [to remove the mark] or he may also intentionally have left it as a safeguard[19] .

Resh Galutha Isaac,[20] a son of R. Bebai's sister, once went from Cordova to Spain[21] and died there. A message was sent from there [in the following terms]. 'Resh Galutha Isaac, a son of R. Bebai's sister, went from Cordova to Spain and died there. [The question thus arose] whether [the possibility that there might have been] two [men of the name of] Isaac is to be taken into consideration[22] or not? — Abaye said: It is to be taken into consideration:[22] but Raba said: It is not to be taken into consideration.[23]

Said Abaye: How[24] do I arrive at my assertion? — Because in[25] a letter of divorce that was once found in Nehardea it was written, 'Near the town of Kolonia,[26] I, David son of Nehilais,[27] a Nehardean, released and divorced my wife So-and-so', and when Samuel's father sent it to R. Judah Nesiah[28] the latter replied: 'Let all Nehardea be searched'.[29] Raba, however, said: If that were so[30]

he[31] should [have ordered] the whole world to be searched![32] The truth is that it was only out of respect for Samuel's father[33] that he sent that message. Raba said: How[34] do I arrive at my assertion? Because in two notes of indebtedness that were once produced in court at Mahuza [the names of the parties] were written as Habi son of Nanai and Nanai son of Habi. and Rabbah[35] b. Abbuha ordered the collection of the debts on these bills. But,surely, there are many [men bearing the names of] Habi son of Nanai and Nanai son of Habi at Mahuza![36] And Abaye?[37]

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(1) After their emerging from the water (cf. Tosaf. s.v. וחזינהו, a.l.).

(2) On their evidence of the men's death.

(3) (If which the judges were well aware independently of the woman's evidence.

(4) Which should prove that the sesame had not been returned to its owner.

(5) Whose wives Rabbi permitted to marry on the assumption that the discovered bodies were theirs.

(6) Who have the same identification marks. Similarly with the sesame in the jar, since it is of the same quantity as that of the deposited sesame it should be assumed to belong to the depositor and should, therefore, be returned to him.

(7) When an identification mark exists, such as a letter on a cask or, as in the case of the sesame, the identity of quantities.

(8) And replaced by similar contents.

(9) Lit, 'sacrifice', i.e., consecrated.

(10) Tithe.

(11) A 'mixture' of terumah and unconsecrated produce. Others read,דמאי demai, produce concerning which it is uncertain whether it had been tithed.

(12) V. Glos. Produce of. which it is certain that the priestly and Levitical dues have not been given for it.

(13) V. Glos.

(14) During the Hadrianic persecutions that followed the Bar Kokeba revolt when the practice of Jewish laws was forbidden (cf supra p. 754. n. 9).

(15) M.Sh IV, 11. This proves that a mark is regarded as sufficient proof that the original contents were not removed and replaced by others!

(16) v. supra note 1.

(17) Since most of the world's produce is unconsecrated.

(18) And replaced by unconsecrated produce Much more so when a single letter only appears on the jar! V. M.Sh., loc. cit.

(19) פנהיא (cf. Pers. panah) 'protection'. People who might perhaps have no scruples about clandestinely consuming other peoples produce would nevertheless be afraid of meddling with sacred commodities.

(20) [Term denotes elsewhere 'Exilarch'; here it is a proper name. V. Obermeyer, p. 183, n.l.].

(21) מקורטבא לאספמיא. So Golds. against Rappaport in ערך מילין p. 156ff. Cordova at that time, as during the Moorish reign and other periods of spanish history, may have formed an independent state. [Obermeyer p. 183 identifies the former with Kurdafad near Ktesifon on the left bank of tigris, and the latter with Apamea, a frontier town of Babylon on on the right bank of the Tigris].

(22) Even when it was not definitely known that there were two such persons in the same place.

(23) Unless it was known that two such persons lived there. (Cf. infra 116a).

(24) Lit., 'whence'.

(25) Cf. Bah.

(26) [Me'iri: By side of the town Nehardea, which had been declared a free (Roman) colony and exempt from taxation, cf. A.Z., Sonc. ed. p. 50, n.5.].

(27) So Rosh and הגהות אשר"י. Cur. edd., 'Androlinai'.

(28) To decide whether the document may be given to the woman who claimed it as a valid one. [The reference must be to R. Judah I the prince, since the father of Samuel was no longer alive during the patriarchate of of R. Judah II (v. Obermeyer, p. 261, n. 4)].

(29) To ascertain whether there is no other person of the same name in that town. This obviously proves the soundness of Abaye's ruling.

(30) As Abaye ruled.

(31) R. Judah Nesi'ah.

(32) Any Nehardean of that name might have left Nehardea for another town after giving the letter of divorce in question.
(33) That he might not be chagrined by hearing that his enquiry was really futile and that there was in fact nothing for him to do but to accept the document as valid.
(34) Lit., 'whence'.
(35) So Bah.Cur. edd., 'Raba'.
(36) And yet it was not doubted that the persons who held the notes were the men named, which proves that even the definite existence of other men of the same name in the same place need not be taken into consideration. This being the rule in monetary matters, it may be inferred that in religious matters, the uncertain existence at least of men of the same name need not be taken into consideration.
(37) How' can he maintain his ruling in view' of the decision of Rabbah b. Abbuha.

Talmud - Mas. Yevamoth 116a

What possibility can be taken into consideration![1] If that of loss,[2] one is surely careful with [a note of indebtedness];[3] if that of a deposit,[4] since the name of the one is like that of the other the former does not entrust the latter with such a deposit;[5] what then can be said?[6] That he[7] may only have delivered [the note] to him![8] 'Letters'[9] [it may be replied] are acquired by mesirah.[10]

A letter of divorce was once found at Sura, and in it appeared this entry: 'In the town of Sura, I, Anan son of Hiyya. a Nehardean, released and divorced my wife So-and-so.' Now when the Rabbis searched from Sura to Nehardea [they found that] there was no other Anan son of Hiyya save one Anan son of Hiyya of Hagra[11] who was at that time at Nehardea, and witnesses came and declared that on the day on which the letter of divorce was written Anan son of Hiyya of Hagra was with them.[12] Said Abaye: Even according to me who hold that [the possibility of the existence of other men of the same name] is to be taken into consideration. no such possibility need be considered here,[13] for [even in respect of the only other man known to have that name] witnesses declared that he was at Nehardea;[14] how then could he [on the same day,] have been[15] at Sura![16] Raba said: Even according to me who hold that [the possibility of the existence of other men of the same name] is not to be taken into consideration. [such possibility] must be considered here,[17] since [the man in question] may have gone [to Sura] on a flying camel,[18] or[19] [got there] by a miraculous leap,[20] or[19] he may have given verbal instructions[21] [for the letter of divorce to be written[22] on his behalf], as, [in fact] Rab said to his scribes, and R. Huna, similarly, said to his scribes: When you are at Shili[23] write [in any deed] 'At Shili', although the instructions were given to you at Hini,[24] and when you are at Hini,[23] write, 'At Hini', although the instructions Were given to you at Shili.[25]

What is [the decision] in respect of the sesame?[26] — R. Yemar ruled: [The possibility that it was removed and replaced by another lot] is not to be taken into consideration; Rabina ruled: It is to be taken into consideration; and the law is that it is to be taken into consideration.

DISCORD BETWEEN HIM AND HER etc. What is to be understood by DISCORD BETWEEN HIM AND HER?Rab Judah replied in the name of Samuel: When [a wife] says to her husband. 'Divorce me!' Do not all women[27] say this?[28] Rather [this is the meaning]: When she says to her husband. 'You have divorced me!' Then let her be believed on the strength of R. Hamnuna's ruling; for R. Hamnuna ruled: If a woman said to her husband, 'You have divorced me'. she is believed, for it is an established principle that no woman would dare [to make such a false assertion] in the presence of her husband! — [Here it is a case] where she said. 'You have divorced me in the presence Of So-and-so and So-and-so', who. when asked, stated that this had never happened .[29]

What is the reason in case Of DISCORD?[30] — R Hanina explained: Because she is likely to tell a lie.[31] R. Shimi b. Ashi explained: Because she speaks from conjecture.[32] What is the practical difference between them?[33]

(1) In deciding the ownership of a note of indebtedness of the nature if the notes mentioned.
(2) That the actual creditor had lost the note and that the man who produced it. whose name is the same as that of the creditor, had found it.
(3) The remote and unlikely possibility of loss may. therefore, be completely disregarded.
(4) That the holder of the note is not its owner, but only keeper or trustee for another man of the same name as his.
(5) Since he knows full well that the keeper might at any moment claim to be the creditor.
(6) In justification of the assumption that the man producing the note is not the real creditor.
(7) The creditor when selling the note to the man who now utters it.
(8) But did not transfer its possession by the usual kinyan. And, since the seller may withdraw' from the sale before legal transfer had taken place, it might be assumed that the creditor named in the note withdrew from the sale and that the man of the same name who now produces the note is not its owner even through purchase.
(9) I.e., a note of indebtedness.
(10) V. Glos. The delivery of the note completes the legal transfer after which the seller can no longer withdraw. Cf Kid. 47b. p BB 76a. 77a.
(11) [Hagronia. a suburb of Nehardea (Obermeyer p. 266)].
(12) In Nehardea; while the letter of divorce was written at Sura. Owing to the distance between the two towns it was impossible for him to have been in the one as well as in the other on the same day.
(13) Where a search revealed that only one such person lived throughout that region.
(14) V. supra n. 2.
(15) Lit., 'what did he require'.
(16) [The distance between Nehardea and Sura was about twenty parasangs, a travelling journey of two days. v. Obermeyer P. 251].
(17) Where it was definitely established that another man of such a name existed.
(18) Dromedary(?) V. Mak., Sonc. ed., P. 21, n. 4.
(19) Lit., 'or also'.
(20) And so it was possible for him to be in both towns on the same day.
(21) At Nehardea.
(22) In Sura.
(23) Shili and Hini were situated near each other (cf. Bezah 25b) on the South of Sura; v. B.B., Sonc. ed., p. 753' n. 6.
(24) The place name entered in a legal document is not that of the locality where the transaction which it records took place or the instructions concerning its writing were given, but that of the locality where the document was written.
(25) Which proves that it was customary for scribes to write legal documents in one place for people who gave them the necessary instruction in another.
(26) Discussed supra 115b.
(27) Lit.. 'all of them also'.
(28) When they are angry. They do not mean it seriously. Why, then, should a woman, because of a momentary outburst, be suspected of inventing a tale about her husband's death?
(29) לא היו דברים מעולם (abr. להד״ם), lit.. 'the things never were.
(30) Why is not a wife in such a case believed if she states that her husband is dead?
(31) Out of hatred she might deliberately invent the tale that her husband was dead so that by marrying again she might become forbidden to him forever.
(32) Though she might not deliberately tell an untruth, her hatred would prevent her from finding out what exactly happened to her husband if ever he was placed in a position of danger. The likelihood of his death would be regarded by ber as a certainty.
(33) R. Hanina and R. Shimi. Is not her word mistrusted in either case?

Talmud - Mas. Yevamoth 116b

— The practical difference between them arises in the case where [the husband] created[1] the discord.[2]

The question was raised: What [is the law in respect of] one witness in a case of discord? Is the reason why one witness is [elsewhere][3] believed[4] that he would not tell a lie which is likely to be exposed.[5] and consequently he would here also tell no lie;[6] or is it possible that the reason why one witness is believed elsewhere[7] is that [the woman] herself makes careful enquiries and [only then] marries again; here, therefore, [his evidence should not be accepted] since, as there was discord between husband and wife,[8] she would not make careful enquiries and yet would marry again? — This remains undecided .[9]

R. JUDAH SAID: SHE IS NEVER etc. It was taught: They[10] said to R. Judah: According to your statement, only a woman of sound senses[11] would be allowed to marry again while an imbecile[12] would never be allowed to marry again! But the fact is that[13] the one as well as the other may be allowed to marry again.

A woman[14] once came to Rab[15] Judah's Beth din. 'Mourn', they said to her, 'for your husband, rend your garments and loosen your hair'. Did they teach her to simulate![16] — They themselves held the same view as the Rabbis,[17] but in order that he[18] also should allow her to marry they advised her to do so. MISHNAH. BETH HILLEL STATED: WE HAVE HEARD SUCH A TRADITION[19] ONLY IN RESPECT OF A WOMAN WHO CAME FROM THE HARVEST[20] AND [WHOSE HUSBAND DIED] IN THE SAME COUNTRY,[21] [THE CIRCUMSTANCES BEING THE SAME] AS THOSE OF A CASE THAT ONCE ACTUALLY HAPPENED. SAID BETH SHAMMAI TO THEM: [THE LAW IS] THE SAME WHETHER THE WOMAN CAME FROM THE HARVEST OR FROM THE OLIVE PICKING, OR FROM THE VINTAGE, OR FROM ONE COUNTRY TO ANOTHER, FOR THE SAGES SPOKE OF THE HARVEST ONLY [BECAUSE THE INCIDENT TO WHICH THEY REFERRED] OCCURRED THEN.[22] BETH HILLEL, THEREFORE, CHANGED THEIR VIEW [THENCEFORWARD] TO RULE IN ACCORDANCE WITH THE OPINION OF BETH SHAMMAI.

GEMARA. It was taught: Beth Shammai said to Beth Hillel, According to your View,[23] one would only know the law concerning[24] the wheat harvest;[25] whence, however, [the law concerning] the barley harvest? And, furthermore, one would only know the law in the case where[24] one harvested; whence, however, [the law in the case where] one held a vintage, picked olives, harvested dates, or picked figs? But [you must admit] it is only the original incident that occurred at harvest time and that the same law is applicable to all [the other seasons]. So here also [we maintain that] the incident occurred with [a husband who died] in the same country. and the same law is applicable to all [other countries]. And Beth Hillel?[26] — In the case of the same country. where people freely [move about].[27] she is afraid;[28] [coming. however]. from one country to another, since people do not freely [move about].[29] she is not afraid.[30] And Beth Shammai?[31] — Here[32] also caravans frequently [move about].[33]

What was the original incident?[34] -[It was that of] which Rab Judah spoke in the name of Samuel: It was the end of the wheat harvest when ten men went to reap their wheat and a serpent bit one of them and he died [of the wound]. His wife, thereupon, came and reported the incident to Beth din, who, having sent [to investigate]. found her statement to be true. At that time it was ordained: If a woman stated, 'My husband is dead', she may marry again; [if she said] 'My husband is dead [and left no issue]', she may contract the levirate marriage.

Must it be suggested that R. Hanania b. Akabia[35] and the Rabbis differ on the same principle as that on which Beth Shammai and Beth Hillel differ? For it was taught: No man shall carry water of purification[36] and ashes of purification[36] across the Jordan on board a ship, nor may one stand on [the bank on] one side and throw them across to the other side, nor may one float them upon water nor may one carry them while riding[37] on a beast or on the back of another man unless his [own] feet were touching the [river] bed. He may, however, convey them across a bridge. [These laws are

applicable] as well to the Jordan as to other rivers. R. Hanania b. Akabia[35] said: They[38] spoke[39] only of the Jordan and of [transport] on board a ship, as was the case in the original incident.[40] Must it, then, be assumed that the Rabbis[41] hold the same view as Beth Shammai[42] while R. Hanania b. Akabia holds the same view as Beth Hillel?[43] — The Rabbis can answer you: Our ruling agrees with the view[44] of Beth Hillel also; for Beth Hillel maintained their opinion[45] only there,[46] since [the woman is believed only because] she fears [to tell an untruth, and it is only] in a place that is near that she fears while in a distant one she does not fear. Here,[47] however, what matters it whether it is on the Jordan or on other rivers![48] R. Hanania b. Akabia can also answer you: I may uphold my view even according to Beth Shammai; for Beth Shammai maintained their opinion[49] only there[46] because [a woman] makes careful enquiries[50] and [only then] marries again. Hence, what matters it whether the locality was near or far. Here,[51] however, [the prohibition] is due to an actual incident; hence it is only [against transport] on the Jordan and on board a ship, where the incident occurred, that the Rabbis enacted their preventive measure, but against other rivers where the incident did not occur the Rabbis enacted no preventive measure.

What was the incident?[52] — [It was that] which Rab Judah related in the name of Rab: A man was once transporting Water of purification[53] and ashes of purification[53] across the Jordan on board a ship, and a piece of a corpse, of the size of an olive,[54] was found stuck in the bottom of the ship. At that time It was ordained: No man shall carry Water of purification and ashes of purification across the Jordan on board a ship.

MISHNAH. BETH SHAMMAI RULED: SHE[55] IS PERMITTED TO MARRY AGAIN AND SHE RECEIVES HER KETHUBAH. BETH HILLEL, HOWEVER, RULED: SHE IS PERMITTED TO MARRY AGAIN BUT SHE DOES NOT RECEIVE HER KETHUBAH. SAID BETH SHAMMAI TO THEM: YOU HAVE PERMITTED [WHAT MIGHT BE] THE GRAVE OFFENCE OF ILLICIT INTERCOURSE,[56] SHALL WE NOT PERMIT [THE TAKING OF HER HUSBAND'S] MONEY WHICH IS OF LESS IMPORTANCE![57] BETH HILLEL ANSWERED THEM: WE FIND

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(1) Lit., ‘accustomed’, i.e., introduced.

(2) While the wife shewed no hatred towards him. As she does not hate him she would not invent a lie in order to get rid of him but would nevertheless readily believe that he was dead should he ever have found himself in a position of danger. She would not take the trouble to ascertain whether her conjecture was not groundless.

(3) When he gives evidence that a husband died in normal circumstances.

(4) And the widow is allowed to marry again.

(5) V. supra p. 811, n. 13.

(6) Hence he is believed.

(7) V. supra note 3.

(8) Lit., ‘to him’.

(9) Teku, v. Glos.

(10) The Sages.,

(11) Who feels her loss and gives expression to it by her weeping and her torn garments. Others render ‘sly’. ‘one able to simulate’ (cf. Golds.).

(12) Who is unconscious of her loss and consequently gives no outward expression to any grief. שוטה may also be rendered ‘foolish’, ‘silly’, ‘simpleton’. Cf. supra n. 11, second rendering.

(13) Lit., ‘but’.

(14) Stating that her husband died in a country beyond the sea.

(15) Cur. edd ‘R’

(16) Since she did not manifest any signs of grief her remarriage should, according to R. Judah's ruling. have been forbidden!

(17) The Sages in our Mishnah and in the quoted Baraitha.

(18) Rab Judah.

(19) That a wife is believed when she states that her husband is dead,
(20) The reason is explained infra.
(21) It being thus possible to verify the woman's statement.
(22) בהווה Lit., 'in what is', The ruling of the Sages was given in connection with a particular case where it so happened that the woman returned from a harvest. The same ruling, however, is applicable in all circumstances. [The term generally denotes 'what usually happens'. It is in this sense that it seems to be taken by the T. J. quoted by Tosaf. (s.v לא): Why should the harvest (be different)? Said A. Mana: It is different in that an accident usually happens there on account of the scorching sun].
(23) That a wife's evidence regarding the death of her husband may be accepted only in circumstances similar to those of the original incident. (Cf. supra n. 4).
(24) Lit., 'I have but'.
(25) The incident (cf. supra note 4) having occurred during the wheat harvest.
(26) Why do they draw a distinction between a husband's death in the same, and in another country.
(27) From place to place. Another interpretation: Many people knew the husband.
(28) To bring a false report which could be easily disproved by one of (a) the travellers or (b) the men who knew the husband, Cf. n. 2.
(29) Cf. supra note 2 mutatis mutandis.
(30) Cf'. supra n. 3 mutatis mutandis.
(31) Do they not provide against the possibility of a wife's mendacity!
(32) From one country to another.
(33) Cf. supra note 2 and note 3 mutatis mutandis.
(34) Spoken of supra.
(35) So MS.M. Cur. edd., 'Akiba'.
(36) Cf. Num. XIX, 1ff.
(37) Lit., 'cause them to ride'.
(38) The Sages.
(39) When enacting the prohibitions mentioned.
(40) Tosef. Parah VIII, v. supra.
(41) The authors of the first ruling in the Baraitha cited.
(42) Since both hold that the restrictions apply not only to conditions which are exactly the same as those of the original incident but to any other condition also.
(43) Cf. supra n. 3 mutatis mutandis, Is it likely. however, that the Rabbis and R. Hanania would differ from Beth Hillel and Beth Shammai respectively!
(44) Lit,, 'we (as to) what we said'.
(45) Restricting the law to conditions exactly similar to those of the original incident.
(46) In the case of a wife's evidence on the death of her husband.
(47) Transporting the water and ashes of purification.
(48) Of course it does not matter.
(49) Trusting the evidence of the wife in all cases, even where the conditions differ from those of the original incident.
(50) Whether her husband was dead.
(51) V. supra note 8.
(52) Spoken of supra.
(53) Cf Num. XIX, 1ff.
(54) The minimum that causes defilement of objects that come in contact with it or that are placed in the same ohel (v. Glos.).
(55) A woman who reports her husband's death.
(56) If the woman were not telling the truth she would still be a married woman and her second marriage would be illicit,
(57) Lit., 'that is light'.

Talmud - Mas. Yevamoth 117a

THAT ON HER EVIDENCE, THE BROTHERS MAY NOT ENTER INTO THEIR

INHERITANCE.[1] SAID BETH SHAMMAI TO THEM: DO WE NOT LEARN THIS[2] FROM HER KETHUBAH SCROLL WHEREIN [HER HUSBAND] PRESCRIBES FOR HER, 'IF THOU BE MARRIED TO ANOTHER MAN, THOU WILT RECEIVE WHAT IS PRESCRIBED FOR THEE'! THEREUPON BETH HILLEL WITHDREW THIS OPINION, THENCEFORTH TO RULE IN ACCORDANCE WITH THE VIEW OF BETH SHAMMAI.

GEMARA. R. Hisda stated: If she[3] is taken in levirate marriage the levir enters into the inheritance[4] on her evidence. If they[5] made an exposition on the kethubah, shall we not make an exposition on the Torah? The All Merciful said, Shall succeed in the name of his brother,[6] and he has surely succeeded.[7] R. Nahman ruled: If [a woman] came before Beth din and stated, 'My husband is dead; permit me to marry again'. permission must be granted her to marry again. and she is given her kethubah. [If she demanded]. 'Give me my kethubah', she must not be permitted even to marry. What is the reason? Because she came with her mind intent on the kethubuh.[8]

The question was raised: What is the ruling [where she said], 'Permit me to marry and give me my kethubah'? Has she come with her mind intent on the kethubah, since she specified her kethubah[9] or [is it assumed that] a person [naturally] lays before the Beth din all the claims he has![10] And[11] should you find [a reason for deciding in her favour because] a person submits whatever claim he has to the Beth din, [the question still remains as to] what [is the law where she stated]. 'Give me my kethubah and permit me to marry'? [Is it assumed that] in this case[12] she has undoubtedly come with her mind bent on the kethubah. or is it possible [that she mentioned her kethubah] because[13] she did not know by what means she becomes permitted [to marry again].[13] — This is undecided.[14]

MISHNAH. ALL ARE REGARDED AS TRUSTWORTHY TO GIVE EVIDENCE[15] FOR HER[16] EXCEPTING HER MOTHER-IN-LAW. THE DAUGHTER OF HER MOTHER-IN-LAW, HER RIVAL, HER SISTER-IN-LAW[17] AND HER HUSBAND'S DAUGHTER.[18] WHEREIN LIES THE DIFFERENCE BETWEEN [THE ADMISSIBILITY OF] A LETTER OF DIVORCE AND [THAT OF THE EVIDENCE OF] DEATH?[19] IN THAT THE WRITTEN DOCUMENT[20] PROVIDES THE PROOF.[21]

GEMARA. The question was raised: What [is the law in regard to the eligibility[22] of] the daughter of her father-in-law?[23] Is the reason [for the ineligibility] of the daughter of her mother-in-law because there is a mother[24] who hates her she[25] also hates her; here,[26] however, there is no mother who hates her?[27] Or is it possible that the reason [for the ineligibility] of the daughter of her mother-inlaw is because she[28] believes that the other squanders[29] the savings of her mother; there,[26] then, she also believes that she squanders[29] the savings of her father-in-law?[30] Come and hear: 'All are regarded as trustworthy to give evidence for her[31] excepting five women'; but if that were so[32] [the number should] be six![33] — It is possible that the reason [for the ineligibility] of the daughter of her mother-in-law is because she[34] believes that the other squanders the savings of her mother[35] [and, therefore] there is no difference between the daughter of her mother-in-law and the daughter of her father-in-law.[36] But, surely. it was taught.[37] 'Excepting seven women'![38] — This is the view of R. Judah. For it was taught:[39] R. Judah adds[40] also a father's wife[41] and a daughter-In-law. They[42] said to him: A father's wife[41] is, in fact, included in the expression 'a husband's daughter',[43] and a daughter-in-law is obviously included in the expression 'her mother-in-law'.[44]

And R. Judah?[45] - Because one can well understand why a mother-in-law should hate her daughter-in-law, since the former believes that the latter squanders her Savings,[46] but why should a daughter-in-law hate her mother-in-law![47] Similarly one may well understand why a husband's daughter hates her father's wife, since the former believes that she is squandering her mother's savings, but why should a father's wife hate her husband's daughter![47]

Why, then, does he[48] add the two?[49] — But [this is the true explanation]: Why does a

daughter-in-law hate her mother-in-law? Because the latter reports[50] to her son all that she[51] does. [Similarly] a father's wife also hates her husband's daughter because the latter reports[50] to her father all that she[52] does. And the Rabbis?[53] — As in water face answereth to face, so the heart of man to man.[54] And R. Judah? — The text[55] applies[56] to [the study of] the words of the Torah.[57]

R. Aha b. ‘Awya said: In the West[58] they asked: What is the ruling in respect of a potential[59] mother-in-law?[60] Does it occur to her that [this woman's][61] husband might die [without issue] and she[62] would thereby be subject to the levir, and therefore. she[62] hates her;[63] or does it not?

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(1) Though inheritance is a monetary affair, Only in order to save her from a life-long widowhood was a woman allowed on her own evidence to marry again. In monetary matters, however, the evidence of two eligible witnesses (cf. Deut. XIX. 15) is a sine qua non.

(2) That she is entitled to her kethubah.

(3) A woman who reported the death of her husband.

(4) Of the deceased. Cf. supra 40a.

(5) Beth Shammai, and later also Beth Hillel, in our Mishnah.

(6) Deut. XXV, 6, explained Rabbinically to refer to the levir.

(7) Hence he is also entitled to the inheritance.

(8) She probably knows that her husband is alive and she has no intention of marrying again. All she aims at is the acquisition of the money.

(9) And even marriage should, therefore, be forbidden to her,

(10) But her main purpose was matrimony. Hence both her requests should be granted.

(11) Reading of Rashal, inserted in cur. edd, within square brackets.

(12) Since she mentioned her kethubah first,

(13) She may have thought that it was the kethubah that releases her from her dead husband and it is for this reason that she mentioned it first. Cf. supra note 3’

(14) Teku. v. Glos,

(15) That her husband died.

(16) Any woman.

(17) The wife of her husband's brother, who becomes her rival if levirate marriage is contracted.

(18) All these are assumed to be, for one reason or another, hostile to her and are therefore suspected of giving false evidence (cf. supra n. 8) in the expectation that she will marry again and thereby become forever forbidden to their relative, her first husband.

(19) I.e., why are the relatives mentioned accepted as qualified bearers of her letter of divorce, (v. Git, 23b) and not as eligible witnesses to testify to the death of her husband?

(20) The letter of divorce,

(21) It is mainly the document itself that constitutes the validity of the divorce and not the eligibility of its bearer.

(22) To give evidence that her husband was dead,

(23) From another wife who is not her mother-in-law.

(24) I.e., her mother-in-law.

(25) The daughter of that mother-in-law.

(26) In the case of the daughter of her father-in-law,

(27) The daughter of her father-in-law is therefore eligible as a witness.

(28) The daughter.

(29) Lit,, ‘eats’.

(30) Lit.,’wife's family’. In consequence of which she hates her and is, therefore, ineligible to be her witness.

(31) Cf. supra p. 824. nn. 8 and 9.

(32) That the daughter of a father-in-law is also ineligible as witness.

(33) Since our Mishnah had enumerated five others. From this then it may be inferred that the daughter of a father-in-law is eligible.

(34) The daughter.

(35) So Bah. Cur. edd., ‘of the father-in-law’.

(36) Both, therefore, may be regarded as one. Hence the number five,
(37) Cur. edd., 'we learned'.
(38) While our Mishnah enumerates only five.
(39) Cur. edd., 'we learned'.
(40) To the number of women who are ineligible to testify to the death of another woman's husband.
(41) The stepmother of the woman in question.
(42) The Sages.
(43) Since a husband's daughter is ineligible as witness for a husband's wife it is obvious that the latter also, since both stand in the same relationship to one another, is equally ineligible as witness for the former. V. infra n. 6.
(44) As a mother-in-law is precluded from giving evidence for her daughter-in-law so,it is obvious, is the latter (cf. supra n. 5) precluded from giving evidence for the former. There was no need, therefore, to enumerate all the four. The mention of two of these embraces the four.
(45) Why in view of the explanation of the Rabbis does he enumerate seven?
(46) As the wife of her son and heir she would in due course become mistress of her possessions.
(47) Her ineligibility, therefore, cannot be inferred from the other. Hence it was necessary specifically to mention her.
(48) R. Judah.
(49) Who, as was just explained, are not hostile to the others, and should, therefore, be eligible to give evidence for them!
(50) Lit., 'reveals', 'discloses'.
(51) Her daughter-in-law.
(52) Her father's wife; her stepmother.
(53) Why, in view of R. Judah's explanation, do they omit the two from their list?
(54) prov. XXVII, 19. Hatred is mutual. As a husband's daughter hates her father's wife so does the latter hate the former; and the same reciprocity exists between a mother-in-law and her daughter-in-law. There was no need, therefore, to mention them all. The four are covered by the two.
(55) Lit., 'this'.
(56) Lit.. 'is written'.
(57) Effort and success are interdependent as in water face answereth face. Or: The successful achievement of the student is dependent on the sympathy and understanding (the cheerful countenance) of the Master.
(58) Palestine, which lay on the West of Babylon.
(59) Lit.. 'that comes afterwards'. i.e., the mother of the levir and stepmother of the husband of the woman in question. who might become her mother-in-law if her husband died childless and she had to contract the levirate marriage with the levir.
(60) Is she eligible as witness if she testifies that her stepson is dead in consequence of which the wife of the deceased must either marry her son or perform halizah with him and marry a stranger (Rashi). [R. Hananel (v. Lewin B. M. Ozar ha-Geonim, Yebamoth p. 334) explains the problem differently. viz., can a woman give evidence on behalf of her potential mother-in-law? Where. for instance, Jacob had two wives, Leah and Rachel, the former of whom bore him a son, Reuben, and the latter, Joseph; and the question arises whether the wife of Reuben may testify as to the death of Jacob, her father-in-law, permitting the remarriage of Rachel, her potential mother-in-law. For should her own husband Reuben die, she would have to contract levirate marriage with his brother Joseph. Rachel thus becoming her mother-in-law].
(61) For whom she tenders evidence.
(62) As her future mother-in-law.
(63) Hence she is ineligible as a witness for her.

Talmud - Mas. Yevamoth 117b

Come and hear: If a woman stated. 'My husband died first and my father-in-law died after him'. she may marry again and she also receives her kethubah. but her mother-in-law is forbidden.[1] Now, why is her[2] mother-in-law forbidden? Is it not because it is assumed that neither her[2] husband died nor did her father.in.law die[3] and that by her statement[4] she intended to damage the position of her mother-in-law.[5] hoping that [as a result][6] she[7] would not in the future[8] come to torment her![9] —

There[10] it may be different because she[11] has experienced her annoyance.[12]

MISHNAH. IF ONE WITNESS STATED, ['THE HUSBAND[13] IS] DEAD', AND THEREUPON HIS WIFE MARRIED AGAIN, AND ANOTHER CAME AND STATED 'HE IS NOT DEAD'. SHE NEED NOT BE DIVORCED. IF ONE WITNESS SAID. 'HE[13] IS DEAD AND TWO WITNESSES SAID. 'HE IS NOT DEAD', SHE MUST, EVEN IF SHE MARRIED AGAIN, BE DIVORCED. IF TWO WITNESSES STATED, 'HE[13] IS DEAD', AND ONE WITNESS STATED, HE IS NOT DEAD', SHE MAY, EVEN IF SHE HAD NOT YET DONE SO,[14] MARRY AGAIN.[15]

GEMARA. The reason[16] then is because [the woman][17] MARRIED AGAIN; had she, however, not married would she[18] not have been permitted to marry? But Surely. 'Ulla stated: Wherever the Torah declared one witness credible,[19] he is regarded[20] as two witnesses, and the evidence of one man[21] against that[22] of two men[23] has no Validity![24] — It is this that was meant: IF ONE WITNESS STATED ['THE HUSBAND IS] DEAD' and after his wife had been permitted to marry again ANOTHER CAME AND STATED 'HE IS NOT DEAD', she is not to be deprived of[25] her former status of permissibility.[26]

IF ONE WITNESS SAID, 'HE IS DEAD', Is this not obvious?[27] For the evidence of one man against that Of[28] two men[29] has no validity! — [This ruling' is] required only in the case of ineligible witnesses[30] [this being] in accordance with the view of R. Nehemiah. For it was taught: R. Nehemiah stated, 'Wherever the Torah declares one witness credible,[31] the majority of statements is to be followed,[32] and [the evidence of] two women against that of one man is given the same validity as that of two men against one man'.[33]

And if you prefer I might reply: Wherever one eligible witness came first, even a hundred women[34] are regarded as one witness.[35] But [here it is such a case] as, for example, where a woman witness came in the first instance;[36] and [the statement] of R. Nehemiah is to be explained thus: R. Nehemiah stated, 'Wherever the Torah declares one witness credible, the majority of statements is to be followed, and [the evidence of] two women against one woman is given the same validity as that of two men against one man; but [the evidence of] two women against that of one man is regarded as half[37] and half[38] .

IF TWO WITNESSES STATED, 'HE IS DEAD' etc. What does this teach us?[39] [A ruling] in respect of ineligible witnesses, [the principle being the same] as that of R. Nehemiah who follows the majority of statements[40] . But is not this exactly the same [as the previous clause]![41] — It might have been assumed that the majority is followed only when the law is thereby made more stringent ,[42] but not [where it leads] to a relaxation of the law;[43] hence we were taught [the final clause] ,[44]

MISHNAH. IF ONE WIFE[45] SAID ['HER HUSBAND IS] DEAD' AND THE OTHER WIFE[46] SAID, 'HE IS NOT DEAD , THE ONE WHO SAID, 'HE IS DEAD' MAY MARRY AGAIN AND SHE ALSO RECEIVES HER KETHUBAH, WHILE THE ONE WHO SAID, 'HE IS NOT DEAD, MAY NEITHER MARRY AGAIN NOR IS SHE TO RECEIVE HER KETHUBAH. IF ONE WIFE[47] STATED, 'HE IS DEAD' AND THE OTHER STATED. 'HE WAS KILLED', R. MEIR RULED: SINCE THEY CONTRADICT ONE ANOTHER THEY MAY NOT MARRY AGAIN. R. JUDAH AND R. SIMEON RULED: SINCE BOTH[48] ADMIT THAT HE[49] IS NOT ALIVE, BOTH MAY MARRY AGAIN.

IF ONE WITNESS STATED, 'HE[50] IS DEAD', AND ANOTHER WITNESS STATED.[51] 'HE IS NOT DEAD',

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(1) To marry again; infra 118a. The evidence as to the death of her husband is not admissible though the witness. since her own husband was dead at the time she gave her evidence, was no longer her daughter.in.law.

(2) The witness's.
(3) And both women are still related to one another as mother-in-law and daughter-in-law.
(4) Lit., 'and what she said thus'.
(5) Who if she married again would not any longer be able to live with her first husband, the father-in-law of the witness.
(6) Cf. supra p. 827. n. 14.
(7) Her mother-in-law.
(8) When her husband and son returned from their foreign travels.
(9) By reporting to her son all the doings of his wife. It is thus obvious that a daughter-in-law is not believed as a witness for her mother-in-law, though the cause of her hatred (the return of her husband and his mother's gossip) is still a thing of the future and at the time her evidence is given, potential only. From this it follows that a potential mother-in-law also is equally ineligible as a witness for her potential daughter. in-law.
(10) Since in that case the woman for whom evidence is given was already her mother-in-law.
(11) The daughter-in-law.
(12) This case, therefore, provides no proof that a woman hates one who had never been her mother-inlaw and whose annoyances she had never experienced.
(13) Who had gone to a country beyond the sea.
(14) prior to the appearance of the one witness.
(15) Even after he tendered his evidence.
(16) Why the woman in the first clause of our Mishnah may live with the man she married.
(17) Whose husband's death was reported by the first witness.
(18) Since our Mishnah only states that SHE NEED NOT BE DIVORCED and does not state that she may marry again.
(19) As is the case here, where one witness testifies to the death of a husband (cf. supra 88b).
(20) Lit., 'behold here'.
(21) In our case, that of the second witness.
(22) Lit., 'in the place of'.
(23) In the first instance, the first witness whose evidence had been accepted as valid as that of two.
(24) Sot. 31b, Keth. 22b, supra 88b. Why then should not the woman be directly permitted to marry again?
(25) The original לא תצא lit.,'she shall (or need) not go out', may bear this meaning as well as that given in our Mishnah.
(26) Because the decision of Beth din had been issued before the second witness appeared. Had he arrived prior to the issue of the decision, the evidence of the first witness, as it had not yet been accepted. would have had no greater validity than his,
(27) That the woman MUST ... BE DIVORCED,
(28) Lit., 'in the place of',
(29) As is the case in the second clause of our Mishnah.
(30) Where the two witnesses were, e.g.. relatives or slaves.
(31) As in the case, e.g.. spoken of in the first clause of our Mishnah.
(32) As the accepted law of valid evidence is in such cases suspended, the evidence of any ineligible witnesses (cf. supra n. 7) is admitted,
(33) Hence the necessity for the ruling of our Mishnah. In the absence of such a ruling it would have been assumed that the evidence of ineligible witnesses is here also inadmissible.
(34) I.e., ineligible witnesses who, after the woman had married again, stated that her husband was not dead,
(35) As the evidence of a single witness when it is opposed to that of a previous witness whose evidence had already been accepted (cf. supra p. 828, n. 18) is completely disregarded, so is the evidence of the hundred women if it conflicts with that of the first eligible witnesses.
(36) And, on her evidence, the widow was permitted to marry again. As two women subsequently opposed the statement of the one, the marriage must be annulled by a letter of divorce.
(37) Of a valid evidence, i.e., as that of one witness.
(38) The evidence of two women against that of one man would, therefore, have the same validity as that of one witness against another, spoken of in the first clause of our Mishnah. and the widow would have retained her first status of permissibility. v. supra 88b.
(39) Is it not obvious that two witnesses are relied upon when they are opposed by one witness only!

(40) Though the two witnesses are ineligible. their evidence against that of the one witness, since they form the majority, is accepted, and the widow is permitted to marry again.
(41) The ruling in the second clause of our Mishnah which, as has just been explained, teaches this very principle.
(42) As in the second clause where, owing to the majority principle, the woman is forbidden to marry again.
(43) As in the final clause under discussion, where, by following the majority. the woman is allowed to marry again.
(44) Of our Mishnah, to indicate that in all cases the majority is to be followed.
(45) Of a man who has gone to a country beyond the sea.
(46) Her rival.
(47) V. p. 830. n. 9'
(48) Lit.. 'this and this'.
(49) Their husband.
(50) V. p. 830. n. 9'
(51) Before the Beth din, on the evidence of the first witness, had allowed the woman to marry again.

Talmud - Mas. Yevamoth 118a

OR IF ONE WOMAN STATED. 'HE[1] IS DEAD', AND ANOTHER WOMAN[2] STATED,[3] 'HE IS NOT DEAD', SHE[4] MAY NOT MARRY AGAIN.

GEMARA. The reason. then,[5] is because she said, 'HE IS NOT DEAD'; had she, however, kept silent she would presumably have been allowed to marry again; but [it may be objected], no rival may give evidence on behalf of her associate![6] — It was necessary [to teach the case where the OTHER WIFE SAID], 'HE IS NOT DEAD.[7] Since it might have been assumed that [their husband] was really dead and that by stating[8] 'HE IS NOT DEAD' she evidently[9] intended to inflict injury upon her rival in the spirit of[10] Let me[11] die with the Philistines,[12] we are informed [that she is nevertheless forbidden to marry again].

IF ONE WIFE STATED, 'HE IS DEAD' etc. R. Meir should have expressed his disagreement in the first clause also![13] R. Eleazar replied: [The first clause] is a subject[14] in dispute and it[15] represents the opinion of R. Judah and R. Simeon.[16] R. Johanan. however. stated that it[17] may be said [to represent even the view of] R. Meir, for in such a case even R. Meir agrees,[18] since in the case of testimony relating to a woman[19] the evidence [of the nature of] 'He is not dead' is not [regarded as a valid] contradiction,[20]

We learned: IF ONE WITNESS STATED, HE IS DEAD' AND ANOTHER WITNESS STATED, HE IS NOT DEAD', OR IF ONE WOMAN STATED, 'HE IS DEAD AND ANOTHER WOMAN STATED, HE IS NOT DEAD', SHE MAY NOT MARRY AGAIN. Now according to R. Eleazar[21] it may well be explained that the anonymous statement [in the final clause][22] is in agreement with R. Meir. According to R. Johanan,[23] however, there is a difficulty! — This is a difficulty.

MISHNAH. IF A WOMAN AND HER HUSBAND WENT TO A COUNTRY BEYOND THE SEA, AND SHE RETURNED AND STATED, MY HUSBAND IS DEAD'. SHE MAY BE MARRIED AGAIN AND SHE ALSO RECEIVES HER KETHUBAH. HER RIVAL, HOWEVER, IS FORBIDDEN.[24] IF [HER RIVAL] WAS THE DAUGHTER OF AN ISRAELITE [WHO WAS MARRIED] TO A PRIEST, SHE IS PERMITTED TO EAT TERUMAH;[25] SO R. TARFON. R. AKIBA, HOWEVER, SAID: THIS[26] IS NOT A WAY THAT WOULD LEAD HER OUT OF THE POWER OF TRANSGRESSION, UNLESS [IT BE ENACTED THAT] SHE SHALL BE FORBIDDEN BOTH TO MARRY AND TO EAT TERUMAH.

IF SHE STATED, 'MY HUSBAND DIED FIRST AND MY FATHER-IN-LAW DIED AFTER HIM, SHE MAY MARRY AGAIN AND SHE ALSO RECEIVES HER KETHUBAH, BUT HER

MOTHER-IN-LAWS[27] IS FORBIDDEN.[28] IF [THE LATTER] WAS THE DAUGHTER OF AN ISRAELITE [WHO WAS MARRIED] TO A PRIEST, SHE IS PERMITTED TO EAT TERUMAH; SO R. TARFON. R. AKIBA, HOWEVER, SAID.. THIS[29] IS NOT A WAY THAT WOULD LEAD HER OUT OF THE POWER OF TRANSGRESSION, UNLESS [IT BE ENACTED THAT] SHE SHALL BE FORBIDDEN BOTH TO MARRY AGAIN AND TO EAT TERUMAH.

GEMARA. And [both statements[30] were] necessary. For If the first only had been stated, it might have been assumed that only in that did N. Tarfon maintain [his view],[31] since the grievance is personal.[32] but that in respect of a mother-in-law, the grievance against whom is merely general,[33] he agrees with N. Akiba.[34] And had the latter only been stated it might have been assumed that R. Akiba maintained [his view] there only, but that in the former case he agrees with R. Tarfon. [Hence both statements were] necessary.

Rab Judah stated in the name of Samuel: The halachah is in agreement with R. Tarfon. Said Abaye: We also learned the same: [If a woman[35] states],[36] 'A son was given to me in a country beyond the sea, and my son died first while my husband died after him', she is believed.[37] [If, however, she states]. 'My husband [died first] and my son died after him', she is not believed,[38] though note must be taken of her statement, and she must, therefore, perform halizah[39] but may not[40] contract the levirate marriage.[41] [From which it follows that] 'note must be taken of her statement', but that no note need be taken of the statement of a rival. Thus our point is proved.

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(1) V. supra p. 830. n. 9.

(2) Even if she is the rival of the woman concerned.

(3) V. supra note 5.

(4) Even the first.

(5) Why the second wife MAY NEITHER MARRY AGAIN.

(6) Her rival.

(7) There was no need to mention the case where she remained silent, which is obvious.

(8) Lit., 'and that which she said'.

(9) Since she went out of her way to contradict her rival and was not content to remain silent.

(10) Lit.. 'she said'.

(11) נפשי v. marg. note. Cur. edd.. נפשה

(12) Judges XVI, 30. She is prepared herself to lose the right of marrying again in order that her rival also may thereby be deprived of her right.

(13) Where. as in the second clause, one woman contradicts the other.

(14) Lit.. 'it was taught'.

(15) The view expressed in the first clause.

(16) [According to R. Eleazar. R. Meir would forbid in the second clause remarriage to both women, because he admits a rival's contradictory evidence, whereas R. Judah and Simeon hold that a rival's contradiction is not admitted and hence they rule that both are permitted to marry. Similarly in the first clause, on R. Meir's view the first woman would not be allowed to marry, regard being had to the contradiction of her rival. On this assumption, the reason stated in the second clause for R. Judah's and R. Simeon's ruling, that neither denied the fact of the man's death, will have been advanced by them as an argument on the hypothesis that R. Meir's view, admitting the rival's contradiction, is accepted. תום" ישנים].

(17) The view expressed in the first clause.

(18) That the assertion of the second wife is not regarded as valid contradiction of the evidence of the first.

(19) [In connection with the death of her husband in regard to which the laws of evidence have been considerably relaxed. Var. lec. 'the testimony of a rival'].

(20) But as a mere outburst of malice, intended to injure her rival. The first evidence is, therefore, accepted.

(21) Who explained that the first clause represents the view of those who differ from R. Meir, while R. Meir maintains that the first wife also is forbidden to marry again, because a rival's contradiction is admitted, v. p. 831, n. 21.

(22) Which forbids remarriage, even where the contradictory evidence was given by the rival (v. supra p. 831. n. 7.)

(23) Who stated that R. Meir agrees with the ruling in the first clause that a rival's contradiction is admitted.
(24) To marry again; since a woman may not tender evidence for her rival.
(25) As during the lifetime of her husband. The evidence of the other which is regarded as invalid to enable the rival to marry again (v. supra n. 1) is equally invalid to deprive her of her right to the eating of terumah.
(26) To forbid the rival to marry and to allow her to eat terumah.
(27) For whom a daughter-in-law is ineligible to tender evidence.
(28) To marry; though. at the time the evidence in her favour was given. the witness, according to whose evidence her husband died before her father-in-law, was no longer her daughter-in-law. The reason is explained supra 117b.
(29) Cf. supra n. 3 mutatis mutandis.
(30) The first (relating to a rival) and the second (relating to a mother-in-law).
(31) That the evidence of a rival is not accepted.
(32) The deprivation of marital intercourse caused by a rival. Only 10 such circumstances, it is possible, did R. Tarfon discredit the evidence of a rival who might indeed be actuated by malice.
(33) Lit,, 'things in the world'.
(34) That a daughter-in-law need not be suspected of deliberate lying because of some general grievance against her mother-in-law; and that consequently. though her evidence is not accepted in respect of relaxing the laws of marriage. it may be accepted in respect of enforcing the laws of terumah.
(35) Who went to a country beyond the sea with her husband before any issue was born from their union.
(36) On her return.
(37) And may contract levirate marriage. Her evidence merely confirms the status in which she was already at the time of her departure. At that time as well as now she had no children to exempt her from the levirate obligations.
(38) To be permitted to marry a stranger without previous halizah with the levir. The evidence of a woman is accepted only in respect of the death of her husband, where it is assumed that she takes all possible care to ascertain the fact of his death. it is not, however, accepted in respect of liberating her from a levir against whom she might have been nursing a personal hatred, so that she would, without making the necessary enquiries, be ready on the flimsiest of proofs to testify anything which enables her to get rid of him.
(39) Owing to the status in which she has been confirmed.
(40) Since note must be taken of her allegation.
(41) Infra 118b, 119b.

Talmud - Mas. Yevamoth 118b

MISHNAH. IF A MAN BETROTHED ONE OF FIVE WOMEN AND HE DOES NOT KNOW WHICH OF THEM HE HAS BETROTHED, AND EACH STATES, 'HE HAS BETROTHED ME. HE GIVES A LETTER OF DIVORCE TO EVERY ONE OF THEM,[1] AND, LEAVING THE KETHUBAH[2] AMONG THEM, WITHDRAWS;[3] SO R. TARFON. R. AKIBA, HOWEVER, SAID: THIS IS NOT A WAY THAT WOULD TAKE ONE OUT OF THE POWER OF TRANSGRESSION, UNLESS ONE GIVES TO EACH OF THEM BOTH A LETTER OF DIVORCE AND HER KETHUBAH.[2]

IF A MAN ROBBED ONE OF FIVE PERSONS AND DOES NOT KNOW WHICH OF THEM HE HAS ROBBED, AND EACH ONE STATES. 'HE HAS ROBBED ME', HE LEAVES THE [AMOUNT OF] THE ROBBERY AMONG THEM AND WITHDRAWS;[4] SO R. TARFON. R. AKIBA, HOWEVER, STATED: THIS IS NOT A WAY THAT WOULD LEAD ONE OUT OF THE POWER OF SIN, UNLESS ONE PAYS [THE FULL AMOUNT OF THE ROBBERY] TO EVERY ONE [OF THE PERSONS INVOLVED].

GEMARA. Since BETROTHED was stated. and not[5] 'cohabited'. and since ROBBED was stated and not 'bought'. whose [view, it may be asked, is represented in] our Mishnah? Neither. [apparently. that of] the first Tanna[6] nor that of R. Simeon b. Eleazar![6] For it was taught: R. Simeon b. Eleazar stated that R. Tarfon and R. Akiba did not differ [on the ruling that] where a man betrothed one of five women, and he does not know which of them he betrothed, he leaves the

kethubah[2] among them and withdraws;[3] they differ only in the case where cohabitation occurred, R. Tarfon ruling that the man leaves the kethubah[2] among them and withdraws, while R. Akiba ruled [that the man is not exempt from transgression] unless he pays[7] everyone of them. R. Tarfon and R. Akiba. furthermore, did not differ on [the ruling that] where a person bought something from five men and does not know from which of them he bought, he may leave the price of the purchase among them and depart; they differ only in the case where a person robbed one of five men, R. Tarfon ruling that the man must deposit the amount of the robbery among them and may then depart, while R. Akiba ruled [that the man is not exonerated] unless he pays [the amount of the] robbery to everyone.[8] Now, since R. Simeon b. Eleazar said that they[9] do not differ in the case where a man betrothed or purchased, it may be inferred that the first Tanna is of the opinion that they[9] did differ. Whose [view then, is presented in our Mishnah]? If it is that of the first Tanna 'betrothal' and purchase should have been mentioned,[10] and if [it is that of] R. Simeon b. Eleazar cohabitation and 'robbery' should have been mentioned![11] — [Our Mishnah represents] in fact [the view of] N. Simeon b. Eleazar, but the meaning of[12] BETROTHED is betrothal through cohabitation'. BETROTHED was used in order to acquaint you how far R. Akiba is prepared to go[13] , as he imposes a penalty[14] even where one transgressed a Rabbinic prohibition[15] only; and ROBBED was taught in order to acquaint you how far N. Tarfon is prepared to go, as he imposes no penalties[16] even where one had transgressed a Pentateuchal prohibition.[17]

MISHNAH. A WOMAN WHO WENT WITH HER HUSBAND TO A COUNTRY BEYOND THE SEA, HER SON ALSO [GOING] WITH THEM, AND WHO CAME BACK AND STATED, 'MY HUSBAND DIED AND AFTERWARDS MY SON DIED', IS BELIEVED.[18] [IF, HOWEVER, SHE STATED.] 'MY SON DIED AND AFTERWARDS MY HUSBAND DIED'.[19] SHE IS NOT BELIEVED,[20] BUT NOTE IS TAKEN OF HER ASSERTION[21] AND SHE MUST, THEREFORE, PERFORM HALIZAH[22] AND MAY NOT CONTRACT THE LEVIRATE MARRIAGE.[23]

[IF A WOMAN[24] STATES].[25] 'A SON WAS GIVEN TO ME [WHILE I WAS] IN A COUNTRY BEYOND THE SEA' AND SHE ALSO ASSERTS, 'MY SON DIED AND AFTERWARDS MY HUSBAND DIED', SHE IS BELIEVED.[26] [IF, HOWEVER, SHE STATES]. 'MY HUSBAND DIED AND AFTERWARDS MY SON DIED .[27] SHE IS NOT BELIEVED,[28] BUT NOTE IS TAKEN OF HER ASSERTION[29] AND SHE MUST, THEREFORE, PERFORM HALIZAH[30] BUT MAY NOT CONTRACT LEVIRATE MARRIAGE.[31]

[[19] F A WOMAN[32] STATES]. 'A BROTHER-IN-LAW WAS GIVEN TO ME [WHILE I WAS] IN A COUNTRY BEYOND THE SEA',[33] AND SHE ALSO STATES, 'MY HUSBAND DIED AND AFTERWARDS MY BROTHER-IN-LAW DIED OR 'MY BROTHER-IN-LAW DIED AND AFTERWARDS MY HUSBAND DIED', SHE IS BELIEVED.[34] IF A WOMAN AND HER HUSBAND AND HER BROTHER-IN-LAW WENT TO A COUNTRY BEYOND THE SEA, AND SHE [ON RETURNING HOME] STATED, 'MY HUSBAND DIED AND AFTERWARDS MY BROTHER-IN-LAW [DIED]' OR 'MY BROTHER-IN-LAW [DIED] AND AFTERWARDS MY HUSBAND [DIED]'. SHE IS NOT BELIEVED; FOR A WOMAN IS NOT TO BE BELIEVED WHEN SHE ASSERTS 'MY BROTHER-IN-LAW IS DEAD', IN ORDER THAT SHE MAY MARRY AGAIN. NOR [WHEN SHE STATES THAT] HER SISTER IS DEAD. IN ORDER THAT SHE MAY ENTER HIS[35] HOUSE.[36] A MAN ALSO IS NOT BELIEVED WHEN HE ASSERTS 'MY BROTHER IS DEAD', SO THAT HE MAY CONTRACT LEVIR' ATE MARRIAGE WITH HIS WIFE, NOR [WHEN HE ASSERTS THAT] HIS WIFE IS DEAD, IN ORDER THAT HE MAY MARRY HER SISTER.[37]

GEMARA. Raba enquired of R. Nahman: What [is the legal position] if a husband transferred to his wife [through an agent][38] the possession of a letter of divorce, where a brother-in-law[39] is in existence?[40] [Is the divorce], since she [usually] hates her brother. in-law, an advantage to her and

[consequently valid, because] a privilege may be conferred upon a person in his absence; or is it possible [that the divorce], since she sometimes loves her brother-in-law, is a disadvantage to her and [consequently invalid because] no disadvantage may be imposed upon a person in his absence? The other replied. We have learned this: NOTE IS TAKEN OF HER ASSERTION AND SHE MUST, THEREFORE, PERFORM HALIZAH. BUT MAY NOT CONTRACT THE LEVIRATE MARRIAGE.[41] Said Rabina to Raba: What [is the legal decision] if a husband transferred to his wife [through an agent][42] the possession of a letter of divorce at a time[43] when a quarrel [raged between them]? [is the divorce], since she has a quarrel with her husband, an advantage to her or [is it a disadvantage, since] the gratification of bodily desires is possibly preferred by her?[44] — Come and hear what Resh Lakish said: 'It is preferable to live in grief[45] than to dwell in widowhood' .[46]

Abaye said: 'With a husband [of the size of an] ant her seat is placed among the great'.[47]

R. Papa said: Though her husband be a carder[48] she calls him to the threshold and sits down [at his side].[49]

R. Ashi said: If her husband is only a cabbage-head[50] she requires no lentils[51] for her pot.[52]

A Tanna taught: All such women[53] play the harlot and attribute the results[54] to their husbands. [

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(1) If he has no desire to marry any of them.

(2) I.e., the sum due to a woman on being divorced. (V. Glos.).

(3) He need not give them more than the amount of one kethubah since he had betrothed no more than one woman. It is for the women themselves to come to an agreement on the disposal of that sum.

(4) Cf. supra n. 2 mutatis mutandis.

(5) Lit,, was not stated'.

(6) Of the Baraitha cited infra.

(7) The full amount of her kethubah.

(8) Tosef. Yeb. XIV.

(9) R. Tarfon and R. Akiba.

(10) And not those of 'betrothal' and robbery

(11) Not those if betrothal and 'robbery'.

(12) Lit , and what'.

(13) Lit 'with the power'.

(14) That the man must pay the amount if her kethubah to each one of the five women.

(15) It is only Rabbinically that betrothal through cohabitation is forbidden. Pentateuchally it constitutes a proper kinyan.

(16) Maintaining as he does that one single sum equal to the amount of the robbery exonerates the robber from all further liability.

(17) Prohibition of robbery was specifically mentioned in the Pentateuch,

(18) And is exempt from levirate marriage and halizah. Her statement is accepted since thereby she is merely confirming the status in which she found herself before her departure. At that time she had a son who exempted her from the levirate bond; and now that her husband died before that son she is still entitled to the same exemption. Her admission of her son's death does not affect her status, since she is the only source of the information, and as her word is accepted in respect of the death it must be similarly accepted in respect of its date.

(19) So that she is in consequence subject to the levirate bond.

(20) Because her assertion would alter the status in which she was confirmed prior to her departure. Such alteration cannot be authorized in view of the possibility that her report might be due to a desire to marry the levir.

(21) Since, at any rate, her statement has impaired her former status.

(22) Before she may be permitted to marry a stranger.

(23) She herself having testified that she was forbidden to the levir.

(24) Who had no children at the time she left her home town.

(25) On returning from across the sea.

(26) And remains subject to the levirate bond and may perform halizah or contract levirate marriage. Her statement is accepted because it confirms the status in which she was established prior to her departure. Cf. supra p. 836. n. 11 mutatis mutandis.
(27) So that, were her statement to be accepted, she would be exempt from the levirate bond to which, in virtue of her former status, she is still subject.
(28) Cf. supra note 2 mutatis mutandis. As a rule, a woman is supposed to hate her brother-in-law.
(29) V. supra n. 3.
(30) V. supra n. 4.
(31) V. supra n. 5.
(32) Who was known to have no brother-in-law.
(33) I.e., her mother-in-law, who was with her overseas, gave birth to a son during their stay there.
(34) Since in either case she only confirms her former status. Cf. supra p. 836. n. 11 mutatis mutandis.
(35) Her sister's husband's.
(36) I.e., to marry him, which she is forbidden to do during the lifetime of her sister.
(37) Cf. supra note 2 mutatis mutandis.
(38) Whom the childless husband had asked to act on behalf of his wife, his intention being to spare her from the levirate obligations on his death. Elsewhere a divorce is invalid unless it had actually been delivered into the woman's hands or into those of an agent who was duly appointed by her.
(39) To whom she would be subject in the absence of a letter of divorce.
(40) Lit., 'in the place of'.
(41) Since this is the ruling in our Mishnah both in the case where It is assumed that she loves the levir (cf. supra p. 837, n. 2) and in that where she is assumed to hate him (cf. supra p. 837. n. 10). it is obvious that it is uncertain whether a divorce given in the circumstance described by Raba is an advantage or a disadvantage to the woman. The legal position in such a case would consequently be that the woman would have to perform halizah but would not be permitted levirate marriage.
(42) V. p. 838. n' 4.
(43) Lit., 'in the place of'.
(44) She might prefer a married life in quarrels to a peaceful life of separation.
(45) Or 'together', 'as husband and wife'. V. following note.
(46) A woman's maxim. She prefers an unhappy life in a married state to a happy one in solitude. טן דו 'with a load of grief', 'in trouble' (last.). According to Rashi, טן דו= 'two bodies' (cf. supra n. 4). Levy compares it with the Pers., tandu, 'two persons'.
(47) A proverb. חרתא a free woman,
(48) נפצא 'flax-beater'; Aruk, נפסא 'a watchman of vegetables'; a very poor and humble occupation.
(49) To show her friends that she is a married woman. She is proud of her husband despite his lowly social status.
(50) קולסא 'dull', or 'ugly' (cf. last.); 'of a tainted family' (Rashi).
(51) Regarded as a cheap food.
(52) For the sake of a married life, a woman willingly renounces all other pleasures. even the enjoyment of the poorest meal.
(53) Lit,, 'and all of them', those married to the unlovely types of husband mentioned.
(54) Lit , 'and hang (it) on'.

Talmud - Mas. Yevamoth 119a

CHAPTER XVI

MISHNAH. A WOMAN WHOSE HUSBAND AND RIVAL WENT TO A COUNTRY BEYOND THE SEA, AND TO WHOM PEOPLE CAME AND SAID, 'YOUR HUSBAND IS DEAD', MUST NEITHER MARRY AGAIN[1] NOR CONTRACT LEVIRATE MARRIAGE[2] UNTIL SHE HAS ASCERTAINED WHETHER HER RIVAL IS PREGNANT.[3] IF SHE HAD[4] A MOTHER-IN-LAW[5] SHE NEED NOT APPREHEND [THE POSSIBILITY OF THE BIRTH OF ANOTHER SON];[6] BUT IF SHE DEPARTED WHILE PREGNANT [SUCH POSSIBILITY]

MUST BE TAKEN INTO CONSIDERATION.[7] R. JOSHUA RULED; SHE NEED NOT APPREHEND [SUCH A POSSIBILITY].[8]

GEMARA. What is implied by[9] 'HER RIVAL'?[10] — It is this that we are told: {The possibility of a birth in respect] of that rival[11] need be apprehended; in respect of another rival, however, it need not be apprehended.[12]

MUST NEITHER MARRY AGAIN NOR CONTRACT LEVIRATE MARRIAGE etc. It is quite proper that she shall not contract levirate marriage since it is possible that [her rival] is pregnant and that she would in consequence cause an infringement[13] [of the prohibition against marriage] of a brother's wife, which is Pentateuchal; but why should she not marry [a stranger]? The majority of women should be taken as a criterion[14] and the majority of women conceive and bear children! Must it then[15] be assumed that [the ruling is that of] R. Meir who takes a minority also into consideration?[16] — It may even be said [to represent the view of] the Rabbis; for the Rabbis follow[17] the majority principle only where the majority is actually present[18] as, for instance, in the case of 'nine shops'[19] and 'Sanhedrin' ,[20] but in respect of a majority that is not actually present[21] the Rabbis were not guided by the majority principle.

Behold the case of a minor boy and a minor girl, where the majority is one that is not actually present and the Rabbis nevertheless follow the majority principle; for it was taught: A minor, whether male or female, may neither perform nor submit to halizah, nor may he contract levirate marriage; so R. Meir. They said to R. Meir: You spoke well [when you ruled] that 'He may neither perform nor submit to halizah', since in the Pentateuchal section[22] man was written,[23] and we draw a comparison between 'woman' and man.[24] What, however, is the reason why he may not contract levirate marriage? He replied: Because a minor male might be found to be a saris;[25] a minor female might be found to be incapable of procreation; and thus the law of incest would be violated. The Rabbis, however, maintain, 'Follow the majority of male minors'; and the majority of male minors are not sarisin;[26] 'Follow the majority of female minors' and the majority of female minors are not incapable of procreation![27] — But, clearly, [it must be admitted], our Mishnah represents the view of R. Meir.

How have you explained it?[28] That it is in agreement with the view of[29] R. Meir? Read, then, the final clause: IF SHE HAD A MOTHER-IN-LAW SHE NEED NOT APPREHEND [THE POSSIBILITY OF THE BIRTH OF ANOTHER SON]; but why? One should be guided by the majority of women, and the majority of women conceive and bear while a minority miscarry, and, since all those who bear [produce] a half of males and a half of females, the minority of those who miscarry should be added to the half [of those who bear] females, and so the males would constitute a minority which[30] should be taken into consideration![31] — It is possible that since the woman was confirmed[32] in her status of permissibility to strangers[33] [the possibility of the birth of a levir] was not taken by him[34] into consideration. In the first clause, then,[35] where she was confirmed in the status of eligibility for the levirate marriage,[36] let her contract the levirate marriage! — R. Nahman replied in the name of Rabbah b. Abbuha: In the first clause where a prohibition which is subject to the penalty of kareth [is involved, the possibility of the birth of a son][37] had to be provided against; in the final clause, however, where a prohibitory law [only is involved][38] no [such possibility][39] was taken into consideration. Said Raba: Consider: The one [prohibition] is Pentateuchal and the other also is Pentateuchal;[40] what matters it, then, whether the prohibition is one involving kareth or whether it is only a mere prohibitory law? — Rather, said Raba;

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(1) Since her husband, when he departed, was known to have had no issue.

(2) It being possible that her rival had a child from their husband.

(3) If the rival is found to be pregnant the woman is free to marry again; and if she is not pregnant, levirate marriage or halizah must be performed.

(4) Overseas.
(5) Who, at the time of her departure, had no other son but the one who is now dead.
(6) To her mother-in-law. It is only in respect of a rival that the possibility of a birth must be taken notice of, since a child, whatever its sex, exempts the woman from the levirate obligations. In the case of a mother-in-law, however, the birth of a female would not affect the woman's freedom to marry again, since it is only a male that subjects her to the levirate obligations. There is no need to apprehend that the mother-in-law had not only (a) given birth to a child but also (b) that that child was not a female but a male.
(7) Since the only doubt is whether the child was a male. Cf. supra n. 6.
(8) Because here also two possibilities must be postulated: (a) that the mother-in-law did not miscarry and (b) that the child born was not a female but a male.
(9) Lit., 'she' or 'it'.
(10) Emphasis on HER.
(11) Who went with her husband to a country beyond the sea.
(12) If witnesses testified that the known rival (v. supra n. 11) was not pregnant there is no need to apprehend the possibility of a marriage with another wife who may have given birth to a child.
(13) Lit., 'meet'.
(14) Lit., 'go'.
(15) Since the majority principle is not followed.
(16) Hul. 6a; and since some women do not conceive and bear, the possibility that the rival belonged to this minority must be provided against by forbidding levirate marriage. Would then our anonymous Mishnah represent the view of an individual!
(17) Lit., 'when do they go'.
(18) Lit., 'which is before us'.
(19) Which were selling permitted meat, while one shop in their vicinity was selling forbidden meat. If between these shops a piece of meat was found and it is not known from which shop it came, it is assumed to be permitted meat, since the majority of the shops were selling meat of such a character. V. Hul. 95a.
(20) A majority of whom (twelve against eleven) are in favour of a certain decision. V. Sanh. 40a.
(21) The majority of women in general who are assumed to conceive and bear.
(22) Dealing with halizah.
(23) V. Deut. XXV, 7.
(24) As the male must be of mature age and not a minor, so must also be the female.
(25) V. Glos.
(26) Pl. of saris, v. Glos.
(27) Bek. 19b. Cf. supra 61b, 105b. The majority spoken of here is, surely, one which is not actually present, and the Rabbis are nevertheless guided by it!
(28) Lit., 'in what did you place it', sc. the first clause of our Mishnah.
(29) Lit., 'like'.
(30) According to R. Meir.
(31) And, contrary to the ruling in our Mishnah, the woman should, as in the first clause, be forbidden marriage.
(32) When her mother-in-law departed.
(33) Lit., 'to the market'; because there was no known levir.
(34) R. Meir.
(35) If a woman's confirmed status at a certain period is a determining factor.
(36) Since her husband when he departed, had no issue.
(37) By the rival.
(38) The marriage of a yebamah to a stranger.
(39) That a son was born by the mother-in-law.
(40) Neither is a mere Rabbinically preventive measure.

Talmud - Mas. Yevamoth 119b

in the first clause the woman's confirmed status[1] [would subject her] to the levirate marriage while

the majority principle[2] [would enable her] to marry any stranger;[3] and, though 'confirmed status' is not as important a factor as a majority, the minority of women who miscarry must be added to the 'confirmed status' so that the factors on either side are equally balanced;[4] hence[5] she MUST NEITHER MARRY AGAIN NOR CONTRACT LEVIRATE MARRIAGE. In the final clause, however, the woman's confirmed status[6] as well as the majority principle[7] [points] to [the permissibility of marriage with] any stranger,[3] so that [viable] males[8] constitute a minority of a minority;[9] and a minority of a minority is not taken into consideration even by R. Meir.

MUST NEITHER MARRY AGAIN NOR CONTRACT LEVIRATE MARRIAGE etc. For ever?[10] — Ze'iri replied: [She waits] on account of herself three months[11] and on account of her associate nine,[12] and then she may, at all events,[13] perform halizah. R. Hanina said: On account of herself [she must wait] three months, but on account of her associate[14] for ever.[15] But let her perform halizah[16] at all events![17] — Both Abaye b. Abin and R. Hanina b. Abin replied: This[18] is a preventive measure against the possibility that the child[19] might be viable[20] as a result of which[21] you would have to subject her to the necessity of a public announcement[22] in respect of the priesthood.[23] Well, let her be subjected to the necessity! — It may happen that someone would be present at the halizah and not at the announcement,[24] and he would form the opinion[25] that a haluzah was permitted to a priest.

We learned: [If a woman states], 'A son was given to me [while I was] in a country beyond the sea' and she also asserts, 'My son died and afterwards my husband died', she is believed. [If she states, however], 'My husband died and afterwards my son died', she is not believed, but note is taken of her assertion and she must, therefore, perform halizah but may not contract levirate marriage.[26] Let it, however, be apprehended that witnesses might come and confirm her statement and that, as a result, you would subject her to the necessity of an announcement in respect of the priesthood! — R. Papa replied: [This refers to] a woman divorced.[27] R. Hiyya son of R. Huna replied: [It refers to one] who stated 'I and he[28] were hidden in a cave'.[29] MISHNAH. [IN THE CASE OF] TWO SISTERS-IN-LAW[30] ONE OF WHOM[31] STATED, 'MY HUSBAND IS DEAD', AND THE OTHER ALSO STATED, 'MY HUSBAND IS DEAD', THE FORMER[31] IS FORBIDDEN[32] ON ACCOUNT OF THE HUSBAND OF THE LATTER,[33] AND THE LATTER IS FORBIDDEN[34] ON ACCOUNT OF THE HUSBAND OF THE FORMER.[33] IF THE ONE HAD WITNESSES[35] AND THE OTHER HAD NO WITNESSES,[35] SHE WHO HAD THE WITNESSES IS FORBIDDEN,[36] WHILE SHE WHO HAD NO WITNESSES IS PERMITTED.[37] IF THE ONE HAD CHILDREN AND THE OTHER HAD NO CHILDREN,[38] SHE WHO HAD CHILDREN[39] IS PERMITTED[34] AND SHE WHO HAD NO CHILDREN[40] IS FORBIDDEN.[34] IF THEY[41] CONTRACTED LEVIRATE MARRIAGES,[42] AND THE LEVIRS DIED, THEY[43] ARE FORBIDDEN [TO MARRY AGAIN].[44] R. ELEAZAR[45] RULED: SINCE THEY WERE ONCE PERMITTED TO MARRY THE LEVIRS[46] THEY ARE PERMITTED TO MARRY ANY MAN.

GEMARA. A Tanna taught: If the one[47] had witnesses[48] and also children, and the other had neither witnesses nor children, both are permitted [to marry again].[49]

IF[50] THEY CONTRACTED LEVIRATE MARRIAGES, AND THE LEVIRS DIED, THEY ARE FORBIDDEN [TO MARRY AGAIN]. R. ELEAZAR RULED: SINCE THEY WERE ONCE PERMITTED TO THE LEVlrs THEY ARE PERMITTED TO MARRY ANY MAN. Raba inquired: What is R. Eleazar's reason? Is it because he is of the opinion that a rival[51] is eligible to tender evidence in favour of her associate or is it because [he holds that] she would not[51] cause injury to herself?[52] What practical difference is there [between the two assumptions]?

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(1) It was an established fact that her husband had no issue and that a levir was in existence.

(2) Most women bear viable children and her rival's child would exempt her from the levirate obligations.

(3) Lit., 'to the market'.

(4) Lit., ‘and it is a half and a half’, ‘confirmed status’ plus minority pointing to the levirate marriage while the majority principle points to permissibility to marry any stranger.
(5) Since neither consideration can be regarded as more weighty than the other.
(6) As one who had no brother-in-law.
(7) Miscarriages and the births of females constitute a majority against the minority of births of viable males.
(8) Only a viable male child exempts a woman from the levirate obligations.
(9) I.e., besides the fact that viable males are in a minority (v. supra n. 10) the possibility of the birth of a viable male is still less to be taken note of in view of the confirmed status of the woman (v. supra note 9).
(10) But why! Let her perform halizah and thus at all events procure her freedom. V. infra p. 844, n. 5.
(11) As any other woman whose husband died. V. supra 42b.
(12) Since should her rival be pregnant, her levirate bond could not be severed by halizah but by the actual birth of a viable child.
(13) Whether the rival gave birth to a child or not. V. infra note 5.
(14) Her rival who might he pregnant.
(15) Until it is definitely ascertained whether her rival had given birth to a viable child.
(16) After a period of nine months (v. supra p. 843, n. 15), and so procure her freedom to marry again.
(17) Since either she is exempted altogether from the levirate obligations by the birth of her rival's child (if one was horn) or (if no viable child was born) she gains her freedom by the halizah.
(18) That no halizah must be performed; v. supra n. 3.
(19) Of the rival.
(20) In consequence of which the halizah would become null and void as if it had never taken place.
(21) Lit., ‘it is found’.
(22) That the halizah was unnecessary and consequently null and void.
(23) I.e., that she is permitted to marry a priest.
(24) V. supra note 10.
(25) Should she eventually be married to a priest.
(26) Supra 118b, q.v. for notes.
(27) From a former husband; before she was married to the one now deceased. As a divorcee she remains forbidden to marry a priest even if the halizah is subseqeuntly found to have no validity.
(28) She and her husband together with their son.
(29) When death occurred. Since no one was present there is no need to provide against the possibility of the appearance of witnesses.
(30) The wives of two brothers.
(31) Lit., ‘this’.
(32) To marry a stranger.
(33) Who might, in fact, he alive and with whom halizah or levirate marriage must he performed. A woman is eligible to tender evidence on the death of her husband in so far only as to enable herself to marry again. She is ineligible, however, to give evidence enabling her sister-in-law to marry again.
(34) To marry again.
(35) That her husband was dead.
(36) To marry a stranger; since there are no witnesses to testify to the death of the levir. The evidence of his wife alone (cf. supra n. 4) is not sufficient for the purpose.
(37) To marry any stranger; since she herself is believed in respect of the death of her husband while in respect of the death of the levir the evidence of the witnesses is available.
(38) And neither had witnesses.
(39) Who exempt their mother from the levirate bond.
(40) And who is consequently subject to the levirate bond of a man whose death is attested only by her sister-in-law whose word cannot he accepted (cf. supra n. 4).
(41) The two sisters-in-law spoken of in the first clause of our Mishnah, neither of whom had children nor was able to produce witnesses to attest her husband's death.
(42) With the levirs other than the absent husbands.
(43) V. supra note 12.

(44) Any stranger. Though the evidence of each woman was valid to enable herself to contract levirate marriage, it is not valid to exempt her sister-in-law- from the levirate bond (cf. supra note 4), and the possibility that their absent levirs (the first husbands) were still alive must he taken into consideration.
(45) Var. lec. R Eliezer.
(46) On the assumption that their husbands were dead.
(47) Of two sisters-inlaw who stated that their husbands were dead.
(48) To confirm her statement.
(49) The former because of her children who exempt her from the levirate bond; and the latter, because witnesses had testified to the death of her levir while she herself is believed in respect of the death of her husband.
(50) Cur. edd. do not indicate by the usual stops that this passage is derived from our Mishnah. Cf. however, Bomb. ed.
(51) By a statement whereby she injures her associate.
(52) Her evidence here would injure herself as it would her associate. Where, however, her associate alone would be the sufferer a rival's evidence is not accepted.

Talmud - Mas. Yevamoth 120a

That of allowing[1] her rival to marry before herself. If it is granted that a rival may give evidence in favour of her associate, her rival may be permitted to marry even if she herself did not remarry. If, however, it be maintained that the reason is because she would not cause injury to herself, the rival would be permitted to marry only if she herself had married again, but if she herself did not remarry, her rival also would not be permitted to remarry. Now, what [is the decision]? — Come and hear: R. ELEAZAR RULED: SINCE THEY WERE ONCE PERMITTED TO THE LEVIR THEY ARE PERMITTED TO MARRY ANY MAN. Now, if it be granted that [the reason is because] she would not cause injury to herself one can well see the reason why only when the one married again is the other permitted to remarry. If it be maintained, however, that the reason is because a rival is eligible to tender evidence in favour of her associate, [the associate should be permitted to marry again] even if the rival did not remarry. Consequently it must be concluded[2] that R. Eleazar's reason is: Because she[3] herself had married again and she would not cause injury to herself! — R. Eleazar may have argued on the basis of the view of the Rabbis.[4] 'According to my view [he may have said in effect] a rival is eligible to tender evidence in favour of her associate, and even if she herself did not remarry the other may be allowed to marry again. According to your view, however, you must at least agree with me that where she herself' remarried the other also should be allowed to marry again, since she[3] would naturally not injure herself!' And the Rabbis?[5] — She might be acting [in the spirit of] let me die with the Philistines.[6]

Come and hear: If a woman and her husband went to a country beyond the sea, and she returned and stated, 'My husband is dead', she may be married again and she also receives her kethubah. Her rival, however, is forbidden. R. Eleazar[7] ruled: Since she becomes permitted her rival also becomes permitted![8] — Read: Since she was permitted and she married again. Let it, however,[9] be apprehended that she[3] may have returned with a letter of divorce and that the reason why she made her statement[10] is because it was her intention to injure her rival![11] — If she was married to an Israelite, this would be so indeed;[12] but here we are dealing with one who married a priest.[13]

MISHNAH. EVIDENCE [OF IDENTITY][14] MAY BE LEGALLY TENDERED[15] ONLY ON [PROOF AFFORDED BY] THE FULL FACE[16] WITH THE NOSE, THOUGH THERE WERE ALSO MARKS ON THE MAN'S BODY OR CLOTHING. NO EVIDENCE [OF A MAN'S DEATH][15] MAY BE TENDERED BEFORE HIS SOUL HAS DEPARTED; EVEN THOUGH THE WITNESSES HAVE SEEN HIM WITH HIS ARTERIES CUT[17] OR CRUCIFIED OR BEING DEVOURED BY A WILD BEAST.[18] EVIDENCE [OF IDENTIFICATION] MAY BE TENDERED [BY THOSE] ONLY [WHO SAW THE CORPSE] WITHIN[19] THREE DAYS [AFTER DEATH].[20] R. JUDAH B. BABA, HOWEVER, SAID: NEITHER ALL MEN, NOR ALL PLACES, NOR ALL SEASONS[21] ARE ALIKE.[22]

GEMARA. Our Rabbis taught: Evidence [of identification][23] may be tendered[24] only on [proof afforded by] the forehead without the face[25] or the face without the forehead — Both together with the nose must[19] be present.[26]

Abaye, or it might be said, R. Kahana, stated: What is the Scriptural proof?[27] — The shew of their countenance[28] doth witness against them.[29]

Abba b. Martha, otherwise[30] Abba b. Manyumi, was being pressed for the payment of some money by the people of the Exilarch's house. Taking some wax he smeared it on a piece of rag and stuck it upon his forehead. He passed before them and they did not recognize him.[31]

THOUGH THERE WERE ALSO MARKS etc. Does this imply that identification marks are not valid Pentateuchally? A contradiction, surely, may be pointed out: If he[32] found it[33] tied to a bag, a purse or a seal-ring[34] or if it was found among his furniture,[35] even after a long time, it[33] is valid![36] — Abaye replied: This is no difficulty. The one is the view of[37] R. Eliezer[38] b. Mahebai while the other is that of[37] the Rabbis. For it was taught: No evidence [of identification] by a mole may he legally tendered. R. Eliezer[38] h. Mahebai ruled: Such evidence may be legally tendered. Do they not differ on the following principle,[39] that one Master[40] is of the opinion that identification marks are valid Pentateuchally[41] while the other Master[42] is of the opinion that identification marks are only Rabbinically valid? — Said Raba: All[43] agree that identification marks are valid Pentateuchally; but here they differ on the question whether it is common for the same kind of mole to he found on persons of simultaneous birth.[44] One Master[42] is of the opinion that it is common for the same kind of mole to be found on persons of simultaneous birth,[45] and the other Master[46] is of the opinion that it is not common for the same kind of mole to be found on persons of simultaneous birth.[47]

Others say: Their[48] point of difference here is whether a mole usually undergoes a change after one's death — One Master[49] is of the opinion that it usually undergoes a change after one's death[50] and the other Master[46] is of the opinion that it does not usually undergo a change after one's death.

Others maintain that Raba said: All[51] agree that identification marks are only Rabbinically valid; but here [it is on the question] whether a mole

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(1) Where a woman who went overseas with her husband leaving her rival in the home town returned and stated that her husband was dead.

(2) Lit., ‘but infer from it’.

(3) The woman who reported the death of her husband.

(4) Lit., ‘according to their words he said to them’.

(5) Why do they not allow the associate to marry even in the latter case?

(6) Judges XVI, 30. In order to inflict injury upon her associate she is willing to suffer injury herself.

(7) Var. Sec. R. Eliezer cf. supra p. 845, n. 16.

(8) Cf. supra 118a. This proves that, on the evidence of a rival, an associate is always permitted to marry again whether the rival who gave the evidence did or did not herself marry again.

(9) If the reason why a rival is believed in respect of her associate is not because she is eligible to tender evidence but because she would not injure herself.

(10) Lit., ‘that which she said thus’. That her husband was dead.

(11) She herself would thereby suffer no disability since she herself is in any case divorced from her husband.

(12) There would be ground for suspecting that she was divorced.

(13) Who may not marry a divorcee (v. Lev. XXI, 7). Had she been a divorced woman she would not have ventured to contract such a marriage for fear lest her former husband might return and expose her.

(14) In respect of a dead man.

(15) To enable the widow to marry again.

(16) פרצוף פנים cf. Gr.**.
(17) Or 'mortally wounded' (v. Rashi). מגוייד rt. גייד, to cut an artery', a mode of execution practised among certain peoples (cf. Jast.).
(18) Since it is possible to recover life even in such precarious conditions.
(19) Lit., 'until'.
(20) After this period, the decay of the corpse would hinder identification.
(21) Lit., 'hours', 'times'.
(22) Decomposition in one case may be much more rapid than in another. The period of THREE DAYS mentioned must, therefore, be varied according to physical and climatic conditions.
(23) In respect of a dead man.
(24) To enable the widow to marry again.
(25) V. supra note 5.
(26) If the evidence of identification is to be valid.
(27) That the full face is essential for identification.
(28) Emphasis on countenance; not any other part of the body.
(29) Isa. III, 9.
(30) Lit., 'which he', 'who was'.
(31) Lit., 'they did not discover it'. בשקר (cf. בקר) 'to examine', 'to discover'.
(32) A man who was carrying a letter of divorce from a husband to his wife.
(33) The letter of divorce after it had been lost for a time.
(34) Cf. infra 120b. טבעת 'ring'.
(35) Cf. Rashi.
(36) B.M. 27b; provided he is able to identify the bag, or any of the other objects mentioned, as the original object to which the letter of divorce had been tied. Though the assumed validity of the document affects a Pentateuchal law (permitting a married woman to marry a stranger) it is nevertheless permitted to rely upon the identification marks, contrary to the implication of our Mishnah.
(37) Lit., 'that'.
(38) Pesaro ed. and MSS. read 'Eleazar'.
(39) Of course they do.
(40) R. Eliezer.
(41) Cf. B.M. 27a.,
(42) The first Tanna.
(43) Both the first Tanna as well as R. Eliezer.
(44) בן גילו, lit., 'son of his circle', ('circle' referring to the sphere of the zodiac). Persons born at the same hour of the day are assumed to be physically and morally subject to the same planetary influences for good and for evil.
(45) As the corpse and the man in question might have been such persons, all marks, other than those afforded by those of the full face, are no reliable proof of identity.
(46) R. Eliezer.
(47) A mole, therefore, is a valid identification mark.
(48) Cf. supra p. 849, n. 14.
(49) The first Tanna.
(50) Hence it cannot be regarded as a valid mark of identification.
(51) V. supra p. 849, n. 14.

Talmud - Mas. Yevamoth 120b

constitutes a distinct[1] identification mark[2] that they differ. One Master is of the opinion that it constitutes a distinct identification mark,[2] and the other Master is of the opinion that it does not constitute a distinct identification mark.

With reference to the version according to which Raba stated that 'identification marks are valid Pentateuchally' [the objection might be raised:] Surely it was taught, THOUGH THERE WERE

ALSO MARKS ON THE MAN'S BODY OR CLOTHING![3] — As to the BODY [the marks indicated by the witnesses were only that the corpse was] long or short;[4] and as to one's CLOTHING [no reliability can be placed upon their identification] since borrowing might be apprehended.[5] If, however, borrowing is to be apprehended how could we allow the return of an ass[6] on [the strength of] the identification marks of a saddle![7] — People do not borrow a saddle because it makes the back of the ass sore.[8] Where one 'found it tied to a bag, a purse or a seal-ring',[9] how do we allow its return![10] — As to a seal-ring one is afraid of forgery;[11] as to one's bag and purse, people are superstitious[12] and do not lend such objects.[13] And if you prefer I might say [that the identification marks of one's] CLOTHING [consisted in a statement] that they were white or red.[14]

EVEN THOUGH THE WITNESSES HAVE SEEN HIM WITH HIS ARTERIES CUT etc. This then implies that a man whose arteries have been cut may live; but this is inconsistent with the following: A person does not cause defilement[15] before his soul has departed, even though his arteries had been cut and even though he is in a dying condition.[16] [Thus it follows that] it is only defilement that he does not cause but that it is impossible for him to live![17] — Abaye replied: This is no difficulty. The one represents the view of[18] R. Simeon b. Eleazar; the other that of[18] the Rabbis. For it was taught: Evidence may be legally tendered on [the death of a person] whose arteries were cut,[19] but no such evidence may be tendered concerning one crucified. R. Simeon b. Eleazar ruled: No such evidence may be legally tendered even concerning one whose arteries were cut, because [the wounds] might be cauterized and [the man] may survive.[20] Can this,[21] however, be reconciled[22] with the views of R. Simeon b. Eleazar? Surely in the final clause[23] it was taught: It once happened at Asia that a man[24] was lowered into the sea and Only his leg was brought up,[25] and the Sages ruled: [If the recovered leg contained the part] above the knee [the man's wife] may marry again,[26] [but if it contained only the part] below the knee she may not remarry![27] — Waters are different since they irritate the wound.[28] But, surely, Rabbah b. Bar Hana related: I myself have seen an Arab merchant who took hold of a sword and cut open the arteries of his camel, but this did not cause it to cease its cry![29] — Abaye replied: That [camel] was a lean animal.[30]

Raba replied: [The operation was performed] with a glowing hot knife,[31] and this is in agreement with the opinion of all.[32]

OR BEING DEVOURED BY A WILD BEAST etc. Rab Judah stated In the name of Samuel: This has been taught only in the case [where the attack was] not on a vital organ,[33] but where it was on a vital organ, evidence may be legally tendered.

Rab Judah further stated in the name of Samuel: If a person whose two organs[34] or the greater part of them were cut[35] escaped, evidence [of his death] may be legally tendered.[36] But this cannot be! For, surely, Rab Judah stated in the name of Samuel: If a man whose two [organs][34] or the greater part of them were cut[35] indicated by gestures, 'Write a letter of divorce for my wife', [such document] is to be written and delivered [to his wife]![37] — He is alive[38] but will eventually die.[39] If this is so[40] one[41] should go into exile[42] on account of him; while, in fact,[43] it was taught: If a man cut [unwittingly] the two, or the greater part of the two [organs[44] of another man] he is not to go into exile! — Surely in connection with this it was stated that R. Hoshaia explained: The possibility must be taken into consideration that the wind might have aggravated the wound[45] or that he himself[46] also may

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(1) מובהק rt. בהק 'to shine', 'glisten'.

(2) And may consequently serve as proof even in pentateuchal prohibitions.

(3) If identification marks have pentateuchal validity these should have been regarded as reliable.

(4) Which cannot be regarded as reliable marks of identification.

(5) There is no proof that the dead man was wearing his own clothes. V. supra note 5.

(6) That was found.

(7) V. B.M. 27a.
(8) The saddle of one ass does not fit another. A saddle, therefore, is a proper mark of identification.
(9) Supra 120a.
(10) It is possible, surely, that the objects were borrowed from another man and that the document tied to them was not the lost original.
(11) Of the seal; and does not lend it to anyone. Hence it may justly be presumed to belong the person on whose body it is found.
(12) The lending of such an object is supposed to effect a transfer of the lender's luck to the borrower.
(13) Cf. supra n. 3.
(14) Many persons wear garments of red and white, and the colours therefore, cannot be regarded as a reliable mark of identification.
(15) As a corpse.
(16) Ohal. 1, 6.
(17) Which is contradictory to the implication in our Mishnah.
(18) Lit., 'that'.
(19) The evidence being accepted as valid to enable the man's wife to remarry.
(20) Lit., 'he is able to burn and to live'. Our Mishnah would thus represent the view of R. Simeon b. Eleazar.
(21) V. supra n. 8.
(22) Lit., 'be set up'.
(23) V. infra 121a, the continuation of our Mishnah.
(24) A diver.
(25) L1t., 'and it did not go up in their hands but his leg'.
(26) Since after the loss of so much of the limb the man cannot survive.
(27) Because a man may survive even in such circumstances. The drowning also cannot be regarded as a certainty since the waters may have thrown the body up on another shore where the man's life may have been saved. Now, if our Mishnah represents the view of R. Simeon b. Eleazar, remarriage should be forbidden even in the case where 'the part above the knee' was also torn away!
(28) And this makes survival in the first case (cf, supra n.2 final clause) impossible.
(29) Till the actual moment of death, which shows that even after the cutting of its arteries an animal may still live.
(30) And the wound was not deep.
(31) Which cauterized the wound.
(32) Since all agree that a cauterized wound is not fatal.
(33) Lit., 'from a place from which his soul does not depart'.
(34) The oesophagus and the trachea.
(35) L1t., 'he cut on him two or the greater part of two'.
(36) His wife being permitted to marry again. 621. 70b.
(37) Lit., 'behold these shall write and give'; which shows that one in such a condition is still regarded as a living man. How, then, could it be said that Rab Judah in the name of Samuel accepted the legality of the evidence of death in similar circumstances!
(38) Hence the validity of his letter of divorce.
(39) And the evidence of his — death is consequently also valid.
(40) If eventual death is regarded as a certainty.
(41) The man who unwittingly inflicted the wounds mentioned.
(42) Cf. Deut. XIX, 2f
(43) Lit., 'wherefore'.
(44) The oesophagus and the trachea.
(45) Or 'made him senseless' (cf. Jast.).
(46) By excessive struggling.

Talmud - Mas. Yevamoth 121a

have brought on his death,[1] What is the practical difference between these [two explanations]? —

The case where one cut [another man's organs] in a house of marble[2] and the latter made some convulsive movements,[3] or also where he cut his organs out of doors and the latter made no convulsive movements.[4]

R. JUDAH . . . SAID: NOT ALL etc. The question was raised: Does R. Judah b. Baba differ [from the first Tanna] in relaxing the law[5] or does he differ from him in imposing a greater restriction?[6] — Come and hear: A man was once drowned at Karmi and after three days he was hauled up at Be Hedya, and R. Dimi of Nehardea allowed his wife to remarry. And again, it happened that a man was drowned in the Tigris[7] and after five days he was hauled up to the Shebistana bridge[8] and, on the evidence of the shoshbinim,[9] Raba permitted his wife to marry again — Now, if you grant that he[10] differs [from the first Tanna] in relaxing the law, they[11] might well have acted in accordance with the ruling of R. Judah b. Baba. If you should contend, however, that he[10] differed in imposing a greater restriction, in accordance with whose view [it may be asked] did they[11] act? — Waters are different because they cause contraction.[12] But, surely, you said that 'waters [are different since they] irritate the wound'! — That applies only where a wound exists, but where no wound exists waters cause contraction. This, furthermore, applies only where the witnesses saw the body as soon as it was brought up, but if it remains some time, it swells.[13]

MISHNAH. IF A MAN FELL INTO THE WATER, WHETHER IT HAD [A VISIBLE] END[14] OR NOT, HIS WIFE IS FORBIDDEN [TO MARRY AGAIN].[15] SAID R. MEIR: IT ONCE HAPPENED THAT A MAN FELL INTO A LARGE CISTERN AND ROSE TO THE SURFACE[16] AFTER THREE DAYS.[17] SAID R. JOSE: IT ONCE HAPPENED THAT A BLIND MAN DESCENDED INTO A CAVE.[18] TO PERFORM RITUAL ABLUTION WHILE HIS GUIDE WENT DOWN AFTER HIM; AND AFTER WAITING LONG ENOUGH FOR THEIR SOULS TO DEPART, PERMISSION WAS GIVEN TO THEIR WIVES TO MARRY AGAIN.[19] ANOTHER INCIDENT OCCURRED AT ASIA[20] WHERE A MAN WAS LOWERED INTO THE SEA, AND ONLY HIS LEG WAS BROUGHT UP,[21] AND THE SAGES RULED: [IF THE RECOVERED LEG CONTAINED THE PART] ABOVE THE KNEE [THE MAN'S WIFE] MAY MARRY AGAIN,[22] [BUT IF IT CONTAINED ONLY THE PART] BELOW THE KNEE, SHE MAY NOT MARRY AGAIN.[23]

GEMARA. Our Rabbis taught: If a man fell into water, whether it had [a visible] end[24] or not, his wife is forbidden [to marry again];[25] so R. Meir. But the Sages ruled: [If he fell into] water that has [a visible] end,[24] his wife is permitted [to marry again],[26] but [if into water] that has no [visible] end[27] his wife is forbidden [to marry again].[28]

What is to be understood by 'has [a visible] end'? — Abaye replied: [An area all the boundaries of which] a person standing [on the edge] is able to see in all directions.[29]

Once a man was drowned in the swamp of Samki, and R. Shila permitted his wife to marry again. Said Rab to Samuel: 'Come, let us place him under the ban'.[30] 'Let us first', [the other replied,] 'send to [ask] him [for an explanation]'. On their sending to him the enquiry: '[If a man has fallen into] water which has no [visible] end. is his wife forbidden or permitted [to marry again]'? he sent to them [in reply], 'His wife is forbidden' — 'And [they again enquired] is the swamp of Samki regarded as water that has [a visible] end or as water that has no [visible] end?' — 'It is', he sent them his reply, 'a water that has no [visible] end'. 'Why then did the Master [they asked] act in such a manner?'[31] — 'I was really mistaken', [he replied]; 'I was of the opinion that as the water was gathered and stationary it was to be regarded as "water which has [a visible] end", but the law is in fact not so; for owing to the prevailing waves it might well be assumed that the waves carried [the body] away'.[32] Samuel thereupon applied to Rab the Scriptural text, There shall no mischief befall the righteous,[33] while Rab applied to Samuel the following text: But in the multitude of counsellors there is safety.[34]

It was taught: Rabbi related how it once happened that while two men were casting nets in the Jordan one of them entered a subterranean fish pond[35] and when the sun had set he could not find the entrance of the cave. His companion, after waiting long enough for his soul to depart, returned and reported the accident to his household. On the following day when the sun rose [the first man] discovered the entrance of the cave, and on returning he found his household in deep mourning[36] 'How great', exclaimed Rabbi, 'are the words of the Sages who ruled [that if a man fell into] water which has [a visible] end his wife is permitted [to marry again, but if into water] which has no [visible] end, his wife is forbidden'.If so,[37] then also in the case of water which has [a visible] end the possibility of having remained in a subterranean fish pond should be taken into consideration! — It is not usual for a subterranean fish pond to be found with water which has [a visible] end.[38]

R. Ashi said: The ruling of the Rabbis [that where a man has fallen into] water which has no [visible] end his wife is forbidden [to marry again]. applies only to an ordinary person but not to a learned man for, should he be rescued.[39] the fact would become known.[40] This, however, is not correct; for there is no difference between an ordinary man and a learned man. Ex post facto, the marriage[41] is valid; ab initio, it is forbidden.

It was taught: R. Gamaliel related, 'I was once travelling on board a ship when l observed a shipwreck and was sorely grieved for [the apparent loss of] a scholar[42] who had been travelling on board that ship. (And who was he? — R. Akiba.) When I subsequently landed, he[43] came to me and sat down and discussed matters of halachah. "My son", I asked him, "who rescued you?" "The plank of a ship", he answered me, "came my way, and to every wave that approached me I bent my head" —[44] Hence the Sages said that if wicked persons attack a man let him bend his head to them.[45] At that hour I exclaimed: How significant are the words of the Stages who ruled [that if a man fell into] water which has [a visible] end, [his wife] is permitted [to marry again; but if into] water which has no [visible] end, she is forbidden'.

It was taught: R. Akiba related, 'l was once travelling on board a ship when I observed a ship in distress,[46] and was much grieved on account of a scholar who was on it.(And who was it? — R. Meir.) When l subsequently landed in the province of Cappadocia[47] he came to me and sat down and discussed matters of halachah. "My son", l said to him, "who rescued you?" — "One wave" he answered me, "tossed me to another, and the other to yet another until [the sea] cast me[48] on the dry land". At that hour I exclaimed: How significant are the words of the Sages who ruled [that if a man fell into] water which has [a visible] end, [his wife] is permitted [to marry again; but if into] water which has no [visible] end, she is forbidden'. Our Rabbis taught: If a man fell into a lion's den, no evidence[49] may be legally tendered concerning him;[50] but if into a pit full of serpents and scorpions, evidence[49] may legally be tendered concerning him.[50] R. Judah b. Bathyra ruled: Even [if he fell] into a pit full of serpents and scorpions, no evidence[49] may legally be tendered concerning him,[50] since the possibility must be taken into consideration

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(1) So that the man who inflicted the wounds was not the direct cause of death. Hence he is not to be exiled, though the wife of the victim may well be allowed to marry again on the evidence of the infliction of such mortal wounds.

(2) Where no wind can penetrate.

(3) According to the first explanation. since no aggravation could have resulted from wind, the offender must be condemned to exile. According to the second explanation he is exonerated, since it is possible that the convulsive movements of the victim brought on his death.

(4) Aggravation by wind is possible, while the bringing on of death by the victim himself cannot be assumed.

(5) While the first Tanna requires the evidence to be based on an examination of the corpse within three days of death, R. Judah allows it, in certain circumstances, even after three days.

(6) Disregarding the evidence under certain conditions even within three days.

(7) דיגלת, Heb הדקל cf. Targum on Gen. II, 14.

(8) [The bridge on the Southern Tigris connecting the great trading route between Khuzistan and Babylon during the persian period; v. Obermeyer pp. 68ff].
(9) Pl. of shoshbin, groomsman'. The shoshbin acted as best men or companions of the groom, to whom they also brought wedding gifts (shoshbinuth).
(10) R. Judah b. Baba.
(11) R. Dimi and Raba.
(12) Of the corpse, the decay of which consequently sets in later than in the case of a corpse on dry land. Hence it is possible in such circumstances to identify a person even after three days from the time of his death.
(13) And changes appearance.
(14) This is explained by Abaye infra.
(15) It being possible that the man was thrown up by the water after a day or two; and that he was restored to life. V. infra n. 8.
(16) Lit., 'and he went up'.
(17) In R. Meir's opinion it is possible for one to live in water for a day or two; and the first clause of our Mishnah is in agreement with this view.
(18) l.e., to waters 'that had a visible end' (cf. supra note 5).
(19) R. Jose is of the opinion that no human being can survive so long (v. p. 854, n. 8) in water, and death may, therefore, be regarded as a certainty. In the case of water 'that has no visible end', however, he agrees with R. Meir, since it is possible that the body was thrown up on a distant shore where it was restored to life.
(20) V. Sanh., Sonc. ed. p. 151, n. 1.
(21) V. supra p. 851, n. 17.
(22) V. p. 852, n. 1.
(23) V. p. 852, 11. 2.
(24) This is explained by Abaye infra.
(25) V. p. 854, n. 6.
(26) It being assumed that the man was not rescued from the water. Any rescue, had it been effected, since all the shores are visible, would have been observed from the point where the drowning occurred.
(27) This is explained by Abaye infra.
(28) Since the man might have been rescued on another shore which was not visible from the point where the drowning occurred.
(29) Lit., 'four winds'. A person observing a drowning accident would not depart as long as there was any hope of rescue, and, as all the shores were visible and no rescue was observed, it may be regarded as a certainty that the drowned man was dead, and his wife may, therefore, be permitted to marry again.
(30) For permitting a married woman to remarry.
(31) V. p.855 n. 12.
(32) Lit.. 'they lowered', and the man was rescued.
(33) Prov. XII, 21. Rab was spared the injustice of placing the innocent R. Shila under the ban.
(34) lbid. Xl, 24. The counsel of Samuel saved Rab from a wrong action.
(35) [Constructed on the shore to retain the fish washed into it by the overflowing river].
(36) Lit 'a great mourning in his house'.
(37) If such an incident as that related by Rabbi is possible.
(38) [There is not sufficient fish to warrant the construction of a pond (Me'iri)].
(39) Lit., 'that he went up'
(40) Lit, 'he has a voice'.
(41) Of his wife to another man.
(42) Talmud Hakam, v. Glos.
(43) R. Akiba.
(44) Thus avoiding its force.
(45) Cf. supra n. 6
(46) Lit., 'that was tossed in the sea'.
(47) Gr.** in Asia Minor.
(48) lit., 'vomited me out'.

(49) That he is dead.
(50) To enable his wife to marry again.

Talmud - Mas. Yevamoth 121b

that he might be a charmer.[1] But the first Tanna?[2] — Owing to the pressure[3] they[4] injure him.[5]

Our Rabbis taught: [If a man] fell into a burning furnace, evidence may be legally tendered concerning him, [and also if he fell] into a boiler that was full of [boiling][6] wine or oil, evidence may be legally tendered concerning him. In the name of R. Aha It was stated: [If the man fell into a hot boiler] of oil, evidence may legally be tendered concerning him, because it[7] adds fuel to the fire;[8] [but if into one] of wine, no evidence may legally be tendered concerning him, because it[9] extinguishes [the fire].[10] They,[11] however, said to him: At first it[9] extinguishes [the fire to a certain extent] but eventually it causes it to burn [with greater vehemence].[12]

SAID R. MEIR: IT ONCE HAPPENED THAT A MAN FELL INTO A LARGE CISTERN etc. It was taught: They said to R. Meir, 'Miracles cannot be mentioned [as proof]'.[13] What [did they mean by] 'miracles'?[14] If it be suggested because he neither eats nor drinks, surely [it may be pointed out], It is written in Scripture, And fast ye for me, and neither eat nor drink [three days]![15] — Rather because he does not sleep. For R. Johanan stated: [A man who said]. 'I take an oath that I will not sleep for three days' is to be flogged[16] and he may sleep at once.[17] What then is R. Meir's reason?[18] — R. Kahana replied: There were[19] arches above arches.[20] And the Rabbis?[21] — They[22] were of marble.[23]

And R. Meir? — It is hardly possible that the man did not hang[24] on to [the arches] and doze a while.

Our Rabbis taught: It once happened that the daughter of Nehonia the well[25] -digger[26] fell into a large cistern, and people went and reported [the accident] to R. Hanina b. Dosa.[27] During the first hour he said to them, 'All is well'.[28] In the second hour he again said, 'All is well'.[28] In the third he said to them, 'She is saved'.[29] 'My daughter', he asked her, 'who saved you?' — 'A ram[30] came to my help[31] with an aged man[32] leading it'. 'Are you', the people asked him, 'a prophet?' — 'I am', he replied, 'neither prophet nor the Son of a prophet; but should the [beneficent] work in which the righteous is engaged[33] be the cause of disaster[34] to his seed!' R. Abba stated: His[35] son nevertheless died of thirst; for it is said in Scripture, And round about Him it stormeth mightily,[36] which teaches that the Holy One, blessed be He, deals strictly with those round about Him even to a hair's[37] breadth. R. Hanina said, [Proof[38] may be adduced] from here: A God dreaded in the great council of the holy ones, and feared of all them that are round about Him.[39]

MISHNAH. EVEN [A MAN ONLY] HEARD WOMEN SAYING, 'SO-AND-SO IS DEAD', THIS SHOULD SUFFICE FOR HIM.[40] R. JUDAH SAID: EVEN IF HE ONLY HEARD CHILDREN SAY, 'BEHOLD WE ARE GOING TO MOURN FOR A MAN NAMED SO-AND-SO AND TO BURY HIM' [IT IS SUFFICIENT].[40] WHETHER [SUCH STATEMENT WAS MADE] WITH THE INTENTION [OF TENDERING EVIDENCE] OR WAS MADE WITH NO SUCH INTENTION [IT IS VALID]. R. JUDAH B. BABA SAID: WITH AN ISRAELITE [THE EVIDENCE IS VALID] EVEN IF THE MAN HAD THE INTENTION [OF ACTING AS WITNESS]. IN THE CASE OF AN IDOLATER, HOWEVER, THE EVIDENCE IS INVALID IF HIS INTENTION WAS [TO ACT AS WITNESS].

GEMARA. Is it not possible that they[41] did not go?[42] — Rab Judah replied in the name of Samuel: [Our Mishnah deals with a case] where they[41] Say, 'Behold we are returning from the mourning for, and the burial of So-and-so'.Is it not possible that a mere ant[43] had died and that the

children gave it the man's name?[44] — [It is a case] where they[45] say, ‘Such and such Rabbis were there’ or ‘such and such funeral orators were there’.

IN THE CASE OF AN IDOLATER, HOWEVER . . . IF HIS INTENTION WAS etc. Said Rab Judah in the name of Samuel: This[46] was taught only in the case where it was his[47] intention to enable [the woman] to be permitted,[48] but if his intention was merely to give evidence his testimony is valid. How could this[49] be ascertained? — R. Joseph replied: If he came to Beth din and stated. ‘So-and-so is dead, allow his wife to marry again’, such evidence is one where his intention was to enable [the woman] to be permitted,[48] [but if he stated], ‘He is dead’, and nothing more, his intention was merely to give evidence.

So It was also stated:[50] Resh Lakish said, This[46] was taught only in the case where it was his intention to enable [the woman] to be permitted,[48] but if his intention was merely to give evidence his testimony is valid.

Said R. Johanan to him:[51] Did it not happen with Oshaia Berabbi,[52] that he opposed[53] eighty-five elders saying to them that, ‘This[46] was taught Only in the case where it was his intention to enable [the woman] to be permitted[48] but if his intention was merely to give evidence his testimony is valid’, but the Sages did not agree with him![54]

But according to the ruling in our Mishnah, that:[55] IN THE CASE OF AN IDOLATER, HOWEVER, THE EVIDENCE IS INVALID IF HIS INTENTION WAS [TO ACT AS WITNESS],[56] how is it possible [for the idolater's testimony ever to be accepted]?[57] — Where he makes a statement at random;[58] as was the case where one went about saying, ‘Who of the family of Hiwai is here? Who is here of the family of Hiwai? Hiwai is dead!’, and R. Joseph allowed his[59] wife to marry again.

A man[60] once went about saying, ‘Alas for the valiant rider who was at Pumbeditha, for he is dead’; and R. Joseph, or it might be said, Raba, allowed his wife to marry again.

A man once went about saying, ‘Who of the family of Hasa is here? Hasa is drowned!’ [On hearing this] R. Nahman exclaimed, ‘By God, the fish must have eaten Hasa up!’ Relying on R. Nahman's exclamation, Hasa's wife went and married again, and no objection was raised against her action.[61]

Said R. Ashi: From this[62] it may be inferred that the ruling of the Rabbis[63] that [if a man had fallen into] water which had no [visible] end, his wife is forbidden [to marry again] applies only ab initio, but if someone had already married her, she is not to be taken away from him.

Others read: R. Nahman allowed his[64] wife to marry again; for he said, ‘Hasa was a great man, and had he come up [out of the water] his rescue would have become known’. The law, however, is not so. For there is no difference between a great man and one who is not great — [In either case] it is permitted[65] ex post facto and forbidden[66] ab initio.

A certain idolater ‘once said to an Israelite, ‘Cut some grass[67] and throw it to my cattle on the Sabbath; if not, I will kill you as I have killed So-and-so, that son of an Israelite, to whom I said, "Cook for me a dish on the Sabbath", and whom, as he did not cook for me, I killed’. His wife[68] heard this and came to Abaye.[69] As he kept her waiting

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(1) Tosef. Yeb. XIV.

(2) Why, in view of R. Judah b. Bathyra's reason, does he admit evidence of death in the latter case?

(3) Of the falling body.

(4) The serpents and scorpions.
(5) In a lion's den, however, there is much more space, and the body might sometimes fall to one side and the animals, if they happened to be full, would leave it untouched.
(6) Standing over the fire.
(7) The oil when, owing to the fall of the body, it flows over the sides of the boiler into the fire beneath it.
(8) Lit., 'it causes to burn'.
(9) The wine (cf. supra n. 9).
(10) And, owing to the cooling caused by the liquid, the man might be saved from actual death.
(11) The Rabbis, represented by the view of the first Tanna.
(12) Hence the ruling that evidence of death may be accepted in the case of a fall into a hot boiler whether the contents be oil or wine.
(13) In the natural course of events the man could not survive long in a cistern. If his death were not caused by the water, some other causes would inevitably bring it about. V. infra.
(14) I.e., why should not the man be able to survive if he could keep his head above the water?
(15) Esth. IV, 16, which shews that it is possible to live for a considerable time without food or drink.
(16) Malkoth (v. Glos.); for taking a false oath, It is impossible for a human being to live for three days without sleep.
(17) In three days' time, accordingly, a man who had fallen into a cistern would inevitably succumb to fatigue and the physical necessity for sleep, and would in the natural course of events be drowned.
(18) If no one can withstand the necessity for sleep. why does not R. Meir, in the circumstances mentioned, admit the evidence?
(19) In the cistern mentioned in our Mishnah.
(20) Where the man might have slept in comparative safety.
(21) Why do they, in such circumstances, admit the evidence?
(22) The arches.
(23) Too slippery for anyone to sleep upon them in safety.
(24) מסריך rt. סרך 'to clutch', 'to twist'.
(25) שחין 'wells' or 'ditches'. Cf. Rashi and Jast.
(26) He was engaged In the benevolent occupation of digging wells for the benefit of the pilgrims to Jerusalem who visited the Temple on the occasion of the three major Festivals of the year. The ordinary wells did not suffice for the large influx of men and cattle on these festive occasions.
(27) Famous for his miraculous powers of cure and rescue through the efficacy of his prayers. Cf. Ber. 34b, Ta'an. 24b. V. B.K., Sonc. ed. p. 287, n. 11.
(28) שלום, lit., 'peace'.
(29) Lit., 'she went up'.
(30) Lit., 'a male of ewes'. — The ram of Isaac (Rashi).
(31) Lit., 'was appointed for me'.
(32) Abraham (Rashi).
(33) Well-digging. V. supra p. 859, n. 13.
(34) Lit., 'shall stumble', 'come to grief'.
(35) Nehonia's.
(36) P5. L, 3, stormeth =נשערה rt. שער 'hair'. V. next note.
(37) Lit., 'like a thread of a hair', כחוט השערה (v. supra n. 4).
(38) Of God's strict dealing with the righteous.
(39) Ps. LXXXIX, 8; cf. parallel passage B.K. 50a.
(40) To tender evidence of death, and to enable the widow to marry again.
(41) The children spoken of in our Mishnah.
(42) To carry out what they said they were going to do, and that the man in question was in fact not dead. How then could such unreliable evidence be acted upon!
(43) Or 'locust'.
(44) For fun. Cf. supra n. 10.
(45) The children spoken of in our Mishnah.
(46) That the evidence is invalid.

(47) The idolater's.
(48) To marry again.
(49) The motive of the witness.
(50) By Amoraim.
(51) Resh Lakish.
(52) Cf. n. on ברבי supra 105b.
(53) שהתרים, so Aruk and Beth Joseph in Eben ha-Ezer XVII. Cur. edd., 'he permitted them with'.
(54) Maintaining that even in the latter case the evidence is invalid.
(55) Lit., 'our Mishnah wherein it was taught'.
(56) From which it follows that if his Intention was not to act as witness his testimony is accepted.
(57) How can one make a statement the object of which is not even to affirm (i.e., to give evidence) that a certain thing had happened, and such a statement nevertheless be accepted as legally reliable?
(58) מסיח לפי תומו lit., 'speaks according to his innocence'; he is merely reporting what he had seen.
(59) Hiwa's.
(60) An idolater.
(61) Lit., 'and they did not say anything to her'.
(62) The acquiescence in the action of Hasa's wife.
(63) Lit., 'that which the Rabbis said'.
(64) Hasa's
(65) Lit., 'yes'.
(66) Lit., 'not'.
(67) אספסתא, grass used as fodder for cattle.
(68) The wife of the Israelite whom the idolater claimed to have killed.
(69) To obtain his ruling as to whether she may marry again.

for three festivals,[1] R. Adda b. Ahabah said to her, 'Apply[2] to R. Joseph, whose knife is sharp'.[3] When she came to him he decided[4] [her case by deduction] from the following Baraitha:[5] If an idolater who was selling fruit in the market declared, 'These fruits are of 'orlah,[6] of a newly broken field,[7] or of a plantation in its fourth year',[8] his statement is disregarded,[9] for his intention was merely to raise the value[10] of his fruit.[11]

Abba Judah of Zaidar[12] related: It once happened that an Israelite and an idolater went on a journey together and when the idolater returned he said, 'Alas for the Jew who was with me on the journey, for he died on the way and I buried him', and [the Israelite's] wife [on this evidence] was allowed to marry again. And, again it happened that a group[13] of men were going to Antiochia[14] and an idolater came and stated, 'Alas for that group[13] of men, for they died and I buried them', and [on this evidence] their wives were permitted to marry again. Moreover, it happened that sixty men were going to the camp[15] of Bether,[16] and an idolater came and stated, 'Alas for sixty men who were on the way to Bether, for they died and I buried them', and [on the basis of this statement] their wives were permitted to marry again.

MISHNAH. EVIDENCE[17] MAY BE TENDERED [EVEN IF THE CORPSE WAS SEEN BY THE WITNESSES] IN CANDLE LIGHT OR IN MOONLIGHT; AND A WOMAN MAY BE GIVEN PERMISSION TO MARRY AGAIN ON THE EVIDENCE OF A MERE VOICE.[18] IT ONCE HAPPENED THAT A MAN WAS STANDING ON THE TOP OF A HILL AND CRIED, SO-AND-SO SON OF SO-AND-SO OF SUCH-AND-SUCH A PLACE IS DEAD', BUT WHEN THEY WENT [TO THE TOP OF THE HILL] THEY FOUND NO ONE THERE. HIS WIFE, HOWEVER, WAS PERMITTED TO REMARRY.[19] AGAIN, IT HAPPENED AT ZALMON[20] THAT A MAN DECLARED, 'I AM SO-AND-SO SON OF SO-AND-SO; A SERPENT HAS BITTEN ME, AND I AM DYING'; AND THOUGH WHEN THEY WENT [TO EXAMINE THE CORPSE] THEY DID NOT RECOGNIZE HIM, THEY NEVERTHELESS PERMITTED HIS WIFE TO REMARRY.

GEMARA. Rabbah b. Samuel stated: A Tanna taught that Beth Shammai ruled that a woman may not be permitted to marry again on the evidence of a mere voice[19] and Beth Hillel ruled that she may be permitted to marry again on the evidence of a mere voice.[21] What does he[22] teach us?[23] This,[24] surely, is the ruling in our Mishnah![25] — It is this that he teaches us: Should an anonymous statement be found that a woman [in such circumstances] is not permitted to marry again, that [statement would represent the view of] Beth Shammai.

BUT WHEN THEY WENT . . . THEY FOUND NO ONE. Is it not possible that it was a demon [that cried]?[26] — Rab Judah replied in the name of Rab: [This is a case] where they[27] saw in him the likeness of a man! But they[28] also are in the likeness of men! — They[27] saw his shadow. But these[28] also have a shadow! They[29] saw a shadow of his shadow. Is it not possible that these[28] also cast a shadow of a shadow? — R. Hanina replied: The demon Jonathan[29] told me that they[28] have a shadow but not a shadow of a shadow. Is it not possible that it was a rival [that cried]?[30] — A Tanna at the school of R. Ishmael taught that at a time of danger[31] [a letter of divorce] may be written and delivered [to the woman][32] even if [the husband who gave the instructions][33] is unknown [to the witnesses].[34]

MISHNAH. R. AKIBA STATED: WHEN I WENT DOWN TO NEHARDEA TO INTERCALATE[35] THE YEAR, I MET NEHEMIAH OF BETH DELI[36] WHO SAID TO ME, 'I HEARD THAT IN THE LAND OF ISRAEL NO ONE, WITH THE EXCEPTION OF R.[37] JUDAH B. BABA, PERMITS A [MARRIED] WOMAN TO MARRY AGAIN ON THE EVIDENCE OF ONE WITNESS'. 'THAT IS SO', I TOLD HIM. TELL THEM', HE SAID TO ME, 'IN MY

NAME: (YOU KNOW THAT THIS COUNTRY[38] IS IN CONFUSION BY REASON OF RAIDERs);[39] I HAVE THIS[40] TRADITION FROM R. GAMALIEL THE ELDER: THAT A [MARRIED] WOMAN MAY BE ALLOWED TO MARRY AGAIN ON THE EVIDENCE OF ONE WITNESS'.[41] AND WHEN I CAME AND RECOUNTED THE CONVERSATION IN THE PRESENCE OF R. GAMALIEL[42] HE REJOICED AT MY INFORMATION AND EXCLAIMED, 'WE HAVE FOUND A COLLEAGUE[43] FOR R. JUDAH B. BABA!' AS A RESULT OF THIS TALK[44] R. GAMALIEL RECOLLECTED THAT SOME MEN WERE ONCE KILLED AT TEL ARZA,[45] AND THAT R. GAMALIEL [THE ELDER] HAD ALLOWED THEIR WIVES TO MARRY AGAIN ON THE EVIDENCE OF ONE WITNESS.[46] AND THE LAW WAS ESTABLISHED THAT [A WOMAN] SHALL BE ALLOWED TO MARRY AGAIN [ON THE EVIDENCE OF ONE] WITNESS [WHO STATES THAT HE HAS HEARD THE REPORT] FROM[47] ANOTHER WITNESS, FROM[47] A SLAVE, FROM[47] A WOMAN OR FROM[47] A BONDWOMAN. R. ELIEZER AND R. JOSHUA RULED: A WOMAN MAY NOT BE ALLOWED TO MARRY AGAIN ON THE EVIDENCE OF ONE WITNESS.[48] R. AKIBA RULED: [A WOMAN IS NOT ALLOWED TO MARRY AGAIN] ON THE EVIDENCE OF[49] A WOMAN, ON THAT OF[50] A SLAVE, ON THAT[50] OF A BONDWOMAN OR ON THAT OF RELATIVES.

GEMARA. Is R. Akiba then[51] of the opinion that on the evidence of[50] a woman,[52] [a wife is] not [permitted to marry again]? Surely, It was taught: R. Simeon b. Eleazar stated in the name of R. Akiba, '[That] a woman is eligible[53] to bring her own letter of divorce[54] is Inferred a minori ad majus: If those women concerning whom the Rabbis ruled that they[55] are not believed when they state, "Her husband[56] is dead"[57] are nevertheless eligible[53] to bring[58] her a letter of divorce,[59] how much more reasonable is it that this woman, who is believed when she states that her own husband is dead, should be eligible[53] to bring her own letter of divorce.' [Thus it follows that only] those women of whom the Rabbis have spoken[57] are not believed[60] but any other[61] woman is believed![62] — This is no difficulty. One ruling[63] was made[64] before the law,[65] had been established; the other,[64] after the law[65] had been established.

MISHNAH. THEY[66] SAID TO HIM:[67] 'IT ONCE HAPPENED THAT A NUMBER OF LEVITES WENT TO ZOAR,[68] THE CITY OF PALMS, AND ONE OF THEM WHO FELL. ILL WAS TAKEN BY THEM INTO AN INN. WHEN THEY RETURNED THEY ASKED THE INNKEEPER[69] WHERE IS OUR FRIEND?" AND SHE REPLIED, HE IS DEAD AND i BURIED HIM". [AND IT WAS ON THIS EVIDENCE THAT] HIS WIFE WAS PERMITTED TO MARRY AGAIN. SHOULD NOT THEN A PRIEST'S WIFE[70] [BE BELIEVED AT LEAST AS MUCH] AS THE INNKEEPER!'[71] HE ANSWERED THEM, WHEN SHE WILL BE [GIVING SUCH EVIDENCE] AS THE INNKEEPER SHE WILL BE BELIEVED. THE INNKEEPER [AS A MATTER OF FACT] HAD BROUGHT OUT TO THEM HIS[72] STAFF, HIS BAG[73] AND THE SCROLL OF THE LAW WHICH HE HAD WITH HIM.[74]

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(1) ריגלי, when the scholars and students who were assembled for the purpose of listening to the festival discourses, were also asked to decide difficult points of law that had arisen during the preceding months. During these gatherings the woman had an opportunity of making enquiries about her vanished husband. According to תשובות בגאונים cited by Rashi, the ריגלי were the anniversaries of the deaths of distinguished men, when scholars from the surrounding localities as well as the general public assembled round the respective graves for study and for discussions of matters of law.

(2) Lit., 'go before'.

(3) Metaph., he is capable of acute logical reasoning and deduction. Cf. Rashi, Hul 77a.

(4) Lit., 'solved'.

(5) Cur. edd., 'Mishnah'.

(6) ערלה (v. Glos.). which are forbidden for consumption, though they may be superior in quality to those which come from old trees.

(7) עזיקה (cf. Jast. s.v.עזקה and Me'iri a.l.); such fruits being forbidden on the Sabbatical year though they may be of a high quality (v. previous note). 'Azeka may have been, according to Rashi (a.l. s.v.לא אמר כלום) a town in Judaea (cf. Josh. X, 10), that was famous for its choice fruit, the point in doubt being whether the fruit had originally belonged to an Israelite and whether It had been tithed. If this interpretation is to be followed the sale of the fruit mentioned presumably took place outside Palestine, where locally grown produce is free from tithe. For other interpretations cf. Tosaf. a.l. s.v. *שלי and Levy, s.v.עזק

(8) נטע רבעי which is holy for gibing praise unto the Lord (Lev. XIX, 24), forbidden to be consumed though they may be of a superior quality. Cf. supra note 5.

(9) Lit., 'he did not say anything'.

(10) להשביח, lit., 'to improve'.

(11) Tosef. Dem. IV. Lit 'purchase'. It is assumed that he merely lied, in order to praise his fruit, so that it might fetch a higher price. Similarly in the case under consideration, the idolater's statement that he killed the Israelite is regarded as an idle boast intended as a mere threat.

(12) The Biblical ציון Sidon, on the Western coast of Phoenicia, [or, Bethsaida in Galilee].

(13) קולר lit., 'chain'.

(14) Gr.'** Antioch, on the Orontes in Syria; or Antiochene, the region round Antioch.

(15) כרכום, a battleground, cf. castra.

(16) The town where in 135 C.E. Bar Kokeba fought his last battle against the Romans.

(17) That a man is dead.

(18) בת קול., 'daughter of the voice', 'echo', even if the person who uttered it was not seen, as in the case given infra.

(19) Cf. supra n. 4.

(20) [Identified with Selamin (Selame) in Galilee (v. Josephus Wars II, 20, 6), the modern Hirbet Selame, N.E of the El Battauf valley 20 km from Sepphoris, v. Klein S, MGWJ, 1927, p. 266].

(21) Tosef. Naz. I.

(22) Rabbah b. Samuel.

(23) By his statement that according to Beth Hillel, whose ruling is accepted as the established law, a mere voice is sufficient evidence.

(24) That such evidence is accepted.

(25) Which, being anonymous, is regarded as the established law.

(26) [Demons were believed to deceive men, causing divorces and other evils; v. Angus the Religious Quests of the Graeco-Roman World, p. 38; cf. Git. 66a].

(27) Who heard the voice.

(28) Demons.

(29) [Name of (a) a demon; (b) a man (Rashi). MS. M. and Git. 66a have, 'Jonathan my son'].

(30) Whom the man had married in another town, and who came for the specific purpose of misleading the woman to marry another man so that she might thereby become forbidden to her present husband. A rival is usually suspected of malice against her associate.

(31) When a man, for instance, was cast into a pit and his fate is in the balance.

(32) In order to release her thereby from perpetual doubt as to the ultimate fate of her husband and from the perpetual prohibition of marrying again.

(33) Calling them out, in the case presumed, from the bottom of the pit.

(34) Who have to execute the mission, v. Git. 66a. Similarly in the case dealt with in our Mishnah. Were not the voice to be relied upon the woman might have to remain all her life bereft of her own husband and unable ever to marry another man.

(35) To add another month. The Hebrew leap year contains thirteen, instead of the usual twelve months.

(36) [Dili, a village in Galilee, Horowitz, I, Palestine, p. 131].

(37) Wanting in cur. edd. Cf., however 115a and infra.

(38) Palestine.

(39) So that it is unsafe for one to undertake a journey to Palestine and to report the traditional ruling that follows, [or, in view of the unsettled conditions, it is difficult to obtain in every case two reliable witnesses].

(40) V. Bah.

(41) Who testifies that her husband is dead.
(42) Of Yabneh, a grandson of R. Gamaliel the Elder.
(43) One who is of the same opinion as he.
(44) Lit., 'from the midst of the thing'.
(45) תל ארזא (lit., 'cedar hill'). It is probably identical with the Biblical תל חרשא mentioned in Ezra II, 59 and Neh. VII, 61 for which the Septuagint reads,Gr.**.
(46) Who testified that their husbands were dead. [Some texts add: 'And the law was established that (a woman) shall be allowed to marry on the evidence if one witness'].
(47) Lit , 'from the mouth of'.
(48) Cf. supra n. 11.
(49) Lit., 'by the mouth of'.
(50) Lit., 'by the mouth of'.
(51) As is evident from the final clause of our Mishnah.
(52) Cf. p. 866, n. 11.
(53) Lit., 'believed'.
(54) From a foreign country, though she, like any other messenger who brings a letter of divorce from foreign parts, would have to make the declaration that the document was written and signed in her presence.
(55) Being suspected of hatred towards the woman in whose favour they pretend to give their evidence.
(56) The husband of the woman whom they are suspected of hating.
(57) Supra 117a.
(58) Cf. supra note 5.
(59) Lit., 'their letters of divorce', i.e., any such letters wherewith they might have been entrusted. V. Git. 23b.
(60) V. supra note 6.
(61) Lit., 'in the world'.
(62) How, then, could it be implied that R. Akiba does not allow the evidence of any woman who testifies to the death of another woman's husband?
(63) Of R. Akiba.
(64) Lit., 'here'.
(65) That a woman's evidence on a man's death shall be relied upon in permitting that man's wife to marry again.
(66) The Rabbis.
(67) R. Akiba. V. previous Mishnah.
(68) On the East or S.E. of the Dead Sea. Zoar is mentioned several times in the Bible. Cf., e.g., Gel. XIV, 2, 8 and XIX, 22.
(69) פונדקית (fem.) 'woman innkeeper'.
(70) כהנת V. n. 3.
(71) I.e., since a woman's evidence is ineligible, even that of a priest's wife would be ineligible. Is it then conceivable that the latter should be regarded as less trustworthy than an innkeeper! כהנת might perhaps be rendered 'princess', 'lady' as כהן is interpreted by the Targumim (cf. e.g., Gen. XLI, 45, ps. CX, 4) as רבא 'great man', 'prince'. 'Should not the lady enjoy the status of the innkeeper!' Another interpretation applies כהנת to all Jewish women since any of them might become a כהנת by marrying a priest. Cf. Golds.
(72) The dead man's.
(73) [Some texts add, 'his shoes'].
(74) It was on this proof, and not on the evidence of the innkeeper, that they acted.

Talmud - Mas. Yevamoth 122b

GEMARA. What was the inferiority of the innkeeper?[1] R. Kahana replied: She was an innkeeper who was an idolatress and she said at random,[2] 'This is his staff, and this is his bag and this is the grave wherein I buried him'. So it was also recited by Abba the son of R. Manyumi b. Hiyya: She was an innkeeper who was an idolatress and she said at random,[2] 'This is his staff, and this is his bag and this is the grave wherein I buried him'. But, surely, they had asked her, 'Where is our friend?'[3] — When she saw them she began to cry, and when they asked her, 'Where is our friend?' she

replied, ‘He died and l buried him’,[4]

Our Rabbis taught: It once occurred that a man came to give evidence on behalf of a woman[5] before R. Tarfon. ‘My son’, [the Master] said to him, ‘what[6] do you know concerning the evidence for this woman?’ — ‘I and he’, the other replied, ‘were going on the same road and when a raiding gang pursued us he grasped[7] the branch of an olive tree, pulled it down, and made the gang turn back. "Lion", I said to him, "I thank you".[8] "Whence did you know [he asked] that my name was Lion? So in fact I am called in my home town: Johanan son of R. Jonathan, the Lion of Kefar Shihaya",[9] and after some time he fell ill and died’. And [on this evidence] R. Tarfon permitted his[10] wife to marry again.

Does not R. Tarfon, however, hold that inquiry and examination[11] are necessary? Surely it was taught: It once happened that a man came before R. Tarfon to give evidence on behalf of a woman.[5] My son’, he said to him, ‘What[6] do you know concerning this evidence?’ ‘I and he’, the other replied, ‘were going on the same road, and when a raiding gang pursued us he grasped the branch of a fig tree, pulled it down, and drove[12] the gang back. "I thank you,[13] Lion", I said to him, and he replied, "You have correctly guessed my name, for so I am called in my home town: Johanan son of Jonathan, the Lion of Kefar Shihaya", and after some time he died’. The Master said to him: Did you not tell me thus, ‘Johanan son of Jonathan of Kefar Shihaya the Lion’?[14] — ‘No’, the other replied, ‘but it is this that I told you: Johanan son of Jonathan, the Lion of Kefar Shihaya’. Having examined him closely[15] two or three times and the man's replies invariably agreeing, R. Tarfon permitted his[16] wife to marry again![17] — This [is a point in dispute between] Tannaim. For it was taught: Witnesses on matrimonial matters[18] are not to be subjected[19] to enquiry and examination.[20] These are the words of R. Akiba;[21] R. Tarfon, however, ruled: They are to be subjected.[22] And they[23] differ [in respect of a ruling] of R. Hanina. For R. Hanina stated: Pentateuchally both monetary, and capital cases must be conducted with enquiry and examination,[20] for it is said, Ye shall have one manner of law,[24] what then is the reason why they have ordained that monetary cases do not require enquiry and examination?[20] In order that you should not lock the door in the face of borrowers —[25] And it is on this principle that[26] they[23] differ: One Master is of the opinion that since the woman has[27] a kethubah to receive[28] [such cases[29] are] on a par with those of monetary matters,[30] while the other Master is of the opinion that since we are thereby permitting a married woman to marry a stranger[31] [such cases[32] are] on a par with capital cases.[33]

R.Eleazar said in the name of R. Hanna: Scholars[34] increase peace in the world, for it is said in the Scriptures, And all thy children shall be to taught of the Lord; and great shall be the peace of thy children.[35]

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(1) Implied by the argument of the Sages, ‘SHOULD NOT THEN A PRIEST'S WIFE etc.’

(2) V. supra p. 861, n. 14.

(3) How then could it be said that she spoke at random?

(4) It was thus obvious that she had no ulterior motive in making her statement and that she was merely answering their enquiry. Such evidence may be regarded as given in all innocence (cf. supra p. 861, n. 14) and may be relied upon.

(5) Testifying that her husband was dead.

(6) Lit., ‘how’.

(7) Lit., ‘and suspended himself’.

(8) יישר כחך lit., ‘may thy strength be right (or firm)’.

(9) [שיהיא, Klein S. (v. E.J. Col. 1139) reads שיהליא Kefar Shihlayim, a village in ldumacea, Saallis (Chaalis) mentioned in Joseph. Wars III, 2.2].

(10) The dead man's.

(11) דרישה וחקירה. Cf. Deut. XIII, 15: Then shalt thou inquire and make search (ודרשת וחקרת). Before the evidence is accepted, witnesses are to be questioned and cross-examined as to the day, hour, and attendant circumstances, in order to test thereby the veracity of their statements. V. Sanh. 32a and 40a.

(12) Lit., ‘and caused to return’.
(13) V. supra note 4.
(14) R. Tarfon changed the order of the words to test the man's accuracy.
(15) דקדק rt. דקק (Pilpel) ‘to crush’.
(16) The dead man's.
(17) Which shews that R. Tarfon holds that ‘inquiry and examination’ are necessary!
(18) I.e., evidence on the death of a husband.
(19) אין בודקין rt. בדק Kal., ‘to search’, investigate’.
(20) V. supra p. 869, n. 7.
(21) Eben ha-Ezer XVIII, 79, Wilna Gaon Glosses and others read: ‘R. Akiba and p. Tarfon however etc’.
(22) Cf. supra note 5.
(23) R. Akiba and R. Tarfon.
(24) Lev. XXIV, 22. As capital cases are subject to such enquiry (v. Deut. XIII, is) so are also monetary cases.
(25) Sanh. 2b, 32a. Were difficulties to be placed in the way of creditors they would altogether decline to advance any loans.
(26) Lit., ‘and in what’.
(27) Lit., ‘there is’.
(28) From the estate of her dead husband. The terms of the marriage contract entitle a woman to her kethubah when she lawfully marries again.
(29) I.e., evidence on the death of a husband.
(30) Hence his opinion that no enquiry and examination of the witnesses is necessary.
(31) Lit., ‘to the world’.
(32) Since intercourse with a married woman is punishable by strangulation.
(33) Where full enquiry and examination is required.
(34) תלמידי חכמים v. Glos s.v. Talmid Hakam.
(35) lsa. LIV, 13. children = בניך (rt. בנה ’to build’). The conclusion of the passage in Ber. 64a is as follows: Read not, thy children(banayik) but thy builders (bonayik). Scholars are the builders of the world and it is their dissemination of true knowledge and enlightenment that preserves and promotes the ideals and blessings of peace.

Talmud - Mas. Kethuboth 2a

C H A P T E R I

MISHNAH. A MAIDEN IS MARRIED[1] ON THE FOURTH DAY [OF THE WEEK] AND A WIDOW ON THE FIFTH DAY, FOR TWICE IN THE WEEK THE COURTS OF JUSTICE[2] SIT IN THE TOWNS, ON THE SECOND DAY [OF THE WEEK] AND ON THE FIFTH DAY, SO THAT IF HE [THE HUSBAND] HAD A CLAIM AS TO THE VIRGINITY [OF THE MAIDEN-BRIDE] HE COULD GO EARLY [ON THE MORNING OF THE FIFTH DAY OF THE WEEK] TO THE COURT OF JUSTICE.

GEMARA. R. Joseph said: Rab Judah said [that] Samuel said: Why did they [the Rabbis] Say. A MAIDEN IS MARRIED ON THE FOURTH DAY? Because we have learned:[3] 'If the time [appointed for the marriage] arrived and they[4] were not married,[5] they[4] eat of his [food][6] and they eat[7] of terumah'[8] — you might think that if the time arrived on the first day in the week he would have to supply her with food, therefore have we learned, A MAIDEN IS MARRIED ON THE FOURTH DAY.[9] Said R. Joseph: Lord of Abraham![10] He [Samuel] attaches a Mishnah which was taught, to a Mishnah which was not taught! Which was taught and which was not taught? This was taught and this was taught! — But [put it this way]: he attaches a Mishnah, the reason of which was explained,[11] to a Mishnah, the reason of which was not explained.[12] But if it was said,[13] it was said thus; Rab Judah said [that] Samuel said: Why did they say, A MAIDEN IS MARRIED ON THE FOURTH DAY? Because IF HE HAD A Claim AS TO THE VIRGINITY HE COULD GO EARLY [NEXT MORNING] TO THE COURT OF JUSTICE — well, let her be married on the first day in the week, so that if he had a claim as to virginity he could go early [on the morning of the second day of the week] to the court of justice! [The answer is:] The Sages watched over the interests[14] of the daughters of Israel so that [the bridegroom] should prepare for the [wedding.] feast three days, [namely] on the first day in the week, the second day in the week, and the third day in the week, and on the fourth day he marries her. And now that we have learned 'shakedu',[15] that [Mishnah] which we have learned: If the time arrived and they were not married, they eat of his [food] and they eat of terumah, [is to be understood as implying that if] the time arrived on the first day in the week, since he cannot marry [her, on the first day of the week, on account of the ordinance], he does not give her food [on the three days, from the first day of the week to the fourth day]. Therefore[16] [R. Joseph concludes], if he became ill or she became ill, or she became menstruous,[17] he does not give her food.

Some [scholars] there are who put this as a question: If he became ill, what is [the law]?[18] [Shall I say:] There.[19] the reason [he need not support her,] is because he is forced,[20] and here, he is also forced?[21] Or shall I say] perhaps, there.[22] he is forced[23] by an ordinance which the Rabbis ordained,[24] [but] here, [he is] not?[25] And if you will say:[26] If he became ill he supplies her with food, [then the question would still be:] if she became ill, what is [the law]? Can he say unto her, 'I am here ready to marry you'? Or, perhaps, she can say unto him, 'His field[27] has been flooded'?[28] And if you will say [that] she can say to him [when she falls ill], 'His field has been flooded.' [then the question is,] if she became menstrous, what is [the law]? During her regular time there is no question

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(1) Lit., 'is taken' as wife.

(2) Lit., 'houses of judgment (law, justice)'.

(3) V. infra 57a.

(4) The maiden or the widow.

(5) The marriage did not take place through the man's fault.

(6) The man has to maintain them.

(7) If the man (the bridegroom) is a priest.

(8) The priest's share of the crop. v. Glos.

(9) And thus to teach that it is not his fault that he does not marry her on the first day in the week, because the Rabbis ordained that he has to wait with the marriage till the fourth day (in the case of a maiden), or the fifth day (in the case of a widow).
(10) An exclamation, like 'O, God!' (v. Rashi ad loc.).
(11) Our Mishnah: So THAT . . . HE COULD GO EARLY TO THE COURT OF JUSTICE.
(12) V. infra 57a.
(13) The saying of Samuel.
(14) Lit., 'ordinance', 'improvement.
(15) 'They (the Sages) watched', etc. — the principle just stated.
(16) Since ye find that the bride has no claim to maintenance where he is not to blame [or the delay in the marriage.
(17) After the time for the marriage had arrived and the marriage cannot take place through one of these causes.
(18) Lit 'how is it?'
(19) When the appointed date of the marriage falls on the first day of the week, v. infra 57a.
(20) By the ordinance of the scholars, according to which he must wait till the fourth day of the week (שקדו).
(21) By his illness to postpone the marriage.
(22) When the appointed date of the marriage falls on the first day of the week.
(23) To postpone the marriage.
(24) And therefore he need not support her.
(25) I.e., in this case he would have to support her since the postponement of the marriage is due to his illness.
(26) Lit., 'And if you may be able (or, find it possible) to say.'
(27) Another reading is 'thy field'. The sense is, of course, the same.
(28) I.e., it is his bad luck that she became ill, and consequently he must support her.

Talmud - Mas. Kethuboth 2b

that she cannot say to him, 'His field has been flooded'. When is the question asked? [If she became menstruous] not during her regular time, what is [the law]? Since it is not during her regular time, she can say unto him, 'His field has been flooded'? Or, perhaps, since there are women who change their periods. It is as if it was her regular time? R. Ahai explained:[1] [We learnt:] When the time came and they were not married, they eat of his food and they eat of terumah.'[2] It does not state. 'They [the men] did not marry them [the women]' but [it says] 'They [the women] were not married.' In what case? If they prevent,[3] why do they eat of his food and eat of the terumah? Hence, you must say [must you not].[4] that they were forced as in this case,[5] and it states 'they eat of his food and they eat of terumah'? — R. Ashi said: Indeed I can say[6] [that] in the case of an accident[7] she does not eat [of his].[8] And [here][9] they [the men] prevented.[10] And by right he ought to have stated, 'they [the men] did not marry [the women].'[11] But since the first clause[12] speaks of them [the women] the latter clause also speaks of them [the women]?[13]

Raba said: And with regard to divorce[14] it is not so.[15] Accordingly Raba holds [that] accident is no plea in regard to divorce.[16] Whence does Raba get this [rule]? Shall I say, from what we have learned: 'Behold this is thy bill of divorce if I come not [back] from now until twelve months,'[17] and he died within the twelve months, there is no divorce.[18] [And we would conclude from this that only if] he died there is no divorce,[19] but if he became ill[20] there is a divorce![21] But perhaps indeed I might say [that] if he became ill there would also he no divorce.[22] and [the Mishnah][23] lets us hear just this [rule], that there is no divorce after death.[24] [That] there is no divorce after death, a previous Mishnah[25] teaches: 'Behold, this is thy bill of divorce if I die,' [or] 'behold, this is thy bill of divorce from this illness,'[26] [or] 'behold, this is thy bill of divorce after [my] death,' he has not said anything.[27] [But] perhaps [that[28] is] to exclude from that[29] of our teachers, for it has been taught: Our teachers allowed her to marry again.[30] And we said: Who are 'our teachers'? Rab Judah said [that] Samuel said: The court that allowed the oil [of the heathen]:[31] they[32] hold like R. Jose who said, 'the date of the document shows it.'[33] But from the later clause:[34] '[This is thy bill of divorce][35] from now if I come not [back] from now [and] until twelve months', and he died within the twelve

months, it is a divorce. [And we may deduce] 'if he died', and the same rule applies if he became ill.[36] [But] perhaps [the divorce is effective] only when he died, because it was not pleasing to him that she should become subject to[37] the yabam![38] — But [the deduction can be made] from this: There was a certain [man][39] who said unto them:[40] 'If I do not come [back] from now until thirty days it shall be a divorce.'[41] He came [back] at the end of thirty days but the ferry stopped him.[42] He said unto them,[43] 'Look, I have come [back]; look, I have come [back]!'[44] Said Samuel: This is not regarded as having come back.[45] But perhaps an accident which is frequent[46] is different,[47] for since he ought to have stipulated it[48] and he did not stipulate it, he injured himself![49] — But [we must say] Raba expressed an opinion of his own:[50] On account of the chaste women and on account of the loose women.[51] On account of the chaste women,[52] because if you will say that it should not be a divorce.[53]

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(1) I.e., 'answered'.

(2) Mishnah 57a: v. supra.

(3) If the women cause the hindrance to the marriage taking place now..

(4) Lit., 'but is it not'.

(5) Lit., as in this manner', that is, when menstruation appeared outside the regular time.

(6) Lit., 'always I say unto thee'.

(7) As irregular menstruation (v. n. 10). The accident is a mishap that comes from the woman.

(8) Lit., 'every accident, she does not eat.

(9) In the Mishnah quoted by R. Ahai.

(10) The marriage from taking place now'.

(11) And not 'they (the women) Here not married'.

(12) Of the Mishnah, quoted by R. Ahai: V. infra 57a.

(13) I.e., since that Mishnah speaks in the first clause of 'maiden' and 'widow', it uses in the clause that follows the passive 'they were not married' the subjects of which are the 'maiden and the 'widow' to use the active 'they did not marry', referring to the men, would have required more words in that clause.

(14) Lit., 'deeds (of divorce).'

(15) I.e., an accident, as explained infra, does not invalidate a divorce.

(16) Lit. , 'there is no accident with divorce'.

(17) These words the husband says to the wife. 'From now until twelve months, means 'within twelve months,.

(18) Lit., 'it is not a Get,' (v. Glos.) that is, the divorce does not take effect: v. Git. 76b.

(19) Because there can be no divorce after death.

(20) And he could not come back within the twelve months through his illness.

(21) Which proves that we do not admit a plea of force majeure to invalidate a Get.

(22) For the plea of accident does apply to divorce.

(23) Git. 76b.

(24) And no other deduction, e.g.. as to illness, is to be made from that Mishnah.

(25) Git. 72a. Lit., 'beginning', 'first clause', denoting here a previous Mishnah.

(26) This phrase is not clear. V. Rashi here and Git. 72a. The phrase seems to mean, 'If I die from this illness.' v. Tosaf. a.l.

(27) I.e., his words have no effect.

(28) I.e., the Mishnah of Git. 76b quoted above.

(29) I.e., from the view of our teachers. If this is the object of (the first clause of) the Mishnah of Cit. 76b, Raba cannot deduce from this Mishnah that if he (the husband) became ill the divorce took effect: v. supra, also note 9.

(30) 'Our teachers' regard her as divorced (against the Mishnah) and allow her to marry again without halizah. If she is regarded as a widow and she has no children she requires halizah before she can re-marry. As to halizah v. Deut. XXV. 5-10. and Glos.

(31) V. A.Z. 36a and 37a.

(32) I.e., the members of the court of justice.

(33) [B.B. 136a: and so here the date inserted for the Get is intended to make it effective from the time of the delivery thereof. For further notes v. Git. (Sonc. ed.) p. 136].

(34) I.e., Raba deduces the rule that the plea of accident does not apply to divorce from the second clause of the Mishnah, cf. Git. 76b.
(35) v. Git. 76b.
(36) And he could not come back on account of his illness.
(37) Lit. , 'that she should fall before' (the yabam).
(38) The husband's brother, who, if she was regarded as a widow (and not as divorced), would have to marry her or let her perform halizah.
(39) A husband.
(40) Certain persons who might be witnesses.
(41) I.e., the bill of divorce given now shall become effective.
(42) The ferry was on the other side of the river and he could not get across, and he was thus prevented (by this accident) from arriving in his town within the thirty days.
(43) To persons standing near by.
(44) The divorce should therefore not take effect.
(45) Lit., 'Its name is not come back"' — the divorce, therefore, takes effect. This proves that force majeure is no plea in regard to Get.
(46) I.e., an accident which is likely to occur, as the ferry being on the other side of the river.
(47) Does not bar the divorce from becoming effective.
(48) That if the ferry should be on the other side of the river and he could not get across and come into his town, it should be regarded as if he had arrived in the town and come hack within the meaning of his condition, which would thus be regarded as not fulfilled, and the divorce would, consequently, not take effect.
(49) He has himself to blame. The attempted deduction from the ferry case is therefore refuted.
(50) Since the rule of Raba, that an accident is no bar to the effectiveness of the divorce, cannot be derived from any Mishnah or from the ferry case, it is attributed to himself that is to his own reasoning.
(51) By 'loose women' are meant women who would not be particular about marrying again even if the validity of the divorce was not established.
(52) The divorce should be effective.
(53) That the divorce should not become effective because of the accident.

Talmud - Mas. Kethuboth 3a

sometimes [it may happen] that he was not held back by an accident,[1] and she would think that he was held back by an accident[2] and she would be tied, and sit.[3] And on account of the loose women, because if you will say [that] it should not be a divorce, sometimes [it may happen] that he was held back by an accident[4] and she would say[5] that he was not held back by an accident[6] and she would go and get married, and the result would be[7] [that] the divorce was invalid[8] and her children [from the second marriage] would be bastards.[9] But is it possible[10] that according to the law of the Bible it would not be a divorce[11] and on account of 'the chaste women' and on account of the 'loose women' we should allow a married woman[12] to the world?[13] — Yes, every one who betroths in accordance with the sense of the Rabbis he betroths,[14] and the Rabbis have annulled his betrothal.[15] Said Rabina to R. Ashi: This might be well[16] [if] he betrothed her with money,[17] [but if] he betrothed [her] by act of marriage, what can one say [then]? — The Rabbis have made[18] his act of marriage non-marital.[19]

Some, [however,] say[20] [as follows]: Raba said: And so [also] with regard to divorce. Accordingly Raba holds [that the plea of] accident applies to divorce.[21] An objection was raised: 'Behold this is thy bill of divorce if I come not [back] from now [and] until twelve months,' and he died within the twelve months, there is no divorce. [Now] if he dies there is no divorce, but if he became ill there would be a divorce! — Indeed l might say [unto thee] that if he became ill there would be no divorce either, and [the Mishnah] lets us hear just this [rule]: that there is no divorce after death. [That] there is no divorce after death a previous Mishnah teaches! — Perhaps [that is] to exclude from that of our teachers. Come and hear:[22] From now if I have not come [back] from now [and] until twelve months,' and he died within the twelve months.it is a divorce. Would not the same rule apply if he

became ill? No, Only if he died, because it was not pleasing to him that she should become subject to the yabam. Come and hear: A certain [man] said unto them: 'If I do not come [back] from now [and] until thirty days it shall be a divorce.' He came [back] at the end of thirty days but the ferry stopped him. And he said unto them, 'Look, I have come [back]; look, I have come [back]!' And Samuel said: This is not regarded as having come back! — An accident which is frequent is different, for since he ought to have stipulated it and he did not stipulate it, he injured himself.

R. Samuel b. Isaac said: They have only taught[23] since the institution of Ezra[24] and after, [according to which] the courts of justice sit[25] only on the second day and on the fifth day [of the week]. But before the institution of Ezra, when the courts of justice sat every day, a woman[26] could be married on any day. Before the institution of Ezra, what there was there was![27] — He means it thus: If there are courts of justice that sit now as before the institution of Ezra,[28] a woman may be married on any day. But what of shakedu?[29] [We suppose] that he[30] had [already] taken the trouble.[31]

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(1) Lit. 'that he was not forced.' The divorce would therefore certainly be effective.

(2) And the divorce would, in her view, not take effect (if the rule would have been that an accident is a bar to the divorce becoming effective).

(3) Lit. , 'and she will be tied'. I.e., she would regard herself as tied to her absent husband and would not marry again. An 'agunah is a woman tied to an absent husband'. The Rabbis endeavoured to prevent the state of 'agunah; v. Git. 33a.

(4) And the divorce would not take effect.

(5) The use of 'she would say' here in contradistinction to 'she would think' in the case of the 'chaste women' is no doubt intentional. She (the loose woman) would say this, although she would not think so in her heart.

(6) In which case the divorce would become effective.

(7) Lit 'and it is found.'

(8) If the divorce should not become effective because of an accident.

(9) The children of a married woman and a man who is not her husband are bastards, mamzerim; v. Yeb. 49a. This would be the case if the divorce would not become effective because of an accident and the first husband should turn up and say that he was held back by an accident. To prevent such evil results Raba established the rule that an accident should not be a bar to the divorce taking effect.

(10) Lit., 'and is there anything?'

(11) [The Plea of force majeure as recognized in the Bible, v. Deut. XXII, 26.]

(12) Lit., 'the wife of a man.'

(13) I.e.,to marry another man.

(14) Lit., 'he sanctifies.' 'he consecrates.' To sanctify, to consecrate a woman to oneself means to marry her. Kiddushin 'sanctifications' means 'betrothal,' 'marriage.' I.e every one who marries a woman marries her on the basis that the marriage is sanctioned by the law of the Rabbis.

(15) Lit. , 'and the Rabbis have caused the betrothal to be released from him,' that is retrospectively. As the marriage is subject to the sanction of the Rabbis, the Rabbis can, if the necessity arises, annul the marriage. Such a necessity has arisen when an accident would be a bar to the divorce becoming effective.

(16) The answer just given might be regarded as satisfactory.

(17) V. Kid. 2a.

(18) I.e., have declared it to be, or regard it.

(19) Lit 'an intercourse of prostitution.' The Rabbis have in either case the power to annul the marriage. The argument that Raba arrived at his views through his own reasoning stands.

(20) Lit., 'There are some who say.'

(21) According to this version. Raba holds that an accident is a bar to the divorce becoming effective.

(22) From here till 'he injured himself' the text is practically identical with the corresponding text on folio 2b. There are only one or two omissions and one or two slight variations. For interpretation, v. notes on the translation of 2b. The difference of the arguments is obvious.

(23) That a maiden marries on the fourth day of the week.

(24) V. B.K. 82a.

(25) Lit., ‘are fixed. ,
(26) Even a maiden.
(27) That is past and does not matter!
(28) Every day.
(29) Lit., ‘we require they watched"’. V. supra 2a.
(30) The bridegroom.
(31) Of preparing for the wedding.

Talmud - Mas. Kethuboth 3b

What is [the reference to] shakedu? [For] it has been taught: Why did they say that a maiden is married on the fourth day? ‘Because if he had a claim as to virginity he could go early [next morning] to the court of justice. But let her be married on the first day in the week and if he had a claim as to virginity he could go early [on the morning of the second day in the week] to the court of justice? — The Sages watched over the interests of the daughters of Israel so that [the man] should prepare for the [wedding-]feast three days, the first day in the week, and the second day in the week, and the third day in the week, and on the fourth day he marries her. And from [the time of] danger and onwards the people made it a custom to marry on the third day and the Sages did not interfere with them. And on the second day [of the week] he shall not marry; and if on account of the constraint[1] it is allowed. And one separates the bridegroom from the bride on the nights of Sabbath at the beginning,[2] because he makes a wound.[3]

What [was the] danger? If I say that they[4] said, ‘a maiden that gets married on the fourth day [of the week] shall be killed’, [then how state] ‘they made it a custom’? We should abolish it entirely! — Said Rabbah: [That] they said, ‘a maiden that gets married on the fourth day [of the week] shall have the first sexual intercourse with the prefect.’[5] [You call] this danger? [Surely] this [is a case of] constraint![6] — Because there are chaste women who would rather surrender themselves to death and [thus] come to danger. But let one expound to them[7] that [in a case of] constraint [it] is allowed?[8] — There are loose women[9] and there are also priestesses.[10] But [then] let one abolish it?[11] A decree[12] is likely to cease, and [therefore] we do not abolish an ordinance of the Rabbis on account of a decree. If so, on the third day he [the prefect] would also come and have intercourse [with the bride]? — Out of doubt he does not move himself.[13]

[It is stated above:] ‘And on the second day [of the week] he shall not marry; and if on account of the constraint it is allowed.’ What constraint [is referred to]? Shall I say [that it is] that which we have said?[14] There,[15] one calls it ‘danger’ ‘and here, one calls it [mere] ‘constraint’! And further, there [it states], ‘they made it a custom’, [whilst] here, ‘it is allowed’![16] — Said Raba: [it is that] they say ‘a general has come to town.[17] In what case? If he comes and passes by,[18] let it be delayed![19] — It is not necessary [to state this but] that he came and stayed. Let him, [then], marry on the third day [of the week]![20] — His[21] vanguard arrived on the third day. And if you wish I may say: What is [the meaning of] ‘on account of the constraint’? As it has been taught: If his bread was baked and his meat prepared and his wine mixed[22] and the father of the bridegroom[23] or the mother of the bride died,[24] they bring the dead [person] into a room and the bridegroom and the bride into the bridal chamber,[25]

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(1) This will be explained anon.
(2) If it is her first marital union.
(3) By the first act of intercourse.
(4) The Roman authorities.
(5) jus primae noctis; v. J.E., VII, p. 395.
(6) [And no woman is enjoined to sacrifice her life in resisting this assault: v. supra p. 7 n. 1, v. infra 51b.]
(7) The women.

(8) V. n. 6.
(9) Who might submit voluntarily.
(10) Wives of priests who would be forbidden to their husbands even when submitting under constraint: v. infra 51b.
(11) Marrying on Wednesday.
(12) Of the Romans.
(13) To come into town.
(14) The fear of the exercise of jus primae noctis.
(15) Earlier in the cited Baraitha.
(16) [Implying that it was not an established custom.]
(17) And he would requisition the food prepared for the wedding-feast.
(18) If he only passes through the town.
(19) I.e., let the marriage be delayed till the fourth day of the following week.
(20) [Instead of the second day of the week and thus give him a longer opportunity for making preparations for the wedding.]
(21) The general's.
(22) With water, their wine being too strong to be drunk undiluted. I.e., all the preparations for the wedding had been made.
(23) [Who had to provide for the wedding-feast.]
(24) [Who provided the wife with her trousseau.]
(25) Huppah, v. Glos. First the marriage and then the mourning.

Talmud - Mas. Kethuboth 4a

and he performs the dutiful marital act[1] and [then] separates [himself from her].[2] And [then] he keeps the seven days of the [wedding-]feast[3] and after that he keeps the seven days of mourning.[3] And [during] all these days he sleeps among the men and she sleeps among the women.[4] And they do not withhold ornaments[5] from the bride all the thirty days.[6] [But that is] only [if] the father of the bridegroom or the mother of the bride [died], because there is [then] no one who should prepare for them [for the wedding], but not [in case of] the reverse.[7] Rafram b. Papa said [that] R. Hisda said: They taught [this] only when water had [already] been put on the meat, but if water had not [yet] been put on the meat, it is to be sold. Raba said: And in a city, although water had been put on the meat, it is sold.[8] R. Papa said: And in a village, although water had not been put on the meat, it is not sold.[9] But where [then] will you find [the rule] of R. Hisda [to apply]? Said R. Ashi: For instance, [in] Matha Mehasia,[10] which is neither a city nor a village.[11]

It has been taught according to R. Hisda: If his bread was baked and his meat prepared and his wine mixed and water had been put on the meat and the father of the bridegroom or the mother of the bride died, they bring the dead [person] into a room and the bridegroom and the bride into the bridal chamber, and he performs the dutiful marital act and [then] separates [himself from her]. And [then] he keeps the seven days of the [wedding-]feast and after that he keeps the seven days of mourning. And all these days he sleeps among the men and she sleeps among the women. And so [also] if his wife became menstruous does he sleep among the men and she sleeps among the women. And they do not withhold ornaments from the bride all the thirty days. In any case he must not perform the [first] marital act on the eve of Sabbath or in the night following the Sabbath.

The Master said [above]: 'He sleeps among the men and she sleeps among the women.' This supports R. Johanan, for R. Johanan said: Although they said [that] there is no mourning on a festival, yet matters of privacy he keeps.[12] R. Joseph the son of Raba lectured in the name of Raba: They taught[13] only if he had yet no intercourse [with her],[14] but if he had [already] intercourse, his wife may sleep with him.[15] But here we deal with a case when he had intercourse, and still it teaches [that] he sleeps among the men and she sleeps among the women? — When did he[16] say [it]? With regard to his wife becoming menstruous. But it says. 'And so [also if his wife became

menstruous]'![17]

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(1) The first intercourse.

(2) [Immediately after which the burial takes place. The death of one of these parents is thus the constraint referred to. Where the death occurred on Monday the marriage is to take place immediately so as to avoid delay in the funeral.]

(3) V. infra.

(4) So that they have no intercourse.

(5) 'Ornaments means both jewellery and toilet requisites.

(6) [The thirty days of semi-mourning that follow the death of a near relative.]

(7) These rules do not apply.

(8) Because it can be sold.

(9) Because it cannot be sold.

(10) A place near Sura.

(11) Lit., 'Which is excluded from a city and excluded from a village'.

(12) [I.e., mourning customs that affect domestic relations, and thus involve no outward manifestations of grief, must be observed.]

(13) That he sleeps among the men and she sleeps among the women.

(14) And he may feel tempted.

(15) In one room.

(16) Raba

(17) And this would seem to show that there is no difference between the time of mourning and the period of menstruation.

Talmud - Mas. Kethuboth 4b

— Thus he[1] means to say:[2] And so [also], if his wife became menstruous and he had not yet had intercourse [with her] he sleeps among the men and she sleeps among the women. Is this [then] to say that he treats mourning more lightly than menstruation?[3] Surely. R. Isaac the son of Hanina said that R. Huna said: All kinds of work[4] which a wife performs for her husband, a menstruant[5] may perform for her husband, except the mixing of the cup[6] and the making[7] of the bed and the washing of his face, his hands and his feet;[8] while with regard to mourning it has been taught: Although they[9] said: No man has a right to force his wife[10] to paint [her eyes] or rouge [her face], in truth[11] they said: She mixes him the cup[12] and she makes him the bed and she washes his face, his hands and his feet?[13] — [This is] not difficult; here[14] [it speaks] of his mourning,[15] there[16] [it speaks] of her mourning.[17] But it says:[18] 'The father of the bridegroom or the mother of the bride [died]'?[19] — This refers to the rest.[20] But is there a difference between his mourning and her mourning? Surely it has been taught: If a man's father-in-law or mother-in-law died,[21] he cannot force his wife to paint [her eyes] and to rouge [her face]. but he lowers his bed[22] and keeps mourning with her. And so [also] if a woman's father-in-law or mother-in-law died[23] she is not allowed to paint [her eyes] and to rouge [her face], but she lowers her bed and keeps mourning with him![24] — Teach with reference to his mourning 'he sleeps among the men and his wife sleeps among the women'.[25] But it says: 'And so [also]'?[26] — This refers to painting and rouging.[27] But it says 'with him'! Does this not mean,[28] with him in one bed? — No, [it means] with him in one house, and as Rab said to his son Hiyya: In her presence[29] keep mourning, in her absence do not keep mourning.[30] R. Ashi said: Can you compare this mourning[31] with ordinary mourning?[32] Ordinary mourning is strict and one would not deal lightly[33] with it. [But] this mourning, since the Rabbis were lenient [about it], one might deal lightly with it. What is the leniency? Shall I say. because it says he performs the dutiful act of marriage and separates [himself from her]? That is[34] because the mourning has not rested upon him[35] yet; [namely] if according to R. Eliezer, [the mourning does not begin] until the body has been taken out of the house,[36] and if according to R. Joshua, [the mourning does not begin] until the golel[37] has been closed![38] — But [the leniency is this,] because it says: He keeps [first] the seven days of the [wedding-]feast and after that he keeps the seven days of mourning.

The Master said: ‘In any case he must not perform the [first] marital act on the eve of Sabbath or in the night following the Sabbath. It is right [that he may not perform it] on the eve of Sabbath, because of a wound.[39] But in the night following the Sabbath, why not? — Said R. Zera:

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(1) The Tanna of the cited Baraitha.

(2) Lit., ‘thus he says.’

(3) Lit., ‘that mourning is lighter to him (the husband) than menstruation’. The case of menstruation is limited to where no intercourse had taken place.

(4) Lit., ‘all works’.

(5) I.e., the wife during menstruation.

(6) I.e., pouring out of wine: v. supra p. 10 n. 6.

(7) Lit., ‘spreading.’

(8) Because the nearness may bring temptation: v. infra 61a.

(9) The Rabbis.

(10) When she is mourning for a parent.

(11) Cf. B.M. 60a: wherever an opinion is introduced with the words, ‘in truth they said,’it means to say that it is an established legal rule.

(12) Cf. infra 61a.

(13) This would show that he treats mourning less lightly than menstruation!

(14) Supra 4a: ‘he sleeps among the men and she sleeps among the women.’

(15) And she might be tempted.

(16) Lit., ‘here.’ In the Baraitha just quoted.

(17) And she would resist temptation.

(18) Lit., ‘it teaches.’

(19) This shows that there is no difference between his mourning and her mourning.

(20) Lit., ‘When it teaches, on the rest. — I.e., this refers to the other points mentioned in the Baraitha on 4a.

(21) Lit., ‘he whose father-in-law or mother-in-law died.’

(22) Placing the mattresses on or near the floor was a sign of mourning.

(23) Lit., ‘she whose father-in-law or mother-in-law died.’

(24) Since it does not state in the latter case that he has to sleep among the men etc., it shows that there is no difference between his mourning and her mourning.

(25) And so there would be a difference between his mourning and her mourning. In his mourning there would be the precaution just stated, while in her mourning that precaution would not be required.

(26) This would show that there is no difference between his mourning and her mourning.

(27) In either case she does not paint or rouge.

(28) Lit., ‘what not?’

(29) In the presence of Hiyya's wife who was in mourning.

(30) I.e., ‘with him’ (or ‘with her’) shews that she keeps mourning with him in his presence and he keeps mourning with her in her presence.

(31) Lit., ‘the mourning of here’, namely the mourning immediately before the marriage; v. supra 3b (bottom) and 4a.

(32) Lit., ‘mourning of the world.’

(33) Lit., ‘and one would not come to disregard it.’

(34) Lit., ‘there’.

(35) Has not begun yet.

(36) Lit., ‘until it goes out from the door of the house.’

(37) The covering stone of a tomb. ‘To close the golel’ means ‘to close the tomb with the golel,’ v. Nazir (Sonc. ed.) p. 302, n. 5.

(38) Cf. M.K. 27a.

(39) He makes a wound through the first intercourse.

Because of accounts.[1] Said Abaye to him: And are accounts of a religious nature forbidden?[2] Surely R. Hisda and R. Hamnuna both said: Accounts of a religious nature, one is allowed to calculate them on Sabbath; and R. Eleazar said: One may assign charity to the poor on Sabbath; and R. Jacob said [that] R. Johanan said: One may go to synagogues and to schoolhouses to watch over public affairs[3] on Sabbath; and R. Jacob the son of Idi said [that] R. Johanan said: One may do any work to save a life[4] on Sabbath; and R. Samuel the son of Nahmani said [that] R. Jonathan said: One may go to theatres and circuses[5] to watch over public affairs on Sabbath; and [a scholar] of the school of Menashia taught: One may negotiate about the girls to be betrothed on Sabbath[6] and about a boy to teach him the book[7] and to teach him a trade? — But, said R. Zera, it has been prohibited[8] lest he might slaughter a fowl.[9] Said Abaye to him: But if this were so, then the Day of Atonement which fell on the second day of the week should be postponed[10] for fear[11] lest he might slaughter a fowl?[12] — There,[13] that [he has to prepare only] for himself he is not troubled [so much],[14] [but] here,[15] that [he has to prepare] for others,[16] he is troubled.[17] Or: there, he has an interval,[18] [but] here, he has no interval.[19] Now that you have come so far,[20] the eve of Sabbath[21] also is prohibited[22] for fear lest he might slaughter a fowl.[23]

The question was asked:[24] [Does the Mishnah mean:] A maiden is married on the fourth day [of the week], and the intercourse takes place on the fourth day, and we are not afraid that he might be pacified?[25] Or perhaps [the meaning is] a maiden is married on the fourth day [of the week], and the intercourse takes place on the fifth day[26] because we are afraid that he might be pacified? — Come and hear: Bar-Kappara taught: A maiden is married on the fourth day [of the week] and the intercourse takes place on the fifth day[26] because on it [the fifth day] the blessing for the fishes was pronounced.[27] A widow is married on the fifth day [of the week] and the intercourse takes place on the sixth day[28] because on it [the sixth day] was pronounced the blessing for man.[29] [We thus see that] the reason is on account of the blessing, but as to [his] being pacified we are not afraid. If so,[30] [in the case of] a widow also the intercourse should take place on the fifth day [of the week], because on it [the fifth day] was pronounced the blessing for the fishes?[31] — The blessing for man is better for him.[32] Or on account of 'they have watched,'[33] for it has been taught: Why did they[34] say [that] a widow is married on the fifth day [of the week] and the intercourse takes place on the sixth day? Because, if you will say that the intercourse should take place on the fifth day, in the morning[35] he will rise and go to his work;[36] therefore the Sages watched over the welfare[37] of the daughters of Israel that he should rejoice with her[38] three days, [namely] on the fifth day of the week,[39] on the eve of Sabbath[40] and [on] Sabbath.[41] What is the difference between 'the blessing' and 'they have watched'?[42] The difference is this:[43] [in the case of] a man of leisure,[44] or [in the case] when a festival falls on the eve of Sabbath.[45]

Bar-Kappara expounded: The work of the righteous[46] is greater than the work[47] of heaven and earth, for in [regard to] the creation of heaven and earth it is written, Yea, My hand hath laid the foundation, of the earth, and My right hand hath spread out the heavens,[48] while in [regard to] the work of the hands of the righteous it is written, The place which Thou hast made for Thee to dwell in, O Lord, the sanctuary, O Lord, which Thy hands have established.[49] Replied[50] one Babylonian, and R. Hiyya [was] his name: [It is written.] And the dry land his hands formed?[51] — It is [to be] written, 'His hand'.[52] But it is written, they formed?[53] — Said R. Nahman b. Isaac: 'His fingers formed,'[54] as it is written. When I behold Thy heavens, the work of Thy fingers, the moon and the stars which Thou hast established.[55]

An objection was raised: [It is written,] The heavens declare the glory of God, and the work of His hands the firmament shows?[56] — Thus he said:[57] The handiwork[58] of the righteous, who shews [it]?[59] The firmament. And what is it? Rain.[60]

Bar-Kappara [also] expounded: What [is the meaning of what] is written. And thou shalt have a

peg among thy implements?[61] Do not read,[62] thy implements,[63] but 'upon thy ear';[64] [this means to say] that if a man hears an unworthy thing[65]

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(1) If he will consummate the marriage in the night following the Sabbath he will give a dinner in the evening and he will make accounts (in his mind) on Sabbath as to the cost of that festive meal.

(2) I.e., is it forbidden to make calculations for a religious purpose on Sabbath?

(3) Lit., 'the affairs of many'.

(4) Lit., 'one removes a person' from under debris. The meaning is: One may do any work on Sabbath to save a life.

(5) Theatres and circuses were also places of general assemblies. in the same way public meetings were also held in synagogues and schoolhouses.

(6) I.e., one may negotiate the betrothal of them on Sabbath.

(7) I.e., the book, the Bible.

(8) Lit., 'a preventive measure'. To have the first intercourse in the night following the Sabbath.

(9) Lit 'the child of a fowl', that is a young fowl. There is also the reading בו 'on it' i.e., on Sabbath for בן. He would be so busy thinking of the festive meal on Sabbath night that he might forget that it was Sabbath and slaughter a fowl for the dinner in the evening.

(10) For one day; v. Rashi.

(11) 'As a preventive measure'.

(12) On Sabbath, since he would be busy thinking of the preparations for the meal on Sunday, which would be the eve of the Day of Atonement. On the eve of the Day of Atonement it is a religious duty to have a festive meal.

(13) In the case of the Day of Atonement.

(14) And he will not forget that it is Sabbath and he will not slaughter a fowl on Sabbath.

(15) In the case of the wedding-feast on Sabbath night.

(16) For the guests of the evening.

(17) And he might forget that it is Sabbath and he might slaughter a fowl on Sabbath.

(18) Sabbath night and Sunday morning. He does not have the important meal before midday or later on the day of the eve of the Atonement Day.

(19) The wedding-dinner would take place on Sabbath night as soon as Sabbath is out.

(20) To this result, namely that he must not perform the first intercourse in the night following the Sabbath because he might profane the Sabbath by slaughtering a fowl on Sabbath.

(21) Friday night.

(22) To have the first intercourse.

(23) On Friday evening, after Sabbath had already begun.

(24) Lit 'it was asked by them'.

(25) Lit 'cooling off to the (his) mind.' That is, if he has intercourse on Wednesday and he has reason to complain as to virginity, his anger might cool off by Thursday morning and he might not go on Thursday to the court of justice; v. supra 2a.

(26) I.e., Wednesday evening, which belongs to the fifth day.

(27) Lit., said (by God).' Cf. Gen. I, 20-23, especially 22.

(28) Thursday evening. v. n. 13.

(29) Cf. Gen. I, 26-28, especially 28.

(30) If the reason is on account of the blessing.

(31) It means this: If the reason is the blessing, why should not intercourse, in the case of a widow, take place on the same day as the marriage, namely on the fifth day? And on the fifth day there was the blessing for the fishes. And if that blessing is good enough for a maiden it should be good enough for a widow.

(32) For Bar Kappara. He considered the blessing for man a stronger reason. In the case of a maiden it is different, as, if her intercourse should take place on Friday, we should he afraid that he might be appeased by Monday, the first court-day after Friday. 'Therefore the blessing for the fishes has to suffice in the case of the maiden.

(33) Shakedu, v. supra pp. 2 and 8. The ordinance that in the case of a widow the intercourse should take place on Friday was made in the interests of the daughters of Israel.

(34) The Sages.

(35) The next morning. In case of a widow the marriage festivities last only one day. V. infra 7a bottom.

(36) Lit., 'he rises unto his trade (work) and goes his way. That is, he walks out of the house and leaves the whole wedding atmosphere behind him. This had to be prevented.
(37) Lit., 'ordinance (for the welfare).'
(38) With the widow-bride.
(39) The day of the marriage.
(40) Friday, the day of the intercourse.
(41) The religious day of rest.
(42) What is the difference between these two reasons?
(43) Lit., 'there is between them.'
(44) Lit., 'an idle man.' 'They have watched' would not apply to a man of leisure, as he need not go to work next day. But the intercourse would have to take place on Friday if the reason was 'the blessing'.
(45) In which case Friday is a religious day of rest, and he would not go to work. But the reason of 'the blessing' would still operate for intercourse on Friday.
(46) Pious men.
(47) The creation.
(48) Isa. XLVIII, 13. There 'My hand' is written.
(49) Ex. XV, 17. In regard to the sanctuary, which is the work of the hands of pious men, 'Thy hands' is written.
(50) I.e., objected.
(51) Ps XCV, 5.
(52) [The kethib in some texts is ידו ('his hand').]
(53) [In the plural. so that the subject 'hand' must also be in the plural.]
(54) 'Fingers' is implied as subject.
(55) Ps. VIII, 4.
(56) Ps. XIX, 2. [Thus we have 'hands' written also in connection with creation.]
(57) Thus the Psalmist meant.
(58) Lit., 'the work of their hands.'
(59) Who tells them, announces them?
(60) Rain comes because the pious pray for it. The handiwork of the righteous is called the 'work of His hands', because in the rain the work of God and the work of the righteous meet. The rain is the work of God, but it comes as the result of the good deeds of the pious, whose prayers God fulflls.
(61) Deut. XXIII, 14.
(62) [In the sense of 'render'.]
(63) From אזן azayn 'implement, tool'.
(64) As if from אזן ozen 'ear'.
(65) Lit 'a thing (or, a word) that is not worthy', not fit to be heard.

Talmud - Mas. Kethuboth 5b

he shall plug his finger[1] into his ears. And this is the same that R. Eleazar said: Why do the fingers of man resemble pegs? Why?[2] Shall I say because they are divided?[3] [Surely] each one has been made for its own purpose![4] For a Master said: This one[5] [Is used for measuring] the span;[6] this one[7] [is used for] taking a fistful of the meal-offering,[8] this one[9] [is used for defining] the cubit measure,[10] this one[11] [is used for taking the measure of] 'a finger',[12] [and] this one[13] [is used for service with] the thumb![14] — But [the question is] why[15] [are the fingers] pointed like pegs? [The reason is] that if a man hears an unworthy thing he shall plug his fingers into his ears. [A member] of the school of R. Ishmael taught: Why is the whole ear hard and the ear-lap soft? [So] that if a man hears an unworthy thing he shall bend the ear-lap into it.[16]

Our Rabbis taught: A man shall not let his ears hear idle things,[17] because they are burnt first of [all] the organs.[18]

The question was asked: Is it allowed[19] to perform the first marital act on Sabbath?[20] Is the blood

[in the womb] stored up,[21] or is it the result of a wound?[22] And if you will say[23] [that] the blood is stored up [in the womb, then the question arises:] is he concerned about the blood,[24] and it is allowed: or is he concerned with the opening,[25] and it is forbidden?[26] And if you will say [that] he is concerned with the blood and the opening comes of itself, [then the question arises:] Is the halachah[27] according to R. Simeon who says: A thing which is not intended[28] is allowed; or is the halachah according to R. Judah who says: A thing which is not intended is forbidden?[29] And if you will say [that] the halachah is according to R. Judah [then the question arises], does he do damage in regard to the opening, or does he improve in regard to the opening?[30] Some say:[31] And if you will say that the blood is the result of a wound [then the question arises], is he concerned about the blood and it is forbidden,[32] or is he concerned with his own pleasure, and it is allowed? And if you will say [that] he is concerned with his own pleasure and the blood comes out of itself,[33] [then the question arises] is the halachah according to R. Judah or is the halachah according to R. Simeon? And if you will say [that] the halachah is according to R. Judah, [then the question arises,] does he do damage by [making] the wound, or does he improve by [making] the wound? And if you will say [that] he does damage by [making] the wound, [then the question arises,] with regard to one who does damage, is the halachah according to R. Judah,

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(1) The finger is pointed like a peg.

(2) Lit., 'what is the reason?' I.e., what is the meaning of the question? With regard to what are the fingers of man like pegs?

(3) I.e., shall I say that the question is: Why are the fingers divided? They might have been joined together.

(4) Lit., 'for its thing.'

(5) The little finger.

(6) I.e the distance from the little finger to the thumb of a spread hand.

(7) The finger next to the little finger.

(8) קמיצה the taking of a fistful of the meal-offering. v. Lev II, 2.

(9) The middle finger.

(10) The cubit is a measure equal to the distance from the elbow to the tip of the middle finger.

(11) The fourth from the little finger.

(12) And also for priestly service with the 'finger'; cf. Lev. IV, 6.

(13) The fifth from the little finger.

(14) V. Lev. VIII, 23, 24; XIV, 14, 17, 25, 28. We thus see that every finger has a definite purpose. They therefore had to be divided and function as separate fingers!

(15) Lit., 'what is the reason (that)?'

(16) Into the ear. He will thus close the ear and not hear the unworthy thing.

(17) Not only unworthy things. but even idle things a man should not hear, e.g tittle-tattle.

(18) Lit., 'of the limbs.' 'Because they are burnt first of (all) the organs' seems to have a figurative meaning. From hearing unworthy or idle things he may proceed to speak unworthy or idle things and then to do unworthy or idle things. The ear is thus the first organ to 'be burnt', to 'catch fire'. c.f. Prov. VI, 27-28. If. the English phrase, 'to burn one's fingers.'

(19) Lit 'How is it?

(20) When the intercourse could not take place here Sabbath, (Tosaf.)

(21) And the intercourse would he allowed, since the blood flows out of its own accord, no wound having been made.

(22) Lit 'or is it wounded?' And the intercourse would be forbidden.

(23) Lit 'And if you should he able to say.'

(24) Is his aim to release it? Lit., 'is it the blood he requires?' [According to Tosaf.: In order to see whether she is a virgin.

(25) Or is his aim to make an opening?

(26) It is forbidden to make an opening on Sabbath. [Such an act comes under the category of 'building'.]

(27) 'Adopted opinion', 'rule'.

(28) An act which is in itself forbidden but is the unintended though unavoidable result of an act which is permitted. Thus one may, according to R. Simeon, push a couch on the floor, on Sabbath, if one has not the intention to make a rut

in the floor, although, as a matter of fact, such a rut is made as the unavoidable result of pushing the couch.

(29) R. Judah's view is opposed to that of R. Simeon; v. n. 4.

(30) Is the making of the opening considered to be to the advantage or disadvantage of the woman? If it is to her disadvantage it would he allowed even according to R. Judah. [Based on the principle that an act of damage does not constitute labour in regard to Sabbath. V. Shab. 106a.]

(31) Lit., 'there are who say', that the questions were with regard to the assumption that the blood is the result of a wound.

(32) To have the intercourse on Sabbath.

(33) The coming of the blood is therefore an unintended but unavoidable result of an act, the intended object of which is the pleasure.

Talmud - Mas. Kethuboth 6a

or is the law according to R. Simeon?[1] In the school of Rab[2] they said: Rab allowed[3] and Samuel forbade.[3] In Nehardea[4] they said: Rab forbade and Samuel allowed. Said R. Nahman b. Isaac: And your [mnemotechnical] sign [is]: These make it lenient for themselves, and these make it lenient for themselves.[5] But does Rab allow it? Surely R. Shimi b. Hezekiah said in the name of Rab: [As regards] that stopper of the brewing boiler, it is forbidden to squeeze it in[6] on a festival day![7] — In that [case][8] even R. Simeon admits [that it is forbidden], for Abaye and Raba, both of them say: R. Simeon admits [that it is forbidden] in [a case of] 'Let his head be cut off, and let him not die!'[9] [But] R. Hiyya the son of Ashi said [that] Rab said: The halachah is according to R. Judah,[10] and R. Hanan the son of Ammi [said that] Samuel said: The halachah is according to R. Simeon.[11] And R. Hiyya the son of Abin taught it without [naming the] men:[12] Rab said [that] the halachah is according to R. Judah. and Samuel said [that] the halachah is according to R. Simeon? — Still, Rab holds like R. Judah, [but] according to that version that says, 'the blood is stored up [in the womb],' he does damage in regard to the opening,[13] [and] according to that version that says, 'the blood is the result of a wound,' he does damage in [making] the wound.[13]

R. Hisda objected: If a girl, whose period[14] to see [blood] had not arrived yet, got married, Beth Shammai[15] say: One gives her four nights,[14] and the disciples of Hillel say: Until the wound is healed up.[16] If her period to see [blood] had arrived[17] and she married, Beth Shammai say: One gives her the first night,[18] and Beth Hillel say: Until the night following the Sabbath [one gives her] four nights.[19]

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(1) According to R. Simeon he who does damage by making a wound had to bring a sin-offering; v. Shab. 106a.

(2) In Sura. Before the words 'in the school of Rab', some texts have the word 'it has been said (that)'.

(3) To have the first intercourse on Sabbath.

(4) The place of Samuel.

(5) In Sura they said that Rab allowed it, and in Nehardea they said that Samuel allowed it.

(6) Into the bottle. The stopper is made of soft material, and, if it is squeezed, the liquid absorbed in the material would come out.

(7) This shows that Rab, like R. Judah, holds that a permitted action which results in a prohibited action, though the latter was not intended, is forbidden; v. p. 19, on. 4 and 5.

(8) Of the stopper in the brewing bottle.

(9) 'Let his head be cut off, and let him not die!' is a dialectic term for an absolutely unavoidable result of an act. V. Jast., s.v. פסק. In such a case R. Simeon admits that the act leading to the forbidden act is prohibited. This applies to the stopper. Intercourse, however, is different; v. infra 6b.

(10) V. p. 19. n. 5.

(11) V. p. 19. n. 4.

(12) I.e., without naming the authorities.

(13) V. supra p. 19, n. 6.

(14) Lit., 'time'.

(15) Lit., 'the house', i.e., the school, of Shammai. (15) In which she can have intercourse with her husband.
(16) The blood that comes out is attributed to the wound and not to menstruation. Ordinarily, after the first intercourse further intercourse is forbidden until the coming out of blood, i.e menstruation, is over. But in this case, in which the young bride had never yet had any menstruation, it is assumed that the blood is not due to menstruation but to the wound caused by the intercourse. According to Beth Shammai this assumption holds good for four nights, and according to Beth Hillel it holds good 'until the wound is healed up.' As to the definition of this phrase, v. Nid. 64b. V. also Nid. 65b, where it is finally decided that after the first coition no further intercourse must take place until the flowing of blood has stopped, even in the case of a young bride who had not yet had any menstruation. V. also Eben ha-'Ezer, 63, and Yoreh De'ah, 193.
(17) But she had in fact not yet seen blood; that is, she had the maturity for it, but the maturity had not yet manifested itself. A girl has reached the period of maidenhood (puberty) when she is twelve years and one day old. When she is twelve and a half years old she has reached the state of bogereth, (v. Glos.), full maturity, womanhood. V. infra 39a.
(18) He may repeat the intercourse during the first night.
(19) Mishnah in Nid. 64b.

Talmud - Mas. Kethuboth 6b

[Now] does it not[1] mean that if he had [yet] no intercourse [with his wife] he may have intercourse [with her] even on Sabbath?[2] — Said Raba: No, except Sabbath. Said Abaye to him: But it says, 'until the night following the Sabbath [one gives her] four nights'?[3] — Only, said Raba, when he already had intercourse [with her].[4] If [it were, as you say,] after he already had intercourse, what does he let us hear?[5] — He lets us hear that it is allowed to have intercourse on Sabbath, as that [statement] of Samuel [teaches], for Samuel said: One may enter into a narrow opening on Sabbath,[6] although[7] he causes pebbles to break loose.[8]

R. Joseph objected: A bridegroom is free from the reading of Shema'[9] in the first night[10] until the night following the Sabbath, if he has not performed [yet] an act.[11] Is it not[12] because he is anxious to perform the marital act?[13] — Said Abaye to him: No; he is anxious because he has not had intercourse.[14] Said Raba to him: And on account of anxiety [only][15] he is free [from reading Shema']? If this were so, then [if] his ship sank in the sea, he would also be free [from the reading of Shema']! And should you say [that] it is really so, surely, R. Abba b. Zabda said [that] Rab said: A mourner is bound to observe all the precepts that are stated in the Torah except [that] of the Tefillin[16] because it is said with regard to them an ornament'?[17] — But, said Raba, this[18] is a dispute of Tannaim,[19] for one [Baraitha] teaches: If he[20] did not do an act [of coition] in the first [night],[21] he is free [from reading Shema'] also in the second [night]; in the second [night],[22] he is free [from reading Shema'] also in the third [night].[23] And another [Baraitha] teaches: [In] the first and second [night] he is free, [but in] the third [night] he is obliged [to read Shema'].[24] And Abaye [holds that] there[25] also they][26] differ with regard to anxiety.[27] And these Tannaim [are] like those Tannaim,[28] for it has been taught [in a Baraitha]: He who marries a maiden shall not perform the first intercourse[29] on Sabbath, and the Sages allow [it]. Who are the Sages? Said Rabbah: It is R. Simeon, who says: A thing which is not intended is allowed.[30] Said Abaye to him: But R. Simeon admits (that it is forbidden] in [a case of] 'Let his head be cut off and let him not die!'[31] Said he to him: Not like those Babylonians who are not skilled in moving aside,[32] but there are some who are skilled in moving aside.[33] If so,[34] why [give the reason of] 'anxious'?[35] — For one who is not skilled. [Then] let them say: One who is skilled is allowed [to perform the first intercourse on Sabbath], one who is not skilled is forbidden? — Most [people] are skilled.[36] Said Raba the son of R. Hanan to Abaye: If this were so, then why [have] groomsmen,[37] why [have] a sheet?[38] — He [Abaye] said to him: There [the groomsmen and the sheet are necessary] perhaps he will see and destroy [the tokens of her virginity].[39]

R. Ammi objected:[40] He who pierces[41] an abscess on Sabbath, if [in order] to make an opening[42] to it, he is guilty,[43] but if [in order] to cause pus to come out of it

(1) Lit., 'is it not?' Having quoted the Mishnah from Nid. 64b, R. Hisda proceeds to ask his question, which is based on the last statement of Beth Hillel.
(2) The question presumes that 'until the night following the Sabbath (one gives her) four nights' may also mean any one of the four nights, and thus the intercourse may be first consummated on the night of Sabbath, (v. Rashi). This shews that one may have the first intercourse on Sabbath.
(3) Sabbath must, therefore, be included!
(4) One night before Sabbath. The intercourse on Sabbath was thus not the first.
(5) What new law does the Tanna teach us? Why should he (the husband) not be allowed to have intercourse on Sabbath?
(6) Lit., 'a narrow opening (or breach). one may enter into it on Sabbath.'
(7) Lit , 'and although.'
(8) He may have, say the second intercourse on Sabbath, v. Rashi, ad loc.
(9) The verses, Deut. VI, 4-9, XI, 13-21; Num. XV, 37-41 which are recited daily, morning and evening.
(10) Following the marriage.
(11) I.e the first intercourse. Mishnah Ber. 16.
(12) That he is free from the reading of Shema', even on Sabbath night.
(13) Lit., 'because he is anxious, because he wants to have intercourse.' Being preoccupied with a duty (mizwah) he is free from another duty (mizwah).
(14) [Before Sabbath, and forbidden to have it on Sabbath.]
(15) Mental agitation, worry.
(16) Phylacteries, v. Glos.
(17) Cf. Ezek. XXIV, 17. [The reference being there to the Tefillin which Ezekiel was charged not to lay aside despite his mourning for his wife. V. M.K. 15a.] A mourner, though very much troubled, is nevertheless not free from observing the precepts. We thus see that anxiety does not exempt one from fulfilling the various religious commandments. And so in the case of the Mishnah quoted by R. Joseph it cannot be that the bridegroom is free from the reading of Shema' only because of his anxiety.
(18) With regard to the first intercourse on Sabbath.
(19) Lit 'this is (of) Tannaim.
(20) The bridegroom.
(21) After the marriage.
(22) If he did not do an act in the second night either.
(23) The third night (after the fourth day in the week) is Sabbath, and he is free from reading Shema' as he is allowed to perform the marital act for the first time.
(24) The teacher of this Baraitha holds that he is not allowed to perform it first on Sabbath, and therefore he is obliged to read Shema'.
(25) In the Baraithas just quoted.
(26) The Tannaim.
(27) According to the first Baraitha his anxiety caused by the fact that he is not allowed to perform the act on Sabbath frees him from reading Shema'. And according to the second Baraitha this anxiety does not free him from reading Shema'. According to the first Baraitha the case of the mourner would be different. Since anxiety is no part of the mourning observances (Rashi. a.l.).
(28) I.e., the dispute of the Tannaim just quoted by Raba is the same as the dispute of the Tannaim of the Baraitha to be quoted now.
(29) Lit., 'shall not have intercourse at the beginning.'
(30) V. supra p. 19, n. 4.
(31) V. supra p. 20, n. 8.
(32) I.e., having intercourse with a virgin without causing a bleeding.
(33) Thus no blood need come out, and 'Let his head be cut off and let him not die!' does not apply.
(34) If the bridegroom is skilled in 'moving sideways'.
(35) He need not be anxious about the intercourse and should not be free from reading Shema' on account of such anxiety.

(36) Therefore the principle regarding 'Let his head be cut off and let him not die!' does not, as a rule, apply.
(37) The groomsmen testify in case of need to the virginity of the bride. V. infra 12a. If the bridegroom will act in a manner that will cause no bleeding, the groomsmen will not be able to testify on the question of virginity.
(38) To provide evidence of the virginity of the bride. Cf. Deut. XXII, 17.
(39) It may happen that he will act in the normal manner and cause bleeding but he will destroy the tokens and maintain that the bride was not a virgin; for this reason the above mentioned provisions are necessary. Where however he moved aside and made a false charge as to her virginity, the bride can plead that she is still a virgin (Rashi).
(40) V. 'Ed. (Sonc. ed.) p. 12 nn. 5-6.
(41) Lit., 'loosens.' Jast.: 'manipulates.'
(42) Lit., 'mouth'.
(43) Of Sabbath-breaking.

Talmud - Mas. Kethuboth 7a

he is free from punishment]?[1] — There[2] it is[3] stored up[4] and is [entirely] loose,[5] here[6] it[7] is stored up[8] but is not [entirely] loose.[9] R. Ammi allowed to have first intercourse[10] on Sabbath. Said the Rabbis to him: But her kethubah[11] is not written yet! — He said to them: Let her seize movable goods.[12] R. Zebid permitted to have the first intercourse on Sabbath. Some say: R. Zebid himself had the first intercourse on Sabbath. Rab Judah allowed to have the first intercourse on a festival. R. Papi said in the name of Raba: You shall not say [that] on a festival it[13] is allowed, but [that] on Sabbath it is forbidden. It is just as well allowed on Sabbath; only it happened so.[14] R. Papa said in the name of Raba: On a festival it is allowed, on Sabbath it is forbidden. Said R. Papi to R. Papa: What is your opinion? Since a wound[15] has been permitted [on a festival] for a necessity. it has been permitted also when there is no necessity? If that were so, it should be permitted to put spices on coals[16] on a festival, for since the kindling of fire has been allowed [on a festival] for a necessity, it should be allowed also when there is no necessity![17] Said he to him.[18] Concerning this[19] the Biblical verse said, save that which every man must eat,[20] [this means] a thing which is useful[21] for every man.[22] R. Aha, the son of Raba, said to R. Ashi: If this were So,[23] then if a deer happened to come to the hands of a person[24] on a festival, [shall we say that] since it is not of equal usefulness for every person,[25] is it really so that it would be forbidden to kill it? Said he[26] to him:[27] I say, 'a thing that is needful for every person,'[28] [and] a deer is needful for every person.[29] R. Jacob, the son of Idi, said: R. Johanan gave a decision[30] in Zaidan:[31] It is forbidden to perform the first intercourse on Sabbath. — And is there an instructive decision for a prohibition?[32] — Yes, we have learned in a Mishnah:[33] The school of Hillel gave a decision regarding her[34] that she[35] should be a Nazirite yet another seven years. Or indeed it is as that which has been taught: If the cord of the spinal column is severed in its larger portion [the animal is trefa],[36] [this is] the view of Rabbi.[37] R. Jacob Says: Even if it[38] is [only] perforated [the animal is trefa]. Rabbi gave a decision[39] according to R. Jacob.[40]

R. Huna said: The halachah is not as stated by R. Jacob. R. Nahman b. Isaac taught thus: R. Abbahu said: R. Ishmael b. Jacob, from Tyre asked R. Johanan in Zaidan, and I heard [it]: Is it allowed[41] to have the first intercourse on Sabbath? And he[42] said to him:[43] It is forbidden. — And the law is: It is allowed to have the first intercourse on Sabbath.[44]

R. Helbo said [that] R. Huna said [that] R. Abba, the son of Zabda, said [that] Rab said: A maiden as well as a widow requires a benediction.[45] — But did R. Huna say so? Did not R. Huna say: A widow does not require a benediction? — It is not difficult.[46] Here[47] [it speaks] of a young man[48] who marries a widow, there[49] of a widower who marries a widow. And when a widower marries a widow [a benediction] is not required? Did not R. Nahman Say: Huna b. Nathan said to me: A Tanna taught: Whence [is it derived that] the benediction of the bridegrooms[50] [has to be said] in the presence of ten [persons]? Because it is said, And he took ten men of the elders of the city, and said: 'Sit ye down here'. And they sat down.[51] And Boaz was a widower, who married a widow![52] — What is [the meaning of the words] 'she does not require a benediction' which R. Huna said? She

does not require a benediction during all the seven days. but on one day[53] she requires a benediction. But that which has been taught:[54] 'The Sages were anxious for the welfare of the daughters of Israel, that he[55] may rejoice with her[56] three days' — how is this to be understood?[57] If [it speaks] of a young man, did you not say — seven;[58] if of a widower, did you not say — one day?[59] — If you wish, you may say [that it speaks] of a widower [and in this case] one day is for the benediction and three days are for rejoicing. And if you wish, you may say [that it speaks] of a young man [and in this case] seven [days] are for the benediction and three [days] for rejoicing.

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(1) And permitted: v. Shab. 107a and 3a. Intercourse should thus be permitted on Sabbath for the first time, even when the aim is the bleeding!

(2) In the case of the abscess.

(3) The blood.

(4) In the abscess.

(5) From the flesh.

(6) In the case of the virgin. bride.

(7) The blood.

(8) In the womb.

(9) From the walls of the womb. [Read with MS.M. 'It is neither stored up nor loose,' but the result of a wound, hence forbidden.]

(10) Lit., 'to perform in the beginning'.

(11) The marriage contract; lit., 'a written deed' (v. Glos.). Marital union is forbidden before the kethubah is written.

(12) And the movable goods will be a pledge in her hand with regard to the kethubah until the marriage contract will be written, when all his real estate is mortgaged with regard to kethubah.

(13) The first intercourse.

(14) Lit., 'and the event that was was thus'. [The question was put to him on a festival and he declared it permissible.]

(15) I.e., the making of a wound.

(16) To perfume the room after dinner; v. Ber. 43a.

(17) The meaning of the question of R. Papi to R. Papa is as follows: If a distinction is to be made, regarding the first intercourse, between Sabbath and a festival and it is to he held, as R. Papa holds in the name of Rab, that it is forbidden in Sabbath and allowed on a festival, then R. Papa must hold that, since certain work was allowed on a festival for a necessity, work should be allowed on a festival even when there is no necessity for it. It is, e.g. allowed to make a wound on a festival by slaughtering an animal for the need of food. It would, therefore, according to R. Papa, be allowed to make a wound (v. supra 3b, 4b, 5b) by performing the first intercourse on a festival, although there is no necessity for it, since the first intercourse can wait until after the festival. If this view were correct, then it should have been allowed to burn spices on coals on a festival, although spices are not a necessity, since the kindling of fire on a festival is allowed for a necessity. And the accepted view is that it is forbidden to put spices on coals on a festival. Consequently, if the first intercourse is forbidden on sabbath it should be forbidden also on a festival, since it is not a necessity. R. Papa's view is therefore wrong. Generally speaking, work that is forbidden on Sabbath is forbidden on a festival. There is an exception in the case of work necessary for preparing food. This is already indicated in Ex. XII, 16; v. Meg. 7b.

(18) To R. Papi.

(19) I.e., to avoid, or anticipate the answer to, your question.

(20) Ex. XII, 16. The verse continues, 'that only may be done to you'.

(21) Literally, 'equal', 'like', 'worth'; a thing that is of equal worth for every one, namely, to eat, to do, to have.

(22) The sense of the answer is this: You cannot compare the first intercourse to spices. Spices are not of equal necessity for every person. As Rashi puts it, only people who are used to luxuries desire spices. But sexual intercourse, even the first act, is a human need, which applies to all people.

(23) I.e., if only work for a necessity to all is allowed on a festival.

(24) Lit., 'happened to meet him.'

(25) Cf. n. 6.

(26) R. Ashi.

(27) To R. Aha.

(28) R. Ashi seems to emphasize the needfulness of the object, though it may nor be of equal necessity to all.

(29) Indeed, he answers, a deer is good for every person, and therefore, it may be slaughtered on a festival.
(30) הורה means 'to teach', 'to instruct', 'to decide'. הוראה denotes a decision based on traditional teaching and (on) one's own learned deductions (One might call it 'an instructive decision.'
(31) Sidon; [others: Bethsaida]
(32) I.e., does not apply the term הורה, or הוראה to a prohibitory decision which need not necessarily be based on tradition or powers of dedication (Rashi).
(33) Nazir 19b.
(34) הורוה.
(35) The Queen Helena of Adiabene, mother of King Monabaz. V. Nazir (Sonc. ed.) p. 66, n. 4.
(36) It is forbidden to use the animal for food if the larger portion of its spinal cord was severed while the animal was alive.
(37) Lit , '(these are) words of Rabbi . Rabbi is Rabbi Judah ha-Nasi.
(38) The spinal cord.
(39) הורוה v. Hul. 45b.
(40) Against his own view. The view of R. Jacob was stricter than that of Rabbi.
(41) Lit., 'How is it?'
(42) R. Johanan.
(43) To R. Ishmael.
(44) This is the conclusion of the long argument.
(45) At the celebration of the marriage. v. P.B. p. 299. Lit , 'laden (with) a blessing. ' Cf. 'obliged to', 'bound to.'
(46) There is no contradiction between the two traditions.
(47) Where R. Huna says that a widow requires a benediction.
(48) A young man who was never married before.
(49) Where R. Huna says that a widow does not require a benediction.
(50) Identical with the benediction mentioned above.
(51) Ruth IV, 2.
(52) And still the benediction was required. As to Boaz having been a widower, v. B.B. 91a.
(53) On the day of marriage.
(54) V. supra 5a.
(55) The bridegroom.
(56) The bride.
(57) Lit., 'In what?' 'How?'
(58) The benediction has to be said all the seven days following the marriage ceremony, and this implies rejoicing. That the benediction has to be said all the seven days in the case of the marriage of a young man, even if the bride is a widow, is inferred from the statement that in the case of the marriage of a widower and a widow it is not required to say the benediction all the seven days (Rashi).
(59) Only on one day has the benediction to be said, and this apparently means rejoicing only on one day.

Talmud - Mas. Kethuboth 7b

An objection was raised: [It has been taught:] The benediction is said [at the celebration of the marriage] for a maiden seven [days] and for a widow one day. Is it not [to be understood that] even [in the case of] a widow who marries a young man [the benediction is said only on one day]? — No [only when the widow marries] a widower. But [if the widow marries] a young man, what [then]? Seven [days]?[1] If that is so, let it be taught:[2] The benediction is said for a maiden[3] seven [days], and for a widow who marries a young man[4] seven [days], and for a widow [who marries a widower][5] one day? — It taught a decided thing:[6] That there is no maiden who has less than seven [days],[7] and there is no widow who has less than one day.[8] The [above] text [says]: R. Nahman said: Huna b. Nathan said to me: A Tanna taught: Whence [is it derived that] the benediction of the bridegrooms [has to be said] in the presence of ten [persons]? Because it is said, And he took ten men of the elders of the city, and said: 'Sit ye down here'.[9] But R. Abbahu said [that it is derived] from here: In assemblies bless ye God, the Lord, from the fountain of Israel.[10] And how does R. Nahman

expound this verse of R. Abbahu?[11] — He requires it for the same purpose as has been set out in a Baraitha:[12] R. Meir used to say: Whence [can it be derived] that even embryos in the bowels of their mothers sang[13] a song[14] by the sea?[15] Because it is said, In assemblies bless ye God, the Lord, from the fountain of Israel.[16] And the other one?[17] — If [that were] so, let the verse say,[18] 'from the womb.'[19] Why [does it say], 'from the fountain'?[20] [To show that it is] concerning the affairs of the fountain.[21] And how does R. Abbahu expound that verse of R. Nahman?[22] — He requires it for expounding: an Ammonite, and not an Ammonitess, a Moabite, and not a Moabitess.[23] For if you would think [that the presence of the ten men was required] for [the saying of] the benediction, would it not have been sufficient if they had not been elders?[24] And the other one?[25] — If you would think [that the verse was to be used] for that exposition, would it not have been sufficient if there had not been ten [persons]?[26] — Yes, to make the matter public[27] — and as Samuel said to R. Hanna of Bagdath:[28] Go out and bring me ten[29] [persons] and I will say unto thee in their presence; If one assigns [property] to an embryo, it acquires it. But the law is: If one assigns [property] to an embryo, it does not acquire it.[30]

The Rabbis taught: The benediction of the bridegrooms is said[31] in the house of the bridegroom.[32] R. Judah says: Also in the house of the betrothal[33] it is said.[34] Abaye said: And in [the province of] Judah they taught [the opinion of R. Judah] because [in the province of Judah] he[35] is alone with her.[36]

Another [Baraitha] teaches: The benediction of the bridegrooms is said in the house of the bridegrooms and the benediction of betrothal in the house of betrothal. [As to] the benediction of betrothal — what does one say?[37] — Rabin b. R. Adda and Rabbah son of R. Adda both said in the name of Rab Judah: Blessed art Thou, O Lord our God, King of the Universe, who has sanctified us by his commandments and has commanded us concerning the forbidden relations and has forbidden unto us the betrothed[38] and has allowed unto us the wedded[39] through [the marriage] canopy[40] and sanctification.[41] R. Aha 'the son of Raba, concludes it.[42] in the name of Rab Judah, [with the words]: Blessed art Thou, O Lord, who sanctifies Israel through canopy and sanctification. He who does not seal[43] [holds that] it is analogous to the blessing over fruits and to the benediction [said on performing] religious commandments.[44] And he who seals[45] [holds that] it is analogous to the kiddush.[46]

Our Rabbis taught: The blessing of the bridegrooms is said in the presence of ten [persons][47] all the seven days.[48] Rab Judah said: And that is only if new guests[49] come.[50] What does One say?[51] Rab Judah 'and: 'Blessed art Thou, O Lord our God, King of the Universe,

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(1) The benediction has to be said during seven days, just as at the marriage of a young man and a maiden!

(2) I.e., it should have been taught.

(3) On the occasion of the marriage of a maiden.

(4) On the occasion of the marriage of a widow and a young man.

(5) On the occasion of the marriage of a widow and a widower.

(6) A definite thing.

(7) On the occasion of the marriage of every maiden the benediction is said during the seven days fol lowing the marriage.

(8) On the occasion of the marriage of a widow the benediction must be said at least on one day (the day of the marriage). Usually a widow marries a widower.

(9) V. supra 7a.

(10) Ps. LXVIII, 27. An 'assembly' consists of at least ten persons; v Sanh. 2a. The 'fountain' is regarded by R. Abbahu, Midrashically, as an allusion to the young wife. Cf. Prov. V, 18: Let thy fountain be blessed, and have joy of the wife of thy youth. V. also V, 15' and lsa. LI, 1. The derivation of R. Abbahu from the verse in Psalms is this: When a marriage is celebrated and a new fountain of Israel is to enrich life, a benediction has to be said in the presence of ten persons.

(11) I.e. 'to what Midrashic use does R. Nahman put Ps. LXVIII, 27?
(12) Lit., 'to what has been taught'.
(13) Lit., 'said.'
(14) Probably the song (Ex. XV) is meant.
(15) The Red Sea.
(16) The derivation is: Even those who were still in 'the fountain' of Israel sang a song unto the Lord. In vv. 23 and 26 R. Meir no doubt saw, Midrashically., allusions to the crossing of the Red Sea. Cf. especially v. 26 with Ex. XV. 20, 21.
(17) R. Abbahu. How does he derive the idea of R. Meir just expounded, since he uses the verse in Ps. LXVlii for another purpose (benediction at the marriage in the presence of ten persons)?
(18) I.e., the verse should have read.
(19) 'From the womb' would indicate the presence of 'fruit of the womb', of an embryo. Cf. e.g., Gen. XXX, 2.
(20) 'Fountain' does not refer to present pregnancy, to an embryo, but to the source of life in the woman without implying that there is life in it now. Therefore we can also speak of the 'fountain' in the maiden.
(21) Marriage is concerned very largely with 'the affairs of the fountain. ' R. Abbahu, therefore, prefers to use the verse in Ps. LXVIII for his Midrashic exposition (benediction at the marriage in the presence of ten persons).
(22) Ruth IV, 2.
(23) In Deut. XXIII, 4, it is said, An Ammonite or a Moabite shall not enter into the assembly of the Lord. The presence of ten elders was required for the interpretation that the prohibition to enter into the assembly of the Lord, that is, to be admitted into the community of Israel, applied only to Ammonite and Moabite men and not to Ammonite or Moabite women. This interpretation made the law clear, and thus Boaz could marry Ruth the Moabitess.
(24) That the presence of elders was necessary shews that the interpreting and establishing of a law was required.
(25) R. Nahman. How will he get that exposition if he uses the verse for a different purpose?
(26) If the presence of the elders was required for establishing a law, then there was no need to have ten elders. A smaller number of elders would also have been sufficient. It is different, according to R. Nahman, if the presence of the ten persons was required for saying the benediction at the marriage of Boaz and Ruth. Ten persons form a congregation; v. supra.
(27) This is the view of R. Abbahu.
(28) Bagdad. v. Rashi, Ber. 54b.
(29) So as to make his legal pronouncement public.
(30) V. B.B. 142b.
(31) Lit., 'they bless the benediction etc.' The reference is to the benediction at the celebration of the marriage held usually at the house of the bridegroom's parents as distinguished from that recited at the betrothal at the house of the parents of the bride V. infra.
(32) V. infra.
(33) On 'betrothal' v. Glos. s.v. erusin.
(34) V. p. 29, n. 13.
(35) The bridegroom.
(36) The bride. Bridegroom and bride are, in the province of Judah, closeted alone after the betrothal, (v. infra 12a). [This is forbidden without the benediction having been previously recited. V. Kallah, I.]
(37) I.e., what are the words constituting the benediction of betrothal?
(38) [Betrothal (erusin) without marriage (nissu'in) does not permit the bride to the bridegroom.]
(39) I.e., the women who are legally married unto their husbands. For the sake of clarity the post-Talmudic versions read: 'those who are wedded unto us.' V. Rashi and the Prayer-Books.
(40) Huppah v. Glos. and Kid (Sonc. ed.) p. 5, n. 7.
(41) חופה וקדושין together constitute the complete marriage. [Var. lec. (Ittur and others) חופה בקדושין 'Huppah by means of Kiddushin', a preferable reading since the act Kiddushin (betrothal) took place in former days before Huppah.]
(42) The benediction; i.e., he adds a concluding portion.
(43) I.e., does not add the concluding portion.
(44) In those blessings there are no concluding portions. [Because their subject matter is praise and not interrupted by words of supplication or other matter (Rashi). Tosaf.: Because they are short prayers], Cf., e.g., P.B. pp. 289-291, 270.
(45) I.e., adds a concluding portion.

(46) Kiddush, 'sanctification', is the special term for the benediction said at the beginning of the Sabbath or a festival. And that benediction has a concluding portion, cf. P.B. pp. 124, 230-231, 243. [Because apart from words of praise to God it contains matter in description of the day of rest or the festival (Rashi). Tosaf.: because it is a lengthy prayer.]
(47) Lit., 'with ten'.
(48) Following the marriage.
(49) Lit 'new faces'.
(50) The benediction of the bridegrooms is said, at the meal on every day' of the seven day's if on every succeeding day new guests, that is guests who were not there on the previous day, come to the meal. For a pretty thought as to Sabbath being 'a new guest' v. Tosaf. a.l.
(51) I.e., What is the text of the benediction?

Talmud - Mas. Kethuboth 8a

who has[1] created all things[2] to his glory'. and[3] 'the Creator of man', and 'who has created man in his image. In the image of the likeness of his form, and has prepared unto him[4] out of himself[5] a building forever.[6] Blessed art thou, O Lord, Creator of man'.[7] 'May the barren[8] greatly rejoice and exult[9] when her children will be gathered[10] in her midst in joy.[11] Blessed art Thou, O Lord, who maketh Zion joyful through[12] her children'[13] 'Mayest Thou make the loved[14] companions greatly to rejoice, even as of old[15] Thou didst gladden Thy creature[16] in the Garden of Eden. Blessed art Thou, O Lord, who maketh bridegroom and bride to rejoice'.[17] 'Blessed art Thou, O Lord our King, God of the universe, who has created joy and gladness, bridegroom and bride, rejoicing, song, mirth, and delight,[18] love, and brotherhood, and peace, and friendship.[19] Speedily, O Lord our God, may be heard in the cities of Judah, and in the streets of Jerusalem, the voice of joy and the voice of gladness, the voice of the bridegroom and the voice of the bride, the voice of the singing[20] of bridegrooms from their canopies[21] and of youths from their feasts[22] of song. Blessed art Thou, O Lord, who maketh the bridegroom to rejoice with[23] the bride'.[24]

Levi came[25] to the house of Rabbi to[26] the wedding-feast of R. Simeon his son [and] said five benedictions.[27] R. Assi came[25] to the house of R. Ashi to[26] the wedding-feast of Mar his son [and] said six benedictions.[28] Does it mean to say that they differ in this: that one holds that there was one formation,[29] and the other holds that there were two formations?[30] — No. All[31] agree [that] there was [only] one formation, [but they differ in this:] one holds [that] we go according[32] to the intention,[33] and the other holds [that] we go according[32] to the fact,[34] as that [statement] of Rab Judah [who] asked:[35] It is written, And God created man in his own image,[36] and it is written, Male and female created He them.[37] How is this [to be understood]? [In this way:] In the beginning it was the intention[38] [of God] to create two [human beings], and in the end [only] one [human being] was created.

R. Ashi came to the house of R. Kahana.[39] The first day[40] he said all the benedictions.[41] From then and further on;[42] if there were new guests[43] he said all the benedictions, but if not [he declared] it to be merely a continuance of the same joy[44] [in which case] one says [only] the benedictions 'in whose dwelling there is joy'[45] and 'who has created'.[46] From the seventh day to the thirtieth day.[47] whether he[48] said to them[49] 'because of the wedding[50] or whether he did not say to them 'because of the wedding', one says the benediction 'in whose dwelling there is joy'.[51] From then[52] and further on;[53] if he said to them 'because of the wedding' he says the benediction 'in whose dwelling there is joy', but not otherwise.[54] And if he says to them 'because of the wedding', until when [is this benediction said]?[53] Said R. Papi in the name of Raba: Twelve months [forming] a year.[55] And at first[56] from when?[57] Said R. Papa: From the time that they put barley into the mortar.[58] But this is not so? Did not R. Papa busy himself for his son Abba Mar[59] and say the benediction[60] from the time of the betrothal? — It was different [in the case of] A. Papa, because he took the trouble [of preparing everything for the wedding].[61] Rabina busied himself for his son[62] in the house of R. Habiba and said the benediction[60] from the time of the betrothal. He said: I am sure with regard to

them that they will not retract [the betrothal].[63] [But] the matter was not successful[64] and they did retract. R. Tahlifa, son of the West,[65] came to Babylon [and] said six long benedictions.[66] But the law is not according to him. R. Habiba came into the house of a circumcision[67] [and] said the benediction 'in whose dwelling there is joy.' But the law is not according to him, since they are distressed because the child has pain.

R. Nahman said [that] Rab said: Bridegrooms are of the number, and mourners are not of the number.[68] An objection was raised: Bridegrooms and mourners are of the number? — You ask [from] a Baraitha against Rab?[69] Rab is a Tanna and differs![70] It has been said: R. Isaac said [that] R. Johanan said: Bridegrooms are of the number, and mourners are not of the number. An objection was raised: Bridegrooms and mourners are of the number?[71] —

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(1) It is common usage to translate in the Prayer books the perfect verb 'has' in the benediction by 'hast' (created, etc.).

(2) Lit 'all'.

(3) I.e., also the benediction of ('the Creator of man'). The words, 'the Creator of man' are preceded by the words, 'Blessed art Thou, O Lord our God, King of the universe,' as in the first benediction.

(4) Unto man.

(5) Out of man. P.B. 'out of his very self.'

(6) Lit., 'a building even to perpetuity.' By 'a building for ever', Eve is meant. V. Rashi, a.l. and cf. Gen. II. 22. 'A building for ever' contains the idea of 'the mother of all living' (Gen. III, 20). It is woman that carries the human race. P.B. p. 299: — 'a perpetual fabric' — expresses well this idea.

(7) These three benedictions are based on Gen. I and II. In the first benediction God is praised for the creation of the world ('the all'). In the second benediction God is praised for the creation of man. 'Man' is used here in the sense of 'human being', cf. Gen. I, 27. In the third benediction God is praised for fashioning man in his image, in the image of the likeness of his form, and for preparing a perpetual building out of man himself. In creating Eve, out of man, god provided for the perpetual renewal of man, of the human being. The divine form of man and the continual re-creation of man, by ever recurring new births, in the divine form, are the subjects of praise in the third benediction while the subject of the second benediction is the creation of man generally. 'The Creator of man', in the concluding portion of the third benediction, has already the further meaning of the creation of man as expressed in the third benediction. In this respect 'The Creator of Man', in the third benediction, differs from 'The Creator of Man' of the second benediction. This might also explain the difficulty which has been felt to exist in the relationship of these two benedictions (v. the Gemara later and Rashi a.l.; v. also Abrahams' Notes, P.B. p. ccxvi).

(8) I.e., Zion; cf. Isa. LIV.

(9) Cf. Isa. LXI, 10 and LXII, 5.

(10) Lit., 'at the gathering of her children.'

(11) Cf. Isa. LIV, 1-3.

(12) Lit., in 'with'.

(13) I.e., by restoring to Zion her children. This benediction seems to have arisen out of Isa. LXII. Cf. especially vv. 4 and 5. And according to Ps. CXXXVII, Jerusalem is to be remembered and set 'above my chiefest joy'; Rashi a.l. (fol. 8a).

(14) I.e., the bridegroom and the bride.

(15) The word מקדם in Gen. II, 8, means 'eastward'. Here it is used in the sense of 'in former times', 'of old'.

(16) I.e., Adam, by giving him a wife; cf. Gen. II, 23. Adam and Eve rejoiced at their union. And so may the bridegroom and bride rejoice.

(17) The last two benedictions do not begin with 'Blessed art Thou, O Lord out God, King of the universe,' because they are in fact prayers. In the first, second and third benedictions God is praised for what he had done. In the fourth as well as in the fifth benediction a prayer is uttered that God may cause something to happen, namely joy to Zion, or to the bridegroom and the bride. For another explanation, v. Rashi and Tosaf. a.l. V., however, Rashi s.v.משמח. The fifth benediction seems to have resulted from the fourth benediction. V. supra n. 4 and cf. Isa. LXII, 5. The two prayers, like the two ideas contained in vv. 4 and 5, were bound up with one another.

(18) All these words mean 'joy'. דיצה means dancing with joy'.

(19) Or, 'fellowship', companionship'.

(20) Lit., 'breakings forth into song, shouts of joy'.
(21) In the Hebrew text the singular is used. Canopy means here 'a bridal chamber'. Cf. Joel II, 16.
(22) In the Hebrew text the singular is used.
(23) In this benediction the joy referred to is the joy of the bridegroom with the bride (Rashi).
(24) In this benediction God is praised for the creation of joy in its various forms. Bridegroom and bride represent joy. True joy leads to love and friendship. These six benedictions are recited at Jewish weddings up to this day. The benediction over the wine is added to them, and together they are called 'the Seven Benedictions'. The loftiness of tone and the beauty of style of these benedictions are unsurpassed. The blend of Biblical strength and Midrashic sweetness seems to point to an early date.
(25) Lit., 'happened to come .
(26) Lit., 'in'. A more correct translation might be, 'during'.
(27) Lit., 'blessed five'. Apparently the second benediction was left out (Rashi).
(28) I.e., all the six benedictions.
(29) For man and woman. Therefore one benediction for the creation of man and woman is sufficient. This would be the third benediction.
(30) One of man and one of woman.
(31) Lit., 'the whole world.'
(32) Lit., 'after'.
(33) The intention was to create two human beings: man and woman.
(34) Only' man was formed, and woman was 'built' out of him; cf. Gen. II, 7 and 22.
(35) Lit., 'to throw up a question'.
(36) Gen. I, 27.
(37) Gen. V, 2: It seems that R. Judah does not ask his question merely from the first five words of Gen. I, 27, and from the first three words of Gen. V, 2, for in that case there would have been no need for him to refer to Gen, V, 2, since he could have asked the question from the last words of Gen 1. 27 'male and female he created them' but his question is from the whole verse 27 in Gen I and from the whole verse 2 in Gen V. The meaning of the question should be this: Gen I, 27 begins by saying that God created man and ends by saying that man was created as male and female. The last words of Gen I, 27 would thus shew that there were two creations. Gen V, 2 begins by saying that God created them male and female, and then it says, as He blessed them and called their name Man in the day when they were created. This verse would shew that in the end there was only one creation. In short: Gen. I, 27. begins with one creation and ends with two creations, and Gen V, 2, begins with two creations and ends with one creation. This, it seems, is the question of Rab Judah. Rab Judah quoted the verses by quoting the first portions of the verse. He really meant to say 'etc.' — In 'Er. 18a and Ber. 61a the name is R. Abbahu. In 'Er. 18a, in the image of God hath he created man, is quoted from Gen. I, 27. In Ber. 61a, 'for in the image of God made he man' (Gen. IX, 6) is quoted. This quotation apparently stands for that of Gen. I, 27. Both in 'Er. 18a and Ber. 61a 'male and female created He them' is quoted first.
(38) Lit., 'it went up in the thought', namely of God. A sense of reverence does not allow Rab Judah to mention 'God' after 'thought'. The meaning of the answer is: At first God intended to create two human beings, man and woman (Gen I. 27). But in the end only man was created by God, and woman was 'built' by God out of man (Gen V, 2)
(39) I.e., to the wedding-feast.
(40) The first of the seven days of the wedding festivities, which began after the marriage ceremony; v. supra 7b.
(41) Lit., 'he blessed all of them.'
(42) Lit., 'from now'. I.e., from the second day to the end of the seven days.
(43) Lit., 'new faces': cf. supra 7b.
(44) If there were new guests it would be a new occasion for joy.
(45) Lit., 'the joy'.
(46) The sixth benediction.
(47) Lit., 'from seven to thirty.'
(48) The host, as a rule the father of the bride.
(49) The invited guests.
(50) 'I have invited you here to dinner' (Rashi).
(51) שהשמחה במעונו v. p. 35, n. 1.
(52) Lit., 'from now'.

(53) I.e., after the thirty days.

(54) Lit., 'if not, not'. (18) The benediction 'in whose dwelling there is joy'.

(55) I.e., the whole of the first year. The phrase 'in whose dwelling there is joy' occurs here for the first time. Commenting on this phrase Rashi says 'at the beginning of the summons (to say Grace).' The words 'in whose dwelling there is joy' are indeed used in the introduction to the Grace after meals at weddings; v. P.B. p. 300. Cf. also Abrahams' Notes, p. ccxviii, and Baer, Seder Abodoth Israel, p. 563. But the question arises: was שהשמחה במעונו said before the Grace after meals in Talmudic times? In our text there is no indication that this was so. Another question is: did the whole benediction consist of the words שהשמחה במעונו ? Or were they the initial words of a longer benediction? The benediction אשר ברא 'who has created' mentioned together with it is the sixth benediction, the longest of the six benedictions. One is thus very much tempted to think that שהשמחה במעונו were words of a longer benediction probably introduced by the formula 'Blessed art Thou, O Lord our God, King of the Universe' and said as a substitute for the first five benedictions. The key note of the first five benedictions is joy. Joy speaks out of every benediction; there was joy in the creation of the universe, in the creation of man, in the formation of man and woman. There is joy in the fourth and fifth benedictions. The joy in the first three benedictions is the joy of God. The joy in the fourth and fifth benedictions is also divine joy. The sixth benediction speaks of the joy created by God for man, 'Blessed art Thou, O Lord out God, King of the Universe, who has created joy and gladness.' etc. The joy of the first five benedictions is summarized by the words, 'in whose dwelling there is joy.' There is joy on high, there is joy with God. This joy is spoken of in the first five benedictions. And this joy is also expressed briefly in the words 'in whose dwelling there is joy'. The human joy, created by God, is expressed in the sixth benediction אשר באר, while שהשמחה במעונו stands for the benediction which was a substitute for the first five benedictions. On the first day of the wedding the six benedictions were said. After the first day, if there were no new guests, two benedictions were said. After the seventh day only one benediction was said. And that benediction was 'in whose dwelling there is joy.' Man's joy began to diminish. So only God's joy was now mentioned. In the time after the Talmud שהשמחה במעונו was given a place in the introduction to the Grace after meals at weddings, instead of being said as a full benediction after Grace, because the full text of this benediction was not mentioned in the Talmud. It may be that the tradition that the full benediction (with 'Blessed art Thou,' etc.) was said, was lost. It was felt that שהשמחה במעונו was left hanging in the air and it was incorporated in the summons to say Grace; v. P.B., p. 300. That the word מעון was chosen to denote the dwelling of God may be due to the fact that it is mentioned in Hag. 12b as the heavenly region in which the angels sing; v. Abrahams and Baer, loc cit. מעון is there spoken of as the fifth of the seven firmaments. Might there not be in it an allusion to the five benedictions, for which the benediction of שהשמחה במעונו is a substitute?

(56) Or, 'originally.' i.e., 'before the wedding.'

(57) Does one say 'In whose dwelling there is joy'.

(58) Or trough (for brewing beer), or pot (for planting barley for the wedding ceremony). The meaning of this phrase is: from the time that they begin making preparations for the wedding (v. Rashi).

(59) I.e., R. Papa had his son engaged to be married.

(60) In whose dwelling there is joy'.

(61) As all preparations for the wedding and the wedding-feast were made, R. Papa felt that he could say the benediction.

(62) I.e. , Rabina had his son engaged (Rashi).

(63) And therefore he said the benedictions.

(64) Lit., 'the matter was not supported (by divine help).

(65) I.e., son of Palestine, Palestinian. It may be that מערבא ('West') was the name of the father of R. Tahlifa; v. Levy, s.v. But the mention of Babylon seems to support the rendering 'son of the West', 'Palestinian'.

(66) He extended the first two benedictions by making additions to them (Rashi). It is possible that 'by long' is meant the full benedictions as they are given on fol. 8a, in contradistinction to the short blessing שהשמחה במעונו

(67) I.e., a house in which a circumcision took place, followed by a festive meal.

(68) There must be ten male persons for the recital of the six (or seven) 'benedictions of the bridegrooms', v. supra 7a and 7b. The benediction of the mourners is also said in the presence of ten male persons, v. infra 8b. R. Nahman says in the name of Rab that bridegrooms may be of the ten, but mourners may not be of the ten. There must be ten without the mourners.

(69) Lit., 'You throw a Baraitha against Rab.'

(70) I.e., Rab's authority is as great as that of a Tanna and he has therefore the right to differ with other Tannaim, Teachers of Mishnah or Baraitha.

(71) The same question is asked against R. Johanan as was asked against Rab. But the answer which was effective in the case of Rab could not be given with regard to R. Johanan. Therefore different answers are attempted, v. infra 8b.

Talmud - Mas. Kethuboth 8b

With regard to what was that taught?[1] With regard to Grace after meals;[2] [and] with regard to what did R. Johanan say [this ruling]?[3] With regard to the line [of comforters].[4] But [then] what of the dictum[5] of which)R. Isaac said [that] R. Johanan said: 'One says the benediction[6] of the bridegrooms in the presence of ten [male persons] and the bridegrooms are of the number, and [one says] the benediction of the mourners[7] in the presence of ten [male persons] and the mourners are not of the number' — is there a benediction [said] in the line [of comforters]?[8] — But [the answer is]: With regard to what did R. Johanan say [this ruling]?[3] with regard to the [benediction recited in the] open space.[9] But [then] what of the dictum which R. Isaac said [that] R. Johanan said: 'One says the benediction of the bridegrooms in the presence of ten [male persons] all the seven [days][10] and the bridegrooms are of the number, and [one says] the benediction of the mourners in the presence of ten [male persons] all the seven [days][11] and the mourners are not of the number — is the benediction [recited in] the open space said all the seven days?[12] — It is possible in the presence of new friends[13] — as in the case of[14] R. Hiyya. the son of Abba, [who was] the Bible teacher of the son[15] of Resh Lakish, or, as some say,[16] the Mishnah teacher of the son of Resh Lakish. [It happened as follows:] A child [of R. Hiyya, the son of Abba] died,[17] The first day[18] he [Resh Lakish] did not go to him. The next day[19] he [Resh Lakish] took with him[20] Judah the son of Nahmani,[21] his meturgeman.[22] [and] said to him: Rise [and] say something[23] with regard to[24] [the death of] the child. He spoke[25] and said: [It is written.] And the Lord saw and spurned, because of the provoking of His sons and His daughters.[24] [This means, in] a generation [in which the fathers spurn the Holy One, blessed be He, He is angry with their sons and their daughters and they die when they are young.[26] And some say [that] he [the child of R. Hiyya, the son of Abba, that died] was a young man[27] and that he [Judah the son of Nahmani] said thus to him:[28] Therefore the Lord shall have no joy in their young men, neither shall He have compassion on their fatherless and widows; for every one is profane and an evil-doer, and every mouth speaketh folly. For all this His anger is not turned away, but His hand is stretched out still.[29] (What is the meaning[30] of 'but His hand is stretched out still'? Said R. Hanan, the son of Rab:[31] All know for what purpose[32] a bride is brought into the bridal chamber, but whoever disgraces his mouth and utters[33] a word of folly-even if a [divine] decree[34] of seventy years of happiness[35] were sealed [and granted] unto him,[36] it is turned for him into evil.) — He came to comfort, [and] he grieved him? This he said to him: Thou art important enough to be held responsible[37] for [the shortcomings of] the generation.[38] He[39] [then] said to him:[40] Rise [and] say something with regard to the praise of the Holy One, blessed be He He spoke and said: The God,[41] who is great in the abundance of His greatness, mighty and strong in the multitude of awe-inspiring deeds, who reviveth the dead with his word,[42] who does great things that are unsearchable[43] and wondrous works without number.[44] Blessed art thou, O Lord, who revivest the dead.[45] He[46] then 'said to him:[47] Rise [and] say something with regard to the mourners. He spoke and said: Our brethren, who are worn out, who are crushed by this bereavement,[48] set your heart to consider[49] this: This it is [that] stands for ever,[50] it is a path from the six days of creation.[51] Many have drunk, many will drink,[52] as the drinking of the first ones, so will be that of the last ones. Our brethren, the Lord of consolation comfort you. Blessed be He who comforteth the mourners. (Said Abaye: 'Many have drunk' he should have said, 'many will drink' one should not have said, 'the drinking of the first ones', he should have said, 'the drinking of the last ones' one should not have said, for R. Simeon, the son of Lakish,[53] said, and so one has taught in the name of R. Jose: Man should never open his mouth to Satan.[54] Said R. Joseph: What text [shows this]? We should have been as Sodom, we should have been like unto Gomorrah.[55] What did He[56] reply unto him?[57] Hear the word of the Lord, ye rulers of Sodom, etc.[58]) He[59] [then] said to him:[60] Rise [and] say something with regard to the

comforters of the mourners.[61] He spoke and said: Our brethren, bestowers of lovingkindnesses, sons of bestowers of lovingkindnesses, who hold fast to the covenant of Abraham our father[62] [for it is said, For I have known him, to the end that he may command his children, etc.],[63] our brethren, may the Lord of recompense pay you your reward. Blessed art Thou who payest the recompense. He[64] [then] said unto him:[65] Rise [and] say something with regard to the whole of Israel. He spoke and said: Master of the worlds, redeem and save, deliver [and] help Thy people Israel from pestilence,[66] and from the sword, and from plundering,[67] and from the blast, and from the mildew, and from all kinds of calamities that [may] break forth and come into[68] the world. Before we call, mayest Thou answer,[69] Blessed art Thou who stayest the plague.[70] 'Ulla said, and some say [that] it was taught in a Baraitha: Ten cups [of wine] the scholars have instituted [to be drunk] in the house of the mourner: Three before the meal in order to open the small bowels, three during the meal in order to dissolve the food in the bowels, and four after the meal: one corresponding to 'who feedeth',[71] one corresponding to the blessing of 'the land',[71] one corresponding to 'who rebuildeth Jerusalem,[71] and one corresponding to 'who is good and doeth good'.[71] They [then] added unto them [another] four [cups]: one in honour of the officers of the town, and one in honour of the leaders of the town, and one in honour of the Temple. and one in honour of Rabban Gamaliel. [When] they began to drink [too much] and to become intoxicated, they restored the matter to its original state.[72] What [about] Rabban Gamaliel? — As it has been taught: At first the carrying out of the dead[73] was harder for his relatives[74] than his death,[75] so that they left him[76] and ran away, until Rabban Gamaliel[77] came and adopted a simple style and they carried him out[78] in garments of linen, and [then] all the people followed his example and carried out [the dead][79] in garments of linen. Said R. Papa: And now it is the general practice [to carry out the dead] even in rough cloth worth [only] a zuz.[80]

R. Eleazar said:

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(1) Lit., 'When was that taught'. In the Baraitha (that mourners ate also of the number)

(2) Lit., 'the benediction of food'.

(3) That mourners are not of the number.

(4) The line of comforters which was formed to offer consolation to the mourners after a burial, v. Sanh. 19a.

(5) Lit., 'But as to this that'.

(6) 'The blessing, or benediction, of the bridegrooms' has a collective sense. The six (or seven) benedictions are meant.

(7) Has also a collective sense; v. infra.

(8) Does one say benedictions in the line that is formed, after the burial of the dead, so that the friends may comfort the mourners? There only words of comfort are said, but no benedictions. In Sanh.. 19a one word of comfort is mentioned: תתנחמו 'be comforted'.

(9) The benedictions of the mourners were said in the open space, v. infra.

(10) Of the wedding festivities.

(11) Of mourning.

(12) Lit., 'Is there a benediction of the open space all the seven days?'

(13) Lit., 'Thou wilt find it in (the case of) new faces'. When new friends come to visit the mourners for the first time during the seven days, the benediction of mourners is said :in the free space.

(14) Lit., 'as that of.'

(15) So MS.M.; cur. edd. 'sons'.

(16) Lit., 'and some say.'

(17) It was R. Hiyya's child that died and not Resh Lakish's. Resh Lakish went to comfort R. Hiyya and took his (Resh Lakish's) meturgeman (v. infra) with him. Some scholars go wrong in the rendering of this passage. V., for instance, Levy p. 303. Bacher rightly speaks of the death of the young child of R. Hiyya.

(18) I.e., the first day of R. Hiyya's mourning.

(19) Lit., 'on the morrow.'

(20) Lit., 'led him.'

(21) Judah the son of Nahmani, is mentioned several times as the meturgeman of Resh Lakish; v. e.g. Sot. 37b, Cit. 60b, (also Tem. 14b), and Sanh. 7b.

(22) ‘Interpreter’. As to his function v. J.E., vol. VIII, p. 521. and vol. I, p. 527, n. I. One sentence may be quoted from the last-named article. ‘In a limited sense it (‘the interpreter’ Amora, or meturgeman) signifies the officer who stood at the side of the lecturer or presiding teacher in the academy and in meetings for public instruction, and announced loudly, and explained to the large assembly in an oratorical manner, what the teacher had just expressed briefly and in a low voice.’ The meturgeman was, therefore, a sort of assistant lecturer. Judah the son of Nahmani, was assistant lecturer to Resh Lakish. He was also a good preacher who expounded well Biblical verses homiletically (cf. e.g., Sanh. 7b). He could also recite benedictions by heart. Cf. Cit. 60b and Tem. 14b. For these reasons apparently Resh Lakish took with him Judah the son of Nahmani, when he paid a visit of condolence to R. Hiyya. the son of Abba. Judah spoke on behalf of Resh Lakish.
(23) Lit., ‘a word’, ‘a thing.’
(24) Lit., ‘corresponding to’, ‘vis-a-vis’.
(25) Lit., ‘he opened.’ This probably means: he opened his mouth (and said), cf. Job III, 1. It may also mean: he opened his discourse; v. the Dictionaries of Levy and Jastrow, s.v. Here the first meaning seems to be more likely. (15) Deut. XXXII, 19.
(26) Lit., ‘small’.
(27) I.e., a grown-up son, not a small child
(28) To R. Hiyya. the son of Abba
(29) Isa. IX. 16.
(30) Lit., ‘What?’ ‘Why?’
(31) In Shab. 33a: b. Raba.
(32) Lit., ‘for what.’
(33) Lit., ‘brings forth from his mouth.’
(34) Lit., a decree of His judgment.’
(35) Lit, ‘for good.’
(36) I.e., even if it was decreed in heaven that he should have seventy’ years of happiness. cf R.H. 16b.
(37) Lit., ‘to be seized’.
(38) Cf. Shab. 33b: ‘the righteous men are seized for (the shortcomings of) the generation.’ V. Rashi a.l.
(39) Resh Lakish
(40) Judah the son of Nahmani.
(41) According to Rashi the words ‘Blessed art Thou, O Lord our God, King of the Universe,’ are to be supplemented before ‘The God,’ etc.
(42) This phrase occurs also in the abbreviated Amida prayer said on Friday’ night. v. P.B. p. 120.
(43) Lit., ‘until there is no searching.’ Cf Ps CXLV. 3.
(44) Lit., ‘until there is no number.’ Cf. Ps. CXLVII, 5. The whole phrase occurs also in the evening service prayer v. P.B. p. 99.
(45) This benediction is, in its main ideas, reminiscent of the first three benedictions of the Amida.
(46) Resh Lakish
(47) Judah the son of Nahmani.
(48) Lit., ‘by this mourning.’
(49) Cf. I Chron. XXII, 25.
(50) Rashi adds: that all die, and you should nor weep too much.
(51) Lit., ‘in the beginning’.
(52) From the cup of sorrow.
(53) I.e., Resh Lakish.
(54) That is, one should never utter ominous words and thus invite misfortune.
(55) Isa. I, 9.
(56) God.
(57) Unto Isaiah.
(58) Isa. I, 20. Because Isaiah compared the people to Sodom and Gomorrah, God addressed them as ‘rulers of Sodom,’ ‘people of Gomorrah.’ This is to illustrate how ominous words can have an evil effect.
(59) Resh Lakish.
(60) Judah the son of Nahmani.

(61) The friends who came to comfort the mourners.

(62) Rashi adds: who bestowed lovingkindnesses. The meaning is: who are carrying out the trust with which Abraham was charged, also for future generations; v. next note.

(63) The passage is bracketed also in the original. The verse continues: and his household after him, that they may keep the way of the Lord, to do righteousness and Justice: to the end that the Lord may bring upon Abraham that which He has spoken of him; Gen. XVIII, 19.

(64) Resh Lakish.

(65) Judah the son of Nahmani.

(66) Lit ,'the pestilence.'

(67) Lit., 'the spoil', 'the plunder'.

(68) Lit.,'to'.

(69) Lit., 'and thou wilt answer'.

(70) Cf. Num. XVII, 13, 15; XXV, 8; II Sam. XXIV, 21, 25; Ps. CVI, 30. It is now time to deal with one or two points arising out of what we are told on this page (folio 8b) about the visit of Resh Lakish and his meturgeman, Judah the son of Nahmani, to R. Hiyya the son of Abba, on the occasion of the death of R. Hiyya's child. The story of this visit was introduced in order to show that there is ברכת רחבה during all the seven days of mourning if new friends are present on each occasion. Now, what is ברכת רחבה ? This question has not been answered yet. In the time of the Gaonim the tradition concerning it had faded already. In Shittah Mekubbezeth on Keth. 8b three different views are quoted. The view mentioned in Nahmanides' Toroth ha-Adam ed. Venice, p. 50a, is again different. The explanation attempted by Krauss in the Jahrbuch der jud.-lit. Gesellschaft, vol. XVII (1926), pp. 238-239 (v. also Krauss, Jahresbericht XXXVII-XXXIX Isr.-Theol. Lehranstalt in Wien, p. 60f) is unsatisfactory. בית האבל in Kethuboth 8b is not inaccurate (v. Jahrbuch, p. 235). The emendation suggested by Krauss (Jahresbericht, p. 60) for מאי ברכת אבלים ברכת רחבה . (Meg. 23b) is unacceptable. In Tractate Soferim ch. XIX ברכת רחבה is not mentioned. The quotation from Hai and Sherira in Shittah Mekubbezeth concludes with the words: 'As much as we have heard, we never heard that the ברכת רחבה was in vogue in Babylon'. The following explanation may however be briefly submitted: — רחבה in this connection has nothing to do with רחוב public place. It is, rather, the open space behind the house (of the mourner). V. Er. 24a-b and Krauss, T.A. vol. I, p. 48, and p. 361, n. 633. ברכת רחבה would thus mean the blessing of the mourners said in the open space behind the house of the mourner. When ten or more friends came to comfort the mourner there was, at any rate in many cases, no room in the house for all the visitors, and the mourners sat in the open space behind the house and the guests assembled there, and the benedictions ברכת אבלים were recited before the assembly in the open space. רחבה was therefore almost identical with the בית האבל Therefore, when it is said in Meg. 23b מאי ברכת אבלים ברכת רחבה this statement is entirely correct. (לא אזל לגביה can only mean that he (Resh Lakish) did not go to him (to the mourner). The next day he did go to him, namely, to his house, or to the open space behind the house. What Krauss, Jahrbuch, p. 239, says on לגביה cannot be accepted.) The story on this page (folio 8b) confirms this interpretation. Resh Lakish and his meturgeman went to R. Hiyya, that is, they went to his house, or to the open space near his house. Judah, the son of Nahmani, delivered there a homily and recited four benedictions. And these benedictions are called ברכת רחבה and ברכת אבלים. That is: The ברכת אבלים., which was recited in the רחבה was also called ברכת רחבה and required the presence of ten new guests. Whether this ברכת רחבה required a cup of benediction is difficult to say. In Toroth ha-Adam p. 45b it says: Some say that ברכת רחבה requires a cup: cf. however ibid. 49a, where the view of R. Paltai seems to be that it had no 'cup' attached to it. In the story on this page (folio 8b) no 'cup' is mentioned. It might have been implied. It may be that the סעודת הבראה (the meal given by friends to the mourners after the funeral) also took place in this רחבה. Cf. M.K. 25a. The ברכת רחבה fell, apparently, early into disuse, so that in post-Talmudic times its real character was not known any more. It is difficult to see why these benedictions disappeared from use. They are beautiful in thought and language, especially benedictions 1 and 2. These two benedictions deserve to be reinstated. Another point that should be noted is this: Judah the son of Nahmani, did not give his own sayings. The homily which he delivered was not his own. The benedictions which he recited had long been fixed. Cf. Rashi, ad loc. וכן סדורות על הסדר. It is strange that Graetz thinks that Judah the son of Nahmani improvised these beautiful prayers and that these prayers shew that Judah was a fine Hebrew stylist. Judah the son of Nahmani was a meturgeman, and a meturgeman was not expected to say original things. He knew by heart the homilies of others and the fixed benedictions, and he delivered the homilies well and he recited the benedictions well. It is interesting to note that קום אימא מילתא was said to the Meturgeman, although the

מילתא was not his. Cf. also Shittah Mekubbezeth: מרינן קום אימא מילתא סדורא בעלמא אמר ליה אבל הני ברכות מעיקרא איתקון והא דא

(71) 'Who feedeth' is the first benediction of Grace after meals, the blessing of 'the land' is the second, 'who rebuildeth Jerusalem' is the third, and 'who is good and doeth good' is the fourth. V. P.B., pp. 280-283; cf. Ber. 48b.

(72) Lit., 'to its old state.' Cf. Sem. ch. XIV, where the text is somewhat different and the order of the 'cups' varies.

(73) I.e.. the funeral.

(74) The relatives of the dead.

(75) Because of the great expense. They buried the dead in costly' garments (Rashi).

(76) The dead.

(77) I.e., Rabban Gamaliel II, also called Rabban Gamaliel of Jabneh.

(78) For variant, cf. M.K. 27b.

(79) For burial

(80) A silver coin, one fourth of a shekel.

Talmud - Mas. Kethuboth 9a

He who says. I have found an 'open opening'[1] is trusted to make her forbidden for him.[2] Why?[3] It is a double doubt:[4] It is a doubt [whether she had the intercourse with the other man while] under him,[5] or[6] , [while] not under him.[7] And if you say[8] that [she had that intercourse while] under him, [there is] the [other] doubt [whether she had that intercourse] by violence or[9] by [her free] will! — It was necessary[10] [to state this rule] in the case of the wife of a priest.[11] And if you wish, you may say [that it speaks of] the wife of an Israelite,[12] and for instance when her father received the betrothal for her [when] she was less than three years and one day old.[13] What does he[14] let 'is hear by [this since] we have already learnt [it]:[15] 'If a man says[16] to a woman, "I have betrothed thee [to myself]", and she says, "Thou hast not betrothed me [to thyself]," she is allowed [to marry] his relatives, but he is forbidden [to marry] her relatives.'[17] — What you might have supposed is that there[18] [he causes a prohibition to himself] because it is certain to him,[19] but here it is not quite certain to him.[20] [Therefore] he[21] lets us hear [this rule].[22] But did R. Eleazar say so? Did not R. Eleazar say: The wife does not become forbidden for her husband save in the case of[23] warning[24] and seclusion,[25] and as [we find in] the occurrence that happened?[26] But how can you [in any case] understand it?[27] Was the occurrence that happened accompanied by warning and seclusion? And again, did they[28] declare her[29] forbidden?[30] — This is no difficulty, [for] thus he[31] means to say:[32] The wife does not become forbidden for her husband save in the case of warning and seclusion, [and this we learn] from the occurrence that happened, because [there] there was no warning and seclusion and [therefore] she[33] was not forbidden.[34] But [the former question] is nevertheless difficult. In the [case of] warning and seclusion but not [in the case of] 'an open opening'![35] — But according to your argument[36] [the question could be asked]: [in the case of] warning and seclusion, yes, [and in the case of] witnesses,[37] no! Hence he[38] means to say thus: The wife does not become forbidden for her husband through one witness[39] but through two witnesses;[40] but in the case of warning and seclusion:[41] even through one witness,[42] and 'an open opening' is like two witnesses.[43] And if you will say: [In the case of] the occurrence that happened. why did they not declare her forbidden?[44] [The answer is:] There it was compulsion.[45] And if you wish you can say as R. Samuel the son of Nahmani said[46] [that] R. Jonathan said:

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(1) 'An open opening' is a euphemistic expression for 'absence of virginity'. The husband, after the first intercourse with his young wife, claims that he found no virginity.

(2) V. infra.

(3) Lit , 'And why?' — The question is: Why should his wife become forbidden for him by what he said regarding the absence of her virginity?

(4) Lit., the doubt of a doubt'.

(5) Under her husband, that is, since the betrothal (erusin); in which case she is regarded as an adulteress who is

forbidden to live with her husband. V. Sanh. 51a.
(6) Lit 'A doubt'.
(7) Before her betrothal.
(8) Lit., 'If thou wilt be found (consequently) to say.'
(9) If a betrothed (or married) woman is violated by another man she does not become forbidden for her husband. V. infra 51b, v. also Deut. XXII, 25-27.
(10) Lit., not necessary', i.e., it would not have been necessary but for the case of the wife of a priest. The meaning is: the rule applies in the case of the wife of a priest.
(11) If the wife of a priest was violated she was forbidden for her husband. V. infra 51b, and Yeb. 56b.
(12) I.e., an ordinary Jew, not a priest.
(13) In this case there is only one doubt: whether she was violated, or submitted by her free will. The other doubt ('under him' or 'not under him') does not arise since in the latter case her virginity would not be affected. V. Ned. 44b.
(14) R. Eleazar (an Amora).
(15) That a man may, by his own evidence, prohibit for himself a thing or a person otherwise permitted to him.
(16) Lit., 'he who says'.
(17) The forbidden degrees of relatives by marriage; v. Kid. 65a.
(18) Kid. 65a.
(19) Lit , 'it is certainly established to him.'
(20) His grievance may' be imaginary.
(21) R. Eleazar.
(22) That he is believed.
(23) Lit., 'over the affairs of'.
(24) Given to the wife by the suspecting husband.
(25) Of the wife with the suspected man. V. Num. V, 11ff; cf. Sol. 2a and 2b.
(26) Lit., 'according to the deed that was'. I.e., of David and Bathsheba, cf. II Sam. XI. This contradicts the dictum of R. Eleazar that the woman becomes forbidden on a mere charge by her husband of an 'open opening'.
(27) This latter dictum of R. Eleazar.
(28) The authorities.
(29) Bath-sheba.
(30) [For Judah. The fact that she was allowed to marry David shews that she was not forbidden to Uriah, for it is a general rule that an adulteress is forbidden to continue with her husband as well as her paramour. Sot. 27b.]
(31) R. Eleazar.
(32) Lit., 'he says'.
(33) Bath-sheba.
(34) For Uriah. V. p. 44, n. 20.
(35) Lit., 'warning . . . yes; an open . . . no.' I.e., the words of R. Eleazar imply that the wife would be forbidden for her husband only in case of warning and seclusion, but not in the case of 'an open opening', which contradicts his former ruling.
(36) If you are to argue from the implications of R. Eleazar's words as they stand.
(37) Why should the evidence of witnesses that the wife was unfaithful be weaker than warning and seclusion? Surely this cannot be!
(38) R. Eleazar.
(39) By the evidence of one witness that the wife was unfaithful; v. Rashi ad loc.
(40) By the evidence of two witnesses.
(41) Where there are two witnesses to the warning and seclusion.
(42) If even only one witness testified to the adultery that followed she is forbidden to her husband. V. Sot. 2b.
(43) I.e., the charge of an 'open opening' by her husband is on a par with the evidence of two witnesses.
(44) For David, seeing that many people knew of the occurrence, and thus there were witnesses.
(45) Bath-sheba could not resist the demand of the king. [And since she was thus not forbidden to Uriah, she was permitted also to David. (V. supra p. 44, n. 20)].
(46) Lit., 'as that which R. Samuel the son of Nahmani said'.

Talmud - Mas. Kethuboth 9b

Everyone who goes out into the war of the House of David writes for his wife a deed of divorce,[1] for it is written, And to thy brethren shalt thou bring greetings, and take their pledge.[2] What [is the meaning of], 'and take their pledge'? R. Joseph learnt: Things which are pledged between him and her.[3]

Abaye said: We have also learned[4] [this]:[5] A MAIDEN IS MARRIED ON THE FOURTH DAY OF THE WEEK. [This implies] only on the fourth day, but not the fifth day.[6] What is the reason? [Presumably] on account of the cooling of the temper.[7] Now in which respect [could the cooling of the mind have a bad result]? If with regard to giving her the kethubah,[8] let him give it to her.[9] Consequently[10] [we must say only] with regard to making her forbidden for him;[11] and [it is a case where] he puts forward a claim.[12] Is it not that he puts forward the claim of 'an open opening'?[13] — No, [it is a case where] he puts forward the claim of blood.[14]

Rab Judah said [that] Samuel said: If any one says. 'I have found an open opening', he is trusted to cause her to lose her kethubah. Said R. Joseph: What does he[15] let us hear? We have [already] learned [this]:[16] He who eats[17] at his father-in-law's [between the time of betrothal and the time of marriage] in Judaea,[18] without witnesses, cannot [after the marriage] raise the claim of [the loss of] virginity, because he is alone with her.[19] In Judaea he cannot raise this claim, but in Galilee[20] he can raise it. Now in which respect? If to make her forbidden for him, why [should he] not [be able to raise this claim] in Judaea?[21] Consequently[22] [we must say it is] to cause her to lose her kethubah;[23] and [it is in a case] when he raises a claim. Is it not that he raises the claim of 'an open opening'? — No, when he raises the claim of blood.[24]

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(1) [So that in case he falls in battle his wife should be free to marry without the necessity of halizah. The Get would in that case take effect retrospectively from the date of its writing (Rashi). Tosaf.: He writes a Get without any conditions to take effect immediately]

(2) I Sam. XVII, 15.

(3) I.e., the betrothals, these thou shalt take from them by a deed of divorce (Rashi).

(4) We have been taught in a Mishnah; v. supra 2a.

(5) That the claim of 'an open opening' makes the wife forbidden for the husband.

(6) Lit., 'on the fourth day, yes, on the fifth day, no.'

(7) The husband might be appeased by the following Monday, cf. supra 2a and 5a.

(8) V. Glos.

(9) No harm is done by this. There is no sin involved in the payment of the marriage settlement to the wife, even if, in law, she forfeited it through her conduct.

(10) Lit., 'but'.

(11) If her conduct makes her forbidden for the husband for marital intercourse then the disregard of this prohibition would involve a sin. And therefore a maiden marries on the fourth day of the week so that there should be no 'cooling of the mind'.

(12) I.e., the husband must have put forward a serious claim.

(13) As evidencing unfaithfulness, This proves that the charge of an 'open opening' by the husband renders his wife forbidden to him.

(14) I.e he claims that there was no bleeding. And this is a more manifest sign of the absence of virginity, evidencing unfaithfulness, than 'an open opening.

(15) Rab Judah.

(16) In a Mishnah; cf. infra 22a.

(17) I.e., he who frequently visits the house of the father of his betrothed bride.

(18) This was customary in Judaea.

(19) And might have had intimate relations with the bride.

(20) In Galilee that custom (v. p. 46, n. 16) did not prevail.

(21) If he is sure that he has not been intimate with her during the time of betrothal and he charges her with unfaithfulness, he renders her, by the mere charge, forbidden to him?

(22) Lit., 'but'.

(23) In Judaea he cannot make her lose the kethubah, because he might have been intimate with her during the period of betrothal.

(24) And therefore Samuel's statement is necessary.

Talmud - Mas. Kethuboth 10a

It was stated: Rab Nahman said [that] Samuel said in the name of R. Simeon b. Eleazar: The scholars ordained for the daughters of Israel [as follows]: for a maiden two hundred [zuz[1]] and for a widow a maneh[2] [one hundred zuz].[3] And they trusted him, so that when he said, 'I have found an open opening', he is believed.[4] If so, what have the Sages accomplished with their ordinance?[5] — Said Raba: The presumption is [that] no one will take the trouble of preparing a [wedding-]feast and will then spoil it.[6] One has taught: Since it[7] is a fine [instituted] by the sages she[8] shall collect only from the worst land[9] [of the husband's estate]. [You say] a fine! Why a fine?[10] — Say then: since it is an ordinance of the sages,[11] she shall collect only from the worst land [of the husband's estate]. Rabban Simeon b. Gamaliel says: The kethubah of a wife is from the Torah.[12] But did Rabban Simeon b. Gamaliel say so? Surely it has been taught: [It is written in the Torah] He shall pay money according to the dowry of virgins;[13] [this teaches us that] this[14] is [as much] as the dowry of the virgins[15] and the dowry of the virgins is [as much] as this.[16] But,[17] the Sages found a support for [the rule that] the kethubah of a wife is from the Torah. Rabban Simeon b. Gamaliel Says: The kethubah of a wife is not from the words of the Bible, but from the words of the Soferim![18] — Reverse it.[19] And why does it appear to you right to reverse[20] the latter [teaching]? Reverse the former [teaching]![21] — We have [already] heard that R. Simeon the son of Gamaliel said that the kethubah is from the Bible, for we learnt: Rabban Simeon b. Gamaliel says: He[22] gives her[23] [the kethubah] in Cappadocian coins.[24] And if you wish, you may say: The whole of it[25] is [according to] Rabban Simeon b. Gamaliel. only[26] it is defective[27] and it teaches thus:[28] Here the Sages found a support for [the rule that] the kethubah of a wife is from the Torah. The kethubah of a widow [however] is not from the words of the Torah but from the words of the Soferim, for Rabban Simeon b. Gamaliel Says: The kethubah of a widow is not from the words of the Torah but from the words of the Soferim.[29]

Someone came before R. Nahman [and] said to him: I have found an open opening.[30] R. Nahman answered:[31] Lash him with palm-switches; harlots[32] lie prostrate before him.[33] But it is R. Nahman who said that he [the husband] is believed![34] — He is believed, but [at the same time] one lashes him with palm-switches. R. Ahai answered: Here[35] [it speaks] of a young man,[36] there [it speaks] of one who was married before.[37]

Some one came before Rabban Gamaliel [and] said to him, I have found an 'open opening'. He [Rabban Gamaliel] answered him: Perhaps you moved aside.[38] I will give you an illustration: To what is this like? To a man who was walking in the deep darkness of the night[39] [and came to his house and found the door locked];[40] if he moves aside [the bolt[41] of the door] he finds it open, if he does not move aside [the bolt of the door] he finds it locked. Some say [that] he [R. Gamaliel] answered him thus: Perhaps you moved aside wilfully[42] and you tore away the door and the bar.[43] I will give you an illustration: To what is this like? To a man who was walking in the deep darkness of the night [and came to his house and found the door locked]; if he moves aside [the bolt of the door] wilfully[44] he finds it open, if he does not move aside [the bolt of the door] wilfully he finds it locked.

Some one came before Rabban Gamaliel the son of Rabbi [and] said to him, 'My master, I have had intercourse [with my newly-wedded wife] and I have not found any blood.' She [the wife] said to him, 'My master, I was a virgin.' He said to them: Bring me that cloth.[45] They brought him the cloth, and he soaked it in water and he washed it and he found on it a good many drops of blood.[46]

[Thereupon] he [Rabban Gamaliel] said to him [the husband]: Go, be happy with thy bargain.[47] Huna Mar the son of Raba of Parazika,[48] said to R. Ashi: Shall we also do it?[49] He answered him:

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(1) V. Glos.
(2) V. Glos.
(3) As her kethubah. V. infra 10b.
(4) And she loses the kethubah.
(5) If he can make her lose the kethubah by the claim of an 'open opening'.
(6) No one will go to the trouble and expense of a wedding and then waste it all by an invented claim. If he makes such a charge, he is, no doubt, telling the truth.
(7) The kethubah.
(8) The wife.
(9) Cf. also B.K. 7b and 8a.
(10) Why do you call it a fine? And why should it he a fine?
(11) I.e., a Rabbinical, and not a Biblical, ordinance.
(12) I.e.. an ordinance of the Bible.
(13) Ex. XXII, 16.
(14) The payment for the enticement of the virgin.
(15) I.e., fifty pieces of silver, the fine inflicted for violating a virgin, v. Deut. XXII, 27.
(16) The 'silver pieces' referred to are shekels, not ma'ahs, v. infra 38a.
(17) Lit., 'from here', i.e., from the phrase 'dowry of virgins'.
(18) The Soferim, or scribes, were the learned men who succeeded Ezra during a period of about two hundred years. Rabban Simeon b. Gamaliel therefore holds that the kethubah was a Rabbinical, and not a Biblical, ordinance.
(19) The answer is: Reverse the reading and say that Rabban Simeon b. Gamaliel said that in the Scriptural verse mentioned is to be found a support for the rule that the kethubah of a wife is from the Bible, and that the first Tanna said that it was not Biblical but 'from the words of the Soferim'.
(20) Lit., 'And why do you see that you should reverse.'
(21) Where it says that Rabban Simeon b. Gamaliel holds that the kethubah of a wife is from the Torah.
(22) The husband.
(23) The wife.
(24) They were more variable than the Palestinian coins. The husband has to pay in Cappadocian coins because the kethubah is from the Bible; v. infra 110b.
(25) Of the teaching of the Baraitha mentioned before.
(26) Lit., 'and'.
(27) A clause is missing.
(28) I.e., the Baraitha should be read thus.
(29) According to this version of the Baraitha, R. Simeon b. Gamaliel holds that the kethubah of the maiden-wife is Biblical and that the kethubah of the widow-wife is rabbinical.
(30) He (the husband) raised this complaint about his newly wedded wife.
(31) Lit., 'said to him', i.e., concerning him.
(32) V. Levy, Vol. III, p. 2. Rashi: 'the harlots of Mabrakta'. [Mabrakta was a place in the neighbourhood of Mahoza. v. Obermeyer, p. 177.]
(33) I.e., such a man ought to be punished. for if he is such an expert in these matters he must have led an immoral life.
(34) If the husband says that he has not found virginity in his wife. Why should he then be lashed for having complained to R. Nahman about his wife?
(35) Where R. Nahman ordered punishment.'
(36) Who was not married before. He should not have known if he had not had intercourse with harlots before his marriage. There R. Nahman ordered lashing.
(37) And therefore he could know without having led an immoral life. He is therefore believed and receives no lashing (Rashi). It is also possible that according to R. Ahai both are believed R. Ahai only explains that it is the young man who gets the birch.
(38) And thus performed the coition without tearing the hymen. V. Jast. p. 595.

(39) Lit., ‘in the blackness of night and darkness’; cf. Prov. VII, 9.
(40) Some such words as these must be inserted.
(41) ‘He moved aside’, and ‘he did not move aside’ refer apparently to the bolt of the door and not to the door itself. The simile is obvious: the bolt is compared to the membrum virile. He moved the membrum virile aside and therefore found ‘an open opening’.
(42) Intentionally.
(43) The ‘door’, ‘door-way’, ‘entrance’, apparently refers to the vagina, or the entrance into the vagina, and ‘the bar’ to the hymen. He intentionally moved so forcibly that he tore open the entrance and swept away the hymen without feeling it.
(44) The action must be intentional. The chief point of this version seems to be the wilful intention. The bolt of a door cannot, as a rule, he moved aside accidentally. There must be intention in the action.
(45) Upon which they spent the night.
(46) The blood was covered by semen.
(47) Lit., ‘take possession of’ a phrase in which there is also an element of joy. ‘Be happy with’ expresses well the spirit of the decision. Rabban Gamaliel himself was happy that he could keep together and strengthen the bond of marriage between husband and wife.
(48) Faransag, near Bagdad.
(49) I.e., apply in such cases the test applied by Rabban Gamaliel to the cloth.

Talmud - Mas. Kethuboth 10b

Our[1] laundry work[2] is like their[3] washing.[4] And if you will say let us do laundry work,[5] [my answer is] the smoothing stone will remove it.[6] Someone came before Rabban Gamaliel the son of Rabbi [and] said to him, ‘My master, l have had intercourse [with my newly-wedded wife] and I have not found any blood.’ She [the wife] said to him, ‘My master, I am still a virgin.’ He [then] said to them: Bring me two handmaids, one [who is] a virgin and one who had intercourse with a man. They brought to him [two such handmaids], and he placed them upon a cask of wine. [In the case of] the one who was no more a virgin its smell[7] went through,[8] [in the case of] the virgin the smell did not go through.[9] He [then] placed this one [the young wife] also [on a cask of wine]. and its smell[10] did not go through. He[11] [then] said to him:[12] Go, be happy with thy bargain.[13] — But he should have examined her from the very beginning![14] — He had heard a tradition,[15] but he had not seen it done in practice.[16] and he thought. The matter might not be certain[17] and it would not be proper[18] to deal lightly with daughters of Israel.[19]

Someone came before Rabban Gamaliel the elder [and] said to him, ‘My master, I have had intercourse [with my newly-wedded wife] and I have not found any blood. She [the wife] said to him, ‘My master, I am of the family of Dorkati, [the women of] which have neither blood of menstruation nor blood of virginity.’ Rabban Gamaliel investigated among her women relatives and he found [the facts to be] in accordance with her words. He [then] said to him: Go, be happy with thy bargain. Happy art thou that thou hast been privileged [to marry a woman] of the family of Dorkati. What is [the meaning of] Dorkati? — A cut-off generation.[20] — R. Hanina said: Vain consolation Rabban Gamaliel offered[21] to that man, for R. Hiyya taught: As the leaven is wholesome for the dough, so is blood wholesome for a woman. And one has [also] taught in the name of R. Meir: Every woman who has abundant blood has many children. It has been said: R, Jeremiah b. Abba said: He [Rabban Gamaliel] said to him [the husband]: Be happy with thy bargain. But R. Jose b. Abin said: He said to him: thou hast been punished with thy bargain.[22] We quite understand the one who says ‘Thou hast been punished’ with thy bargain — this is [according to the view] of R. Hanina. But according to him who says ‘Be happy’ [with thy bargain], what is the advantage [of such a marriage]? — He [the husband] does not come to any doubt regarding menstruation.

Someone came to Rabbi [and] said, ‘My master, I have had intercourse [with my newly-wedded wife] and I have not found any blood.’ She said, ‘My master, I was [and am] still a virgin, and it was

[a period of] years of dearth.' Rabbi saw that their faces were black,[23] [and] he commanded concerning them, and they[24] brought them[25] to a bath and gave them to eat and to drink and brought them to the bridal chamber, and he had intercourse with her and found blood. He[26] [then] said to him: Go, be happy with thy bargain. Rabbi applied to them the verse:[27] Their skin is shrivelled upon their bodies,' it is withered, it is become like a stick.[28]

MISHNAH. A MAIDEN — HER KETHUBAH IS TWO HUNDRED [ZUZ],[29] AND A WIDOW — A MANEH.[30] A MAIDEN, WHO IS A WIDOW, [OR] DIVORCED, OR A HALUZAH[31] FROM BETROTHAL[32] — HER KETHUBAH[33] IS TWO HUNDRED [ZUZ], AND THERE LIES AGAINST THEM THE CHARGE OF NON-VIRGINITY.[34]

GEMARA. Why [is a widow called] 'almanah'? R. Hana of Bagdad said: because of the maneh.[35] But what can be said with regard to a widow from the betrothal?[36] — Because that one is called 'almanah'[37] this one is also called 'almanah.'[38] What can be said with regard to [the word] 'almanah', that is written in the Bible?[39] — [The woman] for whom the Rabbis will in future institute [the kethubah of] a maneh. But does the Bible speak of a thing which will be in the future?[40] — Yes, for it is written: And the name of the third river is Hiddekel, that is it which goeth towards the east of Ashur,[41] and R. Joseph learnt: Ashur, that is Seleucia. But was [Seleucia] already then in existence? But [it is mentioned] because it will exist in the future. Here also 'almanah' is mentioned in the Bible] because it [the kethubah of maneh] will exist in the future.

R. Hana of Bagdad also said: The rain waters, saturates and manures [the earth] and refreshes[42] and enlarges[43] [the fruits]. Raba the son of R. Ishmael, and some say R. Yemar the son of Shelemiah, said: Which is the verse?[44] [It is this:] Thou waterest the ridges abundantly, thou settlest the furrows thereof, thou makest it soft with showers, thou blessest the springing thereof.[45]

R. Eleazar said: The altar removes and feeds, makes beloved, atones.[46] Have not 'atones' and 'removes' the same meaning?[47] It removes [evil decrees][48] and atones for sins R. Hana of Bagdad also said: Dates warm, satisfy, act as a laxative,[49] strengthen[50] and do not make [one] delicate.

Rab said: If one has eaten dates, he should not give a legal decision. An objection was raised. Dates are wholesome morning and evening, in the afternoon they are bad, at noon they are incomparable.[51] and they remove three things: evil thought, stress of the bowels, and abdominal troubles! — Do we say that they are no good? They are indeed good. only for the moment [they cause] unsteadiness. It is analogous to wine, for the Master said:[52] He who has drunk[53] one-fourth [of a log][54] of wine shall not give a legal decision.[55] And if you wish you may say: There is no difficulty: This is before a meal and that is after a meal,[56] for Abaye said: Mother[57] told me: Dates before a meal are as an axe to the palmtree,[58] after a meal as a bar to the door.[59] Dasha [door], Raba explained:[60] derek sham[61] ['the way there'].[62] Darga [stairs, ladder]. Raba explained:[63] derek gag [the way of the roof].[64] Puria [bed], R. Papa explained: sheparin we-rabin 'aleha [because one is fruitful and multiplies on it]. R. Nahman b. Isaac said:

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(1) Babylonian.

(2) גיחוץ is fine laundry' work.

(3) Palestinian.

(4) כיבום is plain washing. In Palestine the plain washing was better than in Babylonia. because the water in Palestine was better or because they had in Palestine better ingredients (Rashi). In order to get the same results they would have to do fine laundry work in Babylonia, and that would include smoothing the cloth with a stone, according to Rashi, with a gloss-stone.

(5) Let us apply גיחוץ to the cloth on which the bride and bridegroom slept.

(6) The blood. In the process of גיחוץ the stone with which the cloth would be smoothed would cause the drops of blood, which would be seen after plain washing, to disappear. The test of Rabban Gamaliel could therefore not be

employed in Babylonia.
(7) I.e., the smell of the wine.
(8) One could smell the wine from the mouth (Rashi).
(9) One could not smell the wine from the mouth.
(10) I.e., the smell of the wine.
(11) Rabban Gamaliel.
(12) To the husband.
(13) The test shewed that the wife was a virgin.
(14) Why did he first have to experiment with the two handmaids.
(15) That this was a reliable test.
(16) Lit., 'The practice he had not seen.'
(17) Lit., 'perhaps it is not certain that the matter is good,' that is, that the test would be effective.
(18) Lit., 'The way of the land,' that is, the custom.
(19) Therefore he carried out the test first with handmaids.
(20) Heb. Dor. Katu'a.
(21) Lit., 'consoled him.'
(22) Lit., 'Be punished with thy bargain,' that is, the marriage stands, although it is not to thy advantage.
(23) From hunger.
(24) Those who carried out Rabbi's commands.
(25) The young couple.
(26) Rabbi.
(27) Lit., 'read concerning them.'
(28) Lam. IV, 8.
(29) V. Glos.
(30) One hundred zuz.
(31) A woman released from a leviratical marriage, by halizah; v. Deut. XXV, 5-10.
(32) She was only betrothed (arusah, v. Glos.) but not married, and became a widow or was divorced, or released by halizah from marrying her deceased fiance's brother.
(33) Lit., 'their kethubah'. The kethubah of either the widow', or the divorcee, or the halizah.
(34) The husband who marries one of these women has a right to complain if he does not find signs of virginity. As they were only betrothed but not married they are expected to be virgins.
(35) The value of the kethubah of a woman who married when she was a widow. This is no attempt at proper etymology.
(36) The value of the kethubah of such a widow is two hundred zuz, and still she is called 'almanah'.
(37) This is no attempt at proper etymology.
(38) Lit., 'One calls her.'
(39) The kethubah was not biblically ordained for the widow; v. supra 10a.
(40) Lit., 'And was the verse written for the future?'
(41) Gen. II, 14.
(42) Or 'softens.'
(43) Lit., 'causes to extend.'
(44) That can be referred to in support of R. Hana's saying regarding the rain.
(45) Ps. LXV, 11.
(46) A play on the word מזבח (altar).
(47) 'Removes' apparently also refers to sins!
(48) The answer is that 'removes' refers to evil decrees.
(49) Lit., 'loosen', (the bowels).
(50) The body.
(51) I.e., very good. — Dates are good, or very good, after the meals in the morning, noon and evening. They are not good in the afternoon after a rest (Rashi).
(52) The reference is to Samuel, in whose name this saying is quoted in 'Er. 64a.
(53) Lit., he who drinks.
(54) Log is a liquid measure equal to the contents of six eggs.

(55) And one-fourth of a log of wine is certainly wholesome. But for the moment it may make one unsteady, and therefore unfit to give legal decisions.
(56) Lit., 'bread'. If one eats dates before a meal, the effect is bad and one must not give legal decisions. The passage which declares them bad speaks of a case where one eats dates after a meal. The statement itself bears this out; v. supra p. 53, n. 6.
(57) V. Kid. (Sonc. ed.) p. 153.
(58) That is, injurious.
(59) This apparently means good. It is difficult to see the meaning of the comparison. Rashi explains: They sustain the body as the bar supports a door.
(60) Lit., 'said'.
(61) A play on the word.
(62) Or, the way is there; or, through there.
(63) Lit., 'said.'
(64) Or, the way to the roof; or, the way through the roof.

Talmud - Mas. Kethuboth 11a

We will also say:[1] ailonith [the barren woman that is] a man-like[2] woman, who does not bear children.[3]

MISHNAH. A WOMAN PROSELYTE, A WOMAN CAPTIVE, AND A WOMAN SLAVE, WHO HAVE BEEN REDEEMED, CONVERTED, OR FREED [WHEN THEY WERE] LESS THAN THREE YEARS AND ONE DAY OLD — THEIR KETHUBAH IS TWO HUNDRED [ZUZ]. AND THERE IS WITH REGARD TO THEM THE CLAIM OF [NON-]VIRGINITY.[4] GEMARA. R. Huna said: A minor proselyte[5] is immersed[6] by the direction[7] of the court.[8] What does he let us know? That it is an advantage[9] to him and one may act for a person in his absence[10] to his advantage? [Surely] we have learned [this already]: One may act for a person in his absence to his advantage. but one cannot act for a person in his absence to his disadvantage!

What you might have supposed is that an idolator[11] prefers a life without restraint[12] because it is established for us that a slave certainly prefers a dissolute life,[13] therefore, he[14] lets us know that this is said[15] [only in the case] of a grown-up person who has already tasted sin,[16] but [in the case of] a minor, it is an advantage to him.[17] May we say that [this Mishnah] supports him:[18] A WOMAN PROSELYTE, A WOMAN CAPTIVE, AND A WOMAN SLAVE, WHO HAVE BEEN REDEEMED, CONVERTED. OR FREED [WHEN THEY WERE] LESS THAN THREE YEARS AND ONE DAY OLD [etc.]? Is it not that they immersed them[19] by the direction of the Court?[20] No, here we treat of the case of a proselyte whose sons and daughters were converted with him, so that they are satisfied with what their father does.[21]

R. Joseph said: When they[22] have become of age they can protest [against their conversion].[23]

Abaye asked:[24] A WOMAN PROSELYTE, A WOMAN CAPTIVE, AND A WOMAN SLAVE, WHO HAVE BEEN REDEEMED, CONVERTED OR FREED [WHEN THEY WERE] LESS THAN THREE YEARS AND ONE DAY OLD-THEIR KETHUBAH IS TWO HUNDRED [ZUZ]. Now if you indeed mean to say [that] when they have become of age they can protest [against their conversion],[25] would we give her the kethubah that she may go and eat [it] in her heathen state? — When she has become of age.[26] [But] when she has become of age, too, she can protest and go out![27] — As soon as she was of age one hour, and did not protest, she cannot protest any more.[28]

Raba raised an objection: These maidens receive the fine:[29] if a man has intercourse with[30] a bastard,[31] a Nethinah,[32] a Cuthean,[33] a proselyte, a captive. or a slave, who have been redeemed, converted, or freed [when they were] less than three years and one day old-they have to be paid the

fine.[34] Now if you say [that] when they have become of age they can protest, would we give her[35] the fine that she may go and eat it in her heathen state? — When she has become of age.[36] When she has become of age too she can protest and go out![37] — As soon as she was of age one hour and did not protest she cannot protest any more.[38] Abaye did not say as Raba [said][39] [because] there[40] [where it speaks of fines we can say]: This is the reason:[41] that the sinner should not have any benefit.[42] Raba did not say as Abaye [said][43] because in the case of the kethubah [we can say that] this is the reason:[44] that it[45] should not be a light matter in his eyes to send her away.[46]

MISHNAH. WHEN A GROWN-UP MAN[47] HAS HAD SEXUAL INTERCOURSE WITH[48] A LITTLE GIRL,[49] OR WHEN A SMALL BOY[50] HAS INTERCOURSE WITH A GROWN-UP WOMAN, OR [WHEN A GIRL WAS ACCIDENTALLY] INJURED BY A PIECE OF WOOD[51] — [IN ALL THESE CASES] THEIR KETHUBAH IS TWO HUNDRED [ZUZ]; SO ACCORDING TO[52] R. MEIR. BUT THE SAGES SAY: A GIRL WHO WAS INJURED ACCIDENTALLY BY A PIECE OF WOOD — HER KETHUBAH IS A MANEH. A VIRGIN, WHO WAS A WIDOW, A DIVORCEE, OR A HALUZAH FROM MARRIAGE[53] — HER[54] KETHUBAH IS A MANEH.[55]

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(1) We will make a similar etymological exposition.

(2) Or ram-like. אֵילונית 'a woman who cannot bear children,' is connected with אַיִל (ram).

(3) I.e., who is incapable of bearing children.

(4) If they had sexual intercourse before they were three years and one day old the hymen would grow again, and they would be virgins. V. 9a and 11b and cf. Nid. 44b and 45a.

(5) I.e., a minor who wants to become a proselyte, that is, be converted to Judaism. Prior to and for the purpose of that conversion the would-be proselyte has to undergo circumcision and immersion in water. V. Yeb. 46aff. The immersion is to signify his purification. If the would-be proselyte is a minor (under thirteen years of age) and has no father to act for him, the Court can authorise his ritual immersion.

(6) Lit., 'they immerse him'.

(7) Lit., 'by the knowledge'.

(8) Lit., 'house of judgment'. Three members constitute the court.

(9) To be received into the Jewish Faith.

(10) Lit., 'not in his presence'. — As the proselyte is a minor he is not, legally speaking, present.

(11) Lit.,'one who worships the stars and planets.'

(12) Lit., 'lawlessness, unbridled lust.' — It would therefore be a disadvantage to the minor would-be proselyte to become a Jew.

(13) Cf. Git. 13a. — This confirms the former supposition.

(14) R. Huna.

(15) Lit., 'these words.'

(16) Lit., 'who has tasted the taste of what is forbidden'.

(17) To become a Jew.

(18) R. Huna.

(19) The women proselytes.

(20) Because they were less than three years and one day old, consequently minors.

(21) The immersion of the minor proselytes therefore took place by the direction of their father and not of the Court. — This Mishnah is therefore no support for R. Huna.

(22) The minor proselytes.

(23) And leave the Jewish faith and go back to their former state without being liable to a penalty by the Jewish Court.

(24) Lit., 'he raised against this a point of contradiction from a higher authority.'

(25) V. note 2.

(26) Only then one gives her the kethubah.

(27) Of Judaism; why then give her the kethubah?

(28) The kethubah would be given to her after 'one hour'.

(29) Lit., 'These maidens to whom there is a fine'. — The fine is that for seducing a girl; v. Deut. XXII, 29.

(30) Lit., 'He who came on.'

(31) V. Yeb. 49a.
(32) A descendant of the Gibeonites. V. Joshua IX, 22, 23, 27 and cf. Yeb. 78b.
(33) A Samaritan.
(34) V. infra 29a.
(35) The proselyte.
(36) And adhered to Jewish practice, only then she is paid the fine, v. Tosaf.
(37) Of Judaism.
(38) The fine would be given to her after 'one hour'.
(39) Did not ask the question of Raba.
(40) In the Mishnah, infra 29a.
(41) Why the fine should he paid to the seduced proselyte girl.
(42) Therefore he should pay the fine in any case. But the case of the kethubah (in our Mishnah) is different. Therefore, Abaye asked from our Mishnah.
(43) He did not ask the same question as Abaye.
(44) Why the kethubah is paid to the woman proselyte.
(45) Lit., 'she'.
(46) Lit., 'to bring her out (of his house)', that is, to divorce her. Therefore he should pay the kethubah in any case. But the case of the fine is different. Therefore Raba asks from the Mishnah infra 29a.
(47) A man who was of age.
(48) Lit., 'who came on'.
(49) Less than three years old.
(50) Less than nine years of age.
(51) Lit., 'One who was injured by wood', as a result of which she injured the hymen.
(52) Lit., 'the words of'.
(53) A maiden was married, and immediately after the marriage. became a widow or divorced, or a haluzah; v. supra 10b.
(54) Lit., 'their', that is, the kethubah of each of them.
(55) Since the marriage had taken place she is regarded as a married woman and it is assumed that she is no more a virgin.

Talmud - Mas. Kethuboth 11b

AND THERE IS WITH REGARD TO THEM NO CHARGE OF NONVIRGINITY. A WOMAN PROSELYTE, A WOMAN CAPTIVE AND A WOMAN SLAVE, WHO HAVE BEEN REDEEMED, CONVERTED, OR FREED [WHEN THEY WERE] MORE THAN THREE YEARS AND ONE DAY OLD — THEIR KETHUBAH IS A MANEH, AND THERE IS WITH REGARD TO THEM NO CHARGE OF NON-VIRGINITY.

GEMARA. Rab Judah said that Rab said: A small boy who has intercourse with a grown-up woman makes her [as though she were] injured by a piece of wood.[1] When I said it before Samuel he said: 'Injured by a piece of wood' does not apply to[2] flesh. Some teach this teaching by itself:[3] [As to] a small boy who has intercourse with a grown-up woman. Rab said, he makes her [as though she were] injured by a piece of wood; whereas Samuel said: 'Injured by a piece of wood' does not apply to flesh. R. Oshaia objected: WHEN A GROWN-UP MAN HAS HAD INTERCOURSE WITH A LITTLE GIRL, OR WHEN A SMALL BOY HAS INTERCOURSE WITH A GROWN-UP WOMAN, OR WHEN A GIRL WAS ACCIDENTALLY INJURED BY A PIECE OF WOOD-[IN ALL THESE CASES] THEIR KETHUBAH IS TWO HUNDRED [ZUZ]; SO ACCORDING TO R. MEIR. BUT THE SAGES SAY: A GIRL WHO WAS INJURED ACCIDENTALLY BY A PIECE OF WOOD — HER KETHUBAH IS A MANEH![4] Raba said. It means[5] this: When a grown-up man has intercourse with a little girl it is nothing, for when the girl is less than this,[6] it is as if one puts the finger into the eye;[7] but when a small boy has intercourse with a grown-up woman he makes her as 'a girl who is injured by a piece of wood.' and [with regard to the case of] 'a girl injured by a piece

of wood.' itself, there is the difference of opinion between R. Meir and the Sages.

Rami b. Hama said: The difference of opinion[8] is [only] when he[9] knew her,[10] for R. Meir compares her[11] to a mature girl,[12] and the Sages compare her to a woman who had intercourse with a man.[13] But if he did not know her,[14] all agree[15] that she has nothing.[16] And why does R. Meir compare her to a mature girl? Let him compare her to a woman who had intercourse with a man! — [In the case of] a woman who had intercourse with a man, a deed had been done to her by a man;[17] but in her case[18] — no deed has been done to her by a man. — And why do the Rabbis compare[19] her to a woman who had intercourse with a man? Let them compare her to a mature girl! [In the case of] a mature girl no deed whatsoever has been done to her,[20] but in her case — a deed has been done to her.[21]

'But if he did not know her, all agree that she gets nothing'.[22] R. Nahman objected: If she says. 'I was injured by a piece of wood,' and he says. 'No, but thou hadst intercourse with a man', Rabban Gamaliel and R. Eliezer say [that] she is believed![23] But, said Raba, whether he knew' her[24] and whether he did not know her,[25] according to R. Meir [her kethubah is] two hundred [zuz];[26] [whereas] according to the Rabbis, if he knew her [her kethubah is] a maneh, [if] he did not know her, she gets nothing.[27]

Raba however changed his opinion,[28] for it has been taught: How [does] the bringing out of an evil name[29] [take place]? He[30] comes to court and says, 'I, So-and-so,[31] have not found in thy daughter the tokens of virginity.' If there are witnesses that she has been unchaste under him,[32] she gets a[33] kethubah of a maneh.[34] [But surely] if there are witnesses that she has been unchaste under him, she is to be stoned![35] — It means this: If there are witnesses that she has been unchaste under him, she has to be stoned; if she was unchaste before [the betrothal], she gets a kethubah of a maneh. Now R. Hiyya b. Abin said [that] R. Shesheth said: This teaches:[36] If he married her in the presumption that she is a virgin and she was found to have had intercourse with a man,[37] she gets a kethubah of a maneh. Whereupon R. Nahman objected: 'If one marries a woman and does not find in her virginity, [and] she says, "After thou hadst betrothed me [to thyself] I was forced[38] and [thus] thy[39] field has been inundated," and he says, "No, but before I betrothed thee [unto me] [thou hadst intercourse with a man], my bargain is [thus] a mistaken one.' [etc.]'[40] and [this assuredly means] she is to get nothing![41] And R. Hiyya b. Abin said to them: Is it possible! R. Amram and all the great ones of the age sat[42] when R. Shesheth said that teaching and they found it difficult[43] and he[44] answered: In which respect is it indeed a mistaken bargain? In respect of two hundred [zuz:], but a maneh she gets [as a kethubah]. And you[45] say [that it means] she gets nothing! Whereupon Raba said: He who asked [this question][46] has asked well, for a mistaken bargain' means entirely.[47] But [then] that [other teaching] presents a difficulty.[48] Put [it] right[49] and say thus: If there are witnesses that she was unchaste under him[50] she has to be stoned, if she was unchaste before [the betrothal], she gets nothing, if she was found to be injured by a piece of wood, she has a kethubah of a maneh. But Surely it was Raba who said [above that], according to the Rabbis, if he did not know her, she gets nothing![51] Hence you must conclude[52] from this[53] that Raba retracted from that [opinion].[54] Our Rabbis taught: If the first [husband] took her [the bride] to his home for the purpose of marriage. and she has witnesses that she was not alone [with him,][55] or even if she was alone [with him]. but she did not stay [with him] as much time as is needed for intercourse, the second [husband][56] cannot raise any complaint with regard to her virginity. for the first [husband] had taken her to his home [for the purpose of marriage].[57]

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(1) Although the intercourse of a small boy is not regarded as a sexual act, nevertheless the woman is injured by it as by a piece of wood.

(2) Lit., 'is not in'.

(3) I.e., the difference of opinion between Rab and Samuel with regard to that question was recorded without any reference to R. Judah.

(4) The Sages differ only with regard to a girl injured by a piece of wood, but not with regard to a small boy who has intercourse with a grown-up woman. This shows that the latter case cannot be compared with the former case. The Mishnah would consequently be against Rab and for Samuel.
(5) Lit., 'says'.
(6) Lit 'here', that is, less than three years old.
(7) I.e., tears come to the eye again and again, so does virginity come back to the little girl under three years. Cf. Nid. 45a.
(8) Between R. Meir and the Sages.
(9) The husband.
(10) I.e., he knew, when he married her, that the bride was thus injured.
(11) The one who was thus injured.
(12) A bogereth (v. Glos.), a girl of full maturity, may sometimes not have signs of virginity, (v. Yeb. 59a), and her kethubah is nevertheless two hundred zuz.
(13) And had no virginity. Therefore her kethubah is only a maneh, as that of a widow.
(14) Did not know of the injury and thus thought that she was in her full virginity.
(15) Lit., 'the words of all.'
(16) Lit., 'it is nothing'. — As he was kept in ignorance of what happened to her, she does not get even a maneh (Rashi).
(17) Lit., 'by the hands of man'.
(18) Lit., 'this'.
(19) Lit., 'instead of comparing'.
(20) Her signs of virginity vanished through her maturity.
(21) Through the piece of wood.
(22) This is the concluding part of the statement.
(23) V. infra 23a. This shews that she gets the kethubah even if he did not know that she had been thus injured.
(24) I.e., knew, when he married her, that she had been injured.
(25) Did not know that she was thus injured.
(26) [And the author of the Mishnah which states that she is believed, will be R. Meir, and she receives two hundred zuz].
(27) V. n. 4. [And our Mishnah which states that she gets only a maneh will represent the view of the Sages in the case where he knew her].
(28) Lit., 'and Raba went back on himself.'
(29) Cf. Deut. XXII, 13,14.
(30) The husband.
(31) Lit., 'such and such a person', — the, husband is addressing the father of his young wife.
(32) I.e., that she had intercourse with a man after their betrothal.
(33) Lit., 'there is unto her'.
(34) V. infra 46a.
(35) Lit., 'a daughter of stoning' — (Cf. Deut. XXII, 20, 21). [How then can she have a claim to a kethubah?]
(36) Lit., 'this says'.
(37) Before the betrothal.
(38) By a man to have intercourse with him.
(39) Lit., 'his field'.
(40) V. Mishnah, infra 12b.
(41) [I.e., the words 'my bargain is a mistaken one' imply that the husband in making this charge denies her the right to receive anything at all. This refutes R. Shesheth's view that she is entitled in such a case to one maneh.]
(42) I.e., were present.
(43) Lit., 'and it was difficult unto them'. I.e., they felt the difficulty presented by the cited Mishnah.
(44) R. Shesheth.
(45) R. Nahman.
(46) I.e., R. Nahman, by asking the question from the cited Mishnah.
(47) I.e., entirely a mistaken bargain and she gets nothing. The question of R. Nahman was therefore a good question.
(48) Lit., 'That is difficult'. The Baraitha of Kethuboth 46a, which says that if she was unchaste before the betrothal she

gets a kethubah of a maneh.

(49) I.e., answer.

(50) I.e., that she had intercourse with a man after their betrothal.

(51) And this is in contradiction with what Raba said just now, namely. that if the young wife was found to be injured by a piece of wood, she has a Kethubah of a maneh.

(52) Lit., 'hear from this'.

(53) From Raba's statement that one injured thus gets a kethubah of a maneh.

(54) Expressed by Raba previously that, according to the Rabbis, if the husband did not know before the betrothal that the bride was injured, she gets no kethubah at all.

(55) Lit., 'that she was not hidden.'

(56) The woman married again after the death of, or divorce by. the first husband.

(57) As she was married before, the second husband must reckon with the possibility of her having had intercourse with the first husband, in spite of the evidence which she can bring to shew that the marriage was not consummated.

Talmud - Mas. Kethuboth 12a

Rabbah said: This teaches that if he married her in the presumption that she was a virgin and she was found to have had intercourse she gets a kethubah of a maneh.[1] R. Ashi said: [No.] generally.I can tell you. she receives indeed nothing; but it is different here, because the first one had married her.[2] But let us apprehend that perhaps she was unchaste under him![3] — Said R. Sherabia: [We] suppose he betrothed her to himself and had immediately intercourse with her.[4]

Some[5] there are who refer this[6] to our Mishnah: A VIRGIN, WHO IS A WIDOW, A DIVORCEE OR A HALUZAH FROM MARRIAGE, — HER KETHUBAH[7] IS A MANEH AND THERE IS NO CLAIM OF VIRGINITY WITH REGARD TO THEM. A VIRGIN FROM MARRIAGE' — how is it possible? — When she was brought into the bridal chamber and no intercourse took Place. Rabbah said: This teaches that if he married her in the presumption that she was a virgin and she was found to have had intercourse she gets a kethubah of a maneh.[8] R. Ashi said: [No.] indeed, I can tell you. generally she gets nothing; but it is different here, because she was brought into the bridal chamber.[9] But let us apprehend that perhaps she was unchaste under him![10] — Said R. Sherabia: When he betrothed her to himself and had immediately intercourse with her.[11] He who refers this[12] to the Baraitha,[13] how much more [would this apply] to our Mishnah.[14] But he who refers this to our Mishnah would not apply it to the Baraitha, because he could say unto her, 'I have relied upon the witnesses.'[15]

MISHNAH. HE WHO EATS WITH HIS FATHER-IN-LAW IN JUDAEA WITHOUT THE PRESENCE OF WITNESSES CANNOT RAISE A COMPLAINT REGARDING THE VIRGINITY. BECAUSE HE HAS BEEN ALONE WITH HER.[16]

GEMARA. Since it says[17] in the Mishnah HE WHO EATS,[18] It follows that there are places also in Judaea where one does not eat.[19] Abaye said: Conclude from this that in Judaea, too, the places differ in their custom, as it was taught: R. Judah said: In Judaea they used formerly to leave the bridegroom and the bride alone one hour before their entry into the bridal chamber, so that he may become intimate with her,[20] but in Galilee they did not do so. In Judaea they used formerly to put up two best men,[21] one for him and one for her, in order to examine the bridegroom and the bride when they enter the bridal chamber,[22] and in Galilee they did not do so. In Judaea. formerly. the best men used to sleep in the house in which the bridegroom and the bride slept, and in Galilee they did not do so. And he who did not act according to this custom could not raise the charge of non-virginity.[23] To which [does this[24] refer]? Shall I say [that it refers] to the first clause?[25] [If so,] It ought to read, 'He who acted[26] [according to this custom]!' Again[27] [if you will say that it refers] to the last clause,[28] it ought to read, 'He who was not examined!'[29] — Abaye said: Indeed [it refers] to the first clause, so read.[30] 'He who acted [according to this custom].' Said Raba to him: But it reads,[31] He who did not

act!' But. said Raba. it means thus: He who did not act according to the custom of Galilee in Galilee but [acted] according to the custom of Judaea in Galilee cannot raise the claim of virginity. R. Ashi said: Indeed [it refers] to the last clause,[32] and we should read,[33] 'He who was not examined.'[34]

MISHNAH. IT IS ALL ONE WHETHER [THE WOMAN IS] AN ISRAELITISH WIDOW OR A PRIESTLY WIDOW[35] — HER KETHUBAH IS A MANEH. THE COURT OF THE PRIESTS[36] COLLECTED FOR A MAIDEN[37] FOUR HUNDRED ZUZ, AND THE SAGES DID NOT PROHIBIT [IT] TO THEM.[38]

GEMARA. A Tanna taught: And the priestly widow-her ketubah is two hundred [zuz]. But we have taught in our Mishnah: AN ISRAELITISH WIDOW AS WELL AS A PRIESTLY WIDOW — HER KETHUBAH IS A MANEH! — Said R. Ashi: There were two ordinances. At first they[39] ordained for a maiden four hundred zuz and for a widow a maneh.

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(1) [For evidently he relied on the evidence that the first marriage was not consummated, and thus married her on the presumption that she was a virgin. and still it is said that he cannot bring a charge against her to make her forfeit the kethubah of a maneh to which she is entitled as a widow.]

(2) And there may have been intercourse and this militates against the presumption that she was a virgin on the second marriage.

(3) After the betrothal to the second husband. [Why then should he not be able to bring a charge against her so as to give witnesses an opportunity to testify as to the true facts?]

(4) So that unchastity was impossible.

(5) Lit., 'and some'.

(6) I.e.,the observations of Rabbah, R. Ashi and R. Sherabia.

(7) I.e., the kethubah of each of them.

(8) V. supra p. 60, n. 11.

(9) [So that it is to be assumed that the marriage was consummated, v. supra p. 60, n. 12.]

(10) After the betrothal to the second husband.

(11) So that unchastity was impossible.

(12) I.e., the observations of Rabbah, R. Ashi and R. Sherabia.

(13) Fol. I11b, bottom. In the case of the Baraitha there were witnesses that there was no intercourse.

(14) In the Mishnah there were no witnesses that no intercourse took place.

(15) And in view of the testimony of the witnesses the presumption that she was a virgin is a strong one, so that R. Ashi's reply to Rabbah would not hold good. True, 'the first one married her,' but there are witnesses who say that no intercourse took place. Rabbah's deduction from the Baraitha would therefore be justified.

(16) And he may have had intimate intercourse with his bride.

(17) Lit 'reaches'.

(18) In the house of the father-in-law.

(19) V. note 3.

(20) Lit 'that his heart may become bold,' towards her, that is that he may become used to her. V. Krauss, T.A II, p. 461. n. 341.

(21) Heb. Shoshebin, groomsman, v. B.B. (Sonc ed.) p. 615, n. 10.

(22) So that they should not deceive one another regarding the tokens of virginity (Rashi). [That would be in such localities in Judaea where the young affianced people were not allowed to be alone before the entry into the bridal chamber. This shews that customs differed in Judaea itself.]

(23) Cf. Tosef. Keth. I.

(24) The last sentence from 'and' till 'virginity'.

(25) In which it said that in Judaea they used to leave the bridegroom and the bride alone.

(26) If he did not act according to this custom he ought to be able to raise the charge of non-virginity'.

(27) Lit., 'but'.

(28) With regard to the examination by the best men.

(29) I.e he over whom there was no supervision by the best man, v. Rashi

(30) Lit., ‘and teach’

(31) Lit ,’teaches’.

(32) With regard to the examination by the best men.

(33) Lit., ‘and teach’.

(34) I.e., over, whom there was no supervision by the best man.

(35) An Israelitish widow is the widow of an ordinary Israelite who was also the daughter of an ordinary Israelite. A priestly widow is a widow who was the daughter of a priest; v. Rashi.

(36) [(a) A court of twenty-three judges holding sessions in priestly communities (Shittah Mekubbezeth. a.l.); (b) A Sanhedrin dominated by Sadducean or High-priestly elements. (V. Geiger Urschrift, pp. 114ff: and Buchler, Swartz Festshrift).]

(37) For the virgin-maiden that was the daughter of a priest; v. Rashi.

(38) Lit., ‘did not strike at their hand’, ‘protest [(a) Although the same was recorded as part of the Kethubah proper and not as the extra addition. v. infra 54b, the payment thereof would he enforced; (b) or. although not recorded at all, the woman could collect it by virtue of the prevalent custom, v, Tosaf.]

(39) The Court of the priests.

Talmud - Mas. Kethuboth 12b

When they saw that they[1] treated them[2] lightly.[3] they ordained for them[4] two hundred [zuz]. When they saw [again] that they[5] kept away from them,[6] for they[7] said, ‘Instead of marrying a priestly widow, we shall rather marry[8] the virgin-daughter of an Israelite,’[9] they restored their [former] ordinance.[10]

THE COURT OF OUR PRIESTS, etc. R. Judah said [that] Samuel said: They[11] did not say it only [regarding] the court of the priests.[12] but even the noble families[13] in Israel, if they want to do as[14] the priests do,[15] may do [so]. An objection was raised: If one wants to do as[14] the priests do,[15] for instance [if] the daughter of an Israelite [gets] married to a priest. or the daughter of a priest [gets married] to an Israelite, one may do [so]. [We would infer from this that only if] the daughter of an Israelite [gets married] to a priest, or the daughter of a priest [gets married] to an Israelite, [it is allowed to do as the priests do], because there is [then] one side of priesthood.[16] but if the daughter of an Israelite [gets married] to an Israelite, it is not [allowed to do as the priests do]![17] — The Mishnah states here a case of ‘not only’; not only [is it allowed[18] in the case of] the daughter of an Israelite [getting married] to an Israelite, who cannot say to her ‘I raise thee’ [to a higher position];[19] but [in the case of] the daughter of an Israelite [getting married] to a priest. who can say to her, ‘I raise thee [to a higher position].’[20] I might think that it is not allowed;[21] [hence] he lets us hear [that this is not so].[22]

MISHNAH. IF A MAN[23] MARRIES A WOMAN AND DOES NOT FIND[24] IN HER VIRGINITY [AND] SHE SAYS, AFTER THOU HADST BETROTHED ME [UNTO THEE][24] WAS FORCED AND [so] THY FIELD HAS BEEN INUNDATED’[25] AND HE SAYS, ‘NO, BUT [IT OCCURRED] BEFORE I BETROTHED THEE [TO ME] AND MY BARGAIN WAS A MISTAKEN BARGAIN’ — RABBAN GAMALIEL AND R. ELIEZER SAY [THAT] SHE IS BELIEVED. [BUT] R. JOSHUA SAYS: WE DO NOT LIVE FROM HER MOUTH[26] , BUT SHE IS IN THE PRESUMPTION OF HAVING HAD INTERCOURSE[27] BEFORE SHE WAS BETROTHED AND HAVING DECEIVED HIM, UNTIL SHE BRINGS PROOF FOR HER STATEMENT.[28]

GEMARA. It was stated: [If one person says to another person]. ‘l have a maneh in your hand,’[29] and the latter[30] says. ‘I do not know[31] — Rab Judah and R. Huna Say: [He is] bound [to pay].[32] and R. Nahman and R. Johanan Say: [he is] free [from the obligation to pay].[33] R. Huna and R. Judah say: [he is] bound [to pay]. [because they hold that] in the case of ‘sure’,and ‘perhaps’. ‘sure’ has it.[34] R. Nahman and R. Johanan say: [he is] free [from the obligation to pay] [because they hold the

view]: leave[35] the money in the possession of its present owner.[36] Abaye said to R. Joseph: The opinion[37] of R. Huna and Rab Judah corresponds with the view of Samuel,[38] for we have learned: [If] she[39] was pregnant, and they said to her, 'What is the nature of this embryo?'[40] [and she answered]. 'It is from the man So-and-So, and he is a priest.' Rabban Gamaliel and R. Eliezer say [that] she is believed. And Rab Judah said [that] Samuel said [that] the halachah is according to Rabban Gamaliel. And R. Samuel b. Judah said to Rab Judah: Sharpwitted one![41] You said to us in the name of Samuel [that] the halachah is according to Rabban Gamaliel also in the first[42] [Mishnah]. [Now what means]: 'also in the first [Mishnah]'? [Assuredly it must mean]. although one could say[43] 'leave the money in the possession of its [present] owner.' [still] Rabban Gamaliel said: 'sure' has it.[44] Is it [then] to say that R. Judah and R. Huna follow the opinion of Rabban Gamaliel, and R. Nahman and R. Johanan follow the opinion of R. Joshua? — R. Nahman can answer you:[45] I even follow the opinion of[46] Rabban Gamaliel; only Rabban Gamaliel says it there[47] because there is miggo.[48] but what miggo is there here?[49] Or [again]: Rabban Gamaliel says it only there, because we Say: leave her in her presumptive state,[50] but here what presumptive state has he got?[51] It is also evident that [it is right] as we have answered, that R. Nahman follows the opinion of[52] Rabban Gamaliel,

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(1) The husbands who married widows of priestly stock.

(2) The wives.

(3) And easily divorced them, because the amount of their kethubah was not high (Rashi).

(4) The wives.

(5) The would-be husbands.

(6) The widows of priestly stock.

(7) The would-be husbands.

(8) Lit., 'we shall go and marry'.

(9) Lit., 'a virgin, a daughter of an (ordinary) Israelite', seeing that both receive the same kethubah.

(10) Lit.. 'they restored their words'.

(11) The scholars.

(12) That the kethubah of the virgin-daughter of a priest could be increased to four hundred zuz.

(13) I.e., families of distinguished birth.

(14) Lit., 'according to the way', 'manner'.

(15) And increase the kethubah to four hundred zuz.

(16) I.e., one of them, either the bridegroom or the bride, is of the priestly family.

(17) And increase the kethubah to four hundred zuz.

(18) To increase the kethubah to four hundred zuz.

(19) As they are both of ordinary Israelite families.

(20) To the privileged position of the wife of a priest.

(21) To increase the kethubah to four hundred zuz.

(22) That it is allowed to increase the kethubah to four hundred zuz.

(23) Lit., 'he who marries'.

(24) Lit., 'and he did not find'.

(25) I.e 'it is thy loss.

(26) I.e., we do not go by what she says and we do not believe her.

(27) With another man.

(28) Lit., 'for her words'.

(29) I.e., you owe me a maneh.

(30) Lit., 'this one'.

(31) The person from whom the money is claimed neither denies nor admits the claim.

(32) The person against whom the claim is made must pay' the maneh to the claimant.

(33) The person against whom the claim is made need not pay anything.

(34) Lit., 'better', 'preferable'. — When one litigant asserts a certainty and the other litigant puts forward the plea of 'I do not know,' judgment is given for the one who asserts a certainty.

(35) Or, let stand.
(36) Lit 'in the presumption of its owner'. The phrase here signifies: leave the money in the possession of its present holder, because, as he is the holder of the money', he is in the presumption of being its rightful owner.
(37) Lit., 'This'.
(38) Lit., 'it is of Samuel'.
(39) An unmarried woman.
(40) i.e., who is the father of this expected child,'
(41) Heb. Shinena. V. B.K. (Sonc. ed.) p. 60 n. 2.
(42) I.e., in our Mishnah, which is the first of the three Mishnahs in which Rabban Gamaliel and R. Eliezer say that she is believed. The first Mishnah will also include the following Mishnah, where, as in our Mishnah, the kethubah is the point at issue.
(43) Lit., 'there is to say'.
(44) [Since he accepts the woman's plea which is 'sure' in preference to the husband's which is 'doubtful'. Which shews that R. Huna and Rab Judah in their ruling follow the view of Samuel that the halachah follows Rabban Gamaliel.]
(45) Lit., 'R. Nahman says unto thee'.
(46) Lit., 'I who say ever.
(47) Lit., 'until now Rabban Gamaliel does not say there'.
(48) Miggo, means since,' 'because,' and 'in consequence of,' and is used here as a legal term, denoting 'a legal rule according to which a deponent's statement is accepted as true on the ground that, if he had intended to tell a lie, he might have invented one more advantageous to his case,' v. Jast. s. v'. The Miggo here is this: Instead of saying that she was forced to have intercourse, she could have said that she was injured by a piece of wood. [This would be a more advantageous plea since it does not disqualify her from marrying a priest as does the plea that she had been forced. And similarly in the case of the next Mishnah she might have maintained that her accident happened after she had become betrothed to him, and thus is entitled to a kethubah of two hundred zuz instead of pleading that it occurred before, reducing thereby her claim to a maneh. V. Rashi.]
(49) In the case of the money claim, what miggo is there which we could apply to the claimant? Therefore, we say, 'leave the money in the possession of its (present) owner.'
(50) The presumption is that the maiden is a virgin. This presumption holds good until she had been found not to be a virgin, and this has been found only after her betrothal. Therefore she was, at the time of her betrothal, in the presumptive state of a virgin.
(51) There is no presumption in favour of the claimant. The presumption is in favour of the person from whom the money is claimed, since he holds the money.
(52) Lit., 'says'.

Talmud - Mas. Kethuboth 13a

for if it were [not] so, there would be a difficulty between one law and another law, for it is established for us [that] in civil matters the law is according to R. Nahman, whereas in this [case][1] R. Judah [said] that Samuel said [that] the halachah is according to Rabban Gamaliel,[2] Is it not then to be concluded from this [that it is] as we have answered?[3] Conclude [so] from this.

MISHNAH. [IF] SHE[4] SAYS, 'I WAS INJURED BY A PIECE OF WOOD', AND HE SAYS, 'NO, THOU HAST HAD INTERCOURSE WITH A MAN[5] — RABBAN GAMALIEL AND R. ELIEZER SAY: SHE IS BELIEVED, AND R. JOSHUA SAYS: WE DO NOT LIVE FROM HER MONTH,[6] BUT SHE IS IN THE PRESUMPTION OF HAVING HAD INTERCOURSE WITH A MAN,[7] UNTIL SHE BRINGS PROOF FOR HER STATEMENT.[8]

GEMARA. With regard to what are their claims?[9] — R. Johanan Says: With regard to two hundred[10] [zuz] and a maneh.[11] R. Eleazar says: with regard to a maneh and nothing.[12] R. Johanan says: With regard to two hundred [zuz] and a maneh, [because] he[13] shares the opinion of R. Meir who says [that] whether he knew of her or did not know of her[14] [she gets as her kethubah] two hundred [zuz]. And R. Eleazar says: With regard to a maneh or nothing, [because] he shares the view

of the Rabbis who say [that] whether he knew of her or did not know of her,[14] [she gets as her kethubah] a maneh. It is quite right that R. Eleazar does not say as R. Johanan [says]. because he establishes it[15] according to the Rabbis.[16] But why does not R. Johanan say as R. Eleazar [says]? — He holds [that when] he[17] married her in the presumption of [her being] a virgin and she is found to have had intercourse, she has a kethubah of a maneh.[18] [According to this view] here[19] he would say. 'a maneh,'[20] and she would say. 'a maneh,'[21] [and] what difference would there be between his claim and her claim?[22] [Now] it is quite right according to R. Eleazar[23] that we have stated[24] two cases,[25] one[26] it to exclude the opinion of Rami b. Hama,[27] and one[28] to exclude the opinion of R. Hiyya b. Abin in the name of R. Shesheth.[29] But according to

R. Johanan why are two cases necessary?[30] — One to show you the strength[31] of Rabban Gamaliel, and one to show you the strength of R. Joshua. The first case to show you the strength of R. Joshua, that, although one could say [there] miggo,[32] she is not believed. The second case to show you the strength of Rabban Gamaliel, that, although one cannot say [there][33] Miggo, she is believed.

MISHNAH. [IF] THEY[34] SAW HER[35] TALKING WITH SOMEONE,[36] AND THEY SAID TO HER, 'WHAT SORT OF A MAN IS HE?[37] [AND SHE ANSWERED, 'HE IS] THE MAN SO-AND-SO AND HE IS A PRIEST — RABBAN GAMALIEL AND R. ELIEZER SAY: SHE IS BELIEVED,[38] AND R. JOSHUA SAYS: WE DO NOT LIVE FROM HER MOUTH,[39] BUT SHE IS IN THE PRESUMPTION OF HAVING HAD INTERCOURSE WITH A NATHIN[40] OR A MAMZER,[41] -[42] UNTIL SHE BRINGS PROOF FOR HER STATEMENT. [IF] SHE[43] WAS PREGNANT AND THEY[44] SAID UNTO HER, 'WHAT IS THE NATURE OF THIS FOETUS.'[45] [AND SHE ANSWERED, 'IT IS] FROM THE MAN SO-AND-SO AND HE IS A PRIEST — RABBAN GAMALIEL AND R. ELIEZER SAY: SHE IS BELIEVED,[46] AND R. JOSHUA SAYS: WE DO NOT LIVE FROM HER MOUTH,[47] BUT SHE IS IN THE PRESUMPTION OF BEING PREGNANT FROM A NATHIN OR A MAMZER,[48] UNTIL SHE BRINGS EVIDENCE FOR HER STATEMENT.

GEMARA. What is the meaning of 'TALKING'? Ze'iri said: She was hidden.[49] R. Assi said: She had intercourse.[50] It is quite right according to Ze'iri that it Says[51] 'TALKING',[52] But according to R.Assi why [does it say] 'TALKING?' — [It is] a more appropriate[53] expression, as it is written:[54] 'She eateth,[55] and wipeth her mouth,[56] and saith, 'I have done no wickedness.'[57] It is quite right according to Ze'iri that he teaches [in the Mishnah] two [cases]: 'TALKING' and 'PREGNANT,[58] But according to R. Assi, why [does the Mishnah teach] two [cases]? — One case[59] to declare her fit[60] and one case[61] to declare her daughter[62] fit.[63] That is quite right according to him who says [that] he who declares her fit declares [also] her daughter fit.[64] But according to him who says [that] he who declares her fit declares her daughter unfit,[65] what is there to say? — R. Assi holds the view of him[66] who says [that] he who declares her fit declares [also] her daughter fit.

R. Pappa said to Abaye: According to Ze'iri who said: What Is TALKING?' She was hidden, and R. Joshua said [that] she is not believed — did not Rab say: We punish with lashes for the privacy[67] but we do not prohibit[68] on account of the privacy? Is it to say that it is not according to R. Joshua?[69] — You may even say [that it is according to] R. Joshua. [for] they set a higher standard in matters of priestly descent.[70]

An objection was raised: [If] they[71] saw her go in[72] with someone[73] Into a secret [place]

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(1) l,e., the case of our Mishnah.

(2) That she is believed, and consequently she gets a kethubah of two hundred zuz.

(3) That even R. Nahman will follow the opinion of Rabban Gamaliel in the case of our Mishnah, that she is believed and gets a kethubah of two hundred in.

(4) The woman whose husband complains about the absence of virginity.

(5) Lit., 'thou art one (that has been) trodden by a man'.
(6) I.e., We do not go by her statement.
(7) Since she has no virginity.
(8) Lit., 'for her words'.
(9) I.e., what is the claim of the husband and what is the claim of the wife?
(10) She says that she was injured and claims a kethubah of two hundred zuz, on the view of R. Meir, supra 11a.
(11) He says that she had intercourse with another man, in which case she gets only a maneh; v. the statement of R. Hiyya b. Abin, supra 11b and Rabbah's statement, supra 12a.
(12) She claims a maneh as one who was thus injured and according to the Sages, (v. supra 11a) gets a maneh. He says that she had intercourse with a man and therefore gets no kethubah at all, on the view advanced by R. Ashi, supra 12a.
(13) [I.e. , The Tanna of this Mishnah shares, in the view of R. Johanan, the opinion of R. Meir, It cannot refer to R. Johanan as he would not be likely to accept the ruling of R. Meir in preference to that of the majority of the Sages (Rashi).]
(14) That she was thus injured, v. supra 11b.
(15) Our Mishnah.
(16) Who are the majority and according to whom the law is decided,
(17) The husband.
(18) V. supra, p. 68, n. 14.
(19) In our Mishnah,
(20) I.e., That she is entitled only to a maneh because he believed her on marriage to be a virgin and found it was not so.
(21) If R. Johanan would say as R. Eleazar says that she could only claim a maneh owing to her accident.
(22) Hence R. Johanan has had to explain the Mishnah as representing the view of R. Meir.
(23) Who says that if she had intercourse with a man, she gets no Kethubah at all.
(24) Lit., 'he teaches',
(25) The case of our Mishnah and that of the previous Mishnah.
(26) The case of our Mishnah.
(27) Who says (supra 11b) that if the husband did not know' that she had an accident she gets no kethubah at all.
(28) The case of the previous Mishnah, where the husband says 'my bargain is a mistaken one, taken to mean that the woman is entitled to no kethubah at all,
(29) Who says that, even if she had intercourse with another man, she gets a Kethubah of a maneh, v. supra 11b.
(30) [Only the case of the second Mishnah should have been stated as illustrating the difference of opinion between R. Gamaliel and R. Joshua in regard to the pleas of 'sure' and 'perhaps', and thus incidentally excluding the opinion of Rama b. Hama, whereas the case of the first Mishnah could' be inferred from the second one.]
(31) I.e., how strong his view is.
(32) V. supra, p. 67. n. 8.
(33) [Since on the view of R. Johanan she gets in any case two hundred zuz, even if the husband was unaware of the accident that happened before the betrothal, v. supra. p. 69.
(34) People.
(35) An unmarried woman.
(36) A man.
(37) Lit., 'what is the nature (or character) of this man'?
(38) And she may marry a priest
(39) I.e., we do not go by her statement.
(40) V. Glos.
(41) 'Mamzer' is usually translated by 'bastard'. Marriage with a 'momzer' and a 'nathin' was forbidden; v. Yeb.78b. As to what constitutes a 'mamzer' v. Yeb. 49a.
(42) And the intercourse with a 'Nathin' or a 'Mamzer' makes her unfit to marry a priest.
(43) An unmarried woman.
(44) People.
(45) V. supra p. 66 n. 17.
(46) And she and her child are fit for priestly marriage.
(47) I.e., we do not go by her statement.

(48) And neither she nor her child is fit for priestly marriage.
(49) 'TALKING' means: 'she was hidden' with a man, and she may have had with him intercourse.
(50) 'TALKing' means: 'she had intercourse' with the man.
(51) In the Mishnah. Lit., 'that he teaches'.
(52) Secret talking. Talking in hiding is also 'talking'.
(53) I.e., euphemistic.
(54) Proverbs XXX, 20.
(55) Also euphemistic expressions.
(56) Also euphemistic expressions.
(57) The first part of the verse reads: 'So is the way of all adulterous woman.
(58) One case of suspicion and one case of certainty. V. also Rashi.
(59) The case of 'TALKING'.
(60) To marry a priest, according to R. Gamaliel.
(61) The case of 'pregnant'.
(62) If the child that was born was a daughter.
(63) To marry a priest, according to R. Gamaliel.
(64) V. infra 13b.
(65) [Whereas the mother has had a presumption of fitness, this cannot be said of her daughter who was born under suspicion, v. infra 13b.]
(66) Lit., 'holds Its',
(67) I.e., the being alone of a man with a married woman. V. Levy and Jast. s,v. יהוד.
(68) The married woman to her husband. In spite of the fact that the woman was alone with another man we do not assume that misconduct took place.
(69) According to R. Joshua we would not believe her and we would say that misconduct took place. Consequently, she ought to be forbidden to her husband.
(70) In order to ensure the purity of the priestly families, he made the law stringent in our Mishnah. But ordinarily R. Joshua would not forbid a wife to her husband on account of her having been alone with another man.
(71) People.
(72) Lit,, 'that she went in'.
(73) I.e., with a man.

Talmud - Mas. Kethuboth 13b

or into a ruin,[1] and they said to her, 'What sort of a man is he?' [and she answered]. 'he is a priest and he is the son of the brother of my father' — Rabban Gamaliel and R. Eliezer say: She is believed. R. Joshua says: We do not live from her mouth, but she is in the presumption of having had Intercourse with a Nathin or a Mamzer, until she brings proof for her statement . Now it is quite right according to Ze'iri,[2] that he teaches[3] two [cases]: into a secret [place] or into a ruin.[4] But according to R. Assi who said: She had intercourse,[5] why does it teach[6] two cases?[7] — It teaches [only] one [case]: into the secret [place] of the ruin.[8] But it teaches: into a secret [place] or into a ruin! — [But say] one [expression stands] for a ruin of a town and one [expression stands] for a ruin of a field. And they are [both][9] necessary. for if it[10] had told us [only] concerning a ruin of a town [one might have said that] in this [case] Rabban Gamaliel declares her fit because most[11] [of the men] of the town are fit with regard to her,[12] but in [the case of] a ruin of a field, when most [of the men][13] are unfit with regard to her.[14] I might say that he agrees with R. Joshua.[15] And if it[16] had told us [only] this [case][17] [I might have said that only] in this case[18] did R. Joshua say [that she is not believed], but in that [case][19] I might say [that] he agrees with Rabban Gamaliel;[20] [therefore] it was necessary [to state both cases].

An objection was raised:[21] This[22] is a testimony with regard to which the woman is fit.[23] But R. Joshua Says: She is not believed. Said R. Joshua to them:[24] Do you not agree that in the case of a woman[25] who was captured, and there are witnesses that she was captured, and she says. 'I am

pure.'[26] she is not believed? They said to him, 'Yes: but what a difference there is between this case and that case.'[27] In this case[28] there are witnesses,[29] and in that case[30] there are no witnesses.[31] He said to them: In that case too[32] there are also witnesses, for her stomach reaches up to her teeth.[33] They said to him, 'Most of the idolators are unrestrained in sexual matters.' He said to them: 'There is no guardian against unchastity.'[34] This applies[35] only in the case of the testimony of the woman with regard to herself.[36] but in the case of the testimony of the woman with regard to her daughter. all agree that the child is a shethuki.'[37] — [Now] what did he[38] say unto them[39] and what did they answer him? This they said unto him: 'You have answered us with regard to the pregnant woman,[40] what will you answer us with regard to the woman [whom they saw] talking [to a man]?'[41] — He said to them: The woman [whom they saw] talking [to a man] is the same as the captive woman.[42] They said to him, 'The captive woman is different, for most of the idolators are unrestrained in sexual matters.'[43] He said to them: Here also,[44] since she hid herself,[45] there is no guardian against unchastity.[46] [Now] at all events he teaches two [cases]: The woman [whom they saw] talking [to a man] and the pregnant woman![47] [This is] a refutation of R. Assi,[48] [This is indeed] a refutation,[49] — But let this difference weigh with him[50] There[51] most of the men are unfit with regard to her, but here[52] most of the men are fit with regard to her! — This[53] supports the opinion of R. Joshua b. Levi, for R. Joshua b. Levi said: He who declares her fit[54] declares her fit even when most of the men are unfit,[55] and he who declares her unfit declares her unfit even when most of the men are fit.[56]

R. Johanan said: He who declares her fit declares also her daughter fit, [and] he who declares her unfit declares also her daughter unfit. And R. Eleazar said: [Even] he who declares her fit declares her daughter unfit. Rabba said: What is the reason of R. Eleazar? [This:] It is quite right [with regard to her], she has the presumption of fitness,[57] [but] her daughter has no presumption of fitness.[58] R. Eleazar objected to [the ruling of] R. Johanan: This only applies to the testimony of the woman with regard to herself, but in the case of the testimony of the woman with regard to her daughter, all agree that the child is a shethuki.[59] Does this not [mean] a shethuki and unfit? — No, a shethuki and fit. But is there a shethuki [who is] fit? — Yes, according to Samuel, for Samuel said: [If] ten priests are standing together and one of them goes away[60] and has intercourse [with a woman], the child is a shethuki. Now what [means here] a shethuki? Is it to say that he is 'silenced' from the property of his father?[61] This is evident! Do we know who his father is? — It means one silences him from the rights of priesthood,[62] for it is written: 'And it shall be unto him and to his seed after him the covenant of an everlasting priesthood.[63] [that is, only] one whose seed is legitimately descending from him, excluding this one,[64] whose seed is not legitimately descending from him.[65]

A bridal couple[66] once came before R. Joseph. She said, 'It[67] is from him'.[68] and he said,

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(1) A deserted building.

(2) According to whom 'talking secretly'. or being with a man in a secret place, gives grounds for suspicion, though it does not necessarily imply intercourse.

(3) In the Baraitha just quoted.

(4) 'Into a secret place' does not imply misconduct, but 'into a ruin' does imply misconduct.

(5) Talking secretly, or being with a man in a secret place. affords no grounds for suspicion unless there has been some evidence of misconduct.

(6) In the Baraitha just quoted.

(7) Since the reference here is to a case where misconduct was seen to have taken place, what matters it whether it occurred in a secret place or a ruin?

(8) The Baraitha is to be understood as if the reading was 'into the secret (place) of the ruin,' and thus only one case is mentioned.

(9) Both expressions.

(10) In the Baraitha just quoted.

(11) Lit., 'the majority'.

(12) Most of the inhabitants of the town are Jews, and the intercourse with a Jew does not make her unfit to marry a

priest.
(13) All kinds of men resort from all parts to a ruin in the field (Rashi).
(14) She might have had intercourse with a man who makes her unfit to marry a priest.
(15) That she is not believed.
(16) The Baraitha just quoted.
(17) A ruin of a field.
(18) A ruin of a field.
(19) A ruin in the town.
(20) That she is believed.
(21) Cf. Tosef. Keth. I. This is a continuation of a passage in the Tosef, which is identical with the first part of the second case of our Mishnah: 'She was pregnant (and they said unto her, What is the nature of this embryo' (and she answered, It is) from the man So-and-so (and) he is a priest"' — Rabban Gamaliel and R. Eliezer say: She is believed.
(22) For variants v. Tosef. loc. cit.
(23) I.e., the woman is legally fit to give that testimony and she is believed.
(24) R. Gamaliel and R. Eleazar, v. n, 20.
(25) Lit., 'a woman captive'.
(26) I.e., no man had intercourse with me during my captivity.
(27) Lit., 'between this (woman) and this (woman)'.
(28) Lit., 'to this woman'.
(29) In the case of the captive woman there ate witnesses that she was captured.
(30) Lit., 'and to this (woman)'.
(31) In the case of the pregnant woman (the case of the Tosefta and our Mishnah) there are no witnesses that she had intercourse with one who makes her unfit for marrying a priest. It is clear, especially from the wording in the Tosefta, that this whole sentence, from 'yes,' until 'witness, is spoken by Rabban Gamaliel and R. Eliezer. V. Rashi.
(32) Of the pregnant woman.
(33) A figurative expression for 'she is visibly pregnant
(34) No one is immune from the possibility of having forbidden sexual intercourse. And the pregnant woman may have had intercourse with one forbidden to her and may thus have become unfit for a priestly marriage. The whole passage is explained soon.
(35) Lit., 'with regard to what are these words said'? When do Rabban Gamaliel and R. Eliezer hold that she is believed?
(36) Her testimony with regard to herself is believed.
(37) A shethuki (lit., 'silenced') is defined in Kid. 69a as one who knows his mother but does not know who his father is. Therefore, the woman herself may marry a priest, but if she gave birth to a daughter, that daughter may not marry a priest. The corresponding sentence in the Tosefta is much shorter; viz 'This applies only to the testimony with regard to herself, but with regard to the child all agree that it is a shethuki'.
(38) R. Joshua.
(39) R. Samuel and R. Eliezer.
(40) Her pregnancy is evidence against her.
(41) Why should she not be believed?
(42) The one case is similar to the other case. In both cases there is a strong possibility of intercourse.
(43) It is not only a question of sexual intercourse, but it is also a question who it was with whom the woman had intercourse. In the case of the captive woman, she is made unfit for priestly marriage, because the men among whom she finds herself are mostly unfit for her. But not so in the case of the woman who was talking to a man, where most men are fit for her, v. supra.
(44) In the case of the woman who was talking to another man.
(45) She was talking to the man secretly.
(46) And she may have had intercourse with a man who makes her unfit for a priestly marriage.
(47) The 'talking woman' and the pregnant woman are, at all events, two different
(48) According to whom the case of the 'talking woman' is also a case of certain sexual intercourse.
(49) I.e., R. Assi stands refuted.
(50) Or, let it be a difference to him (R. Joshua). Lit., 'let it go out to him' — 'let it be different to him'.
(51) In the ease of the captive woman.

(52) In the case of the 'talking woman,
(53) The fact that R. Joshua disregards this difference.
(54) Lit., 'according to the words of him who declares her fit'.
(55) With regard to her, as in the case of the captive woman.
(56) With regard to her, as in the case of the 'talking woman'.
(57) Legal fitness. She is of legitimate birth and she is fit to marry a priest. The doubt as to the nature of the man with whom she had intercourse does not destroy the presumption of her fitness.
(58) Because suspicion attaches to her very birth. If the man who is the father is unfit, then she is unfit and must not marry a priest. The doubt is sufficient to make her unfit, since there is no presumption of fitness to remove.
(59) V. p. 73, n. 10 and p. 74. n. 4.
(60) Lit., 'separated himself'.
(61) I.e., he does not inherit the property of his (alleged) father.
(62) He has no share in the rights and privileges of priesthood.
(63) Num, XXV, 13.
(64) The unknown father of the shethuki.
(65) [He cannot transmit the rights of priesthood to his seed, v. Yeb. 100b, but as regards marriage with one of priestly stock, this shethuki is permitted. This shews that one may be a shethuki and yet fit.]
(66) Lit,, 'that betrothed (man) and his betrothed (woman)'.
(67) The child with which she was pregnant.
(68) From her fiance.

Talmud - Mas. Kethuboth 14a

'Yes. [it is] from me.' R. Joseph said: Why should we be afraid? First,[1] he admits, and moreover, Rab Judah said [that] Samuel said: The halachah is according to Rabban Gamaliel.[2] Abaye said to him: And in this [case]. if he did not admit, would Rabban Gamaliel declare her as fit? Did not Samuel say to Rab Judah: 'Sharp-witted one! The halachah is according to Rabban Gamaliel, but you should not act upon it,[3] unless most men are fit for her,' whereas here most men are unfit for her![4] — And according to your reasoning is not this [statement] in itself difficult? [First he says] 'The halachah [is. etc.'] [and then] 'do not act in practice [on it]'![5] Hence you must say: The one ruling applies before[6] the other after it was done,[7] and in this case also it is like 'after it was done.'[8]

Abaye asked[9] Raba: Did R. Joshua Say: She is not believed? This would be in contradiction with the following: R. Joshua and R. Judah b. Bathyra testified concerning the widow[10] [of one who was] of a mixed family[11] that she is fit to marry a priest![12] — He said to him: Now is this so?[13] There[14] the woman marries, and [in that case] she examines[15] and [then] marries; but here[16] the woman misconducts herself; does she first examine and then misconduct herself?[17]

Raba said: Is the contradiction [only] between [one statement of] R. Joshua and [the other Statement of] R. Joshua. [but] not[18] between [one Statement of] Rabban Gamaliel and [another Statement of] Rabban Gamaliel?[19] Surely the concluding clause[20] teaches: Rabban Gamaliel said to them: We accept your testimony,[21] but what can we do, since Rabban Johanan b. Zakkai decreed that no court be set up for this purpose.[22] because the priests will obey you to remove[23] but not to bring near?[24] — But, said Raba; there is no contradiction between [the statement of] Rabban Gamaliel and [the other statement of] Rabban Gamaliel, [because] there[25] it is sure'[26] [and] here[27] it is 'perhaps.'[28] Neither is there a contradiction between [the one statement of] R. Joshua and [the other statement of] R. Joshua, [because] there[29] there is one doubt[30] [and] here[31] there is a double doubt.[32] Therefore, according to Rabban Gamaliel the 'sure' is [so] strong[33] [a plea] that even where [there is only] one doubt[34] he declares [her] fit,[35] and the 'perhaps' is [so] weak [a plea][36] that even where there is a double doubt[37] he declares [her] unfit.[38] [And] according to R. Joshua one doubt[39] is [so] strong that even in the case where [she pleads] 'sure' he declares [her] unfit,[40] and a double doubt[41] is [so] light[42] that even in the case where [she pleads] 'perhaps' he declares [her] fit.[43]

Our Rabbis taught: Which is the widow[44] [of one] of a mixed family? When there is with regard to it[45] [no doubt] on account of mamzeruth,[46] nathinuth[47] and on account of slaves of the kings.[48] R. Meir said:

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(1) Lit., 'one'.
(2) That she is believed, v. supra 12b.
(3) Lit., 'thou shalt not do a deed'.
(4) As she is betrothed, the only man fit for her is her fiance. To all other men she is prohibited.
(5) This seems self-contradictory!
(6) [lf a priest comes to seek guidance in regard to such a marriage we declare it not permissible unless he was held fit for the woman.]
(7) [If he did marry her without consulting the authorities he may retain her.]
(8) [Since she is already betrothed we do not force the bridegroom to put her aside.]
(9) Lit., 'raised (a contradiction) to'.
(10) V. p. 78, n. 9.
(11) עיסה means 'dough' and is also a designation for a mixed community or a mixed family, that is a community or a family with an admixture of illegitimate persons or persons of doubtful legitimacy, v. Kid. 69b.
(12) [This shews that we place her on her erstwhile presumption of fitness and refuse to disqualify her for the sake of a doubt.]
(13) I.e., what a comparison!
(14) In the case of 'Ed.
(15) The purity of the family.
(16) In the case of our Mishnah.
(17) Therefore she is not believed.
(18) Lit., 'is there no contradiction'.
(19) And one must endeavour to explain R. Gamaliel also.
(20) Of the Mishnah in 'Ed.
(21) I.e., we approve of what you say.
(22) [Of declaring the legitimacy of such a doubtful case.]
(23) I.e., not to allow persons of doubtful legitimacy to join their families.
(24) They will not obey the court if permission is given for persons of doubtful legitimacy to enter their families. V. 'Ed. (Sonc. ed.) p. 48, nn. 2-7.
(25) In the case of our Mishnah.
(26) She says that she is sure that she had intercourse with a legitimate person.
(27) In the Mishnah in 'Ed.
(28) As it is a case of עיסה the woman herself cannot say that she is sure that the family is free from illegitimate admixtures.
(29) In the case of our Mishnah.
(30) Whether the man with whom she had intercourse was fit or unfit (regarding the priesthood).
(31) In the Mishnah in 'Ed.
(32) Indeed, in the case of a widow of a member of a mixed family there are many doubts of illegitimacy.
(33) I.e., important.
(34) Against her.
(35) For the priesthood.
(36) Unimportant.
(37) V. p.77, n. 20.
(38) For the priesthood.
(39) In the case of our Mishnah
(40) For the priesthood.
(41) In the Mishnah in 'Ed.
(42) Unimportant.

(43) For the priesthood. In short, with Rabban Gamaliel the 'sure' outweighs one doubt, and with R. Joshua one douht outweighs the 'sure'.
(44) Who has been held to be fit for marrying a priest: Tosaf. omits 'widow'. And indeed in Tosef., kid. V the word is left out. The reference will be to a girl of a mixed family and not to a widow of a member of a mixed family. v. Tosaf. [On the whole subject of עיסה v., Rosenthal F. MGWJ 1881, also pp. 38ff and Freund L. Schwartz-Festschrift p. 163ff and Graetz op. cit. 1879, pp. 99ff].
(45) The family.
(46) Mamzer-ship.
(47) Nathin-ship. For nathin and mamzer v. Glos.
(48) Cf. Neh. VII, 57, and Yeb. 17b. [According to Rashi the reference is to the Herodian dynasty.] When there is no suspicion, with regard to that family, of intermarriage with mamzerim, nathinim and royal slaves.

Talmud - Mas. Kethuboth 14b

I have heard that when there is none of these [defects] in the family one permits [its members] to marry into the priesthood. R. Simeon b. Eleazar said in the name of R. Meir. and R. Simeon the son of Menasia also said it:[1] Which is the widow [of one] of a mixed family? When a doubtful halal[2] was mixed up[3] in it, [for] the Israelites know the mamzerim who are among them, but they do not know the halalim who are among them.[4]

The Master said: 'Which is the widow [of one] of a mixed family? When there is with regard to it [no doubt] on account of mamzeruth, nathinuth and on account of slaves of the kings'. [This would show that if there is a doubt on account of] a halal [in the family] it is fit.[5] Why should these[6] be different? [Because] these are Biblical? A halal is also Biblical![7] And further:[8] 'R. Meir said: I have heard that when there is none of these [defects] in the family one permits [its members] to marry into the priesthood'. This is the same [as that which] the first Tanna[9] [taught]! And further:[10] 'R. Simeon b. Eleazar said in the name of R. Meir, and R. Simeon b. Menasia also said it: Which is the widow [of one] of a mixed family? When a halal was mixed up in it, [for] the Israelites know the mamzerim who are among them, but they do not know the halalim who are among them.' Surely it says in the first clause [that if there is a doubt regarding] a halal [in the family, the family is] fit [to marry into the priesthood]! R. Johanan said: There is a difference between them [concerning a person who when he is called] mamzer protests and [when he is called] halal is silent. The first Tanna holds [that] every person who when called 'unfit' is silent is [considered] unfit, and thus the first Tanna said: Which is the widow [of one] of a mixed family? When there is in it no one who is silent if he is called mamzer or nathin, or slave of the king, or halal. Whereupon R. Meir said to him: This applies only to [each of] these cases[11] since [he who calls him thus is liable to] render him unfit [to enter] into [the congregation,] but he who is called a halal and is silent,[12] is fit, and the reason he is silent is that it does not trouble him.[13] Whereupon R. Simeon b. Eleazar said to the first Tanna[14] of R. Meir: If you have heard that R. Meir declares the person fit in the case of silence, this is not when he is called halal and is silent, but when he is called mamzer and is silent, for the reason he is silent is because he says to himself; 'a mamzer is well-known'.[15] But [if he is called] mamzer and he protests. or [he is called] halal and is silent he is unfit,[16] for the reason he is silent is because he thinks, 'it is enough if he is not excluded from the congregation'.[17]

One Baraitha taught: R. Jose says: [if he is called] mamzer and is silent, he is fit, and if he is called halal and is silent, he is unfit. And another Baraitha taught: [if he is called] halal and is silent he is fit, [but if he is called] mamzer and is silent, he is unfit. There is no difficulty;[18] the one[19] is according to the first Tanna in the sense of R. Meir, and the other one is according to R. Simeon b. Eleazar in the sense of R. Meir.

MISHNAH. R. JOSE SAID: IT HAPPENED THAT A GIRL. WENT DOWN TO DRAW[20] WATER FROM A SPRING AND SHE WAS RAVISHED. R. JOHANAN B. NURI SAID: IF

MOST OF THE INHABITANTS[21] OF THE TOWN MARRY [THEIR DAUGHTERS] INTO THE PRIESTHOOD,[22] THIS [GIRL] MAY [ALSO] MARRY INTO THE PRIESTHOOD.[23]

GEMARA. Raba said to R. Nahman: According to whom did R. Johanan b. Nuri say [this n the Mishnah?]. If according to Rabban Gamaliel, [surely] he declares as fit even when there is a majority of unfit![24] [And] if it is according to R. Joshua, [surely] he declares as unfit even when there is a majority of fit![25] — He said to him: Rah Judah said [that] Rab said:

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(1) Lit., 'according to his words'.

(2) Halal is one who is profaned, unfit for priesthood on account of his father's illegitimate connection. Cf. Lev. XXI, 15 and v. Kid. 77a and 77b. A doubtful halal is a person about whom there is a doubt whether he is a halal or not.

(3) נטמע means 'to he mixed up beyond recognition'. V. Jast.

(4) Therefore one has to he careful with regard to doubtful halalim.

(5) [The widow would not be disqualified where there was a doubtful admixture of a halal in her dead husband's family.]

(6) [The marriage to any one of those enumerated in the Baraitha is Biblically forbidden and consequently renders the woman who marries the offspring of such an union unfit for a subsequent marriage to a priest, v. Yeb. 68a.]

(7) Cf. Lev. XXI, 15, and Yeb. 68a.

(8) Another difficulty.

(9) The first statement of the Baraitha and R. Meir's are practically identical.

(10) Another difficulty.

(11) Mamzer, nathin and royal slave.

(12) [And does not protest against the stigma attached to his descent.]

(13) Since he is not excluded from the congregation.

(14) That is, the teacher who transmitted the words of R. Meir and said in his name 'l have heard, etc.' and not the first Tanna of the cited Baraitha.

(15) Lit., a mamzer has a voice — And since he is not regarded generally as a mamzer he does not think it worth while to protest against the assertion of one man.

(16) For the priesthood.

(17) As he is not excluded from the congregation, he does not desire any investigations into his origin (Rashi).

(18) There is no contradiction between these two Baraithas.

(19) The second Baraitha.

(20) Lit., 'to fill'.

(21) Lit., 'men',

(22) Are entitled to marry their daughters to priests. This shows that they are 'fit'.

(23) Because the man with whom she had intercourse is taken to be one of the majority, and the majority consists of 'fit' men,

(24) Because he places the woman on the presumption of fitness, v. supra 13b.

(25) V. supra 13b.

Talmud - Mas. Kethuboth 15a

The incident[1] happened at the springs[2] of Zepphoris, and the ruling followed R. Ammi, for R. Ammi said: and that is when a company of unfit men passed by there,[3] and also R. Jannai. for R. Jannai said: if she had intercourse at the springs she is fit for the priesthood. — Do you really mean to say at the springs? — But rather [say]: If she had intercourse at the time of [the people visiting] the springs she is fit for the priesthood. But if someone went[4] from Zepphoris and had intercourse [with her], the child is a shethuki.[5] This is according to the following: When R. Dimi came[6] he said that Ze'iri said [in the name of] R. Hanina, and some say: Ze'iri said [in the name of] R. Hanina:[7] One goes after the majority of [the inhabitants of] the town and one does not go after the majority of the [passing] company. — Just the reverse! These[8] move about and those[9] are stationary![10] — But [say thus]: One goes after the majority of the [inhabitants of the] town, but only when there is [also] the majority of the [passing] company with it, but one does not go after the majority of the [inhabitants

of the] town alone, nor after the majority of the [passing] company alone.[11] — What is the reason?[12] — It is prohibited[13] [to go after] the majority of the [passing] company in order to prevent[14] [going after] the majority of [the inhabitants of] the town. But even [in the case of] the majority of [the inhabitants of] the town, if he, went[15] to her, [let us say that] he who separates himself separates himself from the majority?[16] — It speaks of a case[17] when she went to him.[18] so that he was stationary,[19] and R. Zera said: All that is stationary is considered as half to half.[20] But do we require two majorities? Has it not been taught: if nine [meat] shops.[21] all of them, sell ritually killed meat. and one [shop sells] meat not ritually slaughtered and he bought in[22] one of them and he does not know in which of them he bought. it is prohibited because of the doubt;[23] but if [meat] was found,[24] one goes after the majority?[25] And if you will say that [it speaks of a case] when the gates of the city are not closed,[26] so that a majority[27] came [also] from outside,[28] did not R. Zera say: even when[29] the gates of the city are closed? — Where purity of descent is concerned they[30] put up a higher standard.[31]

The text says: 'R. Zera said: All that is stationary is considered as half to half.' [This apparently means] whether it is for leniency or for strictness.[32] Whence does R. Zera take it? Shall I say from [the Baraitha which teaches that] if nine [meat] shops, all of them, sell ritually killed meat and one [shop sells] meat not ritually slaughtered and he bought in one of them[33] and he does not know in which of them he bought, it is prohibited because of the doubt; but if [meat] was found, one goes after the majority? There it is for strictness![34] But [he derives it] from [the following]: If there were [in a certain place] nine frogs and one reptile[35] and he touches one of them and he does not know which of them he touched he is unclean because of the doubt? — There also it is for strictness![36] — But [rather] from [the following]: If there were [in a certain place] nine reptiles and one frog and he touches one of them and he does not know which of them he touched, [if this happened] on private ground he is unclean because of the doubt, [but] if this happened in a public place,[37] he is clean because of the doubt.[38]

And how do we know this[39] from the Bible? — The verse says: And if he lie in wait for him and rise up against him,[40] [that is to say that he is not guilty of murder] until he intended [to kill] him. And the Rabbis? — They said in the school of R. Jannai: This excludes one who throws a stone into [a group of people]. What case do you mean? Do you mean a case when there are nine idolators and one Israelite? Let it be sufficient for him[41] that the majority are idolators,[and] even if [you will say that it is considered as] half to half, [the rule is that] when there is a doubt in capital cases one takes a lenient view! — It speaks of a case when there are nine Israelites and one idolator, so that the idolator is stationary, and whatever is stationary is considered as half to half.[42]

It was stated: R. Hiyya b. Ashi [said that] Rab said [that] the law is according to R. Jose.[43] And R. Hanan b. Raba [said that] Rab said [that] it was [only] a decision for the hour.[44] R. Jeremiah argued: And for pure descent we do not require two majorities? Have we not learned:

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(1) Related in our Mishnah.

(2) קרונות var. lec. (קרונה) 'spring', so Levy. V. also Krauss, TA. I 212. Jast.: 'Caravan', 'Station'.

(3) [So that there were two majorities of fit persons — the majority of local inhabitants and the majority of visitors from outside].

(4) Lit., 'separated himself'.

(5) V. supra 13b and Glos.

(6) To Palestine.]

(7) Leaving out R. Dimi.

(8) The people of the passing company.

(9) The inhabitants of the town.

(10) Lit , 'and these are fixed and stand'. — As to the point of the question, v. infra.

(11) I.e., there must be two majorities.

(12) That we do not go after the majority of the (passing) company.
(13) Lit., 'a prohibition'
(14) Lit., 'on account of'.
(15) Lit., 'if they went', that is to say one of the inhabitants of the town.
(16) I.e., he who comes away from a crowd, or a community is regarded as having come away from those who constitute the majority of the crowd or community. And if the majority of the town consists of fit people, we ought to assume that the man who had intercourse with the woman was one of the majority and did not disqualify her from marrying a priest, and that no blemish attaches to the child.
(17) Lit., 'no, necessarily'.
(18) Lit., 'to them'.
(19) I.e., fixed in one place.
(20) The rule of majority does not apply, v. infra.
(21) Out of the ten meat-shops that are in the market
(22) Lit., 'from'.
(23) Lit., 'its doubt is prohibited'. [Because the prohibited minority is in a fixed, settled place (kabu'a), v. infra.]
(24) In the market-place, in which the ten shops are situated.
(25) And the majority of the shops sell ritually killed meat. Thus we see that one single majority is sufficient.
(26) [And meat is admitted from the outside.]
(27) Of butchers selling ritually killed meal.
(28) Lit., 'from the world'. [So that there are two majorities — the majority of local Jewish butchers and the majority of Jewish butchers from outside.]
(29) Lit., 'although'.
(30) The Sages.
(31) And therefore two majorities are required, cf. supra 13a.
(32) I.e., whether the result of this rule is lenient or strict, that is, to allow or to prohibit (whichever it may be).
(33) This illustrates the principle of kabu'a, a fixed, stationary prohibition.
(34) And you cannot derive from this for leniency.
(35) Dead reptiles make ritually unclean, but not frogs, v. Lev, XI, 29.
(36) And you cannot derive from this for leniency.
(37) [On the principle that a doubtful ease of uncleanness is clean if it arises in a public place but unclean if in private ground v. Sot. p. 140.]
(38) From this Baraitha you can derive both for strictness and for leniency.
(39) The rule: what is stationary is considered half to half.
(40) V. Deut. XIX, 11.
(41) Lit., 'let it be deduced by him'.
(42) For full notes on this passage v. Sanh. (Sonc. ed.) p. 531, n. 4 and B.K. (Sonc. ed.) p. 253.
(43) In our Mishnah.
(44) A special decision for the occasion, regard having been had to certain circumstances, which is not to be taken as a precedent, for elsewhere two majorities are required.

Talmud - Mas. Kethuboth 15b

[If] one found in it[1] an abandoned[2] child — if the majority [of the inhabitants of the town consist of] non-Israelites [the child is] a non-Israelite, if the majority [of the inhabitants of the town consist of] Israelites [the child is] an Israelite, [and if the inhabitants of the town are] half to half, [the child is] an Israelite.[3] And Rab said: They have taught this only with regard to sustaining it,[4] but not with regard to pure descent. And Samuel said: [They have taught this only] with regard to removing debris[5] for its sake?[6] — That which Rab Judah said in the name of Rab[7] [namely, that] the incident happened at the springs of Zepphoris,[8] escaped his[9] attention.[10] But according to R. Hanan b. Raba who said [that] it was a decision for the hour,[11] it is difficult![12] He who taught this[13] did not teach that.[14]

The [above] text [says]: '[If] one found in it an abandoned child — if the majorlty [of the inhabitants of the town consist of] non-Israelites [the child is] a non-Israelite. if the majority [of the inhabitants of the town consist of] Israelites [the child is] an Israelite, [and if the inhabitants of the town are) half to half [the child is] an Israelite. Rab said: They have taught this only with regard to sustaining it, but not with regard to pure descent. But Samuel said: [They have taught this only] with regard to removing debris for its sake.' But did Samuel say so? Did not R. Joseph say that R. Judah said in the name of Samuel: We do not go with regard to saving life after the majority?[15] — But the saying of Samuel referred[16] to the first clause: 'If the majority [of the inhabitants of the town consist of] non-Israelites [the child is] a non-Israelite.' [Upon this] Samuel said: And with regard to removing debris it is not so,[17] 'If the majority [of the inhabitants of the town consist of] non-Israelites [the child is] a non-Israelite' — for what practical purpose [is this taught]? — R. Papa said: To allow him to eat [meat of] animals not ritually slaughtered. — 'If the majority [of the inhabitants of the town consists of] Israelites [the child is] an Israelite,' — for what practical purpose [is this taught]? — R. Papa said: That one returns to him a lost object.[18] If [the inhabitants of the town are] half to half [the child is] an Israelite' — for what practical purpose [is this taught]? Resh Lakish said: With regard to damages.[19] How shall we imagine this case? Shall we say that an ox of ours[20] gored[21] an ox of his?[22] [In this case] let him[23] say to him.[24] 'Bring evidence that you are an Israelite — and take![25] It speaks of a case when an ox of his[26] gored an ox of ours[27] — one half he[28] pays, and with regard to the other half he says to them,[29] 'Bring evidence that I am not an Israelite and I will pay[30] you.[31]

C H A P T E R I I

MISHNAH. IF A WOMAN BECAME A WIDOW OR WAS DIVORCED[32] [AND] SHE SAYS, 'THOU DIDST MARRY ME [AS] A VIRGIN,'[33] AND HE SAYS, 'NOT SO, BUT I MARRIED THEE [AS] A Wldow,'[34] -[35] — IF THERE ARE WITNESSES THAT SHE WENT OUT[36] WITH A HINUMA[37] AND HER HEAD UNCOVERED,[38] HER KETHUBAH IS TWO HUNDRED [ZUZ.][39] R. JOHANAN THE SON OF BEROKA SAYS: ALSO THE DISTRIBUTION OF ROASTED EARS OF CORN IS EVIDENCE.[40] AND R. JOSHUA ADMITS THAT, IF ONE SAYS[41] TO HIS FELLOW,[42] THIS FIELD BELONGED TO YOUR FATHER AND I BOUGHT IT FROM HIM. HE IS BELIEVED,

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(1) In a town in which Israelites and non-Israelites live.

(2) Lit., 'thrown away'.

(3) Mak. VII, 2.

(4) [Jews are in duty bound to support their own poor.]

(5) On Sabbath.

(6) It would appear from this text with regard to pure descent that one majority' is not sufficient.

(7) Lit., '(that) Rab said'.

(8) So that there were two majorities, v. supra p. 81, n. 3.

(9) R. Jeremiah.

(10) Had R. Jeremiah not overlooked this he would not have asked his question, for indeed two majorities were required for pure descent.

(11) It is now being assumed that R. Hanan also accepted the explanation that it occurred at the springs of Zepphoris, so that there were two majorities and he regards this ruling of R. Johanan b. Nuri only as a special decision, but elsewhere, two majorities are not required.

(12) Why does Rab say in the case of the abandoned child 'but nor with regard to pure descent', which would shew that Rab requires two majorities also in other cases?

(13) That Rab said here 'but not with regard to pure descent'.

(14) That R. Judah said in the name of Rab that the incident happened at the springs of Zepphoris. Indeed there was only one majority there, and therefore R. Hanan said, 'it was a decision for the hour', v. supra, p 83, n. 10 In all other cases two majorities are required.

(15) Where it is a question of saving life the minority had to be equally taken into considerations.
(16) Lit., but when that of Samuel was said, it was said with regard'.
(17) One must remove the debris from the child in any case.
(18) V. B.M. (Sonc. ed.) p. 149, n. 6.
(19) V. B.E. (Sonc. ed) p. 211, n. 6.
(20) Belonging to Israelites.
(21) Cf Ex. XXI, 35,36.
(22) Belonging to the erstwhile abandoned child.
(23) The Israelite,
(24) To him who was an abandoned child.
(25) The damages due to you.
(26) Belonging to the erstwhile abandoned child.
(27) Belonging to Israelites.
(28) The erstwhile abandoned child.
(29) To the Israelites.
(30) Lit., 'give.'
(31) The other half as well, that is full damages, v. B.K. loc. cit.
(32) Lit., 'the woman who became a widow or was divorced.'
(33) And the kethubah is two hundred zuz.
(34) And the kethubah is one hundred sins.
(35) If the woman became a widow the dispute is between her and the heir (or heirs) of the husband.
(36) On her wedding day, from the house of her father to the house of her husband.
(37) For the meaning of this word v. infra p. 95.
(38) That is, her hair loosened; for the meaning of פרוע cf. Num. V, 18.
(39) Because only virgin-brides went out on their wedding day with a hinuma and with the hair of the head loosened.
(40) That she was a virgin. They used to distribute roasted ears of corn to little children at the weddings of maidens, but not of widows or divorcees.
(41) Lit., 'in (the case of) one (who) says.'
(42) I.e., to another man.

Talmud - Mas. Kethuboth 16a

FOR THE MOUTH THAT BOUND IS THE MOUTH THAT LOOSENS.[1] BUT IF THERE ARE WITNESSES THAT IT[2] BELONGED TO HIS FATHER AND HE SAYS, 'I BOUGHT IT FROM HIM.' HE IS NOT BELIEVED.

GEMARA. The reason[3] is that there are witnesses,[4] but if there are no witnesses the husband is believed. Is it to say that the anonymous and undisputed decision[5] recorded in our Mishnah is not according to Rabban Gamaliel? For if it were according to Rabban Gamaliel, did not he say that she is believed?[6] — You may even say [that it is according to] Rabban Gamaliel; [for] Rabban Gamaliel says [it][7] only there in [a case of] 'sure' and 'perhaps'.[8] but here[9] where they are both[10] sure[11] [in their statements] he[12] did not say [it][13] — But he who raised the question, how could he raise it at all?[14] Surely this is a case where they are both 'sure' [in their statements]! — Since most women get married as virgins [you might say that] it[15] is like 'sure and perhaps'.[16] This[17] may also be proved by the following reasoning, since it is stated: AND R. JOSHUA ADMITS [etc.][18] It is well if you say [that] Rabban Gamaliel admits.[19] But if you say [that] Rabban Gamaliel does not admit.[20] to whom does [then] R. Joshua admit?[21] Do you think [that] R. Joshua refers to this chapter?[22] He refers to miggo[23] in the first chapter.[24] To which?[25] Is it to say [that he refers] to this: If she was pregnant, and they said to her. 'What is the nature of this embryo'. [and she answered, 'it is] from man So-and-so and he is a priest'. Rabban Gamaliel and R. Eliezer say: She is believed, [and] R. Joshua says: We do not live from her mouth?[26] What miggo is there in that case?[27] Behold, her stomach reaches up to her teeth![28] Again [should it refer] to this: They saw her talking with someone and they

said to her: 'what is the character of this man?' [and she answered, 'it is] man So-and-so and he is a priest'. Rabban Gamaliel and R. Eliezer say: She is believed [and] R. Joshua says: We do not live from her mouth?[29] [There too.] what miggo is there? True, there is according to Ze'iri, Who says [that] 'she was talking' means 'she was hiding herself' [with a man]. [in which case she has] a miggo, for if she wished she could say. 'I had no intercourse,' and [still] she said, 'I had intercourse,' [therefore] she is believed. But according to R. Assi, who says [that] 'she was talking' means 'she had intercourse, what miggo is there?[30] Or again [should he refer] to this: She says. 'I was injured by [a piece of] wood,' and he says. 'Not so, but thou wast trodden by a man.' Rabban Gamaliel and R. Eliezer say: She is believed, and R. Joshua says: We do not live from her mouth?[31] [There too] what miggo is there? True, there is according to R. Eliezer, who says that [the dispute between the husband and the wife is] with regard to a maneh and nothing.[32] [In which case she has] a miggo, for if she wished she could say. 'I was injured by a piece of wood under thee,'[33] and she would get two hundred [zuz.],[34] and [still] she said [that she was injured] earlier,[35] [therefore] she is believed. But according to R. Johanan who says that [the dispute between the husband and the wife is] with regard to two hundred [zuz] and a maneh,[36] what miggo is there?[37] — But [he refers] to this: If one has married a woman and has not found in her virginity [and] she says. 'After thou hadst betrothed me [to thyself] I was violated and thy field has been inundated,' and he says, 'Not so, but [it happened] before I betrothed thee [to myself]'. Rabban Gamaliel and R. Eliezer say: She is believed, and R. Joshua says: We do not live from her mouth,[38] For [here there is] a miggo, because if she wished she could say. 'I was injured by a piece of wood under thee,' and [by saying this] she would not make herself unfit for the priesthood. and [still] she said, 'l have been violated', and [by saying this] she made herself unfit for the priesthood; therefore Rabban Gamaliel said that she is believed. And R. Joshua said to Rabban Gamaliel: With regard to this miggo here,[39] I agree with you, but with regard to that miggo there,[40] I differ from you. Now, this is a miggo and that is a miggo, what difference is there between this miggo and that miggo.? Here[41] there is no slaughtered ox before you, there[42] there is a slaughtered ox before you.[43] But since most women get married as virgins.[44] [even] if no witnesses came,[45] what of it?[46] — Rabina said: Because one can say:[47] most women marry as maidens and a minority as widows. And whenever a maiden gets married, it is spoken about,[48]

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(1) I.e., if that person had been silent the other man would not have known that the field ever belonged to his father. We have, therefore, to believe both his statements.

(2) The field.

(3) Of the decision given in our Mishnah that the kethubah of the woman is two hundred zuz.

(4) That she went out on her wedding day with the hinuma and uncovered head.

(5) Lit., 'we have learnt without definition.'

(6) V. supra 12b.

(7) That she is believed.

(8) There (in the Mishnah 22b) the husband cannot be 'sure' with regard to his statement, while the wife can be sure. V. Rashi.

(9) In our Mishnah.

(10) The husband and the wife.

(11) Lit., 'in sure and sure'.

(12) Rabban Gamaliel.

(13) That the wife is believed. The wife is not believed more than the husband.

(14) The answer is so obvious.

(15) The case in our Mishnah.

(16) The statement of the wife is more 'sure' than that of her husband. And therefore you might say that she is believed even when there are no witnesses that she went out with a hinuma' and her head uncovered. And as this is, apparently, not the view of our Mishnah, the questioner raised his question.

(17) That Rabban Gamaliel would admit that, if there were no witnesses that she went out with a hinuma' and her head uncovered, the husband would be believed (Rashi).

(18) V. second clause of our Mishnah.

(19) Lit., ‘Rabban Gamaliel treats of "he admits".’ I.e., It is well, if it is assumed that Rabban Gamaliel admits that, in the absence of witnesses, (v. n. 13) the husband is believed, since it is a case of ‘sure’ and ‘sure’; in which case the author of the first clause of the Mishnah is Rabban Gamaliel, who while differing from R. Joshua in a case of ‘sure’ and ‘perhaps’ (as in the Mishnah on 12b), agrees here with R. Joshua, since it is a case of ‘sure’ and ‘sure’. And, therefore, it is said in the second clause of the Mishnah ‘AND R. JOSHUA ADMITS,’ namely In the first clause of the Mishnah Rabban Gamaliel admits to R. Joshua. and in the second clause R. Joshua admits to Rabban Gamaliel (Rashi).
(20) V. n. 15.
(21) To what do the words ‘AND R. JOSHUA ADMITS’ refer, seeing that no mention is made previously in the Mishnah of any dispute.
(22) I.e., to the first clause in the first Mishnah of this Chapter.
(23) I e., the controversy regarding miggo v. supra p. 67. n. 8.
(24) Lit ‘he refers to miggo and he refers to the first chapter’.
(25) I. e., to which ease does he refer?
(26) V. supra 13a, second Mishnah, second clause.
(27) Lit., ‘there’.
(28) She could not say that she had no intercourse! What other statement could she have made which would have been more to her advantage?
(29) V. supra 13a. second Mishnah, first clause.
(30) She could not say that she had no intercourse since there is evidence to the contrary! What other statement could she have made which would have been more to her advantage?
(31) V. infra 13a, first Mishnah.
(32) v. Supra 13a.
(33) Since our betrothal. In which ease she is entitled to two hundred zuz.
(34) V. supra p. 69.
(35) That is, before the betrothal and thus claims only a maneh.
(36) V. supra p. 68. And she would get two hundred (zuz) if she was injured by a piece of wood, whether she was injured before or after the betrothal.
(37) V. preceding note.
(38) V. supra 12b.
(39) The second clause of our Mishnah. The man could have been silent, therefore we believe also his second statement.
(40) In the Mishnah 22b.
(41) In the second clause of our Mishnah.
(42) In the Mishnah 12b.
(43) The phrase ‘there is a slaughtered ox before you’ means, there is a fact which cannot be wiped out or denied. This applies to the Mishnah 12b. The virginity is not there. This fact remains. According to R. Joshua in such a case a miggo is of no avail. But in our Mishnah the other person would not have known that the field once belonged to his father if the present holder had not told him so. This is meant by the phrase, ‘There is no slaughtered ox before you.’ There is no fact here if the holder of the field had not stated it. In such a case a miggo is applied, because we assume that the holder of the field would not have said it if he had not bought the field from the other man's father.
(44) Reverting to the argument at the beginning of this folio.
(45) That she went out with a hinuma and uncovered head.
(46) She should be regarded as having belonged to the majority and therefore having been a virgin at her marriage, so that her kethubah would be two hundred (zuz).
(47) Lit., ‘there is to say’.
(48) Lit., ‘she has a voice.’ A girl's marriage is much more spoken about than a widow's marriage. A girl's marriage is also much more festive and much more public.

Talmud - Mas. Kethuboth 16b

and since this one was not spoken about,[1] [the presumption that she belonged to] the majority has become shaken. — But if [you maintain that] whenever a maiden gets married it is spoken about, [then even] when witnesses come,[2] what of it?[3] They are false witnesses![4] — But, said Rabina: most

marriages of maidens are spoken about,[5] and [in the case of] this one, since it was not spoken about, [the presumption that she — the bride — belonged to] the majority has been shaken.[6] IF THERE ARE WITNESSES THAT SHE WENT OUT WITH A HINUMA, etc. Should we not be afraid that perhaps she might produce witnesses before this court and get [her kethubah] paid and [later] she might produce the written document [of the kethubah] before another court and get [her kethubah] paid [a second time] by that [document]? — R. Abbahu said: This teaches [that] one writes a quittance.[7] R. Papa said:[8] It speaks of a place in which one does not write a kethubah document.[9] Some refer[10] this[11] to the [following] Baraitha: If she lost her kethubah document, or she hid it, or it was burnt, [then the matter is as follows:] if they danced before her, played before her, passed before her the cup of [glad] tidings,[12] or the cloth of virginity[13] [and] if she has witnesses with regard to one of these [things],[14] her kethubah is two hundred [zuz]. Now should we not be afraid that perhaps she might produce witnesses before this court and get [her kethubah] paid and [later] she might produce the written document before another court and get [her kethubah] paid [a second time] by that document? — R. Abbahu said: This teaches [that] one writes a quittance. R. Papa said: It speaks of a place in which one does not write a kethubah document. But does it not say '[if] she lost her kethubah document'?[15] — [It so happened] that he wrote her [one]. But may she not after all produce it and get [her kethubah] paid [a second time] with it! The meaning of 'she lost [it]' is 'she lost [it] in fire.'[16] If so, it is the same as 'it was burnt!' And then, what can you say with regard to 'she hid [it]?'[17] And furthermore, why [mention] 'she lost [it]'?[18] — But [this is what the Baraitha means]: if she lost it, it is as if she had hidden it before us, and we do not give her [the kethubah money] until witnesses say [that] her kethubah document has been burnt.[19] He who refers this[20] to the Baraitha, all the more [does he refer it] to the Mishnah. But he who refers this to our Mishnah [does] not [refer it] to the Baraitha, because of the difficulty.[21] IF THERE ARE WITNESSES, etc. Should we not be afraid that perhaps she might produce witnesses of hinuma before this court and get [her kethubah] paid and [later] she might produce [other] witnesses of hinuma before another court and get [her kethubah] paid [a second time]? — Where it is not possible otherwise,[22] we certainly write a quittance. [It is said above in the Baraitha]: '[If] they passed before her the cup of [glad] tidings.'[23] What is the cup of [glad] tidings? R. Adda the son of Ahaba said: One passes before her a cup of wine of Terumah,[24] as if to say. 'This one is worthy of eating Terumah.'[25] R. Papa demurred to this: Does not a widow eat Terumah?[26] But, said R. Papa [as if to say] 'This one is "first"[27] as Terumah is "first".'[28] It has been taught: R. Judah says: One passes before her a cask of wine. R. Adda the son of Ahaba said: [If she was] a virgin one passes before her a closed one, [and if] she has had intercourse with a man one passes before her an open one. Why? Let us pass [a cask of wine] before a virgin and let us not pass [a cask of wine] at all before one who had intercourse? — [It may happen] some times that she has seized[29] two hundred [so] and [then] says. 'I was a virgin and they did not pass [a cask of wine] before me because they were prevented by an accident.'[30] Our Rabbis taught: How does one dance[31] before the bride? Beth Shammai say:

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(1) If this had been known as a maiden's marriage it would have been made public and there would have been people to come forward and give evidence that she went out with a hinuma and her head uncovered.

(2) And say that she went out with a hinuma and uncovered head.

(3) Since this marriage was not spoken about, one should say that she was not married as a maiden.

(4) Since other people knew nothing about it.

(5) Not 'all marriages of maidens'.

(6) Therefore, the presence or absence of witnesses makes all the difference.

(7) [And the husband produces a quittance that he paid her the kethubah, cf. B.B. 171b.]

(8) [He holds that no quittance may be written for fear of putting the lender at a disadvantage in case he loses it. What they do on payment is to tear up the bond without which the creditor cannot claim his debt.]

(9) [And the woman collects her dues in the court since it is a condition enjoined by the court, v. infra 51a.]

(10) Lit., 'teach'.

(11) The controversy of R. Abbahu and R. Papa.

(12) כום של בשורה, v. infra.

(13) On the day of her marriage.
(14) Which are only done at the marriage of a virgin.
(15) And this shows that a kethubah document was written.
(16) And she cannot produce it any more.
(17) If she hid it, she can produce it.
(18) As 'she lost (it)' is mentioned separately, it cannot mean 'in fire'.
(19) This means that if 'she lost' it or 'she hid' it. she does not get the kethubah money unless she finds the document and produces it. If she says 'it was burnt,' she must produce witnesses that it was burnt. This answer is indeed unsatisfactory.
(20) The controversy of R. Abbahu and R. Papa.
(21) V. supra note 10.
(22) [In a place where no kethubah is written, and the woman collects her dues at the court by means of witnesses, and there is the possibility for her to produce two sets of witnesses before two different courts and collect ber kethubah twice.]
(23) כום של בשורה v. Krauss T.A. II, p. 459. In J. Keth II, 1, חבית של בשרות 'a barrel of glad tidings' is mentioned.
(24) V. Glos.
(25) That is, she is unblemished and fit to marry a priest.
(26) A widow may also marry a priest.
(27) I. e., she is a virgin and for the first time dedicated to married life.
(28) Terumah is called 'first', cf. Num. XV, 20, 21; Deut. XVIII, 4.
(29) If she is in possession of the two hundred zuz the onus probandi is on the other party.
(30) Rashi says: They were intoxicated from the wine which they drank at the wedding, and the other party could not bring evidence to disprove her statements. But now that a cask of wine has to be passed also before one who was not a virgin, witnesses will be available to testify that in the latter case an open cask was passed before her.
(31) What does one sing or recite?

Talmud - Mas. Kethuboth 17a

The bride as she is.[1] And Beth Hillel say: 'Beautiful and graceful bride'![2] Beth Shammai said to Beth Hillel: If she was lame or blind, does one say of her: 'Beautiful and graceful bride'? Whereas the Torah[3] said, 'Keep thee far from a false matter.'[4] Said Beth Hillel to Beth Shammai: According to your words,[5] if one has made a bad purchase in the market, should one praise it[6] in his eyes or depreciate it?[7] Surely,[8] one should praise it in his eyes. Therefore,[9] the Sages said: Always should the disposition of man be pleasant with people. — When R. Dimi came,[10] he said: Thus they sing before the bride in the West:[11] no powder[12] and no paint[13] and no waving[14] [of the hair], and still a graceful gazelle. When the Rabbis ordained R. Zera they sang before him thus: No powder and no paint and no waving [of the hair], and still a graceful gazelle. When the Rabbis ordained R. Ammi and R. Assi they sang before them thus: Such as these, such as these ordain unto us, [but] do not ordain unto us of the perverters[15] or babblers,[16] and some say: of the half-scholars[17] or one-third-scholars.[18] When R. Abbahu came from the Academy to the court of the Emperor,[19] hand-maids[20] from the Imperial house went out towards him and sang before him thus, 'Prince of his people, leader of his nation, shining light,[21] blessed be thy coming in peace!' They tell of R. Judah b. Ila'i that he used to take a myrtle twig and dance before the bride and say: 'Beautiful and graceful bride.' R. Samuel the son of R. Isaac danced with three [twigs].[22] R. Zera said: The old man is putting us to shame.[23] When he[24] died,[25] a pillar of fire came between him and the whole [of the rest of the] world. And there is a tradition that a pillar of fire has made such a separation[26] only either for one in a generation or for two in a generation only.[27] R. Zera said: His twig[28] [benefited] the old man, and some say: His habit[29] [benefited] the old man, and some say: his folly[30] [benefited] the old man. — R. Aha took[31] her[32] on his shoulder and danced [with her]. The Rabbis said to him: May we [also] do it? He said to them: If they[33] are on you[34] like a beam,[35] [then it is] all right. and if not, [you may] not. R. Samuel b. Nahmani said [that] R. Jonathan said: it is allowed to look intently at the face of the bride all the seven [days][36] in order to make her beloved to her husband.[37] But the law is not according to him. Our Rabbis taught: One causes a funeral procession[38] to make way[39] for a bridal procession,[40] and both of them[41] for the King of Israel. One tells of King Agrippa that he made way for a bride, and the Sages praised him. — They praised him — from this it would seem that he did well. Did not R. Ashi say: Even according to him, who says [that] if a king forgoes his honour, his honour is forgone, if a king forgoes his honour, his honour is not forgone. for a Master said:[42] 'Thou shalt set a king over thee,'[43] [this means] that his awe shall be over thee?[44] — It was [at] a cross-road.[45] Our Rabbis taught: One interrupts[46] the study of the Torah for the sake of a funeral procession[47] and the leading[48] of the bride [under the bridal canopy]. They tell of R. Judah b. Ila'i that he interrupted the study of the Torah for the sake of a funeral procession[49] and the leading[50] of the bride [under the bridal canopy]. This applies only[51] when there are not sufficient people at the funeral procession,[52] but if there are sufficient people one does not interrupt [the study of the Torah].[53] And how many are sufficient? R. Samuel the son of Ini said in the name of Rab: Twelve thousand men and six thousand trumpets.[54] And some say: Twelve thousand[55] men and among them six thousand trumpets.[56] 'Ulla said: For instance when people form a line from the city-gate to the burial place. R. Shesheth, and some say R. Johanan said: Its taking away[57] is like its giving.[58] As its giving was in [the presence of] sixty myriads[59] [of people], so [has] its taking away [to be] in [the presence of] sixty myriads [of people]. And this is the case only[60] with regard to one who read [the Bible] and studied [the Mishnah.]

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(1) One does not exaggerate in praising the bride. If she is not beautiful one does not say that she is.

(2) Every bride has to be regarded and praised as beautiful and graceful.

(3) I.e., the Pentateuch.

(4) Ex XXIII. 7.

(5) I.e., according to the view you have just expressed.

(6) The thing purchased.

(7) In the text 'in his eyes' is repeated here.

(8) Lit., ‘you] must say’.
(9) Lit , ‘from here’.
(10) To Babylonia.
(11) I. e., Palestine.
(12) כחל. A powder used for painting the eye-lids. stibium.
(13) שרק A paint for the face.
(14) פירכום means ‘making the hair beautiful’ either by dyeing it or by dressing it. It may also denote making the hair into locks. V. Levy and Jast. ‘Waving’ is perhaps the best translation. It may also refer to painting the face. Cf. Shah. 34a and Jast. s.v. פרכם I. One painting refers to the eyes, one to the cheeks, and one, perhaps, to the lips.
(15) I.e., Immature scholars who pervert the reasons of the law (Rashi). V. Sank. ag.
(16) I.e men who cannot substantiate their decisions who cannot argue properly (Rashi).
(17) V, Levy
(18) V. Levy. On these terms v. also Sank. (Son. ed) p. 65 notes.
(19) At Ag where he had his academy.
(20) In Sank. 14a. ‘the matrons’.
(21) Lit., ‘lamp of light’.
(22) [He used to throw up three twigs one after the other and catch them in turn (Rash).]
(23) Through his myrtle dance before the bride.
(24) R. Samuel the son of R. Isaac.
(25) Lit., ‘when his soul was at rest’.
(26) I.e., that such an apparition was seen.
(27) I.e., for one man or two men in a generation. Only for very great and pious men such a phenomenon occurs.
(28) With which he danced at weddings before the bride. This good deed was the cause of the apparition.
(29) Of dancing before the bride.
(30) Of dancing with three twigs before the bride (Rashi). The words in the text for ‘twig’, ‘habit’ and ‘folly’ are almost alike.
(31) Lit., ‘caused her to ride’.
(32) The bride.
(33) The brides.
(34) I.e., on your shoulders.
(35) I.e.. awaking no sensual desire.
(36) Of the wedding week.
(37) When he (the husband) sees that all look at her intently (admiring her beauty), her beauty enters his heart (Rashi).
(38) Lit ‘the dead’.
(39) Lit., ‘to pass by’.
(40) Lit., ‘before a bride’.
(41) Lit., ‘and this and this’.
(42) In Kid. 32b it says שנאמר, ‘for it is said’. Here אמר מר is used referring apparently to R. Ashi.
(43) Deut. XVII. 15.
(44) That thou shalt respect him, v, Sot. (Sonc. ed.) p. 204.
(45) Where Agrippa made way for a bride. and people might have thought that be had to go in the other direction.
(46) Lit., ‘one abolishes’, ‘suspends’.
(47) Lit., ‘for the bringing out of the dead’.
(48) Lit., ‘for the bringing in’.
(49) Lit , ‘for the bringing out of the dead’.
(50) Lit., ‘for the bringing in’.
(51) Lit., ‘in what (case) are these words said’?
(52) Lit., ‘when there is not with him all his requirement’.
(53) This limitation only applies to the funeral procession. but not to the leading of the bride to the canopy
(54) I.e., trumpeters.
(55) So the correct reading in Meg. 29a. Our text ‘thirteen thousand’.
(56) I.e., trumpeters.

(57) I.e., the taking away of the Torah. When a scholar dies the Torah which he knew and studied is taken away, as far as his knowledge and his study are concerned.
(58) I.e., as the giving of the Torah on Sinai.
(59) I.e.. 600,000.
(60) Lit., 'and these words (have been said)'.

Talmud - Mas. Kethuboth 17b

But for one who taught [others] there is no limit.[1] AND IF THERE ARE WITNESSES THAT SHE WENT OUT WITH A HINUMA etc. What is hinuma.? — Surhab b. Papa said in the name of Ze'iri: A myrtle-canopy.[2] R. Johanan said: A veil under which the bride [sometimes] slumbers.[3] R. JOHANAN THE SON OF BEROKA SAYS, etc. It was taught: This was [regarded as] a proof in Judaea; what is [the proof in] Babylonia? — Rab said: The dripping of oil on the heads[4] of the scholars.[5] R. Papa said to Abaye: Did the master speak of oil [used] for cleaning [the head]?[6] — He said to him:[7] Orphan,[8] did not your mother do the dripping of the oil on the heads of the scholars at the time[9] of the event?[10] As that [case when] one of the scholars was occupied with [the wedding of] his son in the house Of Rabbah b. 'Ulla — and some say, Rabbah b. 'Ulla was occupied with [the wedding of] his son in the house of one of the scholars — and he dripped oil on the heads of the scholars at the time of the event.[11] — What [sign is there at the wedding of] a widow? — R. Joseph taught: A widow has no roasted ears of corn [distributed at her wedding].[12] AND R. JOSHUA ADMITS THAT IF ONE SAYS TO HIS FELLOW etc. But let him[13] teach: R. Joshua admits that in [the case when] one says to his fellow,'this field belonged to you[14] and I have bought it of you' [he is believed]? — Because he would have to teach [in] the last clause: If there are witnesses that it was his and he says. 'l have bought it of you'. he is not believed.[15] [And] how shall we imagine this case? If he ate [the fruits of] it [during the] years of hazakah[16] why should he not be believed? And if he did not eat [the fruits of] it [during the] years of hazakah it is self-evident that he is not believed![17] — If so, with regard to his father[18] also [one could argue]: If he[19] ate [the fruits of] it [during the] years of hazakah. why should he not be believed?[20] And if he did not eat [the fruits of] it [during the] years of hazakah, it is self-evident that he is not believed! We grant you with regard to his father, [because] there may be a case, as, for instance, when he ate [the fruits of] it two [years] during the life of the father and one [year] during the life of his son.[21] And [this would be] according to R. Huna, for R. Huna said: One does not acquire the ownership of the property of a minor by the undisturbed possession of it during the prescribed period. even if [he continued in the possession after] the minor had become of age.[22] But R. Huna comes to let us hear [what is already taught In] our Mishnah![23] — If you wish. you may say. R. Huna says. 'what is to be derived from our Mishnah by implication.'[24] And if you wish, you may say, 'he lets us hear, even if he had become of age'.[25] But let him[26] [after all] teach with regard to himself[27] and put the case when he[28] ate [the fruits of] it two [years] in his presence[29] and one [year] in his absence,[30] and, for instance, when he[31] fled? — Because of what did he flee? If he fled because of [danger to his] life,[32] it is self-evident that he[33] is not believed. since he cannot protest![34] And if he fled because of money [matters].[35] he ought to have protested.[36] because it is established for[37] [that] a protest in his absence[38] is a [valid] protest![39] For we have learned: There are three countries with regard to hazakah: Judaea, Trans-Jordan and Galilee.[40] [If] he[41] was in Judaea and someone took possession [of his land] in Galilee, [or he' was] in Galilee and Someone took possession [of his land] in Judaea, it is no hazakah[42] until he is with him in the [same] province.[43] And we asked[44] concerning it,[45] What opinion does he[46] hold? If he holds that a protest in his absence[47] is a [valid] protest,[48] this should apply also to Judaea and Galilee.[49] And if he holds [that] a protest in his absence is not a [valid] protest. it should not he [a valid protest] even if they are both in Judaea?[50] [And] R. Abba the son of Memel said: Indeed, he holds [that] a protest in his absence is a [valid] protest, but our Mishnah speaks[51] of a time of lawlessness.[52] — And why does he just speak of Judaea and Galilee?[53] '

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(1) Of the number of people attending his funeral.

(2) So Rashi. V. next note.
(3) So Rashi. Cf. however, Levy and Jast. s. vv. Cf. also Krauss, TA., II, p. 457. note 311, and p. 458. note 316.
(4) Lit., 'head'.
(5) Rashi.' Young scholars who were present at the wedding. This was a sign that the bride was a virgin.
(6) Surely the scholars do not require such oil (Rashi) cf. also Krauss, T.A. I. p. 683. n. 187.
(7) Abaye.
(8) I.e., one who is ignorant of this custom (Rashi).
(9) Lit . 'hour'.
(10) I.e., at your wedding.
(11) Of the wedding.
(12) And the absence of the ears of corn is the sign that she is a widow (Rashi).
(13) The teacher of our Mishnah.
(14) Instead of 'to your father'. [Since the reason for R. Joshua's ruling is that it is a case where there is no slaughtered ox before you, he could have illustrated it in this way (Rashi). Tosaf.: this would be a stronger case seeing that both parties are 'sure' in their plea]
(15) And this is not the case. for the reasons to be stated immediately.
(16) 'To eat' the field meant 'to use and take' the fruits of the field. 'To eat' the field without anyone complaining about this meant undisturbed possession of the field. And if this undisturbed possession lasted three years without interruption it established ownership. V. B.B. 28ff. Both the holding of the land and the right accruing from it giving the title of ownership are called hazakah. 'Years of hazakah'; the term means both 'the years of holding' and 'the years of holding that give the right and title of ownership.' 'To eat' is similar to usus' in the Twelve Tables (VI. 3)' In the sense of 'holding' hazakah is also similar to 'usus'. In the sense of 'acquisition (of ownership) by holding for a certain period fixed by law', it is similar to 'usucapio' in Roman Law. Ulpian says. 'Usucapio est adjectio dominii per continuationem possessionis temporis lege definita.' 'Usucapio is the acquisition of ownership by possession for the length of time required by law.' The full time for 'usucapio' of lands and houses was in Roman Law (till Justinian) two years. In Talmudic Law it was three years. For the Roman Law of 'usucapio' see, Hunter, Roman Law, 4th ed., p. 205ff, Muirhead, Law of Rome, 3rd ed., p. 132f., p. 241 and p. 380. and Moyle. Justiniani Institutiones, 3th ed. p. 225ff. As to iusta causa and iustus titulus, v. Moyle. op. cit. p. 226, n.3; in Talmudic Law cf. Baba Bathra, fol. 41a, Mishnah. הזקה על ידי אכילה would correspond to usucapio. 'The taking by using' (usucapio) would after the prescribed time become 'taking (altogether). that is acquiring by use.' In Talmudic Law- 'capio' was the more dominating term. It seems that the full meaning of 'auctoritas' in 'usus auctoritas fundi' (in 'the Twelve Tables, v. Muirhead, op. cit. p. 132) was lost in the course of time. 'Auctoritas' seems to mean the authority, the right of ownership acquired by the use of the soil (real property). 'Usucapio' is not so good as 'usus auctoritas'. 'Usucapio' has, after all, in Roman Law two meanings, as hazakah in Talmudic Law. It is worthy of note that Ulpian. who came from Syria, was a contemporary of the Tannaim of the second half of the second century. Gaius also lived in the second century. אכלה is not translated by 'he bad the usufruct of it', because 'usufruct' is the right of using and taking the fruits of property not one's own. (Justinian's Institutes, II. 4) v. Moyle, Engl. Translation of Justinian's Institutes, 4th ed., p. 47. v. also Hunter, op. cit., p. 396.
(17) And since he had to teach in the last clause the case where the field belonged to 'his father', he also taught in the first clause 'this field belonged to your father.'
(18) I.e., the father of the other man.
(19) The claimant, i.e., the man who says. 'This field belonged to your father and l bought it of him.'
(20) In the last clause of the Mishnah.
(21) [And the Mishnah teaches us although he did occupy for three years he is nevertheless not believed.]
(22) V. B.M. 391. Fir certain business transactions, the minor became of age, in Talmudic Law, when be reached the age of twenty; v. B.B. 155a.
(23) According to the answer just given the rule stated by R. Huna is implied in the teaching of the Mishnah.
(24) What R. Huna states is not said explicitly in the Mishnah. It is to be derived by implication. And R. Huna derives it and states it as a rule.
(25) The rule as stated by B. Huna has an additional point, namely. 'even if be bad become of age'. This cannot be derived from the Mishnah by implication. This additional point is the reason why R. Huna states the rule.
(26) The teacher of our Mishnah.

(27) The other man, and not the other man's father.
(28) The present possessor.
(29) In the presence of the other man.
(30) This year in his absence does not count, as be could not protest.
(31) The other man. [And thus teach us that, although be did occupy it for three years. the year be had it in the other's absence does not count, and be is not believed.]
(32) He was in danger of bis life in the place in which be lived. He would be afraid to protest (against the man holding bis land) in his place of refuge, because be would be afraid of being pursued by those who sought his life. The fact that be did not protest during the third year would, therefore, not make the possession of the field by the present holder an undisturbed possession for the period required by the law.
(33) The present possessor.
(34) Cf. n. 11.
(35) To avoid unpleasantness because of money-matters.
(36) Wherever be is, as no personal harm would be done to him even if his place of refuge became known.
(37) I.e., it is an established rule.
(38) I.e., in the absence of the present holder.
(39) Because the protest goes from person to person until it reaches the present bolder. V. B.B. 38b.
(40) I.e.. the three provinces of Palestine mentioned in the Mishnah are regarded as three different countries in respect of hazakah.
(41) The owner of the land.
(42) The undisturbed holding of the land for the period required by law does not acquire ownership.
(43) Mishnah, B.B. 38a: 'in one province. only when both, owner and holder, are in the same province, that is in Judaea or in Galilee, v. B.B. 38a.
(44) By way of discussion,
(45) Cf B.B. 38a-b.
(46) The teacher of the Mishnah.
(47) I.e., in the absence of the present holder.
(48) Because the protest goes from person to person until it reaches the present holder, v. B.B. 38b.
(49) I.e., if the one is in Judaea and the other is in Galilee in due course the protest made by the owner in one province will reach the holder in the other province.
(50) Lit., 'even Judaea and Judaea also not'. Even if they are in the same province, but in different places. The protest is still In his absence.
(51) Lit., 'and the Mishnah they taught'.
(52) In the text: חירום 'Lawlessness'. A lawlessness brought about by war or by other causes. Through the lawlessness there is no communication between the two provinces, so that the protest cannot reach the holder of the land. And if the protest cannot reach the holder of the land, the protest, if made, would have no force. And as the protest would have no force, the possession of the holder does not become an undisturbed possession. Cf. Rashbam, B.B. 38a.
(53) Lit., 'and why are Judaea and Galilee different that he takes (them)'? The meaning of the question is: 'Lawlessness may also occur between towns in the same province.'

Talmud - Mas. Kethuboth 18a

Because [the condition of the relations between] Judaea and Galilee is usually as in time of lawlessness.[1] But let him teach: R. Joshua admits [that] when one says to his fellow, 'I borrowed from you a maneh and paid it [back] to you.' he is believed![2] — Because he would have [in that case] to teach [in] the last clause: 'If there are witnesses that he borrowed from him [a maneh] and he says. "I have paid it [back]" he is not believed', but it is established for us[3] [that] if one lends [money] to his fellow before[4] witnesses, he need not pay it [back] to him before witnesses.[5] — But let him [then] teach: R. Joshua admits [that] if one says to his fellow, 'I owed to your father a maneh[6] and I returned to him half'[7] he is believed![8] — According to whose opinion?[9] If according to the opinion of the Rabbis. surely they say [that he is regarded as] one who returns a lost thing;[10] [and] if according to R. Eliezer b. Jacob. surely he says that he must take an oath![11] For it has been

taught:[12] R. Eliezer b. Jacob says: Sometimes [it may happen] that a man has to take an oath because of his own statement. How [is it]? [If one says to his fellow]. 'I owed to your father a maneh and I returned to him half,' he must take an oath.[13] And this is [a case] where one takes an oath because of one's statement.[14] But the Sages say: He is [regarded] only as one who returns a lost thing and he is free. And does not R. Eliezer b. Jacob hold [that] one who returns a lost thing is free?[15] — Rab said: [It speaks here of a case] when a minor claimed from him.[16] But did not a Master say: One does not take an oath because of a claim by a deaf-mute, an imbecile, or a minor?[17] — What is [meant by] 'minor'? A grown-up person, and why does he call him 'minor'? Because with regard to the affairs of his father he is [regarded as] a minor. If so, [how can you say] 'his own statement?' It is a claim [made] by others! — It is a claim [made] by others and [also] his own admission. But all claims [consist of] a claim [made] by others and one's own admission![18] — They differ here with regard to [an opinion of] Rabbah, for Rabbah said: Why did the Torah say [that] he who admits a part of the claim must take an oath? [Because] it is a presumption [that] no man is insolent in the face of his creditor. He would [indeed] like to deny the whole [debt]. but he does not do it[19] because no one is [so] insolent.

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(1) Cf. B. B. 28a for variants.

(2) [The Mishnah could have illustrated the ruling of R. Joshua in a case 'where there is no ox slaughtered before you'. in this way instead of by one dealing with real property and with 'your father.']

(3) I.e.,it is an established rule; cf. B.B. 170a, Shebu. 41b.

(4) Lit., 'with'.

(5) I.e., he is believed if he says he repaid it to him in the absence of witnesses. so the Mishnah could not teach that he is not believed.

(6) Lit., 'a maneh to thy father in my hand', that is, thy father had a maneh in my hand.

(7) Lit., 'and made him eat half (or a portion)'. it may be that be paid him the half in kind, perhaps in goods.

(8) [Since it is made entirely on his own initiative. This would be a strong point. having regard to the law that elsewhere he who admits half a claim is not believed without an oath, v. infra.]

(9) Would that statement be.

(10) Even if the admission is not made on his own initiative but made on the claim of the son, he is free from paying the other half, and from taking an oath. V. Shebu 42a, also 38b.

(11) As to the other half.

(12) Shebu. 42b.

(13) As to the other half.

(14) If he would not have made the statement no one would have known of his debt.

(15) From taking an oath. [Surely this is against the well-established principle that he is exempt. v. Git. 48b.]

(16) His statement was therefore not entirely 'his own statement'.

(17) V. Shebu. 38b. [How then could R. Eliezer in such a case impose an oath?]

(18) [All cases for which an oath is imposed are such as where the one against whom a claim is made makes a partial admission.

(19) Lit., 'and this one that be does not deny it'.

Talmud - Mas. Kethuboth 18b

[Indeed] he would like to admit the whole of it,[1] only he does not do it in order to slip away from him [for the present].[2] and he thinks, 'as soon as I will have money I will pay it'.[3] And [therefore] the Divine Law[4] said: Impose an oath on him, so that he should admit the whole of it.[5] [Now] R. Eliezer b. Jacob holds [that] he is not insolent against him nor against his son, and therefore he is not [regarded as] one who returns a lost thing. And the Rabbis hold [that] against him he is not insolent, but against his son he might be insolent, and since he is not insolent,[6] he is [regarded as] one who returns a lost thing.[7]

MISHNAH. IF WITNESSES SAID, 'THIS[8] IS OUR HANDWRITING, BUT WE WERE

FORCED,[9] WE WERE MINORS, WE WERE DISQUALIFIED WITNESSES,[10] THEY ARE BELIEVED.[11] BUT IF THERE ARE WITNESSES THAT IT IS THEIR HANDWRITING, OR THEIR HANDWRITING COMES OUT FROM ANOTHER PLACE,[12] THEY ARE NOT BELIEVED.[13] GEMARA. Rami b. Hama said: They taught[14] this[15] only when they[16] said: We were forced [by threats] with regard to money.[17] but [if they said]. we were forced [by threats] with regard to [our] life, they are believed. Raba said to him: Is it so? After he has once testified. he cannot again testify![18] And if you will say [that] this applies only to an oral testimony but not to testimony In a document — did not Resh Lakish say: If witnesses are signed on a document it is as if their testimony had been examined in court?[19] No; if it has been said,[20] it has been said with regard to the first clause, [where it is stated:] THEY ARE BELIEVED. Whereupon Rami b. Hama said: They taught this[21] only when they[22] said, 'We were forced [by threats] with regard to [our] life.' but if they said, 'we were forced [by threats] with regard to money. they are not believed. because no one makes himself [out to be] a wicked man.[23] Our Rabbis taught: They[24] are not believed to disqualify[25] it.[26] This is the view of R. Meir; but the Sages say [that] they are believed. This is right according to the Rabbis,[27] who follow[28] their principle[29] 'the mouth that bound is the mouth that loosened,'[30] but what is the reason of R. Meir?[31] I grant you [with regard to] 'DISQUALIFIED WITNESSES.'[32] [because] the creditor himself examines well [the witnesses] beforehand and [then] lets [them] sign.[33] [With regard to] 'MINORS' also [it can be explained] according to R. Simeon b. Lakish. for Resh Lakish[34] said:

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(1) The whole debt.

(2) I.e.,to postpone the matter.

(3) The whole debt.

(4) Lit., 'the All-Merciful'.

(5) Now.

(6) And admits a part of the debt.

(7) And be is believed without an oath. For further notes on the whole passage v. Sheb. (Sonc. ed.) pp. 25ff'.

(8) The handwriting of the signatures on a document.

(9) To sign.

(10) Lit 'Unfit with regard to testimony'. They may have been unfit either through kinship or through their conduct (Rashi). Cf. Sanh. 27b and 24b.

(11) [Since it is they who at the first instance confirm their signatures. they are also believed in the attendant reservation made by them in regard thereto.]

(12) As when their handwriting has been confirmed on another document.

(13) [Since the validity of their signatures does not depend on their present attestation the reservation Is not accepted.]

(14) In our Mishnah.

(15) That if their handwriting is confirmed through another document they are not believed to disqualify their signature on the present document.

(16) The witnesses.

(17) Money threats should not have made them sign a falsehood. And they are not believed to say that they signed a falsehood, v. note 12.

(18) Retracting what he testified before — By their signatures they declared the document valid. and they cannot now declare it to be invalid.

(19) Therefore, what applies to oral testimony applies also to testimony in a document.

(20) I.e., if Rami b. Hama made any statement similar to the one mentioned above.

(21) That they are believed to disqualify their signature.

(22) The witnesses.

(23) I.e.. a man's testimony against himself has no legal effect. And by saying now that money threats made them sign a false testimony. the witnesses would make themselves out to be wicked men. V. n. 6.

(24) The witnesses who signed the document.

(25) In the manner stated in the first clause of the Mishnah.

(26) The document.

(27) I.e.. 'the Sages'.

(28) Lit., 'as'.

(29) Lit., 'their reason'.

(30) I.e., the same persons who made the document valid have the power to make the document invalid. cf. Mishnah 14b.

(31) Lit., 'but according to R. Meir, what is the reason'?

(32) I.e., if they say 'we were unfit to bear testimony;' v. supra p. 101, n. 13.

(33) They must therefore have been fit witnesses, and they cannot now say that they were unfit.

(34) Abbreviated from R. Simeon h. Lakish.

Talmud - Mas. Kethuboth 19a

It is a presumption that the witnesses do not sign a document unless [everything] was done by adults.[1] But what is the reason with regard to 'FORCED?'[2] — R. Hisda said: R. Meir holds that if one said to witnesses, 'sign a falsehood and you will not be killed,' they should rather be killed and not sign a falsehood.[3] Raba said to him: Now. if they would come to us to ask [our] advice, we would say unto them: Go [and] sign and do not be killed, for a Master said: 'There is nothing that comes before the saving of life except idolatry, incest and bloodshed only.'[4] Now that they have signed, can we say to them: why have you signed?[5] But the reason of R. Meir is in accordance with what R. Huna [said in the name of] Rab: for R. Huna said [that] Rab said: If he[6] admits that he has written the bond,[7] there is no need[8] to confirm it.[9] [To revert to] the main text:[10] R. Huna said [that] Rab said: If he[11] admits that he has written the bond, there is no need to confirm it. R. Nahman said to him: Why do you go round about?[12] If you hold with R. Meir, say: the halachah is according to R. Meir.[13] He[14] [then] said to him:[15] And how do you Sir, hold?[16] He[17] said to him:[18] When they come[19] before us in court,[20] we say to them: go [and] confirm your documents[21] and [then] come to court.[22] Rab Judah said [that] Rab said: If one said: This is a [loan-] deed of trust,[23] he is not believed. Who said [it]? If the debtor said it, it is plain; why should he be believed? If the creditor said [it], may a blessing come upon him![24] And if the witnesses said [it], — [then] if their handwriting comes out from another place, it is plain that they are not believed,[25] and if their handwriting does not come out from another place, why should they not be believed?[26] (Mnemonic: BASH)[27] Raba said: Indeed, the debtor said [it], and [it is] according to R. Huna, for R. Huna said [that] Rab said: If he[28] admits that he has written the document, there is no need to confirm it.[29] Abaye said: Indeed, the creditor said [it], and it is a case where he would injure others.[30] And [this is] according to R. Nathan, for it has been taught:[31] R. Nathan says: Whence [do we learn that], if one has a claim of a maneh against his fellow and that fellow against another fellow,[32] we[33] take out [the sun, of a maneh] from this one and give it to that one?[34] The Writ says[35] And he shall give [it] to whom he owes [it].[36] R. Ashi said: Indeed, the witnesses said [it], and [it is in a case] where their handwriting does not come out from another place; and as to your question,[37] Why should they not be believed, [the answer is] as stated by R. Kahana, for R. Kahana said: It is forbidden for a man to keep[38] a [loan-] deed of trust in his house, because it is said: Let[39] not unrighteousness dwell in thy tents.[40]

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(1) That is, all the parties, including the witnesses, must have been grown-up persons and not minors. Therefore. R. Meir holds that the witnesses are not allowed to say now that they were minors when they signed the document.

(2) Why does R. Meir hold that, if the witnesses said 'we were forced to sign the document. they are not believed?

(3) So that even if they say that they were forced us sign a falsehood by threats with regard to their life, they make themselves out to be wicked, and this no one can do; v. p. 102, n. 12.

(4) This means: everything, every religious law must yield to the preservation of life. If one is told: Transgress this or that law, otherwise you will be killed, he should transgress the law and not be killed. Only in respect of idolatry, incest and bloodshed this rule does does not apply. One should rather lose one's life than commit these transgressions; v. Sanh. 74a.

(5) In the case of signing a document, one should sign a falsehood and not lose one's life. The witnesses should,

therefore, be believed if they said. ‘we were forced to sign a falsehood by threats to our life’.
(6) The debtor.
(7) And that the witnesses signed it by his direction.
(8) For the creditor.
(9) By the witnesses; and the debtor cannot plead that he has discharged the debt as long as the creditor holds the bond. The statement of the witnesses is not necessary now. Therefore, they cannot disqualify the bond, according to R. Meir.
(10) From which the above quotation has been taken.
(11) The debtor.
(12) Lit., ‘O thou cunning man, what is the use of thy going round about?’ (Jast.).
(13) [Instead of making it an independent statement, thus conveying the impression that it is a ruling on which there is no disagreement among Tannaim.]
(14) R. Huna.
(15) R. Nahman.
(16) I.e.. what is your opinion?
(17) R. Nahman.
(18) R. Huna.
(19) Creditors.
(20) Lit., ‘to law’.
(21) Rashi: ‘Go and seek (and bring) your witnesses and confirm it (the document)’. [As a precaution. In case the debtor, though admitting that he wrote the bond, will plead that he had discharged the debt.
(22) Lit ‘and go down to law’.
(23) I.e., a bill of indebtedness signed on trust, in expectation that the loan, which is stated in the bill as having been advanced, will be advanced at some future date. The debtor trusts the creditor. The document is therefore called שטר אמנה, a document, or deed of trust’.
(24) For being so honest.
(25) V. our Mishnah.
(26) It is their testimony upon which the validity of the document depends.
(27) A stands for Raba, A for Abaye, and SH for R. Ashi, the names of the three Amoraim who follow now.
(28) The debtor.
(29) [And the debtor cannot now invalidate the document by saying that it is a deed of trust even in the absence of attesting witnesses.]
(30) If the creditor is believed that the document is a deed of trust, be will injure others, who are his creditors, if he has no other assets. Therefore, he is not believed.
(31) In a Baraitha.
(32) I.e., A owes a maneh to B, and B owes a maneh to C.
(33) The court.
(34) The court takes a maneh from A and gives it to C. since B who is the creditor of A is the debtor of C.
(35) תלמוד לומר, lit., ‘There is a teaching in the Scriptural text to intimate (this)’, v. Jast. p. 1672.
(36) Num. V, 7. E. V. ‘and give it unto him to whom he is ‘guilty’. The teaching derived from these scriptural words by R. Nathan is: restitution has to be made to him to whom restitution is due. If A owes a maneh to B and B owes a maneh to C, the debt of A to B is paid, or may be paid. to C.
(37) Lit., ‘what you say’.
(38) Lit., ‘to cause to stay’.
(39) M.T. ‘And let not’.
(40) Job XI, 14.

Talmud - Mas. Kethuboth 19b

And R. Shesheth, the son of R. Idi, said: From [the words of] R. Kahana can be inferred[1] [that] if witnesses said, ‘Our words were [regarding a matter of] trust,’[2] they are not believed, for this reason:[3] Since it is ‘unrighteousness’ [we say that] they must not sign on [what is] unrighteousness.[4] R. Joshua b. Levi. said: It is forbidden for a man to keep a paid bill of indebtedness in his house,

because it is said: 'Let not unrighteousness dwell in thy tents'.[5] In the West[6] they said in the name of Rab: [It is said]: If iniquity be in thy hand, put it far away.[7] This is a [loan-] deed of trust and a deed of good-will;[8] [and it is said]: 'And let not unrighteousness dwell in thy tents'. This is a paid bill of indebtedness. He who says [that it[9] applies to] a paid bill of indebtedness, how much more [does it apply to] a [loan-] deed of trust.[10] [And] he, who says [that it applies to] a [loan-] deed of trust, [would hold that it does not apply to] a paid bill of indebtedness,[11] because sometimes they keep it on account of the scribe's fees.[12] It has been stated: A book[13] that is not corrected[14] — R. Ami said: Until thirty days one is allowed to keep it, from then and further on, it is forbidden to keep it, because it is said: 'Let not unrighteousness dwell in thy tents.[15] R. Nahman said: If witnesses said, 'Our words were [regarding a matter of] trust.'[16] they are not believed; [if they said]. 'Our words were [attended by] declaration,'[17] they are [also] not believed.[18] Mar. the son of R. Ashi. said: [if witnesses said]. 'Our words were [regarding a matter of] trust,' they are not believed; [but if they said], 'Our words were [attended by] declaration,' they are believed, for this reason:[19] this one[20] was allowed to be written[21] and that one[22] was not allowed to be written.[23] Raba asked of R. Nahman: How is it [if witnesses say], 'Our words were [subject to] a condition' ?[24] [Are they not believed in the case of] 'declaration' and 'trust' because[25] they invalidate[26] the document, and [in] this [case of 'condition'] they also invalidate the document? Or is perhaps 'condition' a different thing?[27] — He[28] said to him:[29] When they[30] come before us in court, we say to them: go [and] fulfil your conditions and [then] come to court. If one witness says [that there was] a condition,[31] and one witness says [that there was] no condition R. Papa said: they both testify to a valid document and only one says [that there was] a condition, and the words of one [witness] have no value where there are two witnesses.[32] R. Huna the son of R. Joshua demurred to this: If so,[33] even if they both say [that there was a condition] [their words should] also [have no value]![34] But we say [that] they come to uproot their testimony,[35] and this one also comes to uproot his testimony.[36] And the law is according to R. Huna, the son of R. Joshua. Our Rabbis taught: If two [witnesses] were signed on a document and died, and two [witnesses] came from the street and said, 'We know that it is their handwriting, but they were forced, they were minors, they were disqualified witnesses, they[37] are believed. But if there are [other] witnesses that this is their handwriting. or their handwriting comes out from another place, [namely] from a document, the validity of which was challenged,[38] and which was confirmed[39] in Court,[40] they are not believed. — And we collect[41] with it as with a valid document? Why? They are two and two![42] — Said R. Shesheth: This teaches [that] contradiction[43] is the beginning of rebuttal,[44]

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(1) Lit., 'understand from this'.

(2) I.e.. they say that the document they signed as witnesses was a loan-deed of trust.

(3) Lit., 'what is the reason?'

(4) And as they had signed, they are not believed when they say that it was a deed of trust, because they cannot make out themselves to be wicked; as supra p. 102, n. 12.

(5) Job XI, 14.

(6) Palestine.

(7) Job XI. 14.

(8) שטר פסים Jast.: 'a deed of sale for accommodation' [Rashb. B.B. 154b explains it as a deed of feigned sale arranged for the purpose of making people believe that the person in whose favour it is made out is wealthy. 'Aruch takes it as a variant of פסטים, **, 'trust'. (v. J. Keth. II, 3) and simply the Greek equivalent of שטר אמנה].

(9) The prohibition to keep the document.

(10) There was fraud even in its origin.

(11) Lit., 'but a paid bill of indebtedness, no.'

(12) Lit., 'the small coins of the scribe' — the creditor paid the scribe's fee, which the debtor has to pay. The creditor, therefore, keeps back the paid bill of indebtedness until he has collected from the debtor the scribe's fee. There is a lawful ground for keeping back the documents.

(13) Of the Bible.

(14) I.e., the mistakes in the manuscript had not been corrected.

(15) And it is ‘unrighteousness’ to keep a book of the Bible with mistakes uncorrected.
(16) I.e., they say that the document they signed as witnesses was a loan-deed of trust.
(17) Of protest. The witnesses say that the seller protested that be was forced to sell and did not recognize the sale, and that they signed the deed in cognizance of the protest.
(18) They cannot invalidate a written document.
(19) Lit., ‘what is the reason’.
(20) The latter.
(21) In order to get out the seller from his predicament.
(22) The former.
(23) On account of ‘unrighteousness’.
(24) The witnesses say. ‘we signed the deed of sale, but the sale was made dependent upon a condition, which has not been fulfilled’.
(25) Lit., ‘this is the reason’.
(26) Lit., ‘uproot’.
(27) [The condition in itself does not affect the validity of the document, only the non-fulfilment thereof.]
(28) R. Nahman.
(29) Raba.
(30) The purchasers in a transaction, the witnesses to which declare. that it was subject to a condition.
(31) Attached to the transaction.
(32) Lit., ‘in the place of two’.
(33) [Since the confirmation of the signature by the witness to the transaction is treated as a formal attestation of the document, which bats the admission of any qualifying declaration subsequent thereto.]
(34) [Having once testified to the validity of the document, they cannot subsequently retract by saying that it was subject to a condition. Why then did R. Nahman, in the case of two witnesses, insist on the purchasers fulfilling the condition?]
(35) [The mere confirmation of their signatures by the witnesses does not complete their attestation of the document. This is completed in their subsequent statement that it was subject to a condition. This latter statement, however, taken in itself, is but a qualification of their former statement confirming their signatures without any direct bearing as to the validity of the document, which really depends upon the fulfilment or non-fulfilment of this condition. In this it is different from the case where the subsequent statement declares the document to have been written under protest, attacking the validity of the document itself.]
(36) So that there is only one witness on the document.
(37) The two witnesses from the street.
(38) Lit ‘against which one called a protest’.
(39) Lit ‘strengthened’.
(40) As valid.
(41) Lit ‘we cause to be collected (the debt)’.
(42) The two witnesses who are signed on the document and who are now dead, and the two witnesses from the street, who testify to the unfitness of the witnesses who bad signed on the document. Even if their handwriting is otherwise confirmed, their testimony is counterbalanced by the testimony of the two witnesses from the street.
(43) הכחשה is a denial of the subject-matter of the evidence, for which however, no retaliatory punishment is imposed, as Deut. XIX, 19 does not refer to witnesses who were contradicted so the subject-matter of their evidence, but against whom the accusation (in a sense) of an ‘alibi’ was proved. [The term ‘alibi’ is used bete for convenience sake, as it deals there with the presence or absence of the witnesses of the alleged crime at the time when it was committed, rather than with the presence or the absence of the accused, as the term is generally understood.]
(44) הזמה I.e., the proving of an ‘alibi’, a rebuttal of evidence, whereby the witnesses are proved to be Zomemim, (v. Glos.). The proving of the subject-matter of the evidence to be false is a first step in a subsequent proof of an ‘alibi’, both being but one continued process of law, v. B K. 73b.

Talmud - Mas. Kethuboth 20a

and as witnesses can be rebutted only in their presence,[1] so can they be contradicted only in their presence.[2] R. Nahman said to him: If they[3] had been before us and [the other two witnesses] had

contradicted them, it[4] would hake been a contradiction,[5] and we would not have paid any attention to them,[6] because it[7] is a contradicted testimony. Now that they[8] are not here[9] — [when it could be maintained] that if they had been before us, they[10] might [even] perhaps have admitted to them[11] — should they be believed? No, said R. Nahman; set the two [witnesses][12] against the two [witnesses][13] and leave the property[14] in the possession of its master.[15] It is analogous to the [case of the] property of a [certain] madman. A [certain] madman sold property. Two [witnesses] came [and] said [that] he sold [the property] when he was insane, and two [witnesses] came and said [that] he sold [the property] when he was sane.[16] [And] R. Ashi said: Set the two [witnesses][17] against the two [witnesses][18] and leave the property[14] in the possession of the madman. And we say [this] only when he has the ownership-right of his forefathers,[19] but if he has not the ownership-right of his forefathers, we say that he bought [the property] when he was insane and that he sold [It] when he was insane.[20] — R. Abbahu said: One rebuts[21] witnesses only in, their presence, but one contradicts them also in their absence. And a rebuttal in their absence — granted that it is not an [effective] rebuttal,[22] but it is a contradiction.[23] The Master said [above]: 'If there are witnesses that this is their handwriting, or their handwriting came out from another place. [namely] from a document which was contested and was confirmed in court, they are not believed'. [This is only] if it was contested, but not, if it was not contested.[24] This is a support[25] for R. Assi, for R. Assi said: A document[26] is confirmed only from a document, which was contested and was confirmed in Court. The Nehardeans[27] said: A document is confirmed only from two kethuboth or from two fields,[28] and [only] when their owners[29] used[30] them for three years, and [that] in comfort.[31] R. Shimi b. Ashi said: And [only] when it is produced by another person,[32] but not [if it is produced] by himself.[33] — Why not [if from] under his own hand? Because he may have forged [the signatures of the witnesses].[34] [If so]. even when produced by another person also, perhaps he went[35] and saw[36] and forged?[37] — So clearly[38] he cannot fix [it in his mind].[39] Our Rabbis taught: A person[40] may write [down] his testimony in[41] a document[42] and may, through it,[43] give evidence even after many years. R. Huna said: Only when he remembers it[44] by[45] himself. R. Johanan said: Even if he does not remember it by himself.[46] Rabbah said: You may infer from [the words of] R. Johanan [that] if two [persons] know evidence[47] and one of them has forgotten [it], the other one may remind him[48] [of it]. They asked: [In the case of] himself[49] — what is [the law]?[50] — R. Habina said: Even he himself [may do so]. Mar b. R. Ashi, said: He himself [may] not. And the law is: he himself [may] not.

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(1) In view of the retaliatory punishment which it involves, the accusation of an 'alibi' can be made only in the presence of the witnesses concerned.

(2) [No evidence is accepted refuting the subject-matter of the evidence in the absence of the witnesses, and since in the case of the document they are dead, the evidence of the second set of witnesses is not accepted. The evidence disqualifying the witnesses as having been forced or minors is considered הכחשה not כהזמה.]

(3) The witnesses who signed the document.

(4) The testimony of the new witnesses.

(5) Of the testimony of the witnesses who signed the document.

(6) The witnesses who signed the document.

(7) The testimony of the witnesses of the document.

(8) The witnesses who signed the document.

(9) They died.

(10) The witnesses who signed the document.

(11) To the other witnesses. I.e., there is an additional reason for disregarding the testimony of the document. The witnesses who signed the document might even have admitted that what the other witnesses said was true.

(12) On the one side.

(13) On the other side.

(14) Lit., 'money'.

(15) I.e., of him who happens to have it now. [E.g., in the case of a note of indebtedness, either the debtor, or the creditor should the latter have happened to distrain on the debtor's goods. And when the Baraitha rules that they are not believed, it means only in so fat that the document is not destroyed.]

(16) Lit., 'well'.
(17) On the one side.
(18) On the other side.
(19) The ownership-right came to him from his forefathers by inheritance.
(20) And the property passes to the purchaser.
(21) V. supra p. 108 nn. 9 and 10
(22) And they do not incur the retaliatory penalty for Zomemim witnesses.
(23) I.e., the evidence stands contradicted.
(24) Lit., 'If it is contested, yes. if it was not contested, no'. If the document was contested and confirmed in court as valid, the new witnesses are not believed; but if the document was not contested and confirmed, the new witnesses are believed.
(25) Lit., 'supports'.
(26) I.e., the signatures of a document. If the confirmation is made by comparing it with the signatures attached to another document.
(27) The Scholars of Nehardea.
(28) From signatures of the same witnesses attached to two marriage settlements it deeds of sale of fields.
(29) I.e., the occupants who claim to be owners.
(30) Lit., 'ate'.
(31) Without anyone protesting against their holding of the fields.
(32) Lit., 'it comes out from under the hands of'. I.e., when the two documents, with which the contested document is compared, were in the possession of other persons and they produced them.
(33) Lit., 'from under his own hand'. I.e., if they were in the possession of the person whose document is contested.
(34) In the contested document.
(35) To the other persons.
(36) The other documents.
(37) The signatures of the witnesses on the contested document.
(38) Lit., 'all that'.
(39) He cannot hope to imitate the handwriting of the witnesses in the other documents, since the documents are not in front of him. By seeing the documents once or twice in the hands of others, he cannot forge the signatures.
(40) Who is going to be a witness in a legal dispute.
(41) Lit., 'on'.
(42) We would say 'on paper'.
(43) עליה 'through it', 'by it', 'by means of it'. There is apparently a legal nicety in the word. Not ממנה, 'from it'. If his evidence is only from it, that is if be does not recollect the evidence even when looking at the paper, his evidence would not be valid. The written testimony should be an aid to his memory. But if it does not recall anything to him, it is valueless.
(44) Part of the evidence (Rashi).
(45) Lit 'of, or from himself'. And the written testimony brings it all back to his mind.
(46) Only after looking at the document, in which be bad written his testimony at the time, he reminds himself of the facts of the case. But if he cannot now recollect anything, the written testimony has no value (Rashi). The same rule obtains in the English Law of Evidence. V. Cockle, Cases and Statutes on the Law of Evidence, third edition, pp. 266-7: 'A witness may refresh his memory by referring to any writing or document made by himself, at or so soon after the transaction in question that the judge considers it was fresh in his memory at the time. But it is not necessary that the witness should have any independent recollection of the fact recorded, if he is prepared to sweat to it on seeing the writing or document.' V. also Powell's Principles and Practice of the Law of Evidence, ninth edition, pp. 269-172. On p. 169: 'A witness may refresh his memory by looking at any memorandum — (1) Which revives in his mind a recollection of the fact to which it refers.' Paragraphs (2) and (3) on p. 170 are also very interesting. (3) is 'an extreme case,' and it is difficult to say whether R. Johanan would have gone as far as that.
(47) Knew facts of a case to which they could testify.
(48) Lit., 'one reminds his fellow'.
(49) I.e., the litigant.
(50) Lit., 'how is it'? I.e., may the litigant remind the witness of the evidence?

But if he[1] is a scholar,[2] even he himself[3] [may remind the witness].[4] As that case of R. Ashi: He knew evidence for R. Kahana, [and] he[5] said to him:[6] Does the master remember that evidence?[7] And he[8] said to him:[9] No. But was it not so and so?[10] He[11] replied: I do not know. In the end, R. Ashi reminded himself, and he gave evidence for him.[12] He[11] saw that R. Kahana was surprised,[13] [so] he[11] said to him:[14] Do you think [that] I relied upon you? l threw it upon my mind[15] and I remembered it.[16] We learnt elsewhere:[17] Mounds which are near a town or a road, whether they are new or old, are unclean;[18] those [mounds] which are distant — if they are new,[19] they are clean,[20] and if they are old,[21] they are unclean.[22] What is near? Fifty cubits.[23] And what is old? Sixty years.[24] [This is] the view[25] of R. Meir. R. Judah says: 'near', [denotes] when there is none nearer; 'old', when one remembers it.[26] [Now] what is [meant by] a town and what is [meant by] a road? Shall I say: [by] a town is [meant] an ordinary town, [and by] a road is [meant] an ordinary road? Do we presume uncleanness out of doubt? Did not Resh Lakish say: They[27] found some pretext[28] and declared the land of Israel unclean?[29] — Said R. Zera: [By] a town is [meant] a town which is near a burial place, and [by] a road is [meant] a road [leading] to a burial place. I grant you [in the case of] a road [leading] to a burial place,[30] because sometimes it might happen [that a funeral took place] at twilight, and it chanced that they buried it[31] in the mound.[32] But [in the case of] a town which is near a burial place — all go to the burial place![33] — Said R. Hanina: Because women bring there[34] their abortions and lepers[35] [bring there][36] their arms.[37] [And it is assumed that] till fifty cubits she[38] goes alone,[39] but for a longer distance[40] she takes a man with her and [then] she goes to the burial place.[41] Therefore, we do not presume uncleanness in Eretz Israel.[42] R. Hisda said: You may infer from [the words of] R. Meir[43] [that] one remembers[44] evidence till sixty years, for a longer[45] [period than sixty years] one does not remember. But it is not so, [for] there[46] [he does not remember the evidence after sixty years] because it[47] is not his concern,[48] but here,[49] since it is his concern, even for a longer [period[50] he] also [remembers the evidence].

MISHNAH. [IF] ONE[51] WITNESS SAYS, 'THIS IS MY HANDWRITING AND THAT IS THE HANDWRITING OF MY FELLOW, AND THE OTHER [WITNESS] SAYS, 'THIS IS MY HANDWRITING AND THAT IS THE HANDWRITING OF MY FELLOW,' THEY ARE BELIEVED. [IF] ONE SAYS, 'THIS IS MY HANDWRITING,' AND THE OTHER SAYS, 'THIS IS MY HANDWRITING,' THEY MUST JOIN TO THEMSELVES ANOTHER [PERSON].[52] [THIS IS] THE VIEW[53] OF RABBI. BUT THE SAGES SAY: THEY NEED NOT JOIN TO THEMSELVES ANOTHER [PERSON], BUT A PERSON IS BELIEVED TO SAY, 'THIS IS MY HANDWRITING'.[54] GEMARA. If you should find [that] according to the view of Rabbi

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(1) The witness.

(2) If the witness is a scholar he will know whether the reminding of the facts recalls the facts, or some of the facts, to his memory. If his memory is not aided, he will not give evidence.

(3) The litigant.

(4) Of the facts.

(5) R. Kahana.

(6) To R. Ashi.

(7) I.e., do you remember those facts?

(8) R. Ashi.

(9) R. Kahana.

(10) R. Kahana asked R. Ashi.

(11) R. Ashi.

(12) For R. Kahana.

(13) R. Kahana was surprised that R. Ashi gave evidence after be bad said twice that be did not remember it.

(14) To R. Kahana.

(15) Lit., ‘upon my soul’. — The meaning of these words is: I tried bard to recall the facts to my mind.
(16) His own mental efforts were successful. — This story shows that a scholar may be reminded of the evidence by the litigant himself.
(17) Oh. XVI, 2.
(18) We assume that there are graves in those mounds.
(19) Lit., ‘new ones’.
(20) If a dead body bad been buried there, it would have been known.
(21) Lit., ‘old ones’.
(22) They might have been used as burial places.
(23) Or less.
(24) Or more.
(25) Lit., ‘the words’.
(26) When it originated.
(27) The scholars.
(28) V. Nazir (Sonc. ed.) p. 247, n. 7.
(29) Why should we then presume uncleanness out of a doubt?
(30) That it is regarded as unclean.
(31) The dead body.
(32) As the funeral took place on the eve of Sabbath at twilight they might not have had time to reach the burial place before the commencement of Sabbath, and therefore they buried the dead body in the mound. Therefore, the mound is unclean.
(33) Since the burial place is near, why should the town, then, be unclean?
(34) In the mounds.
(35) Lit., ‘those who are afflicted with boils (leprosy)’.
(36) In the mounds.
(37) Or other limbs, which have been amputated or have fallen off through the disease of leprosy.
(38) The woman.
(39) And in that case she would bury the abortion in the mound.
(40) Lit., ‘more’.
(41) As she takes a man to accompany ber she does not mind going to the burial place and burying the abortion there.
(42) Lit., ‘the land of Israel’.
(43) Who says, ‘What is old? Sixty years.’
(44) Lit., ‘this evidence is remembered’.
(45) Lit., ‘more’.
(46) In the case of the mound.
(47) I.e., the matter of the origin of the mound.
(48) Lit., ‘not thrown upon him’. I.e., there is no reason why he should remember how the mound originated mote than sixty years back.
(49) In the case of a legal dispute, he is interested in the facts of which he was a witness, and, therefore, he remembers the evidence even after sixty years.
(50) Than sixty years.
(51) Lit., ‘this’.
(52) So that there should be two witnesses for each handwriting (signature).
(53) Lit., ‘the words’.
(54) And the two witnesses thus confirm the document which they signed.

Talmud - Mas. Kethuboth 21a

they[1] give evidence with regard to their handwriting.[2] according to the Sages they[3] give evidence with regard to the maneh[4] in the deed.[5] This is self-evident! — You might have said that Rabbi was in doubt whether they[3] testified to their signature or to the maneh in the deed.[6] And the difference[7] would be when one of them died. [Here] we need two witnesses[8] from the street to testify regarding

it,[9] because otherwise,[10] the whole of the money less a quarter would go out[11] by the mouth[12] of one witness, and both here and there the stricter rule would prevail.[13] Therefore, he teaches that it is clear to Rabbi,[14] whether the result is lenient[15] or strict.[16] For Rab Judah said [that] Rab said: If two [witnesses] are signed on a document and one of them died, two [persons] from the street are required to give evidence with regard to him.[17] In this[18] it would be lenient[19] according to Rabbi and it is strict[20] according to the Rabbis. And if there are not two, but there is only one,[21] what [then]? — Said Abaye: He[22] shall write his signature on a piece of clay[23] and place it before the court, and the court confirms it,[24] and he need not testify to his own signature,[25] and he [then] goes with that one[26] and they [together] testify to [the signature of] the other [witness].[27] And only on a piece of clay[28] but not a scroll,[29] lest a bad[30] man may find it and write on it whatever he likes,[31] and We have learned: If one person produces the handwriting[32] of another person[33] that he owes him [money], he collects [the debt] from unmortgaged[34] property.[35] Rab Judah said [that] Samuel said. The halachah is according to the Sages[36] This is obvious! [When there is a dispute between] one [authority] and many [authorities] the law is according to the many (authorities]! You might have said: since the halachah is according to Rabbi as against one of his fellow-scholars, it is also against many of his fellow-scholars,[37] so be lets us hear[38] [otherwise]. (Mnemonic: Nah, Nad, Had.)[39] R. Hinena b. Hiyya said to R. Judah, and some say (that] R. Huna b. Judah [said] to Rab Judah, and some say [that] R. Hiyya b. Judah [said] to Rab Judah: And did Samuel say so? Surely once a deed came out[40] from the court of Mar Samuel and there was written in it, 'Whereas R. 'Anan b. Hiyya came and testified to his own signature and to that of his fellow-witness,[41] namely,[42] R. Hanan b. Rabbah, and whereas R. Hanan b. Rabbah came and testified to his own signature and to that of his fellow-witness, namely R. 'Anan b. Hiyya,' we have verified[43] it, and we have confirmed it,[43] as it is proper![44] — He said to him: That deed belonged to orphans, and Samuel was afraid of an erring court.[45] Samuel thought: There might be someone who held that the halachah is [generally] according to Rabbi as against one fellow-scholar, and not as against many of his fellow-scholars, but [that] in this[46] [the halachah is according to Rabbi] even as against many of his fellow-scholars,[47] I will make relief,[48] so that the orphans should not suffer any loss. Rab Judah said [that] Samuel said: Witness and judge are joined together.[49] Rami b. Hama said: How excellent is this tradition! Said Raba: What is the excellence? What the witness testifies to the judge does not testify to, and what the judge testifies to the witness does not testify to?[50] And indeed, when Rami b. Ezekiel came he said: Do not heed those rules which my brother Judah[51] laid down in the name of Samuel.

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(1) The witnesses.

(2) Therefore the handwriting of each witness has to be confirmed by two witnesses.

(3) The witnesses.

(4) Maneh is only mentioned as an illustration. It is the transaction recorded in the deed to which they testify. This transaction might have been the loan of a maneh.

(5) And the two witnesses testify to the transaction by each of them confirming his signature, hence the ruling of the Sages.

(6) [And being in doubt, he took the more stringent view, and required that both witnesses testify to each other's signature.]

(7) Whether Rabbi was sure or doubtful in his view.

(8) Because of Rabbi's doubt whether the witnesses testified to their signature or to the maneh in the deed.

(9) The signature of the dead witness.

(10) Lit., 'if so'. I.e., if we should say that one witness from the street would be sufficient.

(11) I.e., would be given to the claimant.

(12) I.e., the evidence.

(13) If Rabbi was in doubt we should require two other witnesses to give evidence regarding the signature of the dead witness. One other witness, added to the surviving witness, would not do, because the evidence of the witnesses may be (since Rabbi is in doubt) with regard to the maneh In the deed, and not to the signatures, in which case half of the evidence regarding the transaction would be given when the surviving witness confirms his own signature. His own confirmation of his signature is sufficient, as fat as his evidence is concerned, if the object of the evidence is the

transaction recorded in the deed. half of the sum mentioned in the deed would then go to the claimant by his confirmation of his signature, in other words, by his evidence. And when be testifies, with the other new witness, regarding the signature of the dead witness, half of the other half of the sum is testified to by him, so that altogether three-quarters of the sum mentioned in the deed would go to the claimant through the evidence of one, the surviving witness, and this is not according to the law, which demands that no more than one half should 'go out' by the evidence of one single witness. (V. Git. (Sonc. ed.) p. 57, n. 9.) Therefore, through Rabbi's doubt, we should require two other witnesses when one witness died. And when both witnesses who signed the deed are alive, each signature must be testified to by both witnesses, because there would be Rabbi's doubt that the evidence may be regarding the signatures. The result would be that in both cases, whether both witnesses are alive or one witness is dead, each signature would have to be testified to by two witnesses.

(14) That the evidence is regarding the signatures.

(15) As in the case of the death of one witness. Being certain in his view that the evidence is with regard to the signatures. and not with regard to the maneh in the deed, Rabbi would hold that one witness from the street, added to the surviving witness, is sufficient. The surviving witness and the new witness would both testify to both signatures. There would be no question of three-quarters of the sum mentioned going out by the mouth of one witness, because in Rabbi's certain view, the evidence is with regard to the signatures and not with regard to the maneh in the deed.

(16) In the case when both the witnesses are alive. They must testify to both signatures.

(17) This is according to the Sages.

(18) I.e., in this case.

(19) V. n. 2.

(20) As the Rabbis (the Sages) hold the view that the evidence is regarding the maneh in the deed, two new witnesses are required to testify to the signature of the dead witness. If there would be only one new witness and he would be added to the surviving witness, three-fourths of the sum mentioned in the deed would go out by the mouth of one witness, v. p. 114, n. 14.

(21) Person from the street who recognizes the handwriting of the dead witness.

(22) The surviving witness.

(23) חספא 'clay', or 'a piece of clay' is reminiscent of the Babylonian clay-tablets.

(24) By comparing the signature on the piece of clay with the signature in the deed.

(25) In the deed.

(26) The person from the street.

(27) Of the dead witness.

(28) Shall he (the surviving witness) write his signature.

(29) We would say 'but not on a sheet of paper'. It is interesting to note the use of 'piece of clay', together with the use of 'scroll'. It may be that חספא was also used, later, in the sense of 'a small piece of paper'.

(30) Dishonest.

(31) He may write over the signature that the signatory borrowed a certain sum of money from him.

(32) A note of indebtedness signed by the other person.

(33) Lit., 'he produced against him his handwriting.'

(34) Lit., 'free'.

(35) V. B.B. 175b. The surviving witness must, therefore, be careful and write his signature only on a piece of clay, or on a small piece of papers on which there is room only for his signature.

(36) In our Mishnah.

(37) Lit., his fellow and even from his fellows'.

(38) That the halachah is according to scholars.

(39) Nah stands for Hinenah b. Hiyya; Nad for Hunah b. Judah; Had for Hiyya b. Judah. the names of the Amoraim that follow.

(40) Declared as valid.

(41) Lit., 'and to the one of (the person) with him'.

(42) Lit., 'and who is it?'

(43) The deed.

(44) We thus see that Samuel acted according to the opinion of Rabbi.

(45) Of judges who might mistakenly think that in this matter the law is according to Rabbi.

(46) In the matter of confirming witnesses' signatures.

(47) And he will not accept the confirmation.

(48) I.e., I will do more than is necessary.

(49) For the purpose of confirming the validity of the document, the witness testifies to his signature, and the judge to his signature endorsing the document which had been presented to court for confirmation. V. infra.

(50) The witness testifies to the transaction (to the maneh in the deed according to the Sages), and the judge testifies to his own signature.

(51) Rab Judah was a brother of Rami.

Talmud - Mas. Kethuboth 21b

Rabbanai, the brother of R. Hiyya b. Abba, came to buy sesame and he said: Thus Samuel said: Witness and judge are joined together. Amemar said: How excellent is this tradition! Said R. Ashi to Amemar: Because the father of your mother[1] praised it, you also praise it! Raba has already refuted it. R. Safra said [that] R. Abba said [that] R. Isaac b. Samuel b. Martha said [that] R. Huna said, and some say [that] R. Huna said [that] Rab said: If three[2] sit together to confirm a deed, and two [of them] know[3] the signatures of the witnesses and one does not know,[4] before they sign,[5] they may testify[6] before him,[7] and he[8] [then] signs[9] [with them]; after they have signed, they may not testify before him and he may not sign. But do we write [the attestation]?[10] Did not R. Papi say in the name of Raba: The judge's attestation which is written before the witnesses give evidence as to their signatures is invalid, because it looks like a lie? [And] here also it looks like a lie! — But say: Before they have written [the attestation] they may testify before him and he [then] signs [with them]; after they have written [the attestation], they may not testify before him and he may not sign. We may infer from this three things.[11] We may infer that a witness may be[12] a judge;[13] we may [also] infer that, if the judges know the signatures of the witnesses, there is no need to testify[14] before them;[15] and [again] we may infer that, if the judges do not know the signatures of the witnesses, it is necessary to give evidence before every one.[16] R. Ashi demurred to this: Agreed[17] that we may infer from it that a witness may be a judge, but [how can we infer from it that], if the judges know the signatures of the witnesses, there is no need to testify before them? Perhaps, indeed, I can say to you [that] this is necessary, but it is different here, because the telling[18] has been fulfilled before one.[19] And [further, how can we infer from It that], if the judges do not know the signatures of the witnesses, it is necessary to give evidence before every one?[20] Perhaps, indeed, I can say to you [that] this is not necessary, but it is different here, because the telling[21] would not have been fulfilled at all.[22] R. Abba sat and reported[23] this law, that a witness may be a judge. R. Safra [then] objected to R. Abba: If three[24] saw it[25] and they are [of] the court, two[26] shall stand up and set [two] of their fellows[27] beside the one, and they[28] shall testify before them,[29] and [then] they say: Hallowed is the new moon, hallowed; for one person is not believed by himself. Now, if you assume that a witness may be a judge, what do we want all this for? Let them sit in their places[30] and proclaim[31] [the new moon] is hallowed! — He said to him: That was also difficult to me, and I asked R. Isaac b. Samuel b. Martha. and R. Isaac [asked] R. Huna, and R. Huna [asked] Hiyya b. Rab, and Hiyya b. Rab [asked] Rab, and he said to them: Leave alone the testimony as to the new moon, [for it is] Biblical, and the confirmation of documents is Rabbinic.[32] R. Abba said [that] R. Huna said [that] Rab said: If three sit to confirm a document and an objection is raised[33] against one of them,[34] they[35] may, before they have signed [the attestation], give evidence regarding him,[36] and he may [then] sign; after they have signed, they may not give evidence regarding him[37] and he may not sign. On what ground was that objection raised? If the objection was on the ground of robbery,[38]

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(1) Rami b. Hama.

(2) Three laymen may constitute themselves into a court.

(3) Lit., 'recognize'.

(4) The signatures.

(5) A declaration that the signatures of the witnesses have been confirmed.

(6) To the signatures of the witnesses.
(7) Before the third judge.
(8) The third judge.
(9) The attestation confirming the signatures. As to the form of the attestation, v. Rashi.
(10) Before the signatures of the witnesses have been testified to by the signatories or by other witnesses.
(11) Lit., 'heat from this three'.
(12) Lit., 'be made'.
(13) [The two who first testify to the signatures of the witnesses may then act as judges, endorsing the document.]
(14) To the signatures.
(15) Before the judges, since no provision is made for any testimony being made before the two judges who know the signatures.
(16) Of the judges, since in this case the two judges have to testify before the third judge.
(17) Lit.,'it is all tight'.
(18) The giving of evidence.
(19) Before the third judge.
(20) Of the judges.
(21) The giving of evidence.
(22) If the two judges had not testified before the third judge.
(23) Lit., 'said'.
(24) Of the Sanhedrin.
(25) The new moon.
(26) Of them.
(27) Of the Sanhedrin.
(28) The two.
(29) The three who form the court.
(30) After they have given evidence as to the new moon.
(31) Together with the third person.
(32) [Whereas in a Biblical matter a witness cannot act as judge, in a Rabbinic measure, e.g., the attestation of documents, no such stringency applies.]
(33) Lit., 'and one calls a protest'. [This protest was made by two, v. infra 26a.]
(34) It is said that he is unfit to act as judge.
(35) The other two persons.
(36) That he is a fit person.
(37) As they are then interested patties, it being to their discredit to have acted as judges with an unfit person.
(38) On account of a robbery which he is alleged to have committed.

Talmud - Mas. Kethuboth 22a

they are two and two.[1] [And] if it is a protest regarding family blemish,[2] [then all that is required is] merely a revealing of the matter.[3] — Indeed, I will tell you, it is a protest regarding robbery, and these say: We know of him that he has repented.[4] R. Zera said: This thing I have heard from R. Abba, and if not for R. Abba of Acco, I would have forgotten it: If three sit to confirm a document and one of them dies,[5] they must write, 'We were In a session of three, and one is no more.'[6] R. Nahman b. Isaac said: And if it is written in it: This document has been produced[7] before us [as] a court of law, more is not necessary.[8] But perhaps it was an arrogant court, and [that is] according to Samuel, for Samuel said: If two have judged,[9] their judgment is a judgment,[10] only they are called an arrogant court?[11] — When it is written in it, [e.g.] 'The court of our Master Ashi.'[12] But perhaps the scholars of the school of R. Ashi hold with Samuel? — When it is written in it, 'And our Master Ashi told us.'[13] MISHNAH. IF A WOMAN SAYS. 'I WAS MARRIED[14] AND I AM DIVORCED', SHE IS BELIEVED, FOR THE MOUTH THAT FORBADE IS THE MOUTH THAT PERMITS. BUT IF THERE ARE WITNESSES THAT SHE WAS MARRIED, AND SHE SAYS. 'I AM DIVORCED', SHE IS NOT BELIEVED. IF SHE SAYS. 'I WAS TAKEN CAPTIVE BUT I HAVE

REMAINED CLEAN.'[15] SHE IS BELIEVED, FOR THE MOUTH THAT FORBADE IS THE MOUTH THAT PERMITS. BUT IF THERE ARE WITNESSES THAT SHE WAS TAKEN CAPTIVE AND SHE SAYS, 'I HAVE REMAINED CLEAN,' SHE IS NOT BELIEVED. BUT IF THE WITNESSES CAME AFTER SHE HAD MARRIED, SHE SHALL NOT GO OUT.[16] GEMARA. R. Assi said: Whence [do we know] from the Torah [the principle of] 'the mouth that forbade is the mouth that permits'? Because it is said: 'My daughter I gave to this man as a wife.'[17] [By saying] 'to man', he made her forbidden,[18] [by saying] 'this', he made her permitted.[19] Why is a Scriptural verse necessary? It stands to reason: he made her forbidden, and he made her permitted! — The Scriptural verse is required according to what R. Huna [said that] Rab said, for R. Huna said [that] Rab said: Whence [do we know] from the Bible that the father is believed to make his daughter forbidden?[20] Because it is said: 'My daughter I gave to [this] man as his wife.'[21] Why [is it said] 'this'?[22] — It is required for what R. Jonah taught, for R. Jonah taught: 'My daughter I gave to this man': '[To] this [man]', and not to the brother-in-law.[23] Our Rabbis taught: If a woman says, I am married', and then she says.[24] 'I am unmarried', she is believed. But she made herself forbidden![25] — Said Raba the son of R. Huna: When she has given a plausible reason for her words.[26] We have also a Baraitha to the same effect. If she says, 'I am married', and then she says, 'I am unmarried', she is not believed, but if she gives a plausible reason for her words, she is believed. And so it once happened with a great woman, who was great in beauty, and men were eager[27] to betroth her, and she said to them, 'I am betrothed'. After a time she became betrothed.[28] The Sages said to her: Why have you chosen[29] to do this?[30] She answered them,[31] 'At first, when unworthy men came to me, I said, "I am betrothed"; now that worthy men come to me, I became betrothed'. And this law R. Aha, the prince of the castle, brought before the Sages[32] in Usha, and they said: If she gives a plausible reason for her words she is believed. Samuel asked Rab: If [a woman] says,[33] 'I am unclean',[34] and then she says. 'I am clean',[35] what is [the law]?[36] He[37] answered him:[38] Also in this case if she gives

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(1) Two give evidence against him (v. n. 4), and these other two for him, and he is still inadmissible, even if the other two give evidence regarding his fitness before they signed.

(2) He is said to be descended from slaves and thus unfit to act as judge.

(3) A search in his genealogy can reveal whether there is any ground for the objection of the two witnesses or not, independent of the evidence of the other two. Why then should the other member of the court, after having signed, be debarred from testifying in his favour?

(4) Lit., 'that he has done repentance'. Repentance implies giving back the thing robbed to its owner. [Since they do not contradict the evidence of the first set of witnesses, their testimony as to his fitness is accepted, provided it is given before they signed.]

(5) Before they signed it.

(6) So that it should be known that the document was confirmed in the presence of three judges.

(7) Lit., 'has gone out'. This term also implies that the document has been found valid.

(8) It is then evident that they were three, as a court of law cannot consist of less than three judges.

(9) Sat as a court and pronounced judgment.

(10) Their decision is valid.

(11) I.e., such practices should be discouraged.

(12) Under R. Ashi a court would certainly consist of three. R. Ashi's court is mentioned as a mere illustration, R. Ashi being a contemporary of R. Nahman b. Isaac, and head of the most renowned Academy and court at Mehasia.

(13) To act as a court. And then the court would certainly consist of three.

(14) Lit., 'the wife of a man'.

(15) No one has had intercourse with me, and I am still fit to marry into the priesthood.

(16) Lit., 'behold, this (one) shall not go out'. I.e., out of the house of her husband. Her second marriage is valid and she is not to be sent away.

(17) Deut. XXII, 16.

(18) As he does not say to which man, he made her forbidden to all men.

(19) To this man.

(20) To all men except the one man to whom he says he gave her in marriage.

(21) Deut. XXII, 16. He can give her as wife to this man and thus make her forbidden to all other men.
(22) It is obvious that he means that man, who is putting up a claim against his newly. wedded wife.
(23) The law of Deut. XXli, 13ff does not apply to the husband's brother who marries the widow of his brother (cf. Deut. XXV, 5ff) and brings against her a charge of defamation. He is not subject to the fine. V. infra 46a.
(24) Lit., 'and she turned (retracted) and she said'.
(25) Lit., 'a piece of prohibition'. By Saying 'I am married', she declared herself to be forbidden to other men, how then can she raise this prohibition by a mere retraction?
(26) Why she said, 'I am married'.
(27) Lit., 'and men jumped at her'.
(28) Lit., 'she stood up and betrothed herself (to a man)'.
(29) Lit., 'why bast thou seen'.
(30) To say that you were betrothed.
(31) Lit., 'she said to them'.
(32) For consideration.
(33) To her husband.
(34) I.e., 'I am in the period of menstruation'.
(35) Lit., 'I bad no menstruation'.
(36) Lit., 'How is it'. May her husband believe bet second statement and have intercourse with her?
(37) Rab.
(38) Samuel.

Talmud - Mas. Kethuboth 22b

a plausible reason for her words she is believed. He learned it from him forty times, and still Samuel did not act accordingly with regard to himself. Our Rabbis taught: When two [witnesses] say [that the husband of the woman] has died, and two [witnesses] say [that] he has not died, or two [witnesses] say [that] she has been divorced, and two [witnesses] say [that] she has not been divorced, she shall not marry [again], but if she has married [again], she shall not go out. R. Menahem b. Jose says: She shall go out. R. Menahem b. Jose said: When do I say [that] she shall go out? — When witnesses[1] came and then she married, but if she married and then came witnesses,[1] she shall not go out. Now, they are two and two,[2] [and] he who has intercourse with her[3] is liable to a doubtful guilt-offering![4] Said R. Shesheth: When she married one of her witnesses.[5] Then she herself should bring a doubtful guilt. offering! — When she says. 'I am sure'.[6] R. Johanan said: When two [witnesses] say [that the husband of the woman] has died, and two [witnesses] say [that] he has not died, she shall not marry [again], but if she has married [again], she shall not go out. When two [witnesses] say [that] she has been divorced, and two [witnesses] say [that] she has not been divorced, she shall not marry [again]. and if she has married, she shall go out. What is the difference between the first case and the second case? — Abaye said: Explain it[7] [that it speaks] of one witness.[8] When one witness says [that] he has died, the Rabbis believe him as two [witnesses].[9] And [this is] according to 'Ulla, for 'Ulla said: Wherever the Torah makes one witness credible. [it is as if] there are two, whereas he who said that he has not died is one, and the words of one have no validity against two.[10] If so, [she should be allowed to marry again] from the beginning? — Because of that [saying] of R. Assi, for R. Assi said: 'Put away from thee a froward mouth, and perverse lips put far from thee'.[11] In the second case [however] one witness says [that] she has been divorced, and one witness says [that] she has not been divorced, they [therefore] both testify to a married woman, and he who says [that] she has been divorced is one, and the words of one have no validity against two. Raba said: Indeed, they are two and two, and R. Johanan regards [as right] the words of R. Menahem b. Jose[12] in [the case of] divorce, but not in [the case of] death. Why? — In the case of death, she cannot contradict him,[13] [but] in the case of divorce, she can contradict him.[14] But would she be as impudent as all that?[15] Did not R. Hamnuna say: If a woman says to her husband, 'thou hast divorced me,' she is believed, [for] the presumption is [that] a woman is not insolent before her husband?[16] — This is the case only when there are no witnesses who support her; but when there are

witnesses who support her, she is indeed insolent. R. Assi says: When the witnesses say, 'he has died just now, he has divorced her just now.' Death one cannot prove,[17] divorce one can prove, for we say to her, 'if it is so, shew us thy document of divorce'.[18] Our Rabbis taught: If two [witnesses] say that she has been betrothed, and two [witnesses] say [that] she has not been betrothed, she shall not marry, and if she has married, she shall not go out. If two [witnesses] say [that] she has been divorced, and two [witnesses] say [that] she has not been divorced, she shall not marry, and if she has married, she shall go out.

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(1) The second set of witnesses.

(2) There are two witnesses against two witnesses, and the matter, that is the death of the first husband, remains in doubt. This cannot refer to the case of divorce, v. infra.

(3) The man who marries bet now'.

(4) A guilt-offering to be brought when one is in doubt whether the act committed was sinful or not.

(5) And be is sure that the first husband died.

(6) [She has a feeling of certitude that her first husband is dead, as otherwise be would have come back to bet (Rashi).]

(7) The statement of R. Johanan.

(8) Not two sets of witnesses testified, but one single witness in each case.

(9) [The Rabbis have laid down the principle that the evidence of one witness testifying to the husband's death is sufficient; v. Yeb. 88a.]

(10) Lit., 'and the words of one are not in the place of two'. [The evidence of the former witness, who said that he was dead, is treated as that of two witnesses, whereas that of the latter only, as that of one.]

(11) Prov. IV. 24 — One should try to avoid evil talk, although there is no objection to the marriage from the point of view of strict law'. [R. Assi was wont to quote this verse from Prov.]

(12) That she should go out.

(13) If her first husband comes back she cannot say to him, 'thou art dead!' Therefore, she would not say that he is dead unless she was sure that it is so, and we believe her.

(14) If the first husband comes and says that he has not divorced her, she will contradict him and say that he has divorced her. If we should believe her she would rely on the denial she could give him and would marry again, although she was still the wife of the first husband.

(15) To contradict her husband in the case of divorce, even if it was not true.

(16) And so we ought to believe her also in the case of divorce!

(17) Therefore she need not go out if she has married again, provided it was to one of the witnesses.

(18) She cannot have lost it in such a short time. And if she cannot show her document of divorce she must not marry again, and if she has married, she must go out.

Talmud - Mas. Kethuboth 23a

What is the difference between the first case and the second case? — Abaye said: Explain it[1] [that it speaks] of one witness.[2] When one witness says [that] she has been betrothed and one witness says [that] she has not been betrothed, they both testify to an unmarried woman, and he who says [that] she has been betrothed is one, and the words of one have no validity against two. In the second case [where] one witness says [that] she has been divorced and one witness says [that] she has not been divorced, they both testify to a married woman, and he who says that she has been divorced is one, and the words of one have no validity against two. R. Ashi said: Indeed, they are two and two, and reverse it.[3] When two say, 'we have seen[4] that she has been betrothed', and two Say, we have not seen that she has been betrothed, she shall not marry [another man], and if she has married she goes out.' [But] this is obvious! 'We have not seen' is no evidence! — It is not [so obvious], as it is needed for the case when they dwelt in one courtyard; one might say, 'if she had been betrothed it would have been known,'[5] so he lets us hear that there are people who get betrothed quietly. In the second case, when two say, 'we have seen that she has been divorced,' and two say, 'we have not seen that she has been divorced, she shall not marry again, and if she has married she shall not go out,' what does he let us hear [by this case]?[6] Although they live in the same courtyard! [But then]

this is the same![7] — One might say that with regard to betrothal it happens that people get betrothed quietly. but with regard to divorce. if she had been divorced, it would have been known, so he lets us hear that there are people who get betrothed and get divorced quietly. AND IF WITNESSES COME AFTER SHE GOT MARRIED. SHE SHALL NOT GO OUT. R. Oshaia refers it[8] to the first clause.[9] Rabbah b. Abin refers it to the second clause.[10] He who refers it to the first clause, how much more [does he refer it] to the second clause, for in the case of a captive woman they have made it lenient.[11] But he who refers it to the second clause does not refer it to the first clause.[12] Is it to say that they differ concerning the view of R. Hamnuna: that he who refers it to the first clause holds the view of R. Hamnuna,[13] and he who refers it [only] to the second clause does not hold the View of R. Hamnuna? — No, all hold the view of R. Hamnuna. and here they differ in this: one argues: When was that of R. Hamnuna said?[14] In his presence,[15] but in his absence she is impudent,[16] and one holds [that] in his absence also she is not impudent.[17] AND IF WITNESSES CAME AFTER SHE GOT MARRIED. etc. The father of Samuel said: 'SHE GOT MARRIED', does not mean, 'she actually got married'. but 'as soon as they[18] allowed her to get married', even if she did not get married yet. But it says: SHE SHALL NOT GO OUT'![19] — [This means] she shall not go out from her first permission.[20] Our Rabbis taught: When she says. 'I was taken captive. and I am pure, and I have witnesses that I am pure. they[18] do not say: We will wait until the witnesses come, but they[18] allow her at once [to marry]. If they[18] allowed her to marry and then the witnesses came and said, 'we do not know',[21] then she shall not go out. But if witnesses of defilement[22] came, even if she has many children she shall go out.[23] Certain women captives came once to Nehardea. The father of Samuel[24] placed watchmen with them.[25] Said Samuel to him: And who watched them till now? Said he to him: 'If they had been thy daughters wouldst thou also have spoken of them so lightly?' It was 'as an error which proceedeth from before the ruler,'[26] and the daughters of Mar Samuel were taken captive. And they were brought[27] to the Land of Israel. They let their captors stand outside and they went in into the school of R. Hanina. This One[28] said, 'I was taken captive and I am pure,' and that one said. 'I was taken captive and I am pure. [So] they[18] allowed them.[29] Then the captors entered. R. Hanina [thereupon] said: They are the children of a Scholar.[30] It [then] became known[31] that they were the daughters of Mar Samuel. R. Hanina [thereupon] said to R. Shaman b. Abba: Go and take care of thy relatives.[32] Said he to R. Hanina: But there are witnesses in the country beyond the sea![33] — Now, however. they are not before us. Witnesses are in the North,[34] and [therefore] she shall be forbidden [to marry]? [Now] the reason[35] is because no witnesses came,[36] but if witnesses came she[37] is forbidden! But did not the father of Samuel say: As soon as they allowed her to get married, even if she did not get married?[38] R. Ashi said: It was stated: Witnesses of defilement.[39]

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(1) The Baraitha just quoted.

(2) For each evidence.

(3) In the first case she has to go out, and in the second case she need not go out.

(4) This, too, is a new element.

(5) Lit., 'there is a voice in the matter'.

(6) 'We have not seen' is no evidence!

(7) As in the first case.

(8) The sentence just quoted.

(9) Of our Mishnah, referring to the claim of the woman that she was divorced.

(10) Referring to her claim that she remained chaste in captivity.

(11) Since it is only presumed that she may have been cohabited with.

(12) Lit., 'but to the first clause, no'.

(13) V. supra 22b.

(14) I.e., with regard to what case did R. Hamnuna express that view.

(15) In the presence of the husband.

(16) [And therefore she would have to go out if witnesses came after she married and said that she was a married woman.]

(17) And therefore she need not go out.

(18) The Court.
(19) This would imply that she did get married.
(20) I.e., from the permission given her by the Court to get married. That permission stands.
(21) Whether she is pure or not.
(22) I.e., witnesses who say that she was defiled while in captivity.
(23) If the husband is a priest.
(24) Abba the son of Abba.
(25) To guard them until they had been redeemed.
(26) V. Eccl. X, 5. The words that escaped the lips of Samuel had bad results.
(27) Lit., and they (the captors) brought them'.
(28) One of the daughters of Samuel.
(29) To marry even a priest.
(30) Since they left the captors outside they were their own witnesses, and the principle of 'the mouth that forbids is the mouth that permits' applied.
(31) Lit., 'the matter was revealed'.
(32) I.e., marry one of them. [R. Shaman was a priest and relative of Samuel (Rashi).]
(33) I.e., 'There are witnesses in a far country, and they may come and testify to the daughters of Samuel having been in captivity. [And defiled; (v. Tosaf.).]
(34) אסתן. Assyrian, istan, 'north', v. Kid. 12b.
(35) Why she is allowed to marry.
(36) To testify. cf. n. 2.
(37) I.e., each one of the daughters.
(38) And if witnesses came afterwards, she may get married.
(39) Only to witnesses who testify that the woman was actually defiled during her captivity, would annul the permission given for bet to get married but witnesses who testify only to bet having been in captivity would not affect that permission. There is then no conflict between R. Hanina and the father of Samuel.

Talmud - Mas. Kethuboth 23b

MISHNAH. IF TWO WOMEN WERE TAKEN CAPTIVE, [AND NOW] ONE SAYS, 'I WAS TAKEN CAPTIVE AND I AM PURE, AND THE OTHER ONE SAYS. I WAS TAKEN CAPTIVE AND I AM PURE.' THEY ARE NOT BELIEVED. BUT WHEN THEY TESTIFY TO ONE ANOTHER, THEY ARE BELIEVED. GEMARA. Our Rabbis taught: [If she says]. 'I am impure and my friend is pure,' she is believed; 'I am pure and my friend is impure', she is not believed; 'I and my friend are impure', she is believed as to herself and she is not believed as to her friend; 'I and my friend are pure'; she is believed as to her friend and she is not believed as to herself. The Master said: '[If she says]. "I am pure and my friend is impure", she is not believed'. How shall we imagine this case? If there are no witnesses,[1] why is she not believed as to herself? She says, 'I was taken captive and I am pure!'[2] Hence it is plain that there are witnesses. [Now] read the middle clause: '"I and my friend are impure"; she is believed as to herself and she is not believed as to her friend'. But if there are witnesses, why is she not believed?[3] Hence it is plain that there are no witnesses. [Now] read the last clause: '"l and my friend are pure"; she is believed as to her friend and she is not believed as to herself'. But if there are no witnesses, why is she not believed as to herself? Hence it is plain that there are witnesses. The first clause and the last clause when there are witnesses, [and] the middle clause when there are no witnesses? — Abaye said: Yes, the first clause and the last clause when there are witnesses, [and] the middle clause when there are no witnesses. R. Papa said: The whole of it [speaks] of where there are witnesses, but there is one witness who reverses.[4] [If] she says, 'I am impure and my friend is pure', and the one witness says to her, 'thou art pure and thy friend is impure', she has declared herself forbidden,[5] [and] her friend becomes permitted through her testimony.[6] If [she says] 'I am pure and my friend is impure', and the one witness says to her, 'Thou art impure and thy friend is pure', since there are witnesses,[7] she is not believed[8] [as to herself], [and] her friend becomes permitted through the testimony[9] of the [one] witness. [If she

says], 'I and my friend are impure.' and the one witness says to her, 'thou and thy friend are pure,' she has declared herself forbidden, [and] her friend becomes permitted through the testimony of the [one] witness. What need is there again for this?[10] It is [the same as in] the first part![11] — You might have said [that] they are both pure and the reason why she says so[12] is that she acts [in accordance with the saying:] 'Let me die with the Philistines',[13] so he lets us hear.[14] [If she says] 'I and my friend are pure', and the one witness says to her, 'Thou and thy friend are impure', since there are witnesses,[15] she is not believed,' [and] her friend becomes permitted through her testimony.[16] What need is there again for this? It is [the same as in] the very first clause![17] — You might have said [that] she is believed[18] only when she declares herself as unfit,[19] but when she declares herself as fit[20] I might say that she is not believed,[21] so he lets us hear[22] [that this is not so]. MISHNAH. AND LIKEWISE TWO MEN, [IF] ONE SAYS, 'I AM A PRIEST',[23] AND THE OTHER SAYS. 'I AM A PRIEST', THEY ARE NOT BELIEVED.[24] BUT WHEN THEY TESTIFY TO ONE ANOTHER, THEY ARE BELIEVED. R. JUDAH SAID: ONE DOES NOT RAISE [A PERSON] TO THE PRIESTHOOD THROUGH THE TESTIMONY[25] OF ONE WITNESS. R. ELEAZAR SAID: ONLY THEN, WHEN THERE ARE PEOPLE WHO OBject;[26] BUT WHEN THERE ARE NO PEOPLE WHO OBJECT. ONE RAISES [A PERSON] TO THE PRIESTHOOD THROUGH THE TESTIMONY OF ONE WITNESS. R. SIMEON B. GAMALIEL SAYS IN THE NAME OF R. SIMEON: THE SON OF THE CHIEF OF THE PRIESTS:[27] ONE RAISES [A PERSON] TO THE PRIESTHOOD THROUGH THE TESTIMONY OF ONE WITNESS. GEMARA. What need is there for all these [cases]?[28] They are needed. For if he had stated [only the case of] 'R. Joshua admits'[29] [I might have said that only in that case is that principle applied]. because there is a possible loss of money.[30] but [in the case of] 'If witnesses say this is our handwriting'[31] where there is no possible loss of money.[32] I would not say so.[33] And if he had stated [the case of] 'If witnesses say this is our handwriting'. [I might have said that Only in that case does that principle apply] because [their statement concerns] other people.[34] but where it concerns himself[35]

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(1) That she and bet friend were taken captive.

(2) And in accordance with the principle in the Mishnah, supra 22a, she should be believed.

(3) As to her friend.

(4) Her testimony.

(5) V. supra p. 121. n. 9.

(6) Lit., 'through her mouth'. [For in regard to a captive woman, he evidence of one in favour of her chastity is sufficient, v. infra 27a.]

(7) That she and her friend were taken captive.

(8) Lit., 'all is not as if from her', i.e., as if dependent on her, (Jast.). The fact that she was taken captive is known from the evidence of the witnesses and not only from her testimony.

(9) Lit., 'mouth'.

(10) The last statement.

(11) [From the two cases in the first part we learn the two principles that her own evidence as to her having become impure must stand, and that the evidence of the witness in favour of chastity is sufficient.]

(12) Lit., 'and this that she says so', — that they ate both impure.

(13) Judg., XVI, 30. She applies to herself and to her friend the well-known Saying of Samson, that is, though she is pure she says that she is impure, so that she should be believed as to her friend, of whom she says that she is impure.

(14) That she is believed as to herself but not as to her friend.

(15) That she and her friend were taken captive.

(16) Lit., 'through her mouth'.

(17) From here we learn that one witness is believed to attest the purity of the captive woman, even if there is another one contradicting him.

(18) As to her friend.

(19) Impure.

(20) Pure.

(21) As to her friend.

(22) Also the last case.

(23) Of priestly stock.

(24) To be given terumah; (v. Glos.).

(25) Lit., 'mouth'.

(26) Lit., 'when? In the place in which there are objectors'. — The objectors say that he is not of priestly descent or legitimate origin.

(27) Segan, v. Sanh. (Sonc. ed.) p. 97, n. 1.

(28) In the preceding Mishnahs from the beginning of this chapter (supra 15b)to this last Mishnah. All these have been cases taught in illustration of the same principle of 'the mouth that forbids is the mouth that permits'.

(29) Supra 15b.

(30) [His first statement that 'This field belonged to thy father', carries with It a possible loss of money. and it must therefore be taken in conjunction with the subsequent statement, 'But l bought it of him'.]

(31) Supra 18b.

(32) [There the witnesses themselves stand to lose nothing by this statement.]

(33) Lit., 'I would say, no'. I.e., I would not apply here the principle of 'the mouth that forbids is the mouth that permits', and their second statement that they acted under constraint etc. is not accepted.

(34) Lit., 'because for the world' — The statement of the witnesses does not concern themselves but others.

(35) As in the case of 'R. Joshua admits'.

Talmud - Mas. Kethuboth 24a

I would not say so. And if he would let us hear these two [cases. I might have said] because [both cases deal with] money matters but [in the case of] 'a married woman',[1] which is a matter of [sexual] prohibition.[2] I would not say so.[3] What need is there for [the case of] 'I was taken captive and I am pure'?[4] — Because he wants to teach 'But if witnesses came after she got married, she shall not go out'.[5] — That is quite right according to him who refers this to the second clause, but according to him who refers this to the first clause,[6] what is there to say? Because he wants to teach [the case of] 'If two women were taken captive'.[7] — And what need is there for [the case of] 'If two women were taken captive'? — You might have said [that] we may be afraid that they favour one another,[8] so he lets us hear [that we do not say so].[9] What need is there for [the case of] 'AND LIKEWISE TWO MEN'?[10] Because he wants to teach the difference of opinion between R. Judah and the Rabbis .[11] Our Rabbis taught: [If one says:] I am a priest and my friend is a priest. he is believed to the extent of allowing him to eat terumah,[12] but he is not believed to the extent of allowing him to marry a woman[13] until there are three, [and] two testify to one and two testify to the other. R. Judah says: He is not believed even with regard to allowing him to eat terumah until there are three, [and] two testify to one and two testify to the other. Is this to say that R. Judah is afraid that they might favour one another,[14] and the Rabbis are not afraid that they might favour one another? Surely [from the following Mishnah] we understand just the reverse! For we have learned: When ass-drivers[15] come to a town and one of them says, 'Mine[16] is new[17] and my friend's is old mine is not prepared[18] and my friends is prepared'; he is not believed;[19] R. Judah says: He is believed![20] — Said R. Adda b. Ahaba, in the name of Rab: The statement must be reversed.[21] Abaye said: Indeed, there is no need to reverse It;[22] in [the case of] demai,[23] they[24] have made it lenient, for most of the 'amme ha-'arez[25] separate the tithes. Raba said: Is the question [only] of R. Judah against R. Judah? Is there no question [also] Of the Rabbis against the Rabbis?[26] No, [they answer]: there is no question of R. Judah against R. Judah. as we have [just] explained,[27] [and] there is no question of the Rabbis against the Rabbis, for [the case[28] is similar to that with regard to which] R. Hama b. 'Ukba said that [it speaks of] when he has his trade-tools in his hand;

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(1) Supra 22a.

(2) Matters of sexual prohibition are treated with greater strictness than money matters.

(3) Therefore, the case regarding a married woman is also taught in illustration of the principle.

(4) Mishnah, 22a second clause.

(5) Ibid concluding clause of Mishnah.
(6) V. supra 23a.
(7) Mishnah, supra 23b.
(8) And the two women shield one another.
(9) That when the two women testify to one another's purity, they are believed.
(10) The case of out Mishnah.
(11) The first Tanna and R. Eliezer.
(12) V. Glos.
(13) Of unblemished descent.
(14) By false mutual recommendations.
(15) Who bring corn to a place to sell.
(16) My corn.
(17) New=fresh, old=not fresh. Fresh corn is not so good as corn that is not fresh. [He Simply says this in depreciation of his own ware and in praise of that of his fellow.] It may also be that 'new' and 'old' are used in the sense of Lev. XXIII, 10ff'., the 'new' being forbidden before the offering of the 'omer; v. Glos.
(18) I.e., the priestly dues have not been given.
(19) [According to the first interpretation (n. 10) the reference is to the tithes only, and according to the second also to the prohibition of 'new' corn.]
(20) This would show that the Rabbis are afraid of people favouring one another, and that R. Judah is not afraid.
(21) I.e., read.' R. Judah says: they are not believed, and the Rabbis Say: They are believed.
(22) Lit., 'do not reverse'.
(23) Demai is produce about which there is a doubt whether the tithes therefrom have been properly taken or not; v. Glos.
(24) The Sages.
(25) V. Glos. They did not observe, or were under the Suspicion of not observing certain religious customs regarding tithes, levitical cleanness, etc. In Spite of this suspicion it was assumed that most of them did give tithes.
(26) If you do not reverse, why should the Rabbis hold that the ass-drivers are not believed, seeing that they do not suspect mutual favouritism.
(27) Lit., answered'. They have made it lenient with regard to demai.
(28) Of the ass-drivers.

Talmud - Mas. Kethuboth 24b

so here also[1] [we deal with] when he[2] has his trade-tools[3] in his hand.[4] And with regard to what[5] was that of R. Hama. b. 'Ukba said?[6] With regard to what we have learned: If a potter left his pots[7] and went down to drink [water from the river,][8] the inner ones are pure and the outer ones are impure.[9] But it has been taught[10] that these and those are impure?-Said R. Hama b. 'Ukba: [it speaks of a case][11] when he had his trade-tools in his hand,[12] so that[13] the hand of all touches them.[14] But it has been taught:[15] These and those are pure? — Said R. Hama b. 'Ukba: When his trade-tools are not in his hand.[16] But [then] the case that we have learnt:[17] 'The inner ones are pure and the outer ones are impure' — how is that possible?[18] — When they[19] are near the public road and [they are impure] because of border stones of the public road.[20] And if you wish you may say: R. Judah and the Rabbis differ as to whether one raises [a person] from terumah to the status of a priest.[21] The question was asked: What is [the law]? Does one raise[22] [a person] from documents[23] to the full status of a priest?[24] — How shall we imagine this case? If we say that it is written in it: 'I, So-and-so, a priest. have signed as witness' — who testifies to him?[25] — No, [but] it must be when it is written in it: I, So-and-so, a priest, have borrowed a maneh from so-and-so, and witnesses have signed [the document]. What [then] is [the law]? Do they[26] testify [only] to the maneh [mentioned] in the document, or do they testify to the whole matter?[27] — R. Huna and R. Hisda [give opposing answers]: One says: One raises,[28] and one says: One does not raise.[28] The question was asked.[29] What is [the law]? Does one raise [a person] from the lifting up of the hands[30] to the status of a priest?[31] This is asked according to him who says [that] one raises [a person] from terumah to the

status of a priest[32] and this is asked according to him who says [that] one does not raise [a person from terumah to the status of a priest].[33] It is asked according to him who says [that] one raises: When is this said?[34] [In the case of] terumah, which [if eaten by one who is not a priest] is a sin punishable with death;[35] but [in the case of] 'lifting up the hands', which [if one who is not a priest performs the pronouncing of the priestly blessing] is [only transgressing the] prohibition of a positive command,[36] [I would say] no.[37] Or perhaps there is no difference,[38] [and] it is asked according to him who says [that] one does not raise: When is this said? [In the case of] terumah, which is eaten in privacy;[39] but [in the case of] 'lifting up the hands,' which [is done] in public [I might say that] if he were not a priest he would not have the impudence[40] [to act as a priest]. Or perhaps there is no difference?[41] — R. Hisda and R. Abina [give opposing answers to this question]: One says: One raises,[42] and One Says: One does not raise. R. Nahman b. Isaac said to Raba: What is [the law]? Does one raise [a person] from 'lifting up the hands' to the full status of a priest? Said he to him: [With regard to this] there is a difference of opinion between R. Hisda and R. Abina. What is the [adopted] law? Said he to him: I know a Baraitha: For it has been taught: R. Jose said: Great[43] is presumption.[44] for it is said: And the children of the priests: the children of Habaiah, the children of Hakkoz, the children of Barzillai, who took a wife of the daughters of Barzillai the Gileadite, and was called after their name. These sought their register. of those that were reckoned by genealogy, and they were not found,' therefore were they deemed polluted and put from the priesthood. And the Tirshatha[45] said unto them, that they should not eat of the most holy things, till there stood up a priest with Urim and Thummim.[46] He[47] [thus] said to them: You remain[48] in your presumptive state; what have you eaten in exile?[49] The holy things of the country.[50] So here also [you shall eat] the sacred things of the country.[51] Now if we were to assume [that] one raises [a person] from 'lifting up the hands' to the state of a priest, since these spread out their hands,[52] one might raise them?'[53] — It is different here,[54] for their presumption has been impaired[55] For if you will not say so.[56] [then] according to him who says [that] one raises [a person] from terumah, since they eat terumah. one might raise them to the status of priests! Hence, [you must say it is][57] because their presumption has been impaired.[58]

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(1) In the case of the ass-drivers.

(2) Each ass-driver.

(3) As the measure and leveller.

(4) This shows that the ass-drivers mean to sell their corn. Therefore the Rabbis suspect them of mutual favouritism. If one praises his friend's produce in one place, the friend will praise the other one's produce in another place. And therefore the Rabbis hold that they are not believed.

(5) Lit., 'where'.

(6) I.e., did he give that explanation.

(7) I.e., put down his pots in the street and left them unobserved.

(8) These words, bracketed in the text, are missing in the Mishnah Toh. VII, 1. whence this is quoted.

(9) As they may have been touched by persons who do not observe the laws of purity.

(10) In a Baraitha.

(11) In the Baraitha.

(12) And thus indicates that the Pots ate for sale.

(13) Lit., 'because'.

(14) Would-be buyers handle the pots and examine them as to their quality. Therefore, in the Baraitha. both the inner and the outer pots are impure.

(15) In another Baraitha.

(16) There is no indication that the pots ate for sale and no one touches them.

(17) In the Mishnah.

(18) Neither explanation of R. Hama b. 'Ukba seems to apply. since some of the pots are pure and some are impure.

(19) The outer pots.

(20) תפופי.' Lit., 'the rubbings' (Rashi), or 'border' (Jast.). According to Rashi, big stones or pegs set up at the sides of the public toad, to prevent trespassing on private property. and against wbich passers.by press. The outer pots ate

impure. because passers-by. who do not observe the laws of purity, may touch them with their garments. The inner pots the passers-by cannot reach, and therefore they ate pure.

(21) יוחסין lit., 'genealogical records', 'traced genealogy'; (Jast. s.v.). The word המתיהשים 'those that were reckoned by qenealoqy'. Ezra Il, 62, refers to 'the children of the priests'. (v. 61). יוחסין means therefore primarily 'genealogical priestly records', 'traced priestly genealogy'. In out text the phrase can be tendered by 'as being of a priestly family'. or as 'having the status of a priest', or' briefly, 'to the full status of a priest'. and the dispute between R. Judah and the Rabbis is. if a person is seen eating terumah, whether he is to be regarded as a priest also in family matters and be allowed to marry a woman of unblemished descent; (v. Kid. 69b). R. Judah says 'yes', and he is therefore strict even with regard to terumah, and does not accept the evidence of one witness, but the Rabbis would say 'no'. and are therefore lenient with regard to terumah (v. 24a). This, then, is the point at issue, and not whether we suspect mutual favouritism, which, in point of fact, all agree that we do not. [According to the Rabbis, however, we must still adopt the answer given before, that the Mishnah of Demai deals with a case when the 'ass-driver had his trade-tools in his hand' (Tosaf.)]

(22) Lit., 'how is it to raise', etc.

(23) In which a person is designated as a priest.

(24) V. note 4.

(25) Who testifies that he is in fact a priest?

(26) The witnesses.

(27) I.e., to the whole contents of the document and so also to the priestly status of the borrower.

(28) A person from documents to the status of a priest.

(29) By the members of the academy.

(30) The priests lifted up their bands in pronouncing the priestly blessing. The pronouncing of the priestly blessing (v. Num. VI, 22.27) is therefore called 'Lifting up the bands'. Cf. Ta'an 26, Bet. 34a.

(31) Should one regard him, wbom be sees pronouncing the priestly blessing. as a priest in every way?

(32) That is, according to R. Judah.

(33) That is, according to the Rabbis.

(34) Lit., '(when are) these words (said)'.

(35) It is therefore to be assumed that he who eats terumah is a priest. as it is not presumed that a person would commit such a grave sin.

(36) LIt., 'do'. The commandment of pronouncing the blessing is given only to Aaron and his sons (and descendants) — Num. Vl, 23. If non-Aaronides perform this commandment, they commit a transgression. because to them this is forbidden by Implication. Only priests may bless, not non-priests. The transgression of a commandment, forbidden by implication from a positive command, is treated like a positive command, and is not punishable. This transgression will therefore be sooner committed by a non-Aaronide than the sin of eating terumah.

(37) I.e one does not raise a person from 'lifting up the hands' to the full status of priest hood.

(38) Between terumah and lifting up the bands.

(39) And the person does not mind committing a wrong act privately.

(40) Lit., 'a man would not be as impudent (or, act as impudently) as all that'.

(41) Between terumah and lifting up the hands.

(42) A person from lifting up of the bands to the status of priest.

(43) I.e., important.

(44) חזקה; the word used here in the sense of 'presumptive continuance of a state, or condition, until evidence is produced rebutting the presumption'. V. Jast. s.v.

(45) [The governor; identified with Nehemiah (Rashi).]

(46) Ezra II, 61-62.

(47) The Tirshatha.

(48) Lit., 'behold you are'.

(49) In Babylonia.

(50) 'Limit,' 'boundary.' has here the technical meaning of 'country,' as distinguished from 'sanctuary and Jerusalem'. 'Sacred things of the country' ate the holy things that may be consumed outside the Temple and Jerusalem, such as terumah, as distinct from sacrificial offerings, that must be consumed within the precincts of the Temple courtyard.

(51) The Tirshatha only forbade them to eat 'the most holy things', as sacrifices. It is therefore implied that as he allowed

them to eat 'the sacred things of the country.' as terumah, in presumptive continuance of their former state, they would be allowed, in the same way, to perform the lifting up of the hands, which was also done in 'the country'.

(52) And pronounced the priestly blessing; v. preceding note.

(53) To the full status of priests, that is, as being of a priestly family,. v. p. 133 n. 4.

(54) In the case Of Ezra II, 61-63.

(55) Since they must not eat 'the most holy things' and the rightful priests do eat them. One would therefore not raise them to the status of priests from lifting up their hands. But in other cases one might do so.

(56) That no mistake can be made because their presumption has been impaired.

(57) Lit., 'but is it not'?

(58) And therefore no mistake can be made, and the same applies to the 'lifting up of hands'.

Talmud - Mas. Kethuboth 25a

If so,[1] what [do the words of R. Jose mean] 'Great is the presumption'?[2] — Till now[3] they ate [only] Rabbinical terumah.[4] [and] now they ate Biblical terumah.[5] And if you wish, you may say: now also they ate Rabbinical terumah[6] [and] did not eat Biblical terumah,[7] and when does one raise [a person] from terumah to the status of a priest. In the case of Biblical terumah, but in the case of Rabbinical terumah one does not raise. If so,[8] what [is the meaning of the words] 'Great is the presumption'?[9] — Although one might have forbidden [Rabbinical terumah] because of Biblical terumah,[10] this has not been forbidden. But did they not eat Biblical terumah? Surely it is written: 'that they should not eat of the most holy things', [implying] 'the most holy things' they did not eat, but Biblical terumah they did eat! — [No]. He means thus: Neither [may they eat] anything that is called 'holy thing's[11] as it is written: 'And no stranger shall eat of the holy thing', nor anything which is called 'holy thing'. for it is written: 'And if a priest's daughter be married into a stranger. she shall not eat of the peace-offering of the holy things'[12] — and a Master said: [that this means] that which has been set aside from the holy things she shall not eat.[13] Come and hear: A presumption for the priesthood is constituted by the 'lifting up of the hands' in Babylonia, and the eating of the hallah[14] in Syria, and taking a share in [the priestly] gifts[15] in large cities.[16] In any case he mentions [here] the 'lifting up of the hands'; is it not with regard to the full status of the priest?[17] — No, with regard to terumah.[18] But he teaches [the ruling regarding terumah] as analogous to the eating of hallah,' just as the eating of hallah [entitles a person] to the full status of a priest, so does the lifting up of the hands [entitle a person] to the full status of a priest? — No. the eating of the hallah itself merely [serves as evidence] regarding terumah, [for] he holds that hallah in our days[19] is Rabbinical and terumah is Biblical and one raises [a person] from Rabbinical hallah to Biblical terumah.[20] and [it is] as R. Huna. the son of R. Joshua. reversed [the words of] the Rabbis.[21] Come and hear: A presumption for the priesthood is [constituted by] the 'lifting up of the hands' and taking a share [at the distribution of the [priestly gifts] at the threshing floors[22] in the Land of Israel;[23] in Syria and in all places to which the messengers of the new moon come[24] the 'lifting up of the hands' is evidence, but not taking a share at the threshing floors.[25] Babylonia is like Syria. R. Simeon b. Gamaliel, says: Also Alexandria in Egypt formerly. because there was there a permanent court of law.[26] In any case he teaches [here] the 'lifting up of the hands'; is it not with regard to the full status of the priest? — No, with regard to hallah. But he teaches [the rule regarding the lifting up of the hands] as analogous to taking a share at the threshing floors: just as taking a share at the threshing floors [serves as evidence] in respect of the status of a priest, so does the 'lifting up of the hands' [serve] in respect of the status of a priest! — No, taking a share at the threshing floors itself [serves as evidence only as] to hallah, for he holds that terumah in our days is Rabbinical and hallah is Biblical and one raises [a person] from Rabbinical terumah to Biblical hallah, even as the Rabbis. whom R. Huna the son of R. Joshua found [in discourse]. For R. Huna, the son of R. Joshua, found the Rabbis in the School of Rab sitting[27] and saying: Even according to him who says that terumah in these days is Rabbinical. hallah is Biblical, for during the seven [years] that they[28] conquered [the Land] and during the seven [years] that they distributed [it][29] there was a duty upon them [to separate] hallah, but there was no duty upon them [to separate] terumah. And I said to them: On the contrary, even according to him who says [that]

terumah in these days is Biblical, hallah is Rabbinical, for it has been taught: [It is written:] 'In your coming'.[30] If 'in your coming'[31] you might think as soon as two or three spies had entered it? [Therefore] it is said in your coming'.[32] I have spoken of the coming of all and not of the coming of a portion of you. Now when Ezra brought them up[33]

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(1) Lit., 'and but'.

(2) How far does the presumption improve their position? Why does R. Jose lay such emphasis on it?

(3) Lit.,'at first'. In Babylonia.

(4) Terumah outside Palestine is only Rabbinically ordained; v. Kid. 36b.

(5) Terumah in Palestine is commanded by the law of the Bible, and the eating of such terumah by them was due to the importance attached to 'presumption'.

(6) I.e.. terumah on vegetables and fruits.

(7) On corn, wine and oil.

(8) Lit.. 'and but'.

(9) V. supra p. 135' n. 4.

(10) Since on their entering the land there would be plenty of Biblical terumah available side by side with the Rabbinical terumah, through being permitted to eat the latter, they might be led to eat also of the former.]

(11) Lev. XXIl, 10. The reference is to terumah. v. Yeb. 74b.

(12) Lev. XXII, 12. The reference is to those portions of sacrifices, the breast and shoulder of peace-offerings. (v. Lev. VII, 34). that could be partaken of by the wives of priests and their slaves; v. next note.

(13) Cf. preceding note. And in Ezra II, 63. both words are used, corresponding to the two words just quoted from Lev. XXII, 10 and 12; v. Kid. 69b and Yeb. 68b and 87a.

(14) The priest's share of the dough; v. Num. XV, 20.

(15) V. Deut. XVIII, 3.

(16) [Though these Portions are permissible to non-priests.it is assumed that no one but a priest would venture to accept these publicly.]

(17) I.e.,in family matters; (v. supra p. 133, n. 4) which solves R. Nahman b. Isaac's question.

(18) [He who is seen to avail himself of any of these privileges as defined may be given terumah, but it cannot be used as evidence regarding marriage.]

(19) Lit., 'in this time', i.e., after the destruction of the Second Temple.

(20) When one is seen being given hallah, we assume he is a priest, and he may be given terumah.

(21) V. infra.

(22) I.e., sharing in the terumah.

(23) [Where terumah was Biblical and would not be given to a person of doubtful descent, and similarly in regard to the 'lifting of hands', the presence of the Sanhedrin, who would investigate claims to priesthood. would be sufficient bar to a non-priest.]

(24) [V. R.H. 18a; informing the people the day on which the Sanhedrin bad proclaimed the new moon of Nisan so that they might observe the festival of Passover on the proper day. These places bad to be within fifteen days' walking distance from Jerusalem.]

(25) Being outside Palestine proper terumah there is only of Rabbinic origin.

(26) Who would investigate claims to priest hood, cf. supra p. 137, n. 12.

(27) Rashi renders בי רב 'house of learning'. school', 'college'.

(28) The Israelites.

(29) Under Joshua. V. B.M. 89a.

(30) בבואכם so literally Num. XV, 18. E.V. 'When you come'.

(31) The emphasis would seem to be on 'come'.

(32) The emphasis is thus laid on 'your'. 'Your' means '(the coming of) all of you'.

(33) To the Land of Israel.

Talmud - Mas. Kethuboth 25b

not all of them went up.[1] Come and hear: A presumption for the priesthood [is constituted by] the

'lifting up of the hands' and taking a share at the threshing floors and testimony.[2] Now is testimony a presumption?[3] Hence he means thus: The 'lifting up of the hands is like a testimony'; as a testimony [raises one] to the status of a priest, so the 'lifting up of the hands' [raises one] to the status of a priest![4] — No. [what it means is] a testimony that comes on the strength of a presumption[5] is like a presumption. as when a man came once before R. Ammi [and] said to him: I am convinced that he[6] is a priest. So he said to him: What have you seen? And he answered him: He read first in the Synagogue.[7] — As[8] priest or as prominent man?[9] — After him a Levite read.[10] And R. Ammi raised him to the priesthood on the strength of his testimony.[11] Someone came before R. Joshua b. Levi, [and] said to him: am convinced that he[12] is a Levite. He said to him: What have you seen? He answered him: He read second in the Synagogue. As Levite or as a prominent man? — A priest read before him.[13] And R. Joshua b. Levi raised him to the status of Levite[14] on the strength of his testimony. Someone came once before Resh Lakish [and] said to him: I am convinced that he[15] is a priest. He 'said to him: What have you seen? [He answered him:] He read first in the Synagogue. He[16] asked him: Have you seen him take a share at the threshing floors?[17] — Said R. Eleazar to him. And does the priesthood cease if there Is no threshing floor there?[18] — Once they sat before R. Johanan [and] there came such a case before them. Resh Lakish asked him:[19] Have you seen him take a share at the threshing floor? So R. Johanan said to him: And does the priesthood cease if there is no threshing floor there? — He[20] turned round, looked at R. Eleazar with displeasure[21] and said: You have heard something from the smith's son[22] and you did not say it to us in his name.[23] Rabbi and R. Hiyya, one raised a son to the priesthood on the testimony of his father, and one raised a brother to the state of Levite on the testimony of his brother. It can be proved that it was Rabbi who raised the son to the priesthood on the testimony of his father, for it has been taught: If one comes and says: 'This Is my son and he is a priest,' he is believed with regard to allowing him to eat terumah, but he is not believed with regard to allowing him to marry a woman.[24] This is the opinion[25] of Rabbi. Said R. Hiyya to him: If you believe him so as to allow him to eat terumah, believe him [also] so as to allow him to marry a woman, and if you do not believe him so as to allow him to marry a woman, do not believe him also as to allow him to eat terumah. He answered him: I believed him so as to allow him to eat terumah because it is In his hands to let him eat terumah,[26] but I do not believe him so as to allow him to marry a woman because it is not in his hands to let him marry a woman.[27] It' is proved.[28] And since it was Rabbi who raised the son to the priesthood on the testimony of his father, [it follows that] it was R. Hiyya who raised the brother to the status of Levite on the testimony of his brother, But [according to] R. Hiyya, why is the son different that [he is] not [raised]?[29] Because he is related to his father. A brother. too, is related to his brother?[30] —

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(1) And therefore hallah in these days is Rabbinical.

(2) Witnesses testify that he is a priest.

(3) Surely you cannot call a Testimony a presumption!

(4) Which answers the question of R. Nahman b. Isaac.

(5) The testimony is to a fact that postulates a presumption.

(6) A certain person. Lit., 'this (man)'.

(7) When called up to the Law. V. Git. 59b.

(8) Lit., 'in the presumption of'.

(9) V. Git. 59b.

(10) This would show that he was a priest; v. Git. 59b.

(11) Lit., 'by his mouth'.

(12) A certain person. Lit., 'this (man)'.

(13) [So he must have been a Levite, v. Git. 59b.]

(14) To give him the first tithe.

(15) A certain person. Lit., 'this (man)'.

(16) Resh Lakish.

(17) The first answer apparently did not satisfy Resh Lakish.

(18) R. Eleazar apparently regarded the first answer as sufficient.

(19) The witness.
(20) Resh Lakish.
(21) Rashi: with an evil eye.
(22) R. Johanan. V. Sanh. (Sonc. ed.) p. 647. n. 8.
(23) He understood that R. Eleazar had heard the phrase he had cited from R. Johanan. and therefore reproved him for this lack of scholarly courtesy in not mentioning his source.
(24) Of unblemished descent.
(25) Lit., 'the words'.
(26) He can give him of his terumah.
(27) Marriage is not in the hand of the father.
(28) That it was Rabbi who promoted the son to priesthood on the testimony of his father.
(29) On the testimony of his father.
(30) Why should he be raised on the evidence of his brother?

Talmud - Mas. Kethuboth 26a

When he was talking in his simplicity.[1] As that [story which] Rab Judah related in the name of Samuel: It happened that a man was talking in his simplicity and said: 'I remember when I was a child and rode on my father's shoulder, they brought me out from school and stripped me of my shirt and immersed me[2] so that I could eat terumah in the evening.'[3] And R. Hiyya added:[4] 'And my friends held aloof from me and called me "Johanan the halloth-eater".'[5] And Rabbi raised him to the priesthood on his testimony. It has been taught: R. Simeon b. Eleazar, says: Just as terumah is a presumption for the priesthood, so is the first tithe a presumption for the priesthood,[6] but he who takes a share [at the threshing floors] through the court — [this] is not a presumption.[7] The first tithe belongs to the Levite?[8] - [This is] according to R. Eleazar, the son of Azariah,for it has been taught: Terumah belongs to the priest, the first tithe to the Levite-this is the view of R. Akiba, R. Eleazar, the son of Azariah, says: The first tithe belongs also to the priest. [But] R. Eleazar, the son of Azariah, says: 'also to the priest'; does he say: to the priest and not to the Levite? — Yes. after Ezra had punished them.[9] But perhaps it happened that they gave it to him?[10] — Said R. Hisda: Here we treat of a case where we know that the father of that [per. son] is a priest and a rumour[11] came Out concerning him that he is the son of a divorced woman[12] or a haluzah[13] and [yet] they gave him tithe at the threshing floor. [He could not be regarded as] a Levite, because he was not a Levite.[14] What then could you say? That he was the son of a divorced woman or the son of a haluzah? [But as to this] there is no question that according to him who says [that] the first tithe is forbidden to strangers.[15] they would not have given [it] to him. For even according to him who says: The first tithe is permitted to strangers.[16] it is only to sustain them[17] but as a distribution [due to him as of right] they do not give it to him.[18] 'But he who takes a share [at the threshing floors] through the court [this] is not a presumption.' If it is not a presumption through the court, when is it a presumption? — Said R. Shesheth: he means thus: If one shares the terumah in the property of his father[19] through the court, it is not a presumption. — This is obvious![20] — You might have said [that] just as those[21] [get their share of terumah] for eating. this one also [gets his share of terumah] for eating, so he lets us hear [that] those [get the terumah] for eating and this one for selling.[22] R. Judah says: ONE DOES NOT RAISE [A PERSON] TO THE PRIESTHOOD ON THE TESTIMONY OF ONE WITNESS, etc. R. Simeon b. Gamaliel says the same as R. Eliezer?[23] And if you will say [that] they differ with regard to an objection raised by one person. [in] that R. Eliezer holds that an objection [may be admitted if cooling from;] one [person] and R. Simeon b. Gamaliel holds that an objection [must come from at least] two [persons] did not R. Johanan say' All agree that an objection [must come from] at least two persons? — But we treat here of a case where the father of this [person] is a priest and a rumour[24] came out concerning him that he is the son of a divorced woman or the son of a haluzah and they put him down,[25] and one witness came and said, 'I know that he is a priest.'[26]

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(1) The brother, on whose statement the promotion was made, did not intend to give evidence.
(2) Terumah had to be eaten in ritual purity.
(3) [Because children ate apt to rummage about in places that are not clean, and thus contract defilement.]
(4) Completing the man's narrative.
(5) Plur. of Hallah, v. Glos.
(6) If a man is seen eating first tithe, it is presumed that he is a priest.
(7) This is explained infra.
(8) V. Num. XVIIl, 24.
(9) The Levites, not to be given any tithes, v. Yeb. 86b.
(10) To the Levite; how' then car first tithe constitute a presumption for priesthood?
(11) Lit., 'voice'.
(12) He is the offspring of a union of a priest with a divorced woman, therefore a halal, ('profaned'). v. Lev. XXI, 7.
(13) V. Glos.
(14) His father is a priest.
(15) Persons who ate neither priests not Levites.
(16) Cf Yeb. 74a, 85b. and 86a.
(17) If they ate poor.
(18) And Since they gave him tithe at the threshing floors it shew's that he is an unblemished priest.
(19) After the father's death.
(20) Even a halal inherits his father.
(21) The brothers.
(22) He inherits the terumah and may sell it to rightful priests but he may not eat it, although the division took place under the direction of the court
(23) In out Mishnah.
(24) Lit 'voice'.
(25) From the status of priesthood.
(26) A rightful, unblemished priest.

Talmud - Mas. Kethuboth 26b

and they raised him [again] and [then] came two [other witnesses] and said [that] he is the son of a divorced woman or the son of a haluzah. and they put him, down [again]. and [then] came one witness and said, 'I know that he is a priest'. [Now] all agree[1] that they[2] are joined into one testimony, and they differ as to whether we are afraid of bringing contempt on the court.[3] The first Tanna[4] holds: Since we put hill, down we do not raise him, [again]. because we are afraid of bringing contempt on the court.[5] Whereas R. Simeon b. Gamaliel, holds: we have put him down and we can raise him, [again].[6] and we are not afraid of bringing contempt on the court. R. Ashi asked against this: If so, even [when there are] two and two[7] also?[8] But, said R. Ashi, they differ as to whether they[9] are joined into one testimony. And they have the same difference of opinion as these Tannaim,[10] for it has been taught: Their testimonies are not joined together unless they have both seen[11] at the same time;[12] R. Joshua b. Korha. says: Even when [they have seell] one after another. Their testimonies are not established[13] in court until they both give evidence at the same time; R. Nathan says: We hear the evidence of one to-day. and when the other one comes to-morrow we hear his evidence.[14] MISHNAH. IF A WOMAN WAS IMPRISONED BY HEATHENS, IF FOR THE SAKE OF MONEY, SHE IS PERMITTED TO HER HUSBAND, AND IF FOR THE PURPOSE OF [TAKING HER] LIFE,[15] SHE IS FORBIDDEN TO HER HUSBAND. GEMARA. R. Samuel b. Isaac said [that] Rab said: They have taught [this] only when the hand of Israel is strong over the heathens.[16] but when the hand of the heathens is strong over themselves,[17] even if for the sake of money, she is forbidden to her husband. Raba raised an objection: R. Jose the priest and R. Zechariah b. ha-Kazzab[18] testified regarding an Israelitish woman, who was pledged[19] in Ashkelon and her family[20] put her away.[21] and her witnesses[22] testified [concerning her] that she did not hide herself [with a man] and that she was not defiled [by a man]. [that] the Sages said to them: If you

believe [the witnesses] that she was pledged believe [them also] that she did not hide herself and that she was not defiled, and if you do not believe [them] that she did not hide herself and that she was not defiled, do not believe [them] that she was pledged.[23] Now Ashkelon [was a town in which] the hand of the heathens was strong over themselves and he teaches

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(1) R. Eliezer and R. Simeon b. Gamaliel.

(2) The testimony of the first witness and that of the last witness so that there ate two witnesses against two witnesses.

(3) If he is re-instated now, having been put down by the court twice.

(4) R. Eliezer.

(5) [Should he be reinstated after having been degraded twice, the court would be brought into contempt; and thus R. Eliezer says that where there have been objectors, there is renewed promotion by the evidence of one witness, namely the last.]

(6) [To the priesthood In continuance of the presumptive state which he had originally enjoyed.]

(7) If two witnesses who speak in his favour come at the same time.

(8) He should be not raised again in the view of R. Eliezer for feat of bringing contempt on the court.

(9) The testimony of the first witness and that of the last witness, so that there ate two witnesses against two witnesses.

(10) The Rabbis and R. Nathan of the Baraitha that follows.

(11) What they testify to.

(12) At the same time and in the presence of one another.

(13) Accepted as evidence.

(14) Their testimonies are joined together and the two single witnesses are regarded as a pair of witnesses. R Eliezer agrees with the Rabbis, R. Simeon b. Gamaliel with R. Nathan.

(15) And she was saved afterwards.

(16) [In which case they were afraid to force the woman, lest they should forfeit their money claim.]

(17) I.e., when the heathens are independent. [or a euphemism ‘themselves’, standing for Israelites.]

(18) ‘Son of the Butcher’.

(19) For a debt.

(20) Who were priests.

(21) Disqualified her from marrying a priest for fear she might have been violated.

(22) Who testified to her having been pledged.

(23) V. ‘Ed. VIII, 2.

Talmud - Mas. Kethuboth 27a

‘when she was pledged’ but not ‘when she was imprisoned’?[1] — [No] the same applies also to [the case if] she had been imprisoned. only it happened so.[2] Some say. Raba said: We have also learned [in a Mishnah] to the same effect: R. Jose the priest and R. Zechariah b. ha-Kazzab testified regarding an Israelitish woman. who was pledged in Ashkelon and her family put her away and her witnesses testified concerning her that she did not hide herself [with a man] and that she was not defiled [by a man]. [that] the Sages said: If you believe [the witnesses] that she was pledged believe [them also] that she did not hide herself and that she was not defiled, and if you do not believe [them] that she did not hide herself and was not defiled, do not believe [them] that she was pledged. In Ashkelon [it happened] for the sake of money, and [yet] the reason [why the Sages permitted her to her husband was] because witnesses testified concerning her, but if witnesses did not testify concerning her [she would] not [have been permitted]; and is it not [also to be supposed] that there is no difference whether she was pledged or imprisoned?[3] — No, when she was pledged it is different.[4] Some put [this argument] in the form of a contradiction. We have learned: IF FOR THE SAKE OF MONEY SHE IS PERMITTED TO HER HUSBAND. But here is a contradiction: ‘R. Jose testified etc.’ [Now] in Ashkelon [it happened] for the sake of money and [yet] the reason [why she is permitted to her husband] is because witnesses testify concerning her, but if no witnesses testify concerning her, [she would] not [have been permitted]. And it is answered: R. Samuel b. Isaac said: It is no contradiction; here[5] [it speaks] when the hand of Israel is strong over the heathens, [and]

there[6] when the hand of the heathens is strong over themselves. IF FOR THE PURPOSE OF [TAKING HER] LIFE SHE IS FORBIDDEN [TO HER HUSBAND]. Rab said: As, for instance, the wives of thieves.[7] Levi said: As, for instance, the wife of Ben Dunai.[8] Hezekiah said: This is only[9] when they have [already] been sentenced to death — R. Johanan says: Even if they have not yet been sentenced to death. MISHNAH. IF TROOPS OF SIEGE HAVE TAKEN A TOWN. ALL THE PRIESTS' WIVES[10] WHO ARE IN IT ARE UNFIT.[11] IF THEY HAVE WITNESSES,[12] EVEN A SLAVE.[13] EVEN A HANDMAID,[14] THEY ARE BELIEVED. NO ONE IS BELIEVED AS TO HIMSELF. GEMARA. There is a contradiction against this: If a reconnoitering troop comes to a town in time of peace the open casks [of wine] are forbidden[15] and the closed ones are permitted.[16] In times of war both are permitted, because they have no time to offer libations.[17] — R. Mari answered: To have intercourse they have time.[18] To offer libations they have no time. R. Isaac b. Eleazar said in the name of Hezekiah: There[19] [it speaks] of a besieging troop of the same kingdom.[20] here[21] [it speaks] of a besieging troop of another kingdom.[22] [Even in the case of a besieging troop] of the same kingdom it is not possible that one of them does not run away[23] [from the rest of the troop]![24] — Rab. Judah answered in the name of Samuel: When the guards[25] see one another.[26] [But] it is not possible that one does not sleep a little![27] — R. Levi answered: When they placed round the town chains. dogs. trunks of trees and geese.[28] R. Abba, b. Zabda said: With regard to this R. Judah Nesi'ah[29] and the Rabbis differ: one said [that] there[30] [it speaks] of a besieging troop of the same kingdom. and here[31] of a beseiging troop of another kingdom, and he found no difficulties, whereas one[32] raised all those questions[33] and answered [them by saying] when they placed round the town chains, dogs. trunks of trees, and geese. R. Idi b. Abin said in the name of R. Isaac b. Ashian: If there is there one hiding place. it protects all priests' wives.[34] R. Jeremiah asked [a question]: What is [the law] if it holds only one? Do we say of each one:[35] This is the one[36] or not? — But why should it be different from [the following case]? There were two paths, one was clean[37] and one was unclean, and someone walked in one of them and [then] prepared clean things.[38] and another person came and walked in the second path and [then] prepared clean things. R. Judah says: If each one comes to ask[39] separately,[40] they are [declared] clean;[41] [but] if they both come together, they are [declared] unclean;[42] R. Jose Says: In either case[43] they are [declared] unclean.[44] [Whereon] Raba, and some say R. Johanan said: [if they come to ask] at the same time, all agree that they are [declared] unclean, if they come one after another, all agree that they are [declared] clean; they differ only when one comes to ask for himself and for the other one; one[45] regards this as[46] [if it were] at the same time, and the other[47] regards this as [if it were] one after another. Now here[48] also, since all [women] [are declared] permitted.it is like [the case where they came] at the same time?[49] — How is this so?[50] There[51] there is certainly an impurity,[52] [but] here[53] who says that any one[54] has been defiled?[55] R. Ashi asked: If she[56] says. 'I have not hidden myself and I have not been defiled', what is [the law]? Do we say

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(1) The case of 'pledged' would be worse than that of 'imprisoned'. for once the tithe for redemption had expired. the pledge remains the absolute possession of the creditor (Rashi).

(2) That she had been pledged.

(3) This Supports R. Samuel b. R. Isaac.

(4) V. p. 144 n. 9.

(5) In our Mishnah.

(6) 'Ed. V. 2.

(7) Their property and their wives were apparently confiscated (Rashi).

(8) Or Dinai, a notorious bandit, v. Sot. (Sonc. ed.) p. 249. n. 2.

(9) Lit ,'and that is'.

(10) Priestesses.

(11) I.e.,forbidden to their husbands, as they might have been defiled by the troops.

(12) That they have not been defiled.

(13) A male slave.

(14) A female slave.

(15) Because they may have offered libations to idols.
(16) It is assumed that the troops do not touch the closed casks since they have open casks of wine.
(17) V. A.Z. 70b. And in our Mishnah it is assumed that the troops have time to violate the women of the town.
(18) They are driven by their passion.
(19) In A.Z. 7ob.
(20) [Sent to suppress a rebellion. The troop is therefore self-restrained]
(21) In our Mishnah.
(22) An enemy troop behaves in a hostile manner, and the women of the town may have been violated.
(23) Var. lec. 'remove his foot'.
(24) And has violated a woman.
(25) Appointed for the protection of the population.
(26) And they can call to one another to arrest any wrongdoer. Fear of the guards would prevent assaults on women.
(27) I.e., the guards may fall asleep for a little while.
(28) So that any one who would attempt to run away (or slip away) would be caught.
(29) The Prince. R. Judah II
(30) In A.Z. 70b.
(31) In out Mishnah.
(32) The other disputing patty.
(33) Raised here in the Gemara.
(34) It is to be assumed of each one that she hid herself there.
(35) Of the priests' wives.
(36) Who hid herself there.
(37) Ritually. In one of the two paths were dead bodies buried, but it is not known in which.
(38) Lit., 'did purities'. I.e., touched things which were ritually pure (Rashi). If he is ritually impure he makes them ritually impure.
(39) They come to ask a scholar for a decision as to the things which they touched.
(40) Lit., 'this one for himself and this one for himself'.
(41) I.e., the things are pure, because the two men ate regarded as pure. Since they came to ask separately I say of each of them that he walked in the clean path.
(42) The things are unclean, because the decision given to the men cannot be: 'you are clean', since one of the two present must have walked in the unclean path. As it is not known which it was they ate both regarded as unclean and the things which they touched are unclean.
(43) Lit., 'Whether So-and-so'. Whether they come separately or together.
(44) V. Toh. V, 5.
(45) R. Jose.
(46) Lit., 'compares it to'.
(47) R. Judah.
(48) In the case of the priests' wives.
(49) And therefore all of them should be forbidden on the view of R. Jose to their husbands, if there is a hiding place in which only one can hide herself, Since, when R. Judah and R. Jose differ, the law is according to R. Jose (Rashi) and since it is ruled that all the women are permitted, it is as if they all had come at one and the same time to ask for a decision.
(50) I.e., is this analogy correct? How can you compare these two cases?
(51) In the case of the two paths.
(52) One path was unclean.
(53) In the case of the priests' wives.
(54) Of the priests' wives.
(55) It may be that there was no defilement at all.
(56) One of the priests' wives.

Talmud - Mas. Kethuboth 27b

'why should she lie,'[1] or do we not say it? But why should this be different from the following case? Once someone hired out an ass to a person, and he said to him, 'Do not go the way of Nehar Pekod. where there is water,[2] go the way of Naresh, where there is no water. But he[3] went the way of Nehar Pekod and the ass died.[4] He[3] [then] came before Raba[5] and said to him. 'Indeed, I went the way of Nehar Pekod, but there was no water. Said Raba: 'Why should he lie?' If he wished he could say 'l went the way of Naresh.' And Abaye said to him: we do not say 'Why should he lie?' where there are witnesses.[6] — Now is this so? There there were witnesses that there certainly was water on the way of Nehar Pekod. but here has she certainly been defiled? It is [only] a fear,[7] and in the case of a fear we say ['why should he lie?'] IF THERE ARE WITNESSES, EVEN A SLAVE, EVEN A HAND' MAID, THEY ARE BELIEVED. And even her own handmaid is believed. But there is a contradiction against this:[8] She[9] must not be alone with him[10] unless there are witnesses, even a slave, even a handmaid[11] except her own handmaid,[12] because she[13] is familiar with her own handmaid![14] — R. Papi said: In [the case of] a woman captive[15] they[16] have made it lenient. R. Papa said: In the one case[17] [it speaks of] her handmaid, in the other case[18] [it speaks of] his handmaid. But her handmaid is not believed? Does he not teach [that] no one may testify as to himself? [This would imply that] her handmaid is believed![19] Her handmaid is like herself.[20] R. Ashi said: In both cases [it speaks of] her handmaid, but [what we maintain is that] the handmaid sees and is silent.[21] [Consequently] there,[22] where her silence makes her permitted.[23] she is not believed, but here,[24] where her silence makes her forbidden.[25] she is believed. Now also, she may come and tell a falsehood?[26] Two [things] she would not do[27] as in the case of Mari b. Isak [or as some say of Hana b. Isak]: To him there came a brother from Be-Hozae and said to him: Give me a share in the property of our father. He answered him: I do not know you. He[28] [then] came to R. Hisda, and he[29] said to him: I he[30] answered you well, for it is written:[31] 'And Joseph knew his brethren, and they knew not him.' This teaches that he went away before he had grown a beard and he came back after growing a beard.[32] [Then] he[29] said to him: I Go and bring witnesses that you are his brother. He[28] answered him:[29] I have witnesses, but they are afraid of him,[33] because he is a powerful man. He[29] [then] said to the other man: Go you and bring witnesses that he[28] is not thy brother. He[30] answered him:[29] Is this the law? [Surely] he who claims must produce evidence![34] He[29] said to him.[30] So I rule for you and all who are powerful like you![35] But they[36] may also come and lie?[37] Two things they[36] will not do.[38] May we say that this difference[39] is like that between [these] Tannaim? [For it was taught in a Baraitha:] This testimony[40] a man and a woman, a boy and a girl, her father and her mother, her brother and her sister [may give], but not her son and her daughter, nor her slave and her handmaid. And [in] another [Baraitha] it was taught. All are believed to testify [for her] except herself and her husband.[41] Now the views of R. Papa and R. Ashi are [certainly] according to the difference of the Tannaim.[42] But is the view of R. Papa according to the Tannaim?[43] R. Papa can answer you: That Baraitha[44] [speaks of a case] when she[45] talked in her simplicity.[46] As that which R. Dimi said when he came: R. Hanan of Carthagene told a story: A case came before R. Joshua b. Levi (or as some say R. Joshua b. Levi told a Story: A case came before Rabbi): Someone was talking in his simplicity and said: I and my mother were taken captives among heathens. When I went out to draw my water, my mind was on my mother.[47] [When I was out] to gather wood, my mind was on my mother. And Rabbi allowed her to marry[48] a priest[49] by [the words of] his mouth.[50] MISHNAH. R. ZECHARIAH B. HA-KAZZAB[51] SAID: BY THIS TEMPLE[52] HER HAND[53] DID NOT MOVE OUT OF MY HAND[54] FROM THE TIME THAT THE HEATHENS ENTERED JERUSALEM UNTIL THEY DEPARTED. THEY[55] ANSWERED HIM: NO ONE MAY TESTIFY CONCERNING HIMSELF.[56] GEMARA. It has been taught: And notwithstanding this[57] he appointed for her a dwelling place[58] in his court-yard. and when she was out, she went out at the head of her children,[59] and when she came in, she came in at the head other children.[60] Abaye asked: May one do so with regard to one's' divorced wife?[61] [Do I say:] There[62] it was allowed because in [the case of] a captive woman[63] they[64] made it lenient, but not here.[65] or is there no difference? — Come and hear: It has been taught: If someone has divorced his wife, she shall not get married [and live] in his neighbourhood.[66]

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(1) Lit.. 'Why should I lie?' Do we apply here the principle of 'Why should I lie?' If she had wished to tell a falsehood she could have said that she hid herself. She does not gain any advantage by her present statement. Therefore we should believe her entire statement.
(2) Which, apparently. the ass-driver would have to cross.
(3) The man who hired the ass.
(4) Apparently through the fatigue of crossing the water.
(5) Before whom the parties, the owner and hirer of the ass, brought their dispute.
(6) It is common knowledge that there is water on the way to Nehar, Pekod, v. however, B.M. (Sonc. ed.) p. 468 and notes.
(7) One is merely afraid that she may have been defiled.
(8) V. Git. 73a.
(9) The wife of a husband who gave her a divorce on condition that he dies, v. Git. 73a.
(10) With her husband between the delivery of the divorce and his death.
(11) Even if a slave or a handmaid is present when husband and wife are in one room.
(12) The wife's own handmaid.
(13) The wife.
(14) We thus see that her own handmaid cannot be a witness. This is the contradiction. For further notes v. Git. (Sonc. ed.) p. 348.
(15) E.g., the priests' wives in the Mishnah.
(16) The Rabbis.
(17) In Git. 73a.
(18) In our Mishnah.
(19) Anyone but herself.
(20) Therefore her own handmaid cannot be a witness.
(21) I.e., all the handmaid does is: She sees what her mistress does and keeps quiet.
(22) In Git. 73a.
(23) There (in Git. 73a), if the handmaid says nothing as to any intimacy between husband and wife after the conditional divorce, she is in her permitted state. And as her handmaid is suspected of Seeing a wrong done and saying nothing her silent testimony is not accepted.
(24) In our Mishnah.
(25) A captive woman is presumed to have been violated unless there is evidence to the contrary. consequently in order to make her mistress permitted to her husband the handmaid would have to speak. She would have to say that her mistress was not defiled. And we do not assume that she would say an untruth. She may be guilty of a silent falsehood, but not of a spoken falsehood. Therefore when she says that her mistress has remained pure she is believed.
(26) In spite of what has just been said by R. Ashi, it is possible that out of attachment to her mistress, or for fear of her, the handmaid may come and actually tell a falsehood. Why should she then be believed?
(27) To be silent about her mistress's defilement and to say that she was not defiled, that she would do both these things we do not assume.
(28) The claimant.
(29) R. Hisda.
(30) Mari, or Hana.
(31) Gen. XLII, 8.
(32) It is therefore possible and even natural that your brother does not recognize you.
(33) Of his brother.
(34) This is the accepted rule!
(35) I.e.,I am the interpreter and exponent of the law. I apply the rules according to circumstances. Now that I have to deal with a man like you; Mari. I modify the rule! And he bowed to the ruling of R. Hisda; v. B.M. 39b. where the story is told more fully.
(36) The witnesses.
(37) Cf. B.M. 39b.
(38) To be silent as to the truth and to tell a falsehood
(39) Whether her handmaid is believed or not.

(40) Regarding a captive woman.
(41) Her handmaid is therefore believed.
(42) R. Papa and R. Ashi would hold like the second Baraitha.
(43) The view of R. Papa does not seem to agree with either Baraitha, since he makes a distinction between his handmaid and her handmaid. According to the first Baraitha no handmaid is believed, whether his or hers, and according to the second Baraitha either handmaid is believed, even hers.
(44) The second Baraitha.
(45) The handmaid.
(46) She related her story quite innocently, without intending to give evidence. In such a case R. Papa would also hold that her handmaid is believed. Therefore R. Papa's view would also be according to the second Baraitha.
(47) Apparently he had his eyes on her so that no one assaulted her.
(48) She was a widow.
(49) Lit., 'into priesthood'.
(50) Relying upon the story told innocently by the Son.
(51) 'The Butcher'. He was a priest in Jerusalem at the time of the Roman conquest.
(52) He swore by the Temple.
(53) The hand of his wife.
(54) I.e., she was always with him, and he knew that she remained pure.
(55) The Sages.
(56) As it concerns himself his testimony cannot be accepted.
(57) That they did not accept this testimony. and consequently she was forbidden to him (Rashi).
(58) Lit., 'a house'.
(59) So that she should not be alone with her husband.
(60) So that she should not be alone with her husband, v. Tosef. Keth. V. for variants.
(61) May she live in the same court-yard in which her former husband lives?
(62) In the case of R. Zechariah.
(63) During the siege she was regarded as a captive woman.
(64) The scholars.
(65) In the case about which Abaye asks.
(66) שכונה 'a group of three houses', v. A.Z. 21a. Former friendship may lead to renewed intimacy.

Talmud - Mas. Kethuboth 28a

and if he[1] was a priest she must not live with him in the [same] alley.[2] If it was a small village[3] — such a case happened, and they said: A small village is considered[4] a neighbourhood.[5] Who must give way before whom? — Come and hear' It has been taught : She must give way before him , and not he before her, but if the court-yard[6] belonged to her, he must give way before her. The question was asked: If the court-yard belonged to both, what is [the law]? Come and hear: 'She must give way before him.' In what case?[7] If the court-yard belongs to him it is obvious; and if the court-yard belongs to her, has it not been taught: 'If the court-yard belongs to her, he gives way before her'? Hence [it must be] in a such case![8] — [No.] Perhaps [it deals with a case] when they rented [the court.yard]. How is it then?[9] — Come and hear: [It is written:] The Lord will hurl thee away violently as a man,[10] and Rab said:[11] moving about[12] is harder for a man than for a woman.[13] Our Rabbis taught: If he[14] borrowed[15] from the property of her father,[16] she collects the payment only through another person.[17] R. Shesheth said: And if they [both] come before us to Court, we do not deal with[18] them.[19] R. Papa said: We excommunicate them. R. Huna, the son of R. Joshua. said: We even order them to be lashed. R. Nahman said: It is taught in Ebel Rabbathi:[20] This is said only[21] when she was divorced after[22] marriage, but if she was divorced after betrothal, she may collect the payments herself, because he is not [so] familiar with her. Once a betrothed and his [former] fiancee came before Raba, and R. Adda b. Mattena, sat before him. Raba placed a messenger[23] between them.[24] R. Adda b. Mattena said to him: Did not R. Nahman say: 'It is taught in Ebel Rabbathi etc.'?[25] — He answered him: We see[26] that they are familiar with one another.[27] Some say: Raba did

not place a messenger between them. R. Adda b. Mattena said to him: Let the Master place a messenger between them. He answered him:[28] Did not R. Nahman say: 'It is taught in Ebel Rabbathi, etc.'? He[29] said to him:[28] This only when they are not familiar with one another, but [as to] these — I see that they are familiar with one another.[27] MISHNAH. THE FOLLOWING[30] ARE BELIEVED ON TESTIFYING WHEN THEY ARE GROWN-UP[31] TO WHAT THEY HAVE SEEN WHEN THEY WERE SMALL:[32] — A PERSON IS BELIEVED ON SAYING ' THIS IS THE HANDWRITING OF MY FATHER.'[33] 'THIS IS THE HANDWRITING OF MY TEACHER. 'THIS IS THE HANDWRITING OF MY BROTHER:[34] REMEMBER THAT THAT WOMAN WENT OUT WITH A HINUMA AND UNCOVERED HEAD,[35] 'THAT THAT MAN USED TO GO OUT FROM SCHOOL[36] TO IMMERSE[37] IN ORDER TO EAT TERUMAH'.[38] 'THAT HE USED TO TAKE A SHARE WITH US AT THE THRESHING FLOOR, THAT THIS PLACE WAS A BETH HA-PERAS.'[39] THAT UP TO HERE WE USED TO GO ON SABBATH.[40] BUT A MAN IS NOT BELIEVED WHEN HE SAYS: SO-AND — SO HAD A WAY[41] IN THIS PLACE, THAT MAN HAD A PLACE OF STANDING UP AND LAMENTATION[42] IN THIS PLACE. GEMARA. R. Huna b. Joshua said: [This is] only[43] when a grown up person is with him.[44] And it is necessary,[45] for if he had taught us[46] [with regard to] his father, [I might say][47] that is because he[48] was always[49] with him,[50] but [with regard to] his teacher. [he would] not [be believed]. And if he had taught us [with regard to] his teacher, [I might say][51] that is because he had reverence[52] for his teacher.[53] And if he had taught us these two [cases],[54] [I might say[55] with regard to] his father, that is because he was always with him, and [with regard to] his teacher, because he had reverence for him, but [with regard to] his brother, in regard to whom there is neither this nor that ground.[56] I might say [that he is] not [believed]; so he teaches us[57] [that] since the confirmation of documents[58] is [only] ordained by the Rabbis,[59] so the Rabbis have believed him regarding what the Rabbis [themselves] have ordained. I REMEMBER THAT THAT WOMAN WENT OUT WITH A HINUMA AND UNCOVERED HEAD. What is the reason?[60] — Because most women get married as virgins, so this[61] is only a declaration.[62] THAT THAT MAN USED TO GO OUT FROM SCHOOL TO IMMERSE IN ORDER TO EAT TERUMAH. But perhaps he was the slave of a priest?[63] — This supports R. Joshua b. Levi; for R. Joshua b. Levi said: A man is forbidden to teach his slave[64] the Torah. But is it indeed not [permitted]? Has it not been taught: If his master has borrowed from him[65] or his master made him

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(1) The husband.

(2) Even if she has not remarried, since a priest's divorced wife is forbidden to a priest.

(3) I.e.,the place In which they lived.

(4) Lit.,'judged'.

(5) And she must not marry and live there.

(6) With the buildings in it.

(7) Lit., 'of what case do we treat'?

(8) Lit., 'manner'. When the court belonged to both.

(9) What is the answer to the question? Lit., 'what is with regard to it'.

(10) lsa. XXli. 17.

(11) Referring to this verse.

(12) Lit., 'hurlings about'.

(13) Hence. if the court-yard belonged to both, she must give way before him. By moving from place to place. a man loses the sphere of his livelihood, while a woman can assure hers by marriage.

(14) The husband who was a priest.

(15) While they were married.

(16) I.e., property that she brought from her father's house or that she inherited from her father after her marriage. (V. Glos. s.v. mulug).

(17) So as to avoid personal contact between them, which may lead to familiarity.

(18) Lit., 'we do not attach ourselves to them'.

(19) She must send someone to represent her.

(20) Name of a small Treatise joined to the Babylonian Talmud which deals with laws of mourning. It is also called euphemistically Semahoth ('Joys').
(21) Lit., 'in what (case) are these words said', i.e., when must they not meet together after divorce. R. Nahman applied the rule stated there to collecting payments or appearing in court together. For variants v. loc. cit.
(22) Lit., 'from'.
(23) Apparently a messenger of the court, an usher.
(24) Between the betrothed and his former fiancee.
(25) That the law does not apply to a betrothed couple that had been divorced.
(26) From our own observations now.
(27) Therefore the rule stated in Ebel Rabbathi cannot hold good in this case.
(28) Raba.
(29) R. Adda.
(30) Lit., 'and those'.
(31) Lit., 'in their greatness', in their majority.
(32) Lit., 'in their smallness', in their minority.
(33) And the signature which was appended when he was still a minor is confirmed in court on the strength of this testimony made in his majority.
(34) To the marriage-ceremony.
(35) Signs that she was a virgin-bride: V. supra 15b and 17b.
(36) When we were pupils together.
(37) I.e.,to bathe for purification so as to be ritually fit to eat terumah.
(38) Which shews that he is a priest. cf. supra 24a-26a.
(39) A field in which a grave has been ploughed becomes a beth ha-peras, and renders unclean through contact for a distance of half a furrow of one hundred cubits In each direction. Peras = half (v. Jast.). Rashi connects it with meaning 'to break' (an area of bone splinters); Maim. with 'to extend' (an area of extension); Tosaf. Nid. 57b with 'to tread' (an area from which people tread aside).
(40) On Sabbath it is not permitted to walk 2000 cubits beyond the outer boundary of the town,
(41) I.e., a right of way.
(42) Var. lec., SITTING DOWN. At funerals. The funeral escort, On returning from a burial, halted on the way seven times at certain places. where they stood up and sat down on the ground to offer comfort to the mourners or to lament for the departed. v. B.B. (Sonc. ed.) p. 420. n. 4.
(43) Lit., 'and that is' — Only then he is believed on testifying to what he saw as a child.
(44) And we arc informed that he is permitted to join the other witness in the evidence which requires the minimum of two witnesses.
(45) To teach the three cases regarding the handwriting.
(46) Lit., 'let us hear'.
(47) That he is believed.
(48) The son.
(49) Lit., 'frequent'.
(50) With his father; he therefore knew' his handwriting well.
(51) That he is believed.
(52) Lit., 'fear, awe'.
(53) He therefore knew his handwriting well.
(54) Of his father and his teacher.
(55) That he is believed.
(56) He is neither always with him nor does he revere him.
(57) Lit., 'he lets us hear' — by stating all the three cases.
(58) I.e.,the attestation of signatures on documents in court.
(59) V. supra 21b.
(60) That he is believed.
(61) His testimony.
(62) No formal testimony of witnesses is required; a general declaration is sufficient.

(63) Who is also entitled to eat terumah.

(64) And this person was in a school, (lit., 'the house of the book') where he learned the Torah (The Book _ the Bible _ the Torah). Therefore he could not be a slave.

(65) From his slave.

Talmud - Mas. Kethuboth 28b

a guardian or he put on Tefillin[1] in the presence of his master or he read three verses[2] in the Synagogue, he does not become free![3] — There[4] it happened that he did it with his consent;[5] [for what case] do we state [our rule]?[6] When he treats him as a child.[7] TO IMMERSE IN ORDER TO EAT TERUMAH. [Only] with regard to Rabbinical terumah.[8] THAT HE WAS TAKING A SHARE WITH US AT THE THRESHING FLOOR. But perhaps he was the slave of a priest? — We have learned [this] according to him who says: One does not distribute terumah to a slave unless his master is with him,[9] for it has been taught: One does not distribute terumah to a slave unless his master is with him. This is the view of R. Judah. R. Jose says: He can say: 'If I am a priest, give me for my sake, and if I am the slave of a priest, give me for the sake of my master'. In the place of R. Judah they used to raise from terumah to the status of a priest; in the place of R. Jose they would not raise from terumah to the status of a priest.[10] It is taught:[11] R. Eleazar, the son of R. Jose,[12] said: I have never given testimony. Once I gave testimony and they raised a slave to the priesthood through my evidence.[13] [You say] they raised! Do you indeed mean to say this? Now. if the Holy One, blessed be He, does not bring a stumbling[14] through the animals of the pious men,[15] how much less through the pious men themselves?[16] — But,[17] they wanted to raise a slave to the priesthood through my evidence. He saw it[18] in the place of R. Jose,[19] and he went and testified in the place of R. Judah.[20] THAT THIS PLACE WAS A BETH HA-PERAS Why?[21] — Because [the law of] beth ha-peras is Rabbinical, for Rab Judah said in the name of Rab: One blows away [the dust from][22] the beth ha.peras. and goes [there]. Rab Judah b. Ammi said in the name of Rab Judah: A beth ha-peras which has been trodden out is clean. What is the reason?[23] It is impossible that a bone [of the size] of a barleycorn was not trodden down by the foot.[24] UP TO HERE HE USED TO GO ON SABBATH. He holds that the [Sabbath] limits[25] are Rabbinical. A MAN IS NOT BELIEVED WHEN HE SAYS: THAT MAN HAD A WAY IN THIS PLACE, SO-AND-SO HAD A PLACE OF STANDING UP AND LAMENTATION IN THIS PLACE. What is the reason? Money we do not extract.[26] Our Rabbis taught:[27] A boy is believed when he says, 'Thus my father told me: this family is clean. this family is unclean. — [You say,] 'clean and unclean'! Do you indeed mean to say this?[28] But [say]: 'this family is fit[29] and this family is unfit', 'That we have eaten at the Kezazah[30] [on the occasion of the marriage] of the daughter of So-and-so to So-and-so', 'that we used to bring hallah and [priestly] gifts[31] to the priest So-and-so'. But only through himself,[32] and not through someone else. In all these cases, if he was an heathen and he became a proselyte, a slave and he was set free, he is not believed.[33] [But] he is not believed when he says 'that man had a way in this place, that man had a place of standing up and lamentation in this place'. R'. Johanan b. Beroka, said. He is believed. To which [clause] does R. Johanan b. Beroka, refer? Shall I say, to the last clause? This is extracting money?[34] — But [it refers] to the first clause. In all these cases, if he was a heathen and he became a proselyte, a slave and he was set free, he is not believed. R. Johanan b. Beroka says: He is believed. In what [principle] do they differ? — The first Tanna holds: Since he was a heathen he would not pay special attention to it,[35] and R. Johanan b. Beroka, holds: Since he had it in his mind to become a proselyte he would pay special attention to it. What is KEZAZAH? — The Rabbis taught: In what manner does kezazah take place? If one of the brothers has married a woman who is unworthy of him, the members[36] of the family come together, bring a cask full of fruit, break it in the middle of the open place[37] and say. Brethren of the house of Israel, hear. Our brother So-and-so has married a woman who is not worthy of him, and we are afraid lest his descendants[38] will be united with our descendants. Come and take for yourselves a sign[39] for future generations, that his descendants shall not be united with our descendants'. This is kezazah with regard to which a child is believed when he testifies. [

(1) The Phylacteries.
(2) From the Bible.
(3) Lit., ‘he does not go out to freedom’, v. Git. 70a. This shews that a slave does learn the Torah.
(4) In the case just quoted.
(5) It may sometimes happen that a slave is taught the Torah.
(6) That it is forbidden to teach a slave the Torah.
(7) And teaches him as he would teach his own children. This is forbidden. Therefore the person in the Mishnah could not be a slave.
(8) Cf. supra 25a. Only with regard to Rabbinical terumah is such testimony sufficient.
(9) As he was alone and took a share at the threshing floor, it shews that he was a priest.
(10) V. supra 26a-27b. And therefore they would not give a slave terumah in the absence of his master, lest this should be used as evidence in regard to marriage.
(11) In a Baraitha.
(12) V. Yeb. 99b.
(13) Lit., ‘through my mouth’.
(14) A sin, an offence.
(15) V. Git. 7a.
(16) And how could such an offence have been caused through R. Eleazar.
(17) The case was as follows.
(18) That they gave terumah to a person who in fact was a slave in the absence of his master.
(19) Where they did not raise from terumah to the state of a priest. There was therefore no harm in distributing terumah to a slave at the threshing floor.
(20) Where they raised from terumah to the state of a priest. They therefore thought that this man was a priest. The mistake was apparently found out in time and he was not raised. No offence was brought about through a pious man.
(21) Why was this testimony sufficient?
(22) To see whether there are any bones there.
(23) Why is it regarded as clean?
(24) And by being reduced to a smaller size is no longer liable to communicate defilement.
(25) I.e., the ordinance regarding the Sabbath limits for walking is Rabbinical; therefore this testimony is sufficient.
(26) On the strength of that statement. In civil matters such testimony is not sufficient.
(27) Cf. Tosef. Keth. III for variants.
(28) ‘Clean’ and ‘unclean’ are not applicable to families.
(29) Unblemished and fit to marry into priestly families.
(30) ‘Cutting off’, ‘severing family connections’; a ceremony attending the sale of an heirloom to an outsider, and the marriage of a man beneath his social rank. It is the marriage-Kezazah that is spoken of here, v. infra.
(31) V. Deut. XVIII, 3.
(32) The boy himself must have been the messenger.
(33) As to what he saw when he was a heathen or a slave.
(34) V. note 5.
(35) To the various matters about which he testified.
(36) Lit., ‘the sons’.
(37) רחבה v. supra p. 41, n. 5. Here. too, it can mean the open space before the house.
(38) Lit., ‘seed’.
(39) As a token. They should remember what happened and tell their children, so that everyone will know to distinguish between the descendants of this brother and those of the rest of the family.

Talmud - Mas. Kethuboth 29a

C H A P T E R I I I

MISHNAH. THESE ARE MAIDENS[1] TO WHOM THE FINE IS DUE.[2] IF ANYONE HAD

INTERCOURSE WITH A MAMZERETH,[3] A NETHINAH,[4] A CUTHEAN,[5] OR WITH A PROSELYTE [MAIDEN].[6] A CAPTIVE, OR A SLAVE-WOMAN,[7] WHO WAS REDEEMED,[8] CONVERTED,[9] OR FREED [WHEN SHE WAS] UNDER THE AGE OF[10] THREE YEARS AND ONE DAY.[11] IF ONE HAD INTERCOURSE WITH HIS SISTER, WITH THE SISTER OF HIS FATHER, WITH THE SISTER OF HIS MOTHER, WITH THE SISTER OF HIS WIFE, WITH THE WIFE OF HIS BROTHER,[12] WITH THE WIFE OF THE BROTHER OF HIS FATHER, OR WITH A WOMAN DURING MENSTRUATION,[13] HE HAS TO PAY THE FINE,[14] [FOR] ALTHOUGH THESE [TRANSGRESSIONS][15] ARE PUNISHED THROUGH [THE TRANSGRESSOR] BEING CUT OFF,[16] THERE IS NOT, WITH REGARD TO THEM, A DEATH [PENALTY] [INFLICTED] BY THE COURT.[17] GEMARA. [Does it mean that only] these blemished maidens get the fine, [but] unblemished ones [do] not?[18] — He means it thus: These are blemished maidens who get the fine:[19] IF ANYONE HAD INTERCOURSE WITH A MAMZERETH, A NETHINAH, A CUTHEAN,[20] etc.

[Only] [the Mishnah states] a maiden [receives a fine],[21] [but not] a small girl.[22] Who is the Tanna [who taught this]? Rab Judah said in the name of Rab: It is R. Meir, for it has been taught:[23] A small child from the age of one day[24] until [the time that] she grows two hairs[25] , sale applies to her,[26] but not the fine;[27] from [the time that] she grows two hairs until she becomes mature,[28] the fine applies to her, but not sale.[29] This is the view of R. Meir; for R. Meir said: Wherever sale applies,[30] the fine does not apply, and wherever the fine applies, sale does not apply. But the Sages say: A small child from the age of three years and one day until [the time that] she becomes mature — the fine applies to her.[31] [Does that mean] only the fine [and] not sale![32] — Say:

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(1) Na'aroth pl. of na'arah, technically, a girl between twelve years and twelve and a half years of age.

(2) If a man has violated any of these maidens mentioned in our Mishnah, he must pay the fine fixed in Deut. XXII, 29.

(3) Fem. of mamzer, v. Glos.

(4) Fem. of nathin, v. Glos.

(5) A Samaritan, V. Glos.

(6) V. supra 11a.

(7) A maiden.

(8) In the text the word is in the plural, because it refers to a class and not to one person.

(9) It is interesting to note that 'CONVERTED' comes before, although it should come after, 'FREED'. The reason is probably because it is, in Hebrew, a shorter word. Of the three words the first has three, the second four, and the fourth, five syllables, not counting the suffix 'waw', ('and'). The sequence of the words chosen makes for symmetry.

(10) Lit., 'less than'.

(11) He has to pay the fine. For further notes v. supra 11a.

(12) Whom the brother divorced after the betrothal.

(13) And they are all maidens.

(14) Lit., 'the fine is due to them'.

(15) V. Lev. XVIII, 9ff

(16) From life, by premature or sudden death, Kareth V. Glos. Cf. Lev. XVIII, 29: For whosoever shall do any of these abominations, even the souls that do them shall be cut off from among their people.

(17) V. e.g., Lev. XX, 9ff. Only death penalty by the court releases from the money fine, v. Gemara.

(18) The phrasing of the Mishnah seems to imply that only the following maidens which are enumerated are entitled to fines — namely, only of blemished descent. Surely that is impossible.

(19) Although the fine has been fixed for unblemished maidens, whom the man could marry (V. Deut. XXII, 29), it is, the Mishnah tells us, due also to blemished maidens, whom he could not marry. That unblemished maidens get the fine need not be specially mentioned in the Mishnah.

(20) He has to pay the fine.

(21) Lit., 'a maiden, yes, a minor, no'.

(22) A ketannah. A girl is so called until the age of twelve years. If a minor was violated, the fine, according to the Mishnah, is not due to her.

(23) V. Tosef. Keth.

(24) Tosef.: A small child from the age of three years and one day. This is, no doubt, the correct reading. In the text of the Talmud 'three years and' is missing.

(25) The sign of beginning maturity.

(26) The father may sell his daughter as a maid-servant; v. Ex. XXI, 7.

(27) If she was violated; the word na'arah is used in Deut. XXII, 28, 29, excluding a minor.

(28) A girl becomes mature when she is twelve and a half years old. She is then called bogereth, v. Glos.

(29) When the girl is a na'arah the father has no more right to sell her.

(30) Sale applies only when the girl is a ketannah, and the fine applies only when the girl is a na'arah.

(31) According to the Sages, the fine is due to the girl both as a ketannah and a na'arah. In other words, the word na'arah in Deut. XXII, 28, 29 is not to be taken strictly.

(32) Lit., 'fine, yes; sale, no'!

Talmud - Mas. Kethuboth 29b

also the fine [applies] when sale [applies].[1]

But are these [maidens][2] entitled to the fine! Why? Read here: 'and she shall be his wife', [that means] one who is fit to be his wife?[3] — Said Resh Lakish: [It is written:] 'maiden', 'maiden', 'the maiden'[4] once[5] [the word 'maiden' is necessary] for itself,[6] once to include [those maidens, the marrying of whom involves the transgression merely of] a plain prohibitory law,[7] and once to include [those maidens, the marrying of whom involves] a transgression punishable with kareth.[8] R. Papa said: [It is written:][9] 'virgin','virgin', 'the virgins'; once [the word 'virgin' is necessary] for itself,[10] once to include [those virgins, the marrying of whom involves the transgression merely of] a plain prohibitory law, and once to include [those virgins, the marrying of whom involves] a transgression punishable with kareth. Why does R. Papa not agree with Resh Lakish? — That [verse][11] he requires for [the same teaching] as that of Abaye, for Abaye said: If he cohabited with her[12] and she died, he is free,[13] for it is said: 'And he shall give unto the father of he maiden';[14] [this means]: To the father of a maiden,[15] but not to the father of a dead [person].[16] And why did not Resh Lakish agree with R. Papa? — That [verse][17] he requires for an analogy[18] for it is taught: [[t is written:] — 'he shall pay money according to the dowry of virgins,[19] [this means that] this[20] shall be like the dowry of virgins,[21] and the dowry of virgins shall be like this.[22] But Resh Lakish also requires it[23] for [the same teaching] as that of Abaye, and R. Papa also requires it[24] for the analogy?[25] — Take therefore six words:[26] 'maiden', 'maiden', 'the maiden', 'virgin', 'virgins', 'the virgins': Two [are necessary] for themselves,[27] one for the teaching of Abaye, and one for the analogy, [and] two remain over: one to include [those maidens, the marrying of whom involves the transgression] of a plain prohibitory law, and one to include [those maidens, the marrying of whom involves] a transgression punishable with kareth.

This[28] [Mishnah] is to exclude [the view of] that Tanna.[29] For it has been taught: [It is written:] and she shall be his wife.[30] Simeon the Temanite says: [This means:] a woman who can become his wife;[31] R. Simeon b. Menassia says: [This means:] a woman who can remain his wife.[32] What difference is there between them?[33] — R. Zera said: The difference between them is with regard to a mamzereth and a nethinah. According to him who says that there must be the possibility of her 'becoming' his wife, here[34] also there is the possibility of her 'becoming' his wife.[35] And according to him who says that there must be the possibility of her remaining his wife, here[36] there is not the possibility of her remaining his wife.[37] But according to R. Akiba, who says: Marriage takes no effect when there is a prohibitory law against[38] it, what is the difference between them?[39] — There is a difference between them in the case of a widow who marries a high priest, and this according to R. Simai, for it is taught:[40] R. Simai says: Of all[41] R. Akiba makes mamzerim,[42] except [the issue of] a widow and a high priest, for the Torah says: 'he shall not take', and 'he shall not profane',[43] [this teaches that] he makes [his issue] profane,[44] but not mamzerim,[45] And according to R. Yeshebab,

who says: Come and let us cry out against Akiba b. Joseph, who says: Whenever the marriage is forbidden in Israel[46] the child [of such marriage] is a mamzer,[47] what is the difference between them?[48] — The difference between them is

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(1) During the whole period that sale applies to a girl, the fine also applies to her, extending however beyond that period, till her stage of bogereth.

(2) Mentioned in our Mishnah.

(3) Lit., 'a woman who is fit for him'. From the words of the Bible one would infer that the fine is payable only if he violated a maiden whom, in law, he could marry. But as to the maidens mentioned in the Mishnah, who are either generally prohibited to an Israelite for marriage, or there is kareth barring their way to marriage, (as in the case of the maidens enumerated in the second clause of the Mishnah), there should be no fine due to them.

(4) In Deut. XXII, 28 'maiden'; verse 29: 'the maiden', and 'the' in 'the maiden' is reckoned as a separate word representing the word 'maiden', so that we have the word 'maiden' written three times. To each of the three words a function is assigned in the Talmudic exposition. One 'maiden' refers to the ordinary unblemished maidens, one 'maiden' refers to the blemished maidens as mentioned in the first clause of the Mishnah, and one 'maiden' refers to the maidens enumerated in the second clause of the Mishnah. — The maidens mentioned in the second part of the first clause of the Mishnah seem to occupy a position of their own. V. Tosaf 29a, s.v. והבא.

(5) Lit., 'one ("maiden")'.

(6) For the ordinary maiden, v. note 3.

(7) Lit., 'those guilty of a negative prohibition', which carries with it the punishment of flagellation only.

(8) V. Glos.

(9) Ex. XXII, 15, 16. There it speaks of seduction. R. Papa, apparently, puts seduction and violation on one level.

(10) V. supra nn. 3 and 5.

(11) Deut. XXII, 29.

(12) By force.

(13) From paying the fine.

(14) The full half-verse is: 'And the man that lay with her shall give unto the father of the maiden fifty silver pieces'. (Deut. XXII, 29.)

(15) I.e., of maiden that lives.

(16) If the maiden is dead, the father cannot be called any more the father of the maiden'. He can only be called the father of the dead maiden, and to such the fine is not payable.

(17) Ex. XXII, 16.

(18) Gezerah shawah; an analogy based on similarity of expressions. V. Glos.

(19) Ex. XXII, 16.

(20) The money to be pact in the case of seduction. (Ex. XXII, 16.)

(21) By 'the dowry of virgins' is meant, according to this teaching, the sum of money to be paid as a fine in Deut. XXII, 29, which is fifty; so here (Ex. XXII, 16) it has to be fifty.

(22) As in Ex. XXII, 16 the money consists of shekels, (this is derived from the special word ישקול, employed for 'pay')' so in Deut. XXII, 29, the fifty have to be shekels.

(23) The word 'the maiden'.

(24) The word 'the virgin'.

(25) Both the teaching of Abaye and the analogy are important to Resh Lakish and P. Papa.

(26) Lit., 'but six verses are written'. — Make your expositions from all the six words taken together.

(27) For the ordinary cases of seduction and violation.

(28) Our Mishnah, in which it is taught that the fine is due also in the case of the violation of maidens, the marriage with whom is prohibited, as a mamzereth or his sister.

(29) I.e., the author of the Baraitha. As to the Tannaim mentioned in the Baraitha, the views of both of them are excluded, v. Tosaf a.l.

(30) Deut. XXII, 29.

(31) Lit., 'to whom there is "becoming".' But his sister cannot 'become' his wife. The very act of marriage is impossible. No marriage, no betrothal, can take effect. V. Kid. 66b. Therefore the law of the fine would not apply to his sister or to any of the other five maidens mentioned in the second clause of the Mishnah.

(32) Lit., 'who is fitting to be retained'. He takes the word 'be', תהיה, in the sense of 'remaining'. This excludes a mamzereth, for although marriage with a mamzereth takes effect, there is 'prohibitory law' attached to it. (v. Kid. 66b). The marriage ought therefore to be discontinued. The mamzereth is thus a woman who cannot remain his wife. Therefore, according to R. Simeon the son of Menassia, the law of fine does not apply to her. — We thus see that our Mishnah excludes both the view of Simeon the Temanite and the view of R. Simeon the son of Menassia.
(33) Between Simeon the Temanite and R. Simeon b. Menassia (Rashi).
(34) In the case of mamzereth and nethinah.
(35) The marriage with a mamzereth or nethinah takes effect although there is a 'prohibitory law' against it. The mamzereth or nethinah can therefore become his wife, although she should not remain his wife. In the view of Simeon the Temanite it is the possibility of her becoming his wife that matters, and therefore they are entitled to the fine.
(36) In the case of mamzereth and nethinah.
(37) In the view of R. Simeon b. Menassia, it is the possibility of her remaining his wife that matters. And since a mamzereth or nethinah cannot remain his wife, they are not entitled to the fine.
(38) V. Yeb. 44a and 49a and v. ibid. 10b and 52b.
(39) Between Simeon the Temanite and R. Simeon the son of Menassia. A mamzereth or nethinah could not, on this view, become his wife even according to R. Simeon b. Menassia; what is then the difference between him and Simeon the Temanite?
(40) In a Baraitha; v. Yeb. 64a and 68a.
(41) I.e., of all the issues of prohibited unions.
(42) R. Akiba declares the offspring of all prohibited unions to be mamzerim, v. Yeb. 49a.
(43) Lev. XXI, 14f. The two verses read: A widow or a divorced woman, or a profane woman, or a harlot, these shall he not take; but a virgin of his own people shall he take to wife. And he shall not profane his seed among his people, for I am the Lord who sanctify him. Vv. 10-15 deal with the high priest.
(44) The children are only unfit for the priesthood.
(45) In this case R. Akiba admits that the marriage takes effect, although there is a prohibitory law against it, so that, in this case, according to Simeon b. Menassia, though the marriage would take effect, since he could not retain her owing to the prohibition, there is no fine, whereas according to Simeon the Temanite, there is a fine.
(46) Lit., 'he who has no (permission of) union in Israel'.
(47) This rule would include also the marriage of a widow and a high priest and would make also the child of such a marriage a mamzer.
(48) What difference would there be now between Simeon the Temanite and R. Simeon b. Menassia?

Talmud - Mas. Kethuboth 30a

with regard to the marriage with an Egyptian or an Edomite [woman], in which case there is a transgression [merely] of a positive law.[1] — That is all right if R. Yeshebab [by his statement] only came to exclude the view of R. Simai.[2] But if his statement was his own,[3] whenever the marriage is forbidden in Israel, the child [of such a marriage] is a mamzer. It would include also a marriage with regard to which a positive law has been transgressed. What is [then] the difference between them? — The difference between them is with regard to a girl, who is no more a virgin, who married a high priest.[4] — And why is this[5] different?[6] — It is a law which does not apply to all.[7]

R. Hisda said: All agree that he who has intercourse with a woman during menstruation[8] [against her will] has to pay the fine,[9] for according to him who holds that there must be the possibility of her[10] 'becoming' his wife, there is with regard to her[11] the possibility of her becoming his wife,[12] and according to him who holds that there must be the possibility of her[13] remaining his wife, there is with regard to her[14] the possibility of her remaining his wife.[15]

Our [Mishnah][16] likewise excludes the view of R. Nehunia b. ha-Kaneh, for it is taught: R. Nehunia b. ha-Kaneh, made the Day of Atonement equal to the Sabbath with regard to payment; as [he who desecrates] the Sabbath[17] forfeits his life[18] and is free from payment,[19] so [he who desecrates] the Day of Atonement[20] forfeits his life[21] and is free from payment. What is the reason

[for the view] of R. Nehunia b. ha-Kaneh? — Abaye said: It is said 'harm'[22] [in the case of death][23] by the hand of man,[24] and it is said 'harm'[25] [in the case of death] by the hand of heaven, [so I say:] As in the case of the 'harm' done by the hand of man one is free from payment,[26] so also in the case of 'harm' done by the hand of heaven, one is free from payment.[27] To this R. Adda b. Ahaba, demurred: Whence [do you know] that Jacob warned his sons[28] against cold and heat,[29] which are by the hand of heaven?[30] Perhaps [he warned them] against lions and thieves, which are 'by the hand of man?'[31] — Is it that Jacob warned them against this and did not warn then, against that? Jacob warned then, against every kind of harm.[32]

[But] are cold and heat by the hand of heaven? Is it not taught: Everything is 'by the hand of heaven' except cold and heat, for it is said: 'Cold and heat are in the way of the froward; he that keepeth his soul holdeth himself far from them'?[33] Further, are lions and thieves 'by the hand of man'? Did not R. Joseph say. and R. Hiyya teach: Since the day of the destruction of the Temple, although the Sanhedrin ceased,[34] the four forms of capital punishment[35] have not ceased? 'They have not ceased,' [you say]? Surely they have ceased! But [say]

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(1) With regard to the Edomite and the Egyptian it is stated in Deut. XXIII, 9: 'The children of the third generation that are born unto them shall enter into the congregation of the Lord.' This is a 'positive law'. That the marriage with an Edomite and an Egyptian of the second generation is forbidden is derived from this positive law. And when a prohibitory law is derived from a positive law, it is regarded as a positive law. And in such a case the marriage takes effect, although it should be discontinued. Thus we would have a difference between Simeon the Temanite and Simeon the son of Menassia.

(2) If his statement refers only to R. Simai, it is limited by the words of R. Simai, and a positive law (i.e., a prohibitory law derived from a positive law) cannot be brought in.

(3) And is therefore unlimited.

(4) In Lev. XXI, 13 the high priest is commanded to take as his wife a virgin. If he marries a girl who is no more a virgin the marriage takes effect, although it should be discontinued. And so we have again a difference between Simeon the Temanite and R. Simeon b. Menassia.

(5) Prohibition derived from a positive law.

(6) From other such prohibitions (e.g., the prohibition with regard to the Edomite and Egyptian) v. p. 164. nn. 6 and 8.

(7) It applies only to the high priest. Therefore it is not treated as the other prohibitory laws that arc derived from positive laws, and it would not be included in the general ruling of R. Akiba even according to R. Yeshebab.

(8) The last case in the second clause of our Mishnah.

(9) Although the cohabitation with a woman during menstruation is prohibited and is punishable with kareth, v. Lev. XVIII, 19 and 29.

(10) The violated maiden.

(11) The menstruant woman.

(12) The marriage of a woman during menstruation takes effect. The fact that cohabitation during menstruation is forbidden does not affect the validity of the marriage, cf. Yeb. 49b and Kid. 68a. The condition of Simeon the Temanite is therefore fulfilled.

(13) The violated maiden.

(14) The menstruant woman.

(15) The marriage of a menstruous woman is entirely valid and may be continued. Thus the condition of R. Simeon b. Menassia is fulfilled.

(16) In the second clause of which it is taught that he who violates his sister or any of the other six maidens enumerated, the intercourse with whom is punishable by kareth, has to pay the fine.

(17) By doing forbidden work on that day.

(18) I.e., he is guilty of a transgression punishable by death (by the hand of man, that is by the court), v. Ex. XXXI, 15 and XXXV, 2.

(19) If, in doing the forbidden work on the Sabbath, he caused damage to someone's property (e.g., if he set fire to a stack of corn) he is free from paying for the damage done, since the transgression involves the death penalty, and where there is the death penalty, there is no payment of money, on the principle that the smaller offence, for which the payment

of money is due, is merged in the greater offence v. infra.
(20) By doing forbidden work on that day.
(21) I.e., he is guilty of a transgression punishable by kareth; v. Lev. XXIII, 29, 30. kareth is a divine visitation. Compare 'And (that soul) shall be cut off from among his people' (v. 29) with 'and I will destroy that soul from among his people' (v. 30). Kareth is called in the Talmud 'death by the hand of heaven', while the death penalty, i.e., death by the court, is called 'death by the hand of man'. T. Nehunia b. ha-Kaneh makes 'death by the hand of heaven' (although it is not known when it will come, and when it comes it may be regarded by some people as a natural death; cf. Sema. III, 10) equal to 'death by the hand of man (which is executed through the Court, and all see that the penalty of death was inflicted for the transgression) and applies to it also the principle that the lesser offence is merged in the greater. On this view since the intercourses mentioned in the second clause of our Mishnah are punishable with kareth, the fine would not he paid.
(22) אסון Ex. XXI. 22, 23.
(23) 'Harm' in Ex. XXI, 22, 23 means (also) death as v. 23 ('then thou shalt give life for life') clearly shews.
(24) Cf. v. 22: And if men strive together and hurt a woman with child etc.
(25) V. Gen. XLII. 4. also XLIV, 29 There the reference is to 'harm' that may befall Benjamin on the Journey which may result in death. V. infra.
(26) In Ex. XXI, 22, when no death (or other 'harm') follows, a payment of money is made. But when death follows, the death penalty is inflicted (v. 23) and no payment of money is made. This is clear, since payment of money is only mentioned to v. 22, and in v. 23 only 'life for life' is mentioned.
(27) Abaye's reasoning is as follows: i. He proves that 'harm' refers both to the harm done by man (including death) and to the harm caused by heaven (including death). Therefore 'death by the hand of heaven' equals 'death by the hand of man'. ii. In the case in which 'death by the hand of man' is mentioned, it is stated that the penalty of death is inflicted ('life for life'), and no payment of money is made. The same applies to a case where the penalty is 'death by the hand of heaven'. The analogy could only he between the two words 'harm'. Once the equality of the two kinds of death is established (through the analogy), the equality of the consequences of these two kinds of death follows.
(28) In Gen. XLII, 4.
(29) So Rashi; fast. 'blowing cold winds'. The words are taken from Prov. XXII, 5.
(30) Cold and heat come from God.
(31) Thieves are 'the hand of man'. Lions are apparently called 'the hand of man', as they are not 'the hand of heaven in the same sense in which cold and heat are 'the hand of heaven,' v., however, infra.
(32) Lit., 'all things'. And such harm as is 'the hand of heaven is included.
(33) Prov. XXII. 5. also A.Z. (Sonc. ed.) p. II, n. 2.
(34) And capital punishment could no longer he decreed by the Jewish Courts.
(35) LIt., 'the four deaths', v. Sanh. 49b.

Talmud - Mas. Kethuboth 30b

the judgment of the four forms of capital punishment has not ceased.[1] He who would have been sentenced to stoning,[2] either falls down from the roof or a wild beast treads him down.[3] He who would have been sentenced to burning, either falls into a fire[4] or a serpent bites him.[5] He who would have been sentenced to decapitation.[6] is either delivered to the government[7] or robbers come upon him.[8] He who would have been sentenced to strangulation, is either drowned in the river or dies from suffocation.[9] But reverse it: Lions and thieves are 'by the hand of heaven', and cold and heat are 'by the hand of man'.

Raba said: The reason [for the view] of R. Nehunia b. hakaneh, is [derived] from here:[10] [It is written:] And if the people of the land do not all hide their eyes from that man, when he giveth of his seed unto Molech, [and put him not to death]; then I will set my face against that man, and against his family, and will cut him off.[11] [With these words] the Torah says:[12] My kareth is like your death [-penalty]; as [in the case of] your death[-penalty] one is free from payment, so [in the case of] my kareth one is free from payment. What is the difference between Raba and Abaye? — The difference is [with regard to] a stranger[13] who ate terumah.[14] According to Abaye he is free [from payment],[15]

and according to Raba he is bound [to pay].[16] But is he free [from payment] according to Abaye? Did not R. Hisda say: R. Nehunia b. ha-Kaneh admits that he who stole [forbidden] fat[17] belonging to his neighbour, and ate it, is bound [to pay],[18] because he was guilty of stealing before he came to [the transgression of] the prohibition with regard to [forbidden] fat?[19] Hence [you say that] as soon as[20] he lifted it[21] up he acquired it,[22] but he did not become guilty of the transgression[23] punishable with death until he had eaten it. Here[24] also, when he lifted it[25] up he acquired it, but he did not become guilty of the transgression[26] punishable with death until he had eaten it![27] — Here we treat of a case where his friend stuck it[28] into his mouth.[29] [But] even then,[30] as soon as he chewed it, he acquired it, but he is not guilty of the transgression punishable with death until he has swallowed it![31] — When [his friend] stuck it into his oesophagus.[32] How shall we imagine this case? If he can give it back,[33] let him give it back.[34] And if he cannot give it back, why should he be guilty?[35] — It speaks of a case when he can give it back only with an effort.[36] R. Papa said, When his friend put liquids of terumah into his mouth.[37] R. Ashi said: [it speaks of a case] when a stranger ate his own terumah.[38]

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(1) The punishment comes in corresponding forms.

(2) To death by stoning.

(3) And kills him.

(4) A conflagration.

(5) And the poison burns and kills him.

(6) With a sword, v. Sanh. 49b.

(7) To the Roman Government.

(8) And slay him.

(9) סרונבי; so Jast.; Rashi: croup.

(10) From the following passage of the Bible.

(11) Lev. XX, 4f.

(12) I.e., God says in the Torah to Israel.

(13) I.e., A non-priest.

(14) If a stranger eats terumah, he is punished with death, not with death 'by the hand of man' but with death 'by the hand of heaven'. V. Lev. XXII, 9, 10 and cf. Sanh. 83a. The death 'by the hand of heaven' in this case is, however, a milder form of kareth. Kareth proper means the cutting off of the life of the transgressor and of his family. The death in the case of a stranger eating terumah means death similar to that of kareth, namely 'by the hand of heaven,' but applied only to the offender. V. Rashi, a.l. Cf. also Lev. XX, 5 (then I will set my face against that man and against his family and I will cut him off).

(15) For the terumah. 'Harm' indicates any kind of death, also the milder form of death 'by the hand of heaven', as that in the case of eating terumah.

(16) To the priest for the terumah. Raba derives the reason for the view of R. Nehunia b. ha-Kaneh, from Lev. XX, 4, 5, and there kareth proper is spoken of. According to Raba, therefore, only kareth proper is made equal to death 'by the hand of man' with regard to one being free from payment, but not the milder form of kareth, of death 'by the hand of heaven, as in the case of a stranger eating terumah. In that case, payment must be made.

(17) Heleb; v. Lev. III, 17; VII, 23 and 25. In the latter verse kareth is the punishment mentioned for eating heleb. Cf. Ker. 2a, 4a-b.

(18) Although the eating of heleb is punishable with kareth; v. preceding note.

(19) Since the crime of stealing was committed before the sin of eating heleb, the principle of the lesser offence being merged in the greater (v. supra 30a) does not apply.

(20) Lit., 'from the time that'.

(21) The heleb.

(22) And from that moment becomes liable for the theft.

(23) Of eating the heleb.

(24) In the case of terumah.

(25) The terumah.

(26) Of eating terumah.

(27) And he should therefore he liable to pay for it.
(28) The terumah.
(29) So that he did not acquire it by lifting it up but only from the moment he eats it, so that the offence of stealing and of eating the terumah are committed simultaneously.
(30) Lit., 'the end of the end'.
(31) The theft is thus committed before the offence of eating the terumah, whereas there is no liability for eating terumah before he swallows it.
(32) So there was no chewing.
(33) I.e., if he can bring it out of his oesophagus.
(34) And by failing to do so he becomes liable from that very moment for stealing it.
(35) Of the transgression of eating terumah, seeing it was a case of force majeure.
(36) [So that even if he had brought it up, it would have been useless. Consequently he cannot be held guilty of stealing. What he can be made liable to pay for is for actually eating the terumah. This act, however, carries with it also a death penalty which applies in this case, since he could by an effort have brought it up. As both penalties do thus arise simultaneously, he is free from payment.]
(37) In this case also both penalties come at the same time; cf. previous note.
(38) Terumah of his own produce, which he separated and was going to give to the priest. In eating it he is guilty of a transgression punishable with death 'by the hand of heaven'.

Talmud - Mas. Kethuboth 31a

and [at the same time] tore the silk garments of his neighbour.[1]

The [above] text [stated]: 'R. Hisda said: R. Nehunia b. hakaneh admits that, if someone stole [forbidden] fat belonging to his neighbour and ate it, he is bound [to pay], because he was guilty of stealing before he came to [the transgression of] the prohibition with regard to [forbidden] fat.' Is it to say that he differs from R. Abin? For R. Abin said: If someone threw an arrow [on Sabbath] from the beginning of four [cubits] to the end of four [cubits[2]] and it[3] tore silk garments in its passage[4] he is free [from payment],[5] for the taking up[6] was necessary for the putting down:[7] Now here[8] also the 'lifting up' was necessary for the eating.[9] — Now, is this so?[10] There[11] 'the putting down' is impossible without the 'taking up'; but here[12] the eating is possible without the 'lifting up', for, if he likes, he can bend down and eat.[13] Or: there,[14] if he wants to take it back, he cannot take it back;[15] but here,[16] he can put it back.[17] — What is the [practical] difference between the one answer and the other answer? — The difference is: when someone carried[18] a knife in the public road[19] and it[20] tore silk garments in its passage: according to the answer that the 'putting down' is impossible without the 'taking up', here[21] also the 'putting down' is impossible without the 'taking up'.[22] And according to the answer that he cannot take it back, here[23] he can take it back.[24]

The text [stated above]: 'R. Abin said: If someone threw [on Sabbath] an arrow from the beginning of four [cubits] to the end of four [cubits] and it tore silk garments in its passage he is free [from payment], for the "taking up" was necessary for the "putting down".' R. Bibi b. Abaye raised the following objection: If someone stole a purse[25] on Sabbath he is bound [to pay],[26] because he was guilty of stealing before he came to the [transgression of] the prohibition which is punishable with stoning,[27] but if he dragged it along he is free [from payment], because the desecration of the Sabbath and the stealing come at the same time.[28] And why?[29] Here also we should say: The lifting up is necessary for the carrying out![30] — Here we treat of a case when he lifted it up in order to hide it and changed his mind and carried it out.[31] [But] is he, in this case, guilty [of desecrating the Sabbath]? Did not R. Simeon say [that] R. Ammi said in the name of R. Johanan: If someone was removing objects from one corner to another corner and changed his mind and carried them out he is free [of the transgression of the desecration of the Sabbath] because the taking up was not from the outset for that [purpose]? — Do not say: in order to hide it, but say: in order to carry it out, only it speaks here of a case when he [paused and] remained standing [for a while].[32] For what purpose did

he remain standing? If to adjust the cord on his shoulder, this is the usual way.[33] — No; [we speak of a case] where he stood still in order to rest. But how would it be if [he had remained standing] in order to adjust the cord on his shoulder?

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(1) Ordinarily he would have to pay his neighbour for the damage done to his garments. But as here the liability to death 'by the hand of heaven' for eating the terumah and the obligation to pay to his neighbour for the torn silk garments come at the same time, he is free from having to make the payment to his neighbour.

(2) To throw an object a distance of four cubits in the public road on Sabbath is a desecration of the Sabbath, which, if done wilfully, is punishable with death 'by the hand of man' (stoning) if after a warning, and with death 'by the hand of heaven' (kareth), if without a warning. V. Shah. 96b and 100a and Ex. XXXI, 14.

(3) The arrow.

(4) I.e., in the course of its flight.

(5) For the silk garments, to their owner.

(6) Of the arrow.

(7) It is when the object is 'put down' or comes to rest, that the act of transgressing, or of throwing, is completed. But it begins with the 'taking up' of the object. The damage to the silk garments was done between the act of 'taking up' עקירה and that of 'putting down', הנחה. The penalty of death or kareth is thus regarded as having come at the same time as the obligation to pay for the torn garments, and he is therefore free from payment (Rashi).

(8) In the case of one stealing heleb and eating it.

(9) Therefore here also the penalty of kareth for eating heleb and the obligation to pay for the heleb to its owner come at the same time, and, according to R. Abin, he would he free from payment.

(10) Is this analogy correct?

(11) In the case of throwing the arrow.

(12) In the case of eating heleb.

(13) Without lifting; there is therefore no analogy. Hence the liability for stealing came first from the moment of lifting.

(14) In the case of throwing the arrow.

(15) Once he has thrown the arrow it takes its course.

(16) In the case of eating the heleb.

(17) Therefore we do not say that the eating of the heleb Begins from the time when he lifted it up.

(18) Lit., 'He who causes to pass'.

(19) To carry an object four cubits in the public road is a desecration of the Sabbath, v. supra.

(20) The knife.

(21) In the case of the knife.

(22) And he would he free from payment, v. p. 170. n. 6

(23) In the case of the knife.

(24) And he would have to pay for the torn garments.

(25) With money.

(26) To the owner of the purse for the loss of the purse and its contents.

(27) He was guilty of stealing as soon as he lifted up the purse, and he was guilty of desecrating the Sabbath only after he carried it into the public road. And as the two guilty acts did not coincide, he is not free from payment.

(28) When he got it out from the domain of the owner into the public road.

(29) Why should he be bound to pay if he lifted up the purse?

(30) And he should he free from payment. V. p. 170, n. 6.

(31) The 'lifting up' was therefore not for the purpose of carrying out,

(32) [His pause in the owner's domain completed the first act of removing, making him liable for the theft, while the liability for Sabbath desecration begins when he resumes his walk to carry it outside.]

(33) Of one who carries a cord, and this pause cannot be regarded as an interruption.

Talmud - Mas. Kethuboth 31b

He would be free [from payment]? [If so] instead of teaching 'but if he dragged it along he is free [from payment]', let him make the distinction in the same case.[1] 'When is this said?[2] If he stood still

to rest; but if [he stood still] to adjust the cord on his shoulder, he is free [from payment]'? But [answer thus:] Whose opinion is this? It is that of Ben 'Azzai, who says: Walking is like standing.[3] [But] how would it be if he threw [the purse]?[4] He would be free [from payment].[5] Let him then make the distinction in the same case,[6] thus when is it said:[7] 'When he walked,[8] but when he threw it, he is free'? — The case of dragging it along is necessary [to be stated]. You might have said that this is not the way of carrying out,[9] so he lets us hear [that it is not so]. Of what [kind of purse does it speak]? If of a large purse, this[10] is the ordinary way [of carrying it out],[11] and if of a small purse, this is not the ordinary way?[12] — In fact [it speaks] of a middle-sized [purse]. But where did he carry it to? If he carried it into the public road, there is desecration of the Sabbath but no stealing,[13] and if he carried it into private ground, there is stealing but no desecration of the Sabbath![14] — No, it is necessary [to state it] when he carried it out to the sides[15] of the public road. According to whose view?[16] If according to [that of] R. Eliezer, who says: The sides of the public road are like the public road,[17] there is desecration of the Sabbath but no stealing[18] and if it is according to the view of the Rabbis, who say: 'The sides of the public road are not like the public road,' there is stealing but no desecration of the Sabbath?[15] — Indeed, it is according to R. Eliezer, and when R. Eliezer says: 'The sides of the public road are like the public road', it is only with regard to becoming guilty of the desecration of the Sabbath,[19] because sometimes, through the pressure of the crowd, people go in there,[20] but with regard to acquiring, one does acquire there, because the public is not often there.[21] R. Ashi said: [We speak of a case] when he lowered[22] his hand to less than three [handbreadths][23] and received it.[24] [And this is] according to Raba, for Raba said: The hand of a person is regarded as [a place of] four by four [handbreadths].[25] R. Aha taught so.[26] Rabina [however] taught: Indeed, when he carried it out into the public road, for he acquires also in the public ground.[27] [And] they[28] differ with regard to a deduction from this Mishnah, for we have learned: If he[29] was pulling it out[30] and it died in the domain of the owner, he is free;[31] but if he lifted it up or brought it[32] out from the territory of the owner[33] and it died, he is bound [to pay].[34] Rabina makes a deduction from the first clause, and R. Aha makes a deduction from the second clause. Rabina makes a deduction from the first clause: 'If he was drawing it out and it died in the domain of the owner, he is free'. The reason [for his being free] is because it died in the domain of the owner, hut If he had brought it out[35] from the domain of the owner[36] and it died, he would have been hound [to pay].[37] R. Aha makes a deduction from the second clause: 'but if he lifted it up or brought it out [etc.]' Bringing out is like lifting up; as lifting up is [an act through which the object] comes into his possession,[38] so bringing out [must he an act through which the object] comes into his possession.[39] According to R. Aha the first clause is difficult and according to Rabina the second clause is difficult? — The first clause is not difficult according to R. Aha, for as long as it has not come into his possession it is called: 'in the domain of the owner'.[40] The second clause is not difficult according to Rabina, for we do not say [that] bringing out is like lifting up.[41]

IF ONE HAD INTERCOURSE [BY FORCE] WITH HIS SISTER, OR WITH THE SISTER OF HIS FATHER, etc. There is a question of contradiction against this: The following persons receive [the punishment of] lashes: he who has intercourse with his sister, with the sister of his father, with the sister of his mother, with the sister of his wife, with the sister of his brother, with the wife of the brother of his father, or with a woman during menstruation,[42]

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(1) In the first case stated when he lifted up the purse.

(2) That the two acts are held not to coincide and he is therefore bound to pay for the purse.

(3) Lit, 'he who walks is as he who stands.' It means: every pace made is a new 'lifting up' and a new 'putting down'. Therefore, the theft is committed with the first 'lifting up' of the purse, and the desecration of the Sabbath is effected when the last pace is made. The two acts therefore do not coincide and he is bound to pay.

(4) He lifted up the purse and threw it into the public road.

(5) Because the stealing and the desecration of the Sabbath come together: cf. the case of the arrow on supra 30a.

(6) In the first case stated when he lifted up the purse.

(7) That the two acts are not held to coincide and he is therefore bound to pay for the loss to the owner of the purse.

(8) And carried out the purse in walking.
(9) From one territory to another, and therefore involves no liability.
(10) Dragging it along.
(11) And why is it necessary to let us hear that dragging it along is a way of carrying out? It is too heavy to carry.
(12) And indeed it should not be regarded as 'carrying out' and should not constitute a desecration of the Sabbath.
(13) Lit., 'the prohibition of Sabbath is there, the prohibition of stealing is not there'. — Without lifting it up there is no acquisition in the public road. (Rashi.)
(14) Since he carried it from one private ground to another private ground next to it. 'Carrying out' is forbidden on Sabbath only from private ground to public ground or from public ground to private ground. V. Shab. 2b and 73a.
(15) V. infra.
(16) Lit., 'according to whom'?
(17) V. Shab. 6a.
(18) V. note 1.
(19) Guilt of the Sabbath.
(20) Lit., 'the public press and go in there'.
(21) And they have therefore more the character of private ground for the purpose of acquisition by pulling (meshikah, v. Glos.).
(22) Lit., joined'.
(23) From the ground. Within three handbreadths from the ground it is public territory. Cf. Shab. 97a.
(24) Indeed he dragged the purse along into the public road, and there he put his (second) hand near the ground, less than three handbreadths, and received the purse into the hand, and his hand acquired it for him. Thus the desecration of the Sabbath and the stealing came at the same time: the former when the purse was carried out into the public road (for dragging along is carrying out), and the latter when — simultaneously — it dropped into his hand (Rashi). V. also next note.
(25) For the purpose of 'taking up' and 'putting down', the place must be at least four by four handbreadths; v. Shab. 4a. Raba said that the hand of a person is regarded as being a place of four by four handbreadths; v. Shab. 5a. And just as it is regarded as a place of four by four handbreadths for the purposes of Sabbath, it is also regarded as such a place for the purposes of acquisition. Therefore, when he received the purse into his hand, although it was lower than three handbreadths from the ground, since his hand is considered a place, in the legal sense, it is as if he had lifted up the purse above the three handbreadths from the ground and he has thus acquired it by lifting it up: the desecration of the Sabbath and the stealing come therefore at the same time (Rashi). 'Lifting' as an act of acquisition must be at least three handbreadths from the ground. V. Kid. (Sonc. ed.) p. 124, n. 5.
(26) As R. Ashi said that there is no acquisition in a public domain except by 'lifting up'.
(27) By dragging along the purse towards him. No 'lifting up' is necessary. The person acquires the object by pulling it (meshikah) even in a public domain.
(28) R. Aba and Rabina.
(29) V. B.K. l.c.
(30) Lit., 'he pulled it and went'. — He intended to steal the animal.
(31) From paying to the owner for the animal, for he has not acquired it yet, since he has not taken it out from the territory of the owner and it has therefore not come into his possession.
(32) The animal.
(33) And by doing this he acquired the animal.
(34) To the owner for the animal, v. B.K. 79a.
(35) By the process of 'pulling'.
(36) Even into public territory.
(37) This shews that pulling an object to oneself acquires also in public territory.
(38) רשות has the meaning of domain as well as of possession.
(39) רשות here also means 'possession'. By being brought into his private domain the object comes into his possession, but not by being brought out into public territory. Therefore R. Aha requires the device of the person receiving the object into his hand near the ground, as R. Ashi said.
(40) Even if it is in the public road.
(41) In the sense in which R. Aha says it.

(42) Persons who commit, after a warning, a transgression punishable with kareth receive the punishment of lashes, v. Mak. 13a.

and it is established that one does not receive lashes and pay![1] — 'Ulla said: There is no difficulty. Here[2] [it speaks] of his sister [who is] a maiden,[3] and there[4] [it speaks] of his sister [who is] a mature girl.[5] [But in the case of] his sister [who is] a mature girl, too, [there are damages to be paid for the] shame and deterioration?[6] — [It speaks of] an idiot.[7] But [there are still damages to be paid for] the pain?[8] [It speaks of] a girl who was seduced.[9] Now that you have come to this,[10] you can even say [that it speaks of] his sister [who was] a maiden [and namely when she was] an orphan[11] and [she was] seduced.[12]

Consequently, 'Ulla holds the view that wherever there is money [to be paid] and the punishment of lashes [to be inflicted], he pays the money and does not receive the lashes,[13] Whence does 'Ulla derive this? — He derives it from [the law with regard to] one person who injures another person. Just as when one person injures another person, in which case there is money to [be paid][14] and the punishment of lashes,[15] he pays the money and does not receive the lashes,[16] so whenever there are payment of money and the punishment of lashes, he pays the money and does not receive the lashes. [But may it not be argued] it is different with [the case of] one person who injures another person because he is liable for five things?[17] And [if you will say] that [the payment of] money is lighter,[18] [one can say against this] that [here it has been excepted] from its rule [and] permitted to the Court![19] But he derives it from the refuted false witnesses.[20] Just as in the case of refuted false witnesses, whose transgression involves the payment of money and the punishment with lashes,[21] they pay the money but do not receive the lashes,[22] so whenever there are payment of money and the punishment of lashes, he pays the money and does not receive the lashes. [But it may be argued] it is different with the case of refuted false witnesses, because they do not require a warning?[23] [And if you will say] that [the payment of] money is lighter, [one can say against this,] that they[24] have not done any deed![25] — But he derives it from both.[26] The point common to both is that there are the payment of money and the punishment of lashes, and in either case he pays the money and does not receive the lashes. So whenever there are payment of money and the punishment of lashes, he pays the money and does not receive the lashes. But [it may be argued] the point common to both is [also] that they both have a strict side?[27] And if [you will say that the payment of] money is lighter, [one can say against this] that they have both a lighter side?[28] —

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(1) Since he receives lashes, according to the Mishnah just quoted, he should not pay the fine, and this would be against our Mishnah.

(2) In our Mishnah.

(3) A na'arah (v. Glos.) and the fine is payable; v. supra 29a. In this case the penalty of lashes would not be inflicted.

(4) In Mak. 13a.

(5) A bogereth (v. Glos.), and no fine is due, v. supra 29a. In this case the penalty of lashes is inflicted.

(6) Which she has suffered, (v. infra 39a-40b). And there would be both lashes and payment.

(7) The girl is not compos mentis, and thus neither shame nor deterioration applies.

(8) Caused by the forced intercourse.

(9) In the Mishnah Mak. 13a, it was not a case of violation, but of seduction; and in seduction there is no pain: v. infra 39b.

(10) To say that the Mishnah Mak. speaks of seduction and not violation.

(11) Since her father is not alive, the damages are payable to her.

(12) And having yielded to his persuasion she will not claim the damages from him; hence lashes are inflicted.

(13) Since 'Ulla explains the Mishnah Mak. 13a as dealing with a bogereth, as otherwise there would be, in his view, no lashes even if he were warned beforehand, but only the payment of the fine.

(14) V. Ex. XXI, 19.

(15) This is deduced from Deut. XXV, 3 (Rashi).

(16) V. infra 32b.

(17) He has to make five kinds of payments; v. B.K. 83b. The payment of money in this case is therefore particularly

heavy and other money payments cannot be compared with it.

(18) And if in this case payment of money is to be made and no lashes are to be given, the same should indeed apply to other cases. Whether the payment is greater or smaller, it is a lighter punishment than lashes, and we see here that the lighter punishment is chosen (cf. Rashi).

(19) In this case the Torah has expressly stated that the Court may administer lashes (cf. Deut. XXV, 2). But the Court may prefer, and as a rule does prefer, that the person who was injured should receive money as compensation (Cf. Tosaf. s.v. ואי). Therefore in this case the money is paid and no lashes are given. But in other cases, as in those of violation and seduction. the rule may be different. In these cases the giving of lashes is not mentioned explicitly in the Torah, and thus its permissiveness is not stated. And when in such cases the punishment of lashes and the payment of money are due, lashes are given. And you cannot derive other cases from this case. With regard to the punishment of lashes v. Mak. 13b.

(20) Witnesses proved zomemim, v. Glos.

(21) Cf. Mak. 4a.

(22) V. infra 32b.

(23) They are subject to the lex talionis without a warning.

(24) The refuted false witnesses.

(25) Their transgression consists in words and not in deeds. Therefore the money penalty is imposed and not that of lashes. But with regard to transgressions in deeds, it may be that the transgressor receives lashes!

(26) The case of one person who injures another person and the case of the refuted false witnesses.

(27) In the one case the five kinds of payment and in the other case the non-requirement of a warning.

(28) In the one case the exception (v. p. 176, n. 9), and in the other case the transgression consisted of words and not of a deed. Therefore you cannot compare other cases with this case.

Talmud - Mas. Kethuboth 32b

But 'Ulla derives it from the two words 'for'.[1] It is written here for he hath humbled her[2] and it is written there: 'Eye for eye'. As there[3] he pays money and does not receive lashes, so wherever there are the payment of money and the punishment of lashes, he pays money and does not receive the lashes.

R. Johanan said: You can even say that it[4] speaks of his sister who was a maiden. Only there[4] it speaks of a case where they warned him,[5] and here[6] it speaks of a case where they did not warn him.[7] Consequently R. Johanan holds the view that wherever there are the payment of money and the punishment of lashes and they warned him, he receives the lashes and does not pay the money. Whence does R. Johanan derive this? — The verse says: According to his guilt;[8] [from this I infer that] you punish him because of one guilt but not because of two guilts, and immediately follow[9] the words: Forty stripes he may give him.[10] But behold when one person injures another person, in which case there are the payment of money and the punishment of lashes, he pays money and does not receive the lashes? And if you will say that this is only when they did not warn him, but when they warned him, he receives the lashes and does not pay — did not R. Ammi say in the name of R. Johanan that, if one person struck another person a blow, for which no perutah[11] can be claimed as damages,[12] he receives the lashes? How shall we imagine this case? If they did not warn him, why does he receive the lashes? Hence it is clear that they warned him, and the reason [why he receives the lashes and does not pay] is because the damages do not amount to a perutah, but if they amount to a perutah he pays the money but does not receive the lashes![13] — [It is] as R. Elai said: The Torah has expressly stated[14] that the Zomemim witnesses have to pay money; so [here] also the Torah has expressly stated that the person who injures another person has to pay money. With regard to what has that [teaching] of R. Elai been said? — With regard to the following:[15] 'We testify that So-and-so owes his fellow two hundred zuz' and they were found to be Zomemim, they receive the lashes and pay,[16] for it is not the verse that imposes upon them[17] the lashes[18] which imposes upon them[17] the payment[19] [of money]. This is the view of R. Meir; and the Sages say: He who pays does not receive lashes.[20] [And] let us say: he who receives lashes does not pay?[21] [Upon that] R. Elai

said: The Torah has expressly stated that the Zomemim witnesses have to pay more money. Where has the Torah stated this? — Consider; it is written: 'Then shall ye do unto him as he had thought to do onto his brother'; why [is it written further,] 'hand for hand'?[22] [This means] a thing that is given from hand to hand, and that is money. [And] the same applies to the case of[23] one person who injures another person. Consider; it is written: 'As he hath done, so shall it be done to him';[24] why [is it written further] 'so shall it be rendered unto him'?[25] [This means] a thing that can be rendered,[26] and that is money.

Why does R. Johanan not say as 'Ulla?[27] — If so[28] you would abolish [the prohibitory law]: The nakedness of thy sister thou shalt not uncover.[29]

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(1) תחת. A deduction based on similarity of expressions — a Gezerah shawah (v. Glos.).
(2) Deut. XXII, 29.
(3) Ex. XXI, 24.
(4) The Mishnah, Mak. 13a.
(5) And he is therefore liable to the payment of money and the penalty of lashes, and the Mishnah in Mak. 13a teaches us that, in that case, he receives the lashes and does not pay the money.
(6) In our Mishnah.
(7) And he is not liable to the penalty of lashes, and therefore he has to pay the money.
(8) Deut. XXV, 2.
(9) Lit., 'and next to it'.
(10) Deut. XXV, 3. This shows that when there are two guilts, or two punishments for one guilt, he receives the punishment of lashes.
(11) A small coin, v. Glos.
(12) Lit., 'in which there is not the value of a perutah'.
(13) Which contradicts R. Johanan's ruling.
(14) Lit., 'increased'. This means: included something by using an additional word, or additional words.
(15) Mak. 4a.
(16) The amount they wanted to make the person pay. against whom they falsely testified.
(17) Lit., 'brings them to'.
(18) For transgressing the ninth commandment.
(19) V. Deut. XIX, 19.
(20) V. Mak. 4a.
(21) According to the view of R. Johanan.
(22) Deut. XIX, 21.
(23) Lit., 'also'.
(24) Lev. XXIV, 19.
(25) Lev. XXIV, 20.
(26) Lit., 'with regard to which there is a rendering', 'a giving'.
(27) That our Mishnah speaks of the case where he had intercourse with his sister as a na'arah, which makes him liable to the fine and exempts him from lashes.
(28) That is, if he who cohabited with his sister who is a maiden, would be free from receiving lashes after he had been warned.
(29) Lev., XVIII, 9. A prohibitory law, if wilfully transgressed, and after a warning, is punishable (also) with lashes. Therefore R. Johanan holds that where there are the payment of money and the punishment of lashes, he receives the lashes and does not pay the money. Only our Mishnah speaks of a case where there was no warning, and therefore he pays the fine.

Talmud - Mas. Kethuboth 33a

[But could not one say] also [in the case of] one person who injures another person: If so[1] you would abolish [the prohibitory law], 'he shall not exceed, lest, if he should exceed.'[2] [And in case of] the

Zomemim witnesses too, [one could say]: If so you would abolish [the law]: 'then it shall be, if the guilty man deserve to be beaten.'[3] But [you must say that in the case of] the Zomemim witnesses it is possible to fulfil it[4] when [the witnesses testified falsely about someone[5] that he was] the son of a divorced woman or the son of a haluzah.[6] [Similarly in the case of] a person who injured another person, it also is possible to fulfil it[7] when he struck him a blow for which no perutah can be claimed as damages.[8] [And so you can say] also [with regard to] his sister [that] it is possible to fulfil it[9] in the case of his sister who was a mature girl![10] — R. Johanan can answer you: [The verse] for he hath humbled her[11] is required for [the same teaching] as of Abaye, for Abaye said: The verse says, 'for he hath humbled her'. This[12] [he shall pay] for he has humbled her, [from which we infer], by implication, that there are also [to be paid damages for] shame and deterioration.[13] And 'Ulla?'[14] — He derives it from a teaching of Raba, for Raba said: The verse says: Then the man that lay with her shall give unto the father of the maiden it fifty shekel of silver;[15] [this means that] for the enjoyment of lying [with the maiden he has to pay] fifty [shekel of silver], [and we infer], by implication, that there are also [to be paid damages for] shame and deterioration.

R. Eleazar[16] says: The Zomemim witnesses pay money and do not receive lashes, because they cannot be warned.[17] Raba said: You may know it [from the following]:[18] When shall we warn them? Shall we warn them at first?[19] They will [then] say: We have forgotten[20] . Shall we warn them during the deed?[21] They would [then] withdraw and not give any evidence.[22] Shall we warn them at the end?[23] [Then] what has been has been.[24] Abaye demurred to this: Let us warn them immediately after they have given their evidence?[25] R. Aha, the son of R. Ika demurred: Let us warn them at first[26] and gesticulate to them [afterwards].[27] Later[28] Abaye said: What I said[29] was nothing. For if one were to say[30] that Zomemim witnesses require a warning, [it would follow that], if we have not warned them, we would not kill them.[31] [But then] is it possible[32] that who they wished to kill without a warning,[33] that they should require a warning? Surely, it is necessary[34] [that the words be fulfilled,] 'then shall ye do unto him as he has thought to do onto his brother',[35] and this would not be [the case here]? To this R. Samma the son of R. Jeremiah demurred. But now [according to your argument], [if the witnesses testified falsely about someone[36] that he was] the son of a divorced woman or the son of a haluzah,[37] since this case is not included in 'as he had thought etc.' a warning should be required![38] — The verse says: 'Ye shall have one manner of law';[39] [this means] a law that is equal for you all.[40]

R. Shisha, the son of R. Idi, said: That a person who injures another person pays money and does not receive the lashes is derived from this:[41] [It is written:] And if men strive together and hurt a woman with child, so that her fruit depart.[42] [Upon this] R. Eleazar said: The verse speaks of a striving with intent to kill, for it is written, But if any harm follow, then thou shalt give life for life[43] . How shall we imagine this case? If they did not warn him, why should he be killed? Hence it is obvious that he was warned, [and it is held], when one is warned regarding a severe matter[44] one also is warned for a light matter,[45] and [yet] the Torah says: And yet no harm follow, he shall be surely fined.[46] To this R. Ashi demurred: Whence [do we know] that when one is warned regarding a severe matter one also stands warned for a light matter? Perhaps it is not so![47] And even if we will say that it is so, whence [do we know] that [the penalty of] death is severer?

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(1) cf, in this case, he has to pay money, he does not receive the lashes, v. supra 32b.

(2) Deut. XXV, 3. If the lashes are not given, this law is not fulfilled.

(3) Deut. XXV, 2, from which is derived the inflicting of lashes on Zomemim witnesses, v. Mak. 2b, and infra.

(4) The flagellation prescribed in Deut. XXV, 2.

(5) A priest.

(6) V. Glos. In this case one cannot do to him as he Bad thought to do to others; nor is there a money fine, so he receives the lashes, v. Mak. 2a.

(7) The flagellation attached to the prohibitory law of Deut. XXV, 3.

(8) Where there is no money payment and so he receives the lashes, v. supra 32b. V. Rashi .

(9) The flagellation attached to the prohibitory law of Lev. XVIII, 9.
(10) As long as there is a possibility of fulfilling the law it is not abolished, as in the other two cases; thus there is no point in R. Johanan's objection to ‘Ulla's explanation.
(11) Deut. XXII, 29, from which ‘Ulla derives that the fine is paid and no lashes are inflicted.
(12) The fifty shekels of silver.
(13) V. infra 40b.
(14) Whence does he derive Abaye's deduction?
(15) Deut. XXII, 29.
(16) So marginal glosses to text. R. Eleazar b. Pedath, generally called in the Talmud simply R. Eleazar, was a disciple and later an associate of R. Johanan. Cur. edd.: R. Eliezer.
(17) [No verse is required to teach that Zomemim witnesses pay and receive no lashes (in opposition to R. Elai supra p. 178) as the Talmud proceeds to explain. The case of Mak. 2a (v. supra note 3) is an exception since there is no possibility of applying the lex talionis; where however it is applicable there are no lashes (Rashi).]
(18) That they cannot be warned.
(19) Before they gave evidence.
(20) The warning. The warning has then lapsed.
(21) I.e,, during the evidence.
(22) Seeing that they are under suspicion they would refuse altogether to give evidence, even true evidence.
(23) After they had given their evidence.
(24) I.e., what they said they cannot withdraw, and there would be no point in warning them.
(25) ‘Within as much (time) as is required for an utterance’, e.g., ‘a greeting’. V. Nazir (Sonc. ed.) p. 71 n. 1.
(26) Before they gave evidence.
(27) I.e., during the evidence. By gesticulating we would remind the witnesses of the warning given to them at first, and they could not say, ‘we have forgotten it’.
(28) Or, ‘another time’.
(29) That the Zomemim witnesses should require a warning to be lashed.
(30) Lit., ‘if it enters thy mind’.
(31) Although their false evidence, had it remained unrefuted, would have brought about the penalty of death on him against whom they testified.
(32) Lit., ‘is there anything (like this)?’
(33) Since their evidence proved to be false, they could not have given a warning to those against whom they testified.
(34) Lit., ‘do we not require’?
(35) Deut. XIX, 19.
(36) A priest.
(37) v. supra p. 180, n. 3.
(38) [If the reason that Zomemim witnesses require no warning is because, otherwise, the principle ‘as he had though’ could not be applied, a warning should be required in this case which the law excepts from the application of this principle].
(39) Lev., XXIV, 22.
(40) And since in most cases the Zomemim witnesses cannot be warned, they need not be warned in this case either.
(41) And not (as supra 32b) from Lev. XXIV, 20.
(42) Ex. XXI, 22.
(43) Ex. XXI, 23. [‘Harm’ means ‘death’; and, the verse tells us, although there was no intent of killing the woman, the blow having been directed against the other man, yet the slayer is put to death, v. Sanh. 74a.
(44) ‘Life for life.’
(45) The lashes for striking a person.
(46) We thus see that although there was a warning and he should be liable to being punished with the lashes, he pays the money and does not receive the lashes.
(47) And since he does not stand warned for the light matter, he is not liable to the punishment with lashes, and therefore pays the fine.

Talmud - Mas. Kethuboth 33b

Perhaps [the punishment with] lashes is severer, for Rab said: If they had lashed Hananiah, Mishael and Azariah, they would have worshipped the [golden] image?[1] R. Samma the son of R. Assi said to R. Ashi; and some say [that] R. Samma the son of R. Ashi [said] to R. Ashi: Do you not make a distinction between a beating that has a limit[2] and a beating that has no limit![3] R. Jacob from Nehar Pekod [also] demurred:[4] That is alright according to the Rabbis who[5] hold that life[6] actually means [life].[7] But according to Rabbi,[8] who holds that it means money, what is there to say?[9] — But, said R. Jacob from Nehar Pekod, in the name of Raba; [it is to be derived] from the following verse:[10] [It is written,] 'If he rise again, and walk abroad upon his staff then shall he that smote him be quit.'[11] Would it enter your mind that this one[12] walks about in the street and that one[13] should be killed?[14] But it teaches that they imprison him;[13] if he[12] dies, they kill him; and if he does not die, 'he shall pay for the loss of his time, arid shall cause him to be thoroughly healed.'[11] Now how shall we imagine this case? If they did not warn him, why should he be killed? Hence it is plain that they warned him, and [it is held], one who was warned for a severe matter stands warned for the lighter matter and [yet] the All-Merciful says [that if he does not die] 'he shall pay for the loss of his time, and shall cause him to be thoroughly healed'.[15] To this R. Ashi asked: Whence [do you know] that one who was warned for a severe matter stands warned for a lighter matter? Perhaps not? And if you will even say that he does [stand warned for the lighter matter], whence [do you know] that death is severer? Perhaps [the punishment with] lashes is severer, for Rab said: If they had lashed Hananiah, Mishael and Azariah, they would have worshipped the [golden] image? R. Samma the son of R. Assi said to R. Ashi, and some say [that] R. Samma the son of R. Ashi [said] to R. Ashi: Do you not make a distinction between a beating that has a limit and a beating that has no limit?[16] R. Mari [also] demurred:[17] Whence [do you know] that [one smote the other] wilfully[18] and 'he shall be quit' [means] from [the penalty of] death? Perhaps [one smote the other] inadvertently[19] and 'he shall be quit' [means] from exile?[20] The difficulty remains.

Resh Lakish said:[21] This[22] is the opinion of R. Meir,[23] who says: He receives the lashes and pays [the money].[24] — If it is according to R. Meir, [then one who violated] his daughter should also [pay the fine]?[25] And if you will say that R. Meir holds [that] one may receive the lashes and pay [the money], but does not hold [that] one may receive the death penalty[26] and pay [the money][27] — has it not been taught: If he has stolen and slaughtered [an animal] on Sabbath,[28] or has stolen and slaughtered [an animal] for idolatry,[28] or has stolen an ox that is to be stoned[29] and slaughtered it, he shall pay fourfold or fivefold.[30] This is the view of R. Meir,[31] but the Sages declare him free [from payment]? — Has it not been stated regarding this: R. Jacob said in the name of R. Johanan, and some say [that] R. Jeremiah said in the name of R. Simeon b. Lakish: R. Abin and R. Elai and the whole company [of scholars] said in the name of R. Johanan [that it speaks of a case when] he [who stole the animal] let it be slaughtered by another person. But is it possible that one sins and another one is punished?[32] Raba said: The Divine law says: and slaughter it or sell it; [this teaches that] as the sale is [effected] through [the participation of] another person, so [may] the slaughtering [of the animal] be through another person. In the School of R. Ishmael it was taught: [the word] 'or' [is] to include the agent. In the School of Hezekiah it was taught: [the word] 'instead'[32] [is] to include the agent. Mar Zutra demurred to this: Is it anywhere to be found that if he does [the deed] himself he is not liable[33] and if an agent does it he is liable? He himself [does not pay], not because he is not liable, but because he suffers the severer penalty. [But] if he [who stole the animal] let it be slaughtered by another person, what is the reason of the Rabbis who declare him free [from paying]? — Who are the Sages?

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(1) V. Dan. III.

(2) The number of lashes given by the Court is limited to forty.

(3) The lashes that might have been given to Hananiah, Mishael and Azariah would have had no limit.

(4) I.e., against the derivation of R. Shisha, based on the exposition of R. Eleazar.

(5) V. Sanh. 79a-b.

(6) In Ex. XXI, 23.
(7) I.e., the death penalty. In this case the text deals with an attack which was attended by a warning, and so you can make the derivation that he pays the money and does not receive the lashes, as supra p. 182, n. 8.
(8) Sanh. 79a-b.
(9) Since there is no question of a death penalty the text need not necessarily refer to a case where there was a warning, and thus affords no basis for the derivation.
(10) Lit., 'from here'.
(11) Ex. XXI, 19.
(12) Who was smitten.
(13) Who smote.
(14) Surely that is impossible! If the one was not killed by the injury, the smiter would not receive the death penalty. Then why does the Torah expressly say that 'he that smote him be quit'?
(15) Although there was a warning making him liable to lashes. This shews that he pays money and does not receive the lashes.
(16) For notes v. supra p. 182, nn. 11-12.
(17) To the derivation of R. Jacob from Nehar Pekod.
(18) In which case only the penalty of death is inflicted, provided there was a warning.
(19) And if he killed him he is banished to one of the cities of refuge. V. Num. XXXV, 11ff and Deut. XIX, 2ff.
(20) I.e., from banishment to one of the three cities of refuge. [The text thus speaks of a case where there was no warning, and for this reason makes him liable to a fine where the blow did not result in death; where however there was a warning there would be no payment, but lashes.]
(21) With regard to the question from the Mishnah in Mak. 13a; v. supra 31b.
(22) The view of our Mishnah.
(23) Lit., 'whose opinion is this? It is that of R. Meir'.
(24) V. supra 32b.
(25) And in the Mishnah infra 36b, it is stated that in such a case no fine is paid, because the penalty of death (by the hand of man) is attached to it. V. also Sanh. 75a.
(26) Lit., 'he dies'.
(27) In the text follows: 'and not'; i.e., and does he not hold that?
(28) And has thus incurred the death penalty.
(29) V. Ex. XXI, 28.
(30) V. Ex. XXI, 37.
(31) We thus see that R. Meir holds that even when there is a death penalty he pays the money.
(32) Regarding the payment of money; v. Kid. 43a.
(33) To pay the money.

Talmud - Mas. Kethuboth 34a

R. Simeon, who says: An unfit slaughtering is not called[1] slaughtering. This might be right with regard to [the slaughtering for] idolatry and [the slaughtering of] the ox that is to be stoned, but the slaughtering on Sabbath is a fit slaughtering, for we learnt: If someone has slaughtered [an animal] on Sabbath or the Day of Atonement, although he is guilty of [a transgression for which he forfeits] his life,[2] his slaughtering is a fit one?[3] — He holds the opinion of R. Johanan ha-Sandalar,[4] for it has been taught: If someone has cooked on Sabbath, [if] by mistake, he may eat it, [and if] wilfully he may not eat it: This is the view of R. Meir. R. Judah says: [If] by mistake, he may eat it after the outgoing[5] of the Sabbath, [if] wilfully, he may never eat it. R. Johanan hasandalar says: [If] wilfully, others may eat it after the outgoing of the Sabbath, but not he, [if] wilfully, neither he nor others may eat it.[6] What is the reason of R. Johanan ha-Sandalar? As R. Hiyya expounded at the entrance of the house of the Prince:[7] [It is written:] 'Ye shall keep the Sabbath therefore, for it is holy unto you'.[8] [From this we derive:] As what is holy is forbidden to be eaten, so what has been prepared[9] on the Sabbath is forbidden to be eaten. If [so, you might say that] as what is holy is forbidden to be enjoyed,[10] so what has been prepared on the Sabbath should be forbidden to be enjoyed? — It says

'unto you'; from this we learn: It shall belong to you.[11] You might think [that it is forbidden to eat] even [what has been prepared on the Sabbath] by mistake,[12] [therefore] it is said: every one that profaneth it shall surely be put to death.[13] [This teaches that only] when [the act was done] wilfully,[14] have I told thee [that it is forbidden as that which is holy] but not [if it was done] by mistake.

R. Aha and Rabina differ concerning this. One says: What has been prepared on Sabbath [is forbidden] according to the Bible, and one says: [only] according to the Rabbis. He who says: According to the Bible — as we have [just] explained.[15] [And] he who says: according to the Rabbis — the verse says: 'It is holy', [that means]: 'it'[16] is holy, but what has been prepared on it is not holy.[17] According to him who says [that the prohibition is only] Rabbinical, what is the reason of the Rabbis who declare him[18] free?[19] — The Rabbis declare him free only with regard to other cases.[20]

But [with regard to] one who slaughtered for idolatry [one can ask:] as soon as he has cut[21] a little it[22] has become forbidden,[23] so when he continues the slaughtering[24] he does not slaughter what is the owner's?[25] — Raba said: [it speaks of a case] when he says [that] he worships it[26] with the completion of the slaughtering. [But with regard to] the ox that is to he stoned [one can ask]: he[27] does not slaughter what is his?[28] Here we speak of a case when he[29] handed it[30] to a keeper and it caused the damage[31] in the house of the keeper[32] and it was sentenced in the house of the keeper and a thief stole it from the house of the keeper. And R. Meir holds the view of R. Jacob and holds the view of R. Simeon. He holds the view of R. Jacob who says: If the keeper returned it even after the sentence had been pronounced, it is regarded as returned.[33] And he holds the view of R. Simeon who says: that which causes [the gain or loss of] money is regarded as money.[34]

Rabbah said: Indeed [it speaks of a case] when he[35] slaughtered it himself

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(1) Lit., 'its name is not'. An act of slaughter that does not for any reason whatsoever effect the ritual fitness of the animal to be eaten is not considered by them in the eye of the law a slaughter.

(2) V. supra 30a.

(3) Mishnah, Hul. 14a.

(4) Probably 'sandal-maker'.

(5) Lit., 'at the outgoing'.

(6) According to R. Johanan ha-Sandalar what has been cooked on Sabbath wilfully must not be eaten by any few. The same would apply to what has been slaughtered wilfully on Sabbath. Thus one can say that the slaughtering on Sabbath is an unfit slaughtering.

(7) Judah the Prince.

(8) Ex. XXXI, 14.

(9) Lit., 'the work of'.

(10) I. e., to have any use or benefit from it.

(11) Although one may not eat it, one may have other uses or benefits from it, e.g., one may sell it to one who is not a Jew and is therefore not bound by these laws.

(12) If he did not know it was Sabbath (Rashi).

(13) Ibid.

(14) For which the death penalty is inflicted.

(15) Lit., 'said'.

(16) I. e., the Sabbath itself.

(17) The prohibition is therefore only Rabbinical.

(18) Who stole an animal and slaughtered it on Sabbath.

(19) From paying four- or fivefold. Since the animal is, according to Biblical law, fit for food, it should be considered a fit slaughter.

(20) Lit., the rest', i.e., the other two cases mentioned: the serving of idols and the ox condemned to death.

(21) The throat of the animal.

(22) The animal.
(23) For any use as an animal slaughtered for idol worship v. Hul. 40a.
(24) Cutting the throat of the animal until the slaughtering of the animal is complete to make it fit for food.
(25) It has already become forbidden to the owner for any use and has thus ceased to be in his possession. He should therefore be free from paying four- or fivefold.
(26) The idol. The idolatrous act is to take place when the slaughtering has been completed. Consequently he was slaughtering what was the owner's.
(27) The thief.
(28) The owner's. An ox that is to be stoned for goring a person is forbidden for any use. It is therefore regarded as not belonging any more to the owner. And he should therefore be free from paying four- or fivefold.
(29) The owner.
(30) The ox.
(31) By killing a person. Cf. Ex. XXI, 28.
(32) I. e., while in the possession of the keeper.
(33) Although the condemned animal has no value, the liability of the keeper, who has to return the animal to its owner, is discharged by the keeper returning the animal to its owner.
(34) Since the thief stole the condemned animal the keeper cannot return it to the owner and he has to pay to the owner the value of the animal as it was when he entrusted it to him. The ox that is to be stoned has therefore a money.value for the keeper. The thief must therefore pay the four- or fivefold. For fuller notes on the whole passage beginning from 'Resh Lakish said' etc., 33b, v. B.K. (Sonc. ed.) pp. 407-410.
(35) The thief.

Talmud - Mas. Kethuboth 34b

and R. Meir holds the view that [though generally] one may receive the lashes and pay, one cannot receive the death penalty and pay[1] but these [cases][2] are different, because the Torah has enacted something novel in [the matter of] fine,[3] and [therefore][4] he has to pay, although he has to suffer the death penalty.[5] And Rabbah follows his own principle, for Rabba said: If he had a kid which he had stolen and he slaughtered it on Sabbath, he is bound,[6] for he was already guilty of stealing before he came to the profanation[7] of the Sabbath; [but] if he stole and slaughtered it on Sabbath he is free,[8] for if there is no stealing[9] there is no slaughtering and no selling.

Rabbah said further: If he had a kid which he had stolen and had slaughtered it at the place he broke into,[10] he is bound,[11] for he was already guilty of stealing before he came to the transgression of breaking in;[12] [but] if he stole and slaughtered it in the place he broke into,[13] he is free, for if there is no stealing, there is no slaughtering and no selling. And it was necessary [to state both cases]. For if he had let us hear [the case of the] Sabbath [I would have said that he is free from payment] because its prohibition is a perpetual prohibition,[14] but [in the case of] breaking in, which is only a prohibition for the moment,[15] I might say, [that it is] not [so].[16] And if he had let us hear [the case of] breaking in [I would say that he is free from payment] because his breaking in is his warning,[17] but [with regard to the] Sabbath, [in] which [case] a warning is required, I might say that [it is] not [so].[18] [Therefore] it is necessary [to state both cases].

R. Papa said: If one had a cow that he had stolen and he slaughtered it on Sabbath, he is liable[19] for he was already guilty of stealing before he came to the profanation of the Sabbath; if he had a cow that he borrowed and he slaughtered it[20] on Sabbath, he is free.[21] R. Aha the son of Raba said to R. Ashi: Does R. Papa mean to tell us[22] [that the same rule[23] applies to] a cow? — He answered him: R. Papa means to tell us [that the same rules applies to] a borrowed [cow]. You might possibly think [that] because R. Papa said that he[24] becomes responsible for its food from the time of [his taking possession of the cow by] 'pulling'[25] here also he becomes responsible for any unpreventable accident [that may befall it] from the time of borrowing,[26] so he lets us hear [that it is not so].[27]

Raba said: If their father left them[28] a borrowed cow,[29] they[30] may use it during the whole period for which he borrowed it;[31] if it died,[32] they are not responsible for what happened.[33] If they thought that it belonged to their father and they slaughtered it and ate it, they pay the value of the meat at the lowest price.[34] If their father left them an obligation of property,[35] they are bound to pay. Some refer it[36] to the first case,[37] and some refer it to the second case.[38] He who refers it to the first case, so much the more [does he refer it] to the second case, and he differs from R. Papa.[39] And he who refers it to the second case[40] does not refer it to the first case, and he agrees with R.Papa.[41]

It is alright [that] R. Johanan[42] does not say according to Resh Lakish,[43] because he wants to explain[44] it[45] according to the Rabbis. But why does not Resh Lakish say according to R. Johanan? — He will answer you: since he is free[46] if they warned him, he is also free [even] if they did not warn him.[47]

And they[48] follow their own principles,[49] for when R. Dimi came [from Palestine] he said: He who has committed inadvertently an act which, if he had committed it wilfully, would have been punishable with death or with lashes, and [which is also punishable] with something else,[50] R. Johanan says [that] he is bound,[51] and Resh Lakish says [that] he is free.[52] R. Johanan says [that] he is bound, for they did not warn him.[53] Resh Lakish says [that] he is free,[54] for since he is free if they warned him, so he is free also when they did not warn him.

Resh Lakish raised an objection against R. Johanan: [It is written]: If no harm follow, he shall be surely fined.[55]

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(1) Cf. supra 33b.

(2) In the case of the slaughtering of the stolen animal, supra 33b.

(3) A fine of four or five times the value of the animal is in itself a novel law.

(4) In view of the novel law in these cases.

(5) Lit., ‘he is killed’.

(6) To pay the fine.

(7) Lit., ‘prohibition’.

(8) From paying the fine,

(9) The crime of stealing is, as it were, wiped out by the more serious transgression of profaning the Sabbath. There is, therefore, no payment of principal. And since there is no payment of the principal, there is also no payment of the fine for the slaughtering and selling.

(10) מחתרתו means here both: the place he broke into and the time of breaking into the place. This breaking in took place after the stealing of the kid, which was a separate act. Cf. Ex. XXII, 2.

(11) To pay the fine.

(12) In which case he may forfeit his life, v. Ex. XXII, 2.

(13) Here the stealing and breaking in are one act.

(14) I. e., if he has profaned the Sabbath and incurred the death penalty, this penalty can always be inflicted.

(15) The thief's life is forfeit only when he is ‘found breaking in’. If he is found later his life is not forfeited, v. Ex. XXII, 2.

(16) I. e., that he is not free from payment.

(17) I. e., he may be killed without a warning.

(18) I. e., that he is not free from payment.

(19) To pay the fine.

(20) And thus stole it.

(21) From paying the fine. For the stealing and the Sabbath desecration by means of the slaughtering were committed simultaneously.

(22) Lit., ‘come to let us hear’.

(23) Which Rabbah applies to the kid.

(24) Cf. B.M. 91a.

(25) Meshikah. v. Glos.
(26) I. e., before he desecrated the Sabbath. And therefore he should have to pay the fine when he slaughters it on Sabbath.
(27) That the stealing coincides with the slaughtering, and he is therefore free from payment if he slaughters the borrowed cow on Sabbath.
(28) I. e., to his children.
(29) I. e., a cow which the father had borrowed.
(30) The children.
(31) Lit., 'all the days of the borrowing'.
(32) Accidentally, without their fault.
(33) Lit., 'for its accident'. The children are not responsible because they did not borrow it.
(34) Which is generally estimated to be two-thirds of the ordinary price, cf. B.B. 146b.
(35) אחריות נכסים, i.e., property which is a security for the payments which would have to be made. He left them (landed) property and with it the obligation which rests upon such property. The chief point in the phrase is the obligation for which such property is a security, and which was passed on to the children.
(36) The last statement.
(37) I. e., they are not responsible for the accident only if their father did not leave them an obligation of property.
(38) When they slaughtered and ate it.
(39) Who says that the obligation is incurred when the accident happens. According to the opposing view, the father left them the obligation, which therefore was incurred at the time of borrowing.
(40) Where the father left them landed property, they are made to pay the full value of the meat since they ought to have been more careful.
(41) Lit., 'and this is the view of R. Papa'. The obligation is incurred with the accident, and at the time of the accident there was no borrower, since the person that borrowed the cow was dead.
(42) Who explains the Mishnah as dealing with a case where there was no warning. v. supra 32b.
(43) Who explains the Mishnah as representing the view of R. Meir, v. supra 33b.
(44) Lit., 'he puts'.
(45) The Mishnah.
(46) From paying the fine.
(47) Since the offence carries with it the penalty of lashes, there is no money payment even where lashes are not inflicted.
(48) R. Johanan and Resh Lakish.
(49) Or 'opinions', stated elsewhere.
(50) I. e.,the payment of money.
(51) To make the money payment.
(52) From making the money payment.
(53) And so there is no death penalty, and therefore he pays.
(54) From making the money payment.
(55) Ex. XXI, 22.

Talmud - Mas. Kethuboth 35a

[Now] is not real 'harm' meant?[1] No, the law concerning 'harm' [is meant].[2] Some say: R. Johanan raised an objection against Resh Lakish: [It is written] 'And if no harm follow, he shall be surely fined'. Is not the law concerning 'harm' [meant]?[2] No, real 'harm' [is meant].[1]

Raba said: Is there any one who holds that he who committed inadvertently an act which, if he had committed it wilfully, would have been punishable with death [and which is also punishable with the payment of money] is bound [to make the money payment]? Has not the school of Hezekiah taught: [It is written] He that smiteth a man . . . he that smiteth a beast[3] [from which we infer:] As in [the case of] the killing of a beast you have made no distinction between [it being done] inadvertently and wilfully, intentionally and unintentionally, by way of going down or by way of going up,[4] so as to

free him [from the payment], but [in any case] make him liable to pay, so also in [the case of] the killing of a man you shall make no distinction between [it being done] inadvertently and wilfully, intentionally and unintentionally, by way of going down or by way of going up, so as to make him liable to pay money, but to free him from paying money?[5] But when Rabin came [from Palestine], he said: [As to] him who committed inadvertently an act which,if he had committed it wilfully, would have been punishable with death [and which is also punishable with the payment of money] — all agree that he is free [from the payment of money], they only differ when the act committed inadvertently would, if committed wilfully, have been punishable with lashes and something else.[6] R. Johanan says [that] he is bound [to make the money payment, because] only with regard to those who commit an act punishable with death, the analogy is made,[7] [but] with regard to those who commit an act punishable with lashes, the comparison is not made. [But] Resh Lakish says [that] he is free [from making the money payment, because] the Torah has expressly included those who commit an act punishable with lashes to be as those who commit an act punishable with death. Where has the Torah included [them]?-Abaye said: [We infer it from] the double occurrence of 'wicked man'[8] Raba said: [We infer it from] the double occurrence of 'smiting'.[9] R. Papa said to Raba: Which 'smiting' [do you mean]? If you mean[10] [the verse][11] 'And he that smiteth a beast shall pay for it, and he that smiteth a man shall be put to death,' this[12] speaks[13] of the death penalty?[14] — Is it this 'smiting'; he that smiteth a beast shall pay for it: life for life and next to it [comes] And if a man cause a blemish in his neighbour, as he hath done so shall it be done to him?[15] But here [the term] 'smiting' is not mentioned![16] — We mean[17] the effect of 'smiting'.[18] But this verse refers to one who injures his fellow, and one who injures his fellow has to pay damages?[19] — It if does not refer to a 'smiting' in which there is the value of a perutah,[20] refer it[21] to a smiting in which there is not the value of a perutah.[22]

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(1) If no harm follows, that is if the woman does not die, he pays the fine. But if the woman dies, no fine is paid, even if he was not warned. This would be according to Resh Lakish and against R. Johanan

(2) I. e., if the woman did not die, or if she died but he was not warned, he pays the fine. The 'law concerning harm' would imply warning. No warning, no death penalty, and therefore payment of money. This would accord with R. Johanan.

(3) Lev. XXIV, 21. The whole verse reads: And he that smiteth a beast shall pay for it; and he that smiteth a man shall be put to death. — Smiting here means killing.

(4) A distinction which obtains in the case of unintentional manslaughter with reference to the liability to take refuge, cf. Mak. 7b.

(5) Even if the killing of the man was done inadvertently, and the death penalty is not inflicted, there is no payment of money to be made. R. Johanan could therefore not have said that he was bound to make the money payment, supra p. 190.

(6) The payment of money.

(7) Between he that smiteth a beast and he that smiteth a man; v. supra.

(8) A Gezerah shawah v. Glos. The word 'wicked' occurs in Num. XXXV, 31 (in the case of the death penalty) and in Deut. XXV, 2 (in the case of the penalty of the lashes), and therefore an analogy is drawn between the two cases.

(9) [Raba disapproves of this double analogy, but assumes that those who are liable to lashes are in every case exempt from payment directly from 'he that smiteth a beast' and not by means of the analogy between them and those liable to the death penalty.]

(10) Lit., 'if to say'.

(11) Lev. XXIV, 21.

(12) The second half of the verse.

(13) Lit., 'is written'.

(14) And offers no basis of deduction for the penalty' of lashes.

(15) Lev. XXIV, 19. This is taken to mean: he shall receive the lashes; v. infra.

(16) It does not say in this verse 'If a man smiteth his neighbour'. It says 'If a man cause a blemish in his neighbour'.

(17) 'We speak of'.

(18) To cause a blemish means to smite. And the smiter has to be smitten, that is, he has to receive the lashes.

(19) But he does not receive lashes.

(20) V. infra 32b.

(21) I. e., the words 'so shall it be done to him'.

(22) And in this case he receives lashes and the analogy with 'he that smiteth a beast' serves to teach, on the view of Resh Lakish, that there is no payment even where, for one cause or another, there is no infliction of lashes.

Talmud - Mas. Kethuboth 35b

Anyhow, he is not liable to pay damages?[1] — It necessarily [speaks of a case] where, while he smote him, he tore his silk garment.[2]

R. Hiyya said to Raba: And according to the Tanna of the school of Hezekiah, who says: [It is written] 'He that smiteth a man . . . He that smiteth a beast' [etc.,][3] — whence does he know that it[4] refers to a week-day and there is no distinction to be made?[5] Perhaps it refers to the Sabbath, [in which case] there is a distinction to be made with regard to the beast itself?[6] — This cannot be,[7] for it is written: 'And he that smiteth a beast shall pay for it, and he that smiteth a man shall be put to death.' How shall we imagine this case? If they did not warn him, why should he, if he killed a man, be put to death? Hence it is clear that they warned him,[8] and if [it happened] on a Sabbath would he, if he smote a beast, pay for it?[9] Therefore it can only refer to[10] a week-day.[11]

R. Papa said to Abaye: According to Rabbah, who says [that] the Torah has instituted something novel in the matter of fines and [therefore] he pays although he is killed[12] — according to whom does he put our Mishnah? If according to R. Meir,[13] [the law regarding] his daughter is difficult,[14] if according to R. Nehunia b. ha-Kana,[15] [the law regarding] his sister is difficult;[16] [and] if according to R. Isaac[17] [the law regarding] a mamzereth is difficult?[18] It would be alright if he would hold like R. Johanan,[19] [for] he would [then] explain it[20] like R. Johanan.[19] But if he holds like Resh Lakish[21] how can he explain it ?[22] — He [therefore], of necessity, holds like R. Johanan.

R. Mattena said to Abaye: According to Resh Lakish who says that the Torah has expressly included those who commit an act punishable with lashes to be as those who commit an act punishable with death[23] — who is the Tanna, who differs from R. Nehunia b. ha'Kana?[24] It is either R. Meir[25] or R. Isaac.[26]

Our Rabbis taught: All forbidden relations and all relations forbidden in the second degree have no claim[27] to fine [for outrage][28] or to indemnity for seduction.

A woman who refuses [her husband] by mi'un[29] has no claim to fine [for outrage] or to indemnity for seduction. [In this case] a barren woman has no claim to fine for outrage or to indemnity for seduction. And a woman who has gone out[30] on account of an evil name,[31] has no claim to fine for outrage or to indemnity for seduction. What are 'forbidden relations' and what are 'relations forbidden in the second degree'? Shall I say [that] 'forbidden relations'

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(1) Because the damages do not amount to a perutah. The verse thus affords no basis of deduction for the ruling of Resh Lakish.

(2) There the analogy is required, and we are taught that he is liable to lashes for the injury he inflicted and is free from paying for the silk garments even if the lashes are not actually inflicted

(3) V. p. 191 and notes,

(4) Lev. XXIV, 21.

(5) Between 'inadvertently' and 'wilfully'; but there is in every case liability to payment.

(6) Payment would be due only if he killed it inadvertently. If he killed it wilfully he would be liable to the death penalty on account of the desecration of the Sabbath and he would thus be free from the money payment.

(7) Lit., 'this does not enter your mind'. It cannot be assumed that the verse refers to the offence having been committed

on Sabbath and inadvertently.
(8) I. e., he killed him wilfully.
(9) Where he killed it wilfully. Surely not, seeing that he is liable to death!
(10) Lit., 'but is it not?'
(11) Where no distinction is made between wilful and inadvertent killing of a beast and the same absence of distinction applies mutatis mutandis to him who kills a man.
(12) Supra 34b.
(13) Who holds that the lesser penalty is not merged in the greater, v. supra 34b.
(14) Why should there be no fine in the case of 'his daughter', (infra 36b).
(15) Who agrees with R. Meir with regard to lashes but not with regard to kareth.
(16) Why does our Mishnah impose a fine in the case of 'his sister' which is subject to kareth?
(17) Who holds that offenders liable to kareth are not subject to lashes, v. Mak. 14a.
(18) Why should there be a fine in this case which is subject to lashes.
(19) That out Mishnah deals with a case where there was no warning and hence no infliction of lashes, v. supra 32b and 34b.
(20) Out Mishnah.
(21) That even where his lashes are actually inflicted, since there isa liability to lashes, there is no payment. V. supra. 34b.
(22) Out Mishnah.
(23) So that there is no payment even if the offence was committed unwittingly.
(24) V. supra 30a. This Tanna would not exempt offenders liable to kareth from payments which would be in accord with out Mishnah which imposes a fine in the case of his sister — an offence involving kareth.
(25) Who does not exempt from, payment on account of the penalty of lashes, and thus although there are also lashes in the case of a sister, there is no exemption from the fine, v. supra 32b.
(26) V. supra note 4. He will consequently hold that an offence with his sister is limited to kareth and does not carry with it any lashes and therefore no exemption from the fine.
(27) Lit 'there is not to them'.
(28) Deut XXII, 28, 29.
(29) V. Glos.
(30) I.e., who had to leave her husband.
(31) Presumably with reference to Deut. XXII, 13ff.

Talmud - Mas. Kethuboth 36a

are really forbidden relations[1] and prohibitions of the second degree [are those relations which were forbidden] by the Rabbis?[2] Why should the latter not receive the fine since they are fit for him Biblically? — But, forbidden relations are those with regard to which one is liable to the penalty of death at the hand of the Court,[3] prohibitions of the second degree are those with regard to which there is kareth;[4] but in the case of prohibitions with regard to which one trespasses a plain prohibitory law,[5] they receive the fine. And whose opinion is it? [It is that of] Simeon the Temanite.[5] Some say: 'Forbidden relations' are those with regard to which one is liable to the penalty of death at the hand of the Court or kareth, 'prohibitions of the second degree are those with regard to which one transgresses a plain prohibitory law. Whose opinion is this? That of R. Simeon b. Menassia.[5]

[It is said above:][6] A woman who refuses her husband by mi'un has no claim to fine [for outrage] or to indemnity for seduction. But any other minor has a claim [to the fine]. Whose opinion would this be? That of the Rabbis, who say: A minor receives the fine.[7] Read now the other clause: 'A barren woman has no claim to fine [for outrage] or to indemnity for seduction'. This is according to R. Meir, who says: The minor does not receive the fine; and this one came from her state as minor into the state of womanhood.[8] The first clause would then be according to the Rabbis and the last clause according to R. Meir? And if you would say that all of it is according to R. Meir, but in the case of the woman who refuses her husband by mi'un he holds like R. Judah[9] — does he indeed hold

the view [of R. Judah]? Has it not been taught: Until when can the daughter exercise the right of mi'un? Until she grows two hairs[10] — [these are] the words of R. Meir. R. Judah says: Until the black is more than the white?[11] — But it is according to R. Judah,[12] and with regard to a minor he holds like R. Meir,[13] But does he[14] hold this view?[15] Did not Rab Judah say [that] Rab said: 'These are the words of R. Meir'?[16] Now if it had been so,[17] he ought to have said: 'These are the words of R. Meir and R. Judah'? — This Tanna[18] holds according to R. Meir in one thing[19] and differs from him in one thing.[20] Rafram said: What is meant by 'a woman who refuses her husband by mi'un'? One who is entitled to refuse.[21] Let him then teach[22] 'a minor'? — This is indeed difficult.

[It is said above:] 'A barren woman has no claim to fine [for outrage] or to indemnity for seduction . A contradiction was raised against this: A woman who is a deaf-mute, or an idiot, or barren, has a claim to fine [for outrage], and a suit can be brought [by her husband] against her concerning her virginity. What contradiction is there? The one [Baraitha][23] is according to R. Meir[24] and the other [Baraitha] is according to the Rabbis! But he who raised the questions how could he raise it at all?[25] — He wanted to raise another contradiction: Against a woman who is a deaf-mute, or an idiot, or has reached maturity,[26] or lost her virginity through an accident, no suit can be brought concerning her virginity; against a woman who is blind or barren, a suit can be brought concerning her virginity. Symmachus says in the name of R. Meir: Against a blind woman a suit cannot be brought concerning her virginity! — Said R. Shesheth: This is not difficult: the one [Baraitha] is according to R. Gamaliel and the other [Baraitha] is according to R. Joshua.[27] [But] say when does R. Gamaliel hold this view?[28] When she pleads;[29] but does he hold this view when she does not plead — Yes, since R. Gamaliel holds that she is believed, [we apply], in a case like this, [the verse], Open thy mouth for the dumb.[30]

'And against a woman who has reached maturity, one cannot bring a suit concerning her virginity.' Did not Rab say: To a woman who has reached maturity one gives the [whole] first night?[31]

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(1) Those forbidden in Lev. XVIII.

(2) Lit., 'the Scribes', v. Yeb. 21a.

(3) V. Lev. XX.

(4) v. Lev. XVIII.

(5) V. supra 29b.

(6) Supra 35b.

(7) V. supra 29a.

(8) Without having been in the state of na'arah, since she did not have the signs of maidenhood. And only a na'arah receives the fine.

(9) That a maiden can exercise the tight of mi'un, v. infra.

(10) The signs of puberty, i. e., as long as she is a minor.

(11) I. e., after she has reached the state of na'arah, the growth of the hair having advanced. This shews that R. Meir does not agree with R. Judah in the matter of mi'un.

(12) According to R. Judah the Baraitha can deal with a na'arah.

(13) That she has no claim to fine; hence the ruling with regard to a naturally barren woman, v. supra p. 195. n. 9,

(14) R. Judah.

(15) Of R. Meir.

(16) V. infra 40b.

(17) As it has just now been said.

(18) Of the Baraitha, cited supra.

(19) That a minor has no claim to fine.

(20) With regard to mi'un.

(21) I. e., a minor. The whole Baraitha would then be according to R. Meir.

(22) I. e., state expressly.

(23) The former Baraitha.

(24) That a minor has no claim and similarly a naturally barren woman. cf. n. 4.

(25) The answer being so obvious.

(26) A bogereth, v. Glos.

(27) V. supra 12b. According to R. Gamaliel's view, since the woman is believed on saying that she was violated after betrothal, in the case of a deaf-mute we admit this plea on her behalf and mutatis mutandis on the view of R. Joshua. v. infra.

(28) That she is believed.

(29) That she was forced after betrothal.

(30) Prov. XXXI, 8. I. e., the Court pleads what she could have pleaded.

(31) For intercourse. We assume that any bleeding that may proceed is not due to menstruation hut to virginity, V. Nid. 64b. And this would shew that she has virginity.

Talmud - Mas. Kethuboth 36b

— If he raises the complaint with regard to the bleeding,[1] it is really so;[2] here we treat of a case where he raises the complaint of the 'open door'.[3]

[It is said above:] 'Symmachus says in the name of R. Meir: Against a blind woman a suit cannot be brought concerning her virginity'. What is the reason of Symmachus? — R. Zera said: 'because she may have struck against the ground'.[4] All the others[5] may also have struck against the ground?[6] All the others see it[7] and show it to their mothers,[8] this one does not see it and does not shew it to her mother.[9]

[It is said above]:[10] 'And a woman who goes out because of an evil name has no claim to fine [for outrage] and to indemnity for seduction'. A woman who goes out because of an evil name is liable to be stoned?[11] — R. Shesheth said: He[12] means it thus: if an evil name has gone out concerning her in her childhood[13] she has no claim to fine [for outrage] or to indemnity for seduction. R. Papa said: Infer from this [that] one does not collect [a debt] with an unsound document. How shall we imagine this case? If to say that a rumour has gone out that the document is forged, and similarly here that a rumour has gone out that she has been unchaste? — Did not Raba say [that] if the rumour has gone out in the town [that] she is unchaste one does not pay any attention to it?[14] — But [the case is that] two [persons] came and said [that] she asked them to commit with her a transgression[15] and similarly here [that] two [persons] came and said [that] he[16] said to them: Forge me [the document]. It is all right there,[17] since there are many unrestrained men.[18] But here[19] — if he[20] has been established,[21] have [therefore] all Israelites been established?[22] — Here also, since he[23] was going round searching for a forgery, I can say [that] he [him. self] has forged it and written it.[24]

*MISHNAH. AND[25] IN THE FOLLOWING CASES NO FINE[26] IS INVOLVED: IF A MAN HAD INTERCOURSE WITH A FEMALE PROSELYTE, A FEMALE CAPTIVE OR A BONDWOMAN, WHO WAS RANSOMED, PROSELYTIZED OR MANUMITTED AFTER THE AGE OF[27] THREE YEARS AND A DAY.[28] R. JUDAH RULED: IF A FEMALE CAPTIVE WAS RANSOMED SHE IS DEEMED TO BE IN HER VIRGINITY[29] EVEN IF SHE BE OF AGE.

A MAN WHO HAD INTERCOURSE WITH HIS DAUGHTER. HIS DAUGHTER'S DAUGHTER, HIS SON'S DAUGHTER. HIS WIFE'S DAUGHTER. HER SON'S DAUGHTER OR HER DAUGHTER'S DAUGHTER INCURS NO FINE,[30] BECAUSE HE FORFEITS HIS LIFE, THE DEATH PENALTIES OF SUCH TRANSGRESSORS BEING[31] IN THE HANDS OF BETH DIN, AND HE WHO FORFEITS HIS LIFE PAYS NO MONETARY FINE FOR IT IS SAID IN SCRIPTURE, AND YET NO HARM FOLLOW HE SHALL BE SURELY FINED.[32]

GEMARA. R. Johanan said: Both R. Judah and R. Dosa taught the same thing. As to R. Judah [we

have the ruling] just mentioned. As to R. Dosa? — It was taught: A female captive[33] may eat terumah;[34] so R. Dosa. 'What after all is it', said R. Dosa, 'that that Arab[35] has done to her? Has he rendered her unfit to be a priest's wife merely because he squeezed her between her breasts?'[36]

Said Raba:[37] Is it not possible that there is really no [agreement between them]?[38] R. Judah may have laid down his ruling[39] here[40] only in order that the sinner may gain no advantage,[41] but there[42] he may hold the same opinion as the Rabbis; is or else: [May not] R. Dosa have laid down his ruling[43] only there[44] [where it concerns] terumah which [at the present time is only] a Rabbinical enactment,[45] but in the case of a fine which is a Pentateuchal law[46] he may well hold the same view as the Rabbis?[47]

Abaye answered him: Is R. Judah's reason here[48] 'that the sinner may gain no advantage'? Surely it was taught: R. Judah ruled, 'If a female captive was ransomed[49] she is deemed to be in her virginity,[50] and even if she is ten years old her kethubah is two hundred[51] zuz'.[52] Now how[53] [could the reason] 'that the sinner shall gain no advantage' apply[54] there?[55] — There also [a good reason exists for R. Judah's ruling, since otherwise[56] men][57] would abstain from marrying her.[58]

Could R. Judah, however, maintain the view [that a female captive] retains the status of a virgin[59] when in fact, it was taught: A man who ransoms a female captive may marry her, but he who gives evidence on her behalf[60] may not marry her,[61] and R. Judah ruled: In either case he[61] may not marry her![62]

Is not this,[63] however, self-contradictory? You said, 'A man who ransoms a female captive may marry her', and then it is stated, 'He[64] who gives evidence on her behalf may not marry her'; shall he[65] not marry her [it may well be asked] because he gives also evidence on her behalf? — This is no difficulty. It is this that was meant: A man who ransoms a female captive and gives evidence on her behalf may marry her,[66] but he who merely gives evidence on her behalf may not marry her.[67]

In any case, however, does not the contradiction against R. Judah remain?[68] — R. Papa replied: Read, 'R. Judah ruled: In either case he may marry her'.

R. Huna the son of R. Joshua replied: [The reading may] still be as it was originally given,[69] but R. Judah was speaking to the Rabbis in accordance with their own ruling. 'According to my view[70] [he argued] the man may marry her in either case; but according to your view[71] it should have been laid down that in either case he may not marry her'.

And the Rabbis?[72] — 'A man who ransoms a captive and gives evidence on her behalf may marry her' because no one would throw money away for nothing,[73] but 'he who merely gives evidence on her behalf may not marry her' because he may have fallen in love with her.[74]

R. Papa b. Samuel pointed out the following contradiction to R. Joseph:

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(1) I. e., the lack of it.

(2) He is entitled to raise this complaint.

(3) V. supra 9a. This complaint cannot be raised against a bogereth.

(4) And thus lost her virginity.

(5) All other girls. Lit., 'all of them'.

(6) And yet a suit can be brought against them concerning their virginity.

(7) I. e., notice the accidental loss of their virginity.

(8) And it is known that the virginity is lost by accident and no claim arises concerning the virginity at their marriage. And if no accidental loss was made known the claim concerning virginity does arise.

(9) But the accidental loss may have happened all the same. Therefore there is no virginity claim against a blind woman.

(10) V. supra 35b. (*) The translation from here to the end of the Tractate is by the Rev. Dr. I. W. Slotki.
(11) Cf. Deut. XXII, 20, 21.
(12) The Tanna.
(13) Before she was betrothed.
(14) V. Git. 89b. And the same would apply to the document.
(15) To have intercourse with her.
(16) The alleged creditor.
(17) In the case of the woman.
(18) Since she solicited two men she might have solicited other men with more success.
(19) In the case of the document.
(20) The alleged creditor.
(21) As a forget.
(22) As forgers. He may therefore not have found men who would sign a forged document.
(23) The alleged creditor.
(24) I. e., forged the signatures of the witnesses.
(25) Cf. the previous Mishnah, supra 29a.
(26) Lit., 'they have no fine', sc. of fifty shekels. (cf. Deut. XXII, 29).
(27) Lit., 'more than'.
(28) An age when intercourse is possible, and girls in the circumstances mentioned are likely to have succumbed to temptation or violence.
(29) Lit., 'behold she is in her sanctity'.
(30) Lit., 'they have no fine'.
(31) Lit., 'because their death'.
(32) Ex. XXI, 22; from which it may be inferred that if 'harm' (i.e., death) follows no monetary fine is incurred.
(33) Who was the daughter or wife of a priest.
(34) Because she is not suspected of intercourse with her captors. A seduced or violated woman is regarded as a harlot who is forbidden to a priest (cf. Lev. XXI, 7) and is, therefore, also ineligible to eat terumah.
(35) Sc. her captor. Arabs were ill-famed for their carnal indulgence (v. Kid. 49b and Tosaf. s.v. וכי a.l.).
(36) Git. 81a; cf. 'Ed'. III. 6. Captors. R. Dosa maintains, only play about with their captives but did not violate them.
(37) So MS.M. Cut. edd., 'Rabbah'. Cf. Tosaf. supra 11a s.v. אביי and infra 37a s.v. אמר רבה.
(38) R. Judah and R. Dosa.
(39) That a ransomed captive retains the status of virgin and consequently is entitled to a fine from her seducer.
(40) In our Mishnah.
(41) By an exemption from the statutory fine (cf. supra p. 198. n. 16).
(42) In the case of terumah cited from Git. 81a. (15) That a female captive is forbidden to a priest and is ineligible to eat terumah.
(43) That a captive retains her status of chastity and may eat terumah if she is a priest's wife or daughter.
(44) V. p. 199, n. 14.
(45) Pentateuchally even a woman whose seduction was a certainty is permitted to eat such terumah. Hence no prohibition was imposed even in Rabbinic law where seduction is doubtful.
(46) And subject to greater restrictions.
(47) The first Tanna of our Mishnah.
(48) In our Mishnah.
(49) שנפדית, so MS.M. Cut. edd., שנשבית, 'was taken captive', is difficult.
(50) Cf. supra p. 199, n. 1.
(51) The statutory sum to which a virgin is entitled. A widow is entitled to one hundred zuz only.
(52) Tosef. Keth. III.
(53) Lit., 'what'.
(54) Lit., 'there is'.
(55) Where the husband had committed no sin. Now since this reason is here inapplicable and R. Judah nevertheless gives the captive the status of a virgin, it follows, as R. Johanan has laid down supra, that R. Judah maintains his view in all cases including., of course, that of terumah also.

(56) I. e., if the captive were only allowed a kethubah of one hundred zuz.
(57) On learning that her kethubah was not the one given to a virgin, and suspecting, therefore, that she had been seduced.
(58) As such a reason, however, is inapplicable to terumah R. Judah, as Raba had suggested. may well be of the same opinion as the Rabbis.
(59) Cf. supra p. 199, n. 1.
(60) That she had not been seduced.
(61) If he is a priest (cf. supra p. 199, n. 6).
(62) Tosef. Yeb. IV; which proves that a female captive does lose her status of virginity. How then could R. Judah maintain in our Mishnah and in the Baraitha cited from Tosef. Keth. III that she retains the status of a virgin?
(63) The Baraitha just cited from Tosef. Yeb.
(64) Implying presumably anyone. even the man who ransomed her.
(65) The man who ransomed the captive and who in such circumstances is permitted to marry her.
(66) Because no man would spend money on the ransom of a captive with the object of marrying her unless he was convinced of her chastity.
(67) In the absence of any special effort on his part to ransom the woman while she was captive he is suspected of tendering false evidence in a desire to gratify his passions.
(68) V. supra p. 200, n. 20.
(69) I. e., that R. Judah ruled: 'He may not marry her'.
(70) That a captive retains her status of chastity.
(71) That a captive loses the status of a virgin.
(72) On what grounds do they draw a distinction between the man who ransoms a captive and the one who only tenders evidence in her favour?
(73) Cf. supra note 4.
(74) Lit., 'put his eyes on her'. Cf. supra note 5.

Talmud - Mas. Kethuboth 37a

Could R. Judah hold the view that [a female captive] is deemed to have retained her virginity[1] when it was, in fact, taught. 'If a woman proselyte discovered [some menstrual] blood[2] on [the day of] her conversion it is sufficient, R. Judah ruled, [to reckon her Levitical uncleanness from] the time she [discovered it].[3] R. Jose ruled: She is subject to the same laws[4] as all other women[5] and, therefore, causes uncleanness [retrospectively] for twenty-four hours,[6] or [for the period] intervening between[7] [her last] examination and[7] [her previous] examination.[8] She must also wait[9] three months;[10] so R. Judah. but R. Jose permits her to be betrothed and married at once'?[11] — The other replied: You are pointing out a contradiction between a proselyte and a captive [who belong to totally different categories, since] a proselyte does not protect her honour while a captive does protect her honour.

A contradiction, however, was also pointed out between two rulings in relation to a captive.[12] For it was taught: Proselytes,[13] captives[13] or slaves[13] who were ransomed, or proselytized. or were manumitted, must wait three months[14] if they were older than three years and one day; so R. Judah. R. Jose permits immediate betrothal and marriage.[15] [The other] remained silent. 'Have you'. he said to him, 'heard anything on the subject?' — 'Thus', the former replied. 'said R. Shesheth: [This is a case] where people saw that the captive was seduced'. If so[16] what could be R. Jose's reason? — Rabbah replied: R. Jose is of the opinion that a woman who plays the harlot makes use of an absorbent in order to prevent conception. This[17] is intelligible in the case of a proselyte, who, since her intention is to proselytize, is careful.[18] It[17] is likewise [intelligible in the case of] a captive [who is also careful][18] since she does not know whither they would take her.[19] It[17] is similarly [intelligible in the case of] a bondwoman [who might also be careful][18] when she hears from her master.[20] What, however, can be said in the case of one who is liberated on account of the loss of a tooth or an eye?[21] And were you to suggest that R. Jose did not speak[22] of an unexpected occurrence,[23] [it might be retorted,] there is the case of a woman who was outraged or seduced[24] which may happen

unexpectedly and yet it was taught: A woman who has been outraged or seduced must wait three months; so R. Judah, but R. Jose permits immediate betrothal and marriage![25] — The fact, however, is, said Rabbah,[26] that R. Jose is of the opinion that a woman who plays the harlot turns over in order to prevent conception.[27] And the other?[28] — There is the apprehension that she might not have turned over properly.[29]

FOR IT IS SAID IN SCRIPTURE, AND YET NO HARM FOLLOW HE SHALL BE SURELY FINED etc. Is, however, the deduction[30] made from this text?[31] Is it not in fact made from the following text:[32] According to the measure of his crime,[33] [which implies][34] you make him liable to a penalty[35] for one crime, but you cannot make him liable [at the same time] for two crimes?[36] — One [text[37] deals] with [the penalties of] death and money and the other[38] with [the penalties of] flogging and money.

And [both texts[39] were] needed. For if we had been told [only of that which deals with the penalties of] death and money[37] it might have been assumed [that the restriction[40] applied only to the death penalty] because it involves loss of life,[41] but not [to the penalties of] flogging and money where no loss of life is involved. And if we had been told only of flogging and money[38] it might have been assumed [that the restriction[40] applied only to flogging] because the transgression for which flogging is inflicted[42] is not very grave,[43] but not [to the penalties of] death and money where the transgression for which the death penalty is imposed[42] is very grave.[44] [Hence it was] necessary [to have both texts].

According to R. Meir, however, who ruled: 'A man may be flogged and also ordered to pay'.[45] what need was there for the two texts?[46] — One[47] deals with the penalties of death and money

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(1) Cf. supra p. 199. n. 1.

(2) Only the menstrual blood of an Israelite woman or of one who was converted to the Jewish faith causes Levitical uncleanness.

(3) I. e., only such objects are deemed to be Levitically unclean as have been touched by her after, but not before her discovery.

(4) Lit., 'behold she'.

(5) Of the Jewish faith.

(6) מעת לעת, lit., 'from time to time'.

(7) Lit., 'from . . . to'.

(8) Whichever period is the less; v. 'Ed. I, 1

(9) After her conversion.

(10) Before she is permitted to marry. in order to make sure that she was not with child prior to her conversion.

(11) From which Baraitha it follows that R. Judah suspects illicit intercourse, contrary to the statement attributed to him in out Mishnah that a captive is presumed to protect her chastity.

(12) Lit., 'captive on captive'.

(13) In the original the noun appears in the sing.

(14) Cf. notes 9 and 10 mutatis mutandis.

(15) V. l.c. n. 11.

(16) That there is definite evidence against her chastity.

(17) Rabbah's explanation.

(18) To have an absorbent in readiness in order to avoid conception and the mixing of legitimate, with illegitimate children. Lit 'she protects herself'.

(19) She makes provision (cf. preceding note) against the possibility of being sold to an Israelite master who might set her free.

(20) Of her impending liberation.

(21) Cf. Ex. XXI, 26f. The bondwoman, surely, could not know beforehand that such an accident would occur.

(22) I. e., did not maintain his ruling that a period of three months must be allowed to pass.

(23) Lit., 'of itself', when, as in the case of the loss of a tooth or an eye. the woman was not likely to have been possessed of an absorbent.
(24) [Rashi does not seem to have read 'seduced' which appears here irrelevant; v. marginal Glosses.]
(25) Which shows that even when the unexpected happens R. Jose requires no waiting period.
(26) The reading in the parallel passage (Yeb. 35a) is 'Abaye'.
(27) No absorbent is needed. Similarly in the case of a liberated captive or slave. Hence the ruling of R. Jose that no waiting period is required.
(28) Why does he require a waiting period.
(29) And conception might have taken place.
(30) That one who suffers the death penalty is exempt from a monetary fine.
(31) Lit., 'from here' sc. Ex XXI, 22, cited in our Mishnah.
(32) Lit., 'from there'.
(33) Deut. XXV, 2, A.V. 'fault', R.V. 'wickedness'.
(34) Since the text makes use of the sing.
(35) Flogging, spoken of in the text cited.
(36) By the imposition of two forms of punishment. V. supra 32b and B.K. 83b, Mak. 4b, 13b.
(37) Deut. XXI, 22.
(38) Deut. XXV, 2.
(39) V. preceding notes.
(40) To one penalty.
(41) The punishment being so severe it alone is sufficient.
(42) Lit., 'its transgression'.
(43) It is sufficient, therefore, if only one penalty is inflicted.
(44) And two penalties might well have been regarded as a proper measure of justice.
(45) Supra 33b. The second text, therefore, cannot be applied as suggested.
(46) V. supra notes 6 and 7.
(47) Deut. XXI, 22.

Talmud - Mas. Kethuboth 37b

and the other[1] with those of death and flogging. And [both texts were] needed. For if we had been told [only of that which deals with the penalties of] death and money it might have been assumed [that the restriction[2] applied to these two penalties only] because we must not inflict one penalty upon one's body and another upon one's possessions, but in the case of death and flogging, both of which are inflicted on one's body, it might have been assumed [that the flogging] is deemed to be [but] one pro tracted death penalty and both may, therefore, be inflicted upon one man.[3] And if we had been told about death and flogging only [the restriction[4] might have been assumed to apply to these penalties only] because no two corporal punishments may be inflicted on the same person, but in the case of the penalties of death and money one of which is corporal and the other monetary it might have been assumed that both may be inflicted.[5] [Both texts were, therefore,] necessary.

What need was there[6] for the Scriptural text, Moreover ye shall take no ransom for the life of a murderer?[7] — The All-Merciful has here stated: You shall take no monetary fine from him and thus exempt him from the death penalty.

What was the need[8] for the Scriptural text, And ye shall take no ransom for him that is fled to his city of refuge'?[9] — The All-Merciful has here stated: You shall take no monetary fine from him to exempt him from exile.[10]

But why two texts?[11] — One deals with unwitting, and the other with intentional [murder]. And [both texts] were required. For if we had been told[12] of intentional murder[13] only it might have been assumed [that the restriction[12] applied to this case only], because the transgression for which death is

inflicted[14] is grave,[15] but not to the one of unintentional murder where the transgression is not so grave. And if we had been told[16] of unintentional murder is only it might have been assumed [that the restriction[16] applied to this case only] because no loss of life is involved,[17] but not to intentional murder where a loss of life[18] is involved.[19] [Both texts were consequently] required.

What was the object[20] of the Scriptural text, And no expiation can be made for the land for the blood that is shed therein, but by the blood of him that shed it?[21] — It was required for [the following deduction] as it was taught: Whence is it deduced that, if the murderer has been discovered after the heifer's neck had been broken,[22] he is not to be acquitted?[23] From the Scriptural text, 'And no expiation can be made for the land for the blood that is shed therein etc.'[24]

Then what was the need[25] for the text, So shalt thou put away the innocent blood front the midst of thee?[26] — It is required for [the following deduction] as it was taught: Whence is it deduced that execution by the sword[27] must be at the neck? It was explicitly stated in Scripture, 'So shalt thou put away the innocent blood from the midst of thee', all who shed blood are compared to the atoning heifer:[28] As its head is cut[29] at the neck[30] so [is the execution of] those who shed blood at the neck.[31] If [so, should not the comparison be carried further]: As there[32] [its head is cut] with an axe and at the nape of the neck so here[33] too? — R. Nahman answered in the name of Rabbah b. Abbuha: Scripture said, But thou shalt love thy neighbour as thyself,[34] choose for him an easy death.[35]

What need was there[36] for the Scriptural text, None devoted, that may be devoted of men, shall be ransomed?[37] — It is required for [the following] as it was taught: Whence is it deduced that, when a person was being led to his execution,[38] and someone said, 'I vow to give his value[39] [to the Temple].' his vow is null and void?[40] [From Scripture] wherein it is said, 'None devoted, that may be devoted of man, shall be redeemed'.[41] As it might [have been presumed that the same law applied] even before his sentence had been pronounced[42] it was explicitly stated: 'Of men',[43] but not 'all men'.[44]

According to R. Hanania b. 'Akabia, however, who ruled that the [age] value of such a person[45] may be vowed[46] because its price is fixed,[47] what deduction does he[48] make from the text of 'None devoted'?[49] — He requires it for [the following deduction] as it was taught: R. Ishmael the son of R. Johanan b. Beroka said, Whereas we find that those who incur the penalty of death at the hand of heaven[50] may pay a monetary fine and thereby obtain atonement, for it is said in Scripture, If there be laid down on him a sum of money,[51] it might [have been assumed that] the same law applied also [to those who are sentenced to death] at the hands of men,[52] hence it was explicitly stated in the Scriptures. 'None . . . devoted[53] of men shall be redeemed'. Thus we know the law only concerning[54] severe death penalties[55] since [they are imposed for offences] which cannot be atoned for[56] if committed unwittingly;[57] whence, [however. is it inferred that the same law applies also to] lighter death penalties[58] seeing that [they are for offences] that may be atoned for[59] if committed unwittingly?[60] It was explicitly stated in Scripture, 'None devoted'.[61] But could not this[62] be inferred independently from Ye shall take no ransom[63] which implies: You shall take no money from him to exempt him [from death]?[64] What need was there for 'None devoted'? — Rami b. Hama replied: It was required. Since it might have been assumed

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(1) Deut. XXV, 2.

(2) To one penalty.

(3) Lit., 'and we shall do on him'.

(4) To one penalty.

(5) V. note 1.

(6) Since it has been laid down that no monetary fine may be imposed upon one who suffers the death penalty.

(7) Num. XXXV, 31. It is now assumed that כופר, (E.V. ransom) signified 'a monetary fine' that is imposed upon the murderer in addition to his major penalty.

(8) Since no monetary fine may be imposed upon one who is flogged, much less upon one who must flee to a city of refuge. Alter: Since a monetary fine is not imposed upon a murderer. Cf. תוספות ישנים and Tosaf. s.v. לא a.l.
(9) Num. XXXV, 32. Cf. supra n. 3.
(10) Sc. the fleeing to a city of refuge.
(11) Num. XXXV, 31 (death and money) and ibid. 32 (exile and money). As both deal with murder, could not the lesson of the one be deduced from the other?
(12) That no ransom may be substituted for the death penalty.
(13) Num. XXXV, 31.
(14) Lit., 'its transgression'.
(15) And a monetary fine is no adequate punishment.
(16) Cf. supra note 10, mutatis mutandis. (15) Num. XXXV, 32.
(17) The murderer's punishment being exile only.
(18) The penalty being death.
(19) And it might have been presumed that in order to save a human life ransom was allowed to be substituted.
(20) In view of Num. XXXV, 31 which forbids ransom to he substituted for capital punishment.
(21) Num. XXXV, 33.
(22) V. Deut. XXI, 1ff.
(23) Though the heifer atones for the people if the murderer is unknown.
(24) V. Sot. 47b.
(25) In view of the text of Num. XXXV. 33 and the deduction just made.
(26) Deut. XXI, 9, forming the conclusion of the section dealing with the ceremony of the 'atoning heifer' (v. note 12).
(27) Lit., 'those executed by the sword'.
(28) יכלה ערופה, lit., 'the heifer whose neck was broken'.
(29) Lit., 'there'.
(30) V. Deut. XXI, 4.
(31) Sanh. 52b.
(32) In the case of the atoning heifer.
(33) The execution of a murderer.
(34) Lev. XIX, 18.
(35) Pes. 75a, Sanh. 52b and 45a.
(36) Cf. supra note 9.
(37) The conclusion is He shall surely be put to death. Lev. XXVII, 29.
(38) Lit., 'goes out to be killed'.
(39) Lit., 'his valuation upon me'. Cf Lev. XXVII, 2ff.
(40) Lit., 'he said nothing'.
(41) Since his life is forfeited his value is nil.
(42) Lit., 'his judgment was concluded'.
(43) I. e., 'a part of a man', 'an incomplete one', viz. one sentenced to death.
(44) I. e., 'a full man', 'one whose life is still in his own hands', viz. a man still on trial before his sentence of death has been pronounced.
(45) Who 'was led to his execution'.
(46) Lit., 'he is valued', if the person who made the vow used the expression, 'I vow his value' not 'his life'.
(47) In Lev. XXVII. Though his forfeited life has no value, his ace (according to Lev. XXVII, 3-7) has a fixed legal value; and the vow, since it did not refer to his life but his value, is interpreted in the Biblical sense and is consequently valid. V. 'Ar. 7b.
(48) Who does not apply it to a condemned man.
(49) Lit , 'that . . . what does he do to it?'
(50) Offenders who ate not subject to the jurisdiction of a court of law' (v. Sanh. 15b).
(51) Ex. XXI. 30.
(52) Sc. by a sentence of a criminal court.
(53) חרם denotes dedication, excommunication and also condemnation to destruction or death.
(54) Lit., 'there is not to me but', 'I have only'.

(55) For offences committed intentionally.
(56) By a sacrifice.
(57) E.g. wounding one's father or stealing a man (V. Ex. XXI, 15f).
(58) If they were committed intentionally.
(59) By a sacrifice.
(60) E.g., idolatry or adultery.
(61) ‘Ar. 7b.
(62) That no ransom may be substituted for the death penalty even in the cases of lighter death penalties.
(63) Num. XXXV, 31.
(64) The death penalty for murder is considered of a lighter character since, the crime, if committed unwittingly, is atoned for by exile.

Talmud - Mas. Kethuboth 38a

that this applied only where murder had been committed[1] in the course of an upward movement,[2] because no atonement[3] is allowed when such an act[4] was committed unwittingly.[5] but that where murder was committed in the course of a downward movement,[2] which [is an offence that] may be atoned for[3] if committed unwittingly,[5] a monetary fine may be received from him and thereby he may be exempted [from the death penalty]. Hence we were taught[6] [that in no circumstances may the death penalty be commuted for a monetary fine].

Said Raba to him,[7] Does not this[8] follow from what a Tanna of the School of Hezekiah [taught]; for a Tanna of the School of Hezekiah taught: He that smiteth a man[9] [was placed in juxtaposition with] And he that smiteth a beast[9] [to indicate that just] as in the case of the killing of[10] a beast no distinction is made whether [the act was] unwitting or presumptuous, whether intentional or unintentional, whether it was performed in the course of a down ward movement or in the course of an upward movement, in respect of exempting him from a monetary obligation[11] but in respect of imposing a monetary obligation[12] upon him,[13] so also in the case of the killing of[14] a man no distinction is to be made whether [the act was] unwitting or presumptuous. whether intentional or unintentional, whether it was performed in the course of a downward movement or in the course of an upward movement, in respect of imposing upon him a monetary obligation[15] but[16] in respect of exempting him from any monetary obligation?[17] — But, said Rami b. Hama, [one of the texts[18] was] required [to obviate the following assumption]: It might have been presumed that this[19] applied only where a man blinded another man's eye and thereby killed him, but that where he blinded his eye and killed him[20] by another act a monetary fine must be exacted from him.[21]

Said Raba to him:[22] Is not this[23] also deduced from [the statement of] another Tanna of the School of Hezekiah; for a Tanna of the School of Hezekiah [taught:] Eye for eye[24] [implies] but not an eye[25] and a life for an eye?[26] — [This]. however, [is the explanation], said R. Ashi: [One of the texts[27] was] required [to obviate the following assumption]: It might have been presumed that since the law of a monetary fine is an anomaly[28] which the Torah has introduced, a man must pay it even though he also suffers the death penalty. Hence we were told[29] [that even a monetary fine may not be imposed in addition to a death penalty].

But according to Rabbah, who said that it is an anomaly[28] that the Torah has introduced by the enactment of the law of a monetary fine [and that therefore an offender][30] must pay his fine even though he is also to be killed,[31] what application can be made of the text ‘None devoted. . .’?[32] — He[33] holds the view of the first Tanna who [is in dispute with] R. Hanania b. ‘Akabia.[34] MISHNAH. A GIRL[35] WHO WAS BETROTHED AND THEN DIVORCED[36] IS NOT ENTITLED, SAID R. JOSE THE GALILEAN, TO RECEIVE A FINE [FROM HER VIOLATOR].[37] R. AKIBA SAID: SHE IS ENTITLED TO RECEIVE THE FINE AND, MOREOVER, THE FINE BELONGS TO HER.[38]

GEMARA. What is R. Jose the Galilean's reason?[39] — Scripture said, That is not betrothed[40] [is entitled to a fine],[41] one, therefore, who was betrothed is not entitled to a fine. And R. Akiba?[42] — [In the case of a girl] that is not betrothed [the fine is given] to her father but if she Was betrothed [the fine is given] to herself.

Now then, [the expression,] A damsel[43] [implies] but not one who is adolescent;[44] could it here also[45] [be maintained] that [the fine is given] to herself?[46] [Likewise the expression] virgin[47] [implies] but not one who is no longer a virgin; would it here also[48] [be maintained] that [the fine is given] to herself?[46] Must it not consequently be admitted[48] [that the exclusion in the last mentioned case] is complete,[49] and so here also[50] it must be complete?[51] — R. Akiba can answer you: The text of[52] 'Not betrothed' is required for [another purpose].[53] as it was taught: 'That is not. betrothed' excludes a girl[54] that was betrothed and then divorced who has no claim to a fine; so R. Jose the Galilean. R. Akiba, however, ruled: She has a claim to a fine and her fine [is given] to her father.[55] This[56] is arrived at by analogy: Since her father is entitled to have the money of her betrothal[57] and he is also entitled to have the money of her fine[58] [the two payments should be compared to one another]: As the money of her betrothal[59] belongs to her father even after she had been betrothed[60] and divorced,[61] so also the money of her fine should belong to her father even after she had been betrothed and divorced. If so[62] what was the object of the Scriptural text, 'That is not betrothed'? It is free for the purpose of a comparison with it and an inference from it by means of a gezerah shawah.'[63] Here[64] it is said, 'That is not betrothed' and elsewhere[65] it is said, That is not betrothed,[66] as here[67] [the fine is that of] fifty [silver coins][68] so is it fifty [silver coins] there[65] also; and as there[65] [the coins must be] shekels[69] so here[67] also they must be shekels.

What, however, moved[70] R. Akiba [to apply the text] of 'That is not betrothed'[71] for a gezerah shawah and that of 'Virgin' for the exclusion[72] of one who was no longer a virgin?

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(1) Intentionally. Lit., 'he killed him'.

(2) Of the hand, body or instrument.

(3) By exile.

(4) Murder in the course of an upward movement of the hand or body.

(5) V. Mak. 7b.

(6) By the text, 'None devoted' from which deduction was made supra.

(7) Rami b. Hama.

(8) The deduction from 'None devoted' that, in the case of murder, the death penalty may not be commuted for a monetary fine irrespective of whether the offence had been committed in the course of an upward. or downward movement.

(9) Lev. XXIV, 21.

(10) Lit., 'he who kills'.

(11) Which in relation to the beast was not spoken of in the text of Lev. XXIV, 21.

(12) Which was spoken of in the text ibid.

(13) I. e., the man who killed the beast must in all cases mentioned pay compensation, and under no circumstance may he evade payment.

(14) Lit., 'he too kills'.

(15) Of which, in respect of murder, Lev. XXIV, 21 does not speak.

(16) Since the text (Lev. XXIV, 21) speaks of the death penalty as the only punishment for murder.

(17) V. supra 35a, B.K. 35a, Sanh. 79b. This shows that no distinction is made in the case of murder between a downward movement or an upward movement, but in every case no money payment can be imposed in addition to the major punishment. And the same principle must apply to the non-acceptance of a ransom in substitution for the death penalty. What need was there then for the text of 'None devoted' (cf. supra p. 208, n. 16)?

(18) Either 'None devoted' or 'He that smiteth' (cf. Rashi).

(19) That no monetary penalty may be imposed upon one who is to suffer the death penalty.

(20) Simultaneously (v. Rashi).
(21) As compensation for the eye, in addition to the death penalty for murder. [For the obvious difficulty involved in this reply of Rami b. Hama, which apparently is intended to explain the purpose of the verse 'none devoted' according to R. Ishmael b. R. Johanan b. Beroka; v. p. 210, n. 9.]
(22) Rami b. Hama.
(23) That for blinding an eye and thereby killing the man no monetary fine may be imposed in addition to the death penalty.
(24) Ex. XXI, 24.
(25) I. e., compensation for the loss of an eye.
(26) [From this is derived that the Law could not mean actual retaliation, as there was always the danger of loss of life to the offender while not an eye and life for a life (Tosaf.)]. B.K. 84a. The deduction from 'He that smiteth' since it is not needed for this case, must consequently apply to that 'when Be Blinded his eye and killed him By another act'; and the question arises again: What need was there for one or for the other of the two previously cited texts (v. supra p. 209. n. 8)?
(27) V. supra p. 209. n. 8.
(28) חידוש, lit., 'an innovation' sc. different from other laws. In many instances it cannot be justified on logical grounds and can only be accepted as a divine law the reason for which is beyond human comprehension.
(29) By means of one of the two texts (v. supra p. 209. n. 8) which is not required in respect of ordinary monetary payments.
(30) If his offence warrants it.
(31) Supra 34b, 3 5b.
(32) Which, according to his view . Is not required to exclude the case just mentioned (cf. supra n. 4).
(33) Rabbah.
(34) Supra 37b where deduction is made from this text that a vow to give to the Temple the value of a person who was led to his execution, is null and void. [The whole passage is extremely difficult; v. Tosaf. The main difficulty is presented by the second answer of Ram B. Hama. (v. p. 209 , n. 11). The following may be offered in explanation: To revert to the very beginning of the discussion the Talmud, assuming that the verse 'you shall take no fine' denotes that no money payment is to be imposed in addition to a death penalty, asked, what need was there for this verse, in view of the verse 'and yet no harm follow' (v. p. 205). There upon follows the reply that this verse meant to exclude the commutation of the death penalty for money payment. Then the question arises, what need was there for R. Ishmael b. R. Johanan b. Beroka to resort, for what practically amounts to the same ruling, to the verse 'None devoted'? To this Rami b. Hama in his first reply, answers that he needed this latter verse in the case where the murder was committed in a downward course. This reply, however, is rebutted by Raba, as such a contingency is already provided for in the verse 'he that smiteth etc.' This forces Rami b Hama to fall back on the original assumption that the verse 'you shall take no ransom' comes to teach that no money payment may be imposed in addition to the death penalty; and as to the very first question, what need is there, in view of the verse 'and yet no harm shall follow' for two verses to teach the same thing? — the reply is: it is necessary to provide for a case where the blinding and the killing result from two separate blows. Raba, however, objected that this contingency too was already provided for. Hence R. Ashi's reply, that the extra verse was required to 'extend the rule to the case of a fine (v. Shittah Mekubbezeth. a.l.). This answer, however, the Talmud did not regard as satisfactory according to Rabbah, who held that a fine may be imposed in addition to the death penalty. On his view the verse 'you shall take no ransom' cannot be taken as referring to the imposition of a money payment in addition to the death penalty. Consequently, he would be forced back on the alternative explanation that it serves to teach that no death penalty may be commuted for money payment and thus the question of supra p. 208 'what need is there of "None devoted"' remains. To this the answer is, that Rabbah would agree with the first Tanna who is in dispute with R. Hanania b. 'Akabia].
(35) Na'arah, v. Glos
(36) Had she not been divorced, the offender is put to death and there is consequently no fine.
(37) V. Deut. XXII, 29. The reason is stated infra.
(38) Not to her father.
(39) For his ruling in our Mishnah.
(40) Deut. XXII, 28.
(41) The man . . . shall give . . . fifty shekels (ibid. 29).

(42) How, in view of the Scriptural text cited, can he maintain that SHE IS ENTITLED TO RECEIVE THE FINE?
(43) Deut. XXII, 28, Heb. na'arah.
(44) A bogereth (v. Glos).
(45) Since R. Akiba laid down that the exclusion of a fine that was implied by the text of 'not betrothed' is restricted to the girl's father but that the girl herself is still entitled to it.
(46) But this is absurd, since no such law is anywhere to be found.
(47) Deut. XXII, 28.
(48) Lit., 'but'.
(49) I. e., no fine is paid either to the girl or to Bet father.
(50) The exclusion of which R. Jose the Galilean has spoken.
(51) The previous objection against R. Akiba's ruling (cf. supra p. 211, n. 8) thus arises again.
(52) Lit., 'that'.
(53) And is consequently not available for the deduction made by R. Jose the Galilean.
(54) V. supra p. 211, n. 1.
(55) The contradiction between this ruling of R. Akiba and Bis ruling in out Mishnah is discussed infro.
(56) That she is entitled to the fine even after she had been betrothed.
(57) V. infra 46b.
(58) V. Deut. XXII, 29.
(59) I. e., a second betrothal while she was still a damsel (na'arah). V. supra p. 211, n. 1.
(60) To one man.
(61) From him and then betrothed to the other man.
(62) If one who was betrothed and divorced is also entitled to a fine.
(63) V. Glos.
(64) In the case of an outrage.
(65) In the case of seduction.
(66) Ex. XXII, 15.
(67) In the case of an outrage.
(68) V Deut. XXII, 29.
(69) שקלים. The text (Ex. XXII, 16) reads ישקל (lit., 'shall weigh', E.V. pay) which is of the same rt. as שקל (shekel).
(70) Lit., 'you saw'.
(71) Deut. XXII, 28.
(72) From the tight to a fine.

Talmud - Mas. Kethuboth 38b

Might [not one equally well] suggest that 'Virgin' should be applied for the gezerah shawah[1] and 'That is not betrothed' [should serve the purpose of] excluding[2] a girl[3] that was betrothed and divorced? — It stands to reason [that the text of] 'That is not betrothed' should be employed for the gezerah shawah,[4] since such a girl[3] is still[5] designated. A damsel that is a virgin.[6] On the contrary; [should not the expression of] 'Virgin' be applied for the gezerah shawah, since [a non-virgin] may still be described as one 'That is not betrothed'?[7] — It stands to reason [that R. Akiba's first view[8] is to be preferred, since] the body of the one[9] had undergone a change while that of the other[10] had not.[11]

As to R. Jose the Galilean,[12] whence does he draw that logical inference?[13] — He derives it from the following where it was taught: He shall pay money according to the dowry of virgins[14] [implies] that this [payment] shall be the same sum as the dowry of the virgins and the dowry[15] of the virgins shall be the same as this.[16]

Does not a contradiction arise between the two statements of R. Akiba?[17] — [The respective statements represent the opinions of] two Tannaim who differ as to what was the ruling of R. Akiba.

[The ruling of] R. Akiba in our Mishnah presents no difficulty since the gezerah shawah does not altogether deprive the Scriptural text of its ordinary meaning.[18] According to R. Akiba's ruling in the Baraitha, however, does not the gezerah shawah completely deprive the Scriptural text of its ordinary meaning?[19] — R. Nahman b. Isaac replied. Read in the text:[20] That is not a betrothed maiden.[21] [But] is not a betrothed maiden one [for the violation of whom] the penalty of stoning [but not fine] is incurred?[22] — It might have been assumed that, since it is an anomaly[23] that the Torah had introduced by the enactment of the law of a monetary fine, an offender[24] must, therefore, pay his fine even if he is also to be executed.[25] According to Rabbah, however, who said that it was an anomaly[23] that the Torah had introduced by the' enactment of the law of a monetary fine and that an offender[24] must pay his fine even if he is also to be executed,[26] what can be said [in reply to the objection raised]?[27] — He[28] adopts the same view as that of R. Akiba in our Mishnah.[29]

Our Rabbis taught: To whom is the monetary fine [of an outraged virgin[30] to be given]? — To her father. Others say: To herself. But why 'to herself'?[31] — R. Hisda replied: We are dealing here with the case of a virgin who was once betrothed and is now divorced, and they[32] differ on the principles underlying the difference between the view of R. Akiba in our Mishnah and his view in the Baraitha.

Abaye stated: If he[33] had intercourse with her and she died,[34] he is exempt [from the fine], for in Scripture it was stated, Then the man . . . shall give unto the damsel's father,[35] but not unto a dead woman's father.[36]

This ruling which was so obvious to Abaye formed the subject of an enquiry by Raba.[37] For Raba enquired: Is the state of adolescence legally attainable in the grave[38] or not? 'Is the state of adolescence attainable in the grave and [the fine,[35] therefore,] belongs to her son,[39] or is perhaps the age of adolescence not attainable in the grave and [the fine, therefore,] belongs to her father?

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(1) And not, as has been said, to exclude a non-virgin from her tight to the fine.

(2) From the tight to a fine.

(3) A na'arah.

(4) So that even a girl (na'arah) who was once betrothed and divorced should be entitled to the fine.

(5) Despite Bet Betrothal and divorce.

(6) Hence it is quite reasonable that her right to the fine shall not be lost. A non-virgin however, who is not described as 'a damsel that is a virgin' justly loses her tight to the fine.

(7) While a na'arah that was once betrothed and divorced and cannot so be described should not be entitled to the fine.

(8) That a na'arah that was once betrothed and divorced is entitled to the fine and that a non-virgin is not.

(9) The non-virgin.

(10) Who was betrothed and divorced.

(11) Cf. supra note 14.

(12) Who, unlike R. Akiba, does not use the expression of 'That is not betrothed' for a gezerah shawah

(13) Stated supra 38a ad fin., that a fine of fifty shekel is to be paid both in the case of seduction and that of violation.

(14) Ex. XXII, 16, the case of seduction

(15) Viz. fifty, as specified in Deut. XXII. 29

(16) Shekels, as implied from Ex. XXII, 16 (cf. supra p. 213. n. 5).

(17) In out Mishnah he laid down that the fine BELONGS TO HER while in the Baraitha (supra 38a) he maintains that it 'is shawah to her father'.

(18) Because in addition to the deduction of the gezerah shawah, the ordinary meaning of the text. viz. that if the 'damsel . . . is not betrothed' the fine is given 'unto the damsel's father' but if she was once betrothed it 'BELONGS TO HER', is also in agreement with the law.

(19) The implication of the ordinary meaning being that if the damsel vas betrothed the fine is paid not to her father but to herself (cf. supra note 4.) while according to R. Akiba it 'is given to her father' irrespective of whether she was, or was not betrothed.

(20) Deut. XXII. 28.
(21) Thus excluding one formerly betrothed but now divorced. The consonants of the original ארשה (Aram. ארסה) may be read as ארשה (as M.T.) 'was betrothed' as well as ארשה 'one who is betrothed'.
(22) Since no monetary fine may be imposed in addition to the penalty of death. What need then was there a for a Scriptural text to teach the same law?
(23) Cf. supra p. 210, n. 3.
(24) If his crime warrants it.
(25) Hence the necessity in this case for the additional Scriptural text.
(26) Supra 34a, 35b, 38a.
(27) Cf. supra p. 214, n. 5. The reply given by R. Nahman b. Isaac supra — that the offence referred to in the text is against one who was still betrothed and that the implication is that the offender, because he is suffering the penalty of death, is exempt from the monetary fine — is untenable; since, according to Rabbah, such an offender incurs both penalties.
(28) Rabbah.
(29) Which, as stated supra, does not 'deprive the Scriptural test of its ordinary meaning'.
(30) This is now assumed to mean a virgin 'that is not betrothed' who is spoken of in Deut. XXII. 28f.
(31) The Scriptural text, surely, lays down that the fine is to be given 'Unto the damsel's father'.
(32) The respective authors of the two opinions expressed in the last cited Baraitha.
(33) The offender spoken of in Deut. XXII, 28f.
(34) Before he was brought to trial.
(35) Deut. XXII, 29.
(36) V. supra 29b.
(37) V. infra p. 217, n. 10 final clause.
(38) In the case of a virgin who was violated while she was a na'arah (v. Glos) and died a na'arah but whose violator was not brought to trial until sometime later when the girl, had she been alive, would have attained the state of bagruth; (v. Glos).
(39) If she had one. As the fine would have been payable to her and not to her father if she had been alive (v. infra 41b) so it is now payable to her son who is her legal heir.

Talmud - Mas. Kethuboth 39a

But is she,[1] however, capable of [normal] conception?[2] Did not R. Bibi recite in the presence of R. Nahman:[3] Three [categories of] women may use an absorbent[4] in their marital intercourse:[5] a minor, and an expectant and nursing mother. The minor,[6] because otherwise she might become pregnant and die. An expectant mother,[6] because otherwise she might cause her foetus to degenerate into a sandal.[7] A nursing mother,[6] because otherwise she might have to wean her child [prematurely][8] and this would result in his death.[9] And what is [the age of such] a minor?[10] From the age of eleven years and one day to the age of twelve years and one day. One who is under,[11] or over this age[12] must carry on her marital intercourse in a normal manner; so R. Meir. But the Sages said: The one as well as the other carries on her marital intercourse in a normal manner, and mercy[13] will be vouchsafed from Heaven, for it is said in the Scriptures, The Lord preserveth the simple.[14] And should you reply that this is a case where she conceived when she was a na'arah and gave birth to a child when she was still a na'arah [it could be objected:] Does one give birth to a child within six months [after conception]? Did not Samuel, in fact, state: The period between the age of na'aruth[15] and that of bagruth[16] is only six months? And should you suggest [that he meant to say] that there were no less but more [than six months] surely [it could be retorted] he used the expression. only'![17] It must be this, then, that he[18] asked: Is the state of adolescence[19] attainable in the grave[20] and her father consequently forfeits[21] [his right],[22] or is perhaps the state of adolescence not attainable in the grave[23] and the father, therefore, does not forfeit[24] [his right]?

Mar son of R. Ashi raised the question[25] in the following manner: Does death effect adolescence[26] or not? — The question stands undecided.[27]

Raba enquired of Abaye: What [is the legal position if] he[28] had intercourse and became betrothed?[29] The other replied: Is it written in Scripture. 'Then the man . . . shall give unto the father of the damsel[30] who was not a betrothed woman'?[31] Following, however, your line of reasoning, [the first retorted, one can argue in respect] of what was taught: '[If the offender had] intercourse with her and she married [the fine] belongs to herself', is it written in Scripture. 'Then the man . . . shall give unto the father of the damsel[32] who was not a married woman'? — What a comparison![33] There[34] [the following analogy may well be made]: Since the state of ado lescence liberates a daughter from her father's authority[35] and marriage also liberates a daughter from her father's authority[36] [the two may be compared to one another]: As [in the case of] adolescence, if she attains adolescence after he had intercourse with her,[37] [the fine] belongs to the girl herself,[38] so also [in the case of] marriage, if she married after he had intercourse with her,[37] [the fine] belongs to the girl herself. But as to betrothal, does it completely liberate a daughter from her father's authority? Surely we learned: [In the case of] a betrothed girl[39] her father and her husband jointly may invalidate her vows.[40]

MISHNAH. THE SEDUCER PAYS THREE FORMS [OF COMPENSATION] AND THE VIOLATOR FOUR. THE SEDUCER PAYS COMPENSATION FOR INDIGNITY AND BLEMISH[41] AND THE [STATUTORY] FINE, WHITE THE VIOLATOR PAYS AN ADDITIONAL [FORM OF COMPENSATION] IN THAT HE PAYS FOR THE PAIN.

WHAT [IS THE DIFFERENCE] BETWEEN [THE PENALTIES OF] A SEDUCER AND THOSE OF A VIOLATOR? THE VIOLATOR PAYS COMPENSATION FOR THE PAIN BUT THE SEDUCER DOES NOT PAY COMPENSATION FOR THE PAIN. THE VIOLATOR PAYS[42] FORTHWITH[43] BUT THE SEDUCER [PAYS ONLY] IF HE DISMISSES[44] HER. THE VIOLATOR MUST DRINK OUT OF HIS POT[45] BUT THE SEDUCER MAY DISMISS [THE GIRL] IF HE WISHES. WHAT IS MEANT BY[46] 'MUST DRINK OUT OF HIS POT'? — EVEN IF SHE IS LAME, EVEN IF SHE IS BLIND AND EVEN IF SHE IS AFFLICTED WITH BOILS [HE MAY NOT DISMISS HER]. IF, HOWEVER, SHE WAS FOUND TO HAVE COMMITTED[47] AN IMMORAL ACT OR WAS UNFIT TO MARRY AN ISRAELITE[48] HE MAY NOT CONTINUE TO LIVE WITH HER, FOR IT IS SAID IN SCRIPTURE, AND UNTO HIM SHE SHALL BE FOR A WIFE,[49] [IMPLYING] A WIFE THAT IS FIT 'UNTO HIM

GEMARA. [For the] PAIN of what?[50] — The father of Samuel replied: For the pain [he has inflicted] when he thrust her upon the ground.

R. Zera demurred: Now then, if he had thrust her upon silk stuffs[51] would he for a similar reason[52] be exempt? And should you say that the law is so indeed,[52] was it not [it may be retorted] taught: 'R. Simeon b. Judah stated in the name of R. Simeon.[53] A violator does not pay compensation for the pain [he has inflicted] because

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(1) A girl in her minority. In the case under discussion, which refers to a na'arah, who died before she became a bogereth the birth of a child is possible only if conception took place while she was a minor — under twelve years of age.

(2) I. e., one that would result in the birth of a child.

(3) V. Yeb. 12b, 100b, Nid. 45a.

(4) מוך 'hackled wool or flax'.

(5) To prevent conception.

(6) Is permitted the use of an absorbent.

(7) סנדל, lit., 'a flat fish', i.e., a fish-shaped abortion due to superfetation.

(8) On account of her second conception which causes the deterioration of her breast milk.

(9) וימות, so MS.M. Cut. edd. omit.

(10) Who is capable of conception but is exposed thereby to danger.

(11) When no conception is possible.
(12) When pregnancy involves no fatal consequence.
(13) To protect them from danger.
(14) Ps. CXVI, 6; sc. those who are unable to protect themselves. From this it follows that a girl under the age of twelve is incapable of normal conception. How then could it be assumed by Raba that a na'arah (cf. supra p. 215, n. 14) might give birth to a child?
(15) Abstract of 'na'arah', (v. Glos).
(16) Abstract of 'bogereth'.
(17) Which implies 'no more'.
(18) Raba.
(19) V. supra p. 215, n. 12.
(20) And the fine is, therefore, payable to the deceased as if she had been alive. (V. infra 41b).
(21) פקע lit., 'bursts'.
(22) To the fine. As a fine is not inheritable before it has been collected, the father cannot inherit it from his daughter, and the offender is consequently altogether exempt from payment.
(23) And the deceased retains the status of a na'arah.
(24) V. supra note 5.
(25) Attributed (supra 38b ad fin.) to Raba.
(26) I. e., does a na'arah (v. Glos) assume the status of adolescence the moment she dies, and her father consequently forfeits his tight to the fine as if she had actually attained her adolescence in her lifetime? The former version of Raba's question differs from this in that it assumes as a certainty, contrary to Abaye's ruling, that death does not effect adolescence, the only doubt being whether adolescence is attained in due course, in the grave. According to this, the latter version, however, Abaye's very certainty is questioned, and the statement (supra p. 215) 'This ruling which was so obvious to Abaye formed the subject of enquiry by Raba' refers to this version.
(27) Teku (v. Glos.)
(28) The offender spoken of in Deut. XXII, 28f.
(29) Before the payment was made. Does the fine still belong to her father or is it now payable to herself?
(30) Deut. XXII, 29.
(31) Of course not. Scripture draws no distinction between the one and the other.
(32) Deut. XXII, 29.
(33) Lit., 'thus, now'.
(34) Marriage.
(35) It is only a minor and a na'arah (v. Glos) over whom a father exercises his authority (v. infra 46b).
(36) The vows of a married woman may be invalidated by her husband only and nor by her father.
(37) While she was still a na'arah.
(38) Since it is the 'father of the damsel' to whom the fine is to be paid (v. Deut. XXII, 29) and not the father of the girl who is adolescent.
(39) A na'arah.
(40) V. Ned. 66b and infra 46b; which shews that a father maintains partial control over his daughter as a na'arah even after her betrothal.
(41) This is explained infra.
(42) To the damsel's father.
(43) Eden if he marries her.
(44) This is explained infra.
(45) עציץ, an earthen vessel used as a receptacle for refuse or as a plant
(46) Lit., 'how'.
(47) Lit., 'there was found in her'.
(48) Lit 'to enter into (the congregation of) Israel', on account of her illegitimate or tainted birth.
(49) So lit. Deut. XXII, 29.
(50) Must the violator pay.
(51) A fall which is not painful.
(52) Lit 'thus also'.

(53) The parallel passage in B.K. 59a has ‘Simeon b. Menasya’.

Talmud - Mas. Kethuboth 39b

the woman would ultimately have suffered the same pain from her husband, but they[1] said to him: One who is forced to intercourse cannot be compared to one who acts willingly’?[2] — [The reference.] in fact,[3] said R. Nahman in the name of Rabbah b. Abbuha [is to the] pain of opening the feet, for so it is said in Scripture, And hast opened thy feet to every one that passed by.[4] But if so, the same applies to one who has been seduced?[5] R. Nahman replied in the name of Rabbah b. Abbuha: The case of one who has been seduced may be compared to that of a person who said to his friend, ‘Tear up my silk garments and you will be free from liability’.[6] ‘My’? Are they[7] not her father's?[8] — This, however, said R. Nahman in the name of Rabbah b. Abbuha, [is the explanation]: The smart women among them declare that one who is seduced experiences no pain. But do we not see that one does experience pain? — Abaye replied: Nurse[9] told me: Like hot water on a bald head.[10] Raba said: R. Hisda's daughter[11] told me, Like the prick of the blood-letting lancet.[12] R. Papa said: The daughter of Abba of Sura[11] told me, Like hard crust in the jaws.[13]

THE VIOLATOR PAYS FORTHWITH BUT THE SEDUCER [PAYS ONLY] IF HE DISMISSES HER etc. WHEN HE DISMISSES HER! Is she then his wife?[14] Abaye replied: Read, ‘If he does not marry her,[15] So it was also taught: Although it was laid down that the seducer pays [the statutory fine] only if he does not marry her, he must pay compensation for indignity and blemish forthwith. And [in the case of] the violator as well as [of] the seducer, she herself or her father may oppose.[16]

As regards one who has been seduced, this[17] may well be granted because it is written in Scripture. If her father will refuse,[18] [since from ‘refusing’][19] I would only [have known that] her father [may refuse], whence [could it be deduced that] she herself [may also refuse]?[20] It was, therefore, explicitly stated ‘will refuse’, implying either of them.[21] But as regards a violator, though one may well grant that she [may refuse him since] it is written in Scripture. ‘and onto him she shall be[22] [which implies][23] only if she is so minded, whence, however, [it may be objected] is it deduced that her father [may also object to the marriage]? — Abaye replied: [Her father was given the right to object] in order that the sinner[24] might not gain an advantage.[25] Raba replied; It[26] is deduced a minori ad majus: If a seducer who has acted against the wish of her father alone may be rejected either by herself or by her father how much more so the violator who has acted both against the wish of her father and against the wish of herself.

Raba did not give the same reply as Abaye, because, having paid the fine, [the offender can] no [longer be described as a] sinner gaining an advantage. Abaye does not give the same reply as Raba [because it may be argued:[27] In the case of] a seducer, since he himself may object [to the marriage], her father also may object to it; [but in the case of] a violator, since he himself may not object [to the marriage] her father also may have no right to object to it.

Another Baraitha taught: Although it has been laid down that the violator pays forthwith[28] she has no claim upon him[29] when he divorces her.[30] [‘When he divorces her’! Can he divorce her?[31] — Read: When she demands a divorce[32] she has no claim upon him].[29] If he died, the fine is regarded as a quittance for her kethubah.[33] R. Jose the son of R. Judah ruled: She is entitled[34] to a kethubah for one maneh.[35]

On what principle do they[36] differ? — The Rabbis hold the view that the only reason why[37] the Rabbis instituted a kethubah [for a wife was] in order that the man might not find it easy[38] to divorce her,[39] but [the violator,] surely, cannot divorce her.[40] R. Jose the son of R. Judah, however, is of the opinion that this man too might torment her until she says to him, ‘I do not want you’.[41] THE

VIOLATOR MUST DRINK OUT OF HIS POT. Said Raba of Parazika[42] to R. Ashi. Consider! [The fines of a violator and a seducer] are deduced from one another.[43]

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(1) The Rabbis who differed from his view.
(2) B.K. 59a. Nose if the PAIN referred to was that caused by the thrust the first Tanna would not have spoken of pain in the case of a husband.
(3) Lit., 'but'.
(4) Ezek XVI, 25.
(5) Why then is a seducer exempt from paying compensation6 for pain.
(6) By her consent to suffer the pain the woman has exempted the man from paying compensation.
(7) The silk garments, sc. her chastity and all it involves (v. infra 46b).
(8) How then could she grant exemption?
(9) Abaye's mother died from childbirth and he was brought up by his nurse (v. Kid. 31b).
(10) Slight but pleasurable pain.
(11) His wife.
(12) ריבדא 'puncture', כוסילתא 'lancer used for blood-letting'.
(13) V. Jast. Aliter: 'palate' (Rashi).
(14) Obviously not, since he has not legally married her. How then can the expression of dismissed be used?
(15) Since the woman, her father, or the seducer himself may object to the marriage.
(16) The marriage.
(17) That the girl as well as her father may oppose the marriage.
(18) So lit., Ex. XXII, 16. (E.v. utterly refuse).
(19) If the verb had nor been repeated.
(20) To marry the seducer.
(21) Lit., 'from any place'.
(22) Deut. XXII, 29.
(23) Since it was not stared, 'And he shall take her'.
(24) The violator.
(25) Over the seducer.
(26) Her father's right to oppose the marriage.
(27) Against his a minori inference.
(28) V. Our Mishnah.
(29) In respect of her kethubah.
(30) The fine he pays is regarded as a settlement of her kethubah, though it was Bet father who received the payment.
(31) Of course not, since Scripture stared, He may not put her away all his days (Deut. XXII, 29).
(32) Lit., 'when she goes out'.
(33) Cf. supra n, 7.
(34) Like a woman who married as a widow or divorcee.
(35) V. Glos.
(36) R. Jose the son of R. Judah and the Rabbis.
(37) Lit., 'what is the reason?'
(38) Lit., 'easy in his eyes'.
(39) V. infra 54a.
(40) Cf. supra note 8. Hence no kethubah was necessary.
(41) She too must, therefore, be protected by a kethubah.
(42) Farausag, a district near Bagdad (cf. Obermeyer p. 269).
(43) The former from the latter in respect of 'shekels' and the latter from the former in respect of the number 'fifty' (v supra 38a ad fin.).

Talmud - Mas. Kethuboth 40a

why then should not this law[1] also be inferred?[2] — Scripture stated, He shall surely pay a dowry for

her to be his wife,[3] 'her'[4] [implies][5] only if he is so minded [need he marry her].

WHAT IS MEANT BY 'MUST DRINK OUT OF HIS POT' etc.? R. Kahana said, I submitted the following argument before R. Zebid of Nehardea:[6] Why should not the positive commandment[7] supersede the negative one?[8] And he replied to me: 'Where do we say that a positive commandment supersedes a negative one? [Only in a case], for instance, like circumcision in leprosy.[9] since otherwise it would be impossible to fulfil the positive commandment, but here,if she should say that she did not want [the man for a husband],would [the question of the performance of] the positive commandment[7] ever have arisen?'[10]

MISHNAH. IF AN ORPHAN WAS BETROTHED AND THEN DIVORCED, ANY MAN WHO VIOLATES HER, SAID R. ELEAZAR, IS LIABLE [TO PAY THE STATUTORY FINE][11] BUT THE MAN WHO SEDUCES HER IS EXEMPT.[12]

GEMARA. Rabbah b. Bar Hana stated in the name of R. Johanan: R. Eleazar made his statement[13] on the lines of the view of his master R. Akiba who ruled: She[14] is entitled to receive the fine, and, moreover, the fine belongs to her. How is this[15] inferred?[16] — As it was stated, IF AN ORPHAN . . . ANY MAN WHO VIOLATES HER, SAID R. ELEAZAR, IS LIABLE [TO PAY THE STATUTORY FINE] BUT THE MAN WHO SEDUCES HER IS EXEMPT, [the difficulty arises: Is not the case of] an orphan self-evident?[17] Consequently it must be this that we were taught: A girl WHO WAS BETROTHED AND THEN DIVORCED has the same status as AN ORPHAN. As [the fine of] an orphan belongs to the orphan herself so does that of a girl who was betrothed and then divorced belong to the girl herself.

R. Zera said in the name of Rabbah b. Shila who said it in the name of R. Hamnuna the Elder who had it from R. Adda b. Ahabah who had it from Rab: The halachah is in agreement with the ruling of R. Eleazar. Rab [in fact] designated R. Eleazar[18] as the happiest[19] of the wise men.

MISHNAH. WHAT IS [THE COMPENSATION THAT IS PAID FOR] INDIGNITY?[20] ALL DEPENDS ON THE STATUS OF THE OFFENDER AND THE OFFENDED.

[AS TO] BLEMISH,[20] SHE IS REGARDED AS IF SHE WERE A BOND WOMAN TO BE SOLD IN THE MARKET PLACE [AND IT IS ESTIMATED] HOW MUCH SHE WAS WORTH[21] AND HOW MUCH SHE IS WORTH NOW.

THE STATUTORY FINE[22] IS THE SAME FOR ALL, AND ANY SUM THAT IS FIXED PENTATEUCHALLY REMAINS THE SAME FOR ALL.

GEMARA, Might it not be suggested that the All-Merciful intended the fifty sela'[23] to cover all the forms of compensation?[24] — R. Zera replied: [If that were so] it would be said, 'Should one who had intercourse with a princess pay fifty and one who had intercourse with the daughter of a commoner also pay only fifty?'[25] Said Abaye to him: If so, the same might be argued in respect of a slave:[26] 'Should [compensation for] a slave who perforates pearls be thirty [and that for] one who does

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(1) That a seducer, like a violator. must marry his victims.

(2) Lit., 'in respect of this thing also let them be inferred from one another'.

(3) Ex. XXII, 15.

(4) לו lit., 'to him.

(5) Since it is not stated, 'And she shall be his wife' (cf. supra. 220, n. 17).

(6) Nehardea was a town on the Euphrates, situated at its junction with the Royal Canal about seventy miles north of Sura, and famous for its great academy in the days o Samuel, which is as rivalled only by that of Sura.

(7) She shall be his wife (Deut. XXII, 29). Lit., 'let the positive command come and supersede etc.'.
(8) The prohibition. e.g., to marry one who was UNFIT TO MARRY AN ISRAELITE.
(9) It is forbidden to remove leprosy by means of a surgical operation; but if the leprosy covered the place or circumcision it is permitted to perform the circumcision although the leprosy is removed in the process. Thus the positive commandment of circumcision supersedes the negative one of leprosy.
(10) Obviously not, since the girl has the right of objecting to marry him. Similarly, if she happens to be one who is forbidden to marry an Israelite she is advised to object to the marriage (Rashi). [Isaiah Trani: Since the command for the performance of this positive precept is not absolute,it is not sufficiently strong to supersede a negative prohibition.]
(11) V. Deut. XXII, 29.
(12) Her acquiescence in the offence is regarded as an intimation that she has renounced her claim to the fine, and since, owing to the death of Bet father, the fine belongs to her, she is fully entitled to remit it.
(13) In our Mishnah.
(14) A girl who was betrothed and risen divorced (v. Mishnah, supra 38a).
(15) That R. Eleazar follows the ruling of R. Akiba?
(16) Lit., 'from what'
(17) Since she has no father the fine obviously belongs to her. What need then was there for our Mishnah
(18) R. Eleazar b. Shammu'a, a disciple of R. Akiba (v. Yeb. 62b).
(19) So Jast. or 'important', 'notable' (v. Levy).
(20) V. Mishnah, supra 39a.
(21) Before the offence.
(22) V. Mishnah, supra 39a.
(23) Deut. XXII, 29.
(24) Lit., 'from all things'.
(25) Though the indignity of the former is undoubtedly greater. Hence it follows that, in addition to the statutory sum which the Torah has awarded to all alike, an additional sum for indignity must be paid in accordance with the status of the offended party.
(26) Compensation for whom is fixed at thirty shekels (v. Ex. XXI, 32).

Talmud - Mas. Kethuboth 40b

needlework also be thirty?'[1] — This, however, said R. Zera, [is the proper explanation]: If two men had intercourse with her, one in a natural, and the other in an unnatural manner, it would be argued,[2] 'Should one who had intercourse with a sound woman pay fifty and one who had intercourse with a degraded woman also pay fifty?'

Said Abaye to him: If so, the same might be argued in respect of a slave: 'Should [compensation for] a healthy slave be thirty [and that for] one afflicted with boils also be thirty?'[1] — This, however, said Abaye, [is the explanation]: Scripture said,[3] Because he hath humbled her[4] [as if to say]: These[5] [must be paid] 'because he hath humbled her',' thus it may be inferred that [compensation for] indignity and blemish[6] must also be paid.[7]

Raba replied: Scripture said, Then the man that lay with her shall give unto the damsel's father fifty [shekels of] silver;[8] for the gratification of 'lying' [he gives] fifty. Thus it may be inferred that [compensation for] indignity and blemish must also be paid.[7]

But say [perhaps] that [compensation for indignity and blemish is paid] to her?[9] — Scripture said, Being in her youth in her father's house,[10] [implying that] all advantages of 'her youth' belong to her father.

[Consider,] however, that which R. Huna said in the name of Rab: 'Whence is it deduced that a daughter's handiwork belongs to her father? [From Scripture] where it is said, And if a man sell his daughter to be a maidservant,[11] as[12] the handiwork of a maidservant belongs to her master so does

the handiwork of a daughter belong to her father'. Now what need is there[13] [it may be asked, for this text when] the law[14] can be deduced from [the text of] 'Being in her youth in her father's house'? Consequently [it must be admitted, must it not, that] that text was written in connection only with the annulment of vows?[15] And should you suggest[16] that we might infer[17] from it,[18] [it could be retorted that,] monetary matters[19] cannot be inferred from ritual matters.[20] And should you suggest[16] that we might infer it[17] from the law of fine, is [it could be retorted, could it not, that,] monetary payments cannot be inferred from fines?[21] — This, however, [is the explanation]:[22] it stands to reason that [her compensation should] belong to her father; for if he wished he could have handed her over[23] to an ugly man or to one afflicted with boils.[24]

AS TO BLEMISH, SHE IS REGARDED AS IF SHE WERE A BONDWOMAN TO BE SOLD. How is she assessed? The father of Samuel replied: It is estimated how much[25] more a man would pay for a virgin slave than[25] for a non-virgin slave to attend upon him. 'A non-virgin slave to attend upon him'! What difference does this[26] make to him? — [The meaning], however, [is this: How much more a man would pay for] a virgin slave than[25] for a non-virgin slave[25] for the purpose of marrying her to his bondman. But even if 'to his bondman', what difference does this[27] make to him? — [We are dealing here] with a bondman who gives his master satisfaction.[28]

MISHNAH. WHEREVER THE RIGHT OF SALE APPLIES NO FINE IS INCURRED[29] AND WHEREVER A FINE IS INCURRED NO RIGHT OF SALE APPLIES. IN THE CASE OF A MINOR THE RIGHT OF SALE[30] APPLIES BUT NO FINE[31] IS INCURRED;[32] IN THE CASE OF A DAMSEL[33] A FINE IS INCURRED[32] BUT NO RIGHT OF SALE[30] APPLIES. TO A DAMSEL WHO IS ADOLESCENT[34] THE RIGHT OF SALE DOES NOT APPLY NOR IS A FINE INCURRED THROUGH HER.

GEMARA. Rab Judah stated in the name of Rab: This[35] is the ruling of R. Meir, but the Sages rule: A fine is incurred[32] even where the right of sale[36] applies. For it was taught: The right of sale[36] applies to a minor from the age of one day until the time when she grows two hairs,[37] but no fine is incurred through her.[38] From the time she grows two hairs until she comes of age a fine is incurred through her but no right of sales applies; so R. Meir, because R. Meir has laid down: Wherever the right of sale applies no fine is incurred, and wherever a fine is incurred no right of sale applies. The Sages, however, ruled: Through a minor from the age of three years and one day until the time she becomes adolescent a fine is incurred.[39] Only a fine [you say] but not the right of sale?[40] — Read: A fine also where the right of sale applies.[41]

R. Hisda said: What is R. Meir's reason?[42] Scripture said, And unto him[43] she shall be[44] for a wife;[45] the text thus speaks of a girl who may herself contract a marriage.[46] And the Rabbis?[47] Resh Lakish replied: Scripture said, na'ar[48] which[49] implies even a minor.[50]

R. Papa the son of R. Hanan of Be Kelohith heard this[51] and proceeded to report it before R. Shimi b. Ashi [when the latter] said to him: You apply it[52] to that law; we apply it to the following: Resh Lakish ruled; A man who has brought an evil name[53] upon a minor is exempt,[54] for it is said in Scripture, And give them unto the father of the damsel,[53] Scripture expressed the term na'arah[55] as plenum.[56]

R. Adda b. Ahabah demurred: Is the reason then[57] because the All-Merciful has written na'arah, but otherwise it would have been said that even a minor [was included], surely [it may be objected] it is written in Scripture, But if this thing be true, and the tokens of virginity be not found in the damsel, then they shall bring out the damsel to the door of her father's house, and [the men of her city] shall stone her,[58] while a minor is not, is she, subject to punishment?[59] — [The explanation,] however, [is that since] na'arah [has been written] here[60] [it may be inferred that here only is a minor excluded] but wherever Scripture uses the expression of na'ar even a minor is included.

(1) Though the labour value of the one is undoubtedly higher than that of the other,
(2) If no compensation for indignity were paid in addition to the statutory fine.
(3) In stating the reason for the statutory fine.
(4) Deut. XXII, 29.
(5) The fifty shekels mentioned.
(6) Which are payable in other cases of injury.
(7) Lit., 'that there is'.
(8) Deut. XXII, 29.
(9) Since 'the damsel's father ' was mentioned (ibid.) only in respect of the fifty shekels of fine.
(10) Num. XXX, 17.
(11) Ex. XXI, 7.
(12) Since 'daughter' and 'maidservant' are mentioned in the same verse they may be compared to one another.
(13) Lit., 'wherefore to me?'
(14) That a daughter's handiwork belongs to her father,
(15) And, therefore, no deduction from it can be made in respect of handiwork. Similarly here also, no deduction from it could be made in respect of compensation for indignity and blemish. Thus an objection arises against Raba's explanation.
(16) In justification of Raba.
(17) That compensation for indignity and blemish belongs to the father,
(18) The law of the annulment of vows.
(19) Such as compensation.
(20) As the fine belongs to her father so does her compensation.
(21) The objection against Raba thus remains.
(22) Why compensation for indignity and blemish is paid to the father.
(23) As wife.
(24) Thus subjecting her to indignity and blemish while he himself derives there from pecuniary benefit. As her indignity and blemish are in his hands he is justly entitled to compensation from the man who inflicts them upon her.
(25) Lit., 'between . . . to'.
(26) The virginity of a slave whom one requires for service.
(27) Cf. previous note mutatis mutandis. The main object of a master is the acquisition of slave children.
(28) And his master in return desires to give him the satisfaction of marrying a virgin.
(29) This is illustrated anon.
(30) By her father (cf. Ex. XXI, 7 and 'Ar. 29b).
(31) V. Deut. XXII, 29 and Ex. XXII, 16.
(32) In case of violation or seduction.
(33) Na'arah (v. Glos.).
(34) Bogereth (v. Glos.).
(35) That IN THE CASE OF A MINOR . . . NO FINE IS INCURRED.
(36) V. p. 226, n. 8.
(37) As a sign of puberty.
(38) V. p. 226, n. 10.
(39) Tosef. Keth. II. Our Mishnah (v. p. 226, n. 13) must consequently represent the ruling of R. Meir.
(40) But this is contrary to the Pentateuchal law (cf. p. 226, n. 8).
(41) From the age of three years and one day until she grows two hairs. under the first age limit, no fine, and above the second age limit until she becomes adolescent, only a fine is incurred.
(42) V. supra p. 226, n. 13).
(43) The girl through whom the fine is incurred.
(44) תהיה.
(45) So lit., Deut. XXII, 29.
(46) Lit., 'who causes herself to be'. תהיה implying action on the part of the girl herself independent of that of any other person. A minor whose marriage is dependent on the will of her father is consequently excluded from the text.
(47) How in view of the implication of the text could they maintain that through a minor a fine is incurred?

(48) נער (So MS.M. and Bah). Cur. edd. נערה.
(49) Since M.T. reads נער though the kere is נערה (damsel).
(50) [The Rabbis explain this form as an example of the epicene use of a noun; cf. GR. ** and GR. **, child].
(51) The deduction attributed to Resh Lakish.
(52) The deduction from נער,נערה.
(53) Deut. XXII, 19.
(54) From the fine of a hundred shekels of silver (v. ibid.).
(55) נערה 'damsel'.
(56) With a 'he' at the end, in order to exclude the minor. [This is the only place in the Pentateuch where the word is written plene].
(57) Why the fine of a hundred shekels is not payable in respect of a minor.
(58) Deut. XXII, 20f.
(59) A minor would consequently have been excluded even if na'ar had been written.
(60) Where a minor, as has been proved, must be excluded.

Talmud - Mas. Kethuboth 41a

MISHNAH. HE WHO DECLARES, 'I HAVE SEDUCED THE DAUGHTER OF SO-AND-SO' MUST PAY COMPENSATION FOR INDIGNITY AND BLEMISH ON HIS OWN EVIDENCE BUT NEED NOT PAY THE STATUTORY FINE.[1]

HE WHO DECLARES, 'I HAVE STOLEN' MUST MAKE RESTITUTION FOR THE PRINCIPAL ON HIS OWN EVIDENCE BUT NEED NOT REPAY DOUBLE,[2] FOURFOLD[3] OR FIVEFOLD.[3]

[HE WHO STATES,] 'MY OX HAS KILLED SO-AND-SO' OR 'THE OX OF SO-AND-SO' MUST MAKE RESTITUTION[4] ON HIS OWN EVIDENCE. [IF HE, HOWEVER, SAID.] 'MY OX HAS KILLED THE BONDMAN OF SO-AND-SO'[5] HE NEED NOT MAKE RESTITUTION ON HIS OWN EVIDENCE.[6]

THIS IS THE GENERAL RULE: WHOEVER PAYS MORE THAN THE ACTUAL COST OF THE DAMAGE HE HAS DONE[7] NEED NOT PAY IT ON HIS OWN EVIDENCE. GEMARA. Why did not he[8] include 'I have violated'?[9] — He implied that this was unnecessary: It was unnecessary [to state that if a man declared,] 'I have violated', in which case he casts no reflection on the girl's character[10] , that he must pay compensation for indignity and blemish on his own evidence,[11] but [if a man declared.] 'I HAVE SEDUCED', in which case he does cast a reflection on her character,[12] it might have been assumed that he does not pay [such compensation] on his own evidence,[13] hence he informs us [that he does].

Our Mishnah does not agree with the following Tanna. For it was taught: R. Simeon b. Judah stated in the name of R. Simeon, [Compensation for] indignity and blemish also a man does not pay on his own evidence[14] because he[15] cannot be trusted[16] to tarnish the character of another man's daughter.

Said R. Papa to Abaye: What [is the ruling if] she is satisfied?[17] — It is possible that her father might not be satisfied. And what if her father also is satisfied? — It is possible that the members of her family might not be satisfied. What if the members of her family are also satisfied? — It is impossible that there should not be one somewhere[18] who is not satisfied.

HE WHO DECLARES, 'I HAVE STOLEN' MUST MAKE RESTITUTION FOR THE PRINCIPAL etc. It was stated: [In respect of liability for] half damages.[19] R. Papa ruled: It is a civil obligation,[20] but R. Huna the son of R. Joshua ruled: It is penal.[21] 'R. Papa ruled: It is a civil

obligation', for he is of the opinion that cattle as a rule[22] cannot be presumed to be safe.[23] Justice, therefore, demands that the owner should make full restitution,[24] but the All-Merciful has shown mercy towards him[25] because his cattle have not yet become mu'ad.[26] 'R. Huna the son of R. Joshua ruled: It is penal', for he is of the opinion that cattle as a rule are presumed to be safe.[27] Justice. therefore, demands that the owner should make no restitution at all,[28] but it was Divine Law[29] that imposed a fine upon him in order that he should exercise special care over his cattle.[30]

(Mnemonic:[31] He damaged what, and killed a general rule.)

We have learned: The plaintiff and the defendant[32] are involved[33] in the payment.[34] Now according to him who holds that liability for half damages is a civil obligation[35] it is perfectly correct [to say] that the plaintiff is involved in the payment,[36] but according to him who maintains that liability for half damages is penal [it may well be asked:] If he receives that which [in strict justice] is not his due how can he be involved[37] in the payment?[38] — It[39] may apply[40] only to [a loss caused by] a decrease in the value of the carcass.[41] [But have we not] already learned elsewhere [about] the decrease in the value of the carcass? 'To compensate for the damage'[42] means that the owner[43] must dispose of the carcass?[44] — One [of the statements deals] with a tam[45] and the other with a mu'ad.[45] And [both statements are] required. For if [that relating to] a tam only had been made it might have been presumed [to apply to that alone] because the animal has not yet become mu'ad but not to a mu'ad since [in the latter case the owner] has been duly warned. And if [only the statement relating to] a mu'ad had been made it might have been assumed [to apply to that case alone] because the owner pays full compensation[46] but not [to that of] a tam.[47] [Both rulings were consequently] required.

Come and hear: What is the difference [in the case of compensation for damages] between a tam[45] and a mu'ad?[45] — In the case of a tam half damages are paid out of its own body,[48] while in the case of a mu'ad full compensation is paid out of the best of the [defendant's] estate.[49] Now if[50] it were the case [that liability for half damage[51] is penal] why was it not also stated[52] that in the case of a tam no compensation is paid merely on one's own evidence[53] whereas in the case of a mu'ad[54] compensation is paid even on one's own[55] evidence?[56] — He[57] recorded [some distinctions][58] and omitted others. What [else, however], did he omit [that should justify the assumption] that he omitted this distinction also.[59] — He omitted [also the payment of] half kofer.[60] If [the only point not mentioned] is that of[61] half kofer it is no omission,

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(1) Prescribed in Ex. XXII, 16, because one's own admission to having committed an act for which a fine is prescribed cannot tender one liable to pay it (v. B.K. 75a).

(2) V. Ex. XXII, 3.

(3) V. ibid. XXI, 37.

(4) V. ibid. XXI, 30, 35.

(5) The fine for which is (v. ibid. 32) thirty shekels.

(6) Cf. supra n. 4.

(7) When evidence against him is available.

(8) The Tanna of our Mishnah.

(9) In addition to 'I have seduced'.

(10) Since the outrage was not her fault but her misfortune.

(11) As the girl's character is not called in question the man's admission may well be regarded as a true confession to satisfy his conscience and as a desire to make amends.

(12) Cf. supra note 3 mutatis mutandis.

(13) I. e., his compensation is to be refused on the ground that his word which casts a reflection on the girl's reputation cannot be accepted without valid proof.

(14) Cf. supra n. 1.

(15) In the absence of other valid evidence.

(16) Lit., ‘not all from him’.
(17) To put up with the reflection in order to gain her compensation.
(18) Lit., ‘in a province of the sea’, ‘a country beyond the sea’.
(19) Restitution made for damage done by the ‘Born’ (v. B.K. 2b) of a tam (v. Glos).
(20) And is consequently payable on one's own evidence.
(21) Lit., ‘fine’, and is payable only where valid evidence, other than the admission of the offender, is available (cf. supra p. 228, n. 5).
(22) Unless their owner takes special care to check them.
(23) They might at any moment do some damage. Hence it is the duty of their owner to hold them under control.
(24) For any damage done by his cattle, since such damage is the result of his carelessness (v. supra n. 2).
(25) By releasing him from half of the payment.
(26) ‘Cautioned’ (v. Glos). But whatever he does pay is a civil liability (v. supra p. 229. n. 13).
(27) And no special care on the part of the owner is called for.
(28) Since it was not his fault that his cattle had done the damage.
(29) By ordering him to pay half damages.
(30) Cf. B.K. 15a.
(31) Containing key words occurring in the following four citations from which objections are raised against the ruling of R. Huna the son of R. Joshua.
(32) Lit., ‘he who suffered, and he who caused the damage’.
(33) This is now assumed to imply ‘loss’.
(34) B.K. 14b.
(35) And that the plaintiff should in strict justice be entitled to full compensation.
(36) Since he loses (v. supra n. 14) a half of which is really his due.
(37) Cf supra n. 12.
(38) This an objection arises against R. Huna the son if R. Joshua.
(39) The statement that the plaintiff also is ‘involved in the payment’.
(40) Lit., ‘is required’.
(41) Between the date on which the animal was killed and that on which the action was tried. Such loss is borne By the plaintiff, the defendant paying only half the difference between the value of the live animal and the carcass as it was on the day of the accident.
(42) B.K. 9b.
(43) Of the animal that was killed, i.e., the plaintiff.
(44) I. e., he must take it in part payment of his compensation, and if its value decreases it is obvious that he must beat the loss (cf. p. 230, n. 20). What need then was there to state the same ruling twice?
(45) V. Glos,
(46) And, therefore, no further liability is imposed upon him.
(47) Where the defendant pays only half of the damages and may, therefore, be expected to beat the loss whenever the value of the carcass had decreased.
(48) I. e., of the tort-feasant animal. The defendant's estate remains exempt from all liability.
(49) Mishnah, B.K. 26b.
(50) So according to Rashal and the parallel passages in B.K. 15a. Cur. edd. omit ‘if . . . case’.
(51) In the case of a tam (cf. supra p. 229, n. 22).
(52) As another distinction between a tam and a mu'ad.
(53) Cf. supra p. 229, n. 14.
(54) Where the liability is civil.
(55) Cf. supra p. 229, n. 13 and text.
(56) Cf. supra p. 230, n. 17.
(57) The Tanna of this Mishnah.
(58) Between a tam and a mu'ad,
(59) In an enumeration the Tanna would not have omitted just one point.
(60) ‘Ransom’ (v. Ex. XXI, 30) V. Glos. In the case of manslaughter a mu'ad pays full compensation while a tam does not pay even half (cf. B.K. 41a).

(61) Lit., on account of'.

since that [Mishnah] may represent the view of[1] R. Jose the Galilean who ruled that [in the case of] a tam half kofer is paid.[2]

Come and hear: [A MAN WHO SAID.] 'MY OX KILLED SO-AND-SO' OR 'THE OX OF SO-AND-SO MUST PAY COMPENSATION ON HIS OWN EVIDENCE. Now does not [this statement deal] with a tam?[3] — No; with a mu'ad. What, however, [would be the law] in the case of a tam? Would no liability be established by one's own evidence? Then instead of stating in the final clause, '. . . THE BONDMAN OF SO-AND-SO HE NEED NOT MAKE RESTITUTION ON HIS OWN EVIDENCE, could not a distinction have been drawn in the very same case, thus: 'This[4] applies only to a mu'ad but in respect of a tam no liability is incurred by one's own evidence'? — The entire [Mishnah prefers to] deal with a mu'ad.[5]

Come and hear: THIS IS THE GENERAL RULE: WHOSOEVER PAYS MORE THAN THE ACTUAL COST OF THE DAMAGE HE HAS DONE NEED NOT PAY ON HIS OWN EVIDENCE, from which it follows,[6] [does it not, that if the payment is] less than the cost of the damage,[7] one must pay compensation even on one's own evidence?[8] Do not infer: '[But if payment is] less than the cost of the damage [one must pay . . . on one's own evidence]',[7] but infer: '[If payment] corresponds to the actual amount of the damage one must pay compensation even on one's own evidence'. What, however, [would be the law if payment were] less than the amount of the damage?[9] Would no liability be established by one's own evidence? Then[10] why was it not stated, 'This is the general rule: Whoever does not pay an amount corresponding to the actual cost of the damage he has done pays no compensation on his own evidence', which would imply [that where compensation is] less or more[11] [it is to be paid on one's own evidence]?[12] — This is indeed a refutation.[13]

The law, however, [is that the liability for] half damage is penal. 'A refutation' [of a ruling][14] and [yet it is] the law? — Yes; for the sole basis of the refutation[15] was that[16] the statement[17] did not run, '[whoever does not pay an amount] corresponding to the actual cost of the damage he has done'; [but such a principle][18] was not regarded by him[19] as exactly accurate, since there is the liability for half damages [in the case of the damage done by] pebbles[20] Concerning which there is an halachic tradition that the liability is civil.[21] On account of this consideration he did not adopt [the form of the expression suggested].

Now that you have laid down that liability for half damage is penal, the case of a dog that devoured lambs or that of a cat that devoured big hens is one of unusual occurrence[22] and no distress is executed in Babylon.[23] If, however, they[24] were small the occurrence is a usual[25] one and distress is executed.[26] Should the plaintiff,[26] however, seize [the chattels of the defendant][27] they are not to be taken away from him.[28] Furthermore, if[29] he pleads. 'Fix for me a date [by which the defendant must come with me] to the Land of Israel,'[30] such date must be fixed for him, and if [the defendant] does not go with him he must be placed under the ban. In any case,[31] however, [the defendant] is to be placed under the ban;[32] for he is told, 'Abate your nuisance',in accordance with a dictum of R. Nathan. For it was taught:[33] R. Nathan said, Whence is it derived that a man may not breed a bad dog in his house nor place a shaking ladder in his house? [From Scripture] where it is said, That thou bring not blood upon thine house.[34]

C H A P T E R I V

MISHNAH. IF A GIRL[35] WAS SEDUCED [THE COMPENSATION FOR] HER INDIGNITY

AND BLEMISH AS WELL AS THE STATUTORY FINE BELONG TO HER FATHER[36] [TO WHOM BELONGS ALSO THE COMPENSATION FOR] PAIN IN THE CASE OF ONE WHO WAS VIOLATED. IF THE GIRL'S ACTION WAS TRIED[37] BEFORE HER FATHER DIED [ALL THE FORMS OF COMPENSATION] ARE DUE TO HER FATHER,[38] IF HER FATHER [SUBSEQUENTLY] DIED THEY ARE DUE TO HER BROTHERS.[39] IF HER FATHER, HOWEVER, DIED BEFORE HER ACTION WAS TRIED THEY[40] ARE DUE TO HER.[41] IF HER ACTION WAS TRIED BEFORE SHE BECAME ADOLESCENT[42] [ALL FORMS OF COMPENSATION] ARE DUE TO HER FATHER; IF HER FATHER [SUBSEQUENTLY] DIED[43] THEY ARE DUE TO HER BROTHERS.[39] IF, HOWEVER, SHE BECAME ADOLESCENT BEFORE HER ACTION COULD BE TRIED THEY ARE DUE TO HER.[44] R. SIMEON RULED.' IF HER FATHER DIED[45] , BEFORE SHE COULD COLLECT [THE DUES] THEY BELONG TO HER.[46]

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(1) Lit., 'this (is) according to whom?'

(2) V. B.K. 26a. The distinction mentioned (v. supra n. 1) does not, therefore, apply. The other distinction also, viz, that between full kofer for a mu'ad and half kofer for a tam, cannot be regarded as an omission, since it is included in the first clause which lays down that in the case of a tam half damages are paid and in that of a mu'ad full compensation is paid, a ruling which applies to kofer as well as to damages. Since there is no other omission, this Mishnah proves that the liability for half damage is civil as supra.

(3) And since liability is established by one's own evidence such liability cannot be penal but civil. Cf. supra 230. n, 17.

(4) That liability is established by one's own admission.

(5) To shew that even in respect of a mu'ad there is a case where no liability is incurred By one's own evidence.

(6) Lit., 'but'.

(7) Such as half damage payable in the case of a tam.

(8) V. supra note 5.

(9) V. p. 232. n. 9,

(10) Instead of laying down a rule from which a wrong inference might be drawn.

(11) Than the actual cost of the damage.

(12) Since, however, the rule was not stated in this form it follows that liability for less than the actual cost of the damage (v. supra n. 1). is not payable on one's own admission. An objection thus arises against R. Huna the son of R. Joshua (cf. supra p. 231, n. 5),

(13) The ruling, therefore, that half damages payable in the case of a tom is penal, stands refuted.

(14) Cf. supra nn. 4 and 5.

(15) Lit., 'what is the reason that it was refuted?'

(16) Lit., 'because',

(17) In out Mishnah.

(18) Which would have excluded all cases of payment for half damages.

(19) The Tanna of this Mishnah,

(20) Kicked up by an animal (v. B.K. 17a and cf, 3b).

(21) Despite the fact that the compensation is less than the actual damage.

(22) And thus coming under the category of damage by the 'horn' (v. B.K. 2b) which is also one of unusual occurrence.

(23) Since penal liabilities may be imposed in Palestine only by a judge who is specially ordained for the purpose (mumhe, v. Glos). No such judges lived in Babylon.

(24) The lambs or the hens.

(25) Falling under the category of damage by the 'tooth' (cf. B.K. 2b) which is also one of usual occurrence and compensation in which case is a civil liability.

(26) Even in Babylon.

(27) [So Rashi. R. Tam: the animal that caused the damage (Tosaf)].

(28) And he retains an amount corresponding to half the damage.

(29) Where no chattels were seized.

(30) Cf. supra p. 233. n. 15.

(31) Whether the plaintiff wishes the case to be tried in the Land of Israel or not.

(32) 'Until he abates the nuisance'. (So B.K. 15b).
(33) B.K. 15b, 46a.
(34) Deut. XXII, 8, referring to the duty of removing a cause of danger though one is not directly responsible for any fatal result.
(35) Na'Arah (v. Glos.).
(36) Cf. Mishnah supra 39a and notes.
(37) Lit.,'she stood before the law.
(38) In accordance with Deut. XXII. 20.
(39) As heirs of their father. Once the court had ordered payment, the amount in question is considered as the 'actual property' of the father which is inherited by his sons, v. infra 43a.
(40) Being still penal liabilities.
(41) V. infra 43a. Var. lec. adds, 'R. Simeon ruled: If her father died before she could collect (the dues) they belong to her'.
(42) A bogereth (v. Glos.).
(43) Wether before or after she became adolescent.
(44) Because at that age she is no longer under her father's control.
(45) Var. lec.; 'If she became adolescent'.
(46) Because the fine does not become the 'actual property' of the father by mere decision of the court, (cf. supra notes 5 and 7).

Talmud - Mas. Kethuboth 42a

HER HANDIWORK, HOWEVER, AND ANYTHING SHE FINDS EVEN IF SHE HAD NOT COLLECTED [THE PROCEEDS]. BELONG TO HER BROTHERS IF HER FATHER DIED.[1] GEMARA. What [new law] does he teach us?[2] Have we not [already] learned: The seducer pays three forms [of compensation] and the violator four. The seducer pays compensation for indignity and blemish as well as the statutory fine, and the violator pays an additional [form of compensation] in that he pays for the pain?[3] — It was necessary [to teach us[2] that the compensation is due] TO HER FATHER.[4] [But] that [the compensation is due] to her father is also obvious, since a seducer has to pay for it? For if [it were to be given] to herself [the objection could be raised], why should the seducer pay [to her when] he acted with her consent?[5] — It was necessary [to tell us[2] of the case where] HER ACTION WAS TRIED [which is a point in] dispute between R. Simeon and the Rabbis.[6] We have learned elsewhere: [If a man said to another] 'You have violated or seduced my daughter', and the other replied. 'I did not violate or seduce her'. 'I adjure you' [said the first] and the other responded. 'Amen', but afterwards admitted his guilt, he is liable.[7] R. Simeon, however, exempts him, for no fine is paid on one's own admission.[8] They,[9] however, said to him: Though no man pays a fine on his own admission he nevertheless pays compensation for indignity and blemish[10] on his own admission.[11] Abaye enquired of Rabbah:[12] What is the law according to R. Simeon[13] where a man said to another, 'You have violated or seduced my daughter, and I have brought you to law and you were ordered to pay me [a stipulated sun, of] money' and the other replied. 'I have neither violated nor seduced her, nor have you brought me to law nor have I been ordered to pay you any money', and after he had taken an oath[14] he admitted his guilt? Is [his liability], since his action had been tried,[15] civil[16] and he consequently incurs thereby a sacrifice for [having taken a false] oath, or is it possible that, though his action had been tried, his liability[17] is still regarded as penal?[18] — The other replied: It is a civil liability and he incurs thereby the obligation to bring a sacrifice for a false oath.[19] He[20] pointed out to him[21] the following objection: R. Simeon, said, As it might have been presumed that if a man said to another, 'You have violated or seduced my daughter' and the other replied 'I have neither violated nor seduced her', [or if the first said]. 'Your ox has killed my bondman' and the other replied, 'He did not kill him', or if a bondman said to his master,[22] 'You have knocked out my tooth' or 'You have blinded my eye'.[23] and he replied. 'I have not knocked it out' or 'I have not blinded it' and [the defendant] took the oath[24] but afterwards admitted his liability it might have been presumed that he is liable,[25] hence It was

explicitly stated in Scripture, And he deal falsely with his neighbour[23] a matter of deposit, or of pledge, or of robbery, or have oppressed his neighbour; or have found that which was lost, and deal falsely therein, and swear to a lie,[26] as these are distinguished by the characteristics of being civil cases so must all [other cases where similar liabilities[27] may be incurred be distinguished by the characteristics] of being civil. These, therefore, are excluded [from liability][28] since they are penal.

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(1) Unlike compensation. Which is not due to their father before the action had been tried and decided in his daughter's favour, these are his due from the moment they come into existence. As they are consequently his 'actual property' he is entitled to transmit them to his heirs.

(2) In our Mishnah.

(3) V. 39a for notes.

(4) This was not mentioned in the Mishnah cited.

(5) If then it is also obvious that the compensation is to be paid to her father what need was there for our Mishnah?

(6) The first Tanna (v. our Mishnah).

(7) To pay the actual amount due as well as an additional fifth (v. Lev. V, 24). and also to bring a guilt-offering.

(8) As the man would have been exempt from the penal liabilities if he had himself admitted the offence in the absence of any other evidence, he must also be exempt from all liabilities (v. supra note 6) in the case of a denial. For it was not a civil liability (mamon), but a penal liability (kenas) that he had denied.

(9) The Rabbis who differed from him.

(10) Which are not kenas but mamon.

(11) V. Shebu. 36b.

(12) Rabbah b. Nahmani who was his teacher.

(13) Who (according to the Mishnah of Shebu. cited) exempts one from liability in the case of a denial.

(14) In confirmation of his denial.

(15) And he was ordered to pay.

(16) [Having been ordered to pay, he can no longer secure exemption by his own admission; his liability is now considered of the mamon class (Rashi)].

(17) Since it was originally penal.

(18) [Var. lec. add: 'and he who confesses to a liability for a fine is exempt'. On this reading, Abaye's question was also whether his own admission, after the action had been tried, exempts him from payment; v. Tosaf.]

(19) [Car. lec. omit: 'and he incurs . . . false oath'. In that case Rabbah's answer is given in general terms. He merely replied, 'it is a civil liability', which for the present is taken to mean that it is so both in respect of an obligation to an oath and to liability to payment; cf. n. 6, v. Tosaf.]

(20) Abaye.

(21) Rabbah.

(22) Lit., 'his bondman said to him'.

(23) In compensation for which he demands his freedom (v. Ex. XXI, 26f). Such compensation is also deemed to be penal, because a slave was regarded as his master's chattels.

(24) In confirmation of his denial.

(25) V. supra p. 236, n. 6.

(26) Lev. V, 21f.

(27) V. supra p. 236, n. 6.

(28) The instances enumerated by R. Simeon.

Talmud - Mas. Kethuboth 42b

Does not [this ruling refer to a man] whose action had already been tried?[1] — No, [it deals] with one whose action had not yet been tried.[2] But, surely, since the first clause deals with the case of a man whose action had been tried, would not the final clause also deal with such a case? For in the first clause it was stated: 'I only knew [that liability[3] is incurred in] cases where compensation is paid for the actual value only, whence, however, is it deduced that [such liability is also incurred in] cases where the payment is double,[4] fourfold[5] or fivefold[5] and [in those of] the violator, the seducer and

the calumniator?[6] From Scripture which explicitly stated, And commit a trespass,[7] [implying that all such are] included'. Now, how is this statement to be understood? If [it is one referring to] a man whose action had not yet been tried [the objection could be raised:] Is double compensation payable in such circumstances?[8] It is obvious, therefore, that [the reference is to one] whose action had already been tried. And since the first clause deals with one whose action had been tried, the final clause also must deal, must it not, with one whose action had already been tried?[9] — The other replied: I could have answered you that the first clause deals with one whose action had already been tried, and the final clause with one whose action had not yet been tried and that the entire Baraitha represents the view of R. Simeon, but I would not give you forced interpretations, for, were I to do so, you might retort: Then either the first clause should begin with 'R. Simeon said' or the final clause should conclude with 'these are the words of R. Simeon'.[10] The fact, however, is that the entire [Baraitha] refers to one whose action had already been tried, the first clause being the view of the Rabbis and the final clause that of R. Simeon, and I must agree with you in regard to the sacrifice for [taking a false] oath,[11] for the All-Merciful has exempted him[12] [as may be deduced] from [the text] And he deal falsely.[13] When I, however, said, that 'It is a civil liability' [I was only implying that a man had the right] to transmit such a liability as an inheritance to his sons.[14] Again he[15] raised an objection against him:[16] R. SIMEON RULED, IF HER FATHER DIED BEFORE SHE COULD COLLECT [HER DUES] THEY BELONG TO HER. Now if you maintain [that such compensation] is a civil liability in respect of being transmitted as an inheritance to one's sons, why should the compensation belong to her? Should it not, in fact, belong to the brothers? — This subject, said Raba, both Rabbah and R. Joseph found difficult for twenty-two years[17] and no solution was forthcoming. It was only when[18] R. Joseph assumed the presidency of the academy[19] that he solved it: There[20] it is different [from other penal liabilities] because Scripture said, Then the man that lay with her shall give unto the damsel's father fifty [shekels of] silver[21] [which implies that] the Torah has not conferred upon the father the right of possession before the money had actually been handed to him; when Rabbah, however, said, 'It is a civil liability in respect of being transmitted as an inheritance to his sons' he was referring to other penal liabilities.[22] But then, in the case of a bondman it is written in Scripture, He shall give into their master thirty shekels of silver,[23] would it here[24] also [be maintained that] the Torah has not conferred upon the master the right of possession before the money had actually been handed to him? — The yitten[25] cannot be compared[26] with we-nathan.[27] If so,[28] [instead of deducing the exemption from sacrifice] from the Scriptural text, 'And he deal falsely',[29] should not the deduction rather be made from 'Then . . . shall give'?[30] — Raba replied: The text of 'And he deal falsely' was required in a case, for instance, where the girl's action had been tried and then she became adolescent[31] and died, in which case[32] when the father receives[33] [the fine] he inherits [it] from her.[34] If so,[35] [however, how could it be said:] 'These, therefore, are excluded [from liability] since they are in fact penal' when they are in fact[36] civil? — R. Nahman b. Isaac replied: [The meaning is], These are excluded since they were originally penal. He[37] pointed out to him[38] another objection: R. Simeon, however. exempts him, for no fine is paid on ones own admission.[39] The reason then[40] is because his action had not been tried[41] but if it had been tried,[42] in which case he does pay,[43] even on his own admission,[44] he would incur. also, would he not, [the obligation of bringing] a sacrifice for swearing [a false oath]?[45] — R. Simeon argues with the Rabbis on the lines of their own view. According to my own view [he argued] the All-Merciful has exempted the man[46] even after he had been tried [as may be deduced] from the text 'And deal falsely'.[47] According to your view, however, you must at least admit that [the man is exempt] if he has not yet been tried, since the claim advanced against him is penal

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(1) At one court where he was ordered to pay; and he now denies his liability before another court. As R. Simeon nevertheless exempts him from liability (cf. supra p. 236, n. 6), an objection arises against Rabbah.

(2) I.e., whose liability had not yet been legally established and the amount claimed is still 'kenas' and not 'mamon'.

(3) V. Supra p. 236. n. 6.

(4) V., Ex. XXII, 3.

(5) Ibid. XXI, 37.

(6) Lit., 'who brought out an evil name' (V. Deut. XXII, 19).
(7) Lev. V, 21, a general statement preceding the details enumerated in the following verses.
(8) certainly not. For, in the first instance, there is no proof that the mail had stolen the object and, secondly, even if he had stolen it he might yet make his own confession and thereby obtain exemption from the double payment.
(9) V. supra note 4.
(10) Why then did R. Simeon's name appear at the beginning of the final clause, thus indicating that only that, and not the first clause represented his view?
(11) That according to R. Simeon he is not liable to bring his sacrifice even if his action had already been tried.
(12) Even if his action had been previously tried.
(13) Lev. V, 22 (cf. supra p. 238, n. 1 and text).
(14) [And much more so in regard to liability to payment on self admission, cf. p. 237 n. 7, v. Shittah Mekubbezeth]. In this respect only is it deemed to be civil if the father died after the action had been tried, though the collection of the sum had not yet been effected.
(15) Abaye.
(16) Rabbah.
(17) I.e., during all the period Rabbah occupied the presidency of the academy at Pumbeditha (cf. Ber. 64a and Hor. 14a).
(18) After the death of Rabbah.
(19) Cf. supra n. 8.
(20) The case of a fine for seduction or violation spoken of in our Mishnah.
(21) Deut. XXII, 29 emphasis on 'give'.
(22) [Cf. supra 237, n. 4). The whole passage is extremely difficult. Commentators explain that Rabbah had it on tradition that a penal liability becomes civil in respect of inheritance after action had been taken, and the whole discussion was to elucidate exactly the implications of this vague tradition; v. Tosaf. 42a, s.v. אמר].
(23) Ex. XXI, 32.
(24) Since the verb 'to give' was used.
(25) יתן which is used in Ex. XXI, 32.
(26) Lit., alone', 'is in a separate category'.
(27) ונתן (Perfect with waw consec.). The former indicates merely future action while the latter implies the pluperfect, 'he shall have given'.
(28) That deduction may be made from Deut. XXII, 29 to the effect that the fines of a violator and a seducer have a different legal status from that of other fines in that they remain penal even after the offender had been tried.
(29) Cf. supra p. 238, n. 1 and text.
(30) Cf. supra n. 8. While the text beginning 'And deal falsely' (Lev. V. 21) excludes only those liabilities which were originally penal but are not so now after the court had issued its ruling (v. supra 42a, ad fin.), the text of Then . . . shall give (Deut. XXII, 29) deals specifically with the fines of a violator and a seducer, laying down that so long as no collection of the fines had been effected, they remain penal even after the court had issued its ruling (v. Rashi and cf. Tosaf. a.l., s.v. אי). [Although the verse 'And deal falsely' is necessary for other penal liabilities, the fine of a violator should not have been included seeing that it belongs to a class by itself as is deduced from 'Then . . . shall give', v. Shittah Mekubbezeth].
(31) A bogereth. When the fine, according to R. Simeon (cf. supra p. 235. n. 11, and text), belongs to her.
(32) Lit., 'for there'.
(33) Lit., 'inherits'.
(34) And as far as he is concerned the liability, the payment of which had been ordered by the court, is no longer penal but civil. Hence the necessity for the text of 'And he deal falsely' to indicate that the defendant is nevertheless exempt from a sacrifice (cf. Tosaf. s.v. כי) because originally the liability was penal (v. Rashi).
(35) That the Baraitha (supra 42a) deals with a case where the action had already been tried and that the father inherits the fine from his daughter.
(36) Cf. supra n. 1.
(37) Abaye.
(38) Rabbah.
(39) Mishnah cited supra 42a.

(40) Why the offender is exempt.

(41) Previously, before a court. For if it had been tried he could not subsequently make a voluntary admission that would exempt him.

(42) By the first court, and he was ordered to pay.

(43) On the ruling of the second court.

(44) The money involved being no longer penal but (on account of the ruling of the first court) civil.

(45) Though the sum involved was originally penal. A contradiction thus arises between this Mishnah and the Baraithas both of which speak in the name of R. Simeon.

(46) From the sacrifice for a false oath.

(47) Cf. supra 42a ad fin.

Talmud - Mas. Kethuboth 43a

and one who makes a voluntary admission in a penal case is exempt.[1] But the Rabbis are of the opinion that the claim[2] is [mainly] in respect of compensation for indignity and blemish.[3] On what principle do they[4] differ? — R. Papa replied: R. Simeon is of the opinion that a man would not leave that which is fixed[5] to claim[6] that which is not fixed,[7] while the Rabbis hold the view that no man would leave a claim[6] from which [the defendant] could not be exempt even if he made a voluntary admission[8] and advance a claim[9] from which he would be exempt[10] if he made a voluntary admission. R. Abina enquired of R. Shesheth: To whom belongs the handiwork of a daughter who[11] is maintained[12] by her brothers?[13] Are they[14] in loco parentis and as in that case her handiwork belongs to her father so here also it belongs to her brothers; or [is it more reasonable that] they should not be compared to their father, for in his case she is maintained out of his own estate but here she is not maintained out of their estate?[15] — He replied: You have learned about such a case: A widow is to be maintained out of the estate of [her deceased husband's] orphans, and her handiwork belongs to them.[16] [But] are [the two cases in every way] alike? It may not be any satisfaction to a man that his widow should be liberally provided for,[17] but he might well be pleased, might he not, that his daughter should?[18] Does this[19] imply that a man has preference for his daughter than for his widow? Surely. R. Abba said in the name of R. Jose:[20] The relationship between[21] a widow and her daughter, in the case of a small estate,[22] has been put on the same level as that of the relationship between[21] a daughter and her brothers. As in the case of the relationship between a daughter and her brothers, the daughter is maintained[23] while the brothers can go begging at [people's] doors, so also in the case of the relationship between a widow and her daughter, the widow is maintained and the daughter can go begging at [people's] doors;[24] [which shews, does it not, that the widow is given preference]? — As regards [provision against] degradation[25] a man gives preference to his widow;[26] as regards liberal provision[27] he gives preference to his daughter.[28] R. Joseph objected: HER HANDIWORK, HOWEVER, AND ANYTHING SHE FINDS, EVEN IF SHE HAS NOT COLLECTED [THE PROCEEDS], BELONG TO HER BROTHERS IF HER FATHER DIED. The reason[29] then is[30] that [they originated during] the lifetime of their father, but [if they originated] after his death [they would belong] to herself. Does not [this refer to a daughter] who is maintained?[31] — No; [this is a case of one] who is not maintained.[32] If she is not maintained, what need is there to state [such a case]?[33] For even according to him who ruled that a master is entitled to say to his bondman, 'Work for me and I will not maintain you'[34] the ruling applies only to a Canaanite bondman concerning whom 'With thee' was not written in Scripture, but not to a Hebrew slave concerning whom with thee[35] was written in Scripture. How much less [then would such a ruling apply] to one's daughter? — Rabbah b. 'Ulla replied: It[36] was only required in the case of a surplus.[37] Said Raba: Did not such a great man as R. Joseph know that [sometimes there may] be a surplus when he raised his objection?[38] The fact however is, Raba explained, that R. Joseph raised his objection from our very Mishnah. For it was stated, HER HANDIWORK, HOWEVER, AND ANYTHING SHE FINDS, EVEN IF SHE HAS NOT COLLECTED [THE PROCEEDS]; but from whom [it may be asked] is she to collect anything she finds? Consequently it must be conceded that it is this that was meant: HER HANDIWORK is like ANYTHING SHE FINDS; as anything she

finds belongs to her father[39] [if she finds it] during his lifetime, and to herself [if she finds it] after his death[40] so also in the case of her handiwork, [if it was done] during the lifetime of her father it belongs to her father [but if it was done] after his death it belongs to herself. Thus it may be concluded [that the ruling of R. Shesheth stands refuted].[41] So it was also stated:[42] Rab Judah ruled in the name of Rab, The handiwork of a daughter who is maintained by her brothers belongs to herself. Said R. Kahana: What is the reason? Because it is written in Scripture And ye make them an inheritance for your children after you,[43] [implying]: 'them'[44] [you may make an inheritance] 'for your children', but not your daughters for your children. This tells us that a man may not transmit his authority[45] over his daughter to his son.[46] To this Rabbah demurred: It might be suggested that the Scriptural text[47] speaks of [payments in connection with] the seduction of one's daughter, fines and mayhem![48] And so did R. Hanina learn: The Scriptural text[47] speaks of [payments in connection with] the seduction of one's daughter, fines and mayhem![49] Is not mayhem injury involving bodily pain?[50] — R. Jose b. Hanina replied:

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(1) Cf. supra p. 236, n. 7.

(2) Of the father, in the Mishnah of Shebu. 36b, cited supra 42a.

(3) Which are civil liabilities.

(4) R. Simeon and the Rabbis.

(5) The statutory fine, prescribed in Deut. XXII, 29.

(6) Compensation for indignity and blemish.

(7) Since it varies according to the status of each individual.

(8) Cf. p. 241, n. 17.

(9) Cf. supra n. 1.

(10) Since it is penal.

(11) In accordance with the terms of her mother's kethubah (v. Glos.); cf. infra 52b.

(12) Until she is married. (V. infra 52b).

(13) The sons of her deceased father.

(14) Since they maintain her.

(15) But of that which their father had left them (cf. supra nn. 7 and 8).

(16) Mishnah, infra 59b. As the handiwork of a widow who is entitled to maintenance by the terms of her kethubah belongs to the sons of the deceased, so obviously does that of a daughter who is also maintained by virtue of a claim in the kethubah of her mother. (Cf. supra n. 7).

(17) By retaining her handiwork for herself. הרווחה, lit., 'relief', 'comfort'. (Rt. רווח or רוח, lit., 'to be far', 'to be placed wide apart', hence 'to have space or room to live in comfort'.)

(18) Her handiwork may, therefore, belong to her.

(19) The suggestion just made.

(20) The parallel passage in B.B. 140b reads, 'Assi'.

(21) Lit., 'at', 'at the side of'.

(22) Which does not suffice for the maintenance of the dependents of the deceased man for a period of twelve months (v. B.B. 139b).

(23) Out of the estate of the deceased.

(24) B.B. 140b.

(25) Begging.

(26) He feels more humiliation when his widow goes begging than when his daughter does so.

(27) Cf. supra p. 242, n. 13.

(28) It is a father's wish, as a rule, that his daughter shall be enabled to save up some money for her marriage dowry.

(29) Why these BELONG TO HER BROTHERS.

(30) As in the case of COMPENSATION and FINE spoken of in the same Mishnah.

(31) Out of her father's estate by her brothers. How then could R. Shesheth rule that the handiwork of a daughter in such circumstances belongs to her brothers?

(32) Where the deceased, for instance, left no property.

(33) I.e., what need was there for the author of our Mishnah to provide a text from which we are to infer that a daughter's

handiwork and anything she finds that originated after her father's death belong to herself?

(34) Git. 12a.

(35) Deut. XV, 16, He fareth well with thee.

(36) The text of our Mishnah from which the inference mentioned is to be drawn (v. p. 243 n. 11).

(37) Sc. if the daughter's earnings exceeded the cost of her maintenance. Our Mishnah was necessary for the purpose of the inference (cf. p. 243 n. 11) that the surplus also belongs to herself.

(38) Of course he knew and, therefore, he could not possibly have raised an objection in the form attributed to him.

(39) In return for her board. A father is under no legal obligation to maintain his daughter (v. infra 49a) and it was, therefore, enacted that in recognition of his consideration for her all she finds shall belong to him (v. B.M. 12b).

(40) Her father's heirs can lay no claim to her finds because the board they provide for her is not an act of kindness on their part but a legal obligation, cf. supra p. 243, n. 7.

(41) Cf. supra p. 243. n. 9.

(42) By Amoraim.

(43) Lev. XXV, 46.

(44) Canaanite bondmen.

(45) Lit., 'privilege', 'advantage'.

(46) Hence the ruling that the handiwork of a daughter, though it belongs to her father, does not belong to her brothers.

(47) Lev. XXV, 46, from which the ruling mentioned (v. supra p. 244, n. 11) has been deduced.

(48) Assault involving bodily injury. V. infra n. 3.

(49) All of which are unusual income and cannot be regarded as an income that brothers might properly expect. Handiwork, however, which may normally be expected, the brothers may justly expect from their sister in return for the maintenance with which they provide her.

(50) Compensation for which is not due even to her father (v. B.K. 87b). What need then was there to exclude his heirs?

Talmud - Mas. Kethuboth 43b

The wound [may be supposed to] have been made in her face[1] . Rab[2] Zera stated in the name of R. Mattena who had it from Rab: (others assert [that it was] Rabbi[2] Zera who stated in the name of R. Mattena who had it from Rab): The handiwork of a daughter who is maintained by her brothers belongs to herself, for it is written in Scripture, And ye make them an inheritance for your children after you[3] [implying]: 'Them'[4] [you may make an inheritance] 'for your children', but not your daughters for your children. This tells us that a man may not transmit his authority over his daughter to his son.[5] Said Abimi b. Papi to him: Shakud[6] made this statement.[7] Who is Shakud? — Samuel. But, surely, was it not Rab who made this statement? — Read: Shakud also made this statement. Mar the son of Amemar said to R. Ashi, Thus the Nehardeans have laid down: The law is in agreement with the ruling of R. Shesheth.[8] R. Ashi [however] said: The law is in agreement with Rab.[9] And the law is to be decided in agreement with the view of Rab. MISHNAH. IF A MAN GAVE HIS DAUGHTER[10] IN BETROTHAL AND SHE WAS DIVORCED, [AND THEN] HE GAVE HER [AGAIN] IN BETROTHAL AND SHE WAS LEFT A WIDOW, HER KETHUBAH[11] BELONGS TO HIM.[12] IF HE GAVE HER IN MARRIAGE AND SHE WAS DIVORCED [AND THEN] HE GAVE HER [AGAIN] IN MARRIAGE AND SHE WAS LEFT A WIDOW, HER KETHUBAH[13] BELONGS TO HER.[14] R. JUDAH SAID: THE FIRST[15] BELONGS TO HER FATHER.[16] THEY,[17] HOWEVER, SAID TO HIM: HER FATHER, AS SOON[18] AS HE GIVES HER IN MARRIAGE, LOSES ALL CONTROL OVER HER.[19] GEMARA. The[20] reason[21] is that when HE GAVE HER IN MARRIAGE [the first time] SHE WAS DIVORCED [and that when] HE GAVE HER [AGAIN] IN MARRIAGE, SHE WAS LEFT A WIDOW [for the first time],[22] but if she had been left a widow twice[23] she would not have been fit to marry again. The Tanna[24] has thus indirectly laid down an anonymous ruling in agreement with Rabbi who holds that if [a thing has happened] twice presumption is established.[25] R. JUDAH SAID: THE FIRST BELONGS TO HER FATHER. What is R. Judah's reason? — Both Rabbah and R. Joseph explained: Since her father has acquired the right to it[26] at the time of the betrothal.[27] Raba objected: 'R. Judah ruled that the first[28] belonged to her father; R. Judah nevertheless admitted that if a father gave his daughter in betrothal while she

was still a minor and she married after she had attained adolescence he has no authority over her'.[29] But why? Might it not here also be argued,[30] 'Since her father has acquired the right to it at the time of the betrothal'?[31] The fact, however, is that if any statement [in the nature mentioned] has at all been made it must have been made in the following terms:[32] Both Rabbah and R. Joseph explained: Because it[33] was written while she was still under his authority.[34] As to the recovery [of a kethubah],[35] from which date may distraint be effected?[36] — R. Huna replied: The hundred[37] or the two hundred[38] from the date of the betrothal[39] and the additional jointure[40] from that of the marriage.[41] R. Assi, however, replied: The former as well as the latter [may be distrained upon only] from the date of the marriage.[42] But could R. Huna, however, have given such a ruling?[43] Has it not been stated: If a wife produced against her husband two kethuboth, one for two hundred, and one for three hundred zuz, she may, said R. Huna, distrain from the earlier date if she wishes to collect the two hundred zuz [but if she desires to collect the] three hundred zuz she may distrain from the later date only. Now if the ruling were as stated[44] she should be entitled, should she not, to distrain to the extent of two hundred zuz from the earlier date and to that of one hundred from the later date? — But [even] according to your conception [it might equally be objected why] should she [not] distrain for all the five hundred zuz, two hundred from the earlier date and three hundred from the later date? What then is the reason why she cannot distrain for all the five hundred? [Obviously this:] Since the man did not write in her favour,[45] 'I willingly added to your credit three hundred zuz to the two hundred' he must have meant to imply: 'If you desired to distrain from the earlier date you would recover [no more than] two hundred, and if you desired to distrain from the later date you would receive three hundred'.

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(1) As an exposed wound decreases her value, compensation is due to her father, since it is he who suffers the loss.

(2) Zera traveled from Babylon to Palestine where he was ordained by R. Johanan and had the title of Rabbi conferred upon him. His former title was only Rab. The following statement was made by him, according to the first reading, before, and according to the second reading after his ordination.

(3) Lev. XXV, 46.

(4) Canaanite bondmen.

(5) Cf. supra p. 244, n. 11.

(6) שקוד 'careful speaker' (cf. Rashi a.l.), 'industrious scholar' (Jast.) 'studious' (Aruk).

(7) The ruling and deduction reported by R. Zera.

(8) V. supra p. 242, n. 12 and text.

(9) In opposition to R. Shesheth.

(10) While she was a minor or a na'arah (v. Glos.).

(11) Of the second, as well as that of the first betrothal.

(12) Because the income of a daughter under the state of bogereth (V. Glos.) belongs to her father.

(13) Whether of the first or the second marriage.

(14) Because a father's control over his daughter, even if she is a minor, ceases as soon as he gives her in marriage; and since the collection of a kethubah, though not its writing, must always follow the marriage the amount collected is the rightful possession of the daughter.

(15) Sc. the kethubah of the first marriage.

(16) The reason is stated infra.

(17) The Rabbis who differed from his view.

(18) Cur. edd. insert in parentheses, 'if'.

(19) Hence it is she who is entitled to receive her kethubah.

(20) The interpretation of this passage is difficult and that of Rashi is here adopted (v. Tosaf. s.v. טעמא)

(21) For the illustration in the second clause of the Mishnah.

(22) So that it is possible for her to remarry a third time.

(23) Instead of having been divorced.

(24) Of our Mishnah by avoiding any unhappy illustration in which the woman cannot marry again.

(25) If a woman, for instance, was widowed twice she is deemed to be a dangerous companion to men, and is, therefore, forbidden to marry again (v. Yeb. 64b).

(26) Lit., 'them'. The plural referring generally to the two respective amounts of the statutory kethubah, two hundred so for a virgin and one hundred for a widow or divorcee (v. Rashi, s.v. הואיל).
(27) When the daughter was still under her father's authority. In the case (if the second kethubah, however, which is subsequent to the first marriage R. Judah agrees, of course, with the Rabbis.
(28) Cf supra p. 246, n. 8.
(29) Sc. the kethubah belongs to herself and not to her father.
(30) That the kethubah should being to the father (cf supra n. 5).
(31) Since such argument, however, was not used the statement attributed above to Rabbah and R. Joseph cannot be authentic.
(32) Lit., 'but if it was said, it was said thus'.
(33) The kethubah for the first marriage. On the use of the pl. נכתבין cf. supra n. 2. [Although the liability in regard to the kethubah began at betrothal, it was not reduced to writing till nuptials proper; cf. Rashi. For other interpretations v. Asheri].
(34) Unlike the Rabbis who were guided by the time of the collection (cf. supra p. 246, n. 7) R. Judah holds that the date of the writing of the kethubah is the determining factor. Hence his ruling in our Mishnah (where the writing took place while the daughter was in her minority) that the kethubah is the father's property. In the Baraitha cited, however, (where the writing took place when the daughter was already adolescent, I. e., shortly before her marriage) the kethubah rightly belongs no longer to her father but to herself.
(35) From property sold between the date of the betrothal and that on which the kethubah was written.
(36) I.e., does the right of distraint begin on the date of the betrothal (when the man becomes Rabbinically liable for the kethubah) or (as in the case just dealt with) on the date the kethubah was written? (V. Rashi. Cf., however, Tosaf s.v. ומיגבא).
(37) For a widow or a divorcee.
(38) In the case of a virgin.
(39) Since these amounts are statutory liabilities applicable to all.
(40) Which differs according to individual arrangements, v. infra.
(41) When the kethubah is written and formal acquisition (kinyan v. Glos.) is effected.
(42) Having accepted the written kethubah that bore the later date on which her marriage took place the woman is assumed to have surrendered her rights to the statutory amount, which she had acquired earlier on betrothal, in favour of her new advantages as well as any disadvantages that were conferred by the written document.
(43) Lit., 'did H. Huna say so'? That the earlier obligation (statutory kethubah) is recoverable from the earlier date (betrothal). and the latter one (additional jointure) from the later date (marriage).
(44) V. supra note 8. Lit., 'there is'.
(45) In her second kethubah.

Talmud - Mas. Kethuboth 44a

Here also[1] [it may similarly be said:] This is the reason why she cannot distrain [for the additional jointure from the earlier date]: Since he did not write in her favour, 'I have added a hundred zuz to the two hundred'[2] she [having accepted the deed] must have renounced her former lien.[3] The Master[4] has laid down that if she wishes she may distrain with the earlier kethubahs and if she prefers she may distrain with the later one.[5] Is it then to be assumed [that this ruling] differs from that of R. Nahman who laid down that if two deeds[6] were issued one after the other the latter cancels the former?[7] — [No, for] has it not been stated in connection with this statement that R. Papa said: R. Nahman nevertheless admits that if the man has added[8] one palm[9] the insertion was intended as an additional privilege?[10] And here also, Surely, [the husband] has added something.[11] [To turn to] the original text.[12] R. Nahman laid down that if two deeds were issued one after the other the latter cancels the former. Said R. Papa: R. Nahman nevertheless admits that if the man has added one palm the insertion was intended as an additional privilege.[13] It is obvious [that the reason why both deeds are valid where] the first [was a deed] of sale and the second [a deed] of gift[14] [is because the action of the owner] was intended[15] to improve the other's rights,[16] as a safeguard against[17] the law of pre-emption;[18] and much more [is this[19] obvious where] the first was for a gift and the second for a

sale, for it may then be presumed that the latter was written in that manner in order to safeguard the other against a creditor's rights.[20] [What], however, [is the reason why] the second cancels the first where both deeds[21] were for a sale or both for a gift? — Rafram replied: Because it may be presumed that [the holder of the deeds] has admitted to the other [the invalidity of the first deed].[22] R. Aha replied: Because it might be presumed that [the holder of the deeds] has surrendered his security of tenure.[23] What is the practical issue between them?[24] — The disqualification of the witnesses,[25] payment of compensation for unsufruct[26] and land tax.[27] What is [the decision] in respect of the kethubah?[28] — Come and hear what Rab Judah laid down in the name of Samuel who had it from R. Eleazar the son of R. Simeon:[29] [The statutory kethubah of] a maneh[30] or two hundred zuz[31] [may be distrained for] from [the date of] the betrothal but the additional jointure only from the date of the marriage. The Sages, however, ruled: The one as well as the other [may be distrained for only] from the date of the marriage. The law is that the one as well as the other [may be distrained only] from the date of the marriage. MISHNAH. THE DAUGHTER OF A PROSELYTE WOMAN WHO BECAME A PROSELYTE TOGETHER WITH HER MOTHER[32] AND THEN[33] Played THE HARLOT IS SUBJECT TO THE PENALTY[34] OF STRANGULATION,[35] BUT NOT TO[36] [STONING AT] THE DOOR OF HER FATHER'S HOUSE[37] NOR [DOES HER HUSBAND PAY THE] HUNDRED SELA'.[38] IF SHE WAS CONCEIVED IN UNHOLINESS[39] BUT HER BIRTH WAS IN HOLINESS[40] SHE IS SUBJECT TO THE PENALTY OF STONING BUT NOT T[36] [THAT OF BRINGING HER OUT TO 'THE DOOR OF HER FATHER'S HOUSE', NOR [DOES HER HUSBAND PAY THE] HUNDRED SELA'. IF SHE WAS BOTH CONCEIVED AND BORN IN HOLINESS[40] SHE IS REGARDED AS A DAUGHTER OF ISRAEL IN ALL RESPECTS.[41] ONE[42] WHO HAD A FATHER BUT NO DOOR OF HER FATHER'S HOUSE',[43] OR A 'DOOR OF HER FATHER'S HOUSE' BUT NO FATHER, IS NEVERTHELESS SUBJECT TO THE PENALTY[44] OF STONING,[45] [FOR THE REGULATION, 'TO] THE DOOR OF HER FATHER'S HOUSE',[46] WAS ONLY INTENDED AS [AN INDEPENDENT] PRECEPT.[47]

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(1) The last cited ruling of R. Huna.

(2) But has included the two hundred in the three hundred under a later date.

(3) Her right to distraint does, therefore, begin on the later date only. In the case of ordinary kethuboth, however, to which R. Huna's first ruling refers, a special clause to the effect that the husband has willingly added the additional jointure to the statutory kethubah forms part of the contract. The woman's original rights consequently remain unimpaired (cf. supra p. 248, n. 8).

(4) I.e., R. Huna in his second ruling. supra 43b.

(5) Lit., 'with that'.

(6) Relating to the same transaction and the same persons.

(7) And the right to distrain begins with the second date. Were R. Nahman's ruling to be applied to the case spoken of by R. Huna, would not the second kethubah have cancelled the first and the woman would have had no choice in the matter?

(8) In the text of the second deed.

(9) Or any other object or money. The addition of a palm applies to a sale, or gift of a plot of land.

(10) Lit., 'he wrote It for an addition'. The deed is not thereby impaired. and it is, therefore, within the right of the holder of the deeds to distrain either with the second deed and thus recover the original as well as the addition but from the later date only, or to distrain from the first date the original alone without the addition.

(11) Another hundred zuz.

(12) Which was cited in the discussion just concluded.

(13) V. p. 249 for notes.

(14) And related to the same transaction and the same persons as the first one.

(15) Lit., 'he (intended) when he wrote for him'.

(16) Even though no material addition was made to the original sale.

(17) Lit., on account of'.

(18) In virtue of which the next abutting neighbour can insist on exercising the right of first purchase. This right applies to a sale but not to a gift. בר מצרא lit., 'one on the border', sc the owner of an adjacent field who has the right of

Pre-emption.
(19) The reason for the validity of both deeds.
(20) Only a buyer may claim compensation from the original owner if a creditor of that owner had distrained upon the land he bought. A donee has no such right. By the writing of the second deed the owner has conferred upon the donee the additional rights of a buyer.
(21) Lit., 'both of them'.
(22) And willingly accepted the second though his rights of distraint were thereby restricted to the later date.
(23) During the period intervening between the date of the first, and that of the second deed.
(24) Rafram and R. Aha.
(25) According to Rafram the witnesses, since they put their signatures to an invalid document, must be regarded as legally unfit for further evidence. (So Rashi. Tosaf., however, s.v. **איכא**, object to this view and (a) restrict the disqualification of the witnesses in respect of such a deed only as is held by the man who had cast aspersion on their characters or (b) apply the disqualification to the signatures). According to R. Aha, who does not question the authenticity of the deed, the character of the witnesses is not in any way affected.
(26) Which the holder of the deeds enjoyed between the first and the second date. According to Rafram, the holder of the deeds must pay such compensation since the first deed is presumed to be invalid. According to R Aha no such compensation is paid since the holder of the deeds renounced only his security of tenure but not his unsufruct.
(27) The original owner must pay it according to Rafram and the holder of the deeds according to R. Aba.
(28) I.e., 'from which date may distraint be effected?' (V. p. 247, n. 11 and 248, n. 1).
(29) Var. lec. 'Eliezer b. Shamua' (Bomb. ed.).
(30) V. Glos.
(31) The respective amounts due (a) to a widow or divorcee, and (b) to a virgin.
(32) Lit., 'the female proselyte whose daughter became a proselyte with her'.
(33) Having become betrothed while she was still a na'arah (v. Glos).
(34) Lit., 'behold this'.
(35) The penalty prescribed for a faithless married woman.
(36) Lit., 'she has not either'.
(37) Prescribed in Deut. XXII, 21 for a betrothed Israelite damsel (na'arah) who played the harlot.
(38) Due from a man who wrongfully accused his wife (v. Deut. XXII, 19). [Nor is he flagellated, the fine and the flogging being prescribed in juxtaposition to one another (Ritba)].
(39) Sc. while her mother was still a heathen.
(40) After her mother's conversion.
(41) She is subject to the penalties and entitled to the privilege as prescribed in Deut. XXII. 19, 21.
(42) Any daughter of Israel (Rashi) who played the harlot while she was a betrothed na'arah.
(43) When her father, for instance, had no house.
(44) Lit., 'behold this'.
(45) v. supra note I.
(46) **פתח בית אביה** (Deut. XXII, 21). Cur. edd. read **אב**.
(47) Not as an indispensable part of the penalty.

Talmud - Mas. Kethuboth 44b

GEMARA. Whence is this[1] deduced? — Resh Lakish replied: Since Scripture said, That she die[2] it[3] included also her who WAS CONCEIVED IN UNHOLINESS BUT HER BIRTH WAS IN HOLINESS: If so, [should not her wrongful accuser][4] also be flogged[5] and [condemned] to pay the hundred sela'?[6] Scripture stated, That she die[7] [implying that she] was included in respect of death but not in respect of the fine. Might it not be suggested [that Scripture intended] to include one who was both conceived and born in holiness? — Such a person is a proper Israelite woman.[8] But can it not be said that [Scripture intended] to include one conceived and born in unholiness? — If this were so what purpose would be served[9] by the expression,[10] 'In Israel'?[11] R. Jose b. Hanina ruled: A man who brought an evil name upon an orphan girl is exempt, for it is said in Scripture, And give them unto the father of the damsel,[12] Which excludes this girl who has no 'father'. R. Jose b. Abin, or it

might be said, R. Jose b. Zebida, raised an objection: If her father utterly refuse[13] [was meant][14] to include an orphan girl in respect of the fine;[15] so R. Jose the Galilean.[16] [Why then should the orphan in this case[17] be excluded]? — He raised the objection and he himself supplied the answer: [This[18] is a case of a girl] who became an orphan after the man had intercourse with her.[19] Rabbah[20] ruled: He[21] is guilty. Whence [did he infer this]? — From that which Ammi taught: A virgin of Israel,[22] but not a proselyte virgin.[23] Now if you assume that in a case of this nature[24] in Israel[25] guilt is incurred, one can well see why it was necessary for a Scriptural text to exclude proselytes. If you, however, assume that in a case of this nature in Israel[25] [the offender] is exempt [the difficulty would arise:] Now [that we know that the offender] is exempt [even if he sinned] against Israelites[25] was it any longer necessary [to mention exemption if the offence was] against proselytes?[26] Resh Lakish ruled: A man who has brought an evil name[27] upon a minor is exempt,[28] for it is said in Scripture, And give them unto the father of the damsel,[29] Scripture expressed the term na'arah[30] as plenum.[31] To this R. Aha[32] b. Abba[33] demurred: Is the reason then[34] because in this case 'the na'arah'[35] was written [in Scripture], but otherwise it would have been said that even a minor [was included], surely, [it may be objected] it is written in Scripture, But if the things be true, and the tokens of virginity be not found in the damsel, then they shall bring out the damsel to the door of her father's house and [the men of the city] shall stone her,[36] while a minor is not, is she, subject to punishment?[37] — [The explanation,] however, [is that, since] na'arah [has been written] here[38] [it may be inferred that only where na'arah[39] is used is a minor excluded] but wherever Scripture uses the expression na'arah[40] even a minor is included.[41] Shila taught: There are three modes [of execution] in the case of a [betrothed] damsel[42] [who played the harlot]. If witnesses appeared against her in the house of her father-in-law[43] [testifying] that she had played the harlot in her father's house[44]

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(1) That IF SHE WAS CONCEIVED IN UNHOLINESS BUT HER BIRTH was IN HOLINESS SHE IS SUBJECT TO THE PENALTY OF STONING.

(2) Deut. XXII, 21, which is superfluous after Shall stone her with stones (ibid.).

(3) By the insertion of the superfluous expression.

(4) Supra p. 251, n. II.

(5) In accordance with Deut. XXII, 18, v. p. 251. n. 11.

(6) V. Deut. XXII, 19.

(7) Ibid. 21; emphasis on 'die'.

(8) And requires no special text to include her.

(9) Lit., 'what would it benefit him'.

(10) Deut. XXII, 21.

(11) None whatever. Hence it follows that the last mentioned was excluded.

(12) Ibid. 29.

(13) מאן ימאן Ex. XXII, 16, dealing with a case of seduction.

(14) Since the verb was repeated (v. note 2).

(15) One form of the verb (ימאן) referring to the father and the other (the infin. מאן) to a girl who has no father.

(16) Which shews that, though the laws in respect of seduction (Ex. XXII, 15f) are inferred from those of outrage (Deut. XXII, 28) and vice versa, and though in the latter case Scripture specifically stated that the fine is payable to the damsel's father (ibid. 29), an orphan is nevertheless entitled to the fine.

(17) In that of an evil name.

(18) The Tannaitic ruling of R. Jose the Galilean.

(19) Only such an orphan is included. All others are excluded by the Scriptural mention of father.

(20) In opposition to the view of R. Jose b. Hanina supra.

(21) The man who brought an evil name upon an orphan.

(22) Deut. XXII, 19.

(23) I.e., the penalties spoken of in the Scriptural text apply only to the former and not to the latter.

(24) Sc. that of a girl who is fatherless. A proselyte, though his or her heathen parents are alive, has the status of one who is fatherless.

(25) Sc. an Israelite girl who is fatherless.
(26) Of course not, since the latter case would be self-evident a minori ad majus. As exemption, however, was specified in this case it may be concluded that in that of an Israelite orphan guilt is incurred.
(27) V. Deut. XXII, 19.
(28) From paying the prescribed fine 'of a hundred shekels'.
(29) V. Deut. XXII, 19.
(30) Damsel, Heb. נערה.
(31) With 'he' at the end of the word. As elsewhere נערה is written נער (na'ara) defective, it is assumed that the plenum here was intended to refer to na'arah (v. Glos.) only, and not to a minor, v. supra 40b, and notes.
(32) Var. 'Adda' (cf. supra 40b).
(33) Var. 'Ahabah' (cf. l.c. and MS.M.).
(34) Why the fine mentioned is not incurred where a minor is concerned.
(35) הנערה, 'the . . . damsel'.
(36) Deut. XXII. 20f.
(37) And a minor would consequently have been excluded even if נער defective had been written.
(38) Where a minor is obviously excluded because she is not subject to penalties.
(39) נערה.
(40) נער.
(41) I.e., the exclusion mentioned was not necessary for the case spoken of in this context where it is obvious (v. supra n. 11) but for the purpose of a general deduction.
(42) Na'arah (v. Glos.).
(43) Sc. after her marriage.
(44) While she was betrothed.

Talmud - Mas. Kethuboth 45a

she is stoned at the door of her father's house,[1] as if to say,[2] 'See the plant that you have reared'. If witnesses came [to testify] against her in her father's house that she played the harlot in his house she is stoned at the entrance of the gate of the city. If having committed the offence[3] she eventually[4] attained adolescence[5] she is condemned to strangulation.[6] This[7] then implies that wherever there occurred a change in one's person, one's mode of execution also must be changed. But is not this contradicted by the following: 'If a betrothed damsel[8] played the harlot and [her husband] brought upon her an evil name[9] after she had attained adolescence,[10] he is neither to be flogged[11] nor is he to pay the hundred sela',[12] but she and the witnesses who testified falsely against her[13] are hurried[14] to the place of stoning'?[15] 'She and the witnesses who testified falsely against her'! Can this be imagined?[16] — But [this is the meaning:] 'She[17] or[18] her witnesses[19] are hurried[14] to the place of stoning'?[20] — Raba replied: You speak [of the law relating to a husband] who brought up an evil name; but this law is different [from the others],[21] because it is an anomaly.[22] For, elsewhere, if a girl[23] entered the bridal chamber,[24] though no intercourse followed, she is condemned to strangulation if she committed adultery, but [a woman upon whom a husband] brought an evil name is condemned to Stoning.[25] Said R. Huna the son of R. Joshua to Raba: Is it not possible that the All-Merciful created the anomaly only where no constitutional change had taken place,[26] but where a constitutional change had occurred[27] the All-Merciful has created no anomaly?[28] — The fact however is, explained R. Nahman b. Isaac, [that the question whether a change in status] involves, or does not involve a change [in the penalty] is [a point in dispute between] Tannaim. For we have learned: If they[29] committed a sin before they were appointed [to their respective offices] and [then] were appointed, they are regarded[30] as laymen. R. Simeon ruled: If their sin came to their knowledge before they were appointed[31] they are liable,[32] but if after they were appointed[33] they are exempt.[34]

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(1) Cf. Deut. XXII. 21.
(2) To the parents.
(3) While she was a na'arah.

(4) Before her trial.
(5) V. Glos. s.v. bogereth.
(6) The penalty prescribed for adults. Only a na'arah (v. Glos.) is subject to the penalty of stoning.
(7) R. Shila's last mentioned ruling that the penalty of a na'arah who attained majority is changed from stoning to strangulation.
(8) V. p. 254, n. 20.
(9) V. Deut. XXII, 14.
(10) Sc. when their marriage took place (Rashi).
(11) v. ibid. 18.
(12) V. ibid. 19.
(13) And were proved Zomemim (v. Glos.).
(14) מקדימין lit., 'go early', sc. they cannot escape their doom and might as well get it over as soon as possible (Rashi).
(15) בית הסקילה, a structure twice a man's height (i.e. six cubits) from which the condemned man was thrown before he was stoned (v. Sanh. 453 [Sone. ed.] p. 295).
(16) Obviously not. If she is condemned they must be true witnesses, and if they are condemned she must be innocent.
(17) If she was found guilty.
(18) The waw of it may be rendered 'or' as well as 'and'.
(19) In the case where their falsehood was established by other witnesses.
(20) Thus, at all events, it follows that despite the change in her person she is still subject to the former penalty, which is in contradiction with the ruling of Shila (v. supra note 1). (The penalty of a na'arah is stoning and that of one who is in her adolescence is only strangulation).
(21) Such as the law of Shila which deals with an accusation by witnesses and not with an evil name brought by a husband.
(22) Lit., 'novelty', and no comparison with, or inference from an anomalous law may he made.
(23) Even a na'arah (v. Glos. and cf. infra 48b).
(24) Huppah (v. Glos.).
(25) [Although had she committed the offence at the time of the defamation, i.e., after marriage, she would he strangled. This proves that in the case where the husband himself, and not witnesses, brings a charge, after marriage, of infidelity having taken place during betrothal, we do not apply the principle that the intervening change in the woman's status effects retrospectively a change in the penalty. And it is the exception which the law makes in this case which proves the general rule to the contrary elsewhere, v. Tosaf.].
(26) As in the case just cited where the change affects only her status — from betrothal to marriage.
(27) I.e., when the girl had attained her adolescence as In the case spoken of by Shila.
(28) The contradiction pointed out (v. supra p. 255, notes 1 and 14) would consequently arise again.
(29) A High Priest and a ruler whose sin-offerings differ from those of laymen. The former's offering being a bullock (Lev., IV, 3) the latter's a he-goat (ibid. 23) while that of a layman is a she-goat (ibid. 28) or a lamb (ibid. 32).
(30) In respect of their sin-offerings.
(31) So that both the commission of the sin and their awareness of it occurred while they were in the same status as laymen.
(32) To bring sin-offerings as prescribed for laymen (v. supra note 4).
(33) So that their sin was committed while they were still laymen and subject to one kind of offering, and their awareness set in when, as a ruler or High Priest, another kind of offering was due.
(34) Completely; on account of the change in their status (Hor. 10a). Consequently it may be assumed that the first Tanna who holds that a change in status does not involve a change of offering, maintains also that a change in the person involves no change of penalty, while R. Simeon who maintains that a change of status removes the obligation of an offering, will hold all the more so that a change in the person removes a man's liability to his former penalty and thus subjects him to the penalty appropriate to his new condition, and thus Shila's teaching will be in accordance with R. Simeon.

Talmud - Mas. Kethuboth 45b

[But] is it not to be maintained that R. Simeon was heard to be guided by [the time of] the awareness also,[1] did you, how ever, hear that he Was guided by [the time of] awareness alone and not also by that of the commission of sin? For were that so,[2] should they[3] not have brought an offering in accordance with their present status, the High Priest a bullock, and the ruler a he-goat?[4] — Surely R. Johanan said to the Tanna:[5] Read, 'She is to be condemned to stoning.'[6] But why?[7] Did not the All-Merciful[8] speak of a betrothed 'damsel'[9] and this one is adolescent? — R. Elai replied: Scripture said, the damsel[10] [implying] her who was a damsel[9] before.[11] Said R. Hanania to R. Elai: If so,[12] should not [the husband] also be flogged and pay the hundred sela'?[13] — 'May the All-Merciful', the other replied, 'save us from such an opinion'.[14] 'On the contrary [the first retorted], may the All-Merciful save us from such an opinion as yours'. What, however, is the reason?[15] — R. Isaac b. Abin, or, as some say, R. Isaac b. Abba, replied: In her case it was[16] her behaviour that brought about her [punishment] but in his case it was is the inclination of his lips[17] that brought about his [penalties]. 'In her case it was her behaviour that brought about her [punishment]' and when she played the harlot she was still a na'arah.[18] 'But in his case it was the inclination of his lips that brought about his [penalty]'; and when does he incur his guilt? Obviously at that time,[19] and at that time she Was already adolescent. Our Rabbis taught: A betrothed damsel[18] who played the harlot is to be stoned at 'the door of her father's house'[20] . If she had no 'door of her father's house'[21] she is stoned at the entrance of the gate of that city. But in a town which is mostly inhabited by idolaters she is stoned at[22] the door of the court. Similarly you may say: A man who worships idols[23] is to be stoned at the gate [of the city] where he worshipped, and in a city the majority of whose inhabitants are idolaters he is stoned at the door of the court .[24] Whence are these rulings derived? — From what our Rabbis have taught: [By the expression] thy gates[25] [was meant] the gate [of the city] wherein the man has worshipped. You say, 'The gate [of the city] wherein the man has worshipped', might it not mean the gate where he is tried?[26] — [Since the expression] 'thy gates' is used below[27] and also above[28] [an analogy is to be made:] As 'thy gates' mentioned above[29] refers to the gate [of the city] wherein he worshipped[30] so does 'thy bates' that was mentioned below[27] refer to the gate [of the city] wherein the man had worshipped. Another interpretation: 'Thy gates',[25] but not the gates of idolaters.[31] [As to] that [expression of] 'thy gates', has not a deduction already been drawn from it?[32] — If [the purpose of the expression were only] this deduction[33] Scripture would have used the expression 'gate'; why thy gates'? Both deductions may, therefore, be made. Thus we obtain [rulings in respect of] idolatry,[34] whence do we [derive the law in respect of] a betrothed girl?[35] R. Abbahu replied: 'Door'[36] is inferred from 'door',[37] and door[37] from 'gate',[38] and 'gate'[37] from 'thy gates'.[39] Our Rabbis taught: [A husband] who brings up an evil name [upon his wife] is flogged[40] and he must also pay a hundred sela'.[41] R. Judah ruled: As to flogging, [the husband is] flogged in all circumstances; as to the hundred sela', however, where he had intercourse with her[42] he pays them but if he did not have intercourse with her[43] he does not pay. They[44] differ on the same principles as those on which R. Eliezer b. Jacob and the Rabbis differed,[45] and it is this that [each of the former group] meant: [A husband] who brought an evil name [upon his wife] is flogged and he must also pay a hundred sela', whether he had intercourse, or did not have intercourse with her, [this being] in agreement with the Rabbis.[46] R. Judah ruled: As to flogging [the husband is] flogged in all circumstances;[47] as to the hundred sela', however, where he had intercourse with her he pays them but if he did not have intercourse with her he does not pay; in agreement with R. Eliezer b. Jacob.[48] Another reading.[49] All the statement[50] is in agreement with the opinion of R. Eliezer b. Jacob[48] and it is this that [each of the former group][51] meant: [A husband] who brought an evil name [upon his wife] is flogged and he must also pay the hundred sela' only where he had intercourse with her.[52] R. Judah ruled: As to flogging, [the husband is] flogged in all circumstances.[53] Can R. Judah, however, maintain that 'as to flogging, [the husband] is flogged in all circumstances' when it was taught: R. Judah ruled, If he had intercourse he is flogged but if he did not have intercourse he is not flogged? — R. Nahman b. Isaac replied: [By the ruling of R. Judah that the husband] 'is flogged'[54] [was meant] chastisement[55] which is a Rabbinical penalty.[56]

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(1) I.e., the nature of an offering cannot be determined by that status alone in which a man finds himself at the time he

committed his sin. If his liability to that offering is to be established he must have the same status when he becomes aware of his sin. It is on this account, and not because a change of status involves a change of penalty, that R. Simeon exempts a man from an offering where he became aware of his sin after he had assumed a new status.
(2) That a change of status involves a man in the offering or penalty of his new condition, in agreement with Shila's ruling, irrespective of that man's former status in which his sin was committed.
(3) Laymen who became aware of their sins after they had been appointed High Priests or rulers.
(4) The answer being in the affirmative the objection against Shila again arises (v. supra p. 255, notes 1 and 14).
(5) Who recited Shila's ruling in his presence.
(6) Sc. despite the change in her person her penalty remains unaltered. That is, Shila's teaching is rejected.
(7) I.e., why (v. supra note 5) is she to be stoned.
(8) In prescribing the penalty of stoning.
(9) Na'arah (v. Glos.).
(10) Deut. XXII, 21 emphasis on 'the', הנערה with the 'he' article.
(11) Sc. at the time of the offence (v. supra note 5).
(12) That the determining factor is the time of the offence.
(13) The penalties prescribed in Deut. XXII, 18f.
(14) An evasive reply. R. Elai held the reason to be so obvious that he refused to discuss it. Cf. the reason given infra.
(15) Why the girl's constitutional change alters the man's penalties and not hers.
(16) Lit., 'this'.
(17) Sc. his organs of speech. It was his talk that brought an evil name upon her.
(18) Na'arah (v. Glos.).
(19) When he spread the report.
(20) If the witnesses came after she had married (v. Rashi). Cf. supra p. 251, n. 10.
(21) Cf. supra p. 252, n. 3.
(22) Or 'outside'; cf. Tosaf. s. v. על, a.l.
(23) MS M., 'and in the case of idolatry'.
(24) Tosef. Sanh. X.
(25) Deut. XVII, 5
(26) The judges' seat was at the city gate (cf. Ruth IV, 1ff).
(27) Deut. XVII, 5, which follows, and prescribes the punishment of the crime mentioned in v. 2 that precedes R.
(28) Deut. XVII. 2.
(29) Where the commission of the crime is spoken of.
(30) Since the text specifically deals with that subject. (v. n. 12).
(31) I.e., if most of the inhabitants of a city are idolaters the execution is not carried out at the gate of the city but at the court gate.
(32) In the analogy supra. Lit., 'you have drawn it out'. How could two deductions be made from one word?
(33) Lit., 'so'.
(34) Since the texts cited deal with that subject.
(35) Na'arah (v. Glos.).
(36) Door of her father's house (Deut. XXII, 21) in the text dealing with the punishment of a betrothed girl.
(37) Door of the gate of the court פתח שער החצר (Num. IV, 26).
(38) V. supra n, 5. Since both nouns (פתח) 'door', and (שער) 'gate' are placed in juxtaposition, the analogy may be made: As 'door' (פתח) in this text is near 'gate' (שער) so is 'door' in Deut. XXII, 21 (v. supra n. 4) to be regarded as occurring near 'gate'. Hence the ruling that if the girl has no 'door of her father's house' she is to be stoned at the 'gate' of the city.
(39) Deut. XVII, 5, which deals with idolatry; the analogy being: As in the case of idolatry so also in that of a betrothed girl the execution takes place at the gate of the court wherever the city is inhabited by a majority of idolaters.
(40) As prescribed in Deut. XXII, 18.
(41) V. Deut. XXII, 19.
(42) And then brought up the evil name by alleging that he had found no tokens of virginity (v. ibid. 17).
(43) And his allegation is based on the evidence of witnesses.
(44) The Rabbis and R. Judah.

(45) Infra.

(46) Who maintain that the Scriptural section dealing with the case of a husband who 'brought up an evil name' upon his wife applies in all circumstances, whether intercourse did or did not take place.

(47) For even where the Scriptural section under discussion does not apply, the penalty of flogging must still be inflicted on account of the infringement of the prohibition against tale bearing.

(48) Who holds that the section under discussion deals only with a case where intercourse preceded the allegation.

(49) Lit., 'some there are who say'.

(50) Lit., 'all of it', sc. the views of both the Rabbis and R. Judah.

(51) V. p. 259, n. 12.

(52) In full agreement with R. Eliezer b. Jacob (cf. supra n. 1).

(53) For the reason given p. 259, n. 15; but he is exempt from the payment of the hundred sela'.

(54) 'In all circumstances'.

(55) מכת מרדות V. Glos. s.v. makkath marduth.

(56) Pentateuchally, however, no flogging is inflicted unless intercourse preceded the charge.

Talmud - Mas. Kethuboth 46a

R. Papa replied: By the expression[1] If he had intercourse he is flogged',[2] which was used there,[3] the monetary fine[4] [was meant].[5] But could one describe a monetary fine as 'flogging'? — Yes, and so indeed we have learned:[6] If a man said, 'I vow to pay half of my valuation'[7] he most pay half of his valuation. R. Jose the son of R. Judah ruled: He is flogged[8] and must pay his full valuation. [And in reply to the question,] why should he be flogged? R. Papa explained: He is 'flogged'[8] by [having to pay his] full valuation.[9] What is the reason?[10] — [The ruling[10] in the case of a vow for] a half of one's valuation[11] is a preventive measure against the possibility [of a vow for] the value of half of one's body,[12] such a half[13] being an organic part[14] on which one's life depends.[15] Our Rabbis taught: And they shall fine him[16] refers to[17] a monetary fine; And chastise him[18] refers to[17] flogging. One can readily understand why 'And they shall fine' refers to a monetary payment since it is written, 'And they shall fine him a hundred shekels of silver and give them unto the father of the damsel';[19] whence, however, is it deduced that 'And chastise him' refers to flogging? — R. Abbahu replied: We deduce 'Shall chastise'[18] from 'Shall chastise',[20] and 'Shall chastise'[20] from 'Son',[21] and 'Son'[21] from 'Son'[22] [occurring in the Scriptural text:] Then it shall be, if the wicked man deserve[23] to be beaten.[24] Whence is the warning[25] against bringing up an evil name [upon one's wife] deduced? R. Eleazar replied: From Thou shalt not go up and dawn as a talebearer.[26] R. Nathan replied: From Then thou shalt keep thee[27] from every evil thing.[28] What is the reason that R. Eleazar does not make his deduction[29] from the latter[30] text?[28] — That text[28] he requires for [the same deduction] as [that made by] R. Phinehas b. Jair: From the text,[31] Then thou shalt keep thee from every evil thing;[28] R. Phinehas b. Jair deduced[29] that a man should not indulge in [morbid] thoughts by day that might lead him to uncleanness by night.[32] What then is the reason why R. Nathan does not make his deduction from the former[33] text?[34] — That text[34] is a warning to the court that it must not be lenient with one[35] [of the litigants] and harsh to the other. If [a husband] did not tell the witnesses,[36] 'Come and give evidence for me' and they volunteered to give it, he[37] is not to be flogged nor is he to pay the hundred sela'.[38] She, however, and the witnesses who testified falsely against her are hurried[39] to the place of stoning. 'She and the witnesses who testified against her'! Can this be imagined? — But [this is the meaning]: 'She or her witnesses are hurried to the place of stoning.[39] Now the reason then[40] is because he did not even tell them [to give their evidence].[41] Had he, however, told them [he would have been subject to the prescribed penalties][42] even though he did not hire them. [This ruling thus serves the purpose] of excluding the view of R. Judah concerning whom it was taught: R. Judah ruled, [a husband] incurs no penalties[42] unless he has hired the witnesses.[43] What is R. Judah's reason? R. Abbahu replied: An analogy is drawn between the two forms of the root 'to lay'.[44] Here[45] it is written, And lay[46] wanton charges against her,[47] and elsewhere it is written, Neither shall ye lay[48] upon him interest,'[49] as there[49] [the offence is committed through the giving of] money[50] so here [also it can be committed only by the giving of]

money.[51] R. Nahman b. Isaac said, and so did R. Joseph the Zidonian recite at the school[52] of R. Simeon b. Yohai: An analogy is drawn between the two forms of the root 'to lay'.[53] R. Jeremiah raised the question: What is the ruling[54] where [the husband] hired them[55] with a piece of land?[56] What [if he hired them] for a sum less than a perutah?[57] What [if both witnesses were hired] for one perutah? R. Ashi enquired: What [is the ruling where a husband][58] brought an evil name [upon his wife] in respect of their first marriage? What [if a levir[59] brought up an evil name] in respect of his brother's marriage? — You may at all events solve one [of these questions].[60] For R. Jonah taught: I gave my daughter unto this man[61] only unto this man[62] but not to a levir.[63] What [is the ruling of] the Rabbis and what [is that of] R. Eliezer b. Jacob?[64] — It was taught: What constitutes[65] the bringing up of an evil name [against one's wife]?[66] If [a husband] came to the Beth din and said, 'I, So-and-so, found not in thy daughter the tokens of virginity'. If there are witnesses that she committed adultery while living with hint she is entitled to a kethubah for a maneh.[67] 'If there are witnesses that she committed adultery while living with him [you say,] she is entitled to a kethubah for a maneh'! But is she not in that case subject to the penalty of stoning?[68] — It is this that was meant: If there are witnesses that she committed adultery while she was living with him she is to be stoned; if, however, she committed adultery before [her marriage] she is entitled to a kethubah for a maneh.[69] If it was ascertained that the evil name had no foundation in fact[70] the husband is flogged and he must also pay a hundred sela' irrespective of whether he had intercourse [with her] or whether he did not have intercourse [with her]. R. Eliezer b. Jacob said: These penalties[71] apply only where he had intercourse [with her]. According to R. Eliezer b. Jacob[72] one can well understand why Scripture used the expressions, 'And go in unto her'[73] and 'When I came nigh to her',[74] but according to the Rabbis[75] what [could be the meaning of] 'And go in unto her'[73] and' When I came nigh unto her'?[74] 'And go in unto her'[73] with wanton charges, and 'When I come nigh to her'[74] with words. According to R. Eliezer b. Jacob[72] one can well see why Scripture used the expression, 'I found not in thy daughter the tokens of virginity',[76] but according to the Rabbis[75] what [could be the sense of the expression], 'I found not in thy daughter the tokens of virginity'? — I found not far[77] thy daughter witnesses to establish her claim to tokens of virginity.[78] It was quite correct for Scripture, according to R. Eliezer b. Jacob,[79] to state, And yet these are the tokens of my daughter's virginity;[80] but according to the Rabbis[81] what could be the sense of [the expression,] 'And yet these are the tokens of my daughter's virginity'?[80] — And yet these are the witnesses who establish[78] the tokens of my daughter's virginity. One can well understand, according to R. Eliezer b. Jacob,[79] why Scripture wrote, And they shall spread the garment,'[80] but according to the Rabbis[81] what [could be the sense of the instruction,] And they shall spread the garment? — R. Abbahu replied: They explain[82] [the charge] which he submitted against her;[83] as it was taught: 'And they shall spread the garment' teaches that the witnesses of the one party and those of the other party come, and the matter is made as clear as a new garment. R. Eliezer b. Jacob said: The words are to be taken in their literal sense: [They must produce] the actual garment.[84] R. Isaac son of R. Jacob b. Giyori sent this message in the name of R. Johanan: Although we do not find anywhere in the Torah that Scripture draws a distinction between natural and unnatural intercourse In respect of flogging or other punishments, such a distinction was made in the case of a man who brought an evil name [upon his wife];[85] for he is not held guilty unless, having had intercourse with her, [even][86] in an unnatural manner, he brought up an evil name upon her in respect of a natural intercourse. In accordance with whose view?[87] If [it be said to be] in accordance with the view of the Rabbis [the husband, it could be retorted, should have been held guilty] even if he had no intercourse with her. If [it be said to be] in agreement with the view of R. Eliezer b. Jacob

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(1) Lit.,'what'.

(2) לוקה. The rt. לקה may signify (a) flogging and also (b) the infliction of any penalty or suffering.

(3) In the last cited ruling of R. Judah.

(4) The hundred shekels.

(5) The payment of the fine only is dependent on previous intercourse, but flogging is inflicted in all circumstances (v. supra p. 259. n. 15).

(6) MS.M., 'it was taught'. Cf. 'Ar. 20a and Tosef. 'Ar. III.
(7) V. Lev. XXVII, 2ff.
(8) לוקה (cf. supra note 5).
(9) Or 'he is punished by having to pay etc'.
(10) For the payment of his full valuation when the man only vowed half of it.
(11) חצי ערכו, as prescribed in Lev. XXVII, 2ff.
(12) ערך חציו
(13) Lit., 'and the value of his half'.
(14) MS.M. דבר Cur. edd. אבר 'limb'.
(15) And where the value of such a part or limb is vowed the full valuation must be paid.
(16) Deut. XXII, 19.
(17) Lit., 'this'.
(18) Deut. XXII, 18.
(19) Deut. XXII, 19.
(20) Deut. XXI, 18.
(21) Ibid.
(22) Ibid. XXV, 2 (v. infra n. 14).
(23) Lit., 'son'.
(24) V. supra n. 13. As this text in which 'son' occurs (v. supra n. 14) speaks definitely of flogging (v. Deut. XXV, 2-3) the punishment of the 'son' spoken of in Deut. XXI, 18, concerning whom also the expression of 'chastise' (ibid.) was used, must also be that of flogging; and since 'chastise' (ibid.) implies flogging, 'chastise' in Deut. XXII, 18 must also mean flogging. V. Sanh. 71b.
(25) Sc. a negative precept for the transgression of which flogging is incurred. No flogging is in- flicted for an offence unless there is a prohibition in regard to it.
(26) Lev. XIX, 16.
(27) ונשמרת the Nif. of שמר which implies a negative precept.
(28) Deut. XXIII, 10.
(29) Lit., 'said'.
(30) Lit., 'from that'.
(31) Lit., 'from here'.
(32) The verse following (Deut. XXIII, 11) speaking of a man . . . that is not clean . . . by night. V. A.Z. 20b.
(33) Lit., 'from that'.
(34) Lev. XIX, 16.
(35) The Heb. of Lev. XIX, 16 cited, is לא תלך רכיל the third word being composed of the letters forming the phrase רך לי 'lenient or gentle to me'.
(36) Who testified that his wife committed adultery before her marriage.
(37) Though the evidence had been proved to be false.
(38) V. Deut. XXII, i8f.
(39) For notes v. supra p. 255, n. 4ff.
(40) Why the husband is exempt.
(41) Since the ruling runs, 'did not tell them', and not 'did not hire them'.
(42) V. Deut. XXII, 18f.
(43) Who testified that his wife committed adultery before her marriage.
(44) Or 'to put'. Lit., 'it comes (from) putting (and) putting'.
(45) In the case of an evil name brought up by a husband (Deut. XXII, 13ff).
(46) ושם, rt. שום 'to put', 'to lay'.
(47) Deut. XXII, 14.
(48) תשימון, rt. שופ.
(49) Ex. XXII, 24.
(50) Interest.
(51) Sc. the hiring of the witnesses.
(52) MS.M. 'Zaidana of the school'. [Probably of Bethsaida].

(53) V. supra p. 262, n. 13ff.
(54) According to R. Judah who laid down that a husband incurs no penalties unless he has hired the witnesses.
(55) The witnesses (v. supra p. 262, n. 12).
(56) Does R. Judah include land also under the term of 'money', or does he, since his ruling was deduced from the law of interest, restrict the price of the hiring to movables only, such as money and foodstuffs, which are specifically mentioned in connection with the laws of interest, (v. Ex. XXII, 24 and Deut. XXIII, 20).
(57) V. Glos.
(58) Who remarried his wife after he had once divorced her.
(59) Who was under the obligation to contract levirate marriage with his deceased brother's wife (cf. Deut. XXV, 5ff).
(60) The last.
(61) Deut. XXII, 16.
(62) I.e., the husband.
(63) Sc. the penalties prescribed in the section apply only to the former.
(64) Referred to supra 45b ad fin.
(65) Lit., 'how'.
(66) V. Deut. XXII, 13ff.
(67) V. Glos.
(68) How then could one speak of giving her a kethubah?
(69) The statutory sum due to a non-virgin.
(70) Lit., 'is not an evil name'.
(71) Lit., 'words', the penalties prescribed in the section of Deut. XXII, 13ff.
(72) Who restricts the application of the penalties (v. supra n. 3) to a husband with whom intercourse had taken place.
(73) Deut. XXII, 13.
(74) Ibid. 14.
(75) Who maintain that the penalties always apply, irrespective of intercourse.
(76) Deut. XXII, 17.
(77) The lamed in לבתך may be rendered 'in' (as E.V.) or 'for' as here expounded.
(78) By refuting the evidence of the first witnesses who accused her of the offence. כשרי, (read as kashre) is to be regarded as the Piel of כשר, 'to make fit', and referring to the action of the witnesses who establish the fitness or honesty of the accused.
(79) V. supra note 4.
(80) Deut. XXII, 17.
(81) V. supra note 7.
(82) ופרשו (E.V., 'and they shall spread') is rendered, 'And they shall explain'. פרש, 'to explain', פרש 'to spread'. Shin and Sin being interchangeable.
(83) השם לה '(the allegation) which he submitted against her'. A play on the word השמלה (E.V. the garment) v. Tosaf.
(84) As proof of the tokens.
(85) Only where his witnesses accused her of illicit intercourse in a natural manner is he, when their evidence is proved to be false, liable to pay the fine of a hundred shekels; but where his witnesses alleged unnatural intercourse he is exempt from the fine even though their evidence was proved to be false.
(86) V. Rashi.
(87) Has the last mentioned statement been made?

Talmud - Mas. Kethuboth 46b

must not the intercourse in both cases be in a natural manner?[1] — The fact, however, is, said R. Kahana in the name of R. Johanan, that the husband is not held guilty unless he had intercourse In a natural manner and he brought up an evil name upon her in respect of a natural intercourse. MISHNAH. A FATHER HAS AUTHORITY OVER HIS DAUGHTER[2] IN RESPECT OF HER BETROTHAL [WHETHER IT WAS EFFECTED] BY MONEY,[3] DEED[4] OR INTERCOURSE;[5] HE IS ENTITLED TO ANYTHING SHE FINDS AND TO HER HANDIWORK; [HE HAS THE

RIGHT] OF ANNULLING HER VOWS[6] AND HE RECEIVES HER BILL OF DIVORCE;[7] BUT HE HAS NO USUFRUCT[8] DURING HER LIFETIME.[9] WHEN SHE MARRIES, THE HUSBAND SURPASSES HIM [IN HIS RIGHTS] IN THAT HE HAS[10] USUFRUCT DURING HER LIFETIME,[11] BUT HE IS ALSO UNDER THE OBLIGATION OF MAINTAINING AND RANSOMING HER[12] AND TO PROVIDE FOR HER BURIAL. R. JUDAH RULED: EVEN THE POOREST MAN IN ISRAEL MUST PROVIDE[13] NO LESS THAN TWO FLUTES AND ONE LAMENTING WOMAN. GEMARA. 'BY MONEY'. Whence is this[14] deduced? — Rab Judah replied: Scripture said, Then shall she go ant for nothing without money,[15] [which implies that] this master[16] receives no money[17] but that another master does receive money;[18] and who is he? Her father.[19] But might it not be suggested that it[20] belongs to her?[21] — Since[22] it is her father who contracts[23] her betrothal, as it is written in Scripture, I gave my daughter unto this man,[24] would she take the money![25] But can it not be suggested that this[26] applies only to a minor[27] who has no legal right[28] [to act on her own behalf], but that a na'arah[29] who has such rights[30] may herself contract her betrothal, and she herself receives the money? — Scripture stated, Being in her youth in her father's house,[31] [implying that] all the advantages of her youth belong to her father. [Consider], however, that which R. Huna said in the name of Rab: 'Whence is it deduced that a daughte handiwork belongs to her father? [From Scripture] where it is said, And if a van sell his daughter to be a maidservant,[32] as[33] the handiwork of a maidservant belongs to her master so does the handiwork of a daughter belong to her father'.[34] Now what need was there,[35] [it may be asked, for this text when] deduction[36] could have been made from [the text of] 'Being in her youth in her father's house'?[31] Consequently [it must be admitted, must it not, that] that text was written in connection only with the annulment of vows?[37] And should you suggest that we might infer this[38] from it,[39] [it could be retorted that] monetary matters cannot be inferred from ritual matters.[39] And should you suggest that we might infer it is from [the law of] fine,[40] [it could be retorted, could it not, that] monetary payments cannot be inferred from fines? And should you suggest that it is might be inferred from [the law of compensation for] indignity and blemish,[41] [it could be retorted] that indignity and blemish are different,[42] since [the rights] of her father [are also, are they not], involved[43] in it?[44] — [This], however, [is the explanation]:[45] It is logical to conclude that when the All-Merciful excluded[46] [another] going out,[47] the exclusion Was meant to be [understood in a manner] similar to the original.[48] But[49] one 'going out', surely, is not like that of the other: For[50] in the case of the master [the maidservant] goes entirely out of his control while in the 'going out' from the control of her father [the daughter's] transfer to the bridal chamber is still lacking?[51] — In respect of the annulment of vows, at any rate, she passes out of his control; for we have learned: In the case of a betrothed damsel[52] it is her father and her husband who jointly annul her vows.[53] DEED OR INTERCOURSE. Whence do we [deduce this]?[54] — Scripture said, And becometh another man's wife is [from which it may be inferred that] the various forms of betrothal[55] are to be compared to one another.[56] HE IS ENTITLED TO ANYTHING SHE FINDS,

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(1) Since he takes the verses literally.

(2) While she is under the age of twelve and a half years and one day.

(3) Sc. the money belongs to him.

(4) The receipt of the deed by him effects his daughter's betrothal.

(5) It is within his rights to allow such an act to have the validity of a kinyan (v. Glos.).

(6) V. Num. XXX. 4ff.

(7) If she was divorced during her betrothal before attaining her adolescence (v. Glos. s.v. bogereth).

(8) Of property that came into her possession from her mother's side.

(9) Such property passes into the possession of a father as heir to his daughter only after her death.

(10) In addition to the privileges enjoyed by a father.

(11) Cf. infra 65b, Kid. 3b.

(12) If she was taken captive.

(13) For his wife's funeral.

(14) That the money of the betrothal belongs to her father.

(15) Ex. XXI, 11, referring to a Hebrew maidservant.
(16) To whom a father sold his daughter (v. ibid. 7).
(17) When she leaves him on becoming a na'arah (v. Glos. and cf. Kid. 4a).
(18) When, on marriage, she passes out of his control.
(19) Since beside the master spoken of in the Scriptural text (cf. Ex. XXI, 8) the daughter of an Israelite has no other master but her father.
(20) The money of her betrothal.
(21) The implication of the text cited merely indicating that, unlike the case of the liberation of an Israelite maidservant, her passing out of her father's control at betrothal is attended by money, without necessarily meaning that this money goes to her father.
(22) Lit 'now'.
(23) Lit., 'accepts'.
(24) Deut. XXII, 16.
(25) Of course not. Hence it must be concluded that it, as stated in our Mishnah, belongs to her father.
(26) A father's right to the betrothal money of his daughter, as implied in the Scriptural text cited.
(27) Though the Scriptural text referred to deals with an evil name brought upon a na'arah (v. Glos.) it might nevertheless be contended that the betrothal of that na'arah took place while she was still a minor.
(28) Lit., 'a hand'.
(29) V. Glos.
(30) Lit., 'a hand'.
(31) Num. XXX, 17.
(32) Ex. XXI, 7.
(33) Since 'daughter' and 'maidservant' appear in juxtaposition an analogy between them may be drawn.
(34) Supra 40b, infra 47a, Kid. 8a.
(35) Lit., 'wherefore to me'.
(36) That a father is entitled to his daughter's handiwork.
(37) And, therefore, no deduction from it can be made in respect of handiwork. Similarly, here also, no deduction from it could be made in respect of a father's right to his daughter's money of betrothal. The previous question, therefore, arises again.
(38) That a father is entitled to his daughter's money of betrothal.
(39) From the law of the annulment of vows.
(40) As the fine prescribed in Deut. XXII, 19, belongs to her father so does the money.
(41) Which belongs to her father (v. supra 40b).
(42) From the case under consideration.
(43) As a father has the right to dispose of the indignity and blemish of his daughter while she is still a na'arah, by allowing any sort of person to marry her, he is also entitled to compensation for any indignity or blemish anyone inflicted upon her without his consent.
(44) The question, whence is it deduced that the money of betrothal belongs to her father, thus arises again.
(45) Why deduction may be made from Ex. XXI, 11 (cf. supra p. 266 notes 13-20, and text).
(46) Cf. supra p. 266 notes 15-18 and text.
(47) V. supra p. 266, n. 17.
(48) As in the original it is the master, and not the maidservant, who, in the absence of the specific text to the contrary, would have received the money for the latter's redemption, so in the implication it must be the father (who corresponds to the master), and not his daughter, who is to receive the money when she passes out of his control at betrothal (v. Rashi). [Now since we learn that her father is entitled to her betrothal money, it follows that the right to effect her betrothal is vested in him, Tosaf.].
(49) Lit., 'but that'.
(50) Lit., there'.
(51) Until her entry into the bridal chamber (Huppah, v. Glos.) a daughter is still partially under the control of her father who is still entitled to her handiwork and remains her heir.
(52) Na'arah (v. Glos.).
(53) The father alone has no longer the right to do so. For further notes on the passage v. Kid. (Sonc. ed.) p. 36.

(54) A father's absolute right to effect the betrothal of his young daughter (v. supra p. 266, nn. 3-4) by these two methods. (15) Deut. XXIV, 2; and becometh והיתה.

(55) הייות lit., 'beings', 'becomings', of the same rt. היה as that of והיתהה (v. supra p. 268, n. 15).

(56) As betrothal by money is entirely in the hands of the father (to whom the money belongs, as has been shewn supra) so is betrothal by deed or intercourse.

in order [to avert] ill feeling.[1] TO HER HANDIWORK. Whence do we deduce this? — [From that] which R. Huna quoted in the name of Rab: Whence is it deduced that a daughter's handiwork belongs to her father? — [From Scripture] where it is stated, And if a man sell his daughter to be a maidservant,[2] as the handiwork of a maidservant belongs to her master so does the handiwork of a daughter belong to her father.[3] But may it not be suggested that this[4] [applies only to] a minor whom he may sell, but the handiwork of a na'arah[5] whom he cannot sell belongs to herself? — It is but logical to assume that it should belong to her father; for should it be imagined that her handiwork does not belong to him [the objection could well be advanced against] the right[6] which the All-Merciful has conferred upon a father to consign his daughter to the bridal chamber: How could he consign her when he thereby[7] prevents her from doing her work?[8] R. Ahai demurred: Might it not be suggested that he[9] pays her compensation [for the time] she is taken away [from her work] or else, that he consigns her during the night,[10] or else that he might consign her on Sabbaths[11] or festivals?[11] — [The fact], however, [is that in the case of] a minor no Scriptural text was necessary.[12] For since is he may even sell her was it at all necessary [to state that her handiwork belongs to him]?[13] If a Scriptural text[14] then was at all necessary [it must have been] in respect of a na'arah. TO ANNUL HER VOWS. Whence do we [deduce this]? [From Scripture] where it is written,[15] Being in her youth in her father's house.[16] AND HE RECEIVES HER BILL OF DIVORCE. Whence is this deduced? — From Scripture where it is written, And she departeth and And becometh,[17] 'departure'[18] being compared to 'becoming'.[19] BUT HE HAS NO USUFRUCT DURING HER LIFETIME. Our Rabbis taught: A father has no usufruct[20] during the lifetime of his daughter.[21] R. Jose the son of R. Judah ruled: A father is entitled to usufruct[20] in the lifetime of his daughter. On what principle do they differ? — The first Tanna is of the opinion that the Rabbis were well justified in allowing usufruct to a husband, since otherwise he might refrain from ransoming [his wife].[22] What, however, can be said[23] in respect of a father? That he would refrain from ransoming her? [It is certain that] he would ransom her in any case. R. Jose the son of R. Judah, however, is of the opinion that a father also might refrain from ransoming [his daughter], for he might think: She is carrying a purse[24] about her, let her proceed to ransom herself.[25] WHEN SHE MARRIES, THE HUSBAND SURPASSES HIM [IN HIS RIGHTS] IN THAT HE HAS USUFRUCT etc. Our Rabbis taught: If [a father] promised his daughter in writing[26] fruit,[27] clothes or other movable objects[28] that she might take[29] with her[30] from her father's house to that of her husband, and she died,[31] her husband does not acquire these objects. In the name of R. Nathan it was stated: The husband does acquire them. Must it be assumed that they[32] differ on the same principles as those on which R. Eleazar b. Azariah and the Rabbis differed? For we learned: A woman who was widowed or divorced, either after betrothal or after marriage, is entitled to collect all[33] [that is due to her]. R. Eleazar b. Azariah ruled: [Only a woman widowed or divorced] after her marriage recovers all [that is due to her], but if after a betrothal a virgin recovers only two hundred zuz[34] and a widow only one maneh[34]

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(1) Between father and daughter.

(2) Ex. XXI, 7.

(3) Cf. supra 40b, 46b, Kid. 3b.

(4) Lit., 'these words', a father's right to his daughter's handiwork.

(5) V. Glos.

(6) Lit., 'but that'.

(7) Lit., 'surely'.

(8) During her preparations for, and the performance of the bridal chamber ceremonial. Since, however, a father does enjoy the right it must be concluded that a daughter's handiwork does belong to her father.

(9) A father who consigns his daughter into the bridal chamber.

(10) When people usually rest from their work.

(11) On which days work is forbidden. The question thus arises again: Whence is it deduced that a daughter's handiwork belongs to her father?

(12) To confer upon her father the right to her handiwork. (15) Lit., ‘now’.
(13) Obviously not.
(14) Viz., the superfluous word לאמה., to be a maidservant (Ex. XXI, 7), from which the analogy is drawn supra. The ordinary text deals, of course, with a minor.
(15) In the Section dealing with the invalidation of vows.
(16) Num. XXX. 17. ‘Being in her youth’ בנעוריה, sc. while she is yet a na'arah (v. Glos.).
(17) Deut. XXIV, 2.
(18) I.e., divorce.
(19) Sc. a wife (cf. Deut. XXIV, 2: Becometh . . . wife). As a father may contract his daughter's betrothal so may he accept her divorce.
(20) V. supra p. 266, n. 7.
(21) V. l.c. n. 8.
(22) Should she ever be taken captive.
(23) In justification of his claim to the usufruct of his daughter's property.
(24) The savings of the proceeds of her property.
(25) And should her savings be insufficient he would refuse to supplement them.
(26) Lit., ‘wrote for her’, as her dowry.
(27) Detached from the ground (v. infra).
(28) Lit., ‘vessels’, ‘chattels’.
(29) Lit., ‘which shall come’.
(30) On betrothal.
(31) During the period of her betrothal.
(32) R. Nathan and the first Tanna.
(33) I.e., her additional jointure as well as her statutory kethubah.
(34) V. Glos., sc. her statutory kethubah only.

Talmud - Mas. Kethuboth 47b

for the man wrote [the additional jointure] for her with the sole object of marrying her.[1] [Must it then be assumed] that he who ruled that ‘her husband does not acquire’ [upholds the same principle] as R. Eleazar b. Azariah[2] while he[3] who ruled that ‘the husband does acquire’ [upholds the same principle] as the Rabbis?[4] — No; all[5] [may, in fact, hold the same view] as R. Eleazar b. Azariah.[6] [For] he who ruled, ‘her husband does not acquire’,[is obviously] in agreement with R. Eleazar b. Azariah.[7] And as to him[3] who ruled, ‘the husband does acquire’ [it may be explained that] only [in respect of undertakings] from him[8] towards her[9] did R. Eleazar b. Azariah maintain his view,[10] [for the reason that] ‘the man wrote [the additional jointure] for her with the sole object of marrying her’,[11] but [in respect of undertakings] from her[12] towards him[13] even R. Eleazar b. Azariah may admit [that betrothal has the same force as marriage] since [undertakings of such a nature][14] are due to [a desire for] matrimonial association, and such association, surely, had taken place.[15] HE IS ALSO UNDER THE OBLIGATION OF MAINTAINING HER etc. Our Rabbis taught: Maintenance was provided for a wife in return for her handiwork, and her burial[16] in return for her kethubah.[17] A husband is, therefore, entitled to usufruct. ‘Usufruct’! Who mentioned it?[18] — A clause is missing, and this is the proper reading: Maintenance was provided for a wife in return for her handiwork, her ransom In return for usufruct,[19] and her burial in return for her kethubah;[20] a husband, therefore, is entitled to usufruct.[19] What [was the need for] ‘therefore’?[21] — It might have been presumed [that a husband] must not consume the fruits[19] but should rather leave them,[22] since, otherwise,[23] he might refrain from ransoming her, hence we were informed that that [course][24] was preferable, for sometimes [the proceeds of the fruit] might not suffice[25] and he[26] would have to ransom her at his own expense. Might I not transpose [the sequence]?[27] — Abaye replied: They[28] ordained the common for the common[29] and the uncommon for the uncommon.[30] Said Raba: The following Tanna is of the opinion that maintenance[31] is a Pentateuchal duty. For it was taught: She'erah[32] refers to[33] maintenance, for so it is said in Scripture, Who also eat the she'er[34] of my peaple;[35] Her raiment[36] [is

to be understood] according to its ordinary meaning; 'Onatha[37] refers to the time for conjugal duty[38] prescribed in the Torah,[39] for so it is said in Scripture, If than shalt afflict[40] my daughters.[41] R. Eleazar said: 'She'erah' refers to the prescribed time for conjugal duty,[39] for so it is said in Scripture, None of you shall approach to any that is near of kin[42] to him to uncover their nakedness;[43] 'Her raiment' [is to be taken] according to its literal meaning; 'Onatha refers to maintenance, for so it is said in Scripture, And he afflicted thee,[44] and suffered thee to hunger.[45]

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(1) And since he did not marry her she can have no claim to it. V. Infra 54b, 89b; B.M. 17b.

(2) As the latter makes the woman's right to her additional jointure dependent on marriage, so also does the former make the husband's right to the dowry his wife brings from her father's house dependent on marriage. In the opinion of both betrothal entitles one only to the prescribed statutory rights.

(3) R. Nathan.

(4) As they deem betrothal to he as valid as marriage in respect of conferring upon a woman the right to her additional jointure as well as to her statutory kethubah, so does R. Nathan deem betrothal to be conferring upon a husband the right to the dowry his wife has brought him. As the additional jointure which is included in the document of the kethubah is acquired on betrothal by the woman, so is the dowry which is also included in the same document acquired on betrothal by the man.

(5) R. Nathan and the first Tanna.

(6) Whose ruling is (as stated infra) the accepted law.

(7) Cf. supra note 6.

(8) A husband.

(9) A wife.

(10) That betrothal does not confer upon a woman the right of acquisition.

(11) V. supra p. 271. n. 5.

(12) A wife.

(13) A husband.

(14) The dowry e.g., which her father promises to her husband.

(15) By the betrothal. Hence the ruling that, in this respect, betrothal alone confers the same rights as marriage.

(16) Variant, 'ransom' (Sheiltoth).

(17) Here it means the dowry (v. supra n. 4) which, like the statutory kethubah and the additional jointure, is also entered in the kethubah document.

(18) Lit., 'their (sc. the fruits') name'; the first clauses of the Baraitha cited speak only of 'handiwork' and 'kethubah' and these, surely, provide no reason for a husband's right to usufruct.

(19) Of her melog (v. Glos.) property which was not entered in the kethubah.

(20) V. supra note 7.

(21) The ruling 'a husband therefore . . . usufruct' seems superfluous after the statement, 'her ransom in return for usufruct'.

(22) I. e., allow their proceeds to accumulate, and thus create a fund for his wife's ransom.

(23) Lit., 'if so'; were he to consume the fruit or to spend their proceeds.

(24) That the husband shall enjoy usufruct and that in return for this he shall assume the obligation of ransoming his wife.

(25) To cover the full amount of the ransom. Lit., 'that they he not full'.

(26) Since, in accordance with the ordinance, he enjoyed usufruct and undertook the obligation of ransom. (V. supra note 14).

(27) In the Baraitha, thus: Maintenance in return for usufruct and ransom in return for handiwork. A wife would consequently be prevented from retaining her handiwork even if she declined maintenance.

(28) The Rabbis.

(29) Maintenance and handiwork are both part of a person's daily routine.

(30) Usufruct for ransom. It is rare that a wife should own melog (v. Glos.) property or that she should be carried away as a captive. Both usufruct and ransom are consequently uncommon.

(31) Of a wife by her husband.

(32) E.V. Her food, שארה (שאר with pronom suffix; v. infra n. 8) Ex. XXI. 10.

(33) Lit., ‘these’.
(34) שאר E. V. flesh.
(35) Micah III, 3.
(36) Ex. XXI. 10.
(37) עונתה, R.V., Her duty of marriage; A.J.V., Her conjugal rights, Ex. XXI, 10. עונתה (rt. ענה in Piel, ‘to afflict’; v. infra nn. 12 and 14).
(38) עונה (rt. ענה; v. supra n. 11).
(39) Cf. infra 61b.
(40) תענה (rt. ענה).
(41) Gen. XXXI, 50.
(42) שאר
(43) Lev. XVIII, 6.
(44) ויענך (rt. ענה).
(45) Deut. VIII, 3.

Talmud - Mas. Kethuboth 48a

R. Eliezer b. Jacob interpreted: [The expressions] She'erah kesutha,[1] [imply]: Provide her with raiment according to her age, viz. that a man shall not provide his old wife[2] [with the raiment] of a young one nor his young wife with that of an old one. [The expressions], Kesutha we- ‘Onatha[3] [imply.] Provide her with raiment according to the season of the year,[4] viz. that he shall not give her new raiment[5] in the summer nor worn out raiment[6] in the winter.[7] R. Joseph learnt: Her flesh[8] implies close bodily contact,[9] viz, that he must not treat her in the manner of the Persians who perform their conjugal duties in their clothes. This provides support for [a ruling of] R. Huna who laid down that a husband who said, ‘I will not [perform conjugal duties] unless she wears her clothes and I mine’, must divorce her and give her also her kethubah. R. JUDAH RULED: EVEN THE POOREST MAN IN ISRAEL etc. This[10] then implies that the first Tanna is of the opinion that these[11] are not [necessary]. But how is one to imagine [the case]? If these[11] were required by the woman's status,[12] what [it may be objected could be] the reason of the first Tanna who ruled [that these[11] were] not [required]? And if these[11] were not required by the woman's status,[13] what [it may be objected could be] the reason of R. Judah? — [The ruling was] necessary only [in a case], for instance, where these were demanded by his status but not by hers. The first Tanna is of the opinion that the principle that she[14] rises with him[15] but does not go down with him[16] is applied only during her lifetime[17] but not after her death, while R. Judah maintains [that the principle applies] even after her death. R. Hisda laid down in the name of Mar ‘Ukba that the halachah is in agreement with R. Judah. R. Hisda further stated in the name of Mar ‘Ukba: If a man became insane Beth din take possession[18] of his estate and provide food and clothing for his wife, sons and daughters, and for anything else.[19] Said Rabina to R. Ashi: Why should this[20] be different from that concerning which it was taught: If a man went to a country beyond the sea and his wife claimed maintenance, Beth din take possession of[21] his estate and provide food and clothing for his wife, but not for his sons and daughters or for anything else?[22] The other replied: Do you not draw a distinction between one who departs[23] deliberately and one who departs[24] without knowing it?[25] What [is meant by] ‘anything else’? — R. Hisda replied: Cosmetics were meant,[26] R. Joseph explained: Charity. According to him who replied, ‘Cosmetics’, the ruling[27] would apply with even greater force to charity.[28] He, however, who explained, ‘charity’ [restricts his ruling[27] to this alone] but cosmetics [he maintains] must he given to her, for [her husband] would not be pleased that she shall lose her comeliness. R. Hiyya b. Abin stated in the name of R. Huna: If a man went to a country beyond the sea, and his wife died, Beth din take possession[29] of his estate and bury her in a manner befitting the dignity of his status. [You say] ‘In a manner befitting the dignity of his status’, and not that of her status![30] — Read, In a manner befitting his status also; and it is this that he[31] informs us: She rises with him [in his dignity] but does not go down with him [to a lower status] even after her death. R. Mattena ruled: A man[32] who gave instructions that when [his wife] died she shall not be buried at the expense of his

estate must be obeyed.[33] What, however, is the reason [for obeying the man] when he has left instructions? Obviously because the estate falls to the orphans;[34] but the estate falls to the orphans, does it not, even if he left no instructions?[35] — [The proper reading], however, is: A man[32] who gave instructions that when he dies be shall not be buried at the expense of his estate[36] is not to be obeyed, for it is not within his power[37] to enrich his sons and throw himself upon the public. MISHNAH. SHE[38] REMAINS[39] UNDER THE AUTHORITY OF HER FATHER[40] UNTIL SHE ENTERS

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(1) שארה כסותה (Ex. XXI, 10), 'her age, her raiment'. שאר = flesh (cf. supra note 8), hence 'body', 'age'.
(2) Lit., 'to her'.
(3) כסותה ועונתה (Ex. XXI, 10), 'her raiment and her time' עונה = 'time', 'season'.
(4) Lit., 'her season'.
(5) Which might be too warm for her in the hot weather.
(6) Being worn thin they would not provide sufficient protection from cold.
(7) Lit., 'in the days of the rains'.
(8) Cf. supra p. 273, n. 6.
(9) Lit., 'nearness of flesh'.
(10) Since the ruling is attributed to R. Judah.
(11) Two flutes and one lamenting woman.
(12) Lit. 'that it is her (sc. her family's) custom'.
(13) Cf. supra n. 8 mutatis mutandis.
(14) A wife.
(15) Her husband.
(16) I.e., enjoys his advantages but does not suffer his disadvantages.
(17) As in the instance dealt with infra 61a.
(18) Lit., 'go down into'.
(19) This is explained infra.
(20) The case dealt with by R. Huna.
(21) This is explained infra.
(22) Infra 107a.
(23) From his home to a foreign country.
(24) From society. sc. becomes insane.
(25) In the former case the man could have left instructions, if he were minded to do so, that his wife and family should be provided for. Since, however, he left no such instructions, it is obvious that he had no intention of providing for them. Hence the ruling that his wife, whom he is under a legal obligation to maintain, (her claim being secured on his estate in accordance with the terms of her kethubah) must be provided for by the Beth din out of his estate; not however, his sons and daughters who have no legal claim upon their father's estate. Where, however, a man becomes insane it may well be assumed that it was his wish that both his wife and family shall be properly provided for out of his estate.
(26) Lit., 'this'.
(27) Of the Baraitha that 'anything else' was not to be provided for.
(28) Since the court which has no right to provide from a man's estate for his own wife's personal enjoyments would have much less power to exact from that estate for charity.
(29) Lit., 'go down into'.
(30) Why should she suffer indignity on account of his lower status?
(31) R. Huna.
(32) While in a dying condition. The instructions of a dying man have the force of a legally written document.
(33) Having survived her husband and collected her kethubah a wife has no further claim upon his estate which is consequently inherited by his sons.
(34) Cf. supra n. 2.
(35) And they, of course, are under no obligation to bury the widow.
(36) But at the public cost.
(37) Lit., 'all from him'.

(38) A na'arah (v. Glos.). This Mishnah is a continuation of the previous one, supra 46b.
(39) לְעוֹלָם, lit., 'for ever', 'always'.
(40) Even after her betrothal. He is entitled to all his privileges; and,' if she is the daughter of an Israelite, although betrothed to a priest, terumah is forbidden to her.

Talmud - Mas. Kethuboth 48b

UNDER THE AUTHORITY OF HER HUSBAND[1] [BY GOING INTO THE BRIDAL CHAMBER][2] AT MARRIAGE. IF HER FATHER DELIVERED HER TO THE AGENTS OF THE HUSBAND[3] SHE PASSES[4] UNDER THE AUTHORITY OF HER HUSBAND. IF HER FATHER WENT WITH HER HUSBAND'S AGENTS[5] OR IF THE FATHER'S AGENTS WENT WITH THE HUSBAND'S AGENTS[5] SHE REMAINS[4] UNDER THE AUTHORITY OF HER FATHER. IF HER FATHER'S AGENTS DELIVERED HER TO HER HUSBAND'S AGENTS[6] SHE PASSES[4] UNDER THE AUTHORITY OF HER HUSBAND. GEMARA. What [is the purport of] REMAINS?[7] — To exclude [the ruling] of an earlier[8] Mishnah where we learned: If the respective periods[9] expired[10] and they were not married[11] they are entitled to maintenance out of the man's estate[12] and [if he is a priest][13] may also eat terumah.[14] Therefore 'REMAINS'[15] Was used.[16] IF HER FATHER DELIVERED HER TO THE AGENTS OF THE HUSBAND SHE PASSES UNDER THE AUTHORITY OF HER HUSBAND etc. Rab ruled: Her delivery [is regarded as entry into the bridal chamber] in all respects[17] except that of terumah;[18] but R. Assi ruled in respect of terumah also. R. Huna, (or as some Say, Hiyya b. Rab,) raised an objection against R. Assi: She remains[15] under the authority of her father until she enters the bridal chamber.[19] 'Did I not tell you', said Rab to them,[20] 'that you should not be guided by an ambiguous statement?[21] He[22] can answer you that "her delivery" is regarded as her entry into the bridal chamber'. Samuel, however, ruled: [Her delivery has the force of entry into the bridal chamber only in respect] of her inheritance.[23] Resh Lakish ruled: [Only in respect] of her kethubah.[24] What is meant by 'her kethubah'? [If it means] that should [the woman] die he inherits it,[25] [then this ruling is, is it not,] the same as that of Samuel?[26] Rabina replied: The meaning is[27] that her [statutory] kethubah from a second husband[28] is only a maneh.[29] Both R. Johanan and R. Hanina ruled: Her delivery [is regarded as entry into the bridal chamber] in all respects. even that of terumah.[30] An objection was raised: If the father went with the agents of the husband, or if the agents of the father went with the agents of the husband, or if she had a court-yard on the way, and she entered it with him[31] to rest there for the night,[32] her father inherits from her if she died, although her kethubah[33] is already in the house of her husband. If, however, her father delivered her to her husband's agents, or if her father's agents delivered her to her husband's agents, or he[34] had a court-yard on the way, and she entered it with him with an intention to matrimony, her husband is her heir if she died, although her kethubah[33] was still in her father's house.[35] This ruling[36] applies only in respect of her inheritance[37] but in respect of terumah [the law is that] no woman is allowed to eat terumah until she enters the bridal chamber.[38] [Does not this represent] a refutation of all?[39] This is indeed a refutation. [But] is not this,[40] however, self-contradictory? You said. 'She entered it with him to rest for the night'. The reason [why such an act is not regarded as entry into the bridal chamber is] because [the entrance was made specifically for the purpose of] resting for the night. Had it, however, been made with no specified intention [it would be deemed to have been made] with an intention to matrimony. Read, however, the final clause: 'She entered it with him with an intention to matrimony', from which it follows, does it not, that if the entrance was made with no specified intention [it would be deemed to have been made just] in order to rest there for the night? — R. Ashi replied: Both entrances mentioned[41] are such as were made with no specified intention, but any unspecified [entrance into] a court-yard of hers [is presumed to have been made] in order to rest there for the night while any unspecified [entrance into] a court-yard of his[42] [is presumed to have been made] with an intention to matrimony. A Tanna taught: If a father delivered [his daughter][43] to the agents of her husband and she played the harlot[44] her penalty is that[45] of strangulation.[46] Whence is this ruling deduced? — R. Ammi b. Hama replied: Scripture stated,[47] To play the harlot in her father's house,[48] thus excluding one whom the father had

delivered to the agents of the husband. Might it not be suggested that this[48] excludes one who entered her bridal chamber but with whom no cohabitation had taken place?[49] — Raba replied: Ammi told me [that a woman[50] who entered her] bridal chamber was explicitly[51] mentioned in Scripture: If there be a damsel that is a virgin betrothed unto a man;[52] 'a damsel' but not a woman who is adolescent, 'a virgin' 'but not a woman with whom intercourse took place, 'betrathed' but not one married.[53] Now what [is meant by] 'one married'? If it be suggested: One actually married, [it can be objected that stich a deduction][54] would be practically the same as that of 'a virgin but not one with whom intercourse took place'. Consequently it must be concluded[41] [that by 'married' was meant one] who entered into the bridal chamber but with whom no intercourse took place.[55]

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(1) far. lec. 'to the bridal chamber' (v. Tosaf. 48a, s.v. לעולם).

(2) Huppah (v. Glos.); cf. Rashi, a.l. and cf. supra n. 10.

(3) Who were sent to bring her from her father's house to that of her husband.

(4) Lit., 'behold she is'.

(5) To her husband's house.

(6) Neither they nor her father who sent them accompanying her to the house of her husband.

(7) לעולם, lit., 'for ever', 'always'. The omission of לעולם would not in any way alter the actual ruling except the wording which would then read, 'She is under' etc. Why then was an apparently superfluous word inserted?

(8) Lit., 'first'.

(9) One of twelve months for a virgin and of thirty days for a widow (from the date their intended husbands claimed them) in which to prepare their marriage outfits.

(10) Lit., 'the time arrived'.

(11) Through their future husbands' delay or neglect.

(12) Lit., 'eat of his'.

(13) Though they are daughters of Israelites.

(14) Infra 57a.

(15) V. note I.

(16) Sc. despite the expiry of the prescribed period a daughter REMAINS UNDER THE AUTHORITY OF HER FATHER UNTIL etc. and is consequently forbidden to eat terumah (cf. supra p. 276, n. 9).

(17) Sc. the man obtains all the privileges to which a husband is entitled from the moment the bride enters the bridal chamber (e.g., the right to her handiwork, heirship).

(18) The woman, if she is the daughter of an Israelite, is forbidden to eat it though the man is a priest (v. infra 57b).

(19) And until then she is forbidden to eat terumah (cf. supra p. 276, n. 9). How then could R. Assi maintain that terumah is permitted to her?

(20) His disciple R. Huna and his son Hiyya.

(21) איפכא, lit., 'reverse'.

(22) Sc. R. Assi. MS.M., TT.

(23) I.e., if she died on the way between her father's house and that of her husband, her dowry (given to her by her father) is inherited by her husband although he is not entitled to his other rights until her entrance into the bridal chamber.

(24) This is explained anon.

(25) Viz., the dowry her father gave her which forms one of the entries in her kethubah.

(26) V. p. 277 n. 17

(27) Lit., 'to say'.

(28) If her first husband died while she was on the way with his agents.

(29) V. Glos. The amount prescribed for a widow. A virgin is entitled to two hundred zuz.

(30) Cf. supra p. 277. n. 12 mutatis mutandis.

(31) Her husband.

(32) With no matrimonial intention.

(33) I.e., the dowry her father gave her.

(34) Her husband.

(35) I.e., the objects specifically assigned to her as dowry were still in her father's house.

(36) That delivery to the husband's agents has the force of a marriage.
(37) V. supra p. 277, n. 17.
(38) Tosef. Keth. IV.
(39) Lit., 'all of them', those (with the exception of Samuel) whose rulings differ from this Baraitha.
(40) The Baraitha last mentioned.
(41) In the first and second clauses.
(42) Her husband.
(43) Cf. supra p. 276, n. 7.
(44) Prior to her entry into the bridal chamber.
(45) Lit., 'behold this'.
(46) Like that of a married woman; not stoning which is the penalty of one betrothed.
(47) In prescribing the penalty of stoning.
(48) Deut. XXII, 21.
(49) What proof is there that one who had not even entered the bridal chamber is also excluded?
(50) Prior to marriage
(51) I.e., is deduced from a specific expression.
(52) Deut. XXII, 23.
(53) V. Sanh. 66b.
(54) Betrothed but not actually married'. (15) Lit., 'but not?'
(55) Since this text excluded such a case from the penalty of stoning no other text is required for the same purpose. Deut. XXII, 21, is consequently free for the deduction made by R. Ammi.

Talmud - Mas. Kethuboth 49a

But might not one suggest that if she[1] returned[2] to her parental home she resumes her former status?[3] — Raba replied: A Tanna of the school of R. Ishmael has long ago settled this difficulty. For a Tanna of the school of R. Ishmael taught: What need was there for Scripture to state, But the vow of a widow, or of her that is divorced, even everything wherewith she bath bound her soul, shall stand against her?[4] Is she not free from the authority of her father[5] and also from that of her husband?[6] [The fact], however, is that where[7] her father had delivered her to the agents of her husband, or where the agents of her father had delivered her to the agents of her husband and, on the way,[8] she became a widow or was divorced[9] [one would not know] whether she was to be described as of[10] the house of her father[11] or as of the house of her husband;[12] hence the need for the text[13] to tell you that as soon as she has left her father's authority,[14] even if only for a short while, he may no longer annul her vows.[15] Said R. Papa: We also learned [a similar ruling]:[16] A man who has intercourse with a betrothed girl incurs no penalties[17] unless she is a na'arah,[18] a virgin, betrothed, and in her father's house.[19] Now one can well see that 'na'arah' excludes[20] one who is adolescent, 'virgin' excludes[20] one with whom a man has had intercourse, and 'betrothed' excludes one who married [by entry into the bridal chamber].[21] What, [however, could the expression] 'in her father's house' exclude? Obviously this:[22] [The case where] her father delivered her to the agents of the husband.[23] R. Nahman b. Isaac said: We also learned [a similar ruling]:[24] Should one have intercourse with a 'married woman'[25] the latter,[26] provided she entered under the authority of her husband,[27] although no intercourse had taken place, is to he punished by strangulation.[28] 'She entered under the authority of her husband' [implies][29] in any form whatever.[30] This is conclusive proof. MISHNAH. A FATHER[31] IS UNDER NO OBLlgation TO MAINTAIN HIS DAUGHTER. THIS EXPOSITION[32] WAS MADE BY R. ELEAZAR B. AZARIAH[33] IN THE PRESENCE OF THE SAGES IN THE VINEYARD OF JABNEH:[34] [SINCE IT WAS ENACTED THAT] THE SONS SHALL BE HEIRS [TO THEIR MOTHER'S KETHUBAH][35] AND THE DAUGHTERS SHALL BE MAINTAINED [OUT OF THEIR FATHER'S ESTATE,[35] THE TWO CASES MAY BE COMPARED:] AS THE SONS CANNOT BE HEIRS EXCEPT AFTER THE DEATH OF THEIR FATHER, SO THE DAUGHTERS CANNOT CLAIM MAINTENANCE EXCEPT AFTER THE DEATH OF THEIR FATHER.

GEMARA. [Since it has been said that] he is UNDER NO OBLIGATION TO MAINTAIN HIS DAUGHTER Only, it follows[36] that he is under an obligation to maintain his son, [and in the case of] his daughter also, since he is only exempt from[37] legal OBLIGATION he is, obviously, still subject[38] to a moral duty; who, [then, it may be asked, is the author] of our Mishnah? [Is it] neither R. Meir nor R. Judah nor R. Johanan b. Beroka? For it was taught: It is a moral duty[39] to feed one's daughters, and much more so ones sons, (since the latter are engaged in the study of the Torah);[40] so R. Meir. R. Judah ruled: It is a moral duty to feed ones sons, and much more so one's daughters, (in order [to prevent their] degradation).[41] R. Johanan b. Beroka ruled: It is a legal obligation to feed one's daughters[42] after their father's death; but during the lifetime of their father neither sons nor daughters need be[43] fed.[44] Now who [could be the author of] our Mishnah? If R. Meir, he, surely, [it may be objected] ruled that [the maintenance of] sons [was only] a moral duty.[45] If R. Judah, he, surely ruled that also[46] [the maintenance of] sons [was only] a moral duty.[45] And if R. Johanan b. Beroka [should be suggested, the objection would be: Is not his opinion that] one is not even subject to[47] a moral duty?[45] — If you wish I might say [that the author is] R. Meir; If you wish I might Say: R. Judah; and if you prefer I might Say: R. Johanan b. Beroka. 'If you wish I might say [that the author is] R. Meir', and it is this that he meant:[48] A FATHER IS UNDER NO OBLIGATIon TO MAINTAIN HIS DAUGHTER, and the same law applies to his son. [Maintenance], however, is a moral duty in the case of his daughter and, much more so, in the case of his sons; and the reason why[49] HIS DAUGHTER was mentioned[50] was to teach us this:

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(1) Whom HER FATHER DELIVERED TO THE AGENTS OF THE HUSBAND.

(2) Before she reached her husband's house.

(3) Since she is again 'in her father's house' her penalty might again be changed from strangulation (the penalty for a married woman) to stoning (the penalty for one betrothed who is in her father's house, (Deut. XXII, 21). This does not exactly raise a difficulty against our Mishnah, but is an attempt merely at elucidating the law (Rashi).

(4) Num. XXX, 10.

(5) Since she was once married. A father's control over his daughter ceases with her marriage.

(6) Being now a widow or a divorcee. Now since neither father nor husband may annul her vows it is self-evident that her vows 'stand against her'. What need then was there for the text of Num. XXX, 10.

(7) Lit., 'behold'.

(8) To her husband's house.

(9) And so returned to her parental home.

(10) Lit., 'how I read about her'.

(11) Because, not having reached her husband's house, she has not passed entirely out of her father's control. Her father should consequently be entitled to annul her vows.

(12) Who is now dead or divorced. Her vows consequently, like those of any other widow or divorcee, could no longer be annulled.

(13) Lit., 'but'.

(14) As, for instance, where she was delivered to the husband's agents.

(15) Yeb. 87a. As in respect of vows the woman is no longer regarded as being 'in her father's house' so also in respect of her penalties.

(16) Sc. a Mishnah which supports the ruling of the Baraitha supra 48b: 'If a father delivered . . . her penalty is that of strangulation'.

(17) Sc. the penalties prescribed in Deut. XXII, 24ff.

(18) V. Glos.

(19) Sanh. 66b.

(20) Lit., 'and not'.

(21) Before intercourse Lad taken Place (cf. supra 48b 3d fit.).

(22) Lit., 'not, to exclude?'

(23) Cf. supra p, 280, notes 4 and 16.

(24) V. supra p. note 1.

(25) Lit., ‘the wife of a man’.
(26) Sc. the woman. So according to MS.M. (v. infra n. 13).
(27) So MS.M. Cur. edd. insert ‘for marriage’.
(28) So MS.M., הרי זו בחנק Cur. edd. הבא עליה הרי זה בחנק
(29) Since even ‘bridal chamber’ was not mentioned.
(30) Lit., ‘in the world’; even mere delivery to the husband's agents.
(31) During his lifetime. V. infra.
(32) On the formula of the kethubah.
(33) On the day when he was appointed president of the College (Rashi, cf. Ber. 27b).
(34) Or Jamnia. The כרם יבנה was either the name of the school, so called because the students ‘sat in rows’ like ‘vines in a vineyard’ (Rashi), or an actual vineyard in which the scholars met (Krauss). The school of Jabneh was established by R. Johanan b. Zakkai during the siege of Jerusalem by Vespasian. Cf. B.B. (Sonc. ed.) p. 549, n. 4.
(35) A formula to that effect must be entered in a kethubah, v. Mishnah infra 52b.
(36) As DAUGHTER only was mentioned.
(37) Lit., ‘there is not’.
(38) Lit., ‘there is’.
(39) Though after a certain age there is no legal obligation.
(40) The bracketed words are the Talmudic comment on this teaching. (V. Rashb. s.v. דעסקי B.B. 141a).
(41) In their search for a livelihood, cf. n. 6.
(42) In accordance with the terms of their mother's kethubah.
(43) Lit., ‘these and these are not’
(44) Cf. Tosef. Keth. IV and BB. 141a.
(45) While our Mishnah implies a legal obligation.
(46) נמי. This may be omitted with MS.M.
(47) Lit., ‘there is not.
(48) In his statement in our Mishnah.
(49) Lit, ‘and that’.
(50) And not ‘son’. Cf. supra p. 282, n. 2 and text.

Talmud - Mas. Kethuboth 49b

That even in the case of his daughter[1] he is only exempt from a legal obligation but is nevertheless subject to a moral duty.[2] ‘If you wish I might say: R. Judah’; and it is this that he meant: A FATHER is UNDER NO OBLIGATION TO MAINTAIN HIS DAUGHTER, and much more so[3] his son.[4] It is, however, a moral duty [to maintain] one's son and, much more so, ones daughters; and the only reason why HIS DAUGHTER was mentioned Was to teach us this: That even [the maintenance of] one's daughter is no[5] legal obligation. ‘And if you prefer I might say: R. Johanan b. Beroka’, and what Was meant is this: HE IS UNDER NO OBLIGATION TO MAINTAIN HIS DAUGHTER, and the same law applies to his son; and this, furthermore, means[6] that [such maintenance] is not even[5] a moral duty; only because [the maintenance of daughters] after their father's death is a legal obligation, the expression, HE IS UNDER NO OBLIGATION, was used here also.[7] R. Elai stated in the name of Resh Lakish who had it from R. Judah[8] b. Hanina: At Usha[9] it was ordained that a man must maintain his sons and daughters while they are young.[10] The question was raised: Is the law in agreement with his statement or not? — Come and hear: When people came before Rab Judah,[11] he used to tell them, ‘A Yarod[12] bears progeny and[13] throws them upon [the tender mercies of] the townspeople’.[14] When people came before R. Hisda,[10] he used to tell them, ‘Turn a mortar[15] for him upside down,[16] in public and let one[17] stand [on it] and say: The raven cares[18] for its young but that man[19] does not care for his children’.[20] But does a raven care[18] for its young? Is it not written in Scripture,[21] To the young ravens which cry?[22] — This is no difficulty. The latter[23] applies to white ravens[24] and the former[25] to black ones.[26] When a man[27] came before Raba he used to tell him, ‘Will it please you that your children should be maintained from the charity funds?’[28] This ruling,[29] however, has been laid down only for one who is not a wealthy man, but if the man is wealthy he

may be compelled[30] even against his wish; as was the case with[31] Raba who used compulsion against R. Nathan b. Ammi[32] and extracted front him four hundred zuz[33] for charity.[34] R. Elai stated in the name of Resh Lakish: It was enacted at Usha[35] that if a man assigned all his estate to his sons in writing, he and his wife[36] may nevertheless[37] be maintained out of it. R. Zera, or as some say, R. Samuel b. Nahmani, demurred: Since the Rabbis went so far as to rule[38] that [in the case that follows] a widow is maintained out of her husband's estate, was there any necessity [to state that such maintenance is allowed to] the man himself and his wife? For Rabin had sent in his letter:[39] If a man died and left a widow and a daughter, his widow is to receive her maintenance from his estate?[40] If the daughter married,[41] his widow is still to receive her maintenance from his estate. If the daughter died?[42] Rab[43] Judah the son of the sister of R. Jose b. Hanina said: I had such a case, and it was decided[44] that his widow was to receive her maintenance from his estate.[45] [In view of this ruling we ask: Was it] necessary [to give a similar ruling[46] in respect of] the man himself[47] and his wife? — It might have been assumed [that the law applies only] there,[48] because there is no one else to provide for her,[49] but here [it might well be argued:] Let him provide for himself and for her;[50] hence we were taught [that here also the same ruling applies]. The question was raised: Is the law in agreement with his view[51] or not? — Come and hear: R. Hanina and R. Jonathan were once standing together when a man approached them and bending down kissed R. Jonathan upon his foot. 'What [is the meaning of] this?' said R. Hanina to him.[52] 'This man', the other[52] replied, 'assigned his estate to his sons in writing

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(1) Who is not engaged in the study of the Torah.

(2) Had 'son' been mentioned instead of DAUGHTER it might have been assumed that the maintenance of a daughter is not even a moral duty.

(3) MS.M., 'and the same law applies to'.

(4) Since it is easier for a man to earn his livelihood.

(5) Lit., 'there is not'.

(6) Lit., 'and that is the law'.

(7) In fact, however, there is neither legal obligation nor moral duty.

(8) Variant, 'R. Jose' (Alfasi and Rosh).

(9) Usha was a town in Galilee, in the vicinity of Sepphoris and Shefar'am, where the Sanhedrin met after it left Jabneh (Jamnia). It was also the place where, after the wars of Bar Cochba, on the cessation of the religious persecutions which characterised the Hadrianic reign in the middle of the second century, an important Rabbinical synod was held. Cf. B.B. (Sonc. ed.) p. 139, n. 1; p. 141, n. 4 and p. 207, n. 3. [On the Synod of Usha v. J.E, XI, 645ff.].

(10) Lit., 'small', under age of puberty (Rashi).

(11) With the case of a father who refused to maintain his young children.

(12) יאנוד (Heb. תנים) 'A bird of solitary habits' (Jast.); 'dragon' or 'jackal' (Rashi). Cf. the rendering of תנים in Jer. IX, 10 by A.V. and R.V. respectively.

(13) Neglecting them.

(14) From which observation it follows that a judge can only censure a heartless father but has no power to compel him to provide for the maintenance of his children.

(15) אסיתא, v. Krauss, TA, I, 447.

(16) An improvised platform.

(17) Aliter, 'him', sc. the father.

(18) Lit., 'asks'.

(19) ההוא גברא, sc. the father. According to the second interpretation, (supra note 8) the expression, as elsewhere, may refer to the speaker himself.

(20) V. supra note 5,

(21) Ps. CXLVII, 9.

(22) Presumably for food; which shews that the parent neglects them.

(23) Lit., 'that', the text implying neglect of the young ravens.

(24) Sc. very young ones. These are disliked by their parents (Rashi).

(25) Rab Judah's statement that ravens do care for their young.

(26) Older birds. For such the parents do care.
(27) Who refused to maintain his young children.
(28) V. supra note 5.
(29) That a father cannot legally be compelled to maintain his children.
(30) To maintain his children.
(31) Lit., 'like that of'.
(32) Who was a wealthy man.
(33) V. Glos.
(34) How much more then may compulsion be used against a wealthy father who refuses to provide for his own children.
(35) Cf. supra p. 183, n. 12.
(36) Though the sons are now the legal owners of the estate.
(37) By virtue of the enactment of Usha.
(38) Lit., 'greater than this did they say'.
(39) From Palestine to Babylon.
(40) In accordance with his undertakings in her kethubah.
(41) And the estate was transferred into her husband's ownership.
(42) And her possessions were inherited by her husband who is her heir.
(43) So in the parallel passage. B.B. 193a. Cur. edd 'Rabbi'.
(44) Lit., 'they said'.
(45) B.B. 193a.
(46) That despite the assignment, maintenance may be drawn from the estate.
(47) Who made the assignment.
(48) The case of the widow spoken of in Rabin's letter.
(49) Lit., 'who may take the trouble'. Her husband being dead she would have been helpless without the allowance for her maintenance.
(50) And consequently should not be allowed to draw upon the estate he assigned to his sons.
(51) That of R. Elai.
(52) R. Jonathan.

Talmud - Mas. Kethuboth 50a

and I compelled them to maintain him'. Now if it be conceded that this[1] was not [in accordance with the strict] law one can well understand why he had to compel them,[2] but if it be contended that this[3] is the law, would it have been necessary for him [it may be objected] to compel them?[4] R. Elai stated: It was ordained at Usha[5] that if a man wishes to spend liberally[6] he should not spend more than a fifth.[7] So it was also taught: If a man desires to spend liberally[6] he should not spend more than a fifth,[7] [since by spending more] he might himself come to be in need [of the help] of people.[8] It once happened that a man wished to spend[6] more than a fifth[7] but his friend did not allow him. Who was it?[9] — R. Yeshebab. Others say [that the man who wished to spend was] R. Yeshebab, but his friend did not allow him. And who was it?[9] R. Akiba. R. Nahman, or as some say, R. Aha b. Jacob, said: What [is the proof from] Scripture?[10] — And of all that Thou shalt give me I will surely give the tenth[11] into thee.[12] But the second tenth,[13] surely, is not like the first one? — R. Ashi replied: I will . . . give a tenth of it[14] [implies 'I will make] the second like the first'. Said R. Shimi b. Ashi: [The number of those who report] these traditions[15] steadily diminishes,[16] and your mnemonic[17] is 'The young[18] assigned in writing[19] and spend liberally'.[20] R. Isaac stated: It was ordained at Usha[21] that a man must bear[22] with his son until [he is] twelve years [of age]. From that age[23] onwards he may threaten[24] his life.[25] But could this be correct?[26] Did not Rab, in fact, say to R. Samuel b. Shilath,[27] 'Do not accept [a pupil] under the age of six; a pupil of the age of six you shall accept and stuff him like an ox'?[28] — Yes, 'stuff him like an ox', but he may not 'threaten him'[24] until after [he has reached the age of] twelve years. And if you prefer I may say: This[29] is no difficulty, since one may have referred[30] to Scripture[31] and the other to Mishnah; for Abaye stated: Nurse[32] told me that a child of six [is ripe] for Scripture; one of ten, for Mishnah; one of thirteen,[33] for a full twenty-four

hours'[34] fast,[35] and, in the case of a girl,[36] [one who is of] the age of twelve.[37] Abaye stated, Nurse[32] told me: A child of the age of six whom a scorpion has bitten on the day on which he has completed his sixth year does not survive [as a rule].[38] What is his remedy? — The gall of a white stork[39] in beer. This should be rubbed into the wound [and the patient] be made to drink it. A child of the age of one year whom a bee has stung on the day he has completed his first year does not survive [as a rule].[38] What is his remedy? — The creepers of a palm-tree in water. This should be rubbed in and [the patient] be made to drink it. Said R. Kattina: Whosoever brings his son [to school] under the age of six will run after hint but never overtake him.[40] Others say: His fellows will run after him but will never overtake him.[41] Both statements, however, are correct:[42] He is feeble but learned. If you prefer I might say: The former[43] applies to one[44] who is emaciated; the latter, to one[44] who is in good health. R. Jose b. Hanina stated:[45] At Usha[46] it was ordained that if a woman had sold usufruct property[47] during the lifetime of her husband and then died, the husband[48] may seize it from the buyers.[49] R. Isaac b. Joseph found R. Abbahu standing among a crowd of people.[50] 'Who', he said to hint, 'is the author of the traditions of Usha?' — 'R. Jose b. Hanina', the other informed him. He learned this from him forty times and then it appeared to him as if he had it safely in his bag.[51] Happy are they that keep justice, that do righteousness at all times.[52] Is it possible to do righteousness at all times? — This, explained our Rabbis of Jabneh[53] (or, as others say. R. Eliezer), refers to a man who maintains his sons and daughters[54] while they are young.[55] R. Samuel b. Nahmani said: This[52] refers to a man who brings up an orphan boy or orphan girl in his house and enables them to marry. Wealth and riches are in his house; and his merit endureth for ever.[56] R. Huna and R. Hisda [expounded the text in different ways]. One said: It applies to a man who studies the Torah[57] and teaches it to others;[58] and the other said: It applies to a man who writes the Pentateuch, the Prophets and the Hagiographa and lends them to others.[59] And see thy children's children,' peace be upon Israel.[60] R. Joshua b. Levy said: As soon as your children have children there will be peace upon Israel; for they will not be subject to halizah[61] or levirate marriage.[62] R. Samuel b. Nahmani said: As soon as your children have children[63] there will be peace for the judges of Israel, for [doubtful claimants] will not come to quarrels.[64] THIS EXPOSITION WAS MADE BY R. ELEAZAR B. AZARIAH[65] IN THE PRESENCE OF THE SAGES etc.

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(1) Maintenance of their father by sons to whom he had assigned his estate.

(2) He compelled them to obey the enactment of Usha though they pleaded adherence to the strict law'.

(3) V supra note 2.

(4) Naturally not, Since the sons would have had no ground whatsoever on which to base their refusal.

(5) V. Supra p. 283, n. 12.

(6) In charity.

(7) Of his wealth. (The reason is given anon. Cf. infra 76b, 'Ar. 282).

(8) Lit., 'creatures'.

(9) His friend.

(10) That no more than a fifth may be spent on charity.

(11) שנועשר אע (Infinitive and Imperfect), the repetition of the verb עשר ('to give a tenth') implies two tenths or one fifth.

(12) Gen. XXVIII, 22.

(13) Which, being taken from the nine tenths that remained after the first tenth had been given away. represents only (1/10 X 9/10 _) 9/100 of the original capital.

(14) אעשרנו, So lit. imperfect with suffix of 3rd sing. instead of the imperfect אעשר

(15) The enactments of Usha reported supra by R Elai.

(16) The first enactment was reported by three Amoraim: R Elai, Resh Lakish and R. Judah (or Jose) b. Hanina (supra 40b), the second only by two: R. Elai and Resh Lakish (supra l.c.). while the third was reported by R Elai alone.

(17) An aid to the recollection of the order in which they were cited and thereby the order of the diminutions.

(18) 'A man shall maintain . . . while they are young' (supra 49b.

(19) 'If a man assigned . . . in writing' (supra l.c.).

(20) 'If a man wishes to spend liberally' (the last cited enactment).

(21) V. Supra p. 183, n. 12.
(22) Lit ,'roll', i.e., have patience with him, and employ gentle means to induce him to study.
(23) Lit., 'from here'.
(24) Lit., 'go down with him into'.
(25) Sc. he may adopt drastic measures if his son is neglectful or indifferent.
(26) Lit., 'I am not (in agreement)'.
(27) A teacher of young children (v. B.B. 8b).
(28) B.B. 21a. This seems to shew that the age of compulsion is six, contrary to R. Isaac's tradition which puts it at twelve.
(29) Cf. supra n. 14.
(30) Lit., 'that'.
(31) Which a child should begin studying at the age of six.
(32) His mother died while he was an infant, and his upbringing was entrusted to a nurse from whom he learned many proverbs and maxims, legends and folklore; v. Kid. 31b.
(33) תתלסר, V n. 23 .
(34) מעת לעת, lit., 'from time to time', from a certain hour of one day to the same hour on the following day.
(35) The fast of the Day of Atonement and that of the Ninth of Ab last for a full twenty-four hours, beginning near sunset and terminating at nightfall on the following day.
(36) Who matures earlier.
(37) Sc. twelve years and one day (Tosaf s.v. ובת, a.l., contrary to Rashi who interprets 'twelve' as 'twelfth', viz., from the age of eleven years and a day). [The text is uncertain. MS.M. and Asheri read 'and one of twelve () for a full twenty four hours' fast and in the case of a little girl'. This may mean; (a) 'and that applies to a little girl', whereas in the case of a boy the age for a full fast begins at thirteen, or (b) 'and the same law applies to a girl'; v. Isaiah Trani. Tosaf. seems to have had a still shorter text with no reference to a boy; y. Tosaf. s.v.].
(38) Unless the appropriate remedy is applied (Rashi). Cf., however, Tosaf. s.v. ומאי a.l.
(39) דיה. The 'white dayyah' is the Talmudic interpretation of חסידה (Lev. XI, 19), E.V. stork (cf. Hul. 63a).
(40) Sc. all his efforts to restore his child to normal health will be of no avail. His health remalns irrevocably ruined.
(41) He will always surpass them in knowledge and attainments.
(42) Lit., 'they are.
(43) V. supra n. 3.
(44) Lit., 'that'.
(45) Infra 78b, B.K. 88b, B.M. 35a, 96b, B.B. 50a. 139b.
(46) V. supra p. 183, n. 12.
(47) Melog (v.Glos).
(48) Who has the legal status of a buyer.
(49) Since he is in the position of the earliest purchaser.
(50) באוכלוסא דאינשי, so MS. M. Cur. edd. דאושא 'of Usha'. Var. lec. קאי בהילכתא דאושא 'engaged in teaching the laws passed at Usha' (Jast.).
(51) Sc. would never forget it.
(52) Ps. CVI, 3.
(53) V. supra p. 181, n. 19.
(54) This is a charitable act, since legally they have no claim upon him for maintenance.
(55) Children being 'at all times' dependent on their father, the text cited may well be applied to such a man. צדקה 'righteousness' may also signify 'charity'.
(56) Ps. CXII, 3.
(57) Which is compared to 'wealth and riches'.
(58) His Torah is not thereby diminished so that 'wealth and riches' (v. supra note 7) 'are in his house', and 'his merit' for teaching other people 'endureth for ever'.
(59) Cf. supra notes 7 and 8 mutatis mutandis. The scrolls remain his, while his 'merit endureth for ever' for enabling others to study.
(60) Ps. CXXVIII, 6.
(61) V. Glos.

(62) Which are frequently the cause of quarrels.

(63) Sc. legal heirs.

(64) On the disposal of the estate of the deceased.

(65) So MS. M. and our Mishnah supra 493. Cur. edd. omit 'b. Azariah' from the quotation.

Talmud - Mas. Kethuboth 50b

R. Joseph sat before R. Hamnuna while R. Hamnuna was sitting and discoursing: As sons may obtain their inheritance only from landed property so may one's daughters obtain their maintenance only from landed property. All shouted at him: 'Is it only from a man who leaves land that sons inherit while from him who leaves no land his sons do not inherit?'[1] Said R. Joseph to him:[2] Might not the Master have been speaking of the kethubah [that is due to] male children?[3] The other[2] replied: The Master who is a great man understood precisely what I meant.[4] R. Hiyya b. Joseph stated: Rab allowed maintenance [to daughters][5] from wheat[6] of 'aliyyah.[7] The question was raised: Was [Rab's allowance made for] a marriage outfit,[8] and by 'aliyyah is meant,[9] 'in accordance with her father's generans[10] disposition', [his ruling being] in agreement with that of Samuel who laid down that in respect of marriage outfit the assessment[11] is determined by [the disposition of] the father;[12] or was it rather for actual maintenance,[13] and by 'aliyyah was meant[9] 'in accordance with the chivalrous[14] enactments made[15] in an upper chamber',[16] for R. Isaac b. Joseph stated: In an upper chamber it was enacted that daughters shall be maintained even out of movable property?[17] — Come and hear: R. Benai the brother of R. Hiyya b. Abba had in his possession orphans' movable property, and when [he and the daughters of the deceased] came before Samuel, the latter said to him, 'Go and provide maintenance [for them]'. Does not [maintenance refer] to actual maintenance, he being of the same opinion as R. Isaac b. Joseph?[18] — No; there[19] [the claim] was in respect of marriage outfit, and Samuel [acted] in accordance with his own view, since he laid down that in respect of marriage outfit the assessment[20] is determined by [the disposition of] the father.[21] [Such] a case[22] occurred at Nehardea,[23] and the Nehardean judges issued an order[24] [in favour of the daughters]. At Pumbeditha also[25] R. Hana b. Bizna allowed [daughters] to collect [for their maintenance].[26] R. Nahman, however, said to them: Proceed to withdraw [your orders], otherwise[27] I shall order the seizure of your mansions. R. Ammi and R. Assi intended to allow maintenance[28] out of movable property.[29] Said R. Jacob b. Idi to them: In a matter concerning which R. Johanan and Resh Lakish hesitated to act[30] would you [venture to] act? R. Eleazar intended to allow maintenance[28] out of movable property.[29] Said R. Simeon b. Eliakim to him: 'Master, I know that in your decision[31] you are not acting on the line[32] of justice but on the line of mercy, but [the possibility ought to be considered that] the students might observe this ruling and fix it as an halachah for future generations'. A similar case[33] was once submitted to[34] R. Joseph. 'Give her', he ordered, 'of the dates that [are spread] on the reed-mat'.[35] Said Abaye to him, 'Even if she were a creditor[36] would the Master have allowed her [a privilege] of such a nature?'[37] — 'What I mean is', the other said to him, '[dates] that are suitable[38] for [spreading on] the reed-mat'.[39]

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(1) Certainly not. The Torah did not restrict the laws of inheritance to landed estates only.

(2) R. Hamnuna.

(3) If their mother pre-deceased their father they are entitled to recover her kethubah from his estate over and above the shares to which they like the other sons are entitled.

(4) The comparison made between the maintenance of daughters and the inheritance of sons was not, as the others who shouted assumed, the ordinary inheritance of sons, which is a Pentateuchal right, but their inheritance of their mother's kethubah (v. supra n. 3) which, like the maintenance of daughters, is merely a Rabbinical obligation undertaken by their father in accordance with the terms of the kethubah which he gave to their mother. Cf. infra 52b, and 91b.

(5) In the absence of real estate.

(6) Sc. movable property.

(7) דעלייה. The noun עלית may signify either 'upper chamber' or 'best' 'generous'. The meaning is discussed anon.

(8) Which is levied from movables also.
(9) Lit., ‘and what ‘aliyyah?’
(10) Cf. supra n. 7.
(11) For a daughter, out of her deceased father's estate.
(12) Infra 68a. A bigger allowance if he was known to be generous, and a smaller one if he was known to be niggardly.
(13) Which, forming one of the terms of the kethubah, may legally be recovered like the statutory kethubah itself, from landed property only.
(14) Lit., ‘good’.
(15) In favour of daughters.
(16) Cf. ‘the upper chamber of Hananiah b. Hezekiah’ (Shab. 13b) and v. supra
(17) [Despite the fact that the lien clause in the Mishnah on which they base their claims to maintenance did not include movables, v. infra 56b].
(18) Who testified supra to the enactment made in favour of daughters.
(19) In the case dealt with by Samuel.
(20) V. p. 290, n. 11.
(21) V. p. 290, n. 12.
(22) In which daughters claimed maintenance from their deceased father's movable property.
(23) V. supra p. 222, n. 8.
(24) Lit., ‘judged’.
(25) Where a similar case (v. supra n. 6) occurred.
(26) From the movable property of their deceased father.
(27) Lit., ‘and if not’.
(28) Of daughters.
(29) V. supra n. 10.
(30) Lit., ‘did not do a deed’.
(31) Lit., ‘in you’.
(32) Lit., ‘measure’.
(33) Of a daughter who claimed maintenance out of her deceased father's estate.
(34) Lit., ‘that (case) which came before’.
(35) To dry; sc. movable property.
(36) Who is entitled to distrain upon sold property, a right to which a daughter is not entitled.
(37) The seizure of movable assets. The answer being in the negative, the question arises: How could R. Joseph allow a daughter the privilege to which even a creditor is not entitled?
(38) I. e., ripe.
(39) But are still attached to the tree. Attached fruit has the status of landed property.

Talmud - Mas. Kethuboth 51a

‘After all, however, [it may be objected] is not all that is ripe[1] for cutting[2] regarded as already cut?’[3] — ‘I mean [dates] that are still dependent[4] on the palm-tree’.[5] A boy orphan and girl orphan[6] once came before Raba.[7] ‘Grant a bigger [maintenance allowance] to the boy’, said Raba, ‘for the sake of the girl’.[8] Said the Rabbis to Raba: Did not the Master himself lay down [that payment may be exacted] from landed property but not from movable property whether in respect of [a daughter's] maintenance, [a wife's] kethubah or [a daughter's] marriage outfit?[9] — He answered them: Had he desired to have a handmaid to attend on him would we not have granted him [an Increased allowance for the purpose]?[10] How much more then [should the allowance be increased] here[11] where it serves[12] two [purposes].[13] Our Rabbis taught: Both landed property[14] and movable property may be seized[15] for the maintenance of a wife[16] or daughters;[16] so Rabbi.[17] R. Simeon b. Eleazar ruled: Landed property may be seized for daughters[18] from sons, for daughters from daughters,[19] and for sons from Sons;[19] for sons from daughters where the estate is large[20] but not where it is small.[21] Movable property[22] may be seized for sons from sons,[23] for daughters from daughters[23] and for sons from daughters, but not for daughters from sons.[24] Although we have an established rule that the

halachah is in agreement with Rabbi [where he differs] from his colleague, the halachah here is in agreement with R. Simeon b. Eleazar; for Raba stated: The law is [that payment may be exacted] from landed property but not from movable property whether in respect of a kethubah, maintenance or marriage outfit.[25]

MISHNAH. [IF A HUSBAND] DID NOT WRITE A KETHUBAH FOR HIS WIFE[26] SHE MAY RECOVER TWO HUNDRED ZUZ[27] [IF AT MARRIAGE SHE WAS] A VIRGIN, AND ONE MANEH[27] [IF SHE WAS THEN] A WIDOW, BECAUSE [THE STATUTORY KETHUBAH] IS A CONDITION LAID DOWN BY BETH DIN. IF HE ASSIGNED TO HER IN WRITING A FIELD THAT WAS WORTH ONE MANE H INSTEAD OF THE TWO HUNDRED ZUZ,[28] AND DID NOT WRITE IN HER FAVOUR,[26] 'ALL PROPERTY THAT I POSSESS IS SURETY FOR YOUR KETHUBAH',[29] HE IS NEVERTHELESS LIABLE [FOR THE FULL AMOUNT][30] BECAUSE [THE CLAUSE MENTIONED] IS A CONDITION LAID DOWN BY BETH DIN. IF HE DID NOT WRITE IN HER FAVOUR[31] [THE CLAUSE], IF YOU ARE TAKEN CAPTIVE I WILL RANSOM YOU AND TAKE YOU AGAIN AS MY WIFE,'[29] OR, IN THE CASE OF A PRIEST'S WIFE,[32] '[29] WILL RESTORE YOU TO YOUR PARENTAL HOME',[33] HE IS NEVERTHELESS LIABLE [To CARRY OUT THESE OBLIGATIONS], BECAUSE [THE CLAUSE] IS A CONDITION LAID DOWN BY BETH DIN. IF SHE IS TAKEN CAPTIVE IT IS HIS DUTY TO RANSOM HER; AND IF HE SAID, 'HERE[34] IS HER LETTER OF DIVORCE AND HER KETHUBAH LET HER RANSOM HERSELF', HE IS NOT ALLOWED [TO ACT ACCORDlngly].[35] IF SHE SUSTAINED AN INJURY IT IS HIS DUTY TO PROVIDE FOR HER MEDICAL TREATMENT,[36] BUT IF HE SAID, HERE[34] IS HER LETTER OF DIVORCE AND HER KETHUBAH, LET HER HEAL HERSELF', HE IS ALLOWED [TO ACT IN ACCORDANCE WITH HIS DESIRE]. GEMARA. Whose [view is represented in our Mishnah]? It is [obviously that of] R. Meir who ruled [that the intercourse of] any man who undertakes to give a virgin less than two hundred zuz[37] or a widow less than 'a Maneh[37] is[38] an act of prostitution;[39] for if [it be suggested that it is the view of] R. Judah, he surely, [it can be objected] ruled, [that if a husband] wished he may write out for a virgin[40] a deed for two hundred zuz and she writes [a quittance][41] 'I have received from you a maneh,' and for a widow [he may write out a deed for] a maneh and she writes [a quittance], 'I received from you fifty zuz'.[42] Read, however, the final clause: IF HE ASSIGNED TO HER IN WRITING A FIELD THAT WAS WORTH ONE MANEH INSTEAD OF THE TWO HUNDRED ZUZ, AND DID NOT WRITE IN HER FAVOUR, ALL PROPERTY THAT I POSSESS[43] IS SURETY FOR YOUR KETHUBAH' HE IS NEVERTHELESS LIABLE [FOR THE FULL AMOUNT], BECAUSE [THE CLAUSE MENTIONED] IS A CONDITION LAID DOWN BY BETH DIN. Does not this obviously represent the view[44] of R. Judah who laid down that [the omission from a bond of the clause] pledging property[45] [is regarded as] the scribe's error?[46] for if [It be suggested that it represents the view of] R. Meir, he, surely, [it can be objected] ruled that [the omission of the clause] pledging property is not [regarded as] the scribe's error. For we have learned: If a man found notes of indebtedness

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(1) Lit., 'that stands'.

(2) לגדוד, so MS. M., Aruk, Tosaf. B.B. 42b (s.v. שבה). Cur. edd., לגזוז 'to shear', is also the reading of Tosaf. a.l. (s.v. סוף).

(3) כגדוד. This is the reading of the authorities who adopt לגדוד (cf. supra n. 9). The others read כגזוז.

(4) Lit., 'require'.

(5) Not being sufficiently ripe they are deemed to he part of the tree (cf. supra note 7).

(6) Brother and sister whose deceased father's movable property had been entrusted to a guardian.

(7) Claiming an allowance out of their father's estate.

(8) Sc. an allowance that shall suffice for the two.

(9) Infra 69b; how then did Raba allow the exaction of maintenance out of movable assets (v. supra n. 13)?

(10) As heir the boy is entitled to have all his needs supplied from the estate.

(11) Where the sister attends on her brother.

(12) Lit., ‘there is’.
(13) Attendance and maintenance.
(14) Lit., ‘property which has surety’, sc. to which a claimant may resort in case of non-payment by the defendant.
(15) From orphans.
(16) Of their deceased father.
(17) Infra 68b.
(18) For their maintenance or marriage outfit.
(19) Sc. the younger are given equal shares with the elder though the latter had taken earlier possession of their father's estate.
(20) V. next note.
(21) I. e., if it does not suffice for the maintenance of the sons and the daughters until they reach adolescence (Rashi. Cf. B.B. 139b). In such a case the estate belongs to the daughters while the sons may go begging (B.B. loc. cit.).
(22) Cf. supra n. 1 mutatis mutandis.
(23) V. supra note 6.
(24) Movable assets of the deceased in the possession of his sons are regarded, as far as his daughters are concerned, as non-existent.
(25) Supra p. 292 and infra 69b.
(26) Lit., ‘for her’.
(27) V. Glos.
(28) The statutory amount of a virgin's kethubah.
(29) This is one of the statutory clauses that a kethubah must contain.
(30) V. p. 293. n. 15.
(31) Lit., ‘for her’.
(32) With whom her husband (the priest) may not live again after she had been a captive and in whose favour the clause ‘and take you again as wife’ cannot be written.
(33) Lit., ‘country’, ‘district’.
(34) Lit., ‘behold’.
(35) Since the obligation to ransom her is incurred as soon as she is taken captive.
(36) Lit., ‘to heal her’.
(37) V. Glos.
(38) Lit., ‘behold this’.
(39) Infra 54b.
(40) As her kethubah.
(41) Though she has received nothing.
(42) Infra 54b. Now since our Mishnah insists on the payment of the full amount of the kethubah, presumably even if the woman had surrendered her claim (corresponding to a quittance), it can only represent the view of R. Meir who disallows such a surrender and not that of R. Judah who allows it.
(43) This is assumed to include even property which he disposed of subsequent to the writing of the kethubah.
(44) Lit , ‘it comes’.
(45) E.g that of the debtor to the creditor.
(46) And not as the considered consent of the creditor. Despite its error the pledging clause is deemed to have been entered.

Talmud - Mas. Kethuboth 51b

he must not restore them[1] if they contain a clause pledging property, because the court would exact payment from such property,[2] but if they do not contain the clause pledging property, he must return them, because the court will not exact payment from the property;[3] so R. Meir. The Sages,[4] however, ruled: In either case he must not return them, because the court will exact payment from the property[5] [in any case].[6] Would then the first clause [represent the view of] R. Meir and the final clause that of R. Judah? And should you suggest that both clauses[7] [represent the view of] R. Meir and that he draws a distinction between a kethubah and notes of indebtedness,[8] [it could be retorted]

does he, indeed, draw such a distinction? Has it not been taught: For five [classes of claims] may distraint be made only on free assets;[9] they are as follows. [A claim for] produce,[10] for amelioration shewing profits,[11] for an undertaking[12] to maintain the wife's son or the wife's daughter, for a note of indebtedness wherein no lien on property had been entered, and for a woman's kethubah from which the clause pledging security was omitted.[13] Now what authority have you heard laying down that [the omission from a deed of a record of] a lien on property is not regarded as the scribe's error?[14] [Obviously it is] R. Meir;[15] and yet it was stated, was it not, 'a woman's kethubah'?[16] — If you wish, I might reply: [Our Mishnah represents the view of] R. Meir; and if you prefer I might reply: [It represents the View of] R. Judah. 'If you prefer I might reply: [It represents the view of] R. Judah',for there[17] she specifically wrote in the man's favour[18] [in a quittance]: 'I received'[19] but here[20] she did not write in his favour,[18] 'I received'.[21] 'If you wish I might reply: [Our Mishnah represents the view of] R. Meir',for by the expression[22] 'HE IS NEVERTHELESS LIABLE' [was meant liability to pay] out of his free assets.[23] IF HE DID NOT WRITE IN HER FAVOUR etc. Samuel's father ruled: The wife of an Israelite who had been outraged is forbidden to her husband, since it may be apprehended that the act begun[24] under compulsion may have terminated[25] with her consent.[26] Rab raised an objection against Samuel's father: [Have we not learned,] IF YOU ARE TAKEN CAPTIVE I WILL RANSOM YOU AND TAKE YOU AGAIN AS MY WIFE?[27] The other remained silent. Rab thereupon applied to Samuel's father the Scriptural text, The princes refrained talking and laid their hand on their mouth.[28] What, however, could he have replied?[29] — [That the law][30] was relaxed in the case of a captive.[31] According to Samuel's father's ruling how is it possible to conceive a case of outrage which the All-Merciful deemed to be genuine?[32] — Where, for instance, witnesses testified that she cried from the commencement to the end. [This ruling],[33] however, differs from that of Raba; for Raba laid down: Any woman, the outrage against whom began[34] under compulsion, though it terminated with her consent, and even if she said, 'Leave him alone', and that if he had not made the attack upon her she would have hired him to do it,is permitted [to her husband]. What is the reason? — He plunged[35] her into an uncontrollable passion.[36] It was taught in agreement with Raba: And she be not seized[37] [only then][38] is she forbidden,[39] [from which it follows] that if she was seized[40] she is permitted.[39] But there is another class of woman who is permitted[39] even if she was not seized.[41] And who is that? Any woman who began[42] under compulsion and ended[43] with her consent. Another Baraitha taught: 'And she be not seized' [only then] is she forbidden[44] [from which it follows] that if she was seized[45] she is permitted.[44] But there is another class of woman who is forbidden[44] even though she was seized. And who is that? The wife of a priest.[46] Rab Judah stated in the name of Samuel who had it from R. Ishmael: 'And she be not seized', [then only][47] is she forbidden,[44] but if she was seized she is permitted. There is, however, another class of woman who is permitted even if she was not seized. And who is that? A woman whose betrothal was a mistaken one,[48] and who may, even if her son sits riding on her shoulder, make a declaration of refusal[49] [against her husband] and go away. Rab Judah ruled: Women who are kidnapped[50] are permitted to their husbands.[51] 'But', said the Rabbis to Rab Judah, 'do they[52] not bring bread to them?'[53] — [They do this] out of fear. 'Do they[52] not, however, hand them[53] their arrows?'[54] — [They do this also] out of fear. It is certain, however, that they[52] are forbidden if [the kidnappers] release then, and they go to them of their own free will. Our Rabbis taught: Royal captives[55] have the status of ordinary captives[56] but those that are kidnapped by highwaymen are not regarded as ordinary captives. Was not, the reverse, however, taught? — There is no contradiction between the rulings concerning royal captives[57] since the former refers[58] [for example] to the kingdom of Ahasuerus[59] while the latter refers[60] to the kingdom of [one like] Ben Nezer.[61] There is also no contradiction between the two rulings concerning captives of highwaymen[62] since the former refers[60] to [a highwayman like] Ben Nezer[61] while the latter refers[60] to an ordinary highwayman.[63] As to Ben Nezer, could he be called there[64] 'king' and here is 'highwayman'? — Yes; in comparison with Ahasuerus he was a highwayman but in comparison with an ordinary robber he was a king. OR, IN THE CASE OF A PRIEST'S WIFE, 'I WILL RESTORE YOU TO YOUR PARENTAL HOME' etc. Abaye ruled: If a widow was married to a High Priest[65] it is the latter's duty to ransom[66] her, since one may apply to her: OR IN THE CASE

OF A PRIEST'S WIFE, I WILL RESTORE YOU TO YOUR PARENTAL HOME',[67]

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(1) Either to the creditor or to the debtor.

(2) Lit 'from them', sc. the nekasim (assets). Aliter: 'Exact payment on the strength of them', sc. the notes. Such exaction would be an injustice to the debtor if he has paid his liabilities and it was he who had lost the paid notes. But even where the creditor admits liability collusion with the object of robbing purchasers may be suspected (v. B.M. 12b).

(3) Ff. supra n. 7, ab. init.

(4) One of whom was R. Judah, a contemporary of R. Meir.

(5) Ff. supra note 7.

(6) Mishnah, B.M. 12b.

(7) Lit., 'all of it'.

(8) While in the case of the latter he does not regard the omission as a scribe's error, he does so in the case of the former since the terms of a kethubah are governed by statutory regulations laid down by Beth din.

(9) Of the defendant; but not on his sold or mortgaged property.

(10) In the case, for instance, where a field with its produce was taken away from a buyer by the man from whom the seller had robbed it. The buyer who may recover the cost of the field itself from the seller's sold or mortgaged property may not recover the cost of the produce except from his free assets. Cf. Git. 48b, B.M. 14b.

(11) Where the buyer (cf. supra n. 3) incurred expense in effecting the improvements of the land.

(12) Lit., 'and he who undertakes'.

(13) B.K. 95a.

(14) And that the holder of such a deed may only distrain on free assets.

(15) Who most consequently be the author of the last cited Baraitha which states that 'a note of indebtedness wherein no lien on property had been entered' entitles the holder to distrain 'only on free assets'.

(16) 'May be distrained only on free assets' if the clause pledging security was omitted from it. The section of our Mishnah, therefore, which states that, despite the omission of such a clause the husband is 'NEVERTHELESS LIABLE' and the kethubah may presumably be distrained on sold and mortgaged property also (v. supra p. 295. n. 2). cannot represent the view of R. Meir. How then could it be suggested that both clauses of our Mishnah (cf. supra p. 295, n. 12 and text) represent the view of R. Meir?

(17) In the Mishnah (infra 54b) cited supra 51a, according to which the statutory sum of a kethubah may be reduced.

(18) Lit., 'for him'.

(19) And she has the right to renounce a portion of her claim.

(20) In our Mishnah which allows the woman the full amount of her kethubah even if her husband had written none.

(21) And the object of our Mishnah is to point out that a woman's consent to dispense with the written document of her kethubah is no evidence that she has surrendered her right to recover the statutory amount to which she is entitled. It is assumed rather that her indifference to the written document is due to her reliance on her statutory rights.

(22) Lit., 'what . . . that was taught'.

(23) His sold or mortgaged property, however, may not be distrained on, in agreement with R. Meir, since no lien on property had been recorded in the kethubah.

(24) Lit., 'her beginning'.

(25) Lit., 'and her end'.

(26) And a wife who willingly played the harlot is forbidden to her husband.

(27) Though a woman in captivity is usually assumed to have been outraged.

(28) Job XXIX, 9.

(29) Lit., 'what has he to say'.

(30) Prohibiting an outraged woman to her husband.

(31) Since her violation is only a suspicion.

(32) Lit., 'permitted'. sc. the woman is exempt from punishment. Cf. Deut. XXII, 26.

(33) Samuel's father's.

(34) Lit., 'her beginning'.

(35) Lit., 'clothed'.

(36) Being a victim of her passions she is deemed to have acted under compulsion even when she professed acquiescence.

(37) Num. V, 13. E.V., neither she be taken in the act.
(38) Sc. if she was not seized, i.e., if she did not act under compulsion but willingly.
(39) To her husband.
(40) Sc. if she acted under compulsion.
(41) But acted willingly.
(42) Lit., 'her beginning'.
(43) Lit., 'and her end'.
(44) To her husband.
(45) Sc. if she acted under compulsion.
(46) Yeb. 56b.
(47) V. supra note 4.
(48) When a condition which remained unfulfilled was attached to it. In such a case the woman may leave her husband without a letter of divorce and she has the status of a feme sole who had never before been married.
(49) V. Glos. s.v. mi'un. [Isaiah Trani: This is not to be taken literally. It means simply that she is permitted to marry another man without a bill of divorce].
(50) Lit., 'whom thieves steal'.
(51) Any intercourse between the kidnappers and the women is regarded as outrage since the latter would not willingly consent to intimate relations with the men they detest.
(52) The kidnapped women.
(53) The thieves, which shows that they live on amicable terms with the kidnappers.
(54) When their camp is attacked.
(55) Sc. women forcibly taken into the royal harem (v. Rashi). Aliter. Captives of the government; 'forced by (Roman) officials' (Jast.).
(56) And are permitted to their husbands, in agreement with the terms of the kethubah (cf. our Mishnah).
(57) Lit., 'kingdom on kingdom'.
(58) Lit., 'that'.
(59) Sc. one taken captive by a royal personage. Not expecting ever to be married by such a person a captive would strenuously resist intimate relations.
(60) Lit., 'that'.
(61) **בן נצר** who was a robber and self-made ruler (cf. Rashi). A woman might well entertain the hope that such a man would consent to marry her and she might consequently allow intimate relations. Ben Nezer is identified by some authorities with Odenathos of Palmyra, who was first a robber chief and ultimately the founder of a dynasty (v. fast.). [V. Graetz, Geschichte, IV p. 453ff.].
(62) Lit., 'robbery on robbery'.
(63) With whom no decent woman would desire to be associated even in marriage. Intercourse with such a man must, therefore, he regarded as outrage.
(64) In the second Baraitha cited. (15) The Baraitha first mentioned.
(65) Though such a marriage is forbidden (cf. Lev. XXI, 14).
(66) If she is taken captive.
(67) The clause in her kethubah as the wife of a priest. Since her ransom would not lead to a re-union with the High Priest but only to her restoration to her parental home, he is obliged to ransom her.

Talmud - Mas. Kethuboth 52a

but if a bastard or a nethinah[1] was married to an Israelite the latter is under no obligation to ransom her, since one cannot apply to her:[2] AND TAKE YOU AGAIN AS MY WIFE.[3] Raba ruled: Wherever the captivity causes the woman to be forbidden[4] [to her husband] it is his duty to ransom her[5] but where some other circumstance causes her to be forbidden to him[6] it is not his duty to ransom her.[7] Must it be assumed [that they[8] differ on the same principles] as the following Tannaim? [For it was taught:] If a man forbade his wife by a vow [from deriving any benefit from him] and she was taken captive, he must, said R. Eliezer, ransom her[9] and give her also her kethubah. R. Joshua said: He must give her her kethubah but need not ransom her. Said R. Nathan: I asked Symmachus,

'When R. Joshua said, "He must give her her kethubah but need not ransom her" [did he refer to a case] where her husband first made his vow against her and she was then taken captive or even to a case where she was first taken captive and he made his vow against her subsequently?'[10] And he told me, 'I did not hear [what he exactly said] but it seems [that he referred to] a case where [the husband] made the vow against her first and the woman was taken captive afterwards; for, should you suggest [that the ruling applied also to a woman who] was taken captive first and the man made his vow against her afterwards [the objection could be raised that in such a case] he might make use of a trick'.[11] Do not they[12] then differ[13] in [the case of one] who made a vow against the wife of a priest,[14] Abaye upholding the view of R. Eliezer[15] while Raba IS maintaining that of R. Joshua?[16] — No;[17] here[18] we are dealing [with the case of a woman] who, for instance, made the vow herself and her husband[19] confirmed it,[20] R. Eliezer being of the opinion that it was he[21] who put his finger between her teeth[22] while R. Joshua maintains that it was she herself who put her finger between her teeth.[23] [But] If she herself put her finger between her teeth what claim can she have to her[24] kethubah? And, furthermore, [it was stated]: Said R. Nathan: I asked Symmachus, 'When R. Joshua said, "He must give her her kethubah but need not ransom her [did he refer to a case] where her husband first made his vow against her and she was then taken captive or even to a case where she was first taken captive and he made his vow against her subsequently?' and he told me: 'I did not hear [what he exactly said]'. Now if [this is a case] where she herself had made the vow, what difference is there [it may be asked] whether he made the vow first against her[25] and she was taken captive afterwards or whether she was first taken captive and he then made the vow?[26] — The fact is that [here[27] it is a case where] the husband made the vow against her, but Abaye explains [the dispute][28] on the lines of his view while Raba explains it on the lines of his view. 'Abaye explains the dispute on the lines of his view', thus: If a widow [was married] to a High Priest no one[29] disputes [the ruling] that it is the husband's duty to ransom her;[30] if a bastard or a nethinah [was married] to an Israelite no one[29] disputes the ruling that it is not his duty to ransom her,[31] if also one made a vow against the wife of a priest[32] no one[29] disputes the ruling that it is his duty to ransom her, since [the principle in this case] is identical with that of a widow [who was married] to a High Priest.[33] They[34] differ only in [respect of him who] made a vow against the wife of an Israelite,[35] R. Eliezer being guided by the woman's original status[36] while R. Joshua is guided by her subsequent status.[37] 'Raba explains it on the lines of his view', thus: If a widow [was married] to a High Priest, or a bastard or a nethinah to an Israelite no one[38] disputes the ruling that it is not the husband's duty to ransom her.[39] They[40] differ only in [the case where one] made a vow against either the wife of a priest or the wife of an Israelite,[41] R. Eliezer being guided by the woman's original status[36] while R. Joshua is guided by her subsequent status.[37] IF SHE IS TAKEN CAPTIVE IT IS HIS DUTY TO RANSOM HER etc. Our Rabbis taught: If she was taken captive during the lifetime of her husband, and he died afterwards, and her husband was aware of her [captivity],[42] it is the duty of his heirs to ransom her, but if her husband was not aware of her captivity it is not the duty of his heirs to ransom her. Levi proposed to give a practical decision[43] in agreement with this Baraitha. Said Rab to him, Thus said my uncle:[44] The law is not in agreement with that Baraitha but with the following[45] wherein it was taught: [If a woman] was taken captive after the death of her husband it is not the duty of his orphans to ransom her, and, furthermore,[46] even if she was taken captive during the lifetime of her husband, but he died subsequently, the orphans are under no obligation to ransom her, since one cannot apply to her [the clause in her kethubah:] AND I WILL TAKE YOU AGAIN AS MY WIFE.[47] Our Rabbis taught: [If a woman] was taken captive and a demand was made upon her husband for as much as ten times her value, he must ransom her the first time. Subsequently, however, he ransoms her only if he desired to do so but need not ransom her[48] if he does not wish to do so. R. Simeon b. Gamaliel ruled:

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(1) Fem. of nathin (v. Glos.).

(2) As the Israelite is forbidden to live with her.

(3) Which is the appropriate clause entered in a kethubah given to the wife of an Israelite, and which cannot apply (v. supra n. 5) where she is one forbidden to him.

(4) Lit., ‘the prohibition of captivity causes her’.
(5) Contrary to the opinion of Abaye, the clause entered in a kethubah of a priest's wife obliges the priest to ransom his wife though she becomes forbidden to him through her captivity, only if she was permitted to him before she had been taken captive.
(6) As, for instance, a widow to a High Priest.
(7) Because, in the case of a forbidden marriage, as the clause ‘AND TAKE YOU AGAIN AS WIFE’ was originally invalid (cf. supra n. 6) the clause ‘RESTORE YOU TO YOUR PARENTAL HOME’ also has no validity. Thus, contrary to the ruling of Abaye, Raba maintains that a High Priest is under no obligation to ransom a widow whom he married in contravention of the laws of the High Priesthood. In the case of a bastard and a nethinah Raba is, of course, of the same opinion as Abaye.
(8) Abaye and Raba.
(9) Although, owing to his vow, he would subsequently be compelled to divorce her.
(10) Though there is good reason to suspect that the object of his vow was to escape his responsibility of ransoming her.
(11) Cf. supra n. 1.
(12) R. Eliezer and R. Joshua.
(13) Lit., ‘what, not?’
(14) I. e., the man who made the vow was himself a priest. It is his duty to ransom his wife, though her being prohibited to him is not due to her captivity, because the clause, ‘I WILL RESTORE YOU TO YOUR PARENTAL HOME’ may well be applied. Their dispute could not refer to an Israelite who made such a vow, since in that case, the clause ‘AND TAKE YOU AGAIN AS MY WIFE’ being inapplicable. R. Eliezer could not have imposed upon the man the duty of ransoming his wife.
(15) Cf. supra n. 5.
(16) That the husband is exempt from ransoming his wife because her prohibition to him was not caused by her captivity but by some other circumstance, viz. his vow.
(17) R. Eliezer and R. Joshua do not differ on the same principles on which Abaye and Raba differed, both of them agreeing either with Abaye or with Raba.
(18) Lit., ‘here in what?’
(19) An Israelite.
(20) Explicitly or implicity.
(21) By his confirmation of the vow.
(22) Metaph. It is his fault that the vow remained valid. Had he desired to annul it he had the full power to do so (v. Num. XXX, 7ff). As he is thus the cause of the woman's prohibition to him and of rendering the clause in the kethubah inapplicable, he must pay the penalty by retaining the responsibility of ransoming her.
(23) She should not have made her vow. Having made it her prohibition to her husband is her own fault. Cf. supra n. 13 mutatis mutandis.
(24) Lit., ‘what is its doing’.
(25) I. e., by confirming it.
(26) In either case, since it was she who made the vow, no trick on the part of the husband can be suspected.
(27) In the dispute between R. Eliezer and R. Joshua.
(28) Between R. Eliezer and R. Joshua.
(29) Neither R. Eliezer nor R. Joshua. Lit., ‘all the world’.
(30) Cf. supra p. 300. n. 3. The fact that she is forbidden to him for come reason other than that of her captivity being of no consequence.
(31) Cf. supra p. 300, n. 2, and text.
(32) Sc. a Priest against his own wife.
(33) In either case the clause, ‘I WILL RESTORE YOU TO YOUR PARENTAL HOME’ (cf. supra p. 300, n. 3) may well be applied after, as well as before, the woman had been taken captive.
(34) St. Eliezer and R. Joshua.
(35) Cf. supra note9 mutatis mutandis. To the wife of an Israelite it was originally possible to apply the clause, ‘I WILL TAKE YOU AGAIN AS MY WIFE’ but now, owing to the vow, it can no longer be applied.
(36) Lit., ‘goes after (the status) of the beginning’. When the clause was applicable and therefore the obligation stands.
(37) Lit.,’in the end’.

(38) V. supra p. 302, n. 6.
(39) In the case of the widow to a High Priest, as her prohibition is due to a cause other than captivity, neither the clause relating to 'remarriage' nor that of 'restoring her to her parental home' is valid (cf. supra p. 300. n. 10); and in the case of the last mentioned because the clause, 'I WILL TAKE You AGAIN AS MY WIFE could not be applied originally and cannot be applied now.
(40) R. Eliezer and R. Joshua.
(41) To either of whom the relevant clauses of her kethubah that were originally applicable now, on account of the vow which is a cause of prohibition 'other than that of captivity'.
(42) And thus incurred the liability to ransom her before he died.
(43) Lit., 'to do a deed'.
(44) R. Hiyya who was Rab's father's brother.
(45) Lit., 'as that'.
(46) Lit., 'and no more but'.
(47) Since her husband is dead. V. Tosef. Keth. IV.
(48) At all. It is his duty to ransom her no more than once (Rashi). Aliter: For an exorbitant price (v. R. Han. Tosaf. s.v. רצה a. l.). If, however, the ransom demanded is not higher than her value he must pay it.

Talmud - Mas. Kethuboth 52b

Captives must not be ransomed for more than their value, in the interests of the public.[1] [This then implies] that they must be ransomed for their actual value even though the cost of a captive's ransom[2] exceeds the amount of her kethubah. Has not, however, the contrary been taught: [If a woman] was taken captive, and a demand was made upon her husband for as much as ten times the amount of her kethubah[3] he must ransom her the first time. Subsequently, however, he ransoms her only if he desires to do so but need not ransom her if he does not wish to do so. R. Simeon b. Gamaliel ruled: If the price of her ransom corresponded to the amount of her kethubah, he must ransom her; if not, he[4] need not ransom her?[5] — R. Simeon b. Gamaliel upholds two lenient rules.[6] IF SHE SUSTAINED AN INJURY IT IS HIS DUTY TO PROVIDE FOR HER MEDICAL TREATMENT. Our Rabbis taught: A widow is to be maintained from [her husband's] orphans' estate; and if she requires medical treatment, it is regarded[7] as maintenance. R. Simeon b. Gamaliel ruled: Medical treatment of a limited liability may be deducted[8] from her kethubah but one which has no limited liability[9] is regarded[10] as maintenance. Said R. Johanan: Blood letting in the Land of Israel[11] was regarded as medical treatment of no limited liability.[12] R. Johanan's relatives had [to maintain] their father's wife who required daily medical treatment. When they came to R. Johanan[13] he told them: Proceed to arrange with a medical man an inclusive fee.[14] [Later, however], R. Johanan remarked: 'We have put ourselves [in the unenviable position] of[15] legal advisers'.[16] What, however, was his opinion at first,[17] and why did he change it in the end![18] At first he thought [of the Scriptural text,] And that thou hide not thyself from thine own flesh,[19] but ultimately he realized [that the position of] a noted personality is different [from that of the general public].[20]

MISHNAH. [A HUSBAND WHO] DID NOT GIVE HIS WIFE IN WRITING[21] [THE FOLLOWING UNDERTAKING:] 'THE MALE CHILDREN THAT WILL BE BORN FROM OUR MARRIAGE[22] SHALL INHERIT THE MONEY OF THY KETHUBAH IN ADDITION TO THEIR SHARES WITH THEIR BROTHERS',[23] IS NEVERTHELESS LIABLE, BECAUSE [THIS CLAUSE] IS A CONDITION LAID DOWN BY BETH DIN. [THOUGH HE DID NOT GIVE HIS WIFE IN WRITING[24] THE UNDERTAKING:] 'THE FEMALE CHILDREN THAT WILL BE BORN FROM OUR MARRIAGE[25] SHALL DWELL IN MY HOUSE AND BE MAINTAINED OUT OF MY ESTATE UNTIL THEY SHALL BE TAKEN IN MAKRIAGE'[26] HE IS NEVERTHELESS LIABLE, BECAUSE [THIS CLAUSE] IS A CONDITION LAID DOWN BY BETH DIN. [SIMILARLY IF HE DID NOT GIVE HIS WIFE THE WRITTEN UNDERTAKING:][27] 'YOU SHALL DWELL IN MY HOUSE AND BE MAINTAINED THEREIN OUT OF MY ESTATE THROUGHOUT THE DURATION OF YOUR WIDOWHOOD', HE IS

NEVERTHELESS LIABLE, BECAUSE [THIS CLAUSE ALSO] IS A CONDITION LAID DOWN BY BETH DIN. SO DID THE MEN OF JERUSALEM WRITE. THE MEN OF GALILEE WROTE IN THE SAME MANNER AS THE MEN OF JERUSALEM. THE MEN OF JUDAEA, HOWEVER, USED TO WRITE:[28] 'UNTIL THE HEIRS MAY CONSENT TO PAY YOU YOUR KETHUBAH'. THE HEIRS, CONSEQUENTLY, MAY, IF THEY WISH TO DO IT, PAY HER HER KETHUBAH AND DISMISS HER. GEMARA. R. Johanan stated in the name of R. Simeon b. Yohai: Why was the kethubah for MALE CHILDREN[29] instituted?[30] In order that any man might thereby[31] be encouraged[32] to give[33] to his daughter as much as to his son. But is such a regulation found anywhere else?[34] Seeing that the All-Merciful ordained that a son shall be heir; a daughter shall not',[35] would the Rabbis proceed to make a provision[36] whereby a daughter shall be the heir? — This[37] also has Scriptural sanction, for it is written, Take ye wives, and beget sons and daughters,' and take wives far your sans, and give your daughters to husbands;[38] [now the advice to take wives for one's] sons is quite intelligible [since such marriages are] within a father's power[39] but [as to the giving of] one's daughters [the difficulty arises:] Is [such giving] within his power?[39] [Consequently[40] it must be] this that we were taught: That a father must provide for his daughter clothing and covering and must also give her a dowry[41] so that people may be anxious to woo[42] her and so proceed to marry her. And to what extent?[43] Both Abaye and Raba ruled: Up to a tenth of his wealth. But might it not be suggested[44] [that the sons] should inherit [what their mother received] from her father[45] but not [that which was due to her] from her husband?[46] — If that were so, a father also would abstain from assigning[47] [a liberal dowry for his daughter].[48] May it then be suggested[44] that where her father had assigned a dowry[49] her husband must also enter the clause[50] but where her father did not assign any dowry[51] her husband also need not enter the clause?[52] — The Rabbis drew no distinction.[53] But should not then[54] a daughter[55] among sons[56] also be heir?[57] — The Rabbis have treated [the kethubah][58] like an inheritance.[59] But should not then a daughter[55] among the other daughters[56] be heir?[60] — The Rabbis made no distinction.[61] Why then[62] is not [the kethubah] recoverable[63] from movables also?[64] — The Rabbis treated it like the [statutory] kethubah.[65] Why then should not distraint be made on sold or mortgaged property?[66] — [The expression] we learned [was] SHALL INHERIT.[67] May it then[62] be suggested [that It Is recoverable] even if there was no surplus[68] of a denar?[69] — The Rabbis have made no enactment where the Pentateuchal law of inheritance would thereby be uprooted. R. Papa was making arrangements for his son to be married into the house of Abba of Sura.[70] He went there to write the kethubah for the bride.[71] When Judah b. Meremar heard [of his arrival] he went out to welcome him.[72] When, however, they reached the door [of the bride's father's house] he asked leave to depart, when [R. Papa] said to him, 'Will the Master come in with me?'

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(1) מפני תיקון העולם 'for the sake of the social order' (Jast.), lit., 'for the establishment of the world', that captors should not thereby be encouraged to demand exorbitant prices for the ransom of their captive.

(2) Lit., 'her ransom'.

(3) Sc. did not exceed R.

(4) Since one cannot be expected to be liable for a single clause of a kethubah more than for the total amount of the kethubah. [Isaiah Trani: The amount of the kethubah here denotes the extra jointure in addition to the statutory two hundred and one hundred zuz].

(5) A ruling which contradicts the implication of the first Baraitha that he must ransom her 'even though the cost of a captive's ransom exceeds the amount of her kethubah'.

(6) The price of the ransom need not exceed either (a) the actual value of the woman or (b) the amount of her kethubah, whichever is the less.

(7) Lit., 'behold it'.

(8) Lit., 'she is healed'.

(9) If. for instance, the woman is always ailing.

(10) Lit., 'behold it'.

(11) Palestine.

(12) Tosef. Keth. IV.

(13) Seeking advice on how to escape the constant drain on their resources.
(14) Lit.,'go fix something for him, for a healer'. Since their liability would thereby become limited they would be entitled to deduct it from the woman's kethubah.
(15) Lit., 'as'.
(16) עורכי הדיינין lit., 'those who arrange (the pleas) before the judges'. It is forbidden for a judge to act, even indirectly, as legal adviser to one of the litigants, v. Aboth (Sonc. ed.) p. 6, n. 1.
(17) When he gave his advice to his relatives.
(18) Lit., 'and in the end what did he think?'
(19) Isa. LVIII, 7, teaching the obligation of assisting one's relatives.
(20) A judge must subject himself to greater restrictions in order to be free from all possible suspicion of partiality.
(21) As one of the clauses of her kethubah.
(22) Lit., 'that you will have from me'.
(23) Who may be born from another wife. The effect of such a clause is that, if the woman predeceases her husband, her sons, on the death of their father (her husband), would inherit her kethubah, and they would recover it from their deceased father's estate, irrespective of the amount or size of the shares to which they are entitled like any of the other sons of the deceased. This clause is designated, as 'kethubath benin dikrin' (kethubah of male children).
(24) V. p. 305, n. 13.
(25) V. p. 305, n. 14.
(26) Lit., 'to men'. This clause is designated as 'kethubath benan nukban' (kethubah of female children).
(27) As one of the clauses of her kethubah.
(28) Immediately after the last mentioned clause.
(29) Cf. supra p. 305, n. is and text.
(30) Sc. why should not the kethubah, which on the death of his wife is legally inherited by the husband, be regarded as a part of his general estate and so be equally divided between all his sons?
(31) By being assured that whatever dowry he may give to his daughter will remain the property of her own children and will not pass through her husband to the children of his other wives.
(32) Lit., 'that a man may leap'.
(33) So MS.M. Cur. edd. 'and he will write'.
(34) Lit., 'is there a thing?'
(35) Cf. Num. XXVII, 8: If a man die, and have no son, then ye shall cause his inheritance to pass unto his daughter, from which it follows that if a man has a son his inheritance shall not pass unto his daughter.
(36) Encouraging a father (cf. supra p. 306. n. 8) to give his daughter a liberal dowry and thus deprive his sons of property which Pentateuchally should in due course be inherited by them.
(37) A father's duty to make liberal provision for his daughter.
(38) Jer. XXIX, 6.
(39) Lit., 'stand in his hand'. It is the man who approaches the woman, not the woman the man.
(40) Since Scripture nevertheless advises fathers to give their daughters to husbands.
(41) Lit., 'something'.
(42) Lit., 'jump', 'leap'.
(43) Must a father go on assigning a dowry for his daughter.
(44) Since the kethubah for the male children was instituted in order to encourage a father to provide a liberal dowry for his daughter.
(45) Sc. the dowry he gave her, which was included in her kethubah.
(46) The statutory kethubah and any additional jointure her husband may have settled upon her.
(47) Lit., 'and will not write'.
(48) No father would be prepared to give a liberal dowry to a husband of his daughter who does not himself also allow the sons of that daughter to inherit what he had promised their mother.
(49) Lit., 'wrote'.
(50) Relating to the MALE CHILDREN. Lit., 'should write'.
(51) Lit., 'did not write'.
(52) Cf. supra p. 307, n. 16 mutatis mutandis.
(53) Between the two kinds of kethubahs, since most kethubahs contain records of dowries (Rashi). All kethubahs must

consequently include the MALE CHILDREN clause also.
(54) V. supra p. 307, n. 10.
(55) Of one wife who had no sons'
(56) Of another wife.
(57) To her mother, as far as her kethubah is concerned. The same reason that applies to male children should equally apply to a daughter in the absence of sons. Why then was a 'male children' and not a similar 'female children' clause instituted?
(58) In which the term 'INHERIT' was used (cf. our Mishnah).
(59) No daughter may 'inherit' among sons.
(60) Though she cannot be heir among sons (v. supra n. 8) she is well entitled, in the case of an ordinary inheritance, to be heir among daughters. Why then should she be deprived of her mother's kethubah (cf. supra n. 6. final clause)?
(61) Cf. supra note 2.
(62) V. supra p. 307, n. 10.
(63) By the sons.
(64) As stated supra 50a.
(65) Which cannot be recovered from the movables of a deceased husband.
(66) Just as the woman can collect her kethubah from mortgaged or sold property, so should the sons be able to recover it from such property, v. infra 55a.
(67) And no sold or mortgaged property may be seized for an inheritance.
(68) After the two 'male children' kethubahs had been paid (v. Mishnah infra 91a).
(69) Whereby the Pentateuchal law of inheritance could be carried out. Why then was it stated (l.c.) that the male children kethubahs are not recoverable in such a case?
(70) Who was his father-in-law (cf. supra 39b and Sanh. 14b). R. Papa's son married the sister of his father's wife.
(71) Lit., 'for her'. This would include the fixing of the amount for the dowry she was to receive from her father.
(72) Lit., 'he came; shewed himself to him'.

Talmud - Mas. Kethuboth 53a

Observing, however, that it was distasteful to him [to enter], he addressed him thus: 'What is it that you have on your mind? [Are you reluctant to enter] because Samuel said to Rab Judah, "Shinena,[1] keep away from[2] transfers of inheritance[3] even though they be from a bad son to a good son, because one never knows what issue will come forth from him,[4] and much more so [when the transfer is] from a son to a daughter",[5] this[6] also [I may point out] is an enactment of the Rabbis; as R. Johanan stated in the name of R. Simeon b. Yohai',[7] The other replied, 'This enactment applies only [to one who acts] willingly;[8] does it also imply that one should be compelled so to act?' — 'Did I tell you' said [R. Papa] to him, 'to come in and coerce him? What I meant was: Come in but exercise no pressure upon him'. 'My entrance', the other replied, 'would amount to compulsion'.[9] [As R. Papa, however,] urged him, he entered but, having sat down, remained silent.[10] [Abba] thought that he[11] was vexed[12] and consequently assigned[13] [to his daughter as dowry] all that he possessed. Finally, however, he said to him,[11] 'Will not the Master speak even now? By the life of the Master, I have left nothing for myself!' — 'As far as I am concerned',[14] the other replied, 'even the amount you have assigned[15] has given me no pleasure'. 'This being the case',[16] the first said, 'I will withdraw'. 'I did not suggest', the other said, 'that you should make a rogue[17] of yourself'. R. Yemar the Elder enquired of R. Nahman: Does a woman who sold her kethubah to her husband retain the right to the kethubah for her male children[18] or not?[19] — Said Raba to him: Why do you not raise the same question in the case of a woman who surrendered her claim [to her kethubah]?[20] 'Now', the other replied, 'that I [found it necessary to] enquire [concerning a woman] who sold [her kethubah],[21] though [in that case] it might well be assumed [that her need for] money compelled her [to the sale; and, furthermore,] it might be said [that she is] like a person who was struck a hundred blows with a hammer,[22] was it then necessary [to raise the same question in respect of] a woman who [voluntarily] surrendered her claim [to her kethubah]?[23] Raba stated: I have no doubt[24] that a woman who sells[25] her kethubah to strangers[26] retains the right to the male children's kethubah.' What is the

reason? [It is her need for] money that has compelled her [to sell].[27] A woman [on the other hand] who surrenders her claim [to her kethubah] in favour of her husband does not retain the right to the male children's kethubah. What is the reason? She has lightheartedly surrendered her claims.[28] [Is, however, a woman,] Raba enquired, who sells her kethubah to her husband treated as one who sells it to strangers,[29] or as one who renounces it in favour of her husband?[30] After he raised the question he himself solved it: [The law concerning] a Woman who sells her kethubah to her husband is the same as that of one who sells it to strangers.[29] R. Idi b. Abin raised an objection: [We learned]: If she[31] died, neither the heirs of the one husband nor the heirs of the other are entitled to inherit her kethubah.[32] And in considering the difficulty, 'How does the question of a kethubah at all arise?'[33] R. Papa replied, 'The kethubah of the male children [was meant]'.[34] But why?[35] Could not one[36] argue here also:[37] 'Her passion has overpowered her'?[38] — There[39] [the loss of her kethubah] is a penalty that the Rabbis have imposed upon her.[40] Rabin b. Hanina once sat [at his studies] before R. Hisda and in the course of the session he laid down in the name of R. Eleazar: A woman who surrenders her kethubah to her husband is not entitled to maintenance.[41] The other[42] said to him: Had you not spoken to me in the name of a great man I would have told you: Whoso rewardeth evil for good, evil shall not depart from his house.[43] R. Nahman and 'Ulla and Abimi son of R. Papi once sat at their studies, and R. Hiyya b. Ammi was sitting with them when there came before them a man whose betrothed wife had died.[44] 'Go and bury her', they said to him, 'or pay her kethubah on her account',[45] Said R. Hiyya to them, We have a teaching:[46] In the case of a betrothed wife[47] [the husband] is subject neither to the laws of onan,[48] nor may he defile himself for her;[49] and she likewise[50] is not subject to the laws of onan,[51] nor may she defile herself for him;[52] if she dies he is not her heir,[53] but if he dies she collects her kethubah.[54] Now the reason [why she collects her kethubah is] because it was he who died; had she, however, died she would not have been entitled to any kethubah.[55] What is the reason?[56] — R. Hoshaia replied: Because one cannot apply to her: 'If you will be married to another man you will receive what is prescribed for you'.[57] When Rabin came[58] he stated in the name of Resh Lakish: If a betrothed woman died, she is not entitled to a kethubah. Said Abaye to them:[59] Go and tell him:

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(1) שינא (rt. שנן 'to sharpen'); (i) 'keen witted', (ii) 'man of iron endurance', (iii) 'long toothed' (cf. שן 'tooth') V. B.B. Sonc. ed. vol. II, p. 561, n. 14.

(2) Lit., 'be not among'.

(3) From persons who are legally entitled to be heirs.

(4) Though the son himself is wicked his children may be righteous.

(5) By giving his daughter a dowry he deprives his sons from a portion of their inheritance. (Cf. supra p. 307, n. 2).

(6) Allowing one's daughter a dowry.

(7) Supra 52b.

(8) Lit., 'from his (own) mind'.

(9) The father of the bride would be ashamed to offer a small dowry in the presence of a distinguished guest.

(10) While R. Papa was discussing the amount of the dowry with the bride's father.

(11) Judah b. Meremar who looked on in silence.

(12) At the smallness of the dowry he was offering.

(13) Lit., 'wrote it'.

(14) Lit., 'if from me'.

(15) Lit., 'that also that you wrote'.

(16) Lit., 'now also'.

(17) הדרנא (rt. הדר 'to return') a retractor.

(18) V. our Mishnah and supra p. 305, n. 15.

(19) Sc. are her sons still entitled to inherit her kethubah as they are entitled to inherit their share in the estate of their father, or do they lose the former right on account of their mother's sale which had transferred her rights to their father from whose estate they can inherit no bigger shares than those to which his other sons are entitled?

(20) Which is a more common occurrence than a sale.

(21) Believing that even in such a case it is possible that the woman irrevocably loses her rights.

(22) V. Golds. who compares עוכלא with Syr. אכלא 'a hammer', and renders עוכלי, 'hammer blows'. Aliter. They inflicted upon her a hundred strokes with a lash to which a small weight named 'ukla was attached (Rashi). Aliter: I may adopt the opinion of him who said, they struck (defeated) that opinion with a hundred measures against one (a hundred arguments against, for one in favour of it). 'Ukla (cf. אוכלא) is a small measure of capacity and also of a weight (Jast.).

(23) Obviously not. If she might lose her rights even when she acted under the stress of circumstances, there can be no question that she loses them when she willingly surrenders them.

(24) Lit.,'it is plain to me'.

(25) For a mere trifle, since, to the buyers the transaction is of a highly speculative and doubtful value. v. infra n. 10.

(26) Who recover it only if she is divorced or if she survives her husband, but lose it completely if she predeceases him and he inherits it.

(27) Not her indifference to the welfare of her sons. On this account, therefore (v. infra n. 1), she does not lose her rights on behalf of her sons.

(28) And, having thereby shewn her complete indifference to the interests of her sons, her surrender is deemed to be final and irrevocable.

(29) Since in both cases she sells it for a mere trifle, the husband's purchase being no less of a speculation than that of strangers (cf. p. 310, nn. 9-10). For should she predecease him, her kethubah would in any case be inherited by him; and the only advantage he might possibly derive from his purchase is the knowledge that his sons would benefit from it if he predeceased his wife. As, in fact, he did not predecease her his purchase fully assumes the same nature as that of strangers, and her male children inherit her kethubah.

(30) Since the kethubah is actually in his possession (which is not the case with strangers) and she consented to sell him all her rights.

(31) A woman whose husband went to a country beyond the sea and who, on being told by one witness that her husband was dead, contracted a marriage, and her first husband subsequently returned.

(32) Yeb. 87b.

(33) Lit. , 'what is its doing?' How could her children submit any claim to her kethubah when she herself, as stated earlier in the Mishnah cited (Yeb. l.c.), is not entitled to one?

(34) Yeb. 91a; sc. if the woman predeceased her two husbands, who in consequence inherited her estate, her children have no claim to her kethubah and receive shares equal to those of their paternal brothers.

(35) Should her children be deprived of the kethubah of their mothers

(36) Since it has been said above that the reason why the woman does not lose her right to the kethubah for her male children is because it was her need that compelled her to sell it.

(37) In the case of the woman who married a second husband on the evidence of one witness.

(38) And this compelled her to marry again. Now since she acted under compulsion her children should not be deprived of her kethubah.

(39) V. p. 311, n. 10.

(40) For marrying again on insufficient evidence (that of one witness) before instituting further inquiries to verify his evidence.

(41) During her widowhood. As she surrendered her kethubah she surrendered thereby all her rights, including that of maintenance, that are contained therein.

(42) R. Hisda.

(43) Prov. XVII, 13.

(44) Before her marriage.

(45) [The reference is to the statutory amount of the kethubah, these Rabbis being of the opinion that the husband has been allowed to retain the kethubah of his deceased wife for the expenses he incurred in the burial.]

(46) A Baraitha. Cf. infra p. 313, n. 1.

(47) Before her marriage.

(48) V. Glos. Unlike an onan whose married wife died, he may Partake of holy food.

(49) If he is a priest (cf. Lev. XXI, 1f).

(50) If he died.

(51) She also is permitted to partake of holy food.

(52) During a festival when not only priests but also Israelites and women are forbidden to attend on the corpses of those

who are not their near relatives (v. R.H. 16b). Aliter: Nor is she under an obligation to defile herself for him. (Cf. Rashi a.l. and Yeb. 29b. s.v. ולא מיטמאת; and Tosaf. loc. cit. s.v. ולא).

(53) To the dowry her father gave her.

(54) Yeb. 29b, 43b, infra 89b. Both the statutory amount and any additional jointure, if he provided her with a kethubah on betrothal (cf. infra 89b.

(55) Contrary to the ruling supra that the man must either bury his betrothed wife or pay to her account the amount of her kethubah.

(56) For the man's exemption from the duty of burying his wife despite the statutory amount of her kethubah which he inherits.

(57) This is one of the clauses of a kethubah (v. Yeb. 117a). Since this clause can obviously have no effect except when a husband predeceases his wife or when she is divorced by him, the kethubah cannot be regarded as the wife's property whenever she predeceases her husband, and he, consequently, cannot be regarded as inheriting it from her. [As to the teaching supra 47b that the husband inherits the kethubah in return for her burial, the reference is to the dowry, v. supra p. 272, n. 7 and cf. p. 312, n. 8.

(58) From Palestine to Babylon.

(59) Those present at the college.

Talmud - Mas. Kethuboth 53b

'You are deprived of your benefaction;[1] it is cast upon the thorns',[2] for R. Hoshaia has already expounded his traditional teachings[3] in Babylon.[4] THE FEMALE CHILDREN THAT WILL BE BORN FROM OUR MARRIAGE etc. Rab[5] taught: Until they shall be taken in marriage;[6] but Levi taught: Until they shall attain adolescence.[7] [Would daughters then be maintained] according to Rab although they attained adolescence, and according[8] to Levi even though they married?[9] — The fact, however, [is that where a daughter] attained adolescence though she was not married or where she was married though she did not attain adolescence no one[10] disputes [the ruling that she is not entitled to maintenance]. They[11] differ only on the question of a [daughter who was] betrothed but did not attain adolescence.[12] So also did Levi teach in his Baraitha:[13] Until they shall attain adolescence and the time for their marriages arrives. Both?[14] — What was meant is this:[15] Either they shall attain adolescence or[16] the time for their marriage[17] shall arrive. [They[18] differ on the same principles] as the following Tannaim: How long is a daughter to be maintained? Until she is betrothed. In the name of R. Eleazar it was stated: Until she attains adolescence. R. Joseph learnt: [Daughters must be maintained] until they become [wives]. The question was raised: Does this[19] mean becoming [wives] at marriage or becoming [wives] at betrothal? — The question must stand unanswered.[20] Said R. Hisda to R. Joseph: Did you ever hear from Rab Judah whether a betrothed [orphan] is entitled to maintenance[21] or not?[22] The other replied: I have not actually heard it, but it may logically be concluded that she is not entitled, because [her future husband], having betrothed her, would not allow[23] her to be degraded.[24] 'If you have not actually heard this', [R. Hisda] retorted 'it may logically be concluded that she is entitled, for [her intended husband], not being sure of her,[25] would not throw his money away for nothing'.[26] Another reading:[27] He[28] replied: I have not actually heard it, but it may logically be concluded that she is entitled [to maintenance]; for [her intended husband], not being sure of her, would not throw his money away for nothing. The other[29] retorted: If you have not actually heard this it may logically be concluded that she is not entitled to maintenance; because [her future husband], having betrothed her, would not allow her to be degraded. (Mnemonic of the men:[30] SHak Zarap.[31] [Subjects:] She refused and a sister-in-law of the second degree is betrothed and he outraged her.) R. Shesheth was asked: Is a minor who exercised her right of refusal[32] entitled to maintenance[33] or not?[34] — You, replied R. Shesheth, have learned this: A widow[35] in her father's house, a divorced woman[35] in her father's house or a woman[35] who was awaiting the decision of a levir[36] in her father's house is entitled to maintenance. R. Judah ruled: [Only a woman who] is still in her father's house is entitled to maintenance but [a woman who] is no longer in her father's house is not entitled to maintenance. [Now is not] R. Judah's ruling exactly the same as that of the first Tanna?[37] Consequently it may be concluded that[38] the difference between

them is the case of a minor who had exercised her right of refusal,[39] the first Tanna being of the opinion that she is entitled [to maintenance][40] while R. Judah upholds the view that she is not entitled to it.[41] Resh Lakish enquired: Is the daughter of a sister-in-law[42] entitled to maintenance[43] or not? Has she no claim to it, since the Master said,[44] Her kethubah is a charge on the estate of her first husband[45] or is it possible that she is entitled to it since the Rabbis have enacted that whenever she[46] is unable to collect her kethubah from [the estate of] the first, she may recover it from that of the second?[47] — The question must remain unanswered.[48] R. Eleazar enquired: Is the daughter of a forbidden relative of the second degree of incest[49] entitled to maintenance[50] or not?

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(1) Or 'recognition' (v. Rashi).

(2) שקילא טיבותך שדיא אהיזרי, a proverb. The information whereby he intended to benefit the students was of no use to them. Aliter: Your good-natured information is taken and thrown over the hedge (slight adaptation from fast.). Aliter: Take your favours and throw them in the bush, v. B.M. Sonc. ed. p. 377.

(3) Which included the one reported by Rabin.

(4) They were in no need, therefore, to wait for the Palestinian report of Rabin.

(5) In dealing with this clause in the kethubah.

(6) Lit., 'to men'. Cf. our Mishnah which agrees with Rab's ruling.

(7) V. Glos. s.v. bogereth.

(8) So MS.M. Fur. edd., 'and Levi'.

(9) Surely not; since either of these conditions liberates a daughter from her father's control and she must in consequence lose her claim to maintenance (cf. infra 68b).

(10) Lit., 'all the world'. V. infra n. 2.

(11) Rab and Levi.

(12) According to Rab she is maintained only until betrothal though by that time she may still be under age, and according to Levi, either adolescence or marriage deprives her of her rights to maintenance.

(13) Levi, like R. Hiyya and R. Oshaia, was the compiler of six orders of Baraithoth corresponding to the six orders of the Mishnah compiled by R. Judah the Patriarch.

(14) Cf. p. 313, n. 14.

(15) Lit., 'but'.

(16) The 'Waw' in וימטי may be rendered, 'and' as well as 'or'.

(17) A period of twelve months from the time her intended husband had claimed her, in the case of a virgin, and one of thirty days in the case of a widow (v. Mishnah infra 57a).

(18) Rab and Levi.

(19) The expression 'become (wives)' in R. Joseph's statement.

(20) Teku, v. Glos.

(21) By her brothers, out of their deceased father's estate.

(22) [He wished to know according to which of the two Tannaim, whose views have just been cited, was the law to be fixed (Tosaf.)]

(23) Lit., 'it would not be pleasing to him'.

(24) As the maintenance of an orphan daughter by her brothers was ordained in order to prevent her degradation (v. supra 49a) it cannot be enforced in this case where no degradation is to be expected.

(25) A betrothal does not always lead to marriage.

(26) As he would not maintain her, the duty (for the reason stated supra p. 314, n. 15) devolves upon her brothers.

(27) Reversing the respective views of R. Joseph and R. Hisda.

(28) R. Joseph.

(29) R. Hisda.

(30) Who raised the following questions.

(31) SHesheth, Lakish, Elazar, Baba, Papa.

(32) V. Glos. s.v. mi'un.

(33) By her brothers, out of their deceased father's estate.

(34) The point of the question is whether (a) the declaration of refusal to live with her husband dissolved her marriage retrospectively and she resumes in consequence the status of one who was never married and is, therefore, entitled to

maintenance until she reaches her adolescence; or (b) since her marriage had once removed her from her father's control, in consequence of which she has lost her right to maintenance, her subsequent declaration of refusal cannot again restore to her the right she had once lost.

(35) Who had been only betrothed but had never married.

(36) Shomereth yabam. v. Glos.

(37) Who also spoke only of a woman 'in her father's house'. Wherein, then, do they differ?

(38) Lit., 'what, not?'

(39) V. Glos. s.v. mi'un.

(40) Cf. p. 315, n. 10. By mentioning a 'widow (cf. supra n. 11) in her father's house' the first Tanna meant to include also the minor who exercised her right of refusal who is thereby restored to the status of one who had never been married and had always been 'in her father's house'.

(41) V. supra p. 315. n. 10. He ruled, 'who is still in her father's house', sc. who has never left it to be married, is entitled to maintenance; not, however, one who had once been married though that marriage bad taken place during minority.

(42) Whom the levir married in fulfilment of the law of the levirate marriage (v. Deut. XXV, 5).

(43) By her brothers, out of their deceased father's estate.

(44) Yeb. 85a.

(45) This refers to the sister-in-law. That is to say the mother of the daughter in question. As her kethubah cannot be made a charge upon the estate of her second husband (her original brother-in-law), so cannot the maintenance of her daughter, which is one of the obligations undertaken in the same document.

(46) The sister-in-law.

(47) Cf. supra n. 8 mutatis mutandis.

(48) Teku, v. Glos.

(49) V. Yeb. 20a, 213.

(50) Out of the estate of her deceased father.

Talmud - Mas. Kethuboth 54a

Has she no claim to maintenance[1] since [her mother] is not entitled to a kethubah, or is it likely that the Rabbis have imposed a penalty only upon her mother who had committed a transgression but not upon her who had committed no transgression? — This remains unanswered. Raba asked: Is the daughter of a betrothed wife entitled to maintenance[2] or not? Is she entitled to maintenance[3] since [her mother] is entitled to a kethubah[4] or is it possible that she is not entitled [to maintenance],[3] since the Rabbis have not ordained [the writing of] the kethubah until the time of the marriage?[5] — The question must stand unanswered. R. Papa asked: Is the daughter of an outraged woman[6] entitled to maintenance[2] or not? According to the ruling of R. Jose the son of R. Judah, who has laid down[7] that [her mother] is entitled to recover[8] a kethubah for one maneh,[9] the question does not arise.[10] It arises only according to the ruling of the Rabbis who have laid down that the fine[11] is regarded as a quittance for her kethubah. What, [it may be asked, is the decision]?[12] Has she no claim to maintenance[13] since [her mother] is not entitled to a kethubah,[14] or might it possibly [be argued thus:] What is the reason why a kethubah [has been instituted for a wife]? In order that the man might not find it easy[15] to divorce her;[16] but [this man],[17] surely, cannot[18] divorce her?[19] — This must stand unanswered. YOU SHALL DWELL IN MY HOUSE etc. R. Joseph learnt: IN MY HOUSE[20] but not in my hovel.[21] She is entitled, however, to maintenance.[22] Mar son of R. Ashi ruled: She is not entitled even to maintenance.[23] The law, however, is not in agreement with Mar son of R. Ashi. R. Nahman stated in the name of Samuel: If marriage was proposed to her[24] and she accepted, she is no longer entitled to maintenance.[25] [This is to imply that] if she did not accept,[26] she would not be entitled to maintenance! — R. Anan replied: This was explained to me by Mar Samuel: If she said, '[l cannot accept the proposal] out of respect for the memory of[27] So-and-so, my husband', she is entitled to maintenance; [but if she said], 'Because the men are not suitable for me,' she is not entitled to maintenance.[28] R. Hisda ruled: If she[29] played the harlot she is not entitled to maintenance. R. Joseph ruled: If she painted her eyes[30] or dyed her hair[31] she is not entitled to maintenance.[32] He who ruled: 'If she played the harlot'[33] would even more so deprive her of

maintenance if she paints her eyes or dyes her hair. He, however, who ruled: 'If she painted her eyes or dyed her hair'[33] would allow her maintenance[34] if she played the harlot. What is the reason? — Her passions have overpowered her. The law, however, is not in agreement with any of these reported rulings but with that which Rab Judah laid down in the name of Samuel: She[35] who claims her kethubah at court is not entitled to maintenance. But is she not entitled? Surely it was taught: If she sold her kethubah, pledged it, or mortgaged [the land that was pledged[36] for] her kethubah to a stranger, she is not entitled to maintenance. [Does not this imply] that only such[37] [acts deprive a widow of her maintenance] but not [the act of] claiming [her kethubah at court]? — These [acts[38] deprive her of her maintenance] whether she appeared at court or not, but the act of claiming [her kethubah deprives her of maintenance] only if she appeared[39] in court but does not [deprive her of it] if she did not appear at court. SO DID THE MEN OF JERUSALEM etc. It was stated: Rab ruled, 'The halachah is in agreement with [the practice of] the MEN OF JUDAEA', but Samuel ruled, 'The halachah agrees with [the practice of] the MEN OF GALILEE'. Babylon[40] and all its neighbouring towns[41] followed a usage in agreement with the ruling of Rab; Nehardea[42] and all its neighbouring towns[41] followed a usage agreeing with the ruling of Samuel. A woman of Mahuza[43] was once married to [a man of] Nehardea. When they came to R. Nahman,[44] and he observed from her voice that she was a native of Mahuza, he said to them, '[The decision must be in agreement with Rab, for] Babylon and all its neighbouring towns have adopted a usage in agreement with the ruling of Rab'. When, however, they pointed out to him, 'But, surely, she is married to [a man of] Nehardea,' he said to them, 'If that is the case, [the decision will be in agreement with Samuel for] Nehardea and all its neighbouring towns followed a usage agreeing with the ruling of Samuel. How far does [the usage of] Nehardea extend? — As far afield as the Nehardean kab[45] is in use.[46] It was stated: [When a kethubah is being paid to] a widow, said Rab, assessment is made of what she wears,[47] but Samuel said: That which she wears is not assessed. Said R. Hiyya b. Abin: [Their opinions[48] are] reversed[49] in the case off retainer.[50] R. Kahana taught: And so[51] [are their opinions][48] in the case of a retainer;[50] and [Rab] had laid down this mnemonic, 'Strip the widow and the orphan[52] and go out'. R. Nahman said: Although we have learned in a Mishnah in agreement with the view of Samuel[53] the law is in agreement with that of Rab. For we learned: Whether a man has consecrated his estate, or whether he has consecrated the valuation of himself[54] [the Temple treasurer][55] has no claim either upon the clothes of that man's wife,[56] or upon the clothes of his children, or the coloured articles that were dyed for them,[57] or any new sandals that [their father] may have bought[57] for them.[58] Said Raba to R. Nahman: Since, however, we have learned in a Mishnah in agreement with the view of Samuel, why does the law agree with that of Rab? The other replied: At first sight it might appear[59] to run parallel to the principle of Samuel, but if you examine it carefully [you will find that] the law, in fact, must be in agreement with [the view of] Rab. For this[60] is the reason:[61] When he[62] bought[63] [the clothes] for her [he did so] on the assumption that she would live with him.[64] He did not, however, buy[63] them for her on the assumption that she should take them[65] and depart.[66] A daughter-in-law of the house of Bar Eliashib was claiming her kethubah from orphans. When she summoned them to court and they said, 'It is degrading for us that you should come with us in such [clothes]', she went home and dressed and wrapped herself in all her garments. When they came before Rabina he told them: The law is in agreement with the ruling of Rab who laid down [that when a kethubah is being paid to] a widow, assessment is made of what she wears. A man[67] once said, 'Let a bride's outfit[68] be provided for my daughter', and the price of an outfit was subsequently reduced. 'The benefit',[69] ruled R. Idi b. Abin, 'belongs to the orphans'.[70] A man[67] once said,

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(1) Which is only one of the obligations a man undertakes in the kethubah he gives to his wife.

(2) Out of her deceased father's estate if he had sons from another wife.

(3) V. supra p. 316, n. 13.

(4) If her father had written one for her on betrothal. As he is responsible for the kethubah of his wife so should he be responsible for the maintenance of his daughter (v. supra p. 316, n. 13).

(5) As the obligation of the kethubah does not begin before marriage, that of maintenance also does not begin earlier.

(6) Whom the offender has subsequently married (v. Deut. XXII, 28f).

(7) Supra 39b.
(8) Out of the man's estate, though he had already paid to her father the fine prescribed in Deut. XXII, 29. v. supra 39b.
(9) V. Glos.
(10) As the kethubah is recoverable from the man's estate so is the daughter's maintenance (v. supra p. 316, n. 13).
(11) That is paid to her father (Deut. XXII, 29).
(12) As regards the daughter's maintenance.
(13) V. supra p. 316, n. 13).
(14) As the kethubah cannot be recovered so cannot the daughter's maintenance.
(15) Lit., 'that she shall not be easy in his eyes'.
(16) He cannot easily divorce her if his act involves him in the payment of the amount specified in the kethubah.
(17) Who committed outrage.
(18) V. Deut. XXII, 29.
(19) Hence the ruling that the woman is not entitled to a kethubah. As this argument, however, does not apply to her daughter the latter may well be entitled to maintenance.
(20) Sc. only if the deceased left a proper house must his sons provide living accommodation for his widow. (Cf. however, fast. infra n. 20.)
(21) בביקתי M.S.M בבית עקתי. _ביקתא=בי עקתא (v. Shab. 77b), 'a house of distress', 'a poor man's house' (Rashi). If the house is too small the orphans may ask her to live elsewhere. Aliter. ביקתא = בקעתא, 'valley', 'group of fields', estate'; the widow 'must be 'content to live in her late husband's house with his heirs, hut she cannot claim a separate residence' (Jast.).
(22) Though she is in residence in her paternal home, she does not forfeit her claim to maintenance from her late husband's estate. Though the first part of the clause of her kethubah, DWELL IN MY HOUSE, is not carried out, the second part, BE MAINTAINED OUT OF MY ESTATE, nevertheless remains valid.
(23) As one part of the clause is inapplicable the other part also becomes void.
(24) The widow.
(25) Her WIDOWHOOD is deemed to have terminated thereby, and in consequence she loses the rights attached to it.
(26) Whatever the reason.
(27) Lit., 'on account of'.
(28) The heirs cannot be compelled to continue her maintenance once she has had an offer from a man who is willing to provide for her.
(29) The widow.
(30) Rt. כחל, (denom. of כוחל, stibium, a powder applied to the eyelids), 'to paint the eyelids', cosmetically or medically (v. Jast.).
(31) Rt. פרכם (denom. of פיקם with inserted ר 'to adorn with paint or dye' (v. Levy). Jast. derives it from פרך, 'to rub', 'to rub with paint' (s.v. פרכם); 'dyeing the hair' (Jast. s.v. פירכום).
(32) Since it is apparent that she is not much concerned for the memory of her late husband.
(33) 'She is not entitled to maintenance'.
(34) Lit., 'she has'.
(35) The widow.
(36) V. Rashi.
(37) Lit., 'these, yes'.
(38) Whereby the widow actually recovers her kethubah.
(39) Lit., 'yes'.
(40) [Stands here for Sura which was in the neighbourhood of the old great city of Babylon, v. Git. Sonc. ed. p. 17, n. 3.]
(41) So Rashi, 'her dependencies', sc. places following her usages (Jast.); 'seine Nachbarorte' (Golds).
(42) V. supra p. 222. n. 8.
(43) A Jewish trading centre. One of the 'neighbouring towns' or 'dependencies' of Babylon.
(44) In connection with a dispute concerning the fulfilment of the terms of the kethubah (v. the final clauses of our Mishnah).
(45) V. Glos. Here a term for a dry measure in general, not the specific kab (Obermeyer p. 242).
(46) Lit., 'spreads'.
(47) Sc. the value of her clothes is deducted from the amount of her kethubah.

(48) Those of Rab and Samuel.
(49) Samuel ruling that the value of clothes is, and Rab maintaining that it is not to be deducted from the man's wages.
(50) Or 'client' (v. Jast.), when he leaves the employ of his master who, during the period of his service, had been supplying him with his clothes. לקיט (rt. לקט 'to gather') 'gleaner', 'field labourer'.
(51) As in the case of a widow.
(52) Sc. the retainer or client.
(53) Viz. that a wife's clothes are the property of her husband.
(54) V. Lev. XXVII, 1ff.
(55) Who comes to collect such offerings.
(56) Cf. supra note 9.
(57) Though they have not yet used them (cf. Rashi). This shews that the raiments are the property of the wife.
(58) 'Ar. 24a, B.K. 102b.
(59) לכאורה adv., Lamed and Kaf. prefixed to the noun אורה, 'light'.
(60) Lit., 'what'.
(61) Why the Temple treasurer has no claim upon a wife's clothes though their value is rightly to be deducted from the amount she is paid in settlement of her kethubah.
(62) The husband.
(63) Or, 'transferred possession'.
(64) Consequently, so long as she lives with him, they are her absolute property and no one can take them away from her. Hence the ruling of the Mishnah of 'Ar. that the Temple treasurer cannot claim them.
(65) When he died.
(66) Hence the ruling of Rab that their value is to be deducted from her kethubah.
(67) On his death bed. The instructions of a person in such a condition have the force of a legally written document.
(68) The cost of which was well known, all brides being similarly provided for (Rashi).
(69) פורנא (rt. פרן 'to cut', hence 'to endow') 'endowment', hence 'good luck' (v. fast.); 'surplus' (Colds.).
(70) It is their duty to provide the outfit, and since they can obtain it at a reduced price the balance is theirs.

Talmud - Mas. Kethuboth 54b

'Four hundred zuz[1] [of the value of this] wine shall be given to my daughter', and the price of wine rose. 'The profit', ruled R. Joseph, 'belongs to the orphans'.[2] Relatives of R. Johanan had [the responsibility of maintaining their] father's wife who was in the habit of consuming much[3] food. When[4] they came to R. Johanan she told them, 'Go and ask your father that he should assign a plot of land for her maintenance'.[5] When they subsequently came before Resh Lakish, he said to them, '[By such an assignment] he has increased all the more [the allowance for] her maintenance'.[6] 'But', they said to him, 'R. Johanan did not say so?' — 'Go',he told them, 'and give her [proper maintenance], otherwise[7] I shall pull R. Johanan out of your ears'. R. Johanan, when they came to him again, said to them, 'What can I do when one of equal standing[8] differs from me?' R. Abbahu stated: This was explained to me by R. Johanan: [If the husband] said,[9] 'towards maintenance' he has thereby increased [the allowance for] her maintenance;[10] but if he said,[9] 'for maintenance' he has thereby limited the allowance for her maintenance.[11]

CHAPTER V

MISHNAH. ALTHOUGH [THE SAGES] HAVE ENACTED THAT A VIRGIN COLLECTS[12] TWO HUNDRED ZUZ[13] AND A WIDOW ONE MANEH,[13] IF HE [THE HUSBAND] WISHES TO ADD, EVEN A HUNDRED MANEH, HE MAY DO SO. [A WOMAN] WHO WAS WIDOWED OR DIVORCED, EITHER AFTER BETROTHAL OR AFTER MARRIAGE, IS ENTITLED TO COLLECT ALL [THAT IS DUE TO HER].[14] R. ELEAZAR B. AZARIAH RULED: [ONLY A WOMAN WIDOWED] AFTER HER MARRIAGE RECEIVES ALL [THAT IS DUE TO HER], BUT IF AFTER A BETROTHAL, A VIRGIN RECOVERS ONLY TWO HUNDRED ZUZ[13] AND A WIDOW ONLY ONE MANEH,[13] FOR THE MAN PROMISED[15] HER

[THE ADDITIONAL JOINTURE] WITH THE SOLE OBJECT OF MARRYING HER.[16] R. JUDAH RULED: IF [A HUSBAND] WISHES HE MAY WRITE OUT FOR A VIRGIN[12] A DEED FOR TWO HUNDRED ZUZ AND SHE WRITES [A QUITTANCE],[17] 'I HAVE RECEIVED FROM YOU A MANEH', AND FOR A WIDOW [HE MAY WRITE OUT A DEED FOR] A MANEH AND SHE WRITES [A QUITTANCE]. 'I HAVE RECEIVED FROM YOU FIFTY ZUZ'. R. MEIR RULED: [THE INTERCOURSE OF] ANY MAN WHO UNDERTAKES TO GIVE A VIRGIN LESS THAN TWO HUNDRED ZUZ[13] OR A WIDOW LESS THAN A MANEH[13] IS[18] AN ACT OF PROSTITUTION.

GEMARA. [Is not this][19] obvious? — It might have been presumed that the Rabbis have fixed a limit in order that the man who has no means might not be put to shame; hence we were taught [that there was no limit]. IF HE WISHES TO ADD etc. It was not stated, 'If he wishes to write',[20] but 'WISHES TO ADD'.[21] This then provides support for [a ruling which] R. Aibu stated in the name of R. Jannai. For R. Aibu stated in the name of R. Jannai: The supplementary provisions[22] [that are included] in a kethubah are subject to the same regulations as the statutory kethubah.[23] [In what respect] can this[24] matter?[25] — In respect of a woman who sells or surrenders [her kethubah],[26] or one who rebels,[27] one who impairs,[28] or claims [her kethubah],[29] or one who transgresses the Law;[30]

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(1) V. Glos.

(2) Since the bequest was not a quantity of wine but a specified sum of money.

(3) Lit., 'spoilt', or 'caused to diminish, (Af. of פסד).

(4) During their father's lifetime. He was on the point of dying and disposing of his property (cf. p. 322, n. i). (15) To consult him as to how they could reduce their liability.

(5) So that the liability of the heirs would thereby be limited to the value of that plot of land only. Such an assignment, of course, is valid only if it was made on one's death bed and is subject in addition to the woman s consent (V. Pe'ah, III, 7 and Rashi a.l.). The efficacy of R. Johanan's advice being dependent on the consent of the woman explains also why R. Johanan, despite his regrets for giving advice to relatives (supra 52b), proceeded to advise them again (v. Tosaf. a.l. s.v. דנייהד). In the other case his advice was effective despite the woman's wish.

(6) His assignment of the land cannot deprive the widow of her right to proper maintenance, and can only be regarded as the provision of an additional source of income from which she might draw in case the maintenance the heirs provided was not on a liberal scale.

(7) Lit., 'and if not'.

(8) Lit., 'who is corresponding to me'.

(9) When he assigned a particular plot of land for his wife's maintenance.

(10) 'Towards' implying an addition to what is already due to her.

(11) 'For maintenance' implying 'in return' or compensation for the maintenance to which she is entitled.

(12) As her statutory kethubah.

(13) V. Glos.

(14) Sc. her statutory kethubah as well as any additional jointure her husband may have settled upon her.

(15) Lit., 'wrote'.

(16) And since he died before marrying her she can have no claim to it.

(17) Though she has received nothing.

(18) Lit., 'behold this'.

(19) That A HUSBAND MAY ADD, IF HE WISHES etc.

(20) Which might have implied a mere gift.

(21) Sc. to the kethubah, implying that the additional jointure assumes the same designation as the statutory kethubah itself.

(22) Such as additional jointure, maintenance, or any other of the terms mentioned in the previous chapter.

(23) Infra 104b.

(24) The treatment of the additional jointure as the statutory kethuhah.

(25) Lit., 'it goes out (results) from it'.

(26) By such an act she sells her additional jointure as well as her statutory kethubah though only 'kethubah' was

mentioned when the transaction took place.

(27) Against her husband, by refusing conjugal rights or work (v. infra 63a). If, in consequence, reductions are made from her kethubah (v. loc. cit.) her additional jointure, like her statutory kethubah, is subject to these deductions.

(28) By admitting that she had already been paid a part of her kethubah (infra 87a). In such a case she cannot recover the balance of the additional jointure even though that part of the kethubah had been left unimpaired. (v. Tosaf. s.v. ולפוגמת).

(29) V. supra 54a. As she loses her maintenance by claiming her statutory kethubah so she loses it by claiming only her additional jointures (Rashi).

(30) A woman who transgresses the Mosaic law or traditional Jewish practice may be divorced without receiving her kethuhah (infra 72a). This applies to her additional jointure also.

Talmud - Mas. Kethuboth 55a

in respect of amelioration,[1] an oath,[2] and the Sabbatical year,[3] in respect of him who assigned all his property to his sons,[4] or the recovery of payment out of real estate and from the worst part of it,[5] also in respect of [the law of a widow] while in her father's house,[6] and of the kethubah for male children.[7] It was stated: The kethubah for the male children,[8] [the scholars of] Pumbeditha[9] ruled, may not be collected from sold or mortgaged property,[10] for we have learned,[8] 'They shall inherit';[11] and the scholars of[12] Matha Mehasia[13] ruled: It may be collected from sold or mortgaged property, for we have learned,[8] 'They shall take'.[14] The law, however, is that it may not be collected from sold or mortgaged property, since we have learned ,[8] 'They shall inherit'.[11] Movables[15] which are available[16] [may be collected][17] without an oath;[18] but if they are not available,[19] [the kethubah may, the scholars of] Pumbeditha ruled, [be collected][20] without an oath[18] and the scholars[21] of Matha Mehasia ruled: Only with an oath. The law [is that they may be collected] without an oath. If [her husband] has set aside for her a plot of land [defining it] by its four boundaries[22] [she[23] may collect from it] without an oath;[24] but if [he only defined it] by one boundary, [the scholars of] Pumbeditha ruled [that collection[25] may be made from it] without an oath,[24] but the scholars of Matha Mehasia ruled: Only with an oath.[26] The law, however, is that collection[25] may be effected without an oath.[22] If a man said to witnesses, 'Write out [a deed],[27] sign it and give it to a certain person',[28] and they took from him symbolic possession there is no need[29] to consult him.[30] [If, however,] no symbolic possession was taken, [the scholars of] Pumbeditha ruled, there is no need[29] to consult him,[30] but the scholars of Matha Mehasia ruled: It is necessary to consult him. The law is that it is necessary to consult him. R. ELEAZAR B. AZARIAH etc. It was stated: Rab and R. Nathan [differed]. One maintained that the halachah was in agreement with R. Eleazar b. Azariah and the other maintained that the halachah was not in agreement with R. Eleazar b. Azariah. You may conclude that it was R. Nathan who maintained that the halachah was in agreement with R. Eleazar b. Azariah[31] since R. Nathan was heard [elsewhere] to follow [the rule of] assumption,[32] he[33] having stated that the halachah was in agreement with R. Simeon Shezuri in the case of a man dangerously ill[34]

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(1) Of the estate of the husband after his death. As the statutory kethubah cannot be recovered from such amelioration (v. Bek. 5lb) so cannot the additional jointure either.

(2) A woman must take an oath in respect of her additional jointure in all cases where she takes an oath in respect of her statutory kethubah (infra 87a).

(3) In which all debts must be released (v. Deut. XV. Iff) but not the obligation of a kethubah (v. Git. 48b). The exemption applies to both the statutory kethubah and the additional jointure.

(4) And left any fraction of land for his wife. Thereby she loses her kethubah (v. B.B. 132a) and her additional jointure also.

(5) These restriction apply to the additional jointure as well as to the statutory kethubah (v. Git. 48b).

(6) She may claim her kethubah within twenty-five years only (v. infra 104a). This applies also to her additional jointure. There is no time limit in the case of a widow who lives in her late husband's house.

(7) The children are entitled to their mother's additional jointure just as they are entitled to her statutory kethubah and to the dowry, which her father gave to her husband on the occasion of their marriage, and which also forms a part of the

kethubah obligations of a husband.
(8) V. Mishnah supra 52b.
(9) פומבדיתא (lit., 'mouth of Beditha', one of the canals of the Euphrates), was a Babylonian town famous as a Jewish centre of learning.
(10) Of the widow's late husband.
(11) One inherits free assets only.
(12) Lit., 'sons of'.
(13) מתא מחסיא is a suburb of Sura in Babylonia.
(14) Instead of they shall inherit'. This implies that the children are entitled to the kethubah as a gift made to them by their father at the time of his marriage with the right to seize his property wherever it may be found.
(15) Pledged by a husband for the kethubah of his wife.
(16) At the time of the man's death.
(17) By the widow who, in other circumstances, is required to take an oath to the effect that her late husband had not given her some money or objects of value as a security for her kethubah.
(18) Since it is definitely known what objects of value had been set aside for her kethuhah there is no reason to suspect that any other objects or money also had been secretly deposited with her.
(19) If, e.g., they were lost.
(20) From the landed property of the deceased, since all of it is legally pledged for the kethubah of one's wife.
(21) Lit., 'sons'.
(22) As a special security for her kethubah.
(23) When her husband dies.
(24) Cf. supra p. 325, n. 14, mutatis mutandis.
(25) V. loc. cit. n. 13.
(26) As only one of the four boundaries had been indicated the plot of land cannot be regarded as a definite security, and the suspicion may be entertained that her husband may have given her some private deposit as a security for her kethubah (cf. supra p. 325, n. 13).
(27) E.g., of a gift of land.
(28) Lit., 'to him'.
(29) Before the deed is written (Rashi).
(30) Whether his instructions were seriously meant or whether he has not since changed his mind (cf. Rashi). According to some authorities the consultation relates to the question of entering a clause pledging the donor's property (cf. Tosaf. s.v. כתובו).
(31) Whose opinion in our Mishnah is based on the assumption that THE MAN PROMISED . . . WITH THE SOLE OBJECT etc.
(32) Wherever a man did not specify his intention or motive.
(33) Cur. edd. read 'R. Nathan'. In Hul. 75b the reading is 'R. Jonathan', and in Men. 30b 'R. Johanan'.
(34) Who gave instructions for a letter of divorce to be written for his wife. The document may be delivered to the woman, even though its delivery was not mentioned in the instructions, because it is assumed that the dying man intended it for this purpose (v. Git. 65b).

Talmud - Mas. Kethuboth 55b

and in that of terumah[1] of the tithe of demai[2] produce.[3] But does not Rab, however, follow [the rule of] assumption? Surely it was stated: As to the gift of a dying man[4] [in the deed of] which was recorded [symbolic] acquisition, the school of Rab in the name of Rab reported [that the testator] has [thereby] made him[5] ride on two harnessed horses;[6] but Samuel said: I do not know what decision to give on the matter. 'The school of Rab in the name of Rab reported [that the testator] has [thereby] made him ride on two harnessed horses', for it is like the gift of a man in good health,[7] and it is also like the gift of a dying man.[8] 'It is like the gift of a man in good health', in that, if he recovered, he cannot retract,[7] and 'it is like the gift of a dying man' in that, if he said that his loan[9] [shall be given] to X, his loan [is to he given] to X.[10] 'But Samuel said: I do not know what decision to give on the matter', since it is possible that he[11] decided not to transfer possession to him[12] except through the

deed,[13] and no [possession by means of a] deed [may be acquired] after [the testator's] death![14]

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(1) V. Glos.

(2) V. Glos.

(3) V. Dem. IV, 1. In this as in the previous case the rule of assumption is followed. Cf. p. 326, n. 10.

(4) Who distributed all his estate. V. B.B. Sonc. ed. p. 658. n. 2. The verbal assignment of a dying man is valid and requires no deed or formal acquisition.

(5) The recipient.

(6) I.e., his claim has a double force: That of the gift of a dying man and that of legal acquisition. ' רכשי , pl. of ריכשא 'a harnessed or galloping horse'.

(7) Owing to the symbolic acquisition that took place.

(8) Cf. supra note 3.

(9) Lit., 'my loan', a debt which someone owes him.

(10) Although the money was not at that time in his possession and the gift was not made in the presence of the three parties concerned (v. B.B. 144a).

(11) By the unnecessary symbolic acquisition. V. infra n. 12.

(12) The donee.

(13) Not merely by virtue of the legal validity of his instructions (v. supra note 3).

(14) Hence it was difficult for Samuel to give a decision on the matter (v. B.B. Sonc. ed. p. 658, n. 11). As Rab, however, definitely ruled in favour of the donee on the assumption that the donor 'made him ride on two harnessed horses', it follows that Rab is guided by the rule of assumption. How then could it be implied supra that it was Rab who held that the halachah was not in agreement with R. Eleazar b. Azariah!.

Talmud - Mas. Kethuboth 56a

— The fact, however, is that both[1] follow [the rule of] assumption; and he who stated that the halachah [was so][2] was well justified, [while in respect of] him who stated that the halachah was not [so],[3] [it may be explained that] here[4] also [the ruling is based on] an assumption, that the man's object[5] [it is assumed] was the formation of a mutual attachment,[6] and such attachment has indeed been formed.[7] R. Hanina[8] once sat in the presence of R. Jannai when he stated: The halachah is in agreement with R. Eleazar b. Azariah. [The Master] said to him, 'Go Out' read your Biblical verses outside;[9] the halachah is not in agreement with R. Eleazar b. Azariah'. R. Isaac b. Abdimi stated in the name of our Master:[10] The halachah is in agreement with R. Eleazar b. Azariah. R. Nahman stated in the name of Samuel: The halachah is in agreement with R. Eleazar b. Azariah. R. Nahman in his own name, however, stated that the halachah was not in agreement with R. Eleazar b. Azariah, while the Nehardeans stated in the name of R. Nahman that the halachah was in agreement with R. Eleazar b. Azariah. And though R. Nahman uttered a curse, proclaiming, 'Such and such a fate shall befall every judge who gives a ruling in agreement with the opinion of R. Eleazar b. Azariah', the halachah is nevertheless in agreement with R. Eleazar b.Azariah. And the halachah in practice is In accordance with the Opinion of R. Eleazar b. Azariah. Rabin enquired: What is the law[11] where the bride only entered the bridal chamber but there was no intercourse? Is the kinyan[12] effected by the affectionate attachment in the bridal chamber[13] or is the kinyan effected by the affectionate attachment of the intercourse?[14] — Come and hear what R. Joseph learnt: 'Because he assigned[15] it to her only on account of the affectionate attachment of the first night'. Now, if you grant that it is the affectionate attachment in the bridal chamber that effects the kinyan it was correct for him to state 'the first night'. If, however, you contend that it is the affectionate attachment of the intercourse that effects the kinyan, does this [it may be objected, first] take place on the first night only and not subsequently? — What then [do you suggest]? The [affectionate attachment in the] bridal chamber? Is the bridal chamber [it may be retorted] entered[16] in the night only and not in the day time![17] — But according to your argument does intercourse take place at night and not in the day time? Surely Raba stated: If one was in a dark room [intercourse] is permitted![18] — This is no difficulty. He[19] may have taught us that it is proper conduct[20] that intercourse should be at night; but [if it is

maintained that it is the affectionate attachment in the] bridal chamber [that effects the kinyan] the difficulty arises![21] — [The assumption that kinyan is effected in the] bridal chamber also presents no difficulty. Since, usually, the bridal chamber is a prelude to[22] intercourse he taught us that it was proper that [it should be entered] at night. R. Ashi enquired: What is the law[23] where [a bride] entering the bridal chamber became menstruous?[24] If you should find [some reason] for saying that it is the affectionate attachment in the bridal chamber that effects the kinyanl[15] [the question still remains whether this applies only to] a bridal chamber that is a prelude[25] to intercourse but not to a bridal chamber that is no prelude to intercourse,[26] or is there perhaps no difference?[27] — This remains unanswered. R. JUDAH SAID: IF [A HUSBAND] WISHES HE MAY WRITE OUT FOR A VIRGIN etc. Does R. Judah hold the opinion that a quittance is written?[28] Surely we learned: If a person repaid part of his debt, R. Judah said, he[29] must exchange [the bond for another].[30] R. Jose said: He[31] must write a quittance for him![32] — R. Jeremiah replied: [Here it is a case] where the quittance is [written] within.[33] Abaye replied: You may even say [that here it is a case] where the quittance is not written within.[34] There[35] it is quite correct[36] [to disallow the use of a quittance, since the debtor] had undoubtedly repaid him[37] and it is possible that the quittance might be lost and that he[37] would produce the bond and thus collect [the paid portion of the debt] a second time. Here,[38] however, did he indeed give her anything?[39] It is a mere statement that she addressed to him.[40] If, then, he preserved [the quittance] well and good;[41] and if he did not preserve it, well, it is he himself who is the cause of his own loss. One can well understand why Abaye did not give the explanation as R. Jeremiah, since it was not stated[42] that the quittance was entered within,[43] but why did not R. Jeremiah give the same explanation as Abaye? — The quittance here[44] is forbidden as a preventive measure against the [erroneous permitting of] a quittance elsewhere.[45] The reason [for the husband's exemption[46] is apparently] because she gave him a quittance in writing.[47] If, however, [she had surrendered a portion of her kethubah] by word of mouth only [he would] not [have been exempt];[48] but why? This,[44] surely, is a monetary matter, and R. Judah was heard to rule that in a monetary matter one's stipulation[49] is valid. For was it not taught: If a man said to a woman, 'Behold thou art consecrated unto me[50] on condition that thou shalt have no [claim] upon me [for] food, raiment or conjugal rights', she is consecrated,[51] but the stipulation is null;[52] so R. Meir. R. Judah, however, said: In respect of monetary matters his stipulation is valid?[53] — R. Judah is of the opinion that the kethubah is a Rabbinical enactment,[54] and the Sages[55] have applied to their enactments[56] higher restrictions than to those of the Torah.[57] But what of the case of usufruct[58] which is a Rabbinical law and the Rabbis nevertheless did not apply any restriction to it;[59] for we learned: R. Judah said, He[60] may for all time eat the fruit of the fruit[61] unless he wrote out for her [the undertaking], 'I have no claim whatsoever[62] upon your estates and their produce and the produce of their produce forever';[63]

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(1) Rah and R. Nathan.

(2) l.e., that it was in agreement with R. Eleazar b. Azariah.

(3) Cf. preceding note, mutatis mutandis.

(4) The statement supra against R. Eleazar b. Azariah.

(5) In promising his bride an additional sum in her kethubah.

(6) Between him and his bride.

(7) Even though no marriage has taken place. The woman is, therefore, entitled to the full sum she had been promised. Hence the statement (which has been ascribed to Rab) against the ruling of R. Eleazar b. Azariah.

(8) Following the reading of Ber. 30b Bah adds 'the Bible teacher'.

(9) [I.e., Go teach the Bible to children instead of venturing into the realms of the halachah. Bible instructions were given in a place 'outside' the academy].

(10) Rab (v. Rashi) or Rabbi, i.e., R. Judah the Patriarch (v. Tosaf. a.l. s.v. אמר). According to Tosaf, the speaker here was the first R. Isaac b. Abdimi who was a disciple of Rabbi (cf. Shab. 4ob) and a teacher of Rab (cf. B.B. 87a and Hul. 110a).

(11) According to R. Eleazar b. Azariah's views in our Mishnah.

(12) V. Glos. The legal and final union that may be regarded as marriage.

(13) Huppah v. Glos. And the bride is consequently entitled to the full amount of the statutory, and the additional

kethuhah.
(14) And since this has not taken place the bride can only claim the statutory minimum.
(15) Lit., ‘wrote’.
(16) Lit., ‘there is’.
(17) Why then did R. Joseph mention ‘night’?
(18) In the day time. V. infra 65b, Shab. 86a.
(19) R. Joseph. V. supra n. 5.
(20) Lit., ‘the way of the earth’.
(21) V. supra n. 5.
(22) Lit., ‘stands for’.
(23) Is the bride entitled to the additional jointure of her kethubah? Cf. supra p. 328, n. 9.
(24) The bridegroom dying before intercourse had taken place. Intercourse with a menstruant is Pentateuchally forbidden. (Cf. Lev. XVIII, 19). (13) Cf. supra p. 328, n. 10.
(25) Lit., ‘suitable’.
(26) Cf. p. 329, n. 12. The bride would consequently have no claim upon the additional sum she was promised.
(27) The bride being entitled in either case to the full amount.
(28) By a creditor to whom part of a debt was repaid; and consequently there is no need to exchange the bond for one in which the balance only is entered.
(29) The creditor.
(30) In which only the balance of the original debt is entered while the first bond is destroyed. The debtor cannot be compelled to accept a quittance which he would have ‘to guard from mice’ and the loss of which might involve him in a claim for the repayment of the full loan. It is more equitable that the creditor should change the bond.
(31) The creditor.
(32) B.B. 170b. Such a course is advantageous to the creditor, since a bond entitles its holder to seize any real estate which the debtor has sold or mortgaged after, but not before the date of his bond. Were a new bond for the balance to be written, the creditor would lose his right to seize any of the debtor's property that was sold or mortgaged between the date of the original bond and that of the new one. In the opinion of R. Jose the rights of the creditor must not be impaired, while in the opinion of R Judah equity demands that the debtor be not encumbered with the necessity of taking care of the quittance (cf. supra n. 6). How then could it be stated here that R. Judah allowed the writing of a quittance?
(33) I.e., is entered on the kethubah itself, so that the husband, unlike the debtor spoken of in B.B., has no need to preserve any document.
(34) Cf. supra n. 9.
(35) The case of the payment of the part of a debt.
(36) For R. Judah.
(37) The creditor.
(38) In our Mishnah.
(39) So MS.M. reading מידי .
(40) She received no money at all from her husband.
(41) Lit., ‘he preserved it’.
(42) In our Mishnah.
(43) V. supra p. 330, n. 9.
(44) The case of the kethubah.
(45) A debt, for instance, where R. Judah does not allow it (cf. supra p. 330, n. 6).
(46) From the payment of the part of the kethubah which his wife has surrendered (v. our Mishnah).
(47) Lit., ‘she wrote for him’.
(48) Since our Mishnah speaks of writing.
(49) Even though it deprives a person from a right to which he is Pentateuchally entitled.
(50) The formula of marriage used by the bridegroom is, ‘Behold thou art consecrated unto me by this ring according to the law of Moses and Israel’.
(51) Becomes his lawful wife.
(52) Since it is contrary to the law of the Torah. Cf Ex. XXI, 10.
(53) B.M 51a, 94a, B.B. 226b

(54) Not Pentateuchal.

(55) Sc. the Rabbis.

(56) In order to prevent laxity.

(57) The laws of the Torah, being universally respected, required no such additional restrictions.

(58) Melog property (v. Glos.) to the fruit of which a husband is entitled during his lifetime while the property itself remains the possession of his wife.

(59) A husband being allowed to surrender his right to the usufruct.

(60) A husband who renounced his claim to the fruit of melog property.

(61) The fruit produced by lands that were purchased out of the proceeds of the fruit of the original property.

(62) Lit., 'judgment and words'.

(63) Infra 83a.

Talmud - Mas. Kethuboth 56b

and it had been established that by 'writing'[1] only saying was meant![2] — Abaye replied: All [married women] have a kethubah; not all, however, have fruit. In respect of what is usual the Rabbis have applied restrictions. In respect of what is not usual, however, the Rabbis have made no restrictions. But what of the case of ass-drivers[3] which is a common occurrence and the Rabbis have nevertheless applied no restrictions to it; for we learned: Where ass-drivers entered a town and one of them declared, 'My [produce] is new and that of my fellow is old' or 'Mine is not fit for use[4] but that of my fellow is fit', they are not believed; but R. Judah said, They are believed![5] — Abaye replied: To any Rabbinical enactment of an absolute character[6] the Rabbis have applied further restrictions, but to any Rabbinical enactment of uncertain origin[7] the Rabbis have added no further restrictions. Raba replied: They[8] relaxed the law in respect of demai.[9] R. MElr RULED . . . ANY MAN WHO . . . GIVE . . . LESS etc. The expression, 'WHO . . . GIVE . . . LESS' [implies][10] even [if the assignment remained a mere] stipulation.[11] Thus it follows that he[12] is of the opinion that the man's stipulation is void and that the woman receives [her full kethubah];[13] yet since[14] the man had said to her[15] 'You will have but a maneh',[16] her mind is not at ease[17] and his intercourse is regarded as an act of prostitution.[18] But, surely, R. Meir was heard to rule that any stipulation[19] which is contrary to what is written in the Torah is[20] null and void, [from which it may be inferred,[21] may it not, that if it is] but against a law of the Rabbis it is[20] valid?[22] — R. Meir holds the view that the kethubah is a Pentateuchal institution. It was taught: R. Meir ruled, If any man assigns to a virgin[23] a sum less than two hundred zuz or to a widow less than a maneh his marriage is regarded as[24] an act of prostitution. R. Jose ruled: One is permitted [to contract such a marriage].[25] R. Judah ruled: If the man wished he may write out for a virgin a bond for two hundred zuz while she writes[26] for him, 'I have received from you a maneh'; and [he may write a bond] for a widow for a maneh while she writes[26] for him, 'I have received from you fifty zuz'.[27] Is R. Jose then of the opinion that 'one is permitted [to contract such a marriage]'?[28] This surely is contrary [to the following:] A woman's kethubah may not be made [a charge on] movable property as a social measure.[29] Said R. Jose: What social measure is this?[30] Their[31] price, surely, is not fixed and they deteriorate in value.[32] Now, did not the first Tanna also say that [a kethubah] may not be made [a charge on movable property]?[33] Must he[34] not, consequently, have meant to say: This[35] applies only where he[36] accepted no responsibility;[37] but where he accepted responsibility[37] [the kethubah] may be made [a charge upon them].[38] Thereupon came R. Jose to question: Even If he[36] did accept responsibility how [could the kethubah be] made [a charge upon them][39] when their price, surely, is not fixed and they deteriorate in value.[40] Now, if there,[41] where the diminution in value [of the movables] is only a possibility,[42] R. Jose provides against it, would he not even more so [adopt a similar course] here[43] where the diminution [of the kethubah] is a certainty? — How now! There[44] she did not know it[45] to think of surrendering her rights;[46] but here she was well aware [of the fact][47] and has definitely surrendered her rights. The sister of Rami b. Hama was married to R. Iwia

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(1) In R. Judah's statement.

(2) Lit., ‘what writes? says’. Which proves that, according to R. Judah no restrictions were made even in the case of a Rabbinical law.
(3) About whose imported produce it is uncertain whether it has been tithed (v. GIos. s.v. Demai). Such produce is only Rabbinically forbidden.
(4) I.e., it had not been duly tithed.
(5) Demai IV, 7, v. supra p. 131 notes. Which shows that, according to R. Judah, no restriction was imposed even on a Rabbinically forbidden produce. (Cf. supra note 8).
(6) Lit., ‘a certainty of their words’.
(7) As in the case of demai where the prohibition is due to the uncertainty whether or not the produce had been tithed.
(8) The Rabbis, though they applied restriction even in cases where their prohibition was due merely to an uncertainty.
(9) V. Glos. The uncertainty here is so great, since most people even among the ‘amme ha-’arez (v. Glos. s.v. ‘Am ha-’arez) do give tithe, that no restrictions were applied to it.
(10) Since the expression used is not ‘if the virgin received less’.
(11) While the woman in fact receives the full amount of her kethubah.
(12) R. Meir.
(13) Cf. supra n. 2. Lit., ‘and there is to her’.
(14) [Lit., ‘and since’. The text is not smooth. MS.M. preserves a better reading ‘but since she had (a full kethubah) what is the reason (of R. Meir)?’ — Since he said to her etc.].
(15) The virgin who is entitled to two hundred zuz.
(16) One hundred zuz (v. Glos.).
(17) [Lit., ‘her mind does not rest, rely upon’, i.e., she contracted her marriage on the expectation of a kethubah of a smaller amount than the prescribed minimum.]
(18) [Since the marriage was not performed in accordance with the requirements of the law, it is regarded as an act of prostitution.]
(19) Lit., ‘whoever makes a stipulation’.
(20) Lit., ‘his stipulatlon’.
(21) Since he mentions the Torah only.
(22) As a kethubah is an enactment of the Rabbis (v. R. Judah's view supra 56a), why is the stipulation void?
(23) As her kethubah.
(24) Lit., ‘behold this’.
(25) The stipulation being valid even if the woman's surrender of her right was only verbal.
(26) Contrary to the opinion of R. Jose, R. Judah maintains that a verbal stipulation or undertaking against a Rabbinical measure is of no validity.
(27) Half a maneh.
(28) I.e., one where the kethubah amounts to less than the prescribed minimum.
(29) Lit., ‘because of making the world right’. Movable objects may be easily lost and do not provide a reliable security for the kethubah.
(30) Lit., ‘there is in this’.
(31) Movable objects.
(32) While a kethubah must always amount to a legally fixed minimum.
(33) Wherein, then, does R. Jose differ from him?
(34) The first Tanna.
(35) That movable property provides no security for a kethubah.
(36) The husband.
(37) For the loss of the movable property.
(38) The possibility of deterioration in value being disregarded by the first Tanna.
(39) Movable objects.
(40) R. Jose is consequently of the opinion that it is not only against loss but also against a diminution in value that provision must be made.
(41) Where movable objects are assigned as a security.
(42) Lit., ‘perhaps they diminish’.
(43) Where the husband definitely assigned no more than half of the legal maximum.

(44) V. supra note 14.

(45) That the value would be diminished.

(46) Lit., ‘that she shall forgive’ or ‘surrender’.

(47) That her husband has contracted for a sum less than her due.

Talmud - Mas. Kethuboth 57a

and her kethubah[1] was lost. When they came before R. Joseph[2] he said to them, Thus said Rab Judah in the name of Samuel: This[3] is the opinion of R. Meir,[4] but the Sages ruled that a man may live with his wife without a kethubah for two or three years.[5] Said Abaye to him:[6] But did not R. Nahman state in the name of Samuel that the halachah is in agreement with R. Meir in his preventive measures?[7] — If so, [the other replied] go and write one[8] for her. When R. Dimi came[9] he stated in the name of R. Simeon b. Pazzi in the name of R. Joshua b. Levi who had it from Bar Kappara: The dispute[10] refers to the beginning,[11] but at the end[11] she cannot, according to the opinion of all, surrender[12] [any portion of her kethubah].[13] R. Johanan, however stated that their dispute extended to both cases.[14] Said R. Abbahu: [The following] was explained to me by R. Johanan: ‘I and R. Joshua b. Levi do not dispute with one another. The "beginning" of which R. Joshua b. Levi spoke means[15] the beginning of [the meeting in] the bridal chamber, and by the "end" was meant[15] the termination of the intercourse;[16] and when I stated that the dispute extended to both cases [I meant] the beginning [of the meeting in] the bridal chamber and the end of that meeting which is the beginning of the intercourse.’[17] When Rabin came[18] he stated in the name of R. Simeon b. Pazzi in the name of R. Joshua b. Levi who had it from Bar Kappara. The dispute refers only to the end, but at the beginning she may, so is the opinion of all, renounce[19] [any portion of her kethubah].[20] R. Johanan, however, stated that their dispute extended to both cases. Said R. Abbahu: This was explained to me by R. Johanan: ‘I and R. Joshua b. Levi do not dispute with one another. The "end" of which R. Joshua b. Levi spoke meant the end of [the meeting in] the bridal chamber, and by the "beginning" was meant the beginning of [the meeting in] the bridal chamber; and when I stated that the dispute extended to both cases [I meant] the beginning,[21] and the termination of the intercourse.’ Said R. Papa: Had not R. Abbahu stated, ‘This was explained to me by R. Johanan: "I and R. Joshua b. Levi do not dispute with one another"’ I would have submitted that R. Johanan and R. Joshua b. Levi were in dispute while R. Dimi and Rabin[22] were not in dispute. The ‘end’ of which Rabin spoke might mean[23] the end of [the meeting in] the bridal chamber, and the ‘beginning’ of which R. Dimi spoke might mean[23] the beginning of the intercourse.[21] What does he[24] teach us thereby?[25] — It is this that he teaches us: [It is preferable to assume][26] that two Amoraim differ in their own opinions[27] rather than that two Amoraim should differ as to what was the view of another Amora.[28] MISHNAH. A VIRGIN IS ALLOWED TWELVE MONTHS FROM THE [TIME HER INTENDED] HUSBAND CLAIMED HER,[29] [IN WHICH] TO PREPARE HER MARRIAGE OUTFIT.[30] AND, AS [SUCH A PERIOD] IS ALLOWED FOR THE WOMAN, SO IS IT ALLOWED FOR THE MAN FOR HIS OUTFIT.[31] FOR A Wldow[32] THIRTY DAYS [ARE ALLOWED]. IF THE RESPECTIVE PERIODS EXPIRED[33] AND THEY WERE NOT MARRIED[34] THEY[35] ARE ENTITLED TO MAINTENANCE OUT OF THE MAN'S ESTATE[36] AND [IF HE IS A PRIEST] MAY ALSO EAT TERUMAH. R. TARFON SAID: ALL [THE SUSTENANCE] FOR SUCH A WOMAN MAY BE GIVEN OF TERUMAH.[37] R. AKIBA SAID: ONE HALF OF UNCONSECRATED FOOD[38] AND ONE HALF OF TERUMAH.[39] A LEVIR[40] [WHO IS A PRIEST] DOES NOT CONFER [UPON HIS SISTER-IN-LAW][41] THE RIGHT OF EATING TERUMAH.[42] IF SHE[43] HAD SPENT SIX MONTHS[44] W[29] TH[45] HER HUSBAND AND SIX MONTHS W[29] TH[45] THE LEVlr,[46] OR EVEN [IF SHE SPENT] ALL OF THEM[47] WITH HER HUSBAND LESS ONE DAY WITH[45] THE LEVIR,[46] OR ALL OF THEM[47] WITH[45] THE LEVIR[46] LESS ONE DAY WITH HER HUSBAND,[48] SHE IS NOT PERMITTED TO EAT TERUMAH.[49] THIS[50] [WAS THE RULING ACCORDING TO] AN EARLIER[51] MISHNAH.[52] THE COURT, HOWEVER, THAT SUCCEEDED[53] RULED:

(1) I.e., the written marriage contract. V. Glos.
(2) To obtain his ruling on the question whether she may continue to live with her husband without the kethubah.
(3) That living with a wife whose kethubah is less than the prescribed minimum, and much more so with one who has no kethubah at all, is regarded as mere prostitution, even though the woman remained legally entitled to collect the full amount of her kethubah.
(4) Who holds that since the woman is not absolutely certain that she will obtain the full amount of her kethubah (either in the case, supra, because she believes the man's stipulation to be valid or, in this case, because she has no document to prove her claim) it can only be regarded as an act of prostitution (v. supra p. 333, n. 8).
(5) I.e., for any length of time. V. Tosaf. s.v. שתים a.l.
(6) R. Joseph.
(7) The Rabbinical restrictions he added to those of the Torah.
(8) A new marriage contract.
(9) From Palestine to Babylon.
(10) Between R. Judah and R. Jose on the question whether a verbal renouncement of the woman is valid (supra 56b).
(11) This is explained infra.
(12) By a mere verbal statement.
(13) Since she has already acquired it. Only by means of a written quittance may her rights then be surrendered.
(14) I.e., to the 'beginning' and 'end'.
(15) Lit., 'what'.
(16) R. Judah and R. Jose dispute only in respect of the period between the beginning and the conclusion of the meeting in the bridal chamber but agree that after intercourse the man's stipulation is invalid unless the woman has surrendered her rights in writing. It was, therefore, quite correct for R. Joshua b. Levi to state that 'at the end (i.e., of the intercourse), she cannot, according to the opinion of all, surrender (i.e., verbally) any part of her kethubah'.
(17) To which the dispute indeed refers (cf. supra p. 335, n. 14).
(18) From Palestine to Babylon.
(19) V. Supra p. 335, nn. 8-10.
(20) Since she has not yet legally acquired it.
(21) Which corresponds to the termination of the meeting in the bridal chamber.
(22) Whose reports appear contradictory.
(23) Lit., 'what'.
(24) R. Papa.
(25) In view of R. Abbahu's definite statement R. Papa's remark seems pointless.
(26) Unless there is proof to the contrary.
(27) It is natural and legitimate for opinions to differ.
(28) In which case one of the two must be definitely wrong since the view of the Amora which both of them claim to represent could not possibly have agreed with what both of them submit. Had not R. Abbahu's statement been authoritative, coming as it did from R. Johanan himself, R. Papa's submission would have been preferred to his.
(29) After their betrothal.
(30) Jewels and similar ornaments (v. Rashi).
(31) The preparations for the wedding dinner and the bridal chamber (v. ibid.).
(32) Who is presumed to be in the possession of some trinkets and jewellery from her first marriage.
(33) Lit., 'the time arrived'.
(34) Owing to the man's delay (v. supra 2b).
(35) The women.
(36) Lit., 'they eat of his'.
(37) Out of the proceeds of which she may buy unconsecrated food for consumption during the days of her Levitical uncleanness.
(38) For consumption during her period of uncleanness.
(39) For her use in her clean state.
(40) יתם , the brother of a deceased childless husband, whose duty it is to marry the widow.
(41) Who became a widow while still betrothed.
(42) Prior to their marriage (v. supra n. 12).

(43) As a betrothed virgin.
(44) Of the period of twelve months that is granted to her.
(45) Lit., 'in the presence of'.
(46) I.e., in awaiting his marriage.
(47) The twelve months.
(48) [Isaiah Trani preserves a better reading, 'even if (she spent) all of them with the husband, less one day, or all of them with the levir].
(49) By virtue of her husband whose obligation to maintain her does not begin until the end of the twelve months, and even then terminates with his death.
(50) That after THE RESPECTIVE PERIODS EXPIRED . . . THEY ARE ENTITLED . . . EAT TERUMAH.
(51) Lit., 'first'.
(52) Cf. Sanh. Sonc. ed. p. 163, n. 7.
(53) The authors of the earlier Mishnah.

Talmud - Mas. Kethuboth 57b

A WOMAN[1] MAY NOT EAT TERUMAH UNTIL SHE HAS ENTERED THE BRIDAL CHAMBER.[2] GEMARA. Whence is this[3] derived? — R. Hisda replied: From Scripture which states, And her brother and her mother said: 'Let the damsel abide with us yamim,[4] at the least ten.[5] Now, what could be meant by yamim? If it be suggested 'two days',[6] do people, [it might be retorted,] speak in such a manner? [If when] they suggested to him[7] two days he said no, would they then suggest ten days? Yamim must consequently mean[8] a year, for it is written, yamim[9] shall he have the right of redemption.[10] But might it not be said [that yamim means] a month,[11] for it is written, But a month of yamim?[12] — I will tell you: [The meaning of] an undefined [expression of] yamim may well be inferred from another undefined expression of yamim, but no undefined expression of yamim may be inferred from one in connection with which month was specifically mentioned. R. Zera stated that a Tanna taught: In the case of a minor,[13] either she herself or her father is empowered to postpone[14] [her marriage].[15] One can well understand why she is empowered to postpone [the marriage], but [why also her] father? If she is satisfied, what matters it to her father? — He might think this: Now she does not realize [what marriage implies] but to-morrow[16] she will rebel [against her husband], leave him and come back to, and fall [a burden] upon me.[17] R. Abba b. Levi stated: No arrangements may be made for marrying a minor while she is still in her minority. Arrangements[18] may, however, be made while she is a minor for marrying her when she becomes of age. Is not this obvious? — It might have been suggested that [this should not be allowed] as a precaution against the possibility of her beginning to feel anxiety at once[19] and so becoming ill. Hence we were taught [that no such possibility need be considered]. R. Huna stated: If on the day she became adolescent[20] she was betrothed, she is allowed thirty days[21] like a widow.[22] An objection was raised: One who has attained adolescence is like one who has been claimed [by her intended husband in marriage]. Does not this imply, 'Like a Virgin who was claimed'?[23] — No, like a widow who was claimed. Come and hear: If a woman who is adolescent had waited for twelve months[24] her husband, said R. Eliezer, since he is liable for her maintenance, may also annul [her vows]![25] — Read: A woman who is adolescent[26] or one[27] who waited twelve months.[28] Come and hear: If a man betrothed a virgin, whether he[29] claimed her and she held back or whether she claimed him and he[29] held back, she is allowed twelve months[30] from the time of the claim but not from the time of the betrothal; and one who is adolescent is like one who has been claimed. How [is this to be understood]? If she was betrothed on the day she became adolescent,[31] she is allowed twelve months; while one betrothed [is sometimes allowed] thirty days.[32] Is not this a refutation against R. Huna? — It is a refutation. What [was meant by] 'while one betrothed [is sometimes allowed] thirty days'? — R. Papa replied, It is this that was meant: If an adolescent woman was betrothed after twelve months of her adolescence have elapsed, she is allowed[30] thirty days like a widow. IF THE RESPECTIVE PERIODS EXPIRED AND THEY WERE NOT MARRIED. 'Ulla stated: The daughter of an Israelite who is betrothed [to a priest] is, according to Pentateuchal law, permitted to

eat terumah, for it is written In Scripture, But if a priest buy any soul, the purchase of his money,[33] and that [woman] also is the purchase of his money.[34] What then is the reason why [the Rabbis] ruled that she is not permitted to eat [terumah]? Because it might happen that when a cup [of terumah] will be offered[35] to her in the house of her father she might give her brother or sister[36] to drink [from it]. If so, [the same reason should apply] also where THE RESPECTIVE PERIODS EXPIRED AND THEY WERE NOT MARRIED! — In that case[37] he appoints for her a special place.[38] Now then, no [hired harvest] gleaner[39] [working] for an Israelite should be allowed to eat terumah, since it is possible that [the household of the Israelite] would come to eat with him! If[40] they feed him from their own [victuals], Would they eat of his?[41] R. Samuel son of Rab[42] Judah explained:[43] Owing to a bodily defect[44] [that might subsequently be detected].[45] lf so, [should not the same reason] also [be applicable to a woman who] had entered the bridal chamber, but intercourse with whom did not take place?[46] — In that case[47] he arranges for her to be first examined and only then takes her in.[48] Now then, the slave of a priest,[49] bought from an Israelite, should not be allowed to eat terumah on account of a bodily defect[44] [that might be discovered]![50] — [The law of cancellation of a sale owing to a subsequent detection of a] bodily defect[44] does not apply to slaves. For if the defect is external [the buyer] has presumably seen it;[51] and if it is internal, since [the buyer] requires [the slave] for work only he does not mind a private defect.[52] Were [the slave] to be found to have been a thief or

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(1) Who is not the daughter of a priest.

(2) Huppah, v. Glos.

(3) Lit., ‘whence these words’, that A VIRGIN IS ALLOWED TWELVE MONTHS.

(4) ימים , E.V., a few days.

(5) Gen. XXIV, 55, referring to the period the relatives of Rebekah wished her to remain with them after consenting to her marriage with Isaac.

(6) The minimum of the plural.

(7) Abraham's servant.

(8) Lit., ‘but what’.

(9) E.V., for a full year.

(10) Lev. XXV, 29. As here yamim means ‘a year’ so it does in Gen. XXIV, 55, while עשור means ‘ten months’.

(11) And עשור , ‘ten days’.

(12) Num. XI, 20. E.V. a full month.

(13) Who was claimed by the man who betrothed her.

(14) Lit ‘prevent’.

(15) Beyond the period given in our Mishnah; until she is of age. V. Tosef. Keth. V.

(16) After the marriage, when she finds her connubial duties distasteful.

(17) He would then have to provide for her a new marriage outfit (v. Rashi). It is the privilege of a minor to leave her husband at any moment by the mere making of a formal declaration that she does not like him (v. Glos. s.v. Mi'un).

(18) Without legal betrothal.

(19) Lit., ‘bring in fear from now’.

(20) A bogereth (v. Glos.). Lit., ‘she became adolescent one day’.

(21) In which to prepare her marriage outfit.

(22) Not the longer period of twelve months. It is assumed that on approaching adolescence a woman begins to prepare her marriage outfit, and the shorter period of one month is regarded as sufficient for completing it.

(23) Who (v. our Mishnah) is allowed a period of twelve months!

(24) From the time she was claimed by the man who betrothed her.

(25) Ned. 70b, 73b. There is no need for her father to consent to the annulment. (Cf. Num. XXX, 4ff). From here it follows that even one who is adolescent is not entitled to maintenance until after the expiry of twelve months, which is an objection against R. Huna.

(26) Who waited thirty days.

(27) A na'arah (v. Glos.).

(28) The difference between the two readings is represented in the original by the addition of a mere waw.

(29) Lit, 'the (intended) husband'.
(30) For the preparation of her outfit.
(31) Lit., 'she became of age one day'.
(32) V. infra for further explanation.
(33) Lev. XXII, 11. The conclusion of the verse is he may eat of it, i.e., of terumah.
(34) The money, or the object of value, which the man gives to the woman as her token of betrothal, and whereby she is acquired as his wife.
(35) Rt. מזג lit., 'to mix', sc. wine with water or spices.
(36) Who are Israelites to whom the eating or drinking of terumah is forbidden.
(37) Lit., 'there', where the priest is legally liable to maintain her.
(38) Away from her father's household; thus preventing her from giving away his victuals to her relatives.
(39) Who is a priest.
(40) Lit., 'now'.
(41) Obviously not. Hence the permissibility for the gleaner to eat his terumah.
(42) Wanting in MS.M.
(43) The reason why the daughter of an Israelite who was betrothed to a priest is not permitted to eat terumah before the time her husband becomes liable to maintain her.
(44) תימפון 'an implied condition the non-fulfilment of which annuls the agreement', whence 'a bodily defect . . . not stated in the contract' (Jast.) Cf. **.
(45) In the woman. This might be discovered before the marriage and, as a result, the betrothal would be annulled retrospectively.
(46) In this case also, should a bodily defect be discovered before the consummation of the marriage the betrothal would be annulled retrospectively. Why then does our Mishnah permit the eating of terumah in such a case?
(47) Lit., there'.
(48) Into the bridal chamber. After entering into the chamber it may be safely assumed that he has satisfied himself that she was not suffering from any bodily defects.
(49) Who eats terumah by virtue of being the slave of a priest.
(50) And that would retrospectively annul the purchase. The slave would consequently retain the status of an Israelite's slave to whom the eating of terumah was all the time forbidden.
(51) And since he nevertheless consented to the purchase he must have been content to overlook it.
(52) The sale, therefore, cannot thereby be annulled.

Talmud - Mas. Kethuboth 58a

a gambler[1] the sale is still valid.[2] What else is there?[3] [Only that the slave might be found to have been] an armed robber or one proscribed by the government;[4] but such characters are generally known.[5] Consider! Whether according to the [explanation of the one] Master[6] or according to that of the other Master[7] she[8] is not permitted to eat [terumah], what then is the practical difference between them? — The difference between them [is the case where her intended husband] accepted [her defects,[9] or where her father] delivered [her to the intended husband's agents][10] or went[11] [with them].[10] R. TARFON SAID: ALL [THE SUSTENANCE] FOR SUCH A WOMAN MAY BE GIVEN OF TERUMAH etc. Abaye stated: The dispute[12] applies only to the daughter of a priest[13] who was betrothed to a priest but with respect to the daughter of an Israelite[14] who was betrothed to a priest all[15] agree [that she is supplied with] one half of unconsecrated food[16] and one half of terumah. Abaye further stated: Their dispute[12] relates to one who[17] was only betrothed,[18] but in respect of a married woman[19] all[15] agree [that she is supplied with] one half of unconsecrated food[20] and one half of terumah.[20] So it was also taught: R. Tarfon said, All [the sustenance] for such a woman is given of terumah. R. Akiba said, One half of consecrated food and one half of terumah — This[21] applies only to the daughter of a priest who was betrothed to a priest, but with respect to the daughter of an Israelite who was betrothed to a priest all[22] agree [that she is supplied with] one half of unconsecrated food and one half of terumah. This,[21] furthermore, applies only to one who[23] was only betrothed but in respect of a married woman[24] all[22] agree [that she is supplied with] one half of

unconsecrated food[25] and one half of terumah.[25] R. Judah b. Bathyra said, She is supplied with two thirds[26] of terumah and one third of unconsecrated food. R. Judah said, All [her sustenance] is given to her in terumah[27] and she sells it and purchases unconsecrated food out of the proceeds.[28] R. Simeon b. Gamaliel said, Wherever terumah was mentioned[29] [the woman] is to be given [a supply equal to] twice the quantity of unconsecrated victuals.[30] What is the practical difference between them?[31] — The difference between them [is the question of the woman's] trouble.[32] A LEVIR [WHO IS A PRIEST] DOES NOT CONFER [UPON HIS SISTER-IN-LAW] THE RIGHT OF EATING TERUMAH. What is the reason? — The All-Merciful said, The purchase of his money[33] while she is the purchase of his brother.[34] IF SHE HAD SPENT SIX MONTHS WITH HER HUSBAND. Now that you stated [that even if she spent the full twelve months less one day] WITH THE HUSBAND [she is] not [permitted to eat terumah] is there any need [to mention also] WITH THE LEVIR?[35] — This is a case[36] [of anti-climax:] 'This, and there is no need to say that'.[37] THIS [WAS THE RULING ACCORDING TO] AN EARLIER MISHNAH etc. What is the reason?[38] — 'Ulla, or some say R. Samuel b. Judah, replied: Owing to a bodily defect [that might subsequently be detected].[39] According to 'Ulla[40] one can well understand [the respective rulings of the earlier,[41] and the later rulings],[42] the former[41] being due to the possibility that a cup [of terumah] might be offered[43] to her in the house of her father,[44] and the latter to [the possibility of] the detection of a bodily defect.[45]

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(1) So Tosaf. s.v. קוביוסטום , and cf. **, 'gambler'; **; 'a crafty person' (contra Rashi's interpretation, 'kidnapper').

(2) Lit., 'he reached him'. Slaves being known to possess such characters a buyer of a slave is presumed to have accepted the inevitable.

(3) That might be given as a reason for the cancellation of the sale.

(4) Sentenced to death.

(5) Lit., 'they have a voice', and the buyer must have known the circumstances before he bought him and must have consented to have him despite his unsavoury character.

(6) 'Ulla.

(7) R. Samuel.

(8) The daughter of an Israelite who was betrothed to a priest.

(9) Once he consented to overlook them he cannot again advance them as a reason for the annulment of the betrothal. In such a case R. Samuel's explanation is not applicable while that of 'Ulla is.

(10) Cf. supra 48b. As she does not any longer live with her father's family 'Ulla's reason does not apply while that of R. Samuel does.

(11) Himself or his agents.

(12) That of R. Tarfon and R. Akiba.

(13) Who is familiar with the restrictions of terumah and would, therefore, abstain from eating it during the days of her Levitical uncleanness when consecrated food is forbidden to her.

(14) Who may be ignorant of the restrictions appertaining to terumah.

(15) Even R. Tarfon.

(16) For consumption during the days of her uncleanness.

(17) Being the daughter of a priest.

(18) Her father with whom she lives during the period of her betrothal might well be relied upon that, as a priest, he would duly supervise her observance of the laws of terumah and would, during her uncleanness, himself, or through her brothers, sell her terumah and purchase for her with the proceeds unconsecrated food.

(19) Who does not live with her husband (cf. infra 64b).

(20) Being alone she might not be able to arrange for the sale of her terumah during her uncleanness, and might consequently be apt to consume the consecrated food forbidden to her.

(21) The difference of opinion.

(22) V. p. 342, n. 10.

(23) Being the daughter of a priest.

(24) V. p. 342. n. 14.

(25) V. p. 342, n. 15.

(26) Lit., ‘portions’.
(27) But, unlike R. Tarfon who allows only as much terumah as if it were unconsecrated victuals, R. Judah allows a larger quantity of terumah (which is cheaper) so that its proceeds should suffice for the purchase of the required quantity of ordinary food.
(28) Lit., ‘money’.
(29) In the subject under discussion.
(30) Tosef. Keth. V. ab. init.
(31) R. Judah and R. Simeon b. Gamaliel.
(32) In the selling of her terumah. It is difficult to sell terumah (the buyers of which, being priests only, are naturally few) and it must be offered at a very low price. To save the woman trouble R. Gamaliel allows her terumah double the quantity of unconsecrated victuals so that by reducing the price of the former by a half she would easily dispose of it and be able to acquire with the proceeds her required ordinary victuals. R. Judah, however, makes no provision for saving her trouble, and allows her only a slight margin of terumah above that of ordinary food estimated at the current prices.
(33) Lev. XXII, 11, v. also supra p. 340, n. 5; only such may eat terumah.
(34) She does not become his own wife before he acquired her through the levirate marriage.
(35) I.e., OR ALL OF THEM WITH THE LEVIR LESS ONE DAY WITH HER HUSBAND etc. If when one day only of the twelve months was not spent with the husband she does not acquire the privilege of eating terumah, how much less would such a privilege be acquired when all the period less one day was not spent with the husband!
(36) Lit., ‘he taught’.
(37) Lit., ‘this, and he need not tell this’.
(38) Of the later Beth din.
(39) V. supra p. 341, nn. 3-4.
(40) Who (supra 75b) gave as the reason for the ruling of the earlier Mishnah that the woman might allow her relatives to drink of her cup of terumah.
(41) Forbidding terumah during the first twelve months also permitting it after the expiration of that period.
(42) Which extends the prohibition until the entry into the bridal chamber.
(43) V. supra p. 340, n. 6.
(44) And she might allow her relatives to drink from it (v. supra note 6). As this would not happen after the twelve months when the intended husband, becoming liable for her maintenance and desirous of preventing her from giving away his victuals to her relatives in her father's house, provides for her an abode of her own, the woman was permitted to eat terumah.
(45) V. supra p. 341, n. 3. Hence the extension of the prohibition until the entry into the bridal chamber.

Talmud - Mas. Kethuboth 58b

According to R. Samuel b. Judah, however, the earlier [ruling of the] Mishnah is due to [the possible detection of] a bodily defect and the later is also due to [the possible detection of] a bodily defect, what then is [the reason for] their difference? — [The principle underlying] the difference is the [efficacy of an] examination by outsiders. One Master[1] is of the opinion that an examination by others[2] is regarded as effective,[3] while the other Master[4] holds the opinion that an examination by others is not regarded as effective.[5] MISHNAH. IF A MAN CONSECRATED HIS WIFE'S HANDIWORK,[6] SHE MAY NEVERTHELESS CONTINUE TO WORK AND TO CONSUME [THE PROCEEDS HERSELF].[7] [IF, HOWEVER, HE CONSECRATED] THE SURPLUS[8] [ONLY]. R. MEIR RULED: IT IS DULY CONSECRATED.[9] R. JOHANAN HA-SANDELAR RULED: IT REMAINS UNCONSECRATED.[9] GEMARA. R. Huna stated in the name of Rab:[10] A woman is entitled to say to her husband, ‘I do not wish either to be maintained by you or to work for you’. He holds the opinion that when the Rabbis regulated [the relations of husband and wife] her maintenance was fundamental[11] while [the assignment of the proceeds of] her handiwork [to her husband] was due [only to their desire for preventing] ill-feeling.[12] If, therefore, she said, ‘I do not wish either to be maintained by you or to work for you’, she is entitled to do so.[13] An objection was raised: Maintenance [for a wife] was provided in return for her handiwork![14] — Read: Her handiwork was assigned [to her husband] in return for her maintenance. May it be suggested that

[our Mishnah] provides support for his[15] view? [It stated,] IF A MAN CONSECRATED HIS WIFE'S HANDIWORK SHE MAY NEVERTHELESS CONTINUE TO WORK AND TO CONSUME [THE PROCEEDS HERSELF]. Does not [this refer to a wife for whom her husband is able[16] to] provide maintenance?[17] — No; [it is a case where the husband is unable to] provide her maintenance. If, however, [her husband is unable to] provide her maintenance, what need was there to state [such an obvious case]?[18] Even according to him who holds that a master has the right to say to his slave, 'Work for me but I will not maintain you,'[19] such a rule applies only to a Canaanite slave concerning whom Scripture has not written 'with thee', but not to a Hebrew slave concerning whom it is written in Scripture. With thee,[20] how much less then [would this apply to] his wife?[21] — It[22] was necessary [as an introduction to] the final clause: [IF, HOWEVER, HE CONSECRATED] THE SURPLUS [ONLY]. R. MEIR RULED: IT IS DULY CONSECRATED.[23] R. JOHANAN HA-SANDELAR RULED: IT REMAINS UNCONSECRATED. Now [R. Huna's ruling] is in disagreement with that of Resh Lakish. For Resh Lakish stated: You must not assume that R. Meir's reason[24] is because he is of the opinion that a man may consecrate that which has not yet come into existence[25] but this is R. Meir's reason: Since [a husband] has the right to compel her to work, his consecration is regarded as if he had said to her, 'May your hands[26] be consecrated to Him who created them'. But, surely, he[27] did not use such an expression![28] — Since R. Meir was heard to state that a man does not utter his words to no purpose,[29] [the expression the husband used here][30] may be regarded as if he had actually said to her, 'May your hands be consecrated to Him who created them'. But is R. Meir of the opinion that a man cannot consecrate anything that is not yet in existence? Surely it was taught: If a man said to a woman, 'Be thou betrothed unto me after I shall have become a proselyte' or 'After thou shalt have become a proselyte'. 'After I shall have been set free', 'After thou shalt have been set free', 'After thy husband will have died', 'After thy sister will have died', or 'After thy brother-in-law shall have submitted to halizah[31] from thee', she, R. Meir ruled, is legally betrothed![32] — From that [Baraitha] the inference[33] may indeed be drawn;[34] from this, [our Mishnah], however, it cannot be inferred.[35] [IF, HOWEVER, HE CONSECRATED] THE SURPLUS [ONLY]. R. MEIR RULED: IT IS DULY CONSECRATED. When does it become consecrated? — Both Rab and Samuel stated: The surplus becomes consecrated only after [the wife's] death.[36] R. Adda b. Ahabah stated: The surplus is consecrated while she is still alive.[37] [In considering this statement] R. Papa argued: In what circumstances?[38] If it be suggested: Where [the husband] allows her maintenance[39] and also allows her[40] a silver ma'ah[41] for her other requirements,[42] what [it may be retorted] is the reason of those who stated that it 'becomes consecrated only after [the wife's] death'?[43] If, however, it is a case where [the husband] does not allow her maintenance and does not allow her a silver ma'ah for her other requirements, what [it may be objected] is the reason of him who stated that 'it is consecrated while she is still alive'? — This is a case indeed[44] where he does allow her maintenance; but does not allow her a silver ma'ah for her other requirements. Rab and Samuel are of the opinion that [the Rabbis] have ordained

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(1) The author of the earlier Mishnah.

(2) Lit., 'outside'. Which the man would naturally arrange at the expiry of the twelve months when he becomes liable for her maintenance.

(3) I.e., after such an examination a man can no longer refuse to marry the woman on the ground of the subsequent detection in her of some bodily defect. Hence his ruling (v. supra p. 344. n. 7).

(4) I.e., the authorities of the latter ruling.

(5) And the man may cancel the engagement. Hence the prohibition to eat terumah until the entry into the bridal chamber when the man himself has the opportunity of ascertaining the condition of her body.

(6) Which partly belongs to him (v. infra 64b).

(7) The reason is given infra.

(8) Of the proceeds in excess of the sum required for her maintenance.

(9) The reason is given infra.

(10) The Hebrew equivalent of the last five words is wanting in the corresponding passage in B.K. 8b.

(11) Since a woman cannot always earn sufficient for her maintenance.

(12) Between husband and wife.
(13) As the Rabbinical enactment aimed at the benefit of the woman only, she may well decline that favour if she is so minded.
(14) Which belongs to her husband (supra 47b). This implies that the assignment of a wife's handiwork to her husband was the original provision.
(15) R. Huna's.
(16) And, indeed, also desires to do so. Cf. Rashi and Tosaf. s.v. מאי .
(17) And since he is nevertheless precluded from consecrating her handiwork it follows, as R. Huna ruled, that a wife is entitled to refuse maintenance and to retain her right over her work.
(18) That he has no right to consecrate her handiwork which does not belong to him!
(19) B.K. 87b, supra 43a, Git. 12a.
(20) Deut. XV, 16.
(21) What need then was there to state the obvious?
(22) The first clause which is indeed self-evident.
(23) Though he does not maintain her.
(24) For giving a husband the right of consecrating his wife's handiwork.
(25) Such as the woman's work before she has performed it.
(26) Which, of course, were in existence at the time of the consecration. Thus it has been shown that according to Resh Lakish it is the opinion of R. Meir that a husband has the right to compel his wife to work.
(27) The husband.
(28) He did not say 'Your hands', but 'Your handiwork'.
(29) V. 'Ar. 5a.
(30) Since it would serve no purpose at all in the form he used it.
(31) V. Glos
(32) When the respective conditions are fulfilled, though at the time of the betrothal they were still unfulfilled (Yeb. 92b, 93b, B.M. 16b). This then shows that a man can legally dispose even of that which is not yet in existence.
(33) V. n. 7 final clause.
(34) Lit., 'yes'.
(35) Since the reason may well be the one given supra by Resh Lakish.
(36) When her husband inherits her estate.
(37) As soon as it is produced.
(38) Could the two opposing views be justified.
(39) Whereby he acquires the right to her earnings.
(40) Every week.
(41) V. Glos.
(42) Whereby he acquires the right to the surplus of her earnings in excess of the sum required for her maintenance, cf. infra 64b.
(43) Since the husband is entitled to both her earnings and the surplus the consecration should take effect even while she is alive.
(44) Lit., 'for ever'; 'always'.

Talmud - Mas. Kethuboth 59a

maintenance [for a wife] in return for her handiwork,[1] and a silver ma'ah[2] in return for the surplus;[3] and since the husband does not give her the silver ma'ah, the surplus remains hers.[4] R. Adda b. Ahabah, however, is of the opinion that maintenance was ordained in return for the surplus,[3] and the silver ma'ah in return for her handiwork; and since [the husband] supplies her maintenance, the surplus is his. On what principle do they[5] differ? — The Masters hold that the usual[6] is for the usual,[7] and the Master holds that the fixed [sum][8] is for the fixed [quantity].[9] An objection was raised: Maintenance [for a wife] was provided in return for her handiwork![10] — Read: In return for the surplus of her handiwork. Come and hear: If he does not give her a silver ma'ah for her other requirements, her handiwork belongs to her![11] — Read: The surplus of her handiwork belongs to

her. But, surely, in connection with this statement it was taught: What [is the quantity of work that] she[12] must do for him?[13] The weight of five sela's[14] of warp in Judaea [etc.]![15] — It is this that was meant: What is the quantity of work [that she must do] in order that we might determine how much is her surplus? The weight of five sela's of warp in Judaea which is ten sela's[16] in Galilee. Samuel stated: The halachah is in agreement with R. Johanan ha-Sandelar.[17] But could Samuel have made such a statement? Have we not learned: [If a woman said to her husband]. 'Konam,[18] if I do aught for your mouth',[19] he[20] need not annul her vow.[21] R. Akiba, however, said: He[20] must annul it, since she might do more work than is due to him.[22] R. Johanan b. Nuri said: He[20] must annul her vow[23] since he might happen to divorce her[24] and she would [owing to her vow] be forbidden to return[25] to him.[26] And Samuel stated: The halachah is in agreement with R. Johanan b. Nuri?[27] — When Samuel stated, 'The halachah is in agreement with R. Johanan b. Nuri' [he referred only] to the surplus.[28] Then let him[29] specifically state, 'The halachah is in agreement with R. Johanan b. Nuri in respect of the surplus', or else 'The halachah is not in agreement with the first Tanna',[30] or else, 'The halachah is in agreement with R. Akiba![31] — But, replied R. Joseph, you speak of konamoth?[32] Konamoth are different. For, as a man may[33] forbid to himself the fruit of his fellow[34] so may he also consecrate[35] that which is not yet in existence.[36] Said Abaye to him:[37] It is quite logical that a man should be entitled to forbid the use of the fruit of his fellows to himself,[38] since he may also forbid his own fruit[39] to his fellow;[40] should he, however, have the right to forbid something that is not yet in existence,[41] seeing that no man has the right[42] to forbid the fruit of his fellow to his fellow?[43] — But, replied R. Huna son of R. Joshua, [that[44] is a case] where the woman said, 'My hands shall be consecrated to Him who created them', [such consecration being valid] since her hands are in existence.[45] But even if she had said so, could she consecrate them? Are they not mortgaged to him?[46] — [This is a case] where she said,[47] 'When I shall have been divorced'.[48] But is there a consecration that could not take effect now[49] and would nevertheless become effective later?[50] — And why not? retorted R. Elai. Were a man to say to his friend, 'This field that I am selling you shall be consecrated as soon as I shall have re-purchased it from you', would it not[51] become consecrated?[52] R. Jeremiah demurred: What a comparison? There[53] [the seller] has the right to consecrate [his field];[54] here,[55] however, [the woman] has no power to divorce herself![56] This[55] is rather similar[57] to the case of a man who said to another, 'This field which I have sold to you shall become consecrated after I shall have re-purchased it from you', where it does not become consecrated.[58] R. Papa demurred: Are the two cases at all similar? There[59] both the field itself and its produce are in the possession of the buyer, but here[60] the wife's person is in her own possession. This[60] is rather similar[61] to the case of a man who said to another,

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(1) Which belongs to the husband.

(2) Every week.

(3) V. supra p. 347. n. 14.

(4) And cannot consequently be consecrated by him until after her death when he inherits it.

(5) Rab and Samuel on the one hand and R. Adda b. Ahabah on the other.

(6) Maintenance.

(7) The proceeds of the woman's handiwork. A surplus, however, in excess of the sum required for her maintenance, is unusual.

(8) The silver ma'ah.

(9) A wife's handiwork the quantity of which is prescribed (v. infra 64b).

(10) Supra 47b, 58b. An objection against R. Adda b. Ahabah.

(11) Infra 64b; which proves that the ma'ah is in return for her handiwork not for the surplus. An objection against Rab and Samuel,

(12) A wife.

(13) Her husband.

(14) V, Glos. s.v. Sela'.

(15) Infra 64b. This 'handiwork', not the surplus. How then could the insertion of 'surplus' be justified?

(16) The Galilean sela' being equal to half that of Judaea.

(17) In our Mishnah.
(18) קונם , (konam) one of the expressions of a vow. V. Glos.
(19) I.e., that her husband shall be forbidden to eat anything prepared by her or purchased from the proceeds of her work.
(20) The husband who is empowered to annul his wife's vows. V. Num. XXX, 7f.
(21) As a wife's work belongs to her husband she has no right to dispose of it by vow or in any other way. Her vow is, therefore, null and void and requires no invalidation.
(22) More than the quantity to which he is entitled (v. infra 64b). Any work in excess of that quantity remains at the disposal of the wife who is entitled to forbid it to her husband by a vow. Hence the necessity for annulment.
(23) Not only on account of the surplus as stated by R. Akiba.
(24) When he loses all claim to her work, and her vow becomes effective.
(25) He would not be able to remarry her because her vow would prevent her from performing for him any of the services which a wife must do for her husband. [R. Johanan b. Nuri is of the opinion that the surplus belongs to the husband and the woman has thus no right to forbid it to him by vow.]
(26) V. Ned. 85a and infra 66a and 70a.
(27) According to whom the woman's vow becomes valid after her divorce though at the time the vow was made the work she will do afterwards has not yet come into existence. From this it follows that a person may similarly consecrate anything that is not yet in existence. How, then, could Samuel who adopts this view as the halachah also state that the halachah is in agreement with R. Johanan ha-Sandelar according to whom a thing which is not yet in existence cannot be consecrated? [For this can be the only reason for R. Johanan ha-Sandelar's view in the Mishnah according to Samuel who explained the reference in the Mishnah to be to the surplus after the wife's death (v. supra p. 347) which R. Johanan ha-Sandelar will regard as unconsecrated because, at the time when the husband consecrated his wife's handiwork, it was not yet in existence (Rashi).
(28) And not to all her work which has not yet come into existence. This answer could be easily refuted, since the same objection that has been raised against the ‘handiwork’ may equally be raised against the ‘surplus’ which also was not in existence when the vow was made. This had been waived, however, in view of the more general objection that follows (Rashi). [Tosaf: Samuel's statement that the halachah is like R. Johanan b. Nuri is limited to his view that the surplus belongs to the husband v. supra p. 349. n. 14].
(29) Samuel.
(30) From which it would be inferred that annulment of the vow is necessary only on account of the surplus.
(31) Who specifically mentioned the surplus. Since none of these expressions was used it is obvious that Samuel could not have referred to the surplus only.
(32) Plural of konam, a general term for vows which are usually introduced by konam.
(33) In making a vow.
(34) Though he could not consecrate such fruit to the Sanctuary.
(35) I.e prohibit to himself by a vow.
(36) I.e., seeing that he can, by means of a vow, prohibit to himself a thing which is not in his possession, he can also prohibit a thing which is not yet in existence. Hence the validity of the vow. In our Mishnah, however, where the subject is ordinary consecration to the sanctuary, halachah is indeed in agreement with R. Johanan ha-Sandelar that the consecration is invalid.
(37) R. Joseph. ‘To him’ is wanting in MS.M.
(38) By a vow.
(39) To any particular person, by means of a vow, or to everybody by a general consecration to the Sanctuary.
(40) He may forbid his fellow's fruit to himself as the master of his own body; and he may forbid his fruit to his fellow as the owner of his fruit.
(41) The woman's work. Neither her work (which has not yet been done) nor her right to it (which she will regain only after divorce) is yet in existence.
(42) Even by a vow.
(43) Certainly not. As a person has no right to do the latter, he being neither master of his fellow's body nor owner of his fruit, so he should not be entitled to do the former (v. supra note 1.)
(44) R. Johanan b. Nuri's ruling which Samuel adopted as the halachah.
(45) Whereas our Mishnah deals with the case where she consecrated her handiwork, and this is not yet in existence.

(46) Her husband. How then could she consecrate that which is not hers?
(47) The consecration shall take effect.
(48) At that time she is again independent of her husband.
(49) As in the case under discussion where the woman while living with her husband is ineligible to dispose of her work.
(50) Obviously not. How then could the halachah be in agreement with R. Johanan b. Nuri?
(51) When it is re-purchased.
(52) It certainly would. Similarly in the case of a woman's work after she is divorced.
(53) The case of the field one is about to sell.
(54) Since at the time of the consecration it is still to his possession. Hence also the effectiveness of his present consecration after he had re-purchased that field.
(55) In the case of the consecration of a wife's work while she is still with her husband.
(56) How then could she have the power to consecrate her work even for the future?
(57) Lit., 'this is not equal but',
(58) Because at the time of the consecration it was no longer in his possession.
(59) The case of the sold field,
(60) V. supra p. 351, n. 15.
(61) V. p. 351, n. 17.

Talmud - Mas. Kethuboth 59b

'This field which I have mortgaged to you shall be consecrated after I have redeemed it,' where it is consecrated. R. Shisha son of R. Idi demurred: Are these cases similar? There it[1] is in his[2] power to redeem it; but here she has no power to divorce herself. This is rather similar to the case of a man who said to his fellow, 'This field which I have mortgaged to you for ten years[3] shall be consecrated when I shall have redeemed it', where it becomes consecrated. R. Ashi demurred: Are these cases similar? There[4] he[2] has the power to redeem it at least after ten years, but here she has never the power to divorce herself![5] — But, replied R. Ashi, you speak of konamoth! Konamoth are different [from ordinary vows] since they effect the consecration of the body[6] itself;[7] and [the reason here[8] is the same] as that of Raba, for Raba stated: Consecration,[9] leavened food[10] and manumission[11] cancel a mortgage.[12] They[13] should then[14] become consecrated forthwith![15] — The Rabbis have imparted force to a husband's rights[16] [over his wife] so that they[13] shall not become consecrated forthwith.[17] MISHNAH. THE FOLLOWING ARE THE KINDS OF WORK WHICH A WOMAN MUST PERFORM FOR HER HUSBAND: GRINDING CORN, BAKING BREAD, WASHING CLOTHES, COOKING, SUCKLING HER CHILD, MAKING READY HIS BED AND WORKING IN WOOL. IF SHE BROUGHT HIM ONE BONDWOMAN[18] SHE NEED NOT DO ANY GRINDING OR BAKING OR WASHING. [IF SHE BROUGHT] TWO BONDWOMEN,[19] SHE NEED NOT EVEN COOK OR SUCKLE HER CHILD. IF THREE, SHE NEED NEITHER MAKE READY HIS BED NOR WORK IN WOOL. IF FOUR, SHE MAY LOUNGE[20] IN AN EASY CHAIR.[21] R. ELIEZER SAID: EVEN IF SHE BROUGHT HIM[22] A HUNDRED BONDWOMEN HE MAY[23] COMPEL HER TO WORK IN WOOL; FOR IDLENESS LEADS TO UNCHASTITY. R. SIMEON B. GAMALIEL SAID: EVEN[24] IF A MAN FORBADE HIS WIFE UNDER A VOW TO DO ANY WORK HE MUST DIVORCE HER AND GIVE HER KETHUBAH[25] TO HER FOR IDLENESS LEADS TO IDIOCY.[26] GEMARA. GRINDING CORN! How could you imagine this?[27] — Read: Attending to[28] the grinding.[29] And if you prefer I might say: With a hand mill. Our Mishnah[30] does not agree with the view of R. Hiyya. For R. Hiyya taught: A wife [should be taken] mainly for the sake[31] of her beauty; mainly for the sake[32] of children.[33] And R. Hiyya further taught: A wife is mainly for the wearing[32] of a woman's finery. And R. Hiyya further taught: He who wishes his wife to look graceful[34] should clothe her in linen garments. He who wishes his daughter to have a bright complexion,[35] let him, on the approach of her maturity, feed her with young fowls and give her milk to drink. SUCKLING HER CHILD. Must it be assumed that our Mishnah[36] does not agree with the View of Beth Shammai? For was it not taught: If a woman vowed not to sickle her child she must, said Beth Shammai, pull the breast out of its mouth,[37] and Beth Hillel said: [Her husband] may

compel her to suckle it.[38] If she was divorced he cannot compel her; but if [the child] knows her[39] [her husband] pays her the fee and may compel her to suckle it in order [to avert] danger?[40] — It may be said to be in agreement even with the view of Beth Shammai, but here[41] we are dealing with such a case, for instance, where the woman made a vow and her husband confirmed it; Beth Shammai being of the opinion that he has thereby put his finger between her teeth,[42] while Beth Hillel hold that it is she that has put her finger between her teeth.[43] Then[44] let them[45] express their disagreement as regards a kethubah generally.[46] Furthermore, it was taught:[47] Beth Shammai said: She need not suckle [her child]![48] — But, clearly, our Mishnah is not in agreement with the view of Beth Shammai. 'If [the child] knows her'.

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(1) The mortgaged field.

(2) The man who consecrated the field.

(3) During which period he has no power to redeem it, as a wife has no power to divorce herself.

(4) The ten years' mortgage.

(5) The two cases, therefore, cannot be compared.

(6) Of the animal or object consecrated.

(7) In relation to the man concerned; and unlike other consecrations to the Temple Treasury, can never be redeemed.

(8) For the validity of the consecration of the wife's work.

(9) Of a pledged animal for the altar.

(10) Which is pledged to a non-Israelite but kept in the possession of an Israelite when the time for its destruction on the Passover Eve arrives. No leaven or leavened food though pledged to a non-Jew may be kept in Jewish possession from the mid-day of Passover Eve until the conclusion of the Passover festival,

(11) Of a mortgaged slave,

(12) Similarly here, the consecration cancels the husband's claim upon the body or work of his wife. Hence the validity of her consecration.

(13) The wife's hands.

(14) V. supra n. 15.

(15) Why then has it been stated that the consecration becomes effective only after her divorce.

(16) שעבודא דבעל lit., 'the subjection or pledging to the husband'.

(17) His rights, as long as she lives with him, are not merely those of a creditor to whom an object has been mortgaged or pledged but the fuller rights of a buyer. For further notes on the whole of this passage, v. Ned. Sonc. ed. pp. 265ff.

(18) Or a sum that would purchase one.

(19) Or their value. V. supra n. 1.

(20) Lit., 'sit'.

(21) I.e., she need not perform even minor services for him. She is under no obligation to leave her chair to bring him any object even from the same house (cf. Rashi). קתדרא , cf. **, 'an easy chair', 'soft seat'.

(22) Her husband.

(23) Or, according to another interpretation, 'should'.

(24) I.e., precautions must be taken against idleness not only in the case mentioned by R. Eliezer but also in the following where the husband himself forbade the work.

(25) Thus enabling her to engage in work again.

(26) שיעמום , 'stupefaction', 'dullness'.

(27) A woman, surely, could not be expected to turn the sails or the wheels of a mill.

(28) Lit., 'causing'.

(29) She performs the accompanying services only.

(30) Which imposes duties of work upon a wife.

(31) Lit., 'a woman is not but'.

(32) V. p. 353, n. 14.

(33) Not as a bondwoman for her husband. R. Hiyya agrees, however, that a wife is expected to work in wool in return for the maintenance her husband allow's her. His only objection is to menial work such as the grinding of corn which has an injurious effect upon her womanly grace. V. Tosaf. s.v. תני .

(34) Lit., 'to nurse', 'to make pliant', 'to make graceful'.

(35) Lit., 'that he may make white'.
(36) Which imposes upon a wife the duty of suckling her children.
(37) I.e., her vow is valid, because she is under no obligation to suckle her child.
(38) According to their view it is a mother's duty to suckle her child and her vow is, therefore, null and void.
(39) And refuses to be nursed by any other woman (Rashi). [Isaiah Trani: Even if it does not refuse to be suckled by another woman, its separation from its mother, whom it has learnt to recognize, may prove injurious to the infant].
(40) Tosef. Keth. V. Since Beth Shammai maintain here that a wife is under no obligation to suckle her children (cf. supra n. 6) out Mishnah (cf. supra n. 5) obviously cannot be in agreement with their view.
(41) In the cited Baraitha.
(42) I.e., it is the husband's fault that the vow remained valid. He could easily have annulled it had he wished to do so. (V. Num. XXX, 7ff).
(43) She should not have vowed (cf. supra note 7).
(44) If, as now suggested, the husband has confirmed the vow the woman had made.
(45) Beth Shammai and Beth Hillel.
(46) Where a woman vowed that her husband was to have no benefits from her. According to Beth Shammai she would be entitled to her kethubah because it is the man's fault that her vow remained valid (cf. supra p. 354, n. 11), while according to Beth Hillel she would receive no kethubah because the making of the vow was her fault (cf. p. 354. n. 12).
(47) In respect of any woman, even one who made no vow.
(48) How then could it be suggested that our Mishnah is in agreement with the view of Beth Shammai?

Talmud - Mas. Kethuboth 60a

At what age?[1] — Raba in the name of R. Jeremiah b. Abba who had it from Rab replied: Three months. Samuel, however, said: Thirty days; while R. Isaac stated in the name of R. Johanan: Fifty days. R. Shimi b. Abaye stated: The halachah is in agreement with the statement of R. Isaac which was made in the name of R. Johanan. One can well understand [the respective views of] Rab and R. Johanan since they are guided by the child's keenness of perception.[2] According to Samuel, however, is such [precocity][3] at all possible? — When Rami b. Ezekiel came[4] he said, 'Pay no regard to those rules which my brother Judah laid down in the name of Samuel; for this said Samuel: As soon as [the child][5] knows her'.[6] A [divorced woman] once came to Samuel [declaring her refusal to suckle her son]. 'Go', he said to R. Dimi b. Joseph, 'and test her case'.[7] He went and placed her among a row of women and, taking hold of her child, carried him in front of them. When he came up to her [the child][8] looked at her face with joy,[9] but she turned her eye away from him. 'Lift up your eyes'. he called to her, 'come, take away your son'. How does a blind child know [its mother]? R. Ashi said: By the smell and the taste.[10] Our Rabbis taught: A child must be breast fed for[11] twenty-four months. From that age onwards[12] he is to be regarded as one who sucks an abominable thing; these are the words of R. Eliezer. R. Joshua said: [He may be breast fed] even for four or five years. If, however, he ceased[13] after the twenty-four months and started again[14] he is to be regarded as sucking an abominable thing.[15] The Master said, 'From that age onwards he is to be regarded as one who sucks an abominable thing'. But I could point out a contradiction: As it might have been presumed that human[16] milk is forbidden[17] since such [prohibition may be deduced from the following] logical argument: If in the case of a beast[18] in respect of which the law of contact[19] has been relaxed[20] [the use of] its milk has nevertheless been restricted,[21] how much more should the use of his milk be restricted in the case of a human being in respect of whom the law of contact has been restricted;[22] hence it was specifically stated, The camel because it[23] cheweth the cud [. . . it is unclean unto you],[24] only 'it' is unclean; human milk, however, is not unclean but clean. As it might also have been presumed that only [human] milk is excluded[25] because [the use of milk] is not equally [forbidden] in all cases[26] but that [human] blood is not excluded[27] since [the prohibition of eating blood] is equally applicable in all cases,[28] hence it was specifically stated, it,[29] only 'it' is forbidden; human blood, however, is not forbidden but permitted.[30] And [in connection with this teaching] R. Shesheth has stated: Even [a Rabbinical] ordinance of abstinence is not applicable to it![31] — This is no difficulty. The latter[32] [refers to milk] that has left [the breast][33] whereas the former[34] [refers to

milk] which has not left [the breast]. [This law, however], is reversed in the case of blood,[35] as it was taught: [Human] blood which [is found] upon a loaf of bread must be scraped off and [the bread] may only then be eaten; but that which is between the teeth[36] may be sucked without any scruple.[37] The Master stated, 'R. Joshua said: [He may be breast fed] even for four or five years'. But was it not taught that R. Joshua said: Even when [he carries] his bundle on his shoulders?[38] — Both represent the same age.[39] R. Joseph stated: The halachah is in agreement with R. Joshua. It was taught: R. Marinus said, A man suffering from an attack on the chest[40] may suck milk[41] [from a beast] on the Sabbath.[42] What is the reason? — Sucking is an act of unusual[43] unloading[44] against which, where pain[45] is involved, no preventive measure has been enacted by the Rabbis. R. Joseph stated: The halachah is in agreement with R. Marinus. It was taught: Nahum the Galatian[46] stated, If rubbish[47] was collected[48] in a gutter[49] it is permissible to crush it with one's foot quietly[50] on the Sabbath, and one need have no scruples about the matter. What is the reason? — Such repair is carried out in an unusual manner[51] against which, when loss is involved,[52] the Rabbis enacted no preventive measure. R. Joseph stated: The halachah is in agreement with the ruling of Nahum the Galatian. 'If he ceased, however, after the twenty-four months and started again he is to be regarded as one who sucks an abominable thing'. And for how long?[53] — R. Judah b. Habiba replied in the name of Samuel: For three days. Others read: R. Judah b. Habiba recited[54] before Samuel: 'For three days'. Our Rabbis taught: A nursing mother whose husband died within twenty-four months [of the birth of their child] shall neither be betrothed nor married again

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(1) Lit., 'until how much?' i.e., at what age is a child assumed to know its mother, and to refuse in consequence to be suckled by another woman?

(2) Lit., 'every one according to his sharpness'; the former fixing it at the age of three months and the latter at that of fifty days.

(3) That a child should know its mother at the age of thirty days.

(4) From Palestine to Babylon, v. infra 111b.

(5) Whatever its age.

(6) May a mother be compelled to suckle it, even after she has been divorced. She is only entitled to a fee from the child's father.

(7) To ascertain whether the child knew its mother.

(8) Cur. edd. הות , (fem.). Read with Bomb. ed. הוה (masc.).

(9) Af. of סוי , 'to look up with joy' (Jast.). 'to gaze longingly'.

(10) Of the milk.

(11) Lit., 'a baby sucks and continues until'.

(12) If he is still breast fed.

(13) Lit., 'he separated'.

(14) Lit., 'and returned'.

(15) Cf. Tosef. Nid. II.

(16) Lit., 'those who walk on two (legs)'.

(17) V. Rashi; lit., 'unclean'.

(18) Of the unclean classes enumerated in Lev. XI, 4ff and Deut, XIV, 7ff.

(19) By a human being.

(20) Contact with a live animal, even of the unclean classes (v. supra n. 10), does not cause uncleanness.

(21) It is forbidden for human consumption (v. Bek, 6b).

(22) Contact with a menstruant, for instance, causes uncleanness.

(23) Emphasis on 'it' (הוא) (v. infra n. 20).

(24) Lev. XI, 4.

(25) Lit., 'I take out', sc. from the prohibition of consuming it.

(26) The milk of a clean beast being permitted.

(27) From the restriction of consuming it.

(28) Even the blood of a clean beast is forbidden.

(29) The second 'it' (הוא) in Lev. IV, 11. Cf. supra n. 14. According to another interpretation the exclusion of blood

is derived from the expression זה (E.V. these) at the beginning of the verse (Rashi).
(30) Cf. Ker. 22a and . infra n. 6.
(31) I.e., human milk is not only Pentateuchally, but also Rabbinically permitted. How then is this ruling to be harmonized with the previous Baraitha cited from Niddah which regards human milk as an 'abominable thing'?
(32) Lit., 'that', the last mentioned Baraitha which permits the consumption of human milk.
(33) And is collected in a utensil.
(34) Which, regarding the milk as an 'abominable thing', forbids it to one older than twenty-four months.
(35) As long as it remains within the body it is permitted; but as soon as it leaves it is forbidden as a preventive measure against the eating of animal blood.
(36) I.e., which has not been separated from the body.
(37) Ker. 21b.
(38) I.e., even at an age when the child is capable of carrying small loads he may still be breast fed. How then is this to be reconciled with the Baraitha cited from Niddah (V. supra note 5)?
(39) Lit., 'one size' or 'limit'.
(40) גונה (rt. גנה 'to groan'), one sighing painfully under an attack angina pectoris. V. Jast.
(41) Goat's milk which has a curative effect (v. Rashi).
(42) Though the release of the milk from the animal's breast resembles the plucking of a plant from its root, or the unloading of a burden, which is forbidden on the Sabbath,
(43) כלאחר יד , lit., 'as if by the back of the hand'.
(44) מפרק (rt. פרק Piel, 'break down', 'detach'). Milking an animal with one's hands is regarded as direct unloading (or detaching) which on the Sabbath is Pentateuchally forbidden (cf. Shab. 95a); releasing the milk by sucking is an unusual or indirect unloading or detaching which is only Rabbinically forbidden.
(45) V. supra p. 357, n. 11.
(46) Of Galatia or Gallia in Asia Minor,
(47) Lit., 'small pieces of straw',
(48) Lit., 'that went up'.
(49) And thus prevents the proper flow of the water.
(50) בצנעא lit., 'privately'.
(51) V. supra p. 357. n. 14.
(52) Were the gutter to remain choked up the overflow of the water would cause damage.
(53) Must the break last for the child to be regarded as having ceased to suck.
(54) A Baraitha, His statement was not merely the report of a ruling of Samuel who was but an Amora.

Talmud - Mas. Kethuboth 60b

until [the completion of the] twenty-four months;[1] so R. Meir. R. Judah however, permits [remarriage] after eighteen months.[2] Said R. Nathan[3] b. Joseph: Those[4] surely, are the very words of Beth Shammai and these[5] are the very words of Beth Hillel; for Beth Shammai ruled: Twentyfour months,[6] while Beth Hillel ruled: Eighteen months![6] R. Simeon b. Gamaliel replied, I will explain:[7] According to the view[8] [that a child must be breast fed for] twenty-four months[9] [a nursing mother] is permitted to marry again after twenty-one months,[10] and according to the view[11] [that it is to be breast fed for] eighteen months[12] she may marry again after fifteen months;[13] because a [nursing mother's] milk deteriorates only three months after [her conception].[14] 'Ulla stated: The halachah is in agreement with the ruling of R. Judah;[15] and Mar 'Ukba stated: R. Hanina permitted me to marry [a nursing woman] fifteen months after [the birth of her child].[16] Abaye's metayer once came to Abaye and asked him: Is it permissible to betroth [a nursing woman] fifteen months after [her child's birth]? — The other answered him: In the first place[17] [whenever there is disagreement] between R. Meir and R. Judah the halachah is in agreement with the view of R. Judah;[15] and, furthermore, [in a dispute between] Beth Shammai and Beth Hillel the halachah is in agreement with the view of Beth Hillel;[18] and while 'Ulla said, 'The halachah is in agreement with R. Judah',[15] Mar 'Ukba stated, 'R. Hanina permitted me to marry [a nursing woman] fifteen months after [the birth of her child]', how much more then [is there no need for you to wait the longer period] since you only intend betrothal.

When he[19] came to R. Joseph[20] the latter told him, 'Both Rab and Samuel ruled that [a nursing woman] must wait twenty-four months exclusive of the day on which her child was born and exclusive of the day on which she is betrothed'.[21] Thereupon he[22] ran[23] three parasangs[24] after him, (some say, one parasang along sand mounds), but failed to overtake him. Said Abaye: The statement made by the Rabbis that 'Even [a question about the permissibility of eating] an egg[25] with kutha[26] a man shall not[27] decide[28] in a district [which is under the jurisdiction] of his Master' was not due [to the view that this might] appear as an act of irreverence[29] but to the reason that [a disciple] would have no success in dealing with the matter. For I have in fact learned the tradition of Rab and Samuel and yet I did not get the opportunity of applying it.[30] Our Rabbis taught: [If a nursing mother] gave her child to a wet nurse or weaned him, or if he died, she is permitted to marry again forthwith.[31] R. Papa and R. Huna son of R. Joshua intended to give a practical decision in accordance with this Baraitha, but an aged woman said to them, 'I have been in such a position[32] and R. Nahman forbade me [to marry again].[33] Surely, this could not have been so;[34] for has not R. Nahman in fact permitted [such remarriage][35] in the Exilarch's family?[36] — The family of the Exilarch was different [from ordinary people] because no nurse would break her agreement[37] with them.[38] Said R. Papi to them:[39] Could you not have inferred it[40] from the following? It has been taught: [A married woman] who was always anxious[41] to spend her time[42] at her paternal home,[43] or who has some angry quarrel at her husband's home,[44] or whose husband was in prison,[44] or had gone to a country beyond the sea,[45] or was old or infirm,[44] or if she herself was barren, old,[46] incapable of procreation or a minor,[46] or if she miscarried after the death of her husband, or was in any other way incapacitated for propagation, must[47] wait three months.[48] These are the words of R. Meir. R. Jose,[49] however, permits betrothal or marriage forthwith.[50] And [in connection with this] R. Nahman stated in the name of Samuel: The halachah is in agreement with R. Meir in respect of his restrictive measures![51] — 'This', they[52] answered him, 'did not occur to us'. The law is [that if the child] died [remarriage by his mother] is permitted [forthwith], but if she has weaned him [her remarriage] is[53] forbidden. Mar son of R. Ashi ruled: Even if the child died [the remarriage of the mother] is forbidden, it being possible that she has killed it so as to be in a position[54] to marry. It once actually happened that a mother strangled her child. This incident, however, is no proof.[55] That woman[56] was an imbecile, for it is not likely that [sane] women would strangle their children. Our Rabbis taught: If a woman was given a child to suckle[57] she must not suckle together with it either her own child or the child of any friend of hers. If she agreed to a small allowance for board she must nevertheless eat much.[58] Whilst in charge of the child[59] she must not eat things which are injurious for the milk. Now that you said [that she must] not [suckle] 'her own child' was there any need [to state] 'nor the child of any friend of hers'? — It might have been assumed that only her own child [must not be suckled] because owing to her affection for it she might supply it with more [than the other child] but that the child of a friend of hers [may well be suckled] because if she had no surplus [of milk] she would not have given any at all. Hence we were taught [that even the child of a friend must not be suckled]. 'If she agreed to a small allowance for board she must nevertheless eat much'. Wherefrom? — R. Shesheth replied: From her own.[60] 'Whilst in charge of the child she must not eat things which are injurious'. What are these? — R. Kahana replied: For instance, cuscuta,[61] lichen, small fishes and earth.[62] Abaye said: Even pumpkins and quinces. R. Papa said: Even a palm's heart[63] and unripe dates.[64] R. Ashi said: Even kamak[65] and fish-hash. Some of these cause the flow of the milk to stop while others cause the milk to become turbid. A woman who couples in a mill will have epileptic children. One who couples on the ground will have children with long necks. [A woman] who treads[66] on the blood[67] of an ass will have scabby[68] children. One who eats[66] mustard will have intemperate children.[69] One who eats[66] cress will have blear-eyed children. One who eats[66] fish brine[70] will have children with blinking eyes.[71] One who eats[72] clay[73] will have ugly children. One who drinks[72] intoxicating liquor will have ungainly[74] children. One who eats[72] meat and drinks wine will have children

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(1) Were she to marry sooner and happen to become pregnant, the child would have to be taken from her breast before the proper time.

(2) The shorter period is in his opinion quite sufficient for the suckling of a child.

(3) Var. lec. ‘Jonathan’ (v.Tosef. Nid. Il).
(4) The words of R. Meir.
(5) R. Judah's words.
(6) As the period during which a child must be breast fed. What then was the object of the repetition of the same views?
(7) Read אפרש (v. She'iltoth, Wayera, III). Cur. edd. אכריע (rt. כרע , Hif. ‘to over-balance’, ‘compromise’).
(8) Lit., ‘the words of him who says’.
(9) Beth Shammai.
(10) Not, as R. Meir ruled, twenty-four.
(11) Lit., ‘the words of him who says’.
(12) Beth Hillel.
(13) And not, as R. Judah ruled, eighteen.
(14) For three months, at least, after her remarriage the child's breast feeding need not be interrupted. The views of Beth Shammai and Beth Hillel thus differ from those of R. Meir and R. Judah respectively.
(15) That a nursing mother need not wait more than eighteen months.
(16) In agreement w1th the view of Beth Hillel as interpreted by R. Simeon b. Gamaliel.
(17) Lit., ‘one’.
(18) Who, according to R. Simeon b. Gamaliel's interpretation, require a nursing mother to postpone remarriage for no longer a period than fifteen months.
(19) Abaye, who was a disciple of R. Joseph.
(20) To consult him on the question his metayer addressed to him.
(21) Yeb. 43a.
(22) Abaye.
(23) In an attempt to stop his metayer from acting on his decision.
(24) V. Glos.
(25) That was found in a slaughtered fowl (v. Tosaf. s.v. אפילו a.l.). The question of eating a properly laid egg with milk (v. next note) could of course never arise.
(26) A preserve containing milk.
(27) Though the answer is simple and obvious.
(28) Lit., ‘solve’.
(29) Against the Master.
(30) When the question was addressed to him. MS.M. adds; ‘because at that time I forgot it’.
(31) After her husband's death. She need not wait until the period for suckling mentioned above has expired.
(32) Lit., ‘with me was (such) an event’.
(33) Before the expiration of the period prescribed for the breast feeding of the child.
(34) Lit., ‘Is it so’?
(35) V. supra n. 12.
(36) The children having been entrusted to hired nurses. This actually happened in the case of his own wife Yaltha (v. She'iltoth, Wayera, XIIl and cf. Golds. a.l.).
(37) Lit., ‘return’, ‘retract’.
(38) Hence it was safe to allow their widows to remarry (note 12). In the case of ordinary people, however, the nurse might well change her mind at any moment and the child would consequently have to fall back upon the nursing of his own mother. Should she then happen to be in a state of pregnancy the child would be in danger of starvation.
(39) R. Papa and R. Huna.
(40) The decision of R. Nahman reported by the woman,
(41) Pass. particip. of רדף ‘to pursue’, ‘be anxious’.
(42) Lit., ‘to go’.
(43) And she was there when her husband died.
(44) At the time of his death.
(45) And there he died.
(46) When her husband's death occurred.
(47) Though in all such cases it is obvious that the woman cannot be pregnant.
(48) Before remarriage or betrothal. This is a precaution against a similar marriage or betrothal on the part of a normal

woman who might be pregnant.
(49) This is also the reading of She'iltoth. The reading of Tosef. Yeb. VI, 6 and ‘Erub. 47a is ‘R. Judah’.
(50) After the husband's death. Cf. Yeb, and ‘Erub. l.c.
(51) It is consequently forbidden for any widow to marry again before the prescribed period of three months has elapsed even where the cause of the prohibition, i.e., that of possible pregnancy, does not apply. Similarly in the case of a nursing mother remarriage would obviously be forbidden even where the child died or is otherwise independent of his mother's nursing. Why then had R. Papa and R. Huna to rely solely upon the aged woman's report?
(52) R. Papa and R. Huna.
(53) Since it is possible that her action was due to her desire to marry.
(54) Lit., ‘and went’.
(55) Lit., ‘and this is not’.
(56) Who strangled her child.
(57) Lit., ‘behold that they gave her a son to give (him) suck’.
(58) Of her own (v. infra) in order to maintain a healthy supply of milk.
(59) Lit., ‘with it’.
(60) Cf. supra n. 2.
(61) כשות, v. Jast., hops (Rashi).
(62) Cf. infra p. 363, n. 4.
(63) Read קרא (cf. Rashi). Cur. edd. קרא (gourd).
(64) Lit., ‘palm branch’.
(65) כמכא , ‘curdled milk’, ‘an appetizing sauce made of milk’, (cf. Fleischer to Levy, and Jast.).
(66) During her pregnancy.
(67) Read דמא (Aruk.). Cur. edd., רמא .
(68) Or ‘bald’, reading גורדני (cf. Rashi). Var. גרגרני ‘gluttons’, ‘bibbers’.
(69) Or ‘gluttons’.
(70) Or ‘small fish’ (Rashi) in brine (Jast.).
(71) Aruk (s.v. מין), ‘small eyes’.
(72) During her pregnancy.
(73) גרגושתא , a certain kind of reddish clay was believed to possess medicinal qualities as an astringent. Cf. Smith, Dict. Gk. Rom. Ant. s.v. creta, v. Jast.
(74) Lit., ‘black’. Cf. Jast.

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of a robust constitution. One who eats eggs will have children with big eyes. One who eats fish will have graceful children. One who eats parsley[1] will have beautiful children. One who eats coriander will have stout[2] children. One who eats ethrog[3] will have fragrant children. The daughter of King Shapur, whose mother had eaten ethrog[3] [while she was pregnant] with her, used to be presented before her father as his principal perfume. R. Huna[4] related: R. Huna b. Hinena tested us [with the following question:] If she[5] says that she wishes to suckle her child and he[6] says that she shall not suckle it her wish is to be granted,[7] for she would be the sufferer.[8] What, [however, is the law] where he says that she shall suckle the child and she says that she will not suckle it? Whenever this[9] is not the practice in her family we, of course, comply with her wish; what, [however, is the law] where this is the practice in her family but not in his? Do we follow the practice of his family or that of hers? And we solved his problem from this: She[10] rises with him[11] but does not go down with him.[12] What, said R. Huna, is the Scriptural proof?[13] — For she is a man's wife,[14] [she is to participate] in the rise of her husband but not in his descent. R. Eleazar said, [The proof is] from here: Because she[15] was the mother of all living[16] she was given [to her husband][17] to live but not to suffer pain. IF SHE BROUGHT HIM ONE BONDWOMAN etc. Her other duties, however, she must obviously perform; [but why?] Let her say to him, ‘I brought you a wife in my place’![18] — Because he might reply, ‘That bondwoman works for me and for herself, who will work for you!’ [IF SHE BROUGHT] TWO BONDWOMEN, SHE NEED NOT EVEN COOK OR SUCKLE etc. Her other

duties, however, she must obviously perform; [but why]? Let her say to him, 'I brought you another wife who will work for me and for her, while the first one [will work] for you and for herself!' — Because he might reply, 'Who will do the work for our guests[19] and occasional visitors!'[20] IF THREE, SHE NEED NEITHER MAKE READY HIS BED. Her other duties, however, she must perform; [but why]? Let her say to him, 'I brought you a third one[21] to attend upon our guests and occasional visitors!' — Because he might reply, 'The more the number of the household the more the number of guests and occasional visitors'. If so,[22] [the same plea could also be advanced] even [when the number of bondwomen was] four! — [In the case of] four bondwomen, since their number is considerable they assist one another. R. Hana, or some say R. Samuel b. Nahmani, stated: [SHE BROUGHT] does not mean that she had actually brought; but: Wherever she is in a position to bring,[23] even though she has not brought any. A Tanna taught: [A wife is entitled to the same privileges] whether she brought [a bondwoman] to him[24] or whether she saved up for one out of her income. IF FOUR, SHE MAY LOUNGE IN AN EASY CHAIR. R. Isaac b. Hanania[25] stated in the name of R. Huna: Although it has been said, SHE MAY LOUNGE IN AN EASY CHAIR she should[26] nevertheless fill[27] for him his cup, make ready his bed and wash his face, hands and feet.[28] R. Isaac b. Hanania[29] further[30] stated in the name of R. Huna: All kinds of work which a wife performs for her husband a menstruant also may perform for her husband, with the exception of filling[31] his cup, making ready his bed and washing his face, hands and feet.[32] As to 'the making ready of his bed' Raba explained that [the prohibition] applies only in his presence but [if it is done] in his absence it does not matter.[33] With regard to 'the filling of his cup'. Samuel's wife made a change[34] [by serving] him with her left hand. [The wife of] Abaye placed it[35] on the edge[36] of the wine cask. Raba's [wife placed it] at the head-side of his couch, and R. Papa's [wife put it] on his foot-stool.[37] R. Isaac b. Hanania[38] further[39] stated: All [foodstuffs] may be held back from the waiter[40] except meat and wine.[41] Said R. Hisda: [This applies only to] fat meat and old wine. Raba said: Fat meat[42] throughout the year but old wine only in the Tammuz[43] season.[44] R. Anan b. Tahlifa related: I was once standing in the presence of Samuel when they brought him a dish of mushrooms, and, had he not given me [some of it], I would have been exposed to danger.[45] I, related R. Ashi, was once standing before R. Kahana when they brought him slices[46] of turnips in vinegar, and had he not given me some, I would have been exposed to danger. R. Papa said: Even a fragrant date [if not tasted may expose one to danger].[45] This is the rule: Any foodstuff that has a strong flavour or an acrid taste [will expose a man to danger[45] if he is not allowed to taste of it]. Both Abbuha[47] b. Ihi and Minjamin b. Ihi [shewed consideration for their waiter] the one giving [him a portion] of every kind of dish[48] while the other gave [him a portion][49] of one kind only.[50] With the former Elijah[51] conversed, with the latter he did not. [It was related of] two pious men, and others say of R. Mari and R. Phinehas the sons of R. Hisda, that one of them[52] gave [a share to his waiter][53] first[54] while the other gave him last.[55] With the one who gave [the waiter his share] first, Elijah[56] conversed; with the one, however, who gave his waiter last, Elijah did not converse.[57] Amemar, Mar Zutra and R. Ashi were once sitting at the gate of King Yezdegerd[58] when the King's table-steward[59] passed them by. R. Ashi, observing that Mar Zutra

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(1) כרפסא = כרפס , celery, parsley, or other green vegetables.

(2) Or 'fleshy', cf. בישרא , 'flesh'.

(3) אתרוגא or אתרוג , a fruit of the citrus family used (a) as one of the 'four kinds' constituting the ceremonial wreath on Tabernacles and also (b) as a preserve.

(4) Var. lec. 'Papa' (Asheri and MS.M.).

(5) The mother of a child.

(6) The father.

(7) Lit., '(we) listen to her'.

(8) Through the accumulation of the milk in her breast. Lit., 'the pain is hers'.

(9) The breast feeding of a child by its mother.

(10) A wife.

(11) Her husband.

(12) Supra 48a. A wife enjoys the advantages of her husband but not his disadvantages.
(13) For the statement cited.
(14) Gen. XX, 3 בעולת בעל of the rt. עלה 'to go up', 'rise'.
(15) Eve, symbolizing all married women.
(16) Gen. III, 20.
(17) Adam, mentioned earlier in the verse.
(18) בחריקאי , abs. חריקא , lit., 'gap'. As the bondwoman takes her place she should be exempt altogether from domestic duties,
(19) אורחי , guests that spend a month or a week.
(20) פרחי (פרחא 'flying'), visitors who pay only a short visit.
(21) Lit., 'another'.
(22) If an increase in the number of bondwomen causes a corresponding increase in that of guests and visitors.
(23) I.e., if she has the means.
(24) Her husband.
(25) MS.M., 'Hanina'.
(26) She is not compelled but is advised (v. Rashi s.v. אבל a.l.).
(27) מוזגת , rt. מזג ' to mix, sc. wine with water or spices.
(28) Such personal services are calculated to nurse a husband's affections (Rash. l.c.).
(29) MS.M. 'Hanina'.
(30) Read (v. marg. note, a.l.) ואמר . Cur. edd. omit the Waw,
(31) Cf. supra n. 3.
(32) In order to prevent undue intimacy between husband and wife during her period of Levitical uncleanness.
(33) Lit,, 'we have nothing in it'.
(34) During her 'clean days', after menstruation and prior to ritual immersion, when marital relations are still forbidden.
(35) V. supra note 10.
(36) Lit., mouth'.
(37) Cf. Golds. Others: (v. Jast.) 'chair'.
(38) MS.M. 'Hanina'.
(39) V. supra note 6.
(40) Until he has finished serving the meal.
(41) Which excite his appetite and any delay in satisfying it causes him extreme pain.
(42) Must not be held back.
(43) תמוז , the fourth month of the Hebrew calendar corresponding to July-August.
(44) When the weather is extremely hot and spicy wine is tempting.
(45) Of faintness due to the extreme pangs of hunger excited by the flavour of the dish,
(46) גרגלידי the 'upper portions'.
(47) Bomb. ed., 'Abuth'.
(48) As it was served.
(49) At the beginning of the meal, of the first dish.
(50) Keeping back the others until the conclusion of the meal.
(51) The immortal prophet, the maker of peace and herald of the Messianic era.
(52) Lit., 'master'.
(53) Of every dish he served.
(54) Before he tasted of it himself.
(55) After he himself and his guests had finished their meal.
(56) V. supra note 7.
(57) By failing to give the waiter a share as soon as the various dishes were served he caused him unnecessary pain of unsatisfied desire and hunger.
(58) Or Yezdjird, one of the Kings of Persia.
(59) אטורנגא ; compound word: 'table' and 'maker'.

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turned pale in the face, took up with his finger [some food from the dish and] put it to his mouth. 'You have spoilt the King's meal' [the table-steward][1] cried. 'Why did you do such a thing?' he was asked [by the King's officers].[1] 'The man who prepared that dish',[2] he[3] replied, 'has rendered the King's food objectionable'. 'Why?' they asked him. 'I noticed', he replied, 'a piece of leprous swine[4] flesh in it'. They examined [the dish] but did not find [such a thing]. Thereupon he took hold of his finger and put it on it,[5] saying, 'Did you examine this part?' They examined it and found it [to be as R. Ashi had said]. 'Why did you rely upon a miracle?' the Rabbis asked him. 'I saw', he replied, 'the demon of leprosy hovering over him'.[6] A Roman once said to a woman, 'Will you marry me?' — 'No,' she replied. Thereupon[7] he brought some pomegranates, split them open and ate them in her presence. She kept on swallowing all the saliva[8] that irritated her, but he did not give her [any of the fruit] until [her body] became swollen.[9] Ultimately he said to her, 'If I cure you, will you marry me?' — 'Yes', she replied. Again[7] he brought some pomegranates, split them and ate them in her presence. 'Spit out at once, and again and again',[10] he said to her, all saliva that irritated you'. [She did so] until [the matter] issued forth from her body in the shape of a green palm-branch; and she recovered. AND WORKING IN WOOL. Only IN WOOL but not in flax. Whose [view then is represented in] our Mishnah? — It is that of R. Judah. For it was taught: [Her husband] may not compel her to wait[11] upon his father or upon his son, or to put straw before his beast;[12] but he may compel her to put straw before his herd.[13] R. Judah said: Nor may he compel her to work in flax because flax causes one's mouth to be sore[14] and makes one's lips stiff.[15] This refers, however, only to Roman flax. R. ELIEZER SAID: EVEN IF SHE BROUGHT HIM A HUNDRED BONDWOMEN. R. Malkio stated in the name of R. Adda b. Ahabah: The halachah is in agreement with R. Eliezer. Said R. Hanina the son of R. Ika: [The rulings concerning] a spit,[16] bondwomen[17] and follicles[18] [were laid down by] R. Malkio; [but those concerning] a forelock,[19] wood-ash[20] and cheese[21] [were laid down by] R. Malkia. R. Papa, however, said: [If the statement is made on] a Mishnah or a Baraitha [the author is] R. Malkia [but if on] a reported statement[22] [the author is] R. Malkio. And your mnemonic[23] is, 'The Mishnah[24] is queen'.[25] What is the practical difference between them?[26] — [The statement on] Bondwomen.[27] R. SIMEON B. GAMALIEL SAID etc. Is not this the same view as that of the first Tanna?[28] — The practical difference between them [is the case of a woman] who plays with little cubs[29] or [is addicted to] checkers.[30]

MISHNAH. IF A MAN FORBADE HIMSELF BY VOW TO HAVE INTERCOURSE WITH HIS WIFE[31] BETH SHAMMAI RULED: [SHE MUST CONSENT TO THE DEPRIVATION FOR] TWO WEEKS;[32] BETH HILLEL RULED: [ONLY FOR] ONE WEEK.[32] STUDENTS MAY GO AWAY[33] TO STUDY THE TORAH, WITHOUT THE PERMISSION [OF THEIR WIVES FOR A PERIOD OF] THIRTY DAYS; LABOURERS [ONLY FOR] ONE WEEK. THE TIMES FOR CONJUGAL DUTY PRESCRIBED IN THE TORAH[34] ARE: FOR MEN OF INDEPENDENCE,[35] EVERY DAY; FOR LABOURERS, TWICE A WEEK; FOR ASS-DRIVERS,[36] ONCE A WEEK; FOR CAMEL-DRIVERS,[37] ONCE IN THIRTY DAYS; FOR SAILORS,[38] ONCE IN SIX MONTHS. THESE ARE THE RULINGS OF R. ELIEZER. GEMARA. What is the reason of Beth Shammai?[39] — They derive their ruling from [the law relating to] a woman who bears a female child.[40] And Beth Hillel? — They derive their ruling from [the law relating to] one who bears a male child.[41] Why should not Beth Hillel also derive their ruling from [the law relating to] a woman who bears a female child?[42] — If they had derived their ruling from [the law relating to] a woman who bears a child they should indeed have ruled thus, but [the fact is that] Beth Hillel derive their ruling from [the law of] the menstruant.[43] On what principle do they[44] differ? — One[45] is of the opinion that the usual[46] [is to be inferred] from the usual,[47] and the other[48] is of the opinion that what a husband has caused[49] should be derived from that which he has caused.[50] Rab stated: They[44] differ only in the case of one who specified [the period of abstention] but where he did not specify the period it is the opinion of both that he must divorce her forthwith and give her the kethubah. Samuel, however, stated: Even where the period had not been specified the husband may delay [his divorce],[51] since it might be possible for him to discover some reason[52] for [the remission of] his

vow.[53] But surely, they[54] once disputed this question; for have we not learned: If a man forbade his wife by vow to have any benefit from him he may, for thirty days, appoint a steward,[55] but if for a longer period he must divorce her and give her the kethubah. And [in connection with this] Rab stated: This ruling applies only where he specified [the period] but where he did not specify it he must divorce her forthwith and give her the kethubah, while Samuel stated: Even where the period had not been specified the husband may also postpone [his divorce],[51] since it might be possible for him, to discover some grounds[52] for [the annulment of his vow]?[56] — [Both disputes are] required. For if [their views] had been stated in the former[57] only it might have been assumed that only in that case did Rab maintain his view, since [the appointment] of a steward is not possible but that in the second case[58] where [the appointment] of a steward is possible he agrees with Samuel. And If the second case[58] only had been stated it might have been assumed that only in that case did Samuel maintain his view[59] but that in the former case[60] he agrees with Rab. [Hence both statements were] necessary. STUDENTS MAY GO AWAY TO STUDY etc. For how long [may they go away] with the permission [of their wives]? — For as long as they desire.

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(1) V. Rashi.

(2) Lit., 'thus'.

(3) R. Ashi.

(4) דבר אחר , lit., 'another thing', sc. 'something unnameable', e.g., swine, leprosy, idolatry and sodomy.

(5) One of the pieces of meat.

(6) Mar Zutra (v. Rashi).

(7) Lit., 'he went',

(8) That welled up in her mouth as a result of the acrid flavour of the fruit.

(9) Lit., 'it became (transparent) like glass' (v. Rashi).

(10) Lit., 'spit (and) eject' (bis).

(11) Lit., 'to stand', v. Rashi.

(12) Such as a horse or an ass or (according to another interpretation) 'male beasts' (v. Rashi and cf. Bah a.l.).

(13) Cattle or (according to the second interpretation in n. 9) 'female beasts'.

(14) Or 'swollen', v. next note.

(15) Because the spinner must frequently moisten the thread, with his saliva (v. Jast.). Aliter: 'the flax causes an offensive smell in the mouth and distends the lips' (cf. Rashi and Golds.).

(16) That has been used for the roasting of meat on a festival, may at the time be put aside (v, Bezah 28b).

(17) Whom a woman brought to her husband at her marriage (v. our Mishnah).

(18) That these, even without the pubic hairs, are sufficient indication of pubes (v. Nid. 52a).

(19) Belorith בלורית (cf. Sanh, Sonc. ed. p. 114, n. 5). An Israelite trimming the hairs of a heathen must withdraw his hand at a distance of three finger's breadth on every side of the forelock (A.Z. 29a).

(20) אפר מקלה , is forbidden to be spread on a wound because it gives the appearance of an incised imprint (v. Mak. 21).

(21) Forbidden, if made by a heathen, because it is smeared over with lard.

(22) שמעתתא , an opinion or dictum of Rabbis, not recorded in a Mishnah or Baraitha, reported by their disciples or colleagues.

(23) An aid to the recollection as to which statements were made by R. Malkia and R. Malkio respectively.

(24) מתניתא a general term for Mishnah and Baraitha in contradiction to שמעתתא (v. supra note 7).

(25) I.e., more authoritative than a reported statement. Malkia מלכיא whose name closely resembles (queen) מלכתא (and not Malkio) is to be associated with the Mishnah and the Baraitha that are designated queen.

(26) R. Hanina and R. Papa.

(27) Which is recorded in our Mishnah. According to R. Papa the comment on it must be that of R. Malkia (cf. supra note 10) while according to R. Hanina it is included among the statements attributed to R. Malkio, v, A.Z. 29a, and Mak. 21a.

(28) R. Eliezer. What difference is there for all practical purposes whether the reason for the ruling Is unchastity or idiocy?

(29) V. Jast. Or 'wooden cubs', counters in a game (cf. Levy).

(30) נדרשיר or נרדשיר nardeshir, the name of a game played on a board; 'chess' (Rashi). [So named after its inventor Ardeshir Babekan, v, Krauss T.A. III, p. 113]. A woman who spends her time in this manner may be exposed to the temptation of unchastity but is in no danger of falling into idiocy.
(31) Lit., 'IF A MAN FORBADE BY VOW HIS WIFE FROM INTERCOURSE'.
(32) After this period it is the duty of the husband either to have his vow disallowed or to release his wife by divorce.
(33) From their homes,
(34) Ex. XXI, 10.
(35) טיילין (rt. טול , Piel, 'to walk about'), men who have no need to pursue an occupation to earn their living and are able 'to walk about' idly.
(36) Who carry produce from the villages to town and whose occupation requires their absence from their home town during the whole of the week.
(37) Who travel longer distances from their homes.
(38) Whose sea voyages take them away for many months at a time.
(39) Who allow TWO WEEKS.
(40) Intercourse with whom is forbidden for two weeks (v. Lev. XII, 5),
(41) In whose case the prohibition is restricted to one week (ibid. 2).
(42) The fact that the longer period of two weeks has Pentateuchal sanction should entitle a husband to vow abstention for a similar length of time.
(43) The period of whose uncleanness is only seven days (v. Lev. XV, 19).
(44) Beth Shammai and Beth Hillel.
(45) Lit., 'Master', sc. Beth Hillel.
(46) Such as a quarrel between husband and wife resulting in a vow of abstention.
(47) Menstruation which is a monthly occurrence. Births are not of such regular occurrence.
(48) Beth Shammai.
(49) Abstention on account of his vow.
(50) Birth. Menstruation is not the result of a husband's action.
(51) For two weeks according to Beth Shammai or one week according to Beth Hillel.
(52) פתח , lit., 'a door'; some ground on which to justify his plea that had he known it he would never have made that vow; v, Ned, 21.
(53) A competent authority, if satisfied with the reason, may under such conditions disallow a vow.
(54) Rab and Samuel.
(55) To supply his wife's needs.
(56) Cf. supra n. 11. Why then should Rab and Samuel unnecessarily repeat the same arguments?
(57) The vow against marital duty.
(58) A vow forbidding other benefits.
(59) Since the appointment of a steward is feasible.
(60) The vow against marital duty.

Talmud - Mas. Kethuboth 62a

What should be the usual periods?[1] — Rab said: One month at the college[2] and one month at home; for it is said in the Scriptures, In any matter of the courses which came in and went out month by month throughout all the months of the year.[3] R. Johanan, however, said: One month at the college and two months at home; for it is said in the Scriptures, A month they were in Lebanon and two months at home.[4] Why does not Rab also derive his opinion from this text?[4] — The building of the holy Temple is different [from the study of the Torah] since it could be carried on by others.[5] Then why does not R. Johanan derive his opinion from the former text?[3] — There [the conditions were] different because every man was in receipt of relief.[6] Rab said:[7] A sigh breaks down half of the human constitution,[8] for it is said in Scripture, Sigh, therefore, thou son of man; with the breaking of thy loins[9] and with bitterness shalt thou sigh.[10] R. Johanan, however, said: Even all the human constitution, for it is said in Scripture, And it shall be when they say unto thee: Wherefore sighest thou? that thou shalt say: Because of the tidings, for it cometh; and every heart shall melt, and all hands shall be slack, and every spirit shall faint, and all knees shall drip with water.[11] As to R. Johanan, is it not also written, 'With the breaking of thy loins'? — [The meaning of] this is that when [the breaking] begins it does so from the loins. And as to Rab, is it not also written, 'And every heart shall melt, and all hands shall be slack, and every spirit shall be faint'? — The report of the holy Temple is different since [the calamity] was very severe. An Israelite and an idolater were once walking together on the same road and the idolater could not keep pace with the Israelite. Reminding him of the destruction of the holy Temple [the latter] grew faint and sighed; but still the idolater was unable to keep pace with him. 'Do you not say', the idolater asked him, 'that a sigh breaks half of the human body'? — 'This applies only', the other replied, 'to a fresh calamity but not to this one with which we are familiar. As people say: A woman who is accustomed to bereavements is not alarmed [when another occurs]'. MEN OF INDEPENDENCE EVERY DAY. What is meant by tayyalin?[12] — Raba replied: Day students.[13] Said Abaye to him: [These are the men] of whom it is written in Scripture, It is vain for you[14] that ye rise early, and sit up late, ye that eat of the bread of toil; so He giveth[15] unto those who chase their sleep away;[16] and 'these',[17] R. Isaac explained, 'are the wives of the scholars,[18] who chase the sleep from their eyes[19] in this world and achieve thereby the life of the world to come',[20] and yet you Say. Day students'![21] — [The explanation]. however, said Abaye, is in agreement [with a statement] of Rab who said [a man of independence is one.] for instance, like R. Samuel b. Shilath[22] who eats of his own, drinks of his own and sleeps in the shadow of his mansion[23] and a king's officer[24] never passes his door.[25] When Rabin came[26] he stated: [A man of independence is one]. for instance, like the pampered men of the West,[27] R. Abbahu[28] was once standing in a bath house, two slaves supporting him, when [the floor of] the bath house collapsed under him.[29] By chance he was near a column [upon which] he climbed[30] taking up the slaves with him.[31] R. Johanan was once ascending a staircase, R. Ammi and R. Assi supporting him, when the staircase collapsed under him. He himself climbed up and brought them up with him. Said the Rabbis to him, 'Since [your strength is] such, why do you require support?[32] — 'Otherwise', he replied. what [strength] will I reserve for the time of my old age?' FOR LABOURERS TWICE A WEEK. Was it not, however, taught: Labourers, once a week? — R. Jose the son of R. Hanina replied: This is no difficulty; the former[33] [speaks of labourers] who do their work in their own town while the latter [speaks of those] who do their work in another town — So it was also taught: Labourers [perform their marital duties] twice a week. This applies only [to those] who do their work in their own town, but for those who do their work in another town [the time is only] once a week FOR ASS-DRIVERS ONCE A WEEK. Rabhah son of R. Hanan[34] said to Abaye: Did the Tanna[35] go to all this trouble[36] to teach us [merely the law relating to] the man of independence[37] and the labourer?[38] — The other replied: No;

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(1) That students should (a) be permitted to be away from their wives even with their consent, and (b) remain at home (v. Rashi). According to one opinion the restrictions spoken of here apply to labourers only. Students are allowed greater freedom. (V. Tosaf. s.v. אלא , a.l.).

(2) Lit., ‘here’.
(3) I Chron. XXVII, emphasis on ‘month by month’.
(4) I Kings V, 28.
(5) Solomon had sufficient men for the work and required each group for no longer than one month out of every three. The study of the Torah demands more time.
(6) The stipend allowed by the king. This allowance enabled a husband to provide a comfortable living for his wife who, in return, consented to his absence from home every alternate month. In the case of students, however, whose study brings no worldly reward to their wives, the period of absence from home should not exceed one month in every three.
(7) The following discussion is introduced here on account of the difference of opinion between Rab and R. Johanan on the application of Scriptural texts, which is characteristic of this as of the previous discussion.
(8) Lit., ‘body’.
(9) The loins are in the middle of the body.
(10) Ezek. XXI, 11.
(11) Ibid. 12. The prophet's sigh is accompanied by shattering effects on all parts of the body.
(12) Cf. supra p. 369, n, 5.
(13) בני פירקי , lit., ‘sons of the lesson’, i.e., students domiciled in the college town who are able to live in their own homes and to attend the college for lessons only.
(14) This admonition is addressed to those who pursue worldly occupations.
(15) Without toiling for it.
(16) Ps. CXXVII, 2. E.V., unto his beloved. לידידו is homiletically treated as coming from the rt. נדד ‘to shake’, ‘chase away’.
(17) ‘Those who chase their sleep away’.
(18) תלמידי חכמים . V. Glos. s.v. talmid hakam.
(19) In sitting up all night waiting for the return of their husbands from the house of study.
(20) As a reward for the consideration they shew to their studious husbands. Since the wives of students who come from other towns would not be expecting their husbands to return home every day, the reference must obviously be to those who live in the college town, i,e., the day students, which proves that even these remain all night at the college.
(21) How could men who spend their nights in study be expected to perform the marital duty daily?
(22) A teacher of children (v. supra 50a) who made an unostentatious but comfortable living.
(23) אפדנא ‘mansion’, ‘palace’, i,e., his own home (cf. ‘the Englishman's home is his castle’).
(24) פרימתקא , MS. M. דרוקא ‘a detachment of soldiers’,
(25) To exact from him service or money. As his wants were moderate, he had no need to be under obligation to anyone for his food or drink and had no need to go fat to seek his livelihood. A man in such a position might well be described as a man of independence.
(26) From Palestine to Babylon.
(27) palestine, which lay to the west of Babylon where this statement was made,
(28) This is told in illustration of the physical strength enjoyed by the Palestinians,
(29) And the three were in danger of falling into the pool of water over which the floor was built,
(30) Grasping it with one hand,
(31) With his other hand.
(32) Lit., ‘to support him’.
(33) Lit., ‘here’. Our Mishnah.
(34) MS.M., R. Hanin b. Papa.
(35) The author of the first clause of out Mishnah, which deals with the ease of a vow.
(36) Lit., ‘fold himself up’.
(37) V. supra p. 369. n. 5.
(38) Whose times only could be affected by an abstinence of ONE WEEK (Beth HIllel) or TWO WEEKS (Beth Shammai). The other classes of persons enumerated, whose times are once in thirty days or at longer intervals, would not thereby be affected.

Talmud - Mas. Kethuboth 62b

to all.[1] But was it not stated ONCE IN SIX MONTHS?[2] — One who has bread in his basket is not like one who has no bread in his basket.[3] Said Rabbah[4] son of R. Hanan to Abaye: What [is the law where] an ass-driver becomes a camel-driver?[5] — The other replied: A woman prefers one kab[6] with frivolity to ten kab[6] with abstinence.[7] FOR SAILORS, ONCE IN SIX MONTHS. THESE ARE THE WORDS OF R. ELIEZER. R. Beruna[8] stated in the name of Rab:[9] The halachah follows R. Eliezer. R. Adda b. Ahabah, however, stated in the name of Rab: This is the view of R. Eliezer only. but the Sages ruled: Students may go away to study Torah without the permission [of their wiveseven for] two or three years.[10] Raba stated: The Rabbis[11] relied on R. Adda b. Ahabah[12] and act accordingly at the risk of [losing] their lives.[13] Thus R. Rehumi who was frequenting [the school] of Raba at Mahuza[14] used to return home on the Eve of every Day of Atonement. On one occasion[15] he was so attracted by his subject [that he forgot to return home]. His wife was expecting [him every moment, saying.] 'He is coming soon,[16] he is coming soon'[16] As he did not arrive she became so depressed that tears began to flow from her eyes. He was [at that moment] sitting on a roof. The roof collapsed under him and he was killed.[17] How often[18] are scholars to perform their marital duties? — Rab Judah in the name of Samuel replied: Every Friday night.[19] That bringeth forth its fruit in its season,[20] Rab Judah, and some say R. Huna, or again. as others say. R. Nahman, stated: This [refers to the man] who performs his marital duty every Friday night.[21] Judah[22] the son of R. Hiyya and son-in-law of R. Jannai was always spending his time[23] in the school house but every Sabbath eve[24] he came home. Whenever he arrived the people saw[25] a pillar of light moving before him. Once he was so attracted by his subject of study [that he forgot to return home]. Not Seeing[26] that Sign. R. Jannai said to those [around him], 'Lower[27] his bed,[28] for had Judah been alive he would not have neglected the performance of his marital duties'. This [remark] was like an error that proceedeth from the ruler,[29] for [in consequence] Judah's[30] soul returned to its eternal rest. Rabbi was engaged in the arrangements for the marriage of his son into the family of R. Hiyya,[31] but when the kethubah[32] was about to be written the bride passed away.[33] 'Is there, God forbid', said Rabbi, 'any taint [in the proposed union]?'[34] An enquiry was instituted[35] into [the genealogy of the two] families [and it was discovered that] Rabbi descended from Shephatiah[36] the son of Abital[37] while R. Hiyya descended from Shimei a brother of David.[38] Later[39] he[40] was engaged in preparations for the marriage of his son into the family of R. Jose b. Zimra. It was agreed that he[41] should spend twelve years at the academy.[42] When the girl was led before him[41] he said to them, 'Let it[43] be six years'. When they made her pass before him [a second time] he said,'I would rather marry [her first] and then proceed [to the academy]'. He felt abashed[44] before his father, but the latter said to him.'My son, you[45] have the mind of your creator;[46] for in Scripture it is written first, Thou bringest them in and plantest them[47] and later it is written, And let them make Me a sanctuary. that I may dwell among them.[48] [After the marriage] he departed and spent twelve years at the academy. By the time he returned his wife[49] had lost the power of procreation. 'What shall we do?', said Rabbi. 'Should we order him to divorce her, it would be said: This poor soul waited in vain! Were he to marry another woman, it would be said: The latter is his wife and the other his mistress.' He prayed for mercy to be vouchsafed to her, and she recovered. R. Hanania b. Hakinai was about to go away to the academy towards the conclusion of R. Simeon b. Yohai's wedding. 'Wait for me', the latter said to him, 'until I am able to join you'.[50] He, however, did not wait for him but went away alone and spent twelve years at the academy. By the time he returned the streets of the town were altered and he was unable to find the way[51] to his home. Going down to the river bank and sitting down there he heard a girl being addressed thus: 'Daughter of Hakinai, O, daughter of Hakinai, fill up your pitcher and let us go!' 'It is obvious',[52] he thought, 'that the girl is ours', and he followed her. [When they reached the house] his wife was sitting and sifting flour. She[53] lifted up her eyes and seeing him, was so overcome with joy[54] that she fainted.[55] 'O, Lord of the universe',[the husband] prayed to Him, 'this poor soul; is this her reward?'[56] And so he prayed for mercy to be vouchsafed to her and she revived. R. Hama b. Bisa went away [from home and] spent twelve years at the house of study. When he returned he said, 'I will not act as did b. Hakina'.[57] He therefore entered the [local] house of study and sent word to his house. Meanwhile his son, R. Oshaia[58] entered, sat down before him and addressed to him a question on [one of the] subjects of study. [R. Hama]. seeing how well versed

he was in his studies, became very depressed. ‘Had I been here,’[59] he said, ‘l also could have had such a child’.- [When] he entered his house his son came in, whereupon [the father] rose before him, believing that he wished to ask him some [further] legal questions. ‘What[60] father’, his wife chuckled,[61] ‘stands up before a son!’ Rami b. Hama applied to him [the following Scriptural text:] And a threefold cord is not quickly broken[62] is a reference to R. Oshaia, son of R. Hania. son of Bisa.[63] R. Akiba was a shepherd of Ben Kalba Sabua.[64] The latter's daughter. seeing how modest and noble [the shepherd] was, said to him, ‘Were I to be betrothed to you. would you go away to [study at] an academy?’ ‘Yes’, he replied. She was then secretly betrothed to him and sent him away. When her father heard [what she had done] he drove her from his house and forbade her by a vow to have any benefit from his estate. [R. Akiba] departed. and spent twelve years at the academy. When he returned home he brought with him twelve thousand disciples. [While in his home town] he heard an old man saying to her, ‘How long

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(1) Even in respect of the other classes a vow may be made for the specified periods only.

(2) In the case of sailors. How could these be affected by an abstention of ONE WEEK or TWO WEEKS?

(3) Proverb (Yoma 18b. Yeb. 32b). The latter experiences the pangs of hunger much more than the former who can eat the bread should he decide to use it up. A sailor's wife may partially satisfy her desires by the hope that her husband may at any moment return. A vow extinguishes all her hope; and she must not, therefore, be allowed to suffer longer than the periods indicated.

(4) Vat. ‘Raba’ (MS.S. and Asheri).

(5) I.e., may an ass-driver become a camel-driver without the permission of his wife, in view of the longer absence from home which the new occupation will involve.

(6) V. Glos.

(7) Proverb, (Sotah 20a, 21b). A woman prefers a poor living in the enjoyment of the company of her husband to a more luxurious one in his absence. She would, therefore, rather have her husband for a longer period at home, though as a result he would be earning less, than be deprived of his company for longer periods. though as a result he would be earning more.

(8) Vat. lec. ‘Mattena’ (Alfasi).

(9) Vat. Iec, ‘Raba’ (Asheri).

(10) And the halachah would be in agreement with the Sages who ate the majority.

(11) I.e, his (Raba's) contemporaries.

(12) According to whose statement the Sages permitted students to leave their homes for long periods (v. supra n. 3).

(13) I.e., they die before their time as a penalty for the neglect of their wives (v. Rashi).

(14) A town on the Tigris, noted for Its commerce and its large Jewish population.

(15) Lit., ‘one day’.

(16) Lit., ‘now’,

(17) Lit., ‘his soul rested’, sc, came to its eternal test.

(18) Lit., ‘when’.

(19) Lit., ‘from the eve of Sabbath to the eve of Sabbath’.

(20) Ps. 1,3.

(21) Cf.B.h.82a.

(22) MS.M.,’R.Judah’.

(23) Lit., ‘was going and sitting’.

(24) בי שמשי ‘twilight’, sc, of the Sabbath eve.

(25) Read with MS.M., יהוו קא חזו Cur. edd., חזי ... הוה (sing.) may refer to R. Jannai.

(26) Cf. supra p’ 375’ n. 18,

(27) Lit., ‘bend’, a mark of mourning for the dead,

(28) מטתו

(29) Cf. Eccl, X, 5’

(30) So MS.M., reading דיהודה.

(31) He was about to marry R. Hiyya's daughter (Rashi).

(32) V. Glos,

(33) Lit,, ‘the soul of the girl rested’. V. supra p’ 375, n. 10.
(34) The unexpected death of the bride being due to providential intervention to prevent an undesirable union,
(35) Lit,, ‘they sat and looked in’,
(36) David's son (II Sam, III,4).
(37) One of David's wives (ibid.).
(38) As the latter was not a descendent of the anointed king's family it was not proper for his daughter to be united in marriage with one who was.
(39) Lit,, ‘he went’.
(40) Rabbi,
(41) Rabbi's son.
(42) The marriage to be celebrated at the end of this period.
(43) The period of study prior to the marriage.
(44) On account of his apparent fickleness,
(45) In being influenced by affection to shorten the courting interval and to hasten the marriage day.
(46) Who also hastened the day of His union with Israel,
(47) Ex, XV, 17, i.e,, only after settlement in the promised land was the sanctuary (the symbol of the union between God and Israel) to be built.
(48) Ex. XXV, 8, i.e., while still in the wilderness. (V. p. 376,n.22).
(49) Having been separated from him for more than ten years (Rashi, cf. Yeb. 34b).
(50) At the conclusion of the marriage festivities.
(51) Lit., ‘did not know (how) to go’.
(52) Lit., ‘infer from this’.
(53) Read with MS.M., דלי Cut. edd., דל עינה may be rendered ‘he lifted up her eye’ i.e., he attracted her attention. (v. Jast. s.v. סוי).
(54) Cf. supra p’ 355, n. 12.
(55) Lit., ‘her spirit fled’.
(56) For depriving herself of her husband so many years for the sake of the Torah.
(57) Who entered his house unexpectedly and thereby neatly caused the death of his wife.
(58) Who was unknown to his father.
(59) I.e., had he remained at home and attended to the education of his son.
(60) Lit., is ‘there’.
(61) Lit., ‘said’.
(62) Eccl. IV, is.
(63) Three generations of scholars all living at the same time, v. B.B. Sone. ed. p. 537.0.8.
(64) One of the three richest men of Jerusalem at the time of the Vespasian siege. V. Git. 56a.

Talmud - Mas. Kethuboth 63a

will you lead the life of a living widowhood?’ ‘If he would listen to me,’ she replied. ‘he would spend [in study] another twelve years’. Said [R. Akiba]: ‘It is then with her consent that I am acting’. and he departed again and spent another twelve years at the academy. When he finally returned he brought with him twenty-four thousand disciples. His wife heard [of his arrival] and went out to meet him, when her neighbours said to her, ‘Borrow some respectable clothes and put them on’, but she replied: A righteous man regardeth the life of his beast.[1] On approaching him she fell upon her face and kissed his feet. His attendants were about to thrust her aside, when [R. Akiba] cried to them, ‘Leave her alone, mine and yours are hers’.[2] Her father, on hearing that a great man had come to the town, said, ‘I shall go to him; perchance he will invalidate my vow’,[3] When he came to him [R. Akiba] asked, ‘Would you have made your vow if you had known that he was a great man?’ ‘[Had he known]’ the other replied. ‘even one chapter or even one Single halachah [I would not have made the vow]’. He then said to him, ‘I am the man’.[4] The other fell upon his face and kissed his feet and also gave him half of his wealth.[5] The daughter of R. Akiba acted in a similar way[6] towards Ben Azzai. This is indeed an illustration of the proverb:[7] ‘Ewe follows ewe; a daughter's acts are like

those of her mother.' R. Joseph the son of Raba [was] sent [by] his father to the academy under[8] R. Joseph. and they arranged for him [to stay there for] six years. Having been there three years and the eve of the Day of Atonement approaching. he said, 'I would go and see my family'. When his father heard [of his premature arrival] he took up a weapon and went out to meet him. 'You have remembered', he said to him, 'your mistress!'[9] Another version: He said to him, 'You have remembered your dove!'[10] They got involved in a quarrel and neither the one nor the other ate of the last meal before the fast.[11] MISHNAH. IF A WIFE REBELS[12] AGAINST HER HUSBAND. HER KETHUBAH[13] MAY BE REDUCED BY SEVEN DENARII[14] A WEEK.[15] R. JUDAH SAID: SEVEN TROPAICS.[16] FOR HOW LONG MAY THE REDUCTION CONTINUE TO BE MADE? UNTIL [A SUM] CORRESPONDING TO HER KETHUBAH [HAS ACCUMULATED].[17] R. JOSE SAID: REDUCTIONS MAY BE MADE CONTINUALLY UNTIL [SUCH TIME] WHEN, SHOULD AN INHERITANCE FALL TO HER FROM ELSEWHERE, [HER HUSBAND] WILL BE IN A POSITION TO COLLECT FROM HER THE [FULL AMOUNT DUE]. SIMILARLY, IF A HUSBAND REBELS AGAINST HIS WIFE, AN ADDITION OF THREE[18] DENARII A WEEK IS MADE TO HER KETHUBAH. R. JUDAH SAID: THREE TROPAICS. GEMARA. REBELS in what [respect]? — R. Huna replied: [In respect] of conjugal Union .R. Jose the son of R. Hanina replied: [In respect] of work. We learned, SIMILARLY, IF A HUSBAND REBELS AGAINST HIS WIFE. Now according to him who said, '[In respect] of conjugal union [this ruling] is quite logical and intelligible;[19] but according to him who said, '[In respect] of work', is he[20] [it may be objected] under any obligation [at all to work] for her?[21] — Yes,[22] [rebellion being possible] when he declares 'I will neither sustain nor support [my wife]' — But did not Rab state: If a man says. 'I will neither sustain nor support [my wife]'. he must divorce her and give her the kethubah?[23] — Is it not necessary to consult him [before ordering him to divorce her]?[24] An objection was raised: The same[25] [law[26] is applicable to a woman] betrothed[27] or married, even to a menstruant, even to a sick woman and even to one who was awaiting the decision of the levir.[28] Now,[29] according to him who said, '[In respect] of conjugal union' it is quite correct to mention the sick,

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(1) A quotation from Prov. XII, 10.

(2) I.e., it is thanks to her suggestion and encouragement that he and, through him, his disciples, were able to acquire their knowledge.

(3) Which a competent authority may under certain conditions do.

(4) Lit., 'he'.

(5) Lit., money'.

(6) As her mother had done towards R. Akiba

(7) Lit., 'and this it is that people say'.

(8) Lit., 'before'.

(9) זונתך, Lit., 'your harlot'. Var. lec. 'thy mate', 'thy beloved'.

(10) יונתך This version is obtained by the slight interchange of a י for a ז (cf. Supra n. 8).

(11) לא איפסיק (rt. פסק , 'to separate', sever', 'cease') i.e., did not eat the סעודה המפסקת, the 'meal which, so to speak. causes one to cease' the eating of food until the conclusion of the Day of Atonement after nightfall On the following day.

(12) The term is explained in the Gemara infra.

(13) V. Glos.

(14) Plural of denar. V. Glos.

(15) This is regarded as the equivalent of the value of the seven kinds of work (supra 59b) a woman is expected to perform for her husband. (Cf. M.R. Gen. LII).

(16) Half a denar.

(17) Then she may be divorced, and cannot claim her kethubah.

(18) Corresponding to the three obligations of a husband, prescribed in Ex. XXI, 10.

(19) Since a husband, like a wife, might sometimes decide to rebel in this respect.

(20) A husband.

(21) Surely not. How then, in this respect. is rebellion applicable to him?

(22) I.e., his duty to maintain and support his wife corresponds to her duty to work for him.

(23) Infra 77a. presumably at once, while according to Out Mishnah every week AN ADDITION . . . IS MADE TO HER KETHUBAH.

(24) Of course it is; since he may quite possibly be persuaded to resume his obligations. It is during this period of negotiation that the weekly additions are made to the kethuhah.

(25) Lit., '(it is) one to me'.

(26) Relating to the rebellion of a wife against her husband.

(27) When she declares that she will refuse to marry.

(28) Infra 64a. שומרת יבם , the widow of a man who died childless, who must either be taken in marriage by her deceased husband's brother or submit to halizah (v. Glos.) from him.

(29) Cut. edd. insert in parentheses: 'This is correct according to him who said "(In respect) of work'; but according to him who said (In respect) of conjugal union", is a menstruant capable of conjugal union? — He can answer you: One who has bread in his basket is not like one who has none'. Others say, v, infra p. 382.

Talmud - Mas. Kethuboth 63b

but according to him who said, '[In respect] of work', is a sick woman [it may be objected] fit to do work?[1] — The fact,however, is that[2] [in respect] of conjugal union all[3] agree that [a wife who refuses] is regarded as a rebellious woman.[4] They[3] differ only in respect of work. One Master is of the opinion that [for a refusal] of work [a wife] is not to be regarded as rebellious and the other Master holds the opinion [that for a refusal] of work also [a wife] is regarded as rebellious. [To turn to] the main text,[5] If a wife rebels against her husband, her kethubah may be reduced by seven denarii a week. R. Judah said: Seven tropaics. Our Masters, however, took a second vote[6] [and ordained] that an announcement regarding her shall be made on four consecutive Sabbaths and that then the court shall send her [the following warning]: 'Be it known to you that even if your kethubah is for a hundred maneh[7] you have forfeited it'.[8] The same [law is applicable to a woman] betrothed or married, even to a menstruant, even to a sick woman, and even to one who was awaiting the decision of the levir.[9] Said R. Hiyya b. Joseph to Samuel: Is a menstruant capable of conjugal union?[10] — The other replied: One who has bread in his basket is not like one who has no bread in his basket[11] Rami b. Hama stated: The announcement concerning her[12] is made only in the Synagogues and the houses of study. Said Raba: This may be proved by a deduction,[13] it having been taught,'Four Sabbaths consecutively'.[14] This is decisive.[15] Rami b. Hania further stated: [The warning] is sent to her[16] from the court twice, once before the announcement and once after the announcement. R. Nahman b. R. Hisda stated in his discourse: The halachah is in agreement with our Masters.[17] Raba remarked: This is senseless.[18] Said R. Nahman b. Isaac to him, 'Wherein lies[19] its senselessness? I, in fact, told it to him, and it was in the name of a great man that I told it to him. And who is it? R. Jose the son of R. Hanina!' Whose view then is he[20] following? — The first of the undermentioned.[21] For it was stated: Raba said in the name of R. Shesheth, 'The halachah is that she[16] is to be consulted',[22] while R. Huna b. Judah stated in the name of R. Shesheth, 'The halachah is that she is not to be consulted'.[23] What is to be understood by 'a rebellious woman'?[24] — Amemar said: [One] who says. 'I like him[25] but wish to torment him'.[26] If she said, however, 'He is repulsive to me', no pressure is to be brought to bear upon her.[27] Mar Zutra ruled: Pressure is to be brought to bear upon her.[28] Such a case once occurred, and Mar Zutra exercised pressure upon the woman and [as a result of the reconciliation that ensued] R. Hanina of Sura[29] was born from the re-union. This, however,[30] was not [the right thing to do]. [The successful] result] was due to the help of providence.[31] R. Zebid's daughter-in-law rebelled [against her husband][32] and took possession of her silk [cloak].[33] Amemar, Mar Zutra and R. Ashi were sitting together[34] and R. Gamda sat beside them; and in the course of the session they laid down the law: [If a wife] rebels she forfeits her worn-out[35] clothing that may still be in existence. Said R. Gamda to them, 'Is it because R. Zebid is a great man that you would flatter him? Surely R. Kahana stated that Raba had only raised this question[36] but had not solved it'. Another version:[37] In the course of their session they decided: [If a wife] rebels she does not forfeit her worn-out clothing[38] that may still be in existence. Said R.

Gamda to them,

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(1) Naturally not. How then could she in this respect be guilty of rebellion?
(2) Lit., ‘but’.
(3) R. Huna and R. Jose.
(4) And the Baraitha cited deals with conjugal union.
(5) Of the quotation, ‘the same law etc.’ cited supra 63a ad fin.
(6) Lit., ‘they (i.e., their votes) were counted again’.
(7) V. Glos.
(8) At the end of the four weeks.
(9) Cf. Tosef. Keth. V., and supra notes 1 and 2.
(10) Obviously not; she being forbidden to her husband until the conclusion of the days of her Levitical uncleanness and the seven subsequent ‘clean days’.
(11) Cf. supra p. 374. n. 9 The woman's declared rebellion and the man's knowledge that even during her cleanness she will remain forbidden. aggravate the pain of the deprivation and entitle him to immediate redress.
(12) A woman who rebelled against her husband
(13) From the very text of the ordinance.
(14) Emphasis on Sabbaths’ days of test when everybody is free from work and able to attend Synagogue and the houses of study.
(15) Lit., ‘Infer from this’.
(16) A woman who rebelled against her husband.
(17) Whose ruling is recorded in the Baraitha just cited (v. supra p. 381. n. 12 and text).
(18) בורכא (cf. בור ‘empty’. uncultivated’). ‘a hollow, senseless statement’. The addition of the כ is on the analogy of words like ערכך (Levy). Others derive if from ברך ‘cave out’ (v. Jast.)
(19) Lit , ‘what’.
(20) Raba who regarded the statement as senseless.
(21) Lit., ‘like that’
(22) With a view to inducing her to resume her duties, and during the negotiations. contrary to the view of our Masters, only the weekly sum mentioned is deducted from her kethubah. [On this interpretation which follows Rashi, Raba decides in accordance with our Mishnah against our Masters. Tosaf. explains differently R Nahman, In stating that the halachah is with our Masters, meant to exclude thereby the view of Rami B Hama regarding the two warnings. He maintained that the words of our masters had to be taken as they stand, with no mention of any warning before the proclamation. This is however rejected by Raba, who declares, on the authority of R. Shesheth, the halachah to be that a warning is given prior to the proclamation The warning will, In this case, be that she will lose the while of her kethubah should she still prove recalcitrant after the proclamation].
(23) [On Tosaf. interpretation. (Previous note) the meaning is she is not warned before but only after the proclamation, agreeing with R. Nahman b. R. Hisda].
(24) Heb. moredeth, whose divorce is to be delayed and deductions are in the meantime to be made from her Kethubah.
(25) Her husband.
(26) In this case divorce is delayed in the hope that the weekly reductions of her kethubah and the persuasions used by the court will induce her to change her attitude.
(27) [The husband can, if he wishes, divorce her forthwith without giving her kethubah; v. Rashi and Tosaf. s.v. אבל .]
(28) V. Supsra note 4.
(29) Supra was the seat of the famous school of Rab, in the South of Babylonia.
(30) Though the pressure in this case resulted to the birth of a great man.
(31) Lit., ‘assistance of heaven’
(32) [She said, ‘He is repulsive to me’ (Rashi) v. infra p. 384, n. 5].
(33) Which she had brought with her when she married, and which was assessed and entered to her Kethubah.
(34) Lit., ‘sat’.
(35) V supra n. 11
(36) As to the forfeiture of worn-out clothes.
(37) Lit., ‘there are who say’.

(38) V. supra p. 383, n. 21.

Talmud - Mas. Kethuboth 64a

'Is it because R. Zebid is a great man[1] that you turn the law against him? Surely R.Kahana stated that Raba had only raised the question but had not solved it'. Now that it has not been stated what the law is,[2] [such clothing] is not to be taken away from her if she has already seized them, but if she has not yet seized them they are not to be given to her. We also make her wait twelve months, a [full] year. for her divorce,[3] and during these twelve months she receives no maintenance from her husband.[4] R. Tobi b. Kisna stated in the name of Samuel: A certificate of rebellion may be written against a betrothed woman but no such certificate may be written against one who is awaiting the decision of the levir.[5] An objection was raised: The same [law[6] is applicable to a woman] betrothed or married, even to a menstruant, even to a sick woman and even to one who was awaiting the decision of the levir![7] — This is no contradiction. The one[8] refers to the case where the man claimed her;[9] the other[10] to that where she claimed him.[11] For R. Tahlifa b. Abimi stated in the name of Samuel: If he claimed her[9] he is attended to;[12] if she claimed him she is not attended to.[13] To what case did you explain the statement of Samuel[14] as referring? To the one where she claimed him?[15] [But if so] instead of Saying[16] 'A certificate of rebellion may be written against a betrothed woman' it should have been said, 'On behalf of a betrothed woman'![17] — This is no difficulty. Read, 'On behalf of a betrothed woman'.[18] Wherein does a woman awaiting the decision of the levir differ [from the man] that no [certificate of rebellion should be issued on her behalf]? Obviously because we tell her, 'Go, you are not commanded [to marry]';[19] [but. then.] a betrothed woman also should be told, 'Go, you are not commanded [to marry]'![19] Again should [it be explained to be one] where she comes with the plea Saying. 'I wish to have a staff in my hand and a spade for my burial',[20] [this then should] also apply to a woman awaiting the decision of the levir if she comes with such a plea! — [The proper explanation] then [must be this]: Both statements[21] [refer to the case] where the man claimed,[22] and yet there is no difficulty. since one[23] may refer[24] to the performance of halizah and the other[25] to that of the levirate marriage. For R. Pedath stated in the name of R. Johanan: [If the levir] claimed her for the performance of halizah his request is to be attended to,[26] but if he claimed her for the levirate marriage his request is disregarded.[27] Why [is he] not [attended to when he claims her] for the levirate marriage? Naturally because we tell him, 'Go and marry another woman'; [but then even when he claims her] for the performance of halizah could we not also tell him, 'Go and marry another woman'? Again should the answer be: [Because] he can plead. 'As she is bound to me[28] no other wife will be given me'. Here also[29] [could he not plead] 'As she is bound to me no other wife will be given to me'? — [The proper explanation] then [is this]: Both statements[30] [deal with one] who claimed her for the levirate marriage. but there is really no difficulty. one[31] being[32] in agreement with the earlier Mishnah while the other is[32] in agreement with the latter Mishnah. For we have learned: The commandment of the levirate marriage must take precedence over that of halizah.[33] [This was the case] in earlier days when [levirs] had the intention of observing the commandment — Now, however, when their intention is not the fulfilment of the commandment, it has been ruled that the commandment of halizah takes precedence over that of the levirate marriage.[34] FOR HOW LONG MAY THE REDUCTION CONTINUE TO BE MADE? etc. What [is meant by] TROPAICS? R. Shesheth replied: [one tropaic is] an istira. And how much is an istira? — Half a zuz.[35] So it was also taught: R. Judah said: Three tropaics which [amount to] nine ma'ah[35] [the reduction being at the rate of] one ma'ah and a half per day.[36] R. Hiyya b. Joseph asked Of Samuel: In what respect is he[37] different [from his wife] that he is allowed [a reduction] for the Sabbath,[38] and in what respect is she different [from him] that she is not allowed [an addition] for the Sabbath?[39] — In her case,[40] since it is a reduction that is made, [the seventh tropaic the husband gains] does not have the appearance of Sabbath pay. In his case, however,[41] since it is additions that are made,

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(1) And would humbly accept the ruling.

(2) Lit., 'neither thus nor thus'.
(3) To afford her an opportunity of changing her attitude.
(4) [Rashi and Adreth among others restrict this procedure to a rebellion out of repulsion, a case illustrated in their view by the daughter-in-law of R. Zebid (v. Supra p. 383, n. 10). Where the rebellion was out of malice she loses her kethubah and dowry completely after the warning at the end of four weeks. Maim., on the other hand, applies it to rebellion out of malice. In the case of rebellion out of repulsion, she is granted a divorce immediately because 'she is not a captive to her husband that she should be forced to have intercourse with him', and though she forfeits her kethubah, she loses none of her dowry (v. Maim. Yad. Ishuth XIV, 8, and commentaries a.l.). In his view the case of R. Zebid's daughter-in-law was one of rebellion out of malice].
(5) Shomereth yabam, v. Glos,
(6) Of. 'a rebellious 'woman'.
(7) Supra 63a, notes.
(8) The Baraitha cited (v. suprs n. 8).
(9) And she refused him.
(10) Samuel's ruling reported by R. Tobi.
(11) And he refused to marry her.
(12) And he is awarded a certificate of rebellion against her.
(13) She is not entitled to a certificate of rebellion against him, which should enable her to obtain the weekly additions to her Kethubah (v. our Mishnah). The reason is given infa. Thus it has been shown that there is a legal difference between the case where he makes the claim and between the case where she makes the claim.
(14) V. p. 384, n. 11.
(15) V. p. 384, n. 12.
(16) Lit., 'that'.
(17) Against her husband.
(18) The emendation involving only the slight change of עלי to לי .
(19) A woman is under no obligation to propagate the race (v. Yeb. 65b).
(20) I.e., a son who will provide for her while she is alive and arrange for her burial when she dies.
(21) Lit., 'these and these', the statement reported in the name of Samuel as well as the other cited from 63a Supra.
(22) And she refused him.
(23) The Baraitha cited (v. supra p. 384, n. 8).
(24) Lit., 'here'.
(25) Samuel's ruling reported by R.Tobi.
(26) V.supra p.384, n. 13.
(27) The reason is given anon in the latter Mishnah cited.
(28) By the marital bond which only halizah can sever.
(29) When he claims her for levitate marriage.
(30) V. supra p. 385. n. 8.
(31) V. supra p. 385. n. 10.
(32) Lit., 'here'.
(33) A woman who refused the levir's claim was, therefore, guity of rebellion, and a certificate against her was issued to the levit.
(34) No certificate of rebellion may, therefore, be issued against a woman who refuses such a marriage.
(35) V. Glos.
(36) The week consisting of six working days.
(37) The husband.
(38) Seven tropaics corresponding to all the days of the week including the Sabbath day.
(39) The nine ma'ah at the rate of one and a half per day corresponding to six days only (cf. supra n. 9).
(40) I.e. , when the woman rebels.
(41) When the man rebels against his wife.

Talmud - Mas. Kethuboth 64b

[another addition for the seventh day] would have the appearance of Sabbath pay. R. Hiyya b. Joseph [further] asked of Samuel: What [is the reason for the distinction] between a man who rebels [against his wife] and a woman who rebels [against her husband]?[1] — The other replied. 'Go and learn it from the market of the harlots; who hires whom?'[2] Another explanation: [The manifestation of] his passions is external; hers is internal. MISHNAH. IF A MAN[3] MAINTAINS HIS WIFE THROUGH A TRUSTEE, HE MUST GIVE HER [EVERY WEEK] NOT LESS THAN TWO KABS[4] OF WHEAT OR FOUR KABS OF BARLEY. SAID R. JOSE: ONLY R. ISHMAEL WHO LIVED NEAR EDOM[5] GRANTED HER A SUPPLY OF BARLEY.[6] HE MUST ALSO GIVE HER HALF AKAB OF PULSE AND HALF ALOG[4] OF OIL; AND AKAB OF DRIED FIGS OR A MANEH[4] OF PRESSED FIGS,[7] AND IF HE HAS NO [SUCH FRUIT] HE MUST SUPPLY HER WITH A CORRESPONDING QUANTITY OF OTHER[8] FRUIT. HE MUST ALSO PROVIDE HER WITH A BED, A MATTRESS[9] AND[10] A RUSH MAT. HE MUST ALSO GIVE HER [ONCE A YEAR] A CAP FOR HER HEAD AND A GIRDLE FOR HER LOINS; SHOES [HE MUST GIVE HER] EACH MAJOR FESTIVAL;[11] AND CLOTHING [OF THE VALUE] OF FIFTY ZUZ EVERY YEAR. SHE IS NOT TO BE GIVEN NEW [CLOTHES][12] IN THE SUMMER OR WORN-OUT CLOTHES IN THE WINTER, BUT MUST BE GIVEN THE CLOTHING [OF THE VALUE] OF FIFTY ZUZ DURING THE WINTER, AND SHE CLOTHES HERSELF WITH THEM WHEN THEY ARE WORN-OUT DURING THE SUMMER; AND THE WORN-OUT CLOTHES REMAIN HER PROPERTY.[13] HE MUST ALSO GIVE HER [EVERY WEEK] A SILVER MA'AH FOR HER [OTHER] REQUIREMENTS[14] AND SHE IS TO EAT WITH HIM ON THE NIGHT OF EVERY SABBATH.[15] IF HE DOES NOT GIVE HER A SILVER MA'AH FOR HER OTHER REQUIREMENTS, HER HANDIWORK BELONGS TO HER.[16] AND WHAT [IS THE QUANTITY OF WORK THAT] SHE MUST DO FOR HIM?[17] THE WEIGHT OF FIVE SELA'S OF WARP IN JUDAEA, WHICH AMOUNTS TO TEN SELA'S IN GALILEE,[18] OR THE WEIGHT OF TEN SELA'S OF WOOF[19] IN JUDAEA, WHICH AMOUNTS TO TWENTY SELA'S IN GALILEE.[18] IF SHE WAS NURSING [HER CHILD] HER HANDIWORK IS REDUCED AND HER MAINTENANCE IS INCREASED. ALL THIS APPLIES TO THE POOREST IN ISRAEL, BUT IN THE CASE OF A MEMBER OF THE BETTER CLASSES[20] ALL IS FIXED ACCORDING TO THE DIGNITY OF HIS POSITION. GEMARA. Whose [view is represented in] our Mishnah?[21] [It seems to be] neither that of R. Johanan b. Beroka nor that of R. Simeon. For we learned: And what must be its[22] size? Food for two meals for each, [the quantity being] the food one eats on weekdays and not On the Sabbath; so R. Meir. R. Judah said: As on the Sabbath and not as on weekdays. And both intended to give the lenient ruling.[23] R. Johanan b. Beroka said:[24] A loaf that is purchased for a dupondiom[25] [when the cost of wheat is at the rate of] four se'ah[25] for a sela'.[25] R. Simeon said:[26] Two thirds of a loaf, three of which are made from a Kab.[27] Half of this [loaf is the size prescribed] for a leprous house,[28] and half of its half[29] renders one's body[30] unfit;[31] and half of the half of its half to be susceptible to Levitical uncleanness,[32] Now, whose [view is that expressed in our Mishnah]?[33] If [it be suggested that it is that of] R. Johanan b. Beroka [the prescribed TWO KABS would only] be [sufficient for] eight [meals].[34] and if [the suggestion is that it is that of] R. Simeon [the TWO KABS would] be [sufficient even for] eighteen [meals].[35] — [Our Mishnah may] in fact [represent the view of] R. Johanan b. Beroka but, as R. Hisda said elsewhere,[36] 'Deduct a third of them for the [profit of the] shopkeeper',[37] so here[38] also take a third[39] and add to them.[40] But [do not the meals] still amount only to twelve?[41] — She eats with him on Friday nights —[42] This is satisfactory according to him who explained[43] [TO EAT In our Mishnah as] actual eating. What, however, can be said according to him who explained 'eating' [to mean] intercourse? Furthermore, [would not her total number of meals still] be only thirteen?[44] — The proper answer is really this:[45] As R. Hisda said elsewhere,[46] 'Deduct a half for the [profit of the] shopkeeper.[47] so here[48] also take a half[49] and add to them.[50] (Does not a contradiction arise between the two statements of R. Hisda?[51] — There is no contradiction. One statement refers[52] to a place where [the sellers of the wheat] supply also wood[53] while the other refers[52] to a place where they do not supply the wood.)[54] If so[55] [the number of meals] is sixteen.[56] With whose [view then would our Mishnah agree]? With R. Hidka who ruled: A man must eat on the Sabbath four meals?[57] — It may be said to represent even

the view of the Rabbis, for one meal is to be reserved for guests and occasional visitors.[58] Now that you have arrived at this position [our Mishnah] may be said to represent even the view of R. Simeon,[59] for according to the Rabbis[60] three meals should be deducted[61] for guests and occasional visitors[62] and according to R. Hidka[63] two Only are to be deducted for guests and occasional visitors.[64] SAID R. JOSE: ONLY . . . GRANTED A SUPPLY OF BARLEY etc. Do they eat barley at Edom only and throughout the world none IS eaten? — It is this that he meant: ONLY R. ISHMAEL WHO LIVED NEAR EDOM GRANTED A SUPPLY OF BARLEY equal to twice the quantity of wheat, because the Idumean barley was of an inferior quality. THE MAN MUST ALSO GIVE HER HALF A KAB OF PULSE. Wine, however, is not mentioned. This provides support for a view of R. Eleazar. For R. Eleazar stated:

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(1) I.e., why does the former lose only half a tropaic a day while the latter loses a full tropaic each day?

(2) The man naturally hires the woman; which shows that the male feels the deprivation mote than the female, His compensation. therefore, must be proportionately higher.

(3) A husband who does not live with his wife.

(4) V. Glos.

(5) In the South of Palestine.

(6) This is explained in the Gemara infta.

(7) דבילה , a cake of pressed figs. The latter is sold by weight; the former by measure,

(8) Lit., ‘from another place’.

(9) מפץ , a mat of bark or reeds,

(10) The separate edd. of the Mishnah read, ‘And if he has no mattress he gives her a rush mat’.

(11) I.e., Passover, Pentecost and Tabernacles.

(12) Which provide more warmth than outworn clothes.

(13) Even after her husband had provided her with the new outfit. This is further discussed in the Gemara infra.

(14) Smaller expenses.

(15) I.e., Friday nights, the prescribed time for marital intercourse.

(16) This is explained supra 59a as referring to the surplus.

(17) Where he supplies her with the prescribed allowances.

(18) The Galilean sela’ being equal in weight to half of the Judaean sela’.

(19) It is twice as difficult to web the warp than the woof. Hence a larger Output is required of the latter than of the former.

(20) מכובד . lit., ‘honoured’, respected’.

(21) Which prescribed for a wife a minimum of TWO KABS.

(22) The loaf of bread required for an ‘erub tehumin. (v. Glos.).

(23) I.e., to reduce the prescribed minimum of the ‘erub. R. Meir used to consume at a weekday meal less bread than at a Sabbath meal at which the richness of the additional Sabbath dishes tempted him to eat more bread. R. Judah, however, consumed on Sabbath, when several satisfying courses ate served, less bread than he would on weekdays owing to the smaller number of courses.

(24) In determining the quantity of bread required for two meals.

(25) V. Glos.

(26) V. p. 388, n. 12.

(27) Of wheat.

(28) If a person remained in such a house (v. Lev. XIV, 33ff) for a length of time during which the quantity of bread mentioned can be consumed his clothes become unclean and require ritual washing (cf. Neg. XIII, 9).

(29) If it consists of Levitically unclean food.

(30) Of the person who ate it,

(31) To eat terumah before he performs ritual immersion, v. ‘Er. 82b.

(32) [This latter passage does not occur in the Mishnah ‘Er. but is introduced in the Gemara on 83a as a teaching by a Tanna].

(33) Where a wife is allowed a minimum of TWO KABS of wheat for the week. Since she must have at least two meals a day, the two Kabs should provide fourteen (seven times two) meals, besides an additional one or two (respectively.

according to the Rabbis or to R. Hidka, infra) for the Sabbath day.
(34) According to R. Johanan b. Beroka a loaf that contains food for two meals (v. supra p. 388. n. 12) is one 'that is purchased for a dupondium when the cost of wheat is at the rate of four se'ah for a sela', Each sela' = four denarii, each denar = six ma'ahs and each ma'ah = two dupondia. Consequently a sela' = (4 X 6 X 2) forty eight dupondta. a se'ah = six Kabs = twelve half-Kabs. Consequently four se'ahs (4 X 12) forty-eight half-Kabs. For a dupondium, therefore, half a Kab of wheat is obtained; and since this quantity supplies two meals each quarter of a Kab provides one meal. The TWO KABS consequently provide only eight meals.
(35) R. Simeon's minimum is 'two thirds of a loaf, three of which ate made of a Kab'. If two thirds represent two meals (v. supra p. 388, n. 12) each third represents one meal. If three loaves are made from one Kab, each Kab represents (3 X 3) nine meals. The TWO KABS, therefore, represent (6 X 9) = eighteen meals. Now since according to our Mishnah a wife must be allowed fourteen meals plus one additional meal or two for the Sabbath (v. supra note 9) neither the view of R. Johanan b. Beroka nor that of R. Simeon can be represented by it.
(36) V. 'Er. 82b.
(37) Though the shopkeeper buys at the rate of four se'ahs for a sela' = half a kab for a dupondium (v. supra p. 389. n. 10) he sells at a higher price, leaving for himself a profit of one third of the purchase price. For each dupondium, therefore, he sells only two thirds of half a kab. One third of half a Kab or one sixth of a Kab thus provides one meal. Two Kabs therefore, would produce (2 x 6) = twelve meals.
(38) In our Mishnah.
(39) The shopkeeper's profit which the husband saves by the supply of wheat instead of shop baked loaves.
(40) To the presumed number of eight. Four is a third of twelve which is the number of meals two Kabs provide.
(41) Cf. supra p. 389. n. 13 ad fin. As, however, she requires fourteen plus one or plus two meals for the week (v. supra p. 389. n. 9) she is still short of three or four meals.
(42) Lit., 'the nights of the Sabbath'. Friday night belongs to the Sabbath, the day always beginning with the sunset of the previous day.
(43) Infra 65b.
(44) The twelve mentioned (v. supra p. 389. n. 13 ad fin.) plus the one she has on Friday night. She is thus still short of a meal or meals (v. supra p. 389. n. 9) for the Sabbath day.
(45) Lit., 'but'.
(46) V. 'Er. 82b.
(47) Cf. supra p. 389, n. 13 mutatis mutandis.
(48) In our Mishnah.
(49) V. supra note 1.
(50) Cf. supra note 2 mutatis mutandis. The woman thus obtains her full number of meals.
(51) Lit., 'a difficulty of R. Hisda against R. Hisda'.
(52) Lit., 'that'.
(53) For the baking of the bread. In such a case the shopkeeper deducts only a third for his profit.
(54) And the shopkeeper sells at a profit equal to half of his purchase price to compensate himself for the cost of the wood.
(55) That a half is to be added.
(56) Each half Kab producing four, instead of the presumed two meals, the two Kabs would produce (4 X 4) sixteen meals.
(57) Shab. 117a. As R. Hidka is in the minority, would an anonymous Mishnah which usually represents the halachah agree with the opinion of an individual against that of a majority?
(58) Cf. supra p. 364. nn. 5-6. This leaves the woman with fifteen meals, twelve for the six weekdays and three for the Sabbath.
(59) According to whom the TWO KABS would provide eighteen meals.
(60) Who maintain that only three meals are prescribed for the Sabbath.
(61) From the eighteen.
(62) Cf. supra note 1.
(63) Whose view is that for the Sabbath four meals are prescribed.
(64) Leaving for the woman four Sabbath meals plus twelve for the week days.

Talmud - Mas. Kethuboth 65a

Talmud - Mas. Kethuboth 65a

No allowance for wine is made for a woman.[1] And should you point out the Scriptural text, I will go after my lovers, that give me my bread and my water, my wool and my flax. mine oil and my drink,[2] [it may be replied that the reference is to] things which a woman desires.[3] And what are they? Jewellery. R. Judah of Kefar Nabirya[4] (others say: of Kefar Napor[5] Hayil) made the following exposition: Whence is it derived that no allowance for wines is made for a woman? — [From Scripture in] which it is said, So Hannah rose up after she had eaten[6] in Shiloh, and after drinking.[7] only 'he had drunk' but she did not drink. Now, then, would you also [interpret:] 'She had eaten'[8] that he[6] did not eat? — What we say is [that the deduction may be made] because the text has deliberately been changed. For consider: It was dealing with her, why did it change [the form]?[9] Consequently it may be deduced that it was 'he who drank' and that she did not drink. An objection was raised: If [a woman] is accustomed [to drink] she is given [an allowance of drink]! — Where she is accustomed to drink the case is different. For R. Hinena b. Kahana stated in the name of Samuel, 'If she was accustomed [to drink] she is given an allowance of one cup; if she was not accustomed [to it] she is given an allowance of two cups'. What does he mean? — Abaye replied: It is this that he means: If she was in the habit [of drinking] two cups in the presence of her husband she is given one cup in his absence; if she is used [to drink] in the presence of her husband only one cup, she is given none at all in his absence. And if you prefer I might say: If she is used [to drink] she is allowed some wine for her puddings[10] only. For R. Abbahu stated in the name of R. Johanan: It happened that when the Sages granted the daughterin-law of Nakdimon[11] b. Gorion a weekly[12] allowance of two se'ahs of wine for her puddings she[13] said to them, 'May you grant such allowances to your daughters'. A Tanna taught: She was a woman awaiting the decision of the levir.[14] Hence they did not reply Amen after her.[15] A Tanna taught: One cup[16] is becoming to a woman; two are degrading. [and if she has] three she solicits publicly.[17] [but if she has] four she solicits even an ass in the street and cares not. Raba said: This was taught only [in respect of a woman] whose husband is not with her; but if her husband is with her [the objection to her drinks] does not arise.[18] But, Surely. [there is the case of] Hannah whose husband was with her![19] — With a guest[20] it is different,[21] for R. Huna stated Whence is it inferred that a guest is forbidden marital union? [From Scripture in] which it is said, And they rose up in the morning early and worshipped before the Lord, and returned, and came to their house to Ramah; and Elkanah knew Hannah his wife; and the Lord remembered her,[22] only[23] then[24] but not before. Homa, Abaye's wife, came to Raba[25] and asked him, 'Grant me an allowance of board', and he granted her the allowance. 'Grant me [she again demanded] an allowance of wine'. 'I know', he said to her, 'that Nahmani[26] did not drink wine'. 'By the life of the Master [I swear]'. she replied. 'that he gave me to drink[27] from horns[28] like this'.[29] As she was showing it to him her arm was uncovered and a light shone[30] upon the court. Raba rose, went home and solicited R. Hisda's daughter.[31] 'Who has been to-day at the court?' enquired R. Hisda's daughter. 'Homa the wife of Abaye'. he replied. Thereupon she followed her, striking her with the straps[32] of a chest[33] until she chased her out of all Mahuza.[34] 'You have', she said to her, 'already killed three [men].[35] and now you come to kill another [man]!' The wife of R. Joseph the son of Raba came before R. Nehemiah the son of R. Joseph and said to him, 'Grant me an allowance of board', and he granted her. 'Grant me also an allowance of wine' [she demanded], and he granted her. 'I know', he said to her, 'that the people of Mahuza drink wine'. The wife of R. Joseph the son of R. Menashya of Dewil[36] came before R. Joseph and said to him, 'Grant me an allowance of board', and he granted her. 'Grant me', she said, 'an allowance of wine', and he granted her. 'Grant me', she said again. 'an allowance of silks'. 'Why silks?' he asked. 'For your sake', she replied. 'and for the sake of your friend and for the sake of your associates'.[37] HE MUST ALSO PROVIDE HER WITH A BED, A MATTRESS etc. Why[38] should he give her A MATTRESS AND A RUSH MAT?[39] — R. Papa replied: [This is done only] in a place where it is the practice to girth the bed with ropes.[40] which would hurt[41] her. Our Rabbis taught: She[42] is not given[43] a cushion and a bolster. In the name of R. Nathan it was stated: She is given a cushion and a bolster. How is this to be understood? If it is a case where she is used to it,[44] what [it may be objected] is the reason of the first Tanna?[45] And if it is

a case where she is not used to it,[44] what [it may be asked] is the reason of R. Nathan?[46] — [The statement was] necessary only in the case where it[47] was his habit but not her habit.[48] The first Tanna[49] is of the opinion that [her husband] may say to her, 'When I go away[50] I take them and when I return I bring them back with me',[51] while R. Nathan holds the opinion that she can tell him, 'It might sometimes happen [that you will return] at twilight[52] when you will be unable to bring them[53] and so you will take mine[54] and make me sleep on the ground'.[55] HE MUST ALSO GIVE HER [ONCE A YEAR] A CAP. Said R. Papa to Abaye:

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(1) Alcoholic drinks might lead her to unchastity (v. Rashi).

(2) Hos. II, 7. And my drink, ושקויי , presumably including wine.

(3) שקויי (cf. supra n. 9) being derived from the rt. שוק 'to long'. 'desire'.

(4) MS. M., גבוריא. [Neburja. identified with en-Nebraten in upper Galilee].

(5) נפור MS.M. גבור ; marg., גבור .

(6) אכלה . This is taken as perfect 3rd pers. fem; according to the accentuation of M.T. it is the inf. estr. with fem.termination.

(7) I Sam. I, 9. E.V., They had drunk. M.T. שתה , Inf. is taken as the equivalent of שתה (3rd masc. sing.), 'he (Elkanah) had drunk'.

(8) The word אכלה (ibid.) instead of אכל , אכלם or אכלו

(9) From the finite to the infinite.

(10) ציקי קדירה (v. Jast.). Others, 'as an ingredient or seasoning of a dish' (v. Rashi and Golds.).

(11) Or 'Nicodemon', 'Nicodemus', one of the three wealthiest men in Jerusalem in the days of the siege by Vespasian and Titus (v. Git. 58a).

(12) Lit., 'from the eve of the Sabbath to the eve of the Sabbath'.

(13) In her annoyance at what she considered to be too small an allowance.

(14) Shomereth yabam. V. Glos.

(15) They did not wish their daughters ever to be placed in the position of a widow who is, moreover, subject to the decision of the levir.

(16) Of wine.

(17) Lit., 'with the mouth'.

(18) Lit., 'we have not (anything) against it'.

(19) And she nevertheless, as stated supra. abstained from drink.

(20) אכסנאי (Cf. Gr. **). 'stranger', 'lodger', 'guest'.

(21) Hannah at the time was not in her own home but at Shiloh.

(22) I Sam. I,19.

(23) Lit., 'yes'.

(24) When they had come to their own home.

(25) After Abaye's death (cf. Yeb. 64b).

(26) Lit., 'my comforter', a name by which Abaye was often referred to, v. Git. Sonc. ed. p. 140, n. 6.

(27) משקיא לי , MS.M. Cur. edd., משקי ליה 'gave him to drink'.

(28) Plural of שופרזא , 'a drinking horn' (v. Jast.) or 'deep cups' (cf.Rashi and Levy).

(29) pointing to her arm.

(30) Lit., 'fell'.

(31) His own wife.

(32) Pl. of קולפא (rt. קלף , 'to peel') 'peeled or scrapped leather', 'a leather strap' (v. Jast.); 'a key' (Rashi).

(33) שידא Aruk, שיראי , 'silk'; בקולפא דשיראי 'with a silken strap'. Rashi: 'With the key of a chest'.

(34) V. supra p. 319. n. 9.

(35) Homa had already thrice married and each of her husbands had died (v. Yeb. 64b).

(36) [Perhaps Debeile in the neighbourhood of Hille (near Sura). There is also a Dabil in Armenia, v. Funk, Monuments Talmudica, p. 291].

(37) To enable her to keep up her social standing in the company of her deceased husband's friends and associates.

(38) Since beds were usually furnished with a skin girth (v. Rashi).

(39) Which are much less comfortable for lying on than a skin girth. R. Tam (Tosaf. s.v. מפץ a.l.) deletes MATTRESS

since on account of its softness it is useful even where the bed is furnished with a skin spread.
(40) Instead of the skin girth.
(41) דמבגר (Af. of בגר) lit., 'which produce a roughness' (v. Jast.). According to Rashi בגר is to e taken in the sense of 'age'. The ropes cause her pain and 'age her' prematurely.
(42) The wife spoken of to Our Mishnah.
(43) By her husband.
(44) To sleep on a cushion and a bolster.
(45) Who ruled that she is not to be allowed these comforts.
(46) Why should her husband be expected to provide for her more comforts than she habitually requires.
(47) V. p. 394. n. 10.
(48) [Yet on the principle that 'she rises with him' supra 61a, she is entitled to them when she is with him (Rashi)].
(49) V. p. 394. n. 11.
(50) From you.
(51) Since she is not in the habit of using them she does not require them in his absence.
(52) On Sabbath eve.
(53) The carrying of objects is forbidden on the Sabbath, the prohibition beginning at twilight on the Friday evening.
(54) The other bed clothes that he had given her or that she herself had purchased. (V. however, next note).
(55) Hence R. Nathan's ruling that a husband must in all cases provide his wife with cushion and bolster. [Var. lec. (v. Tosaf.) omit 'so you will take mine'. On that reading the woman will argue that she would be made to sleep on the ground, even in his presence, when she is entitled to all the comfort to which he is accustomed, v. supra note 2].

Talmud - Mas. Kethuboth 65b

This Tanna[1] [expects a person to be] 'stripped naked and to wear shoes'![2] 'The Tanna,' the other replied. 'was dealing[3] with a mountainous region where one cannot possibly manage with less than three pairs of shoes [a year].[4] and indirectly he informed us that these should be given to her on the occasion of a major festival so that she might derive joy from them. AND CLOTHING [OF THE VALUE] OF FIFTY ZUZ. Abaye said: Fifty small zuz.[5] Whence is this deduced? — From the statement:[6] ALL THIS APPLIES TO THE POOREST IN ISRAEL, BUT IN THE CASE OF A MEMBER OF THE BETTER CLASSES ALL IS FIXED ACCORDING TO THE DIGNITY OF HIS POSITION. Now, should one imagine [that the reference is to] fifty real zuz,[7] whence [it could be objected] would a poor man obtain fifty zuz? Consequently it must be concluded [that the meaning is] fifty small zuz. SHE IS NOT TO BE GIVEN NEW etc. Our Rabbis taught: Any surplus of food[8] belongs to the husband, while any Surplus of worn out clothes belongs to the woman. [You said:] 'Any surplus of worn out clothes belongs to the woman'; of what use are they to her? — Rehaba replied: For putting on during the days of her menstruation so that she may not [by the constant wearing[9] of the same clothes] become repulsive to her husband. Abaye stated: We have a tradition that the surplus of the worn out clothes of a widow[10] belongs to her husband's heirs. For the reason in the former case[11] is that she shall not become repulsive to her husband[12] but in this case[13] let her be ever so repulsive. HE MUST ALSO GIVE HER [EVERY WEEK] A SILVER MA'AH etc. What [is meant by] SHE IS TO EAT? — R. Nahman replied: Actual eating. R. Ashi replied: Intercourse. We have learned: SHE IS TO EAT WITH HIM ON THE NIGHT OF EVERY SABBATH. Now, according to him[14] who said, '[actual] eating' it is quite correct to use the expression SHE IS TO EAT. According to him,[15] however, who said, 'intercourse', why [it may be asked] was the expression SHE IS TO EAT used?[16] — It is a euphemism.[17] as it is written in Scripture. She[18] eateth, and wipeth her mouth, and saith: 'I have done no wickedness'.[19] An objection was raised: R. Simeon b. Gamaliel said, 'She is to eat with him on the night of the Sabbath and on the Sabbath [day]'. Now, according to him[20] who said, ' [actual] eating', it is correct to state, 'and on the Sabbath [day]'.[21] According to him,[22] however, who said, 'intercourse', is there any intercourse on the Sabbath day? Did not R. Huna state, The Israelites are holy and do not have intercourse in the day-time'?[23] — But, Surely, Raba stated: It is permitted in a dark room.[24] IF SHE WAS NURSING [HER CHILD]. R. 'Ulla the Great made at the Prince's[25] door the following

exposition: Although it was said:[26] 'A man is under no obligation to maintain his sons and daughters when they are minors', he must maintain them while they are very young.[27] How long?[28] — Until the age of six; in accordance [with the view of] R. Assi, for R. Assi stated: A child of the age of six is exempt[29] by the 'erub[30] of his mother. Whence [is this[31] derived]? — From the Statement: IF SHE WAS NURSING [HER CHILD] HER HANDIWORK IS REDUCED AND HER MAINTENANCE IS INCREASED. What can be the reason?[32] Surely because he[33] must eat together with her. But is it not possible [that the reason[32] is] because she[34] ailing? — If that were the case it should have been stated, 'If she was ailing', why then [was it stated]. IF SHE WAS NURSING?[35] But is it not possible that it was this that we were taught:[36] That nursing mothers are commonly ailing?[37] It was stated: What is the addition[38] that he makes for her?[39] R. Joshua b. Levi said: She is given an additional allowance for wine, because wine is beneficial for lactation.

C H A P T E R V I

MISHNAH. A WIFE'S FIND AND HER HANDIWORK BELONG TO HER HUSBAND. AND [OF] HER INHERITANCE[40] HE HAS THE USUFRUCT DURING HER LIFETIME.[41] [ANY COMPENSATION FOR] AN INDIGNITY OR BLEMISH [THAT MAY HAVE BEEN INFLICTED UPON] HER BELONGS TO HER. R. JUDAH B. BATHYRA RULED: WHEN IN PRIVACY[42] SHE RECEIVES TWO-THIRDS [OF THE COMPENSATION] WHILE HE[43] RECEIVES ONE-THIRD, BUT WHEN IN PUBLIC[44] HE RECEIVES TWO-THIRDS[45] AND SHE RECEIVES ONE-THIRD. HIS SHARE IS TO BE GIVEN TO HIM FORTHWITH, BUT WITH HERS LAND IS TO BE BOUGHT AND HE[43] ENJOYS THE USUFRUCT.[46]

GEMARA. What does he[47] teach us? This surely was already learnt: A father has authority over his daughter in respect of her betrothal [whether it was effected] by money, by deed or by intercourse; he is entitled to anything she finds and to her handiwork; [he has the right] of invalidating her vows, and he receives her letter of divorce; but he has no usufruct during her lifetime. When she marries, the husband surpasses him [in his rights] in that he has usufruct during her lifetime![48] — He[49] regarded this[50] as necessary [on account of the law relating to] INDIGNITY OR BLEMISH [THAT MAY HAVE BEEN INFLICTED UPON] HER, [which is the subject of] a dispute between R. Judah b. Bathyra and the Rabbis.[51]

A tanna recited in the presence of Raba: A wife's find belongs to herself; but R. Akiba ruled: [It belongs] to her husband. The other[52] said to him: Now that [in respect of the] surplus[53]

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(1) Who imposes upon a husband the duty of giving his wife shoes three times a year and clothing only once a year.

(2) Proverb. By the time the woman will receive her second or third pair of shoes her clothes will be worn to tatters and yet she would be wearing new shoes; a toilet more ludicrous than one uniformly shabby and worn out.

(3) Lit., 'stands'.

(4) Though clothes may conveniently last for the same period.

(5) Provincial zuz (Rashi). A provincial, or country zuz was equal in value to an eighth of the town, Or Tyrian zuz.

(6) Lit., 'since it was taught'.

(7) I.e., of the Tyrian standard (ef. p. 395, n. 14).

(8) I.e., if the woman did not consume all her allowance of food prescribed in our Mishnah.

(9) During her clean and unclean periods.

(10) Whose allowance for clothes is made by her deceased husband's heirs.

(11) Lit., 'there'.

(12) Lit., 'in his presence'.

(13) Lit., 'here'.

(14) R. Nahman.

(15) R. Ashi.

(16) Cf. Bah. a.l.

(17) לישנא מעליא , lit., ‘a perfect or appropriate expression’. MS.M.adds, נקט , ‘he took up (used)’.
(18) The adulterous woman.
(19) Prov. XXX, 20.
(20) R. Nahman.
(21) Since one has to eat in the day time also.
(22) R. Ashi.
(23) Shab. 86a, Nid. 17a.
(24) V. Ibid.
(25) The Exlarch.
(26) Lit., ‘that they (sc. the Rabbis) said’.
(27) Lit., ‘the small of the small’.
(28) Must he maintain them.
(29) יוצא , i.e., he does not require one specially prepared for himself (v. Golds.). Rashi takes יוצא in the literal sense, ‘he goes out’. i.e., should his father place an ‘erub in one direction and his mother to the opposite direction he would be allowed to move only in the direction his mother had chosen. In any case it follows that a child of the age of six is entirely attached to and dependent upon his mother and, consequently, just as a man must provide for his wife so must he provide for the child who is entirely dependent upon her.
(30) V. Glos.
(31) That a father is at all liable to maintain his young children,
(32) For the increase of the maintenance.
(33) The child.
(34) During lactation.
(35) The conclusion, therefore, must be that she was not ailing.
(36) By the use of the expression. NURSING, and not ‘ailing’.
(37) As this is quite possible no positive proof is available that it is a father's legal duty to maintain his young children.
(38) For the Increase of the maintenance.
(39) So Bah. Cur. edd. omit.
(40) Which she inherited from a relative (Rashi's first interpretation supported by R. Tam., Tosaf. s.v. וירושתה a.l.).
(41) The capital, however, remains hers.
(42) I.e., if the indignity was imposed in the absence of onlookers or the blemish inflicted upon a concealed part of her body.
(43) Her husband.
(44) I.e., if people witnessed the indignity or if the blemish was inflicted on a part of the body that is exposed.
(45) Since he not only shares her indignity and degradation but, in addition, must also put up with a woman who has become disfigured. V. Rashi.
(46) As is the case with all property that comes into a wife's possession after her marriage. The capital remains hers and after his death or on divorce she recovers also the right of usufruct.
(47) The author of our Mishnah.
(48) V. supra 46b, notes, from which it follows that a husband is entitled to all his wife's possessions enumerated in our Mishnah. Why then were the same rulings repeated here?
(49) The author of our Mishnah.
(50) Our Mishnah.
(51) And could not have been inferred from the statement quoted.
(52) Raba.
(53) Of a woman's work above the amount required for her maintenance.

Talmud - Mas. Kethuboth 66a

which is her handiwork[1] R. Akiba ruled [that it belongs] to herself, how much more so her find? For we learned: [If a woman said to her husband,] ‘Konam, if I do aught for your mouth’, he need not invalidate her vow;[2] R. Akiba, however, said: He must invalidate it, since she might do more work than is due to him![3] — Reverse then: A wife's find belongs to her husband, but R. Akiba ruled [that

it belonged] to herself. But surely, when Rabin came[4] he stated in the name of R. Johanan: In respect of a surplus[5] obtained through no undue exertion all[6] agree that [it belongs to the] husband, and they only differ in respect of a surplus[5] obtained through undue exertion; the first Tanna being of the opinion [that even this belongs] to her husband while R. Akiba maintains [that it belongs] to herself![7] — R. Papa replied: A find is like a surplus gained through undue exertion,[8] [concerning which there is] a difference of opinion between R. Akiba and the Rabbis.

R. Papa raised the question: What is the law where she performed for him two [kinds of work] simultaneously?[9] Rabina raised the question: What is the ruling where she did three or four [kinds of work][10] simultaneously? — These must remain undecided.[11]

[ANY COMPENSATION FOR] INDIGNITY OR BLEMISH [THAT MAY HAVE BEEN INFLICTED UPON] HER. Raba son of R. Hanan demurred:[12] Now then,[13] if a man insulted his fellow's mare would he also have to pay him [compensation for the] indignity? But is a horse then susceptible to insult?[14] — This, however, [is the objection:] If a man spat on his fellow's garment would he[15] also have to pay him [compensation for this] indignity? And should you say that [the ruling] is really so,[16] surely [it can be retorted] we have learned: If a man spat so that the spittle fell upon another person, or uncovered the head of a woman, or removed a cloak from a person he must pay four hundred zuz;[17] and R. Papa explained: This has been taught [to apply] only [where it touched] him[18] but if it touched his garment only [the offender] is exempt![19] — [An insult] to his garment involves no indignity to him, [but an insult to] his wife does involve an indignity to him.[20]

Said Rabina to R. Ashi: Now then,[21] If a man insulted a poor man of a good family where all the members of the family are involved in the indignity, must he also pay [compensation for] indignity to all the members of the family?[22] — The other replied: There[23] it is not their own persons [that are insulted]. Here, however, one's wife is [like] one's own body.

MISHNAH. IF A MAN UNDERTOOK TO GIVE A FIXED SUM OF MONEY TO HIS SON-IN-LAW AND HIS SON-IN-LAW DIED,[24] HE[25] MAY, THE SAGES RULED, SAY[26] 'I WAS WILLING TO GIVE [THE MENTIONED SUM] TO YOUR BROTHER BUT I AM UNWILLING TO GIVE IT TO YOU'.[27]

IF A WOMAN UNDERTOOK TO BRING HER HUSBAND[28] ONE THOUSAND DENARII HE MUST ASSIGN TO HER[29] A CORRESPONDING SUM OF FIFTEEN MANEH.[30] AS A CORRESPONDING SUM FOR APPRAISED GOODS,[31] HOWEVER, HE ASSIGNS[29] ONE FIFTH LESS.[32] [IF A HUSBAND IS REQUESTED TO ENTER IN HIS WIFE'S KETHUBAH:] 'GOODS ASSESSED AT ONE MANEH', AND THESE ARE IN FACT WORTH A MANEH,[33] HE CAN HAVE [A CLAIM FOR] ONE MANEH ONLY.[34] [OTHERWISE,[35] IF HE IS REQUESTED TO ENTER IN THE KETHUBAH:] 'GOODS ASSESSED AT A MANEH', HIS WIFE MUST GIVE HIM [GOODS OF THE ASSESSED VALUE[35] OF] THIRTY-ONE SELA'S AND A DENAR,[36] AND IF 'AT FOUR HUNDRED [ZUZ]', SHE MUST GIVE [HIM GOODS VALUED[35] AT] FIVE HUNDRED [ZUZ.][37] WHATEVER

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(1) And should belong to her husband. A husband is entitled to his wife's handiwork (v. our Mishnah) in, return for the maintenance he provides for her (v. supra 58b).

(2) Since a wife's work, and even its surplus (v. supra note 6), belongs to her husband, (v. supra note 7) she has no right to dispose of it without his consent. Her vow, therefore, is null and void and no invalidation is required.

(3) And of this surplus being her own property, she may well dispose. (For further notes v. supra 59a). How then, Raba argued, could the opinion be entertained that, according to R. Akiba, a wife's find (to which she has a greater claim than to the surplus mentioned) should belong to her husband?

(4) From Palestine to Babylon.

(5) V. supra note 6.

(6) Lit., ‘all the world’, sc. R. Akiba and the Rabbis.
(7) A find should naturally be regarded as a ‘surplus obtained through no undue exertion’, about which there is no difference of opinion. How then could it be said that the find of a wife is a point in dispute?
(8) Most finds are not easily obtained, and before one finds anything valuable among the deposits of the sea, for instance, many hours and days might have to he spent.
(9) Acting as watchman, for instance, and spinning at the same time.
(10) While doing the former (v. supra n. 2) she was also teaching, for instance. a lesson and hatching eggs. Are such performances regarded as ordinary. or undue exertion?
(11) Teku, v. Glos.
(12) Against R. Judah b. Bathyra (v. our Mishnah).
(13) If a man is to receive compensation for an indignity or injury which he himself has not sustained.
(14) Surely not Raba's objection does not, consequently, arise.
(15) Cf. supra n. 6
(16) That he must pay compensation.
(17) Cf. B.K. 90a.
(18) The body of the offended party.
(19) Which proves conclusively that for such an offence, since it was not committed on one's person, no compensation is paid. Why then should a husband receive compensation for his wife's sufferings which he himself has not experienced?
(20) Read לֵיהּ (MS.M.). Cur. edd., read לָהּ , and the rendering (rather unsatisfactory) would be as follows: His garment feels no shame but his wife feels the indignity.
(21) If indirect insult also entitles one to compensation.
(22) certainly not. Why then should the husband receive compensation for indignity to his wife?
(23) The case of indirect insult to the family.
(24) Childless; so that his widow should now be married to, or perform halizah (v. Glos.) with his surviving brother (v. Deut. XXV, 5ff) who, in the case of his marriage with the widow, is entitled to the deceased brother's estate (v. Yeb. 40a).
(25) The father-in-law.
(26) To the surviving brother who by virtue of his right to the estate of the deceased now claims also the slim his father-in-law had promised him.
(27) And the brother must, nevertheless, either submit to halizah from the widow or marry her.
(28) On marriage.
(29) As her kethubah (v. Glos.)
(30) V. Glos. He must, in return for the profits he will be able to derive from his trading with her money, add fifty per cent to the amount his wife brought him. A maneh == a hundred denarii (or zuz), and fifteen maneh == fifteen hundred denarii.
(31) I.e., if she brought to him, on marriage, goods instead of cash. This kind of dowry is designated Shum (appraisement).
(32) Than the appraised value. This refers to an appraisement made during the wedding festivities when the tendency is to over-assess whatever goods the bride brings to her husband. [According to the T.J. a fifth is allowed for the wear and tear of the goods, since her husband is held responsible for them].
(33) I.e., if the assessment was made prior to the wedding festivities. (Cf. p. 401, n. 12).
(34) He cannot claim twenty-five percent more than the maneh as in the case where the valuation was made during the wedding festivities (v. supra note 1).
(35) l.e., If the valuation was made during the wedding festivities (cf. supra p. 401, n. 12).
(36) V. Glos. A sela’== four denarii, thirty-one sela's and one denar = (31 X 4 + 1) 125 denarii. A maneh, or a hundred denarii, is a fifth less than one hundred and twenty-five denarii.
(37) [This passage is difficult, and the interpretations of it are many and varied, cf. e.g., Tosaf. s.v. שום . The explanation given follows Rashi. R. Hai Gaon, on the basis of the T.J. (v. supra p. 401, n. 12) explains: If she promised to bring him a dowry (shum) of property worth a maneh, which does not wear out, and is thus always actually worth a maneh, she need not add a fifth to it, v. Shittah Mekubbezeth; v. p. 406, in the case of a bar of gold].

Talmud - Mas. Kethuboth 66b

A BRIDEGROOM ASSIGNS [TO HIS WIFE IN HER KETHUBAH] HE ASSIGNS AT ONE FIFTH LESS [THAN THE APPRAISED VALUE].

GEMARA. Our Rabbis taught: There was no need to state that where the first[1] was a scholar and the second an 'am ha-'arez [the father-in-law] can say, 'I WAS WILLING TO GIVE [THE MENTIONED SUM] TO YOUR BROTHER BUT I AM UNWILLING TO GIVE IT TO YOU, but even where the first was 'am ha-'arez and the second a scholar he may also say so.

IF A WOMAN UNDERTOOK TO BRING TO HER HUSBAND ONE THOUSAND DENARII etc. Are not these[2] the same as the case in the first clause?[3] — He taught [first concerning a] large assessment[4] and then he taught also about a smaller assessment;[5] he taught about his assessment[6] and he also taught about her assessment.[7]

M I S H N A H. IF A WOMAN UNDERTOOK TO BRING TO HER HUSBAND[8] READY MONEY, EVERY SELA'[9] OF HERS COUNTS[10] AS SIX DENARII.[11] THE BRIDEGROOM MUST UNDERTAKE [TO GIVE HIS WIFE][12] TEN DENARII FOR HER [PERFUME][13] BASKET IN RESPECT OF EACH MANEH.[14] R. SIMEON B. GAMALIEL SAID: IN ALL MATTERS THE LOCAL USAGE SHALL BE FOLLOWED.

GEMARA. This,[15] surely, is exactly [the same ruling as] 'He must assign to her a corresponding sum of fifteen maneh'.[16] — He taught first about a major transaction[17] and then taught about a minor transaction.[18] And [both rulings were] necessary. For had that of the major transaction only been taught it might have been assumed [that it applied to this only] because the profit [it brings in] is large but not to a minor transaction the profit from which is small; [hence it was] necessary [to state the latter]. And had we been informed of that of the minor transaction only it might have been said [to apply to this only] because the expenses and responsibility[19] are small but not to a large transaction where the expenses and responsibility are great; [hence it was] necessary [to state the former].

THE BRIDEGROOM MUST UNDERTAKE [TO GIVE HIS WIFE] TEN DENARII FOR HER BASKET. What is meant by BASKET?

r. Ashi replied: The perfume basket. R. Ashi further stated: This ruling applies to Jerusalem[20] only.

R. Ashi enquired: [Is the prescribed perfume allowance[21] made] in respect of each maneh valued or each maneh for which [obligation has been] accepted?[22] [And even][23] if you could find [some reason] for stating: ['In respect of each] maneh for which [obligation has been] accepted'[22] [the question arises: Is the allowance to be made only on] the first day or every day? Should you find [some ground] for deciding: Every day, [the question still remains whether this applies only to the] first week or to every week. Should you find [some authority] for stating: Every week, [it may be asked whether this applies only to the] first month or to every month — And should you find [some argument] for saying: Every month, [It may still be questioned whether this is applicable only to the] first year or to every year. — All this remains undecided.[24]

Rab Judah related in the name of Rab: It once happened that the daughter of Nakdimon b. Gorion[25] was granted by the Sages[26] an allowance of four hundred gold coins in respect of her perfume basket for that particular day, and she[27] said to them, 'May you grant such allowances for your own daughters!' and they answered after her: Amen.[28] Our Rabbis taught: It once happened that R. Johanan b. Zakkai left Jerusalem riding upon an ass, while his disciples followed him, and he saw a girl picking barley grains in the dung of Arab cattle. As soon as she saw him she wrapped

herself with her hair and stood before him. ‘Master’, she said to him, ‘feed me’. ‘My daughter’, he asked her, ‘who are you?’ ‘I am’, she replied, ‘the daughter of Nakdimon b. Gorion’. ‘My daughter’, he said to her, ‘what has become[29] of the wealth of your father's house?’ ‘Master’, she answered him, ‘is there not a proverb current in Jerusalem: "The salt[30] of money is diminution?"’[31] (Others read: Benevolence).[32] ‘And where [the Master asked] is the wealth of your father-in-law's house?’ ‘The one’, she replied, ‘came and destroyed the other’.[33] ‘Do you remember, Master’, she said to him, ‘when you signed my kethubah?’ ‘I remember’, he said to his disciples, ‘that when I signed the kethubah of this [unfortunate woman], I read therein "A million gold denarii from her father's house" besides [the amount] from her father-in-law's house’.[34] Thereupon R. Johanan b. Zakkai wept and said: ‘How happy are Israel;[35] when they do the will of the Omnipresent no nation nor any language-speaking group has any power over them; but when they do not do the will of the Omnipresent he delivers them into the hands of a low people, and not only in the hands of a low people but into the power of the beasts of a low people’.

Did not Nakdimon b. Gorion, however, practice charity? Surely it was taught: It was said of Nakdimon b. Gorion that, when he walked from his house to the house of study, woollen clothes were

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(1) Brother who died.

(2) The latter portions of our Mishnah, which contain various instances of deductions of a fifth. (So Rashi. For another interpretation v. Tosaf. s.v. תנא).

(3) AS A CORRESPONDING SUM . . . HE ASSIGNS ONE FIFTH LESS, which includes all the other instances.

(4) ONE THOUSAND DENARII to which the ruling AS A CORRESPONDING SUM . . . HE ASSIGNS ONE FIFTH LESS refers.

(5) GOODS ASSESSED AT A MANEH... THIRTY-ONE SELA'S AND A DENAR. Both cases were necessary, since some might assume that with a larger sum over-estimation is more likely while others might assume that over-estimation is more likely to take place in the case of a smaller sum.

(6) WHATEVER A BRIDEGROOM ASSIGNS . . . ONE FIFTH LESS, referring to a valuation made by him, of goods she had already brought to him before the kethubah had been written.

(7) IF AT FOUR HUNDRED [ZUZ] SHE MUST GIVE etc., the last three words implying that the kethubah had already been written and SHE MUST GIVE the required amount of goods which is naturally valued by her (or her relations) to correspond after due deduction with the amount entered in the kethubah.

(8) On marriage.

(9) Which is worth four denarii.

(10) In respect of the corresponding amount to be entered in her kethubah.

(11) I.e. , fifty percent is added to it as in the case of ready money mentioned in the previous Mishnah. The difference between the two cases will be explained in the Gemara infra.

(12) Whether daily, weekly or more rarely has not been stated.

(13) According to the explanation of the Gemara.

(14) Which she brings on marriage.

(15) The ruling in the first clause of our Mishnah.

(16) V. previous Mishnah. In that case he adds fifty percent, and so he does in this case also. Why then should the same ruling be recorded twice?

(17) A thousand denarii in the previous Mishnah, supra 66a.

(18) EVERY SELA’ etc. in the Mishnah of ours.

(19) זיונא (v. Rashi). Jast., ‘management, expenses and risks of business’: עיסקא זוטא דזוטר זיונא , ‘a small capital the management of which is easy’.

(20) Where the women here in the habit of indulging in the use of perfumes.

(21) Ten denarii in respect of each maneh (v. our Mishnah).

(22) by the husband in the kethubah. The latter (v. previous Mishnah) amount to one fifth less than the valuation.

(23) V. Tosaf. s.v. ואם .

(24) Teku, v Glos.

(25) Cf. supra 65a (p. 392, n. 6).
(26) To whom, when her husband died, she applied for an order for an allowance out of her husband's estate.
(27) In her discontent with the amount.
(28) V. supra p. 392, n. 10 and text.
(29) Lit., 'where did it go'.
(30) I.e., the preservative, the safeguard.
(31) חסר , i.e. , spending it in the exercise of charitable and benevolent deeds. As the members of her family were not charitable they lost their money.
(32) חסד (v. supra n. 3) interchange of ד with ר.
(33) The two were mixed up and when the one was lost the other disappeared with it.
(34) The addition made to her kethubah by the bridegroom.
(35) Read with MS.M., אשריהם. Cur. edd., אשריכם , 'happy are you'.

Talmud - Mas. Kethuboth 67a

spread beneath his feet and the poor followed behind him and rolled them up![1] — If you wish I might reply: He did it for his own glorification —[2] And if you prefer I might reply: He did not act as he should have done,[3] as people say, 'In accordance with the camel is the burden'.[4]

It was taught: R. Eleazar the son of R. Zadok said, 'May I [not] behold the consolation [of Zion] if I have not seen her[5] picking barley grains among the horses' hoofs at Acco. [On seeing her plight] I applied to her this Scriptural text: If thou know not, O thou fairest among women, go thy way forth by the footsteps of the flock and feed thy kids;[6] read not thy kids[7] but thy 'bodies'.[8]

R. Shaman b. Abba stated in the name of R. Johanan: If a wife brought to her husband[9] [a bar of] gold, it is to be assessed and [entered in her kethubah] according to its actual value.[10]

An objection was raised: '[Broken pieces of] gold are like vessels'.[11] Does not this imply[12] 'like silver vessels' which wear out?[13] — No, 'like gold vessels' which do not wear out. If so, [the expression] should have been 'like vessels [made] thereof'! And, furthermore, it was taught: [A bar of] gold is like vessels; gold denarii are like ready money.[14] R. Simeon b. Gamaliel said: Where the usage is not to change them[15] they are valued and are [to be entered in the kethubah] at the rate of their actual value.[16] Now, to what is R. Simeon b. Gamaliel referring? If it be suggested [that he refers] to the final clause,[17] the inference [it may be pointed out would be] that the first Tanna maintains his opinion[18] even when the usage is not to change them, but, surely, [it may be objected] they can not be used as currency![19] It must consequently be assumed[20] [that he[21] referred] to the first clause and that it is this that was meant: [A bar of] gold is like vessels; and what [is meant by] vessels? silver vessels;[22] and R. Simeon b. Gamaliel said: It is like gold denarii where the usage is not to change them![23] — No;[24] he[21] may still refer to the final clause but [it is a case where] with difficulty they can be used as currency; and the principles on which they differ is this: One Master[25] holds the view that since they can be used as currency we allow her the increase[26] and the other Master[21] is of the opinion that since they can be used as currency only with difficulty, she is not to have the increase.[27]

If you prefer I might reply: All the statement[28] is that of R. Simeon b. Gamaliel, but a clause therein is missing, and the proper reading is as follows: [A bar of] gold is like vessels,[29] gold denarii are like ready money. This is the case only where it is the usage to change them,[30] but where it is the usage not to change them[31] they are to be valued and entered in the kethubah at the rate of their actual value; so R. Simeon b. Gamaliel for R. Simeon b. Gamaliel holds the view that where it is the usage not to change them they are to be valued and [entered in the kethubah] at the rate of their actual value. But [the difficulty] nevertheless [remains that the expression] should have been, 'like vessels [made] thereof'! — This is indeed a difficulty. And if you prefer I might reply: We are here[28]

dealing with a case of broken pieces of gold.[32] R. Ashi said: [We deal here[28] with] gold leaf.[33] R. Jannai stated: The spices of Antioch[34] are[35] like ready money.[36] R. Samuel b. Nahmani stated in the name of R. Johanan:[37] A woman[38] is entitled to seize Arabian camels in settlement of her kethubah.[39]

R. Papi stated: A woman[38] may seize clothes[40] manufactured at Be Mikse[41] for her kethubah.[42]

R. Papi further stated: A woman[38] may seize sacks made at Rodya[43] and the ropes of Kamhunya[44] for her kethubah.

Raba stated: At first I said: A woman[38] is entitled to seize money bags[45] of Mahuza[46] for her kethubah.[42] What was [my] reason? Because [women] relied upon them.[42] When I observed, however, that they[47] took them and went out with them into the market[48] and as soon as a plot of land came their way they purchased it with this money I formed the opinion that they rely[49] only upon land.[50] MISHNAH. IF A MAN GAVE HIS DAUGHTER IN MARRIAGE WITHOUT SPECIFYING ANY CONDITIONS, HE MUST GIVE HER NOT LESS THAN FIFTY ZUZ. IF THE [BRIDEGROOM] AGREED TO TAKE HER IN NAKED HE[51] MAY NOT SAY, 'WHEN I HAVE TAKEN HER INTO MY HOUSE I SHALL CLOTHE HER WITH CLOTHES OF MY OWN', BUT HE MUST PROVIDE HER WITH CLOTHING WHILE SHE IS STILL IN HER FATHER'S HOUSE. SIMILARLY IF AN ORPHAN IS GIVEN IN MARRIAGE[52] SHE MUST BE GIVEN NOT LESS THAN FIFTY ZUZ. IF [CHARITY] FUNDS ARE AVAILABLE[53] SHE IS TO BE FITTED OUT IN ACCORDANCE WITH THE DIGNITY OF HER POSITION.

GEMARA. Abaye stated: By FIFTY ZUZ small coins[54] [were meant]. Whence is this statement inferred? — From the statement in the final clause: IF [CHARITY] FUNDS ARE AVAILABLE SHE IS FITTED OUT IN ACCORDANCE WITH THE DIGNITY OF HER POSITION [concerning which], when it was asked, 'What was meant by FUNDS'.[55] Rehaba explained: Charity funds.[56] Now if we should imagine that by FIFTY ZUZ the actual[57] [coins were meant], how much [it may be asked] ought we to give her even IF CHARITY FUNDS ARE AVAILABLE! Consequently it must be inferred that by FIFTY ZUZ small coins [were meant].

Our Rabbis taught: If an orphan boy and an orphan girl applied for maintenance,[58] the girl orphan is to be maintained first and the boy orphan afterwards,[59] because it is not unusual for a man to go begging[60] but it is unusual for a woman to do so.[61] If an orphan boy and an orphan girl

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(1) I.e., taking the stuff away with them.

(2) Such gifts are not regarded as proper charity.

(3) He did not give in accordance with his means.

(4) The richer and the greater the man the more is expected of him.

(5) The daughter of Nakdimon b. Gorion.

(6) Cant. I., 8.

(7) גדיותיך.

(8) גויותיך, involving the change of ו for ד.

(9) On marriage.

(10) No addition of fifty per cent (as in the case of ready money) and no subtraction of a fifth (as in the case of goods) are made

(11) כלים , the term is explained anon.

(12) Lit., 'what, not?'

(13) And consequently deteriorate in value. How then could R. johanan maintain that a bar of gold is to be entered in the kethubah for its full value without reducing the fifth prescribed for goods?

(14) Since they can be used as currency. An addition of fifty percent in their case must, therefore, be entered in the kethubah.

(15) In the ordinary course of trade, i.e., where they are not taken as currency.
(16) And no addition (as in the case of cash) is made. Tosef. Keth. VI.
(17) Gold denarii etc.
(18) That an addition of fifty percent is to be made (v.supra n. 12).
(19) Lit., 'do not go out'. Why then should they be treated as ready money?
(20) Lit., 'but not'.
(21) R. Simeon b. Gamaliel.
(22) And a reduction of a fifth is therefore to be made.
(23) Cf. supra p. 406, n. 13. Would then R. Johanan accept the opinion of R. Simeon b. Gamaliel against that of the anonymous first Tanna?
(24) R. Simeon b. Gamaliel does not refer to the first clause.
(25) The first Tanna.
(26) Of fifty percent, as in the case of regular currency.
(27) In the case of bar gold, however, it is generally agreed, as R. Johanan ruled, that it is to be entered into the kethubah at the rate of its actual value.
(28) The Baraitha cited.
(29) I.e., gold wares.
(30) Cf. supra p. 406, n. 13 mutatis mutandis.
(31) V. supra p. 406, n. 13.
(32) Which wear away in use. Such are indeed to be treated in the same way as silver ware (as has been suggested supra), their price being entered in the kethubah after a deduction of one fifth had been made. R. Johanan. however, who rules the entry of their actual value deals with the case of large bars which do not perceptibly wear away, and whose full value must consequently appear in the kethubah.
(33) ממלא var. מלא (v. Rashi). Tosaf., 'gold ore'; Golds., 'gold dust'. Cf. p. 407, n. 14 mutatis mutandis.
(34) Or Antiochene, the capital of Syria on the Orontes, founded by Seleucus Nicator. [Antioch was a trading centre for spices (v. Krauss, T.A., I, p. 690)].
(35) In respect of the amount to be entered in a kethubah.
(36) Fifty percent is to be added to the amount the wife brings in on marriage. These spices were so famous that they could always be sold and thus easily turned into cash.
(37) Var. lec., 'Johanan'. (MS. M. and Rosh).
(38) A widow who advances the claim for her kethubah against her deceased husband's estate (v. Tosaf. s.v. גמלים).
(39) Though these are movable objects, they are, owing to the ready sale they command, deemed to have been pledged for the kethubah. פרנא , 'settlement', 'endowment' (cf. Jast.). Rashi's interpretation, 'the profit of a third', is rejected by Tosaf. l.c. [Frankel MGWJ, 1861, p. 118 derives the term from the Gk. ** the outfit which the bride has to bring with her].
(40) V. Rashi; 'sheets' (Jast.).
(41) [A frontier town between Babylon and Arabia (Obermeyer, p. 334)].
(42) Cf. supra n. 6 mutatis mutandis.
(43) Not identified.
(44) [In the neighbourhood of Supra, op. cit. p. 296].
(45) I.e., the sums of money which they contain (Rashi).
(46) A famous commercial town (v. supra p. 319, n. 9).
(47) Windows or divorced women who seized them for their kethubah.
(48) So MS.M. Cur. edd., omit the last three words.
(49) As a guarantee for their kethubah.
(50) Hence they should not be allowed to seize Mahuza bags.
(51) Lit., 'the husband'.
(52) By the guardians of the poor.
(53) Lit., 'there is in the purse'.
(54) V. supra 65b.
(55) Lit., 'bag'.
(56) Lit., 'bag of charity'.

(57) I.e., the Tyrian zuz (v. supra l.c.).
(58) Lit., 'who came to be maintained', Out of the poor funds.
(59) If the funds permit.
(60) Lit., 'his way is to go about the doors'.
(61) Lit., 'to go about'.

Talmud - Mas. Kethuboth 67b

applied for a marriage grant[1] the girl orphan is to be enabled to marry first and the boy orphan is married afterwards, because the shame of a woman is greater than that of a man.[2] Our Rabbis taught: If an orphan applied for assistance to marry,[3] a house must be rented for him, a bed must be prepared for him and [he must also be supplied with] all [household] objects [required for] his use, and then he is given a wife in marriage, for it is said in Scriptures, Sufficient for his need in that which he wanteth:[4] 'sufficient for his need', refers to the house; 'in that which wanteth', refers to a bed and a table; 'he'[5] refers to a wife, for so it is said in Scripture, I will make him[5] a help meet unto him.[6]

Our Rabbis taught: 'Sufficient for his need' [implies] you are commanded to maintain him, but you are not commanded to make him rich; 'in that which he wanteth' [includes] even a horse to ride upon and a slave to run before him. It was related about Hillel the Elder that he bought[7] for a certain poor man who was of a good family a horse to ride upon and a slave to run before him. On one occasion he could not find a slave to run before him, so he himself ran before him for three miles.

Our Rabbis taught: It once happened that the people of Upper Galilee bought for a poor member of a good family of Sepphoris[8] a pound of meat every day.[9] 'A pound of meat'! What is the greatness in this? — R. Huna replied: [It was] a pound of fowl's meat.[10] And if you prefer I might say: [They purchased] ordinary meat for a pound[11] [of money].[12] R. Ashi replied: The place was[13] a small village[14] and everyday a beast had to be spoiled for his sake.[15]

A certain man once applied to[16] R. Nehemiah [for maintenance]. 'What do your meals consist of', [the Rabbi] asked him. 'Of fat meat and old wine', the other replied — 'Will you consent [the Rabbi asked him] to live[17] with me on lentils?' [The other consented,] lived with him on lentils and died. 'Alas', [the Rabbi] said, 'for this man whom Nehemiah has killed.' On the contrary, he should [have said] 'Alas for Nehemiah who killed this man'! — [The fact], however, [is that the man himself was to blame, for] he should not have cultivated his luxurious habits to such an extent.

A man once applied to[18] Raba [for maintenance]. 'What do your meals consist of?' he asked him. 'Of fat chicken and old wine', the other replied. 'Did you not consider', [the Rabbi] asked him, 'the burden of the community?' 'Do I', the other replied, 'eat of theirs? I eat [the food] of the All-Merciful; for we learned: The eyes of all wait for Thee, and Thou givest them their food in due season,[19] this, since it is not said, 'in their season' but 'in his[20] season', teaches that the Holy One, blessed be He, provides for every individual his food In accordance with his own habits'.[21] Meanwhile there arrived Raba's sister, who had not seen him for thirteen years, and brought him a fat chicken and old wine. 'What a remarkable incident!'[22] [Raba][23] exclaimed; [and then] he said to him, 'I apologize[24] to you, come and eat'.

Our Rabbis taught: If a man has no means and does not wish to be maintained [out of the poor funds] he should be granted [the sum he requires] as a loan and then it can be presented to him as a gift; so R. Meir. The Sages, however, said: It is given to him as a gift and then it is granted to him as a loan. ('As a gift'? He, surely, refuses to[25] take [gifts]! Raba replied: It is offered to him in the first instance[26] as a gift.)

If he has the means but does not want to maintain himself, [at his own expense],[27] he is given

[what he needs] as a gift, and then he is made to repay it. (If 'he is made to repay it' he would, surely, not take again! — R. Papa replied: [Repayment is claimed] after his death.) R. Simeon said: If he has the means and does not want to maintain himself [at his own expense], no one need feel any concern about him. If he has no means and does not wish to be maintained [out of the poor funds] he is told, 'Bring a pledge and you will receive [a loan]' in order to raise thereby his [drooping] spirit.[28]

Our Rabbis taught: To lend[29] refers to a man who has no means and is unwilling to receive his maintenance [from the poor funds] to whom [the allowance] must be given as a loan and then presented to him as a gift. Thou shalt lend him[30] refers to a man who has the means and does not wish to maintain himself [at his own expense] to whom [the allowance] is given as a gift and repayment is claimed from his [estate] after his death, so R. Judah. The Sages, however, said: If he has the means and does not wish to maintain himself [at his own expense] no one need feel any concern about him. To what, however, is the text Thou shalt lend him[31] to be applied? The Torah employs ordinary phraseology.[32]

Mar 'Ukba had a poor man in his neighbourhood into whose door-socket he used to throw four zuz every day. Once[33] [the poor man] thought: 'I will go and see who does me this kindness'. On that day [it happened] that Mar 'Ukba was late at[34] the house of study and his wife[35] was coming home with him. As soon as [the poor man] saw them moving the door he went out after them, but they fled from him and ran into a furnace from which the fire had just been swept. Mar 'Ukba's feet were burning and his wife said to him: Raise your feet and put them on mine. As he was upset,[36] she said to him, 'I am usually at home[37] and my benefactions are direct'.[38] And what [was the reason for] all that?[39] — Because Mar Zutra b. Tobiah said in the name of Rab (others state: R. Huna[40] b. Bizna said in the name of R. Simeon the Pious; and others again state: R. Johanan said in the name of R. Simeon b. Yohai): Better had a man thrown himself into a fiery furnace than publicly put his neighbour to shame. Whence do we derive this? From [the action of] Tamar; for it is written in Scripture, When she was brought forth,[41] [she sent to her father-in-law].[42]

Mar 'Ukba had a poor man in his neighbourhood to whom he regularly sent four hundred zuz on the Eve of every Day of Atonement. On one occasion[43] he sent them through his son who came back and said to him, 'He does not need [your help]'. 'What have you seen?' [his father] asked. 'I saw [the son replied] that they were spraying old wine before him'.[44] 'Is he so delicate?' [the father] said, and, doubling the amount, he sent it back to him.

When he[45] was about to die[46] he requested, 'Bring me my charity accounts'. Finding that seven thousand of Sijan[47] [gold] denarii were entered therein he exclaimed, 'The provisions are scanty and the road is long', and he forthwith[48] distributed half of his wealth. But how could he do such a thing?[49] Has not R. Elai stated: It was ordained at Usha that if a man wishes to spend liberally he should not spend more than a filth?[50] — This applies only during a man's lifetime, since he might thereby be impoverished[51] but after death[52] this does not matter.

R. Abba used to bind money in his scarf,[53] sling it on his back, and place himself at the disposal of the poor.[54] He cast his eye, however, sideways [as a precaution] against rogues.[55]

R. Hanina had a poor man to whom he regularly sent four zuz on the Eve of every Sabbath. One day he sent that sum through his wile who came back and told him [that the man was in] no need of it. 'What [R. Hanina asked her] did you see?' [She replied:] I heard that he was asked, 'On what will you dine;

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(1) Out of the charity funds. Lit., 'came to be married'.

(2) Tosef. Keth. VI.

(3) V. p. 409, n. 12.

(4) Deut. XV, 8.
(5) לו lit., 'unto him'.
(6) Gen. II, 18, referring to a wife. Tosef Keth. VI.
(7) Alfasi: he hired.
(8) A town on one of the Upper Galilean mountains. It was called Sepphoris צפורי (v. Meg. 6a) 'because it was perched on the top of a mountain like a bird', צפור . At one time it was the capital of Galilee and is identified (l.c.) with Kitron (Judges I, 30). V. Klein, S. מאמרים , 54ff
(9) Tosef. Pe'ah. IV.
(10) Which was very expensive.
(11) ליטרא , is both a weight, the Roman libra, and a measure of capacity.
(12) The meat was so expensive.
(13) Lit., 'there'.
(14) Where there are no buyers.
(15) All the meat that remained after his one pound had been taken off had to be thrown away for lack of buyers and consumers.
(16) Lit., 'came before'.
(17) שתגלגל (rt. גלל , Pilp.). lit., 'roll', i.e., 'to put up with the inconvenience'.
(18) Lit., 'came before'.
(19) Ps. CXLV,15. בעתו lit., 'in his season'.
(20) V. supra n. 3
(21) V. Rashi.
(22) מאי דקמא , lit., 'what is that before me?'
(23) So Rashi. Ar. reads, מאי דקאמא (== קא אמא , 'which I said') i.e., the applicant remarked, 'This is just what I have said'. (Cf. Jast.).
(24) Lit., 'I humble myself'. Rashi: 'I spoke too much'. The rt. ענה , עני , may bear either meaning.
(25) Lit., 'not'.
(26) Lit., 'to Open'.
(27) And thus leads a life of penury.
(28) Lit., 'that his mind shall be elated or cheered'. By this offer he is made to feel that he is not treated as a pauper and he consents, therefore, ultimately to take the sum as a loan without a pledge.
(29) העבט , E.V., surely, Deut. XV, 8.
(30) תעביטנו ibid.
(31) I.e., the repetition of the verb, in the Infinitive and Imperfect (v. supra nn. 2 and 3), from which R. Judah derived his ruling.
(32) Lit., 'spoke in the language of men', who are in the habit of repeating their words. Hence no inference may be drawn from the repetition in the text cited.
(33) Lit., 'one day'.
(34) So MS.M., בבי Cur. edd. לבי .
(35) Who, owing to the late hour, went to meet him.
(36) Lit., 'his mind weakened'. He feared that he was not providentially protected from the heat of the furnace because he was not as worthy of divine protection as his wife.
(37) So that the poor had easy access to her.
(38) Lit., 'near'. She gave them gifts in kind and they could forthwith derive benefit from them. He, however, was not approachable at all times and the alms he gave to the poor were not in kind but in money which had first to be spent before the poor could derive any benefit from it. His benefits, therefore, were indirect.
(39) Why did they make such an effort to escape from the attention of the poor man?
(40) Var Hana (v. B.M. 59a).
(41) To be burned (Gen. XXXVIII, 24).
(42) Ibid., 25. She chose to be burned rather than publicly put her father-in-law to shame. it was only through Judah's own confession (ibid. 26) after he received her private message (ibid 25) that she was saved.
(43) Lit., 'day'.
(44) קמיה MS.M. Cur. edd., 'to him'.

(45) Mar ‘Ukba’.
(46) Lit., ‘when his soul was (about to) come to its rest’.
(47) The name of a Persian town in the district of Shiraz, v. Fleischer to Levy's Worterbuch I, p. 560.
(48) Lit ,’he arose’.
(49) Distributing half his wealth.
(50) V. supra 50a.
(51) Lit., ‘go down from his wealth’.
(52) I.e , when one is on the point of dying as was the case with Mar ‘Ukba.
(53) סודרא ‘scarf’ or ‘turban’, a cloth placed over, or wound round the head, hanging down loosely upon, the arms and shoulders.
(54) Who undid the binding and shared the money among themselves.
(55) He would nevertheless spare the poor the feelings of shame.

Talmud - Mas. Kethuboth 68a

on the silver [coloured] cloths[1] or on the gold [coloured] ones?[2] ‘ ‘It is in view of such cases’ [R. Hanina] remarked, ‘that R. Eleazar said: Come let us be grateful to the rogues for were it not for then, we[3] would have been sinning every day, for it is said in Scripture, And he cry unto to the Lord against thee, and it be sill unto thee.[4] Furthermore, R.Hiyya b. Rab of Difti[5] taught: R. Joshua b. Korha said, Any one who shuts his eye against charity is like one who worships idols, for here[6] it is written, Beware that there be not a base[7] thought in thy heart etc. [and thine eye will be evil against thy poor brother][8] and there[9] it is written, Certain base[7] fellows are gone out,[10] as there[9] [the crime is that of] idolatry, so here also [the crime is like that of] idolatry’.[11]

Our Rabbis taught: If a man pretends to have a blind eye, a swollen belly or a shrunken leg,[12] he will not pass out from this world before actually coming into such a condition. If a man accepts charity and is not in need of it his end [will be that] he will not pass out of the world before he comes to such a condition.

We learned elsewhere: He[13] may not be compelled to sell his house or his articles of service’.[14] May he not indeed?[15] Was it not taught: If he was in the habit of using gold articles he shall now use copper ones?[16] — R. Zebid replied. This is no difficulty. The one[17] refers to the bed and table: the other to cups and dishes. What difference is there in the case of the cups and dishes that they are not [to be sold]? Obviously because he can say, ‘[The inferior quality] is repulsive to me’, [but then, in respect of] a bed and table also, he might say [the cheaper article] is unacceptable to me! — Raba the son of Rabbah replied: [This[17] refers] to a silver strigil.[18] R. Papa replied: There is no difficulty: one[19] [refers to a man] before he came under the obligation of repayment,[20] and the other refers to a man[21] after he had come under the obligation of repayment.[22] MISHNAH. IF AN ORPHAN WAS GIVEN IN MARRIAGE BY HER MOTHER OR HER BROTHERS [EVEN IF] WITH HER CONSENT[23] AND THEY ASSIGNED[24] TO HER A HUNDRED, OR FIFTY ZUZ,[25] SHE MAY, WHEN SHE ATTAINS HER MAJORITY,[26] RECOVER FROM THEM THE AMOUNT THAT WAS DUE TO HER.[27] R. JUDAH RULED: IF A MAN HAD GIVEN HIS FIRST DAUGHTER IN MARRIAGE, THE SECOND[28] MUST RECEIVE AS MUCH AS THE [FATHER] HAD GIVEN TO THE FIRST. THE SAGES, HOWEVER, SAID: SOMETIMES A MAN IS POOR AND BECOMES RICH OR RICH AND BECOMES POOR.[29] THE ESTATE SHOULD RATHER BE VALUED AND SHE[30] BE GIVEN [THE SHARE THAT IS HER DUE].

GEMARA. Samuel stated: In respect of the marriage outfit[31] the assessment[32] is to be determined by [the disposition of] the father.[33]

All objection was raised: ‘The daughters are to be maintained and provided for[34] out of the estate of their father. In what manner? It is not to be said, "Had her father been alive he would have given

her such and such a sum" but the estate is valued and she is given [her due share]'. Does not ['provided for' refer to] the marriage[35] outfit?[36] — R. Nahman b. Isaac replied: No; [it refers to] her own maintenance.[37] But, surely, it was stated: 'Are to be maintained and provided for'; does not one [of the expressions][38] refer to the marriage[39] outfit and the other to her own maintenance?[40] — No; the one as well as the other refers to her own maintenance,[40] and yet there is no real difficulty, for one of the expressions[38] refers[41] to food and drink and the other[41] to clothing and bedding.

We learned: THE SAGES, HOWEVER, SAID, SOMETIMES A MAN IS POOR AND BECOMES RICH OR RICH AND BECOMES POOR. THE ESTATE SHOULD RATHER BE VALUED AND SHE BE GIVEN [THE SHARE THAT IS HER DUE]. Now what is meant by POOR and RICH? If it be suggested that POOR means poor in material possessions, and RICH means rich in such possessions, the inference [should consequently be] that the first Tanna holds the opinion that even when a man was rich and became poor she is given as much as before; but, surely, [it may be objected] he has none [to give]. Must it not then [be concluded that] POOR means poor in mind[42] and RICH means rich in mind,[43] and yet it was stated, THE ESTATE SHOULD RATHER BE VALUED AND SHE BE GIVEN [THE SHARE THAT IS HER DUE]. from which it clearly follows that we are not guided by the assumed disposition [of her father], and this presents an objection against Samuel![44] He[45] holds the same view as R. Judah. For we learned, R. JUDAH RULED: IF A MAN HAD GIVEN HIS FIRST DAUGHTER IN MARRIAGE, THE SECOND SHOULD RECEIVE AS MUCH AS THE [FATHER] HAD GIVEN TO THE FIRST. [Why], then, [did he not] say, 'The halachah is in agreement with R. Judah'?[46] — If he had said, 'The halachah is in agreement with R. Judah', it might have been assumed [to apply] only [where her father had actually] given her[47] in marriage, since [in that case] he has revealed his disposition, but not [to a case where] he had not given her[47] in marriage,[48] hence he[45] taught us[49] that R. Judah's reason is that we are guided by our assumption [as to whit was her father's disposition], there being no difference whether he had already given her[50] in marriage or whether he had not given her in marriage; the only object he[51] had[52] in mentioning [the case where a father] gave her[50] in marriage was to let you know the extent of the ruling[53] of the Rabbis[54] [who maintain] that although he had already given her[50] in marriage and had thereby revealed his disposition, we are nevertheless not to be guided by the assumption [as to what may have been the father's disposition].

Said Raba to R. Hisda: In our discourse we stated[55] in your name, 'The halachah is in agreement with R. Judah. The other replied: May it be the will [of Providence] that you may report in your discourses all such beautiful sayings in my name. But could Raba, however, have made such a statement?[56] Surely, it was taught: Rabbi said, A daughter who is maintained by her brothers is to receive[57] a tenth of [her father's] estate;[58] and Raba stated that the law is in agreement with Rabbi![59] — This is no difficulty. The former[60] [is a case] where we have formed some opinion about him;[61] the latter[62] is one where we have not formed any opinion about him.[63] This explanation may also be supported by a process of reasoning. For R. Adda b. Ahaba stated: It once happened that Rabbi gave her[64] a twelfth of [her father's] estate. Are not the two statements contradictory?[65] Consequently[66] it must be inferred that the one[67] [refers to a father of whom] some opinion had been formed while the other[68] [refers to one of whom] we have formed no opinion. This is conclusive proof.

[To turn to] the main text.[69] Rabbi said, A daughter who is maintained by her brothers is to receive a tenth of [her father's] estate. They[70] said to Rabbi: According to your statement, if a man had ten daughters and one son the sons should receive no share at all on account of[71] the daughters? He replied: What I mean is this: The first[72] [daughter] receives a tenth of the estate, the second [receives a tenth] of what [the first] had left, and the third [gets a tenth] of what [the second] had left, and then they divide again [all that they had received] into equal shares.

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(1) I.e., white linen (Rashi).

(2) Silk cloths dyed. (Rashi a.l.; cf. also Rashi on Ezek. XVI, 16). טלי or טלי may be compared with GR.** ,

cushion', 'pillow' (v. Levy); 'will you recline at dinner', he was asked, 'on the linen, or silken pillows?' The noun is also rendered, 'table outfit', the expressions, 'silver' and gold' being taker, literally; 'Will you dine with the silver outfit (i.e., with the outfit used in connection with silver vessels) or with the gold outfit?' (Jast.).

(3) Who do not always respond to every appeal for charity.

(4) Deut. XV, 9.

(5) Dibtha, below the Tigris.

(6) In connection with the duty of assisting the poor.

(7) בליעל

(8) Deut. XV, 9.

(9) Concerning idolatry

(10) Deut. XIII, 14, the expression base, בליעל (v. supra n. 12), occuring in both cases.

(11) It is only thanks to the rogues who claim charity under false pretences that we have an excuse for not responding to every appeal.

(12) V. Rashi; 'a hump' (Jast.) . שוק may be rendered 'leg', 'foreleg' or 'shoulder'. The rt. קפה in Piel is to be taken according to Rashi's interpretation in the sense of 'binding', 'forcing', or 'outraging'. It is taken by Jast. as denom. of קפה 'to make high and arched shoulders', 'to cause or pretend to be humpbacked'.

(13) One who owns less than two hundred zuz and wishes to take a share in the poor man's gifts. The possessor of two hundred zuz is forbidden to participate in the poor man's gifts.

(14) Though the proceeds of such a sale would raise the man's capital above the two hundred zuz limit. Pe'ah VIII, 8.

(15) Lit., 'and not?'

(16) Which proves that a poor man is expected to sell his costlier goods before he is allowed to take alms. Why then was it stated here that he is not compelled to sell 'his artical of service'?

(17) The last mentioned Baraitha which orders the sale of 'articles of service'.

(18) There can be no hardship in using instead of one made of a cheaper metal.

(19) The Mishnah from Pe'ah, according to which one is not compelled to sell his articles of service.

(20) I.e., if he possessed less than two hundred zuz and applied for assistance before receiving any help under false pretences. As there is no claim against him he is not to be compelled to sell his articles of service.

(21) Who, being in possession of two hundred zuz, accepted alms under false pretences.

(22) I.e., after it had been discovered that did not belong to the poor classes and was ordered by the court to refund all sums he had received unlawfully. In such a case, if he is unable to meet the claim otherwise, he is compelled to sell his costly articles and to content himself with the use of cheaper ones.

(23) And much more so if without her consent.

(24) Lit., 'wrote'.

(25) As her share in the estate of her deceased father.

(26) Though she had accepted the amount during her minority V.supra note 1.

(27) VI., a tenth of the estate.

(28) Who marries after his death.

(29) The amount he gives to his first daughter is, therefore, no criterion for his second

(30) The second daughter.

(31) Of an orphan.

(32) I.e.,the amount to be given to the orphan on marriage out of her father's estate.

(33) She is to receive a bigger or a smaller amount in accordance with her fathers reputation for generosity or niggardliness.

(34) This is explained anon.

(35) Lit., ['the parnasah of her husband', parnasah being a technical term to denote the estate set aside for the dowry of the orphaned daughter. Frankel MGWJ 1861,p.119 connects it with the Gk. ** cf. supra p. 408. n. 6].

(36) A contradiction against the ruling of Samuel.

(37) Before marriage, while she is still with her brothers.

(38) 'To be (a) maintained and (b) provided for'.

(39) V. p. 416, n. 13.

(40) V. p. 416, n. 15.

(41) Lit., 'that'.

(42) Niggardly; having the mind or disposition of a poor man.
(43) Generous.
(44) Who stated that the amount is determined by what is known of the disposition of her father. How, it is asked, could Samuel differ from a Mishnah?
(45) Samuel.
(46) Which would have been a shorter statement and would have included the name of its author also.
(47) HIS FIRST DAUGHTER.
(48) Since his disposition had not beers revealed.
(49) By his specific ruling.
(50) HIS FIRST DAUGHTER.
(51) The compiler of our Mishnah.
(52) Lit., 'and that.'
(53) Lit., 'power'.
(54) The Sages
(55) Or: Shall we state etc. (cf Rashi, s v. דרשינן Bezah 28a)
(56) That the amount to be given to an orphan on marriage is determined, as R. Judah ruled, by the disposition of her father.
(57) On marriage.
(58) Ned. 39b.
(59) I.e., that the amount the daughter is to receives is a legally, prescribed proportion. How then could he have said that the halachah was in agreement with R. Judah (v supra note 7)?
(60) Lit., that', the statement that the halachah follows R. Judah (v. supra note 7)
(61) The orphan's father. Knowing his disposition it is possible to determine accordingly what amount his daughter shall be allowed on marriage.
(62) Lit., 'that', the law that the proportion she is to receive is always a tenth of the estate.
(63) If he was unknown to the court and no one is able to supply reliable information on the point.
(64) An orphan on marriage.
(65) According to the former statement Rabbi allowed only one tenth while according to the latter he allowed a twelfth.
(66) To reconcile the contrary statements.
(67) The case where a twelfth had been allowed.
(68) Cf. supra p. 418, n. 13.
(69) A citation from which has been discussed supra..
(70) The scholars at the college.
(71) Lit.,'in the place of'.
(72) It is at present assumed, 'the first to marry'.

Talmud - Mas. Kethuboth 68b

But did not each one receive what was hers?[1] — It is this that was meant: If all of theme wish[2] to marry at the same time they are to receive equal shares.[3] This provides support for [the opinion] of R. Mattena; for R. Mattena has said: If all of them wish to marry at the same time they are to receive one tenth. 'One tenth'! Can you imagine [such a ruling]?[4] The meaning must consequently be that[5] they are to receive their tenths at the same time.[6] Our Rabbis taught: The daughters,[7] whether they had attained their adolescence before they married or whether they married before they had attained their adolescence, lose their right to maintenance[8] but not to their allowance for marriage outfit; so Rabbi. R. Simeon b. Eleazar said: If they also attained their adolescence, they lose the right to their marriage outfit.[9] How should they proceed?[10] — They hire for themselves husbands[11] and exact their outfit allowance. R. Nahman stated: Huna told me, The law is in agreement with Rabbi.

Raba raised an objection against R. Nahman: IF AN ORPHAN WAS GIVEN IN MARRIAGE BY HER MOTHER OR HER BROTHERS [EVEN IF] WITH HER CONSENT, AND THEY ASSIGNED TO HER A HUNDRED, OR FIFTY ZUZ, SHE MAY, WHEN SHE ATTAINS HER

MAJORITY, RECOVER FROM THEM THE AMOUNT THAT WAS DUE TO HER. The reason then[12] is because she was a minor;[13] had she, however, been older[14] her right[15] would have been surrendered![16] — This is no difficulty; the one[17] , is a case where she protested;[18] the other,[19] where she did not protest.[20] This expla nation may also be supported by a process of reasoning. For otherwise[21] there would arise a contradiction between two statements of Rabbi.[22] For it was taught, 'Rabbi said, A daughter who is maintained by her brothers is to receive a tenth of [her father's] estate', [which implies] only when[23] she is maintained[24] but not[25] when she is not maintained.[26] Must it not in consequence be concluded that one [statement deals with one] who protested and the other [with one] who did not protest. This proves it.

Rabina said to Raba: R. Adda b. Ahaba told us in your name, If she attained her adolescence she need not lodge a protest;[27] if she married she need not lodge a protest;[27] but if she attained her adolescence and was also married it is necessary for her to lodge a protest.[28] But could Raba have made such a statement? Surely, Raba pointed out an objection against R. Nahman [from the Mishnah of] AN ORPHAN, and the other replied that 'the one is a case where she protested, the other where she did not protest'![29] — This is no difficulty. One[30] is a case where she is maintained[31] by them;[32] the other,[33] where she is not maintained by them.[34]

R. Huna stated in the name of Rabbi: [The right[35] to] marriage outfit is not the same as that[36] conferred by a condition in a kethubah.[37] What is meant by 'is not the same as that conferred by a condition in a kethubah'? Should it be suggested[38] that whereas for the allowance for a marriage outfit even property pledged[39] may be seized,[40] [for the fulfilment of an obligation[36] under] the terms of a kethubah no pledged property[41] may be seized,[42] what [new point, it may be objected,] does this teach us? Surely it is a daily occurrence [that pledged property] is seized for marriage outfit but not for maintenance! [Should it], however, [be suggested that] whereas for a marriage outfit movable objects also may be seized, [for the fulfilment of an obligation under] a condition in a kethubah only real estate. but not movable objects, may be seized, [it may be objected that,] according to Rabbi, for the one as well as the other[43] [movable objects] may be seized. For it was taught: Both landed property and movable property may be seized for the maintenance of a wile or daughters;[44] so Rabbi! What, then, is meant by '[The right to] marriage outfit is not the same as that conferred by a condition in a kethubah'? — As it was taught: If a man[45] said that his daughters must not be maintained out of his estate he is not to be obeyed.[46] [If, however, he said, that] his daughters shall not receive their marriage outfit out of his estate he is obeyed, because [the right to] marriage outfit is not the same as that conferred by a condition in a kethubah[47] . [

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(1) Of course she did. Each one is entitled to a tenth of the value of the estate as it stood at the time she married. Why then should there be a new division in equal shares, which would deprive those who married earlier from what was their due?

(2) Lit., 'came'.

(3) After each in turn had received a tenth of the value of the estate as it stood at the moment her share was allowed to her. Since subsequently they will all pool their shares it does not matter which of them is given her share first. the only object of the allotment of the successive shares is to determine what part of the estate is to be left for the son. If there were three daughters for instance, the division would proceed as follows: One daughter would be allowed one tenth of the estate; the other 1/10 X 9/10; and the third 1/10 X 81/100. The son would, therefore, receive 1- (1/10-9/100 — 81/1000)= 729/1000, and each daughter would ultimately get a 271/3 X 1000 of the entire estate.

(4) Certainly not. If every daughter is entitled to a tenth of the estate, several daughters, surely, should receive more than one tenth.

(5) Lit., 'but'.

(6) The reading being עישור כאחד instead of עישור אחד (one tenth'). Cf. supra n. 9.

(7) Of a man who left an estate and is survived by sons.

(8) Because the terms of a kethubah provide for the maintenance of daughters only until adolescence (v. Glos. s.v. bogereth) or marriage, whichever is the earlier.

(9) The tenth of the estate to which, as stated supra, a daughter is entitled. In his opinion it is only one who is a minor, nacarah (v. Glos.), that receives such tenth, once she has reached her adolescence, or married as a nacarah, without claiming at the time her full marriage outfit, she loses her claim to it.
(10) If they had not been married early and are desirous of securing their tenth before losing it through age.
(11) [They hire men to declare that they would marry them (Strashun)].
(12) why she may recover the amount prescribed for her marriage outfit,
(13) At the time she married.
(14) Even If she was still a nacarah at the time of marriage.
(15) To her full claim.
(16) And she would not be entitled to the balance of her marriage outfit. This anonymous Mishnah then is in agreement with the view of R. Simeon b. Eleazar. Now, since the halachah is usually in agreement with the anonymous Mishnah how could R. Nahman maintain that the halachah is in agreement with Rabbi?
(17) Rabbi's statement that she does not lose her marriage outfit.
(18) When less than her due was assigned to her.
(19) Our Mishnah.
(20) Hence it is only a minor, who cannot surrender her rights, that may recover the balance when she becomes of age. One, however, who has passed her minority (cf. supra note 8) may well surrender her right. Her silence is regarded as consent.
(21) Lit., 'for if so', that Rabbi maintains that in all cases a daughter on attaining adolescence does not lose the right to her marriage outfit,
(22) Lit., 'that of Rabbi against that of Rabbi'.
(23) Lit., 'yes'.
(24) Is she to receive a tenth of the whole.
(25) She is to receive no such allowance.
(26) I.e., after she had attained her adolescence, How then could Rabbi also have stated that a daughter always (v. supra n. 1) receives her outfit?
(27) Against the full, or partial loss of her marriage outfit allowance. Even without her protest she retains he right to the tenth of the estate that is due to her,
(28) Otherwise she loses her claim to the marriage outfit.
(29) Supra. Cf. supra p. 420, notes 11 to 14. From which it follows that once she passes her minority, though she did not attain her adolescence, a daughter loses her full claim to an outfit allowance if she did not lodge her protest on marriage. How then could it be said that according to Raba, 'if she married (provided it was before attaining her adolescence) she need not lodge a protest'?
(30) Raba's ruling that 'if she married she need not lodge a protest'.
(31) After her marriage.
(32) Her brothers. In such a case it is to be presumed that her silence was not due to her consent to lose her outfit but to the belief that, as they continued to maintain her, they would also give her in due course the full amount of her outfit allowance.
(33) The inference from our Mishnah according to which one who has passed out of her minority surrenders on marriage her right to the balance of her outfit.
(34) Hence she loses the right to her outfit unless she lodged her protest.
(35) Of a daughter.
(36) Of a daughter's maintenance.
(37) Cf. supra 52b.
(38) As a point of difference between the two rights.
(39) By the brothers (not by the father).
(40) Since it represents a fixed sum (one tenth of the estate) it had the validity of a debt incumbent upon the estate.
(41) Even if it was only the brothers who pledged it (v. Git. 48b)
(42) As the amount is not a fixed quantity it has not the same force as a debt.
(43) For maintenance as well as for marriage outfit.
(44) And much more so for marriage outfit which has the validity of a debt of a debt (cf. supra nn. 6 and 8).
(45) On his death bed.

(46) Since even a dying man, whose verbal instructions have the validity of a legal contract, cannot annul the undertaking to maintain his daughters which he entered in the kethubah.
(47) While the latter is obligatory upon the deceased and upon his heirs, the firmer has to be provided by the heirs only where the deceased did not give specific instructions to the contrary.

Talmud - Mas. Kethuboth 69a

Rah inserted[1] [the following enquiry] between the lines[2] [of a communication[3] he sent] to Rabbi: What [is the law] where the brothers have encumbered [the estate they inherited from their father]?[4] [When the enquiry reached him] R. Hiyya [who] was sitting before him asked, '[does he mean:] They sold it or pledged it?' — 'What difference call this make?'[5] the other retorted. Whether they sold it [he continued] or pledged it, [the estate] may he seized [to meet the obligation] of marriage outfit but may not be seized for that of maintenance

As to Rab, however, if his enquiry [related to brothers] who sold [the estate], he should have written to him, 'sold'; and if his enquiry [related to brothers] who pledged it, he should have written to him, 'pledged'! — Rab wished to ascertain the law concerning both cases and he thought: If I write to him 'sold' [I shall get] satisfaction If he were to send [in reply] that 'the estate may be seized', since the same ruling would apply with even greater force to the case where they pledged [the estate]. If, however, he were to send me in reply that 'it may not be seized',the question [in respect of brothers] who pledged [the estate] would still remain. If, [again]. I were to write to him, 'pledged' then if he sent in reply that 'the estate may not be seized' this ruling would apply with even greater force [to the case where] they sold it. Should he, however, send a reply that 'it may be seized', the question [in respect of brothers] who sold It would still remain. I will, therefore, write to him , 'encumbered' which might mean the one[6] as well as the other[7]

R. Johanan, however, ruled: [An estate][8] may not be seized either [to meet the obligation of the] one or of the other.[9]

The question was raised: Did not R. Johanan hear the ruling of Rabbi, but if he had heard it he would have accepted it? Or is it possible that he heard it and did not accept it? — Come and hear what has been stated: If a man died and left two daughters and one son, and the first forestalled [the others] and took a tenth of the estate while the other did not manage to collect [her share] before the son died[10] , R. Johanan ruled: The second[11] has surrendered her right.[12] Said R. Hanina: Something that is even more striking than this has been said, [viz.. that an estate] may be seized[13] [to meet the obligation] of a marriage outfit though it may not be seized for that of maintenance, and you nevertheless state, 'The second has surrendered her right'?[14] Now, if that were the case,[15] he[16] should have asked him 'who said it?'[17]

But is it not possible that he in fact did not hear it [at first][18] and when he [finally] heard he accepted it, but there[19] [the circumstances are] different, since the house [of the second daughter] has now ample provisions?[20] Said R.Yemar to R. Ashi: Now then,[21] if she[22] found anything at all, so that her house is amply provided for, would we in such a case also not give her a tenth of the estate? — The other replied: I said, A house amply provided for from the same estate.[23]

Amemar ruled: A daughter[24] has [the legal status of] an heiress. Said R. Ashi to Amemar: Should it be desired to settle her claim[25] by means of a money payment such a settlement cannot be effected for the same reason?[26] — 'Yes', the other replied. 'Should it be desired [the first asked] to settle her claim by [giving her] one plot of land, such a settlement cannot be effected for the same reason?'[26] — 'Yes', the other replied .[27] R. Ashi, however, ruled: A daughter[28] has [the legal status of] a creditor.[29] And Amemar also withdrew his former opinion. For R. Minyomi son of R. Nihumi stated: I was once standing before Amemar and a woman who claimed a tenth of [her deceased father's]

estate appeared before him, and I observed [that it was his] opinion that if [her brothers] desired to settle with her by means of a money payment he would have agreed to the settlement.[30] For he heard the brothers say to her, 'If we had the money we would settle with you[31] by a cash payment', and he remained silent and told them nothing to the contrary.

Now that it has been said that [a daughter in her claim to her tenth][28] has the legal status of a creditor [the question arises whether she is the creditor] of the father or of the brothers. In what respect can this matter? — In respect [of allowing her] to collect [her tenth] either from their medium[32] land and without an oath,[33] or of their worst land with an oath.[34] Now what [is the law]? — Come and hear [of the decision] of Rabina: He allowed the daughter of R. Ashi to collect [her tenth] from Mar[35] the son of R. Ashi out Of his medium land, without an oath, but from the son of R. Sama[36] the son of R. Ashi out of his worst land with an oath.[37]

R. Nehemiah the son of R. Joseph sent the following message to Rabbah the son of R. Huna Zuta[38] of Nehardea:[39] When this woman[40] presents herself to you, authorize her to collect a tenth part of [her deceased father's] estate even from the casing of handmills.[41]

R. Ashi stated: When we were at the college of R. Kahana we authorized the collection [of a daughter's tenth] from the rent[42] of houses also.

R. Anan sent [this communication] to R. Huna, '[To] our colleague Huna, greetings.[43] When this woman[40] presents herself before you, authorize her to collect a tenth part of [her father's] estate'. [When the communication arrived,] R. Shesheth was sitting before him. 'Go', [R. Huna] said to him,[44] 'and convey[45] to him[46] [the following message]-and he[47] who does not deliver the message[48] to him shall fall under the ban — "Anan, Anan, [is the collection to be made] from landed, or from movable property? And who presides at the meal in a house of mourning?"'[49] R. Shesheth went to R. Anan and said to him: The Master[50] is a teacher,[51] and R. Huna is a teacher of the teacher,[52] and he pronounced the ban against anyone who would not convey[53] [his message] to you;[54] and had he not pronounced the ban I would not have said, 'Anan, Anan, [is the collection to be made] from landed, or movable property, and who presides at the meal in a house of mourning?'[55] Thereupon, R. Anan went to Mar 'Ukba and said to him: See, Master, how R. Huna addressed[56] me as 'Anan, Anan';[57] and, furthermore, I do not know what he meant by the message he sent me on marziha.[58] The other said to him: Tell me now

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(1) Lit., 'suspended'.

(2) חטי perhaps from חטט 'to dig'. 'scratch' hence a line drawn with a stylus (cf Rashi and last.). Aruk renders 'stitches' (cf חוט 'thread'), and this is apparently the interpretation adopted by Tosaf (s v. תלה a l.), the meaning being that 'among the documents that were sewn together one containing the enquiry was appended'; or, 'among the stitches holding the documents together the one containing the enquiry was inserted'.

(3) A friendly,' letter (Rashi).

(4) May it be seized by the daughter for their marriage outfit?

(5) Lit.,'what goes out (results) from it?'

(6) Lit., 'thus'.

(7) Sold or pledged. And should there be a difference in law between the two cases, Rabbi in his reply would naturally indicate it.

(8) Which the brothers sold or pledged. Cf. supra.

(9) I.e., maintenance or marriage outfit.

(10) And the entire estate fell to the lot of the daughters.

(11) Since she did not collect her tenth while the son was alive, i.e., before she and her sister became the sole heirs,

(12) A daughter may claim a tenth of the estate from a son only but not from a daughter whose rights are equal to hers.

(13) Though it has been pledged or sold.

(14) To her marriage outfit, even in an estate which had been neither sold nor pledged. The first sister, surely, cannot

possess a stronger claim upon the estate than a buyer or a creditor, V. Git. 51a.
(15) That R. Johanan never heard Rabbi's ruling.
(16) R. Johanan.
(17) Since he did not ask him this it may be inferred that R. Johanan did hear Rabbi's ruling but did not accept it. For this reason also he did not withdraw his ruling in the case of the two daughters.
(18) Rabbi's ruling.
(19) The case of the two daughters which was discussed after he had heard Rabbi's ruling and accepted it.
(20) At first she was entitled to a tenth only and now she gets a half. In such circumstances she may well be expected to surrender her claim to the tenth. Rabbi, however, deals with a case where the brothers are alive, and the daughters ate entirely dependent on their tenths,
(21) If the argument of additional provision is admissible.
(22) The second sister.
(23) From which she was to receive her tenth.
(24) In respect of her right to a tenth of her father's estate.
(25) To the tenth of the estate. Lit., 'to remove her'.
(26) Because she has the status of an heiress, Lit., 'thus also'.
(27) As heiress she has the right to claim a share in the actual property her father left and in every portion of it.
(28) In respect of her right to a tenth of her father's estate.
(29) Her claim may, therefore, be met by a money payment or by the allotment of any plot of land of the value of a tenth of the estate that is due to her.
(30) Lit., 'he would have removed (sc. dismissed) her',
(31) So MS. M. adding לך after סליקנא.
(32) Land is classified as עידית best בינונית, medium Or זיבורית worst, and payments are made from these respective qualities in accordance with the strength and validity of any particular claim. Cf. e g., Git. 48b.
(33) That she had never taken anything from the estate. This would be the law if she were regarded as the creditor of the brothers.
(34) If she is regarded as the father's creditor. In the latter case she would be subject to the restrictions imposed on a creditor who claims his debt from the debtor's orphans (v. Get. 48b).
(35) Who survived his father and from whom his sister claimed a portion of her tenth.
(36) Who predeceased R. Ashi and whose son, on the death of his grandfather (R. Ashi), inherited his father's (R. Sama's) share and was now sued by his aunt to give her the portion of her tenth that his father as a son of R. Ashi owed her (Rashi). [Ritba and others: R. Sama died shortly after R. Ashi, before his daughter managed to collect her tenth share in the estate].
(37) According to Rabina, then, the daughter was regarded as the debtor of her brothers (Mar and R. Sama). From the former, therefore, who was alive she consequently collected of the best and without an oath (cf. supra p. 425 , n. 11). From the latter, however, she could only collect through his son as the creditor of has father's and was therefore subject to the restrictions of a creditor who collects from orphans (cf. supra. note I).
(38) Var. lec., 'Zuti' (cf. B.B. 66b)
(39) V. supra p. 222, n. 8.
(40) The bearer, whose case R. Nehemiah had investigated.
(41) The casing being regarded as landed estate from which her tenth may be collected.
(42) The yield of the houses being legally regarded, like, the houses themselves, as landed property (cf. supra n. 8').
(43) Lit., 'peace.
(44) To R. Shesheth.
(45) Lit., 'say'.
(46) To R. Anan.
(47) I.e., 'If you do not deliver the message etc.', the third person being used for euphemism.
(48) I.e., using exactly the same words, lit., 'say'.
(49) R. Huna was apparently offended by the tone or wording of R. Anan's communication. Hence the abusive reply.
(50) R. Anan.
(51) A complimentary introduction to the unpleasant message that follows
(52) I.e., R. Anan. An excuse for carrying out his instructions though they were offensive to R. Anan.

(53) Lit., ‘say’.
(54) Lit., ‘to him’.
(55) The seat of honour at the meal in a house of mourning was given to the greatest scholar in the company
(56) Lit , ‘sent’.
(57) Without the title of ‘R.’
(58) מרזיחה rendered supra, ‘a house of mourning’.

Talmud - Mas. Kethuboth 69b

how the incident actually occurred. ‘The incident’, the first replied, ‘happened in such and such a way’. ‘A man’, the other exclaimed, ‘who does not know the meaning of marziha should [scarcely] presume to address[1] R. Huna as, "our colleague Huna".’

What [is the meaning of] marziha. — Mourning; for it is written in Scripture, Thus saith the Lord: Enter not into the house of mourning[2] etc.[3]

R. Abbahu stated: Whence is it deduced that a mourner sits at the head [of the table]?[4] [From Scripture] wherein it is said, I chose out their way, and sat at the head,[5] and dwelt as a king in the army, as one that comforteth[6] the mourners.[7] But does not yenahem[8] mean [one who comforts] others?[9] R. Nahman b. Isaac replied: The written form is YNHM.[10] Mar Zutra said: [The deduction[11] is made] from here: We-sar marzeah seruhim,[12] he who is in bitterness and distracted[13] becomes the chief[14] of those that stretched themselves.[15]

Raba stated: The law [is that payment may be exacted] from landed property, but not from movable property, whether in respect of maintenance, kethubah or marriage outfit.[16]

MISHNAH. IF A MAN DEPOSITED[17] A SUM OF MONEY FOR HIS [UNMARRIED] DAUGHTER WITH A TRUSTEE,[18] AND [AFTER SHE WAS BETROTHED][19] SHE SAYS, ‘I TRUST MY HUSBAND’,[20] THE TRUSTEE MUST ACT IN ACCORDANCE WITH THE CONDITION OF HIS TRUST;[21] SO R. MEIR. R. JOSE, HOWEVER, SAID: WERE [THE TRUST] ACTUALLY[22] A FIELD[23] AND SHE WISHED TO SELL IT, WOULD IT NOT BE DEEMED[24] SOLD FORTHWITH![25] THIS APPLIES TO ONE WHO IS OF AGE.[26] IN THE CASE OF A MINOR, HOWEVER, THERE IS NO VALIDITY AT ALL IN THE ACT OF A MINOR.

GEMARA. Our Rabbis taught: If a man deposited for his son-in-law with a trustee a sum of money wherewith to buy a field for his daughter, and she says, ‘Let it be given to my husband’, she is entitled [to have her wish fulfilled, if it was expressed] after her marriage[27] but if only after her betrothal the trustee must act according to the conditions of his trust;[28] so R. Meir. R. Jose, however, said: A woman who is of age has a right [to obtain her desire] whether [it was expressed] after her marriage or only after betrothal, but [in the case of] a minor [whether her wish was expressed] after marriage or after betrothal, the trustee must act in accordance with the conditions of his trust.[29] What is the practical difference between them?[30] If it be suggested that the practical difference between them is the case of a minor after her marriage, R. Meir holding the opinion that [even] she is entitled [to have her wish] and R. Jose comes to state that even after marriage [It is only] a woman who is of age that is entitled to have her wish[31] but not a minor, [in that case] what of[32] the final clause,[33] IN THE CASE OF A MINOR, HOWEVER, THERE IS NO VALIDITY AT ALL IN THE ACT OF A MINOR. Who [it might be asked] could have taught this? If it be suggested [that the author was] R. Jose, [it could be objected:] This, surely, could be inferred from the first clause; for, since R. Jose said, WERE [THE TRUST] ACTUALLY A FIELD AND SHE WISHED TO SELL IT, WOULD IT NOT BE DEEMED SOLD FORTHWITH! [it follows[34] that only] one that is of age, who is eligible to effect a sale, was meant,[35] but not a minor who is ineligible to effect a sale.[36] Consequently it must be R. Meir [who was the author of] it, and a clause is in fact missing [from our Mishnah], the

proper reading being as follows:[37] 'THE TRUSTEE MUST ACT IN ACCORDANCE WITH THE CONDITIONS OF HIS TRUST. This applies only [to a woman whose desire was expressed] after her betrothal, but if after her marriage she is entitled [to have her wish]. THIS [furthermore] APPLIES TO ONE WHO IS OF AGE. IN THE CASE OF A MINOR, HOWEVER, THERE IS NO VALIDITY AT ALL IN THE ACT OF A MINOR.'[38] — [The fact]. however, is that the practical difference between them is the case of one who is of age [whose wish was expressed] after her betrothal.[39]

It was stated: Rab Judah said in the name of Samuel. The halachah is in agreement with R. Jose. Raba ion the name of R. Nahman said, The halachah is in agreement with R. Meir. Ilfa[40] reclined[41] upon a sail mast[42] and[43] said: 'Should any one come and submit to me any statement [in the Baraithoth] of R. Hiyya and R. Oshaia[44] which I cannot make clear to him [with the aid] of our Mishnah I will drop from the mast[45] and drown myself'. An aged man came and recited to him [the following Baraitha:][46] If a man[47] said, 'Give my children[48] a shekel a week',[49] and they require a sela',[50] a sela' is to he given to them.[51] But if he said, 'Give them no more than a shekel', only a shekel is to he given to them.[52] If, however, he gave Instructions that if these died others[53] shall be his heirs in their stead, only one shekel [a week] is to be given to them, irrespective of whether he used the expression of 'give' or 'give no [more]',[54] [Ilfa] said to him: [Do you wish to know] whose ruling this[55] is?

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(1) Lit., 'sent'.

(2) מרזה , Heb. from Aram. מרזיחה

(3) Jer. XVI, 5

(4) At the meal in a house of mourning.

(5) E V., as chief. ואשב ראש may bear both renderings.

(6) This is explained by R. Nahman anon.

(7) Job. XXIX, 25.

(8) ינחם Imperf. Piel of נחם .

(9) How then could the text be said to refer to the mourner who is himself to be comforted?

(10) ינחם , which may be vocalized as the Pus form Yenuham, 'one who is comforted'. Though the text must retain its obvious meaning with the M.T. vocalization of ינחם , the possibility of reading ינחם as ינחם also permits of the Midrashic exposition (Tosaf. s.v. אמר).

(11) That the mourner is to sit at the head of the table at the meal in a house of mourning.

(12) וסר מרזח סרוחים , Amos, VI, 7. Midrashically, סר = שר (chief, I.e., 'sits at the head'), מרזח is divided into מר (bitter) and זח (rt. זוח distracted), and סרוחים is taken to refer to the comforters who stretch themselves on their couches or on the ground at the feet of the mourner. (Cf. Golds.). E.V., And the revelry of men that stretched themselves shall pass away.

(13) I.e. , the mourner.

(14) I.e. , sits at the head of the table during the meal.

(15) Before him, sc. those, who came to offer their condolence.

(16) A Gaonite provision, תקנת הגאונים , empowers also the seizure of movable property to meet any of these obligations (cf Tosaf. supra 51a. s.v. ממקרקעי). [This Takkanah has been ascribed to Hunai Gaon and dated 787, v. Epstein, L. The Jewish Marriage, p. 255 and Tykocinski, Die Gaonaischen Verordnungen, p. 35ff].

(17) Lit., 'he who made a third', i.e., appointed a third person as trustee.

(18) Cf. supra n. 12, instructing him to use the money after his death for the benefit of his daughter, e.g., to buy for her a field.

(19) So Tosaf (s.v. המשליש) contrary to Rashi's 'married', v. Gemara infra.

(20) 'And desire the money to be given to him',

(21) Lit., 'what was put in his hand as a third party'. The daughter's wish is to be disregarded and the trustee buys a field with it.

(22) Lit., 'was not but'.

(23) Not merely a sum of money with which to buy one.

(24) Lit., ‘behold it’.
(25) Lit., ‘from now’, sc. from the moment she expressed her desire to sell it, and the same should apply where the trust consisted of a sum of money. The sum of money must consequently be at her disposal and she may gave it to her husband if she desires to do so.
(26) The point of this limitation is discussed in the Gemara infra.
(27) The assumption being that the father wished the trustee to act only until his daughter's marriage.
(28) V. supra p. 428, n. 16.
(29) Tosef. Keth. VI. Cf. supra p. 428, n. 16.
(30) R. Meir and R. Jose, i.e., does R. Meir in the Baraitha refer to a minor also or only to one who is of age?
(31) Lit., ‘yes’.
(32) Lit., ‘say’.
(33) Of our Mishnah.
(34) Since R. Jose gave as the reason for his ruling the consideration that she could have sold the field if she wished
(35) Lit., ‘yes’.
(36) The final clause, then, would be superfluous
(37) Lit , and thus he taught’.
(38) Now, since R. Meir also admits that the act of a minor has no validity, his statement in the Baraitha cited that after marriage she is entitled to have her wish must refer to one who is of age and not to a minor. What, then, is the practical difference between R. Meir and R. Jose?
(39) According to R. Meir her wish is to be ignored; according to R. Jose it is to be granted. Cf. supra p. 428, n. 14 As to a minor both agree that bet request is not to be granted even if she makes it after her marriage
(40) Scholar and merchant, a contemporary of R. Johanan. When the latter was appointed to the presidency of the college the former was away from his home town, engaged in the pursuit of his commercial enterprises. What follows happened on his return when he was told that had he devoted more time to his studies and less to commerce the presidency would have been offered to him. V. Ta'an. 21a.
(41) Lit., suspended himself’ (cf. Rashi Git. 32b, s.v. דתלי Pesah. 68b, s.v. ותלי).
(42) Or sail-yard. Cf. Rashi. Other renderings: ‘Sail, or mast of a boat’, ‘mastyard’, איסקריא , GR.**,(perhaps from rt. סקר , ‘to espy’, hence ‘espying place’) ‘mast’ or ‘yard’ (v. Jast.) מכותא cf. Assyr. makua, a kind of ‘boat’, ‘mast’ or ‘sail-yard’ (v. Rashi, a.l. and Git. 36a, Rashb. B.B. 161b); ‘a ship’ (Aruk). In the parallel passage. Ta'an 21a, the reading for דמכותא is דספינתא (of a ship).
(43) To prove that despite has commercial undertakings he had not forgotten his studies.
(44) These were regarded as the most authoritative of the Baraitha collections
(45) Cf. p 430, n. 9.
(46) Demanding Mishnaic authority for its rulings V. infra note 12.
(47) Lying on his death bed, or setting out on a long journey.
(48) Out of the estate he leaves behind.
(49) For their maintenance
(50) A sela’ two shekels
(51) Their father's mention of the smaller coin. it is assumed, was not meant to exclude the bigger one. All that he implied was that his children should be given no more than their actual weekly requirements.
(52) Though they may be in need of more.
(53) Whom he named.
(54) Because in this case it is evident that it was his intention to economize as much as possible. (11) Because in this case it is evident that it was his intention to economize as much as possible on the weekly maintenance of his children in order that the heirs he nominated might in due course receive as large an inheritance as possible.
(55) That, though the children need more than their father had allowed them, the instructions of the deceased must be carried out.

Talmud - Mas. Kethuboth 70a

It is that of R. Meir[1] who laid down that it is a religious obligation to carry out the instructions of a dying man.[2]

R. Hisda stated in the name of Mar 'Ukba: The law is that whether [the dying man] said, 'Give' or 'give no more',[3] his children are to he given all that they require. But have we not, however, an established principle that the halachah is in agreement with R. Meir who laid down that it is a religious obligation to carry out the instructions of a dying man? — This applies to other matters, but in this case [the father] is quite satisfied [that his children should be provided with all they need]; and in limiting their allowance,[4] his object was[5] to encourage them.[6]

We learned elsewhere: With regard to little children,[7] their purchase is a valid purchase and their sale is a valid sale in the case of movable objects.[8] Rafram explained: This has been taught in the case only where no guardian had been appointed,[9] but where a guardian had been appointed neither their purchase nor their sale has any legal validity. Whence is this inferred? From the expression, THERE IS NO VALIDITY AT ALL IN THE ACT OF A MINOR. But might not the case where a trustee[10] had been appointed be different?[11] — If so,[12] it should have been stated, 'IN THE CASE OF A MINOR, HOWEVER, a trustee must act in accordance with the conditions of his trust' what [then was the purpose of the expression,] THERE IS NO VALIDITY AT ALL IN THE ACT OF A MINOR? Hence it may be inferred [that the same law is applicable] in all cases.[13]

C H A P T E R V I I

MISHNAH. IF A MAN FORBADE HIS WIFE BY VOW TO HAVE ANY BENEFIT FROM HIM HE MAY, [IF THE PROHIBITION IS TO LAST] NOT MORE[14] THAN THIRTY DAYS, APPOINT A STEWARD,[15] BUT IF FOR A LONGER PERIOD HE MUST DIVORCE HER[16] AND GIVE HER THE KETHUBAH. R. JUDAH RULED: IF HE WAS AN ISRAELITE[17] HE MAY KEEP HER [AS HIS WIFE IF THE PROHIBITION WAS FOR] ONE MONTH, BUT MUST DIVORCE HER AND GIVE HER THE KETHUBAH [IF IT WAS FOR] TWO MONTHS. IF HE WAS A PRIEST[18] HE MAY KEEP HER [AS HIS WIFE, IF THE PROHIBITION WAS FOR] TWO MONTHS,[19] BUT MUST DIVORCE HER AND GIVE HER THE KETHUBAH [IF IT WAS FOR] THREE.

IF A MAN FORBADE HIS WIFE BY VOW THAT SHE SHOULD NOT TASTE A CERTAIN FRUIT[20] HE MUST DIVORCE HER AND GIVE HER THE KETHUBAH. R. JUDAH RULED: IF HE WAS AN ISRAELITE[17] HE MAY KEEP HER [AS HIS WIFE, IF THE VOW WAS FOR] ONE DAY, [BUT IF FOR] TWO DAYS HE MUST DIVORCE HER AND GIVE HER THE KETHUBAH. IF, HOWEVER, HE WAS A PRIEST[18] HE MAY KEEP HER [AS HIS WIFE, IF THE VOW WAS FOR] TWO DAYS [BUT IF FOR] THREE HE MUST DIVORCE HER AND GIVE HER THE KETHUBAH.

IF A MAN FORBADE HIS WIFE BY VOW THAT SHE SHOULD NOT MAKE USE OF A CERTAIN ADORNMENT[21] HE MUST DI VORCE HER AND GIVE HER THE KETHUBAH. R. JOSE RULED: [THIS[22] APPLIES] TO POOR WOMEN IF NO TIME LIMIT[23] IS GIVEN, AND TO RICH WOMEN [IF THE TIME LIMIT[23] IS] THIRTY DAYS.

GEMARA. Since, however, he[24] is under an obligation to [maintain] her[25] how can he forbid her by a vow [to have any benefit from him]? Has he then the power[26] to cancel his obligation? Surely we have learned: [If a woman said to her husband] 'Konam, if I do aught for your mouth' he need not annul her vow;[27] from which[28] it is evident that, as she is under an obligation to him,[29] she has no right to cancel her obligation,[30] similarly here, since he is under an obligation to [maintain] her he should have no right to cancel his obligation![31] — [This,] however, [is the right explanation:] As he[32] is entitled to say to her,[33] 'Deduct [the proceeds of] your handiwork for your maintenance'[34]

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(1) Expressed in our Mishnah by the ruling that despite the request of the daughter the trustee must carry out the

instructions of her deceased father.
(2) Cf. Git. 14b, 15a and 40a.
(3) Cf. supra 69b ad fin.
(4) Lit., 'and (as to) that which be said thus'.
(5) Lit., 'he came'.
(6) To lead a thrifty life and to make an effort to earn their livelihood.
(7) Of the ages of nine and eight' (Rashi. a.l. s.v. הפעוטות .). 'six and seven' (Rashb. B.B. 155b, s.v. אלא).
(8) Transactions in landed estate, however, may be made by such only as have produced signs of puberty or have attained the age of twenty, v. Git. 59a, 65a, B.B. l.e.
(9) By a father or the court.
(10) With definite instructions as to the use he was to make of the trust money.
(11) From an ordinary guardian who is expected to use his own discretion in the best interests of the orphans. In the latter case the orphan's transaction might be deemed valid because it is not against their father's instructions and, being in the interest of the orphans, the guardian might well be presumed to have acquiesced.
(12) That a distinction is to be drawn between a trustee with special instructions and an ordinary guardian.
(13) Where there is a guardian, whose charge is somewhat similar to that of a trustee. Lit , 'even in the world'.
(14) Lit., 'until'.
(15) To supply his wife's maintenance.
(16) I.e., if the woman demands her freedom.
(17) Who, unlike a priest (v. Lev. XXI, 7), may remarry his divorced wife.
(18) Cf. supra n. 4.
(19) A priest was allowed more time in order to afford him a longer period of retracting before his divorce separates her from him for ever.
(20) He confirmed a vow she had made to that effect (Rashi). Though he has no right to forbid his wife the eating or tasting of any foodstuffs he may, by keeping silent when she herself makes such a vow, confirm it; v. Num. XXX, 7ff. Others: He vowed to abstain from his wife should she taste a certain fruit; v. Isaiah Trani.
(21) Cf. supra n. 7 mutatis mutandis.
(22) That in the case of a vow against a wife's adornments, the husband must DIVORCE HER AND GIVE HER THE KETHUBAH.
(23) To the duration of the vow.
(24) A husband.
(25) His wife.
(26) Lit., 'all (power) as if from him?'
(27) Supra 59a and notes.
(28) Since no annulment is required.
(29) A wife's handiwork belongs to her husband.
(30) In consequence of which her vow is null and void and requires no annulment.
(31) And his vow also should, therefore, be null and void.
(32) A husband.
(33) His wife.
(34) I.e., he would neither maintain her nor expect her to give him her handiwork (v. supra n. 8).

Talmud - Mas. Kethuboth 70b

he [in making his vow] is regarded[1] as having said to her, 'Deduct [the proceeds of] your handiwork for your maintenance'.

If, however, one is to adopt the ruling R. Huna gave in the name of Rab, for R. Huna stated in the name of Rab: A wife may say to her husband , 'I would neither be maintained by, nor work [for you]', why should there be no need to annul [her vow] when she said 'Konam, if l do aught for your mouth'? Let it rather be said that as she is entitled to say, 'I would neither be maintained by nor work [for you]' she [in making her vow] might be regarded[1] as having said, 'I would neither be

maintained by, nor work [for you]'?[2] — [The fact,] however, [is that] the explanation is not that 'he is regarded'[3] but that he actually said to her, 'Deduct your handiwork for your maintenance.' If so,[4] what need has she of a steward?[5] — [She needs one] where [the proceeds of her handiwork] do not suffice.[6] If, [however, her handiwork] does not suffice,[7] our original question arises again![8] R. Ashi replied: [This is a case] where [her handiwork] suffices for major requirements but does not suffice for minor requirements.

How is one to understand these 'minor requirements'? If the woman is in the habit of having them, they are, surely, a part of her regular requirements,[9] and if she is not used to them[10] what need has she for a steward?[11] — [The law concerning a steward] is required only where she was used [to them] in her father's house but consented to dispense with them when with her husband.[12] In such a case she can say to him, 'Hitherto, before you forbade me by a vow [to have any benefit from you], I was willing to put up with your [mode of living], but now that you have forbidden me [to enjoy any benefit from you] I am not able to put up [any longer] with your [mode of living]'. And wherein lies the difference [between a vow for more, and one for] NOT MORE THAN THIRTY DAYS? — [Within a period of] NOT MORE THAN THIRTY DAYS people would not become aware of it, and the matter would be no degradation to her; but after a longer period[13] people would hear of it, and the matter would be degrading to her.

If you prefer I might reply: [His vow[14] is valid] only if he vowed while she was merely betrothed to him.[15] But has a betrothed woman, however, any claim to maintenance?[16] — [Yes], if the time [for the celebration of the marriage] arrived and she was[17] not married. For we have learned: If the respective periods expired[18] and they were not married,[19] they[20] are entitled to maintenance[21] out of the man's estate, and [if he is a priest] may also eat terumah.[22] Wherein then lies the difference [between a vow for more, and one for] NOT MORE THAN THIRTY DAYS? — [During a period of] NOT MORE THAN THIRTY DAYS an agent[23] performs his mission; for a longer period no agent performs his mission.

And if you prefer I might reply: [The husband's vow[24] is valid] when he made it while she was betrothed to him and she was [afterwards] married.

But if she was married [afterwards] she must obviously have understood her position and accepted it![25] — [It is a case] where she pleaded, 'I thought I shall be able to bear it but now I cannot bear it'.

But granted that such a plea[26] is properly admissible[27] in respect of bodily defects;[28] is it admissible, however, in respect of maintenance?[29] — Clearly, then, we can only explain as we explained at first.

HE MAY, [IF THE PROHIBITION IS TO LAST] NOT MORE THAN THIRTY DAYS, APPOINT A STEWARD. Does not the steward, however, act on his[30] behalf?[31] — R. Huna replied: [Our Mishnah refers] to one who declared, 'Whoever will maintain [my wife] will not suffer any loss'.[32] But, even if be spoke in such a manner, is not the steward acting on his behalf? Have we not learned: If a man who was thrown into a pit cried that whosoever should hear his voice should write a letter of divorce for his wife, [the hearers][33] may lawfully[34] write, and deliver [it to his wife]?[35] — How now! there[36] the man said, 'should write';[37] but did the man here[38] say, 'should maintain'? All he said was, 'whoever will maintain'.[39]

But surely R. Ammi said: In [the case of] a fire [breaking] out on the Sabbath][40] permission was given to make the announcement 'Whosoever shall extinguish it will suffer no loss'.[41] Now what does [the expression] 'In a fire'[42] exclude? Does it not exclude a case of this kind?[43] — No; [it was meant] to exclude other acts that are forbidden on the Sabbath.[44]

Rabbah raised an objection: If a man is forbidden by a vow to have any benefit from another man, and he has nothing to eat [the other] may go to a shopkeeper with whom he is familiar and say to him , 'So-and-so is forbidden by a vow to have any benefit from me, and I do not know what to do for him'. [The shopkeeper] may then give to the one and recover the cost from the other.[45] Only such [a suggestion][46] is permitted but not that of 'whoever will maintain [my wife] will not suffer any loss'?[47] — [The formula,] 'There is no question' is here implied:[48] There is no question [that a man may announce,] 'whoever will maintain [my wife] will not suffer any loss', since he is speaking to no one in particular;[49] but even in this case where, since he is familiar with him[50] and goes and speaks to him directly, [it might have been thought that his mere suggestion is] the same as if he had expressly told him,[50] 'You go and give him',[51] hence we were taught [that this also is permitted].

[To revert to] the main text.[52] If a man is forbidden by a vow to have any benefit from another man, and he has nothing to eat, [the other] may go to a shopkeeper with whom he is familiar and say to him, 'So-and-so is forbidden by a vow to have any benefit from me, and I do not know what to do for him'. [The shopkeeper] may then give to the one and recover the cost from the other.[53] If his[54] house is to be built, his wall to be put up or his field to be harvested [the other] may go to labourers with whom he is familiar and say to them, 'So-and-so is forbidden by a vow to have any benefit from me, and I do not know what to do for him'. They may then work for him and recover[55] their wages from the other. If they were going on the same journey and the one had with him nothing to eat, [the other][56] may give [some food] to a third[57] person as a gift and the first may take it [from that person] and eat it.[58] If no third person[57] is available, he[56] may put the food upon a stone or a wall, and say, 'Behold this is free[59] for all who desire [to take it]', and the other[60] may take it and eat it.[61] R. Jose, however, forbids this.[62] Raba said: What is R. Jose's reason? — [It is forbidden as] a preventive measure against

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(1) Lit., 'is made'.

(2) And her vow should be valid. Why then has it been said that her husband 'need not annul her vow'?

(3) Lit., 'do not say; be is made'.

(4) That her handiwork is not taken away from her.

(5) The proceeds of her handiwork could be spent on her maintenance.

(6) To make up the legally prescribed sum (v. supra 64b).

(7) And it is, therefore, still her husband's duty to maintain her in part.

(8) How can he by his vow cancel an obligation that is incumbent upon him?

(9) Lit., 'she is used to them'.

(10) Being mere luxuries.

(11) The husband, surely, is not expected to provide for such luxuries.

(12) Lit., 'roll' with him', i.e., to put up with his mode of living.

(13) Lit., 'more'.

(14) That his wife shall not HAVE ANY BENEFIT FROM HIM.

(15) When he is under no obligation to maintain her.

(16) Certainly not (v. supra n. 13). What need then was there to state the obvious?

(17) Lit., 'they were'. V. n. 2.

(18) Lit., 'the time (for the respective marriages referred to supra 57a) arrived'.

(19) Through the man's delay.

(20) The women mentioned.

(21) In accordance with a Rabbinical ordinance.

(22) Mishnah supra 57a. Since in such circumstances the man is Pentateuchally under no obligation to maintain his betrothed his vow forbidding her to have any benefit is valid; and as he is obliged to maintain her in accordance with Rabbinic law he must appoint a steward to look after her maintenance.

(23) The steward appointed (v. our Mishnah).

(24) V. supra p. 435, n. 12.

(25) What claim then could she advance?

(26) Mistaken judgment.
(27) Lit., 'that we say so'.
(28) Though a woman at first consented to live with the man who suffered from such defects she may subsequently plead that she under-estimated her feeling and that now she cannot bear them (v. infra 77a). A woman may well be excused her first error of judgment in such circumstances.
(29) No woman, surely, could plead that she was not aware that a person could live without food. As she has once accepted the disability she should not be entitled to change her mind.
(30) The husband's.
(31) Lit., 'do his mission'. The answer being in the affirmative, the question arises why his agent should be allowed to do on his behalf what he himself is not allowed to do.
(32) He would reimburse him.
(33) Though they have received no direct instructions.
(34) Lit., 'behold these'.
(35) Git. 66a; as if they had been agents who had received direct instructions from him. Similarly the steward spoken of in our Mishnah should be regarded as the husband's agent (v. supra p. 436, n. 15).
(36) The case of divorce.
(37) A definite instruction.
(38) In the matter of maintenance.
(39) This is not even an indirect instruction but a mere intimation. Anyone acting on such an intimation only cannot be regarded as agent.
(40) When a Jew is forbidden to do any work himself or to instruct someone else, even a Gentile, to do it for him.
(41) Shab. 121a.
(42) Implying a fire only and not other cases.
(43) A person's announcement concerning compensation for the maintenance of his wife whom he himself is forbidden to maintain, or any similar announcements which might lead someone to perform on behalf of that person what he himself is forbidden to do.
(44) The sanctity of the Sabbath demands greater restrictions which need not he applied to other prohibitions such as those of vows for instance.
(45) Ned. 43a. Lit., 'gives to him and comes and takes from this'.
(46) Which is rather vague and non-committal.
(47) Which is more explicit and a committal undertaking. An objection against R. Huna.
(48) Lit., 'be (the Tanna of that Mishnah) said'.
(49) Lit., 'to the world'.
(50) The shopkeeper.
(51) And, thereby becoming his virtual agent, be should, like himself, be forbidden to supply any provisions.
(52) Of the citation from Ned. 43a.
(53) V. supra p. 437, n. 14.
(54) The man who is forbidden to have benefit from the other by a vow.
(55) Lit., 'and come and take'.
(56) Benefit from whom he is forbidden to derive.
(57) Lit., 'another'.
(58) Cf. infra n. 16.
(59) Lit., 'they are ownerless property'.
(60) V. supra note 9.
(61) MS.M. omits ומותר ('and it is permitted') which seems superfluous here as well as supra. V. supra n. 13.
(62) V. Ned. 43a.

Talmud - Mas. Kethuboth 71a

[a repetition of] the incident of Beth Horon.[1]

R.JUDAH SAID: IF HE WAS AN ISRAELITE HE MAY KEEP HER [AS HIS WIFE, IF THE

PROHIBITION WAS FOR] ONE MONTH etc. Is not this the same ruling as that of the first Tanna?[2] — Abaye replied: He[3] came to teach us [the law concerning] a priest's wife.[4] Raba replied: The difference between them is a full month[5] and a defective month.[6]

Rab stated: This[7] was taught only in the case of a man who specified [the period of the prohibition], but where he did not specify, he[8] must divorce her immediately and give her the kethubah. Samuel, however, stated: Even where the period was not specified [the husband] need not divorce her, since it is possible that he might discover some reason[9] for [the remission of] his vow.[10] But surely they[11] had once been in dispute upon this principle; for have we not learned, 'If a man forbade his wife by vow to have intercourse, Beth Shammai ruled: [She must consent to the deprivation for] two weeks; Beth Hillel ruled: [Only for] one week';[12] and Rab stated, 'They[13] differ only in the case of a man who specified [the period of abstention] but where he did not specify the period he[14] must divorce her forthwith and give her the kethubah', and Samuel stated, 'Even where the period had not been specified the husband need not divorce her, since it might be possible for him to discover some reason[15] for [the annulment of] his[16] vow'?[17] — [Both disputes were] necessary. For if [their views] had been expressed in the former case[18] it might have been assumed that only in that case did Rab maintain his view, since [the appointment] of a steward is not possible, but that in the latter case[19] where [the appointment] of a steward is possible, he agrees with Samuel. And if [their views] had been stated in the latter case[19] it might have been assumed that only in that case did Samuel maintain his view, since the appointment of a steward is possible. but that in the former case[18] he agrees with Rab. [Hence both statements were] necessary.

We learned: IF A MAN FORBADE HIS WIFE BY VOW THAT SHE SHOULD NOT TASTE A CERTAIN FRUIT, HE MUST DIVORCE HER[20] AND GIVE HER THE KETHUBAH. Now according to Rab[21] [there is no contradiction[22] since] the latter[23] may apply to a man who did not specify [the period of the prohibition] and the former[23] to a man who did specify [the period]. According to Samuel,[24] however, a contradiction arises![22] — Here we are dealing with a case, for instance, where the woman made the vow and he confirmed it;[25] R. Meir[26] holding the opinion that [the husband][27] had himself put his finger between her teeth. But does R. Meir hold the principle, 'He has himself put his finger between her teeth'? Surely it was taught: If a woman made the vow of a nazirite[28] and her husband heard of it and did not annul it, she, said R. Meir and R. Judah, has thereby put her own finger between her teeth. Therefore, if the husband wishes to annul her vow, he may do so. But if he[29] said, 'I do not want a wife who is in the habit of vowing'. she may be divorced without [receiving] her kethubah. R. Jose and R. Eleazar said: He[30] has put his finger between her teeth. Therefore, if the husband wishes to annul her vow, he may do so. But if he[31] said, 'I do not want a wife who is in the habit of vowing', he may divorce her but must give her the kethubah![32] — Reverse [the views]: R. Meir and R. Judah said: 'He has put'[33] and R. Jose and R. Eleazar said: 'She has put'.[34] But is R. Jose of the opinion that it is she who put?[34] Have we not learned: R. Jose ruled: [THIS[35] APPLIES] TO POOR WOMEN IF NO TIME LIMIT IS GIVEN?[36] — Read: R. Meir and R. Jose said, 'He has put';[33] R. Judah and R. Eleazar said, 'She has put'.[34] But does R. Judah uphold the principle of 'She put'?[34] Have we not learned: R. JUDAH RULED: IF HE WAS AN ISRAELITE HE MAY KEEP HER [AS HIS WIFE, IF THE VOW WAS FOR] ONE DAY?[37] — Read: R. Meir and R. Judah and R. Jose said, 'He put'.[33] and R. Eleazar said, 'She put'.[34] And should you find [some ground] for insisting that the names must appear in pairs,[38] then read: R. Meir and R.Eleazar said, 'She put',[39] and R. Judah and R. Jose said, 'He put';[40] and this anonymous Mishnah[41] is not in agreement with R. Meir.

Is R. Jose, however, of the opinion that [THIS[42] APPLIES] TO POOR WOMEN IF NO TIME LIMIT IS GIVEN; from which[43] it is evident that a husband has the right to annul[43] [such vows]?[44] This, surely, is incongruous [with the following]. These are the vows[45] which a husband may annul: Vows which involve an affliction of soul[46] [as, for instance, if a woman said, 'I vow not to enjoy the pleasure of bathing] should I bathe'[47] [or] 'I swear that[48] I shall not bathe', [or again, 'I vow not to

make use of adornments] should I make use of an adornment',[47] [or] 'I swear that[48] I shall not make use of any adornments'. R. Jose said: These are not regarded as vows involving an affliction of soul;[49] and the following are vows that involve an affliction of soul: '[I swear] that I shall not eat meat' or 'that I shall not drink wine' or 'that I shall not adorn myself

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(1) V. Ned. Sonc. ed. p. 148f and notes.

(2) Who also allowed a period of THIRTY DAYS.

(3) R. Judah.

(4) of which the first Tanna does not speak.

(5) Consisting of thirty days.

(6) Of twenty-nine days. According to R. Judah ONE MONTH is allowed irrespective of whether it is a full or a defective one. According to the first Tanna THIRTY DAYS are invariably allowed.

(7) That for a period of thirty days a steward may be appointed.

(8) Though his vow might be annulled by a competent authority by the end of the thirty days.

(9) Lit., ' a door'.

(10) V. supra p. 370. nn. 10-11.

(11) Rab and Samuel.

(12) Supra 61b.

(13) Beth Shammai and Beth Hillel.

(14) According to the opinion of both.

(15) V. supra note 10.

(16) V. supra. p. 370, n. 11

(17) Why then should Rab and Samuel be in dispute upon the same principle here also?

(18) The prohibition of intercourse.

(19) The vow forbidding other benefits.

(20) Forthwith.

(21) Who draws a distinction between a specified and an unspecified period.

(22) Between this ruling (immediate divorce) and the earlier Mishnah (allowing a certain period to pass).

(23) Lit., 'here'.

(24) Who, contrary to the view of Rab (v. supra n. 4), draws no distinction.

(25) Since if she is willing to accept her kethubah and leave him, she would not try to obtain the annulment of her vow. There is no advantage, therefore, in postponing the divorce. Where, however, he himself made the vow, the divorce is delayed in order to afford him an opportunity of discovering some ground for the remission of his vow.

(26) Who is generally the author of an anonymous Mishnah.

(27) By confirming her vow though he had the right to annul it.

(28) V. Num. VI, 2ff.

(29) Having once confirmed the vow.

(30) V. supra p. 440, n. 10.

(31) Having once confirmed the vow.

(32) Which shews that R. Meir's view is that she and not he has put the finger between the teeth, where she makes the vow and he confirms it.

(33) His finger between her teeth.

(34) Her finger between her teeth.

(35) That the husband must divorce her and give her the kethubah.

(36) This referring (as has been explained supra) to a vow the woman had made, it follows that according to R. Jose it is the husband who puts his finger between her teeth.

(37) But if for more than ONE DAY be must divorce her and give her the kethubah. This referring to a vow the woman has made, it follows that according to R. Judah also it is the husband who put his finger etc. (v. supra n. 7).

(38) Lit., 'to say: He taught in pairs'.

(39) Her finger between her teeth.

(40) V. supra note 3.

(41) Which follows the principle that it is the husband who 'put his finger between her teeth'.

(42) That a husband must divorce his wife and also give her the kethubah if he has not annulled a vow she has made against the use of a certain adornment.

(43) Since the husband is penalized (v. supra n. 13) for not annulling the vow.

(44) I.e., those relating to a woman's adornments.

(45) So MS.M. and separate edd. of the Mishnah. Cur. edd., 'things'.

(46) V. Num. XXX, 14.

(47) 'Up to a certain time'.

(48) Lit., 'if'.

(49) Hence they may not be annulled by a husband. V. Ned. Mishnah 79a; cf. however next note. [The passage that follows does not occur in the Mishnah Ned. 79a and the source of the whole citation is consequently, according to some commentators, said to be a Baraitha (v. Shittah Mekubbezeth). Tosaf. however (s.v. הכי) on the basis of an entirely different text, omits this passage.]

Talmud - Mas. Kethuboth 71b

with coloured garments'![1] — Here[2] we are dealing with matters affecting their intimate relations.[3] This explanation is satisfactory according to him who maintains that a husband may annul [vows on] matters affecting their intimate relations. — What, however, can be said [in explanation] according to him who maintains that a husband may not annul [such vows]? For it was stated:[4] [As to vows on] matters affecting their intimate relations, R. Huna ruled: A husband may annul them; R. Adda b. Ahabah ruled: A husband may not annul them, for we do not find that a fox should die of the dust of his den![5] — The fact, however, is that we are here[2] dealing with a case, for instance, where she made her marital intercourse dependent upon her use of adornments, by saying. 'The enjoyment of your intercourse shall be forbidden to me should I ever make use of any adornment.'[6] [This explanation] is in agreement with a ruling of R. Kahana. For R. Kahana ruled, [If a woman said to her husband]. 'The enjoyment of my intercourse [shall be forbidden][7] to you', he may compel her to such intercourse;[8] [if, however, she vowed,] 'The enjoyment of your intercourse [shall be forbidden][9] to me'[10] he must annul [her vow][11] because no person is to be fed with a thing that is forbidden to him.[12] But let her[13] not adorn herself and consequently not be forbidden to him![14] — If so,[15] she would be called, 'The ugly woman'.[16] But then let her adorn herself and be forbidden [intercourse] either for two weeks, according to Beth Shammai[17] or for one week according to Beth Hillel!'[18] — These[19] apply only to a case where he [the husband] has forbidden her by a vow [to have intercourse with him], because [in such circumstances] she thinks 'He may have been angry with me[20] and will later[21] calm down'.[22] Here, however, since she has made the vow and he remained silent,[23] she comes to the conclusion: 'Since he remained silent[23] he must indeed hate me'.[24]

R. JOSE RULED: [THIS APPLIES] TO POOR WOMEN IF NO TIME LIMIT IS GIVEN. What is the TIME LIMIT?[25] — Rab Judah citing Samuel replied: Twelve months.[26] Rabbah b. Bar Hana citing R. Johanan replied: Ten years.[26] R. Hisda citing Abimi replied: A festival;[27] for[28] the daughters of Israel adorn themselves on a festival.

AND TO RICH WOMEN [IF THE TIME LIMIT IS] THIRTY DAYS. Why just[29] THIRTY DAYS? — Abaye replied: Because[28] a prominent woman enjoys the scent of her cosmetics for thirty days.[30]

MISHNAH. IF A MAN FORBADE HIS WIFE[31] BY VOW THAT SHE SHALL NOT GO TO HER FATHER'S HOUSE, AND HE[32] LIVES WITH HER IN THE SAME TOWN, HE MAY KEEP [HER AS HIS WIFE, IF THE PROHIBITION WAS FOR] ONE MONTH; BUT IF FOR TWO MONTHS HE MUST DIVORCE HER AND GIVE HER ALSO THE KETHUBAH. WHERE HE, HOWEVER, LIVES IN ANOTHER TOWN, HE MAY KEEP [HER AS HIS WIFE, IF THE PROHIBITION WAS FOR] ONE FESTIVAL,[33] [BUT IF FOR] THREE[34] FESTIVALS, HE MUST DIVORCE HER AND GIVE HER ALSO HER KETHUBAH. IF A MAN FORBADE HIS WIFE

BY VOW[35] THAT SHE SHALL NOT VISIT A HOUSE OF MOURNING OR A HOUSE OF FEASTING, HE MUST DIVORCE HER AND GIVE HER ALSO HER KETHUBAH, BECAUSE THEREBY HE HAS CLOSED [PEOPLE'S DOORS] AGAINST HER. IF HE PLEADS, HOWEVER, [THAT HIS ACTION] WAS DUE TO SOME OTHER CAUSE[36] HE IS PERMITTED [TO FORBID HER]. IF HE SAID TO HER: '[THERE SHALL BE NO VOW] PROVIDED THAT YOU TELL[36] SO-AND-SO WHAT YOU HAVE TOLD ME' OR 'WHAT I HAVE TOLD YOU' OR 'THAT YOU SHALL FILL[36] AND POUR OUT ON THE RUBBISH HEAP', HE MUST DIVORCE HER AND GIVE HER ALSO HER KETHUBAH.

GEMARA. This, surely, is self-contradictory. You said, HE MAY KEEP [HER AS HIS WIFE, IF THE PROHIBITION WAS FOR] ONE FESTIVAL, which implies that if it was for two festivals he must divorce her and give her also her kethubah. But read the concluding clause, [IF FOR] THREE FESTIVALS HE MUST DIVORCE HER AND GIVE HER ALSO HER KETHUBAH, from which it follows, does it not, that if it was for two only he may keep [her as his wife]?[37] Abaye replied: The concluding clause refers to a priest's wife, and it represents the view of R. Judah.[38] Rabbah b. 'Ulla said: There is no contradiction, for one[39] refers to a woman who was anxious [to visit her parents home][40] and the other applies to one who was not anxious.[41]

Then[42] was I in his eyes as one that found peace,[43] R.[44] Johanan[45] interpreted: like a bride[46] who was found faultless[47] in the house of her father-in-law[48] and she is anxious to go and tell of her success[49] at her paternal home.[50]

And it shall be at that day, saith the Lord, that thou shalt call me Ishi,[51] and shalt not call me Ba'ali,[52] R. Johanan interpreted: Like a bride in the house of her father-in-law[53] and not like a bride in her paternal home.[54]

IF A MAN FORBADE HIS WIFE BY VOW etc. One can well understand that in respect [of her prohibition to enter] A HOUSE OF FEASTING

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(1) Such vows only may be annulled by a husband. Now, in view of this ruling of R. Jose (v. supra n. 5), how could it be said that according to his opinion a husband may annul vows against the use of any adornments?

(2) In the case of adornments referred to by R. Jose in our Mishnah.

(3) Lit., 'things between him and her' (sc. husband and wife): a powder, for instance, for the removal of superfluous hair from unexposed parts of the body. A woman's abstention from the use of such kinds of cosmetics or adornments are regarded as things affecting their intimate relations and such vows may well be annulled by a husband, v. Ned. 79b.

(4) Ned. 81a.

(5) Proverb: i.e., one is not injured by an element to which one is accustomed. The husband being accustomed to his wife, cannot be harmed by her refusal to look after her body (as defined n. 8); 'pit' (Rashi) or 'rubble', 'loose ground' (Jast.). Since the intimate relations of husband and wife are not affected by such a vow, the husband has no right to invalidate them. How, then, can be be penalized in the case of the adornments spoken of in our Mishnah?

(6) The annulment of such a vow is within the right of a husband.

(7) By a vow.

(8) Because it is not within her power to make a vow against a duty that is incumbent upon her as a married woman.

(9) By a vow.

(10) Such a vow is within her power to make, since it relates to her own gratification.

(11) Though he is under no obligation to respect it.

(12) Cf. supra note 1.

(13) If according to R. Jose the only reason why a husband has the right to annul his wife's vows in connection with adornments (v. our Mishnah) is because she has made her marital intercourse dependent upon them.

(14) Why then is a husband entitled to annul such vows?

(15) If she were to dispense with her adornments.

(16) An insult which she would not be able to bear, and in consequence of which she would resume the use of

adornments and thus affect her marital relationship. Cf. supra note 1.
(17) As in the case where a man forbade his wife by a vow to have intercourse with him (supra 61b).
(18) Why then has it been stated that HE MUST DIVORCE HER AND GIVE HER THE KETHUBAH forthwith?
(19) The respective rulings of Beth Shammai and Beth Hillel, which allow a certain period before a divorce can be enforced.
(20) When he made his vow.
(21) Lit., 'now'.
(22) And seek the help of an authority in obtaining its disallowance.
(23) And so confirmed it.
(24) She is, therefore, anxious to leave him at once. Hence the ruling in our Mishnah (cf. p. 443, n. 13).
(25) During which a wife must put up with the deprivation of her adornments, and be unable to demand a divorce.
(26) Only where the prohibition has been extended to a longer period can the husband be compelled to divorce his wife and to give her also her kethubah.
(27) I.e., until the major festival next to the day on which the vow was made. The major festivals are Passover, Pentecost and Tabernacles.
(28) Lit., 'for so'.
(29) Lit., 'what is the difference?'
(30) If, therefore, the prohibition imposed upon her by the vow is for less than that period, she does not suffer much by the deprivation of her cosmetics.
(31) He confirmed a vow she bad made to that effect. Though a husband has no right to impose such a vow upon his wife, be may confirm it by remaining silent when he hears that she has imposed such a vow upon herself; v. Num. XXX, 7ff; or, he vowed to abstain from his wife should she go to her father's house; cf. supra p. 433, n. 7.
(32) Her father. [Var. lec. 'IF THEY', v. Rashi].
(33) It was customary for daughters to visit their parents living in another town on the occasion of each major festival (v. p. 444. n. 7), and it was laid down that no hardship was involved if one such visit was omitted.
(34) The question of two is discussed infra.
(35) V. p. 444, n. 11.
(36) This is explained in the Gemara.
(37) How then are the two clauses to be reconciled?
(38) In the Mishnah supra 70a.
(39) Lit., 'here', the first clause which implies that if the prohibition is to last for two festivals the woman must be divorced and is to receive her kethubah.
(40) רדופה, pass. particip. Kal of רדף, 'to pursue', v. next note. In the first year of her married life a woman is anxious, as soon as the first festival after her marriage approaches, to pay a visit to her paternal home where she looks forward to the enjoyment of recounting her novel experi ences in her husband's home. If she is prevented by a vow from paying the visit at the first festival she must be given the opportunity of paying a visit not later than at the second festival. Hence if the vow is for the first two festivals, she is entitled to a divorce and to her kethubah also.
(41) Where she is homesick and always longing to visit her parents, two festivals are considered a hardship. If she shews no such signs of homesickness there is no hardship involved unless the inhibition is for at least three festivals (Rashi). Tosaf. s.v. כאן explains differently: A woman who failed to visit her paternal home on the occasion of the first festival after her marriage is presumed to be fairly indifferent to such visits, and to be suffering no undue hardship by postponing her visit for another two festivals.
(42) Var. lec., according to Tosaf. 'for it is written, l'hen'.
(43) Cant. VIII, 10.
(44) Var. lec., according to Tosaf. 'and R.' etc.
(45) Var. lec 'Jonathan'.
(46) Sc. a woman in the first year of her married life.
(47) שלמה (lit.. 'whole', 'perfect') is of the same root as שלום (peace) in the text cited.
(48) Where she lives with her husband.
(49) Lit., 'her praise'
(50) Cf. supra p. 445, n. 8.
(51) אישי, 'my husband', analogous to אישות 'matrimony', the term implying that the marital union between the

parties is complete.

(52) Hosea II, 18. בעלי signifies 'my master', or 'my husband' in the sense that the man is lord over his wife.

(53) I.e after her marriage when her union with her husband is complete. (V. supra n. 10).

(54) When her future husband is still her ba'al (master) and not her Ish (husband). Israel's relation to God, the prophet assures the people, will be intimate like that of the first mentioned bride and not cautious, reserved and uncertain like that of the latter.

Talmud - Mas. Kethuboth 72a

the reason, HE HAS CLOSED [PEOPLE'S DOORS] AGAINST HER, is applicable;[1] what [point, however,] is there [in the reason,] HE HAS CLOSED [PEOPLE'S DOORS] AGAINST HER, in the case of A HOUSE OF MOURNING? — A Tanna taught: To-morrow she might die and no creature would mourn for her.[2] Others read: And no creature would bury her.[3]

It was taught: R. Meir used to say: What is meant by the Scriptural text, it is better to go to the house of mourning than to go to the house of feasting. for that is the end of all men, and the living will lay it to his heart,[4] what, [I say, is meant by] And the living will lay it[5] to his heart? The matters relating to death. [Let him realize] that if a man mourns for other people others will also mourn for him; if he buries other people others will also bury him; if he lifts up [his voice to lament] for others, others will [lift up their voices to lament] for him; if he escorts others [to the grave] others will also escort him; if he carries others [to their last resting place] others will also carry him.

IF, HOWEVER, HE PLEADS [THAT HIS ACTION] WAS DUE TO SOME OTHER CAUSE HE IS PERMITTED. What is meant by SOME OTHER CAUSE? — Rab Judah citing Samuel replied: On account of dissolute men who frequent that place. Said R. Ashi: This applies only where [the place] has gained such a reputation; where, however, it has not gained such reputation it is not within the power of the husband [to veto it].[6]

IF HE SAID TO HER: '[THERE SHALL BE NO VOW] PROVIDED THAT YOU TELL [etc.].' [Why indeed] should she [not] tell it? — Rab Judah citing Samuel replied: [This refers to] abusive language.[7]

OR 'THAT YOU SHALL FILL AND POUR OUT ON THE RUBBISH HEAP'. [Why indeed] should she [not] do it? — Rab Judah citing Samuel replied: [Because the meaning of his request is] that she shall allow herself to be filled and then scatter it.[8] In a Baraitha it was taught: [The man's request is] that she shall fill ten jars of water and empty them on to the rubbish heap. Now according to [the explanation] of Samuel one can well see the reason why HE MUST DIVORCE HER AND GIVE HER ALSO HER KETHUBAH; according to the Baraitha, however, [the difficulty arises] what matters it to her if she does it?[9] — Rabbah b. Bar Hana citing R. Johanan replied: [She cannot be expected to do it] because she would appear like an imbecile.

R. Kahana stated: If a man placed his wife under a vow that she shall neither borrow nor lend a winnow, a sieve, a mill or an oven, he must divorce her and give her also her kethubah, because [should she fulfil the vow] he would give her a bad name among her neighbours. So it was also taught in a Baraitha: If a man placed his wife under a vow that she shall neither borrow nor lend a winnow, a sieve, a mill or an oven, he must divorce her and give her also her kethubah, because [should she comply with his desire] he would give her a bad name among her neighbours. Similarly if she vowed that she shall neither borrow nor lend a winnow, a sieve, a mill or an oven, or that she shall not weave beautiful garments for his children, she may be divorced without a kethubah, because [by acting on her wishes] she gives him a bad name among his neighbours.

MISHNAH. THESE ARE TO BE DIVORCED WITHOUT RECEIVING THEIR KETHUBAH:

A WIFE WHO TRANSGRESSES THE LAW OF MOSES OR [ONE WHO TRANSGRESSES] JEWISH PRACTICE. AND WHAT IS [REGARDED AS A WIFE'S TRANSGRESSION AGAINST] THE LAW OF MOSES? FEEDING HER HUSBAND WITH UNTITHED FOOD,[10] HAVING INTERCOURSE WITH HIM DURING THE PERIOD OF HER MENSTRUATION,[11] NOT SETTING APART HER DOUGH OFFERING,[12] OR MAKING VOWS AND NOT FULFILLING THEM.[13] AND WHAT [IS DEEMED TO BE A WIFE'S TRANSGRESSION AGAINST] JEWISH PRACTICE? GOING OUT WITH UNCOVERED HEAD,[14] SPINNING IN THE STREET[15] OR CONVERSING WITH EVERY MAN. ABBA SAUL SAID: [SUCH TRANSGRESSIONS INCLUDE] ALSO THAT OF A WIFE WHO CURSES HER HUSBAND'S PARENTS IN HIS PRESENCE. R. TARFON SAID: ALSO ONE WHO SCREAMS. AND WHO IS REGARDED A SCREAMER? A WOMAN WHOSE VOICE CAN BE HEARD BY HER NEIGHBOURS WHEN SHE SPEAKS INSIDE HER HOUSE.[16]

GEMARA. FEEDING HER HUSBAND WITH UNTITHED FOOD. How are we to understand this? If the husband knows [the fact],[17] let him abstain; if he does not know [it],[17] how did he discover it? — [This ruling was] required in the case only where she told him, 'So-and-so the priest has ritually prepared for me the pile of grain',[18] and he went and asked him and her statement was found to be untrue.

HAVING INTERCOURSE WITH HIM DURING THE PERIOD OF HER MENSTRUATION. How are we to understand this? If he was aware of her [condition] he could have abstained, if he was not aware [of it][19] he should still rely upon her, for R. Hinena b. Kahana stated in the name of Samuel: Whence is it deduced that the menstruant herself may [be relied upon to] count [correctly]?[20] From the Scriptural statement, Then she shall number to herself[21] seven days,[22] 'Lah means to herself.'[23] — It was required in the case only where she said to her husband, 'So-and-so the sage told me that the blood was clean',[24] and when her husband went and asked him it was found that her statement was untrue. If you prefer I might reply on the lines of a ruling of Rab Judah who said: If a woman was known[25] among her neighbours to be a menstruant her husband[26] is flogged on her account for [having intercourse with] a menstruant.[27]

NOT SETTING APART THE DOUGH OFFERING. How is this to be understood? If the husband was aware [of the fact] he should have abstained [from the food]; if he was not aware [of it at the time] how does he know it now? — [The ruling is to be understood as] required in the case only where she said to him. 'So-and-so the baker[28] has ritually prepared the dough[29] for me' and when the husband went and asked him her statement was found to be untrue.

OR MAKING VOWS AND NOT FULFILLING THEM; for the Master stated: One's children die on account of the sin of making vows,[30] as it is said in Scripture. Suffer not thy mouth to cause thy flesh to sin etc. [wherefore should God be angry at thy voice, and destroy the work of thine hands];[31] and what is the work of a man's hands? You must say: His sons and his daughters. R. Nahman[32] said, [It[33] may be inferred] from the following: In vain have I smitten your children;'[34] 'In vain' implies, on account of vain utterances.[35]

It was taught: R. Meir said, Any man who knows that his wife makes vows and does not fulfil them should impose vows upon her again. [You say] 'Should impose vows upon her [again]'? Whereby would he reform her?[36] — But [say] he should provoke her again in order that she should make her vow in his presence[37] and he would [thus be able to] annul it.[38] They, however, said to him: No one can live with a serpent in the same basket.[39]

It was taught: R. Judah said. Any husband who knows that his wife does not [properly] set apart for him the dough offering should set it apart again after her. They, however, said to him: No one can live with a serpent in the same basket.[40] He who taught it[41] in connection with this case[42] [would

apply it] with even greater force to the other case;[43] he, however, who taught it in connection with the other case [applies it to that case only][44] but [not to this one,[42] because][45] it might sometimes happen that he would eat.[46]

AND WHAT [IS DEEMED TO BE A WIFE'S TRANSGRESSION AGAINST] JEWISH PRACTICE? GOING OUT WITH UNCOVERED HEAD. [Is not the prohibition against going out with] an uncovered head Pentateuchal;[47] for it is written, And he shall uncover the woman's head,[48] and this, it was taught at the school of R. Ishmael, was a warning to the daughters of Israel that they should not go out with uncovered[49] head?[50] — Pentateuchally

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(1) By the confirmation of such a vow he deprives her of social enjoyments and relaxation.

(2) As she had not participated in the mourning for others.

(3) סופדה v. Tosef. Keth. VII and cf. supra n. 1 mutatis mutandis. Aliter: 'And none will care for her' (Jast.) סופנה (rt. ספן 'to hide', or 'to care for').

(4) Eccl. VII, 2.

(5) Emphasis on it.

(6) Lit. 'not as if all (the power) is from him'.

(7) Lit., 'words of shame'.

(8) Euphemism for vigorous exercise after intercourse in order to prevent conception.

(9) Lit., 'let her do it'.

(10) V. Num. XVIII, 21ff.

(11) V. Lev. XVIII, 19.

(12) V. Num. XV, 19ff.

(13) V. Deut. XXIII, 22.

(14) Aliter: With hair loose or unbound.

(15) This is explained in the Gemara.

(16) This is explained in the Gemara.

(17) When the food is given to him.

(18) Sc. be has received his priestly dues. Asheri, Tur and Shulhan 'Aruk omit 'priest'. Any person, by setting apart the priestly and Levitical dues, might ritually prepare the grain.

(19) At the time.

(20) The prescribed number of the days of her uncleanness.

(21) לה.

(22) Lev. XV, 28.

(23) I.e., she may be implicitly trusted to count correctly. What need was there for the ruling in our Mishnah?

(24) That it was not menstrual.

(25) By her habit or the like.

(26) If he had intercourse with her after he had been duly cautioned.

(27) Kid. 80a. Our Mishnah would thus refer to a case where the neighbours informed the husband of the facts after the event.

(28) Lit., 'kneader'.

(29) I.e., he has duly set apart the dough offering.

(30) And not fulfilling them nor applying for their disallowance.

(31) Eccl. V, 5.

(32) Var., 'R. Nahman b. Isaac' (Shab. 32b).

(33) The penalty for the sin of vows.

(34) Jer. II, 30.

(35) Vows made but not fulfilled.

(36) The imposition of an additional vow would hardly induce her to fulfil her former vows or change her habits.

(37) ידירנה (Hif. of נדר) may bear this meaning, 'he shall cause her (by his provocation) to vow', as also the previously assumed meaning, 'he shall cause her to be under (sc. impose upon her) a vow'.

(38) And so avoid the necessity of divorcing her.

(39) Proverb; if it is the woman's habit to make vows and to break them it is practically impossible for her husband to be always on the look out to invalidate them. She would, despite all vigilance, manage to make vows of which he would remain ignorant. He is entitled, therefore, to insist on divorcing her.
(40) Cf. p. 450, n. 12 mutatis mutandis.
(41) R. Judah's ruling which aims at avoiding a divorce.
(42) The dough offering.
(43) Vows. A transgression in connection with these (which are not common) is much less likely than in connection with the dough offering which has to be given from every dough that is made. If, according to R. Judah, divorce should be avoided in the latter case how much more so in the former.
(44) Cf. supra n. 4.
(45) Owing to the frequency of bread baking.
(46) Bread, the dough offering from which had not been set apart. As one is more likely to commit a transgression in this case R. Judah would not seek to avoid a divorce.
(47) Why then is it here described as one of mere Jewish practice?
(48) Num. V. 18 (v. A.V.) R.V. and A.J.V. render ‘And let the hair of the woman's head go loose’.
(49) Cf. supra n. 9.
(50) Why then was this described as traditional Jewish practice?

Talmud - Mas. Kethuboth 72b

it is quite satisfactory [if her head is covered by] her work-basket;[1] according to traditional Jewish practice, however, she is forbidden [to go out uncovered] even with her basket [on her head].

R. Assi stated in the name of R. Johanan: With a basket [on her head a woman] is not guilty of[2] [going about with] an uncovered head. In considering this statement, R. Zera pointed out this difficulty: Where [is the woman assumed to be]?[3] If it be suggested, ‘In the street’, [it may be objected that this is already forbidden by] Jewish practice;[4] but [if she is] in a court-yard[3] [the objection may be made that] if that were so[5] you will not leave our father Abraham a [single] daughter who could remain with her husband![6] — Abaye, or it might be said, R. Kahana, replied: [The statement refers to one who walks] from one courtyard into another by way of an alley.[7]

SPINNING IN THE STREET. Rab Judah stated in the name of Samuel: [The prohibition applies only] where she exposed her arms to the public. R. Hisda stated in the name of Abimi: [This applies only] where she spins rose [coloured materials, and holds them up] to her face.[8]

CONVERSING WITH EVERY MAN. Rab Judah stated in the name of Samuel: [This refers only to one] who jests with young men.

Rabbah b. Bar Hana related: I was once walking behind R. ‘Ukba when I observed an Arab woman who was sitting, casting her spindle and spinning a rose [coloured material which she held up] to her face.[9] When she saw us she detached the spindle [from the thread], threw it down and said to me, ‘Young man, hand me my[10] spindle’. Referring to her[11] R. ‘Ukba made a statement. What was that statement? — Rabina replied: He spoke of her as a woman SPINNING IN THE STREET. The Rabbis said: He spoke of her as one CONVERSING WITH EVERY MAN.

ABBA SAUL SAID: [SUCH TRANSGRESSIONS INCLUDE] ALSO THAT OF A WIFE WHO CURSES HER HUSBAND'S PARENTS IN HIS PRESENCE. Rab Judah said in the name of Samuel: [This[9] includes also] one who curses his parents in the presence of his offspring;[12] and your mnemonic sign[13] is, Ephraim and Manasseh,[14] even as Reuben and Simeon,[15] shall be mine.[16] Rabbah[17] explained:[18] When she said[19] in the presence of her husband's son, ‘May a lion devour your grandfather’.[20]

R. TARFON SAID: ALSO ONE WHO SCREAMS. What is meant by a screamer? — Rab Judah replied in the name of Samuel: One who speaks aloud[21] on marital matters. In a Baraitha it was taught: [By screams was meant a wife] whose voice[22] during her intercourse in one court can be heard in another court. But should not this, then,[23] have been taught in the Mishnah[24] among defects?[25] — Clearly we must revert to the original explanation.[26]

MISHNAH. IF A MAN BETROTHED A WOMAN ON CONDITION THAT SHE WAS NOT SUBJECT TO ANY VOWS AND SHE WAS FOUND TO BE UNDER A VOW,[27] HER BETROTHAL IS INVALID. IF HE MARRIED HER[28] WITHOUT MAKING ANY CONDITIONS AND SHE WAS FOUND TO BE UNDER A VOW,[27] SHE MAY BE DIVORCED WITHOUT RECEIVING HER KETHUBAH.

[IF A WOMAN WAS BETROTHED] ON CONDITION THAT SHE HAS NO BODILY DEFECTS, AND SHE WAS FOUND TO HAVE SUCH DEFECTS, HER BETROTHAL IS INVALID. IF HE MARRIED HER WITHOUT MAKING ANY CONDITIONS AND SHE WAS FOUND TO HAVE BODILY DEFECTS, SHE MAY BE DIVORCED WITH OUT A KETHUBAH. ALL DEFECTS WHICH DISQUALIFY PRIESTS[29] DISQUALIFY WOMEN ALSO.[30]

GEMARA. We have [in fact] learned [the same Mishnah] also in [the Tractate] Kiddushin.[31] [But] here[32] [the laws][33] were required [in respect of] kethuboth,[34] and the laws concerning betrothal[35] were stated on account Of those of the kethubah; there[36] the laws in respect of betrothal were required, and those concerning kethuboth[33] were stated on account of those of betrothal.

R. Johanan said in the name of R. Simeon b. Jehozadak: They[37] spoke only of the following vows. That she would not eat meat, that she would not drink wine or that she would not adorn herself with coloured garments. So it was also taught elsewhere: They spoke of such vows as involve an affliction of the soul, [namely,] that she would not eat meat, that she would not drink wine or that she would not adorn herself with coloured garments.

In dealing with this subject R. Papa raised this difficulty: What does it[38] refer to? If it be suggested [that it refers] to the first clause[39] [it might be retorted that] since the husband objects [to vows] even other kinds of vows[40] Should also be included! — [It refers] only to the final clause.[41] R. Ashi said: It may in fact refer to the first clause,[39] but in respect of the vows to which people usually take exception[42] his objection is valid;[43] respect of vows to which people do not as a rule take exception his objection has no validity.

It was stated: If a man betrothed a woman on condition [that she was under no vow] and married her without attaching any conditions, it is necessary, Rab ruled, that she[44] shall obtain from him a letter of divorce; and Samuel ruled: It is not necessary for her to obtain a letter of divorce from him.[45] Said Abaye:

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(1) קלתה or קלת, calathus, ‘a woven vase-shaped basket’.

(2) Lit., ‘there is not in her’.

(3) When her head is covered by her basket only.

(4) Spoken of in our Mishnah. What need then was there for R. Johanan's statement?

(5) That otherwise the law of ‘uncovered head’ applies also in a court-yard.

(6) Since all married women go about in their court-yards with uncovered heads.

(7) Into which the two courts open out. An alley, since fewer people frequent it, would not have been included in the restrictions spoken of in our Mishnah in respect of a public street, yet it is not considered sufficiently private to allow the woman to go about there with ‘uncovered head’. Hence the necessity for the specific ruling of R. Johanan.

(8) That it might reflect the rose colour. ורד ‘rose’. (V. Tosaf s.v. בטווה). Aliter: ‘Spins with a rose in her hair’,

reading וורד 'and a rose' (Maim.). Aliter: 'Spins with the thread lowered in front of her face' (euphemism), reading ורד rt. רדד, 'to flatten', 'lower' (Rashi). Var. lec. ויורד (rt. ירד) 'to go down', 'descend' (cf. Jast. and Golds.).
(9) Cf. supra n. 4.
(10) Reading פלכאי (Aruch). Cur. edd., פלך.
(11) Lit., 'on her' or 'it'. (8) The expression בפניו . . . המקללת, WHO CURSES. . . . IN HIS PRESENCE.
(12) MS.M. יולדיו בפני מולדיו; Cur. edd. יולידיו בפני מולידיו.
(13) To aid in the recollection that one's offspring is like oneself.
(14) Jacob's grandchildren.
(15) His own children.
(16) Gen. XLVIII, 5.
(17) Var., 'Raba'.
(18) The cursing of which Samuel spoke.
(19) [V. Tosaf. s.v. יולידיו; cur. edd. add 'to him'].
(20) V. Rashi, and Tosaf. loc. cit.
(21) Lit., 'makes her voice heard'.
(22) Her screams of pain caused by the copulation.
(23) Since her screaming is due to a bodily defect.
(24) Infra 77a.
(25) Of course it should. Such a case in our Mishnah is out of place.
(26) That given in the name of Samuel.
(27) Lit., and vows were found upon her'.
(28) Lit., 'he took her, in (his house)'. It will be explained infra whether this does or does not refer to the preceding case.
(29) From the Temple service (cf. Lev. XXI, 17ff).
(30) From marriage. If such a woman married she may be divorced without a kethubah.
(31) In Kid. 50a.
(32) Since our tractate is dealing with the laws of kethubah.
(33) DIVORCED WITHOUT A KETHUBAH (bis).
(34) Plural of kethubah.
(35) HER BETROTHAL IS INVALID.
(36) In the tractate of Kid. 50a.
(37) The Rabbis in our Mishnah.
(38) The definition of vows given in the name of R. Simeon b. Jehozadak.
(39) Where the husband explicitly expressed his objection to betroth a woman who was under a vow.
(40) Lit., 'all words', 'things'.
(41) Where the husband had made no conditions.
(42) Such as those mentioned in R. Simeon b. Jehozadak's definition.
(43) And the betrothal, therefore, is invalid.
(44) If it was found that she was under a vow, and the man consequently refuses to live with her.
(45) Cf. Yeb. 110a.

Talmud - Mas. Kethuboth 73a

It must not be suggested that Rab's reason[1] is that, because the man has married her without attaching any conditions, he has entirely dispensed with his former condition.[2] Rab's reason rather is that no man treats his intercourse as a mere act of prostitution.[3]

Surely they[4] once disputed on such a principle.[5] For it was stated: Where [an orphan] minor[6] who did not[7] exercise her right of mi'un[8] and who, when she came of age, left[9] [her husband][10] and married [another man], Rab ruled: She requires no letter of divorce from her second husband,[11] and Samuel ruled: She requires a letter of divorce from her second husband![12] — [Both disputes were] necessary. For if the latter[13] only had been stated, it might have been assumed that Rab adhered to his opinion[14] in that case only because no condition was attached [to the betrothal],[15] but that in the

former case,[16] where a condition was attached [to the betrothal],[17] he agrees with Samuel.[18] And if the former case[16] only had been stated, it might have been assumed that in that case only[19] did Samuel maintain his view[20] but that in the latter[13] he agrees with Rab.[21] [Hence both were] required.

We have learned: IF HE MARRIED HER WITHOUT MAKING ANY CONDITION AND SHE WAS FOUND TO BE UNDER A VOW, SHE MAY BE DIVORCED WITHOUT RECEIVING HER KETHUBAH [which[22] implies that] it is only her kethubah that she cannot claim but that she nevertheless requires a letter of divorce. Now does not this[23] refer to one who has betrothed a woman on condition [that she was under no vow][24] and married her without making any condition?[25] This then[26] represents an objection against Samuel![27] [

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(1) For regarding the marriage as valid.

(2) And consequently he must not only divorce her but must give her her kethubah also.

(3) The consummation of the marriage was, therefore, a legal act necessitating a divorce for its annulment. In respect of the monetary obligation, however, the man still adheres to his original condition which she did not fulfil, and be cannot consequently be expected to give her also her kethubah.

(4) Rab and Samuel.

(5) I.e., whether intercourse after a conditional betrothal (the case spoken of supra 72b), or a legally imperfect marriage or betrothal (the case cited infra from Yeb. 109b) has the force of a valid and proper marriage to require the divorce for its annulment.

(6) Who was given in marriage by her mother or brothers.

(7) While she was still in her minority.

(8) V. Glos.

(9) Lit., ‘stood up’.

(10) With whom she had intercourse after she had come of age.

(11) Because, according to Rab, her second marriage was null and void owing to the kinyan (v. Glos.) effected by the intercourse of the first husband when she came of age. (V. supra n. 12). Being well aware that the original marriage which took place during the woman's minority had no legal force, the man is presumed to have intended his intercourse after she had attained her majority to effect the required legal kinyan of marriage.

(12) Yeb. 109b; because any act of intercourse on the part of the first husband, even after the woman had attained her majority, was carried out in reliance on the original betrothal which, having taken place while she was a minor, had no validity. Her betrothal to the second is, therefore, valid and must be annulled by a proper divorce. Though it may be added, Samuel admits that she is prohibited to the second husband, having regard to the fact that she did not exercise her right until she reached her majority (v. Nid. 52a). This prohibition is nevertheless only Rabbinical and consequently has no bearing on the question of the divorce, the purpose of which is to sever a union which is Pentateuchally binding. According to Rab, however, (v. supra p. 455, n. 13) the prohibition of the woman to her second husband is not merely Rabbinical but is, in fact, Pentateuchal. Why then should Rab and Samuel dispute on the same principle twice?

(13) Lit., ‘that’, the dispute in the case of the minor, cited from Yeb. 109b.

(14) That the intercourse of the first husband is regarded as a kinyan.

(15) And the husband may, therefore, be presumed to be anxious to give to the union all the necessary validity of a proper marriage (cf. supra p. 455, n. 13).

(16) That stated supra 72b.

(17) And the husband naturally believes that the woman, since she consented to the marriage, was in a position to fulfil it.

(18) That, as it never occurred to the husband (v. supra n. 5) that his original betrothal was in any way invalid, and as he did not, therefore, betroth her by subsequent cohabitation, no divorce is required.

(19) Since a condition was attached to the original betrothal.

(20) That the marriage, owing to its dependence on the original condition, is invalid.

(21) That, since no conditions were made, the intercourse of the first husband after her attaining majority has the validity of a kinyan, and no divorce from the second is required.

(22) Since the kethubah was excluded and not the letter of divorce.

(23) The second clause of our Mishnah.

(24) I.e., the case spoken of in the first and previous clause, the second clause of the Mishnah being dependent on the first.

(25) Which is the case in dispute between Rab and Samuel.

(26) The answer being apparently in the affirmative, and the implication being that a divorce is required.

(27) Who ruled (supra 72b ad. fin.) that no divorce is necessary.

Talmud - Mas. Kethuboth 73b

— No; [this[1] refers to one who] betrothed her without attaching a condition and also married her without attaching a condition.[2] If, however, one betrothed a woman on a certain condition and subsequently married her without attaching a condition would she, [according to our Mishnah], indeed[3] require no divorce?[4] If so, then, instead of stating, IF A MAN BETROTHED A WOMAN ON THE CONDITION THAT SHE WAS NOT SUBJECT TO ANY VOWS AND SHE WAS FOUND TO BE UNDER A VOW, HER BETROTHAL IS INVALID,[5] it should rather have been stated: If a man married a woman without attaching a condition and she was found to be under a vow, her betrothal is invalid, and [it would be evident, would it not, that this[6] applies] even more so to the former?[7] — It is really this reading that was meant:[8] IF A MAN BETROTHED A WOMAN ON THE CONDITION THAT SHE WAS NOT SUBJECT TO ANY VOWS, and then he married her without making any conditions, AND SHE WAS FOUND TO BE UNDER A VOW, HER BETROTHAL IS INVALID; if, however, he betrothed her without making any conditions and also MARRIED HER WITHOUT MAKING ANY CONDITIONS, SHE MAY BE DIVORCED WITHOUT RECEIVING HER KETHUBAH; it is only her kethubah that she cannot claim but it is necessary for her to obtain a divorce. But why has she no claim to her kethubah? Because, [apparently], he[9] could plead, 'I do not want a wife that is in the habit of making vows',[10] but if that is the case there should be no need for her to obtain a divorce either![11] — Rabbah replied: It is only according to Rabbinical law that she requires a divorce. So also said R. Hisda: It is only in accordance with the Rabbinical law that she requires a divorce. Raba replied: The Tanna[12] was really in doubt.[13] [Hence he adopted] the lenient view in monetary matters[14] and the stricter one[15] in the case of prohibitions.[16]

Rabbah stated: They[17] differ only in the case of an error[18] [affecting] two women,[19] but where an error [affects] one woman[20] all agree[21] that she requires no divorce from him.[22] Said Abaye:[23] But our Mishnah, surely, is one which [has been assumed[24] to refer to] an error [affecting] one woman but was nevertheless adduced as an objection![25] If, however, such a statement was made at all it must have been made in this form: Rabbah stated: They[26] differ only in the case of an error [affecting] a woman [who is in a position] similar [to that of one of] two women,[27] but in the case of an error [affecting] merely one woman[28] all agree[29] that she requires no divorce from him.[30]

Abaye raised an objection against him:[31] If a man betrothed a woman in error[32] or [with something worth] less than a perutah,[33] and, similarly, if a minor betrothed a woman, even if any [of them] has subsequently sent presents[34] [to the woman], her betrothal is invalid,[35] because he has sent these gifts on account of the original betrothal.[36] If, however, they[37] had intercourse they have thereby effected legal kinyan. R. Simeon b. Judah in the name of R. Ishmael said: Even if they had intercourse they effect no kinyan.[38] Now here, surely, it is an error [affecting] only one woman and they[39] nevertheless differ. Would you not [admit that by 'error' is meant] an error in respect of vows?[40] — No; [what was meant is] an error in respect of that which was worth less than a perutah.[41] — But was not 'less than than a perutah' explicitly mentioned: 'If a man betrothed a woman in error or [with something worth] less than a perutah'?[42] — [The latter part is] really an explanation [of the former:] What is meant by 'If a man betrothed a woman in error'? If, for instance, he betrothed her with 'something worth less than 'a perutah'.

On what principle do they[43] differ?[44] — One Master[45] holds the view that everyone is aware that

with less than the value of a perutah no betrothal can be effected, and consequently any man having intercourse [after such an invalid act] determines [to do so] for the purpose of betrothal. The other Master,[46] however, holds the view that not everyone is aware that with less than the value of a perutah no betrothal can be effected, and when a man has intercourse [after such an act[47] he does so] in reliance on his first betrothal.[48]

He raised [another] objection against him:[49] [If a man said to a woman,] 'I am having intercourse with you on the condition that my father will consent',[50] she is betrothed to him even if his father did not consent. R. Simeon b. Judah, however, stated in the name of R. Simeon, If his father consented she is betrothed but if his father did not consent she is not betrothed.[51] Now here, surely, it is a case similar to that of an error affecting one woman[52] and they[53] nevertheless differ![54] — They differ in this case[55] on the following points.[56] One Master[57] holds the opinion that [the expression] 'On the condition that my father consents' implies, 'On condition that my father will remain silent', and [the betrothal is valid] because, surely, his father remained silent. And the other Master[58] holds the opinion [that the meaning of the expression is] that his father will say, 'yes', and [the betrothal is invalid] because his father in fact did not say, 'yes'.

He raised [a further] objection against him.[59] The Sages agree with R. Eliezer[60] in respect of a minor whom her father had given in marriage and who was divorced,[61] [in consequence of which] she is regarded as an 'orphan' in her father's lifetime,[62] and who was then remarried,[63] that she must perform halizah[64] but may not[65] contract the levirate marriage because her divorce was a perfectly legal divorce,[66] but her remarriage was not a perfectly legal remarriage.[67] This,[68] however, applies only where he[69] divorced her while she was a minor[70] and remarried her while she was still a minor;[71] but if he[72] divorced her while she was a minor[73] and remarried her while she was still a minor and she became of age while she was still with him, and then he died,[74] she must either perform halizah or contract the levirate marriage.[75]

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(1) The second clause of our Mishnah.

(2) I.e., the second clause of our Mishnah is not dependent on the first one.

(3) Lit., 'thus'.

(4) This would seem to follow from the interpretation of our Mishnah just advanced on behalf of Samuel.

(5) A form of expression which, omitting all reference to marriage, might imply that if she was subsequently married unconditionally a divorce is required.

(6) That the betrothal is invalid and that consequently no divorce is required.

(7) The case enunciated in the present form of our Mishnah where the betrothal was not followed by marriage.

(8) Lit., 'thus also he said'.

(9) Should be be ordered to pay the kethubah.

(10) And her betrothal is, therefore, invalid as if the man had advanced such a plea at the actual time of the betrothal.

(11) Cf. p. 457, n. 10. Rab's view that 'no man treats his intercourse as a mere act of prostitution' (supra 73a) cannot be advanced here in reply, since Samuel, whose views are the subject of the present discussion, does not admit it.

(12) Of our Mishnah.

(13) As to 'whether the presumption that, as a rule, one does not want to live with a wife who is in the habit of making vows is sufficient reason for regarding the betrothal of such a woman as null and void.

(14) I.e., the kethubah. As the woman's claim to it is of a doubtful nature, her husband who is the possessor of the money cannot be made to pay it.

(15) That a divorce is necessary if she wishes to remarry.

(16) It is forbidden to live with another man's wife.

(17) Rab and Samuel, supra 72b, ad fin.

(18) I.e., the man believed that the woman was under no vow while in fact she was.

(19) The first of whom a man betrothed on the condition that she was under no vow and the second of whom he afterwards married without making any condition and subsequently found that she was under a vow. Samuel regards the non-conditional marriage of the second as invalid because the man is presumed to have married her on the same

condition as that on which he betrothed the first. Rab, however, maintains that it is quite possible that the man was so attracted by the second woman that he was willing to dispense with his terms.

(20) Whom the man betrothed on a certain condition and afterwards married without making any condition.

(21) Even Rab.

(22) Since the man has made it clear at the betrothal that he objected to live with her if she were encumbered with any vows.

(23) Rashal deletes 'to him', which appears in brackets in cur. edd.

(24) Supra 73a ad fin.

(25) Against Samuel (l.c.); which shews, contrary to Rabbah's assumption, that even in the case of a mistake in respect of one woman, some authorities maintain that a divorce is required.

(26) Rab and Samuel, supra 72b ad fin.

(27) One, for instance, who was betrothed on a certain condition, was then divorced and subsequently married with no condition. In such a case Rab maintains that a divorce is required as in the case of the second woman where two women were involved (cf. supra p. 458, n. 9), while Samuel maintains that no divorce is required because the man's condition at the betrothal is regarded as a permanent declaration that he would not live with a woman who was in the habit of making vows and, since this condition renders the marriage null and void, no divorce is required to annul such a marriage.

(28) I.e., one whose marriage had followed her betrothal, and no divorce had intervened, so that the man may well be presumed to have consummated marriage on the same terms as those he laid down at the betrothal.

(29) Even Rab.

(30) In raising the objection against Samuel supra our Mishnah was assumed to deal with 'a woman who was in a position similar to that of two women' (cf. supra n. 1).

(31) Rabbah.

(32) This, at present, is presumed to mean that the woman was under a vow and the man was at the time unaware of it.

(33) V. Glos.

(34) Sablonoth; v. Kid. Sonc. ed. p. 254, n. 4.

(35) Although the presents, if specifically given as a token of betrothal, would effect a valid kinyan of betrothal.

(36) And since that betrothal is invalid the gifts cannot effect the necessary kinyan.

(37) Any of those mentioned whose betrothal is invalid.

(38) Tosef. Kid. IV.

(39) R. Ishmael and the first Tanna.

(40) Cf. supra note 6. This proves that one authority at least (viz. the first Tanna) regards a non-conditional marriage as valid though it followed a conditional betrothal. How then could Rabbah maintain, according to the second version, that in such a case all agree that, as the marriage is invalid, no divorce is required.

(41) The man, at the time of betrothal, having been under the erroneous impression that kinyan may be effected by such an insignificant sum. Since this law is generally known it may well be presumed that subsequent intercourse was intended as kinyan. In the case of an error in respect of vows, however, subsequent intercourse cannot alter the invalidity of the betrothal since during the performance of the latter act the man may still have been under the impression that his wife was not restricted by any vow. The general opinion, therefore, is, Rabbah may well maintain, that no divorce is in this case required.

(42) Is it likely that the same law should be repeated in the same context?

(43) R. Ishmael and the first Tanna.

(44) On the previous assumption (that the 'error' referred to the conditional betrothal of a woman who was under a vow) the principles underlying this dispute might be those upheld supra by Rab and Samuel respectively. On the present assumption, however, (that be 'error' refers to a betrothal attempted with less than a perutah) the difficulty arises (cf. supra note 1) 'on what principles do they differ?' sc. how could R. Ishmael maintain his view that 'even if they had cohabited they effect no kinyan'?

(45) The first Tanna.

(46) R. Ishmael.

(47) Which be believes to be a valid betrothal.

(48) Which was in fact invalid and in consequence of which the cohabitation constitutes no kinyan.

(49) Rabbah.

(50) To the union.

(51) Git. 25b.
(52) Since in both cases a condition was attached to the betrothal, merely one woman is involved, and no divorce intervened between betrothal and intercourse.
(53) R. Simeon and the first Tanna.
(54) R. Simeon maintaining that the intercourse is a valid kinyan, and a divorce is consequently required. How then (cf. supra p. 459, n. 14 mutatis mutandis) could Rabbah assert that in such a case all agree that no divorce is necessary?
(55) Lit., 'there'.
(56) Not on the principle underlying Rabbah's assertion.
(57) The first Tanna.
(58) R. Simeon.
(59) Rabbah.
(60) The reading in the parallel passage, Yeb. 109a, is 'Eleazar'.
(61) Her father having received the letter of divorce on her behalf.
(62) Like an orphan, she has no father to give her away in marriage, because though alive be has lost his right to do so after he has given her in marriage once.
(63) Lit., 'he (the first husband from whom she was divorced) married her again'. While she was still in her minority when her actions have no legal validity.
(64) V. Glos.
(65) If her husband died childless and was survived by a brother.
(66) And as the divorcee of his brother she is forbidden to the levir under the penalty of kareth (v. Glos.).
(67) Cf. supra n. 13.
(68) That the Sages admit that the minor in question may not contract the levirate marriage.
(69) Her first husband.
(70) The validity of the divorce being due to the fact that her father has accepted the letter of divorce on her behalf.
(71) When neither she nor her father (cf. supra p. 461, n. 12) had the right to contract the marriage; and her husband died while she was still in her minority so that no intercourse at all had taken place when she came of age.
(72) Her first husband.
(73) V. p. 461, n. 20.
(74) So that it was possible for intercourse to take place when she was already in her majority.
(75) Because the act of intercourse after she had come of age constituted a legal kinyan of marriage, and she became thereby the legally married wife of the deceased.

Talmud - Mas. Kethuboth 74a

In the name of R. Eliezer,[1] however, it was stated: She[2] must perform halizah but may not contract the levirate marriage.[3] Now, here,[4] surely, it is a case similar to that of an error[5] affecting merely one woman and they[6] nevertheless differ![7] — In that case[8] also [it may be said that][9] they[6] differ on the following principles.[10] One Master[11] maintains that everyone is aware that there is no validity in the betrothal of a minor and, consequently, any man having intercourse [after such an invalid act] determines that his intercourse shall serve the purpose of a betrothal.[12] The other Master,[13] however, maintains that not everyone is aware that there is no validity in the betrothal of a minor, and when a man has intercourse [after such an act[14] he does so] in reliance on his original betrothal.[15]

[So][16] it was also stated: R. Aha b. Jacob stated in the name of R. Johanan. If a man betrothed a woman on a certain condition and then had intercourse with her, she,[17] it is the opinion of all, requires no letter of divorce from him.

R. Aha the son of R. Ika, his[18] sister's son[19] raised an objection against him: A halizah under a false pretext[20] is valid; and what is 'a halizah under a false pretext'? Resh Lakish explained: Where a levir is told, 'Submit to her halizah and you will thereby wed her'. Said R. Johanan to him:[21] I am in the habit of repeating [a Baraitha,] 'Whether he[22] had the intention[23] [of performing the commandment of halizah] and she had no such intention, or whether she had such intention and he

had not, her halizah is invalid, it being necessary[24] that both shall [at the same time] have such intention', and you say that her halizah is valid?[25] But, said R. Johanan, [this is the meaning:][26] When a levir is told, 'Submit to her halizah on the con dition that she gives you two hundred zuz'.[27] Thus[28] it clearly follows that as soon as a man has performed an act[29] he has thereby dispensed with his condition, [why then should it not be said] here also that as soon as the man has intercourse he has thereby dispensed with his condition?[30] — The other replied: Young hopeful,[31] do you speak sensibly?[32] Consider: Whence do we derive [the law of the validity of] any condition? [Obviously] from the condition in respect of the sons of Gad and the sons of Reuben;[33] [hence it is only] a condition that may be carried out through an agent, as was the case there,[34] that is regarded as a valid condition; but one which cannot be carried out through an agent,[35] as was the case there, is not regarded as a valid condition.[36] But is not intercourse[37] an act which cannot be performed through an agent as was the case there[34] and yet a condition in connection with it is valid?[38] — The reason[39] there is because the various forms of betrothal[40] were compared to one another.[41] R.'Ulla b. Abba in the name of 'Ulla in the name of R. Eleazar stated: If a man betrothed a woman by a loan[42] and then had intercourse with her, or on a certain condition[43] and then had intercourse with her, or with less than the value of a perutah[44] and then had intercourse with her, she,[45] it is the opinion of all, requires from him a letter of divorce.[46]

R. Joseph b. Abba, in the name of R. Menahem in the name of R. Ammi stated: If a man betrothed a woman with something worth less than a perutah and then had intercourse with her, she[45] requires a letter of divorce from him.[46] It is only in this case[47] that no one could be mistaken,[48] but in the case of the others[49] a man may be mistaken.[50]

R. Kahana stated in the name of 'Ulla: If a man betrothed a woman on a certain condition[43] and then had intercourse with her, she[45] requires a divorce from him.[46] Such a case once occurred and the Sages could find no legal ground[51] for releasing the woman without a letter of divorce. [This is meant] to exclude [the ruling] of the following Tanna. For Rab Judah stated in the name of Samuel in the name of R. Ishmael: And she be not seized[52] [only then[53] is she] forbidden;[54] if, however, she was seized[55] she is permitted.[54] There is, however, another [kind of woman] who is permitted[54] even though she was not seized.[56] And who is she? A woman whose betrothal was a mistaken one[57] and who may, even if her son sits riding on her shoulder,

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(1) V. supra p. 461, n. 10.

(2) Whom the first husband remarried 'while she was still a minor and she came of age while she was with him, and then be died' (cf. Rashi, second version, s.v. ה ג a.l.). Aliter: Even if she was remarried after she came of age, or was divorced and remarried after she came of age, R. Eliezer's reason being that preventive measures were necessary against the possibility of erroneously allowing one who was an 'orphan in the lifetime of her father' to contract levirate marriage. If the former interpretation is adopted the author of the Baraitha here cited would be in disagreement with the one in Yeb. 109a (v. Rashi l.c.); if the latter interpretation is adopted, the reading of cur. edd. infra is to be emended (v. infra note 14).

(3) V. Yeb. 109a where this passage occurs with some slight variations.

(4) Where remarriage took place 'while she was still a minor and she came of age while she was with him'.

(5) The error of believing the betrothal of the minor to be valid.

(6) The Sages and R. Eliezer.

(7) The Sages maintaining that levirate marriage may be contracted; which proves that the intercourse that took place when she was of age is regarded as a valid kinyan. As the same principle applies also to the case of error in respect of a woman under a vow (supra) an objection arises against Rabbah (cf. supra p. 459, n. 14).

(8) Lit., 'there'.

(9) If the second interpretation (supra note 7) is adopted the reading is to be emended to: Every one knows that the betrothal of a minor is invalid, but where one betrothed a woman on a certain condition and then had intercourse he does so in reliance on this condition (v. Rashi).

(10) Not on the one underlying the case of which Rabbah spoke.

(11) The view expressed by the Sages.
(12) Hence the validity of the marriage and the permissibility of a levirate marriage.
(13) R. Eliezer.
(14) Which be believes to be a valid betrothal.
(15) Which in fact was invalid. Hence the invalidity of the marriage etc. (cf. supra note 1).
(16) In agreement with Rabbah who stated (supra 73b) that 'in the case of an error affecting merely one woman all agree that she requires no divorce from him'.
(17) If the condition has not been fulfilled.
(18) R. Aba b. Jacob's.
(19) MS.M. reads 'son of the sister of Resh Lakish'.
(20) מוטעת (rt. טעה, Hof'al.) lit., 'misled'.
(21) Resh Lakish. Cur. edd. omit 'to him' which is the reading of MS.M.
(22) The levir.
(23) When be submitted to halizah.
(24) Lit., 'until'.
(25) If the levir, according to the interpretation of Resh Lakish, performed the halizah in order to effect thereby a kinyan of marriage, he obviously did not intend to perform the commandment of halizah the very purpose of which is not the union of the woman with, but her separation from, the levir. And, since there was no intention to perform the commandment, how could such a halizah be valid?
(26) Of 'a halizah under a false pretext'.
(27) V. Glos. Even if the promised sum was not paid to the levir the halizah is nevertheless valid. Tosef. Yeb. XII, Yeb. 106a.
(28) Since the non-fulfilment of the condition does not invalidate the halizah.
(29) [Without emphasizing at the time that he does so in reliance on the condition (v. Tosaf.).]
(30) And the woman should, therefore, become his lawful wife. How then could R. Aha b. Jacob maintain in the name of R. Johanan that a betrothal, on a certain condition that has not been fulfilled, is invalid and no divorce is required even if intercourse followed the betrothal?
(31) Lit., 'son of the school house'.
(32) Lit., 'beautiful'.
(33) V. Num. XXXII, 29, 30 and Kid. 61a.
(34) Moses instructed Joshua to act, so to speak, as his agent in carrying out the condition he had made (v. Num. XXXII, 28ff).
(35) Halizah, for instance. The levir cannot instruct an agent to submit to halizah on his behalf when the sum promised shall have been handed to him.
(36) As the condition is null and void the act of halizah remains valid despite the unfulfilled condition. Where, however, the condition was valid, as in the case of the betrothal spoken of by R. Aha b. Jacob, the non-fulfilment of the condition renders the betrothal null and void and no subsequent intercourse can be regarded as an annulment of the condition and confirmation of the betrothal.
(37) When it was intended as a kinyan of marriage.
(38) As was stated in the passage quoted from Git. 25b (supra 73b).
(39) For the validity of the condition.
(40) הויות (rt. היה) lit., 'beings'. 'becomings'. היה is the rt. of והיתה (Deut. XXIV, 2), and she becometh . . . wife. A woman may become a man's wife either by receiving from him (a) money (or its equivalent in kind) or (b) a deed or (c) by cohabitation (Kid. 2a).
(41) As a condition in connection with (a) and (b) (which may be performed through an agent) is valid, so also is one in connection with (c).
(42) Which she owed him. Such betrothal is invalid because loaned money may be spent, while a betrothal cannot be valid unless money or its equivalent (v. p, 464, n. 15) was actually given to the woman at the time of the betrothal (v. Kid. 6b).
(43) Which was not fulfilled.
(44) V. Glos. The minimum sum for a betrothal to be valid is a perutah.
(45) If the union is to be dissolved.

(46) Because a man, it is assumed, would not allow his intercourse to deteriorate into a mere act of prostitution.

(47) Betrothal with less than a perutah.

(48) That the betrothal was valid. Knowing his act to be invalid be determines to effect the kinyan of the marriage through his subsequent intercourse. Hence the necessity for a divorce to dissolve it.

(49) Betrothal by a loan or on a certain condition, spoken of supra in the name of R. Eleazar.

(50) He might be under the impression that a loan may effect a valid betrothal or that the condition he had made had been fulfilled. As his intercourse would consequently be based on his erroneous presumption of the validity of the betrothal the union would have no validity and, contrary to the view expressed in the name of R. Eleazar (v. supra n. 8), no divorce to dissolve it would be required.

(51) Lit., 'there was no power'.

(52) Num. V, 13, E.V., neither she be taken in the act.

(53) Only if she was 'not seized', i.e., she did not act under compulsion but willingly (cf. Yeb. 56b).

(54) To her husband.

(55) I.e., if she acted under compulsion.

(56) Cf. supra n. 1.

(57) I.e., when a condition that was attached to it remained unfulfilled. In such a case the woman may leave her husband without a letter of divorce and is free to marry any other man.

Talmud - Mas. Kethuboth 74b

make a declaration of refusal[1] [against her husband] and go away.[2]

Our Rabbis taught: If she[3] went to a Sage [after her betrothal] and he disallowed her vow her betrothal is valid. [If one[4] went] to a physician who cured her, her betrothal is invalid. What is the difference between the act of the Sage and that of the physician?[5] — A Sage annuls[6] the vow retrospectively[7] while a physician effects the cure only from that moment onwards.[8] But was it not, however, taught, [that if she[9] went] to a Sage and he disallowed her vow or to a physician and he cured her, her betrothal is invalid?[10] — Rabbah[11] replied: There is no contradiction. The former[12] represents the view of R. Meir; the latter[13] represents that of R. Eleazar. 'The former represents the view of R. Meir', who holds that a man does not mind[14] his wife's being exposed to the publicity[15] of a court of law.[16] 'The latter represents that of R. Eleazar' who holds that no man wants his wife to be exposed to the publicity[17] of a court of law.[18] What is the source[19] [of these statements]?[20] — [The following] where we learned: If a man divorced his wife on account of a vow [she had made] he may not remarry her,[21] nor may he remarry his wife [if he divorced her] on account of a had name.[22] R. Judah ruled: In the case of a vow that was made in the presence of many people[23] he may not remarry her,[24] but if it was not made in the presence of many people he may remarry her.[25] R. Meir ruled: In the case of a vow [the disallowance of which] necessitates the investigation of a Sage[26] her husband may not remarry her,[27] but if it does not require the investigation of a Sage[28] he may remarry her.[29] R. Eleazar said:[30] The prohibition against [remarriage where the disallowance of the vow] required [the investigation of a Sage][31] was ordained only on account [of a vow] which requires [no such investigation].[32] (What is R. Judah's reason?[33] Because it is written in Scripture,

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(1) I.e., she requires no formal letter of divorce.

(2) V. supra 51b. The practical ruling of the Sages, as reported by R. Kahana in the name of 'Ulla, shews that the ruling of R. Ishmael was not adopted.

(3) The woman who was under a vow at the time of her betrothal.

(4) The woman who was afflicted with a bodily defect at the time of her betrothal.

(5) I.e., why is the betrothal valid in the case of the former and not in that of the latter?

(6) Lit., 'uproots'.

(7) So that the woman, at the time of her betrothal, was virtually under no vow. Hence the validity of the betrothal.

(8) Since the woman at the time of the betrothal was still suffering from her affliction the betrothal was effected under a false assumption and is therefore invalid.

(9) V. supra note 8.
(10) How is this statement to be reconciled with the previous one according to which disallowance of a vow by a Sage renders the preceding betrothal valid?
(11) V. Marg. glos. Cur. edd. , 'Raba'.
(12) The ruling that the betrothal is valid if a Sage disallowed the vow.
(13) That even where a Sage had disallowed the vow the betrothal is invalid.
(14) Lit., 'Is willing'.
(15) שתתבזה, lit., 'that she shall be disgraced'.
(16) By applying in person to the Sage for the disallowance of her vow. It is assumed, therefore, that a man has no objection to betrothing a woman who is under a vow, since she may subsequently apply to a Sage for a disallowance.
(17) V. p. 466, D. 20.
(18) Consequently, if he had known that she was under a vow he would not have betrothed her. Hence the invalidity of the betrothal.
(19) Lit., 'it'.
(20) Attributed to R. Meir and R. Eleazar respectively.
(21) Because, according to one opinion (v. Git. 45b), it is possible that after the woman had obtained from a Sage the disallowance of her vow and had married another man, her first husband might regret his action in divorcing her and, advancing the plea that he would not have divorced her had he known that her vow could be disallowed, might impair thereby the validity of her second marriage. By the enactment that 'he may not re-marry her' a husband is naturally induced to institute all the necessary enquiries and to consider very carefully his course before he decides upon divorce, and should he nevertheless divorce her and then plead that he was unaware that her vow could be disallowed, his plea might well be disregarded. According to another opinion (Git. l.c.) the prohibition to marry a woman in the circumstances mentioned is a penalty, and a warning to women to abstain from making vows.
(22) Immoral conduct. For the reason cf. supra note 6 mutatis mutandis. As a vow may be disallowed so may a bad name turn out to be unfounded, and the first husband might then try to impair the validity of the second marriage. According to the second opinion (v. supra note 6 ad fin.) the prohibition is a penalty for, and a warning against, lax morality and ill-reputed associations.
(23) Lit., 'of which many knew', cf. infra 75a ab init.
(24) Since such a vow can never be disallowed (v. infra p. 468, n. 6 and text). R. Judah adopts the second reason (supra note 6).
(25) Because, since the disallowance of such a vow is permitted, no penalty has been imposed upon the woman.
(26) I.e., if it is of the class of vows which a husband is not entitled to invalidate.
(27) R. Meir, maintaining that a husband does not mind his wife's being exposed to the publicity of a court of law forbids remarriage on account of the first reason supra p. 467, n. 6, since the first husband might plead that if he had known that the vow could be disallowed by a Sage he would not have consented to give a divorce.
(28) I.e., if the vow was of a class the invalidation of which is within the husband's rights.
(29) Because in this case the husband cannot advance the plea that the divorce was due to a misunderstanding (cf. supra p. 467, n. 6 and note 12).
(30) Cur. edd. insert in parentheses, 'Whether it requires or whether it does not require he may not remarry her' (cf. the reading in Git. 45b, Rashal and Asheri).
(31) V. p. 467, n. 11 .
(32) V. supra note 1. Since in the latter case the husband might plead that he was not aware that he had the right to disallow the vow. In the former case, however, no such plea can be advanced because no man would consent that his wife should be exposed to the publicity of a court of law. V. Git. 45b.
(33) For ruling that a vow that was made in public (v. supra p. 467, nn. 8 and 9) may not be disallowed.

Talmud - Mas. Kethuboth 75a

And the children of Israel smote them not, because the princes of the congregation had sworn unto them.[1] And what is considered 'many'? R. Nahman b. Isaac said: Three [men]; [for the expression of] 'days'[2] implies two [days] and 'many'[2] three. R. Isaac replied: Ten; [for the term] congregation[3] was applied to them.)[4] [Now] 'R. Meir ruled: In the case of a vow [the disallowance of which]

necessitates the investigation of a Sage he may not remarry her' [and] 'R. Eleazar said: The prohibition [against remarriage where the disallowance of the vow] required [the investigation of a Sage] was ordained only on account [of a vow] which required [no such investigation]'.[5] on what principles do they[6] differ? — R. Meir holds the view that 'a man does not mind his wife's being exposed to the publicity of a court of law' and R. Eleazar holds the view that 'no man wants his wife to be exposed to the publicity of a court of law'.[7] Raba replied:[8] Here[9] we are dealing with the case of a woman from a noted family in which case the man[10] could say,[11] 'I have no wish to be forbidden to marry her relatives'.[12] If so,[13] [consider] the final clause where it is stated, 'But if he[14] went[15] to a Sage who disallowed his vow or to a physician who cured him, his betrothal of the woman is valid', [why, it may be asked, was it not] stated, 'the betrothal is invalid' and[16] explained,[17] 'Here we are dealing with the case of a man from a noted family concerning whom the woman[18] might plead. 'I have no wish to be forbidden to marry his relatives'?[19] — A woman is satisfied with any sort [of husband] as Resh Lakish said. For Resh Lakish stated: 'It is preferable to live in grief[20] than to dwell in widowhood'.[21] Abaye said: With a husband [of the size of an] ant her seat is placed among the great.[22] R. Papa said: Though her husband be a carder[23] she calls him to the threshold and sits down [at his side].[24] R. Ashi said: Even if her husband is only a cabbage-head[25] she requires no lentils[26] for her pot.[27]

A Tanna taught: But all such women[28] play the harlot and attribute the consequences[29] to their husbands.

ALL DEFECTS WHICH DISQUALIFY etc. A Tanna taught: To these[30] were added[31] [excessive] perspiration, a mole and offensive breath.[32] Do these, then, not cause a disqualification in respect of priests? Surely we have learned,[33] 'The old, the sick and the filthy'[34] and we have also learned, 'These defects whether permanent or transitory, render human beings[35] unfit [for the Temple service]![36] — R. Jose b. Hanina replied: This is no contradiction. The former refers to perspiration that can be removed;[37] the latter, to perspiration that cannot be removed.[38]

R.Ashi said [in reply]: You are pointing out a contradiction between 'perspiration' and 'one who is filthy' [which in fact are not alike, for] there, in the case of priests,[39] it is possible to remove the perspiration[40] by the aid of sour wine, and it is also possible [to remove] an offensive breath by holding pepper in one's mouth and thus performing the Temple service, but in the case of a wife[41] [such devices are for all practical purposes] impossible.[42]

What kind of a mole is here meant? If one overgrown with hair, it would cause disqualification in both cases; if one with no hair, [then, again], if it is a large one it causes disqualification in both cases[43] and if it is a small one it causes no disqualification in either; for it was taught: A mole which is overgrown with hair is regarded as a bodily defect; if with no hair it is only deemed to be a bodily defect when large but when small it is no defect; and what is meant by large? R. Simeon b. Gamaliel explained: The size of an Italian issar![44] — R. Jose the son of R. Hanina said: One which is situated on her forehead.[45] [If it was on] her forehead he[46] must have seen it and acquiesced![47] — R. Papa replied: It is one that was situated under her bonnet and is sometimes exposed and sometimes not.

R. Hisda said: I heard the following statement from a great man (And who is he? R. Shila). If a dog bit her[48] and the spot of the bite turned into a scar [such a scar] is considered a bodily defect.

R. Hisda further stated: A harsh voice in a woman is a bodily defect; since it is said in Scripture, For sweet is thy voice, and thy countenance is comely.[49]

R. Nathan of Bira learnt: [The space] of one handbreadth between a woman's breasts.[50] R. Aha the son of Raba intended to explain in the presence of R. Ashi [that this statement meant that '[the space of] a handbreadth' is to [a woman's] advantage,[51] but R. Ashi said to him: This[52] was taught in

connection with bodily defects. And what space [is deemed normal]? Abaye replied: [A space of] three fingers.

It was taught: R. Nathan said, It is a bodily defect if a woman's breasts are bigger than those of others. By how much? — R. Meyasha the grandson of R. Joshua b. Levi replied in the name of R. Joshua b. Levi: By one handbreadth. Is such a deformity, however, possible?[53] — Yes; for Rabbah b. Bar Hana related, I saw an Arab woman who flung her breasts over her back and nursed her child.

But[54] of Zion it shall be said: 'This man and that[55] was born in her; and the Most High Himself doth establish her;[56] R. Meyasha, grandson of R. Joshua b. Levi, explained: Both[57] he who was born therein and he who looks forward to seeing it.[58]

Said Abaye: And one of them[59] is as good as two of us.[60] Said Raba: When one of us, however, goes up there[61] he is as good as two of them. For [you have the case of] R. Jeremiah who, while here,[62] did not understand what the Rabbis were saying, but when he went up there he was able to refer to us as 'The stupid Babylonians'.[63]

MISHNAH. IF SHE[64] WAS AFFLICTED WITH BODILY DEFECTS WHILE SHE WAS STILL IN HER FATHER'S HOUSE,[65] HER FATHER[66] MUST PRODUCE PROOF THAT THESE DEFECTS AROSE AFTER SHE HAD BEEN BETROTHED AND [THAT, CONSEQUENTLY, IT WAS THE] HUSBAND'S FIELD THAT WAS INUNDATED.[67] IF SHE CAME UNDER THE AUTHORITY OF HER HUSBAND,[68] THE HUSBAND[69] MUST PRODUCE PROOF THAT THESE DEFECTS WERE UPON HER BEFORE SHE HAD BEEN BETROTHED AND [THAT CONSEQUENTLY] HIS BARGAIN WAS MADE IN ERROR. THIS IS THE RULING OF R. MEIR. THE SAGES, HOWEVER, RULED: THIS[70] APPLIES ONLY TO CONCEALED BODILY DEFECTS;

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(1) Josh. IX, 28; the oath could not be annulled because it was taken in public.

(2) Referring to Lev. XV, 25. Cf. Nid. 73a.

(3) עדה (Josh. ibid.).

(4) And a congregation consists of not less than ten men.

(5) Cf. supra p. 467, nn. 11ff.

(6) R. Meir and R. Eleazar. Cf. supra p. 466, nn. 29ff.

(7) The source of the statements (v. supra p. 467, n-.5) has thus been shewn. For further notes on the passage v. Git. (Sonc. ed.) pp. 200ff.

(8) In explanation of the contradiction pointed out supra 74b.

(9) The second Baraitha which rules that the betrothal is invalid even if a Sage has disallowed the vow.

(10) Even according to R. Meir who maintains that a husband does not mind his wife's appearance before a court of law one may still be objecting to live with a wife who is restricted by a vow.

(11) In his desire to avoid a divorce and to obtain the retrospective annulment of his betrothal (v. following note).

(12) Her mother and sister who are forbidden to marry the man who divorced her. He may insist that he wishes to retain the privilege of marrying these women members of a noted family though he objected to the particular one who restricted herself by a vow. By obtaining the annulment of the betrothal he does not place his wife under the category of a divorcee and he retains, in consequence, the right of marrying her relatives. Hence the ruling (even according to R. Meir) that the betrothal is invalid.

(13) If Raba's explanation is to be accepted.

(14) A man who betrothed a woman on the condition that he was under no vow or that he suffered no bodily defects.

(15) After the betrothal

(16) In order to reconcile the two clauses.

(17) On the lines followed by Raba in the first clause.

(18) Cf. supra n. 3 mutatis mutandis.

(19) Cf. mutatis mutandis, supra nn. 4 and 5.

(20) Or ‘together’, ‘as husband and wife’. V. following note.
(21) Yeb. 118b. This is a woman's maxim. She prefers a married life of unhappiness and misery to a happy and prosperous life in solitude. טן דו (adv.) ‘with a load of grief’, ‘in trouble’ (Jast.) Aliter: (Cf. supra n. 13) טן דו ‘two bodies’ (Rashi); ‘two persons’ (Levy).
(22) A woman's opinion of a married life (v. Yeb. l.c.). חראתא pl. of חרתא, ‘a free woman’.
(23) נפסא, ‘flax-beater’ (Rashi), a watchman of vegetables’ (Aruch.), i.e., of a poor and humble occupation.
(24) To shew her friends that she is a married woman. She is proud to be in the company of a husband however humble his occupation and social status.
(25) קלוסא, i.e., ‘dull’, ‘ugly’ (v. Jast.): ‘of a tainted family’ (Rashi).
(26) I.e., even a cheap vegetable.
(27) A woman is content to dispense even with the cheapest enjoyments for the sake of a married life.
(28) Who marry the unlovely types enumerated.
(29) Lit., ‘and hang on’.
(30) The defects that disqualify priests (v. Bek. 43a).
(31) In the case of women (v. our Mishnah).
(32) Lit., ‘smell of the mouth’.
(33) In respect of defects that render animals unfit for the altar (Bek. 41a).
(34) Under which term, it is at present assumed, excessive perspiration and offensive breath are included.
(35) Sc. priests.
(36) Bek. 43a. How then could it be said supra that excessive perspiration and offensive breath are not included among those that disqualify a priest?
(37) By the application of water (v. Tosaf. s.v. כאן). Aliter: That may be cured (v. Tosaf. loc. cit.).
(38) Cf. supra n. 14 mutatis mutandis.
(39) Who were not described as ‘filthy’, but as suffering from excessive perspiration or offensive breath. R. Ashi, contrary to the previous assumption (v. supra note 11), draws a distinction between ‘filthy’ which implies a chronic state of the body and the two others which are only minor defects.
(40) Even if water could not remove it.
(41) With whom a husband is constantly in contact.
(42) Hence the ruling that even such minor defects render a betrothal invalid.
(43) Lit., ‘here and here’, in the case of a priest and in that of a wife.
(44) V. Glos. The question then arises: What kind of a mole was meant in the Baraitha supra where it is mentioned among the three defects of a wife that do not disqualify a priest.
(45) And is small in size and without hair.
(46) The man who betrothed her.
(47) How then could a mole in such circumstances be regarded as a defect that causes the invalidity of the betrothal?
(48) Any woman.
(49) Cant. II, 14.
(50) This is explained anon.
(51) But if it was bigger or smaller it is to be regarded as a defect.
(52) R. Nathan's statement.
(53) Lit., ‘is there such a kind’.
(54) The following paragraph, though irrelevant to the subject under discussion, is inserted here because of its author, R. Meyasha, who is also the author of the previous statement.
(55) איש ואיש, lit., ‘man and man’.
(56) Ps. LXXXVII, 5.
(57) The inference is derived from the repetition of man (v. supra n. 3).
(58) Will be acclaimed as a son of Zion.
(59) The man of Zion, i.e., the Palestinians (Rashi).
(60) Babylonians.
(61) To Palestine.
(62) In Babylon.
(63) Cf. Men. 42a.

(64) A betrothed woman.

(65) I.e., before she married and went to live with her husband.

(66) If his daughter is to be entitled to her kethubah from the man who betrothed her and refused to marry her on account of her defects.

(67) Metaph. It is the husband's misfortune that the woman who had no such defects prior to her betrothal is now afflicted with them.

(68) I.e., if the defects were discovered after the marriage.

(69) Should be, on account of her defects, desire to divorce her and to deny her the kethubah.

(70) The validity of a husband's plea that HIS BARGAIN WAS MADE IN ERROR.

Talmud - Mas. Kethuboth 75b

BUT IN RESPECT OF DEFECTS THAT ARE EXPOSED HE[1] CANNOT ADVANCE ANY VALID PLEA.[2] AND IF THERE WAS A BATH-HOUSE IN THE TOWN HE CANNOT ADVANCE ANY VALID PLEA[2] EVEN AGAINST CONCEALED BODILY DEFECTS, BECAUSE HE [IS ASSUMED TO HAVE HAD HER] EXAMINED BY HIS WOMEN RELATIVES.[3]

GEMARA. The reason then[4] is because the father produced proof, but if he produced no proof,[5] the husband is believed.[6] Whose [view consequently is here[7] expressed]? [Obviously] that of R. Joshua who stated, 'Our life is not dependent on her statement'.[8] Now read the final clause: IF SHE CAME UNDER THE AUTHORITY OF THE HUSBAND, THE HUSBAND MUST PRODUCE PROOF, the reason then[9] is because the husband produced proof, but if he produced no proof,[10] the father is believed,[11] a ruling which expresses the view of R. Gamaliel who stated that the woman is believed![12] — R. Eleazar replied: The contradiction[13] [is evident]; he who taught the one did not teach the other.[14]

Raba said: It must not be assumed that R. Joshua[15] is never guided by the principle of the presumptive soundness of the body, for the fact is[16] that R. Joshua is not guided by that principle only where it is opposed by the principle of possession.[17] Where, however, the principle of possession is not applicable R. Joshua is guided by that of the soundness of the body; for it was taught: If the bright spot[18] preceded the white hair, he[19] is unclean; if the reverse, he is clean. [If the order is in] doubt, he is unclean; but R. Joshua said: It darkened.[20] What is meant by 'It darkened'? Rabbah replied: [It is as though the spot] darkened[21] [and, therefore,] he is clean.[22]

Raba explained:[23] The first clause [is a case of] 'Here[24] they[25] were found and here they must have arisen'[26] and so is the final clause: Here[27] they[28] were found and here they must have arisen.[29] Abaye raised an objection against him:[30] IF SHE CAME UNDER THE AUTHORITY OF THE HUSBAND, THE HUSBAND MUST PRODUCE PROOF THAT THESE DEFECTS WERE UPON HER BEFORE SHE HAD BEEN BETROTHED[31] AND [THAT, CONSEQUENTLY,] HIS BARGAIN WAS MADE IN ERROR; [Thus only if she had the defects] BEFORE SHE HAD BEEN BETROTHED [is the husband's plea] accepted,[32] [but if they were seen upon her] only after she had been betrothed[33] [his plea would] not [be accepted]. But why? Let it be said,[34] 'Here they were found and here they must have arisen'![35] — The other[30] replied: [The principle[36] cannot be applied if the defects were discovered] after she had been betrothed because it may be taken for granted that no man drinks out of a cup[37] unless he has first examined it; and this man[38] must consequently have seen [the defects] and acquiesced.[39] If so,[40] [the same principle should apply] also to one [who had defects] prior to her betrothal. [Since,] however, [it is not applied], the presumption must be that no man is reconciled to bodily defects, [why then is it not presumed] here[41] also that no man is reconciled to bodily defects? — This, however, is the explanation: [The principle[36] cannot be applied to defects discovered] after she had been betrothed because two [principles] are [opposed to it:] The presumptive soundness of the woman's body[42] and the presumption that no man drinks out of

a cup unless he has first examined it and that this man must, consequently, have seen [the defects] and acquiesced. What possible objection can you raise?[43] Is it the presumption that no man is reconciled to bodily defects? [But this] is only

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(1) Since he was in a position to see them.

(2) That he was not aware of these defects.

(3) He must have known, therefore, of the defects, and acquiesced.

(4) Why in the first clause of our Mishnah the woman who was divorced after a betrothal is entitled to her kethubah.

(5) So that it is unknown when the defects first arose.

(6) If he pleads that the woman was afflicted with the defects prior to her betrothal; and he, as the possessor of the money, is consequently exempt from paying the kethubah as is the law in respect of all monetary claims where the possessor cannot be deprived of his money without legal proof of the claim advanced against him.

(7) In the implication that the law is to be decided in favour of the husband who is the possessor of the money and not in favour of the woman who, since she was born without bodily defects, has the claim of presumptive soundness of body.

(8) I.e., we do not rely on the woman's assertion, supra 12b, where the time she had been outraged is a matter of dispute between her and her husband. Though the woman has in her favour the claim of the presumptive chastity of her body she, nevertheless, cannot obtain her kethubah because of her husband's stronger claim as the possessor of the amount of the kethubah.

(9) Why the woman does not receive her kethubah.

(10) So that it is unknown when the defects first arose.

(11) Cf. supra note 7 mutatis mutandis; the woman's presumptive soundness of body being regarded as a superior claim to that of the husband possessor of the amount of the kethubah.

(12) Supra 12b. Cf. supra p. 473, n. 9 mutatis mutandis and p. 473, n. 12. A contradiction thus arises between the first and the second clause of our Mishnah.

(13) תברא. Aliter: (rt. תבר 'to break') Divide or sever (the two clauses). R. Han. (v. Tosaf. s.v. תברא). regards תברא as an imprecation.

(14) The first clause represents the view of R. Joshua who maintains the same view in the case spoken of in the second clause, while the second clause expresses the view of R. Gamaliel who maintains it in the case of the first clause also, neither of them drawing a distinction between a woman who was still in her father's house and one who was already under the authority of her husband.

(15) Cf. supra p. 473, nn 7-8.

(16) Lit., 'but'.

(17) Lit., 'presumptive possession of the money'.

(18) In leprosy. V. Lev. XIII, 2-4.

(19) The man afflicted.

(20) Neg. IV, 11.

(21) Cf. Lev. XIII, 6: If the plague be dim (or dark) . . . then the priest shall pronounce him clean.

(22) Thus it has been shewn that R. Joshua, since be ruled that a doubtful case of leprosy is clean, is guided by the principle of the presumptive soundness of the human body wherever it is not opposed by the principle of possession.

(23) The apparent contradiction between the first and the second clause of our Mishnah (cf. supra note 1).

(24) In the FATHER'S HOUSE.

(25) The BODILY DEFECTS of the woman.

(26) And it is owing to this principle only that the onus of producing proof was thrown upon the father. Otherwise, he would have been believed without proof, in agreement with the view of R.Gamaliel, which is the adopted halachah (v. supra 12b), because his claim is supported by the principle of his daughter's presumptive soundness of body.

(27) In the husband's house.

(28) The BODILY DEFECTS of the woman.

(29) The two clauses of our Mishnah thus present no contradiction, both expressing the view of R. Gamaliel (cf. supra p. 474, n. 15).

(30) Raba.

(31) תתארם. The reading in our Mishnah is נתארסה a change of tense and form that does not materially affect the meaning of the phrase.

(32) Lit., ‘yes’.
(33) Although she was still in her father's house.
(34) If Raba's explanation is correct.
(35) Since this principle, however, is not adopted in the final clause, how could Raba's explanation be upheld?
(36) ‘Here they were found etc.’.
(37) Euphemism.
(38) Since he had married the woman.
(39) Hence the inadmissibility of the principle, ‘Here they were found etc.’.
(40) If the principle of the ‘presumptive examination of the cup’ is the determining factor in favour of the woman.
(41) In the final clause where the proof established the existence of the defects after betrothal while the woman was still in her father's house.
(42) Lit. ‘place the body upon its strength’.
(43) Against deciding, on the basis of the two principles, in favour of the woman.

Talmud - Mas. Kethuboth 76a

one principle[1] against two principles,[2] and one against two cannot be upheld.[3] [But where the defects were discovered] before betrothal, the principle of the presumptive soundness of her body cannot be applied,[4] and all that remains is[5] the presumption that no man drinks out of a cup unless he has first examined it and that this man must consequently have seen [the defects] and acquiesced, [but to this it can be retorted:] On the contrary, the presumption is that no man is reconciled to bodily defects, and consequently the money is to remain in the possession of its holder.[6]

R. Ashi explained:[7] The [claim in the] first clause[8] [is analogous to the claim] ‘You owe my father a maneh’,[9] but that in the final clause[10] [is analogous to the claim] ‘You owe me a maneh’.[11]

R. Aha the son of R. Awya raised an objection against R. Ashi: R. Meir[12] admits that in respect of bodily defects[13] likely to have come[14] with her from her father's house it is the father who must produce the proof.[15] But why?[16] Is [not this[17] analogous to the claim,] ‘You owe me a maneh’?[18] — Here[15] we are dealing with the case of a woman who had a superfluous limb.[19] [But if] she had a superfluous limb[20] what proof could be brought?[21] — Proof that the man has seen it[22] and acquiesced.

Rab Judah stated in the name of Samuel: If a man exchanged a cow for [another man's] ass, and the owner of the ass pulled[23] the cow[24] but the owner of the cow did not manage to pull[25] the ass before the ass died, it is for the owner of the ass to produce proof that his ass was alive at the time the cow was pulled.[26] And the Tanna [of our Mishnah who taught about] a bride[27] supports this ruling. Which [ruling concerning the] bride?[28] If it be suggested: [

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(1) In favour of the man. The principle of possession is of no consequence here because it is completely disregarded when opposed by that of the presumptive soundness of the body.
(2) Which are in favour of the woman.
(3) Hence the ruling in her favour.
(4) Since proof was adduced that she was afflicted with the defects prior to her betrothal.
(5) Lit. ‘what is there?’ in favour of the woman's claim.
(6) In the absence of the presumption of the soundness of body (cf. supra n. 5) the principle of possession is a determining factor (cf. supra note 2), and thus, being added to that of a man's irreconcilableness to bodily defects, two principles in favour of the man are opposed to one in favour of the woman. Hence the ruling in favour of the man.
(7) The apparent contradiction between the first and second clause of our Mishnah (cf. supra p. 474, n. 1).
(8) Since the kethubah of a betrothed woman, as a na'arah (v. Glos.), unlike that of a married one, belongs to her father and not to herself.
(9) Where the presumptive soundness of the claimant's daughter's body, not being that of the claimant herself, cannot

override the principle of possession which is in favour of the husband. Hence the necessity for the father to produce the proof.

(10) Dealing with a married woman.

(11) In which case (cf. supra note 9 mutatis mutandis), the presumptive soundness of the body of the woman who is herself the claimant is sufficient to establish her claim. Hence it is for the husband to produce the necessary proof. Thus it is possible to assume that both the clauses of our Mishnah under discussion represent the view of R.Gamaliel who ruled that the presumptive soundness of body overrides the principle of possession.

(12) Though he stated in our Mishnah that if the defects were discovered after the woman CAME UNDER THE AUTHORITY OF HER HUSBAND it is the latter that MUST PRODUCE PROOF.

(13) The reference is at present assumed to be to any kind of defect.

(14) Lit., 'that are likely to come'.

(15) Tosef. Keth. VII.

(16) Should the father have to produce the proof.

(17) According to R. Ashi's explanation.

(18) The woman being married and the kethubah belonging to her, the presumptive soundness of her body should be sufficient to establish her claim.

(19) Not, as has been presumed by R. Aha, with one who was afflicted with any defect. A superfluous limb does not grow after betrothal. Being a congenital defect, the principle of the presumptive soundness of the body cannot be applied.

(20) Which is obviously congenital.

(21) In support of her claim to her kethubah.

(22) Prior to betrothal or marriage.

(23) Pulling, meshikah (v. Glos.) is one of the forms of acquiring legal possession.

(24) While the ass still remained on his premises.

(25) To take it to his premises.

(26) If such proof is produced the former owner of the cow must bear the loss, because the legal acquisition by one of the parties of one of two objects exchanged places upon the other party the responsibility for any accident that might happen to the other object even though he did not himself formally acquire it (v. Kid. 28a).

(27) Concerning whose defects a similar doubt exists. In the case of the exchanged animals it is uncertain whether the ass died before or after the acquisition of the cow; in the case of the bride it is uncertain whether she had her defects before or after her betrothal.

(28) Provides the support.

Talmud - Mas. Kethuboth 76b

The one concerning a bride IN HER FATHER'S HOUSE,[1] are the two cases [it may be objected] alike? There it is the father[2] who produces the proof and receives[3] [the kethubah from the husband][4] while here it is the owner of the ass[5] who produces the proof and retains [the cow],[6] — R. Abba replied: [The ruling concerning a] bride in her father-in-law's house.[7] But [the two cases] are still unlike, for there it is the husband who produces the proof[8] and thereby impairs the presumptive right of the father,[9] while here it is the owner of the ass who produces the proof[10] and thereby confirms his presumptive right![11] — R. Nahman b. Isaac replied: [The support is derived from the case of the] bride IN HER FATHER'S HOUSE in respect of her token of betrothal.[12] And, furthermore, it need not be said [that this[13] applies only] in accordance with him who holds [that a token of] betrothal is not unreturnable[14] but [it holds good] even according to him who maintains [that a token of] betrothal is unreturnable, since his ruling relates only to certain betrothal, but [not] to doubtful betrothal [where the father may retain the token] only[15] if he produces proof but not otherwise.[16]

An objection was raised: If a needle was found in the thick walls of the second stomach [of a ritually killed beast, and it protrudes only] from one of its sides,[17] the beast is fit [for human consumption,[18] but if it protruded] from both sides, the beast is unfit for human consumption.[19] If a drop of blood was found on [the needle] it is certain that [the wound was inflicted] before the ritual

killing;[20] if no drop of blood was found on it, it is certain that [the wound was made] after the killing.[21] If the top[22] of the wound was covered with a crust, it is certain that [the wounding occurred] three days prior to the killing;[23] if the top[22] of the wound was not covered with a crust,[24] it is for the claimant to produce the proof.[25] Now if the butcher[26] had already paid the price he[27] would have to produce the required proof and so obtain the refund [of his money]; but why? Let the owner of the beast rather produce the proof and retain [the purchase money]![28] — [This is a case] where the butcher[26] has not yet paid the price.[29] But how can such an absolute assertion[30] be made?[31] — [This] however, [will dispose of the difficulty:] For when Rami b. Ezekiel came he said, 'Pay no regard to those rules which my brother Judah laid down in the name of Samuel; for thus said Samuel: He in whose domain the doubt first arose[32] must produce the proof; and the Tanna [of our Mishnah who taught about] the bride[33] provides support for this ruling.[34]

An objection was raised: If a needle was found in the thick walls of the second stomach etc.[35] Now,[36] if the butcher[26] has not yet paid the purchase price it would be the owner of the beast[36] who would have to produce the proof and so obtain [its price] from [the butcher]; but why? [Has not] the doubt arisen [when the beast was already] in the possession of the butcher?[37] — [This is a case] where the butcher has already paid the price.[38] But how can such a categorical statement[39] be made?[40] — It is the usual practice that so long as one man does not pay the price the other does not give his beast.

THE SAGES, HOWEVER, RULED: THIS APPLIES ONLY TO CONCEALED BODILY DEFECTS. R. Nahman stated:

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(1) In the first clause; the assumption being that, in agreement with R. Eleazar (supra 75b), it represents the view of R. Joshua, and that the father must produce the proof even where the defects were discovered after marriage and the doubt did not arise until after the bride had come under the authority of her husband. (Cf. Rashi, a.l. and infra s.v. אליבא, ad fin.). Similarly in the case of the exchange of the animals the owner of the ass must produce proof though the doubt occurred after his meshikah of the cow had transferred the ass to the responsibility of the other party.

(2) The claimant.

(3) Lit., 'brings out'.

(4) Which is the usual rule: The claimant produces the proof and receives his due.

(5) The defendant.

(6) Contrary to the usual rule (v. supra n. 4). How then could it be asserted that the latter is supported by the former?

(7) I.e., the second clause of our Mishnah provides the support; the assumption being with R. Eleazar (supra 75b), that it represents the view of R. Gamaliel and that the husband must produce the proof even where the defects were discovered prior to marriage, while the bride was still in her parental home, and her kethubah still belonged to her father. (Cf. Rashi a.l. and infra s.v. אליבא ad fin.). The support is adduced thus: If in this case where the doubt first arose while the bride was still under her father's authority (i.e., in the claimant's possession) it is the husband, who is the defendant, that must produce the proof, how much more so in the case of the exchange of the animals where the doubt arose In the house of the defendant (the owner of the ass) that the latter must produce the proof.

(8) That she had the defects prior to her betrothal.

(9) The presumption of the woman's soundness of body.

(10) That the ass was alive at the time the cow was acquired by him.

(11) The presumption that the ass that was alive prior to the acquisition of the cow was also alive during the time the cow was acquired. How then could a case in which the proof rightly serves the purpose of impairing a presumptive right be taken as support to one in which the proof is adduced to confirm a presumptive right?

(12) In the first clause of our Mishnah where the proof must be produced by the father (cf. supra p. 478, n. 1 mutatis mutandis) though it serves also the purpose of enabling him to retain the money, or object of value, that was given as the token of the betrothal of the bride. Similarly in the case of the exchange of the animals, the owner of the ass produces the proof and retains the cow.

(13) That proof is required to enable the father to retain the token of betrothal.

(14) Lit., 'given for sinking', i.e., that it is not returned under any conditions whatsoever (v. B.B. 145a). Since it is 'not

unreturnable', it is not in the father's full possession and he might well he expected to have to produce the proof.
(15) Lit., 'yes'.
(16) Lit., 'if not, not'.
(17) The inner side of the stomach. Owing to the thickness of its folds it is quite possible that the needle merely pricked, but did not pierce through the stomach wall.
(18) Since the wound caused by the needle was not fatal.
(19) Trefa (v. Glos.). A perforation of the stomach is a fatal wound which renders the afflicted animal unfit for human consumption even if it was ritually killed before it could die of the wound.
(20) And the beast is, therefore, unfit for human consumption (cf. supra n. 8).
(21) When it could not affect the life of the beast which, in consequence, remains fit for consumption.
(22) Lit., 'mouth'.
(23) And should a butcher buy the beast within the three days it is a bargain made in error which he may cancel and claim the refunding of his purchase money.
(24) And the vendor pleads that the wound was made after the sale when the beast was in the possession of the buyer, while the buyer insists that it was made prior to the sale when it was still in the vendor's possession.
(25) Hul. 50b.
(26) Sc. the buyer.
(27) Being the claimant.
(28) As in the case spoken of by Samuel (supra 76a), where the owner of the ass produces the proof and retains the cow. Since, however, the law here is not so, an objection arises against Samuel's ruling.
(29) So that the vendor is the claimant. Hence it is for the butcher, who is the defendant, to produce the proof and thus retain his money.
(30) That the butcher always buys on credit and that he is, therefore, always the defendant.
(31) A butcher, surely, does not always buy on credit and our Baraitha does not mention buyer at all but claimant, irrespective of whether he happens to be the buyer or the vendor.
(32) I.e., the owner of the cow, since the doubt first arose after the owner of the ass had acquired the cow and thereby transferred the responsibility for the ass to the former owner of the cow.
(33) That if the doubt concerning the first appearance of her defects arose while she was in her paternal home her father must produce the proof, and that if it arose when she was already under the authority of her husband it is the husband who must produce the proof.
(34) Samuel, according to the present explanation, would hold the same opinion as Raba who stated (supra 75b) that the first as well as the second clause of our Mishnah represents the view of one Tanna, viz. that of R. Joshua.
(35) Supra, cited from Hul. 50b.
(36) Since it has been laid down that the claimant must produce the proof.
(37) Of course it has, since the needle could not have been found before the beast had been killed. Now if Rami b. Ezekiel's report in the name of Samuel is to be regarded as authentic, the butcher should have been the party to produce the proof.
(38) And it is the butcher in fact from whom the proof is expected.
(39) That the butcher invariably buys for cash and that he is therefore always the claimant.
(40) Does not a butcher sometimes take on credit?

Epilepsy[1] is regarded as [one of the] concealed bodily defects.[2] This, however, applies only to attacks which occur at regular periods,[3] but if they are irregular [epilepsy is regarded] as [one of the] exposed bodily defects.[4]

MISHNAH. A MAN IN WHOM BODILY DEFECTS HAVE ARISEN CANNOT BE COMPELLED TO DIVORCE [HIS WIFE]. R. SIMEON B. GAMALIEL SAID: THIS APPLIES ONLY TO MINOR DEFECTS, BUT IN RESPECT OF MAJOR DEFECTS[5] HE CAN BE COMPELLED TO DIVORCE HER.

GEMARA. Rab Judah recited: 'HAVE ARISEN';[6] Hiyya b. Rab recited: 'Were'.[7] He who recited 'HAVE ARISEN' [holds that the ruling applies] with even more force [where the defects] 'were',[7] since [in the latter case the woman] was aware of the facts and acquiesced. He, however, who recited 'Were' [holds that the ruling does] not [apply where the defects] 'have arisen'.[8]

We learned: R. SIMEON B. GAMALIEL SAID: THIS APPLIES ONLY TO MINOR DEFECTS BUT IN RESPECT OF MAJOR DEFECTS HE CAN BE COMPELLED TO DIVORCE HER. Now, according to him who reads, 'HAVE ARISEN[9] it is quite proper to make a distinction between major defects and minor defects.[10] According to him, however, who reads, 'were', what [it may be asked] is the difference between major defects and minor ones? Was she not in fact aware [of their existence] and acquiesced?[11] — She may have thought that she would be able to tolerate them but now she finds that she is unable to tolerate them.[12]

These,[13] R. Simeon b. Gamaliel explained, are major defects: If, for instance, his eye was blinded, his hand was cut off or his leg was broken.

It was stated: R. Abba b. Jacob said in the name of R. Johanan: The halachah is in agreement with R. Simeon b. Gamaliel. Raba said in the name of R. Nahman: The halachah is in agreement with the Sages. But could R. Johanan, however, have made such a statement?[14] Surely Rabbah b. Bar Hana stated in the name of R. Johanan: Wherever R. Simeon b. Gamaliel taught in our Mishnah, the halachah is in agreement with his ruling except [in the cases of] 'guarantor',[15] 'Zidon'[16] and the 'latter proof'![17] — There is a dispute of Amoraim as to what was R. Johanan's view.[18]

MISHNAH. THE FOLLOWING ARE COMPELLED TO DI VORCE [THEIR WIVES]: A MAN WHO IS AFFLICTED WITH BOILS, OR HAS A POLYPUS,[19] OR GATHERS [OBJECTIONABLE MATTER][20] OR IS A COPPERSMITH[20] OR A TANNER,[20] WHETHER THEY WERE [IN SUCH CONDITIONS OR POSITIONS] BEFORE THEY MARRIED OR WHETHER THEY AROSE AFTER THEY HAD MARRIED. AND CONCERNING ALL THESE R. MEIR SAID: ALTHOUGH THE MAN MADE A CONDITION WITH HER [THAT SHE ACQUIESCES IN HIS DEFECTS] SHE MAY NEVERTHELESS PLEAD, 'I THOUGHT I COULD ENDURE HIM,[21] BUT NOW I CANNOT ENDURE HIM.'[21] THE SAGES, HOWEVER, SAID: SHE MUST ENDURE [ANY SUCH PERSON] DESPITE HER WISHES, THE ONLY EXCEPTION BEING A MAN AFFLICTED WITH BOILS, BECAUSE SHE [BY HER INTERCOURSE] WILL ENERVATE HIM.

IT ONCE HAPPENED AT ZIDON THAT THERE DIED[22] A TANNER WHO HAD A BROTHER[23] WHO WAS ALSO A TANNER. THE SAGES RULED: SHE[24] MAY SAY, 'I WAS ABLE TO ENDURE[21] YOUR BROTHER BUT I CANNOT ENDURE YOU'.

GEMARA. What [is meant by one] WHO HAS A POLYPUS? — Rab Judah replied in the name of Samuel: [One who suffers from an offensive] nasal smell. In a Baraitha it was taught: [One

suffering from] offensive breath.[25] R. Assi learnt in the reverse order[26] and supplied the mnemonic, 'Samuel did not cease [studying] all our chapter [with] his mouth'.[27]

WHO GATHERS. What [is meant by one] WHO GATHERS? — Rab Judah replied: One who gathers dogs' excrements.[28]

An objection was raised: 'One who gathers' means a tanner![29] — But even according to your own view,[30] would not a contra diction arise from our Mishnah [which specifies] OR GATHERS OR IS A COPPERSMITH OR A TANNER?[31] — One may well explain why our Mishnah[31] presents no contradiction[32] because the latter[33] refers to a great tanner[34] whilst the former[35] refers to a small tanner;[36] but according to Rab Judah the contradiction remains?[37] — [The definition][38] is [a matter in dispute between] Tannaim. For it was taught: 'One who gathers' means a 'tanner'; and others say: It means 'one who gathers dogs' excrements'.[39]

OR IS A COPPERSMITH OR A TANNER. What is meant by A COPPERSMITH? — R. Ashi[40] replied: A kettle-smith.[41] Rabbah b. Bar Hana explained: One who digs copper from the mine.[42] It was taught in agreement with Rabbah b. Bar Hana: What is meant by a coppersmith? One who digs copper from the mine.[42]

Rab stated: If a husband says, 'I will neither maintain nor support [my wife]', he must divorce her and give her also her kethubah. R. Eleazar went and told this reported statement to Samuel [who] exclaimed, 'Make Eleazar eat barley;[43] rather than compel him to divorce her let him be compelled to maintain her'. And Rab?[44] — No one can live with a serpent in the same basket.[45] When R. Zera went up[46] he found R. Benjamin b. Japheth sitting [at the college] and reporting this[47] in the name of R. Johanan.[48] 'For this statement', he said to him, 'Eleazar was told in Babylon to eat barley'.

Rab Judah stated in the name of R. Assi:[49] We do not compel divorce except [in the case of] those who are tainted.[50] When I mentioned this in the presence of Samuel he remarked, 'As, for instance, a widow [who was married] to a High Priest, a divorced woman or a haluzah[51] to a common priest, a bastard or a nethinah[51] to an Israelite, or the daughter of an Israelite to a nathin[51] or a bastard; but if a man married a woman and lived with her ten years and she bore no child he cannot be compelled [to divorce her]'. R. Tahlifa b. Abimi, however, stated in the name of Samuel: Even the man who married a woman and lived with her ten years and she bore no child may be compelled [to divorce her].[52]

We learned, THE FOLLOWING ARE COMPELLED TO DIVORCE [THEIR WIVES]: A MAN WHO IS AFFLICTED WITH BOILS OR HAS A POLYPUS. This[53] is quite justified according to R. Assi, since only Rabbinically forbidden cases were enumerated whilst those which are Pentateuchally forbidden were omitted.[54] According to R. Tahlifa b. Abimi[55] however, our Mishnah should also have stated: If a man married a woman and lived with her for ten years and she bore no child he may be compelled [to divorce her].[56] — R. Nahman replied: This is no difficulty. For in the latter case[57] [compulsion is exercised] by words; in the former[58] cases, by whips.[59]

R.Abba demurred: A servant will not be corrected by words![60] — The fact, however, explained R. Abba, is that in all these cases[61] [compulsion is exercised] by means of whips

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(1) נכפה, 'one who is epileptic'. כפה in Nif. 'to be overtaken by a demon'.

(2) Because a woman may conceal her epilepsy by remaining indoors when the attack comes on.

(3) In such a case she can avoid appearing in public when she feels the approach of the attack.

(4) V. Our Mishnah.

(5) The nature of these is explained in the Gemara.

(6) I.e., that the husband's defects spoken of in our Mishnah arose after he married the woman.

(7) Cf. supra n. 10, i.e., the man was afflicted with the defects before his marriage.
(8) Cf. supra p. 481, n. 10. In this case the woman might well plead that had she known that the man would later develop bodily defects she would never have consented to marry him.
(9) V. supra p. 481, n. 10.
(10) Since it is reasonable to expect a woman to object to the former but not to the latter.
(11) Of course she was, the defects having arisen prior to her marriage.
(12) Hence her right to claim a divorce.
(13) This paragraph appears in old edd. and Alfasi (cf. Bah a.l.) as a Mishnah.
(14) Which implies that only in this particular case is the halachah in agreement with R. Simeon b. Gamaliel.
(15) V. B.B. 174a.
(16) V. Git. 74a.
(17) V. Sanh. 31a.
(18) Rabbah b. Bar Hana maintaining that a general rule had been laid down whilst R. Abba b. Jacob disputes this.
(19) Cf. and v. Gemara infra.
(20) This is explained in the Gemara.
(21) Lit., 'to receive', 'accept'.
(22) Without leaving any issue.
(23) It is the duty of the surviving brother to contract the levirate marriage with the widow (v. Deut. XXV, 5ff).
(24) The widow.
(25) Lit., 'smell of the mouth'.
(26) Attributing to Samuel the definition given in the Baraitha and vice versa.
(27) Mouth in association with the name of Samuel suggesting that it was Samuel who interpreted POLYPUS as offensive breath from the mouth (cf. supra note 7).
(28) Used for tanning.
(29) Tosef. Keth. VII, which is contradictory to the definition given here by Rab Judah.
(30) That 'one who gathers' means a tanner.
(31) Which shews that 'tanner' and 'one who gathers' are two distinct occupations.
(32) Against the Baraitha which defines 'one who gathers' as a 'tanner'.
(33) Lit., 'here', the term TANNER specifically mentioned.
(34) Who does not himself gather the excrements.
(35) 'One WHO GATHERS'.
(36) Who must himself gather the excrements needed for his work.
(37) Cf. supra p. 483, n. 11.
(38) Of 'one who GATHERS'.
(39) Rab Judah, in differing from the Baraitha, adopted this latter definition.
(40) Var. lec. Rab (Aruch.).
(41) חשלי, pl. of חשלא, 'smith'; דודי, pl. of דודא (Bib. Heb. דוד), 'pot', 'kettle'.
(42) Lit., 'cuts . . . from its root', sc. source'.
(43) Like an animal, since he, by being so credulous as to accept an absurd statement, displayed no higher intelligence.
(44) Why does he order divorce rather than maintenance?
(45) Metaph. Divorce is, therefore, preferable.
(46) From Babylon to Palestine.
(47) Rab's ruling supra.
(48) I.e., that R. Johanan also was of the same opinion as Rab.
(49) Var. lec., Rab (Asheri), R. Ashi (Alfasi).
(50) I.e., those who are disqualified to their husbands as priests or from marrying into the congregation of Israel. [Var. lec., 'We compel in the case of tainted (women)'. A man who married a woman disqualified to him is compelled to put her away (v. Shittah Mekubbezeth). According to our text it might be suggested that Samuel's dictum is restricted to cases where the defect resides in the woman and does not exclude the cases of blemishes dealt with in our Mishnah, where the defect is in the man].
(51) V. Glos.
(52) Because propagation of the species is one of the 613 commandments.

(53) The omission from this list in our Mishnah of the tainted persons enumerated by Samuel.
(54) As these are obvious.
(55) Who, unlike R. Assi, included the man, whose wife had no child after living for ten years with him, among those who are compelled to divorce their wives.
(56) Since compulsion in this case is only a Rabbinical ordinance.
(57) Lit., 'that', the man whose wife had no child for ten years (v. supra n. 6).
(58) Those enumerated in our Mishnah.
(59) As the compulsion in the latter case is merely in the nature of persuasion it could not be included among the others.
(60) Prov. XXIX, 19. How then would a man who refuses to carry out a decision of a court of law be moved by mere persuasion?
(61) The man whose wife had no child as well as those enumerated in our Mishnah. Lit., 'that and that'.

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but in the former, if she said, 'I wish to be with him', she is allowed [to live with him] whilst in the latter,[1] even if she said, 'I wish to be with him', she is not allowed [to continue to live with him].[2] But behold [the case of the man who was] afflicted with boils with whom the woman is not allowed to live even if she said, 'I wish to be with him', for we learned: THE ONLY EXCEPTION BEING A MAN AFFLICTED WITH BOILS BECAUSE SHE [BY HER INTERCOURSE] WILL ENERVATE HIM, and this case was nevertheless enumerated![3] — There,[4] if she were to say. 'I will live with him under [the supervision of] witnesses',[5] she would be allowed [to remain with him] but here,[6] even if she were to say, 'I will live with him under [the supervision of] witnesses,' she would not be allowed to do so.

It was taught: R. Jose related, An old man of the inhabitants of Jerusalem told me, 'There are twenty-four [kinds of] skin disease,[7] and in respect of all these the Sages said, "Intercourse is injurious", but most of all is this the case with those afflicted with ra'athan'.[8] What is the cause of it? — As it was taught: If a man had intercourse immediately after being bled, he will have feeble[9] children; if intercourse took place after the man and the woman[10] had been bled they will have children afflicted with ra'athan. R. Papa stated: This[11] has been said only in the case where nothing was tasted [after the bleeding] but if something was tasted there can be no harm.[12]

What are the[13] symptoms? — His eyes tear, his nostrils run, spittle flows from his mouth and flies swarm about him. What is the cure?[13] — Abaye said: Pila,[14] ladanum,[15] the rind of a nut tree, the shavings of a dressed hide,[16] melilot[17] and the calyx[18] of a red date-tree. These must be boiled together and carried into a house of marble,[19] and if no marble house is available they may be carried into a house [the walls of which are of the thickness] of seven bricks and a half.[20] Three hundred cups [of the mixture] must then be poured upon his[21] head until his cranium is softened, and then his brain is cut open. Four leaves of myrtle must be brought and each foot[22] [in turn] lifted up and one [leaf] placed [beneath it].[23] It[24] is then grasped with a pair of tweezers and burned; for otherwise it would return to him.[21]

R. Johanan issued the announcement: Beware of the flies of the man afflicted with ra'athan.[25]

R. Zera never sat [with such a sufferer] in the same draught. R. Eleazar never entered his tent. R. Ammi and R. Assi never ate any of the eggs coming from the alley in which he lived. R. Joshua b. Levi, however, attached himself to these [sufferers] and studied the Torah; for he said, A lovely hind and a graceful doe,[26] if [the Torah] bestows grace upon those who study it, would it not also protect them?

When he[27] was about to die the Angel of Death was instructed, 'Go and carry out his wish'. When he came and shewed himself to him the latter said, 'Shew me my place [in Paradise]'. — 'Very

well', he replied. 'Give me your knife', the other demanded, '[since, otherwise], you may frighten me on the way'. He gave it to him. On arriving there he lifted him up and shewed him [his place]. The latter jumped and dropped on the other side [of the wall].[28] He seized him by the corner of his cloak; but the other exclaimed, 'I swear that I will not go back'. Thereupon the Holy One, blessed be He, said, 'If he ever had an oath of his annulled[29] he must return;[30] but if not, he need not return'. 'Return to me my knife', he said to him; but the other would not return it to him. A bath kol[31] went forth and said to him, 'Return the thing to him, for it is required for the mortals'.[32]

Elijah[33] heralded him[34] proclaiming. 'Make room for the son of Levi, make room for the son of Levi'. As he[34] proceeded on his way he found R. Simeon b. Yohai sitting on thirteen stools[35] of gold. 'Are you', the latter asked him, 'the son of Levi?' — 'Yes', he replied. 'Has a rainbow [the latter asked again] ever appeared in your lifetime?' — 'Yes', he replied. 'If that is so [the other said] you are not the son of Levi'.[36] The fact, however, is[37] that there was no such thing [in his lifetime], but he[38] thought, 'I must take no credit for myself'.

R. Hanina b. Papa was his[39] friend, and when he was about to die the Angel of Death was commanded, 'Go and carry out any wish of his'. He went to his house and revealed himself to him. 'Allow me', the latter said to him, 'thirty days in which to revise my studies', for it was said,[40] 'Happy is he who comes here in full possession of his learning'. He left him, and after thirty days he appeared to him again. 'Shew me', the latter said to him 'my place [in Paradise]'. 'Very well', he replied. 'Give me your knife', the other said to him, [since otherwise], you may frighten me on the way'. 'Do you wish to treat me as your friend[41] has done?' he asked. 'Bring', the other replied, 'the Scroll of the Law and see if anything that is written therein has not been observed by me'. 'Have you attached yourself', he asked 'to the sufferers of ra'athan and engaged thus in the study of the Torah?'[42] Nevertheless when his soul passed to its eternal rest, a pillar of fire formed a partition between him and the world; and we have it as a tradition that such a partition by a pillar of fire is made only for a person who is unique in his generation[43] or [one] of the two [outstanding men] in his generation. R. Alexandri approached him and said, 'Do it for the honour of the Sages', but he disregarded him. 'Do it [he said] for the honour of your father's house', but he again disregarded him. 'Do it [he finally requested] for your own honour's sake' [and the pillar of fire] departed.

Abaye remarked: [The purpose of the pillar of fire was] to keep away[44] anyone who had failed to observe even a single letter[45] [of the Torah]. Said R. Adda b. Mattena to him: [This then would also] exclude the Master, since he has no battlement to his roof.[46] The fact, however, was[47] that he did have one, but the wind had thrown it down at that moment.

R. Hanina said: Why are there no sufferers from ra'athan in Babylon? — Because they eat beet[48] and drink beer containing cuscuta[49] of the hizme[50] shrub.

R. Johanan stated: Why are there no lepers in Babylon? — Because they eat beet,[48] drink beer, and bathe in the waters of the Euphrates. [

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(1) Lit., 'here'. V. supra p. 485, n. 9.

(2) V. supra p. 485, n. 3.

(3) An objection against R. Abba's explanation.

(4) In the case just cited.

(5) Sc. only to attend on him, while refraining from intercourse.

(6) The case of the man whose wife had no child for ten years after their marriage.

(7) Lit., 'stricken with boils'.

(8) Tosef. Keth. VII, ad fin. ראתן (cf. רתת 'trembling'), one of the skin diseases causing nervous trembling and extreme debility of the body (v. Jast.). Aliter: A person having an insect in his brain (cf. Rashi).

(9) Or 'nervous'. ויתיקין, rt. ותק, 'to unnerve'.

(10) Lit., ‘both of them’.
(11) The warning against intercourse after being bled.
(12) Lit., ‘we have nothing against it’.
(13) Lit., ‘his’, of the man suffering from ra'athan.
(14) A fragrant plant (v. Jast.). Aliter: polion (Rashi). Aliter: Penny royal (cf. Golds. ‘Polei’).
(15) Or ‘labdanum’, , a soft black or dark brown resinous exudation from the Cistus or rock rose.
(16) These fall off when the hide is being smoothed.
(17) Sweet scented clover.
(18) מתחלא (cf. תחלא, half-ripe date), the calyx of the date when it is in its early unripe condition.
(19) To shut out all draughts.
(20) אריחא is of the size of half a brick, the size of the brick being three handbreadths.
(21) The sufferer from ra'athan.
(22) Of the insect (cf. Rashi's interpretation, supra p. 486, n. 9).
(23) Thus preventing the insect from burying its feet in the brain when lifted out.
(24) The insect.
(25) Which are infectious.
(26) Prov. V, 19, a reference to the Torah.
(27) R. Joshua b. Levi.
(28) Of Paradise.
(29) איתשיל (rt. שאל ‘to ask’ in Ithpa'el) ‘to ask a competent authority for absolution from an oath or a vow’.
(30) His present oath can also be annulled.
(31) V. Glos.
(32) Lit., ‘creatures’
(33) Elijah, the prophet who went up by a whirlwind into heaven (II Kings II, 11).
(34) R. Joshua b. Levi.
(35) תכתקי (v. Levy and Jast.). A more acceptable rendering might be: Sitting at thirteen tables of fine gold (cf. תכא ‘a table’).
(36) I.e., the saintly man concerning whom Elijah made his proclamation. The rainbow being a token of the covenant (Gen. IX, 12) that, though the people deserved destruction, the waters shall no more become a flood to destroy all flesh (ibid. 15), should not appear in the lifetime of a saint whose merit alone is sufficient to save the world from destruction (v. Rashi).
(37) Lit., ‘and this is not (so)’.
(38) R. Joshua b. Levi.
(39) The pronoun refers to the Angel of Death (Rashi) or to R. Joshua b. Levi (according to a MS.).
(40) In the world to come (cf. B.B. 10b).
(41) Cf. p. 488, nn. 11 and 12.
(42) Sc. he was not even as pious and staunch in his faith as R. Joshua b. Levi to trust in the power of the Torah to protect him from all evil. If the latter, despite his extreme piety, did not hesitate to outwit the Angel of Death, how much more likely was he to do so.
(43) Head and shoulders above them in learning and piety.
(44) From attending on the deceased.
(45) ‘Even . . . letter’ is deleted by Rashal. [On this reading render: ‘Who has failed to observe (the Torah as he did)’, v. Rashi].
(46) Which is a contravention of Deut. XXII, 8.
(47) Lit., ‘and this is not (so)’.
(48) Aliter: Tomatoes.
(49) Instead of the usual hops.
(50) Prob. Spira Regia (Jast.); is also suggested as a probable derivation.

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CHAPTER VIII

MISHNAH. IF A WOMAN CAME INTO THE POSSESSION[1] OF PROPERTY BEFORE SHE WAS BETROTHED, BETH SHAMMAI AND BETH HILLEL AGREE THAT SHE MAY[2] SELL. IT OR GIVE IT AWAY AND HER ACT IS LEGALLY VALID. IF SHE CAME INTO THE POSSESSION OF THE PROPERTY AFTER SHE WAS BETROTHED, BETH SHAMMAI SAID: SHE MAY SELL IT,[2] AND BETH HILLEL SAID: SHE MAY NOT SELL IT;[2] BUT BOTH AGREE THAT IF SHE HAD SOLD IT OR GIVEN IT AWAY HER ACT IS LEGALLY VALID. R. JUDAH STATED: THE SAGES ARGUED BEFORE R. GAMALIEL, 'SINCE THE MAN[3] GAINS POSSESSION OF THE WOMAN DOES HE NOT ALSO GAIN POSSESSION OF HER PROPERTY?'[4] HE REPLIED, 'WE ARE EMBARRASSED[5] WITH REGARD TO [THE PROBLEM OF] HER NEW POSSESSIONS[6] AND DO YOU WISH TO INVOLVE US [IN THE PROBLEM OF] HER OLD ONES[7] ALSO?' IF SHE CAME INTO THE POSSESSION OF PROPERTY AFTER SHE WAS MARRIED, BOTH[8] AGREE THAT, EVEN IF SHE HAD SOLD IT OR GIVEN IT AWAY, THE HUSBAND MAY SEIZE IT FROM THE BUYERS. [IF SHE CAME INTO POSSESSION] BEFORE SHE MARRIED.[9] AND SUBSEQUENTLY MARRIED, R. GAMALIEL SAID: IF SHE[10] HAD SOLD IT OR GIVEN IT AWAY HER ACT IS LEGALLY VALID. R. HANINA B. AKABIA STATED: THEY ARGUED BEFORE R. GAMALIEL, SINCE THE MAN[11] GAINED POSSESSION OF THE WOMAN SHOULD HE NOT ALSO GAIN POSSESSION OF HER PROPERTY?' HE REPLIED, 'WE ARE EMBARRASSED WITH REGARD TO [THE PROBLEM OF] HER NEW POSSESSIONS AND DO YOU WISH TO INVOLVE US [IN THE PROBLEM OF] HER OLD ONES ALSO?[12] R. SIMEON DRAWS A DISTINCTION BETWEEN ONE KIND OF PROPERTY AND ANOTHER: PROPERTY THAT IS KNOWN[13] TO THE HUSBAND [THE WIFE] MAY NOT SELL, AND IF SHE HAS SOLD IT OR GIVEN IT AWAY HER ACT IS VOID; [PROPERTY, HOWEVER,] WHICH IS UNKNOWN TO THE HUSBAND SHE MAY NOT SELL, BUT IF SHE HAS SOLD IT OR GIVEN IT AWAY HER ACT IS LEGALLY VALID.

GEMARA. What is the essential difference between the first clause[14] in which they[15] do not differ and the succeeding clause[16] in which they differ?[17] — The school of R. Jannai replied: In the first clause it was into her possession that the property had come;[18] in the succeeding clause[16] the property came into his possession.[19] If, however, [it is maintained] that the property 'came into his possession' why is HER ACT LEGALLY VALID when SHE HAD SOLD [THE PROPERTY] OR GIVEN IT AWAY? — This then [is the explanation:] In the first clause the property has beyond all doubt come into her possession.[18] In the succeeding clause, [however, the property] might be said [to have come either] into her, or into his possession;[20] [hence,][21] she may not properly sell [the property, but] IF SHE HAD SOLD IT OR GIVEN IT AWAY HER ACT IS LEGALLY VALID.

R. JUDAH STATED: [THE SAGES] ARGUED BEFORE R. GAMALIEL. The question was raised: Does R. Judah[22] refer to the case of direct permissibility[23] or also to one of ex post facto?[24]

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(1) Lit., 'to whom there fell'.

(2) After her betrothal and before her marriage. V. infra.

(3) Through betrothal.

(4) The application of this argument is explained in the Gemara.

(5) Lit., 'ashamed'.

(6) In failing to discover a reason why a husband (as stated infra) is entitled to seize the property which his wife had sold or given away even though she obtained it after marriage.

(7) Property into the possession of which she came while she was only betrothed.

(8) Beth Shammai and Beth Hillel.

(9) [I.e either before or after she was betrothed (Rashi), v. Tosaf.].

(10) After her marriage.

(11) By marriage.

(12) Cf. supra p. 490, on. 5-7.
(13) This is explained in the Gemara.
(14) Of our Mishnah.
(15) Beth Shammai and Beth Hillel,
(16) Property obtained AFTER SHE WAS BETROTHED.
(17) In both cases surely, she sells or gives away after betrothal when her property presumably belongs to the man who betrothed her. Cf. infra note 10.
(18) Before betrothal she is the legal possessor of whatever is given to her.
(19) Because, as it is assumed at present, after betrothal the man is the legal owner of all that the woman may have.
(20) The kinyan of betrothal being regarded as that of a doubtful marriage, since it is uncertain whether marriage will follow.
(21) According to Beth Hillel.
(22) In the argument he reported in the name of the Sages to invalidate her sale.
(23) I.e.,the ruling of Beth Shammai that if she obtained property after she was betrothed she is fully entitled to sell it or to give it away.
(24) Where it is the unanimous opinion of Beth Shammai and Beth Hillel THAT IF SHE HAD SOLD IT OR GIVEN IT AWAY HER ACT IS LEGALLY VALID.

Talmud - Mas. Kethuboth 78b

Come and hear what was taught in the following. R. Judah stated: They argued before R. Gamaliel, 'Since the one woman[1] is his wife and the other[2] is his wife, just as a sale by the former[3] is invalid so also should a sale by the latter[4] be invalid'. He replied, 'We are in an embarrassed condition with regard to [the problem of] her new possessions and you wish to involve us [in the problem of] her old ones also?'[5] Thus[6] it may be inferred that he referred to a case of ex post facto also. This is conclusive.[7]

It was taught: R. Hanina b. Akabia said, It was not such a reply[8] that R. Gamaliel gave to the Sages,[9] but it was this that he replied, '[There is] no [comparison]; if you say [the ruling][10] is to apply to a married woman whose husband is entitled to her finds, to her handiwork and to the annulment of her vows, will you say it also applies to a betrothed woman whose husband is not entitled either to her finds or to her handiwork or to the annulment of her vows?'[11] 'Master', they said to him, '[this is quite feasible if] she effected a sale before she married;[12] what, [however, will be your ruling where] she was married and effected the sale[13] subsequently?' — 'This woman also', he replied, 'may sell or give away, and her act is valid'. 'Since, however', they argued, 'he[14] gained possession of the woman[15] should he not also gain possession of her property?'[16] — 'We are quite embarrassed', he replied, 'about [the problem of] her new possessions and you wish to involve us [in the problem of] her old ones[17] also!' But, surely, we learned, [IF SHE CAME INTO POSSESSION] BEFORE SHE MARRIED, AND SUBSEQUENTLY MARRIED, R. GAMALIEL SAID: IF SHE HAD SOLD IT OR GAVE IT AWAY[18] HER ACT IS LEGALLY VALID![19] — R. Zebid replied, Read: She may sell or give away, and her act is valid.[20] R. Papa replied: There is no difficulty,[21] for one[22] is the view of R. Judah on R. Gamaliel's opinion[23] whilst the other[24] is the view of R. Hanina b. Akabia on R. Gamaliel's opinion.[25] Is R. Hanina b. Akabia then in agreement with Beth Shammai?[26] — It is this that he meant: Beth Shammai and Beth Hillel did not differ at all on this point.[27]

Both Rab and Samuel stated: Whether a woman came into the possession of property before she was betrothed or whether she came into possession after she was betrothed her husband may, [if she sold it] after she married, take it away from the buyers. In agreement with whose view [is this ruling], which is neither in agreement with that of R. Judah nor with that of R. Hanina b. Akabia? — They adopted the ruling of our Masters; for it was taught: Our Masters took a recount [of votes, and decided that] whether a woman came into the possession [of property] before she was betrothed or

whether she came into its possession after she was betrothed, her husband may, [if she sold it] after she married, take it away from the buyers.[28]

AFTER SHE WAS MARRIED, BOTH AGREE. May it be suggested that here we are learning Of the enactment of Usha,[29] for R. Jose the son of R. Hanina stated: It was enacted at Usha that if a woman sold during the lifetime of her husband melog[30] property,[31] and died, the husband[32] may seize it from the buyers![33] — Our Mishnah [deals with the seizure] during the woman's lifetime for the purposes of usufruct [only];[34] the enactment of Usha [refers to the seizure] of the capital after her death.[35]

R. SIMEON DRAWS A DISTINCTION BETWEEN ONE KIND OF PROPERTY [etc.]. Which kind is regarded as KNOWN, and which as UNKNOWN? — R. Jose the son of R. Hanina replied: KNOWN means landed property;[36] UNKNOWN, movable property. But R. Johanan said: Both are regarded as KNOWN, but the following is classed as UNKNOWN. Whenever a woman lives in a certain place and comes into the possession of property in a country beyond the sea. So it was also taught elsewhere: The following is classed as unknown. Wherever a woman lives in a certain place and comes into the possession of property in a country beyond the sea.

A certain woman[37] wishing to deprive her [intended] husband of her estate assigned it in writing to her daughter.[38] After she married and was divorced[39]

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(1) Lit., ‘this one’, — whom he married.

(2) Whom he betrothed.

(3) Of any property that came into her possession after marriage.

(4) Of property she obtained after betrothal.

(5) Cf. supra p. 490, nn. 5-7. Tosef. Keth. VIII.

(6) Since this Baraitha speaks explicitly of a sale that had already taken place.

(7) Lit., ‘hear or infer from it.

(8) As the one contained in our Mishnah.

(9) Who compared a betrothed to a married woman.

(10) ‘EVEN IF SHE HAD SOLD IT . . . THE HUSBAND MAY SEIZE IT FROM THE BUYERS’.

(11) Only a husband and a father, acting together, may annul the vows of a betrothed woman as a na'arah (v. Glos.).

(12) While she was only betrothed.

(13) Of property that came into her possession before her marriage.

(14) By the kinyan of marriage.

(15) I.e., the right to her finds and handiwork and to the invalidation of her vows.

(16) To the usufruct of which a husband is entitled during her lifetime. If her sale is valid her husband would inevitably be deprived of his right to the usufruct.

(17) Cf. supra p. 490, nn. 5-7.

(18) I.e., a case ex post facto.

(19) From which it follows that such a sale or gift is not permitted in the first instance, a ruling which is in contradiction to that reported by R. Hanina in the name of R. Gamaliel.

(20) [On this reading the amendment is made in the text of our Mishnah; var. lec., ‘Read: if she sold it or gave it away her act is valid’, the change being made in the Baraitha, v. Tosaf. s.v. תני].

(21) V. supra n. 5.

(22) Our Mishnah (cf. supra n. 5).

(23) That even during betrothal a woman is not permitted in the first instance to sell or to give away, much less may she do so after marriage.

(24) The quoted Baraitha.

(25) That even a married woman may sell or give away property that came into her possession before she married. This view which R. Hanina did not state specifically in our Mishnah he elucidated in the Baraitha.

(26) And not with Beth Hillel who ruled that even after a betrothal a woman is not permitted in the first instance to sell

or give away; much less may she do so after marriage. Would then R. Hanina deviate from the accepted halachah which is in agreement with Beth Hillel?

(27) But both agreed that the woman is fully entitled to sell or to give away.

(28) Tosef. Keth. VIII.

(29) V. supra p. 283. n. 12.

(30) V. Glos.

(31) The capital of which belongs to the woman, while its usufruct is enjoyed by the husband.

(32) Who is heir to his wife and has the status of a 'prior purchaser'.

(33) Supra 50a, B.K. 88b, E.M. 35a, 96b. B.B. 50a, 139b. The difficulty then arises: What need was there for the enactment of Usha in view of the ruling in our Mishnah on the enactment of Usha v. Epstein. L. The Jewish Marriage Contract, pp. 110ff.

(34) After the woman's death, however, even if she predeceased her husband, the capital would, according to our Mishnah, revert to the buyer.

(35) Cf. supra n. 5. [Tosaf. s.v. לימא states that the Gemara could have also explained the need of the enactment of Usha to provide for the case where she inherited the property whilst betrothed, whereas the Mishnah refers only to property which fell to her after marriage].

(36) It is to be assumed that the husband in marrying her expected such property to come into her possession.

(37) A widow who was about to marry.

(38) Intimating at the same time in the presence of witnesses that the transfer was only temporary, and that it was her wish that the estate shall revert to her on the death of her husband or on her being divorced by him.

(39) And her daughter refusing to part with the gift.

Talmud - Mas. Kethuboth 79a

she came before R. Nahman [to claim the return of her estate]. R. Nahman tore up the deed.[1] R. Anan, thereupon, went to Mar 'Ukba[2] and said to him, 'See, Master, how Nahman the boor[3] tears up people's deeds'. 'Tell me', the other said to him, 'how exactly the incident occurred'. 'It occurred', he replied,' in such and such a manner'. 'Do you speak', the other exclaimed, 'of a deed a woman intended as a means of evasion?[4] Thus said R. Hanilai b. Idi in the name of Samuel: I am an officially recognized judge,[5] and should a deed which a woman intended as a means of evasion[4] come into my hand I would tear it up.

Said Raba to R. Nahman:[6] What in fact is the reason?[7] [Obviously] because no man would neglect himself and give his property away to others. But this would apply to strangers only, whilst to a daughter one might well give![8] — Even in the case of a daughter a woman gives preference to her own person.[9] An objection was raised: If a woman desires to keep her property from her husband, how is she to proceed? She writes out[10] a deed of trust[11] to a stranger;[12] so R. Simeon b. Gamaliel.[13] But the Sages said: If he[14] wishes he may laugh at her[15] unless she wrote out for him: '[You shall acquire possession] from this day whenever I shall express[16] my consent',[17] The reason then[18] is because she wrote out for him in the manner prescribed;[19] but had she not done so, the [fictitious] buyer would have acquired [would he not] possession of it?[20] — R. Zera replied: There is no difficulty. One ruling[21] refers to [a woman who has assigned to the stranger] all her property;[22] the other,[23] to [a woman who assigned to a stranger] a part of her property. But if the buyer does not[24] acquire her property[25] the husband[26] should acquire it![27] — Abaye replied: It[28] was treated as property WHICH IS UNKNOWN TO THE HUSBAND[29] in accordance with the view of R. Simeon.[30]

MISHNAH. [IF A MARRIED WOMAN] CAME INTO THE POSSESSION OF MONEY, LAND SHOULD BE BOUGHT THEREWITH AND THE HUSBAND IS ENTITLED TO THE USUFRUCT.[31] [IF SHE CAME INTO THE POSSESSION OF] PRODUCE THAT WAS DETACHED FROM THE GROUND,[32] LAND SHOULD BE BOUGHT THEREWITH AND THE HUSBAND IS ENTITLED TO THE USUFRUCT. [IF IT WAS] PRODUCE ATTACHED TO THE

GROUND, THE LAND,[33] R. MEIR RULED, IS TO BE VALUED AS TO HOW MUCH IT IS WORTH WITH THE PRODUCE[34] AND HOW MUCH WITHOUT THE PRODUCE, AND WITH THE DIFFERENCE[35] LAND SHOULD BE BOUGHT[36] AND THE HUSBAND IS ENTITLED TO ITS USUFRUCT.[37] THE SAGES, HOWEVER, RULED: ALL PRODUCE ATTACHED TO THE GROUND BELONGS TO THE HUSBAND[38] AND ONLY THAT WHICH IS DETACHED FROM IT[39] BE LONGS TO THE WIFE; [WITH THE PROCEEDS OF THE LATTER] LAND IS TO BE BOUGHT AND THE HUSBAND IS ENTITLED TO THE USUFRUCT.[40]

R. SIMEON SAID: IN RESPECT OF THAT[41] WHEREIN THE HUSBAND IS AT AN ADVANTAGE WHEN HE MARRIES HIS WIFE[42] HE IS AT A DISADVANTAGE WHEN HE DIVORCES HER[43] AND IN RESPECT OF THAT WHEREIN HE IS AT A DISADVANTAGE WHEN HE MARRIES HER HE IS AT AN ADVANTAGE WHEN HE DIVORCES HER. HOW SO? PRODUCE WHICH IS ATTACHED TO THE GROUND IS THE HUSBAND'S WHEN HE MARRIES HIS WIFE[44] AND HERS WHEN HE DIVORCES HER,[45] WHILST PRODUCE THAT IS DETACHED FROM THE GROUND IS HERS WHEN SHE MARRIES[46] BUT THE HUSBAND'S WHEN SHE IS DIVORCED.[47]

GEMARA. It is obvious[48] [that if husband and wife differ on the choice of purchase between] land and houses,[49] land [is to receive preference].[50] [If they differ on the choice between] houses and date-trees, houses [are to receive preference].[51] [If they insist respectively on] date-trees and other fruit trees, date-trees [are to receive preference].[51] [If their dispute is on] fruit trees and vines, fruit trees [are to receive preference].[51] [What, however, is the ruling if the husband desires to purchase][52] a thicket of sorb[53] or a fish pond?[54] — Some maintain that it is regarded as[55] produce;[56] and others maintain that it is regarded as[57] capital.[58] This is the general rule:[59] If the stump grows new shoots[60] it is regarded as capital,[61] but if the stump grows no new shoots it is regarded as produce.[62]

R. Zera stated in the name of R. Oshaia in the name of R. Jannai (others say, R. Abba stated in the name of R. Oshaia in the name of R. Jannai), If a man steals

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(1) Of the gift which the daughter produced.

(2) Who was Ab Beth Din (v. Glos.). [The reference is to Mar ‘Ukba II, v. Funk, Die Juden in Babylonian I, notes p. XIV.]

(3) חקלאה, lit ‘field-labourer’; ‘uncultured fellow’.

(4) מברחת (Hif. of ברח), lit., ‘one who causes to flee’ or ‘to escape’.

(5) He was appointed to that office by the Resh Galutha or Exilarch (v. Sanh. 5a). מורה הוראה, lit., ‘guide for ruling’, one who gives directions or decisions on questions of ritual and legal practice.

(6) When he tore up the deed of gift which the daughter produced.

(7) Why Samuel (upon whose ruling R. Nahman relied) did not recognize the validity of a deed that was intended as a means of evasion.

(8) On what authority then did R. Nahman tear up the deed which had been produced by the woman's daughter?

(9) And it may safely be assumed, therefore, that the gift was intended as a temporary one which was to revert to the donor as soon as the cause that impelled her to make the gift had been removed.

(10) Prior to her marriage.

(11) שטר פסים (or פסים cf. Aruch and last.), a deed of a feigned sale or gift with which one person entrusts (cf. פיסטים ‘trust’) another in order to make people believe (in the interests of one of the parties) that a proper sale or presentation had actually taken place.

(12) Lit., to another’, so MS.M. Cur. edd. ‘to others’.

(13) Who, maintaining that such a deed has no legal validity, the holder of the deed having no claim whatever upon the property specified in it, considers the fictitious transaction as a safe protection for the woman.

(14) The holder of the deed.

(15) I.e., he may retain possession of the property by virtue of the deed; and thus refuse to return it to her.

(16) At any time in the future.

(17) Tosef. Keth. IX. In this case only is the woman protected against the holder of the deed as well as against her husband. For should the latter claim the property she can evade him by expressing consent to its acquisition by the stranger; and should the stranger claim possession she can exercise her right of refusing to give her consent.
(18) Why the holder of the deed cannot claim possession of the property in the case mentioned.
(19) Lit., 'thus'.
(20) This, then, is in contradiction to the ruling of Samuel supra.
(21) Lit., 'that', Samuel's view.
(22) Since no person would give away all his property to a stranger it is pretty obvious that the deed related to a fictitious transaction.
(23) The ruling of the Sages in the Baraitha cited.
(24) Where the woman's entire property had been assigned to him.
(25) In consequence of which the woman remains Its legal possessor.
(26) Who is entitled to the usufruct of his wife's possessions during her lifetime and to her capital also after her death.
(27) Why should the property be awarded to the woman?
(28) Property fictitiously transferred by a woman prior to her marriage.
(29) Since he believes the transaction to have been a genuine one, the husband does not expect ever to enjoy the use of the property in question.
(30) Our Mishnah ad fin.
(31) The land itself remaining in the possession of the woman.
(32) I.e., after being harvested.
(33) Which remains the property of the woman.
(34) Which, having grown before the land came into possession of the woman, remains her property, in the opinion of R. Meir, like the land itself.
(35) Lit., 'remainder', i.e., the value of the attached produce which is the property of the woman (v. supra note 7) and not of the husband who, according to R. Meir, is entitled only to such produce of his wife's land as grows after, but not before he had become entitled to the usufruct.
(36) Thus turning the proceeds of the produce into capital.
(37) The purchased land remaining the property of the wife (cf. supra note 4).
(38) Even if it grew before he had become entitled to the usufruct of the land.
(39) At the time he marries the woman, when he acquires the right to the usufruct.
(40) Cf. supra note 4.
(41) Lit., 'in the place'.
(42) Lit., 'at her entrance', sc. into her married state.
(43) Lit., 'at her going out'.
(44) If at that time they were still attached. This is in agreement with the view of the Sages supra and the point of difference between them and R. Simeon is discussed infra.
(45) A divorced woman being entitled not only to the land (which was hers all the time) but also to all produce of such land that had not been detached prior to her divorce.
(46) It is consequently turned into capital by purchasing therewith land to the usufruct of which the husband is entitled while the land itself remains in the possession of the woman.
(47) All detached fruit belonging to the husband who is entitled to the usufruct of his wife's land.
(48) When A MARRIED WOMAN CAME INTO THE POSSESSION OF MONEY which, as stated in our Mishnah, is to be invested in LAND, sc. a reliable profit yielding security.
(49) Each insisting on his or her choice.
(50) Land being a safer and better investment than houses both as regards durability (which is an advantage to the wife who remains the owner of the capital) and yield (which is an advantage to the husband who has the right of usufruct).
(51) Cf. supra n. 9 mutatis mutandis.
(52) Cf. supra n. 7. This is the interpretation of R. Tam and R. Han. (V. Tosaf. s.v. כללא) contrary to Rashi.
(53) Which can only be used for the cutting of its wood and which is valueless after the wood has been cut.
(54) That loses all its value after the fish have been removed.
(55) Lit., 'they say concerning it'.
(56) Since no capital remains (cf. supra p. 498, nn. 12 and 13) for the woman. Hence it is her right to veto such a

purchase.

(57) Cf. supra n. 14.

(58) Because the land of the thicket and the pond respectively remain after the sorb had been cut or the fish had been removed. Against such a purchase, therefore, the woman may not exercise her veto.

(59) Laid down by the authors of the first ruling.

(60) I.e., if after the first yield had been disposed of the capital continues to yield further produce or profit.

(61) So R. Han. (v. Tosaf. a.l. s.v. כללא). Cur. edd., followed by Rashi, read produce'.

(62) V. supra n. 5. Cur. edd., followed by Rashi, read, 'capital'. As a thicket of sorb or a fish pond produces only one yield (cf. supra p. 498. on. 12 and 13) it may not be purchased (v. supra p. 498, n. 7) if the woman objects (cf. supra n. 15).

Talmud - Mas. Kethuboth 79b

the young of a melog[1] beast he must pay double[2] its value to the woman.[3] In accordance with whose [view has this ruling[4] been laid down]? Is it in agreement with neither that of the Rabbis nor with that of Hananiah? For it was taught: The young of a melog beast belongs to the husband; the child of a melog bondwoman belongs to the wife; but Hananiah the son of Josiah's brother ruled, The child of a melog bondwoman has been given the same legal status as the young of a melog beast![5] — It may be said to agree even with the opinion of all,[6] for it is the produce alone that the Rabbis in their enactment have assigned to the husband but not the produce that accrues from this produce.[7] [The view] of Hananiah is quite logical on the assumption[8] that death[9] is not to be taken into consideration,[10] but [what principle is followed by] the Rabbis? If they do take into consideration the possibility of death,[11] even the young of a melog beast also should not [belong to the husband], and if they do not take the possibility of death into consideration,[12] then even the child of a bondwoman also [should belong to the husband]![13] — They do in fact take the possibility of death into consideration,[11] but the case of the beast is different [from that of a bondwoman] since its skin remains.[14]

R. Huna b. Hiyya stated in the name of Samuel: The halachah is in agreement with Hananiah. Said Raba in the name of R. Nahman: Although Samuel said, 'The halachah is in agreement with Hananiah', Hananiah admits that if the woman is divorced she may pay the price [of the bondwoman's children] and take them because [they constitute] the pride of her paternal house [which she is entitled to retain].[15]

Raba stated in the name of R. Nahman: If a woman brought to her husband[16] a goat for milking, a ewe for shearing, a hen for laying eggs, or a date-tree for producing fruit, he may go on eating [the yield of any of these][17] until the capital is consumed.

R. Nahman stated: If a woman[16] brought to her husband a cloak[18] [its use] is [to be regarded as] produce and he may continue to use it as a covering until it is worn out.[19]

In accordance with whose view [has this statement[20] been made]? — In agreement with the following Tanna,[21] for it has been taught: Salt or sand[22] is regarded as produce;[23] a sulphur quarry or an alum-mine[24] is regarded, R. Meir said, as capital,[25] but the Rabbis said, As produce.[26]

R.SIMEON SAID: IN RESPECT OF THAT WHEREIN THE HUSBAND IS AT AN ADVANTAGE. [Is not this view of] R. Simeon identical [with that of] the first Tanna?[27] — Raba replied: The difference between them is [the case of produce that was] attached at the time of the divorce.[28]

MISHNAH. IF AGED BONDMEN OR BONDWOMEN FELL TO HER[29] [AS AN INHERITANCE] THEY MUST BE SOLD, AND LAND PURCHASED WITH THE PROCEEDS,

AND THE HUSBAND CAN ENJOY THE USUFRUCT THEREOF. R. SIMEON B. GAMALIEL SAID; SHE NEED NOT SELL THEM,[30] BECAUSE THEY ARE THE PRIDE OF HER PATERNAL HOUSE.[31] IF SHE CAME INTO THE POSSESSION OF OLD OLIVE-TREES OR VINES THEY MUST BE SOLD,[32] AND LAND PURCHASED WITH THE PROCEEDS, AND THE HUSBAND CAN ENJOY THE USUFRUCT THEREOF. R. JUDAH SAID: SHE NEED NOT SELL THEM, BECAUSE THEY ARE THE PRIDE OF HER PATERNAL HOUSE.[31] GEMARA. R. Kahana stated in the name of Rab: They[33] differ only where [the olive-trees or vines] fell [to the woman] in her own field,[34] but [if they were] in a field that did not belong to her[35] she must, according to the opinion of all, sell them;[36] because [otherwise] the capital[37] would be destroyed.[38] To this R. Joseph demurred: Are not BONDMEN OR BONDWOMEN[39] the same as [trees in] a field that does not belong to her[40] and there is nevertheless a dispute?[41] — The fact is, if the statement[42] has at all been made it must have been made in the following terms: R. Kahana stated in the name of Rab, They[43] differ only where [the olive-trees and vines] fell [to the woman] in a field that did not belong to her[44] but [if they were] in her own field[45] it is the opinion of all that she need not sell them because [she is entitled to retain] the pride of her paternal house.

MISHNAH. HE WHO INCURRED EXPENDITURE IN CONNECTION WITH HIS WIFE'S [MELOG][46] PROPERTY, WHETHER HE SPENT MUCH AND CONSUMED[47] LITTLE, [OR SPENT] LITTLE AND CONSUMED MUCH, WHAT HE HAS SPENT HE HAS SPENT, AND WHAT HE HAS CONSUMED HE HAS CONSUMED.[48] IF HE SPENT BUT DID NOT CONSUME HE MAY TAKE AN OATH AS TO HOW MUCH HE HAS SPENT AND RECEIVE COMPENSATION.

GEMARA. How much is considered LITTLE? — R. Assi replied: Even one dried fig; but this applies only where he ate it in a dignified manner.[49] Said

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(1) V. Glos.

(2) V. Ex. XXII, 6ff.

(3) And not to the husband. Since a beast dies, and its yield ceases, the young must replace it as capital and is consequently the property of the wife. It may not be consumed by the husband but may be sold, and a produce-yielding object purchased with the proceeds.

(4) In the statement made in the name of R. jannai.

(5) And belongs to the husband.

(6) Both with that of the Rabbis and that of Hananiah.

(7) The young is the ‘produce’ of the beast but the ‘double’ that the thief pays as restitution is the produce of that young and consequently the ‘produce of the produce’ of the beast. This belongs to the wife.

(8) Lit., ‘that is’.

(9) Either of the bondwoman or of the beast.

(10) Hence his ruling that the child of the bondwoman, as well as the young of the beast, are to be regarded as produce which belongs to the husband, the bondwoman or the beast being regarded as the ‘capital’ which remains in the possession of the wife.

(11) As implied by their ruling that ‘the child of the melog bondwoman belongs to the wife’ (cf. supra p. 499 n. 9 mutatis mutandis) and not to the husband.

(12) As their ruling that ‘the young of a melog beast belongs to the husband’ seems to imply.

(13) How then can the two rulings be reconciled?

(14) And constitutes a small capital which remains the possession of the woman so that the young is treated as ‘produce’.

(15) Cf. Yeb. 66b.

(16) On marriage.

(17) Since milk, wool, eggs and fruit are the ‘produce’ of the goat, the ewe, the hen and the tree respectively and, even when the yield ceases, the woman is still left with some capital such as the skin of the goat and the ewe, the feathers of the hen or the wood of the date-tree.

(18) As melog property.

(19) The shreds being regarded as the woman's capital.
(20) Of R. Nahman that even shreds constitute capital.
(21) Sc. the Rabbis, infra, who differ from R. Meir.
(22) Of melog property situated on the sea shore.
(23) Since the yield is continual. It may, therefore, be used up by the husband.
(24) The supplies of which gradually come to an end.
(25) The quarry or the mine must he sold, and a constantly produce-yielding object is to he acquired with the proceeds.
(26) Which may he used up by the husband. The quarry or mine constitute in their opinion the capital which remains the property of the woman. Cf. supra note 2.
(27) The Sages, cf. supra p. 498, n. 3.
(28) Of which the Sages did not speak in our Mishnah. While according to R. Simeon such produce belongs to the woman, the Sages assign it to the husband because it grew prior to the divorce when he was still entitled to usufruct. That produce detached at the time of divorce belongs to the husband, as R. Simeon stated, cannot, of course, be a matter in dispute.
(29) A married woman.
(30) Even if her husband desires it (cf. Rashi).
(31) Which she is entitled to retain.
(32) 'As wood' (so the separate edd. of the Mishnah).
(33) The first Tanna and R. Judah in our Mishnah.
(34) I.e., if she came into the possession of the trees together with land in which they grew.
(35) If, for instance, her father from whom she inherited them did not own the soil and was only entitled to the trees alone until they withered.
(36) In order that land or any other produce-yielding capital might be acquired with the proceeds.
(37) Which should remain the permanent possession of the woman.
(38) When the trees withered.
(39) After whose death no capital whatsoever remains.
(40) Cf. supra note 6.
(41) Though the capital is destroyed.
(42) Attributed to Rab.
(43) The first Tanna and R. Judah in our Mishnah.
(44) V. supra note 3.
(45) V. supra note 2.
(46) V. Glos.
(47) By virtue of his right to its usufruct.
(48) He has no claim for compensation upon his wife should he divorce her.
(49) V. Kid. 45b.

Talmud - Mas. Kethuboth 80a

R. Abba: At the school of Rab it was stated, Even the refuse[1] of dates.[2]

R.Bibi enquired: What [is the ruling in respect of] a mash of pressed dates?[3] — This stands undecided.[4]

What [is the ruling if] he did not eat it[5] in a dignified manner?[6] 'Ulla replied: On this there is a difference of opinion between two Amoraim in the West.[7] One says, The value of an issar;[8] and the other says, The value of a denar.[8]

The judges of Pumbeditha[9] stated: Rab Judah gave a practical decision[10] in [a case where the husband used up some] bundles of vine-shoots,[11] Rab Judah acting here in accordance with his own principle; for Rab Judah ruled: If he[12] ate thereof [during one of the three years] only 'uncircumcised'[13] produce,[14] [the produce of] the Sabbatical year,[15] or the produce of mingled

seed,[16] this counts [towards the three years of] hazakah.[17]

R. Jacob stated in the name of R. Hisda: If a man has incurred expenses on the melog property of his wife who was a minor[18] [he is in the same legal position] as one who incurred expenses on the property of a stranger.[19] What is the reason? — The Rabbis have enacted this measure[20] in order that he should not allow her property to deteriorate.[21]

A woman once came into the possession of four hundred zuz[22] at Be-Hozae.[23] Her husband went thither, spent six hundred [on his journey] and brought with him the four hundred. While he was on his way back he required one zuz and took it out of these. When he came before R. Ammi[24] the latter ruled: What he has spent he has spent and what he used he has used.[25] Said the Rabbis to R. Ammi: Does not this[26] apply only where he consumes the produce, whilst here he used up the capital which [constituted a part of] the expenditure? — If so, he replied,[27] he is one who SPENT BUT DID NOT CONSUME, then HE MAY TAKE AN OATH AS TO HOW MUCH HE HAS SPENT AND RECEIVE HIS COMPENSATION. HE MAY TAKE AN OATH AS TO HOW MUCH HE HAS SPENT AND RECEIVE COMPENSATION. Said R. Assi: This applies only where the appreciation corresponds to the expenditure. What exactly is the object of this[28] law?[29] — Abaye replied: That if the appreciation exceeded the expenditure be receives the sum of his outlay without an oath. Said Raba to him: If so,[30] one might be induced to act cunningly![31] — [The object of the law] however, said Raba, was that if the outlay exceeded the appreciation he is only entitled to receive that amount of his outlay which corresponds to the appreciations and [even this can be obtained only] by an oath.[32]

The question was raised: What is the legal position where a husband has sent down[33] arisin[34] in his place?[35] Does [an aris] go down [into melog fields] in his reliance on the rights of the husband, [and, consequently,] when the husband forfeits his claim[36] they also[37] lose theirs, or does an aris possibly go down [into the melog fields] in his reliance on the [yield of] the land, and land, surely is usually entrusted to arisin?[38] To this Raba son of R. Hanan demurred: Wherein does this case essentially differ from that of a man who went down into a neighbour's field and planted it without the owner's authority where an assessment[39] is made and he is at a disadvantage?[40] — In that case[41] there was no other person to take the trouble;[42] but here there is the husband who should have taken the trouble.[43] What then is the decision on the matter? — R. Huna the son of R. Joshua replied: We must observe [the conditions of each case]: If the husband is an aris,[44] the arisin lose all claim to compensation wherever the husband loses his claim;[45] if the husband is not an aris [they are entitled to compensation, since] all land is usually entrusted to arisin.[46]

The question was raised: What is the ruling where a husband sold [his wife's melog] land for usufruct?[47] Do we say that whatever he possesses[48] he may transfer to others, or is it possible that the Rabbis have by their enactment granted the usufruct to the husband Only

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(1) שיגרא (rt. שגר 'to flow', 'to cast').

(2) After all the juice and sweetness has been pressed out, when they are practically valueless.

(3) V. Jast. s.v. חובצא, חובין.

(4) Teku, v. Glos.

(5) The 'dried fig', supra.

(6) I.e., what minimum quantity must one eat in such a case to he regarded as having CONSUMED LITTLE?

(7) Palestine.

(8) V. Glos.

(9) The reference is to R. Papa b. Samuel (v. Sanh. 17b).

(10) In favour of the wife who was divorced.

(11) Of his wife's melog property, with which he fed his cattle. Though the shoots were hardly suitable for the purpose, Rab Judah regarded their consumption as sufficient reason for denying the husband all rights to compensation for his

expenses.
(12) A person who occupied a field for three years.
(13) ‘Orlah (v. Glos. and cf. Lev. XIX, 23).
(14) I.e., the shoots, since the fruits of ‘Orlah are forbidden for all uses.
(15) Which is common property and the consumption of which is no proof of ownership.
(16) Kil'ayim (v. Glos. and cf. Lev. XIX, 19 and Deut. XXII, 9). Only the shoots are permitted in this case also (cf. supra n. 15).
(17) V. Glos. This shews that right of ownership may be established not only by the consumption of proper produce but also by that of mere shoots. Similarly, here, the improper feeding of one's cattle with vine-shoots is also regarded as proper consumption to exempt the woman from all responsibility for the expenses her husband had incurred on her melog property.
(18) Who might leave him at any time by exercising her right of mi'un (v. Glos.).
(19) The minor on exercising mi'un must compensate her husband for any improvements he may have effected in her property, paying him at the rate given to an aris (v. Glos.) in that country.
(20) Conferring upon the husband of a minor the rights of an aris in respect of any expenses on her melog property that he may incur.
(21) Had no provision been made for enabling him to recover his expenses he, knowing that the minor might leave him at any moment by exercising her right of mi'un, would exploit her property to the full, spending nothing on its improvement.
(22) V. Glos.
(23) A town in Khuzistan, S.W. Persia.
(24) Claiming his expenses.
(25) Cf. our Mishnah. The benefit he has derived from the one zuz (‘CONSUMED LITTLE’) deprives him of the right to recover the six hundred zuz for his expenses (‘HE SPENT MUCH’).
(26) That If HE HAS SPENT MUCH AND CONSUMED LITTLE he cannot recover his expenses.
(27) So Bah.
(28) Lit., ‘concerning what’.
(29) Of R. Assi, i.e., does he lay the emphasis on TAKE AN OATH or on RECEIVE? In other words: Is it implied that the husband must swear Only where the appreciation just corresponds with his outlay, hut is to receive his outlay without any oath where the appreciation exceeds the outlay; or is the implication that he is to receive for his outlay no more than the value of the appreciation, and where the former exceeds the latter, he is not entitled to receive the difference even though he is willing to swear?
(30) That in the circumstances mentioned one may obtain a sum of money without affirming his claim by an oath.
(31) However small the outlay, one might claim the full value of appreciation minus a fraction, and receive it for the mere asking.
(32) Confirming the amount he claims.
(33) Into his wife's melog lands.
(34) Pl. of aris (v. Glos.).
(35) Do these arisin, when the woman is divorced, receive the full value of their amelioration?
(36) Where, e.g., he consumed any part of the produce.
(37) If they consumed any of it.
(38) Had not the husband sent them, the wife would have done it herself. The arisin should consequently he entitled to the full refund of their share.
(39) Of the appreciation.
(40) B.M. 101a. He is repaid the amount he spent or is allowed the value of the appreciation whichever is the less. The two cases being essentially analogous, why was the question of the arisin at all raised?
(41) That of the man who entered his neighbour's field.
(42) Of planting the field. The man who undertook the work in the absence of other cultivators, and thus benefited the owner, is therefore, justly entitled to some compensation.
(43) And since he would not have been entitled to any compensation if he consumed anything of the produce so also, it may well he argued, should not the arisin, who stepped into his place, be entitled to any compensation. Hence the enquiry.

(44) Capable of attending to the field himself as any experienced aris.
(45) Since the wife might well plead that, if they had not interfered, her husband would himself have done the work. As they have only done what the husband would have done they cannot expect any higher privileges.
(46) Cf. supra p. 505, n. 9.
(47) Sc. that the buyer cultivated the land and enjoys its produce while the land itself remains the property of its original owner.
(48) לה of cur. edd. in brackets is wanting in Alfasi. Cf. Asheri.

Talmud - Mas. Kethuboth 80b

in order to provide for the comfort of his home but not so that he should sell it? — Judah Mar b. Meremar replied in the name of Raba: Whatever he has done is done. R. Papi[1] in the name of Raba replied: His act has no validity. Said R. Papa: The ruling reported[2] by Judah Mar b. Meremar was not explicitly stated[3] but was arrived at by inference. For a woman once brought to her husband[4] two bondwomen,[5] and the man went and married another wife and assigned to her one of them. [When the first wife] came before Raba and cried, he disregarded her. One who observed [the incident] formed the opinion [that Raba's inaction] was due to his view that whatever the husband did[6] is valid;[7] but in fact, it is not so.[8] [Usufruct has been allowed to a husband] in order to provide for the comfort of his house and here, Surely, comfort was provided.[9]

And the law is that if a husband sold [his wife's melog] field for its usufruct[10] his act has no legal validity. What is the reason? Abaye replied: Provision must be made against the possible deterioration of the land.[11] Raba explained: In order [to safeguard] the comfort of his house.[12] What is the practical difference between them?[13] — The practical difference between them is the case of land that was adjoining a town;[14] or else where the husband [himself] was [acting as] aris,[15] or else where [the husband] receives money[16] and trades therewith.[17]

MISHNAH. IF A WOMAN AWAITING THE DECISION OF THE LEVIR[18] CAME[19] INTO THE POSSESSION OF PROPERTY, BETH SHAMMAI AND BETH HILLEL AGREE THAT SHE MAY SELL IT OR GIVE IT AWAY, AND THAT HER ACT IS LEGALLY VALID.[20] IF SHE DIED, WHAT SHALL BE DONE WITH HER KETHUBAH[21] AND WITH THE PROPERTY THAT COMES IN AND GOES OUT WITH HER?[22] BETH SHAMMAI RULED: THE HEIRS OF HER HUSBAND[23] ARE TO SHARE IT[24] WITH THE HEIRS OF HER FATHER;[25] AND BETH HILLEL RULED: THE [ZON BARZEL][26] PROPERTY IS TO REMAIN WITH THOSE IN WHOSE POSSESSION IT IS,[27] THE KETHUBAH[28] IS TO REMAIN IN THE POSSESSION OF THE HEIRS OF THE HUSBAND, AND THE PROPERTY WHICH GOES IN AND COMES OUT WITH HER[29] REMAINS IN THE POSSESSION OF THE HEIRS OF HER FATHER.

IF HIS[30] BROTHER[31] LEFT MONEY, LAND SHALL BE BOUGHT THEREWITH AND HE[32] SHALL ENJOY ITS USUFRUCT.[33] [IF THE DECEASED LEFT] PRODUCE THAT WAS DETACHED FROM THE GROUND, LAND SHALL BE BOUGHT [OUT OF THE PROCEEDS] AND HE[32] SHALL ENJOY ITS USUFRUCT. [IF IT WAS STILL] ATTACHED TO THE GROUND, THE LAND[34] IS TO BE ASSESSED, SAID R. MEIR, AS TO HOW MUCH IT IS WORTH[35] TOGETHER WITH THE PRODUCE AND HOW MUCH IT IS WORTH WITHOUT THE PRODUCE, AND WITH THE DIFFERENCE LAND SHALL BE BOUGHT,[36] AND HE[37] SHALL ENJOY ITS USUFRUCT. THE SAGES, HOWEVER, RULED: PRODUCE WHICH IS [STILL] ATTACHED TO THE GROUND BELONGS TO HIM,[38] BUT THAT WHICH IS DETACHED FROM THE GROUND PASSES INTO THE OWNERSHIP OF HIM WHO SEIZES IT FIRST.[39] IF HE [SEIZED IT] FIRST HE ACQUIRES OWNERSHIP; AND IF SHE [SEIZED IT] FIRST LAND SHALL BE BOUGHT THEREWITH AND HE[37] SHALL ENJOY ITS USUFRUCT. IF [THE LEVIR] MARRIED HER SHE IS REGARDED AS HIS WIFE IN ALL RESPECTS[38] SAVE THAT HER KETHUBAH REMAINS A CHARGE ON HER FIRST HUSBAND'S ESTATE.

HE CANNOT SAY TO HER, 'BEHOLD YOUR KETHUBAH LIES ON THE TABLE', BUT ALL HIS PROPERTY[40] IS PLEDGED TO HER KETHUBAH.[41] SO, TOO, A MAN MAY NOT SAY TO HIS WIFE, BEHOLD YOUR KETHUBAH LIES ON THE TABLE, BUT ALL HIS PROPERTY IS PLEDGED TO HER KETHUBAH. IF HE DIVORCED HER[42] SHE IS ENTITLED ONLY TO HER KETHUBAH.[43] IF HE SUBSEQUENTLY REMARRIED HER SHE IS [TO ENJOY THE SAME RIGHTS AS] ALL OTHER WIVES, AND IS ENTITLED ONLY TO HER KETHUBAH.[38]

GEMARA. The question was raised: If a woman awaiting the decision of a levir[44] died, who is to bury her? Are her husband's heirs to bury her because they inherit her kethubah[45] or is it possibly the heirs of her father who must bury her because they inherit the property that comes in and goes out with her? — R. Amram replied, Come and hear what was taught: If a woman awaiting the decision of a levir died,

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(1) So MS.M. and Bail. Cur. odd., 'Papa'.

(2) Lit., 'that'.

(3) By Raba.

(4) On marriage.

(5) As melog property.

(6) Even if he sold moles property.

(7) Hence the statement of Judah Mar.

(8) A husband has no right to sell such property. It was only in that particular case that the husband acted within his rights for the reason that follows.

(9) Since the bondwoman would even now attend to general household duties.

(10) V. supra note 4.

(11) Lit., 'we fear lest it will deteriorate'. The buyer of the usufruct, having no interest in the land itself, would exploit it to the full, neglecting its proper cultivation and use. The husband, however, who, in addition to his right to usufruct, might also, in the event of his surviving his wife, become the owner of the land itself, may well be relied upon to give it proper attention.

(12) The sale of the usufruct to a stranger would deprive the household of the enjoyment of it.

(13) Abaye and Raba. Is not the sale of the usufruct equally forbidden whatever the reason?

(14) Where it is possible to watch the treatment meted out to the land by the buyer and to take in good time the necessary steps for its protection. In such a ease Raba's reason is applicable; Abaye's is not. According to the latter the husband would he entitled to sell the usufruct.

(15) He himself was looking after the land, delivering to the buyer the harvested produce. In this case also Raba's reason is applicable, but not Abaye's (cf. supra note 4).

(16) From the buyer.

(17) In this case Abaye's reason applies: but not Raba's, since the income from the trading provides for the comfort of the house. According to Raba the sale of usufruct in such a case is permitted.

(18) שומרת יבם the widow of a deceased brother during the period intervening between the death of her husband and her halizah or marriage with the levir.

(19) During this waiting period (Rashi. Cf., however, Rashi on the parallel Mishnah s.v. שנפלו Yeb. 38a).

(20) As melog property (v. Glos.) she has the right to dispose of it in the way she thinks fit.

(21) V. Glos. Here it denotes the sum corresponding in value to the wife's dowry which is conveyed under terms of tenancy to the husband, who enters it in the marriage contract and accepts full responsibility: v. Glos. s.v. zon barzel.

(22) I.e., her melog property, the capital of which remains in the legal possession of the wife, the husband, who enjoys Only the usufruct, accepting no responsibility for it.

(23) Who is heir to his wife. 'Husband' in this context _ levir.

(24) I.e., the melog property, not the kethubah concerning which Beth Shammai are of the same opinion as Beth Hillel that follows. The discrepancy between the first clause in the Mishnah, where the melog property is declared definitely hers, whereas in this second clause it is considered doubtfully so, is explained in Yeb. 38a.

(25) Since it is a matter of doubt whether the marital bond with the levir constitutes such a close relationship as that of

actual marriage, the right of heirship as between her husband's heirs and her father's cannot he definitely determined. The property must, therefore, he equally divided between them.

(26) V. Glos.

(27) The question whether these are the heirs of the husband who had undertaken responsibility for the property, or the heirs of the wife whose capital it was originally, is dealt with 10 B.B. 158b.

(28) Here (unlike supra p. 507, n. 11) it has its usual connotation; (a) the statutory sum of a hundred zuz for a widow and two hundred zuz for a virgin which is entered in all marriage contracts irrespective of any property that the wife may bring with her on marriage and (b) the amount which the husband adds to it over and above the value of the property which she brought to him.

(29) V. supra note 1,

(30) The levir's (v. supra p. 507, n. 11).

(31) The deceased (v. l.c.).

(32) The levir, if he contracted the levirate marriage with the widow.

(33) The capital being pledged to the woman for her kethubah which remains a charge upon the estate of her first husband, the deceased. According to this opinion even movable possessions, such as money. are also pledged for the kethubah.

(34) Read אותה with Bah a.l. Cur. edd. אותן refers to פירות and conveys no sense.

(35) היא יפה (so Bah). Cur. edd. הן יפין (cf. previous note).

(36) R. Meir holding the view that whatever the land yielded while it was in the possession of the deceased (i.e.. during his lifetime) is mortgaged for the wife's kethubah.

(37) The levir, if he contracted the levirate marriage with the widow.

(38) This is discussed in the Gemara infra.

(39) כל הקודם זכה lit., 'whoever is first gains possession'. The same ruling applies also to money, since movables, in the opinion of the Sages, are not pledged for the kethubah unless the wife had seized them (cf. Infra 84b).

(40) Which he inherited from his deceased brother.

(41) I.e., he cannot pay her out her kethubah and sell the rest, hut must hold the whole of the deceased brother's estate as mortgaged to her kethubah; v. infra p. 512, n. 21.

(42) After he had duly consummated the levirate marriage.

(43) And he is at liberty to dispose of the rest of the property (v. supra n. 6) as he may desire.

(44) Cf. supra p. 507, n. 8.

(45) Which should compensate for burial expenses (cf. supra 47b).

Talmud - Mas. Kethuboth 81a

it is the duty of her heirs, even those who inherit her kethubah, to bury her. Said Abaye, We also have learned a [similar Mishnah]: A widow is to be maintained out of the estate of [her deceased husband's] orphans, and her handiwork belongs to them. It is not their duty, however, to bury her; it is the duty of her heirs, even those who inherit her kethubah, to bury her.[1] Now, what widow is it that has two kinds of heirs?[2] Obviously[3] she who is awaiting the decision of a levir.[4]

Said Raba: But could[5] he not plead, 'I am only heir to my brother; it is not my duty to bury his wife'![6] — Abaye replied: [Such a plea would be untenable] because he is approached by two alternative demands:[7] If he is heir to his brother he should bury his wife;[8] if he does not bury his wife he should return her kethubah.[9] [Raba] retorted, it is this that I mean: [Might he not plead], 'I am only heir to my brother; it is not my duty to bury his wife; and if [I am expected to bury her] on account of the kethubah[10] [I may point out that] a kethubah is not payable during [the husband's] lifetime'?[11] — Who is it that was heard to admit the kethubah as a text for legal exposition?[12] Beth Shammai, of course.[13] But Beth Shammai have also been heard to lay down the rule that a note of indebtedness which is due for payment is regarded as repaid.[14] For we have learned: If their husbands[15] died before they drank,[16] Beth Shammai rule that they are to receive their kethubah and that they need not drink,[16] and Beth Hillel rule that they either drinks or they do not receive their kethubah.[17] [Now how could it be said,] 'They either drink', when the All-Merciful said, Then shall

the man bring his wife to the priest,[18] and he is not there? [The meaning must] consequently be: As they do not drink[19] they are not to receive their kethubah. Again 'Beth Shammai rule that they are to receive their kethubah and that they need not drink', but why [should they receive their kethubah]? Is not their claim of a doubtful nature,[20] it being uncertain whether she had committed adultery or not;[21] then how could an uncertainty[22] override a certainty?[23] Beth Shammai [must consequently] hold the view that 'a note of indebtedness that is due for payment is regarded as repaid'.[24] But is it not required [that the proviso], 'When thou wilt be married to another man thou wilt receive what is prescribed for thee' [be complied with], which is not the case here?[25] — R. Ashi replied: A levir is also regarded as 'another man'.[26]

Raba addressed [the following message] to Abaye[27] through R.Shemaya b. Zera: Is a kethubah[28] indeed payable during [the levir's] lifetime? Has it not, in fact, been taught: R. Abba[29] stated, 'I asked Symmachus, "How is a man[30] who desires to sell his brother s property to proceed" [and he replied,] "If he is a priest,[31] he should prepare a banquet[32] and use persuasive means;[33] if he is an Israelite[34] he may divorce her and then marry her again".'[35]

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(1) Supra 43a, infra 95b.

(2) The expression 'her heirs, even those who inherit her kethubah' implies that there exists also another class of heirs who do not inherit her kethubah.

(3) Lit., 'be saying'.

(4) [The last clause is to be taken independently of the first, which cannot refer to such a widow since it speaks of orphans, v. Tosaf.].

(5) The levir who, in fact, inherits only the statutory kethubah and the additional jointure, which are the property of his brother, and not the zon barzel, the original property of the woman. Cf. however, Tosaf. s.v. ולימא a.l.

(6) It was only his brother's duty to bury his wife in return for her kethubah which he inherits (cf. supra 47b) but not his duty, since he does not inherit from the widow but from his brother.

(7) Lit 'they come to him from two sides'.

(8) As his brother would have done had he survived her.

(9) To her heirs. Which is conceded to a husband in return for his wife's burial expenses.

(10) Cf. note 10.

(11) And he, representing her husband, since it was his intention to consummate levirate marriage, is still alive.

(12) The exposition being: Since the kethubah contains the proviso, 'When thou wilt be married to another man, thou wilt receive what is prescribed for thee', it may be inferred that, except in the case of divorce, the kethubah is not payable during the lifetime of the husband, when his wife cannot 'be married to another man.

(13) V. Yeb. 117a.

(14) Yeb. 38b, Sol. 25a. The amount of the debt is deemed to he in the virtual possession of the creditor. So, too, with the amount of the kethubah which is deemed to he in the virtual possession of the widow. The levir is consequently inheriting it not from his brother but from the widow, in return for which he must incur the obligation of burying her.

(15) Of women suspected of illicit intercourse with strangers after they had been warned by their husbands.

(16) The water of bitterness. (V. Num. V, 24).

(17) Yeb. 38b. Sol. 24a.

(18) Num. V, 15, emphasis on man.

(19) The water of bitterness (v. Num. V, 24.)

(20) Of course it is.

(21) In the former case she loses her right to her kethubah; in the latter case she does not.

(22) That of her claim (v. supra n. 10).

(23) It is certain that the husband's heirs are the rightful owners of his estate.

(24) So that the woman (and not the heirs) being regarded as the virtual possessor of the amount of her kethubah, no certainty is here overridden by an uncertainty.

(25) Since one awaiting the decision of a levir is not permitted to marry any stranger. How, then, could it he said supra that the kethubah is collected in the levir's lifetime?

(26) At the moment her husband's death had set her free to marry the levir the proviso of her kethubah was fulfilled, and

her kethubah is payable.

(27) Who maintained supra that the kethubah is payable even during the lifetime of the levir.

(28) Of a woman awaiting the decision of the levir.

(29) I.e., R. Abba Arika or Rab.

(30) A levir who married his deceased brother's widow for whose kethubah (v. our Mishnah) all the property he inherited from his deceased brother is mortgaged.

(31) Who is forbidden to marry a divorced woman (v. Lev. XXI, 7).

(32) For his wife, his former sister-in-law.

(33) To secure her consent to sell so much of the property (v. supra note 6) as is in excess of the amount of her kethubah. If her consent cannot he obtained and he wishes to live with her he has no redress. He cannot divorce and remarry her as an Israelite may (v. infra) since his priesthood (v. supra note 7) would preclude him from marrying a woman he has once divorced.

(34) Who may marry a divorced woman.

(35) Adopting this course, he may either (a) pay her the amount of her kethubah as soon as she is divorced and, after selling all the property which is in excess of it, marry her again (on the condition of the first kethubah, v. infra 80b) or (b) he may remarry her before paying to her the amount of her kethubah and on remarriage give her a new one which, as all ordinary kethuboth, is secured not only on his present possessions but also on his future acquisitions. It is only a levir whose future acquisitions are not pledged for the kethubah of his deceased brother's widow (whom he marries and whose only security is the property left by her deceased husband) that is forbidden to sell the property he has inherited from that brother. Any other husband, including a levir who remarried his sister-in-law after he consummated levirate marriage and after he divorced her, since such a kethubah is secured by present possession and future acquisition, may well sell all his property even without his wife's consent.

Talmud - Mas. Kethuboth 81b

Now if it could be assumed that a kethubah is payable during the lifetime [of the levir] why should he not set aside exclusively for her some property equal in value to the amount of the kethubah, and then sell the rest?[1] 'But according to your argument[2] [it might be asked] why should not the same objection[3] be raised from our Mishnah [where it was stated,] HE CANNOT SAY TO HER, "BEHOLD YOUR KETHUBAH LIES ON THE TABLE", BUT ALL HIS PROPERTY IS PLEDGED FOR HER KETHUBAH?' — 'There[4] we might merely have been given a piece of good advice;[5] for, were you not to admit this, [how would you] read the final clause where it is stated, So, TOO, A MAN MUST NOT SAY TO HIS WIFE, "BEHOLD YOUR KETHUBAH LIES ON THE TABLE", BUT ALL HIS PROPERTY IS PLEDGED FOR HER KETHUBAH, would he here also [it may be asked] not be able to sell if he wished to do so?[6] Consequently [it must be agreed that] he was there merely giving a piece of good advice;[7] and similarly here also we might merely be given a piece of good advice;[5] the statement of R. Abba, however, does present an objection!'[8] — 'R. Abba's statement also does not give rise to any objection [because the restrictions on the man's liberty to sell] are due to [the desire of avoiding] hatred.'[9] A sister-in-law once fell to the lot of a man[10] at Pumbeditha, and his [younger] brother wanted to cause her to be forbidden to marry him[11] by [forcing upon her] a letter of divorce.[12] 'What is it', [the eldest brother] said to him, 'that you have in your mind? [Are you troubled] because of the property[13] [that I all, to inherit]?[14] I will share the property with you'. R. Joseph [in considering this case] said: Since the Rabbis have laid down that he[15] may not sell,[16] his sale is invalid even if he had already sold it.[17] For it was taught:[18] If a man died[19] and left a widow who was awaiting the decision of a levir[20] and also left a bequest of property of the value of a hundred maneh,[21] [the levir] must not sell the property although the widow's kethubah amounts only to one maneh, because all his property is pledged to her kethubah.[22] Said Abaye to him:[23] Is it so that wherever the Rabbis ruled that one must not sell, the sale is invalid, even after it had taken place? Did we not, in fact, learn: Beth Shammai said, She[24] may sell it, and Beth Hillel said, She may not sell it; but both agree that if she had sold it or given it away her act is legally valid?[25] The case was sent to R. Hanina b. Papi who sent [the same reply] as that of R. Joseph. On this Abaye remarked: Has R. Hanina b. Papi, forsooth, hung jewels[26] upon it?[27] It was

then sent to R. Minyomi the son of R. Nihumai who sent [the same reply] as Abaye[28] [and added:][29] 'Should R. Joseph give a new reason report it to me. R. Joseph thereupon went out, investigated, and discovered that it was taught: If a man who had a monetary claim against his brother died,[30] and left a widow who had to await the decision of a levir, [the latter][31] is not entitled to plead, 'Since I am the heir I have acquired [the amount of the debt]', but it must be taken from the levir and spent on the purchase of land and he is only entitled to its usufruct.[32] But 'is it not possible', said Abaye to him, 'that provision was made in his own interests?'[33] — 'The Tanna stated', the other replied, 'that it must be "taken" from him,[34] and you say that "provision was made in his own interests"'! The case was again sent to R. Minyomi the son of R. Nihumai who said to then,: Thus said R. Joseph b. Minyomi in the name of R. Nahman, 'This[35] is not an authentic teaching'.[36] What is the reason?[37] If it be Suggested, 'Because money is a movable thing and movables are not pledged to a kethubah',[38] is it not possible [it might be retorted] that the statement represents the view of R. Meir who holds that movables are pledged to a kethubah?[39] [Should it be suggested,] however,[40] 'Because he[41] could say to her: You are not the party I have to deal with',[42]

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(1) What need then was there for persuasion or divorce and remarriage?

(2) 'Since you can see no reason against the sale of the property in excess of the kethubah except that a kethubah is not payable during the levir's lifetime'.

(3) Against Abaye, supra.

(4) In our Mishnah.

(5) In the interests of the woman; but not a legal ruling. Hence no objection can arise from it.

(6) Of course he could sell, since his future acquisitions are also pledged for the kethubah (cf. supra p. 512, n. 11).

(7) Cf. supra n. 6.

(8) As shewn supra.

(9) Between husband and wife. Were he allowed to set aside a particular part of his property as surety for her kethubah she might misinterpret his action to be a preliminary to a permanent divorce. By adopting the measures described supra he makes it clear to all that the only motive for his action was his desire to sell the property.

(10) The woman's husband died without issue and the duty of marrying her or submitting to her halizah fell upon that man who was the eldest surviving brother of the deceased.

(11) His eldest brother.

(12) A divorce by one of the surviving brothers causes the widow to be forbidden to all the brothers (v. Yeb. 50a).

(13) Of the deceased.

(14) The brother who marries the widow inherits also the estate of the deceased (v. Yeb. 40a).

(15) A levir for whose marriage (or halizah) a sister-in-law is waiting.

(16) The estate of his deceased brother, which he inherits.

(17) Similarly, here, the share promised to the younger brother under a legal kinyan is deemed to be a sale which is invalid.

(18) Cf. infra n. 10.

(19) Without issue.

(20) Cf. supra p. 507, n. 8.

(21) V. Glos.

(22) Which proves that the levir who is responsible far his sister-in-law's kethubah may not sell any of his deceased brother's property which he inherits.

(23) R. Joseph.

(24) A wife who came into the possession of property.

(25) Supra 78a; which proves that a sale ex post facto is valid even though it was not originally permitted.

(26) כיפי (כיף, כיפא 'stone') 'precious stones'.

(27) He has not. His ruling is no more supported by proof or reason than that of R. Joseph, and may he equally disregarded.

(28) That the sale is valid.

(29) Cf. MS.M. which inserts, 'and he (also) sent (word) to them'.

(30) Without issue.

(31) I.e., the debtor who, as brother of the deceased, marries his widow and also inherits his estate (v. supra p. 514, n. 4).
(32) The debt in this case is similar to a sale ex post facto, and nevertheless it is invalid; which proves the correctness of R. Joseph's ruling.
(33) Lit., 'that which was good for him they did for him'; it is more advantageous for a person when his money is invested than when it is spent.
(34) Implying forcible action against his will.
(35) The Baraitha discovered by R. Joseph.
(36) It is spurious and not to be relied upon.
(37) V. previous note.
(38) And a statement that regards them as pledged to a kethubah must consequently be spurious.
(39) Cf. Yeb. 99a, Kid. 68b.
(40) As a reason why the statement under discussion must be considered spurious.
(41) The levir.
(42) He is the debtor of the deceased but not hers. Cf. supra n.8 mutatis mutandis.

Talmud - Mas. Kethuboth 82a

is it not possible [it might be retorted] that the statement represents the view of R. Nathan, since it was taught: R. Nathan stated, 'Whence is it deduced that if a man claims a maneh[1] from another, and this one [claims a similar sum] from a third, the sum is to be collected from the last [named] and handed over to the first? From Scripture, which stated,[2] And give unto him against whom he hath trespassed'?[3] [This], however, [is the reason:][4] We find nowhere a Tanna who imposes two restrictions[5] in the matter of a kethuboth;[6] we only find agreement either with R. Meir or with R. Nathan.[7] Raba remarked: If so, I can well understand[8] what Abaye meant when I heard him say, 'This is not an authentic teaching' and [at the time] I did not understand what [his reason] was.

A sister-in-law at Matha Mehasia[9] once fell to the lot of a man[10] whose [younger] brother wanted to cause her to be forbidden to marry him[11] by [forcing upon her] a letter of divorce.[12] 'What is it', [the eldest brother] said to him, 'that you have in your mind? If it is on account of the property[13] [that you are troubled][14] will share the estate with you'. 'I am afraid', the other replied, 'that you will treat me as the Pumbedithan rogue [has treated his brother]'.[15] 'If you wish', the first said to him, 'take your half at once'.[16] Said Mar son of R. Ashi: Although when R. Dimi came[17] he stated in the name of R. Johanan, If a man said to another, 'Go and pull[18] this cow, but it shall pass into your legal possession only after thirty days', he legally acquires it after thirty days,[19] even if it stands at the time in the meadow,[20] [in this case the younger brother cannot acquire possession of the promised share]; for there[21] it was in his power [to transfer possession at once][22] but here[23] it is not in his power [to transfer immediate possession]. But, surely, when Rabin came[24] be stated in the name of R. Johanan[25] that 'he does not acquire possession'![26] — This is no difficulty: One[27] refers to a case where the seller said, 'Acquire possession[28] from now';[29] the other, where he did not say, 'Acquire from now'.

'Ulla was asked: What is the ruling where levirate marriage was consummated first and the division of the property[30] took place afterwards?[31] — The act[32] is null and void[33] [he replied]. What is the ruling [he was asked] if the division[30] took place first and the levirate marriage afterwards?[31] -The act[32] [he replied] is null and void.[33] R. Shesheth demurred: Now [that it has been said that where] levirate marriage took place first and the division[30] afterwards the act[32] is null and void, was it at all necessary [to ask the question where] the division took place first and the levirate marriage afterwards?[34] — [The respective enquiries related to] two independent incidents that occurred [at different times].[35]

When Rabin cam€[24] he stated in the name of Resh Lakish: Whether levirate marriage was consummated first and the division took place afterwards, or whether the division took place first

and the levirate marriage afterwards, the act is null and void. And [in fact] the law is that the act is null and void.

THE SAGES, HOWEVER, RULED: WHAT IS STILL ATTACHED TO THE GROUND BELONGS TO HIM. But why? Is not all his[36] landed estate[37] a pledge and a guarantee for her kethubah? — Resh Lakish replied: Read, 'Belongs to her'.[38]

IF [THE LEVlr] MARRIED HER SHE IS REGARDED AS HIS WIFE. In what respect? — R. Jose the son of R. Hanina replied: By this is meant that her separation from him is effected by a letter of divorce[39] and that he may marry her again.[40] [You say,] 'Her separation from him is effected By a letter of divorce'; [but] is not this obvious? — It might have been assumed that since the All-Merciful said, And perform the duty of a husband's brother unto her,[41] she[42] is still subject to the original levirate obligations[43] and a letter of divorce should not be enough unless [the separation had been effected] by halizah, hence we were taught [that only a letter of divorce is required].

[You say,] 'He may marry her again'; [but] is not this obvious?

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(1) V. Glos.

(2) Num. V, 7.

(3) Emphasis on the last five words which refer to the first, who is the person against whom the trespass had been committed, and not to the second who is merely an intermediary who, even if the debt had been repaid to him, would also have had to transfer it to the first. Similarly in the statement under discussion the debt which the deceased claims from the levir might well be regarded as a debt due to the widow who has a claim upon the deceased.

(4) Cf. supra p. 515, n. 10.

(5) That of R. Meir as well as that of R. Nathan.

(6) Which is only a Rabbinical institution.

(7) But not with both. Since the statement under discussion does impose both restrictions it must be considered spurious.

(8) Lit., 'that is'.

(9) A suburb of Sura. It was an important seat of learning in the days of Rab, and attained even greater fame in the first two decades of the fifth century under the guidance of R. Ashi.

(10) Cf. supra p. 523, n. 10.

(11) Cf. loc. cit. n. 11.

(12) Cf. supra p. 513, n. 12.

(13) Cf. p. 514, n. 1.

(14) Cf. loc. cit. n. 2.

(15) He did not keep the promise he made (supra Rib). Pumbeditha was notorious for its sharpers (cf. B.E. 46a, Hul. 127a).

(16) Though legal acquisition could not be effected until the consummation of the levirate marriage.

(17) From Palestine to Babylon.

(18) Pulling, meshikah (v. Glos.) is one of the forms of kinyan.

(19) From the moment he pulled it.

(20) Sc., not in the possession of the buyer.

(21) In the case of the cow,

(22) Hence he may legally transfer possession even after thirty days.

(23) In the case of the share of the younger brother. The elder brother cannot possibly convey possession of the deceased brother's estate before performing the levirate marriage, when it then passes into his possession. Hence also the invalidity of the kinyan.

(24) From Palestine to Babylon.

(25) In the case of the deferred acquisition of a cow, just cited.

(26) Which presents a contradiction between the two rulings attributed to R. Johanan.

(27) The first cited ruling.

(28) After the thirty days.

(29) I.e., retrospective possession which is valid.
(30) Between the levir who married the widow and any other of the brothers.
(31) Is the brother entitled to retain the property the levir has allotted to him?
(32) Sc. the division by which the levir deprives the widow whom he married of a security for her kethubah.
(33) And the property remains in the possession of the levir, the kethubah of the widow being secured on it.
(34) If the division is invalid in the first case, where the kinyan might be immediate, how much more so in the second case where the kinyan can only be retrospective.
(35) The second enquiry was addressed by those who did not hear of the first mentioned ruling.
(36) The deceased.
(37) Including whatever is attached to it.
(38) The Sages' dispute being limited to detached produce and money which, they maintain, as movables are not pledged to a kethubah.
(39) Not by halizah (v. Glos.) by which the bond between a levir and his sister-in-law is severed where no levirate marriage is consummated.
(40) Though prior to the levirate marriage a divorced sister-in-law is forbidden to marry any of the brothers.
(41) Deut. XXV, 5.
(42) Since the expression of levirate marriage (duty of a husband's brother) is specifically mentioned in addition to the expression of marriage (And take her to him to wife, ibid.).
(43) Even after the consummation of the levirate marriage.

Talmud - Mas. Kethuboth 82b

— It might have been assumed that since he has already performed the commandment that the All-Merciful has imposed upon him she shall again resume towards him the prohibition of [marrying] a brother's wife,[1] hence we were informed [that he may remarry her]. But might it not be suggested that the law is so[2] indeed?[3] — Scripture stated, And take her to him to wife,[4] as soon as he has taken her she becomes his wife [in all respects].

SAVE THAT HER KETHUBAH REMAINS A CHARGE ON HER FIRST HUSBAND'S ESTATE. What is the reason?[5] — A wife has been given[6] to him from heaven.[7] If, however, she is unable to obtain her kethubah from her first husband [provision was made by the Rabbis that] she receives it from the second[8] in order that It may not be easy for bin, to divorce her.[9]

HE CANNOT SAY TO HER, BEHOLD YOUR KETHUBAH [etc.]'. What [need was there for stating] SO,TOO?[10] — It might have been suggested [that the restriction mentioned applies only] in the former case[11] because the levir does not insert [in her kethubah the clause] 'That which I possess and that which I will acquire',[12] but that in the latter case, where he does insert [the pledge clause,] 'That which I possess and that which I will acquire',[13] she relies upon this guarantee,[14] hence we were told [that the ruling applies in both cases].

IF HE DIVORCED HER SHE IS ENTITLED ONLY TO HER KETHUBAH. Only[15] IF HE DIVORCED HER [may he sell the property],[16] but if he did not divorce her he may not. Thus we were informed in agreement with the ruling of R. Abba.[17]

IF HE SUBSEQUENTLY REMARRIED HER SHE IS [TO ENJOY THE SAME RIGHTS AS] ALL OTHER WIVES, AND IS ENTITLED ONLY TO HER KETHUBAH. IF HE SUBSEQUENTLY REMARRIED HER'! What does he thereby[18] teach us? Have we not learned: If a man divorced his wife and then remarried her, his second marriage is contracted on the terms of her first kethubah?[19] — It might have been assumed that the law applied only to his wife since it was he himself who wrote the kethubah; in the case of his sister-in-law, however, since it was not he[20] who wrote the kethubah for her, it might well have been assumed that where he divorced, and then remarried her the kethubah must come from himself, hence we were taught [that in this case also she

is entitled only to the first kethubah].

Rab Judah stated: At first they used to give merely a written undertaking[21] in respect of [the kethubah of] a virgin for two hundred zuz[22] and in respect of that of a widow for a maneh,[22] and consequently[23] they grew old and could not take any wives, when Simeon b. Shetah took the initiative[24] and ordained that all the property of a husband is pledged for the kethubah of his wife. So it was also taught elsewhere: At first they used to give merely a written undertaking[25] in respect of [the kethubah of] a virgin for two hundred zuz[22] and in respect of that of a widow for a maneh,[22] and consequently[23] they grew old and could not take any wives. It was then ordained that the amount of the kethubah[26] was to be deposited in the wife's father's house. At any time, however, when the husband was angry with her he used to tell her, 'Go to your kethubah'.[27] It was ordained, therefore, that the amount of the kethubah[26] was to be deposited in the house of her father-in-law.[28] Wealthy women[29] converted it into silver, or gold baskets, while poor women converted it into brass[30] tubs. Still, whenever the husband had occasion to be angry with his wife he would say to her, 'Take your kethubah and go'.[31] It was then that[32] Simeon b. Shetah ordained that the husband must insert the pledging clause, 'All my property is mortgaged to your kethubah'.[33] [

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(1) Lev. XVIII, 16.

(2) That halizah is required and that he may not remarry her.

(3) Lit., 'thus also'.

(4) Deut. XXV, 5; where only the latter part of the verse, And perform the duty of a husband's brother unto her, would have been sufficient.

(5) I.e., why should not the levir, her present husband, assume responsibility for her kethubah.

(6) Lit., 'they caused him to acquire'.

(7) She was not chosen by him but was imposed upon him by the Divine law of the levirate marriage. He cannot, therefore, be expected to undertake any monetary obligations in respect of her kethubah.

(8) The levir who married her.

(9) Lit., 'that it may not be easy in his eyes to cause her to go out'.

(10) In the case of a wife. Is it not obvious that a husband's obligation towards a wife he himself has chosen cannot possibly be less than those he incurs in respect of a sister-in-law he married only in obedience to a commandment?

(11) The marriage of a sister-inlaw.

(12) 'Shall be pledged to the kethubah'. So that the woman, having her security limited to the levir's possessions that were inherited from her deceased husband, would naturally suspect that by 'putting her kethubah on the table' the levir intends to escape his full responsibility and desires to deprive her of the possibility of collecting her kethubah when the occasion arises. This, as might well be expected, would create animosity between husband and wife (cf. supra p. 513, n. 9).

(13) So that the kethubah is well secured.

(14) And no animosity would ensue despite his 'putting of the kethubah on the table'.

(15) Lit., 'yes'.

(16) Which he inherited from the deceased and which is in excess of the amount of the kethubah.

(17) Supra 81a, that unless the woman can be persuaded to consent to the sale of the property it may be sold only after she had been divorced.

(18) By specifying the law in the case of a sister-in-law whom the levir had married.

(19) I.e., she cannot claim a second kethubah, infra 89b; And this law one would expect to apply also to a sister-in-law. What need then was there to specify it in the case of the latter. (V. Supra n. 1)?

(20) But her first husband.

(21) Lit., 'they would write'. No clause pledging the husband's landed property being inserted in the kethubah.

(22) V. Glos.

(23) Women refusing to marry under such precarious conditions, (v. supra note 4).

(24) Lit., 'until he came'.

(25) V. supra note 4.

(26) Lit., 'it'.

(27) I.e., he could easily get rid of her since the amount of her kethubah was at hand and there was no need for him to make any efforts to find the money.

(28) Sc. husband.

(29) The amount of whose kethubah was high. In addition to the statutory sum the kethubah also contains additional obligations on the part of the husband corresponding to the amount the wife brought to him on marriage.

(30) So Tosaf. s.v. עביט. Cur. edd. 'urine'.

(31) Cf. supra p. 520, n. 10.

(32) V. l.c. n. 7.

(33) So MS.M. Cur. edd., 'to her kethubah'. [For a full discussion of this passage v. Epstein, L., op. cit. pp. 19ff.]

Talmud - Mas. Kethuboth 83a

C H A P T E R I X

MISHNAH. IF A HUSBAND GIVES TO HIS WIFE A WRITTEN UNDERTAKING, 'I HAVE NO CLAIM WHATSOEVER[1] UPON YOUR ESTATES', HE MAY NEVERTHELESS ENJOY ITS USUFRUCT DURING HER LIFETIME AND, WHEN SHE DIES, HE IS HER HEIR. IF SO, WHAT WAS HIS OBJECT IN GIVING HER THE WRITTEN UNDERTAKING, 'I HAVE NO CLAIM WHATSOEVER UPON YOUR ESTATES'? THAT IF SHE SOLD THEM OR GAVE THEM AWAY HER ACT MIGHT BE VALID. IF HE WROTE, 'I HAVE NO CLAIM WHATSOEVER UPON YOUR ESTATES AND UPON THEIR PRODUCE, HE MAY NOT ENJOY THEIR USUFRUCT DURING HER LIFETIME BUT, WHEN SHE DIES, HE IS HER HEIR. R. JUDAH RULED: HE MAY IN ALL CASES ENJOY THE YIELD OF THE PRODUCE UNLESS HE WROTE OUT FOR HER [THE FOLLOWING UNDERTAKING]: 'I HAVE NO CLAIM WHATSOEVER UPON YOUR ESTATES AND UPON THEIR PRODUCE AND THE PRODUCE OF THEIR PRODUCE AND SO ON WITHOUT END.

IF HE WROTE, 'I HAVE NO CLAIM UPON YOUR ESTATES, THEIR PRODUCE AND THE PRODUCE OF THEIR PRODUCE DURING YOUR LIFETIME AND AFTER YOUR DEATH', HE MAY NEITHER ENJOY THEIR PRODUCE DURING HER LIFETIME NOR CAN HE BE HER HEIR WHEN SHE DIES. R. SIMEON B. GAMALIEL RULED:WHEN SHE DIES HE IS HER HEIR BECAUSE [BY HIS DECLARATION] HE IS MAKING A CONDITION WHICH IS CONTRARY TO WHAT IS ENJOINED IN THE TORAH[2] AND WHENEVER A MAN MAKES A CONDITION WHICH IS CONTRARY TO WHAT IS WRITTEN IN THE TORAH, HIS CONDITION IS NULL AND VOID.[3] GEMARA. R. Hiyya taught:[4] If a husband said[5] to his wife.[6]

And if he gave her such an undertaking in writing,[7] what does It matter? Was it not taught: If a man says[8] to another,[9] 'I have no claim whatsoever on this field, I have no concern in it and I entirely dissociate myself from it',[10] his statement is of no effect?[11] — At the school of R. Jannai it was explained, [we are dealing here with the case] of a man who gave the undertaking to his wife[12] while she was still only betrothed to him,[13] [the ruling[14] being] in agreement with that of R. Kahana, that a man is at liberty to renounce beforehand an inheritance[15] which is likely to accrue to him from another source;[16] and [this ruling, furthermore, is] in agreement with a dictum of Raba, that if anyone says. 'I do not desire [to avail myself] of a regulation of the Rabbis of this kind', his desire is granted.[17] What [is meant by the expression] 'of this kind'? As [that referred to in the statement made by] R. Huna in the name of Rab: A woman is entitled to say to her husband, 'I do not wish either to be maintained by you or to work for you'.[18] If so,[19] should not [the same ruling apply to] a married woman also?[20] Abaye replied: In the case of a married woman the husband's rights have the same force as the wife's.[21] Raba said: His rights are superior to hers. This[22] is of practical significance in the case of a woman who was awaiting the decision of the levir.[23] The question was raised: What is the ruling if symbolic kinyan was executed[24] [at the time of the renunciation]?[25] — R. Joseph replied: [The kinyan is invalid since] it related to an abstract renunciation.[26] R. Nahman

replied: [The kinyan is valid because] it related to land itself.[27] Said Abaye: R. Joseph's statement is reasonable

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(1) Lit., 'no right nor claim'.
(2) According to the Torah it is the husband who is the heir of his wife (v. B.B. 111b).
(3) It is only the produce which was granted to the husband by a Rabbinical measure, that he may renounce.
(4) In reference to the rulings in our Mishnah.
(5) Emphasis on said, sc. he can waive his rights by a mere verbal declaration.
(6) Infra 102b.
(7) Much less if it was only verbal.
(8) Either verbally or in a written document (v. Rashi).
(9) Sc. to his partner.
(10) Lit., 'and my hand is removed from it'.
(11) Infra 95a. Git. 77a, B.B. 43a, 49a; because no man can renounce his rights by a mere verbal declaration unless by way of a gift or sale, but since there was no expression such as, 'I make the field over to you'. or words to the same effect denoting a gift, the waiver is ineffective. Now since a written undertaking that omitted such an expression is invalid, bow much more so would that be the case with a mere verbal utterance? An objection thus arises against R. Hiyya.
(12) Lit., 'when he writes for her'.
(13) When he has as yet no right to her property.
(14) Which allows renunciation in such a case.
(15) Lit., 'stipulate that he shall not inherit'.
(16) Sc. from a stranger to whom he becomes next of kin through an act of his (such as marriage) and whose heir he becomes thereby in accordance with Rabbinic law. It is only an inheritance from a next-of-kin, or property that is already in one's possession, the rights of which cannot be waived by mere renunciation but requires (v. supra n. 8) the specific expressions of 'giving'. [This statement of R. Kahana is on the view that the law that the husband inherits his wife is a Rabbinic provision. v. supra p. 528, cf. supra p. 522, n. 2].
(17) Since the regulation was made for his benefit, he is at liberty to reject it.
(18) Since her maintenance by her husband in return for her handiwork is a Rabbinic regulation made in favour of the woman, she is at liberty to reject it. A husband (cf. supra nn. 13 and 14) is similarly entitled to renounce his rights as heir to his wife, without any further formality.
(19) That the husband's right to renounce his claim upon his wife's property is due to the fact that it was for his benefit that her property was assigned to him.
(20) Of course it should. Why then was it necessary for the school of R. Jannai supra to explain the ruling as referring to an undertaking that was given 'while she was still only betrothed to him'?
(21) Lit., 'his hand is like her hand'. Since he is consequently legal possessor of the property he cannot (cf. supra p. 523, n. 13) waive his rights to it by mere renunciation.
(22) The difference of opinion between Abaye and Raba, which does not in any way affect our present discussion since in either case a husband is regarded as the possessor of his wife's property and cannot, by a mere verbal renunciation, legally transfer it.
(23) If such a woman died and left property which came into her possession either (a) while her husband was still alive or (b) after his death while she was awaiting the levir's decision, the respective rights of her heirs and her husband's heirs to such property depend on, and vary according to, the respective views of Abaye and Raba as fully discussed in Yeb. 39a, q.v.
(24) Lit., 'they (sc. witnesses) acquired from him (on behalf of his partner)'. Cf. Rashi.
(25) Of his share in his partner's property. spoken of in the Baraitha quoted supra in objection to R. Hiyya. Does, or does not such kinyan, it is asked, effect the legal transfer of the land despite. or because of the fact, that no expression of 'giving' (v. supra p. 523. n. 8) was used. [According to Tosaf. s.v. קני the query refers to the waiving of rights by a husband to the property of his wife after marriage].
(26) Lit., 'they acquired from him (a mere verbal expression) of right and claim', which are not in his power to waive.
(27) Lit., 'of the body of the land', which is, of course, a concrete object that may well be acquired by symbolic kinyan.

where [the partner][1] lodged his protest forthwith,[2] but if he delayed,[3] the kinyan must be regarded as relating to the land itself,[4] Amemar said, the law is that the kinyan is taken to refer to the land itself.[5] Said R. Ashi to Amemar: [Do you speak] of one who lodged his protest forthwith or of one who delayed it? 'In what respect [the other asked] does this matter?' — In respect of [determining whether the law is] in agreement with the view of R. Joseph.[6] 'I did not hear this',[7] the other replied. 'by which I mean that I do not accept it.'

IF SO, WHAT WAS HIS OBJECT IN GIVING HER THE WRITTEN UNDERTAKING etc. But[8] why should she not be able to say to him, 'You have renounced all your claims'?[9] — Abaye replied: The holder of a deed is always at a disadvantage.[10] But might it not be suggested [that he renounced his claim] upon the usufruct?[11] — Abaye replied: A young pumpkin [in hand] is better than a full-grown one [in the field].[12] But may it be suggested [that his renunciation related] to his heirship?[13] Abaye replied: Death is a common occurrence but the sale [of property by a wife] is not common;[14] and whenever a person renounces his claims [he does so] in respect of what is not a common occurrence but he does not do it in respect Of that which is a common occurrence. R. Ashi replied:[15] [The husband's renunciation was] 'UPON YOUR ESTATES',[16] but not upon their produce; 'UPON YOUR[17] ESTATES', but not after your death.[18]

R. JUDAH RULED: HE MAY IN ALL CASES ENJOY THE YIELD OF THE PRODUCE [etc.]. Our Rabbis taught: The following are regarded as produce and the following as the yield of the produce respectively. If a woman brought to her husband[19] a plot of land and it yielded produce, such yield is regarded as produce. If he sold the produce and purchased land with the proceeds and that land yielded produce, such yield is regarded as the yield of the produce. The question was raised: According to R. Judah, [is the expression] THE PRODUCE OF THEIR PRODUCE[20] the essential element,[21] or is rather WITHOUT END[22] the essential element,[23] or is it possible that both expressions are essential?[24] But should you find [some ground] for deciding [that the expression] THE PRODUCE OF THEIR PRODUCE is the essential element,[25] what need was there [it might be asked, for the mention[26] of] 'WITHOUT END'? — It is this that we were taught: So long as he renounced in her favour, in writing, the yield of the produce it is as if he had expressly written in her favour, 'without end'. But should you find [some reason] for deciding that WITHOUT END is the essential element,[27] what need was there [it might be asked, for the mention[26] of] THE PRODUCE OF THEIR PRODUCE? — It is this that we were taught; Although he renounced in her favour, in writing, the yield of the produce [the renunciation] is valid only[28] if he also wrote 'without end' but is invalid[29] if he did not [write it]. But if you should find some argument for giving the decision that both expressions are essential [it could he asked]. what need is there for the specification[30] of both? Both are necessary. For if only the 'yield of the produce' had been written in her favour and 'without end' had been omitted, it might have been assumed that he loses thereby his right to the enjoyment of the yield of the produce only but that he is still entitled to enjoy the produce of the yield of that produce, hence it is necessary for the expression 'without end' [to be included in the renunciation]. And if only 'without end' had been written in her favour and the 'yield of the produce' had not been specified,[30] it might have been assumed that 'without end' referred to the first produce only,[31] hence it is necessary to specify also the 'yield of the produce'.[32]

The question was raised: May a husband who wrote, in favour of his wife, the renunciation 'I have no claim whatsoever upon your estates and upon the yield of their produce', enjoy the produce itself? Has he renounced the yield of their produce only but not the produce [itself] or is it possible that he renounced all his claim? But it is quite obvious that he has renounced all his claims. For should you suggest that he only renounced his claim upon the yield of the produce but not upon the produce itself, whence [it might be objected] would arise a yield of the produce if the man had consumed the produce itself?[33]

[No, for even] according to your view, [how will you explain] the statement in our Mishnah, R. JUDAH RULED: HE MAY IN ALL CASES ENJOY THE YIELD OF THE PRODUCE etc. [Where it may equally be objected,] whence would there be a yield of the produce if she[34] has consumed the produce itself? [Your explanation,] however, [would be that the reference is to a case] where the woman had allowed [the produce] to remain;[35] here also [it may be a case] where the husband has allowed the produce to remain.[35]

R. SIMEON B. GAMALIEL RULED etc. Rab said: The halachah is in agreement with the ruling of R. Simeon b. Gamaliel but not because of the reason he gave. What is meant by 'the halachah is In agreement with the ruling of R. Simeon b. Gamaliel but not because of the reason he gave'? If it be suggested: 'The halachah is in agreement with the ruling of R. Simeon b. Gamaliel' in respect of his statement that WHEN SHE DIES HE IS HER HEIR, 'but not because of the reason he gave'.for whereas R. Simeon b. Gamaliel is of the opinion that if A MAN MAKES A CONDITION WHICH IS CONTRARY TO WHAT IS WRITTEN IN THE TORAH, HIS CONDITION IS NULL AND VOID, Rab holds that such a condition[36] is valid[37] and [his acceptance of the ruling[38] is solely due to] his opinion that a husband's right of inheritance is a Rabbinical enactment and that the Sages have imposed upon their enactments greater restrictions than upon those of the Torah;[39]

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(1) Who waived his rights.

(2) As soon as the partner came to take possession of the field, he declared that he never intended to give away his share and that his renunciation was merely a way of escape from a quarrel with his partner.

(3) Lit., 'when standing', the protest being made sometime after his partner had taken possession of the field.

(4) Cf. p. 524, n. 9; it being obvious that this belated protest was only the result of an afterthought, and that his original intention was to give away his share to his partner.

(5) V. p. 524, n. 9.

(6) Supra 83a ad fin.

(7) The ruling of R. Joseph. Cf. MS. M.

(8) If the husband's renunciation is sufficiently valid to confer legality on his wife's sale or gift.

(9) I.e., even his rights to usufruct and heirship.

(10) Should his claims ever conflict with those of the person in possession in whose favour the deed is always to be interpreted. In the case under discussion the wife is regarded as the 'holder of the deed' and the husband as the possessor of the rights of (i) usufruct, (ii) heirship and (iii) the seizure of any property she has sold or given away. Since his renunciation can be interpreted as referring to one of these rights only, the woman has no legal footing on which to claim 'You have renounced all your claims'.

(11) And not upon his other rights (cf. note 7) including that of seizure of the property his wife has sold or given away.

(12) Cf. 'a bird in hand is worth two in the bush' (Eng. prov.). The right to usufruct, which can be enjoyed at once, though it is of less value than the land itself, is more advantageous to a husband than the right of the seizure of property that his wife may possibly sell at some future time. The former is a certainty, the other is an eventuality.

(13) Cf. supra n. 9 mutatis mutandis.

(14) A woman as a rule does not sell her ancestral possessions.

(15) To the two objections just dealt with by Abaye.

(16) Emphasis on ESTATES.

(17) Emphasis on the pronoun.

(18) When they are no longer hers.

(19) On marriage.

(20) And not that of WITHOUT END. (Rashi); cf. note 8 ad fin.

(21) In the wording of the renunciation spoken of by R. Judah; and, if it was omitted, the renunciation, as far as the yield of produce is concerned, is invalid even though the expression 'without end' had been used. Aliter. And the renunciation is valid even though 'without end' was omitted (Tosaf. s.v. **פירי**).

(22) And not 'the produce of the produce'.

(23) Cf. supra n. 7, mutatis mutandis.

(24) And if one of them was omitted the renunciation is invalid.
(25) V. supra note 7.
(26) In our Mishnah.
(27) Cf. supra note 5.
(28) Lit., ‘yes’.
(29) LIt., ‘not’.
(30) In the renunciation.
(31) That it is this produce, but not its yield, that he renounces for ever
(32) [All of which justifies the query as to which expression is regarded as essential according to R. Judah. The query is left unanswered, v. infra p. 528. n. 2].
(33) Obviously there could be none Hence it may be concluded that the husband renounced ‘all his claims’.
(34) The wife. Cf. Rashi. Cur. edd., דאבלינהו.
(35) It had for some reason remained unconsumed and a produce-yielding object had been purchased with the proceeds. [Here, too, the question remains unanswered, v. supra p. 527. n. 5].
(36) If it relates to monetary matters.
(37) In agreement with R. Judah, supra 56a.
(38) Of R. Simeon b. Gamaliel, that the condition is invalid in the case of the husband's heirship.
(39) Not being Pentateuchal, people might be lax in their observance. Greater safeguards were, therefore, required.

Talmud - Mas. Kethuboth 84a

could Rab, however, [it may be retorted,] hold the opinion that one's condition [though contrary to what is written in the Torah] is valid? Has it not in fact been stated: If a man says to another, ‘[I sell you this object] on condition that you have no claim for overreaching against me’ [the buyer]. Rab ruled, has nevertheless a claim for overreaching against him,[1] and Samuel ruled, He has no claim for overreaching against him?[2] — [It is this] then [that was meant;] ‘The halachah is in agreement with the ruling of R. Simeon b. Gamaliel’ who laid down that IF A MAN MAKES A CONDITION WHICH IS CONTRARY TO WHAT IS WRITTEN IN THE TORAH, HIS CONDITION IS NULL AND VOID, ‘but not because of the reason he gave’, for whereas R. Simeon b. Gamaliel is of the opinion that WHEN SHE DIES HE IS HER HEIR, Rab maintains that when she dies he is not her heir.[3] But is not this in agreement with his reason[4] and not with his ruling?[5] — This then [it is that was meant:] ‘The halachah is in agreement with the ruling of R. Simeon b. Gamaliel’ who laid down that WHEN SHE DIES HE IS HER HEIR, but not ‘because of the reason he gave’ for, whereas R. Simeon b. Gamaliel is of the opinion that only a condition that is contrary to a Pentateuchal law is null but one that is contrary only to a Rabbinic law[6] is valid, Rab maintains that even a condition contrary to a Rabbinic law[6] is also null.[7]

But this would be in agreement, would it not, with both his reason[8] and his ruling.[9] Rab only adding [greater force to it]?[10] This then [it is that was meant :] ‘The halachah is in agreement with R. Simeon b. Gamaliel’ who laid down that WHEN SHE DIES HE IS HER HEIR, but not ‘because of the reason he gave’, for, whereas R. Simeon b. Gamaliel holds that a husband's right of heirship is Pentateuchal and that [it is invalid because] WHEREVER A MAN MAKES A CONDITION WHICH IS CONTRARY TO WHAT IS WRITTEN IN THE TORAH, HIS CONDITION IS NULL AND VOID, Rab maintains that a husband's right of heirship is only a Rabbinic enactment and [that the condition is nevertheless null because] the Sages have imparted to their enactments the same force as that of Pentateuchal laws.

But [could it be said,] that Rab is of the opinion that a husband's right of heirship is only Rabbinical when in fact we have learned:[11] R. Johanan b. Beroka ruled, ‘If a husband is the heir of his wife he must [when the Jubilee year[12] arrives] return [the inheritance] to the members of her family and allow them a reduction of price’;[13] and, in considering this statement, the objection was raised: What is really his[14] opinion? If he holds that a husband's right of heirship is Pentateuchal,

why [it may be asked] should he return [the inheritance at all]?[15] And if [he[16] holds it to be only] Rabbinical, why [it may be objected] should [even a part of] its price be paid?[17] And Rab explained: He[16] holds in fact the opinion that a husband's right of heirship is Pentateuchal but[18] [here it is a case of a man], for instance, whose wife bequeathed to him a [family] graveyard, [and it is] in order [to avoid] a family taint[19] that the Rabbis have ruled, Let him take the price and return it; and by[20] 'allow them a reduction in price' [was meant a deduction of] the cost of his wife's grave;[21] [the return of a family graveyard being] in agreement with what was taught: If a person has sold his [family] grave, the path to this grave, his halting place.[22] or his place of mourning, the members of his family may come and bury him perforce,[23] in order [to avert] a slight upon the family![24] — Rab spoke here in accordance with R. Johanan b. Beroka's point of view but he himself does not uphold it.

MISHNAH. IF A MAN DIED AND LEFT A WIFE,[25] A CREDITOR,[26] AND HEIRS[27] AND HE ALSO HAD A DEPOSIT OR A LOAN IN THE POSSESSION OF OTHERS, THIS, R. TARFON RULED, SHALL BE GIVEN TO THE ONE WHO IS UNDER THE GREATEST DISADVANTAGE.[28] R. AKIBA SAID: NO PITY IS TO BE SHEWN IN A MATTER OF LAW; AND IT[29] SHALL RATHER BE GIVEN TO THE HEIRS, FOR WHEREAS ALL THE OTHERS[30] MUST TAKE AN OATH[31] THE HEIRS NEED NOT TAKE ANY OATH.[32] IF HE LEFT PRODUCE THAT WAS DETACHED FROM THE GROUND, THEN WHOEVER[33] SEIZES IT FIRST ACQUIRES POSSESSION. IF THE WIFE TOOK POSSESSION OF MORE THAN THE AMOUNT OF HER KETHUBAH, OR A CREDIT OR OF MORE THAN THE VALUE OF HIS DEBT, THE BALANCE, R. TARFON RULED, SHALl. BE GIVEN TO THE ONE WHO IS UNDER THE GREATEST DISADVANTAGE.[34] R. AKIBA SAID: NO PITY IS TO BE SHEWN IN A MATTER OF LAW; AND IT SHALL RATHER BE GIVEN TO THE HEIRS, FOR WHEREAS ALL THE OTHERS[30] MUST TAKE AN OATH[31] THE HEIRS NEED NOT TAKE ANY OATH.[32] GEMARA. What was the object of specifying both A LOAN and a DEPOSIT?[35] [Both were] required. For if A LOAN only had been mentioned it might have been presumed that only in that case did R. Tarfon maintain his view, because a loan is intended to be spent,[36] but that in the case of a deposit which is in existence[37] he agrees with R. Akiba.[38] And if the former[39] only had been mentioned it might have been assumed that only in that case did R. Akiba maintain his view[40] but that in the other case[41] he agrees with R. Tarfon.[42] [Hence both were] necessary.

What is meant by TO THE ONE WHO IS UNDER THE GREATEST DISADVANTAGE? — R. Jose the son of R. Hanina replied: To the one who is under the greatest disadvantage in respect of proof.[43] R. Johanan replied: [The reference is] to the kethubah of the wife[44] [who was given this privilege] in order to maintain pleasantness[45] [between her and her husband].[46] [This dispute is the same] as that between the following Tannaim: R. Benjamin said, To the one who is under the greatest disadvantage in respect of proof.[43] and this is the proper [course to take]; R. Eleazar said.[The reference is] to the kethubah of the wife[44] [who was given this privilege] in order to maintain pleasantness[45] [between her and her husband].[46] IF HE LEFT PRODUCE THAT WAS DETACHED. As to R. Akiba,[47] what was the point in discussing the BALANCE when[48] the entire estate belongs to the heirs?[49] — The law is so indeed,[50] but since R. Tarfon spoke of the BALANCE, he also mentioned the BALANCE.

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(1) Because the condition is contrary to the Pentateuchal injunction of אל-תונו (Lev. XXV, 24).

(2) Now, since Rab recognizes the invalidity of a condition that is contrary to Pentateuchal law of overreaching, how could he be said to regard a similar condition elsewhere as valid?

(3) The condition being 'and because a husband's right of heirship is, in Rab's opinion, a Rabbinical enactment which has not the same force as that of a Pentateuchal law.

(4) I.e., that a condition which is contrary to a Pentateuchal law is null.

(5) That WHEN SHE DIES HE IS HER HEIR. The answer being in the affirmative, the facts are directly opposite to the statement made supra by Rab.

(6) Such, e.g. as a renunciation by a husband of his rights to the usufruct of his wife's property.
(7) Because in his opinion the Sages have impaired to their enactments the same force as that of a Pentateuchal law.
(8) V. supra note 2.
(9) Cf. supra note 3.
(10) Viz., and extending R. Gamaliel's principle to a Rabbinic enactment applies it also to the usufruct. This being the case, how is Rab's statement supra to be understood?
(11) Bek. 52b.
(12) Cf. Lev. XXV, 8ff.
(13) This, it is at present assumed, is the meaning of וינכה להן מן הדמים.
(14) R. Johanan b. Beroka.
(15) An inheritance to which one is Pentateuchally entitled does not return in the Jubilee Year (cf. Bek. 52b).
(16) R. Johanan b. Beroka.
(17) By the members of the wife's family. Lit., 'what is their doing?' Since the husband's right is only in Rabbinic law the members of the wife's family, who are the original owners Pentateuchally, should be entitled to the return of the inheritance to them without any monetary payment on their part.
(18) In explanation of the difficulty as to why such all inheritance should be restored in the Jubilee Year.
(19) It is derogatory for a family that strangers should be interred in their graveyard while their own members should have to seek burial in another family's graveyard.
(20) Lit., 'and what?'
(21) Since it is a husband's duty to bury his dead wife.
(22) The place where, on returning from burial, the funeral escort halts to offer, with due ceremonial, consolation to the mourners. On returning from a burial the funeral escort halted on the way at a certain station where seven times they stood up and sat down on the ground, to offer comfort and consolation to the mourners or to weep and lament for the departed.
(23) They may force the buyer to take back the purchase price and so cancel the sale.
(24) B.B. 100b, Bek. 52b. Cf. supra p. 530. n. 9. Now since Rab specifically stated here that 'a husband's right of inheritance is Pentateuchal' how could he be said to hold that such a right is only Rabbinical.
(25) Who claims her kethubah.
(26) Claiming the repayment of his debt.
(27) Expecting their inheritance.
(28) This is explained infra.
(29) The deposit or the loan
(30) Widows and creditors.
(31) Before they are authorized to seize any portion of the estate.
(32) The inheritance passes into their possession as soon as the parson whose heirs they are dies. Since they are the legal possessors, the others, whose claims have yet to be substantiated by an oath, cannot deprive them of their possessions, for the movables of orphans are not pledged to the creditors of their father.
(33) The heirs, the widow or the creditor.
(34) This is explained infra.
(35) Could not the law of the one be inferred from the other?
(36) The amount of the loan not being in existence at the time the man died it cannot pass into the possession of his heirs before it had been collected from the debtor.
(37) At the time the depositor died, since a deposit must never be spent by the bailee.
(38) That, since it is in existence, it passes into the possession of the heirs.
(39) A DEPOSIT.
(40) Cf supra note 4.
(41) A loan.
(42) Cf. supra note 2.
(43) Sc. the holder of the last dated bond by which such landed estate only may be seized as had been sold after that date.
(44) Who, being unable to exert herself like a man in the search for any possible possessions of her husband, is regarded as 'THE ONE WHO IS UNDER THE GREATEST DISADVANTAGE'.

(45) חינא lit., 'grace'.
(46) While he is alive. Her uncertainty in respect of her settlement after his death might have led to quarrels and strife. Aliter; That women may readily consent to marriage. Had they not been assured that they would have the first claim upon their husband's estate they might refuse all offers of marriage (cf. Rashi). Aliter; That women may be attractive to their husbands by their attachment and devotion which would result from the sense of security they would feel in the provision fist their future (cf. T.J., Aruch and R. Han. in Tosaf. s.v. לכתובת a.l.).
(47) Who regards the heirs as the possessors because WHEREAS OTHERS MUST TAKE AN OATH THE HEIRS NEED NOT.
(48) For the very same reason (cf. previous note).
(49) The seizure on the part of the widow or a creditor of any movable portion of such property would consequently be invalid.
(50) Lit., yes, so also', even if the creditor or the widow has seized any portion of the estate the heirs' right to it is in no way affected and the seized property must be returned to them in its entirety.

Talmud - Mas. Kethuboth 84b

. But would R. Akiba[1] maintain that seizure[2] is never legally valid?[3] Raba replied in the name of R. Nahman: Seizure[4] is valid where it took place during the lifetime [of the deceased].[5] Now according to R. Tarfon,[6] where [must the produce] be kept?[7] — Both Rab and Samuel replied: It must be heaped up and lie in a public domain, but [if it was kept] in an alley[8] no [seizure is valid]. Both R. Johanan and Resh Lakish, however, said: Even [if the produce lay] in an alley [seizure is valid].

Certain judges once gave their decision in agreement with R. Tarfon, and Resh Lakish[9] reversed their verdict. Said R. Johanan to him, 'You have acted as [if R. Akiba's ruling were a law] of the Torah'![10] May it be assumed that they[11] differ on this principle; One Master upholds the view that if [in giving a decision] a law cited in a Mishnah had been overlooked the decision must be reversed[12] and the other Master upholds the view that if a law cited in a Mishnah had been overlooked the decision need not be reversed?[13] — No; all agree that if [in giving a decision] a law cited in a Mishnah had been overlooked the decision must be reversed, but this is the point at issue between them:[14] One Master holds that the halachah is in agreement with the opinion of R. Akiba [only when he differs] from a colleague of his but not from his master,[15] while the other Master holds that the halachah [is in agreement with him] even [if he differs] from his master. If you prefer[16] I might say; All agree that the halachah agrees with R. Akiba [only when he differs] from a colleague of his but not from his master. Here, however. the point at issue is this: One Master holds R. Tarfon to have been his[17] master and the other Master holds him to have been his colleague. Alternatively it might be said: All agree that he[18] was his[19] colleague; but the point at issue between them[20] is this: One Master maintains that the statement[21] was that 'The halachah [agrees with R. Akiba]'[22] and the other Master maintains that the statement[21] was that 'one should be inclined [in favour of a ruling of R. Akiba]'.[23]

R. Johanan's relatives seized in an alley a cow that belonged to orphans. When they appeared before R. Johanan, he said to them, 'Your seizure is quite lawful'. R. Simeon b. Lakish, however, before whom they subsequently appeared, said to them. 'Go and return it'.[24] 'What can I do', said R. Johanan to whom they came again, 'when one of equal authority[25] differs from me?'

[A creditor] once seized an ox from the herdsman of [his debtor's] orphans. The creditor said, 'I seized it during the lifetime [of the debtor]'[26] and the herdsman said, 'He seized it after the debtor's death'.[27] They appeared before R. Nahman who asked the herdsman, 'Have you witnesses that [the creditor] has seized it?' — 'No', the other replied. [R. Nahman thereupon] said to him: Since he could have said, 'It came into my possession through purchase'[28] he is also entitled to say. 'I seized it during the lifetime [of the debtor]'. But did not Resh Lakish state; The law of presumptive possession is inapplicable to living creatures?[29] — The case of an ox that was entrusted to a

herdsman is different [from that of other living creatures].[30]

The people of the Nasi's[31] household once seized in an alley a bondwoman belonging to orphans. At a session held by R. Abbahu, R. Hanina b. Papi and R. Isaac Nappaha in whose presence sat also R. Abba they[32] were told, 'Your seizure is quite lawful'. 'Is it', said R. Abba to them,[33] 'because these people are of the Nasi's household that you are favouring them? Surely, when certain judges once gave a decision in agreement with R. Tarfon Resh Lakish reversed their decision'.[34]

Yemar b. Hashu had a money claim against a certain person who died and left a boat. 'Go', he said to his agent, 'and seize it'. [The latter] went and seized it, but R. Papa and R. Huna the son of R. Joshua met him and told him, 'You are seizing [the ship] on behalf of a creditor and thereby you are causing loss to others,[35] and R. Johanan ruled: He who seizes [a debtor's property] on behalf of a creditor and thereby causes loss to others[35]

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(1) V. supra note 1.

(2) Cf. note 3.

(3) This is a mere enquiry (v. Rashi). R. Tan, regards it as an objection. the assumption of the invalidity of seizure being contradictory to the Mishnah supra 80b, where the woman awaiting levirate marriage, who was first to take possession of the detached produce, is declared to have acquired it; (v. Tosaf. s.v. ולרבי a.l.).

(4) Of chattels.

(5) So that the chattels had never for one moment passed into the possession of the heirs.

(6) Who maintains that WHOEVER SEIZES IT FIRST ACQUIRES POSSESSION, because the heirs do not become its possessors as soon as the man dies.

(7) That the seizure should be valid.

(8) Which is frequented by few people. In such a spot where meshikah (v. Glos.) is valid (cf. B.B. 84b) the produce, even according to R. Tarfon, passes into the possession of the heirs as soon as its original owner dies, and seizure by any other person is invalid.

(9) Who follows the ruling of R. Akiba.

(10) An expression of disapproval. Only a decision which is contrary to the Torah must be reversed. A Rabbinical ruling, however, has no such force, and though a judge may be expected to act according to a certain ruling, his decision must not be reversed if he differed from it.

(11) R. Johanan and Resh Lakish.

(12) Though R. Akiba's ruling is not explicitly contained in a Mishnah, but reported by Amoraim, it is considered a Mishnaic ruling since the law is in agreement with his opinion whenever it is opposed by no more than one individual. Cf. Sanh. 33a.

(13) Is it likely, however, that any authority would uphold the latter view?

(14) R. Johanan and Resh Lakish.

(15) R. Tarfon was sometimes regarded as the master of R. Akiba (v. infra).

(16) Since the last mentioned view seems unlikely.

(17) R. Akiba's.

(18) R. Tarfon.

(19) R. Akiba's.

(20) R. Johanan and Resh Lakish.

(21) On the reliability of R. Akiba's rulings.

(22) Hence the action of Resh Lakish in reversing the decision of the judges mentioned.

(23) I.e. , a ruling of his has not the force of an halachah though a judge is expected to follow it rather than that of any other individual who is opposed to it. Since, however, a decision has been given to the contrary the decision must stand. Hence R. Johanan's objection to the action of Resh Lakish (v. supra n. 11).

(24) In agreement with R. Akiba that seizure of movables for debt after the death of the original owner is invalid, the property having passed, at the moment he died, into the possession of his heirs.

(25) V. Rashi. Lit., 'who is corresponding to me'.

(26) So that it never came into the possession of the orphans.

(27) Cf. supra note 3 mutatis mutandis.
(28) And his statement could not be disproved on account of the absence of witnesses to testify to the seizure.
(29) הגודרות lit., 'those kept In the fold', since (a) they stray into other people's folds and (b) are sometimes taken accidentally from the pasture lands by a shepherd to whom they do not belong. (v. B.B. 36a. Cit. 20b). Now, since the creditor's right to the retention of the animal can only be based on that of presumptive possession, which is here inapplicable, why did Rash Lakish allow the creditor to retain it?
(30) A herdsman is presumed to take good care that his flock stray not into other people's folds, or be seized by other shepherds.
(31) Judah II.
(32) The people of the Nasi's household.
(33) R. Abbahu and his colleagues.
(34) Supra.
(35) Other creditors.

Talmud - Mas. Kethuboth 85a

does not legally acquire it'.[1] Thereupon they[2] seized it themselves, R. Papa rowing[3] the boat while R. Huna the son of R. Joshua pulled it by the rope. One Master then declared, 'I have acquired all the ship'[4] and the other similarly declared, 'I have acquired all of it'.[5] They were met by R. Phinehas b. Ammi who said to them: Both Rab and Samuel ruled that '[Seizure is valid] only if [the produce] was piled up and lay in a public domain'.[6] 'We too', they replied, 'have seized it at the main current of the river'.[7] When they appeared before Raba he said to them, 'Ye white geese[8] that strip the people of their cloaks;[9] thus ruled R. Nahman; [The seizure is valid] only if it took place during the lifetime [of the original owner].

The men of Be-Hozae[10] once claimed a sum of money from Abimi the son of R. Abbahu, who sent it to them by the hand of Hama the son of Rabbah b. Abbahu. He duly went there and paid them, but when he asked them, 'Return to me the bond', they replied. 'This payment was made in settlement of some other claims'.[9] He came before R. Abbahu [to complain] and the latter asked him, 'Have you witnesses that you have paid them?' — 'No', he replied. 'Since', the former said to him, 'they could plead[11] that the payment was never made,[12] they are also entitled to plead that the payment was made in settlement of some other claims'.[13]

What is the law in respect of the agent's liability to refund? — R. Ashi replied; We have to consider the facts. If he[14] said to him. 'Secure the bond and pay the money' he[15] must refund it; [but if he[14] said.] 'Pay the money and secure the bond', he is under no obligation to refund it. The law, however, is not so. He[15] must refund it in either case, because the other[14] may well say. 'I deputed you to improve my position, not to make it worse

There was a certain woman with whom a case[16] of bonds was once deposited and when the heirs [of the depositor] came to claim it from her she said, 'I seized them[17] during [the depositor's] lifetime'.[18] R. Nahman to whom she came said to her, 'Have you witnesses that it[19] was claimed from you during [the depositor's] lifetime and that you refused to return it?' — 'No', she replied. 'If so', he said to her, 'your seizure is one that took place after [the owner's] death,[20] and such a seizure is invalid.[21]

A woman was once ordered[22] to take an oath[23] at the court of Raba, but when R. Hisda's daughter[24] said to him, 'I know that she is suspected of [taking false] oaths', Raba transferred the oath to her opponent.[25]

On another occasion R. Papa and R. Adda b. Mattena sat in his presence when a bond was brought to him. Said R. Papa to him. 'I know that this bond is paid up'. 'Is there, [Raba] asked him, 'any

other man with the Master [to confirm the statement]?' 'No', he replied. 'Although', the other said to him, 'the Master is present [to give evidence] there is no validity [in the testimony of] one witness'.[26] Said R. Adda b. Mattena to him, 'Should not R.Papa be [deemed as reliable] as the daughter of R. Hisda?'[27] — 'As to the daughter of R. Hisda [he replied] I am certain of her;[28] I am not sure, however, about the Master'.[29] Said R. Papa: Now that the Master has stated [that a judge who can assert,] 'I am certain of a person', may rely upon that person's evidence,[30] I would tear up a bond on the evidence of my son Abba Mar of whose reliability I am certain. 'I would tear up'! Is such an act conceivable?[31] — He rather [meant to say,] 'I would impair a bond[32] on his evidence'.

A woman was once ordered to take[33] an oath at the court of R. Bibi b. Abaye, when her opponent suggested to them, 'Let her rather come and take the oath in our town,[34] where she might possibly feel ashamed [of her action] and confess'. 'Write out said she to them, 'the verdict in my favour[35] so that after I shall have taken the oath it may be given to me'. 'Write it out for her', ordered R. Bibi b. Abaye. 'Because', said R. Papi. 'you are descendants of short-lived people you speak frail words;[36] surely Raba stated, 'An attestation[37] by judges that was written before the witnesses have identified their signatures is invalid',[38] from which it is evident [that such an attestation] has the appearance of a false declaration, and so here also [the verdict][39] would appear to contain a false statement'. This conclusion,[40] however, is futile[41] [as may be inferred] from a statement of R. Nahman, who said; R. Meir ruled that even if [a husband] found it[42] on a rubbish heap, and then signed and gave it to her, it is valid; and even the Rabbis[43] differ from R. Meir only in respect of letters of divorce where it is necessary that the writing shall be done specifically in her name, but in respect of other legal documents they agree with him,[44] for R. Assi stated in the name of R. Johanan, 'A man may not borrow again on a bond on which he has once borrowed and which he has repaid.[45] because the obligation [incurred by the first loan][46] was cancelled;[47] the reason then is because 'the obligation was cancelled', but that [the contents of the document] have the appearance

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(1) One has no right to acquire a benefit for one man at the expense of another, v. Git. 11b.

(2) Who were also among the deceased's creditors.

(3) A form of acquisition.

(4) Rowing being in his opinion the proper form of acquiring legal possession of a ship.

(5) Cf. supra n. 6 mutatis mutandis.

(6) Supra 84b, infra 86b. The boat presumably lying at the river bank which, not being frequented by many boats, has the status of an alley, could not, therefore, be lawfully seized and acquired.

(7) On which many boats ply and which has the status of a public thoroughfare where seizure is legal.

(8) Metaph., 'old men'.

(9) By giving a decision in their own favour and thus robbing the other creditors.

(10) V. supra p. 504, n. 5. (13) Lit., 'these are (from other) sides'.

(11) In the absence of witnesses to testify that the debt had been paid.

(12) לא היו דברים מעולם lit., 'the things never were'.

(13) V. supra p. 536, n. 23.

(14) The man who sent him.

(15) The agent.

(16) מלוגא (rt. מלד 'to pluck'), a bag made of skins from which the hair has been plucked.

(17) The bonds.

(18) 'In payment of the debt he owed me'.

(19) The case of bonds.

(20) As long as he was alive the bonds were held by her as a deposit which was virtually in the possession of the depositor.

(21) Since at the death of the depositor the bonds had passed directly into the possession of his heirs.

(22) Lit., 'became liable'.

(23) To confirm her denial of a monetary claim that had been advanced against bet.

(24) Raba's wife.

(25) The claimant who in such a case (cf. Shebu. 44b) is entitled to the sum claimed on confirming it by an oath
(26) [Asheri, Alfasi and Isaiah Trani omit 'No . . . one witness'. According to this reading Raba required the confirmation by another person because R. Papa was related to one of the parties, v. Tosaf, and Strashun].
(27) Whose testimony was regarded by Raba, supra, as sufficient to disqualify the defendant from taking an oath.
(28) That I can rely upon her evidence.
(29) [Did he mean to imply that he suspected R. Papa of lying? This is unlikely in view of the discussion that follows in which R. Papa seemed to betray no resentment at the affront. Yet this is the only meaning which can be attached to the text of cur. edd. Preference is consequently to be given to the reading of Asheri and Alfasi (v. n. 1); and what Raba meant was that, as a relative, R. Papa's evidence could not be accepted].
(30) Even though no other witness is available Lit.. 'It is a thing'.
(31) In money matters, surely, the evidence of two witnesses is required.
(32) Sc. the holder would have to confirm the statement in the bond by an oath before an order for repayment could he issued (Tosaf.).
(33) Lit., 'become liable'.
(34) So Bah. Cur. edd. omit 'our'.
(35) זכוותא, pl, of זכותא, 'favourable judgment'.
(36) Abaye was a descendant of the house of Eli who were condemned to die young (cf. I Sam. II, 32). ממולאי and מוליתא (rt. מלל 'to crush') 'frail things', 'frail words', 'frail or short-lived people'. A similar expression in Arabic means 'to be foolish'. Cf. B.B. 137b, Sone. ed. p. 582, n. 6.
(37) Of a document, confirming the signature of the witnesses.
(38) Git 26b, supra 21b.
(39) Which the woman requested and the wording of which would have implied that when it was written she had already taken the oath.
(40) That a document containing a statement which at the time of writing was not yet true is invalid even after the act it mentions has materialized.
(41) Lit., 'and it is not'.
(42) A letter of divorce he has prepared for his wife.
(43) Who denied the validity of the document.
(44) That the validity of the document (cf. supra n. 4) is not affected.
(45) On the same day that he borrowed. Though the bond in such a case is not antedated it may not be used again.
(46) Viz., the right to seize the debtor's property.
(47) When it was repaid. The second loan, since no new bond was issued in connection with it, has only the force of a loan by word of mouth which does not entitle the creditor to seize any of the debtor's sold property. Should the first bond, however, be used for the second loan, the lender might unlawfully seize property to which he is not legally entitled. B.M. 17a.

Talmud - Mas. Kethuboth 85b

of a false statement[1] is a matter which need not be taken into consideration.

A certain man once deposited seven pearls, wrapped in a sheet, with R. Miasha the son of the son of R. Joshua h. Levi. As R. Miasha died intestate[2] they came to R. Ammi.[3] 'In the first instance', he said to them, 'I know that R. Miasha the son of the son of R. Joshua b. Levi was not a wealthy man,[4] and secondly. does not the man[5] indicate the marks?'[6] This ruling, however, applies only to a man who was not a frequent visitor at the bailee's house,[7] but if he was a frequent visitor there [the marks he indicates are no evidence of ownership since] it might well be assumed that another person has made the deposit and he happened to see it. A certain man once deposited a silver cup with Nasa; and Hasa died intestate.[8] R. Nahman before whom [the heirs] appeared said to them, 'I know that Hasa was not a wealthy man? and, furthermore, does he[5] not indicate the mark?'[9] This, however, applies only to a man who was not an habitual visitor at the bailee's house,[7] but if he was a frequent visitor there [the mark he indicates is no valid proof since] it might be said that another person had deposited [the cup] and he happened to see it.

A certain man once deposited a silk cloth[10] with R. Dimi the brother of R. Safra, and R. Dimi died intestate.[2] R. Abba, to whom [the depositor] came [to submit his claim.] said to them,[11] 'In the first place I know that R. Dimi was not a wealthy man[4] and, secondly, the man is here indicating the distinguishing mark.' This, however, applies only to a man who was not a frequent visitor[7] at the bailee's house, but if he was a frequent visitor there [the indication of the mark is no valid proof since] it might well be suggested that another man deposited the object and he happened to see it. A man once said[12] to those around him,[13] 'Let my estate be given to Tobiah', and then he died. [A man named] Tobiah came [to claim the estate]. 'Behold', said R. Johanan. 'Tobiah has come'.[14] Now if he said, 'Tobiah'[15] and 'R. Tobiah'[16] came, [the latter is not entitled to the estate, since] he said 'To Tobiah' but not 'To R. Tobiah'. If he,[16] however, was on familiar terms with him[17] [the estate must be given to him, since the omission of title might have been due to] the fact that he was on intimate terms with him. If two Tobiahs appeared,[18] one of whom was a neighbour[19] and the other a scholar, the scholar is to be given precedence.[20] If one [of the Tobiahs] is a relative and the other a scholar, the scholar is given precedence.[20] The question was asked: What is the position where one is a neighbour[19] and the other a relative? — Come and hear; Better is a neighbour that is near than a brother far off[21] if both[22] are relatives, or both are neighbours. or both are scholars the decision is left to the discretion[23] of the judges.

Come, said Raba to the son of R. Hiyya b. Abin, I will tell you a fine saying of your father's:[24] Although[25] Samuel said, 'If a man sold a bond of indebtedness to another person and then he[26] released the debtor, the latter is legally released;[27] and, moreover, even [a creditor's] heir may[28] release [the debtor]' Samuel, nevertheless, admits that, where a wife brought in to her husband[29] a bond of indebtedness and then remitted it, the debt is not to be considered remitted, because her husband's rights are equal to hers.[30]

A relative of R. Nahman once sold her kethubah for the goodwill.[31] She was divorced and then died. Thereupon [the buyers] came to claim [the amount of the kethubah] from her daughter.[32] 'Is there no one', said R. Nahman to those around him,[33] 'who can tender her advice?

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(1) The bond having been written not for the second but for the first loan.

(2) Lit., 'he did not order'. And his heirs maintained that the pearls might have belonged to the deceased from whom they inherited them.

(3) To obtain his ruling on the ownership of the deposit.

(4) And he could not consequently have been the owner of costly objects.

(5) The depositor.

(6) That the pearls were (a) wrapped up in a sheet and (b) their number was seven (Rashi. Cf., however, Tosaf. s.v. קיהיב.

(7) Lit.,' that be was not in the habit of entering and going out from there'.

(8) He was accidentally drowned (v. Yeb. 121b).

(9) That it was a silver cup.

(10) מטכסא cf. , silk or silk cloth.

(11) To the heirs.

(12) While he was on his death bed.

(13) Lit., 'to them'.

(14) Sc. the estate must be given to this man.

(15) I.e., if he assigned his estate to a person whom he named without describing him by the title by which he is usually known.

(16) A scholar of the name of Tobiah who bears the title 'R(abbi)'.

(17) The testator.

(18) Claiming the estate.

(19) Of the deceased.

(20) A person is assumed to be more favourably disposed towards a scholar than towards any other person. On the merit and heavenly reward of him who benefits scholars, v. Bet. 34b.
(21) Prov. XXVII, 10.
(22) Who claim the estate.
(23) שוחדא _ שודא 'choice', 'singling out', 'discretion' (Jast.). Aliter. 'Favour', 'gift'. i.e., the judges in their verdict may favour, or make a gift of the estate to any of the claimants they prefer (cf. R. Tam in Tosaf. s.v. שודא and Levy s.v.). Aliter: שודא _ שדי 'to throw', i.e., the judges must cast about for (gauge) the opinion of the testator to determine which of the claimants he preferred (Rashi). Cf. Golds. שודא ist unverkennbar das syn. סודא, סוודא (confabulatio, colloquium) Rat, Beschluss der Richter'.
(24) Lit 'which your father said'.
(25) This is the reading in the parallel passage elsewhere (cf. B.B. 147b). The reading here is הא, lit., 'that', 'as to that'.
(26) The seller.
(27) Because the buyer of a bond is entitled only to the same rights as those of the seller and since the latter, by his release of the creditor, has forfeited his claims upon the debt, the former also forfeits them; v. Kid.. Sonc. ed. p. 239. n. 1.
(28) When he inherits the estate of the creditor.
(29) On marriage.
(30) Lit., 'his hand is like her hand'; hence it is not within her power to remit the debt without her husband's consent.
(31) Cf. Rashi. טובת הנאה lit , 'the goodness of a favour' (cf. the English idiom, 'a game for love'), i.e., receiving no full price for her kethubah from the buyers, who purchase it as a speculation in case her husband dies first it divorces her. Should she die first, they have no claim to the kethubah.
(32) Who was the heir to her mother's kethubah.
(33) Lit., 'to them'.

Talmud - Mas. Kethuboth 86a

She might remit[1] her mother's kethubah in favour of her father,[2] and then she may inherit it frons him'.[3] When she heard this she went and remitted it [in her father's favour]. Thereupon R. Nahman said: 'We have put ourselves in the [unenviable] position of legal advisers'.[4] What was the opinion that he held at first[5] and what made him change it afterwards?[6] — At first he thought [of the Scriptural text.] And that thou hide not thyself from thine own flesh,[7] but ultimately he realized that [the position of] a noted personality is different [from that of the general public].[8]

[Reverting to] the main text; Samuel said, 'If a man sold a bond of indebtedness to another person, and then he released the debtor, the latter is released; and, moreover, even [a creditor's] heir may release [the debtor].'[9] Said R. Huna the son of R. Joshua; But if he[10] is clever he[11] rattles some coins in his[12] face and [the latter][13] writes the bond[14] in his[15] name.

Amemar said; He[16] who adjudicates [liability] in an action [for damage] caused indirectly would here also[17] adjudge damages[18] to the amount [recoverable] on a valid bond,[19] but he who does not adjudicate [liability] in an action for damage caused indirectly[20] would here adjudge damages only to the extent of the value of the mere scrap of paper.[21] Such[22] an action was [once tried] when through Rafram's insistence[23] R. Ashi[24] was compelled to order the collection [of damages][25] in the manner of a beam that is fit for decorative mouldings.[26]

Amemar stated in the name of R. Hama; If a man has against him, the claim of his wife's kethubah and that of a creditor, and he owns a plot of land and has also ready money, the creditor's claim is settled by means of the ready money while the woman's claim is settled by means of the land, the creditor being treated in accordance with his rights,[27] and the wife in accordance with her rights.[28] If, however, he owns only one plot of land and it suffices to meet the claim of one only, it is to be given to the creditor;[29] it is not to be given to the wife. What is the reason?[30] — More than the man's desire to marry is the woman's desire to be married.[31]

Said R. Papa to R. Hama, Is it a fact that you have stated in the name of Raba; If a man, against whom there was a monetary claim owned a plot of land, and who, when his creditor approached hini with the claim for repayment, replied, 'Collect your loan from the land', he is to be ordered [by the court,] 'You must yourself go and sell it, bring [the net proceeds] and deliver it to him'?[32]

'No', the other replied. 'Tell me then', [the first said to him,] 'how the incident[33] had actually occurred'. '[The debtor]' the other replied, 'alleged that his money belonged to[34] an idolater; and since he acted in an improper manner[35] he was similarly treated in an improper manner'.[36]

Said K. Kahana to R. Papa; According to the statement you made that the repayment of [a debt to] a creditor is a religious act,[37] what is the ruling where [a debtor] said, 'I am not disposed to perform a religious act'?[38] — 'We', the other replied. 'have learned: This[39] applies only to negative precepts, but in the case of positive precepts, as for instance, when a man is told, 'Make a sukkah'[40] and he does not make it [or, 'Perform the commandment of the] lulab'[41] and he does not perform it

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(1) Lit., 'let her go and remit'.

(2) Since, as has been stated (supra 85b ad fin.), even a creditor's heir may release the debtor'. The daughter is in this case the heir to a debt (the kethubah) which her father owed her mother who sold it to others who, like the buyers of a bond, lose all their claims upon it as soon as the heir has remitted it.

(3) Upon whom the buyers have no claim.

(4) עורכי הדיינין lit., 'those who arrange (the pleas) before the judges'. A judge is forbidden to act even indirectly as legal adviser to one of the parties. Cf. Aboth I, 8, Sonc. ed. p. 6. n. 1.

(5) When he tendered advice.

(6) Lit., 'and in the end what did he think?' sc. why did he finally reproach himself for acting as 'legal adviser'?

(7) Isa. LVIII, 7, implying that it is one's duty to come to the assistance of one's relative.

(8) A judge, in order to be free from all suspicion of partiality, must subject himself to greater restrictions and must consequently tender no legal advice whatever to line of the parties in a lawsuit, even in cases where the action is not to be tried by him, v. supra 52b.

(9) V. p. 541, nn. 15ff.

(10) The buyer.

(11) As soon as he buys the bond and before the creditor has had time to think of remitting it to the debtor.

(12) The debtor.

(13) Being naturally in need of ready money.

(14) For the amount involved. As soon as he buys the bond and before the creditor has time to think of remitting it to the debtor.

(15) The buyer's.

(16) I.e., R. Meir (cf. B.K. 100a f).

(17) Lit., 'by it'; in the case of a bond the debt in which had been remitted to the debtor after the creditor had sold the bond of indebtedness.

(18) In favour of the buyer.

(19) The creditor who was the cause of the damage must compensate the buyer for his loss.

(20) As to the dispute on this point v. B.K. 116b.

(21) On which the bond is written, since the creditor might plead that he is only liable for the piece of paper which he sold. For the debt itself he is not liable since it was only indirectly that he caused the loss of it.

(22) Cf.. however, Infra n. 17.

(23) By his legal and scholastic arguments.

(24) Who was the adjudicator in the action (cf however, infra n. 17).

(25) From, the creditor who remitted the debt. According to another interpretation (cf. Rashi on the parallel passage, B.K. 98b) R. Ashi in his childhood had destroyed a bond of indebtedness, and Rafram made him pay for it in accordance with the ruling of R. Meir (v. supra note 8).

(26) Metaph. As the beam is smooth and straight and of the best quality of wood so was the collection made to the full

extent of the damage and of the best of the creditor's estate.

(27) As he advanced ready money he is justly entitled to ready money.

(28) As her statutory kethubah is secured on the husband's lands she is entitled to his land only. The amount (if the kethubah corresponding to the on barzel (v. Glos.) property, though this might have consisted of ready money, is, like the statutory kethubah with which it is amalgamated, also secured on the husband's lands only.

(29) If the bond of indebtedness and the kethubah bear the same date. Otherwise, the holder of the document bearing the earlier date takes precedence.

(30) For the preference of the creditor where the documents were issued on the same date.

(31) And the disadvantage in respect of the collection of her kethubah would not in any way deter her from marriage. If a creditor, on the other hand, were to experience undue difficulty in the collection of his debt he might decide to turn away from his door all future borrowers.

(32) Is it possible that a debtor would be expected to go to all this trouble when the creditor's security was not that of ready money but of land?

(33) That gave rise to the erroneous report.

(34) Lit., 'attached his money to'.

(35) By attempting to deprive his creditor from his due.

(36) In being ordered to find a buyer for his land, though elsewhere (cf. supra n. 6) it is the task of the creditor to do so.

(37) V. 'Ar. 22a.

(38) [Since, that is to say, the payment of a debt is a religious obligation, where is the sanction for the employment of compulsory measures to make one pay his debts? Others connect the question with the preceding case of one who ascribes his money to a non-Jew so as to evade payment, v. Tosaf. s.v. אמר].

(39) That flogging is administered and the sinner is thereby purged.

(40) The festive booth for the Feast of Tabernacles (cf Lev. XXIII, 34ff).

(41) 'Palm-branch', the term applied to the festive wreath used in the Tabernacles ritual and consisting of four species of which the palm-branch is one (cf. Lev. XXIII, 40).

Talmud - Mas. Kethuboth 86b

he is flogged[1] until his soul departeth.[2]

Rami b. Hama enquired of R. Hisda: What is the ruling where [a husband said to his wife,] 'Here is your letter of divorce but you shall be divorced thereby only after [the lapse of] thirty days'. and she went and laid it down at the side of a public domain?[3] — 'She', the other replied, 'is not divorced, by reason of the ruling of Rab and Samuel, both of whom have stated, 'It must be heaped up and lie in a public domain'[4] and the sides of a public domain are regarded as the public domain itself.[5] On the contrary! She should be deemed divorced by reason of a ruling of R. Nahman, who stated in the name of Rabbah b. Abbuha, 'If a man said to another, "Pull this cow, but it shall pass into your possession Only after thirty days", he legally acquires it even if it stands at the time in the meadow';[6] and a meadow presumably has, has it not, the same status as the sides of a public domain?[7] — No; a meadow has a status of its own[8] and the sides of a public domain, too, have a status of their own.[9] Another version: He[10] said to him,[11] 'She[12] is divorced by reason of a ruling of R. Nahman,[13] the sides of a public domain having the same status as a meadow'. — 'On the contrary! She should not be regarded as divorced by reason of a ruling of Rab and Samuel.[13] for have not the sides of a public domain the same status as a public domain?' — 'No; a public domain has a status of its own[8] and the sides of a public domain, too, have a status of their own'.[9]

MISHNAH. IF A HUSBAND SET UP HIS WIFE AS A SHOPKEEPER[14] OR APPOINTED HER AS HIS ADMINISTRATRIX HE MAY IMPOSE UPON HER AN OATH[15] WHENEVER HE DESIRES TO DO SO. R. ELIEZER SAID; [SUCH AN OATH[15] MAY BE IMPOSED UPON HER] EVEN IN RESPECT OF HER SPINDLE AND HER DOUGH.[16]

GEMARA. The question was asked; Does R. Eliezer mean [that the oath[17] is to be imposed] by

implication[18] or does he mean that it may be imposed directly?[19] Come and hear: They[20] said to R. Eliezer, 'No one can live with a serpent in the same basket'.[21] Now if you will assume that R. Eliezer meant the imposition of a direct oath[19] one can well understand the argument;[22] but if you were to suggest [that he meant the oath to be imposed] by implication only, what [it may be objected] could this[23] matter to her?[24] — She might tell him, 'Since you are so particular with me I am unable to live with you'.[25]

Come and hear:[26] If a man did not exempt his wife[27] from a vow[28] and from an oath[29] and set her up as his saleswoman or appointed her as his administratrix, he may impose upon her an oath[29] whenever he desires to do so. If, however, he did not set her up as his saleswoman and did not appoint her as his administratrix, he may not impose any oath upon her. R. Eliezer said: Although he did not set her up as his saleswoman and did not appoint her as his administratrix, he may nevertheless impose upon her an oath wherever he desires to do so, because there is no woman who was not administratrix for a short time, at least, during the lifetime of her husband, in respect of her spindle and her dough. Thereupon they said to him: No one can live with a serpent in the same basket. Thus you may infer that [R. Eliezer meant that the oath[29] may he imposed] directly. This is conclusive.

MISHNAH. [IF A HUSBAND] GAVE TO HIS WIFE AN UNDERTAKING IN WRITING, 'I HAVE NO CLAIM UPON YOU FOR EITHER VOW[30] OR OATH',[31] HE CANNOT IMPOSE AN OATH[32] UPON HER. HE MAY, HOWEVER, IMPOSE AN OATH UPON HER HEIRS[33] AND UPON HER LAWFUL SUCCESSORS.[34] [IF HE WROTE,] I HAVE NO CLAIM FOR EITHER VOW[30] OR OATH[31] EITHER UPON YOU, OR UPON YOUR HEIRS OR UPON YOUR LAWFUL SUCCESSORS', HE MAY NOT IMPOSE AN OATH EITHER UPON HER OR UPON HER HEIRS OR UPON HER LAWFUL SUCCESSORS. HIS HEIRS, HOWEVER, MAY[35] IMPOSE AN OATH UPON HER, UPON HER HEIRS OR UPON HER LAWFUL SUCCESSORS. [IF THE WRITTEN UNDERTAKING READ.] 'NEITHER I NOR MY HEIRS NOR MY LAWFUL SUCCESSORS[36] SHALL HAVE ANY CLAIM UPON YOU OR UPON YOUR HEIRS OR UPON YOUR LAWFUL SUCCESSORS FOR EITHER VOW OR OATH', NEITHER HE NOR HIS HEIRS NOR HIS LAWFUL SUCCESSORS MAY IMPOSE AN OATH EITHER UPON HER OR UPON HER HEIRS OR UPON HER LAWFUL SUCCESSORS.

IF SHE[37] WENT FROM HER HUSBAND'S GRAVE TO HER FATHER'S HOUSE,[38] OR RETURNED TO HER FATHER-IN-LAW'S HOUSE BUT WAS NOT MADE ADMINISTRATRIX, THE HEIRS ARE NOT ENTITLED TO IMPOSE AN OATH UPON HER;[39] BUT IF SHE WAS MADE ADMINISTRATRIX THE HEIRS MAY IMPOSE AN OATH UPON HER IN RESPECT OF [HER ADMINISTRATION] DURING THE SUBSEQUENT PERIOD[40] BUT NOT IN RESPECT OF THE PAST.[41] GEMARA. What is the nature of the oath?[42] — Rab Judah replied in the name of Rab:

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(1) In an endeavour to coerce him to perform the precept.

(2) Hul. 132b; if he persists in his refusal. Thus it follows that no one is at liberty to declare, 'I am not disposed to perform a religious act'.

(3) Where fewer people walk, and where it remained intact until the lapse of the thirty days. Is the letter of divorce, it is asked, regarded as being still in the possession of the woman, despite its place of deposit, and the woman is consequently legally divorced, or is the spot, being at the side of a public domain, subject to the same restrictions in respect of kinyan as the public domain itself.

(4) Supra 84b, 85a, q.v., from which it follows that an object in a public domain cannot be acquired except by a specific act of kinyan.

(5) Cf. supra n. 9. The woman cannot consequently he regarded as being in possession of the letter of divorce and her divorce is, therefore, invalid.

(6) Supra 82a q.v. for notes.

(7) As the cow is acquired after the specified period, though stationed in a meadow', so should the woman be deemed to be in the possession of the letter of divorce, though it lies at the side of a public domain.
(8) Hence the validity of a deferred kinyan if at the specified period the object was within its boundaries.
(9) No deferred kinyan being effective within such a spot.
(10) R. Hisda.
(11) Rami b. Hama.
(12) The woman to whom her husband gave a letter of divorce stipulating that it shall take effect only after the lapse of thirty days.
(13) V. supra.
(14) That she should sell his wares
(15) That she has not dealt fraudulently with anything that had been put in her charge.
(16) Sc. not only when she is engaged in commercial transactions, but also when she is occupied with her domestic affairs only. (V. Gemara infra).
(17) He has spoken of in our Mishnah.
(18) גלגול lit 'rolling'. sc only where the wife has to take an oath in respect of her commercial transactions may an oath in respect of her domestic occupations be added.
(19) Sc. even if she is attending to her domestic occupations only.
(20) The Rabbis who differed from him.
(21) Proverb. Serpent _ cantankerous husband.
(22) A wife could justly object to live with a cantankerous man who does not trust her in her domestic responsibilities.
(23) The oath by implication.
(24) When she has in any case to take an oath in respect of her business transactions.
(25) Her refusal to live with him is not due to the actual oath but to his mistrust of her integrity.
(26) An answer to the question supra as to what was R. Eliezer's meaning.
(27) By a formal declaration.
(28) E.g., 'may all the produce of the world be forbidden to me if I misappropriated any of your goods or money' (cf. Git. 34b).
(29) V. supra p. 546. n, 10.
(30) V. p. 547. n. 10.
(31) V. supra p. 546, n. 20.
(32) The nature of this oath is explained infra.
(33) If, having been divorced by him, she died and they claim from him the amount of her kethubah. The oath they take affirms that the deceased had not enjoined upon them either while, or before, she was dying, not did they find any entry among her papers that the kethubah was paid (v. Shebu. 45a).
(34) People who bought her kethubah from her. Cf. n. 4, mutatis mutandis.
(35) If on the death of their father the widow, her heirs or lawful successors claim from them the payment of her kethubah.
(36) The purchasers of his estate from whom the kethubah is claimed in the absence of unencumbered property.
(37) The woman whom her husband had granted exemption from vow and oath (v. supra).
(38) Sc. she severed all connection with her husband's business affairs as soon as he was buried.
(39) Even in respect of the period between her husband's death and burial.
(40) Lit., 'for that which is to come', the exemption having expired at the moment the estate passed into the possession of the heirs.
(41) The period of her administration prior to their father's death, when she was protected by his exemption.
(42) The exemption from which is discussed in the first clause of our Mishnah.

Talmud - Mas. Kethuboth 87a

[It is one that is incumbent] upon a woman who during the lifetime of her husband was made administratrix [of his affairs].[1] R. Nahman replied in the name of Rabbah b. Abbuha: [It is one that is incumbent] upon a woman who impairs her kethubah.[2] R. Mordecai went to R. Ashi and submitted to him this argument: One can well imagine [the origin of the exemption], according to him who

holds [that the oath is one incumbent] upon a woman who impairs her kethubah [by assuming that] it occurred to the woman that she might sometime be in need of money and would draw it from her kethubah and would, therefore, tell her husband, 'Give me an undertaking in writing that you will impose no oath upon me'.[3] According to him, however, who holds [that the oath is one incumbent] upon a woman who during the lifetime of her husband was made administratrix [of his affairs],[4] did she know [it may be objected] that he would set her up as administratrix that she should say to him, 'Give me a written undertaking that you will impose no oath upon me'?[5] — The other replied: You taught this statement[6] in connection with that clause;[7] we teach it[8] in connection with this:[9] IF SHE WENT FROM HER HUSBAND'S GRAVE TO HER FATHER'S HOUSE, OR RETURNED TO HER FATHER-IN-LAW'S HOUSE BUT WAS NOT MADE ADMINISTRATRIX, THE HEIRS ARE NOT ENTITLED TO IMPOSE AN OATH UPON HER, BUT IF SHE WAS MADE ADMINISTRATRIX THE HEIRS MAY IMPOSE AN OATH UPON HER IN RESPECT OF [HER ADMINISTRATION] DURING THE SUBSEQUENT PERIOD BUT NOT IN CONNECTION WITH THE PAST, [and, in reply to the question as to] what exactly was meant by THE PAST, Rab Judah stated in the name of Rab: [The period] during the lifetime of her husband for which she was made administratrix [of his affairs], but in respect of [the period intervening] between death and burial an oath may be imposed upon her.[10] R. Mattena, however,[11] maintained that no oath may be imposed upon her[12] even in respect of [the period between] death and burial;[13] for the Nehardeans laid down: For poll-tax,[14] maintenance[15] and funeral expenses. an estate[16] is sold without public announcement.[17]

Said Rabbah in the name of R. Hiyya: [If in giving exemption to his wife a husband wrote,] 'Neither vow nor oath' it is only he who cannot impose an oath upon her, but his heirs may impose an oath upon her. [If he wrote, however,] 'Free from vow, free from oath', neither he nor his heirs may exact an oath from her, [since by this expression] he meant to say to her: 'Be free from the obligation of an oath'.

R. Joseph. however, stated in the name of R. Hiyya: [If in giving exemption to his wife a husband writes,] 'Neither vow nor oath' it is only he who cannot impose an oath upon her but his heirs may; [but if he wrote,] 'Free from vow, free from oath', both he and his heirs may exact an oath from her [since by such an expression] he thus meant to say to her: 'Clear yourself by means of an oath'.

R. Zakkai sent to Mar 'Ukba the following message: Whether [the husband wrote,] 'Neither oath' or 'Free from oath', or whether [he wrote.] 'Neither vow', or 'Free from vow', [and he used the expression] 'In respect of my estates',[18] he cannot impose an oath upon her, but his heirs may. [If he wrote, however,] 'In respect of these estates', neither he nor his heirs may exact an oath from her.

R. Nahman stated in the name of Samuel in the name of Abba Saul the son of Imma Miriam: Whether [the husband wrote,] 'Neither oath' or 'Free from oath'' whether [he wrote,] 'Neither vow' or 'Free from vow , or whether [he used the expression,] 'In respect of my[18] estates' or 'In respect of these estates', neither he nor his heirs may exact an oath from her; but what can I do in view of a ruling of the Sages that anyone who comes to exact payment out of the property of orphans is not to be paid unless he first takes an oath.[19]

Others read this[20] as a Baraitha: Abba Saul the son of Imma Miriam stated; Whether [the husband wrote.] 'Neither oath' or 'Free from oath', whether [he wrote,] 'Neither vow' or 'Free from vow , or whether [he used the expression,] 'In respect of my[18] estates, or 'In respect of these estates'. neither he nor his heirs may impose ,an oath upon her; but what can I do in view of a ruling of the Sages that anyone who comes to exact payment out of the property of orphans need not be paid unless he first takes an oath. [It was in connection with this Baraitha[21] that] R. Nahman said in the name of Samuel: The halachah is in agreement with the ruling of the son of Imma Miriam.

MISHNAH. A WOMAN WHO IMPAIRS[22] HER KETHUBAH IS NOT PAID[23] UNLESS SHE FIRST TAKES AN OATH.[24] IF ONE WITNESS TESTIFIES AGAINST HER THAT [HER KETHUBAH] HAS BEEN PAID,[25] SHE IS NOT BE PAID UNLESS SHE FIRST TAKES THE OATH. FROM THE PROPERTY OF ORPHANS, FROM ASSIGNED PROPERTY[26] AND [FROM THE PROPERTY OF] AN ABSENT HUSBAND[27] SHE MAY NOT RECOVER [THE PAYMENT OF HER KETHUBAH] UNLESS SHE FIRST TAKES AN OATH.[28]

HOW [ARE WE TO UNDERSTAND THE STATEMENT,] 'A WOMAN WHO IMPAIRS HER KETHUBAH'? IF HER KETHUBAH WAS FOR A THOUSAND ZUZ[29] AND [HER HUSBAND] SAID TO HER, 'YOU HAVE ALREADY RECEIVED [THE FULL AMOUNT OF] YOUR KETHUBAH', AND SHE SAYS, 'I RECEIVED ONLY A MANEH',[29] SHE IS NOT PAID [THE BALANCE] UNLESS SHE TAKES AN OATH. WHAT IS MEANT BY[30] 'IF ONE WITNESS TESTIFIES AGAINST HER THAT [HER KETHUBAH] HAS BEEN PAID'? IF HER KETHUBAH WAS FOR A THOUSAND ZUZ[29] AND WHEN [HER HUSBAND] SAID TO HER, 'YOU HAVE RECEIVED [THE FULL AMOUNT OF] YOUR KETHUBAH', SHE REPLIED, 'I HAVE NOT RECEIVED IT WHILE ONE WITNESS TESTIFIES AGAINST HER THAT [THE KETHUBAH] HAS BEEN PAID[25] SHE IS NOT PAID UNLESS SHE FIRST TAKES AN OATH. WHAT IS MEANT BY THE EXPRESSION,[30] 'FROM ASSIGNED PROPERTY'? IF [HER HUSBAND] HAD SOLD HIS PROPERTY TO OTHERS AND SHE SEEKS TO RECOVER PAYMENT FROM THE BUYERS, SHE IS NOT PAID UNLESS SHE FIRST TAKES AN OATH. WHAT IS THE EXPLANATION OF THE EXPRESSION,[30] FROM THE PROPERTY OF ORPHANS'? IF [HER HUSBAND] DIED AND LEFT HIS ESTATE TO HIS ORPHANS AND SHE SEEKS TO RECOVER PAYMENT FROM THE ORPHANS, SHE IS NOT PAID UNLESS SHE FIRST TAKES AN OATH. WHAT IS TO BE UNDERSTOOD BY[31] 'AN ABSENT HUSBAND'? IF HER HUSBAND WENT TO A COUNTRY BEYOND THE SEA AND SHE SEEKS TO RECOVER PAYMENT IN HIS ABSENCE,[32] SHE IS NOT PAID UNLESS SHE FIRST TAKES AN OATH.

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(1) It is from such an oath only that a husband exempts his wife, but not from one which a woman incurs when she impairs her kethubah (v. infra). A husband, according to this view, only exempts his wife from an obligation which is in his power to impose upon her but not from one which she has brought upon herself.

(2) By admitting that part of it has been paid to her. A woman who makes such an admission while her husband pleads that he has paid her the full amount is not entitled to receive the balance she claims except on oath, and it is the opinion of the authority cited by R. Nahman that a husband's general exemption extends to such an oath also, much more so to that required from her as administratrix (cf. supra note 2).

(3) And while asking for exemption from this particular oath she might at the same time ask for an exemption from both oaths.

(4) Cf. supra note 2.

(5) As she cannot be assumed to divine her husband's thoughts and intentions, the desire for such a request could naturally never arise.

(6) Rab Judah's, (supra 86b f).

(7) The case dealt with in the first clause of our Mishnah (cf. supra p. 549. n. i).

(8) I.e., you assume that R. Judah and R. Nahman refer to one and the same clause.

(9) The final clause dealing with the oath of an administratrix.

(10) Cf. supra p. 548, n. 11. Whereas R. Nahman refers to the first clause, Rah Judah refers to the case of an administratrix in the last clause, and so R. Mordecai's objection does not arise.

(11) Differing from Rab Judah.

(12) The administratrix whom her husband has exempted from oath.

(13) This period also coming under the term of THE PAST.

(14) On behalf of orphans.

(15) Of one's widow or daughter.

(16) A bequest now belonging to the orphans of the deceased.

(17) Because in all these cases money is urgently needed and there is no time for the public announcement that must precede all sales effected on the order of a court. The urgency of the sale must inevitably lead to some undercutting of prices which the widow cannot possibly avoid (v. Git. 52b). It would consequently be an act of injustice to impose upon her an oath in respect of her administration during the period between her husband's death and burial.
(18) Omitting the demonstrative pronoun ‘these’.
(19) V. B.B. 5b.
(20) The ruling cited in the name of Abba Saul.
(21) Cf. supra n. 3.
(22) This is explained anon.
(23) The balance she claims.
(24) Affirming her claim.
(25) In full (v. infra).
(26) Mortgaged or sold.
(27) Lit., ‘and not in his presence’, i.e., if a husband who was abroad sent a divorce to his wife and she claims her kethubah in his absence.
(28) Which is imposed upon her by the court even if the respective defendants mentioned do not demand it.
(29) V. Glos.
(30) Lit., ‘how".
(31) Lit., ‘how’.
(32) Cf. supra p. 552, n. 6.

Talmud - Mas. Kethuboth 87b

R. SIMEON RULED: WHENEVER[1] SHE[2] CLAIMS HER KETHUBAH THE HEIRS MAY IMPOSE AN OATH UPON HER BUT WHERE SHE DOES NOT CLAIM HER KETHUBAH THE HEIRS CAN NOT IMPOSE AN OATH UPON HER.

GEMARA. Rami b. Hama wished to assume that the OATH[3] was Pentateuchal,[4] since [it is a case where] one [of two persons] claims two hundred [zuz] and the other admits one hundred [the defence] being an admission of a part of the claim,[5] and whoever admits part of a claim must[6] take an oath.[7] Said Raba: There are two objections to this assumption: In the first place, all who take an oath in accordance with Pentateuchal law take the oath and do not pay,[8] while she[9] takes the oath and receives payment. And, secondly, no oath may be imposed[6] in respect of the denial of [a claim that is] secured[10] on landed property.[11] [The fact,] however, is, said Raba, [that the oath is only] Rabbinical. As it is the person who pays that is careful to remember the details while he who receives payment is not, the Rabbis have imposed an oath upon her[12] that she might be careful to recollect the details.

The question was raised; What if a woman impaired her kethubah by [admitting that she received part payment in the presence of] witnesses? [Is it assumed that] were [her husband] to pay her [the balance] he would do it in the presence of witnesses,[13] or [is it rather assumed that] it was a mere coincidence [that witnesses were present when the first payment was made]?[14] — Come and hear;[15] All who take an oath in accordance with Pentateuchal law, take the oath and do not pay,[16] but the following take an oath and receive payment; A hired labourer,[17] a man who was robbed[18] or wounded,[19] [any claimant] whose opponent is suspected of [taking a false] oath[20] and a shopkeeper[21] with his [accounts] book,[22] and also [a creditor] who impaired his bond [the first instalment of which had been paid] in the absence of witnesses.[23] Thus only[24] [where the first instalment was paid] ‘in the absence of witnesses’[25] but not where it was paid in the presence of witnesses![26] — This is a case of ‘there is no question . . .’[27] There is no question[28] that [when the first instalment was paid] in the presence of witnesses she must take an oath; when, however, [it was paid] in the absence of witnesses,it might be assumed that she has [the same privilege] as one who restores a lost object [to its owner][29] and should, therefore, receive payment without taking an oath. It was, therefore, taught

[that the oath is nevertheless not to be dispensed with].

The question was raised: What if a woman impaired her kethubah [by including in the amount she admitted] sums amounting to[30] less than the value of a perutah?[31] Is it assumed that since she[32] is so careful in her statements she must be speaking the truth[33] or is it possible that she[34] is merely acting cunningly?[35] — This remains unsolved.[36]

The question was raised: What if a woman declares her [original] kethubah to have been less [than the amount recorded in the written document]?[37] Is it assumed that such a woman is in the same position as the woman who impaired [her kethubah] or is it possible [that the two cases are unlike, since] the woman who impairs [her kethubah] admits a part [of the sum involved][38] while this one does not admit a part [of the sum involved]?[39] — Come and hear: A woman who declares that her [original] kethubah was less [than the amount recorded in the document] receives payment without an oath. How [is this to be understood]? If her kethubah was for a thousand zuz[40] and when her husband said to her, 'You have already received your kethubah,'[41] she replies. 'I have not received it,[41] but [the original kethubah] was only for one maneh,'[42] she is to receive payment without an oath.[43]

Wherewith, however, does she collect [the amount she claims]? Obviously with that document.[44] But is not that document a mere potsherd?[45] — Raba the son of Rabbah replied: [This is a case] where she states, 'There was an arrangement of mutual trust between me and him'.[46]

IF ONE WITNESS TESTIFIES AGAINST HER THAT [HER KETHUBAH] HAS BEEN PAID [etc.]. Rami b. Hama wished to assume that the OATH was Pentateuchal, for it is written In Scripture, One witness shall not rise up against a man for any iniquity, or for any sin;[47] it is only for ally iniquity or for any sin that he may not rise up, but he may rise up [to cause the imposition upon one of the obligation] of an oath. And, furthermore, a Master has laid down: In all cases where two witnesses render a man liable to pay money, one witness renders him liable to take an oath.[48] Said Raba: There are two objections to this assumption. In the first place, all who take an oath in accordance with Pentateuchal law, do so and do not pay,[49] while she takes an oath and receives payment; and, secondly, no oath may be imposed in respect of the denial of [a claim that is] secured on landed property. [The fact], however, is, said Raba [that the oath is only] Rabbinical, [having been enacted] to appease the mind of the husband.

R. Papa said:

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(1) Lit., 'all the time'.

(2) The Gemara infra explains what R. Simeon refers to.

(3) Which A WOMAN WHO IMPAIRS HER KETHUBAH must take.

(4) On the difference between a Rabbinical oath and one imposed by the Torah v. Shebu. 41a.

(5) [Read with MS.M.: for she claims of him two hundred (zuz) and he admits to her one hundred, so that he is admitting part of the claim].

(6) Pentateuchally.

(7) That he has repaid the difference. The woman, having admitted receipt of a part of her kethubah, must consequently be in a similar position.

(8) I.e., it is the defendant, not the claimant, who takes the oath.

(9) The woman who impaired her kethubah and claims the balance.

(10) As is a kethubah.

(11) V. Shebu. 42b, B.M. 57b.

(12) V. supra p. 553, n. 11.

(13) As he did in the case of the first payment. The woman would consequently be entitled to payment without taking the oath.

(14) And since the man was not particular to secure witnesses on the first occasion, he might have been equally indifferent on the second occasion, and the woman would consequently have to take an oath.
(15) V. Mishnah Shebu. 44b.
(16) V. supra p. 553, n. 10.
(17) Who swears that he has not received his wages.
(18) Witnesses testifying that they saw the robber emerging from that person's house carrying an object which they could not identify.
(19) The evidence shewing that the wound had been inflicted while the two men were alone in a particular spot, though no third party had witnessed the actual wounding.
(20) I.e., if the defendant is known to have once before sworn falsely.
(21) Who was given an order by an employer to supply a certain amount of goods to his workmen on account of their wages.
(22) If the book shews that the goods had been duly supplied and the workmen deny receiving them, the shopkeeper, like the workmen, is ordered to take an oath (the former that he supplied the goods and the latter that they had Dot received them) and both receive payment from the employer.
(23) [Add with MS.M. 'and she who impairs her kethubah without witnesses']. These last two mentioned cases are not found in the Mishnah (v. supra n. 11 ad fin.) and their source is a Baraitha (cf. Tosaf. s.v. ואלו a.l.).
(24) Lit., 'yes'.
(25) Must the claimant take the oath.
(26) The woman, in the case under discussion, would consequently be entitled to collect the balance she claims without taking an oath.
(27) Lit., 'he implied (the formula)."It is not required" (to say etc.)'.
(28) Lit., it is not required (to say that)'.
(29) In such a case a person is not expected to take an oath that he had returned all that he had found. His honesty is taken for granted in view of the fact that a dishonest man would have kept the object entirely to himself. Similarly with the impaired kethubah. Had the woman been dishonest she need not have admitted the receipt of an instalment at all and could have collected the full amount of her kethubah by virtue of the written document she possesses.
(30) Lit., 'less less'.
(31) V. Glos.
(32) By including even small and insignificant payments.
(33) And should, therefore, be exempt from an oath in respect of the balance.
(34) In mentioning insignificant payments.
(35) She mentioned the small sums in order to give the impression of being a careful and scrupulous person while in fact the instalment or instalment she received were substantial sums. Consequently an oath should be imposed upon her.
(36) Teku, v. Glos.
(37) And she claims that amount; while her husband states that he had paid her all her kethubah.
(38) The husband asserting that he paid the full amount and she admitting the receipt of a part of it. In such a case an oath may justly be imposed upon the woman.
(39) Since according to her statement the kethubah never amounted to more than the sum she now claims.
(40) V. Glos.
(41) The amount entered in the document.
(42) While the document contains a larger sum.
(43) This solves the problem.
(44) The kethubah she holds.
(45) Sc. of no legal value, since she herself admits that the amount it records is fictitious.
(46) They agreed, she states, that she would claim the smaller sum only despite the entry in the kethubah which shewed a larger one. This verbal agreement does not in any way affect the validity of the kethubah which, having been written and signed in a proper manner and attested by qualified witnesses, is a valid document on the strength of which a legal claim may well be founded; cf. supra 19b.
(47) Deut. XIX. 15.
(48) As two witnesses would have caused the woman to lose her kethubah entirely, one witness may rightly cause an oath to be imposed upon her. V. Shebu. 40a.

(49) V. supra p. 553, n. 10ff.

Talmud - Mas. Kethuboth 88a

If he[1] is clever he may bring her under the obligation[2] of a Pentateuchal oath:[3] He pays her[4] the amount of her kethubah in the presence of one witness, associates the first witness[5] with the second[6] and then treats his first payments[7] as a loan.[8] R. Shisha son of R. Idi demurred: How can one associate the first witness with the second one?[9] — But, said R. Shisha the son of R. Idi, [he might proceed in this manner:][10] He pays her the amount of her kethubah in the presence of the first witness and a second one, and then treats his first payments as a loan. R. Ashi demurred: Might she not still assert that there were two kethubahs?[11] — But, said R. Ashi: He might inform them[12] [of the facts].[13]

FROM ASSIGNED PROPERTY. Elsewhere we have learned; And so also orphans cannot exact payment unless they first take an oath.[14] From whom?[15] If it be suggested. From a borrower[16] [it may be objected;] Since[17] their father would have received payment without an oath[18] should they require an oath?[19] — It is this, however, that was meant: And so also orphans cannot exact payment from orphans unless they first take an oath.[20]

R. Zerika stated in the name of Rab Judah: This[21] has been taught only [in the case] where the orphans[22] stated, 'Father told us; I have borrowed and paid up'. If, however, they said, 'Father told us: I have never borrowed' [the others] cannot exact payment even if they take an oath. Raba demurred: On the contrary. wherever a man says. 'I have not borrowed', it is as if he had said, 'I have not paid'![23] — [The fact,] however, [is that] if such a statement[24] was at all made it was made in these terms: R. Zerika stated in the name of Rab Judah. This[25] has been taught only [in a case] where the orphans[22] stated, 'Father told us: l have borrowed and paid up'. If, however, they said — 'Father told us: I have never borrowed', [the orphans of the creditor] may exact payment from them without an oath , because to say, 'I have not borrowed' is equivalent to saying, 'I have not paid'.

AND[26] [FROM THE PROPERTY OF] AN ABSENT HUSBAND [A WOMAN] MAY NOT RECOVER [THE PAYMENT OF HER KETHUBAH] UNLESS SHE FIRST TAKES AN OATH. R. Aha, the governor of the castle,[27] stated: A case[28] was once brought before R. Isaac Nappaha[29] at Antioch[30] and he made this statement, 'This[31] has been taught only in respect of the kethubah of a woman [who receives preferential treatment] in order to maintain pleasant relations[32] [between her and her husband] but not [in respect of] a creditor. Raba, however, stated in the name of R. Nahman; Even a creditor [has been given the same privilege],[33] in order that every person shall not take his friend's money and abscond and settle in a country beyond the sea and thus [cause the creditor's] door to be shut in the face of intending borrowers.[34]

R. SIMEON RULED: WHENEVER SHE CLAIMS HER KETHUBAH etc. What is R. Simeon referring to? — R. Jeremiah replied. To this; AND[35] [FROM THE PROPERTY OF] AN ABSENT HUSBAND [A WOMAN] MAY NOT RECOVER [THE PAYMENT OF HER KETHUBAH] UNLESS SHE FIRST TAKES AN OATH [which implies that] there is no difference between [a claim] for maintenance and one for a kethubah,'[36] and [in opposition to this ruling] R. Simeon came to lay down the rule that WHENEVER SHE CLAIMS HER KETHUBAH THE HEIRS MAY IMPOSE AN OATH UPON HER

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(1) The husband whose plea is supported by one witness only.

(2) Lit., 'bring her to the hands of'.

(3) Cf. supra p. 553. n. 6.

(4) A second time.

(5) Who saw the first payment.

(6) Should she deny having had her kethubah paid, he presents the two witnesses in support of his claim.
(7) On account of her kethubah.
(8) Should she then deny receiving the money he may well impose upon her a Pentateuchal oath on the strength of the evidence of the first witness who was present when she received it. It is only in the case of a kethubah which is an hypothecary obligation (v. supra) that a witness cannot impose upon a defendant the Pentateuchal oath.
(9) In view of the fact that the evidence of the one relates to a transaction at which the other was not present. The law of evidence demands that both witnesses testify to the same transaction. Should the woman he prepared to deny the second payment also, no Pentateuchal oath could be imposed upon her and she would thus be able to obtain a third payment also on taking a Rabbinical oath.
(10) V. supra notes 1-8.
(11) The first of which she had returned when she had received her first payment. As the first witness, who knows that the two payments were made to her in settlement of a kethubah would naturally corroborate her statement, the dispute would still relate to a kethubah and not to a loan. How then could a Pentateuchal oath be imposed upon her?
(12) The two witnesses.
(13) Before he makes his second payment. As the first witness would thus be aware that the second payment is made solely for the purpose of imposing upon her a Pentateuchal oath in respect of the first payment which she fraudulently denied, he would refrain from giving evidence in her favour and the man would thus be able to recover his money. Her peculiar plea that she had two kethubahs would naturally be disregarded in the absence of all supporting evidence.
(14) Shebu. 45a. Cf. supra p. 548, n. 4.
(15) Can they not 'exact payment etc.'.
(16) Against whom they produce a bond of indebtedness bequeathed by their father.
(17) Lit., 'now".
(18) As all creditors who produce a bond of indebtedness against a debtor.
(19) Obviously not, since orphans would not be subject to a restriction from which their father was exempt.
(20) Cf. Shebu. 47a.
(21) That after taking an oath the orphans of a lender are entitled to receive payment of a bond they have inherited.
(22) Of the borrower.
(23) B.B. 6a, Shebu. 41b. If a man did not borrow he obviously did not repay; but since the bond shews that he did borrow, he must obviously be ordered to pay. How then could it be said that if the orphans pleaded that their father told them that he never borrowed they are exempt from payment?
(24) As the one attributed to R. Zerika.
(25) That the orphans cannot exact payment of a bond they have inherited unless they first take an oath.
(26) V. our Mishnah. Cut. edd. add here ונפרעת MS.M. והנפרעת.
(27) A surname (v. Rashi). Cf. Neb. VII, 2, where Hananiah is so described.
(28) Of a claim against an absent debtor.
(29) So MS.M. and Bah. Cut. edd. omit 'Nappaha'.
(30) The capital of Syria, on the river Orontes. It was founded by Seleucus Nicator and was at one time named Epidaphnes.
(31) That a claimant may be authorized by a court to seize the property of a defendant in the latter's absence.
(32) V. supra p. 532, n. 11f.
(33) Cf. supra n. 5.
(34) Metaph. Undue difficulty in the collection of a debt would prevent people from risking their money in the granting of loans.
(35) Cf. supra p. 558. n. 13.
(36) For either claim the woman cannot recover from her absentee husband's property without an oath.

Talmud - Mas. Kethuboth 88b

BUT WHERE SHE DOES NOT CLAIM HER KETHUBAH THE HEIRS CANNOT IMPOSE AN OATH UPON HER. And they[1] [in fact] differ on the same principles as those on which Hanan and the sons of the High Priests differed; for we learned: If a man went to a country beyond the sea and his wife claimed maintenance, she must, Hanan ruled, take an oath at the end[2] but not at the

beginning.[3] The sons of the High Priests, however, differed from him and said that she must take an oath both at the beginning[3] and at the end.[4] R. Simeon [is thus of the same opinion] as Hanan while the Rabbis[5] [hold the same view] as the sons of the High Priests.

R. Shesheth demurred; Then[6] [instead of saying,] THE HEIRS MAY IMPOSE AN OATH UPON HER, It should have said, 'Beth din[7] may impose an oath upon her'! — The fact, however, is, said R. Shesheth.[that R. Simeon referred] to this:[8] If she went from her husband's grave to her father's house, or returned to her father-in-law's house but was not made administratrix, the heirs are not entitled to impose an oath upon her; but if she was made administratrix the heirs may exact an oath from her in respect of [her administration] during the subsequent period but may not exact one concerning the past;[9] and [in reference to this ruling] R. Simeon came to lay down the rule that WHENEVER SHE CLAIMS HER KETHUBAH THE HEIRS MAY ENACT AN OATH FROM HER BUT WHERE SHE DOES NOT CLAIM HER KETHUBAH THE HEIRS CANNOT IMPOSE AN OATH[10] UPON HER. And they[11] differ on the same principles as those on which Abba Saul and the Rabbis differed; for we have learned: An administrator whom the father of the orphans had appointed must take an oath,[10] but one whom the Beth din have appointed need not take an oath. Abba Saul, however, said, The rule is to be reversed: If Beth din appointed him he must take an oath but if the father of the orphans appointed him he need not take an oath.[12] R. Simeon [thus holds the same view] as Abba Saul[13] and the Rabbis [in our Mishnah hold the same view] as the Rabbis.[14] Abaye demurred: Then[15] [rather than say,] WHEREVER SHE CLAIMS HER KETHUBAH[16] it should have said,[15] 'If[17] she claims'.[18] The fact, however, is, said Abaye, [that R. Simeon referred] to this: [If a husband] gave to his wife an undertaking in writing, 'I renounce my claim upon you for either vow or oath', he cannot impose an oath upon her etc. [If the written undertaking read,] 'Neither I nor my heirs nor my lawful successors will have any claim upon you. or your heirs or your lawful successors for either vow or oath', neither he nor his heirs nor his lawful successors may impose an oath either upon her or upon her heirs or upon her lawful successors;[19] and [in reference to this ruling][20] R. Simeon came to lay down the rule[21] that[22] WHENEVER SHE CLAIMS HER KETHUBAH THE HEIRS MAY ENACT AN OATH FROM HER.[22]

And they[23] [consequently] differ on the same principles as those on which Abba Saul the son of Imma Miriam, and the Rabbis differed.[24] R. Simeon agreeing with Abba Saul and the Rabbis [of our Mishnah] with the Rabbis.[25] R. Papa demurred: This would satisfactorily explain [the expression] WHENEVER SHE CLAIMS HER KETHUBAH.[26] What, however, can be said [in justification of] BUT WHERE SHE DOES NOT CLAIM HER KETHUBAH?[27] The fact, however, is, said R. Papa, [R. Simeon's ruling was intended] to oppose the views of both R. Eliezer and those who differed from him.[28] MISHNAH. IF SHE[29] PRODUCED A LETTER OF DIVORCE WITHOUT A KETHUBAH[30]

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(1) R. Simeon and the first Tanna.

(2) Sc. when her husband dies and she claims her kethubah.

(3) I.e., when he is still alive and she claims maintenance.

(4) Infra 104b.

(5) The first Tanna in our Mishnah.

(6) Lit., 'that', i.e., if it is a case of a wife's claim for maintenance during her husband's lifetime.

(7) The court. V. Glos.

(8) The preceding Mishnah.

(9) Supra 86b, q.v. for notes.

(10) Affirming faithful and honest administration.

(11) R. Simeon and the first Tanna.

(12) Git. 52b, q.v. for the reasons of the respective rulings.

(13) Since the woman also has been appointed by the 'father of the orphans'.

(14) Of the Mishnah cited.

(15) Since R. Simeon relaxes the law in favour of the woman.
(16) Then THE HEIRS MAY IMPOSE AN OATH, an expression which implies that R. Simeon is adding a restriction.
(17) I.e., only if.
(18) 'May an oath be exacted'. 'WHENEVER SHE CLAIMS . . . THE HEIRS MAY' implies that whereas the first Tanna exempted the woman from an oath even where she claimed her kethubah, R. Simeon differed from him and imposed upon her an oath 'WHEREVER SHE CLAIMS'.
(19) Supra 86b q.v. for notes.
(20) Which exempts the woman from an oath even when she seeks to recover payment from orphans.
(21) Restricting the woman's privilege. Cf. supra n. 2f.
(22) Cf. supra n. 4.
(23) R. Simeon and the first Tanna.
(24) Supra 87a.
(25) Of the Baraitha referred to.
(26) Cf. supra note 4. The Rabbis having exempted the woman from the oath that the orphans might wish to impose upon her, R. Simeon laid down that WHEREVER etc.
(27) What need was there for this statement which has no beating on what the Rabbis have said?
(28) I.e., R. Simeon differs from the views expressed in the two Mishnahs, supra 86b, and not only, as Abaye maintained, from those of the second Mishnah only. Contrary to what has been stated in these two Mishnahs, R. Simeon laid down that a wife's liability to take an oath is not determined by the action of the husband in granting her exemption and by the terms of that exemption, but is entirely dependent on whether the woman does or does not claim her kethubah. (V. Rashi and Tosaf'. s.v. לאפוקי a.I.). [On this interpretation R. Papa does not disagree with Abaye but merely adds that R. Simeon's interpretation refers also to the second clause. This is supported by MS.M. which omits: The fact is however, (lit. 'but'), said R. Papa. For other interpretations v. Shittah Mekubbezeth].
(29) A woman who seeks to recover the amount of her kethubah.
(30) I.e., the written marriage contract (v. Glos.). It is now assumed that the woman asserts that the document was lost.

Talmud - Mas. Kethuboth 89a

SHE IS ENTITLED TO COLLECT THE AMOUNT OF HER KETHUBAH.[1] [IF SHE, HOWEVER, PRODUCED HER] KETHUBAH WITHOUT A LETTER OF DIVORCE AND, WHILE SHE PLEADS, MY LETTER OF DIVORCE WAS LOST',[2] HE[3] Pleads, 'MY QUITTANCE[4] WAS LOST', AND SO ALSO A CREDITOR WHO PRODUCED[5] A BOND OF INDEBTEDNESS THAT WAS UNACCOMPANIED BY A PROSBUL,[6] THESE[7] ARE NOT PAID. R. SIMEON B. GAMALIEL RULED; SINCE THE TIME OF DANGER[8] A WOMAN IS ENTITLED TO COLLECT HER KETHUBAH WITH OUT A LETTER OF DIVORCE AND A CREDITOR IS ENTITLED TO COLLECT [HIS DEBT] WITHOUT A PROSBUL.

GEMARA. This[9] implies [does it not] that a quittance[10] may be written;[11] for if a quittance may not be written would not the possibility have been taken into consideration that the woman might produce her kethubah [after her husband's death] and[12] collect therewith [a second time]?[13] — Rab replied: We are dealing[14] with a place where no kethubah is written.[15] Samuel, however, said: [Our Mishnah refers] also to a place where a kethubah is written.

May then[16] a quittance be written according to Samuel?[17] R. Anan replied, This was explained to me by Mar Samuel;[18] Where it is the custom not to write [a kethubah] and [the husband] asserted, 'I have written one' it is he who must produce the proof, where it is the usage to write one and she pleads. 'He did not write one for me' it is she that must produce the proof.[19]

Rab[20] also withdrew from [his previously expressed opinion]. For Rab had stated: Both in a place where [a kethubah] is written and in one where it is not written, a letter of divorce [enables a woman to] collect her statutory[21] kethubah [while the written document of the] kethubah [enables her to] collect the additional jointure;[22] and whosoever wishes to raise any objection may come and do so.[23]

We have learned: [A WOMAN, HOWEVER, WHO PRODUCED HER] KETHUBAH WITHOUT A LETTER OF DIVORCE AND, WHILE SHE PLEADS, 'MY LETTER OF DIVORCE WAS LOST HE PLEADS, 'MY QUITTANCE WAS LOST'. AND SO ALSO A CREDITOR WHO PRODUCED A BOND OF INDEBTEDNESS WITHOUT A PROSBUL, THESE ARE NOT PAID. Now, according to Samuel[24] this statement is quite intelligible since one might interpret it as applying to a locality where it is the practice to write [no kethubah] and the husband pleaded. 'I did write one'. In such a case [the man] might justly be told, 'Produce your evidence', and should he fail to do so he might well be told, 'Go and pay up'.[25] According to Rab,[26] however, [the question arises,] granted that she[27] is not to collect her statutory kethubah,[28] let her at least collect the additional jointure![29] — R. Joseph replied: Here[30] we are dealing with a case where no witnesses to the divorce were present. Since [the husband] could have pleaded. 'I have not divorced her',[31]

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(1) Sc. the sum she claims. Should the husband plead that he already paid her that sum and that the document had been returned to him at the time and was then duly destroyed, his plea would be disregarded since the provision for a kethubah has the force of 'an act of a court', מעשה בית דין, and is as binding in the absence of a written document as if one had been actually in existence. Only the production of valid evidence could exempt the man from payment. Cf. B.M. 17b.

(2) 'Before I collected my kethubah'.

(3) The husband.

(4) 'Which was given to me at the time I paid the amount of the kethubah'. His wife, he alleges. had produced at that time her letter of divorce only asserting that her written kethubah was lost. As is the procedure in such cases, he maintains, the letter of divorce was duly destroyed in order to prevent the woman from claiming therewith a second payment at another court of law, while he was furnished with a quittance as a protection for his heirs should the woman produce her kethubah after his death, and, denying that she was ever divorced, claim the amount of her kethubah as the widow of the deceased.

(5) After the Sabbatical year when all debts must be released (v. Deut. XV. 2).

(6) Pleading that the prosbul was lost, while the debtor asserts that such a document had never been made out and that he was consequently released from his debt by the Sabbatical year. פרוזבול, a form of declaration which enables a creditor to retain his rights to the collection of his debts even after the Sabbatical year. (V. Glos. and cf. Git. 34b).

(7) Lit., 'behold these'.

(8) The Hadrianic persecutions that followed the rebellion of Bar Cochba (132-135 C.E.) when all religious practices were forbidden on the penalty of death and it was hazardous to preserve a letter of divorce or a prosbul.

(9) The ruling in out Mishnah that the amount of a kethubah may be collected by a woman who produces her letter of divorce only, even if, under the plea that she lost it, she does not surrender her kethubah.

(10) In lieu of the return of the original document, such as the kethubah or any bond of indebtedness.

(11) Despite the pleas of the defendant who objects to become the custodian of a quittance and demands the return of the original record of his obligations or, in its absence, exemption from payment.

(12) As a widow (cf. supra p. 562, n. 6 ad fin.).

(13) As this possibility is disregarded it follows that a quittance may well be written despite the defendant's objection. But how is this ruling to be reconciled with the accepted view of the authority (B.B. 171b) who holds that the defendant may rightly object to have to 'guard his quittance from mice'?

(14) In our Mishnah.

(15) The women relying on the general provision of the Rabbis which entitles every wife to a kethubah.

(16) Cf. supra notes 2 and 3.

(17) Cf. supra n. 9.

(18) MS.M.: Samuel.

(19) Samuel also is thus of the opinion that a quittance may not be written, as was laid down in B.B. 171b, while our Mishnah, according to his interpretation, refers both to places where a kethubah is written as well as to those where a kethubah is not written. The woman IS ENTITLED TO COLLECT THE AMOUNT OF HER KETHUBAH even if she fails to produce the document when, in the former case, she produced valid proof that her husband did not write one for

her, and, in the latter case, where the man failed to produce valid proof that he did write one for her.

(20) Who first restricted the ruling of our Mishnah to a place where no kethubah is written.

(21) Lit., 'root', i.e., the amount of two hundred and a hundred zuz to which a virgin and a widow respectively are entitled.

(22) The first clause of our Mishnah thus refers to the statutory kethubah which may be collected with a letter of divorce, while the second clause refers to the additional jointure, both clauses applying to all localities irrespective of whether the custom of the place was to write a kethubah or not to write one.

(23) Sc. no possible objection could be raised to this view, since the woman would never be able to collect mote than what is her due.

(24) Who allows the statutory kethubah as well as the additional jointure to be collected on the strength of a letter of divorce.

(25) Both the additional and the statutory jointure, on the evidence of the letter of divorce. Should the woman subsequently produce a written kethubah without her letter of divorce, payment, as stated in our Mishnah, might justly be refused if the husband pleads that he had already paid her all that was due to her, at the time she produced her letter of divorce, that her letter of divorce was then destroyed and that a quittance was given to him. The ruling that she NEED NOT BE PAID is consequently quite logical.

(26) Who allows only the statutory kethubah to be collected on the production of a letter of divorce.

(27) When she produces her written kethubah alone.

(28) Because she might have already collected it with her letter of divorce (cf. supra p. 564, n. 5).

(29) Which is at all events due to her (cf. supra p. 564. n' 5). As our Mishnah, however, ruled that she NEED NOT BE PAID anything at all, an objection against Rab's view thus arises.

(30) In the statement of our Mishnah under discussion.

(31) And thereby procured exemption from payment of the kethubah.

Talmud - Mas. Kethuboth 89b

he is also entitled to plead, 'I have divorced her but I have already paid her the kethubah'.[1]

But since it was stated in the final clause, R. SIMEON B. GAMALIEL RULED: SINCE THE TIME OF DANGER A WOMAN IS ENTITLED TO COLLECT HER KETHUBAH WITHOUT A LETTER OF DIVORCE AND A CREDITOR IS ENTITLED TO COLLECT [HIS DEBT] WITHOUT A PROSBUL, [it follows that] we are dealing with a case where witnesses to the divorce are present; for had no such witnesses been present whereby could she have collected [her kethubah]?[2] — [The fact], however, is that the entire Mishnah represents the view of R. Simeon b. Gamaliel, but some clauses are missing, the correct reading being the following: NEED NOT BE PAID'. This applies only where no witnesses to the divorce are present, but if such witnesses are present she is entitled to collect her additional jointure. As to the statutory kethubah, if she produces her letter of divorce she may collect it, but if she does not produce her letter of divorce she may not collect it.[3] Since the time of danger, however, a woman may collect her kethubah even if she does not produce her letter of divorce, for R. SIMEON B. GAMALIEL RULED; SINCE THE TIME OF DANGER A WOMAN IS ENTITLED TO COLLECT HER KETHUBAH WITHOUT A LETTER OF DIVORCE AND A CREDIT OR [IS ENTITLED TO COLLECT HIS DEBT] WITHOUT A PROSBUL'.

R. Kahana and R. Assi said to Rab; According to the ruling you have laid down that the statutory kethubah is collected by the letter of divorce , [the question arises,] whereby does a woman who was widowed after her marriage collect her kethubah? [Obviously] through the witnesses [who testify to the] death [of her husband]. Should we not, however, take into consideration the possibility that her husband might have divorced her and that she might subsequently[4] produce the letter of divorce[5] and collect[6] with it also? — [A widow may collect her kethubah only] if she lived with her husband.[7] But is it not possible that he might have divorced her near the time of his death?[8] — [In such a case] it is he[9] who has brought the loss upon himself.

Whereby does a woman who was widowed after her betrothal collect her kethubah? [Obviously] by the witnesses [who testify to the man's] death. Should we not, however, take into consideration the possibility that the man might have divorced her and that she would subsequently produce her letter of divorce and collect with it also?[10] — [This],[11] however, [is the explanation:][12] Where no other course is possible a quittance may be written.[13] For were you not to admit this [the objection might be raised even in respect of] the very witnesses [who testify to her husband's] death:[14] The possibility should be considered that the woman might present [one pair of] witnesses to [her husband's] death before one court and so collect [her kethubah] and then present [another pair] before another court and collect it [again]. It must he obvious, therefore,[15] that where no other course is possible a quittance may be written.

Said Mar Kashisha the son of R. Hisda to R. Ashi: Whence is it derived that a woman who was widowed after her betrothal is entitled to a kethubah.[16] If it be suggested [that it may he derived] from this passage: 'A woman who was widowed or divorced either after her betrothal or after her marriage is entitled to collect all[17] [that is due to her]',[18] is it not possible [it may be retorted that this applies to a case] where the man had written a kethubah for her? And were you to argue. 'If he has written one for her, what need was there to tell [such an obvious rule?' It could be retorted that it serves the purpose] of rejecting the view of R. Eleazar b. Azariah who maintained that 'the man wrote the [additional jointure] for her with the sole object of marrying her'.[19] The inference too [from the Mishnah cited leads to the same conclusion].[20] For it has been stated, '[She] is entitled to collect all [that is due to her]'. Now if you agree that [this is a case where] the man had written [a kethubah] for her one can well understand why she 'is entitled to collect all [that is due to her]'.[21] If you submit, however, that the man did not write a kethubah for her, what [it may be objected is the justification for the expression.] 'is entitled to collect all', seeing that she is only entitled to one hundred or two hundred[22] zuz?[23] [Should it,] however, [be suggested that the law[24] may be derived] from that which R. Hiyya b. Abin[25] taught: 'In the case of a betrothed wife[26] [a husband] is neither [subject to the laws of] onan[27] nor may he[28] defile himself for her,[29] and she likewise is not subject to the laws of the onan[30] nor is she[31] obliged[32] to defile herself for him;[33] if she died he[34] does not inherit from her though if he died she is entitled to collect the amount of her kethubah',[35] is it not possible [it might be retorted that this refers only to a case] where the man had written a kethubah for her? And should you argue. 'If he had written one for her what need was there to state [such an obvious ruling?' It might be replied that] 'it was necessary [in order to inform us that if] she died he does not inherit from her'.[36]

R. Nahman said to R. Huna: According to Rab who laid down that a letter of divorce [enables a woman to] collect her statutory kethubah, is there no cause to apprehend that she might produce the letter of divorce at one court of law and collect her kethubah therewith and then again produce it at another court of law and collect therewith [a second time]? And should you reply that it might be torn up,[37] could she not [it may be retorted] demand, 'I need [it to be enabled] thereby[38] to marry again? — [What we do is,] we tear it up and endorse on the back of it: 'This letter of divorce has been torn by us, not because it is an invalid document but in order to prevent the woman from collecting therewith a second payments.

MISHNAH. [A WOMAN WHO PRODUCED] TWO LETTERS OF DIVORCE AND TWO KETHUBAHS MAY[39] COLLECT PAYMENT OF THE TWO KETHUBAHS.[40] [IF SHE PRODUCES, HOWEVER.] TWO KETHUBAHS AND ONE LETTER OF DIVORCE[41] OR ONE KETHUBAH AND TWO LETTERS OF DIVORCE,[42] OR A KETHUBAH, A LETTER OF DIVORCE AND [EVIDENCE OF HER HUSBAND'S] DEATH,[43] SHE MAY COLLECT PAYMENT FOR ONE KETHUBAH ONLY, FOR ANY MAN WHO DIVORCES HIS WIFE AND THEN REMARRIES HER CONTRACTS HIS SECOND MARRIAGE ON THE CONDITION OF THE FIRST KETHUBAH.[44]

GEMARA. If she desired it, she[45] could [evidently][46] collect [payment of her kethubah] either with the one kethubah or with the other.[47] May it not then be argued that this ruling presents an objection against the ruling which R. Nahman stated in the name of Samuel? For R. Nahman stated in the name of Samuel: Where two bills[48] are issued one after the other[49] the latter annuls the former![50] — Has it not been stated in connection with this ruling that R. Papa said: 'R. Nahman in fact admits that if one[51] has added in the [second] bill one palm-tree[52] [it is assumed that] he has written it[53] for the sake of that addition',[54] so also here [it is a case] where the husband has added something for her [in the second kethubah].[55]

Our Rabbis taught: If [a woman] produced a letter of divorce, a kethubah and [evidence of her husband's] death[56]

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(1) His plea is accepted because by abstaining from the use of the false though convenient plea, 'I have not divorced her at all', he has established his reputation for honesty.

(2) It is obvious, therefore, that witnesses were available; contrary to R. Joseph's interpretation (supra 89a ad fin.).

(3) Since it is possible that she had already collected it once on the strength of her letter of divorce.

(4) After receiving payment of her kethubah on the evidence of the witnesses who testified to the death of her husband.

(5) Before another court.

(6) Her statutory kethubah.

(7) Where it is well known that she was not divorced by him.

(8) So that the fact would remain unknown.

(9) By consenting to a secret divorce.

(10) The answer previously given, which well explains the case of a widow after her marriage, is inapplicable here since a betrothed man and woman do not live together.

(11) And not as has been first suggested, 'where she lived with her husband'.

(12) Of the difficulty pointed out by R. Kahana and R. Assi.

(13) Had no quittance been allowed in such instances claimants would be deprived unjustly of their legitimate rights.

(14) In localities where no kethubah is written.

(15) Lit., 'but it is certain'.

(16) Even where the man did not write one for her. That this is the case is apparent from the previous discussion where the husband's liability has been tacitly assumed. Had not a betrothed woman been allowed a kethubah unless she possessed also a written document, the objection that she might collect her kethubah mote than once could must have been advanced, since the document would have been destroyed as soon as payment had been made.

(17) I.e., both her statutory kethubah and her additional jointure.

(18) Supra 47b, 54b, B.M. 17b.

(19) Cf. loc. cit., and since be died before he married her she, it might have been thought, is only entitled to her statutory kethubah but not to the additional jointure. Hence it was necessary for the ruling that she '15 entitled to collect all (that is due to her)'.

(20) That the case dealt with is one 'where the man had actually written a kethubah for her'.

(21) The reason being that the man had expressly promised her in writing not only the statutory kethubah but also the additional jointure.

(22) One hundred if she married as a widow, and two hundred if as a virgin.

(23) I.e., the statutory kethubah only and nothing more.

(24) That a woman who was widowed after her betrothal is entitled to her kethubah (v. supra p. 567, n. 2).

(25) The reading elsewhere (cf. B.M. 18a, Sanh. 28b) is 'Ammi'.

(26) Before the marriage took place.

(27) A mourner during the period between the death and burial of certain relatives is called onan (v. Glos.) and is subject to a number of restrictions. A priest whose betrothed wife died may, unlike one whose married wife died, partake of sacrificial meat or any other holy food.

(28) If he is a priest.

(29) Cf. Lev. XXI, 1ff.

(30) She is allowed to partake of holy food.
(31) Unlike a married wife whose duty it is to attend to the burial of her husband.
(32) Cf. supra n. 10. The laws of defilement do not apply to women. Cf., however, infra n. 22.
(33) Aliter; 'Nor may she defile herself for him', i.e., during a festival when not only priests but also Israelites and women are forbidden to attend on the corpses of those who are not their near relatives (v. R.H. 16b).
(34) Unlike a husband who is heir to his wife (v. B.B. 111b).
(35) Yeb. 29b, B.M. 18a.
(36) Which is not obvious. And since the case where 'she deed' had to be stated, the one where 'he died', though self-evident, had, by way of contrast, also to be mentioned.
(37) As soon as payment is made.
(38) By using it as evidence that she had been legally divorced.
(39) If the date of the first kethubah is earlier than that of the first divorce and that of the second kethubah is earlier than that of the second divorce.
(40) Because it is assumed that after he had once divorced her the man had remarried her and then divorced her again. The kethubahs are consequently both due to her.
(41) The dates of both kethubahs being earlier than that of the letter of divorce, so that both obviously refer to the same marriage.
(42) I.e., the man married her after she had once been divorced by him, but did not write for her a second kethubah before he again divorced her.
(43) If the order was marriage, divorce, remarriage, death.
(44) I.e., that she should be entitled only to the first kethubah.
(45) WHO PRODUCED TWO KETHUBAHS AND ONE LETTER OF DIVORCE.
(46) Since our Mishnah does not specify which of the two kethubahs is to be used, the choice is evidently left to the woman.
(47) I.e., either with the kethubah that bears the earlier, or with the one that bears the later date. Should she prefer to use that of the earlier date she would obviously be able to seize even such property as her husband had sold after the earlier, though prior to the later, date.
(48) Signed by the same person and referring to the same transaction.
(49) Sc. the date on the one is later than on the other.
(50) Supra 44a; and the holder of the two bills is entitled to seize only such property as the defendant had sold subsequent to the later date. This then is in contradiction, is it not, to the ruling in out Mishnah which authorizes the woman (cf. supra p. 569, n. 11) to make use of her earlier kethubah?
(51) A seller or donor.
(52) That was not included in the bill of the earlier date.
(53) The second bill.
(54) And not with the intention of annulling the first one.
(55) Cf supra n. 7. Hence the ruling that the woman may collect payment with either of the two kethubahs. She may not collect, however, with both kethubahs unless the second document contained a specific insertion to the effect that it was the husband's desire that the second one shall form an addition to the first. In the absence of such an insertion the woman may collect either (a) the smaller amount contained in the first kethubah and enjoy the right of seizing all property her husband had sold since that date or (b) the bigger amount in the second kethubah and restrict her right of seizure to such property only as bad been sold after the second date. By the issue of a second kethubah, containing an addition to the first one without the specific insertion mentioned, a husband is assumed to have conferred upon his wife the right of choosing between the respective advantages and disadvantages of the two documents. Where the second kethubah, however, contains no addition at all, the latter document is assumed to have been intended as a cancellation of the first, since otherwise it need not have been issued, and seizure of property is restricted to the later date.
(56) Claiming one kethubah as a divorcee from her first marriage and the other as a widow from her second marriage.

Talmud - Mas. Kethuboth 90a

she may. if the letter of divorce bears an earlier date than the kethubah, collect payment for two kethubahs,[1] but if the kethubah bears an earlier date than the letter of divorce she may collect

payment of one kethubah only, for any man who divorces his wife and then remarries her contracts his second marriage on the condition of the first kethubah.

MISHNAH. [IN THE CASE OF] A MINOR WHOM HIS FATHER HAD GIVEN IN MARRIAGE, THE KETHUBAH OF HIS WIFE[2] REMAINS VALID,[3] SINCE IT IS ON THIS CONDITION THAT HE KEPT HER AS HIS WIFE. [IN THE CASE OF ONE WHO BECAME] A PROSELYTE AND HIS WIFE WITH HIM, THE KETHUBAH REMAINS VALID,[4] SINCE IT IS ON THIS CONDITION THAT HE KEPT HER AS HIS WIFE.

GEMARA. R. Huna stated: [The ruling of our Mishnah][5] was given only in respect of the maneh[6] or the two hundred zuz;[7] to the additional jointure, however, she[8] is not entitled.[9] Rab Judah, however, stated: She[10] is entitled [to receive payment for] her additional jointure also.

An objection was raised: If an additional monetary obligation was undertaken[11] the woman receives that which was added.[12] [Thus it follows, does it not, that] only if an additional monetary obligation was undertaken[13] is the woman to receive any addition[14] but if no such addition was made[15] [she does] not [receive any addition at all]?[16] — Read: 'Also that which had been added'.[17] But surely, [in the following Baraitha] it was not taught so: 'If an additional monetary obligation was undertaken[13] the woman receives that which was added, and if no additional monetary obligation was undertaken a virgin receives two hundred zuz and a widow receives a maneh'. Is not this then an objection against Rab Judah?[18] — Rab Judah was misled by the wording of our Mishnah. He thought that the rule, 'THE KETHUBAH OF HIS WIFE REMAINS VALID', applied to the full amount;[19] but in fact it is not so. It applies to the statutory kethubah alone.

C H A P T E R X

MISHNAH. IF A MAN WAS MARRIED TO TWO WIVES AND DIED, THE FIRST [WIFE] TAXES PRECEDENCE[20] OVER THE SECOND, AND THE HEIRS[21] OF THE FIRST WIFE TAKE PRECEDENCE[22] OVER THE HEIRS OF THE SECOND. IF HE MARRIED A FIRST WIFE AND SHE DIED AND THEN HE MARRIED A SECOND WIFE AND HE HIMSELF DIED,[23] THE SECOND WIFE[24] AND HER HEIRS[25] TAKE PRECEDENCE OVER THE HEIRS OF THE FIRST WIFE.[26]

GEMARA. Since it was stated THE FIRST [WIFE] TAKES PRECEDENCE OVER THE SECOND but not 'The first wife receives payment[27] and the second does not',[28] it may be implied that if the second wife forestalled [the first] and seized [the payment of her kethubah] it cannot be taken away from her.[29] May it then be inferred from this ruling that if a creditor of a later date has forestalled [one of an earlier date] and 'distrained [on the property of the debtor], his distraint is of legal Validity?[30] In fact it may be maintained that his distraint is of no legal validity, and as to [the phrase] TAKES PRECEDENCE, It means complete [right of seizure];[31] as we have learned: A son takes precedence over a daughter.[32]

Some there are who say: Since it was not stated, 'If the second wife forestalled [the first] and seized [the payment of her kethubah] it is not to he taken away from her', it may be implied that even if she has seized payment it may be taken away from her. May it then be concluded that if a creditor of a later date has forestalled [one of an earlier date] and distrained [on the property of a debtor] his distraint is of no legal Validity?[33] — In fact it may be maintained that his distraint is of legal validity, only because the Tanna stated, THE SECOND WIFE AND HER HEIRS TAKE PRECEDENCE OVER THE HEIRS OF THE FIRST WIFE[34] ,

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(1) Since in such a case it is evident that the kethubah was given to her in connection with her second marriage. Her first kethubah she collects on the evidence of her letter of divorce.

(2) The sum of two hundred in which is assigned to a virgin.
(3) Even when he becomes of age, though the woman at that time is no longer a virgin. (V. Tosaf. s.v אע"ז). The kethubah of a non-virgin is only one hundred in.
(4) Though it was given to her before her husband became a proselyte.
(5) That the wife of a minor is entitled to her kethubah even when he becomes of age.
(6) V. Glos.
(7) I.e., the statutory kethubah (cf supra n. 3) which is a woman s due in accordance with a Rabbinical enactment and is entirely independent of the minor's will or consent.
(8) The woman married to a minor.
(9) Since a minor cannot legally be bound to any contract.
(10) The woman who married a minor.
(11) Lit., 'they renewed', sc. the monetary addition was undertaken by the minor after he came of age or by the intending proselyte after he had embraced Judaism.
(12) Tosef. Keth. IX. It is now assumed that this refers to the additional sum only.
(13) V. p. 571. n. 11.
(14) Lit., 'yes'. Cf. p. 571, n. 12.
(15) After the minor came of age or the idolater had embraced Judaism.
(16) An objection against Rab Judah who allows a woman even the additional jointure that a minor or an idolater may have settled upon her.
(17) To the additional jointure that had been settled upon her while her husband was still an idolater or in his minority.
(18) Since here it was explicitly stated that only the statutory kethubah may be recovered (cf. supra n. 4).
(19) That was mentioned in the kethubah, i.e., the statutory kethubah as well as the additional jointure.
(20) In respect of her claim to her kethubah.
(21) If the women, having survived their husband, died before they had collected the payments of their kethubahs.
(22) Cf. supra n. 1, mutatis mutandis.
(23) And the sons of the first wife claim (a) their mother's kethubah to which they are entitled by virtue of the 'male children' clause (v. Mishnah supra 52b) which their father had entered in their mother's kethubah, or (b) their due share in their father's estate.
(24) Who, unlike the first, has survived her husband and consequently has, in respect of her claim upon her kethubah, the same legal status as a creditor.
(25) Who, like their mother, have the status of creditors.
(26) Who predeceased her husband and consequently lost her claim to her kethubah, since a surviving husband is the heir of his wife, her sons' claim to her kethubah (v. n. 4) being treated as a claim for an inheritance (v. supra 55a) and as such must yield precedence to that of a creditor.
(27) Lit., 'she has'.
(28) Lit., 'has not'.
(29) Since the expression of 'PRECEDENCE' only Implies priority of claim but not actual and inalienable right.
(30) Lit., 'what he collected is collected'. But If this were the case there would have been no dispute on the subject infra 94a.
(31) Lit , 'and what....he taught completely', i.e , the claim of the first wife to her kethubah is absolute; and, should there be no balance, the second wife would receive nothing.
(32) B.B. 115a, where the meaning is that if there is a son he has full rights to the estate whilst a daughter has no claim of heirship upon it at all.
(33) Cf. supra n. 1 mutatis mutandis.
(34) Where the statement, 'If the heir's of the first forestalled the heirs of the second and seized payment it is not to be taken away from them' is inapplicable, since, in fact, it is taken away from then, the estate being mortgaged to the heirs of the second who have the status of creditors.

Talmud - Mas. Kethuboth 90b

he also taught. THE FIRST WIFE TAKES PRECEDENCE OVER THE SECOND.[1]

IF A MAN MARRIED A FIRST WIFE. Three rulings may be inferred from this statement. It may be inferred that if one [wife died] during her husband's lifetime and the other after his death, [the sons of the former] are entitled to the kethubah of 'male children'[2] and we do not apprehend any quarrelling.[3] Whence is this inferred? Since it was stated, THE SECOND WIFE AND HER HEIRS TAKE PRECEDENCE OVER THE HEIRS OF THE FIRST WIFE [it follows that] they are only entitled to precedence but that if there is [a balance, the others also] take [their share]. It may also be inferred that the kethubah [of the second wife][4] may be regarded as the surplus[5] over the other.[6] Whence is this inferred? Since it was not stated [that payment[7] is made only] if a surplus of a denar remained there. Furthermore It may be inferred that a kethubah [claimed by virtue] of the 'male children' [clause] may not be distrained on mortgaged property;[8] for if it could be imagined that it may be distrained on mortgaged property, the sons of the first wife[9] should [be entitled to] come and distrain on [the property] of the sons of the second .[10] To this R. Ashi demurred: Whence [these conclusions]? Might I not in fact maintain that if one [wife died] while her husband was alive, and the other after his death, [the sons of the former] are not entitled to the kethubah [that they claim by virtue] of the 'male children' clause, whilst the expression of[11] TAKE PRECEDENCE[12] might refer[13] to the inheritance?[14] And were you to retort: What was the object[15] [of the description] THE HEIRS OF THE FIRST WIFE?[16] [I might reply that] as the Tanna used the expression, THE SECOND WIFE AND HER HEIRS[17] he also spoke of THE HEIRS OF THE FIRST WIFE![18] And with reference to your conclusion that 'the kethubah [of the second wife] may be regarded as a surplus over the other', might I not in fact still maintain that no kethubah may be regarded as a surplus over the other, but here[19] it is a case where there was a surplus of a denar![20] [As to the case where] one [wife died] during her husband's lifetime and the other after his death, this is [a matter in dispute[21] between] Tannaim. For it was taught: [If a man's wives] died, one during his lifetime and the other after his death, the sons of the first wife, Ben Nannus ruled, can say to the sons of the second,[22] 'You are the sons of a creditor;[23] take your mother's kethubah[24] and go'.[25] R. Akiba said: The inheritance[26] has already been transferred[27] from [the sole right of inheritance by] the sons of the first wife[28] [the joint right of inheritance by these and] the sons of the second.[29] Do they[30] not differ on the following principle: One Master[31] holds the Opinion that where one [wife died] during her husband's lifetime and the other after his death [the sons of the former] are entitled to the kethubah [of their mother by Virtue of the] 'male children' clause, and the other Master holds that where one [wife died] during a husband's lifetime and the other after his death [the sons of the former] are not entitled to the 'male children' kethubah?[32] Said Rabbah: I found the young scholars of the academy while they were sitting [at their studies] and arguing: All[33] [may hold the view that where] one [wife died] during her husband's lifetime and the other after his death [the sons of the former] are entitled to [their mother's] 'male children' kethubah, but here they[34] differ [on the principle whether the second wife's][35] kethubah may be regarded[36] as a surplus over the other; and the same dispute applies to [the debt] of a creditor.[37] One Master[31] holds that the [second wife's][35] kethubah is regarded as a surplus over the other,[36] and the same law applies to [the debt] of a creditor, and the other Master holds that no one kethubah may be regarded as a surplus over the other, and the same law applies to [the debt] of a creditor. Thereupon I said to them: In respect of [a claim of] a creditor no ones disputes [the view] that [the debt] is regarded as a surplus;[38] they[30] only differ in respect of a kethubah.[39] TO this R. Joseph demurred: If so[40] [instead of saying.] 'R. Akiba said: The inheritance has already been transferred' it should [have said.] 'If there is a surplus of a denar [the sons of the first wife receive their mother's kethubah].'[41] [The fact]. however, is, said R. Joseph. that they[42] differ [on the question whether the 'male children' kethubah is payable where] one [wife died] during her husband's lifetime and the other after his death .[43]

These Tannaim[44] [differ on the same principle] as the following Tannaim. For it was taught: If a man married his first wife and she died and then he married his second wife and he himself died, the sons of this wife[44] may come after [her][45] death and exact their mother's kethubah.[46] R. Simeon ruled: If there is a surplus of one denar[47] both[48] receive the kethubahs of their mothers but if no [such surplus remains] they[48] divide [the residue][49] in equal portions. Do they[50] not differ on this

principle: Whereas one Master[51] holds that where one [wife died] during her husband's lifetime and the other after his death [the sons of the former] are entitled to the ‘male children’ kethubah, the other Master holds that where one [wife died] during her husband's lifetime and the other after his death [the children of the former] are not entitled to the ‘male children’ kethubah?[52] No; all[53] may agree that where one [wife died] during her husband's lifetime and the other after his death [the sons of the former] are to receive the ‘male children’ kethubah,

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(1) omitting here also an expression which is inapplicable in the other case.

(2) Cf. supra 52b and supra p. 573’ n. 4.

(3) Between the heirs of the second, who claim their mother's kethubah as creditors (cf. supra p. 57. n. 6) and those of the first, who claim (cf. loc. cit. n. 7) their ‘male children’ kethubah as heirs, the former disputing the right of the latter to have .1 larger share in the father's estate than they.

(4) Which has the force of a debt.

(5) V. Mishnah infra 91a. The kethubahs that wives heirs receive by virtue of the ‘male children’ clause (supra 52b) is subject to a surplus of one denar, at least, that must remain after the kethubahs have been paid in full, to safeguard the application of the Pentateuchal law of succession in regard to at least part if the estate. If no such minimum surplus remains the ‘male children’ kethubahs cannot he collected and the entire estate is divided in accordance with the Pentateuchal law of succession among all the sons.

(6) The kethubah which the heirs of the first wife claim by virtue of the ‘male childrens’ clause. The kethubah of the second wife which has to he paid as a debt by all the heirs (cf. infra p. 573,11. 5) who first inherit that amount, provides for the application of the Pentateuchal law’ of succession. The heirs the first wife consequently receive their ‘male children’ kethubah and no minimum surplus of a denar is required as would have been the case had the second kethubah also been dependent on the ‘male children’ clause.

(7) Of the ‘male children’ kethubah of the first wife.

(8) l.c . it has the status of an inheritance and not that of a debt.

(9) Whose claim is of an earlier date than that of the second.

(10) Hence it may be inferred that their claim cannot be distrained on mortgaged property.

(11) Lit , ‘and what’.

(12) Which implies that if there is any residue they also receive a share.

(13) Lit., ‘it was taught’.

(14) Of their father's estate; and not to the ‘male children’ kethubah.

(15) Lit., ‘wherefore to me’.

(16) ‘OF THE FIRST WIFE’ in the final clause has no point if bet sons claim, not the ‘male children’ kethubah by virtue of her rights, but their share in their fathers estate as his heirs.

(17) A proper description, since it is by virtue of their mother's rights that their claim to her kethubah is established.

(18) A mere balancing of expression which has no bearing in the latter case on the source from which their claim is derived.

(19) If the PRECEDENCE spoken of refers even, as at first suggested, to the ‘male children’ kethubah.

(20) Though this fact was not specifically stated in our Mishnah it may have been taken for granted in view of the ruling laid down in the following Mishnah (infra 91a).

(21) As to whether the sons of the first wife are entitled to their mother's kethubah by virtue of the ‘male children’ clause.

(22) Wherever the estate does not allow of a surplus of a denar above the amount of the two kethubahs.

(23) Cf. supra p’ 573, n. 5.

(24) Which becomes due to her on the father's death, and which you inherit from her. This provides for the application of the Pentateuchal law of succession, all the heirs discharging a debt incurred by the father (cf. supra p. 575’ n. 3)’

(25) The Pentateuchal law of succession having been fulfilled (v. supra n 10) the sons of the first wife are entitled to the full payment of their mother's ‘male children’ kethubah out of the residue of the estate.

(26) Of the kethubah of the first wife who predeceased her husband.

(27) Lit., ‘jumped’. at the time the man died and was survived by his second wife.

(28) Lit., ‘and fell before’.

(29) I.e., the residue of the estate, remaining after the deduction of the second wife's kethubah, is the common

inheritance of all the sons of the deceased, those of the wife who predeceased him having no claim whatsoever in respect of the male children' kethubah which is payable only where both wives predeceased their husband.
(30) Ben Nannus and R. Akiba.
(31) Ben Nannus.
(32) V. supra note I.
(33) Lit., 'all the world' (v. supra note 2).
(34) V. supra note 2.
(35) The woman who survived her husband and whose claim has the same force as that of a creditor.
(36) Where not even a denar remained after the claims of the two kethubahs had been met.
(37) In the ease where both wives predeceased their husband and the sons of both claim the 'male children' kethubahs of their mothers while the creditor lays claim to the residue.
(38) And the sons of the two wives are consequently entitled to their mother's 'male children' kethubahs respectively.
(39) Ben Nannus holds the view that the kethubah of a wife, who had survived her husband, has the same status as a debt and consequently (v. supra P. 575. n. 3) enables the sons of the first wife to collect the payment of the 'male children' kethubah of their mother; while R. Akiba maintains that the payment of a kethubah is not on a par with that of any other debt; for, whereas any other debt is paid by the heirs to another person after they had first inherited that sum (v. l.c). the amount of a kethubah is received by the sons themselves, in the first instance, as debtors without it having first fallen into their possession as heirs. The sons not having inherited the kethubah, there is no application here of the Pentateuchal law of succession. In order, therefore. that the Pentateuchal law of succession might not be superseded by the Rabbinical enactment of the 'male children' kethubah, it was ordained that in such a ease the sons of the first wife shall lose completely their rights to the kethubah.
(40) That R. Akiba allows the 'male children' kethubah where there is a surplus.
(41) The expression. however, which he actually used implies that the sons never receive their mother's kethubah.
(42) Ben Nannus and R. Akiba.
(43) As has been assumed at first (cf supra p. 576. notes 7.14. and p. 577' nn. 1-4).
(44) This (according to Rashi) is at present assumed to refer to the second wife who survived him and whose kethubah has, therefore, the status of a debt. R. Han, however, reads explicitly 'the sons of the second' (v. Tosaf infra 91a s.v.וכו').
(45) V. Tosaf. l.c.
(46) While the sons of the wife who predeceased her husband, as at present assumed (v. supra n. 5), are not entitled to their mother's kethubah, in virtue of the 'male children' clause.
(47) After the sum of the two kethubahs bad been deducted.
(48) The sons of both wives.
(49) The balance remaining after the kethubah of the second wife bad been paid.
(50) R. Simeon and the first Tanna.
(51) R. Simeon.
(52) But since the principles are the same what need was there to record two disputes on the very same principles?
(53) R. Simeon and the first Tanna,

Talmud - Mas. Kethuboth 91a

but they differ here on [the question whether it is necessary for the surplus] denar to consist of real estate. The one Master[1] holds that only real estate is regarded as a surplus[2] but not movables[3] and the other Master[4] holds that even movables [are regarded as surplus].[5] But can you say so?[6] Have we not learned, R. Simeon ruled: Even if there was movable property[7] it is of no avail[8] unless there was landed property [of the Value of] one denar more than [the total amount of] the two kethubahs?[9] — [The fact,] however, is that they[10] differ here on [the question whether] a denar of mortgaged property [is regarded as a surplus]. One Master[11] holds that only free property constitutes a surplus[12] but not mortgaged property, and the other Master[13] holds that mortgaged property also [constitutes a surplus]. If so,[14] [instead of stating,] 'R. Simeon ruled: If there is a surplus of one denar', should it not have been stated, 'Since there is a surplus of one denar'? — The fact, however, is that they[10] differ on [the question whether a sum] less than a denar [constitutes a surplus]. One Master[15] is of

the opinion that only a denar constitutes a surplus[16] but not a sum less than a denar, and the other Master[17] holds that even less than a denar [constitutes a surplus]. But did not R. Simeon, however, say 'a denar'? And were you to reply. 'Reverse [their views]',[18] does not the first Tanna of the Mishnah[19] [it may be retorted] also speak of a denar?[20] — The fact, however, [is that we must follow] on the lines of the first two explanations. and reverse [the views].[21]

Mar Zutra stated in the name of R. Papa: The law [is that where] one [wife died] during her husband's lifetime and the other after his death [the sons of the former] are entitled to the 'male children' kethubah, and that one kethubah[22] is regarded as the surplus over the other. [Now] granted that if we had been told that '[where] one [wife died] during her husband's lifetime and the other after his death [the sons of the former] are entitled to the "male children" kethubah', but had not been told that 'one kethubah is regarded as the surplus over the other' it might have been presumed [that the former law applied] Only where the surplus amounted to a denar but not otherwise.[23] [Why,] however, could we [not have] been informed [of the second law only, viz., that] 'one kethubah is regarded as the surplus over the other', and it would have been self-evident,[24] [would it not, that this ruling was] due to [the law that 'where] one [wife died] during her husband's lifetime and the other after his death [the sons of the former] are entitled to the "male children" kethubah'?[25] — If we were given the information in such a manner, [the law] might have been presumed [to apply to a case,] for instance, where a man had married three wives of whom two died during his lifetime and one after his death, and the last mentioned had given birth to a daughter who is not entitled to heirship.[26] but [not to the case where] one [wife died] during her husband's lifetime and the other after his death and the latter had given birth to a son,[since in this case] the possibility of a quarrel[27] might have to be taken into consideration,[28] hence we were taught [that even in this case one kethubah[29] is regarded as surplus over the other].[30] MISHNAH. IF A MAN WAS MARRIED TO TWO WIVES AND THEY DIED, AND SUBSEQUENTLY HE HIMSELF DIED, AND THE ORPHANS [OF ONE OF THE WIVES][31] CLAIM THEIR MOTHER'S KETHUBAH[32] [BUT THE ESTATE OF THE DECEASED HUSBAND] IS ONLY ENOUGH[33] [FOR THE SETTLEMENT OF THE] TWO KETHUBAHS[34] [ALL THE ORPHANS] RECEIVE EQUAL SHARES.[35] IF THERE WAS A SURPLUS[36] OF [A MINIMUM OF] ONE DEN A R,[37] EACH GROUP OF SONS[38] RECEIVE THE KETHUBAH OF THEIR MOTHER.[39] IF THE ORPHANS [OF ONE OF THE WIVES][40] SAID, 'WE ARE OFFERING FOR OUR FATHER'S ESTATE ONE DEN AR MORE [THAN THE TOTAL AMOUNT OF THE KETHUBAHS]', IN ORDER THAT THEY [MIGHT THEREBY BE ENABLED TO] TAKE THEIR MOTHER'S KETHUBAH[41] THEIR REQUEST IS DISREGARDED[42] AND[43] THE ESTATE IS [PROPERLY] VALUED AT THE BETH DIN. IF THE ESTATE INCLUDED[44] PROSPECTIVE PROPERTY,[45] IT IS NOT [REGARDED] AS [PROPERTY HELD] IN ACTUAL POSSESSION.[46] R. SIMEON RULED: EVEN IF THERE WAS MOVABLE PROPERTY[47] IT IS OF NO AVAIL[48] UNLESS THERE WAS LANDED PROPERTY [WORTH] ONE DENAR MORE THAN [THE TOTAL AMOUNT OF] THE TWO KETHUBAHS.

GEMARA. Our Rabbis taught: If one wife had[49] [a kethubah for] a thousand [zuz] and the other for five hundred, each group of sons[50] receive the kethubah of their mother provided a surplus of one denar was available; otherwise, they must divide the estate in equal proportions.

It is obvious [that if[51] the estate was] large[52] and[53] it depreciated,[54] the heirs have already[55] acquired ownership thereof.[56] What, [however, is the ruling where the estate was] small and it appreciated?[57] — Come and hear the case of the estate of the house of Bar Zarzur which was small and it appreciated, and when [the heirs] came [with their suit] before R. Amram he said to them, 'It is your duty[58] to satisfy them'.[59] As they disregarded [his ruling] he said to them, 'If you will not satisfy them I will chastise you with a thorn that causes no blood to flow'.[60] Thereupon he sent them to R. Nahman, who said to then,, 'Just as [in the case where an estate was] large and it depreciated

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(1) The first Tanna.

(2) Lit., 'yes'.
(3) As in the case under dispute the surplus consisted of movables the first Tanna denies the sons of the first wife all rights to their mother's kethubah,
(4) R. Simeon,
(5) Hence his ruling that where there is a surplus (even if it consists of movables) the sons of the first wife, like those of the second, are entitled to the payment of their mother's kethubah,
(6) That R. Simeon regards movables also as a surplus.
(7) Lit., 'property which has no security'.
(8) As far as the calculation of a surplus is concerned,
(9) V. the Mishnah infra.
(10) R. Simeon and the first Tanna.
(11) The first Tanna,
(12) Lit., 'yes'.
(13) R. Simeon.
(14) That the Baraitha under discussion deals with a case where there is a surplus of one denar and that R. Simeon relaxes the ruling of the first Tanna by regarding that denar as surplus even if it represents mortgaged property.
(15) The first Tanna.
(16) Lit., 'yes'.
(17) R. Simeon.
(18) I.e., that in the opinion of the first Tanna the sons of the first wife are deprived of their mother's Kethubah (cf. supra p. 578, n. 7) only where there is no surplus at all, but if there is one, even if of less than a denar, they are entitled to her kethubah, while according to R. Simeon they are entitled to her kethubah only if the surplus amounts to a denar (so Tosaf. s.v. **וכי תימא** a.I. contrary to Rashi).
(19) Infra, who is in dispute with R. Simeon and who is identical with the first Tanna of the Baraitha (supra 90b) under discussion.
(20) How' then can it be suggested (cf. supra note 4) that the first Tanna admits a surplus of less than a dear?
(21) Cf. supra note 4 mutatis mutandis. The first Tanna deprives the sons of the first wife of her kethubah only where there is no surplus at all but if there is one, even though it consists of movables or mortgaged property. they are to receive her kethubah, while R. Simeon allows them their mother's kethubah only where the denar surplus consists of landed and free property (cf. Tosaf. s.v.**כי**). The previous objection against the expressions 'if' instead of 'since' (cf. supra p. 579' n. 16) does not arise since R. Simeon is more restrictive than the first Tanna.
(22) That is paid to the heirs of the wife who bad survived her husband and whose kethubah has the status of a debt.
(23) Lit., 'if there is a surplus of a denar, 'yes'; if not, 'not'. Hence one can well understand the necessity for the statement of the second law also.
(24) Lit., 'and l would know'.
(25) Since it is such a case only. where one kethubah has the status of a debt, that could give rise to this law. Where both wives died doting their husband's lifetime the sons of both have obviously equal rights of inheritance and the question of surplus to satisfy the Pentateuchal law of inheritance does not arise.
(26) In respect of her father's estate. As her claim is restricted to bet mother's kethubah alone, not being entitled to a share in the residue of bet father's estate after her mother's kethubah had been paid. no quarrels between bet and the sons of the two other wives could possibly arise on that account. Hence it is lawful for the sons whose mother's kethubah was larger to collect their due by pointing to the sum paid to the daughter (in settlement of her mother's kethubah which has the status of a debt) as the surplus which satisfied the Pentateuchal law of inheritance.
(27) Between that son and his brothers, all of whom have the same rights to their father's estate; v. supra p. 574. n. 8.
(28) I.e.,it might have been presumed that in order to obviate such a quarrel it may have been enacted that in such a case the second kethubah is not regarded as a surplus and all the sons share equally, after the payment of the second kethubah, the residue of their father's estate.
(29) V. supra p. 580, n. 8.
(30) The possibility of a quarrel does not affect the rights of the sons of the first wife.
(31) Whose kethubah was for a larger sum than that of the other.
(32) As heirs of their mother, by virtue of the 'male children' clause (v. Mishnah, supra 52b); while the other heirs demand a division in equal portions on the ground that, irrespective of their mother's 'male children' kethubahs, as sons

of the deceased they are entitled to equal shares in his estate.
(33) Lit., ‘and there is not there but’.
(34) So that, if their demand is complied with, the brothers would be receiving their respective shares of their mother's kethubahs in virtue of the ‘male children’ clause, thus allowing no scope for the operation of the Biblical law of succession.
(35) As heirs of their father with equal rights to his estate.
(36) After the two kethubahs had been paid.
(37) So that the pentateuchal law of succession could be applied to it.
(38) Lit., ‘these... and these’.
(39) And the residue of the estate (amounting to not less than one denar) is then divided between all the sons in equal portions.
(40) V. supra note I.
(41) Cf. supra notes 4.9 and text.
(42) Lit., ‘they do not listen to them’.
(43) Lit., ‘but’.
(44) Lit., ‘there were there’.
(45) Such, for instance, as an expected inheritance from the orphan's grandfather who survived their father, or an outstanding debt of their father's which would fall due only at some time in the future.
(46) The existing estate must accordingly be divided equally amongst all the sons of the deceased though the addition of the prospective property would have provided a surplus.
(47) Cf. supra p’ 579’ n’ 9’
(48) Cf. loc. cit. n. 10.
(49) Lit., ‘to this’,
(50) Lit., ‘these ‘ . ‘ and these’.
(51) At the time the father died,
(52) I.e,, its value exceeded the total amount of the kethubah by not less than a denar,
(53) When it was valued at the court.
(54) So that no surplus remained after deduction of the amounts of the kethubahs,
(55) At the moment of their father's death, when there was a surplus (v. supra note 4).
(56) The sons of the wife whose kethubah was for the larger amount are, therefore, entitled to the larger sum though at the time of the division of the property there was no longer any surplus.
(57) V, supra notes 2-5. Are the sons who claim the larger kethubah now entitled to it as if the surplus had been available at the time of their father's death, or is a claim once lost never recoverable?
(58) Lit., ‘go’.
(59) The sons of the woman whose kethubah was for the larger amount,
(60) Metaph. He would place them under the ban.

Talmud - Mas. Kethuboth 91b

the heirs have already acquired ownership thereof, so [also where the estate was] small and it appreciated the other heirs[1] have already[2] acquired ownership thereof.[3] (Mnemonic:[4] A thousand and a hundred duty in a kethubah, Jacob put up his fields by words [of] claimants.) A man against whom there was a claim of a thousand zuz had two mansions each of which he sold[5] for five hundred zuz. The creditor thereupon came and distrained on one of them and then he was going to distrain on the other. [Whereupon the purchaser] took one thousand zuz, and went to [the creditor] and said to him, ‘If [the one mansion] is worth to you one thousand zuz, well and good; but if not, take your thousand[6] zuz and go’.[7] Rami b. Hama [in dealing with the question] proposed that this case was exactly analogous to that in our Mishnah: IF THE ORPHANS [OF ONE OF THE WIVES] SAID, ‘WE ARE OFFERING FOR OUR FATHER'S ESTATE ONE DENAR MORE’.[8] But Raba said to him, ‘Are the two cases at all alike? There[9] the orphans[10] would be suffering a loss, but here, does the creditor suffer any loss? He only advanced a thousand zuz and a thousand zuz he receives

And for what amount is the tirpa[11] made out?[12] — Rabina said: For a thousand zuz. R. ‘Awira said: For five hundred. And the law is [that the tirpa is made out] for five hundred.

A certain man against whom someone had a claim for a hundred zuz had two small plots of land each of which he sold[5] for fifty zuz. His creditor came and distrained on one of them and then he came again to distrain on the other. [The purchaser. thereupon.] took a hundred zuz and went to him and said, ‘If [one of the plots] is worth a hundred zuz[13] to you. well and good; but if not, take the one hundred zuz and go’.[14] R. Joseph [in considering the question] proposed to say that this was a case exactly analogous to that in our Mishnah: IF THE ORPHANS [OF ONE OF THE WIVES] SAID[15] etc. But Abaye said to him, ‘Are the two cases at all alike? There the orphans would have suffered a loss, but here, what loss would [the creditor] have? He lent a hundred and receives a hundred’.

For what amount is the tirpa made out? — Rabina said: For a hundred. R. ‘Awira said: For fifty. And the law is [that it is made out] for fifty. A certain man against whom there was a claim for a hundred zuz died and left a small plot of land that was worth fifty zuz. As his creditor came and distrained on it the orphans went to him and handed to him fifty zuz. Thereupon he distrained on it again. When they came [with this action] before Abaye. he said to them, ‘It is a moral duty incumbent upon orphans[16] to pay the debt of their father.[17] With the first payment you have performed a moral duty. and now that he has seized [the land again] his action is perfectly lawful’,[18] This ruling. however, applies only in the case where [the orphans] did not tell him ,[19] ‘These fifty zuz are for the price of the small plot of land’, but if they did tell him, ‘these fifty zuz are for the price of the small plot of land’ ,[20] they have thereby entirely dismissed him,[21]

A certain man[22] once sold the kethubah of his mother[23] for a goodwill [price][24] and said to [the buyer], ‘If mother comes and raises objections I shall not pay you any compensation’.[25] His mother then died having raised no objections. but he himself[26] came and objected.[27] Rami b. Hama [in discussing the case] proposed to decide that he[28] takes the place of his mother. Raba, however, said to him: Granted that he did not accept any responsibility for her action, did he not accept responsibility for his own action either?[29] Rami b. Hama stated: If Reuben[30] sold a field to Simeon[30] without a guarantee[31] and Simeon then re-sold it to Reuben with a guarantee

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(1) Whose mother's kethubah was for the smaller amount.

(2) At the moment their father died, when there was 110 surplus.

(3) Cf. supra note 8 mutatis mutandis,

(4) The words or phrases of the mnemonic correspond to striking terms in the successive rulings that follow,

(5) To one person after he had incurred his debt.

(6) The sum which the seller owed him,

(7) l,e,, ‘give up both mansions’,

(8) As the offer of the orphans is rejected on account of its excessive nature, so is the purchaser's demand of the excessive valuation of the one mansion also to be rejected.

(9) Our Mishnah.

(10) The sons of the woman whose kethubah was for the lesser amount.

(11) **טירפא** (rt. **טרף** ‘to seize’), a document issued by a court of law to a claimant (e.g.. a creditor, or a purchaser on whom, as in this case, the seller's creditor has distrained) who is unable to collect his due from the defendant (in this case, the seller), authorizing him to trace his property (including any land the defendant may have sold after the liability in question had been incurred by him) for the purpose of seizing it eventually in payment of his claim.

(12) Lit., ‘do we write’. Where the creditor was willing to accept the one mansion from the purchaser in settlement of his claim of one thousand zuz, is it for the five hundred zuz which the purchaser has actually lost, or is it for the one thousand zuz, the amount of the debt he has settled?

(13) The sum which the seller owed him.

(14) I.e., return both plots.

(15) Cf. supra p. 584. nn. 5.9 mutatis mutandis.

(16) Though such a duty cannot be enforced by a court of law.
(17) As a mark of respect for his memory.
(18) Since a debtor's landed property is pledged for his debts.
(19) The creditor, when they paid him the first fifty zuz.
(20) Thus pointing out that the money was not intended as a payment of the debt.
(21) He cannot again seize the land which is now the absolute property of the orphans.
(22) Whose mother married again after his father's death.
(23) During her second husband's lifetime.
(24) טובת הנאה (cf. supra p. 542, n. 4). A very small price only would be paid for such a kethubah, the purchase of which must be in the nature of a mere speculation, since the mother might die during the lifetime of her husband who would inherit it or the son might pre-decease his mother and never come Into Its possession. in both of which eases the purchaser would lose all he paid.
(25) LIt., 'I will not come to your rescue' (rt. פצי in Pa. 'to free , save , rescue separate by force'). i.e., he accepted no responsibility whatsoever for the safety of the money advanced.
(26) As the heir of his mother.
(27) Contending that as he had accepted no responsibility he may now, like his mother, himself object to the sale and thus procure the amount of the kethubah for himself.
(28) The son.
(29) Of course he did. Though he may well cancel the sale on the ground that it was invalid because it had taken place before he (the seller) was in possession of the inheritance (cf. B.M. 16a), he must nevertheless refund to the buyer the full price he had received whatever it may have been. (For an alternative interpretation v. Rashi a.I., second explanation. and cf. Tosaf s.v. דזבנה a.I.).
(30) The names of the first two sons of Jacob (cf. Gen. XXIX, 32f) are taken as fictitious names for 'seller' and 'buyer' respectively.
(31) For compensation in ease of distraint by a creditor.

and Reuben's creditor[1] came and seized it from him, the law is that Simeon must proceed to offer him[2] compensation.[3] Raba, however, said to him: Granted that [Simeon] had accepted responsibility for general claims,[4] did he also accept responsibility for [claims against Reuben] himself?[5] Raba admits, however, that where Reuben inherited a field from Jacob[6] and sold it to Simeon[7] without a guarantee and Simeon then re-sold It to Reuben with a guarantee. whereupon Jacob's creditor came and seized it from him, the law is that Simeon must proceed to offer him[8] compensation.[9] What is the reason?-Jacob's creditor is regarded as any other creditor.[10]

Rami b. Hama [further] stated: If Reuben sold a field to Simeon with a guarantee and allowed [the price of the field] to stand[11] as a loan,[12] and when Reuben died, and his creditor came to seize it from Simeon, [the latter] satisfied him by [refunding to him the] amount ,[13] the law is that Reuben's children can tell him, '[As far as] we [are concerned,] our father has left movables[14] with you. and the movables of orphans are not pledged to a creditor.'[15]

Raba remarked: If the other[16] is clever he gives them[17] a plot of land in settlement of the debt and then he collects it from them,[18] in accordance [with a ruling of] R. Nahman who stated in the name of Rabbah b. Abbahu: If orphans collected a plot of land for their father's debt,[19] a creditor[20] may in turn collect it from them.[21] Rabbah[22] stated: If Reuben sold all his fields[23] to Simeon who In turn sold one field [of these] to Levi, and then Reuben's creditor appeared,[24] [the latter] may collect either from the one or from the other.[25] This law, however, applies only where [Levi] had bought [land of] medium quality, but if he bought either the best or the worst he may tell him,[26] 'It is for this reason[27] that I have taken the trouble [to buy the best or the worst because either is] land which is not available for you'.[28] And even [when he bought] medium quality the law is applicable only where [Levi] did not leave[29] medium quality of a similar nature

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(1) By virtue of a bond the date of which was antecedent to that of the first sale.

(2) Reuben.

(3) As if Reuben had not been the original seller. As simeon, who guaranteed compensation. would have to fulfil his obligation in the ease of any other buyer he incurs the same liability towards Reuben who, not having given any guarantee for his sale has the same status as any other buyer. **ומפצי**, rt. **פצי** cf. supra note 2.

(4) Proceeding from his own creditors.

(5) The answer is obviously in the negative. Simeon is undoubtedly exempt from all such claims.

(6) Sc. his father (cf. supra p. 586, n' 7).

(7) I.e., any other person (v. loc. cit.).

(8) Reuben,

(9) Lit., 'and rescue him from him' (cf. supra p. 586, n. 2).

(10) I.e., as if Jacob had been a stranger and the creditor had no claim against Reuben's father but against the man from whom Reuben had bought the field. Since the claim of the creditor is not against Reuben himself the claim against his father does not affect his right if he once sold the field without guarantee and Simeon resold it to him with a guarantee.

(11) Lit., 'put up', 'established'.

(12) I.e., instead of paying in cash Simeon gave him a note of Indebtedness,

(13) Lit,, zuzim, money', i,e., the amount of the loan which he owed to Reuben's heirs.

(14) Viz., the amount of the debt,

(15) Nor to the buyer who has been deprived by him of the field. Having paid a claim for which the orphans were not responsible, he must suffer the loss himself,

(16) The buyer from whom the orphans now claim the price of the land which he owes,

(17) The orphans.

(18) By virtue of the responsibility which their father, as seller, had undertaken towards him, as buyer. Since the land comes into their possession by virtue of the debt they inherited from their father, it is deemed to be an inheritance which may be seized by a buyer whose purchase had been distrained on by their father's creditor.

(19) Which was owing to him.
(20) Who lent money to their father,
(21) As if the land had been a direct inheritance from their father, although their acquisition of it took place after his death (cf. supra n. 13) as a result of the creditor's inability to meet his obligation.
(22) MS.M. reads, 'Raba', and this is also the reading in the parallel passage in B.K. 8b.
(23) By one deed of sale (v. infra n. 4).
(24) Claiming payment of the debt,
(25) Lit,,'if he wishes he collects from this and if he wishes he etc.', i.e., either from Simeon or from Levi. Where, however, the fields were sold by Reuben under more than one deed (cf. supra n. 2) his creditor cannot distrain on Levi unless the field the latter had bought was the last one that Reuben had sold to Simeon. If it was not the last, Levi may refuse payment on the ground that, even after Simeon had bought that field, Reuben was still in possession of sufficient property to meet his creditor's claim, and that no creditor can distrain on property sold while free property remained in the debtor's possession.
(26) The creditor who is entitled to recover his debt from the medium quality of the debtor's free, or sold property.
(27) That the creditor might have no legal claim upon it,
(28) Cf. supra n. 5'
(29) With Simeon.

Talmud - Mas. Kethuboth 92b

but if he did leave medium quality of a similar nature he may lawfully tell him,[1] 'I have left for you ample land[2] from which to collect [your debt]'.

Abaye stated: If Reuben sold a field to Simeon with a guarantee and a creditor of Reuben's came to distrain on it the law is that Reuben may proceed to litigate[3] with that creditor and [the latter] cannot say to him, 'You are no party to me'[4] for [the other can] retort, 'For whatever you will take away from him he will turn to me [to claim compensation]'[5] Others say: Even where no guarantee was given[6] the same law[7] applies, since [Reuben] may say to him,[8] 'I do not like Simeon to have any grievance against me

Abaye [further] stated: If Reuben sold a field to Simeon without a guarantee and there appeared against him[9]

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(1) The creditor.
(2) Lit., 'place'.
(3) **ומפצי** Cf. supra p. 586, n. 2.
(4) Since he was distraining against Simeon and not against him who, as an uninterested party, has no right to be a pleader in the lawsuit (cf. B.K. 70a).
(5) 'Hence I am an interested party'.
(6) By Reuben to Simeon.
(7) That the creditor cannot say to Reuben, 'You are no party to me'.
(8) The creditor,
(9) Reuben.

Talmud - Mas. Kethuboth 93a

claimants[1] [disputing his title to the field][2] he[3] may withdraw before he has taken possession of it,[4] but after he had taken possession of it[5] he may no longer withdraw,[6] because [Reuben] can say to him,[3] 'You have agreed to a bag sealed with knots[7] and you got it'.[8] And from what moment is possession considered to have been effected? — As soon as he[9] sets his foot upon the landmarks.[10] Others say: Even [If the sale was made] with a guarantee the same law[11] applies. since [the seller] might say to him, 'Produce the tirpa[12] [that was issued against] you and I shall pay you'.[13]

MISHNAH. IF A MAN WHO WAS MARRIED TO THREE WIVES DIED, AND THE KETHUBAH OF ONE[14] WAS A MANEH,[15] OF THE OTHER[14] TWO HUNDRED ZUZ, AND OF THE THIRD[14] THREE HUNDRED ZUZ[16] AND THE ESTATE[17] [WAS WORTH] ONLY ONE MANEH[18] [THE SUM] IS DIVIDED EQUALLY.[19] IF THE ESTATE[20] [WAS WORTH] TWO HUNDRED ZUZ [THE CLAIMANT] OF THE MANEH RECEIVES FIFTY ZUZ[21] [AND THE CLAIMANTS RESPECTIVELY] OF THE TWO HUNDRED AND THE THREE HUNDRED ZUZ [RECEIVE EACH] THREE GOLD DENARII.[22] IF THE ESTATE[23] [WAS WORTH] THREE HUNDRED ZUZ,[24] [THE CLAIMANT] OF THE MANEH RECEIVES FIFTY ZUZ[25] AND [THE CLAIMANT] OF THE TWO HUNDRED ZUZ [RECEIVES] A MANEH[25] WHILE [THE CLAIMANT] OF THE THREE HUNDRED ZUZ [RECEIVES] SIX GOLD DENARII.[26] SIMILARLY, IF THREE PERSONS CONTRIBUTED TO A JOINT FUND[27] AND THEY HAD MADE A LOSS OR A PROFIT THEY SHARE IN THE SAME MANNER.[28]

GEMARA. [THE CLAIMANT] OF THE MANEH RECEIVES FIFTY ZUZ. Should she not be entitled to thirty-three and a third zuz only?[29] — Samuel replied: [Here it is a case] where the one who is entitled to the two hundred zuz gave a written undertaking to the woman who was entitled to one maneh, 'I have no claim whatsoever upon the maneh'.[30] But if so,[31] read the next clause: [THE CLAIMANTS RESPECTIVELY] OF THE TWO HUNDRED, AND THE THREE HUNDRED ZUZ [RECEIVE EACH] THREE GOLD DENARII, [why, it may be objected, could she[32] not] tell her,[33] 'You have already renounced your claim upon[34] it'? — Because she can reply. 'I have only renounced my claim'.[35]

IF THE ESTATE [WAS WORTH] THREE HUNDRED etc. [Why should THE CLAIMANT] OF THE TWO HUNDRED ZUZ[36] RECEIVE A MANEH [when in fact] she should be entitled to seventy-five zuz only?[37] — Samuel replied: [Our Mishnah refers to a case] where the woman who was entitled to the three hundred zuz gave a written undertaking to the one who was entitled to the two hundred zuz and the other who was entitled to a maneh, 'I have no claim whatsoever upon you in respect of one maneh'.[38] R. Jacob of Nehar Pekod[39] replied in the name of Rabina: The first clause deals with two acts of seizure[40] and the final clause deals with two acts of seizure.[40] 'The first clause deals with two acts of seizure' viz. seventy-five zuz came into their hands[41] the first[42] time[43] and one hundred and twenty-five the second[42] time.[44] 'The final clause deals with two acts of seizure, viz., seventy-five came into their hands[41] the first[42] time[43] and two hundred and twenty-five the second[42] time.[45]

It was taught: This[46] is the teaching of R. Nathan. Rabbi,[47] however, said, 'I do not approve[48] of R. Nathan's views in these [cases][46] for[49] [the three wives][50] take equal shares'.[51]

SIMILARLY IF THREE PERSONS CONTRIBUTED. Samuel ruled: If two persons contributed to a joint fund,[52] one of them a maneh, and the other two hundred zuz,

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(1) עסיקין 'contestants' (v. Rashi). Others: 'disputes' (cf. Jast. s.v, עסק II).

(2) Aliter: 'Protests against the tithe were issued' (v. fast. loc. cit.).

(3) Simeon.

(4) If he has not yet paid for it.

(5) And so legally acquired it. Legal acquisition may be effected before the price of the land had been paid, the price becoming a debt due to the seller.

(6) Despite the disputes involved.

(7) Rashi (B.K. 9a): A bag full of wind.

(8) I.e.'you made a purchase without proper investigation and you must bear the unpleasant consequences.

(9) The buyer.

(10) Of the field, to level them (v. Rashi B.M. 14b).

(11) That the buyer may not withdraw after he had taken possession.
(12) V. supra p. 584, n. 8.
(13) I.e., before the court has authorized the distraint the buyer has no right to cancel the sale on the ground that he is troubled by claimants, Only when the court has given its decision in favour of the claimants, and the land was actually taken away from him, has he the right to call upon the seller for compensation.
(14) Lit., 'this',
(15) A hundred zuz (v. Glos.).
(16) And the three contracts bore the same date, If they bear different dates the collection of any earlier kethubah takes precedence over the later one.
(17) Lit., 'there was'.
(18) A hundred zuz (v. Glos.).
(19) Since the three women have equal claims upon that maneh, the smallest kethubah being for no less than one maneh.
(20) Lit., 'there was'.
(21) This will be discussed in the Gemara infra.
(22) I,e., seventy-five zuz. A gold denar twenty-five silver denarii or zuz (v. B.M. 45b). The two women take equal shares in the two hundred zuz since the kethubah of either is for no less a sum and the money available is equally pledged to both.
(23) Lit., 'there was',
(24) So that the first maneh is pledged to all the three women (cf. supra note 2). the second to the claimants of the two hundred and the three hundred respectively, while the third maneh is only pledged to the claimant of the three hundred.
(25) V. supra note 4'
(26) One hundred and fifty us.
(27) Lit., 'who put into a bag' sc. for trading purposes.
(28) In proportion to the amounts contributed.
(29) I,e., a third of the first maneh, since she has no claim at all upon the second maneh,
(30) Which is legally pledged to her. In that maneh she has only one rival claimant in the person of the woman whose kethubah is for three hundred, The maneh is consequently to be divided between the two only.
(31) That the holder of the kethubah for the two hundred us has renounced her claim upon the first maneh,
(32) The claimant of the three hundred zuz.
(33) The holder of the kethubah for the two hundred.
(34) Lit 'you have removed yourself from'.
(35) 'As far as the claimant of the maneh was concerned but not my legal right to a share in it', i.e., she only undertook to abstain from litigation with the claimant of the maneh in order to enable her thereby to obtain a half of that sum, but she had not renounced her right to a share in that maneh should she ever wish to assert it against the third wife, the holder of the kethubah for the three hundred us. She is, therefore, entitled, as far as the balance of that maneh is concerned, to claim a share equal to that of the third wife, which, together with her share in the second maneh, amounts to (50/2 + 100/2) seventy-five us or three gold denarii,
(36) Who, as stated above, has renounced fifty zuz of the first maneh.
(37) I.e., a half of the balance of fifty of the first maneh and a half of the second maneh amounting to a total of (520/2 +100/2 = 25 +50) seventy-five zuz, The third maneh upon which she has no claim at all (cf. supra p. 590. n. 7) must, of course, be excluded from the calculations of her share.
(38) While the woman whose kethubah was for two hundred us did not renounce any of her rights in favour of the holder of the kethubah for the one maneh. The first maneh is consequently divided between these two, the second maneh between the second and the third woman while the third maneh is given to the third woman only.
(39) Lit., 'the river of Pekod', a town east of Nehardea, or a district in S.E. Babylon. Pekod is mentioned in Jer. L, 21 and Ezek. XXIII, 23.
(40) l.e., the women collected the amounts mentioned in two instalments, the second of which was not available when the first was collected.
(41) Lit., 'fell'.
(42) Lit., 'one'.
(43) Since each woman had a claim upon this sum the three divide it between them in equal shares, each one receiving twenty-five zuz.

(44) The first one, having already received twenty-five us, now claims no more than seventy-five zuz, and since her claim to the seventy-five zuz is legally equal to the claims of the other two women the sum is equally divided between them and she receives a third of it, or twenty-five zuz, bringing up her total collection to FIFTY ZUZ. The second woman who has a claim upon the full balance of a hundred zuz divides the sum with the third woman each receiving fifty zuz which, added to the twenty-five zuz each received of the first maneh, amounts to a total of seventy-five zuz, or THREE GOLD DENARII.
(45) Seventy-five us of these, as in the previous case (cf. supra n. 4), is equally divided between the three women thus allowing a total of FIFTY ZUZ for the first woman. The second one who also received twenty-five zuz at the first division and who still claims a balance of two hundred minus twenty-five one hundred and seventy-five us receives twenty-five zuz as her share in the seventy-five us mentioned and another fifty zuz which is her share in the maneh that is equally divided between her and the third woman, thus receiving a total of twenty-five plus twenty-five plus fifty a hundred zuz or a MANEH. The balance of fifty us now remaining is given to the third woman who thus receives a total of twenty-five plus twenty-five plus fifty plus fifty one hundred and fifty==six GOLD DENARII.
(46) The part of our Mishnah which deals with the eases of the three women.
(47) R. Judah the Patriarch or Prince, compiler of the Mishnah.
(48) Lit,, 'see'.
(49) Lit., 'but'.
(50) Despite the difference in the amounts of their respective kethubahs.
(51) The estate being equally pledged to all the three, the woman who claims the smallest amount has no less a right to it than the women who claim the bigger amounts have a right to theirs. Only in the case of contributors to a common fund are profits and losses to be divided in proportion to the respective amounts contributed.
(52) Cf. supra p. 590, n. 10.

Talmud - Mas. Kethuboth 93b

the Profit is to be equally divided.[1] Rabbah said: It stands to reason [that Samuel's ruling applies] where an ox [was purchased][2] for ploughing and Was used[3] for ploughing.[4] Where, however, an ox [was purchased] for ploughing[5] and was used[3] for slaughter[6] each of the Partners[7] receives a share in proportion to his capital.[8] R. Hamnuna, however, ruled: Where an ox [was bought] for ploughing,[9] even if it was used[3] for slaughter[10] the profit must be equally divided.[11]

An objection was raised: If two persons contributed to a joint fund,[12] one of them a maneh, and the other, two hundred zuz, the profit is to be equally divided.[13] Does not this refer to an ox [bought] for ploughing and used[3] for slaughter, and [thus presenting] an objection against Rabbah? — No, it refers to an ox that was bought for ploughing and was used for ploughing.[9] What, however, [is the law where] an ox [was bought] for ploughing and used[3] for killing? Does each partner[7] [in such a case] receive a share in proportion to his capital? Then instead of stating in the final clause, 'If one man had bought [some oxen] out of his own money and the other [had bought some] out of his own money[14] and the animals were mixed up, each partner[7] receives a share in proportion to his capital',[15] could not a distinction have been made in the very same case,[16] [thus:] 'This[17] applies only where an ox was bought for ploughing and was used for ploughing, but where an ox was bought for ploughing and was used for slaughter each partner receives a share in proportion to his capital'? — It is this, in fact, that[18] was implied: 'This[19] applies only where an ox was bought for ploughing and was used for ploughing. but where an ox was bought for ploughing and was used for slaughter' the law is the same as 'if one man had bought [some oxen] out of his own money and the other [had bought some] out of his own money, and the animals were mixed up [in which case] each party receives a share in proportion to his capital'.

We learned: SIMILARLY IF THREE PERSONS CONTRIBUTED TO A JOINT FUND AND THEY MADE A LOSS OR A PROFIT THEY SHARE IN THE SAME MANNER. Does not 'THEY MADE A LOSS mean that they made a loss on their actual transaction, and A PROFIT' that they made a profit on their actual transaction?[20] — R. Nahman replied in the name of Rabbah b.

Abbuha: No; they made 'A PROFIT' [owing to the issue of] new coins[21] and THEY MADE A LOSS' [by the deterioration of a coin into] an istira[22] that was only suitable for application to a bunion.[23]

MISHNAH. IF A MAN WHO WAS MARRIED TO FOUR WIVES DIED, HIS FIRST WIFE[24] TAKES PRECEDENCE[25] OVER THE SECOND, THE SECOND TAKES PRECEDENCE OVER THE THIRD AND THE THIRD OVER THE FOURTH. THE FIRST MUST TAKE AN OATH[26] [IN ORDER TO GIVE SATISFACTION] TO THE SECOND,[27] THE SECOND TO THE THIRD,[28] AND THE THIRD TO THE FOURTH,[28] WHILE THE FOURTH RECOVERS PAYMENT WITHOUT AN OATH.[29] BEN NANNUS SAID: SHOULD SHE[30] HAVE THE ADVANTAGE BECAUSE SHE IS THE LAST? SHE ALSO MAY NOT EXACT PAYMENT EXCEPT ON OATH, IF ALL [KETHUBAHS] WERE ISSUED ON THE SAME DAY THEN THE WOMAN [WHOSE KETHUBAH] PRECEDED THAT OF THE OTHER, EVEN IF ONLY BY ONE HOUR,[31] GAINS [THE FIRST RIGHT]. AND SO IT WAS THE CUSTOM IN JERUSALEM TO INSERT THE HOURS [IN SUCH DOCUMENTS]. IF ALL KETHUBAHS WERE ISSUED AT THE SAME HOUR AND THE ESTATE IS WORTH NO MORE[32] THAN A MANEH [THE WOMEN] RECEIVE EQUAL. SHARES.

GEMARA. On what principle do they[33] differ? — Samuel replied:

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(1) Lit., 'for the middle'.

(2) With the joint capital.

(3) Lit., 'stands'.

(4) So that the share of one partner in the ox is as essential as that of the other, the animal being useless for work unless it is whole.

(5) And much more so if it was purchased for slaughter. (Cf. infra note 7.)

(6) Its value in flesh having in the meantime increased.

(7) Lit., 'this ' ' ' this'.

(8) Since the carcase can be well divided. The original intention to use the animal for ploughing only (cf. supra note 3) does not alter the fact that in the end it was used for the purpose which admitted of division.

(9) V. supra nn. 3 and 7'

(10) Cf. supra n. 4 mutatis mutandis.

(11) Lit., 'for the middle'.

(12) Cf. supra p. 590 n. 10.

(13) Tosef. Keth. X.

(14) One party having bought more expensive and, therefore, much stronger animals than the other.

(15) Tosef. I.e.; since stronger animals are capable of more work.

(16) Spoken of in the first clause, where the two men bought an ox jointly.

(17) That profits are equally divided.

(18) Lit., 'thus also'.

(19) That profits are equally divided.

(20) Which is in contradiction to Samuel's ruling (Rashi). .Aliter: Since it is self-evident that profits on an ox that was both bought and used for slaughter are to be divided proportionally, this ruling, being superfluous in such a case, must refer to that of an ox that was originally bought for ploughing and was only subsequently used for slaughter. Thus an objection arises against R. Hamnuna (v. Tosaf, s,v. מאי a.I.).

(21) The older currency which the men originally invested being worth more than the new currency. so that the profit in the terms of the new currency was not made on any business transactions but on the actual coins. Since then it is the original investments that are returned to their owners the return must be in proportion to the respective original investments. Any profit, however, that is the result of business transactions is equally divided, (V. Rashi. Cf., however, Tosaf. s.v. הותירו a.I.)

(22) A coin (v. Glos.).

(23) As a cure. I.e., coins that have been withdrawn from circulation and, having lost their monetary value, are of no

more use than a piece of metal. Such a loss (cf. supra note 4) must be borne by the two men in proportion. A trading loss, however, is, as Samuel ruled, to be equally divided.

(24) I,e,, the woman whose kethubah bears the earliest date.

(25) In respect of her claim to her kethubah,

(26) That she had received no payments from her husband, on account of her kethubah, prior to his death,

(27) Who might lose all her kethubah should no balance remain after the first had collected her due,

(28) Cf. supra n. 4 mutatis mutandis,

(29) If the orphans are of age. In the ease of orphans who are still in their minority no one may exact payment from them except with an oath; v. supra 87a.

(30) The fourth.

(31) Provided the hour had been entered in the document.

(32) Lit., 'and there is not there',

(33) Ben Nannus and the first Tanna.

Talmud - Mas. Kethuboth 94a

[Their dispute relates to a case,] for instance, where It was found that one of the fields[1] did not belong to him,[2] their point of difference[3] being the question [of the legality of the action] of a creditor of a later date who forestalled [one of an earlier date] and distrained [on the debtor's property]. The first Tanna holds that such distraint has no legal validity,[4] and Ben Nannus holds that whatever he distrained on is legally his,[5] R. Nahman in the name of Rabbah b. Abbuha replied: Both[6] agree that the distraint [of a creditor of a later date] has no legal validity,[7] but here they differ on the question whether provision is to be made against the possibility that [the fourth woman might] allow the ground to deteriorate. One Master[8] is of the opinion that provision is to be made against the possibility that she[9] might allow the ground[10] to deteriorate,[11] and the other Master is of the opinion that no provision need be made against such a possibility. Abaye replied: The difference between them[6] is the ruling of Abaye the Elder who stated: The 'orphans' spoken of[12] are grown-ups and there is no need to say that minors[13] [are included].[14] The first Tanna[15] does not hold the view of Abaye the Elder while Ben Nannus upholds it.[16]

R.Huna stated: If two brothers or two partners had a lawsuit[17] against a third party[18] and one of them went with that person to law,[19] the other[20] cannot say to him,[21] 'You are not my party'[22] because[23] [the one who went to law] acted on his behalf also.[24]

R. Nahman once visited Sura[25] and was asked what the law was in such a case.[26] He replied: This is [a case that has been stated in] our Mishnah: THE FIRST MUST TAKE AN OATH [IN ORDER TO GIVE SATISFACTION] TO THE SECOND, THE SECOND TO THE THIRD AND THE THIRD TO THE FOURTH, but it was not stated, 'the first to the third'. Now, what could be the reason?[27] Obviously[28] because [the second] has acted on her behalf also. But are [the two cases] alike? In the latter,[29] an oath for one person is the same as an oath for a hundred,[30] but in this case[31] he[32] might well plead, 'Had l been present I would have submitted more convincing arguments'.[33] This,[34] however, applies only when he[32] was not In town [when the action was tried] but if he was in town [his plea is disregarded, since if he had any valid arguments] he ought to have come.[35]

It was stated: If two deeds[36] bearing the same date[37] [are presented in court,[38] the property in question],[39] Rab ruled, should be divided [between the two claimants], and Samuel ruled: [The case is to be decided at] the discretion of the judges.[40] Must it be assumed that Rab follows the view Of R. Meir who holds that the signatures of the witnesses make [a Get] effective,[41]

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(1) Which the first three women had taken in payment of their respective kethubahs.

(2) I.e., it was found that the deceased husband had taken it by violence from a person who might appear at any moment to claim it, and any one of the three wives, that might thus be deprived of her field, would ultimately proceed 10 make

her claim against the field that had been reserved for the fourth wife.
(3) In arguing the question whether the fourth woman may be asked by one of the other women to take an oath that she had not already collected her kethubah during the lifetime of their husband,
(4) And the creditor who holds the earlier-dated bond may consequently distrain on that property. Similarly in the case of the kethubah spoken of in our Mishnah, as that of the fourth woman bears the latest date, any of the other women, being in the position of earlier creditor, may distrain on her field wherever she is deprived of the field that had been allotted to her. And since the fourth may thus be deprived of her field by any of the others at any time there is no need to make sure of her claim by the imposition of an oath, and she, consequently, RECEIVES PAYMENT WITHOUT AN OATH.
(5) As the fourth woman (cf. supra note I) could not consequently be deprived of her field once it has been allotted to her SHE ALSO MAY NOT RECEIVE PAYMENT EXCEPT UNDER AN OATH.
(6) Ben Nannus and the first Tanna.
(7) Against the claims of an earlier creditor,
(8) Ben Nannus.
(9) The fourth woman.
(10) That has been allotted to her.
(11) If no oath were imposed upon her she would realize that her tenure of the property may only be temporary and would consequently exploit it to the full and neglect its amelioration. Hence the ruling that she also must take an oath before she receives payment.
(12) In the Mishnah supra 87a and Shebu. 45a: From orphans' property she cannot recover payment except on oath. (Cf. Mishnah Git, 48b: Payment from orphans can be received only from the poorest land).
(13) Who require greater protection.
(14) Cf. Git. 50a, Shebu. 47b.
(15) Who exempts the fourth woman from the oath.
(16) Our Mishnah does not refer to the particular case which Samuel mentioned and the oath is imposed upon the fourth woman as a protection of the orphans and not vis-_-vis the other women,
(17) In connection with their joint ownership.
(18) Lit,, 'one'.
(19) And lost his case.
(20) Brother or partner.
(21) The third party.
(22) And so demand a new trial on his share.
(23) Lit.,'but'.
(24) Lit,, 'he did his mission'.
(25) V. supra p. 383, n. 7'
(26) Dealt with by R. Huna.
(27) For exempting the first from taking an oath vis-_-vis the third.
(28) Lit., 'not?'
(29) Lit., 'there', that is our Mishnah.
(30) Once the woman has declared on oath that her husband had not paid her kethubah, her claim to it is established irrespective of the number of women who plead that she may have been paid by her husband.
(31) Lit., 'here'.
(32) The brother or partner who was not present at the trial.
(33) Which would have enabled him to win his case. Our Mishnah, therefore, provides no answer to the enquiry addressed to R. Nahman.
(34) That the plea, 'Had I been present etc.' is admissible.
(35) To court,
(36) Of a sale or a gift relating to the same property.
(37) Lit., 'coming forth in one day'.
(38) As the hour at which a deed was executed was not usually entered (except in Jerusalem) it cannot be determined which of the deeds is the earlier and which is the later document.
(39) I.e., the property of the donor or seller respectively which the holders of the deeds claim.
(40) שודא דדייני , v. supra p. 541. n. 12. The judges are empowered to give their decision in favour of the claimant

who in their opinion deserves it (so Rashi and R. Tam, Tosaf. B.B. 350 s.v שודא) According to Rashb. (B.B. loc. cit.) the judges estimate which of the two claimants the seller or donor was more likely to favour. This may also be the opinion of Rashi (cf. infra 94b s.v. ושמואל ad fin).

(41) Git. 3b. Lit., 'the witnesses of the signature cut (the marriage union)'. In the ease of a deed, too. the validity should begin on the date the signatures were attached. And since the two deeds bear the same date and no hours are specified (cf. supra p. 597, n. 22) the two should have the same force and there can be no other alternative but that of dividing the property equally between the two claimants.

Talmud - Mas. Kethuboth 94b

and that Samuel follows the view of R. Eleazar who holds that the witnesses to the delivery [Of a Get] make it effective?[1] — No, all[2] follow the view of R. Eleazar,[3] but it is the following Principle on which they differ here. Rab is of the opinion that a division [between the claimants] is preferable and Samuel holds that [leaving the decision to] the discretion Of the judges is prefer. able. But can you maintain that Rab follows the view Of R. Eleazar? Surely, Rab Judah stated in the name of Rab, 'The halachah is in agreement with R. Eleazar in matters Of divorce' [and he added.] 'When I mentioned this in Samuel's presence he said: "Also in the case of other deeds". Does not this then imply that Rab is of the opinion that in the case Of deeds [the halachah is] not [in agreement with R. Eleazar]?' Clearly. Rab follows the view Of R. Meir and Samuel that of R. Eleazar.

An objection was raised: 'If two deeds[4] bearing the same date [are produced in court, the property In question] is to be divided. Is not this an objection against Samuel?[5] — Samuel can answer you: This represents the view of[6] R. Meir but I follow the view of R. Eleazar.[7]

But if this[8] represents the view of R. Meir, read the final clause: 'If he[9] wrote [a deed] for one man[10] [and then he wrote a deed for,] and delivered it to another man, the one to whom he delivered [the deed] acquires legal possession'. Now if [this[8] represents the view of] R. Meir why does he acquire possession? Did he not, in fact, lay down that the signatures of the witnesses[11] make [a Get] effective?[12] — This[13] [is a question which is also in dispute between] Tannaim.[14] For it was taught: And the Sages say [that the money][15] must[16] be divided,[17] while here[18] it was ruled that the trustee[19] shall use his own discretion.[20]

The mother of Rami b. Hama[21] gave her property in writing to Rami b. Hama in the morning, but in the evening she gave it in writing to Mar 'Ukba b. Hama.[22] Rami b. Hama came before R. Shesheth who confirmed him in the possession of the property. Mar 'Ukba then appeared before R. Nahman who Similarly confirmed him in the possession of the property. R. Shesheth, thereupon, came to R. Nahman and said to him, 'What is the reason that the Master has acted in this way?' 'And what is the reason', the other retorted, 'that the Master has acted in that way?' 'Because', the former replied, '[Rami's deed was written] first' ,[23] 'Are we then', the other retorted, 'living in Jerusalem where the hours are inserted [in deeds]?'[24] 'Then why [the former asked] did the Master act in this way?'[25] '[I treated it,] the other retorted, [as a case to be decided] at the discretion of the judges'.[26] 'I too'' the first said, '[treated the case as one to be decided at] the discretion of the judges' ,[27] 'In the first place' the other retorted, 'I am a judge[28] and the Master is no judge, and furthermore, you did not at first come with this argument' ,[29]

Two deeds [of sale][30] were once presented before R. Joseph, one being dated,[31] 'On the fifth of Nisan' ,[32] and the other was vaguely dated, 'In Nisan'. R. Joseph confirmed the [holder of the deed which had the entry,] 'fifth of Nisan' in the possession of the property. 'And I', said the other, 'must lose?' 'You', he replied, 'are at a disadvantage, since it may be suggested that your deed was one that was written[33] on the twenty-ninth of Nisan'[34] 'Will, then, the Master', the other asked, 'write for me

(1) Cit. 9b. The date of the signatures is immaterial. Since, therefore, it is possible that the donor or seller has delivered the one deed before he delivered the other, the judges must use their discretion in deciding which of the two claimants was the more likely to have been favoured by the deceased.
(2) L.it., 'all the world', Rab and Samuel.
(3) Since his ruling is the accepted law (cf. Cit. 86b).
(4) V. supra p 597' nn. 20-23.
(5) Who maintained that it is left to the discretion of the judges to decide which of the claimants is to receive the property in dispute.
(6) Lit., 'this according to whom?'
(7) Since Samuel has Tannaitic authority for his view he may well differ from R. Meir.
(8) The Baraitha, the first clause of which has been quoted.
(9) The seller or donor.
(10) To whom, however, he did not deliver it until a later date (v. infra n. 7).
(11) Not the delivery of the document.
(12) And since the first deed was signed before the other, the holder of that deed should have acquired possession despite the fact that it was delivered to him after the second deed had been delivered to the other man. The Baraitha must consequently represent the view of R. Eleazar who, as is evident from the first clause, also upholds the ruling that the property in dispute must he divided, How then, in opposition to two Tannaim, could Samuel (cf. supra p. 598' n. 7) maintain his view?
(13) The point in dispute between Rab and Samuel,
(14) Cf. supra n. 2.
(15) Which a man sent through an agent to a certain person who, however, died before the agent could deliver It to him (v. Cit, 14b).
(16) If on returning the agent found that the sender also had died,
(17) Between the heirs of the sender and the heirs of the payee.
(18) In Babylon.
(19) השליש lit., 'the third party', I.e., the agent through whom the money was sent. The parallel passage (Git. 14b) reads, השליח'the messenger. Colds, suggests that השלי which was an abbreviation for השליח was here wrongly read השליש.
(20) A ruling which is based on the same principle as that of Samuel's in respect of the judges. The ruling of the Sages is followed by Rab while that adopted by the Rabbis in Babylon is followed by Samuel,
(21) Cf. B.B. 151a where an incident involving the same characters is recorded. The circumstances, however, are not exactly identical and the arguments involve totally different principles. The two records (v. Tosaf. s,v, אמיה) obviously deal with two different incidents.
(22) And it was not known to which of the two the deed was delivered first.
(23) In the morning, while that of his brother was written in the evening.
(24) Of course not. Since in Babylon no hours were entered in deeds it is obvious that, in accordance with the usage of the place. if two deeds were written on the same day no preference is to be given to one because it was written a few hours earlier than the other, Rami, therefore, can claim no preference over Mar 'Ukba.
(25) Since both deeds have the same force the property should have been equally divided between Rami and Mar 'Ukba. Why was it all confirmed in the possession of the latter?
(26) I.e..following the ruling of R. Eleazar that it is the witnesses to the delivery that render a deed effective, he estimated that it was Mar 'Ukba, for whom his mother had been known to have had greater affection, to whom his deed had been delivered first.
(27) And since his decision was given first, R. Nahman should not have reversed it by relying merely on his own discretion,
(28) Appointed by the Exilarch and the academy (Rashi).
(29) He did not at first contend that he treated the case as one that was dependent on the discretion of the judges but submitted that Rami was entitled to the property because his deed was written first. As this submission was erroneous, since outside Jerusalem no hours were entered in deeds and the case was not tried in Jerusalem but in Babylon, his decision could well be reversed.
(30) Both relating to the same field that was sold under a guarantee for indemnification.

(31) Lit., 'written'.

(32) The first civil month in the Hebrew calendar corresponding to March-April.

(33) Lit., 'son of'.

(34) I.e., the last day of the month. Hence the priority of the claim of the holder of the presumably earlier deed.

Talmud - Mas. Kethuboth 95a

a tirpa[1] [authorizing distraint on property sold][2] after the first of Iyar?'[3] 'They',[4] he replied, 'might tell you: You [are holding a deed] that was written on the first of Nisan' .[5] What means of redress [can he[6] have recourse to]?[7] — They[8] write out authorizations[9] to one another.[10] MISHNAH. IF A MAN WHO WAS MARRIED TO TWO WIVES SOLD HIS FIELD,[11] AND THE FIRST WIFE[12] HAD GIVEN A WRITTEN DECLARATION TO THE BUYER, 'I HAVE NO CLAIM WHATSOEVER UPON YOU', THE SECOND WIFE[13] MAY[14] DISTRAIN ON THE BUYER, AND THE FIRST WIFE[12] ON THE SECOND, AND THE BUYER ON THE FIRST WIFE,[15] AND SO THEY GO ON IN TURN UNTIL THEY ARRANGE SOME COMPROMISE BETWEEN THEM, THE SAME LAW APPLIES ALSO TO[16] A CREDITOR[17] AND TO[16] A WOMAN CREDITOR,[17]

GEMARA. What matters it even if she HAD GIVEN him A WRITTEN DECLARATION? Has it not been a man says to another, 'I have no claim whatsoever on this field, I have no concern in it and l entirely dissociate myself from it', his statement is of no effect?[18] — Here we are dealing with a case where a kinyan was executed.[19] But even if kinyan had been executed, what is the use? Could she not say, 'I merely wished to oblige my husband'?[20] Have we not, in fact, learned: If a man bought [a married woman's property][21] from her husband and then bought it also from the wife, his purchase is legally invalid.[22] Does not this[11] [13] show clearly that the woman can plead, 'l merely wished to oblige my husband'?[20] R. Zera replied in the name of R. Hisda: This is no difficulty. One ruling[23] is that of R. Meir and the other[24] is that of R. Judah. For it was taught: [If a husband] drew up a deed[25] for the buyer[26] [of a field of his wife],[27] and she did not endorse it, [and then he drew up a deed] for another buyer [of a field of hers][27] and that she did endorse, she loses thereby [her claim to] her kethubah,'[28] so R. Meir.[29] R. Judah, however, said: She may plead, 'I[30] merely meant to oblige my husband;[31] what [claim] can you have against me?'[32]

As to Rabbi,[33] however, would he allow the anonymous Mishnah here to represent the view of R. Meir and the anonymous Mishnah there[34] to represent the view of R. Judah?[35] R. Papa replied: [Our Mishnah deals] with the case of a divorced woman,[36] and it represents the opinion of all. R. Ashi replied: Both Mishnahs[37] represent the views of R. Meir,[38] for R. Meir maintains his view[39] only there where two buyers are concerned,[40] since in such a case she may well be told, 'If you wished to oblige. you should have done so in the case of the first buyer',[41] but where Only one buyer [is concerned]. even R. Meir admits [that the sale is invalid].[42] while our Mishnah[43] [refers to a case] where [the husband had first] written out a deed for another buyer.[44]

Elsewhere we learned: Payment cannot be recovered from mortgaged property where free assets are available, even if they are only of the poorest quality.[45] The question was raised: If the free assets were blasted[46] may the mortgaged property be distrained on? — Come and hear: [If a husband] drew up a deed for the buyer [of a field of his wife] and she did not endorse it [and then he drew up a deed] for another buyer [of a field of hers] and that she did endorse, she loses thereby [her claim to] her kethubah,' so R. Meir.[47] Now, if it could be imagined that where the free assets were blasted the mortgaged property may be distrained on [the difficulty would arise:] Granted that she lost [her right to recover] her kethubah from the second buyer,[48] why[49] should she not be entitled[50] to recover it, at any rate, from the first buyer?[51] — Said R. Nahman b. Isaac:[52] The meaning of 'she loses' is that she loses [her right to recover her due] from the second buyer.[53] Said Raba: Two objections may be raised against this explanation:[54] In the first place [it may be pointed out] that [the expression of]

'she loses' implies total loss. And, furthermore, it was taught: If a man borrowed from one person and sold his property to two others, and the creditor gave a written declaration to the second buyer, 'I have no claim whatever upon you', [this creditor] has no claim whatever upon the first buyer, since the latter can tell him, 'I have left you[55] a source[56] from which to recover your debt'![57] — There,[58] [it may be argued[59] that] it was he[60] who had deliberately caused the loss to himself.[61]

Said R. Yemar to R. Ashi:

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(1) V. supra p. 584, n. 8.

(2) By the same vendor.

(3) The month following Nisan. Lit., 'from Iyar onwards'. However late in Nisan the deed may have been written it could not have been later than the first of the following month, and the vendee should, therefore (v. supra p. 600, n. 9)' be entitled to distrain at least on those vendees who purchased their property from the same vendor after he had purchased his.

(4) The vendees whose purchases were effected after the first of Iyar.

(5) And since his deed was consequently of an earlier date than the one that was written on the 'fifth of Nisan', the holder of the latter deed was not entitled to the property which R. Joseph confirmed in his possession. 'Before distraining on our purchases', the vendees (v. supra n. 8) might well plead, 'claim the land which you have actually bought'.

(6) The holder of the 'In Nisan' deed.

(7) In view of the alternative pleadings. Should he make a claim against the holder of the deed written On the fifth of Nisan the latter could retort that 'In Nisan' meant the twenty-ninth of the month; and should he attempt to distrain on those who bought after the first of Iyar they could retort that 'In Nisan' meant the first of that month.

(8) The holders of the 'In Nisan' and 'fifth of Nisan' deeds.

(9) To distrain on subsequent buyers.

(10) The holder of the 'In Nisan' deed is thus enabled to distrain on the subsequent vendees by virtue of his own deed or by virtue of that of the 'fifth of Nisan' held by the other. Since the vendor guaranteed to indemnify either of them he may distrain on behalf of the other if the later vendees plead that his deed was written as early as on the first of Nisan; or if, in reply to the claim of the holder of the 'fifth of Nisan' deed, they pleaded that the 'In Nisan' deed was written as late as on the twenty-ninth and that the holder of the earlier deed should consequently have distrained on him and not on them, who were later purchasers, he may distrain on them by virtue of his own deed.

(11) Which was pledged for the kethubahs of the women,

(12) I.e., the woman who was married first and whose kethubah consequently bore the earlier date.

(13) Whose claim upon the field was not in any way impaired.

(14) When her husband dies.

(15) Since she had renounced in his favour her claims upon that field.

(16) Lit., 'and so',

(17) This is explained infra.

(18) Supra 83a q.v. for notes, Git. 77a.

(19) Lit., 'they (sc. witnesses) acquired from her (on behalf of the vendee)'. Such a kinyan (as was laid down by Amemar, supra 83b) is taken to refer to the land itself and not merely to the woman's abstract renunciation.

(20) St. her kinyan was not meant to be taken seriously.

(21) Which (a) her husband inserted in her kethubah as a special security for the sum of that kethubah, apart from the general security on all his estate, or (b) her husband assigned to her after their wedding as special security for her kethubah, or (c) she had brought to her husband as marriage dowry and for the money value of which he had made himself responsible to her (v. B,B. 49b ff).

(22) Cit. 55b, B.B. loc. cit. (13) The ruling that the sale is invalid.

(23) That of our Mishnah,

(24) The ruling that the sale is invalid.

(25) Lit., 'he wrote .

(26) Lit., 'for the first'.

(27) V, supra p. 602, n. 11.

(28) If her husband has no free property left. She cannot recover her kethubah even from the first buyer since he might

plead that when he had bought his field her husband was still left in the possession of that field which he subsequently sold to the second purchaser.

(29) Because by refusing to endorse the first deed she made it clear that she had no desire to please her husband. Her action in endorsing the second deed may, therefore, be regarded as the true expression of her consent to the sale and her earnest renunciation of her claim upon the property.

(30) In endorsing the second deed.

(31) Cf. supra p. 602, n. 10,

(32) Surely none. She is, therefore, entitled to recover her kethubah from the second buyer.

(33) R. Judah the Patriarch, the Redactor of the Mishnah.

(34) Git, 55b just cited.

(35) Since the halachah agrees as a rule with the anonymous Mishnah a contradiction would arise.

(36) Who renounced her rights to the purchased field after she had been divorced, so that the plea of obliging her husband is clearly inadmissible.

(37) Lit., 'all of it', our Mishnah as well as the one in Git. 55b.

(38) Both dealing with a woman who was still living with her husband,

(39) That the woman loses her kethubah.

(40) As was specifically mentioned in that Baraitha. Cf. supra note 7'

(41) As she had not done it she cannot now plead that her object was to oblige her husband.

(42) Since she may plead that she merely wished to oblige her husband.

(43) Which regards the woman's renunciation as valid.

(44) Whose deed she refused to endorse. Cf. supra p. 603, n. 7.

(45) Git. 48b.

(46) After the sale of the others.

(47) Cf. supra p, 603 notes,

(48) On account of her endorsement of his purchase.

(49) Since her first source of payment was no longer available,

(50) As in the case of free assets that were blasted.

(51) Whose purchase corresponds to the 'mortgaged property' referred to in the enquiry. Since, however, she is not allowed to distrain on the first it follows, does it not, that even if the free assets were blasted, payment cannot be recovered from mortgaged property.

(52) The Baraitha quoted provides no solution to the question.

(53) Her right to recover her kethubah from the first buyer, however, remains unimpaired.

(54) Which R. Nahman b. Isaac advanced.

(55) 'When I purchased the first field'.

(56) The field which the second buyer had subsequently purchased.

(57) Similarly in the ease of the woman, her kethubah cannot be recovered from the first buyer who might well plead that he too had left her a source from which to collect her kethubah, R. Nahman h. Isaac's explanation thus stands refuted by two objections.

(58) In the Baraitha cited by Raba,

(59) In justification of R. Nahman b. Isaac's explanation. So according to R. Tam and R. Han (v. Tosaf, s.v. הֹתם a. l.), contrary to Rashi who regards what follows as the conclusion of Raba's arguments, v. infra n. 5.

(60) The creditor,

(61) By signing the declaration in favour of the second buyer though he was well aware that by this act he loses the only source available for the recovery of his debt. In the ease of a woman, however, whose kethubah does not fall due for payment until after the death of her husband, it may well be maintained that the renunciation of her rights in favour of the second buyer, during the lifetime of her husband, was not regarded by her as of any practical consequence, and the loss ultimately ensuing cannot, therefore, be said to have been deliberately caused by herself. As the two eases are not analogous R. Nahman b. Isaac's explanation stands unrefuted, The first objection raised by Raba remains unanswered as happens sometimes in such Talmudic discussions where only the second of two objections is dealt with. Moreover the first objection is rather feeble and may well be met by the reply that the expression 'she loses' need not necessarily imply total loss (so Tosaf. loc, cit.), According to Rashi 'There . ' himself', is taken by Raba as an argument against the solution of the problem that was attempted by inference from the first Baraitha, and might also be inferred from the last

one quoted (cf. Golds.). ‘There’, i,e.,in the eases dealt with in the last Baraithas, the argument runs, it was he’, i e.,the claimant (the woman in the first case and the creditor in the second) ‘who had caused the loss to himself’; and no inference can, therefore, be drawn from either of these cases in respect of the one referred to in the question where the claimant is in no way responsible for the loss of the free assets.

Talmud - Mas. Kethuboth 95b

This,[1] Surely, is the regular practice[2] [of the courts of law]? For did not a man once pledge a vineyard to his friend for ten years[3] but it aged after five years,[4] and [when the creditor] came to the Rabbis[5] they wrote out a tirpa[6] for him?[7] — There[8] also it was they[9] who caused the loss to themselves. For, having been aware that it may happen that a Vineyard should age,[10] they should not have bought [any of the debtor's pledged land].[11] The law, however, is that where free assets are blasted, mortgaged property may be distrained on. Abaye ruled: [If a man said to a woman][12] ‘My estate shall be yours and after you [it shall be given] to So-and-so’, and then the woman[13] married, her husband has the Status of a vendee and her successor[14] has no legal claim[15] in face[16] of her husband. In agreement with whose view [was Abaye's ruling laid down]? In agreement with the following Tanna.[17] For it has been taught: [If one man said to another,] ‘My estate shall be yours and after you [it shall be given] to So-and-so’ and the first recipient went down [into the estate] and sold it, the second may reclaim the estate[18] from those who bought it; so Rabbi. R. Simeon b. Gamaliel ruled: The second may receive only that which the first has left.[19] But could Abaye have laid down such a ruling? Did not Abaye in fact, Say, ‘Who is a cunning rogue? He who counsels[20] to sell[21] an estate[22] in accordance with the ruling of R. Simeon b. Gamaliel?[23] — Did he Say, ‘She may marry’?[24] All he said was, ‘The woman married’.[25]

Abaye further stated: [If a man said to a woman.][26] ‘My estate shall be yours and after you [it shall be given] to So-and-so’ and the woman sold [the estate] and died, her husband[27] may seize It from the buyer, the woman's successor[28] [may seize it] from the husband,[29] and the buyer from the successor,[30] and all the estate is confirmed in the possession of the buyer.[31] But why should this case be different from the following where we learned: AND SO THEY GO ON IN TURN UNTIL THEY ARRANGE SOME COMPROMISE BETWEEN THEM?-There they are all suffering some loss[32] but here it is only the buyer who suffers the loss.[33]

Rafram went to R. Ashi and recited this argument to him: Could Abaye have laid down such a ruling?[34] Did he not, in fact, lay down: [If a man said to a woman.] ‘My estate shall be yours and after you [it shall be given] to So-and-so’,and then the woman married, her husband has the status of a vendee, and her successor has no legal claim in face of her husband?[35] — The other replied: There [it is a woman] to whom he[36] spoke while she was feme sole,[37] but here [we are dealing with one] to whom he[36] spoke when she was married.[38] For it is this that he meant to tell[39] her? ‘Your successor only shall acquire Possession; your husband shall not’.[40]

THE SAME LAW APPLIES ALSO TO A CREDITOR. A Tanna taught:[41] The same law applies to[42] a creditor and two buyers[43] and also to a woman, who was a creditor,[44] and two buyers.[45]

C H A P T E R X I

MISHNAH. A WIDOW IS TO BE MAINTAINED OUT OF THE ESTATE OF [HER DECEASED HUSBAND'S] ORPHANS [AND] HER HANDIWORK BELONGS TO THEM. IT IS NOT THEIR DUTY, HOWEVER, TO BURY HER; IT IS THE DUTY OF HER HEIRS, EVEN THOSE WHO INHERIT HER KETHUBAH, TO BURY HER.

GEMARA. The question was asked: Have we learnt,[46] ‘is to be maintained’[47] or ‘one who is maintained’?[48] Have we learned, ‘is to be maintained’, in agreement with the men of Galilee,[49] so

that there is no way[50] [by which the orphans] can avoid[51] maintaining her; or have we rather learned 'one who is maintained',[48] in agreement with the men of Judaea,[52] so that [the orphans,] if they wish it, need not[53] maintain her?

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(1) To allow creditors to distrain on mortgaged property wherever free assets are blasted.

(2) Lit., 'and, surely, actions every day'.

(3) The terms entered in the mortgage deed being that the creditor was to enjoy the usufruct of the vineyard during the ten years, in payment of his loan, while the vineyard itself was to return to the debtor at the end of that period without any further payment or obligation on his part.

(4) I.e., ceased yielding produce before the creditor had recouped himself in full.

(5) To claim the balance of the loan,

(6) V. supra p. 584, n. 8.

(7) And thereby enabled him to distrain on all property which the debtor had sold after the date On which the mortgage deed was written. This being the regular practice in the administration of the law, why was the question, supra 95a, at all raised?

(8) The ease just cited.

(9) Who purchased the lands from the debtor though they were well aware that these were already pledged to the mortgagee of the vineyard.

(10) And that this might happen before the expiry of the ten years in consequence of which the creditor would naturally distrain on the debtor's remaining property.

(11) Having bought it they have only themselves to blame for the consequences. The regular practice of the courts in such actions has, therefore, no bearing on the ease referred to in the question.

(12) Who (as will be explained Infra) was feme sole.

(13) Lit., 'and stood up'.

(14) Lit., 'to after you'.

(15) Lit., 'nothing'.

(16) Lit., 'place'.

(17) R. Simeon b. Gamaliel.

(18) After the death of the first donee who, by the terms of the gift, was entitled to the usufruct during his lifetime only but had no right to sell the estate itself

(19) B.B. 137a; and since the first has sold the estate the second his no rightful claim upon it.

(20) So Rashb. (B. B. 137a). Aliter. Who lakes counsel with himself (R. Gersh.).

(21) And much more so one who sells (so according to Rashb. v. supra n. 15).

(22) Which was given to a person with the stipulation that after his death it shall pass over to another person.

(23) Sotah 21b, B. B. loc. cit. Though such a sale is morally wrong, since the donor meant the second donee to have the estate after the death of the first, it is nevertheless quite legal on the basis of the ruling of R. Simeon b. Gamaliel. Now since Abaye condemns the person who acts on the ruling of R. Simeon b. Gamaliel, would he himself base a ruling of his on this view' of R. Simeon b. Gamaliel?

(24) Which would have implied approval.

(25) A fait accompli. Her action, however, though legal, is nevertheless condemned by Abaye as morally wrong.

(26) Who (v. infra) was married.

(27) Who has the status of a first buyer.

(28) Cf. supra p. 606, n. 9.

(29) Because, unlike the previous ease where the woman of whom Abaye spoke was unmarried, the woman in this case (v. supra n. 4) was married at the time the estate was presented to her and her successor. Her husband who was not in any way mentioned by the donor is, therefore, deemed to have been Implicitly excluded by the donor from all rights to, or claim upon. the estate.

(30) In agreement with the ruling of R. Simeon b. Gamaliel that the first donee has the right to sell the estate.

(31) It cannot again be taken away from him by the husband, since his present tenure of the estate is no longer based upon his rights as a buyer from the married woman but upon the rights derived from her successor. In the former ease the husband as 'first buyer' (v. supra note 5) would have had right of seizure. In the latter ease he has none.

(32) The buyer loses some of his purchase money and the women lose portions of their kethubah.

(33) The husband and the donees are only claiming a gift.
(34) That all the estate is confirmed in the possession of the buyer.
(35) Cf. supra p. 606, n. 7 and 9.
(36) The donor.
(37) Cf. supra p. 606, n. 7.
(38) Cf. supra p. 607, n. 4.
(39) Lit., 'what did he (mean) to say?'
(40) Cf. supra 607. n. 7.
(41) In explanation of our Mishnah.
(42) Lit., 'and so'.
(43) The total value of whose purchases from the debtor represents the amount of the debt. The creditor, if he renounced his claim to the extent of that portion of the debt that was secured on the second buyer's purchase, may distrain on the purchases of the first buyer who in turn distrains on the second buyer (whose purchase was that of property that was already pledged to the first in security of his purchase) who in turn distrains on the creditor (by virtue of his renunciation); and so they go on in turn until a compromise is arranged.
(44) Sc. who claims the amount of her kethubah.
(45) Cf. supra n' 9 mutatis mutandis.
(46) In our Mishnah.
(47) ניזונת sc. the reading given supra.
(48) הניזונת in which case the Mishnah means that only the handiwork of a widow, who is maintained by the orphans, belongs to them.
(49) Who entered in the kethubah the clause. 'You shall dwell in my house and be maintained therein out of my estate throughout the duration of your widowhood' (v. Mishnah supra 52b).
(50) 'To go' (cf. fast.).
(51) Aliter. There is no possibility of avoiding (cf. Levy).
(52) Who added to the clause mentioned (supra n. 4), 'Until the heirs may consent to pay you your kethubah' (Mishnah. supra 52b).
(53) If they had paid her the kethubah.

Talmud - Mas. Kethuboth 96a

— Come and hear what[1] R. Zera stated in the name of Samuel:[2] 'The find of a widow belongs to herself'. Now if you grant that what we learnt was, one who is maintained' [this ruling is] quite justified,[3] but if you insist that what we learnt was 'is to be maintained'[4] [why,[5] it might be objected, should they not] have the same rights as a husband, and just as in the latter case[6] a wife's find belongs to her husband, so it, the former case[7] also the find of the woman[8] should belong to the heirs?[9] — I may still insist that what we have learnt[10] was 'is to be maintained'; for the reason why[11] the Rabbis have ordained that the find of a wife belonged to her husband is in order that he shall bear no grudge[12] against her, but as regards these[13] let them bear the grudge.[14]

R.Jose b. Hanina ruled: All manner of work which a wife must render to her husband[15] a widow must render to the orphans, with the exception of serving one's drinks,[16] making ready one's bed and washing one's face, hands or feet.[17] R.Joshua b. Levi ruled: All manner of service that a slave must render to his master a student must render to his teacher, except that of taking off his[18] shoe.[19] Raba explained: This ruling[20] applies only to a place where he[21] is not known, but where he is known there can be no objection.[22] R. Ashi said: Even where he[21] is not known the ruling[20] applies only where he does not put on tefillin[23] but where he puts on tefillin, he may well perform such a service.[22] R.Hiyya b. Abba stated in the name of R. Johanan. A man who deprives his student of [the privilege of] attending on him acts as if he had deprived him of [an act of] kindness, for it is said in Scripture, To him that deprives[24] his friend[25] of kindness.[26] R. Nahman b. Isaac said: He also deprives[27] him of the fear of heaven, for it is said in Scripture, And he forsaketh the fear of the Almighty.[28]

R.Eleazar ruled: If a widow[29] seized movables [to provide] for her maintenance, her act is[30] valid.[31] So it was also taught: If a widow seized movables [to provide] for her maintenance, her act is[30] valid.[31] And so R. Dimi, when he came,[32] related: It once happened that the daughter-in-law of R. Shabbethai seized[33] a saddle bag[34] that was full of money,[35] and the Sages had no power to take it out of her possession.

Rabina ruled: This[36] applies only to maintenance but [movables seized] in payment of a kethubah may be taken away from her. Mar son of R. Ashi demurred: Wherein [is the case of seizure] for a kethubah different [from the other]? Is it because [the former may be distrained for] on landed property and not on movables, may not maintenance also, [it may be objected, be distrained] on landed property and not on movables? The fact, however, is that as in respect of maintenance seizure[30] is valid,[31] so it is also valid in respect of a kethubah.

Said R. Isaac b. Naphtali to Rabina: Thus, in agreement with your view, it has also been stated in the name of Raba. R.Johanan stated in the name of R. Jose b. Zimra: A widow who allowed two or three years to pass[37] before[38] she claimed maintenance loses her maintenance. Now [that it has been said that] she loses [her maintenance after] two years, was it necessary [to mention also] three? — This is no difficulty; the lesser number[39] refers to a poor woman while the bigger one[39] refers to a rich woman;[40] or else: The former[39] refers to a bold woman and the latter[39] to a modest woman.[41] Raba ruled: This[42] applies only to a retrospective claim,[43] but in respect of the future she is entitled [to maintenance].

R.Johanan enquired: If the orphans plead, 'We have already paid[44] [the cost of maintenance[45] in advance]', and she retorts, 'I did not receive it', who must produce the proof?

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(1) So MS.M. reading דאמר Cur. edd. omit the daleth.

(2) Alfasi and Asheri omitting. 'R. Zera stated' read 'Samuel stated'.

(3) Our Mishnah representing the view of the men of Judaea, Samuel's ruling might be applied to a widow who (v. supra note 7) was not maintained by the orphans.

(4) In agreement with the men of Galilee who allow' the orphans no alternative.

(5) In view of the fact that they must always maintain the widow as a husband must always maintain his wife.

(6) Lit., 'husband'.

(7) Lit., 'here', Sc. the case referred to by Samuel.

(8) I.e., the widow.

(9) As Samuel, however, ruled that it belongs to herself it must be concluded that the reading in our Mishnah is, 'one who is maintained'.

(10) In our Mishnah.

(11) Lit., 'what',

(12) איבה 'enmity'.

(13) The orphans who are legally bound to maintain her.

(14) It is only the handiwork of the widow that belongs to the orphans, in return for the maintenance she receives from them, as the handiwork of a wife, for a similar reason, belongs 10 her husband.

(15) V. supra 59b.

(16) Lit., 'mixing (the drink in his) cup'. Rt. מזג to mix with water (to weaken its strength) or spices.

(17) These are intimate services to which a husband only is entitled.

(18) Lit., 'loosening', 'undoing'.

(19) Only a Canaanite slave performs this menial service, and a student performing it might be mistaken for such a slave,

(20) That a student should not assist his teacher in taking off his shoes.

(21) The student.

(22) Lit 'we have nothing against it'.

(23) V. GIos. As slaves also do not wear tefillin (v Git. 40a), his status might well be mistaken.

(24) לְמַם, rt. מסס 'to melt'.
(25) Sc. the student one teaches.
(26) Job VI, 14. The previous verse speaks of help which is homiletically applied to that of the student to his teacher. R.V. renders v. 14. To him that is ready to faint kindness should be shewed from his friend. 'Should be shewed' is changed by A. J. V. to 'is due'.
(27) Lit., 'breaks off'.
(28) Job VI, 14; E.V., Even10 him that forsaketh etc. [Personal attendance on scholars constitutes in itself a good education in righteous conduct and fear of the Almighty, v. Bet. 7b.
(29) Whose maintenance may be distrained for on landed property only (v. supra 69b).
(30) Ex post facto.
(31) Lit., what she seized she seized'.
(32) From Palestine to Babylon.
(33) From the estate of her deceased husband.
(34) דסקיא Gr. , a bag made up of two pouches.
(35) For her maintenance.
(36) That the seizure of movables by a widow is ex post facto valid.
(37) Lit.. 'who delayed'.
(38) Lit., 'and not'.
(39) Lit., 'here'.
(40) Who is able to live for a considerable time on her own means. Such a woman cannot be assumed to have surrendered her right to maintenance before a period of three years had elapsed.
(41) Who is too shy to litigate or to go to court. Cf. supra n. 2 second clause.
(42) The loss of maintenance.
(43) For the time that has passed.
(44) To the widow.
(45) For the ensuing year.

Talmud - Mas. Kethuboth 96b

Is the estate [of the deceased man] in the presumptive possession of the orphans[1] and consequently it is the widow who must produce the proof, or is the estate rather in the presumptive possession of the widow[2] and the proof must be produced by the orphans? Come and hear what Levi taught: [In a dispute on the maintenance of] a widow, the orphans must produce the proof[3] so long as she is unmarried,[4] but if she was married[5] the proof must be produced by her.[6]

R.Shimi b. Ashi said: [This point[7] is a matter in dispute between] the following[8] Tannaim: She[9] may sell [portions of her deceased husband's estate] but should specify in writing,[10] 'These I have sold for maintenance,' and 'These I have sold for the kethubah' [as the case may be]; so R. Judah. R. Jose, however, ruled: She[11] may sell [such portions] and need not specify the purpose[12] in writing, for in this manner she gains an advantage.[13] They[14] thus apparently[15] differ on the following point: R. Judah, who ruled that it is necessary to specify[16] the purpose,[17] holds that the [deceased man's] estate is in the presumptive possession of the orphans and that it is the widow who must produce the proof,[18] whilst R. Jose, who ruled that it was not necessary to specify the purpose, upholds the view that the estate is in the presumptive possession of the widow and that it is the orphans who must produce the proof.[19] Whence [is this[20] made so obvious]? It is quite possible that all[14] agree that the [deceased man's] estate is in the presumptive possession of his widow and that the orphans must produce the proof,[21] but R. Judah[22] is merely tendering good advice [by following which the widow] would prevent people from calling[23] her a glutton.[24] For were you not to admit this,[25] could not the question[26] raised by R. Johanan[27] be answered from the Mishnah:[28] She may sell [her deceased husband's estate] for her maintenance out of court but should enter [in the deed of sale,] 'I have sold these for maintenance'?[29] Consequently[30] It must be concluded[31] that no deduction may be made from the Mishnah[28] because therein only good advice was tendered;[32] and so also here[33] [it may

similarly be submitted that R. Judah] was only tendering good advice.[32] Or else: All[34] may agree that the estate [of the deceased] is in the presumptive possession of the orphans, but R. Jose's reason[35] is exactly the same as [that given by] Abaye the Elder who stated: To what may the ruling[36] of R. Jose be compared? To [the instructions of] a dying man who said, 'Give two hundred zuz[37] to So-and-so, my creditor,[38] who may take them, if he wishes, in settlement of his debt or, if he prefers, he may take then, as a gift',

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(1) Who are his legal heirs.

(2) To whom it is pledged in accordance with an enactment of the Rabbis.

(3) That they have paid her in advance.

(4) Since the estate is pledged to her (v. supra n. 9).

(5) And claims the cost of her maintenance for the time past.

(6) Having married she loses the security of her Former husband's estate.

(7) The question of the presumptive ownership of the deceased man's estate.

(8) Lit., 'as', 'like'.

(9) A widow.

(10) In the deeds of sale.

(11) A widow.

(12) Whether it was maintenance or kethubah.

(13) Lit., 'her power is beautiful', as will be explained anon.

(14) R. Judah and R. Jose.

(15) Lit., 'what not'?

(16) In the deeds of sale.

(17) Whether it was maintenance or kethubah.

(18) That she has not been paid the cost of maintenance. Hence it is to her advantage that the purpose of the sale should be specified. Should she fail to do so, the orphans, when she comes to claim her kethubah from them, might refuse payment on the ground that her sale had the purpose of recouping her for her kethubah. Her alternative plea, 'If so, pay me for my maintenance' could be met by the counter plea that they had already Paid for it in movables, a plea which, when coming from orphans, the court must accept.

(19) A specification of the purpose, therefore, would bring no advantage to her. Its omission, on the other hand, might well prove advantageous in the case where the deceased man's estate was completely consumed by the orphans and the widow had recourse to distraining on landed property which he sold during his lifetime. Submitting that her own sales had the purpose of providing for her maintenance she may legally distrain on such property which is pledged for her kethubah. Had she, however, specified that her sales had the purpose of recovering her kethubah she could no longer distrain on her husband's sold property which (v. Git. 48b) is not pledged for her maintenance.

(20) The conclusion of R. Shimi.

(21) That the widow had already received the allowance for her maintenance.

(22) In ruling that the widow should specify the purpose for which her sales are made.

(23) Lit., 'that they shall not call'.

(24) Were she to omit from the deed of sale the mention of her kethubah people might assume that all the proceeds of her sales were spent on her maintenance alone. As a reputed glutton her chances of a second marriage would be diminished (v. Rashi).

(25) Lit., 'say so', that R. Judah in his ruling is merely tendering advice.

(26) Lit., 'that'.

(27) 'Who must produce the proof' (supra 96a ad fin.).

(28) Infra 97b.

(29) Of course it could. The reason for the requirement of a specification of the purpose of the sale that underlies R. Judah's ruling in the Baraitha should obviously hold good for the similar ruling in the Mishnah. If the reason in the former is that the estate remains in the presumptive possession of the orphans, the same reason would apply to the latter. And since a Mishnah, unlike a Baraitha, must be known to all students, R. Johanan's question would easily have been answered.

(30) Since the question had to be solved from Levi's Baraitha.

(31) Lit., ‘but’.
(32) But the presumptive possession of the estate is that of the widow.
(33) In the Baraitha.
(34) R. Judah and R. Jose.
(35) For the ruling that the purpose of the sale need not be specified in the deed.
(36) V. supra n. 8. משל lit., ‘simile’.
(37) V. Glos.
(38) Cf. B.B. 138b.

Talmud - Mas. Kethuboth 97a

who, if he takes them as a gift, has not the same advantage [as if he had taken them for his debt].[1]

In what manner does [a widow] sell [her deceased husband's property] for her maintenance?[2] — R. Daniel son of R. Kattina replied in the name of R. Huna: She sells [portions of it] once in twelve months[3] and the buyer supplies her maintenance [in instalments][4] once every thirty days. Rab Judah, however, stated: She sells once in six months and the buyer provides her maintenance [in instalments] once every thirty days.

It was taught in agreement with R. Huna: [A widow] sells[5] once in twelve months and the buyer supplies her maintenance [in instalments] once every thirty days. It was also taught in agreement with Rab Judah: [A widow] sells once in six months and the buyer provides her maintenance [in instalments] once every thirty days.

Amemar said: The law is that [a widow] sells [sufficient land to suffice her] for six months and the buyer provides her maintenance [in instalments] once every thirty days. Said R. Ashi to Amemar: What [about the ruling] of R. Huna? — ‘I’, the other replied, ‘have not heard of it’, by which he meant,[6] ‘I do not approve of it’.

R. Shesheth was asked: May [a widow] who sold [land] for her maintenance subsequently distrain on it[7] for her kethubah? This question was raised on [the basis of a ruling of] R. Joseph who stated, ‘If a widow has sold [any of her deceased husband's estate][8] the responsibility for the indemnity falls upon the orphans,[9] and if the court sold [any such property] the responsibility for the indemnity again falls upon the orphans’[10] What [then, it was asked, is the ruling]? May she, since the responsibility for the indemnity falls upon the orphans, distrain [on the land],[11] or is it possible that [the buyers] may tell her,[12] ‘Granted that you have not accepted general[13] responsibility for indemnity, did you not indeed accept responsibility [against distraint] by yourself either?’[14] — You, he replied, have learned it: ‘[A widow][15] may continue to sell[16] until [only the estate of] the value of her kethubah [remains], and this is a support to her since she might thus collect her kethubah from the residue’. Thus[17] it may be inferred that only if she left [estate corresponding to the value of her kethubah] may[18] [she collect her kethubah]. but if she did not leave [so much of the estate,[19] she may] not.[20] But is it not possible that he[21] was merely tendering good advice, in order that people might not call her a swindler?[22] — If so,[23] he[21] should have stated, ‘She collects her kethubah from the remainder’, why [then did he also add,] ‘A support to her’? Consequently it must be inferred that only if she left [estate corresponding to the value of her kethubah] may[18] [the widow collect her kethubah], but if she did not leave [so much[19] she may] not.[20]

The question was raised: If a man sold [a plot of land][24] but [on concluding the sale] he was no longer in need of money, may his sale[25] be withdrawn[26] or not?[27] Come and hear: There was a certain man who sold a plot of land to R. Papa because he was in need of money to buy some oxen, and, as eventually he did not need it, R. Papa actually returned the land to him! — [This is no proof since] R. Papa may have acted beyond the strict requirements of the law.[28]

Come and hear: There was once a dearth at Nehardea[29] when all the people sold their mansions,[30] but when eventually wheat arrived[31] R. Nahman told them: The law is that the mansions must be returned to their original owners! — There also the sales were made in error since it eventually became known that the ship[32] was[33] waiting in the bays.[34] If that is so,[35] how [explain] what Rami b. Samuel said to R. Nahman, 'If [you rule] thus you will cause them[36] trouble in the future',[37] [whereupon] he replied, 'Is dearth a daily occurrence?' and to which the former retorted, 'Yes, a dearth at Nehardea is indeed a common occurrence'?[38] And the law is that if a man sold [a plot of land][39] and [on concluding the sale] was no longer in need of money the sale may be withdrawn.

MISHNAH. A WIDOW, WHETHER [HER HUSBAND DIED] AFTER [HER] BETROTHAL[40] OR AFTER [HER] MARRIAGE[41] MAY SELL [OF HER DECEASED HUSBAND'S ESTATE] WITHOUT [THE SANCTION OF] BETH DIN. R. SIMEON RULED: [IF HER HUSBAND DIED] AFTER MARRIAGE[41] SHE MAY SELL[42] [OF HIS ESTATE] WITHOUT [THE SANCTION OF] BETH DIN,[43] [BUT IF ONLY] AFTER [HER] BETROTHAL, SHE MAY NOT SELL [ANY OF THE ESTATE] EXCEPT WITH [THE SANCTION OF] BETH DIN, SINCE SHE IS NOT ENTITLED TO MAINTENANCE, AND ONE WHO IS NOT ENTITLED TO MAINTENANCE MAY NOT SELL [SUCH PROPERTY] EXCEPT WITH [THE SANCTION OF] BETH DIN.

GEMARA. One can readily see [that the privilegє[44] of a woman who was widowed] AFTER MARRIAGE is due to [her immediate need for] maintenance;[45]

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(1) A debt may be distrained for on sold property, but a gift may not. Similarly with the widow, by omitting, in agreement with the ruling of R. Jose, the specification of the purpose of her sales, she retains the right to distrain on her deceased husband's sold property by advancing the plea that her own sales had been made for the purpose of her maintenance (which cannot, of course, be distrained for on such property) and that she was now seeking to recover her kethubah to which such property is pledged. To protect herself against the plea of the orphans that her kethubah also was paid out of her sales, she might arrange for witnesses to he present when the sales for her maintenance take place and when she makes a verbal declaration to that effect.

(2) למזונות, so MS.M. Cur. edd. omit the word.

(3) Sufficient to Provide for her maintenance during all that period.

(4) He must not pay the full price in one instalment in order that he may be enabled, should the widow marry before she receives all the instalments, to hand over the balance to the orphans.

(5) Portions of her deceased husband's estate.

(6) Lit.,'as if to say'.

(7) On the very land she has sold.

(8) To reimburse herself for her maintenance or kethubah, but guaranteeing indemnity to the buyer.

(9) Since it is they who are responsible for the widow's kethubah and maintenance.

(10) Infra 100a.

(11) Though she herself had sold it; and refer the buyers to the orphans.

(12) When she proceeds to distrain on the land she sold them.

(13) Lit., 'of the world', sc. if other claimants distrained on the land.

(14) And, consequently. she is not allowed to distrain on such property.

(15) To provide for her maintenance.

(16) Portions of her deceased husband's estate.

(17) Since according to this ruling the widow must have recourse to the residue.

(18) Lit., 'yes'.

(19) But sold all of it.

(20) Collect her kethubah by distraining on the lands she sold.

(21) The author of the Baraitha, in ruling that a portion of the estate corresponding to the value of the kethubah must remain unsold.

(22) L1t., 'retractor'. Legally. however, she may well distrain on the property of such buyers.

(23) If the ruling was in the nature of advice.
(24) For the sole reason that he needed money for some specific purpose.
(25) Since he no longer needed the money.
(26) On the ground of being a sale made in error.
(27) Owing to the fact that at the time of the sale the seller was still in need of money.
(28) לפנים משורת הדין lit., 'within the line of the law', i.e., he surrendered his legal right for the sake of benefiting a fellow man; v. B.K. Sonc. ed. p. 584, n. 2.
(29) V. supra p. 222, n. 8.
(30) To use the proceeds for the purchase of wheat.
(31) And prices fell so that the sellers of the mansions were no longer in need of the money.
(32) That carried the grain.
(33) At the time the sales were effected.
(34) Sheltering until the subsidence of the high water. Had these sellers been aware of the fact that the ship was so near they would never have thought of selling their mansions. Such sales may, therefore, be regarded as sales in error, which may be withdrawn. The question under discussion, however, refers to a seller who was actually in need of money when his sale was effected (v. p. 616, n. 16) and whose release came only after the sale.
(35) That the reason for R. Nahman's ruling was that the ship was already in the bays at the time the sales were arranged. So according to Rashb. (v. Tosaf. s. v. אי, a.l.) contra Rashi who takes this argument to he in support of the reason given for R. Nahman's ruling.
(36) The sellers.
(37) Because they will not be able to find buyers.
(38) Granted the frequency of dearth at Nehardea, the detention of the provision ships in the bays is obviously of no common occurrence. Consequently it must be concluded that R. Nahman's reason for the cancellation of the sales was not because 'the ship was in the bays' but because the sellers, though in need of money when the sales were arranged, had no need of the money subsequently, such cases being of frequent occurrence.
(39) V. supra p. 616, n. 13.
(40) When her claim is restricted to that of her kethubah only (v. our Mishnah infra).
(41) When she claims also maintenance.
(42) For her maintenance.
(43) Since she cannot be expected to starve until Beth din find time to deal with her case.
(44) To SELL... WITHOUT THE CONSENT OF BETH DIN.
(45) Cf. supra n. 4.

Talmud - Mas. Kethuboth 97b

what, however, is the reason[1] [for conferring this privilege[2] upon one widowed] after betrothal?[3] — 'Ulla replied: In order to [enhance the] attractions[4] [of matrimony].[5] R. Johanan replied: Because no man wants his wife to suffer the indignity [of appearing] in court. What is the practical difference between them?[6] — The practical difference between them is the case of a divorced woman. For according to him who replied, 'In order to [enhance the] attractiveness [of matrimony]' a divorced woman also may[7] claim [the privilege[8] of the provision for matrimonial] attractiveness; but according to him who replied, 'Because no man Wants his wife to suffer the indignity [of appearing] in court' a divorced woman [is not entitled to the privilege since] the man does not care [for her dignity].

We learned: And a divorced woman may not sell [of her former husband's estate][9] except with the sanction of Beth din.[10] Now, according to him who replied, 'Because no man wants his wife to suffer the indignity [of appearing] in court' the ruling is well justified since for a divorced wife one does not care; but according to him who replied, 'In order to [enhance the] attractions [of matrimony'. why should not] a divorced woman[11] also be entitled to claim [the privilege of the provision for matrimonial] attractiveness? — This represents the view of R. Simeon.[12] If [this represents the view of] R. Simeon [the objection arises: Was not this principle] already laid down in the earlier clause,

AFTER HER BETROTHAL SHE MAY NOT SELL etc.?[13] — It might have been presumed [that his ruling applied] Only to a woman widowed after [her] betrothal, since in her case there was not much affection,[14] but that a divorced woman, in whose case there was much affection,[15] may[16] demand [the privilege of the provision for matrimonial] attraction.[17] But have we not learned this[18] also: WHO IS NOT ENTITLED TO MAINTENANCE which includes,[19] does it not, a divorced woman?[20] — No, [it includes one who is both] divorced[21] and' not divorced,[22] as [the one spoken of by] R. Zera who stated: Wherever the Sages described a woman as both divorced and not divorced[22] her husband is responsible for her maintenance.[23]

Come and hear: As she[24] may sell [of her deceased husband's estate] without [the sanction of] Beth din so may her heirs, those who inherit her kethubah, sell [such property] without [the sanction of] Beth din. Now, according to him who replied, 'Because no man wants his wife to suffer the indignity [of appearing] in court' one can well see the reason for this ruling;[25] for as it is disagreeable to him[26] that she should suffer indignity so it is also disagreeable to him that her heirs should suffer indignity. According to him, however, who replied, 'In order to [enhance the] attractiveness [of matrimony]', what [consideration for] attractiveness [it may be objected] could there be in respect of her heirs?[27] — 'Ulla interpreted this [to be a case where] her daughter, for instance, or her sister, Was her heir.[28]

MISHNAH. [A WIDOW WHO] SOLD HER KETHUBAH OR PART OF IT, OR PLEDGED IT OR PART OF IT, OR PRESENTED IT OR PART OF IT, TO A STRANGER, MAY NOT SELL THE RESIDUE [OF HER DECEASED HUSBAND'S ESTATE][29] EXCEPT WITH (THE SANCTION OF] BETH DIN.[30] THE SAGES, HOWEVER, RULED: SHE MAY SELL [THE LAND PLEDGED FOR HER KETHUBAH] EVEN IN FOUR OR FIVE INSTALMENTS[31] AND [IN THE MEANTIME][32] SHE MAY SELL [OF HER HUSBAND'S ESTATE TO PROVIDE] FOR HER MAINTENANCE WITHOUT [THE SANCTION OF] BETH DIN, ENTERING, [HOWEVER, IN THE DEED OF SALE,] 'I SOLD [THE LAND TO PROVIDE] FOR MY MAINTENANCE'.[33] A DIVORCED WOMAN, HOWEVER, MUST NOT SELL [SUCH PROPERTY] EXCEPT WITH [THE SANCTION OF] BETH DIN.

GEMARA. Who [is the author of the first ruling in] our Mishnah?[34] — It is R. Simeon. For it was taught: If a woman sold [all] her kethubah or pledged it, or mortgaged [the land that was pledged for] her kethubah to a stranger, she is not entitled to maintenance.[35] R. Simeon ruled: Even if she did not sell or pledge [all] her kethubah, but half of it only, she loses her maintenance.[36] Does this[37] then imply that R. Simeon holds the view that we do not regard part of the amount[38] as being legally equal to the full amount, while the Rabbis maintain that part of the amount is legally regarded as the full amount? But, [it may be objected], have we not in fact heard the reverse? For was It not taught: And he[39] shall take a wife its her virginity[40] excludes one who is adolescent[41] [some of whose] virginity is ended; so R. Meir. R. Eleazar and R. Simeon permit[42] [the marriage] of one who is adolescent?[43] — There[44] they differ [on the interpretation] of Scriptural texts,[45] R. Meir being of the opinion that 'virgin'[46] implies even [one who retains] some of her virginity; 'her virginity'[47] implies only one who retains all her virginity;[48] 'in her virginity'[49] implies only[50] [when previous intercourse with her took place] in a natural manner,[51] but not when in an unnatural manner.[52] R. Eleazar and R. Simeon, however, are of the opinion that 'virgin' would have implied a perfect virgin; 'her virginity' implies even [one who retains] only part of her virginity;

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(1) Of the first Tanna of our Mishnah.

(2) As far as her kethubah is concerned.

(3) Why should not a claim of this nature (cf. supra note 1) be subject to the jurisdiction of a court just as that of any other claimants?

(4) Lit., 'grace'.

(5) In the absence of the privilege some women might refuse to consent to their betrothal; v. supra 84a.

(6) ‘Ulla and R. Johanan.
(7) Since the privilege is not dependent on the husband's feelings.
(8) V. supra note 8.
(9) To reimburse herself for her kethubah.
(10) Mishnah infra.
(11) Since the privilege is not dependent on the husband's feelings.
(12) Who, as follows from his ruling in our Mishnah, does not recognize the principle of providing for matrimonial attractiveness.
(13) Cf. supra n. 4’ Why then should the same principle be repeated?
(14) Lit., ‘her favour (in the eyes of the husband) was not much’. Her husband having died before he married her. As no woman would expect privileges after such a slight matrimonial relationship there was Do need to confer the privilege (v. supra p. 618, n. 5) upon such a widow,
(15) Cf. previous note mutatis mutandis. V. Tosaf. s.v, אלמנה a.I. for two other interpretations.
(16) Even according to R. Simeon.
(17) Hence the necessity for the two rulings.
(18) The case of a divorced woman.
(19) Lit., ‘to include what?’
(20) After her marriage. It cannot refer to a woman divorced after her betrothal since her case could be inferred a minori ad majus from that of A WIDOW... AFTER HER BETROTHAL.
(21) After betrothal.
(22) One, for instance, to whom the husband has thrown a letter of divorce in a public thoroughfare and it is uncertain whether it fell nearer to her or to him (v. Git. 74a).
(23) Our. Mishnah thus teaches that the husband's responsibility for the maintenance of a woman in such circumstances ceases with his death, and his orphans, therefore, are under no obligation to maintain her out of his estate. She is well entitled to maintenance during his lifetime since it is through him that she is prevented from contracting a second marriage; but after his death, when she is free to marry again, her claim which was all the time of a doubtful nature must lapse.
(24) A widow.
(25) The right of the heirs to sell without the sanction of Beth din.
(26) The husband.
(27) Who as a rule are males (cf. Rashi). A female enjoys the right of inheritance only in the absence of males.
(28) In whose case the consideration of rendering matrimony attractive must be reckoned with.
(29) For her maintenance.
(30) This is the view of R. Simeon (v. Gemara infra).
(31) Lit., ‘times’.
(32) Before the last instalment is sold.
(33) Such insertion being in certain cases advantageous for the woman (as explained supra 96b).
(34) According to which a widow who sold even only part of her kethubah may not sell of her husband's estate without the sanction of Beth din.
(35) Tosef. Keth. XI, supra 54a. If. however, she sold etc. a part of it only she is still entitled to maintenance. Cur. edd. insert here in parentheses, ‘these are the words of R. Meir’, a sentence which is wanting in the Tosefta. Rashi retains it.
(36) Tosef. Keth. XI; as she loses her maintenance she may not sell without the sanction of Beth din. Cf. supra n. 4 and Rashi on our Mishnah, s.v. לא תמכור. Rashal actually inserts in the text ‘and the rest she may not sell except with the sanction of Beth din’, a reading which was apparently wanting in Rashi's text as well as in cut. edd., but was known to the Tosafists (v. Tosaf. s.v. מכרה).
(37) The dispute between R. Simeon and the Rabbis according to which the former regards the absence of a part as the absence of the whole while the latter do not.
(38) Sc. of the kethubah. Lit., ‘silver’ with reference to Ex. XXII, 17.
(39) A High Priest.
(40) Lev. XXI, 13.
(41) A bogereth (v. Glos.).
(42) A High Priest.

(43) Yeb. 595. The absence of a part of her virginity not being regarded as the absence of all virginity. Thus it follows that, while R. Simeon does not regard the absence of a part as the absence of the whole, the Rabbis do, which is the reverse of their respective views here (v. p. 621, n. 7).
(44) In the Baraitha cited from Yeb.
(45) Not on the question whether a part legally equals the whole.
(46) בתולה.
(47) בתוליה.
(48) Which excludes the one who is adolescent some of whose virginity is ended.
(49) בבתוליה (Lev. XXI, 13)
(50) Lit., 'yes'.
(51) Is she forbidden to a High Priest.
(52) The superfluous ב (='in') in בבתוליה implies intercourse in the place of virginity. Unnatural intercourse with a na'arah (v. Glos) whereby virginity is not affected, is consequently excluded.

Talmud - Mas. Kethuboth 98a

'in her virginity'[1] implies only one[2] whose entire virginity is intact,[3] irrespective of whether [previous intercourse with her was] of a natural or unnatural character.[4] A certain woman[5] once seized a silver cup on account of her kethubah[6] and then claimed her maintenance. She appeared before Raba. He [thereupon] told the orphans, 'Proceed to provide for her maintenance; no one cares for the ruling of R. Simeon who laid down that we do not regard part of the amount as legally equal to the full amount.

Rabbah the son of Raba sent to R. Joseph [the following enquiry:] Is a woman[7] who sells [of her deceased husband's estate] without [an authorization of] Beth din required to take an oath[8] or is she not required to take an oath? — And [why, the other replied, do you not] enquire [as to whether] a public announcement[9] [is required]? I have no need, the first retorted, to enquire concerning a public announcement because R. Zera has stated in the name of R. Nahman, 'If a widow assessed [her husband's estate] on her own behalf[10] her act is invalid';[11] now, how [is this statement] to be understood? If a public announcement[9] has been made [the difficulty arises,] why is her act invalid? Must we not consequently assume that there was no public announcement, and [since it was stated that] Only [if the assessment was made] 'on her own behalf' is 'her act invalid' it follows, does it not, [that if she made it] on behalf of another[12] her act is valid?[13] — [No,] a public announcement may in fact have been made but [her act is nevertheless invalid] because she can be told, 'Who [authorized] you to make the assessment?'[14] as was the case with a certain man with whom corals[15] belonging to orphans had been deposited and he proceeded to assess them on his own behalf for four hundred ZUZ, and when later its price rose to six hundred zuz, he appeared before R. Ammi, who said to him, 'Who [authorized] you to make the assessment?'[16] And the law is that she[17] is required to take an oath,[18] but there is no need to make a public announcement.[19] MISHNAH.IF A WIDOW WHOSE KETHUBAH WAS FOR TWO HUNDRED ZUZ SOLD[20] [A PLOT OF LAND THAT WAS] WORTH A MANEH[21] FOR TWO HUNDRED ZUZ OR ONE THAT WAS WORTH TWO HUNDRED ZUZ FOR ONE MANEH, HER KETHUBAH IS DEEMED TO HAVE BEEN THEREBY SETTLED.[22] IF HER KETHUBAH, HOWEVER, WAS FOR ONE MANEH, AND SHE SOLD [LAND THAT WAS] WORTH A MANEH AND A DENAR' FOR ONE MANEH, HER SALE IS VOID. EVEN THOUGH SHE DECLARED, I WILL RETURN THE DENAR TO THE HEIRS' HER SALE IS VOID.[23] R. SIMEON B. GAMALIEL RULED: HER SALE[22] IS ALWAYS VALID[24] UNLESS THERE WAS[25] [SO MUCH LAND] THERE AS WOULD HAVE ENABLED HER[26] TO LEAVE[27] FROM A FIELD AN AREA OF NINE KAB,[28] AND FROM A GARDEN THAT OF HALF A KAB[29] OR, ACCORDING TO R. AKIBA, A QUARTER OF A KAB.[29] IF HER KETHUBAH WAS FOR FOUR HUNDRED ZUZ AND SHE SOLD [PLOTS OF LAND][30] TO [THREE] PERSONS, TO EACH FOR ONE MANEH,[31] AND TO A FOURTH[32] [SHE SOLD] WHAT WAS WORTH A MANE HAND A DENAR FOR ONE MANEH,[33] [THE

SALE] TO THE LAST PERSON IS VOID BUT [THE SALES] OF ALL THE OTHERS ARE VALID. GEMARA. Wherein does [the sale of a plot of land] THAT WAS WORTH TWO HUNDRED ZUZ FOR ONE MANEH differ [from the previous case? Is it] because she[34] might be told, 'You yourself have caused the loss'? [But, then, why should she not, where she SOLD A PLOT OF LAND THAT WAS] WORTH A MANEH FOR TWO HUNDRED ZUZ, also [be entitled to] say, 'It is I who have made the profit'?[35] — R. Nahman replied in the name of Rabbah b. Abbuha:

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(1) Which includes one who is adolescent (Lev. XXI, 13).

(2) Being a na'arah (v. Glos.).

(3) Is permitted to be married by a High priest.

(4) Yeb. 595. She is forbidden even if it was unnatural. Her virginity must he completely intact. Cf. supra note 11. Thus it has been shewn that the dispute between R. Simeon and the Rabbis (sc. R. Meir) has no bearing on the legal relationship between the part and the whole (cf. supra note 4). but on the method of interpreting certain Scriptural texts.

(5) A widow.

(6) The amount of which exceeded the value of the cup.

(7) A widow.

(8) That she did not collect more than her due.

(9) Of the intended sale of the estate, as is the procedure where the sale is ordered by the court.

(10) And seized it for her kethubah.

(11) Lit., 'she did nothing'; the orphans may at any time reclaim that land and refund her the amount of her kethubah.

(12) I.e., she sold the estate for her kethubah to a third party.

(13) Lit., 'what she did she did'; which shews that no public announcement is required in the case of the sale under discussion.

(14) As neither the court nor the orphans had given her any such authorization the estate must remain in the legal possession of the orphans. If, however, she sells to other people her act is valid since she is fully authorized to do so.

(15) כסיתא (so Rashi). Cur. edd., כיסתא fodder'. MS. M. כסותא 'garment'.

(16) Cf. supra n. 8 mutatis mutandis.

(17) A woman in the circumstances spoken of 10 Rabbah's enquiry supra.

(18) V. supra note 2.

(19) Cf. n. 3. [This implies that the assessment must nevertheless be made in the presence of an expert valuer (Trani)].

(20) From her deceased husband's estate.

(21) V. Glos.

(22) Because she is to blame for the loss incurred.

(23) Since she had no right to sell a part of the land (representing the value of the denar) her entire sale is deemed to have been made in error and is. therefore, void.

(24) Even if the land she sold was worth more than the amount of her kethubah; because she can refund the balance to the orphans.

(25) Lit., 'shall be'.

(26) If she had not sold for more than her due. Lit. , 'sufficient', 'as much as'.

(27) Exclusive or inclusive of the land she sold over and above the area representing the value of the amount that was due to her.

(28) Sc. in which such a quantity of seed could be sown. An area of that size represents the minimum of land that can be profitably cultivated. By leaving a lesser area the woman is causing undue loss to the orphans. and her sale must consequently be annulled. If the lesser area, however, would have remained even if she had sold what was her due, her sale is valid since the orphans could not in any case have made profitable use of the residue.

(29) The minimum area that can be profitably laid out as a garden. Cf. supra n. 9 mutatis mutandis.

(30) From her deceased husband's estate.

(31) Lit., 'to this for a maneh and to this for a maneh'.

(32) Lit., 'last'.

(33) So that in the last sale she disposed of more than her due.

(34) The widow who effected the sale.

(35) And so have a claim to another maneh.

Talmud - Mas. Kethuboth 98b

Rabbi[1] has taught here[2] that all [profits[3] belong] to the owner of the money.[4] As it was taught,[5] 'If one unit[6] was added to [the purchases made by an agent] all [the profit belongs] to the agent'; so R. Judah, but R. Jose ruled,, '[The profit] is to be divided',[7] [and, in reply to the objection,] But, surely, it was taught that R. Jose ruled, All [profit belongs] to the owner of the money! Rami b. Hama replied: This is no difficulty for the former refers to an object that has a fixed value[8] while the latter refers to one that has no fixed[9] value.[10] R. Papa stated: The law is that[11] [the profit made by the agent on] an object that had a fixed value must be divided,[7] but if on an object that had no fixed value all [profit belongs] to the owner of the money. What does he[12] teach us?[13] — That the reply that was given[14] is the proper one.[15] The question was raised: What [is the law where a man] said to his agent,[16] 'Sell for me a lethek'[17] and the latter presumed[18] to sell a kor.[19] [Is the agent deemed to be merely] adding to the owner's instructions and [the buyer, therefore,] acquires possession of a lethek, at all events, or is he rather transgressing his instructions and [the buyer, therefore,] acquires no possession of a lethek either? — Said R. Jacob of Nehar Pekod[20] in the name of Rabina, Come and hear: If a householder said to his agent, 'Serve a piece [of meat][21] to the guests', and the latter said to them, 'Take two',[22] and they took three,[22] all of them are guilty[23] of trespass.[24] Now if you agree [that the agent][25] was merely adding to the host's instruction one can well understand the reason why the householder is guilty of trespass. If you should maintain, however, [that the agent][25] was transgressing his instruction [the objection could well be advanced:] Why should the householder be guilty of trespass? Have we not In fact learned: If an agent performed his mission it is the householder who is guilty of trespass but if he did not perform his mission it is the agent who is guilty of trespass?[26] — Here we may be dealing with a case where the agent said to the guests, 'Take one at the desire[27] of the householder[28] and one at my own request's[27] and they took three.

Come and hear: IF HER KETHUBAH, HOWEVER, WAS FOR A MANEH, AND SHE SOLD [LAND THAT WAS] WORTH A MANEH AND A DENAR FOR A MANEH, HER SALE IS VOID. Does[29] not [this mean] that SHE SOLD [LAND THAT WAS] WORTH A MANEH AND A DENAR FOR A MANE band a denar,[30] and that by[29] [the expression,] 'FOR A MANEH' the maneh that was due to her [is meant], and by[29] EVEN[31] [one is to understand] EVEN THOUGH SHE DECLARED, I WILL RETURN THE DENAR TO THE HEIRS [by repurchasing for them] land of the value of a denar'? And was it not nevertheless stated, HER SALE IS VOID?[32] — No,[33] retorted R. Huna the son of R. Nathan, [this is a case] where [she sold] at the lower price.[34]

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(1) R. Judah I, the Patriarch, compiler of the Mishnah c. 200 C.E.

(2) In our Mishnah.

(3) Made by an agent.

(4) Since the widow was merely acting as the agent of the orphans, who are the owners, she cannot lay any claim to the profit she made.

(5) V. infra, o. 12.

(6) Lit., 'one more'.

(7) Between agent and owner; v. Tosef. Dem, VIII.

(8) And, since it is not certain in whose favour the additional unit was given away by the seller, its value must be equally divided between the agent and the owner of the money.

(9) So that the additional unit cannot be regarded as a gift, but as a part of the purchase, payment for which was made with the money of the owner. Hence it is the latter only who is entitled to the added unit.

(10) Thus it has been shewn that our Mishnah which deals with land (something that has no fixed value) and assigns the profits to the original owner (the orphans) is in agreement with the view of R. Jose.

(11) הלכתא so cur. edd. and R. Han. MS.M. and a reading approved by Tosaf. (s.v. אמר) is הלכך 'therefore'.

(12) R. Papa.

(13) By his statement which is only a repetition of what has just been laid down. This question seems to imply the

reading of הלכך (v. supra n. 13) rather than that of הלכתא, (Tosaf.).

(14) By Rami b. Hama.

(15) Lit., 'that which we replied is a reply'.

(16) Lit., 'to him'.

(17) Sc. a plot of land in which a lethek (half a kor) of grain may be sown.

(18) Lit., 'and went'.

(19) V. Glos.

(20) A town situated on the east of Nehardea.

(21) Which was subsequently found to have been consecrated food.

(22) Each.

(23) The host in respect of the first, the agent in respect of the second and the guests 10 respect of the third.

(24) Me'il. 20a.

(25) Like the agent spoken of in the enquiry.

(26) Hag. 10b, Kid. 42b, Ned. 54a, Me'ii. 205. Consequently it must be concluded, must it not. that an agent in the circumstances mentioned is deemed to have added to, and not transgressed, his instructions?

(27) Lit., 'knowledge'.

(28) Thus performing his mission.

(29) Lit., 'what'.

(30) Sc. for its full price, so that no error was involved.

(31) Which, in view of the fact that the denar obviously belongs to the orphans, is apparently meaningless.

(32) As the woman is in a position similar to that of the agent spoken of in the enquiry it follows that as her sale is void so is that of the agent.

(33) I.e., our Mishnah is not to be understood as suggested.

(34) Sc. for one maneh only; the error 10 the sale, not the excess of the land sold, being the reason for the invalidity of the sale. [Read with MS.M. and Tosaf. בדזילא instead of בדאויל in cur. edd.].

Talmud - Mas. Kethuboth 99a

But since the final clause[1] [deals with a case] where [she sold] at a lower price, [would not] the earlier clause[2] [naturally[3] refer to one] where [she did] not [sell] at a lower price. for has [it not] been stated in the final clause, IF HER KETHUBAH WAS FOR FOUR HUNDRED ZUZ AND SHE SOLD [PLOTS OF AND] TO [THREE] PERSONS[4] TO EACH FOR ONE MANEH, AND TO A FOURTH[4] [SHE SOLD] WHAT WAS WORTH A MANE HAND A DENAR FOR ONE MANEH, [THE SALE] TO THE LAST PERSON IS VOID BUT [THE SALES] OF ALL THE OTHERS ARE VALID?[5] — No, both the earlier and the final clause [refer to a sale] at a lower price, but[6] it is this that we were informed in the final clause: The reason [why her sale is void is] because [she sold][7] at a lower price [the property] that belonged to the orphans,[8] but [if that[9] had been done] with her own,[10] her sale is valid.[11] But is not this already inferred from the first clause: WHOSE KETHUBAH WAS FOR TWO HUNDRED ZUZ SOLD [A PLOT OF LAND THAT WAS] WORTH A MANEH FOR TWO HUNDRED ZUZ OR ONE THAT WAS WORTH TWO HUNDRED ZUZ FOR ONE MANEH, HER KETHUBAH IS DEEMED TO HAVE BEEN THEREBY SETTLED?[12] — It might have been assumed [that the ruling[13] was applicable] there Only because [by her one act] she completely severed her connection with that house,[14] but that here[15] [the sale for] the first maneh [should be deemed invalid] as a preventive measure against [the assumption of the validity of the sale for the] last maneh,' hence we were informed [that the law was not so].

Some there are who say: You have no need to ask [for a ruling] where [a man said to his agent,] 'Go and sell for me a lethek'[16] and [the latter] sold for him a kor, since [in this case the agent] was undoubtedly adding to his instructions.[17] The question, however, arises as to what is the ruling where the man said to the agent, 'Go and sell for me a kor' and he sold for him Only one lethek.[16] Do we [in such a case] lay down that [the agent] might tell the man, 'I have done for you that which is more

advantageous to you, for [had I sold the full kor, and] you were no longer in need of money you could not have retracted',[18] or is it rather [held that the owner] might retort to him, 'It is no satisfaction to me that many deeds [should be held] against me'? — R. Hanina of Sura[19] replied, Come and hear: If one man gave to another a gold denar[20] and told him, 'Bring me a shirt', and the other brought him a shirt for three sela's and a cloak for three sela's, both are guilty of trespass.[21] Now if you admit that an agent in similar circumstances[22] has performed his mission and was only adding to his instructions, one can well see why the owner[23] is guilty of trespass.[24] If, however, you should maintain that [the agent in such circumstances] was transgressing his instructions, why should [the owner] be guilty of trespass?[25] — Here we are dealing with a case where [the agent] brought him [a shirt that was] worth six sela's for three.[26] If so[27] why should the agent be guilty of trespass? — On account of the cloak.[28] But if that were so,[29] read the final clause: R. Judah ruled, Even in this case[29] the owner is not guilty of trespass because he might say [to the agent,] 'I wanted a big shirt and you brought me one that is small and bad'![30] — 'Bad' means[31] 'bad in respect of the price', for[32] [the owner can] tell him, 'Had you brought me one for six sela's [my gain would have been] even greater since it would have been worth twelve sela's.'[33] This[34] may also be proved by an inference. For it was stated:[35] R. Judah admits [that if the transaction was] in pulse both[36] are guilty of trespass

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(1) Of our Mishnah.

(2) The clause just cited.

(3) Since two clauses are not necessary to lay down the same principle.

(4) V. our Mishnah for notes.

(5) An objection against R. Huna the son of R. Nathan (cf. supra n' 9).

(6) As to the objection (v. supra n. 9).

(7) To the fourth person.

(8) Sc. land that exceeded the amount that was due to her.

(9) The sale of land of the value of a maneh and a denar for one maneh only.

(10) I.e., when she was selling to the first three persons. and when the extra land for the denar was still hers.

(11) Because the law of overreaching is inapplicable to landed property even where the error amounted to as much as a sixth of the value; much less when it is no more than one hundredth.

(12) Which shews that where the additional land sold constituted a part of the woman's due, her sale is valid. Cf. supra p. 627, n. 11.

(13) That the sale is valid when the land belongs to the woman,

(14) In such a case naturally no preventive measures are called for.

(15) The case in the final clause.

(16) V. supra p. 626, n. 2.

(17) And the buyer is consequently entitled to the possession at least of the lethek (cf. supra 98b).

(18) The sale consequently should be valid.

(19) Cf. supra p. 383, n. 7.

(20) Rashi: The gold denar twenty-five silver denarii, or six sela's (cf. B.M. 44b). [Rashi probably means approximately six sela's, since one sela' four denarii, or the extra denar may be surcharge as agio. v, Strashun].

(21) If the denar was found to have belonged to the sanctuary. Me'il. 21a.

(22) Selling one lethek where the instruction was to sell two (a kor) is similar to spending on an object three sela's where the instruction was to spend on it six (a gold denar).

(23) Lit., 'master of the house', sc. the man who gave the denar to the agent.

(24) He is responsible for the offence since his wish had been carried out.

(25) Consequently it must be inferred that the agent spoken of 10 the enquiry has performed his mission (cf. supra p. 628, n. 6).

(26) Cf. supra note 4.

(27) That the agent carried out the sender's instructions.

(28) Which he bought entirely on his own responsibility.

(29) That the agent bought for three sela's an article that was actually worth six,

(30) Me'il, loc. cit. If the reply given (cf. supra n. 9) is to be accepted R. Judah's statement is apparently meaningless.
(31) Lit., 'what'.
(32) Despite the fact that the shirt bought was actually worth six sela's.
(33) The higher the price the higher in proportion is the profit. Aliter: One who pays a higher price is allowed a greater discount (cf. Rashi s.v. דא ל, and Tosaf. s,v. כל a.I.).
(34) That by 'bad' R. Judah meant 'bad in respect of the price', that the shirt bought for three sela's was actually worth six, and that the reason why the owner is not guilty of trespass is because his wish to have the advantage of the bigger purchase had not been carried out.
(35) Tosef. Me'il, II.
(36) The owner and the agent.

Talmud - Mas. Kethuboth 99b

because [the quantity of] pulse for a sela' [is in exactly the same proportion as] that for one perutah.[1] This is conclusive. How is this[2] to be understood? If it be suggested [that it refers] to a place where [pulse] is sold by conjectural estimate, does not one [it may be objected] who pays a sela' obtain the commodity at a much cheaper rate?[3] — R. Papa replied: [It refers] to a place where each kanna[4] is sold[5] for one perutah.[6] Come and hear: IF HER KETHUBAH WAS FOR FOUR HUNDRED ZUZ AND SHE SOLD [PLOTS OF LAND] TO [THREE] PERSONS[7] TO EACH FOR ONE MANEH, AND TO A FOURTH[7] [SHE SOLD] WHAT WAS WORTH A MANEH AND A DEN AR FOR ONE MANEH [THE SALE] TO THE LAST PERSON IS VOID BUT [THE SALES] OF ALL THE OTHERS ARE VALID![8] — [This[9] is no proof, for] as R. Shisha the son of R. Idi replied[10] [that the final clause of our Mishnah deals] with small plots of land,[11] [so it may] in this discussion[12] also [be argued that the clause cited deals] with small plots of land.[13] It is obvious [that if a man] instructed [his agent to sell a plot of land] to one person but not to two persons [and he sold it to two' the sale is invalid[14] for] he distinctly told him, 'To one person but not to two persons'.[15] What, [however, is the ruling where] he gave instructions [that the sale shall be made] to one person without mentioning any further limitation?[16] R. Huna ruled: 'To one person' implies 'but not to two'.[17] Both R. Hisda and Rabbah son of R. Huna, however, ruled: 'To one person'[18] may mean even to two;[19] 'to one', may mean[16] even to a hundred.[19] R. Nahman once happened to be at Sura[20] when R. Hisda and Rabbah b. R. Huna came to visit him. 'What [is the ruling], they asked him, in such a case?'[21] — To one', he replied, [may mean] even to two, 'to one' may mean even to a hundred. '[Are the sales valid,]' they asked him, 'even where the agent made an error?'[22] — 'I do not speak', he replied, 'of a case where the agent had made an error'. 'But did not a Master', they asked again, 'say [that the law of] overreaching does not apply to landed property'?[23] This[24] applies only where the owner made the error; but where the agent has made the error [the owner] might tell him, 'I sent you to improve my position but not to impair it'.[25] Whence, however, is it inferred that a distinction may be drawn between the agent and the owner? — [From] what we have learned, 'If a man tells his agent, "Go and give terumah", the latter must give sold no more than a lethek. The validity of the sales of the former is consequently no criterion for the "validity of the sales of the agent in question. the terumah in accordance with the disposition of the owner,[26] and if he does not know the owner's disposition, he should give the terumah in a moderate manner, viz., one fiftieth.[27] If he reduced [the denominator by] ten[28] or added ten to it[29] his terumah is nevertheless valid',s while in respect of an owner[26] it was taught: If, when setting apart terumah, there came up in his hand even so much as one twentieth[30] his terumah is valid.[31] Come and hear: IF HER KETHUBAH WAS FOR FOUR HUNDRED ZUZ AND SHE SOLD [PLOTS OF LAND] TO [THREE] PERSONS[32] TO EACH FOR ONE MANEH, AND TO A FOURTH[32] [SHE SOLD] WHAT WAS WORTH A MANEH AND A DENAR FOR ONE MANEH, [THE SALE] TO THE LAST PERSON IS VOID BUT [THE SALES] OF ALL OTHERS ARE VALID.[33] R. Shisha the son of R. Ishi replied: [This clause deals] with small plots of land.[34]

MISHNAH. IF AN ASSESSMENT OF THE JUDGES[35] WAS BY ONE SIXTH LESS, OR BY

ONE SIXTH MORE [THAN THE ACTUAL VALUE OF THE PROPERTY]. THEIR SALE IS VOID. R. SIMEON B. GAMALIEL RULED: THEIR SALE IS VALID FOR, OTHERWISE,[36] OF WHAT ADVANTAGE WOULD THE POWER OF A COURT BE? IF A BILL FOR INSPECTION,[37] HOWEVER, HAS BEEN DRAWN UP, THEIR SALE IS VALID EVEN IF THEY SOLD FOR TWO HUNDRED ZUZ[38] WHAT WAS WORTH ONE MANEH,[38] OR FOR ONE MANEH WHAT WAS WORTH TWO HUNDRED ZUZ.

GEMARA. The question was asked: What is the legal status of[39] an agent?[40] —

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(1) The smallest coin. No advantage is gained10 making a bigger purchase. The owner's wish 10 this case, unlike that of the shirt (cf. supra p. 629, n. 13) may consequently be regarded as having been carried out. Thus it has been shewn that the reason why R. Judah exempts the owner in the case of the shirt is the one indicated. (Cf. p. 629.0. 14).

(2) The transaction10 pulse.

(3) Than one who buys for a perutah only. The more the amount spent by the buyer the more generous the conjectural estimate of the seller How then could it be said (cf. supra n. 1) that no advantage is gained from the purchase of a larger quantity?

(4) כנא (cf.) a small measure of capacity.

(5) Lit., 'measured'.

(6) V . Glos. ; no advantage, therefore, is gained from the purchase of larger quantities. Read with MS.M. דכייליכנא כנא בפרוטה Cur edd., 'where they measure with kannai (pl. of kanna) so that he tells him. Each kanna for a perutah'.

(7) V. our Mishnah for notes.

(8) Though at the time she sold to each of the first three persons she was in fact authorized (or entitled) to sell much more. As these sales of the woman (which are analogous to an agent's sale of a lethek when his instructions were to sell as much as a kor) are valid, so one would expect the sale of the agent to be valid, and a reply is thus obtained to the enquiry supra 995.

(9) Cf. supra note 8.

(10) Infra.

(11) Detached from one another.

(12) L1t., 'here'.

(13) Cf. supra n. 11. In such circumstances the woman was never expected (entitled or authorized) to sell for all the four hundred zuz to one person at one and the same time. By selling the small plots each for a price not higher than one maneh she is in a different legal position from that of the agent who,10 fact, was expected to sell a full kor while he actually

(14) Even if the sale of a lethek, where the instructions were to sell a kor, were to be ruled as being valid.

(15) Thus clearly expressing his objection to be responsible for more than one deed of sale.

(16) Are the agent's sales to two persons. in such circumstances, valid or not?

(17) The sales, therefore, are invalid.

(18) Unless some definite form of restriction has been expressed.

(19) The sales to them are consequently valid. The mention of one person only is regarded as the usual manner of speech, which is not intended to exclude any larger number of persons.

(20) V. supra p. 383, n. 7'

(21) As the one just discussed.

(22) By accepting a lower price.

(23) V. Mishnah B.M. 56a, why then should the agent's error cause the invalidity of the sale? [Var. lec., 'But did the Master not say etc.',the reference being to R. Nahman's ruling reported B.M. 108a, v. Tosaf. s.v. הכי].

(24) The law just quoted.

(25) Hence the invalidity of the sale.

(26) Lit., 'master of the house'.

(27) Of the produce.

(28) Sc. one fortieth of the whole, which is the quantity of terumah given by men of a liberal disposition (v. Ter. IV, 3).

(29) A sixtieth, which is the measure given by one who is of a mean disposition (v. loc, cit.).

(30) Ter. IV 4; but if his error was greater his terumah is invalid.
(31) Which proves conclusively that a distinction is made between an error made by an owner and one made by his agent.
(32) V. our Mishnah for notes.
(33) Though the multiplicity of sales and inevitable deeds might be objected to' if not by the orphans themselves, by Beth din. Since, however, no such objection is admitted in this case, the same ruling should apply to the case discussed in the enquiry supra 99a.
(34) That were detached from one another, so that it was impracticable to sell them all to one person. Hence the validity of the sales. Where one plot of land, however, is concerned, the owner might well object to have the responsibility of a multiplicity of deeds.
(35) Of a deceased husband's estate which was sold to pay the kethubah of his widow.
(36) Lit., 'if so'.
(37) אגרת בקורת (אגרת= letter', 'bill'; בקורת from rt. בקר, 'to examine' 'inspect'), a legal document, issued by a court, inviting the public to inspect property put up by an order of the court for sale.
(38) V. Glos.
(39) Lit. 'like whom'.
(40) Who made a mistake in the sale he was instructed to effect.

Talmud - Mas. Kethuboth 100a

Raba in the name of R. Nahman replied: An agent [has the same status] as judges,[1] but R. Samuel b. Bisna replied in the name of R. Nahman: As a widow.[2] 'Raba in the name of R. Nahman replied: An agent [has the same status] as judges', for as judges do not act in their [personal interests] so does an agent not act in his [personal interests], thus excluding a widow who acts in her [own personal interests]. 'R. Samuel b. Bisna replied in the name of R. Nahman: As a widow', for as the widow is a single individual so is an agent a single individual; thus excluding members of a court, who are many. — And the law is that an agent [has the same legal status] as a widow. But why [should this case be] different from that concerning which we learned: If a man tells his agent, 'Go and give terumah' the latter must give the terumah in accordance with the disposition of the owner, and if he does not know the owner's disposition, he should separate terumah in a moderate manner, viz. one fiftieth. If he reduced [the denominator by] ten or added ten to it his terumah is, nevertheless, valid?[3] — There[4] [the circumstances are different], for, since someone might give his terumah in a niggardly manner while some other might give it liberally, [the agent][5] might tell the owner, 'I deemed[6] you to be of such [a disposition]';[7] but here, since it was clearly an error, [the owner] might well say, 'You should have made no error'.[8]

R. Huna b. Hanina stated in the name of R. Nahman: The halachah is in agreement with the ruling of the Sages.[9] [Can it be said,] however, that R. Nahman does not hold [that the act of a court is invariably valid since, otherwise,] of what advantage would the power of a court be,[10] when R. Nahman, in fact, ruled in the name of Samuel:[11] If orphans came to take their shares in their father's estate, the court must appoint for [each of] them a guardian and [these guardians] choose for [each of] them a proper share, and when [the orphans] grow up they may enter a protest [against the settlement]; but R. Nahman in his own name, laid down: Even when they grow up they may enter no protest since, otherwise, of what advantage would the power of a court be? — This is no difficulty, the former[12] [referring to a case] where the guardians made a mistake while the latter[13] [deals with one] where no error was made. If no error was made, on what grounds could [the orphans] enter their protest? — On that of the adjacent fields.[14]

When R. Dimi came[15] he stated: It once happened that Rabbi[16] acted in agreement with the ruling of the Sages[9] when Perata, the son of R. Eleazar b. Perata, grandson of R. Perata the Great, asked him, 'If so, of what advantage would the power of a court be?'[10] And [as a result] Rabbi reversed his decision. Thus it was taught by R. Dimi. R. Safra, however, taught as follows: It once happened that

Rabbi[16] desired to act in agreement with the ruling of the Sages,[9] when Perata, the son of R. Eleazar b. Perata, grandson of R. Perata the Great, said to him, 'If so, of what advantage is the power of a court?' And[17] [as a result] Rabbi did not act as he intended.[18] Must it be assumed that they[19] differ on this principle: One master[20] holds the view that if [in giving a decision] a law cited in a Mishnah[21] has been overlooked the decision must be reversed, and the other Master[22] upholds the view[23] that it cannot be reversed?[24] — No; all[19] agree that if [in giving a decision] a law cited in a Mishnah has been overlooked the decision must be reversed, but one Master holds that the incident occurred in one way[25] while the other holds that it occurred in the other way.[25]

R. Joseph stated: If a widow sold [any of her deceased husband's estate][26] the responsibility for the indemnity falls upon the orphans,[27] and if the court sold [any such property][28] the responsibility for the indemnity again falls upon the orphans.[29] [Is not this ruling] obvious?[30] — It was not necessary [indeed in respect of] the widow,[30] but was required [in respect of] the court; for it might have been assumed

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(1) The sale is valid if the error did not amount to a sixth (v. our Mishnah).

(2) The slightest error renders the sale invalid (cf. the Mishnah supra 98a.)

(3) Ter. IV, 4 and supra 99b q.v. for notes. This then shews, contrary to what was laid down above as law (cf. supra n. 5)' that a slight error does not render an agent's act invalid.

(4) In the case of an agent giving terumah for the owner.

(5) Who gave more, or less, than the owner was inclined to give.

(6) Lit., 'estimated'.

(7) Niggardly or liberal as the case might be.

(8) Hence the invalidity of the sale however slight the error may have been.

(9) The first mentioned ruling in our Mishnah.

(10) I.e., the view of R. SIMEON B. GAMALIEL.

(11) V. Kid. Sonc. ed. p. 210, notes.

(12) Lit., 'that', R. Nahman's ruling in the name of Samuel (cf. supra n. 2).

(13) R. Nahman's ruling in his own name (cf. supra, n. 3)'

(14) Lit., 'on (the ground of) the sides', sc. the unsatisfactory situation of their allotted fields owing to their distance from other fields which they already possessed.

(15) From Palestine to Babylon.

(16) R. Judah I, the Patriarch, compiler of the Mishnah.

(17) So MS.M. (wanting in cur. edd.).

(18) Lit., 'the act'.

(19) R. Dimi and R. Safra.

(20) R. Dimi.

(21) Sc. that of R. Simeon b. Gamaliel, which, unlike that of the first Tanna, is also supported by a reason.

(22) R. Safra.

(23) Which is, however, most unlikely.

(24) Had then Rabbi acted in agreement with the Sages' ruling, he would not have been able to reverse his decision.

(25) Lit., 'thus'.

(26) To reimburse herself for her maintenance or kethubah, guaranteeing indemnity to the buyer.

(27) Because they are responsible for the widow's kethubah and maintenance, and she, in selling the estate, was merely acting as their agent.

(28) For the maintenance of a widow or daughter. Cf. also supra n. 10 mutatis mutandis.

(29) Cf. supra n. 10 mutatis mutandis and 97a.

(30) Cf supra n. 11.

that whoever buys from the court does so in order that he may have the benefit of a public

announcement,[1] hence we were informed [that the responsibility for the indemnity still remains upon the orphans].

R. SIMEON B. GAMALIEL RULED etc. To what limit [of error]?[2] — R. Huna b. Judah replied in the name of R. Shesheth: To a half.[3] So it was also taught: R. Simeon b. Gamaliel ruled, If the court sold for one maneh what was worth two hundred zuz, or for two hundred zuz what was worth one maneh, their sale is valid. Amemar laid down in the name of R. Joseph: A court that sold [one's estate] without a [previous] public announcement are deemed[4] to have overlooked a law cited in a Mishnah and [their decision][5] must be reversed. [You say] 'Are deemed'?[4] since

Have they not in actual fact overlooked one,' we learned:[6] The assessment [of the property] of the orphans[7] [must be accompanied by a public announcement for a period of] thirty days, and the assessment of consecrated land[8] [for a period of] sixty days; and the announcement must be made both in the morning and in the evening?[9] — If [the ruling[10] were to be derived] from that [Mishnah alone] it might be presumed that it applied only to an agent[11] but not to a court; hence we were taught[10] [that the law applied to a court also].

R. Ashi raised an objection against Amemar: IF AN ASSESSMENT OF JUDGES WAS BY ONE SIXTH LESS, OR ONE SIXTH MORE [THAN THE ACTUAL VALUE OF THE PROPERTY], THEIR SALE IS VOID, but [it follows] if it corresponded to the actual worth of the land[12] their sale is valid. Does not this[13] [apply even to a case] where no public announcement was made?[14] — No; [it applies only to one] where an announcement was made. But since the final clause [refers to a case] where an announcement was made [must not] the first clause[15] [refer to one] where no announcement was made; for in the final clause it was taught: IF A BILL FOR INSPECTION,[16] HOWEVER, HAS BEEN DRAWN UP, THEIR SALE IS VALID EVEN IF THEY SOLD FOR TWO HUNDRED ZUZ WHAT WAS WORTH ONE MANEH, OR FOR ONE MANEH WHAT WAS WORTH TWO HUNDRED ZUZ ?[17] — The fact indeed is [that the first clause refers to a case] where no announcement was made, and [yet[18] there is] no difficulty, for one ruling[19] refers to objects concerning which public announcements must be made, while the other[20] refers to objects concerning which no public announcements are made, such as[21] slaves, movables and deeds. (What is the reason [why no announcement is made in the case of] slaves? — [Because if one were made] they might hear It and escape. Movables and deeds? — Because they might be stolen.) If you wish I might reply:[22] One ruling[23] refers to a time when an announcement is made while the others refers to a time when no announcement is made, the Nehardeans having laid down that for poll-tax,[24] maintenance[25] and funeral expenses [an estate][26] is sold without a public announcement.[27] And if you prefer I might reply:[22] One ruling[23] applies to a place where announcements are made while the other[20] applies to one where no announcements are made, R. Nahman having stated: Never was a bill for inspection[28] drawn up at Nehardea.[29] From this [statement][30] one implied that [the reason[31] was] because they[32] were experts in assessments; but R. Joseph b. Minyomi stated: It was explained to me by R. Nahman [that the reason is] because they[33] were nicknamed 'consumers of publicly auctioned estates',[34]

Rab Judah ruled in the name of Samuel: Orphans' movables must be assessed[35] and sold forthwith.[36] R. Hisda ruled in the name of Abimi: They are to be sold[37] in the markets.[38] There is, however, no difference of opinion between them.[39] One speaks of a place[40] in the proximity of a market ,[41] while the other deals with one[40] from which the market is far.[42]

R. Kahana had in his possession some beer that belonged to the orphan R. Mesharsheya b. Hilkai. He kept it until the festival,[43] saying, 'Though it might deteriorate,[44] it will have a quick sale.'[45]

Rabina had In his possession some wine belonging to the orphan Rabina the Little, his sister's son, and he had also some wine of his own which he was about to take up to Sikara.[46] When he came to

R. Ashi and asked him, 'May I carry [the orphan's wine] with my own'[47] the other told him, 'You may go; it is not superior to your own.

MISHNAH. [A MINOR] WHO EXERCISED THE RIGHT OF MI'UN,[48] A FORBIDDEN RELATIVE OF THE SECOND DEGREE,[49] OR A WOMAN WHO IS INCAPABLE OF PROCREATION IS NOT ENTITLED EITHER TO A KETHUBAH[50] OR TO THE BENEFITS[51] [OF HER MELOG[48] PROPERTY][52] OR TO MAINTENANCE,[53] OR TO HER WORN OUT ARTICLES.[54] IF THE MAN, HOWEVER, HAD MARRIED HER AT THE OUTSET ON THE UNDERSTANDING THAT SHE WAS INCAPABLE OF PROCREATION SHE IS ENTITLED TO A KETHUBAH. A WIDOW WHO WAS MARRIED TO A HIGH PRIEST,[55] A DIVORCED WOMAN OR A HALUZAH[48] WHO WAS MARRIED TO A COMMON PRIEST,[56] A BASTARD OR A NETHINAH[48] WHO WAS MARRIED TO AN ISRAELITE. OR THE DAUGHTER OF AN ISRAELITE WHO WAS MARRIED TO A NATHIN,[48] OR A BASTARD IS ENTITLED TO A KETHUBAH.[57]

GEMARA. Rab taught: A minor who is released by means of a letter of divorce is not entitled to a kethubah[58] and, much less so, [a minor] who exercises the right of mi'un[48] Samuel taught: [A minor] who exercises the right of mi'un[48] is not entitled to a kethubah,[59] but a minor who is released by a letter of divorce is entitled to her kethubah.[60] Samuel[61] follows his [previously expressed] principle; for he laid down: [A minor] who exercises the right of mi'un[62] is not entitled to a kethubah[63] but a minor who is released by a letter of divorce is entitled to her kethubah,'[64] [a minor] who exercises the right of mi'un[62] is not [through this act] disqualified from marrying the brothers [of her husband],[65] nor is she thereby disqualified from marrying a priest,[66] but [a minor who] is released by a letter of divorce is [through this act] disqualified from marrying the brothers [of her husband][67] and also from marrying a priest;[68] [a minor] who exercises the right of mi'un need not wait three months[69]

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(1) Lit.,'it is with the intent that a voice may be brought out for him that he buys'. Since any sale by a court must be preceded by a public announcement. it is conceivable that if any person had a claim upon the land in question he would advance it as soon as the announcement had been made. A buyer who is presumably aware of these considerations might. therefore, be assumed to feel so secure in his purchase as to surrender his guarantee for indemnity. [Aliter: Whoever buys from the Beth din buys for the purpose that he might gain publicity as a man of means, without necessarily expecting any guarantee of indemnification; Strashun].

(2) Is the sale valid.

(3) Of the actual value.

(4) Lit., 'are made'.

(5) Unlike an erroneous decision that does not conflict with a Mishnah, which remains in force and compensation is paid by the court.

(6) In a Mishnah.

(7) That is put up for sale to meet the claims of their father's widow or daughters.

(8) Sold by the Temple treasurer.

(9) 'Ar. 21b.

(10) Laid down by Amemar in the name of R. Joseph.

(11) Who sells orphans' property.

(12) Lit., 'worth for worth', or 'equal for equal'.

(13) The implied ruling that the sale is valid.

(14) Is this then an objection against Amemar?

(15) Since two adjacent clauses would not repeat the same law.

(16) Which involves. of course, a public announcement (v. supra p. 632, n. 12).

(17) Is this then an objection against Amemar?

(18) Despite the deduction which is apparently in contradiction to Amemar's ruling.

(19) Lit., 'here', the ruling of Amemar.

(20) The first clause of our Mishnah.
(21) Lit., 'and these are objects concerning which no public announcement is made'.
(22) To the objection against Amemar that was raised supra.
(23) Lit., 'here', the ruling of Amemar.
(24) On behalf of orphans.
(25) Of one's widow or daughters.
(26) Of a deceased, inherited by his orphans.
(27) Since in all these cases money is urgently needed no time can be spared for the usual public announcement that must precede other sales ordered by a court; v. supra 8a.
(28) Cf. supra p. 632, n. 12.
(29) Cf. supra p. 222, n. 8.
(30) Of R. Nahman.
(31) For dispensing with a bill of inspection at Nehardea.
(32) The Nehardeans.
(33) Who bought orphans' estates that were offered for sale after a public announcement.
(34) A description of contempt. At such enforced sales the buyers usually made exorbitant profits at the expense of the helpless orphans.
(35) Immediately on their father's death.
(36) In order to prevent their deterioration.
(37) [Read with MS. M.: They are taken to the markets, מוליכין]
(38) Or 'on market days' (cf. Rashi, s.v. דמקרב).
(39) Rab Judah and R. Hisda.
(40) L1t., 'that'.
(41) Aliter: A time when market day is near (cf. Rashi loc. cit.).
(42) Aliter. 'When market day is a long way of' (cf. I.e.).
(43) Though beer must be classed as movables.
(44) איצטא. 'depreciation in the market' or 'deterioration of quality' (cf Jast.) Aliter: 'Though it might become sour', (cf. Rashi).
(45) Lit., 'will bring quick money', I.e , there will be no need to sell on credit. Cash sales, though at a comparatively small price, are preferable to sales on credit that might command a higher price.
(46) [A town on the Tigris near Mahuza. Obermeyer. p. 186].
(47) Sc. may a trustee undertake the risk of sea transport [The wine could be taken from Matha Mehasia (Sura) the home of Rabina to Sikara, either overland or by boat. The former journey, though shorter, was the more expensive and involved greater risk of breakage to the earthenware barrels in which the wine was transported, v. Obermeyer, p. 188ff.]
(48) V. Glos.
(49) Who is forbidden by Rabbinic, though not by Pentateuchal, law (cf. Yeb. 21a).
(50) Cf. Yeb. 113a, B.M. 67a; the first mentioned because her separation may be affected even against her husband's will, the second was penalized for contracting an unlawful marriage (cf. Yeb. 85b) while in the case of the last her marriage is regarded as a contract under false pretences.
(51) Lit., 'fruit'. Aliter: Usufruct.
(52) Sc. her husband is under no obligation to pay her ransom if she is taken captive, though in the case of a legal and normal marriage a husband must assume such obligation (in return for the usufruct of his wife's melog property). As this woman is not entitled to a kethubah she is also deprived of the right to be ransomed which is one of the terms of a kethubah. Aliter; Her husband need not refund the usufruct,
(53) Cf. supra note 5 mutatis mutandis. The limitations of this ruling are dealt with infra 107b.
(54) The articles which she brought to her husband on marriage and the value of which was included in her kethubah. If her husband has used these articles he need not compensate her for their wear or loss when she leaves him.
(55) V. Lev. XXI, 13.
(56) V. ibid. 7.
(57) Yeb. 84a.
(58) Since the marriage of a minor, n his opinion, has no validity and her status is that of one seduced,
(59) Cf. supra note 3.

(60) Because a divorce can be given with the husband's consent only.
(61) In his ruling just cited.
(62) V. Glos,
(63) Cf. supra p. 639, R. 3.
(64) V. p. 639, n. 13.
(65) V. p. 639, n. 11,
(66) Since she has not the status of a divorced woman, mi'un dissolving the union retrospectively.
(67) Because it is forbidden to marry a woman whom ones brother had divorced.
(68) V, Lev. XXI, 7'
(69) After mi'un, before contracting a second marriage, though such a period must be allowed to pass in the case of any other divorced woman or widow. Cf. supra n' 5.

Talmud - Mas. Kethuboth 101a

but [a minor who] was released by a letter of divorce must wait three months.[1] What does he[2] teach us when all these cases have already been taught:[3] If [a minor] has exercised the right of mi'un against her husband he is permitted to marry her relatives[4] and she is permitted to marry his relatives,[4] and he does not disqualify her from marrying a priest;[5] but if he gave her a letter of divorce he is forbidden to marry her relatives and she is forbidden to marry his relatives and he also disqualifies her from marrying a priest?[6] — He found it necessary [to restate these rulings in order to mention:] 'She must wait three months' which we did not learn.[7]

Must one assume [that they[8] differ on the same principles] as the following Tannaim: R. Eliezer stated, There is no validity whatsoever in the act of a minor, and her husband is entitled neither to anything she finds,[9] nor to the work of her hands,[9] nor may he invalidate her vows;[10] he is not her heir[9] and he may not defile himself for her;[11] this being the general rule: She is in no respect regarded as his wife, except that it is necessary for her to make a declaration of refusal;[12] and R. Joshua stated, The act of a minor is valid, and her husband has the right to anything she finds[13] and to the work of her hands,[13] to invalidate her vows,[14] to be her heir,[13] and to defile himself for her;[15] the general principle being that she is regarded as his wife in every respect, except that she may leave him[12] by declaring her refusal against him?[16] Must one then assume that Rab[17] has laid down the same principle as that of R. Eliezer[18] and that Samuel[19] has laid down the same principle as that of R. Joshua?[20] — There is no difference of opinion between them[21] as to what was the view[22] of R. Eliezer;[23] they differ only in respect of the view[22] of R. Joshua. Samuel [ruled] In agreement with R. Joshua; but Rab argued that[24] R. Joshua maintained his view only there[25] [where the benefits[26] are transferred] from her to him[27] but not [where the benefits[28] are to be transferred] from him to her.[29]

OR TO HER WORN OUT ARTICLES. Said R. Huna b. Hiyya to R. Kahana: You have told us in the name of Samuel that this[30] was taught only in respect of melog,[31] but that to zon barzel[31] property she is entitled. R. Papa, in considering this statement, raised the point: To which [class of women did Samuel refer]? If it be suggested: To [A MINOR] WHO EXERCISED THE RIGHT OF MI'UN [the difficulty would arise:] If [the articles] are still in existence she would be entitled to receive them in either case,[32] and if they were no longer in existence she would in neither case[32] be entitled to receive them.[33] [Is the reference], then, to A WOMAN WHO IS INCAPABLE OF PROCREATION? [But here again, it may be objected:] If [the articles] were still in existence she would receive them in either case,[32] and if they no longer existed [the ruling] should be reversed: She should receive melog property since [the capital] always remains in her legal possession[34] but should not receive zon barzel property since [the capital] does not remain in her possession.[35] [The fact,] however, [is that the reference is] to A FORBIDDEN RELATIVE OF THE SECOND DEGREE, in whose case[36] the Rabbis have penalized the woman in respect of [what is due to her] from the man,[37] and the man in respect of [what is due to him] from the woman.[38] R. Shimi b. Ashi remarked: From R. Kahana's statement[39] it may be inferred [that if a lawful wife] brought to her

husband[40] a cloak,[41] the article is [to be treated as] capital and the man may not continue to wear it until it is worn out.[42] But did not R. Nahman, however, rule that [a cloak must be treated as] produce?[43] — He[44] differs from R. Nahman. IS NOT ENTITLED [. . .] TO A KETHUBAH. Samuel stated: This was taught only in respect of the maneh[45] and the two hundred zuz,'[46] to the additional jointure,[47] however, she[48] is entitled. So it was also taught: The women concerning whom the Sages have ruled, 'They are not entitled to a kethubah' as, for instance, a minor who exercised the right of mi'un[39] and the others enumerated in the same context,[49] are not entitled to the maneh[50] or to the two hundred zuz,[51] but are entitled to their additional jointures; women, however, concerning whom the Sages have ruled, 'They may be divorced without [receiving their] kethubah' as, for instance, [a wife who] transgresses the [Mosaic] law, and others enumerated in the same context,[52] are not entitled to their additional jointures[47] and much less to [their statutory kethubahs of] a maneh[50] or two hundred zuz;[51] whilst a woman who is divorced on the ground of in repute[53] takes only[54] what is hers[55] and departs. This[56] provides support to R. Hunah who laid down: If she played the harlot [a wife] does not in consequence forfeit

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(1) As any other woman (v. supra note 8).

(2) Samuel, in the statement cited.

(3) In a Mishnah.

(4) V. supra p. 639, n. 11.

(5) Cf. note 5'

(6) Yeb. 1085.

(7) in the Mishnah of Yeb. cited.

(8) Rab and Samuel.

(9) To which a lawful husband is entitled.

(10) Which is the privilege of a husband (cf. Num. XXX, 7ff).

(11) If he is a priest. Only a lawful husband may (cf. Lev. XXI, 2).

(12) If she wishes to marry another man.

(13) Rabbinic law has conferred upon him the same rights as those of a lawful husband. Cf. p. 640, n. 17.

(14) Which is the privilege of a husband (cf. Num. XXX, 7ff).

(15) Even if he is a priest (cf. supra n. 1). Since he inherits her she is regarded as a meth mizwah (v. Glos.) for whom he may defile himself though Pentateuchally she is not his proper wife; v. Rashi Yeb. 108a.

(16) And no letter of divorce is required. Yeb. 89b, 108a.

(17) Who does not allow a kethubah to a divorced minor.

(18) Who ruled: 'There is no validity whatsoever in the act of a minor'.

(19) Who allows to a minor her kethubah,

(20) Who ruled that 'the act of a minor is valid'. Is it likely, however, that Rab and Samuel who were Amoraim would engage in a dispute which is practically a mere repetition of that of Tannaim?

(21) Lit., 'all the world', sc, Rab and Samuel.

(22) Lit., 'according'.

(23) I.e., even Samuel must admit that according to R. Eliezer, no kethubah is due to a minor a minori ad majus (cf. infra nn. 16 to 19 and text mutatis mutandis).

(24) Lit., 'up to here',

(25) In the case cited from Yeb.

(26) Inheritance, handiwork and finds.

(27) A husband may well be given such privileges in order to encourage men to undertake the responsibilities of married life.

(28) Such as the kethubah and the other privileges contained therein.

(29) There is no need to hold out inducements of marriage to a woman who is assumed to be always craving for marriage.

(30) That the woman spoken of in our Mishnah is not entitled to compensation for the WORN OUT CLOTHES. It will be discussed anon to which of the three classes of woman mentioned Samuel referred.

(31) V. Glos.

(32) Whether they were melog or zon barzel.
(33) Since, in the case of zon barzel, the husband might plead that what he used up was legally his, and in respect of melog also, though he had no right to use up the 'capital'. he might still plead justification on the ground that it would have become his by the right of heirship if he had survived her. In either case he would be justified in his claim that the minor's right to compensation does not come into force except on divorce.
(34) And the husband, therefore, had no right to use it up.
(35) But in that of the husband who was consequently entitled to use it up completely.
(36) Since both husband and wife are guilty of a transgression.
(37) Lit., 'fined her in respect of what is his'. Viz the kethubah and maintenance as well as for the wear of melog articles which he used up unlawfully and for which,10 the case of a lawful marriage. he would have been liable to pay compensation to the woman.
(38) Lit. , 'fined him in respect of what is hers'. He must pay compensation for the wear of zon barzel articles which he used up, though a lawful wife cannot object to such use. [Although the woman is nor mally entitled to compensation for the wear of the zon barzel property, it is still considered a fine, as legally the husband should, in this case, not be made to pay since he does not divorce of his own free will (R. Nissim). Var. lec. , they fined her in respect of what is hers (i.e..the melog property) and him in respect of what is his (i.e., the zon barzel property).]
(39) That in a forbidden marriage the woman is not entitled to compensation for worn out melog articles.
(40) On marrying him.
(41) As melog.
(42) If he did so he must pay compensation.
(43) Supra 79b.
(44) R. Kahana.
(45) The statutory kethubah that is due to one who married as a widow or divorcee.
(46) Due to a virgin (cf. supra note 7 mutatis mutandis).
(47) Which a husband settles on his wife at his own pleasure.
(48) Lit., 'they', sc, the classes of women mentioned in our Mishnah.
(49) Lit., 'and her associates'.
(50) V. supra note 7.
(51) V. supra n. 8.
(52) Cf. supra n. 10 and v. Mishnah supra 72a.
(53) Lit., 'on evil name', sc. of faithlessness.
(54) MS.M. inserts, 'the worn out clothes'.
(55) Lit., 'before her', sc. her 'melog property.
(56) The last ruling in the cited Baraitha.

Talmud - Mas. Kethuboth 101b

her worn out articles that are still in existence.

A tanna recited in the presence of R. Nahman: [A wife who] played the harlot forfeits in consequence her worn out articles [though they are still] in existence. 'If she' , the other said to him, 'has played the harlot, have her chattels also played the harlot?[1] Recite rather: She does not forfeit her worn out articles [that are still] in existence' — Rabbah b. Bar Hana stated in the name of R. Johanan: This[2] is the view of the unnamed R. Menahem,[3] but the Sages ruled: [A wife who] played the harlot does not thereby forfeit her worn out articles that are still in existence.

IF THE MAN, HOWEVER, HAD MARRIED HER etc. Said R. Huna:A woman incapable of procreation [has sometimes the status of] a wife and [sometimes she has] no such status;[4] a widow[5] [has always the status of] a proper wife. 'A woman incapable of procreation [has sometimes the status of] a wife and [sometimes she] has no such status'; if the husband knew of her [defect][6] she is entitled to a kethubah[7] and if he did not know of her [defect] she is not entitled to a kethubah. 'A widows [has always the status of] a proper wife', for, whether her husband was aware of her

[widowhood] or whether he was not aware of it, she is always entitled to a kethubah. Rab Judah, however, said: The one[8] as well as the other[9] [has sometimes the status of] a wife and [sometimes she has] no such status,[4] for [in either case] if her husband was aware of her [condition or status] she is entitled to a kethubah and if he was not aware of it she is not entitled to a kethubah. An objection was raised: If [a High Priest] married on the presumption that [the woman] was in her widowhood[10] and it was found that she had been in such a condition,[10] she is entitled to her kethubah. Does not this imply that if[11] there was no presumption[12] she is not entitled to a kethubah?[13] — Do not infer 'that[11] if there was no such presumption' but infer [this:] If he married her on the presumption that she was not in her widowhood[14] and it was found that she had been in such a condition,[14] she is not entitled to a kethubah. What, however, [is the ruling where he married her] with no assumption? Is she entitled [to a kethubah]? Then instead of stating, 'On the presumption that [the woman] was in her widowhood[14] and it was found that she had been in such a condition,[14] she is entitled to her kethubah', should it not rather have been stated, 'With no assumption she is entitled to her kethubah'[15] and [it would have been obvious that this[16] applied] with even greater force to the former?[17] Furthermore, it was explicitly taught: If he[18] married her in the belief[19] [that she was a widow] and it was found that his belief was justified,[19] she is entitled to a kethubah, but if he married her with no assumption she is not entitled to a kethubah. [Does not this present] an 'objection against R. Huna? — It was our Mishnah that caused R. Huna to err. He thought that, since a distinction was drawn in the case of a woman incapable of procreation[20] and no distinction was drawn in respect of a widow, it must be inferred that a widow is entitled [to a kethubah even if she was married] with no assumption of her status. [In fact, however] this is no [proper conclusion], for in stating the case of a widow the author intended to apply to it[21] the distinction drawn in the case of the woman who was incapable of procreation.[22]

CHAPTER XII

MISHNAH. IF A MAN MARRIED A WIFE AND SHE MADE AN ARRANGEMENT WITH HIM THAT HE SHOULD MAINTAIN HER DAUGHTER[23] FOR FIVE YEARS, HE MUST MAINTAIN HER FOR FIVE YEARS. IF SHE WAS [SUBSEQUENTLY][24] MARRIED TO ANOTHER MAN AND ARRANGED WITH HIM ALSO THAT HE SHOULD MAINTAIN HER DAUGHTER[23] FOR FIVE YEARS, HE, TOO, MUST MAINTAIN HER FOR FIVE YEARS. THE FIRST HUSBAND IS NOT ENTITLED TO PLEAD, 'IF SHE WILL. COME TO ME I WILL MAINTAIN HER',[25] BUT HE MUST FORWARD HER MAINTENANCE TO HER AT THE PLACE WHERE HER MOTHER [LIVES].[26] SIMILARLY, THE TWO HUSBANDS CANNOT PLEAD, 'WE WILL MAINTAIN HER JOINTLY', BUT ONE MUST MAINTAIN HER AND THE OTHER ALLOW HER THE COST OF HER MAINTENANCE. IF SHE[27] MARRIED[24] HER HUSBAND MUST SUPPLY HER WITH MAINTENANCE AND THEY[28] ALLOW HER THE COST OF HER MAINTENANCE. SHOULD THEY[29] DIE, THEIR OWN DAUGHTERS ARE TO BE MAINTAINED OUT OF THEIR FREE ASSETS ONLY[30] BUT SHE[27] MUST BE MAINTAINED EVEN OUT OF ASSIGNED PROPERTY, BECAUSE SHE[31] [HAS THE SAME LEGAL STATUS] AS A CREDITOR. PRUDENT MEN USED TO WRITE,[32] 'ON CONDITION THAT I SHALL MAINTAIN YOUR DAUGHTER FOR FIVE YEARS WHILE YOU [CONTINUE TO LIVE] WITH ME'. GEMARA. It was stated: A man who said to his fellow, 'I owe you a maneh'[33] is, R. Johanan ruled, liable; but Resh Lakish ruled: He is free. How is one to understand [this dispute]? If [it refers to a case] where the man said to them[34] 'You are my witnesses', what [it might be objected] is the reason of Resh Lakish who holds him to be free?[35] If [it is a case] where he did not say to them,[34] 'You are my witnesses, what [it might equally be objected] can be the reason of R. Johanan who holds him liable?[36] The fact is[37] that [the dispute relates to a case] where he did not tell them, 'You are my witnesses', but here we are[38] dealing [with the case of a person] who said to another, 'I owe you a maneh'[33] by [handing to him][39] a note of indebtedness.[40] R. Johanan ruled: He is liable, because the contents[41] of a bond[42] has the same force as if the man [who delivered it] said, 'You are my witnesses'; but Resh Lakish ruled: He is free, because the contents[41] of a bond has

no binding force.

We learned: IF A MAN MARRIED A WIFE AND SHE MADE AN AGREEMENT WITH HIM THAT HE SHALL MAINTAIN HER DAUGHTER FOR FIVE YEARS, HE MUST MAINTAIN HER FOR FIVE YEARS. Does not this refer to[43] , a case like this?[44]

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(1) Surely not.

(2) The version recited by the Tanna in the presence of R. Nahman.

(3) Sc. whose rulings were often quoted anonymously in the Mishnah and the Baraitha. [The reference is to R. Menahem b. R. Jose, v, Neg. 262.]

(4) Lit., 'and not a wife'.

(5) Even if married to a High Priest (cf. Lev. XXI, 14).

(6) Before he married her.

(7) He is assumed to have acquiesced.

(8) MS,M., one incapable of procreation'.

(9) 'A widow' (so MS.M.) who was married to a High Priest.

(10) Lit., 'so'.

(11) Lit. , 'but' —

(12) A case analogous to that where the High Priest was not aware of the woman's widowhood, supra.

(13) An objection against R. Huna.

(14) Lit. , 'so'.

(15) So Bah. Cur. edd. omit the last six words.

(16) The woman's right to her kethubah.

(17) Lit. , 'that', where the High Priest actually presumed the woman's widowhood.

(18) A High Priest.

(19) בידוע particip. pass. of ידע ('to know') with prefix.

(20) 'IF THE MAN, HOWEVER, HAD MARRIED HER AT THE OUTSET . . . SHE IS ENTITLED etc.'.

(21) Lit., 'stands on'.

(22) Which immediately precedes it.

(23) From another husband.

(24) before the expiration of the five years.

(25) Sc. refusing maintenance on the ground that her mother with whom she lives was no longer his wife.

(26) Var. lec., 'to the place of her mother' (so according to the separate edd. of the Mishnah and Alfasi).

(27) The daughter.

(28) Respectively; each one the full cost.

(29) The two husbands (v. supra n. 2).

(30) Cf. 48b.

(31) Whose rights are based on a written bond.

(32) In any agreement to maintain a wife's daughter.

(33) V. Glos.

(34) Those who were present at the time of his admission of the debt.

(35) Such a ruling, surely. is contrary to what has been laid down in Sanh. 29b.

(36) This, surely, is also contrary to what was taught in Sanh. 29b, that the admission is valid only where the debtor explicitly stated, 'You are my witnesses'.

(37) Lit., 'always'.

(38) Lit., 'in what are we'.

(39) In the presence of witnesses.

(40) In which the debt is acknowledged in the man's handwriting but is not attested by his signature nor by that of witnesses.

(41) Lit., 'thing'.

(42) Delivered in the presence of witnesses.

(43) Lit., 'what, not?'

(44) Where the husband had handed over the written agreement (cf. supra note 8 mutatis mutandis) in the presence of witnesses without specifically appointing them as such. Had the document been duly signed the ruling, being so obvious, would have been superfluous. Does this then present an objection against Resh Lakish?

Talmud - Mas. Kethuboth 102a

— No, [our Mishnah is dealing] with deeds on verbal agreements,[1] and [the ruling[2] was necessary] in accordance with [the view] of R.Giddal, since R. Giddal has laid down in the name of Rab:[3] [if[4] one man said to another.] 'How much are you giving to your son?' [and the other replies.] 'Such and such a sum', and [when the other asks.] 'How much are you giving to your daughter?' [the first replies.] 'Such and such a sum', [and on the basis of this talk] a betrothal was effected,[5] kinyan is deemed to have been executed, these being matters concerning which kinyan is effected by a mere verbal arrangement.[6]

Come and hear: If a man gave to a priest in writing [a statement] that he[7] owed him five sela's[8] he must[9] pay him the five sela's and his son is not redeemed thereby![10] — There [the law] is different because one is under a pentateuchal obligation [to give them] to him.[11] If that be so, why did he write? — In order to choose for himself a priest.[12] If that is the case[13] why is not his son redeemed?[14] — In agreement with a ruling of 'Ulla; For 'Ulla said, pentateuchally [the son] is redeemed as soon as [the father] gives [the note of money indebtedness to the priest,] and the reason why the Rabbis ruled that he was not redeemed is because a preventive measure was enacted against the possibility of the assumption that redemption may be effected by means of bonds [in general].[15]

Raba said: [Their '[6] dispute seems to follow the same principles] as [laid down by] Tannaim: [If the guarantee] of a guarantor appears[16] below the signatures to bonds of indebtedness,[17] [the creditor] may recover his debt from [the guarantor's] free property.[18] Such a case once came before R. Ishmael who decided that [the debt] may be recovered from [the guarantor's] free property.[18] Ben Nannus, however, said to him, '[The debt may] be recovered neither from free property nor from assigned property'. 'Why?' the other asked him. 'Behold', he replied, 'this is just as if [a creditor] were [in the act of] throttling a debtor[19] in the street,[20] and his friend found him and said to him, "Leave him alone and I will pay you", [where he is undoubtedly] exempt from liability, since the loan was not made through trust in him.'[21] May it not be suggested that R. Johanan holds the same view as R. Ishmael while Resh Lakish holds that of Ben Nannus? — On the view of Ben Nannus there can be no difference of opinion;[22]

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(1) שטרי פסיקתא in which the witnesses enter the terms that were verbally agreed upon between the parties and duly attach their signatures.

(2) Which might appear superfluous in view of the fact that the agreement has been properly drawn up and duly signed.

(3) Kid. 9b.

(4) In negotiating a marriage.

(5) Lit., 'they stood and betrothed'.

(6) No symbolic kinyan being necessary. Our Mishnah, too' deals similarly with a verbal agreement from which symbolic kinyan was absent; and, contrary to the opinion that an agreement without kinyan is invalid, it lays down the law In agreement with R. Giddal.

(7) Lit., 'that I'.

(8) Or shekels. Such a sum is due to the priest for the redemption of an Israelite's firstborn son (cf. Ex. XIII, 13 and Num. XVIII, 16).

(9) Though the document was unsigned and no kinyan was executed and, in consequence. should have no more legal force than a verbal admission. This contradicts Resh Lakish.

(10) Bek. 510.

(11) [He is not actually obliged Biblically to give to this particular priest, hence omit to him' with MS.M. which reads 'because it is Biblical'.]

(12) In the absence of the written document the five sela's could have been given to any other priest.
(13) That the Pentateuchal obligation confers upon a legally invalid document the force of one that was duly signed by witnesses.
(14) A legal bond, surely, might be regarded as a virtual payment.
(15) Other than those In which the father of the child himself assumed the liability. (14) R. Johanan and Resh Lakish.
(16) Lit., 'which goes out'.
(17) [The guarantor simply declaring 'I am guarantor' without attaching his signature (Tosaf.).]
(18) But not from property which he sold or mortgaged. Since the signatures of the witnesses do not appear below the guarantee, the guarantor's undertaking can have no more force than a verbal promise, or a loan that has not been secured by a bond, in which case no assigned property is pledged to the creditor.
(19) Lit., 'his fellow'.
(20) Sc. using violence against him.
(21) Such a guarantee is offered for the sole purpose of rescuing the debtor from the creditor's violence. It cannot be regarded as a serious guarantee to discharge the debt, since the debt was incurred before the guarantee was given, v. B.B. 175b.
(22) I.e., even R. Johanan must admit that Ben Nannus differs from his ruling. For, if in the case of a guarantee which has Pentateuchal authority (v. B.B. 173b), Ben Nannus does not recognize the validity of a personally unattested undertaking, how much less would he recognize such an undertaking in a case like that spoken of by R. Johanan.

Talmud - Mas. Kethuboth 102b

their dispute, however, might relate to the view of R. Ishmael. R. Johanan is, [of course,] in agreement with R. Ishmael, while Resh Lakish [might argue:] R. Ishmael maintains his view there[1] only[2] because a pentateuchal responsibility is involved[3] but [not] here where no pentateuchal responsibility is involved.

The [above] text [stated]: 'R. Giddal has laid down in the name of Rab: [If one man said to another,] "How much are you giving to your son?" [and the other replied,] "Such and such a sun,", and [when the other asks,] "How much are you giving to your daughter?" [the first replies,] "Such and such a sum", [and on the basis of this talk] betrothal was effected, kinyan is deemed to have been executed, these being matters concerning which kinyan is effected by a mere verbal arrangement'.[4] Said Raba: It stands to reason that Rab's ruling should apply [only] to the case of a man whose daughter was[5] a na'arah,[6] since the benefit [of her betrothal][7] goes to him,[8] but not to that of a bogereth,[6] since the benefit [of the betrothal of the latter]' does not go to him; but, by God! Rab meant [his ruling to include] even one who is a bogereth. For, should you not concede this, [the objection could be put:] What benefit does the son's[9] father derive?[10] The reason consequently must be that[11] owing to the pleasure of the formation of a mutual family tie they decide to allow one another the full rights of kinyan.

Said Rabina to R. Ashi: Are those verbal arrangements,[12] allowed to be recorded[13] or are they not allowed to be recorded?[14] — They, the other replied, may not be recorded.[15] He[16] raised an objection against him:[17] PRUDENT MEN USED TO WRITE,[18] ON CONDITION THAT I SHALL MAINTAIN YOUR DAUGHTER FOR FIVE YEARS WHILE YOU [CONTINUE TO LIVE] WITH ME'?[19] — The meaning of[20] 'WRITE' [in this context] is 'say'. Could 'saying', however, be described as 'writing'? — Yes, for so we learned: If a husband gives to his wife a written undertaking,[21] 'I have no claim whatsoever upon your estates',[22] and R. Hiyya taught:[23] If a husband said[24] to his wife.[25]

Come and hear: Deeds of betrothal[26] and marriage[27] may not be written except with the consent of both parties,[28] but, [it follows, that] with the consent of both parties they may be written. Does not this refer to[29] deeds based on verbal agreements?[30] — No; deeds of actual betrothal,[31] [the ruling[32] being] in agreement with R. papa and R. Sherabya; for it was stated: If a man wrote it[33] in her

name[34] but without her consent she is, said Rabbah[35] and Rabina, betrothed, but R. Papa and R. Sherabya aid, She is not betrothed.[36]

Come and hear: SHOULD THEY DIE, THEIR OWN DAUGHTERS ARE TO BE MAINTAINED OUT OF THEIR FREE PROPERTY ONLY BUT SHE MUST BE MAINTAINED EVEN OUT OF ASSIGNED PROPERTY, BECAUSE SHE [HAS THE SAME LEGAL STATUS] AS A CREDITOR![37] Here we are dealing with a case where the man was made to confirm his obligation[38] by a kinyan.[39] If so,[40] [the same right[41] should be enjoyed, should it not, by one's own] daughters also? — [This is a case] where kinyan was executed in favour of the ones but not in favour of the others.[42] Whence this certainty?[43] — Since she was in existence at the time the kinyan was executed, the kinyan in her favour is effective; the other daughters,[44] however, since they were not in existence at the time the kinyan was executed, the kinyan in their favour is not effective. But do we not also deal with the case where they[45] were in existence at the time of the kinyan, this being possible where,[46] for instance, the man had divorced his wife and then remarried her? — [This] however, [is the explanation:] Since she is not covered by the provision of Beth din[47] kinyan in her case is effective; in the case of the other daughters, however, who are protected by the provision of Beth din,[47] kinyan is not effective. Are they, on that account, worse off?[48] — This, however, is the reason: In the case of his own daughters, since they are protected by the provision of Beth din,[47] it might be assumed that he entrusted them[49] with some bundles [of money].[50]

THE FIRST HUSBAND IS NOT ENTITLED TO PLEAD [etc.] R.Hisda stated: This[51] implies that [the place of] a daughter must be with her mother.[52] Whence, [however, the proof] that we are dealing here[53] with one who is of age; is it not possible that[54] we are dealing only with a minor [whose custody must be entrusted to her mother] on account of what had once happened? For it was taught: If a man died and left a young son with his mother,[55] [and while] the father's heirs demand, ‘Let him be brought up with us’ his mother claims, ‘My son should be brought up by me’, [the son] must be left with his mother, but may not be left with anyone who is entitled to be his heir.[56] Such a case[57] once occurred and [the heirs] killed him on the eve of passover![58] — If that were so[59] it should have been stated,[60] ‘To wherever she is,’

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(1) The case of the guarantor.

(2) Lit., ‘until here’.

(3) The recognition of a guarantor's responsibility is (as stated supra) Pentateuchal.

(4) Supra 102a q.v. for notes.

(5) At the time betrothal was negotiated.

(6) V. Glos.

(7) Sc. the sum of money or object of value which the man gives to the woman as a token of betrothal which constitutes the required kinyan.

(8) Lit., to his hand’. As a return for the benefit he, it may well be presumed, readily agrees that even his verbal undertaking should have the legal force of a personally attested written deed.

(9) Sc. the bridegroom's.

(10) Surely none; since the pecuniary benefit from his son's betrothal does not belong to him.

(11) Lit., ‘but’.

(12) Lit., ‘words’, spoken of supra, in connection with which no symbolic kinyan was executed.

(13) Sc. in a deed, by witnesses.

(14) For, if they were to be embodied10 a deed, the holder of such a deed would be enabled to distrain on assigned property to which, in the absence of symbolic kinyan, he is legally not entitled. [The question, according to Isaiah Trani, is whether these may be reduced to writing without the consent of both parties, either of whom may object to encumbering the property with a mortgage, v. Shittah Mekubbezeth a.I. and R. Nissim on Kid.9b also, for other interpretations.]

(15) Cf. supra nn. 10 and 11.

(16) Rabina.

(17) R. Ashi.
(18) כותבין emphasis on 'WRITE'.
(19) Though the agreement was only verbal. How then could K. Ashi maintain that verbal arrangements may not be embodied in a deed?
(20) Lit., 'what'.
(21) הכותב
(22) Mishnah supra 830.
(23) In reference to this Mishnah which uses the expression of writing (v. supra n. 3).
(24) Emphasis on the word האומר.
(25) Which proves that a verbal statement is sometimes described as a written one.
(26) Verbal agreements between the parties on the amounts promised.
(27) Kethubah contracts.
(28) B.B. 167b,Kid.9b.
(29) Lit., 'what, not?'
(30) Cf. supra p. 647, n. 13. An objection thus arises against R. Ashi who ruled that verbal agreements 'may not be recorded'. [On Trani's interpretation (supra p. 650, n. II) this passage is adduced in support of R. Ashi that such deeds cannot be written without the consent of both parties. This will, however, necessitate the deletion of the words '(it follows that) with the consent of both they may be written', which words10 fact do not occur in MS.M.]
(31) Betrothal may be effected by a deed wherein the man enters, 'Behold thou art betrothed unto me'.
(32) Which requires the consent of the woman to such a deed.
(33) A deed of betrothal.
(34) Or 'for her sake', that of the woman he wishes to betroth.
(35) Var., 'Raba' (MS.M., the parallel passage in Kid., and Codes).
(36) Kid. 9b, 48a.
(37) Since only a written deed would confer upon her such a status it is obvious that such a deed was in her possession, an objection against R. Ashi (cf. supra n. 12).
(38) To maintain his wife's daughter.
(39) Lit., 'where they acquired (symbolic) possession from his hand'. Hence the permissibility of writing a deed.
(40) That the verbal agreement was under a kinyan.
(41) To exact the cost of maintenance from assigned property.
(42) Lit., 'to this'.
(43) The Mishnah, surely, does not mention kinyan in the case of the one and omit it in that of the others.
(44) Who were presumably born from the marriage contracted at the time of the kinyan.
(45) The man's own daughters.
(46) Lit., 'and how is this to be imagined?'
(47) The clause of the kethubah which entitles daughters born from that marriage to maintenance.
(48) The contrary might, in fact, be expected: As they enjoy the privilege of the clause in the kethubah (v. supra n. 10) they should also be entitled to the privilege of the kinyan.
(49) Lit., 'caused them to seize', before he died.
(50) Or valuables, to discharge his obligation on the account of their maintenance.
(51) The ruling that the maintenance of one's wife's daughter must be forwarded to the place where her mother lives.
(52) The brothers who maintain her are not entitled to demand that she shall live with them.
(53) In our Mishnah.
(54) In stating. 'WHERE HER MOTHER (LIVES)'.
(55) לאמו; wanting in Bomb. ed.
(56) An interested party may be suspected of murder.
(57) That the child was entrusted to the care of relatives who were entitled to be his legal heirs.
(58) In order to secure his property. Now since there is nothing to prove that an older daughter (who is well capable of looking after herself) must also be maintained at her mother's house and cannot be compelled to live with the brothers and receive maintenance from them, an objection arises against R. Hisda. [Detractors of the Talmud, it may be mentioned, professed to find in this passage an allusion to the 'ritual' murder of 'Christian' children! The absurdity of this suggestion was pointed out by Eric Bischoff in his Talmudkatechismus, p. 38, where he describes it as 'sinnlos'

(senseless). It is evident that this incident was recorded to emphasize the danger of entrusting a child to the care of one who stands to benefit by its death. For we see here that even the sanctity of the Festival did not deter the brothers from perpetrating a crime for the purpose of gain. This danger has also been recognized in the English Law of Insurance which lays down that a man cannot insure his child's life to derive a benefit on its death].

(59) That a daughter who is of age may be compelled to live with her brothers.

(60) In our Mishnah.

Talmud - Mas. Kethuboth 103a

why then was it stated, 'AT THE PLACE WHERE HER MOTHER [LIVES]'?[1] Consequently it must be inferred that [the place of] a daughter, whether she be of age or a minor, is with her mother.

THE TWO HUSBANDS CANNOT PLEAD etc. A certain man once leased his mill to another for [the consideration of the latter's services in] grinding [his corn].[2] Eventually he became rich and bought another mill and an ass. Thereupon he said to the other, 'Until now I have had my grinding done at your place but now[3] pay me rent'. — 'I shall', the other replied, 'only grind for you'.[4] Rabina [in considering the case] intended to rule that it involved the very principle that was laid down in our Mishnah: THE TWO HUSBANDS CANNOT PLEAD, 'WE WILL MAINTAIN HER JOINTLY', BUT ONE MUST MAINTAIN HER AND THE OTHER ALLOWS HER THE COST OF HER MAINTENANCE.[5] R. 'Awira, however, said to him: Are [the two cases] alike? There [the woman][6] has Only one stomach, not two;[7] but here[8] [the lessee] might well tell the owner, 'Grind [in your own mill][9] and sell; grind [in mine][10] and keep'.[11] This,[12] however, has been said only in a case where [the lessee] has no [other orders for] grinding at his mill,[13] but if he has [sufficient orders for] grinding at his mill he may in such circumstances be compelled [not to act] in the manner of Sodom.[14]

MISHNAH. SHOULD A WIDOW SAY, 'I HAVE NO DESIRE TO MOVE FROM MY HUSBAND'S HOUSE', THE HEIRS CANNOT TELL HER, GO TO YOUR FATHER'S HOUSE AND WE WILL MAINTAIN YOU', BUT THEY MUST MAINTAIN HER IN HER HUSBAND'S HOUSE[15] AND GIVE HER A DWELLING BECOMING HER DIGNITY. IF SHE SAID, HOWEVER,[16] HAVE NO DESIRE TO MOVE FROM MY FATHER'S HOUSE', THE HEIRS ARE ENTITLED TO SAY TO HER, 'IF YOU STAY WITH US YOU WILL HAVE YOUR MAINTENANCE, BUT IF YOU DO NOT STAY WITH US YOU WILL RECEIVE NO MAINTENANCE'. IF SHE BASED HER PLEA[16] ON THE GROUND THAT SHE WAS YOUNG AND THEY[17] WERE YOUNG,[18] THEY MUST MAINTAIN HER WHILE SHE LIVES IN THE HOUSE OF HER FATHER.

GEMARA. Our Rabbis taught:[19] [A widow] may use [her deceased husband's] dwelling as she used it during his[20] lifetime. [She may also use] the bondmen and bondwomen, the cushions and the bolsters, and the silver and gold utensils as she used them during the lifetime of her husband, for such is the written undertaking he gave her: 'And you shall dwell in my house and be maintained therein out of my estate throughout the duration of your widowhood'.[21]

R. Joseph learnt:[22] 'In my house' [implies] 'but not in my hovel'.[23]

R. Nahman ruled: If orphans sold a widow's dwelling[24] their act is legally invalid.[25] But why [should this case be] different from that of which R. Assi spoke in the name of R. Johanan as follows:[26] If the male orphans forestalled [the female orphans] and sold[27] some property of a small estate[28] their sale is valid?[29] — There[30] [the property] Was not pledged to any daughter[31] during [her father's] lifetime,[32] but here[33] [the dwelling] was pledged to the widow[34] during [her husband's] lifetime.[35]

Abaye stated: We have a tradition that if a widow's dwelling[36] collapsed it is not the duty of the heirs to rebuild it.' So it was also taught: If a widow's dwelling[36] collapsed it is not the duty of the heirs to rebuild it.[37] Furthermore, even if she says, 'Allow me and I shall rebuild it at my own expense', she is not granted her request .[38]

Abaye asked: What [is the legal position if] she repaired it?[39] — This is undecided.[40]

IF SHE SAID, HOWEVER,'I HAVE NO DESIRE' etc. Why should they not give her maintenance while she lives there?[41] — This supports [a statement] of R. Huna who said, 'The blessing of a house [is proportionate] to its size'.[42] Why then can they not give her according to the blessing of the house?[43] — That is so.[44] Said R. Huna: The sayings[45] of the Sages [are a source of] blessing, wealth and healing. [As to] 'blessing',[we have] the statement just mentioned. 'Wealth'? — Because we learned: If one sold fruits to another[46] [and the buyer] pulled[47] them, though they have not yet been measured,[48] ownership is acquired. If, however, they have been measured,[49] but [the buyer] has not pulled them, ownership is not acquired. But if [the buyer] is prudent he rents the place where they are kept.[50] 'Healing'? — For we learned: A man should not chew wheat and put it on his wound during the Passover because it ferments.[51]

Our Rabbis taught: When Rabbi[52] was about to depart [from this life] he said, 'I require [the presence] of my sons'. When his sons entered into his presence he instructed them: 'Take care that you shew due respect to your mother. The light[53] shall continue to burn in its usual place, the table[53] shall be laid in its usual place [and my] bed shall be spread in its usual place.[54] Joseph of Haifa and Simeon of Efrath who attended on me in my lifetime shall attend on me when I am dead'.

'Take care that you shew due respect to your mother'. Is [not this instruction] Pentateuchal, since it is written, Honour thy father and thy mother?[55] — She was their stepmother.[56] [Is not the commandment to honour] a stepmother[56] also Pentateuchal, for it was taught: Honour thy father and thy mother,'[55] 'thy father'[57] includes[58] 'thy stepmother','and thy mother'[59] includes[60] 'thy Stepfather',[61] and the superfluous waw[62] includes 'thy elder brother'? — This exposition[63] [was meant to apply] during [one's own parents'] lifetime but not after [their] death.

'The light shall continue to burn in its usual place, the table shall be laid in its usual place [and my] bed shall be spread in its usual place'.[64] What is the reason? — He used to come home again at twilight every Sabbath Eve. On a certain Sabbath Eve a neighbour came to the door speaking aloud, when his handmaid whispered, 'Be quiet for Rabbi is sitting there'. As soon as he heard this he came no more,in order that no reflection might be cast[65] on the earlier saints.[66]

'Joseph of Haifa and Simeon of Efrath who attended on me in my lifetime shall attend on me when I am dead'. He was understood to mean, 'In this world'.[67] When it was seen however, that their biers preceded his[68] [all] said that the conclusion must be that he was referring to the other[69] world, and that the reason why he mentioned it[70] was that it might not be suspected that they were guilty of some offence[71] and that it was only the merit of Rabbi that protected[72] them until that moment .[73]

'I require'. he said to them, '[the presence] of the Sages of Israel', and the Sages of Israel entered into his presence. 'Do not lament for me',[74] he said to them, 'in the smaller towns,

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(1) Emphasis on MOTHER.

(2) No money rental having been arranged.

(3) 'That I have another mill in which to grind my corn'.

(4) But will pay no rent.

(5) As 10 this case a cash payment must be made though originally only maintenance gas undertaken so in the case of

the miller a cash rental may be demanded though the original arrangement was for payment in service.
(6) Spoken of in our Mishnah.
(7) She cannot he expected to consume a double allowance of food. Hence there is no other alternative but that of substituting one monetary payment for one allowance of food.
(8) The case of the miller.
(9) The one you bought.
(10) The one I hired from you.
(11) A suggestion which may well be adopted by the owner without any loss to himself.
(12) That the lessee cannot be compelled to pay a cash rental.
(13) It would be an act of injustice to compel him to pay rent while his machinery stood idle. It is more equitable that he should be enabled to continue the original agreement whereby he is both kept employed and pays his rent.
(14) The Sodomites were notorious for refusing to do any favours even when they cost them nothing. 'A dog-in-the-manger attitude' (cf. B.B. Sonc. ed. p. 62, n. 3).
(15) בבית בעלה, so MS.M. Wanting incur. edd.
(16) For refusing to live with the heirs.
(17) The heirs, children from another wife.
(18) In consequence of which she fears quarrels or temptation.
(19) Cf. Tosef. Keth. XI.
(20) Lit., 'her husband'.
(21) Mishnah supra 52b.
(22) In explaining the Mishnah cited.
(23) Supra 540 q.v. for notes.
(24) Which formed part of her deceased husband's estate.
(25) Lit., 'they have not done anything'.
(26) Lit., 'for R. Assi stated in the name of R. Johanan'.
(27) Before the court had dealt with the case.
(28) Of their deceased father, which is legally due to the daughters (cf. infra 108b).
(29) Lit., 'what they sold is sold', Yeb. 67b, Sotah 21b, B.B. 1400.
(30) The sale of a small estate.
(31) Lit., 'to her'.
(32) A father is under no legal obligation to maintain his daughters.
(33) A widow's dwelling.
(34) Lit., 'to her'.
(35) As is evident from the Mishnah supra 52b.
(36) Which formed part of her deceased husband's estate.
(37) Her claim upon the dwelling terminates as soon as it is no longer fit for habitation.
(38) Lit., 'they do not listen to her'.
(39) The dilapidated dwelling (v. Rashi). Aliter; May she repair it? (V. Tosaf. s.v. ג ה a.l.) Is she entitled, it is asked, to continue to live In that dwelling so long as it can be kept up by repairs or must she quit it as soon as dwelling in it becomes impossible without repairs.
(40) Teku, v. Glos.
(41) In her father's house.
(42) Tosef. Keth. XII, B.B. 144b. The more the members of a household the cheaper the cost of living.
(43) Sc. an allowance equal to the cheaper cost of her maintenance at the house of the heirs.
(44) Lit., 'thus also'; she is in fact entitled to such an allowance.
(45) Lit., 'tongue', 'language'.
(46) The price having been agreed upon.
(47) 'Pulling' (meshikah, v. Glos.).
(48) Measuring is not an essential factor of a sale, since it merely determines the quantity sold.
(49) V. B.B. 84b as to how and where.
(50) Mishnah B.B. 84b. If the fruit is kept in the seller's domain the buyer who for some reason is unable to transport his purchase forthwith and fears that the seller might retract and cause him financial loss, may thus protect himself by

renting the spot on which the fruit is kept and thereby acquire possession of the fruit since a man's domain acquires possession for him. A buyer thus gets wealth by taking the hint of the Sages.

(51) Pesah. 39b. From this saying one learns of a remedy for a wound.

(52) R. Judah I (135-220 C.E.) the Patriarch, compiler of the Mishnah.

(53) Which he used during his lifetime.

(54) 'Bed shall. . . place' is wanting in MS.M.

(55) Ex. XX, 12.

(56) Lit., 'a father's wife'.

(57) את אביך emphasis on את the sign of the defined accusative, which is not absolutely essential in the context.

(58) Lit., 'this'. Cf., however, Beth Joseph, Y.D. 240 ad fin. where the reading is לרבות 'to include'.

(59) ואת אמך cf. supra n. 7 mutatis mutandis.

(60) V. supra note 8.

(61) Lit. 'thy mother's husband'.

(62) In ואת אמך.

(63) Lit., 'these words', respect for step.parents.

(64) V. supra note 4.

(65) Lit., 'to bring out'.

(66) צדיקים 'righteous and pious men' who were denied the privilege of revisiting their earthly homes.

(67) I.e., they should attend to his burial (Rashi) or to the light. table and bed at his house, of which he spoke earlier.

(68) They died about the same time as Rabbi and were buried first.

(69) Lit., 'that'.

(70) Lit., 'that he said thus', that they should attend on him.

(71) Lit., 'that they may not say: They had something'.

(72) Lit., 'benefitted'.

(73) Until the end of his days.

(74) Or 'hold funeral orations'.

Talmud - Mas. Kethuboth 103b

and reassemble[1] the college after thirty days.[2] My son Simeon is wise[3] my son Gamaliel Nasi[4] and Hanina b. Hama shall preside [at the college].

'Do not lament for me in the smaller towns'. He was understood to give this instruction In order [to cause less] trouble.[5] As it was observed, however, that when lamentations were held in the large towns everybody[6] came[7] they arrived at the conclusion that his instruction was due to [a desire to enhance] the honour [of the people].[8]

'Reassemble the college after thirty days', because [he thought] 'I am not more important than our teacher Moses concerning whom it is Written in Scripture. And the children of Israel wept for Moses in the plains of Moab thirty days'.[9]

For thirty days they mourned both day and night; subsequently[10] they mourned in the day-time and studied at night or mourned at night and studied during the day, until a period of twelve months of mourning[11] [had passed].

On the day that Rabbi died a bath kol[12] went forth and announced: Whosoever has been present at the death of Rabbi is destined to enjoy the life of the world to come. A certain fuller,[13] who used to come to him[14] every day, failed to call on that day; and, as soon as he heard this, went up upon a roof, fell down to the ground and died. A bath kol[12] came forth and announced: That fuller also is destined to enjoy the life of the world to come. 'My son Simeon is wise. What did he[14] mean?[15] — It is this that he meant: Although my son Simeon is wise, my son Gamaliel shall be the Nasi.[16] Said Levi, 'Was It necessary to state this?'[17] — It was necessary'. replied R. Simeon b. Rabbi, 'for

yourself and for your lameness'.[18] What was his[19] difficulty?[20] Does not Scripture state, But the kingdom gave he to Jehoram, because he was the firstborn?[21] — The other[22] was properly representing[23] his ancestors[24] but R. Gamaliel was not properly representing[23] his ancestors.[25] Then why did Rabbi act in the manner he did?[26] — Granted that he[27] was not representing his ancestors In wisdom he was worthily representing them in his fear of sin.[28]

'Hanina b. Hama shall preside at the college'. R. Hanina, however, did not accept [the office] because R. Afes was by two and a half years older than he; and so R. Afes presided. R. Hanina sat [at his studies] outside [the lecture room],[29] and Levi came and joined him. When R. Afes went to his eternal rest[30] and R. Hanina took up the presidency Levi had no one to join him[31] and came in consequence to Babylon.

This description coincides with the following:[32] When Rab was told that a great man who was lame made his appearance at Nehardea[33] and held a discourse [in the course of which he] permitted [the wearing of] a wreath,[34] he said,'It is evident[35] that R. Afes has gone to his eternal rest, and R. Hanina has taken over the presidency; and that Levi having had no one to join him, has come [down here].' But might not one have suggested that R. Hanina came to his eternal rest, that R. Afes continued In the presidency as before[36] and that Levi who had no one to join him came [therefore, to Babylon]? If you wish I might reply: Levi would have submitted to the authority of R. Afes. And if you prefer I might reply: Since [Rabbi] once said, 'Hanina b. Hama shall preside at the college', there could be no possibility of his not becoming head;[37] for about the righteous it is written in Scripture. Thou shalt also decree a thing, and it shall be established unto thee.[38]

Was there not R. Hiyya?[39] — He had already gone to his eternal rest.[40] But did not R. Hiyya, state, 'I saw Rabbi's sepulchre[41] and shed tears upon it'? — Reverse [the names]. But did not R. Hiyya state, 'On the day on which Rabbi died holiness ceased'? — Reverse [the names]. But has it not been taught: When Rabbi fell in R. Hiyya entered into his presence and found him weeping. 'Master', he said to him, 'Why are you weeping? Was it not taught: '[If a man] dies smiling it is a good omen for him, if weeping it is a bad omen for him; his face upwards it is a good omen, his face downwards it is a bad omen; his face towards the public it is a good omen, towards the wall it is a bad omen; if his face is greenish it is a bad omen, if bright and ruddy it.is a good omen; dying on Sabbath Eve[42] is a good omen, on the termination of the Sabbath[43] is a bad omen; dying on the Eve of the Day of Atonement is a bad omen, on the termination of the Day of Atonement[44] is a good omen; dying of diarrhoea is a good omen because most righteous men die of diarrhoea?' And the other replied, 'I weep on [account of my impending separation from] the Torah and the commandments'?[45] — If you wish I might reply: Reverse [the names]; and if you prefer I might reply: In fact there Is no need to reverse [the names; but as] R. Hiyya was engaged in the performance of pious deeds Rabbi thought 'I will not disturb him'.[46] This[47] is in line with the following:[48] When R. Hanina and R. Hiyya were engaged in a dispute R. Hanina said to R. Hiyya, 'Do you [venture to] dispute with me? Were the Torah, God forbid, to be forgotten in Israel, I would restore it by means of my dialectical arguments'. — 'I', replied R. Hiyya, 'make provision that the Torah shall not be forgotten in Israel. For I bring flax seed, sow it, and weave nets [from the plant]. [With these] I hunt stags with whose flesh I feed orphans and from whose skins I prepare scrolls, and then proceed to a town where there are no teachers of young children, and write out the five Books of the Pentateuch for five children [respectively] and teach another six children respectively the six orders of the Mishnah, and then tell each one: Teach your section to your colleagues"'. It was this that Rabbi [had in mind when he] exclaimed, 'How great are the deeds of Hiyya?' Said R. Simeon b. Rabbi to him: '[Greater] even than yours?' — 'Yes', he replied. 'Even', asked R. Ishmael the son of R. Jose, 'than my father's?' — 'God forbid', the other replied. 'Let no such thing be [mentioned] in Israel!'[49]

'I desire', he[50] announced, 'the presence of my younger son R. Simeon entered into his presence

and he entrusted him with the orders[51] of wisdom. ‘I desire the presence of my elder son’, he announced. When R. Gamaliel entered he entrusted him with the traditions and regulations[51] of the Patriarchate. ‘My son’, he said to him, ‘conduct your patriarchate with men of high standing,[52] and cast bile among the students’.[53]

But , surely, this[54] is not proper[55] for is it not written in Scripture, But he honoureth them that fear the Lord,[56] and the Master said that this [text might be applied to] Jehoshaphat, King of Judah. who, on seeing a scholar, used to rise from his throne, embrace him and kiss him, and call him ‘My master, my master; my teacher, my teacher’? — This is no difficulty: The latter attitude[57] [is to be adopted] in private; the former[57] in public.[58]

It was taught: Rabbi was lying [on his sickbed] at Sepphoris[59] but a [burial] place was reserved for him at Beth She'arim.[60] Was it not, however, taught: Justice, justice shalt thou follow.[61] follow Rabbi to Beth She'arim? — Rabbi was [indeed] living at Beth She'arim[62] but when he fell ill[63] he was brought to Sepphoris

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(1) Lit., ‘and cause to sit.

(2) Of lamentation and mourning. No longer period for mourning shall be allowed.

(3) חכם. this is explained in the Gemara infra. V. also infra n. 24 and p. 659. n. 9.

(4) נשיא ‘prince’. ‘president’, ‘patriarch’. On some of the dignities and honours attached to the offices of Nasi, Hakam, and Ab-beth-din respectively v. Hor. 13b.

(5) By restricting the lamentations to the larger towns the inhabitants of the smaller ones as well as the villagers would be spared the time and trouble involved in arranging, or attending, the public funeral services.

(6) Lit., ‘all the world’.

(7) Both from the smaller towns and the villages.

(8) Cf., ‘he wished that Israel might be honoured in greater measure through him’ (Sanh. 470).

(9) Deut. XXXIV, 8.

(10) Lit., ‘from now onwards’.

(11) Lit., ‘that they mourned twelve months of the year’.

(12) V. Glos.

(13) [Probably this was the fuller mentioned in Ned. 410 (Jacob Emden).]

(14) Rabbi.

(15) One would naturally expect the wise son rather than the other to succeed his father as Nasi. Why then did Rabbi mention the wisdom of the one as apparently a reason for the appointment of the other?

(16) Cf. supra p. 658 nn. 13-14. [Halevy Doroth, II, p. 20, n. I, explains that what Rabbi primarily meant was that Simeon shall be the Hakam and Gamaliel the Nasi. The precedence, however, given in his instructions to Simeon, although his office was second to that of the Nasi, indicated that Rabbi desired to have a secondary meaning attached to his words. Hence the question, ‘what did he mean?’].

(17) That Gamaliel, who was the elder son and entitled to the succession, shall be the Nasi.

(18) Levi was lame (v. Suk. 530). Aliter (Jast.): ‘Do we need thee and thy limping (lame remark)?’

(19) R. Simeon b. Rabbi's.

(20) In understanding Levi's objection.

(21) II Chron. XXI, 3. (Cf. p. 659, n. 10). What need then was there, as Levi objected, for Rabbi's specific instruction?

(22) Lit., ‘that’, Jehoram.

(23) Lit., ‘fulfilling the place of’.

(24) Since there was no other son possessing a superior claim.

(25) His younger brother having been wiser. Hence the necessity for Rabbi's specific instructions. Aliter; What was his (sc. Levi's) difficulty? (Is it) that Scripture stated, But the kingdom . . . the firstborn, that (firstborn, it may be replied.) was properly representing his ancestors but R. Gamaliel etc. (cf. S. Strashun).

(26) Lit. , ‘thus’.

(27) Gamaliel.

(28) Moral conception and conduct (cf. Abboth III, II; Sonc. ed. III, 9’ p. 32).

(29) Since he could not recognise R. Afes as his superior.
(30) Lit., ‘his soul rested’.
(31) Lit., ‘to sit at his side’.
(32) Lit., ‘and that is’.
(33) V. supra p. 222, n. 8.
(34) On the Sabbath, when the carrying of objects from one domain into another is forbidden (cf. Shab. 59b).
(35) Lit., ‘infer from this’.
(36) Lit., ‘as he sat he sits’.
(37) Lit., ‘that he should not reign’. Consequently he must have survived R. Afes.
(38) lob XXII, 28.
(39) Who was superior to both R. Hanina and R. Afes. Why was he overlooked by Rabbi?
(40) When Rabbi was making his testamentary appointments.
(41) ‘His coffin’ (Rashi).
(42) Being the approach of the day of rest.
(43) Lit., ‘at the going out of the Sabbath’.
(44) One's sins having been forgiven during the day.
(45) All of which proves that R. Hiyya was still alive when Rabbi was on his deathbed.
(46) Lit., ‘cause him to be idle’ or ‘to relax’.
(47) The testimony to R. Hiyya's piety and public benefactions.
(48) Lit., ‘and that is (why)’.
(49) Cf. B.M. 85b where the parallel passage contains some variations including the substitution of ‘R. Ishmael the son of R. Jose’ for ‘R. Simeon b. Rabbi’.
(50) Rabbi. The story of the last moments of his life, interrupted by the Preceding discussions, explanations and incidents, is here resumed.
(51) Plur. const. of סדר ‘order’, ‘rules and regulations’.
(52) ברמים (sing. רם ‘high’, ‘elevated’). Aruch reads, בדמים) (דמים ‘equivalent’, ‘compensation’, ‘value’) ‘as something precious’.
(53) Sc. ‘introduce a firm discipline in the college’.
(54) Keeping scholars under a discipline which many might regard as degrading.
(55) Lit., ‘I am not’.
(56) Ps. XV, 4.
(57) Lit., ‘that’.
(58) Scholars, like the general public, may be expected to respect the common rules and regulations and to pay homage to the Patriarch.
(59) V. supra p. 410, n. 6.
(60) Identified with (a) the modern Tur'an. a village situated ten kilometres E.N.E. of Sepphoris (I. S. Horowitz, Palestine s.v.); (b) Besara, mentioned in Josephus, the modern Dscheda W. of the Valley of Jezreel (Klein. S. EJ. 4, 427).
(61) Deut. XVI, 20.
(62) ‘Rabbi . . . She'arim’ is wanting in עין יעקב edd.
(63) V. B.M. 85a.

Talmud - Mas. Kethuboth 104a

because it was situated on higher ground[1] and its air was salubrious.

On the day when Rabbi died the Rabbis decreed a public fast and offered prayers for heavenly mercy. They. furthermore, announced that whoever said that Rabbi was dead would be stabbed with a sword.

Rabbi's handmaid[2] ascended the roof and prayed: ‘The immortals[3] desire Rabbi [to join them] and the mortals[4] desire Rabbi [to remain with them]; may it be the will [of God] that the mortals may

overpower the immortals'. When, however, she saw how often he resorted to the privy,[5] painfully taking off his tefillin[6] and putting them on again, she prayed: 'May it be the will [of the Almighty] that the immortals may overpower the mortals'. As the Rabbis incessantly continued[7] their prayers for [heavenly] mercy she took up a jar and threw it down from the roof to the ground. [For a moment] they ceased praying[8] and the soul of Rabbi departed to its eternal rest.[9] 'Go', said the Rabbis to Bar Kappara, 'and investigate'.[10] He went and, finding that [Rabbi] was dead, he tore his cloak and turned the tear backwards. [On returning to the Rabbis] he began: 'The angels[11] and the mortals[12] have taken hold of the holy ark.[13] The angels overpowered the mortals and the holy ark has been captured'. 'Has he', they asked him, 'gone to his eternal rest?' — 'You', he replied, 'said it; I did not say it'.

Rabbi, at the time of his passing, raised his ten fingers towards heaven[14] and said: 'Sovereign of the Universe, it is revealed and known to you that I have laboured in the study of the Torah with my ten fingers and that I did not enjoy [any worldly] benefits even with my little finger. May it be Thy will that there be peace In my [Jast] resting place'. A bath kol[15] echoed, announcing, He shall enter into peace; they shall rest on their beds.[16]

[Does not] the context require [the singular pronoun:] 'On thy bed'?[17] This provides support for R. Hiyya b. Gamda. For he stated in the name of R. Jose b. Saul: When a righteous man departs from this world the ministering angels say to the Holy One, blessed be He, 'Sovereign of the Universe, the righteous man So-and-so is coming', and he answers them, 'Let the righteous men come [from their resting places], go forth to meet him, and say to him that he shall enter into peace [and then] they[18] shall rest on their beds'.

R. Eleazar stated: When a righteous man departs from the world he is welcomed by[19] three companies of ministering angels. One exclaims, 'Come[20] into peace'; the other[21] exclaims, He who walketh in his uprightness,[22] while the third[23] exclaims, 'He shall enter into peace; they shall rest on their beds'.[22] When a wicked man perishes from the world he is met[24] by three groups of angels of destruction. One announces, 'There is no peace, saith the Lord, unto the wicked';[25] the other[23] tells him, 'He[26] shall lie down in sorrow',[27] while the third[23] tells him, 'Go down and be thou laid with the uncircumcised'.[28]

MISHNAH. SO LONG AS SHE LIVES IN HER FATHER'S HOUSE [A WIDOW][29] MAY RECOVER HER KETHUBAH AT ANY TIME.[30] AS LONG, HOWEVER, AS SHE LIVES IN HER HUSBAND'S HOUSE SHE MAY RECOVER HER KETHUBAH ONLY WITHIN[31] TWENTY-FIVE YEARS, BECAUSE IN THE COURSE OF TWENTY-FIVE YEARS SHE HAS SUFFICIENT OPPORTUNITIES[32] OF RENDERING[33] FAVOURS[34] CORRESPONDING [IN VALUE TO THE AMOUNT OF] HER KETHUBAH; SO R. MEIR WHO LAID DOWN THE RULING IN THE NAME OF R. SIMEON B. GAMALIEL. THE SAGES, HOWEVER, RULED: SO LONG AS SHE LIVES IN HER HUSBAND'S HO USE [A WIDOW][35] MAY RECOVER HER KETHUBAH AT ANY TIME,[36] BUT AS LONG AS SHE LIVES IN HER FATHER'S HOUSE SHE MAY RECOVER HER KETHUBAH ONLY WITHIN[31] TWENTY-FIVE YEARS.[37] IF [THE WIDOW] DIED, HER HEIRS MUST MENTION[38] HER KETHUBAH WITHIN[31] TWENTY-FIVE YEARS.[39] GEMARA. Said Abaye to R. Joseph. [Is it logical[40] that] the poorest woman in Israel [should be allowed to recover her kethubah] ONLY WITHIN TWENTY-FIVE YEARS and Martha the daughter of Boethus[41] also ONLY WITHIN TWENTY-FIVE As?[42] — The other replied: In accordance with the camel is the burden.[43]

The question was raised: Must she,[44] according to R. Meir, lose in proportion?[45] -This must stand undecided.[46]

THE SAGES, HOWEVER, RULED: SO LONG. Said Abaye to R.Joseph: [Is it reasonable that if]

she comes before sunset she may recover her kethubah and that [if she came] after sunset she may not recover it? [Is it likely that] she has surrendered it in that short while? — 'Yes', the other replied. 'all the standards of the Sages are such. In [a bath of] forty se'ah[47] [for instance] one may perform ritual immersion; In [a bath of] forty se'ah minus one kortob[47] one may not perform ritual immersion

Rab Judah reported in the name of Rab: R. Ishmael son of R. Jose testified in the presence of Rabbi to a statement he made[48] in the name of his father that [the ruling in our Mishnah] was taught only [in respect of a woman] who produces[49] no deed of the kethubah but if she produces[49] the deed of the kethubah she may recover [the amount of] her kethubah at any time.[50] R. Eleazar, however, ruled: Even if she produces[49] the deed of the kethubah she may recover the amount within twenty-five years Only.

R. Shesheth raised an objection: 'A creditor may recover his debt [at any time]. even if there was no mention of it.'[51] Now, how is this to be understood? If [it refers to a creditor] who holds no bond, whereby [it might be asked] could he recover his debt? Consequently [it must refer to one] who does hold a bond [from which it follows, does It not, that] only a creditor [may recover his due]. because he is not likely to have surrendered his claim, but that a widow[52] [is deemed to have] surrendered?[53] — He[54] raised the objection and he also removed it: This[55] may, in fact, refer to[56] one who holds no bond,[57] but[58] here we are dealing with a case[59] where the debtor[60] admits [his liability].[61] But, Surely. R. Elai had stated: They[62] taught. 'A divorced woman has the very same rights as a creditor'.[63] Now, how are We to understand [this ruling]? If [it refers to a divorcee] who holds no kethubah, whereby [it might be objected] could she recover her due? Consequently [it must refer to one] who does hold a kethubah, [from which it follows, does it not, that] only a divorcee [may recover her kethubah] because she is not likely to have surrendered it, but that a widow [is deemed to have] surrendered?[64] — Here also [it is a case] where the defendant[60] admits [the claim].[65]

R. Nahman b. Isaac stated: R. Judah b. Kaza learnt in the Baraitha of the school of Bar Kaza, If she[66] claimed her kethubah

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(1) Cf. Meg. 60: 'Why was it called Sepphoris (צפורי)? Because it was perched on the top of a hill like a bird' (צפור 'bird').

(2) A famous character, known for her sagacity and learning.

(3) Lit., 'those above', 'the angels'.

(4) Lit., 'those below', 'lower regions'.

(5) He was suffering from acute and painful diarrhoea (cf. B.M. 85a).

(6) V. Glos. These must not be worn when the body is not in a state of perfect cleanliness.

(7) Lit., 'they were not silent'.

(8) Lit., 'they remained silent'.

(9) Lit., 'rested'.

(10) Rabbi's condition.

(11) אראלים lit., 'messengers' (Jast.); cf. B.H. מלאך. Aliter; 'God's lions' (Levy).

(12) מצוקים (rt. יצק 'to cast'). Aliter; 'The just' (Rashi).

(13) Metaph. Rabbi was known as 'our holy teacher'.

(14) Lit., 'in an upward direction'.

(15) V. Glos.

(16) Isa. LVII, 2.

(17) In harmony with the first part of the verse. [Strashun amends 'on his bed'].

(18) The righteous who went out to welcome him.

(19) Lit., 'go out to meet him'.

(20) Var. 'He shall enter' (עין יעקב).

(21) Lit.,

(22) Isa. LVII, 2.

(23) Lit., ‘and one’.
(24) Lit., ‘go out to meet him’.
(25) Isa. XLVIII, 22.
(26) M.T. reads ‘Ye’תשכבון. [This is also the reading of MS.M.].
(27) lsa. L, 11.
(28) Ezek. XXXII, 19.
(29) Who is maintained by her deceased husband's heirs.
(30) Lit.,’for ever’.
(31) Lit., ‘until’.
(32) Lit,, ‘there is (the opportunity)’.
(33) At the expense of the heirs who maintain her.
(34) To neighbours and friends, by giving them small gifts.
(35) V. supra note 8.
(36) Lit., ‘for ever’.
(37) If a longer period has been allowed to pass she is presumed to have surrendered her claim. Such surrender cannot be assumed In the case of a widow who lives in her late husband's house, since the respect shewn to her by the heirs with whom she lives may well account for her bashfulness to advance a claim which might disturb the cordial relations between them.
(38) Sc. claim.
(39) Of her husband's death. They lose their claim if a longer period has been allowed to lapse.
(40) According to R. Meir's ruling in our Mishnah.
(41) One of the rich women of Jerusalem in the time of the Titus and Vespasian siege (cf. Git. 56a) whose kethubah amounted to a very high figure.
(42) A kethubah like that of the latter, surely. could not be spent in small gifts in the same period as one for the minimum amount of a kethubah.
(43) Proverb. The richer the woman the more she may be expected to spend.
(44) A widow who claimed her kethubah within twenty-five years.
(45) Sc. one twenty-fifth of her kethubah for each year that she has allowed to pass. Lit.,’divide into three’.
(46) Teku v. Glos.
(47) V. Glos.
(48) Lit., ‘which he said’.
(49) Lit., ‘goes out from under her hands’.
(50) It is held that if she had surrendered her kethubah she would have destroyed the deed or given it up to the heirs.
(51) For twenty-five years.
(52) Who enjoyed the protection of the heirs for all those years and who, furthermore, is not actually ‘out of pocket’ when her kethubah is surrendered.
(53) An objection against R. Eleazar.
(54) R. Shesheth.
(55) The Baraitha just cited.
(56) Lit., ‘always’.
(57) The inference being: Only a creditor who holds no bond is not presumed to have surrendered his claim but that a widow who holds no kethubah is presumed to have surrendered her claim.
(58) In reply to the objection: How could the claim be proved in the absence of a bond?
(59) Lit., ‘10 what?’
(60) Lit., ‘he who is liable.
(61) Cf. supra n. 7.
(62) The authors of the Baraitha.
(63) She may recover her kethubah even after twenty: five years.
(64) V. supra notes 1 and 2.
(65) Sc. that her kethubah had not yet been paid.
(66) A widow (cf. supra p. 665, n. 8).

Talmud - Mas. Kethuboth 104b

she is again entitled to the original period.[1] and if she produced[2] the deed of the kethubah she may recover [the amount of] her kethubah at any time.[3]

R. Nahman b. R. Hisda sent [the following message] to R. Nahman b. Jacob: Will our Master instruct us as to whether the dispute[4] [refers to] one who produced a deed of the kethubah or to one who produced no deed of the kethubah,' and with whose ruling does the halachah agree? — The other replied: The dispute refers to one who produced no deed of the kethubah, but [a woman] who produced a deed of the kethubah may recover her kethubah at any time;[5] and the halachah is in agreement with the ruling of the Sages.

When R. Dimi came[6] he reported R. Simeon b. Pazzi who laid down in the name of R. Joshua b. Levi who had it from Bar Kappara: This[7] was taught only in respect of the maneh[8] and the two hundred zuz.[8] To any additional jointure, however, the woman is always entitled.[9] R. Abbahu in the name of R. Johanan, however, ruled: She is not entitled even to the additional jointure; for R. Aibu has laid down in the name of R. Jannai: The additional provisions[10] of a kethubah are subject to the same rules[11] as the kethubah itself.[12] So it was also said:[13] R. Abba laid down in the name of R. Huna who had it from Rab: This was taught only in respect of the maneh and the two hundred zuz. To any additional jointure, however, she is always entitled.[14] Said R. Abba to R. Huna: Did Rab really say this?[15] — 'Do you wish', the other replied, to silence me[16] or to stand me a drink?'[17] — 'I',the other replied. wish to silence you!'

The mother-in-law of R. Hiyya Arika[18] was the wife of his brother,[19] and [when she became] a widow lived in her father's bouse. [R. Hiyya] maintained her for twenty.five years at her paternal home [but when] at the end [of the period] she said to him. 'Supply me with my maintenance' he told her, 'You have no [longer any claim to] maintenance'. 'pay me [then', she said'my] kethubah'. 'You have no claim,' he replied- 'either to maintenance or to the kethubah' ,[20] She summoned him to law before Rabbah b. Shila. 'Tell me', [the judge] said to him,[21] 'what exactly were the circumstances. 'I maintained her', the other[21] replied. 'for twenty-five years at her paternal home and, by the life of the Master!, I carried [the stuff] to her on my shoulder'. 'What is the reason', [the judge] said to him, 'that the Rabbis[22] ruled, so LONG AS SHE LIVES IN HER HUSBAND'S HOUSE [A WIDOW] MAY RECOVER HER KETHUBAH AT ANY TIME? Because we assume that she did not claim it in order [to save herself from] shame.[23] Similarly here also[24] [it may well be assumed] that she did not [previously] submit her claim in order [to save herself from] shame.[23] Go, and supply her [maintenance]'. [As R. Hiyya] disregarded [the ruling. the judge] wrote out for her an adrakta[25] on his property. Thereupon he came to Raba and said to him, 'See, Master, how he treated my case',[26] 'He has given you the proper ruling', the other replied. 'If that is the case',[the widow] said to him,[27] 'let him[28] proceed to refund me the produce[29] [he has consumed] since that day[30] to date'. 'Shew me' he[27] said to her, 'your adrakta'.[31] As he observed that it did not contain the clause,[32] 'And we have ascertained that this estate belonged to the deceased', he said to her, 'The adrakta is not properly drawn up'.[33] 'Let the adrakta be dropped'. she said; 'and let me receive [the refund for the produce] from the day on which the period of the public announcement terminated[34] to date'. 'This',[35] he replied. applies only to a case[36] where no error has crept[37] into the adrakta, but where an error occurs[37] in the adrakta the document possesses no validity'.[38] 'But did not the Master himself lay down', she exclaimed, '[that the omission[39] of the clause] pledging property [is to be regarded as the] scribe's error?'[40] — 'In this case', Raba told her, '[the omission] cannot be said to be a scribe's error, for even Rabbah b. Shila originally[41] overlooked the point'.[42] He thought: Since both belonged to him[43] what matters it [whether the widow distrains] on the one or the other.[44] But this is not [the proper view]. For sometimes [the widow] might go and improve those [lands][45] while those belonging to her husband[46] would be allowed[47] to deteriorate and [the heir might eventually] tell her, 'Take yours[48] and return to me mine',[49] and a stigma[50] would thus fall[51] upon the court.[52]

CHAPTER XIII

MISHNAH. TWO JUDGES OF CIVIL LAW[53] WERE [ADMINISTERING JUSTICE] IN JERUSALEM, ADMON AND HANAN B. ABISHALOM. HANAN LAID DOWN TWO RULINGS[54] AND ADMON LAID DOWN SEVEN: —[55]

IF A MAN WENT TO A COUNTRY BEYOND THE SEA AND HIS WIFE CLAIMED MAINTENANCE, HANAN RULED:

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(1) Of twenty-five years. Lit. , 'behold she is as at first'.

(2) Lit. , 'goes out from under her hands'.

(3) Cf. supra note 12.

(4) Between R. MEIR and THE SAGES.

(5) Cf. supra p. 667. n. 12.

(6) From Palestine to Babylon.

(7) That after a period of twenty-five years a widow is presumed to have surrendered her kethubah.

(8) V. Glos., sc. the statutory kethubah which is one maneh in the case of marriage with a widow and two hundred zuz in that with a virgin.

(9) Since this may be regarded as a gift (and not as the legal kethubah) from the husband to his wife.

(10) Lit., 'conditions', of which the additional jointure is one.

(11) Lit., 'like'.

(12) One who loses the statutory kethubah must also forfeit the additional jointure.

(13) By Amoraim.

(14) V. supra notes 4 to 6.

(15) [MS.M. inserts, He (R. Huna) said he was silenced; cf. Ned. Sonc. ed. p. 242. notes.]

(16) I.e., was his question intended to imply incredulity?

(17) I.e., he wished in all earnestness to ascertain whether Rab had actually made that statement so that in return for the valuable information he might treat him to a cup of wine. אישתיקן and אשקיין a play upon the similarity of the letters.

(18) The tall.

(19) Who died childless and whose estate was inherited by R. Hiyya.

(20) In accordance with the ruling of the Sages in our Mishnah.

(21) R. Hiyya.

(22) Sc. THE SAGES.

(23) Cf. supra p. 665. n. 16, second clause.

(24) Where so much respect was shewn to her by R. Hiyya that he carried her foodstuffs to her on his shoulder.

(25) אדרכתא (rt. דרך 'to tread'). an authorization following that of another legal document called tirpa (cf. B.B. , Sonc. ed., p 738. n. 1) which a court issues to a claimant after he had traced the defendant's property. to seize it (to 'tread' on) for the purpose of having it offered for public sale and his recovering the proceeds or the land itself at the Price valued.

(26) Lit., 'judged me'.

(27) Raba.

(28) R. Hiyya.

(29) Of the land that was valued at a sum corresponding to that of her kethubah.

(30) On which she received the adrakta (according to the opinion of Rabbah). when it was signed (according to Abaye). or when the period of the announcement of the public sale terminated (according to Raba). From such date the land passes into the possession of the claimant and its produce also from that day onwards belongs to him (cf. B.M. 36b).

(31) V. supra p. 669. n. 7.

(32) Lit., 'that it was not written in it'.

(33) The adrakta referred to all R. Hiyya's landed property. while legally it should have been restricted to those which he inherited from his deceased brother. On his own lands the widow could have no claim whatsoever.

(34) In agree. melt with the view of Raba (cf. supra p. 669. n. 12). After the claimant discovers a field that belonged to the defendant he reports to the court who value it, and arrange for a period of thirty days for the public announcement. at the end of which the claimant comes into possession (v. B.M. 35b).
(35) That the land passes into the possession of the claimant on one of the dates mentioned (supra p. 669. n. 12).
(36) Lit., 'these words'.
(37) Lit., 'is written'.
(38) Lit., we have not in it'; the land does not pass into the ownership of the claimant until he takes actual possession of it.
(39) From a deed.
(40) And is deemed to have been entered though the scribe had omitted it (B.M. 140. B.B. 169b). Why then should an error in the adrakta cause its invalidity?
(41) [Rightly omitted in MS.M.]
(42) Lit., 'in that'. In that he had an adrakta made out against R. Hiyya's own property.
(43) R. Hiyya.
(44) R. Hiyya's brother's or his own. Hence he drew up the adrakta on all R. Hiyya's lands.
(45) Which did not belong to her husband but to his heir and which the court handed over to her in return for her claim.
(46) And were legally pledged for her kethubah.
(47) By the heir who is well aware that he can at any time re-claim his own land and transfer the property of the deceased to his widow,
(48) Cf. supra p. 670, n. 16.
(49) Cf. supra p. 670. n. 15.
(50) Lit., 'murmur', 'reflection'.
(51) Lit., 'and come to bring out'.
(52) Who would be accused of carelessness or indifference in the provision they made for the widow.
(53) גזירות (plural of גזירה, 'decree', 'decision'). Var., גזילות (plural of גזילה 'robbery') v. infra. Cf. B.K. 58b, Sonc. ed. p. 340, n. 1.
(54) From which the Sages differed.
(55) V. supra n. 2. The rulings are enumerated in this Mishnah and in those following.

Talmud - Mas. Kethuboth 105a

SHE MUST TAKE AN OATH[1] AT THE END[2] BUT NOT AT THE BEGINNING.[3] THE SONS OF THE HIGH PRIESTS,[4] HOWEVER, DIFFERED FROM HIM AND RULED THAT SHE MUST TAKE AN OATH BOTH AT THE BEGINNING[3] AND AT THE END.[2] R. DOSA B. HARKINAS AGREED WITH THEIR RULING. R. JOHANAN B. ZAKKAI SAID: HANAN HAS SPOKEN WELL; SHE NEED TAKE AN OATH ONLY AT THE END.[2]

GEMARA. I Would point out an Inconsistency: 'Three judges in cases of robbery[5] were [administering justice] in Jerusalem. Admon b. Gadai,[6] Hanan the Egyptian and Hanan b. Abishalom'. Is there not an inconsistency between 'three'[7] and 'TWO', and an inconsistency between 'CIVIL'[8] and 'robbery'?[9] One might well admit that there is no [real] inconsistency between the 'three' and the 'TWO' since he[10] may be enumerating [only those] whom he con siders important[11] and omitting[12] [the one] whom he does not consider important. Does not, however, the inconsistency between 'CIVIL' and 'robbery' remain? — R. Nahman b. Isaac replied: [Both terms may be justified on the grounds] that they[13] imposed fines[14] for acts of robbery;[15] as it was taught: If [a beast] nipped off a plant, said R. Jose. the Judges of Civil Law in Jerusalem ruled that if the plant was in its first year [the owner of the beast pays as compensation] two silver pieces.[16] if it was in its second year [he pays as compensation] four silver pieces.[17]

I point out [another] contradiction: Three judges of Civil Law were [administering justice] in Jerusalem. Admon, and Hanan and Nahum?[18] — R. Papa replied: He who mentioned Nahum was R. Nathan;[19] for it was taught: R. Nathan stated, 'Nahum the Mede also was one of the Judges of Civil

Law in Jerusalem', but the Sages did not agree with him.

Were there, however, no more [judges]? [Did not] R. Phinehas. in fact, state on the authority of R. Oshaia that there were three hundred and ninety four courts of law[20] in Jerusalem, and an equal number of Synagogues. of Houses of Study[21] and of schools?[22] — Judges there were many, but we were speaking of Judges of Civil Law only.

Rab Judah stated in the name of R. Assi: The Judges of Civil Law in Jerusalem received their salaries out of the Temple funds[23] [at the rate of] ninety-nine maneh.[24] If they were not satisfied is they were given an increase.

[You say] 'They were not satisfied'?[25] Are we dealing with wicked men?[26] The reading in fact is,[27] [If the amount was] not Sufficient[28] an increase was granted to them even if they objected.[29]

Karna[30] used to take one istira[31] from the innocent[32] party and one istira from the guilty party and then informed them of his decision.[33] But how could he[34] act in such a manner? Is it not written in Scripture, And thou shalt take no gift?[35] And should you reply that this applies only where he does not take from both [litigants] since he might [in consequence] wrest judgment, but Karna, since he took [the same amount] from both parties, would not come to wrest judgment, [it can be retorted:] Is this permitted even where one would not come to wrest judgment? Was it not in fact taught: What was the purpose of the statement And thou shalt take no gift?[35] If to teach that one must not acquit the guilty or that one must not condemn the innocent [the objection Surely could be raised]. It was already specifically stated elsewhere in Scripture, Thou shalt not wrest judgement.[36] Consequently it must be concluded that even [where the intention is] to acquit the innocent or to condemn the guilty the Torah laid down, And thou shalt take no gift?[37] — This[37] applies only where [the judge] takes [the gift] as a bribe,[38] but Karna took [the two istira] as a fee.[39] But is it permissible [for a judge to take money] as a fee.[39] Have we not in fact learned: The legal decisions of one who takes a fee for acting as judge are null and void?[40] — This[40] applies only to a fee for pronouncing judgment, while Karna was only taking compensation for loss of work.[41]

But [is a judge] permitted to take compensation for loss of work? Was it not in fact taught: Contemptible is the judge who takes a fee for pronouncing judgment; but his decision is valid?[42] Now, what is to be understood [by fee]. If it be suggested [that it means] a fee for acting as judge [the objection would arise: How could be said,] 'his decision is valid', when in fact we have learned:[43] The legal decisions of one who takes a fee for acting as judge are null and void? Consequently it must mean[44] a fee for loss of work,[45] and yet it was stated, was it not, 'Contemptible is the judge etc.'? — This applies only to a loss of work that cannot be proved, but Karna received [compensation for] loss of work that could be proved. for he was [regularly occupied in] smelling tests[46] at a wine store,[47] and for this he was paid a fee.[48] This is similar to the case[49] of R. Huna. When a lawsuit was brought to him, he used to say to the [litigants]. 'Provide me with a man who will draw the water[50] in my place[51] and I will pronounce judgment for you'.

Said R. Abbahu: Come and see how blind are the eyes of those who take a bribe. If a man has pain in his eyes he pays away money to a medical man and he may be cured or he nay not be cured, yet these take what is only worth one perutah[52] and blind their eyes [therewith]. for it is said in Scripture. For a gift blindeth them that have sight.[53]

Our Rabbis taught: For a gift doth blind the eyes of the wise,[54] and much more so those of the foolish; And pervert the words of the righteous,[54] and much more so those of the wicked. Are then fools and wicked men capable of acting as judges?[55] — But it is this that is meant: 'For a gift doth blind the eyes of the wise', even a great Sage who takes bribes will not depart from the world without [the affliction of] a dullness of the mind,[56] 'And pervert the words of the righteous',

(1) That she has no property of her husband's in her possession.
(2) Sc. when her husband dies and she claims her kethubah.
(3) I.e., during his lifetime when she claims her maintenance.
(4) בני כהנים גדולים A similar description occurs in Oh. XVII, 5. Cf. supra p. 64, n. 6, בית דין של כהנים 'Priestly Court' or 'Court of Priests'.
(5) Or any damage.
(6) I.e, Admon mentioned in our Mishnah.
(7) In the Baraitha cited.
(8) Cf. supra note 1.
(9) In the Baraitha cited.
(10) The author of our Mishnah.
(11) On the admissibility of another rendering v. Tosaf. s.v., דחשיב, a.I.
(12) Lit., 'did not teach'.
(13) The judges mentioned.
(14) Lit., 'decreed decrees'. Hence the term 'CIVIL' גזירות: (v. supra p. 672, n. 1) in our Mishnah.
(15) גזילות (cf. supra p. 672, nn. 1 and 8). Hence the justification for the use of this term in the Baraitha.
(16) A silver piece = one ma'ah or a third of a denar, v. Glos.
(17) B.K. 58b.
(18) Inconsistent with our Mishnah which mentions only TWO. V., however, Tosaf s.v. דחשיב.
(19) [Who considered Nahum important, v. Maharsha].
(20) Each consisting of twenty-three judges.
(21) For Mishnah and Talmud.
(22) For children.
(23) תרומת הלשכה, lit., 'heave-offering of the (people) to the (Temple treasure) chamber'.
(24) V. Glos.
(25) לא רצו,
(26) Who expect from the public funds more than is required for a decent living. A judge's salary most not exceed the actual cost of his living (v. Rashi).
(27) Lit., 'but'.
(28) To provide for a decent living.
(29) V. supra p. 673, n. 15.
(30) A judge if the Exile. Cf Sanh. 17b, Sonc. ed. p.88, n. 5.
(31) V. Glos.
(32) A the party in whose favour judgment was to he given.
(33) Lit., 'and judged for them the law'.
(34) Karna.
(35) Ex. XXIII. 8.
(36) [Deut. XVI, 19.
(37) Ex. XXIII, 8.
(38) Sc. with the intention of perverting judgment.
(39) For his professional services.
(40) Kid. 58, Bek. 29a.
(41) Lit 'idleness'.
(42) Lit, 'his Judgment is judgment'. a fee for acting as judge [the objection would arise: How could it be said,] 'his decision is valid', when in fact we have learned: 1 The
(43) So Bah. Cur. edd. 'it was taught'.
(44) Lit., 'but'.
(45) Lit., 'idleness'.
(46) To advise the owner as to which wine could be stored for longer and which only for shorter periods.
(47) אמבראRashi reads the noun in the pl., stores'.
(48) Lit., 'and they gave him a zuz' (v. Glos.). When acting as judge he was entitled to demand compensation for his

loss.
(49) Lit., ‘like that’.
(50) ‘For the irrigation of my land’.
(51) בחריקאי, cf. supra p. 364. n. 4
(52) The smallest coin, v.Glos.
(53) Ex.XXIII,8.
(54) Deut. XVI, 19.
(55) Obviously not; how then is it likely that anyone would offer them any bribe
(56) Lit., ‘blindness of heart’.

Talmud - Mas. Kethuboth 105b

even one who is righteous in every respect and takes bribes will not depart from this world without [the affliction of] confusion of mind. When R. Dimi came[1] he related that R. Nahman b. Kohen made the following exposition: What was meant by the Scriptural text, The King by justice establisheth the land, but he that loveth gifts overthroweth it? If the judge is like a king who is not in need of anything[2] he establisheth the land, but if he is like a priest who moves to and fro among the threshing floors,[3] he overthroweth it.[4]

Rabbah b. R. Shila stated: Any judge who is in the habit of borrowing[5] is unfit to pronounce judgment. This, however, applies only where he possesses nothing to lend to others, but where he possesses things to lend [his borrowing] does not matter.[6] This, however, cannot surely be correct;[7] for did not Raba borrow things from the household of Bar Merion, although they did not borrow anything from him? — There he desired to give them better standing.[8]

Raba stated: What is the reason for [the prohibition[9] against taking] a gift?[10] Because as soon as a man receives a gift from another he becomes so well disposed towards him[11] that he becomes like his own person, and no man sees himself in the wrong.[12] What [is the meaning of] shohad?[13] She-hu had.[14]

R. Papa said: A man should not act as judge either for one whom he loves or for one whom he hates; for no man can see the guilt of one whom he loves or the merit of one whom he hates.

Abaye said: If a scholar[15] is loved by the townspeople [their love] is not due to his superiority but [to the fact] that he does not rebuke them for [neglecting] spiritual[16] matters.

Raba remarked: At first I thought that all the people of Mahuza[17] loved me. When I was appointed judge[18] I thought that some[19] would hate me and others[20] would love me. Having observed, however, that the man who loses[21] to-day[22] wins tomorrow I came to the conclusion that if I am loved they all love me and if I am hated they must all hate me.

Our Rabbis taught: And thou shalt take no gift;[23] there was no need to speak of [the prohibition of] a gift of money, but [this was meant:] Even a bribe of words[24] is also forbidden, for Scripture does not write, And thou shalt take no gain.[25] What is to be understood by ‘a bribe of words’?[24] — As the bribe offered to Samuel.[26] He was once crossing [a river] on a board[27] when a man came up and offered him his hand.[28] ‘What’, [Samuel] asked him, ‘is your business here?’ — ‘I have a lawsuit’, the other replied. ‘I’, came the reply, ‘am disqualified from acting for you in the suit’.

Amemar was once engaged in the trial of an action,[29] when a bird flew down upon his head and a man approached and removed it. ‘What is your business here?’ [Amemar] asked him. ‘I have a lawsuit’, the other replied. ‘I’, came the reply, ‘am disqualified from acting as your judge’.

Mar ‘Ukba once ejected some saliva[30] and a man approached and covered it. ‘What is your business here?’ [Mar ‘Ukba] asked him. ‘l have a lawsuit’, the man replied. ‘I’, came the reply, ‘am disqualified from acting as your judge’.

R. Ishmael son of R. Jose, whose aris[31] was wont to bring him a basket full of fruit[32] every Friday[33] but on one occasion[34] brought it to him on a Thursday, asked the latter, ‘Why the present change?’ I have a lawsuit’, the other replied, ‘and thought that at the same time[35] I might bring [the fruit] to the Master’. He did not accept it from him [and] said,’I am disqualified to act as your judge’. He thereupon appointed a couple of Rabbis to try the case for him. As he was arranging the affair[36] he [found himself] thinking, ‘If he[37] wished he could plead thus, or if he preferred he might plead thus’.[38] ‘Oh’, he exclaimed, ‘the despair that waits for those who take bribes’![39] If I, who have not taken [the fruit at all], and even if I had taken I would only have taken what is my own, am In such [a state of mind], show much more [Would that[40] be the state of] those who accept bribes’.

A man once brought to R. Ishmael b. Elisha[41] [a gift of] the firstfleece.[42] ‘Whence’,the latter asked him, ‘are you?’ — ‘From such and such a place’, the other replied. ‘But’, [R. Ishmael] asked, ‘was there no priest to whom to give it [in any of the places] between that place and this?’[43] — ‘I have a lawsuit’, the other replied, ‘and thought that at the same time[44] I would bring [the gift] to the Master’.He said to him, ‘I am unfit to try your action’,and refused to receive [the gift] from him. [Thereupon] he appointed two Rabbis to try his action. As he was arranging this affair[45] he [found himself] thinking, ‘If he[46] wished he could plead thus, or if he preferred he might plead thus’.[47] ‘Oh’, he exclaimed, ‘the despair that awaits those who take bribes! If I, who did not take [the gift], and even if l had taken it I would only have accepted that which is my due, am in such [a state of mind], how much more [would that be the case with] those who accept bribes’.

A man once brought to R. Anan a bale of small marsh fish.[48] ‘What is your business here’, the latter asked him. ‘I have a lawsuit’, the other replied. [R. Anan] did not accept it from him, and told him, ‘I am disqualified to try your action’. ‘I would not now request’, the other said to him, ‘the Master's decision [in my lawsuit]; will the Master, however, at least accept [the present] so that I may not be prevented from offering my first-fruit?[49] For it was taught: And there came a man from Baal-shalishah, and brought the man of God bread of the first-fruits, twenty loaves of barley, and fresh ears of corn in his sack;[50] but was Elisha[51] entitled to eat first-fruit?[52] This, however, was intended to tell you that one who brings a gift to a scholar [is doing as good a deed] as if he had offered first-fruits’. It was not my intention to accept [your gift’, R. Anan] said to him, ‘but now that you have given me a reason I will accept it’ — Thereupon he sent him to R. Nahman to whom he also dispatched [the following message:] ‘Will the Master try [the action of] this man, for I, Anan,[53] am disqualified from acting as judge for him’. ‘Since he has sent me such a message’, [R. Nahman] thought, ‘he must be his relative’ —[54] An orphans’ lawsuit was then in progress[55] before him; and he reflected:

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(1) From Palestine to Babylon.

(2) Sc. is independent of other people's help or favours.

(3) Collecting his dues.

(4) Cf Sanh. 7b.

(5) Any objects. The verb שאל, here used, does not apply to money.

(6) Lit., ‘we have nothing against it’.

(7) Lit., ‘Is it really so?’

(8) His borrowing was of no benefit to himself. Lit., ‘to cause them to be important’. For a similar reason Rabbah levied a contribution for charity on the orphans of the house of Bar Merion (cf. B.B. 8a).

(9) Upon a judge.

(10) Even where the judge intended to act justly.

(11) Lit., ‘his mind draws near to him’.

(12) Lit., ‘guilt’.
(13) שוחד, ‘gift’, ‘bribe’.
(14) שהוא חד, ‘that he (the recipient) is one (with the giver)’. This is not intended as etymology but as a word play.
(15) Lit., ‘one who has caught fire by (association with) Rabbis’.
(16) Lit ‘of heaven’.
(17) V. supra p. 319, n. 9’
(18) In that town.
(19) Who would lose their lawsuits.
(20) In whose favour judgment would be given.
(21) Lit, ‘who is made guilty’.
(22) Lit., ‘now’.
(23) Ex. XXIII, 8.
(24) Or ‘acts’.
(25) בצע which would have meant a monetary bribe.
(26) Lit., ‘as that of Samuel’.
(27) Or ‘ferry’.
(28) To assist him.
(29) Lit., ‘was sitting and deciding a law’.
(30) Lit., ‘threw saliva before him’.
(31) Gardener-tenant (v. Glos.).
(32) As rent, from R. Ishmael's garden which he cultivated.
(33) מעלי שבתא, lit., ‘entering of the Sabbath’, sc. Sabbath Eve.
(34) Lit., ‘day’.
(35) Lit., ‘by the way’.
(36) Lit., ‘went and came’.
(37) His aris.
(38) All possible pleadings in favour of the aris rose spontaneously to his mind.
(39) So Jast. תיפח נפשם, lit., ‘may their ghost blow out’, or ‘be blown’ (rt. נפח ‘to blow’).
(40) Cf. supra n.3.
(41) Who was a priest and entitled to the priestly does.
(42) Cf. Deut. XVIII, 4.
(43) Lit., ‘from there to here’.
(44) Lit., ‘by the way’.
(45) Lit., ‘went and came’.
(46) The man who offered him the priestly due.
(47) Cf. supra notes 1-5.
(48) בי גילי ‘among the marshes’. Sc. that live among the reeds in the swamps (Jast.). [Obermeyer p. 245. n. 1 suggests בי גילי to be the name of a place, Al Kil on the Tigris].
(49) Cf. Ex. XXIII, 19.
(50) II Kings IV, 42.
(51) Who was no priest. Tradition ascribes him to the tribe of Gad (cf. Pesah. 68a and Rosh. a.l.).
(52) Obviously not; why then did he accept ‘first-fruits’?
(53) Wanting in MS.M.
(54) It is forbidden to act as judge or witness in a relative's lawsuit.
(55) Lit., ‘was standing’.

Talmud - Mas. Kethuboth 106a

The one[1] is a positive precept and the other[2] is also a positive precept. but the positive precept of shewing respect for the Torah[2] must take precedence. He, therefore, postponed[3] the orphans’ case and brought up that man's suit. When the other party[4] noticed the honour he was shewing him[5] he remained speechless.[6] [Until that happened] Elijah[7] was a frequent visitor of R. Anan whom he was

teaching the Order of Elijah.[8] but as soon as he[9] acted in the manner described[10] [Elijah] stayed away. He[9] Spent his time[11] in fasting, and in prayers for [God's] mercy, [until Elijah] came to him again; but when he appeared he greatly frightened him. Thereupon he[12] made a box [for himself] and in it he sat before him until he concluded his Order with him. And this is [the reason] why people speak of the Seder Eliyyahu Rabbah and the Seder Eliyyahu Zuta.[13]

In the days[14] of R. Joseph there was a famine.[15] Said the Rabbis to R. Joseph, 'Will the Master offer prayers for [heavenly] mercy'? He replied, 'If Elisha, with whom, when the [main body of] Rabbis had departed, there still remained two thousand and two hundred Rabbis,[16] did not offer up any prayers for mercy in a time of famine,[15] should I [at such a time venture to] offer prayers for mercy? But whence is it inferred that so many remained? — [From Scripture] where it is written, And his servant said: How should I set this before a hundred men.?[17] Now what is meant by [the expression.] 'Before a hundred men'? If it be suggested that all[18] [was to be set] before the hundred men [one might well object that] in years of famine [all this] is rather a large quantity. Consequently it must be concluded[19] that each [loaf was set] before a hundred men.[20]

When the [main body of] Rabbis departed from the school of Rab there still remained behind one thousand and two hundred Rabbis; [when they departed] from the school of R. Huna there remained behind eight hundred Rabbis. R. Huna when delivering his discourses [was assisted] by thirteen interpreters.[21] When the Rabbis stood up after R. Huna's discourses[22] and shook out their garments the dust rose [so high] that it obscured the [light of] day, and people in Palestine[23] said, 'They have risen after the discourses of R. Huna the Babylonian' — When [the main body of] Rabbis departed from the schools of Rabbah and R. Joseph there remained four hundred Rabbis and they described themselves as orphans. When [the main body of] Rabbis departed from the school of Abaye (others say, From the school of R. Papa, while still others say, From the school of R. Ashi) there remained two hundred Rabbis, and these described themselves as orphans of the orphans.

R. Isaac b. Radifa said in the name of R. Ammi: The inspectors of [animal] blemishes[24] in Jerusalem received their wages from the Temple funds.[25] Rab Judah said in the name of Samuel: The learned men who taught the priests the laws of ritual slaughter received their fees from the Temple funds.[25] R. Giddal said in the name of Rab: The learned men who taught the priests the rules of kemizah[26] received their fees from the Temple funds.[25] Rabbah b. Bar Hana said in the name of R. Johanan: Book readers[27] in Jerusalem received their fees from the Temple funds.[28]

R. Nahman said: Rab stated that the women who wove the [Temple] curtains received their wages from the Temple funds[25] but I maintain [that they received them] from the sums consecrated for Temple repairs, since the curtains were a substitute for builder's work.

An objection was raised: The women who wove the [Temple] curtains, and the house of Garmo[29] [who were in charge] of the preparation of the shewbread,[30] and the house of Abtinas[29] [who were in charge] of the preparation of the incense,[31] received their wages from the Temple funds![32] — There[33] [it may be replied] the reference is [to the curtains] of the gates;[34] for R. Zera related in the name of Rab: There were thirteen curtains in the second Temple, seven corresponding to the seven gates,[35] one for the entrance to the Hekal,[36] one for the entrance to the 'Ulam,[36] two[37] [at the entrance] to the Debir[36] and two [above them and] corresponding to them in the upper storey.[38]

Our Rabbis taught: The women who brought up their children for the [services of the red] heifer,[39] received their wages from the Temple funds. Abba Saul said: The notable[40] women of Jerusalem fed them and maintained them.

R. Huna enquired of Rab:

(1) Lit., ‘that’, to judge the orphan.
(2) Respect for a man of learning (cf. B.K. 41b) and consequently also for those who are related to him.
(3) Lit., removed’, ‘put aside’.
(4) Lit., ‘the master of his law(suit’).
(5) His opponent. whom R. Nahman presumed to he R. Anan's relative.
(6) Lit., ‘his plea was stopped’.
(7) Cf supra p. 488, n. 6.
(8) סדר אליהו, a Rabbinic work of mysterious origin and authorship.
(9) R. Anan.
(10) Lit , ‘thus’. He allowed himself to be the unconscious tool of the man who cunningly bribed him.
(11) Lit., ‘sat’.
(12) R. Anan.
(13) The former was taught when P. Anan was without, the latter when he was within, the box (Rashi). [Tosaf.: the Treatise consists of a large and small book, hence the names Rabbah and Zuta. Both constitute the Midrash known as Tanna debe Eliyyaha].
(14) Lit., ‘years’. a reference perhaps to the period during which he was head of the academy.
(15) ריתחא, lit., ‘agitation’. excitement’, hence ‘anger’. Owing to God's anger the world was afflicted with famine (v. Rashi).
(16) To dine with him.
(17) II Kings IV, 43.
(18) Lit., ‘all of them’, i.e., the twenty loaves of barley and fresh ears of corn, enumerated in the preceding verse.
(19) Lit., ‘but’.
(20) There were twenty loaves of barley (II Kings II, 42). one loaf of bread of the first-fruits (ibid.) and one loaf of fresh ears of corn (ibid.). a total of twenty-two loaves. Since each loaf was set before a hundred men the total number of the men must have been (twenty-two times one hundred =) two thousand two hundred (Rashi).
(21) Each of whom addressed a section of the crowded audiences, v. Glos. s.v. Amora.
(22) Lit., ‘sitting’.
(23) Lit., ‘in the west’.
(24) מבקרי מומין, lit., ‘those who examine blemishes’, officials whose duty it was to ascertain whether any beast was unfit as a sacrifice owing to a disqualifying blemish.
(25) תרומת הלשכה, v. supra p. 673, n. 13.
(26) קמיצה, (rt. קמץ, ‘to close the hand’), ‘taking a handful’ from a meal-offering. Cf. e.g., Lev. II, 2 and Men. 11a.
(27) Who check scribal errors.
(28) In order to preserve the accuracy of the written word the services of the readers were placed free at the disposal of any member of the public (cf. Rashi).
(29) A priestly family.
(30) Cf. Ex. XXV. 30 and Yoma 38a.
(31) Cf. Ex. XXX, 23ff and Yoma 38a.
(32) An objection against R. Nahman.
(33) In the Baraitha just cited.
(34) Which cannot be regarded as forming a part of the structure of the building, while R.Nahman spoke of those curtains that replaced a wall that in the first Temple formed the partition between the Holy of Holies and the Hekal (v. infra n.5 and Yoma 51b).
(35) Of the Temple court.
(36) The Hekal (היכל) or ‘Holy’, was situated between the ‘Ulam (אולם) the Temple porch and the Debir (דביר), and contained the candlestick, the table for the shewbread and the golden altar. The Debir, or the Holy of Holies, contained the ark and the cherubim.
(37) With a space of one cubit between them in place of the thickness of the wall in the first Temple (cf. supra note 3).
(38) To form a partition between the chamber above the Debir and that above the Hekal.
(39) Cf. Num. XIX, 2ff. Certain services in connection with its preparation had to be entrusted to children who from birth were brought up under conditions of scrupulous ritual purity. For this purpose the mothers had to live in specially constructed buildings from the ante-natal period until the time the children were ready for their duties. (Cf. Suk. 21a).

(40) Rich (Rashi).

Talmud - Mas. Kethuboth 106b

May vessels of ministry[1] be procured[2] with the offerings consecrated to Temple repair? Are these [a part of] the equipment[3] of the altar and were, therefore,[4] purchased[5] with the offerings consecrated to Temple repair, or are they rather among the requirements of the sacrifices and were, therefore, procured[6] with the Temple funds? — 'They'. the other[7] replied, 'may be procured[2] with the Temple funds only'.

He raised an objection against him; And when they had made an end, they brought the rest of the money[8] before the King and Jehoiada,[9] whereof were made vessels for the house of the Lord, even vessels wherewith to minister[10] etc. — The other[11] replied: He that taught you the Hagiographa did not teach you the Prophets: But there were not made for the hose of the Lord cups[12] etc. for they gave that to them that did the work.[13] But if so,is there not a contradiction between the two Scriptural texts? — There is really no contradiction. The former is a case[14] where after the collections were made [for Temple repair] there remained a balance,[15] while the latter[14] is a case where no balance remained.[16] But even if there was a balance after the Collection had been made, what of it?[17] R. Abbahu replied: Beth din make a mental[18] Stipulation that if they[19] be required they should be utilized for their original purpose[20] and that if [they would] not [be required] they should be [spent] on vessels of ministry.

A Tanna of the school of R. Ishmael taught: Vessels of ministry were provided[21] from the Temple funds; for it is said in Scriptures The rest of the money,[22] now what funds shewed a balance?[23] Obviously[24] the Temple funds.[25] But might it not be suggested that only the balance itself [could be spent on the vessels of ministry]?[26] — As Raba said,[27] The burnt-offering[28] implies the first burnt-offering,[29] so must the money[30] imply the first money.[31] An objection was raised: The incense and all congregational sacrifices were provided[32] from the Temple funds; the golden altar,[33] the frankincense[34] and the vessels of ministry were provided from the residue of the drink-offerings;[35] the altar for the burnt-offerings,[36] the chambers and the courts were provided from the funds that were dedicated for Temple repair, [and whatever was situated] outside the court walls[37] was provided out of the surplus of the Temple funds;[38] and it is this that [explains what] we learned: The city wall and its towers and all other requirements of the city were provided from the surplus of the Temple funds?[39] — This [point[40] is in fact a question at issue between] Tannaim. For we learned: What were they doing[41] with the surplus of the offerings [for the Temple funds]?[42] Beaten gold [plates that served as] a covering for [the walls and floor][43] of the Holy of Holies. R. Ishmael said: The surplus of the fruit[44] [was spent on the purchase of sacrifices] for the dry season[45] of the altar, while the surplus of the offerings [for the Temple funds] was spent upon vessels of ministry. R. Akiba said: The surplus of the offerings [for the Temple funds was spent on sacrifices] for the dry season of the altar while the surplus of the drink-offerings[35] was used for [the purchase of] the vessels of ministry. R. Hanina, the deputy High Priest, said: The surplus of the drink-offerings [was spent on sacrifices] for the dry season of the altar, while the surplus of the offerings [for the Temple funds was spent] on vessels of ministry. And neither the one nor the other[46] admitted that [there ever was a surplus] in the [proceeds of the] fruit.[47]

What is [meant by] 'fruit'?[48] — It was taught: What were they doing with the surplus of the offering [to the Temple funds]?[49] They bought fruit at a low price and sold it at a higher price, and with the profits sacrifices were purchased for the dry season of the altar; and it is this that [explains what] we learned: The surplus of the fruits was spent on sacrifices for the dry season of the altar. What is meant by 'neither the one nor the other admitted that [there ever was a surplus] in [proceeds of the] fruit'?[50] — [The following of] which we learned: What were they doing with the surplus[51] of the Temple funds? They purchased therewith wines, oils and various kinds of fine flour, and the

profit [resulting was credited] to the sacred funds; so R. Ishmael. R. Akiba said: No sale for profit is made with the sacred funds nor out of those of the poor.[52] Why [may no sales for profit be made] with sacred funds? — There must be no poverty where there is wealth. Why [is] no [sale for profit made] with the poor funds? — Because a poor man might come unexpectedly and there would be nothing to give him.

IF A MAN WENT TO A COUNTRY BEYOND THE SEA. It was stated: Rab ruled,

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(1) For use on the 'external' altar, a stone structure in the Temple court.

(2) Lit., 'made'.

(3) Lit., 'need', 'requirement'.

(4) Since the altar was builder's work.

(5) Lit. 'come'.

(6) Lit., 'they were making them'.

(7) Rab.

(8) That was dedicated to Temple repair.

(9) 'The priest' is in cur.edd. enclosed in parentheses. It does not appear in M.T.

(10) II Chron. XXIV, 14; which proves that offerings for Temple repair may be used for the provision of vessels of ministry. An objection against Rab.

(11) Rab

(12) Sc. vessels of ministry.

(13) II Kings XII. 14-15.

(14) Lit., 'here'.

(15) Lit., 'they collected and left over'; hence it was permissible to procure 'vessels wherewith to minister' with the balance.

(16) Lit., 'where they collected and did not leave'.

(17) Cf. supra n.8 ab init.; how could funds collected for one purpose lawfully be used for another?

(18) Lit., 'heart'.

(19) The funds collected.

(20) Lit., 'if they were required they were required'.

(21) Lit., 'come'.

(22) II Chron. XXIV, 14.

(23) Lit, 'which is the money that has a remainder'.

(24) Lit.. 'be saying, this'.

(25) Since after the current yearly expenses were met the balance was allowed to remain in the treasury.

(26) But the main funds could not.

(27) Pes. 58b, B.K. 111a.

(28) העולה Lev. VI, 5, emphasis on the definite article.

(29) Sc. that is offered on the altar every morning before all other sacrifices.

(30) הכסף (II Chron. XXIV, 14) emphasis again on the definite article (cf. supra n.21).

(31) I.e., the income of the current year, and not only the balance. Cf. infra p. 684, n. 7.

(32) Lit., 'come'.

(33) Which, since it was not attached to the ground and was movable, was not regarded as a part of the structure of the building.

(34) That was placed at the side of the shewbread. The Wilna Gaon omits frankincense; v. J. Shek. IV, 3.

(35) This is explained in Men. 90a.

(36) The 'external' altar, cf. supra p. 682, n. 10.

(37) E.g., the women's court and the city walls.

(38) Sc. after the expenses for the current year have been met. Cf. supra p. 683, n. 24.

(39) Shek. IV, 2. Does not this Baraitha, which lays down that vessels of ministry were provided out of the surplus of the drink-offerings contradict the teaching of the school of R. Ishmael?

(40) From which funds the vessels of ministry were procured.

(41) When the new year began on the first of Nisan and the funds of the previous year were no longer allowed to be used for the purchase of congregational sacrifices.
(42) Of the previous year.
(43) Rashi.
(44) This is explained infra.
(45) קיץ המזבח. Sc. when no private offerings were available and the altar lay idle; v. Shebu., Sonc. ed. p. 50, n. 3.
(46) Lit., 'and this and this', sc. R. Akiba and R. Hanina.
(47) Shek. 6a. Thus it is shewn that the opinion expressed at the school of R. Ishmael is a question in dispute between Tannaim.
(48) In the Mishnah just cited.
(49) V. supra P. 684, n. 10.
(50) Sc. how could they be so sure of the conditions of the market at all times?
(51) Lit., 'surplus of the remainder'.
(52) Shek. IV, 3. R. Akiba, and similarly R. Hanina (cf. supra n. 1). is thus of the opinion that there could never have been a surplus of tho fruit since it was never sold.

Talmud - Mas. Kethuboth 107a

An allowance for maintenance must be granted[1] to a married woman,[2] but Samuel ruled: No allowance may be granted[1] to a married woman.[2] Said Samuel: Abba[3] agrees with me [that no allowance is to be granted][4] during the first three months,[5] because no man leaves his house empty. In a case where a report was received[6] that he[7] was dead there is no difference of opinion between them.[8] They only differ when no one heard that he[7] was dead. Rab ruled, 'An allowance for maintenance must be granted' since he[7] is under an obligation [to maintain her]; on what ground however, did Samuel rule, 'No allowance may be granted'? — R. Zebid replied: Because it might well be assumed that he handed over to her some bundles [of valuables].[9] R. Papa replied: We must take into consideration the possibility that he told her, 'Deduct [the proceeds of] your handiwork[10] for your maintenance'.[11] What is the practical difference between them?[12] — The practical difference between them is the case of a woman who is of age[13] but [the proceeds of whose handiwork] did not suffice [for her maintenance],[14] or a minor[15] [the proceeds of whose handiwork] is sufficient [for her maintenance].[16]

We learned: IF A MAN WENT TO A COUNTRY BEYOND THE SEA AND HIS WIFE CLAIMED MAINTENANCE, HANAN RULED: SHE MUST TAKE AN OATH AT THE END BUT NOT AT THE BEGINNING. THE SONS OF THE HIGH PRIESTS, HOWEVER, DIFFERED FROM HIM AND RULED THAT SHE MUST TAKE AN OATH BOTH AT THE BEGINNING AND AT THE END. They thus[17] differ only in respect of the oath but [agree, do they not,] that maintenance must be given to her?[18] — Samuel explained [this to refer to a case] where a report had been received that [the absent husband] was dead. Come and hear: If [a husband] went to a country beyond the sea and his wife claimed maintenance she must, said the sons of the High Priests, take an oath,[19] Hanan said: She need not take an oath. If [the husband] came, however, and declared, 'I have provided for her maintenance'[20] he is believed.[21] Here also [it may be replied] is a case where a report was received that he was dead. But, did it not Say, 'If [the husband] came, however, and declared'?[22] [The meaning of the expression is,] If he came after the report had been received.

Come and hear: If [a husband] went to a country beyond the sea, and his wife claimed maintenance, and he returned and said [to her], 'Deduct your handiwork for your maintenance', he is entitled [to withhold it]. If Beth din, however, granted the allowance before [he returned] their decision is valid.[23] Here also it is a case where a report that he had died was received.

Come and hear: If [a husband] went to a country beyond the sea and his wife claimed maintenance, Beth din take possession of[24] his estate and provide food and clothing for his wife, but not for his sons and daughters or for anything else![25] — R. Shesheth replied; [Here it is a case] where a husband maintained his wife at the hands of a trustee.[26] If so, [should not maintenance be granted to] one's sons and daughters also?[27] [It is a case] where [a husband] made provision for the maintenance of his wife[28] but not of his daughters.[28]

Whence this certainty?[29] — This, however, said R. Papa, [is the explanation: This is a case] where she heard from one witness that [her husband] had died. To her, since she could Marry on the evidence of one witness, we must also grant maintenance; to his sons and daughters, however, since they, even if they desired it, could not be allowed to take possession of his estate on the evidence of one witness, maintenance also may not be granted — What [is meant by] 'anything else'? R. Hisda replied: Cosmetics. R. Joseph replied: Charity. According to him who replied, 'Cosmetics' the ruling[30] would apply with even greater force to

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(1) By the court, out of her husband's estate.

(2) Whose husband is away from home. אשת איש, lit., 'the wife of a man'.

(3) Sc. Rab who was also known as Abba Arika.

(4) Added by Bah in the text.
(5) Of the husband's absence.
(6) Lit., 'when they heard'.
(7) The absent husband.
(8) Lit., 'all the world (sc. Rab and Samuel) do not differ'; both agree that the woman is entitled to an allowance for maintenance.
(9) Out of which to defray the cost of her maintenance.
(10) Which are a husband's due.
(11) And that she may have consented.
(12) R. Zebid and R. Papa.
(13) Whom a husband might safely entrust with valuables.
(14) In consequence of which she would not have consented in return for her handiwork to forego her right to maintenance. Such a woman. according to R. Zebid, would still not be entitled to the court's ruling for her allowance, while according to R. Papa she would.
(15) Whom no husband would entrust with valuables.
(16) And who, in consequence, might have consented to forego her maintenance in return for her handiwork. Such a minor, according to P. Zebid, would, while according to R. Papa she would not. be entitled to the court's ruling for an allowance.
(17) Lit., 'until here' —
(18) An objection against Samuel.
(19) Cf. supra p. 672, n. 4.
(20) By entrusting her with some valuables.
(21) If he takes the prescribed oath, and the amount allowed by the court must be refunded to him. From here it obviously follows that the court does make an allowance from an absent husband's estate, a legal practice which is contrary to Samuel's ruling.
(22) A dead man, sorely, could not come and make a declaration.
(23) Tosef. Keth. XII. Lit. , 'what they have fixed is fixed'; which proves that the court does make an allowance to a wife from her absent husband's estate, contrary to the ruling of Samuel,
(24) Lit 'go down into'.
(25) This is explained infra. Cf. supra 48a. A contradiction thus arises (cf. supra n. 5) against Samuel's view.
(26) Who now refuses to continue to act on his behalf. A husband's appointment of a trustee conclusively proves that he has left no valuables with his wife for her maintenance, and that be could not have asked her to retain her handiwork for her maintenance. Hence it is quite proper for Beth din to arrange for her maintenance. Where no trustee, however, is appointed Samuel's ruling holds.
(27) Since it is assumed that he had entrusted the maintenance of his wife to a trustee, why not assume the same in regard to his sons and daughters?
(28) Lit., 'for this'.
(29) That provision was made for the one and not for the others. The Baraitha, surely, draws no distinction.
(30) That 'anything else' was not to be provided for.

Talmud - Mas. Kethuboth 107b

charity[1] . He, however, who replied, 'Charity' [restricts the ruling to this alone] but cosmetics [he maintains] must be given to her, for [her husband] would not be pleased that she should lose her comeliness.[2]

Come and hear: A yebamah[3] during the first three months is maintained out of the estate of her husband — Subsequently[4] she is not to be maintained either out of the estate of her husband or out of that of the levir. If, however, [the levir] appeared in court[5] and then absconded she is maintained out of the estate of the levir![6] — Samuel can answer you: What possibility need we take into consideration in the case of this [woman]?[7] If that of[8] [having been entrusted[9] with] bundles of valuables[10] [one could well object that such a levir] is not well disposed towards her;[11] and if that

of[12] [the remission of] her handiwork[13] [the fact is, it could be retorted, that] she is under no obligation to give it to him.[14]

Come and hear: A woman who went with her husband to a country beyond the sea and then came back and stated, 'My husband is dead', may, if she wishes, successfully claim her maintenance and, if she prefers, may equally claim her kethubah. [If she stated, however,] 'My husband has divorced me', she may be maintained[15] to the extent of her kethubah![16] — Here also [it may be replied, it is a case] where a report was received that he had died. Then[17] why [is she maintained] only to the extent of her kethubah? — Because she herself has brought the loss upon herself.[18]

Come and hear: In what circumstances was it laid down that [a minor who] exercised her right of refusal[19] is not entitled to maintenance? It cannot be said, In [those of] one who lives with her husband, since [in such circumstances] her husband is under an obligation to maintain her, but [in those], for instance, [of one] whose husband went to a country beyond the sea, and she borrowed money and spent it[20] and then[21] exercised her right of refusal. Now, the reason [why she is not entitled to maintenance is obviously] because she exercised her right of refusal; had she, however, not exercised her right of refusal, maintenance would have been granted to her?[22] — Samuel can answer you: What possibility need we provide against as far as she is concerned? If against that of[23] [having been entrusted with] bundles of valuables [it may be pointed out that] no one entrusts a minor with valuables; and if against that of [the man's remission of] her handiwork[24] [the fact is, it could be argued, that] the handiwork of a minor does not suffice [for her maintenance].[25] What is the ultimate decision?[26] When R. Dimi came[27] he related: Such a case was submitted to Rabbi at Beth She'arim[28] and he granted[29] the Woman[30] an allowance for her maintenance, [while a similar case was submitted] to R. Ishmael at Sepphoris[31] and he did not grant her any maintenance. R. Johanan was astonished at this decision — What reason [he wondered] could R. Ishmael see that [in consequence of it] he allowed her no maintenance? Surely the sons of the High Priests and Hanan differed only on the question of the oath,[32] but [they all agree, do they not, that] maintenance is to be given to her? — R. Shaman b. Abba answered him: Our Master, Samuel, in Babylon has long ago explained this [as being a case] where a report had been received that [the absent husband] had died. 'You', the other remarked, 'explain so much with this reply'.

When Rabin came[27] he related: Such a case was submitted to Rabbi at Beth She'arim[28] and he did not grant the woman[30] any maintenance, [while in a similar case which was submitted] to R. Ishmael at Sepphoris[31] [the latter] granted her an allowance for her maintenance. Said R. Johanan: What reason could Rabbi see for not granting her an allowance, when Hanan and the sons of the High Priests obviously differed only in respect of the oath[32] but [agreed that] maintenance is to be given her? — R. Shaman b. Abba replied: Samuel in Babylon has long ago explained this [as being a case] where a report has been received that [the absent husband] had died. 'You','the other remarked, 'explain so much with this answer'. The law, however, is in agreement with Rab,[33] and a married woman is to be granted an allowance for her maintenance. The law is also in agreement with a ruling which R. Huna laid down in the name of Rab, R. Huna having stated on the authority of Rab: A wife is within her rights when she says to her husband, 'I desire no maintenance from, and refuse to do [any work for you]'. The law, furthermore, agrees with a ruling of R. Zebid[34] in respect of glazed vessels,[35] R. Zebid having laid down: Glazed vessels[35] are permitted[36] if they are white or black,[37] but forbidden[38] if green.[39] This,[40] however, applies only to such[41] as have no cracks[42] but if they have cracks they are forbidden.[38]

MISHNAH. IF A MAN WENT TO A COUNTRY BEYOND THE SEA AND SOMEONE CAME FORWARD[43] AND MAINTAINED HIS WIFE, HANAN SAID: HE LOSES HIS MONEY.[44] THE SONS OF THE HIGH PRIESTS[45] DIFFERED FROM HIM AND RULED: LET HIM TAKE AN OATH AS TO HOW MUCH HE SPENT AND RECOVER IT. SAID R. DOSA B. HARKINAS: [MY OPINION IS] IN AGREEMENT WITH THEIR RULING. R. JOHANAN B.

ZAKKAI SAID: HANAN SPOKE WELL [FOR THE MAN] PUT HIS MONEY ON A STAG'S HORN.[46]

GEMARA. Elsewhere we have learned: If a man is forbidden by a vow to have any benefit from another

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(1) Since a court which has no power to provide from a man's estate for his own wife's enjoyments would have much less power to exact charity from his estate.

(2) Supra 482.

(3) A woman whose husband died without issue, and who awaits levirate marriage or halizah which must not take place before the lapse of three months after her husband's death.

(4) Lit., 'from now and onwards'.

(5) To answer the widow's demand for marriage or halizah.

(6) Yeb. 41b. Is not this then (cf. supra P. 687, n. 5) an objection against Samuel's ruling?

(7) To deprive her in consequence of her maintenance.

(8) Lit., 'on account of'.

(9) By the absent levir, before his departure.

(10) To cover her cost of living.

(11) Lit., 'his mind is not near to her', and it is, therefore, most unlikely that he left any valuables with her.

(12) Lit., 'on account of'.

(13) Sc. that he might have allowed her to retain the proceeds of her handiwork to defray therewith her cost of living.

(14) Hence the indisputable right of the court to grant an allowance out of the absent levir's estate. In the case of an absent husband, however, where both possibilities must be taken into consideration, Samuel's ruling holds.

(15) Out of her husband's estate, by an order of the court.

(16) Because if she was10 fact divorced she is well entitled to her kethubah, and if she was not divorced she has a rightful claim to maintenance. Now, is not this ruling (cf. supra p. 687. n. 5) an objection against Samuel's ruling?

(17) Since the assumption is that she is a widow.

(18) By declaring that she had been divorced. A divorcee is entitled to her kethubah but, unlike a widow, is not entitled to maintenance.

(19) V. Glos. s.v. mi'un.

(20) Lit., 'and ate'.

(21) Lit., 'she stood up'.

(22) Which is an objection (cf. supra p. 687. n. 5) against Samuel.

(23) Lit., 'on account of'.

(24) V. supra p. 689, n. 3.

(25) And she would not have agreed to release her husband from his obligation to maintain her in return for the inadequate income from her handiwork.

(26) Lit., 'what is there about it?' Is maintenance to be allowed to a wife out of her absent husband's estate?

(27) From Palestine to Babylon.

(28) Cf. supra p. 663, n. 4.

(29) Out of the estate of her absent husband.

(30) Lit., 'her'.

(31) Cf. supra p. 410, n. 6.

(32) V. our Mishnah.

(33) Supra 107a ab init.

(34) [This is introduced here because R. Zebid figures in the above discussion; or, it is likely that both the rulings of R. Huna and R. Zebid were adopted at the same session, v. Shittah Mekubbezeth].

(35) If earthenware.

(36) For use (cf. infra note 5ff).

(37) These kinds of glaze prevent absorption despite the porous nature of the earthenware.

(38) To be used at all, if they once contained heathen foodstuffs or heathen wine of libation (nesek), or on the Passover if they ever contained frames, any foodstuffs that were not free from leavened substances of any of the five kinds of grain

(cf. Hal. I, i).

(39) Or ‘yellow’. The last mentioned glaze, unlike the former, contains crystals of alum which increase the absorptive capacity of the potsherd (cf. A.Z. 33b).

(40) That green (or yellow) glazed earthenware is permitted (v. sura note 4).

(41) Lit , ‘and it was not said but’.

(42) In the glazed surface.

(43) Lit., ‘and one rose’.

(44) He has no legal claim upon the husband who neither instructed him to advance the money nor promised to refund his expenses.

(45) Cf. supra p. 672, n. 7.

(46) Metaph. He could never recover the money from the stag, nor can he recover it from the woman or her husband (cf. p. 691 n. 12).

Talmud - Mas. Kethuboth 108a

the latter may nevertheless pay for him his shekel,[1] repay his debt[2] and restore to him any object he may have lost; but where a reward is taken,[3] the benefit is to be given[4] to the sacred funds.[5] Now, one can well be satisfied [with the ruling that] he may ‘pay for him his shekel’ [because by this payment] he merely performs a religious act,[6] for it was taught:[7] It is lawful to withdraw[8] [from the funds of the Temple treasury] on the account of that which was lost,[9] collected[10] or about to be collected;[11] and [the ruling that he may] restore to him any object he may have lost’ [is also intelligible since thereby] also he is performing a religious duty;[12] but [how could he be permitted to] ‘repay his debt’ [when thereby] he undoubtedly benefits[13] him? — R. Oshaia replied: ‘This ruling[14] is that of[15] Hanan who said: HE LOSES HIS MONEY.[16] Raba, however, replied: The ruling[14] may be said [to agree even with the view of] the Rabbis,[17] for here[18] we are dealing [with the case of a man] who borrowed money on the condition that he does not repay it [except when he is inclined to do so].[19] It is well that Raba does not give the same reply as R. Oshaia, since [he wishes] the ruling to agree even with the opinion of the Rabbis. On what ground, however, does not R. Oshaia [wish to] give the same reply as Raba? — R. Oshaia can answer you: Granted that he[20] has no actual benefit;[21]

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(1) His annual contribution to the fund for congregational sacrifices. According to Tosaf. (s.v. ועל) provided it was lost on its way to the Temple treasury, v. infra n. 10.

(2) Which he may be owing to a third party.

(3) For the return of a lost object; and this man either refuses to take it or where he, too, is forbidden by vow to derive any benefit from the other man, v. Ned. 33a.

(4) Lit., ‘shall fall’.

(5) Ned. 33a. The other may not retain the amount of the reward since it is legally due to the man from whom he is forbidden to derive any benefit.

(6) And confers no benefit upon the other.

(7) Cf. marginal note and Tosaf. B.M. 58a s.v. דתנן. Cur. edd. ‘we learned’.

(8) תורמין (rt. תרם ‘to lift’, ‘separate’). Such withdrawals were made three times a year (cf. Shek. III, i).

(9) Sc. the man whose shekel was lost has a share in the sacrifices purchased out of the funds as if his contribution had actually reached the treasury. According to Tosaf. (loc. cit.); provided it had been handed by him to the Temple treasurer, and it was lost after the withdrawal in the Temple had taken place.

(10) By an agent who lost it on the way. According to Tosaf., after the withdrawal in the Temple had taken place. Cf. supra note 10).

(11) B.M. 58a. From the first two mentioned cases it thus follows that the man whose shekel was lost (cf. notes 10 and 11) gains no benefit from the generosity of the man who paid his shekel in the circumstances mentioned (cf. supra note 2).

(12) And the question of conferring a benefit upon the other does not arise. His object is not the benefit of the man but the religious act.

(13) קמשתרשי, (rt. שרש, Hithpa.) 'to take root'.
(14) That he may 'repay his debt'.
(15) Lit.,'who is it?'
(16) Similarly anyone who repays a stranger's debt cannot reclaim it from him. Such a debtor, it follows, is not regarded as the recipient of the amount repaid. For the same reason he cannot be regarded as the recipient of a benefit.
(17) Who hold a man liable for any expenses any. body may have incurred on his behalf.
(18) Lit., 'here in what?'
(19) V. Ned. Sonc. ed. p. 102, n. 5. Since the creditor in such circumstances can never exact payment from the debtor, any man who repays it confers no real benefit upon him.
(20) In the circumstances mentioned (cf. supra n. 7).
(21) From the repayment of the debt.

Talmud - Mas. Kethuboth 108b

has he not [some benefit in being spared] shame?[1] Another reading:[2] There also he has benefit, the benefit that he [need not] feel embarrassed in the other's presence.[3]

MISHNAH. ADMON LAID DOWN SEVEN RULINGS: —[4] IF A MAN DIES AND LEAVES SONS AND DAUGHTERS, IF THE ESTATE IS LARGE,[5] THE SONS INHERIT IT AND THE DAUGHTERS ARE MAINTAINED [FROM IT][6] AND IF THE ESTATE IS SMALL,[5] THE DAUGHTERS ARE MAINTAINED FROM IT, AND THE SONS CAN GO BEGGING.[7] ADMON SAID, 'AM I TO BE THE LOSER BECAUSE I AM A MALE!'[8] R. GAMALIEL SAID; ADMON'S VIEW HAS MY APPROVAL.[9]

GEMARA. What does he[10] mean?[11] — Abaye replied: He means this; 'AM I TO BE THE LOSER BECAUSE I AM A MALE and capable of engaging in the study of the Torah?' Said Raba to him: Would, then, he who is engaged in the study of the Torah be entitled to heirship, while he who is not engaged in the study of the Torah not be entitled to be heir?[12] — But, said Raba, it is this that he[10] meant: AM I BECAUSE I AM A MALE, and entitled to be heir in the case of a large estate, TO BE THE LOSER [of my rights] in the case of a small estate?'

MISHNAH. IF A MAN CLAIMED FROM ANOTHER JARS OF OIL AND [THE LATTER] ADMITTED HIS CLAIM TO [EMPTY] JARS, ADMON RULED: SINCE HE ADMITTED A PORTION OF THE CLAIM HE MUST TAKE AN OATH,[13] BUT THE SAGES SAID: THE ADMISSION OF THE PORTION [OF THE CLAIM] IS NOT OF THE SAME KIND AS THE CLAIM.[14] R. GAMALIEL SAID; ADMON'S VIEW HAS MY APPROVAL.[12]

GEMARA. From this[15] it may be inferred that, according to the Rabbis,[16] [a man from] whom one claimed wheat and barley and he admitted the claim to the barley is exempt [from oath]. Must it then be said that this presents an objection against a ruling which R. Nahman laid down in the name of Samuel? For R. Nahman laid down in the name of Samuel: [A man from] whom one claimed wheat and barley and he admitted one of them is liable [to an oath]?[17] — Rab Judah replied in the name of Rab; [Our Mishnah deals with the case of one from] whom a certain quantity[18] [of oil] was claimed.[19] If so,[20] what could Admon's reason be? — This, however, said Raba, [is the explanation]: Both[21] [agree] that where [the claimant] said to the other, 'I have the contents[22] of ten jars of oil in your tank',[23] he claims from him the oil but not the jars, [and if he said], 'You owe me[24] ten jars full of oil', he claims both the oil and the jars; they only differ where [the claimant] said to him, 'You owe me[24] ten jars of oil'. Admon maintains that in this expression a claim for the jars also is implied, and the Rabbis[25] contend that in this expression the jars were not implied.

The reason then[26] is because 'in this expression the jars were not implied', but if the jars had been implied in this expression he would apparently have been liable [to the oath]. Must it consequently

be presumed that this presents an objection against a ruling of R. Hiyya b. Abba? For R. Hiyya b. Abbah[27] ruled: [A man from] whom one claimed wheat and barley, and he admitted one of them, is exempt [from an oath]? — R. Shimi b. Ashi replied: [The making of such a claim][28] is the same as if one had claimed from another a pomegranate with its peel.[29] To this Rabina demurred: A pomegranate without its peel cannot be preserved, but oil can well be preserved without jars![30] [The fact] however, is that[31] we are here[32] dealing [with the case of a man] who said to another, 'You owe me[33] ten jars of oil', and the other replied, 'The [claim for the] oil is a pure invention,[34] [and as to] the jars, too, I owe you[35] five and you have no [claim to any other] five'. Admon maintains that this expression implies a claim to the jars also and, since [the defendant] must take an oath in respect of the jars,[36] he must also take an oath by implication[37] in respect of the oil, while the Rabbis[38] are of the opinion that such an expression does not imply a claim for the jars [so that] what the one claims[39] the other did not admit, and what the latter admitted[40] the former did not claim.

MISHNAH. IF A MAN PROMISED[41] A SUM OF MONEY TO HIS [PROSPECTIVE] SON-IN-LAW AND THEN DEFAULTED,[42]

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(1) Of defaulting. Of course he has. Raba's reply. therefore, is unacceptable to R. Oshaia.

(2) So Bah and Rashal. Wanting in cur. edd.

(3) [The difference between the two versions is that whereas according to the former, the sparing of a feeling of shame is not considered an actual benefit, according to the latter it is regarded as such, v. Glosses of Bezalel Ronsburg].

(4) Lit., 'said seven'. Cf. supra p. 672 nn. 2 and 3.

(5) Lit., 'possessions are many'. The definition of 'large' and 'small' is given in B.B. Sonc. ed. p. 594.

(6) Until their majority or marriage.

(7) Lit., 'go about (people's) doors'.

(8) This is explained in the Gemara.

(9) Lit., 'I see the words of Admon.

(10) Admon.

(11) Sc. what reason is there to assume that, as regards maintenance, a male should be given any preference at all over a female?

(12) Obviously not. The Pentateuchal laws of inheritance. surely, draw no distinction between a learned, and an ignorant son.

(13) That he owes him no oil.

(14) The claim was for (a) jars and (b) oil, while the admission was in respect of the full claim of the former and of no part of the latter.

(15) The statement of the Sages in our Mishnah (cf.supra n. 7).

(16) Sc. THE SAGES.

(17) Shebu. 40a.

(18) Lit., 'measure'.

(19) JARS does not refer to the actual containers but to their measure or capacity, the jars themselves forming no part of the claim.

(20) That the jars admitted formed no part of the claim.

(21) Lit., 'that all the world', Admon and the Sages.

(22) מלא, lit., 'fulness'.

(23) בור, a receptacle in the oil press.

(24) Lit., 'l have with you'.

(25) Sc. THE SAGES.

(26) Why the Sages do not regard the admission of the claim to the jars as AN ADMISSION OF THE SAME KIND AS THE CLAIM.

(27) MS.M. inserts, 'in the name of R. Johanan'.

(28) 'Jars of oil'.

(29) Between the oil and the jars in which it is kept there exists a definite connection similar to that of the pomegranate and its peel; but between wheat and barley there exists no such connection. An admission of one of the two in the former

cases may well be regarded as AN ADMission OF THE SAME KIND AS THE CLAIM though an admission of one of the two in the latter case cannot be so regarded.

(30) In the tank. How then could the one pair be compared to the other?

(31) Lit., 'in what?'

(32) In our Mishnah.

(33) Lit., 'I have with you'.

(34) Lit., 'the things never were'.

(35) Lit.,'you have'.

(36) Having clearly admitted a part of the claim.

(37) V. supra p. 549 n. 3.

(38) Sc. THE SAGES.

(39) Oil.

(40) Jars.

(41) Lit., 'fixed'.

(42) פשט לו את הרגל, lit., 'stretched out the leg towards him', as if to say, 'Take the dust of my foot', or 'hang me by the leg, l have nothing to give you' (Rashi).

Talmud - Mas. Kethuboth 109a

LET [HIS DAUGHTER] REMAIN [SINGLE][1] UNTIL HER HAIR GROWS GREY.[2] ADMON RULED: SHE MAY SAY,[3] 'HAD I MYSELF PROMISED THE SUM ON MY BEHALF I WOULD REMAIN [SINGLE][1] UNTIL MY HAIR GREW GREY, BUT NOW THAT MY FATHER HAS PROMISED IT, WHAT CAN I DO? EITHER MARRY ME OR SET ME FREE'. R. GAMALIEL SAID: ADMON'S WORDS HAVE MY APPROVAL.

GEMARA. Our Mishnah does not [uphold the same view] as that of the following Tanna. For it was taught: R. Jose son of R. Judah stated, There was no difference of opinion between Admon and the Sages that, where a man promised a sum of money to his [prospective] son-in-law and then defaulted, his daughter may say[3] My father has promised on my behalf, what can I do?' They only[4] differ where she herself promised a sum of money on her own behalf, in which case the Sages ruled: Let her remain [single][5] until her hair grows grey, while Admon maintained that she could say, 'I thought that my father would pay for me [the promised amount], but now that my father does not pay for me, what can I do? Either marry me or set me free'. Said R. Gamaliel: Admon's words have my approval.[6]

A Tanna taught: This[7] applies only to a woman who is of age but in the case of a minor compulsion may be used. Who is to be compelled? If the father [be suggested], should [not the ruling. it may be retorted,] be reversed?[8] — But, said Raba, compulsion is exercised against the [prospective] husband that he may give her a letter of divorce.

R. Isaac b. Eleazar laid down on the authority of Hezekiah: Wherever R. Gamaliel stated, 'Admon's words have my approval', the halachah agrees with him. Said Raba to R. Nahman, Even in the Baraitha?[9] — The other replied, Did we say 'In the Mishnah?' What we said was, 'Wherever R. Gamaliel stated'.[10]

Said R. Zera in the name of Rabbah b. Jeremiah: As to the two rulings which Hanan has laid down, the halachah is in agreement with him who followed his view,[11] but in respect of the seven rulings that were laid down by Admon, the halachah is not in agreement with him who followed his view.[12] What does he[13] mean? If it be suggested that he means this: As to the two rulings which Hanan has laid down, the halachah is in agreement with himself and with him who followed his view, and that in respect of the seven rulings that were laid down by Admon, the halachah is neither in agreement with himself nor with him who followed his view,[12] [it may be objected:] Did not R.

Isaac b. Eleazar lay down on the authority of Hezekiah that ‘wherever R. Gamaliel stated, "Admon's words have my approval", the halachah agrees with him’? — What he[13] meant, however, must have been this: As to the two rulings which Hanan has laid down, the halachah is in agreement with himself and with him who followed his view,[14] but in respect of the seven rulings that were laid down by Admon, the halachah does not agree with him who followed his view[15] but agrees with himself in all his rulings. But, surely, R. Isaac b. Eleazar laid down on the authority of Hezekiah that ‘wherever R. Gamaliel stated, ‘Admon's words have my approval" the halachah agrees with him’. [Does not this imply:] Only[16] where he stated;[17] but not where he did not state? — The fact, however, is that he[13] meant this; As to the two rulings which Hanan has laid down, the halachah is in agreement with himself and with him who followed him,[14] but of the seven rulings that were laid down by Admon, there are some concerning which the halachah is in agreement with himself and with him who followed his view[18] while there are others concerning which the halachah does not agree with him[19] but with him who followed his view,[15] [the rule being that] wherever R. Gamaliel stated, ‘Admon's words have my approval’ is the halachah in agreement with him, but not elsewhere.[20] MISHNAH. IF A MAN CONTESTS [THE OWNERSHIP OF] A FIELD ON [THE DEED OF SALE OF] WHICH HE IS SIGNED AS A WITNESS,[21] ADMON RULED; [HIS CLAIM IS ADMISSIBLE BECAUSE] HE CAN SAY,[22] ‘[LITIGATION WITH] THE SECOND[23] IS EASIER FOR ME, SINCE THE FIRST[24] IS A MORE DIFFICULT PERSON THAN HE’.[25] THE SAGES, HOWEVER, RULED THAT HE HAS LOST HIS RIGHT.[26] IF [THE SELLER][27] MADE IT[28] A [BOUNDARY] MARK FOR ANOTHER PERSON[29] [THE CONTESTANT][30] HAS LOST HIS RIGHT.[31]

GEMARA. Abaye said: This[32] was taught only [in respect of] A WITNESS, but a judge[33] does not lose his title;[34] for R. Hiyya taught Witnesses may not sign a deed unless they have read it[35]

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(1) Unmarried and undivorced.

(2) Sc. the son-in-law cannot be compelled either to marry her or to set her free.

(3) To her prospective husband.

(4) Lit., ‘concerning what?’

(5) Unmarried and undivorced.

(6) Tosef. Keth. XII.

(7) The ruling of the Baraitha.

(8) If compulsion is to be resorted to, this should not be in the case of a minor whose actions have no legal validity, but in that of one who is of age, whose undertaking is legally valid (v. Strashun).

(9) Just cited, where the dispute relates to a promise made by the daughter herself (cf. Rashi s.v. אפי and Tosaf. s.v. ואפילו a.l.). [R. Nissim; Does this principle apply elsewhere also in a Baraitha? — though here the halachah has been fixed according to the version of our Mishnah].

(10) The halachah, apparently contradictory, being determined by the version of the Mishnah and Baraitha respectively, (cf. Tosaf. l.c.). [Cf. however n. 6].

(11) כיוצא בו, lit., ‘like he who goes out with him’, sc. R. Johanan b. Zakkai (cf. the Mishnahs supra 105a and 107b). This is discussed anon. aliter; ‘Like that which goes out with it’, i.e., rulings similar to those laid down by Admon (v. Tosaf.) [According to Adreth a case similar to that of Admon's is provided by one who pays his fellow's debt to his creditor without his instructions. and where the claim is, say, for wheat and barley and the admission is only in regard to one of these, we have an instance similar to that of Admon].

(12) Sc. R. Gamaliel (cf. the Mishnahs supra 108b f). Cf. also p. 697, n.8 mutatis mutandis.

(13) R. Zera.

(14) V. p. 697, n. 8.

(15) I.e., R. Gamaliel (cf. supra note I) who agreed with him in three rulings only, for the halachah agrees with Admon in all his rulings.

(16) Lit. , ‘yes’.

(17) Is the halachah in agreement with Admon.

(18) Sc. the three rulings (cf supra n. 4).

(19) Rashal on the interpretation of Tosaf. (v. p. 697, n. 8) emends: ‘agrees neither with him nor with etc.’
(20) Lit., ‘not those’, sc. the rulings of Admon of which R. Gamaliel expressed no approval.
(21) His plea being that the seller has taken it from him by violence.
(22) So separate edd. of the Mishnah, Alfasi and Asheri.
(23) The buyer.
(24) The seller.
(25) Sc. he might plead that he signed as a witness, not because he acknowledged the seller to be the lawful owner, but in the hope that it would be easier for him to recover his field from the buyer than from the seller.
(26) By signing the deed of sale he is presumed to have acknowledged the seller as the lawful owner of that field.
(27) Whose title to the field is contested.
(28) The contested field.
(29) To whom he has sold a field adjacent to it.
(30) Who signed as a witness to the deed of sale in which the contested field was described as the property of the seller, and given as one of the boundaries of the field sold.
(31) Even according to Admon. The plea that the contestant preferred to litigate with the buyer is obviously inadmissible here, and the reason given supra note 6, applies.
(32) The ruling that the contestant HAS LOST HIS TITLE.
(33) Who attested the Signatures of the witnesses to a deed of sale.
(34) To the field sold and, despite his Signature, may reclaim it. A judge is concerned only with the attestation of the witnesses’ signature and not with the contents of the deed.
(35) Since it is the contents of the deed to which they must testify.

Talmud - Mas. Kethuboth 109b

but judges[1] may sign even though they have not read it.[2]

IF [THE SELLER] MADE IT A [BOUNDARY] MARK FOR ANOTHER PERSON. Abaye said: This was taught Only [where it was] FOR ANOTHER PERSON, but [if it was made a boundary mark] for himself[3] he does not lose his right; for he can say, ‘Had I not done that[4] for him he would not have sold the field to me’. What [possible objection can] you have?[5] That he should have made a declaration [to that effect]? Your friend [it can be retorted] has a friend, and the friend of your friend has a friend.[6]

A certain man once made a field[7] a [boundary] mark for another person,[8] [and one of the witnesses,] having contested [its ownership,][9] died, when a guardian was appointed [over his estate].[10] The guardian came to Abaye[11] who quoted to him: ‘IF [THE SELLER] MADE IT A [BOUNDARY] MARK FOR ANOTHER PERSON [THE CONTESTANT] HAS LOST HIS RIGHT’. ‘If the father of the orphans had been alive’, the other retorted, ‘could he not have pleaded, "l have conceded to him[12] only one furrow"?’[13] — ‘You speak well’, he said, ‘for R. Johanan stated, If he submitted the plea, "l have conceded to you only one furrow", he is believed’. ‘Proceed at any rate [Abaye later[14] told the guardian] to give him one furrow’.[15] On that [furrow, however,] there was a nursery of palm trees, and [the guardian] said to him, ‘Had the father of the orphans been alive, could he not have submitted the plea, "I have re-purchased it from him"?’[16] — ‘You speak well’, [Abaye] said to him, ‘for R. Johanan ruled, If he submitted the plea, "I have re-purchased it from him" he is believed’.[17] Said Abaye: Anyone who appoints a guardian should appoint one like this man who understands how to turn [the scales][18] in favour of orphans.

MISHNAH. IF A MAN WENT TO A COUNTRY BEYOND THE SEA AND [IN HIS ABSENCE] THE PATH TO HIS FIELD WAS LOST,[19] ADMON RULED: LET HIM WALK [TO HIS FIELD][20] BY THE SHORTEST WAY.[21] THE SAGES, HOWEVER, RULED: LET HIM EITHER PURCHASE A PATH FOR HIMSELF EVEN THOUGH IT [COST HIM] A HUNDRED MANEH OR FLY THROUGH THE AIR.

GEMARA. What is the Rabbis'[22] reason? Does not Admon speak well?[23] — Rab Judah replied in the name of Rab: [The ruling[24] refers to a field], for instance, which [the fields of] four persons surrounded on its four sides.[25] If that be so, what can be Admon's reason?[26] — Raba explained: Where four persons[27] succeeded[28] [to the adjacent fields] by virtue of the rights of four [persons respectively][29] or where four persons succeeded[28] [to them][30] by virtue of one,[29] all agree that these may turn him away.[31] They[32] only differ where one person succeeded[33] [to all the surrounding fields] by virtue of four persons.[34] Admon is of the opinion that [the claimant can say to that person,] 'At all events[35] my path is in your territory'; and the Rabbis hold the opinion [that the defendant might retort,] 'If you will keep quiet, well and good,[36] but if not l will return the deeds to their respective original owners whom you will have no chance of calling to law'.[37]

A [dying man][38] once instructed [those around him] that a palm tree shall be given to his daughters but the orphans proceeded to divide the estate and gave her no palm tree. R. Joseph [in considering the case] intended to lay down that it involved the very same principle as that of our Mishnah.[39] But Abaye said to him: Are [the two] alike? There,[40] each one can send [the claimant to the path] away;[41] but here, the palm tree is in their common possession.[42] What is their way out?[43] — They must give her a palm tree and divide [the estate] all over[44] again.

A [dying man][45] once instructed [those around him] that a palm tree shall be given to his daughter. When he died he left[46] two halves of a palm tree.[47] Sat R. Ashi [discussing the case] and grappled with this difficulty; Do people call two halves of palms trees a palm tree' or not? — Said R. Mordecai to R. Ashi, Thus said Abimi of Hagronia[48] in the name of Raba: People do call two halves of palm trees 'a palm tree'.[49]

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(1) Cf. supra n. 13.

(2) A judge's signature on a deed consequently does not prove that beyond the Signatures of the witnesses he was at all aware of its contents.

(3) Sc. if the contestant himself bought a field from the man whom he accuses of having stolen an adjacent field from him, and the latter, inserting the field in dispute as a boundary, described it as his own.

(4) Lit., 'thus', i.e., agreed to the description of the stolen field as the property of the seller.

(5) Against this plea.

(6) Popular saying. The declaration would eventually reach the ears of the seller who might in consequence cancel the sale.

(7) Which he was accused of having stolen.

(8) To whom he had sold a field adjacent to it.

(9) Cf. supra p. 699, n. I.

(10) To manage it for the orphans.

(11) To claim the field on behalf of his wards.

(12) Of the field in dispute.

(13) That was immediately next to the sold field. The orphans should, therefore, be entitled to reclaim the rest of the field.

(14) After proof had been adduced that the field had been stolen from the father of the orphans.

(15) The minimum which the deceased must have conceded.

(16) After it had been ascribed to him.

(17) [The reason for this ruling. according to Rashi, is because the field is known to have belonged to the contestant and but for his signature referred to, the present occupier has no proof of his title to the field. This admission on the part of the contestant is, however, cancelled by his declaration of having repurchased the field, v. supra 16a.]

(18) Lit.,'to turn over'.

(19) It being unknown in which of the surrounding fields it lay.

(20) He must be allowed a short path through one of the surrounding fields. (This is further explained infra).

(21) The minimum. He cannot claim more than what is, at all events, due to him.

(22) THE SAGES.
(23) The assumption now being that all the surrounding fields belonged to one person who must obviously be held responsible for the lost path.
(24) In our Mishnah.
(25) So that each person can shift responsibility on the others.
(26) How can one be held responsible when all the four are equally involved?
(27) The respective owners of the four surrounding fields.
(28) Lit., 'came'.
(29) Sc. by purchase or gift.
(30) After the path was lost.
(31) Cf. supra note 8.
(32) Admon and the Sages.
(33) Lit., 'came'.
(34) Sc. by purchase or gift.
(35) In whichever field the path was lost.
(36) Lit., 'you will keep quiet' (bis). He will sell him a path at a reasonable price (cf. Rashi). V . however, Tosaf. Yeb. 37b, s.v. דאמר.
(37) Lit., 'and you will not be able to talk law with them'. Cf supra p. 701, n. 8.
(38) The verbal instructions of one in such circumstances have the force of a legally written document.
(39) Like the owners of the adjacent fields each of whom shifts the responsibility for the path on to the others. so can each brother shift the responsibility for the palms tree on to the other brothers.
(40) The case in our Mishnah.
(41) The One path can lie only in one person's held, and each of the defendants can, therefore, well plead that it did not lie in his.
(42) Lit., 'with them', the instructions of the deceased having been given before the division of the estate, and the duty of carrying out his wish is incumbent upon all the heirs jointly.
(43) Lit., 'their correction'. 'redress' —
(44) Lit., 'from the beginning'.
(45) V. supra note 2.
(46) Among his many palm trees.
(47) Sc. two palm trees in each of which he owned a half, and the heirs desired to assign them to the daughter in fulfilment of their father's instructions.
(48) One of the suburbs of Nehardea.
(49) And the brothers can assign these to the daughter despite the greater trouble involved in their cultivation.

Talmud - Mas. Kethuboth 110a

MISHNAH. IF A MAN PRODUCED A BOND OF INDEBTEDNESS AGAINST ANOTHER, AND THE LATTER PRO DUCED [A DEED OF SALE,[1] SHEWING] THAT THE FORMER HAD SOLD HIM A FIELD,[2] ADMON RULED; [THE OTHER] CAN SAY, HAD I OWED YOU [ANYTHING] YOU WOULD HAVE RECOVERED IT WHEN YOU SOLD ME THE FIELD'.[3] THE SAGES, HOWEVER, SAY; THIS [SELLER] MAY HAVE BEEN A PRUDENT MAN, SINCE HE MAY HAVE SOLD HIM THE LAND IN ORDER TO BE ABLE TO TAKE IT FROM HIM AS A PLEDGE.[4]

GEMARA. What is the reason of the Rabbis? Does not Admon speak well? — Where [the purchase] money is paid first and the deed is written afterwards, no one disputes that the [defendant] may well say [to the claimant], 'You should have recovered your debt when you sold me the field'.[3] They only differ where the deed is written first and the purchase money is paid afterwards. Admon is of the opinion that [the claimant] should have made a declaration [of his motive],[5] while the Rabbis[6] maintain [that the claimant can retort,] 'Your friend has a friend, and the friend of your friend has a friend'.[7]

MISHNAH. IF TWO MEN PRODUCED BONDS OF INDEBTEDNESS AGAINST ONE ANOTHER,[8] ADMON RULED; [THE HOLDER OF THE LATER BOND CAN SAY TO THE OTHER,] 'HAD I OWED YOU [ANY MONEY] HOW IS IT THAT YOU BORROWED FROM ME?'[9] THE SAGES, HOWEVER, RULED: THE ONE RECOVERS HIS DEBT[10] AND THE OTHER RECOVERS HIS DEBT.[11] GEMARA. It was stated: If two men produced bonds of indebtedness against one another, R. Nahman ruled: The one recovers his debt and the other recovers his debt.[12] R. Shesheth said: What is the point[13] in exchanging bags?[14] The one rather retains his own [money][15] and the other retains his.

All agree[16] that if both [litigants possess land of the] best,[17] medium or worst quality [distraint for each on the other is] undoubtedly a case of changing bags.[14] They differ only where one [of the litigants] has land of medium quality and the other of the worst quality. R. Nahman is of the opinion that 'the one recovers his debt and the other recovers his debt' because in his view an assessment[18] is made on the basis of the debtor's[19] possessions,[20] [so that] the owner of the land of the worst quality proceeds to distrain on the medium quality [of the other][21] which then becomes with him the best; and the other can then proceed to take from him the worst only.[22] R. Shesheth, however, said, 'What is the point in exchanging bags?' because he is of the opinion that an assessment[23] is made on a general basis,[24] [so that] eventually when the original owner of the medium land[25] proceeds [to distrain on the property of the other][26] he will only take back his own medium land. But what [reason can] you see, according to R. Nahman, that the owner of the worst quality of land should proceed [to distrain] first? Why should not rather the owner of the medium quality come first and distrain on the worst [of the other] and then let him distrain on it?[27] — [But this ruling] applies only[28] where the [holder of the worst land] submitted his claim first. But after all when they come to distrain, do they not come simultaneously?[29] The fact, however, [is that the ruling] applies only[28] where one [of the litigants] has best and medium land, and the other has only of the worst. One Master[30] is of the opinion that an assessment[31] is made on the basis of the debtor's[32] possessions,[33] while the other Master[34] is of the opinion that an assessments is made on a general basis.[35]

We have learned: THE SAGES, HOWEVER, RULED: THE ONE RECOVERS HIS DEBT AND THE OTHER RECOVERS HIS DEBT![36] R. Nahman explained this, according to R. Shesheth, [as referring to a case,] for instance, where one borrowed for a period often, and the other for one of five years.[37] But how exactly are we to understand this? If it be suggested that the first [bond][38] was for ten years and the second for five, would Admon [it may be objected] have ruled [that the second can say to the first:] 'HAD OWED YOU [ANY MONEY] HOW IS IT THAT YOU BORROWED FROM ME?' The time for payment[39] surely, had not yet arrived.[40] If, however, [it be suggested that] the first was for five years and the second for ten, how [it may again be objected] is this to be understood? If the time for payment[39] had arrived,[40] what [it may be asked] could be the reason of the Rabbis?[41] And if the time for payment[39] had not yet arrived,[40] well, payment was not yet due and what [it may again be asked] is Admon's reason? — [This ruling was] required [in that case] only where [the holder of the earlier bond][42] came [to borrow] on the day on which the five years had terminated.[43] The Masters[44] are of the opinion that it is usual to borrow money for one day[45] and the Master[46] is of the opinion that one does not borrow money for one day.[47]

Rama b. Mama explained: We are here[48] dealing with [a case where one of the bonds was presented by] orphans[49] who are themselves entitled to recover a debt but from whom no debt may be recovered.[50]

Was it not, however, stated, THE ONE RECOVERS HIS DEBT AND THE OTHER RECOVERS HIS DEBT?[51] — [The meaning is:] The one recovers his debt, and the other is entitled to recover it but gets nothing. Said Raba: Two objections [may be advanced] against this explanation. Firstly, it was stated, 'THE ONE RECOVERS HIS DEBT AND THE OTHER RECOVERS[51] HIS DEBT';

and, secondly, could not [the other party] allow the orphans to distrain on a plot of land [of his] and then recover it from them,[52] in accordance with [a ruling of] R. Nahman, for R. Nahman said in the name of Rabbah b. Abbuha: If orphans collected a plot of land for their father's debt[53] the creditor[54] may re-collect it from them?[55] — This is a difficulty.

Why could it not be explained [that this is a case] where the orphans owned land of the worst quality and the other owned best[56] and medium quality, so that the orphans proceed to distrain on his medium land[57] and allow him to distrain on their worst only? For, even though[58] an assessment[59] is made on a general basis[60] is not payment from orphans' property recovered from their worst land only?[61] — This applies only where [the creditor] has not yet seized [their property] but where[62] he had seized it[63] he may lawfully retain it.[64]

MISHNAH. [THE FOLLOWING REGIONS ARE REGARDED AS] THREE COUNTRIES IN RESPECT OF MATRIMONY:[65] JUDAEA, TRANSJORDAN AND GALILEE. [A MAN] MAY NOT TAKE OUT [HIS WIFE WITH HIM][66] FROM ONE TOWN[67] TO ANOTHER[68] OR FROM ONE CITY[69] TO AN OTHER. WITHIN THE SAME COUNTRY, HOWEVER, HE MAY TAKE HER OUT WITH HIM FROM ONE TOWN INTO ANOTHER OR FROM ONE CITY INTO AN OTHER[70]

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(1) Bearing a later date than that of the bond.

(2) And thereby he seeks to prove that either he never borrowed the sum claimed or that he repaid It prior to his purchase of the field.

(3) By seizing the purchase price in payment of the debt. Since he did not do it is obvious that he owed bins nothing.

(4) Movables can be hidden away.

(5) And since he did not do so the defendant may well plead, 'HAD I OWED YOU' etc.

(6) THE SAGES.

(7) Cf. supra p. 700, n. 3 mutatis mutandis.

(8) One bond bearing an earlier date than the other.

(9) And this plea exempts him from payment.

(10) Lit., 'bond of his debt'.

(11) No balancing of amounts or exchange of bonds being allowed by the court. Each bond must be treated on its own merits and orders for distraint are given accordingly.

(12) V. p. 703, n. II.

(13) If the amounts of the two debts are equal (v. infra).

(14) Metaph. If the bags are of equal weight there is no advantage to an animal in changing them from one side to the other (Jast.) or to a human being in changing the burden from one hand to the other (Levy). מטרתא, 'leather bag' (Rashi). Cf. 'a liquid measure', 'cask'.

(15) Or property on which the other desires to distrain.

(16) Lit., 'all the world', R. Nahman and R. Shesheth.

(17) Lit., 'best and best'.

(18) On behalf of a creditor who distrains on the debtor's land.

(19) Lit., 'of his'.

(20) If the debtor, for instance, has only two kinds of land, medium and inferior quality, the former is regarded as 'best' and the creditor can only distrain on the inferior land. A creditor (cf. B.K. 7b) may distrain on the 'medium' land of the debtor if he possesses such, or on the 'worst'. He has no right to distrain on the 'best'.

(21) Being in fact the only kind of land the other possesses.

(22) He cannot reclaim the medium quality that was taken from him, since it is now regarded as its present owner's 'best' (cf. supra note 9).

(23) V.supra note 7.

(24) Lit., 'of all men'.

(25) Lit., 'that one'.

(26) Who had taken possession of his medium land.

(27) Cf. p. 704, n. 11. The other could not distrain on the medium which is now his best.
(28) Lit., 'is not required but'.
(29) Since both presented their bonds at court (v. our Mishnah ab init.). Why then should one be allowed an advantage over the other?
(30) R. Nahman.
(31) V. supra p. 704, n. 7.
(32) Lit., 'of his'.
(33) Cf. supra p. 704, n. 9. The owner of the worst land, if allowed to distrain on the other instead of keeping his own. is at an advantage in either case. whether he distrains first or last. If he distrains first he obtains, of course, the other's medium land which, becoming his 'best', cannot be distrained on by the creditor, and the other must consequently recoup himself from his worst. If, on the other hand, the owner of the best and medium land distrains first, it is again the other's worst land (the only kind he possesses) to which he can have recourse, while the other still distrains on his medium.
(34) R. Shesheth.
(35) Cf. supra p. 704. n. 13. Where, therefore, two bonds are simultaneously presented at court and the order would naturally be made that the owner of the worst land distrains first on the other's 'medium' and that the latter then distrains on the same 'medium', the procedure would be as useless as that of 'exchanging bags'.
(36) Is not this an objection against K. Shesheth?
(37) So that it is advantageous to the debtor of the loan for the longer period that his bond shall not be balanced against the other's.
(38) I.e., the one bearing the earlier date.
(39) Lit., 'its time'.
(40) When the second bond was written.
(41) It should be pretty obvious that the holder of the later bond should be believed mince he might well plead as Admon suggested.
(42) The five years' loan.
(43) Payment having been due on the following day.
(44) The Sages. Lit., 'master'.
(45) Hence their ruling that both bonds are valid.
(46) Admon.
(47) Hence the admissibility of the plea, 'HAD I OWED YOU etc'
(48) In our Mishnah.
(49) Who inherited it from their father.
(50) If they possessed no landed property. Orphans' movables may not be distrained on.
(51) Not merely, 'is entitled to recover etc.
(52) Cf. supra n. 12 mutatis mutandis.
(53) Which someone owed him.
(54) To whom their father owed money.
(55) Supra 92a, Pes. 31a, B.B. 125a.
(56) So cur. edd. and MS.M. R. Nissim and Maharsha omit.
(57) To which a creditor is entitled (cf. supra p. 704. n. 9 second clause).
(58) Lit , also'.
(59) Cf. supra p. 704. n. 7.
(60) Lit., 'of all men'.
(61) V. Git. 48b.
(62) MS.M. 'but here since'.
(63) As in the case under discussion where they seek to take it from him.
(64) Lit., 'he seized'.
(65) Sc. a man who married in one of these cannot compel his wife to go with him to any of the others.
(66) Except with her consent.
(67) כרך.
(68) In another country.

(69) [עיר According to Rashi כרך is larger than עיר. According to Krauss, the former denotes a city (large or small) surrounded by a wall, v. He'atid. III, 1ff.]
(70) Even if she objects.

Talmud - Mas. Kethuboth 110b

BUT NOT FROM A TOWN TO A CITY NOR FROM A CITY TO A TOWN.[1] [A MAN] MAY TAKE OUT [HIS WIFE WITH HIM] FROM AN INFERIOR[2] TO A SUPERIOR[3] DWELLING, BUT NOT FROM A SUPERIOR[3] TO AN INFERIOR[2] DWELLING. R. SIMEON B. GAMALIEL RULED: NOT EVEN FROM AN INFERIOR DWELLING TO A SUPERIOR DWELLING, BECAUSE THE [CHANGE TO A] SUPERIOR DWELLING PUTS [THE HUMAN BODY] TO A [SEVERE] TEST.[4]

GEMARA. One may readily grant [the justice of the ruling that a wife may not be compelled to move] FROM A CITY TO A TOWN, since everything [necessary] is obtainable in a city while not everything is obtainable in a town. On what grounds, however, [can she not be compelled to move] FROM A TOWN TO A CITY? — [This ruling] provides support for R. Jose b. Hanina who stated, 'Whence is it deduced that city[5] life[6] is difficult?[7] [From Scripture] where it is said, And the people blessed all men that willingly offered themselves to dwell in Jerusalem.[8]

R.SIMEON B. GAMALIEL RULED etc. What [is meant by] PUTS [THE HUMAN BODY] TO A [SEVERE] TEST'?[9] — In agreement [with a saying] of Samuel. For Samuel said: A change of diet is the beginning of bowel trouble.[10]

It is written in the Book of Ben Sira: All the days of the poor[11] are evil;[12] but are there not the Sabbaths and festivals?[13] — [The explanation, however, is] according to Samuel. For Samuel said: A change of diet is the beginning of bowel trouble.[10] Ben Sira said: The nights also.[14] Lower than [all] the roofs is his roof,[15] and on the height of mountains is his vineyard,[16] [so that] the rain of [other] roofs [pours down] upon his roof and the earth of his vineyard [is washed down] into the vineyards [of others].[17] MISHNAH. [A MAN] MAY COMPEL ALL [HIS HOUSEHOLD] TO GO UP[18] [WITH HIM] TO THE LAND OF ISRAEL., BUT NONE MAY BE COMPELLED TO LEAVE IT. ALL [ONE'S HOUSEHOLD] MAY BE COMPELLED TO GO UP[18] TO JERUSALEM,[19] BUT NONE MAY BE COMPELLED TO LEAVE IT. [THIS APPLIES TO] BOTH MEN AND WOMEN.[20] IF A MAN MARRIED A WOMAN IN THE LAND OF ISRAEL AND DIVORCED HER IN THE LAND OF ISRAEL, HE MUST PAY HER [HER KETHUBAH] IN THE CURRENCY OF THE LAND OF ISRAEL. IF HE MARRIED A WOMAN IN THE LAND OF ISRAEL AND DIVORCED HER IN CAPPADOCIA HE MUST PAY HER [HER KETHUBAH] IN THE CURRENCY OF THE LAND OF ISRAEL.[21] IF HE MARRIED A WOMAN IN CAPPADOCIA AND DIVORCED HER IN THE LAND OF ISRAEL, HE MUST A GAIN PAY [HER KETHUBAH] IN THE CURRENCY OF THE LAND OF ISRAEL.[21] R. SIMEON B. GAMALIEL, HOWEVER, RULED THAT HE MUST PAY HER IN THE CAPPADOCIAN CURRENCY.

IF A MAN MARRIED A WOMAN IN CAPPADOCIA AND DIVORCED HER IN CAPPADOCIA, HE MUST PAY HER [HER KETHUBAH] IN THE CURRENCY OF CAPPADOCIA.

GEMARA. What [was the expression,] 'MAY COMPEL ALL'[22] intended to include? — To include slaves.[23] What, however, [was the expression[22] intended] to include according to him who specifically mentioned 'slaves' [in our Mishnah]? — To include [removal] from a superior dwelling to an inferior one. What [was the expression,] 'BUT NONE[24] MAY BE COMPELLED TO LEAVE IT' intended to include? — To include a slave who fled from outside the Land [of Israel] into the

Land in which case his master is told,[25] 'Sell him here, and go', in order to [encourage] settlement in the Land of Israel. What [was the expression] 'ALL[26] . . . MAY BE COMPELLED TO GO UP TO JERUSALEM' intended to include? — To include [removal] from a superior dwelling to an inferior one. What [was the expression,] 'BUT NONE[27] MAY BE COMPELLED TO LEAVE IT' intended to include? — To include even [removal] from an inferior dwelling to a superior one; only since as it was stated in the earlier clause,[28] 'NONE MAY BE COMPELLED TO LEAVE IT it was also stated in the latter clause,[29] 'NONE MAY BE COMPELLED TO LEAVE IT'.[30]

Our Rabbis taught: If [the husband] desires[31] to go up[32] and his wife refuses[31] she must be pressed[33] to go up; and if [she does] not [consent] she may be divorced[34] without a kethubah. If she desires[31] to go up[32] and be refuses,[31] he must be pressed to go up; and if [he does] not [consent] he must divorce her and pay her kethubah. If she desires to leave[35] and he refuses to leave, she must be pressed not to leave, and if [pressure is of] no [avail] she may be divorced[34] without a kethubah. If he desires to leave[35] and she refuses he must be pressed not to leave, and if [coercion is of] no [avail] he must divorce her and pay her kethubah.[36]

IF A MAN MARRIED A WOMAN etc. Is not this self-contradictory? It was stated, IF HE MARRIED A WOMAN IN THE LAND OF ISRAEL AND DIvorced HER IN CAPPADOCIA HE MUST PAY HER [HER KETHUBAH] IN THE CURRENCY OF THE LAND OF ISRAEL, from which it clearly follows that we are guided by [the currency of the place where the] obligation[37] was undertaken.[38] Read, however, the concluding clause: IF HE MARRIED A WOMAN IN CAPPADOCIA AND DIVORCED HER IN THE LAND OF ISRAEL HE MUST AGAIN PAY HER [HER KETHUBAH] IN THE CURRENCY OF THE LAND OF ISRAEL, from which it follows, does it not, that we are guided by [the currency of the place] where collection is effected?[39] — Rabbah replied: [The rulings] taught here [are among those in which the claims relating to] a kethubah are weaker [than those of other claimants],[40] for [the author] is of the opinion that the kethubah is a Rabbinical enactment.[41] R. SIMEON B. GAMALIEL, HOWEVER, RULED THAT HE MUST PAY HER IN THE CAPPADOCIAN CURRENCY. He is of the opinion[42] that the kethubah is Pentateuchal.[43]

Our Rabbis taught: If a man produces a bond of indebtedness against another [and the place of issue] entered[44] therein was Babylon, [the debtor] must allow him to collect it in Babylonian currency. If [the place of issue] entered[44] therein was the Land of Israel he must allow him to collect it in the currency of the Land of Israel. If no place of issue was entered[44] he must, if it was presented in Babylon, pay him in Babylonian currency; and, if it was presented in the Land of Israel, he must pay him in the currency of the Land of Israel. If merely [a sum of] 'silver [pieces]'[45] was entered, the borrower may pay the other whatever he wishes.[46] [This is a ruling] which does not apply to[47] a kethubah.[48] To what [ruling does this[49] refer]? — R. Mesharsheya replied: To that in the first clause,[50] thus indicating that the law is not in agreement with[51] R. Simeon b. Gamaliel who ruled that the kethubah is Pentateuchal.

'If merely [a sum of] "silver [pieces]" was entered the borrower may pay the other whatever he wishes'. May not one say that [a 'silver piece' merely signified] a bar [of silver]? — R. Eleazar replied: [This is a case] where 'coin' was mentioned in the bond.[52] May not one suggest [that it signified] small change? — R. Papa replied: Small change is not made of silver.[53]

Our Rabbis taught: One should always live in the Land of Israel, even in a town most of whose inhabitants are idolaters, but let no one live outside the Land, even in a town most of whose inhabitants are Israelites; for whoever lives in the Land of Israel may be considered to have[54] a God, but whoever lives outside the Land may be regarded as one who has no God. For it is said in Scripture, To give you the Land of Canaan, to be your God.[55] Has he, then, who does not live in the Land, no God?[56] But [this is what the text intended] to tell you, that whoever lives outside the Land

may be regarded as one who worships idols. Similarly it was said in Scripture in [the story of] David, For they have driven me out this day that I should not cleave to the inheritance of the Lord, saying: Go, serve other gods.[57] Now, whoever said to David, 'Serve other gods'? But [the text intended] to tell you that whoever lives outside the Land[58] may be regarded as one who worships idols.[59]

R. Zera was evading Rab Judah because he desired to go up to the Land of Israel while Rab Judah had expressed [the following view:] Whoever goes up from Babylon to the Land of Israel transgresses a positive commandment, for it is said in Scripture,

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(1) The reason is stated infra.

(2) Lit., 'bad'.

(3) Lit., 'beautiful'.

(4) This is further explained by Samuel infra. בודק rt. בדק 'to examine', 'test', 'try'. Aliter (Jast.): בדק 'to penetrate'; 'the removal to a better residence (and style of living) penetrates (the body and creates disease)'.

(5) Lit., 'cities'.

(6) שישיבת, rt. ישב 'to sit', 'dwell'.

(7) Lit., 'hard', owing to overcrowding, lack of pure country air and an insufficiency of parks and open spaces.

(8) Neh. XI, 2.

(9) בודק cf. supra note 1.

(10) חולי מעים, lit., 'disease of the bowels', 'abdominal trouble'. Cf. B.B. 146a, Sonc. ed. p. 628 (where מעים is omitted) and Sanh. 101a, Sonc. ed. p. 683.

(11) So A.J.V.; A.V. and R.V. 'afflicted'.

(12) Prov. XV, 15, Ben Sira XXXI, 5.

(13) During which days, at least, the poor were provided with substantial meals.

(14) Ben Sira loc. cit. Not only all the days.

(15) As a poor man he is compelled to live in a low-roofed hovel.

(16) Since he cannot afford a more costly vineyard in the valley.

(17) Ben Sira XXXI, 6-7.

(18) Lit., 'cause to go up'.

(19) From any other Palestinian place.

(20) A wife also may compel her husband to live with her in Jerusalem or the Land of Israel and, if he refuses, she is entitled to demand a divorce and the payment of her kethubah.

(21) The Cappadocian coins were dearer than the corresponding ones of the Land of Israel.

(22) Emphasis on 'ALL'.

(23) Hebrew slaves also may be compelled by their master to follow him to Jerusalem or to the Land of Israel.

(24) Emphasis on 'NONE'.

(25) Lit., 'we say to him'.

(26) Emphasis on 'ALL'.

(27) Emphasis on 'NONE'.

(28) In reference to the Land of Israel.

(29) In respect of Jerusalem.

(30) Though the latter clause is, in fact, redundant, it being self-evident that if a person may be compelled to leave a superior dwelling to move to an inferior one, provided the latter is in Jerusalem, he could not a fortiori be compelled to leave Jerusalem even for the sake of a change from an inferior to a superior dwelling.

(31) Lit., 'says'.

(32) From a country outside the Land, to the Land of Israel, or from a province in the latter to Jerusalem.

(33) This law does not apply to the present time owing to the risks of the journey (Tosaf. s.v. הוא a.l.). Rabbenu Hayim also maintains that living in the Land of Israel is now not a religious act owing to the difficulty and impossibility of fulfilling many of the precepts attached to the soil (Tosaf. loc. cit. q.v.).

(34) Lit., 'she goes out'.

(35) Jerusalem, for a provincial town in the Land of Israel, or the latter for a foreign country.

(36) Tosef. Keth. XII.

(37) To pay the kethubah.
(38) The obligation is undertaken at marriage and collection takes place on divorce (or the man's death).
(39) Cf. supra n. 2.
(40) Cf. supra p. 709, n. 4, B.B. 132b, Sonc. ed. p. 554, n. 9, Bek. 52a.
(41) Non-Pentateuchal (cf. infra n. 6 and text).
(42) Contrary to the view of the first Tanna (cf. supra n. 5).
(43) [In the Jerusalem Talmud the opinions are reversed: R. Gamaliel holds that the kethubah is Rabbinical, whereas the Sages consider it Biblical, the Palestinian giving preference to the Palestine coinage, v. supra 10a].
(44) Lit., 'written'.
(45) No mention being made of the exact denomination.
(46) Since he may assert that the figure in the bond referred to the smallest silver coin.
(47) Lit., 'which is not so in'.
(48) Tosef. Keth. XII.
(49) The last clause.
(50) Sc. unlike a creditor who, according to the first clause, is entitled to collect his due in the currency of the place of issue, a woman collects her kethubah in the cheaper currency only.
(51) Lit., 'to bring out from'.
(52) Lit., 'written in it .
(53) Lit., 'small change of silver people do not make'. Cf. B.B. 165b f, Sonc. ed. p. 722f.
(54) Lit., 'is like as if he has'.
(55) Lev. XXV, 38; implying apparently that only in the land of Canaan would He be their God.
(56) One surely may serve God anywhere.
(57) I Sam. XXVI, 19.
(58) David was compelled to seek shelter from Saul in the country of Moab and the land of the Philistines.
(59) Tosef. 'A.Z. V.

Talmud - Mas. Kethuboth 111a

They shall be carried to Babylon, and there shall they be, until the day that I remember them, saith the Lord.[1] And R. Zera?[2] — That text[1] refers[3] to the vessels of ministry.[4] And Rab Judah? — Another text also is available:[3] I adjure you, O daughters of Jerusalem, by the gazelles, and by the hinds of the field, [that ye awaken not, nor stir up love,[5] until it please]'.[6] And R. Zera? — That[7] implies that Israel shall not go up [all together as if surrounded] by a wall.[8] And Rab Judah? — Another 'I adjure you'[9] is written in Scripture. And R. Zera? — That text is required for [an exposition] like that of R. Jose son of R. Hanina who said: 'What was the purpose of those three adjurations?[10] — One, that Israel shall not go up [all together as if surrounded] by a wall;[8] the second, that whereby the Holy One, blessed be He, adjured Israel that they shall not rebel against the nations of the world; and the third is that whereby the Holy One, blessed be He, adjured the idolaters that they shall not oppress Israel too much'. And Rab Judah? — It is written in Scripture, That ye awaken not, nor stir up.[11] And R. Zera? — That text is required for [an exposition] like that of R. Levi who stated: 'What was the purpose of those six adjurations?[12] — Three for the purposes just mentioned and the others, that [the prophets] shall not make known the end,[13] that [the people] shall not[14] delay[15] the end,[13] and that they shall not reveal the secret[16] to the idolaters'.

By the gazelles, and by the hinds of the field.[17] R. Eleazar explained: The Holy One, blessed be He, said to Israel, 'If you will keep the adjuration, well and good; but if not, I will permit your flesh [to be a prey] like [that of] the gazelles and the hinds of the field'.

R. Eleazar said: Whoever is domiciled in the Land of Israel lives without sin, for it is said in Scripture, And the inhabitant shall not say, 'I am sick', the people that dwell therein shall be forgiven their iniquity.[18] Said Raba[19] to R. Ashi; We apply this [text][18] to those who suffer from disease.

R.Anan said; Whoever is buried in the Land of Israel is deemed to be[20] buried under the altar; since in respect of the latter[21] it is written in Scripture, At altar of earth thou shalt make unto me,[22] and in respect of the former[23] it is written in Scripture, And his laud doth make expiation for his people.[24]

'Ulla was in the habit of paying visits to the Land of Israel but came to his eternal rest[25] outside the Land — [When people] came and reported this to R. Eleazar he exclaimed, 'Thou 'Ulla, shouldst die in an unclean land!.'[26] 'His coffin', they said to him, 'has arrived'.[27] 'Receiving a man in his lifetime', he replied, 'is not the same as receiving him after his death'.

A certain man[28] who fell under the obligation [of marrying][29] a sister-in-law[30] at Be Hozae[31] came to R. Hanina and asked him whether it was proper[32] to go down there to contract with her levirate marriage. 'His brother', [R. Hanina] replied, 'married a heathen[33] and died, blessed be the Omnipresent Who slew him, and this one would follow him!'

Rab Judah stated in the name of Samuel: As it is forbidden to leave the Land of Israel for Babylon so it is forbidden to leave Babylon[34] for other countries. Both Rabbah and R. Joseph said: Even from Pumbeditha[35] to Be Kubi.[36]

A man once moved from Pumbeditha to [settle in] Be Kubi and R. Joseph placed him under the ban.

A man once left Pumbeditha to [take up his abode at] Astunia,[37] and he died.[38] Said Abaye: 'If this young scholar wanted it, he could still have been alive'.[39]

Both Rabbah and R. Joseph stated: The fit[40] persons of Babylon are received[38] by the Land of Israel, and the fit[40] ones of other countries are received[41] by Babylon. In what respect?[42] If it be suggested: In respect of purity of descent,[43] surely [it may be objected,] did not the Master say, 'All countries are [like] dough[44] towards the Land of Israel,[45] and the Land of Israel is [like] dough towards Babylon'?[46] — The fact, however, [is that the 'fit'[47] are received] in respect of burial.[48]

Rab Judah said: Whoever lives in Babylon is accounted as though he lived in the Land of Israel; for it is said in Scripture, Ho, Zion, escape, thou that dwellest with the daughter of Babylon.[49]

Abaye stated: We have a tradition that Babel[50] will not witness the sufferings[51] [that will precede the coming] of the Messiah.[52] He [also] explained it[53] to refer[54] to Huzal[55] in Benjamin which would be named[56] the Corner of Safety.[57]

R. Eleazar stated: The dead outside the Land[58] will not be resurrected; for it is said in Scripture, And I will set glory[59] in the land of the living,[60] [implying] the dead of the land in which I have my desire[61] will be resurrected, but the dead [of the land] in which I have no desire will not be resurrected.

R. Abba b. Memel objected: Thy dead shall live, my dead bodies shall arise;[62] does not [the expression] 'Thy dead shall live' refer to the dead of the Land of Israel, and 'My dead bodies shall arise' to the dead outside the Land;[63] while the text,[64] And I will give glory[65] in the land of the living[60] was written of Nebuchadnezzar concerning whom the All-Merciful said, 'I will bring against them a king who is as swift as a stag'?[66] — The other replied: Master, I am making an ex position of another Scriptural text: He that giveth breath unto the people upon it,[67] and spirit to them that walk therein.[68] But is it not written, My dead bodies shall arise?[69] — That was written in reference to miscarriages.[70] Now as to R. Abba b. Memel, what [is the application] he makes of the text,[71] 'He

that giveth breath unto the people upon it'? — He requires it for [an exposition] like that of R. Abbahu who stated: Even a Canaanite bondwoman who [lives] in the Land of Israel is assured of a place in[72] the world to come, [for in the context] here it is written, unto the people[73] upon it,[74] and elsewhere it is written, Abide ye here with[75] the ass[76] [which may be rendered][77] people that are like an ass'.[78]

And spirit to them that work therein[74] [teaches], said R. Jeremiah b. Abba in the name of R. Johanan, that whoever walks four cubits in the Land of Israel is assured of a place[79] in the world to come. Now according to R. Eleazar,[80] would not the righteous outside the Land[81] be revived?[82] — R. Elai replied: [They will be revived] by rolling [to the Land of Israel]. R. Abba Sala the Great demurred: Will not the rolling be painful to the righteous? — Abaye replied: Cavities will be made for them underground.

Thou shalt carry me out of Egypt and bury me in their burying-place.[83] Karna remarked: [There must be here] some inner meaning. Our father Jacob well knew that he was a righteous man in every way, and, since the dead outside the Land will also be resurrected, why did he trouble his sons?[84] Because he might possibly be unworthy to [roll through] the cavities.[85]

Similarly you read in Scripture, And Joseph took an oath of the children of Israel, [saying....ye shall carry up my bones from hence],[86] and R. Hanina remarked: [There is here] an inner meaning. Joseph well knew himself to be a righteous man in every way, and, since the dead outside the Land[87] will be revived, why did he trouble his brothers [with a journey of] four hundred parasangs? Because he might possibly be unworthy to [roll through] the cavities.[88]

His brothers[89] sent [the following message] to Rabbah:[90] 'Jacob well knew that he was a righteous man in every way' etc.[91] Ilfa added to this the following incident. A man was once troubled on account of [his inability to marry] a certain woman[92] and desired to go down [to her country]; but as soon as he heard this[91] he resigned himself to his unmarried state[93] until the day of his death. Although you are a great scholar [you will admit that] a man who studies on his own cannot be on a par with a man who learns from his master. And perchance you might think that you have no master [good enough for you here, we may inform you that] you have one, and he is[94] R. Johanan. If you are not coming up, however, beware [we advise you] of three things. Do not sit too long, for [long] sitting aggravates one's abdominal troubles;[95] do not stand for a long time, because [long] standing is injurious to the heart; and do not walk too much, because [excessive] walking is harmful to the eyes. Rather [spend] one third [of your time] in sitting, one third in standing and one third in walking. Standing is better than sitting when one has nothing to lean against.

'Standing'! How can this be imagined in view of the statement that '[long] standing is injurious to the heart'? — What was meant in fact was this:[96] Better than sitting

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(1) Jer. XXVII, 22.

(2) How could he act against this text?

(3) Lit., 'is written'.

(4) Enumerated previously in the context (Jer. XXVII, 19ff).

(5) For the Land of Israel.

(6) Cant. II, 7. Before it pleased God to bring them back to their Land they must patiently remain in Babylon.

(7) The text of Cant. II, 7.

(8) Individuals, however, may well go there. Cur. edd., read בחומה MS. M., כחומה, 'like a wall'. So also Emden and Strashun.

(9) Cant. III, 5, which refers to individuals.

(10) The two mentioned (Cant. II, 7, Ill, 5) and the one in Cant. V, 8.

(11) Cant. II, 7, אם תעירו ואם תעוררו, the repetition of the root עור implies (a) all Israel together and (b)

individuals.
(12) Each of the three adjurations (cf. supra n. 10) is repeated (cf. supra n. 11).
(13) Of the exile. The beginning of the Messianic era.
(14) By their misdeeds.
(15) ירחקו (rt. רחק 'to be far'). Aliter; Shall not regard the end (of the exile) as being too far off, and so lose hope (Maharsha). Var. ידחקו (rt. דחק 'to press'), 'force by excessive prayer'.
(16) Of intercalation Aliter: The secret of the reasons underlying the commandments in the Torah (Rashi).
(17) Cant. II, 7.
(18) Isa. XXXIII, 24.
(19) Read with עין יעקב 'Rabina', Yalkut: R. Abba, since Raba and R. Ashi were not contemporaries.
(20) Lit., 'as if'.
(21) Lit., 'here'.
(22) Ex. XX, 21.
(23) Lit., 'there'.
(24) Deut. XXXII, 43. The renderings of A.V., R.V. and A.J.V. respectively differ from each other and from the one given here.
(25) Lit., 'his soul rested'.
(26) The italicized words are a quotation from Amos VII. 17.
(27) In the Land of Israel for burial.
(28) Who lived in the Land of Israel.
(29) Lit. 'that fell to him'.
(30) V. Glos. s.v. yibbum.
(31) V. supra p. 504, n. 5.
(32) Lit., 'what is it?'
(33) כותית var. גויה). Apparently a term of contempt for the Jewish woman of Be Hozae (Golds.).
(34) Which was a centre of religion and learning.
(35) V. supra p. 325, n. 5.
(36) It is forbidden to move one's abode. בי כובי was the name of a village in the vicinity of Pumbeditha' (Rashi Kid. 70b); 'the fort of P.' (Jast.).
(37) אסתוניא a place near Pumbeditha. [Identified by Obermeyer (p. 229) with Piruz Shabur.]
(38) So MS.M. Cur. edd. omit the waw.
(39) His death was due to his departure from Pumbeditha.
(40) כשרין, either (a) of pure and legitimate descent or (b) worthy and righteous. V. infra n. 8.
(41) This is explained anon.
(42) Are the 'fit . . . received'.
(43) Cf. supra note 7 (a), sc. that such persons may marry into any pure families of the Land of Israel and Babylon respectively.
(44) Opp. to 'fine flour', sc. a mixed mass the ingredients of which cannot be determined. Metaph. for impurity or illegitimacy of descent.
(45) The families of the latter place would not allow, therefore, any person from the former to marry any of their members.
(46) Kid. 69b, 71a, which proves that as regards purity of descent Babylon stands higher than the Land of Israel. How then could it be said that only the 'fit persons of Babylon are received by the Land of Israel'? On the causes of the lower standard of genealogical purity in the Land of Israel v. Halevy's suggestion quoted in Kid., Sonc. ed. p. 350, n. 6.
(47) Cf. supra note 7 (b).
(48) Only the worthy men of Babylon and other countries should be allowed burial in the Land of Israel and Babylon respectively. Unworthy men should not be admitted to the former whose soil was sacred or to the latter which scholars and saints had made their home (cf. supra note 1).
(49) Zech. II, 11.
(50) בבל, usually rendered 'Babylon', but v. infra notes 6 and 7.
(51) Or 'travail'.
(52) חבלי דמשיח; 'but the more correct reading is חבליה דמשיח (Moore, G.F., Judaism II 361, n. 2).

חבלי המשיח 'frequent in modern Christian books is fictitious' (loc. cit.). The 'sufferings' or 'travail' are more fully described in Sanh. 97b, Sonc. ed. p. 654. These are the 'throes of mother Zion which is in labor to bring forth the Messiah — without metaphor, the Jewish people' (Moore, loc. cit. text).

(53) The tradition as to the immunity of Babel.

(54) Not, as might be assumed, to the well known Babylon (cf. supra note 2).

(55) הומל, a village to the north of Jerusalem between Tel Al-Ful and Nob 'the city of the priests'. It was known by many names including that of בבל (v. Horowitz, I.S., Palestine, p. 73. nn 3ff, s.v. אצל). Neubauer, (Geogr. p. 152) describes it as an old fortress in Palestine (v. Jast.). There was also a Huzal in Babylonia between Nehardea and Sura. Cf. Sanh. 19a, Sonc. ed. p. 98, n. 3 and Berliner, Beitr. z. Geogr. p. 32.

(56) וקרו ליה, lit., 'and they would call it'. The pronoun according to Rashi refers to the 'days of the Messiah', but this is difficult.

(57) The noun הוצל is regarded here as the Hof. of נצל 'to save'.

(58) Of Israel.

(59) צבי. Cf. infra notes13 and 18.

(60) Ezek. XXVI, 20.

(61) צביון containing the three letters of צבי (cf. supra note II). God's care for Palestine is taken for granted. Cf. e.g, A land which the Lord thy God careth for; the eyes of the Lord thy God are always upon it (Deut. XI, 12).

(62) Isa. XXVI, 19.

(63) Of Israel.

(64) Lit., 'and what'.

(65) V. supra note II.

(66) צבי also means 'stag' (cf. supra note 11).

(67) The land of Israel.

(68) Isa. XLII, 5.

(69) Isa. XXVI, 19.

(70) Even they will be resurrected but only in the Land of Israel.

(71) Lit., 'that'.

(72) Lit., 'daughter of'.

(73) עם

(74) Isa. XLII, 5.

(75) עם.

(76) Gen. XXII, 5.

(77) The consonants עם being the same (cf. supra on. 7 and 9.)

(78) Sc. slaves who are considered the property of the master. As the 'people' spoken of in Isa. XLII, 5, are assured of a place in the world to come so are the 'people' referred to in Gen. XXII, 5. Moore describes this as 'a specimen of exegetical whimsicality, rather than an eccentricity of opinion' (Judaism, II, 380).

(79) Lit., 'son of'.

(80) Who based his view on Ezek. XXVI, 20, supra.

(81) Of Israel.

(82) But this, surely. is most improbable.

(83) Gen. XLVII, 30.

(84) To carry him to Canaan?

(85) Var. lec., 'because he did not accept the suffering of the pain of rolling through the cavities' (Yalkut and עין יעקב).

(86) Gen. L, 25.

(87) Of Israel.

(88) V. p.717, n. 19.

(89) Who lived in Palestine and desired him to join them,

(90) Rabbah b. Nahmani who wad domiciled in Pumbeditha in Babylonia (cf. supra p. 325, n. 5).

(91) V. Karna's remark supra.

(92) Who refused to leave her home country outside Palestine to join him in Palestine.

(93) Lit 'he rolled by himself'.

(94) Lit., ‘and who is he?’
(95) Pl. of תחתון ‘nethermost’, hence ‘piles’.
(96) Lit., ‘but’.

Talmud - Mas. Kethuboth 111b

with nothing to lean against is standing with something to lean against.

And thus [his brothers][1] proceeded to say [in their message]: — ‘Isaac and Simeon and Oshaia were unanimous in their view that[2] the halachah is in agreement with R. Judah in [respect of the mating of] mules’. For it was taught: If a mule was craving for sexual gratification it must not be mated with a horse or an ass[3] but [only with one of] its own species.[4]

R.Nahman b. Isaac stated; By ‘Isaac’[5] was meant[6] R. Isaac Nappaha. By ‘Simeon’,[5] R. Simeon b. Pazzi — others say: Resh Lakish;[7] and by ‘Oshaia’,[8] R. Oshaia[8] Berabbi.[9]

R. Eleazar said; The illiterate[10] will not be resurrected, for it is said in Scripture, The dead will not live etc.[11] So it was also taught: The dead will not live.[11] As this might [be assumed to refer] to all, it was specifically stated, The lax[12] will not rise,[11] [thus indicating] that the text speaks only of such a man as was lax in the study of the words of the Torah.[13] Said R. Johanan to him:[14] it is no satisfaction to their Master[15] that you should speak to them in this manner. That text[16] was written of a man who was so lax as[17] to worship idols. ‘I’, the other[18] replied, ‘make an exposition [to the same effect] from another text. For it is written in Scripture, For thy dew is as the dew of light, and the earth shall bring to life the dead.[19] him who makes use of the ‘light’ of the Torah will the ‘light’ of the Torah revive, but him who makes no use of the light of the Torah[20] the light of the Torah will not revive’. Observing, however, that he[21] was distressed, he[18] said to him, ‘Master, I have found for them[22] a remedy in the Pentateuch: But ye that did cleave unto the Lord your God are alive every one of you this day;[23] now is it possible to ‘cleave’ to the divine presence concerning which it is written in Scripture, For the Lord thy God is a devouring fire?[24] But [the meaning is this:] Any man who marries his daughter to a scholar, or carries on a trade on behalf of scholars,[25] or benefits scholars from his estate is regarded by Scripture[26] as if he had cleaved to the divine presence.[27] Similarly you read in Scripture, To love the Lord thy God, [to hearken to His voice,] and to cleave unto Him.[28] Is it possible for a human being to ‘cleave’ unto the divine presence? But [what was meant is this:] Any man who marries his daughter to a scholar, or carries on a trade for scholars, or benefits scholars from his estate is regarded by Scripture as if he had cleaved to the divine presence.

R. Hiyya b. Joseph said: A time will come when the just will break through [the soil] and rise up in Jerusalem, for it is said in Scripture, And they will blossom out of the city like grass of the earth,[29] and by ‘city’ only Jerusalem can be meant for it is said in Scripture, For I will defend this city.[30]

R. Hiyya b. Joseph further stated: The just in the time to come will rise [apparelled] in their own clothes.[31] [This is deduced] a minori ad majus from a grain of wheat. If a grain of wheat that is buried[32] naked sprouts up with many coverings how much more so the just who are buried in their shrouds.

R. Hiyya b. Joseph further stated: There will be a time when the Land of Israel will produce baked cakes of the purest quality[33] and silk[34] garments, for it is said in Scripture, There will be a rich[35] cornfield[36] in the land.[37]

Our Rabbis taught: There will be a rich cornfield in the Land upon the top of the mountains.[37] [From this] it was inferred that there will be a time when wheat will rise as high as a palm-tree and will grow on the top of the mountains. But in case you should think that there will be trouble in

reaping it, it was specifically said in Scripture, its fruit shall rustle like Lebanon;[37] the Holy One, blessed be He, will bring a wind from his treasure houses which He will cause to blow upon it. This will loosen its fine flour and a man will walk out into the field and take a mere handful[38] and, out of it, will [have sufficient provision for] his own, and his household's maintenance.

With the kidney-fat of wheat.[39] [From this] it was inferred that there will be a time when a grain of wheat will be as large as the two kidneys of a big bull. And you need not marvel at this, for a fox once made his nest In a turnip and when [the remainder of the vegetable] was weighed, it was found [to be] sixty pounds in the pound weight of Sepphoris.[40]

It was taught: R. Joseph[41] related: It once happened to a man[42] at Shihin[43] to whom his father had left three twigs of mustard that one of these split and was found to contain nine kab of mustard, and its timber sufficed to cover a potter's hut.

R. Simeon b. Tahlifa[44] related. Our father left us a cabbage stack and we[45] ascended and descended it by means of a ladder.[46] And of the blood of the grape thou drankest foaming wine.[47] It was inferred: The world to come is not like this world. In this world there is the trouble of harvesting and treading [of the grapes], but in the world to come a man will bring one grape[48] on a wagon or a ship, put it in a corner of his house and use its contents as [if it had been] a large wine cask, while its timber[49] would be used to make fires for cooking.[50] There will be no grape that will not contain thirty kegs[51] of wine, for it is said is Scripture, And of the blood of the grape thou drankest foaming wine,[52] read not 'foaming'[53] but homer.[54]

When R. Dimi came[55] he made the following statement: What is the implication in the Scriptural text, Binding his foal[56] unto the vine?[57] There is not a vine in the Land of Israel that does not require [all the inhabitants of] one city[58] to harvest it; And his ass's colt[59] into the choice[60] vine,[57] there is not even a wild[61] tree in the Land of Israel that does not produce a load of [fruit for] two she-asses.[62] In case you should imagine that it contains no wine, it was explicitly said in Scriptures, He washes his garments in wine.[57] And since you might say that it is not red it was explicitly stated, And of the blood of the grape thou drankest foaming wine.[63] And in case you should say that it does not cause intoxication it was stated, His vesture.[64] And in case you should think that it is tasteless it was expressly stated, His eyes shall be red[65] with wine,[66] any palate that will taste it says, 'To me, to me'.[67] And since you might say that it is suitable for young people but unsuitable for old, it was explicitly stated And his teeth white with milk;[66] read not, 'teeth white'[68] but 'To him who is advanced in years'.[69]

In what [sense] is the plain meaning of the text[70] to be understood?[71] — When R. Dimi came[72] he explained: The congregation of Israel said to the Holy One, blessed be He, 'Lord of the Universe, wink to me with Thine eyes,[73] which [to me will be] sweeter than wine, and shew[74] me Thy teeth which will be sweeter than milk'.[73] [This interpretation] provides support for R. Johanan who said; The man who [by smiling affectionately] shews[75] his teeth to his friend is better than one who gives bins milk to drink, for it is said in Scriptures, And his teeth white with milk,[70] read not 'teeth white' but 'shewing the teeth'.[76]

R. Hiyya b. Adda[77] was the Scriptural tutor of the young children of Resh Lakish. [On one occasion] he took a three days' holiday[78] and did not come [to teach the children]. 'Why', the other asked hiss when he returned, 'did you take a holiday?' 'My father', he replied, 'left me one espalier[79] and on the first day I cut from it three hundred clusters [of grapes], each cluster yielding one keg. On the second day I cut three hundred clusters, each two of which yielded one keg. On the third day I cut three hundred clusters, each three of which yielded one keg, and so I renounced my ownership of more than one half of it'. 'If you had not taken a holiday [from the Torah]', the other told him, 'it would have yielded much more'.[80]

Rami b. Ezekiel once paid a visit to Bene-berak[81] where he saw goats grazing under fig-trees while honey was flowing from the figs, and milk ran from them, and these mingled with each other. 'This is indeed', he remarked, '[a land] flowing with milk and honey'.[82]

R. Jacob b. Dostai related: From Lod[83] to Ono[84] [is a distance of about] three miles.[85] Once I rose up early in the morning and waded [all that way] up to my ankles in honey of the figs.

Resh Lakish said: I myself saw the flow of the milk and honey of Sepphoris[86] and it extended [over an area of] sixteen by sixteen miles.

Rabbah b. Bar Hana said: I saw the flow of the milk and honey in all the Land of Israel

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(1) V. nn. 4-5.
(2) Lit., 'said one thing'.
(3) An act which is contrary to the law forbidding the hybridization of heterogeneous animals.
(4) Tosef. Kil. I, Hul. 79a.
(5) Referred to in the message supra
(6) Lit., 'this'.
(7) Sc. R. Simeon b. Lakish.
(8) MS.M., Hoshaia.
(9) Or 'Berebi'. A title of uncertain meaning. It denotes a scholar of any famous college or a qualified Rabbi who remained at college and acted as tutor to senior students. Cf. Mak. 5b, Sonc. ed. p. 25, n. 4 and Naz., Sonc. ed. p. 64, n. 1.
(10) עמי הארצות pl of 'Am ha-'arez v. Glos.
(11) Isa. XXVI, 14.
(12) רפאים cf. רפה, רפי 'to be or make lax'. A.V and R.V. 'deceased'; R.V. marg. and A. J. V., 'shades'.
(13) Sc. the illiterate (v. supra n. 9).
(14) A. Eleazar.
(15) God Who created all beings even the illiterate.
(16) Isa. XXVI, 14.
(17) Lit., 'who makes himself lax'.
(18) R. Eleazar.
(19) Isa. XXVI, 19.
(20) Sc. the illiterate who does not engage in the study of the Torah.
(21) R. Johanan.
(22) The illiterate.
(23) Deut. IV, 4, emphasis on 'cleave'.
(24) lbid. 24.
(25) Thus enabling them to devote their time to study. Aliter. Assigns them a share in his business as sleeping partners. V. Sanh., Sonc. ed. p. 671, n. 4.
(26) Lit 'Scripture brings up on him'.
(27) The illiterate (v. supra p. 719. n. 19) need not, therefore, be in despair since, by practising any of these alternatives, they also will be included among the resurrected.
(28) Deut. XXX, 20.
(29) Ps. LXXII, 16.
(30) Referring to Jerusalem. II Kings XIX, 34.
(31) Which they wore during their lifetime (J.T. cited by Tosaf. s.v. בלבושיהן a.I.). The noun in the present context apparently refers to the shrouds (v. Tosaf. loc. cit.) and this may also be the opinion of one authority in J.T. (cf. Marginal Glosses to text.).
(32) Sown.
(33) Cf. Rashi and Jast. גלוסקא, 'a brand of white flour' or 'a white and delicate bread'. (V. infra p. 721, nn. 2 and 3).

(34) Or ‘woollen’.
(35) Heb. פסת analogous to פסים (Gen. XXXVII, 3) (E.V. of many colours).
(36) Heb. בר signifies also ‘purity’.
(37) Ps. LXXII, 16.
(38) פיסת ידו (cf. supra n. 2).
(39) Deut. XXXII, 14.
(40) Cf. supra p. 410, n. 6.
(41) Read with MS.M. ‘R. Jose’.
(42) Halafta of Sepphoris.
(43) A town near Sepphoris.
(44) MS. M. and others (v. Wilna Gaon), ‘Halafta’.
(45) In order to gather its leaves.
(46) בסולם. MS. M., במעלות כסולם, ‘on steps as on a ladder’.
(47) Deut. XXXII, 14.
(48) Aliter: ‘Stalk of grapes’ (Jast.).
(49) The stalk of the grape. V. also p. 721, n. 15 Aliter: the wood of the cask which the husk had superseded (Maharsha).
(50) Lit., ‘under the dish’.
(51) Each measuring one se'ah (v. infra n. 5).
(52) Deut. XXXII, 14.
(53) חמר
(54) חמר the consonants of the two being identical A homer thirty se'ah.
(55) From Palestine to Babylon.
(56) עירה, absol. עיר (v. infra n 10)
(57) Gen XLIX, II.
(58) Heb. עיר (v. supra n. 8).
(59) אתונו, absol. אתון ‘she-ass’.
(60) שורקה v. infra n. 13).
(61) סרק analogous to סורקה the ש in שורקה (v. supra n. 12) being read as ס (cf. Maharsha)
(62) V. supra n. II. The number ‘two’ is perhaps derived from בני (in בני אתונו) which is taken as the pl. const. of בן and signifies no less than two.
(63) Deut. XXXII, 14. Read with MS.M. and עין יעקב, And his vesture in the blood of grapes, which is the conclusion of Gen. XLIX, 11, the text of the present exposition.
(64) סותה, derived from the rt. סות, ‘to incite’, ‘agitate’.
(65) חכלילי (v. infra n. 19).
(66) Gen. XLIX 12.
(67) חכלילי, (v.supra n. 17) is expounded as, the palate (will say:) To me, to me’
(68) לבן שנים
(69) לבן שנים lit., to a son of years’. לבן ‘white’ also means ‘to a son’, שנים ‘teeth’ may also mean, by a change of vowels ‘years’.
(70) Gen. XLIX. 12
(71) Lit. ‘is written’.
(72) From Palestine to Babylon
(73) חכלילי (cf. supra p. 722. nn. 17 and 19) is again read as חכ-לי-לי, but חכ is regarded as analogous to the rt. חוך ‘to laugh’, ‘to smile affectionately’, facial movements which involve the eyes and the teeth.
(74) V. infra note 6 and text.
(75) Lit., ‘makes white’ (cf. supra note 4).
(76) Lit., ‘whitening of the teeth’ (cf. supra l.c).
(77) [MS.M Abba; v. supra 8b].
(78) Lit., ‘he relaxed’.
(79) Or ‘a vine trained to an espalier’.
(80) Sc. the progressive daily decline of the yield was due to the corresponding increase in the number of days in which he failed to return to his sacred duty of teaching his pupils the word of God.

(81) One of the cities in the tribe of Dan (Josh XIX, 45); now the village Ibn Ibrak, north east of Jaffa (v. Horowitz, I.S , Palestine s.v.)
(82) Cf. e.g.. Ex. III, 8, Num. XIII, 27.
(83) Or Lydda, the Roman Diospolis, W.N.W. of Jerusalem.
(84) Modern Kafr Annah, between Jaffa and Lydda (v. supra note 2).
(85) The actual distance is rather seven miles (v. Horowitz, op. cit., s.v. אונו n. 1).
(86) V. supra p. 410. n. 6.

Talmud - Mas. Kethuboth 112a

and [the total area] was equal [to the land extending] from Be Mikse[1] to the Fort of Tulbanke,[2] [an area of] twenty-two parasangs in length and six parasangs in breadth.

R. Helbo, R. 'Awira[3] and R. Jose b. Hanina once visited a certain place where a peach that was [as large] as a pot of Kefar Hino[4] was brought before them. (And how big is a pot of Kefar Hino? — Five se'ah.) One third [of the fruit] they ate, one third they declared free to all, and one third they put before their beasts. A year later R. Eleazar came there on a visit and [a peach] was brought to him. Taking it in his one hand[5] he exclaimed, A fruitful land into a salt waste, for the wickedness of them that dwell therein.[6]

R. Joshua b. Levi once visited Gabla[7] where he saw vines laden with clusters of ripe grapes[8] standing up [to all appearances] like calves. 'Calves among the vines!', he remarked. 'These', they told him, 'are clusters of ripe grapes'.[8] 'Land, O Land', he exclaimed, 'withdraw thy fruit; for whom art thou yielding thy fruit? For those Arabs[9] who rose up against us on account of our sins?' Towards [the end[10] of that] year R. Hiyya happened to be there and saw them[11] standing up [to all appearances] like goats. 'Goats among the vines', he exclaimed. 'Go away', they told him, 'do not you treat us as your friend did'.

Our Rabbis taught: In the blessed years[12] of the Land of Israel a beth se'ah[13] yielded fifty thousand[14] kor[15] though in Zoan,[16] even in the days of its prosperity,[17] a beth se'ah yielded [no more than] seventy kor.[15] For it was taught: R. Meir said, I saw in the valley of Beth Shean[18] that a beth se'ah[13] yielded seventy kor.[15] Now, among all the countries there is none more fertile than the land of Egypt, for it is said in Scripture, Like the garden of the Lord, like the land of Egypt;[19] and there is no more fertile spot in all the land of Egypt than that of Zoan where kings were brought up, for it is written in Scripture, For his princes[20] are at Zoan.[21] Furthermore, in all the Land of Israel there is no ground more rocky than at Hebron[22] where the dead[23] were buried. Hebron was nevertheless seven times as fertile[24] as Zoan; for it is written in Scripture, And Hebron was built in seven years before Zoan in Egypt,[25] now what [can be the meaning of] built? If it be suggested that it was actually built, is it possible [It may be objected that] a man[26] would build a house[27] for his younger son[28] before he built one for his elder son,[29] it being stated in Scriptures And the sons of Ham, Cush and Mizraim, and Put and Canaan?[30] [The meaning must] consequently be[31] that it was seven times as fertile[32] as Zoan.[33] This refers to stony ground, but [in ground] where there are no stones [a beth se'ah would yield] five hundred [kor].[34] This too refers to periods when the land was not blessed,[35] but [of the time] when it was blessed[35] it is written in Scripture, And Isaac sowed in that land, [and found in the same year a hundredfold].[36]

It was taught: R. Jose stated, One se'ah[37] in Judea yielded five se'ah: One se'ah of flour, one se'ah of fine flour, one se'ah of bran, one se'ah of coarse bran and one se'ah of cibarium.

A certain Sadducee[38] once said to R Hanina: 'You may well sing the praises of your country. My father left me one beth se'ah[39] and from it [I obtain] oil, wine, corn and pulse, and my cattle also feed on it'.

An Amorite[40] once said to a Palestinian,[41] 'How much do you gather[42] from that date tree that stands on the bank of the Jordan?' — 'Sixty kor',[37] the other replied. 'You have not improved it'. the former said to him, 'but rather[43] ruined it; we used to gather[44] from it one hundred and twenty kor'. 'I too', the other replied 'was speaking to you [of the yield] of one side only'.

R. Hisda stated: What [was meant] by the Scriptural text, I give thee a pleasant land, the heritage of the deer?[45] Why was the Land of Israel compared to a deer? — To tell you that as the skin of a deer[46] cannot contain its flesh[47] so cannot the Land of Israel contain its produce.[48] Another explanation: As the deer is the swiftest among the animals so is the Land of Israel the swiftest of all lands in the ripening of its fruit. In case[49] [one should suggest that] as the deer is swift but his flesh is not fat so is the Land of Israel swift to ripen but its fruits are not rich, it was explicitly stated in Scripture, Flowing with milk and honey[50] [thus indicating that they are] richer than milk and sweeter than honey.

When R. Eleazar went up to the Land of Israel he remarked, 'I have escaped [one penalty]'.[51] When he was ordained he said, 'I have now escaped two [penalties]'.[51] When he was given a seat on the council for intercalation he exclaimed, 'I have escaped the three [penalties]'; for it is said in Scripture, And My hand shall be against the prophets that see vanity etc. They shall not be in the council of My people,[52] which refers to[53] the council for intercalation, neither shall they be written in the register of the house of Israel,[52] refers to[53] ordination; neither shall they enter into the land of Israel[52] [is to be understood] in accordance with its plain meaning.

When R. Zera went up to the Land of Israel and could not find a ferry wherein to cross [a certain river][54] he grasped a rope bridge and crossed. Thereupon a certain Sadducee sneered at him: 'Hasty people, that put your mouths before your ears,[55] you are still, as ever, clinging to your hastiness'. 'The spot', the former replied. 'which Moses and Aaron were not worthy [of entering] who could assure me that I should be worthy [of entering]?' R. Abba[56] used to kiss the cliffs of Akko.[57] R. Hanina[56] used to repair its roads.[58] R. Ammi and R. Assi[59]

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(1) V. supra p. 408, n. 9.

(2) The latter was a place on Tel-ben-kaneh, one of the upper reaches of the Euphrates on the boundary between Babylonia and Palestine. Cf. Kid. Sonc. ed. p. 365. n. 8; Horowitz, op. cit. s.v. אקרא דתולבנקי; S. Funk, Juden in Bab. I, p. 13, n. 2.

(3) MS.M. עזריה

(4) [Identified by Klein (Beitrage, p. 184) with Kefar Hananiah in Galilee].

(5) It was so small.

(6) Ps. CVII, 34.

(7) Biblical Gebal, a district between Ammon and Amalek (cf. Ps. LXXXIII, 8) now known as A-gibal, S.E. of the Dead Sea. This Gebal is not to be confused with Gebal, a Zidonian town in the N.W. of Palestine (v. Horowitz, op. cit., s.v.).

(8) קטופי, pl. of קטופא (rt. קטף 'to pluck'), 'fruit ready to be plucked'.

(9) Bomb. ed., 'heathens'.

(10) So Rashi. Cf Maharsha.

(11) The clusters of grapes.

(12) So Rashi. Lit. . 'In her blessings'.

(13) An area of fifty cubits by fifty in which one se'ah (v. Glos.) of seed can be sown.

(14) Lit., 'five myriads'.

(15) V. Glos.

(16) In the land of Egypt.

(17) Lit., 'settlement'.

(18) In the Jordan plain, about twenty miles to the south of Tiberias. The town of Beth Shean is mentioned several times in the Bible (cf. e.g., Josh. XVII. 11 and 16, Judges I, 27, I Sam. XXXI, 10, I Chron. VII, 29). The town once belonged

to Egypt (it occurs in the Tel-el-Amarna letters under the name of Bitsani) while at other times in its history it formed part of the Land of Israel. In the post exilic period it belonged neither to the former nor (cf. Hul. 6b, 7a) the latter country, and is taken by R. Meir here as an example of the normal fertility of a neutral district in order to draw the inference that follows.
(19) Gen. XIII, 10.
(20) Sc. rulers, kings. Aliter: the princes of Israel flocked to Zoan to solicit the protection of the kings of Egypt (v. Rashi).
(21) Isa. XXX, 4.
(22) Sixteen miles S.S.W. of Jerusalem.
(23) Cf. Gen. XLIX, 31.
(24) Lit., 'built', 'cultivated'.
(25) Num. XIII, 22.
(26) Ham (v. Gen. X, 6)
(27) And much less a whole town.
(28) Canaan (v. ibid.).
(29) Mizraim (ibid.).
(30) Ibid.
(31) Lit., 'but'.
(32) Lit., 'built', 'cultivated'.
(33) Seven times seventy kor _ four hundred and ninety kor.
(34) At least; only ten more than rocky ground (v. supra n. 9).
(35) Cf. supra p. 725, n. 5.
(36) Gen. XXVI, 12. A hundred times five hundred _ five thousand (v. supra p. 725, nn. 7 and 10 and text).
(37) V. Glos.
(38) [Read with MS. M. Min (v. Glos.) and cf. Git 57a].
(39) Cf. supra p. 725, n. 6.
(40) Of the early inhabitants of Canaan (cf. e.g., Gen. XV, 21).
(41) Lit., 'to a son (inhabitant) of the Land of Israel'; to an Israelite who entered Palestine in the days of Joshua.
(42) Or 'cut' (cf. MS. M. גדריתון).
(43) Cf. Bah.
(44) Cf. supra n. 18.
(45) Jer. III, 19; נחלת צבי, A.V., goodly heritage.
(46) After it had been flayed.
(47) It cannot again be made to cover the full body of the animal.
(48) It grows in such abundance that all the store houses of the land cannot provide sufficient accommodation for its storage.
(49) Lit., 'if'.
(50) V. e.g., Ex. III, 8, Num. XIV, 8.
(51) This is explained anon.
(52) Ezek. XIII. 9.
(53) Lit., 'this'.
(54) The Jordan?
(55) Israel said נעשה, 'we will do' before ונשמע 'and we will hear' (Ex XXIV, 7).
(56) In his love for Palestine.
(57) Acre Or Ptolemais, a city and harbour on the northern end of Haifa Bay on the coast of Palestine.
(58) Lit., 'its stumblings', 'obstacles'.
(59) Cf. p. 727, n. 12.

Talmud - Mas. Kethuboth 112b

used to rise [from their seats[1] to move] from the sun to the shade[2] and from the shade to the sun.[3] R. Hiyya b. Gamda[4] rolled himself in its[5] dust, for it is said in Scripture, For Thy servants take pleasure

in her stones, and love her dust.[6]

R. Zera said: R. Jeremiah b. Abba stated, 'In the generation in which the son of David[7] will come there will be prosecution[8] against scholars'. When I repeated this statement in the presence of Samuel, he exclaimed, [There will be] test after test,[9] for it is said in Scripture, And if there be yet a tenth in it, it shall again be eaten up.[10]

R. Joseph learnt:[11] [There will be] plunderers[12] and plunderers of the plunderers.[13]

R. Hiyya b. Ashi stated in the name of Rab: In the time to come all the wild trees of the Land of Israel will bear fruit; for it is said in Scripture, For the tree[14] beareth its fruit, the fig-tree and the vine do yield their strength.[15]

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(1) Where they sat while delivering their discourses.

(2) In the summer when the heat is intense.

(3) In the cold days of the winter. In order to obviate any fault finding with the weather of Palestine (Rashi).

(4) In his love for Palestine.

(5) Palestine's.

(6) Ps. CII, 15.

(7) The Messiah.

(8) קטיגוריא

(9) Trials and calamities will follow each other in close succession. 'One reduction after the other' (Jast.). MS.M. adds, בוגדים בגדו ובגד בוגדים בגדו. (Isa. XXIV, 16) the assonance of which might have suggested R. Joseph's comment (v. infra n. 15).

(10) Isa. VI, 13.

(11) An exposition of the Isaiah text cited (v.supra n. 12). [Cf. Targum a.l. and B.K., Sonc. ed. p. 9. n. 9].

(12) Who will leave only 'a tenth of it'.

(13) Inferred from 'shall again be eaten up'. Aram. ובזוזי דבזוזי בזוזי (cf. supra note 11).

(14) Sc. 'the wild tree', since fruit-trees are specifically mentioned in the following clause (Rashi).

(15) Joel II, 22.

Talmud - Mas. Nedarim 2a

C H A P T E R I

MISHNAH. ALL THE SUBSTITUTES FOR [THE FORMULAS OF] VOWS HAVE THE VALIDITY OF VOWS.[1] THOSE FOR HARAMIM ARE LIKE HARAMIM,[2] THOSE FOR OATHS ARE LIKE OATHS, AND THOSE FOR NEZIROTH ARE LIKE NEZIROTH.[3] IF ONE SAYS TO HIS NEIGHBOUR, 'I AM DEBARRED FROM YOU BY A VOW, [OR] I AM SEPARATED FROM YOU,' [OR] 'I AM REMOVED FROM YOU, IN RESPECT OF AUGHT[4] THAT I MIGHT EAT OF YOURS OR THAT I MIGHT TASTE OF YOURS,' HE IS PROHIBITED. IF HE SAYS: I AM BANNED TO YOU,' THEN R. AKIBA WAS INCLINED TO GIVE A STRINGENT RULING.[5]

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(1) The principal form of a vow to abstain from anything is: 'This shall be to me as a korban (Heb. sacrifice); korban was sometimes substituted by konam or konas.

(2) Herem (plural haramim): a vow dedicating something to the Temple or the priests.

(3) Neziroth: the vow of a nazirite. A nazirite had to abstain from grapes and intoxicating liquors and refrain from cutting his hair and defiling himself through the dead.

(4) [Reading שאנו, Var. lec. שאינו 'for I will eat naught of yours'.]

(5) I.e., declared the vow binding. [According to Maimonides, provided he adds: 'for I will eat naught of yours'. Tosaf., however, (infra 7a) holds that the phrase by itself implies a vow to abstain from aught belonging to the other person.]

Talmud - Mas. Nedarim 2b

GEMARA. ALL THE SUBSTITUTES FOR [THE FORMULAS OF] VOWS HAVE THE VALIDITY OF VOWS: Why other clauses[1] not stated in [the Mishnah of] Nazir,[2] whilst [our Mishnah of] Nedarim includes them all? — Because oaths and Vows are written side by side [in the Bible][3] they are both stated, and since the two are mentioned, the others are stated also. Then let OATHS be taught immediately after VOWS? — Because he states vows In which the article is forbidden to the person, he follows it up with HARAMIM, where likewise the article is forbidden to the person. OATHS, however, are excluded [from the category of vows], since oaths bind the person to abstain from a thing;[4] [hence they cannot immediately follow vows].

The Mishnah commences with substitutes: ALL THE SUBSTITUTES FOR [THE FORMULAS OF] VOWS etc., yet proceeds to explain the laws of abbreviations of VOWS: IF ONE SAYS TO HIS NEIGHBOUR: I AM DEBARRED FROM YOU BY A VOW . . . WITH HIS VOW;[5] moreover, [the Tanna] has altogether omitted to state that abbreviations [are binding]? — [The Tanna does] speak of them, but our text is defective,[6] and this is what was really meant: ALL SUBSTITUTES and abbreviations OF VOWS HAVE THE VALIDITY OF VOWS. Then let substitutes be first explained? — The clause to which [the Tanna] has last referred is generally first explained, as we have learned: Wherewith may [the Sabbath lights] be kindled, and wherewith may they not be kindled? They may not be kindled etc.[7] Wherein may food be put away [to be kept hot for the Sabbath], and wherein may it not be put away? It may not be put away [etc.].[8] Wherewith may a woman go out (from her house on the Sabbath], and wherewith may she not go out? She may not go out from etc.[9] [Is it then a universal rule] that the first clause is never explained first? But we have learnt: Some relations inherit from and transmit [their estate] to others; some inherit but do not transmit. Now, these relations inherit from and transmit to each other etc.[10] Some women are permitted to their husbands but forbidden to their husbands' brothers;[11] others are the reverse. Now, these are permitted to their husbands but forbidden to their husbands' brothers etc.[12] Some meal offerings require oil and frankincense, others require oil but no frankincense. Now, these require both oil and frankincense etc.[13] Some mealofferings must be taken [by the priest to the south-west corner of the altar], but do not need waving;[14] others are the reverse. Now, these must be taken to the

altar etc.[15] Some are treated as first-borns in respect of inheritance[16] but not in respect of the priest;[17] others are treated as first-borns in respect of the priest but not in respect of inheritance. Now who is regarded as a first-born in respect of inheritance but not in respect of the priest etc.?[18] — In these examples [the first clause is explained first] because it contains numerous instances [to which its law applies]. But, 'Wherewith may a beast go out on the Sabbath, and wherewith may it not go out?' where [the first clause does] not contain numerous instances, yet it is explained [first], viz., a camel may go out etc.?

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(1) Viz., HARAMIM, OATHS, AND VOWS.

(2) The tractate Nazir commences likewise: All substitutes for the nazirite vow are binding.

(3) Num. XXX, 3: If a man vow a vow unto the Lord, or swear an oath.

(4) A vow is thus taken: 'This shall be forbidden tonic,' the prohibition falling upon the thing. An oath, however, is thus taken: 'I swear to abstain from a certain thing,' the prohibition falling upon the person.

(5) Since the principal way of making a vow is to declare a thing to be as korban, the omission of such a declaration renders the vow merely an abbreviation or suggestion (lit., 'a handle') of a vow, V. Nazir (Sonc. ed.) p. 2.

(6) This may mean either that there is actually a lacuna in the text, words having fallen out, or that though it is correct in itself something has to be supplied to complete the sense; v. Weiss, Dor. III, p. 6. n. 14. The former is the most probable here.

(7) Shab. 20b.

(8) Ibid. 47b.

(9) Ibid. 57a. — In all these examples the second clause is first discussed.

(10) B.B. 108a.

(11) In Levirate marriage, v. Deut. XXV, 5 seq.

(12) Yeb. 84a.

(13) Men. 59a.

(14) A ceremony in which the priest put his hands under those of the person bringing the offering and waved them to and fro in front of the altar.

(15) Ibid. 60a

(16) I.e., they receive a double share of their patrimony; v. Deut. XXI, 17.

(17) They do not need redemption: v. Ex. XIII, 23.

(18) Bek. 46a. In all these examples the first clause is discussed first.

Talmud - Mas. Nedarim 3a

Hence there is no fixed rule: sometimes the first clause is explained first, at others the last clause is first explained. Alternatively: abbreviations are explained first, because they [sc. their validity] are deduced by exegesis.[1] Then let these be stated first? He [the Tanna] commences indeed with substitutes, since these are Scriptural,[2] and proceeds to explain abbreviations, which are inferred by interpretation only.[3] This harmonises with the view that substitutes are merely the foreign equivalents [of the word korban].[4] But what can be said on the view that they are forms expressly invented by the Sages for the purpose of making vows?[5] — Now, are abbreviations mentioned at all; were you not compelled to assume a defective text? Then indeed place abbreviations first. Thus: All abbreviations of VOWS have the validity of VOWS, and ALL SUBSTITUTES FOR VOWS HAVE THE VALIDITY OF VOWS. These are the abbreviations: IF ONE SAYS TO HIS NEIGHBOUR . . . And these are the substitutes: Konam, konas, konah.[6]

Now, where are abbreviations written? — When either a man or a woman shall separate themselves to vow a vow [lindor neder] of a nazirite [nazir le-hazzir];[7] and it has been taught: Nazir le-hazzir is to render substitutes and abbreviations of neziroth as neziroth.[8] From this I may infer only the law of neziroth; whence do we know that it applies to other vows too? This is taught by the verse: When either a man or a woman shall separate themselves to vow a vow of a nazirite to the Lord:[9] here ordinary vows are compared to neziroth and vice versa.[10] Just as in neziroth

abbreviations are equally binding, so in the case of other vows; and just as in other vows, he who does not fulfil them violates the injunctions: He shall not break his word,[11] and Thou shalt not delay to pay it,[12] so in neziroth. And just as in other vows, the father can annul those of his daughter and the husband those of his wife, so with neziroth.

Wherein does neziroth differ? Because it is written nazir lehazzir! But [in the case of] vows too it is written, lindor neder;[13] then what need is there of analogy? — If the text were neder lindor just as 'nazir le-hazzir', it would be as you say, and the analogy would be unnecessary,' since however, 'lindor neder' is written, the Torah spoke in the language of men.[14] This agrees with the view that the Torah spoke in the language of men; but he who maintains that the Torah did not speak in the language of men,[15] to what purpose does he put this 'lindor neder'? — He interprets it to deduce that abbreviations of vows are as VOWS, and then neziroth is compared to vows; and as to 'nazir le-hazzir' he interprets it as teaching

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(1) But not explicitly stated in the Bible.

(2) I.e., their validity is explicitly stated in the Bible.

(3) When stating the law in general terms there is a preference for that which is best known; hence, substitutes, being explicitly taught, are first mentioned. But when going into details, the Tanna prefers to deal first with the lesser known.

(4) Hence their validity may be regarded as explicitly stated in the Bible, since it obviously does not matter in which language a vow is taken.

(5) V. infra, 10a.

(6) V. infra 9a.

(7) Num. VI. 2.

(8) Sc. equally binding.

(9) Ibid.

(10) Since they are coupled together. This method of exegesis is known as hekkesh.

(11) Ibid. XXX, 3.

(12) Deut. XXIII, 22.

(13) Lit., 'to vow a vow — likewise a pleonastic form.

(14) The point is this: The usual grammatical form is for the verb to precede its cognate object. Hence, when this order is reversed, as in nazir le-hazir, one may directly infer something from the unusual order. When it is observed, however, nothing can be inferred.

(15) So that every pleonasm, even if in accordance with the general idiom, gives an additional teaching.

Talmud - Mas. Nedarim 3b

that one nazirite vow falls upon another.[1] Then he who maintains that the Torah spoke in the language of men, and interprets 'nazir le-hazzir' as teaching the validity of abbreviations of neziroth, whence does he learn that a nazirite vow can fall upon another? If he agrees with the view that a nazirite vow does not fall upon another, it is well; but if he agrees with the view that it does, whence does he know it? — Let Scripture say, li-zor [the kal form]; why 'le-hazzir' [the causative]? That you may infer both from it.[2] In the West[3] it was said: One Tanna deduces [the validity of] abbreviations from 'lindor neder'; whilst another deduces it from [the 'phrase], he shall do according to all that proceedeth out of his mouth.[4]

The Master said: 'And just as in other vows, he who does not fulfil them violates the injunctions, he shall not break his wad, and thou shalt not delay to pay it, so in neziroth.' Now, as for 'he shall not break his word' as applying to [ordinary] vows, it is well: it is possible e.g., if one says, 'I vow to eat this loaf', and does not eat it; he violates the injunction, 'he shall not break his word'. But how is, 'he shall not break [his word],' possible in the case of neziroth.? For, as soon as one says, 'Behold, I am a nazir' he is one; if he eats [grapes], he is liable for, nor eat moist drapes or dried;[5] if he drinks [wine], he violates, he . . . shall drink no vinegar of wine, or vinegar of strong drink, neither shall he

drink any liquor of grapes.[6] — Raba answered: It is to transgress two [injunctions].[7] How is 'thou shalt not delay to pay it,' referring to neziroth, conceivable? [For] as soon as one says 'Behold, I am a nazir', he is one; if he eats [grapes], he transgresses, 'neither' shall he . . . eat moist grapes or dried?' — When one says: 'when I wish, I will be a nazir'.[8] But if he says, 'when I wish', the injunction 'thou shalt not delay' does not apply?[9] — Said Raba: E.g., if he says, 'I must not depart this world before having been a nazir,' for he becomes a nazir from that moment.[10] For this is similar to one who says to his wife: 'Here is your divorce, [to take effect] one hour before my death,' where she is immediately forbidden to eat terumah.[11] Thus we see that we fear[12] that he may die at any moment: so here[13] too, he becomes a nazir immediately, for we say, Perchance he will die now.

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(1) A nazirite vow for an unspecified period means for thirty days. If one who is already a nazir takes a nazirite vow, it is binding, and becomes operative when the first ends. Thus he translates: a nazir can take a vow le-hazir, to become a nazir after his present vow terminates, v. infra isa.

(2) The heavier form le-hazzir implies intensity, therefore it is interpreted as meaning something additional to what might be inferred from the kal li-zor, which itself being pleonastic allows us to infer something not explicit in the verse.

(3) I.e., the Palestinian academies.

(4) Num. XXX, 3: this embraces every form in which a vow can be made.

(5) Ibid. VI, 3.

(6) Ibid. [It is assumed that the injunction 'he shall not break his word' can apply only to a case where the vow is nullified by his action, e.g., where he vows to eat and he does not eat, but not where he, for instance, vows not to eat and he does eat, where the vow has not been nullified but transgressed: and similarly in the case of a nazir.]

(7) [Raba extends the scope of the injunction to include cases where the oath is transgressed: and thus by drinking wine he transgresses 'he shall it drink', in addition to 'he shall not break his word'.]

(8) If he postpones becoming a nazir, he violates, 'thou shalt not delay etc'.

(9) Since there is no vow until he so desires.

(10) Not actually, but in the sense that he must assume his naziriteship without delay lest he dies the next moment.

(11) V. Glos.

(12) Lit., 'we say'.

(13) In the case of a nazirite.

Talmud - Mas. Nedarim 4a

R. Aha b. Jacob said: E.g., if one takes a nazirite vow whilst in a cemetery.[1] This agrees with the view that the naziriteship is not immediately binding. But on the view that it is immediately valid, is then, 'he shall not delay,' applicable?[2] Moreover, Mar, son of R. Ashi, said: The vow is immediately valid, and they differ[3] only on the question of flagellation? — Nevertheless he violates, 'thou shalt not delay,' because the [ritually] clean naziriteship is delayed. R. Ashi said: Since this is so, [it follows that] if a nazir intentionally defiles himself, he transgresses thou shalt not delay in respect to [the recommencement of] the clean naziriteship.

R. Aha, the son of R. Ika, said: He[4] might transgress 'that shalt not delay' in respect to shaving.[5] Now, this goes without saying according to the view that shaving is indispensable,[6] but even on the view that the shaving is not a bar [to the sacrifices], nevertheless he does not observe the precept of shaving. Mar Zutra the son of R. Mari said: He might violate 'Thou shalt not delay' in respect to his sacrifices. Is this deduced from here; surely, it is rather inferred from elsewhere: [When thou shalt vow a vow unto the Lord, thou shalt not slack to pay it, for the Lord thy God] will surely require it of thee:[7] this refers to sin-offerings and trespass-offerings?[8] — I might say that the Torah set up an anomaly[9] in the case of nazir.[10] What is the anomaly? Shall we say, the fact that a vow to bring the sin-offering of a nazir[11] is invalid: but a sin-offering for heleb[12] cannot be made obligatory by a vow,[13] yet one transgresses, 'thou shalt not delay'? But the anomaly is this: I might have thought, since even if one says, 'I will be a nazir only with respect to the kernels of grapes,'[14] he is a nazir in all respects. I would think that he does not violate, Thou shalt not delay'; therefore we are told

[otherwise].[15] , Now, this is well according to the opinion that a vow of naziriteship in respect of the kernels of grapes makes one a nazir in all respects; but on the view of R. Simeon, viz., that one is not a nazir unless he separates himself from all, what can be said? Moreover, this is an anomaly in the direction of greater stringency?[16] — But the anomaly is this: I might have thought, since

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(1) A nazir may not defile himself through the dead. Consequently the vow does not become immediately operative, but he must not delay to leave the cemetery so that it shall become binding.

(2) Surely not, for he is an actual nazir, subject to all the provisions of a nazir.

(3) Sc. R. Johanan and Resh Lakish, in Nazir 16b.

(4) The nazirite.

(5) After the completion of his naziriteship: v. Num. VI, 9, and thus violate the injunction 'thou shalt not delay'.

(6) Lit., 'hinders' — the offering of the sacrifices on the completion of naziriteship, hence delay in shaving involves a delay in sacrifices.

(7) Deut. XXIII, 22.

(8) And this would cover the case of a nazirite. For what purpose then the application of the verse 'thou shalt not delay' to the nazirite?

(9) Lit., 'a novelty' — as such it cannot be included in other general laws, as it is a principle of exegesis that an anomaly stands in a class by itself.

(10) Which includes a nazir's sacrifices.

(11) By one who is not nazirite.

(12) Forbidden fat.

(13) A vow to bring a sin-offering which is normally due for eating heleb is not binding if the vower is not actually liable.

(14) V. Num. VI, 4.

(15) By the coupling of the nazirite vow with other vows in the same sentence.

(16) How then would we think that the injunction does not apply, so that it is more lenient

if he shaves himself for one [sacrifice] of the three, he fulfils his duty.[1] therefore he should not be subject to, 'Thou shalt not delay'; hence we are told [that it is not so]. An alternative answer is this: the anomaly is that it cannot be vowed; but as to your difficulty of the sin-offering for heleb,[2] — the sin-offering for heleb comes for atonement,[3] but for what does the sin-offering of anal come?[4] But the sin-offering of a woman who gave birth,[5] which does not come for an atonement, yet one violates, 'thou shalt not delay' on account thereof? — That permits her to eat of sacrifices.[6]

The Master said: 'And just as in other vows, the father can annul those of his daughter and the husband those of his wife, so in the case of neziroth, the father can annul the neziroth of his daughter and the husband that of his wife'. But what need is there of analogy; let us infer it from VOWS by general similarity?[7] — Perhaps he can annul only in the case of other vows, because their duration is unlimited; but with respect to neziroth, the duration of which is limited — for an unspecified vow of neziroth is for thirty days, — I might say that it is not so.[8] Hence we are informed [otherwise].[9]

IF ONE SAYS TO HIS NEIGHBOUR, I AM DEBARRED FROM YOU BY A VOW' etc. Samuel said: In all these instances he must say, 'in respect of aught that I might eat of yours or that I might taste of yours'. An objection is raised: [If one says to his neighbour], 'I am debarred from you by a vow,' [or] 'I am separated from you.' [or] 'I am removed from you', he is forbidden [to derive any benefit from him]. [If he says,] 'That which I might eat or taste of yours' [shall be to me prohibited], he is forbidden![10] — This is what is taught: When is this? If he adds 'in respect of aught that I might eat or taste of yours.' But the reverse was taught: [If one says to his neighbour,] 'That which I might eat or taste of yours' [shall be prohibited to me], he is forbidden; 'I am debarred from you by a vow', [or] 'I am separated from you', [or] 'I am removed from you,' he is [likewise]

forbidden! — Read thus: Providing that he had first said, 'I am debarred from you, etc.'[11] If so, it is identical with the first [Baraitha]?[12] Moreover, why teach further, 'he is forbidden' twice?[13] — But this is what Samuel really said: Because he said, 'in respect of aught that I might eat of yours or that I might taste of yours', the maker of the vow alone is forbidden while his neighbour is permitted;[14]

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(1) A nazir at the termination of his vow is bound to bring three sacrifices, viz., a burnt-offering, a sin-offering, and a peace-offering. Yet if he shaves and brings only one, the prohibitions of a nazir, such as the drinking of wine, etc., are lifted. This is a unique law, and in the direction of greater leniency.

(2) Supra p. 7, n. 10.

(3) Hence one violates the injunction by delaying to make atonement.

(4) Though technically a sin-offering, it is, in fact, merely part of a larger vow. Hence it is an anomaly that it cannot be vowed separately.

(5) V. Lev. XII, 6ff.

(6) Which may be an obligation. e.g., the eating of the Passover sacrifice. Hence 'thou shalt not delay' is applicable.

(7) Since naziriteship is a form of vow. [מה מצינו Lit., 'as we find concerning', a method of hermeneutics whereby an analogy is drawn from one case for one single similar case, as distinct from hekkesh (supra p. 4, n. 6) where the analogy is based on the close connection of the two subjects in one and the same context.]

(8) Since the vow will automatically lapse.

(9) By the analogy.

(10) The first clause proves that the vow is valid without the addition.

(11) According to this rendering, the bracketed 'shall be prohibited to me' must be deleted.

(12) Why then is the order reversed? This difficulty arises in any case. But if each clause is independent, it can be answered that the second Baraitha intentionally reverses the clauses, so as to make their independence obvious, since the interpretation 'providing that he had first said' is forced; whilst in the first Baraitha the assumption that the second clause is an addition to the first is quite feasible.

(13) Seeing that the whole refers to one vow.

(14) To benefit from him.

but if he merely says. 'I am debarred from you by a vow,' both are forbidden. Just as R. Jose son of R. Hanina said: [If one says to his neighbour] 'I am debarred from you by a vow,' both are forbidden.

We learnt: [If one says to his neighbour,] 'Behold! I am herem[1] to you,' the muddar[2] is forbidden.[3] But the maddir[2] is not [forbidden]?[4] — E.g., if he explicitly states, 'but you are not [herem] to me'. [But does it not continue,] 'You are herem to me', the maddir is forbidden, [implying,] but not the muddar? — E.g., if he explicitly states, 'but you are not [herem] to me.' But what if it is not explicit: both are forbidden? But since the final clause teaches,' I am [herem] to you and you are [herem] to me,' both are forbidden, it is only in that case that both are forbidden, but in general he is forbidden while his neighbour is permitted?[5] But this is how R. Jose son of R. Hanina's [dictum] was stated: [If one says to his neighbour,] 'I am under a vow in respect of you,' both are forbidden; 'I am debarred from you by a vow,' he is forbidden but his neighbour is permitted. But our Mishnah teaches, 'FROM YOU, yet our Mishnah was explained according to Samuel that in all cases he must say, 'in respect of aught that I might eat of yours or that I might taste of yours' — only then is he [alone] forbidden while his neighbour is permitted, but in the case of, 'I am debarred from you by a vow,' both are forbidden? But this is what was originally stated in Samuel's name: It is only because he said, 'in respect of aught that I might eat of yours or that I might taste of yours,' that he is forbidden only in respect of eating. But [if he only said,] 'I am debarred from you by a vow,' he is forbidden even benefit. If so, let Samuel state thus: But if he did not say, 'In respect of aught that I might eat of yours or that I might taste of yours,' even benefit is forbidden to him?[6] But this is what was stated: Only if he says, in respect of aught that I might eat of yours or that I might taste of

yours', is he forbidden; but if he [merely] says, 'I am debarred from you by a vow,' it does not imply a prohibition at all. What is the reason? 'I am debarred from you,' [implies] 'I am not to speak to you ; 'I am separated from you' [implies] 'I all, to do no business with you'; 'I am removed from you' implies, 'I am not to stand within four cubits of you'.

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(1) V. Glos.

(2) Muddar is the object of the vow; maddir is the man who makes the vow.

(3) Infra 47b.

(4) This contradicts Samuel's dictum that without the addition the incidence of the vow is reciprocal.

(5) Which contradicts R. Jose b. R. Hanina.

(6) So the text as amended by Bah.

Talmud - Mas. Nedarim 5b

Shall we say Samuel holds the opinion that inexplicit abbreviations are not abbreviations?[1] — Yes. Samuel makes the Mishnah agree with R. Judah, who maintained: Inexplicit abbreviations are not abbreviations. For we learnt: The essential part of a Get[2] is, 'Behold, thou art free unto all men'. R Judah said: [To this must be added] 'and this [document] shall be unto thee from me a deed of dismissal and a document of release.'[3] Now, what forced Samuel to thus interpret the Mishnah, so as to make it agree with R. Judah: let him, make it agree with the Rabbis, that even inexplicit abbreviations [are binding]?[4] Said Raba: The Mishnah presents a difficulty to him: Why state, IN RESPECT OF AUGHT THAT I MIGHT EAT OF YOURS OR THAT I MIGHT TASTE OF YOURS, let him teach, IN RESPECT OF AUGHT THAT I MIGHT EAT OR THAT I MIGHT TASTE [and no more]? This proves that we require explicit abbreviations.

It was stated: Inexplicit abbreviations — Abaye maintained: They are [valid] abbreviations; while Raba said: They are not [valid] abbreviations. Raba said: R. Idi explained the matter to me. Scripture says, [When either a man or a woman shall] explicitly law a vow of a nazirite, to separate themselves unto the Lord: abbreviations of neziroth are compared to neziroth: just as neziroth must be explicit in meaning, so must their abbreviations be too.

Are we to say that they differ in the dispute of R. Judah and the Rabbis? For we learnt: The essential part of a Get is the words, 'Behold, thou art free unto all men.' R. Judah said: [To this must be added,] 'and this [document] shall be unto thee from me a deed of dismissal and a document of discharge and a letter of release': [Thus] Abaye rules as the Rabbis, and Raba as R. Judah? — [No.] Abaye may assert: My opinion agrees even with R. Judah's. Only in divorce does R. Judah insist that abbreviations shall be explicit, because 'cutting off'[5] is necessary, and this is lacking;[6] but do you know him to require it elsewhere too? Whilst Raba can maintain, My view agrees even with that of the Rabbis. Only in the case of divorce do they say that explicit abbreviations are not essential,

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(1) I.e., invalid. For the above forms are such, and Samuel maintains that they impose no prohibition at all without the explanatory clauses.

(2) V. Glos.

(3) Otherwise it is not clear that the divorce is to be effected by the Get. Thus he holds that inexplicit abbreviations are invalid.

(4) [For unless Samuel had cogent reasons to make the Mishnah agree only with R. Judah, he himself would not have accepted the view of R. Judah in preference to that of the majority of Rabbis (Ran).]

(5) [Referring to Deut. XXIV, 3: 'And he shall write unto her a writ of cutting off' (so literally).]

(6) If the abbreviation is inexplicit the severance is not complete.

Talmud - Mas. Nedarim 6a

because no man divorces his neighbour's wife;[1] but do you know then, [to rule thus] elsewhere?[2]

An objection is raised: [If one says,] 'That is to me,' [or] 'this is to me,' he is forbidden,[3] because it is an abbreviation of ['that is as a] korban [to me].'[4] Thus, the reason is that he said, 'unto me,' but if he did not say, 'unto me,' it is not so:[5] this refutes Abaye? — Abaye replies thus: It is only because he said, 'to me,' that he is forbidden; but if he [merely] said, 'behold, that is,' without adding 'to me' he might have meant, 'behold, that is hefker,'[6] or 'that is for charity.'[7] But is it not stated, 'because it is an abbreviation of, "a korban?"'[8] — But answer thus: Because he said, 'to me,' he [alone] is forbidden, but his neighbour is permitted; but if he said, 'behold, that is', both are forbidden, because he may have meant,[9] 'behold that is hekdesh.[10]

An objection is raised: [If one says,] 'Behold, this [animal] is a sin-offering,' 'this is a trespass-offering,' though he is liable to a sin-offering or a trespass-offering, his words are of no effect. [But if he says,] 'Behold, this animal is my sin-offering,' or 'my trespass-offering,' his declaration is effectual if he was liable. Now, this is a refutation of Abaye![11] — Abaye answers: This agrees with R. Judah.[12] But Abaye said, My ruling agrees even with R. Judah?[12] — Abaye retracted. Are we to say [then] that Raba's ruling agrees [only] with R. Judah's?[13] — No. Raba may maintain: My view agrees even with that of the Rabbis. Only in the case of divorce do they say that explicit abbreviations are not essential, because no man divorces his neighbour's wife; but elsewhere explicit abbreviations are required.

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(1) I.e., even if the wording is inexplicit, the whole transaction makes its meaning perfectly clear. [This argument makes it evident that the point at issue between R. Judah and the Rabbis is mainly concerning the phrase [from me', the Rabbis being of the opinion that since no man divorces his neighbour's wife, it is clear that the Get comes 'from him' (Ran); v. Git. 85b.]

(2) Elsewhere they may agree that inexplicit allusions are invalid.

(3) To benefit from it.

(4) So Rashi and Asheri. [Alternatively: Because it is an abbreviation valid for a korban (an offering), and therefore also valid in case of a vow.]

(5) Because it is an inexplicit abbreviation.

(6) Ownerless property. V. Glos.

(7) Hence it is not an abbreviation of a vow at all.

(8) [This is difficult. The meaning apparently is that the reason that it is an abbreviation valid for a korban, (v. n. 2) ought to apply also to the declaration 'that is' by itself, since such a declaration too is valid for a korban; v. Ran.]

(9) [Where the object vowed was not fit for sacrifice; v. n. 6.]

(10) Sanctified property. V. Glos.

(11) Since in the first clause the abbreviation is invalid because it is inexplicit.

(12) V. supra 5b.

(13) Since Abaye's view agrees only with that of the Rabbis.

Talmud - Mas. Nedarim 6b

R. Papa enquired: Are abbreviations valid in the case of kiddushin,[1] or not? Now, how does this problem arise? Shall we say thus: If one said to a woman, 'Behold, thou art betrothed unto me, and said to her companion, 'and thou too,' it is obvious that this is actual kiddushin?[2] — But e.g., If one said to a woman, 'Behold, thou art betrothed unto me,' and then to her companion, 'and thou'. Do we assume that he meant 'and thou too,' and so the second is betrothed;[3] or perhaps he said to her companion, 'and do thou witness it', and so she is not betrothed?

But is R. Papa really in doubt? But since he said to Abaye. Does Samuel hold that inexplicit abbreviations are valid?[4] it follows that he [R. Papa] holds that abbreviations are valid in the case of kiddushin? — R. Papa's question to Abaye was based on Samuel's opinion.[5]

R. Papa enquired: Are abbreviations binding in respect of pe'al[6] or not? What are the circumstances? Shall we say that one said, 'Let this furrow be pe'ah. and this one too' — that is a complete [declaration of] pe'ah? — His problem arises, e.g., if he [merely] said, 'and this,' without adding 'too'.[7] (Hence it follows that if one says, 'Let the entire field be pe'ah', it is so?[8] — Yes. And it was taught likewise: Whence do we know that if one wishes to render his whole field pe'ah, he can do so? From the verse, [And when ye reap the harvest of thy land, thou shalt not wholly reap] the corner of the field.)[9] — Do we say, Since it [sc. pe'ah] is compared to sacrifices, just as abbreviations are binding in the case of sacrifices, so in the case of pe'ah too; or perhaps, the analogy holds good only in respect of [the injunction,] than shalt not delay?[10] Now, where is the analogy found? — For it was taught:

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(1) Betrothals. V. Glos.

(2) Not an abbreviation.

(3) Lit., 'kiddushin takes hold on her companion'.

(4) In reference to kiddushin, v. Kid. 5b.

(5) Recognising that Samuel held abbreviations to be valid in the case of kiddushin.

(6) Pe'ah-the corner of the field, which was left for the poor. v. Lev. XIX, 9.

(7) [Asheri seems to have read: Did he then mean 'and this too is for pe'ah' or 'and this is for personal expenses'.]

(8) The presumption is that R. Papa's problem arises only if the first furrow alone contained the necessary minimum, for otherwise the second would certainly be pe'ah; therefore the second furrow is in addition to the requisite minimum, and becomes pe'ah, if abbreviations are binding. But if more than the minimum can be pe'ah, it follows that even the whole field can be pe'ah.

(9) And not 'the corner in thy field'. Lev. MIX, 9.

(10) I.e., if pe'ah is not given within the fixed period, this injunction is violated.

Talmud - Mas. Nedarim 7a

[When thou shalt vow a vow unto the Lord thy God, thou shalt not delay to pay it, far the Lord will surely require it] of thee:[1] this refers to gleanings, forgotten sheaves, and pe'ah.[2]

Are abbreviations binding in the case of charity or not? How does this arise? Shall we say, that one said, 'This zuz[3] is for charity, and this one too,' that is a complete [declaration of] charity! — But, e.g., If one said, '[And] this,' omitting 'too'. What then: did he mean, 'and this too is for charity,' or, 'and this is for my personal expenditure,' his statement being incomplete?[4] Do we say, Since this is likened to sacrifices, as it is written' [That which is gone out of thy lips thou shalt keep and perform; even a free-will offering according as thou hast vowed unto the Lord thy God, which thou hast promised] with thy mouth, which refers to charity:[5] hence, just as abbreviations are valid for sacrifices, so with charity; or possibly the comparison is in respect of 'Thou shalt not delay' only?

Are abbreviations valid in respect of hefker or not? But that is charity?[6] — This problem is based on a presupposition:[7] Should you rule, abbreviations are valid in the case of charity, because there is no analogy by halves,[8] [what of] hefker?[9] Do we say: Hefker is charity; or possibly charity differs, charity being for the poor only, whilst hefker is both for the rich and the poor?

Rabina propounded: Are abbreviations effective in respect of a privy or not?[9] How does this arise? Shall we say, that he declared, 'Let this place be for a privy, and this one too,' then obviously it is one? — But e.g., if he declared, 'and this,' omitting 'too'. What then? Does '[and] this' mean 'and this too shall be a privy,' or perhaps, what is meant by 'and this'? In respect of general use? Now, this proves that it is certain to Rabina that designation is valid for a privy. But Rabina propounded: What if one designates a place for a privy' or for baths; is designation effective or not?[10] — Rabina

propounded this problem on an assumption. [Thus:] Is designation effective or not, should you answer, Designation is effective, are abbreviations valid or not?[11] This question remains.

I AM BANNED TO YOU,' etc. Abaye said: R. Akiba admits in respect to lashes, that he is not flagellated;[12] for otherwise, let [the Mishnah] state, R. Akiba gave a stringent ruling.[13] R. Papa said: With respect to, 'I am isolated [nedinah] from you,' all agree that he is forbidden; 'I am accursed [meshamatna] from you,' all agree that he is permitted. Wherein do they differ?

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(1) Deut. XXIII, 22.

(2) Whilst he will surely require it refers to sacrifices, supra 4a. Hence they are assimilated to each other, being coupled in the same verse. The Hebrew for of thee is מעמך which can be rendered 'of that which is with thee', the reference being to the gleanings etc., which are to be left for those that are 'with dice', i.e., the poor. Ex. XXII, 24.

(3) Zuz, a silver coin, one fourth of a shekel.

(4) This alternative may apply to the query on pe'ah too: i.e., did he mean, 'and this furrow too', or, 'and this furrow be for my personal use?' V. p. 13, n. 7.

(5) This is deduced from the verse: the promise of charity is gone out of my mouth (Isa. S>V, 23, so translated here), where a promise by mouth refers to charity.

(6) Renunciation of one's property is the equivalent of giving it to charity. Thus the problem has already been stated.

(7) Lit., 'he sass, "if you should say".'

(8) I.e., it cannot be confined to certain aspects only.

(9) A place so appointed may not be used for reciting prayers, even before it was used as a privy.

(10) In the sense that this place may not be used henceforth for reciting prayers.

(11) In all the foregoing problems on kiddushin, pe'ah, charity etc., the abbreviations, though apparently not clear in meaning, since alternatives are given, are regarded as explicit, since the alternatives are, in every case, of a remote character, and the question then arises whether abbreviations, though explicit enough, are effective in these cases, v. Ran. 6b, s.v. בעי.

(12) If he breaks the vow.

(13) 'WAS INCLINED' shows that he entertained some doubt, and would therefore not inflict the penalty of lashes.

Talmud - Mas. Nedarim 7b

In the case of, 'I am banned to you,' R. Akiba maintaining that it is the equivalent of 'isolated' [nedinah], whilst the Rabbis hold that it means accursed' [meshamatna]. Now, this conflicts with R. Hisda's view. For a certain man, who declared, 'I am accursed in respect of the property of the son of R. Jeremiah b. Abba' went before R. Hisda. Said he to him, 'None pay regard to this [ruling] of R. Akiba'. [Thus] he holds that they differ in respect to' 'I am accursed' [meshamatna].

R. Elai said in the name of Rab. If [a Rabbi] places a person under a ban in his presence, the ban can be revoked only in his presence; if in his absence, it can be revoked both in his presence and in his absence. R. Hanin said in Rab's name. One who hears his neighbour utter God's name in vain[1] must place him under a ban; otherwise he himself must be under a ban,[2] because the unnecessary utterance of the Divine Name always leads to poverty, and poverty leads to death, as it is written, [And the Lord said unto Moses in Midian, Go, return unto Egypt]. For all the men are dead [which sought thy life];[3] and it was taught: Wherever the Sages cast their eyes [in disapproval] death or poverty has resulted.

R. Abba said: I was standing in the presence of R. Huna, when he heard a woman utter God's name in vain. Thereupon he banned her, but immediately lifted the ban in her presence. This proves three things: [i] He who hears his neighbour utter the Divine Name unnecessarily must excommunicate him; [ii] If [a Rabbi] bans a person in his presence, the ban must be lifted in his presence too. [iii] No time need elapse between the imposition and the lifting of a ban.[4]

R. Giddal said in Rab's name: A scholar may utter a ban against himself, and lift it himself. But is this not obvious? — I would think that a prisoner cannot free himself from prison; hence we are taught otherwise. Now, how can such a thing occur? — As in the case of Mar Zutra the Pious:[5] when a disciple incurred a ban,[6] [Mar Zutra] first excommunicated himself and then the disciple.[7] On arriving home, he lifted the ban from himself and then from the disciple.

R. Giddal also said in Rab's name:

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(1) Lit., the mentioning of the Name from his neighbour's mouth.

(2) [I.e., deserves to be placed under a ban, (Ran).]

(3) Ex. IV, 19. It is stated infra 64b that the reference is to Dathan and Abiram, who in fact were alive at Korah's rebellion, but had become poverty-stricken. Four are regarded as dead: a poor man, a leper, a blind person, and one who has no children. They were not blind, for it is written, wilt thou put out the eyes of these men? (Num. XVI, 14). Again, they were not lepers, for we find that they had not been excluded from the congregation: in the midst of all Israel (Deut. XI, 6). Even if they had been childless, they still could have been a source of danger to Moses before Pharaoh. Hence when God assured Moses that the danger was past, He meant that they were now poor and without influence (Ran).

(4) Hence, the ban may be merely a nominal punishment. V. J.E. art. Anathema. The term used here is niddui, and though it is stated there (p. 560, 2) that niddui is for seven days (M.K. 16a, 17b), it is evident from this passage that there was a formal ban too of no particular duration.

(5) Heb. hasida, (hasid). In Rabbinic literature the term is a title of respect denoting the type of an ideal Jew; (cf. Ta'an. 8a; Tem. 15b).

(6) [Here the term used is shamta, ‘desolation’, ‘curse’. According to Rashi, ‘shamta’ is a less severe form of ban than ‘niddui’; Maimonides, Yad, Talmud Torah, VII, 2, equates them. Nahmanides, Mishpat ha-Herem, considers shamta to be a general term for the more severe form of excommunication, the Herem, and the less severe, the Niddui.

(7) This was done to safeguard the honour of his disciple.

Talmud - Mas. Nedarim 8a

Whence do we know that an oath may be taken to fulfil a precept? From the verse, I have sworn, and I will perform it, that I will keep thy righteous judgments.[1] But is he not under a perpetual oath from Mount Sinai?[2] — But what [R. Giddal] teaches us is that one may stimulate himself.[3] R. Giddal also said in Rab's name: He who says, ‘I will rise early to study this chapter or this tractate,’ has vowed a great vow to the God of Israel. But he is under a perpetual oath from Mount Sinai, and an oath cannot fall upon another?[4] Then [again] if he informs us that a person may thus stimulate himself, it is identical with R. Giddal's first [statement]? — This is what R. Giddal teaches: The oath is binding, since one can free [i.e., acquit] himself by the reading of the Shema’ morning or evening.[5] R. Giddal said in Rab's name: If one says to his neighbour, ‘Let us rise early and study this chapter,’ it is his [the former's] duty to rise early, as it is written, And he said unto me, arise, go forth into the plain, and there I will talk with thee. Then I arose and went forth into the plain, and behold, the glory of the Lord stood there.[6]

R. Joseph said: If one was placed under a ban in a dream, ten persons are necessary for lifting the ban.[7] They must have studied halachah;[8] I but if they had only learnt [Mishnah],[9] they cannot lift the ban; but if such as have studied halachah are unavailable, then even those who have only learnt Mishnah], but had not studied [halachah] will do. But if even such are unavailable, let him go and sit at the cross-roads, and extend greetings[10] to ten men, until he finds ten men who have studied halachah.[11] Rabina asked R. Ashi: If he knew [in his dream] the person who placed him tinder a ban, can this person lift the ban? — He answered: He might have been appointed [God's] messenger to ban him, but not to revoke it. R. Aha asked R. Ashi: What if one was both banned and readmitted[12] in his dream? — Said he to him: Just as grain is impossible without straw,[13]

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(1) Ps. CXIX, 106.

(2) Every Jew is regarded as having sworn at Sinai to observe God's precepts.

(3) By an oath, to do what he is in any case bound to do.

(4) I.e., an oath is not valid when referring to that which is already subject to an oath.

(5) The passage commencing: Hear O Israel etc. (Deut. VI, 4 seq.). There is a definite obligation to study day and night, which is derived either from Deut. VI, 7 (and thou shalt teach them, etc.) or from Josh. I, 8 (This book of the law shall not depart out of thy mouth). But it is stated in Men. 95b that the obligation is fulfilled by the reading of the Shema' morning and evening.

(6) Ezek. III, 22, 23. The Lord, having instructed him to go forth, had preceded him.

(7) Dreams were widely held to have a positive significance; indeed, as almost partaking of the nature of prophecy. As we see here, a definite quality of reality was ascribed to them. V. J.E. s.v. 'Dreams'.

(8) Heb., hilketha, v. next note.

(9) So Rashi and Ran on the basis of our text. Mishnah is the law in broad outline, which characterises the whole of our present Mishnah, as compiled by R. Judah I. Hilketha (halachah) (law, rule) would appear to connote here the Talmudic discussion thereon, i.e., the amoraic development of the Mishnah. For tanu (תנו) referring to amoraic teaching instead of Tannaitic. cf. Kaplan, Redaction of the Talmud, pp. 209 seq. Ran, Asheri, and Tosaf, offer another interpretation, based on a slightly different reading: They must have taught law, but not merely learnt it (themselves).

(10) Lit., 'give peace' — the usual form of a Jewish greeting.

(11) Tosaf.: the greetings of ten men at the cross-roads will remove his grief; but ten scholars are necessary for the removal of the ban.

(12) Lit., 'it was loosened for him'.

(13) Cf. Jer. XXIII, 28.

Talmud - Mas. Nedarim 8b

so is there no dream without meaningless matter.[1]

Rabina's wife was under a vow; he then came before R. Ashi, asking. Can the husband become an agent for his wife's regret?[2] — He replied: If they [the three scholars] are ready assembled, he can do so: but not otherwise.[3] Three things may be inferred front this incident: [i] A husband can become an agent for his wife's regret. [ii] It is not seemly[4] for a scholar to revoke a vow in his teacher's town.[5] [iii] If they [the necessary scholars] are already assembled, it is well. But a scholar may lift a ban even in the vicinity of his master, and even a single ordained scholar[6] may lift a ban.

R. Simeon b. Zebid said in the name of R. Isaac b. Tabla, in the name of R. Hiyya Areka of the school of R. Aha, in the name of R. Zera in the name of R. Eleazar in the name of R. Hanania in the name of R. Mi'asha on the authority of R. Judah b. Il'ai: What is the meaning of, But unto you that fear my name shall the sun of righteousness arise with healing in its wings?[7] — This refers to those people who fear to utter the Divine name in vain.[8] 'The sin of righteousness with healing in its wings': Said Abaye, This proves that the motes dancing in the sun's rays have healing power. Now, he differs from R. Simeon b. Lakish, who said: There is no Gehinnom[9] in the world to come,[10] but the Holy One, blessed be He, will draw forth the sun from its sheath: the righteous shall be healed, and the wicked shall be judged and punished thereby. As it is written, But unto you that fear my name shall the sun of righteousness arise with healing in its wings.[11] Moreover, they shall be rejuvenated by it, as it is written, And ye shall go forth and grow up as calves of the stall.[12] But the wicked shall be punished thereby, as it is written, Behold, the day cometh that shall burn as an oven, and all the proud, yea, and all that do wickedly, shall be stubble; and the day that cometh shall burn them up, saith the Lord of Hosts, that it shall leave them neither root nor branch.[13]

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(1) I.e., the ban is not lifted.

(2) So as to have the vow cancelled. On regret (haratah). v. infra 21b, a.l.

(3) Because having troubled to assemble three scholars, he may be anxious that his trouble should not be unrewarded and so exceed his wife's instructions as to the grounds on which she desired absolution.

(4) This is the reading of Ran. Cur. edd. (quoted by Rashi too): a scholar is not permitted.

(5) Since Rabina, himself a Rabbi, did not act in the town of R. Ashi, his teacher.

(6) Mumhe, v. Glos.

(7) Mal. III. 20.

(8) The name of God represents the Divine nature and the relation of God to His people. As such it was understood as the equivalent of the Divine Presence, hence the awe with which it was surrounded, cf. Kid. 71a, Sanh. 99a.

(9) Gehinnom (Gehenna) as an equivalent of hell, purgatory, takes its name from the place where children were once sacrificed to Moloch, viz., ge ben Hinnom, the valley of the son of Hinnom, to the south of Jerusalem (Josh. XV, 8; 11 Kings XXIII, 10; Jer. VII, 32-32; XIX, 6. 13-14).

(10) ['Olam ha-ba. Here, as it is clear from the context, the reference is to the Messianic days.]

(11) Thus, unlike Abaye, he applies the verse to the future world.

(12) Mal. III, 20.

(13) Mal. III, 19.

Talmud - Mas. Nedarim 9a

MISHNAH. [IF ONE SAYS] 'AS THE VOWS OF THE WICKED, HE HAS VOWED IN RESPECT OF NEZIROTH, A SACRIFICE, AND AN OATH.[1] [IF HE SAYS:] 'AS THE VOWS OF THE RIGHTEOUS,' HIS WORDS ARE OF NO EFFECT. [BUT IF HE SAID,] 'AS THEIR FREEWILL-OFFERINGS,' HE HAS VOWED IN RESPECT OF A NAZIRITE VOW AND A SACRIFICE.[1]

GEMARA. But perhaps he meant thus: 'I do not vow as the vows of the wicked?' — Samuel answered: The Mishnah refers to one who said, 'As the vows of the wicked behold I am,' [or] '[I take] upon myself,' [or] '[I am debarred] from it': [which means,] 'Behold, I am a nazir,' [or] 'I take upon myself [the obligation] to offer a sacrifice,' [or] 'I [am debarred] by an oath [to derive any benefit] therefrom. Behold, I am a nazir': but perhaps he meant, 'Behold, lam to fast'? — Said Samuel: That is if a nazir was passing in front of him.[2] 'I am [debarred] by an oath [to derive any benefit] therefrom.' But perhaps [hemennu] [from or of it] means 'that I am to eat of it'? — Said Raba: It means that he said, '[I am debarred] from it not to eat it.' If so, why state it?[3] — I would argue, But he has not explicitly taken an oath![4] Hence we are informed [otherwise].[5]

[IF HE SAYS], 'AS THE VOWS OF THE RIGHTEOUS,' etc. Which Tanna recognises a distinction between a vow and a freewill offering:[6] shall we say, neither R. Meir nor R. Judah? For it was taught: Better it is that thou shouldst not vow, than that thou shouldst vow and not pay.[7] Better than both is not to vow at all: thus said R. Meir. R. Judah said: Better than both is to vow and repay.[8] — You may even say that it is R. Meir:

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(1) I.e., his vow is valid in respect of these. This will be explained in the Gemara.

(2) So he meant, 'such as he'.

(3) Since it is obvious.

(4) Hence it is not an oath.

(5) [The meaning of the Mishnah would be accordingly: If a nazirite is passing by and a man noticing him says. 'Behold, I am as he who makes the vows of the wicked', (meaning the nazirite, who in a sense is regarded as a sinner; v. infra 10a); or if a man with a beast before him says, 'I take upon myself as the vows of the wicked', or, with a loaf of bread before him, says. 'From it as the vows of the wicked', he becomes respectively a nazirite; Is obliged to bring a sacrifice; and is forbidden to eat of the loaf, each utterance being treated as an abbreviation of a vow (Ran).]

(6) In making a vow to offer a sacrifice, one says, 'Behold, I will bring a sacrifice'; since he may forget to do so, it is considered wrong to make a vow. But a freewill donation is declared thus: 'Behold, this animal is for a sacrifice'. Since the animal has already been put aside for the purpose, there is no fear of forgetfulness.

(7) Eccl. V, 4.

(8) Thus neither draw a distinction between a vow and a freewill-offering.

Talmud - Mas. Nedarim 9b

R. Meir spoke only of a vow, but not of a freewill-offering. But the Mishnah states: AS THEIR FREEWILL-OFFERINGS, HE HAS VOWED IN RESPECT OF NAZIR AND A SACRIFICE?[1] — Learn: HE HAS made a freewill-offering IN RESPECT OF NAZIR AND A SACRIFICE. Now, wherein does a vower differ, that he is not [approved]: because he may thereby come to a stumbling-block?[2] But a freewill-offering too can become a stumbling-block?[3] — [He does as] Hillel the Elder.[4] For it was taught: It was said of Hillel the Elder that no man ever trespassed through his burnt-offering;[5] he would bring it as hullin[6] to the Temple court, then sanctify it, and put his hand upon it[7] and slaughter it. That is well in respect of a freewill-offering of sacrifices; but what can be said of a freewill-offering of neziroth?[8] — It is as Simeon the Just.[9] For it was taught: Simeon the Just said: Only once in my life have I eaten of the trespass-offering brought by a defiled tear. On one occasion a nazir came from the South country, and I saw that he had beautiful eyes, was of handsome appearance, and with thick locks of hair symmetrically arranged. Said I to him: 'My son, what [reason] didst thou see to destroy this beautiful hair of thine?'[10] He replied: 'I was a shepherd for my father in my town. [Once] I went to draw water from a well, gazed upon my reflection in the water, whereupon my evil desires rushed upon me and sought to drive me from the world [through sin]. But I said unto it [my lust]: "Wretch! why dost thou vaunt thyself in a world that is not thine, with one who is destined to become worms and dust?[11] I swear[12] that I will shave thee off [his beautiful hair] for the sake of Heaven."' l immediately arose and kissed his head, saying: 'My son, may there be many nazirites such as thou in Israel! Of thee saith the Holy Writ, When either a man or a woman shall separate themselves to vow a vow of a nazirite, to separate themselves unto the Lord.[13]

R. Mani demurred: Wherein does the trespass-offering of an unclean nazirite differ, that he did not eat [thereof]: because it comes on account of sin? Then he should not have partaken [of] all trespass-offerings, since they come on account of sin? Said R. Jonah to him, This is the reason: When they regret [their evil deeds], they become nazirites, but when they become defiled, and the period of neziroth is lengthened,[14] they regret their vow, and thus hullin is brought to the Temple court.[15] If so, it is the same even with an undefiled nazir too?[16] — A clean nazir is not so, for he [previ ously] estimates his will-power, [and decides] that he can vow.

Alternatively:

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(1) Rashi: this implies that it is stated as a vow. Asheri: the use of both terms together, FREEWILL-OFFERINGS and HE HAS VOWED proves that the Tanna of our Mishnah recognises no difference between them.

(2) By forgetting to fulfil his vow.

(3) Because when an animal has been dedicated, it may not be put to any use; in a momentary forgetfulness, however, one may use it.

(4) 'Elder' (Heb. zaken) does not necessarily refer to age, but was a title of scholarship; cf. Kid. 32b; Yoma 28b; J.M.K. III, beginning of 81c.

(5) By putting it to secular use after dedication.

(6) Non-holy, v. Glos.

(7) Lev. I, 4: And he shall put his hand upon the lead of the burnt-offering.

(8) Since the possibility of violating one of the laws of neziroth constitutes a stumblingblock.

(9) So the text as emended by Ran. — One who takes the vow of a nazirite in such circumstances as those related by Simeon the Just need not fear a stumbling-block. Scholars differ whether he is identical with Simeon I (310-291 or 300-270 B.C.E.) or Simeon II (219-199 B.C.E.). v. Ab. (Sonc. ed.) p. 2, n. 1.

(10) V. Num. VI, 18.

(11) Meaning himself. In thus apostrophising his lust he did not ascribe any persona], independent identity to it, as is evident from the context.

(12) Lit., 'by the service' (of the Temple).
(13) Num. VI, 2. A nazirite vow made for such reasons may be regarded as the vow of the righteous. Simeon the Just's refusal to partake of these sacrifices must be regarded as a protest against the growing ascetic practice of taking vows to be a nazirite, — usually a sign of unhappy times; Weiss, Dor, I, 85, v. Nazir (Sonc. ed.) p. 13.
(14) Since they must recommence their neziroth; v' Num. VI, 12.
(15) Actually, of course, the animal would be consecrated; but it is as though it were hullin, since their neziroth, on account of which the sacrifice is brought, was not whole-hearted.
(16) He may regret the vow before the expiration of his term.

Talmud - Mas. Nedarim 10a

You may even say that it [the Mishnah] agrees with R. Judah, for R. Judah said this[1] only of a freewill-offering, but not of a vow. But he teaches: Better than both is to vow and repay? — Learn: To make a freewill-offering and repay. Now, why is a vow objectional: because one may come thereby to a stumbling-block.[2] [Does not] the same apply to a free-will offering whereby too he may come to a stumbling-block? — R. Judah conforms to his other view, viz., that a person may bring his lamb to the Temple-court, consecrate and lay [hands] upon it, and slaughter it.[3] This answer suffices for a freewill-offering of a sacrifice; but what can be said of a free-will offering of neziroth? — R. Judah follows his view [there too]. For it was taught: R. Judah said: The early hasidim[4] were eager to bring a sin-offering, because the Holy One, blessed be He, never caused them to stumble. What did they do? They arose and made a free-will vow of neziroth to the Omnipresent, so as to be liable to a sin-offering to the Omnipresent.[5] R. Simeon said: They did not vow neziroth. But he who wished to bring a burnt-offering donated it freely, and brought it; if a peace-offering, he donated it freely and brought it; or if a thanks-offering and the four kinds of loaves,[6] donated it freely and brought it. But they did not take neziroth upon themselves, so as not to be designated sinners, as it is written, And [the priest] shall make atonement for him, for that he sinned against a soul.[7]

Abaye said: Simeon the Just, R. Simeon, and R. Eleazar hakappar, are all of the same opinion, viz., that a nazir is a sinner. Simeon the Just and R. Simeon, as we have stated. R. Eleazar ha-Kappar Berabbi,[8] as it was taught: And he shall make atonement for him, for that he sinned against a soul. Against which 'soul' then has he sinned? But it is because he afflicted himself through abstention from wine. Now, does not this afford an argument from the minor to the major? If one, who afflicted himself only in respect of wine, is called a sinner: how much more so one who ascetically refrains from everything. Hence, one who fasts is called a sinner. But this verse refers to an unclean nazir?[9] — That is because he doubly sinned.[10]

MISHNAH. ONE WHO SAYS, 'KONAM,' 'KONAH,' OR 'KONAS,'[11] THESE ARE THE SUBSTITUTES FOR KORBAN.[12] 'HEREK,' 'HEREK,' [OR] 'HEREF,' THESE ARE SUBSTITUTES FOR HEREM.[13] 'NAZIK,' 'NAZIAH,' 'PAZIAH,' THESE ARE SUBSTITUTES FOR NEZIROTH;[14] 'SHEBUTHAH,' 'SHEKUKAH,' OR ONE WHO VOWS BY MOHI,[15] THESE ARE SUBSTITUTES FOR SHEBU'AH.[16]

GEMARA. It was stated: Substitutes: R. Johanan said: They are foreign equivalents [of the Hebrew]; R. Simeon b. Lakish said: They are forms devised by the Sages for the purpose of making vows; (and thus it is written, in the month which he had devised of his own heart).[17] And why did the Rabbis institute substitutes? — That one should not say korban. Then let him Say, korban? — Lest he say korban la-adonai [a sacrifice to the Lord]. And why not say korban la-adonai? — Lest one say la-adonai without korban, and thus utter the Divine Name in vain.[18] And it was taught: R. Simeon said:

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(1) That it is better to vow and repay.
(2) V. p. 21, nn. 1 & 6.

(3) It cannot become a stumbling-block, because it is hullin practically until it is killed.
(4) Hasid, PI. hasidim; lit., 'pious ones'. The hasidim referred to here are definitely not the Essenes (Weiss, Dor, I, P' 110). [Buchler, Types. p. 78, makes these early hasidim contemporaries of Shammai and Hillel.]
(5) V. Num. VI, 14.
(6) A thanks-offering was accompanied by forty loaves of bread, divided into four different kinds.
(7) Num. VI, 11 .
(8) [Or, Berebi, designation by which Bar Kappara is known to distinguish him from his father who bore the same name, v. Nazir, (Sonc. ed.) p. 64, n. 1.]
(9) How then can one deduce that a nazir in general is a sinner?
(10) The verse shews that a double sin is referred to, because 'for that he sinned' alone would have sufficed; 'against a soul' is superfluous, and teaches that he is a sinner in two respects: (i) by becoming a nazir at all; (ii) by defiling his neziroth (Ran). — The whole passage shows the Jewish opposition to asceticism, for Judaism rejects the doctrine of the wickedness of this life and the inherent corruption of the body, which is the basis of asceticism. Whilst the community as a whole fasted in times of trouble (cf. Esth. IV, 16; Ta'an. 10a, 15a), and certain Rabbis too were addicted to it (e.g. R. Ze'ira, B.M. 85a), yet individual fasting was discouraged, as here; v. Maim. Yad, De'oth, III, 1; VI, 1; Lazarus, Ethics of Judaism, ¤¤ 246-256.
(11) [Its derivation is probably from kenum, 'self', 'person', and then the object in an elliptical sentence, 'I pledge (myself) my person with So-and-so (that I will not do this or that)', v. Cooke, North Semitic Inscriptions, p. 34. This is a substitute for korban vow, in which he declares 'this may be forbidden to me as is a sacrifice'. No satisfactory explanation has been given so far for the other terms, which seem to be corruptions of konam.]
(12) Heb. for sacrifice.
(13) Ban.
(14) The vow of a nazir: 'Behold, I will be a nazir'. These words may be substituted for nazir.
(15) This is explained in the Gemara. [The Mishnayoth text reads 'BY MOTHA', an abbreviation of Momatha, the Aramaic equivalent of Shebu'ah.]
(16) Heb. for oath.
(17) I Kings XII, 33, referring to the unauthorised festival instituted by Jeroboam in the eighth instead of the seventh month. [The Heb. for 'devised', בדה is the same as used by R. Johanan in his definition. The bracketed words appear to be a copyist's gloss that has crept into the text. They do not occur in MS.M.]
(18) This machinery for vows, regulating the manner in which they were to be made, points to the practice as being very prevalent. V. Weiss, Dor, I, 85.

Talmud - Mas. Nedarim 10b

Whence do we know that one must not say, 'Unto the Lord a burnt-offering,' 'unto the Lord a meal-offering,' 'unto the Lord a thanks-offering,' or 'unto the Lord a peace-offering'?[1] Because it is written, [If any man of you bring] an offering to the Lord.[2] And from the minor we may deduce the major: If concerning one who intended uttering the Divine Name only in connection with a sacrifice, the Torah taught, an offering to the Lord;[3] how much more [care must one take against its deliberate utterance] in vain!

Shall we say that this [conflict] is dependent on Tannaim? For it was taught: Beth Shammai maintain: Substitutes of substitutes are binding; whilst Beth Hillel Say: They are not.[4] Surely, the ruling that secondary substitutes are valid is based on the view that substitutes are foreign equivalents;[5] whilst he who says that they are invalid holds that they are forms devised by the Sages?[6] — No. All agree that substitutes are foreign words; but Beth Shammai hold that Gentiles speak in these [terms] too,[7] whilst Beth Hillel hold that they do not speak in these [terms]. Alternatively Beth Shammai hold: Secondary substitutes [are declared valid] as a precautionary measure on account of substitutes themselves;[8] but Beth Hillel maintain: We do not enact a precautionary measure for secondary substitutes on account of the substitutes themselves.

What forms do double modifications of vows take? — R. Joseph recited: Mekanamana,

mekanehana, mekanesana. What are the secondary substitutes of herem? — Mafash'ah taught: harakim, harakim, harafim. Secondary substitutes of neziroth? — R. Joseph learnt: mehazakana, menazahana, mephana.[9] The scholars inquired: What of mipahazna, mithhazana, mith'azana?[10] Rabina asked R. Ashi: What of kinema: does it mean konam,[11] or perhaps, kinemon besem [sweet cinnamon]?[12] R. Aha, the son of R. Hiyya, asked R. Ashi: What of kinah: does it mean a fowl's sty,[13] or konam? These remain questions.[14]

What are secondary substitutes of oaths? — Shebuel, shebuthiel, shekukeel. But shebuel may simply mean Shebhuel the son of Gershon? But say thus: Shebubiel, shebuthiel shekukeel.[15] Samuel said: If one says ashbithah, he says nothing: ashkikah, he says nothing; karinsha, he says nothing.[16]

OR ONE WHO VOWS BY MOHI, THESE ARE SUBSTITUTES [FOR SHEBU'A]. It was taught: R. Simeon b. Gamaliel said: One who says 'by Mohi' [Moses][17] says nothing; 'by Momtha which Mohi said,'[18] these are substitutes for an oath. MISHNAH. IF ONE SAYS [TO HIS NEIGHBOUR], 'THAT WHICH I MIGHT EAT OF YOURS BE NOT[19] HULLIN,'[20] 'BE NOT KASHER,'[21] 'BE NOT PURE,' 'BE CLEAN OR UNCLEAN,'[22] 'BE NOTHAR,'[23] OR PIGGUL,[24] HE IS FORBIDDEN.[25] AS THE LAMB,'[26] AS THE TEMPLE SHEDS OF CATTLE OR WOOD,'[27] 'AS THE WOOD' [ON THE ALTAR], AS THE FIRE [ON THE ALTAR],'[28] ' AS THE ALTAR,' 'AS THE TEMPLE, AS JERUSALEM;' [OR] IF ONE VOWED BY REFERENCE TO THE ALTAR UTENSILS,[29] THOUGH HE DID NOT MENTION KORBAN, IT IS AS THOUGH HE HAD VOWED BY KORBAN.[30] R. JUDAH SAID: HE WHO SAYS JERUSALEM[31] HAS SAID NOTHING.

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(1) In this order, the Divine Name preceding.

(2) Lev. I, 1; thus the offering must precede.

(3) But not the reverse, lest one utter the Name in vain.

(4) Lit., 'they are permitted'.

(5) Hence, the first modifications are correct foreign words, the substitutes thereof are corrupt, but also used, and hence valid for oaths.

(6) Hence secondary substitutes, not having been assigned by the Sages to that purpose, are invalid.

(7) Sc. secondary substitutes; hence they are valid.

(8) Which would otherwise be treated as invalid by the masses.

(9) [Read Menazakna . . . mepazahna, each of which consists ofthe three consonantal letters of the substitutes with prefix and suffix; v. Strashun].

(10) [Strashun reads: Mepahazna, menahazna, menakazna, the last consonantal letters of the substitutes being transposed. This receives support from MS.M.]. Are they binding or not?

(11) Hence it is valid.

(12) Ex. XXX, 23; i.e., it is not a vow-form at all.

(13) I.e., the fem. of קֵן (kin), a bird's nest.

(14) In all these doubtful forms the question arises when they were actually used to express vows, the question being whether they imply vows or something else — notwithstanding the intention of their user.

(15) מהו 'What is the law' in cur. edd. is to be deleted; Bah.

(16) These forms are ineffective for expressing oaths.

(17) ['By Moses', was one of the common forms of asseveration, cf. Bez. 38b; Shab. 101b. V. Chajes, Notes.]

(18) By the oath which Moses uttered. [The allusion is to Ex. II, 21, where ויואל משה is rendered, 'Moses swore'. (Ran).]

(19) The Hebrew is la-hullin, here regarded as meaning: not hullin. V. also p. 28, n. 8.

(20) V. Glos.

(21) Lit., 'fit', ritually permitted for consumption.

(22) So cur. edd. Asheri explains: be as sacrifices, to which the laws of cleanliness and uncleanness apply — i.e., forbidden. Rashi's text reads simply: be not clean, be unclean, etc.

(23) Lit., 'left over'. The flesh of an offering which remains over after the period in which it must be eaten, v. Ex. XXIX,

34, and Lev., VII, 17.

(24) Lit., 'abomination'. The flesh of an animal sacrificed with the deliberate intention of eating it after the permitted period; it is then forbidden even within the period, v. Lev. VII, 18.

(25) To eat aught of his neighbour.

(26) I.e., the lamb of the daily sacrifice.

(27) The alternative is implied by the use of the plural in the Mishnah (Tosaf.).

(28) [So T.J. Others: Fire-offerings, cf. Lev. XXI. 6. (V. Asheri and Tosaf.)]

(29) I.e., your food be as the altar utensils unto me, hence, forbidden.

(30) V. Mishnah 20a.

(31) Without as i.e., 'Your food be Jerusalem to me'.

Talmud - Mas. Nedarim 11a

GEMARA. The scholars presumed. What does la-hullin mean: Let it not be as hullin, [implying] but as a sacrifice. Who is the authority of our Mishnah? If R. Meir: but he does not hold that the positive may be inferred from the negative?[1] For we learnt, R. Meir said: Every stipulation which is not like the stipulation of the children of Gad and Reuben is invalid.[2] Hence it must be R. Judah.[3] Then consider the conclusion: R. JUDAH SAID: HE WHO SAYS JERUSALEM HAS SAID NOTHING. Now, since the conclusion is R. Judah, the former clause is not R. Judah?[4] — The whole Mishnah gives R. Judah's ruling, but this is what is stated: for R. JUDAH SAID: HE WHO SAYS JERUSALEM HAS SAID NOTHING.[5]

But if one says, 'as Jerusalem,' is he forbidden according to R. Judah? But it was taught: R. Judah said: He who says, 'as Jerusalem,' has said nothing, unless he vows by what is sacrificed in Jerusalem! — It is all R. Judah, and two Tannaim, conflict as to his views.[6]

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(1) To render it legally binding. Thus, if one says, 'Iet it not be as hullin', we may not infer that he meant, 'but let it be as a korban', and so declare it forbidden.

(2) Num. XXXII, 20-23; 29-30, q.v. We see there that Moses stipulated what was to happen in each case, and did not rely on one clause only, from which the reverse might be deduced, v. Kid. 61a.

(3) That the positive is inferred from the negative, and is then legally binding.

(4) Since it is specifically pointed out that the second clause is R. Judah.

(5) For that reason 'as' is specified in all the previous expressions.

(6) The Tanna of the Mishnah holding R. Judah's view to be that 'as Jerusalem' is a binding form, and the Tanna of the Baraitha that it is not.

Talmud - Mas. Nedarim 11b

It was taught: [If one says,] 'That which I might eat of yours,' or 'that which I might not eat of yours, be hullin,' or, 'be the hullin,' or, 'be as hullin,' he is permitted.[1] [If he says,] 'That which I might eat of yours be not hullin,' he is forbidden;[2] 'that which I might not eat of yours be not hullin,' he is permitted. Now with whom does the first clause agree? With R. Meir, viz., who does not hold that the positive may be inferred from the negative.[3] Then consider the latter clause: 'That which I might not eat of yours be not hullin,' he is permitted. But we learnt: [If one says,] 'That which I might not eat of yours be not for korban': R. Meir forbids [him]. Now we raised the difficulty: but he does not rule that the positive may be inferred from the negative?[4] And R. Abba replied: It is as though he said, 'Let it [i.e., your food] be for the korban, therefore I will not eat of yours.'[5] Then here too' perhaps, he meant, 'Let it not be hullin; therefore I may not eat of yours'? — This Tanna agrees with R. Meir on one point, but disagrees with him on another. He agrees with him on one point. that the positive may not be inferred from the negative; but disagrees with him on another, [viz.,] on [the interpretation of] la-korban. R. Ashi said: In the one case he said le-hullin;[6] in the other[7] he said, 'la-hullin', which might mean, 'let it not be hullin,[8] but as a korban'.

BE CLEAN OR UNCLEAN,' 'AS NOTHAR,' 'AS PIGGUL, HE IS FORBIDDEN. Rami b. Hama asked: What if one said: 'This be unto me as the flesh of a peace-offering after the sprinkling of the blood'? But if he vowed thus, he related [his vow] to what is permissible![9] — But (the question arises thus]: E.g., if there lay flesh of a peace-offering before him and permitted food lay beside it' and he said, 'This be like this'. What then: did he relate it to its original state,[10] or to its present [permitted] condition? — Raba answered: Come and hear: [We learnt:] IF ONE SAYS . . . AS NOTHAR, [OR] AS PIGGUL, [HE IS FORBIDDEN].

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(1) To eat or benefit from his neighbour.

(2) Rashi. Ran is inclined to delete the clause, since, as the Talmud shews, this Baraitha is taught according to R. Meir, who holds that the positive may not be inferred from the negative.

(3) Hence, when he Says, 'That which I might not eat of yours be hullin', we may not infer that that which he might eat should not be hullin, and so prohibited.

(4) The hypothesis being that he is forbidden on account of this inference.

(5) The Hebrew form is la-korban: in popular speech la 'to the' may be a hurried utterance of la' 'not'; therefore on the first assumption what he said was: 'shall not be a korban'; in the answer the preposition is given its normal meaning, viz., shall be for the korban.

(6) Meaning as (or, for) hullin. [This can by no means he taken to denote 'not', and since R. Meir does not infer the positive from the negative, he does not consider it a vow.]

(7) The case interpreted by R. Abba.

(8) [So Ran. curr. edd. la-hullin, 'not hullin'].

(9) His words imply no prohibition.

(10) Before the sprinkling of the blood, when it was forbidden.

Talmud - Mas. Nedarim 12a

Now, nothar and piggul[1] are [possible only] after the sprinkling of the blood! —[2] R. Huna the son of R. Nathan said to him, This refers to nothar of a burnt-offering.[3] Said he to him, If so, let him [the Tanna] teach: As the flesh of the burnt-offering?[4] — He proceeds to a climax.[5] [Thus:] It is unnecessary [to teach that if one relates his vow to] the flesh of a burnt-offering, that he is forbidden, since he referred it to a sacrifice. But it is necessary for him [to teach the case of] nothar and piggul of a burnt-offering. For I would think that he referred it to the prohibitions of nothar and piggul, so that it counts as a reference to what is inherently forbidden, and he is not prohibited;[6] hence he informs us [otherwise].

An objection is raised: Which is the bond mentioned in the Torah?[7] If one says, 'Behold! I am not to eat meat or drink wine, as on the day that my father or teacher died,' [or] 'as on the day when Gedaliah the son of Ahikam was slain,'[8] [or] 'as on the day that I saw Jerusalem in ruins.' Now Samuel commented thereon: Providing that he was under a vow in respect to that very day.[9] What does this mean? Surely that e.g., he stood thus on a Sunday, on which day his father had died, and though there were many permitted Sundays, it is taught that he is forbidden; this proves that the original [Sunday] is referred to.[10] — Samuel's dictum was thus stated: Samuel said, Providing that he was under a vow uninterruptedly since that day.[11]

Rabina said, Come and hear: [If one says, 'This be unto me] as Aaron's dough,[12] or as his terumah', he is permitted.[13] Hence, [if he vowed,] 'as the terumah of the loaves of the thanksgiving-offering,'[14] he would be forbidden.[15]

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(1) Some delete piggul, since at no time was it permitted. If retained in the text, it is so because nothar and piggul are generally coupled; but Raba's deductions are from nothar only.

(2) The proof is this. A sacrifice is forbidden because at some time it was consecrated by a vow. With the sprinkling of

its blood it loses its forbidden character until it becomes nothar, when it resumes it. But a direct reference to nothar itself is inadmissible in a vow, because nothar is Divinely forbidden, and not the result of a vow (v. text, and p. 30, n. 2). Hence the reference must have been to the condition of the flesh before the sprinkling of the blood.

(3) The flesh of which is not permitted even after the sprinkling of the blood: hence it proves nothing.

(4) Without reference to nothar at all.

(5) Lit., he states, 'it is unnecessary'.

(6) When a man imposes a prohibition by referring one thing to another, the latter must be also artificially forbidden, e.g., a sacrifice, which was originally permitted, and then forbidden through consecration. But if it is Divinely forbidden, without the agency of man, the vow is invalid. Thus, if one says, 'This be to me as the flesh of the swine', it is not forbidden. Now, the prohibition of piggul and nothar are Divine: therefore, If the reference was in point of that particular prohibition, the vow would be invalid.

(7) Num. XXX, 3: If a man vow a vow unto the Lord, or swear an oath to bind his soul with a bond, he shall not break his word.

(8) After the destruction of the first Temple by Nebuchadnezzar in 586 B.C.E. and the deportation of the nobles and the upper classes to Babylon, Gedaliah the son of Ahikam was appointed governor of the small community that was left. As a result of a conspiracy he was slain on the second day of Tishri. Jer. XL-XLI.

(9) The assumed meaning is: he had vowed on the day of his father's death, or had once vowed not to eat meat on the day that Gedaliah the son of Ahikam was slain, and now he vowed a second time, 'I am not to eat meat, etc. as on the day when I am forbidden by my previous vow, thus the second vow was related to an interdict which was itself the result of a vow (Ran.).

(10) I.e., the first Sunday distinguished by his former vow.

(11) I.e., he had been under a vow every Sunday until this present vow. Hence nothing can be proved. v. Shebu. (Sonc. ed.) p. 105.

(12) Num. XV, 20-21. Ye shall offer up a cake of the first of your dough for an heave offering. This, and terumah (v. Glos.) belonged to Aaron, i.e., the priest, and was prohibited to a star (I.e., a non-priest).

(13) To benefit therefrom. The vow is invalid, because the dough and the terumah, not being prohibited to all, are regarded as Divinely forbidden: v. p. 30, n. 2.

(14) V. Lev. VII, 22ff. Of the forty loaves brought (p. 32, n. 1) one out of each set of ten was terumah, and belonged to the priest.

(15) Because the prohibition of those is evidently due to a vow.

Talmud - Mas. Nedarim 12b

But the terumah of the thanksgiving loaves is [forbidden] only after the sprinkling of the blood![1] — [No.] Infer thus: [If he vows,] 'as the terumah of the shekel-chamber,'[2] he is forbidden. But what if [he said,] 'as the terumah of the thanksgiving loaves,' he is permitted? Then let him [the Tanna] state the terumah of the thanksgiving loaves, then how much more so 'his terumah'![3] — He teaches us this: The terumah of the thanksgiving loaves is 'his terumah'.[4] Alternatively, the terumah of the thanksgiving loaves may also mean before the sprinkling of the blood,[5] e.g., if it was separated during the kneading [of the dough].[6] Even as R. Tobi b. Kisna said in Samuel's name: If the thanksgiving loaves are baked as four loaves [instead of forty], it suffices. But does not the Writ state forty?[7] — As a meritorious deed. But terumah has to be taken therefrom?[8] And should you answer that one loaf is taken for all, — but we learnt: [And of it he shall offer] one out of each oblation:[9] 'one' teaches that terumah is not to be taken from one oblation for another?[10] And should you say that a piece is taken from each, — but we learnt: 'One' teaches that a piece is not to be taken? But it must be that he separates it during kneading, taking one [part] of the leaven, one of the unleavened cakes, one of the unleavened wafer, and one of the fried cake;[11] [so here too].

Shall we say that this is dependent on Tannaim? [For it was taught: If one says,] 'This be unto me as a firstling,'[12] R. Jacob forbids it, while R. Jose permits it. Now, how is this meant? If we say, before the sprinkling of the blood:[13] what is the reason of him who permits it? If after, on what grounds does the other forbid it? But it surely [means]

(1) This itself is disputed. The view of R. Eliezer b. Simon is adopted here. Since, by deduction, this vow is binding, we evidently regard the reference as being to the present state.

(2) This refers to a special fund kept in the Temple for various purposes. mainly congregational sacrifices; Shek. III, 2: IV, 1. — This is the deduction to be made, not the previous one.

(3) If a vow referring to the terumah of the loaves of a thanks-offering is invalid, though in their origin their own prohibition is due to a vow, how much more will a vow referring to other terumah, which is Divinely forbidden, be valid. Also, it is a general rule that there is a preference for teaching the less likely, so that the more likely may be deduced therefrom a minori.

(4) I.e., the word 'terumah' embraces all forms of terumah.

(5) It is even then forbidden to a star, v. Glos.

(6) Although the loaves become sanctified only by the sprinkling of the blood, according to our premise, yet if the terumah was separated in the dough, it is consecrated.

(7) Not actually. But since the Writ speaks of four species, and terumah (I.e., one in ten) was to be given from each, it follows that forty had to be made.

(8) One from each ten.

(9) Lev. VII, 14.

(10) Each kind of loaf is here referred to as an oblation.

(11) V. Lev. VII, 12.

(12) v. Num. XVIII, 15.

(13) Of the firstling, when it is definitely forbidden.

Talmud - Mas. Nedarim 13a

that flesh of a firstling lay before him, and this other flesh lay at its side, and he declared, 'this be as this,' and [thus] it is a controversy of Tannaim?[1] — No. All treat of before the sprinkling of the blood; and what is the reason of him who permits it? The Writ States, If a man vow,[2] [teaching] that one must vow by that which is [itself] forbidden through a vow; thus excluding a firstling, which is an interdicted thing. And he who forbids it?[3] — The Writ states, 'unto the Lord,'[2] to include an interdicted thing.[4] Then he who permits it, how does he interpret 'unto the Lord'? — He employs it in respect of relating [a vow] to a sin-offering or a guilt-offering.[5] Now, what [reason] do you see to include a sin-offering and a guilt-offering and exclude the firstling? — I include the sin-offering and the guilt-offering which one sanctifies[6] by a vow,[7] but exclude the firstling, which is holy from its mother's womb. But he who forbids?[8] A firstling too one sanctifies by a vow. For it was taught: It was said on the authority of Rabbi, Whence do we know that one is bidden to consecrate the firstling born in one's house? — From the verse, [All] the firstling males [that come of thy herd and thy flock] thou shalt sanctify [unto the Lord].[9] But he who permits it [argues thus]: If he does not consecrate it, is it not holy?[10]

. . . AS THE LAMB, AS THE TEMPLE SHEDS etc. It was taught: A lamb, for a lamb, as a lamb; [or] sheds, for sheds, as sheds; [or] wood, for wood, as wood; [or] fire, for fire, as fire; [or] the altar, for the altar, as the altar; [or] the temple, for the temple, as the temple; or Jerusalem, for Jerusalem, as Jerusalem, — in all these cases, [if he says,] 'what I might eat of yours,' he is forbidden; 'what I might not eat of yours,' he is permitted.

Now which Tanna do we know draws no distinction between a lamb, for a lamb and as a lamb? — R. Meir.[11] Then consider the second clause: and in all these cases, [if he says], 'that which I might not eat of yours [be so],' he is permitted. But we learnt: [If one says to his neighbour,] 'That which I might not eat of yours be not for korban, R. Meir forbids [him]. Now R. Abba commented thereon: It is as though he said, 'Let it [i.e., your food] be for korban, therefore I may not eat of yours'? — This is no difficulty: in the one case he said, 'lo le-imra';[12] in the other he said, 'le-imra'.[13] MISHNAH. IF ONE SAYS [TO HIS NEIGHBOUR], 'THAT WHICH I MIGHT EAT OF YOURS BE

KORBAN', [OR]' A BURNT-OFFERING',[14] [OR] 'A MEAL-OFFERING', [OR]' A SIN-OFFERING [OR] 'A THANKSGIVING-OFFERING', [OR]' A PEACE-OFFERING, — HE IS FORBIDDEN.[15] R. JUDAH PERMITTED [HIM].[16] [IF HE SAYS,] 'THE KORBAN,' [OR] 'AS A KORBAN,' [OR]' KORBAN,[17] BE THAT WHICH I MIGHT EAT OF YOURS,' HE IS FORBIDDEN.[18] IF HE SAYS: THAT WHICH I MIGHT NOT EAT OF YOURS BE FOR A KORBAN,'[19] R. MEIR FORBIDS [HIM].

GEMARA. Now, the Mishnah teaches, [IF HE SAYS.] 'THE KORBAN,' [OR] 'AS KORBAN,' [OR] 'A KORBAN BE THAT WHICH I MIGHT EAT OF YOURS,' HE IS FORBIDDEN. Thus, it is anonymously taught as R. Meir, who recognises no distinction between 'it sheep' and 'for a sheep'.[20] But if so, then as to what he [the Tanna] teaches: 'THE KORBAN . . . [BE] THAT WHICH I MIGHT EAT OF YOURS,' HE IS FORBIDDEN. But it was taught: The Sages concede to R. Judah that if one says, 'Oh, korban,' or 'Oh, burnt-offering,' 'Oh, meal-offering,' 'Oh, sin-offering, what I will eat this of thine,' he is permitted, because he merely vowed by the life of the korban![21] —

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(1) Whether the reference is to its present (permitted) state or to its original (forbidden) condition.

(2) Num. XXX, 3.

(3) What is his reason?

(4) This will not apply to all Divinely forbidden things, but only to such as the firstling, as the Talmud proceeds to explain.

(5) That the vow is valid.

(6) Lit., 'seizes'.

(7) Though one cannot offer these as vows, without having incurred the obligation, the actual animal is forbidden as a result of the vow of consecration, since another could equally well have been sacrificed.

(8) How will he meet this argument?

(9) Deut. XV, 19. Thus, though Divinely consecrated, yet its owner must formally declare it holy, and hence it may be regarded as subject to a vow.

(10) Of course it is! Hence its interdict is not the result of a vow.

(11) Since R. Judah rules that if one says Jerusalem, without 'for' or 'as', the vow is invalid.

(12) 'Let it not be for the lamb' — hence it is permitted. [So cur. edd. MS.M. and Ran read: In one case he said la'-imra; 'let it not be the lamb'. V. supra. p. 28, n. 8.]

(13) 'Let it be for the lamb' — there he is forbidden.

(14) [The two may also be taken together and thus rendered 'a sacrifice of a burnt-offering'.]

(15) To eat aright of his neighbour's.

(16) Because he did not say, 'as a sacrifice', etc.

(17) In this last case korban is used as an oath: I swear by the sacrifice to eat naught of thine.

(18) Vowing by means of korban formula was a specifically Jewish practice: v. Josephus, Contra Apionem, 1, ¤¤ 22, Halevy, Doroth I, 3, pp. 314 f.

(19) In the Gemara these words are subsequently otherwise interpreted, but in the promise they are thus translated.

(20) V. supra p. 33, n. 6.

(21) That he would eat. Then why not assume the same in our Mishnah?

Talmud - Mas. Nedarim 13b

This is no difficulty: Here he said ha korban,'[1] there he said ha-korban.[2] What is the reason?[3] He meant, '[I swear] by the life of the sacrifice.'[4] He [the Tanna] teaches: THAT WHICH I MIGHT NOT EAT OF YOURS BE NOT FOR KORBAN, R. MEIR FORBIDS HIM. But R. Meir does not rule that the positive may be inferred from the negative?[5] R. Abba answered: it is as though he said: 'Let it be for korban, therefore I will not eat of yours'.[6]

MISHNAH. IF ONE SAYS TO HIS NEIGHBOUR, 'KONAM BE MY MOUTH SPEAKING

WITH YOU,' [OR] 'MY HANDS WORKING FOR YOU,' [OR] 'MY FEET WALKING WITH YOU,' HE IS FORBIDDEN.[7]

GEMARA. But a contradiction is shown: There is greater stringency in oaths than in vows, and greater stringency in vows than in oaths. There is greater stringency in vows, for vows apply to obligatory as to optional matters,[8] which is not so in the case of oaths.[9] And there is greater stringency in oaths, for oaths are valid with respect to things both abstract and concrete, but vows are not so?[10] — Said Rab Judah: It means that he says,[11] 'let my mouth be forbidden in respect of my speech,' or 'my hands in respect of their work', or 'my feet in respect of their walking'.[12] This may be inferred too, for he [the Tanna] teaches: 'MY MOUTH SPEAKING WITH YOU,' not, ['konam] if I speak with you'.[13]

C H A P T E R I I

MISHNAH. NOW THESE ARE PERMITTED:[14] [HE WHO SAYS,] WHAT I MIGHT EAT OF YOURS BE HULLIN,' 'AS THE FLESH OF THE SWINE, AS THE OBJECT OF IDOLATROUS WORSHIP,'[15] AS PERFORATED HIDES,'[16] 'AS NEBELOTH AND TEREFOTH',[17] AS ABOMINATIONS AND REPTILES, AS AARON'S DOUGH OR HIS TERUMAH',[18] — [IN ALL THESE CASES] HE IS PERMITTED. IF ONE SAYS TO HIS WIFE, 'BEHOLD! THOU ART UNTO ME AS MY MOTHER,'[19] HE MUST BE GIVEN AN OPENING ON OTHER GROUNDS,[20] IN ORDER THAT HE SHOULD NOT ACT FRIVOLOUSLY IN SUCH MATTERS.[21]

GEMARA. Now, the reason is because he said, 'WHAT I MIGHT EAT OF YOURS BE HULLIN'; but if he said, 'What I might eat of yours be lehullin,' it would imply: let it not be hullin but a korban.[22] Whose view is taught in our Mishnah? If R. Meir's, but he does not hold

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(1) The ha being a separate word, and thus an interjection expressing an affirmative oath — I will eat. [The vowel of the ha as interjection is, in addition, of a longer quality than that of ha as definite article.]

(2) Here the ha is an inseparate def. art.; hence he must have meant, 'What I might eat of yours he a sacrifice', and therefore he is forbidden.

(3) Of the Baraitha, that he is permitted.

(4) That I will eat of yours.

(5) And according to our premise the reason for R. Meir's ruling is that we deduce the opposite from his words, thus: 'but that which I might eat of thine be for korban'.

(6) V. p. 28, n. 8.

(7) According to the terms of his vow.

(8) I.e., if one said, 'I am forbidden by a vow to erect a sukkah (v. Glos.), or put on tefillin', (v. Glos.) the vow is binding, although he is bound to do these things. and if he does them, he violates the injunction he shall not break his word.

(9) I.e., if he said, 'I swear not to erect a sukkah, his oath is invalid.

(10) Vows being applicable to concrete things only. Walking, talking and working are regarded here as abstractions (by contrast with the vow that a loaf of broad etc shall be as a sacrifice and forbidden), yet the Mishnah states that the vows are valid.

(11) I.e., it is regarded as though he says.

(12) The reason for this assumption is this: the konam of the Mishnah may refer either to my mouth (concrete) or to my talking (abstract). In the former case the vow would be valid, but not in the latter. Since it is not clear which, we adopt the more rigorous interpretation.

(13) In which case the speaking would be the object of the vow: the speaking being abstract, the vow would be invalid.

(14) I.e., invalid.

(15) Lit., 'as the worship of stars'.

(16) The hide was perforated opposite the heart, which was cut out from the living animal and offered to the idol. Cf.

'A.Z. 29b and 32a.

(17) V. Glos. s.v. nebelah (pl. nebeloth) and terefoth (pl. terefoth).

(18) V. supra 12a, a.l.

(19) I.e., forbidden.

(20) Lit., 'from another place'. I.e., when he wishes his vow to be annulled, the Rabbi, who must find for him some grounds of regret to invalidate his vow, must not do so by pointing out that such a vow is derogatory to his mother's dignity.

(21) His mother's honour is too easy a ground for regret, and if the vow is invalidated on that score it is an encouragement to make such vows lightly, since they can easily be annulled. The making of vows was discouraged: cf. 9a.

(22) And the vow would be binding.

Talmud - Mas. Nedarim 14a

that the positive may be inferred from the negative? But if R. Judah's, it is identical with the earlier Mishnah?[1] — Because he [the Tanna] teaches, 'AS THE FLESH OF THE SWINE, AS THE OBJECT OF IDOLATROUS WORSHIP,' he teaches hullin too.[2] Rabina said: This is what he teaches: NOW THESE ARE PERMITTED as [if he said WHAT I MIGHT EAT OF YOURS BE] HULLIN, VIZ., [IF ONE SAYS,] 'AS THE FLESH OF THE SWINE AS THE OBJECT OF IDOLATROUS WORSHIP'; and if HULLIN were not stated, I would have thought that absolution[3] is required But could I possibly think so? Since the last clause teaches: IF ONE SAYS TO HIS WIFE, 'BEHOLD! THOU ART UNTO ME AS MY MOTHER,' HE MUST BE GIVEN AN OPENING ON OTHER GROUNDS, it follows that in the first cause absolution is unnecessary? But it is clear that HULLIN is mentioned incidentally.

Whence do we know it?[4] — Scripture states, If a man vow a vow unto the Lord:[5] This teaches that one must vow by what is [itself] forbidden through a vow.[6] If so, even [if one vows] by a [Divinely] interdicted object too, since it is written, to bind his soul with a bond?[7] — That is necessary for what was taught: Which is the bond referred to in the Torah etc.[8]

HE WHO SAYS TO HIS WIFE, BEHOLD! THOU ART UNTO ME AS MY MOTHER', etc. But a contradiction is shewn: If one says to his wife, 'Behold! thou art unto me as the flesh of my mother, as the flesh of my sister, as 'orlah,[9] as kil'ayim[10] of the vineyard, his words are of no effect.[11] — Said Abaye: His words are of no effect by Biblical law, yet absolution is required by Rabbinical law. Raba answered: One refers to a scholar; the other refers to an 'am haarez.[12] And it was taught even so: If one vows by the Torah,[13] his words are of no effect. Yet R. Johanan commented: He must retract [his vow] before a Sage; while R. Nahman observed: A scholar does not need absolution.

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(1) Supra 10b.

(2) I.e., hullin is unnecessary in itself, but mentioned merely for the sake of completeness.

(3) Lit., 'a request' (for revocation).

(4) That these vows are not binding.

(5) Num. XXX, 3.

(6) Translating: if a man vow by referring to a vow.

(7) Ibid. This may also be interpreted: to bind his soul by that which is already a bond, vis. something Divinely interdicted.

(8) V. supra 12a.

(9) V. Glos.

(10) V. Glos. Deut. XXII, 9.

(11) Because all these objects are forbidden by the Law.

(12) Lit., 'people of the earth' — an ignoramus. v. J.E. s.v. In the first case the vow is entirely invalid; but an ignoramus

will treat vows too lightly if shewn leniency, and therefore needs absolution.
(13) (E.g., 'I vow by the Torah not to eat of this loaf' — in reality a kind of oath. V. infra (Ran).]

Talmud - Mas. Nedarim 14b

It was taught: If one vows by the Torah, his words are of no effect; by what is written therein, his vow is binding; by it and by what is written therein, his vow is binding. Since he states, 'by what is written therein, his vow is binding,' is it necessary to mention, 'by it and by what is written therein?' — R. Nahman answered: There is no difficulty: one means that a Torah is lying on the ground; the other, that [the vower] holds a Torah in his hand. If it is lying on the ground, his thoughts are of the parchment; if he holds it in his hand, his thoughts are of the Divine Names therein.[1] Alternatively, [both clauses mean] that it is lying on the ground, and we are informed this: even when it is lying on the ground, since he vows, 'by what is written therein,' his vow is valid;[2] and an anti-climax is taught.[3] A further alternative: the whole [Baraitha] indeed means that he holds it in his hand, and we are informed this:[4] Since he holds it in his hand, even if he merely says 'by it,' it is as though he said, 'by what is written therein'.[5]

MISHNAH. [IF ONE SAYS,] 'KONAM IF I SLEEP', 'IF I SPEAK', OR 'IF I WALK';[6] OR IF ONE SAYS TO HIS WIFE, 'KONAM IF I COHABIT WITH YOU,' HE IS LIABLE TO [THE INJUNCTION] HE SHALL NOT BREAK HIS WORD.[7]

GEMARA. It was stated: [If one says,] 'Konam be my eyes sleeping to-day, if I sleep to-morrow' — Rab Judah said in Rab's name: He must not sleep that day, lest he sleep on the morrow. But R. Nahman said: He may sleep on that day, and we do not fear that he may sleep on the morrow. Yet Rab Judah agrees that if one says, 'Konam be my eyes sleeping tomorrow, If I sleep to-day,' he may sleep that day;

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(1) The Heb. bamah shekathuw bah may mean either, by what is written therein, or, by that whereon it (the Law) is written. Now if the Scroll is lying on the ground, and one says, 'bamah shekathuw bah', we assume that he thought that it was a mere scroll not written upon, since it had been irreverently placed on the ground, and his words refer to the actual parchment, unless he says 'bah ubamah shekathuw bah', which can only mean by the scroll and by what is written therein. A reference to the parchment is invalid; to the Divine Names, is binding.
(2) I.e we assume the Heb. bamah shekathuw bah to bear that meaning, not, 'by that whereon it is written'.
(3) In the clause: 'By it and by what is is written therein.' Lit., 'this, and the other goes without saying'.
(4) Bah. [Cur. ed.: 'the whole also, the middle clause etc.'. Ran: 'the final clause informs us this'. All of which shows the text is in disorder. An attempt may he made to restore the text on the basis of MS.M. and Ran: 'The first clause (refers to the case) where it lies on the ground (MS.M.), the final clause (Ran) where he holds it in his hand (MS.M.). Such a text is also implied in the Ran on the passage.]
(5) I.e., bah u-bamah shekathuw bah are now translated 'by it or by what is written therein', the copulative sometimes meaning or. The text is not quite clear, that of the Ran has been adopted as giving the most plausible rendering.
(6) I.e., I am forbidden by a vow to sleep, etc. [Lit., 'konam be that which I sleep'. V. Laible, MGWJ. 1916, pp. 29ff'.]
(7) Num. XXX, 3.

Talmud - Mas. Nedarim 15a

a person may be lax with respect to a condition, but he is observant of an actual prohibition.[1] We learnt: [IF ONE SAYS,] 'KONAM IF I SLEEP, IF I WALK, IF I SPEAK, etc. How is it meant? If literally, 'if I sleep,' is such a vow valid? But it was taught: There is greater stringency in oaths than in vows, for oaths are valid with respect to things both abstract and concrete, but vows are not so; and sleep is an abstract thing! But if he said, 'Konam be my eyes sleeping,'[2] then, if he states no time-limit, is he permitted to go on until he violates the injunction, he shall not break his word?' But R. Johanan said: [If one says,] 'I swear not to sleep for three days', he is flagellated and may sleep

immediately.[3] But if it means that he says, 'Konam be my eyes sleeping tomorrow, if I sleep to-day[4] — surely you say that a person is observant in respect of an actual prohibition?[5] Hence it is obvious that he says, 'Konam be my eyes sleeping to-day, if I sleep tomorrow. Now, if he did not sleep that first day, how can the injunction, he shall not break his word[6] apply, even if he slept on the second? Hence it surely means that he did sleep, thus proving that he is permitted to do so. This refutes Rab Judah! When is this stated? If he happened to sleep on the first day.[7] Rabina said: After all, it is as taught,[8] yet how can he shall not break his word apply? — By Rabbinical law.[9] But can the Biblical injunction apply by Rabbinical law?[10] — Yes. Even as it was taught: Things which are permitted, yet some treat them as forbidden, you must not permit them in their presence, because it is written, he shall not break his word.[11]

We learnt: [If one says to his wife, 'Konam be] that which you benefit from me until Passover, if you go to your father's house until the Festival',[12] if she went before Passover, she may not benefit from him until Passover. Now, only if she went before Passover is she forbidden, but not otherwise?[13] — R. Abba answered: If she went before Passover, she is forbidden and is flagellated;[14] If she did not go, she is merely forbidden. Then consider the second clause: After Passover, she is subject to he shall not break his word. Now if she did not benefit before Passover, how can the injunction apply? Hence it is obvious that she did benefit, which proves that this is permitted,

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(1) Thus, where the second day is merely a condition for the first, we fear that even after having slept on the first, he may do so on the second too, hut where the second day is the subject of the actual vow, we do not fear that having slept on the first he will disregard the prohibition of the second.

(2) Since the konam falls upon the eyes, the vow is valid, eyes being concrete.

(3) Because it is impossible to keep awake three consecutive days. Therefore his oath is inherently vain (v. Shebu. 25a); hence he is punished, and the oath is invalid.

(4) It cannot mean that he simply said, 'konam be my eyes sleeping to-day', as in that case it is obvious; hence the stipulation must be assumed, and the meaning of the Mishnah will be that he must take heed not to sleep on the first day, lest he sleep on the second too, and thereby violate the injunction, for on any other meaning the Mishnah is superfluous.

(5) So there is no reason for refraining from sleeping that day, since he will observe his oath on the next.

(6) Num. XXX, 3.

(7) Despite the prohibition for which very reason he may not sleep on the first.

(8) Literally, viz., 'konam if I sleep'.

(9) Though by Biblical law the vow is invalid, since sleep is abstract, the Rabbis declared it binding, and therefore the injunction holds good.

(10) Lit., 'is there (the transgression) he shall not break in a Rabbinic (law)'.

(11) When one is accustomed to treat a thing as forbidden, it is as though it were subject to a vow. Thus, though the prohibitive force of custom is Rabbinical only, the Biblical injunction applies to it.

(12) 'The Festival', without any further determinant, always refers to Tabernacles, six months after Passover.

(13) Though the condition extends to Tabernacles, we do not fear that she may yet violate it after Passover: this refutes Rab Judah.

(14) If she benefits from him.

thus refuting Rab Judah! — [No.] That Mishnah teaches that if she benefited, she is involved in, 'he shall not break his word'.

We learnt: [If one says to his wife, 'Konam be] that which you benefit from me until the Festival, if you go to your father's house before Passover': if she goes before Passover, she may not benefit from him until the Festival, but is permitted to go after Passover. [Thus,] if she goes, she is forbidden, but not otherwise?[1] — Raba answered: The same law applies that even without going she is forbidden. But if she goes, she is forbidden [to benefit], and receives lashes [if she does]; if she

does not go, she is merely forbidden.

An objection is raised: [If he says,] 'This loaf [of bread be forbidden] to me to-day, if I go to such and such a place to-morrow: if he eats it, he is liable to an injunction, 'he shall not go'![2] — Does he [the Tanna] teach: he may eat it — [surely] he teaches, 'if he eats it' so that if he eats it he is under the injunction not to go.[3] [The Baraitha continues:] If he goes, he violates the injunction, he shall not break his word.[4] But there is no [clause] teaching that he goes [on the second day]: this contradicts Rab Judah![5] — R. Judah answers you: In truth, he could teach, he goes: but since the first clause teaches, 'if he eats', not being able to teach.'he eats'.[6] the second clause too teaches, 'if he goes

IF ONE SAYS TO HIS WIFE, KONAM IF I COHABIT WITH YOU.' HE IS LIABLE TO [THE INJUNCTION,] HE SHALL NOT BREAK HIS WORD. But he is obligated to her by Biblical law, as it is written, her food, her raiment, and her marriage rights he shall not diminish?[7] — It means that he vows, 'The pleasure of cohabitation with you be forbidden me': thus he surely denies himself the enjoyment of cohabitation.[8] For R. Kahana said: [If a woman says to her husband,] 'Cohabitation with me be forbidden to you,' she is compelled to grant it, since she is under an obligation to him. [But if she says,] 'The pleasure of cohabitation with you be forbidden me,' he is forbidden [to cohabit]. Since one may not be fed with what is prohibited to him.[9]

MISHNAH. [IF HE SAYS,] '[I SWEAR] AN OATH NOT TO SLEEP, OR, 'TALK,' OR, 'WALK,' HE IS FORBIDDEN [TO DO SO]. [IF HE SAYS,] 'A KORBAN BE WHAT I MIGHT NOT EAT OF YOURS,'[10] [OR] 'OH KORBAN! IF I EAT OF YOURS,' [OR] 'WHAT I MIGHT NOT EAT OF YOURS BE NOT A KORBAN UNTO ME,' HE IS PERMITTED [TO EAT OF HIS NEIGHBOURS'].

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(1) Though by going any time before Passover, subsequent to having benefited from her husband, the vow is violated. This contradicts Rab Judah.

(2) This too refutes Rab Judah, since he may eat the loaf on the first day.

(3) But actually this is forbidden.

(4) Num. XXX, 3.

(5) For if he may not eat the loaf on the first day. the Baraitha should teach such a clause on the assumption that he did not eat it.

(6) For it cannot be taught that he may eat — this being Rab Judah's opinion.

(7) Ex. XXI, 10. How then can he free himself by a vow?

(8) Hence his vow is valid, since it falls primarily upon himself.

(9) So here too. Where the husband or wife make a vow, depriving the other if his or her rights, it is invalid. But if the vow deprives its maker from the enjoyment of his or her privileges, it is valid, though the other is affected thereby too.

(10) An alternative is: 'By the sacrifice (i.e., I swear by the sacrifice) I will not eat of yours.' [On this interpretation, the declaration is a form of oath taken by the life of the korban which is not binding. V. supra 13a, (Ran).]

Talmud - Mas. Nedarim 16a

GEMARA. Whose view is taught in our Mishnah? — R. Meir's; for if R. Judah's, he recognises no distinction between a korban and Oh, korban.[1] Then consider the latter clause [IF HE SAYS,]. 'WHAT I MIGHT NOT EAT OF YOURS BE NOT A KORBAN UNTO ME,' HE IS PERMITTED. But we learnt: [If one says,] 'That which I might not eat of yours be not for a korban unto me': R. Meir forbids [him]. And R. Abba observed thereon: It is as though he said, 'let it [i.e., your food] be for a korban, therefore I may not eat of yours.[2] — There is no difficulty: in the latter case he said, 'le-korban' [for a korban]; but here [in our Mishnah] he said, 'la'-korban,'[3] which means: let it not be a korban. MISHNAH. [IF HE SAYS, 'I TAKE] AN OATH [THAT] I WILL NOT EAT OF YOURS,' [OR] 'OH OATH THAT[4] I EAT OF YOURS,' [OR 'I TAKE] NO OATH [THAT] I WILL NOT EAT OF YOURS,'[5] HE IS FORBIDDEN.

GEMARA. This proves that 'Oh oath that I eat of yours implies that I will not eat. Now this contradicts the following: Oaths are of two categories, which are extended to four, viz., '[I swear] that I will eat,' 'that I will not eat,' 'that I have eaten, 'that I have not eaten'.[6] Now, since he enumerates, 'that I will eat,' 'that I will not eat,' 'that I have eaten.' 'that I have not eaten, it follows that [the phrase,] 'that I eat of yours' implies, 'I will eat'? — Abaye answered: 'That I eat' has two meanings. If one was being urged to eat, and he replied: 'I will eat, I will eat, moreover. [I take] an oath that I eat,' it implies, 'I will eat.' But if he said, 'I will not eat, I will not eat,' and then added: '[I take] an oath that I eat,' it implies, 'I will not eat'.[7] R. Ashi answered: 'That I eat,' in connection with an oath,[8] really means that he [actually] said, 'I will not eat'.[9] If so, it is obvious: why state it? — I might think it is a mispronunciation[10] which caused him to stumble;[11] we are therefore taught [otherwise]. Abaye does not give R. Ashi's reason, because it is not stated, 'That I will not eat.' R. Ashi rejects Abaye's interpretation: he holds, 'that I will not eat' may also bear two meanings. [Thus:-] if one was being urged to eat, and he said, 'I will not eat, I will not eat, and then added, 'I [swear by] an oath', whether [he concluded] 'that I eat,' or, 'that I do not eat,' it implies, 'I will eat'. While the language, 'An oath that I will not eat,' may also be explained as meaning, 'I swear [indeed] that I will not eat.'[12] But the Tanna[13] states a general rule: she-'okel [always] means that I will eat, and she-lo 'okel, that I will not eat.[14] MISHNAH. IN THESE INSTANCES OATHS ARE MORE RIGOROUS THAN VOWS.[15] YET THERE IS [ALSO] GREATER STRINGENCY IN VOWS THAN IN OATHS. E.G., IF ONE SAYS, 'KONAM BE THE SUKKAH THAT I MAKE,' OR, 'THE LULAB THAT I TAKE, OR, THE TEFILLIN[16] THAT I PUT ON:' [WHEN EXPRESSED] AS VOWS THEY ARE BINDING, BUT AS OATHS THEY ARE NOT, BECAUSE ONE CANNOT SWEAR TO TRANSGRESS THE PRECEPTS.

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(1) This is argued from the fact the Mishnah does not include the form 'korban be what I might eat of yours', as permissible, as it does in the case of 'Oh, korban', which could be included according to R. Judah's opinion that the particle 'as' is necessary to render the oath binding, v. supra.

(2) Then why not assume the same here?

(3) So Ran. cur. edd. lo le-korban.

(4) V. Gemara.

(5) This even according to R. Meir, for the Talmud states (Shebu'oth 36a) that R. Meir holds that the positive may be inferred from the negative in oaths.

(6) The two categories are affirmative and negative oaths referring to the future, which are extended to include similar oaths in the past.

(7) The Heb. then means: 'I swear in this matter of eating' — viz., that I will not eat. [The whole turns on the meaning attached to שאוכל. The particle ש may denote 'that' or 'if' (or 'that which'). In the first instance, the circumstance favours the former interpretation: 'An oath that I eat', i.e., 'I swear that I eat'. In the latter, he probably meant: 'An oath if (or that which) I eat, i.e., 'I swear not to eat', (or, 'By oath be forbidden that which I eat); cf. Shebu. 19b.]

(8) I.e., the Mishnah, when employing this phrase in connection with oaths.

(9) I.e., the Mishnah merely indicates that his oath bore reference to eating, but actually it was a negative one.

(10) Lit 'a twisting of the tongue'.

(11) Saying she-i-'okel instead of she-'okel, the difference in Hebrew being very slight. — This answer, as well as the discussion supra et passim on le-korban and lo korban, implies that the vows and oaths, as hypothetically posited in the Mishnah, were actually taken in Hebrew, not in another language. Thus Hebrew was generally spoken when the Mishnah was composed, and the Hebrew employed in the Mishnah would appear a natural, not an artificial language. V. M.H. Segal, Mishnaic Hebrew Grammar, Introduction.

(12) The text is not quite clear, but the general meaning appears to be this: When he says, 'lo akilna, lo akilna (I will not eat),' he may mean it positively, 'I will certainly not eat'; when he further adds, 'I swear that I will eat (she-'okel)' or 'that I will not eat' he is strengthening his first statement, for 'I swear that I will eat (she-'ohel)' may mean, 'I swear in respect of this matter of eating'. On the other hand, his first words may mean, 'I will not eat'? — of course I will! Hence the subsequent oath confirms this, for 'I swear that I will not eat (she-lo 'okel)' may mean, 'An oath may be imposed upon what I will no eat, but not upon what I will eat.' Hence, if Abaye's explanation is correct, that the Tanna teaches

that she-'okel may imply a negative, he should also teach that she-lo 'okel may imply an affirmative. [MS.M. preserves a better reading: . . , if one was being urged to eat . . . whether (he concluded) 'that I eat' or 'that I do not eat' he means 'I shall not eat', while the language 'An oath that I will not eat' may be explained 'An oath that I do eat'. The meaning is thus clearer: When he first says 'I will not eat', his subsequent statement, whatever it is, will, on Abaye's explanation, be taken as confirming the first: If it is 'An oath that I eat' the particle ש (v. supra p. 43. n. 4) denotes 'if' or ('that which') and he means 'I swear I eat'; if it is 'An oath that I do not eat' the particle is simply taken in the sense of 'that'. And thus similarly on Abaye's view, the phrase 'that I do not eat' could also be explained in a positive sense: 'I swear. . . if I do not eat', viz., where it was preceded by the statement 'I will eat'. This however, is impossible, in view of the Mishnah in Shebu'oth, which draws a distinction between 'that I will eat' and 'that I will not eat' and not between the circumstances that produced the oath.]

(13) Of the Mishnah in Shebu'oth.

(14) Disregarding the special cases where the general tenor of a person's speech or the inflection of his voice reverses the literal meaning of his oath.

(15) Since the Mishnah (15b) states that a vow in these terms is not binding.

(16) V. Glos. for these words.

Talmud - Mas. Nedarim 16b

GEMARA. MORE RIGOROUS? That implies that they are [valid] vows;[1] but it is taught, He is permitted?[2] — This is taught in reference to the second clause of the other section: [viz.,] [If one says,] ['I swear] on oath not to sleep,' or, 'talk,' or 'walk,' he is forbidden [to do so]: IN THESE INSTANCES OATHS ARE MORE RIGOROUS THAN vows.[3]

YET THERE IS GREATER STRINGENCY IN VOWS THAN IN OATHS etc. R. Kahana recited, R. Giddal said in Rab's name, and R. Tabyomi recited, R. Giddal said in Samuel's name: Whence do we know that one cannot swear [a valid oath] to violate the precepts? Front the verse, When a man . . . swear an oath . . . he shall not break his word,'[4] [this implies,] he may not break his word,[5] but he must break a word [i.e., an oath] in respect of Heavenly matters.[6] Now, why are vows different: because it is written, When a man vow a vow unto the Lord . . . he shall not break his word?[7] But [of] oaths too it is written, or swear an oath unto the Lord he shall not break his word?[8] — Abaye answered: In that case [vows] one says: 'The pleasure of the sukkah be forbidden me';[9] but in this case [oaths] one says; 'I swear that I shall not benefit from the sukkah'.[10] Raba objected: Were the precepts then given for enjoyment?[11] But Raba answered: There [in the case of vows] one says, 'The sitting in the sukkah be forbidden me';[12] but here [oaths] one says, 'I swear not to sit in the sukkah'.

Now, do we learn that one cannot swear to transgress the precepts from this verse: do we not rather deduce it from elsewhere? For it was taught: If one swears to annul a precept, and does not, I might think that he is liable,[13]

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(1) Save that their binding character is not so rigid as that of oaths; but if not binding at all, the term is inapplicable.

(2) V. Mishnah 25b; that indicates that these vows are quite invalid.

(3) For as stated in the Mishnah on 14b, such vows are indeed binding, but as explained by Rabina (v. 15a), only by Rabbinical Law; whereas oaths of a similar nature are Biblically valid.

(4) Num. XXX, 3.

(5) I.e., when it refers to human, optional matters.

(6) I.e., when the subject of the vow is obligatory.

(7) Ibid. Implying that it is binding even when referring to Divine, non-optional matters. This is inferred by regarding unto (ל) as meaning against: i.e., when a man vows contrary to the Lord's precepts.

(8) Ibid. Not actually; but as to the Lord immediately precedes or swear an oath, it may he regarded as referring to it.

(9) Hence it is binding, as one may not coy that which he has vowed not to enjoy.

(10) I.e., the oath falls primarily upon the person. v. supra 2b; but one cannot free himself from a Biblical obligation.

(11) Technically speaking, one cannot be said to drive physical enjoyment from the fulfilment of a precept, and therefore a vow in these terms would not be binding. One's highest enjoyment should be in obedience to God's word. [Apart from its halachic implications, the object of this saying was to keep the ethical principle free from any admixture of the idea of utility V. Lazarus, M. Ethics of Judaism, I, p. 284.]
(12) Thus the vow falls upon the sukkah, which is rendered forbidden, and upon the person; therefore it is valid.
(13) For swearing falsely.

Talmud - Mas. Nedarim 17a

hence the Bible teaches, [or if a soul swear, pronouncing with his lips] to do evil, or to do good etc.:[1] just as doing good refers to something optional,[2] so doing evil refers [only] to something optional. This excludes one who swears to annul a precept, and did not annul it,[3] because it is not optional! — One verse is to exempt him from the sacrifice due for [violating] an oath, and the other is to exempt him [from punishment[4] for having violated] the injunction concerning an oath.

MISHNAH. A VOW WITHIN A VOW IS VALID,[5] BUT NOT AN OATH WITHIN AN OATH. E.G., IF ONE DECLARES, 'BEHOLD, I WILL BE A NAZIR IF I EAT [THIS LOAF].' 'I WILL BE A NAZIR IF I EAT [THIS LOAF],' AND THEN EATS [IT], HE IS LIABLE IN RESPECT OF EACH [VOW].[6] BUT IF HE SAYS, 'I SWEAR THAT I WILL NOT EAT [THIS LOAF],' 'I SWEAR THAT I WILL NOT EAT [THIS LOAF],' AND THEN EATS [IT], HE IS LIABLE [TO PUNISHMENT] FOR ONE [OATH] ONLY.

GEMARA. R. Huna said: This holds good only if one says, 'Behold, I will be a nazir to-day [if I eat this loaf]; I will be a nazir to-morrow [if I eat this loaf]', since an extra day is added, the [second] neziruth[7] is binding in addition to the first.[8] But if he says, 'Behold, I will be a nazir to-day, I will be a nazir to-day,' the second neziruth is not valid in addition to the first. But Samuel said: Even if one declares, 'Behold, I will be a nazir to-day, I will be a nazir to-day,' the second neziruth is binding. Now, according to R. Huna, [the Mishnah,] instead of teaching BUT NOT AN OATH WITHIN AN OATH, should teach, Sometimes A VOW WITHIN A VOW IS VALID, and sometimes not. [If one says,] 'Behold, I will be a nazir to-day; behold, I will be a nazir to-morrow,' the vow within the vow is binding. But if he says, 'Behold, I will be a nazir to-day, I will be a nazir to-day,'

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(1) Lev. V, 4.

(2) V. Shebu. Sonc. ed.) p. 147 for notes.

(3) Teaching that no penalty is incurred.

(4) [I.e., the penalty of lashed for transgressing 'he shall not break his word'. He is however lashed for uttering a vain oath; v. Shebu. 29a (Tosaf).]

(5) Lit., 'there is a vow within a vow'.

(6) And he must observe two periods of neziroth of thirty days each. This double vow relating to the same thing is called a vow within a vow.

(7) Abstract noun from nazir, 'naziriteship'.

(8) And the full statutory period of thirty days must be observed for the second neziruth.

Talmud - Mas. Nedarim 17b

the second is not binding?[1] — This is a difficulty.

We learnt: A VOW WITHIN A VOW IS VALID, BUT NOT AN OATH WITHIN AN OATH. How is this? shall we say that one declared, 'Behold, I will be a nazir to-day. Behold, I will be a nazir tomorrow':[2] then an analogous oath is: 'I swear not to eat figs. I swear not to eat grapes,' why should this second oath be invalid? But the invalidity of all oath within an oath arises thus: 'I swear not to eat figs, I swear not to eat figs.' Then an analogous vow in respect of neziruth is: 'Behold, I will be a nazir to-day; Behold, I will be a nazir to-day; and it is stated, A VOW WITHIN A VOW IS VALID. This refutes R. Huna? — R. Huna answers you: The Mishnah applies to one who said: 'Behold, I will be a nazir to-day. Behold, I will be a nazir to-morrow;'[3] and an analogous oath is: 'I swear not to eat figs I swear not to eat figs and grapes,'[4] the second oath being invalid. But did not Rabbah Say: [If one says,] 'I swear not to eat figs,' and then adds, 'I swear not to eat figs and grapes'; if he eats figs, sets aside [an animal for] a sacrifice and then eats grapes, the grapes constitute [only] half the extent [of his second oath],[5] and a sacrifice is not brought for [the violation

of] such. Front this we see that if one declares, ‘I swear not to eat figs,’ and then adds,’ I swear not to eat figs and grapes’: since the [second] oath is valid in respect of grapes, it is valid in respect of figs too? — R. Huna does not agree with Rabbah.

An objection is raised; If one made two vows of neziruth, observed[6] the first, set aside a sacrifice,[7] and then had himself absolved thereof [sc. the first vow], the second is accounted to him in [the observance of] the first.[8] How is this? Shall we say that he declared, ‘Behold, I will be a nazir to-day; Behold, I will be a nazir tomorrow’, why does the second replace the first; surely there is an additional day? But it is obvious that he said: ‘Behold, I will be a nazir to-day; Behold, I will be a nazir to-day.’

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(1) The point of the difficulty is that the Tanna should not draw a distinction between vows and oaths, when it can be drawn between vows themselves.

(2) The second vow being a real addition to the first.

(3) So that the second vow is identical with the first, save that a day is added.

(4) The second oath thus included the first, and added thereto.

(5) Which embraces grapes and figs.

(6) Lit., ‘counted’ — the days of his vow.

(7) Due on the expiration of neziroth.

(8) I.e., the term of neziroth already observed is accounted to the second view, since the first was revoked.

Talmud - Mas. Nedarim 18a

This contradicts R. Huna! — No. After all, [it means that he said,] ‘Behold, I will be a nazir to-day; Behold, I will be a nazir to-morrow; and how is it accounted to him? With the exception of that additional day. Alternatively, [it means], e.g that one undertook two periods of neziruth simultaneously.[1]

R. Hamnuna objected: To vow a vow of a Nazirite, declaring themselves it Nazirite [into the Lord]:[2] teaches hence [we learn] that neziruth falls upon neziruth.[3] For I would think, does it [the reverse] not follow a fortiori: If an oath, which is [more] stringent, is not binding upon another oath; how much more so neziruth, which is less rigorous![4] Therefore it is stated, ‘a nazirite, declaring himself a nazirite to the Lord’; from which [we learnt] that neziroth falls upon neziroth. Now how is this? Shall we say, that one said, ‘Behold, I will be a nazir to-day; Behold, I will be a nazir to-morrow, — is a verse necessary? But presumably it applies to one who said, ‘Behold, I will be a nazir to day, Behold, I will be a nazir to-day;’ and it is stated that the second [vow of] neziruth is binding in addition to the first?[5] — No. This refers to one who undertook two [periods of] neziruth simultaneously.

Now, wherein is an oath more rigorous than a vow? Shall we say in so far that it is applicable even to the abstract:[6] but a vow too is more stringent, since it is as valid in respect to a precept as in respect to anything optional?[7] — But it is because it is written in reference thereto, he shall not be held guiltless [that taketh my name in vain].[8]

BUT IF HE SAYS, ‘I SWEAR THAT I WILL NOT EAT [THIS LOAF],’ ‘I SWEAR THAT I WILL NOT EAT [THIS LOAF],’ AND THEN EATS IT, HE IS LIABLE [TO PUNISHMENT] FOR ONE [OATH] ONLY. Raba said: If he was absolved of the first, the second becomes binding. How is this deduced? Since it is not stated, It is only one [oath], but, HE IS LIABLE [TO PUNISHMENT] FOR ONE [OATH] ONLY: thus, there is no room for it;[9] but if the first is revoked, the second becomes binding. A different version [of Raba's dictum] is this: There is no penalty [for the second], yet it is an oath. For what purpose is it so?[10] — For Raba's dictum. For Raba said: If he was absolved of the first, the second takes its place. Shall we say that the following supports him: If

one made two vows of neziruth, observed the first, set aside a sacrifice, and was then absolved thereof, the second [vow] is fulfilled in [the observance of] the first?[11] — [No.] This refers e.g., to one who vowed two periods of neziruth simultaneously.[12]

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(1) Declaring. 'I vow two periods of neziroth'.

(2) Num. VI, 2.

(3) I.e., a vow of neziruth is binding upon one who is already a nazir, translating thus: . . . of a nazirite, when he is already a nazirite to the Lord.

(4) The greater stringency of oaths is explained below. To shew that the second is binding-surely it is obvious!

(5) This contradicts R. Huna.

(6) V. supra 13b, a.l.

(7) V. Mishnah on 16a.

(8) Ex. XX, 7.

(9) I.e., for the second to impose a penalty, since that is incurred on account of the first.

(10) Since he is not punished for violating the second, whilst he is already bound by the first, what does it matter whether we regard the second as an oath or not?

(11) This proves that the second is actually valid.

(12) Hence the second is binding; but if one declares, 'I swear not to eat this loaf, I swear not to eat this loaf', it may be that his second statement has no validity at all. For further notes on this passage v. Shebu. (Sonc. ed.) pp. 150ff.

Talmud - Mas. Nedarim 18b

MISHNAH. UNSPECIFIED VOWS ARE INTERPRETED STRICTLY, BUT IF SPECIFIED,[1] LENIENTLY. E.G., IF ONE VOWS, BEHOLD! THIS BE TO ME AS SALTED MEAT,' OR, 'AS WINE OF LIBATION': NOW, IF HE VOWED BY ALLUSION TO A PEACEOFFERING,[2] HE IS FORBIDDEN;[3] IF BY AN IDOLATROUS SACRIFICE, HE IS PERMITTED, BUT IF IT WAS UNSPECIFIED, HE IS FORBIDDEN. [IF ONE DECLARES], 'BEHOLD! THIS BE TO ME AS HEREM': IF AS A HEREM TO THE LORD,[4] HE IS FORBIDDEN; IF AS A HEREM TO THE PRIESTS, HE IS PERMITTED.[5] IF IT IS UNSPECIFIED, HE IS FORBIDDEN. 'BEHOLD! THIS BE TO ME AS TITHE': IF HE VOWED, AS CATTLE TITHES, HE IS FORBIDDEN; IF AS CORN TITHES, HE IS PERMITTED; IF UNSPECIFIED, HE IS FORBIDDEN.[6] 'BEHOLD! THIS BE TO ME AS TERUMAH';[7] IF HE VOWED, AS THE TERUMAH OF THE TEMPLE-CHAMBER,[8] HE IS FORBIDDEN; IF AS THE TERUMAH OF THE THRESHING-FLOOR [I.E., OF CORN]. HE IS PERMITTED;[9] IF UNSPECIFIED, HE IS FORBIDDEN: THIS IS THE VIEW OF R. MEIR. R. JUDAH SAID; AN UNSPECIFied REFERENCE TO TERUMAH IN JUDEA[10] IS BINDING, BUT NOT IN GALILEE, BECAUSE THE GALILEANS ARE UNFAMILIAR WITH THE TERUMAH OF THE TEMPLE-CHAMBER.[11] UNQUALIFIED ALLUSIONS TO HARAMIM IN JUDEA ARE NOT BINDING. BUT IN GALILEE THEY ARE, BECAUSE THE GALILEANS ARE UNFAMILIAR WITH PRIESTLY HARAMIM.[12]

GEMARA. But we learnt: A doubt in neziruth is treated leniently?[13] — R. Zera answered; There is no difficulty; This [our Mishnah] agrees with the Rabbis; the other, with R. Eliezer. For it was taught: If one consecrates [all] his beasts and his cattle,[14] the koy[15] is included. R. Eliezer said: He has not consecrated the koy.[16] He who maintains that one permits doubt to extend to his chattels,[17] maintains likewise that he permits it to extend to himself too.[18] But he who holds that one does not permit doubt to extend to his chattels, will maintain this all the more of one's own person.

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(1) After the vow is made in general terms (Ran).

(2) [Var. lec. 'TO HEAVEN', v. next note.]

(3) To benefit from the object of his vow — i.e., his vow is valid.

(4) Lit., 'of Heaven'. For 'Heaven' as a synonym of god cf. I Macc. III, 18 (though some ancient authorities read there

'the God of heaven'); Matt. XXI. 25; v. A. Marmorstein, The Old Rabbinic doctrine of God, I, pp. 14 and 105-106.
(5) That which was devoted (herem) to the Lord, i.e., to be utilized in or sold for Temple purposes, could not be redeemed, and hence was definitely forbidden for secular use (Lev. XXVII, 28); but if devoted to the priests. it might be so used once they had taken possession of it (Num. XVIII, 14); it is therefore regarded as permitted, and a reference to it in a vow has no validity.
(6) The cattle tithe had to be formally designated, hence it is regarded as humanly forbidden, and a reference to it is valid; but the corn tithe belonged automatically to the Levite, even if not formally designated; therefore it is regarded as Divinely forbidden; v. supra 13b.
(7) V. Glos.
(8) For congregational sacrifices; v. Shek. III. 2; IV. 1.
(9) V. p. 50. n. 8. The terumah of the Temple fund had to be formally designated, but that of corn was regarded as Divinely and automatically forbidden.
(10) I.e., the southern portion of Palestine.
(11) The Galileans, living at some distance from the Temple, did not think much about the Temple fund, consequently, when they spoke of terumah without any further qualification, they meant terumah if corn.
(12) As the priests lived mainly in Judea, priestly haramim were unusual in Galilee; hence a Divine Herem must have been meant.
(13) Toho. IV, 12. E.g., if one vows, 'Behold! I will be a nazir if the man who is just passing is one', and that person disappeared before it could be ascertained whether he was or not, the vow is not binding. This contradicts the Mishnah that an unspecified vow, the meaning of which is doubtful, is rigorously interpreted.
(14) So Rashi and Asheri. Ran: his beasts or his cattle; Tosaf. maintains that it refers to both cases The term 'cattle' (behemah) refers to domesticated animals; 'beasts' (hayyah) to wild or semi-wild animals.
(15) Probably a kind of bearded deer or antelope. It is doubtful whether this belongs to the genus of cattle or of beasts. This view is that the koy must be included in the one or the other. Or, according to the interpretation of the Ran, we are strict because of our doubt.
(16) Because his vow embraced animals of certain, but not of uncertain genus.
(17) I.e., in consecrating his cattle or his beasts, he meant it to include the lot, though aware that it is of doubtful genus.
(18) Thus, having subjected himself to an unspecified vow, his intention is that the most rigorous interpretation of his words shall apply.

Talmud - Mas. Nedarim 19a

Abaye said to him: How have you explained [the Mishnah] 'A doubt in neziruth is ruled leniently' — as being R. Eliezer's view? Then consider the latter clause: Doubtful first-borns, whether of man[1] or beast,[2] whether clean or unclean — the claimant must furnish proof [that they are first-borns].[3] And it was taught thereon: They may neither be sheared nor put to service![4] — He replied: Why do you compare innate sanctity[5] with man-made sanctity?[6] But if there is a difficulty, it is this: Doubtful fluids,[7] in respect of becoming unclean [themselves], are unclean; in respect of defiling others, they are clean:[8] this is R. Meir's view, and R. Eliezer agreed with him. But is it R. Eliezer's opinion that in respect of becoming unclean [themselves] they are unclean? But it was taught, R. Eliezer said: Liquids have no uncleanness at all [by Scriptural law]; the proof is that Jose b. Joezer of Zeredah[9] testified[10] that the stag locust[11] is clean [i.e., fit for food], and that the fluids[12] in the [temple] slaughter-house are clean?[13] Now, there is no difficulty according to Samuel's interpretation that they are clean [only] insofar that they cannot defile other liquids, but that nevertheless they are unclean in themselves; but according to Rab, who maintained that they are literally clean [even in respect of themselves], what can be said?[14] But [answer thus]: One [the Mishnah in Toharoth] teaches R. Judah's view; the other [our Mishnah] gives R. Simeon's. For it was taught: [If one says,] 'Behold! I will be a nazir,' if this stack contains a hundred kor,'[15] and he goes and finds it stolen or destroyed: R. Judah ruled that he is not a nazir: R. Simeon, that he is.[16]

Now, R. Judah is self-contradictory. Did he say that one does not place himself in a doubtful position?[17] Then a contradiction is shewn: R. JUDAH SAID: AN UNSPECIFIED REFERENCE TO

TERUMAH IN [JUDEA IS BINDING, BUT NOT IN GALILEE, BECAUSE THE GALILEANS ARE UNFAMILIAR WITH THE TERUMAH OF THE TEMPLE-CHAMBER. Thus the reason is that they are unfamiliar,

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(1) If, e.g., a woman gave birth to twins, a male and a female, and it is not known the head of which appeared first (this being legally regarded as birth). If of the male, he is a firstborn; but if of the female, the male is not a first-born even if he subsequently issued first.

(2) If, e.g., two cows calved, one a male and one a female, one a firstling and one not; and it is not known whether the male is the firstling. Only male firstlings belong to the priest.

(3) I.e., if the priest claims the firstling or redemption money for the first-born.

(4) Just as certain firstlings. (v. Deut. XV, 19). How then can this be the view of R. Eliezer, who holds that when in doubt the animal is not regarded as consecrated?

(5) Lit., 'sanctity that comes of itself', v. B.M. (Sonc. ed.) pp. 26ff.

(6) In the former case a rigorous view is naturally taken. But when man consecrates, he has in mind only that which certainty comes within the terms of his consecration.

(7) E.g., if an unclean person, whose touch defiles liquids. put his hand into a vessel, and it is not known whether he actually touched the liquid there or not.

(8) They do not defile them.

(9) I Kings XI, 26.

(10) On the historic occasion, when as a result of a dispute between R. Gamaliel and R. Joshua, the former was temporarily deposed from the Patriarchate, and R. Eliezer b. 'Azariah appointed in his stead. An examination was then made of scholars' traditions, which were investigated and declared valid or otherwise, v. 'Ed. (Sonc. ed.) Introduction, XI.

(11) Heb. Ayil, of doubtful meaning.

(12) The flow of blood and water.

(13) Even by Rabbinical law. Since the general uncleanliness of liquids is rabbinical only, it was not imposed upon liquids in the temple slaughter house, so as not to defile the flesh of sacrifices. The language of this testimony is Aramaic, whereas all other laws in the Mishnah are couched in Hebrew. Weiss, Dor, I, 105, sees in this a proof of its extreme antiquity; v. A.Z. (Sonc. ed.) pp. 181ff for further notes.

(14) It may appear that this difficulty arises in any case. But if the Mishnah, 'an uncertain vow of neziruth', is not R. Eliezer's ruling, it can be answered that though the entire law of the uncleanness of liquids is rabbinical only, he is nevertheless stringent in a case of doubt. But if the Mishnah agrees with R. Eliezer, so that though neziruth and vows in general are Biblically binding, he is lenient in case of doubt, how can he treat liquids strictly, when the law is merely rabbinical?

(15) A measure of capacity: 36.44 litres in dry measure; 364.4 litres in liquid measure. J.E. 'Weights and Measures'.

(16) Lit., 'R. Judah permits. R. Simeon forbids'.

(17) I.e., he meant to be a nazir only if it certainly contained that measure.

Talmud - Mas. Nedarim 19b

but if they were familiar [therewith], it would be binding?[1] — Raba answered: In the case of the stack he holds that since doubt is graver than certainty, one will not put himself into that doubtful position. For if he is a certain nazir, he may shave[2] and offer his sacrifice, which may be eaten, but if he is a doubtful nazir, he may never shave.[3] R. Huna b. Judah asked Raba; But what if he said, 'Behold! I will be a lifelong nazir'?[4] He replied; Even then, a lifelong nazir, his doubt is graver than his certainty; for a certain nazir lightens the burden of his hair and offers three animals,[5] but not so a doubtful nazir. But what if he said, 'Behold! I will be a Samson nazirite'?[6] — He replied: A Samson nazirite was not included.[7] Said he to him: But R. Adda b. Ahabah said: A Samson Nazirite was taught?[8] He replied; If it was taught, it was taught.[9]

R. Ashi said: That [the Mishnah in Toharoth] gives the view of R. Judah quoting R. Tarfon.[10] For it was taught: R. Judah said on the authority of R. Tarfon: Neither is a nazir, because neziroth must

be expressed with certainty.[11] If so, why particularly if the stack was stolen or destroyed?[12] — To shew how far-reaching is R. Simeon's view, that even if it was stolen or destroyed, he still maintains that one places himself in a doubtful position.

R. JUDAH SAID: AN UNSPECIFIED REFERENCE TO TERUMAH IN JUDEA etc. But if they were familiar therewith, it would be binding, which shews that the doubt is ruled stringently. Then consider the last clause: UNQUALIFIED ALLUSIONS TO HARA MIM IN JUDEA ARE NOT BINDING BUT IN GALILEE THEY ARE, BECAUSE THE GALILEANS ARE UNFAMILIAR WITH PRIESTLY HARAMIM. But if they were familiar, they would be invalid: thus in doubt we are lenient? — Abaye answered: The last clause is the view of R. Eleazar b. R. Zadok. For it was taught: R. Judah said: An unspecified [reference to] terumah in Judah is binding. R. Eleazar son of R. Zadok said: unspecified [references to] haramim in Galilee are binding.

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(1) Though it would still be doubtful to which he referred.

(2) On the expiration of his term of neziroth.

(3) Because this must follow his sacrifices. But being a doubtful nazir, he cannot offer any at all, lest he be not one, in which case the animal, having been wrongfully designated as a nazir's sacrifice, is hullin (q.v. Glos.), which may not be brought to the Temple Court.

(4) Here the doubt cannot he more stringent than the certainty, as the term never expires, and since R. Judah draws no distinction in neziroth, his ruling must apply even to such.

(5) V. Nazir, 4.

(6) V. ibid. In which case his hair may never be cut.

(7) The term nazir may include a lifelong nazir, but not a Samson nazir, which would require special mention.

(8) [I.e., that R. Judah declares that he is not a nazir even in the case of a Samson nazirite vow (Ran).]

(9) I cannot answer it.

(10) But not his own view.

(11) This refers to the following case: If two persons were walking together, and one said: 'I will be a nazir, if the man who is coming towards us is one'; whereupon the other said: 'I will be a nazir if he is not', the vow is binding upon neither, because of the element of doubt in each when it was made, v. Naz. 34a.

(12) Even if the stack is intact and contains the stipulated measure, the vow of neziruth is invalid, since when it was taken it was unknown.

Talmud - Mas. Nedarim 20a

MISHNAH. IF ONE VIEWS BY HEREM,[1] AND THEN SAYS, 'I VOWED ONLY BY A FISHING NET',[2] BY KORBAN, AND THEN SAYS, I VOWED ONLY BY ROYAL GIFTS',[3] [IF HE SAYS] BEHOLD! [I MYSELF] 'AZMI BE A KORBAN',[4] AND THEN STATES. 'I VOWED ONLY BY THE EZEM [BONE] WHICH I KEEP FOR THE PURPOSE OF VOWING';[5] [IF ONE SAYS,] 'KONAM BE ANY BENEFIT MY WIFE HAS OF ME, AND THEN DECLARES, I SPOKE ONLY OF MY FIRST WIFE, WHOM I HAVE DIVORCED (IF NONE OF THESE [VOWS] DO THEY REQUIRE TO SEEK ABSOLUTION.[6] BUT IF A REQUEST FOR ABSOLUTION IS PREFERRED, THEY ARE PUNISHED AND TREATED STRICTLY: THIS IS THE VIEW OF R. MEIR, BUT THE SAGES SAY: THEY ARE GIVEN AN OPENING [FOR REGRET] (IN OTHER GROUNDS.[7] AND THEY ARE ADMONISHED SO THAT THEY DO NOT TREAT VOWS WITH LEVITY.

GEMARA. This is self-contradictory: You say, OF NONE OF THESE VOWS DO THEY REQUIRE TO SEEK ABSOLUTION; and then you continue: IF A REQUEST FOR ABSOLUTION IS PREFERRED, THEY ARE PUNISHED AND TREATED STRICTLY?[8] — Said Rab Judah, This is its meaning; OF NONE OF THESE VOWS DO THEY REQUIRE TO SEEK ABSOLUTION. This applies however only to a scholar;[9] and when 'am ha-arez[10] applies for absolution, he is punished and treated strictly. Now 'TREATED STRICTLY' is well: it means that

we do not suggest an opening for regret.[11] But how are they punished? — As it was taught: If one vowed neziroth and then violated his vow: his case is not examined unless he observes his vow for the full period that he had violated it: this is the view of R. Judah. R. Jose said: This applies only to short neziroth [i.e., thirty days]; but in the case of a long period of neziroth, thirty days are sufficient.[12] R. Joseph said: Since the Rabbis have decreed, his case is not to be examined, if a Beth din[13] does attend to it [before time], it does not act right [and must be reprimanded]. R. Aha b. Jacob said: It is banned.[14]

BUT THE SAGES SAY: THEY ARE GIVEN AN OPENING [FOR] REGRET etc. It was taught: Never make a practice of vowing, for ultimately you will trespass in the matter of oaths,[15] and do not frequent an 'am ha-arez, for eventually he will give you tebalim;[16] and do not associate with a priest, an 'am ha-arez, for ultimately he will give you terumah to eat;[17] and do not converse much with women, as this will ultimately lead you to unchastity.[18] R. Aha of the school of[19] R. Josiah said: He who gazes at a woman eventually comes to sin, and he who looks even at a woman's heel will beget degenerate children. R. Joseph said: This applies even to one's own wife when she is a niddah.[20] R. Simeon b. Lakish said: 'Heel' that is stated means the unclean part, which is directly opposite the heel.

It was taught: [And Moses said unto the people, fear not: for God is come to prove you,] that his fear may be before your faces:[21] By this is meant shamefacedness; that ye sin not[22] — this teaches that shamefacedness leads to fear of sin: hence it was said[23] that it is a good sign if a man is shamefaced.[24] Others say: No man who experiences shame[25] will easily sin; and he who is not shamefaced — it is certain that his ancestors were not present at Mount Sinai.

R. Johanan b. Dahabai said: The Ministering Angels told me four things: People are born lame because they [sc. their parents] overturned their table [i.e., practised unnatural cohabitation]; dumb, because they kiss 'that place'; deaf, because they converse during cohabitation; blind, because they look at 'that place'. But this contradicts the following: Imma Shalom[26] was asked: Why are

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(1) Viz., 'This be herem unto me'.

(2) Herem meaning net too; i.e., 'I did not vow at all'.

(3) Korban meaning an offering, and hence applicable to gifts or tribute to the king.

(4) Implying that he had consecrated himself to the Lord and needed redemption; v. Lev. XXVII, 1-8. (Rashi). [Or: May I myself be forbidden to you as korban (Ran).]

(5) [In order to give the impression to the hearer that I am making a vow.]

(6) Being invalid, according to the meaning assigned to them.

(7) Lit., 'from another place'. I.e., they cannot obtain absolution on the plea that thy had attached an unusual significance to their words, for the phrase cf. supra 13b.

(8) The first implies that they are altogether invalid, whereas the second implies that they are valid vows.

(9) Who is careful about making vows.

(10) V. Glos.

(11) When one desired absolution, the Rabbi usually suggested grounds for granting it; here, however, such aid was to be withheld.

(12) E.g., if he had vowed to be a nazir a hundred days, violated his vow for fifty days, and then desired absolution, it is enough to observe thirty days only, and then he is absolved. Here too he is punished in this way.

(13) Lit., 'house of law': Jewish court of law. Any three persons could constitute themselves a Beth din, by request, and it is to such a constituted body of laymen that this dictum probably refers. [Absolution could he granted either by one Rabbi or by three laymen; infra.]

(14) On the term used shamta, v. supra p. 17, n. 2.

(15) Which are more stringent.

(16) Tebel, pl. tebalim, produce from which no tithes have been set aside.

(17) According to this reading the exhortation is to a zar. The Ran however reads: 'unclean terumah', which was

forbidden even to a priest, in which case the exhortation is to a priest.

(18) The present statement is not meant to be derogatory to women, who were held in high esteem, but conditioned by the prevailing laxity in sexual matters which characterised many of the ancient peoples. V. Herford Talmud and Apocrypha, pp. 163ff.

(19) Berabbi or Beribbi is a contraction of Be Rab, belonging to the school of an eminent teacher (Jast.).

(20) A woman during her period of menstruation and seven days following.

(21) Ex. XX, 17.

(22) Ibid.

(23) This indicates a very ancient tradition; v. Frankel, Z.: Darke ha-Mishnah, p. 305; Bacher, Tradition und Tradenten, pp. 160, 171 seqq.

(24) Cf. Yeb. 79a, where a sense of shame is said to be one of the characteristics of the Jew; also Ab. V, 20, where 'shamefacedness' is contrasted with 'bold-facedness', i.e., impudence or insolence.

(25) I.e., who is not hardened or callous, but feels humiliated when he does wrong.

(26) The wife of R. Eliezer b. Hyrkanos, a sister of Gamaliel II.

Talmud - Mas. Nedarim 20b

thy children so exceedingly beautiful? She replied: [Because] he [my husband] 'converses' with me neither at the beginning nor at the end of the night, but [only] at midnight; and when he 'converses', he uncovers a handbreadth and covers a hand breadth, and is as though he were compelled by a demon. And when I asked him, What is the reason for this [for choosing midnight], he replied, So that I may not think of another woman,[1] lest my children be as bastards.[2] — There is no difficulty: this refers to conjugal matters;[3] the other refers to other matters.

R. Johanan said: The above is the view of R. Johanan b. Dahabai; but our Sages said: The halachah is not as R. Johanan b. Dahabai, but a man may do whatever he pleases with his wife [at intercourse]: A parable; Meat which comes from the abattoir, may be eaten salted, roasted, cooked or seethed; so with fish from the fishmonger.[4] Amemar said: Who are the 'Ministering Angels'? The Rabbis. For should you maintain it literally, why did R. Johanan say that the halachah is not as R. Johanan b. Dahabai, seeing that the angels know more about the formation of the fetus than we? And why are they designated 'Ministering Angels'? — Because they are as distinguished as they.[5]

A woman once came before Rabbi and said, 'Rabbi! I set a table before my husband, but he overturned it.' Rabbi replied: 'My daughter! the Torah hath permitted thee to him — what then can I do for thee?' A woman once came before Rab and complained. 'Rabbi! I set a table before my husband, but he overturned it.' Rab replied; Wherein does it differ from a fish?[6]

And that ye seek not after your own heart.[7] [Deducing] from this Rabbi taught: One may not drink out of one goblet and think of another.[8] Rabina said: This is necessary only when both are his wives.

And I will purge out from among you the rebels, and them that transgress against me.[9] R. Levi said: This refers to children belonging to the following nine categories: children of fear,[10] of outrage, of a hated wife, one under a ban,[11] of a woman mistaken for another,[12] of strife,[13] of intoxication [during intercourse], of a mentally divorced wife,[14] of promiscuity, and of a brazen woman.[15] But that is not so: for did not R. Samuel b. Nahmani say in the name of R. Jonathan: One who is summoned to his marital duty by his wife will beget children such as were not to be found even in the generation of Moses? For it is said, Take you wise men, and understanding [and known among your tribes, and I will make them rulers over you];[16] and it is written, So I took the chiefs of your tribes, wise men and known[17] but 'understanding' is not mentioned.[18] But it is also written, Issachar is a large-boned ass;[19] whilst elsewhere it is written, And of the children of Issachar, which were men that had understanding of the titles?[20] — [It is virtuous] only when the wife ingratiates herself [with her husband].[21]

CHAPTER III

MISHNAH. FOUR TYPES OF VOWS HAVE THE SAGES INVALIDATED;[22] VIZ., VOWS INCENTIVE, VOWS OF EXAGGERATION, VOWS IN ERROR, AND VOWS [BROKEN] UNDER PRESSURE.[23] VOWS INCENTIVE: E.G., IF ONE WAS SELLING AN ARTICLE AND SAID, KONAM THAT I DO NOT LET YOU HAVE IT FOR LESS THAN A SELA''; AND THE OTHER REPLIED, KONAM THAT I DO NOT GIVE YOU MORE THAN A SHEKEL —

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(1) At the beginning of the night women are still going about in the streets; at the end, before morning, they are abroad again.

(2) Figuratively, of course. This shews that they did converse.

(3) That are permitted.

(4) [This parable serves to express the absence of reserve that may characterise the mutual and intimate relationship of husband and wife without offending the laws of chastity.]

(5) Rashi (in Kid. 71a): they are distinguished in dress, being robed in white and turbaned; cf. passage a.l.: Shah. 25b.

(6) V. supra.

(7) Num. XV, 39.

(8) Whilst cohabiting with one woman to think of another.

(9) Ezek. XX, 38.

(10) When a husband imposes himself upon his wife by force; Asheri reads: children of a maidservant (אמה instead of אימה); v. MGWJ 1934 p 136. n. 1.

(11) A person under a ban was forbidden to cohabit.

(12) Having intended to cohabit with one of his wives, he cohabited with another.

(13) Not a hated wife, but one with whom he had just then quarrelled.

(14) I.e., when her husband has decided to divorce her.

(15) One who openly demands her conjugal rights.

(16) Deut. I. 13.

(17) Ibid. I, 15.

(18) The Heb. נבונים is here taken to denote the highest degree of wisdom — but such could not be found.

(19) Gen. XLIX, 14; cf. Gen. XXX. 16-18. The allusion is to the legend that Leah heard the braying of Jacob's ass, and so came out of the tent and said to Jacob, thou must come in unto me. She had thus demanded her conjugal rights.

(20) I Chron. XII. 33; though such men were not to be found in the days of Moses. This was Leah's reward, thus proving that it is meritorious for a woman to demand her rights.

(21) She may shew her desires, as did Leah, who merely invited Jacob into her tent, but not explicitly demand their gratification.

(22) Lit., 'permitted'.

(23) This is explained infra 27a.

Talmud - Mas. Nedarim 21a

BOTH ARE AGREED UPON THREE DENARII.[1]

GEMARA. FOUR VOWS HAVE THE RABBIS INVALIDATED etc. R. Abba b. Memel said to R. Ammi: You have told us in the name of R. Judah Nesi'ah:[2] Which Tanna holds this view? — R. Judah, who said on the authority of R. Tarfon: Neither is a nazir, because neziroth must be expressed with certainty.[3] Raba said: You may even say, The Rabbis. Does the Mishnah teach, both [subsequently] agreed — it teaches, BOTH ARE AGREED.[4]

Rabina asked R. Ashi: If he demanded more than a se'ah, and the other offered less than a shekel[5] is it a [valid] vow, or still a matter of incitement?[6] — He replied. We have learnt this. If one was urging his neighbour to eat in his house, and he answered: 'Konam if I enter your house,' or 'if I

drink a drop of cold water', he may enter his house and drink cold water, because he only meant eating and drinking in general.[7] But why? Did he not state, a drop of cold water? Hence this is the usual manner of speech.[8] Thus here too: this is the usual manner of speech![9] — He said to him:

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(1) A sela' _ two shekels _ four denarii.

(2) R. Judah, the Prince II.

(3) 19b. Thus here too, in the case of the incentive vow, since the two parties are dependent upon another, the vow is invalid.

(4) Thus, neither meant the vow seriously at all; but the conditional vow of neziroth was really meant.

(5) [I.e., the vendor demanded a sela' and a perutah (v. Glos.) and the buyer offered a shekel minus a perutah (Ran).]

(6) Since each was so exact, it may be that the sum was literally meant by both, and the vow likewise.

(7) But did not intend his words literally.

(8) For emphasis stating 'a drop of water', when in reality something substantial was meant.

(9) For emphasis: but neither meant his words literally, hence the vow is invalid.

Talmud - Mas. Nedarim 21b

How compare? In the case of cold water, 'the righteous promise little and perform much';[1] but here, It is really doubtful whether he [the vendor] implied that he would take less than a sela', and [the buyer] that he would give more than a shekel,[2] and it is [a vow of] incitement, or perhaps, each spoke literally, and it is a valid [vow]? This problem remains unsolved.

Rab Judah said in R. Assi's name: For these four vows [formal] absolution must be sought from a Sage. When I stated this before Samuel, he observed: The Tanna teaches, FOUR VOWS HAVE THE SAGES INVALIDATED,[3] yet you say. absolution must be sought from a Sage! R. Joseph reported this discussion in the following version: Rab Judah said in R. Assi's name: A Sage may remit only such [vows] as are similar to these four. Thus in his view mere regret is not given as an opening [for absolution].[4] A man once came before R. Huna [for absolution]. He asked him: 'Are you still of the same mind?' and he replied 'No!' Thereupon he absolved him. A man once came before Rabbah son of R. Huna, who asked him: 'Had ten men been present to appease you just then, would you have vowed?' On his replying 'No!' he absolved him. It was taught: R. Judah said: We ask him, 'Are you still of the same mind?' If he answers, No!' he is absolved. R. Ishmael son of R. Jose said on his father's authority: We say to him: 'Had ten men been present to appease you just then, would you have vowed?' If he replies in the negative, absolution is granted.

(Mnemonic: Assi and Eleazar, Johanan and Jannai).[5]

A man once came before R. Assi. He asked him: 'Do you now regret [that you ever vowed]?' and he replied, 'Do I not?' Thereupon he absolved him.[6] A man once came before R. Eleazar. He said to him, 'Do you desire your vow?'[7] 'He replied: 'Had I not been provoked, I certainly would not have desired aught.' 'Let it be as you wish,' answered he. A woman who had subjected her daughter to a vow[8] came before R. Johanan. Said he to her, 'Had you known that your neighbours would say of your daughter,

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(1) When the would-be host urged him to partake just a little, he understood that a full meal was intended, and therefore made the vow in the terms he did, meaning, however, to debar himself only from a substantial meal.

(2) Both intending to compromise on three denarii.

(3) I.e., they have no binding power at all.

(4) A definite reason for absolution is necessary, based on a fact which was unknown when the vow was made; consequently, it may be regarded as having been made in error. But if the only reason for cancellation is that the vower regrets it, absolution cannot be granted, v. infra 77b.

(5) A mnemonic is a short phrase or a string of words or letters each consisting of catchwords of statements or incidents,

strung together as an aid to the memory.

(6) (He holds that mere regret is accepted as ground for revoking a vow, contrary to the view of Rab Assi in the name of Rab Judah, the author of this ruling here being Rabbi Assi, a Palestinian Amora as distinct from the former, who was a Babylonian. (Ran).]

(7) Ran: I.e., have you no regret that you ever made the vow except that you wish that it be no longer valid from now, in which case absolution cannot be granted. Rashi: 'Did you fully desire to vow, i.e., were you calm and composed, vowing with full deliberation' this seems more plausible.

(8) Not to benefit from her mother.

Talmud - Mas. Nedarim 22a

"If her mother had not seen something shameful[1] in her [behaviour], she would not have put her under a vow without cause" — would you have vowed?' On her replying in the negative, he absolved her. The grandson of R. Jannai the Elder[2] came before him Said he to him, 'Had you known that [when you vow] your ledger[3] is opened [in heaven] and your deeds examined — would you have vowed?' On his giving a negative reply, he absolved him R. Abba said: Which verse [teaches this]? After vows cometh examination.[4] But though R. Jannai proposed this as a ground for absolution, we may not do so.[5] Nor do we suggest the following, which Rabbah b. Bar Hanah related in R. Johanan's name: What opening did R. Gamaliel give to a certain old man? Thee is that speaketh like the piercings of a sword, but the tongue of the wise is health.[6] He who speaketh [a vow] is worthy of being pierced by the sword, but that the tongue of the wise [i.e., absolution] health. Nor do we suggest the following, viz., what was taught, R. Nathan said: One who vows is as though he built a high place,[7] and he who fulfils it is as though he sacrificed thereon. Now the first [half] may be given as an opening,[8] but as for the second, Abaye maintained: We suggest [it]; Raba said: We do not suggest [it]. This is the version of the discussion as recited by R. Kahana. R. Tabyomi reported it thus: We may not suggest the latter half;[9] but as for the first, — Abaye maintained: We suggest [it]; Raba said: We do not. The law is that neither the first [half] nor the second may be proposed.

Nor do we suggest the following dictum of Samuel, Viz., Even when one fulfils his vow he is called wicked. R. Abba said: Which verse [teaches this]? But if thou shalt forbear to vow, it shall be no sin in thee.[10] And [the meaning of] forbearance is learnt from forbearance as expressed elsewhere. Here it is written, But if thou shalt forbear to vow, and there it is written, There the wicked forbear from insolence.[11] R. Joseph said: We too have learnt so. [If one says:] 'As the vows of the righteous,' his words are of no effect. [But if he says:] 'As the vows of the wicked,' he has vowed in respect of a nazirite vow and a sacrifice.[12]

R. Samuel b. Nahmani said in the name of R. Jonathan: He who loses his temper is exposed to all the torments of Gehenna,[13] for it is written, Therefore remove anger from thy heart,' thus wilt thou put away evil from thy flesh.[14] Now 'evil' can only mean Gehenna, as it is written, The Lord hath made all things for himself yea, even the wicked for the day of evil.[15] Moreover, he is made to suffer from abdominal troubles, as it is written, But the Lord shall give thee there a trembling heart, and failing of eyes, and sorrow of mind.[16] Now what causes failing eyes and a sorrowful mind? Abdominal troubles.

When 'Ulla went up to Palestine,[17] he was joined by two inhabitants of Hozai,[18] one of whom arose and slew the other. The murderer asked of 'Ulla: 'Did I do well?' 'Yes,' he replied; 'moreover, cut his throat clean across.'[19] When he came before R. Johanan, he asked him, 'Maybe, God forbid, I have strengthened the hands of transgressors?' He replied, 'You have saved your life.'[20] Then R. Johanan wondered: The Lord shall give them there an infuriated heart[21] refers to Babylon?[22] 'Ulla replied, 'We had not yet

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(1) Lit., 'something best left alone'.

(2) Lit., ‘the son of the daughter’. Var. lec.: Jannai Rabbah, the Great. He was a Palestinian amora of the first generation (second and third generation); to be distinguished from Jannai the Younger, a Palestinian amora of the fourth generation.
(3) The notion that there is a Heavenly ledger in which man's doings are recorded (cf. Aboth, III, 20) is probably connected with the idea of the Book of Life, in which are inscribed on the Judgment Day of New Year those who are to be granted life for the ensuing year (cf R.H. 15b). The Sefer Hasidim (13th century) observes that God is in no need of a book of records: ‘the Torah speaks the language of man’, i e.. figuratively. Cf Aboth, (Sonc. ed .) p. 12, n. 9.
(4) Prov. XX, 25.
(5) Because it terrifies one too much, and makes him ready to express a regret which he may not feel.
(6) Ibid. XII, 18.
(7) For sacrifice — this being forbidden since the building of Solomon's Temple.
(8) Merely building a high place without sacrificing is not so heinous all offence, and therefore the suggestion is not so terrifying.
(9) All agreeing that it is too frightening.
(10) Deut. XXIII, 23.
(11) Job III, 17. Thus forbearing being employed of the wicked in the latter verse, its use in the former shews that he who vows is also so dubbed.
(12) Supra 9a.
(13) V. p. 19, n. 6.
(14) Ecc. XI, 10.
(15) Prov. XVI, 4. This is understood to mean Gehenna.
(16) Deut. XXVIII, 65.
(17) ‘Ulla was a Prominent Palestinian amora of the latter part of the third century and the beginning of the fourth. He frequently visited Babylonia, in pursuance of the general policy of maintaining intellectual intercourse between these two great centres, and his learning was very highly esteemed there; Bacher, Ag. Bab. Amor. pp. 93-97.
(18) [Or Be'Hozae, the modern Khuzistan, province S.W. Persia, Obermeyer, Die Landschaft Babylonien, pp. 204ff.]
(19) Fearing that disapproval would endanger his own life; moreover, he wished to hasten his death.
(20) The action was excusable, being in self-defence.
(21) Ibid.
(22) How then could one Jew become so angry with another in Palestine as to slay him?

Talmud - Mas. Nedarim 22b

crossed the Jordan [into Palestine].’

Rabbah son of R. Huna said: He who loses his temper, even the Divine Presence is unimportant in his eyes, as it is written, The wicked, through the pride of his countenance, will not seek God,’ God is not in all his thoughts.[1] R. Jeremiah of Difti[2] said: He forgets his learning and waxes ever more stupid, as it is written, For anger resteth in the bosom of fools;[3] and it is written, But the fool layeth open his folly.[4] R. Nahman b. Isaac said: It is certain that his sins out number his merits, as it is written, And a furious man aboundeth in transgressions.[5]

R. Adda son of R. Hanina said: Had not Israel sinned, only the Pentateuch and the Book of Joshua would have been given them, [the latter] because it records the disposition of Palestine [among the tribes].[6] Whence is this known? For much wisdom proceedeth from much anger.[7]

R. Assi said: Absolution is not granted for[8] [a vow in the name of] the God of Israel, except [the following]: ‘Konam be any benefit [by the God of Israel] my wife has of me, because she stole my purse or beat my child’; and it was subsequently learnt that she had done neither.[9]

A woman once came before R. Assi. He asked her, ‘How did you vow?’ She replied, ‘By the God of Israel.’ Said he to her, ‘Had you vowed by mohi, which is a mere substitute,[10] I would absolve you. Now that you did not vow by mohi, but by the God of Israel, I will not absolve you.

R. Kahana visited[11] R. Joseph's home. The latter said to him, ‘Eat something’; to which he replied, ‘No, by the Master of all, I will not taste anything.’ R. Joseph answered, ‘No, by the Master of all, you may not eat.’ Now R. Kahana rightly said, ‘No, by the Master of all, etc.’ [to strengthen his vow]; but why did R. Joseph repeat this? — This is what he said: ‘Since you have said, "No, by the Master of all", you may not eat.’[12]

Raba said in R. Nahman's name: The law is: Regret may be made an opening [for absolution], and absolution is granted for [a vow made in the name of] the God of Israel.

Raba was praising R. Sehorah to R. Nahman as a great man. Thereupon N. Nahman said: ‘When he comes to you, bring him to me.’ Now he [R. Sehorah] had a vow for absolution, so he went before R. Nahman, who asked him: ‘Did you vow bearing this[13] in mind?’ ‘Yes,’ he replied. ‘Or this?’ ‘Yes.’ This being repeated a number of times, R. Nahman became angry and exclaimed, ‘Go to your room!’[14] R. Sehorah departed, and found an opening for himself: Rabbi said: Which is the right course that man should choose for himself? That which he feels to be honourable to himself, and brings him honour from mankind.[15] But now, since R. Nahman has become angry, I did not vow on this understanding. He thus absolved himself.

R. Simeon son of Rabbi had a vow for absolution. He went before the Rabbis, who asked him, ‘Did you vow bearing this in mind?’ He replied, ‘Yes.’ ‘Or this?’ ‘Yes.’ [This was repeated] several times,

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(1) Ps. X, 4.

(2) V. p. 214, n. 2.

(3) Ecc. VII, 9.

(4) Prov. XIII, 26.

(5) Prov. XXIX, 22.

(6) But the other books, consisting mostly of the rebukings of the prophets, would have been unnecessary.

(7) Ecc. I, 18; i.e., the anger of God caused Him to send many prophets with their wise teachings. — We learn through error, and sin becomes the occasion of a fuller Revelation by God.

(8) Lit., ‘no (request for absolution) is attended to in the case of’.

(9) [This exception is made for the sake of restoring peace in the home.]

(10) V. Mishnah, supra 10a.

(11) Lit., ‘happened (to be) at’.

(12) I.e., Even if you desire, because one cannot be absolved from such an oath.

(13) Some fact mentioned.

(14) I cannot absolve you.

(15) V. Aboth II. 2 (Sonc. ed.) p. 12, n. 2 and 5.

Talmud - Mas. Nedarim 23a

and the Rabbis passed wearily to and fro ‘twixt sun and shade.[1] Said Botnith, the son of Abba Saul b. Botnith, to him, ‘Did you vow in order that the Rabbis should thus wearily pass from sun to shade and from shade to sun?’ ‘No,’ replied he. Thereupon they absolved him.

R. Ishmael son of R. Jose had a vow for absolution. He went before the Rabbis, who asked him, ‘Did you vow bearing this in mind?’ ‘Even so,’ replied he. ‘Or this?’ ‘ Yes.’ This was repeated several times. A fuller, seeing that he was paining the Rabbis, smote him with his basket.[2] Said he, ‘I did not vow to be beaten by a fuller,’ and so he absolved himself. R. Aha of Difti objected to Rabina: But this was an unexpected fact, as it had not occurred to him that a fuller would smite him, and we learnt: An unexpected fact may not be given as an opening?[3] — He replied: This is not unexpected,

because scoffers[4] are common who vex the Rabbis.[5]

Abaye's wife had a daughter. He declared, '[She must marry] one of my relations,' and she maintained, 'one of mine'. So he said to her: '[All] benefit from me be forbidden to you if you disregard my wish and marry her to one of your relations.' She went, ignored his desire, and married her to her relation. [Subsequently Abaye] went before R. Joseph [for absolution], who asked him: 'Had you known that she would disregard your wish and marry her to her relation, would you have vowed?' He answered, 'No,' and R. Joseph absolved him. But is such permitted?[6] — Yes, and it was taught : A man once imposed a vow on his wife not to make the festival pilgrimage [to Jerusalem]; but she disregarded his wish, and did go. He went to R. Jose [for absolution], who said to him, 'Had you known that she would disregard your wish and make the journey, would you have imposed the vow on her?' He answered, 'No,' and R. Jose absolved him.

MISHNAH. R. ELIEZER B. JACOB SAID: ALSO HE[7] WHO WISHES TO SUBJECT HIS FRIEND TO A VOW TO EAT WITH HIM, SHOULD DECLARE: EVERY VOW WHICH I MAY MAKE IN THE FUTURE SHALL BE NULL'. [HIS VOWS ARE THEN INVALID,] PROVIDING THAT HE REMEMBERS THIS AT THE TIME OF THE VOW.

GEMARA. But since he says, 'Every vow which I may make in the future shall be null,' he will surely not listen to him[8] and not come to [eat with] him? —

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(1) In an endeavour to find grounds for absolution.

(2) The Rabbis appear to have held open session.

(3) V. infra 64a. The tact must have been in existence, when the vow was made, but overlooked. If, however, it occurred only subsequently, it cannot be a ground for absolution.

(4) Apikora (pakar) etymologically should mean a loose, unbridled person. Its phonetic similarity phonetic similarity to Epicurus, the philosopher, stamped it with the meaning of sceptic, heretic, and that is its probable meaning in Sanh. XI, 2, where an apikoros is excluded from the world to come. The definition given in the Gemara, 99b, viz., one who is scornful of the Rabbis, which is the same as it bears here, was in all probability an extension of its meaning, due to feuds between the Rabbis and some sections of the people.

(5) And as their adherents naturally try to punish them, the incident could have been anticipated, and therefore is not regarded as unexpected

(6) The vow itself providing cause for absolution.

(7) The friend.

(8) This too is an example of a vow of incitement, v. Gemara.

The text is defective, and this is what was taught : He who desires his friend to eat with him, and after urging him, imposes a vow upon him, it is 'a vow of incitement [and hence invalid]. And he who desires that none of his vows made during the year shall be valid, let him stand at the beginning of the year and declare, 'Every vow which I may make in the future shall be null.[1] [HIS VOWS ARE THEN INVALID,] PROVIDING THAT HE REMEMBERS THIS AT THE TIME OF THE VOW. But if he remembers, he has cancelled the declaration and confirmed the vow?[2] — Abaye answered: Read: providing that it is not remembered at the time of the vow. Raba said, After all, it is as we said originally.[3] Here the circumstances are e.g., that one stipulated at the beginning of the year, but does not know in reference to what. Now he vows. Hence, if he remembers [the stipulation] and he declares: 'I vow in accordance with my original intention', his vow has no reality. But if he does not declare thus, he has cancelled his stipulation and confirmed his vow.

R. Huna b. Hinena wished to lecture thereon [sc. anticipatory cancellation] at the public session. But Raba remonstrated with him : The Tanna has intentionally obscured the law,[4] in order that vows

should not be lightly treated, whilst you desire to teach it publicly!

The scholars propounded: Do the Rabbis disagree with R. Eliezer b. Jacob or not?[5] And should you say that they differ, is the halachah like him or not?[6] — Come and hear: For we learnt: If one says to his neighbour,

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(1) This may have provided a support for the custom of reciting Kol Nidre (a formula for dispensation of vows) prior to the Evening Service of the Day of Atonement (Ran.). The context makes it perfectly obvious that only vows, where the maker abjures benefit from aught. or imposes an interdict of his own property upon his neighbour, are referred to. V. J.E. s.v. Kol Nidre. Though the beginning of the year (New Year) is mentioned here, the Day of Atonement was probably chosen on account of its great solemnity. But Kol Nidre as part of the ritual is later than the Talmud, and, as seen from the following statement about R. Huna h. Hinena, the law of revocation in advance was not made public.

(2) Since, when vowing. he knows of his previous declaration, he obviously disregards it. as otherwise he would not vow at all.

(3) The received text is correct.

(4) By giving a defective text. This implies that here, at least, the lacuna is not accidental, due to faulty transmission, but deliberate; cf. p. 2, n. 3.

(5) But regard this as a binding vow.

(6) Since the Mishnah teaches it as an individual opinion.

Talmud - Mas. Nedarim 24a

'Konam that I do not benefit from your if you do not accept for your son a kor of wheat and two barrels of wine,' — his neighbour may annul his vow without [recourse to] a Sage, by saying: 'Did you vow for any other purpose but to honour me? This [nonacceptance] is my honour.' Thus, it is only because he asserts, 'This is my honour'; but otherwise, it is [a binding] vow. Whose view is this? If R. Eliezer b. Jacob's, — it is a vow of incitement ?[1] Hence it must be the Rabbis,[2] thus proving that they disagree with R. Eliezer! — [No.] After all, it may be R. Eliezer b. Jacob's view: he admits that this is a [real] vow, for he [who makes it] says [in effect], 'I am not a dog, that I should benefit from you without your benefiting from me.'

Come and hear: If one says to his neighbour, ' Konam that you benefit not from me, if you do not give my son a kor of wheat and two barrels of wine,' — R. Meir rules: He is [so] forbidden until he gives; but the Rabbis maintain: He too can annul his vow without a Sage by declaring: 'I regard it as though I have received it.' Thus, it is only because he says, 'I regard it as though I have received it' ; but otherwise it is [a valid] vow. Whose view is this? If R. Eliezer b. Jacob's, — but it is a vow of incitement. Hence it must be the Rabbis'; thus proving that they disagree with him! — [No.] Verily, it may be R. Eliezer b. Jacob's view: he admits that this is a [real] vow, for he [who makes it] says, 'I am not a king to benefit you without your benefiting me.'

Mar Kashisha son of R. Hisda said to R. Ashi, Come and hear: VOWS [BROKEN] UNDER PRESSURE: If one subjected his neighbour to a vow to dine with him,[3] and then he or his son fell sick, or a river prevented him [from coming to him]. But otherwise the vow is binding. Whose view is this? If R. Eliezer b. Jacob's, — but it is [a vow of] incitement. Hence it must be the Rabbis', which proves that they disagree with him! — [No.] This may be R. Eliezer b. Jacob's view. Do you think that the inviter imposed the vow upon the invited? On the contrary, the invited imposed the vow upon the inviter. Thus: He said to his neighbour, 'Do you invite me to your banquet?' 'Yes,' replied he. 'Then make a vow to that effect.' So he vowed, and then he [the person invited] or his son fell sick, or was kept back by a river; such are vows [broken] under pressure.

Come and hear: R. Eliezer b. Jacob went even further [in his definition of vows of incitement]: If one says to his neighbour, 'konam that I do not benefit from you if you will not be my guest and

partake of fresh bread and a hot drink with me'; and the latter remonstrated in his turn — such too are vows of incitement.[4] But the Sages did not admit this. Now, to what does this disagreement refer? Surely,

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(1) Which is invalid in any case.

(2) The text is thus emended by Bah.

(3) Saying, 'You are forbidden to benefit from me if you do not eat with me'.

(4) [Although the fact that the invitation was so carefully worded, and that the other remonstrated would tend to indicate that the vower was in earnest.]

Talmud - Mas. Nedarim 24b

even to the first [illustration given by R. Eliezer b. Jacob]! This proves that the Rabbis dispute his ruling [in its entirety]. This proves it.[1] What is our final conclusion on the matter?[2] — Come and hear: For R. Huna said: The halachah is like R. Eliezer b. Jacob.[3]

MISHNAH. VOWS OF EXAGGERATION: WHEN ONE SAYS, 'KONAM IF I DID NOT SEE ON THIS ROAD AS MANY AS DEPARTED FROM EGYPT, OR 'IF I DID NOT SEE A SERPENT LIKE THE BEAM OF AN OLIVE PRESS.

GEMARA. It was taught: Vows of exaggeration are invalid, but oaths of such a nature are binding. How are such oaths possible? Shall we say that one said. 'I swear [so and so] if I have not seen etc.' — he said nothing![4] — Abaye answered: When one declares, 'I swear that I did see' etc.[5] Raba objected: If so, why teach it?[6] Moreover, it is taught parallel to vows![7] But, said Raba: When one says, 'May [all] the fruit in the world be forbidden me on oath if I did not see on this road as many as departed from Egypt.' Rabina said to R. Ashi: Perhaps this man saw an ant nest and designated them[8] 'those who left Egypt's his oath thus being genuine? —

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(1) So cur. edd. Asheri: No. The disagreement refers only to the latter example. Accordingly, the next question: what is our final conclusion, still refers to the same problem, whether the Rabbis disagree or not.

(2) Having proved that they disagree, whose view is law? V. preceding note.

(3) Ran: The answerer knew that R. Huna referred to the first too, or assumed that he would be referring to the Mishnah, which was well known by all, rather than the Baraitha, which was not so well known. Alternatively, the whole point of the question whether the Rabbis disagree is to know the correct halachah, for since they are in the majority it may not be as R. Eliezer b. Jacob. Now, however, that R. Huna gave his ruling that the halachah is as R. Eliezer b. Jacob in the whole matter, it makes no difference whether the Rabbis disagree with him or not.

(4) He did not complete his sentence.

(5) It is then not regarded as an intentionally false oath, meriting punishment, but as an oath of exaggeration.

(6) It is obvious.

(7) Just as vows seek to impose an interdict, so do these oaths too.

(8) On account of their large number.

Talmud - Mas. Nedarim 25a

He replied. One who swears, swears in our sense, and we do not think of an ant nest. Now, does one never swear in his own sense? But it was taught: When an oath is administered, he [the man swearing] is admonished: 'Know that we do not adjure you according to your own mind, but according to our mind[1] and the mind of the Court.' Now, what does this exclude? Surely the case of one who gave [his creditor] checkers [tokens in game] and [mentally] dubbed them coins; and since he is admonished, 'according to our intention,' it follows that [otherwise] one may swear in his own sense? — No. It excludes such an incident as Raba's cane. A man with a monetary claim upon his neighbour once came before Raba, demanding of the debtor, 'Come and pay me.' 'I have repaid

you,' pleaded he. 'If so,' said Raba to him, 'go and swear to him that you have repaid.' Thereupon he went and brought a [hollow] cane, placed the money therein, and came before the Court, walking and leaning on it. [Before swearing] he said to the plaintiff: 'Hold the cane in your hand'. He then took a scroll of the Law and swore that he had repaid him all that he [the creditor] held in his hand.[2] The creditor thereupon broke the cane in his rage and the money poured out on the ground; it was thus seen that he had [literally] sworn to the truth.[3]

But even so, does one never swear in his own sense? But it was taught: Thus we find that when Moses adjured the children of Israel in the plains of Moab, he said unto them, 'Know that I do not adjure you in your sense, but in mine, and in that of the Omnipresent', as it is written, Neither with you only etc.[4] Now what did Moses say to Israel? Surely this: Lest you transgress my words[5] and then say. 'We swore in our own sense'; therefore he exhorted them: [swear] in my sense. What does this exclude: surely the naming of idols 'god'? This proves that one does sometimes swear in his own sense. — No. Idols too are called 'god', as it is written, And against all the gods of Egypt I will execute judgment.[6] Then let him adjure then, to fulfil the commands? — That might imply the commands of the King. Then let him adjure then, to fulfil all the commands? — That might imply [the precept of] fringes,[7] for a Master said, The precept of fringes is equal to all the [other] precepts of the Torah.[8] But why did not Moses simply adjure the Israelites to fulfil the Torah?[9] — Because that would imply one Torah only.[10] Then why not adjure then, to fulfil the Toroth?[11] — That might mean the Torah of the meal-offering, the Torah of the sin-offering, the Torah of the trespass-offering.[12] Then why not impose an oath to fulfil the whole Torah? — The whole Torah might mean merely to refrain from idolatry, as it was taught : Idolatry is so grave a sin that the rejection thereof is as the fulfilment of the whole Torah. Then why not impose an oath to observe the prohibition against idolatry and the whole Torah; or to fulfil the six hundred thirteen precepts? — Moses used a general expression without troubling [to enumerate details].[13]

OR IF I DID NOT SEE A SERPENT LIKE THE BEAMS OF AN OLIVE-PRESS. Is this impossible? Was there not a serpent in the days of King Shapur[14] before which thirteen stables of straw were laced, and it swallowed then, all?[15] — Samuel answered: He meant 'as smooth as a bean, etc.' But are not all serpents smooth? — We speak [of one who declared that] its back was smooth [not on]y the neck].[16] Then let him [the Tanna] state 'smooth'? — He thereby informs us in passing that the beams of the olive-press must be smooth. How does this affect the law? — In respect of buying and selling: to tell you that if one sells the beams of an olive-press. the sale is valid only if they are smooth, but not otherwise.[17]

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(1) [In Shebu. 29b. the reading is 'the mind of the Omnipresent'.]

(2) In his (the debtor's) possession i.e., all that he claimed of him.

(3) Hence the exhortation is needed to exclude such oaths, as the defendant may really believe that be is swearing truly. But no person regards his oath as true when he mentally attaches a particular meaning to his words.

(4) Deut. XXIX, 13; i.e., not merely according to your thoughts.

(5) [So Bah. cur. edd. 'lest you do something'.]

(6) Ex. XII, 12.

(7) Num. XV, 38.

(8) Because it is written, and it shall be unto you for a fringe, that ye may look upon it, and remember all the commandments of the Lord. Ibid. 39.

(9) Instead of imposing an oath against idol worship, which, as shewn, is ambiguous.

(10) The written Law, but not the Oral law. The former is the Bible, more especially the Pentateuch, while the latter is the whole body of tradition and Rabbinical development thereof. It is generally assumed that the Oral Law was the matter In dispute between the Pharisees, who accepted it, and the Sadducees, who rejected it. Weiss, Dor, I, 116 seq.; Halevy, Doroth, I, 3, 360 seq. denies this ii to, and maintains that the Sadducees were purely a political party that rejected religious teaching altogether, and only later, through force of circumstances, attempted some interpretation of Scripture.

(11) Pl. of Torah.
(12) Each of which is referred to a 'torah': Lev. VI, 7, 18; VII, 1.
(13) The text of the whole passage is in some disorder, the translation is of the text as emended by Bah; for further notes v. Shebu. (Sonc. ed.) pp. 159ff.
(14) Shapur I, a contemporary of Samuel and King of Persia.
(15) This question assumes that the comparison is in point of size. — Aruch reads: thirteen hides full of straw'. Rashi in Shebu. 29b explains that it was a man-eating serpent. hot coals were concealed in the straw, and these killed it. [This is reminiscent of the Apocryphal story of Daniel and the Dragon]
(16) The backs of serpents are not smooth but somewhat scaly, caused by hard folds of skin, v. Lewysohn, Zoologie, p. 234.
(17) A number of other interpretations have been given to the whole passage. Rashi translates: spotted like a beam. Ran: incised like a beam; and an alternative, based on the Jerusalemi: square like a beam, instead of circular. Asheri inclines to the last interpretation.

Talmud - Mas. Nedarim 25b

MISHNAH. VOWS IN ERROR: [IF ONE SAYS, 'KONAM,] IF I ATE OR DRANK, AND THEN REMEMBERED THAT HE HAD; OR, 'IF I EAT OR DRINK,' AND THEN FORGOT [HIS VOW] AND ATE OR DRANK; [OR] 'KONAM BE ANY BENEFIT WHICH MY WIFE HAS OF ME, BECAUSE SHE STOLE MY PURSE OR BEAT MY CHILD, AND IT WAS SUBSEQUENTLY LEARNT THAT SHE HAD NOT BEATEN HIM NOR STOLEN; ALL THESE ARE VOWS IN ERROR. IF A MAN SAW PEOPLE EATING [HIS] FIGS AND SAID TO THEM, LET THE FIGS BE A KORBAN TO YOU,' AND THEN DISCOVERED THEM TO BE HIS FATHER OR HIS BROTHERS,[1] WHILE OTHERS WERE WITH THEM TOO — BETH SHAMMAI MAINTAIN: HIS FATHER AND BROTHERS ARE PERMITTED, BUT THE REST ARE FORBIDDEN. BETH HILLEL RULE: ALL ARE PERMITTED.

GEMARA. It was taught: Just as vows in error are permitted, so are oaths in error.[2] What are oaths in error? — E.g., those of R. Kahana and R. Assi. One said, I swear that Rab taught this, whilst the other asserted, I swear that he taught this: thus each swore truthfully according to his belief.

IF A MAN SAW PEOPLE EATING [HIS] FIGS. We learnt elsewhere: The Sabbaths and festivals are suggested as an opening [for regret].[3] Before then the ruling was that for those day's the vow is canceled, but for others it is binding; until R. Akiba taught: A vow which is partially annulled is entirely annulled.

Rabbah said: All agree that if he said, 'Had I known that my father was among you I would have declared, "You are all forbidden except my father",' all are forbidden but his father is permitted. They differ only if he asserted, 'Had I known that my father was among you. I would have said, "So-and-so are forbidden and my father is permitted".'[4]

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(1) Whom he would not have prohibited.
(2) V. Shebu. 28b.
(3) E.g., if one made a self-denying vow, the Rabbi may ask him, 'Had you known that this is forbidden on Sabbaths and Festivals, would you have vowed?' Should he answer 'No', he is absolved.
(4) In the former instance, the second declaration, apart from excluding his father, does not alter the vow at all, since just as he first vowed 'you are all forbidden', so now too. Therefore it is not regarded as even partially annulled. But in the second case, the actual form of the vow is changed from the inclusive you are all forbidden' to the detailed enumeration 'So-and-so are forbidden', even if the enumeration covered all. Because of these two factors, viz., the exclusion of his father and the change in form in respect to the rest, it is regarded as partially annulled. Thus the view of Beth Hillel is in accordance with R. Akiba's dictum, whilst Beth Shammai's decision agrees with the earlier ruling. In many cases we find Beth Shammai adhering to the older view; cf. Weiss, Dor, I, 183.

Talmud - Mas. Nedarim 26a

But Raba maintained: All agree that if he declared, ‘Had I known that my father was among you I would have said, "So-and-so are forbidden but my father is permitted",’ all are permitted.[1] They are in dispute only if he declared, ‘Had I known that my father was among you, I would have said, "You are all forbidden except my father".’ Beth Shammai agree with R. Meir, who maintains, one's first words are to be reckoned with, and Beth Hillel agree with R. Jose who said, one's last words count.[2]

R. Papa objected to Raba: In what instance did R. Akiba rule that a vow which is partially annulled is entirely annulled? E.g., [If one said.] ‘Konam, that I do not benefit from any of you,’ if one was [subsequently] permitted [to afford him benefit], they are all permitted. [But if he said,] ‘Konam that I do not benefit from A, B, C,’ etc.: if the first was [subsequently] permitted, all are permitted; but if the last-named was permitted, he alone is permitted, but the rest are forbidden. As for Rabbah, it is well, [for] he can apply the first clause[3] to one who [in the first instance] enumerated A, B, C, etc.;[4] while the second clause[5] refers to one who [in the first instance] declared, ‘to any of you.’[6] But as for yourself: granted that you can apply the first clause to one who [in his second statement] declared, ‘to any of you.’[7]

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(1) Even Beth Shammai regard such as a partially annulled vow, and accept R. Akiba's dictum.

(2) The dispute refers to his second declaration, which is divided into ‘first words’ and ‘last words’. The first words are, ‘you are all forbidden’; since these are identical with his earlier declaration, Beth Shammai maintain that his vow has not even been partially annulled. His last words are ‘except my father’, since these definitely limit the scope of the earlier declaration, Beth Hillel maintain that the vow has thereby been partially, and consequently entirely, annulled.

(3) Viz., ‘konam that I do not benefit from all of you’.

(4) Subsequently altering it to the form given in the Mishnah.

(5) ‘Konam that I do not benefit from A, B, C’, etc.

(6) Hence the actual forms given refer to the second declaration. Now, Rabbah maintains that the dispute of Beth Hillel and Beth Shammai, as that of R. Akiba and his predecessors, refers to a case where the second declaration, besides excluding a particular person, differs in form from the first. Hence in the two instances dealt with here it is the view only of R. Akiba (and Beth Hillel) that that absolution extends to all; but his predecessors hold that even in these instances absolution is limited to the person definitely excluded. This explanation does not allow for the distinction drawn in the two subdivisions of the second clause, and Raba draws attention to it in his reply. — A number of varying interpretations have been given in this passage. The one adopted here is that of Tosaf.

(7) Hence, as explained by Raba above, this ruling is disputed by R. Akiba's predecessors; therefore it is given as an illustration of R. Akiba's view on), implying that his predecessors disagree.

Talmud - Mas. Nedarim 26b

But as for the second clause, where one enumerated, A, B, C — is this R. Akiba's view [only]: why do the Rabbis disagree therewith? But you say that all agree that the vow is entirely annulled? — Raba answered: Even according to Rabbah, is R. Akiba's ruling satisfactory? How have you explained it: that he said, ‘any of you’: who then is the ‘first’, and who is the ‘last’? But [explain it thus]: The first clause means that he said, ‘any of you’; but the second refers e.g., to one who made each dependent on the preceding, vowing, B be as A, C be as B, etc.[1] This may be proved too, for it is taught: if the middle person was permitted, those mentioned after him are [also] permitted, but not those named before.

R. Adda b. Ahaba objected to Raba: ‘Konam, if I taste onions, because they are injurious to the heart’: then one said to him, But the wild onion[2] is good for the heart — he is permitted to partake of wild onions, and not only of these, but of all onions. Such a case happened before R. Meir, who gave absolution in respect of all onions. Does it not mean that he declared, ‘Had I known that wild onions

are good for the heart, I would have vowed: "all onions be forbidden me, but wild onions be permitted"'?[3] — No. This refers to one who declared, 'Had I known that wild onions are good for the heart, I would have vowed, "Such and such onions be forbidden me, but wild onions be permitted"'; and therefore R. Meir's ruling agrees with both R. Akiba and the Rabbis.

Rabina objected to Raba: R. Nathan said: A vow may be partly permitted and partly binding. E.g., if one vowed not to eat a basket [of figs],

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(1) Therefore if by his second statement A is excluded, the rest are likewise excluded. But if the last-named is excluded, the vow remains in full force with respect to those mentioned earlier.

(2) Rashi: the name of a place — probably Cyprus.

(3) This contradicts Raba's view that Beth Shammai's ruling, confining absolution only to that explicitly excluded, is in agreement with R. Meir. Here we see that R. Meir himself granted complete absolution.

among which were shuah[1] figs, and then declared, 'Had I known that shuali figs were among them, I would not have vowed' — the basket of figs is forbidden, but the shuah figs are permitted. Then R. Akiba came and taught: A vow which is partially annulled is entirely annulled. Does it not mean that he declared, 'Had I known that shuah figs were among them, I would have vowed: "The black figs and white figs be forbidden, but the shuah figs be permitted"?' Yet it is R. Akiba's view only, but the Rabbis dispute it.[2] — No. This refers to one who declared, 'Had I known that shuah figs were among them, I would have vowed, "Let the whole basket [of figs] be forbidden, but the shuah figs permitted."'

Which Tanna is the authority for the following dictum of the Rabbis? If one vowed simultaneously not to benefit from five men, if he is absolved in respect of one of them, he is absolved in respect of all; but [if he stated,] 'Except one of them,' that one is permitted, but the others are forbidden [to him]. According to Rabbah, the first clause agrees with R. Akiba [only], and the second clause with all.[3] According to Raba, the second clause agrees with the Rabbis [only], and the first clause with all.

MISHNAH. VOWS [BROKEN] UNDER PRESSURE: IF ONE SUBJECTED HIS NEIGHBOUR TO A VOW, TO DINE WITH HIM,[4] AND THEN HE OR HIS SON FELL SICK, OR A RIVER PREVENTED HIM [FROM COMING TO HIM] — SUCH IS A VOW [BROKEN] UNDER PRESSURE. GEMARA. A man once deposited his rights[5] at Beth din, and declared: 'If I do not appear within thirty days, these rights shall be void.' Subsequently he was unavoidably prevented from appearing. Thereupon R. Huna ruled: His rights are void. But Rabbah said to him, He was unavoidably prevented, and the Divine Law exempts such,for it is written, But unto the damsel shalt thou do nothing.[6] And should you answer, the death penalty is different ,[7] □ but we learnt ; VOWS [BROKEN] UNDER PRESSURE; IF ONE SUBJECTED HIS NEIGHBOUR TO A VOW TO DINE WITH HIM, AND THEN HE OR HIS SON FELL SICK, OR A RIVER PREVENTED HIM [FROM COMING TO HIM] — SUCH IS A VOW [BROKEN] UNDER PRESSURE![8] Now, according to Rabbah, wherein does this differ from what We learnt: [If one said to his wife,] 'Behold! this is thy divorce, [to be effective] from now, if I do not come back within twelve months', and he died within the twelve months, the divorce is valid?[9] Yet why so? was he not forcibly prevented! — I will tell you. There it may be different,

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(1) A species of white figs.

(2) This contradicts Raba's view that in such a case there is no dispute.

(3) In the first clause it is assumed that his partially revoking statement was, 'Had I known that X was in the group, I would have said, ' 'A, B, C, etc. be forbidden, but X be permitted".' This assumption is based on the contrast with the

second clause, where one was excluded, from which it is assumed that his revoking statement was, ‘Had I known . . . I would have declared, "All of you be forbidden etc."’

(4) Saying, ‘You are forbidden to benefit from me if you do not eat with me’.

(5) A document embodying his rights (Tosaf.).

(6) Deut. XXII, 26. This refers to a betrothed maiden who was violated against her will; but if she was a consenting party, she was punished with death.

(7) Because of its gravity.

(8) Proving that such exemption holds good in all cases.

(9) And if she is childless she is free from Levirate marriage or the ceremony of loosening the ‘shoe (v. Deut XXV, 5. seq.), because she is not the deceased's widow.

Talmud - Mas. Nedarim 27b

because had he known that he would die, he would have decided and given the divorce so as to take effect immediately.[1] And how does it differ from the case of the man who declared, ‘If I do not come within thirty days from now, let it be a divorce. ‘ He came [on the last day], but was cut off through [the lack of] a ferry. [Yet though] he cried out, ‘See! I have come; see! I have come!’ Samuel ruled, That is not called coming[2] . But why: surely he was unavoidably prevented? — Perhaps an accident that can be foreseen is different, and [the lack of] a ferry could be foreseen.[3]

Now according to R. Huna, let us see; It is an asmakta,[4] and an asmakta gives no title?[5] — Here it is different, because he had deposited his rights.[6] And where they are deposited, is it not an asmakta? But we learnt: If one repaid a portion of his debt, and then placed the bond in the hands of a third party, and declared, ‘If I do not repay [the balance] within thirty days, return the bill to the creditor,’[7] and the time came and he did not repay, R. Jose maintained: He [the third party] must surrender the bond to the [creditor]; R. Judah maintained: He must not surrender it. And R. Nahman said in the name of Rabbah b. Abbahu in Rab's name: The halachah is not as R. Jose, who ruled that an asmakta gives a legal claim.[8] — Here it is different, because he had declared, ‘These rights shall be void.’[9] Now the law is: an asmakta does give a legal claim, providing that no unavoidable accident supervened and that a formal acquisition was made[10] at an authoritative Beth din.[11]

MISHNAH. ONE MAY VOW TO MURDERERS,[12] ROBBERS,[13] AND PUBLICANS THAT IT [THE PRODUCE WHICH THEY DEMAND] IS TERUMAH, EVEN IF IT IS NOT,[14] OR THAT IT BELONGS TO THE ROYAL HOUSE, EVEN IF IT DOES NOT. BETH SHAMMAI MAINTAIN: ONE MAY MAKE ANY FORM OF VOW,

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(1) So that the result would be the same.

(2) Because he had stipulated to come at a particular time.

(3) But the Mishnah refers to a river abnormally swollen by the rains and inciting snow.

(4) V. Glos.

(5) I.e., gives the claimant no rights, because it is presumed that such a promise was not meant seriously, but made only in order to give the transaction the character of good faith and solemnity.

(6) Not merely promised them.

(7) Who will thus be able to demand the full sum.

(8) V. B.B. (Sonc. ed.) p. 734.

(9) This is a stronger declaration than e.g., ‘I will not claim my rights’; hence it is valid.

(10) The conceding party formally ceded his rights. This was symbolically effected by one giving an article, e.g., a scarf, to the other.

(11) Rash and Maim.: an ordained Beth din; Ran: a Beth din with the power to enforce its decisions.

(12) I.e., robbers who kill if their demands are not granted.

(13) Rashi, Ran, Rosh and Tosaf. all interpret this as private robbers. Jast.: official oppressors. These are less desperate than murderers, and do not kill if their demands are refused.

(14) This vow is to save it from their hands, as terumah is forbidden to a zar, q.v. Glos. — It is remarkable that even murderers and robbers are assumed to respect the prohibition of terumah!

Talmud - Mas. Nedarim 28a

EXCEPTING THAT SUSTAINED BY AN OATH;[1] BUT BETH HILLEL MAINTAIN: EVEN SUCH ARE PERMISSIBLE.[2] BETH SHAMMAI RULE: HE MUST NOT VOLUNTEER TO VOW;[3] BETH HILLEL RULE: HE MAY DO SO. BETH SHAMMAI SAY: [HE MAY VOW] ONLY AS FAR AS HE [THE MURDERER, etc.] MAKES HIM VOW; BETH HILLEL SAY: EVEN IN RESPECT OF WHAT HE DOES NOT MAKE HIM VOW. E.G., IF HE [THE ROBBER] SAID TO HIM, SAY: KONAM BE ANY BENEFIT MY WIFE HAS OF ME'; AND HE DECLARED, 'KONAM BE ANY BENEFIT MY WIFE AND CHILDREN HAVE OF ME,' — BETH SHAMMAI RULE: HIS WIFE IS PERMITTED, BUT HIS CHILDREN ARE FORBIDDEN; BETH HILLEL RULE: BOTH ARE PERMITTED.

GEMARA. But Samuel said, The law of the country is law?[4] — R. Hinena said in the name of R. Kahana in the name of Samuel: The Mishnah refers to a publican who is not limited to a legal due.[5] The School of R. Jannai answered: This refers to an unauthorised collector.

OR THAT IT BELONGS TO THE ROYAL HOUSE, EVEN IF IT DOES NOT. How does he vow? — R. Amram said in Rab's name: By saying, 'May all the fruits of the world be forbidden me, if this does not belong to the royal house.' But if he said, 'may they be forbidden,' all the fruits of the world are forbidden to him.[6] — He adds, to-day. But if so, the publican will not accept it! — He mentally stipulates 'to-day,' but makes no explicit reservation; and though we [normally] rule that an unexpressed stipulation is invalid,[7] it is different when made under duress.

BETH SHAMMAI MAINTAIN: ONE MAY MAKE ANY FORM OF VOW . . . BUT BETH HILLEL RULE THAT EVEN SUCH ARE PER MISSIBLE. BETH SHAMMAI RULE: THE OWNER MUST NOT VOLUNTEER TO VOW; BETH HILLEL RULE: HE MAY DO SO. BETH SHAMMAI SAY: HE MAY VOW ONLY AS FAR AS HE [THE MURDERER] MAKES HIM VOW; BETH HILLEL SAY: EVEN IN RESPECT OF WHAT HE DOES NOT MAKE HIM VOW. E.G., IF HE [THE ROBBER] SAID TO HIM, SAY: KONAM BE ANY BENEFIT MY WIFE HAS OF ME'; AND THE OWNER DECLARED, 'KONAM BE ANY BENEFIT MY WIFE AND CHIldren HAVE OF ME — BETH SHAMMAI RULE: HIS WIFE IS PERMITTED, BUT HIS CHILDREN ARE FORBIDDEN; BETH HILLEL RULE: BOTH ARE PERMITTED.

R. Huna said: A Tanna taught: Beth Shammai maintain: He must not volunteer with an oath; Beth Hillel say: He may volunteer even with an oath. Now, in the view of Beth Shammai, only with an oath may he not volunteer, but he may volunteer a vow. But we learnt: BETH SHAMMAI RULE: THE OWNER MUST NOT VOLUNTEER TO VOW. Moreover, he may merely not volunteer an oath, but he may vow with an oath [if requested]; but we learnt, BETH SHAMMAI MAINTAIN: ONE MAY MAKE ANY FORM OF VOW, EXCEPTING THAT SUSTAINED BY AN OATH? — The Mishnah deals with a vow, to shew how far-reaching is Beth Shammai's ruling;[8] whilst the Baraitha treats of an oath, to shew the full extent of Beth Hillel's view.[9]

R. Ashi answered, This is what is taught: Beth Shammai say, There is no absolution for an oath; and Beth Hillel say, There is absolution for an oath.[10]

MISHNAH. [IF ONE SAYS,] 'LET THESE SAPLINGS BE KORBAN [I.E., CONSECRATED] IF THEY ARE NOT CUT DOWN'; OR, LET THIS GARMENT BE KORBAN IF IT IS NOT BURNT: THEY CAN BE REDEEMED.[11] [IF HE SAYS,] 'LET THESE SAPLINGS BE KORBAN UNTIL THEY ARE CUT DOWN ; OR, LET THIS GARMENT BE KORBAN UNTIL IT IS

BURNT',

(1) I.e. one may not vow, 'may this corn be forbidden me by an oath if' etc.

(2) Weiss, Dor I, p. 185, conjectures that this controversy arose out of Herod's demand that all the members of the nation should swear loyalty to him (Joseph. Ant. 15, ¤ 10).

(3) If the murderer does not demand a vow as an assurance, he must not offer to vow of his own accord.

(4) Therefore the publican has a legal claim: why then is the owner permitted to evade payment by a false vow?

(5) Under the Roman Procurators there was a tremendous amount of illegal extortion, particularly of octroi tolls, v. Sanh. (Sonc. ed.) p. 148.

(6) For if the vow contains no sort of evasion, it is binding whatever its purpose.

(7) Lit., 'words that are in the heart are no words'.

(8) I.e., one may not volunteer even a vow, which is not as grave as an oath.

(9) That one may volunteer even an oath, in spite of its greater gravity.

(10) According to this, the Baraitha does not treat of vows under pressure at all. The Heb. lo yiftah (rendered 'he may not volunteer') will mean: He (the rabbi) must not give an opening for regret, i.e., must not grant absolution.

(11) They are duly consecrated, and must be redeemed before they are permitted for secular use.

Talmud - Mas. Nedarim 28b

THEY CANNOT BE REDEEMED.[1]

GEMARA. Let [the Mishnah] teach 'they are consecrated!'[2] — Because the second clause must state ' THEY CANNOT BE REDEEMED,'[3] the first clause also states, 'THEY CAN BE REDEEMED.

How was the vow made?[4] — Amemar answered: By saying, '. . . if they are not cut down to-day'; and the day passed without their being cut down. If so, why teach it: is it not obvious? — The need for teaching it arises e.g., when a strong wind is blowing.[5] But the same is taught with respect to a garment: and does a garment stand to be burnt? — Even so; e.g., when a fire has broken out. So here too [in respect of plants], a strong wind is blowing; and I might think that he thought that they would not be saved, and therefore vowed.[6] Hence the Mishnah informs us [that the vow is binding].

LET THESE SAPLINGS BE KORBAN etc. [Can they] never [be redeemed]?[7] — Said Bar Pada: If he redeems them, they revert to their sanctity; if he redeems them again, they again revert to their sanctity, until they are cut down.[8] When cut down, he redeems them once,[9] and that suffices. 'Ulla said: Having been cut down, they require no further redemption.[10]

(1) Because a definite limit having been set, even if they are redeemed, they revert to their consecrated state.

(2) Instead of the unusual 'they can be redeemed'. This is the reading of Ran, Asheri, and one view of Tosaf. Rashi's reading, which is that of cur. edd. is, 'let the Mishnah teach "they are consecrated" (in one respect) "and unconsecrated" (in another)'; the meaning of which is, they are consecrated in accordance with his vow', but not so strongly that they cannot be redeemed. This aspect of non-consecration is merely by contrast with the case of the second clause, where, even if redeemed, they revert to their consecrated state. [Tosaf. in name of R. Isaac of Dampierre (Ri.) gives a more satisfactory interpretation to this reading: 'They are consecrated' as long as they are not cut down, and 'unconsecrated' when they are cut down.]

(3) It would be insufficient merely to state that they are consecrated, as the emphasis lies on the fact that redemption cannot release them.

(4) Since ultimately they have to be cut down, how' and when can they become consecrated?

(5) In which case it might be assumed that he never for a moment thought it possible for the saplings to be spared and did not consecrate them with a perfect heart.

(6) But not really meaning it, and so the vow is invalid.

(7) Surely that is impossible, since the vow set a limit to their period of sanctity!

(8) V. p. 82, n. 3.
(9) V. infra.
(10) Since by the term of the vow their consecration lasts only until then.

Talmud - Mas. Nedarim 29a

Said R. Hamnuna to him: Whither then has their sanctity departed? What if one said to a woman, 'Be thou my wife to-day, but to-morrow thou art no longer my wife': would she be free without a divorce?[1] — Raba replied: Can you compare monetary consecration to bodily consecration?[2] Monetary sanctity may automatically end; but bodily consecration cannot end thus. Abaye objected to him: Cannot bodily consecration automatically cease? But it was taught: [If one says.] 'Let this ox be a burntoffering for thirty days, and after that a peace-offering':[3] it is a burntoffering for thirty days, and after that a peace-offering. Now why? it has bodily sanctity, yet it loses it automatically![4] — This deals with one who consecrated its value.[5] If so, consider the second clause: [If he says,] 'Let it be a burnt-offering after thirty days, but a peace-offering from now' [it is so]. Now, if you agree that one clause refers to bodily sanctity, and the other to monetary sanctity,

(1) Notwithstanding that he had married her for a limited period. So here too, though he had declared, 'let them be korban until they are cut down'; yet when they are, they do not automatically lose their sanctity. but must be redeemed.
(2) The plants have only a monetary consecration, i.e., they cannot themselves be offered in the Temple, but must be redeemed, and their redemption money is utilized in the Temple service. But a married woman is herself consecrated to her husband.
(3) I.e., if sacrificed within thirty days, it must be a burnt-offering; if after, a peace-offering.
(4) Its sanctity as a burnt-offering has automatically ceased, though it retains the sanctity of a peace-offering.
(5) I.e. , the value of this ox be consecrated as a burnt-offering for thirty days. viz., that if redeemed within thirty days, a burntoffering must be bought for the money; if after, a peace-offering.

Talmud - Mas. Nedarim 29b

hence the Tanna must teach both [clauses], because I would think that monetary consecration can automatically cease, but not so bodily sanctity; hence both are rightly taught. But if you maintain that the two refer to monetary consecration, why teach them both? If a higher sanctity can automatically give way to a lower sanctity, Surely it is superfluous to state that a lower sanctity can be replaced by a higher one?[1] Shall we say that this is a refutation of Bar Pada, who maintained that sanctity cannot cease automatically? — Said R. Papa, Bar Pada can answer thus: The text is defective,[2] and this is its meaning: If he did not say, 'let this be a peace — offering from now, it remains a burnt-offering after thirty days.[3] This may be compared to the case of one who says to a woman, 'Be thou betrothed unto me after thirty days'; she becomes betrothed [then], even though the money [of betrothal] has been consumed [in the meanwhile].[4] But is this not obvious?[5] — This is necessary only [to teach that] where he supplemented his first declaration [it is still ineffective].[6] Now that is well on the view that she [the woman] cannot retract;[7] but on the view that she can retract, what can be said?[8] — Even according to that view, this case is different, because a verbal promise to God is as actual delivery in secular transactions.[9]

R. Abin and R. Isaac b. Rabbi[10] were sitting before R. Jeremiah, who was dozing. Now they sat and stated: According to Bar Pada, who maintained that they revert to their sanctity,

(1) The burnt-offering has a higher sanctity than a peace-offering.
(2) This is Rashi's reading, but is absent from the versions of Asheri, Ran, and Tosaf.
(3) The text is thus to be reconstructed: If one says, 'Let this ox be a burntoffering for thirty days, and from now and after thirty days a peace-offering': it is a burnt-offering for the first thirty days, and a peace-offering after that. But if he did not say, 'Let it be a peace-offering from now and after thirty days', but merely, 'let it be a burnt-offering for thirty

days; and a peace-offering afterwards'; it remains a burnt-offering after thirty days. In the former case, the sanctity pertaining to the burnt-offering automatically ceases, because that of the peace-offering is potentially concurrent therewith and extends beyond it; but in the latter case, the sanctity cannot automatically cease (Rashi). Ran, Asheri and Tosaf. explain it differently.

(4) So here too. When the second sanctity is not imposed concurrently with the first, the latter, on the completion of the thirty days, is similar to the money, which though consumed in the meanwhile, is nevertheless effective in betrothing the woman; so also the first sanctity remains though the period has been 'consumed'.

(5) Since it is taught that only when the second sanctity runs concurrently with the first does it take effect after thirty days, it is self-evident that if it is not imposed concurrently, the first sanctity remains after the period.

(6) I.e. , if after declaring. 'this ox be a burnt-offering for thirty days and after that let it be a peaceoffering' (in which case, as we have seen, it remains a burnt-offering), he made a supplementary statement, 'let it be a peace-offering from now and after thirty days', it will still remain a burnt-offering after that period, because this statement from now' must be made at the outset. Now, if only the first clause had been taught. viz., that if he imposed the second sanctity concurrently with

(7) During the interval and become betrothed to another man. So here too, unless the second sanctity was at the outset imposed concurrently with the first, the force of the latter remains.

(8) So here too by analogy, even if the second sanctity was not imposed concurrently with the first, it should cancel the first after the thirty days.

(9) I.e., the declaration, 'this ox be a burntoffering for thirty days', has more force than a normal promise affecting the interests of man only. but is regarded as though thereby the animal had actually been made into a burnt-offering. and therefore that sanctity, even though imposed for a limited period, remains after it, unless another was imposed concurrently therewith.

(10) [Read with MS.M 'b. Joseph'.]

Talmud - Mas. Nedarim 30a

you may solve the problem of R. Hoshaia. Viz., what if one gives two perutahs to a woman, saying to her, 'Be thou betrothed unto me for one of these to-day. and for the other be thou betrothed unto me after I divorce thee'?[1] [Now, from Bar Pada's ruling you may deduce that the second] is indeed [valid] kiddushin.[2] This the first the former is duly effective, I would think that it is so even if this concurrent sanctity was imposed only in a supplementary statement. Hence the need for the second clause, viz., that if the second sanctity was not (at the very outset) imposed concurrently with the first, it cannot come into effect. roused R. Jeremiah, and he said to them, Why do you compare redemption by the owner to redemption by others? Thus did R. Johanan say: If he himself redeems them, they revert to their sanctity; but if others redeem them, they do not.[3] Now a [divorced] woman may be compared to the case of redemption by others.[4] It was stated likewise: R. Ammi said in R. Johanan's name: Only if he himself redeems them was this taught [that they revert to their sanctity]; but when others redeem them, they do not revert to their sanctity.

MISHNAH. HE WHO VOWS [NOT TO BENEFIT] FROM SEAFARERS, MAY BENEFIT FROM LAND-DWELLERS; FROM LAND-DWELLERS, HE IS FORBIDDEN [TO BENEFIT] EVEN FROM SEAFARERS, BECAUSE SEAFARERS ARE INCLUDED IN THE TERM LAND-DWELLERS'; NOT THOSE WHO MERELY TRAVEL FROM ACCO TO JAFFA,[5] BUT THOSE WHO SAIL AWAY GREAT DISTANCES [FROM LAND].

GEMARA. R. Papa and R. Aha son of R. Ika — one referred it [the last statement] to the first clause, and the other to the second. Now, he who referred it to the first clause learnt thus: HE WHO VOWS [NOT TO BENEFIT] FROM SEAFARERS MAY BENEFIT FROM LAND-DWELLERS. Hence, he may not benefit from seafarers; NOT THOSE WHO MERELY

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(1) Is the second betrothal valid?

(2) For, just as the plants after redemption revert to their sanctity in virtue of an earlier declaration, so the woman, after

being freed by a divorce, will revert to her betrothed state in virtue of the declaration prior thereto — Ran and Asheri. Rashi: For, when the plants are cut down, they should, according to the terms of the vow, lose their sanctity; yet in virtue of the first declaration they retain it until they are redeemed. So here too: though the divorce sets the woman free, the prior declaration is valid insofar as she becomes betrothed again. This interpretation is rather strained. Moreover, it would appear that the deduction is made from the fact that before being cut down the plants revert to their sanctity after being redeemed, and not because they require redemption even after being cut down. In Rashi's favour, however, it may be observed that this law of consecration after redemption is that of the Mishnah as explained both by Bar Pada and by 'Ulla. So that the particular reference to Bar Pada may indicate that the solution in deduced from the continued sanctity of the saplings after they are cut down, which is maintained by Bar Pada only.

(3) For since they are redeemed by others, they are no longer under the authority of their first owner, therefore his first declaration is no longer valid.

(4) Because once divorced, she is no longer under her husband's authority, just as the plants, when redeemed by others, are not under the authority of their first owner.

(5) Acco (also called Acre). A city and seaport of Phoenicia on a promontory at the foot of mount Carmel ('Cf. Josephus. Ant, II, 10, 2). Jaffa. A city of Palestine and a Mediterranean Port, 35 miles northwest of Jerusalem.

Talmud - Mas. Nedarim 30b

TRAVEL FROM ACCO TO JAFFA, as these are land-dwellers, BUT THOSE WHO SAIL AWAY GREAT DISTANCES [FROM LAND]. He who referred it to the second clause learnt thus: [IF ONE VOWS NOT TO BENEFIT] FROM LAND-DWELLERS, HE MAY NOT BENEFIT FROM SEAFARERS; [this applies] NOT ONLY TO THOSE WHO TRAVEL MERELY FROM ACCO TO JAFFA. BUT EVEN TO THOSE WHO TRAVEL GREAT DISTANCES, since they eventually land.

MISHNAH. HE WHO VOWS [NOT TO BENEFIT] FROM THE SEERS OF THE SUN, IS FORBIDDEN FROM THE BLIND TOO, BECAUSE HE MEANT THOSE WHOM THE SUN SEES'.[1]

GEMARA. What is the reason? — Since he did not say 'from those who see,' he meant to exclude only fish and embryos.[1]

MISHNAH. HE WHO VOWS [NOT TO BENEFIT] FROM THE BLACK-HAIRED MAY NOT [BENEFIT] FROM THE BALD AND THE GREY-HAIRED, BUT MAY [BENEFIT] FROM WOMEN AND CHILDREN, BECAUSE ONLY MEN ARE CALLED BLACKHAIRED.

GEMARA. What is the reason? — Since he did not say 'from those who possess hair'.[2]

BUT MAY [BENEFIT] FROM WOMEN AND CHILDREN, BECAUSE ONLY MEN ARE CALLED 'BLACK-HAIRED'. What is the reason? — Men sometimes cover their heads and sometimes not; but women's hair is always covered, and children are always bareheaded.[3] MISHNAH. ONE WHO VOWS [NOT TO BENEFIT] FROM YILLODIM [THOSE BORN] MAY [BENEFIT] FROM NOLADIM THOSE TO BE BORN]; FROM NOLADIM, HE MAY NOT [BENEFIT] FROM YILLODIM. R. MEIR PERMITTED [HIM TO BENEFIT] EVEN FROM YILLODIM; BUT THE SAGES SAY: HE MEANT ALL WHOSE NATURE IT IS TO BE BORN.[4]

GEMARA. Now, according to R. Meir, noladim go without saying;[5] who then is forbidden to him? — The text is defective, and thus to be reconstructed: ONE WHO VOWS [NOT TO BENEFIT] FROM YILLODIM MAY [BENEFIT] FROM NOLADIM; FROM NOLADIM, YILLODIM ARE FORBIDDEN TO HIM. R. MEIR SAID: ALSO HE WHO VOWS NOT TO BENEFIT] FROM NOLADIM MAY [BENEFIT] FROM YILLODIM, JUST AS HE WHO VOWS NOT TO BENEFIT FROM YILLODIM MAY [BENEFIT] FROM NOLADIM.[6]

R. Papa said to Abaye: Are we to conclude that noladim implies those about to be born? If so, does the verse, thy two sons, which noladim unto thee in the land of Egypt,[7] — mean 'who are to be born'?[8] — What then will you say: that it implies who were born? If so, what of the verse, behold a child nolad unto the house of David Josiah by name:[9] will you say that he was [already born]? but even Menasseh [Josiah's grandfather] was not yet born![10] But nolad implies both,[11] and in vows, we follow general usage.[12] BUT THE SAGES SAY: HE MEANT ALL WHOSE NATURE IT IS TO BE BORN. Excluding what? — It excludes fish and fowl.[13]

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(1) [I.e.. he might have intended the phrase 'those who see the sun' as an euphemism for 'those whom the sun sees', i.e., the blind (cf. Bek. VIII, 3, סכי שמש, 'looking to the sun' used euphemistically for 'squinting'). But since with vows we adopt the more rigorous interpretation, he is forbidden to benefit from those who see as well as from the blind (cf. Rabinowitz, M. Graber Otzar ha-Safruth II, 137ff.).]

(2) Therefore bald and grey-haired people are included, since they were once black-haired.

(3) Hence women would be referred to as 'those of covered hair', and children as 'the bare-headed'. — Ran. In Mishnaic times it was the universal practise for women's hair to be covered, and its violation was deemed sufficient ground for divorce without payment of the kethubah (Keth. 72a Mishnah.) From the present passage it appears that no distinction was drawn between married and unmarried women, but later on custom became more lenient with respect to unmarried women (Shulhan 'Aruk', O.H. 75, 2; cf. Sanh. (Sonc. ed.) p. 398. n. 1 , referring to Gentiles). As for men, it was considered a sign of reverence and piety to cover the head (Kid. 31a, Shab. 118b); nevertheless only in the case of great scholars was it held to be indispensable (cf. Kid. 8a.

(4) I.e., not hatched, and therefore including both those already born and those to be born.

(5) That they are permitted. since the Mishnah states, R. MEIR PERMITTED (HIM TO BENEFIT) EVEN FROM YILLODIM.

(6) I.e. in each case his words are taken literally.

(7) Gen. XLVIII.5.

(8) The reference being to Ephraim and Manasseh, who were already born.

(9) I Kings XIII, 2.

(10) This verse was spoken in the reign of Jeroboam I.

(11) Biblically. Sc. 'born' and 'to be born'.

(12) Lit., 'the language of the sons of men', which applies nolad to those who are yet to be born.

(13) Which are spawned and hatched respectively.

Talmud - Mas. Nedarim 31a

MISHNAH. HE WHO VOWS [NOT TO BENEFIT] FROM THOSE WHO REST ON THE SABBATH, IS FORBIDDEN [TO BENEFIT] BOTH FROM ISRAELITES AND CUTHEANS.[1] IF HE VOWS [NOT TO BENEFIT] FROM GARlic EATERS, HE MAY NOT BENEFIT FROM ISRAELITES AND CUTHEANS;[2] FROM THOSE WHO GO UP[3] TO JERUSALEM, HE IS FORBIDDEN [TO BENEFIT] FROM ISRAELITES BUT FROM CUTHEANS HE IS PERMITTED.[4]

GEMARA. What is meant by 'THOSE WHO REST ON THE SABBATH'? Shall we say, 'those who observe the Sabbath,' why particularly Cutheans: even heathens [if they observe the Sabbath] too? Hence It must mean 'those who are commanded to observe the Sabbath.'' If so, consider the last clause: FROM THOSE WHO GO UP TO JERUSALEM, HE IS FORBIDDEN [TO BENEFIT] FROM ISRAELITES BUT FROM CUTHEANS HE IS PERMITTED. But why so: are they not commanded too?[5] — Sand Abaye: In both clauses the reference is to those who are commanded and fulfil [their obligations]. Hence, in the first clause, both Israelites and Cutheans are commanded and observe [the Sabbath]; but those heathens who rest on the Sabbath do so without being obliged to. As for making pilgrimages to Jerusalem, Jews are commanded and observe it; but Cutheans, though commanded, do not.

MISHNAH. [IF ONE SAYS,] 'KONAM THAT I DO NOT BENEFIT FROM THE CHILDREN OF NOAH,' HE MAY BENEFIT FROM ISRAELITES, BUT NOT FROM HEATHENS.

GEMARA. But are then Israelites excluded from the children of Noah? — Since Abraham was sanctified, they are called by his name.[6]

MISHNAH. [IF ONE SAYS, 'KONAM] THAT I DO NOT BENEFIT FROM THE SEED OF ABRAHAM,' HE IS FORBIDDEN [TO BENEFIT] FROM ISRAELITES, BUT PERMITTED [TO BENEFIT] FROM HEATHENS.

GEMARA. But there is Ishmael?[7] — It is written, for in Isaac shall thy seed be called.[8] But there is Esau? — 'In Isaac',[9] but not all [the descendants of] Isaac.

MISHNAH. [IF ONE SAYS, 'KONAM] THAT I DO NOT BENEFIT FROM ISRAELITES', HE MUST BUY THINGS FROM THEM FOR MORE [THAN THEIR WORTH] AND SELL THEM FOR LESS.[10] [IF HE SAYS, 'KONAM] IF ISRAELITES BENEFIT FROM ME, HE MUST BUY FROM THEM FOR LESS AND SELL FOR MORE [THAN THEIR WORTH], BUT NONE NEED CONSENT TO THIS.[11] THAT I MAY NOT BENEFIT FROM THEM, NOR THEY FROM ME, HE MAY BENEFIT ONLY FROM HEATHENS.[12]

GEMARA. Samuel said: If one takes an article from an artisan[13] on approval, and whilst in his possession it is accidentally damaged, he is liable for it. Hence we see that in his view the benefit is on the side of the buyer.[14] We learnt: [IF ONE SAYS, ' KONAM] THAT I DO NOT BENEFIT FROM ISRAELITES,' HE MUST . . . SELL THEM FOR LESS. Hence he may not sell at its actual worth: but if the purchaser benefits [not the vendor], why not sell at its actual worth? — The Mishnah refers to an unsaleable article.[15] If so, consider the first statement : HE MUST BUY FOR MORE THAN THEIR WORTH.[16] Moreover, consider the second clause: [IF HE SAYS, 'KONAM] IF ISRAELITES BENEFIT FROM ME,' HE MUST BUY FROM THEM FOR LESS AND SELL FOR MORE THAN THEIR WORTH. But if this refers to unsaleable merchandise, even [to sell] at its actual worth [should be permitted]?[17] — The second clause refers to 'keen' merchandise.[18] If so, why must he purchase at a lesser [price]; he may even pay the full value?[19] —

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(1) Lit., 'men of Cuth or Cuthah'; this was one of the five cities from which Sargon, King of Assyria, brought settlers for the depopulated Northern Palestine, after it had been conquered and its inhabitants deported (II Kings XVII, 24, 30). During the period of its depopulation the land had become overrun by lions, who now attacked the settlers; they took this as a sign of the wrath of the local deity, and so, after instruction, they became Jews, though continuing some of their heathen practices. The religious status of the Cutheans (also called Samaritans) was of rather a vacillating nature. The Cutheans observed the Sabbath.

(2) It was customary for these to eat garlic on Friday evenings. B.K. 82a.

(3) For the three Festivals v. Deut. XVI, 16.

(4) The Cutheans built a temple upon mount Gerizim, and though this was destroyed by John Hyrcanus, they continued to reverence the site and make pilgrimages thereto, instead of to Jerusalem.

(5) Since they regarded themselves as true Jews and had formally become converts.

(6) I.e., they are referred to as descendants ofabraham, not of Noah.

(7) Hence his descendants, who are heathens, should be included in the vow.

(8) Gen. XXI, 12.

(9) I.e. , only a portion of his descendants.

(10) Because if he trades on ordinary terms, he is benefiting from them.

(11) I.e., since others are not likely to trade on such terms, in practice he may not trade with them at all.

(12) The point is this. One might think that since it is almost impossible for such a vow to be kept, it is by its very nature invalid; hence it is taught that its observance is not impossible, as he can fall back upon heathens.

(13) Ran reads: from a tradesman.
(14) Trustees are divided into various categories, according to their degrees of responsibility, depending upon the benefit they derive from their trust. Only one who borrows an article is liable for accidental damage, because all the benefit is on his side, the lender receiving nothing in return. Since Samuel rules that the prospective purchaser is liable for accidental damage, it is evident that he puts him in the same category as a borrower, who is the only one to derive benefit.
(15) I.e., something for which there are no buyers. Hence the vendor benefits from the transaction, unless he sells below market price.
(16) But if it is unsaleable, even if he pays no more than its market value, he is not benefiting.
(17) Since the purchaser does not thereby benefit from him.
(18) Goods in keen demand.
(19) As the vendor does not benefit, since he can easily sell it to someone else.

Talmud - Mas. Nedarim 31b

But the Mishnah refers to average merchandise;[1] whilst Samuel refers to an article that is eagerly sought.

It was taught in agreement with Samuel : If one takes articles from a tradesman [on approval] to send them [as a gift] to his father-in-law's house, and stipulates: 'if they are accepted, I will pay you their value, but if not, I will pay you for their goodwill benefit':[2] if they were accidentally damaged on the outward journey, he is liable;[3] if on their return journey, he is not liable, because he is regarded as a paid trustee.[4]

A middleman [once] took an ass[5] to sell, but could not sell it. On his way back it was accidentally injured, [whereupon] R. Nahman held him liable to make it good. Raba objected: 'if they were damaged on the outward journey, he is liable; if on their return journey. he is not!' — Sand he to him: The return journey of a middleman counts as an outward journey, for if he finds a purchaser even at his doorstep, will he not sell [it] to him?

MISHNAH. [IF ONE SAYS,] 'KONAM THAT I DO NOT BENEFIT FROM THE UNCIRCUMCISED, HE MAY BENEFIT FROM UNCIRCUMCISED ISRAELITES BUT NOT FROM CIRCUMCISED HEATHENS; THAT I DO NOT BENEFIT FROM THE CIRCUMCISED,' HE IS FORBIDDEN TO BENEFIT FROM UNCIRCUMCISED ISRAELITES BUT NOT FROM CIRCUMCISED HEATHENS, BECAUSE 'UNCIRCUMCISED' IS A TERM APPLICABLE ONLY TO HEATHENS, AS IT IS WRITTEN, FOR ALL THE NATIONS ARE UNCIRCUMCISED AND ALL THE HOUSE OF ISRAEL ARE UNCIRCUMCISED IN THE HEART.[6] AND IT IS FURTHER SAID, AND THIS UNCIRCUMCISED PHILISTINE SHALL BE [AS ONE OF THEM],[7] AND IT IS FURTHER SAID, LEST THE DAUGHTERS OF THE PHILISTINES REJOICE, LEST THE DAUGHTERS OF THE UNCIRCUMCISED TRIUMPH.[8] R. ELEAZAR B. 'AZARIAH SAID: THE FORESKIN IS LOATHSOME, SINCE IT IS A TERM OF OPPROBRIUM FOR THE WICKED, AS IT IS WRITTEN, FOR ALL THE NATIONS ARE UNCIRCUMCISED. R. ISHMAEL SAID, GREAT IS [THE PRECEPT] OF CIRCUMCISION, SINCE THIRTEEN COVENANTS WERE MADE THEREON.[9] R. JOSE SAID, CIRCUMCISION IS A GREAT PRECEPT, FOR IT OVERRIDES [THE SEVERITY OF] THE SABBATH.[10] R. JOSHUA B. KARHA SAID: GREAT IS [THE PRECEPT OF] CIRCUMCISION. FOR [NEGLECTING] WHICH MOSES DID NOT HAVE [HIS PUNISHMENT] SUSPENDED EVEN FOR A SINGLE HOUR[11] . R. NEHEMIAH SAID, GREAT IS [THE PRECEPT OF] CIRCUMCISION, SINCE IT SUPERSEDES THE LAWS OF LEPROSY.[12] RABBI SAID, GREAT IS CIRCUMCISION, FOR [NOTWITHSTANDING] ALL THE PRECEPTS WHICH ABRAHAM FULFILLED HE WAS NOT DESIGNATED PERFECT UNTIL HE CIRCUMCISED HIMSELF, AS IT IS WRITTEN, WALK BEFORE ME, AND BE THOU PERFECT.[13] ANOTHER EXPLANATION: GREAT IS CIRCUMCISION, SINCE BUT FOR THAT, THE HOLY ONE,

BLESSED BE HE, WOULD NOT HAVE CREATED THE UNIVERSE, AS IT IS WRITTEN, BUT FOR MY COVENANT BY DAY AND NIGHT,[14] I WOULD NOT HAVE APPOINTED THE ORDINANCES OF HEAVEN AND EARTH.[15] GEMARA. It was taught: R. Joshua b. Karha said, Great is circumcision, for all the meritorious deeds performed by Moses our teacher did not stand him in stead when he displayed apathy towards circumcision, as it is written, and the Lord met him, and sought to kill him.[16] R. Jose sand, God forbid that Moses should have been apathetic towards circumcision, but he reasoned thus: 'If I circumcise [my son] and [straightway] go forth [on my mission to Pharaoh], I will endanger his life, as it is written, and it came to pass on the third day, when they were sore.[17] If I circumcise him, and tarry three days, — but the Holy One, blessed be He, has commanded: Go, return unto Egypt.[18] Why then was Moses punished?

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(1) Which is neither a drag on the market nor in keen demand.

(2) Which he would derive from his father-in-law's knowing that he wished to make him a present. Although only a matter of goodwill a monetary value could be set upon it.

(3) This supports Samuel's ruling.

(4) Who is not liable for accidental damage; this is because he has derived some benefit through having had it in his charge; but he cannot be considered as a simple borrower, the sole benefit being his, since this benefit has by now ceased, B.M. (Sonc. ed.) p. 460.

(5) חמדא. The word may also mean 'wine'.

(6) Jet. IX, 25. Thus, though there may be some circumcised among the heathens, they are collectively termed 'uncircumcised'; similarly, when the Israelites are rebuked for their leanings to paganism, they are denounced as 'uncircumcised of heart'.

(7) I Sam. XVII, 36, though he did not know whether Goliath was uncircumcised or not.

(8) II Sam. I, 20.

(9) In the passage dealing with God's command to Abraham to circumcise himself, the word 'covenant' occurs thirteen times. Gen. XVII.

(10) Circumcision, though entailing work, is performed on the Sabbath.

(11) This is discussed in the Gemara.

(12) A leprous spot, such as a swelling etc., may not be cut off (Deut. XXIV, is so interpreted); but if it is on the foreskin, it may be removed together with it.

(13) Gen. XVII, 1.

(14) This is taken to refer to circumcision, which, as shown above, is frequently designated as such.

(15) Jer. XXXIII, 25. This is the end of the Mishnah in our text, but other versions, including that of Ran and Tosaf., add the following: — Great is circumcision, for it counterbalances all other precepts put together, as it is written, behold he blood of the covenant, which he Lord hath made with you concerning all these words (Ex. XXIV, 8). All these words are understood to mean all God's precepts: and 'the blood of the covenant', though referring in its context to sacrifice, is applied to circumcision, on account of its frequent designation as covenant. Part of this reading is quoted in the Gemara as a Baraitha. — Weiss, Dor, II, 9. regards all these dicta as called forth by Christianity's abrogation of circumcision.

(16) Ex. IV, 24.

(17) Gen. XXXIV, 25. This refers to the inhabitants of the city of Shechem, who underwent circumcision. Moses considered it dangerous to take his son on a journey within the first three days of circumcision.

(18) Ex. IV, 19, implying without delay.

Talmud - Mas. Nedarim 32a

Because he busied himself first with the inn,[1] as it is written, And it came to pass by the way, in the inn.[2] R. Simeon b. Gamaliel sand: Satan[3] did not seek to slay Moses but the child, for it is written, [Then Zipporah took a sharp stone, and cut off the foreskin of her son, and cast it as his feet, and sand,] Surely a bloody hathan art thou to me.[4] Go forth and see: who is called a hathan? Surely the infant [to be circumcised].[5]

R. Judah b. Bizna lectured: When Moses was lax in the perform ance of circumcision, Af and Hemah[6] came and swallowed him up, leaving nought but his legs. Thereupon immediately Zipporah 'took a sharp stone and cut off the foreskin of her son';[7] straightway he let him alone.[8] In that moment Moses desired to slay them, as it is written, Cease from Af and forsake Hemah.[9] Some say that he did slay Hemah, as it is written, I have not Hemah.[10] But is it not written, for I was afraid of Af and Hemah?[11] — There were two [angels named] Hemah. An alternative answer is this: [he slew] the troop commanded by Hemah, [but not Hemah himself].

It was taught: Rabbi sand, Great is circumcision, for none so ardently busied himself with [God's] precepts as our Father Abraham, yet he was called perfect only in virtue of circumcision, as it is written, Walk before me and be thou perfect,[12] and it is written, And I will make my covenant between me and thee.[13] Another version [of Rabbi's teaching] is this: Great is circumcision, for it counterbalances all the [other] precepts of the Torah, as it is written, For after the tenor of these words I have made a covenant with thee and with Israel.[14] Another version is: Great is circumcision, since but for it heaven and earth would not endure, as it is written, [Thus saith the Lord,] But for my covenant by day and night,[15] I would not have appointed the ordinances of Heaven and earth.[16] Now this [statement][17] conflicts with R. Eleazar's: for R. Eleazar[18] said, Great is the Torah, since but for it heaven and earth could not endure, as it is written, But for my covenant by day and night, I would not have appointed the ordinances of heaven and earth.[19]

Rab Judah sand in Rab's name: When the Holy One, blessed be He, said to our Father Abraham, 'Walk before me and be thou perfect',[20] he was seized with trembling. 'Perhaps,' he said, 'there is still aught shameful in me!' But when He added, 'And I will make my covenant between me and thee', his mind was appeased.[21]

Aid he brought him forth abroad.[22] Now Abraham had said unto him, 'Sovereign of the Universe! I have gazed at the constellation which rules my destiny, and seen that I am not fated to beget children.' To which [God] replied: 'Go forth from thy astrological speculations: Israel is not subject to planetary influences.'

R. Isaac said: He who perfects himself, the Holy One, blessed be He, deals uprightly with him, as it is written, With the merciful thou wilt shew thyself merciful, and with the upright thou wilt shew thyself upright.[23] R. Hoshaia said: If one perfects himself, good fortune will be his,[24] as it is written, Walk before me and be thou perfect;[25] and it is further written, And thou shalt be a father of many nations.[26]

Rabbi[27] said: He who practises enchantment will be harassed by witchcraft, as it is written, For against him, of [the seed of] Jacob, there is enchantment.[28] But surely it is written with lamed aleph?[29] — But he is thus punished as measure for measure.[30] Ahabah the son of R. Zera learnt: He who does not practice enchantment is brought within a barrier [i.e., in proximity to God] which not even the Ministering Angeis may enter, as it is written, For there is no enchantment in Jacob, neither is there any divination in Israel: now it shall be asked [by the angels] of Jacob and Israel, What hath God wrought?[31]

R. Abbahu said in R. Eleazar's name: Why was our Father Abraham punished and his children doomed to Egyptian servitude for two hundred and ten years? Because he pressed scholars into his service, as it is written, He armed his dedicated servants[32] born in his own house.[33] Samuel[34] said: Because he went too far in testing the attributes [i.e., the promises] of the Lord, as it is written, [And he sand, Lord God,] whereby shall I know that I shall inherit it?[35] R. Johanan sand: Because he prevented men from entering beneath the wings of the Shechinah, as it is written, [And the king of Sodom said it to Abraham,] Give me the persons, and take the goods to thyself.[36]

And he armed his trained servants, born in his own house.[37] Rab said, he equipped them[38] by [teaching them] the Torah.[39] Samuel sand, he made them bright with gold [i.e., rewarded them for accompanying him]. Three hundred and eighteen:[40] R. Ammi b. Abba sand: Eliezer outweighed them all. Others say, It was Eliezer, for this is the numerical value of his name.[41]

R. Ammi b. Abba also said: Abraham was three years old when he acknowledged the Creator, for it is written, Because [Heb. ‘ekeb] that Abraham obeyed my voice:[42] the numerical value of ‘ekeb is one hundred seventy two.[43] R. Ammi b. Abba also said:

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(1) Instead of with circumcision.

(2) Ibid. IV, 24. This implies that as soon as he left the road he turned his attention to the inn, arranging his baggage, quarters, etc., instead of immediately circumcising his son.

(3) Var. lec. ‘that angel’. Generally speaking. Satan was regarded as man's adversary and accuser, but without independent power, which be must derive from God. (Cf. Job I, seq., Zech. III. 1f.) In the older Talmudic literature Satan is seldom mentioned, but his name is found more frequently in the amoraic period, and it may well be that the variant reading here (angel) is the original one. V. also Kid. (Son. ed.) p. 142, n. 5.

(4) Ex. IV, 25.

(5) Hathan generally means bridegroom, son-in-law: but in connection with circumcision it refers to the infant to be circumcised

(6) Wrath and anger personified.

(7) As the whole body was swallowed up save the legs. Zipporah understood that this was a punishment for neglecting the circumcision of the foreskin.

(8) Ex. IV, 26.

(9) Ps XXXVII, 8. Af and Hemah are regarded here as proper nouns.

(10) Isa. XXVII, 4. Spoken by God, and according to this interpretation, because Hemah had been slain.

(11) Deut. IX, 19. This refers to the sin of the Golden Calf, which was subsequent to the incident under discussion.

(12) Gen. XVII, 1, in reference to circumcision.

(13) Ibid. XVII, 2. [Indicating that Abraham was to attain perfection through the covenant of circumcision.] Rashi, without pointing out any incorrectness in the text, relates this verse to the next passage; v. next note.

(14) Ex. XXXIV, 27. After the tenor of these words is taken to refer to all God's precepts; by a ‘covenant’, ‘circumcision’ is understood; thus the two — all God's precepts and circumcision — are equated. Rashi appears to have the following reading: As it is written, Behold the blood of the covenant, which the Lord hath made with you concerning all these words (Ex. XXIV, 8); and it is also written. And I will mike my covenant between me and thee (Gen. XVII, 2). Just as ‘covenant’ in the latter verse refers to circumcision, so also in the former; whilst the end of that verse, ‘concerning all these words’, shews that circumcision is equal in importance to ‘all these words’, i.e., all God's commandments.

(15) V. p. 93, n. 8.

(16) Jer. XXXIII, 25.

(17) Which identifies ‘covenant’ here with circumcision.

(18) [So Pes. 68b. Cur. edd. R. Eliezer.]

(19) Thus, according to him, ‘covenant’ in this verse refers to the Torah, not to circumcision.

(20) Gen. XVII, 1.

(21) For be then understood that the imperfection was not in himself, but in the lack of a formal covenant between him and the Almighty.

(22) Gen. XV, 5.
(23) II Sam. XXII, 26.
(24) Lit., 'the hour will stand by him'.
(25) Gen. XVII, 1.
(26) Ibid. XVII, 4. This should be his good fortune, as a reward for perfecting himself.
(27) Var. lec.: R. Levi.
(28) Num. XXIII, 23.
(29) Lo = not, so that the verse reads, Surely there is no enchantment in Jacob.
(30) I.e., this is not deduced from a Scriptural verse, but from the general axiom that punishment corresponds to the crime. Though the Jewish Sages attributed reality to supernatural agencies in general, they nevertheless sought to discourage superstitious practices; v. M. Joseph. Judaism as Creed and Life. pp. 79-81.
(31) Num. XXIII, 23. The Israelites, through not practising enchantments, are brought into such close contact with God, that they know secrets not entrusted to the angels.
(32) I.e., scholars dedicated to the study of the Torah. The word is treated as a derivative of hanok, to educate, dedicate.
(33) Gen. XIV, 14.
(34) Var. lec.: R. Samuel b. Nahmani.
(35) Gen. XV, 8.
(36) Ibid. XIV, 21. Abraham, by permitting this, instead of taking the persons himself, and teaching them to know' God, is said to have prevented them from coming beneath the wings of the Divine Presence. This dictum seems to indicate that R. Johanan was in favour of proselytes.
(37) Ibid. XIV, 14.
(38) A variant reading is herikan; he emptied them from the Torah, i.e., disregarded their learning and forced them into service, or perhaps, withdrew them from their studies.
(39) Wa-yarek is here connected with yarak to make shine; cf. yerakrak., yellow (shining).
(40) Ibid.
(41) Hebrew letters are also used as numbers, and the numerical value of אליעזר is 318.
(42) Gen. XXVI, 5.
(43) The verse is therefore thus interpreted: 172 years hath Abraham obeyed my voice. As he lived 175 years in all, he was three years old when he acknowledged the Creator.

Talmud - Mas. Nedarim 32b

The numerical value of ha-satan [Satan] is three hundred sixty four.[1]

R. Ammi b. Abba also said: [First] Abram is written, then Abraham.[2] at first God gave him mastery over two hundred forty three limbs, and later over two hundred forty eight, the additional ones being the two eyes, two ears, and the membrum.[3]

R. Ammi b. Abba also said: What is the meaning of, There is a little city. etc.?[4] 'A little city' refers to the body; and 'a few men within' to the limbs; 'and there came a great king against it and besieged [it]' to the Evil Urge;[5] 'and built great bulwarks against it', to sin; 'Now there was found in it a poor wise man, to the Good Urge; and he by his wisdom delivered the city, to repentance and good deeds; yet no man remembered that same poor man, for when the Evil Urge gains dominion, none remember the Good Urge.

Wisdom strengtheneth the wise more than ten mighty ones which are in the city.[6] 'Wisdom strengtheneth the wise' refers to repentance and good deeds; 'more than ten mighty ones,' viz., the two eyes, two ears, two hands, two feet, membrum and mouth.[7]

R. Zechariah said on R. Ishmael's authority: The Holy One, blessed be He, intended to bring forth the priesthood from Shem, as it is written, And he [sc. Melchizedek] was the priest of the most high God.[8] But because he gave precedence in his blessing to Abraham over God, He brought it forth

from Abraham; as it is written, And he blessed him and said. Blessed be Abram of the most high God, possessor of heaven and earth, and blessed be the most high God.[9] Said Abraham to him, 'Is the blessing of a servant to be given precedence over that of his master?' Straightway it [the priesthood] was given to Abraham, as it is written, The Lord said unto my Lord,[10] Sit thou at my right hand, until I make thine enemies thy footstool;[11] which is followed by, The Lord hath sworn, and will not repent, Thou art a priest for ever, after the order of Melchizedek,'[12] meaning, 'because of the words of Melchizedek.'[13] Hence it is written, And he was a priest of the most High God, [implying that] he was a priest, but not his seed.[14]

CHAPTER IV

MISHNAH. THE ONLY DIFFERENCE BETWEEN ONE WHO IS UNDER A VOW NOT TO BENEFIT AUGHT FROM HIS NEIGHBOUR, AND ONE WHO IS FORBIDDEN TO EAT OF HIS FOOD, IS IN RESPECT OF WALKING [OVER HIS PROPERTY] AND [THE USE OF] UTENSILS NOT EMPLOYED IN THE PREPARATION OF FOOD.[15] IF A MAN IS UNDER A VOW [NOT TO EAT] OF HIS NEIGHBOURS FOOD, THE LATTER MAY NOT LEND HIM A SIFTER, SIEVE, MILL-STONE OR OVEN,[16] BUT HE MAY LEND HIM A SHIRT, RING, CLOAK, AND EARRINGS.[17]

GEMARA. Which Tanna [is the authority of the Mishnah]?[18] — R. Adda b. Ahabah said, It is R. Eliezer. For it was taught: R. Eliezer said: Even the extra [given by a vendor to his customer] is forbidden to him who is under a vow not to benefit [by his neighbour].[19]

IF A MAN IS UNDER A VOW NOT TO [EAT] OF HIS NEIGHROUR'S FOOD, THE LATTER MAY NOT LEND HIM etc.

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(1) This indicates that his seductive powers over mankind are only for 364 days of the year. On the 365th, viz., the Day of Atonement, he has no power over man.

(2) The original name of Abram, whose numerical value is 243, was changed to Abraham, with the value 248, the numbers of members of man's body. V. Mak. (Sonc. ed.) p. 109. n. 5.

(3) As a reward for his undergoing circumcision he was given mastery over those limbs, which, through hearing and seeing, entice one to immorality; but now he was enabled by his will-power to forbid them to look upon or listen to sin. The last mentioned, of course, refers to the control of the sex-lust. Cf. Maim. 'Guide', III, ch. 49.

(4) Eccl. IX, 14f.

(5) One's evil inclinations personified; in B.B. 16a he is identified with Satan.

(6) Ibid. VII, 19.

(7) I.e., by repentance and good deeds one can conquer the evil desires of all these.

(8) Gen. XIV, 18. The Midrash identifies him with Shem, the son of Noah, Abraham's eighth ancestor.

(9) Ibid. 19f.

(10) Here taken as referring to Abraham; cf. Ber. 7b, where my lord is explicitly so explained.

(11) Ps. CX, 1.

(12) Ibid. CX, 4.

(13) I.e., because of his giving precedence to Abraham.

(14) Though Abraham was a descendant of Melchizedek, and thus the priesthood was inherited by the latter's seed, yet this was through the merit of Abraham, not of Melchizedek. — Ran.

(15) If he is forbidden all benefit, these are forbidden; but if the vow is only in respect of food, these are permitted.

(16) This teaches that not only are those utensils prohibited which are used in the immediate preparation of food for eating, such as a cooking pot. but even those employed in the early stages only.

(17) [Or 'nose-rings].

(18) That even such a trifling benefit as walking over his property is forbidden.

(19) Since R. Eliezer held that the vow applied even to such trifles, he is the authority of our Mishnah.

Talmud - Mas. Nedarim 33a

But he vowed in respect of food?[1] — Said R. Simeon b. Lakish: This refers to one who said, 'The benefit of your food be forbidden me.'[2] But may it not mean that he is not to chew wheat [to a pulp] and apply it to his wound?[3] — Raba replied: The Mishnah refers to one who said: 'Any benefit from you leading to the enjoyment of food be forbidden me.' R. Papa said: A sack for bringing fruit, an ass for bringing fruit, and even a mere basket, all lead to the enjoyment of food. R. Papa propounded: What of a horse for travelling [to a banquet] or a ring to appear in;[4] or, what of passing over his land?[5] — Come and hear: BUT HE MAY LEND HIM A SHIRT, RING, CLOAK AND EARRINGS. How is this to be understood? Shall I say it is not to appear in them, need this be stated?[6] Hence it must mean to be seen in them, and it is taught that he may lend them to him! — No. After all, it does not mean to appear in them; but because the first clause teaches THE LATTER MAY NOT LEND HIM,[7] the second clause teaches HE MAY LEND HIM.[8]

MISHNAH. AND WHATEVER IS NOT EMPLOYED IN THE PREPARATION OF FOOD, WHERE SUCH ARE HIRED OUT, IT IS FORBIDDEN.[9]

GEMARA. Hence the first clause applies even where such things are not hired. Which Tanna [rules thus]?[10] — Said R. Adda b. Ahabah: It is R. Eliezer.[11]

MISHNAH. IF ONE IS UNDER A VOW NOT TO BENEFIT FROM HIS NEIGHBOUR, THE LATTER MAY PAY HIS SHEKEL,[12] SETTLE HIS DEBTS, AND RETURN A LOST ARTICLE TO HIM. WHERE PAYMENT IS TAKEN FOR THIS,[13] THE BENEFIT MUST ACCRUE TO HEKDESH.[14]

GEMARA. Thus we see that it is merely driving away a lion [from his neighbour's property],[15] and permitted. Which Tanna [rules thus]? — Said R. Hoshaia: This is

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(1) Which does not include these utensils.

(2) Instead of simply 'Your food be forbidden me'. The additional words, 'b. etc.' are understood to include something besides actual food, viz., utensils for its preparation.

(3) I.e., the longer form may imply that food is forbidden no matter how used, yet still be confined to actual foodstuffs.

(4) So as to be treated as an honoured guest.

(5) On the way to a feast.

(6) For then he does not benefit at all, and it is obvious that he may lend them to him.

(7) This must be taught; v. p. 100, n. 2.

(8) I.e., it is merely to round off the Mishnah, though it is self-evident.

(9) Even to one who is under a vow in respect of food as explained in the Gemara above, for the remission of the hiring fee is a benefit leading to the enjoyment of food.

(10) That even where the benefit is so trifling, since it can be borrowed without a fee, it is forbidden.

(11) V. p. 100, n. 5.

(12) There was an annual tax of half a shekel for the upkeep of the Temple; v. Shek. I, 1; Ex. XXX, 13.

(13) E.g., if he lost work through returning the article; v. B.M. 30b.

(14) V. Glos. This is discussed in the Gemara.

(15) I.e., he is merely performing a neighbourly action, without bestowing real benefit, for even if the other man does not pay the shekel, he still shares in the public sacrifices; also, when his debts are settled, the debtor personally receives nothing.

Talmud - Mas. Nedarim 33b

Hanan's view.[1] Raba said: You may even say that it agrees with all: [We suppose that] the man who is interdicted by vow not to benefit from his neighbour was lent [money] without obligation to

repay.[2]

What is [the ruling of] Hanan? — We learnt: If a man departed overseas, and another arose and supported his wife: Hanan said: He has lost his money.[3] But the sons of the High priests[4] disputed this and maintained: He must swear how much he expended and is reimbursed [by the husband]. R. Dosa b. Harkinas ruled as they did; whilst R. Johanan b. Zakkai said: Hanan has ruled well — it is as though he had placed his money upon a deer's horn.[5]

Now, Raba did not say as R. Hoshaia, because he interpreted our Mishnah to harmonize with all views. R. Hoshaia did not say as Raba: [to settle a debt] that need not be repaid is forbidden as a preventive measure on account of [a debt] that must be repaid.[6]

AND RETURN A LOST ARTICLE TO HIM. R. Ammi and R. Assi [differ thereon] — one said: This is only when the property of the finder[7] is forbidden to the loser, so that in returning it to him, he returns what is his own.[8] But if the property of the loser is forbidden to the finder, he may not return it, because he benefits him by R. Joseph's perutah.[9] But the other maintained: Even if the finder may not benefit from the loser's property, he may return it, and as for R. Joseph's perutah, this is rare.[10]

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(1) This is explained further on.

(2) The creditor having lent it to be repaid at the debtor's leisure (Ran). Therefore, when his neighbour repays his debt, he confers no benefit upon him. Similarly, he may pay his shekel only when he is not bound to pay it himself, e.g., if he had already sent it and it was lost on the road.

(3) He has no claim upon the husband.

(4) There was a special court of priests, and this may be referred to here; v. Keth. 104b.

(5) I.e., he cannot expect its return.

(6) Lest it be thought that the latter too may be settled.

(7) Lit., ‘restorer’.

(8) So that the loser is not benefiting.

(9) Since when a person is engaged in the performance of one precept, he is exempt from another, the finder, when fulfilling this precept, may decline to give a perutah of charity to a poor man. This is referred to as R. Joseph's perutah, because he based a certain ruling upon this fact. B.K. 56b.

(10) One rarely avails himself of that privilege, hence the finder gains nothing.

Talmud - Mas. Nedarim 34a

We learnt: WHERE PAYMENT IS TAKEN FOR THIS, THE BENEFIT MUST ACCRUE TO HEKDESH. Now, that is well on the view that even if the finder must not benefit from the loser's property, he may also return it: hence it is taught: WHERE PAYMENT IS MADE FOR THIS, THE BENEFIT MUST ACCRUE TO HEKDESH.[1] But on the view that if the finder may not benefit from the loser he must not return it, why should the benefit accrue to hekdesh?[2] — This law refers to one case only.[3]

Others report it in the following version: R. Ammi and R. Assi differ thereon: one said: This was taught only if the finder may not benefit from the loser's property. R. Joseph's perutah being rare; but if the loser may not benefit from the finder's property, he may not return it, because he [the finder] benefits him. While the other maintained: Even if the loser may not benefit from the finder's property, he may return it, for he is only returning his own.

We learnt: WHERE PAYMENT IS TAKEN FOR THIS, THE BENEFIT MUST ACCRUE TO HEKDESH. Now that is well on the view that even if the loser may not benefit from the finder, he may also return it: thus he justifies WHERE [etc.],[4] but on the view that if the loser may not benefit

from the finder, he may not return it, how is WHERE [etc.] explained?[5] This is a difficulty.

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(1) For since the finder cannot benefit from the loser, he cannot receive his fee from him; on the other hand, the loser is liable for it; therefore it goes to hekdesh; v. p. 104, n 2, for the reverse case.

(2) Since he may not return it, there is no fee.

(3) I.e., where the loser may not benefit from the finder. This is the interpretation of the passage according to our text. But the text of Ran is reversed, and (with its explanation) is as follows: This is well on the view that only if the loser may not benefit from the finder it may be returned, but not in the reverse case. Hence, the fee must go to the Temple treasury. if it is beneath the finder's dignity to accept it, for were the loser to retain it, he would be benefiting from the finder. But on the view that even if the finder must not benefit from the loser it may be returned, why must the fee go to the Temple treasury? If the finder declines it, the loser may retain it, since here is no prohibition upon him. If on the other hand the finder wishes to accept it, why may he not do so: in accepting it he is not benefiting from the loser, but merely being paid for lost time? The Talmud replies that though the law permitting the return of the lost article applies to both cases, the statement that the fee must go to the sanctuary applies only to one, viz., where the loser may not benefit from the finder.

(4) The law referring to this case, as explained above, where it is beneath the finder's dignity to accept the fee.

(5) For then it may be returned only if the loser may benefit from the finder; but in that case, why must the fee be given to hekdesh? If the finder does not accept it, the loser may retain it for himself.

Talmud - Mas. Nedarim 34b

Raba said: If a hefker loaf[1] lies before a man, and he declares, 'This loaf be hekdesh', and he takes it to eat it,he trespasses in respect of its entire value; if to leave it to his children, he trespasses in respect of its goodwill value only.[2] R. Hiyya b. Abin asked Raba: [What if one says to his neighbour,] 'My loaf [be forbidden] to you,' and then gifts it to him: now, he said, 'my loaf,' meaning only so long as it IS In his own possession;[3] or perhaps, having said '[be forbidden] to you,' he has rendered it to him hekdesh?[4] — He replied: It is obvious that even if he gifted it to him, it is forbidden. For what was it [his vow] to exclude? Surely not the case where it would be stolen from him?[5] — He replied, No: It excludes the case where he invites him for it.[6]

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(1) V. Glos.

(2) A Zar (i.e., not a priest) is forbidden to eat consecrated food; if he does, he is guilty of trespass. and bound to make restitution of its value plus a fifth (Lev. XXII, 14). Now as soon as he takes this consecrated loaf, with the intent of eating it, he withdraws it from the possession of hekdesh into his own. Hence he has trespassed in respect of the whole of it. But if he merely intends leaving it to his children, he merely benefits by its goodwill value (i.e., the benefit he enjoys through his children's knowing that he wishes to leave it to them) and hence liable for that only. [Had, however, the loaf been his own, he would not have been guilty of a trespass by taking it up with the intent of eating it. Since it was all the time in his possession, both before and after the consecration, he would be treated in regard to it as a Temple Treasurer, to whom the law of trespass does not apply, v. B.K. (Sonc. ed.) p. 103.]

(3) Therefore now that he gave it to him, it is no longer his; hence permitted.

(4) So that the prohibition always remains.

(5) When A says to E, 'My loaf be forbidden to you', thus excluding B from its enjoyment, what is his purpose? Obviously, as long as it is in A's possession it is forbidden to B in any case, since it does not belong to him. Surely A did not intend his vow only in the unlikely event of the loaf being stolen? Hence he must have meant, 'Even if I give you this loaf which is now mine, it shall be forbidden to you.'

(6) I.e., if A should invite B to dine with him off that loaf of bread, it should be forbidden to him; but not if he gives it to him. This interpretation follows Ran. Others explain the passage differently. According to all versions, לאו must be deleted from the text.

Talmud - Mas. Nedarim 35a

He objected: If A says to B, 'Lend me your cow,' and B replies, 'Konam be [this] cow if I possess [another] for you,'[1] or, my property be forbidden you if I possess any cow but this': [or,] 'Lend me

your spade,' and he replies, 'This spade be forbidden me if I possess [another];' or 'my property be forbidden me, if I possess any spade but this', and it is discovered that he possesses [another]. During his, [B's] lifetime it is forbidden [him]; but if he dies, or it is given to him,[2] it is permitted?[3] — Said R. Aha son of R. Ika: That is if it was given to him through another.[4] R. Ashi said: This may be proved too, for it is stated, 'it is given to him,' not 'he gives it to him.'[5]

Raba asked R. Nahman: Does the law of trespass apply to Konamoth?[6] — He replied, We have learnt this: WHERE PAYMENT IS TAKEN FOR THIS, THE BENEFIT MUST ACCRUE TO HEKDESH. This teaches that it is as hekdesh: just as the law of trespass applies to hekdesh, so it applies to Konamoth.

This is dependent on Tannaim: If one Says, 'Konam, this loaf is hekdesh,'[7] then whosoever eats it, whether he or his neighbour, commits trespass; therefore the law of redemption applies to it.[8] [But if he says,] 'This loaf is hekdesh to me'; [by eating it] he commits trespass; but his neighbour does not commit a trespass; therefore the law of redemption does not apply:[9] this is the view of R. Meir. But the Sages maintain: In both cases no trespass is involved, because the law of trespass does not apply to Konamoth.

R. Aha son of R. Avi asked R. Ashi: [If A says to B,] 'My loaf be forbidden to you,'[10] and then makes a gift of it to him, who is liable for trespass? Shall the giver incur it but it is not forbidden to him? Is the receiver to incur it — but he can say, 'I desired to accept what is permitted, not what is forbidden?'[11] — He replied: The receiver incurs the liability when he uses it, for whoever converts money of hekdesh into hullin,[12] thinks that it is hullin, yet he is involved in trespass;[13] so this one too is liable for trespass.

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(1) The actual wording is difficult, and the commentators attempt various explanations. The literal translation is given here.

(2) V. infra.

(3) This contradicts Raba.

(4) B gave it to C, who gave it to A. Since B voluntarily (in contradistinction to theft) let it out of his possession, his vow loses its validity.

(5) Though the Hebrew word is the same for both, by tradition it was to be read as a niphal, not as a kal.

(6) A term in us technicus for things interdicted by a vow, usually introduced with the formula konam. Since konam is a korban (a sacrifice) when one vows that a thing shall be konam, he declares it to be virtually consecrated, and hence if the vow is violated, it is as though trespass has been committed. Or it may be argued that in spite of its origin, konam is used without the suggestion of consecration, but merely to imply prohibition.

(7) Not specifying to whom, and therefore applying it to all, including himself. [Read with MS. M.: 'This loaf is hekdesh', omitting konam,' v. also Shebu. 22a.]

(8) Since it is so much regarded as consecrated that by eating it one commits trespass, it is also so in respect of redemption, whereby it reverts to hullin (non-consecrated), whilst the redemption money becomes consecrated.

(9) Since it is not regarded as consecrated in respect of all.

(10) Using the formula 'konam'.

(11) The receiver not knowing that this was the forbidden loaf.

(12) V. Glos.

(13) Because the law of trespass applies only to unwitting misuse of hekdesh.

Talmud - Mas. Nedarim 35b

MISHNAH. AND HE MAY SEPARATE HIS TERUMAH AND HIS TITHES WITH HIS CONSENT.[1] HE MAY OFFER UP FOR HIM THE BIRD SACRIFICES OF ZABIM AND ZABOTH[2] AND THE BIRD SACRIFICES OF WOMEN AFTER CHILDBIRTH, SIN-OFFERINGS AND GUILT-OFFERINGS.[3] HE MAY TEACH HIM MIDRASH,

HALACHOTH AND AGGADOTH,[4] BUT NOT SCRIPTURE.[5] YET HE MAY TEACH SCRIPTURE TO HIS SONS AND DAUGHTERS.[6]

GEMARA. The scholars propounded: Are the priests [in sacrificing] our agents or agents of the All-Merciful? What is the practical difference? — In respect of one who is forbidden to benefit [from a priest]: if you say that they are our agents, surely he [the priest] benefits him [by offering up his sacrifices]; hence it is prohibited. But if you say that they are the agents of the All-Merciful, it is permitted. What [then is the ruling]? — Come and hear: We learnt: HE MAY OFFER UP FOR HIM THE BIRD SACRIFICES [etc.]. Now if you say that they are our agents, does he not benefit him? Then on your view, let him [the Tanna] teach, HE MAY OFFER UP SACRIFICES FOR HIM?[7] But those who lack atonement are different.[8] For R. Johanan said: All [sacrifices] require [the owner's] consent,[9] save for those lacking atonement; since a man brings a sacrifice for his sons and daughters when minors, for it is said, This is the law of him that hath issue,[10] [implying] both for a minor or an adult.[11] If so, according to R. Johanan, does, This is the law for her that hath born [a male or a female][12] imply both an adult or a minor? Is a minor capable of childbirth? But R. Bibi recited in R. Nahman's presence: Three women use a resorbent [to prevent conception]: a minor, a pregnant woman, and a woman giving suck: a minor, lest she conceive and die?[13] — That verse, 'This is the law for her that hath born', [teaches,] that it is a]] one whether the woman be sane or an imbecile, since one must offer a sacrifice for his wife, if an imbecile, in accordance with R. Judah's dictum. For it was taught. R. Judah said: A man must offer a rich man's sacrifice[14] for his wife, and all other sacrifices which are incumbent upon her; since he writes thus for her [in her marriage settlement]: [I shall pay] every claim you may have against me from before up to now.[15]

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(1) If A is forbidden to benefit from B, B (the maddir) may separate terumah on the produce of the former (called the muddar). The Gemara discusses whose consent is meant.

(2) V. Glos.

(3) Lev. XV, 14f, 29f, XII, 6-8. i.e., the maddir, if a priest, may offer these sacrifices for the muddar.

(4) The three branches of Jewish learning. Midrash (from darash, to study, investigate) means any kind of Biblical hermeneutics. In contradistinction to the peshat (literal interpretation) it denotes the deeper investigation into the text of the Bible in order to derive interpretations and laws not obvious on the surface. Halachoth is a term referring to religious law (embracing both civil and ritual law) whether based on Biblical exposition, (and thus arrived at by Midrash) or not. By Aggadah (or Haggadah, from higgid, to narrate) is meant the whole of the non-legal portion of the Talmud. Thus it includes narratives, homiletical exegesis of the Bible (which inculcate morals, beliefs, etc. but no actual laws) medicine, astronomy, dreams, legends and folklore in general.

(5) Lit., 'that which is (to be) read' sc. from a written text. The Pentateuch with its literal interpretations in contradistinction to Midrash, v. Aboth (Sonc. ed.) p. 75, n. 1. As will be seen on 37a, Scripture was generally regarded as the study of children only, adults usually investigating the deeper meaning too.

(6) From this we see that it was usual to teach the Bible to girls, in spite of the Talmudic deduction that daughters need not be educated (Kid. 30a). The opposition of R. Eliezer to teaching Torah to one's daughter (Sot. 20a: He who teaches his daughter Torah is as though he taught her lewdness) was probably directed against the teaching of the Oral Law, and the higher branches of study. [V. Maim. Yad. Talmud Torah, I, 13.] Yet even in respect of this, his view was not universally accepted, and Ben 'Azzai (a.l.) regarded it as a positive duty to teach Torah to one's daughters. The context shows that the reference is to the higher knowledge of Biblical law. In point of fact, there were learned women in Talmudic times e.g., Beruriah, wife of R. Meir (Pes. 62b).

(7) Sacrifices, in general, not lust these.

(8) I.e., those who are unclean, and not permitted to eat holy food (e.g., the flesh of sacrifices) or enter the Sanctuary until their sacrifices have been offered up. This term however does not refer to sinners, whose sacrifice makes atonement for them. The sin- and guilt-offerings mentioned in the Mishnah will also refer to the former.

(9) Before the priest may offer them.

(10) Lev. XV. 32, referring to the sacrifices.

(11) The expression 'this is the law' is emphatic, and hence extends its provisions to include those who might otherwise not have been included. Since a minor cannot bring a sacrifice himself, his father must do so for him. Moreover, a minor

has no legal consent. Thus, we see that these sacrifices can be brought without their owner's (i.e., those on whose behalf it is offered) consent. Since their consent is unnecessary, the priests do not act as their agents, and on that account it is permitted.

(12) Ibid. XII, 7.

(13) V. Yeb. 12b. Thus we see that a minor is incapable of childbirth. — Of course, the same might have been stated simply on physiological grounds.

(14) Certain sacrifices were variable, depending on their owner's financial position (v. Lev. V, 1-13; XII, 1-8). Now in a strictly legal sense every married woman is poor, since she has no proprietary rights, everything belonging to her husband. Nevertheless, if he is wealthy, he must bring the sacrifice of a rich person.

(15) [This clause is taken as referring to sacrifices for which she may have become liable after the betrothal.] So curr. edd. Ran omits 'R. Judah said' from the beginning of the Baraitha, and adds at this point: R. Judah said: Therefore, if he divorced her, he is free from this liability, for thus she writes (in the document acknowledging receipt of settlements due to her on divorce): (I free you) from all the liabilities hitherto borne by you in respect of me. From the Rashi in B.M. 104a, it appears that his version there was the same as the Ran's here. Now, reverting to the argument, since R. Judah (and the first Tanna) taught that a husband is liable for his wife's obligatory sacrifices, 'this is the law' may be interpreted as applying to an imbecile too, the liability resting with her husband. For if this principle of the husband's liability were not admitted, this interpretation would be impossible, since an imbecile herself is not a responsible person.

Talmud - Mas. Nedarim 36a

R. Simi b. Abba objected: If he [the maddir][1] is a priest, he may sprinkle for him the blood of his sin-offering and his guilt-offering?[2] — This refers to the blood of a leper's sin-offering and of a leper's guilt-offering [who lack atonement], as it is written, This shall be the law of the leper:[3] both an adult and a minor.[4]

We learnt: If priests render a sacrifice piggul[5] in the Temple, and do so intentionally, they are liable;[6] This implies [that if they do so] unwittingly, they are exempt, though it was taught thereon:[7] Yet their piggul stands.[8] Now, it is well if you say that they are the agents of the All-Merciful: hence their piggul stands. But if you say that they are our agents, why is it so; let him say to him, 'I appointed you an agent for my advantage, not for my hurt'?[9] — I will tell you: Piggul is different, because the Writ saith, neither shall it be imputed unto him:[10] [implying that it is piggul] in spite of everything.[11]

The [above] text [states]: 'R. Johanan said: All require [the owner's] consent, save for those lacking atonement, since one brings a sacrifice for his sons and daughters when minors.' If so, let one offer a sin-offering on behalf of his neighbour for [eating] heleb,[12] since one brings [a sin-offering] for his insane wife?[13] Why then did R. Eleazar say: If a man set aside a sin-offering for heleb on his neighbour's behalf, his action is invalid?[14] — [Now consider:] In respect to his insane wife, what are the circumstances? If she ate [heleb] whilst insane, she is not liable to a sacrifice;[15] while if she ate it when sane, subsequently becoming insane, [there is the ruling of] R. Jeremiah who said in the name of R. Abbahu in R. Johanan's name: If a man ate heleb, set aside an offering, became insane, and then regained his sanity, it [the sacrifice] is unfit: having been once rejected, it remains so.[16]

Yet if so,[17] a man should be able to offer the passover sacrifice for his neighbour,[18] since he brings it for his sons and daughters, who are minors. Why then did R. Eleazar say: If a man sets aside a passover sacrifice for his neighbour his action[18] is null? — Said R. Zera: [The law, And they shall take to them every man] a lamb, according to the house of their fathers, [a lamb for a house],[19] is not Biblically incumbent [upon minors].[20] And how do we know this? — Because we learnt: If a man says to his sons [who are not of age], 'I will slaughter the passover sacrifice for whomever of you first enters Jerusalem', then as soon as the first of them enters with his head and the greater part of his body, he acquires his portion, and assigns a part thereof to his brothers with him. Now, if you

maintain that ‘a lamb, according to the house of their fathers’ is Biblically applicable [to minors], then standing over the flesh, can he transfer a portion to his brethren?[21] If so, why did their father speak thus to them? — In order to stimulate them in [the performance of] precepts. It was taught likewise: it once happened [after their father had spoken thus] that the daughters entered [the city] before the sons, so that the daughters shewed themselves zealous, and the sons indolent.[22]

HE MAY SEPARATE HIS TERUMAH [etc.]

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(1) V. Glos.

(2) Now. since these offerings are unspecified, they must refer to all, even of those who do not lack atonement.

(3) Lev. XIV, 2, referring to his purificatory sacrifices.

(4) Therefore the same reasoning applies as in the case of a zab.

(5) v. Glos. Such a sacrifice is ‘not acceptable’ and does not acquit its owner of his liability, so that he is bound to offer another.

(6) To compensate the owner of the sacrifice.

(7) This is absent in our text, but supplied from Men. 49a.

(8) Though committed unwittingly, the sacrifice remains piggul.

(9) I.e., such an act committed on behalf of someone else can be repudiated.

(10) Lev. VII, 18.

(11) I.e., the priest is the owner's agent, yet the latter cannot repudiate him, because his power of rendering a sacrifice piggul is absolute and unconditional.

(12) Forbidden fat. The objection is not particularly in regard to this sin-offering, but to all sin-offerings brought on account of transgression. The addition of heleb merely illustrates the type of offering referred to, and is frequently used as the general designation of a sin-offering.

(13) Who also has neither legal consent nor knowledge.

(14) The animal not becoming sanctified.

(15) Not being responsible for her actions.

(16) I.e., when the transgressor lost his reason, his sacrifice became unfit for offering, because an insane person cannot offer, and it remains unfit even if he regains his sanity. Thus we see that even if a sane person sinned, he is not liable to a sacrifice on becoming insane. Therefore, one cannot bring a sin-offering for his insane wife for actual transgression; hence the proposed analogy cannot be drawn.

(17) Still objecting to R. Johanan's first ruling.

(18) Without his knowledge.

(19) Ex. XII, 3.

(20) The Passover sacrifice had to be definitely assigned (before the animal was slain) to a number of persons and anyone not so appointed was subsequently forbidden to cat thereof. But this assignment does not, by Scriptural law, apply to minors at all. For this reason the father could slaughter for them, since they did not need to be appointed. Hence, one cannot argue from this to an adult, to whom the law off appointment applies.

(21) For the assignment of the sacrifice can be made only before it is slain, not after (Pes. 89a). How then can one son assign a portion of the sacrifice to his brothers after it is killed? Therefore we must conclude that by Biblical law they are not bound to be appointed for the eating of the sacrifice at all.

(22) But it is not stated that they lost their portion, proving that assignment is not Biblically incumbent upon them.

Talmud - Mas. Nedarim 36b

The scholars propounded: If one gives terumah of his own for his neighbour's produce, does he require his consent or not? Do we say, since it is a benefit for him, his consent is unnecessary;[1] or perhaps, [the privilege of performing] the precept is his, and he prefers to perform it himself? Come and hear! HE MAY SEPARATE HIS TERUMAH AND HIS TITHES WITH HIS CONSENT. How is this meant: Shall we say, his own corn is used?[2] Then with whose consent? If with his own, who appointed him an agent?[3] But if it means with the owner's consent — does he not benefit him by acting as his agent?[4] Hence it must mean that he separates his own [i.e., the maddir's] produce for the

owner's. Now, with whose consent? If with the owner's, does he not benefit him? Hence it must mean with his own knowledge [without informing the owner].[5] Now if you say that he requires his consent, does he not benefit him?[6] — [No.] After all, it means the owner's [produce] for the owner's produce; and it is as Raba said [elsewhere], That the owner had announced, 'Whoever wishes to separate, let him do so;' here, too, the owner had announced etc.[7]

R. Jeremiah asked R. Zera: If one separates of his own for his neighbour's [produce], to whom does the goodwill [value] belong?[8] Do we say, but for this man's produce, would the other's stack have been made fit to use?[9] Or perhaps, but for this man's stack, the other man's produce would not be terumah?[10] — He replied, Scripture saith, all the increase of thy seed . . . . and thou shalt give.[11]

He objected: HE MAY SEPARATE HIS TERUMAH AND HIS TITHES WITH HIS CONSENT. Now if you say that the goodwill belongs to the owner, surely he [the maddir] benefits him? Hence this proves that the goodwill is his![12] — I will tell you: it is not so. This means that the terumah belongs to the owner; 'HIS CONSENT also referring to the owner, who had announced, 'Whoever wishes to separate, let him do so.'

Come and hear: R. Abbahu said in R. Johanan's name: He who sanctifies the animal must add the fifth, whilst only he for whom atonement is made sanctifies a substitute;[13] and he who gives terumah of his own for another man's produce, the goodwill is his.[14]

HE MAY TEACH HIM MIDRASH, HALACHOTH, AND AGGADOTH, BUT NOT SCRIPTURE. Why not Scripture — because he benefits him? But [by] Midrash too he benefits him? — Said Samuel: This refers to a place where the teaching of Scripture is remunerated, but not that of Midrash. How state this definitely?[15] —

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(1) As it may be taken for granted.

(2) Lit., '(produce) of the owner of the stack (is separated as terumah, etc.) for produce belonging to the owner of the stack.'

(3) I.e., surely A cannot separate terumah for B, using B's produce, without the latter's consent.

(4) Whereas his vow forbids him to benefit him.

(5) [This is not regarded as a direct benefit, since he does not give him aught; v. Ran.]

(6) For by consenting he shews that he regards it as a benefit.

(7) Though such an announcement is a sufficient authorisation, the maddir is not thereby specially appointed an agent, and so does not directly benefit him.

(8) I.e., if another Israelite paid him something to give the terumah to a particular friend of his, to whom does that thing belong?

(9) Therefore the goodwill should belong to him who renders the terumah.

(10) Produce can he declared terumah only on account of other produce. But one cannot take some corn and declare it terumah.

(11) Deut. XIV, 25. In its context, thou shalt give refers to the changing of produce into money; but it is here taken out of its context and related to all the increase of thy seed, shewing that the goodwill belongs to the owner of the corn, no matter who actually separates the tithe. This is the reading of our text, and also that of Ran. But such forcible disregard of the context is not very plausible. Asheri prefers a preferable reading: (When thou hast made an end of tithing) All the tithes of thine increase . . . and thou shalt give it to the Levite; (Deut. XXVI, 12).

(12) This of course is on the assumption that the naddir gives his own corn as terumah.

(13) If A dedicates an animal for B's sacrifice and it subsequently receives a blemish and must be redeemed, then if A, who sanctified it, redeems it himself, he must add a fifth to its value, but nut if B redeems it (this is deduced from Lev. XXVII, 15). Again, if another animal is substituted for the first, both the original and its substitute are holy (ibid. 10). R. Johanan rules that this is only if B, on whose behalf the animal was sanctified, made the substitution, but not if A did so.

(14) Sc. the man who gives it.

(15) Seeing that the statement in the Mishnah is unqualified.

Talmud - Mas. Nedarim 37a

He [the Tanna] informs us this: that even where a fee is taken, it may be accepted only for Scripture, but not for Midrash. Now, why does Midrash differ, that remuneration is forbidden: because it is written, And the Lord commanded me at that time to teach you;[1] and it is also written, Behold I have taught you statutes and judgments, even as the Lord my God commanded me[2] just as I [taught you] gratuitously, so you must teach gratuitously? Then should not Scripture too be unremunerated? — Rab said: The fee is for guarding [the children]. R. Johanan maintained: The fee is for the teaching of accentuation.[3]

We learnt: HE MAY NOT TEACH HIM SCRIPTURE. Now that is well on the view that remuneration is for the teaching of accentuation. But on the view that payment is for acting as guardian — does an adult need one?[4] — It refers to a child. If so, consider the last clause: BUT HE MAY TEACH SCRIPTURE TO HIS SONS: can a child have children? — It is defective, and teaches thus: HE MAY NOT TEACH HIM SCRIPTURE in the case of a minor: but if he is an adult, HE MAY TEACH SCRIPTURE BOTH TO him and HIS SONS.

An objection is raised: Children are not to study a new portion of Bible on the Sabbath; but they may make a first revision on the Sabbath.[5] This is well on the view that remuneration is for the teaching of accentuation: hence a passage may not be read for the first time on the Sabbath;[6] but on the view that payment is for acting as guardian, why is it forbidden to teach a passage for the first time on the Sabbath, yet permitted to give a first revision on the Sabbath; surely there is pay for guardianship oil the Sabbath?[7] — Now, even according to your reasoning: is remuneration for teaching the accentuation on the Sabbath forbidden? Is it not included [in the weekly or monthly fee], which is permitted? For it was taught: If one engages a [day] labourer to look after a child,[8] or the heifer,[9] or to watch over the crops,[10] he may not pay him for the Sabbath:[11] therefore

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(1) Deut. IV, 14.

(2) Ibid. 5.

(3) The whole system of punctuation and accentuation being post-Biblical, Moses' prohibition does not apply to it. The meaning of the phrase pisuk te' ammim is not altogether clear. Jastrow translates: 'the division of words into clauses in accordance with the sense, punctuation'. Be that as it may, it must at least refer to a particular manner of dividing the Biblical text with or without signs, over and above that which would naturally suggest itself by the subject matter. This conclusion must be drawn from the fact that it is regarded by Rab as non-Sinaitic: yet the clearly natural division, corresponding to peshat, could not have been thought of as introduced after Moses; what sense then did it make otherwise? There is mention of chanting in Meg. 32a, but there the reference is to the Mishnah as well as the Bible, the former being studied in a sort of chant, and the phrase pisuk te'ammim is not used there. [Berliner, A., however, in Bertr. z. hebr. Gram. p. 29, n. 1, quotes Rashi on Gen. Rab. XXXVI, (according to a M_nchen MS.) as explaining pisuk te'ammim as Tropen, cantillation.]

(4) Hence, Bible teaching to an adult should be unremunerated, in which case it should be permitted in the Mishnah.

(5) I.e., having studied it before, they may revise it even for the first time on the Sabbath.

(6) Because remuneration is made chiefly for teaching a passage for the first time, as that is the most difficult part of instruction. Hence, if a new passage is thus taught on the Sabbath, the teacher is paid chiefly for Sabbath labour, which is forbidden.

(7) What does it matter whether the passage is a new' one or not? The guardianship is the same in both cases, and remuneration for such work on the Sabbath is forbidden.

(8) That he should not ritually defile himself. It was customary for a child to draw the water from a well to mix with the ashes of the red heifer; this child had to be ritually clean.

(9) This refers to the red heifer. The guardian was to take care that 'no yoke came upon it' (Num. XIX, 2).

(10) This refers to the barley specially sown seventy days before Passover (Men. 85a) for the ceremony of 'sheaf waving' (v. Lev. XXIII. 11) and to the wheat of which were made the 'two wave-loaves' on Pentecost (ibid. 17). These

crops were specially guarded.

(11) Since each day is separately paid for, and payment for the Sabbath per se is forbidden.

Talmud - Mas. Nedarim 37b

if they are lost [or harmed] [on the Sabbath], he is not responsible. But if he was engaged by the week, month, year or septennate, he is paid for the Sabbath; consequently, if they are lost, he is responsible.[1] But in the matter of the Sabbath a new passage may not be studied for the first time for this reason: that the parents of the children may be free for the observance of the Sabbath. An alternative answer is this: because on the Sabbath they eat and drink [more than on weekdays] and feel sluggish;[2] as Samuel said: The change in one's regular diet is the beginning of digestive trouble.[3]

Now, he who maintains that remuneration is for the teaching of accentuation, — why does he reject the view that it is for acting as guardian? — He reasons: Do daughters then need guarding?[4] And he who maintains that the fee is for guardianship, — why does he reject the view that it is for teaching accents? — He holds that accents are also Biblical;[5] for R. Ika b. Abin said in the name of R. Hananel in Rab's name: What is the meaning of, And they read in the book, in the law of God, distinctly, and they gave the sense, so that they understood the reading?[6] 'They read in the book, it, the law of God,' refers to Scripture; 'distinctly,' to Targum;[7] 'and they gave the sense', to the division of sentences; 'so that they understood the reading,' to the accentuation; others say, to the masoroth.[8]

R. Isaac said: The textual reading,[9] as transmitted by the Soferim, their stylistic embellishments, [words] read [in the text] but not written, and words written but omitted in the reading, are all halachah from Moses at Sinai.[10] By textual reading is meant words as erez, shamayim, mizraim.[11] Stylistic embellishments: e.g., [and comfort ye your hearts;] after that ye shall pass on.[12] [Let the damsel abide with its a few days, at least ten:] after that she shall go. [Avenge the children of Israel of the Midianites;] afterwards, shalt thou be gathered unto thy people.[13] [The singers went before,] the players on instruments followed after.[14] Thy righteousness is like the great mountains.[15]

[Words] read [in the text] but not written: [the word] 'Euphrates' in [the verse] as he went to recover his border at the river [Euphrates];[16] [the word] 'man' in [the verse] And the counsel of Ahitophel . . . was as if a [man] had enquired of the oracle of God;[17] [the word] 'come' in [the verse] Behold, the days [come], saith the Lord, the city shall be built etc.;[18] 'for it' in [the verse] let there be no escape [for it]:[19] 'unto me' in [the verse] All that thou sayest [unto me] I will do; 'to me' [in the verse] And she went down unto the floor;[20] 'to me' in [the verse] And she said, These six measures of barley gave he unto me; for he said [to me],[21] All these [words] are read but not written.[22] The following are written but not read: [the word] 'pray' in forgive;[23]

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(1) Thus we see that the Sabbath may be paid for providing it is included in the general weekly agreement. Hence, though the main work in teaching lies in the first reading, this should be permitted on the Sabbath, since the fee is included in the general arrangements.

(2) Hence are not fit to study a portion for the first time.

(3) Lit., 'disease of the bowels'. The Sabbath being a day of delight, the parents naturally wish to play and amuse themselves with their children thereon. But if the children study a new passage on that day, since this requires great concentration, the parents may be afraid of distracting their attention. It is interesting to observe from actual life what the Sabbath meant to the people. In spite of the innumerable restrictions pertaining to that day, and on account of which the Sabbath has been severely criticised as an intolerable burden, right from the New Testament times down to the present day, this simple statement, teaching no doctrine or view of the Sabbath, but recording a simple fact, vividly illustrates the utter shallowness of all that misinformed criticism. Cf. Schechter, Studies in Judaism ('The Law and Recent Criticism, pp. 296f). — 'On the one side, we hear the opinions of so many learned professors, proclaiming ex cathedra that the Law was a most terrible burden, and the life under it the most unbearable slavery . . . On the other side we have the testimony

of a literature extending over about twenty-five centuries, and including all sorts and conditions of men, scholars, poets, mystics, lawyers . . . schoolmen, tradesmen, workmen, women, simpletons, who all . . . give unanimous evidence in favour of this Law, and of the bliss and happiness of living and dying under it, — and this, the testimony of people who were actually living under the Law, not merely theorising upon it'.

(4) Girls are generally at home and do not venture into the streets; hence require no guarding. Now the Mishnah states in general terms that he may not teach Scripture. Though this, as explained, refers to a minor, yet even so the law holds good both of boys and of girls, since no limitations are given. But if payment is for guardianship, he should be permitted to teach girls, who do not need it. — Another reading is: does an adult need guarding? According to this, the explanation that the Mishnah refers to a minor is rejected as being too farfetched.

(5) I.e., the system of accentuations goes back to Moses: consequently it was included in Moses' prohibition.

(6) Neh. VIII, 8.

(7) Targum, 'translation', generally refers to the Aramaic translation of the Bible. In Mishnaic phraseology it might refer to a translation from Hebrew or the Bible into any language, (v. J. Kid. 59a, where it denotes a Greek version of Aquila; Meg. II, 1; Shab. 115a), but the word Targum by itself was restricted to the Aramaic version of the Bible. This Aramaic translation was publically read in the synagogue, along with the original text, and rules for reading it were formulated (v. Meg. II, 1; Tosef. Meg. II, V). This practice was an ancient institution, dating back to the Second Temple, and according to Rab, going back to Ezra, v. J.E., XII, p. 57.

(8) Masoroth: Tosaf and Asheri refer this to the plene and defective readings, e.g., where the 'o' is represented by waw (plene) and where it is missing (defective); where the 'i' is shewn by yod, and where not. Ran simply states: the traditional readings. The term 'masorah' occurs in Ezek. XX, 37, and means 'fetter'. Thus the masorah is a fetter upon the text, i.e., it fixes its reading. In course of time it was connected with masar (to hand down), and thus came to mean traditional reading. The old Hebrew text was in all probability written without any breaks. it was the work of the Masorites to make the divisions into words, books, sections, paragraphs, etc., and fix the orthography and pronunciation. The traditionally fixed text, especially with a view to its orthography, was called masoreth; the division into sense-clauses, pisuk te'ammim; the traditional pronunciation, mikra. V. J.E. s.v. Masorah.

(9) V. preceding note.

(10) I.e., though these were established by the Soferim (v. Glos.) they are based on usage going back to Moses.

(11) In pause (viz., an ethnahta or sof pasuk) the tone-vowels are lengthened. Since there is nothing in the lettering to indicate this grammatical change, it was the work of the Soferim to teach it.

(12) Gen. XVIII, 5.

(13) Num. XXXI, 2.

(14) Ps. LXVIII, 26.

(15) Ps. XXXVI, 7. In all these examples 'after' is strictly speaking superfluous, for the verses would have made the same sense without it (presumably by the use of the copulative). In the last example, the comparative kaf (like) is also unnecessary, being omitted in the parallel stich: thy judgements are a great deep. But they are inserted in the text in order to give it a smoother flow. Ran: In all these cases, 'after' (Heb. ahar). and in the last example, 'like the mountains' (Heb. keharere) bear a disjunctive accent, so as to elucidate the meaning. E.g., the first example (disregarding the accents) might read, 'and comfort ye your hearts after ye shall have passed', and so the other examples. The last example, owing to the disjunctive of ke-harere, is according to Ran to be translated: Thy righteousness, O God, is as (manifest as) the mountains. These disjunctives are referred to as the embellishments of the Soferim. Goldschmidt, Nedarim a.l. (p. 442, n. 84) observes that a copulative word has been omitted in all these texts, as is shewn by the Samaritan text and some MSS.

(16) II Sam. VIII, 3.

(17) Ibid. XVI, 23.

(18) Jer. XXXI, 38.

(19) Jer. L. 29.

(20) Ruth III, 5.

(21) Ibid. 17.

(22) Wilna Gaon adds the following examples, given in some editions, and also in Soferim VI, 8: But (the children of) Benjamin would not hearken (Jud. XX, 13); Because (Heb. Ki 'al ken: ken is read but not written) the king's son is dead (II Sam. XVIII, 20); The seal of the Lord of (hosts) (II Kings XIX, 31); Adrammelech and Sharaezer (his sons) smote him (Ibid. 37).

(23) II Kings V, 18.

'these' in Now [these] are the commandments.[1] 'let him bend' in Against him that bendeth [let him bend] the bow;[2] 'five' in and on the south side, four thousand and five [five] hundred;[3] 'if' in it is time that [If] I am thy near kinsman.[4] The foregoing are written but not read.[5]

R. Aha b. Adda said: In the West [i.e., Palestine] the following verse is divided into three verses, viz., And the Lord said unto Moses, Lo, I come unto thee in a thick cloud etc.[6]

R. Hama b. R. Hanina said: Moses became wealthy but from the chippings of the tablets, for it is written, Hew thee two tablets of stone like unto the first:[7] their chips be thine.

R. Jose son of R. Hanina said: The Torah was given only to Moses and his seed, for it is written, write thee these words[8] [and] Hew thee:[9] just as the chips are thine so is the writing thine.[10] But Moses in his generosity gave it to Israel, and concerning him it is said, He that hath a bountiful eye shall be blessed, etc.[11] R. Hisda objected: And the Lord commanded me at that time to teach you statutes and judgments?[12] — He commanded me, and I [passed it on] to you.[13] [A further objection:] Behold, I have taught you statutes and judgments, even as the Lord my God commanded me?[14] — He commanded me, and I taught you. Now, therefore, write this song for you![15] — This refers to the song alone.[16] That this song be a witness for the against the children of Israel?[17] — But only the [Scripture] dialectics [were given to Moses alone].[18]

R. Johanan said: The Holy One, blessed be He, causes His Divine Presence to rest only upon him who is strong, wealthy, wise and meek;[19] and all these [qualifications] are deduced from Moses. Strong, for it is written, And he spread abroad the tent over the tabernacle;[20] and a Master said, Moses our teacher spread it; and it is also written, Ten cubits shall be the length of the board.[21] Yet perhaps it was long and thin?[22] — But [it is derived] from this verse: And I took the two tables, and cast them out of my two hands, and broke them.[23] Now, it was taught: The tables were six [handbreadths] in length, six in breadth, and three in thickness.[24] Wealthy, [as it is written] Hew thee, [interpreted] the chips be thine. Wise: for Rab and Samuel both said, Fifty gates of understanding were created in the world, and all but one were given to Moses, for it is said, For thou hast made him [sc. Moses] a little lower than God.[25] Meek, for it is written, Now the man Moses was very meek.[26]

R. Johanan said: All the prophets were wealthy. Whence do we derive this? From Moses, Samuel, Amos and Jonah. Moses, because it is written, I have not taken one ass from them.[27] Now, if he meant without a hiring fee — did he then merely claim not to be one of those who take without a fee?[28] He must hence have meant, even with a fee.[29] But perhaps it was because of his poverty?[30] — But [it is derived] from the verse, Hew thee etc.: the chips be thine. Samuel, because it is written, Behold here I am: witness against me before the Lord, and before his anointed: whose ox have I taken, or whose ass have I taken?[31] Now, if he meant for nothing — did he then merely claim not to be one of those who take without payment? Hence he must have meant, even for payment. But perhaps it was due to poverty? — Rather from this verse, And his return was to Ramah: for there was his house.[32] Whereupon Raba observed, wherever he went, his house went with him.[33] (Raba said: A greater thing is said of Samuel than of Moses: for in the case of Moses it is stated, 'I have not taken one ass from them' implying even for a fee;[34] but in the case of Samuel, he did not hire it even with their consent, for it is written, And they said, thou hast not defrauded us, nor taken advantage of our willingness.)[35] Amos, because it is written, Then answered Amos and said to Amaziah, I was no prophet, neither was I a prophet's son, but I was a herdman and a gatherer of sycamore fruit;[36] which R. Joseph translated: Behold, I am the owner of flocks, and possess sycamore trees in the valley.[37] Jonah, as it is written [and he found a ship going to Tarshish:] so he paid the fare thereof, and went

down into it.[38] And R. Johanan observed: He paid for the hire of the whole ship. R. Romanus said: The hire of the ship was four thousand gold denarii.

R. Johanan also said: At first Moses used to study the Torah and forget it, until it was given to him as a gift, for it is said, And he gave unto Moses, when he had made an end of communing with him [. . . two tables of testimony].[39]

MISHNAH. AND HE MAY SUPPORT HIS WIFE AND CHILDREN, THOUGH HE [THE MUDDAR] IS LIABLE FOR THEIR MAINTENANCE.[40] BUT HE MAY NOT FEED HIS BEASTS, WHETHER CLEAN OR UNCLEAN.[41] R. ELIEZER SAID: HE MAY FEED AN UNCLEAN BEAST OF HIS, BUT NOT A CLEAN ONE. THEY [THE SAGES] SAID TO HIM, WHAT IS THE DIFFERENCE BETWEEN AN UNCLEAN AND A CLEAN BEAST? HE REPLIED TO THEM, THE LIFE OF A CLEAN BEAST BELONGS TO HEAVEN, BUT THE BODY IS HIS OWN;[42] BUT AN UNCLEAN ANIMAL

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(1) Deut. VI, 1. Wilna Gaon deletes this example, as in fact 'these' is read. He substitutes 'eth in As the Lord liveth ('eth — sign of the accusative) that made us this soul (Jer. XXXVIII, 16). In Heb. Zoth (this) and 'eth are similar, differing only in one letter, and this may have caused the error in the text.

(2) Jer. LI, 3.

(3) Ezek. XLVIII, 26.

(4) Ruth III, 12.

(5) Wilna Gaon adds the following examples: Ibid. XV, 21 Jer. XXXIX. These are given in Soferim VI.

(6) Ex. XIX, 9. [This is not to imply that in Palestine where the whole of the Pentateuch was read in three years, most verses were divided in two or three (v. Rappaport, Halichoth Kedem pp. 10 and 17). It only means that this was one of the few passages in which there existed a difference of division between the Palestinians and Babylonians; v. Blau, JQR, 1896, p. 143.]

(7) Ex. XXXIV, 1.

(8) Ibid. 27.

(9) Ibid. 1.

(10) The Torah is thy property.

(11) Prov. XXII, 9.

(12) Deut. IV, 24. This proves that it was not given to Moses for himself.

(13) This is the answer, which interprets the verse thus: And the Lord commanded me at that time, (and I determined) to teach you etc.

(14) Ibid. 5.

(15) Ibid. XXXI, 19. 'For you' shews that it was given to the Israelites in the first place.

(16) But the rest of the Torah was originally given to Moses alone.

(17) Deut. XXXI, 19. If the reference is to the song alone, how can that testify against Israel?

(18) And he taught them to the people.

(19) Cf. Maim. Guide, II, ch. 32. It seems strange that wealth should he regarded as a necessary qualification for prophecy. Poverty was not regarded as a fault, many of the Rabbis being poor (e.g., Hillel, before he became nasi; R. Joshua, the opponent of R. Gamaliel; R. Judah), yet were not thought of any the less. CF. also Aboth, VI, 4. Is it possible that 'wealthy' was included in order to oppose the N.T. teachings which imply that poverty in itself is a virtue? [According to Asheri these qualifications are deemed necessary for the gift of permanent prophecy. This would explain the inclusion of wealth, which dowers its possessor with the sense of independence. the better to proclaim the word of God and which commands greater respect.]

(20) Ex. XL, 19.

(21) Ex. XXVI, 16. This then was the height of the tabernacle: to have spread the tent over it he must have been extremely tall, and presumably correspondingly strong.

(22) In which case he would not necessarily be strong.

(23) Deut. IX, 17.

(24) These would be extremely heavy and require great strength to handle.

(25) Ps. VIII, 6.
(26) Num. XII, 3.
(27) Num. XVI, 15.
(28) Surely he did not pride himself on not being a thief!
(29) I.e., he had no need to hire an animal, possessing so many himself. Therefore he must have been wealthy.
(30) I.e., having so few possessions that he did not need one.
(31) I Sam. XII, 3.
(32) Ibid. VII, 17.
(33) I.e., he travelled about with all the retinue and baggage of his house: this could be done only by a wealthy man.
(34) This implies that he did not compel them to hire him an ass. Yet even when he merely requested it, they might have dissimulated their unwillingness through shame and hired it to him.
(35) Ibid. XII, 4.
(36) Amos VII, 14.
(37) Hence I have no need to turn my prophecy to professional uses. Boker, rendered in the A.V. 'herdman', is here translated 'owner of flocks'. [This is the rendering of Targum Pseudo-Jonathan; v. B.K. (Sonc. ed.) p. 9, n. 9.]
(38) Jon. I, 3.
(39) Ex. XXXI, 18. This shews that the two tables (i.e., the Torah) were made a gift to him.
(40) This continues the preceding Mishnahs. Tosaf.: this applies according to the Rabbis supra 33b, to maintenance above the minimum necessities, which is all a husband is liable For.
(41) Because a fattened animal has more value than otherwise; hence it is a direct benefit to the muddar.
(42) I.e., since it may be eaten, he directly benefits by its fattening

Talmud - Mas. Nedarim 38b

BELONGS BODY AND LIFE TO HEAVEN.[1] SAID THEY TO HIM, THE LIFE OF AN UNCLEAN BEAST TOO BELONGS TO HEAVEN AND THE BODY IS HIS. FOR IF HE WISHES, HE CAN SELL IT TO A HEATHEN OR FEED DOGS WITH IT.

GEMARA. R. Isaac b. Hananiah said in R. Huna's name: He who is under a vow not to benefit from his neighbour may give him his daughter in marriage. R. Zera pondered thereon: What are the circumstances? If the property of the bride's father is forbidden to the bridegroom, — is he not giving him a servant to serve him?[2] If again the bridegroom's property is forbidden to the father of the bride[3] — but even a greater thing was said: HE MAY SUPPORT HIS WIFE AND CHILDREN. THOUGH HE [THE MUDDAR] IS LIABLE FOR THEIR MAINTENANCE;[4] then you say, He may give him his daughter in marriage! — After all, this refers to the case where the property of the father of the bride is forbidden to the bridegroom, but this treats of his daughter, a bogereth,[5] [who marries] at her own desire. It was taught likewise: He who is under a vow not to benefit from his neighbour may not give him his daughter in marriage; but he may permit his daughter, a bogereth, to marry him at her own desire.

R. Jacob said: If a man imposes a vow on his son [to do no service for him], in order that his son may study,[6] the latter may fill a barrel of water and light the lamp for him.[7] R. Isaac said: He is permitted to broil him a small fish.

R. Jeremiah said in R. Johanan's name: If a man is under a vow not to benefit from his neighbour, the latter may offer him the cup of peace. What is that? — Here [in Babylon] it has been interpreted, the cup drunk in the house of mourning.[8] In the West [Palestine] it was said: the cup of the baths.[9]

BUT HE MAY NOT FEED HIS BEASTS, WHETHER etc. It was taught: Joshua of 'Uzza said: He may feed his Canaanitish [i.e., heathen] bondmen and bondwomen, but not his beasts, whether clean or unclean. Why so? Because slaves are for service;[10] beasts are for fattening.

MISHNAH. IF ONE IS FORBIDDEN TO BENEFIT FROM HIS NEIGHBOUR, AND HE PAYS HIM A VISIT [IN SICKNESS] HE MUST STAND, BUT NOT SIT; HE MAY AFFORD HIM A CURE OF LIFE, BUT NOT A CURE OF MONEY.[11]

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(1) Since it may not be eaten, he does not benefit through its fattening.

(2) Why is it then permitted? This is on the assumption that the reference is to a na'arah, (v. Glos.), whose labour belongs to her father, and who in turn transfers it to her husband.

(3) And R. Huna teaches that he may marry his daughter, though by maintaining her he indirectly benefits her father.

(4) So that he could support his daughter even when under her father's roof, and he is not considered as thereby benefiting her father. Surely then it is only too obvious that he may marry her.

(5) Over twelve years and six months and one day of age. She is no longer under her father's authority, and the profits of her labour belong to herself.

(6) Without interruption.

(7) For presumably his vow was not directed against such trifling services, which require very little time.

(8) It was customary to drink a special mourner's cup at the meals in a mourner's house. Keth. 8b.

(9) It was the custom to drink a cup of some beverage after a hot bath.

(10) Consequently their master does not gain anything when one feeds them. This refer, to extra food over the slave's requirements. — Ran.

(11) The meaning of this is discussed on 42b.

Talmud - Mas. Nedarim 39a

GEMARA. What are the circumstances? If the visitor's property is forbidden to the invalid, he may even sit? Whilst if the invalid's property is forbidden to the visitor, he may not even stand?[1] — Said Samuel: In truth, it means that the visitor's property is forbidden to the invalid, and applies to a place where a fee is received for sitting [with an invalid], but not for standing.[2] How state this definitely?[3] — He [the Tanna] teaches us thus: that even where it is customary to take a fee for visiting, one may receive it only for sitting, but not for standing.[4] An alternative answer is this: Just as R. Simeon maintained [elsewhere] that it is feared that he may tarry a long time whilst standing,[5] so here too it is feared that he may stay a long time if he sits.[6] 'Ulla said: After all it means that the invalid's property is forbidden to the visitor, for[7] he did not vow where it affects his health.[8] If so, he may sit too? — Because he can stand.[9]

An objection is raised: If he fell sick, he may enter to visit him; if his son became ill, he may inquire [after his health] in the street.[10] Now this is well according to 'Ulla, who maintains that it means that the invalid's property is forbidden to the visitor, for he did not vow where it affects his own health.[11] But on Samuel's explanation, that the visitor's property is forbidden to the invalid, what is the difference between himself and his son? — He can answer you: Our Mishnah means that the invalid may not benefit from the visitor; in the Baraitha, the case Is reversed. How state this definitely?[12] — Said Raba:

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(1) For by standing in his house he is regarded as benefiting.

(2) It was customary to have companions or visitors for invalids, to cheer them up. Therefore if the visitor gives the invalid his company without accepting a fee, he is benefiting him.

(3) That money is paid for sitting and not for standing.

(4) One who sits presumably stays a long time; but one who stands pays only a fleeting visit, and hence may not receive a fee.

(5) V. 42b.

(6) I.e., the Mishnah refers to an invalid who is forbidden to benefit from the visitor. The visitor may not sit, lest he stay a long time, which is certainly a benefit to the invalid.

(7) Generally the Heb. kegon states a particular instance. Here, however, it introduces a general statement. — Rashi, Ran, and Asheri.

(8) The invalid never intended that his neighbour should be so stringently forbidden to benefit from him as not even to stand in his house to cheer him up in his illness.

(9) For the invalid would not have the visitor benefit from him more than is strictly necessary.

(10) But not enter his house.

(11) Therefore, if his son fell sick, the visitor may not enter his house, because it is to be assumed that the question of his son's health did not come into consideration at the time of the vow.

(12) On what grounds is this difference based?

Talmud - Mas. Nedarim 39b

Our Mishnah presents a difficulty to Samuel: Why particularly teach that he may stand but not sit? Hence it must refer to a case where the invalid is forbidden to benefit from his visitor.[1]

Resh Lakish said: Where is visiting the sick indicated in the Torah? In the verse, If these men die the common death of all men, or if they be visited after the visitation of all men etc.[2] How is it implied? — Raba answered: [The verse means this:] If these men die the common death of all men, who lie sick a-bed and men come in and visit them, what will people say? The Lord hath not sent me[3] for this [task]. Raba expounded: But if the Lord make a new thing:[4] if the Gehenna[5] is already created, 'tis well: if not, let the Lord create it. But that is not so, for it was taught: Seven things were created before the world, viz., The Torah, repentance, the Garden of Eden, Gehenna, the Throne of Glory, the Temple, and the name of the Messiah. The Torah, for it is written, The Lord possessed me [sc. the Torah] in the beginning of his way, before his works of old.[6] Repentance, for it is written, Before the mountains were brought forth, or ever thou hadst formed the earth and the world . . . Thou turnest man to destruction, and sayest, Repent, ye sons of men.[7] The Garden of Eden, as it is written, And the Lord God planted a garden in Eden from aforetime.[8] Gehenna, as it is written, For Tophet[9] is ordained of old.[10] The Throne of Glory, as it is written, Thy Throne is established from of old.[11] The Temple, as it is written, A glorious high throne from the beginning is the place of our sanctuary.[12] The name of the Messiah, as it is written, His name [sc. of Messiah] shall endure for ever, and [has existed] before the sun![13] — But Moses said thus: If a mouth has already been created for it [sc. Gehenna], 'tis well; if not, let the Lord create one. But is it not written, There is no new thing under the sun?[14] — He said thus: If the mouth is not near to this spot, let it draw near.

Raba, or as others say, R. Isaac, lectured: What is meant by, The sun and the moon stood still in their zebul?[15] What were they doing in the zebul, seeing that they were set in the raki'a?[16] This teaches that the sun and the moon ascended from the raki'a to the :zebul and exclaimed before Him, 'Sovereign of the Universe! If thou wilt execute judgment for Amram's son,[17] we will give forth our light; if not, we will not shine.' In that moment He shot spears and arrows at them. 'Every day,' He rebuked them, 'men worship you, and yet you give your light. For My honour you do not protest, yet you protest for the honour of flesh and blood.' [Since then,] spears and arrows are shot at them every day before they consent to shine,[18] as it is written, And at the light of thy arrows they go, etc.[19]

It was taught: There is no measure for visiting the sick. What is meant by, 'there is no measure for visiting the sick?' R. Joseph thought to explain it: its reward is unlimited. Said Abaye to him: Is there a definite measure of reward for any precept? But we learnt: Be as heedful of a light precept as of a serious one, for thou knowest not the grant of reward for precepts? But Abaye explained it: Even a great person must visit a humble one. Raba said: [One must visit] even a hundred times a day. R. Abba son of R. Hanina said: He who visits an invalid takes away a sixtieth of his pain.[20] Said they to him: If so, let sixty people visit him and restore him to health? — He replied: The sixtieth is as the tenth spoken of in the school of Rabbi, and [providing further that] he [the visitor] is of his affinity.[21] For it was taught: Rabbi said: A daughter who enjoys maintenance from her brothers' estate receives a tenth of the estate.[22] Said they to Rabbi: If so, if a man leaves ten daughters and one son, the latter receives nothing! He replied: The first [to marry] receives a tenth of the estate; the second, a tenth of

the residue; the third, a tenth of what remains. [Now, if they all married at the same time], they redivide equally.[23]

R. Helbo fell ill. Thereupon R. Kahana went and proclaimed:

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(1) It is certainly true that one who forbids his neighbour to benefit from him does not do so at the cost of his own health. But then he would draw no distinction between standing and sitting, and would desire the visitor to have the benefit of sitting in his house too. Hence on 'Ulla's interpretation the distinction in the Mishnah is wrong; therefore Samuel reverses it.
(2) Num. XVI, 29.
(3) Ibid.
(4) Ibid. 30.
(5) V. p. 19, n. 6.
(6) Prov. VIII, 22.
(7) Ps. XC, 2f. 'Before', etc. applies to 'Repent'.
(8) Gen. II, 8.
(9) Another name for Gehenna.
(10) Isa. XXX, 33.
(11) Ps. XCIII, 2.
(12) Jer. XVII, 12.
(13) Ps. LXXII, 17. Now, according to this, Gehenna was definitely created before the world; how then could Moses be doubtful? — The general idea of this Baraitha is that these things are the indispensable prerequisites For the orderly progress of mankind upon earth. The Torah, the supreme source of instruction, the concept of repentance, in recognition that 'to err is human', and hence, if man falls, he needs the opportunity to rise again; the garden of Eden and the Gehenna symbolising reward and punishment, which, without conceding a purely utilitarian basis for ethical striving, are nevertheless powerful incentives thereto; the Throne of Glory and the Temple, indicating that the goal of creation is that the kingdom of God (represented by the Temple) should be established on earth as it is in Heaven; and finally, the name of Messiah, the assurance that God's purpose shall be eventually achieved.
(14) Ecc. I, 9.
(15) Hab. Ill, 11.
(16) According to tradition, there are seven heavens, zebul being one.
(17) By punishing Korah and his confederates.
(18) Accepting the Almighty's rebuke, they refuse to shine, because of the insult to His glory, until they are forced to.
(19) Ibid.
(20) A variant: his sickness.
(21) As the invalid. Born under the same planetary influence, Asheri; Rashi (and last.) 'of the same age'.
(22) She can, on marriage, demand a tenth of the estate for a dowry and trousseau. V. Keth. 68a.
(23) I.e., after taking one tenth of the estate, and another a tenth of what is left, and a third likewise, etc., they pool the lot together, and divide it equally. — Thus here too, the first visitor with the same affinity takes away a sixtieth of the sickness; the second a sixtieth of the remainder, and so on. Hence he would not be completely cured.

Talmud - Mas. Nedarim 40a

R. Helbo is sick. But none visited him. He rebuked them [sc. the scholars], saying, 'Did it not once happen that one of R. Akiba's disciples fell sick, and the Sages did not visit him? So R. Akiba himself entered [his house] to visit him, and because they swept and sprinkled the ground before him,[1] he recovered. 'My master,' said he, 'you have revived me!' [Straightway] R. Akiba went forth and lectured: He who does not visit the sick is like a shedder of blood.

When R. Dimi came,[2] he said: He who visits the sick causes him to live, whilst he who does not causes him to die. How does he cause [this]? Shall we say that he who visits the sick prays[3] that he may live, whilst he who does not prays that he should die, — 'that he should die!' can you really

think so? But [say thus:] He who does not visit the sick prays neither that he may live nor die.[4]

Whenever Raba fell sick, on the first day he would ask that his sickness should not be made known to any one lest his fortune be impaired.[5] But after that, he said to them [his servants], 'Go, proclaim my illness in the market place, so that whoever is my enemy may rejoice, and it is written, Rejoice not when thine enemy falleth . . . Lest the Lord see it, and it displeases him, and he turn away his wrath from him.[6] whilst he who loves me will pray for me.

Rab said: He who visits the sick will be delivered from the punishments of Gehenna, for it is written, Blessed is he that considereth the poor: the Lord will deliver him in the day of evil.[7] 'The poor' [dal] means none but the sick, as it is written, He will cut me off from pining sickness [mi-dalah];[8] or from this verse: Why art thou so poorly [dal], thou son of the King?[9] Whilst 'evil' refers to Gehenna, for it is written, The Lord hath made all things for himself' Yea, even the wicked for the day of evil.[10] Now, if one does visit, what is his reward? [You ask,] 'what is his reward?' Even as hath been said; 'he will be delivered from the punishment of Gehenna!' — But what is his reward in this world? — The Lord will preserve him, and keep him alive, and he shall be blessed upon the earth; and thou wilt not deliver him unto the will of his enemies.[11] 'The Lord will preserve him'. — from the Evil Urge, 'and keep him alive' — [saving him] from sufferings; 'and he shall be blessed upon the' earth,' — that all will take pride in him;[12] 'and the wilt not deliver him unto the will of his enemies', — that he may procure friends like Naaman's, who healed his leprosy; and not chance upon friends like Rehoboam's, who divided his kingdom.

It was taught: R. Simeon b. Eleazar said: If the young tell you to build, and the old to destroy, hearken to the elders, but hearken not to the young, for the building of youth is destruction, whilst the destruction of the old is building. And a sign for the matter is Rehoboam the son of Solomon.[13]

R. Shisha son of R. Idi said: One should not visit the sick during the first three or the last three hours [of the day], lest he thereby omit to pray[14] for him. During the first three hours of the day his [the invalid's] illness is alleviated; in the last three hours his sickness is most virulent.[15]

Rabin said in Rab's name: Whence do we know that the Almighty sustains the sick? From the verse, The Lord will strengthen him upon the bed of languishing.[16] Rabin also said in Rab's name: Whence do we know that the Divine Presence rests above an invalid's bed? From the verse, The Lord doth set himself upon the bed of languishing.[17] It was taught likewise: He who visits the sick must not sit upon the bed, or on a stool or a chair, but must [reverently] robe himself and sit upon the ground, because the Divine Presence rests above an invalid's bed, as it is written, The Lord doth set himself upon the bed of languishing.

Rabin also said in Rab's name: [The swelling of] the Euphrates testifies abundantly to rain in the West.[18] Now, he disagrees with Samuel, who said: A river increases [in volume] from its bed.[19] Now, Samuel is self-contradictory. For Samuel said: Running water does not purify,

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(1) Asheri: R. Akiba, finding the chamber neglected, gave the necessary orders.

(2) From Palestine.

(3) Lit., 'begs mercy for him'.

(4) Through the lack of his prayers, which might have been accepted, he is said to cause his death.

(5) If his illness became known, people might talk about it and thus affect his fate (Rashi).

(6) Prov. XXIV, 17f.

(7) Ps. XLI, 2.

(8) Isa. XXXVIII, 12.

(9) II Sam. XIII, 4.

(10) Prov. XVI, 4.

(11) Ps. XLI, 3.
(12) Lit., 'all will be honoured in him' — he will be a source of pride to all.
(13) His elder councillors advised him to submit to the malcontents, thus apparently weakening his authority; whilst his young friends advised him to strengthen his rule by rejecting their demands. As a result of listening to the young men his kingdom was split. Kings XII.
(14) Lit., 'dismiss' his mind from mercies.
(15) Consequently, a visitor in the first three hours may think him on the road to recovery, and consider prayer unnecessary; in the last three hours, on the other hand, he may feel that prayer is hopeless.
(16) Ps. XLI, 4.
(17) This is another rendering of the same verse. Rashi suggests another interpretation; for yisa'denu, meaning 'he will strengthen him', read yesharenu, 'he will abide with him'.
(18) Palestine. When it rains in Palestine, which is higher than Babylon, the water flows down and causes the swelling of the Euphrates. This is another way of saying that the rise of a river is due to the rains. The practical bearing of this on ritual law is discussed below.
(19) Lit., 'From its rock': though it appears to swell through the rains, actually more water gushes upwards from the river bed than is added by the rain,

Talmud - Mas. Nedarim 40b

except the Euphrates in Tishri.[1] Samuel's father made mikwaoth for his daughters in Nisan[2] and had mats set for them in the days of Tishri.[3]

R. Ammi said in Rab's name: What is meant by the verse, Therefore, thou son of man, prepare thee stuff for removing?[4] This is a lamp, plate and

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(1) Tishri is the seventh month of the Jewish year, generally coinciding with September-October. If a mikweh (ritual bath) is made of collected rain water, it is efficacious only if its water is still, not running or flowing. On the other hand, a well or spring with its water gushing forth from its source is efficacious even when it flows onward. Now, during the whole year, the river may contain more rain water or melted snow than its own natural waters; consequently, it is all considered as rain water, which does not cleanse when in a running state. But in Tishri the rains have ceased, nor is there any melted snow in the river. Then it is like a well or spring, and even though running its water is efficacious for ritual cleansing. Now, according to this, the river's rise is caused mainly by rain. This conflicts with the view that at all times the water from its source is more.
(2) Nisan, the first Jewish month, corresponding to March-April. As the river is then swollen by rain, he did not permit them to take their ritual bath in the running river, but made special enclosed baths for them.
(3) In Tishri they performed their ablutions in the river. Now the bed of the river is miry, and should the feet sink into it, the water cannot reach them and the immersion is invalid; he therefore placed mats in the river bed for them to stand on. Ran gives another explanation: He hung up mats on the shore to serve as a screen, For modesty. [Obermeyer op. cit. p. 278: he set up for them tents made of reeds]. On both explanations this story is mentioned here in support of Samuel's second dictum.
(4) Ezek. XII, 3.

Talmud - Mas. Nedarim 41a

a rug.[1]

[And thou shalt serve thine enemies . . .] in want of all things.[2] R. Ammi said in Rab's name: This means without a lamp or table. R. Hisda said: Without a wife; R. Shesheth said: Without an attendant; R. Nahman said: Without knowledge. A Tanna taught: Without salt or fat. Abaye said: We have it on tradition that no one is poor save he who lacks knowledge. In the West [palestine] there is a proverb: He who has this, has everything; he who lacks this, what has he? Has one acquired this, what does he lack? Has he not acquired this, what does he possess?

R. Alexandri said in the name of R. Hiyya b. Abba: A sick man does not recover from his sickness until all his sins are forgiven him, as it is written, Who forgiveth all thine iniquities; who healeth all thy diseases.[3] R. Hamnuna said: He [then] returns to the days of his youth, for it is written, His flesh shall be fresher than a child's: he shall return to the days of his youth.[4]

Thou host turned his bed in his sickness.'[5] R. Joseph said: This means that he forgets his learning. R. Joseph fell ill and forgot his learning; but Abaye restored it to him. Hence it is frequently stated that R. Joseph said, 'I have not heard this law,' and Abaye reminded him, 'You yourself did teach it to us and did deduce it from this particular Baraitha.'

When Rabbi had studied his teaching in thirteen different interpretations, he taught R. Hiyya only seven of them. Eventually Rabbi fell sick [and forgot his learning]. Thereupon R. Hiyya restored to him the seven versions which he had taught him, but the other six were lost. Now, there was a certain fuller who had overheard Rabbi when he was studying them himself; so R. Hiyya went and learned them from the fuller, and then repeated these before Rabbi. When Rabbi met him, he said to him, 'Thou hast taught[6] both R. Hiyya and myself'. Others say that he spoke thus to him: 'Thou hast taught R. Hiyya, and he has taught me.

R. Alexandri also said in the name of R. Hiyya b. Abba: Greater is the miracle wrought for the sick than for Hananiah, Mishael and Azariah. [For] that of Hananiah, Mishael and Azariah [concerned] a fire kindled by man, which all can extinguish; whilst that of a sick person is [in connection with] a heavenly fire,[7] and who can extinguish that?

R. Alexandri also said in the name of R. Hiyya b. Abba, — others state, R. Joshua b. Levi said: When a man's end has come, all have dominion over him, for it is written, And it will be that whosoever findeth me will slay me.[8] Rab deduced it from this verse: They stand forth this day to receive thy judgments: for all are thy servants.[9]

Rabbah b. Shila was told that a tall man had died. [Now it happened thus:] This man was riding on a little mule and when he came to a bridge, the mule shied and threw the man, and he was killed. Thereupon Rabbah applied to him the verse, They stand forth this day to receive thy judgments etc.

Samuel saw a scorpion borne by a frog across a river, and then stung a man, so that he died. Thereupon Samuel quoted, They stand forth this day to receive thy judgments etc.[10]

Samuel said: Only a sick person who is feverish[11] may be visited. What does this exclude? It excludes those concerning whom it has been taught by R. Jose b. Parta in R. Eliezer's name, viz., One must not visit those suffering with bowel [trouble], or with eye disease, or from headaches. Now the first is well, the reason being through embarrassment;[12] but what is the reason of the other two? — On account of Rab Judah's dictum, viz., Speech is injurious to the eyes and to [people suffering from] headaches.[13]

Raba said: Feverishness, were it not a forerunner of the angel of death,[14] it would be as salutary

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(1) These are the minimum requisites of a wanderer.

(2) Deut. XXVIII, 48.

(3) Ps. CIII, 3.

(4) Job XXXIII, 25.

(5) Ps. XLI, 4.

(6) Lit., 'made'.

(7) I.e., his temperature rises.

(8) Gen. IV, 14; thus Cain, thinking that his end had arrived, recognised that everything would have power to slay him.
(9) Ps. CXIX, 91. I.e., all become servants to carry out God's judgment of doom.
(10) Though a scorpion cannot swim, he was carried across by the frog, in order to fulfil God's judgment.
(11) Lit., 'when he is wrapped in heat'.
(12) He has his bowels frequently moved.
(13) This is the reading of Asheri; cur. edd. add, 'and is good for fever' and Wilna Gaon amends likewise.
(14) Both in the Bible and in the Talmud death is regarded as coming to man through an angel. Thus we find mention of the 'angel of the Lord' destroying 185,000 men in the Assyrian camp (II Kings XIX, 35); the destroying angel (II Sam. XXIV, 15); 'the angel of the Lord' whom David saw standing 'between the earth and the heaven, having a drawn sword in his hand stretched out over Jerusalem' (I Chron. XXI, 15). In the Talmud this angel is frequently referred to, and he was conceived as causing death by dropping gall into the mouth of the victim; 'A.Z. 20b; v. J.E. IV, 480ff.

Talmud - Mas. Nedarim 41b

once in thirty days as thorns which surround [and protect] a palm tree, and as theriak[1] to the body[2] R. Nahman b. Isaac said: [I want] neither it nor its theriak.

Rabbah b. Jonathan said in R. Jehiel's name: 'Arsan is beneficial for healing the sick. What is 'arsan? — Said R. Jonathan: Old peeled barley which sticks to the sieve.[3] Abaye observed: They require boiling as the flesh of an ox. R. Joseph said: It is fine barley flour which sticks to the sieve; [whereupon] Abaye remarked: It needs as much boiling as the flesh of an ox.

R. Johanan said: We must not visit one afflicted with burdam,[4] nor mention its [real] name. What is the reason? — R. Eleazar said: Because it is like a gushing well.[5] R. Eleazar also said: Why is it called burdam? Because it is a gushing well.[6]

THE LATTER MAY AFFORD HIM A CURE OF LIFE BUT NOT A CURE OF MONEY. What does this mean? Shall we say that 'A CURE OF LIFE means without payment, and 'A CURE OF MONEY' is for a fee?[7] Then let him [the Tanna] state: He may heal him without payment, but not for a fee? — But by 'A CURE OF LIFE' his own person is meant: whilst 'A CURE OF MONEY' refers to his cattle.[8] R. Zutra b. Tobiah said in Rab's name: Nevertheless he may tell him: this drug is beneficial for it, that drug is injurious for it.

MISHNAH. HE MAY BATHE TOGETHER WITH HIM IN A LARGE BATH, BUT NOT IN A SMALL ONE,[9] HE MAY SLEEP IN A BED WITH HIM. R. JUDAH SAID: [ONLY] IN SUMMER, BUT NOT IN WINTER, BECAUSE HE [THEREBY] BENEFITS HIM.[10] HE MAY RECLINE ON A COUCH[11] OR EAT AT THE SAME TABLE WITH HIM[12] BUT NOT OUT OF THE SAME DISH;[13] BUT HE MAY DINE WITH HIM OUT OF A BOWL WHICH RETURNS.[14]

GEMARA. It was taught: He may not bathe together with him in a bath, or sleep in a bed with him, whether large or small: this is R. Meir's ruling. R. Judah said: A large one in winter, and a small one in summer are permitted.[15] He may bathe with him in a large bath, and may take a hot air bath with him [even] in a small one.[16] He may recline on a couch with him, and eat at the same table, but not out of the same dish. Yet he may eat out of the same bowl that returns. R. Jose b. Hanina said: that means the bowl that returns to the host.[17]

MISHNAH. HE MAY NOT EAT WITH HIM OUT OF THE BOWL PUT BEFORE WORKMEN,[18] NOR MAY HE WORK WITH HIM ON THE SAME FURROW: THIS IS R. MEIR'S VIEW. BUT THE SAGES SAY: HE MAY WORK, PROVIDED HE IS AT A DISTANCE.

GEMARA. There is no dispute at all that they may not work near [each other]. They differ only in reference to [working at] a distance. R. Meir maintains: We forbid at a distance as a preventive

measure on account of nearby, for he [the maddir] softens the ground before him; while the Rabbis hold: We do not enact a preventive measure.

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(1) A certain compound believed to be an antidote against poisonous bites.

(2) I.e., the fever has a purging and purifying effect on the body.

(3) On account of its fatness. Lit., 'of the top of the sieve'.

(4) Dysentery, bloody flux; Rashi quotes a version burdas.

(5) Not to shame the one afflicted with it.

(6) The word is a compound; bor dam, a well of blood.

(7) LIFE, Heb. nefesh. will then be the equivalent of desire (nefesh in Heb. sometimes bears that meaning, c.g., Gen. XXIII, 8: If it be your desire, Heb. nafshekem), i.e., of his own free will. The Mishnah then will refer to the doctor being a muddar (v. Glos.), who may not accept a fee from the invalid.

(8) Hence, nefesh in the Mishnah is translated 'his soul', i.e., himself, whilst mamon (money) refers to his chattels. According to this interpretation the invalid is the muddar; nevertheless, the saving of life overrules other considerations. This is so, even if another doctor is available, for the skill of the first may be greater. In fact, the prohibition to heal his cattle holds good only if another doctor can he obtained, — Ran.

(9) In a small one his own body perceptibly raises the level of the water, and also adds to its heat; he thereby benefits him.

(10) By adding warmth.

(11) Even in winter, as no benefit is gained.

(12) This is not forbidden lest he eat of the other's portion.

(13) A large bowl was sometimes placed on the table, from which all ate. The maddir and the muddar may not eat out of the same bowl, lest the former take too little from it and thereby benefit the latter.

(14) This is explained in the Gemara.

(15) In the first case the warmth is not appreciably increased, whilst in the second the increase is of no advantage.

(16) The addition of heat there being of no benefit.

(17) I.e., there is so much in it that it goes back to the host unemptied. Another meaning: that continually goes back to the host to be replenished. In that case the maddir does not benefit the muddar by taking a small portion.

(18) The employer used to provide a large bowl of food for his workmen, out of which they all ate.

Talmud - Mas. Nedarim 42a

MISHNAH. HE WHO IS FORBIDDEN BY VOW TO BENEFIT FROM HIS NEIGHBOUR, [IF THE VOW WAS IMPOSED] BEFORE THE SEVENTH YEAR,[1] MAY NOT ENTER HIS FIELD [IN THE SEVENTH YEAR][2] NOR TAKE OF THE OVERHANGING [FRUIT].[3] BUT IF [THE VOW WAS IMPOSED] IN THE SEVENTH YEAR, HE MAY NOT ENTER HIS FIELD, BUT MAY EAT OF THE OVERHANGING BRANCHES.[4] IF HE WAS [MERELY] FORBIDDEN IN RESPECT OF FOOD [BUT NOT ALL BENEFIT], [AND THE VOW WAS IMPOSED] BEFORE THE SEVENTH YEAR, HE MAY ENTER HIS FIELD, BUT MAY NOT EAT OF ITS FRUITS; BUT [IF IT WAS IMPOSED] IN THE SEVENTH YEAR, HE MAY ENTER [HIS FIELD] AND EAT [OF ITS FRUITS].

GEMARA. Rab and Samuel both ruled: [If one says to his neighbour], 'This my property [be forbidden] to you', [if he vowed] before the seventh year, he may not enter his field or take of the overhanging [fruits] even when the seventh year arrives. But if he vowed in the seventh year, he may not enter his field, yet may enjoy the overhanging [fruits]. R. Johanan and Resh Lakish both maintained [If one says to his neighbour,] 'This my property [be forbidden] to you'; [if he vowed] before the seventh year he may neither enter his field nor eat of the overhanging [fruits]; when the seventh year arrives, he may not enter his field, yet may eat of the overhanging [fruits].

Shall we say that they differ in this: Rab and Samuel hold that a man can prohibit [unto others] that which is in his ownership, [for the prohibition to be effective] even after it passes out of his

ownership;[5] whilst R. Johanan and Resh Lakish maintain: One cannot prohibit [unto others] that which is in his ownership [for the prohibition to continue even] after it leaves his ownership? Now can you reason so? Does anyone rule that a person cannot declare prohibited that which is his, even after it passes out of his ownership? If so, let them differ with reference to 'this property [be forbidden etc.],' and how much more so would it apply to 'this my property!'[6] Moreover, we have learnt that a person can declare prohibited that which is in his ownership for even after it leaves his ownership. For we learnt: If one says to his son, 'Konam, if you benefit from me,' — if he dies, he inherits him.[7] [But if he explicitly stipulates] during his lifetime and after his death,

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(1) Lev. XXV, 1-7. The seventh year was called the year of release. The land was not to be ploughed or sowed, and its crops, with certain reservations, were free to all.

(2) To gather of its crops, since he is forbidden 'the treading of the foot'. Cf. Mishnah on 32b.

(3) I.e., if the maddir has a tree close to his boundary, and the fruit overhangs the muddar's field, so that it is possible for the muddar to take of the fruit without entering the maddir's land, he is still forbidden to do so.

(4) [Omitted in the printed Mishnayoth version].

(5) Consequently, though in the seventh year the crops do not belong exclusively to their owner, being free to all, yet the vow made before retains its validity, forbidding the muddar to take even of the overhanging fruits.

(6) I.e., even if one says, 'This property be forbidden to you', R. Johanan and Resh Lakish maintain that the vow is ineffective for the seventh year, when the crops are no longer his. The same will hold good with even greater force, if he vows 'this my property' etc., for in that case he appears to limit the incidence of the vow to the period in which it is his.

(7) For it is his by right.

Talmud - Mas. Nedarim 42b

if he dies he does not succeed him! — Here it is different, because he [explicitly] stated during his lifetime and after his death.[1] Yet at all events there is a difficulty?[2] — But [explain the dispute thus:] There is no dispute at all in respect of 'this property etc.'[3] They differ [only] in respect of 'My property etc.' Rab and Samuel maintain: There is no difference between 'This property' or 'my property': one can prohibit [for all time]. But R. Johanan and Resh Lakish maintain: [By saying,] 'This property,' he can prohibit; my property,' he cannot prohibit. But does anyone maintain that there is no difference between 'this property' and 'my property'? But we learnt: If one says to his neighbour, 'Konam, if I enter your house,' or 'if I purchase your field,' and then the owner dies or sells it, he is permitted [to enter or buy it]. [But if he says, 'Konam], if I enter this house', or 'if I purchase this field,' and the owner dies or sells it, he is forbidden! — But [explain thus:] R. Johanan and Resh Lakish refer to 'my property'; Rab and Samuel to 'this property': and they do not differ.

BUT [IF THE VOW WAS IMPOSED] IN THE SEVENTH YEAR, HE MAY NOT ENTER HIS FIELD etc. Why may he eat of the overhanging [fruits] — because they are [now] ownerless? But the land too is ownerless.[4] — Said 'Ulla: This refers to trees standing on the border.[5] R. Simeon b. Eliakim said: It is forbidden lest he stand and linger there.[6]

MISHNAH. HE WHO IS FORBIDDEN BY VOW TO BENEFIT FROM HIS NEIGHBOUR MAY NEITHER LEND TO HIM NOR BORROW FROM HIM NOR ADVANCE HIM OR RECEIVE FROM HIM A LOAN.[7] HE MAY NEITHER SELL TO NOR PURCHASE FROM HIM.

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(1) But otherwise it may well be that the validity of a vow ceases when its subject is no longer under the control of the maddir.

(2) Sc. the first.

(3) The vow remains valid even in the seventh year.

(4) In the sense that every person has the right to enter and take of its crops.

(5) Therefore, since it is unnecessary to enter the field, it is not ownerless.

(6) The land is ownerless only in respect of entering and taking its crops: this done, it reverts to its real owner. But we

fear that the muddar, having eaten his fill, may tarry there, which is forbidden to him.

(7) Yalwenu (lawah) and yash'ilenu (sha'al) refer to money and utensils respectively.

Talmud - Mas. Nedarim 43a

GEMARA. As for 'HE MUST NOT LEND TO HIM,' that is well, since he [thereby] benefits him. But 'HE MUST NOT BORROW FROM HIM' — how does he benefit him? Further, [even] 'HE MUST NOT RECEIVE A LOAN FROM HIM' and 'HE MUST NOT PURCHASE FROM HIM' are well, since he [the muddar] may benefit.[1] But 'HE MUST NOT BORROW FROM HIM': how does he [the muddar] benefit? — Said R. Jose son of R. Hanina: It means e.g., that they made a vow not to benefit from one another. Abaye answered: He is forbidden to borrow, lest he also lend, and the same applies to the other clauses.[2]

MISHNAH. IF ONE SAYS TO ANOTHER, 'LEND ME YOUR COW, TO WHICH THE OTHER REPLIES, 'IT IS NOT FREE'; WHEREUPON HE EXCLAIMS, KONAM, IF I EVER PLOUGH MY FIELD WITH IT', IF HE GENERALly PLOUGHED HIMSELF, HE IS FORBIDDEN,[3] BUT OTHERS ARE PERMITTED. BUT IF HE DID NOT GENERALLY PLOUGH HIMSELF, HE AND ALL MEN ARE FORBIDDEN.[4] IF ONE IS FORBIDDEN BY VOW TO BENEFIT AUGHT FROM HIS NEIGHBOUR, AND HE HAS NAUGHT TO EAT, HE [THE MADDIR] CAN GO TO THE SHOPKEEPER AND SAY, SO-AND-SO IS FORBIDDEN BY VOW TO BENEFIT AUGHT FROM ME, AND I DO NOT KNOW WHAT TO DO'. THE SHOPKEEPER MAY THEN SUPPLY HIM, AND COME AND RECEIVE PAYMENT FROM HIM [THE MADDIR]. IF HE HAD HIS [THE MUDDAR'S] HOUSE TO BUILD, OR HIS FENCE TO ERECT, OR HIS FIELD TO REAP, HE [THE MADDIR] MAY GO TO LABOURERS, AND SAY, 'SO-AND-SO IS FORBIDDEN BY VOW TO BENEFIT AUGHT FROM ME, AND I DO NOT KNOW WHAT TO DO.' THERE UPON THEY WORK FOR HIM [THE MUDDAR]. AND COME AND RECEIVE WAGES FROM HIM [THE MADDIR]. IF THEY ARE WALKING TOGETHER ON THE ROAD, AND HE [THE MUDDAR] HAS NOTHING TO EAT, HE [THE MADDIR] CAN MAKE A GIFT TO A THIRD PERSON, AND HE [THE MUDDAR] IS PERMITTED [TO HAVE] IT. IF THERE IS NO OTHER WITH THEM, HE PLACES IT ON A STONE OR A WALL, SAYING, 'THIS IS FREE TO WHOMEVER DESIRES IT'; AND THE OTHER TAKES AND EATS IT. BUT R. JOSE FORBIDS THIS. GEMARA. R. Johanan said, what is R. Jose's reason? He maintains that hefker[5] is like a gift: just as a gift [is not valid] until it passes from the possession of the giver into that of the receiver, so hefker too [is not valid] until it passes into the ownership of him who acquires it.[6] R. Abba objected: And the other [the muddar] takes and eats it; but R. Jose forbids this. Said R. Jose: When is that? If the vow preceded his renunciation;

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(1) For the maddir may borrow worn coins, and return new ones. As the value of coins depended to some extent on their weight, the muddar would benefit. Likewise, the maddir may not purchase an article for which there is no demand, and for the same reason.

(2) By 'other clauses' the reference is only to borrowing money. — Asheri.

(3) To plough the field with that cow, if it is subsequently lent to him.

(4) For his vow must have referred to others.

(5) V. Glos.

(6) I.e., when a person declares a thing to be hefker, it does not immediately cease to be his, but remains his property until taken. Thus the muddar takes the maddir's food.

Talmud - Mas. Nedarim 43b

but if his renunciation preceded his vow, it is permitted. Now if you say [that it belongs to the first owner] until it comes Into the possession of him who acquires it, what does it matter whether his vow preceded his renunciation or the reverse? — He raised the objection and answered it himself:

He who vows has no thought of what he has renounced.

Raba objected: [If the dying person assigned] part [of his property] to the first, and all of it to the second, [and then recovered,] the first acquires, but not the second![1] But Raba said, This is R. Jose's reason: It is a preventive measure, on account of the gift of Beth Horon.[2]

It was taught: If one declares his field hefker: he can retract within the first three days, but not after.[3]

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(1) V. B.B. 148b. The law of a sick person likely to die is this: If he assigns all his property to anyone, and then recovers, his gift is invalid, it being assumed that it was made only on account of expected death. But if he leaves part for himself, it is valid; for, we argue, were it on account of approaching death, he would have left nothing for himself. Here, when he made the first assignation, part was still left for himself: hence it remains valid on his recovery. But after the assignation of the second nothing is left: consequently, on his recovery, it is null. Now, if it is maintained that a gift is not valid until the recipient actually takes possession, why is it more valid for the first than for the second: just as the portion assigned to the second is the residue left by the first, so that assigned to the first may be regarded as the residue left by the second? — So Rashi. On this interpretation, 'all of it' means 'the rest of it'. Asheri and Tosaf., however, point out that in such a case both gifts would be null on recovery, since he leaves after all nothing for himself. Accordingly, they explain thus: He assigned part of his property to A, then all to B, meaning also that already assigned to A. Consequently his gift to B was the result of a new intention, not borne in mind when making his first gift. Now, just as in making a gift, the donor intends it to apply even to that which he has already given away, as shewn, so when one vows, the vow is made even with respect to that which he has previously declared hefker. This refutes the distinction drawn by R. Abba. — Ran has a variant reading of this passage.

(2) V. 48a. There it is a case of a gift being an obvious evasion; so here too, his declaration of hefker does not appear genuine but as a mere evasion of his vow.

(3) This is in reference to the tithe. No tithe was due on produce taken from ownerless fields. Now, if he either revokes his declaration within the first three days, or takes possession without a formal retraction, his declaration is null: consequently, it has never been ownerless, and the crops must be tithed. But after three days, the declaration has legal force. Naturally, if no one else takes possession thereof, he can do so himself, but whether he or another, it is free from tithe.

Talmud - Mas. Nedarim 44a

If he declares, 'Let this field be hefker for one day, one week, one year, or one septennate';[1] before possession has been taken thereof, whether by himself or by a stranger, he can retract. But if it has [already] been acquired by himself or by a stranger, he cannot retract. [Must we assume that] the first clause agrees with the Rabbis, and the second with R. Jose?[2] — Said 'Ulla: The second clause too agrees with the Rabbis. If so, why 'before possession has been taken thereof, whether by himself or by a stranger, he can retract?' — [Hefker for] a year or a septennate is different, being unusual.[3] Resh Lakish said, Since the second clause agrees with R. Jose,[4] the first too must agree with him. But this is the reason of the first clause:[5] that the law of hefker may not be forgotten.[6] If so, let it be hefker even from the first day? — Said Rabbah, This is on account of evaders, who may declare their property hefker, and then reacquire it.[7] [Will you maintain] that by Biblical law it is not hefker:[8]

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(1) After the end of which it is to revert to himself, if no one has taken possession in the meanwhile.

(2) For since he cannot retract after three days even though no person has taken possession, it is evident that hefker is legally valid even before it reaches another. This agrees with the view of the Sages that the maddir can declare his property hefker and the muddar acquire it without its being regarded as passing direct from one to the other. But the second clause, stating that he can retract so long as no one has taken possession, shews that until then it is legally his. This agrees with R. Jose, that the maddir cannot declare his property hefker for the muddar to acquire it.

(3) 'Ulla interprets the whole Baraitha on the view of the Rabbis. Consequently, if one declares his property hefker, it immediately becomes so, and should the first owner take possession thereof, even immediately, the law of hefker applies

thereto, rendering it free from tithe. That it is by Biblical law. Since, however, this is manifestly exposed to abuse, for by a legal fiction everyone could thus evade the tithe, the Rabbis enacted that the law of hefker should apply only after three days, during which a stranger can take possession. So Rashi and Asheri appear to interpret it, though according to the latter, if the first owner resumes possession within three days, explicitly declaring that he is acquiring hefker but not retracting, the crops are exempt From tithe. Ran and Tosaf. explain that within the first three days he can retract even if a stranger has already taken possession thereof. In N.M. 273, 9 the first interpretation is accepted. But in the second clause, the declaration itself is weak, being limited to a certain Period. Consequently the Rabbis admit that it is not valid until one has actually taken possession. — It may be asked, if it is hefker even if re-acquired by the first owner, of what use is the enactment? The answer is that to acquire hefker it is insufficient to make a mere declaration of acquisition, but some work must be done in the field. Before the owner has time to do this, he may be forestalled: that is regarded as a sufficient check to evasion (v. Rashi).

(4) Resh Lakish accepts the obvious implications.

(5) That 'after three days, the declaration is binding', even if no one has taken possession thereof.

(6) For if we rule that whenever the owner resumes possession, it is not regarded as hefker. it will be forgotten altogether that hefker is exempt from tithe. Therefore the Rabbis ruled that after three days the declaration is binding. Nevertheless, since on this view it is not, Biblically, hefker even after three days if no stranger has taken possession, the crops are not Free from tithe on the first owner re-acquiring them, for the Rabbis have no power to exempt crops which by Biblical law are liable, as is explained infra.

(7) V. p. 139, n. 5.

(8) V. n. 3.

Talmud - Mas. Nedarim 44b

but perhaps he will come to tithe from [produce] that is liable for [produce] that is exempt, or vice versa?[1] — He is told, 'When you tithe, tithe for it out of itself.'[2]

An objection is raised: If a man declares his vineyard hefker and rises early on the following morning and vintages it,[3] he is liable to peret,[4] 'oleloth,[5] the forgotten sheaves,[6] and pe'ah,[7] but he is exempt from tithe. Now as for 'Ulla, it is well: it states the rabbinic law, and states the Biblical law.[8] But on the view of Resh Lakish, why is he free from tithe?[9] — He answers you thus: My statement is based on R. Jose; whilst this accords with the Rabbis.[10]

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(1) The tithe could be separated from one lot of produce upon another (of the same species), providing that both bore the same liability. E.g if one harvests his two fields, he can take From one the tenth of the combined produce. If, however, he separates a tithe of one field, thus freeing the rest, he cannot take another tithe from the same for the second field. Similarly, if he has two lots of corn, one liable to tithe by Biblical law, and the other only by Rabbinical law, so that by Biblical law it is really exempt, he may not separate from the one for the other. Now it has been explained here that according to R. Jose, so long as no stranger has taken possession, it is not hefker by Biblical law even after three days. and consequently Biblically liable. But by Rabbinical law it is hefker, even if the original owner re-acquires it. Nevertheless, as explained on p. 139, n. 5, the Rabbis ordered that he shall tithe it. Thus, in this respect, the Rabbis restored it to Biblical law. But the owner, being told that it is hefker, may regard the liability to tithe as merely a Rabbinical measure, and therefore, if he has any other corn which is only Rabbinically liable, separate from the one, which is really Biblically exempt, For the Biblically liable, or vice versa.

(2) Only in this respect is it regarded as hefker even if the first owner resumes possession.

(3) Thus he resumed possession thereof.

(4) Single grapes fallen off during the cutting, which must be left for the poor. — Lev. XIX, 10.

(5) 'Olelah, 'oleleth, pl. 'oleloth, gleanings reserved for the poor; in general, a small single bunch on a single branch. Ibid. and Deut. XXIV, 21.

(6) Sheaves (here grapes) forgotten in the course of ingathering, which had to be left for the poor. — Deut. XXIV, 19.

(7) Pe'ah — corner; the corner of the field left for the poor. — Lev. XIX, 9.

(8) 'Ulla maintains that the Baraitha in stating that he can retract within the first three days, teaches the Rabbinical law, whereas this Baraitha states the Biblical law according to which it is hefker immediately.

(9) Since he maintains that within the first three days it is not hefker even by Biblical law, and hence subject to tithes, and even after that it is hefker only by Rabbinical law, why is it taught here that on the very next day it is free from tithe? **(10)** Who maintain in the Mishnah that it is hefker immediately, hence free from tithe.

Talmud - Mas. Nedarim 45a

Alternatively: One case refers to hefker declared in the presence of two; the other, if declared before three. For R. Johanan said in the name of R. Simeon b. Jehozadak: Hefker declared in the presence of three is valid, but not in the presence of two.[1] R. Joshua b. Levi said: By the Torah, it is hefker even if declared in the presence of one: why then are three required? So that one can take possession, and the other two attest it.[2] [

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(1) Until one actually takes possession. Therefore, in the Mishnah, since no person is present, R. Jose maintains that if the maddir declares the food hefker, and the muddar takes it, he receives it directly from the maddir. But the vineyard, we assume, was renounced in the presence of three; therefore even R. Jose agrees that the renunciation is immediately valid. Hence, if he re-acquires it, it is exempt from tithe. The stronger validity of hefker in the presence of three is due to its greater publicity.

(2) For otherwise the first owner can deny his renunciation.

Talmud - Mas. Nedarim 45b

C H A P T E R V

MISHNAH. IF [TWO] JOINT OWNERS MADE A VOW NOT TO BENEFIT FROM ONE ANOTHER, THEY MAY NOT ENTER THE COURTYARD.[1] R. ELIEZER B. JACOB SAID: EACH ENTERS INTO HIS OWN.[2]

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(1) Which belongs to both.

(2) He maintains that it is as though it had been stipulated when jointly acquiring the property, that it should belong to each partner separately for his entering therein. Consequently, when he enters, he is not benefiting from the other. The Sages do not accept this view.

Talmud - Mas. Nedarim 46a

AND BOTH ARE FORBIDDEN TO SET UP A MILL-STONE OR AN OVEN OR BREED FOWLS THEREIN.[1] IF [ONLY] ONE WAS FORBIDDEN BY VOW TO BENEFIT FROM THE OTHER, HE MAY NOT ENTER THE COURT. R. ELIEZER B. JACOB SAID: HE CAN MAINTAIN, 'I AM ENTERING INTO MY OWN, NOT INTO YOURS.' HE WHO THUS VOWED IS FORCED TO SELL HIS SHARE [OF THE COURT].[2] IF A MAN FROM THE STREET WAS FORBIDDEN BY VOW TO BENEFIT FROM ONE OF THEM, HE MAY NOT ENTER THE COURT. R. ELIEZER B. JACOB SAID: HE CAN MAINTAIN, 'I ENTER YOUR NEIGHBOUR'S PORTION, AND I DO NOT ENTER INTO YOURS. IF ONE IS FORBIDDEN BY VOW TO BENEFIT FROM HIS NEIGHBOUR, AND THE LATTER POSSESSES A BATH-HOUSE OR AN OLIVE PRESS LEASED TO SOMEONE IN THE TOWN, AND HE HAS AN INTEREST THEREIN, HE [THE MUDDAR] IS FORBIDDEN [TO MAKE USE OF THEM]; IF NOT, HE is PERMITTED. IF A MAN SAYS TO HIS NEIGHBOUR, 'KONAM, IF I ENTER YOUR HOUSE', OR 'IF I PURCHASE YOUR FIELD,' AND THEN [THE OWNER] DIES OR SELLS IT TO ANOTHER, HE IS PERMITTED [TO ENTER OR BUY IT]; [BUT IF HE SAYS.] 'KONAM, IF I ENTER THIS HOUSE, OR 'IF I PURCHASE THIS FIELD,' AND [THE OWNER] DIES OR SELLS IT TO ANOTHER, HE IS FORBIDDEN.

GEMARA. The scholars propounded: They differ when they interdicted themselves by vow. But

what if each imposed a vow upon the other? Do we say, they differ [only] in the former case, but that in the latter the Rabbis agree with R. Eliezer b. Jacob, since they are involuntarily prohibited;[3] or perhaps the Rabbis dispute even in the latter case?[4] Come and hear: IF [ONLY] ONE WAS FORBIDDEN BY VOW[5] TO BENEFIT FROM THE OTHER . . . and the Rabbis dispute it! — Learn, forbade himself from his neighbour.[6] This is logical too, for the second clause states: NOW, HE WHO THUS VOWED IS FORCED TO SELL HIS SHARE OF THE COURT. Now, this is reasonable if the vow was self-imposed: hence he is compelled. But if you say that a vow was imposed against him, why is he compelled. Seeing that the position is not of his making?[7]

Rabbah said in Ze'iri's name:

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(1) R. Eliezer b. Jacob admits this, for joint owners can object to this. Consequently, if they do not, each benefits by the permission of the other.

(2) For since he may enter, but not the other (this being taught on the view of the Sages), the second, in resentment, might enter none the less in disregard of the vow.

(3) For if they voluntarily interdict themselves of all benefit, it may be maintained that each thereby renounces also his share, which is inseparable from his partner's. But when each forbids the other, it may be argued that neither can prohibit that which the other enjoys in his own right.

(4) For the prohibition arises because in their opinion it is impossible to distinguish between the portions belonging to each.

(5) Muddar is the hofal, and implies that the vow was imposed upon him by another.

(6) Nadur, passive Kal. implies self-imposed. No emendation is really made in the Mishnah, but the Talmud answers that muddar may be synonymous with nadur, self-imposed.

(7) Lit., 'surely he is under constraint'. I.e., it is equitable to force him to sell, if as a result of his own vow he may come to transgression, but not otherwise.

Talmud - Mas. Nedarim 46b

The dispute is only if it [the court] is large enough to be divided; but if not, all agree that they are permitted.[1] Said R. Joseph to him: But what of a synagogue which is as a thing which cannot be divided,[2] yet we learnt, Both are forbidden [the use of] the [common] property of the town?[3] — But, said R. Joseph in Ze'iri's name, The controversy is only when it is not [large] enough to divide;[4] but if it is, all agree that both are forbidden. R. Huna said: The halachah is as R. Eliezer b. Jacob; and R. Eleazar said likewise: The halachah is as R. Eliezer b. Jacob.

IF ONE IS FORBIDDEN BY VOW TO BENEFIT FROM HIS NEIGHBOUR, AND THE LATTER POSSESSES A BATH-HOUSE etc. How much is meant by AN INTEREST THEREIN? — R. Nahman said: A half, third, or a quarter, but not less.[5] Abaye said, Even for less, he is forbidden. Under what conditions is he permitted? If he [the lessee] rents it in return for [the payment of] the land-tax.[6]

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(1) The smallest area of a court to be of any use as such is four square cubits. Now, only if it contains at least eight square cubits do the Rabbis maintain that each is forbidden to enter, since it is possible for them to divide, and yet each portion shall be large enough itself for a court; for then it cannot be said that when they purchased it jointly, each was entitled to the whole of it, as explained on p. 142, n. 2. But a lesser area cannot be divided, and therefore the original condition of purchase must have been that the whole belongs to each.

(2) Since its essential use is joint worship, and should it be divided, it ceases to be a synagogue.

(3) Infra 48a.

(4) Yet even then the Rabbis maintain that each is forbidden to enter.

(5) Less than a quarter is regarded as negligible. And the muddar is not forbidden to use it on its account. [Var. lec., 'but for eggs it is permitted'. בבצים for בבציר, the reference being to the egg-shaped forms of clay which are placed in the oven of the bath-house for drying. If his interest consists in the use he makes of the bath-house for that purpose, it is

not regarded of any consequence.]

(6) The tax must have been very high if the owner was prepared to forego any possible profit. — Taska was the Persian land tax. (v. Obermeyer. p. 221, n. 3), and the Mishnah, which was produced in Palestine, cannot actually refer to this tax. Abaye's interpretation must therefore be regarded merely as an illustration. [Aliter: If he (the lessee) obtained it on a rental; retaining all the profit to himself.]

Talmud - Mas. Nedarim 47a

IF ONE SAYS TO HIS NEIGHBOUR etc. Abim[1] propounded: What [if one says to his neighbour.] 'Konam, if you enter this house,' and then he sells it or dies: Can one prohibit that which he owns [for the prohibition] to be effective even when it leaves his ownership, or not? — Said Raba, Come and hear: If one says to his son, 'Konam that you benefit not from me,' and he dies, he is his heir. [But if he explicitly stipulates] during his lifetime and he dies, he does not succeed him. This proves that one can prohibit that which he owns [for the prohibition] to hold good when it leaves his ownership. The proof is conclusive.

We learnt elsewhere: [If one says.] 'Konam be these fruits to me,' or, 'Be they konam for my mouth,' or, 'Be they konam to my mouth': he is forbidden [to benefit] from what has been exchanged for them or grown from them.[2] Rami b. Hama propounded. If he vows, 'Konam be these fruits to So-and-so', what of their exchange? Do we say, With respect to oneself, since he can forbid to himself [even] his neighbour's property, he can [likewise] forbid to himself what is not yet in existence;[3] but as for his neighbour, since one cannot prohibit another's produce to his neighbour, he likewise cannot prohibit what is non-existent;

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(1) Var. lec.: Abaye.

(2) Infra 57a.

(3) What may be given for the produce subsequent to the vow is regarded as non-existent when the vow is made.

Talmud - Mas. Nedarim 47b

or perhaps since what is taken in exchange is the same as what grows from its seed, there is no difference between oneself and his neighbour?[1] — Said R. Aha b. Manyumi, Come and hear: If a man says to his wife, 'Konam, if I benefit thee,' she may borrow [money], and the creditors come and exact it from him. Why can the creditors collect it [from him]: surely because what is taken in exchange is not the same as what grows from them?[2] Said Raba, possibly it is forbidden [to make an exchange] in the first place only, but if it has been done, it is valid.[3] But come and hear: If a man betroths [a woman] with 'orlah,[4] she is not betrothed; but if he sells it and betroths her with the money thereof, she is betrothed![5] — [No.] Here too it may be forbidden in the first place only, but if done it is valid. MISHNAH. [IF A MAN SAYS TO HIS NEIGHBOUR.] 'I AM HEREM TO YOU,' THE MUDDAR IS FORBIDDEN [TO DERIVE BENEFIT]. 'YOU ARE HEREM TO ME,' THE MADDIR IS FORBIDDEN. I AM [HEREM] TO YOU, AND YOU ARE [HEREM] TO ME, BOTH ARE PROHIBITED. BOTH ARE PERMITTED [TO ENJOY THE USE OF] THOSE THINGS WHICH BELONG TO THOSE WHO CAME UP FROM BABYLON [TO PALESTINE],[6] BUT ARE FORBIDDEN [THE USE OF] THINGS THAT BELONG TO THAT TOWN.[7]

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(1) For it is obvious that the fruit which grows is forbidden to his neighbour, and possibly what is given in exchange is the same.

(2) Thus, in this case, the money she receives is not the same that is repaid.

(3) I.e., it can be maintained that the problem regarding what is exchanged for them, is whether one may deliberately exchange these fruits for something else, so that it shall be permitted to the muddar. But if they were exchanged, they certainly are permitted. Hence, in this case, since the wife receives the money before the creditors exact it from her husband, it is regarded as a fail accompli, the legality of which is not in doubt. (The explanation follows Asheri. Ran gives a different interpretation).

(4) 'Fruit of uncircumcision. V. Lev. XIX, 23.

(5) This proves that the prohibition does not remain upon what has been exchanged for something forbidden.

(6) I.e., the band of immigrants who returned to Palestine under Zerubbabel, and later under Ezra and Nehemiah, who declared certain things inalienable property which can be deemed ownerless.

(7) In which each citizen has a share.

Talmud - Mas. Nedarim 48a

NOW, WHAT ARE THE THINGS THAT BELONG TO THEM THAT CAME UP FROM BABYLON? E.G., THE TEMPLE MOUNT, THE COURTS OF THE TEMPLE AND THE WELL ON THE MIDROAD.[1] WHAT ARE THE THINGS THAT BELONG TO THAT TOWN, E.G., THE PUBLIC SQUARE, THE BATH-HOUSE, THE SYNAGOGUE, THE ARK [IN WHICH THE SACRED SCROLLS WERE KEPT] AND THE BOOKS [OF THE LAW],[2] AND [THE ESTATE OF] HIM WHO ASSIGNS HIS PORTION TO THE NASI.[3] R. JUDAH SAID: IT IS THE SAME WHETHER HE ASSIGNS IT TO THE NASI OR TO A PRIVATE INDIVIDUAL, BUT WHAT IS THE DIFFERENCE? IF HE ASSIGNS IT TO THE NASI, HE NEED NOT [FORMALLY] CONFER TITLE;[4] WHILST IN THE CASE OF AN INDIVIDUAL IT IS NECESSARY TO CONFER TITLE.[5] BUT THE SAGES MAINTAIN: FORMAL GRANT OF TITLE IS NECESSARY IN BOTH CASES; THEY MENTIONED THE NASI IN PARTICULAR AS THIS IS USUAL.[6] R. JUDAH SAID: THE GALILEANS NEED NOT ASSIGN [THEIR PORTION], BECAUSE THEIR ANCESTORS HAVE ALREADY DONE SO FOR THEM.

GEMARA. Why is it forbidden?[7] — Said R. Shesheth, The Mishnah teaches thus: How can they repair their position?[8] Let them assign their portion to the nasi.[9]

R. JUDAH SAID: THE GALILEANS NEED NOT ASSIGN [THEIR PORTION]. BECAUSE THEIR ANCESTORS HAVE ALREADY DONE SO FOR THEM. It was taught: R. Judah said: the Galileans were quarrelsome and wont to make vows not to benefit from each other: so their fathers arose and assigned their portions to the nasi.

MISHNAH. IF ONE IS FORBIDDEN BY VOW TO BENEFIT FROM HIS NEIGHBOUR AND HAS NOTHING TO EAT, THE LATTER CAN GIVE IT [FOOD] TO A THIRD PARTY, AND THE FORMER IS PERMITTED TO USE IT. IT HAPPENED TO ONE IN BETH HORON[10] THAT HIS FATHER WAS FORBIDDEN TO BENEFIT FROM HIM. NOW HE [THE SON] WAS GIVING HIS SON IN MARRIAGE;[11] SO HE SAID TO HIS NEIGHBOUR, 'THE COURTYARD AND THE BANQUET BE A GIFT TO YOU, BUT THEY ARE YOURS ONLY THAT MY FATHER MAY COME AND FEAST WITH US AT THE BANQUET. THEREUPON HE ANSWERED, 'IF THEY ARE MINE, LET THEM BE CONSECRATED TO HEAVEN!' 'BUT I DID NOT GIVE YOU MY PROPERTY TO CONSECRATE IT TO HEAVEN, HE PROTESTED. YOU GAVE ME YOURS SO THAT YOU AND YOUR FATHER MIGHT EAT AND DRINK TOGETHER AND BECOME RECONCILED TO ONE ANOTHER, WHILST THE SIN [OF A BROKEN VOW] SHOULD DEVOLVE UPON HIS HEAD,'[12] HE RETORTED. [WHEN THE MATTER CAME BEFORE] THE SAGES, THEY RULED: EVERY GIFT WHICH IS NOT [SO GIVEN] THAT IF HE [THE RECIPIENT] CONSECRATES IT, IT IS CONSECRATED, IS NO GIFT [AT ALL].

GEMARA. [Does the Mishnah adduce] a Story to contradict [its ruling]?[13] — The text is defective, and was thus taught: But if the end proves [his intention] at the beginning,[14] it is forbidden, and so it happened in Beth Horon, in the case of one whose last action demonstrated his first [as a mere evasion].

Raba said: They [the Sages] taught [that it is forbidden] only if he said, 'They are yours only in order that my father may come [etc.].' But if he said, 'They are yours so that my father may come, he meant, 'It depends on your will.'[15] A different version is this: Raba said: Do not think that he is forbidden only if he said, 'And they are yours only in order that my father may come', but if he said, 'They are yours so that my father may come' it is permitted. [That is not so,] for even if he said, 'They are yours: let my father come,' it is forbidden. What is the reason? Because the banquet

proves his intention.

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(1) Between Babylon and Palestine, for the supply of water to the pilgrims, v. ‘Erub. 104b. These things were declared the property of all Israel.

(2) (Rashi. Asheri: Books purchased by the congregation for the reading of the general public.]

(3) The head of the Sanhedrin in Jerusalem and subsequent places. According to this reading, this portion too would be forbidden. But the Gemara amends the text of the Mishnah.

(4) I.e., by the mere documentary assignation it becomes the Nasi's property.

(5) E.g., one of the recognised methods of acquisition.

(6) For one would fear to assign his portion in communal property to an individual, lest he then forbid it to him. V. also Halevy, Doroth, I, 3, p. 61 and general discussion a.l.

(7) This question is based on the assumption that if the maddir assigns his portion to the nasi, the muddar is still forbidden.

(8) Since the use of communal property as defined in the Mishnah is essential to them.

(9) In cur. edd. a portion of the Mishnah is here reproduced in brackets, viz., ‘R. Judah said, It is the same . . . this is usual’. But the quotation is pointless, and should be deleted.

(10) A border town between Benjamin and Ephraim.

(11) And desired his father's presence.

(12) [Probably a euphemism for ‘my head’. J. reads ‘my head’.]

(13) Surely not! For the Mishnah states that the maddir may make a gift for the muddar to benefit thereby, and then quotes a case where this was forbidden.

(14) That it was a mere device.

(15) Hence it is permitted.

Talmud - Mas. Nedarim 48b

A certain man had a son who used to carry off bundles of flax. Thereupon his father forbade his property to him.[1] ‘But,’ said others to him, ‘what if the son of your son is a scholar?’[2] He replied, ‘Let him acquire it, and if my[3] grandson be a scholar, it shall be his.’[4] Now, what is the law? — The Pumbedithans[5] ruled, This is a case of ‘Acquire, in order to give possession,’ and such does not give a legal title. R. Nahman said: He [the son] acquires [it], for [the giving of] a sudarium too is a case of ‘Acquire, in order to give possession.’[6] R. Ashi demurred: But in the case of a sudarium, who tells you that if he retains it, it is not his?[7] Moreover, the sudarium is a case of ‘Acquire in order to give possession,’ and ‘Acquire [it] from now.’[8] But as for this property, — when shall he acquire it? When his grandson is a scholar: [but] by then the sudarium [whereby the transference was made] has been returned to its owner.[9] Raba [also] questioned R. Nahman: But the gift of Beth Horon was a case of ‘Acquire, in order to give possession,’ yet it was invalid? Sometimes he answered, Because his banquet proves his intention;[10] sometimes he answered, This is taught in accordance with R. Eliezer, who maintained that even the extra [given by the vendor to a customer] is forbidden to one who is interdicted by vow to benefit.[11]

We learnt, THE SAGES RUled, EVERY GIFT WHICH IS NOT [SO GIVEN] THAT IF HE [THE BENEFICIARY] CONSECRATES IT, IT IS CONSECRATED, IS NOT A GIFT [AT ALL]. Now, what does EVERY include? Surely it includes such as this case of stealing flax?[12] — No. It includes the case of the second version of Raba's ruling.[13] [

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(1) Though, as stated above, (supra 47a) his son would still inherit it, this story may be explained on the supposition that he had two sons, and wished to give the whole of his estate to the second (Ran).

(2) At the time he had no grandson yet.

(3) This is Rashi's reading. Cur. edd.: and if . . . . [Var. lec. ‘let him not acquire, and if . . .’ v. Bah.]

(4) But if not, it reverts to my other son. — Ran.

(5) A great academy town in Babylonia, at the mouth of the Beditha (which is the meaning of the name), a canal of the

Euphrates.
(6) One of the methods of acquisition was by exchange (halifin), in which an object (a sudarium kerchief) was given by the purchaser or recipient to the vendor or donor as a symbolical substitute v. B.M. 47a. Now, actually. this was given merely in order that the latter might give legal possession to the former, and was generally returned, yet it was valid.
(7) I.e., though in fact it was only a symbol, and usually returned, yet it may be retained; but here it was not intended that the son should have possession at all but merely to be the medium of transference, for if his grandson would not be a scholar, the estate was to revert to his second son.
(8) [Ran reads: Acquire in order to give possession from now.] As soon as the vendor acquires the scarf, the purchaser is the legal owner of his purchase.
(9) [At the time when the title was granted the grandson was not yet in existence, and when he is ripe enough to receive the legacy the act of transference had long been a matter of the past, and no longer effective.]
(10) I.e., it was not a genuine gift at all.
(11) On account of this he ruled that he may not even walk over his field (32b), though ordinarily walking over another person's field is not accounted an encroachment of rights. Thus R. Eliezer treats vows far more stringently than other matters. Consequently, here too he rules the gift invalid. But the Sages, who disagree with him, would regard the gift of Beth Horon valid.
(12) That such a gift is invalid, not merely because of the greater stringency of vows, but because 'Acquire in order to give possession' confers no title. [This is the reading of Ran. Rashi and Asheri: Where the condition was repeated or cast in two forms (v. supra p. 149 n. 3). Our text presents a conflation of the two readings.]
(13) V. Supra.

Talmud - Mas. Nedarim 49a

C H A P T E R V I

MISHNAH. HE WHO VOWS [NOT TO EAT] WHAT IS COOKED [MEBUSHAL] IS PERMITTED WHAT IS ROASTED OR SEETHED.[1] IF HE SAYS, 'KONAM THAT I TASTE ANY COOKED DISH [TABSHIL]' HE IS FORBIDDEN [TO EAT] FOOD LOOSELY COOKED IN A POT, BUT IS PERMITTED [TO PARTAKE] OF WHAT IS SOLIDLY PREPARED.[2] HE MAY ALSO EAT A HARD BOILED EGG[3] AND REMUZIAN CUCUMBERS.[4] HE WHO VOWS ABSTINENCE FROM FOOD PREPARED IN A POT, IS FORBIDDEN ONLY BOILED DISHES; BUT IF HE SAYS, 'KONAM THAT I TASTE NOT WHATEVER DESCENDS INTO A POT, HE IS FORBIDDEN EVERYTHING PREPARED IN A POT.[5]

GEMARA. It was taught: R. Josiah forbids [them].[6] And though there is no proof of this,[7] there is some indication, for it is said, And they boiled[8] the Passover in fire, according to the law.[9] Shall we say that they differ in this: That R. Josiah holds: Follow Biblical usage; whilst our Tanna maintains: In vows follow the popular usage? No. All agree that in vows we must follow popular usage: but each [rules] according to [the usage] in his district. In the district of our Tanna roast is called roast, and cooked, cooked. But in R. Josiah's, even roast is called cooked. But he adduces a verse? — That is a mere support.[10]

[IF HE SAYS,] 'KONAM THAT I TASTE NOT ANY COOKED DISH [TABSHIL]. But he vowed [abstinence] from a tabshil?[11] — Said Abaye: This Tanna designates everything with which bread is eaten a tabshil.[12] And it was taught [likewise], He who vows [abstinence] from a tabshil is forbidden all cooked food [tabshil], and whatsoever is roasted, seethed, or boiled; he is also forbidden soft preserves of gourds with which the sick eat their bread. But this is not so. For R. Jeremiah fell sick. When the doctor called to heal him, he saw a pumpkin lying in the house. Thereupon he left the house, saying. 'The angel of death is in that house,[13] yet I am to cure him'![14] — That is no difficulty: the former refers to soft preserves; the latter to hard.[15] Raba b. 'Ulla said: The latter refers to the pumpkin itself;[16] the former to its inner contents.[17] For Rab Judah said: The soft part of a pumpkin [should be eaten] with beet; the soft part of linseed is good with kutah.[18] But

this may not be told to the ignorant.[19]

Raba said: By 'the sick', scholars are meant.[20] This agrees with another dictum of his. For Raba said:

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(1) Seethed. Heb. shaluk שלוק, denotes more thoroughly boiled than cooked (mebushal).

(2) Because (tabshil is only applicable to a loose liquid-like substance, but not to a dense mass.

(3) [טורמוטא, Gr. ** trembling, hence shrivelled up; v. Gemara. J. explains it as lightly boiled egg; cf. Krauss. T.A. I. pp. 125 and 515.]

(4) This is discussed on 51a.

(5) Both liquids and solids.

(6) Sc. what is roasted or seethed. This refers to the first clause of the Mishnah.

(7) That מבושל includes these.

(8) Heb. ויבשלו, impf. of בשל of which מבושל is a pass. part.

(9) II Chron. XXXV, 13. But the Passover Sacrifice had to be roasted; hence מבושל is applicable to roasts too. Yet this is not actual proof, because as stated infra, in vows the popular usage is the norm.

(10) His ruling, however, is not based thereon.

(11) Which implies both loosely cooked and a dense mass.

(12) But not otherwise; a dense mass cannot be eaten with bread.

(13) I.e the pumpkin is like poison for him.

(14) This shows that they are injurious to invalids.

(15) The soft are beneficial, the hard, injurious.

(16) I.e., the outer portion, which is hard and injurious.

(17) Its heart, which is soft and beneficial

(18) A preserve consisting of sour milk, bread-crusts and salt. — Jast.

(19) Lest they tear up the growing flax to obtain the seed (Ran). Because it will appear absurd to then, (Tosaf).

(20) I.e., in the Baraitha stating that 'the sick' eat their bread with soft preserves of gourds, the Rabbis and students are meant, not the literally sick. Hence there is no contradiction between that and the story of R. Jeremiah.

Talmud - Mas. Nedarim 49b

In accordance with whom is it that we pray for the invalid and the sick?[1] In accordance with R. Jose.[2] Since he said, 'the invalid and the sick,' It follows that 'invalid' is literal, and 'the sick' [metaphorically] means the Rabbis.[3]

BUT IS PERMITTED [TO PARTAKE] OF A DISH SOLIDLY PREPARED. Our Mishnah does not agree with the Babylonians, for R. Zera said: The Babylonians are fools, eating bread with bread.[4] R. Hisda said: There is none[5] to make enquiries of the epicureans[6] of Huzal[7] how porridge is best eaten, whether a wheat porridge with wheaten bread, and a barley porridge with barley bread, or perhaps [they are best reversed,] wheat with barley, and barley with wheat. Raba ate it with stunted [parched] grains. Rabbah son of R. Huna found R. Huna eating porridge with his fingers. So he said to him, 'Why do you eat with your hands?' He replied, Thus did Rah say, [To eat] porridge with [one] finger is well: how much more so with two or three! Rab said to his son Hiyya, and R. Huna said the same to his son Rabbah, 'If you are invited to eat porridge, [you may even go] a parasang[8] for it; to eat beef, even three parasangs. Rab said to his son Hiyya, and R. Huna said likewise to his son Rabbah: You must never expectorate before your teacher, save [after eating] a pumpkin or porridge, because they are like lead pellets:[9] expectorate this even in the presence of King Shapur.[10]

R. Jose and R. Judah, — one ate porridge with his fingers, and one with a prick.[11] He who was eating with the prick said to him who was eating with the fingers, 'How long will you make me eat your filth?'[12] The other replied, 'How long will you feed me with your saliva?'[13]

Lesbian figs[14] were placed before R. Judah and R. Simeon. R. Judah ate; R. Simeon did not. [Whereupon] R. Judah asked him, 'Why are [you], Sir not eating?' He replied. 'These never pass out at all from the stomach.' But R. Judah retorted, 'All the more [reason or eating them], as they will sustain us tomorrow.'[15] R. Judah was sitting before R. Tarfon, who remarked to him, 'Your face shines to-day.' He replied. 'Your servants went out to the fields yesterday and brought us beets, which we ate unsalted, had we salted them, my face would have shone even more.

A certain matron[16] said to R. Judah, 'A teacher and drunkard!'[17] He replied, You may well believe me that[18] I taste [no wine] but that of Kiddush and Habdalah[19] and the four cups of Passover,[20] on account of which I have to bind my temples from Passover until Pentecost;[21] but a man's wisdom maketh his face shine.[22] A min[23] said to R. Judah. 'Your face is like that of a moneylender or pig breeder.'[24] He replied, 'Both of these are forbidden to Jews; but there are twenty-four conveniences between my house and the School, and every hour I visit one of them.'

When R. Judah went to the Beth ha-Midrash,[25] he used to take a pitcher on his shoulders [to sit on], saying. 'Great is labour, for it honours the worker.'[26] R. Simeon used to carry a basket upon his shoulders, saying likewise, 'Great is labour, for it honours the worker.'

R. Judah's wife went out, brought wool, and made an embroidered cloak. On going to market she used to put it on, whilst when R. Judah went [to synagogue] to pray he used to wear it. When he donned it, he uttered the benediction, Blessed be He who hath robed me with a robe.[27] Now, it happened once that R. Simeon b. Gamaliel proclaimed a fast,[28] but R. Judah did not attend the fast-service.[29] Being informed that he had nothing to wear, he [R. Simeon b. Gamaliel] sent him a robe, which he did not accept.

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(1) In our daily prayers; v. P.B. p. 47.

(2) V. R.H. 16a. The Rabbis there maintain that a man is judged on New Year, and once he is sentenced, whether to life or death, the verdict cannot be reversed. Consequently, in their opinion it would be futile to pray for the recovery of the sick during the year. Hence the practice of praying for them accords with R. Jose's view, that man is judged every day.

(3) Who are weakened by their intensive studies.

(4) I. e., even food solidly prepared is eaten by them with bread consequently such would be included in the term 'tabhshil' and forbidden.

(5) So the text as emended by Bah. Asheri reads: Is there any one etc.

(6) Lit., 'those who are very careful in their eating'. Rashi and one version of the Ran. Others: the fastidious.

(7) A very old town lying below Nehardea, but nearer to Sura and belonging to the judicial circuit of the latter: Obermeyer, p. 299.

(8) V. Glos.

(9) I.e., it is dangerous to swallow the saliva left in the mouth after eating these.

(10) Known otherwise as Shapur I. He was King of Persia and a friend of Samuel; Ber. 56a

(11) Used as a fork.

(12) They were both eating out of the same dish.

(13) Because the thorn was not wiped each time after being put into his mouth.

(14) Jast. These are very difficult to digest.

(15) As such below, R. Judah was extremely poor; hence this was a consideration to him, though there is probably an element of humour in his retort.

(16) This is mostly used of Roman ladies of noble birth.

(17) מורה ורוי i.e., you are a Sage, yet you are drunk! His faces was always red and shining, giving that impressions.

(18) Lit., 'My faith in the hand of this woman if . . .'

(19) Kiddush: a short blessing of sanctification, recited at the commencement of Sabbaths and festivals. Habdalah, lit., ' separation', a benediction said at the end of Sabbaths and festivals, thanking God for the distinction He created between holy and non-holy days. Both are recited over wine, which is drunk.

(20) Four cups of wine are drunk at the meals on the first evening (without Palestine, two evenings) of Passover.

(21) They gave him such a headache! Doubtlessly a metaphorical exaggeration.
(22) Ecc. VIII, 1.
(23) [So MS.M. (v. Glos.), cur. edd. 'Sadducee'.]
(24) Their faces are always shining because of their great profits!
(25) School House.
(26) Lit., 'its master'. Otherwise he would have had to sit on the floor. It is not clear whether the school was so deficient in equipment that this was really necessary, or he himself wished to shew his appreciation of labour. In the story of the deposition of R. Gamaliel (Ber. 27b-28a). It is stated that many additional seats were placed for the great accretion of new disciples, proving that it was not customary to sit on the floor. R. Judah belonged to the following generation.
(27) There is no such benediction in the statutory liturgy, and R. Judah probably uttered this without the use of the Divine Name and without mention of God's sovereignty. Through the omission of these it is not really a benediction at all, hence R. Judah might recite it. (Real benedictions may not be uttered save where the Rabbis have prescribed them).
(28) Over and above the statutory fasts special fasts were proclaimed in times of drought or on account of national disasters, such as pestilence, evil decrees, etc.; Ta'an. 19a.
(29) A special service was held: Ta'an. 15a.

Talmud - Mas. Nedarim 50a

Lifting up the mat [upon which he was sitting], he exclaimed to the messengers, 'See what I have here,[1] but I do not wish to benefit from this world.'[2]

The daughter of Kalba Shebu'a[3] betrothed herself to R. Akiba.[4] When her father heard thereof, he vowed that she was not to benefit from aught of his property. Then she went and married him in winter.[5] They slept on straw, and he had to pick out the straw from his hair. 'If Only I could afford it,' said he to her, 'I would present you with a golden Jerusalem.'[6] [Later] Elijah came to them in the guise of a mortal,[7] and cried out at the door. 'Give the some straw, for my wife is in confinement and I have nothing for her to lie on.' 'See!' R. Akiba observed to his wife, 'there is a man who lacks even straw.' [Subsequently] she counselled him, 'Go, and become a scholar.' So he left her, and spent twelve years [studying] under R. Eliezer and R. Joshua. At the end of this period, he was returning home, when from the back of the house he heard a wicked man jeering at his wife, 'Your father did well to you. Firstly, because he is your inferior; and secondly, he has abandoned you to living widowhood all these years.' She replied, 'Yet were he to hear my desires, he would be absent another twelve years. Seeing that she has thus given me permission,' he said, 'I will go back.' So he went back, and was absent for another twelve years, [at the end of which] he returned with twenty-four thousand disciples.[8] Everyone flocked to welcome him, including her [his wife] too. But that wicked man said to her, 'And whither art thou going?'[9] 'A righteous man knoweth the life of his beast,'[10] she retorted. So she went to see him, but the disciples wished to repulse her. 'Make way for her,' he told them, 'for my [learning] and yours are hers.' When Kalba Shebu'a heard thereof, he came [before R. Akiba] and asked for the remission of his vow and he annulled it for him.

From six incidents did R. Akiba become rich: [i] From Kalba Shebu'a.[11] [ii] From a ship's ram. For every ship is provided with the figurehead of an animal. Once this [a wooden ram] was forgotten on the sea shore, and R. Akiba found it.[12] [iii] From a hollowed out trunk.[13] For he once gave four it to sailors, and told them to bring him something [that he needed]. But they found only a hollow log on the sea shore, which they brought to him, saying, 'Sit on this and wait'.[14] It was found to be full of denarii. For it once happened that a ship sunk and all the treasures thereof were placed in that log, and it was found at that time. [iv] From the serokita.[15] [v] From a matron.[16] [vi]

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(1) My a miracle, upon which he had relied, the place was filled with gold.
(2) This story shows that R. Judah, i.e R. Judah b. Ila'i, was extremely poor. In general the scholars of that generation lived in great poverty, as a result of the Hadrianic persecutions. V. A. Buchler, The Jewish Community of Sepphoris, pp. 67 seq.

(3) V. Git. 56a.
(4) Then a poor shepherd.
(5) An interval generally elapsed between betrothal (kiddushin) and marriage (nesu'in).
(6) A golden ornament with Jerusalem engraved thereon. V. 'Ed. II. 7.
(7) Cf. Sanh. 109a, 113b; v. Tosaf. Hul. 6a. s.v. אשכחיה.
(8) Cur. edd.: 'pairs of disciples'. But 'pairs' is absent in the version of Ket. 62b, and should be deleted here.
(9) Taunting her that she was too humble to be observed by so great a scholar.
(10) Prov. XII, 10.
(11) Who shared his wealth with him.
(12) It contained money.
(13) גווזא < גזע, a stem, trunk: Rashi translates: a ship's coffer, from גנז to hide, and גזא, treasure.
(14) [Lit., 'make this a tarrying place' (Goldschmidt); or 'Let our master make this (a tarrying place)', Rashi.]
(15) 'Aruch translates: Ishmaelite traders. The phrase is missing in 'En Jacob and unnoticed by the commentaries, and is obviously a corrupt dittography of ומן מטרוניתא (Jast.)
(16) A large sum of money was once needed for the school house. R. Akiba borrowed it from a matron, and at her request gave the Almighty and the sea as sureties for its punctual repayment. But when the money fell due, R. Akiba was unwell. Thereupon the matron stood at the edge of the sea did exclaimed, 'Sovereign of the Universe! Thou knowest that to Thee and to the sea have I entrusted my money'. In reply, He inspired the Emperor's daughter with a mad fit, in the course of which she threw a chest full of treasures into the sea, which was washed up at the matron's feet. On his recovery, he brought her the money, with apologies for the delay: but she told him what had happened, and sent him away with many gifts.

Talmud - Mas. Nedarim 50b

The wife of Turnusrufus.[1] [vi] From Keti'a b. Shalom.[2]

R. Gamada gave four zuz to sailors to bring him something. But as they could not obtain it, they brought him a monkey for it. The monkey escaped, and made his way into a hole. In searching for it, they found it lying on precious stones, and brought them all to him.

The Emperor's[3] daughter said to R. Joshua b. Hananiah: 'Such comely wisdom in an ugly vessel!'[4] He replied. 'Learn front thy father's palace. In what is the wine stored?' 'In earthern jars.' she answered. 'But all [common] people store [wine] in earthern vessels and thou too likewise! Thou shouldst keep it in jars of gold and silver!' So she went and had the wine replaced in vessels of gold and silver, and it turned sour. 'Thus,' said he to her, 'The Torah is likewise!' 'But are there not handsome people who are learned too?' 'Were they ugly they would be even more learned,' he retorted.

A certain woman of Nehardea came before Rab Judah[5] for a lawsuit, and was declared guilty by the court. 'Would your teacher Samuel[6] have judged thus?' she said. 'Do you know him then?' he asked. 'Yes, He is short and big-stomached, black and large teethed.' 'What, you have come to insult him! Let that woman be under the ban!' he exclaimed. She burst and died.

HE MAY ALSO EAT A WELL-BOILED EGG [BEZA TURMITA] — What is beza turmita? — Samuel said: The slave who can prepare one is worth a thousand denarii. For it must be placed a thousand times in hot water and a thousand times in cold, until small enough to be swallowed whole. If one is ulcerated, it attracts the matter to itself, and when it passes out the doctor knows what medicine is required and how to treat him. Samuel used to examine himself with Kulha,[7] [which weakened him so] that his household tore their hair [in despair].

We have learnt elsewhere: If one is working among kelusfin, [Lesbian figs], he may not eat of benoth sheba';[8] among benoth sheba', he may not eat of kelusfin. What are kelusfin? — A species of

figs of which pap is made. A certain man once gave his slave to his friend to teach him a thousand different ways of making pap, but he taught him only eight hundred. So he summoned him to a lawsuit before Rabbi. Rabbi remarked, ‘Our fathers said, "We have forgotten prosperity,"[9] but we have never even seen it!’[10]

Rabbi made a wedding feast for his son Simeon, (and did not invite Bar Kappara).[11] He wrote above the banqueting-hall,[12] ‘Twenty-four thousand myriad denarii have been expended on these festivities ‘Thereupon Bar Kappara said, ‘If it is thus with those who transgress His will[13] , how much more so with those who do His will!’ When he [subsequently] invited him, he observed, ‘If it is thus with those who do His will in this world, how much more so [will it be] in the world to come!’

On the day that Rabbi laughed, punishment would come upon the world.[14] So he said to Bar Kappara [who was a humorist]. ‘Do not make me laugh, and I will give you forty measures of wheat.’ He replied. ‘But let the Master see

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(1) Tineius Rufus, a Roman governor of Judea. After her husband's death she became a convert and married R. Akiba, bringing him in much wealth. V.’A. Z. 20a.

(2) Keti'a b. Shalom was condemned to death by a Roman emperor — probably Hadrian — for giving counsel against the emperor and in favour of the Jews. He made R. Akiba his heir. — ‘A.Z. (Sonc. ed.) 10b, pp. 53ff.

(3) [Hadrian: v. J.E. VII. 291.

(4) He was very ugly.

(5) [At Pumbeditha where he had his school.]

(6) R. Judah was for a short time a pupil of Samuel, after the death of Rab and R. Asst: v. Yeb. 18a.]

(7) A stalk of some plant, which acted in the same way as the beza turmita.

(8) A different species of figs. The reference is to Deut. XXIII, 25: When thou comest into thy neighbour's vineyard, then thou mayest eat grapes until thy fill at thin own pleasure. The Rabbis interpret this as referring to workers, who may eat any of the fruit — not particularly grapes — upon which they are engaged, but must confine themselves thereto.

(9) Cf. Lam. III, 17, implying that they had once known it.

(10) I.e., it is extraordinary that in these bad times he should know as many as he did.

(11) The bracketed phrase is transposed its our editions.

(12) Where the festivities took place.

(13) A reference to the wrong done in not inviting him.

(14) Rabbi suffered internal pains for thirteen years, during which there was never a drought. — B.M. 85a.

Talmud - Mas. Nedarim 51a

that I may take whatever measure I desire.’ So he took a large basket, pitched it over,[1] placed it on his head, went [to Rabbi] and said to him. ‘Fill me the forty measures of wheat which I may demand front you.’ Thereupon Rabbi burst into laughter, and said to him, ‘Did I not warn you not to jest?’ He replied. ‘I wish but to take the wheat which I may [justly] demand.’

Bar Kappara [once] said to Rabbi's daughter. ‘Tomorrow I will drink wine to your father's dancing and your mother's singing.’[2]

Ben Eleasa, a very wealthy man, was Rabbi's son-in-law, and he was invited to the wedding of R. Simeon b. Rabbi. [At the wedding] Bar Kappara asked Rabbi, What is meant by to'ebah?[3] Now, every explanation offered by Rabbi was refuted by him, so he said to him, ‘Explain it yourself.’ He replied. ‘Let your housewife come and fill me a cup.’ She came and did so, upon which he said to Rabbi, ‘Arise, and dance for me, that I may tell it to you.’ Thus saith the Divine Law, ‘to'ebah’: to'eh attah bah.[4] At his second cup he asked him , ‘What is meant by tebel?’[5] He replied in the same manner as before, [until] he remarked, ‘Do [something] for me, and I will tell you.’ On his

complying, he said 'tebel hu' means: Is there tablin [perfume] in it [the animal]? Is intimacy therewith sweeter than all other intimacies?[6] Then he further questioned, 'And what is meant by zimmah?'[7] 'Do as before, [and I will tell you.'] When he did so, he said, 'zimmah' means zu mah hi'.[8] Now, Ben Eleasa could not endure all this, so he and his wife left.

What is [known of] Ben Eleasa? — It was taught: Ben Eleasa did not disburse his money for nothing, but that he might achieve thereby the High Priest's style of hair-dressing, as it is written, They shall only poll their heads.[9] It was taught: [That means] in the Lulian fashion.[10] What was the Lulian style? — Rab Judah said: A unique style of hairdressing. How is that? — Raba said: The end [of one row of hair] reaching the roots of the other, and such was the hairdressing fashion of the High Priest.[11]

AND REMUZIAN CUCUMBERS [DELA'ATH HA-REMUZAH]. What is DELA'ATH HA-REMUZAH? — Samuel said, Karkuz pumpkins.[12] R. Ashi said, cucumbers baked in ashes. Rabina objected to R. Ashi: R. Nehemiah said: Syrian cucumbers, i.e., Egyptian cucumbers, are kil'ayim[13] in respect of Greek and Remuzian [cucumbers!][14] This refutation is unanswerable.

MISHNAH. HE WHO VOWS [ABSTINENCE] FROM FOOD PREPARED IN A POT IS FORBIDDEN ONLY BOILED DISHES. BUT IF ONE SAYS, 'KONAM, IF I TASTE AUGHT THAT DESCENDS INTO A POT', HE IS FORBIDDEN EVERYTHING PREPARED IN A POT.[15] GEMARA. It was taught: He who vows [abstinence] from what goes into a boiling pot, may not eat of what goes into a stew pot, because it has already entered the boiling pot before going into the stew pot; from what goes into a stew pot, he may eat of what goes into a boiling pot; from what is [wholly] prepared in a boiling pot, he may eat of what is prepared in a stew pot; from what is wholly prepared in a boiling pot, he may eat what is [partially] prepared in a stew pot. If he vows [abstinence] from what goes into an oven, only bread is forbidden him. But if he declares, 'Everything made in an oven be forbidden me,' he is forbidden everything that is made in an oven.

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(1) That it should retain the the wheat.

(2) Jast. lit., 'croaking', connecting קירקני will קירקור the croaking of frogs. Asheri, Rosh and Tosaf: 'in the rounds', perhaps connecting it with ** circus. (Goldschmidt). Rash: when she fills my clip.

(3) Abomination. Lev. XX, 13, referring to unnatural vice.

(4) Thou errest in respect of her, i e., by forsaking the permitted and indulging in the forbidden.

(5) Disgrace. Lev. XVIII, 23, referring to bestiality: E.V.: 'confusion'.

(6) Lit., 'different from'. That thou leavest thine own kind for it.

(7) Wickedness, Ibid. 17, referring to incest with a wife's daughter.

(8) Who is she, i.e. , through promiscuous intercourse the parentage is unknown, and thus a father might marry his daughter.

(9) Ezek. XLI, 20.

(10) Lulianus was a popular corruption of Julianus. V. Sanh. (Sonc. ed.) p. 128 n. 2.

(11) Eleasa expended huge sums to have his hair so dressed. Presumably it was a costly process known only to a few experts.

(12) That do not improve in cooking כרכוז. Obermeyer. op. cit. pp. 35f., identifies it with Circesium on the Euphrates. some 73 parasangs from Pumbeditha on the way to Palestine.

(13) V. Glos.

(14) And mayest be sown together with them, v. Deut. XXII, 9, which applies to all diverse species, cf Kil. I, 5. — This Baraitha proves that remuzah indicates the place of origin, not the manner of its preparation. Obermeyer a.l. regards הרמוצא as a form of הרמאם the river Hirmas which rises by Nisibis.

(15) This is repeated exactly in VI, 1. From Ran it would appear that it was absent in VI, 1, in his edition its correct place being here. Rashi, on the other hand, comments upon it in both places. It is possible that the words MISHNAH and GEMARA should be deleted, the whole being a quotation from the first Mishnah serving as a caption for the discussion in the Gemara (Marginal Gloss to Wilna ed.). — As to the difference between 'boiled dishes' and 'food prepared in a

pot', the first term applies to dishes completely boiled therein, the second to food only partially prepared therein and finished elsewhere.

Talmud - Mas. Nedarim 51b

MISHNAH. [IF HE VOWS ABSTINENCE] FROM THE PRESERVE, HE IS FORBIDDEN ONLY PRESERVED VEGETABLES;[1] [IF HE SAYS, 'KONAM,] IF I TASTE PRESERVE', HE IS FORBIDDEN ALL PRESERVES. 'FROM THE SEETHED,' HE IS FORBIDDEN ONLY SEETHED MEAT; 'KONAM, IF I TASTE SEETHED HE IS FORBIDDEN EVERY THING SEETHED.

GEMARA. R. Aha the son of R. Awia asked R. Ashi: If one said, 'That which is preserved,' 'that which is roasted,' 'that which is salted', what do these terms imply?[2] — This remains a problem.

MISHNAH. [IF ONE VOWS ABSTINENCE] 'FROM THE ROAST,' HE IS FORBIDDEN ONLY ROAST MEAT: THIS IS R. JUDAH'S OPINION. '[KONAM,] IF I TASTE ROAST', HE IS FORBIDDEN [TO PARTAKE] OF ALL FORMS OF ROAST. 'FROM THE SALTED, HE IS FORBIDDEN ONLY SALTED FISH; '[KONAM, IF I TASTED SALTED [FOOD].' HE IS FORBIDDEN [TO PARTAKE] OF EVERYTHING PRESERVED IN SALT. '[KONAM,] IF I TASTE FISH OR FISHES,'[3] HE IS FORBIDDEN [TO EAT] THEM, BOTH LARGE AND SMALL, SALTED AND UNSALTED, RAW AND COOKED. YET HE MAY EAT HASHED TERITH,[4] BRINE, AND FISH PICKLE.[5] HE WHO VOWS [ABSTINENCE] FROM ZAHANAH.[6] IS FORBIDDEN HASHED TERITH, BUT MAY PARTAKE OF BRINE AND FISH PICKLE. HE WHO VOWS [ABSTINENCE] FROM HASHED TERITH MAY NOT[7] PARTAKE OF BRINE AND FISH PICKLE.

GEMARA. It was taught: R. Simeon b. Eleazar said: [If he vows] '[Konam. If I taste] fish [day],' he is forbidden large ones but permitted small ones '[Konam] if I taste dagah,'[8] he is forbidden small ones , but permitted large ones . '[Konam,] if I taste dag [and] dagah,' he is forbidden both large and small ones. R. Papa said to Abaye: How do we know that '[Konam, If I taste] dag' implies large ones only? because it is written, Now the Lord had prepared a great fish dag] to swallow up Jonah?[9] But is it not written, Then Jonah prayed onto the Lord his God out of the fish's [dagah] belly?[10] — This is no difficulty: perhaps he was vomited forth by the large fish and swallowed again by a smaller one. But [what of the verse] And the fish [dagah] that was in the river died?[11] did only the small fish die, not the Iarge? — Hence dagah implies both large and small, but in vows human speech is followed.[12]

HE WHO VOWS [ABSTINENCE] FROM ZAHANAH. etc. Rabina asked R. Ashi: What if one says. 'Zihin be forbidden me'?[13] The problem remains.

MISHNAH. HE WHO VOWS [ABSTINENCE] FROM MILK MAY PARTAKE OF CURD.[14] BUT R. JOSE FORBIDS IT. 'FROM CURD,' HE IS PERMITTED MILK. ABBA SAUL SAID: HE WHO VOWS [TO ABSTAIN] FROM CHEESE, IS INTERDICTED THEREFROM, WHETHER SALTED OR UNSALTED. FROM MEAT,'

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(1) The use of the def. art. limits the vow to the most common form of preserve.

(2) Are they the equivalent of the definite art, and so limited, or not?

(3) 'Fish' refers to large ones, 'fishes' to small, which are sold in quantities.

(4) A certain fish. This is sold in slices, whereas his vow related to is hole ones only.

(5) This is absent from cur. edd., but is inserted by Bah.

(6) Mud-fish, small fish preserved in brine, similar to terith (Jast.).

(7) This is the reading of Rashi and Asheri. Other editions, likewise Ran, read 'may'.

(8) Fem. of dag used in the collective.
(9) Jon. II, 1.
(10) Ibid. 2, shewing that dagah too refers to large fish.
(11) Ex. VII, 21.
(12) In general usage, dag refers to large fish, dagah to small.
(13) Zihin, a preparation of small fish, is analogous to zahanah. The problem is whether he is allowed brine and fish pickle (muries).
(14) Maim: whey.

Talmud - Mas. Nedarim 52a

HE MAY PARTAKE OF BROTH AND THE SEDIMENTS OF BOILED MEAT;[1] BUT R. JUDAH FORBIDS THEM]. R. JUDAH SAID: IT ONCE HAPPENED THAT [IN SUCH A CASE] R. TARFON FORBADE US[2] [EVEN] EGGS BOILED THEREWITH. THEY REPLIED, THAT IS SO, BUT ONLY IF HE VOWS, 'THIS MEAT BE FORBIDDEN ME. FOR IF HE VOWS [TO ABSTAIN] FROM SOMETHING, AND IT IS MIXED UP WITH ANOTHER, IF IT [THE FORBIDDEN FOOD] IS SUFFICIENT TO IMPART ITS TASTE [TO THE OTHER]. IT[3] IS FORBIDDEN.[4] IF HE VOWS [TO ABSTAIN] FROM WINE, HE IS PERMITTED [TO FAT] FOOD WHICH CONTAINS THE TASTE OF WINE; BUT IF HE SAYS, 'KONAM IF I TASTE THIS WINE', AND IT FALLS INTO FOOD, IF IT IS SUFFICIENT TO IMPART ITS TASTE [TO THE FOOD]. IT IS FORBIDDEN.

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(1) Bits of meat that fall away from the piece in boiling and form a jelly.
(2) Ear. Iec. me.
(3) That other food.
(4) But if one vows abstinence from meat in general, the eggs boiled therewith, likewise the soup and meat sediment, are permitted.

Talmud - Mas. Nedarim 52b

GEMARA. But the following contradicts this. [If one vows abstinence] from lentils, lentil cakes are forbidden him; R. Jose permits then,![1] — There is no difficulty: each Master [rules] according to [the usage] of his locality. In that of the Rabbis, milk is called milk, and curd, curd; but in that of R. Jose, curd too is called curd of milk.

It was taught: He who vows [abstinence] from milk, is permitted curd; from curd,is permitted milk; from milk, is permitted cheese; from cheese, is permitted milk; from broth, is permitted meat sediment; from meat sediment, is permitted broth. If he says, 'This meat be forbidden me,' the meat itself, its broth and its sediment, are forbidden him. If he vows [to abstain] from wine, he may partake of food which contains the taste of wine; but if he says, 'Konam that I taste not this wine,' and it falls into food, if the taste of wine is [perceptible] therein, it is forbidden.

MISHNAH. HE WHO VOWS [ABSTINENCE] FROM GRAPES IS PERMITTED WINE: FROM OLIVES, IS PERMITTED OIL. IF HE SAYS, KONAM. THAT I TASTE NOT THESE OLIVES AND GRAPES', BOTH THEY AND THEIR JUICE[2] ARE FORBIDDEN.

GEMARA. Ram b. Hama propounded: Is 'these' essential, or 'that I taste not' essential?[3] (But, if you can think that 'these' is essential, why add 'that I taste not'? — He [the Tanna] may teach this [by the addition]: even if he Says. 'that I taste not.' yet only if he declares, 'these' is he prohibited, but not otherwise.) — Raba said. Come and hear: [If one says Konam be these fruits to me,'[4] 'Be they konam to my mouth,' he is forbidden [to benefit] from what is exchanged for them or what grows of their seeds. This implies that he may benefit from their juice![5] — In truth, even their juice

is forbidden; but he [the Tanna] prefers to teach that what is exchanged for them is the same as what grows from their seeds.[6] Come and hear: 'That I eat not or taste not of them,' he is permitted [to benefit] from what is exchanged for them or what grows of their seeds.[7] This implies that their juice is forbidden![8] — Because the first clause does not mention their juice, the second clause omits it too.[9]

Come and hear: R. Judah said: It once happened that [in such a case] R. Tarfon forbade us [even] eggs boiled therewith. They replied, that is so. By only if he vows, 'This meat be forbidden me.' For if he vows [to abstain] from something, and it is mixed up with another, if it [the forbidden food] is sufficient to impart its taste [to the other], it is forbidden![10] — There is no question about 'these': that is certainly essential.[11] The problem is with respect to 'that I taste not': is that essential or not?[12] — Come and hear: ['Konam that I taste not fish or fishes'], he is forbidden [to eat] them, both large and small, salted and unsalted, raw and cooked. Yet he may eat hashed terith and brine![13] — Raba said: Providing it [the brine] had already issued from them [before the vow].[14]

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(1) Infra 53b. Thus R. Jose permits what is made from the forbidden substance, whilst in the Mishnah he declares curd forbidden under the term milk.

(2) Lit., 'what comes from them'.

(3) Since an ordinary vow does not interdict the juice (If grapes and olives, whilst in the second clause thus is forbidden, the question arises, on account of which particular phrase are they prohibited? Is it because he vowed 'these grapes', or because he added 'that I taste not', superfluous in itself, being implied in konam, and therefore perhaps extending the vow to oil and wine?

(4) Infra 57a.

(5) Though he said 'these'. This proves that the essential clause in the Mishnah is 'that I taste not'.

(6) Though the firmer is an entirely different thing: how much more than that which actually issues therefrom!

(7) This continues the quotation.

(8) For, according to the last answer, this is more likely to be forbidden than the others. Hence, were this permitted, it would be explicitly stated. This too proves that the essential clause is 'that I taste not'.

(9) For the sake of uniformity. But actually it may be permitted.

(10) This definitely proves that 'this' is essential.

(11) I.e., it is certain that 'these' alone extends the vow as indicated.

(12) Is that phrase alone sufficient to extend its scope?

(13) Brine is the juice that issues from the fish, yet it is permitted, though he said, 'that I taste not'. This proves that that alone is insufficient.

(14) But the brine which issues thereafter may be forbidden: hence the problem remains.

Talmud - Mas. Nedarim 53a

MISHNAH. HE WHO VOWS [ABSTINENCE] FROM DATES IS PERMITTED DATE HONEY; FROM WINTER GRAPES,'[1] HE IS PERMITTED VINEGAR MADE FROM WINTER GRAPES — R. JUDAH B. BATHYRA SAID: IF IT BEARS THE NAME OF ITS ORIGIN,[2] AND HE VOWS [TO ABSTAIN] FROM IT,[3] HE IS FORBIDDEN [TO BENEFIT] FROM WHAT COMES FROM IT. BUT THE SAGES PERMIT IT.

GEMARA. But the Sages are identical with the first Tanna? — They differ in respect of the following which was taught: R. Simeon b. Eleazar laid down this general rule: Whatever is eaten itself, and what comes from it too is eaten, e.g., dates and the honey of dates, and he vowed [abstinence] from the substance itself, he is forbidden that which comes from it;[4] but if he vows [abstinence] from what comes from it, he is also forbidden the substance itself.[5] But if the substance is not eaten itself, whilst what comes from it is,[6] and he vowed [abstinence] from the substance itself, he is forbidden only what comes from it,[7] because he meant nought else but what comes from it.[8]

MISHNAH. HE WHO VOWS [ABSTINENCE] FROM WINE MAY PARTAKE OF APPLE-WINE [CIDER]; FROM OIL HE IS PERMITTED SESAME OIL;[9] FROM HONEY, HE IS PERMITTED DATE HONEY; FROM VINEGAR, HE IS PERMITTED THE VINEGAR OF WINTER GRAPES; FROM LEEKS, HE IS PERMITTED PORRET;[10] FROM VEGETABLES, HE IS PERMITTED FIELD HERBS,[11] BECAUSE IT IS A QUALIFYING EPITHET.[12]

GEMARA. It was taught: He who vows [to abstain] from oil: to Palestine sesame oil is permitted him, but he is forbidden olive oil; in Babylon, he is forbidden sesame oil but permitted olive oil. In the place where they are both commonly used, both are forbidden. But that is obvious? — It is necessary to teach it only when most people use one: I might think that the majority must be followed. We are therefore taught that a doubtful prohibition is [resolved] stringently.[13]

He who vows [abstinence] from vegetables, in normal years is forbidden garden vegetables but permitted wild vegetables; in the seventh year. He is forbidden wild vegetables but permitted garden vegetables.[14] R. Abbahu said on the authority of R. Hanina b. Gamaliel:

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(1) סתוניות < סתוא winter, remaining on the tree till winter.

(2) As here, the vinegar being called 'winter grapes vinegar'.

(3) Sc. the article of its origin, i.e., winter grapes.

(4) T. J. has 'permitted', which Wilna Gaon regards as correct.

(5) V. preceding note.

(6) E.g winter grapes.

(7) If the substance is foresworn.

(8) The first Tanna, who rules that vinegar of winter grapes is permitted, disagrees with R. Simeon b. Eleazar, whilst the Sages agree with him. Hence, 'the Sages permit it', refers to the substance itself, when not usually eaten, but not to what comes from it

(9) שומשום (pl. שומשמין) probably fr. שמש (sun-flower), sesame.

(10) קפלוט pl. קפלוטות (**), is a species of leek with a head (porrum capitatum).

(11) Wild vegetables.

(12) The reason of all these is that is where a qualifying epithet is normally added to the name of the substance it is not included in the unspecified term: thus, in speaking of wine (unspecified), grape wine is meant, not apple wine: and so the rest.

(13) Consequently, though a particular oil is used by a minority only, yet if its usage is sufficiently prevalent to warrant the assumption that the vow may have been meant to include it, it is forbidden.

(14) Since none are planted then, by the unspecified term wild vegetables are meant.

This was taught only where vegetables are not imported into Palestine from abroad;[1] but where they are imported into Palestine from abroad, [garden vegetables] are forbidden. This is dependent on Tannaim: Vegetables may not be imported from abroad into Palestine; R. Hanina b. Gamaliel said: We may import them. What is the reason of him who prohibits it? — R. Jeremiah said: On account of the clods of earth.[2]

MISHNAH. [HE WHO VOWS TO ABSTAIN] FROM CABBAGE IS FORBIDDEN ASPARAGUS;[3] FROM ASPARAGUS, HE IS PERMITTED CABBAGE;[4] FROM POUNDED BEANS, HE IS FORBIDDEN MIKPEH:[5] R. JOSE PERMITS IT. [IF ONE VOWS TO ABSTAIN] FROM MIKPEH, HE IS FORBIDDEN GARLIC. R. JOSE PERMITS IT; FROM GARLIC, HE IS PERMITTED MIKPEH. FROM LENTILS, LENTIL CAKES ARE FORBIDDEN HIM. R. JOSE PERMITS THEM. FROM LENTIL CAKES, LENTILS ARE PERMITTED HIM. [IF ONE SAYS] 'KONAM, IF I TASTE HITTAH, HITTIN',[6] BOTH THE FLOUR THEREOF AND THE [BAKED] BREAD ARE FORBIDDEN TO HIM: IF I TASTE GERIS, GERISSIN',[7] HE IS FORBIDDEN [TO

PARTAKE] OF THEM WHETHER RAW OR COOKED. R. JUDAH SAID: [IF ONE DECLARES], 'KONAM, IF I TASTE HITTAH OR GERIS,' HE MAY CHEW THEM RAW.

GEMARA. It was taught: R. Simeon b. Gamaliel said: [If one vows 'Konam,] if I taste hittah [wheat]', baked wheat [i.e., flour] is forbidden him, but he may chew it raw; '[Konam,] if I taste hittin,'[8] he may not chew them raw, but if baked, they are permitted;[9] 'If I taste hittah, hittin', he may neither eat them baked nor chew them raw. [If he says. 'Konam,] if I taste geris', it is forbidden cooked, but may be chewed [raw]; '[Konam], if I taste gerrissin', he is forbidden either to cook them or chew them raw. [

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(1) Lit., 'outside the Land (of Israel)'.

(2) Which may adhere to the roots when they are brought: these clods were considered unclean, v. Shab. 15b.

(3) Being considered a species of the genus 'cabbage' (Jast.).

(4) The part is included in the whole, but the whole is not included in the part.

(5) A stiff mass of oil, grist, and onions (Jast.).

(6) hittah, a grain of wheat, also (generically) wheat; pl. hittim (in popular speech the Aramaic plural hittin, was used).

(7) Geris, a pounded bean, also used collectively: pl. gerissim.

(8) Wheat, but plural in form.

(9) Such are the respective meanings assigned in common speech to hittah and hittin: the same difference occurs in geris and gerissin.

Talmud - Mas. Nedarim 54a

C H A P T E R V I I

MISHNAH. HE WHO VOWS [TO ABSTAIN] FROM VEGETABLES IS PERMITTED GOURDS. R. AKIBA FORBIDS THEM. THE [SAGES] SAID TO HIM, BUT WHEN A MAN SAYS TO HIS AGENT 'FETCH ME VEGETABLES, HE REPLIES, I COULD OBTAIN ONLY GOURDS. HE ANSWERED, EXACTLY: BUT WOULD HE SAY, 'I COULD OBTAIN ONLY PULSE?'[1] BUT THAT GOURDS ARE INCLUDED IN VEGETABLES, WHILST PULSE IS [DEFINITELY] NOT. HE IS [ALSO] FORBIDDEN FRESH EGYPTIAN BEANS. BUT PERMITTED THE DRY SPECIES].[2]

GEMARA. HE WHO VOWS [TO ABSTAIN] FROM VEGETABLES etc. But he vowed [to abstain] from vegetables![3] — Said 'Ulla: This refers to one who vows. 'The vegetables of the pot [be forbidden] to me.'[4] But perhaps he meant vegetables which are eaten [with food cooked] in a pot?[5] — He said: 'Vegetables that are cooked in a pot [he forbidden] to me.'[6]

Wherein do they differ? — The Rabbis maintain: Whatever an agent must inquire about does not belong to the same species;[7] but R. Akiba maintains, Whatever the agent needs inquire about is of the same species.[8] Abaye said: R. Akiba admits in respect to punishment that he is not flagellated.[9]

We learnt elsewhere: If the agent carried out his commission, the principal[10] is guilty of a trespass; if he did not carry out his commission, he himself is guilty of a trespass.[11] With which Tanna does this agree? R. Hisda said: Our Mishnah does not agree with R. Akiba. For we learnt:[12] Thus, if he said to him, 'Give the guests meat, and he gave them liver; '[give them] liver,' and he gave them meat, the agent is guilty of a trespass.[13] But if this agrees with R. Akiba: did he not say. Whatever an agent must inquire about, belongs to that species? In that case, the principal, and not the agent, should be liable to a trespass-[offering]?[14] Abaye said, This may agree even with R. Akiba:

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(1) If only pulse were obtainable, he would simply report that vegetables were unobtainable.

(2) These are two different species, the fresh regarded as a vegetable, the dry a cereal, because it is ground into flour.

(3) Which gourds are certainly not.

(4) And since gourds are boiled in pots, R. Akiba maintains that they are included.

(5) E.g., onions, which are put in a pot for seasoning.

(6) This most refer to something prepared for itself, and not mere seasoning.

(7) A servant, being told to buy vegetables and finding only gourds, would ask his master whether these would do.

(8) For if not, he would reject them immediately.

(9) For eating them. Though he forbids them, it is not certain that they are vegetables.

(10) Lit., 'householder'.

(11) V. Me'il, 20a. The reference is to hekdesh (q.v. Glos.), which must not be appropriated for secular use; if it is (unwittingly), a trespass-offering must be brought, v. Lev. V, 14. Now, if one instructs his agent to do this, and his instructions are exactly carried out, he is responsible; if not, the agent is held to have acted of his own accord and is himself responsible.

(12) Continuing the Mishnah quoted.

(13) It should be observed that by offering this hekdesh to the guests the agent has already misappropriated it by withdrawing it from sacred to secular ownership. The sacrifice is due for that withdrawal; hence when the guests eat it. It is no longer sacred, and no obligation rests upon them.

(14) For if one is sent to buy meat and finds only liver, he should certainly consult his master about it. Therefore, if the servant gave liver when ordered to give meat, on R. Akiba's view he carried out his master's instructions.

Talmud - Mas. Nedarim 54b

does not R. Akiba admit that he must consult [his principal]?[1] When this discussion was repeated before Raba, he remarked, Nahmani hath said well.[2]

Which Tanna disagrees with R. Akiba? — R. Simeon b. Gamaliel. For it was taught: He who vows [to abstain] from meat, is forbidden every kind of meat; he is also forbidden the head, feet, windpipe, liver, heart, and fowl; but he is permitted the flesh of fish and locusts. R. Simeon b. Gamaliel said: He who vows [to abstain] from meat is forbidden every kind of meat, but permitted the head, feet, windpipe, liver, heart and fowl, and it is superfluous to mention the flesh of fish and locusts.[3] And thus R. Simeon b. Gamaliel used to say: The entrails are not meat, and he who eats them is no man. In respect of what is this said?[4] [To teach that] he who eats them as meat is no man in respect of purchase.[5]

Why does the first Tanna declare fowl forbidden? Because the agent is wont to inquire about it! But the same applies to flesh of fish in regard to which the agent too, if he can obtain no meat, consults [his master] saying. 'If I cannot obtain meat, shall I bring fish?' Hence it should be forbidden? — Said Abaye: This refers to one who was bled [just before his vow] who [consequently] would not eat fish.[6] If so he would not eat fowl either, for Samuel said: If one is bled, and then eats fowl, his heart will palpitate like a fowl's. And it was taught: One must not be bled and eat fish, fowl, or pickled meat. And it was taught: If one is bled, he must not eat milk, cheese, eggs, cress owl, or pickled meat! — Fowl is different, because it may be eaten after being thoroughly boiled. Abaye [also] said:[7] It refers to one whose eyes ache, fish being injurious to the eyes. If so, he should eat fish, for Samuel said, Nun, Samek, 'Ayin[8] [read] Nuna [fish] sama [are a healing] la-'enayim [to the eyes]! — That is at the end of the illness.[9]

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(1) Though maintaining that it is of the same species, R. Akiba agrees that a servant should not take meat when ordered to get liver without further instructions. Consequently his action is regarded as his own.

(2) Abaye was an orphan brought up in the house of Rabbah b. Nahmani, who called him by the name of his father, v. Git. (Sonc. ed.) p. 240, n. 6.

(3) Thus he maintains that liver is not included in meat, and so differs from R. Akiba.

(4) Thus the reading as emended by Hart. Since R. Simeon does not exclude the entrails from the things forbidden, in what respect are they not meat?

(5) I.e., If one likes them as much as other meat and is prepared to pay the same price, he is regarded as irrational (Rashi). Tosaf. in Meil. 20b s v. קרביים explains this: If one buys an animal and finds that the entrails are unfit fir food, he cannot demand that the sale be nullified in that account, since they are not meant for human consumption.

(6) It was considered unhealthy to eat fish after being bled. Since then he would not have eaten fish in any case, his vow was not directed against it.

(7) 'Also' must be added if this reading be retained, since the first answer was also Abaye's. In Me'il. loc. cit., however, the reading is 'R. Papa'.

(8) Three letters of the Hebrew alphabet in order.

(9) When the eyes are recovering, fish is beneficial, but at the beginning of the ailment of fish is injurious.

Talmud - Mas. Nedarim 55a

MISHNAH. HE WHO VOWS [TO ABSTAIN] FROM DAGAN [GRAIN] IS FORBIDDEN DRY EGYPTIAN BEANS: THIS IS R. MEIR'S VIEW, BUT THE SAGES SAY: ONLY THE FIVE PIECES ARE FORBIDDEN HIM.[1] R. MEIR SAID: IF HE VOWS [TO ABSTAIN] FROM TEBU'AH,[2] HE IS FORBIDDEN ONLY THE FIVE SPECIES; BUT ONE WHO VOWS [ABSTINENCE] FROM DAGAN, IS FORBIDDEN ALL; YET HE IS PERMITTED THE FRUITS OF THE TREE AND VEGETABLES.

GEMARA. Shall we say that DAGAN implies anything that can he heaped up?[3] To this R. Joseph objected: And as soon as the commandment came abroad, the children of Israel brought in abundance the first-fruits of corn [dagan] wine and oil, and honey, and of all the increase of the field; and the tithe of all things brought they in abundantly.[4] But should you say that DAGAN implies everything that can be heaped up, what is meant by, And as soon as the commandment came abroad they brought in abundance?[5] — Abaye answered: It is to include the fruits of the tree and vegetables.

R. MEIR SAID: IF ONE VOWS [TO ABSTAIN] FROM TEBU'AH, etc. R. Johanan said: All agree that if one vows [to abstain] from tebu'ah, the five species only are forbidden to him. It was taught likewise: And both[6] agree that if one vows [abstinence] from tebu'ah, only the five species are forbidden. But that is obvious? — Tonight argue, tebu'ah implies everything: therefore he teaches that it does not imply everything. R. Joseph objected: And as soon as the commandment came abroad, they brought in abundance etc.?[7] — Raba answered: Tebu'ah is one thing: tebu'ath sadeh is another.[8]

The Son of Mar Samuel ordered that thirteen thousand zuz worth of 'allalta[9] from Nehar Pania[10] should be given to Raba. So Raba sent [an enquiry] to R. Joseph: what is meant by 'allalta? — R. Joseph replied, It is [taught in] a Baraitha: And all agree that if he vows [abstinence] from tebu'ah, the five species only are forbidden him. Said Abaye to him. How compare? Tebu'ah implies only the five species, [whereas] 'allalta implies everything. When this was repeated before Raba, he observed, I am in no doubt that 'allalta means everything. My problem is this: What of the rent of houses and the hire of ships? Shall We say, Since they depreciate, they are not included in 'allalta,' or perhaps since the depreciation is imperceptible they [too] are termed 'allalta?[11] The scholars narrated this to R. Joseph, 'Since he does not need us!' he exclaimed, 'why did he send to us?' And so R. Joseph was annoyed. When Raba learnt this, he went before him on the eve of the Day of Atonement, and found his attendant mixing him a cup of wine.[12] 'Let me prepare it for him,' said he. So he gave it to him, and he mixed the cup of wine. On drinking it he observed, 'This mixture is like that of Raba the son of R. Joseph b. Hama. 'It is indeed he,' was his reply. He then said to him, 'Do not take your seat[13] until you have explained this verse to me. [Viz.,] What is meant by, 'And from the wilderness, Mattanah; and from Mattanah, Nahaliel; and from Nahaliel, Bamoth'?[14] — He replied , When one makes himself as the wilderness, which is free to all,[15] the Torah is presented to

in from the field', is wider in scope, and applies to everything brought in from the field, even fruit

and vegetables. him as a gift [mattanah] as it is written, 'And from the wilderness, Mattanah'. And once he has it as a gift, God gives it to him as an inheritance [nahaliel],[16] as it is written, 'And from Mattanah, Nahaliel;' And when God gives it him as an inheritance, he ascends to greatness' as it is written, 'And from Nahaliel, Bamoth [heights']. But if he exalts himself, the Holy One, blessed be He, casts him down, as it is written, 'And from Bamoth, the valley'.[17] Moreover, he is made to sink[18] into the earth, as it is written, Which is pressed down[19] into the desolate soil. But should he repent, the Holy One, blessed be He, will raise him again,

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(1) Viz., Wheat, barley, rye, oats, and spell.

(2) Field produce.

(3) Heb. midgan: this being the reason that R. Meir forbids dry Egyptian beans under the term DAGAN.

(4) II Chron. XXXI, 5: The emphasis laid upon the abundance of their offering implies that they brought more tithes than required by Biblical law.

(5) Since they were obliged to tithe DAGAN by Biblical law, and DAGAN includes all things that can be heaped up, what did they add to the Biblical ordinance? (Rashi). Asheri explains: since DAGAN includes all things that can be heaped up, what else be implied by the phrase 'and all the increase of the field'?

(6) R. Meir and the Sages.

(7) 'And all the increase of the field' (tebu'ath sadeh) is not confined there to the five species only (Rashi). Tosaf. remarks: And Abaye has already interpreted it as referring to vegetables and fruit.

(8) I.e. tebu'ah does mean the five species only: but tehu'ath sadeh, lit., 'that which is brought

(9) 'Allalta, connected with Heb. עלל (cf. Lam. I, 22: and do unto them, as thou has done unto me ועולל למו כאשר עוללת לי) denotes that which is produced (in the fields), and is the Aramaic equivalent of tebu'ah.

(10) [Harpania, a rich agricultural town in the Mesene district S. of Babylon situated on a hill and canal. Obermeyer (op. cit.) p. 198ff.]

(11) 'Allalta, perhaps derived by popular etymology from עלל to enter, to come in (as revenue), applies to that which appreciates, not depreciates. viz., field produce, which from the time of sowing until it is ready for food appreciates in value. Once ready, it cannot depreciate as food, whereas a house, even when still fit for its purpose, continuously depreciates.

(12) Wine was not drunk raw, but had to be diluted with water.

(13) Lit., 'sit on your legs'. V. Nazir (Sonc. ed.) p. 87, n. 7.

(14) Num. XXI, 19f.

(15) I.e., is prepared truly to teach the Torah to all.

(16) I.e., it becomes his safe possession.

(17) From the heights he is hurled down into the valley.

(18) Var. lec. pressed down — שוקפין — which has a more obvious connection with the verse adduced.

(19) ונשקפה E.V. 'which looketh', is here connected with שקף to strike (down).

Talmud - Mas. Nedarim 55b

as it is written, Every valley shall be exalted.[1]

It was taught: He who vows [to abstain] from dagan is also forbidden dry Egyptian beans; yet moist ones are permitted. He is also permitted rice, grist, groats and pearl-barley. He who vows [to abstain] from the fruits of that year, is forbidden all the fruit of that year, but is permitted goats, lambs, milk, eggs, and fledglings [of that year].[2] But if he vows, 'The growths of this year [be forbidden] to me,' all these are forbidden. He who vows [abstinence] from the fruits of the earth is forbidden all the fruits of the earth, yet is permitted mushrooms and truffles; but if he vows, 'that which grows from the earth [be forbidden] to me,' all these are forbidden him. But this contradicts the following: For that which does not grow from the earth, one must recite the benediction, 'by whose word all things exist.'[3] And it was taught: For salt, brine mushrooms, and truffles, 'by whose word all things exist' is said![4] — Abaye answered, They do indeed grow out of the earth, but draw

their sustenance from the air,[5] and not from the earth. But he [the Tanna] states: For that which does not grow out of the earth?[6] — Read: For that which does not draw its sustenance from the earth.[7]

MISHNAH. HE WHO VOWS [NOT TO BENEFIT] FROM GARMENTS IS PERMITTED SACK-CLOTH,[8] CURTAIN,[9] AND BLANKET WRAPPING. IF HE SAYS, 'KONAM, IF WOOL COMES UPON ME,' HE MAY COVER HIMSELF WITH WOOL FLEECES;[10] [KONAM] IF FLAX COMES UPON ME', HE MAY COVER HIMSELF WITH FLAX BUNDLES.[11] R. JUDAH SAID: IT ALL DEPENDS UPON THE PERSON WHO VOWS, [THUS:] IF HE IS LADEN [WITH WOOL OR FLAX] AND PERSPIRES AND HIS ODOUR IS OPPRESSIVE, AND HE VOWS 'KONAM' IF WOOL OR FLAX COME UPON ME,' HE MAY WEAR THEM, BUT NOT THROW THEM [AS A BUNDLE] OVER HIS BACK.[12]

GEMARA. It was taught: He who vows [not to benefit] from garments is permitted sack-cloth, curtain, and blanket wrapping. But he is forbidden a belt,[13] fascia,[14] scortea, a leather spread, shoes,[15] knee breeches breeches and a hat. What is a scortea? — Rabbah b. But Huna said: a leather coat.

It was taught: One may go out [on the Sabbath] wearing a thick sack-cloth, a coarse blanket, a curtain, and a blanket wrap, to keep off the rain;[16] but not with a box, basket[17] or matting for the sane purpose. Shepherds may go out with sacks;[18] not only shepherds, but all men, but that the Sages spoke of what is usual.

R. JUDAH SAID, IT ALL DEPENDS UPON THE PERSON WHO VOWED, etc. It was taught: How did R. Judah say, it all depends upon the person who vows? If he is wearing wool, and he is irritated and he vows 'Konam, if wool comes upon me,' he is forbidden to wear, but permitted to carry it; if he is laden with flax and perspires and vows, 'Konam, if flax comes upon me, he may wear but must not carry it.

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(1) Isa. XL, 4.

(2) Though metaphorically they too might be regarded as the fruits of the year, the vow must be understood literally.

(3) This deals with the blessings to be recited before partaking of food or drink.

(4) The combination of these two statements proves that mushrooms and truffles are not earth-grown, and thus contradicts the ruling that a vow to abstain from what grows from the earth includes them.

(5) Therefore they are included in the vow, 'growths of the earth'; yet since their sustenance is drawn chiefly from the air, they are not regarded as earth grown in respect of a benediction.

(6) Whilst according to Abaye they do.

(7) This is hardly an emendation, but rather an interpretation; cf. p. 3, n. 2.

(8) [Of goats-hair, v. Kel. XXVII, 1.]

(9) Some kind of rough, ready garment, which was not a garment proper.

(10) Because the vow implies garments which can he worn.

(11) אניצי פשתן flax — stalks after they are soaked, beaten and baked (Jast.).

(12) For in the circumstances it is evident that his vow referred to it as a load, not as a garment.

(13) The פונדא was a hollow belt used as a pouch.

(14) A band or sash; Lat. fascia.

(15) The word is the plural of **, impilia (pair of) felt shoes (Jast.).

(16) These, though not actually garments, are nevertheless counted as such, and hence permissible on the Sabbath.

(17) Placed over the head to ward off the rains.

(18) In the first clause, 'sack-cloth' would seem to refer to a rough garment; in the second, 'sacks' is probably to be understood literally', put over one's head to ward off the rain.

MISHNAH. ONE WHO VOWS [NOT TO BENEFIT] FROM A HOUSE IS PERMITTED THE UPPER STOREY:[1] THIS IS R. MEIR'S VIEW. BUT THE SAGES SAY: THE UPPER STOREY IS INCLUDED IN 'HOUSE'. HE WHO VOWS [NOT TO HAVE THE USE OF] THE UPPER STOREY IS PERMITTED [THE USE OF] THE HOUSE.

GEMARA. Which Tanna taught: [And I put a plague of leprosy] in a house [of the land of your possession]:[2] this includes the side-chambers;[3] 'in a house', this includes the upper storey? — R. Hisda said, It is R. Meir's teaching. For if the Rabbis', why require 'in a house' to include the upper storey, since they say that an upper storey is an integral part of the house? Abaye said, it may agree even with the Rabbis, yet a verse is necessary. For you might think, [since] it is written, 'in a house of the land of your possession': that which is [directly] attached to the land[4] is called 'house', but the upper storey, not being attached to the land, [is not called 'house']. With whom does the following dictum of R. Huna b. Hiyya in 'Ulla's name agree? Viz., [If one says,] I sell you a house[5] within my house,' he can offer him an upper storey. Hence it is only because he says, 'I sell you a house within my house';[6] but in the case of 'house' without definition he cannot offer him the upper storey. Shall we say, It agrees with R. Meir? — You may even say, It agrees with the Rabbis: by 'aliyyah, the best[7] of his houses is meant.[8]

MISHNAH. ONE WHO VOWS [ABSTINANCE] FROM A BED IS PERMITTED DARGESH:[9] THIS IS R. MEIR'S VIEW. BUT THE SAGES SAY: DARGESH IS INCLUDED IN 'BED'. IF HE VOWS [ABSTINENCE] FROM A DARGESH, HE IS ALLOWED [THE USE OF] A BED.

GEMARA. What is dargesh? — 'Ulla said: A bed reserved for the domestic genius.[10] Said the Rabbis to 'Ulla: But we learnt, When he [sc. the High Priest] was given the mourner's meal,[11] all the people sat on the ground, whilst he reclined on the dargesh. Now, in normal times[12] he does not sit upon it, yet on that day he does! Rabina demurred to this: Let it be analogous to meat and wine, of which at other times[12] he partakes or not, as he pleases, whereas on that day we give them to him?[13] But this is the difficulty. for it was taught: The dargesh was not lowered[14] but stood up [on its legs]. Now if you say that it is the bed of the domestic genius, has it not been taught: He who lowers his bed, lowers not merely his own bed [as mourner], but all the beds of the house? — This is no difficulty:

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(1) These were quite distinct, often belonging to separate owners; cf. B.M. 116b.

(2) Lev. XIV, 34.

(3) יציע, V. B.B. 61a. So curr edd. Ran and Wilna Gaon emend it to צבוע painted walls, because side chambers are excluded in the Sifra from the laws of leprosy, and the teaching is that even these are subject to the lass of house leprosy. This is necessary, because leprosy in garments only applies to undyed materials. — Neg. XI, 3.

(4) This soil.

(5) [בית may mean either an apartment or a whole house, v. B.B. (Sonc. ed.) p. 247. n. 6.]

(6) 'Apartment'.

(7) מעולה fr. עלה, lit., 'the highest'.

(8) I.e., the purchaser can demand the best of his houses, the phrase in Hebrew בית שבביתי denoting the superlative. But if he simply sold him a בית he could give him an upper storey.

(9) V. Gemara.

(10) I.e., one not put to any use, but to bring good luck to the house.

(11) The first meal eaten by mourners after the funeral was called the סעודת הבראה meal of comfort or restoration, v. Sanh. 20a.

(12) Lit., 'the whole year'.

(13) [On the wine drunk at the house of the mourner, v. Keth. 8a. There is however no law stated anywhere else that meat had to form part of the mourner's meal of comfort. The only reference in Sem. XIV speaks merely of a local custom (cf. Tur Yoreh De'ah, 282). It should however be noted that the parallel passages (Sanh. 20a and M.K. 27a) read: 'Let it be analogous to eating and drinking', and this is also the reading of MS.M. here.]

(14) As is the rule with all other stools and beds in a house of mourning.

Talmud - Mas. Nedarim 56b

for it may be similar to the trestle[1] reserved for utensils. For it was taught, If there was a trestle reserved for utensils [in the house], he need not lower it. But if there is a difficulty, it is this: For it was taught: R. Simeon b. Gamaliel said: As for the dargesh, its thongs are untied and it automatically collapses;[2] but if the dargesh is the bed of the domestic genius, has it then thongs? When Rabin came,[3] he said, I consulted one of the scholars named R. Tahlifa b. Tahlifa of the West,[4] who frequented the leather-workers' market, and he told me, What is dargesh.? A leather bed.[5] It has been stated: What is a mittah, and what a dargesh? — R. Jeremiah said, [In] a mittah [a bedstead] the strapwork is drawn on top; a dargesh has the strapwork inside.[6]

An objection is raised: From when are wooden articles ready to receive uncleanliness?[7] A mittah and a cradle from when they are smoothed [by being rubbed] with fish skin.[8] Now if the mittah has its strapwork drawn up on top, why must it be smoothed with fish skin?[9] But both [the mittah and the dargesh] have their strappings drawn inside: a mittah has its straps drawn in and on through slits [in the boards]; those of a dargesh go in and on through loops.

R. Jacob b. Aha said in Rabbi's name: A mittah whose poles[10] protrude [downwards][11] is set up [on its side], and that is sufficient.[12] R. Jacob b. Idi said in R. Joshua b. Levi's name: The halachah is as R. Simeon b. Gamaliel.[13]

MISHNAH. ONE WHO VOWS [NOT TO BENEFIT] FROM A TOWN, MAY ENTER THE TOWN TEHUM:[14] BUT MAY NOT ENTER ITS OUTSKIRTS.[15] BUT ONE WHO VOWS [ABSTINENCE] FROM A HOUSE, IS FORBIDDEN FROM THE DOOR-STOP[16] AND WITHIN.

GEMARA. Whence do we know that the outskirts of a town are as the town itself? — R. Johanan said, Because it is written, and it came to pass, when Joshua was in Jericho etc.[17] Now, what is meant by 'in Jericho'? Shall we say, actually in Jericho: but is it not written. Now Jericho was straitly shut up because of the children of Israel?[18] Hence it must mean in its outskirts.[19] Then say that it means even in the tehum?[20] — But with respect to the tehum it is written, And ye shall measure without the city [in the east side two thousand cubits etc.].[21]

BUT ONE WHO VOWS [ABSTINENCE] FROM A HOUSE IS FORBIDDEN FROM THE DOOR-STOP AND WITHIN. But not from the door-stop and without.[22] R. Mari objected: Then the priest shall go out of the house;[23] I might think that he goes home and then has it probably of the width. To these a cross-piece was attached, the whole forming a frame over which a net or curtain was slung. shut up; therefore it is taught, to the door of the house.[24] If [I had only to go by] 'to the door of the house,' I might think that he stands under the lintel and closes it; therefore, it is written, ['Then the priest shall go] out of the house', implying that he must go right out of it — How so? He must stand at the side of the lintel and close it. Yet how do we know that if he goes home and has it closed, or stands under the lintel and shuts it, that it is validly shut? From the verse, And shut up the house,[25] implying no matter how it be done.[26] — In the case of the [leprous] house it is different, because it is written 'out of the house', implying that he must go right out of the house.

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(1) מטה mittah, lit., 'bed'; this trestle must have been similar in shape to a bed.

(2) This too refers to a house of mourning.

(3) From Palestine.

(4) The Palestinian.

(5) Its strapping consisted of leather instead of ropes. Not being supported by long legs it stood very low. For this reason it is disputed in the Mishnah whether it is included in bed or not, and also whether it needs lowering during mourning. v.

Sanh. (Sonc. ed.) p. 107, n. 1.
(6) The straps are attached on the inside through slits in the frame.
(7) An article cannot become unclean unless it is completely finished for rise.
(8) To polish the surface, v. Kel. XXI, 1.
(9) By the mittah the bedstead itself, i.e., the framework, is understood. If this framework is always overlaid with straps; why need it he smoothed at all?
(10) נקליטין, two poles fixed at the head and foot of the bedstead, in the centre
(11) I.e., below the level of the bedding to the space underneath.
(12) The reference is to a house of mourning. Such a bed, if actually lowered, may appear to he standing in its usual position, since then the poles protrude upwards.
(13) That the thongs of a dargesh must be untied in a house of mourning.
(14) A distance of two thousand cubits right round the town boundaries.
(15) 70 2/3 cubits from the town borders. The two thousand cubits which is the permitted journey outside the town on the Sabbath, are calculated from the outer edge of these 70 2/3 cubits, v. ‘Er. 52b.
(16) The moulding of the door frame against which the door shuts.
(17) Josh. V, 13.
(18) Ibid. VI, 1.
(19) Which are referred to as the town itself.
(20) Perhaps Joshua was stationed within the tehum of Jericho which is spoken of as ‘in Jericho’.
(21) Num. XXXV. 5.
(22) I.e., the steps or threshold up to the doorstep are permitted.
(23) Lev. XIV, 38. The priest, after inspecting the leprous house for the first time, was to go out and have it sealed up for a week.
(24) Lev. XIV, 38.
(25) Ibid.
(26) Now, when one is outside the lintel, he is also, of course, outside the door-stop: yet he is not regarded here as being right out of the house, thus contradicting the implication of the Mishnah that without the door-stop is not part of the house.

Talmud - Mas. Nedarim 57a

MISHNAH. [IF A MAN SAYS]. ‘KONAM BE THESE FRUITS TO ME, BE THEY KONAM FOR MY MOUTH,’ OR ‘BE THEY KONAM TO MY MOUTH,’ HE IS FORBIDDEN [TO BENEFIT] FROM WHAT IS EXCHANGED FOR THEM OR WHAT GROWS FROM THEM. [IF HE SAYS KONAM] IF I EAT OR TASTE OF THEM, HE IS PERMITTED [TO BENEFIT] FROM WHAT IS EXCHANGED FOR THEM OR WHAT GROWS OF THEM, [THAT IS] IN A THING OF WHICH THE SEED ITSELF PERISHES: BUT IF THE SEED DOES NOT PERISH,[1] EVEN THAT WHICH GROWS OUT OF THAT WHICH [FIRST] GREW FROM IT IS FORBIDDEN. IF HE SAYS TO HIS WIFE, ‘KONAM BE THE WORK OF YOUR HANDS TO ME,’ .’KONAM BE THEY FOR MY MOUTH, OR ‘KONAM BE THEY TO MY MOUTH’:[2] HE IS FORBIDDEN THAT WHICH IS EXCHANGED FOR THEM OR GROWN FROM THEM. [IF HE SAID, KONAM] IF I EAT OR TASTE [THEREOF]’. HE IS PERMITTED WHAT IS EXCHANGED FOR THEM OR WHAT IS GROWN FROM THEM, THAT IS IN A THING OF WHICH PERISHES THE SEED ITSELF, BUT IF THE SEED DOES PERISH, EVEN THAT WHICH GROWS OUT OF THAT WHICH [FIRST] GREW FROM IT IS FORBIDDEN. [IF HE SAYS TO HIS WIFE, ‘KONAM THAT] WHAT YOU WILL PRODUCE I WILL NOT EAT THEREOF UNTIL PASSOVER’ OR ‘THAT WHAT YOU WILL PRODUCE, I WILL NOT WEAR UNTIL PASSOVER’, HE MAY EAT OR WEAR AFTER PASSOVER OF WHAT SHE PRODUCES BEFORE PASSOVER. ‘[THAT] WHAT YOU PRODUCE UNTIL PASSOVER I WILL NOT EAT’, OR ‘[THAT] WHAT YOU PRODUCE UNTIL PASSOVER I WILL NOT WEAR’, HE MAY NOT EAT OR WEAR AFTER PASSOVER WHAT SHE PRODUCES BEFORE PASSOVER.[3] [IF HE SAYS, KONAM] BE ANY BENEFIT YOU HAVE FROM ME UNTIL PASSOVER, IF YOU GO TO YOUR FATHER'S

HOUSE UNTIL THE FESTIVAL[4] IF SHE GOES BEFORE PASSOVER SHE MAY NOT BENEFIT FROM HIM UNTIL PASSOVER:

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(1) E.g., garlic or onions; these, when placed in the soil, do not rot away, but grow so that their growths always contain part of the original.

(2) And she was paid by means of agricultural produce.

(3) The reference is to her earnings in general, which he may not expend on food or clothing.

(4) [הַחַג where unspecified denotes generally the Festival of Succoth, cf. I Kings VIII, 2.

Talmud - Mas. Nedarim 57b

IF SHE GOES AFTER PASSOVER[1] SHE IS SUBJECT TO, HE SHALL NOT BREAK HIS WORD.[2] ['KONAM] BE ANY BENEFIT YOU HAVE FROM ME UNTIL THE FESTIVAL IF YOU GO TO YOUR FATHER'S HOUSE BEFORE PASSOVER', IF SHE GOES BEFORE PASSOVER, SHE MAY NOT BENEFIT FROM HIM UNTIL THE FESTIVAL, BUT IS PERMITTED TO GO AFTER PASSOVER.

GEMARA. IF A MAN SAYS TO HIS WIFE, 'KONAM BE THE WORK OF YOUR HANDS TO ME,' 'FOR MY MOUTH,' OR 'TO MY MOUTH, etc.' Ishmael, of Kefar yama,[3] — others say, Kefar Dima[4] — propounded[5] the case of an onion that has been pulled up in the seventh year and planted in the eighth, and its growth exceeds the stock. And this is what he asked: The growth is permitted, whilst the stock is forbidden:[6] but since the growth exceeds the stock, the permitted growth comes and annuls what is forbidden;[7] or is it not so?[8] He came before R. Ammi, and he could not solve it. He then went before R. Isaac the smith,[9] who solved it from the following dictum of R. Hanina of Torata[10] in R. Jannai's name: If one plants an onion of terumah, and its increase exceeds the stock, it is [all] permitted.[11] Said R. Jeremiah, others state, R. Zerika, to him, Do you abandon two and follow one? Now who are the two? — [i] R. Abbahu, who said in R. Johanan's name: If a young tree[12] already with fruit is grafted on an old one, even if it multiplies two hundredfold, it [the original fruit] is forbidden.[13] [ii] R. Samuel son of R. Nahmani said in R. Jonathan's name: If an onion is planted in a vineyard and the vineyard is [subsequently] removed, it [the onion] is forbidden.[14]

Then he [Ishmael] again went before R. Ammi, who solved it from the following: For R. Isaac said in R. Johanan's name: If a litra[15] of onions was tithed[16] and then planted, the whole of it must be re-tithed.[17] This proves that the yield nullifies the stock.[18] Perhaps, however, this is different, being in the direction of greater stringency![19] — But [it can be solved] from the following: For it was taught: R. Simeon said:

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(1) After having enjoyed benefit from him.

(2) Num. XXX, 3.

(3) The former and modern Jabneel near Tiberias. V. Horowitz, Palestine, pp. 322ff.]

(4) In the original the difference is denoted by the single letter.

(5) Lit., 'brought up in his hand'.

(6) The produce of the seventh year, if retained for private use after a certain period, were forbidden for use. V. p. 183, n. 16.

(7) If something forbidden becomes mixed up with something permitted, the latter exceeding the former (the ratio of excess differs: generally it must be sixty times as much), the latter annuls the former, and it is all permitted. Here too, the stock is used with the increase.

(8) Rashi, Tosaf. and Asheri regard the problem as referring only to annulment, but that it is certain that the increase itself is permitted. Ran, however, interprets the problem as relating to the increase: either it is permitted, in which case it also annuls the stock, or all is forbidden since it grew from prohibited stock.

(9) The Rabbinate being unpaid (cf. infra 37a), many Rabbis were tradesmen or workers. E.g., Hillel was a woodcutter

before he became nasi; R. Joshua was a charcoal maker, and there was a R. Johanan who was a sandal maker.

(10) This is the conjectured meaning of תריתאה otherwise תורתייה.

(11) To a lay Israelite. So likewise in our problem.

(12) I.e., less than three years old, the fruit of which, called 'orlah, is forbidden.

(13) Though elsewhere 'orlah is nullified by such an increase.

(14) For when growing there together, they were 'forbidden mixture', (Deut. XXII, 9) and hence the onion was forbidden. Though the vines were removed, and the further growth of the onion permitted, yet the original remains forbidden. (Ran.: yet it is all, including the increase, forbidden). Both these statements are opposed to the first in R. Jannai's name.

(15) **, the Roman Libra, a pound.

(16) I.e., all the priestly dues were separated from it.

(17) I.e., both the stock and the increase.

(18) Though the stock had been tithed once, the whole must he re-tithed, the original being assimilated to the increase.

(19) I.e., whereby assimilating the original to the increase the law is more stringent, it is so assimilated. But the problem is whether the original is regarded as nullified though thereby a prohibition is raised.

Talmud - Mas. Nedarim 58a

For everything [forbidden] which can become permitted, e .g., tebel,[1] second tithe,[2] hekdesh,[3] and hadash,[4] the Sages declared no limit.[5] But for everything which cannot become permitted. e.g., terumah, the terumah of the tithe,[6] hallah,[7] 'orlah,[8] and kil'ayim of the vineyard,[9] the Sages declared a limit.[10] Said they to him, But seventh year produce cannot become permitted, yet the Sages set no limit to it. For we learnt: Seventh year produce of no matter what quality renders its own kind forbidden![11] He replied, my[12] ruling too is only in respect of removal; but as for eating, [it renders it forbidden] only if sufficient to impart its taste thereto.[13] But perhaps this too is different, since [the nullification] is in the direction of greater stringency. But solve it from the following: We learnt: Onions [of the sixth year] upon which rain fell, and which grew [in the seventh], — if the leaves are blackish, they are forbidden; if greenish, they are permitted.[14] R. Hanina b. Antigonus said: If they can be pulled up by their leaves, they are forbidden.[15] Conversely, on the termination of the seventh year they are permitted.[16] This proves that the increase, which is permitted, nullifies that which is forbidden.[17] But perhaps it refers to crushed [onions]?[18] — But [it may be solved] from the following. For it was taught:

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(1) V. Glos. This is forbidden for use, 'but becomes permitted oil payment of the priestly dues.

(2) A tithe which had to be eaten in Jerusalem, but forbidden elsewhere. It could, however, be redeemed, by allocating its value, plus a fifth, to he expended in Jerusalem, after which it might be enjoyed anywhere.

(3) Anything dedicated to the Temple which cannot be offered as sacrifice may be put to secular use after it is redeemed.

(4) Lit., 'new'. The new crops which are forbidden until the offering of the 'Omer, v. Lev. XXIII, 10-14.

(5) If these are mixed up with permitted food, the Sages do not rule that if the latter exceeds the former by a certain ratio the whole is permitted, as in the next clause. The reason is, since it is possible to cancel the prohibition in itself, there is no need to have recourse to nullification through excess.

(6) Of the tithe which the Levite received from the Israelite, he had to give one tenth to the priest.

(7) V. Glos. The last three are forbidden to a lay Israelite, and the prohibition itself cannot be cancelled.

(8) V. Glos.

(9) V. Glos.

(10) If these became mixed with other permitted substances, the latter nullifies them, providing they exceed them by certain fixed amounts.

(11) If mixed with other produce of the same kind, not of the seventh year, the latter is forbidden.

(12) So cur. edd., also Rashi and Asheri. Ran.: their ruling, which is more suitable to the context.

(13) The seventh year produce might he kept by its owner for his personal use only as long as like produce is still growing in the fields, and available to wild beasts. Once the produce has ceased from the fields the gathered species of the same produce must be 'removed'. That time, the exact limits of which are given in Sheb. IX. 2 et seqq. is called the

time of removal. Now R. Simeon answers the difficulty thus: If seventh year produce, of no matter what quality, is mixed with other produce before the time of removal, it all becomes as the former, and must be eaten before the time of removal. For, since it is permitted until then, there is no need to have recourse to nullification by excess. But if after the time of removal (and this has not been removed, so that it may not be eaten). He permitted produce is forbidden only if there is sufficient of the prohibited to impart its taste to the whole mixture. Of course, where they are both of the same kind, this is strictly speaking impossible, but it is calculated on the basis of two different kinds. Now what has been said with respect of a mixture of two lots of produce, seventh year and non-seventh year, also applies to a single plant which is partly seventh and partly non-seventh year produce. E.g., if a sixth year onion is planted and grows no matter how slightly in the seventh, the addition, even if but the smallest fraction of the original, renders the whole as seventh year produce, which is subject to the law of removal. This we see that the increase, though grown out of that which is permitted, is reckoned as distinct from the original, and can render it forbidden. Hence, contrariwise, if the increase is permitted and of sufficient quantity, it can nullify the prohibition attaching to the original.

(14) Whilst the onion is growing naturally from the soil, its leaves have a blackish tint. But sometimes, after its natural growth has ceased, the rain inflates it, giving it a sort of over-ripeness. Then its leaves bear a greenish and faded appearance. Hence in this case, if the leaves are blackish, it is a sign that the onion has naturally grown in the seventh year, and therefore the addition renders it all forbidden, i.e. 'imposes upon the whole the law of seventh year produce. But if they are greenish, it has grown of itself, and hence permitted.

(15) Even if the leaves are not blackish, yet if they are strong enough for the whole onion to be pulled up by them without their breaking off, it is a sign if normal growth, and so forbidden.

(16) If seventh year onions were left in the soil and grew in the eighth, if the leaves go blackish, it is a sign of natural growth in the eighth, and therefore the whole onion is permitted. — Asheri observes that the two cases are not exactly similar. For the sixth year onion is

(17) And this solves the problem.

(18) I.e., if the onions were crushed and grated, so that the forbidden part no longer preserves its separate identity; in that case it is nullified by excess. But the problem arises only if the onion is intact.

Talmud - Mas. Nedarim 58b

If [a workman] is engaged in weeding leek plants[1] for a Cuthean,[2] he may make a light meal of them and must separate the tithes from them as certain.[3] R. Simeon b. Eleazar said: If [the labourer is employed by] an Israelite suspected of violating the laws of the seventh year,[4] he may make a light meal thereof [if working] in the eighth year.[5] This proves that the growth, which is permitted, nullifies [the original stock], which is rendered forbidden even by a slight increase in the seventh, whereas he seventh under the same conditions is rendered permitted only by an increase in the eighth at least greater than the original. Nevertheless, the general principle, that blackishness of the leaves indicates natural growth, is the same in both. forbidden. But perhaps it refers to a plant whose seed perishes [in the soil]? — But it is taught: The following are leek plants: The lof,[6] garlic and onions.[7] But Perhaps it refers to crushed plants?[8] — This teaches of one who is suspected of violating the Sabbatical year.[9] But perhaps it refers to a mixture?[10] — This teaches of one who is engaged in weeding.[11] Now, shall we say that this refutes R. Johanan and R. Jonathan?[12] — Said R. Isaac: The Sabbatical year produce is different; since the interdict is through the soil,[13] its nullification too is through the soil.[14] But the prohibition of the tithe is likewise through the soil,[15] yet it is not nullified by the soil. For it was taught: If a litra of tithe, itself tebel,[16] is sown in the soil and it improves [i.e.. increases], and is the equivalent of ten litras, it [sc. the whole] is liable to tithe[17] and [is subject to the laws of] the Sabbatical year,[18] whilst as for the [original] litra, a tithe thereof must be seperated from elsewhere,[19] according to calculation.[20]

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(1) The Talmud explains below what this is.

(2) V. Glos.

(3) If he wishes to make of them a regular meal. The obligation of tithing vegetables is Rabbinical only, not Biblical. When crops are tithed, and then resown, the new produce is again liable to the priestly dues. Nevertheless, a labourer engaged in working on crops may make a light meal of them. If, however, the crops originally sown were tebel (v. Glos.)

one may not even make a light meal of their produce whilst working on them. Now, this Baraitha is to some extent self-contradictory, but in reality represents a compromise. Thus, the Cutheans disregarded their tithe obligations. Consequently, it must be assumed with certainty that they have not set aside the tithes from their produce, of which no regular meal may be made without tithing. This is not regarded as a doubtful tithe, viz. , that it is not known whether the Cuthean fulfilled his obligations or not, but as a certain tithe. Yet since the entire obligation is Rabbinical only, the Rabbis did not carry through this assumption to its extreme logical conclusion and forbid a labourer engaged thereon to enjoy even a snack, but permitted it, as ordinary tithed plants which are resown. This leniency is based on another possible assumption, viz., only if crops are taken in through the front of the house they are tebel in the sense that one may not even make a light meal thereof before the priestly dues are rendered. Here it is possible that these crops were never thus taken in (Tosaf.).

(4) I.e., that he planted them in the seventh year.

(5) Lit., 'the termination of the Sabbatical year'. Though the original is forbidden as seventh year produce, the increase nullifies it, and hence it is permitted to the labourer.

(6) A plant similar to colocasin, with edible leaves and roots, and bearing beans; and it is classified with onions and garlic (Jast.).

(7) Thus proving that it applies even to those plants whose original stock remain.

(8) The crushing obliterates the original stock.

(9) He would not trouble to crush it in order to evade the prohibition.

(10) I.e., the labourer may eat it only when it is mixed up with other plants, the excess of which nullifies the original forbidden stock.

(11) The labourer may eat while engaged in the act of weeding, though there is no mixture. Thus this definitely proves that the increase nullifies the original.

(12) V. supra 57b.

(13) Lev. XXV, 2: Then the land shall feet a sabbath unto the Lord

(14) But 'orlah is prohibited through immaturity, and 'diverse seeds' (kil'ayim) through mixture.

(15) I.e., by replanting. For if one sows tithed grains the produce in tebel: thus, by putting it into soil, it becomes prohibited.

(16) I.e., the tithe of which had not been given, v. p. 183, n. 9.

(17) Although itself a tithe, the ordinary law of tebel applies to it, and it must be retithed (and terumah too must be given).

(18) If it grew in that year.

(19) I.e., a tithe — the terumah of the tithe due in the first place — must be given to the priest. This tithe must not be taken out of the resultant crop, but from the previous year's, of which the litra was part, because one must not tithe one year's grain with another's.

(20) This proves that the forbidden nature of the untithed tithe remains, in spite of the fact that it was sown in the soil.

Talmud - Mas. Nedarim 59a

— I will tell you: The tithe obligation is caused by the storing up [of the grain].[1] Rami b. Hama objected: [If a man says,] 'KONAM BE THESE FRUITS TO ME, 'BE THEY KONAM FOR MY MOUTH, OR 'BE THEY KONAM TO MY MOUTH,' HE IS FORBIDDEN [TO BENEFIT] FROM WHAT IS EXCHANGED FOR THEM OR WHAT GROWS FROM THEM. [IF HE SAYS, 'KONAM] IF I EAT OR TASTE OF THEM,' HE IS PERMITTED [TO BENEFIT] FROM WHAT IS EXCHANGED FOR THEM OR WHAT GROWS OF THEM, [THAT IS] IN A THING OF WHICH THE SEED ITSELF PERISHES; BUT IF THE SEED DOES NOT PERISH, EVEN THAT WHICH GROWS OF THAT WHICH [FIRST] GREW FROM IT IS FORBIDDEN![2] — Said R. Abba: Vows[3] are different: since if he wishes he can demand absolution from tithes, they are as [forbidden] things that may become permitted and [hence] are not nullified by excess.[4] But with terumah likewise he may, if he wishes, demand absolution from it,[5] and yet it can be nullified?[6] For we learnt : If a se'ah[7] of unclean terumah falls into less than a hundred of hullin it must [all] rot.[8] [This implies. but if it falls] into a hundred [se'ahs of hullin], it is nullified? — I will tell you: This refers to terumah in the priest's hands, in regard to which he can demand no absolution.[9] If so,

consider the second clause: If it was undefiled, it should [all] be sold to a priest.[10] But this refers to [terumah in the hands of] an Israelite, who inherited it from his maternal grandfathers a priest.[11] But the second clause teaches, It must be sold to a priests save for the value of that se'ah?[12] — But answer thus: As for vows, it is well, since it is meritorious to seek absolution from them on account of R. Nathan's dictum, Viz., He who vows, is as though he built a high place; and he who fulfils it, is as though he burned incense thereon. But what merit is there in seeking absolution from terumah.?[13]

The text [above] states: 'R. Johanan said: If a litra of onions was tithed and then planted, the whole of it must be retithed'. Now Rabbah[14] was sitting and stating this law, whereupon R. Hisda said to him: Who will obey you and R. Johanan your teacher: whither has the permitted portion in them departed? He replied: But did we not learn something similar? Viz., 'Onions [of the sixth year] upon which rain fell, and which grew [in the seventh], —

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(1) Until the grain is harvested and actually piled up in a stack, there is no obligation for the priestly dues. Thus it is not an obligation caused by the soil.

(2) This proves that the increase does not nullify the original, thus refuting R. Ammi's view.

(3) Konamoth, Lit., 'Vows expressed by Konam'.

(4) V. p. 183, n. 8.

(5) If one declares certain grain terumah in error, he can have this declaration nullified, and the grain reverts to its former state.

(6) Cur. edd. add 'by mere excess'. Wilna Gaon deletes this, since mere excess is insufficient, a hundred times its quantity being required.

(7) V. Glos.

(8) Unclean terumah may not he eaten by anyone, and therefore nothing can be done with the mixture.

(9) The Israelite who declares it terumah can have his declaration nullified only before it reaches the hands of the priest but not after.

(10) Obviously then it was still in the hands of an Israelite.

(11) Thus it had already belonged to a priest, and cannot be revoked.

(12) Which belongs to the priest as terumah. But under the circumstances here posited, even that se'ah too belongs to the Israelite.

(13) Therefore something prohibited by a vow is treated as that which can become permitted, since it ought to be revoked; but this does not apply to terumah.

(14) Var. lec.: Raba.

Talmud - Mas. Nedarim 59b

if the leaves are blackish, they are forbidden; if greenish, they are permitted.'[1] But even if blackish, why are they forbidden? Let us say, whither has the permitted portion in them departed? — He replied: Do you think that it refers to the original stock? [Only] with respect to the increase is it taught. They are forbidden. If so, what does R. Simeon b. Gamaliel come to teach? For it was taught [thereon:] R. Simeon b. Gamaliel said: That which grew under the obligation [of removal][2] is under that obligation: that which grew in a state of exemption is exempt. Surely the first Tanna too says thus? — The whole Mishnah is stated by R. Simeon h. Gamaliel.[3] Yet you learn R. Simeon b. Gamaliel's view [to be thus] only where he took no trouble;[4] but where one takes trouble,[5] it [the stock] is nullified by the excess [of the increase].[6] Now, where one takes trouble, is it nullified by the excess? But what of the case of the litra of tithe, itself !ebel, where he took trouble, yet it is taught, 'whilst as for the original litra, a tithe thereof must he separated from elsewhere according to calculation'?[7] — The tithe is different, because Scripture saith, Thou shalt surely tithe all the increase of thy sowing.'[8] and people sow what is permitted, but do not sow what is forbidden.[9]

The text [above states:] 'R. Hanina of Torata said in R. Jannai's name: If one plants an onion of terumah, and its increase exceeds the stock, it is [all] permitted.' Shall we say that the permitted

increase

(1) V. 58a.

(2) Viz., in the Sabbatical year.

(3) The second clause is merely stating a reason for the ruling in the first.

(4) As in this case, the sixth year onions having been left in the earth during the seventh year.

(5) Where he plants the onions.

(6) This is Rabbah's remark: though it would appear that R. Simeon b. Gamaliel's view is opposed to his, in reality it is not.

(7) V. supra 58b.

(8) Deut. XIV, 22.

(9) U.e., we oblige him to give terumah on the original tithe, since he did wrong in sowing it without rendering the terumah. It is thus in the nature of a fine, that he should not profit by his neglect. But normally the original stock is nullified, when lahour is required to produce the excess.

Talmud - Mas. Nedarim 60a

nullifies the forbidden [stock]? But we learnt: What grows from terumah is [likewise] terumah? — He [R. Haninah] refers to the second growth.[1] But we learnt this too: The second growth [of terumah] is hullin.?[2] — He teaches us this: (this is so] even where the stock does not perish in the earth. But we learnt: The growth of tebel is permitted in the case where the seed thereof [which is tebel] perishes [in the earth], but if it does not perish, [even] its second growth is forbidden! — He teaches us [that the second growth is permitted] when it exceeds the original.[3]

CHAPTER VIII

MISHNAH. [IF ONE VOWS,] 'KONAM, IF I TASTE WINE TO-DAY, HE IS FORBIDDEN ONLY UNTIL IT GETS DARK; [IF HE SAYS] 'THIS SABBATH,'[4] HE IS FORBIDDEN THE WHOLE WEEK AND THE SABBATH BELONGS TO THE PAST;[5] 'THIS MONTH,' HE IS FORBIDDEN THE WHOLE OF THAT MONTH, BUT THE BEGINNING OF THE [FOLLOWING] MONTH BELONGS TO THE FUTURE;[6] 'THIS YEAR,' HE IS FORBIDDEN THE WHOLE YEAR, WHIlst THE BEGINNING OF THE [FOLLOWING] YEAR BELONGS TO THE FUTURE; THIS SEPTENNATE,'[7] HE IS FORBIDDEN THE WHOLE OF THAT SEPTENNATE, AND THE [FOLLOWING] SABBATICAL YEAR BELONGS TO THE PAST.[8] BUT IF HE SAYS, 'ONE DAY,' 'ONE SABBATH,' 'ONE MONTH,' 'ONE YEAR,' [OR] 'ONE SEPTENNATE,' HE IS FORBIDDEN FROM DAY TO DAY.[9] [IF ONE VOWS,] 'UNTIL PASSOVER, HE IS FORBIDDEN UNTIL IT ARRIVES; 'UNTIL IT BE' [PASSOVER], HE IS FORBIDDEN UNTIL IT GOES;[10] 'UNTIL PENE[11] PASSOVER,' R. MEIR SAID: HE IS FORBIDDEN UNTIL IT ARRIVES; R. JOSE SAID: UNTIL IT GOES.

GEMARA. 'KONAM, IF I TASTE WINE' etc. R. Jeremiah[12] said: At nightfall he must obtain absolution iron, a Sage.[13] What is the reason? — R. Joseph said: 'To-day' is forbidden as a precautionary measure on account of 'one day'[14]

(1) I.e., an onion of terumah having been planted and its yield replanted, the second crop is permitted, but the first is terumah.

(2) Then what does R. Hanina teach?

(3) Whilst the Mishnah stating that it is forbidden holds good only if the growth does not exceed the original.

(4) 'Sabbath' denotes both the Sabbath day and a calendar week.

(5) I.e., the Sabbath following his vow, belongs to the current week, not the following.

(6) And hence permitted

(7) I.e., the seven-year cycle.

(8) I.e., it ends the Septennate in which the vow was made, and hence is included. An alternate rendering of the whole passage is this: 'This Sabbath' (that is the actual word of the Mishnah; v. n. I): e.g., if one vows on the Sabbath day, the whole week is forbidden, and the Sabbath of the past week too, i.e., the day of his vow, though belonging to the past week, while the vow obviously refers to the coming one, is nevertheless included. 'This month', e.g., if he vows on new moon (Rosh hodesh), the whole of the following month is forbidden, and the new moon itself is also accounted to the next month. 'This year', i.e., if one vows on new year's day, the whole of the year is forbidden, including that day, which belongs to the future. 'This septennate', i.e., if one vows in the Sabbatical year, the following septennate is forbidden, and the Sabbatical year itself in which he vows, though really belonging to the past Septennate. — On this interpretation, if a vow is made on the Sabbath, New Moon, New Year's day or in a Sabbatical year, for a Sabbath (i.e., calendar week), month, year, or septennate respectively, the day itself on which the vow is made, and in the last case, the Sabbatical year itself, are forbidden. The different phraseology used to indicate this, reference being made to the future in two cases and to the past in two others, intimates the law, if one vows in the middle of the week, etc. Thus, if in the middle of the week or septennate, the following Sabbath

(9) I.e., a day of twenty-four hours; likewise a month of thirty days, a year of twelve months, and a septennate of seven years.

(10) I.e., the future tense is regarded as future perfect.

(11) [Var. lec.: lifene. Either word may denote (a) the turn of; (b) the face of; (c) until before.]

(12) Asheri in his 'Pesakim' reads: R. Jeremiah b. Abba.

(13) But the vow is not lifted automatically.

(14) If when one vows 'to-day', he is told that the vow' automatically ends at nightfall, he may think the same of 'one day', which binds him, however, twenty-four hours.

Talmud - Mas. Nedarim 60b

Said Abaye to him: If so, let 'One day' be forbidden on account of 'to-day'?[1] — He replied: 'To-day' may be mistaken for 'one day', but 'one day' cannot be mistaken for 'to-day'.[2]

Rabina said: Meremar told me: Thus said your father in R. Joseph's name: With whom does this statement of R. Jeremiah b. Abba agree? With R. Nathan. For it was taught: R. Nathan said: Whoever vows is as though he built a high place, and who fulfils it, is as though he burnt incense thereon.[3]

and Sabbatical year are forbidden; in the middle of the month or year, the following New Moon or New Year's day are permitted. Ran, Asheri and Tosaf. prefer the former interpretation: Rashi the latter.

THIS SABBATH, HE IS FORBIDDEN THE WHOLE WEEK [AND THE SABBATH BELONGS TO THE PAST]. This is obvious? — I might think that he meant the [week] days of the Sabbath:[4] we are therefore taught [otherwise].

'THIS MONTH,' HE IS FORBIDDEN THE WHOLE OF THAT MONTH, BUT THE BEGINNING OF THE [FOLLOWING] MONTH BELONGS TO THE FUTURE. This is obvious? — It is necessary only when the [following] Month is defective: I might think that the new Moon belongs to the past, and is forbidden: it is therefore intimated that people call it new moon.[5]

'THIS YEAR,' HE IS FORBIDDEN THE WHOLE YEAR. The scholars propounded: What if one vows, 'Konam, if I taste wine a day'? is its law as 'to-day' or 'one day'? — Come and hear [a solution] from our Mishnah. 'KONAM, IF I TASTE WINE TO DAY HE IS FORBIDDEN WINE ONLY UNTIL IT GETS DARK; hence 'a day' is as 'one day'! Then consider the second clause: IF HE SAYS, 'ONE DAY,' HE IS FORBIDDEN FROM DAY TO DAY: hence a day' is as 'to-day'?[6] Thus nothing can be deduced from this.

R. Ashi said, Come and hear: 'Konam, if I taste wine this year,'[7] if the year was intercalated, he is forbidden for the year and the extra month. How is this meant?

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(1) I.e., if he vows 'one day', let him be forbidden until the nightfall of the following day. Otherwise, if he terminates his vow in the middle of the day, twenty-four hours after its commencement, he may think that had he stated 'today', he could likewise end it in the middle of the day of his vow.

(2) I.e , if he vows 'one day', he may think that it ends at nightfall, just as 'to-day'; but if he vows 'to-day', he cannot possibly think that it ends before the nightfall of the same day, since in 'one day' the vow lasts beyond nightfall and includes part of the following day too.

(3) I.e., because one does wrong in vowing at all, he is treated stringently and ordered to obtain absolution for his vow when it should lapse automatically. In Rashi's opinion, this conflicts with the reason given by R. Joseph. But Asheri regards it as complementary thereto: whilst accepting the reasoning, he regards the fear of mistaking 'to-day' for 'one day' as insufficient in itself to justify this precautionary measure: hence he adds the reason drawn from R. Nathan's dictum.

(4) The Sabbath being a day of delight, it might be assumed that he never intended to deny himself wine on that day, since week-days too are implied in that term.

(5) The months of the Jewish year consist of either twenty-nine or thirty days and generally alternate. Hence, if the following month is detective (i.e., of twenty-nine days), this one is full. In the month following a full one, the first two days are designated 'new moon', the first being really the thirtieth day of the past full month. Hence, if one vowed in a full month, it might be thought that he is bound on the first new moon day of the next. Therefore the Mishnah teaches that since it is called new moon, People generally regard it as part of the next month, and hence he is permitted thereon. — This is the reading of Asheri, Ran and Tosaf. But our editions, and Rashi too. have: I might think that the new moon belongs to the past, and should not be forbidden. This reading cannot be reconciled with the first interpretation of the Mishnah, but agrees with the second (q.v. p. 190, n. 5). If he vowed 'this month' on the first new moon day, I might think that since it actually belongs to the past month he is not forbidden thereon. Therefore it is taught that since it is designated new moon, he must have meant to include it.

(6) In Heb. 'one' is expressed by אחד, but the indef. 'a' is unexpressed, lit., 'day', and hence the problem, and the differentiation between 'a day' and one day'.

(7) Lit., 'the year'.

Talmud - Mas. Nedarim 61a

Shall we say, [literally,] as taught? [Then] why state it?[1] Hence it must surely mean that he vowed 'a year':[2] this proves that 'a year' is as 'this year', and [consequently], 'a day' as 'to-day'! — No! In truth, it means that he vowed, 'this year'; yet I might think that the majority of years should be followed, which have no intercalated months;[3] therefore we are taught [otherwise].

The scholars propounded: What if one vows, 'Konam, if I taste wine a Jubilee':[4] Is the fiftieth year [counted] as before the fiftieth or as after?[5] Come and hear: For a conflict of R. Judah and the Rabbis has been taught: And ye shall hallow the fiftieth year:[6] you must count it as the fiftieth year, but not as the fiftieth and as the first year [of the following jubilee].[7] Hence they [the Sages] said: The Jubilee is not part of the [following] septennate. R. Judah maintained: The Jubilee is counted as part of the septennate. Said they to R. Judah, But Scripture saith, six years shalt thou sow thy field,[8] whereas here there are only five![9] He replied: But on your view, Surely it is said, and it shall bring forth fruit for three years.'[10] whereas here there are four![11] But it can be referred to other Sabbatical years; hence mine too[12] must be thus explained.

'UNTIL PASSOVER', HE IS FORBIDDEN etc. Shall we say that R. Meir holds that a man does not place himself.

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(1) It is obvious, since the addition is an integral part of the year.

(2) Only then is it necessary to state that the addition is forbidden him, i.e., 'a year' is as 'this year': for if it implied 'one

year', he should be forbidden exactly twelve months.

(3) Hence the intercalated month is permitted.

(4) Ran observes that since the former problem is left unsolved, a day' would be the equivalent of 'one day' (since when in doubt the more stringent interpretation is adopted), and consequently a jubilee as one jubilee, and the problem cannot arise. Therefore he must have vowed 'this (the) jubilee'.

(5) On the former supposition it is forbidden; on the latter it is permitted.

(6) Lev. XXV, 10.

(7) I.e., that year is the fiftieth, the jubilee, and it cannot be counted also as the first of the following fifty and seven year. cycles.

(8) Ibid. 3.

(9) Since there is no sowing in the jubilee year.

(10) Ibid. 21.

(11) The forty-eighth year produce must suffice for itself, the forty-ninth, which is a Sabbatical year, the fiftieth, which is Jubilee, and until the harvesting of the fifty-first. This is a difficulty on any view, R. Judah's included: he posits it merely to prove that the Biblical statements about the Sabbatical year do not in any case apply to the Jubilee period, even on the view of the Rabbis.

(12) I.e., the verse by which you desire to refute me.

Talmud - Mas. Nedarim 61b

in a doubtful position, whilst R. Jose maintains that he does place himself in a doubtful position?[1] But the following contradicts it: If a man has two groups of daughters by two wives, and he declares, 'I have given one of my elder daughters in betrothal,[2] but do not know whether it was the eldest of the senior[3] group or of the junior group, or the youngest of the senior group, who is older than the eldest of the junior group': they are all forbidden,[4] except the youngest of the junior group:[5] this is R. Meir's view. R. Jose said: They are all permitted except the eldest of the senior group.[6] — Said R. Hanina b. Abdimi in Rab's name: The passage must be reversed.[7] And it was taught [even so]: This is a general principle: That which has a fixed time, and one vows, until the turn [pene] thereof, — R. Meir said: It means, until it goes; R. Jose maintained: Until it arrives.

MISHNAH. [IF HE VOWS,] 'UNTIL THE HARVEST, 'UNTIL THE VINTAGE, OR, UNTIL THE OLIVE HARVEST,' HE IS FORBIDDEN (ONLY UNTIL IT ARRIVES. THIS IS A GENERAL RULE WHATEVER HAS A FIXED TIME AND ONE VOWS, 'UNTIL IT ARRIVES, HE IS FORBIDDEN UNTIL IT ARRIVES; IF HE DECLARES, 'UNTIL IT BE', HE IS FORBIDDEN UNTIL IT GOES. BUT WHATEVER HAS NO FIXED TIME, WHETHER ONE VOWS, 'UNTIL IT BE,' OR 'UNTIL IT ARRIVES,' HE IS FORBIDDEN ONLY UNTIL IT ARRIVES. [IF HE SAYS,] 'UNTIL THE SUMMER [HARVEST],'[8] OR, 'UNTIL THE SUMMER [HARVEST] SHALL BE,' [HE IS FORBIDDEN] UNTIL PEOPLE BEGIN TO BRING [THE FIGS] HOME IN BASKETS;' UNTIL THE SUMMER [HARVEST] IS PAST,' [IT MEANS] UNTIL THE KNIVES[9] ARE FOLDED UP [AND LAID AWAY].[10]

GEMARA. A tanna taught: The basket referred to is the basket of figs, not of grapes.[11] It was taught: He who vows [abstinence] from summer fruits, is forbidden only figs. R. Simeon b. Gamaliel said: Grapes are include din figs.[12] What is the reason of the first Tanna? He holds that figs are plucked off by hand, whilst grapes are not plucked off by hand;[13] whereas R. Simeon b. Gamaliel maintains, Grapes too are plucked off by hand when quite ripe.[14]

UNTIL THE SUMMER [HARVEST] IS PAST,' [IT MEANS] UNTIL THE KNIVES ARE FOLDED UP [AND LAID AWAY]. A Tanna taught: Until most of the knives have been put away.

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(1) The expression until pene — or lifene — is a doubtful one. v. supra p. 191. n. 3. R. Meir, on this hypothesis, holds that when one vows he intends his words to hear only that meaning which can with certainty be attributed to them, not

desiring to be in a position of doubt; while R. Jose controverts it.
(2) A father could betroth his daughter, if a minor, even without her knowledge; though v. Kid. 41a.
(3) I.e., by his first wife.
(4) Both to the groom, since they may be sisters of the betrothed, and to others, being possibly betrothed themselves.
(5) Who is permitted to strangers, since she is definitely not 'the elder'.
(6) This shews that in R. Meir's view one intends his words or actions to bear even a meaning which can be attributed to it only with doubt, and R. Jose holds the opposite.
(7) I.e., the authorities of our Mishnah.
(8) The time for this is not fixed.
(9) Used for cutting off the figs from the tree.
(10) Other meanings: until the figs are arranged in layers; until the matting, on which the gigs are dried, is folded up.
(11) I.e., he is forbidden only until the figs are brought in in baskets, not the grapes, which are gathered in slightly later.
(12) I.e., in summer fruits.
(13) קַיִץ, the Heb. for summer (fruits), denotes the gathering or plucking (of the fruits). But as grapes are cut off from the vine with a pruning knife, the term is inapplicable in their case.
(14) Lit., 'when about to be detached' (from the tree). Asheri. [Rashi: 'overripe'. Jast: 'when their stems are thin', cf. Ran.]

A Tanna taught: If most of the knives have been put away, they [the remaining figs] are permitted [to strangers] as far as theft is concerned, and are exempt from tithes.[1]

Rabbi and R. Jose son of K. Judah came to a certain place when most of the knives had been folded. Rabbi ate;[2] R. Jose son of R. Judah did not. Their owner came and said to them, 'Why do the Rabbis not eat? most of the knives have been folded!' Nevertheless R. Jose son of R. Judah did not eat, believing that the man had spoken [sarcastically] in a grudging spirit.

R. Mama son of R. Hanina came to a place when most of the knives had been folded. He ate; but [when] he offered [some] to his attendant, he would not eat. 'Eat,' said he; 'thus did R. Ishmael son of R. Jose tell me on his father's authority: When most of the knives have been folded, they [the remaining figs] are permitted [to strangers] as far as theft is concerned 'and are exempt from tithes'.

R. Tarfon was found by a man eating [of the figs] when most of the knives had been folded, [whereupon] he threw him into a sack and carried him, to cast him in the river. 'Woe to Tarfon,' he cried out, 'whom this man is about to murder!' When the man heard this,[3] he abandoned him and fled. R. Abbahu said on the authority of R. Hananiah b. Gamaliel: All his lifetime that pious man grieved over this, saying. 'Woe is me that I made [profane] use of the crown of the Torah!'[4] For Rabbah b. Bar Hanah said in R. Johanan's name: Whoever puts the crown of the Torah to [profane] use, is uprooted from the world.[5] This follows a fortiori. If Belshazzar, who used the holy vessels which had become profaned, as it is written, For the robbers shall enter into it, and profane it:[6] [teaching], since they had broken in, they were profaned; yet he was uprooted from the world, as it is written, In that night was Belshazzar slain:[7] how much more so he who makes [profane] use of the crown of the Torah, which endureth for ever!

Now since R. Tarfon ate when most of the knives were folded, why did that man ill-treat him? — Because someone had been stealing his grapes all the year round, and when he found R. Tarfon, he thought that it was he. If so, why was he grieved [at revealing his identity]?[8] — Because R. Tarfon, being very wealthy, should have pacified him with money.[9]

It was taught: That thou mayest love the Lord thy God and that thou mayest obey his voice, and that thou mayest cleave unto him:[10] [This means] that one should not say, I will read Scripture that I may be called a Sage.' I will study, that I may be called Rabbi, I will study,[11] to be an Elder, and sit in the assembly [of elders];[12] but learn out of love, and honour will come in the end, as it is written, Bind them upon thy fingers, write them upon the table of thine heart,'[13] and it is also said, Her ways are ways of pleasantness;[14] also, She is a tree of life to them that lay hold upon her: and happy is everyone that retaineth her.[15]

R. Eliezer son of R. Zadok said: Do [good] deeds for the sake of their Maker,[16] and speak of them[17] for their own sake. Make not of them a crown wherewith to magnify thyself, nor a spade to dig with.[18] And this follows a fortiori. If Belshazzar, who merely used the holy vessels which had been profaned, was driven from the world; how much more so one who makes use of the crown of the Torah!

Raba said: A man may reveal his identity where he is unknown, as it is said, but I thy servant fear the Lord from my youth.[19] But as for the difficulty of R. Tarfon,[20] — he was very wealthy, and should have pacified him with money.

Raba opposed [two verses]: It is written, But I thy servant fear the Lord for in my mouth,' whilst it is also written, Let another man praise thee, and not thine own mouth?[21] One refers to a place where

he is known; the other, to where he is unknown.

Raba said: A rabbinical scholar may assert, I am a rabbinical scholar; let my business receive first attention;[22] as it is written, And David's sons were priests,'[23] just as a priest receives [his portion] first, So does the scholar too. And whence do we know this of a priest? — Because it is written, Thou shalt sanctify him therefore, for he offereth the bread of thy God:[24] whereon the School of R. Ishmael taught: 'Thou shalt sanctify him' — in all matters pertaining to holiness:

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(1) Because once the knives are put away, the owner has, in effect, shewn that the remaining figs are unwanted by him and free to all, i.e., hefker, from which there are no priestly dues; cf. p. 139, n.2.

(2) Of the figs left on the fields.

(3) That he was R. Tarfon.

(4) I.e., over saving his life by revealing his identity.

(5) This is in accordance with the general view held that one should derive no benefit whatsoever from the Torah. Cf supra 37a and Aboth, IV,5. (Sonc. ed.) p. 47, n. 3.

(6) Ezek. VII, 22.

(7) Dan. V, 30.

(8) His grief would have been justified had the keeper been angry on account of R. Tarfon's action alone: For instead of saving himself by disclosing his name, he should have told him the law on the subject and offered to pay for what he had eaten, but if he was mistaken for an habitual thief, what else could he have done: should he have offered to make good the depredations of the whole year!

(9) Precisely so.

(10) Deut. XXX, 20.

(11) [So Bah. cur. edd.: אשנן 'I will teach.' I.e. he teaches others, so that his fame may spread and he may obtain a seat in the Academy.]

(12) 'Elder' may simply mean scholar (cf. Kid. 32b), or more exactly a member of the Sanhedrin; cf. Joseph. Ant. XII, 111, p. 3.

(13) Prov. VII, 3: i.e., make it an integral part of thyself, not as something outside thee, cherished only for its worldly advantages.

(14) Ibid. III, 17.

(15) Ibid. 18: this is quoted to shew that honour comes eventually.

(16) I.e., God Who decreed them (Ran.). [Or. 'the performance of them', i.e., for the sake of doing good (Bahja Ibn Pakuda, Duties of the Heart, Introduction.]

(17) VIz., the words of the Torah.

(18) In I Sam. XIII, 20. and Ps. LXXIV, 5, kardom means an axe. Possibly it was a two-sided tool, one side serving as a spade and the other as an axe.

(19) I Kings XVIII, 12

(20) V. supra.

(21) Prov. XXVII, 2.

(22) Lit., 'dismiss my case first'. E g., in a shop or market place. cf. the story in Kid. 70a.

(23) II Sam. VIII, 18. They were not priests, of course; hence the verse means that as scholars they were entitled to certain priestly privileges.

(24) Lev. XXI, 8.

Talmud - Mas. Nedarim 62b

to be the first to commence [the reading of the Law],[1] the first to pronounce the blessing,[2] and first to receive a good portion.[3]

Raba said: A rabbinical scholar may declare, I will not pay poll-tax, for it is written, [also we certify to you, that touching any of the priests . . . or ministers of this house of God,] it shall not be lawful to impose mindah [tribute,] belo [custom,] or halak [toll,] upon them:[4] whereon Rab Judah

said: ‘mindah’ is the king's portion [of the crops]; ‘belo’ is a capitation tax, and ‘halak’ is arnona.[5] Raba also said: A Rabbinical scholar may assert, ‘I am a servant of fire, and will not pay poll-tax.’[6] What is the reason? Because it is [only] said in order to drive away a lion.[7] R. Ashi owned a forest, which he sold to a fire-temple. Said Rabina to R. Ashi: But there is [the injunction]. Thou shalt not put a tumbling-block before the blind![8] — He replied: Most wood is used for [ordinary] heating.[9]

MISHNAH. [IF HE VOWS,] ‘UNTIL THE HARVEST,’ [IT MEANS] UNTIL THE PEOPle BEGIN REAPING THE WHEAT HARVEST, BUT NOT THE BARLEY HARVEST.[10] IT ALL DEPENDS ON THE PLACE WHERE HE VOWED:[11] IF IN A HILL-COUNTRY. THE HILL-COUNTRY [HARVEST]; IF IN THE PLAIN, [THE HARVEST OF] THE PLAIN [IS MEANT].[12] [IF HE VOWS,] ‘UNTIL THE RAINS,’ [OR], ‘UNTIL THE RAINS SHALL BE’, [IT MEANS] UNTIL THE SECOND RAINFALL DESCENDS.[13] R. SIMEON B. GAMALIEL SAID: UNTIL THE [NORMAL] TIME FOR THE [FIRST] RAINFALL IS REACHED.[14] [IF HE VOWS,] ‘UNTIL THE RAINS CEASE,’ [IT MEANS] UNTIL THE END OF NISAN:[15] THIS IS R. MEIR'S VIEW. R. JUDAH SAID: UNTIL PASSOVER IS PAST.

GEMARA. It was taught: He who vows in Galilee, ‘until the fruit-harvest,’ and then descends to the valleys, though the fruit harvest has begun in the valley, he is forbidden [by his vow] until the fruit-harvest in Galilee.

[IF HE VOWS,] ‘UNTIL THE RAINS,’ [OR] ‘UNTIL THE RAINS SHALL BE,’ [IT MEANS] UNTIL THE SECOND RAINFALL DESCENDS. R. SIMEON B. GAMALIEL SAID, etc. R. Zera said: The dispute is only if he said, ‘until the rains’;[16] but if he declared, until the rain,’ he [certainly] meant, until the time of the [first] rain.[17]

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(1) In ancient times the public reading of the Law was done by those ‘called up’. The priest was to be called to read the first portion. v. Git. 59a.

(2) I.e., the blessing for bread prior to the meal, and grace after the meal.

(3) At a meal he must be served first. — Asheri: when sharing anything with an Israelite, the latter must divide the thing to be shared in two equal portions and give choice of pick to the priest.

(4) Ezra VII, 24.

(5) Or ‘annona’, produce tax. Jast. conjectures that הלך probably means a tax for the sustenance of marching troops.

(6) To the Persian it would suggest a fire worshipper, who was free from poll-tax. But the scholar making (his assertion should mean that he worships the Lord, who is designated ‘consuming fire’ in Deut. IV, 24. (Under Chapter II, fire worship became the national and state-aided religion of the Persians, and in order to win converts to that religion fire worshippers enjoyed exemption from poll-tax: v. Funk, S. Die Juden in Babylonien II. p. 3.)

(7) I.e., in self-defence, against irregular extortion. Ran states that Raba's dictum means that even a Rabbinical student may act thus, and it is not regarded as an untruth; the ordinary person may certainly do so.

(8) Lev. XIX. 14: i.e., nothing must be done to aid idolatry.

(9) Not for idolatrous service,

(10) Which is earlier.

(11) I.e., though normally ‘harvest’, unspecified, means the wheat harvest, if in a particular place one refers thus to the barley harvest it means until then. Likewise, as the Mishnah proceeds to explain.

(12) Harvesting is later in a hill-country than in a plain.

(13) I.e., until it commences. There are three winter rainfalls in Palestine. Their times are discussed on 63a. When he states, ‘until the rainfall’, without specifying which, it is assumed that he means the middle one, as he would have defined the first or last by name.

(14) Even if it does not rain then. Since the times of the rainfalls are not exact, he must have meant when the rainfall commences.

(15) The first month in the Jewish year, corresponding to March-April.

(16) The first Tanna maintains that the plural implies, until there shall have been at least two rainfalls; whilst in R. Simeon b. Gamaliel's opinion the terms of the vow are fulfilled when the time for the second rainfall comes, even though

it did not actually rain.
(17) So Rashi.

Talmud - Mas. Nedarim 63a

An objection is raised: What is the time of the rainfall?[1] The earliest is on the third [of Marheshwan],[2] the middle [i.e., the second] on the seventh, and the last on the twenty-third: this is R. Meir's view. R. Judah said: The seventh, the seventeenth, and the twenty-third. R. Jose said: The seventeenth, the twenty-third, and the new moon of Kislew.[3] And R. Jose used likewise to rule that individuals must not fast [for rain] until Kislew has commenced.[4] Now we observed thereon: As for the first rainfall, it is well: [they differ] in respect of petitioning;[5] the third [likewise] is in respect of fasting.[6] But [as for] the second, in respect of what [is the controversy]? And R. Zera answered: In respect of one who vows.[7] Whereon we observed: With whom does the following Baraitha agree: R. Simeon b. Gamaliel said: If the rain descends for seven days in succession, it is counted as the first and second rainfall?[8] With whom does this agree? With R. Jose![9] — That refers to one who vows, 'Until the rains.'

MISHNAH. [IF HE VOWS,] 'KONAM THAT I TASTE NOT WINE FOR A YEAR', IF THE YEAR IS INTERCALATED.[10] HE IS FORBIDDEN DURING THE YEAR AND ITS EXTENSION. [IF HE SAYS.] 'UNTIL THE BEGINNING OF ADAR,'[11] [IT MEANS] UNTIL THE BEGINNING OF THE FIRST ADAR; 'UNTIL THE END OF ADAR,' UNTIL THE END OF THE FIRST ADAR.[12]

GEMARA. Thus we see that by stating Adar, without qualification, the first is meant. Shall we say that our Mishnah reflects R. Judah's views? For it was taught: For the first Adar, one writes 'The first Adar'; for the second, simply 'Adar': this is R. Meir's view. R. Judah said: For the first Adar, one writes 'Adar'; for the second, one writes 'the second Adar'![13] — Abaye said: You may say that it agrees even with R. Meir: the latter is where he knew that it was a leap year; the former [i.e., the Mishnah], if he did not know.[14]

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(1) Sc. the winter rain, which generally came in three periods, as explained here. There was also, of course, the Spring rain. V. Ta'an. 6a.

(2) Marheshwan is the eighth month of the year, corresponding to October-November.

(3) Kislew is the ninth month of the year, corresponding to November-December.

(4) And rain has not yet fallen.

(5) For rain. A short prayer for rain — טל ומטר '(give) dew and rain', called she'elah, request or petition, is inserted in the eighth benediction of the 'amidah when the first rainfall is due. V. Ta'an. 10a.

(6) A public fast was proclaimed if the drought continued after the time of the third rainfall had arrived. V. Ta'an. I, 4-7: II, 1.

(7) I.e., if one vows, 'until the rains', it means until the second rainfall: hence the controversy as to when it is due.

(8) As we have seen, R. Simeon b. Gamaliel's own view is that the line of the rainfall is the deciding factor, whether it actually rains or not. But since the Rabbis maintain that the vow means until it rains, R. Simeon argued that even on their view, if it rains for seven days in succession, it should be considered as two rainfalls, and hence terminates the vow. It is now assumed that no dictinction is here made how he expressed his vow. But on R. Zera's view, that they all agree that where he says 'until the rain', the time of the first rainfall is the deciding factor, R. Simeon b. Gamaliel's remark is irrelevant.

(9) For in R. Meir's view there are only four days between the two rain-falls, and in R. Judah's there are ten.

(10) The Jewish year being lunar, an extra month is periodically intercalated to make it agree with the Solar year; v. J.E. art. 'Calendar'.

(11) The twelfth month of the year == February-March.

(12) Var. lec.: SECOND ADAR. When a year is intercalated, a month is added after Adar, which is called the second Adar.

(13) This is in reference to the dating of documents.

(14) If he knew and stated Adar, without qualification, the second is meant, in R. Meir's view. But if he did not know, he must have meant the first, since he does not wish to be in doubt as to the length of his vow, that he should include the second Adar if the year is subsequently intercalated.

Talmud - Mas. Nedarim 63b

And it was taught even so: [If one writes.] 'until the new moon of Adar,' [it means] until the new moon of the first Adar; but if it was a leap year, until the new moon of the second Adar. Now, this proves that the first clause does not refer to leap year?[1] Hence the latter clause means, if he knew that it was a leap year; the former, if he did not know.

MISHNAH. R. JUDAH SAID: [IF ONE VOWS,- 'KONAM THAT I TASTE NO WINE UNTIL PASSOVER SHALL BE,' HE IS FORBIDDEN ONLY UNTIL THE PASSOVER NIGHT,[2] FOR HE MERELY MEANT, UNTIL THE EVENING OF PASSOVER, UNTIL THE HOUR WHEN MEN ARE WONT TO DRINK WINE.[3] IF HE VOWS, 'KONAM THAT I TASTE NO MEAT UNTIL THE FAST [I.E., THE DAY OF ATONEMENT] SHALL BE,' HE IS FORBIDDEN ONLY UNTIL THE EVE OF THE FAST, FOR HE MERELY MEANT, UNTIL PEOPLE USUALLY EAT MEAT.[4] R. JOSE, HIS SON, SAID: [IF HE VOWS,] KONAM, IF I TASTE GARLIC UNTIL THE SABBATH, HE IS FORBIDDEN ONLY UNTIL SABBATH EVE [I.E., FRIDAY NIGHT], FOR HE MEANT, UNTIL IT IS CUSTOMARY FOR PEOPLE TO EAT GARLIC.[5] IF HE SAYS TO HIS NEIGHBOUR 'KONAM, IF I BENEFIT FROM YOU, IF YOU DO NOT COME AND ACCEPT FOR YOUR SONS A KOR OF WHEAT AND TWO BARRELS OF WINE, THE LATTER MAY ANNUL HIS VOW WITHOUT RECOURSE TO A SAGE, BY DECLARING, 'DID YOU VOW FOR ANY OTHER PURPOSE BUT TO HONOUR ME? THIS [NON-ACCEPTANCES] IS MY HONOUR. LIKEWISE, IF HE SAYS TO HIS NEIGHBOUR, 'KONAM, IF YOU BENEFIT FORM ME, IF YOU DO NOT GIVE MY SON A KOR OF WHEAT AND TWO BARRELS OF WINE' — R. MEIR RULES: HE IS FORBIDDEN UNTIL HE GIVES; BUT THE SAGES MAINTAIN: HE TOO CAN ANNUL HIS VOW WITHOUT A SAGE, BY DECLARING, I REGARD IT AS THOUGH I HAVE RECEIVED IT. IF HE WAS URGING HIS NEIGHBOUR TO MARRY HIS SISTER'S DAUGHTER, AND HE EXCLAIMED, 'KONAM, IF SHE EVER BENEFITS FROM ME'; LIKEWISE, IF HE IS DIVORCING HIS WIFE AND VOWS, 'KONAM, IF MY WIFE HAS EVER BENEFIT FROM ME, — THEY ARE PERMITTED TO BENEFIT FROM HIM, BECAUSE HE MEANT ONLY MARRIAGE. IF HE WAS URGING HIS NEIGHBOUR TO EAT IN HIS HOUSE, AND HE REPLIED, 'KONAM, IF I ENTER, OR, 'THE DROP OF WATER THAT I DRINK, HE MAY ENTER HIS HOUSE AND DRINK COLD WATER BECAUSE HE ONLY MEANT EATING AND DRINKING IN GENERAL.[6] [

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(1) That is obviously impossible, since in that case 'until the new moon of the first Adar' is meaningless.

(2) So in Mishnayoth edd.

(3) This is the reading as amended by Bah.

(4) It was a widespread custom to eat meat on the eve of Atonement day. The point of these two rulings, as of the next too, is that although the expression might mean until Passover shall have been, etc., the imperfect being intended as a fut. perfect, yet since it is customary to drink wine in the first evening, he is assumed to have meant until it comes, which is also a possible rendering of his words. And the same applies to the vow regarding meat.

(5) I.e., on the eve if Sabbath; the institution thereof is ascribed to Ezra; v. B.K. 82a and supra 31a.

(6) But did not mean the expression to be taken literally.

Talmud - Mas. Nedarim 64a

C H A P T E R I X

MISHNAH. R. ELIEZER SAID: ONE MAY SUGGEST TO A MAN AS AN OPENING [FOR ABSOLUTION][1] THE HONOUR OF HIS FATHER AND MOTHER BUT THE SAGES FORBID.[2] SAID R. ZADOK: INSTEAD OF GIVING THE HONOUR OF HIS FATHER AND MOTHER, LET US SUGGEST THE HONOUR OF THE ALMIGHTY AS AN OPENING.[3] IF SO, THERE ARE NO VOWS.[4] BUT THE SAGES ADMIT TO R. ELIEZER THAT IN A MATTER CONCERNING HIMSELF AND HIS FATHER AND MOTHER THEIR HONOUR IS SUGGESTED AS AN OPENING. R. ELIEZER ALSO RULED: A NEW FACT[5] MAY BE GIVEN AS AN OPENING; BUT THE SAGES FORBID IT. E.G., IF A MAN SAID, 'KONAM THAT I BENEFIT NOT FROM SO AND SO, AND HE [THE LATTER] THEN BECAME A SCRIBE,[6] OR WAS ABOUT TO GIVE HIS SON IN MARRIAGE,[7] AND HE DECLARED, 'HAD I KNOWN THAT HE WOULD BECOME A SCRIBE OR WAS ABOUT TO GIVE HIS SON IN MARRIAGE, I WOULD NOT HAVE VOWED;' [OR IF HE SAID,] 'KONAM, IF I ENTER NOT THIS HOUSE,' AND IT BECAME A SYNAGOGUE, AND HE DECLARED, HAD I KNOWN THAT IT WOULD BECOME A SYNAGOGUE, I WOULD NOT HAVE VOWED: R. ELIEZER PERMITS IT,[8] BUT THE SAGES FORBID IT.

GEMARA. What is meant by THERE ARE NO VOWS? — Abaye said: If so, Vows are not properly revoked.[9]

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(1) Lit., 'open for man'.

(2) V. p. 61, n. 7. Since vows are discreditable (v. supra 9a), to make them is to cast a reflection upon one's parents.

(3) One dishonours God by committing anything unworthy.

(4) The Talmud discusses the meaning of this. According to our text, this is still R. Zadok's speech, and a refutation of R. Eliezer. But Ran, Tosaf. and Asheri read: They (the Sages) said to him: If so, there are no vows. On this reading. R. Zadok agrees with R. Eliezer, but goes beyond him, whilst the Sages maintain that even on R. Eliezer's view, one could not go so far as to suggest the honour of God as an opening, for if so, there are no vows. But, as is evident from the Mishnah, they disagree with R. Eliezer too.

(5) Lit., 'newly-born', 'unexpected'.

(6) I.e., a school teacher, whose services the maddir might require for his child; others: a notary, whose services might be essential to him.

(7) And the maddir wished to take part in the festivities.

(8) As an opening for absolution.

(9) Because a vow can be annulled only on grounds, which, when suggested, need not necessarily make him regret his vow, in which case when he is moved to repent, it is to be assumed that his repentance is genuine. But when it is suggested to him that by vowing he dishonoured God, no person is so impudent as to maintain that he would have vowed notwithstanding, even if he would have done so; consequently, his vow is not properly revoked.

Talmud - Mas. Nedarim 64b

Raba explained: If so no one will seek a Sage's absolution for his vow.[1]

We learnt: BUT THE SAGES ADMIT TO R. ELIEZER THAT IN A MATTER CONCERNING HIMSELF AND HIS FATHER AND MOTHER, THEIR HONOUR IS SUGGESTED AS AN OPENING. Now, as for Abaye, who explains [it as meaning], if so, vows are not properly revoked, it is well: here, since he has been [so] impudent, he is impudent.[2] But on Raba's explanation. Viz., if so, none will seek a Sage's absolution for his vow, why is such an opening suggested to him here?[3] — I will tell you. Since all [other] vows cannot be annulled without a Sage,[4] it may be offered as an opening here too.[5] R. ELIEZER ALSO RULED: A NEW FACT MAY BE GIVEN AS AN OPENING, etc. What is R. Eliezer's reason? — R. Hisda said: Because Scripture saith, [And the Lord said unto Moses in Midian, Go, return into Egypt:] for all the men are dead [which sought thy life].[6] But death was a new fact:[7] this proves that a new fact is given as an opening. What then is the reason of the Rabbis? — They argue thus: Did these men die? Surely R. Johanan said on the

authority of R. Simeon b. Yohai: Wherever nizzim [quarrelling] or nizzawim [standing] is mentioned, the reference is to none but Dathan and Abiram?[8] But, said Resh Lakish, they had become poor.[9]

R. Joshua b. Levi said: A man who is childless is accounted as dead, for it is written, Give me children, or else I am dead.[10] And it was taught: Four are accounted as dead: A poor man, a leper, a blind person, and one who is childless. A poor man, as it is written, for all the men are dead [which sought thy life].[11] A leper, as it is written, [And Aaron looked upon Miriam, and behold, she was leprous. And Aaron said unto Moses . . .] let her not he as one dead.[12] The blind, as it is written, He hath set me in dark places, as they that be dead of old.[13] And he who is childless, as it is written, Give me children, or else I am dead.[14]

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(1) Since God's honour may apply to all vows, if such is suggested, every person will annul his vow himself, and thus the solemnity of vows be destroyed.

(2) For obviously, if he has been so impudent as to make such a vow, he is sufficiently brazen not to offer regard for his parents' honour as a ground for absolution, unless he has genuinely repented of having acted so contumaciously toward them.

(3) Since one can thus annul his own vow.

(4) This not being accepted as a ground in other vows.

(5) On account of other vows, it will be the practice to apply for absolution to a Sage, and that will be adhered to even in such an isolated ease as this, which is an exception to the general rule.

(6) Ex. IV. 19: the Talmud states below that Moses had vowed to Jethro not to return to Egypt, on account of the men who sought his life, and now God absolved Moses of his vow on the grounds that they were dead.

(7) I.e., one that arose subsequent to Moses' vow.

(8) Cf. Ex. II, 13: And when he went out on the second day, behold, two men of the Hebrews strove together (nizzim), with: That is that Dathan and Abiram, which were famous in the congregation, who strove against (hizzu. of which nizzim is a participle) Moses against Aaron. Cf. also, Ex. V, 20: And they met Moses and Aaron, who (sc. they) stood (nizzawim) in the way, with Num. XVI, 27. And Dathan and Abiram came out, and stood (nizzawim) etc. The similarity of language leads to the assumption that the same people are referred to in all cases, viz., Dathan and Abiram Now, it was on their account that Moses fled from Egypt, and God told him that they were dead. But they reappear in Korah's rebellion. Hence the statement that they were dead cannot be taken literally.

(9) Lit., 'they had descended from their property'. V. supra p. 16, n. 3 Now, though impoverishment was also a new fact, yet since it is of common occurrence (here regarded as more likely than death, as he left them, presumably, in good health), the Rabbis regard it as one which might be foreseen, and therefore a legitimate ground for absolution.

(10) Gen. XXX, 1.

(11) V. n. 2.

(12) Num. XII, 10-12.

(13) Lam. III, 6: this is interpreted: he hath set me in dark places, just as the blind, who are accounted as long since dead.

(14) Possibly the inclusion of the poor and childless was directed against the early Christian exaltation of poverty and celibacy.

Talmud - Mas. Nedarim 65a

It was taught: He who is forbidden to benefit from his neighbour can have the vow absolved only in his [neighbour's] presence.[1] Whence do we know this? — R. Nahman said: Because it is written, And the Lord said unto Moses, In Midian, go, return into Egypt, for all the men are dead which sought thy life.[2] He said [thus] to him: 'In Midian thou didst vow; go and annul thy vow in Midian.' [How do we know that he vowed in Midian?] — Because it is written, And Moses was content [wa-yo'el] to dwell with the man;[3] now alah[4] can only mean an oath, as it is written, and hath taken an [alah] oath of him.[5]

And also against King Nebuchadnezzar he rebelled, who had adjured him by the living God.[6]

What was [the nature of] his rebellion? — Zedekiah found Nebuchadnezzar eating a live rabbit.[7] 'Swear to me,' exclaimed he, 'not to reveal this, that it may not leak out!' He swore. Subsequently he grieved thereat, and had his vow absolved and disclosed it. When Nebuchadnezzar learned that they were deriding him, he had the Sanhedrin[8] and Zedekiah brought before him, and said to them, 'Have ye seen what Zedekiah has done? Did he not swear by the name of Heaven not to reveal it?' They answered him, 'He was absolved of his oath.' 'Can then one be absolved of an oath?' he asked them. 'Yes,' they returned. 'In his presence or even not in his presence?'[9] — '[Only] in his presence,' was their reply. 'How then did ye act?' said he to them: 'why did ye not Say this to Zedekiah?' Immediately, 'The elders of the daughter of Zion sit upon the ground, and keep silence.'[10] R. Isaac said: This teaches that they removed the cushions from under them.[11]

MISHNAH. R. MEIR SAID: SOME THINGS APPEAR AS NEW FACTS, AND YET ARE NOT [TREATED] AS NEW;[12] BUT THE SAGES DO NOT AGREE WITH HIM.[13] E.G., IF ONE SAYS, 'KONAM THAT I DO NOT MARRY SO AND SO, BECAUSE HER FATHER IS WICKED,' AND HE IS [THEN] TOLD, HE IS DEAD, OR, HE HAS REPENTED; 'KONAM, IF I ENTER THIS HOUSE, BECAUSE IT CONTAINS A WILD DOG, OR, 'BECAUSE IT CONTAINS A SERPENT,' AND HE IS [THEN] INFORMED, THE DOG IS DEAD, OR, THE SERPENT HAS BEEN KILLED, THESE ARE AS NEW FACTS, YET ACTUALLY NOT [TREATED] AS NEW FACTS. BUT THE SAGES DO NOT AGREE WITH HIM.[14]

GEMARA. 'KONAM, IF I ENTER THIS HOUSE, BECAUSE IT CONTAINS A WILD DOG, etc.' But if it died, it really is a new fact?[15] — Said R. Huna: It is as though he conditioned his vow by this fact. R. Johanan said: He was told, 'He has already died,' or, 'already repented.'[16]

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(1) If A vowed not to benefit from B, A cannot have his vow absolved except in the presence of B. In the Jerusalem Talmud two reasons are given for this: (i) if his neighbour does not know of his absolution, he may suspect him of breaking his vow, (ii) he who vowed not to benefit from his neighbour — presumably for his neighbour's benefit — he should be put to shame for his niggardly spirit and he made to seek absolution in his presence. Therefore it is insisted upon.

(2) Ex. IV, 19.

(3) Ibid. II, 21.

(4) The root of wa-yo'el

(5) Ezek. XVII, 13.

(6) II Chron. XXXVI. 13.

(7) Other: a raw rabbit.

(8) The Jewish court.

(9) Sc. of the person to whom the oath was sworn.

(10) Lam. II, 10.

(11) A sign of their unworthiness and deposition.

(12) I.e., though occurring after the vow, they might have been anticipated.

(13) Var. lec.: and the Sages agree with him.

(14) Var. lec.: and the Sages agree with him.

(15) Not only in appearance.

(16) I.e., before the vow, and the vow was thus made in error. Therefore R. Meir teaches that in the former it is not treated as a novel occurrence and absolution may be granted on that score. The Sages disagree, holding that it may not be granted, as a precautionary measure.

Talmud - Mas. Nedarim 65b

R. Abba objected: [If one Vows,] 'Konam that I do not marry that ugly woman, whereas she is beautiful; 'that black[skinned] woman,' whereas she is fair; 'that short woman,' who in fact is tall, he is permitted to marry her. Not because she was ugly and became beautiful [after the vow], black

and turned fair, short and grew tall, but because the vow was made in error. Now, as for R. Huna, who explained it, It is as though he conditioned his vow by this fact, it is well: he [the Tanna] teaches the case of one who makes his vow dependent upon a fact, and the case of an erroneous vow. But according to R. Johanan, who explained [this Mishnah as meaning] that he had already died or repented,[1] why teach [two instances of erroneous vows]? This is a difficulty. MISHNAH. R. MEIR ALSO SAID: AN OPENING [FOR ABSOLUTION] MAY BE GIVEN FROM WHAT IS WRITTEN IN THE TORAH, AND WE SAY TO HIM. 'HAD YOU KNOWN THAT YOU WERE VIOLATING [THE INJUNCTIONS]. THOU SHALT NOT AVENGE, THOU SHALT NOT BEAR A GRUDGE AGAINST THE CHILDREN OF THY PEOPLE. THOU SHALT LOVE THY NEIGHBOUR AS THYSELF.[2] OR THAT THY BROTHER MAY LIE WITH THEE;[3] OR THAT HE MIGHT BECOME POOR AND YOU WOULD NOT BE ABLE TO PROVIDE FOR HIM,[4] [WOULD YOU HAVE VOWED]?' SHOULD HE REPLY, 'HAD I KNOWN THAT IT IS SO, I WOULD NOT HAVE VOWED,' HE IS ABSOLVED.

GEMARA. R. Huna son of R. Kattina said to the Rabbis:[5] But he can reply. Not all who become poor fall upon me [for support]; and as for my share of the [general] obligations, I can provide for him together with everyone else?[6] — He replied: I maintain, He who falls [upon the community] does not fall at the beginning into the hands of the charity overseer.[7]

MISHNAH. A WIFE'S KETHUBAH[8] MAY BE GIVEN AS AN OPENING [FOR ABSOLUTION]. AND THUS IT ONCE HAPPENED THAT A MAN VOWED NOT TO BENEFIT FROM HIS WIFE.[9] AND HER KETUBAH AMOUNTED TO FOUR HUNDRED DENARII.[10] HE WENT BEFORE R. AKIBA, WHO ORDERED HIM TO PAY HER THE KETHUBAH [IN FULL]. SAID HE TO HIM, 'RABBI, MY FATHER LEFT EIGHT HUNDRED DENARII, OF WHICH MY BROTHER TOOK FOUR HUNDRED AND I TOOK FOUR HUNDRED: IS IT NOT ENOUGH THAT SHE SHOULD RECEIVE TWO HUNDRED AND I TWO HUNDRED?' — R. AKIBA REPLIED: EVEN IF YOU SELL THE HAIR OF YOUR HEAD YOU MUST PAY HER HER KETHUBAH. HAD I KNOWN THAT IT Is SO,' HE ANSWERED, I WOULD NOT HAVE VOWED.' THEREUPON R. AKIBA PERMITTED HER [TO HIM].[11]

GEMARA. Is then movable property under a lien for the kethubah?[12] — Abaye said: [It refers to] real estate worth eight hundred denarii. But the hair of his head is mentioned, which is movable property! — It means thus: Even if you must sell the hair of your head for your keep.[13] This proves that the debtor's means are not assessed?[14] — Said R. Nahman son of R. Isaac: [No].

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(1) So that it was a vow in error.

(2) Lev. XIX. 18.

(3) Ibid. XXV, 36; e.g., when one forbids another to benefit from him.

(4) So the reading in Ran and Asheri.

(5) Asheri reads: Rabbah.

(6) I.e., I can still give my share through the communal charitable institutions. since it is not directly for him.

(7) Only as a last resource does one apply for communal relief. But in the first place one seeks private relief, which the man who made the vow is debarred from affording.

(8) Marriage settlement.

(9) He, being unable to live without benefiting from her, must divorce her and pay her marriage settlement.

(10) The kethubah as variable. The minima are two hundred denarii and one hundred denarii for a virgin and a widow respectively; Keth. 10b.

(11) Thus annulling the vow.

(12) This is the subject of a dispute between R. Meir and the Rabbis in Keth. 81b. — It is now assumed that the eight hundred denarii were in the form of movables.

(13) Lit., 'and eat'. Even so, you are hound to hand over your real estate in payment of the kethubah.

(14) For the purpose of exempting him of payment, in whole or in part. This is disputed in B.M. 114a.

It means that the kethubah deed is not torn up.[1]

MISHNAH. THE SABBATHS AND FESTIVALS[2] ARE GIVEN AS AN OPENING. THE EARLIER RULING WAS THAT FOR THESE DAYS THE VOW IS CANCELLED, BUT FOR OTHERS IT IS BINDING; UNTIL R. AKIBA CAME AND TAUGHT: A VOW WHICH IS PARTIALLY ANNULLED IS ENTIRELY ANNULLED. E.G., IF ONE SAID, KONAM THAT I DO NOT BENEFIT FROM ANY OF YOU, IF ONE WAS [SUBSEQUENTLY] PERMITTED [To BENEFIT HIM], THEY ARE ALL PERMITTED. [BUT IF HE SAID, 'KONAM] THAT I DO NOT BENEFIT FROM A, B, C, ETC.', IF THE FIRST WAS PERMITTED, ALL ARE PERMITTED; BUT IF THE LAST-NAMED WAS PERMITTED, HE ALONE IS PERMITTED, BUT THE REST ARE FORBIDDEN. (IF THE MIDDLE PERSON WAS PERMITTED, THOSE MENTIONED AFTER HIM ARE [ALSO] PERMITTED, BUT THOSE MENTIONED BEFORE HIM ARE FORBIDDEN.)[3] [IF ONE VOWS,] 'KORBAN BE WHAT I BENEFIT FROM THIS [MAN], KORBAN BE WHAT I BENEFIT FROM THAT [MAN],' AN OPENING [FOR ABSOLUTION] IS NEEDED FOR EACH ONE INDIVIDUALLY. [IF ONE VOWS.] 'KONAM, IF I TASTE WINE, BECAUSE IT IS INJURIOUS TO THE STOMACH: WHEREUPON HE WAS TOLD, BUT WELL-MATURED WINE IS BENEFICIAL TO THE STOMACH, HE IS ABSOLVED IN RESPECT OF WELL-MATURED WINE, AND NOT ONLY IN RESPECT OF WELL-MATURED WINE, BUT OF ALL WINE. KONAM, IF I TASTE ONIONS, BECAUSE THEY ARE INJURIOUS TO THE HEART', THEN HE WAS TOLD, 'BUT THE WILD ONION[4] IS GOOD FOR THE HEART,' — HE IS PERMITTED TO PARTAKE OF WILD ONIONS, AND NOT ONLY OF WILD ONIONS, BUT OF ALL ONIONS. SUCH A CASE HAPPENED BEFORE R. MEIR, AND HE GAVE ABSOLUTION IN RESPECT OF ALL ONIONS.

GEMARA. IF THE LAST-NAMED WAS PERMITTED, HE ALONE IS PERMITTED, BUT THE REST ARE FORBIDDEN. Which Tanna [ruled thus]? — Raba said: It is R. Simeon, who maintained, unless he declared 'i swear' to each one separately.[5]

'KONAM, IF I TASTE WINE,' etc. But let it follow [from the fact] that it is not injurious?[6] — R. Abba said: It means: Moreover, it is beneficial.[7]

'KONAM, IF I TASTE ONIONS,' etc. But let it follow [from the fact] that they are not injurious? — Said R. Abba: It means: Moreover, they are beneficial.

MISHNAH. A MAN'S OWN HONOUR, AND THE HONOUR OF HIS CHILDREN, MAY BE GIVEN AS AN OPENING. [THUS:] WE SAY TO HIM, 'HAD YOU KNOWN THAT TO-MORROW IT WILL BE SAID OF YOU, THAT IS HIS REGULAR HABIT TO DIVORCE HIS WIFE"; AND OF YOUR DAUGHTERS THEY WILL SAY, THEY ARE THE DAUGHTERS OF A DIVORCED WOMAN. WHAT FAULT DID HE FIND IN THIS WOMAN TO DIVORCE HER?"'[8] IF HE REPLIES, 'HAD I KNOWN THAT IT IS SO. I WOULD NOT HAVE VOWED,' HE IS ABSOLVED.

[IF ONE VOWS,] 'KONAM IF I MARRY THAT UGLY WOMAN, WHEREAS SHE IS BEAUTIFUL; THAT BLACK [-SKINNED] WOMAN, WHEREAS SHE IS FAIR; 'THAT SHORT WOMAN, WHO IN FACT IS TALL, HE IS PERMITTED TO MARRY HER, NOT BECAUSE SHE WAS UGLY, AND BECAME BEAUTIFUL, OR BLACK AND TURNED FAIR, SHORT AND GREW TALL, BUT BECAUSE THE VOW WAS MADE IN ERROR. AND THUS IT HAPPENED WITH ONE WHO VOWED NOT TO BENEFIT FROM HIS SISTER'S DAUGHTER, AND SHE WAS TAKEN INTO R. ISHMAEL'S HOUSE AND MADE BEAUTIFUL. MY SON,

EXCLAIMED R. ISHMAEL TO HIM, 'DID YOU VOW NOT TO BENEFIT FROM THIS ONE!' 'NO,' HE REPLIED, WHERE UPON R. ISHMAEL PERMITTED HER [TO HIM]. IN THAT HOUR R. ISHMAEL WEPT AND SAID, 'THE DAUGH TERS OF ISRAEL ARE BEAUTIFUL, BUT POVERTY DISFIGURES THEM.'[9] AND WHEN R. ISHMAEL DIED, THE DAUGHTERS OF ISRAEL RAISED A LAMENT, SAYING, YE DAUGHTERS OF ISRAEL WEEP FOR R. ISHMAEL. AND THUS IT IS SAID TOO OF SAUL, YE DAUGHTERS OF ISRAEL, WEEP OVER SAUL.[10]

GEMARA. A story [is quoted] contradicting [the ruling]![11] — The text is defective[12] and was thus taught: R. Ishmael said: Even if she was ugly and became beautiful, black and turned fair, or short and grew tall. AND THUS IT HAPPENED WITH ONE WHO COWED NOT TO BENEFIT FROM HIS SISTER'S DAUGHTER; SHE WAS TAKEN INTO R. ISHMAEL'S HOUSE AND MADE BEAUTIFUL, etc.

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(1) I.e.. though the debtor may he exempted of part payment now, the debt always remains, in case his prospects improve later. Thus R. Akiba merely meant that the debt of the kethubah would always hang over him.

(2) Here the reading is, The Festivals and the Sabbaths; but on 25b it is quoted in the order given here, and Asheri gives the same reading here too.

(3) This is quoted on 26b, but as part of a Baraitha, not a Mishnah; hence it should he omitted, and Asheri too omits it.

(4) Or, Cyprus onions.

(5) V. Shebu. 38a. If a man is dunned by a number of creditors, and he takes a false oath, saying, 'I swear that I owe nothing to you, nor to you, nor to you etc.,' he is liable only to one sacrifice, as for one false oath; unless he declares, 'I swear that I owe nothing to you', 'I swear that I owe nothing to you', 'I swear that I owe nothing to you', etc., in which case he is liable to a sacrifice for each false oath — this is R. Simeon's view. Thus here too, if he declared, 'Korban be what I benefit from A', 'Korban be what I benefit from B', etc., mentioning 'Korban' in the case of each separately, each is regarded as a separate vow. Otherwise they would all be forbidden or permitted alike by the same vow, or its absolution. (The earlier clause in which 'Korban' was not mentioned in the case of each refers to an enumeration in which each person was made dependent upon the preceding). Although the caption of this passage is. IF THE LAST-NAMED, ETC., it appears from Ran, Asheri and Tosaf. that the deduction as to authorship is based on 'KORBAN BE WHAT I BENEFIT FROM THIS (MAN).

(6) Even if not beneficial, that is sufficient to annul the vow.

(7) I. e., firstly. it is not injurious, which itself is sufficient; but what is more, it is even beneficial.

(8) I.e., there must he something wrong with her, and her daughters probably follow in her footsteps. This refers to a vow to divorce one's wife.

(9) R. Ishmael flourished during the latter portion of the first century and the early part of the second C.E. This period, falling roughly between the destruction of the Temple and the Bar Cochba revolt, and extending some time beyond the fall of Bethar is 135 C.E., must have been one of hardship and poverty for many Jews.

(10) II Sam. I, 24. — In ancient days women were professional mourners, and chanted dirges in chorus at the bier of the dead.

(11) The Mishnah, after ruling that the vow is annulled only if she was actually beautiful when it was made, then quotes a story in which R. Ishmael annulled it in respect of a woman who was subsequently made beautiful.

(12) Cf. p. 2, n. 3.

Talmud - Mas. Nedarim 66b

A Tanna taught: She had a false[1] tooth, and R. Ishmael made her a gold tooth at his own cost. 'When R. Ishmael died, a professional mourner commenced [the funeral eulogy] thus: Ye daughters of Israel, weep over R. Ishmael, who clothed you etc.[2]

A man once said to his wife, 'Konam that you benefit not from me, until you make R. Judah and R. Simeon taste of your cooking.' R. Judah tasted thereof, observing, 'It is but logical:[3] If, in order to make peace between husband and wife, the Torah commanded, Let My Name, written to sanctity, be

dissolved in "the utters that curse" ,[4] though ‘tis but doubtful,[5] how much more so I!’ R. Simeon did not taste thereof, exclaiming, ‘Let all the widows’ children perish,[6] rather than that Simeon be moved from his standpoint, lest they fall into the habit of vowing.’

A man once said to his wife, ‘Konam that you benefit not from me until you expectorate on R. Simeon b. Gamaliel.’ She went and spat upon his garment, and he [R. Simeon b. Gamaliel] absolved her.[7] R. Aha of Difti[8] said to Rabina: But his aim was to insult him! — He replied: To expectorate upon the garments of R. Simeon b. Gamaliel is a great insult.

A man once said to his wife, ‘Konam that you benefit not from me, until you shew aught beautiful[9] in yourself to R. Ishmael son of R. Jose.’ Said he to them:[10] ‘Perhaps her head is beautiful?’ — ‘It is round,’ they replied.[11] ‘Perhaps her hair is beautiful?’ — ‘It is like stalks of flax .’ ‘Perhaps her eyes are beautiful?’ — ‘They are bleared.’ ‘Perhaps her nose is beautiful?’ — ‘It is swollen.’ ‘Perhaps her lips are beautiful?’ — ‘They are thick.’ ‘Perhaps her neck is beautiful?’ — It is squat .’’Perhaps her abdomen is beautiful?’ — ‘It protrudes.’ ‘Perhaps her feet are beautiful?’ — ‘They are as broad as those of a duck.’ ‘Perhaps her name is beautiful?’ — ‘It is liklukith.’[12] Said he to them, ‘She is fittingly called liklukith, since she is repulsive through her defects’; and so he permitted her [to her husband].

A certain Babylonian went up to the Land of Israel and took a wife [there]. ‘Boil me two [cows’] feet,’ he ordered, and she boiled him two lentils,[13] which infuriated him with her. The next day he said, ‘Boil me a griwa’,.[14] so he boiled him a griwa. ‘Go and bring me two bezuni;’[15] so she went and brought him two candles.[15] ‘Go and break them on the head of the baba.’[16] Now Baba b. Buta was sitting on the threshold, engaged in judging in a lawsuit. So she went and broke them on his head. Said lie to her[17] , ‘What is the meaning of this that thou hast done?’ — She replied, ‘Thus my husband did order me.’ ‘Thou hast performed thy husband's will,’ he rejoined; ‘may the Almighty bring forth from thee two sons like Baba b. Buta.

C H A P T E R X

MISHNAH. IN THE CASE OF A BETROTHED MAIDEN,[18] HER FATHER AND HER BETROTHED HUSBAND ANNUL HER VOWS.[19]

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(1) Lit., ‘An inserted tooth’.

(2) Continuing as in II Sam. I, 24, q.v.

(3) Lit., ‘(it follows) a fortiori’ (that I should do so.

(4) V. Num. V, 23.

(5) Whether the wife was guilty of adultery.

(6) I.e., let the husband die, so that she becomes a widow, and all her children — of course, hardly to he taken literally.

(7) So emended by Bah.

(8) Identified with Bibtha in the vicinity of Wasit on the lower reaches of the Tigris; Obermeyer, op. cit., p. 197.

(9) So Bah. [Cur. ed. ‘a becoming defect’.]

(10) Either to the husband and wife, or to those who reported the matter to him.

(11) Perhaps it was Esquimaux-shaped, which both in the East and in the West would hardly he considered beautiful.

(12) Which means repulsive.

(13) Misunderstanding his Babylonian pronunciation, and mistaking telafe (feet) for telaf he (lentils) Rashi. Another version: Boil me two (meaning ‘some’) lentils, and she boiled him (just) two lentils, taking him literally.

(14) A large measure (of lentils). Thinking that she had intentionally boiled only two the previous day through laziness or meanness, he asked for an extraordinary large quantity, believing that she would scale it down.

(15) Denoting either ‘melons’ or ‘candles’.

(16) Threshold; i.e., break them on the top of the threshold.

(17) no note.

(18) There were two stages of marriage. (i) erusin, betrothal, and (ii) nissu'in, hometaking. The betrothed maiden was called arusah, and her husband arus. Erusin was as binding as marriage, and could be annulled only by divorce, but cohabitation was forbidden, and the arusah remained in her father's house until the nissu'in. By maiden — na'arah — a girl between twelve years and one day and twelve and a half years plus one day old is meant, after which she becomes a bogereth. The reference to a maiden here is to exclude a bogereth, not a minor.
(19) V. Num. XXX, 3ff. But not separately, because she is partly under the authority of both. A bogereth is not under her father's authority, and is therefore excluded.

Talmud - Mas. Nedarim 67a

IF HER FATHER ANNULLED [HER VOW] BUT NOT THE HUSBAND, OR IF THE HUSBAND ANNULLED [IT] BUT NOT THE FATHER, IT IS NOT ANNULLED; AND IT GOES WITHOUT SAYING IF ONE OF THEM CONFIRMED [IT].

GEMARA. But that[1] is the same as the first clause. HER FATHER AND HUSBAND ANNUL HER VOWS! — I might think that either her father or her husband is meant;[2] therefore we are taught [otherwise].

AND IT GOES WITHOUT SAYING IF ONE OF THEM CONFIRMED [IT]. Then why teach it? If we say that annulment by one without the other is invalid, what need is there to state 'IF ONE OF THEM CONFIRMED [IT]?' — It is necessary, in the case where one of them annulled it and the other confirmed it, and then the latter sought absolution of his confirmation.[3] I might think, that which he confirmed, he has surely overthrown;[4] there fore we are taught that they must both annul simultaneously.[5]

IN THE CASE OF A BETROTHED MAIDEN, HER FATHER AND HER HUSBAND ANNUL HER VOWS. Whence do we know this?[6] — Rabbah[7] said: The Writ saith, And if she be to an husband, when she vowed [. . . then he shall make her vow . . . of no effect]:[8] hence it follows that a betrothed maiden, her father and her husband annul her vows.[9] But perhaps this verse refers to a nesu'ah? — In respect to a nesu'ah there is a different verse, viz., And if she vowed in her husband's house, etc.[10] But perhaps both refer to a nesu'ah,[11] and should you object, what need of two verses relating to a nesu'ah? It is to teach that a husband cannot annul pre-marriage vows?

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(1) Viz., IF HER FATHER ANNULLED, etc.
(2) The 'and', Heb. ו, having the disjunctive force of 'or'.
(3) By a Rabbi, who granted it to him just as he would for a vows.
(4) Either that the very revoking of his confirmation is in itself the equivalent of nullification, or, having revoked his confirmation, he is now free to nullify the vow.
(5) Not literally, for even if one annulled in the morning, and the other in the evening, it is valid. But there must be no invalidating act between the two nullifications, and here, since one confirmed it, the nullification of the other previous thereto is void.
(6) That her husband may annul her vows, though she has not yet entered his home.
(7) Yalkut reads: Raba.
(8) Num. XXX, 7-9.
(9) This verse is preceded by, But, if her father disallow her in the day that he heareth; not any of her vow . . . shall stand . . . because her father disallowed her. Then follows: And if she be etc. Now, Rabbah reasons thus: Since we have a different verse for a nesu'ah (a married woman, v. Glos.), as explained below, this verse must refer to an arusah, and consequently, the copulative 'and' must mark a continuation of the preceding verse; i.e., if in her father's house, the father has power to annul her vow, and if at the same time she is married, viz., an arusah, her husband too, in conjunction with her father, exercises this authority. For if the 'and' introduces a separate law, namely, that the husband of arusah can disallow her vows without her father, the verse referring to a nesu'ah is superfluous: if the husband can himself annul the vows of an arusah, surely it goes without saying that he can do so for a nesu'ah! Now this reasoning is implicit in the

first verse quoted, but the Talmud proceeds to elucidate it by means of question and answer.

(10) Ibid. II.

(11) But in the case of an arusah the father alone can annul her vows.

Talmud - Mas. Nedarim 67b

— But does that not follow in any case?[1] Alternatively, I might say 'to be' implies kiddushin.[2] But perhaps the father himself can annul?[3] — If so, what is the need of, 'and bind himself by a bond, being in the father's house . . . if her father disallow . . . not any of her vows shall stand . . . because her father disallowed her'?[4] If the father can annul them alone even when there is an arus, surely he can do so when there is no arus! But perhaps the father needs the arus, but the arus can annul alone? And should you reply, If so, why does Scripture mention the father?[5] It is to shew that if he confirmed, the confirmation is valid![6] — If so, why write, 'and if she vowed in her husband's house': [since] it follows a fortiori: if the arus can annul alone even where there is a father,[7] is it necessary [to state it] when she is no longer under her father's control! But perhaps, 'and if she vowed in her husband's house', teaches that he cannot annul pre-marriage vows?[8] — From that fact itself [it is proved. That] an arus can annul pre-marriage vows: surely, that is [only] because of his partnership with the father.[9]

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(1) Rashi, Ran, and one alternative in Asheri explain: 'And if she vowed in her husband's house', which obviously refers to a nesu'ah, teaches at the same time that the vow must have been made in her husband's house, and not before marriage. So that 'and if she be, etc.', must refer to an arusah.

(2) The phrase 'if she be' denotes mere betrothal; it therefore refers to an arusah.

(3) Though it has been shewn that the husband can annul only in conjunction with the father, the latter, on the other hand, can perhaps act alone.

(4) Num. XXX, 4-6.

(5) I.e., why is and if she be at all to an husband coupled with because her father disallowed her; as explained p. 217, n. 5, that the and combines the two. But why combine them, if the arus can annul entirely without the father?

(6) I.e., the father still retains that authority. But if he is neutral, the arus alone can annul.

(7) I.e., when she is still under the paternal roof and to some extent under his authority; e.g., her earnings belong to her father.

(8) The question here is not the same as on 67a. There it was suggested that both 'and if she be to an husband' and, 'and if she vowed in her husband's house' refer to a nesu'ah, the latter verse teaching that the husband cannot annul pre-marriage vows. Here the question is: perhaps the first verse refers to an arus, and means that he can annul alone, and the second to a husband (after nissu'in)? But it does not teach that in the second case too he can annul, since this is obvious from the first a fortiori, but implies a limitation: that he cannot annul pre-marriage vows.

(9) It is obvious that an arus alone cannot wield greater authority than a husband. Hence, when we find that in one respect his power is greater, it must be because he does not exercise it alone, but in conjunction with the father, who can disallow his daughter's vows whenever made under his authority.

Talmud - Mas. Nedarim 68a

The School of R. Ishmael taught: [These are the statutes which the Lord commanded Moses] between a man and his wife, between the father and his daughter, [being yet in her youth in her father's house]:[1] this teaches that in the case of a betrothed maiden both her father and her husband annul her vows.[2] Now, according to the Tanna of the School of Ishmael, what is the purpose of 'and if she be to an husband'?[3] — He utilizes it for Rabbah's other dictum.[4] Now, how does Raba utilize the verse adduced by the Tanna of the School of Ishmael?[5] — It is necessary to teach that the husband can annul vows which concern himself and his wife.[6]

The scholars propounded: Does the husband cut [the vow] or weaken [it]?[7] How does this problem arise? E.g., If she [the betrothed maiden] vowed not to eat the size of two olives [of anything],[8] and

the arus heard of it and annulled the vow, and she ate them. Now, if we say that he cuts the vow apart, she is flagellated; but if he weakens it, it is merely forbidden.[9] What [is the law]? — Come and hear: When was it said that if the husband died, his authority passes over[10] to the father? In the case where the husband did not hear [the vow] before he died, or heard and annulled it, or heard it and was silent,[11] and died on the same day: this is what we learnt: If the husband died, his authority passes over to the father;[12]

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(1) Num. XXX, 17.

(2) The verse is interpreted as referring to one and the same woman; hence it states that her father and her husband have authority over her, and that is possible only in the case of a betrothed maiden.

(3) Which was utilized on 67a for this teaching.

(4) V. 70a.

(5) Since he deduces this from 'and if she be etc'.

(6) Deduced from 'between a man and his wife', i.e., only such vows as concern them and their mutual relationship.

(7) Does he completely nullify half the vow, leaving the other half for the father, or does he weaken the whole vow, whilst actually nullifying nothing of it? [The same question applies equally to the father (Ran).]

(8) Nothing whatsoever may be eaten of that which is forbidden, but the size of an olive is the smallest quantity for which punishment is imposed.

(9) If he cuts the vow in two, then the size of one olive remains forbidden in its full stringency, and therefore she is flagellated for the violation of her vow. But if he weakens the whole of the vow, though leaving it all forbidden, the prohibition is not so stringent that punishment should be imposed.

(10) Lit., 'emptied out'.

(11) So emended by Bah.

(12) In all these cases the husband had no actually confirmed the vow; therefore the father is left with the full authority to annul it.

Talmud - Mas. Nedarim 68b

but if he heard and confirmed it, or heard it and was silent, and died on the following day,[1] he [the father] cannot annul it.[2] If the father heard and annulled it, and died before the husband managed to hear of it, — this is what we learnt: If the father died, his authority does not pass over to the husband.[3] If the husband heard and annulled it, and died before the father managed to hear of it, — in this case we learnt: If the husband died, his authority passes over to the father.[4] If the husband heard and annulled it, and the father died before he managed to hear of it, the husband cannot annul it,[5] because the husband can annul only in partnership.

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(1) Having thus ipso facto confirmed it.

(2) Once the husband has confirmed, the father cannot annul it, even after the former's death.

(3) Infra 70a. With his death his annulment is void, and the husband is not empowered to nullify the vow himself, though in the reverse case the father could do so.

(4) The first clause of the Mishnah means that the father heard it before the husband's death; this clause, that the husband died before the father heard it. Now I might think that only if he had heard it in the husband's lifetime, and so could have annulled it together with him, does he inherit his authority, but if he had not heard of it in her husband's lifetime, his authority is not transmitted. Therefore this clause teaches otherwise,

(5) I.e., act in lieu of her father.

Talmud - Mas. Nedarim 69a

If the father heard and annulled it, and the husband died before he managed to hear of it, the father can again annul the husband's portion. R. Nathan said; That is the view of Beth Shammai; but Beth Hillel maintain: He cannot annul it [a second time]. This proves that according to Beth Shammai, he cuts it apart, whilst in the view of Beth Hillel he weakens it.[1] This proves it.[2]

Raba propounded: Can absolution be sought from confirmation,[3] or not? Should you say, no absolution can be sought front confirmation, is there absolution from annulment, or not?[4] — Come and hear: For R. Johanan said: One can seek absolution from confirmation but not from annulment.

Rabbah propounded: What if [he said], 'It is confirmed to thee, it is confirmed to thee,' and then sought absolution of his first confirmation? — Come and hear: For Raba said: If he obtained absolution from the first, the second becomes binding upon him.[5]

Rabbah propounded: What if [he declares]. 'It be confirmed unto thee and annulled unto thee, but the confirmation be not valid unless the annulment had operated?'[6]

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(1) Hence, according to Beth Shammai, when the father annulled it, the husband's portion remains, as it were, intact in all its stringency. The husband's right to annul the other half is sufficiently tangible, since that half is as stringent in itself as the whole, to be transmitted to the father. But in the views of Beth Hillel annulment by the father, as by the husband, merely weakens it; hence the husband's right to wipe off entirely a prohibition that is already weakened is too intangible to be transmitted to the father. — But in the first clause, where without the father having annulled his share, the husband annuls it and then dies, since the father can annul his own share he can annul too the weakened share of the husband (Asheri).

(2) And since in all disputes between Beth Shammai and Beth Hillel the halachah is in the latter, the final ruling is that the husband weakens the incidence of the whole vow.

(3) By a Sage, after expressing 'regret'.

(4) The confirmation of a vow is as a vow; hence the question whether it can be revoked. The revocation of the annulment of a vow should not be in question, since it might be assumed that one cannot revoke in order to impose a prohibition, but that elsewhere (76b) we find the two likened to each other.

(5) V. supra 18a: just as there, so here too, and hence the second confirmation retains its full force.

(6) Without the stipulation it is obvious that the annulment is invalid, for a vow once confirmed cannot be annulled. Since, however, one is made dependent upon the other, the question arises whether the annulment cancels the confirmation or not.

Talmud - Mas. Nedarim 69b

— Come and hear [a solution] from the controversy of R. Meir and R. Jose; For we learnt: [If one declares,] 'This [animal] be a substitute for a burnt-offering, a substitute for a peace-offering,' it is a substitute for a burnt-offering [only]; this is R. Meir's view. But R. Jose ruled: If that was his original intention,[1] since it is impossible to pronounce both designations simultaneously, his declarations are valid.[2] Now, even R. Meir asserted [that the second statement is disregarded] only because he did not say, 'Let the first not be valid unless the second take effect'; but here that he declared, 'but the confirmation be not valid unless the annulment has operated,' even R. Meir admits that the annulment is valid.

Rabbah propounded: What [if he declares], 'It be confirmed unto thee and annulled to thee simultaneously?'[3] — Come and hear: For Rabbah said: Whatever is not [valid] consecutively, is not valid even simultaneously.[4]

Rabbah propounded: What [if he declares], 'It be confirmed to thee to-day? Do we rule, it is as though he had said to her, 'but it be annulled unto thee to-morrow' [by implication], or perhaps he in fact did not declare thus?

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(1) To declare it a substitute for both.

(2) V. Lev. XXVII, 33; He shall not search whether it be good or bad, neither shall he change it: and if he change it at all, then both it and the change thereof shall be holy. This is interpreted as meaning that if an animal he dedicated for a

particular sacrifice, e.g., a peace-offering, and then a second substituted for it, both are holy, the second having exactly the same holiness as the first. Now, R. Meir rules that if he declares it a substitute for two other consecrated animals in succession, only the first declaration is valid, and the second disregarded. But R. Jose maintains that if the second statement was not added as an afterthought, but formed part of the original intention, the whole is valid. Consequently, the animal must be sold, and the money expended half for a burnt-offering and half for a peace-offering.

(3) [Or, if he said at one and the same time 'It be confirmed and annulled to thee'].

(4) If one marries two sisters in succession, the second marriage is obviously invalid; hence, if one makes a simultaneous declaration of marriage to two sisters, such declaration is entirely null, v. Kid. 50b. Thus here too, since they could not both take effect if pronounced in succession, they are null when pronounced simultaneously. It is therefore as though he has not spoken at all, and he remains at liberty to confirm or annul the vow, as he pleases.

Talmud - Mas. Nedarim 70a

Now, if you say, he did not in fact declare thus, what if he declares, 'It be confirmed unto thee to-morrow';[1] do we rule, he is unable to annul it for to-morrow, since [by implication] he confirmed it for today;[2] or perhaps, since he did not state, 'It be confirmed unto thee to-day,' by declaring, 'It be annulled unto thee to-morrow,' he really meant from to-day? Now, should you say that even so, since he [implicitly] confirmed it to-day,[3] it is as though in force to-morrow too,[4] what if he declares, 'It be confirmed unto thee for an hour?' Do we say, It is as though he declared, 'It be annulled unto thee thereafter'; or perhaps, he in fact did not say thus to her? Should you rule, he did not in fact declare thus, what if he did explicitly annul it?[5] Do we say, Since he confirmed it, he confirmed it [for good]; or perhaps, as he is empowered to confirm and annul it the whole day, if he says, 'It be annulled unto thee after an hour,' his statement is efficacious? — Come and hear: [If a woman vows], 'Behold, I will be a nazirite'; and her husband on hearing it, exclaimed 'And l'; he cannot [subsequently] annul it.[6] But why so? Let us say that his exclamation, 'And I,' referred to himself only [viz.,] that he would be a nazirite, but as for her vow, 'Behold, I will be a nazirite,' he confirmed it [but] for one hour;[7] whilst thereafter, if he wishes to annul it, why cannot he do so? Surely it is because having confirmed it, he confirmed it [for good]! — No. He [the Tanna of that Mishnah] holds that every 'And I' is as though one declares, 'It be permanently confirmed unto thee.'

MISHNAH. IF THE FATHER DIES, HIS AUTHORITY DOES NOT PASS OVER TO THE HUSBAND; BUT IF THE HUSBAND DIES, HIS AUTHORITY PASSES OVER TO THE FATHER. IN THIS RESPECT, THE FATHER'S POWER IS GREATER THAN THE HUSBAND'S. BUT IN ANOTHER, THE HUSBAND'S POWER IS GREATER THAN THAT OF THE FATHER, FOR THE HUSBAND CAN ANNUL [HER VOWS] AS BOGERETH[8] BUT THE FATHER CANNOT ANNUL HER VOWS AS BOGERETH.[9]

GEMARA. What is the reason?'[10] — Because the Writ saith, In her youth, she is in her father's house.[11]

IF THE HUSBAND DIES, HIS AUTHORITY PASSES OVER TO HER FATHER. Whence do we know this?[12] — Said Rabbah:[13] Because it is written, And if she be at all to an husband and her vows be upon her:[14] [

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(1) Without first asserting, 'It be disallowed thee to-day'.

(2) A vow can be annulled only on the day the husband or father hears of it. — Num. XXX, 6-9, 13.

(3) Accepting the first alternative.

(4) Having confirmed it for the first day, he no longer has the power to annul it; hence his nullification from the morrow is invalid.

(5) I.e., it be confirmed to thee for an hour and thereafter annulled.

(6) Mishnah, Nazir 20b.

(7) Since he merely attached his vow to that of his wife, he must have meant momentarily to confirm the vow.

(8) V. Glos.

(9) The father can annul his daughter's vow only if a na'arah (v. Glos.)

(10) That the father's authority is not transmitted to the husband, as it is in the reverse case.

(11) Num. XXX, 17: i.e., as long as she is in her youth, she is under parental control. Hence if her father dies, his authority is not transferable.

(12) The first question was 'what is the reason thereof', because, granted that the husband's authority is transmitted, as stated in the second clause, why is the father's not? But now the Talmud asks, how do we know that the husband's authority is transmitted?

(13) This is alluded to in 68a, where the reading is Raba.

(14) Ibid. 7. The word for 'being' is repeated, from which it is deduced that two betrothals are referred to. This is preceded by a verse dealing with the father's powers of annulment, and as stated above (p. 217, n. 5), the 'And' commencing v. 7 combines the two verses, teaching that even in the case of marriage the father may still retain his authority.

Talmud - Mas. Nedarim 70b

hence the [vows made by her] previously to her second betrothal are assimilated to [those made] previously to her first betrothal;[1] just as those made before the first betrothal, the father can annul alone, so also those made before the second betrothal, the father can annul alone. But perhaps this is only in the case of vows which were unknown to the arus,[2] but those which were known to the arus the father is not able to annul?[3] — As to vows unknown to the arus, these[4] follow from 'in her youth, she is in her father's house'.[5]

IN THIS RESPECT, THE FATHER'S POWER IS GREATER THAN THE HUSBAND'S etc. How is this meant?[6] Shall we say, that he betrothed her[7] whilst a na'arah, and then she became a bogereth? But consider: [her father's] death frees her from her father's authority, and the bogereth stage frees her from her father's authority; then just as at death, his authority does not pass over to her husband, so on puberty, his authority should not pass over to her husband?[8] Again, if he betrothed her as a bogereth, surely that has already been taught once, viz., A bogereth who tarried twelve months?[9] (Now this is self-contradictory. You say, 'a bogereth who tarried twelve months': in the case of a bogereth, why twelve months? thirty days are sufficient?[10] — Read: A bogereth and one [viz., a na'arah] who tarried twelve months.) But still the difficulty remains?[11] — I can answer either that here it is specifically taught, whilst there bogereth is mentioned because it is desired to state the controversy between R. Eliezer and the Rabbis. Or, alternatively, bogereth [there] is specifically taught; but [here], because the first clause states 'IN THIS RESPECT etc.,' a second [contrary] clause IN THIS RESPECT, is added.[12]

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(1) I.e., since the verse implies a reference to two betrothals, they are equalized, and therefore the periods preceding them too. The period preceding the second betrothal is of course after the first husband's death.

(2) Lit., 'which were not seen by the arus'. I.e., the first arus died before becoming aware of them.

(3) Just as the vows made prior to her first betrothal.

(4) Sc. that the father can annul these alone after the death of the arus.

(5) Which implies that as long as there is no other authority over her, her father is in authority, and the very least to which this can be applied is to vows of which the arus was not aware, hence the deduction from, 'and if she be at all to an husband' must apply even to vows known to the arus before his death

(6) That the husband (arus) can annul the vows of a bogereth.

(7) I.e. by kiddushin, making her an arusah.

(8) Since she was under parental control when she made the vow.

(9) V. infra 73b; there it is seen that the arus can annul the vows of a bogereth.

(10) V. p. 216, n. 1; in the case of a na'arah the interval between kiddushin (erusin) and nissu'in might not be more than twelve months; in the case of a bogereth, not more than thirty days. After that, even if the nissu'in were not celebrated,

the arus is responsible for her maintenance, though she is still in her father's house.

(11) Viz., that we know from elsewhere that the arus can annul the vows of a bogereth.

(12) Though really unnecessary here.

Talmud - Mas. Nedarim 71a

MISHNAH. IF ONE VOWED AS AN ARUSAH, WAS DIVORCED ON THAT DAY AND BETROTHED [AGAIN] ON THE SAME DAY, EVEN A HUNDRED TIMES,[1] HER FATHER AND LAST BETROTHED HUSBAND CAN ANNUL HER VOWS. THIS IS THE GENERAL RULE: AS LONG AS SHE HAS NOT PASSED OUT INTO HER OWN CONTROL FOR [BUT] ONE HOUR, HER FATHER AND LAST HUSBAND CAN ANNUL HER VOWS.[2]

GEMARA. Whence do we know that the last arus can annul vows known[3] to the first arus? — Said Samuel: Because it is written, And if she be at all to an husband, and her vows are upon her:[4] this implies, the vows that were already 'upon her'.[5] But perhaps that is only where they [sc. her vows] were not known to her first arus, but those which were known to her first arus, the last arus cannot annul? — 'Upon her' is a superfluous word.[6] It was taught in accordance with Samuel: A betrothed maiden, her father and her husband annul her vows. How so? If her father heard and disallowed her, and the husband died before he managed to hear, and she became betrothed [again] on the same day, even a hundred times, her father and her last husband can annul her vows. If her husband heard and disallowed her, and before the father heard it the husband died, the father must again annul the husband's portion.[7] R. Nathan said; That is the view of Beth Shammai; but Beth Hillel maintain: He cannot re-annul.[8] Wherein do they differ?

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(1) To a hundred.

(2) I.e., that she has never been completely married (with nissu'in) and divorced, in which case she would be her own mistress.

(3) Lit., 'seen by'.

(4) Num. XXX, 7.

(5) I.e., before she was betrothed.

(6) Because Scripture could state, now if she be at all to an husband, then as for her vows, or the utterance of her lips etc. Hence 'upon her' is added to intimate that the last arus can annul vows made during the first betrothal. Now actually the Mishnah may simply mean that if she was betrothed a number of times, the power of annulment always lies with her father and her last husband, and does not necessarily refer to vows made during an earlier betrothal; whilst the phrase 'on that day' may be due to her father, who of course can annul only on the day he heard her vow. But Samuel assumed that it does in fact refer to such vows, and therefore the passage may be understood as though it read, Samuel said; Whence do we know, etc.? Hence this law is ascribed to Samiel rather than to the Mishnah, and consequently the Talmud proceeds to quote a Baraitha in support of Samuel's ruling.

(7) It goes without saying that he must annul his own portion. But the Baraitha teaches that he must also annul the husband's portion, because the latter's action is rendered void by his death.

(8) Without the co-operation of the second arus. Thus, according to Beth Hillel the second arus has a right of annulment over the vows known to the first arus, which is in support of Samuel.

Talmud - Mas. Nedarim 71b

— Beth Shammai maintain that even in respect to vows known to the arus, his [the husband's] authority passes over to the father; also he [the husband] cuts [the vow] apart;[1] whilst Beth Hillel maintain: Her father and second husband [together] must annul her vow, and the husband does not cut it apart.[2]

The scholars propounded; Is divorce as silence or as confirmation?[3] What is the practical difference? E.g., if she vowed, her husband heard it, divorced and remarried her on the same day:

now, if you say it is as silence, he can now disallow her; but should you rule that it is as confirmation, he can not?

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(1) V. p. 220, n. 4; because he cuts the vow apart, therefore his powers therein are finished when he has annulled it, and consequently, even if she remarries, the father can annul the vow entirely alone, without the co-operation of the second arus.

(2) Therefore the husband only weakens it; hence he is not finished with it, and so, on remarriage, his authority is transmitted to the second husband (Ran). Asheri, however, explains that the question whether the father needs the co-operation of the second husband is independent of whether the husband cuts the vow apart or weakens the stringency of the whole; it is mentioned here merely because, as was stated on 69a, they do differ on this question too.

(3) If a woman made a vow, and her husband heard it and divorced her on that day, without first annulling the vow.

Talmud - Mas. Nedarim 72a

— Come and hear; When was it said that if the husband dies his authority passes over to the father? If the husband did not hear [the vow], or heard and annulled it, or heard it, was silent, and died on the same day.[1] Now, should you say that divorce is as silence, let him [the Tanna] also teach, 'or heard it and divorced her'? Since it is not taught thus, it follows that divorce is as confirmation! — Then consider the second clause: But if he heard and confirmed it, or heard it, was silent, and died on the following day, he [the father] cannot annul it.[2] But if you maintain that divorce [too] is as confirmation, let him also state, 'or if he heard it and divorced her.' But since this is omitted, it proves that divorce is tantamount to silence! Hence no deductions can be made from this; if the first clause is exact, the second clause is stated [in that form] on account of the first; if the second is exact, the first is so taught on account of the second.[3]

Come and hear; IF SHE VOWED AS AN ARUSAH, WAS DIVORCED ON THAT DAY AND BETROTHED [AGAIN] ON THE SAME DAY, EVEN A HUNDRED TIMES, HER FATHER AND HER LAST HUSBAND CAN ANNUL HER VOWS; this proves that divorce is the equivalent of silence, for if it is as confirmation, can the second arus annul vows which the first arus confirmed?[4] — No. This refers to a case where the first arus did not hear thereof. If so, why particularly state ON THE SAME DAY? The same holds good even after a hundred days! — This refers to a case where the arus did not hear thereof, but her father did; so that he can annul only on the same day, but not afterwards.

Come and hear: If she vowed on one day, and he divorced her on the same day and took her back on the same day, he cannot annul it.[5] This proves that divorce is as confirmation! — I will tell you. This refers to a nesu'ah,[6] and the reason that he cannot annul is because a husband cannot annul pre-marriage vows.[7]

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(1) V. 68a, b, and notes.

(2) The silence of a whole day is the equivalent of confirmation.

(3) I.e., one clause must have been taught with exactitude, and the omission of divorce is intentional; but the other has been stated inexactly, for though divorce could have been included therein, it was omitted for the sake of parallelism.

(4) Surely not!

(5) Now it is assumed that it refers to mere betrothal.

(6) I.e., when she finally becomes married to him.

(7) I.e., in the case of a nesu'ah; v. supra 67a.

Talmud - Mas. Nedarim 72b

MISHNAH. IT IS THE PRACTICE OF SCHOLARS,[1] BEFORE THE DAUGHTER OF ONE OF THEM DEPARTS FROM HIM FOR NISSU'IN], TO DECLARE TO HER, 'ALL THE VOWS

WHICH THOU DIDST VOW IN MY HOUSE ARE ANNULLED'. LIKEWISE THE HUSBAND, BEFORE SHE ENTERS INTO HIS CONTROL [FOR NISSU'IN] WOULD SAY TO HER, 'ALL VOWS WHICH THOU DIDST VOW BEFORE THOU ENTERST INTO MY CONTROL ARE ANNULLED'; BECAUSE ONCE SHE ENTERS INTO HIS CONTROL HE CANNOT ANNUL THEM.[2]

GEMARA. Rami b. Hama propounded: Can a husband annul [a vow] without hearing [it]:[3] is, and her husband heard it,[4] expressly stated,[5] or not — Said Raba: Come and hear: IT IS THE PRACTICE OF SCHOLARS, BEFORE THE DAUGHTER OF ONE OF THEM DEPARTS FROM HIM, TO DECLARE TO HER, 'ALL THE VOWS WHICH THOU DIDST VOW IN MY HOUSE ARE ANNULLED'. But he did not hear them![6] — Only when he hears them does he annul them. If so, why make a declaration before he hears?[7] — He [the Tanna] informs us this: that it is the practice of scholars to go over such matters.[8] Come and hear, from the second clause: LIKEWISE THE HUSBAND, BEFORE SHE ENTERS INTO HIS CONTROL, WOULD SAY TO HER [etc.]! — Here too it means that he said, 'When I hear them.'[9]

Come and hear: If one says to his wife, 'All vows which thou mayest vow until I return from such and such a place are confirmed,' his statement is valueless;[10] [If he said] 'Behold, they are annulled,' R. Eliezer ruled: They are annulled. But he has not heard them![11] — Here too [it means] that he said, 'When I hear them.' Why then state it now? Let him disallow her when he hears it? — He fears, I may then be busily occupied.[12]

Come and hear: If one says to a guardian,[13] 'Annul all the vows which my wife may make between now and my return from such and such a place', and he does so: I might think that they are void, therefore Scripture teaches, her husband may establish it, or her husband may make it void.[14] This is the view of R. Josiah. Said R. Jonathan to him: But we find in the whole Torah that a man's agent is as himself![15] Now, even R. Josiah ruled thus only because it is a Scriptural decree, 'her husband may establish it, or her husband may make it void': but both agree that a man's agent is as himself;[16] but he [the husband] did not hear the vows![17]

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(1) Lit., 'disciples of the Sages'.

(2) Because they are pre-nissu'in vows.

(3) I.e., can he declare that if his wife has vowed, he vetoes her vows?

(4) Num. XXX, 8.

(5) That he can annul only if he heard it.

(6) The fact that he generalises, 'ALL THE VOWS' proves this.

(7) Since his present annulment is, on this hypothesis, invalid.

(8) I.e., to mention this at frequent intervals; the daughter, on hearing this, may confess that she has vowed so and so, and then the father really annuls it.

(9) According to the reading of our text, this answer differs from the previous. There it was stated that the father can annul the vows only when he hears them, his purpose in generalizing being to induce his daughter to reveal that she had vowed. Here, however, the answer is that this general annulment will automatically become valid when the husband hears the vow, and another declaration is unnecessary. The reason for the difference is this: since she became a nesu'ah, and entirely freed from parental control, the father will not be in a position to annul her vows when he hears them; hence he cannot annul them in anticipation either. The husband, on the contrary, will have her even more under his authority when she actually vows; therefore his anticipatory veto is valid.

(10) So that he can subsequently annul them.

(11) Proving that this is unnecessary.

(12) And overlook it; hence the annulment is made now.

(13) I.e., one appointed to be in charge of his household in his absence.

(14) Num. XXX, 14.

(15) Hence the guardian's annulment is valid.

(16) So that but for the decree, the annulment would be valid.
(17) And if it were necessary for him to hear them before making them void, his authorisation to the guardian would be invalid, since a man cannot invest an agent with authority which he himself lacks.

Talmud - Mas. Nedarim 73a

— Here too it means that he said, 'When I hear of it, annul it.' But when he hears it, let him annul it himself? — He fears, I may then be busily occupied.

Rami b. Hama propounded: Can a deaf man disallow [the vows of] his wife? Now, should you rule that a husband can annul without hearing, that is because he is capable of hearing; but a deaf man, who is incapable of hearing, falls within R. Zera's dictum, viz., That which is eligible for mixing, [the lack of] mixing does not hinder its validity; whilst that which is not eligible for mixing, [the lack of] mixing hinders its validity?[1] Or perhaps, 'and her husband heard it'[2] is not indispensable? — Said Raba, Come and hear: 'And her husband heard', — this excludes the wife of a deaf man. This proves it.

The scholars propounded: Can a husband disallow [the vows of] his two wives simultaneously: is the word 'her' particularly stated, or not?[3] — Said Rabina, Come and hear: Two suspected wives are not made to drink[4] simultaneously, because each is emboldened[5] by her companion.[6] R. Judah said: It is not [forbidden] on that score, but because it is written, and he shall make her drink.'[7] implying, her alone.[8]

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(1) The reference is to a meal-offering, in which the flour was mixed with oil. Not more than sixty 'esronim ('isaron, pl. 'esronim, is the tenth part of an ephah) could be thoroughly mixed with oil in the vessels used for that purpose. Hence, if a person vowed a meal-offering of sixty-one 'esronim, sixty were brought in one vessel, and one in another. Whereon R. Zera observed, though the meal-offering is in fact valid even if not mixed with oil at all, it must be capable of being mixed, and therefore sixty-one esronim in one utensil would be invalid. So here too, though it may be unnecessary for the husband actually to hear the vow, he must be physically able to hear it.
(2) I.e., the hearing of the husband.
(3) Num. XXX, 9, 'but if her husband disallow her'. I.e., when Scripture uses the singular 'her' in this connection, does it expressly teach that only one wife can be disallowed at a time, or is no particular emphasis to be laid thereon, the singular being the usual mode of expression?
(4) V. Num. V, 2 ff.
(5) Lit., 'her heart swells'.
(6) The consciousness that another is undergoing the same ordeal emboldens each not to confess.
(7) Ibid. 27; In Tosef. Neg. the verse quoted is, and the Priest shall bring her near, ibid. 16. [MS.M. reads: because it is written 'her', the reference either to verse 16 or 19, 'The priest shall cause her to swear'. V. Sot. (Sonc. ed.) p. 32. n. 2.]
(8) Hence the same applies to vows: in R. Judah's view, two wives cannot have their vows disallowed simultaneously; in the opinion of the first Tanna, they can.

Talmud - Mas. Nedarim 73b

MISHNAH. [IN THE CASE OF] A BOGERETH WHO TARRIED TWELVE MONTHS, AND A WIDOW [WHO TARRIED] THIRTY DAYS,[1] — R. ELIEZER SAID; SINCE HER [BETROTHED] HUSBAND IS RESPONSIBLE FOR HER MAINTENANCE, HE MAY ANNUL. [HER VOWS]. BUT THE SAGES SAY: THE HUSBAND CANNOT ANNUL UNTIL SHE ENTERS INTO HIS CONTROL.[2]

GEMARA. Rabbah said: R. Eliezer and the early Mishnah[3] taught the same thing. For we learnt; A virgin is given twelve months to provide for herself.[4] When the twelve months expire,[5] she must be supported by him [i.e., her arus] and may eat terumah.[6] But the yabam[7] does not authorize her to

eat terumah.[8] If she spent six months in the lifetime of[9] her husband [the arus], and six months in that of the yabam,[10] or even the whole period less one day in the lifetime of her husband, or the whole period less one day in that of the yabam, she may not eat terumah: this is the early Mishnah. But a subsequent Beth din[11] rules: No woman can partake of terumah until she enters the huppah.[12] Said Abaye to him, Perhaps it is not so. The early Mishnah informs us in respect of [her] eating terumah, which is [forbidden merely by] a Rabbinical enactment;[13] but as for vows, which are Biblically binding, I may say that it is not so. And you know R. Eliezer's view[14] only in respect to vows for the reason which R. Phinehas said in Raba's name, viz.: Every [woman] who vows, vows conditionally upon her husband's assent.[15] But as for terumah, it may well be that though [forbidden only by] a Rabbinical precept,[16] she may not eat thereof.

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(1) V. supra 70b.

(2) V. supra, 70b.

(3) 'Early Mishnah' bears various connotations. Sometimes it simply means the earlier view of a particular school, which subsequently gave a different ruling (v. Hag. 2a, where, however, the term does not occur in the Mishnah itself but is used by an Amora to differentiate between the earlier and the later views of Beth Hillel). Elsewhere it may denote the collection of Mishnaic material made by the 'elders of Beth Shammai and Beth Hillel'; as such it is brought into contrast with the rulings of later Rabbis, e.g., R. Akiba; v. Sanh. III, 4; 'Ed. VII, 2. But it is also used to differentiate between the views of earlier and later Rabbis. Thus, in the present instance, the term connotes the views of R. Tarfon and R. Akiba (v. Keth. 57a), with which 'a later Beth din' (v. text infra) differed; here, too the term is so used by an Amora.

(4) I.e., to make the necessary preparations for marriage, such as acquiring a trousseau; the reference is to an arusah, and twelve months is the maximum that may elapse before the nissu'in without either side having legal cause for complaint.

(5) While nissu'in was still postponed.

(6) If the daughter of an Israelite is betrothed to a priest, she may eat terumah, as is deduced from Lev. XXII, 11. By a Rabbinical law, however, she is forbidden until after the nissu'in: but if twelve months have elapsed, she is permitted.

(7) The levir, v. Glos.

(8) V. n. 5: on the priest's death she reverts to her former status, and even if there is no issue, so that she is bound to marry the yabam, this tie does not permit her to eat terumah.

(9) Lit., 'in the presence of'.

(10) I.e., the arus having died within the twelve months.

(11) 'Beth din', which is now generally taken to mean a court of law, was originally the court or college which decided on civil and religious questions; (v. J.E., s.v. Beth din.)

(12) V. Glos. i.e., until the home-taking, v. Keth. 57a. — Thus both R. Eliezer in our Mishnah and the early Mishnah maintain that after twelve months they are regarded as completely married: R. Eliezer, in that the husband can annul her vows; the early Mishnah, in that his wife may eat terumah.

(13) V. p. 231, n. 5.

(14) That the period of twelve months establishes quasi nissu'in.

(15) Though the stipulation is not expressed, in recognition of her dependence upon him, since he maintains her. Hence the same holds good of an arus after twelve months, who also must provide for her.

(16) This interpretation of the phrase terumah of the Rabbis follows Asheri.

Talmud - Mas. Nedarim 74a

MISHNAH. IF A WOMAN WAITS FOR A YABAM,[1] WHETHER FOR ONE OR FOR TWO,[2] — R. ELIEZER RULED: HE [THE YABAM] CAN ANNUL [HER VOWS]. R. JOSHUA SAID: [ONLY IF SHE WAITS] FOR ONE, BUT NOT FOR TWO. R. AKIBA SAID; NEITHER FOR ONE NOR FOR TWO. R. ELIEZER ARGUED: IF A MAN CAN ANNUL THE VOWS OF A WOMAN WHOM HE ACQUIRED HIMSELF, HOW MUCH THE MORE CAN HE ANNUL THOSE OF A WOMAN GIVEN TO HIM BY GOD![3] SAID R. AKIBA TO HIM; IT IS NOT SO; IF YOU SPEAK OF A WOMAN WHOM HE ACQUIRES HIMSELF, THAT IS BECAUSE OTHERS HAVE NO RIGHTS IN HER; WILL YOU SAY [THE SAME] OF A WOMAN GRANTED TO HIM BY GOD, IN WHOM OTHERS TOO HAVE RIGHTS![4] R. JOSHUA SAID

TO HIM: AKIBA, YOUR WORDS APPLY TO TWO YEBAMIM; BUT WHAT WILL YOU ANSWER IF THERE IS ONLY ONE YABAM? HE REPLIED, THE YEBAMAH IS NOT AS COMPLETELY UNITED TO THE YABAM[5] AS AN ARUSAH IS TO HER [BETROTHED] HUSBAND.[6]

GEMARA. It is well according to R. Akiba, for he maintains that the bond [wherewith she is bound to the yabam] involves no legal consequences;[7] also according to R. Joshua, who maintains that the tie is a real one.[8] But what is R. Eliezer's reason? Even if the tie is a real one, selection is not retrospective?[9] — R. Ammi answered: [The circumstances are] e.g., that he [the yabam] made a [betrothal] declaration,[10] R. Eliezer ruling with Beth Shammai that a declaration completely acquires.[11] But R. Joshua says thus: That applies only to one yabam, but not to two yebamin; for can there be such a case that though when his brother comes he can prohibit her to him by cohabitation or divorce, and yet he [the first] can annul![12] Whilst R. Akiba maintains that the bond carries with it no legal consequences. Now, according to R. Eleazar,[13] who maintained that in the opinion of Beth Shammai a declaration is binding only in that it renders her co-wife[14] ineligible,[15] what can be said?[16] — The reference here is to one who had come before Court and been ordered to support her;[17] and [the law] is in accordance with the dictum of R. Phineas in Raba's name: Every woman who vows, vows conditionally upon her husband's assent.

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(1) This is the designation of the widow between the death of her husband and her union with or rejection by the yabam.

(2) If there is more than one, she waits for all, as anyone may marry or free her.

(3) Lit., 'heaven'. The yabam acquires his sister-in-law through a Biblical precept.

(4) I.e., all the brothers of the deceased have the same rights in her.

(5) [MS.M.: HER HUSBAND v. infra p. 236, n. 3.]

(6) The meaning of this is discussed below.

(7) Lit., 'there is no real tie'. E.g., in respect of vows this tie gives him no right of veto.

(8) Hence, if there is only one yabam, he can annul her vows, but not if there are two, since it is not clear which will take her.

(9) Bererah, a term denoting retrospective validity of a subsequent selection. CF. supra Mishnah 45b, v. Glos. Thus, here, when she vows, it is not clear which yabam will eventually marry her. [Unlike, however, elsewhere in the Talmud where this principle is debated and gives rise to difference of opinion, its application here would not be retro-active, as we are not considering whether the annulment by one yabam before marriage becomes effective after marriage, but whether it takes effect immediately. And in regard to this it is taken as axiomatic that there is no bererah, as in the case of two yebamim it cannot be stated with certainty which of the two will be her husband (cf. Adereth. S. Kiddushin). The term bererah is accordingly used here in a loose sense and in fact does not occur in the parallel passage, Yeb. 29b; v. a.l.]

(10) מאמר in reference to a yabam means a formal declaration, 'be thou betrothed to me'.

(11) I.e., by means of this declaration she is his wife in all legal respects; hence that yabam can annul her vows. — The view of Beth Hillel is that only cohabitation effects this.

(12) I.e., even in Beth Shammai's view a declaration is a legal betrothal only if there is but one yabam, but not if there are two. Because even after the declaration, if the other cohabited with her or divorced her, she is forbidden to the first.

(13) An amora; the Tanna in the Mishnah is R. Eliezer.

(14) Two or more wives of the same husband are co-wives (Zaroth) to each other.

(15) Lit., to reject the co-wife'. In the following case; A, B and C, are three brothers, A and B being married to X and Y, two sisters. If A dies childless and C makes a declaration to X (but does not consummate the marriage), and then B dies childless too, Beth Shammai rule that X, A's widow, remains C's wife; hence Y, B's wife and the would-be co-wife of X, is ineligible to him, since one cannot take in marriage a yebamah who is also his wife's sister. Thus we see that Beth Shammai rule that the declaration made by C is Biblically valid as betrothal, for otherwise he would be regarded as having become the yabam of two sisters simultaneously, in which case a different law applies. Thereon R. Eleazar observed, only in this respect did Beth Shammai hold a declaration to be Biblically binding; but should he subsequently desire to free her, a divorce is not sufficient (as it would be had the marriage been consummated), but halizah too is needed.

(16) Since then she is not his wife in all respects, why can he annul her vows?

(17) If the yabam delayed to marry or free her, she could claim support from him. V. Yeb. 41b.

Talmud - Mas. Nedarim 74b

We learnt: R. ELIEZER ARGUED, IF HE CAN ANNUL THE VOWS OF A WOMAN WHOM HE ACQUIRED HIMSELF, SURELY HE CAN ANNUL THOSE OF A WOMAN GIVEN TO HIM BY GOD! But if it means that he made her a declaration, it is [also] a case of acquiring her himself? — It means that he acquired her himself through the instrumentality of Heaven.[1]

You may [now] solve Rabbah's problem? [Viz.,] in the view of Beth Shammai, does a declaration effect erusin or nissu'in?[2] You can solve it that it effects nissu'in; for if it effects erusin, surely we learnt, [In the case of] a betrothed maiden, her father and [betrothed] husband [jointly] annul her vows?[3] Said R. Nahman b. Isaac: What is meant by 'He can annul [her vows]'? He can annul [them] in conjunction with her father.[4]

It was taught likewise as R. Ammi: If a woman waits for a yabam, whether for one or for two, — R. Eliezer ruled: he can annul [her vows]; R. Joshua said: [Only if she waits] for one, but not for two; R. Akiba said, Neither for one nor for two. R. Eliezer argued: If a woman, in whom he has no portion at all until she comes under his authority [by marriage], yet once she comes under his authority, she is completely his;[5] then a woman in whom he has a portion even before she comes under his authority,[6] when she does come under his authority, she is surely completely his! Said R. Akiba, No. If you say this in the case of a woman whom he acquires himself, that is because just as he has no portion in her [before marriage], so have others no portion in her; will you say [the same] of a woman gifted to him by God, in whom, just as he has a portion, so have others too a portion in her! Thereupon R. Joshua said to him: Akiba, your words apply to two yebamim: what will you answer in respect of one yabam? He replied: Have we then drawn a distinction [in other respects] between one yabam and two yebamim, whether he makes her a declaration or not? and just as it is in reference to other matters, so it is in reference to vows.[7] Thus did Ben 'Azzai lament, 'Woe to thee, Ben 'Azzai, that thou didst not study under R. Akiba.'[8] How

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(1) Scripture in the first place giving him a unique right in her.

(2) On the hypothesis that the Mishnah refers to a yabam who made a declaration.

(3) Whilst this Mishnah merely mentions the yabam.

(4) Though the Mishnah does not state it, that is merely because it deals only with the question whether a yabam has annulment rights at all, without inquiring into the extent of such rights.

(5) That he may annul her vows either alone (after nissu'in) or in conjunction with her father.

(6) The yabam has a presumptive claim upon her as soon as her husband dies childless.

(7) The reference is explained on 75a; — hence, since one of two yebamim cannot annul, one himself is also unable to annul. Lit., 'wait in attendance upon R. Akiba'.

(8) He was so impressed with the keen intellect displayed by R. Akiba in this controversy, that he voiced his regret at not having studied under him. — Ben 'Azzai was a younger contemporary of Akiba, and in spite of this lament he followed R. Akiba in halachah and exegesis; whilst his tone towards him is that of a pupil to his teacher. For that reason the amoraim concluded that he was a disciple-colleague. V. Weiss. Dor. II, 112. Jer. B.B. IX, 17b; Bab. ibid. 158b; Jer. Shek. III, 47b.

Talmud - Mas. Nedarim 75a

does this Baraitha support R. Ammi? — Because it states, 'whether he made her a declaration or not.'[1] Alternately, [it follows] from the first clause, which States, 'then when she does come under his authority, she is surely completely his': but if he did not betroth her, how is she completely his? Hence it follows that he had made a declaration to her.

What is meant by ‘and just as it is in reference to other matters, so it is in reference to vows’? — Said Raba, It means this: Do you not admit that one is not stoned for [violating] her, as in the case of a betrothed maiden?[2] R. Ashi said, The Mishnah too supports [this interpretation]:[3] THE YEBAMAH IS NOT AS COMPLETELY UNITED TO HER [BETROTHED] HUSBAND AS AN ARUSAH TO HER [BETROTHED] HUSBAND.[4]

MISHNAH. IF A MAN SAYS TO HIS WIFE, ‘ALL VOWS WHICH YOU MAY VOW FROM NOW UNTIL I RETURN FROM SUCH AND SUCH A PLACE ARE CONFIRMED,’ THE STATEMENT IS VALUELESS; [IF HE SAID] ‘BEHOLD, THEY ARE ANNULLED,’ — R. ELIEZER RULES, THEY ARE ANNULLED; THE SAGES MAINTAINED, THEY ARE NOT ANNULLED. SAID R. ELIEZER: IF HE CAN ANNUL VOWS WHICH HAVE ALREADY HAD THE FORCE OF A PROHIBITION,[5] SURELY HE CAN ANNUL THOSE WHICH HAVE NOT HAD THE FORCE OF PROHIBITION! THEY SAID TO HIM: BEHOLD, IT IS SAID, HER HUSBAND MAY ESTABLISH IT, AND HER HUSBAND MAY ANNUL IT:[6] THAT WHICH HAS ENTERED THE CATEGORY OF CONFIRMATION, HAS ENTERED THE CATEGORY OF ANNULMENT;[7] BUT THAT WHICH HAS NOT ENTERED THE CATEGORY OF CONFIRMATION, HAS NOT ENTERED THE CATEGORY OF ANNULMENT.

GEMARA. The scholars propounded: In R. Eliezer's view, do they take effect and [then] become annulled, or do they take no effect at all? What is the practical difference?

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(1) Which proves that the former is the case here, as otherwise this is irrelevant.

(2) Even if a declaration was made, her seducer is not stoned: this proves that she is not yet his wife, and therefore the same is true of vows.

(3) [That R. Akiba based his argument on the penalty for violation, and consequently that the Mishnah deals with the case where a declaration was made, (cf. Rashi).]

(4) [Since he is designated as her husband, this shows that we deal with a case where he made a declaration (Rashi); v. supra p. 233, n. 1.] And the reference can only be to the penalty for violation.

(5) I.e., after they are made.

(6) Num. XXX, 14.

(7) Having been made, it can be confirmed, and hence annulled too.

Talmud - Mas. Nedarim 75b

— E.g., if another man makes a vow dependent on this.[1] Now, if you say that [the wife's vows] take effect, the dependence is a real one;[2] but if you say that they take no effect, there is no substantiality in it.[3] What [is the law]? — Come and hear: SAID R. ELIEZER, IF HE CAN ANNUL VOWS WHICH HAVE ALREADY HAD THE FORCE OF A PROHIBITION, SURELY HE CAN ANNUL VOWS WHICH HAVE NOT HAD THE FORCE OF PROHIBITION! This proves that they take no effect at all. — [No.] Is it then stated, which do not have the force etc.: WHICH HAVE NOT HAD THE FORCE OF PROHIBITION is taught, [meaning], which have not yet had the force of a prohibition.[4]

Come and hear: R. Eliezer said to them. If where a man cannot annul his own vows, once he has vowed,[5] he can nevertheless annul his own vows before making them;[6] then where he can annul his wife's vows after she vowed, how much the more should he be able to annul them before she vows! Now, surely this means that his wife's [vows] are like his: just as his vows take no effect at all,[7] so his wife's vows too would take no effect at all! — No: each is governed by its own laws.[8]

Come and hear: They answered R. Eliezer: If a mikweh,[9] though it raises the unclean front their uncleanness, cannot nevertheless save the clean from becoming unclean;[10] then a man, who cannot raise the unclean from their uncleanness,[11] how much the more can he not save the clean from

becoming unclean.[12] This proves that they[13] take no effect at all.[14]

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(1) Lit., 'attached to them'. I.e., if the wife vowed, 'Behold, I will be a nazirite'; and another person exclaimed, 'And I likewise'.

(2) Hence the second vow is valid.

(3) And the vow made dependent upon the wife's vow is invalid.

(4) Yet they may take effect only, however, to be immediately made void.

(5) I.e., every person excepting a married woman.

(6) By an anticipatory declaration of annulment; v. supra 23b.

(7) If preceded by a declaration of annulment; for if they did take effect, only a Rabbi could grant absolution. Moreover, the anticipatory annulment, forgotten at the time of actual vowing, renders it a vow made in error, which ab initio is no vow. Cf. supra 23b.

(8) Though one is deduced from the other, it is not necessary to assume similarity in all respects. An anticipatory annulment of one's own vows prevents them from taking effect at all, whilst if applied to his wife's, they may take effect and become void.

(9) A ritual bath, by immersion in which unclean persons or things are purified.

(10) I.e., one cannot take a ritual bath to be kept clean, should he subsequently come into contact with defiling matter.

(11) Rashi; if a man swallowed an unclean ring and then took a ritual bath, the ring, since it is within him, is not purified, but remains defiled after excretion.

(12) If he swallows a clean ring, and then comes in contact with the dead, the ring ought to become unclean, whereas the law is that it remains clean (Ran), v. Hul. 71a. — So also, though a husband can annul a vow when made, he cannot before. So cur. edd. and Rashi. Asheri and Ran have a simpler and more effective reading: They replied to R. Eliezer, Let the mikweh prove it, which frees the unclean from their uncleanness, yet cannot prevent the clean from becoming unclean. So also, a husband may annul his wife's vow after it has become binding, but not before.

(13) Sc. the wife's vows annulled in anticipation.

(14) Since they draw an analogy from a mikweh, which cannot prevent a clean man from becoming unclean, it follows that in R. Eliezer's view the husband's annulment prevents the vow from taking effect at all.

Talmud - Mas. Nedarim 76a

Then consider the second clause: They [the Rabbis] said to R. Eliezer: If an unclean utensil is immersed in order to purify it, shall a clean utensil be immersed, so that on [subsequently] becoming defiled it shall [simultaneously] become clean![1] This proves that they do take effect.[2] — I will tell you: The Rabbis were not clear as to R. Eliezer's standpoint. Hence they said thus to him: What is your opinion? If you maintain that they [the vows] take effect, but are annulled, you are refuted by [the analogy of] a utensil; whilst if you do not hold that they take effect, the mikweh is your refutation.

Come and hear: R. Eliezer said to them: If defiled seeds are rendered clean by being sown in the soil, how much more so if [already] sown and rooted [in the soil]![3] This proves that they do not take effect at all.

Now, do not the Rabbis admit the validity of [such] an ad majus conclusion? Surely it was taught: I might think that a man can sell his daughter when a na'arah:[4] — But you can argue a minori: if she who was already sold goes free,[5] is it not logical that if not sold yet, she cannot be sold [now]![6]

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(1) Surely not.

(2) Since they compare it to the prior immersion of a utensil to render it clean after it has become defiled.

(3) That they certainly cannot be defiled. Thus also vows: if a vow can be annulled when already in force, surely the annulment can operate to prevent it from coming into force!

(4) The reference is to Ex. XXI, 7.

(5) On attaining the na'arah stage.

(6) V. Kid. 4a. This reasoning is exactly analogous to R. Eliezer's. The Talmud interposes that no verse is required.

Talmud - Mas. Nedarim 76b

— Yes: elsewhere they do draw an ad majus conclusion, but here it is different, because Scripture writes, Her husband may confirm it, and her husband may annul it:[1] [teaching], that which has entered the category of confirmation, has entered the category of annulment; but that which has not entered the category of confirmation, has not entered the category of annulment.

MISHNAH. [THE PERIOD ALLOWED FOR] THE ANNULMENT OF VOWS IS THE WHOLE DAY:[2] THIS MAY RESULT IN GREATER STRINGENCY OR GREATER LENIENCY.[3] THUS, IF SHE VOWED ON THE NIGHT OF THE SABBATH, HE CAN ANNUL ON THE NIGHT OF THE SABBATH AND ON THE SABBATH DAY UNTIL NIGHTFALL. IF SHE VOWED JUST BEFORE NIGHTFALL,[4] HE CAN ANNUL ONLY UNTIL NIGHTFALL: FOR IF NIGHT FELL AND HE HAD NOT ANNULLED IT, HE CAN NO LONGER ANNUL IT.

GEMARA. It was taught: [The period allowed for] the annulment of vows is the whole day. R. Jose son of R. Judah and R. Eliezer son of R. Simeon maintained: Twenty-four hours.[5] What is the reason of the first Tanna? — Scripture saith, [But if her husband disallowed her] on the day that he heard it.[6] And what is the reason of the Rabbis? — Because it is written, [But if her husband altogether holds his peace at her] from day to day.[7] But on the view of the first Tanna, surely it is written, 'from day to day'? — That is necessary. For were [only] 'on the day that he heard it' [written], I would say, only by day,[8] but not by night; therefore it is written, 'from day to day'.[9] Now, according to him who cites 'from day to day', is it not written, 'on the day that he heard it'? — That is necessary. For were only 'from day to day' written, I would think that he can annul her vows from [e.g.,] the first day of one week to the first day of the following;[10] therefore it is written, 'on the day that he heard it'.

R. Simon b. Pazzi said in the name of R. Joshua b. Levi: The halachah is not in accordance with that pair.[11] Levi wished to give a practical decision in accordance with these Tannaim; whereupon Rab said to him, Thus said my dear relative,[12] The halachah is not in accordance with that pair. Hiyya b. Rab used to shoot arrows and at the same time examine [a person] desirous of absolution;[13] Rabbah b. R. Huna would [repeatedly] sit down and stand up.[14]

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(1) Num. XXX, 14.

(2) In which the husband or father learns of the vow.

(3) 'Stringency' and 'leniency' are not quite relevant in this connection, the meaning being that by thus fixing a calendar day, i.e., a night and a day, the period for annulment may be shorter or longer, as the case might be.

(4) At the close of the Sabbath.

(5) Lit., 'from time to time', from the hour the vow is made until the same hour the following day.

(6) Num. XXX, 9. By 'day' a calendar day is understood: V. n. 6.

(7) Num. XXX. 15: v. p. 239, n. 8: the same is implied in 'from day to day.'

(8) I.e., he can annul the vow.

(9) Which naturally includes the night.

(10) So interpreting the phrase.

(11) Viz., R. Jose b. R. Judah and R. Eliezer b. R. Simeon.

(12) Sc. Hiyya b. Rab, his uncle.

(13) Hiyya b. Rab just having been mentioned, another thing is stated about him, viz., that he took absolution very lightly, granting it even whilst engaged in other pursuits.

(14) In the earnestness of his examination, he could not keep in his place. [Cf. supra 23a. Ran: 'would keep seated or standing', not taking the matter too seriously.]

Talmud - Mas. Nedarim 77a

We learnt elsewhere: Vows may be annulled[1] on the Sabbath, and absolution from vows[2] may be sought where it is necessary for the Sabbath.[3] The scholars propounded: May vows be annulled on the Sabbath only if it is needed for the Sabbath, or perhaps, even if it is unnecessary?[4] Come and hear: For R. Zuti, of the school of R. Papi, learnt: Vows may be annulled [on the Sabbath] only if necessary for the Sabbath. Said R. Ashi: But we did not learn thus; IF SHE VOWED JUST BEFORE NIGHTFALL, HE CAN ANNUL ONLY UNTIL NIGHTFALL. But if you rule [that he can annul] only when it is necessary for the Sabbath, but not otherwise, why say, UNTIL NIGHTFALL; he cannot annul even by day,[5] since it is unnecessary for the Sabbath?[6] — It is a controversy of Tannaim: [The period allowed for] the annulment of vows is the whole day. R. Jose son of R. Judah and R. Eliezer son of R. Simeon maintained: Twenty-four hours. Now, on the view that [they can be annulled only] the whole of that day, but not thereafter, [it follows that] he can annul them even if unnecessary for the Sabbath;[7] but on the view [that he has] twenty-four hours, [he can annul] only if it is necessary for the Sabbath, but not otherwise.

'And absolution from vows may be sought where it is necessary for the Sabbath'. The scholars propounded: Is that only if one had no time [to seek absolution before the Sabbath], or perhaps even if he had time? — Come and hear: For the Rabbis gave a hearing to the son of R. Zutra son of R. Ze'ira [to grant him absolution] even for vows for which there was time before the Sabbath.[8]

Now, R. Joseph thought to rule that absolution may be granted[9] on the Sabbath only by a single ordained scholar, but not by three laymen, because it would look like a lawsuit.[10] Said Abaye to him: Since we hold that [those who grant it] may stand, be relatives, and [absolve] even at night, it does not look like a lawsuit.[11]

R. Abba said in the name of R. Huna in the name of Rab: The halachah is that vows may be annulled on the Sabbath. But this is [explicitly taught in] our Mishnah: IF SHE VOWED ON THE NIGHT OF THE SABBATH [ETC.]?[12] — But say thus: The halachah is that absolution[13] may be sought at night. R. Abba said to R. Huna, Did Rab really say thus? Said he, He was silent.[14] Do you say, 'He was silent', or, 'he was drinking'? asked he.[15] — R. Ika b. Abin said: Rab gave a hearing to Rabbah [to grant him absolution]

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(1) By a husband or father, as the case may he.

(2) From a sage.

(3) I.e., where the absolution is necessary for the Sabbath. E.g., if one vowed not to eat, which clashes with the joyous spirit of the Sabbath.

(4) I.e., does the last condition, 'where it is necessary for the Sabbath,' refer to the whole Mishnah, or only to absolution? — By 'annulment' the annulment by a father or husband is meant.

(5) The reference being to a vow made on the Sabbath; v. Mishnah.

(6) The vow having been made just before nightfall, it cannot be necessary for the sake of the Sabbath to annul it.

(7) Since we cannot abrogate his right of annulment altogether.

(8) Lit., 'whilst yet day.'

(9) Lit., 'sought'.

(10) Three judges are necessary for that, and it must not take place on the Sabbath.

(11) Because in a lawsuit the judges must be seated, may not be relatives of the litigants, and it may not take place at night.

(12) Which shows that the husband can annul vows on Sabbath.

(13) From a Sage.

(14) Heb. אישתיק; this bears a close resemblance to drinking, and R. Abba seems not to have quite caught his reply.

(15) So Rashi: Do you mean that you stated this halachah before him and that he remained silent, which you interpreted as assent: or that he was drinking at the time, and could make no comments? Other versions, based on different readings:

R. Huna asked, Would you offer me a drink, or do you say that he was silent, i.e., do you question me because you agree, and desire Rab's authority for it, or do you disagree, and suggest that Rab was silent when I stated this law, deeming it unworthy even of refutation? Or: do you offer me a drink (in approval), or silence me (in disapproval)? — In all these cases, the alternatives are expressed by words very similar to each other.

Talmud - Mas. Nedarim 77b

in a chamber of the College, whilst standing, alone, and at night.[1]

Raba said in R. Nahman's name: The halachah is that absolution from vows may be granted standing, alone, and at night, on the Sabbath, by relatives, and even if there was time before the Sabbath [to seek absolution]. 'Standing'? But it was taught: R. Gamaliel descended from the ass, wrapped himself [in his robe], sat down, and absolved him?[2] — R. Gamaliel held that [the Rabbi] must give an 'opening' for regret, so that the vow may be revoked ab initio; this requires deep thought; therefore he sat down.[3] But in R. Nahman's opinion no opening for regret Is necessary;[4] therefore he [the Rabbi] can stand.[5]

Raba said to R. Nahman: Behold, Master, a scholar, who came from the west [i.e., Palestine], and related that the Rabbis gave a hearing to the son of R. Huna b. Abin and absolved him of his vow, and then said to him, 'Go, and pray for mercy, for you have sinned. For R. Dimi, the brother of R. Safra, learnt: He who vows, even though he fulfils it, is designated a sinner.' R. Zebid said: What verse [teaches this]? — But if thou shalt forbear to vow, it shall be no sin in thee;[6] hence, if thou hast not forborne, there is sin.

It was taught: If a man says to his wife, '[In respect to] all vows which you may make, I object to your vowing,' or, 'they are no vows,' the declaration is valueless.[7] [If he says,] 'You have done well,' or, 'there is none like you,'[8] or, 'had you not vowed, I myself would have imposed a vow upon you.'[9] — these declarations are effective.[10]

A man should not say to his wife on the Sabbath, 'It is annulled for you,' or, 'made void for you,' as he would say on week-days, but, 'Take and eat it,' 'Take and drink it,'[11] and the vow becomes automatically void.[12] R. Johanan observed: Yet he must annul it in his heart.[13] It was taught: Beth Shammai say: On the Sabbath he must annul it in his heart; on week-days he must express [his annulment] with his lips. But Beth Hillel say: In both cases he may annul it in his heart, and need not express it with his lips.[14]

R.Johanan said: If a Sage employs a husband's phraseology, or a husband that of a Sage, their pronouncements are invalid.[15] For it was taught: This is the thing [which the Lord hath commanded]:[16] [this teaches], only a Sage may absolve, but a husband cannot absolve.[17] For I might think, If a Sage, who cannot annul, can absolve, surely a husband, who may annul, can also absolve! Therefore it is stated,

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(1) The former question is left unanswered, but this incident is quoted to show that Rab himself acted on this ruling. — So cur. edd. But other readings introduce this by 'come and hear.

(2) This happened once when R. Gamaliel was travelling from Acco to Chezib. On the way he was accosted by a man who demanded to be absolved from a vow.

(3) The Rabbi must find grounds sufficiently strong to make him regret his now (v. supra 21b). Such grounds are not easily found. But sitting is not essential for the actual granting of absolution.

(4) [Even if he expresses no regret for ever having made the vow, but merely wishes to be absolved from it from now on, the Sage may revoke it; (v. Rashi 'Er. 64a).]

(5) So cur. edd. and Rashi, Ran and Asheri reverse the reading, though the final result remains unaltered. Thus: R. Gamaliel held that mere (present) regret does not afford an 'opening', i.e., grounds for absolution, but some fact, which,

had it been present to the mind of the person vowing, would have caused him to desist, so that the vow may be voided from its very beginning, etc.

(6) Deut. XXIII, 23.

(7) Because it is not the correct way of annulment. — So Rashi, on the basis of our reading, and likewise one version of Ran.

(8) An expression of satisfaction.

(9) This must not be taken that in Talmudic times the husband could impose a vow upon his wife, the expression merely being one of approval. In the chapter dealing with vows (Num. XXX) the husband is merely given powers of annulment, not to impose vows; in fact, no person is empowered to impose vows upon another; but v. Weiss, Dor. 1, p. 15.

(10) I.e., they are perfect confirmations, which cannot be withdrawn by subsequent annulment. — 'Effective' is followed by two dots(:), which denotes the completion of a subject, the next word commencing a new one. As, however, the next passage is not preceded in our text by 'It was taught' nor by any other word which generally introduces a new passage, it is possible that the dots have crept into the editions in error. But in the version of Ran the next passage is preceded by 'It has been taught' (v. Marginal Glosses to Wilna edition).

(11) If she vowed not to eat or drink.

(12) To preserve the sanctity of the Sabbath one should not use the same phraseology as of week-days.

(13) Formally: 'it is annulled for thee.'

(14) Of annulment, it being sufficient to say 'Take and eat it.'

(15) A husband must say, מופר לך 'It is annulled for thee'; a Sage, מותר לך 'It is permitted thee'. [The difference in the phraseology employed by Sage and husband is determined by the distinct function of each. The Sage revokes the vow, rendering it void ab initio, whereas the husband annuls it that it may not be binding for the future (Ran).]

(16) Num. XXX, 2. 'This is the thing' implies that the following enactments must be exactly carried out.

(17) Absolution by a Sage is deduced from the next verse.

Talmud - Mas. Nedarim 78a

'This is the thing', [implying] only a Sage can absolve, but a husband cannot absolve. Another [Baraitha] taught: 'This is the thing', [teaches,] [only] a husband may annul, but a Sage cannot annul. For I might think, If a husband, who cannot absolve, can annul; surely a Sage, who may absolve, can also annul! Therefore it is stated, 'This is the thing', [implying,] a husband can annul, but a Sage cannot annul. [Further:] It is here stated, This is the thing; whilst elsewhere, in connection with [sacrifices] slaughtered without [the Temple Court], it is also written, This is the thing [which the Lord hath commanded]:[1] just as in the latter case, Aaron, his sons, and all Israel [are included in the law],[2] so does the chapter on vows relate to Aaron, his sons, and all Israel; and just as here, the heads of the tribes [are particularly addressed],[3] so there too [the reference is] to the heads of the tribes. In respect of what law [is this deduced] in the chapter of vows? — Said R. Aha b. Jacob: To teach that three laymen are qualified [to grant absolution]. But is not 'the heads of the tribes' stated?[4] — R. Hisda, — others state R. Johanan — answered: [That intimates that] a single ordained scholar [can absolve].[5] For what purpose are the heads of the tribes related to [sacrifices] slaughtered without? — R. Shesheth said: To teach that the law of revocation applies to hekdesh.[6] But according to Beth Shammai, who maintained that hekdesh cannot be revoked, for what purpose are the heads of the tribes related to [sacrifices] slaughtered without? — Beth Shammai do not admit [the validity of] this gezerah shawah. Now, for what purpose is 'this is the thing' written in the chapter on vows? — To teach that only a Sage may absolve, but a husband cannot absolve; and that only a husband can annul, but a Sage cannot annul. Why is 'this is the thing' related to [sacrifices] slaughtered without? — To teach that one incurs guilt only for slaughtering [without the prescribed place], but not for wringing [a bird's neck outside].[7]

Then on the view of Beth Shammai, whence do we know that three laymen are valid?[8] — They deduce it from [the teaching reported by] R. Assi b. Nathan. For it is written, And Moses declared unto the children of Israel the set feasts of the Lord.[9] Whereon it was taught. R. Jose the Galilean

said: The festivals were stated, but not the Sabbath of the Creation[10] with them: Ben ‘Azzai said: The festivals were stated, but not the chapter on vows with them. Now, this Baraitha was unintelligible to R. Assi b. Nathan, so he went to Nehardea, before R. Shesheth. Not finding him there, he followed him to Mahuza,[11] and said to him: ‘The festivals were stated, but not the Sabbath of the Creation with them’: but the Sabbath is written together with them![12] Furthermore, the festivals were stated, but not the chapter on vows with them, but that is written alongside thereof![13] — Said he to him, It means this:

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(1) Lev. XVII. 2.

(2) The verse commences, Speak unto Aaron, and unto his sons, and unto all the children of Israel.

(3) Num. XXX, 2: And Moses spake unto the heads of the tribes concerning the children of Israel.

(4) This, in the case of vows, implies the ordained scholars.

(5) For since the gezerah shawah (v. Glos.) based on ‘this is the thing’ relates all Israel to vows, whilst ‘the heads of the tribes’ specifies scholars, the discrepancy can be reconciled only by assuming that either one ordained scholar or three laymen may absolve. — One layman being insufficient, three (not two) are required, as in the case of a Beth din.

(6) V. Glos. I.e., if one consecrates an animal, which is really a form of vow, and then slaughters it without the Temple court, he can be absolved of his vow, thus revoking his consecration, whereby he is found to have slaughtered an unconsecrated animal.

(7) The passage reads: This is the thing which the Lord hath commanded . . . what man that slaughtered an ox . . . and bringeth it not unto the door of the tabernacle of the congregation, etc.; yishhat (‘slaughtered’), implies cutting the throat (cf. shehitah). A bird sacrifice was killed by its neck being wrung, Lev. I, 15.

(8) Since they reject the gezerah shawah by which it is deduced in the Baraitha.

(9) Lev. XXIII, 44.

(10) Lit., ‘the Sabbath of the beginning’. I.e., the Sabbath, so called because God rested on the seventh day.

(11) A large Jewish town on the Tigris, where Raba had his academy.

(12) At the beginning of Lev. XXIII, v. 3 and also in v. 38.

(13) Num. XXVIII-XXIX deal with the festivals, and XXX treats of vows.

Talmud - Mas. Nedarim 78b

[only] the festivals of the Lord need sanctification by Beth din,[1] but not the Sabbath of the Creation;[2] (further] the festivals of the Lord require an ordained scholar,[3] but absolution of vows requires no ordained scholar, for even a Beth din of laymen [may grant it]. But in the chapter on vows ‘the heads of the tribes’ is stated! — R. Hisda, others state, R. Johanan, said: That refers to a single ordained scholar.

R. Hanina said: He who keeps silence [when his wife vows] in order to provoke her[4] can annul even after ten days. Raba objected: When was it said that if the husband dies his authority is transferred to the father? If the husband did not hear [the vow], or heard it and was silent, or heard and annulled it and died on the same day. But if he heard and confirmed it, or heard it, was silent, and died on the following day, he [the father] cannot annul.[5] Now, surely it means that he kept his silence in order to vex her?[6] — No. It means that he was silent in order to confirm it. If so, it is tantamount to ‘or if he heard and confirmed it?’[7] — But it means that he kept silent without specifying [his intentions].

R. Hisda objected: Confirmation is more stringent than annulment, and annulment is more stringent than confirmation. [Thus:] Confirmation is more stringent,

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(1) Beth din must declare which day is new moon, and thereby sanctify it, and thence the festival was calculated.

(2) The seventh day of the week is automatically sacred.

(3) To declare the sanctification of the New Moon, which cannot be done by a layman.

(4) Intending to annul the vow eventually, but keeping silence in the meantime to vex his wife, who may wish to be

freed.

(5) V. supra 68a.

(6) And yet if he died the following day, his silence is regarded as confirmation.

(7) Why teach it in two clauses?

Talmud - Mas. Nedarim 79a

since silence confirms, but does not annul;[1] and if he confirms in his heart, he has confirmed it, [whereas] if he annuls in his heart, it is not annulled; [moreover], if he confirmed, he cannot annul, and if he annulled, he cannot confirm.[2] Now, this teaches that silence confirms. Surely it means silence in order to provoke? — No; [it means] that he was silent in order to confirm. If so, it is identical with 'if he confirms in his heart?' — But it means that he was silent with no specified intention.

Now we have seen that confirmation is more stringent than annulment; where do we find that annulment is more [stringent] than confirmation? — Said R. Johanan: One may seek absolution from confirmation, but not from annulment.

R. Kahana objected: But if her husband altogether hold his peace at her from day to day.[3] Scripture refers to silence in order to vex. You say, in order to vex. Perhaps this is not so, the reference being to silence with intention to confirm? Now, when it is said, because he held his peace at her,[4] Scripture already refers to silence in order to confirm; hence, to what can I apply the phrase, 'but if the husband altogether hold his peace at her? To silence in order to vex. That is indeed a refutation.[5] But let one [verse] be applied to silence in order to confirm, and the other to silence without specified intentions? — Additional verses are written.[6]

Raba objected: IF SHE VOWED JUST BEFORE NIGHTFALL, HE CAN ANNUL ONLY UNTIL NIGHTFALL: FOR IF NIGHT FELL AND HE HAD NOT ANNULLED IT, HE CAN NO LONGER DO SO: but why? Let it [at least] be counted as though he were silent in order to provoke her! This is a refutation.

R. Ashi objected: [If the husband declares,] 'I know that there were vows, but did not know that they could be annulled,' he may annul them [now].[7] 'I knew that they could be annulled, but did not know that this is a vow,'[8] R. Meir ruled: He cannot annul [now];[9] whilst the Sages maintain: He can annul. But why [not, according to R. Meir]; let it [at least] be as though he were silent in order to provoke! This is a refutation.

C H A P T E R X I

MISHNAH. NOW THESE ARE THE VOWS WHICH HE[10] CAN ANNUL: VOWS WHICH INVOlve SELF-DENIAL.[11] [E.G.,]. 'IF I BATHE,' OR, 'IF I DO NOT BATHE,' 'IF I ADORN MYSELF,' OR, 'IF I DO NOT ADORN MYSELF.'

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(1) Which is viewed as greater stringency.

(2) This is not stated as an aspect of greater stringency in one or the other, but merely teaches a law.

(3) Num. XXX, 15.

(4) Ibid.

(5) Of R. Hanina.

(6) The idea of silence is expressed three times in that verse, But if her husband altogether keep silence — expressed in Heb. by הֶהֱרִישׁ יְהֵרִישׁ, which is a double expression, and, because he has kept silence — a third time; therefore every form of silence is meant.

(7) Because only when he knows his authority is the day regarded as 'the day on which he heard it.'

(8) Rashi: of a binding nature; Ran such as the husband may annul, (v. next Mishnah).

(9) For since he knew that the husband could annul vows, the day that he first learnt of his wife's vow is the day that he heard it.

(10) The husband.

(11) Cf. Num. XXX, 13.

Talmud - Mas. Nedarim 79b

R. JOSE SAID: THESE ARE NOT VOWS OF SELF-DENIAL, BUT THE FOLLOWING ARE VOWS OF SELF-DENIAL: VIZ., IF SHE SAYS, 'KONAM BE THE PRODUCE OF THE [WHOLE] WORLD TO ME', HE CAN ANNUL; 'KONAM BE THE PRODUCE OF THIS COUNTRY TO ME,' HE CAN BRING HER THAT OF A DIFFERENT COUNTRY;[1] '[KONAM BE] THE FRUITS OF THIS SHOP-KEEPER TO ME', HE CANNOT ANNUL; BUT IF HE CAN OBTAIN HIS SUSTENANCE ONLY FROM HIM,[2] HE CAN ANNUL: THIS IS R. JOSE'S OPINION.

GEMARA. [He can annul] only vows of self-denial, but not if they involve no self-denial? But it was taught: Between a man and his wife, between thee father and his daughter:[3] this teaches that a husband can annul vows which [affect the relationship] between himself and his wife? — I will tell you: He can annul both; but vows of self-denial he can permanently annul;[4] but if they involve no self-denial, annulment is valid only so long as she is under him, but if he divorces her, the vow becomes effective. [This refers however] to matters affecting their mutual relationship but involving no self-denial; but if they involve self-denial, the vow does not become effective. Now, do vows involving no self-denial become effective if he divorces her? But we learnt: R. Johanan b. Nuri said: He must annul it, lest he divorce her and she thereby be forbidden to him.[5] This proves that if he divorces her after first having annulled the vow, the annulment remains valid? — I will tell you: in both cases the annulment stands; but vows of self-denial he can annul in respect of both himself and strangers,[6] whereas if they involve no self-denial, he can annul in respect of himself only, not of others;[7] and it is thus meant: THESE ARE THE VOWS WHICH HE CAN ANNUL in respect of both himself and others, viz., VOWS THAT INVOLVE SELF-DENIAL.

'IF I BATHE.' What does this mean? Shall we say, that she declared, 'Konam be the fruit of the world to me, if I bathe'? then why annul it? Let her not bathe, and so the fruit of the world will not be prohibited to her! Moreover, could R. Jose maintain in this case that THESE ARE NOT VOWS OF SELF-DENIAL: perhaps she bathes, and the fruit of the world become forbidden to her?

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(1) Hence it is not a vow of self-deprival.

(2) E.g., if he must buy on credit, and no other tradesman trusts him.

(3) Num. XXX, 17.

(4) Even if he subsequently divorces her.

(5) If a woman vows that the work of her hands be forbidden to her husband, though the vow, through seeking to deprive the husband of his legal due, is invalid, R. Johanan b. Nuri ruled that the husband should nevertheless annul it. For, should he divorce her, the vow becomes valid, and therefore be could not remarry her, v. infra 85a.

(6) I.e., even if she marries another, the annulment holds good.

(7) I.e. if he divorces her and she marries another, the vow resumes its force.

Talmud - Mas. Nedarim 80a

Again, if she said, 'Konam be the pleasure of bathing to me for ever, if I bathe [once]', and the reason he can annul is because what can she do? if she bathes [once], the pleasure of [subsequent] bathing is forbidden her; if not, she becomes repulsive; whilst R. Jose maintains that she need not bathe, her repulsiveness being of no concern to us. But if so, it should be taught thus: R. Jose said:

This condition involves no self-denial? — Hence she must have vowed, 'Konam be the pleasure of bathing to me for ever, if I bathe to-day,' R. Jose maintaining that the disfigurement of one day's [neglect of bathing] is not disfigurement.

Talmud - Mas. Nedarim 80b

You have explained, 'IF I BATHE': how is 'IF I DO NOT BATHE' meant? Shall we say that she vowed, 'The pleasure of bathing be forbidden me forever, if I do not bathe to-day, 'why does she need annulment — let her bathe! — Said Rab Judah: [It means] that she said, 'The pleasure of bathing be forbidden me for ever, if I do not bathe in the water of steeping.'[1] Then by analogy, 'IF I DO NOT ADORN MYSELF' means, 'If I do not adorn myself with naphtha': but that renders her filthy![2] — Said Rab Judah, She vowed, 'The pleasure of bathing be forbidden me for ever, if I bathe to-day, and I swear not to bathe [to-day]'; 'the pleasure of adornment be forbidden me for ever, if I adorn myself to-day, and I swear not to adorn myself [to-day]'. Rabina said to R. Ashi: If so, the Mishnah should state, THESE ARE THE VOWS and oaths! — He replied: Learn, THESE ARE THE VOWS and oaths. Alternatively, oaths too are included in vows, for we learnt, [if one says,] As the vows of the wicked, he has vowed in respect of a nazirite vow, a sacrifice and an oath.[3]

Now, did the Rabbis rule that bathing involves self-denial when one refrains therefrom? But the following contradicts it: Though all these are forbidden,[4] kareth[5] is incurred only for eating, drinking and performing work. But if you maintain that in refraining from bathing there is self-denial, then if one bathes on the Day of Atonement he should be liable to kareth?[6] — Raba answered: In each case our ruling is based on the Scriptural context. In reference to the Day of Atonement, where it is written, Ye shall afflict your souls,[7] something whereby affliction is there and then perceptible [is implied];[8] whereas [to refrain from] bathing is not an immediately perceptible affliction. But of vows, where it is written, Every vow and every binding oath to afflict the soul,[9] something which leads to affliction [is indicated],[10] and not to bathe [for a long time] results in affliction.

One ruling of R. Jose contradicts another of his: With respect to a well belonging to townspeople, when it is a question of their own lives or the lives of strangers,[11] their own lives take precedence;[12] their cattle or the cattle of strangers, their cattle take precedence over those of strangers; their laundering or that of strangers,[13] their laundering takes precedence over that of strangers. But if the choice lies between the lives of strangers and their own laundering, the lives of the strangers take precedence over their own laundering. R. Jose ruled: Their laundering takes precedence over the lives of strangers.[14] Now, if to (refrain merely from] washing one's garment is a hardship in R. Jose's view,

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(1) I.e., the water in which flax was steeped; such water is foul and noisome, and it is an act of mortification to bathe therein.

(2) Surely 'adorn' would not be used in that sense!

(3) V. supra 9a.

(4) Viz., eating, drinking, etc., on the Day of Atonement.

(5) V. Glos.

(6) Since kareth is the penalty for not 'afflicting one's soul' — i.e., undergoing mortification; Lev. XXIII, 29.

(7) Ibid. XVI, 29.

(8) E.g., abstention from food.

(9) Num. XXX, 14.

(10) That follows from the infinitive.

(11) The well being the sole source of supply, sufficient only for the townspeople or for strangers, but not for both.

(12) They have a prior right thereto.

(13) The water being used for laundering purposes.

(14) In his opinion there is great self-denial in wearing unlaundered linen.

how much more so with respect to the body? — I will tell you: In R. Jose's opinion laundering is indeed of greater importance than bathing. For Samuel said: Scabs of the head [caused by not washing] lead to blindness; scabs (arising through the wearing] of (unclean] garments cause madness; scabs (due to neglect] of the body cause boils and ulcers.[1]

They sent word from there (sc. Palestine]:[2] Be on guard against scabs; take good care (to study] in company[3] and be heedful (not to neglect] the children of the poor,[4] for from them Torah goeth forth, as it is written, The water shall flow out of his buckets (mi-dalyaw]:[5] [meaning], from the dallim [poor] amongst them goeth forth Torah.[6] And why is it not usual for scholars to give birth to sons who are scholars? — Said R. Joseph, That it might not be maintained, The Torah is their legacy.[7] R. Shisha, the son of R. Idi, said: That they should not be arrogant towards the community. Mar Zutra said: Because they act high-handedly against the community.[8] R. Ashi said: Because they call people asses.[9] Rabina said: Because they do not first utter a blessing over the Torah.[10] For Rab Judah said in Rab's name: What is meant by, Who is the wise man, that he may understand this [. . . for what is the land destroyed etc.]?[11] Now, this question was put to the Sages, Prophets, and Ministering Angels,[12] but they could not answer it, until the Almighty Himself did so, as it is written, And the Lord said, Because they have forsaken my law which I set before them, and have not obeyed my voice, neither walked therein:[13] but is not 'have not obeyed my voice' identical with, 'neither walked therein'? — Rab Judah said in Rab's name: [It means] that they did not first recite a benediction over the Torah.[14]

Isi b. Judah did not come for three days to the college of R. Jose. Wardimus, the son of R. Jose, met him and asked, 'Why have you Sir, not been for these last three days at my father's school?' He replied, 'Seeing that I do not know your father's grounds [for his rulings], why should I attend?' 'Please repeat, Sir, what he told you,' he urged; 'perhaps I may know the reason.' Said he, 'As to what was taught, R. Jose said: Their laundering takes precedence over the lives of strangers, whence do we know a verse [to support this]? Said he, Because it is written, And the suburbs of them shall be for their cattle, and for their goods, and for all their beasts [hayyatham].[15] Now, what is meant by hayyatham: Shall we say, 'beasts' — but beasts are included in cattle? But if hayyatham means literally 'their lives', is it not obvious?[16] Hence it must surely refer to laundering,[17] since [neglect of one's clothes] causes the pains of scabs.[18]

R.JOSE SAID: THESE ARE NOT VOWS OF SELF-DENIAL. The scholars propounded: In the view of R. Jose, can he [the husband] annul them as matters affecting their mutual relationship?[19] — Come and hear: R. JOSE SAID: THESE ARE NOT VOWS OF SELF-DENIAL, implying however that they are matters affecting their mutual relationship.[20] — [No.] Perhaps he argues to them on their view. [Thus:] In my opinion they are not even matters affecting their mutual relationship: but you who maintain that they are vows of self-denial, should at least concede to me that these are not vows of self-denial.[21] What [is our decision on the matter]? — Adda b. Ahabah said: He can annul them, R. Huna said: He cannot annul,

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(1) Madness is the worst of the lot.

(2) This always refers to R. Eleazer b. Pedath — Sanh. 17b.

(3) This ensures greater keeness and understanding than studying alone.

(4) Or, not to neglect their teaching (Ran).

(5) Num. XXIV, 7.

(6) Adopting reading of 'En Yakob. Water being symbolic of Torah: cf. Is. LV, 1.

(7) I.e., others should not complain that it is useless for them to study, or that they themselves should not think study unnecessary.

(8) Var. lec.: because they are arrogant etc.

(9) These observations shew that there was a mutual antipathy between the scholars and the masses. Cf. Graetz, Gesch. IV, p. 361. It is noteworthy however that, as evidenced by this passage, many Rabbis themselves criticised the attitude of scholars.

(10) As required.

(11) Jer. IX, 11.

(12) 'And ministering angels' is absent from our text, but added from the parallel passage in B.M. 85a.

(13) Ibid. 10.

(14) This follows since the Almighty Himself had to answer; had they neglected it altogether, the reason would have been patent to all. Hence it must mean that though they studied it, their motives were selfish, and not based on an appreciation of its own intrinsic worth. This is expressed by saying that they did not recite a benediction over it, i.e., they did not value it for itself. Ran.

(15) Num. XXXV, 3.

(16) That they use it to benefit their own lives.

(17) I.e., wells in their suburbs shall be put to this use.

(18) And as it is expressed by a word meaning life, we deduce that its importance is so great that it takes precedence over the lives of strangers.

(19) For the husband may assert that he personally is affected by his wife's refusal to bathe or adorn herself. On the difference between the grounds of annulment, v. supra, 79b.

(20) For otherwise he should simply state that the husband cannot annul them (Ran and Asheri).

(21) So that if you persist in conceding the husband the right to annul, it should be on the grounds of mutual concern, not mortification.

Talmud - Mas. Nedarim 81b

because no fox dies in the earth of its own lair.[1]

It was taught in accordance with R. Adda b. Ahabah: Vows involving self-denial he [the husband] can annul in respect of both himself and herself, and in respect to herself and strangers;[2] but if they involve no self-denial, he can annul in respect of himself and herself, but not in respect to herself and strangers. E.g., if she vows, 'Konam be fruit unto me'? he can annul: 'Konam that I prepare nought for my father,' 'for your brother,' 'for your father,' 'for my brother,' or 'that I place no straw before your cattle,' or, 'water before your herds,' he cannot annul.[3] '[Konam] that I may not paint or rouge or cohabit,' he can annul as a matter affecting their mutual relationship; 'that I do not make your bed,' or, 'prepare[4] you drink,' or, 'wash your hands or feet,' he need not annul.[5] R. Gamaliel said: He must annul [them], as it is written, he shall not break his word.[6] Alternatively, 'he shall not break his word' teaches that a Sage cannot absolve himself from his own vows. Now, whom do we know to regard [a vow], 'that I paint not nor rouge' as matters affecting their mutual relationship [and not of self-denial]? R. Jose;[7] yet it is stated that he can annul them as matters affecting their mutual relationship.

The Master said: ' . . . "or cohabit," he can annul as a matter affecting their mutual relationship.' How so? If she vows, 'The pleasure of cohabitation with me [be forbidden] to you', why annul it, seeing that she is bound to afford it to him?[8] — But it means that she vowed, 'the pleasure of cohabitation with you be forbidden me,' and it accords with R. Kahana's dictum, viz., [If she vows,] 'The pleasure of cohabitation with me [be forbidden] to you,' she is compelled to grant it; but if she vows, 'The pleasure of cohabitation with you [be forbidden] to me,' he must annul it, because no person may be fed with what is forbidden to him. Who is the author of what was taught: Things that are in themselves permissible, and yet are treated by others as forbidden, you may not treat them as permitted in order to nullify them? Who is the author? — R. Gamaliel. For it was taught: R. Gamaliel said: He must annul them, as it is written, he shall not break his word;[9] alternatively, 'he shall not break his word' teaches that a Sage cannot absolve himself from his own vows.[10]

Raba asked R. Nahman: In the Rabbis' view, is [a vow to refrain from] cohabitation [a vow of] self-denial or a matter affecting their mutual relationship? — He replied, We have learnt this: [If she vows,] 'May I be removed from all Jews,'[11]

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(1) I.e., being accustomed to it, he cannot be harmed thereby. Likewise, the husband, being accustomed to his wife, is unaffected by her refusal to bathe.

(2) V. 79b.

(3) Because it is not a vow of mortification, nor is she under any obligation to do these things.

(4) Lit., 'mix the cup' (of wine with water).

(5) Such vows are automatically invalid, since she is under an obligation to do these things.

(6) Num. XXX, 3; i.e., by a Rabbinical decree he must annul it, that she may not treat vows lightly. The law is not deduced from the verse, which is cited merely to shew the solemnity of vows.

(7) For the Rabbis of the Mishnah hold it to be a vow of mortification.

(8) Hence it is automatically invalid.

(9) Just as there, a self-imposed prohibition may not be lightly treated, so here too.

(10) Thus the text as amended by Bah.

(11) That no Jew shall cohabit with me.

Talmud - Mas. Nedarim 82a

he must annul his own part, and she shall minister to him, whilst remaining removed from all Jews.[1] But if you say that this is a vow of self-denial, why does she remain forbidden to all Jews?[2] This proves that it is [only] a matter affecting their mutual relationship! — [No.] This is asked according to the Rabbis, whereas 'May I be removed from the Jews' is the teaching of R. Jose [only]. For R. Huna said: This entire chapter states the ruling of R. Jose. Whence is this deduced? Since the Mishnah teaches, R. JOSE SAID: THESE ARE NOT VOWS OF SELF-DENIAL, why state again HE CAN ANNUL: THIS IS R. JOSE'S OPINION? It therefore follows that from this onward [the author] is R. Jose.[3]

Samuel said on Levi's authority: All vows the husband can annul to his wife, except 'my benefit [be forbidden] to so and so,' which he cannot annul.[4] But he can annul [the vow], 'the benefit of so and so [be forbidden] to me.'[5]

We learnt: '[KONAM] BE THE FRUIT OF THIS COUNTRY TO ME,' HE CAN BRING HER THAT OF A DIFFERENT COUNTRY?[6] — Said R. Joseph: It means that she vowed, '[KONAM BE THE FRUIT OF THIS COUNTRY TO ME] which you may bring'.[7] Come and hear: 'KONAM BE THE FRUIT OF THIS SHOP-KEEPER TO ME,' HE CANNOT ANNUL? — Here too it means that she said, 'which you may bring.' [But does it not state:] BUT IF HE CAN OBTAIN SUSTENANCE ONLY FROM THIS SHOP-KEEPER, HE CAN ANNUL. Now if you maintain that she vowed, 'which you may bring,' why can he annul it?[8] Hence, since the second clause must mean [even] those not brought by the husband, the first clause [too must refer to even] what she herself brings? — But in the first clause he cannot annul, though [her vow forbade even what] she herself brings;

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(1) I.e., if he divorces her.

(2) Since the husband can annul vows of self-denial.

(3) The Talmud leaves the problem unsolved and proceeds to another subject.

(4) Not being a vow of mortification; this is self-evident, but is mentioned as a contrast to the next clause.

(5) Though she may not be immediately in need thereof, she may need it later, and therefore it is a vow of mortification.

(6) If abstention from the produce of an entire country is no mortification, surely to be forbidden benefit from a single person is none!

(7) Hence there is no self-denial. But had she entirely forbidden them, it would certainly entail deprivation, and the same

holds good if she forbids benefit from a single person.
(8) Let some other person, or herself, obtain supplies.

Talmud - Mas. Nedarim 82b

and our Mishnah states R. Jose's view. For R. Huna said: This entire chapter states the ruling of R. Jose. And what is meant by HE CANNOT ANNUL? On the score of self-denial, but he can annul it as a vow affecting their mutual relationship.[1]

Rab Judah said in Rab's name: If she vows [to abstain] from two loaves, [abstention from] one of which is self-denial, but not from the other:[2] since he [the husband] can annul in respect of that which causes self-denial, he can also annul in respect of the other. R. Assi said in R. Johanan's name: He can annul only in respect of that which causes self-denial, but not in respect of the other. Others say, R. Assi asked R. Johanan: What if she vows [to abstain] from two loaves, [abstention from] one of which is self-denial, but not from the other? — He answered: He can annul in respect of that which causes self-denial, but not in respect of the other. He objected: If a woman made a vow of a nazirite, and drank wine or defiled herself through the dead,[3]

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(1) Because he may find it necessary to maintain his wife with the provisions of that particular tradesman, and by forbidding benefit from him, his wife puts him to inconvenience. — Now, to revert to the subject, since this is the view of R. Jose only, in the Rabbis' opinion he could annul it as a vow of self-denial, in which case the annulment is wider in scope, as stated on 79b, and Samuel's dictum is in accordance with the Rabbis (Rashi and Ran). Asheri and Tosaf. explain that there may be two different answers here. Thus: (i) The Mishnah is taught according to R. Jose, whereas Samuel's dictum agrees with the Rabbis. Alternatively, (ii) by HE CANNOT ANNUL is meant that he cannot annul it as a vow of self-denial, but as a vow affecting them both. But Asheri and Tosaf. disagree on the interpretation of (ii). Asheri: and therefore Samuel's dictum may agree even with R. Jose, for Samuel too meant that he can annul it only as a vow affecting their mutual interests. Tosaf.: alternatively, the first clause could accord even with the Rabbis, who agree with R. Jose that this is no vow of mortification, being so limited in scope, yet it may be annulled as a vow of mutual concern, and Samuel too meant it in the same way.
(2) E.g., if one loaf was of fine flour and the other of coarse.
(3) Both of which are forbidden to a nazirite, Num. VI, 3, 6.

Talmud - Mas. Nedarim 83a

she receives forty [lashes].[1] If her husband disallowed her and she did not know that he disallowed her, and she drank wine and defiled herself through the dead, she does not receive forty [lashes]. But if you maintain, He can annul [only] in respect of that which causes self-denial, but not in respect of that which does not, perhaps he annulled her vow only in respect of wine, since [abstention therefrom] is a deprivation, but not of the kernels or husks [of grapes], abstention from which is no deprivation; hence let her receive forty?[2] — R. Joseph replied: There is [no state of] semi-neziruth.[3] Said Abaye to him: Does that imply that there is a sacrifice for semi-neziruth?[4] But, said Abaye, there is no semi-neziruth,[5] nor is there a sacrifice for semi-neziruth.

An objection is raised: If a woman made a vow of neziruth, set aside an animal, and then her husband disallowed her: she must bring the sin-offering of a bird, but not burnt-offering of a bird.[6] But if you say, a sacrifice is not incurred for half [the period of] neziruth, why must she bring the sin-offering of a bird? — What then: a sacrifice is incurred for half [the period of] neziruth — then she should bring three animals, [viz.,] a sin-offering, a burnt offering and a peace-offering?[7] But after all no sacrifice is incurred for half neziruth; whilst, as for the sin-offering of a bird which she must bring, that is because such is due even in case of doubt.[8]

He [further] objected: If a woman made a vow of a nazirite and became defiled, and then her

husband disallowed her, she must bring the sin-offering of a bird, but not the burnt-offering of a bird. But if you rule, he can annul [only] in respect of what involves self-denial, but cannot annul that which involves no self-denial,

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(1) The usual punishment for violating a negative injunction. Actually only thirty-nine lashes were given.

(2) For 'she goes unpunished' implies for no matter which injunction of a nazirite she transgresses. By 'perhaps' etc., 'surely can annul only' is meant.

(3) One is either completely a nazirite or not at all. But the vow to abstain from two loaves is divisible.

(4) Surely not! Since R. Joseph replied that there is no state of semi-neziruth, it follows that there may be a sacrifice for semi-neziruth. E.g., if a woman vowed to become a nazirite, whose duration, if unspecified, is thirty days, and after fifteen her husband learnt of her vow and annulled it. Now, his annulment cancels the following fifteen days, but not the previous, and Abaye expresses his surprise that, as is implied in R. Joseph's answer, the sacrifices are to be offered for half the period of neziruth.

(5) I.e., that some provisions of neziruth shall apply whilst others do not.

(6) On the expiration of the neziruth, three sacrifices are due, a burnt-offering, a sin-offering, and a peace-offering; Num. VI, 14. If, however, a nazir comes defiled through the dead within his period he must bring one animal as guilt-offering and two turtle-doves or young pigeons, one as a sin-offering and the other as a burnt-offering, and then recommence the full period afresh; ibid. 10f. Now, this is the meaning of the Baraitha. If a woman made the vow of a nazirite, and separated the animal for a guilt-offering, became defiled, and then had the vow annulled, she must offer only the pigeon sin-offering, but not the pigeon burnt-offering. Tosaf. and Asheri both question the purpose of the clause 'and set aside her animal,' which is apparently irrelevant, and leave the difficulty unresolved. Ran explains that its purpose is to shew that even if she had gone so far as to dedicate her guilt-offering, annulment cancels the neziruth retrospectively.

(7) Since the annulment by the husband is not retrospective (v. supra p. 244, n. 1) the short period in which she practised neziruth stands and is for her regarded as the whole, at the termination of which the three animals enumerated above are due. Cf. Num. VI, 13: And this is the law of the nazirite, when the days of his separation are fulfilled etc. Since her husband annulled the vow, her days are fulfilled by whatever period she observed.

(8) E.g., if a pregnant woman miscarried, and it is unknown whether the fetus had attained viability, in which case the sacrifices of childbirth are due, or not, she must bring a fowl sin-offering. Since this sacrifice is brought even for a doubtful liability, she must also bring it here for the sin of having vowed to be a nazirite; cf. 10a.

Talmud - Mas. Nedarim 83b

perhaps he disallowed her [only] in respect of wine, [abstention from] which is a real hardship, but not in respect of defilement through the dead, since no hardship is involved?[1] I will tell you: [The prohibition of] defilement through the dead too involves hardship, for it is written, and the living will lay it to his heart;[2] whereon it was taught: R. Meir used to say, What is meant by. and the living will lay it to his heart? He who laments will be lamented; he who weeps will be wept for; he who buries will be buried.[3]

MISHNAH. [IF SHE VOWS], 'KONAM, IF I MIGHT BENEFIT FROM MANKIND,'[4] HE CANNOT ANNUL,[5] AND SHE CAN BENEFIT FROM THE GLEANINGS, FORGOTTEN SHEAVES, AND PE'AH.[6] [IF A MAN SAYS] 'KONAM BE THE BENEFIT WHICH PRIESTS AND LEVITES HAVE FROM ME, THEY CAN SEIZE (THEIR DUES] AGAINST HIS WILL.[7] [BUT IF HE VOWS,] 'KONAM BE THE BENEFIT THESE PRIESTS AND LEVITES HAVE FROM ME,' OTHERS TAKE [THE DUES].

GEMARA. Thus we see that she may derive her sustenance from his [her husband's goods],[8] thus proving that her husband is not included in 'MANKIND' (in the sense of her vow]. Then consider the second clause: AND SHE CAN BENEFIT FROM THE GLEANINGS, FORGOTTEN SHEAVES, AND PE'AH; but she may not eat of her husband's, which proves that he is included in 'MANKIND'? — Said 'Ulla: After all, the husband is not included, and [the Mishnah] teaches thus: moreover, he cannot annul because SHE CAN BENEFIT FROM THE GLEANINGS,

FORGOTTEN SHEAVES, AND PE'AH.[9] Raba said: In truth, the husband is included in 'mankind', and (the second clause] states a reason. [Thus:] Why cannot he annul?[10] Because SHE CAN BENEFIT FROM THE GLEANINGS, FORGOTTEN SHEAVES, AND PE'AH.[11] R. Nahman said: In truth, the husband is not included in 'MANKIND', and the Mishnah teaches thus: if she was divorced, SHE CAN BENEFIT FROM THE GLEANINGS, FORGOTTEN SHEAVES, AND PE'AH.[12]

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(1) On 'perhaps etc.' v. p. 258, n. 1. Hence in spite of the annulment she ought to complete the full period and then offer the usual sacrifices. Tosaf. objects that the same answer could be given here as above, viz., there is no state of semi-neziruth; and replies that this perhaps holds good only of the kernels and husks of grapes, and everything appertaining thereto. But the prohibition of defilement is quite distinct from that of wine, (as is illustrated by a Samson nazirite. V. Nazir 4a) and therefore one may exist without the other.

(2) Ecc. VII, 2.

(3) I.e., one who pays the last respects to the dead will be similarly honoured, and, by implication, he who refrains will be likewise treated with contempt. It is therefore a matter of self-denial to abstain from death defilement, since thereby one forfeits the respects of his fellow-men at his own death.

(4) Lit., 'creatures'.

(5) Discussed in the Gemara.

(6) These are free to all. Since these are hefker (v. Glos.), she does not benefit from mankind in taking them.

(7) Since these belong to them, he cannot prohibit them.

(8) As otherwise it is certainly a vow of self-denial, which he may annul. It is now assumed that 'AND SHE CAN . . . PE'AH' does not give the reason why he cannot annul, but is an independent statement. For surely abstention from all mankind, including her husband, is no less deprivation than abstention from a tradesman from whom alone the husband can obtain supplies, which is regarded as mortification (v. supra 79b), though there too recourse might be had to gleanings, etc.! (Ran.).

(9) I.e., in the first place he cannot annul because his own substance is available to her, but an additional reason is that SHE CAN, etc. This furnishes a reason only when taken in conjunction with the first, but not independently (Ran. v. n. 5).

(10) Seeing that she cannot benefit even from her husband.

(11) As for the argument in n. 5, Raba will maintain that abstention from a tradesman from whom alone the husband can obtain supplies constitutes mortification only in winter, when gleanings, etc. are not available (Ran).

(12) I.e., though the husband is not included when she vows, he is after divorcing her, and then she must have recourse to gleanings, etc.

Talmud - Mas. Nedarim 84a

Raba objected before R. Nahman: Now, is the husband not included in the term 'MANKIND'? But we learnt: [If she vows,] 'May I be removed from all Jews,' he must annul his own portion therein, and she shall minister unto him, whilst remaining removed from all Jews.[1] But if you say that the husband is not included in MANKIND,[2] it is a vow of self-denial, which he should permanently annul?[3] — Here it is different, because it is obvious that she forbids to herself [primarily] what is [normally] permitted.[4]

SHE CAN BENEFIT FROM THE GLEANINGS, FORGOTTEN SHEAVES, AND PE'AH. Now the poor tithe is not included;[5] but it was taught in the Baraitha: And [she can benefit] from the poor tithe? — Said R. Joseph: That is no difficulty: one [teaching] agrees with R. Eliezer, the other with the Rabbis. For we learnt, R. Eliezer said: One need not designate the poor-tithe of demai;[6]

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(1) If she is divorced or becomes a widow. Infra 90a.

(2) [The terms 'Jews' and 'mankind' are taken to denote the same thing in relation to the husband.]

(3) For if the husband is not included in 'mankind', her vow cannot refer to cohabitation, which is forbidden in any case, but to benefit in general, and hence is a vow of mortification, which he can permanently annul (as stated on 79b); why

then state 'whilst remaining removed from all Jews,' which, on this hypothesis, means that she may never benefit from them. So cur. edd. and as rendered by Asheri. Ran, Tosaf. and the chief reading of Asheri are much simpler: But if the husband is not included in mankind, why annul his own portion therein, seeing that the vow never referred to him?

(4) Hence she must have meant her husband too, it being altogether unlikely that her vow bore reference to after divorce. But normally the term does not include her husband.

(5) In the third and sixth years of the septennate a tithe was separated for the poor, the owner of the field giving it directly to whomsoever of the poor he pleased.

(6) V. next note.

Talmud - Mas. Nedarim 84b

whilst the Sages say: He must designate [it], but need not separate it.[1] Now surely he who maintains that the doubt[2] renders it tebel,[3] also holds that he [the owner] possesses the good will thereof,[4] and that being so, he may not benefit [her].[5] Whilst he who maintains that no designation is necessary, is of the view that the doubt does not render it tebel;[6] and wherever the doubt does not render it tebel, he [the owner] enjoys no goodwill therein,[7] and therefore she may benefit therefrom.[8] Said Abaye to him: [No.] All agree that the doubt renders it tebel, but R. Eliezer and the Rabbis differ in this: R. Eliezer maintains that the 'amme ha-arez are not suspected of withholding the poor tithe, since should he renounce the title to his property and thus become a poor man, he may take [the tithe] himself; hence he suffers no loss.[9] But the Rabbis hold that no one will renounce ownership of his property, for he fears that another may acquire it;[10] therefore they are suspected.[11] Raba said: Here [the Mishnah] refers to the poor tithe distributed in the [owner's] house,[12] in connection wherewith 'giving' is mentioned, [viz.,] and thou shalt give it unto the Levite, the stranger, etc.;[13] therefore one [who vows not to benefit from mankind] may not benefit therefrom.[14] Whilst there [in the Baraitha] the reference is to the poor tithe distributed in the threshing floor; since it is written thereof, And thou shalt leave it at thy gates,[15] one may benefit therefrom.

'KONAM BE THE BENEFIT PRIESTS AND LEVITES HAVE FROM ME,' THEY CAN SEIZE, ETC. Thus we see that goodwill benefit has no monetary value.[16] Then consider the last clause: [BUT IF HE VOWS]. 'KONAM BE THE BENEFIT THESE PRIESTS AND LEVITES HAVE FROM ME.' OTHERS TAKE [THE DUES]: but not these, thus proving that goodwill benefit has monetary value? — Said R. Hoshaia:[17] There is no difficulty: the one [clause] accords with Rabbi, the other with R. Jose son of R. Judah. For it was taught: If one steals his neighbour's tebel and consumes it, he must pay him the value of the tebel:[18] that is Rabbi's ruling. R. Jose son of R. Judah said: He must pay him only for the value of its hullin. Now presumably they differ in this:

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(1) Demai, lit., 'of what (nature),' 'dubious' is the technical term for produce bought from a person who is not trusted to render the tithes, generally the 'am ha-arez; (v. Glos.) such produce had to be tithed by the purchaser. R. Eliezer maintains that it is unnecessary to designate any portion thereof as the poor tithe, because even if the first owner has definitely not separated the poor lithe the produce is permitted. But the Sages hold that as long as the poor tithe has not been separated the produce may not be eaten; therefore, since the original owner is under suspicion, he must designate the poor tithe himself, i.e., declare, 'this part of the produce is the poor tithe.' On the other hand, he is not compelled to give it to the poor, as he can challenge them, 'Prove that the first owner did not render the poor tithe.'

(2) Whether the poor tithe has been set aside or not.

(3) V. Glos.

(4) I.e., the owner can give the poor tithe to whomsoever of the poor he wishes.

(5) For the owner confers a definite benefit upon the person of his choice, since he could have given it to some other. Consequently, if a woman vows not to benefit from all mankind, she cannot take the poor tithe.

(6) Actually, according to this view, even if the poor tithe has definitely not been separated, it is not tebel; but since the discussion refers to demai, the doubt is mentioned.

(7) But must give it to the first poor man who applies. The interdependence of goodwill and tebel is deduced from Scripture.

(8) Lit., ‘one’. For she does not benefit from the owner, but takes it in virtue of her own right.
(9) It is assumed that no person transgresses a law which he can observe without loss to himself. Hence there is no fear that the ‘am ha-arez does not separate the poor-tithe. For he can designate part of the produce as poor tithe, formally renounce ownership if all his possessions, acquire the tithe, and then reacquire their possessions. Therefore when one purchases cereals from an ‘am ha-arez, he may assume that the poor tithe has been separated, or that by formally renouncing ownership the peasant has exempted it.
(10) For such renunciation had to be in the presence of witnesses, supra 45a, one of whom might forestall the first owner and acquire it himself.
(11) Since Abaye had refuted R. Joseph's answer, the difficulty remains, and Raba proceeds to dispose of it.
(12) If for any reason the poor tithe was not distributed in the threshing floor, as it should have been, it must be done in the house.
(13) Deut. XXVI, 12.
(14) For ‘thou shalt give’ implies that the owner possesses disposal rights therein.
(15) Ibid. XIV, 28; this implies that it must be left for whomever wishes to take it, and that the owner cannot allot it to any line in particular.
(16) Since the priest and Levites, who may not benefit from him, can seize the dues against his wishes, though he possesses the right of disposing of them at will.
(17) Var. lec.: Joseph.
(18) I.e., the value of the hullin (v. Glos.) it contains and the monetary value of his disposal rights over the terumah and tithes therein.

Talmud - Mas. Nedarim 85a

Rabbi holds that goodwill benefit has money value, whilst R. Jose son of R. Judah holds that goodwill benefit has no money value.[1] — No. All agree that goodwill benefit has no monetary value, but here they disagree over unseparated [priestly] dues.[2] But since goodwill benefit has no monetary value, what does it matter whether they have been separated or not?[3] — But this is Rabbi's reason: the Rabbis penalised the thief, that he may not steal; whereas R. Jose son of R. Judah maintains that the Rabbis penalised the owner, that he should not delay with his tebel.[4] Raba said:[5] Terumah is different, this being the reason that they can take it against his will: for terumah is fit only for priests, and since he came and forbade it to them, he rendered it just like dust.[6]

MISHNAH. [IF SHE VOWS,] ‘KONAM THAT I DO NOT AUGHT FOR[7] MY FATHER,’ ‘YOUR FATHER,’ ‘MY BROTHER,’ OR, ‘YOUR BROTHER,’ [THE HUSBAND] CANNOT ANNUL IT. ‘THAT I DO NOT AUGHT FOR YOU,’ HE NEED NOT ANNUL.[8] R. AKIBA SAID: HE MUST ANNUL IT, LEST SHE EXCEED HER OBLIGATIONS.[9] R. JOHANAN B. NURI SAID: HE MUST ANNUL IT, LEST HE DIVORCE HER AND SHE THEREBY BE FORBIDDEN TO HIM.

GEMARA. Samuel said: The halachah is as R. Johanan b. Nuri. Shall we say that in Samuel's opinion a man can consecrate that which is non-existent?[10] But the following contradicts it: If a man consecrates his wife's handiwork [which she will produce],

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(1) Hence the first clause of the Mishnah under discussion agrees with R. Jose b. R. Judah, and the second with Rabbi.
(2) Rabbi regards the whole as hullin, whilst R. Jose b. R. Judah maintains that since they would have had to be separated eventually, they are regarded as though already removed from the whole, and therefore he must pay only for its hullin.
(3) Since they must eventually be separated.
(4) But render its dues immediately after harvesting. He therefore receives a payment only for its hullin. Presumably he is nevertheless required to render the priestly dues or their value on the stolen produce.
(5) In reconciling the discrepancy between the two clauses.
(6) I.e., entirely valueless, as far as he is concerned, and therefore the priests can take it.

(7) Lit., ‘for the mouth’.

(8) Since she is bound to work for him.

(9) The amount of work she is obliged to do for him is prescribed in Keth. 64b. Her vow is valid in respect of everything above that, and therefore the husband must annul the vow.

(10) Lit., ‘a thing that has not come into the world’. For the prohibition of a vow is a manner of consecration, v. p. 105, n. 8. Now, according to R. Johanan b. Nuri that prohibition is effective in respect of anything she may do after he divorces her, though as yet she is neither divorced nor has she produced anything: hence, just as a vow is valid in respect of the non-existent, so is consecration too, and since Samuel accepts this ruling as the halachah, it must be his view too.

Talmud - Mas. Nedarim 85b

she may work and provide for herself, and as for the surplus, R. Meir[1] rules that it is hekdesh.[2] R. Johanan the sandal-maker ruled that it is hullin.[3] Whereon Samuel said: The halachah is as R. Johanan the sandal-maker, thus proving that a man cannot consecrate the non-existent. And should you reply that he ruled that the halachah is as R. Johanan b. Nuri only in respect of the excess;[4] then he should have said, The halachah is as R. Johanan b. Nuri in respect of the excess, or, the halachah is as the first Tanna,[5] or, the halachah is not as R. Akiba? — But, said R. Joseph, konamoth[6] are different: since a man can interdict his neighbour's fruit to himself, he can prohibit to himself the non-existent.[7] Said Abaye to him: It is proper that one may prohibit his neighbour's fruit to himself, since he can forbid his own fruit to his neighbour: but shall he forbid the non-existent to his neighbour, seeing that he cannot interdict his neighbour's fruit to his neighbour![8] — But, said R. Huna the son of R. Joshua, it means that she vowed, ‘My hands be consecrated in respect of what they may produce’;[9] [the vow is valid even after divorce,] because her hands are already in existence. But if she vowed thus, would they be consecrated [and forbidden]? surely her hands are pledged to her husband.[10] She vowed, ‘When he divorces me.’ But now at least she is not divorced: how then do you know that such a declaration is valid?

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(1) Var. lec.: Tarfon.

(2) Because one can consecrate the non-existent.

(3) He holds that one cannot consecrate the non-existent.

(4) For since R. Johanan b. Nuri rejects R. Akiba's reason, it follows that in his opinion the surplus belongs to the husband, not to the wife.

(5) Who also holds that the excess belongs to the husband, since he maintains he need not annul.

(6) I.e., prohibitions, arising as a result of vows, v. supra p. 105, n. 8.

(7) For in real consecration one cannot consecrate his neighbour's property.

(8) Abaye objects that the analogy is defective. For in both cases cited by R. Joseph. viz., prohibiting his neighbour's produce and prohibiting the non-existent to himself, there is when vowing one element of the vow under his control — himself. But if a woman interdicts her earnings to her husband, neither her husband nor her future earnings are in her control when she vows.

(9) So that whatever my hands produce shall be forbidden.

(10) And since the vow cannot take immediate effect, it cannot become effective after divorce.

Talmud - Mas. Nedarim 86a

— Said R. Elai: What if a man declares to his neighbour, ‘Let this field which I am selling you be consecrated when I buy it back from you’, — is it not consecrated?[1] R. Jeremiah demurred to this: How compare! [In the case of] ‘Let this field which I sell you [etc.],’ it is now in his possession; but is it in a woman's power to consecrate the work of her hands?[2] This is [rather] to be compared only to a man who says to his neighbour, ‘Let this field, which I have sold to you, be consecrated when I repurchase it from you,’ — is it consecrated?[3] R. Papa demurred to this: How compare! In the case of purchase the matter is definitely closed;[4] but as for a woman, is the matter definitely closed?[5] This can only be compared to a man who declares to his neighbour. ‘Let this field, which I have

mortgaged to you, be consecrated when I redeem it from you', — is it not consecrated? R. Shisha the son of R. Idi demurred to this: How compare! As for the field, it is in his power to redeem it; but does it lie with a woman to be divorced? This is [rather] to be compared to one who says to his neighbour. 'Let this field, which I have mortgaged to you for ten years, be consecrated on its redemption,' — is it not consecrated?[6] R. Ashi demurred to this: How compare! There is a definite term [for redemption]; has then a woman a definite term [when she can encompass her divorce]?[7]

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(1) Surely it is! So here too the vow is valid in respect of a future state through it is not valid when made.

(2) Obviously not.

(3) Surely not. Thus, he argued, this analogy proves on the contrary that the woman's vow is invalid.

(4) Neither the field nor its produce belongs, for the time being, to the vower.

(5) For her body at least still belongs to herself.

(6) Surely it is, though it cannot be redeemed before a certain date; so in the case of a woman too, though she cannot procure her divorce. As far as actual law is concerned this Rabbi agrees with the preceding: he merely varies the analogy for the sake of greater accuracy, though the result is the same.

(7) Obviously not; hence it should follow that her vow is invalid.

Talmud - Mas. Nedarim 86b

But, said R. Ashi, konamoth are different, since they have the force of intrinsic sanctity;[1] and [it is] in accordance with Raba's dictum, For Raba said: Hekdesh,[2] [the prohibition of] leaven, and manumission [of a slave] release from [the burden of] mortgage.[3] If so, why state LEST HE DIVORCE HER?[4] — Learn: moreover, LEST HE DIVORCE HER.[5]

MISHNAH. IF HIS WIFE VOWED, AND HE TOUGHT THAT HIS DAUGHTER HAD VOWED, OR IF HIS DAUGHTER VOWED AND HE THOUGHT THAT HIS WIFE HAD VOWED; IF SHE TOOK THE VOW OF A NAZIRITE, AND HE THOUGHT THAT SHE HAD VOWED [TO OFFER] A SACRIFICE, OR IF SHE VOWED (TO OFFER] A SACRIFICE, AND HE THOUGHT THAT SHE VOWED A NAZIRITE VOW; IF SHE VOWED [TO ABSTAIN] FROM FIGS, AND HE THOUGHT THAT SHE VOWED FROM GRAPES, OR IF SHE VOWED [TO ABSTAIN] FROM GRAPES AND HE THOUGHT THAT SHE VOWED FROM FIGS,[6] HE MUST ANNUL [THE VOW] AGAIN.

GEMARA. Shall we say that ['if her husband] disallow her'[7] is precisely meant?[8]

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(1) Lit., 'bodily sanctity'. I.e., of objects consecrated in themselves, and which are offered on the altar; these are irredeemable. The term is opposed to 'monetary consecration,' i.e., objects which are consecrated so that they may be redeemed and their redemption money dedicated to Temple Service. As seen above (p. 105, n. 8), konam is really a form of consecration, and it is here stated that its prohibition is as strong as that which is intrinsically consecrated.

(2) V. Glos.

(3) If one pledges an unblemished animal for repayment of a debt, and then consecrates it, the intrinsic sanctity it acquires liberates it from the bond and the creditor cannot seize it in payment. Similarly, if one pledges leaven to a Gentile, the advent of Passover and the resultant prohibition cancels the pledge, and the Jew is bound to destroy it, like any other leaven. Likewise, if one mortgages a slave and then manumits him, he is released from the pledge, and the creditor cannot take him on payment. Hence, if a woman declares her hands konam, she thereby destroys their pledged character, and the vow is valid.

(4) For according to this the vow is valid even before.

(5) I.e., actually the vow is valid even now, since konam has the force of intrinsic consecration. But should you dispute this, for the Rabbis strengthened the husband's rights, so that not even konam may cancel them, the husband must still annul the vow, lest he divorce her. The objections raised above to the assumption that the vow has after-divorce validity are now inapplicable. Since in fact the vow should be valid immediately, but that the Rabbis, by a special decree, strengthened the husband's rights and rendered it valid, it follows that on divorce the law is restored to its proper basis.

— In Keth. 59b the text reads: ‘the Rabbis strengthened the husband's rights, so that the consecration should not be valid from now’; and the reading of Rashi, Tosaf. and Asheri is the same here too. Cur. edd., however, and also Ran, have the reading as given.

(6) And on these assumptions he annulled the vow.

(7) Num. XXX, 9.

(8) I.e., he must intend to disallow her, not a different person.

Talmud - Mas. Nedarim 87a

But what of the rents [for the dead], concerning which, for . . . for . . . is written, viz., [Then David took hold on his clothes and rent them . . .] for Saul and for Jonathan his son:[1] yet it was taught: If he was informed that his father had died, and he rent [his garments], and then it was discovered that it was his son, he has fulfilled the duty of rending?[2] — I will tell you: there is no difficulty. The one [teaching] refers to an unspecified action; the other to a specified one.[3] And it was taught [likewise]:[4] If he was informed that his father had died, and he rent his garments, and then it was discovered to be his son, he did not fulfil the duty of rending. If he was told that a relation of his had died, and thinking that it was his father, he rent [his garments], and then it was discovered to be his son, he fulfilled the duty of rending.[5] R. Ashi said: The one means [that he realised his error] within the period of an utterance;[6] the other, [that he realised it] after the period of an utterance. ([Thus:] Your ruling that his duty of rending is fulfilled holds good when it is discovered to be his son within the period of an utterance, whilst your ruling that his obligation remains unfulfilled is [if he learnt it] after such period of an utterance.)[7] And it was taught likewise: If one has all invalid in his house, who falls into a swoon and appears to be dead, and he rends his garments, and then he [the invalid] dies, his duty of rending is unfulfilled.[8] Said R. Simeon b. Pazzi in the name of R. Joshua b. Levi on the authority of Bar Kappara. This was taught only if he died after the period of an utterance; but [if he died] within the period of an utterance, he need not rend his garments again.[9] Now, the law is that [that which follows an action] within the period of an utterance is as [though it were simultaneous with] the utterance,[10] except in the case of blasphemy, idolatry, betrothal and divorce.[11]

MISHNAH. IF SHE VOWS, ‘KONAM, IF I TASTE THESE FIGS AND GRAPES, AND HE [THE HUSBAND] CONFIRMS [THE VOW] IN RESPECT OF FIGS, THE WHOLE [VOW] IS CONFIRMED; IF HE ANNULS IT IN RESPECT OF FIGS, IT IS NOT ANNULLED, UNLESS HE ANNULS IN RESPECT OF GRAPES TOO. IF SHE VOWS, ‘KONAM IF I TASTE FIGS’ AND ‘IF I TASTE GRAPES’, THEY ARE TWO DISTINCT VOWS.[12]

GEMARA. Who is the author of our Mishnah? — R. Ishmael. For it was taught: Her husband may confirm it, or her husband may make it void:[13] If she vows, ‘Konam, if I taste these figs and grapes’, and he [the husband] confirms [the vow] in respect of figs, the whole vow is confirmed;

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(1) II Sam. I, 11f. The repetition of ‘for’ implies that he made a rent for each specifically.

(2) Though it appears from the verse quoted that the rent must be for a particular person; the same then should hold good of annulment of vows.

(3) I.e., the Baraitha means that he rent his garment without specifying for whom (v. Tosaf.), but in the Mishnah he explicitly designated the wrong person.

(4) והתניא, v. note 6.

(5) Thus if he had explicitly rent his garments for the wrong person, his obligation is unfulfilled; but not if his error was a mental one only. [Some texts omit the last clause. The Baraitha just cited is thus regarded as contradictory to the first. On this reading והתניא (v. n. 5) introduces a question and is to be rendered ‘But was it not taught’. V. Asheri, 4a.)

(6) I.e., almost immediately after he rent his garments, within the time that it would take to make an utterance, e.g., a greeting, v. Nazir 20b.

(7) [On this reading, which is that of cur. edd., R. Ashi's main object is to reconcile the two Baraithas (v. n. 6), though his distinction in regard to the time when the error was discovered might serve also to explain our Mishnah (Ran). Some

texts; however, omit the bracketed passage. On this latter reading R. Ashi's reply is intended solely to reconcile our Mishnah and the first cited Baraitha; v. Asheri, cur. edd. which retain the 'last clause' (v. n. 6) and this bracketed passage, present, on the view of Asheri, a conflated text.]

(8) Since he was alive when the garments were rent, that rending is invalid.

(9) So the text as emended by Bah.

(10) Hence cancelling or modifying the action, as the case may be.

(11) If one commits blasphemy or practises idolatry, and immediately, within the period of utterance, retracts, his retraction is unavailing. If a woman accepts kiddushin or a divorce, and immediately thereafter withdraws her consent, such withdrawal is invalid.

(12) And each can be annulled or confirmed without the other.

(13) Num. XXX, 14.

Talmud - Mas. Nedarim 87b

but if he annulled it in respect of figs, it[1] is not annulled, unless he annuls in respect of the grapes too: this is R. Ishmael's opinion. R. Akiba said: Behold, it is written, her husband may [yekimennu] confirm it or her husband may annul it [yeferenu]: just as yekimennu implies mimmennu [part of it],[2] so yeferenu means part thereof.[3] And R. Ishmael?[4] — Is it then written, he shall annul [part] thereof? And R. Akiba?[5] — Annulment is assimilated to confirmation: just as confirmation [denotes a part] thereof, so annulment too [denotes a part] thereof. R. Hiyya b. Abba said in R. Johanan's name: These are the views of R. Ishmael and R. Akiba. But the Sages maintain: Confirmation is assimilated to annulment: just as in the case of annulment, that which he annulled is void, so also in respect to confirmation, that which he confirmed is confirmed.[6]

IF SHE VOWS, 'KONAM, IF I TASTE FIGS' [AND 'IF I TASTE GRAPES, etc.']. Raba said: Our Mishnah agrees with R. Simeon, who ruled: He must say 'I swear' to each one separately.[7]

MISHNAH. [IF THE HUSBAND DECLARES,] 'I KNOW THAT THERE WERE VOWS, BUT DID NOT KNOW THAT THEY COULD BE ANNULLED', HE MAY ANNUL THEM [NOW]. [BUT IF HE SAYS:] 'I KNOW THAT ONE CAN ANNUL, BUT DID NOT KNOW THAT THIS WAS A VOW,' R. MEIR RULED: HE CANNOT ANNUL IT, WHILST THE SAGES MAINTAIN: HE CAN ANNUL.[8]

GEMARA. But the following contradicts this: [Or if he smote him with any stone, wherewith a man may die,] seeing him not [. . . then the congregation shall restore him to the city of his refuge]:[9] this excludes a blind man;[10] that is R. Judah's view. R. Meir said: It is to include a blind person![11] —

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(1) [a. Either the whole vow; or b. the part he did not annul (Ran); v. p. 270, n. 5.]

(2) Yekimennu is taken as a contraction of yakim mimmenu, 'he shall confirm part of it'.

(3) Though yeferenu itself cannot bear that meaning, it is nevertheless so rendered by analogy with yekimennu. Hence if he annulled part thereof, the entire vow is annulled.

(4) How does he justify his view?

(5) And how does he dispose of this objection?

(6) On this reading, the Sages regard it as axiomatic that part of a vow can be annulled, and by analogy rule likewise for confirmation. Hence the statement of the Mishnah, that if he annulled the vow in respect of figs it is not annulled, must mean that the vow is not entirely void; the conflict in the Baraitha must also be interpreted on the same lines. But in the Tosefta it appears that if one annulled only part thereof the entire vow remains valid. Consequently the reading of some editions is preferable: But the Sages maintain, just as in the case of annulment, even that part which he annulled is not void, so is confirmation too — even that which he confirmed is not confirmed (Ran).

(7) V. supra p. 211, n. 3; so here too, only if she says 'If I taste' for each separately, is it regarded as two distinct vows.

(8) V. supra 79a for notes.

(9) Num. XXXV, 23f.

(10) Who is not exiled to the refuge cities for manslaughter.

(11) In Deut. XIX, 5, it is stated, as when a man goeth into a wood with his neighbour, etc. This implies that the unwitting murderer must have known where his victim was, but that he killed him unintentionally. If, however, he did not know of his presence, the law of exile is inapplicable. Now a blind person does not see his victim, nevertheless, owing to the greater keenness of his other faculties he senses the presence of the victim, though not knowing exactly where he is. R. Judah maintains that the partial knowledge of the blind is regarded as full knowledge, and would be sufficient for the law to operate. Consequently, when Scripture states, 'seeing him not', which implies that he might however have seen him, it must teach the exclusion of the blind. R. Meir's view is that partial knowledge is in itself not regarded as complete knowledge; hence, without any verse one would assume that a blind person is excluded. Consequently, 'seeing him not' cannot exclude the blind, since for that no verse is necessary, but must be translated, 'though not seeing him', i.e., though unable to see him, and the verse extends the law to the blind. Thus this contradicts the Mishnah, for there R. Meir rules that since he possessed the partial knowledge that a husband can annul vows, he is regarded as having possessed the complete knowledge, and therefore cannot annul after the day of hearing. Likewise R. Judah here is opposed to the Sages in the Mishnah, by whom R. Judah is meant, when they are in opposition to R. Meir (Rashi). Ran, Asheri and Tosaf. give different interpretations.

Talmud - Mas. Nedarim 88a

Raba answered: In each case (the ruling follows] from the context.[1] R. Judah reasons: Concerning a murderer it is written, As when a man goeth into a wood with his neighbour, etc.,[2] implying whoever can go into a 'wood', and a blind person too can enter a wood. Now, should you say that 'seeing him not' teaches the inclusion of the blind, that could be deduced from 'a wood'. Hence 'seeing him not' must exclude the blind. But R. Meir maintains: It is written, [Whoso killeth his neighbour] without knowing,[3] [which implies] whoever that can know, whereas a blind person cannot know. Now, should you say that 'seeing him not' excludes the blind, that would follow from, 'without knowing'. Consequently, 'seeing him not' must teach the inclusion of the blind.[4]

MISHNAH. IF A MAN IS UNDER A VOW THAT HIS SON-INLAW SHALL NOT BENEFIT FROM HIM,[5] AND HE DESIRES TO GIVE MONEY TO HIS DAUGHTER, HE MUST SAY TO HER, 'THIS MONEY IS GIVEN TO YOU AS A GIFT, PROVIDING THAT YOUR HUSBAND HAS NO RIGHTS THEREIN, (FOR ONLY THAT IS YOURS] WHICH YOU MAY PUT TO YOUR PERSONAL USE.'[6]

GEMARA. Rab said: We learnt this only if he says to her, 'WHICH YOU MAY PUT TO YOUR PERSONAL USE.' But if he says, 'Do what you please,' the husband acquires it.[7] Samuel said: Even if he declares, 'Do what you please,' the husband has no rights therein. R. Zera demurred to this:

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(1) So cur. edd. Ran reads: In this case (sc. of a murderer) the ruling follows from the context.

(2) Deut. XIX, 5.

(3) Ibid. 4; i.e., by throwing a stone without knowing where it will fall.

(4) Thus their dispute does not centre on the question whether partial knowledge is as full knowledge or not, and hence has no bearing on our Mishnah.

(5) The text is uncertain.

(6) Lit., 'put into your mouth.'

(7) For since she is able to put it to any use, her rights are automatically transferred to her husband.

Talmud - Mas. Nedarim 88b

With whom does this ruling of Rab agree? With R. Meir, who said: The hand of a woman is as the hand of her husband.[1] But the following contradicts it: How is a partnership formed in respect of an alley way?[2] One [of the residents] places there a barrel [of wine] and declares, 'This belongs to all

the residents of the alley way': and he transfers ownership to them through his Hebrew slave, male or female, his adult son or daughter, or his wife.[3] But if you say, her husband acquires it, the 'erub[4] has not left the husband's possession?[5] — Raba replied: Although R. Meir said, The hand of a woman is as the hand of her husband, he agrees in respect to 'partnership',[6] that since his object is to transfer it to others, she can acquire it from her husband. Rabina objected before R. Ashi: The following can acquire it on their behalf: his adult son or daughter, his Hebrew slave, male or female. But the following can not acquire it on their behalf: his son or daughter, if minors, his Canaanite slave, male or female, and his wife![7] — But, said R. Ashi, the Mishnah[8] holds good [only] when she possesses a court in that alley way,[9] so that since she can acquire part ownership [in the 'erub] for herself,[10] she can also acquire it on behalf of others.

MISHNAH. BUT EVERY VOW OF A WIDOW AND OF HER THAT IS DIVORCED . . . SHALL STAND AGAINST HER.[11] HOW SO? IF SHE DECLARED, BEHOLD, I WILL BE A NAZIRITE AFTER THIRTY DAYS', EVEN IF SHE MARRIED WITHIN THE THIRTY DAYS, HE CANNOT ANNUL IT.

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(1) I.e., she has no independent rights, v. Kid. 23b.

(2) By a legal fiction a partnership was formed by all the Jewish residents of an alley in respect thereto, that it might rank as a private domain, and carrying therein be permitted on the Sabbath. This was effected by placing in it some food of which all the residents became joint-owners, v. 'Er. 73b.

(3) Who accept it from him on behalf of the residents.

(4) Lit., 'mixture', 'combination', the technical terms for the thing deposited (v. Glos.).

(5) And that law is contained in an anonymous Mishnah, the author of which is R. Meir.

(6) Shittuf. The technical term for the partnership created for the purposes of the Sabbath law.

(7) The reference is the same as above. This shews that the wife, having no powers of acquisition apart from her husband, cannot be the medium of transference, and thus contradicts the Mishnah just quoted. This difficulty arises in any case, but Rabina adduces it here to refute the distinction posited by Raba.

(8) In 'Er.

(9) E.g., if she had inherited it before marriage, and the groom had written a deed renouncing all rights therein.

(10) Because that is in the husband's own interest, for carrying is forbidden in the alley unless every resident — and the wife ranks as one in her own rights, since she possesses a court — is part owner of the 'erub, whereas the other teaching (a Baraitha) refers to the case where she has no court of her own.

(11) Num. XXX, 10.

Talmud - Mas. Nedarim 89a

IF SHE VOWS WHILE UNDER HER HUSBAND'S AUTHORITY, HE CAN DISALLOW HER. HOW SO? IF SHE DECLARED, 'BEHOLD! I WILL BE A NAZIRITE AFTER THIRTY DAYS,' [AND HER HUSBAND ANNULLED IT], EVEN THOUGH SHE WAS WIDOWED OR DIVORCED WITHIN THE THIRTY DAYS, IT IS ANNULLED. IF SHE VOWED ON ONE DAY, AND HE DIVORCED HER ON THE SAME DAY AND TOOK HER BACK ON THE SAME DAY, HE CANNOT ANNUL IT. THIS IS THE GENERAL. RULE: ONCE SHE HAS GONE FORTH AS HER OWN MISTRESS [EVEN] FOR A SINGLE HOUR, HE CANNOT ANNUL.

GEMARA. It was taught: If a widow or a divorced woman declares, 'Behold! I will be a nazirite when I marry,' and she marries, — R. Ishmael said: He [the husband] can annul. R. Akiba ruled: He cannot annul. (And the mnemonic is Yelaly).[1] If a married woman declares, 'Behold! I will be a nazirite when I am divorced,' and she is divorced: R. Ishmael ruled: He cannot annul;[2] R. Akiba said: He can annul.[3] R. Ishmael argued: Behold, it is said, But every vow of a widow, and of her that is divorced . . . shall stand against her,[4] implying that the [incidence of] the vow must be in the period of widowhood or divorce.[5] [But] R. Akiba maintains: It is written, with whatever she hath bound her soul,[4] implying that the binding of the vow must be [created] in the period of widowhood

or divorce.[6]

R. Hisda said: Our Mishnah agrees with R. Akiba.[7] Abaye said: It may agree even with R. Ishmael: in the Mishnah she made herself dependent upon a time factor; the period may end without her being divorced or the period may end without her being married;[8] but in the Baraitha she made the vow dependent upon marriage.[9]

'This is the general rule,' taught with respect to a betrothed maiden,[10] is to extend the law to where the father accompanied the [betrothed] husband's messengers, or the father's messengers accompanied the [betrothed] husband's messengers, — that in the case of a betrothed maiden her vows are annulled by her father and husband.[11] 'THIS IS THE GENERAL RULE,' taught in the chapter,[12] 'Now these are the vows,' is meant to extend [the law] to where the father delivered her to her [betrothed] husband's messengers, or where the father's agents delivered her to the messengers of the [betrothed] husband, [and it teaches] that the husband cannot annul [vows] made [by her] previously.[13]

MISHNAH. THERE ARE NINE MAIDENS WHOSE VOWS[14] STAND:[15] [i] A BOGERETH WHO [VOWED] AND IS AN ORPHAN;[16] [ii] A MAIDEN [WHO VOWED] AND [THEN] BECAME A BOGERETH AND IS AN ORPHAN;

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(1) I.e., in the clause just quoted, R. Ishmael rules Yafer, he may annul; R. Akiba: Lo yafer, he cannot annul. In the next clause it is the reverse, R. Ishmael says, Lo Yafer; and R. Akiba: Yafer.

(2) The husband's annulment whilst she is married is invalid after divorce.

(3) Thus in both cases R. Ishmael maintains that the woman's status when the vow is to take effect is the deciding factor, and R. Akiba holds that it depends on her status when she vows.

(4) Num. XXX, 10.

(5) And that in that case it 'shall stand against her', i.e., it cannot be annulled, proving that the incidence of the vow is what matters.

(6) I.e., that she makes the vow then, and that in that case her husband cannot annul.

(7) Since in both clauses of the Mishnah the matter is determined by the time when the vow was made.

(8) Adopting the reading of Bah. v. Ran.

(9) If she is unmarried, and vows to be a nazirite when she marries, there must he a change of status between the making of the vow and its incidence; in that case R. Ishmael rules that we regard the latter. But if she merely postpones the incidence of the vow, she may bear the same status when the vow becomes operative as when it is made; there R. Ishmael may admit that we regard the time of making the vow.

(10) Supra 71a. Whenever a general rule is stated, it is always meant to add to the specific case actually given.

(11) When the father gives over his daughter to the messengers of the husband to escort her to her new home, she is regarded as a nesu'ah, and has passed out of her father's authority. But if he or his messengers accompany her, together with her husband's messengers, she is yet under his authority, and he still shares the power to annul with her husband. On this home-taking ceremony v. Keth. 48b.

(12) I.e., in the present Mishnah, which forms part of Chapter XI.

(13) I.e., vows made before her homecoming. Having passed out of her father's authority, (v. n. 2) she is her own mistress until she enters her husband's home, and if she vowed in the interval, he cannot annul.

(14) 'Maidens' is not used here in the restricted sense of na'arah, but means girls and women in general who were betrothed while still in the stage of na'arah.

(15) I.e., they cannot be annulled.

(16) The reference is to 'an orphan during her father's lifetime,' i.e., one who was married with nissu'in, and then widowed or divorced. Even if she is still a minor, her father no longer has any authority over her, so she is called 'an orphan during her father's lifetime.'

[iii] A NA'ARAH WHO IS NOT YET A BOGERETH, AND IS AN ORPHAN;[1] [iv] A BOGERETH [WHO VOWED] AND WHOSE FATHER DIED;[2] [v] A NA'ARAH [WHO VOWED] AND IS NOW A BOGERETH AND WHOSE FATHER DIED;[2] [vi] A NA'ARAH WHO IS NOT YET A BOGERETH AND WHOSE FATHER DIED; [vii] A MAIDEN WHOSE FATHER DIED, AND AFTER HER FATHER DIED SHE BECAME A BOGERETH;[3] [viii] A BOGERETH[4] WHOSE FATHER IS ALIVE; [ix] A MAIDEN TURNED BOGERETH, WHOSE FATHER IS ALIVE.[5] R. JUDAH SAID: ALSO ONE WHO MARRIED HIS DAUGHTER WHILST A MINOR, AND SHE WAS WIDOWED OR DIVORCED AND RETURNED TO HIM [HER FATHER] AND IS STILL A NA'ARAH.

GEMARA. Rab Judah said in Rab's name: These are the words of R. Judah. But the Sages say: The vows of three maidens stand: [i] a bogereth; [ii] an orphan; and [iii] an orphan during her father's lifetime.[6]

MISHNAH. [IF SHE VOWS,] 'KONAM THAT I BENEFIT NOT FROM MY FATHER OR YOUR FATHER IF I PREPARE AUGHT FOR YOU,'[7] OR, 'KONAM THAT I BENEFIT NOT FROM YOU, IF I PREPARE AUGHT FOR MY FATHER OR YOUR FATHER,' HE CAN ANNUL.

GEMARA. It was taught: [If she vows, 'Konam] that I benefit not from my father or your father, if I prepare aught for you,' — R. Nathan said: He cannot annul;[8] the Sages maintain: He can annul.[9] 'May I be removed from Jews,[10] if I minister to you,' — R. Nathan said: He cannot annul: the Sages rule: He can annul.

A man once vowed not to benefit from the world if he should marry before having studied halachah:[11] he ran with ladder and cord,[12] yet did not succeed in his studies. Thereupon R. Aha son of R. Huna came and led him into error,[13] and caused him to marry;

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(1) So Asheri: A na'arah who vowed before becoming a bogereth, and was orphaned (and is still not a bogereth). [These three belong to the group of maidens whose vows cannot be annulled because they are orphans (as defined).]

(2) [She made a vow as na'arah, lost her father and is still a na'arah. These three belong to the group of maidens whose vows cannot be annulled because they have no fathers.]

(3) [She lost her father, vowed, and then became a bogereth.]

(4) I.e., who vowed as a bogereth.

(5) I.e., who vowed as a na'arah, but comes to enquire about annulment when she is a bogereth. [These three belong to the group of maidens whose vows cannot be annulled because they have reached the status of bogereth.]

(6) V. p. 275, n. 7. There is actually no conflict, R. Judah's nine being included in the Sages' three. R. Judah's enumeration is merely in greater detail, and intended to sharpen his disciples' minds (T. J. a.l.).

(7) Lit., 'for thy mouth'.

(8) He does not regard it as a vow of self-denial, for she can refrain from doing anything for her husband.

(9) Since she is in duty bound to serve her husband.

(10) Cf. p. 279, n. 7.

(11) Laws. For a discussion of the full meaning of the term halachah v. Weiss, Dor. I, 70.

(12) גפא is the ladder by which one ascends the palm tree to gather its dates; תוביל is the cord whereby its branches are pulled down, to facilitate gathering whilst one stands on the ground. — The expression is metaphorical: he made every possible effort.

(13) By making him believe that if he married the vow would not be valid.

Talmud - Mas. Nedarim 90a

then daubed him with clay[1] and brought him before R. Hisda.[2] Said Raba: Who is so wise as to do such a thing if not R. Aha son of R. Huna, who is [indeed] a great man? For he maintains: Just as the

Rabbis and R. Nathan disagree in reference to annulment, so also with respect to absolution.[3] But R. Papi said: The disagreement is only in respect to annulment, R. Nathan holding that the husband cannot annul unless the vow has already become operative, for it is written, Then the moon shall be confounded;[4] whilst the Rabbis maintain: The husband can annul even before the vow takes effect, as it is written, He maketh void the intentions of the crafty.[5] But as for absolution, all agree that a Sage cannot permit anything until the vow is operative, for it is written, He shall not break his word.[6]

Shall we say that the following supports him? [If he vows,] 'Konam that I benefit not from So-and-so, and from anyone from whom I may obtain absolution for him,' he must obtain absolution in respect of the first, and then obtain absolution in respect of the second.[7] But if you say, absolution may be granted even before the vow takes effect, surely he can be absolved in whatever order he pleases![8] — And who knows whether this one is first and that the other is the second?[9]

Shall we say that this supports him: [If he vows,] 'Konam that I benefit not from So-and-so, and behold! I will be a nazirite if I be absolved therefrom'; he must be absolved of his vow, and then of his naziriteship.[10] But if you say, absolution may be granted before the vow takes effect, if he wishes, let him first be absolved of his vow; and if he wishes, let him first be absolved of being a nazirite? — This agrees with R. Nathan.[11]

Rabina said: Meremar told me: Thus did your father say in R. Papi's name: The controversy is only in reference to annulment, but in respect to absolution all agree that he [the Sage] may grant it even before the vow is operative,[12] because it is written, 'He shall not break his word,'

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(1) I.e., his garments. To show him that the services of other people were indispensable: he would straightway need someone to clean his garments (Ran).

(2) For absolution.

(3) V. supra 89b. R. Nathan maintains that since the vow is not yet operative, he cannot annul, whilst the Rabbis hold that he can annul it though as yet inoperative. So with reference to absolution: in R. Nathan's view, one can be absolved from his vow only when it is in effect etc. For that reason he caused him to marry first, and did not have the vow annulled immediately.

(4) Isa. XXIV, 23; Heb. והפדה הלבנה. This is merely quoted as a sign. וחפרה is similar to והפרה (and he shall disallow her), whilst הלבנה is connected with בנה to build, and thus, by a play on words, the phrase is translated: and he shall disallow her, when the edifice (of the vow) be erected, i.e., when the vow is operative, but not before. [It is however omitted from MS.M.]

(5) Job V, 12, i.e., even when a vow is as yet merely an intention, not having taken effect, it can be annulled.

(6) Num. XXX, 3: Rashi translates: he (the Rabbi) shall not break (i.e., grant absolution for) his vow, i.e., as long as it is only a word, which has not yet taken effect. Asheri observes: from this we deduce, he (who vowed) may not break his word, but another (sc. a Sage) may break it, i.e., grant absolution, but that is only when 'he must do according to all that proceedeth out of his mouth,' viz., when the vow is operative.

(7) I.e., the Sages who became subject to the vow on account of having granted absolution.

(8) Lit., 'if he wishes, he can be absolved of this one first, and if he wishes, he can be absolved of the other first.' — Thus this supports R. Papa's contention.

(9) I.e., indeed that is so: 'first' and 'second' need not refer to the order in which he vowed, but to the order of absolution.

(10) Here it is explicitly stated that be can only be absolved of being a nazirite after absolution of his vow, when his conditional vow to be a nazirite has taken effect.

(11) I.e., R. Abba b. R. Huna may be correct in asserting that this is a matter of dispute, and this Baraitha is taught according to R. Nathan.

(12) The reverse of what was said above.

intimating that no act had yet taken place.[1]

An objection is raised: [If he vows,] 'Konam that I benefit not from So-and-so, and from anyone from whom I obtain absolution for him'; he must be absolved in respect of the first, and then obtain absolution in respect of the second. But why so? Let him be absolved in whichever order he pleases![2] — Who knows which one is first or which one is second?[3]

An objection is raised: [If he vows,] 'Konam that I benefit not from So-and-so, and behold! I will be a nazirite if I be absolved therefrom': he must be absolved of his vow, and then of his naziriteship. But why so? If he wishes, let him first be absolved of his vow, and if he wishes, let him first be absolved of being a nazirite! This is indeed a refutation.

MISHNAH. AT FIRST IT WAS RULED THAT THREE WOMEN MUST BE DIVORCED AND RECEIVE THEIR KETHUBAH:[4] SHE WHO DECLARES: I AM DEFILED TO YOU';[5] OR 'HEAVEN IS BETWEEN YOU AND ME';[6] AND 'MAY I BE REMOVED FROM JEWS.'[7] BUT SUBSEQUENTLY, TO PREVENT HER FROM CONCEIVING A PASSION FOR ANOTHER[8] TO THE INJURY OF HER HUSBAND,[9] THE RULING WAS AMENDED THUS: SHE WHO DECLARED, 'I AM DEFILED UNTO YOU,' MUST BRING PROOF: 'HEAVEN IS BETWEEN ME AND YOU' — THEY SHOULD ENGAGE IN PRAYER,[10] AND 'MAY I BE REMOVED FROM JEWS' — HE [THE HUSBAND] MUST ANNUL HIS PORTION,[11] AND SHE SHALL MINISTER TO HIM, WHILST REMAINING REMOVED FROM JEWS.

GEMARA. The scholars propounded: If she declared to her husband, 'I am defiled to you,'[12] may she eat of terumah?[13] — R. Shesheth ruled: She may eat thereof, so as not to cast a stigma upon her children.[14] Raba said: She may not eat, for she can eat hullin.[15] Raba said: Yet R. Shesheth admits that if she was widowed,[16] she may not eat: is his reason aught but that she should not cast a stigma upon her children? But if she was widowed or divorced [and she ceases to eat of terumah], it will be said, It is only now that she was seduced.[17]

R. Papa said, Raba tested us: If the wife of a priest was forcibly ravished,[18] does she receive her Kethubah or not? Since forcible seduction in respect to a priest is as voluntary infidelity in respect to an Israelite, she does not receive her Kethubah;[19] or perhaps she can plead, 'I personally am fit;[20]

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(1) V. p. 278, n. 2; the vow was not yet operative, and we deduce that the Sage can cause him, by absolution, to break his word. So Ran. Rashi: thus asserting that the act (sc. of R. Abba b. R. Huna, v. 89b end) was unnecessary.

(2) V. p. 278, n. 4.

(3) V. p. 278, n. 5.

(4) V. Glos.

(5) I.e., unfaithful.

(6) I.e., her husband is impotent — a thing that, apart from herself, can be known only to Heaven.

(7) Including her own husband. By this vow she shewed that cohabitation was unbearable to her, and therefore could demand to be divorced and receive her Kethubah.

(8) Lit., 'casting her eyes at another man.'

(9) [מקלקלת על בעלה. A difficult phrase. According to the rendering adopted, the meaning is: She will purposely make one of these declarations in order to obtain her freedom against his will. Ran explains: She may go to a place where nothing is known of her vow and marry there. He seemed to have taken this phrase as denoting: She will act unseemly (whilst still) with her husband, and as referring only to the declaration 'May I be removed from Jews'.]

(10) That his impotency might cease (Tosaf.) [Lit., 'They should act by way of a request'. Ran: attempts should be made to placate the wife. Rashi: the husband should be asked to agree to a divorce.]

(11) I.e., as far as he personally is concerned.

(12) This refers to the wife of a priest.

(13) If it is true, she certainly must not. Yet the Mishnah in its second recession ruled that she must first prove it. Now

the question arises, Do we disbelieve her in all respects, in which case she may eat of terumah, or only in respect of a divorce?

(14) If she refrains, it will be assumed that she told the truth, in which case her children may be bastards.

(15) None will observe that she consistently refrains from eating terumah and no aspersions will be cast upon her children.

(16) Rashi and Tosaf. read: or divorced.

(17) Thus her refraining leaves the honour of her children unaffected.

(18) If the wife of an Israelite is seduced: if voluntarily, she becomes forbidden to him; if forcibly, she remains permitted. But the wife of a priest is forbidden in both cases.

(19) As is the case of an Israelite's wife who committed adultery of her own free will.

(20) Having been forcibly ravished, she has committed no wrong.

Talmud - Mas. Nedarim 91a

it is only the man whose field has been ruined?'[1] And we answered him, It is [taught in] our Mishnah: (SHE WHO DECLARES,] 'I AM DEFILED TO YOU,' RECEIVES HER KETHUBAH. Now to whom does this refer? Shall we say, to the wife of an Israelite: If of her own free will, does she receive her Kethubah? Whilst if by force, is she forbidden to her husband?[2] Hence it must refer to the wife of a priest: now, if of her own free will, does she receive the Kethubah? Is she of less account[3] than the wife of an Israelite, [who sinned] voluntarily? Hence it must surely mean by force; and it is stated that she receives her Kethubah.

The scholars propounded: What if she declares to her husband, 'You have divorced me'?[4] — R. Hamnuna said: Come and hear: SHE WHO DECLARES, 'I AM DEFIled TO YOU': Now even according to the later Mishnah,[5] which teaches that she is not believed, it is [only] there that she may lie, in the knowledge that her husband does not know;[6] but with respect to 'You have divorced me,' of [the truth of] which he must know, she is believed, for there is a presumption [that] no woman is brazen in the presence of her husband.[7] Said Raba to him: On the contrary. even according to the first Mishnah, that she is believed, it is [only] there, because she would not expose herself to shame;[8] but here it may happen that she is stronger [in character] than her husband,[9] and so indeed be brazen.

R. Mesharsheya objected: 'HEAVEN IS BETWEEN ME AND YOU,' as ruled by the early Mishnah, refutes Raba's view; for here it involves no shame for her, yet it is stated that she is believed? — Raba holds that there, since she cannot avoid declaring whether the emission is forceful or not, were it not as she said, she would not make the charge.[10]

But let 'HEAVEN IS BETWEEN US,' as ruled by the later Mishnah, refute R. Hamnuna's view, for here she knows that her husband knows,[11] yet it is taught that she is not believed? — R. Hamnuna maintains that here too she would argue to herself, 'Granted that he knows that cohabitation has taken place, does he know whether the emission is forceful'?[12] Therefore she may be lying.

A certain woman was accustomed to rise [in the morning] and wash her husband's hands whenever intimacy had taken place. One day she brought him water to wash. 'But,' exclaimed he, 'nothing has taken place to-day'! 'If so,' she rejoined, [it must have been] 'one of the gentile

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(1) I.e., it is his sanctity, not my wrong-doing, that prohibits me to him.

(2) Surely not! and there is no need to divorce her.

(3) I.e., is her sin of less account?

(4) Is she believed in spite of his denial, or may it be a ruse to gain her freedom?

(5) I.e., the Mishnah as it was subsequently amended.

(6) Whether her statement is true.

(7) I.e., she would not be brazen enough to tell such a lie in his presence, wherefore she is believed.

(8) If she had not actually been ravished.

(9) So Ran. Rashi: her husband might have ill-treated her; she has conceived a strong passion for (another) man.

(10) I.e., since it is a charge of extreme delicacy and unpleasantness, she would not make it if it were untrue.

(11) Whether the charge is true or not.

(12) Surely not, for only the woman can feel that.

Talmud - Mas. Nedarim 91b

perfume sellers[1] who were here to-day; if not you, perhaps it was one of them.' Said R. Nahman: She had conceived a passion for another, and her declaration has no substance.[2]

A certain woman shewed displeasure with her husband. Said he to her, 'Why this change now?' She replied, 'You have never caused me so much pain through intimacy as to-day.' 'But there has been none to-day!' he exclaimed. 'If so,' she returned, [it must have been] 'the gentile naphtha sellers who were here to-day; if not you, perhaps it was one of them.' Said R. Nahman: Disregard her; she had conceived a passion for another.

A certain man was closeted in a house with a [married] woman. Hearing the master [her husband] entering, the adulterer broke through a hedge and fled.[3] Said Raba: The wife is permitted; had he committed wrong, he would have hidden himself [in the house].[4]

A certain adulterer visited a woman. Her husband came, whereupon the lover went and placed himself behind a curtain before the door.[5] Now, some cress was lying there, and a snake [came and ate] thereof; the master [her husband] was about to eat of the cress, unknown to his wife. 'Do not eat it,' warned the lover, 'because a snake has tasted it.' Said Raba: The wife is permitted: had he committed wrong, he would have been pleased that he should eat thereof and die, as it is written, For they have committed adultery, and blood is in their hands.[6] Surely that is obvious? — I might think that he had committed wrong, and as for his warning, that is because he prefers the husband not to die, so that his wife may be to him as stolen waters are sweet, and bread eaten in secret is pleasant;[7] therefore he teaches otherwise.

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(1) Lit., 'dealers in aloe'.

(2) I.e., she is disbelieved. The reference here is to the wife of a priest; v. p. 280, n. 9. For if she were the wife of an Israelite, she would not be forbidden to him even if it were true. Ran.

(3) [In the presence of the husband ('Aruch).]

(4) That the husband should remain in ignorance of his presence.

(5) So Ran. 'Aruch: and placed himself in a concealed arch by the gate.

(6) Ezek. XXIII, 37.

(7) Prov. IX, 17. Though this Tractate ends with a number of stories referring to adultery, these are not to be taken as reflecting general conditions. The strong opposition to unchastity displayed by the Prophets and the Rabbis, as well as the practice of early marriage, would have conduced to higher moral standards. V. J.E. art. 'Chastity'.

Talmud - Mas. Nazir 2a

C H A P T E R I

MISHNAH. ALL THE SUBSTITUTES FOR THE NAZIRITE VOW[1] ARE EQUIVALENT TO NAZIRITE VOWS. IF A MAN SAYS, 'I SHALL BE [ONE].' HE BECOMES A NAZIRITE. [IF HE SAYS.] 'I SHALL BE COMELY, A NAZIRITE, A NAZIK,[2] A NAZIAH[2] A PAZIAH. HE BECOMES A NAZIRITE. [IF HE SAYS.] 'I INTEND TO BE LIKE THIS,' OR 'I INTEND TO CURL [MY HAIR].' OR 'I MEAN TO TEND [MY HAIR].' OR 'I UNDERTAKE TO DEVELOP TRESSES,' HE BECOMES A NAZIRITE. [IF HE SAYS.] 'I TAKE UPON MYSELF [AN OBLIGATION INVOLVING] BIRDS,' R. MEIR SAYS HE BECOMES A NAZIRITE, BUT THE SAGES SAY HE DOES NOT BECOME A NAZIRITE.

GEMARA. Seeing that the Tanna[3] is teaching the order Nashim,[4] why does he speak of the nazirite? — The Tanna had in mind the scriptural verse, Then it cometh to pass if she find no favour in his eyes, because he hath found some unseemly thing in her,[5] and he reasons thus. What was the cause of the woman's infidelity? Wine. Further, he proceeds, whosoever sees an unfaithful wife in her degradation[6] will take a nazirite's vow and abjure wine.[7]

[How is it that in enunciating the general rule,[8] the Mishnah] mentions first 'substitutes' and then gives examples of 'allusions'?[9] — Raba, others say Kadi,[10] said: There is a hiatus [in the Mishnah] and it should read as follows: 'All the substitutes for the nazirite vow are equivalent to nazirite vows, and all allusions to the nazirite vow are equivalent to nazirite vows. The following are allusions. If a man says.I shall be [one]." he becomes a nazirite [etc.].' Ought not then the substitutes to be enumerated first?[11] — It is customary for the Tanna to explain first what he mentions last. Thus we learn: With what materials may [the Sabbath lamp] be kindled, and with what may it not be kindled?[12] and the exposition begins: It is forbidden to kindle etc. [Again, we learn:] With what materials may [hot victuals] be covered [on the Sabbath,][13] and with what may they not be covered?[14] and the exposition begins: It is forbidden to cover etc. [Again:] What may a woman 'wear when she goes out [on the Sabbath], and what may she not wear when she goes out?[15] and the exposition begins: She must not go out etc.

But have we not learnt: With what trappings may an animal go out [on the Sabbath]. and with what may it not go out?[16] whilst the exposition begins: The camel may go out etc.; [and again:] Some both inherit and bequeath,[17] and some inherit but do not bequeath. Some bequeath and do not inherit, and some neither inherit nor bequeath,[18] whilst the exposition begins: The following both inherit and bequeath? The truth is that the Tanna adopts sometimes one method and sometimes the other, [according to circumstances]. In the first set of cases adduced, because the prohibition is a personal one,[19] this personal prohibition is expounded first. On the other hand, in the case of the animal, since the prohibition arises primarily through the animal,[20] those things which are permitted are mentioned first.

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(1) V. Num. VI, 2-22.

(2) These 'substitutes' are mutilations of the Hebrew word nazir. Cf. Ned. 10b.

(3) v. Glos.

(4) Nashim, the third of the six orders of the Mishnah contains the laws pertaining to women. The inclusion of the nazirite regulations appears at first sight incongruous.

(5) Deut. XXIV, 1. The verse is quoted in the concluding paragraph of M. Gittin. This suggests that the order of the treatises assumed was Gittin, Nazir, Sotah, the order of the Jerusalem Talmud. In Sot. 2a, a different reason is given assuming the order of the Babylonian Talmud, viz.: — Nedarim, Nazir, Sotah. V. however Tosaf. s.v. מאי

(6) Cf. Num. v, 11-31.

(7) For this reason Nazir is followed by Sotah.

(8) I.e., all the substitutes for the nazirite vow, etc.
(9) Viz., 'I shall be one' etc. Allusions, Heb. yadoth; lit., 'handles', phrases suggesting the nazirite's vow.
(10) Aliter, others quote the statement anonymously.
(11) Cf. Ned. 2bff
(12) Shah. 20b.
(13) To retain their warmth.
(14) Ibid. 47b.
(15) Ibid. 57a.
(16) Ibid. 52b.
(17) I.e., to those from 'whom they inherit.
(18) B.B. 108a.
(19) He himself is forbidden to do the action.
(20) He may not allow the animal to wear the trappings.

Talmud - Mas. Nazir 2b

With inheritance, again. the basic type of inheritance is dealt with first. Granted all this, [in the case of the nazirite vow] why should not the substitutes be enumerated first? — There is a special reason, viz., that [the rule regarding the efficacy of] the allusions is derived [from the scriptural text] by a process of inference[1] and therefore the Tanna set a special value on it. Then why does he not mention them first? — For opening the subject the Tanna prefers to mention the basic type of vow,[2] but in his exposition, he illustrates the allusions first.

IF A MAN SAYS I SHALL BE [ONE].' HE BECOMES A NAZIRITE. But might he not mean, 'I shall keep a fast day'?[3] — Samuel said: We must suppose that a nazirite is passing by [when he makes this declaration]. Are we to infer from this that Samuel is of the opinion that allusions, the significance of which is not manifest,[4] have not the force of a direct statement?[5] — Let me explain. [What Samuel means is that] if a nazirite is passing by, there is no reason to suspect a different intention,[6] but without question, if no nazirite is passing by, we say that he might mean, 'I shall keep a fast day.'[7] But perhaps his purpose was to free the other from his sacrifices?[8] — [We presume it to be known] that he added mentally ['a nazirite']. If so, it is surely obvious [that he becomes a nazirite]? It might be thought that we require his utterance and his intention to coincide, and so we are told [that this is not so].

I SHALL BE COMELY .. . HE BECOMES A NAZIRITE. Perhaps he means, 'l shall be comely before Him in [the performance of] precepts. as has been taught: [The verse]. This is my God and I will glorify[9] Him[10] means, I will glorify Him in [the performance of] precepts; I shall build an attractive booth,[11] procure a faultless palm-branch.[11] wear elegant fringes, write a mangificent Scroll of the Law and provide it with wrappings of choicest silk? — Samuel said: [We assume that] he takes hold of his hair[12] when he says, 'I shall be comely.'

[Seeing that to become] a nazirite is in a way a sin,[13] can it be termed comely? —

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(1) They are not mentioned explicitly, but are inferred from the redundant sequence of references to the Nazirite vow in Num,. VI, 2. V. Ned. 3a.
(2) Heb. 'Korban', 'sacrifice', the generic term for every kind of vow. The 'substitutes' are considered essential forms of the vow, the 'allusions' subsidiary forms.
(3) Lit., 'I shall be in a fast'.
(4) As would be the case if a nazirite did not pass by at the time.
(5) Kid. 5a reports Samuel as holding the opposite.
(6) [Although the allusion is not particularly manifest, in accordance with Samuel's view, in Kid. loc. cit. Cf. Asheri.]
(7) And in the absence of an allusion of any likely significance, there is no obligation at all. Cf. Asheri.

(8) I.e., defray their cost. His meaning would then be, 'I shall be in his place for the purpose of offering his sacrifices;' cf. Num,. VI, 14ff..

(9) 'Glorify' and 'comely' are from the same Hebrew root.

(10) Ex. XV, 2.

(11) For the Feast of Tabernacles. Cf. Lev. XXIII, 42 and 40.

(12) And so the reference is to the naziriteship, when his hair would grow long.

(13) Because he denies himself that which the Torah has permitted.

Talmud - Mas. Nazir 3a

Yes. For even R. Eliezer ha-Kappar who says that a nazirite is accounted a sinner, means only the nazirite who has contracted ritual impurity; for, since he must nullify [his previous abstinence][1] in accordance with the rule laid down by the Merciful One, But the former days shall be void, because his consecration was defiled,[2] there is a danger that he may break his nazirite vow.[3] But a nazirite who remains ritually clean is not termed a sinner.[4]

I INTEND TO BE LIKE THIS: Granted that he takes hold of his hair, he does not say 'I intend to be through this,'[5] [but only 'like this']? — Samuel said: We suppose that a nazirite is passing by at the time.

I INTEND TO CURL[6] [MY HAIR]. How do we know that this [word MESALSEL] refers to the curling of the hair? — From a remark made by a maidservant[7] of Rabbi's household, who said to a certain man: How much longer are you going to curl [mesalsel] your hair? But perhaps [it refers to] the Torah[8] in accordance with the verse, Extol her [salseleha] and she will exalt thee?[9] — Samuel said: Here, too, we suppose that he takes hold of his hair.

I MEAN TO TEND[10] [MY HAIR]. How do we know that this [word MEKALKEL] refers to the tending of his hair? — From what we learnt: 'With regard to orpiment.[11] R. Judah said that there must be sufficient to depilate the kilkul,'[12] and Rab commented: [This means the hair of] one of the temples.[13] But might it not mean tending the poor. in accordance with the verse, And Joseph sustained [wa-yekalkel] his father and his brothers?[14] — Samuel said: Here too. we assume that he takes hold of his hair.

I UNDERTAKE TO DEVELOP[15] TRESSES,'[16] HE BECOMES A NAZIRITE. How do we know that this [word] shilluah signifies increase? — From the verse, Thy shoots [shelohayik] are a park of pomegranates.[17] But perhaps it has the significance of 'removal'[18] in accordance with the verse, And sendeth [we-sholeah] waters upon the fields?[19] — The occurrence of the word pera' [tresses] in connection with the nazirite gives the tanna the clue. It says here, He shall be holy. he shall let the locks [pera'] grow long.[20] and it says elsewhere regarding an ordinary priest,[21] Nor' suffer their locks [pera'] to grow long [yeshallehu].[22] Alternatively, we can say that the sholeah used of water,[23] also signifies increase,[24] for when produce is watered it shoots up.

[IF HE SAYS] 'I TAKE UPON MYSELF [AN OBLIGATION INVOLVING] BIRDS,' R. MEIR SAYS HE BECOMES A NAZIRITE. What is R. Meir's reason? — Resh Lakish said: [In making this vow] he has in mind the birds that are coupled with hair in the scriptural verse, Till his hair was grown long like eagles' feathers, and his nails like birds' claws.[25] R. Meir is of the opinion that a man will refer to one thing when he means something else occurring in the same context,[26]

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(1) The period which elapsed before he became unclean.

(2) Num. VI, 22.

(3) He may not be able to control his desire for wine for the longer period.

(4) Cf. infra 29a, where the opposite is asserted.

(5) The text is uncertain. The meaning would apparently be: I intend to discipline myself through my hair, reading בזה instead of כזה in cur. edd.
(6) Heb. mesalsel.
(7) This maidservant always spoke Hebrew, v. Meg. 28a.
(8) I.e., he vows to engage in the study of Torah.
(9) Prov. IV, 8.
(10) Heb. mekalkel.
(11) Heb. sid, usually lime, here orpiment, used as a depilatory.
(12) The transference of this amount from a private to a public domain on the Sabbath constitutes an indictable offence.
(13) Shah. 80b.
(14) Gen. XLVII, 12.
(15) Heb. leshaleah.
(16) Heb. pera'.
(17) Cant. IV, 13.
(18) I.e., he vows to remove his hair.
(19) Job V, 10. I.e. transports the waters from field to field (cf. the context).
(20) Num. VI, 5.
(21) I.e., not the High Priest, who is subject to stricter regulations. V. Sanh. 22b.
(22) Ezek. XLIV, 20. In Sanh. 22b this same comparison is made to show that pera' means a growth of thirty days' duration (the normal duration of a nazirite vow). Thus whether shilluah means 'grow' or remove', the nazirite vow is implicit in the word pera'.
(23) In the verse of Job.
(24) [Cur. edd. add in brackets, 'as R. Joseph translated,' referring to the Targum on the Prophets ascribed to R. Joseph. V. B.K. (Sonc. ed.) p. 9, n. 9. The reading that follows is, however, not found in our Targum.]
(25) Dan. IV, 30. It is assumed that he takes hold of his hair, or a nazirite is passing by (Rashi). Cf. below.
(26) Lit., 'he is seized by what is close to it.' E.g., here, he says 'birds' when he means 'hair'.

Talmud - Mas. Nazir 3b

whilst the Rabbis are of the opinion that a man will not refer to one thing when he means another. R. Johanan said: Both [R. Meir and the Rabbis] are agreed that a man will not refer to one thing etc.,[1] and R. Meir's reason is that we take account of the possibility that what he had undertaken was to bring the birds of a ritually unclean nazirite.[2]

But if we are to take [possible meanings] into account, why should we not say that he was undertaking [to bring] a free will offering of birds? — in that event, he would have said, 'I undertake to bring a nest.'[3]

But perhaps he meant: I undertake [to bring] the birds of a leper?[4] — We must suppose that a nazirite passes by at the time. But perhaps it was a ritually unclean nazirite and he desired to free him from his [obligatory] sacrifices? — We must suppose that a ritually clean nazirite passes by at the time.[5]

What [practical] difference is there between them?[6] — There would be a difference [for example] if he should say: I take upon myself [an obligation involving] the birds mentioned in the same context as hair. According to R. Johanan, notwithstanding that he says this, he becomes a nazirite if one is passing at the time, but not otherwise;[7] whereas according to R. Simeon b. Lakish, even though no nazirite passes by at the time [he becomes a nazirite].[8] But is there any authority who disputes that a man may refer to one thing and mean another occurring in the same context? Has it not been taught: If a man says, '[By] my right hand,' it is accounted an oath.[9] Now, surely the reason for this is the verse, When he lifted up his right hand and his left hand unto heaven, and swore by Him who liveth for ever?[10] — Not so. It is because the expression '[By my] right hand,' is itself an

oath, as it has been taught: How do we know that if a man says. '[By] my right hand,' it is accounted an oath? From the verse, The Lord hath sworn by his right hand.[11] And how do we know that if a man says. 'By my left hand,' it is accounted an oath? Because the verse continues, And by the arm of his strength.[11]

MISHNAH. [IF A MAN SAYS] 'I DECLARE MYSELF A NAZIRITE [TO ABSTAIN] FROM PRESSED GRAPES, OR FROM GRAPE STONES, OR FROM POLLING, OR FROM [CONTRACTING] RITUAL DEFILEMENT, HE BECOMES A NAZIRITE AND ALL THE REGULATIONS OF NAZIRITESHIP APPLY TO HIM.

GEMARA. The Mishnah is not in agreement with R. Simeon, for it has been taught: R. Simeon says that he does not incur the liabilities [of a nazirite] unless he vows to abstain from everything [that is forbidden to a nazirite], whilst the Rabbis say that even though he vows to abstain from one thing only, he becomes a nazirite.

What is R. Simeon's reason?-Scripture says. [He shall eat] nothing that is made of the grape-vine, from the pressed grapes even to the grape-stone.[12] And what is the Rabbis' reason? — The verse reads, He shall abstain[13] from wine and strong drink.[14] What does R. Simeon make of the statement, 'He shall abstain from wine and strong drink'? — He requires it to prohibit wine the drinking of which is a ritual obligation as well as wine the drinking of which is optional. What is this [wine the drinking of which is obligatory]? The wine of Kiddush[15] and Habdalah,[15] [is it not]?

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(1) And therefore R. Meir's reason is not the one given by Resh Lakish.

(2) V. Num. VI, 10. [I.e., he undertook to bring such birds should he afterwards become unclean during his proposed naziriteship; hence he becomes a nazirite (Rashi).]

(3) As this was the usual manner in which free-will offerings of birds were made.

(4) Cf. Lev. XIV, 4. [That is he undertook to bring birds for a leper freeing him from his obligatory sacrifices. Asheri.] This question creates a difficulty both for R. Johanan and Resh Lakish (Rashi).

(5) And as such a one has not to bring the offering of birds, he must have referred to himself.

(6) Between R. Johanan and Resh Lakish.

(7) As he may simply be undertaking to bring an offering of birds.

(8) [That is, according to R. Meir; v. Rashi and Tosaf. This difference will, however, apply also on the view of the Rabbis, for where he explicitly states....'the birds mentioned in the same context as hair,' the Rabbis would also agree according to Resh Lakish that he becomes a nazirite; cf. Rashi 2b (top).]

(9) Tosaf. Ned. I, e.g., if he says, 'My right hand that I shall eat this loaf.'

(10) Dan. XII, 7; and when he refers to his right hand he means the oath in the same context.

(11) Isa. LXII. 8. ['Arm of his strength' refers to the left hand; ,'. Ber. 6a.]

(12) The emphasis is laid on the word 'nothing', so that the vow must expressly include everything. Num. VI, 4.

(13) Lit., 'vow to abstain'.

(14) Ibid. VI, 3. Thus it is sufficient if his vow refers specifically to wine only. This verse is made here to refer to the actual taking of the nazirite vow; though from the context it might he thought to he part of the enumeration of objects forbidden the nazirite.

(15) V. Glos.

Talmud - Mas. Nazir 4a

But surely here he is bound by the oath taken on Mount Sinai?[1] — We must therefore suppose the following dictum of Raba to be indicated, [Viz.:] — [If a man says,] 'I swear to drink [wine]' and later says, 'I wish to be a nazirite,' the nazirite vow operates despite the oath.[2]

And do not the Rabbis also require [this verse] to prohibit wine, the drinking of which is a ritual obligation as well as wine the drinking of which is optional? — If this were its [sole] purpose, only

wine need have been mentioned in the verse! [What is the purport of the addition] of 'strong drink'! It is to enable us to infer both things.[3] And R. Simeon?[4] — He [will hold] that the reason for the addition of strong drink is to guide us in the interpretation of the same expression when used in connection with the Temple service, in the verse, Drink no wine nor strong drink, thou, nor thy sons with thee.[5] Just as for the nazirite, only wine is forbidden but not other beverages, so in connection with the Temple service, only wine is forbidden [to the priests], but not other intoxicating beverages. This conflicts with the opinion of R. Judah, for it has been taught: R.Judah said that [a priest] who eats preserved figs from Keilah,[6] or drinks honey or milk, and then enters the Temple, is guilty.[7] Alternatively,[8] R. Simeon rejects the Principle that a prohibition can come into operation when a prohibition [on a different count] is already present,[9] as has been taught: R. Simeon says that a man who eats carrion[10] on the Day of Atonement is not liable [to a penalty for breach of observance of the day].[11]

What do the Rabbis make of the verse, ['He shall eat] nothing that is made of the grapevine'?[12] The Rabbis will tell you that this teaches that [the various kinds of food] forbidden to a nazirite can combine together.[13] R. Simeon. on the other hand, does not require a rule about combination, for it has been taught: R. Simeon says that a mite [of forbidden food] is sufficient [to entail liability] to stripes; a quantity equivalent to an olive is required only where a sacrifice is [the appropriate penalty].

MISHNAH. [IF A MAN SAYS] 'I VOW TO BE LIKE SAMSON,[14] THE SON OF MANOAH, WHO WAS THE HUSBAND OF DELILAH, OR 'WHO PLUCKED UP THE GATES OF GAZAH,'[15] OR 'WHOSE EYES THE PHILISTINES PUT OUT,'[16] HE BECOMES A NAZIRITE LIKE SAMSON. GEMARA. Why must [the Mishnah] specify all these expressions? — All are necessary. For if he were to say. 'I wish to be like Samson,' I might think that some other Samson [was intended], and so we are told [that he must add] 'like the son of Manoah.' Again, if he were to add [only] 'the son of Manoah,' I might think that there is someone else so named, and so we are told [that he must add], 'like the husband of Delilah,' or 'like him whose eyes the Philistines put out.'[17]

MISHNAH. WHAT DIFFERENCE IS THERE BETWEEN A NAZIRITE LIKE SAMSON AND A LIFE-NAZIRITE?[18] A LIFE-NAZIRITE. WHENEVER HIS HAIR BECOMES BURDENSOME, MAY THIN IT WITH A RAZOR AND THEN OFFER THREE ANIMAL SACRIFICES,[19] WHILST SHOULD HE BE RITUALLY DEFILED, HE MUST OFFER THE SACRIFICE [PRESCRIBED] FOR DEFILEMENT.[20] THE NAZIRITE LIKE SAMSON IS NOT PERMITTED TO THIN HIS HAIR SHOULD IT BECOME BURDENSOME, AND IF [RITUALLY] DEFILED, DOES NOT OFFER THE SACRIFICE [PRESCRIBED] FOR DEFILEMENT.

GEMARA. How does the life-nazirite come in here?[21] — There is a hiatus [in the Mishnah]. and it should read as follows: If a man says, 'I intend to be a life-nazirite,' he becomes a life-nazirite. What difference is there between a nazirite like Samson and a life-nazirite? A life-nazirite whenever his hair becomes burdensome may thin it with a razor and then offer three animal sacrifices, whilst should he be ritually defiled, he must offer the sacrifice [prescribed] for defilement. The nazirite like Samson is not permitted to thin his hair with a razor should it become burdensome,

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(1) I.e., surely his vow cannot annul obligations in existence since the giving of the law on Mount Sinai, so Rashi. Tosaf. (Rabbenu Tam) replaces the last two sentences by the following: 'Can it be that the wine of Kiddush and Habdalah is indicated? But is he then bound by an oath taken on Mount Sinai?' According to this view there is no scriptural obligation to drink wine at Kiddush and Habdalah. This is the view usually accepted.

(2) I.e., although this is wine the drinking of which is incumbent on him.

(3) Viz.: (i) wine the drinking of which is an obligation is forbidden the nazirite. (ii) though he vows to abstain from one thing only he becomes a nazirite.

(4) How will he meet the argument of the Rabbis?
(5) The verse was addressed to Aaron as High priest. Lev. x, 9.
(6) A town in the lowlands of Judea, cf. Josh. XV, 44' v. Sanh. (Sonc. ed.) p. 481, n. 6.
(7) Of transgressing the prohibition against strong drink in Lev. X, 9.
(8) An alternative reason for R. Simeon's opinion that he does not become a nazirite unless he vows to abstain from everything, is being given (Rashi).
(9) In other words, an act already prohibited cannot he prohibited on another count. Hence, once his vow to abstain from wine begins to operate, he can no longer become a full nazirite (Rashi). This interpretation considers the statement, 'I declare myself a nazirite (to abstain) from pressed grapes' to consist of two parts in the following order: (i) I vow to abstain from pressed grapes; (ii) I declare myself a nazirite. For other interpretations, v. Tosaf. and Asheri.
(10) Heb. nebelah, v. Glos.
(11) Carrion being already in itself prohibited.
(12) V. supra p. 7, n. 4.
(13) I.e., supposing he eats less of each kind than the minimum size of an olive, yet the total quantity consumed is the size of an olive, he is liable to stripes.
(14) Samson was a nazirite to a limited extent only. V. next Mishnah.
(15) V. Judg. XVI, 3.
(16) V. Judg. XVI, 21.
(17) Thus the first three expressions are de rigueur, but for the third equivalents may he used.
(18) One who declares himself a nazirite for life. Samson was also a nazirite for life.
(19) A nazirite on terminating his abstinence was required to offer three animal sacrifices. V. Num. VI, 13ff
(20) Defilement of a nazirite. Num. VI, 9.
(21) Lit., 'who mentioned its name'.

Talmud - Mas. Nazir 4b

and if ritually defiled does not offer the sacrifice [prescribed] for defilement. [You say that the nazirite like Samson] does not have to offer the sacrifice [prescribed] for defilement,[1] enabling me to infer that he is subject to the nazirite obligation [which forbids him to defile himself]. Who then is [the author of] our Mishnah, [seeing that] it can be neither R. Judah nor R. Simeon? For it has been taught: R. Judah said that a nazirite like Samson is permitted to defile himself [deliberately, by contact] with the dead, for Samson himself did so; R. Simeon says that if a man declares. '[I intend to be] a nazirite like Samson,' his statement is of no effect, since we are not aware that Samson personally ever pronounced a nazirite vow.[2] [We ask then:] Who [is the author of our Mishnah]? It cannot be R. Judah, for he says that [a nazirite like Samson] may even [defile himself] intentionally. whereas our Mishnah [merely] states [that no sacrifice need be offered] if he has become defiled [accidentally]; nor can it be R. Simeon since he says that the vow does not become operative at all! — Actually it is R. Judah [and the nazirite like Samson is permitted to defile himself] but because in referring to the life-nazirite,[3] the Mishnah uses the expression 'SHOULD HE BE [RITUALLY] DEFILED.' the same expression is used in referring to the nazirite like Samson.[4]

May we say that the difference [of R. Judah and R. Simeon] is essentially the same as that of the following Tannaim? For it has been taught: [If a man says.] 'This [food] shall be [as forbidden] for me as a firstling,'[5] R. Jacob says he may not eat it, but R. Jose says he may.[6] May we not say then that R. Judah agrees with R. Jacob in holding that the object [with which the comparison is made,][7] need not itself be one forbidden as the result of a vow, whilst R. Simeon agrees with R. Jose in holding that the object [with which comparison is made] must be one forbidden as the result of a vow? — This is not so. Both [R. Judah and R. Simeon] are agreed that it is necessary for the object [with which comparison Is made] to be one forbidden as the result of a vow, but the case of the firstling is different, since in the verse, [When a man voweth a vow][8] unto the Lord,[9] [the superfluous words 'unto the Lord'] include the firstling[10] [as a legitimate object of comparison].

What does R. Jose reply [to this argument]? — He will say that the expression ‘unto the Lord’ serves to include the sin-offering and the guilt-offering[11] [but not the firstling]. [We may ask him:] On what ground, then, are the sin-offering and the guilt-offering included rather than the firstling? — [He would reply:] The sin-offering and the guilt-offering are included because they have to be expressly dedicated,[12] but the firstling is excluded since it need not be expressly dedicated. And R. Jacob? — He can rejoin: Firstlings too, are expressly dedicated, for it has been taught: [The members] of our Teacher's household[13] used to say: How do we know that when a firstling is born in a man's flock, it is his duty to dedicate it expressly [for the altar]? Because it says, The males shalt thou dedicate.[14] And R. Jose? — He can reply: Granted that it is a religious duty to dedicate it [expressly], yet if he fails to do so, is it not nevertheless sacred?[15]

[It may be said:] In the case of the nazirite, too, is there not a phrase ‘Into the Lord’?[16] — This is required for the purpose taught [in the following passage]: Simon the Just[17] said: In the whole of my life, I ate of the guilt-offering of a defiled nazirite [only once].[18] This man who came to me from the South country, had beauteous eyes and handsome features with his locks heaped into curls. I asked him: ‘Why, my son, didst thou resolve to destroy such wonderful hair?’ He answered: ‘In my native town. I was my father's shepherd, and, on going down to draw water from the well, I used to gaze at my reflection [in its waters]. Then my evil inclination assailed me, seeking to compass my ruin,[19] and so I said to it, "Base wretch! Why dost thou plume thyself on a world that is not thine own, for thy latter end is with worms and maggots. I swear[20] I shall shear these locks to the glory of Heaven!"’ Then I rose, and kissed him upon his head. and said to him: ‘Like unto thee, may there be many nazirites in Israel. Of such as thou art, does the verse say, When a man shall clearly utter a vow, the vow of a nazirite to consecrate himself unto the Lord.’[21]

But was not Samson a nazirite [in the ordinary sense]?[22] Surely the verse states, For the child shall be a nazirite into God from the womb![23] — It was the angel who said this.

How do we know that [Samson] did defile himself [by contact] with the dead? Shall I say, because it is written, With the jawbone of an ass have I smitten a thousand men,[24] but it is possible that he thrust it at them without touching them? But [we know it] again from the following. And smote thirty men of then and took their spoil.[25] But it is possible that he stripped them first and slew them afterwards? — It says clearly [first]. And he smote, [and then,] And took. But it is still possible that he [merely] wounded them mortally[26] [before stripping them]! — [We must say], therefore, that it was known by tradition [that he did come into contact with them]. Where does it state [in the Scriptures] that a life-nazirite [may thin his hair]? — It has been taught: Rabbi said that Absalom was a life-nazirite, for it says, And it came to pass at the end of forty years that Absalom said to the king: [pray thee, let me go and pay my vow which I have vowed unto the Lord in Hebron.[27] He used to cut his hair every twelve months, for it says. [And when he polled his head,] now it was at every year's [yamim] end [that he polled it],[28]

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(1) I.e., if he becomes unclean.

(2) Tosef. Nazir I, 3.

(3) Who is forbidden to defile himself.

(4) And the if is not to he pressed.

(5) The firstlings of clean domestic animals were the perquisite of the priests and could be eaten by them only. V. Num. XVIII, 15.

(6) V. Ned. 13a.

(7) E.g.. the firstling or Samson. It is impossible to vow not to eat a firstling as it is holy from birth.

(8) From this phrase we infer that the object used for comparison must be itself prohibited as the result of a vow. V. Ned. 13a.

(9) Num. XXX, 3.

(10) Since it must he dedicted unto the Lord by the owner.

(11) Being obligatory, they might he thought not to count as things dedicated by a vow.
(12) Lit., 'they are seized by a vow'. Although the obligation to offer a sin-offering does not result through a vow, yet the animal to be used must he dedicated by the owner, 'This is my sin-offering.'
(13) Probably R. Gamaliel III son of R. Judah ha-Nasi I (called simply Our Teacher) cf. Halikoth 'Olam I, 3.
(14) Deut. XV, 19.
(15) And so the firstling must he excluded as an object of comparison.
(16) Num. VI, 2. And so should it not he possible to vow to become a nazirite like Samson?
(17) High Priest circa 300 B.C.E., v. however Aboth (Sonc. ed.) p. 2, n. 1.
(18) He feared that nazirites, after defilement would regret their vows because of the inevitable prolongation. As the sacrifice would then retrospectively prove to have been unnecessary, he refused to eat of it.
(19) Lit., 'drive me from the world'.
(20) Lit., 'by the (Temple) service', a common form of oath at this period.
(21) Num. VI, 2. [The story has a parallel in the familiar Narcissus story, Ovid, Metamorphoses, III, 402ff; but its moral in endowing the youth with the power of self-mastery is evidently superior.]
(22) I.e., was not his naziriteship the result of a vow?
(23) Judg. XIII, 5.
(24) Judg. XV, 16.
(25) Judg. XIV, 19.
(26) [Defilement is communicated only after the last breath of life is gone.]
(27) The verse following states that Absalom vowed to serve the Lord. This, together with the known length of his hair, leads to the conclusion that he was a life-nazirite. II Sam. XV, 7.
(28) II Sam. XIV, 26; yamim usually means 'days'.

Talmud - Mas. Nazir 5a

and the meaning of the word 'yamim' here is decided by its meaning when used in connection with houses in walled cities;[1] just as there it means twelve months,[2] so here it means twelve months. R. Nehorai said: [Absalom] used to poll every thirty days. R. Jose said: He used to poll on the eve of each Sabbath,for princes usually poll on the eve of each Sabbath.

[We have said that] Rabbi's reason [for interpreting 'yamim' as a year] is because of its occurrence in connection with houses in walled cities. But has not Rabbi himself said that 'yamim' [in that connection] means not less than two days?[3] — The only reason that he uses the comparison at all[4] is because of the reference to the heaviness [of Absalom's hair],[5] and two days' growth is not heavy.[6]

Why should it not be two years, in accordance with the verse, And it came to pass at the end of two full years?[7] From a text containing 'yamim' without mention of years' conclusions may be drawn concerning another text containing 'yamim' without mention of years';[8] but no conclusion can be drawn here from this verse where there is mention of 'years'.

Why should it not be thirty days, for there is a verse, but a whole month?[9] — From a text mentioning 'yamim' without 'months', conclusions may be drawn concerning another text mentioning 'yamim' without 'months',[10] but this verse affords no indication since 'months' are mentioned therewith.

Why should not the inference be made from mi-yamim yamimah ['from days to days']?[11] — Conclusions may be drawn concerning a text containing 'yamim'. from another' [text] containing 'yamim', but not from one containing 'yamimah'.

But what is the difference [between 'yamim' and 'yamimah']? Have not the school of R. Ishmael taught that in the verses, And the priest shall come again,[12] Then the priest shall come in,[12] 'coming again' and 'coming in' mean one and the same thing?[13] — Inference [from nonidentical expressions]

is permissible where there is no identical expression [on which to base the inference], but where an identical expression exists, the inference must be drawn from the identical expression.[14]

Another reply [to the suggestion that inference be made from 'yamimah']: How do we know [with certainty] that [they went] once every three months? May not the four times per annum have occurred alternately at intervals of four months and of two months?[15]

'R. Nehorai said: [Absalom] used to poll every thirty days.' What is his reason? — [Ordinary] priests [poll every thirty days][16] because [their hair] becomes burdensome, and so here it would become burdensome [after thirty days].[17]

'R. Jose said: He polled on the eve of each Sabbath, [etc.]' What difference then was there between him and his brothers?[18] — When a festival occurred in mid-week, his brothers polled, but he did not do so. Alternatively, his brothers [if they wished] could poll on Friday morning, but he could not do so until the late afternoon. What were the forty years referred to [by Absalom]?[19] — R. Nehorai, citing R. Joshua, said that it means 'forty years after [the Israelites] had demanded a king.'[20] It has been taught: The year in which they demanded a king, was the tenth year [of the principate of] Samuel the Ramathean.[21]

MISHNAH. A NAZIRITE VOW OF UNSPECIFIED DURATION [REMAINS IN FORCE] THIRTY DAYS.

GEMARA. Whence is this rule derived?-R. Mattena said: The text reads He shall be [yihyeh] holy,[22] and the numerical value[23] of the word yihyeh is thirty.[24] Bar Pada said: [The duration of the vow] corresponds to the number of times that parts of the root nazar are found in the Torah,[25] viz., thirty less one.[26] Why does not R. Mattena derive [the number of days] from the [occurrences of the various] parts of nazar? — He will tell you that [some of] these are required for teaching special lessons. [Thus the verse.] He shall abstain [yazzir] from wine and strong drink,[27] is required to prohibit wine the drinking of which is a ritual obligation as well as wine the drinking of which is optional;[28] [whilst the verse,] Shall clearly utter a vow, the vow of a nazirite to consecrate himself,[29] teaches that one nazirite vow can be superimposed on another.[30]

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(1) V. Lev. XXV, 29.

(2) Since the word 'year' is used explicitly in the same connection.

(3) V. 'Ar. 31a, where he infers from this text that redemption cannot take place before the second day, though it may take place any time within the year.

(4) The Gezerah shawah (v. GIos.).

(5) V. II Sam. XIV, 26.

(6) Hence the comparison must he with yamim in the sense of year, which it also hears in this passage; v. n. 4.

(7) Lit., 'two years of yamim', Gen. XLI, 1.

(8) E.g., from Lev. XXV, 29 to II Sam. XIV, 26.

(9) Lit., 'a month of yamim', Num. XI, 20.

(10) V. supra p. 14, n. 10.

(11) The reference is to Jephthah's daughter, visited by the Israelitish maidens 'four days in the year', i.e., apparently, at equal intervals of three months. Judg. XI, 40.

(12) Lev. XIV, 39-44. referring to an infected house.

(13) For purposes of inference, v. Hot. (Sonc. ed.). p. 57. n. II. How much more so then with words so similar as 'yamim' and 'yamimah'!

(14) I.e., since there is another context where the word 'yamim' occurs, we learn from that and not from 'yamimah'.

(15) It is impossible therefore to give an exact value to 'yamimah'.

(16) V. Ta'an. 17a.

(17) And Absalom polled when his hair became heavy. II Sam. XIV, 26.

(18) Since all princes poll weekly.
(19) In II Sam. XV, 7.
(20) V.I Sam. VIII, 5'
(21) V. Seder 'Olam XIV.
(22) Num, VI, 5.
(23) Gematria, v.Sanh. (Sonc.ed.),p. 121, n. 4.
(24) יהוה Y = 10; H= 5; Y=10; H= 5. In Hebrew, as in Greek, the letters have numerical values.
(25) I.e., in the section on the nazirite vow. Num. VI, 1ff. Parts of the root nadar are included in the computation, but the nazar of verse 7 is omitted since it does not mean 'separation', but 'crown'.
(26) V. infra.
(27) Num. VI, 3.
(28) V. supra p. 8.
(29) Ibid. VI, 2.
(30) If he repeats the vow, he becomes a nazirite twice.

Talmud - Mas. Nazir 5b

To which Bar Pada can reply: Is there not even one [recurrence of a part of nazar] that is not needed for a special lesson? Since this one may be used for computation. ail may be used for computation.[1] We have learnt: A NAZIRITE VOW OF UNSPECIFIED DURATION [REMAINS IN FORCE] THIRTY DAYS. Now, this fits in well enough with the view of R. Mattena, but how can it be reconciled with Bar Pada's view?[2] — Bar Pada will tell you that because [the period of the vow closes with] the thirtieth day, on which the nazirite polls and brings his sacrifices, [the Mishnah] says thirty [days].

We have learnt: If a man says, 'I declare myself a nazirite,' he polls on the thirty-first day.[3] Now, this fits in well enough with the view of R. Mattena, but how is it to be reconciled with Bar Pada's view? — Bar Pada will say: Consider the clause which follows, [viz.:] Should he poll on the thirtieth day, his obligation is fulfilled. We see, then, that the second clause [of this Mishnah] lends support to his view, whilst the original clause [must be read] as though it contained the word [I declare myself a nazirite for thirty] 'whole' [days].[4] Does not this second clause need to be reconciled with R. Mattena's view?[5] — He considers part of a day equivalent to a whole day.[6]

But have we not learnt: '[Should someone say,] "I intend to be a nazirite for thirty days," and poll on the thirtieth day, his obligation is not fulfilled'?[7] — [We presume that] he said, 'whole days'.

We have learnt: If a man undertakes two naziriteships, he polls for the first one on the thirty-first day, and for the second on the sixty-first day.[7] This fits in well enough with the view of R. Mattena

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(1) As well as for teaching special lessons.
(2) According to which the period should be 29 days.
(3) V. infra 162.
(4) And therefore he polls on the 31st day.
(5) According to which the polling should he on the thirty-first day.
(6) Thus though he polls on the thirtieth day, he has kept thirty days of naziriteship.
(7) Infra p. 53.

Talmud - Mas. Nazir 6a

but how is it to be reconciled with Bar Pada's view? — Bar Pada will say: Consider the clause which follows, [viz.:] If, however, he should poll for the first on the thirtieth day, he can poll for the second on the sixtieth day. Thus the second clause lends support to his view, whilst the original clause [must

be read] as though it contained the words ‘whole days’.

Is not R. Mattena in conflict with this second clause?[1] — R. Mattena can reply: This must be interpreted in the light of the next clause, which says that the thirtieth day counts as belonging to both periods.[2] This is taken to signify then that part of a day is equivalent to a whole day. But has he [the Tanna] not stated this once already?[3] — It might be thought that this is only true for one naziriteship but not for two, and so we are told [that it is also true for two].[4]

We have learnt: Should he poll on the day prior to the sixtieth, he has fulfillied his obligation. since the thirtieth day is included in the [required] number.[5] Now, this fits in well enough with the view of R. Mattena, but for Bar Pada what necessity is there [for this statement], since he says that [the normal duration] is thirty days less one? — He will say: This is the very passage on which I rely for my opinion.

We have learnt: If a person says, ‘I intend to be a nazirite’ and contracts ritual defilement on the thirtieth day, the whole period is rendered void.[5] Now, this fits in well enough with the view of R. Mattena, but does it not conflict with that of Bar Pada? —

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(1) Cf. 11. 4.

(2) As end of the first and beginning of the second naziriteship.

(3) As an inference from another clause of the same Mishnah (v. supra, p. 17); what necessity is there then for this latter clause?

(4) That one part of the day belongs to one and the other to the second period.

(5) Infra p. 53.

Bar Pada will say: Consider the subsequent clause [which reads]: R. Eliezer says: Only the [next] seven days are void.[1] Now if you assume that thirty days are necessary [as the minimum period of nazirite separation], should not all be void?[2] [R. Mattena, however, will reply:] R. Eliezer is of the opinion that part of a day is equivalent to the whole.[3]

We have learnt: [If a man says] ‘I intend to be a nazirite for one hundred days,’ and contracts ritual defilement on the hundredth day, the whole period is rendered void. R. Eliezer said that only thirty days are rendered void.[4] Now, if we assume[5] that R. Eliezer considers part of a day to be equivalent to a whole day, surely only seven days should be annulled?[1] Again [on the other hand] if we assume[6] that he does not regard part of the day as equivalent to a whole day, should not the whole period be annulled?[7] — In point of fact, we do not regard part of a day as equivalent to a whole day. In that case, why is not the whole period annulled? — Said Resh Lakish: R. Eliezer's reason is as follows: Scripture says, And this is the law of the nazirite, [on the day] when the days of his consecration are fulfilled.[8] Thus the Torah expressly declares that if he contracts ritual defilement on the day of fulfilment, the law for a nazirite vow [of unspecified duration] is to be applied to him.[9] May we say [that the difference between R. Mattena and Bar Pada] is the same as that between the following Tannaim? [For it was taught:] From the verse, Until the days be fulfilled,[10] I can only infer that the vow must continue in force at least two days,[11] and so the text adds, He shall be holy; he shall let the locks grow long,[12] and hair does not ‘grow long’ in less than thirty days. This is the view of R. Josiah. R. Jonathan, however, said that this [reasoning] is unnecessary, for we have the text, Until the days be fulfilled.[12] What days then are those which have to be ‘fulfilled’? You must say the thirty days [of the lunar month].[13] May we assume that R. Mattena agrees with R. Josiah, and Bar Pada with R. Jonathan? — R. Mattena can maintain that both [authorities] agree that thirty days is the necessary period and the point at issue between them is whether the word ‘until’ [preceding a number] signifies the inclusion or exclusion [of the last unit of that number].[14] R. Josiah is of the

opinion that in the term 'until' [the last unit] is not included,[15] whereas R. Jonathan is of the opinion that by the use of 'until', [the last unit] is included.[16] The Master stated: What days then are those which have to be 'fulfilled'? You must say, The thirty days [of a lunar month]. But could it not be a week[17] — [In the case of] a week, what deficiency is there to make up?

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(1) Since he is unable to offer his nazirite sacrifices until he has been sprinkled with the ashes of the red heifer on the third and seventh days. V. Num. XIX, 1ff.

(2) Because the defilement takes place while the vow is still in force.

(3) Hence when the defilement takes place, the vow is no longer in force.

(4) Infra P. 53.

(5) As does R. Mattena.

(6) As does Bar Pada.

(7) For then the naziriteship is not complete until the close of the hundredth day and defilement during the naziriteship nullifies the whole preceding period.

(8) Num. VI, 13.

(9) I.e., he is to be a nazirite again for 30 days. [i.e., not more and not less, irrespective of the question whether or not part of the day is equivalent to a whole day (Tosaf.).]

(10) Ibid. 5.

(11) 'Two' being the minimum to which the plural 'days' could he applied.

(12) Num. VI, 5.

(13) An ordinary lunar month contains 29 days, a 'full' month 30 days.

(14) I.e., whether e.g. 'until 30' means 30 or 29.

(15) And the number thirty is derived by means of the rest of the verse, 'He shall let the locks grow long'.

(16) And the number thirty is obtained from 'Until the days be fulfilled'.

(17) Lit., 'a Sabbath', i.e., six working days completed by the Sabbath to make a week.

Talmud - Mas. Nazir 7a

Could it then not be a year?[1] — Are these reckoned in days? Surely the Rabbis of Caesarea[2] have said: How do we know that a year is not reckoned in days? Because Scripture says, months of the year:[3] [this signifies that] months are counted towards years but not days.

MISHNAH. IF HE SAYS, 'I INTEND TO BE A NAZIRITE FOR ONE LONG [PERIOD,' OR] 'I INTEND TO BE A NAZIRITE FOR ONE SHORT [PERIOD],' THEN EVEN [IF HE ADDS, 'FOR AS LONG AS IT TAKES TO GO] FROM HERE TO THE END OF THE EARTH,' HE BECOMES A NAZIRITE FOR THIRTY DAYS.

GEMARA. Why is this so? Has he not said, 'from here to the end of the earth'?[4] — His meaning is: For me this business is as lengthy as if it would last from here to the end of the earth. We have learnt: [If a man says,] 'I wish to be a nazirite as from here to such and such a place,' we estimate the number of days' journey from here to the place mentioned, and if this is less than thirty days, he becomes a nazirite for thirty days; otherwise he becomes a nazirite for that number of days.[5] Now why should you not say in this case also that [his meaning is]: For me, this business seems as if it would last from here to the place mentioned?[6] — Raba replied: We assume that [when he made the declaration] he was setting out on the journey.[7] Then why should he not [observe a naziriteship of thirty days] for each parasang?[8] R. Papa said: We speak of a place where they do not reckon [distances] in parasangs. Then let him [observe a naziriteship] for every stage [on the road]; for have we not learnt that [a man who says,] 'I intend to be a nazirite as the dust of the earth,' or 'as the hair of my head,' or 'as the sands of the sea,' becomes a life-nazirite, polling every thirty days?[9] — This [principle][10] does not apply to [a nazirite vow in which] a definite term is mentioned,[11] and this has indeed been taught [explicitly]: [A man, who says,] 'I intend to be a nazirite all the days of my life,' or 'I intend to be a life-nazirite,' becomes a life-nazirite,[12] but even [if he says] 'a hundred years,' or

'a thousand years,' he does not become a life-nazirite,[13] but a nazirite for life.[14]

Rabbah said: Hairs are different [from parasangs or stages], since each is separate from the others.[15]

In the case of days, do we not find the verse, And there was evening and there was morning, one day?[16] — There it is not because [days] are discrete entities [that the verse says one day] but to inform us that a day with the night [preceding it] together count as a day,[17] though they are really not discrete entities.

Raba said: Why raise all these difficulties? The case [in which he says 'FROM HERE TO THE END OF THE EARTH'] is different, because he has already said: I INTEND TO BE A NAZIRITE FOR ONE [SINGLE PERIOD].

MISHNAH. [IF A MAN SAYS] 'I INTEND TO BE A NAZIRITE, PLUS ONE DAY,' OR 'I INTEND TO BE A NAZIRITE, PLUS AN HOUR,' OR 'I INTEND TO BE A NAZIRITE, ONCE AND A HALF,' HE BECOMES A NAZIRITE FOR TWO [PERIODS].

GEMARA. What need is there [for the Mishnah] to specify all these cases?[18] — They are all necessary. For had it mentioned only, 'I INTEND TO BE A NAZIRITE, PLUS ONE DAY,' [it might have been thought] that here only do we apply the rule that 'there is no naziriteship for a single day,' and so he must reckon two [periods], whereas [when he says] 'I INTEND TO BE A NAZIRITE, PLUS AN HOUR,' he is to reckon thirty one days. So this case is mentioned explicitly

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(1) And the ordinary year may be considered 'deficient' by the side of a leap year.

(2) [On the Rabbis of Caesarea v. Lieberman, S. The Talmud of Caesarea, pp. 9ff.]

(3) Ex, XII, 2.

(4) And he should be a nazirite for life.

(5) Infra p. 23.

(6) And his naziriteship should in any case not extend beyond thirty days.

(7) The presumption is, then, that the journey and the length of naziriteship are connected.

(8) A Persian mile.

(9) Infra p. 23.

(10) That he has to observe a succession of periods of naziriteship. polling at the end of each period.

(11) E.g., from here to such and such a place.

(12) And polls every thirty days.

(13) Having mentioned a definite term.

(14) I.e., he keeps one long naziriteship during which he can never poll. Tosef. Naz. I, 3.

(15) But distance is continuous. Hence if he mentions hairs, he is understood to mean a succession of short naziriteships, but if he mentions a distance, one long one.

(16) And so distance in terms of days is also discrete, yet the Mishnah quoted above confines the naziriteship to a single period, and not to a succession equal in number to the number of days.

(17) For the reckoning of Sabbaths and Festivals.

(18) One would be enough, and we could infer the others.

Talmud - Mas. Nazir 7b

Again.if it had simply added, '[I INTEND TO BE A NAZIRITE] PLUS AN HOUR,' [it might have been thought that he must count two periods] because he was [clearly] not speaking with precision,[1] whereas the expression 'ONCE AND A HALF' is precise, and it might therefore have been thought that he should not reckon two [periods].[2] And so we are told that in each case, he becomes a nazirite for two periods.

MISHNAH. [IF A MAN SAYS,] 'I INTEND TO BE A NAZIRITE FOR THIRTY DAYS PLUS AN HOUR,' HE BECOMES A NAZIRITE FOR THIRTY-ONE DAYS, SINCE THERE IS NO NAZIRITESHIP FOR HOURS.

GEMARA. Rab said: This applies[3] only when he says, 'thirtyone days,' but if he says, 'thirty days plus one day,' he becomes a nazirite for two periods.[4] Rab follows R. Akiba whose method it was to lay stress on superfluities of expression, as we have learnt: [If a man sells a house, the sale includes] neither the cistern nor the cellar, even though he inserted the depth and the height [in the deed of sale]; he must, however, purchase for himself a right-of way.[5] This is the opinion of R. Akiba, but the Sages say that he need not purchase a right-of-way for himself.[6] R. Akiba does admit, however, that if he explicitly excludes [pit and cellar], he does not have to purchase a right-of-way.[7]

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(1) Since naziriteships are reckoned in days only.

(2) But forty-five days.

(3) The assumption of the Mishnah that a man can become a nazirite for thirty-one days.

(4) See last Mishnah and Gemara.

(5) I.e., He does not retain a right-of-way to the cistern and cellar, unless he explicitly reserves it for himself.

(6) Since the sale does not include the cistern and cellar, he may be presumed to have reserved a right of way to them.

(7) The insertion of this superfluous clause is taken by R. Akiba to indicate that he wished to retain a right of way; v. B.B. 64a.

Talmud - Mas. Nazir 8a

MISHNAH. [IF A MAN SAYS,] 'I INTEND TO BE A NAZIRITE AS THE HAIRS OF MY HEAD, OR THE DUST OF THE EARTH, OR THE SANDS OF THE SEA,' HE BECOMES A LIFE-NAZIRITE, POLLING EVERY THIRTY DAYS. RABBI SAID THAT SUCH A MAN DOES NOT POLL EVERY THIRTY DAYS;[1] THE MAN WHO POLLS EVERY THIRTY DAYS IS THE ONE WHO SAYS, 'I UNDERTAKE NAZIRITESHIPS[2] AS THE HAIR ON MY HEAD, OR THE DUST OF THE EARTH, OR THE SANDS OF THE SEA.' [IF HE SAYS,] 'I INTEND TO BE A NAZIRITE AS THE CAPACITY OF THIS HOUSE, OR AS THE CAPACITY OF THIS BASKET,' WE INTERROGATE HIM. IF HE SAYS THAT HE HAS VOWED ONE LONG PERIOD OF NAZIRITESHIP, HE BECOMES A NAZIRITE FOR THIRTY DAYS, BUT IF HE SAYS THAT HE HAS VOWED WITHOUT ATTACHING ANY PRECISE MEANING [TO HIS STATEMENT], WE REGARD THE BASKET AS THOUGH IT WERE FULL OF MUSTARD SEED, AND HE BECOMES A NAZIRITE FOR THE WHOLE OF HIS LIFE.[3] [IF HE SAYS,] 'I INTEND TO BE A NAZIRITE, AS FROM HERE TO SUCH AND SUCH A PLACE,' WE ESTIMATE THE NUMBER OF DAYS' [JOURNEY] FROM HERE TO THE PLACE MENTIONED. IF THIS IS LESS THAN THIRTY DAYS, HE BECOMES A NAZIRITE FOR THIRTY DAYS; OTHERWISE HE BECOMES A NAZIRITE FOR THAT NUMBER OF DAYS. [IF HE SAYS], 'I INTEND TO BE A NAZIRITE, AS THE NUMBER OF DAYS IN A SOLAR YEAR'' HE MUST COUNT AS MANY NAZIRITESHIPS AS THERE ARE DAYS IN THE SOLAR YEAR. R. JUDAH SAID: SUCH A CASE ONCE OCCURRED, AND WHEN THE MAN HAD COMPLETED [HIS PERIODS], HE DIED.

GEMARA. WE REGARD THE BASKET AS THOUGH IT WERE FILLED WITH MUSTARD SEED, AND HE BECOMES A NAZIRITE FOR THE WHOLE OF HIS LIFE. But why [mustard seed]? Surely we could regard it as though it were full of cucumbers or gourds, and so provide him with a remedy?[4] — Hezekiah said: This is a matter on which opinions differ, the author [of our Mishnah] being R. Simeon, who has affirmed that people do undertake obligations in which the use of an ambiguous formula results in greater stringency than the use of a precise one.[5] For it has been taught: [If a man has said,] 'I intend to be a nazirite provided this heap [of grain] contains a hundred

kor,[6] and on going to it, he finds that it has been stolen or lost, R. Simeon declares him bound [to his vow] since whenever in doubt as to a nazirite's liabilities, we adopt the more stringent ruling.[7] R. Judah, however, releases him since whenever in doubt as to a nazirite's liabilities, we adopt the more lenient ruling.[8]

R. Johanan said: It is even possible that [the author of the Mishnah] is R. Judah. For in the case just mentioned, the man has possibly not entered into a naziriteship at all [if there were not one hundred kor in the heap],[9] whereas in this case [mentioned in the Mishnah,] he does at any rate enter into a naziriteship.[10] On what grounds can he be released from it?[11] But why not regard the basket as though it were full of cucumbers and gourds, and so provide him with a remedy?[12] — Such an idea ought not to cross your mind, for he has undertaken one [unbroken] naziriteship,[13]

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(1) But becomes a nazirite for life and may never poll.

(2) נזירות

(3) (a) One naziriteship for every grain of mustard, [or, (b) one long naziriteship during which he can never poll].

(4) [By enabling him to poll at the end of every thirty days (according to (b) p. 23, n. 6).]

(5) As here, the reference to a basketful without specifying its contents, results in naziriteship for life.

(6) A dry measure; v. Glos.

(7) So that, as we are not certain that the heap contained less than 100 kor, he must observe the naziriteship.

(8) Tosef. Naz. II, 2.

(9) And therefore we do not declare him a nazirite lest he should eventually bring profane animals into the sanctuary, v. infra p. 102.

(10) For some period of time, whatever the basket is regarded as containing.

(11) And therefore he must he a nazirite for life.

(12) I.e., let him keep as many naziriteships as the basket will contain gourds or cucumbers. The questioner imagines that in R. Judah's view he becomes a life-nazirite, who can poll every thirty days. cf. supra, p. 21, n. 4.

(13) And if he brings his sacrifices at the termination of the number of days that the basket would contain gourds or cucumbers, he may he bringing profane animals into the sanctuary, as his naziriteship may he of longer duration. Thus he becomes a nazirite for life, during which he can never poll.

Talmud - Mas. Nazir 8b

R. Judah agreeing with Rabbi, as we have learnt: RABBI SAID THAT SUCH A MAN DOES NOT POLL EVERY THIRTY DAYS. THE MAN WHO POLLS EVERY THIRTY DAYS IS THE ONE WHO SAYS, 'I UNDERTAKE NAZIRITESHIPS AS THE HAIR OF MY HEAD, OR THE DUST OF THE EARTH, OR THE SANDS OF THE SEA.'

Is it then a fact that R. Judah agrees with Rabbi? Have we not learnt: [IF HE SAYS,] 'I INTEND TO BE A NAZIRITE AS THE NUMBER OF DAYS IN A SOLAR YEAR,' HE MUST COUNT AS MANY NAZIRITESHIPS AS THERE ARE DAYS IN THE SOLAR YEAR. R. JUDAH SAID: SUCH A CASE ONCE OCCURRED, AND WHEN THE MAN HAD COMPLETED [HIS PERIODS], HE DIED? Now if you say that this man, [by using this formula,][1] undertook [consecutive] naziriteships,[2] we can understand why [R. Judah says that] when he finished,[3] he died. But if you say that he undertook a single naziriteship,[4] could it ever be said of such a man that he had 'COMPLETED'?[5] Moreover, could [R. Judah] possibly agree with Rabbi, seeing that it has been taught: R. Judah said: [If a man says,] 'I intend to be a nazirite, as the number of heaps of the fig crop,[6] or the number of ears [in the field] in the Sabbatical year,'[7] he must count naziriteships as the number of heaps of the fig crop, or the number of ears [in the field] in the Sabbatical year?[8] — [Where he explicitly mentions the word] 'number',it is different.

But does Rabbi make a distinction where the word 'number' [is used]? Has it not been taught: [If a man says,] 'I intend to be a nazirite as the number of days in a solar year,' he must count as many

naziriteships as there are days in the solar year; if [he says] 'as the days of a lunar year,' he must count as many naziriteships as there are days in a lunar year. Rabbi said that this does not hold unless he says, 'I undertake naziriteships as the number of days in the solar year or as the number of days in the lunar year'?[9] — R. Judah agrees with Rabbi on one point, and differs from him on the other. He agrees with him on one point, viz: that what is undertaken is a [single] naziriteship,[10] but differs from him on the other, for whilst R. Judah distinguishes between [the cases] where the word 'number' is mentioned and where it is omitted, Rabbi does not so distinguish.

Our Rabbis taught: [A man who says,] 'I wish to be a nazirite all the days of my life,' or 'I wish to be a life-nazirite,' becomes a life-nazirite. Even if he says a hundred years, or a thousand years, he does not become a life-nazirite, but a nazirite for life.[11]

Our Rabbis taught: [If a man says,] 'I wish to be a nazirite plus one,' he must reckon two [naziriteships]. [If he adds,] 'and another,' he must reckon three, and if he then adds 'and again'. he counts four. Surely this is obvious? — It might be thought that the words 'and again' refer to the whole [preceding number], making six in all, and so we are told that this is not so.

Our Rabbis taught: [When a man says,] 'I wish to be a nazirite,' Symmachos affirmed [that by adding] hen,[12] [he must reckon] one; digon,[13] two; trigon,[13] three; tetragon,[13] four; pentagon,[13] five [naziriteships].[14]

Our Rabbis taught: A house that is round, or digon,[15] or trigon,[15] or pentagon,[15] does not contract defilement through the plague [of leprosy]. One that is tetragon[15] does. What is the reason? — For Scripture, both in the latter part and in the earlier part of the passage [dealing with the leprosy of houses], puts walls [in the plural][16] instead of wall [in the singular], thus making four walls in all.[17] [

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(1) 'I intend to he a nazirite, etc.'

(2) 365 naziriteships, each of thirty days duration.

(3) At the end of thirty years.

(4) He would then mean, 'I undertake to be a nazirite for the number of the sun's days, i.e., for ever.' (Rashi). [Alternatively: If you say he undertook a single naziriteship (i.e. of 365 days duration) could it be said of him that he had completed the amount of naziriteships required by the Rabbis, in support of whose view R. Judah cites the incident; v. Tosaf.]

(5) He could never bring sacrifices.

(6) Aliter; paths of the fig-gatherers. v. Kohut, Aruch.

(7) Aliter; field.paths in the Sabbatical year.

(8) Tosef. Naz. I. Whereas Rabbi holds that in such a case he would have to count only as many days as there are heaps of figs.

(9) Tosef. Naz. I. And, according to Rabbi, the same would be the case if he omitted the word 'number', the important thing being the use of the term, 'nazirite' or 'naziriteships'.

(10) I.e., when he says, 'I intend to be a nazirite as the capacity of this house'.

(11) Tosef. Naz. I, 3, and supra p. 21.

(12) Gr. **, once.

(13) The last syllable is probably a Hebraisation of ** Thus digon — ** — twice; and so on. V. Kohut, Aruch.

(14) Tosef. Naz. I.

(15) Here we have the normal meaning, two-sided, and so on.

(16) Lev. XIV, 39, and 37.

(17) Cf. Neg. XII, I.

C H A P T E R II

MISHNAH. [IF A MAN SAYS.] 'I INTEND TO BE A NAZIRITE [AND ABSTAIN] FROM DRIED FIGS AND PRESSED FIGS', BETH SHAMMAI SAY THAT HE BECOMES A NAZIRITE [IN THE ORDINARY SENSE].[1] BUT BETH HILLEL SAY THAT HE DOES NOT BECOME A NAZIRITE. R. JUDAH SAID: EVEN THOUGH BETH SHAMMAI DID AFFIRM [THAT THE FORMULA IS OF SOME EFFECT]. THEY MEANT ONLY WHERE HE SAID,[2] 'THEY ARE [FORBIDDEN] TO ME, AS IS A SACRIFICE.'[3]

GEMARA. [IF A MAN SAYS,] 'I INTEND TO BE A NAZIRITE [AND ABSTAIN] FROM DRIED FIGS AND PRESSED FIGS, BETH SHAMMAI SAY THAT HE BECOMES A NAZIRITE: But why? Does not the Divine Law say, nothing that is made of the grape-vine?[4] — Beth Shammai adopt the view of R. Meir, who said that a man does not make a declaration without meaning something,[5] whilst Beth Hillel adopt the view of R. Jose that a man's intentions are to be gathered from[6] the concluding portion of his statement [equally with the first portion], and [in consequence] the vow here carries with it its annulment.[7]

But surely Beth Shammai also agree that the vow here carries with it its annulment? — We must therefore say, that Beth Shammai adopt the view of R. Meir, who said that a man does not make a declaration without meaning something, and so immediately he utters the words 'I INTEND TO BE A NAZIRITE', he becomes a nazirite, and in adding '[AND ABSTAIN] FROM DRIED FIGS AND PRESSED FIGS, his purpose is to obtain release[8] [from his vow], and Beth Shammai [reject this] in accordance with their general principle that there can be no release from [vows made for] sacred purposes, and since there can be no release from [vows made for] sacred purposes, there can be no release from naziriteship. Beth Hillel, on the other hand, agree with R. Simeon, as we have learnt:[9] R. Simeon declared him free[10] [of obligation], since his offering was not undertaken in the customary manner:

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(1) I.e., he must abstain from wine and grapes.

(2) I.e., he added (Rashi). [Tosaf: . . as if he said'; Asheri: . . .here he intended'].

(3) They then become forbidden, but he does not become a nazirite even according to Beth Shammai.

(4) Num. VI, 4, which would show that naziriteship applies only to wine etc.

(5) Even though taken altogether his words are meaningless, and we therefore select that part which has a meaning and hold him to it.

(6) Lit., 'a man is held by'.

(7) Lit., 'its door' for escape; by his concluding remarks, he has withdrawn from his nazirite vow.

(8) Lit, 'to ask for remission.

(9) In connection with one who vowed to bring a meal-offering of barley flour; v. infra.

(10) From bringing the offering, since a meal-offering could be brought only of wheaten flour.

Talmud - Mas. Nazir 9b

Our Mishnah is not in agreement with the following tanna. For it has been taught: R. Nathan said that Beth Shammai declare him both to have vowed [to abstain from figs] and to have become a nazirite, whilst Beth Hillel declare him to have vowed [to abstain from figs], but not to have become a nazirite. [Here,] Beth Shammai agree with R. Meir[1] and R. Judah,[2] and Beth Hillel with R. Jose.[3] According to another report, R. Nathan said that Beth Shammai declare him to have vowed [to abstain from figs], but not to have become a nazirite, whilst Beth Hillel declare him neither to have vowed, nor to have become a nazirite. [Here,] Beth Shammai agree with R. Judah, and Beth Hillel with R. Simeon.[4]

We have learnt elsewhere: A man who says, 'I undertake to bring a meal-offering of barley-flour,' must [nevertheless] bring one of wheaten flour.[5] If he says, 'of coarse meal,' he must [nevertheless]

bring fine meal. If,'without oil and frankincense,' he must [nevertheless] add oil and frankincense; 'of half a tenth,' he must offer a whole tenth; 'of a tenth and a half', he must offer two tenths. R. Simeon declared him, free [of obligation], since his offering was not undertaken in the customary manner.[6]

Who is the Tanna [who asserts that] if anyone undertakes to bring a meal-offering of barley-flour, he must bring one of wheaten flour? — Hezekiah replied: The matter is a subject of controversy, [the Tanna here] representing Beth Shammai. For have not Beth Shammai averred that when a man says ['I intend to be a nazirite and abstain] from dried figs and pressed figs,' he becomes a nazirite? So too, if he says 'of barley-flour', he must bring one of wheatenflour. R. Johanan, on the other hand, replied that it is possible to maintain that [the passage quoted] represents the views of both [Beth Shammai and Beth Hillel] and that it refers to a man who says, 'Had I known that such vows are not made, I should not have vowed in this wise, but in the [correct] manner

Hezekiah said: The rule just laid down applies only where he said 'of barley', but if he says 'of lentils',[7] he need bring nothing at all. [Can this be so?] Consider: To whom does Hezekiah ascribe the Mishnah [containing this ruling]? To Beth Shammai! Now lentils in regard to a meal-offering, are as dried figs to a nazirite, and there Beth Shammai declare him to be a nazarite?[8] Hezekiah relinquished that opinion.[9] Why did he relinquish it? —[10] Raba said: Because he found that Mishnah difficult to understand. Why does it say 'barley' and not 'lentils'?[11] And so Hezekiah concluded that Beth Shammai's assertion was what R. Judah [maintained it to be].[12] R. Johanan, on the other hand, affirmed that [the rule of the Mishnah is applicable] even if he says 'of lentils'. But was it not R. Johanan who averred that [he only brings the offering if] he affirms: Had I known that such vows are not made, I should not have vowed in this wise, but in the [correct] manner?[13] — He[14] was arguing on Hezekiah's premises. You relinquished your former opinion,[15] because [the Mishnah] does not mention [the case] 'of lentils'. But might it not be a case of progressive argument, viz, not only is it true that when he says, 'of lentils' he must bring a proper mealoffering, since we may hold that he is there repenting [of his vow], and so we lay stress upon the opening portion of his statement, but even if he says 'of barley', where we could take it as certain that his intention is: If it can become consecrated after the manner of the 'Omer meal-offering,[16]

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(1) That a man does not make a declaration without meaning something.

(2) Of our Mishnah.

(3) That a man's intention may be gathered from the concluding portion of his statement, and not like R. Simeon; cf. n. 7.

(4) That a vow must be undertaken in the customary manner.

(5) Which alone was permissible for a meal-offering. v. Lev. II. 2: And when anyone bringeth a meal-offering unto the Lord, his offering shall be of fine flour; and he shall pour oil upon it and put frankincense thereon.

(6) M. Men. 103a.

(7) There was an obligatory offering of barley for the 'Omer but no offering of lentils at all (v. Lev. XXIII, 10ff.).

(8) And so here he ought to bring a meal-offering of wheaten Hour if he says 'of lentils'.

(9) That the Tanna of the Mishnah of Men. 103a is Beth Shammai. [He will consequently accept the explanation of R. Johanan (Tosaf.).]

(10) He could still have maintained that the Mishnah of Men. represents the view of Beth Shammai, and retract from the second statement holding that the ruling applies even if the man said 'of lentils'!

(11) If the view of Beth Shammai is that we hold a man to the first portion of his vow, then even if he says, 'I intend to offer a mealoffering of lentils', he should be obliged to bring one of wheaten flour.

(12) [The text is in disorder, and the interpretations suggested are many and varied. It appears to be best understood on the basis of Rashi's interpretation of R. Judah's statement in our Mishnah, viz., that he actually added, THEY ARE FORBIDDEN TO ME AS IS A SACRIFICE (v. supra p. 28, n. 2). On this view, even according to Beth Shammai, where he vowed to bring a meal-offering from barley, he would not be obliged to bring one of wheat unless he, e.g., explicitly stated that had he known that such vows are not made, he would have vowed in the correct manner, as R. Johanan (supra p. 30), but while such a plea would be accepted if he vowed barley because it could have been a

bona-fide error, it could not be admitted if he undertook to offer 'lentils'. Granted this, the Mishnah in Men. can represent the views of both Beth Hillel and Beth Shammai, as R. Johanan stated, hence the reason for Hezekiah relinquishing his former opinion (v. p. 30, 11. 4).]

(13) [A plea which is not admitted if he vowed to bring 'lentils', v. n. 4.]

(14) [R. Johanan, in affirming that the ruling is applicable even if he says 'of lentils'.]

(15) [V. supra p. 30, n.4.]

(16) Which was of barley. v. Lev.XXIII, 10ff.

Talmud - Mas. Nazir 10a

or the meal-offering of the faithless wife,[1] then I desire it to become consecrated, but not otherwise — even there we are told that he must bring one of wheaten flour.[2]

MISHNAH. IF HE SAYS, 'THIS HEIFER IS SAYING I SHALL BECOME A NAZIRITE IF I RISE,'[3] OR 'THIS DOOR IS SAYING I SHALL BECOME A NAZI RITE IF I OPEN', BETH SHAMMAI SAY THAT HE BECOMES A NAZIRITE, BUT BETH HILLEL SAY THAT HE DOES NOT BECOME A NAZIRITE. R. JUDAH SAID: EVEN THOUGH BETH SHAMMAI DID AFFIRM [THAT THE FORMULA WAS OF SOME EFFECT], IT WAS ONLY WHERE HE SAYS:[4] 'THIS HEIFER SHALL BE [FORBIDDEN] TO ME AS IS A SACRIFICE, IF IT SHOULD STAND UP [OF ITSELF]'.

GEMARA. Is it possible for a heifer to talk? — Rami b. Hama replied: [The Mishnah] here, refers to where a heifer lay crouching before him, and he said, 'This heifer thinks that it is not going to stand up. I intend to be a nazirite [and abstain] from its flesh, if it stands up of its own accord,' and it then arose of its own accord. Beth Shammai now apply their customary view and Beth Hillel their customary view. Beth Shammai who affirm that [in spite of his saying], 'from dried figs and pressed figs', he becomes a nazirite, assert here that [even] when he says 'from its flesh', he becomes a nazirite, whilst Beth Hillel declare that he does not become a nazirite.

But have not Beth Shammai asserted this once, already? Raba replied: A second and a third time[5] [did they repeat it]. R. Hiyya, too, taught it a second and a third time, and so did R. Oshaia teach it a second and a third time, and they are all necessary statements; For if the rule had been stated merely in the case of dried figs and pressed figs, [it might have been argued] that Beth Shammai were of the opinion there that his words take effect and he becomes a nazirite because [figs and] grapes can be confused,[6] whereas flesh and grapes cannot be confused. Similarly had it been affirmed regarding flesh [it might have been argued] that Beth Shammai were of the opinion in this instance that he becomes a nazirite, because flesh and wine [are naturally associated],[7] but it would not apply to dried figs and pressed figs, and so this case also is given explicitly. Again, had it been affirmed in these two cases [only, it might have been argued] that only in these cases was Beth Shammai's assertion to be applied, whilst as concerns the door, they would defer to Beth Hillel.[8] Further, had only the door been referred to, [it might have been argued] that only in this case do Beth Hillel dissent, but in the other two they defer to Beth Shammai, and so we are told that this is not so.

[Nevertheless,] said Raba, does the Mishnah say if [the cow] rises of its own accord?[9] But, said Raba, we must explain thus: The heifer, for example, is recumbent before him, and he says, 'I undertake to bring it as a sacrifice'.

This is all very well as regards the heifer which can be offered as a sacrifice but can a door be sacrificed?[10] — Raba therefore [corrected himself and] said: The heifer, for example, is recumbent before him,[11]

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(1) This was also barley, v. Num. V, 15.

(2) I.e. although his vow ban a certain meaning even if taken at face value, and there is no need for us to emphasise the first clause to the exclusion of the second, yet we do so.
(3) Apparently this is taken as a clumsy way of saying: 'If I do not make this cow get up, I vow abstinence from its flesh.'
(4) Cf. supra p. 28, n. 2.
(5) The case of the DOOR.
(6) So that when he said figs he may have meant grapes.
(7) And when he spoke of the one, he thought of the other.
(8) Because there is no association between a door and grapes.
(9) Whilst admitting the necessity of restating the principle in our Mishnah, Raba objects to the explanation of Rami b. Hama on the ground that the word 'rises' might mean with the help of others, whereas according to Rami b. Hama the vow is effective only when the heifer rises of its own accord.
(10) Since the case of the door in the Mishnah is parallel to that of the heifer, any explanation applying to the heifer must hold good if the door is substituted.
(11) And appears as if it will never rise, even if force is used.

Talmud - Mas. Nazir 10b

and he says, 'I undertake a nazirite-vow [to abstain] from wine if it does not stand up,' and it then stood up of its own accord. In Beth Shammai's opinion, the substance[1] of this man's vow lay in his intention to cause [the heifer] to rise by force,[2] and this he did not do,[3] whereas Beth Hillel are of the opinion that [the vow was made] because [the heifer] was recumbent,[4] and it has risen.[5]

If this is [the meaning of the Mishnah], how is the subsequent clause to be understood, viz.: R. JUDAH SAID: EVEN THOUGH BETH SHAMMAI DID AFFIRM [THAT THE FORMULA WAS OF SOME EFFECT], IT WAS ONLY WHERE HE SAYS, AND SHALL BE FORBIDDEN TO ME AS A SACRIFICE ETC.'? Does [his vow] then, attach to the heifer at all?[6] — [It must be] therefore, that he said, for example, 'I undertake a nazirite vow [to abstain] from its flesh if it should not stand up,' and it then stands up of its own accord. In Beth Shammai's opinion, the substance of this man's VOW is his intention to cause [the heifer] to rise by force, and this he has not done, whereas according to Beth Hillel, the substance of his vow lies in the fact that [the heifer] was recumbent, and it has risen.[7]

But are Beth Hillel of the opinion that if [the heifer] does not stand up, [the man] becomes a nazirite? Have they not said that [by a vow to abstain] from flesh, he does not become a nazirite?[8] — They were arguing on the premises of Beth Shammai. In our opinion, he does not become a nazirite even if [the heifer] should not stand up, but you who say that he does become a nazirite[9] should at least admit that the substance of his vow lay in the fact that [the heifer] was recumbent, and it has since risen. Beth Shammai reply that this is not so, and the substance of the man's vow lay in his intention to cause [the heifer] to rise by force, and this he has not done.[10]

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(1) Lit., 'the obligation'.
(2) Lit., 'with his hand'. The word 'stand up' being taken to mean 'stand up through me'.
(3) He therefore becomes a nazirite.
(4) And can only take effect if it remains recumbent.
(5) He does not therefore become a nazirite.
(6) The words 'it is forbidden to me as a sacrifice' imply that the heifer itself was the object of the vow, whereas in Raba's explanation it is the heifer's not standing up which is the condition for the operation of the man's naziriteship, and he has no intention of attaching any sanctity to the heifer.
(7) But if it did not rise he would be a nazirite.
(8) Even as in the case of a vow to abstain from pressed figs, v. supra p. 32.
(9) Where he says simply, 'I undertake to he a nazirite (and abstain) from flesh.'

(10) And so he becomes a nazirite.

Talmud - Mas. Nazir 11a

MISHNAH. IF A CUP OF WINE DULY TEMPERED[1] IS OFFERED TO A MAN, AND HE SAYS, 'I INTEND TO BE A NAZIRITE IN REGARD TO IT,' HE BECOMES A NAZIRITE. ON ONE OCCASION A CUP OF WINE WAS OFFERED TO A WOMAN ALREADY INTOXICATED AND SHE SAID, 'I INTEND TO BE A NAZIRITE IN REGARD TO IT. THE SAGES RULED THAT ALL THAT SHE MEANT WAS TO FORBID IT TO HERSELF, AS A SACRIFICE [IS FORBIDDEN]. GEMARA. You cite a case to disprove [the rule]! You begin by saying that HE BECOMES A NAZIRITE, and then quote the case of the woman [who does not become a nazirite], from which I should conclude that [by means of this formula] he forbids to himself only this [cup that is offered to him] but is allowed to drink other wine? — There is a hiatus [in the Mishnah], which should read: 'If a cup of wine duly tempered is offered to a man, and he says "I undertake a nazirite vow [to abstain] from it", he becomes a nazirite.' If, however, he was [already] intoxicated when he said 'I intend to be a nazirite [and abstain] from it',he does not become a nazirite,[2] (since he is accounted as having merely forbidden it to himself as a sacrifice is forbidden. If you should object that he ought to have said so [unambiguously], [the reply is] that he thought they would bring a fresh one and importune him, and so he thought, 'I will say something to them which will leave them in no doubt [as to my intention]). ON ONE OCCASION, TOO, A WOMAN [ALREADY INTOXICATED etc.].

MISHNAH. [IF A MAN SAYS,] 'I DECLARE MYSELF A NAZIRITE, ON CONDITION THAT I CAN DRINK WINE, OR CAN HAVE CONTACT WITH THE DEAD', HE BECOMES A NAZIRITE, AND ALL THESE THINGS ARE FORBIDDEN HIM. [IF HE SAYS,] 'I WAS AWARE THAT THERE IS SUCH A THING AS NAZIRITESHIP BUT I WAS NOT AWARE THAT A NAZIRITE IS FORBIDDEN TO DRINK WINE', HE IS BOUND [TO HIS VOW].[3] R. SIMEON, HOWEVER, RELEASES HIM.[4] [IF HE SAYS,] 'I WAS AWARE THAT A NAZIRITE IS FORBIDDEN TO DRINK WINE,[5] BUT I IMAGINED THAT THE SAGES WOULD GIVE ME PERMISSION, SINCE I CANNOT DO WITHOUT WINE', OR 'SINCE I AM A SEXTON',[6] HE IS RELEASED.[7] R. SIMEON, HOWEVER, BINDS HIM [TO HIS VOW].[8] GEMARA. Why does R. Simeon not dissent from the first ruling [also]? — R. Joshua b. Levi said: R. Simeon did in fact dissent from the first ruling also. Rabina said: In the opening clause, R. Simeon does not dissent, because the condition [there attached to the vow][9] is contrary to an injunction of the Torah, and whenever a condition is contrary to an injunction of the Torah, it is void.[10] R. Joshua b. Levi, on the other hand, considered that the words ON CONDITION here are equivalent to 'except'.[11]

It has been taught in support of Rabina's view: If he said, 'I declare myself a nazirite, on condition that I may drink wine, or have contact with the dead,' he becomes a nazirite and all these things are forbidden to him, since the condition he lays down is contrary to an injunction of the Torah; and whenever a condition is contrary to an injunction of the Torah,it is void.[12]

[IF HE SAYS] I WAS AWARE THAT A NAZIRITE IS FORBIDDEN TO DRINK WINE [etc.]: In the preceding clause,[13] we find it is [the Rabbis] who bind him [to his vow] and R. Simeon who releases him [and why is it not the same here]? — Here, too, it should read: [The Rabbis] bind him whilst R. Simeon releases.

Alternatively, you need not reverse the text,

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(1) Wine in ancient times was never drunk neat.

(2) His intention being to cease from drinking.

(3) I.e. be becomes a full nazirite

(4) He does not become a nazirite at all, P. Simeon being of opinion that a nazirite vow is not effective unless it comprises all the things forbidden to a nazirite, v. supra 3b.

(5) [Add, 'or that a nazirite may have no contact with the dead.']

(6) [And therefore thought the Rabbis would permit me to come in contact with the dead.]

(7) He does not become a nazirite at all.

(8) He becomes a full nazirite.

(9) That he should be allowed to touch a dead body or drink wine.

(10) And therefore the vow stands.

(11) Hence the vow was not all-inclusive, and therefore R. Simeon regards it as null.

(12) Tosef. Naz. II, 1.

(13) Where he says he did not know that wine is forbidden.

Talmud - Mas. Nazir 11b

[and we may explain thus]. In the first clause, where he makes a nazirite vow [to abstain] from one thing[1] only, according to the Rabbis, who hold that [the nazirite vow takes effect] even though he forswears one thing only, he becomes a nazirite and [the things forbidden to a nazirite] are forbidden to him; whereas according to R. Simeon who holds that [the nazirite vow does not take effect] until he forswears all of them, [all the things forbidden to a nazirite] are permitted to him. In the subsequent clause where he forswears all, and desires release as regards one thing, according to the Rabbis who declare him to be a nazirite even though he forswears one thing only, if he desires release as regards one only, he is released [from all]; according to R. Simeon who requires him to forswear them all, he cannot obtain release from one, until he obtains release from all. This is the reason we have the reading [in the second clause]: R. SIMEON BINDS HIM.

Yet another solution is possible. The controversy concerns vows [broken] under pressure,[2] and the difference [between R. Simeon and the Rabbis] is the same as that between Samuel and R. Assi [in the following passage]. For we have learnt: Four types of vows were remitted by the Sages,[3] incentive Vows,[4] vows of exaggeration,[5] inadvertent vows[6] and vows [broken] under pressure.[7] And [commenting thereon] R. Judah said: 'R. Assi ruled that it was necessary with these four types of vow to seek remission from a Sage. When I told this to Samuel, he said to me, The Tanna says that the Sages have remitted them, and you say that they must still be asked to remit them!' The Rabbis agree with Samuel,[8] R. Simeon with R. Assi.[9]

MISHNAH. [SHOULD A MAN SAY,] 'I DECLARE MYSELF A NAZIRITE AND I UNDERTAKE TO POLL A NAZIRITE',[10] AND SHOULD HIS COMPANION, HEARING THIS, SAY: 'I TOO, AND I UNDERTAKE TO POLL A NAZIRITE', THEN, IF THEY ARE CLEVER THEY WILL POLL EACH OTHER; OTHERWISE THEY MUST POLL OTHER NAZIRITES.

GEMARA. The question was propounded: If his companion, on hearing [his vow], says [simply]: 'I TOO', what are the consequences? Does [the remark] 'I TOO' embrace the whole of the original statement,[11] or does it embrace only half of it? If it should be decided that it embraces only half of the statement,is this to be the first half or the second half? — Come and hear: [AND HIS COMPANION, HEARING THIS, SAYS:] I TOO, AND I UNDERTAKE TO POLL A NAZIRITE, THEN IF THEY ARE CLEVER THEY WILL POLL EACH OTHER. From the fact that he is made to say both I TOO' and 'I UNDERTAKE ,it may be inferred that 'I TOO' has reference to half of the statement only.

Quite so: it has reference to half of the statement only, but is this the first half or the second half? — This follows from the same [passage]. For since he is made to say AND I UNDERTAKE TO POLL'[12] it follows that 'I Too' has reference to the first half.

R. Huna, the son of R. Joshua said to Raba: How can we be sure that this is so? May we not suppose that 'I TOO' really refers to the whole statement, and that the additional 'AND I UNDERTAKE', merely confirms his Undertaking? For if you do not admit this, [what do you make of] the subsequent [Mishnah] that reads: [Should a man say:] 'I undertake half the polling of a nazirite', and should his companion, hearing this, say: 'I too, I undertake half the polling of a nazirite'?[13] Are there here two sections to which he can be referring? We can only suppose that there he is merely repeating 'I have undertaken this obligation', and in this case too [it is possible] that he is merely repeating 'I have undertaken this obligation.' Raba replied: How now! If you are prepared to say that in the first [Mishnah the words 'I UNDERTAKE ETC.'] are of importance, but not in the subsequent one, then they are repeated in the subsequent one — unnecessarily, it is true — because they are included in the first one where it is important,[14] but if you maintain that it is of importance neither in the first [Mishnah] nor in the subsequent one, would it be included unnecessarily in both? R. Isaac b. Joseph citing R. Johanan said: If a man instructs his representative

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(1) I.e., one of the things forbidden a

(2) Viz., his inability to live without wine.

(3) I.e., without the need of remission being asked for.

(4) E.g.. 'I vow . . . if I pay more', made during bargaining to show himself in earnest.

(5) E.g., 'I vow . . . if there were not a million people there', the number being obviously exaggerated.

(6) E.g., 'I vow . . . if I was there,' and he later remembers that he was there.

(7) E.g., through illness. V. Ned. 20b.

(8) Since it is impossible for a nazirite to be a sexton, the vow is null of itself and he is not a nazirite.

(9) Though he cannot be a nazirite, the vow must be remitted by a Sage.

(10) I.e., enable a nazirite to poll by providing his sacrifices.

(11) I.e., both (i) 'I wish to be a nazirite,' and (ii) 'I undertake to poll a nazirite.'

(12) And not merely 'I Too'.

(13) Mishnah infra 12b.

(14) I.e., the second Mishnah repeats the phrasing of the first, for the sake of parallelism.

to go and betroth for him a wife, without specifying any woman, he becomes [in the meanwhile] forbidden [to marry] any woman in the world, since it is presumed that the messenger carries out his commission, and since he did not specify [the woman], he does not know which he betrothed for him.[1] Resh Lakish raised an objection against R. Johanan [from the following]: If a dove of an indeterminate pair[2] should fly away into the air, or amongst those sin-offerings that have to be killed,[3] or if one of the pair should perish, a partner is to be taken for the other one.[4] [This implies that] with a determinate pair there is no remedy;[5] though all other pairs [in the world] would be valid.[6] Now why should this be so? Should we not say of each one, perhaps this is one [that flew away]?[7] He replied: I spoke of a woman who is stationary and you raise objections from prohibited things that are mobile![8] Should you argue further that here too the woman may be mobile, for it is possible that he may have met her in the street and betrothed her, [the cases are still different] for the woman returns to her customary place, but can the same be said of the bird-pair?

Raba said: R. Johanan would admit that a woman who has [among her unmarried relatives] neither daughter, daughter's daughter, nor son's daughter; neither mother nor maternal grandmother, nor sister, although she may have a sister who was divorced after [the representative was sent] — such a woman would be permitted to him,[9] because at the time that he gave his instructions, [the sister] was still married, and when a person appoints a deputy, it is [to perform] something that is possible at the time,[10] but for something that is not possible at the time he does not appoint a deputy.[11]

We have Iearnt: [SHOULD A MAN SAY:] 'DECLARE MYSELF A NAZIRITE, AND I[11]

UNDERTAKE TO POLL A NAZIRITE,' AND SHOULD HIS COMPANION, HEARING THIS, SAY: 'I TOO, AND I UNDERTAKE TO POLL A NAZIRITE, THEN, IF THEY ARE CLEVER, THEY WILL POLL EACH OTHER; OTHERWISE THEY MUST POLL OTHER NAZIRITES. Now this [suggestion][12] is all very well as regards the latter, since the former had become [a nazirite] first,[13] but as to the former, was the latter a nazirite [when he made his vow]?[14]

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(1) Any woman may therefore be a relative, of a forbidden degree of kinship, of his betrothed wife.

(2) A pair of doves of which it has not yet been determined which is to be the sin-offering and which the burnt-offering.

(3) v. Kin. 1, 2.

(4) The pair is then to be determined in the usual way; Kin. II, I.

(5) Since it is not known which is the survivor.

(6) We assume that a random pair does not contain the missing dove, as we are guided by the majority.

(7) [And could not be offered except on behalf of the owner who originally determined it.]

(8) Where the objects are stationary (קבוע), a majority is not considered decisive, but any minority is as potent as the majority (cf. Sanh. [Sonc. ed.] p. 531. n. 4) and so there is an even chance that any woman is a near kinswoman of his betrothed wife.

(9) I.e., to betroth before the deputy returns.

(10) Here, to betroth an unmarried woman.

(11) Hence the deputy could not possibly have betrothed the other sister.

(12) Viz., that they should poll each other.

(13) Lit., 'since the former was in his presence'; and so his vow to poll a nazirite can be understood as applying to the former.

(14) How then can his vow apply to the latter, if we accept Raba's contention that a man can appoint an agent only for something which is possible at the time.

Talmud - Mas. Nazir 12b

It follows therefore that he must have meant: 'If I should find one who is a nazirite, I shall poll him'; and so here too, perhaps he means: 'If you find one who is divorced, [you can] betroth her on my behalf'? — We may put [our maxim] thus. A person can appoint a deputy only for a commission that he himself can execute at the moment, but he cannot appoint him for a commission that he himself cannot execute at the moment [but can only do later].

But is that so? Come and hear: If a man says to his agent,[1] 'You are to declare void any vows that my wife makes from the present moment until the time I return from such-and-such a place,' and he does so,it might be imagined that they become void, but Scripture says: Her husband may let it stand, or her husband may make it void.[2] This is the opinion of R. Josiah. R. Jonathan said: In all circumstances do we find that a man's representative is equivalent to himself.[3] Now, [R. Josiah's] reason derives from the statement of the Divine Law, Her husband may let it stand, or her husband may make it void, and but for this, the agent would be able to declare them void, whereas where [the husband] himself is concerned, it has been taught: Should a man say to his wife, 'All the vows that you may make from the present moment until I return from such-and-such a place are to stand,' this is of no effect. [Should he say,] 'They are to be void,' R. Eliezer declares them void, but the Sages say that they are not void.[4] Now assuming that R. Josiah agrees with the Rabbis that he himself could not make them void, [we nevertheless find that] had not the Divine Law said, Her husband may let it stand or her husband may make it void, the agent could have declared them void?[5] — It is possible that he agrees with R. Eliezer that [the husband] can make them void [in advance]. If that is so, why does he trouble to appoint a deputy? Why does he not declare them void himself? — He fears that [at the moment of departure][6] he might forget, or be angry, or be too busy.

MISHNAH. [SHOULD A MAN SAY,] 'I UNDERTAKE THE POLLING OF HALF A NAZIRITE,'[7] AND HIS COMPANION, HEARING THIS, SAY 'I, TOO; I UNDERTAKE THE

POLLING OF HALF A NAZIRITE,' THEN, ACCORDING TO R. MEIR, EACH MUST POLL A NAZIRITE COMPLETELY, BUT THE SAGES SAY: EACH POLLS HALF A NAZIRITE.

GEMARA. Raba said: All agree that if he Says, 'I undertake half the sacrifices[7] of a nazirite,' he is obliged to bring only half the sacrifices;[8] if he says 'I undertake the sacrifices of half a nazirite,' he must bring a complete set of sacrifices, since partial naziriteship is impossible.[9] Where they differ is when the phraseology of the Mishnah [is used].[10] R. Meir considers that as soon as he says 'I undertake [to poll]' he becomes liable to the complete sacrifice of naziriteship, and when he [afterwards] specifies half a naziriteship, it is no longer within his power [to limit his obligation].[11] The Rabbis, on the other hand, look upon it as a vow accompanied by its own modification.[12]

MISHNAH. [SHOULD A MAN SAY,] '[11] UNDERTAKE TO BECOME A NAZIRITE WHEN I SHALL HAVE A SON,' AND A SON BE BORN TO HIM, HE BECOMES A NAZIRITE. IF THE CHILD BORN BE A DAUGHTER, OR SEXLESS, OR AN HERMAPHRODITE, HE DOES NOT BECOME A NAZIRITE. SHOULD HE SAY, WHEN I SHALL HAVE A CHILD,' THEN EVEN IF IT BE A DAUGHTER, OR SEXLESS, OR AN HERMAPHRODITE, HE BECOMES A NAZIRITE.

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(1) A person left by a man in charge of his household while he is away.

(2) Num. XXX, 14.

(3) Ned. 72b.

(4) Ned. 72a.

(5) Which seems to show that a man can appoint an agent for something which cannot be done at once but can be done later.

(6) Until then, he wishes to retain his option of declaring his wife's vows void or not, at his pleasure.

(7) I.e.,to bring half the sacrifices accompanying the polling of a nazirite.

(8) Because there is no ambiguity.

(9) The phrase 'half a nazirite' is meaningless and must therefore be replaced by 'a nazirite', since it is presumed that he intended to undertake a real obligation.

(10) Here the actual obligation, which is to provide sacrifices, is not mentioned explicitly but must be inferred. The position of the word 'half' is no longer decisive, since no other position yields more sense. Accordingly, its significance must be determined.

(11) Limitation is now only possible on application to a Sage, and so he must bring a complete sacrifice.

(12) And therefore only the modified vow comes into operation and it is sufficient for him to bring half the sacrifices. V. supra p. 28, n. 7.

Talmud - Mas. Nazir 13a

SHOULD HIS WIFE MISCARRY, HE DOES NOT BECOME A NAZIRITE. R. SIMEON SAID: [IN THIS CASE] HE MUST SAY, IF IT WAS A VIABLE CHILD, I AM A NAZIRITE OBLIGATORILY; OTHERWISE I UNDERTAKE A NAZIRITESHIP VOLUNTARILY.'[1] SHOULD [HIS WIFE] LATER BEAR A CHILD,[2] HE THEN BECOMES A NAZIRITE. R. SIMEON SAID: HE SHOULD SAY, 'IF THE FIRST WAS A VIABLE CHILD, THE FIRST [NAZIRITESHIP] WAS OBLIGATORY, AND THE PRESENT ONE WILL BE VOLUNTARY, OTHERWISE, THE FIRST ONE WILL HAVE BEEN VOLUNTARY, AND THE PRESENT ONE IS OBLIGATORY.

GEMARA. For what purpose are we told this?[3] — Because of the subsequent clause, viz.: — IF IT BE A DAUGHTER, OR SEXLESS, OR AN HERMAPHRODITE, HE DOES NOT BECOME A NAZIRITE. But is not this obvious? — It might be thought that his meaning was 'If I beget a child'[4] and so we are told that this is not so SHOULD HE SAY 'WHEN I SHALL HAVE A CHILD' etc.: But is not this obvious? — It might be thought that he only meant the child that is reckoned amongst

men,[5] and so we are told [that any child is meant].

SHOULD HIS WIFE MISCARRY HE DOES NOT BECOME A NAZIRITE. The author of this statement is the R. Judah of the heap of grain.[6]

R. SIMEON SAID: HE SHOULD SAY, 'IF THE CHILD WAS VIABLE, THEN I AM A NAZIRITE OBLIGATORILY; OTHERWISE I UNDERTAKE NAZIRITESHIP VOLUNTARILY.' — R. Abba put the following question to R. Huna: Should a man say, 'I undertake to become a nazirite when I shall have a son', and his wife miscarries, and he set aside a sacrifice,[7] and then his wife gave birth [to a son],[8] what is the law?[9] From whose standpoint [was this problem propounded]? If from the standpoint of R. Simeon, what problem is there? Does not R. Simeon say that wherever there is a doubt in questions concerning naziriteship we adopt the more stringent ruling?[10] — It must therefore be from the standpoint of R. Judah, who maintains that in questions concerning naziriteship,if there is a doubt the more lenient ruling is adopted. The query then is whether [the animal] became sacred or not,[11] But what [practical] difference can it make [which it is]?[12] — [There would be the question of] whether he might shear it, or work with it.[13] The problem was unsolved. Ben Rehumi put the following question to Abaye: [Should a man say,] 'I undertake to become a nazirite when I shall have a son, and his companion, hearing this, add 'And I undertake likewise,' what would be the law? Is the reference to his words[14] or to him himself?[15] Should your finding be that the reference is to him himself,[16] then if a man should say, 'I undertake to become a nazirite when I shall have a son,' and his companion, hearing this, add 'I too , what would be the law? Is the reference to himself, I or does he mean, 'I am as much your good friend as you are yourself'?[17] Should your finding be that whenever the other is present

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(1) And in either case he becomes a nazirite.

(2) After her miscarriage.

(3) That if a son is born, he becomes a nazirite.

(4) The Hebrew word בֵּן son', is a denominative of בָּנָה 'to beget children', and might be used for any child (Rashi).

(5) I.e., a son through whom the family is propagated.

(6) v. supra 8a.

(7) To bring at the end of his proposed naziriteship.

(8) As a result of the same confinement.

(9) I.e., what about the sacrifice between the time it was set aside, and the time the second child was born. The question is made clearer anon.

(10) So that the husband was a nazirite in law, and the sacrifice properly set aside from the first.

(11) [Does the birth of the second child prove that the first was the result of the same pregnancy and consequently not premature and viable, or do we assume that it was the result of a later pregnancy and thus premature and non-viable?]

(12) Since it is now sacred.

(13) In the interval between the birth of the first and second child, as no benefit might be derived from sacred property.

(14) I.e., 'I also undertake to become a nazirite when I have a son'.

(15) The former, i.e., I also undertake to become a nazirite when you have a son'.

(16) The latter, meaning, 'I too shall be a nazirite when I have a son'.

(17) I.e., 'I too shall be a nazirite when you have a son'.

Talmud - Mas. Nazir 13b

he would be ashamed [to refer to himself],[1] then if a man should say, 'I undertake to be a nazirite when so-and-so has a son,' and his companion, hearing this, add 'I too,' what would be the law? Would it be said then that because the other is not present he is referring to himself,[2] or does he mean, 'I am as good a friend to him as you are'?[3]

The problem was left unsolved.

MISHNAH. [IF A MAN SAYS,] 'I INTEND TO BE A NAZIRITE [NOW] AND A NAZIRITE WHEN I SHALL HAVE A SON', AND BEGINS TO RECKON HIS OWN [NAZIRITESHIP]. AND THEN HAS A SON BORN TO HIM, HE IS TO COMPLETE HIS OWN NAZIRITESHIP] AND THEN RECKON THE ONE ON ACCOUNT OF HIS SON. [IF HE SAYS,] 'I INTEND TO BE A NAZIRITE WHEN I SHALL HAVE A SON, AND A NAZIRITE [ON MY OWN ACCOUNT]', AND HE BEGINS TO RECKON HIS OWN [NAZIRITESHIP] AND THEN HAS A SON BORN TO HIM, HE MUST INTERRUPT HIS OWN [NAZIRITESHIP], RECKON THE ONE ON ACCOUNT OF HIS SON, AND THEN COMPLETE HIS OWN. GEMARA. Raba put the following question. If he should say, 'I wish to be a nazirite[4] after twenty days time,' and then 'For one hundred days commencing now', what would be the law? Seeing that these hundred days will not be complete in twenty, are they to be inoperative [for the time being][5] or, seeing that there will remain sufficient time afterwards[6] for the hair to grow long,[7] do they come into operation [immediately]?[8]

Why does [Raba] not [first] raise the question of a [second] naziriteship of short duration?[9] It is a problem within a problem that he has raised:

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(1) And he must have meant, 'I shall be a nazirite when you have a son.'

(2) I.e., 'I too shall be a nazirite when I have a son.'

(3) I.e., 'I too shall be a nazirite when so-and-so has a son.

(4) An ordinary naziriteship of thirty days.

(5) I.e., till thirty days after the twenty.

(6) At the termination of the ordinary naziriteship.

(7) A nazirite could not poll until his hair had grown for thirty days.

(8) He will count twenty days, observe an ordinary naziriteship of thirty days, and then count eighty days to complete the naziriteship of one hundred days.

(9) 'I wish to be a nazirite after twenty days', and then, 'An (ordinary) nazirite commencing now.'

Talmud - Mas. Nazir 14a

Suppose it is decided that with a short naziriteship, since only ten days remain,[1] these ten days would certainly not be reckoned,[2] [what are we to say] of a naziriteship of a hundred days?[3] Seeing that eighty remain, would these [eighty days] be reckoned[2] or not?

And again, suppose it is decided that [the naziriteship] [in this case] operates [immediately], what would be the law if he were to say 'I wish to be a nazirite after twenty days time' and then 'I wish to be a life nazirite now',[4] would this become operative [at once] or not?[5] And again, supposing it is decided that in all these cases, since it is possible to secure release,[6] they become operative [at once],[7] what would be the law if he were to say 'I wish to become a nazirite like Samson in twenty days time', and then 'I wish to be an ordinary nazirite now'? In this case, since release cannot be secured,[8] would it become operative or not?

If he were to say, 'I desire to be as Moses on the seventh of Adar,'[9] what [would his meaning be]?[10]

Of these [questions], decide the first, [For it was taught: Should a man say] 'I wish to be a nazirite after twenty days time,' and then 'For a hundred days from now,' he reckons twenty days, and then thirty days, and then eighty days to complete the first naziriteship.[11] [SHOULD HE SAY, 'I WISH TO BE A NAZIRITE WHEN I SHALL HAVE A SON, AND A NAZIRITE ON MY OWN ACCOUNT etc.']

If he contracts ritual defilement[12] during the period [of naziriteship] on account of his son, R. Johanan said: This renders void [the first[13] period as well], but Resh Lakish said: It is not void. 'R. Johanan said that it becomes void,' — because [the whole] is one long period of naziriteship; 'but Resh Lakish said that it is not void,' — since his own naziriteship, and the one on account of his son are distinct.

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(1) If it is interrupted by a naziriteship after twenty days.

(2) As completing the first naziriteship by adding them to the twenty days, since ten days do not allow for the hair to grow long and therefore this naziriteship does not commence until the other one is finished.

(3) Is it on the same footing as the short one, or does it commence at once?

(4) Though a life-nazirite polls every thirty days, the naziriteship is continuous and cannot be interrupted. Thus once the life-naziriteship operates it is impossible for the ordinary naziriteship to take effect.

(5) I.e. , shall the life-naziriteship be suspended until the ordinary naziriteship has been observed, or does it become operative and he must obtain release from the other naziriteship.

(6) From the naziriteship which is to become operative in twenty days time.

(7) And he must secure release from the naziriteship which was to have operated after twenty days.

(8) A nazirite like Samson could never be freed from his vow, since Samson could not be freed.

(9) Supposed to be the date of the birth and death of Moses, v. Kid. 38a.

(10) Either 'As after the death of Moses on the seventh of Adar'; when presumably many nazirite vows were made by the Israelites, or, 'As after the birth of Moses on the seventh of Adar', a festive occasion.

(11) Tosef. Nazir II.

(12) With the dead.

(13) The period counted before his son's naziriteship came into operation.

Talmud - Mas. Nazir 14b

If he contracts ritual defilement during the period that he is leprous.[1] R. Johanan said: This renders void [the earlier period of naziriteship]; but Resh Lakish said: It is not void. 'R. Johanan said that it becomes void,' — since he is in the midst of his period of naziriteship,[2] 'but Resh Lakish said that it is not void,' — because the period of leprosy and the naziriteship are distinct.

And it is necessary [to have both these controversies on record]. For if only the first[3] were recorded, [we might say that] there R. Johanan was of the opinion that [the first period] becomes void because the same term, naziriteship, applies to both, whereas in the other he would agree with Resh Lakish that the nazirite period and the leprosy are distinct. Similarly had only the other [regarding leprosy] been recorded, [we might suppose that] only there did Resh Lakish hold [the two periods to be distinct], whereas in the first he would agree with R. Johanan. Thus the necessity [for recording both controversies] is demonstrated. If he becomes unclean on a day [during the period that] his hair is growing.[4] — Rab said: This does not render void [the earlier period]; this even according to R. Johanan who said [above] that the [earlier period] does become void, for this is only so [when the uncleanness is incurred] during the naziriteship itself, but not during the period his hair is growing which is merely the complement of the naziriteship.[5] Samuel, on the other hand, said: It does render void [the earlier period]; and this even according to Resh Lakish who said [above] that [the earlier period] does not become void, for whereas there, there are two distinct naziriteships, here[6] there is but one naziriteship.[7]

R. Hisda said: All would agree that should his hair be still unshorn[8] when the blood [of his sacrifice had been sprinkled],[9] he would have no remedy.[10] With whose opinion does this statement accord? It cannot be with that of R. Eliezer,[11] for seeing that in his opinion polling estops [him from drinking wine, the uncleanness][12] is still prior to the 'fulfilment of his [consecration]'[13] and [the whole period] should become void![14] Nor can it accord with the Rabbis, Seeing that they say that the polling does not estop [him from drinking wine]![15] -In point of fact, it does accord with the opinion

of the Rabbis, the phrase, ‘he would have no remedy’, meaning, ‘he would have no means of fulfilling the precept of polling [in purity]’.

R. Jose son of R. Hanina said: A nazirite whose period is completed,is scourged for contracting ritual defilement,[16] but not for polling or for [drinking] wine. Why is he scourged for ritual defilement? [Assuredly] because Scripture says. All the days that he consecrateth himself unto the Lord [he shall not come near to a dead body],[17] thus including the days after fulfilment equally with the days before fulfilment! But in that case, for polling too he should be liable to scourging seeing that the All-Merciful Law Says. All the days of his naziriteship there shall cone no razor upon his head,[18] thereby including the days after fulfilment equally with the days before fulfilment. Again, All the days of his naziriteship shall he eat nothing that is made of the grape-vine,[19] should also include the days after fulfilment equally with the days before fulfilment? —

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(1) One who becomes leprous during his naziriteship completes it when the leprosy is cured.

(2) As is proved by the fact that when he recovers from his leprosy he completes his period.

(3) Relating the naziriteship on account of his son.

(4) If he had his hair polled by force, his naziriteship is not interrupted thereby and he completes his period. If this is less than thirty days, he must nevertheless allow his hair to grow for thirty days. The additional days constitute the ‘period that his hair is growing’.

(5) And not an integral part of it.

(6) When he allows his hair to grow after having been polled by force.

(7) The additional days are an integral part of naziriteship and not a mere complement.

(8) Lit., ‘hallowed’, cf. Num. VI, 11.

(9) And he became unclean.

(10) In regard to polling and wine drinking-so it is assumed at present.

(11) V. infra 472.

(12) He cannot drink wine after polling

(13) Cf. Num. VI, 13.

(14) Cf. ibid. 12, and he begins a new period at the end of which he finds the remedy.

(15) And defilement after the termination of his period does not affect the naziriteship.

(16) Before offering his sacrifices.

(17) Num. VI, 6.

(18) Ibid. VI, 5.

(19) Num. VI. 4.

Talmud - Mas. Nazir 15a

[Defilement] is different, for the All-Merciful Law says, And he defile his consecrated head,[1] showing that [the penalty for defilement lies] wherever the nazirite ship depends on the head.[2]

An objection was raised: A nazirite who has completed his period is forbidden to poll, or drink wine, or have contact with the dead. Should he poll or drink wine, or have contact with the dead he is to receive the forty stripes. [This is] a refutation of R. Jose son of R. Hanina.

MISHNAH. [SHOULD A MAN SAY.] ‘I UNDERTAKE TO BECOME A NAZIRITE WHEN I SHALL HAVE A SON, AND TO BE A NAZIRITE FOR ONE HUNDRED DAYS [ON MY OWN ACCOUNT],’ AND A SON BE BORN TO HIM BEFORE THE EXPIRATION OF SEVENTY DAYS, HE LOSES NONE OF THIS PERIOD;[3] BUT IF AFTER SEVENTY DAYS, THESE SEVENTY DAYS ARE VOID, SINCE THERE CAN BE NO POLLING FOR LESS THAN THIRTY DAYS.[4]

GEMARA. Rab said: The seventieth day itself is reckoned as part of both periods.[5]

We learnt: IF [A SON] BE BORN TO HIM BEFORE THE EXPIRATION OF SEVENTY DAYS, HE LOSES NONE OF THIS PERIOD. Now if you assume that [the day of birth] is reckoned as part of both periods,[not only does he not lose but] he actually profits![6] — Strictly speaking there should have been no mention of the period-before the seventieth day,[7] but because it says in the subsequent clause [of the Mishnah], that [birth] after the seventieth day renders these seventy days void, the period before the seventieth day is mentioned in the first clause.

Come [then] and hear the subsequent clause: 'IF IT BE BORN AFTER THE SEVENTIETH DAY,[8] THE SEVENTY DAYS ARE VOID[9] — The meaning of 'AFTER' is, after [the day] after [the seventieth day] ,[10] You say then that [a birth on] the day after [the seventieth day] itself,[11] would not render void [the previous period]. But if this is so, why should we be told that if the birth occurs before the seventieth day none of the period is lost, seeing that the same is true [of a birth occurring] on the day after the seventieth day? — It is consequently to be inferred that 'AFTER' means [the day] after literally, and thus the Mishnah unquestionably [contradicts] Rab.

Whose authority was Rab following in making this assertion? Shall we say it was Abba Saul, [in connection with whom] we have learnt: If a man bury his dead three days before a festival, the enactment of seven days' [full mourning] ceases to apply to him, if eight days before the festival, the enactment of thirty days [halfmourning] ceases to apply, and he may trim his hair on the eve of the festival. Should he, however, fail to trim his hair on the eve of the festival, he is not permitted to do so afterwards [until the thirty days' half-mourning elapse].

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(1) Num. VI, 9.

(2) I.e., as long as his head is unpolled. though the 'days of his consecration are fulfilled'.

(3) I.e., He counts a naziriteship of thirty days on account of his son, and then completes the hundred days on his own account.

(4) And since there are not thirty days left over from the first naziriteship, the whole of it becomes void, and he has to start his one hundred days over again.

(5) So that on the one hand seventy days of his own naziriteship are completed, and on the other he need only reckon twenty-nine more days for the naziriteship following the birth of his son. The same will of course be true of the last day of this naziriteship, when he must again commence the remainder of his own (Rashi).

(6) For each of the days between the naziriteships counts as two.

(7) Because there is no manner of doubt as to what the law should be and he does in fact gain.

(8) I.e., as we should suppose on the seventy-first.

(9) Whereas if Rab be right, a birth on the seventy-first day should not render void the previous period, since reckoning both ways, thirty days remain.

(10) I.e., The seventy-second day, which on any reckoning would not leave more than twenty-nine.

(11) I.e., seventy-first day.

Abba Saul said: Even if he should fail to trim his hair before the festival, he is permitted to do so afterwards,for just as the observance of three days [before the festival] causes the enactment of seven days [full mourning] to lapse, so the observance of seven days [full-mourning before the festival] causes the enactment of thirty days [half-mourning] to lapse. Now, Abba Saul's reason is surely that the seventh day is reckoned as part both of [the full-mourning] and of [the halfmourning]![1] — Possibly Abba Saul only makes this avowal in connection with the periods of the seven days'[2] mourning which are a rabbinic enactment, whereas he would not do so in connection with naziriteship, a scriptural enactment?[3] It must therefore be that Rab follows R. Jose. for it has been taught: R. Jose said that a woman, 'on the wait' for gonorrhoenic issue,[4] on whose behalf [the paschal lamb] has been slaughtered and [its blood] sprinkled, on the second day [of her waiting], and

who later [in the same day] observes an issue, may not eat [of the passover],[5] and does not have to prepare the second passover.[6] Now R. Jose's reason is surely because in his opinion, part of the day counts as a whole day, so that she becomes unclean only from the moment [of observing the issue] and thereafter.[7]

Is this indeed R. Jose's opinion?[8] Has it not been taught: R. Jose said that a sufferer from gonorrhoea who has observed unclean issue on two occasions, and on whose behalf [the paschal lamb] has been slaughtered and [its blood] sprinkled 'on the seventh day [of his impurity], and Similarly a woman, on the wait' for gonorrhoeic issue on whose behalf [the paschal lamb] has been slaughtered and [its blood] sprinkled — if they afterwards observe an unclean issue, then even though they render unclean couch and seat[9] retrospectively, they are not obliged to offer the second passover?[10] — [The uncleanness] is retrospective only by enactment of the Rabbis. This is indeed evident, for if it were scriptural, on what grounds would they be exempt from the second passover?[11] [No!][12] In point of fact it would be possible for the uncleanness [to be retrospective] in biblical law also, the concealed impurity[13] of gonorrhoea not being reckoned a ban [to the offering of the passover].

R. Oshaya. too, is of the opinion that the retrospective incidence is rabbinic in origin,[14] for it has been taught:[15] R. Oshaia said that one who observes a gonorrhoeic issue on his seventh day, renders void the preceding [seven days]. R. Johanan said to him: Only that day itself becomes void. But consider! [What is R. Johanan saying?] If it renders void at all, it should render all [seven days] void, otherwise it should not render void even the same day? — Read therefore: [R. Johanan said that] it does not even render void the same day,

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(1) In the same way as Rab reckons the 70th day twice over.

(2) The argument applying with greater force to the period of half-mourning.

(3) Hence Rab cannot appeal to his authority.

(4) V. Lev. XV, 25ff. Should a woman observe issue after her menstrual period, she becomes unclean until evening. From that time she is 'on the wait', and if there is an issue on the second day, she becomes unclean for seven days. A third day certifies her as gonorrhoeic, and she must then bring a sacrifice after purification; v. Sanh. (Sonc. ed.) p. 577. n. i. Whilst unclean she must not eat the flesh of sacrifices.

(5) For she is now unclean for seven days.

(6) On the 14th day of the following month, Iyar; v. Num. IX, 9ff.

(7) She was fit to offer the Passover, although she cannot now eat it. Adopting the reading of Tosaf., Asheri and others.

(8) That she becomes unclean only from that moment.

(9) Cf. Lev. XV, 4.

(10) Since they render unclean couch and seat retrospectively, the day must count as belonging wholly to the unclean period!

(11) Since they were already unclean when the paschal lamb was killed.

(12) This would afford no proof.

(13) Lit., 'impurity of the abyss', a technical term for an impurity of which there is no sign until its issue.

(14) In the opinion of R. Jose.

(15) [var. Iec.: For R. Oshaia said].

. [R. Oshaia] replied: You have on your side R. Jose, who said that the uncleanness is incident [according to the Scripture] from the moment [of observation] and thereafter. Now was it not R. Jose who said that the uncleanness was retrospective? We see therefore that the retrospective incidence must [in his opinion] be rabbinic.[1]

Now seeing that R. Jose is of the opinion that part of a day counts as a whole day, how is it ever

possible for there to be a certified[2] female sufferer from gonorrhoea to offer the [prescribed] sacrifice, for if the issue is observed in the second half of the day, then the first half of the day counts as the period of 'waiting'?[3] — It is possible either if she should have continual issue for three days, or alternatively, if she observes the issue on each of the three days shortly after sunset, so that there is no part of the day that can be reckoned [as a period of cleanness].

CHAPTER III

MISHNAH. IF A MAN SAYS, 'I INTEND TO BE A NAZIRITE', HE POLLS ON THE THIRTY-FIRST DAY, BUT SHOULD HE POLL ON THE THIRTIETH DAY, HIS OBLIGATION IS FULFILLED. [IF, HOWEVER, HE SAYS] 'I INTEND TO BE A NAZIRITE FOR THIRTY DAYS,' AND POLLS ON THE THIRTIETH DAY, HIS OBLIGATION IS NOT FULFILLED. IF A MAN UNDERTAKES TWO NAZIRITESHIPS, HE POLLS FOR THE FIRST ONE ON THE THIRTY-FIRST DAY, AND FOR THE SECOND ON THE SIXTY-FIRST DAY. IF, HOWEVER, HE SHOULD POLL FOR THE FIRST ON THE THIRTIETH DAY, HE CAN POLL FOR THE SECOND ON THE SIXTIETH DAY, WHILST SHOULD HE POLL ON THE DAY PRIOR TO THE SIXTIETH, HE HAS FULFILLED HIS OBLIGATION; FOR THIS WAS THE TESTIMONY THAT R. PAPAIAS BORE CONCERNING ONE WHO UNDERTAKES TWO NAZIRITESHIPS, VIZ., THAT IF HE SHOULD POLL FOR THE FIRST ON THE THIRTIETH DAY, HE IS TO POLL FOR THE SECOND ON THE SIXTIETH DAY, WHILST SHOULD HE POLL ON THE DAY PRIOR TO THE SIXTIETH DAY, HE HAS FULFILLED HIS OBLIGATION, THE THIRTIETH DAY COUNTING TOWARDS THE REQUIRED NUMBER. IF A MAN SAYS, 'I INTEND TO BE A NAZIRITE,' AND CONTRACTS RITUAL DEFILEMENT ON THE THIRTIETH DAY, HE RENDERS VOID THE WHOLE PERIOD. R. ELIEZER SAYS: ONLY THE SEVEN DAYS ARE VOID. [IF HE SAYS,] 'I INTEND TO BE A NAZIRITE FOR THIRTY DAYS, AND CONTRACTS RITUAL DEFILEMENT ON THE THIRTIETH DAY, THE WHOLE PERIOD IS VOID. [IF HE SAYS,] 'I INTEND TO BE A NAZIRITE FOR ONE HUNDRED DAYS,' AND CONTRACTS RITUAL DEFILEMENT ON THE HUNDREDTH DAY, HE RENDERS VOID THE WHOLE PERIOD. R. ELIEZER SAYS[4] : ONLY THIRTY DAYS ARE VOID. IF HE CONTRACTS DEFILEMENT ON THE HUNDRED AND FIRST DAY, THIRTY DAYS ARE VOID. R. ELIEZER SAYS: ONLY SEVEN DAYS ARE VOID.

GEMARA. IF A MAN SAYS, 'I INTEND TO BE A NAZIRITE' AND CONTRACTS RITUAL DEFILEMENT ON THE THIRTIETH DAY, HE RENDERS VOID THE WHOLE PERIOD. R. ELIEZER SAYS: ONLY THE SEVEN DAYS ARE VOID.

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(1) Otherwise he would he contradicting himself.

(2) One who has observed an issue on three successive days.

(3) During which she has been clean. and being clean part of the day. she is considered to have been clean all day.

(4) no note.

Talmud - Mas. Nazir 16b

R. Eliezer is of the opinion that any [defilement contracted] after the fulfilment'[of the period] renders only seven days void.[1]

[IF HE SAYS,] 'I INTEND TO BE A NAZIRITE FOR THIRTY DAYS, AND CONTRACTS RITUAL DEFILEMENT ON THE THIRTIETH DAY, THE WHOLE PERIOD IS VOID. Here, R. Eliezer does not dissent because [we assume that] the man said, 'whole days'.[2]

[IF HE SAYS,] 'I INTEND TO BE A NAZIRITE FOR A HUNDRED DAYS, AND CONTRACTS RITUAL DEFILEMENT ON THE HUNDREDTH DAY, HE RENDERS VOID

THE WHOLE PERIOD. R. ELIEZER SAYS: ONLY THIRTY DAYS ARE VOID. All this may be taken [in two ways,] according as we follow Bar Pada or R. Mattena as explained above.[3]

MISHNAH. IF A MAN MAKES A NAZIRITE VOW WHILST IN A GRAVEYARD, THEN EVEN IF HE REMAINS THERE FOR THIRTY DAYS, THESE ARE NOT RECKONED,[4] AND HE DOES NOT HAVE TO BRING THE SACRIFICE [PRESCRIBED] FOR RITUAL DEFILEMENT. IF HE LEAVES[5] IT AND RE-ENTERS,[6] [THE PERIOD][7] IS RECKONED, AND HE MUST BRING THE SACRIFICE [PRESCRIBED] FOR DEFILEMENT. R. ELIEZER SAID: NOT [IF HE RE-ENTERS] ON THE SAME DAY, FOR IT SAYS, BUT THE FORMER DAYS SHALL BE VOID,[8] [IMPLYING] THAT THERE MUST BE 'FORMER DAYS'

GEMARA. It has been stated: If a man makes a nazirite vow whilst in a graveyard, then according to R. Johanan the naziriteship takes effect, but according to Resh Lakish it does not take effect. R. Johanan says: The naziriteship does take effect because he considers it merely to be suspended and in readiness, so that whenever he becomes ritually clean, it commences to operate; whereas Resh Lakish holds that, the naziriteship does not take effect; if he repeats [the vow] later [when he is clean], it will commence to operate, but not otherwise.

R. Johanan raised an objection to Resh Lakish [from the following]: IF A MAN MAKES A NAZIRITE VOW WHILST IN A GRAVEYARD, THEN EVEN IF HE REMAINS THERE FOR THIRTY DAYS, THESE ARE NOT RECKONED, AND HE DOES NOT HAVE TO BRING THE SACRIFICE [PRESCRIBED] FOR RITUAL DEFILEMENT. [This implies, does it not,] that it is only the sacrifice [prescribed] for ritual defilement that he does not have to bring, but [the vow] does take effect? — He replied: [Not so;] he does not come within the scope of the law, either of ritual defilement or of the sacrifice.

An objection was again raised by him [from the following]: If a man is ritually defiled, and vows to become a nazirite, he is forbidden to poll, or to drink wine, or to touch a dead body. Should he poll, or drink wine, or touch a dead body, he is to receive the forty stripes.[9] If now you admit that [the vow] takes effect, then we see why he receives the forty stripes; but if you say that it does not take effect, why should he receive the forty stripes? —

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(1) V. supra 6b.

(2) And the thirty are not yet completed.

(3) According to H. Mattena a naziriteship whose duration is not specified lasts thirty days, whilst Bar Pada says that it lasts twenty-nine days. The full discussion of the Mishnah occurs above, fols. 5b-7a.

(4) I.e., the naziriteship does not begin.

(5) [And submits to the process of purification.]

(6) After becoming clean, v. infra.

(7) He is considered an ordinary nazirite from the time he becomes clean until he re-enters the graveyard.

(8) Num. VI, 12.

(9) Tosef. Naz. II, 9.

We are dealing here with the case in which he left [the graveyard] and re-entered it.[1]

A [further] objection was raised by him [as follows]: The only difference between a person ritually defiled who makes a nazirite vow, and a ritually clean nazirite who becomes unclean, is that the former reckons his seventh day [of purification] as part of his period [of naziriteship], whereas the latter does not reckon his seventh day [of purification] as part of his [new] period. If now you assume that [the vow of the unclean person] does not take effect, how is [the seventh day] to be counted [in his period]? — Mar b. R. Ashi said: Both [R. Johanan and Resh Lakish] agree that [the vow] does take effect; where they differ is whether there is [to be a penalty of] stripes.[2] R. Johanan is of the opinion that since [the vow] takes effect, he suffers the penalty of stripes, but Resh Lakish is of the opinion that there is no penalty of stripes, although [the vow] does take effect.

R. Johanan raised an objection to Resh Lakish [from the following]: IF A MAN MAKES A NAZIRITE VOW WHILST IN A GRAVEYARD, THEN EVEN IF HE SHOULD REMAIN THERE FOR THIRTY DAYS, THESE ARE NOT RECKONED, AND HE DOES NOT HAVE TO BRING THE SACRIFICE [PRESCRIBED] FOR RITUAL DEFILEMENT. [This implies, does it not,] that it is only the sacrifice prescribed for ritual defilement that he does not have to bring, but he does suffer stripes? — Strictly speaking, it should have stated that he does not receive stripes, but since it was requisite in the subsequent clause to mention that where HE LEAVES [THE GRAVEYARD] AND RE-ENTERS, THE [PERIOD] IS RECKONED, AND HE MUST BRING THE SACRIFICE [PRESCRIBED] FOR DEFILEMENT, the initial clause, too, mentions that he need not bring the sacrifice [prescribed] for ritual defilement.[3]

Come and hear: The only difference between a ritually defiled person who makes a nazirite-vow, and a ritually clean nazirite who becomes unclean, is that the former reckons his seventh day [of purification] as part of his period [of naziriteship], whereas the latter does not reckon his seventh day as part of his period. [Does not this imply] that as regards stripes, they are on a par? — He[4] replied: Not so. Where they are on a par is as regards polling.

[You aver, then,] that the latter receives stripes,[5] but the former does not do so. Why is this not mentioned? — The [Baraitha] is referring to that which is serviceable[6] to him, not to that which is to his detriment.[7]

Come and hear: Whosoever was ritually defiled and vowed to be a nazirite is forbidden to poll, or to drink wine. If he should poll, or drink wine, or come into contact with the [human] dead, he is to receive the forty stripes? This is undeed a refutation.[8]

Raba enquired: If a man vows to be a nazirite whilst in a graveyard, what is the law? Has he to be [in the graveyard] a certain time[9] for him to be liable to stripes, or not?

What are the circumstances? If he was told not to make a nazirite vow, why should any length of stay be necessary? What is the reason why no length of stay [in the graveyard] is necessary for the [ritually clean] nazirite [to be liable to stripes]? It is because he was forewarned;[10] and here too he was forewarned!

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(1) When he had become clean and repeated the vow.

(2) [For contracting defilement whilst making his vow in the graveyard.]

(3) Thus making the two clauses symmetrical in form.

(4) Resh Lakish.

(5) For defilement.

(6) To know when to commence the naziriteship.
(7) To receive stripes.
(8) Of Resh Lakish
(9) A minimum period. V. Shebu. 17a.
(10) Of the prohibition against defiling himself.

Talmud - Mas. Nazir 17b

We must suppose, therefore, that he entered [the graveyard] in a box, or a chest, or a portable turret,[1] and his fellow came and broke away the covering.[2] [The question then arises] whether [the rule requiring] a certain length of stay[3] was only laid down with reference to [defilement within] the Temple precincts, but not outside,[4] or whether there is no distinction.[5] The problem was unsolved.

R. Ashi raised the following question: If a man vows to become a nazirite whilst in a graveyard, is he required to poll or not? Is polling required only of a ritually clean nazirite who has contracted ritual defilement, because he has defiled his consecration,[6] and not of a ritually unclean person who makes a nazirite vow, or is there no difference [between the two]? — Come and hear: IF A MAN MAKES A NAZIRITE VOW WHILST IN A GRAVEYARD, THEN EVEN IF HE REMAINS THERE FOR THIRTY DAYS, THESE ARE NOT RECKONED, AND HE DOES NOT HAVE TO BRING THE SACRIFICE [PRESCRIBED] FOR RITUAL DEFILEMENT. [This implies, does it not,] that it is only the sacrifice prescribed for ritual defilement that need not be brought, but that polling is necessary! [That is not so.] The statement is made as a reason [for something else]. The reason that he need not bring the sacrifice prescribed for ritual defilement is that polling is unnecessary.[7]

Come and hear: The only difference between a ritually defiled person who makes a nazirite vow and a ritually clean nazirite who contracts ritual defilement is that the former reckons his seventh day [of purification] as part of his period [of naziriteship], whereas the latter does not reckon his seventh day as part of his [new] period. Surely, then, as regards polling both are on the same footing? — No! Where both are on the same footing is as regards stripes. In the case of polling, [you aver that] one polls and the other does not. Then why not mention this? — The seventh day is mentioned, and includes all observances dependent upon it.[8]

Come and hear: I am only told here[9] that the period of his ritual defilement is not reckoned [in the days of his naziriteship]. How do we know [that the same is true] of the period of declared leprosy?[10] This can be derived from an analogy [between the two]. Just as after the period of ritual defilement he is required to poll and bring a sacrifice, so after the period of declared leprosy he is required to poll and bring a sacrifice; and so just as the period of ritual defilement is not reckoned, the period of declared leprosy ought not to be reckoned. — Not so! For in the case of the period of defilement, it may he because this renders void the former reckoning[11] that it is not reckoned, whereas the period of declared leprosy does not render void the former reckoning,[12] and therefore it should itself be reckoned. — I will put the argument differently. Seeing that 'a nazirite in a graveyard',[13] whose hair is ripe for polling,[14] does not count [the days spent in the graveyard as part of his naziriteship], surely the period of declared leprosy, when his hair is not ripe for polling,[15] should not be counted.[16] Now surely polling as a result of his defilement is meant?[17] — No! the reference may be to polling [after observing the nazirite vow] in ritual purity.[18] This is indeed evident.

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(1) And therefore did not con-tract uncleanness when in the graveyard, being in a separate place.
(2) After he had vowed to become a nazirite.
(3) Viz., sufficient for prostration. V. Shebu. 17a.
(4) To cases not connected with the Temple, e.g.. when a nazirite becomes unclean inside the graveyard.
(5) And therefore in the graveyard also a certain length of stay is required.

(6) V. Num. VI, 9.
(7) The problem therefore remains.
(8) The seventh day is counted as part of his naziriteship because he need not bring a sacrifice, and he does not bring a sacrifice since he does not poll.
(9) In Num. VI, 22.
(10) Cf. Lev. XIII, 3ff.
(11) The period of naziriteship counted before defilement.
(12) The period counted before leprosy.
(13) I.e., one who made the vow of naziriteship in a graveyard.
(14) For he will poll automatically at the end of the seven days of purification, just as a ritually clean nazirite polls at the end of his naziriteship. This is the initial interpretation of the argument as understood by the Gemara.
(15) There is no definite period at which he has to poll, but he must wait until he recovers from the disease.
(16) The whole of the above paragraph is a quotation from Sifre on Num. VI, 12.
(17) I.e., surely the phrase 'whose hair is ripe for polling' means that he must poll as a result of his defilement in the graveyard, so that R. Ashi's question is answered in the affirmative.
(18) So that the argument is: Seeing that 'a nazirite in a graveyard' whose hair will be ripe for polling after he has purified himself and observed the period of his naziriteship, does not count etc., surely the leper, whose hair is not ripe for polling as part of his naziriteship because he must poll on recovery from his disease before he commences to count the naziriteship, ought not to count etc.

Talmud - Mas. Nazir 18a

For if you assume that polling as a result of the defilement is intended, does he not have to poll after the period of declared leprosy?[1] — No, [this does not constitute proof, for] the reference is to the polling on account of the naziriteship.[2]

Come and hear: The verse, And he defile his consecrated head[3] refers to a ritually clean [nazirite] who contracts ritual defilement; it enjoins on such a one to remove his hair and sacrifice birdofferings, but [by implication] exempts one, who vows to become a nazirite at a graveside, from removing his hair and sacrificing bird-offerings. For you might argue a fortiori: if the ritually clean [nazirite] who contracts ritual defilement must remove his hair and sacrifice bird-offerings, all the more must one who commenced [his naziriteship] whilst defiled remove his hair and sacrifice bird-offerings; therefore the text says expressly, 'And he defile his consecrated head', [implying] that only the ritually clean [nazirite] who contracts ritual defilement is required by Scripture to remove his hair and sacrifice bird-offerings, but not the person who vowed to become a nazirite at a graveside. This proves then [that the latter is exempt].

Who is the author of the following dictum, taught by the Rabbis, [viz.,] The only difference between a ritually defiled person who makes a nazirite vow, and a ritually clean nazirite who contracts ritual defilement, is that the former reckons his seventh day [of purification] as part of his period [of naziriteship],[4] whilst the latter does not reckon his seventh day as part of his [new] period? — R. Hisda said: It is Rabbi, for Rabbi has said that the naziriteship [after defilement] does not recommence until the eighth day of purification, for if you were to say it is R. Jose son of R. Judah, surely he holds that the naziriteship [after defilement] begins to operate on the seventh day of purification.

Where are these opinions of Rabbi and R. Jose son of R. Judah [to be found]? — It has been taught: And he shall hallow his head that same day;[5] Rabbi says [that this refers to] the day on which he offers his sacrifices,[6] but R. Jose son of R. Judah says [it refers] to the day on which he polls.[7]

And who is the author of the teaching that, 'A nazirite who contracts ritual defilement many times brings a single sacrifice only'?[8] — R. Hisda said: It is R. Jose son of R. Judah, who has said that the

naziriteship [after defilement] recommences on the seventh day of purification. Thus the case [contemplated] could arise if he were to contract defilement on the seventh day [of purification][9] and then again on the seventh day after that,[10] nevertheless since there was no period when he could have brought his sacrifice,[11] he need offer one sacrifice only [for both defilements]. According to Rabbi, however, if he contracted ritual defilement on the seventh day and then again on the seventh day,[12] the whole is one long period of ritual defilement,[13] whilst if we suppose he contracts ritual defilement upon the eighth day and again upon the eighth day, then there is a point of time [on each occasion] when he could bring his sacrifice.[14]

What is Rabbi's reason [for his opinion]? — The verse says [first], And make atonement for him that he sinned by reason of the dead,[15] and then, And he shall hallow his head.[16] And what does R. Jose son of R. Judah [say to this]? — If this is its intention, the text should read simply, 'And he shall hallow his head'.

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(1) So that the two cases are exactly analogous, and we cannot call one 'ripe for polling' and the other 'not ripe for polling'.

(2) The defiled nazirite has to poll because he is a nazirite, whereas the leper polls because he was a leper. There would thus still be room for the argument even if the meaning were that 'a nazirite in a graveyard' must poll.

(3) Num. VI. 9.

(4) I.e., the seventh day is counted as the first day of his thirty days of naziriteship.

(5) Num. VI, 12.

(6) The eighth day after the occurrence of the defilement.

(7) The seventh day after the occurrence of the defilement.

(8) Ker. II, 3.

(9) After he has bathed.

(10) After the occurrence of the second defilement, so that this is a separate defilement. But if he became unclean on the sixth day, it would be the same defilement.

(11) Which has to be brought on the 8th day.

(12) After the occurrence of the second defilement.

(13) Hence we cannot say 'many times' as in the passage quoted.

(14) And he must bring a sacrifice for each period of defilement.

(15) Num. VI, 11.

(16) Hence the naziriteship is to recommence after the offering of the sacrifice, which took place on the eigth day.

Talmud - Mas. Nazir 18b

What is the purpose of [the additional phrase], 'that day'? Since it cannot refer to the eighth day,[1] we may take it as referring to the seventh day. And Rabbi? He can say that the purpose of the phrase 'that day' is to tell us that even if he should fail to bring his sacrifices [the naziriteship commences].

Now what compelled R. Hisda to ascribe the authorship of this dictum to R. Jose son of R. Judah? Why should he not have interpreted it as referring to where he became unclean on the eighth night,[2] and ascribed the authorship to Rabbi?[3] Are we to understand from the fact that he does not ascribe the authorship to Rabbi, that in his opinion the night [before the day that his sacrifice is due] is not regarded as belonging to the preceding period?[4] — R. Adda b. Ahaba replied: One thing depends on the other. If we hold that the night [before the day his sacrifice is due] is regarded as belonging to the preceding period, then, since he can offer his sacrifice only in the morning, the naziriteship does not begin to operate until the morning;[5] whereas if the night [before the day his sacrifice is due] is not regarded as belonging to the preceding period, the naziriteship after purification [from defilement] begins in the evening.[6]

Our Rabbis taught:[7] If [a nazirite][8] contracts defilement on the seventh day [of purification], and

then he again contracts defilement on the seventh day [following], he is only required to offer one sacrifice. If he contracts defilement on the eighth day, and then once more on the eighth day [following], he is required to offer a sacrifice for each [defilement]. He begins to reckon [the new naziriteship] immediately;[9] this is the opinion of R. Eliezer, but the Sages say: He is required to offer but one sacrifice for all [the defilements] so long as he has not yet offered his sin-offering.[10] If he has brought his sin-offering and then contracts defilement, and again offers his sin-offering and again contracts defilement, he is required to furnish a [full] sacrifice for each defilement. If he has furnished his sin-offering, but not his guilt-offering, he [nevertheless] commences to reckon [the new naziriteship]. R. Ishmael, the son of R. Johanan b. Beroka said: Just as his sin-offering estops him [from commencing to reckon the new naziriteship], so does his guilt-offering.

Now, all is in order according to R. Eliezer, for the verse says, And he shall hallow his head that same day,[11] even though he may not yet have provided the sacrifices. [And likewise] the Rabbis [explain] 'that [day]', [implying], even though he may not yet have provided the guilt-offering.[12] But what does R Ishmael, the son of R. Johanan b. Beroka make of the words 'that [day]'? — He will reply: [His naziriteship commences] 'that [day]', even though he may not yet have provided the burnt offering. And the Rabbis? — They do not consider it necessary to have an excluding phrase for [permission to dispense with] the burnt offering, since it is [brought] simply as a gift.[13]

What is the Rabbis' reason [for stating that the guilt-offering is no bar]? — It has been taught: What is the implication of the verse, And he shall consecrate unto the Lord the days of his Naziriteship, and shall bring a he-lamb of the first year for a guilt-offering?[14] Since we find that all other guilt-offerings mentioned in the Torah are a bar [to atonement so long as they are not brought], it might have been thought that this one is also a bar,

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(1) For if it did, it would be superfluous.

(2) I.e., the night preceding the eigth day.

(3) So that the defilements are separate, though in regard to sacrifices they would be considered one, seeing that no sacrifice can be brought at night.

(4) Lit., 'wanting time. Although the sacrifice cannot be brought till the next day.

(5) So that there would still be only one defilement.

(6) And he would have to bring, according to Rabbi, a sacrifice for each defilement.

(7) [So Rashi; cur. edd., read, 'The text (states)'. This term, however, would not have the same meaning here as elsewhere in the Talmud where the reference is to a text previously cited; v. Asheri.]

(8) Who became unclean.

(9) Though he has not yet offered his sacrifices.

(10) The sacrifice of a nazirite who had become unclean consisted of two doves, one a sin-offering, the other a burnt-offering, and also a he-lamb as a guilt-offering. V. Num. VI, 10-12.

(11) Num. VI, 11.

(12) But the new naziriteship cannot commence till he has brought the others.

(13) [And not to effect atonement, as the other sacrifices, v. Zeb. 7b.]

(14) Num. VI, 12.

and so the text says, 'And he shall consecrate . . . and shall bring [a guilt-offering]' implying that even though he may not yet have brought [the guilt-offering], he is to consecrate. R. Ishmael, son of R. Johanan b. Beroka said: 'And he shall consecrate . . . and shall bring'. When does he consecrate? After he has brought.[1]

Who is the Tanna of the following [teaching] taught by the Rabbis: 'If a woman undertakes a nazirite vow, and contracts ritual defilement, and then her husband declares [her vow] void, she must

bring the sin-offering of a bird, but not the burnt-offering of a bird'? — R. Hisda replied: It is R. Ishmael.[2] How comes [R. Ishmael] to this ruling? — If he holds that the husband nullifies [his wife's vow],[3] then she should not be required to bring the sinoffering of a bird, whilst if he holds that the husband only terminates[4] [the vow],[5] why should she not be required to bring the burnt-offering of a bird as well? — Actually he is of the opinion that a husband nullifies [his wife's vow], and he further agrees with R. Eleazar ha-Kappar. For it has been taught: R. Eleazar ha-Kappar, Berabbi,[6] said: Why does the Scripture say, And make atonement for him, for that he sinned by reason of the soul.[7] Against what 'soul' did he then sin? It can only be because he denied himself wine.[8] If then this man who denied himself wine only is termed a sinner, how much more so is this true of one who is ascetic in all things!

But the verse is referring to an unclean nazirite,[9] whilst we are applying it even to a ritually clean nazirite? — R. Eleazar ha-Kappar[10] is of the opinion that a ritually clean nazirite is also a sinner, and the reason that Scripture teaches this [lesson in connection] with a defiled nazirite is that he repeats his sin.[11]

IF HE LEAVES IT AND RE-ENTERS, THE DAYS ARE RECKONED. It is stated that they are reckoned.[12] Does then the naziriteship begin to operate merely because he has left [the graveyard]?[13] — Samuel said: [We are speaking of] where he has left it, been sprinkled [a first and] a second time and bathed.[14] But [are we to infer that] if he re-enters, then only are they reckoned, whilst if he does not re-enter, they are not reckoned? — The argument is progressive. Not only [do they count] if he leaves, but [they count] also if he re-enters [immediately after purification].[15]

R. Kahana and R. Assi asked Rab: Why have you not explained [the Mishnah] to us in this manner? — He replied: I was under the impression that you did not require [to be told]. R.ELIEZER SAID: NOT IF HE DOES SO ON THE SAME DAY, FOR IT SAYS, AND THE FORMER DAYS SHALL BE VOID, IMPLYING THAT THERE MUST BE FORMER DAYS. 'Ulla said: R. Eliezer was referring only to a ritually defiled person who makes a nazirite vow, but a ritually clean nazirite who contracts ritual defilement, makes [his naziriteship] void, even on the first day.[16]

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(1) The naziriteship begins anew after he has brought the guilt-offering.

(2) [Who, in contradistinction to the Rabbis, holds that the burnt-offering is not brought as a mere gift, but specifically as a sacrifice of a nazirite, and since her naziriteship is void, she brings no sin-offering.]

(3) Lit., 'uproots , i.e., that his action is retrospective and the vow has never been valid.

(4) Lit., 'cuts off'.

(5) When he disallows it; until then it was effective.

(6) [Or 'Berebi'. Designation by which Bar Kappara is known in order to distinguish him from his father who bore the same name. The meaning of the title is uncertain: (a) a compound of 'house', be, and 'rabbi', i,e., belonging to the school of an eminent teacher (Jast.), or (b) a compound of 'son', 'bir', and 'rabbi', 'a son of a scholar', i.e., 'a scholar', v. J.E. III, 52.]

(7) **נפש**, E.V.: 'dead'. Num. VI, II.

(8) And so the woman must bring the sin-offering because she wished to deny herself wine.

(9) The section of which it forms part begins (Num. VI, 9), If any man die suddenly upon him, so that he becomes defiled,. . .he shall bring two turtle doves, of which one was a sin-offering brought because, . . .he sinned by reason of the soul.

(10) Cf., however, supra 3a, where R. Eleazar ha-Kappar is reported as saying that a ritually clean nazirite is not a sinner.

(11) For the period before defilement is void and he must now recommence to count thirty days.

(12) So that he must bring the sacrifices of a nazir who becomes unclean.

(13) For he is still unclean.

(14) I.e., undergone the purification rites. V. Num. XIX, 19.

(15) In which case we might think that he is as at first.

(16) When there are no 'former days'.

Talmud - Mas. Nazir 19b

Raba added: R. Eliezer's reason[1] is that the text continues, Because his consecration was defiled,[2] i.e., because he undertook the naziriteship during defilement.

Abaye raised an objection [from the following]. [If a man says,] 'I wish to be a nazirite for one hundred days,' and contracts ritual defilement at the very beginning of them, it might be held that this makes void [the naziriteship], but the text reads, 'And the former days shall be void'; there must first be 'former days', and here there are no former days. If he contracts ritual defilement at the end of the hundred days, it might be held that this makes void [the naziriteship], but the text reads, 'And the former days shall be void', implying that there are later days too' and here there are no days to come. If he contracts ritual defilement on the ninety-ninth day. It might be held[3] that he should not make void the naziriteship, but the text reads, And the former days shall be void, implying that there must be days to come, and here there are both former days[4] and days to come. Now it cannot be said that we are dealing with a ritually defiled person who makes a nazirite vow, since the account begins. "'I wish to be a nazirite for a hundred days," and he contracts defilement at the very beginning of them,' and yet it says that former days are necessary. — This indeed is a refutation [of 'Ulla].

R. Papa asked Abaye: Regarding the days that are required, is it sufficient if one has passed and [the defilement occurs when] the second begins, or must two pass, and [the defilement occur when] the third has begun? — [Abaye] had no information on the subject, so [Rab Papa] went and asked Raba. He replied: The text reads they shall fall away.[5]

Both the word 'days', and the [plural] form, 'they shall fall away' are needed,[6] for if the Divine Law had used the word 'days' and not the form 'they shall fall away', it might have been held that it is sufficient if one day has passed, and the second begun,[7] and so the Divine Law wrote 'they shall fall away'. And if it had used the form 'they shall fall away', and not [the plural] 'days', it might have been held that even one day is sufficient, and so the Divine Law uses the word days.

MISHNAH. IF A MAN VOWS A NAZIRITESHIP OF LONG DURATION AND COMPLETES IT AND THEN ARRIVES IN THE LAND [OF ISRAEL], BETH SHAMMAI SAY THAT HE IS A NAZIRITE FOR THIRTY DAYS, BUT BETH HILLEL SAY THAT HIS NAZIRITESHIP COMMENCES AGAIN AS AT FIRST. IT IS RELATED THAT QUEEN HELENA,[8] WHEN HER SON WENT TO WAR,[9] SAID: 'IF MY SON RETURNS IN PEACE FROM THE WAR, I SHALL BE A NAZIRITE FOR SEVEN YEARS. HER SON RETURNED FROM THE WAR, AND SHE OBSERVED A NAZIRITESHIP FOR SEVEN YEARS. AT THE END OF THE SEVEN YEARS, SHE WENT UP TO THE LAND [OF ISRAEL][10] AND BETH HILLEL RULED THAT SHE MUST BE A NAZIRITE FOR A FURTHER SEVEN YEARS. TOWARDS THE END OF THIS SEVEN YEARS, SHE CONTRACTED RITUAL DEFILEMENT, AND SO ALTOGETHER SHE WAS A NAZIRITE FOR TWENTY-ONE YEARS. R. JUDAH SAID: SHE WAS ONLY A NAZIRITE FOR FOURTEEN YEARS.[11]

GEMARA. The first clause reads: BETH SHAMMAI SAY [HE] IS A NAZIRITE FOR THIRTY DAYS, BUT BETH HILLEL SAY THAT HIS NAZIRITESHIP COMMENCES AGAIN AS AT FIRST. May we say that the ground on which they differ is that Beth Shammai are of the opinion [Rabbis declared] foreign lands [to be unclean] on account of their soil,

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(1) For making a distinction between one who undertook the naziriteship in purity, and an unclean person who undertakes a naziriteship, where we require former days'.

(2) Num. VI, 12.

(3) Since there is only one day to come and not 'days'.
(4) Viz., part of the ninety-ninth and the hundredth.
(5) Meaning that two complete days must have passed. So Rashi.
(6) [The text could have read 'And he shall hallow his head on that day apart from the previous days' (Tosaf.)]
(7) Because part of a day is like the whole. The reading of Rashi and the Bah. has been adopted. Our printed text reads: It might have been held that it is necessary for two days to have passed and the third begun, and so the Divine Law used the form 'they shall fall away'. Thus the inference conflicts with the usually accepted interpretation of Raba's reply. The objection to it is that the Gemara above appears to imply that the two phrases are weak forms needing to be strengthened by the appearance of both. The printed text, on the other hand, at the last treats 'days' as a strong form.
(8) Queen of the Adiabene, circa 40 C.E., Mother of Izates, V. Josephus Ant. XX, 2-4.
(9) Possibly the war of the restoration of Artabanus as King of Parthia. Ibid. 3.
(10) Also recorded by Josephus 2, 5.
(11) V. the Gemara, infra.

Talmud - Mas. Nazir 20a

whilst Beth Hillel are of the opinion that it was on account of the air also?[1] — No! All are agreed that the enactment was because of the soil, but Beth Shammai are of the opinion that we penalise[2] him by [the imposition of] a naziriteship of normal length, whilst Beth Hillel are of the opinion that he is penalised from the very commencement of his naziriteship.

IT IS RELATED THAT QUEEN HELENA etc.: The question was asked: [Does R. Judah agree that] she contracted impurity, in which case his statement concurs with Beth Shammai's opinion,[3] or does he 'deny that she contracted impurity, in which case his statement concurs with Beth Hillel's opinion?[4]

Come and hear: SHE WENT UP TO THE LAND [OF ISRAEL]. AND BETH HILLEL RULED THAT SHE MUST OBSERVE NAZIRITESHIP FOR A FURTHER SEVEN YEARS ETC. Now if you assume that she did contract impurity, and that [R. Judah] concurs with Beth Shammai, then the text should read: R. Judah said: She was a nazirite for fourteen years and thirty days, instead of [simply] fourteen years! There has also been taught in the same sense: R. Judah quoting R. Eliezer said that the implication of the verse, And this is the law of the Nazirite [on the day when the days of his separation are fulfilled][5] is: the Torah says that if he contracts ritual defilement on the day of his fulfilment, he is to be given the law of a nazirite.[6]

MISHNAH. WHERE TWO GROUPS OF WITNESSES GIVE EVIDENCE CONCERNING A MAN, ONE SAYING THAT HE VOWED TWO NAZIRITESHIPS[7] AND THE OTHER THAT HE VOWED FIVE, BETH SHAMMAI SAY THAT THE EVIDENCE IS CONFLICTING [IN TOTO], AND NO NAZIRITESHIP OPERATES AT ALL, BUT BETH HILLEL SAY THAT 'FIVE' INCLUDES 'TWO', SO THAT HE BECOMES A NAZIRITE FOR TWO PERIODS.

GEMARA. The Mishnah disagrees with the following Tanna. For it has been taught: R. Ishmael, the son of R. Johanan b. Beroka, said that Beth Shammai and Beth Hillel did not dispute that five included two where there are two groups of witnesses one saying five and one two. Where they differed was when of a single pair of witnesses, one says five and the other two, Beth Shammai averring that this is conflicting evidence, whilst Beth Hillel maintained that [here also], five includes two.

Rab said: All are agreed that where [the witnesses] enumerate [the evidence is conflicting]. R. Hama said to R. Hisda: What does this mean? It cannot mean that one says it was five and not two, and the other it was two and not five, for they plainly contradict each other. And if again it means that one says, [he vowed] a first and a second time, and the other a third, fourth and fifth time.

(1) Hence according to Beth Hillel the defilement which he has contracted by being on a foreign land is much more severe.

(2) For incurring a defilement instituted by the Rabbis though not recognised by the Torah.

(3) That only thirty days are required, the second seven years being due to the impurity.

(4) That seven years are required, the fourteen being made up of the original seven, and the seven imposed because of absence from Palestine.

(5) Num. VI, 13.

(6) The implication is probably that R. Judah does require a nazirite who becomes defiled in his last day to observe thirty more days, so we are entitled to make an inference from the brief form 'fourteen years as is done in the text.

(7) So Tosaf. Rashi renders 'years of naziriteship'.

Talmud - Mas. Nazir 20b

[we may ask,] what need is there for the se cond to repeat [the first two]?[1] Seeing that [the second witness] testifies to the more stringent ones,[2] then he certainly testifies to [the first two] that are less stringent?[3] — In the West[4] they maintain that where there is enumeration, there is no conflicting [of evidence].[5]

CHAPTER IV

MISHNAH. SHOULD A MAN SAY, 'I INTEND TO BE A NAZIRITE, AND HIS COMPANION OVERHEAR AND ADD 'I TOO,' [AND THE NEXT REPEAT] 'I TOO', ALL BECOME NAZIRITES. IF THE FIRST IS RELEASED [FROM HIS VOW],[6] ALL ARE [AUTOMATICALLY] RELEASED, BUT IF THE LAST ONE IS RELEASED, HE ALONE BECOMES FREE, THE OTHERS REMAINING BOUND [BY THEIR VOWS]. IF HE SAYS, 'I INTEND TO BE A NAZIRITE, AND HIS COMPANION OVERHEARS AND ADDS, 'LET MY MOUTH BE AS HIS MOUTH AND MY HAIR AS HIS HAIR, HE [ALSO] BECOMES A NAZIRITE. [IF HE SAYS,] 'I INTEND TO BE A NAZIRITE, AND HIS WIFE OVERHEARS AND ADDS, 'I TOO,' HE CAN DECLARE HER [VOW] VOID,[7] BUT HIS OWN REMAINS BINDING. [IF A WOMAN SAYS,] 'I INTEND TO BE A NAZIRITE, AND HER HUSBAND OVERHEARS AND ADDS, 'I TOO,' HE CANNOT DECLARE [HER VOW] VOID.[8] [IF HE SHOULD SAY IN CONVERSATION WITH HIS WIFE,] 'I INTEND TO BE A NAZIRITE. WHAT ABOUT YOU?' AND SHE ANSWER 'AMEN,' HE CAN DECLARE HER [VOW] VOID, BUT HIS OWN REMAINS BINDING. [BUT IF SHE SHOULD SAY,] 'I INTEND TO BE A NAZIRITE, WHAT ABOUT YOU?' AND HE ANSWER, 'AMEN,' HE CANNOT DECLARE [HER VOW] VOID.[8]

GEMARA. Resh Lakish was [once] seated in the presence of R. Judah the Prince,[9] and discoursed as follows: [They become nazirites by saying 'I too,'] only if they all attach their vows within the interval of a break in conversation.[10] And how much is the length of such an interval? The time sufficient for a greeting. And how much is this? The time taken by a disciple to greet his master.[11] [R. Judah] said to him: You do not allow a disciple any further opportunity.[12]

(1) There is still no conflict, although there is enumeration, for seeing that, etc.

(2) To the existence of a third, fourth, and fifth naziriteship.

(3) In this paragraph, the reading of Tosaf. has been adopted. [According to printed texts, render: 'Why was it necessary to state this; seeing that Rab ruled to this effect in a more stringent case, would he not rule likewise in a less stringent one?' The stringent case referred to is where the enumeration is made by two groups of witnesses, in which case Rab ruled (in a passage which Rashi cites from J. Sanh. V) that the evidence is conflicting.]

(4) I.e., in Palestine, cf. J. Sanh. V, 2.

(5) He is therefore required to observe two naziriteships, Rab's opinion being wrong. The second witness is not really

contradicting the first, and thus there are two witnesses to the first two naziriteships.

(6) Under certain conditions release can be obtained from a vow on application to an authorised Rabbi. V. Ned. 78a.

(7) The husband has the power of confirming or declaring void his wife's vows 'on the day that he hears them' — v. Num. XXX, 9.

(8) For by attaching his vow to hers, he incidentally confirms her vow.

(9) Nesi'ah; R. Judah II.

(10) I.e., the normal interval between the remarks of two persons holding a conversation. Lit., 'within the time sufficient for (the next) remark.' The point of Resh Lakish's statement is that we do not consider the remark 'I too' as being like one of the 'allusions' of the beginning of the first chapter, but its validity depends solely on its being obviously a reference to the original vow. Hence it must follow it, as though they were part of the same conversation.

(11) I.e., to say the three words, Shalom 'aleka Rabbi; 'Peace unto Thee, Master'.

(12) Both to greet his master and say 'I too', ואני (one word), if he wishes to. According to Rashi, R. Judah agreed with Resh Lakish, but other commentators consider that he disagreed with Resh Lakish and allowed four words as the interval in this case.

Talmud - Mas. Nazir 21a

The same principle[1] is taught in the following passage: If a man says, 'I intend to be a nazirite' and his companion overhear and delay long enough to make a break in conversation and then add, 'I too,' he himself is bound [by his vow], but his companion is free. The length of a break in conversation is the time taken by a disciple to greet his master.[2]

May we say that the following [passage] corroborates [Resh Lakish's statement]? [For the Mishnah says:] SHOULD A MAN SAY, I INTEND TO BE A NAZIRITE, AND HIS COMPANION OVERHEAR AND ADD 'I TOO,' [AND THE NEXT REPEAT] 'I TOO,' [ALL BECOME NAZIRITES];[3] and carries the series no further?[4] — Do you expect the Tanna to string together a list like a pedlar [crying his wares]?[5] Then why should he not mention ['I too'] once only and leave us to infer the rest?[6] — He could very well have done so, but because in the clause that follows he says: IF THE FIRST IS RELEASED [FROM HIS VOW] ALL ARE [AUTOMATICALLY] RELEASED, BUT IF THE LAST ONE IS RELEASED, HE ALONE BECOMES FREE, THE OTHERS REMAINING BOUND [BY THEIR vows], thus [using a phrasing which] implies that there is a person [or persons] in between, he mentions 'I too,' twice [in the opening clause].[7]

The question was propounded: Does each link up with his immediate predecessor, or do they all link up with [the utterance of] the first? The practical issue involved is whether the process can be continued indefinitely. If each links up with his immediate predecessor, then it would be possible to continue indefinitely,[8] but if they all link up with the first one, the process could not continue for longer than the space of a break in conversation.[9] What then is the law? — Come and hear: SHOULD A MAN SAY, I INTEND TO BE A NAZIRITE,' AND HIS COMPANION OVERHEAR AND ADD 'I TOO,' [AND THE NEXT REPEAT] 'I TOO'; without going further; and so we can infer that they all link up with the first,[10] for if it be the case that each links up with his immediate predecessor, why should not the phrase 'I too' be repeated many more times? — Do you expect the Tanna to string together a list like a pedlar [crying his wares]? Then let him mention ['I too'] once, and indicate all the rest in this manner?[11] — Since he continues: IF THE FIRST IS RELEASED [FROM HIS VOW] ALL ARE [AUTOMATICALLY] RELEASED, BUT IF THE LAST ONE IS RELEASED, HE ALONE BECOMES FREE, THE OTHERS REMAINING BOUND [BY THEIR VOWS; thus using a phrasing] which implies that there are persons in between, he therefore mentions 'I too' twice [in the first clause].[12]

Come and hear: IF THE FIRST IS RELEASED [FROM HIS VOW] ALL ARE RELEASED; [it follows that] only [on the release of] the first are the others released, but not [on the release of] an

intermediate one, and so we can infer that they all link up with the first one![13] — I can reply that actually each links up with his immediate predecessor, and the reason [why the first is mentioned] is that [the Tanna] desired to say that 'ALL ARE RELEASED', and if he had stated this in connection with the intermediate one there would have remained the first one unreleased; therefore he preferred to mention in this connection the first.[14]

Come and hear: IF THE LAST ONE IS RELEASED, HE ALONE BECOMES FREE, THE OTHERS REMAINING BOUND [BY THEIR VOWS]. [Now the reason for this is presumably because] there are no others following him,[15] but if the second one, who is followed by others, [were released,] these would also become free,[16] and so we can infer that each links up with his immediate predecessor! — In point of fact, I can argue that they all link up with the first, and that the expression 'THE LAST' [as used by the Tanna] refers to those in between [also], but because he speaks [in the preceding clause] of 'THE FIRST', he refers to the others as THE LAST.[17]

Come and hear [the following passage] where it is taught explicitly: If the first is released they all become free; if the last is released he alone becomes free, the rest remaining bound; if an intermediate one is released, those following him also become free, but those preceding him remain bound. This shows conclusively that each links up with his immediate predecessor.[18]

[IF HE SAYS,] 'I INTEND TO BE A NAZIRITE' AND HIS COMPANION OVERHEARS AND ADDS, 'LET MY MOUTH BE AS HIS MOUTH AND MY HAIR AS HIS HAIR,' [HE ALSO BECOMES A NAZIRITE]: Simply because he says, 'LET MY MOUTH BE AS HIS MOUTH AND MY HAIR AS HIS HAIR,' does he become a nazirite?[19]

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(1) According to the other commentators: To the same effect as Resh Lakish, as opposed to R. Judah.

(2) Tosef. Naz. III, 1.

(3) Which would show' that only two can attach themselves.

(4) The argument is: If the Tanna merely desired to state that any number of persons can become nazirites by saying 'I too', he should not have stopped after two. Since he does stop, he must have had a different aim, viz to fix the length of the interval that can elapse and the formula still be valid. The interval is naturally that of a break in conversation.

(5) Although the expression 'I too', is repeated only twice, there may be no limit to the number of persons who could become nazirites in this

(6) Viz. That it is possible for any number to become nazirites by saying 'I too'.

(7) To provide the extra person in between the first and the last.

(8) Since any number of persons could become nazirites by each saying 'I too' within the specified interval after his immediate predecessor's declaration, 'I too'.

(9) I.e., within the specified interval after the first person's declaration, 'I intend to be a nazirite.'

(10) So that not more than two persons can say 'I too', consecutively and became nazirites.

(11) I.e., since the Tanna does not wish to give a long list, why should he mention even as many as two persons. All the information is contained in the first statement that by saying 'I too' it is possible to become a nazirite.

(12) Thus indicating the person in between the first and the last.

(13) For otherwise all those who had spoken after any one of the intermediate ones should he released with that one.

(14) But in point of fact if any one of the others is released, all the succeeding ones are released.

(15) There are in existence several readings of the text at this point. We have adopted that of Tosaf., which keeps very close to the usual printed text.

(16) The Mishnah is taken to mean: Only if it is the last one who is released, do all the others remain bound by their vows.

(17) But his intention is to exclude only the first.

(18) The Gemara frequently attempts to obtain a ruling from a Mishnah even though a Baraitha states explicitly what is required.

(19) Which would seem to show that if he says, 'My mouth is a nazirite,' he is a nazirite.

Does not this conflict with the following passage? [It has been taught that if a man says,] 'Let my hand be a nazirite,' or 'Let my foot be a nazirite,' his words are of no effect. [But if he says,] 'Let my head be a nazirite,' or 'let my liver be a nazirite,' he becomes a nazirite. The rule is: If the organ is one upon which life depends, he becomes a nazirite![1] — Rab Judah replied: [In the Mishnah] he is presumed to say, 'Let my mouth be as his mouth as regards wine,' or 'my hair as his hair as regards shearing.'[2] [IF A WOMAN SAYS,] 'I INTEND TO BE A NAZIRITE, AND HER HUSBAND OVERHEARS AND ADDS, 'I TOO,' HE CANNOT DECLARE [HER VOW] VOID: The question was propounded: Does the husband nullify[3] or does he only terminate [the vow]?[4] The difference is of importance for deciding the case of a woman who vows to be a nazirite and whose companion overhears and says, 'I too,' and whose husband subsequently hears of the matter and declares her vow void. If it be decided that he nullifies [her vow], her companion is also set free,[5] but if it be decided that he merely terminates [the vow], she herself will be released, and her companion will remain bound [to the vow]. What, then, is the law? Come and hear: [IF A WOMAN SAYS,] 'I INTEND TO BE A NAZIRITE,' AND HER HUSBAND OVERHEARS AND ADDS, 'I TOO,' HE CANNOT DECLARE [HER VOW] VOID. Now, should you suppose that the husband terminates [the vow], he ought to be able to declare his wife's [vow] void, whilst remaining bound himself.[6] It surely follows, therefore, [from the fact that he cannot do so] that a husband nullifies [his wife's vow]?[7] — Not at all! Strictly speaking, the husband [in general] only terminates [the wife's vow,] and here by rights he should be able to declare her vow void,[8] and the reason why he cannot do so is because his saying, 'I too,' is equivalent to saying, 'I confirm it for you,'[9] and so if he [later] seeks to have the confirmation revoked,[10] he can then declare [his wife's vow] void,[11] but not otherwise.

Come and hear: If a woman undertakes a nazirite vow and sets aside the requisite animal [for the sacrifice] and her husband subsequently declares [the vow] void, then, if the animal was one of his own, it can be put to pasture with the herd,[12] but if it was one of hers, the sin-offering is to be left to die [etc.].[13] Now, should you suppose that the husband nullifies [the vow, the animal] should become profane?[14] It surely follows, therefore, that the husband [merely] terminates [the vow]?[15] — In point of fact, we can maintain that the husband nullifies [the vow], but [the animal remains sacred] for this reason. Since she no longer requires atonement,[16] [the case] is similar to that of a sin-offering whose owner has died, and it is a tradition that sin-offerings whose owners have died are left to die.

Come and hear: If a woman undertakes a nazirite vow and then drinks wine or is defiled by a corpse, she is to receive forty stripes.[17] What exactly are the circumstances? If her husband has not declared [the vow] void, would it have been necessary to tell us this?[18] Obviously, then, her husband must have declared [the vow] void.[19] Now if you suppose that the husband nullifies [the vow], why should she receive forty stripes?[20] It surely follows, therefore, that the husband [only] terminates [the vow]?[21] — In point of fact, we can maintain that the husband really nullifies [the vow], but [in this case] because we are told in the clause that follows: If her husband declares it void without her being aware of it, and she drinks wine or is defiled by a corpse, she does not receive the stripes;[22]

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(1) But it is possible to live without hair or mouth-hence the conflict. Tosef. Naz. III, 1.

(2) Thus expressly referring to the obligations of a nazirite. The statement is now very similar to the 'allusions' of Chapter I.

(3) Lit., 'uproot'.

(4) I.e., is it as though the vow had never been made, or is the vow only cancelled from the time it is declared void? V. Num, XXX, 7ff.

(5) Since the words 'I too' have no object of reference.

(6) She would be free hereafter, whilst he would remain a nazirite. Because the termination, while freeing her, in no wise affects the force of his 'I too'.

(7) And so he cannot declare his wife's vow void, for by so doing, he would incidentally retract his own vow, which is

forbidden.

(8) Since the termination of her naziriteship does not affect his own naziriteship.

(9) Once the husband has confirmed his wife's vow, he can no longer declare it void; v. Num. XXX, 16.

(10) By applying to a Sage.

(11) And he himself will remain a nazirite.

(12) I.e., it ceases to be sacred and may be returned to the fold.

(13) I.e., it is still sacred, v. infra 24a.

(14) For the naziriteship is null, and the animal was set aside in error, v. infra 31a.

(15) And the animal is actually a sin-offering, but cannot be offered since the woman is no longer a nazirite.

(16) For she has ceased to be a nazirite; thus Rashi and the printed text, Tosaf. and other MSS. read: 'Since she requires atonement,' i.e., because she denied herself wine (v. supra 19a).

(17) Infra 23a.

(18) Viz., that she receives stripes. For she is no different from any other nazirite.

(19) After his wife drank wine.

(20) For we now see that she was not really a nazirite when she violated the rules of naziriteship.

(21) And though she is no longer a nazirite, she must receive stripes for drinking wine when she was a nazirite,

(22) Infra 23a.

Talmud - Mas. Nazir 22a

we are also taught in the first clause that, [if her husband does not annul her naziriteship,] she does receive [stripes].[1]

Come and hear: If a woman undertakes a nazirite vow and contracts ritual defilement, and then her husband declares [the vow] void, she is to bring a bird as a sin-offering, but not one as a burnt-offering.[2] Now if you suppose that the husband terminates [the vow], she ought also to bring a bird as a burnt-offering?[3] — What then would you have us think? That [the husband] nullifies [the vow]? Then she ought not to bring a bird as a sin-offering either?[4] — That is so. Here, however, we are being given the opinion of R. Eleazar ha-Kappar, for it has been taught: R. Eleazar ha-Kappar Berabbi said: [It may be asked,] Why does Scripture say, [And make atonement for him] for that he sinned by reason of the soul?[5] For against what soul has he sinned? [The reply is,] however, that because he denied himself wine, he is called a sinner. If then this man who denied himself wine only is called a sinner, how much more so is this true of one who is ascetic in all things![6]

Come and hear the following where it is taught explicitly: If a woman vows to be a nazirite and her companion overhears and says, 'I too, and then the husband of the first woman declares [her vow] void, she is released [from her vow] but her companion remains bound.[7] From this it follows that the husband terminates [the vow].[8] R. Simeon however says[9] that where [her companion] says to her, 'I undertake the same [obligation] as you,' both become free.

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(1) Though here it is obvious,

(2) A nazirite who contracts defilement must bring one bird as a burnt offering and one as a sin-offering, (cf. Num. VI, 10, 11); v. supra 19a.

(3) For the husband does not affect the period before his declaration that the vow is to be void.

(4) Since she was not really a nazirite when she violated her vow.

(5) For notes v. supra p. 64.

(6) Thus she must bring a sin-offering even though the husband nullifies the vow, because she had denied herself wine.

(7) Tosef. Naz. III, 5.

(8) Continuation of the cited Baraitha.

(9) Since otherwise both women should become free together.

Talmud - Mas. Nazir 22b

Mar Zutra, the son of Rab Mari said: The same problem is raised here as was raised by Rami b. Hama.[1] For Rami b. Hama wished to know the effect of saying, 'Let these [victuals] be, as far as I am concerned, as the flesh of [this] peace-offering.'[2] Does a man, in thus linking one thing with another, refer to the original state [of the subject of comparison],[3] or to its ultimate state?[4]

But surely [the two cases] do not bear comparison?[5] For when he says in that case, 'Let these [victuals], as far as I am concerned, be as the flesh of this peace-offering,' [the fact remains that] even though once the blood is sprinkled, this may be eaten outside [the Temple precincts, yet it] is still sacred.[6] In our case, on the other hand, if we suppose that she has the ultimate state in mind, then the husband [of the first woman] has declared [the vow] void![7] Some consider that our problem and that of Rami b. Hama are undoubtedly identical.[8]

If [a woman] says to her [companion], 'I intend to be a nazirite in your wake,'[9] what would the law be? Does 'in your wake' [mean,] 'I intend to follow in your wake in every respect,' so that she becomes free, or does it refer to her [companion's] condition before her husband declared [the naziriteship] void, so that she remains bound?

Come and hear: If a woman vows to be a nazirite and her husband overhears and adds, 'I too',[10] he cannot declare [her vow] void. Now should you assume that when he says, 'I intend to follow in your wake,'[11] he has in mind the original situation,[12] why should he not be able to declare her [vow] void, whilst allowing his own to remain? Does it not follow, therefore, that what he refers to is the situation with all its developments, and so [it is only when] he himself [is involved that he] cannot declare [the vow] void,[13] but where [another] woman says, 'I intend to follow in your wake,' she would also be freed?[14] — This is not the case. In point of fact, he may be referring to the original situation, but in this case, when he says, 'I too,' it is as though he says. 'I confirm it for you,' and so if he consults [a wise man] in order to have his ratification upset, he will be able to declare [her vow] void, but not otherwise.

[IF HE SHOULD SAY IN CONVERSATION WITH HIS WIFE,] 'I INTEND TO BE A NAZIRITE, WHAT ABOUT YOU'[15] AND SHE ANSWER' AMEN,' HE CAN DECLARE HER [VOW] VOID, BUT HIS OWN REMAINS BINDING: The following passage seems to contradict this statement. [If a man says to his wife,] 'I intend to be a nazirite. What about you?'[16] if she answers 'Amen,' both become bound [to their vows],[17] but otherwise both are free, because he made his vow contingent on hers?[18] — Rab Judah replied: You should [emend the Baraitha to] read, He can declare her [vow] void, but his own remains binding.

Abaye said: It is even possible to leave the reading intact. The Baraitha supposes him to say to her, 'I intend to be a nazirite with you,' thus making his vow contingent on her vow;[19]

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(1) I.e., whether the vow of the second woman remains binding or not depends, not on the precise force of the husband's declaration that a vow is void, but on the alternatives enunciated by Rami b. Hama.

(2) This might not be eaten before its blood was sprinkled on the altar, but could be eaten afterwards.

(3) Here, the flesh before the sprinkling of the blood; so that the victuals indicated would also become forbidden. This problem is treated differently in Ned. 11b (q.v.).

(4) After the sprinkling of the blood, when the flesh may be eaten. Similarly in the case of the second woman the problem is: — Did she contemplate the original state of the first woman, so that she remains a nazirite, or did she also consider the possibility of the husband declaring the vow void, when her own would also become void. As the Baraitha says that her vow remains binding we may also infer that in Rami b. Hama's case the original state was meant and the victuals are forbidden. The word צננא used to convey the idea of a final state is usually taken from the root meaning 'cold', i.e., 'when it had cooled down'. L. Goldschmidt suggests that it may be derived from a Syriac word 'zenana' meaning the savour of roast meat,' and refers to the time when the flesh is prepared for food.

(5) And therefore the solution of the one problem obtained from the Baraitha, does not give the solution of the other.
(6) For it may be eaten for a limited period only, viz.: two days and one night (v. Zeb. V, 7), and so the victuals might also be subject to this restriction. Hence whichever of the alternatives enunciated by Rami is adopted, there is a restriction on the victuals.
(7) And the vow of the second will not operate. But she must have meant something by the vow, and we are therefore forced to conclude that she had only the original state in mind. Thus the solution of this problem given by the Baraitha affords no clue to the solution of Rami's problem.
(8) These do not consider the distinction drawn above decisive, for the woman may have considered it sufficient if she abstained from wine until the husband of the first one declared the vow void, and so once more we have two alternatives.
(9) And then the vow of the other is declared void.
(10) This is taken to be the same as 'in your wake', for since the husband can declare her vow void and the outcome of her vow is in his power, he would be referring to her ultimate as well as her present state.
(11) And all the more if he says, 'I too', to his wife.
(12) And he himself is not affected by any change in her vow.
(13) Since he would be freeing himself.
(14) If the husband annuls the first woman's vow'.
(15) Lit., 'I intend . . . and thou . . .'
(16) Lit., 'I intend . . . and thou.'
(17) But our Mishnah empowers him to declare her vow void,
(18) Tosef. Naz. III.
(19) Thus he cannot declare her vow void, for he would be nullifying his own at the same time.

Talmud - Mas. Nazir 23a

whilst our Mishnah supposes him to say to her, 'I intend to be a nazirite. What about you?'[1] And so he may declare her [vow] void but his own remains binding.

MISHNAH. IF A WOMAN UNDERTAKES A NAZIRITE VOW AND THEN DRINKS WINE OR IS DEFILED BY A CORPSE,[2] SHE IS TO RECEIVE FORTY [STRIPES]. IF HER HUSBAND DECLARES IT VOID WITHOUT HER BEING AWARE OF IT, AND SHE DRINKS WINE OR IS DEFILED BY A CORPSE, SHE DOES NOT RECEIVE THE FORTY [STRIPES]. R. JUDAH SAID: ALTHOUGH [IT MAY BE A FACT THAT] SHE DOES NOT RECEIVE THE FORTY [STRIPES]. SHE SHOULD RECEIVE THE STRIPES INFLICTED FOR DISOBEDIENCE.[3]

GEMARA. Our Rabbis taught: [In the verse,] Her husband hath made them void,' and the Lord will forgive her,[4] Scripture is speaking of a woman whose husband has declared her [vow] void without her knowledge .[5] [intimating] that she requires atonement and forgiveness. When R. Akiba reached this verse. he wept: 'For if one who intended to take swine's flesh and by chance takes lamb's flesh[6] stands in need of atonement and forgiveness, how much more so does one who intended to take swine's flesh and actually took it, stand in need thereof'?[7]

A similar inference may be made [from the verse]. Though he know it not, yet is he guilty and shall bear his iniquity.[8] If of one who intends to take lamb's flesh and by chance takes swine's flesh, for instance in the case of [one who ate] a slice of fat concerning which it was uncertain whether it was of the permitted or the forbidden kind,[9] the text says, 'and shall bear his iniquity', how much more so [is this true] of one who intended to take swine's flesh and actually took it.

Isi b. Judah interpreted [the verse], Though he know it not, yet is he guilty and shall bear his iniquity, [as follows]. If of one who intends to take lamb's flesh and takes swine's flesh for instance in the case of [one who eats one of] two slices[10] of fat one of which is forbidden fat and the other permitted fat, the text says, and shall bear his iniquity, how much more so [is this true] of one who intended to take swine's flesh and actually took it. For this let them grieve that are fain to grieve.

But what need is there for all these cases?[11] — They are all necessary. For if we had only been told about the woman, [we might have thought] that atonement and forgiveness are necessary there,[12] because from the very beginning her intention was to do that which is forbidden, whereas with the slice concerning which it is uncertain whether it is forbidden or permitted fat, where his intention was to do that which is permitted,[13] [we might have thought] that atonement and forgiveness are not necessary. If, on the other hand, we had only been told about the latter, [we might have thought] that it is because there is a definite prohibition involved,[14] whereas the woman whose husband has declared her [vow] void and whose act is [consequently] permitted, should not require atonement and forgiveness. Again, if we had only been told of these two cases, we might have thought that in these two cases atonement and forgiveness suffice, since the presence of something forbidden is not definite, whereas with two slices of which one is forbidden and one permitted fat, where the presence of something forbidden is definite, atonement and forgiveness do not suffice.[15] We are therefore told that there is no difference.

Rabbah b. Bar Hana, quoting R. Johanan, said:[16] The verse, For the ways of the Lord are right, and the just do walk in them,' but transgressors do stumble therein,[17] may be illustrated by the following example. Two men roast their paschal lambs.[18] One eats it with the intention of fulfilling the precept[19] and the other eats it with the inten tion of having an ordinary meal. To the one who eats it to fulfil the precept [applies]. 'And the just do walk in them,' but to the one who eats it to have an ordinary meal [applies], 'but transgressors do stumble therein'. Resh Lakish remarked to him: Do you call such a man wicked? Granted that he has not fulfilled the precept in the best possible manner, he has at least carried out the passover rite. Rather should it be illustrated by two men, each of whom had his wife and his sister staying with him. One chances upon his wife and the other chances upon his sister. To the one who chances upon his wife [applies], 'And the just do walk in them', and to the one who chances upon his sister [applies], 'but transgressors do stumble therein'.

But are the cases comparable? We speak [in the verse] of one path, whereas here [in the example given] there are two paths.[20] Rather is it illustrated by Lot when his two daughters were with him.[21] To these [the daughters], whose intention it was to do right,[22] [applies], 'the just do walk in them', whereas to him [Lot] whose intention it was to commit the transgression [applies], 'but transgressors do stumble therein'.

But perhaps it was his intention also to do right? — [Do not think this for a moment, for][23] R. Johanan has said: The whole of the following verse indicates [Lot's] lustful character. And Lot lifted up[24] is paralleled by, And his master's wife lifted up her eyes upon;[25] 'his eyes' is paralleled by, for she hath found grace in my eyes[26] 'and beheld' is paralleled by, And Shechem the son of Hamor beheld her;[27] 'all the kikar ['plain'] of the Jordan' by For on account of a harlot, a man is brought to a kikar ['loaf'] of bread,'[28] and 'fat' it was well watered everywhere' by, I will go after my lovers, that give me my bread and my water, my wool and my flax, mine oil and my drink.[29]

But [Lot] was the victim of compulsion?[30] — It had been taught on behalf of R. Jose son of R. Honi that the dot[31] over the letter waw [_ 'and'] in the word U-bekumah ['and when she arose'][32] occurring in [the story of] the elder daughter, is to signify that it was her lying down that he did not notice, but he did notice when she arose. But what could he have done, since it was all over? — The difference is that he should not have drunk wine the next evening.

Raba expounded as follows: What is the significance of the verse, A brother offended is harder to be won than a strong city;

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(1) Thus his own naziriteship is independent of hers.

(2) Intentionally.

(3) These were administered at the discretion of the court and are Rabbinical in origin.
(4) Num. XXX, 13.
(5) Since the same words in verse 9 refer to a woman who knows that her husband has declared her vow void.
(6) I.e., the woman who thought to drink wine during her naziriteship, but was not really a nazirite.
(7) Tosef. Naz. III, 6.
(8) Lev. V, 27. with reference to the offering of a guilt-offering.
(9) Heb. Heleb, 'suet'. Animal fat used in the sacrificial rite. This fat might not be eaten even in the case of ordinary animals.
(10) Isi b. Judah holds that this guilt-offering was not brought if he ate a slice concerning which it was doubtful whether it was permitted or forbidden fat, but only if he ate one of two slices and did not know if it was the permitted or the forbidden slice.
(11) R. Akiba's interpretation of the nazirite woman and the two cases of one who may have eaten forbidden fat.
(12) The passage in Lev. V. 27, says that a guilt-offering must be brought for 'atonement' and the offender will be 'forgiven'.
(13) He thought it was the permitted kind of fat.
(14) For the slice might in fact be forbidden fat.
(15) And there must also be expiation. A guilt-offering could be brought only to make as atonement for an unintentional transgression.
(16) The whole passage from here to the next Mishnah occurs again in Hor. 10b-12b; for fuller notes v. Hor. (Sonc. ed.). p. 73.
(17) Hosea XIV, 20.
(18) The passover was to be eaten as the final course of the evening meal when the guests had already eaten their fill.
(19) To eat the passover offering. V. Ex. XII, 8.
(20) Each has done a different act.
(21) After the destruction of Sodom. V. Gen. XIX, 32.
(22) Viz., to preserve the human species, for they imagined that the rest of mankind had perished. V. Gen. XIX, 31.
(23) Inserted from 'En. Jacob.
(24) Gen. XIII, 10.
(25) E.V., 'east' her eyes; Potiphar's wife to Joseph. Gen. XXXIX, 7.
(26) E.V., 'For she pleaseth me well'; Samson of the Philistine woman. Jud. XIV, 3.
(27) Gen. XXXIV, 2.
(28) Prov. VI, 16.
(29) Hosea II, 7. 'Watered' and 'drink' are from the same root.
(30) His daughters first made him drunk.
(31) One of the puncta extraordinaria. V. Ges. K. Grammar, sec. 5n.
(32) 'And the first born went in and lay with her father; and he knew not when she lay down,' nor 'when she arose'. Gen. XIX, 33.

Talmud - Mas. Nazir 23b

And their contentions are like the bars of a castle?[1] 'A brother offended is harder to be won than a strong city', refers to Lot who separated from Abraham,[2] 'And their contentions are like the bars of a castle', for he gave rise to contentions [between Israel and Ammon][3] for An Ammonite or a Moabite shall not enter into the assembly of the Lord.[4]

Raba and some say R. Isaac, expounded as follows: What is the significance of the verse, He that separateth himself seeketh his own desire and snarleth against all sound wisdom?[5] 'He that separateth himself seeketh his own desire' refers to Lot. 'And snarleth [yithgale'] against all sound wisdom', tells us that his disgrace was published [nithgaleh][6] in the Synagogues and Houses of Study, as we have learnt: An Ammonite and a Moabite[7] are forbidden [in marriage] and the prohibition is perpetual.[8]

'Ulla said: Both Tamar[9] and Zimri[10] committed adultery. Tamar committed adultery and gave birth to kings and prophets.[11] Zimri committed adultery and on his account many tens of thousands of Israel perished.[12]

R. Nahman b. Isaac said: A transgression performed with good intention is better than a precept performed with evil intention.[13] But has not Rab Judah, citing Rab, said: A man should always occupy himself with the Torah and [its] precepts, even though it be for some ulterior motive,[14] for the result will be that he will eventually do them without ulterior motive?[15] — Read then: [A transgression performed with good intention is] as good as a precept performed for an ulterior motive, as it is written, Blessed above women shall Jael be, the wife of Heber the Kenite. Above women in the tent shall she be blessed,[16] and by 'women in the tent', Sarah, Rebecca, Rachel and Leah are meant.[17]

R. Johanan said: That wicked wretch [Sisera] had sevenfold intercourse [with Jael] at that time, as it says. At her feet he sunk, he fell, he lay,' etc.[18] But she derived pleasure from his intercourse? — R. Johanan said:[19] All the favours of the wicked are evil to the righteous, for it says, Take heed to thyself that thou speak not to Jacob either good or bad.[20] Now [that he was not to speak] bad we can understand, but why was he not to speak good? Thus it may properly be inferred that the good of such a one is an evil. The above text [states]: Rab Judah, citing Rab, said: A man should always occupy himself with the Torah and [its] precepts, even though it be for some ulterior motive, for the result will be that he will eventually do them without ulterior motive. For as reward for the forty-two sacrifices which the wicked Balak offered,[21] he was privileged to be the progenitor of Ruth, for R. Jose son of R. Hanina has said that Ruth was descended from[22] Eglon, [the grandson of Balak,][23] king of Moab.

R. Hiyya b. Abba, citing R. Johanan. said: How do we know that the Holy One, blessed be He, does not withhold the reward even for a decorous expression? The elder daughter [of Lot] called her son Moab[24] and so the All-Merciful One said [to Moses]:[25] Be not at enmity with Moab, neither contend with them in battle.[26] Only war was forbidden, but they might be harassed. The younger daughter, on the other hand, called [her son's] name Ben-Ammi[27] and so it says, Harass them not, nor contend with them.[28] They were not to be harassed at all.

R. Hiyya b. Abin said: R. Joshua b. Korha said: A man should always be as alert as possible to perform a precept, for as reward for anticipating the younger by one night, the elder daughter [of Lot]

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(1) Prov. XVIII, 19.

(2) Thereby offending him. V. Gen. XIII, 11.

(3) Corrected from Hor. 10b. Thus Moab and Ammon, Lot's descendants, were barred from intermarriage with Israel because Lot offended Abraham. [The text here reads: 'like bolts and the palace.' I.e., the contentions constitute the bolts which bar the admission of Ammon and Moab into the house of Israel — the palace.]

(4) Deut. XXIII, 4.

(5) Prov. XVIII, 1.

(6) A play on the Hebrew roots indicated.

(7) But not an Ammonite woman or a Moabite woman.

(8) Yeb. 76b.

(9) With her father-in-law, Judah. V. Gen. XXXVIII, 14.

(10) With the Midianitish woman. V. Num. XXV, 14.

(11) David and his descendants were of the tribe of Judah; Amos and Isaiah are traditionally said to have been of the tribe of Judah. V. Sot. 10b.

(12) In the plague; v. Num. XXV, 9.

(13) For an example see below.

(14) לשמה 'for its own sake'.
(15) An example of this occurs below.
(16) Jud. V, 24.
(17) The word 'tent' occurs in connection with each of these (Tosaf.). Rashi omits Rebecca and says that the reference is to the fact that each of the other three gage their handmaidens to their husbands with ulterior motive.
(18) The words 'he sunk', 'he fell', occur three times each, and the words 'he lay' once. Jud. V. 27.
(19) Var. lec., R. Johanan said R. Simon b. Yohai said (Hor. 10b).
(20) Gen. XXXI, 29.
(21) On the occasion of Balaam's attempt to curse Israel. V. Num. XXIII-XXIV.
(22) Lit., 'the granddaughter of', cf. Tosaf.
(23) Inserted from Hor. 10b.
(24) Lit., 'of my father'.
(25) Inserted from Hor. 10b.
(26) Deut. II, 9.
(27) Lit., 'son of my people'. A less shameless appellation.
(28) Deut. II, 19.

was privileged to appear in the genealogical record of the royal house of Israel, four generations[1] earlier.

MISHNAH. IF A WOMAN MAKES A NAZIRITE VOW AND SETS ASIDE THE REQUISITE ANIMAL [FOR THE SACRIFICE] AND HER HUSBAND SUBSEQUENTLY DECLARES [THE VOW] VOID, THEN, IF THE ANIMAL WAS ONE OF HIS OWN, IT CAN BE PUT TO PASTURE WITH THE HERD,[2] BUT IF IT WAS ONE OF HERS, THE SIN-OFFERING IS TO BE LEFT TO DIE, THE BURNTOFFERING IS TO BE OFFERED AS AN [ORDINARY] BURNTOFFERING, AND THE PEACE-OFFERING IS TO BE OFFERED AS AN [ORDINARY] PEACE-OFFERING. THIS [LAST], HOWEVER, MAY BE EATEN FOR ONE DAY [ONLY],[3] AND REQUIRES NO LOAVES.[4] IF SHE HAS A LUMP SUM OF MONEY[5] [SET ASIDE FOR THE PURCHASE OF SACRIFICES]. IT IS TO BE USED FOR FREE-WILL OFFERINGS;[6] IF EARMARKED MONEY,[7] THE PRICE OF THE SIN-OFFERING IS TO BE TAKEN TO THE DEAD SEA;[8] THE USE OF IT IS FORBIDDEN, BUT INVOLVES NO MALAPPROPRIATION;[9] FOR THE SUM SET ASIDE FOR THE BURNT-OFFERING, A BURNT-OFFERING IS TO BE PROVIDED, THE USE OF WHICH INVOLVES MALAPPROPRIATION;[10] WHILST FOR THE SUM SET ASIDE FOR THE PEACE-OFFERING, A PEACE-OFFERING IS TO BE PROVIDED, WHICH MAY BE EATEN FOR ONE DAY [ONLY] AND REQUIRES NO LOAVES.[11]

GEMARA. Who is the Tanna [of our Mishnah, who intimates] that the husband is not liable for the wife's [sacrifices]?[12] — R. Hisda said: It is the Rabbis, for if you suppose it is R. Judah [then since he is liable,] why should [the animals] be sent to pasture with the herd?[13] For it has been taught: R. Judah says: A man [who can afford to do so] must offer the rich man's sacrifice[14] on his wife's behalf, as well as all other sacrifices for which she may be liable. For thus does he write to her [in the marriage settlement, viz.: I shall pay] every claim you may have against me from before up to now.[15]

Raba said: It may even be R. Judah. [The reply to R. Hisda's objection being that the husband] is liable only for something which she needs, but not for something which she does not need.[16] Another version [of the above discussion is as follows]. Who is the Tanna [of our Mishnah]? — R. Hisda said: It is R. Judah,[17] [the husband, however,] being liable only for something that she needs, but not for something that she does not need.[18] For if it were the Rabbis [do they not say that] he is not liable for her [sacrifices] at all?[19] The only possible interpretation of the liability [implicit in the

Mishnah][20] would be that he transferred [the animals] to her, but on transference it becomes her own property.[21]

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(1) Obed, Jesse, David and Solomon through Ruth; while Rehoboam was a son of Naamah, the Ammonitess.

(2) I.e., it ceases to be sacred and may be returned to the fold.

(3) Until midnight, the period allowed for a nazirite offering (v. Zeb. V, 6); whereas an ordinary peace-offering could be eaten for two days and a night. (V. Ibid. V, 7).

(4) Whereas a nazirite offering does require them. V. Num. VI, 15.

(5) I.e., if the sums to be spent on the separate sacrifices were still unspecified.

(6) Burnt-offerings, whose hides became the perquisite of the priests.

(7) I.e., divided into portions for the separate sacrifices.

(8) 'Taken to the Dead Sea' is the usual Talmudic mode of saying, 'not applied to any useful purpose.'

(9) I.e., there is no penalty. For the rules regarding the unauthorised use of sacred property. v. Lev. V, 15.

(10) Heb. me'ilah, the diversion of sacred or priestly things to secular or lay uses. E.V. uses 'trespass', but 'mal-appropriate' expresses better the sense of the Hebrew word (cf. N.E.D.).

(11) Thus earmarked money is treated in the manner prescribed for sacrifices.

(12) By declaring that if she sets aside his animals without his consent, they do not remain sacred at all.

(13) They ought to remain sacred, because she had the right to take them.

(14) Where the kind of sacrifice to be offered depends upon a man's means. e.g., Lev. V, 7.

(15) This clause is taken as referring to sacrifices for which she may have become liable after the betrothal. This shows that in R. Judah's opinion the husband is liable. Other versions read instead of the last sentence: For thus does she write (in the receipt for her marriage-settlement when she claims it after divorce): And every claim that I may have had against you before now (is hereby discharged).

(16) And his annulment of her vow shows that there was no need for her sacrifice, which thereby loses its sanctity.

(17) Who says that a man must offer a rich man's sacrifice for his wife.

(18) And therefore when the husband declares the vow void, the animals lose their sanctity.

(19) What need therefore for the rule? She cannot make his animal sacred at all.

(20) Which in saying that the animals are sent to pasture only if the husband declares her vow void, implies that if he does not declare it void, they become sacred.

(21) And this ease is considered in the second clause of the Mishnah: 'BUT IF IT WAS ONE OF HERS. Thus this interpretation on the view of the Rabbis is impossible.

Talmud - Mas. Nazir 24b

Raba said: It may even be the Rabbis, for even when he transfers it to her [his intention is] to provide something which she needs, but he does not transfer it to provide something she does not need.[1]

IF IT WAS ONE OF HERS, THE SIN-OFFERING IS TO BE LEFT TO DIE, THE BURNT-OFFERING IS TO BE OFFERED: Where did she get it from, seeing that it has been affirmed that whatever a woman acquires becomes her husband's? — R. Papa replied: She saved it out of her housekeeping money.[2] Another possibility is that it was given to her by a third person with the proviso that her husband should have no control over it.

THE BURNT-OFFERING IS TO BE OFFERED AS AN [ORDINARY] BURNT-OFFERING, AND THE PEACE-OFFERING IS TO BE OFFERED [etc.]. Samuel said to Abbahu b. Ihi: 'You are not to sit down[3] until you explain to me the following dictum: 'The four rams that do not require loaves [as an adjunct of the sacrifice] are the following: — his, hers, and those after death and after atonement!'[4] — [He explained as follows:] 'Hers' is the one referred to [in our Mishnah]. 'His' is referred to in the following [Mishnah]: For we learnt: A man is able to impose a nazirite vow on his son, whereas a woman cannot impose a nazirite vow on her son. Consequently, if [the lad] polls himself [within the period of his naziriteship] or is polled by his relatives, or if he protests[5] or his relatives protest on his behalf, then if a lump sum was set aside, it is to be used to provide free-will

offerings, and if earmarked monies, the price of the sin-offering is to be taken to the Dead Sea, [the use of it is forbidden, but involves no malappropriation];[6] for the price of the burnt-offering, a burnt-offering is to be provided and this can involve malappropriation, whilst for the price of the peace-offering, a peace-offering is to be provided which may be eaten for one day only and requires no loaves.[7] Whence do we know [this of] 'the one after death'? — For we have learnt: Should a man set aside money for his nazirite offerings, the use of it is forbidden but involves no malappropriation since it may all be expended on the purchase of a peace-offering.[8] If he should die, monies not earmarked are to be used for providing freewill-offerings, whilst with regard to earmarked monies, the price of the sin-offering is to be taken to the Dead Sea, the use of it is forbidden but involves no malappropriation; for the price of the burnt-offering, a burnt-offering is to be provided, and this does involve malappropriation; whilst for the price of the peace-offering, a peace-offering is to be provided, which may be eaten for one day [only] and requires no loaves.[9]

[That] 'the one after atonement' [requires no loaves] we learn by a process of reasoning. For the reason that the 'one after death' does not [require loaves] is because it is not eligible for the purposes of atonement,[10] but then neither is the 'one after atonement' eligible for the purpose.[11]

But are there no more? What of the following [passage that Levi taught]:[12] All other peace-offerings of a nazirite, not slaughtered in the prescribed manner[13] are fit [for the altar], but they do not count as fulfilment of their owner's obligation;[14] they may however be eaten for one day [only],[15] and do not require loaves or [the gift of] the shoulder[16] [to the priest]?[17] — The enumeration [of Samuel] includes [animals offered] in the prescribed manner but omits those not [offered] in the prescribed manner.

['If he should die,] and have a lump sum of money it is to be used for providing free-will offerings'.[18]

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(1) The transference is thus provisional, and this case is not the same as that of the second clause.

(2) Lit., 'scraped it off her dough.'

(3) [Lit., 'sit on your legs.' with reference to their custom of sitting on the ground with the legs crossed under them, v. Orah Mishor, a.l.]

(4) 'After atonement' means an animal that was lost and replaced and then found. The others are explained below.

(5) Even if be does not poll.

(6) Added with R. Akiba Eger (d. 1837) from the Mishnah text infra 28b.

(7) Infra 28b. For the various terms used see our Mishnah (24a) and notes.

(8) A peaceoffering could not be malappropriated until after the ritual sprinkling of its blood, v. Me'il, 6b. For the other offerings extra money could be provided.

(9) Me'il III, 2.

(10) For the owner is dead and no further atonement is necessary.

(11) Because the atonement has already been made, and so here too loaves are not required.

(12) So Bah, cf. Men. 48b.

(13) The prescribed peace-offering for a nazirite is a ram of the second year.

(14) And he must offer another beast.

(15) V. supra p. 85, n. 10.

(16) V. Num. VI, 19.

(17) V. Tosef. Naz. IV.

(18) Quoted from Mishnah Me'il, cited above.

Talmud - Mas. Nazir 25a

But money for a sinoffering is included in it?[1] — R. Johanan said: This is a traditional rule[2] relating to the nazirite. Resh Lakish said: The Torah says, [in the verse] Whether it be any of their vows or

any of their-freewill offerings.[3] This indicates that anything left over from [money subscribed for] vowed offerings is to be spent on freewill-offerings.[4]

Now if we accept the view of R. Johanan who says that this ruling concerning the nazirite is traditional, we can understand why it [applies only to] a lump sum of money and not to earmarked money.[5] But on Resh Lakish's view that it is derived from the verse, Whether it be any of their vows, or any of their freewill offerings, why should it apply only to money in a lump sum? Surely it should also apply to earmarked monies? — Raba replied: You cannot maintain that the reference is also to specific monies, for a Tanna of the School of R. Ishmael has already given a [different] decision [as follows]: The verse, Only thy holy things which thou hast and thy vows,[6] speaks of the offspring and substitutes[7] of sacred animals. What is to be done with them? Thou shalt take [them] and go unto the place which the Lord shall choose.[6] It might be thought [from this] that they are to be taken to the Temple and kept without food and drink until they perish, but Scripture continues, And thou shalt offer thy burnt-offerings, the flesh and the blood,[8] as much as to say, as you do with the burnt-offering so do with its substitute,[9] as you do with the peace-offering so do with its offspring [and substitutes]. It might further be thought that the same applies to the offspring [and substitutes] of a sin-offering and the substitute of a guiltoffering,[10] but the text states 'only' [precluding these].[11] The above is the opinion of R. Ishmael. R. Akiba says that it is unnecessary [to use this argument for the guilt-offering], for it says. It is a guiltoffering,[12] which shows that it retains its status.[13]

[The above passage] states: 'It might be thought that they are to be taken to the Temple and kept without food and drink until they perish, but Scripture continues, And thou shalt offer thy burntofferings, the blood and the flesh.' But why [should one think this]; seeing that only in regard to the sin-offering is there a traditional teaching that it is left to perish?[14] — Were it not for the verse, it might have been thought that the offspring of the sin-offering [may be allowed to perish] anywhere,

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(1) Should not this be 'taken to the Dead Sea'?

(2) Lit., 'a halachah'.

(3) Lev. XXII, 18.

(4) And here there is money left over from the naziriteship money.

(5) For presumably the tradition mentioned one and not the other.

(6) Deut. XII, 26. The words in themselves are superfluous.

(7) Substitution of a sacrifice was not allowed, and if it was attempted both animals became sacred, v. Lev. XXVII, 33.

(8) Deut. XII, 27.

(9) I.e., sacrifice it in the same way. 'Offspring' is not mentioned in connection with the burnt-offering or guilt-offering because these are males.

(10) That they be offered as guilt-offerings or sin-offerings.

(11) The particle, רק only, is one of the particles invariably considered to indicate a limitation of the rule that follows it.

(12) Lev. V, 19.

(13) The word הוא 'it is', is emphatic in the Hebrew'. Hence if money is ear-marked for a sin-offering etc., it cannot be used for voluntary offerings, but must be used in the manner described in the Mishnah.

(14) Tem. 21b.

whilst the offspring of other sacred animals [are left to perish] in the Temple only;[1] hence we are told that they are not [left to perish at all].

It also states above: It might further be thought that the same applies to the offspring [and substitutes] of sin-offerings and the substitute of a guilt-offering, but the text states 'only' precluding [these]. But what need is there of a verse, for there is a traditional ruling that the offspring of a

sin-offering is to perish? — That is so; but the verse is required for the guilt-offering.

But for the guilt-offering, too, there is a traditional ruling viz., that wherever [an animal] if intended as a sin-offering, is left to perish, if intended as a guilt-offering it is allowed to pasture [until a blemish appears]?[2] — If we had only the traditional ruling, it might be thought that the traditional ruling [is indeed so], but [nevertheless] should someone sacrifice [the animal] he would incur no guilt by so doing; hence the verse tells us that if someone should sacrifice it, he has transgressed a positive precept.[3]

'R. Akiba says that it is unnecessary [to use this argument for the guilt-offering] for it says, It is a guilt-offering, which shows that it retains its status.' What need is there of the verse, since we have it as a traditional ruling that wherever [an animal] if intended as a sin-offering is left to perish ' if intended as a guilt-offering it is to pasture [until a blemish appears]? — That is so, and the verse is only necessary for [the case described by] Rab. For R. Huna. citing Rab, said: If a guilt-offering which had been relegated to pasture[4] [until a blemish appears] was slaughtered as a burntoffering, it is a fit and proper [sacrifice].[5] This is true only if it was [already] relegated, but not otherwise, for the verse says, 'It is [a guilt-offering,' implying] that it retains its status.[6]

The master said [above]: 'This is a traditional ruling[7] concerning the nazirite.' Are there then no other spheres [in which it applies]? Has it not been taught: 'And all others[8] required by the Torah to offer a nest of birds,[9]

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(1) Since it says, 'Thou shalt take (them) etc.'

(2) When it would be sold and the money devoted to sacred purposes.

(3) Viz.: that only the others are to be sacrificed and not this one. A prohibition inferred from a positive command, as here, is called a positive precept.

(4) Lit., 'was transferred (from the category of guilt-offering) to pasture.'

(5) And the flesh may be burnt on the altar.

(6) As a guilt-offering and if offered as a burntoffering, the flesh is not fit for the altar.

(7) That no account is taken of the presence of money that should have gone to purchase a sin-offering, but the whole of the money if in a lump sum is utilised for freewill-offerings.

(8) As well as the nazirite.

(9) E.g., a leper who must offer on recovery a sin-offering and a burnt-offering, and may provide birds if he cannot afford animals; v. Lev. XIV, 21ff.

who set aside money for this purpose and then desire to use it to provide an animal[1] as sin-offering, or as burnt-offering can do so. Should such a one die and leave a lump sum of money, it is to be used to provide freewill-offerings'?[2] — He mentions the nazirite, meaning also [to include] those required to offer birds whose case is similar,[3] but excluding [the following case]. For it has been taught: If a man, under an obligation to offer a sin-offering, says, 'I undertake to provide a burnt-offering,' and sets aside money saying, 'This is for my obligation,' should he then desire to provide from it either a sin-offering or a burnt-offering he must not do so.[4] Should he die and leave a lump sum of money, it is to be taken to the Dead Sea.[5]

R. Ashi said: In the statement[6] that moneys earmarked must not be used [for freewill-offerings], you should not presume [the meaning to be] that he said, 'This [portion] is for my sin-offering, this for my burnt-offering, and this for my peace-offering,' for even if he says simply, '[All] this is for my sin-offering, burnt-offering and peace-offering,' it counts as earmarked money.[7] Others say that R. Ashi said, Do not presume that he must say, '[All] this is for my sin-offering, burnt-offering and peace-offering,' for even if he says, '[All] this is for my obligation,' it is regarded as earmarked

money.[8] Raba said: Though we have said that a lump sum of money is to be used for freewill-offerings, yet if the money for the sin-offering becomes separated from the rest,[9] all is regarded as earmarked. [

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(1) If they become more affluent.

(2) Thus the ruling applies to these as well as to the nazirite.

(3) Since their obligation to provide both a sin-offering and a burnt-offering springs from a single source, and they are not separate obligations.

(4) Here the obligations are separate. What he must do is to add more money and buy both animals at the same time (Tosaf.).

(5) The traditional ruling does not apply here, and there is now no remedy since a sin-offering cannot be brought after death. Tosef. Me'il. I, 5.

(6) In the various texts quoted above.

(7) And must not be used for freewill-offerings.

(8) And the sums required are regarded as unspecified only if he put them aside without stating their purpose.

(9) E.g., if sufficient for a sin-offering is lost, the rest is to be used as to half for a peace-offering and half for a burnt-offering.

Talmud - Mas. Nazir 26b

. It has been taught in agreement with Raba: [If a nazirite says,] 'This is for my sin-offering and the remainder for the rest of my nazirite obligations,' [and then dies,] the money for the sinoffering is to be cast into the Dead Sea, and the rest is to be used, half to provide a burnt-offering, and half, a peace-offering.[1] The law of malappropriation applies to the whole of it,[2] but not to any separate part of it.[3] [If he says,] 'This is for my burnt-offering and the remainder for the rest of my nazirite obligations,' [and then dies,] the money for the burnt-offering is to be used for a burntoffering and it can suffer malappropriation, whilst the rest is to be used to provide freewill-offerings and can suffer malappropriation.[4] Rab Huna, citing Rab, said that [our rule][5] applies only to money, but animals would be regarded as earmarked.[6] R. Nahman added that the animals that would be regarded as earmarked would only be unblemished animals, but not blemished ones.[7] [Three] bars of silver, on the other hand, would be counted as earmarked.[8] R. Nahman b. Isaac, however, considered even bars of silver as unspecified,[9] but not [three] piles of timber.[10]

R. Shimi b. Ashi asked R. Papa: What is the reason [for the distinctions made] by these Rabbis?[11] Is it that they interpret money',[12] as meaning neither animals, nor bars of silver, nor piles of timber [as the case may be]? For if so, they should also say money' but not birds.[13] Should you reply that they do make this distinction too, how comes R. Hisda to say that birds[14] do not become earmarked except [when earmarked] by the owner at their purchase, or by the priest at their preparation,[15] seeing that our tradition is that only money [is regarded as unspecified]? —

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(1) In agreement with Raba.

(2) Since the money for the burnt-offering can suffer malappropriation.

(3) Since the money for the peace-offering may be in the part used, and a peace-offering does not suffer malappropriation.

(4) Adopting an emendation of the Wilna Gaon after the text of Tosef. Me'il. I, 5. Our texts read: 'The law of malappropriation applies to the whole of it, but not to any part of it.' This cannot be the case since all the rest is to be used for freewill burnt-offerings which suffer malappropriation.

(5) Regarding the disposition of a lump sum of money.

(6) Even if they were not the animals that a nazirite must bring (v. Tosaf. and Asheri for various explanations of the distinctions). Possibly the reason is that it can be assumed that he intended to exchange each one for one of the animals suitable for his sacrifice.

(7) He would have to sell these first in order to purchase others, and would not think of them In terms of animals but in

terms of money.

(8) He would not sell the silver to buy animals, in order not to lose on the two transactions, but would await his opportunity to barter for animals.

(9) They are easily convertible into money at a very small loss, and would therefore naturally be thought of in terms of money.

(10) Which would not be sold, in order to avoid loss, but bartered for animals.

(11) Rab, R. Nahman and R. Nahman b. Isaac.

(12) In the phrase, 'money in a lump sum,' occurring in our Mishnah and the other texts.

(13) I.e., they should regard birds as specified.

(14) Lit., 'nests', i.e., the pair of birds brought as offerings; cf. e.g., Lev. XII, 8.

(15) But not by the mere purchase. Hence if the owner dies, the pair is indeterminate and becomes a freewill-offering in the cases considered, contrary to the assumption that this is true only of money.

Talmud - Mas. Nazir 27a

He replied: But on your own argument [that all these are unspecified], how are we to explain [the following] which we learnt: R. Simeon b. Gamaliel said that if [a nazirite] brings three animals and does not say explicitly [what they are for], the one which is fit to be a sin-offering shall be offered as a sin-offering,[1] the one fit to be a burnt-offering[2] shall be offered as a burnt-offering and the one fit for a peace-offering[3] shall be offered as a peace-offering?[4] Now why should this be so? Do you not say that animals are not regarded as earmarked?[5] — [R. Shimi b. Ashi][6] rejoined: [The explanation is this.[7] In R. Hisda's case] the reason[8] is because the All-merciful has said, And she shall take [two turtle doves, the one for a burnt-offering and the other for a sin-offering],[9] and also, And [the priest] shall take [the one for a sin-offering and the other for a burntoffering[10] showing that they can be earmarked] either when the owner takes them or when the priest offers them. [In R. Simeon b. Gamaliel's case] too

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(1) The ewe lamb; v. Num, VI, 14.

(2) The one year old male lamb.

(3) The two year old ram.

(4) Infra 45a.

(5) Surely therefore we must regard them as earmarked and take the expression 'money' as excluding all else from being regarded as unspecified.

(6) So Asheri. According to Rashi, R. Papa is still speaking; but v. Yoma 41a where the statement following is attributed to R. Shimi b. Ashi.

(7) R. Shimi now assumes that unless there has been explicit earmarking, everything is unspecified, and he therefore goes on to explain why R. Hisda allows the priests to earmark the birds and the reason for R. Simeon b. Gamaliel's statement.

(8) That it is possible for the priest to sacrifice the birds even if the owner does not specify them, although birds are otherwise specified.

(9) Lev. XII, 8.

(10) Lev. XV, 30.

Talmud - Mas. Nazir 27b

would it be possible to say that the one that should be the sin-offering is to be the burnt-offering, seeing that one is female and the other male?[1]

R. Hamnuna raised an objection: Do we really say that an animal which has a blemish is regarded as unspecified? Come [then] and hear [the following]: What are the circumstances in which a man is permitted to poll at the expense of his father's naziriteship? Suppose his father had been a nazirite and had set apart the money for his nazirite sacrifices and died, and [the son then] said, 'I declare

myself a nazirite on condition that I may poll with my father's money,'[2] [then he may do so].[3] If he leaves unspecified moneys, they fall to [the Temple treasury to provide] freewillofferings. If there were animals set apart, the sin-offering is left to die, the burnt-offering is to be offered as a burnt-offering, and the one for a peace-offering is to be offered as a peaceoffering.[4] Is not this the case even if the animal is blemished?[5] — No; only if it is without blemish. But if a blemished one is unspecified, why is money' mentioned?[6] The text ought to read: If he left a blemished animal, it is to be used to provide freewill-offerings?[7] — That is precisely what it means. For a blemished animal is made sacred purely in respect of the price it will bring; and this price is [included in] 'money'.

Raba raised an objection: [It has been taught: The expression] his offering[8] [signifies] that he can discharge his obligation with his own offering but not with that of his father. It might be thought [that this means merely] that an obligation with regard to a serious offence cannot be discharged with an offering set aside by his father for a less serious offence or vice versa, whereas he could discharge an obligation entailed by a less serious offence, with an offering set aside by his father for a similar offence, or [an obligation] entailed by a more serious offence, with [an offering set aside for] a similar offence. Hence Scripture repeats the words, his offering,[9] [to show that] he can discharge an obligation with his own offering but not with that of his father [even in this instance]. Again, it might be supposed that [the rule that] he cannot discharge an obligation with his father's offering applies only if it is an animal set aside by his father albeit for an offence of a similar degree of gravity, since [there is a similar rule] that a man cannot make use of his father's [nazirite] animal for polling in respect of [his own] naziriteship,[10] but that he could discharge his obligation with motley set aside by his father, and even [transfer it] from a serious offence to one less serious or vice versa, for a man can make use of his father's [nazirite] money for polling in respect of [his own] naziriteship,

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(1) And so formal earmarking is not necessary, but in all other cases it is necessary and without it they are regarded as unspecified. Thus R. Shimi b. Ashi disagrees with the Rabbis mentioned above. Maim. Yad Neziruth IX, 5, also rules in agreement with this interpretation of R. Shimi's views.

(2) I.e., buy the sacrifices that must be offered on polling with my father's money.

(3) The quotation is incomplete. V. the Tosef. and cf. infra 30b.

(4) Tosef. Naz. III, 9.

(5) Viz., that it is left to die or to be used to provide a burnt-offering or a peace-offering, as the case may be. How then does R. Nahman (R. Hamnuna's contemporary) distinguish between blemished and unblemished animals?

(6) In the opening clause of the Baraitha.

(7) This is a finer distinction than the one between animals and money.

(8) Used with reference to the sacrifice a ruler must bring if he sins in error, Lev. IV. 23.

(9) Used also with reference to the goat brought as a sacrifice by one of the common people who sins in error, Lev. IV, 28.

(10) V. infra 30a.

always provided that it is a lump sum and not earmarked money.[1] Hence Scripture repeats the expression his offering[2] [a third time, to show] that he can discharge his obligation with his own offering, but not with that of his father [even in this instance]. It might be thought, further, [that we can only lay down] that he is unable to discharge an obligation with money set aside by his father, albeit for an offence of equal gravity, but that he could discharge his obligation with an offering he himself has set apart, [even transferring it] from a less serious to a more serious offence, or vice versa. Hence Scripture uses the expression, his offering . . . for his sin,[3] to show that the offering must be for the particular sin. It might be argued, again, that [we can only lay down that] he cannot discharge his obligation with an animal which he has set apart for himself whether for an equally serious offence or for an offence of a different degree of gravity, since [we know that] if he sets aside

an animal [to make atonement] for [the offence of eating] forbidden fat,[4] and [by mistake] sacrifices it for [the offence of eating] blood, or vice versa, he has not been guilty of malappropriation and [consequently] has not procured atonement;[5] but [we might think] that he could discharge his obligation with money which he set aside for himself whatever be the degree of gravity of the offence, since [we know that] if he set aside money for himself [to make atonement] for [the offence of eating] forbidden fat, and used it [by mistake] for [the offence of eating] blood, or vice versa, he is guilty of malappropriation and [consequently] does procure atonement,[6] and so Scripture says, for his sin[7] to show that the offering must be for the particular sin [even in such circumstances].[8] Now this passage refers simply to an animal.[9] Surely this includes even a blemished one?[10] — Not at all. One without blemish is meant. But if a blemished animal is regarded as not earmarked, why go on to speak of money set aside by his father when it could speak of an animal which has a blemish [instead]?[11] — That is precisely [what is meant], for the only use [of such an animal for sacrificial purposes] is for the price it will bring, and this price is 'money'. MISHNAH. IF ONE OF THE KINDS OF BLOOD[12] HAS BEEN SPRINKLED ON HER BEHALF, [THE HUSBAND] CAN NO LONGER ANNUL [THE VOW].[13] R. AKIBA SAYS, IF EVEN ONE OF THE ANIMALS HAS BEEN SLAUGHTERED ON HER BEHALF, HE CAN NO LONGER ANNUL [THE VOW]. THE ABOVE IS TRUE ONLY IF SHE IS POLLING[14] [AFTER OBSERVING THE NAZIRITESHIP] IN PURITY, BUT IF SHE IS POLLING AFTER RITUAL DEFILEMENT, HE CAN [STILL] ANNUL [THE VOW], BECAUSE HE CAN SAY, 'I CANNOT TOLERATE AN UNSEEMLY WIFE,'[15] RABBI[16] SAYS THAT HE CAN ANNUL [HER VOW] EVEN IF SHE IS POLLING [AFTER OBSERVING THE NAZIRITESHIP] IN PURITY, SINCE HE CAN AVER THAT HE CANNOT TOLERATE A WOMAN WHO IS POLLED.

GEMARA. Our Mishnah does not agree with R. Eliezer, for R. Eliezer says that polling is a bar [to the drinking of wine],[17] and since she has not polled, she is forbidden wine, and so since she is [still] unseemly, he is able to annul [her vow].

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(1) Ibid.

(2) Used also with reference to the lamb brought as a sacrifice by one of the common people who sins in error, Lev. IV, 32.

(3) 'He shall bring for his offering a goat . . . for his sin which he hath sinned.' Lev. IV, 28.

(4) Heb Heleb.

(5) He is guilty of malappropriation if he transfers an object in error from sacred to profane use, This cannot be done with animals intended for the altar, but only with objects intended for general temple use. Since an animal intended for the altar cannot be transferred from sacred to profane use, it cannot possibly become his again, and so once he sets aside an animal for the offence of eating forbidden fat, he cannot gain possession of it in order to use it to atone for his offence of eating blood.

(6) For malappropriating sacred money renders it his and it can now be used for any purpose he likes; v. note 2.

(7) Lev. IV, 18. The phrase used is the same as that from which the last inference was drawn. Rashi uses the verse in Lev. IV, 16, 'as concerning his sin'; but the parallel quotation in Ker. 27b is identical with this.

(8) And so, although the transference in error was valid, he is unable to transfer it at will. This Baraitha occurs also in Ker. 27b.

(9) In mentioning that a nazirite cannot poll with his father's animal.

(10) And so we see that a blemished animal is regarded as specific.

(11) And so make the distinction finer.

(12) I.e., the blood of one of the sacrifices.

(13) And her hair must be shorn.

(14) I.e., bringing the sacrifices at the polling.

(15) A teetotaller. This is based on the verse in Zach. IX, 1. 'New wine shall make the maids flourish.'

(16) Some versions read R. Meir.

(17) No wine may be drunk until after polling.

Our Tanna [on the other hand] takes the view that as soon as the blood is sprinkled on her behalf, she is permitted to drink wine and as a result she is no longer unseemly, whilst R. Akiba is of the opinion that even though the animal has only been slaughtered, he is no longer able to annul [her vow] since destruction of sacred property [would result].[1]

R. Zera objected: But why [should there necessarily be destruction of sacred property, in such a case]? Could not the blood be sprinkled as though it were some other [sacrifice],[2] when it would be permitted to eat the flesh? For has it not been taught: If the lambs prepared for the Festival of Assembly[3] were slaughter ed as though they were a different sacrifice, or before or after the proper time,[4] the blood is to be sprinkled and the flesh can be eaten. Should [the mistake] occur on a Sabbath, [the blood] is not to be sprinkled, but if [notwithstanding] it is sprinkled, [the sacrifice] is acceptable, but the portions belonging to the altar must be roasted after dark?[5] — The reply is this. If it were the burntoffering or the peace-offering that had been slaughtered,[6] this [procedure] could be followed, but [the Mishnah] assumes that the sin-offering was slaughtered first [as could in fact happen], for we have learnt: If [the nazirite] polls after [the sacrifice] of any one of the three, his duty is performed.[7]

THE ABOVE IS TRUE ONLY IF SHE IS POLLING [AFTER OBSERVING THE NAZIRITESHIP] IN PURITY, BUT IF SHE IS POLLING AFTER RITUAL DEFILEMENT, HE CAN [STILL] ANNUL [THE VOW], BECAUSE HE CAN SAY, 'I CANNOT TOLERATE AN UNSEEMLY WIFE.' RABBI SAYS THAT HE CAN ANNUL [HER VOW] EVEN IF SHE IS POLLING [AFTER OBSERVING THE NAZIRITESHIP] IN PURITY, SINCE HE CAN AVER THAT HE CANNOT TOLERATE A WOMAN WHO IS POLLED. The first Tanna [does not allow this objection] because she can wear a wig, but Rabbi considers that [the husband] will not be satisfied with a wig because of the dirt [it collects].[8]

MISHNAH. A MAN IS ABLE TO IMPOSE A NAZIRITE VOW ON HIS SON,[9] BUT A WOMAN CANNOT IMPOSE A NAZIRITE VOW ON HER SON. IF[10] [THE LAD] POLLS HIMSELF OR IS POLLED BY HIS RELATIVES, OR IF HE PROTESTS OR HIS RELATIVES PROTEST ON HIS BEHALF, THEN IF [THE FATHER] HAD SET ASIDE AN ANIMAL [FOR THE SACRIFICE], THE SIN-OFFERING IS LEFT TO DIE, THE BURNT-OFFERING IS TO BE OFFERED AS AN [ORDINARY] BURNT-OFFERING, AND THE PEACE-OFFERING IS TO BE OFFERED AS AN [ORDINARY] PEACE-OFFERING. THIS [LAST], HOWEVER, MAY BE EATEN FOR ONE DAY [ONLY], AND REQUIRES NO LOAVES. IF HE HAD UNSPECIFIED MONIES, THEY FALL [TO THE TEMPLE TREASURY] TO PROVIDE FREEWILL-OFFERINGS: WHILST WITH REGARD TO EARMARKED MONIES, THE PRICE OF THE SIN-OFFERING IS TO BE TAKEN TO THE DEAD SEA, IT BEING NEITHER PERMISSIBLE TO USE IT, NOR POSSIBLE TO MALAPPROPRIATE IT; FOR THE PRICE OF THE BURNT-OFFERING, A BURNT-OFFERING IS TO BE PROVIDED AND THIS CAN SUFFER MALAPPROPRIATION, WHILST FOR THE PRICE OF THE PEACE-OFFERING, A PEACEOFFERING IS TO BE PROVIDED, WHICH MAY BE EATEN FOR ONE DAY ONLY AND REQUIRES NO LOAVES.

GEMARA. A man can [subject the son to a nazirite vow], but not a woman. Why? — R. Johanan said: It is a [traditional] ruling with regard to the nazirite.[11] R. Jose son of R. Hanina,

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(1) For the flesh could not be eaten. R. Akiba, however, would admit her right to drink wine after the sprinkling of the blood.

(2) Lit., 'be sprinkled not in its own name.'

(3) Pentecost.

(4) [In the absence of a fixed calendar there was always the possibility of the festival sacrifice being offered on a day earlier or later, and this Baraitha explains the procedure to be followed should such an incident occur.]
(5) And thus we see that an animal slaughtered as though it were some other sacrifice need not be destroyed, but can be eaten.
(6) On behalf of the nazirite woman.
(7) And so if the husband is allowed to annul the vow, this sin-offering would have to be destroyed as is asserted by R. Akiba, like all sin-offerings the owners of which no longer stand in need of atonement. Infra 45a.
(8) And so in order not to provoke ill-feeling between them, the husband should be allowed to annul the vow and save her from polling.
(9) Until what age wall be discussed in the Gemara.
(10) [So Tosaf. and Asheri, omitting כיצד ('how?') in our texts which Bertinoro however explains: How (shall the offerings be treated) if the lad polls himself, etc.?]
(11) And requires no other justification. A tradition has the force of a Biblical injunction.

Talmud - Mas. Nazir 29a

citing Resh Lakish, said: So as to train him to [carry out his] religious duties.[1] If so, why should not a woman also be able to do so? — [Resh Lakish] holds that it is a man's duty to train his son to [carry out his] religious duties, but not a woman's duty to train her son.[2] Now on R. Johanan's view that it is a [traditional] ruling with regard to the nazirite vow, we can understand why he can do this with his son but not with his daughter,[3] but according to Resh Lakish, ought not the same to be true of a daughter? — He holds that it is his duty to train his son, but not to train his daughter.

Now on R. Johanan's view that it is a [traditional] ruling with regard to the nazirite, we can understand why he can impose naziriteship [on his son], but not [ordinary] vows;[4] but on Resh Lakish's view, why should he not be able [to impose ordinary] vows too? — [The Mishnah] argues progressively.[5] Not only is it his duty to train [his son] by [imposing upon him] vows which do not make him unseemly, but it is even his duty to impose a naziriteship, although this will make him unseemly.

Now on R. Johanan's view that it is a [traditional] ruling with regard to the nazirite, we can understand how it teaches: IF HE PROTESTS OR HIS RELATIVES PROTEST ON HIS BEHALF [THE NAZIRITESHIP IS VOID];[6] but on Resh Lakish's view, as cited by R. Jose son of R. Hanina, have relatives the power to tell [the father] not to instruct [the son] in religious duties? — He holds that [the son] objects to any training which is undignified.[7]

Now on R. Johanan's view that it is a [traditional] ruling with regard to the nazirite, we can understand why [the boy] is permitted to poll,[8] although [this means] rounding [the corners of the head];[9] but on Resh Lakish's view as cited by R. Jose son of R. Hanina that it is in order to train him to [carry out his] religious duties, he would be [transgressing] in rounding [the corners of his head]?[10] — [Resh Lakish] holds that the rounding of the whole head[11] is [prohibited only by] a rabbinic enactment,[12] and since training is [a duty] imposed by the Rabbis, [the duty as to] training imposed by the Rabbis can overrule the rabbinic enactment against rounding [the whole head].

Now on R. Johanan's view that it is a [traditional] ruling with regard to the nazirite, we can understand why [the boy] is allowed to poll and offer the sacrifices [of a nazirite]; but on the view of Resh Lakish as cited by R. Jose son of R. Hanina that it is in order to train him to [carry out his] religious duties, he would be bringing profane [animals] into the Temple court?[13] — [Resh Lakish] holds that [the prohibition against the bringing of] ordinary animals into the Temple-court is not Scriptural.[14]

Now on R. Johanan's view that it is a [traditional] ruling with regard to the nazirite, we can

understand why if he contracts ritual defilement, he may bring an offering of a pair of birds, which the priest will eat after pinching off [the head];[15] but on Resh Lakish's view, as cited by R. Jose son of R. Hanina, he will be eating carrion?[16] — [Resh Lakish] agrees with R. Jose son of R. Judah that fowl do not require to be [ritually] slaughtered in Torah law, and considers that [the prohibition against bringing] non-sacred [fowl] into the Temple court is not Scriptural.[17]

Is this in fact R. Jose's opinion? Has it not been taught: R Jose son of R. Judah said: Whence do we infer that a sin-offering of fowl, brought in a doubtful case [of childbirth][18] is not to be eaten?[19] From the verse, And of then that have an issue, whether it be a man or a woman.[20] Woman is here compared to man.[21] Just as a man is required to bring an offering for [a transgression],[22] which has certainly been committed so must the woman bring an offering for [a childbirth] which has certainly occurred;[23] and just as there is an offering to be brought by a man after a doubtful [transgression], so must an offering be brought by a woman after a doubtful [childbirth]. Again, just as a man brings [an offering of] the same kind in a case of doubtful [transgression] as he does after a certain one,[24] so must a woman bring [an offering of] the same kind after a doubtful [childbirth] as she does after a certain one.[25] [Shall we] then [infer further that] just as [in a doubtful case] a man brings an offering that is eaten,[26] so is the offering brought by the woman to be eaten?

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(1) I.e., it is Rabbinic in its origin.

(2) And so she has not the power to impose upon him an obligation involving the offering of sacrifices.

(3) For the tradition was only known with regard to sons.

(4) The Mishnah mentions only naziriteship and not other vows.

(5) And the inference that he cannot impose ordinary vows is wrong.

(6) This being part of the tradition.

(7) On account of the need to shave his head. And so the relatives can protest on his behalf.

(8) On completing the term of naziriteship.

(9) Which is otherwise forbidden; v. Lev. XIX, 27.

(10) [Which vitiates the whole value of the training.]

(11) Which is the manner in which a nazirite polls.

(12) The Scriptural verse says that ‘the corners’ are not to be rounded, and this is taken to mean the corners by themselves, but not in conjunction with the rest of the head.

(13) I.e., offer profane animals on the altar, for as he is not a nazirite the animals do not become sacred. This is forbidden.

(14) And is therefore permitted in this instance.

(15) Birds offered as sacrifices were not slaughtered ritually with a knife, but the priest pinched off their heads with his thumb nail.

(16) Since there was no obligation to offer birds, these birds are not really an offering and should be killed in the usual way.

(17) There is a controversy on this point in Hul. 27b.

(18) After childbirth, or even a miscarriage, a mother was required to offer certain sacrifices, including a bird as sin-offering (v. Lev. XII, 6). In this Baraitha R. Jose son of R. Judah explains what is to happen if there is a doubt as to a birth (i.e., a true miscarriage) having taken place (cf. also Ker, I, 1).

(19) Although after certain childbirth it was eaten.

(20) Lev. XV. 33’

(21) I.e., cases in which a man (as well as a woman) is required to furnish an offering, with the ease in which only a woman can do so, viz.: childbirth,

(22) When the Torah prescribes an offering for some offence, e.g., the eating of forbidden fat, it is understood that there is to be no doubt that an offence was committed. Where a doubt existed a different offering, the guilt-offering, was prescribed (v. Lev. V, 17).

(23) I.e., Lev. XII, 6. which describes the offering, is referring to a certain and not a doubtful childbirth.

(24) Viz., an animal (and not a bird) in both cases if the offence is, e.g., the eating of forbidden fat.

(25) Including a sin-offering of a bird in both cases.

(26) [The flesh of a guilt-offering for a doubtful transgression was eaten, v. Zeb. 54b.]

Talmud - Mas. Nazir 29b

You cannot say so. Whilst this applies in the case of a man where only one forbidden act is involved,[1] you cannot argue that this should also be the case with a woman where two forbidden acts are involved. Now what are the two forbidden acts referred to? Are they not the prohibition against the eating of carrion,[2] and the prohibition against the entry of profane [sacrifices] into the Temple court?[3]

R. Aha, the son of R. Ika [however] demurred [to this inference[4] being drawn], for it is surely possible that [the eating was forbidden][5] because it would appear as though two rabbinic enactments were being transgressed.[6]

Can we say that [the controversy between R. Johanan and Resh Lakish] is the same as that between [the following] Tannaim? [For it has been taught:] Rabbi says that he can impose a nazirite vow on his son until his majority;[7] but R. Jose son of R. Judah says, [only] until he reaches the age of making vows [for himself].[8] Now surely [the controversy between R. Johanan and Resh Lakish] is the same as [that between these] Tannaim, Rabbi considering it to be a [traditional] ruling with regard to the nazirite, so that though [the son] may have reached the age of making vows [for himself, the father] can still impose a [nazirite] vow on him until he attains his majority, whereas R. Jose son of R. Judah who asserts [that he can do so only] until [the son] reaches the age of making vows [for himself] is of the opinion that [the father may impose a naziriteship] in order to train him to [carry out his] religious duties, and, now that he has passed out of his [father's] control,[9] there is no longer an obligation [to train him]?[10] — I will tell you; not at all. Both [Rabbi and R. Jose son of R. Judah may] agree that this is a [traditional] ruling with regard to the nazirite. Where they differ is about [the vows of] one who can discriminate[11] [but] who has not quite reached manhood. Rabbi considers that [a youth] who can discriminate [but] who has not quite reached manhood is [permitted to make vows] only by enactment of the Rabbis and so the right granted by the Torah [to the parent][12] overrules the Rabbinical right [of the youth];[13] whereas R. Jose son of R. Judah considers that [a youth] who can discriminate [but] who has not quite reached manhood, has a Scriptural right [to make vows].[14]

Alternatively, it may be that both [Rabbi and R. Jose son of R. Judah] would agree that [the father may impose a naziriteship] in order to train him to [carry out his] religious duties, and that [the right of a youth,] who can discriminate [but] who has not quite reached manhood, [to make vows] is Rabbinic. Rabbi, on the one hand, holds that [the parent's duty] to train, which is itself Rabbinic, overrules [the right of the youth,] who can discriminate [but] who has not quite reached manhood, [to make vows for himself] which is also Rabbinic;[15] whilst R. Jose son of R. Judah, who says [that the father's right lasts only] until [the lad] reaches the age of making vows, holds that the Rabbinic duty to train [the lad] does not set aside [the right of a youth] who can discriminate [but] who has not quite reached manhood [to make his own vows, although this is also Rabbinic].[16]

Can we say that [the controversy between] the above Tannaim[17] is the same as that between the following Tannaim?[18] For it has been taught: It is related that R. Hanina's father once imposed a nazirite vow upon him and then brought him before R. Gamaliel. R. Gamaliel was about to examine him to discover whether or not he had reached his majority[19] — according to R. Jose[20] it was to discover whether he had reached the age of making vows[21] — when [the young Hanina] said to him, 'Sir, do not exert yourself to examine me. If I am a minor, then I am a nazirite because of my father's [imposition], whilst if I am an adult,[22] I undertake it on my own account.' Thereupon R. Gamaliel rose and kissed him upon his head, and said, 'I am certain that this [lad] will be a religious leader[23] in Israel.' It is said that in a very short space of time, he became in fact a religious leader in Israel.[24]

Now on R. Jose son of R. Judah's view that [the father's control lasts only] until [the boy] reaches the age at which he can make vows [for himself], we can understand why he should have said, 'If I am a minor,[25] I shall be [a nazirite] because of my father's [action, and so on].' But on Rabbi's view that [it lasts] until manhood, [of what value was the statement], 'whilst if I am an adult, I undertake it on my own account,'

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(1) If he was not in fact guilty, a profane animal was sacrificed on his behalf. This the Tanna of the Baraitha considers is forbidden.

(2) The bird, having its neck pinched, is carrion, pinching being only permitted to a true sacrificial bird.

(3) And thus we see that R. Jose considers both these acts forbidden by the Torah, in contradiction to the statement attributed to him above.

(4) That the above acts are forbidden by the Torah.

(5) Our text has, instead of this inserted phrase, 'She is liable', which gives no sense. We have therefore followed all the commentators and omitted it.

(6) I.e., the eating of the bird brought by the woman was forbidden not because the comparison with the guilt-offering brought by the man did not extend to cover it, but because two enactments of the Rabbis were involved, and this outweighs the analogy with the guilt-offering.

(7) Lit., 'until two hairs appear', i.e., until there is definite evidence that he has reached puberty, usually after the end of the thirteenth year.

(8) I.e., between the twelfth and thirteenth birthdays, when he understands the significance of a vow.

(9) For he can now make his own vows.

(10) And therefore he cannot impose one.

(11) I.e., who realises the significance of a vow.

(12) To impose a naziriteship. A halachah or traditional ruling has the force of a scriptural enactment.

(13) To make vow's himself.

(14) And when he reaches this age, his father can no longer impose a naziriteship upon him.

(15) And the father can impose a naziriteship until the boy is thirteen.

(16) And when the boy reaches the age of making vows, the father's right to impose a naziriteship ceases.

(17) Rabbi and R. Jose son of R. Judah.

(18) This is put as a question although the answer in this case is not negative. This is not uncommon (Asheri).

(19) Lit., 'produced two hairs', as a sign of puberty. On this view, he was thirteen years old at the time.

(20) I.e., R. Jose son of R. Judah. V. Tosaf.

(21) The boy was only twelve years old according to R. Jose.

(22) In regard to making vows.

(23) Lit., will render halachic decisions.'

(24) Tosef. Nid. V.

(25) It is here supposed that all the young R. Hanina meant was, 'If I cannot yet make vows myself,' no special significance attaching to his use of the word minor'.

Talmud - Mas. Nazir 30a

seeing that he was still under his father's control?[1] — [Rabbi will reply that] he really said, 'I intend to be one on my father's account [if he still has the right to impose it],[2] and on my own account [otherwise].' Now if he had in fact reached manhood at that time, his own naziriteship would take effect; if [he reached manhood] after [observing the naziriteship], he would have observed his father's naziriteship.[3] But suppose he reaches [manhood] during this period, what is to happen then?[4] Now on R. Jose son of R. Judah's view that [the father's right lasts] until the age at which he can make vows [for himself], all will be well,[5] but on Rabbi's view that [the right lasts] until he reaches manhood, how will you explain what happened?[6] — In point of fact, on Rabbi's view no other solution is possible,[7] than that he should observe [naziriteships] both on the father's account and on his own account.[8]

MISHNAH. A MAN CAN POLL [WITH OFFERINGS DUE FOR] HIS FATHER'S NAZIRITESHIP.[9] BUT A WOMAN CANNOT DO SO. WHERE, FOR EXAMPLE, A MAN'S FATHER HAD BEEN A NAZIRITE, AND HAS SET APART A LUMP SUM OF MONEY FOR [THE SACRIFICES OF] HIS NAZIRITESHIP AND DIED AND [THE SON THEN] SAID, 'I DECLARE MYSELF A NAZIRITE ON CONDITION THAT I MAY POLL WITH MY FATHER'S MONEY. R. JOSE SAID THAT THESE MONEYS ARE TO BE USED FOR FREEWILL-OFFERINGS AND THAT SUCH A MAN CANNOT POLL AT THE EXPENSE OF HIS FATHER'S NAZIRITESHIP. WHO CAN DO SO? HE WHO WAS A NAZIRITE TOGETHER WITH HIS FATHER, AND WHOSE FATHER HAD SET APART A LUMP SUM OF MONEY FOR HIS NAZIRITE [SACRIFICES] AND DIED. [ONLY] SUCH A MAN CAN POLL AT THE EXPENSE OF HIS FATHER'S NAZIRITESHIP.[10]

GEMARA. Why [cannot a woman poll with her father's money]? — R. Johanan said: It is a [traditional] ruling with regard to the nazirite.[11] Surely this is obvious and so what purpose does [the ruling] serve, for a son inherits his father but a daughter does not do so?[12] — It is not necessary, except in the case where he had a daughter only.[13] It might have been thought that the tradition received was that [all] heirs [could poll][14]

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(1) So that although he could make vows himself, his father could still impose a naziriteship on him.

(2) I.e., minor means 'under my father's control.'

(3) This is the explanation of R. Han. quoted in Tosaf.

(4) For his father's naziriteship will automatically lapse on his reaching manhood; v. Tosef. Naz. III.

(5) For on his reaching the age of making vows, vows imposed by his father beforehand are unaffected, and manhood is a long way off.

(6) I.e., how do you account for the acceptance by Rabban Gamaliel of the double vow without further ado, since R. Hanina might reach manhood during the naziriteship.

(7) If the boy does not wish to be examined.

(8) I.e,, observe a naziriteship of sixty days, instead of thirty, so that all contingencies are covered.

(9) I.e., may purchase the sacrifices due on polling with money set apart for his father's sacrifices.

(10) Many MSS. (v. Tosaf.) reverse these two examples, making R. Jose permit him to poll if he becomes a nazirite afterwards, but not if he is a nazirite together with his father. In the parallel passage Tosef. Naz. III, there is the same MS. confusion. Cf. also supra 17b, and infra 30b,

(11) No justification is therefore needed.

(12) And so she could not obtain the money. For the rules of inheritance, v. Num. XXVII, 6ff.

(13) In such a case the daughter inherits (ibid.).

(14) So that where there was no son, the daughter could poll.

Talmud - Mas. Nazir 30b

and so the ruling tells us [that this is not so].

The question was asked: Do the Rabbis differ from R. Jose or not;[1] and if it should be decided that they differ, whether with the first clause [only] or with the subsequent clause also?[2] Come and hear: In what circumstances was it said that a man may poll at the expense of his father's naziriteship? Where his father who had been a nazirite set apart money for [the sacrifices of] his naziriteship and died, and [the son then] said, 'I declare myself a nazirite on condition that I may poll with my father's money,' he [the son] is permitted to poll with his father's money. But where both he and his father were nazirites together, and his father set apart money for [the sacrifices of] his naziriteship and died, the money is to be used for freewill-offerings. The above is the opinion of R. Jose.[3] R. Eliezer,[4] R. Meir and R. Judah said: Just such a one may poll with his father's money.[5]

Rabbah raised the problem: Suppose [the nazirite] has two sons, both nazirites,[6] what is the law?

Did the tradition state [simply] that there is a halachah,[7] so that the one who was first [to become a nazirite] may poll, or did it state [that the son may use the money because it is his] inheritance and so they divide it?

Raba raised the problem: Suppose [the sons were] the firstborn[8] and another, what would the law be? Was the tradition received as a halachah and [the first-born] is therefore not entitled to receive for polling the same proportion as he receives [of the rest of the estate], or is [the money for the nazirite sacrifices, part of his] inheritance, and just as he takes a double portion there, so also is it with the [money for] polling?

Should it be decided that [the money for the nazirite sacrifices is part of] the inheritance, so that [the first-born] receives for polling in proportion to what he receives [of the rest of the estate], does [the first-born] receive a double portion only when [the money] is profane, but not when it becomes sacred,[9] or is there no difference, seeing that he has acquired [a double portion] for polling?[10]

Suppose his father was a life-nazirite[11] and he an ordinary nazirite, or his father an ordinary nazirite and he a life-nazirite, what would the law be?[12] Was the halachah received only with regard to ordinary naziriteships,[13] or is there no difference?[14]

Should it be decided that [such is the case] here [because] both the naziriteships[15] were discharged in ritual purity,[16] [then] R. Ashi raised a [further] problem. Suppose his father were an unclean nazirite[17] and he a clean nazirite,[18] or his father were a clean nazirite[19] and he an unclean nazirite,[20] what would be the law? The problem was unsolved.

CHAPTER V

MISHNAH. BETH SHAMMAI SAY THAT CONSECRATION IN ERROR IS [EFFECTIVE] CONSECRATION,

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(1) The problem arises because of the wording of our Mishnah. If no one differs from R. Jose, why say 'R. Jose said'?

(2) I.e., do they permit the son to poll in both cases, or do they permit the one R. Jose forbids and vice versa.

(3) The opinion here ascribed to R. Jose is not that of our version of the Mishnah, but is that of the MS. versions. One or other must be emended, for consistency (v. Tosaf.).

(4) Our text, R. Eliezer, is a common scribal error for R. Eleazar b. Shamua, the colleague of the other Rabbis mentioned.

(5) Tosef. Naz. III. 9. Hence, (a) these Rabbis differ from R. Jose. (b) the difference covers both cases, for the 'Just such a one' is emphatic. So Rashi. Tosaf., Maim. Yad. (Neziruth VIII, 15), and most other commentators, however, consider that in the opinion of these Rabbis he may use his father's money under all circumstances.

(6) And then dies, leaving money for sacrifices.

(7) A ruling. Viz.: that it is possible for the son to use the money left by his father for his own naziriteship, no reason being given as to why he may do so.

(8) Who is entitled to a double portion of the heritage. V. Deut. XXI, 17.

(9) I.e., he receives two thirds of the money left towards his own nazirite sacrifices, but after the animals have been slaughtered and sacrificed he must return part of the sacred meat to his brother, so that each obtains just half of the meat which is to be eaten. — This question is raised because except for unslaughtered peace-offerings a first-born does not obtain a double portion of the sacred animals left at his father's death.

(10) And so he will also keep a double portion of the meat.

(11) And he put aside money for his naziriteship and died.

(12) I.e., may the son use the money for his own naziriteship or not?

(13) And he may not use the money.

(14) And he may use the money.

(15) Of the father and of the son.

(16) And there is no distinction between the kind of naziriteship undertaken.

(17) And he had set aside money to buy the sacrifices required for purification (v. Hum. VI, 10), and then died.

(18) I.e., may the son use the money towards the sacrifices he must offer on completing his naziriteship.

(19) And he had set aside money for the sacrifices and then died.

(20) I.e., may the son use the money towards the sacrifices of an unclean nazirite.

Talmud - Mas. Nazir 31a

BUT BETH HILLEL SAY THAT IT IS NOT EFFECTIVE. FOR EXAMPLE, IF SOMEONE SAYS, THE BLACK BULL THAT LEAVES MY HOUSE FIRST SHALL BE SACRED,' AND A WHITE ONE EMERGES, BETH SHAMMAI DECLARE IT SACRED, BUT BETH HILLEL SAY THAT IT IS NOT SACRED. [OR IF HE SAYS,] 'THE GOLD DENAR THAT COMES INTO MY HAND FIRST SHALL BE SACRED, AND A SILVER DENAR CAME TO HIS HAND BETH SHAMMAI DECLARE IT SACRED, WHILST BETH HILLEL SAY THAT IT IS NOT SACRED. [AGAIN, IF HE SAYS,] 'THE CASK OF WINE THAT I COME ACROSS FIRST SHALL BE SACRED,' AND HE COMES ACROSS A CASK OF OIL, BETH SHAMMAI DECLARE IT SACRED, BUT BETH HILLEL SAY THAT IT IS NOT SACRED.

GEMARA. BETH SHAMMAI SAY THAT CONSECRATION, etc.: Beth Shammai's reason is that they compare original consecration[1] with secondary consecration.[2] Just as substitution, even when made in error, is effective,[3] so [original] consecration, even when made in error, is effective. Beth Hillel, however, contend that this is true only of substitution,[4] but that no consecration in error can take effect in the first instance.

But suppose, according to Beth Shammai, someone says, 'This [animal] is to replace that [one] at midday,' it would surely not become a substitute [immediately] from that moment, but only when midday arrives, and so here too, [surely, consecration should not take effect] until the condition [under which it was made] becomes realized?[5] — R. Papa replied: The reason that [the word] 'FIRST' was mentioned by him was [simply] to indicate that one [of his black oxen] which should emerge first.[6] — But the text says, 'the black bull,' and surely it contemplates the case where he may have only the one?[7] — In the case considered, he is assumed to have two or three.[8] Beth Hillel, however, contend that if this [was his intention][9] it should have said, '[The black hull] that leaves earliest.'[10] — Raba of Barnesh[11] said to R. Ashi; Is this [called] consecration in error? It is surely intentional consecration?[12] — [He replied:] Quite so, but [it is called consecration in error] because at first the expression he used gave a wrong impression.[13]

Is it indeed Beth Shammai's opinion that consecration in error is not effective consecration?[14] Have we not learnt: If a man, who vows to be a nazirite, sets aside an animal [for the sacrifice], and [then] applies to the Sages [for absolution from his vow] and they release him, [the animal] goes forth and pastures with the flock.[15] Beth Hillel said to Beth Shammai: Do you not admit that this is a case of consecration in error,[16] and yet [the animal] goes forth and pastures with the flock?[17] Whence[18] it follows [does it not] that Beth Shammai hold consecration in error to be effective? — No; Beth Hillel were mistaken. They took the reason for Beth Shammai's view[19] to be that consecration in error is effective, but the latter replied that [the consecration is effective] not because it was consecration in error, but because at first the expression he used gave a wrong impression.[20]

But is it Beth Shammai's opinion that consecration in error is not effective? Come [then] and hear: If [some people] were walking along the road

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(1) Consecration of a profane object.

(2) Lit., 'final consecration'. If anyone substitutes a profane animal for one already sacred, the substitution is not effective, but the profane animal becomes sacred too (v. Lev. XXVII, 20). Substitution is termed 'secondary

consecration'.

(3) V. Tem. 27a.

(4) Since one animal was already sacred.

(5) But not where the stipulation was not fulfilled, as, e.g., a white bull emerged and not a black one. Thus the comparison with substitution is not borne out.

(6) R. Papa rejects the explanation of Beth Shammai's opinion given above, and says that even on Beth Shammai's view, it is the black bull that emerges first which becomes sacred. In other words we do not set aside his statement because a white bull emerged first, as 'FIRST' may be understood as applying to the black oxen only (Tosaf.).

(7) In which case, he could not mean 'the first of the black bulls.'

(8) I.e., unless he has two or three black bulls, the question of one bull becoming sacred does not arise.

(9) Viz., that the first black bull to emerge should become sacred, irrespective of whether others came out before it.

(10) [שיצא בראשון 'at first', which may also denote the first (black bull) that leaves.]

(11) [Near Sura, v. Obermeyer. Die Landschaft Babylonien, p. 296.]

(12) For on R. Papa's view, he intended to make the first black bull to emerge sacred.

(13) For he appears to mean that the black bull must come out before any other bull.

(14) As is maintained by R. Papa.

(15) I.e., it ceases to be holy.

(16) For when he consecrated the animal he believed himself liable, whilst his subsequent release showed that he was not.

(17) Infra 31b.

(18) From Beth Hillel's remark.

(19) That the first black bull is sacred.

(20) I.e., he really meant that bull to be sacred, but appeared to be saying something else.

Talmud - Mas. Nazir 31b

and [saw] someone coming towards them, and one said, 'I declare myself a nazirite if it is So-and-so,' whilst another said, 'I declare myself a nazirite if it is not So-and-so,' [and a third man,] 'I declare myself a nazirite if one of you is a nazirite, [a fourth, 'I declare myself a nazirite] if neither of you is a nazirite, [a fifth, 'I declare myself a nazirite] if both of you are nazirites,' [and a sixth, 'I declare myself a nazirite] if all of you are nazirites,' Beth Shammai say that all [six] of them are nazirites.[1] Now this is a case of consecration in error,[2] and yet [the Mishnah] teaches that all of them are nazirites? — From this it certainly follows that Beth Shammai are of the opinion that consecration in error is effective, but not from the other.[3]

Abaye said: You should not assume that [the declaration] was made in the morning.[4] We speak here of a case where it was already midday, and he then said, 'The black bull that left my house first [to day] shall be sacred,'[5] and when informed that a white one left [first], he remarked, 'Had I known that a white one left, I should not have said black.'[6] But how can you say that it refers to what took place at midday,[7] seeing that the text reads: THE GOLD DENAR THAT COMES?[8] — Read, 'that has come.'[9] [But the text also reads,] THE CASK OF WINE THAT I COME ACROSS?[8] — Read, 'that I came across.[9]

R. Hisda said: Black [oxen] amongst white [ones] spoil the herd.[10] White [patches] on black [oxen] are a blemish.

We have learnt: [IF SOMEONE SAYS,] 'THE BLACK BULL THAT IS THE FIRST TO LEAVE MY HOUSE [SHALL BE SACRED,' AND A WHITE ONE EMERGES, BETH SHAMMAI DECLARE] IT SACRED. Now when a person consecrates, he does so with an ill grace,[11] and yet Beth Shammai say that [the white bull] is sacred?[12] Do you suggest then that a person consecrates with a good grace?[13] [If so, how can we explain the following clause: IF HE SAYS,] 'THE GOLD DENAR THAT COMES INTO MY HAND FIRST [SHALL BE SACRED],' AND A SILVER

DENAR CAME TO HIS HAND, BETH SHAMMAI DECLARE IT SACRED?[14] — Do you submit, then, that a person consecrates with an ill grace? [Consider then the following: IF HE SAYS,] 'THE CASK OF WINE THAT I COME ACROSS FIRST [SHALL BE SACRED],' AND HE COMES ACROSS A CASK OF OIL, BETH SHAMMAI DECLARE IT SACRED,' and yet oil is superior to wine? — That raises no difficulty, for it was taught with reference to Galilee where wine is superior to oil. But the first clause [of our Mishnah] seems to contradict R. Hisda? — R. Hisda will reply: My statement[15] referred to Carmanian[16] oxen.

R. Hisda also used to say: A black ox for its hide, a red one for its flesh, a white one for ploughing.[17] But R. Hisda said that black [oxen] amongst white ones spoil the herd?[18] — He said that with reference to Carmanian oxen.

MISHNAH. IF A MAN VOWS TO BE A NAZIRITE AND THEN SEEKS RELEASE FROM A SAGE[19] BUT IS FORBIDDEN [TO ANNUL HIS VOW], HE CAN RECKON [THE NAZIRITESHIP] FROM THE TIME THAT THE VOW WAS MADE.[20] IF HE SEEKS RELEASE FROM A SAGE AND IS ABSOLVED AND HAS AN ANIMAL SET ASIDE [FOR A SACRIFICE], IT GOES FORTH TO PASTURE WITH [THE REST OF] THE HERD.[21] BETH HILLEL SAID TO BETH SHAMMAI: DO YOU NOT ADMIT THAT HERE WHERE THE CONSECRATION IS IN ERROR,[22] [THE ANIMAL] GOES FORTH TO PASTURE WITH THE HERD?[23] BETH SHAMMAI REPLIED: DO YOU NOT ADMIT THAT IF A MAN IN ERROR CALLS THE NINTH [ANIMAL], THE TENTH,[24] OR THE TENTH THE NINTH, OR THE ELEVENTH THE TENTH, EACH BECOMES SACRED?[25] BETH HILLEL RETORTED: IT IS NOT THE ROD THAT MAKES THESE SACRED,[26] FOR SUPPOSE THAT IN ERROR HE PLACED THE ROD UPON THE EIGHTH OR UPON THE TWELFTH, WOULD THIS HAVE ANY EFFECT? [THE FACT IS] THAT SCRIPTURE WHICH HAS DECLARED THE TENTH TO BE SACRED, HAS ALSO DECLARED SACRED THE NINTH

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(1) Mishnah, infra 32b. q.v.

(2) Since they become nazirites whether or no their conditions are fulfilled.

(3) I.e., not from our own Mishnah, which is only apparently but not really a case of consecration in error, as explained by R. Papa and R. Ashi.

(4) I.e., that when the man said, 'The black bull etc.' he was referring to a future event and not a past one.

(5) [Vocalizing יצא instead of יצא]

(6) The case is now analogous to substitution in error, and Beth Shammai's reason will be that they infer consecration in error from substitution in error.

(7) I.e., to a past event.

(8) 'Left' and 'will leave' have the same consonants in Hebrew but are pronounced differently (v. p. 112, n. 7); but in these cases, the past has different consonants from the future and so cannot be confused with it.

(9) I.e., change the reading. Instead of יעלה read עלה and instead of תעלה read עלתה.

(10) Because black oxen are inferior to white ones.

(11) Lit., 'malevolent eye'. He does not wish anything more than he has specified to become sacred.

(12) And so white bulls must be worth less than black ones.

(13) Lit., 'benevolent eye'.

(14) Thus he is satisfied to give a silver coin instead of a gold one, but had he consecrated with a good grace, the silver would not become sacred.

(15) That white oxen are better than black.

(16) Carmania, a province of Persia, the oxen of which were generally employed for ploughing.

(17) I.e., each kind is most suitable for the purpose mentioned. Thus in respect to its hide, a black ox is superior to a white one. [V. Lewysohn, Zoologie, p. 131.]

(18) Yet here he says that their hides are superior.

(19) It is presumed that he had drunk wine in the interval.

(20) I.e., presumably, his transgression has not affected the validity of the period past.

(21) I.e., it ceases to be holy.
(22) Because his release shows that no sacrifice was necessary.
(23) And so no consecration in error should be effective.
(24) During tithing of cattle; cf. Lev. XXVII, 32.
(25) Thus consecration in error is effective.
(26) I.e., it is not his error in striking the wrong animal with the tithing rod that makes it sacred.

AND THE ELEVENTH.[1]

GEMARA. Who can the author of [the first paragraph of] our Mishnah be? For it [agrees] neither with R. Jose nor with the Rabbis. For it has been taught: If a man vows [to be a nazirite] and transgresses a rule of his naziriteship, his case is not examined,[2] unless he [first] observes in [nazirite] abstinence as many days as he has passed in indulgence.[3] R. Jose said that thirty days are enough.[4] Now if [the author] be the Rabbis, [the case also of] naziriteship for a long period offers difficulty,[5] whilst if it be R. Jose, [the case of] naziriteship for a short period offers difficulty?[6] — It may be maintained either that [the author] is R. Jose, or that [the authors] are the Rabbis. It may be maintained that [the author] is R. Jose, by supposing that [the Mishnah refers] to a long period of naziriteship [only],[7] and [the Baraitha] to a short period of naziriteship [as well].[8] It can also be maintained that [the authors] are the Rabbis, in which case we must read [in the Mishnah] not, 'FROM THE TIME THAT THE VOW WAS MADE,'[9] but 'equal [to the period which has elapsed] since the vow was made.'[10]

IF HE SEEKS RELEASE FROM THE SAGES, AND THEY ABSOLVE HIM etc.: R. Jeremiah said: From [the opinion of] Beth Shammai we can infer that of Beth Hillel. Do not Beth Shammai assert that consecration in error is effective and yet when it becomes clear[11] that the nazirite vow is not valid, [the animal] goes forth to pasture with the herd? So too, for Beth Hillel. Although they say that substitution in error is effective substitution, this is only true where the original consecration remains,[12] but where the original consecration is revoked,[13] [the consecration resulting from] the substitution is also revoked.[14]

The Master said: 'DO YOU NOT ADMIT THAT IF HE CALLS THE NINTH THE TENTH, etc. It has been stated: In the case of the tithe, R. Nahman said that [this is the rule only] if this is done in error, not if it is done intentionally.[15] R. Hisda and Rabbah b. R Huna, however, said that [it is certainly the rule] if it is done in error, and all the more so if it is done intentionally.[16]

Raba said to R. Nahman: According to you who assert that [it is the rule only] if it is done in error and not if done intentionally, when Beth Shammai asked Beth Hillel, DO YOU NOT ADMIT THAT IF HE CALLED THE NINTH THE TENTH, THE TENTH THE NINTH, OR THE ELEVENTH THE TENTH, THAT ALL THREE ARE SACRED? and Beth Hillel were silent,[17] why could they not have answered that the case of tithes is different since these[18] cannot be made sacred intentionally?[19] — R. Shimi b. Ashi replied: The reason that they did not do so is because of an afortiori argument that might be based on this [by Beth Shammai].[20] For [Beth Shammai might have argued that] if tithes that cannot be consecrated [out of turn] intentionally can be so consecrated in error, then ordinary consecration that can be done intentionally should certainly take effect [in error].[21] This [argument], however, would be unsound, for [ordinary] consecration depends entirely upon the intention of the owner.[22] MISHNAH. IF A MAN VOWS TO BE A NAZIRITE AND ON GOING TO BRING HIS ANIMAL [FOR THE SACRIFICE] FINDS THAT IT HAS BEEN STOLEN, THEN IF HE HAD DECLARED HIMSELF A NAZIRITE BEFORE THE THEFT OF HIS ANIMAL,[23] HE IS [STILL] A NAZIRITE,

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(1) If they are struck in error; v. infra for source.

(2) Should he desire to be released from his vow.

(3) I.e., the number of days which have elapsed between his transgression and his seeking for absolution.

(4) Tosef. Ned. I; i.e., if his period of transgression was longer than thirty days, he is made to keep a naziriteship of thirty days, before being released.

(5) The Mishnah allows him to reckon in all cases the days of his transgression as part of his naziriteship, whilst the Rabbis do not do so.

(6) They would conflict in regard to the short period in the manner explained in the previous note. In regard to the long period they would not conflict, since R. Jose allows him to reckon all the period of transgression, which is more than thirty days, and it could be argued that this is all that the Mishnah means. The text adopted here is that of Tosaf.; Asheri, Maim. and most other commentators, agreeing with the quotation in Ned. 200. Our printed text, which reads that the short period offers a difficulty for the Rabbis and the long period for R. Jose, assumes a reading of the Tosefta which would agree with most MSS. of the Tosef. (Ned. I, 11) and with the Jerusalem Talmud (J. Naz. V, 4), but requires an argument at once more complicated and subtle.
(7) There being no conflict with R. Jose's view, as explained in the previous note.
(8) In this case only does R. Jose require the whole of the period of transgression to be counted afresh.
(9) Which implies that the period when there was transgression forms part of the naziriteship and so conflicts with the view of the Baraitha.
(10) Mishnah and Baraitha now agree.
(11) By the release that was granted.
(12) I.e., when the first animal for which the second is substituted is not afterwards declared profane.
(13) [E.g., owing to the remission of the naziriteship for which the animal was reserved.]
(14) I.e., the animal substituted also becomes profane.
(15) If he intentionally strikes the ninth animal as though it were the tenth, it does not become sacred.
(16) I.e., in either case the animal becomes sacred.
(17) I.e., they found no flaw in the argument itself, but were compelled to reply that it is only in this case that Scripture has declared consecration in error effective.
(18) I.e.,the ninth or eleventh animal.
(19) And since they did not say this, it follows that even if he strikes the ninth animal intentionally, it becomes sacred.
(20) If it is assumed that the cases are comparable.
(21) And Beth Hillel do not admit that consecration in error is effective.
(22) Whereas a man is bound to tithe his animals, and so the rules applying in the one case need bear no resemblance to those applying in the other. Hence R. Nahaman cannot be refuted from this (Tosaf.).
(23) I.e., the three animals which a nazirite offers on completing his vow.

Talmud - Mas. Nazir 32b

BUT IF HE HAD DECLARED HIMSELF A NAZIRITE AFTER THE THEFT OF HIS ANIMAL, HE IS NOT A NAZIRITE.[1] IT WAS ON THIS POINT THAT NAHUM THE MEDE FELL INTO ERROR WHEN NAZIRITES ARRIVED [IN JERUSALEM] FROM THE DIASPORA AND FOUND THE TEMPLE IN RUINS.[2] NAHUM THE MEDE SAID TO THEM, 'HAD YOU KNOWN THAT THE TEMPLE WOULD BE DESTROYED, WOULD YOU HAVE BECOME NAZIRITES?' THEY ANSWERED, NO, AND SO NAHUM THE MEDE ABSOLVED THEM.[3] WHEN, HOWEVER, THE MATTER CAME TO THE NOTICE OF THE SAGES THEY SAID: WHOEVER DECLARED HIMSELF A NAZIRITE BEFORE THE DESTRUCTION OF THE TEMPLE IS A NAZIRITE, BUT IF AFTER THE DESTRUCTION OF THE TEMPLE, HE IS NOT A NAZIRITE.

GEMARA. Rabbah said: The Rabbis overruled R. Eliezer and laid down [the law] in accordance with their own views. For we have learnt: It is permitted to grant release on the ground of improbable contingencies;[4] this is the opinion of R. Eliezer, but the Sages forbid this.[5]

Rabbah[6] said further: Although the Rabbis said that improbable contingencies cannot be made the grounds for release, yet conditions involving improbable contingencies can be made a ground for release. For example, it would have been possible to say to them: Suppose someone had come and said to you[7] that the Temple would be destroyed, would you have uttered your vow?

R. Joseph said: Had I been there, I should have said to them:[8] Is it not written, The temple of the Lord, the temple of the Lord, the temple of the Lord, are these,[9] which points to [the destruction of]

the first and second temples?[10] — Granted that they knew it would be destroyed, did they know when this would occur?[11]

Abaye objected: And did they not know when? Is it not written, Seventy weeks are determined upon thy people, and upon thy holy city?[12] — All the same, did they know on which day?[13]

MISHNAH. IF [PEOPLE] WERE WALKING ALONG THE ROAD AND [SAW] SOMEONE COMING TOWARDS THEM, AND ONE SAID, 'I DECLARE MYSELF A NAZIRITE IF IT IS SO-AND-SO, WHILST ANOTHER SAID, 'I DECLARE MYSELF A NAZIRITE IF IT IS NOT SO-AND-SO,' [AND A THIRD MAN,] '[7] DECLARE MYSELF A NAZIRITE IF ONE OF YOU IS A NAZIRITE,' [A FOURTH, 'I DECLARE MYSELF A NAZIRITE] IF NEITHER OF YOU IS A NAZIRITE,' [A FIFTH, 'I DECLARE MYSELF A NAZIRITE] IF BOTH OF YOU ARE NAZIRITES,' [AND A SIXTH, 'I DECLARE MYSELF A NAZIRITE] IF ALL OF YOU ARE NAZIRITES.' BETH SHAMMAI SAY THAT ALL [SIX] OF THEM ARE NAZIRITES, BUT BETH HILLEL SAY THAT ONLY THOSE WHOSE WORDS WERE NOT FULFILLED, ARE NAZIRITES.[14] R. TARFON SAID: NOT ONE OF THEM IS A NAZIRITE. IF [THE PERSON APPROACHING] TURNED AWAY SUDDENLY[15] [WITHOUT BEING IDENTIFIED], HE[16] IS NOT A NAZIRITE. R. SIMEON SAYS: HE SHOULD SAY, 'IF I WAS RIGHT,[17] I AM A NAZIRITE OBLIGATORILY, OTHERWISE I WISH TO BE A NAZIRITE, VOLUNTARILY.

GEMARA. Why should the ones whose words were not fulfilled become nazirites?[18] — Rab Judah replied: Read, 'those whose words were fulfilled.'

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(1) As his vow had been made under a misapprehension.

(2) The nazirite vow was binding until the sacrifices had been offered.

(3) As the vow had been made under a misapprehension.

(4) I.e., the grounds for release need not have been anticipated at the time the vow was entered into.

(5) Mishnah, Ned. IX, 1. Here in Nazir, on the other hand, R. Eliezer's view is not quoted, showing that it was not considered permissible to rely on it under any circumstances whatsoever.

(6) Our text, in error, has Raba.

(7) When you were about to declare yourselves nazirites.

(8) To those who contended that the destruction of the Temple, being an event which could not have been foreseen, could not be used as a ground for release (Asheri).

(9) Jer. VII, 4.

(10) Since it indicates that there would be three temples. Thus the destruction was foretold and could have been anticipated.

(11) And so they could not anticipate it.

(12) Dan. IX, 24. This prophecy was uttered at the beginning of the seventy years captivity in Babylon. From the restoration to the second destruction is said to have been 420 years, making in all 490. i.e., seventy weeks of years.

(13) And since they did not know, they expected to offer their sacrifices before the destruction.

(14) This is explained in the Gemara.

(15) Lit., 'he shuddered back'.

(16) I.e., one whose naziriteship was contingent oil the identity of the person approaching.

(17) In my identification.

(18) According to Beth Hillel.

Talmud - Mas. Nazir 33a

Abaye replied: We suppose him to have added, for example, 'even if it be not So-and-so I intend[1] to be a nazirite,' the meaning of the phrase HIS WORDS WERE NOT FULFILLED [used in the Mishnah] being, his first words were not fulfilled but his later ones were.[2]

IF [THE PERSON APPROACHING] TURNED AWAY SUDDENLY [WITHOUT BEING IDENTIFIED] HE IS NOT A NAZIRITE etc.: The reason [that he is not a nazirite] is because the other turned away, which would show that had the other come before us, he would become a nazirite. Who is the author [of this opinion)?[3]

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(1) [Read אי הוי for איהוי.]

(2) And so he becomes a nazirite.

(3) There is no Gemara on 33b, this page being taken up with Tosaf.

Talmud - Mas. Nazir 34a

Should you say it is R. Tarfon, would he become a nazirite? For since he did not know at the time he uttered the nazirite vow whether it was So-and-so or not, would the naziriteship have become operative [at all]? For have we not been taught: R. Judah on behalf of R. Tarfon said that not one of them[1] is a nazirite because naziriteship is not intended except when assumed unequivocally?[2] — It must,therefore, be R. Judah [who indicated this in connection] with the heap of grain. For it has been taught: [If a man says,] 'I declare myself a nazirite, provided that this heap of grain contains one hundred kor,' and then finds that [the heap] has been stolen or is lost, R. Simeon binds [him to a naziriteship], whilst R. Judah frees him [from the vow].[3] R. Simeon holds that since, had it not been stolen, it might have been found to contain one hundred kor, in which case he would have become a nazirite, he must now also become a nazirite. Here,[4] too, since, had the other come before us and we had known that it was So-and-so, he would have become a nazirite, now [that the other has not come] he also becomes a nazirite.

MISHNAH. IF [ONE MAN] SAW A KOY[5] AND SAID, 'I DECLARE MYSELF A NAZIRITE IF THAT IS A BEAST OF CHASE, [AND ANOTHER] 'I DECLARE MYSELF A NAZIRITE IF THAT IS NOT A BEAST OF CHASE,' [A THIRD SAID] 'I DECLARE MYSELF A NAZIRITE IF THAT IS CATTLE,' [A FOURTH SAID,] 'I DECLARE MYSELF A NAZIRITE IF THAT IS NOT CATTLE,' [A FIFTH SAID,] I DECLARE MYSELF A NAZIRITE IF THAT IS BOTH A BEAST OF CHASE AND CATTLE,' [AND A SIXTH SAID,] 'I DECLARE MYSELF A NAZIRITE IF THAT IS NEITHER BEAST OF CHASE NOR CATTLE.' [THEN A SEVENTH SAID,] 'I DECLARE MYSELF A NAZIRITE IF ONE OF YOU IS A NAZIRITE,' [AN EIGHTH SAID,] I DECLARE MYSELF A NAZIRITE IF NOT ONE OF YOU IS A NAZIRITE,' [WHILST A NINTH SAID,] 'I DECLARE MYSELF A NAZIRITE IF YOU ARE ALL NAZIRITES, THEN ALL OF THEM BECOME NAZIRITES.

GEMARA. In one [Baraitha] it is taught that nine [can become] nazirites,[6] and in another that nine naziriteships [can be undertaken].[7] Now there would be nine nazirites if, for example, a number of men referred to [the Koy] one after another;[8] but how is it possible for nine naziriteships [to be undertaken] by one man? There could indeed be six, as enumerated in our Mishnah,[9] but how could the other three be undertaken? — R. Shesheth replied: He could say,[10] 'I declare myself a nazirite and undertake the naziriteships of you all.'[11]

C H A P T E R V I

MISHNAH. THREE THINGS ARE FORBIDDEN TO A NAZIRITE, VIZ.:- RITUAL DEFILEMENT, POLLING, AND PRODUCTS OF THE VINE. ALL PRODUCTS OF THE VINE CAN BE RECKONED TOGETHER[12] WHILST THERE IS NO PENALTY UNLESS HE EATS AN OLIVE'S BULK OF GRAPES,

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(1) One of those, mentioned in our Mishnah, who undertook a naziriteship if the person approaching were So-and-so.

(2) Tosef. Naz. III.

(3) Thus in R. Judah's view unless the vow is free from all doubt it does not become operative. Tosef. Naz. II. Cf., however, Ned. 192, where the view of R. Judah here, and R. Judah on behalf of R. Tarfon and held by R. Ashi to be identical.

(4) I.e., in the Mishnah.

(5) The Rabbis were uncertain whether the Koy, an animal permitted for food, should be considered of the genus cattle, בהמה or a beast of chase, חיה. V. Aruch s.v. כוי. [It is generally taken as a cross between a goat and some species of gazelle; v. Lewysohn, op. cit. p. 215.]

(6) By using different formulae and making the vow contingent on the Koy being a beast of chase or cattle.

(7) I.e., one man can undertake nine naziriteships by using different formulae with reference to the Koy.

(8) As described in our Mishnah.

(9) For the first six formulae could all be uttered by one man.

(10) Referring to nine men who had each undertaken a naziriteship in the manner of the Mishnah.

(11) I.e., 'I undertake a naziriteship for each one of you who is a nazirite.

(12) To form a total of an olive's bulk in the case of solids, or as the earlier Mishnah has it, a quarter of a 108 in the case of fluids, for the consumption of which there is a penalty, viz. stripes. (Meiri's interpretation of a very difficult passage).

Talmud - Mas. Nazir 34b

[OR,] ACCORDING TO THE EARLIER MISHNAH,[1] UNLESS HE DRINKS A QUARTER [OF A LOG][2] OF WINE. R. AKIBA SAID THAT THERE IS A PENALTY EVEN IF HE SOAKS HIS BREAD IN WINE AND ENOUGH [is ABSORBED] TO MAKE UP ALTOGETHER[3] AN OLIVE'S BULK.[4]

THERE IS A SEPARATE PENALTY FOR WINE, FOR GRAPES, FOR HARZANIM AND FOR ZAGIM.[5] R. ELEAZAR B. AZARIAH SAID: THERE IS NO PENALTY [IN THE CASE OF THE LAST TWO SPECIES] UNLESS HE EATS TWO HARZANIM AND ONE ZAG.

BY HARZANIM AND ZAGIM ARE MEANT THE FOLLOWING. ACCORDING TO R. JUDAH, HARZANIM MEANS THE OUTER PORTION [OF THE GRAPE].[6] ZAG THE INNER PORTION,[7] BUT R. JOSE SAID: THAT YOU MAY NOT ERR, [THINK OF] THE ZOG [BELL] OF AN ANIMAL,[8] OF WHICH THE OUTER PART IS TERMED THE ZOG [HOOD].[9] AND THE INNER PART THE INBAL [CLAPPER].

GEMARA. THREE THINGS ARE FORBIDDEN TO A NAZIRITE, VIZ.: RITUAL DEFILEMENT etc.: Products of the vine are [forbidden] but not the vine itself, so that our Mishnah differs from R. Eleazar, for it has been taught: R. Eleazar said that even leaves and shoots [of the vine] are included [in the things forbidden to a nazirite].

Some draw the inference[10] from the subsequent clause, viz.: WHILST THERE IS NO PENALTY UNLESS HE EATS AN OLIVE'S BULK OF GRAPES. GRAPES only [carry a penalty] but not the vine itself, so that our Mishnah differs from R. Eleazar, for it has been taught: R. Eleazar said that even leaves and shoots are included.

In what [essentially] does the difference [between R. Eleazar and the Rabbis of our Mishnah] lie?-R. Eleazar interprets [certain scriptural passages as consisting of] 'amplifications and limitations,'[11] whilst the Rabbis interpret [them as] general statements and specifications.[12] R. Eleazar [argues as follows:] He shall abstain from wine and strong drink[13] is a limitation,[14] whilst, Nothing that is made of the grape-vine[15] is an amplification. When a limitation is followed by an amplification all things are embraced.[16] What then does the amplification serves to include [here]? Everything [coining from the vine],[17] and what does the limitation exclude? Only the twigs.

The Rabbis, on the other hand, [argue as follows:] 'He shall abstain from wine and strong drink' is

a specification;[18] '[He shall eat] nothing that is made of the grape-vine' is a general statement; 'from the pressed grapes even to the grape-stone'[19] is again a specification. When we have a specification, a generalisation, and a [second] specification, only what is similar to the specification may be adjudged [to be within the scope of the prohibition]. In the specification fruit[20] and fruit refuse[21] are particularised, and so whatever is fruit[22] or fruit refuse [is prohibited].[23] Should you object that in the specification ripe fruit is particularised, and so only what is ripe fruit [is prohibited],[24] the reply is that [in this view] nothing would be left implicit in Scripture, everything being explicitly mentioned.[25] Fresh grapes and dried grapes are mentioned, as are also wine and vinegar. It follows that the inference must be drawn not in the latter form,[26] but in the first form. Again, seeing that we finally include everything [similar to fruit or fruit refuse], for what purpose is 'from pressed grapes even to the grape-stone mentioned [separately from the other specification]?[27] To tell us that wherever a specification is followed by a general statement it is not permissible to extend [the terms of the specification] so as to include only whatever is similar to it, but the general statement widens the scope of the specification,[28] unless Scripture indicates the specification in the manner in which it is indicated in the case of the nazirite.[29]

The Master said: 'In the specification fruit and fruit refuse are particularised, and so whatever is fruit or fruit refuse [is prohibited].' 'Fruit' means grapes, but what is 'fruit refuse'? — Vinegar. What is meant by 'Whatever is fruit'? — Unripe grapes. And by 'whatever is fruit refuse'? — R. Kahana said that this serves to include worm-eaten grapes.[30] [And what is the significance of] 'even to the grape-stone'?[31] Rabina said that this serves to include the intermediate part.[32]

The Master said: 'Should you object that in the specification raw ripe fruit is particularised, and so only what is ripe fruit [is prohibited], the reply is that [on this view] nothing would be left implicit in Scripture, everything being explicitly mentioned. Fresh grapes and dried grapes are mentioned, as are also wine and vinegar. It follows that the inference must be drawn not in the latter form, but in the first form. Again, seeing that we finally include everything [similar to fruit or fruit refuse], for what purpose is from pressed grapes even to the grape-stone mentioned [separately from the other specification]? To tell us that wherever a specification is followed by a general statement it is not permissible to extend [the terms of the specification] as as to include only whatever is similar to It, but the general statement widens the scope of the specification, unless Scripture indicates the specification

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(1) [Or 'First Mishnah', a collection of Halachoth the compilation of which began according to Geonic accounts as early as Hillel and Shammai; v. Sanh. (Sonc. ed.) p. 163, n. 7.]

(2) A quarter of a log is between 50 and 60 c.c. (== the bulk of one and a half average-sized eggs).

(3) I.e., along with the bread.

(4) According to R. Akiba, an olive's bulk (less than 10 c.c.) carries with it a penalty in the case of liquids.

(5) There is no need to consume more than one variety to incur the penalty. All four species are mentioned in Num. VI, 3-4. harzanim being usually translated 'pressed grapes' and zag, 'grape-stone', following the opinion of R. Judah given later in the Mishnah.

(6) The skin.

(7) The stone.

(8) The bell suspended at the animal's neck.

(9) And so, too, zag of a grape is its skin.

(10) That our Mishnah and R. Eleazar differ.

(11) Ribbni u-Mi'ut. I.e., as consisting of clauses that amplify and clauses that restrict.

(12) Kelal u-ferat. The significance of these technical terms will become clearer in the argument set out below. For a full explanation of these terms, v. Shebu. (Sonc. ed.) p. 12, n. 3.

(13) Num. VI, 3.

(14) The things prohibited are confined to the things mentioned.

(15) Num. VI, 3. Lit., Of everything that is made . . he shall not eat.

(16) I.e., the scope, in this case of the prohibition, is as wide as possible, the restriction serving merely to exclude some one thing, here the twigs.
(17) And so also the leaves and the shoots.
(18) Of the things forbidden.
(19) Num. VI, 4; the concluding half of the last verse quoted.
(20) Grapes and wine.
(21) Vinegar.
(22) Including unripe grapes.
(23) Worm-eaten grapes.
(24) And thus unripe grapes would be excluded.
(25) I.e., there is no form of ripe fruit different from those mentioned in the verses quoted.
(26) Restricted to ripe fruit.
(27) I.e., why does not the whole specification precede the generalisation.
(28) And includes also things not similar to the specification.
(29) With the general statement interrupting it.
(30) That went bad before they ripened.
(31) In Num. VI, 3.
(32) What remains of the flesh after the wine has drained off.

in the manner in which it is indicated in the case of the nazirite.

Now, R. Eleazar b. Azariah utilises the clause, 'from the pressed grapes even to the grape stone' for the inference that there is no penalty unless he eats two pressed grapes and one grape-stone.[1] Where does he find a [second] specification?[2] -He will agree with R. Eleazar who interprets [the passage as a clause that] amplifies [followed by a clause] that limits.[3] Alternatively, it can be argued that he agrees with the Rabbis, for [he might say] if [the sole object of this clause were the inference] of R. Eleazar b. Azariah, the Torah could have included, 'from the pressed grapes even to the grape-stone' with the other items specified.[4] Why then does it appear after the general statement? To show that the text is to be construed as a general statement followed by a specification. But why should not this be its sole object?[5] If this were so, the verse should have read either 'pressed grapes and grape-stones [with both words in the plural] or 'pressed grape and grape-stone [with both in the singular]. The reason why the All-merciful says, 'from the pressed grapes even to the grape-stone' can only be that we should both interpret as a general statement followed by a specification and infer [that there is no penalty] unless he eats two pressed-grapes and one grape-stone.

Now R. Eleazar interprets [the text as consisting of] a clause that amplifies and a clause that limits. Where then does he find [in the Scripture the typical example of] specification, general statement and second specification?-R. Abbahu said that he finds it in the following verse. If a man deliver unto his neighbour an ass, or an ox, or a sheep,[6] is a specification; or any beast is a generalisation; to keep is a further specification[7] and so we may infer only what is similar to the specification.[8]

Raba said that [R. Eleazar] could find one in the following verse. And if [his offering] be of [the flock][9] is a specifications the flock a general statement, and [whether of] the sheep, [or of] the goats a further specification, and so we may infer only what is similar to the specification.[10]

Rab Judah of Diskarta[11] asked Raba: Why should not [R. Eleazar] find it in the following verse? [Ye shall bring your offering] of[12] is a specification the cattle [beasts] a general statement, and [of] the herd [or of] the flock a further specification, and so only what is similar to the specification can be inferred?[13] — He replied: This is not a clear case, for if [he inferred it] from there it could be

argued that [in the expression] ‘the cattle’,

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(1) V. our Mishnah supra.

(2) To be able to continue the argument as the Rabbis do.

(3) In R. Eleazar's argument no second specification is needed.

(4) In the verse preceding.

(5) Leaving no room for R. Eleazar b. Azariah's further ruling.

(6) As a bailment. Ex. XXIII, 9.

(7) For it excludes beasts of prey which cannot be ‘kept’, i.e. guarded.

(8) Domestic animals of any kind and also poultry.

(9) Lev. I, 10. The inference depends on the Hebrew construction which could have read ‘And if flock’, so that the expression ‘of the flock’ does limit the choice permitted.

(10) In this example it is not clear from the verse what is excluded. An animal that had been worshipped as a deity would be forbidden as a sacrifice, but the commentators differ as to whether Raba could have had this in mind.

(11) [Deskarah, sixteen parasangs N.E. of Bagdad Obermeyer op. cit. p. 146.]

(12) Lev. 1, 2. (V. note 4).

(13) Viz.: domestic clean animals, though the age would be immaterial.

cattle includes beasts of chase.[1] — [Rab Judah] retorted: Could beasts of chase be included In ‘cattle’ [in this instance]? For ‘the herd and the flock’[2] are mentioned, making in fact a specifications a general statement, and a specifications and only what is similar to the specification can be inferred![3]

How do we know that [the rule] is correct?[4] -It has been taught: And thou shalt bestow the money for whatsoever thy soul desireth[5] is a general statement, for oxen or for sheep or for wine or for strong drink a specification, and or for whatsoever thy soul asketh of thee a further general statement, making a general statement, a specification and a second general statement. Only what is similar to the specification may be inferred,[6] and so because the specification particularises the product of that which is itself a product ,[7] whose sustenance is drawn from the earth ,[8] whatever is a product of a product-bearing species that draws its sustenance from the earth [may be purchased].[9]

Seeing that when there is a general statement, a specifications and a general statement, we infer whatever is similar to the specification, what is then the function of the second general statement? It is to add whatever resembles the things specified.[10] Again, seeing that when there is a specifications a general statement, and a specifications what is similar to the specification is inferred, what is the purpose of the second specification? — But for its presence it would be said that it is a case of general statement being added to the [first] specification.[11] Further, seeing that both when there are two general statements [separated by] a specification and when there are two specifications [separated by] a general statement, what is similar to the specification is inferred, what then is the difference between the two cases? — It is that whereas in the former case we include even things that resemble the specification In one respect only,[12] in the latter case we include only what resembles [the specification] in two respects, but not what resembles it in one respect.[13]

Seeing that when a specification is followed by a general statement, the general statement supplements the specification, all things being included, and again when a limitation is followed by an amplifying clause, this amplifies to the fullest extent, all things being included, what then is the difference between [the two cases]? — The difference is that whereas in the case of a specification followed by a general statement, both shoots and leaves [say],[14] would be included, in the case of a limitation followed by an amplifying clause, Only the shoots, but not the leaves [would be included].[15] R. Abbahu said: R. Johanan said that what is permitted is not reckoned together with

what is forbidden[16] in the case of any prohibition of the Torah with the exception of the prohibitions of the nazirite where the Torah says explicitly, [Neither shall he drink] that which is soaked in grapejuice.[17]

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(1) And so the second specification is in any case necessary to exclude these, and we cannot use it to derive the method of specification etc.

(2) Which are domestic clean animals and not beasts of chase, and their mention serves to exclude beasts of chase.

(3) Thus beasts of chase would be automatically excluded by the operation of the rule, so that the rule can be applied.

(4) Viz.: that when there is more than one specification, whatever is similar can be inferred (Rashi).

(5) Deut. XIV, 26, referring to money converted from the second tithe.

(6) Thus the presence of a second generalisation alters the rule that applies when there is a single clause of each kind. The same is taken to be true when there is a second specification.

(7) Mineral substances are thus excluded.

(8) In contrast to fish.

(9) E.g., poultry also.

(10) Without the second general statement, only the things actually specified would be included in the scope of the subject under discussion.

(11) [In which case the rule is that even things that do not resemble the specification are included.]

(12) E.g., in the case of the second tithe we do not also require the thing purchased to be attached to the soil and so exclude poultry.

(13) And so, for example, vine shoots are not forbidden the nazirite although they may be edible.

(14) This is not referring to any particular case, but is simply an illustration of how the difference might arise.

(15) V. Shebu. (Sonc. ed.) p. 12, n. 3.

(16) I.e., there is no penalty unless a full olive's bulk of the forbidden food is consumed. Thus half an olive's bulk of forbidden fat and half of permissible meat would entail no penalty.

(17) E.V. ‘liquor’. Num. VI, 3. Hence an olive's bulk of, e.g., bread soaked in wine carries the penalty.

Talmud - Mas. Nazir 36a

Ze'iri said: Another [exception] is leaven which it is prohibited to burn [on the altar] .[1] According to whom [will Ze'iri infer this? Evidently] after the manner of R. Eleazar who interprets the particle kol [any].[2] But then should not another exception be leaven [on passover]?[3] — Quite so. But [Ze'iri wished to indicate his] dissent from the opinion of Abaye that the burning of even less than an olive's bulk counts as an offering,[4] and so he [incidentally] tells us that the burning of less than an olive's bulk does not count as an offering.[5]

As R. Dimi was once sitting and repeating the above reported decision [of R. Johanan][6] Abaye raised the following objection. [A Mishnah says:] If part of a stew of terumah[7] containing garlic and oil of hullin[8] is touched by a [defiled person who] had bathed that day,[9] the whole is rendered unfit [to be eaten].[10] If part of a stew of hullin containing garlic and oil of terumah is touched by a [defiled person who] had bathed that day, only that part that was touched becomes unfit [to be eaten].[11] Now, in discussing this it was asked why the part touched should become unfit[12] and Rabbah b. Bar Hanah quoting R. Johanan replied: The reason is that a layman[13] would be scourged for eating an olive's bulk.[14] Surely this

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(1) Lev. II, 11.

(2) Ibid. ‘any leaven’ as a sign that even in combination it is forbidden, with the full penalty for transgression.

(3) For here R. Eleazar explicitly makes this interpretation of kol, (v. Pes. 43b), and so why does not Ze'iri mention it.

(4) So that even if the total bulk burnt is less than an olive, there is a penalty. V. Men. 58a.

(5) Although not all the olive's bulk need be leaven. That leaven on passover is another exception we are expected to infer.

(6) That what is permitted does not combine with what is forbidden.

(7) The priestly heaveoffering (v. GIos.). It had to be kept in ritual purity.

(8) 'Profane food' i.e. not terumah.

(9) And would become ritually pure after sunset. Although counted as clean for many purposes he could still defile terumah.

(10) Including the garlic and the oil, which are regarded as though absorbed in the terumah.

(11) Teb. Y. II, 3.

(12) Seeing that hullin predominates.

(13) A non-priest who is forbidden to eat terumah.

(14) Thus the predominance of hullin does not take away the sacred character of the terumah contained in the mixture.

Talmud - Mas. Nazir 36b

is because permitted food combines with forbidden?[1] — [R. Dimi] replied: No! [What R. Johanan means] by an olive's bulk is that an olive's bulk [of actual terumah][2] would be consumed during the time taken to eat a peras.[3] [Abaye objected:] Is then the time taken to eat a peras [reckoned] as a meal by the Torah?[4] — [R. Dimi] replied: It is. Then, [Abaye asked], why do the Rabbis differ from R. Eleazar as regards Babylonian kutah?[5] [R. Dimi] replied: Let Babylonian kutah alone,[6] since there is no olive's bulk [of leaven] consumed in the time it takes to eat a peras. For if a man does gulp down [a large quantity] at once, we disregard such a fancy as being quite exceptional,[7] whilst if one merely dips [other food] into it, you will not find an olive's bulk [of the leaven] consumed in the time taken to eat a peras.[8]

He [Abaye] raised objection against [R. Dimi's ruling from the following passage]. [It has been taught:] If two [spice] mortars, one containing terumah and the other hullin stood near two pots, one containing terumah and the other hullin, and [the contents of] the first pair fell into the other pair,[9] both [dishes] may be eaten,[10] for we assume that hullin fell into hullin and terumah into terumah. Now if it is a fact that the consumption of an olive's bulk within the time taken to eat a peras is [prohibited by] the Torah, why do we make this assumption?[11] — But if, [granting your view, replied R. Dimi] permitted and forbidden foods combine, how again could the assumption be justified?[12] The fact is that no argument can be based on the terumah of spices, [for its sanctity is the result] of a rabbinic enactment.[13]

He [Abaye] raised a [further] objection. [It has been taught:] If two baskets, one containing terumah and the other hullin stood near two vessels,[14] one of terumah and the other of hullin and the former pair were tipped into the latter, both are permitted, for we assume that hullin fell into hullin and terumah into terumah.[15] Now if it is a fact that an olive's bulk consumed within the time taken to eat a peras is [prohibited by] the Torah, how can we make such an assumption?

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(1) Seeing that scourging is the penalty for eating an olive's bulk of the mixture.

(2) Not of the mixture.

(3) Lit. 'piece', a piece of bread equal in size to four average eggs. This interval constitutes a single meal (Ker. III, 3). Since the quantity of terumah contained in the amount of stew eaten in this interval was an olive's bulk, there would be a penalty of scourging for a layman. [According to Maimonides, Yad, Erubin I, 9, peras is equal to three average 'eggs'].

(4) So that stripes would be inflicted even if other food is taken in the same interval.

(5) A preserve of sour milk, bread crusts and salt used as a source. R. Eleazar considered it to be prohibited on Passover by the Torah, so that its consumption entailed a penalty, whilst the Rabbis considered it to be forbidden only by rabbinic decree; v. Pes. 43a.

(6) For if indeed permitted and forbidden foods combined, you would be still harder put to it to explain why the Rabbis would not consider it forbidden by the Torah-law! (So the text in yes. 44a).

(7) Because ordinary people do not use it as a food, his eccentric eating of it is not treated as eating to entail a penalty.

(8) And so it is only forbidden by rabbinic decree.

(9) Without it being known which was tipped into which.

(10) I.e., the dish of hullin may still be eaten by a layman.
(11) Since a mixture of terumah and hullin would be forbidden in Torah-law, our doubt concerning the dishes should be resolved (as it always is in cases of Torah-law) in the stricter sense, and both declared terumah.
(12) For then the doubt would certainly be concerned with Torah-law, so that both dishes should be forbidden.
(13) The Torah does not require terumah to be separated from spices. Hence the doubt concerns only what is forbidden by the Rabbis and so is resolved in the more lenient sense.
(14) Heb. Sa'in, plural of Sa'ah, a large dry measure, here assumed to contain grain.
(15) Tosef. Ter. VI, 15.

Talmud - Mas. Nazir 37a

On my view that what is permitted and what is forbidden combine fin general], this will offer no difficulty, for it may be taken for granted that hullin predominated;[1] whereas on your view [that there is a prohibition whenever] an olive's bulk is consumed within the time taken to eat a peras, what difference would the predominance of hullin make?[2] — [R. Dimi] replied: Do not seek to argue from terumah at the present time, for [its sanctity] is rabbinic.[3]

Abaye asked [R. Dimi]: What ground is there for assuming that the purpose of the phrase 'soaked in'[4] is to indicate that what is permitted and what is forbidden combine,[5] for may not its purpose be to indicate that the taste is equivalent to the substance itself?[6] (Is not this curious? First Abaye is perplexed by R. Dimi's statement[7] and points out all the above contradictions, and then he suggests that perhaps, after all, the flavour is equivalent to the substance![8] — After [R. Dimi] had answered him,[9] he went on to suggest that perhaps its purpose is to indicate that the taste is equivalent to the substance itself.)[10] For it has been taught: The phrase 'soaked in' makes the taste equivalent to the substance itself, so that if [the nazirite] soaked grapes in water and this acquired the taste of wine, there would be a penalty [for drinking it].[11] From this case, an inference may be drawn applicable to all prohibitions of the Torah. For seeing that in the case of the nazirite where the prohibition is not permanent,[12] where he is not forbidden to derive any benefit [from wine],[13] and where he may even have the prohibition removed,[14] the taste was declared to be equivalent to the substance, then in the case of mixed seeds in the vineyard[15] where the prohibition is permanent, where it is forbidden to derive any benefit from them, and where there is no way in which the prohibition can be removed it surely follows that the flavour is to be equivalent to the substance itself. The same argument applies to Orlah[16] which has two [of these properties].[17] — [R. Dimi] replied:[18] The above represents the view of the Rabbis, whereas R. Abbahu, in making his statement [on behalf of R. Johanan],[19] was following the opinion of R. Akiba. To what [statement of] R. Akiba [does this refer]? Shall I say that it is the [dictum of] R. Akiba to be found here [in our Mishnah] where we learn: R. AKIBA SAID THAT THERE IS A PENALTY EVEN IF HE SOAKS HIS BREAD IN WINE AND ENOUGH [IS ABSORBED] TO COMBINE INTO AN OLIVE'S BULK;[20] But whence [do you know that the olive's bulk includes the bread eaten]?[21] May it not mean that the wine alone must be an olive's bulk! And should you object that the statement would then be obvious?[22] [To this we may reply] that its object is to indicate dissent from the opinion of the first Tanna[23] [that there is no penalty] Unless he drinks a quarter [of a log] of wine! It must therefore be the [statement of] R. Akiba to be found in the following Baraitha where it is taught: R: Akiba said that a nazirite who soaks his bread in wine and eats an olive's bulk of the bread and wine is liable [to the penalty]. R. Aha, the son of R. Iwia, asked R. Ashi: Whence will R. Akiba, who interprets the phrase 'whatever is soaked in' as implying that permitted and forbidden foods combine, derive the rule that the taste is equivalent to the substance itself?[24] — He can derive it from [the prohibition of] meat and milk [seethed together],[25] for there is no more than the mere taste in that case[26] and yet it is forbidden, whence we may infer that the same is true here.[27] The Rabbis do not allow this inference to be made from meat and milk because it is an anomalous [prohibition].[28]

What constitutes its anomaly? Shall I say it is the fact that each constituent is permitted separately,

while the combination is forbidden? Surely also in the case of mixed [seeds][29] each constituent is permitted separately and the combination is forbidden![30] — It is, therefore, the fact that If soaked in milk all day long, [the meat] remains permitted, and yet on seething it becomes forbidden.[31]

Must not R. Akiba, too, agree that [the seething together of] meat and milk is an anomalous [prohibition]?[32] — It must therefore be

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(1) So that there would no longer be a Torah-prohibition, for the predominance of the hullin causes the terumah to lose its identity in Torah-law. This argument could not be used of spices since its flavour which permeates the whole dish is too strong to become neutralised.

(2) For it is unlikely that the Baraitha is assuming that there was so little in the baskets that a peras of the mixed contents afterwards contained less than an olive's bulk of the contents of one of them. The Torah-doubt would therefore remain.

(3) After the destruction of the Temple and the depopulation of Judea, many scriptural precepts, including the separation of tithes and terumah were still observed by the people, although not strictly binding on them in Torah law.

(4) V. supra p. 128, n. 6.

(5) In the case of the nazirite prohibitions only, as asserted by R. Dimi quoting R. Johanan. V. supra 35a, end.

(6) I.e., anything flavoured with a forbidden substance is equally forbidden, even as the forbidden substance itself. [That is, provided the forbidden substance consisted originally of the size of an olive. This requirement distinguishes Abaye's principle from the one reported by R. Dimi in virtue of which what is permitted combines with what is forbidden, even though the Iatter is less in size than an olive's bulk.]

(7) And considers that the same should be true of all prohibitions, not merely the nazirite prohibition.

(8) Thus rejecting the inference in toto!

(9) All the questions he put to him.

(10) The bracketed passage is an interjection.

(11) And so why does not R. Johanan make the same inference as the author of this Baraitha? The rest of the paragraph contains the concluding portion of the Baraitha.

(12) But lasts as long as the naziriteship, which may be as little as thirty days.

(13) He may, for example, sell it.

(14) By giving sufficient grounds for this to a Sage.

(15) It was forbidden to sow grain between the vines, v. Deut. XXII, 9.

(16) The fruit of a tree during its first three years after planting, v. Lev. XIX, 23.

(17) The prohibition is permanent, and it is forbidden to derive any benefit from it, but after the 3rd year the fruit may be eaten. — This ends Abaye's argument.

(18) [So Var. lec. Cur. edd.: ‘A certain scholar said to him’.]

(19) Supra 35b, that permitted and forbidden foods combine in the case of the nazirite prohibition.

(20) Supra 34b.

(21) To enable us to infer that permitted and forbidden foods combine.

(22) In which case there would have been no point in having it in the Mishnah.

(23) The Tanna of the ‘earlier Mishnah’ mentioned in our Mishnah.

(24) It is assumed that R. Akiba admits this rule.

(25) V.Ex. XXIII, 19.

(26) Since the meat by itself is forbidden owing to the taste of the milk it absorbed.

(27) I.c., that water having the taste of wine is forbidden the nazirite.

(28) And 50 cannot be made the basis of a general rule.

(29) The planting of mixed seeds in a vineyard, v. Deut. XXII, 9.

(30) So that milk and meat are not unique in this respect.

(31) Thus it is not the taste but the seething that is at the root of the prohibition.

(32) From which no analogies can be drawn.

that he derives the rule from the [necessity for] scalding the vessels of a Gentile.[1] For the

All-Merciful Law has said, Everything that may abide the fire [ye shall make go through the fire etc,][2] telling us that they are [otherwise] forbidden. Now the scalding of a Gentile's vessels [must be done] because the mere taste is forbidden, and so here too, the same is true.

Then why should not the Rabbis also infer this rule from the scalding of a Gentile's vessels? — [Rab Ashi] replied: There [too] the prohibition is anomalous for everywhere else in the Torah whatever imparts a worsened flavour is permitted,[3] whereas in the case of the scalding of a Gentile's vessels a worsened [flavour][4] is forbidden.

Must not R. Akiba agree that this case is anomalous?[5] — R. Huna b. Hiyya replied: According to R. Akiba, the Torah only forbade utensils that had been used [by a gentile] on the same day, in which case the flavour is not detrimental.[6] And the Rabbis? — They considered that even with a pot that had been used on the same day it was impossible for the flavour not to be slightly detrimental. R. Aha, the son of R. Iwia, said to R. Ashi: The Rabbis' opinion should throw a certain light on the views of R. Akiba. For the Rabbis say that [the phrase] 'whatever is soaked in' has as its object to indicate that the taste is equivalent to the substance itself, and [further] that a rule may be derived from this applicable to all prohibitions of the Torah. And so, ought not R. Akiba also, who interprets this same [phrase] 'whatever is soaked in' as implying that what is permitted combines with what is forbidden, infer [further] from it a rule applicable to all prohibitions of the Torah?[7] [R. Ashi] replied: [He does not do so] because the nazirite and the sin-offering[8] are dealt with in two verses [of Scripture] from which the same inference[9] is possible, and whenever there are two verses from which the same inference is possible no other cases may be inferred.[10]

The nazirite [passage] is the one just explained.[11] What is [the inference from] sin-offering? It has been taught: [The verse] Whatsoever [food] shall touch the flesh thereof[12] shall be holy[13] might be taken to imply that [it becomes holy] even if none [of the sin-offering] is absorbed by it.[14] Scripture [however] says the flesh thereof, [this indicates that it becomes sacred] only when It absorbs from its flesh;[15] 'it [then] shall be holy', [that is, have the same degree of sanctity] as [the sin-offering] itself.[16] If the latter is ritually unfit [to be eaten][17] the other becomes unfit also, whilst if it is still permitted, the other is also permitted, only under the same conditions of stringency [as the sinoffering].[18]

What can the Rabbis [say to this argument]?[19] — They will contend that both verses are necessary.[20] For if the All-Merciful had inscribed only the verse relating to the sin-offering it would have been said that we have no right to infer from it the case of the nazirite, for we could not infer anything about the nazirite from [regulations applying to] sacrificial meats.[21] Again, had the All-Merciful inscribed only the verse relating to the nazirite, It could have been argued that no rule can be derived from the nazirite, since the prohibitions in his case are very severe indeed for he is forbidden even the skin of the grape. On this ground we should have been able to infer nothing. [Thus both verses are necessary.]

What is R. Akiba's reply [to this argument]? — He will reply that both verses are certainly not necessary. Granted that had the All-Merciful inscribed only the verse relating to the sin-offering, we could not have deduced the case of the nazirite because what is profane cannot be inferred from [regulations applying] to sacrificial meats,[22] yet the All-Merciful could have inscribed only the verse relating to the nazirite, and the case of the sin-offering could have been deduced from this, since [in any case] all other prohibitions of the Torah are inferred from the nazirite prohibition.[23] And the Rabbis? — They [can] reply that while the [verse relating to] sin-offering [tells us] that permitted and forbidden foods combine, we cannot infer from [regulations applying to] sacrificial meats any rule concerning profane food,[24] [whereas] when the phrase 'whatever is soaked in' tells us that the taste is equivalent to the substance itself, a rule is inferred from this applicable to all prohibitions of the Torah. And R. Akiba? — He considers that both verses are intended to tell us that what is

permitted combines with what is forbidden, so that these are two verses from which the same inference can be made, and when two verses occur from which the same inference can be made, no other cases may be inferred.[25] R. Ashi said to R. Kahana: How are we to explain the following, where it is taught: '[The verse] Nothing that is made of the grape-vine, from the pressed grapes even to the grape-stone,[26] teaches that the things forbidden to a nazirite can combine together'?[27] For seeing that it is possible, according to R. Akiba, for what is permitted to combine with what is forbidden, need we be told that the same is true of two species of forbidden substances? — [R. Kahana] replied: What is permitted [combines with] what is forbidden only [if they are eaten] together, whereas two species of forbidden substances combine even [if eaten] consecutively.

Now R. Simeon

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(1) Before they can be used by Jews.

(2) Referring to the vessels captured by the Jews during the campaign against Midian. Num. XXXI, 23. The scalding prescribed causes the sides of the vessel to exude forbidden flavours that may have been absorbed.

(3) And consequently does not cause what is permitted to become forbidden. For the derivation of this rule v. A.Z. 67b.

(4) Any flavour exuded from the sides of a cooking-utensil nor properly scalded of course worsens the food.

(5) And so bow can it form the basis of our rule.

(6) And we may properly infer that the flavour of a forbidden substance is forbidden.

(7) Whereas R. Johanan, who is following the opinion of R. Akiba, expressly confines the rule to nazirite prohibitions only; v. supra 35b.

(8) This is explained immediately below.

(9) Viz.: That a permitted and a forbidden substance combine.

(10) Ordinarily a rule is derived from a single passage. If another passage occurs from which exactly the same rule would follow, it can only be because there is in fact no rule, and both the cases are exceptional; v. Sanh. (Sonc. ed.) p. 458, n. 9.

(11) Whatever is soaked in... Num. VI, 3-

(12) I.e. of the sin-offering.

(13) Lev. VI, 20.

(14) The meaning is: It might have been taken as implying this if the word flesh had not been used.

(15) In which case the permitted and forbidden foods have combined. R. Akiba's deduction now follows. [The text of cur. edd. is difficult. A better reading is preserved in the Sifra a.l. 'till it absorbs', omitting the words, 'into its flesh.]

(16) The sin-offering could be eaten only 'by the males of the priesthood, within the hanging of the court, the same day and evening until midnight'. (M. Zeb. V, 3; Singer's P. B. p. 12). For other meats there were other, often less stringent regulations. (Ibid.).

(17) E.g. because it is after midnight.

(18) See note 10.

(19) If the verses relating to nazirite and sin-offering both lead to the same inference how do they establish their rule about taste and substance?

(20) I.e. That it is in fact impossible to infer the rule from either one of the passages taken alone, since its presence would have been put down to other properties of the sinoffering or the nazirite, which are really irrelevant as far as the rule is concerned.

(21) Since no rule about profane things can be inferred from sacred ones. This is a general principle.

(22) So that the inference that could be drawn from the sin-offering is admittedly not exactly the same as that drawn from the nazirite prohibitions

(23) By the Rabbis. For no mention of the sin-offering is made in the Baraitha (supra 37a). Thus this verse would be altogether superfluous, and the principle of 'two verses from which the same inference can be drawn' can be applied.

(24) And so this principle is confined to sacred meats.

(25) And that is why R. Akiba confines the principle to the nazirite prohibitions.

(26) Num. VI, 4.

(27) So that provided an olive's bulk is consumed there is a penalty, even if the quantity of each constituent is less than this.

does not require the principle of combination.[1] What interpretation does he put on the verse, 'Nothing that is made etc.'? — He requires it for the rule that one cannot become a nazirite without undertaking explicitly to abstain from all the things [that are forbidden a nazirite].[2]

R. Abbahu, quoting R. Eleazar, said: In none of the instances In the Torah requiring a quarter [of a log][3] does what is permitted combine with what is forbidden, with the exception of the quarter [of a log] of the nazirite, where the Torah uses the phrase 'soaked in'.[4] What is the difference between R. Johanan[5] and R. Eleazar? — It is that the former includes solid foods,[6] the latter liquids only but no other things. R. Eleazar said that there are ten quarters [of a log][7] and R. Kahana knew for a fact[8] that five [involved] red [liquids][9] and five white.[10] For the five red ones [there is the following mnemonic]:[11] A nazirite and a celebrant of the passover who delivered judgment in the sanctuary and died. 'A nazirite' indicates the quarter [log] of wine [entailing a penalty] for the nazirite [who drinks it].[12] 'A celebrant of the passover' refers to the following dictum quoted by Rab Judah on behalf of Samuel viz: — Each of these four cups[13] should contain sufficient [undiluted wine] to make a quarter of a log [of diluted wine].[14] 'Who delivered judgment' [refers to the law that] one who has partaken of a quarter of a log of wine must not render a decision.[15] 'In the sanctuary [refers to the law that a priest] who drinks a quarter of a log of wine and then enters the sanctuary renders himself liable to death penalty.[16] 'And they died' [indicates the following teaching]: For it has been taught, whence do we infer that a quarter of a log of blood taken from two corpses renders unclean the contents of a tent? Because it is said, Neither shall he go to any dead body.[17]

The five white [fluids are indicated in the following mnemonic]: The cake of a nazirite or a leper who were disqualified on the Sabbath. 'The cake' [signifies] the quarter of a log of oil for the cake;[18] 'of a nazirite', the quarter of a log of oil [that must be brought] by a nazirite;[19] 'or a leper,' the quarter of a log of water [that must be used] for a leper.[20] 'Disqualified' [indicates] what we have learnt: Other ritually defiled liquids render the body unfit[21] if a quarter of a log [is partaken of].[22] 'On the Sabbath' [indicates] what we have learnt: For all other liquids [the legal quantity][23] is a quarter of a log, and for all waste liquids [the legal quantity] is a quarter of a log.

But is there no instance other than [the ten mentioned, requiring a quarter of a log?] There is surely the case: 'With a quarter [of a log of water] the hands of one person, and even of two may be washed [before food]'![24] Disputed cases are not included.[25] But we have [also the following case]: He brought an earthenware phial and poured into it half a log of water from the laver.[26] According to R. Judah it was only a quarter of a log'?[27] — Disputed cases are not included.

But we have [also the following]: 'How much water must be poured [into the chamber-pot]?[28] As little as one pleases. R. Zakkai said: It must be a quarter of a log'.[29] — Disputed cases are not included.

But there is also the ritual-bath?[30] — [There are ten cases] besides this one, for the Rabbis [subsequently] disallowed this quantity.[31]

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(1) Because in his opinion there is a penalty even for a minute quantity of any one of the things forbidden the nazirite. V. supra 4a.

(2) Supra 3b.

(3) E.g., The quarter-log of blood that spreads defilement throughout a tent; Cf. infra 54a.

(4) Num. VI, 3.

(5) Who uses the term 'all the prohibitions of the Torah' instead of 'all quarters (of a log) in the Torah'. Supra 35b.

(6) In the scope of the application of the principle.

(7) In ten instances the quantity of fluid required by the Law is a quarter of a log.
(8) Lit., 'held in his hand'.
(9) Wine or blood.
(10) Water or oil.
(11) Each term of the mnemonic indicates one of the instances.
(12) Mishnah supra 34b
(13) That must he partaken of at the passover meal; v. Pes. X, 1.
(14) Wine was usually diluted with three parts of water, v. Pes. 108b.
(15) Inferred from the juxtaposition of the forbidding of wine to priests about to enter the sanctuary (Lev. X, 9) and the statement that a priest's duty is to 'teach (lit., 'render decisions for') the children of Israel'. (Ibid. V, 11).
(16) M. Ker. III, 3, inferred from Lev. X. 9.
(17) Lev. XXI, 11. Heb. 'nafshoth' in the plural, and so two or more corpses, v. Sanh. 4a.
(18) I.e., the unleavened portion of the thankoffering, which required half of what was brought for the whole thank-offering. V. Lev. VII, 12 and Men. 8 (Tosaf).
(19) Num. VI, 15.
(20) Lev. XIV, 5.
(21) I.e., ritually unclean.
(22) V. Me'il. 17b. [There the reading is 'all liquids'. Our text is difficult to explain; cf. Bertinoro on Mik. x, 7.]
(23) The removal of which from a public to a private domain carries with it a penalty for breach of the Sabbath.
(24) Yad. I, 1.
(25) This is not a unanimous opinion, R. Jose contending that each person requires a quarter of a log (ibid.).
(26) The Mishnah is describing the preparation of the 'bitter waters' to be drunk by a faithless wife. V. Lev. V, 17.
(27) Sotah II, 2.
(28) To enable one to say one's prayers in the same room.
(29) Ber. 25b.
(30) A ritual-bath containing a quarter of a log might be used for dipping small vessels such as needles to remove ritual defilement; v. Pes. 17b.
(31) And enacted that only a full-size ritual-bath containing 40 seahs was to be used even for needles. V. Hag. 21b.

Talmud - Mas. Nazir 38b

WHILST THERE IS NO PENALTY UNLESS HE EATS AN OLIVE'S BULK OF GRAPES etc.:] The first Tanna[1] does not put all the things forbidden a nazirite on the same footing as drinking,[2] whereas R. Akiba, because of the verse nor eat fresh grapes nor dried,[3] says that just as in eating an olive's bulk [entails a penalty], so for all the prohibitions[4] an olive's bulk [is sufficient to entail a penalty].

THERE IS A SEPARATE PENALTY FOR WINE etc. Our Rabbis taught: [The verse,] 'Nor eat fresh grapes nor dried' indicates that there is a penalty for [eating] the one by itself, and a penalty for [eating] the other by itself.[5] From here a rule may be derived applicable to all prohibitions of the Torah.[6] Just as here where we have a single species [grapes] known by two different names [fresh and dried], each entails a distinct penalty, so wherever we find a single species known by two different names, each entails a penalty distinct from the other. In this way, new wine and grapes are included.[7]

Abaye said: For eating pressed-grapes [the nazirite] is scourged twice;[8] For eating grape-stones he is scourged twice; for eating both pressed-grapes and grape-stones he is scourged three times. Raba[9] said: He is scourged once only [in the first two cases] since we do not scourge for [breach of] the prohibition expressed in general terms.

R. Papa raised an objection: [It is taught] R. Eleazar said that a nazirite who drank wine all day long would be scourged once only. If, however, he was warned, 'Do not drink', and again 'Do not

drink', [and so on], there would be a penalty for each [warning]. If he ate fresh grapes, dried grapes, pressed-grapes, grape-stones, and squeezed a cluster of grapes and drank [the liquor] he would be scourged five times.[10] Now if [Abaye is right] he should be scourged six times, including once on account of 'He shall eat nothing [that is made of the grape-vine]'? — [Abaye replied:] He mentioned some and omitted others.[11] But what other [count] is omitted, that the one referred to[12] should have been omitted?[13] — He omitted, He shall not break his word.[14] Had this last, however, been the only one, it would not have been considered an omission,[15] [as it could be argued that R. Eleazar] mentioned only [those prohibitions] that are not found elsewhere, whereas this one is found in connection with ordinary vows too.[16]

Rabina of Parazikia[17] said to R. Ashi: But he has in any case omitted the intermediate portion of the grape![18] — But said R. Papa[19] [in reply to the various arguments advanced]: Five is not actually mentioned [in the Baraitha].[20] But [R. Papa]

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(1) I.e. the 'earlier Mishnah' of our text, which prescribes a different legal quantity for drinking (viz.: a quarter of a log) than for eating.

(2) And so in other cases an olive's bulk entails a penalty. Thus the first Tanna makes no use of the arguments of R. Akiba given later at all.

(3) Num. VI, 3, the first half of which is the prohibition against drinking.

(4) Including drinking.

(5) So that in eating both together there will be a double penalty.

(6) Tosaf. has the preferable reading 'all prohibitions of the nazirite'.

(7) Although the first can be obtained simply by squeezing the second, a nazirite who partakes of both is scourged twice.

(8) The general prohibition contained in the verse, 'He shall eat nothing that is made of the grape-vine' is held by Abaye to add one scourging to the total number entailed by eating forbidden substances.

(9) In Pes. 41b, where this controversy also occurs, the names are interchanged, Raba's appearing before the statement here attributed to Abaye. V. D.S. a.l

(10) Tosef. Naz. IV, 1. (Here there is a variation based on the Mishnah infra 42a).

(11) I. e. 'five' does not represent the total number of counts, but there are five scourgings in addition to others on counts not mentioned.

(12) Viz., The general prohibition 'He shall eat nothing etc.'

(13) It is assumed that the Tanna would not ordinarily omit one count only.

(14) Num. XXX, 3. There would be stripes for breach of this injunction also.

(15) And so its omission cannot be used as a counter argument against Raba (Tosaf). Aliter 'This is not an omission at all, for R. Eleazar etc.' so that the original contradiction remains.

(16) There is thus a good reason for its omission, and so no objection to its being the only one omitted. (Tosaf.)

(17) [Or Parazika, Farausag, near Bagdad, Obermeyer, p. 269. Var. lec. Raba of Parazikia, v. B.B. (Sonc. ed.) p. 15.]

(18) The pulp, which entails a separate penalty, (v. supra, 34b near end). This would be present in the squeezed cluster, so that there should be six counts apart from the other two.

(19) [Var. lec. Rabina; cf. n. 7.]

(20) The correct reading is '. . . he would be scourged on each count', so that both Abaye and Raba can interpret it to suit their opinions. Incidentally the objection of Rabina of Parazikia is also disposed of.

quoted the passage in contradiction [of Abaye] because of the five [scourgings], and if five is not mentioned in it, why did he quote it as a contradiction? — R. Papa said [to himself]: I imagined that [Abaye's opinion] was not a tradition [he had received], and so he would retract [on hearing my quotation], for I did not know that it was a tradition and that he would not retract.[1]

R. ELEAZAR B. AZARIAH SAID etc.: R. Joseph said: In agreement with whom is the rendering in the Targum[2] as 'from the kernels even unto the skins'?[3] — In agreement with the opinion of R.

Jose.[4]

MISHNAH. A NAZIRITESHIP OF UNSPECIFIED DURATION LASTS THIRTY DAYS.[5] SHOULD [THE NAZIRITE] POLL HIMSELF OR BE POLLED BY BANDITS,[6] THIRTY DAYS ARE RENDERED VOID.[7] A NAZIRITE WHO POLLS HIMSELF, NO MATTER WHETHER HE USES A SCISSORS OR A RAZOR, OR WHO TRIMS [HIS HAIR] HOWEVER LITTLE, INCURS A PENALTY.

GEMARA. [The Academy] wished to know whether the growth of the hair takes place at the roots or at the tips.[8] [The knowledge] is of importance for the case of a nazirite polled by bandits who left enough [of each hair] for the end to be curled in towards the root.[9] If [the hair] grows at the roots the consecrated part has been removed,[10] but if it grows at the tips, then the part he consecrated is still there.[11]

Judge from the live nit found at the root of a strand [of hair], for if it were true that the growth is at the root ought it not to be found at the tip?[12] — The growth may well be at the tip, but the nit, being alive, continually moves down [towards the root].

Judge[13] from a dead nit [that is found] at the end of a strand[of hair], for if it were true that the growth takes place at the end, ought it not to be found near the root? There again [it may well be] because it has no power [to grasp the hair][14] that it slides more and more along it.

Judge from the pigtails of heathens[15] that loosen near the root after growing [for some time]![16] There too, [it may well be] because of its being creased by his lying on it that it grows loose.[17]

Judge from the sekarta[18] for the wool grows fresh again underneath [the marking], and this is something which we learned [in a Mishnah];[19] further when old men dye their beards, these grow white again

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(1) Instead he tried to explain away the Baraitha as quoted, and so R. Papa explained that there was in fact no contradiction.

(2) V. Targum Onkelos on Num. VI, 4.

(3) Instead of from the ‘pressed-grapes (skins) even to the grape-stone as our versions have.

(4) V. Our Mishnah.

(5) This statement is repeated here (from supra 5a) to explain the rule of the next sentence.

(6) Before bringing his sacrifices.

(7) So that he should have a nazirite's poll when his sacrifices are offered and the vow terminated.

(8) I.e., Does the growth of the hair result from new portions emerging from beneath the scalp, so that the part at first in contact with the scalp is afterwards found at a distance from it; or does this part remain where it is, and the growth take place in the visible part of the hair?

(9) I.e., a seven-days growth, v. infra 39b.

(10) And so this nazirite would have to observe a further thirty days as enjoined in the Mishnah.

(11) And he may proceed to bring his sacrifices and poll in the ordinary manner. In this argument it is taken for granted that a nazirite consecrates the hair on his head at the time of his vow.

(12) Assuming that the nit stays on the same point of the strand all the time.

(13) Lit., ‘come and hear’.

(14) Now that it is dead.

(15) [Heb. belorith (etym. obscure), a heathen fashion of growing locks from the crown of the head hanging down in plaits at the back; v. Krauss, TA I, 645.]

(16) So that new hair must have appeared near the roots.

(17) And not because new hair has grown.

(18) A red paint with which the tenth animals were marked during tithing, v. Bek. IX, 7 (58a).

(19) The Mishnah (Bek. IX, 7) would not have suggested marking with sekarta if the markings were to become hidden shortly afterwards by a new growth. Mishnaic verification is always preferable to a mere argument.

Talmud - Mas. Nazir 39b

at the roots.[1] From this we can justly infer that hair increases at the roots. This proves it.

But it has been taught [as follows]: A nazirite polled by bandits who left sufficient [of each hair] for the end to be curled inwards towards the root is not required to render void [his naziriteship].[2] Now if it is true that the hair grows from beneath, why should he not render it void? — It is here assumed that they polled him after the termination [of his naziriteship], and the author is R Eliezer in whose opinion whatever happens after the termination of the naziriteship renders void only seven days,[3] his reason being that he applies the same rule to polling in ritual purity[4] as to polling after defilement. Just as in polling after defilement seven days become void,[5] so in polling in ritual purity seven days are to be come void; and the Rabbis knew for a fact that every seven days enough hair grows for the tip to be curled inwards towards the root.[6]

A NAZIRITE WHO POLLS HIMSELF, NO MATTER WHETHER HE USES A RAZOR OR A SCISSORS,[7] OR WHO TRIMS [HIS HAIR] HOWEVER LITTLE INCURS A PENALTY: Our Rabbis taught: [From the word] razor,[8] I only know [that he is forbidden to use] a razor. How do I know that if he pulls [his hair] out, or plucks it [with tweezers] or trims it however little [he is equally culpable]? The verse continues, He shall be holy, and shall let the locks of the hair of his head grow long.[9] The above is the opinion of R. Josiah, whereas R. Jonathan said that 'razor' implies razor only, and if he plucks [his hair] or pulls it out, or trims it but a little there is no penalty.[10] But it says, He shall be holy etc.?[11] — This is to tell us that if he removes it with a razor, he has transgressed both a positive and a negative precept.[12]

Another [Baraitha] taught: 'Razor' tells me only [that he is forbidden to use] a razor. How do l know that if he pulls out [his hair], or plucks it, or trims it but a little [he is equally culpable]? The verse reads, [A razor] shall not come upon his head.[13] Now seeing that we are finally [intended] to include all means [of removing the hair], why are we told that a razor shall not come upon his head? This is because we should not otherwise be able to infer that the final polling must be done with a razor.[14] For it is impossible to derive this from the leper[15]

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(1) So that the same is true of human hair as of sheep's wool.

(2) But may proceed to bring his sacrifices and Poll in the ordinary manner.

(3) This view is stated in connection with a nazirite who contracted defilement after the termination of his period. V. supra. Mishnah and Gemara 160.

(4) I.e. polling after the termination of the vow in ritual purity. Before the termination, in both cases thirty days become void according to R. Eliezer; Ibid.

(5) Viz.: the seven days during which he is unclean.

(6) So that if this amount was already left by the bandits, he need not wait at all.

(7) In the Mishnah the order is, scissors or razor'.

(8) 'There shall no razor come upon his head' (Num. VI, 5) — of the nazirite.

(9) Indicating that the objection is to removing the hair and not simply to the use of a razor, as the means of removing it.

(10) It is not even forbidden to do this according to R.Jonathan (v. Tosaf.).

(11) Implying at least that it is forbidden to remove his hair by any means, even if there is no penalty (see previous note).

(12) I.e., the implication is also a razor only, the prohibition of its use being merely strengthened.

(13) Interpreted, omitting the first word 'razor', as 'he shall not remove (the hair) of his head'.

(14) At the termination of the naziriteship; v. Num. VI, 18, where the instrument to be used for polling is not mentioned, and so we infer it from the mention of the razor earlier in the passage.

(15) Who is also required to poll; v. Lev. XIV, 8-9.

, since we could not argue to the less stringent[1] from the more stringent[2] and impose [on the former] greater stringency.[3] Rabbi said: This argument is unnecessary.[4] For the text [can be] read, A razor shall not come upon his head until [the days of his naziriteship] are fulfilled,[5] so that the Torah says explicitly that after fulfilment, polling is to be carried out only with a razor.

But it [also] says, A razor shall not come upon his head?[6] — This is to provide for a penalty on two counts.[7]

R. Hisda said that stripes are incurred by [removing] one hair; [the completion of his naziriteship] is held up if two hairs [remain];[8] [the naziriteship] does not become void unless the greater part of his hair is removed by a razor.

[Are we to understand that] a razor only [is meant by R. Hisda] but no other method? Is it not taught 'How do we know that all other methods of removing [the hair are equally forbidden] etc.'? — You must therefore say [in R. Hisda's dictum] 'removed as though by a razor.'[9]

Likewise has it been taught: A nazirite who pulls out [his hair], or plucks it, or trims it but a little [incurs a penalty, but he][10] does not render void [the previous period] unless [he shaves] the greater part of his head with a razor.[11] R. Simeon b. Judah in the name of R. Simeon said: Just as two hairs [if they are left] hold up [the termination of the naziriteship], so also [the removal of] two hairs renders void [the previous period].[12]

We learn elsewhere: There are three who must poll, and whose polling is a religious duty, the nazirite, the leper, and the levites.[13] If any one of them polled without a razor, or left behind two hairs, his act is invalid.[14]

The Master said, 'There are three who must poll and whose polling is a religious duty.' Surely this is obvious?[15] It might have been thought that they are simply required to remove their hair, and even smearing it with nasha[16] [is valid] and so we are told that this is not so.[17]

It is [also] stated, 'If any one of them polled without a razor etc. Now we can grant this in the case of a nazirite where there is written, There shall no razor come upon his head,[18] and of the levites where there is written, And let them cause a razor to pass over all their flesh,[19] but how do we know that a leper must use a razor? Should you reply that this can be inferred from the levites [by the following argument, viz.] The levities require to poll, and the polling must be performed with a razor, and so I will infer of the leper who is required to poll that the polling must be performed with a razor; [your argument] can be refuted. For although it is true of the levites [that they must use a razor, this may be] because they had to be offered as a wave-offering,[20] which is not the case with the leper. You will therefore attempt to infer it from the nazirite.[21] But [it may be asked] although it is true of the nazirite, [this may be] because his sacrifice must be accompanied by cakes,[22] whereas a leper's does not require this. It being thus impossible to infer what is required from one by itself, you will try to infer it from both together in the following way. You will infer it [using the above argument] from the levites. [To the objection] that although it is true of the levites [this may be] because they had to be offered as a wave-offering, [you will reply that] the nazirite will show [that this cannot be the reason].[23] [To the objection that] although it is true of the nazirite [this may be] because his sacrifice must be accompanied by cakes, [you will reply that] the levites show [that this cannot be the reason].[24] The argument thus goes round; what applies to one side does not apply to the other; and what applies to the other side does not apply to the one side. What they have in common is that they both require to poll[25] and this polling must be done with a razor, and so I will

infer with regard to the leper[26] who is also required to poll that his polling must be done with a razor.

Said Raba of Barnesh[27] to R. Ashi: But can it not be objected that another common property of [the levites and the nazirite] is

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(1) The nazirite who polls only his head.
(2) The leper who must shave his wholy body.
(3) Requiring a razor to be used, because the leper uses a razor. It might well be that a nazirite could use any means for removing his hair.
(4) Viz.: The argument that because the word razor is superfluous in v. 5, polling in v. 18 means with a razor.
(5) By altering the punctuation in v. 5, which concludes 'Until the days of his naziriteship are fulfilled he is holy to the Lord'.
(6) Implying equally that a razor only is forbidden during the naziriteship.
(7) There is a penalty for removing the hair, and a second penalty if a razor is used during the naziriteship.
(8) The polling is invalidated thereby, and the procedure at the termination cannot continue as long as these remain.
(9) I.e. close to the scalp.
(10) Added from the Tosef. agreeing with the reading of the various commentators.
(11) Thus the Baraitha agrees with R. Hisda.
(12) Tosef. Naz. IV, 2.
(13) When first appointed to office the levites had to poll. V. Num. VIII, 7.
(14) Neg. XIV, 4.
(15) For in each case there is a verse requiring them to poll.
(16) Or nesa, a plant the sap of which was used as a depilatory. [Others regard it as a poisonous drug. Krauss, op. cit. I, 642, takes nasa as a variant of nasam mentioned in Neg. X, 10.]
(17) But that a razor is essential.
(18) Num. VI, 5. From this it is inferred that only a razor may be used at the final polling. V. supra.
(19) Num. VIII, 7.
(20) V. Num. VIII, 11. To refute an argument of the above kind, it is sufficient to show some difference however trivial between the procedure to he followed in both cases.
(21) By an argument similar in the above.
(22) V. Num. VI, 15.
(23) For a nazirite was not required to be offered as a wave-offering yet had to use a razor.
(24) For although the same was not true of the levites, yet they had to use a razor.
(25) And it must be this common property that determines the other common property, viz.: that a razor must be used.
(26) Lit., 'add to them the leper . . .'
(27) [Near Matha Mehasia, a suburb of Sura; Obermeyer op. cit. p. 297].

that their sacrifice could not be offered in poverty,[1] whereas the sacrifice of a leper could be offered in poverty?[2]

Raba b. Mesharsheya said to Raba: This Tanna first asserts that [the rule of the nazirite] could not be deduced from that of the leper[3] because we must not argue to the less stringent from the more stringent in order to impose on it the same stringency, and then he goes on to say that [the case of the leper itself] should be inferred by argument,[4] whereas in fact we are not able to infer it from any argument![5] — [Raba] replied: The former discussion is based on the view of the Rabbis,[6] the latter on that of R. Eliezer,[7] for we have learnt:[8] Whilst there is no penalty[9] unless he plucks out [the hair] with a razor. R. Eliezer said that even if he plucks it with tweezers or with a rohitni[10] he incurs a penalty.[11]

What is the reason of the Rabbis?[12] It has been taught: Why does Scripture mention his beard?[13]

Because we find elsewhere[14] the verse, Neither shall they shave off the corners of their beards,[15] it might be thought that this applies even to [a priest who is] a leper. We are therefore told [that the leper must shave] 'his beard'.[16] Whence [do we know] that he must use a razor? — It has been taught: [The verse,] Neither shall they shave off the corners of their beards[17] could mean that even if they shaved it with scissors there would be a penalty, and so we are told [elsewhere], Neither shalt thou mar [the corners of thy beard].[18] [This last verse alone] could mean that even if he plucks it out with tweezers or a rohitni there is a penalty, and so we are told, Neither shall they shave the corners of their beards. How [do we make the inferences from these verses]? The kind of shaving that also mars [the beard] is with a razor.[19]

But how does it follow?[20] For may it not well be that even if [the leper] uses tweezers or a rohitni he has carried out his religious duty, the purpose of the verse[21] being to tell us that even if he uses a razor there is no penalty? — I will explain. If you assume that even if he uses tweezers or a rohitni he has carried out his religious duty, the verse should have remained silent on the subject[22] and I should have argued as follows. Seeing that a nazirite, who has done what is forbidden,[23] is nevertheless obliged [to use a razor], then [the leper] who is here doing a religious duty[24] should certainly [be allowed to use a razor].

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(1) A nazirite or a levite who could not afford the necessary sacrifices was given no alternative but had to wait until he could do so.

(2) For a leper who was poor, special sacrifices of doves were permitted (v. Lev. XIV, 21ff.). Hence the leper is less stringent than either of the others, and so should perhaps not be obliged to use a razor for his ritual shaving.

(3) Thus assuming that a leper certainly has to use a razor (v. supra 39b end). Raba b. Mesharsheya is here taking it for granted that the two Baraithas to which he makes reference form a single text.

(4) For the gathering together of the three cases, nazirite, leper, and levites, into a single Baraitha is an indication that the case that is not explicit is deducible from those that are.

(5) Since the argument from the levites or the nazirite fails completely. Even to an argument from the common properties there is the objection of Raba of Barnesh. How then, Raba b. Mesharshaya asks, is the sequence of the two Baraithas to be explained?

(6) Who do in fact deduce that a leper must use a razor from an independent source. V. infra.

(7) Who deduces that a leper must use a razor from the nazirite obligation to do so. V. infra 41a.

(8) This Mishnah is quoted simply in order to show the existence of a controversy between R. Eliezer and the Rabbis, the Baraithas adduced to expound the sources of the controversy being anonymous.

(9) For rounding the corners of the head.

(10) Rohitni, usually a plane, here appears to mean some instrument for removing single hairs, since it is compared to a tweezers. V. Jastrow s.v.

(11) Mak. 202.

(12) I.e., what is their source for the case of the leper?

(13) In Lev. XIV, 9, of the leper, for we already know that he must shave 'all his hair'.

(14) Of the priests.

(15) Lev. XXI, 5.

(16) Even if he is a priest.

(17) Lev. XXI, 5.

(18) Of ordinary Israelites, not priests. Here the word 'mar' is used and a scissors does not 'mar'.

(19) And since what is forbidden the ordinary person is prescribed for the leper, as is inferred in the previous Baraitha, a leper can, nay must, use a razor.

(20) That he must use the razor.

(21) Which says that the leper must shave, and also that he must shave his beard, and not simply that he must remove the hair.

(22) Not using the word shave'.

(23) By becoming defiled; aliter, by becoming a nazirite at all, in accordance with the opinion of R. Eleazar ha-Kappar, v. supra 19a.

(24) He was not responsible for his leprosy, so that the act of purification is purely a religious duty, not an expiation.

Talmud - Mas. Nazir 41a

Moreover, should you assume that if he uses tweezers or a rohitni he has carried out his religious duty, then because a razor is not mentioned explicitly [it should be entirely forbidden][1] in accordance with the dictum of Resh Lakish who has said that wherever we find both a positive command and a prohibition[2] then, if it is possible to observe both[3] well and good, otherwise the positive command is to override the prohibition.[4]

And what is R. Eliezer's reason?[5] — It has been taught: Why does Scripture mention 'his head'?[6] — Since it says in connection with the nazirite, There shall no razor come upon his head[7] it might be thought that this is true even of a nazirite who becomes a leper. We are therefore told that [the leper must shave] his head.[8]

How does it follow?[9] May it not well be that even if he uses tweezers or a rohitni he has carried out his religious duty? And should you object that the razor should not have been mentioned,[10] [the answer would be that] this tells us that [the leper] may use even a razor; for I might have thought that because a nazirite who uses a razor[11] incurs a penalty, so does a leper[12] who uses a razor incur a penalty, and so we are told that this is not so?[13] — If you assume that a leper who uses tweezers or a rohitni has carried out his religious duty, then because a razor is not mentioned explicitly [in his case, it should be forbidden entirely], in accordance with the dictum of Resh Lakish.[14]

What interpretation do the Rabbis put on [the mention of] 'his head'?[15] — They require it to override the prohibition against rounding [the corners of the head] ' as it has been taught: [The verse] Ye shall not round the corners of your heads[16] might mean that the same is true of a leper, and we are therefore told [that he must shave] 'his head'.

But this[17] can be deduced from [the mention of] 'his beard'. For it has been taught: Why does Scripture mentions his beard? Since it says, Neither shall they shave off the corners of their beards,[18] it might be thought that even [a priest who is] a leper may not do so. And we are therefore told [that the leper must shave] 'his beard'. Now why should it be necessary to mention both 'his head' and 'his beard'?[19] — It is necessary. For had the All-Merciful mentioned 'his beard' and not 'his head' it might have been thought that the rounding of the whole head is not considered [as infringing the prohibition against] rounding,[20] and so the All-Merciful Law also mentions 'his head'.[21]

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(1) I.e., even if the word 'shave' had been used without the additional use of the expression 'his beard' we should not have made the inference that he is allowed to use a razor because of the dictum of Resh Lakish now given.

(2) I.e., a command to do something (e.g., the leper is told to shave his beard) forbidden under certain circumstances.

(3) I.e., carry out the positive command without transgressing the other.

(4) The positive command must be fulfilled at all costs.

(5) I.e., what is his source for the law that a leper must use a razor, since he holds that the prohibition of marring his beard applies to all instruments, there is no proof that a leper is obliged to use a razor.

(6) Of a leper, seeing it has already said he must shave all his hair. Lev. XIV, 9.

(7) Num. VI, 5.

(8) And we see also that it must be with a razor, since it is this that is explicitly forbidden the nazirite.

(9) That he is obliged to use the razor.

(10) In Num. VI, 5, in connection with the nazirite, seeing that all things are forbidden him.

(11) During his naziriteship.

(12) [Who is also a nazirite.]

(13) But there is still no proof that he must use a razor.

(14) V. supra p. 149.

(15) Since they already know that a leper may use a razor.
(16) Which applies to all persons. Lev. XIX, 27.
(17) Viz. the fact that the injunction to the leper to shave overrides any prohibition that might otherwise prevent him from so doing.
(18) Lev. XXI, 5; of the priests.
(19) Seeing that either case could be inferred from the other.
(20) I.e., that shaving the head is permitted even to an ordinary person, only the rounding of the corners without the rest of the head being forbidden because it was a heathen practice. Whether this is in fact the case is discussed infra 57b-58, both sides of the question receiving arguments in its favour.
(21) Enabling us to infer that even the shaving of the whole head is also forbidden an ordinary person.

Talmud - Mas. Nazir 41b

Again, had 'his head' been mentioned and not 'his beard' I would have understood that two things are implied, first that the positive command [to shave] overrides the prohibition, and secondly that the rounding of the whole head is considered [to infringe the prohibition against] rounding, but there would still remain [the question], how do we know that a razor must be used?[1] And so the All-Merciful Law mentions his beard.[2]

And whence does R. Eliezer learn that a positive command overrides a prohibition? — He infers it from the [command to wear] twisted cords. For it has been taught: Thou shalt not wear a mingled stuff, [linen and wool together];[3]

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(1) For there the expression 'rounding' is used, and in fact 'rounding' is forbidden even if no razor is used.
(2) In this case the expression is 'shave' which has been shown (supra 40b) to imply the use of a razor.
(3) Deut. XXII, 11. The next quotation is the beginning of the next verse.

Talmud - Mas. Nazir 42a

but nevertheless, Thou shalt make thee twisted cords of them.[1]

The Master said: 'If any one of them polled without a razor, or left behind two hairs, his act is invalid.'[2] R. Aha the son of R. Ika said: This implies that Torah-law accepts [the principle that] the majority[3] counts as the whole.[4] In what way [does this follow]? — From the fact that the All-Merciful reveals in the cafe of the nazirite that, On the seventh day he shall shave it,[5] [for we infer that] here only [is his duty unfulfilled] until the whole [has been shaved],[6] whilst elsewhere the majority counts as the whole.

R. Jose son of R. Hanina demurred to this: But this [verse] is speaking of a defiled nazirite?[7]

In the West[8] they laughed at this [objection]. Consider, [they said]. That a defiled nazirite is required to use a razor [in shaving his head] is inferred from a ritually pure nazirite.[9] [It stands to reason then that] we can now infer the rule of the ritually pure nazirite from the defiled nazirite, viz. that just as when the latter leaves two hairs standing his act is invalid, so when the former leaves two hairs standing his act is invalid.

Abaye propounded [the following question]: What [would be the Law] if a nazirite shaved and left two hairs standing, and then when his head showed a new growth shaved off [those two hairs], would this hold up [the termination of the naziriteship] or not?

Raba propounded [the following question]: What [would be the law] if a nazirite shaved, leaving two hairs standing,[10] and then shaved one and one fell out?[11]

R. Aha of Difti[12] asked Rabina: Has Raba any doubt in the case where hair is shaved one at a time?[13] — [He replied], We must say then, [the question arises if] one fell out and he shaved the other.[14]

He then replied:[15] Here is no polling, for here is no hair.

But if there is no hair here, then polling has been performed?[16] — The meaning is: Although there is no hair left, the duty to poll has not been validly observed.[17]

MISHNAH. A NAZIRITE MAY SHAMPOO [HIS HAIR] AND PART IT [WITH HIS FINGERS] BUT MAY NOT COMB IT.[18] GEMARA. HE MAY SHAMPOO [HIS HAIR] AND PART IT [WITH HIS FINGERS]. Who is the author of this opinion? — It is R. Simeon who says a breach of the law which is not intended is allowed.[19] BUT HE MAY NOT COMB IT; here we come round to the opinion of the Rabbis.[20] [Are we then to understand that] the first clause is by R. Simeon and the next one by the Rabbis? — Rabbah replied: The whole is by R. Simeon, [for] a man who combs his hair intends to remove loose strands.[21]

MISHNAH. R. ISHMAEL SAID: HE IS NOT TO CLEANSE IT WITH EARTH BECAUSE IT CAUSES THE HAIR TO FALL OUT.

GEMARA. The Academy wished to know whether we read 'because it causes the hair to fall out,' or 'because of [the kinds of earth that] cause the hair to fall out.' Where would a practical difference arise? In the case where there is a variety of earth that does not cause it to fall out . If you say that we read 'because it causes it to fall out,' then wherever we know that it does not cause it to fall out, it could be used. But if you say 'because of [the kinds of earth that] cause it to fall out' that he may not use any kind at all! This was left undecided.

MISHNAH. A NAZIRITE WHO HAS DRUNK WINE ALL DAY LONG HAS INCURRED A SINGLE PENALTY ONLY. IF HE WAS TOLD 'DO NOT DRINK,' 'DO NOT DRINK' AND HE DRANK,[22] HE HAS INCURRED A PENALTY FOR EACH [WARNING].

FOR POLLING ALL DAY LONG HE INCURS ONE PENALTY ONLY. IF HE WAS TOLD, 'DO NOT POLL,' 'DO NOT POLL AND HE DID POLL,[22] HE HAS INCURRED A PENALTY FOR EACH [WARNING]. FOR DEFILING HIMSELF [BY CONTACT] WITH THE DEAD ALL DAY LONG HE INCURS ONE PENALTY ONLY. IF HE WAS TOLD, DO NOT DEFILE YOURSELF, DO NOT DEFILE YOURSELF, AND HE DID DEFILE HIMSELF,[23] HE HAS INCURRED A PENALTY FOR EACH [WARNING].

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(1) From the juxtaposition of the two laws it is inferred that the second is to be carried out even at the cost of transgressing the first. A further discussion of this point will be found infra (58a-b).

(2) Supra 40a.

(3) Or the larger portion.

(4) I.e., is legally equivalent to the whole.

(5) Num. VI, 9. This sentence is a superfluous repetition of the previous one, 'He shall shave his head on the day of his cleansing', and is therefore taken as indicating that the whole head must be shaved

(6) Because here we have a special indication that the larger portion is insufficient

(7) Whereas according to the Baraitha, even a clean nazirite who leaves two hairs standing has not shaved effectively.

(8) I.e., the Palestinian Academies. [The reference elsewhere is to R. Jose b. Hanina. Here it may be to R. Eleazar. V. Sanh. 17b.]

(9) The razor mentioned in Num. VI, 5, refers to an undefiled nazirite.

(10) So that the polling is invalid and must be repeated on the remaining two hairs.

(11) So that he had not polled two hairs validly.
(12) [Dibtha below the Tigris, S.E. Babylon, Obermeyer, op. cit. 197.]
(13) There would finally remain two as in the present instance, and the polling of one would, R. Aha assumes, certainly complete the polling.
(14) Thus when he commenced the final polling, there were not two hairs left, but one.
(15) I.e., Raba answered his own problem (v. the parallel text in B.K. 105a).
(16) For he is only required to poll what is actually there.
(17) Since there were not two hairs when he started. He should therefore poll again later (v. Asheri and Maimonides, Yad Neziruth, VIII, 7); Rashi, here, does not require him to poll again.
(18) I. e., may not use a comb, because hair will come out.
(19) Provided that the act he is doing is permitted, he is not made to refrain because he may unintentionally also do something forbidden (v. Shab. 50b). So here, although hairs may detach themselves even if he uses only his fingers, we do not forbid him to use them.
(20) For here too it is not his intention to detach hairs.
(21) And this is forbidden.
(22) After each warning.
(23) After each warning.

Talmud - Mas. Nazir 42b

GEMARA. It was stated: Rabbah, citing R. Huna, said: Scripture [speaking of the nazirite] makes the comprehensive statement, He shall not make himself unclean;[1] when it adds, He shall not enter [by a dead body],[2] [its intention is] to utter a [separate] warning against defilement [by contact] and a [separate] warning against entering [a tent],[3] but not against defilement [by contact] from two scources [at the same time].[4] R. Joseph, however, said: By God! R. Huna said that even for defilement [by contact] from two sources [at the same time there are separate penalties]. For R. Huna has said that a nazirite, standing in a cemetery, who was handed the corpse of his own [relative] or some other corpse, and touched it incurs a penalty.[5] Now why should this be so? Is he not actually being defiled all the time?[6] It follows therefore that R. Huna must have said that even for defilement [by contact] from two sources [he is to receive separate penalties].

Abaye raised an objection from the following. [A Baraitha teaches:] 'A priest,[7] carrying a corpse on his back, who was handed the corpse of his own [relative] or some other corpse and touched it, might be thought to have incurred a penalty,[8] but the text says, Nor profane [the sanctuary][9] [prescribing a penalty] for one not already profaned [and thus] excluding this man who is already profaned?[10] — [R. Joseph] replied: But our Mishnah should cause you the same perplexity, for we learn [there], FOR DEFILING HIMSELF [BY CONTACT] WITH THE DEAD ALL DAY LONG HE INCURS ONE PENALTY ONLY. IF HE WAS TOLD, 'DO NOT DEFILE YOURSELF,' 'DO NOT DEFILE YOURSELF, AND HE DID DEFILE HIMSELF, HE HAS INCURRED A PENALTY FOR EACH [WARNING]. But why should this be so? Is he not already defiled? We can therefore only conclude that [the Mishnah and the Baraitha] contradict each other.[11]

[Abaye retorted:] There is no difficulty [in reconciling the Mishnah and the Baraitha]. The latter assumes that there is concatenation,[12] the former that there is no concatenation.

Is then defilement through concatenation a Torah enactment? Has not R. Isaac b. Joseph said: R. Jannai said that defilement through concatenation was held to be effective only as it affects terumah and sacrificial meats,[13] but not the nazirite or a celebrant of the passover?[14] Now, if as you assert, it is a Torah [defilement], why should there be this difference?[15] — There concatenation of one man with another is meant;[16] in our case concatenation of the man with the corpse.[17]

'But not against defilement [by contact] from two sources [at the same time,'[18] said Rabbah]

because he is actually defiled already. But in the case of defilement [by contact] and entering [a tent containing a corpse] is he not also already defiled?[19] — R. Johanan replied: In the latter case [he is supposed to enter] a house [whilst undefiled];[20] in the former, [which takes place] in the open [there cannot be two penalties].[21]

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(1) Num. VI, 7.

(2) E.v. 'come near to', Num. V. 6.

(3) Containing a dead body. So that a nazirite, duly warned, who enters a covered place containing a corpse and actually touches the corpse is scourged twice.

(4) I.e., for touching two corpses at the same time he is scourged only once, even if warned against each separately.

(5) I.e., a penalty for touching the corpse.

(6) By being in the cemetery.

(7) Some versions (including Tosaf. and Asheri) read 'a nazirite'.

(8) I.e., a further penalty for the second contact.

(9) Of the High Priest. Lev. XXI, 12; so our text. Tosaf. and others read the verse, 'to profane himself' (Ibid. 4) spoken of an ordinary priest. In either case it is presumed that the same is true of the nazirite.

(10) Whereas according to R. Joseph there should be an extra penalty. Hence the contradiction.

(11) And I, says R. Joseph, agree with the Mishnah which is more important.

(12) I.e., that the person and the two corpses are in contact at the same time, and that is why there is no extra penalty. Where there is contact at different times there is an additional penalty.

(13) I.e., a person defiled through concatenation (in what way is explained below) is forbidden to eat terumah (v. Glos.) or sacrificial meats for seven days, as though there had been direct contact with the corpse.

(14) These observe defilement for one day only.

(15) Hence concatenation is not a Torah enactment, and why should there be the difference between the Mishnah and the Baraitha.

(16) I.e., a man touching a second man in contact with a corpse. Here the defilement for seven days instead of one is rabbinic.

(17) If he then touches a second corpse there is no further defilement and so no further penalty.

(18) The Torah does not prescribe two scourgings in such a case, v. supra.

(19) Why then does Rabbah say that he is to receive two scourgings in this case?

(20) So that he both enters the house of the dead and becomes defiled at the same instant. Hence both prohibitions are transgressed together.

(21) Because he becomes unclean by the first contact and then no further penalty can lie for contact or entering a tent of the dead.

Talmud - Mas. Nazir 43a

But even [on entering] a house, as soon as his hands are inside he becomes unclean,[1] so that when he has gone right in he is already unclean?[2] — As a matter of fact, said R. Eleazar, if he put his hands together and entered there would be [a penalty only] for defilement but none for entering, but if he drew himself up[3] and entered, defilement and entering occur at the same moment.

But it is impossible for his nose not to go in first? — As a matter of fact, said Raba, if he introduces his hand[4] there would be [a penalty] for defilement and not for entering, but if he introduces his body,[5] defilement and entering are simultaneous.

But it is impossible for his toes not to enter first? — R. Papa therefore said: It is supposed that he entered in a box, or a chest, or a turret,[6] and his fellow came and broke away the covering,[7] so that defilement and entering are simultaneous. Mar b. R. Ashi said: It is supposed that he entered whilst the other lay dying,[8] and whilst he was sitting there the spirit departed so that defilement and entering were simultaneous.

Our Rabbis taught: To profane himself[9] signifies that until the time that the other dies [he is permitted to remain with him].[10] Rabbi said that, When they die[11] signifies that he may be in contact with them until they die.

What is the difference between these two [alternative reasons]?[12] — R. Johanan said that they differ only as to the texts selected.[13] Resh Lakish said: They differ as regards the rule for a dying man. The one who takes the text 'To profane himself' considers a dying man [as profanation],[14] whilst the one who takes, 'When they die', says that [there is no prohibition] until he is dead, and so none in the case of one who is dying.

Now, according to the one who derives [the law] from 'to profane himself', is there not the text, 'When they die'?[15] — He requires this for [the following inference] of Rabbi. For it has been taught: Rabbi said that 'When they die' he is forbidden to defile himself, but he may defile himself [by association with them] when they are suffering from leprosy[16] or an issue.[17]

But does not the one who derives [the law] from 'when they die' also require it for this inference? — If this is [its sole purpose], the text should read 'When dead'. Because it says 'When they die' we infer both things.

Now according to the one who derives [the law] from 'When they die', is there not the verse, 'to profane himself'?[18] — 'To profane himself' signifies the following, viz: — that one who is not profaned [incurs a penalty] but not the one who is already profaned.[19]

But does not the one who derives [the law] from 'to profane himself' also require it for this inference? — If this were its sole purpose, the text should read 'to profane'. Because it reads, 'to profane himself' we infer both things.

An objection was raised. [We have learnt:] A man does not spread defilement until his life departs. Not even one whose arteries are severed or who is in the throes of death does so.[20] Now according to the one who bases the rule on 'to profane himself',[21] does it not say here that they do not spread defilement?[22] — Defilement is not spread until the life departs, but there is profanation already.[23]

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(1) Defilement is supposed to pervade the whole of the interior of a house containing a corpse, and so any organ introduced has touched the source of defilement.

(2) And thus even with a house there can be no additional penalty for entering.

(3) I.e., kept his hands at his sides.

(4) Or any other organ. Asheri reads here 'head'.

(5) Keeping his head and arms well back.

(6) Being in a separate domain he would not then become unclean.

(7) Making the interior of the box part of the interior of the tent. [It is assumed that he too helped in the removal of the covering, or otherwise he would incur no penalty (Asheri)].

(8) [As a priest he had no right to enter a house where a person lay dying, v. infra (Asheri)].

(9) Spoken of the priests in connection with the prohibition against defiling themselves with the dead other than near kin, Lev. XXI, 4.

(10) I.e., only the actual profanation is forbidden.

(11) Spoken of the nazirite prohibition against defilement even with near kin. Num. VI, 7.

(12) I.e., what difference in law results.

(13) Lit., 'the implications of the phrases in need of interpretation'. There is no practical difference.

(14) For most people who are dying do die and so actual defilement is very probable. The risk therefore counts as profanation.

(15) What is his interpretation of the latter verse?

(16) V. Lev. XIII, 1ff.

(17) Gonorrhoea, v. Lev. XV, 1ff.

(18) What is his interpretation of it?

(19) Cf. supra 42b.

(20) Oh. 1, 6.

(21) To include a dying man as profanation, as the Rabbis interpret this verse in the opinion of Resh Lakish.

(22) Contradicting Resh Lakish.

(23) A priest is accordingly forbidden to come in contact with the dying.

Talmud - Mas. Nazir 43b

R. Hisda, citing Rab, said: [A priest] if his father was decapitated, must not defile himself for him, For what reason? The text says for his father,[1] meaning when he is whole and not when he is defective.[2] R. Hamnuna said to him: In that case, suppose [the father] were travelling through the valley of 'Araboth[3] and robbers cut off his head, would you also maintain that [the son] is not to defile himself for him?[4] — He replied: You raise the question of a meth mizwah![5] Seeing that we consider it his duty [to defile himself under such circumstances] to strangers,[5] how much more so is this true of his father!

But is this considered a meth mizwah? Has it not been taught: A meth mizwah is [a corpse] with none to bury him. Were he able to call and others answer him,[6] he is not a meth mizwah;[7] and here this man has a son?[8] — Because they are travelling on the road, it is as though he had none to bury him.

An objection was raised [from the following]: [It has been taught,] For her may he defile himself[9] signifies that he may defile himself for her herself but not for one of her limbs; for he may not defile himself for a limb cut off [even] from his father[10] whilst still alive; but he may search for a bone the size of a barleycorn.[11] Now what means 'he may search for a bone the size of a barleycorn'? Surely that if there is a small part missing [he may nevertheless defile himself]?[12] — No. The author of that statement is R. Judah. For it has been taught.' R. Judah said that he may defile himself for her, but not for her limbs; for he is forbidden to defile himself for limbs severed from his father whilst still alive; but he may defile himself for limbs severed from his father after death.

But R. Kahana taught amongst [the Baraithas of] R. Eliezer b. Jacob [the following one]: 'For her may he defile himself,' but he must not defile himself for limbs, thus excluding an olive's bulk of [the flesh of] a corpse, or an olive's bulk of nezel[13] or a spoonful of rakab.[13] It might be thought that he is also forbidden to defile himself for the spinal column, or the skull, or the greater part of the bodily frame [of his sister's corpse][14] or the majority [of its bones],[14] but since it is written, and say unto them,[15] it follows that Scripture has permitted you an additional defilement.

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(1) Although the priest is forbidden to defile himself for the dead yet he may defile himself for near relatives such_as his father, Lev. XXI. 2.

(2) If the head is severed from the body, even though it is beside it, the corpse is considered defective.

(3) A valley in Babylonia, notorious for its robber bands. (Jast.).

(4) R. Hamnuna assumes rightly that R. Hisda would not deny this.

(5) A corpse whose burial is a religious duty, v. Glos. Infra 44a.

(6) I.e., if he has relatives to provide for his burial.

(7) And a priest must not defile himself by undertaking his burial.

(8) Who could arrange for other people to bury his father. If, then, he is allowed to do so himself it must be because decapitation does not matter; which contradicts R. Hisda.

(9) Of the spinster sister of a priest, Lev. XXI, 3.

(10) Who is a closer relation.

(11) I.e., if he is engaged in burying his father he may search for any parts missing to restore them to the corpse.

(12) And since no other opinion is mentioned, it is to be presumed that no-one disagrees with the statement; and thus R. Hisda is contradicted.

(13) V. Mishnah infra 49b.

(14) Each of these counts as a whole corpse for the purposes of defilement in a tent.

(15) Lev. XXI. 1. The phrase is superfluous, for the verse begins, Speak unto the priests . . . .

Talmud - Mas. Nazir 44a

It might be thought [further] that he is not to defile himself for the spinal column, or the skull, or the greater part of the bodily frame or the majority of the bones of the other [relations],[1] but I will tell you [why that is not so]. His sister is distinguished [from strangers] by the fact that her body depends on him [for its burial], and he is required to defile himself for the spinal column, or the skull, or the greater part of its bodily frame or the majority [of its bones], and so in all cases where the body depends on him [for burial], he is required to defile himself, for its spinal column, or its skull, or the greater part of its bodily frame, or the majority [of its bones]. [This contradicts Rab, does it not?][2] — The author of this [Baraitha] too is R. Judah, whereas Rab agrees with the following Tanna. For it has been taught: The story is told that the father of R. Isaac [the priest][3] died at Ginzak[4] and he was informed three years later. He went and asked R. Joshua b. Elisha and the four Elders with him,[5] and they replied: For his father[6] when he is whole, but not when he is defective.[7]

MISHNAH. THREE THINGS ARE FORBIDDEN THE NAZIRITE, VIZ: — DEFILEMENT, POLLING AND PRODUCTS OF THE VINE. DEFILEMENT AND POLLING HAVE A STRINGENCY NOT POSSESSED BY PRODUCTS OF THE VINE IN THAT DEFILEMENT AND POLLING RENDER VOID [THE PREVIOUS PERIOD], WHEREAS [PARTAKING OF] PRODUCTS OF THE VINE DOES NOT DO SO. PRODUCTS OF THE VINE HAVE A STRINGENCY NOT POSSESSED BY DEFILEMENT OR POLLING IN THAT PRODUCTS OF THE VINE PERMIT OF NO EXCEPTION FROM THE GENERAL PROHIBITION,[8] WHEREAS DEFILEMENT AND POLLING ARE ALLOWED AS EXCEPTION FROM THE GENERAL PROHIBITION IN THE CASE WHERE POLLING IS A RELIGIOUS DUTY,[9] OR WHERE THERE IS A METH MIZWAH[10] . DEFILEMENT ALSO HAS A STRINGENCY NOT POSSESSED BY POLLING, IN THAT DEFILEMENT RENDERS VOID THE WHOLE OF THE PRECEDING PERIOD,[11] AND ENTAILS THE OFFERING OF A SACRIFICE, WHEREAS POLLING RENDERS VOID ONLY THIRTY DAYS AND DOES NOT ENTAIL A SACRIFICE.

GEMARA. Why should not defilement also permit of no exception from the general prohibition, in virtue of the following a fortiori argument from wine? Seeing that wine which does not render void [the previous period] permits of no exception from the general prohibition, then defilement which does render void [the previous period] should certainly not permit of an exception from the general prohibition? — The text says, Nor defile himself for his father or for his mother,[12] signifying that it is only for his father or for his mother that he is forbidden to defile himself, whereas he is required to defile himself for a meth mizwah.

Then why should not wine permit of an exception from the general prohibition because of the following a fortiori argument from defilement? Seeing that defilement, which renders void [the previous period], permits of an exception from the general prohibition, then wine which does not render void [the previous period] should certainly permit of an exception from the general prohibition? — The verse says, He shall abstain from wine and strong drink,[13] thus forbidding wine that should be drunk as a ritual obligation[14] as well as wine that he might drink from choice.[15]

Then why should not wine render void the whole [of the previous period] because of the following a fortiori argument from defilement? Seeing that defilement which permits of an exception from the general prohibition renders void [the previous period], then wine which permits of no exception

should certainly render void [the preceding period]? — The verse says, But the former days shall be void because his consecration was defiled,[16] signifying that defilement renders void, but wine does not do so.

Why should not polling render void the whole [of the previous period][17] because of the following a fortiori argument from defilement? Seeing that defilement, the agent of which is not subjected to the same [penalty] as the patient,[18] renders void the whole [of the previous period], then polling where the agent is subject to the same penalty as the patient,[19] should certainly render void the whole [of the preceding period]? — The verse says, But the former days shall be void because his consecration was defiled[20] signifying that defilement renders void the whole [of the preceding period], but polling does not do so.

Why should not the agent be subject to the same [penalty] as the patient in the case of defilement, because of the following a fortiori argument from polling? Seeing that in the case of polling, where only thirty days are rendered void, the agent is subject to the same [penalty] as the patient, then in the case of defilement where the whole [of the preceding period] is rendered void, the agent should certainly be subject to the same [penalty] as the patient? The verse says, And he defile his consecrated head[21] signifying [that the penalty is only] for him who defiles his [own] consecrated head.

Then polling should not result in the agent being subject to the same [penalty] as the patient, because of the following a fortiori argument from defilement. Seeing that in the case of defilement, where the whole [of the preceding period] is rendered void, the agent is not subject to the same [penalty] as the patient, then in the case of polling, which does not render void the whole [of the preceding period], the agent should certainly not be subject to the same [penalty] as the patient? — The verse says, There shall no razor come upon his head,[22] and can be read as signifying that he shall not make it come himself, and that no other shall make it come either.[23]

Polling should not permit of an exception from the general prohibition because of the following a fortiori argument front wine. Seeing that wine which does not render void [the preceding period] permits of no exception from the general prohibition, then polling which does render void [the preceding period] should certainly permit of no exception? — The All-Merciful mentions both his hair and his beard.[24]

Then polling should not render void any [of the preceding period] because of the following a fortiori argument from wine. Seeing that wine which permits of no exception does not render void, polling which does permit of an exception from the general prohibition should certainly not render void? — We require a sufficient growth of hair and this would be lacking.[25]

Why should not wine render void thirty days because of the following a fortiori argument from polling? Seeing that polling, which permits of an exception from the general prohibition, renders void [thirty days], then wine which permits of no exception from the general prohibition should certainly do so? — Is not the only reason[26] because there must be a sufficient growth of hair? After wine his hair is still intact.[27]

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(1) Mentioned in the verse before the one dealing with his spinster sister.

(2) For according to this Baraitha, too, he is permitted to defile himself for a part of the body, in contradiction to the statement made by R. Hisda in the name of Rab. The Baraithas of R. Eliezer b. Jacob were highly esteemed and that is why this one is quoted, although the reply may seem obvious. It would now be necessary to show some other Baraitha agrees with Rab.

(3) Var. lec. R. Zadok the priest. [V. Tem. XII. Hyman, Toledoth, I, p. 202 gives preference to our text, since R. Zadok was present at his father's death.]

(4) [Ganzaka, N.W. of Persia; v, A.Z. (Sonc. ed.) p. 165, n. 5.]
(5) Whether he might personally arrange his removal to the family sepulchre (Rashi).
(6) Lev. XXI, 2.
(7) After three years he would undoubtedly be defective. Thus this Baraitha agrees with Rab.
(8) I.e. under no circumstances is a nazirite ever permitted to drink wine.
(9) As when a nazirite becomes a leper and then recovers from the disease.
(10) A corpse without relatives to provide for its burial must be buried by the first person who can do so, be he nazirite, priest, or even High Priest; cf. infra 47a seq.
(11) However long it should be.
(12) Lev. XXI, 11; although referring to the High Priest, the same applies to the nazirite.
(13) Num. VI, 3; wine is mentioned specifically to tell us that it is to permit of no exception.
(14) E.g. if the person had sworn to drink wine before becoming a nazirite, he must not do so not with standing.
(15) Cf. supra 3b.
(16) Num. VI. 12.
(17) Instead of only thirty days.
(18) There is no penalty attached to one who defiles a nazirite.
(19) Both are scourged, v. infra.
(20) Num. VI, 12.
(21) Ibid. 9.
(22) Ibid. 5.
(23) The verb is written defectively and may therefore be read as an active mood instead of a passive one. There is now no agent mentioned who 'causes it to come upon his head' and so whoever uses the razor on the nazirite is also a transgressor. [This follows Rashi's reading. Asheri seems to have had a smoother text which simply took 'razor' as subject of 'come upon his head', thus making no distinction as to who passes the razor over the nazirite.]
(24) In Lev. XIV, 9, whence is derived that the leprous nazirite must poll, v. supra 41a.
(25) After he had once polled illegitimately. Hence he must render thirty days void, before terminating the naziriteship.
(26) Why polling renders void thirty days.
(27) And so there is no point in requiring him to render any period void.

Talmud - Mas. Nazir 44b

MISHNAH. HOW WAS [THE RITE OF] THE POLLING AFTER DEFILEMENT [PERFORMED]? HE WOULD BE SPRINKLED ON THE THIRD AND SEVENTH DAYS,[1] POLL ON THE SEVENTH DAY AND BRING HIS SACRIFICES ON THE EIGHTH DAY. IF HE POLLED ON THE EIGHTH DAY,[2] HE WOULD BRING HIS SACRIFICES ON THAT SAME DAY. THIS IS THE OPINION OF R. AKIBA. R. TARFON ASKED HIM: WHAT DIFFERENCE IS THERE BETWEEN THIS [NAZIRITE] AND A LEPER?[3] HE REPLIED: THE PURIFICATION OF THIS MAN DEPENDS ON THE [LAPSE OF SEVEN] DAYS ONLY], WHEREAS THE PURIFICATION OF A LEPER DEPENDS [ALSO] ON HIS POLLING,[4] AND HE CANNOT BRING A SACRIFICE UNLESS THE SUN HAS SET UPON HIM [AFTER HIS RITUAL BATH].[5]

GEMARA. Did [R. Tarfon] accept this answer or not?[6] — Come and hear: Hillel[7] learnt: If [the nazirite] polled on the eighth day, he was to bring his sacrifices on the ninth. Now if you assume that he accepted the answer, should he not bring his sacrifices on the eighth day?[8] — Raba said: This creates no difficulty,[9] for the one case[10] assumes that he bathed on the seventh day, and the other[11] that he did not bathe on the seventh day.[12]

Abaye said: I came across the colleagues of R. Nathan b. Hoshaia, seated [at their studies] and reporting the following [teaching]. [Scripture says,] And come before the Lord unto the door of the tent of meeting and give them unto the priest.[13] When is he to come?[14] If he has bathed and waited until after sunset he may [come], but if he has not bathed and waited until after sunset he may not do

so. Thus we see [they said] that [this Tanna] is of the opinion that a tebul yom[15] after gonorrhoea is still like a sufferer from gonorrhoea.[16] I [Abaye] then said to them: If that is so,[17] then in the case of a defiled nazirite where we find the verse, He shall bring too turtle doves . . . to the priest to the door of the tent of meeting[18] [we should also say] that he is to come only if he has bathed and waited until after sunset.[19]

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(1) After defilement, with water mixed with ashes of the red heifer, v. Num. XIX.

(2) Instead of the seventh.

(3) A leper who polled on the eighth day instead of the seventh was required to wait until the ninth day before offering his sacrifices. [V. Sifra on Lev. XIV, 9, where this, R. Akiba's view in the case of the leper is stated. According to some texts, however, R. Akiba is of the opinion that the leper could bring his sacrifices on the same day (v. Malbim, a.l.). On this reading, adopted by Rashi, Maimonides, and others, the Mishnah is to be interpreted thus: SAID R. TARFON TO HIM, IF SO WHAT IS THE DIFFERENCE BETWEEN THE NAZIRITE AND THE LEPER (SINCE BOTH ARE IN THIS RESPECT ALIKE). HE REPLIED, (THEY DIFFER IN THIS:) THE PURIFICATION OF THIS MAN DEPENDS ON THE LAPSE OF SEVEN DAYS (ONLY) — i.e., he becomes clean on the seventh day even if he did not poll — WHEREAS THE PURIFICATION OF A LEPER DEPENDS ALSO ON HIS POLLING (v. n. 6); AND (THERE IS A FURTHER DIFFERENCE IN THAT A NAZIRITE) DOES NOT BRING A SACRIFICE UNLESS THE SUN HAS SET UPON HIM (AFTER HIS RITUAL BATH) — i.e., whenever he immersed whether on the seventh or eighth day, he brings the sacrifice only on the following day, whereas the leper who immersed on the eighth day may bring the sacrifice on the same day, since he has been declared by the Torah clean as a result of the first polling and immersion, v. Lev. XIV, 8.]

(4) He does not take a ritual bath until after the polling (Lev. XIV, 8); the nazirite took it before.

(5) Until evening he is a tebul yom (v. Glos.) and so cannot bring sacrifices.

(6) I.e. , does he now agree with R. Akiba, or does he still contend that the nazirite who polls on the eighth day must wait like the leper until the ninth before bringing his sacrifices?

(7) The Amora of that name; not the Patriarch Hillel.

(8) So that unless R. Tarfon still disagreed with R. Akiba there would be no author for this Baraitha of Hillel.

(9) Even if R. Tarfon agreed with R. Akiba.

(10) That of the Mishnah which permits him to offer his sacrifices on the eighth day.

(11) The Baraitha which compels him to wait until the ninth day.

(12) And could not bring sacrifices before sunset on the day he bathed (the eighth day), and so had to wait until the ninth day.

(13) Lev. XV, 24. Referring to the sacrifices of one who has recovered from an unclean issue. V. 13 requires him to bathe on the seventh day after the cessation of the issue.

(14) I.e. , when is he permitted to enter the Temple precincts again?

(15) V. Glos.

(16) And so could not enter the Temple mount to give his sacrifices to the priest. Further, on the Eve of Passover it would be forbidden to slaughter a Paschal lamb on his behalf and he would have to wait until the second Passover (v. Ker. 10a).

(17) I. e. , if the reason just given is in fact the Tanna's reason for requiring him to wait until after sunset.

(18) Num. VI, 10. In this context, too, the previous verse requires him to bathe first.

(19) And so a nazirite after defilement should also be forbidden to enter the temple mount in just the same way as one who has recovered from gonorrhoea is forbidden to do so.

Talmud - Mas. Nazir 45a

Now where were the Gates of Nicanor[1] situated? At the entrance to [the camp of] the Levites[2] [were they not]? And yet it has been taught: One who is defiled by a corpse is allowed to enter the camp of the Levites; and not merely one defiled by a corpse, but even the corpse itself [may enter there], for it Says, And Moses took the bones of Joseph with him;[3] the meaning of with him is ‘in his own section , i.e. in the camp of the Levites.[4] It must therefore be,[5] said Abaye, that a tebul yom after gonorrhoea is not like a sufferer from gonorrhoea,[6] but in spite of this, because he still lacks

atonement, he is not to enter [into the Temple precincts].[7] For seeing that the reference is to the Camp of the Levites,[8] why is it called [in the verse], 'the Tent of Meeting'? To tell us that just as one who lacks atonement might not enter there,[9] so one who lacks atonement may not enter the Camp of the Levites.[10]

How is it known in that case?[11] — It has been taught: He shall be unclean,[12] includes also a tebul yom; his uncleanness is yet upon him[13] includes also one who lacks atonement.

MISHNAH. HOW WAS [THE RITE OF] POLLING IN RITUAL PURITY[14] PERFORMED? HE WOULD BRING THREE ANIMALS, A SIN-OFFERING, A BURNT-OFFERING, AND A PEACE-OFFERING, SLAUGHTER THE PEACE-OFFERING AND POLL THEREAFTER. THIS IS THE OPINION OF R. JUDAH. R. ELEAZAR SAID: HE WOULD POLL ACTUALLY AFTER THE SIN-OFFERING, FOR IN ALL CASES [THE SACRIFICE OF] THE SIN-OFFERING TAKES PRECEDENCE.[15] BUT IF HE POLLED AFTER [THE SLAUGHTER] OF ANY ONE OF THE THREE HIS OBLIGATION WOULD BE DISCHARGED.[16]

R. SIMEON B. GAMALIEL SAID: IF HE BROUGHT THREE ANIMALS WITHOUT SPECIFYING [WHAT THEY WERE FOR],[17] THE ONE SUITABLE FOR A SIN-OFFERING[18] WAS TO BE SACRIFICED AS A SIN-OFFERING, FOR A BURNT-OFFERING[19] AS A BURNT-OFFERING, AND FOR A PEACE-OFFERING[20] AS A PEACEOFFERING.

GEMARA. Our Rabbis taught: [When it says], And the nazirite shall shave at the door of the tent of meeting,[21] Scripture is speaking of the peace-offering[22] of which it is said, And kill it at the door of the tent of meeting.[23] You say that Scripture is speaking of the peace-offering, but may it not mean literally 'at the door of the tent of meeting'?[24] I will explain. If that were its meaning, it would show contempt [for the Sanctuary] — R. Josiah said: It is unnecessary [to rely on a mere assertion] —[25] For the Torah says, Neither shalt thou go up by steps upon Mine Altar,[26] and how much more so should it be forbidden to show contempt.[27]

R. Isaac said: This argument is unnecessary.[28] For the verse continues, And shall take the hair of his consecrated head and put it on the fire [which is under the sacrifice of peace-offerings),[29] referring to one who needs only to take it and put it [on the fire], and thus excluding [the case contemplated],[30] where he would need to take it, fetch it,[31] and put it [on the fire].

Another version [of R. Isaac's dictum]:[32] R. Isaac said: Scripture is there[33] speaking of the peace-offering. You say it is speaking of the peace-offerings but may it not mean literally 'at the door of the tent of meeting'? The verse continues, And shall take the hair of his consecrated head [etc.], signifying that he shaved where he broiled [the peace-offering].[34]

Abba Hanan, on behalf of R. Eliezer, said: 'And the nazirite shall shave at the door of the tent of meeting' signifies that whenever the door of the tent of meeting is not open,[35] he is forbidden to shave.

R. Simeon [of] Shezuri said: 'And the nazirite shall shave at the door of the tent of meeting', but not a female nazirite,

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(1) It was to the Gates of Nicanor, which separated the Women's Court from the rest of the Temple precincts, that the sacrifices were brought. [The Nicanor Gate was situated on the West of the Women's Court, and was an entrance to the Inner Court. For a full discussion of the apparent discrepancies between the Talmudic sources and Josephus on the situation of the Nicanor Gate, v. Buchler, JQR, 1898, 687ff, and Hollis, F. J., The Archaeology of Herod's Temple. pp. 180ff.]

(2) The division of the encampment of the Israelites in the wilderness into three camps of varying degrees of sanctity,

viz.: (i) The Camp of Israel. (ii) The Camp of the Levites, (iii) The Camp of the Divine Presence, was transferred to the Temple at Jerusalem, the three divisions being known by the same names (v. Sifre Num. I, 1).
(3) Ex. XIII, 19.
(4) Thus the nazirite even before purification could enter the Camp of the Levites, which makes the above deduction after the fashion of the colleagues of R. Nathan b. Hoshaya absurd. (V. Tosef. Kelim Kamma, I, 7.)
(5) What follows is the text and version of Tosaf. That of Rashi is given below, note 8.
(6) And might have a Paschal lamb slaughtered on his behalf.
(7) I.e. , he is forbidden to enter the Camp of the Levites to give his sacrifices to the priest, not because he is treated as though he were still suffering from the issue, but because he is lacking in atonement, i.e., has not yet offered the necessary sacrifices. And although, in general, a person lacking in atonement was not forbidden to enter the Camp of the Levites, but only the Camp of the Divine Presence, here for the reason to be given immediately entry even into the Camp of the Levites is forbidden until after sunset.
(8) For the sacrifices had only to be taken as far as the Gates of Nicanor in the Camp of the Levites.
(9) The proof is given below.
(10) Whereas the nazirite is not considered lacking in atonement since his defilement arose from external causes (contact with the dead) and not from internal ones (leprosy or issue). Thus far the version of Tosaf. Rashi reads as follows: '(The colleagues of R. Nathan replied): As a matter of fact, a tebul yom after gonorrhoea does count as a sufferer from gonorrhoea, whilst even in the case you mention (of the nazirite) he should not enter (the Camp of the Levites, although a corpse itself might do so) because he lacks atonement. For if it is only the Camp of the Levites that is in question (i.e., if in any case the defiled nazirite can enter the Camp of the Levites and has to penetrate no further), why is it referred to in the verse as 'the Tent of Meeting' (which is part of the Camp of the Divine Presence)? To tell us that just as one who lacks atonement may not enter (the latter place), so he may not enter the Camp of the Levites'. It will be observed that apart from the obvious difference at the beginning, Tosaf. does not consider a defiled nazirite as coming within the category of 'lacking atonement' whilst Rashi does.
(11) I.e., how do we know that one who lacks atonement is forbidden to enter the Camp of the Divine Presence?
(12) Num. XIX, 13; this refers to a person defiled by a corpse who has not bathed; and in the context he is forbidden to enter the Sanctuary. The use of the future tense in the verb is taken as a sign that even a tebul yom must not enter there.
(13) Ibid. The inference is from the redundancy of these words.
(14) At the termination of the naziriteship; v. Num. VI, 14ff.
(15) V. Zeb. 900.
(16) I.e., the opinions of R. Judah and R. Eleazar give the normal procedure, but a variation in the order would not invalidate the polling.
(17) Cf. supra 28b.
(18) A ewe-lamb in its first year.
(19) A he-lamb in its first year.
(20) A two-year old ram.
(21) Num. VI, 18.
(22) I.e., the nazirite is to shave after the slaughter of the peace-offering.
(23) Lev. III, 2.
(24) And so be referring to the place, not the time of polling.
(25) We can infer directly from the Torah that a disdainful proceeding is not to be allowed, and need not rely on our feelings on the subject.
(26) 'That thy nakedness be not uncovered there', Ex. XX, 23.
(27) We have given our printed text as interpreted by the early commentators (Rashi, Asheri). In Sifre Num. Sect. 34 (in VI, 28), the words 'R. Josiah said: It is unnecessary' are lacking. Recent Talmud editions insert in square brackets an alternative text from the Midrash Rabbah on Numbers, beginning with 'R. Josiah said: Scripture is speaking etc.' There is also a version of the Wilna Gaon (v. Ed. Romm, Marginal Annotations), concluding, 'This is the opinion of R. Josiah'. All these alternatives make what our text gives as two opinions, one opinion.
(28) I.e., It is unnecessary to make use of the argument that to shave at the door of the tent of meeting would show contempt.
(29) Num. VI, 18.
(30) I.e. , that the nazirite should shave at the door of the tent of meeting.

(31) From "here he shaved to the place where the nazirites used to broil the peace-offering. It follows then that the first half of the verse cannot be taken literally as referring to place, but must be referring to time, viz.: after the slaughter of the peaceoffering. [The chamber where the Nazirites broiled their peace-offering was situated on the South East of the women's court, Mid. II, 6.]
(32) This is the version in Sifre (ibid.).
(33) In Num. VI, 18, And the nazirite shall shave at the door etc.
(34) Asheri pertinently points out that there is no Scriptural proof that the broiling was not to take place at the door.
(35) פתח, 'door' means 'opening'. Abba Hanan prefers an interpretation as near as possible to the literal one, if the literal one itself cannot be used.

Talmud - Mas. Nazir 45b

lest the young priests become assailed by temptation through her.[1] [R. Simeon's colleagues] said to him: The case of the faithless wife[2] disproves your point, for there it is written, And [the priest] shall set her before the Lord,[3] and we are not afraid lest the young priests be assailed by temptation, through her.[4] He replied: [The woman nazirite] pencils [her eyebrows] and applies rouge, whilst [the faithless wife] uses neither pencil nor rouge.[5]

MISHNAH. HE THEN TOOK THE HAIR OF HIS CONSECRATED HEAD AND THREW IT UNDER THE CAULDRON.[6] IF HE SHAVED IN THE 'PROVINCE'[7] HE DID NOT THROW IT UNDER THE CAULDRON: THE ABOVE REFERS ONLY TO POLLING IN RITUAL PURITY.[8] WHEREAS IN POLLING [AFTER] RITUAL DEFILEMENT HE DID NOT CAST IT UNDER THE CAULDRON; R. MEIR SAID: ALL [NAZIRITES] THREW IT UNDER THE CAULDRON WITH THE SOLE EXCEPTION OF A DEFILED NAZIRITE [WHO POLLED] IN THE 'PROVINCES.

GEMARA. HE THEN TOOK THE HAIR OF HIS CONSECRATED HEAD. Our Rabbis taught: He then took the broth,[9] put it along with the hair of his consecrated head and threw it under the cauldron containing the peace-offering. But if he threw it under the cauldron containing the sin-offering or the guilt-offerings his obligation would also be discharged.

But is there a guilt-offering in the case of a ritually pure nazirite?[10] — Raba replied: It means that if a ritually defiled nazirite threw it under the pot of the guilt-offerings his obligation would be discharged.

How do we know this?[11] — Raba replied: The verse says, 'Which is under the sacrifice of the peace-offerings', signifying that part of its sacrifice should be underneath it.[12]

'But if he threw it under the cauldron containing the sin-offering [or the guilt-offering] his obligation would also be discharged.' Why?[13] — The verse says, The sacrifice of,' thereby including the sin-offering and the guilt-offering.[14]

But have you not made use of the words 'the sacrifice of' for [the rule concerning] the broth? — If that is its whole significance the verse should have said, 'Of the broth of the peace-offerings.' Why then does it say 'the sacrifice of'? Clearly to include the sin-offering and the guilt-offering.

But perhaps its whole significance is this inference of the sin offering and the guilt-offering?[15] — If so, the verse should have read 'the peace-offering or the sacrifice'. Why does it say, 'the sacrifice of the peace-offering'? We are thus entitled to infer both things.

Our Rabbis taught: All [nazirites] threw [their hair] beneath the cauldron with the exception of a defiled nazirite who polled in the 'province', because his hair had to be buried.[16] This is the opinion

of R. Meir. R. Judah said: Ritually clean [nazirites] whether in the one place or the other[17] threw it under; ritually defiled nazirites whether in the one place or the other[17] did not throw it under, whilst the Sages said: None threw it under the cauldron excepting a clean [nazirite who polled] in the sanctuary, because [the polling] had then been properly done in the prescribed manner.[18]

MISHNAH. HE EITHER BOILED OR HALF-BOILED[19] THE PEACE-OFFERING. THE PRIEST THEN TOOK THE BOILED SHOULDER OF THE RAM,[20] AN UNLEAVENED CAKE FROM THE BASKET, AND AN UNLEAVENED WAFER, PLACED THEM ON THE NAZIRlte'S HANDS[21] AND WAVED THEM. AFTER THIS, THE NAZIRITE WAS ALLOWED TO DRINK WINE AND DEFILE HIMSELF FOR THE DEAD.

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(1) The female nazirite was therefore required to poll in private, but not a male nazirite. [R. Simeon, according to Tosaf. understood 'door' in the literal sense, and consequently differs from the Mishnah Mid. II, 6, which provides for the polling a special chamber, v. supra p. 168, n. 10).

(2) Or Sotah, v. Num. V, 11ff.

(3) Num. V, 16. The hair was uncovered during the ceremony of administering the 'bitter waters'. V. 17.

(4) The purpose of the verse cannot be therefore to require a woman nazirite to poll in private. In fact, she need not do so.

(5) And is therefore not attractive. R. Simeon retained his opinion that a woman nazirite was to poll in private, and a male in public.

(6) In which his peace-offering was being prepared.

(7) I.e., outside the Temple precincts, he did not have to bring the hair into the temple. Thus the Babylonian version of the Mishnah. The Jerusalem version reads here also, 'he threw it under'

(8) At the termination of the naziriteship.

(9) Of the peace-offering.

(10) The sacrifices mentioned (supra 45a) are sin-offering, burnt-offering, peace-offering.

(11) That the broth had also to be cast under the cauldron.

(12) The inference is from the superfluous words 'the sacrifice of': showing that the fire was beneath the sacrifice itself, and not merely beneath the pot.

(13) I.e., why not say that the peace-offering only is meant, since it is mentioned explicitly.

(14) Although it should preferably be the peace-offering.

(15) And not the rule concerning the broth.

(16) V. Tem. 34a.

(17) Whether in the Temple or in the 'province'.

(18) Tosef. Naz. IV, 5.

(19) [שולק . So Rashi. according to Tosaf. the word denotes 'overdone'.]

(20) [The Mishnah does not mention the 'breast' and the 'shoulder', Num. VI, 20), as it deals only with such rites as are distinct to the peace-offering of the nazirite; v. Petuchowski, a.l.]

(21) V. Num. VI, 19.

Talmud - Mas. Nazir 46a

R. SIMEON SAID THAT AS SOON AS ONE KIND OF BLOOD[1] HAD BEEN SPRINKLED ON HIS BEHALF THE NAZIRITE COULD DRINK WINE AND DEFILE HIMSELF FOR THE DEAD.[2]

GEMARA. Our Rabbis taught: And after that the nazirite may drink wine[3] means after [the performance of] all that has to be done.[4] This is the opinion of R. Eliezer, but the Sages said that [it means] after any Single act.[5]

What is the Rabbis' reason? — In this verse it is written, 'And after that the nazirite may drink wine,' whilst in the preceding verse occur the words, After he has shaven his consecrated head,[6] and

so just as there [‘after’] means after the single act, here too it means after a single act.

But may it not mean after both acts?[7] — If that were so, there would be no need for the similarity of phrase.[8]

Rab said: The rite of ‘waving’ in the case of the nazirite is indispensable.[9]

Whose opinion does this follow? Shall I say that of the Rabbis? Surely, since the Rabbis do not consider polling indispensable, the ‘waving’ is certainly not so![10] It must therefore be that of R. Eliezer. But then it is obvious, for R. Eliezer has said that [the verse[11] means] ‘after all that has to be done’? — It might be thought that since in the matter of atonement it is merely a non-essential feature[12] of the [sacrificial] rite,[13] it is also not indispensable here, and so we are told [by Rab that this is not so].[14]

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(1) I.e., the blood of any one of the three sacrifices.

(2) He did not have to wait until the whole rite was completed.

(3) Num. VI, 20.

(4) I.e., all the rites of the preceding verses.

(5) After even the first of the acts, viz.: the sprinkling of one kind of blood (Tosaf.).

(6) Num. VI, 19.

(7) I.e., after the polling of the preceding verse, as well as the sacrifice.

(8) The Gezerah Shawah, v. Glos. For it would have been more natural for the verse to have said simply ‘and then he may drink etc.’ instead of ‘and after etc.’

(9) Lit., ‘holds up’ the nazirite from wine and defilement,

(10) V. Num. VI, 19-20, for the ‘waving’ follows the polling.

(11) ‘And after that the nazirite may drink wine’ ibid. 21.

(12) Although part of the normal procedure; v. Yoma 5a.

(13) Lit., ‘relics of a precept’.

(14) And that it is here indispensable, in the view of R. Eliezer.

Talmud - Mas. Nazir 46b

But is it in fact indispensable? Has it not been taught: This is the law of the nazirite[1] [signifies] whether he has hands or not?[2] — But then, when we are taught: ‘This is the law of the nazirite’ signifies whether he has hair or not,[3] would this also mean that [polling] can be dispensed with?[4] Are we not taught further: A bald nazirite, say Beth Shammai, need not pass a razor over his head, whereas Beth Hillel say that he must pass a razor over his head;[5] and Rabina has explained that Beth Shammai's ‘need not’ signifies that he has no remedy,[6] whilst in Beth Hillel's view there is a remedy?[7]

The above interpretation [by Rabina of the Baraitha] agrees with that of R. Pedath. For R. Pedath has said that Beth Shammai [in this Baraitha] and R. Eliezer hold the same opinion. The [dictum of] R. Eliezer referred to [is the following]. It has been taught: If [the leper] has no [right] thumb or great toe[8] he can never become clean. This is the opinion of R. Eliezer. R. Simeon said that [the blood] should be put on their place and this would be valid, whilst the Sages said that it should be put on his left [thumb and great toe] and this would be valid.[9]

Another version.[10] Raba[11] said: The rite of ‘waving’ in the case of the nazirite is indispensable.

Whose opinion does this follow? Shall I say that of R. Eliezer? It would be obvious. Since R. Eliezer said that [the nazirite cannot drink wine until] after [the completion of] all that has to be done! Therefore it must be that of the Rabbis. But seeing that the Rabbis say that polling [itself] is

not indispensable, certainly the waving' [which follows polling] can be dispensed with?

But can it be dispensed with? Has it not been taught: 'This is the law of the nazirite' signifies whether he has hands or no?[12] — But then when we are taught: 'This is the law of the nazirite' signifies whether he has hair or no, would this also mean that [polling] is indispensable?[13] Have we not been taught further: A bald nazirite, say Beth Shammai, need not pass a razor over his head whilst Beth Hillel say that he must pass a razor over his head?[14] — R. Abina replied: 'Must' according to Beth Hillel signifies that he has no remedy,[15] whereas according to Beth Shammai he has a remedy.

This interpretation [of the Baraitha by R. Abina] differs from that of R. Pedath.[16]

MISHNAH. SHOULD HE POLL AFTER ONE OF THE SACRIFICES AND THIS BE FOUND INVALID,[17] HIS POLLING IS INVALID[18] AND HIS SACRIFICES[19] DO NOT COUNT: [THUS][20] SHOULD HE POLL AFTER THE SIN-OFFERING, WHICH WAS NOT OFFERED AS SUCH,[21] AND THEN OFFER THE OTHER SACRIFICES UNDER THEIR CORRECT DESIGNATIONS, HIS POLLING IS INVALID AND [NONE OF] HIS SACRIFICES COUNTS FOR HIM. [SIMILARLY], SHOULD HE POLL AFTER THE BURNT-OFFERING OR THE PEACE-OFFERING, WHICH HAVE NOT BEEN OFFERED AS SUCH, AND THEN OFFER THE OTHER SACRIFICES UNDER THEIR CORRECT DESIGNATION, HIS POLLING IS INVALID AND [NONE OF] HIS SACRIFICES COUNTS FOR HIM. R. SIMEON SAID: THAT PARTICULAR SACRIFICE DOES NOT COUNT,[22] BUT HIS OTHER SACRIFICES DO COUNT.

SHOULD HE POLL AFTER ALL THREE SACRIFICES AND ONE OF THEM BE FOUND VALID, HIS POLLING IS VALID AND HE HAS [ONLY] TO BRING THE OTHER SACRIFICES.

GEMARA. R. Adda b. Ahaba said: This [Mishnah] tells us that R. Simeon is of the opinion that a nazirite who polls after offering a voluntary peace-offering has fulfilled his religious obligation.[23] Why is this so? Because the verse Says, And put it on the fire which is under the sacrifice of peace-offerings,[24] and not 'his peaceofferings'.[25]

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(1) Num. VI, 21.

(2) Tosef. Naz. I, 6. The meaning is here assumed to be, 'if he has no hands, the waving-rite can be omitted', so that even if he has hands it does not prevent him from drinking wine before it has taken place.

(3) Tosef. Naz. I, 6.

(4) By the same argument as before, assuming that if he has no hair the ceremony of shaving need not be performed.

(5) Tosef. Naz. I, 7 and Yoma 61b with the ascriptions reversed. Nazir contains a number of such passages both tannaitic and of later date (e.g. supra 38b. Abaye and Raba reversed in Pes. 41b). Cf. Tosaf. Men. 58b, s.v. ואיכא .

(6) Since he can never shave, he will never be able to drink wine.

(7) He can perform the motions of the rite — pass a razor over his head — although the actual shaving is impossible. And so above the true interpretation is that he must do what is possible consistent with his lack of hands, e.g.. use his arms. But the 'waving' can by no means be dispensed with,

(8) One of the rites to be performed during the purification of the leper was the sprinkling of blood of the sacrifice on his right thumb and great toe; Lev. XIV, 14.

(9) Neg. XIV, 9.

(10) Of the dictum attributed above to Rab, and of the discussion round it.

(11) Our printed text has Rab. But all the commentators appear to have had Raba, not Rab.

(12) The ceremony must be performed, and thus is indispensable. Here the interpretation is the reverse of what it was in the earlier version.

(13) I.e., whether he has hair or not, shaving must be done.

(14) So that the act of polling is not indispensable according to Beth Hillel, and consequently the waving should also be considered not indispensable.
(15) For he has no hair to shave, and therefore can never terminate his naziriteship. Similarly the wave-offering is indispensable.
(16) For according to R. Abina, Beth Shammai allow him a remedy, whereas R. Pedath (v. supra) says that they do not allow him a remedy.
(17) As explained later in the Mishnah (Rashi); or by the blood being upset before the sprinkling, or the sacrifice becoming defiled (Tosaf.).
(18) And he must wait thirty days according to the Rabbis, or seven according to R. Eliezer before bringing fresh sacrifices; v. Mishnah supra 39a.
(19) Other sacrifices offered after the polling.
(20) The word 'thus' is added by Rashi, who considers what follows explanatory of the opening phrase of the Mishnah. Tosaf. considers it a new section, explaining the first clause differently: (v. note 5).
(21) But was sacrificed as a peace-offering instead.
(22) Where the burnt-offering or peace-offering was sacrificed under an incorrect designation (Rashi); they count as voluntary peace-offerings (v. Zeb. 2a), but for the purpose of liberating the nazirite must be replaced by other animals. [A sin-offering, however, sacrificed under an incorrect designation is entirely disqualified. v. Zeb. ibid.]
(23) Since R. Simeon's dictum refers to a nazirite who polled after a voluntary-offering (v. previous note).
(24) Num. VI, 18.
(25) Hence any peace-offering is valid.

Talmud - Mas. Nazir 47a

MISHNAH. IF [A NAZIRITE] ON WHOSE BEHALF ONE KIND OF BLOOD[1] HAS BEEN SPRINKLED BECOMES UNCLEAN, R. ELIEZER SAID EVERYTHING IS RENDERED VOID,[2] WHILST THE SAGES SAID: HE IS TO BRING HIS REMAINING SACRIFICES AFTER PURIFICATION. THEY SAID TO [R. ELIEZER]: IT IS RELATED OF MIRIAM OF TARMOD[3] THAT ONE KIND OF BLOOD WAS SPRINKLED ON HER BEHALF WHEN SHE WAS TOLD THAT HER DAUGHTER WAS DANGEROUSLY ILL. SHE WENT AND FOUND HER DEAD,[4] AND THE SAGES TOLD HER TO OFFER HER REMAINING SACRIFICES AFTER PURIFICATION.

GEMARA. The Mishnah says: R. ELIEZER SAID EVERYTHING IS RENDERED VOID. But R. Eliezer has said that whatever occurs after the fulfilment [of the nazirite period] renders void seven days?[5] — Rab replied: By 'IS RENDERED VOID' here, R. Eliezer means 'renders his sacrifices void'.[6] This is also clear from the sequel. viz: — WHILST THE SAGES SAID: HE IS TO BRING HIS REMAINING SACRIFICES AFTER PURIFICATION.[7] IT IS RELATED FURTHER, OF MIRIAM OF TARMOD, THAT ONE KIND OF BLOOD WAS SPRINKLED ON HER BEHALF WHEN SHE WAS TOLD THAT HER DAUGHTER WAS DANGEROUSLY ILL. SHE WENT AND FOUND HER DEAD, AND THE SAGES TOLD HER TO OFFER THE REMAINING SACRIFICES AFTER PURIFICATION. This proves it.[8]

C H A P T E R V I I

MISHNAH. A HIGH PRIEST AND A NAZIRITE MAY NOT DEFILE THEMSELVES [BY CONTACT] WITH THEIR [DEAD] RELATIVES, BUT THEY MAY DEFlle THEMSELVES WITH A METH MIZWAH.[9]

IF THEY WERE WALKING BY THE WAY AND FOUND A METH MIZWAH, R. ELIEZER SAYS THAT THE HIGH PRIEST SHOULD DEFILE HIMSELF BUT NOT THE NAZIRITE, BUT THE SAGES SAY: THE NAZIRITE SHOULD DEFILE HIMSELF BUT NOT THE COMMON PRIEST.[10] R. ELIEZER SAID TO THEM: RATHER SHOULD THE PRIEST, WHO DOES NOT

OFFER A SACRIFICE ON DEFILEMENT, DEFILE HIMSELF, THAN THE NAZIRITE WHO MUST OFFER A SACRIFICE ON DEFILEMENT.[11] THEY REPLIED: RATHER SHOULD THE NAZIRITE WHOSE CONSECRATION IS NOT PERMANENT,[12] DEFILE HIMSELF, THAN THE PRIEST WHOSE CONSECRATION IS PERMANENT.[13]

GEMARA. It is clear that as between a High Priest and a nazirite, the one [authority][14] is of the opinion that the High Priest is of superior sanctity,[15] and the other[16] that the nazirite is of superior sanctity.[17]

As between [a High Priest] anointed with the anointing oil,[18] [

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(1) I.e., the blood of one of the three sacrifices.

(2) Explained in the Gemara.

(3) A nazirite, Tarmod or Tadmor Palmyra. (V. I Kings, IX, 18).

(4) Thus becoming accidentally unclean.

(5) Supra 16a-b. If then 'EVERYTHING' means the nazirite period, R. Eliezer is contradicting himself.

(6) I.e., the sacrifice the blood of which had been sprinkled is invalid and must be replaced, in accordance with R. Eliezer's view that the whole termination ceremony of the nazirite hangs together; v. supra 46a.

(7) The words in cur. edd. 'This proves it' are to be deleted.

(8) That the point at issue was only the validity of the first sacrifices.

(9) I.e., a corpse without relatives at hand to bury it; v. Glos.

(10) Some versions read 'High Priest'. The argument is not affected.

(11) V. Num. VI, 9ff.

(12) It lapses at the end of the period of his naziriteship, or he can obtain release from his vow by application to a sage (Tosaf.).

(13) It is a result of his birth.

(14) I.e., the Sages.

(15) I.e., if both come upon a corpse which has no relatives to bury it, the nazirite must defile himself in order to bury it.

(16) R. Eliezer.

(17) And the High Priest must bury the corpse.

(18) V. Ex. XXX, 30. The High Priest ceased to be consecrated with this oil in the days of Josiah (c. 620 B.C.E.); v. Hor. 120 and Yoma 52b. After this, consecration took place by investing the priest with the garments of a High Priest.

and [one consecrated by wearing] the additional garments,[1] the former is of superior sanctity,[2] for the former must offer the bullock brought for breach of any of 'all the commandments',[3] but the latter cannot offer it.[4]

As between an anointed [High Priest] who has been superseded,[5] and one consecrated by [wearing] the additional garments,[6] the latter is of superior sanctity,[7] for he performs the Temple service, whilst the former is not permitted to perform the Temple service.[8]

As between one superseded on account of a [nocturnal] mishap,[9] and one superseded on account of a deformity,[10] the former is of superior sanctity,[11] for he will be fit to perform the Temple service on the morrow, whilst the one superseded on account of his deformity is not fit to perform the Temple service.[12]

The question was propounded: As between [the High Priest] anointed for a war,[13] and the deputy [High Priest],[14] which is of superior sanctity? Does the [High Priest] anointed for war take precedence, because he is qualified to go to war, or does the deputy take precedence, because he is qualified to perform the Temple service?[15] — Come and hear: For it has been taught: The only difference between a [High Priest] anointed for war and a deputy is that if they were both walking by the way and encountered a meth mizwah, the [High Priest] anointed for war is to defile himself, but not the deputy. But has it not been taught: A [High Priest] anointed for war takes precedence of a deputy? — Mar Zutra replied: As far as saving his life is concerned,[16] the [High Priest] anointed for war has a superior claim for many [people] depend upon him,[17] but as regards defilement, the deputy is of superior sanctity, as has been taught: R. Hanina b. Antigonus said that the reason the office of deputy to the High Priest was created,[18] was that should any disqualification happen to him [the High Priest], he can enter and minister in his stead.

[Now Eliezer and the Sages] differ only as regards a High Priest and a nazirite walking together, but each one by himself would be required to defile himself.[19] How is it known that this is so? — Our Rabbis have taught: To what does the passage. Neither shall he go in to any dead body[20] refer? It can hardly be to strangers, since this could be inferred a fortiori [by the following argument]. Seeing that a common priest, who is allowed to contract defilement in the case of kinsmen, is forbidden to do so in the case of strangers,[21] the High Priest who is not permitted to contract defilement in the case of kinsmen should certainly not be permitted to do so in the case of strangers. It follows that the passage refers to kinsmen, [and when therefore the text says.] Nor for his father[22] is he permitted to defile himself, [we infer that] he is permitted to defile himself in the case of a corpse [the burial of] which is a religious duty.

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(1) The High Priest wore eight garments and the common priest four. V. Ex. XXVIII.

(2) And if both encounter a corpse, the latter must bury it.

(3) V. Lev. IV, 2ff.

(4) V. Hor. 11b.

(5) If the High Priest could not officiate on the Day of Atonement, another Priest was appointed to his office for that day only. As soon as the former was able to perform his duties, the latter was superseded.

(6) And who is the regular High Priest.

(7) And the former must defile himself if the latter is the only other person present and they encounter a corpse.

(8) Having officiated as High Priest, he was not allowed to act as a common priest, nor could he officiate as High Priest whilst the other lived, as this would cause jealousy. v. Hor. 12b.

(9) Lev. XV, 16.

(10) Lev. XXI, 27.

(11) And the latter must defile himself in the event of both meeting with a corpse.

(12) Until the deformity disappears.
(13) V. Deut. XX.
(14) Segan, who deputised for the High Priest if he was unable to perform the Temple service on the Day of Atonement. On Segan, v. Sanh. (Sone. ed.) p. 97, n. 1.
(15) But once a priest had been anointed for war, he could no longer take part in the Temple service.
(16) Should both be in danger.
(17) For he is to go to war on their behalf.
(18) This saying occurs also in Yoma 39a, where the reading is: 'R. Hanina, the priestly deputy, said that the reason the deputy stands at his (the High Priest's) right is that . . .' on the whole passage v. Hor. (Sonc. ed.) pp. 97ff.
(19) If they came upon a corpse whose burial is a religious duty.
(20) Lev. XXI, 21.
(21) V. Lev. XXI. 2 and 3.
(22) Since this part of the verse is superfluous. Lev. XXI, 22.

Talmud - Mas. Nazir 48a

[The words,] Nor for his mother form the basis of the Gezerah shawah used by Rabbi. For it has been taught: Rabbi said: In the case of a nazirite, when they die,[1] he is not allowed to defile himself on their account, but he may defile himself [if they are unclean] through [leprous] plague or unclean issue. But this covers the nazirite only. How are we to infer the same for a High Priest? As follows: There is no need for the expression, his mother[2] in the case of the High Priest, and Scripture need not have mentioned this, since the same may be derived from the following a fortiori argument. Seeing that though a common priest may defile himself on account of his brother by the same father,[3] yet a High Priest may not defile himself on account of his father,[4] then if a common priest may not defile himself on account of his brother by the same mother,[5] surely [it follows that] a High Priest may not defile himself on account of his mother. Since this can be inferred by a process of reasoning, why does Scripture mention 'his mother' in connection with the High Priest? It is available for purpose of comparison and to set up a Gezerah shawah [from like expressions]. The phrase 'his mother' occurs in connection with the nazirite and the phrase 'his mother' occurs in connection with the High Priest, and so just as in the case of the nazirite it is to his mother [etc.], 'when they die' that he is forbidden to defile himself, but not when they are unclean through leprosy or unclean tissue, so in the case of the High Priest, it is to his mother [etc.], when they die that he is forbidden to defile himself, but not when they are unclean through leprosy or unclean issue.

We have thus found the sanction for a High Priest.[6] How is the same known of a nazirite? It has been taught: From the passage, All the days that he separateth himself unto the Lord, he shall not come near to a [dead][7] body [nefesh],[8] it might be concluded that even the body [nefesh] of an animal is intended, the word [nefesh] being used as in the verse, And he that smiteth [the nefesh of] a beast.[9] Therefore Scripture says, 'he shall not come near to a dead body,' indicating that a human body [nefesh] is being referred to. R. Ishmael says: It is unnecessary [to argue in this manner]. Since it says, 'he shall not come', Scripture is referring to bodies which cause defilement merely on coming [under the same roof].[10] [Futher],for his father, or for his mother,[11] he may not defile himself, but he may defile himself for a meth mizwah. But even if this [expression] did not occur, I could infer it as follows: Seeing that a High Priest whose consecration is permanent may defile himself for a meth mizwah, then surely a nazirite whose consecration is not permanent[12] may defile himself?[13] But this inference is not valid. For if it is true in the case of a High Priest,it may be because he is not required to offer a sacrifice as a consequence of his defilement, whereas a nazirite must offer a sacrifice as a consequence of his defilement, [and it might be objected that] since he must offer a sacrifice in consequence of his defilement,[14] he may not defile himself for a meth mizwah. And so Scripture says, He shall not make himself unclean for his father, or for his mother, [implying], 'but he may make himself unclean for a meth mizwah'. But perhaps [the correct inference is that] he may not defile himself for his father or for his mother, but he may defile himself

for other corpses?[15] This follows by an argument a fortiori. Seeing that a common priest who may defile himself for his kinsmen is forbidden to defile himself for other dead,[16] then a nazirite who may not defile himself for kinsmen is surely forbidden to defile himself for other dead.

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(1) Num. VI, 7. Referring to a nazirite's relatives.

(2) Lev. XXI, 11. A High Priest may not defile himself for his mother's corpse.

(3) But not the same mother.

(4) Though a father is nearer kin than a brother.

(5) But not the same father.

(6) I.e., that a High Priest must defile himself for a corpse the burial of which is a religious duty.

(7) Some authorities omit the word 'dead' from the Talmud text, since the assumed inference would only follow if it were lacking in the Bible.

(8) Num. VI, 6.

(9) Lev. XXIV, 28.

(10) This applies to human corpses. Animal corpses defile only if touched or carried.

(11) Num. VI, 7.

(12) But only for as long as he has undertaken to he a nazirite, or until he seeks release at the hands of a Sage.

(13) And the phrase, 'For his father etc.' is unnecessary to teach that he may defile himself for a corpse whose burial is a religious duty.

(14) V. Num. VI, 9ff.

(15) I.e., nonkinsmen whose death he would not mourn so much.

(16) V. Lev. XXI, 2.

Talmud - Mas. Nazir 48b

And so why does Scripture say, 'for' his father, or 'for his mother'? For his father or for his mother he is forbidden to defile himself, but he may defile himself for a meth mizwah. But even if this[1] were not written,I could infer it as follows: A general prohibition[2] is stated for the High Priest, and a general prohibition[3] is stated for the nazirite, and so just as, though there is a general prohibition for the High Priest, he is forbidden to defile himself for his father, but he may defile himself for a meth mizwah, so when there is a general prohibition for the nazirite [it signifies that] he may not defile himself for his father but he may defile himself for a meth mizwah.[4] But it is possible to argue in another direction. A general prohibition is stated for the common priest,[5] and a general prohibition is stated for the nazirite, and so just as, though there is a general prohibition stated for the common priest, he may defile himself for his father, so too though there is a general prohibition stated for the nazirite he may defile himself for his father. Scripture therefore says, 'He shall not make himself unclean for his father, or for his mother,' but he may make himself unclean for a meth mizwah.

But surely this is needed to tell us [the plain fact] that he may not defile himself for his father?[6] — In point of fact, 'for his father' tells us that he may not defile himself for his father;[7] 'for his brother'[8] he may not defile himself but he may defile himself for a corpse [the burial of] which is a religious duty; 'or for his mother'[8] is used to form the basis of a Gezerah shawah after the manner of Rabbi;[9] whilst 'or for his sister'[8] is required for the following [teaching]. For it has been taught: For what purpose is 'for his sister' mentioned?[10] If a [nazirite] was on his way to slaughter his Paschal lamb, or to circumcise his son and he heard that a near kinsmen had died, it might be thought that he ought to defile himself. It therefore says, 'He shall not make himself unclean'. But it might [then] be thought he should not defile himself for a meth mizwah. The text therefore adds, 'for his sister', [implying that] for his sister he is forbidden to defile himself, but he may defile himself for a meth mizwah.

R.Akiba said:[11] ['Nefesh'] 'body' refers to strangers; 'dead' to kinsmen, 'For' his father or for his mother' [teaches that] he is forbidden to defile himself for these, but he may defile himself for a

meth mizwah. 'For his brother' [tells us] that if he he both High Priest and a nazirite, it is for his brother that he is forbidden to defile himself, but he may defile himself for a corpse [the burial of] which is a religious duty. 'For his sister' [is required] as has been taught: 'If a man was on his way to slaughter his Paschal lamb or circumcise his son etc.'

Whence does R. Akiba derive the lesson learnt by Rabbi from the Gezerah shawah? — He will reply: Since it has been said that if he be both High Priest and a nazirite it is for his brother that he is forbidden to defile himself but he may defile himself for a meth mizwah,[12] what difference does it make whether he is simply High Priest or High Priest and a nazirite.[13]

And whence does R. Ishmael derive the rule about a High Priest who is a nazirite?[14] — Since the All-Merciful allows [the breach of] a single prohibition in connection with a meth mizwah, what does it matter whether there is only one prohibition or two?

[In that case] for what purpose is for his sister required?[15] — You might assume that in connection with a meth mizwah the All-Merciful permitted [the defilement of] a nazirite and a priest because this is an offence which is merely prohibited but where the neglect of circumcision and the Paschal lamb entailing kareth[16] is involved, [the nazirite or priest] should not defile himself for a meth mizwah[17] and so we are told [that he should].

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(1) The phrase 'For his father or for his mother'.

(2) 'Neither shall he go in to any dead body'; Lev. XXI, 11.

(3) 'He shall not come near to a dead body'. Num. VI, 6.

(4) And 'For his father etc.' is superfluous.

(5) 'There shall none defile himself for the dead amongst the people', Lev. XXI. 1.

(6) And it is not meant merely to provide the ground for the inference, that a nazirite may defile himself for a corpse whose burial is a religious duty.

(7) And since he may not defile himself for his father, he may not for his brother, since the father is nearer kin.

(8) Num. VI, 7.

(9) Supra 48a.

(10) For since he may not defile himself for his father, he may not for his sister.

(11) R. Akiba is interpreting Num. VI, 6 and 7, in a different manner to R. Ishmael.

(12) So that the inference, when they die, but not when they have plague also refers to the kinsmen of a nazirite who is High Priest.

(13) In either case be is not forbidden to touch them if they have leprosy or unclean issue.

(14) That he may defile himself to bury a neglected corpse.

(15) If a nazirite must defile himself to bury a neglected corpse, he must also defile himself for this purpose even when on his way to slaughter his paschal lamb.

(16) V. Glos.

(17) When about to slaughter his paschal lamb.

Talmud - Mas. Nazir 49a

On the view of R. Akiba, seeing that whether he be simply a High Priest or whether he be a High Priest who is also a nazirite, we can infer from 'for his brother' [that he may defile himself for a neglected corpse], what is the purpose of 'for his father and for his mother'? — They are both necessary. For were only his father mentioned, it might be thought that the reason why he may not defile himself for him is that there is merely a presumption [of paternity],[1] whereas for his mother who we know bore him, he should defile himself. Again, if the All-Merciful had mentioned his mother, it might be thought that he may not defile himself for his mother because her children['s descent] is not reckoned through her,[2] whereas for his father, since it has been affirmed, 'by their families, by their fathers' houses',[3] it might be said that he should defile himself. We are therefore

told [that he may defile himself for neither].

[On the view of R. Akiba] what is the purpose of 'Neither shall he go in to any dead body'?[4] —

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(1) His wife may have committed adultery.

(2) But through the male line.

(3) Num. I, 2. From this verse the inference is drawn that descent is counted in the male line; v. B.B. 109b.

(4) Lev. XXI, 12. Said of the High Priest.

Talmud - Mas. Nazir 49b

'To any' excludes strangers;[1] 'dead' excludes kinsmen, 'body' [nafshoth] excludes a quarter [of a log] of blood coming from two corpses, [and informs us] that it renders unclean by being under a covering [with it], as it is written, 'neither shall he go in to any dead body [nafshoth]'.[2]

MISHNAH. THE NAZIRITE MUST POLL FOR [DEFILEMENT CONTRACTED FROM] THE FOLLOWING SOURCES OF DEFILEMENT:FOR A CORPSE, OR AN OLIVE'S BULK OF [THE FLESH OF] A CORPSE, OR AN OLIVE'S BULK OF NEZEL,[3] OR A LADLEFUL OF CORPSE-MOULD,[4] OR THE SPINAL COLUMN, OR THE SKULL, OR ANY LIMB [SEVERED] FROM A CORPSE OR ANY LIMB [SEVERED] FROM A LIVING BODY THAT IS STILL PROPERLY COVERED WITH FLESH,[5] OR A HALF-KAB[6] OF BONES, OR A HALF-LOG[6] OF BLOOD, WHETHER [THE DEFILEMENT IS CON TRACTED] FROM CONTACT WITH THEM, FROM CARRYING THEM, OR FROM OVERSHADOWING[7] THEM; FOR [DEFILEMENT CONTRACTED FROM] A BARLEY-GRAIN'S BULK OF BONE, WHETHER BY CONTACT OR CARRYING. ON ACCOUNT OF THESE, A NAZIRITE MUST POLL AND BE SPRINKLED ON THE THIRD AND SEVENTH DAYS; SUCH [DEFILEMENT] MAKES VOID THE PREVIOUS PERIOD, WHILST HE DOES NOT BEGIN TO COUNT ANEW [HIS NAZIRITESHIP] UNTIL HE HAS BECOME CLEAN AND BROUGHT HIS SACRIFICES.

GEMARA. Our Rabbis taught: After the demise of R. Meir, R. Judah said to his disciples, 'Do not allow the disciples of R. Meir to enter here, for they are disputatious and do not come to learn Torah, but come to overwhelm me with citations from tradition.' Symmachus forced his way through and entered. He said to them, 'Thus did R. Meir teach me: The nazirite must poll for [defilement contracted from] the following sources of defilement: for a corpses or for an olive's bulk of [the flesh of] a corpse.' R. Judah was wroth and said to them, 'Did I not tell you not to allow the pupils of R. Meir to enter here, because they are disputatious? If he must poll for an olive's bulk of [the flesh of] a corpse, then certainly he must poll for the corpse itself![8]

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(1) I.e., that he may not defile himself by touching their corpses.

(2) The Hebrew has the plural of nefesh, indicating two corpses. The nefesh is identified with the blood (v. Deut. XII, 23) hence R. Akiba's inference; v. Sanh. (Sonc. ed.) pp. 22 and 14.

(3) Coagulated corpse-dregs; v. infra 50a.

(4) The earth of a decomposed body.

(5) Sufficient flesh for the limb to have maintained itself when attached to the body.

(6) V. Glos. for these measures.

(7) This type of defilement is caused by being, either under the same roof as, or perpendicularly above or below, the source of defilement; cf. Num. XIX, 14ff.

(8) And this does not require explicit mention.

Talmud - Mas. Nazir 50a

R. Jose' commented: People will say, 'Meir is dead, Judah is angry, Jose is silent, what is to become

of the Torah?' And so R. Jose explained: It was only necessary [to mention the corpse itself explicitly] for the case of a corpse that has not an olive's bulk of flesh upon it. — But it can still be objected: If [the nazirite] must poll for a [single] limb, then surely he must poll for the whole [skeleton]! — It must therefore be as R. Johanan explained [elsewhere],[1] that it was only necessary [to mention the corpse itself] for the case of an abortion in which the limbs were not bound together by the sinews, and here too it refers to an abortion in which the limbs are not bound together by the sinews.[2]

Raba said: It is only necessary [to mention the corpse itself] for the case where there is the greater part[3] of the frame [of a corpse][4] or the majority [of its bones],[4] which do not amount altogether to a quarter [kab] of bones.[5]

FOR AN OLIVE'S BULK OF [THE FLESH OF] A CORPSE, OR AN OLIVE'S BULK OF NEZEL: And what is NEZEL? The flesh of a corpse that has coagulated, and liquid secretion [from a corpse] that has been heated [and has congealed].[6]

What are the circumstances? If it be not known to belong to [the corpse], what does it matter if it has coagulated?[7] Whilst if we know that it pertains to [the corpse], then even though it has not coagulated [it should defile]! — R. Jeremiah replied: [Secretion] of uncertain origin is referred to. If it coagulates,it is [cadaverous] secretion,[8] otherwise it may be phlegm or mucus.[9]

Abaye inquired of Rabbah: Is there [defilement through] corpsedregs in the case of [defilement caused by] animals[' corpses], or not?[10] Was the tradition only that corpse-dregs coming from man [defile], but not corpse-dregs coming from animals, or is there no difference?[11] According to the opinion that the uncleanness is of the heavier type[12] only until [the animal is unfit to be eaten by]a stranger,[13] and is then of the lighter type[14] until [it is unfit to be eaten by] a dog,[15] there is no difficulty,[16] but according to the opinion that the uncleanness remains of the heavier type until [it is unfit to be eaten by] a dog, what answer can be given?[17] — Come and hear: If he melted [unclean fat] with fire, it remains unclean, but if in the sun,[18] it becomes clean. Now if you assume [that the animal remains unclean] until [it is unfit to be eaten by] a dog, then even if [the fat has been melted] in the sun, it should also [remain unclean]![19] — It only melts after it has decomposed in the sun, and since it has decomposed it is [nothing but] dust.[20]

We have learnt elsewhere: Any jet of liquid [poured from a clean to an unclean vessel] is clean[21] save only [a jet of] thick honey[22] and heavy batter.[23]

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(1) The reference here is thought to he to Oh. II,1, dealing with defilement by overshadowing, where the same phrase occurs. But the only occurrence of this statement of R. Johanan is found in Hul. 89b, with reference to our Mishnah; v. Tosaf. Naz. and Hul.

(2) A single limb of such an abortion not containing an olive's bulk of flesh, would not convey defilement, but the whole does.

(3) The greater part being equivalent to the whole.

(4) V. infra 52b for the explanation of these terms.

(5) And but for the fact that it constitutes the greater part of the frame of the corpse it would not convey defilement.

(6) [Nezel is thus derived from נצל to separate', cf. Gen. XXXI. 9 (Rashi); Petuchowski connects it with נזל 'to flow', 'melt away'.]

(7) It should not convey defilement.

(8) And causes defilement.

(9) Which do not defile.

(10) This question has no bearing on the nazirite, who does not lose any of his period for defilement caused by an animal corpse.

(11) And animal corpse-dregs also defile.

(12) Defiling man by contact or carrying.

(13) V. Bek. 23b. A Jew may not eat the flesh of an animal which dies of itself, but may give it to a stranger; v. Deut. XIV, 21.

(14) Defiling food only but not man.

(15) After which it ceases to defile.

(16) For corpse-dregs are unfit to be eaten by a human being.

(17) For corpse-dregs are fit to be eaten by a dog.

(18) When it becomes corpse-dregs.

(19) It is assumed that though the sun turns the fat into corpse-dregs, it is still fit to be eaten by a dog.

(20) And unfit for a dog. Hence it becomes clean.

(21) I.e.,it does not convey defilement from the unclean to the clean vessel.

(22) Aliter; The honey of Zifim; (cf. Josh. XV, 24). V.Sot. 48b.

(23) So the Aruch.

Talmud - Mas. Nazir 50b

Beth Shammai say: Also one of a porridge of grist or beans, because [at the end of its flow] it springs back.[1]

Rammi b. Hama asked: is there [transference of defilement through] a jet in the case of foodstuffs,[2] or does [transference of defilement through] a jet not apply to foodstuffs? Do we say [that the principle applies to thick honey and batter] because they contain liquor,[3] whereas [foodstuffs] contain no liquor,[4] or is it perhaps because they are compact masses[5] and [foodstuffs] are also compact masses?[6] — Raba replied: Come and hear: A whole piece of fat[7] from a corpse, if melted, remains unclean, but if it was in pieces[8] and they were melted, it remains clean.[9] Now if you assume [that the principle of transference of defilement through] a jet does not apply to foodstuffs, [then even if it be] whole and then melted it should become clean![10] — R. Zera commented: I and Mar, son of Rabina, interpreted [the above teaching as follows]: It refers to where at the time of melting, the column of fire ascended to the mouth of the vessel[11] and [the fat] coagulated whilst it was all together.[12]

Rabina said to R. Ashi: Come and hear [the following]: Beth Shammai say: Also one of a porridge of grist or of beans, because [at the end of its flow] it springs back![13] — What does this prove? In the other cases[14] it may be the fact that they are compact masses [which causes defilement] though here it is because of the liquor.[15]

OR A LADLEFUL OF CORPSE-MOULD: And what is its size? — Hezekiah said: The palm of the hand full. R. Johanan said: The hollow of the hand[16] full.

It has been taught: The [measure of the] ladleful of corpsemould mentioned is,from the bottom of the fingers upwards.[17] So R. Meir. The Sages say [it means] the hollow of the hand full.[18] Now R. Johanan at least agrees with the Rabbis; but with whom does Hezekiah agree, neither with R. Meir, nor with the Rabbis? — I will tell you. The palm of the hand full and from the joints of the fingers upwards is the same measure.[19] R. Shimi b. Adda said to R. Papa: How is it known that 'from the joints of the fingers and upwards' means towards the tips? Perhaps it means lower down the hand[20] when [the measure] is the palm of the hand full?[21] This was not solved.[22]

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(1) Being thick liquids, they have such elasticity that when he ceases to pour out the liquid, the lower end of the jet, which has touched the unclean vessel, springs back into the upper vessel. M. Maksh. V. 9.

(2) Viz, if he melted some solid food, e.g.,fat, and poured it from a clean to an unclean vessel.

(3) And it is the presence of the liquor which causes the jet to shrink backwards.

(4) Whence they would not transfer defilement from the lower end of the jet to the upper end.

(5) And so transfer defilement; in the same way as any solid becomes wholly unclean even if part of it is defiled.
(6) And transfer defilement.
(7) Of an olive's bulk.
(8) Each smaller than an olive. When smaller than an olive, unclean flesh loses its defiling property.
(9) Though now solidified to one piece larger than an olive's bulk. Tosaf. Oh. IV, 3.
(10) Whilst being melted, the fat would move from side to side of the vessel and so there would be less than an olive's bulk of the fat in one spot, if the jet of liquid fat be not counted as joined together.
(11) And the vessel was at rest when heated so that the fat was heated all together.
(12) Without moving from its original position, so Rashi. Tosaf. and Asheri give the following reading: 'It refers to where at the time of melting a column [of fat] rose and sublimed at the mouth of the vessel'. In either case there is no flow.
(13) It is now assumed that the Rabbis disagree with Beth Shammai only as regards grist and beans, but accept his criterion of springing back. This occurs in the presence of a liquid only.
(14) I.e., thick honey and batter.
(15) And the Rabbis disagree as to the criterion. Beth Shammai say it is liquor and the Rabbis, perhaps, the fact that it is a compact mass.
(16) Formed by bending the fingers to touch the wrist.
(17) I.e., presumably towards the tips of the fingers.
(18) Tosef. Oh. II, 2.
(19) And he agrees with R. Meir.
(20) Upwards in the direction of the shoulder.
(21) And there is no difficulty for Hezekiah.
(22) These words occur in the printed texts, but are omitted by Tosaf. and others.

Talmud - Mas. Nazir 51a

Our Rabbis taught: What type of corpse produces corpsemould [that can defile]? A corpse buried naked in a marble sarcophagus or on a stone floor is a corpse which produces corpse-mould. If it is buried in its shroud, or in a wooden coffin, or on a brick floor, it is a corpse which does not produce corpse-mould [that can defile].[1]

'Ulla said: Corpse-mould [to defile] must come from flesh and sinew and bone. Raba raised [the following] objection to 'Ulla. [It has been taught:] Corpse-mould derived from flesh is clean. This implies that if it be from bones it is unclean, even though there be no flesh present? — Say rather as follows: Corpse-mould derived from flesh is clean, unless there be bone in the flesh. But there are no sinews!?[2] — It is impossible that there should be flesh and bones without sinews.

Rab Samuel[3] b. Abba said that R. Johanan said: Two corpses buried together act as gilgelin[4] to each other. R. Nathan [son of R. Oshaia][5] raised the following objection. [It has been taught that corpse-mould] derived from two corpses is unclean? — Said Raba, [we suppose that] each was buried separately and decayed and together' formed a ladleful of corpse-mould.[6]

Rabbah b. Bar Hanah said that R. Johanan said: If a man cut [the corpse's] hair and buried it with it, it acts as gilgelin [and the resultant mould does not defile].

We have learnt elsewhere: Every part of a corpse is unclean except the teeth, the hair and the nails; but whilst still attached [to the corpse], they are all unclean.[7] Hezekiah propounded: What is the law in the case of hair long enough to be polled,[8] and nails long enough to be pared?[9] Do we say that anything which is fit to be cut is as though already cut,[10] or perhaps they are after all still attached?[11] — But cannot the question be resolved from [the dictum of] Rabbah b. Bar Hanah?[12] The reason [that the hair acts as gilgelin] is because he cut it, but if he does not cut it, it does not?[13] He [Rabbah b. Bar Hanah] might have meant this: If he cut it, it acts as gilgelin; but if he did not cut

it, he was in doubt [as to its effect].[14]

R. Jeremiah propounded: What is the law regarding corpsemould coming from the heel?[15] Does our tradition specify corpsemould derived from a whole corpse, but not corpse-mould resulting from [the decomposition of] the heel, or is there no difference? — Come and hear: R. Nathan son of R. Oshaia learnt that corpsemould derived from two corpses is unclean. Now if you assume that what comes from the heel is not [counted as corpse-mould], then, if we look to the one [corpse], [the mould in the mixture] may have been taken from the heel, and if to the other, it may have been taken from the heel?[16] — Where the whole corpse has decayed and [the corpse-mould] has been taken from the heel, there it would certainly be [counted as corpse-mould],[17] but here the question is when one limb[18] has decomposed and [the mould] has been taken from the heel. This was left unsolved.

R. Jeremiah propounded: Does a fetus in a woman's womb act as gilgelin or not? Since a Master has affirmed that a fetus counts as the thigh of its mother, is it therefore part of her body and so does not act as gilgelin, or perhaps since it would eventually leave [the womb], does it count as separated from her? Should you decide that since a fetus will eventually leave [the womb], it is separate from her,

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(1) For the resultant mould will be mixed with fragments of cloth, wood, or brick, since these crumble. Tosef. Oh. II, 2.

(2) And ‘Ulla said all three are necessary.

(3) Var. lec. Shaman.

(4) A covering or girdle. lit., ‘wrappers’; so that the corpse. mould which results does not defile, just as it does not when the corpse is buried in a shroud.

(5) Inserted from Bah.

(6) In such a case, the joint mixture causes defilement; but if buried together, the resultant mould does not defile.

(7) Oh. III, 3.

(8) Hair that is long and would have been polled had not death intervened.

(9) Does the resultant corpse-mould defile? — So Rashi. According to Tosaf. the question is: Is the hair unclean or not?

(10) And prevents the formation of corpse-mould.

(11) And count as part of the body.

(12) ‘If he cut the hair and buried it, it acts as gigelin’.

(13) Thus attached hair counts as part of the corpse.

(14) And this was the very question of Hezekiah.

(15) The lower part of the body.

(16) And the resulting mixture should not defile, if corpsemould from the heel does not.

(17) This is shown by R. Nathan's dictum.

(18) One of the lower limbs.

Talmud - Mas. Nazir 51b

what would be the law regarding semen in a woman s womb? Do we say that because it has not yet formed [into an embryo] it counts as part of her body,[1] or perhaps seeing it has come from elsewhere, it is not [part of the body]?[2]

R. Papa propounded: What about excrement? Seeing that one cannot exist without food, is it part of one's life,[3] or perhaps this too comes from elsewhere?[4]

R. Aha son of R. Ika propounded: What about his skin?[5]

R. Huna b. Manoah propounded: What about his phlegm and his mucus?

R. Samuel b. Aha said to R. Papa: If now you assume that all these mentioned act as gilgelin, how

can there be corpse-mould which defiles? — If he was given to drink water from [the Well of] the Palm Trees,[6] depilated with nasha,[7] and was steeped in the [hot] springs of Tiberias.[8]

Abaye said: We hold a tradition that a corpse that has been ground to powder does not come under [the law of] corpse-mould. The following was propounded: If it were ground and then decayed, what would be the law? Is the reason [that corpse-mould defiles] solely because flesh and bones and sinews are present, and here they are present, or do we require it [to have become corpsemould] as in its original form, and this has not occurred? This was left unsolved.

'Ulla b. Hanina learned: A defective corpse[9] does not come under [the law of] corpse-dust,[10] nor does it acquire the soil on which it lies,[11] nor does it help to make an area into a graveyard.[12] The following objection was raised. [We have learnt:] No! Because you say this[13] of a corpse to which [the law concerning] 'the greater part, a quarter [kab]' and 'a ladleful of corpse-mould' applies, would you say it of a living body to which [the laws concerning] 'the greater part, a quarter [kab of bones]' and 'a ladleful of corpse-mould' do not apply?[14] What are the circumstances?[15] [Surely,] that one limb has decayed.[16] And similarly[17] in the case of a corpse, even if one member [has decomposed, the law of] corpse-dust applies?[18] — Does it say, 'whereas in the case of a corpse [the law of corpse-dust applies]'?[19] What we are told is that there are corpses to which [the law of] corpse-dust applies,[20] but there are no living bodies to which [the law of] corpse-dust applies.

Raba propounded: If [a man's limb] decayed whilst he was alive and he then died,[21] what would the law be?[22] Does the tradition specify corpse-mould which decayed when he was dead, or perhaps it is enough that he is now dead? — Come and hear [the following]. [We have learnt:] No! Because you say this of a corpse to which [the laws concerning] 'the greater part', 'a quarter [kab of bones]' and 'a ladleful of corpse-mould' apply, would you say it of a living body etc. The reason [that the law of corpse-mould does not apply to a living body] is because it is alive, from which we infer that if he died [the law of] corpse-mould would apply.[23] — Does it say, 'whereas if he died [the law of corpse-mould applies]'? What we are told is that there are corpses to which [the law of] corpse-mould applies, but there are no living bodies to which [the law of] corpsemould applies.[24]

Raba propounded: What is the law concerning a defective[25] ant?[26] Does the tradition specify [a certain] size[27] and this is wanting, or does it specify a [separate] creature[28] and this it is? —

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(1) And does not act as gilgelin.

(2) And acts as gilgelin.

(3) And so does not act as gilgelin.

(4) And not being part of the body acts as gilgelin.

(5) Does it act as gilgelin or not? Rashi translates: What about his spittle?

(6) A violent purgative; v. Shab. 110a.

(7) A natural depilatory, v. supra p. 164, n. 4.

(8) To remove the skin.

(9) One lacking a member.

(10) When it decays, a ladleful of its corpse-dust does not defile by 'overshadowing'.

(11) Lit., 'take possession'. If a complete corpse is unearthed, the soil round about it must be removed with the body; v. infra Mishnah 64b.

(12) Lit., 'It has not (the law of) the area of a cemetery'. If three complete corpses are found together, the place where they are found must be converted into a graveyard. Ibid.

(13) That an olive's bulk of its flesh defiles by 'overshadowing'.

(14) V. 'Ed. VI, 3.

(15) Under which the law of corpse-mould does not apply to a living body.

(16) I.e., only part of the body.

(17) Since the cases are parallel.

(18) Contradicting ‘Ulla b. Hanina's teaching.
(19) Which would imply that the comparison was exact.
(20) Viz., whole bodies.
(21) And the body crumbled into corpse-dust, together with the limb which decayed during his lifetime.
(22) Does the law of corpse-dust apply or not?
(23) Thus Raba's question is answered in the affirmative.
(24) And the question remains.
(25) One lacking a limb.
(26) Does he receive stripes for eating it or not? — V. Mak. 13a.
(27) That the creature eaten must be the size of an ant.
(28) That what is eaten must be a separate creature.

Talmud - Mas. Nazir 52a

R. Judah of Diskarta[1] replied: Judge from the following. [It has been taught: From the verse, Whosoever doth touch] them [. . . shall be unclean],[2] it might be thought that this is [only if he touches] whole [reptiles], and so Scripture says, [And upon whatsoever any] of them [. . . doth fall].[3] From ‘of them’ [alone] it might be thought that part of them [defiles], and so Scripture says ‘them’. How are [the texts to be] reconciled? [He is not unclean] unless he touches a part of one equivalent to a whole one and the Sages estimated this to be the size of a lentil, since the sand-lizard[4] at its first formation[5] is of the size of a lentil. Hence it follows that tradition specifies [a certain] size.[6] R. Shemaya demurred: The reason that we require a [particular] size, so that if it is not the size of a lentil it does not defile, is because there is no life in it,[7] but when there is life in it, [it may be that] no [minimum size is required].[8] It is this question that is being put to you.[9]

THE BACKBONE AND THE SKULL: The question was propounded: Does the Mishnah say the backbone and the skull,[10] or does it say perhaps the backbone or the skull?[11] — Raba replied: Come and hear: A backbone that has been stripped of most of its ribs[12] is clean,[13] but if it is in the grave, even though it is broken in pieces or separated [into parts], it is unclean,[14] because of the grave.[15] Now the reason [that the backbone is clean] is that it has been stripped, but if it were not stripped,it would be unclean,[16] and so may we [not] infer from this that the correct reading is, either the backbone or the skull? — Does it say, ‘But if etc.’?[17] What we are told is that when [the backbone is] stripped, it is clean;[18] but the other case[19] still remains doubtful.

Come and hear: R. Judah says: Six things were declared unclean by R. Akiba and clean by the Sages, and R. Akiba retracted his opinion. It is related that a basket full of [human] bones was taken into the Synagogue of the Tarsians[20] and placed in the open air.[21] Then Theodos, the Physician, together with all the physicians, entered, and said that there was not the backbone of a single corpse there.[22] The reason [that it was declared clean] is that there was not a backbone from a single [corpse], but had there been either a backbone or a skull from a single [corpse],[23] a nazirite would have been required to poll because of it, whence it follows that we read in our Mishnah, either the backbone or the skull? The case was put strongly. Not only was there not the backbone and skull of a single corpse, but there was not even the backbone of a single corpse or the skull of a single corpse.

Judge[24] from the enumeration [of the six things]: And what are the six things that R. Akiba declared unclean and the Sages clean? A limb set up[25] from two corpses, a limb set up [from bones sever ed] from two living men, and a half-kab of bones taken from two corpses, a quarter [log] of blood taken from two [corpses], a barleycorn's bulk of bone broken into two parts, the backbone and the skull.[26]

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(1) V. supra p. 126, n. 6.
(2) Lev. XI, 31. Referring to dead reptiles.

(3) Ibid. 32. ‘of’ meaning even ‘part of’.
(4) One of the reptiles which defile; v. Ibid. 30.
(5) But if less, it does not defile.
(6) For the sand-lizard is the size of a lentil when whole.
(7) As in the case of the dead sand-lizard.
(8) But only that the creature should be alive.
(9) And R. Judah of Diskarta has not answered this.
(10) That both must be in the room for the nazirite to poll.
(11) And he must poll if only one is there.
(12) Cf. the Tosef. where the reading is probably, ‘vertebrae’.
(13) I.e., it does not defile through ‘overshadowing’.
(14) And defiles if ‘overshadowed’.
(15) Which joins the pieces together. Tosef. Oh.II, 3.
(16) Though the backbone alone is mentioned in the Tosefta.
(17) Adopting reading of Asheri.
(18) Perhaps even when the skull is there too.
(19) Stripped and the skull removed.
(20) Other renderings are, ‘weavers’, ‘bronzeworkers’; v. Aruch and A.S. 27b. [We find a synagogue of Tarsians in Jerusalem, Tiberias and Lydda. According to Krauss, Synagogale Altertumer, p. 201, they are identical with the synagogues of Alexandrians, who had brought over with them, to Palestine, the industry in Tarsian carpets — an industry which flourished greatly in Egypt; v. also TA. II, 625.]
(21) I.e., under an opening in the roof to prevent it conveying uncleanness by ‘overshadowing’.
(22) And so it could not convey defilement by ‘overshadowing’. Tosef. Oh. IV, 2.
(23) And a nazirite had ‘overshadowed’ it.
(24) Lit., ‘come and hear’.
(25) I.e., made by taking one bone from one corpse and another bone from a second corpse.
(26) This enumeration appears to be a digest of Oh. II, 6 and 7, or Tosef. ‘Ed. I, 6; but is not quite identical with either.

Talmud - Mas. Nazir 52b

Now if you assume that either the backbone or the skull [alone is unclean] there would [surely] be seven things there? — When [the number six] was mentioned,[1] it referred to all those things where the majority differed from him, but excluded [the case of] a barley-corn's bulk of bone, since it is an individual who differed from him,[2] for we have learnt: If a barley-corn's bulk of bone is divided into two, R. Akiba declares it unclean and R. Johanan b. Nuri clean.[3]

Alternatively, [the number six] referred to members coming from a corpse, but it did not refer to [the case of] a member [severed] from a living being.[4]

Alternatively, [the number six] referred to all those [cases] where a nazirite must poll because of ‘overshadowing’ them, but excludes [the case of] a barley corn's bulk of bone,[5] since he need not.

Alternatively, [the number six] referred to all those [cases] from which he retracted, but excludes [the case of] a quarter [log] of blood, from which he did not retract. For Rabbi said to Bar Kappara, ‘Do not include [the case of] a quarter [-log] of blood amongst the retractions,for R. Akiba had that as a [traditional][6] teaching, and furthermore the verse, Neither shall he go in to any dead body,[7] supports him. — R. Simeon says: All his life he declared [a quarter-log of blood from two corpses] unclean, whether he retracted after his death, I do not know.[8] — A Tanna taught that [R. Simeon's] teeth grew black because of his fasts.[9] Come and hear: It has been taught: Beth Shammai say that a quarter [-kab] of bones, be they any of the bones, whether from two [limbs] or from three,[10] [is sufficient to cause defilement by overshadowing]. And Beth Hillel say, a quarter [-kab of bones] from a [single] corpse [is required], [and these bones must be derived] from [those bones which

form] the greater part [of a skeleton] either in frame[11] or in number.[12] R. Joshua asserted: I can make the statements of Beth Shammai and Beth Hillel one.[13] For [when] Beth Shammai say 'from two [limbs] or from three,' [they mean] either from two shoulders and one thigh, or from two thighs and one shoulder, since this is the major part of a man's structure in height, whilst Beth Hillel say [the quarter kab must be taken] from the corpse, [viz.] from the greater part either in structure[14] or in number, for this [numerical majority] is to be found in the joints of the hands and feet.[15] Shammai says even a [single] bone, from the backbone or from the skull [defies by overshadowing]![16] — Shammai is different, as he takes the more stringent view.[17]

Can one infer from this that Shammai's[18] reason is that he takes the stricter view, but the Rabbis would require both backbone and skull? — No! For the Rabbis may only disagree with Shammai concerning a single bone coming from the backbone or the skull, but where these are complete one alone [may be sufficient].

Rammi b. Hama propounded: What is the law in the case of a quarter [-kab] of bones [coming] from the backbone and the skull? When [our Mishnah] stated that a half-kab of bones [is required], was it only where there are present [bones] from its other limbs [too], but since [the bones] from the backbone and skull are treated more seriously, even a quarter [-kab] of bones [is sufficient], or perhaps there is no difference?[19] — Raba replied: Come and hear: [We learnt:] THE BACKBONE AND THE SKULL.[20] Now if you assume that a quarter [-kab] of bones coming from the backbone and the skull is to be taken more seriously,[21] it should state 'for a quarter [-kab] of bones coming from the backbone etc.'?[22] —

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(1) In the text there occurs here the following mnemonic for the alternative methods of arriving at the number six: 'The mnemonic is: An individual who polls and another'.

(2) In which case the norm is in accordance with R. Akiba.

(3) Oh. II, 7.

(4) This excludes the case of a limb set up from bones severed from two living beings: Tosaf. reads here: 'Only those cases relating to corpses are included (in the six), not those relating to living bodies'.

(5) V. our Mishnah.

(6) So Asheri.

(7) Lev. XXI, II; v. supra 38a.

(8) Tosef. Oh. IV, 2.

(9) To atone for the not quite respectful reference to his teacher. Cf. Hag. 22b.

(10) I.e., the quarter-kab must contain parts of more than one bone. Some (e.g. Maimonides to 'Ed. I, 7) interpret: from two corpses or from three.

(11) Lit., 'building' i.e. those bones which go towards forming the greater part of the frame, e.g.' the shoulder and thigh bones.

(12) A body contains 248 bones, whence the greater part in number is 125 bones. V. Mak. (Sonc. ed.) p. 169, n. 5.

(13) So that the two schools refer to different things and their opinions are not mutually exclusive.

(14) This is the shoulder and thigh.

(15) I.e., the bones in the hands and feet form the greater number of bones in the body, without being so important that they form the major part of the structure.

(16) Thus backbone or skull is meant. This should solve the reading in the Mishnah. Part of this Baraitha occurs as a Mishnah, 'Ed. I, 7.

(17) He holds that even a single bone defiled, hence does not require both the skull and backbone, but the Rabbis may disagree.

(18) The printed text reads in error 'Beth Shammai'.

(19) And even here a half-kab is necessary. The Wilna Gaon deletes the last sentence as an interpolation based on false premises. He asserts that the query is whether a quarter-kab of bones from the skull or backbone conveys uncleanness by overshadowing, even as a quarter-kab derived from the great part of a skeleton either in frame or in number, and connects with Oh. II, 1 q.v.

(20) According to Rashi the Tosef. quoted at foot of 52a is referred to, Tosaf. thinks it is our Mishnah, whilst the Wilna Gaon refers it to Oh. II,1.

(21) R. Elijah of Wilna reads: is unclean.

(22) For this is less than a whole skull and includes it.

Talmud - Mas. Nazir 53a

But it was Raba himself who said that [special mention] was required only for a backbone and a skull containing less than a quarter [-kab] of bones?[1] — After hearing R. Akiba's opinion, [he altered his own opinion].[2]

Come and hear: Shammai says, even a single bone, from the backbone or from the skull [defiles by 'overshadowing']![3] Shammai is different, for he takes the much more stringent view.[4]

Can we infer from this that Shammai's reason[5] is that he is strict, but according to the Rabbis [there is no defilement by overshadowing'] unless there is a half-kab of bones? — Perhaps the Rabbis only disagree with Shammai where there is a single bone, but where there is a quarter [kab] of bones even the Rabbis agree [that this is sufficient].

R. Eliezer said: The Elders of an earlier generation [were divided]. Some used to say that a half-kab of bones and a half-log of blood [is required] for everything,[6] whilst a quarter [-kab] of bones and a quarter [-log] of blood is not sufficient for anything. Others used to say that even a quarter [-kab] of bones and a quarter [-log] of blood [is enough] for everything. The Court that came after them said that a half-kab of bones and a half-log of blood [is the quantity] for [making unclean] everything, a quarter [-kab] of bones and a quarter [-log] of blood [is sufficient] in the case of terumah[7] and sacred meats,[8] but not in the case of a nazirite or one preparing the paschal lamb.[9] But surely the compromise of the third [opinion] IS no [true] compromise?[10] — R. Jacob b. Idi replied: They had it as a tradition deriving from Haggai, Zechariah and Malachi.

ON ACCOUNT OF THESE A NAZIRITE MUST POLL: The word THESE,[11] in the first clause serves to exclude a barley-corn's bulk of bone, for touching or carrying which he must [poll] though not for overshadowing it — The word THESE in the next clause serves to exclude a rock overhanging a grave.[12]

OR A HALF-KAB OF BONES:

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(1) And how can he infer from the mention of the backbone and skull that a quarter kab of bones from the backbone and skull does not defile.

(2) And the reply to Rammi b. Hama was given before he heard it. This last phrase is authenticated by the MSS. but its meaning is obscure. The Wilna Gaon reads: (That statement of Raba's was) in accordance with the view of Beth Shammai: a reading in keeping with his text.

(3) The rule for these being more stringent, as seen from Shammai's ruling, a quarter of a kab should suffice according to the Rabbis.

(4) But the Rabbis disagree.

(5) That a single bone suffices.

(6) I.e., conveys defilement by 'overshadowing' in all cases.

(7) V. Glos.

(8) After being under the same roof with a quarter-kab of bones, a man may not eat terumah or sacred meats.

(9) These are not rendered unclean so as to cause the nazirite to lose the period already counted, or to prevent the passover celebrant from offering the paschal lamb.

(10) And cannot be accepted as the final decision; for it is not arrived at by logical argument, but by accepting part of each of the other opinions; v. Rashi.

(11) I.e., but no others.

(12) Although he becomes unclean by touching the stone, he need not poll; cf. Shab. 82b.

Talmud - Mas. Nazir 53b

[We see that] only if there is a half-kab of bones [must the nazirite poll], but not if there is a quarter [-kab] of bones. What are the circumstances? For if we assert that there are amongst them bones of a barley-corn in size, then we can give as the reason [that the nazirite must poll, the presence of] a barley-corn's bulk of bone? — The reference is to where [the bone] was crushed into powder.

OR ANY LIMB [SEVERED] FROM A CORPSE OR ANY LIMB [SEVERED] FROM A LIVING BODY THAT IS STILL PROPERLY COVERED WITH FLESH: What are the consequences if sufficient flesh is not attached [and a nazirite is defiled by touching or carrying such a bone]?[1] — R. Johanan said that the nazirite is not required to poll because of them. Resh Lakish said that the nazirite must poll because of them. R. Johanan said that the nazirite is not required to poll because of them, for it says in the first [Mishnah][2] only ANY LIMB [SEVERED] FROM A CORPSE OR ANY LIMB [SEVERED] FROM A LIVING BODY THAT IS STILL PROPERLY COVERED WITH FLESH, [implying] 'but not otherwise'; whilst Resh Lakish said that he must poll, since this case is not mentioned in the subsequent [Mishnah].[3] [To the argument of Resh Lakish] R. Johanan will reply that whatever can be inferred from the rule [of our Mishnah] is not mentioned in the subsequent [Mishnah]. But what of the half-kab of bones [mentioned in our Mishnah] which implies that only half a kab of bones [can defile] but not a quarter [kab] of bones, and yet the subsequent [Mishnah] mentions [explicitly] that a quarter [-kab] of bones [do not defile]? — In that instance were a quarter [-kab] of bones not [mentioned]. I should have thought that he need not [poll] even [if defiled] through contact with it or carrying it, and so the Mishnah had to mention the [case of a] quarter [-kab] of bones [in order to teach] that it is only for overshadowing them that the nazirite is not required to poll.[4]

But what of the half-log of blood [mentioned in our Mishnah], from which it may be inferred that only [if the nazirite is defiled by 'overshadowing'] a half-log of blood, [is he required to poll] but not by a quarter [-log] of blood, and yet the subsequent [Mishnah] mentions [explicitly that] a quarter [-log] of blood [does not defile]? — In that case, the purpose [of mentioning it in the next Mishnah] is to dissent from the view of R. Akiba, for R. Akiba has stated that a quarter [-log] of blood coming from two corpses conveys defilement by overshadowing.[5]

How are we to picture this limb [severed] from a corpse? For if it has a bone of a barley-corn's bulk, what is R. Johanan's reason [for saying that a nazirite need not poll if he touches it], whilst if it has not a bone of a barley-corn's bulk, what is Resh Lakish's reason [for saying that the nazirite must poll if he touches it]? — Resh Lakish will reply that in point of fact it has not a bone of a barley-corn's bulk, and in spite of this, the All-Merciful has included it [amongst the things which cause defilement]. For it has been taught; [The verse,] And whosoever in the open field toucheth one that is slain with a sword, or one that dieth of himself [....shall be unclean seven days,[6] has the following significance]. In the open field' refers to one who overshadows a corpse. 'One that is slain'[7] refers to a limb [severed] from a living body which is in such condition that [if attached to the body] it could have been restored. 'A sword' signifies that this is of the same [degree of defilement][8] as the slain body. 'Or one that dieth of himself' refers to a limb severed from a corpse. 'Or a bone of a man' refers to a quarter [-kab] of bones. 'Or a grave' refers to a close grave;[9]

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(1) It is assumed that the bone has not the bulk of a barley-corn.

(2) Supra 49b.

(3) Infra 54a, where the kinds of defilement for which the nazirite need not poll are enumerated.

(4) But be must poll if he touches it or carries it.

(5) Supra 38a; 49b. And so we are told that a nazirite is not required to poll for defilement conveyed by a quarter-log of blood. [Asheri and others omit 'for R. Akiba . . . by overshadowing', the reference being to R. Akiba's view' given infra 56b that a nazir must poll for coming in contact with a quarter-log of blood.]

(6) Num. XIX, 16.

(7) Lit., 'that which is severed'.

(8) If used to slay a person.

(9) I.e., one in which there is no hollow space of a handbreadth between the corpse and the roof of the grave.

Talmud - Mas. Nazir 54a

for a Master said that defilement breaks through [the ground] and ascends, and breaks through [the ground] and descends.[1] [Thus far defilement by 'overshadowing' has been discussed,] whilst as regards [defilement by] contact, Rab Judah said that it has been taught: [The verse]. And upon him that touched the bone, or the slain[2] [etc.] [has the following significance]. 'The bone' refers to a barley-corn's bulk of bone. 'Or the slain' refers to a limb severed from a living body which is not in such condition that [if attached to the body] it could have been restored. 'Or the dead' refers to a limb severed from a corpse. 'Or the grave' refers, said Resh Lakish, to the grave, [of those buried] before the revelation [at Sinai].[3]

Now what is meant by 'a limb [severed] from a corpse'? For if it has a bone of a barley-corn's bulk, it is [covered by the rule concerning] one who touches a bone! We must therefore suppose that it has not a bone of a barley-corn's bulk, and in spite of this the All-Merciful Law has included it [amongst the things whose contact defiles].

R. Johanan, on the other hand, will say that in point of fact [the limb severed from a corpse] has [a barley-corn's bulk of bone] in it, and if [the verse] is unnecessary for teaching [that the limb defiles by] contact,[4] you can use it to teach[5] [that it defiles through] carrying.[6]

AND BE SPRINKLED ON THE THIRD AND SEVENTH DAYS AND IT MAKES VOID etc.: The question was propounded: When the Mishnah teaches UNTIL HE HAS BECOME CLEAN, does it refer to the seventh day, meaning until after sunset, so that the author is R. Eliezer,[7] or does it perhaps refer to the eighth day, the words UNTIL HE HAS BECOME CLEAN, meaning until he has brought his sacrifices, so that it gives the view of the Rabbis? — Judge[8] from the following. Since it teaches in the subsequent [Mishnah] that he commences to count immediately [after purification],[9] it follows that UNTIL HE HAS BECOME CLEAN in the first [Mishnah][10] means, until he has brought his sacrifices, and the ruling is that of the Rabbis who assert that naziriteship after purification does not operate until the eighth day.

MISHNAH. BUT FOR [DEFILEMENT CAUSED BY] SEKA KOTH [OVERHANGING BOUGHS][11] OR PERA'OTH [PROTRUDING BRICKS][12] OR A [FIELD THAT IS A] BETH PERAS,[13] OR LAND OF THE GENTILES[14] OR THE GOLEL [COVERING STONE] OR DOFEK [SIDE STONES] OF A TOMB,[15] OR A QUARTER [-LOG] OF BLOOD, OR A TENT [IN WHICH IS A CORPSE],[16] OR A QUARTER [-KAB] OF BONES, OR UTENSILS THAT HAVE BEEN IN CONTACT WITH A CORPSE, OR [THE DEFILEMENT OF A LEPER'S] TALE OF DAYS[17] OR HIS PERIOD OF DECLARED LEPROSY;[18] FOR ALL THESE THE NAZIRITE IS NOT REQUIRED TO POLL. HE MUST, HOWEVER, BE SPRINKLED ON THE THIRD AND SEVENTH [DAYS],

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(1) So that any one walking above or beneath such a grave is accounted as 'overshadowing' it and becomes unclean. Cf. Oh. VII. 1.

(2) Num. XIX, 18.

(3) Lit., 'before the Word'. I.e., the bodies of Israelites buried before the revelation, though they do not defile by

'overshadowing', are treated like bodies of gentiles that defile at least by contact.
(4) For we already know this from the rule of one who touches a bone.
(5) [In accordance with the principle of Talmudic hermeneutics to apply a Biblical statement superfluous in respect of its own law to some other subject.]
(6) And we cannot infer from this that a limb which has not a bone of a barley-corn's bulk defiles a nazirite who touches it.
(7) The controversy concerns the question whether the naziriteship after purification commences immediately or whether it does not begin until the necessary sacrifices have been offered; v. supra 18b.
(8) Lit., 'come and hear'.
(9) With reference to the defilements for which a nazirite need not poll; infra 54b.
(10) Where it does not say immediately'.
(11) Under which there is a source of defilement, the exact branch being unknown. Such a branch would defile by 'overshadowing', and the person becomes unclean because of the doubt that has arisen.
(12) The meaning is mutatis mutandis, the same as in previous note.
(13) A field in which a grave has been ploughed becomes a beth peras, and renders unclean through contact for a distance of half a furrow of one hundred cubits in each direction. Peras Half.
(14) V supra 19b.
(15) According to Rabbenu Tam, 'the tombstone and the side stones on a grave'. [The tombs in ancient times were closed by means of large stones in order to protect them against the ravenous jackals (v. J.E. XII, p. 188). According to Levy the golel was an upright stone put up at the entrance of every niche or chamber כוך (v. B.B. (Sonc. Ed.) pp. 422ff, for illustrations) into which the bodies were deposited; and the dofek is the buttressing stone which was placed in front of the golel to prevent it from falling. For other views v. Krauss TA. II, pp. 488ff.]
(16) According to Tosaf. the meaning is 'a quarter-log of blood or a quarter-kab of bones in a tent.'
(17) V. Lev. XIV, 8.
(18) According to Rashi; the period during which he offers his sacrifices for purification after the tale of days; v. Lev. XIV, 9ff.

Talmud - Mas. Nazir 54b

WHILST [THE UNCLEANNESS] DOES NOT RENDER VOID THE FORMER PERIOD,[1] BUT HE COMMENCES TO RESUME COUNTING [HIS NAZIRITESHIP] IMMEDIATELY [AFTER PURIFICATION] AND THERE IS NO SACRIFICE.[2] [THE SAGES] SAID IN FACT[3] THAT THE DAYS OF [DEFILEMENT OF] A MALE OR FEMALE SUFFERER FROM GONORRHOEA[4] AND THE DAYS THAT A LEPER IS SHUT UP[5] ARE RECKONED [AS PART OF THE NAZIRITESHIP].

GEMARA. By SEKAKOTH is meant a tree that overhangs the ground and by PERA'OTH protrusions from a fence.[6]

OR LAND OF THE GENTILES: The question was propounded: Did [the Rabbis] enact that the land of the Gentiles [causes defilement] because of the air,[7] or did they, perhaps, enact only because of the soil?[8] — Come and hear: HE MUST, HOWEVER, BE SPRINKLED ON THE THIRD AND SEVENTH [DAYS]. Now if you suppose that it was [declared unclean] because of the air, what need is there for sprinkling?[9] Does it not follow then that it was because of the soil? — No. In point of fact, it may have been because of the air, and when the Mishnah teaches [that he must be sprinkled] it refers to the other instances. This indeed appears to be the case, since UTENSILS THAT HAVE BEEN IN CONTACT WITH A CORPSE are mentioned. Do such utensils necessitate sprinkling?[10] Thus it follows from this that [sprinkling] applies to the remainder only.[11]

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(1) I.e.,the period before defilement.
(2) I.e., the sacrifice prescribed for a nazirite after defilement
(3) באמת Lit., 'In truth did they say'. Rashi remarks that this phrase denotes a halachah received by Moses at Sinai.

V. B.M. 60a. Cf., however, below (56b) where this is derived by interpretation of the verses. [Rosenthal, F., Hoffmann Festschrift, p. 40, explains the phrase as the latin vero _ 'in fact'; and here is used to affirm the view that only the days of defilement of a male or female sufferer from gonorrhoea and the days that a leper is shut up are reckoned, but not the days of the leper's tale and his period of declared leprosy. This affirmation was necessary in view of the suggestion supra 56b that even in the latter case the days should be reckoned.]

(4) Cf. Lev. XV.

(5) Cf. Lev. XIII, 4ff

(6) Oh. VIII, 2, and Tosef. Oh. IX, 4.

(7) So that entering the atmosphere of a foreign country renders unclean. For the time when this enactment was promulgated. v. Shah. 15a.

(8) And one who does not touch the soil remains clean.

(9) Defilement from the air would be mild and would not necessitate sprinkling.

(10) In many instances they do not. [Vessels that come in contact with the dead do not communicate defilement to man so as to render him a principal source of uncleanness. The only question arises in case of metal vessels which, according to some authorities, become as grave a source of uncleanness as the dead itself. V. Tosaf. a.l.]

(11) I.e., to those to which we know it applies on other grounds. Thus the air of the lands of the gentiles may defile and the Mishnah affords no evidence about it.

Talmud - Mas. Nazir 55a

Can we say [that the controversy about the air of a foreign country] is the same as that between the following Tannaim? [It has been taught:] If a person enters a foreign country in a box, or a chest, or a portable turret, Rabbi declares him unclean, while R. Jose son of R. Judah declares him clean. Is not this because Rabbi holds that [the uncleanness of the lands of the Gentiles][1] is because of the air[2] and R. Jose son of R. Judah holds that it is because of the soil?[3] — No. Both would agree that [foreign countries defile] because of the soil. The latter, however, holds that a tent in motion is still counted a tent,[4] whilst the former holds that a tent in motion does not constitute a tent.[5] But have we not been taught: R. Jose son of R. Judah says that if a chest is full of utensils and someone throws it in front of a corpse in a tent, it becomes unclean,[6] whilst if it were there already [in the tent], it remains clean?[7] — It must therefore be that both [Rabbi and R. Jose son of R. Judah agree that foreign countries defile] because of the air. The latter holds that since [travelling in a chest] is not common the Rabbis did not intend the enactment to apply [to such a case].[8] whilst the former holds that although it is unusual, the Rabbis intended the enactment to apply to it. It has been taught to the same effect:[9] A person who enters a foreign country in a box, or a chest, or a portable turret remains clean, whilst [if he enters] in a carriage. or a boat, or a ship with a mast,[10] he becomes unclean.[11]

Alternatively,[12] [Rabbi and R. Jose son of R. Judah] may dis agree here on the question [whether a man travelling in a chest was declared unclean] for fear lest he put out his bead or the greater part of his [body].[13] It has been taught to this effect. R. Jose son of R. Judah says, a person who enters a foreign country in a box, or a chest, or a portable turret is clean until he puts out his head or the greater part of his [body].

BUT HE COMMENCES TO RESUME COUNTING [IMMEDIATELY etc.]: R. Hisda said: It was taught [that the days of declared leprosy are not counted] only in the case of a short naziriteship,[14] but in the case of a long naziriteship[15] they also help to discharge [the days of his naziriteship]. R. Sherabya objected: HE COMMENCES TO RESUME COUNTING IMMEDIATELY AND DOES NOT ANNUL THE PREVIOUS PERIOD.[16] What are the circumstances? For if it is speaking of a short naziriteship, he requires [thirty days] growth of hair,[17]

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(1) [It is suggested that the uncleanness of the land of gentiles was decreed in the days of Alcimus in order to stem the tide of immigration from Palestine that had set in as a result of his persecutions. v. Weiss, Dor I, 105.]

(2) And even in a chest, he touches the air.

(3) And since he has not touched the soil, he is clean.
(4) And protects whatever is inside from defilement from outside.
(5) And whatever is inside is accounted as having contact with the ground and becomes unclean.
(6) Together with its contents.
(7) Which proves that R. Jose b. R. Judah does not consider that a tent in motion affords protection from defilement.
(8) And so the person inside remains clean.
(9) That the reason R. Jose declares him clean is that this method of travelling is uncommon.
(10) אסקריא. So Jast.; or better, 'sailing boat', v. Krauss TA. II, p. 341, who connects it with Grk. **]
(11) Tosef. Oh. XVIII, 2.
(12) It is now assumed: (i) That the enactment was because of the soil. (ii) That a tent in motion affords protection from defilement. (iii) When a chest full of utensils is thrown in front of a corpse, it becomes unclean because it ceases to have the character of a tent, protecting from defilement, and is treated as a utensil.
(13) When he would become unclean because of 'overshadowing' the soil.
(14) Of thirty days duration.
(15) Longer than thirty days when even if the period of leprosy is counted, thirty days still remain.
(16) It is clear from this that there has been a break in the counting.
(17) And so must ignore what has gone before and count thirty days.

Talmud - Mas. Nazir 55b

and so it surely refers to a long naziriteship, and yet it teaches that HE COMMENCES TO COUNT IMMEDIATELY? — [R. Sherabya] put the question and answered it himself. [The Mishnah is speaking] of a naziriteship of, say, fifty days, of which he had observed twenty [days] when he became leprous. He must then poll for his leprosy [when he is healed] and observe a further thirty days of the nazirite [obligation], in which case he has a [thirty days] growth of hair.[1]

Rami b. Mama raised the following objection:[2] [We have learnt:] A nazirite, who was in doubt whether he had been defiled[3] and in doubt whether he had been a declared leper,[4]

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(1) The days of declared leprosy cannot then be counted since he would not have thirty days left.
(2) To refute R. Hisda's statement.
(3) On the day he became a nazirite.
(4) On the day that he became a nazirite, having perhaps been healed the same day. A nazirite who becomes unclean must poll on becoming clean, and a leper shaves his body twice on recovering. Since this nazirite may not have been unclean nor may he have been a leper, he cannot shave his head during the period of his naziriteship. He must therefore count the full period before shaving because of the doubt, and allow a similar period to pass before the second and third shaving. Since he may have been both a leper and unclean because of touching a dead body, he must count a fourth period for his naziriteship in purity.

Talmud - Mas. Nazir 56a

may eat sacred meats after sixty days.[1] and drink wine and touch the dead after one hundred and twenty days.[2] In connection with this passage it has been taught: This is only true of a short naziriteship, but in the case of a naziriteship of [say,] a year, he may eat sacred meats [only] after two years, and drink wine and touch the dead after four years.[3] Now if you suppose that the days [of declared leprosy] help to discharge his [naziriteship], then three years and thirty days should be enough?[4]

R. Ashi raised the following objection:[5] I am only told that the days Of his defilement are not reckoned in the number [of days of his naziriteship]. How do we know [that the same is true] of the days of his declared leprosy? This follows by analogy. [After] the days of defilement, he must poll and bring an offering, and [after] the days of his declared leprosy, he must poll and bring an offering.

Whence we should infer that just as the days of his defilement are not reckoned in the number [of days of his naziriteship], so the days of his declared leprosy are not reckoned in the number! No! If you say this of the days of his defilement, where the previous days[6] are rendered void because of them, would you also say it of the days of his declared leprosy where the previous days are not rendered void because of them? I can argue then in the following manner. Seeing that a nazirite [who undertakes his naziriteship] at the graveside, whose hair is ripe for polling because of his naziriteship, does not count [the time spent at the grave] in the number [of days of his naziriteship].[7] surely the days of his declared leprosy when his hair is not ripe for polling because of the naziriteship[8] should not be counted. In this way we may only infer that the period of his declared leprosy [may not be counted]. How do we know that [the same is true] of his tale of days?[9] This follows by analogy.

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(1) When he will have shaved twice for his leprosy.

(2) After polling once for his defilement and again on terminating his naziriteship, v. infra 59b.

(3) Tosef. Ha. VI, 1.

(4) The third polling taking place after two years and thirty days, thirty days being the time for a growth of hair and the rest of the year will be coincident with the time of his leprosy. Since this is not the case, it follows that the days of his leprosy are not reckoned towards the naziriteship.

(5) To refute R. Hisda.

(6) The period of naziriteship counted before defilement.

(7) I.e., he does not poll for his defilement, but begins his naziriteship after leaving the grave and becoming clean and then polls on completing his naziriteship.

(8) He has to poll because he was a leper; cf supra 17b.

(9) The seven days that he 'tells' on recovery; v. Lev. XIV. 8.

Talmud - Mas. Nazir 56b

Just as [after] the days of his declared leprosy he must poll,[1] so [after] his tale of days [he must poll],[2] and so, just as the days of his declared leprosy are not reckoned in the number [of days of his naziriteship], so his tale of days [are not counted]. It might be thought that the same is true of the days that he is shut up,[3] and this too could be derived by analogy. A declared leper defiles both couch and seat,[4] and during the days that he is shut up, he defies both couch and seat. And so if you infer that the days of his declared leprosy are not counted in the number [of days of his naziriteship], neither should the days when he is shut up be counted in the number. But this is not so. If it is true of the days of his declared leprosy [that the days are not counted], it is because [after] his declared leprosy, he must poll and bring an offering and therefore they are not counted, whereas since [after] the days that he is shut up he does not need to poll nor need he bring an offering, therefore they can be counted in the number [of days of his naziriteship]. From these arguments [the Rabbis] inferred that the days of [the leper's] telling and the days of his declared leprosy are not counted in the number [of days of his naziriteship], but the days [of defilement] of a male or female sufferer from gonorrhoea, and the days when a leper is shut up are counted.[5]

Now one of the arguments mentioned is: 'No! If you say this of the days of his defilement where the previous days are rendered void because of them, would you also say it of the days of his declared leprosy [where the previous days are not rendered void]'. What kind [of naziriteship is referred to]? Should it be a short naziriteship,[6] then we require a [thirty days] growth of hair and there is not such a growth.[7] Thus it must be a long naziriteship [which is referred to] and yet it says that they are not reckoned in the number [of days of the naziriteship]. From this it follows [that the period of declared leprosy is never counted].[8] This proves it.

MISHNAH. R. ELIEZER[9] SAID ON BEHALF OF R. JOSHUA THAT EVERY DEFILEMENT [CONVEYED] BY A CORPSE FOR WHICH A NAZIRITE MUST POLL ENTAILS A

LIABILITY FOR ONE ENTERING THE SANCTUARY[10] [WHILST THUS DEFILED], AND EVERY DEFILEMENT [CONVEYED] BY A CORPSE FOR WHICH A NAZIRITE IS NOT REQUIRED TO POLL DOES NOT ENTAIL A LIABILITY FOR ONE ENTERING THE SANCTUARY [WHILE SO DEFILED]. R. MEIR SAID: SUCH [DEFILEMENT] SHOULD NOT BE LESS SERIOUS THAN [DEFILEMENT THROUGH] A REPTILE.[11]

GEMARA. Did R. Eliezer receive this [statement] in the name of R. Joshua?[12] Did he not receive it in the name of R. Joshua b. Memel, as has been taught: R. Eliezer[13] said: When I went to 'Ardacus[14] I found R. Joshua b. Pethar Rosh[15] sitting and expound ing points of law in the presence of R. Meir. [One of them was as follows.] Every defilement [conveyed] by a corpse for which a nazirite must poll entails a penalty for entering the Sanctuary, and every defilement [arising] from a corpse for which a nazirite is not required to poll, does not entail a penalty for entering the Sanctuary. [R. Meir] said to him; Such [defilement] should not be less stringent than [defilement by] a reptile? I then asked [R. Joshua b. Pethar Rosh]. 'Are you at all versed in [the sayings of] R. Joshua b. Memel?' He replied. 'I am'. Thus did R. Joshua b. Memel tell me in the name of R. Joshua: Every defilement [arising] from a corpse for which a nazirite must poll, entails a penalty for entering the Sanctuary, and every defilement [arising] from a corpse for which a nazirite is not required to poll, does not entail a penalty for entering the Sanctuary.[16] Thus we see that it was in the name of R. Joshua b. Memel that [R. Eliezer] received it? — They replied:[17] From this it follows that whenever a tradition is transmitted through three [men], the first and the last [name] are mentioned, whilst the middle [name] is not mentioned.[18]

R. Nahman b. Isaac said: We, too. have learned to the same effect: Nahum the Scribe[19] said, This was transmitted to me from R. Measha, who received it from his father, who received it from 'the Pairs',[20] who received it from the Prophets as a tradition [handed] to Moses on Mt. Sinai: If a man who has sown his field with two varieties of wheat collects them on one threshing floor,[21] he need leave [only] one pe'ah,[22] but if he collects them on two threshing floors,[23] he must leave two pe'ahs.[24] Now here, Joshua and Caleb are not mentioned [between Moses and the Prophets]. Thus it follows from this [that intermediate names may be omitted].

MISHNAH. R. AKIBA SAID: I ARGUED IN THE PRESENCE OF R. ELIEZER[25] AS FOLLOWS. SEEING THAT A BARLEY-CORN'S BULK OF BONE WHICH DOES NOT DEFILE A MAN BY 'OVERSHADOWING', COMPELS A NAZIRITE TO POLL SHOULD HE TOUCH IT OR CARRY IT, THEN SURELY A QUARTER [-LOG] OF BLOOD WHICH DEFILES A MAN BY 'OVERSHADOWING, SHOULD CAUSE A NAZIRITE TO POLL IF HE TOUCHES IT OR CARRIES IF?[26] HE REPLIED: WHAT NOW, AKIBA! TO ARGUE FROM THE LESSER TO THE GREATER IS NOT PERMITTED IN THIS INSTANCE.' WHEN I AFTERWARDS WENT AND RECOUNTED THESE WORDS TO R. JOSHUA, HE SAID TO ME, 'YOUR ARGUMENT WAS SOUND, BUT [IN THIS CASE] THIS HAS BEEN DECLARED AS A FILED HALACHAH.[27]

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(1) Lev. XIV, 8.

(2) Ibid. v. 9.

(3) A doubtful case of leprosy is isolated for seven days; v. Lev. XIII, 4-6.

(4) V. Lev. XV, 4, for this type of defilement.

(5) The whole of the last paragraph occurs in Sifre to Num. VI, 12. R. Ashi now proceeds with his objection.

(6) And we are told that the period before the declared leprosy is counted, but not the period of leprosy.

(7) If we reckon the days before leprosy.

(8) Thus R. Hisda's statement is refuted.

(9) [Read with I. 'R. Eleazar (b. Shammua)', a disciple of R. Akiba. R. Eliezer b. Hyrcanus the teacher of R. Akiba could not have reported a teaching in the name of R. Joshua a disciple of his disciple. V. also n. 10 and p. 201 n. 1.]

(10) The Temple precincts. The liability is a sacrifice, if the offence is committed unwittingly.

(11) R. Meir's argument is: Since there is a penalty for entering the Temple after defilement by a reptile, although the person so defiled does not have to be sprinkled on the third and seventh days, then in the case of defilement by a corpse for which a nazirite need not poll. Just as he need not after defilement by a reptile, there should be a penalty on entering the Temple, for in this case he must be sprinkled on the third and seventh days.
(12) R. Joshua b. Hananiah (c. 100 C.E.).
(13) [Var. lec. R. Eleazar.]
(14) Identified with Damascus (Jast.). [Or, with Ard a-Suk near the source of the Jordan (Horowitz I. S. Palestine, p. 78).]
(15) [Var. lec. 'b. Pethora'; 'b. Bathyra'. V. Zuckermandel Tosefta p. 290.]
(16) Tosef. Naz. V, 3. Tos. Oh. IV, 7.
(17) [Asheri and Tosaf. omit 'they replied'.]
(18) Thus in our Mishnah though the tradition was received from R. Joshua through R. Joshua b. Memel and R. Eliezer, only the first and last of these is mentioned.
(19) Heb. לבלר _ libellarius.
(20) Zugoth (Pairs), from Jose B. Jo'ezer and Jose B. Johanan to Hillel and Shammai; v. Aboth (Sonc. ed.) p. 3, n. 8.
(21) I.e., does not keep them separate.
(22) Pe'ah. The corner of the field that was left for the poor. V. Lev. XXIII, 22.
(23) Thus treating them as two separate crops.
(24) Pe'ah II, 6. The text here has been emended after all the commentators to agree with the Mishnah in Pe'ah. The text, which is supported by the MSS., quotes instead Pe'ah III, 2, as the tradition of Nahum: If a man sowed dill or mustard seed in two or three separate places, he must leave pe'ah from each.
(25) R. Eliezer b. Hyrcanus. In the last Mishnah by R. Eliezer, R. Eleazar b. Shammua is meant. V. supra p. 208, n. 4.
(26) Yet the Mishnah 54a counts the quarter-log of blood as one of the things for which a nazirite need not poll.
(27) As a tradition from Sinai and no inference may be drawn.

Talmud - Mas. Nazir 57a

GEMARA. The question was propounded: Was it [the law concerning] a barley-corn's bulk of bone[1] that was a halachah and that of the quarter [-log] of blood [that was being derived] by argument, and [this is what is meant by saying that] an argument from the lesser to the greater is not permitted in the case of a halachah?[2] Or, was it [the law concerning] a quarter [-log] of blood[3] that was a halachah, while [the law concerning] a barley-corn's bulk of bone [was simply used] for the argument, and [this is what is meant by] saying that an argument from the lesser to the greater is not permitted in the case of a halachah?[4] — Come and hear: [It has been taught: The rulings concerning] a barley-corn's bulk of bone is a halachah,' [the rulings of] a quarter [-log] of blood [can be derived] by an argument; but an argument from the lesser to the greater is not permitted in the case of a halachah.[5]

CHAPTER VIII

MISHNAH. TWO NAZIRITES TO WHOM SOMEONE SAYS, I SAW ONE OF YOU DEFILED, BUT I DO NOT KNOW WHICH OF YOU IT WAS,' MUST [BOTH] POLL[6] AND BRING SACRIFICES [PRESCRIBED] FOR DEFILEMENT AND SACRIFICES [DUE ON TERMINATING A NAZIRITESHIP] IN PURITY,[7] [AND ONE OF THEM] MUST SAY, 'IF I AM UNCLEAN, THE SACRIFICES FOR DEFILEMENT ARE MINE, AND THE SACRIFICES IN PURITY ARE YOURS, WHILST IF I AM THE ONE WHO IS CLEAN, THE SACRIFICES IN PURITY ARE MINE AND THE SACRIFICES FOR DEFILEMENT ARE YOURS.' THEY MUST THEN COUNT THIRTY [MORE] DAYS[8] AND BRING SACRIFICES IN PURITY AND [ONE OF THEM] MUST SAY, IF I AM THE ONE WHO WAS UNCLEAN, THE SACRIFICES FOR DEFILEMENT WERE MINE, THE SACRIFICES IN PURITY WERE YOURS, AND THESE ARE MY SACRIFICES IN PURITY, WHILST IF I WAS THE ONE WHO WAS CLEAN, THE SACRIFICES IN PURITY WERE MINE, THE SACRIFICES FOR DEFILEMENT WERE

YOURS, AND THESE ARE YOUR SACRIFICES IN PURITY.

GEMARA. The Mishnah Says: TWO NAZIRITES TO WHOM SOMEONE SAYS, 'I SAW ONE OF YOU DEFILED, BUT I DO NOT KNOW WHICH OF YOU IT WAS [etc.]: Now why [is this necessary]?[9] For whence do we derive all [the laws concerning] doubtful defilement [arising] in a private domain?[10] [Is it not] from [the regulations regarding] a faithless wife?[11] [Whence it may be in ferred that] just as in the case of a faithless wife [only] the lover and his mistress are together,[12] so in every case of doubtful defilement in a private domain [the defilement is assumed to be definite] only if there were but two persons present, whereas in the present instance, the two nazirites and the one standing near[13] make three, so that it becomes [the same as] a case of doubtful defilement in a public domain [and the rule is:] Every case of doubtful defilement in a public domain remains clean?[14] — Rabbah son of R. Huna replied: [The Mishnah assumes that the third person] says, 'I saw a source of defilement thrown between you?[15] R. Ashi commented: This is also indicated [in the language of the Mishnah]

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(1) Viz., that a nazirite must poll if he touches a bone of that size.

(2) And this was the reason that R. Akiba's argument was not accepted.

(3) Viz., that it defiles by overshadowing'.

(4) I.e., no new properties may be added by an argument to what is traditionally known.

(5) Thus the first alternative is meant.

(6) When both have completed their periods of naziriteship.

(7) One set of each kind of sacrifice.

(8) The usual period of naziriteship.

(9) Why should either of them have to take account of the possibility that he has become unclean?

(10) Viz.: That cases of doubtful defilement in a private domain are treated as if definitely unclean.

(11) Cf. Num. V, 11ff. The woman is regarded as having defiled her marital relationship and must undergo the ordeal of the bitter waters though there is no evidence of unfaithfulness; v. Sot. 28b.

(12) Proceedings involving the drinking of bitter waters can be taken against a faithless wife only if there is no eye-witness of unfaithfulness; v. Num. V, 13. and Sot. 2b.

(13) Who asserts that he saw one of them become unclean.

(14) And so each nazirite should regard himself as clean and need bring no sacrifice for defilement.

(15) And the third person was at a distance, so that the conditions for a private domain were fulfilled.

for it says: BUT I DO NOT KNOW WHICH OF YOU IT WAS, which proves [that he was not in their company].[1]

THEY MUST POLL AND BRING [etc.]: But why [should they be allowed to poll]? Perhaps they are not unclean and they will [nevertheless] have rounded [the corners Of the head]?[2] -Samuel replied: [The Mishnah is speaking] Of a woman or a minor.[3]

Why does he not regard [the Mishnah] as speaking of an adult [male nazirite], the rounding of the whole head not being considered [an infringement of the prohibition against] rounding?[4] — Since he does not do so ,it follows that Samuel holds that the rounding of the whole head is considered [an infringement of the prohibition against] rounding.

Mar Zutra taught this exposition of Samuel with reference to a subsequent Mishnah [which reads]: A nazirite who was in doubt whether he had been defiled and in doubt whether he had been a certified leper may eat sacred meats after sixty days [etc.][5] and must shave four times.[6] [But why?][7] Will he not have marred [the corners of his beard]?[8] — Samuel replied: [The Mishnah is speaking] of a woman or a minor.[9]

R. Huna said: One who rounds [the head of] a minor is guilty.[10] R. Adda b. Ahabah said to R. Huna: Then who shaves your [children's heads]? He replied: Hoba.[11] [Rab Adda exclaimed:] Does Hoba wish to bury her children?[12] During the whole of R. Adda b. Ahabah's lifetime, none of R. Huna's children survived.[13] Seeing that both [R. Huna and R. Adda] hold that rounding the whole head is [an infringement of the rule against] rounding,[14] wherein do they differ?[15] — R. Huna holds that [the verse,] Ye shall not round the corners of your heads, neither shalt thou mar the corners of thy beard,[16] [signifies] that to whomsoever marring is applicable,[17] rounding is applicable, and since marring does not apply to women, rounding, too, does not apply to them.[18] R. Adda b. Ahabah, on the other hand, holds that both he who rounds and he who is rounded are included [in the prohibition],[19] the one who rounds being compared to the one who is rounded, [to the effect that] wherever the one who is rounded is guilty, the one who rounds is also guilty. Hence, since a child is not punishable[20] and so is not guilty [of the offence of rounding], he who rounds [the child] is also not guilty.[21]

Can we say that [the question of] rounding the whole head is the subject of [controversy between] Tannaim? For our Rabbis have taught: Why does Scripture mention his head?[22] Since it says, ye shall not round the corners of your heads,[23]

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(1) For otherwise it should have read: 'And I have forgotten which of you it was'.

(2) Which is forbidden except to a nazirite or a leper; v. Lev. XIX. 27.

(3) For whom there is no prohibition against rounding.

(4) Cf. supra 41a.

(5) Infra 59b; v. supra 55b for relevant notes.

(6) 'And drink wine and have contact with the dead after one hundred and twenty days', which occurs in the Mishnah is here contracted to 'shave four times' after the Baraitha quoted on page 60a.

(7) Inserted with Bah, i.e., why may he shave in case of doubt?

(8) And this is forbidden (v. Lev. XIX, 27) unless he is actually a leper. The reading we have adopted is that of Rashi and Tosaf. Our printed text has: 'Will he not have rounded?' in which case there is no difference between Mar Zutra and the earlier statement. On our reading the point of Mar Zutra's statement is that we are without definite evidence of Samuel's opinion on the subject of rounding the whole head.

(9) Who have no beards.

(10) Of transgressing the command not to round.

(11) The wife of R. Huna, who, being a woman, was not commanded not to round.

(12) If the rounding of a child's head is forbidden, it is also forbidden for a woman to round it.

(13) Although R. Adda himself would have allowed the children's heads to be rounded even by a man (v. infra), his unfortunate forecast proved true during his lifetime.

(14) For the point at issue was whether this was permitted in the case of a minor, but both agreed that it is forbidden with an adult. Why does the one permit a woman to round a child and the other not allow it.

(15) What is the point at issue?

(16) Lev. XIX, 27.

(17) I.e. men who have beards.

(18) I.e., There is no penalty even if a woman rounds an adult. But a man may not round a minor.

(19) I.e., 'Ye shall not round' refers to both.

(20) For any offence.

(21) Hence even an adult may round a child. Thus when R.Adda said that Hoba should not poll the children, he was arguing on R. Huna's premises.

(22) Of the leper; although it has already said that he must shave all his hair; Lev. XIV,9.

(23) Speaking of all persons Lev. XIX,27.

it might be thought that the same is true of a leper, therefore Scripture says 'his head'.[1] And another [Baraitha] taught: Why does Scripture mention 'his head'?) Since it says with reference to the nazirite, There shall no razor come upon his head,[2] it might be thought that the same is true of a nazirite who becomes a leper, therefore Scripture says 'his head'.[3] Now surely there is here a difference of opinion between Tannaim [on the question of rounding the whole head]. The [Tanna] who refers ['his head'] to the nazirite holding that the rounding of the whole head does not count as rounding,[4] and that the purpose of the text[5] is to override the prohibition and positive command [incumbent on the nazirite],[6] whilst the other [Tanna] holds that the rounding of the whole head does count as rounding[7] and the purpose of the verse is to override a simple prohibition![8] — Said Raba: [It may be that] both [Tannaim] agree that the rounding of the whole head does not count as rounding, and the purpose of the verse [according to the latter Tanna][9] is [to permit rounding] where he first rounds [the corners only] and then shaves [the rest of the head]. Since he would not be guilty if he shaved it all at the same time, he is not guilty if he first rounds [the corners] and then shaves [the rest].[10]

But could Scripture possibly intend this?[11] Has not Resh Lakish said that wherever we find a positive command and a prohibition [at variance], then if it is possible to observe both, well and good, otherwise the positive command overrides the prohibition?[12] — We must therefore say that both [Tannaim] agree that the rounding of the whole head counts as rounding [the corners], and that the authority who utilises the verse ['his head' to prove that a positive command] may override both a prohibition and a positive command, infers that a simple prohibition [can be overridden] from [the command to wear] twisted cords. For the verse says, Thou shalt not wear a mingled stuff,[13] and it has been taught [in explanation of this]: Thou shalt not wear a mingled stuff, [wool and linen together], but nevertheless, Thou shalt make thee twisted cords[14] of them.

Why does not the one who infers this [rule][15] from 'his head' infer it from 'twisted cords'? — He will reply that [the latter] is required for [the following dictum of] Raba. For Raba noted the following contradiction. It is written, And that they put with the fringe of each corner, [i.e.,] of the same [material] as the corner[16] must there be a thread of blue.[17] Yet it is [also] written wool and linen together.[18] How are these to be reconciled? Wool and linen discharge [the obligation to provide fringes] both for [garments of] their own species,[19] and also for other species,[20] but other kinds [of material] discharge [this obligation] only for [garments of] the same species but not for [garments of] a different species.[21]

And whence does the Tanna who utilizes 'his head' for [the inference that a positive command overrides] a simple prohibition learn that the positive command[22] overrides both a prohibition and a positive command?[23] — He infers it from [the expression] 'his beard'.[24] For it has been taught: Why does Scripture mention 'his beard'?[25] Since it says,[26] neither shall they shave off the corners of their beard,[27] it might be thought that the same is true of a priest who is a leper, and so Scripture says 'his beard'.[28]

Why does not the [Tanna] who utilizes 'his head' for [teaching that] the positive command and prohibition [can be overruled by a positive command] infer it from [the words] 'his beard'? — But according to your view[29] when we have the rule elsewhere

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(1) The leper must even shave his head.

(2) Num. VI, 5.

(3) Even a nazirite must shave his head if he becomes a leper. Cf. the somewhat different discussion of these two Baraithas, supra 41a.

(4) And so no special permission is required to round the head of a leper on shaving him.

(5) 'His head'.

(6) Viz.: There shall no razor come upon his head (Num. VI. 5) and, He shall let the locks of the hair of his head grow

long (Ibid.). In spite of these verses, the leprous nazirite is to shave his head.
(7) And it might be thought that even an ordinary leper must not round his head.
(8) I.e., one which has no accompanying positive command to the same effect.
(9) Who uses it to allow rounding in the case of an ordinary Ieper.
(10) I.e., the verse tells us that even if he shaves his head without avoiding the transgression of the prohibition against rounding, where is no penalty.
(11) Viz.: no permit infringement of a prohibition when it can he avoided.
(12) And here, if rounding the whole head is not an infringement, he should shave the whole head at once.
(13) Deut. XXII, 21.
(14) The next verse. The inference is that fringes of wool may be placed on a linen garment, the prohibition of the preceding verse notwithstanding.
(15) That a positive command overrides a simple prohibition.
(16) This is inferred from the redundant 'each corner'. Since we know from the preceding phrase that the fringes are to he on the corners, Raba concludes that the fringes must he of the same material as the garment.
(17) Num. XV, 38.
(18) Deut. XXII, 21, followed by Thou shalt make thee twisted cords, implying apparently that fringes must be made of wool and linen only.
(19) Wool and linen.
(20) Wool fringes may be put on a silk or linen garment.
(21) Silk fringes do nor count as fringes if put on a woollen garment.
(22) In the case of the leper.
(23) If the nazirite becomes leprous he may shave his head on recovering.
(24) Lev. XIV, 9 of a leper.
(25) Since he must shave the whole of his body.
(26) Of the priests.
(27) Lev. XXI, 5. This is the prohibition. The positive command is contained in the next verse. They shall be holy unto their God.
(28) Even a priest must shave his beard if he is a leper.
(29) That we make the inference from 'his beard', so that the case of the leprous nazirite can be deduced from that of the leprous priest.

Talmud - Mas. Nazir 58b

that a positive command cannot override a prohibition accompanied by a positive command, let it be inferred from the [case of a leprous] priest that it can override?[1] [To this you reply] that we can make no inference from the [case of a leprous priest], [because] the case of the priest is different since the prohibition [overridden] does not apply to all people equally.[2] So, too, we are unable to infer the nazirite [leper] from the priest [leper] since the prohi bition [overridden in the case of the priest] does not apply equally to all people.[3]

Now to what use does the [Tanna] who utilizes [the phrase] 'his head' for the nazirite [leper], put [the phrase] 'his beard'?[4] — He requires it for [the following] that has been taught:[5] [From the verse] Neither shall they shave off the corners of their beard,[6] it might be thought that even if he shaved it with a scissors, he would be guilty, and so Scripture says [elsewhere], neither shalt thou mar [the corners of thy beard].[7] If it had [only written] 'neither shalt thou mar' It might have been thought that if he plucked it out with tweezers or a rohitni,[8] he would be guilty, and so Scripture says, 'neither shalt they shave off the corners of their beard'. What sort of shaving also mars? I should say that this is [shaving with] a razor.[9] Now according to the other tanna who utilizes the phrase, 'his head' for [overriding] a simple prohibition, why is it necessary to write both 'his head' and 'his beard'? [For since the expression 'his head'] can be understood as implying the overriding of a simple prohibition[10] and it can be understood also as implying the overriding of a prohibition accompanied by a positive command,[11] it can be applied indifferently to both,[12] and both could be

inferred?[13] — The priest [leper] cannot be inferred from the nazirite [leper], since the latter can secure release [from his nazirite vow].[14] The nazirite [leper] cannot be inferred from the priest [leper], since the [latter] prohibition does not apply equally to all people.[15] [Finally,] we cannot infer from these a rule for other cases,[16] since the previously mentioned objections could be raised.[17]

Rab said: A man may thin [the hair of] his whole body with a razor. An objection was raised. [It has been taught:] One who removes [the hair of] the armpits or the private parts is to be scourged?[18] — This [refers to removal] by a razor whereas the other of [Rab refers to removal] by a scissors. But Rab also mentions a razor? — [He means closely] as though with a razor.

R. Hiyya b. Abba, citing R. Johanan said: One who removes [the hair of] the armpits or of the private parts is to be scourged. An objection was raised. [It has been taught:] Removal of hair is not [forbidden] by the Torah, but only by the Soferim?[19] — What he too meant by scourging is [scourging inflicted] by the Rabbis .[20]

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(1) For your question assumes that there is no difference between this case and others.

(2) It refers to priests but not to ordinary Israelites. A prohibition which applies to all equally must be considered of greater force and, therefore, if accompanied by a positive command, it cannot be overruled.

(3) But anyone can become a nazirite and so the nazirite prohibition is of greater force, and a rule which applies to priests cannot be taken as applying to nazirites.

(4) For the priest leper can be inferred from the nazirite leper.

(5) Our text repeats here the Baraitha about a priest leper quoted before: Why does Scripture mention 'his beard'? Because it says, neither shall they share off the corners of their beard, it might be thought that the same is true of a priest who is a leper, and so Scripture says 'his beard'. And how do we know that this must be done with a razor? It has been taught: This passage appears to have been omitted by all the commentators and so we omit it with the Bail.

(6) Lev. XXI, 5.

(7) Lev. XIX, 27 of an ordinary Israelite. Scissors do not mar.

(8) V. Glos.

(9) And the phrase, 'his beard' teaches us that the leper too must shave with a razor; cf. supra 40b.

(10) By inference from the verse, 'ye shall not round the corners of your head' as in the first Baraitha supra.

(11) From the nazirite as in the second Baraitha.

(12) I.e., seeing that the method of inference is the same in both cases, we should have inferred both.

(13) What need is there of 'his beard'? The priest-leper can be inferred from the naziriteleper.

(14) By applying to a sage. And since the prohibition is not a permanent one, it might be thought that only here can a positive command override a prohibition accompanied by a positive command but not in the case of a priest-Ieper.

(15) But only to priests, whereas anyone can become a nazirite. Hence if the fact that a priest-Ieper may shave were taught, it would not be possible to infer in the case of a nazirite-leper that the prohibition and positive command to let his hair grow are overruled by the positive command for a leper to shave.

(16) Lit., 'we cannot infer other cases from them'. I.e., that in all cases a positive command overrides a prohibition accompanied by a positive command.

(17) Viz.: That the case of the nazirite and the priest are special instances and cannot be generalised.

(18) For infringing the prohibition against a man appearing as a woman; v. infra.

(19) Lit. 'by the Scribes' (v. Sanh., Sonc. ed., p. 360, n.7). Why then does R. Johanan say that the penalty is scourging.

(20) I.e. not the statutory 39 stripes, but a scourging prescribed at the discretion of the Rabbis for transgressing a non-Biblical law.

Talmud - Mas. Nazir 59a

Others say [that the above argument took the following form]. R. Hiyya b. Abba, citing R. Johanan, said: One who removes [the hair of] the armpits or the private parts is to be scourged because of [infringing the prohibition] neither shall a man put on a woman's garment.[1] An objection was raised. [We have been taught:] Removal of hair is not [forbidden] by the Torah, but only by the

Soferim? — That statement [of R. Johanan] agrees with the following Tanna. For it has been taught: One who removes [the hair of] the armpits or the private parts infringes the prohibition, neither shall a man put on a woman's garment.

What interpretation does the first Tanna[2] put on [the verse] 'neither shall a man put on a woman's garment'? — He requires it for the following that has been taught: Why does Scripture say, A woman shall not wear that which pertaineth unto a man [etc.]?[3] If merely [to teach] that a man should not put on a woman's garment, nor a woman a man s garment, behold it says [of this action] this is an abomination[4] and there is no abomination here![5] It must therefore mean that a man should not put on a woman's garment and mix with women, nor a woman a man's garment and mix with men. R. Eliezer b. Jacob says: How do we know that a woman should not go to war bearing arms? Scripture says, 'A woman shall not wear that which pertaineth unto a man.' [The words] 'Neither shall a man put on a woman's garment,' [signify] that a man is not to use cosmetics as women do.

R. Nahman said that a nazirite is permitted [to remove the hair of his armpits],[6] but this is not the accepted ruling. The Rabbis said to R. Simeon b. Abba: We have seen that R. Johanan has no [hair in his armpits].[7] [R. Simeon] said to then,: It has fallen out because of his old age.

A certain man was sentenced to scourging before R. Ammi, and when his armpits became bared,[8] he noticed that they were not shaven. R. Ammi said to then,: Let him go free. This man must be a member of the [learned] fraternity.[9]

Rab asked R. Hiyya whether [it was permitted] to shavɛ[10] [the armpits]. He replied: It is forbidden. [Rab] then asked: But it grows?[11] He replied: SOn of great ancestors,[12] there is a limit. If it continues to grow [beyond this] it falls out.

Rab asked R. Hiyya whether [it was permitted] to scratch [the armpits to remove the hair]. He replied: It is forbidden. [To the further question] whether he might [scratch] through his garment,[13] he replied that it was permitted. Some say that he asked him whether he might [scratch] through his garment during prayers[14] and he replied that it was forbidden; but this is not the accepted ruling.[15]

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(1) Deut. XXII, 5. It was customary only for women to shave the hair of the body.

(2) Who holds that the removal of this hair is not forbidden by the Torah.

(3) Ibid.

(4) The end of the verse reads: 'whosoever doeth these things is an abomination to the Lord'. This word, 'abomination', is used of forbidden intercourse.

(5) The mere act of putting on the garments is not wrong.

(6) At the same time as he shaves his head when he would in any case be unattractive.

(7) How is it possible, if the removal is forbidden.

(8) As he was stripped to receive the punishment.

(9) As the fact that his armpits were unshaven proved.

(10) With scissors.

(11) Uncomfortably long, and one should be allowed to remove it for the sake of comfort without transgressing the prohibition.

(12) Lit., 'Son of princes'. A favourite appellation of Rab, used by his uncle R. Hiyya.

(13) I.e. whether he might scratch on top of his shirt, without touching the bare flesh.

(14) To remove a source of irritation. It is forbidden to touch the bare skin during prayers.

(15) I.e. scratching through a garment is allowed.

Talmud - Mas. Nazir 59b

MISHNAH. IF ONE OF THEM DIES;[1] R. JOSHUA SAID THAT [THE OTHER] SHOULD SEEK

SOME THIRD PERSON[2] PREPARED TO UNDERTAKE A NAZIRITE-VOW TOGETHER WITH HIM, AND SAY: IF I WAS DEFILED, YOU ARE TO BE A NAZIRITE IMMEDIATELY, BUT IF I WAS CLEAN, YOU ARE TO BECOME A NAZIRITE AT THE END OF THIRTY DAYS.' THEY THEN COUNT THIRTY DAYS AND BRING SACRIFICES FOR DEFILEMENT AND SACRIFICES [DUE ON TERMINATING A NAZIRITESHIP] IN PURITY AND [THE FIRST ONE] SAYS, 'IF I AM THE ONE WHO WAS DEFILED, THE SACRIFICES FOR DEFILEMENT ARE MINE AND THE SACRIFICES IN PURITY ARE YOURS, WHILST IF I AM THE ONE WHO REMAINED CLEAN, THE SACRIFICES IN PURITY ARE MINE AND THE SACRIFICES AFTER DEFILEMENT ARE [SACRIFICES OFFERED] IN DOUBT.'[3] THEY THEN COUNT [A FURTHER] THIRTY DAYS AND BRING [ONE SET OF] THE SACRIFICES IN PURITY AND [THE FIRST ONE] SAYS, 'IF I AM THE ONE WHO WAS DEFILED, THE SACRIFICE FOR DEFILEMENT [OFFERED PREVIOUSLY] WAS MINE AND THE SACRIFICE IN PURITY WAS YOURS, AND THIS IS MY SACRIFICE IN PURITY, WHILST IF I WAS THE ONE WHO REMAINED CLEAN, THE SACRIFICE IN PURITY WAS MINE AND THE SACRIFICE AFTER DEFILEMENT [WAS OFFERED] IN DOUBT AND THIS IS YOUR SACRIFICE IN PURITY.

BEN ZOMA SAID TO [R. JOSHUA]: WHO WILL LISTEN TO [THIS MAN] AND UNDERTAKE A NAZIRITE-VOW TOGETHER WITH HIM? WHAT HE MUST DO IS TO BRING[4] A BIRD AS A SINOFFERING AND AN ANIMAL AS A BURNT-OFFERING AND SAY, IF I WAS DEFILED, THE SIN-OFFERING IS PART OF MY DUE[5] AND THE BURNT-OFFERING IS A VOLUNTARY OFFERING, WHILST IF I REMAINED CLEAN, THE BURNT-OFFERING IS PART OF MY DUE AND THE SIN-OFFERING [A SACRIFICE OFFERED] IN DOUBT.' HE MUST THEN COUNT THIRTY DAYS AND BRING THE SACRIFICES IN PURITY AND SAY, IF I WAS DEFILED, THE FORMER BURNT-OFFERING WAS A VOLUNTARY ONE AND THIS IS THE OBLIGATORY ONE, WHILST IF I REMAINED CLEAN, THE FORMER BURNT-OFFERING WAS THE OBLIGATORY ONE AND THIS THE VOLUNTARY ONE. THESE [OTHERS] ARE THE REST OF MY SACRIFICES.' R. JOSHUA RETORTED: THE RESULT WILL BE THAT THIS [NAZIRITE] WILL BRING HIS SACRIFICES HALF AT A TIME![6] THE SAGES, HOWEVER, AGREED WITH BEN ZOMA.

GEMARA. But let him bring them [half at a time]?[7] — Rab Judah citing Samuel said: R. Joshua only said this in order to sharpen [the wits of] the students.[8] R. Nahman[9] said, What would R. Joshua do with the intestines to prevent them decomposing?[10]

MISHNAH. A NAZIRITE WHO WAS IN DOUBT WHETHER HE HAD BEEN DEFILED AND IN DOUBT WHETHER HE HAD BEEN A CONFIRMED[11] LEPER, MAY EAT SACRED MEATS AFTER SIXTY DAYS,[12] AND DRINK WINE AND TOUCH THE DEAD AFTER ONE HUNDRED AND TWENTY DAYS,[13] SINCE POLLING ON ACCOUNT OF [LEPROUs] DISEASE OVERRIDES [THE PROHIBITION AGAINST] THE POLLING OF THE NAZIRITE ONLY THEN [THE LEPROSY] IS CERTAIN, BUT WHEN IT IS DOUBTFUL IT DOES NOT OVERRIDE IT.[14]

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(1) One of the two men mentioned in the last Mishnah 57a.

(2) Lit. 'someone from the street'.

(3) Its flesh would be interred and not eaten, as in the case with a sacrifice brought for certain defilement; v. supra 29a.

(4) On completing his naziriteship.

(5) He must offer the sin-offering because he cannot commence to count the naziriteship in purity until it is sacrificed, if he had been in fact defiled. The other sacrifices can be dispensed with in the circumstances; v. supra 18b.

(6) If he was in fact clean, his burnt-offering will have been brought thirty days before the other sacrifices.

(7) I.e., What is the point of R. Joshua's objection to the procedure of Ben Zoma.

(8) It was not a real objection. R. Joshua merely wanted the students to learn not to forbear from raising an objection

because it may have no basis.

(9) Both Rashi and Tosaf. have: 'R. Nahman b. Isaac'.

(10) If we were to do as R. Joshua suggests, the fat of the intestines (which must be offered on the altar) would decompose whilst both nazirites were being shaved prior to the waving. Surely, this is as great an objection as the bringing of the sacrifices at different times. R. Nahman points out that not merely is there no technical objection to the procedure of Ben Zoma but R. Joshua's cannot even be considered preferable. Tosaf.

(11) מוחלט 'confirmed': a person afflicted with leprosy who, on the first examination or after the period of confinement, is declared by the priest to he a leper; v. Lev. XIII, 45ff.

(12) I.e., after counting two nazirite periods of thirty days.

(13) After four nazirite periods. V. supra 55b for relevant notes.

(14) But the period of naziriteship must he observed before polling; v. Gemara following.

Talmud - Mas. Nazir 60a

GEMARA. A Tanna taught: [The procedure laid down in the Mishnah] applies only in the case of a short naziriteship,[1] but in the case of a naziriteship of [say,] a year, he may eat sacred meats [only] after two years, and drink wine and touch the dead after four years ,[2] It has been taught further in connection with this: He must poll four times.[3] At the first polling he brings a pair of birds, a bird as a sin-offering, and an animal as a burnt-offering.[4] At the second [polling] he brings a bird as a sin-offering and an animal as a burnt-offering. At the third he [again] brings a bird as a sin-offering and an animal as a burnt-offering. At the fourth he brings the sacrifice [due on terminating the naziriteship] in purity.

It has just been said: 'At the first polling he brings etc.' [In this way] whatever the facts are he offers the correct [sacrifice]. For if he was certainly a leper but was not defiled, the pair of birds are [in discharge of] his obligation,[5] the bird as a sin-offering [is a sacrifice offered] in doubt and is to be buried, and the burntoffering is a free-will offering. He cannot however be shaved [a second time] seven days hence,[6] for perhaps he is not a confirmed leper and the All-Merciful has said [of the nazirite]. There shall no razor come upon his head until [the days] be fulfilled.[7] If, on the other hand, he was not certainly a leper but he was defiled, then the bird as a sin-offering is [in discharge of] his obligation,[8] the pair of birds, being prepared without [the Temple court][9] are not [in the category of] profane [animals] brought into the Temple-court,[10] whilst the animal as a burnt-offering is a freewill-offering. Finally, if he was neither a leper nor defiled, then the pair of birds are [in any case] prepared without [the Temple-court] ,[11] the bird as a sin-offering is to be buried, and the animal as a burnt-offering is [in discharge of] his obligation [as a clean nazirite].[12]

But surely he requires a guilt-offering?[13] — [The author of this Baraitha] is R. Simeon who says that he brings one and makes a stipulation.[14]

At the second and third polling a pair of birds is unnecessary for these have been prepared.[15] What [doubt] is there [remaining]? That perhaps he was actually a confirmed leper?[16] [Because of this he offers] one [of the two birds as a sin-offering,][17] for the doubt on account of the tale of days[18] and one for the doubt on account of defilement.[19]

At the fourth polling he brings the sacrifice in purity and stipulates

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(1) Of thirty days duration.

(2) Tosef. Naz. VI, I.

(3) At the end of each thirty days or year.

(4) The purpose of the offerings will be explained immediately.

(5) V. Lev. XIV, 2.

(6) The normal period of separation between the two pollings of a leper; Lev. XIV, 9.

(7) Num. VI, 5. He must therefore wait another whole period before he can shave the second time. Hence he can eat sacred meats only after two periods have elapsed.
(8) Ibid.10.
(9) Lev. XIV, 5 seq.
(10) And so can be offered even though he may not have been a leper.
(11) And so can be offered even if he is not a leper.
(12) This permits him to poll and the other sacrifices can be brought later.
(13) After the second polling on recovery from leprosy (Lev. XIV, 10). Until it was brought he could not eat sacred meats.
(14) V. Men. 105a. He stipulates that if a guilt-offering is not due, the animal is to be a voluntary peace-offering. Since the author is R. Simeon, there was no need to mention the guiltoffering.
(15) At the first polling.
(16) When he must now bring sacrifices due after his tale of days; Lev. XIV,9.
(17) Brought at the second and third pollings.
(18) The seven days that must be counted between the two pollings of a nazirite, but which have here become a whole period.
(19) The burnt-offering is brought on each occasion in case he should have completed his naziriteship in purity.

Talmud - Mas. Nazir 60b

that if he Was actually a [clean] nazirite,[1] the first burntoffering was [in discharge of] his obligation and the present one is a freewill-offering, whilst if he was defiled and a confirmed leper, the first burnt-offering was a freewill-offering and this one is [in discharge of] his obligation and the other [animals] are the rest of his sacrifice.

[A nazirite] who was in doubt whether he had been defiled but certainly been a confirmed leper, may eat sacred meats after eight days,[2] and may drink wine and touch the dead after sixty-seven days,[3] One who was in doubt whether he had been a confirmed leper but had certainly been defiled, may eat sacred meats after thirty-seven days ,[4] and may drink wine and touch the dead after seventy-four days.' One who was certainly defiled and certainly a confirmed leper may eat sacred meats after eight days, and may drink wine and touch the dead after forty-four days.[5]

R. Simeon b. Yohai was asked by his disciples: May a ritually clean nazirite who was a leper poll once only[6] and have it reckoned for both purposes?[7] — He replied: He cannot poll in this way.[8] They then asked him: Why? — He replied: If both [the nazirite and the leper polled] in order that it should grow again,[9] or both [polled] In order to remove [the hair],[10] your suggestion would be sound, but as it is the nazirite [polls] to remove [the hair] and the leper [polls] to let it grow again. [They then said:] Granted that it should not count [for both pollings] after the period of confirmed leprosy, let it still count [for both] after his tale of days?[11] — He replied: If both were required to poll before the sprinkling of the blood [of the sacrifice], your suggestion would be sound, but here the leper polls before the sprinkling of the blood[12] and the nazirite after the sprinkling of the blood.[13] [They next suggested that though the one polling] should not count both for the days of his leprosy and his naziriteship, yet it ought to count for the days [both] of his leprosy and of his defilements.[14] [R. Simeon, however,] said to them: If both [polled] before bathing, your proposal would be sound, but the defiled [nazirite polls] after bathing[15] and the leper[16] before bathing.[17]

[Another version of the discussion is as follows.][18] They said to him: You have given a good reason why ii should not count [both] for his tale of days and for his naziriteship, but why should not [one polling] count for his period of confirmed leprosy as well as for his defilement, since in both cases [the polling] is to allow [the hair] to grow? — He replied: In the case of a ritually clean nazirite who is a leper, [the purpose of] the one [polling][19] is for [the hair] to grow again and the other[20] is to remove [the hair], whilst in the case of a defiled nazirite who is a leper, the latter [polling takes

place] before bathing and the former after bathing.

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(1) And was never a leper nor unclean.

(2) Since the shaving for leprosy may take place immediately he is seen to be clean and he has still to walt eight days.

(3) For he must wait thirty days after the second polling for leprosy before he may shave on account of the doubt whether he was defiled, and then he counts thirty days for his naziriteship in purity.

(4) As a defiled nazirite, he polls on becoming clean at the end of seven days and then again for his clean naziriteship after thirty days. Since he may have been a leper, these two pollings now count for the leprosy and as he was certainly unclean he can poll after seven days for the uncleanness and again after thirty days for his clean naziriteship.

(5) Seven for the leprosy, seven for the defilement and thirty for the clean naziriteship; Tosef. Naz. VI, z.

(6) If the termination of his naziriteship and his recovery from the disease coincided.

(7) This is really an objection to the Mishnah which requires him to poll four times, i.e., separately for each contingency. (R. Asher.)

(8) And he must poll twice.

(9) I.e., if both were required to remove the hair a second time as the leper must.

(10) With no subsequent obligation to let it grow.

(11) Since after the tale of days (Lev. XIV,9), the leper also polls to remove his hair.

(12) He shaves on the seventh day and offers the sacrifice on the eighth day. (Lev. XIV, 9-10).

(13) V. Num. VI, 16-18.

(14) I.e., when the end of leprosy and defilement coincide.

(15) He shall shave his head on the day of his cleansing (Num. VI,9) i.e., after bathing.

(16) V. Lev. XIV,9.

(17) Tosef. Naz. V,4' where the arguments are transposed in part.

(18) So Tosaf. and R. Asher consider the next passage.

(19) Viz., the polling because of the confirmed leprosy.

(20) Viz., the polling after the naziriteship.

Talmud - Mas. Nazir 61a

R. Hiyya taught [the following differences: The leper polls] before bathing, [the unclean nazirite] after bathing; the former before the sprinkling of the blood, the [clean nazirite] after the sprinkling of the blood.

SINCE POLLING ON ACCOUNT OF [LEPROUs] DISEASE etc. Rami b. Hama propounded: Are the four pollings required[1] for carrying out a religious duty,[2] or whether they are merely in order to remove defiled hair?[3] The practical issue is whether this may be removed with nasha.[4] For if we say that they are a religious duty It would not be permitted to treat [the hair] with nasha, whereas if their purpose is simply the removal of defiled hair, treatment with nasha would be permitted. What, then, is the law?-Raba replied: Come and hear: And he is required to undergo four pollings.[5] Now if you assume that their purpose is simply the removal of defiled hair, three [pollings] alone should suffice.[6] Hence you may prove that they are [all] a religious duty. This proves It.

CHAPTER IX

MISHNAH. GENTILES HAVE NO [COMPETENCE FOR] NAZIRITESHIP,[7] BUT WOMEN AND SLAVES[8] HAVE. THE NAZIRITE VOW IS MORE STRINGENT IN THE CASE OF WOMEN THAN IN THE CASE OF SLAVES, FOR A MAN CAN COMPEL HIS SLAVE [TO BREAK HIS VOW][9] BUT HE CANNOT COMPEL HIS WIFE [TO DO SO].

GEMARA. The Mishnah teaches that GENTILES HAVE NO [COMPETENCE FOR] NAZIRITESHIP [etc.]. How do we know this? — For our Rabbis taught: [Scripture says] Speak unto the children of Israel,[10] but not to Gentiles; and say unto them, thereby including slaves.[11]

But what need is there of a Verse,[12] Seeing that there is a principle that every precept incumbent on women is also incumbent on slaves?[13] — Raba replied: [Naziriteship] is different [from other laws]. For there is a verse, [When a man voweth a vow] to bind his soul with a bond,[14] which thus refers to one who is his own master[15] and excludes slaves who are not their own masters.[16] Now because [slaves] are not their own masters it might be thought that they are precluded from making nazirite-vows[17] and so we are told [this is not so]. The Master stated: 'Speak in to the children[18] of Israel but not to Gentiles.' But does the mention of Israel always exclude Gentiles?[18] Is there not written in connection with 'Arakin,[19] Speak unto the children of Israel,[20] and yet it has been taught: 'Israelites can vow 'Arakin but not Gentiles. It might be thought that [Gentiles] cannot be the subject of 'Arakin vows either,[21] but the verse says A man'?[22] — [Naziriteship] is different, for here there is a verse, He shall not make himself unclean for his father or his mother,[23] which shows that [the passage] is referring to such as have a [legal] father,[24] and thus excluding Gentiles who have no [legal] father. In what respect have Gentiles no father? Shall I say it is as regards inheritance?[25] Surely R. Hiyya b. Abin, citing R. Johanan has said that a Gentile inherits his father in Torah-law, for there is a verse, Because I have given Mount Seir to Esau for an [inheritance]![26] — You must therefore mean that such as are bound to honour their fathers [are referred to].[27] But does it say Honour thy father in connection with nazirites?[28] , — We must therefore say that the verse, 'He shall not make himself unclean for his father or his mother' shows that only those to whom [the laws of] defilement apply [can assume naziriteship]

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(1) For a nazirite who was both doubtfully a leper and doubtfully defiled.

(2) I.e., whether each one is a religious duty requiring a razor.

(3) And only the polling of a clean nazirite requires a razor.

(4) A plant depilatory. v. supra p. 146, n. 4.

(5) The Baraitha cited above.

(6) For only the first three pollings are because of the doubtful leprosy and defilement. The fourth is certainly an ordinary polling of a clean nazirite. Hence since the Baraitha makes no distinction between them, they must all be equally a religious duty.

(7) I.e., if a gentile undertakes to be a nazirite, the vow is of no effect.

(8) I.e., non — Jewish slaves who, after having submitted to circumcision and the prescribed ablution, are subject to the fulfilment of certain precepts.]

(9) As long as the slave belongs to him.

(10) Num. VI, 2; opening the chapter on naziriteship.

(11) 'Israel' is not repeated, and thus we infer that others than Israelites can undertake naziriteship, i.e., slaves also.

(12) To allow slaves to undertake naziriteship.

(13) Women are explicitly allowed to become nazirites (Num. VI, 2). For the principle. v. Chag. 4a.

(14) Num. XXX, 3 which lays down that vows are binding.

(15) Lit., 'whose soul (person) belongs to himself'.

(16) A slave's vows are not binding.

(17) Since they are also a kind of vow.

(18) From the scope of the scriptural passage in which it occurs.

(19) Vows of' valuation, v. Lev. XXVII.

(20) Lev. XXVII, 1.

(21) I.e., that an Israelite cannot vow to give the valuation of a Gentile.

(22) Ibid. v.2; 'When a nun shall clearly utter a row of persons unto the Lord according to thy valuation'. Thus we see that 'Israel' in v. 1 does not exclude Gentiles entirely from the scope of the chapter, but only disqualifies them from vowing 'Arakin. Similarly, since the word 'man' also occurs in connection with naziriteship (Num. VI, 2). Gentiles should not he wholly excluded from naziriteship.

(23) Num. VI, 7.

(24) Viz.: Jews, who in all matters belong to their fathers' family, Gentiles, on the other hand, are held in Jewish law to count descent from the mother.

(25) I.e., that a Gentile should not inherit his father.

(26) E.V. ‘possession. Deut. II, 5.

(27) V. Num. VI, 7. And since a Gentile is nor hound by the commandment, he cannot become a nazirite.

(28) That you hold Gentiles to be excluded from the scope of the chapter.

Talmud - Mas. Nazir 61b

but not gentiles to whom [the laws of] defilement do not apply. How do we know that [the laws of] defilement do not apply to them? — The verse says. But the man that shall be unclean and shall not purify himself that soul shall be cut off from the midst of the kahal [assembly],[1] referring to such as form a kahal and excluding [gentiles] who do not form a kahal.[2]

How does it follow [that the laws of defilement do not apply to gentiles]? Perhaps [all that is meant is that] he is not liable to kareth [excision],[3] but [the laws of] defilement do apply [to him]?[4] Scripture Says, And the clean person shall sprinkle upon the unclean,[5] [teaching that] whoever can become clean,[6] becomes unclean, and whoever cannot become clean does not become unclean.[7] But perhaps we may say that while [the laws of] purification do not apply to [gentiles], yet [the laws of] defilement do apply?[8] — Scripture says, But the man that shall be unclean aid shall not purify himself.[9] R. Aha b. Jacob said: [Naziriteship] is different,[10] for here there is a verse, And ye may make them an inheritance for your children after you.[11] [From this we learn that] to whomsoever [the laws of] inheritance [of slaves] apply, to him [the laws of] defilement apply, and to whomsoever [the laws of] inheritance [of slaves] do not apply, to him [the laws of] defilement do not apply.[12]

If that is the reason [that gentiles cannot become nazirites],[13] then slaves too should not be able [to become nazirites]?[14] — In point of fact, said Raba, [the following is the reason that gentiles are wholly excluded from naziriteship].[15] It is quite permissible in the case of ‘Arakin [to argue thus:] when it says, ‘the children[16] of Israel’ [it implies that] Israelites can vow ‘Arakin but not gentiles. I might go on to infer from this that [gentiles] cannot be the subject of ‘Arakin vows either,[16] Scripture [therefore] says ‘all’[17] [But you cannot similarly argue] here, [in the case of naziriteship as follows: The words ‘children of Israel’ imply that] Israelites can undertake nazirite — vows and bring the offering [due on terminating the naziriteship], but not gentiles.[18] I might go on to infer from this that [gentiles] cannot become nazirites at all. Scripture [therefore] says ‘man’.[19] For I will say such an argument is inadmissable[20] since [the exclusion of gentiles] from [bringing the nazirite] offering is not inferred from this [verse], but from elsewhere, [as has been taught:] R. Jose, the Galilean said, [the verse] for a burnt-offering[21] serves to exclude [a gentile] from [bringing] the nazirite-offerings.[22] Why not argue [as follows: The words ‘children of Israel’ imply that] Israelites can undertake life-naziriteships but not gentiles. I might go on to infer from this that [gentiles] cannot undertake [ordinary] nazirite-vows either,[23] Scripture [therefore] says ‘man’?[24] R.Johanan replied: Is the life-nazirite mentioned [in Scripture]?[25] Why not argue [as follows: The words children of Israel imply that] Israelites can impose nazirite-vows upon their children, but not gentiles. I might go on to infer from this that [gentiles] cannot become nazirites [at all]. Scripture [therefore] says ‘man’?[26] But R. Johanan has said that this is a [traditional] ruling with regard to the nazirite![27]

Why not argue [as follows: The words ‘children of Israel’ imply that] Israelites can poll [with the offerings due] for their father's nazirite-sacrifices,[28] but not gentiles.

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(1) Num. XIX, 20.

(2) The term ‘kahal is used of Jews only.

(3) If he enters the Temple whilst defiled; for the word kahal is used in the phrase referring to excision. On kareth v. Glos.

(4) I.e., he can become unclean and defile others.

(5) Num. XIX, 19.
(6) I.e., by undergoing the purification rites. [These rites are specially prescribed for the congregation of the children of Israel. V. Num. XIX, 9.]
(7) And since a gentile cannot undergo the purification rites, he does not become unclean.
(8) I.e., having become unclean, he can defile others and remains unclean himself, but he cannot become clean again.
(9) Num. XIX, 20. Implying that wherever there can be no purification, there is no defilement.
(10) From 'Arakin. And when we said that gentiles have no legal father, it was in respect of slaves.
(11) Lev. XXV, 46. Referring to gentile slaves. A gentile cannot bequeath his slaves in Torah-law; v. Git. 38a.
(12) And since the laws of defilement do not apply to gentiles, they cannot become nazirites.
(13) Viz., that they cannot bequeath their slaves to their heirs.
(14) For the laws of inheritance do not apply to slaves. A slave's property becomes his masters.
(15) Although the mention of 'children of Israel' does not necessarily exclude gentiles from the scope of a scriptural passage.
(16) I.e., that gentiles are wholly excluded from the scope of the passage dealing with 'Arakin.
(17) And gentiles may be the subject of an 'Arakin vow though they cannot make such a vow.
(18) Thus the mention of 'children of Israel' excludes gentiles from the scope of the nazirite passage.
(19) Num. VI, 2. The mention of 'man' now partially includes gentiles within the scope of the passage. They can become nazirites, but may not bring the offerings due on terminating the naziriteship.
(20) I.e., it is impossible to utilise the words 'children of Israel' merely in order to exclude gentiles from bringing the nazirite offerings.
(21) Lev. XXII, 18.
(22) V. Men. 73b. Thus the words 'children of Israel' must wholly exclude gentiles from naziriteship.
(23) I.e., gentiles are wholly excluded from the scope of the nazirite passage.
(24) They can become ordinary nazirites.
(25) We learnt about it from the case of Absalom (supra 4b). Hence the verse cannot be referring to the life-nazirite at all.
(26) They can themselves under — take nazirite-vows but cannot impose them upon their children.
(27) Supra 28b. Hence, Scripture cannot be referring to this ruling.
(28) Supra 30a.

Talmud - Mas. Nazir 62a

I might go on to infer from this that [gentiles] cannot become nazirites [at all]. Scripture [therefore] says man? — But it has been stated: R. Johanan said, This is a [traditional] ruling with regard to the nazirite.[1]

Now if it is a fact [that 'man' includes gentiles],[2] what need is there for the expression, When a man shall clearly utter a vow . . . according to thy valuation[3] occurring in connection with 'Arakin? For consider! 'Arakin are compared [in this verse] with vows, as it says, When a man shall clearly utter a vow . . . according to thy valuation,[3] and it has been taught in connection with vows: Scripture mentions the word man[4] in order to include gentiles, who are allowed to vow vowed-offerings[5] and freewill-offerings,[6] just as Israelites do.[7] What need then is there for the verse, 'When a man shall clearly utter' in connection with 'Arakin?[8] — In point of fact, this [word] 'man' is required for the inclusion of [a youth] who can discriminate but has not quite reached manhood.[9]

This is all very well [if we accept the view of] the authority[10] who considers that a youth who can discriminate but has not quite reached manhood has a Scriptural right [to make Vows],[11] but [if we accept the view of] the authority[12] who considers this right to be rabbinic, what need is there for, When a man shall clearly utter [etc.]?[13] It serves to include a gentile [youth] who can discriminate but has not quite reached manhood.[14]

This is all very well if we accept the view of the authority[15] who argues [as follows: The words

'children of Israel' imply that] Israelites can be the subject of 'Arakin vows but not gentiles. I might go on to infer from this that [gentiles] cannot vow 'Arakin, Scripture [therefore] says man.[16] If, however, we accept the view of the authority[17] who argues [as follows: The words children of Israel imply that] Israelites can vow 'Arakin but not gentiles. I might go on to infer from this that [gentiles] cannot be the subject of 'Arakin, Scripture [therefore] says man: [our difficulty remains]. For seeing that even a baby a month old can be the subject of an 'Arakin vow, what need is there of, 'when [a man] shall clearly utter'?[18] — R. Adda b. Ahaba replied: Its purpose is to bring within the scope of the rule an adult gentile who although he is an adult [cannot make even ordinary vows, if he] cannot discriminate.[19]

Now what need is there of [the phrase,] 'when [a man] shall clearly utter' mentioned in connection with the naziriteship? For seeing that the naziriteship is compared with [ordinary] vowing[20] what need is there of 'when [a man] shall clearly utter'? — It serves to include allusions the significance of which is not manifest.[21] For it has been stated: Abaye said that allusions whose significance is not manifest have the force of a direct statement, whilst Raba said that they have not the force of a direct statement.[22] Now if we accept Abaye's view, there is no difficulty,[23] but if we accept Raba's view what can we reply?[24] In point of fact 'when [a man] shall clearly utter' is necessary for R. Tarfon's case. For it has been taught: R. Judah on behalf of R. Tarfon said that not one of these people[25] is a nazirite, because naziriteship is not intended except when assumed unequivocally.[26] This is all very well if we accept the view of R. Tarfon, but [if we accept the view of] the Rabbis what can you reply?[27] In point of fact it is necessary for [the following] which has been taught: Annulment of vows has no foundation[28] and is without [Scriptural] support.[29] R. Eliezer says that it has [Scriptural] support, for Scripture says twice 'when [a man] shall clearly utter'?[30] one signifies a distinct binding expression,[31] and one a distinctness [which opens the way] to annulment.[32]

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(1) Hence Scripture cannot be referring to it and the words, 'children of Israel', must entirely exclude gentiles from undertaking naziriteships.

(2) The upshot of the previous discussion is a vindication of the assertion that 'man' usually includes gentiles. It is only because it cannot possibly have that meaning in connection with naziriteship, that it is not so interpreted there. Hence the Gemara now enquires whether gentiles would not have been included for the purposes of 'Arakin even without 'man' being mentioned.

(3) Lev. XXVII,2.

(4) V. Lev. XXII, 18. Whoever he be (lit., a man, a man) . . . that bringeth his offering, whether it be of their vows etc. The reference in the following discussion II to vowing sacrifices for the altar. [The text adopted follows Bah. Cur. edd. read: Scripture should have mentioned (only) 'a man' why does it state 'a man, a man'. Though the reading is supported by the parallel passages, it hardly fits in with the trend of the passage where the word 'man' in itself is taken to include gentiles.]

(5) Heb. נדר.

(6) Heb. נדבה. The difference between a vowedoffering and a freewill offering is this. The former, if it dies or is lost, must be replaced, but the latter need not be replaced.

(7) Cf. Tem. 2b.

(8) For 'Ar. are covered by the interpretation of Lev. XXII, 18 in the Baraitha.

(9) He too may make vows. V. supra 29b.

(10) R. Jose b. R. Judah. V. supra 29b.

(11) This right is then inferred from the word 'man' in Lev. XXVII, 2.

(12) R. Judah the prince (Ibid.).

(13) I.e., We are still without a use for the word 'man' in this verse.

(14) R. Judah the prince also agreeing that his right to make vows is Scriptural.

(15) R. Judah; V. 'Ar. 5b.

(16) Thus permitting gentile youths who have not yet reached manhood to make 'Arakin (and other) vows.

(17) R. Meir. Ibid.

(18) For it can no longer refer to gentile youths since no gentile can make an 'Arakin vow.

(19) The inference being: Only a gentile who knows what he is uttering can make even ordinary vows (Tosaf.).
(20) V. Ned. 3a. And ‘shall clearly utter’ already occurs in connection with vows in Lev. XXVII, 2.
(21) V. supra 2a-b.
(22) And the vow fails to take effect.
(23) The interpretation will be: The vow must be uttered clearly or it is of no effect.
(24) I.e., what use does be make of the phrase ‘to utter clearly?’
(25) Who vow naziriteships of the form. If the person approaching is So and so, I will become a nazirite.
(26) V. supra 34a.
(27) I.e., what use do they make of ‘shall clearly utter’?
(28) Lit., ‘fly in the air’.
(29) I.e., the possibility of annulling vows is purely a traditional law.
(30) Once in Lev. XXVII, 2 of ‘Arakin and once in Num. VI, 2 of nazirite vows.
(31) I.e., once the vow is clearly undertaken, it remains binding.
(32) If annulment is sought, the vow ceases to be binding.

MISHNAH. [THE NAZIRITE-VOWS OF] SLAVES ARE MORE STRINGENT THAN [THOSE OF] WOMEN; FOR HE CAN DECLARE VOID THE VOWS OF HIS WIFE, BUT HE CANNOT DECLARE VOID THE VOWS OF HIS SLAVES. IF HE DECLARES HIS WIFE'S [VOW] VOID, IT IS VOID FOR EVER, BUT IF HE DECLARES HIS SLAVE'S VOW VOID, HE BECOMES FREE AND MUST COMPLETE HIS NAZIRITESHIP.[1] GEMARA. Our Rabbis taught: What can his master compel him [to disregard]? [The vow of] Naziriteship, but not [other] vows, or [vows involving] 'Arakin.[2]

Why this difference in the case of the nazirite-vow? — The Allmerciful has said, To bind his soul with a bond,[3] showing that only those who are their own masters[4] are referred to, and excluding slaves, who are not their own masters. But if this is the reason, the same should be true of [other] vows?[5] — R. Shesheth replied: We suppose here[6] that a cluster of grapes lay before [the slave].[7] In the case of vows, where if this [cluster] becomes prohibited to him, others will not become prohibited, [his master] cannot compel him [to eat this one]. But in the case of a nazirite-vow, if this one becomes forbidden,[8] all others become forbidden; and that is why he can compel him [to eat it].[9]

But do not [ordinary] vows[10] include the possibility that there is available Only the one cluster of grapes in question, so that if he does not eat it he will grow weak[11] [and yet the vow takes effect]? — Raba therefore said: We suppose that a pressed grape lay before him.[12] In the case of vows, he is prohibited from eating that one only, and so [his master] cannot compel him [to break his vow]. But in the case of the nazirite-vow where he is also prohibited from eating others, he can compel him [to break his vow].

But do not [ordinary] vows include the possibility that there is available only the one pressed grape in question, so that if he does not eat it he will grow weak [and yet the vow takes effect]? Abaye therefore replied: [The Baraitha really means] what is his master obliged to compel him [to disregard]? [The vow of] naziriteship.[13] but he does not [even] have to compel him [to disregard ordinary] vows or oaths.[14] This is because the verse says [If any one swear] to do evil or to do good.[15] Just as doing good is a voluntary undertaking, so must the doing of evil be a voluntary undertaking, the doing of evil to others being thereby excluded, since he has not the right [to harm others].[16]

MISHNAH. SHOULD [THE SLAVE] FLEE FROM [HIS MASTER'S] PRESENCE,[17] R. MEIR SAID THAT HE MUST NOT DRINK WINE, BUT R. JOSE SAID THAT HE MAY.

GEMARA. Is it possible that [R. Meir and R. Jose] differ in regard to the following dictum of Samuel? For Samuel has said: Should a man renounce ownership of his slave, he becomes free, no deed of emancipation being required. Does R. Meir agree with Samuel[18] and R. Jose differ from him? — No; both hold this opinion of Samuel.[19] But the one who says he should drink considers that since he is ultimately to return to his master, he ought to drink in order not to grow emaciated. The other, who says that he should not drink considers that he should feel the pangs of deprivation in order that he should return [to his master].

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(1) Thus our text, and so Maimonides (Mishnah Commentary a.l. and Yad. Neziruth II, 18). Raabad however, reads 'and he afterwards becomes free, then he must complete his vow'.

(2) Tosef. Naz. VI, where 'oaths' replaces 'Arakin', for which v. Glos.

(3) Num. XXX, 3 of ordinary vows.

(4) V. supra p. 228, n.9.

(5) Seeing that the passage in which the verse occurs refers to ordinary vows.

(6) In the Baraitha which distinguishes nazirite-vows from other vows.

(7) And his vow, nazirite or ordinary, was made with reference to that bunch of grapes.
(8) I.e. if the nazirite-vow does become operative.
(9) [So as to have his strength unimpaired.]
(10) As referred to in the Baraitha.
(11) And so injure his master.
(12) [It is assumed that abstention from the pressed grape cannot affect his strength (Asheri)].
(13) If he does not wish it to take effect.
(14) These being automatically of no effect.
(15) Lev. V, 4.
(16) And since a slave's vows harm his master, they are inoperative.
(17) Run away after making a nazirite-vow.
(18) And assume that the owner despairs of the slave's return and thus renounces his ownership. The slave being free must therefore complete his naziriteship (v. previous Mishnah).
(19) And do not consider the owner to have renounced his possession of the slave.

Talmud - Mas. Nazir 63a

MISHNAH. IF A NAZIRITE POLLS AND THEN DISCOVERS THAT HE WAS DEFILED, THEN IF THE DEFILEMENT IS DEFINITE [THE NAZIRITESHIP] IS RENDERED VOID, BUT IF IT IS A DEFILEMENT OF THE DEPTH,[1] IT IS NOT RENDERED VOID, BEFORE POLLING, HOWEVER, EITHER [TYPE OF DEFILE MENT] RENDERS [THE NAZIRITESHIP] VOID. [THE LAW REGARDING 'DEFILEMENT OF THE DEPTH' IS] AS FOLLOWS. IF HE GOES DOWN INTO A CAVERN TO BATHE, AND A CORPSE IS FOUND FLOATING AT THE MOUTH OF THE CAVERN,[2] HE IS [DEFINITELY] UNCLEAN. IF IT IS FOUND EMBEDDED IN THE FLOOR OF THE CAVERN,[3] THEN IF HE WENT IN MERELY TO REFRESH HIMSELF HE REMAINS CLEAN,[4] BUT IF IT WAS TO PURIFY HIMSELF AFTER DEFILEMENT THROUGH CONTACT WITH THE DEAD HE REMAINS UNCLEAN,[5] BECAUSE WHERE THE STATUS QUO IS ONE OF DEFILEMENT THE DEFILEMENT REMAINS, BUT WHERE IT IS ONE OF PURITY, HE REMAINS CLEAN, THIS BEING THE PRESUMPTION [IN EACH CASE].[6]

GEMARA. How do we know this?[7] — R. Eliezer said: A verse reads, And if any man die very suddenly beside him,[8] 'beside him' Signifying that it is evident to him.[9] Resh Lakish said: A verse reads, If [any man . . .] shall be unclean by reason of a dead body or be on the road, afar off,[10] signifying that [the uncleanness] must be like a road. Just as a road is visible, so must uncleanness be visible. If these be correct,[11] what of the following where we learnt: 'Defilement of the depth' is such [defilement] as is not known even to a single person living anywhere in the world. If, however, it is known to someone living even at the end of the world, it is not defilement of the depth.[12] Now on [Resh Lakish's] view that [defilement] should be [visible] like a road, there is no difficulty,[13] but on [R. Eleazar's] view that it must be evident to him, what matters it if there is someone at the end of the world who knows of it? Further, there is the following: If a man finds a corpse lying [buried] across the road,[14] he becomes unclean in respect of terumah,[15] but remains clean as regards naziriteship and celebration of the passover.[16] But what is the difference?[17] — We must therefore say that [the rule of] defilement of the depth is known by tradition.[18] BEFORE POLLING, HOWEVER, etc.: Who is the author [of the Mishnah]?[19] R. Johanan replied: R. Eliezer, who considers that polling estops [him from drinking wine].[20]

Rami b. Mama propounded: What would be the law if [the nazirite] became unclean during the fulfilment of [his naziriteship], but discovered this after the fulfilment.[21] Is it [the moment of] discovery that is important,[22] and this occurred after fulfilment, or not,[23] the practical difference being [the period that is] to be rendered void?[24]

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(1) טומאת התהום. A particular type of uncertain defilement, defined later in the Mishnah.
(2) The cavern is a tent for the purposes of defilement. Although the corpse was discovered after he left the cavern, the defilement is regarded as a certain one, the doubt having arisen in a private domain (v. supra 212f).
(3) This is the ordinary case of defilement of the depth, the source of defilement being 'below ground'. V. Gemara below.
(4) To the extent that if he does not discover the incident until after polling, there is no effect on the naziriteship. But if he discovers it earlier, then he is unclean.
(5) Definitely unclean, for the purposes of our Mishnah.
(6) Lit., 'the matter has feet'; i.e., a basis of support.
(7) Viz. that defilement of the depth does not necessarily render void a naziriteship.
(8) Num. VI, 9, on the defilement of a nazirite.
(9) Defilement of the depth, as described in the Mishnah, is not evident to him, for he could not know' of the corpse's existence beneath the floor of the cavern.
(10) E.V. 'In a journey'. Num. IX, 10 of the second passover. Defilement of the depth was treated leniently as regards celebrants of the passover also.
(11) Viz., that the regulations concerning 'defilement of the depth' are deduced from Scripture.
(12) Tosef. Zabim II, 5.
(13) The fact that one man knows of it is enough to make it 'visible' for legal purposes.
(14) I.e., a defilement of the depth, it being uncertain whether the man overshadowed it.
(15) V. Glos.
(16) Ibid.
(17) If he is clean, he is clean for all things. Otherwise he is unclean for all things.
(18) And tradition confines the leniency only to naziriteship and the passover.
(19) Which implies that the naziriteship is over only after the polling, even if the sacrifices have been offered.
(20) Supra 24b.
(21) After counting the whole period of the naziriteship but before the termination (sacrifices or polling according to the Rabbis or R. Eliezer).
(22) And he counts as unclean henceforth.
(23) And he is unclean retrospectively.
(24) Uncleanness after fulfilment renders a shorter period void than uncleanness during the period; v. supra 16a-b.

Talmud - Mas. Nazir 63b

Raba replied: Come and hear: BEFORE POLLING, HOWEVER, EITHER [TYPE OF DEFILEMENT RENDERS IT VOID]. How are we to understand this? If he discovered [the defilement] during the period of fulfilment would it be necessary to tell us [that the naziriteship is void]?[1] It follows that after fulfilment is meant. Hence [discovery after fulfilment renders void]. The question, however, still remains whether the whole [period] is rendered void or only seven [days].

But on whose [view is this question asked]?[2] Shall I say on the Rabbis' view? It is obvious that the whole period becomes void! Whilst on R. Eliezer's view any [defilement contracted] after fulfilment renders only seven days void? — The reply is [that R. Eliezer said] this of one who actually becomes unclean after fulfilment, whereas here [the defilement of the depth] occurred before the fulfilment.[3] [Do we then say that the whole is rendered void] or is this case different since discovery did not come until after fulfilment? — The same passage [answers this question too]. For it says: EITHER [TYPE OF DEFILEMENT] RENDERS IT VOID, making no distinction between them.[4]

Our Rabbis taught: If a man finds a corpse lying across the road,[5] he becomes unclean in respect of terumah,[6] but remains clean in respect of the nazirite-vow and celebrating the passover.[7] This is only true if there was no room for him to pass [without actually walking over the corpse], but if there was room for him to pass, he remains clean even in respect of terumah.[8] [Further], it is only true[9] if

[the corpse] was found whole, but if it was found [with its limbs] broken or dislocated, even though there was no room to pass[10] we conceive that he may perhaps have passed between the pieces.[11] If, however, [the corpse] was in a grave, then, even if [its limbs were] broken or dislocated, he becomes unclean because the grave unites it. [Further,] we say this[12] only of one who was walking on foot, but if he was carrying a load or riding, he becomes unclean,[13] because it is possible for one walking on foot to avoid either touching [the corpse] or making it vibrate,[14] or overshadowing it, but it is impossible for one carrying a load or riding to avoid either touching it or making it vibrate or overshadowing it. [Further,] this ruling[15] applies only to a 'defilement of the depth', but if it was a known [source of] defilement, all three become unclean. A defilement of the depth is one which is not known to anyone [living even] in any part of the world. If, however, someone [living even] at the other end of the world knows about it. It is not [regarded as] a defilement of the depth.[16] If [the corpse] was hidden in straw or in pebbles, it counts as a defilement of the depth,[17] [but if] in the sea or by darkness or in a cleft of the rocks, this does not count as a defilement of the depth.[18] 'Defilement of the depth' was held to apply only in the case of a corpse.[19] [THE LAW REGARDING DEFILEMENT OF THE DEPTH IS] AS FOLLOWS.

IF HE GOES DOWN: A [dead] reptile when floating, does not defile.[20] For it has been taught: If there is a doubt concerning a [source of defilement] floating in a vessel or on the earth,[21] it is treated as clean. R. Simeon said that in a vessel [the doubtful object] is treated as unclean, whilst on the earth it is treated as clean.[22]

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(1) For there is no question that defilement of the depth counts as ordinary defilement as regards the future. It is only retrospectively that con — cessions are made to nazirites and celebrants of the passover.

(2) The Gemara here interrupts the argument to analyse the question.

(3) If it is the time of defilement that is important, then the whole period may be rendered void. Hence the question is asked of R. Eliezer and not of the Rabbis.

(4) And thus the defilement is retrospective, there being no half measures. Except for the nazirite who has entirely completed his naziriteship and the passover celebrant who did not learn of the incident soon enough to prevent the sacrifice of the passover-offering, defilement of the depth is true defilement.

(5) I.e., if the corpse is found buried after he has passed, making defilement of the depth. V. infra.

(6) V. Glos. And may not eat it.

(7) Retrospectively only: v. infra.

(8) Since there is now a genuine doubt occurring in a public place as to whether he did become defiled.

(9) That he is unclean as regards terumah.

(10) Had he walked straight on. But it is assumed that there is nowhere an unbroken line of pieces stretched across the road.

(11) I.e. walked irregularly and not straight on, therefore he remains clean.

(12) That he remains clean in the case of a dislocated corpse

(13) And may not eat terumah.

(14) By stepping on some object which will move the corpse.

(15) That there is a difference between terumah and the others.

(16) But as a certain source of defilement.

(17) For it is possible that new straw was blown across it and pebbles rolled against it and nobody knew of its existence.

(18) Since someone has probably looked in and seen the corpse.

(19) Tosef. Zabim II, 5.

(20) I.e. if there is a doubt as to whether a floating reptile was touched, we assume that it was not touched.

(21) A pool in the ground.

(22) Tosef. Toharoth V, 4.

Talmud - Mas. Nazir 64a

What is the first Tanna's reason?[1] R. Isaac b. Abudimi said: Scripture says. [Ye shall not mistake

yourselves abominable] with any swarming thing that swarms,[2] signifying no matter where it swarms,[3] and says further, 'On the earth'.[4] How are these verses to be reconciled? Where there is no doubt that he touched it he is [always] unclean, but if there is a doubt he remains clean.[5]

And what is R. Simeon's reason? — 'Ulla said: Scripture says, Nevertheless a fountain [. . . shall be clean][6] and continues [But he who toucheth their case] shall be unclean.[7] How are we to reconcile these? Whilst floating in a vessel [a doubtful object] is treated as unclean, but on the earth it is treated as clean.

Our Rabbis taught: Where there are doubts concerning any [source of defilement] that is carried[8] or dragged along, the objects are regarded as unclean, because it is as though they are at rest,[9] but where the doubt concerns things that are thrown,[10] they are treated as clean, with the exception of an olive's bulk of a corpse, one who overshadows a source of defilement, and all [other] things that propagate defilement upwards as well as downwards,[11] [This last expression] serves to include sufferers from gonorrhoea, male and female.[12]

Rami b. Hama propounded: What is the law concerning a corpse[13] lying in a vessel floating on the surface of the water. Is the vessel the criterion,[14] or the corpse?[15] Should it be decided that the vessel is the criterion,[16] what would be the law if the [fragment of] a corpse was lying on a [dead] reptile?[17] Seeing that the latter defiles only until evening and the former for seven days, are we to consider it as though it were lying in a vessel,[18] or should it perhaps be considered a compact source of defilement?[19] Should it be decided [further] that this is considered as though it were lying in a vessel, and therefore is treated as though defilement were certain, what would be the law if a [dead] reptile were lying on a floating animal carcase? Seeing that both defile only until evening, are they to be regarded as a compact source of defilement, or should we consider rather that of the one an olive's bulk is necessary,[20] whilst of the other a lentil's bulk is sufficient? [Further] what would be the law if one reptile lay on the other? Here certainly the measure is the same,[21] but perhaps, seeing that they are distinct, we should regard it as lying in a vessel? Again, should it be decided that in the case of one reptile lying on another, it is regarded as though it lay in a vessel because the [two reptiles] are distinct, what would be the law regarding a reptile floating on a liquefied animal carcase?[22] Seeing that it has been liquefied is it to be regarded as liquid,[23] or do we perhaps say that after all it is [now] a solid?[24] [Again], should you decide that it is a solid, what would be the law regarding a reptile [floating] on an effusion of semen? Should you decide that the latter, because it originates by detachment [from the human body] is a solid, what would be the law regarding a reptile floating on Water of Cleansing,[25] that was floating on the surface of [ordi nary] water?[26] — We do not know. All these problems remain unsolved.

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(1) I.e., what is the source of his opinion?

(2) Lev. XI, 43 continuing Neither shall ye defile yourselves with them.

(3) Even on the surface of water.

(4) Ibid v. 44. Neither shall ye defile yourselves with any manner of swarming thing that moveth upon the earth.

(5) In the case where the reptile was floating.

(6) Lev. XI, 36. This signifies that even if there is a (dead) reptile in the fountain, there would be no defilement.

(7) Ibid. Signifying whatever the circumstances.

(8) Or 'suspended' (Tosef. and Maimonides, Yad Aboth ha-Tumeoth, XIV,3).

(9) Since they are in contact with the ground or the person carrying them all the time.

(10) The doubt being whether it brushed against the person in transit.

(11) Tosef. Zabim III, 8. In these cases, the defilement being of a more stringent type, even doubts as to projectiles are sufficient to render unclean. The corpse defiles in a tent i.e., upwards.

(12) The gonorrhoeic sufferer defiles anything pressing on him from above even if it is not in direct contact with him.

(13) Maimonides, Aboth ha-Tumeoth XIV, 4 reads 'reptile'.

(14) And the corpse is at rest in the vessel. The doubt is as to whether it was touched, the person concerned being in no

doubt that he did not overshadow' it.

(15) Which is floating. Tosaf. read 'Or the water' which is moving. The problem is whether this is a floating source of defilement or not.

(16) So that in cases of doubt, uncleanness is assumed.

(17) Here, and in the other cases below, the second object is to be taken as Boating on the surface of water. Maimonides reads here 'A reptile lying on a corpse. There are many, not particularly important variations, in the readings of questions that follow; v. Marginal notes of the Wilna Gaon.

(18) So that in cases of doubt, uncleanness is assumed.

(19) I.e., as one source floating on water. Then, provided it is certain that there was no overshadowing, cleanness will be assumed.

(20) Of the carcase, an olive's bulk must be present before defilement ensues. This 'measure', and the 'lentil's bulk' for reptiles are Rabbinic traditions.

(21) I.e., for both a lentil's bulk is sufficient to defile.

(22) That had afterwards coagulated.

(23) So that the reptile is really floating on the water.

(24) Lit., 'a food', the generic word for solids.

(25) I.e., the water containing the ashes of the Red Heifer, which also defiled by contact. V. Num. XIX, 1 seq.

(26) Would the Water of Cleansing, thickened by the ashes, count as a solid, and so as a vessel, or not?

Talmud - Mas. Nazir 64b

R. Hamnuna said: A nazirite or a celebrant of the passover who walks over a grave of the depth on his seventh day [of purification after defilement][1] is clean,[2] the reason being that defilement of the depth is not potent enough to render void [the naziriteship or the passover]. Raba objected: IF IT WAS TO PURIFY HIMSELF AFTER DEFILEMENT[3] THROUGH CONTACT WITH THE DEAD HE REMAINS UNCLEAN, BECAUSE WHERE THE STATUS QUO IS ONE OF DEFILEMENT THE DEFILEMENT REMAINS, BUT WHERE IT IS ONE OF PURITY HE REMAINS CLEAN?[4] — [R. Hamnuna] replied: I admit you are right in the case of a nazirite who needs polling.[5] Raba [then] said to him: And I admit you are right in the case of a celebrant of the passover who has completed all preliminaries.[6] Abaye said [to Raba]: But has he not still to wait for the sun to set?[7] — He replied: The sun sets of its own accord.[8]

Abaye, too, gave up this opinion, for it has been taught: If it is on the day of fulfilment,[9] she must bring [a further sacrifice], but if during fulfilment she need not bring one.[10] It might be thought that she is not required to bring [a sacrifice] for a birth occurring during the fulfilment, but must bring one for a birth occurring after the fulfilment,[11] and discharge her obligation for both births,[12] and so Scripture says, And when the days of her purification are fulfilled,[13] which signifies that if it occurs on the day of fulfilment she must bring [a sacrifice] but not if it occurs during the fulfilment. [Whereon] R. Kahana explained that the difference[14] was due to the fact that she needed to bring a sacrifice.[15] Now, in the other case, has she not still to wait for the sun to set?[16] — Abaye replied: the sun sets of its own accord.[17]

MISHNAH. IF A MAN FINDS A CORPSE FOR THE FIRST TIME[18] LYING IN THE USUAL POSITION,[19] HE MAY REMOVE IT TOGETHER WITH THE SOIL THAT IT OCCUPIES.[20] [IF HE FINDS] TWO, HE MAY REMOVE THEM TOGETHER WITH THE GROUND THEY OCCUPY. IF HE FINDS THREE, THEN IF THE DISTANCE BETWEEN THE FIRST AND THE LAST IS FROM FOUR TO EIGHT CUBITS,[21] THIS IS A GRAVEYARD SITE.[22]

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(1) When sunset would make him clean.

(2) Provided that he does not learn of the incident until the naziriteship is done with; v. our Mishnah.

(3) That he entered the cave containing a grave of the depth.

(4) And the Mishnah is speaking of the seventh day of purification after defilement, and so contradicts R. Hamnuna.

(5) The unclean nazirite does not complete his purification until he has polled. That is why the presumption of uncleanness is considered to be still present on the seventh day of purification.
(6) And thus has a presumption of purity.
(7) The purification is not really complete until sunset even in the case of a celebrant of the passover.
(8) He himself has nothing more to do.
(9) The reference is to a miscarriage occurring within the term of purification after childbirth, viz. 41 days for a male child and 81 days for a female child. V. Lev. XII, I ff. The period of purification and all other obligations follow a miscarriage as well as a normal birth.
(10) The reason is explained below.
(11) I.e. after the term of fulfilment, reckoning from the first birth, but before the term of fulfilment reckoning from the subsequent one, for which as we have been told no sacrifice is needed.
(12) I.e., bring two sacrifices, one for the first birth and one for the third.
(13) Lev. XII, 6 continuing, She shall bring a lamb etc.
(14) Between the case where the second birth occurs on the day of fulfilment and she is required to bring a second sacrifice, and that where the third birth occurs after the first fulfilment and she is not required to bring a sacrifice.
(15) In the latter case, she was still unclean at the time of the third birth, owing to the intervention of the second one, and so the first sacrifice was not yet due. She is therefore considered to be within the period of fulfilment. Not so in the former case.
(16) Before she becomes clean, and fit to eat of sacrifices.
(17) Thus we see that Abaye does not regard the necessity of waiting for sunset as interfering with the presumption of cleanness.
(18) Without previously having found a corpse in the same spot, and without knowing that it was there.
(19) Prostrate: the only way Jews were buried.
(20) For reburial elsewhere, v. Gemara.
(21) Which is an indication that he has stumbled on an old burial vault.
(22) The bodies must not be removed, but have to be reburied where found.

Talmud - Mas. Nazir 65a

HE MUST THEN SEARCH BEYOND FOR A DISTANCE OF TWENTY CUBITS.[1] IF HE FINDS A SINGLE [CORPSE] AT THE END OF TWENTY CUBITS, HE MUST SEARCH BEYOND FOR ANOTHER TWENTY CUBITS. THE REASON[2] IS THAT THERE IS [NOW] A PRESUMPTION,[3] WHEREAS IF HE HAD FOUND IT FIRST, HE WOULD HAVE BEEN ABLE TO REMOVE IT TOGETHER WITH THE SOIL IT OCCUPIES.[4]

GEMARA. Rab Judah said: IF A MAN FINDS, but not if [he knows] it is to be found there;[5] A CORPSE, but not one who had been killed;[6] LYING, but not seated;[7] IN THE USUAL POSITION, but not with its head lying between its thighs.[7] 'Ulla b. Hanina taught: A defective corpse[8] does not acquire the ground it occupies, nor does it help to form a graveyard site.

Why does not [the law of the Mishnah] apply to all these? — Because we say that perhaps it is [the body of] a heathen.[9] If he finds two [corpses] with the head of one beside the feet of the second, and the head of the second beside the feet of the first, they do not acquire the soil which they occupy and do not help to form a graveyard site.[10] If he finds three [corpses] one of which was known to be there while the others [were found] for the first time, or if two [were found] for the first time and two were known [to be there] they do not acquire the soil they occupy[11] and do not form a graveyard site.

It is related that R. Yeshobab once searched [a certain spot] and found two [bodies] which were known to be there and one [which was discovered] for the first time, and he wanted to declare them a graveyard site.[12] R. Akiba said to him: All your trouble was for nothing. [The Rabbis] did not declare a graveyard site save where three [corpses] were known to be there, or three [were found] for the first time.[13]

[IF HE FINDS] TWO, HE MAY REMOVE THEM TOGETHER WITH THE SOIL THEY OCCUPY: Where is this law of the soil [a corpse] occupies to be found?[14] — R. Judah said: The verse says, Thou shalt carry me out of Egypt,[15] [signifying] carry with me [some Egyptian soil].[16] And what is the quantity of earth] which it occupies? — R. Eleazar[17] explained that he takes the loose earth[18] and digs up three finger-breadths of the virgin soil.[19]

The following objection was raised — [It has been taught:] And what quantity [of earth] are we to understand by 'the ground which it occupies?' R. Eleazar b. R. Zadok explained that he takes the chips [of the coffin][20] and the lumps of earth,[21] discarding what certainly [did not belong to the body] and leaving whatever was doubtful [for removal].[22] The remainder adds together to form the major part of the structure of the corpse, the quarter [kab] of bones and the spoonful of corpse — mould?[23] — [R. Eleazar] agrees with the following Tanna. For it has been taught: What quantity of [earth is meant by] 'the ground which it occupies?' R. Johanan,[24] citing Ben 'Azzai, said: He takes the loose earth and digs up three finger-breadths of virgin soil.

HE MUST THEN SEARCH BEYOND IT:

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(1) For other vaults.

(2) That he must continue to search if he finds one only.

(3) That the field is a graveyard site; since twenty cubits would not be an abnormal distance between two vaults; cf. supra p. 237, n. 5.

(4) Oh. XVI, 3. On the measurements v. B.B. (Sonc. ed.) p. 426 and notes.

(5) In that case he may not remove it (Tosaf.).

(6) In which case it is assumed that it was buried there for convenience and not that there was an old cemetery there.

(7) Jewish bodies were always buried prostrate; hence this cannot be an old Jewish cemetery. In these last three cases, he removes the body for reburial elsewhere.

(8) A corpse lacking a member essential to life. (Tosef. Oh. XVI, 2).

(9) Hence the site is not declared a Jewish cemetery and the bodies can be removed for burial elsewhere.

(10) Jews were not buried in this manner.

(11) Thus our text and Rashbam in B.B. 101b; but this as it stands contradicts our Mishnah, and it is therefore better to read with Tosef. Oh. XVI, 2 'Or if one (was found) for the first time and two were known, they are entitled to the ground they occupy, but do not form a graveyard site'.

(12) This would entail examining for twenty cubits.

(13) And whilst they may not be removed, they do not form a graveyard site. V. Tosef. Oh. XVI,2 where the last paragraph occurs with variations.

(14) [So Aruch; cur. edd. 'What means the ground it occupies'?]

(15) Gen. XLVII,30; spoken by Jacob to Joseph.

(16) Interpreting the verse, 'carry with me of Egypt'.

(17) R. Eleazar b. Pedath. Our texts have in error R. Eleazar b. R. Zadok.

(18) Formed through the decomposition of the body.

(19) This being the depth to which any blood etc., coming from the body would penetrate.

(20) Which was usually of stone (Tosaf.). Aliter The chips of spices put in with the body; cf. II Chronicles XVI,14.

(21) Into which the decomposing corpse congealed.

(22) When the body was removed. Hence the part to be removed contained no virgin soil, contrary to the opinion of R. Eleazar.

(23) Required to propagate uncleanness in a tent. (V. supra 49b, 50a). Tosef. Oh. II, 2 with variations.

(24) R. Johanan b. Nuri.

Talmud - Mas. Nazir 65b

Raba said: If he searched, [found a corpse][1] and removed it, searched [again and found another] and

removed it, [and then] searched [again] and found [a third corpse], he must not remove this one [for reburial] with the other two,[2] nor the other two [for reburial] with this one.[3] Others say that Raba said: As permission had been given to remove [the others],[4] he may remove them [all].[5] But why should not [the field] become a graveyard site?[6] — Resh Lakish said: [The Rabbis] seized upon any pretext to declare the Land of Israel clean.[7]

Suppose he searched [beyond it][8] for twenty cubits [in one direction only][9] and did not find [another corpse], what is the law?[10] — R. Monashya b. Jeremiah, citing Rab, replied: This is the graveyard site.[11] What is the reason [that we say this?][12] — Resh Lakish said: They seized on any pretext to declare the Land of Israel clean.

MISHNAH. EVERY DOUBTFUL CASE OF [LEPROUS] DISEASE[13] ENCOUNTERED FOR THE FIRST TIME BEFORE UN CLEANNESS HAS BEEN ESTABLISHED[14] IS CLEAN.[15] AFTER UNCLEANNESS HAS BEEN ESTABLISHED DOUBTFUL CASES ARE UNCLEAN.[16]

GEMARA. How do we know this?[17] — Rab Judah citing Rab, said: The verse says, to pronounce it clean, or to pronounce it unclean.[18] Scripture mentions cleanness first.[19] In that case even after uncleanness has been established, doubtful cases should be clean?[20] — We must therefore say that this dictum of Rab, quoted by R. Judah was uttered in connection with the following.[21] [A Mishnah says:] If the bright spot[22] appears before the white hair,[23] he is unclean, but if the white hair appears before the bright spot he is clean. If there is a doubt, he is unclean. R. Joshua said: It is doubtful.[24] What is meant by 'it is doubtful'? — Rab Judah[25] replied: It is doubtful and [consequently] clean.[26] May it not mean that it is doubtful and [consequently] unclean? — Rab Judah citing Rab said: The verse says, to pronounce it clean, or to pronounce it unclean;[27] Scripture mentions cleanness first.[28]

MISHNAH. A PERSON SUFFERING FROM A FLUX IS EX AMINED REGARDING SEVEN THINGS,[29] BEFORE THE PRESENCE OF GONORRHOEA HAS BEEN ESTABLISHED,[30] VIZ.: — WITH REGARD TO FOOD,[31] DRINK, BURDENS,[32] LEAPING,[33] SICKNESS, A VISION[34] OR AN IMPURE THOUGHT.[35] ONCE GONORRHOEA IS ESTABLISHED, HE IS NO LONGER EXAMINED. [FLUX RESULTING] FROM AN ACCIDENT[36] TO HIM, DOUBTFUL [FLUX].[37] AND HIS ISSUE OF SEMEN ARE UNCLEAN, FOR THERE IS A PRESUMPTION [OF UNCLEANNESS].[38]

IF A MAN GIVES ANOTHER A BLOW FROM WHICH HE WAS EXPECTED TO DIE AND HE PARTIALLY RECOVERED AND THEN GREW WORSE AND DIED [THE OTHER] IS LIABLE [FOR MURDER]. R. NEHEMIAH EXEMPTS HIM SINCE THERE IS A PRESUMPTION [IN HIS FAVOUR].[39]

GEMARA. How do we know this?[40] — Nathan said: The verse says. And of the gonorrhoeic[41] that have the issue,[42] [whether it be a man or a woman].[43] [The male] at his third experience of issue is compared to the female.[44] But have we not been taught: R. Eliezer Says: At the third [issue] we examine him but not at the fourth?[45] In point of fact they disagree on [the question of stressing the particle] 'the'.[46] R. Eliezer lays stress on [the particle] 'the', whilst the Rabbis do not do so.

[FLUX RESULTING] FROM AN ACCIDENT TO HIM, DOUBTFUL FLUX:

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(1) For the first time.

(2) Since the region is now revealed as a graveyard site.

(3) Once removed legally they need not be brought back.

(4) I.e., since the removal of the two was legal.

(5) The third corpse counts as newly found.

(6) Since three bodies have been uncovered in it.

(7) I.e. in order to declare a region in the land of Israel clean, the least pretext was considered sufficient. Rashi suggests another rendering, viz.: 'They found a rib and declared the Land of Israel clean'; i.e., the Jews on entering Palestine found a human rib buried and thereupon declared the whole of the rest of Palestine clean, no further search after graveyard sites being necessary. Hence any pretext to avoid declaring parts of Palestine unclean will do.
(8) Referring to the Mishnah that he must search beyond the three corpses found to a distance of twenty cubits.
(9) Tosaf. v. next note.
(10) Must he search in other directions or not? (Tosaf.). Aliter. Do these three alone form a graveyard site or not? (Rashi). Aliter: If he has searched in all directions and found nothing, must he search more thoroughly and dig more deeply? (Asheri).
(11) But no other part of the field.
(12) I.e., why are we not stricter in our requirements?
(13) Referring to a doubt that has arisen as to whether an affected spot has spread or not (v. Lev. XIII), e.g., two persons are examined by a priest and have different-sized areas of disease. The following week both 'areas are the size of the larger of the two and the priest is uncertain which one has increased, v. Neg. V,4.
(14) Lit., 'so long as he has not become bound to the uncleanness'. Before the patient has been declared unclean.
(15) Both men remain clean.
(16) If a similar doubt arises as to whether the diseased part has diminished in size.
(17) That there is any difference between the two cases quoted in the Mishnah.
(18) Lev. XIII, 59, concluding the chapter on the symptoms of leprous disease.
(19) Hence doubtful cases should also be regarded as clean.
(20) Thus there is no ground for basing the distinction on this verse.
(21) And the law of the Mishnah is not derived from a verse, but follows from the fact that in the first case there is no presumption of uncleanness and in the second case there is.
(22) Of Ieprous disease, v. Lev. XIII, 2.
(23) The symbol of uncleanness. Ibid. v. 3.
(24) Neg. IV, 11. The word rendered 'doubtful' is the technical term for 'dim' used of a diseased spot, (v. Lev. XIII, 6). For a discussion of the reading here v. Tosaf. Sanh. 87b, I.v.
(25) Parallel passages (Sanh. 87b) have Rabbah.
(26) I.e.,it is considered to have become dim and is therefore clean.
(27) Lev. XIII, 59.
(28) The disease is to be pronounced clean unless it certainly has the symptoms of uncleanness described in that chapter.
(29) To determine whether any of these seven things was not the cause of the flux, as it would not then be evidence of gonorrhoea.
(30) I.e., before there has been a flux on three occasions, v. Zabim II, 2.
(31) Whether he had eaten too much.
(32) Whether he had carried heavy loads.
(33) Any kind of strain through physical exercise might cause flux.
(34) The sight of two people in coition.
(35) A similar thought.
(36) I.e., after one of the seven things mentioned.
(37) See the Gemara.
(38) V. Zabim II, 2.
(39) The recovery creates a presumption that death was not caused by the blow. [Maim. Yad., Rozeah, IV, 5 explains contrariwise: The fact that he ultimately died creates a presumption that death was caused by the blow, the last clause being thus explanatory of the views of the Rabbis.]
(40) That after gonorrhoea is established, he is not questioned as to possible causes.
(41) E.V. 'And of them'. Indicating the first issue.
(42) Expressed in Heb. by the nota accusativi, 'eth'. Indicating the second issue.
(43) Indicating the third issue; Lev. XV, 33.
(44) Who becomes gonorrhoeic whatever the cause. Hence at the third issue gonorrhoea is established whatever its cause.
(45) And on the present interpretation of the verse, he is not examined for the third issue.

(46) The Hebrew particle governing the accusative. This particle can be omitted and so its presence is taken by R. Eliezer to indicate another issue before the comparison is made of man with woman.

Talmud - Mas. Nazir 66a

Raba said: Do not suppose [that the meaning of 'doubtful flux' is] that there is a doubt whether there was an issue or not. In point of fact, the issue must be a certain one,[1] the doubt being whether it was due to an issue of semen[2] or whether it was caused by [a separate gonorrhoeic] attack.[3] Once uncleanness has been established, if there is a doubt, he is unclean.[4]

HIS ISSUE OF SEMEN IS UNCLEAN: In what respect [is the semen unclean]? For if it be in respect of touching it,[5] how is it worse than the issue of semen of a clean person?[6] — It must therefore mean that the semen of a sufferer from gonorrhoea defiles through being carried. But who is known to hold the view that the issue of semen of a sufferer from gonorrhoea defiles if carried? For if you say that it is the following Tanna, as has been taught: 'R. Eliezer says that the issue of semen of a sufferer from gonorrhoea does not defile if carried, whilst R. Joshua says that it does defile if carried, because it is impossible that it should not be diluted with gonorrheic fluid' — even R. Joshua only says this[7] because it is diluted with gonorrhoeic fluid, but not when it is undiluted?[8] — In point of fact, said R. Adda b. Ahabah, [the purpose of the Mishnah is] to lay down that [subsequent gonorrhoeic issue] is not ascribed to [the prior flow of semen].[9] R. Papa tried to argue with Raba that this[10] was because the flow resulted from his weakness [following the gonorrhoea].[11] Raba said to him: Have we not learnt: A proselyte defiles if subject to a gonorrhoeic flow immediately after conversion?[12] — He replied: There cannot be greater sickness than this.[13]

We must say in fact[14] that [to what extent semen of a sufferer from gonorrhoea defiles] is a controversy of Tannaim — For it has been taught: The semen of a sufferer from gonorrhoea defiles for twenty — four hours[15] if carried. R. Jose however, Says; for the whole of the same day.[16]

Wherein does their controversy lie?[17] — In respect of the point raised by Samuel. For Samuel noted the following contradiction. It is written, If there be among you any man that is not clean by reason of that which chanceth him by night [etc.][18] and it is written [further], when evening cometh on he shall bathe himself in water.[19] The one who says twenty-four hours infers this from when evening cometh on,[20] and the other infers it from, 'that which chanceth him by night'.[21] Now to the one who infers it from 'when evening cometh on,' [it may be objected] it is written, 'that which chanceth him by night'? — He will reply that it is customary for an emission to occur at night.[22]

MISHNAH. SAMUEL WAS A NAZIRITE IN THE OPINION OF R. NEHORAI, AS IT SAYS, AND THERE SHALL NO RAZOR [MORAH] COME UPON HIS HEAD.[23] IT SAYS WITH REFERENCE TO SAMSON, AND [NO] RAZOR [MORAH][24] AND IT SAYS WITH REFERENCE TO SAMUEL, AND [NO] RAZOR [MORAH]; JUST AS MORAH IN THE CASE OF SAMSON [IS USED OF] A NAZIRITE,[25] SO [WE SHOULD SAY] MORAH IN THE CASE OF SAMUEL [IS USED OF] A NAZIRITE. R. JOSE OBJECTED: BUT HAS NOT MORAH REFERENCE TO [FEAR[26] OF] A HUMAN BEING? R. NEHORAI SAID TO HIM: BUT DOES IT NOT ALSO SAY, AND SAMUEL SAID; 'HOW CAN I GO? IF SAUL HEAR IT HE WILL KILL ME'[27] [WHICH SHOWS] THAT HE WAS IN FACT AFRAID OF A HUMAN BEING?[28]

GEMARA. Rab said to his son Hiyya:

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(1) Examination must show the presence of gonorrhoeic matter.

(2) When it only adds one day to his period of counting.

(3) When he would have to begin to count his seven clean days over again, (v. Lev. XV, 13).

(4) And the gonorrhoeic matter is ascribed to an attack of gonorrhoea and not to the issue of semen.

(5) That one who touches the semen of a sufferer from gonorrhoea becomes unclean.
(6) Which also renders unclean by contact. Lev. XV, 16, 17.
(7) Viz.: That the semen defiles if carried.
(8) Which is the case contemplated by the Mishnah. The question still remains, why does the Mishnah say that the semen of a sufferer from gonorrhoea is unclean?
(9) As would be the case for twenty-four hours after an emission of semen in the case of a normal person. v. Zabim II, 3.
(10) The reason that it is not ascribed to the issue of semen once gonorrhoea is established.
(11) And was due to the gonorrhoea and not a consequence of the emission of semen.
(12) Zabim II, 3; If an issue of semen preceded conversion and gonorrhoeic flow followed, it is not ascribed to the emission, but counts as a first gonorrhoeic flow.
(13) The emotional effect of the conversion is sufficient sickness to occasion the flow, but does not render it nugatory as the seven things of the Mishnah do (Rashi). Tosaf. achieves better sense by omitting 'he replied', and making the whole part of Raba's objection, viz.: 'Can there be greater weakness than that which results from the emotional effect of conversion?' and yet the flow is considered unclean. Hence R. Papa's reason is not correct.
(14) Although R. Adda attempted to argue to the contrary.
(15) I.e., if the semen issues within twenty-four hours of the gonorrhoeic flow.
(16) If it comes before the evening; here there is no mention of dilution of the semen by gonorrhoeic fluid. Thus these Tannaim differ from R. Eliezer and R. Joshua, and the Mishnah represents their opinion, that the semen renders unclean if carried.
(17) The controversy of R. Jose and the other Tanna.
(18) Deut. XXIII, II. Interpreted as meaning: If he should chance to have an emission of semen during the day, consequent on a gonorrhoeic issue during the previous night.
(19) Ibid. v. 12.
(20) Which indicates that though night has already fallen he still remains unclean; i.e., until the end of the period of twenty — four hours.
(21) Which he interprets as meaning, 'until nightfall'; but as soon as night has fallen he becomes clean and an emission will not then defile, if carried.
(22) But there is no particular significance in the use of the word night.
(23) I Sam. I, 11.
(24) Judges XIII, 5. 'And no razor shall come upon his head'.
(25) Ibid. 'for the child shall be a nazirite unto God'.
(26) Reading מורה as מורא (fear) from ירא the verb having adopted a ה ל ending: Jast. s.v. מורה II interprets from a root מר meaning 'authority'.
(27) I Sam. XVI, 2.
(28) Lit., 'flesh and blood'. Hence morah cannot mean 'fear' or Hannah's prediction would have been false. It must therefore mean 'a razor'.

Talmud - Mas. Nazir 66b

Snatch [the cup] and say grace.[1] So also did R. Huna say to his son Rabbah. Snatch [the cup] and say grace.

Does this mean that it is better to say the blessing [than to make the responses]? Has it not been taught: R. Jose says that he who responds. 'Amen', is greater than he who says the blessing, and R. Nehorai said to him: I swear[2] that this is so. In proof of this, [it may be noted] that the ordinary soldiers begin a battle but the picked troops gain the victory?[3] — There is a difference of opinion between Tannaim on this matter. For it has been taught: Both the one who says the blessing and the one who responds, 'Amen', are included [in this verse].[4] Nevertheless, [reward] is given first to the one who says the blessing.

R. Eleazar,[5] citing R. Hanina, said: The disciples of the sages increase peace throughout the world, as it is said, And all thy children shall be taught of the Lord; and great shall be the peace of thy

children.[6]

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(1) You be the one who takes the cup of wine to say the grace, and let the others answer, ‘Amen’ to your blessings.
(2) Lit., ‘by heaven’.
(3) A reference to the Roman practice of saving the veteran soldiers until the enemy's resistance had been weakened by the less experienced soldiers. We see then that the one who completes the blessing by responding is greater.
(4) Ps. XXXIV, 3, ‘O magnify the Lord with me, and let us exalt His name together’. (Rashi).
(5) V. Yeb. 122b.
(6) Isa. LIV, 13.

Talmud - Mas. Sotah 2a

C H A P T E R I

MISHNAH. IF ONE WARNS[1] HIS WIFE [NOT TO ASSOCIATE WITH A CERTAIN MAN]. R. ELIEZER SAYS: HE WARNS HER ON THE TESTIMONY OF TWO WITNESSES,[2] AND MAKES HER DRINK [THE WATER OF BITTERNESS] ON THE TESTIMONY OF ONE WITNESS[3] OR HIS PERSONAL TESTIMONY. R. JOSHUA SAYS: HE WARNS HER ON THE TESTIMONY OF TWO AND MAKES HER DRINK ON THE TESTIMONY OF TWO.

HOW DOES HE WARN HER? IF HE SAYS TO HER IN THE PRESENCE OF TWO, DO NOT CONVERSE WITH THAT MAN, AND SHE CONVERSED WITH HIM, SHE IS STILL PERMITTED TO HER HUSBAND[4] AND PERMITTED TO PARTAKE OF THE HEAVE-OFFERING.[5] SHOULD SHE HAVE ENTERED A PRIVATE PLACE WITH HIM AND STAYED WITH HIM A TIME SUFFICIENT FOR MISCONDUCT TO HAVE OCCURRED, SHE IS FORBIDDEN TO HER HUSBAND[6] AND FORBIDDEN TO PARTAKE OF THE HEAVE-OFFERING. IF [HER HUSBAND] DIED,[7] SHE PERFORMS THE CEREMONY OF HALIZAH[8] BUT CANNOT CONTRACT A LEVIRATE MARRIAGE.

GEMARA. Now that the Tanna has finished [Tractate] Nazir, what is his reason for continuing with [Tractate] Sotah?[9] — It is according to the view of Rabbi; for it has been taught: Rabbi says, Why does the section of the Nazirite adjoin that of the suspected woman?[10] To tell you that whoever witnesses a suspected woman In her disgrace should withhold himself from wine.[11] But [the Tanna in the Mishnah] should treat of [Tractate] Sotah first and afterwards that of Nazir![12] — Since he treated of [Tractate] Kethuboth [marriage-settlements] and dealt with the theme, 'He who imposes in vow upon his wife',[13] he next treated of [Tractate] Nedarim [Vows]; and since he treated of [Tractate] Nedarim, he proceeded to treat of [Tractate] Nazir which is analogous to Nedarim,[14] and then continues with Sotah for the reason given by Rabbi.

IF ONE WARNS HIS WIFE. As an accomplished fact[15] it is allowable, but as something still to be done it is not. Consequently our Tanna holds that it is forbidden to give a warning.[16]

R. Samuel b. R. Isaac said: When Resh Lakish began to expound [the subject of] Sotah, he spoke thus: They only pair a woman with a man according to his deeds;[17] as it is said: For the sceptre of wickedness shall not rest upon the lot of the righteous.[18] Rabbah b. Bar Hanah said in the name of R. Johanan: It is as difficult to pair them as was the division of the Red Sea; as it is said: God setteth the solitary in families: He bringeth out the prisoners into prosperity![19] But it is not so; for Rab Judah has said in the name of Rab: Forty days before the creation of a child, a Bath Kol[20] issues forth and proclaims, The daughter of A is for B;[21] the house of C is for D; the field of E is for F! — There is no contradiction, the latter dictum referring to a first marriage and the former to a second marriage.

R. ELIEZER SAYS, HE WARNS HER ON THE TESTIMONY OF TWO WITNESSES etc. So far only do [R. Eliezer and R. Joshua] differ, viz. in the matter of warning and seclusion, but in the matter of misconduct [they agree] that one witness is believed.[22] We similarly learn in the Mishnah: If one witness says: I saw that she committed misconduct, she does not drink the water.[23] Whence is it derived according to Torah-law that one witness is believed? As our Rabbis taught: And there be no witness against her[24] — the text refers to two witnesses.[25] But perhaps it is not so and even one [suffices]! There is a teaching to declare, One witness shall not rise up against a man.[26]

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(1) Lit., 'is jealous of, i.e., he gives her a warning because he feels jealous.

(2) There must be two witnesses that he had warned her in their presence; otherwise he cannot require her to drink the water of bitterness.

(3) That she had secluded herself with the man, after due warning had been given.
(4) Lit., 'to her house'. Marital relations may continue.
(5) If her husband is a priest. The heave-offering could be eaten by any member of the priest's household who was ritually clean; Num. XVIII, 8ff.
(6) Forthwith, before the water is drunk.
(7) Before she had undergone the ordeal.
(8) V. Glos.
(9) What is the association of ideas between the subject of the Nazirite and the woman suspected of infidelity?
(10) In Num. V and VI.
(11) Immoderate use of wine is a source of immorality. v. Ber. 63a.
(12) That being the order in which they are dealt with in Scripture.
(13) The opening words of Keth. VII.
(14) A man becomes a nazirite by imposing a vow upon himself.
(15) This is derived from the addition of the definite article, the literal sense being: he who warns, i.e., he who has given a warning.
(16) Different views are taken on this question; v. p. 8.
(17) Only if his actions are righteous does he have a faithful wife.
(18) Ps. CXXV, 3.
(19) Ibid. LXVIII, 7. The first clause refers to marriage-making, the second to the release of prisoners. Therefore the two are declared identical as regards difficulty.
(20) V. Glos.
(21) Since the marriage is ordained even before birth, it cannot be dependent upon a man's conduct.
(22) [After due warning had been given and seclusion taken place]. And without drinking the water she leaves her husband's house and does not receive what would normally have been due to her under the marriage-contract.
(23) Infra 31a.
(24) Num. V, 13.
(25) I.e., wherever Scripture uses the word witness, even in the singular, it denotes two.
(26) Deut. XIX, 15.

Talmud - Mas. Sotah 2b

From the fact that it is stated: '[A] witness[1] shall not rise up against a man', do I not know that one is intended? Why is there a teaching to declare 'one witness'?[2] This establishes the rule that wherever it is stated 'witness', it signifies two unless the text specifies 'one'; and [in the case under discussion] the All-Merciful declares that when there are not two witnesses against her but only one, and she has not been violated,[3] she is forbidden [to her husband].[4] Now the reason for that[5] is because it is written: One witness shall not rise up against a man. Were it however not so [stated], I might have supposed that 'witness' in the verse relating to a suspected woman means one.[6] But if there be not even one witness against her, why should she then be prohibited [to her husband]? — [The verse: One witness etc.] is necessary, because otherwise it might have occurred to me to suppose that 'there be no witness against her' means, he is not believed against her. He is not believed against her! What, then, [does the text] want unless there are two witnesses?[7] Let the Scriptural text be silent on the point [and not mention it at all], since the rule could have been deduced by analogy from the occurrence of the word dabar[8] in the verse relating to civil actions, and I would know that it applies to every case of testimony mentioned in the Torah! — It was necessary [for Scripture to have mentioned it], because otherwise it might have occurred to me to suppose that the matter is different in the case of a suspected woman inasmuch as there was some basis for the charge, seeing that he had warned her and she had been secluded [with the man]; consequently one witness should be believed against her. But how is it possible to say [that if the Torah had not specified that 'witness' always means two, I might have supposed that the intention of 'there be no witness against her' was] that he is not believed against her and she is permitted to her husband? Surely from what is written: 'and she had not been violatedð ,[9] it is implied that she is forbidden to

him! It was necessary [for Scripture to have mentioned this], because otherwise it might have occurred to me to suppose that [the evidence against her] is not believed unless there are two witnesses,[10] and [that the verse means] that she had not been violated on the evidence of two witnesses. We are consequently taught [that one witness is believed].

R. JOSHUA SAYS: HE WARNS HER ON THE TESTIMONY OF TWO etc. What is R. Joshua's reason? Scripture states 'against her' — I.e., 'against her' [in the matter of misconduct][11] but not in the matter of warning, 'against her' [in the matter of misconduct] but not in the matter of seclusion. R. Eliezer, [on the other hand] says: 'Against her' [in the matter of misconduct] but not in the matter of warning only. Perhaps, however, 'against her' does mean, and not in the matter of seclusion! — Seclusion is compared to 'defilement' [misconduct], for it is written, and he kept close and she be defiled.[12] But warning also is compared to 'defilement', for it is written, and he be jealous of his wife and she be defiled![13] — The All-Merciful excluded this by the phrase 'against her'.[14] But what leads you to this conclusion?[15] — It is obvious that seclusion is more serious [than warning] because she is forthwith prohibited to her husband as with 'defilement'. On the contrary, warning is more serious since it is the root cause [of her seclusion rendering her forbidden to her husband]![16] — If there was no seclusion, would there have been any warning?[17] But if there was no warning, what effect would seclusion have? — Nevertheless seclusion is the more serious since it is the beginning of 'defilement'.

Our Mishnah does not agree with the following Tanna. For it has been taught: R. Jose son of R. Judah says in the name of R. Eliezer: He who warns his wife does so on the testimony of one witness or his personal testimony, and makes her drink [the water of bitterness] on the testimony of two witnesses. The Sages replied: According to the view of R. Jose son of R. Judah, there is no purpose in the matter.[18] What is the reason of R. Jose son of R. Judah? — Scripture states 'against her', i.e., 'against her' [in the matter of misconduct] but not in the matter of seclusion. Perhaps, however, 'against her' means: and not in the matter of warning? — Warning is compared to 'defilement', for it is written, and he be jealous of his wife and she be defiled. But seclusion is also compared to 'defilement', for it is written, and he kept close and she be defiled? — That refers to a length of time sufficient for 'defilement' to have occurred.[19]

[It was stated above:] 'The Sages replied: According to the view of R. Jose son of R. Judah, there is no purpose in the matter'. What does this mean? — There may be times when he did not warn her and he claims that he did warn her.[20] Is there, then, according to our Mishnah any purpose in the matter, since there may be times when she had not been secluded with the man and the husband claims that she had been secluded?[21] — R. Isaac b. Joseph said in the name of R. Johanan, [Read] also according to the view of R. Jose son of R. Judah, there is no purpose in the matter. 'Also according to the view of R. Jose son of R. Judah' [you say]; is there, then, no question with respect to our Mishnah? On the contrary, according to our Mishnah there is foundation [for the charge], but in the other case [the view of R. Jose son of R. Judah] there may be no foundation![22] — But if the teaching is reported, it must be in this form: R. Isaac b. Joseph said in the name of R. Johanan: 'According to the view of R. Jose son of R. Judah, and also according to our Mishnah, there is no purpose in the matter.'

R. Hanina of Sura said: Nowadays a man should not say to his wife, 'Do not be secluded with So-and-so', lest we decide according to R. Jose son of R. Judah who said: A warning [is effective] if given on [the husband's] personal testimony. If she then secluded herself with the man, since we have not now the water for a suspected woman to test her, the husband forbids her to himself for all time.

Resh Lakish said: What is the meaning of the term kinnui?[23] A matter which causes hatred [Kin'ah] between her and others. Consequently he holds that the warning can be on [the husband's]

personal testimony; and since not everybody knows that he gave her a warning and they say: 'What has happened that she holds herself aloof?' they will proceed to cause hatred against her. R. Jemar b. Shelemia said in the name of Abaye: [Kinnui means] a matter which causes hatred between husband and wife. Consequently he holds that the warning must be on the testimony of two witnesses and everybody is aware that he gave her a warning,[24] and it is he who proceeds to cause hatred against her.

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(1) And not witnesses.

(2) The word one is superfluous if a single witness is intended, since it would have been sufficient to state a witness.

(3) But consented to the act. Num. V, 13. The English Version translates the verb she be not taken in the act; but the Rabbis understood it in the sense that she was not forced to misconduct and was a consenting party. Cf. the use of the same verb in Deut. XXII, 28. If she had been violated, she was exempt from the ordeal.

(4) Infra 31b. [This proves that in the matter of misconduct one witness is believed, as otherwise whence is it known that she was not violated?]

(5) For maintaining that the term witness' in the case of the Sotah denotes two.

(6) 'And there be no witness against her' means not even one.

(7) What is the purpose of the words if the meaning of there be no witness indicates only one and that his evidence is not accepted?

(8) In connection with infidelity the text has he hath found some unseemly matter (dabar) in her (Deut. XXIV, 1), and in connection with civil actions At the mouth of two witnesses, or at the mouth of three witnesses, shall a matter (dabar) be established (ibid. XIX, 15). By the rule of Gezerah Shawah, analogy of expression, the principle of the latter with regard to the number of witnesses required is also applied to the former.

(9) Therefore it is maintained that misconduct has occurred with her consent.

(10) In a charge of misconduct.

(11) One witness is sufficient; but for warning and seclusion two are necessary.

(12) Num. V, 13.

(13) Ibid. 14.

(14) The phrase 'against her' was explained above as relating only to misconduct.

(15) That 'against her' excludes the idea that warning is to be compared to misconduct, and that only seclusion is to be likened to it.

(16) Without previous warning she would not be prohibited to her husband because of seclusion.

(17) There must have been seclusion to cause jealousy and consequently a warning.

(18) In requiring the husband's personal testimony, since, as the Gemara will explain, it may be false.

(19) So that if the time of seclusion was insufficient, she is not required to drink the water.

(20) So what purpose is there in requiring the husband's unsupported evidence?

(21) The Mishnah compels the woman to drink the water on the unsupported evidence of the husband.

(22) According to the Mishnah there must have been warning on the testimony of two witnesses, so there is some foundation for the charge; but according to R. Jose the husband can give her warning on his uncorroborated testimony which might be groundless.

(23) That is the term used in Num. V, 14, 'he be jealous'.

(24) Since the witnesses are likely to talk of it to others.

Talmud - Mas. Sotah 3a

Conclude that they hold that it is forbidden to give a warning;[1] but according to him who says that it is permissible to give a warning, what is the meaning of Kinnui? — R. Nahman b. Isaac said: Kinnui means nothing but 'warning;' and thus Scripture states: Then the Lord warned [wa-yekna] his land.[2]

It has been taught: R. Meir used to say: If a person commits a transgression in secret, the Holy One, Blessed be He, proclaims it against him in public; as it is said: And the spirit of jealousy came upon him;[3] and the verb 'abar [came upon] means nothing but 'proclaiming', as it is said: And Moses gave commandment, and they caused it to be proclaimed throughout the camp.[4] Resh Lakish

said: A person does not commit a transgression unless a spirit of folly [shetuth] enters into him; as it is said: If any man's wife go aside.[5] [The word is] written [so that it can be read] sishteh.[6]

The School of R. Ishmael taught: Why does the Torah believe one witness in the case of a suspected woman? Because there was some basis for the charge, seeing that he had warned her and she had secluded herself with the man, and one witness testifies that she had 'defiled' [misconducted] herself. R. Papa said to Abaye, But the warning is mentioned in the text after the seclusion and misconduct?[7] — He replied to him, We'abar [means] there had already come upon him.[8] But can that interpretation be also applied to, And every armed man of you will pass over?[9] — In that passage, since it is written: And the land will be subdued before the Lord, then afterward ye shall return,[10] it follows that the reference is to the future; but here, if it should enter your mind that we follow the order of the text [and we'abar signifies 'will come'], of what use is a warning after misconduct and seclusion had taken place?

The School of R. Ishmael taught: A man does not warn his wife unless a spirit[11] enters into him; as it is said: 'And the spirit of jealousy came upon him and he be jealous of his wife'. What is the meaning [of the word] 'spirit'? — The Rabbis declare, It is a spirit of impurity;[12] but R. Ashi declares, It is a spirit of purity.[13] Reasonable is the view of him who declares that it is a spirit of purity, because it was taught: and he be jealous of his wife — this is voluntary[14] in the opinion of R. Ishmael; but R. Akiba says: It is obligatory. It is well if you say that it means a spirit of purity, then everything is right; but if you say that it means a spirit of impurity, is it voluntary or obligatory for a man to introduce a spirit of impurity into himself!

[To turn to] the main text: And he be jealous of his wife — this is voluntary in the opinion of R. Ishmael; but R. Akiba says: It is obligatory. For her he may defile himself[15] — this is voluntary in the opinion of R. Ishmael; but R. Akiba says: It is obligatory. Of them shall ye take your bondmen for ever[16] — this is voluntary in the opinion of R. Ishmael; but R. Akiba says: It is obligatory. R. Papa said to Abaye — others declare it was R. Mesharsheya who said to Raba: Is this to say that R. Ishmael and R. Akiba differ in this way throughout the Torah, one maintaining that [a precept] is voluntary and the other that it is obligatory? — He replied, They only differ here over texts: And he be jealous of his wife — it is voluntary in the opinion of R. Ishmael; but R. Akiba says: It is obligatory. What is the reason of R. Ishmael? — He holds the same view as that of the following teacher. It has been taught: R. Eliezer b. Jacob says: Since the Torah declares, Thou shalt not hate thy brother in thine heart,[17] it is possible to think that this applies also in such a circumstance;[18] therefore there is a text to say: And the spirit of jealousy came upon him and he be jealous of his wife.[19] And [what is the reason of] R. Akiba? — The word 'jealous' occurs a second time in the verse.[20] And [how does] R. Ishmael [explain the repetition of jealous]? — Since it was necessary to write, And she be defiled and afterwards and she be not defiled, the Torah wrote and he be jealous of his wife.[21] This is in agreement with the teaching of the School of R. Ishmael; for it was taught in the School of R. Ishmael; Wherever a Scriptural passage is repeated, it is only repeated because of some new point contained therein. [Similarly] 'For her he may defile himself — this is voluntary in the opinion of R. Ishmael; but R. Akiba says: It is obligatory. What is the reason of R. Ishmael? — Since it is written: Speak unto the priests the sons of Aaron and say unto them, There shall none defile himself for the dead among his people,[22] it was likewise necessary to write, For her he may defile himself. And [from where does] R. Akiba [learn that a priest may so defile himself]? — He derives it from, Except for his kin;[23] what then is the purpose of, For her he should defile himself? [It is to indicate that] it is obligatory. And [how does] R. Ishmael [explain the addition of these words]? — 'For her' he may defile himself but not for any of her limbs.[24]

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(1) Because they explain Kinnui in the sense of hatred, and it is not allowed to create hatred.

(2) Joel II, 18. (E.V. 'Then the Lord was jealous for his land'.)

(3) Num. V, 14.

(4) Ex. XXXVI, 6.
(5) Num. V, 12. The word for 'go aside' is sisteh.
(6) I.e., act in folly.
(7) The matter of seclusion and misconduct is mentioned in Num. V, 12f, and the warning from jealousy in verse 14.
(8) [ועבר is treated as pluperfect.]
(9) Num. XXXII, 21 where the same word, we'abar, occurs.
(10) Ibid. 22.
(11) Introduced into him by God to warn him of what had occurred.
(12) An instigation by Satan.
(13) Which revolts against immorality.
(14) The husband can ignore the matter if he so wishes.
(15) Lev. XXI, 3. Does it mean he may or he should; and similarly with the other instances discussed.
(16) Ibid. XXV, 46.
(17) Ibid. XIX, 17.
(18) That a husband may overlook his wife's seclusion with another man and not warn her.
(19) He interprets the words as meaning: if the spirit of jealousy came upon him and he wishes to warn his wife.
(20) He understands the second clause as he should be jealous and warn her.
(21) The words are repeated because of the two contingencies mentioned and no such deduction is to be drawn as R. Akiba suggests.
(22) Lev. XXI, 1.
(23) Ibid. 2.
(24) An amputated limb of a body defiles in the same way as the whole body. V. Nazir 43b.

Talmud - Mas. Sotah 3b

[What reply does] R. Akiba [make to this explanation]? — If that were the sole intention, the All-Merciful should have written 'for her' and then stop; what is the purpose of the words 'he should defile himself? Deduce therefrom.[1] [How does] R. Ishmael [meet this argument]? — Since the Torah wrote 'for her', it likewise wrote 'he may defile himself this is in agreement with the teaching of the School of R. Ishmael; for it was taught in the School of R. Ishmael: Wherever a Scriptural passage is repeated, it is only repeated because of some new point contained therein. [And similarly,]'Of them shall ye take your bondmen for ever[2] — this is voluntary in the opinion of R. Ishmael; but R. Akiba says: It is obligatory. What is the reason of R. Ishmael? — Since it is written: Thou shalt save alive nothing that breatheth,[3] it was likewise necessary to write, 'Of them shall ye take your bondmen for ever', in order to indicate that if a man belonging to any other Gentile people has intercourse with a Canaanite woman[4] and begets a son by her, it is permissible to purchase him as a slave. For it has been taught: Whence is it that if a man belonging to any other Gentile people has intercourse with a Canaanite woman and begets a son by her, it is permissible to purchase him as a slave? There is a text to declare, Moreover of the children of the strangers that do sojourn among you, of them shall ye buy.[5] It is possible to think that also if a Canaanite had intercourse with a woman belonging to any other Gentile people and he begets a son by her, it is permissible to purchase him as a slave; therefore there is a text to declare, Which they have begotten in your land[6] — from those born in your land[7] and not from those who dwell in your land.[8] And [from where does] R. Akiba [learn this rule]? — He derives it from, 'Of them shall ye buy'; what then is the purpose of, 'Of them ye shall take your bondmen for ever'? [It indicates that] it is obligatory. And [how does] R. Ishmael [explain the addition of these words]? — 'Of them' [he may purchase] but not of your brethren. [From where does] R. Akiba [derive this rule]? — It is deduced from the mention of 'your brethren' at the end of the verse: But over your brethren the children of Israel ye shall not rule, one over another, with rigour.[9] [How does] R. Ishmael [meet this argument]? — Since the Torah wrote 'But over your brethren', it likewise wrote 'of them'. This is in agreement with the teaching of the School of R. Ishmael; for it was taught in the School of R. Ishmael: Wherever a Scriptural passage is repeated, it is only repeated because of some new point contained therein.

R. Hisda said: Immorality in a house is like a worm in the sesame plant. Further said R. Hisda: Anger in a house is like a worm in the sesame plant. Both these statements refer to a woman, but in the case of a man there is no objection.[10] Further said R. Hisda, At first, before Israel sinned [against morality], the Shechinah abode with each individual; as it is said: For the Lord thy God walketh in the midst of thy camp.[11] When they sinned, the Shechinah departed from them; as it is said: That he see no unclean thing in thee and turn away from thee.[12]

R. Samuel b. Nahmani said in the name of R. Jonathan: Whoever performs one precept in this world, it precedes him for the world to come; as it is said: And thy righteousness shall go before thee;[13] and whoever commits one transgression in this world, it clings to him and precedes him for the Day of Judgment, as it is said: The paths of their way are turned aside; they go up into the waste and perish.[14] R. Eleazar says: It attaches itself to him like a dog; as it is said: He hearkened not unto her, to lie by her, or to be with her[15] — to lie by her in this world, or to be with her in the world to come.

We learn elsewhere: It is a proper conclusion that if the first evidence [that the woman had secluded herself with the man], which does not prohibit her [to her husband] for all time,[16] is not established by fewer than two witnesses, is it not right that the final evidence [that she had misconducted herself] which prohibits her to him for all time, should not be established by fewer than two witnesses! Therefore there is a text to state, 'And there be no witness against her', [implying that], whatever [evidence] there may be against her [is believed, even if it be only one witness]. And with respect to the first evidence [about her seclusion with the man, that one witness suffices may be argued by] a fortiori reasoning as follows: If the final evidence [regarding misconduct], which prohibits her to her husband for all time, is established by one witness, is it not proper that the first evidence, which does not prohibit her to him for all time, should be established by one witness! Therefore there is a text to state, Because he hath found some unseemly matter in her,[17] and elsewhere it states: At the mouth of two witnesses, or at the mouth of three witnesses shall a matter be established;[18] as the 'matter' mentioned in this latter case must be confirmed by the testimony of two witnesses, so also here [in the case of the suspected woman] the 'matter' must be confirmed by the testimony of two witnesses.[19] Is this deduction to be drawn from the words, 'Because he hath found some unseemly matter in her'? It ought to be derived from 'against her' — i.e., 'against her' [in the matter of misconduct] but not in the matter of warning, 'against her' [in the matter of misconduct] but not in the matter of seclusion![20] — He also says similarly[21] [and his teaching is to be cited as follows]: Therefore there is a text to state 'against her' [in the matter of misconduct] but not in the matter of warning, 'against her' [in the matter of misconduct] but not in the matter of seclusion; and whence is it that merely in a case of misconduct, where there had been no warning or seclusion one witness is not believed? It is stated here, 'Because he hath found some unseemly matter in her', and elsewhere it states: 'At the mouth of two witnesses, or at the mouth of three witnesses, shall a matter be established'; as in the 'matter' mentioned in the latter case two witnesses are required, so also here [where there has been misconduct without warning and seclusion] two witnesses are required. Our Rabbis have taught: Which is the 'first testimony'? Evidence of seclusion, and the 'final testimony' is evidence of 'defilement' [misconduct].

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(1) That it is obligatory.

(2) Lev. XXV, 46.

(3) Deut. XX, 16.

(4) The woman belonged to the seven nations which had to be exterminated.

(5) Lev. XXV, 45.

(6) Ibid. I.e., the original natives of Canaan.

(7) [Whose father belongs to another land.]

(8) [I.e., the original natives of Canaan]. It is to be noted that descent is traced through the father, whereas in the case of

a Jew descent is traced through the mother.
(9) Lev. XXV, 46.
(10) This opinion is contradicted by popular proverbs quoted in the Talmud, viz., 'He among the full-grown pumpkins and his wife among the young ones' (infra, p. 45), and 'He who gives vent to his anger destroys his house' (Sanh. 102b).
(11) Deut. XXIII, 15.
(12) Ibid.
(13) Isa. LVIII, 8.
(14) Job VI, 18.
(15) Gen. XXXIX, 10.
(16) Because the water may prove her innocent.
(17) Deut. XXIV, 1.
(18) Ibid. XIX, 15.
(19) Infra 31a-b.
(20) V. supra p. 5.
(21) The teacher in the Mishnah accepts the deduction from 'against her' and uses the argument from the occurrence of the word 'matter' for another purpose. He had been quoted wrongly and the Gemara proceeds with the correct form of the teaching.

Talmud - Mas. Sotah 4a

And how long is the duration in the matter of seclusion? Sufficient for misconduct, i.e., sufficient for coition, i.e., sufficient for sexual contact, i.e., sufficient for a person to walk round a date-palm. Such is the view of R. Ishmael; R. Eliezer says: Sufficient for preparing a cup of wine;[1] R. Joshua says: Sufficient to drink it; Ben Azzai says: Sufficient to roast an egg; R. Akiba says: Sufficient to swallow it; R. Judah b. Bathyra says: Sufficient to swallow three eggs one after the other; R. Eleazar b. Jeremiah says: Sufficient for a weaver to knot a thread; Hanin b. Phineas says: Sufficient for a woman to extend her hand to her mouth to remove a chip of wood [from between the teeth]; Pelemo says: Sufficient for her to extend her hand to a basket and take a loaf therefrom. Although there is no proof for this [last opinion] there is an indication, viz., For on account of a harlot, to a loaf of bread.[2] What is the purpose of all these definitions? — They are necessary; because if we were only taught sufficient for misconduct, I would have thought that it meant sufficient time for her misconduct and her submission;[3] therefore it is defined as sufficient for coition.[4] If, however, it were only taught sufficient for coition, I would have thought that it meant sufficient time for completed coition; therefore it is defined as sufficient for sexual contact. If, further, we had only been taught sufficient for sexual contact, I would have thought that it meant sufficient time for sexual contact and her submission; therefore it is defined as sufficient for misconduct. And how much is the time sufficient for sexual contact? Sufficient for a person to walk round a date-palm.

In contradiction of the above [I quote the following]: And be kept close[5] — but how long is the duration in the matter of seclusion we have not heard. Since, however, it states 'and she be defiled', deduce that it is time sufficient for misconduct, i.e., sufficient for coition, i.e., sufficient for sexual contact, i.e., sufficient for a date-palm to rebound.[6] Such is the view of R. Eliezer; R. Joshua says: Sufficient for preparing a cup of wine; Ben Azzai says: Sufficient to drink it; R. Akiba says: Sufficient to roast an egg; R. Judah b. Bathyra says: Sufficient to swallow it.[7] Now it is assumed that walking round a date-palm and the rebound of a date-palm are identical [in length of time, and the question thus arises:] R. Ishmael said above, 'Sufficient for a person to walk round a date-palm', and R. Eliezer disagreed with him; and here R. Eliezer says: 'Sufficient for a date-palm to rebound'! — Abaye said: 'Walking round' means on foot, and 'rebound' means by the force of the wind. R. Ashi asked: How is 'rebound' to be understood? Does it mean that the palm is blown in one direction and then in its opposite, or perhaps that it is blown in one direction and then in its opposite and finally returns to its original position? — The question remains unanswered.

R. Eliezer said above: ‘Sufficient for preparing a cup of wine’, and here he says: ‘Sufficient for a date-palm to rebound’! — They are alike in duration. R. Joshua said above, ‘Sufficient to drink it’, and here he says: ‘Sufficient for preparing a cup of wine’! — Say [that the correct version is], Sufficient for preparing a cup of wine and drinking it. But why not say rather that they are alike in duration? — If so, he would agree with R. Eliezer's view.[8] Ben Azzai said above ‘Sufficient to roast an egg’, and here he says: ‘Sufficient to drink [a cup of wine]’! — They are alike in duration. R. Akiba said above, ‘Sufficient to swallow [a roasted egg]’, and here he says: ‘Sufficient to roast an egg’! — Say [that the correct version is], Sufficient to roast an egg and swallow it. But why not say rather that they are alike in duration? — If so, he would agree with Ben Azzai's view. R. Judah b. Bathyra said above, ‘Sufficient to swallow three eggs one after the other’, and here he says: ‘Sufficient to swallow [one roasted egg]’! — He spoke in accordance with the view of R. Akiba who said that we fix as the duration a length of time sufficient to roast and swallow an egg, [and with reference to this he said,] ‘speak rather only of the duration of swallowing’, that is ‘sufficient time to swallow three eggs one after the other’, for that is the same as roasting and swallowing [one egg].[9]

‘R. Eleazar b. Jeremiah says: Sufficient for a weaver to knot a thread’. R. Ashi asked: Does this mean two ends which are distant or near?[10] — The question remains unanswered.

‘Hanin b. Phineas said: Sufficient for a woman to extend her hand to her mouth to remove a chip of wood’. R. Ashi asked: Does this mean wedged tightly [between the teeth] or not? — The question remains unanswered.

‘Pelemo said: Sufficient for her to extend her hand to a basket and take a loaf therefrom’. R. Ashi asked: Is it [a loaf] which is wedged in tightly or not, a new or old [basket],[11] a hot or cold [loaf],[12]

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(1) By diluting it with water.

(2) Prov. VI, 26. This is the literal rendering of the Hebrew.

(3) I.e., that he should make improper advances and induce her to submit.

(4) Consequently she must have secluded herself with the intention of committing misconduct.

(5) Num. V, 13.

(6) After having been bent by the wind.

(7) Tosef. Sot. I, 2.

(8) That cannot be, because he gives a different definition, and so it is impossible to think them alike in duration.

(9) [Why introduce at all the act of roasting, seeing that the act of swallowing by itself can afford a suitable standard for defining the duration?]

(10) I.e., does it include the time spent in bringing the threads together as well as tying them?

(11) In a new basket the ends of straws protrude and catch in the loaves, so that it takes longer to get one out.

(12) A warm loaf has to be drawn out with greater care and therefore takes longer.

wheaten or of barley,[1] soft or hard-baked? — The question remains unanswered.

R. Isaac son of R. Joseph said in the name of R. Johanan: Each of the teachers defined the duration [of coition] from his own experience. But they included Ben Azzai who was unmarried! — If you wish I can say that he had married and separated [from his wife],[2] or that he had heard it from his master, or that The secret of the Lord is with them that fear him.[3]

R. ‘Awira expounded sometimes in the name of R. Ammi and at other times in the name of R. Assi: Whoever eats bread without previously washing the hands is as though he had intercourse with a harlot ; as it is said , For on account of a harlot, to a loaf of bread.[4] Raba said: [On that interpretation] the verse, ðFor on account of a harlot, to a loaf of bread’ should have read: ‘On

account of a loaf of bread, to a harlot'! But, said Raba, [the meaning is:] Whoever has intercourse with a harlot will in the end go seeking a loaf of bread.

R. Zerika said in the name of R. Eleazar: Whoever makes light of washing the hands [before and after a meal] will be uprooted from the world. R. Hiyya b. Ashi said in the name of Rab: With the first washing [before the meal] it is necessary to lift the hands up; with the latter washing [after the meal] it is necessary to lower the hands . There is a similar teaching: Who washes his hands [before the meal] must lift them up lest the water pass beyond the joint,[5] flow back and render them unclean. R. Abbahu says: Whoever eats bread without first wiping his hands is as though he eats unclean food; as it is stated: And the Lord said: Even thus shall the children of Israel eat their bread unclean.[6]

And[7] what means, And the adulteress hunteth for the precious life? — R. Hiyya b. Abba said in the name of R. Johanan: Every man in whom is haughtiness of spirit will in the end stumble through an [unfaithful] married woman; as it is said: 'And the adulteress hunteth for the precious life'. Raba said: [On that interpretation] the word 'precious' should have been 'haughty'! Furthermore the verse should have read, [The haughty soul] hunteth [the adulteress]! But, said Raba, [the meaning is:] Whoever has intercourse with a married woman, even though he had studied Torah, of which it is written: It is more precious than rubies,[8] i.e., above a High Priest who enters into the innermost part of the Sanctuary, she will hunt him to the judgment of Gehinnom.[9] R. Johanan said in the name of R. Simeon b. Yohai: Every man in whom is haughtiness of spirit is as though he worships idols; it is written here, Every one that is proud in heart is an abomination to the Lord,[10] and it is written elsewhere, Thou shalt not bring an abomination into thine house.[11] R. Johanan himself said: He is as though he had denied the fundamental principle;[12] as it is said: Thine heart be lifted up and thou forget the Lord thy God, etc.[13] R. Hama b. Hanina said: He is as though he had broken all the laws of sexual morality;[14] it is written here, Every one that is proud in heart is an abomination to the Lord, and it is written elsewhere, For all these abominations, etc.[15] 'Ulla said: He is as though he had erected an idolatrous altar; as it is said: Cease ye from man whose breath is in his nostrils;[16] for wherein [bammeh] is he to be accounted of?[17] — read not bammeh but bamah [an idolatrous altar].

What means, Hand to hand, he shall not escape punishment?[18] Rab said: Whoever has intercourse with a married woman, though he proclaim the Holy One, blessed be He, to be Possessor of heaven and earth as did our father Abraham, of whom it is written: I have lift up mine hand unto the Lord, God Most High, Possessor of heaven and earth,[19] he will not escape the punishment of Gehinnom. The students of the School of R. Shila objected: [On that interpretation] the phrase 'Hand to hand etc.' should have read: 'Of my [God's] hand will not escape punishment'! But, said they of the School of R. Shila, [the meaning is:] Though he received the Torah as did our teacher Moses, of whom it is written: At his right hand was a fiery law unto them,[20] he will not escape the punishment of Gehinnom. R. Johanan objected: [On that interpretation] the phrase 'Hand to hand' should have read 'Hand from hand'![21] But, said R. Johanan,

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(1) A wheaten loaf is smoother and has to be grasped more firmly; and similarly with one which is soft-baked.

(2) The passage in Yeb. 63b does not make it clear whether Ben Azzai was censured for remaining a bachelor or for having married and not begetting children.

(3) Ps. XXV, 14. The knowledge was revealed to him.

(4) Prov. VI, 26. (E.V. 'For on account of a harlot a man is brought to a loaf of bread'). [As much as to say that the disregard of one Rabbinic precept leads to the disregard of another.]

(5) When washing the hands for a meal, the water should reach the second joint of the fingers; Hul. 106a. The hands beyond the joint having been left unwashed are deemed unclean.

(6) Ezek. IV, 13.

(7) The Gemara now continues the discussion of prov. VI, 26 quoted above.

(8) Prov. III, 15. מפנינים

(9) לפני ולפנים, a play upon the word מפנינים v. n. 4.

(10) Prov. XVI, 5.
(11) Deut. VII, 26, the reference being to an idolatrous image.
(12) Viz., the existence of God.
(13) lbid. VIII, 14.
(14) Enumerated in Lev. XVIII.
(15) Lev. XVIII, 27.
(16) Understood in the sense: who is proud.
(17) Isa. II, 22.
(18) Prov. XVI, 5.
(19) Gen. XIV, 22.
(20) Deut. XXXIII, 2.
(21) Since the interpretation implies that the adulterer receives from, and does not give to.

Talmud - Mas. Sotah 5a

[the meaning is:] Though he practise charity in secret,[1] concerning which it is written: 'A gift in secret pacifieth anger,[2] he will not escape the punishment of Gehinnom. Whence is there a prohibition for the haughty of spirit? — Raba said in the name of Ze'iri: Hear ye, and give ear; be not proud.[3] R. Nahman b. Isaac said: [It is derived] from this passage, Thine heart be lifted up, and thou forget the Lord thy God,[4] and it is written: Beware lest thou forget the Lord thy God.[5] This is in accord with what R. Abin said in the name of R. Elai; for R. Abin said in the name of R. Elai: Wherever it is stated 'Beware' 'lest' and 'Do not' the reference is to a prohibition.

R. 'Awira expounded, sometimes he said it in the name of R. Assi and at other times in the name of R. Ammi: Every man in whom is haughtiness of spirit will in the end be reduced in rank; as it is said: They are exalted, there will be reduction of status;[6] and lest you think that they remain in existence, the text continues, 'And they are gone'. If, however, he changes [and becomes humble], he will be gathered [to his fathers] in his due time like our father Abraham; as it is said: But when they are lowly, they are gathered in like all[7] — i.e., like Abraham, Isaac and Jacob in connection with whom the word 'all' is used.[8] If not, They are cut off as the tops of the ears of corn.[9] What means 'as the tops of the ears of corn'? R. Huna and R. Hisda [explain it]. One says that it means like the awn of the grain, and the other that it means like the ears themselves . This is quite right according to him who says that it means like the awn of the grain, since it is written 'as the tops of the ears of corn'; but according to him who says that it means like the ears themselves, what signifies 'as the tops of the ears of corn'? — R. Assi said, and it was similarly taught in the School of R. Ishmael: It is like a man who enters his field; he gleans the tallest ears.

With him also that is of a contrite and humble spirit.[10] R. Huna and R. Hisda [explain it]. One says that it means the contrite is with Me, and the other that I [God] am with the contrite. The more probable view is in accord with him who holds the meaning to be I am with the contrite; for behold, the Holy One, blessed be He, ignored all the mountains and heights and caused His Shechinah to abide upon Mount Sinai, but did not elevate Mount Sinai [up to Himself].

R. Joseph said: Man should always learn from the mind of his Creator; for behold, the Holy One, blessed be He, ignored all the mountains and heights and caused His Shechinah to abide upon Mount Sinai, and ignored all the beautiful trees and caused His Shechinah to abide in a bush.[11]

R. Eleazar also said: Every man in whom is haughtiness of spirit is fit to be hewn down like an Asherah.[12] It is written here, The high ones of stature shall be hewn down,[13] and elsewhere it is written: And ye shall hew down their Asherim.[14] Further said R. Eleazar, Every man in whom is haughtiness of spirit, his dust will not be disturbed [for the Resurrection]; as it is said: Awake and sing, ye that dwell in the dust[15] — it is not said 'ye that lie in the dust', but, 'ye that dwell [shokne]

in the dust', i.e., each one who during his lifetime made himself a neighbour [shaken] to the dust [by his humility]. Further said R. Eleazar: Over every man in whom is haughtiness of spirit the Shechinah laments; as it is said: But the haughty he knoweth from afar.[16]

R. Awira expounded, and according to another version it was R. Eleazar: Come and see that the manner of the Holy One, blessed be He, is not like the manner of human beings. The manner of human beings is for the lofty to take notice of the lofty and not of the lowly; but the manner of the Holy One, blessed be He, is not so. He is lofty and He takes notice of the lowly, as it is said: For though the Lord be high, yet hath he respect unto the lowly.[17]

R. Hisda said, and according to another version it was Mar 'Ukba: Every man in whom is haughtiness of spirit, the Holy One, blessed be He, declares, I and he cannot both dwell in the world; as it is said: Whoso privily slandereth his neighbour, him will I destroy; him that hath an high look and a proud heart will I not suffer[18] — read not 'him' [I cannot suffer], but 'with him'[19] I cannot [dwell]. There are some who apply this teaching to those who speak slander; as it is said,'whoso privily slandereth his neighbour, him will I destroyð.

R. Alexandri said: Every man in whom there is haughtiness of spirit, even the slightest wind will disturb;[20] as it is said: But the wicked are like the troubled sea.[21] If the sea, which contains so many quarters of a log,[22] is ruffled by the slightest wind, how much more so a human being who contains but one quarter of a log.[23]

R. Hiyya b. Ashi said in the name of Rab: A disciple of the Sages should possess an eighth [of pride].[24] R. Huna the son of R. Joshua said: [This small amount of pride] crowns him like the awn of the grain. Raba said: [A disciple of the Sages] who possesses [haughtiness of spirit] deserves excommunication, and if he does not possess it he deserves excommunication.[25] R. Nahman b. Isaac said: He should not possess it or part of it; is it a trifling matter concerning which it is written: Every one that is proud in heart is an abomination to the Lord![26]

Hezekiah said: A man's prayer is not heard unless he makes his heart [soft] like flesh; as it is said , And it shall come to pass, that from one new moon to another, shall all flesh come to worship, etc.[27] R. Zera said: Concerning flesh it is written: And it is healed;[28] but it is not written concerning man, And he is healed.

R. Johanan said: The word for man [adam] indicates dust, blood and gall;[29] the word for flesh [basar] indicates shame, stench and worm. Some declare that [instead of 'stench' we should have the word] Sheol, since its initial letter corresponds.[30]

R. Ashi said: Every man in whom is haughtiness of spirit will in the end be degraded; as it is said,

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(1) He gives from 'hand to hand'.

(2) Prov. XXI, 14.

(3) Jer. XIII, 15.

(4) Deut. VIII, 14.

(5) Ibid. 11.

(6) Job XXIV, 24.

(7) lbid.

(8) V. Gen. XXIV, 1, XXVII, 33 and XXXIII, 11.

(9) Job loc. cit.

(10) Isa. LVII, 15.

(11) Ex. III, 2. Similarly should man associate with the humble.

(12) An object of idolatrous worship.

(13) Isa. X, 33.
(14) Deut. VII, 5.
(15) Isa. XXVI, 19. 'Ye that lie in the dust' would apply to all mortals.
(16) Ps. CXXXVIII, 6. The Hebrew word translated knoweth, ידע , is understood in the sense of punish, cf. Jud. VIII. 16.
(17) lbid.
(18) Ps. CL. 5.
(19) Involves a slight change in the vocalization.
(20) [The smallest disappointment is liable to discomfit him.]
(21) Isa. LVII, 20.
(22) A liquid measure, equal to the contents of six eggs.
(23) This was considered the minimum quantity of blood in the body essential to life.
(24) He should have a little pride to maintain his self-respect.
(25) To have too much is bad, and also too little because it prevents a Rabbi from exercising his authority.
(26) Prov. XVI, 5.
(27) Isa. LXVI, 23.
(28) Lev. XIII, 18. Hence only one whose heart is soft like flesh will be healed, and not a man in his full pride.
(29) The initials of these words in Hebrew form adam.
(30) The initial of the word for 'stench' is samek, whereas the second letter in basar is similar in form to that of 'Sheol'.

Talmud - Mas. Sotah 5b

For a rising and for a scab,[1] and se'eth ['rising'] means nothing else than elevation, as it is said: Upon all the high mountains, and upon all the hills that are nisaoth [lifted up].[2] Sappahath ['scab'] means nothing else than attachment; as it is said: Attach me, I pray thee, into one of the priests' offices, that I may eat a morsel of bread.[3]

R. Joshua b. Levi said: Come and see how great are the lowly of spirit in the esteem of the Holy One, blessed be He, since when the Temple stood, a man brought a burnt-offering and received the reward of a burnt-offering, a meal-offering and he received the reward of a meal-offering; but as for him whose mind is lowly, Scripture ascribes it to him as though he had offered every one of the sacrifices; as it is said: The sacrifices of God are a broken spirit.[4] More than that, his prayer is not despised; as it continues: A broken and a contrite heart, O God, thou wilt not despise.

R. Joshua b. Levi further said: He who calculates his ways in this world will be worthy to behold the salvation of the Holy One, blessed be He; as it is said: To him that ordereth his way will I show the salvation of God[5] — read not we-sam [that ordereth] but we-sham [who calculates] his way.[6]

HOW MUST HE WARN HER? etc. This is self-contradictory. You declare, IF HE SAYS TO HER IN THE PRESENCE OF TWO, DO NOT CONVERSE WITH THAT MAN — consequently conversation is the equivalent of seclusion.[7] He then proceeds to teach: AND SHE CONVERSED WITH HIM, SHE IS STILL PERMITTED TO HER HUSBAND AND PERMITTED TO PARTAKE OF THE HEAVEOFFERING — consequently conversation is nothing! — Abaye said: This is what he means: [If he said to her,] Do not converse, and she conversed with him, Do not converse, and she secluded herself with him, that is nothing; [but if he said to her,] Do not be secluded with him, and she conversed with him, she is still permitted to her husband and permitted to partake of the heave-offering. Should she have entered a private place with him and stayed a time sufficient for misconduct to have occurred, she is forbidden to her husband and forbidden to partake of the heave-offering.

IF [HER HUSBAND] DIED, SHE PERFORMS THE CEREMONY OF HALIZAH. Why so? Let her also contract a levirate marriage! — R. Joseph said: Scripture declared: And when she is

departed out of his house, she may go and be another man's wife[8] — she may marry ‘another’ man but not her brother-in-law.[9] Abaye said to him, According to your argument, Halizah also should be unnecessary! He replied to him, If the husband is living, is not a Get required?[10] So here likewise Halizah is necessary.[11] Another version is: R. Joseph said: The All-Merciful declared: And when she is departed out of his house, she may go and be another man's wife, so as not to destroy his house;[12] and you argue, let her also contract a levirate marriage![13] Abaye said to him, According to your argument, she should never marry again so as not to destroy another man's house! — He replied to him,

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(1) Lev. XIV, 56 interpreted as: having first been elevated, he will become something superfluous among men, and therefore esteemed as nothing.

(2) Isa. II, 14.

(3) I Sam. II, 36. The Hebrew for the verb attach resembles the word for scab, v. Shebu, 6b.

(4) Ps. LI, 19.

(5) Ibid. L, 23.

(6) He calculates the loss incurred in fulfilling a precept against the reward it will bring him, v. Aboth, II, 1.

(7) Since it justifies a warning from the husband.

(8) Deut. XXIV, 2.

(9) [‘Another’ excludes the brother-in-law whose marriage to her is but a continuation, so to speak, of her first marriage. The derivation is based on the superfluous word ‘another’ which is taken to refer to a case where the wife was charged with an ‘unseemly thing’ and her husband died. The meaning of the verse would accordingly be as follows: If she found no favour . . . because he hath found some unseemly thing, he shall write her a bill of divorcement. When she departs out of his house (whether on his death or on divorce) and she goeth and becometh another man's wife, implying she can become the wife only of another man but not the brother-in-law.]

(10) Despite her misconduct. Ibid. 3 mentions, and write her a bill of divorcement. The technical term for this document is Get.

(11) [The brother-in-law taking the place of the dead husband.]

(12) V. supra p. II where it is taught that the wife's immorality destroys the husband's house.

(13) And perhaps destroy the brother-in-law's house.

Talmud - Mas. Sotah 6a

Do we compel any other man to marry her [as in the case of a brother-in-law where it is a duty]! Another version is: R. Joseph replied: The text calls [the second husband] ‘another’, because he is not the equal of the first husband, since the latter removes wickedness from his house [by divorcing his wife] whereas the other introduces wickedness into his house [by marrying such a woman]; and you argue, let her also contract a levirate marriage! Abaye said to him, According to your argument, if she does marry another man and he died without issue, she may not contract a levirate marriage since the text calls him ‘another’![1] — While living with the second husband she may have been of spotless reputation! Raba said: It is an a fortiori argument:[2] if she is forbidden to [her husband] to whom she is [otherwise] allowed, how much more so to [her brother-in-law] to whom she is [normally] forbidden! Abaye said to him, According to your argument, if a High Priest betrothed a widow and he died and had a brother who was an ordinary priest, she may not marry him, since if she becomes forbidden to one to whom she is [otherwise] allowed, how much more so to one to whom she is [normally] forbidden![3] [You say,] ‘If she becomes forbidden’ — she is actually forbidden;[4] ‘to one to whom she is allowed’ — he is forbidden [to marry her]! But [ask rather as follows: According to Raba's argument] if the wife of a priest had been violated and he died, and he had a brother who was disqualified,[5] she may not marry him, since if she is forbidden to [her husband][6] to whom she is [otherwise] allowed, how much more so to one to whom she is [normally] forbidden![7] — A woman who had been violated is permitted to a non-priest and the prohibition does not apply in his case.[8]

MISHNAH. THE FOLLOWIN[9] ARE PROHIBITED TO PARTAKE OF THE HEAVE-OFFERING:[10] SHE WHO SAYS, 'I AM UN CLEAN TO THEE';[11] WHEN WITNESSES CAME [AND TESTIFIED] THAT SHE HAD Mlsconducted HERSELF;[12] SHE WHO SAYS, I REFUSE TO DRINK [THE WATER]'; WHEN THE HUSBAND IS UNWILLING TO MAKE HER DRINK [THE WATER]: AND WHEN THE HUSBAND COHABITED WITH HER ON THE JOURNEY.[13]

GEMARA. R. Amram said: The following did R. Shesheth tell us and enlighten our eyes from our Mishnah:[14] In the case of a suspected woman where the witnesses against her are in a far-distant land,[15] the water does not prove her.[16] What is the reason? Because Scripture states: And be kept close and she be defiled and there be no witness against her[17] — this is when there is nobody who knows anything against her, thus excluding the case when there are men who know something against her.[18] And he enlightened our eyes from our Mishnah where it is taught: WHEN WITNESSES CAME [AND TESTIFIED] THAT SHE HAD MISCONDUCTED HERSELF. When did the witnesses come? If we say that they came before she drank the water, she is an adulteress;[19] consequently they could only have come after she had drunk the water. This is quite right if you say that the water does not prove her,[20] then all is clear; but if you say that [in such a circumstance] the water does prove her, the water may demonstrate retrospectively that the witnesses were false![21] — R. Joseph said to him, Still I maintain that the water does prove her, and answer that some merit she possesses causes the water to suspend its effect.[22] In what do [R. Joseph and R. Shesheth] differ? — In the matter of her becoming ill, according to the teaching of Rabbi. For we learn: Rabbi says: Merit [in the woman] causes the water of bitterness to suspend its effect, and she never bears a child or thrives, but she gradually grows ill and finally dies through that death.[23] R. Shesheth is of the opinion that both in the view of Rabbi and of the Rabbis she grows ill;[24] and R. Joseph is of the opinion that in the view of Rabbi she grows ill but in the view of the Rabbis she does not.[25]

R. Shimi b. Ashi raised an objection: R. Simeon says: Merit does not cause the water of bitterness to suspend its effect; and if you say that merit does cause the water of bitterness to suspend its effect, you discredit the water in the case of all the women who drink it and defame the pure woman who drank it, since people will say: They were unclean, only their merit caused the water to suspend its effect upon them.[26] But if it is so,[27] then through [the teaching], 'Where the witnesses against her are in a far-distant land', you likewise defame the pure women who drank and people will say: They were unclean, only the witnesses against them are in a far-distant land! — [The reply to R. Shimi is:] You quote R. Simeon; but as R. Simeon holds that merit does not cause the water to suspend its effect, he similarly holds that the existence of witnesses does not cause it to suspend its effect.

Rab raised an objection: The following have their meal-offerings destroyed:[28]

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(1) [And how can we compel the brother-in-law to marry her?]

(2) [To forbid her to the brother-in-law.]

(3) As wife of his brother. The conclusion is false, because such a levirate marriage is permissible.

(4) A High Priest is not allowed to marry a widow; Lev. XXI, 14.

(5) From the priesthood because he was the issue of another marriage which was illegal.

(6) A priest could not continue to live with his wife after she had been violated.

(7) The argument is false, because the man disqualified from the priesthood could marry his childless brother's widow if she had been violated.

(8) I.e., a non-priest was not obliged to divorce his wife who was the victim of violation.

(9) Wives of priests.

(10) For all time, even if the woman be a priest's daughter (v. Bertinoro).

(11) She admits misconduct.

(12) Even if she had successfully come through the ordeal, v. Gemara.

(13) To Jerusalem, where alone the ordeal was carried out. V. Mishnah p. 30.

(14) He found support for his teaching in the statement of the Mishnah.
(15) And unable to appear before a Court to give evidence that she misconducted herself.
(16) It has no effect, though she be guilty.
(17) Num. V, 13.
(18) 'No witness' is now interpreted literally, and not as before, viz., only one witness.
(19) As the result of their evidence; [consequently she is forbidden to partake of the heave-offering, v. Yeb. 44b].
(20) If there are witnesses of her misconduct who have not testified.
(21) Because, if she came through successfully, her reputation is cleared. [Why then should she be prohibited to partake of the heave-offering for all time?]
(22) This point is discussed immediately. If this view is accepted, the water does not affect her although the witnesses are true.
(23) Through her belly swelling and her thigh falling (Num. V, 27). The passage is cited from infra 22b.
(24) And the Sages only disagree with him on the question whether she dies. In any case, if she does not grow ill, it cannot be attributed to her merit but to the fact that there are witnesses who have not given evidence.
(25) So that on either view, if the water has no effect, it is due to her merit.
(26) Also quoted from infra 22b.
(27) Viz., that the existence of absent witnesses causes the water not to take effect.
(28) V. Num. V, 15 for this offering. In the cases mentioned, it is not burnt upon the altar or redeemed by payment in money of its value, but destroyed by fire.

Talmud - Mas. Sotah 6b

She who says: 'I am unclean'; and when witnesses came [and testified] that she had misconducted herself.[1] When did the witnesses come? If I say that they came before the offering was hallowed,[2] then it can become non-holy?[3] Consequently they could only have come after it had been hallowed. This is quite right if you say that the water proves her;[4] consequently she is qualified to have [the flour] hallowed and offered on her behalf, and since it was hallowed from the commencement, it is certainly holy[5] and for that reason her meal-offering is destroyed. But if you say that the water does not prove her, it becomes evident retrospectively that the hallowing was from the commencement in error,[6] and therefore [the flour] becomes non-holy![7] — Rab Judah of Diskarta[8] said: Suppose that [after the hallowing] she committed adultery within the Temple-precincts,[9] since it was hallowed from the commencement, it is certainly holy! R. Mesharsheya objected: But do not the priestly novitiates accompany her?[10] — Rab Judah [meant,] She committed adultery with one of these novitiates. R. Ashi[11] said: Suppose it was necessary for her to relieve herself, do you think that the priestly novitiates hang on to her headgear![12] R. Papa said: The matter is certainly as we originally explained;[13] and when you argue, [The offering] becomes non-holy, [the answer is that the rule by which the offering is destroyed] is a decree of the Rabbis lest it should be said, we may take [the flour] out of the ministering vessel for secular use.

R. Mari raised an objection: If her offering became ritually defiled before it became hallowed in the vessel, behold it is like all meal-offerings[14] and is redeemed; but if [it became defiled] after it had been hallowed in the vessel, behold it is like all meal-offerings [in such a circumstance] and is destroyed.[15] If the handful of flour[16] was hallowed but there was not sufficient time to offer it before [the husband] died[17] or she died, behold it is like all the meal-offerings and must be destroyed. If the handful had been offered but there was not sufficient time [for the priest] to eat the remainder[18] before [the husband] died or she died, behold it is like all the meal-offerings and is eaten; because it was brought from the commencement in connection with a matter of doubt,[19] it atoned for the doubt which is now ended. If witnesses came [and testified] against her that she had misconducted herself, her meal-offering is destroyed; should the witnesses against her be proved to be perjurers,[20] her meal-offering is non-holy?[21] — You mention perjured witnesses; the fact that they were perjured witnesses is generally known.[22]

There is a teaching in accord with the view of R. Shesheth[23] but not for the same reason as his,[24] viz., If she be clean[25] — [this indicates] there are no witnesses against her in a far-distant land;[26] 'and if she be clean' — [the addition of and indicates] it is not merit that causes the water to suspend its effect; ['and if] she [be clean'] — [meaning that she has escaped the effect of the water because she is in fact clean] and not because women who spin by moonlight were discussing her.[27] Now as for R. Simeon,[28] agreed that he does not expound the conjunction and;[29] still there is the case

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(1) Quoted from infra p. 144.

(2) By the priest placing the flour in one of the ministering vessels.

(3) By being redeemed; so why does the Mishnah say it is destroyed?

(4) And she drank the water before witnesses testified.

(5) Even after the witnesses gave evidence.

(6) Since witnesses proved her guilty and the ordeal was unnecessary.

(7) And does not even have to be redeemed since the hallowing was based on an error.

(8) [Deskarah, 16 miles N.E. of Bagdad; Obermeyer, Die Landschaft Babylonian, p. 116.]

(9) And witnesses came to testify concerning this act of infidelity.

(10) So that adultery could not occur there.

(11) Who rejects the thought that she could be guilty with one of the novitiates.

(12) When she retired to relieve herself. Consequently she could have the opportunity with another than the novitiates.

(13) That the witnesses came concerning the first act of infidelity.

(14) Which became defiled before being hallowed.

(15) Mishnah, p. 114. What follows is cited in the main from Tosefta Sotah II.

(16) Num. V, 26.

(17) In the event of the husband's death she does not drink the water.

(18) Of the flour which is not burnt upon the altar and is the priest's perquisite.

(19) The woman's chastity.

(20) Zomemim v. Glos. Before the meal-offering was burnt upon the altar.

(21) Though it has been placed in the vessel; and we do not say, as above, that by a Rabbinic decree, it must be destroyed. This contradicts the view given by R. Papa.

(22) So that it will be recognised that the offering was never holy.

(23) Viz., that the water does not take effect when there are absent witnesses.

(24) Which is based on the phrase 'No witness against her' (v. supra p. 24). The teaching finds another derivation in support.

(25) Num. V, 28.

(26) The verse is thus explained; if she be really pure and did not escape the effect of the water through the witnesses being far away, then she will conceive.

(27) Women gather together in the moonlight to spin and gossip. To be talked about by them was a sufficient disgrace to suspend the effect of the water.

(28) Who holds that merit does not suspend the effect of the water.

(29) To derive from it a Scriptural basis for his view.

where there are witnesses against her in a far-distant land![1] — That is uncommon.[2]

MISHNAH. HOW DOES [THE HUSBAND] DEAL WITH HER? HE BRINGS HER TO THE COURT OF JUSTICE IN THE PLACE WHERE HE RESIDES, AND THEY ASSIGN TO HIM TWO DISCIPLES OF THE SAGES[3] LEST HE COHABIT WITH HER ON THE JOURNEY.[4] R. JUDAH SAYS, HER HUSBAND IS TRUSTED WITH HER.[5]

GEMARA. Two [disciples of the Sages] and he make three. Is this to say that it supports the teaching of Rab? For Rab Judah said in the name of Rab: [The Rabbis] did not teach [that a woman

may be in the company of two men] except in a city; but on a journey there must be three, in case one of them should have need to relieve himself and consequently one of them will be left alone with [the possibility of] immorality![6] — No; here the reason is that they should be witnesses against him.[7] [But the fact that] disciples of the Sages are necessary and not ordinary men, does this not support another teaching of Rab? For Rab Judah said in the name of Rab: [The Rabbis] did not teach [that a woman may be in the company of two men] except in the case of pure men; but in the case of dissolute men not even with ten. It once happened that ten men carried a [live] woman [out of the city] in a coffin [to violate her]! — No; here the reason is that they will know to warn him.[8]

R. JUDAH SAYS, HER HUSBAND etc. It has been taught: R. Judah says: By a fortiori reasoning [it is deduced] that a husband is trusted.[9] If a husband is trusted in the matter of his wife during menstruation where the penalty is excision,[10] how much more so in the matter of his wife under suspicion in connection with which there is a mere prohibition.[11] And [how do] the Rabbis [meet this argument]? — The same reasoning establishes [their view]: in the case of a wife during menstruation where the penalty is excision, since it is so stringent, the husband is trusted; but in the case of a wife under suspicion where [cohabitation] is a mere prohibition, since there is no stringent [penalty] for him, he is not trusted. But does R. Judah derive his view from a fortiori reasoning? He surely derives it from a Scriptural text; for it has been taught: Then shall the man bring his wife unto the priest[12] — according to the Torah it is the husband who has to bring his wife; but said the Sages, They assign to him two disciples of the Sages lest he cohabit with her on the journey. R. Jose says: By a fortiori reasoning [it is deduced] that a husband is trusted with her. If a husband is trusted in the matter of his wife during menstruation where the penalty is excision, how much more so in the matter of his wife while under suspicion in connection with which there is a mere prohibition. [The Sages] replied to him, No; if you argue [that he may be trusted] in the case of his wife during menstruation to whom he will have a right [on her recovery], will you argue so in the case of his wife under suspicion when he may never have a right to her![13] It further states: Stolen waters are sweet, etc.![14] R. Judah says: According to the Torah it is the husband who has to bring his wife; as it is said: Then shall the man bring his wife![15] — At first he argued his view to [the Sages] by a fortiori reasoning; but when they refuted it, he then quoted the text to them. But R. Judah's opinion is the same as that of the first Tanna![16] — There is a point of difference between them, viz., [the continuation], 'But, said the Rabbis' etc.[17]

MISHNAH. THEY BRING HER UP TO THE GREAT COURT OF JUSTICE WHICH IS IN JERUSALEM, AND [THE JUDGES] SOLEMNLY CHARGE HER IN THE SAME WAY THAT THEY CHARGE WITNESSES IN CAPITAL CASES[18] AND SAY TO HER,' MY DAUGHTER, WINE DOES MUCH, FRIVOLITY DOES MUCH, YOUTH DOES MUCH, BAD NEIGHBOURS DO MUCH.[19] DO IT[20] FOR THE SAKE OF HIS GREAT NAME WHICH IS WRITTEN IN HOLINESS SO THAT IT MAY NOT BE OBLITERATED BY THE WATER.'[21] AND THEY RELATE TO HER MATTERS WHICH NEITHER SHE NOR ALL THE FAMILY OF HER FATHER'S HOUSE IS WORTHY TO HEAR.[22] — IF SHE SAID, 'I HAVE MISCONDUCTED MYSELF', SHE GIVES A QUITTANCE FOR HER MARRIAGE-SETTLEMENT[23] AND DEPARTS;[24] BUT IF SHE SAYS, 'I AM PURE', THEY BRING HER UP TO THE EAST GATE WHICH IS BY THE ENTRANCE OF NICANOR'S GATE[25] WHERE THEY GIVE SUSPECTED WOMEN THE WATER TO DRINK, PURIFY WOMEN AFTER CHILDBIRTH AND PURIFY LEPERS.[26] A PRIEST SEIZES HER GARMENTS[27] — IF THEY ARE RENT THEY ARE RENT, AND IF THEY BECOME UNSTITCHED THEY ARE UNSTITCHED UNTIL HE UNCOVERS HER BOSOM,[28] AND HE UNDOES HER HAIR. R. JUDAH SAYS: IF HER BOSOM WAS BEAUTIFUL HE DOES NOT UNCOVER IT, AND IF HER HAIR WAS BEAUTIFUL HE DOES NOT UNDO IT. — IF SHE WAS CLOTHED IN WHITE, HE CLOTHES HER IN BLACK. IF SHE WORE GOLDEN ORNAMENTS

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(1) Which is deduced from Scripture as suspending the effect of the water; consequently there is still the objection that it

causes pure women to be suspected.
(2) It is so rare for witnesses to be far away that no suspicion would be created on that ground.
(3) To accompany him and his wife on the journey.
(4) To Jerusalem where the ordeal takes place.
(5) That he will not cohabit; if he does, the ordeal is not held.
(6) V. Kid. 81a.
(7) In the event of the husband cohabiting with her.
(8) Should he wish to cohabit, so that the ordeal be not held.
(9) In this matter of cohabitation and witnesses are unnecessary.
(10) Kareth v. Glos. Lev. XX, 18. A husband may occupy the same room as his wife while she is in that condition and he is trusted not to cohabit.
(11) Without any penalty attached thereto, v. Yeb. 11b.
(12) Num. V, 15.
(13) If she is proved guilty, he must divorce her. Consequently the temptation is greater in the latter case.
(14) Prov. IX, 17.
(15) [R. Judah thus derives his ruling from a Scriptural text and not from a fortiori reasoning?]
(16) Quoted at the end of the last paragraph who cites Num. V, 15.
(17) With which R. Judah disagrees.
(18) V. Sanh. 37a.
(19) I.e., there may be some excuse for your behaviour.
(20) Confess if you are guilty, and so make the ordeal unnecessary which includes the use of the Divine Name.
(21) V. Num. V, 23.
(22) Instances of persons in Israel's history who confessed their guilt.
(23) I.e., she admits misconduct in writing and the forfeiture of the sum due to her under the marriage-settlement,
(24) After being formally divorced.
(25) Two gates of Corinthian bronze presented to the Temple by an Alexandrian named Nicanor. They were located between the Court of Israelites and the Court of women. V. Nazir (Sonc. ed.) p. 165, n. 11.
(26) I.e., the place where such persons, who are not allowed through uncleanness to enter the Temple-precincts, bring their purificatory offerings.
(27) At the neck.
(28) Lit., ‘heart’.

Talmud - Mas. Sotah 7b

AND NECKLACES, EAR-RINGS AND FINGER-RINGS, THEY REMOVE THEM FROM HER IN ORDER TO MAKE HER REPULSIVE. AFTER THAT [THE PRIEST] TAKES A COMMON ROPE[1] AND BINDS IT OVER HER BREASTS.[2] WHOEVER WISHES TO LOOK UPON HER COMES TO LOOK WITH THE EXCEPTION OF HER MALE AND FEMALE SLAVES, BECAUSE HER HEART IS MADE DEFIANT THROUGH THEM. ALL WOMEN ARE PERMITTED[3] TO LOOK UPON HER, AS IT IS SAID, THAT ALL WOMEN MAY BE TAUGHT NOT TO DO AFTER YOUR LEWDNESS.[4]

GEMARA. Whence is this?[5] — R. Hiyya b. Gamda said in the name of R. Jose b. Hanina: From the analogous use of the word ‘law’. It is written here, And the priest shall execute upon her all this law;[6] and elsewhere it is written: According to the tenor of the law which they shall teach thee.[7] As in this latter case it is [the Court of] seventy-one,[8] so also in the former it is [the Court of] seventy-one.

AND [THE JUDGES] SOLEMNLY CHARGE HER etc. I quote in contradiction: Just as they solemnly charge her not to drink,[9] so they solemnly charge her to drink, saying to her, ‘My daughter, if the matter is clear to thee that thou art pure, rely upon thy purity and drink; because the water of bitterness is only like dry powder which is placed upon living flesh. If there is a wound, it penetrates

and goes through [the skin]; and if there is no wound, it has no effect.[10] — There is no contradiction; here [they charge her not to drink] before [the writing on] the scroll is blotted out,[11] and there [they charge her to drink] after it has been blotted out.[12]

AND SAY TO HER etc. Our Rabbis have taught: He tells her narratives and incidents which occurred in the early writings;[13] for instance, Which wise men have told and have not hid it [from their fathers],[14] namely Judah confessed and was not ashamed; what was his end? He inherited the life of the world to come. Reuben confessed and was not ashamed; what was his end? He inherited the world to come. And what was their reward? What was their reward [you ask]! It was as we have just mentioned. But [the meaning is], What was their reward in this world? Unto them alone the land was given, and no stranger passed among them.[15] It is quite right with Judah; we find that he confessed, for it is written: And Judah acknowledged them, and said: She is more righteous than I.[16] Whence, however, is it that Reuben confessed? — As R. Samuel b. Nahmani said in the name of R. Johanan: What means that which is written: Let Reuben live and not die; and this for Judah?[17] All the years that the Israelites were in the wilderness, Judah's bones[18] kept turning in his coffin until Moses arose and begged mercy for him. He said before Him, Lord of the Universe, who caused Reuben to confess? It was Judah,[19] [as it is stated], 'And this for Judah'; immediately [after Moses prayed], 'Hear, Lord, the voice of Judah', each limb entered its socket.[20] But [the angels] would not permit him to enter the heavenly Academy;[21] [so Moses prayed], 'And bring him in unto his people'. He was unable to discuss the theme which the Rabbis were then debating; [so Moses prayed], 'With his hands let him contend for himself.[22] He was still not able to secure a decision in accordance with the traditional practice; [so Moses prayed], 'Be an help against his adversaries'.[23] It is quite right that Judah confessed so that Tamar should not be burnt; but why did Reuben confess? Surely R. Shesheth has declared: Consider him shameless who [publicly] specifies his sins! — [Reuben confessed] so that his brothers should not be suspected [of his offence].

IF SHE SAID, 'I HAVE MISCONDUCTED MYSELF' etc. Is it to be concluded from this that a quittance is written out?[24] — Abaye said: Read [in our Mishnah]: [The document of the marriage-settlement] is torn. Raba replied to him, But the Mishnah mentions A QUITTANCE! But, said Raba, we deal here with places where they do not write a document for a marriage-settlement.[25]

BUT IF SHE SAYS, 'I AM PURE', THEY BRING HER UP TO THE EAST GATE. 'THEY BRING HER UP'?

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(1) The Palestinian Gemara explains it as 'an Egyptian cord' which is used because she followed the immoral practices of Egypt. More probably it means a cord made of twisted strips of the bark of the palm-tree. It was the commonest form of rope and used here as a mark of contempt.

(2) To prevent her clothing from falling down.

(3) Interpreted in the Gemara to mean that they should as a duty look.

(4) Ezek. XXIII, 48.

(5) That the water must be administered by the great Court in Jerusalem.

(6) Num. V, 30.

(7) Deut. XVII, 11. The reference is here to the Supreme Court.

(8) V. Sanh. 14b and 86a.

(9) If guilty, but make confession.

(10) Quoted from Tosefta Sotah I, 6.

(11) Num. V, 23, so that the Divine Name may not be obliterated in vain.

(12) To encourage her to go through the ordeal if she is convinced of her innocence.

(13) The Pentateuch.

(14) I.e., they confessed, Job XV, 18. (E.V. 'Which wise men have told from their fathers and have not hid it').

(15) Ibid. 19.

(16) Gen. XXXVIII, 26.

(17) Deut. XXXIII, 6f.
(18) According to tradition, the bones of all Jacob's sons were carried out of Egypt.
(19) When he confessed, Reuben followed his example.
(20) Of the skeleton and ceased rolling about.
(21) Where the Torah is studied.
(22) May he be able to prevail in the debate.
(23) V. B.M. 86a.
(24) The question whether a quittance is given or the document of the marriage-settlement torn is discussed in B.B. 170b.
(25) This was sometimes not done because there was an established rule about the amount due to a wife from her husband, v. B.M. (Sonc. ed.) p. 107, n. 4.

Talmud - Mas. Sotah 8a

But she is already there![1] — They lead her up[2] and lead her down, for the purpose of wearying her.[3] For it has been taught: R. Simeon b. Eleazar says: The Court causes the witnesses to be taken from place to place that their mind may become confused and they retract [their evidence, if false].[4]

WHERE THEY GIVE SUSPECTED WOMEN THE WATER TO DRINK etc. This is quite right in the case of suspected women; because it is written: And the priest shall set the woman before the Lord.[5] Likewise is it with lepers; because it is written: And the priest that cleanseth him shall set the man . . . . before the Lord.[6] But why a woman after childbirth? Is it to say because they come to stand by their offerings; for it has been taught: A person's offering is not sacrificed until he stands by it? If so, it should also apply to men and women with a running issue![7] — It does indeed also apply to them, and the Tanna [in the Mishnah] only specifies one of them.[8] Our Rabbis have taught: They do not give two suspected women the water to drink at the same time, so that the heart of one should not become defiant because of the other.[9] R. Judah says: It is not from this reason, but Scripture declares, [The priest shall cause] her [to swear][10] — her alone. And for the first Tanna it is likewise written 'her'![11] — The first Tanna is R. Simeon who expounds the reason of Scriptural texts[12] and [here] he states the reason: What is the meaning of 'her'? Her alone, so that the heart of one should not become defiant because of the other. What difference is there, then, between them? — The difference between them is the case of a woman who is trembling.[13] But even if [a woman] is trembling, may we give her the water to drink [simultaneously with another woman] when, behold, we may not perform precepts in bundles?[14] For we have learnt: They do not give two suspected women the water to drink at the same time, nor purify two lepers at the same time, nor bore the ears of two slaves at the same time,[15] nor break the necks of two calves at the same time,[16] because we may not perform precepts in bundles! — Abaye said, but others declare it was R. Kahana: There is no contradiction; the latter case referring to one priest,[17] the other to two priests.

A PRIEST SEIZES HER GARMENTS. Our Rabbis have taught: And let the hair of the woman's head go loose.[18] I only have here mention of her head; whence is it derived that it applies to her body?[19] The text states: 'the woman's'.[20] If so, what is the object of the text declaring, 'And let the hair of the head go loose'? It teaches that the priest undoes her hair.[21]

R. JUDAH SAYS, IF HER BOSOM WAS BEAUTIFUL etc. Is this to say that R. Judah is afraid of impure thoughts being aroused and the Rabbis do not fear this? Behold we have heard the opposite opinion of them; for it has been taught: In the case of a man [who is to be stoned] they cover him with one piece of cloth in front, and in the case of a woman with two pieces, one in front and one behind, because the whole of her is considered nudity. This is the statement of R. Judah; but the Sages say: A man is stoned naked but a woman is not stoned naked![22] — Rabbah answered: What is the reason here?[23] Lest she go forth from the Court innocent, and the priestly novitiates become inflamed through her, whereas in the other case she is stoned. Should you reply that it may

cause them to be inflamed by another woman, Raba[24] declared: We have learnt a tradition that the evil impulse only bears sway over what a person's eyes see. Raba asked: Is it, then, that R. Judah contradicts himself and the Rabbis do not contradict themselves? But, said Raba, R. Judah does not contradict himself as we have just explained[25]

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(1) V. Mishnah p. 30.

(2) The Temple-mount to be charged by the judges, then lead her to the bottom, and finally up again.

(3) So that she may be more disposed to confess.

(4) V. Sanh. 32b.

(5) Num. V, 18.

(6) Lev. XIV, 11.

(7) Ibid. XV, 14, 29.

(8) Who do not enter the Temple precincts owing to a condition of defilement, and consequently stand at Nicanor's gate.

(9) One may be guilty and the other not. The first may refuse to confess because the other does not confess.

(10) Num. V, 19. V. Ned. 73a.

(11) So why does he give his own reason?

(12) V. B.M. 115a.

(13) And therefore we cannot say she is defiant, and on the view of the first Tanna, as explained, she might be submitted to the ordeal at the same time with another suspected woman.

(14) Each must have separate attention.

(15) Ex. XXI, 6.

(16) Deut. XXI, 1 ff.

(17) Administering the water to two women, when it would be performing a precept in bundles.

(18) Num. V, 18.

(19) That be uncovers her bosom, as stated in the Mishnah.

(20) And not merely ‘the hair of her head’.

(21) And unravels the locks.

(22) V. Sanh. 45a.

(23) That R. Judah is against the exposure of her bosom.

(24) In the parallel passage in Sanh. 45a the name is Rabbah.

(25) The case of a suspected woman is not analogous to that of a woman who is to be stoned.

Talmud - Mas. Sotah 8b

, and the Rabbis likewise do not contradict themselves. What is the reason here?[1] Because [it is written], That all women may be taught not to do after your lewdness.[2] In the other case [of stoning], however, there cannot be a severer warning than that.[3] Should you argue, Let both be inflicted upon her,[4] R. Nahman said in the name of Rabbah b. Abbuha: The text states: Thou shalt love thy neighbour as thyself[5] — choose for him [or her] a light death. Is this to say that Mishnaic teachers disagree [with respect to this teaching] of R. Nahman?[6] — No; everybody is in agreement with R. Nahman's teaching, but they differ here on the following point: [the Rabbis] hold that disgrace is worse than physical pain, and [R. Judah] holds that physical pain is worse than disgrace.[7] IF SHE WAS CLOTHED IN WHITE etc. It has been taught: If black garments became her, they clothe her in mean garments.

IF SHE WORE GOLDEN ORNAMENTS etc. This is obvious. Since she has to be made repulsive how much more is it necessary to do this![8] — What you might have thought is that with these ornaments upon her, the disgrace would be greater; as the proverb declares, ‘Stripped naked, yet wearing shoes’. Therefore we are taught [that all ornaments must be removed].

AFTER THAT [THE PRIEST] TAKES A COMMON ROPE etc. R. Abba asked R. Huna, Does [the absence of] a common rope invalidate the ceremony of a suspected woman? If the purpose is

that her garments should not slip down from her, then a small belt would also suffice; or is it perhaps as the Master said: 'She girded herself with a belt [to adorn herself] for him,[9] therefore the priest takes a common rope and binds it over her breasts', and consequently [its absence] does invalidate the ceremony? — He replied: You have [the reason stated:] After that he takes a common rope and binds it over her breast so that her garments should not slip down from her.

WHOEVER WISHES TO LOOK UPON HER COMES TO LOOK etc. This is self-contradictory! You say: WHOEVER WISHES TO LOOK UPON HER COMES TO LOOK; consequently it makes no difference whether they be men or women. Then it is taught: ALL WOMEN ARE PERMITTED TO LOOK UPON HER — hence women are [permitted] but men are not! — Abaye answered: Explain it[10] as referring to women. Raba said to him, But the Mishnah states: WHOEVER WISHES TO LOOK UPON HER COMES TO LOOK! But, said Raba, [the meaning is:] WHOEVER WISHES TO LOOK UPON HER COMES TO LOOK, it makes no difference whether they be men or women; but women are obliged[11] to look upon her, as it is said: 'That all women may be taught not to do after your lewdness.' MISHNAH. IN THE MEASURE WITH WHICH A MAN MEASURES IT IS METED OUT TO HIM. SHE ADORNED HERSELF FOR A TRANSGRESSION; THE HOLY ONE, BLESSED BE HE, MADE HER REPULSIVE. SHE EXPOSED HERSELF FOR A TRANSGRESSION; THE HOLY ONE, BLESSED BE HE, HELD HER UP FOR EXPOSURE. SHE BEGAN THE TRANSGRESSION WITH THE THIGH AND AFTERWARDS WITH THE WOMB; THEREFORE SHE IS PUNISHED FIRST IN THE THIGH AND AFTERWARDS IN THE WOMB,[12] NOR DOES ALL THE BODY ESCAPE.GEMARA. R. Joseph said: Although the measure[13] has ceased, [the principle] IN THE MEASURE has not ceased.[14] For R. Joseph said, and similarly taught R. Hiyya: From the day the Temple was destroyed, although the Sanhedrin ceased to function, the four modes of execution[15] did not cease. But they did cease! — [The meaning is:] The judgment[16] of the four modes of execution did not cease. He who would have been condemned to stoning either falls from a roof [and dies] or a wild beast tramples him [to death]. He who would have been condemned to burning either falls into a fire or a serpent stings him. He who would have been condemned to decapitation is either handed over to the [Gentile] Government[17] or robbers attack him. He who would have been condemned to strangulation either drowns in a river or dies of a quinsy.[18]

It has been taught: Rabbi[19] used to say: Whence is it that in the measure with which a man measures it is meted out to him? As it is said: By measure in sending her away thou dost contend with her.[20] I have here only a se'ah;[21] whence is it to include a trikab and half a trikab, a kab and half a kab, a quarter, an eighth, a sixteenth and a thirtysecond part of a kab? There is a text to state, For all the armour of the armed man in the tumult.[22] And whence is it that every perutah[23] reckons together into a great sum? There is a text to state, Laying one thing to another to find out the account.[24] Thus we find in the case of a suspected woman that in the measure with which she measured it was meted out to her. She stood at the entrance of her house to display herself to the man; therefore a priest sets her by the Nicanor-gate and displays her disgrace to all. She wound a beautiful scarf about her head for him; therefore a priest removes her headgear and places it under her feet. She beautified her face for him; therefore

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(1) That the Rabbis do not scruple to disgrace the suspected woman, whereas in the case of the woman who is stoned they do.

(2) Ezek. XXIII, 48.

(3) Viz., the stoning itself; therefore the Rabbis are against the exposure of the body.

(4) Disgrace as well as death by stoning.

(5) Lev. XIX, 18.

(6) That when R. Judah says a woman is stoned naked except for a loin-cloth in front and behind he evidences disagreement with R. Nahman.

(7) Therefore the former believe that a woman about to die would prefer to be clothed although it may involve a more

protracted death, while R. Judah takes the opposite view, v. Sanh. (Sonc. ed.) pp. 294-5.
(8) Why, then, does the Mishnah mention it?
(9) Her paramour; v. infra p. 38.
(10) The phrase, WHOEVER WISHES etc.
(11) The word מותרות, 'are permitted', is apparently derived here from the root תרה 'to warn'; hence 'are warned, obliged'.
(12) V. Num. V, 21 f.
(13) Meted out by a Jewish Court of Justice.
(14) Referring to Divine retribution.
(15) V. Sanh. 90a.
(16) Through Divine intervention.
(17) Which executes him by the sword.
(18) V. Sanh. (Sonc. ed.) p. 236.
(19) [The parallel passage in Sanh. 100a has 'R. Meir'].
(20) Isa. XXVII, 8.
(21) The word for by measure is connected by Rabbi with se'ah, a dry measure of which a trikab (equals three kab) is a half. Se'ah is taken as representing a very serious offence.
(22) Isa. IX, 4, E.V. 5. The Hebrew words for 'armour' סאון and 'armed man' סואן are likewise connected with se'ah.
(23) A small coin, here representing a minor offence which is not overlooked for punishment.
(24) Eccl. VII, 27.

Talmud - Mas. Sotah 9a

her face is made to turn green in colour.[1] She painted her eyes for him; therefore her eyes protrude. She plaited her hair for him; therefore a priest undoes her hair. She signalled to him with her finger; therefore her fingernails fall off. She girded herself with a belt for him; therefore a priest takes a common rope and ties it above her breasts. She thrust her thigh towards him; therefore her thigh falls. She received him upon her body; therefore her womb swells. She gave him the world's dainties to eat; therefore her offering consisted of animal's fodder.[2] She gave him costly wine to drink in costly goblets; therefore a priest gives her water of bitterness to drink in a potsherd. She acted in secret; and He that dwelleth in the secret place of the Most High[3] directed His face against her [to punish her], as it is said: The eye also of the adulterer waiteth for the twilight, saying: No eye shall see me.[4] Another version is: She acted in secret; the All-present proclaims it in public, as it is said: Though his hatred cover itself with guile, his wickedness shall be openly shewed before the congregation.[5]

Since [the teaching that even the slightest sin is punished] is derived from 'Laying one thing to another to find out the account', why do I require 'For all the armour of the armed man in the tumult'? — That [the punishment is] according to measure. But since that is derived from 'For all the armour of the armed man in the tumult', why do I require 'By measure in sending her away thou dost contend with her'? — It is in accord with the teaching of R. Hinena b. Papa; for R. Hinena b. Papa said: The Holy One, blessed be He, does not exact punishment of a nation until the time of its banishment into exile, as it is said: 'By measure in sending her away, etc'. But it is not so; for Raba has said: Why are three cups mentioned in connection with Egypt?[6] One which she drank in the days of Moses; one which she drank in the days of Pharaoh-Necho;[7] and one which she is destined to drink with her allies! Should you reply that they passed away, and these are different [Egyptians],[8] behold it has been taught: R. Judah said: Minyamin, an Egyptian proselyte, was a colleague of mine among the disciples of R. Akiba; and Minyamin, the Egyptian proselyte, told me: 'I am an Egyptian of the first generation,[9] and I married an Egyptian woman of the first generation; I will marry my son to an Egyptian woman of the second generation so that my grandson may be permitted to enter the Community'![10] — But if the above statement was made it was made as follows: R. Hinena b. Papa

said: The Holy One, blessed be He, does not exact punishment of a king until the time of his banishment into exile, as it is said: 'By measure in sending her away, etc'. Amemar applied this teaching of R. Hinena b. Papa to the following: What means the text: For I the Lord change not; therefore ye, O sons of Jacob, are not consumed'?[11] 'I the Lord change not' — I have not smitten a people and repeated it;[12] 'therefore ye, O sons of Jacob, are not consumed' — that is what is written: I will spend Mine arrows upon them[13] — Mine arrows will be spent, but [the sons of Jacob] will not cease.R. Hamuna said: The Holy One, blessed be He, does not exact punishment of a man until his measure [of guilt] is filled; as it is said: 'In the fullness of his sufficiency he shall be in straits, etc'.[14] R. Hinena b. Papa expounded: What means the text: Rejoice in the Lord, O ye righteous; praise is comely for the upright?[15] Read not praise is na'wah ['comely'], but praise is neweh ['a habitation']. This alludes to Moses and David over whose works [in erecting a Sanctuary] their enemies had no power.[16] Of [the Temple planned by] David, it is written: Her gates are sunk in the ground.[17] With regard to Moses the Master said: After the first Temple was erected, the Tent of Meeting was stored away, its boards, hooks, bars, pillars and sockets. Where [were they stored]? — R. Hisda said in the name of Abimi: Beneath the crypts of the Temple.

Our Rabbis have taught: The suspected woman[18] set her eyes on one who was not proper for her; what she sought was not given to her[19] and what she possessed was taken from her;[20] because whoever sets his eyes on that which is not his is not granted what he seeks and what he possesses is taken from him.

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(1) This, and the protruding of the eyes, are the effect of drinking the water; v. Mishnah 20a.

(2) Barley meal, Num. V, 15.

(3) Ps. XCI, I.

(4) Job XXIV, 15. No eye etc. is explained in the sense, God will not observe me.

(5) Prov. XXVI, 26.

(6) The word 'cup' occurs three times in Gen. XL, 11, and is a symbol of calamity.

(7) When Egypt was defeated by Babylon (Jer. XLVI. 2). The third 'cup' refers to the Messianic era. The conclusion is, therefore, that punishment is not exacted of a nation only at the time of banishment.

(8) The original Egyptians had disappeared and their land was inhabited by a different race.

(9) That means, he had been personally converted to Judaism and was not the son of a proselyte.

(10) V. Deut. XXIII, 9, E.V. 8. This proves that the original Egyptians are considered as still extant.

(11) Mal. III, 6.

(12) The Hebrew word for 'change' שנה also means 'repeat'.

(13) Deut. XXXII, 23.

(14) Job XX, 22.

(15) Ps. XXXIII, 1.

(16) I.e.,the enemies of Israel did not profit by any of the materials when the Temple was destroyed.

(17) Lam. II, 9.

(18) Who is guilty.

(19) She is not allowed to marry her lover.

(20) She dies if she drinks the water, and is divorced with loss of her settlement if she confesses.

Talmud - Mas. Sotah 9b

We thus find it with the primeval serpent [in the Garden of Eden] which set its eyes on that which was not proper for it; what it sought was not granted to it and what it possessed was taken from it. The Holy One, blessed be He, said: I declared: Let it be king over every animal and beast; but now, Cursed art thou above all cattle and above every beast of the field.[1] I declared, let it walk with an erect posture; but now it shall go upon its belly. I declared: Let its food be the same as that of man; but now it shall eat dust. It said: I will kill Adam and marry Eve; but now, I will put enmity between thee and the woman, and between thy seed and her seed.[2] Similarly do we find it with Cain, Korah,

Balaam, Doeg, Ahitophel, Gehazi, Absalom, Adonijah, Uzziah and Haman, who set their eyes upon that which was not proper for them; what they sought was not granted to them and what they possessed was taken from them.

SHE BEGAN THE TRANSGRESSION WITH THE THIGH etc. Whence is this? Shall I say because it is written: When the Lord doth make thy thigh to fall away and thy belly to swell?[3] But it is likewise written: Her belly shall swell and her thigh shall fall away![4] — Abaye said: When [the priest] utters the curse, he first curses the thigh and then curses the belly; but when the water produces its effect it does so in its normal order, viz., the belly first and then the thigh. But also in connection with the curse, it is written: Make thy belly to swell and thy thigh to fall away![5] — That is what the priest informs her, viz., that it affects her belly first and then the thigh so as not to discredit the water of bitterness.[6]

MISHNAH. SAMSON WENT AFTER [THE DESIRE OF] HIS EYES; THEREFORE THE PHILISTINES PUT OUT HIS EYES, AS IT IS SAID, AND THE PHILISTINES LAID HOLD ON HIM, AND PUT OUT HIS EYES.[7] ABSALOM GLORIED IN HIS HAIR; THEREFORE HE WAS HANGED BY HIS HAIR. AND BECAUSE HE COHABITED WITH THE TEN CONCUBINES OF HIS FATHER, THEREFORE HE WAS STABBED WITH TEN LANCES, AS IT IS SAID, AND TEN YOUNG MEN THAT BARE JOAB'S ARMOUR COMPASSED ABOUT.[8] AND BECAUSE HE STOLE THREE HEARTS, THE HEART OF HIS FATHER, THE HEART OF THE COURT OF JUSTICE, AND THE HEART OF ISRAEL, AS IT IS SAID, SO ABSALOM STOLE THE HEARTS OF THE MEN OF ISRAEL,[9] THEREFORE THREE DARTS WERE THRUST THROUGH HIM, AS IT IS SAID, AND HE TOOK THREE DARTS IN HIS HAND, AND THRUST THEM THROUGH THE HEART OF ABSALOM.[10] — IT[11] IS THE SAME IN CONNECTION WITH THE GOOD. MIRIAM WAITED A SHORT WHILE FOR MOSES, AS IT IS SAID, AND HIS SISTER STOOD AFAR OFF;[12] THEREFORE ISRAEL WAS DELAYED FOR HER SEVEN DAYS IN THE WILDERNESS, AS IT IS SAID, AND THE PEOPLE JOURNEYED NOT TILL MIRIAM WAS BROUGHT IN AGAIN.[13] JOSEPH EARNED MERIT BY BURYING HIS FATHER AND THERE WAS NONE AMONG HIS BROTHERS GREATER THAN HE; AS IT IS SAID, AND JOSEPH WENT UP TO BURY HIS FATHER, ETC.,[14] AND THERE WENT UP WITH HIM BOTH CHARIOTS AND HORSEMEN.[15] WHOM HAVE WE GREATER THAN JOSEPH SINCE NONE OTHER THAN MOSES OCCUPIED HIMSELF WITH HIS BURIAL? MOSES EARNED MERIT THROUGH THE BONES OF JOSEPH AND THERE WAS NONE IN ISRAEL GREATER THAN HE, AS IT IS SAID, AND MOSES TOOK THE BONES OF JOSEPH WITH HIM.[16] WHOM HAVE WE GREATER THAN MOSES SINCE NONE OTHER THAN THE OMNIPRESENT OCCUPIED HIMSELF [WITH HIS BURIAL], AS IT IS SAID, AND HE BURIED HIM IN THE VALLEY?[17] NOT ONLY CONCERNING MOSES DID THEY SAY THIS, BUT CONCERNING ALL THE RIGHTEOUS, AS IT IS SAID, AND THY RIGHTEOUSNESS SHALL GO BEFORE THEE, THE GLORY OF THE LORD SHALL BE THY REARWARD.[18]

GEMARA. Our Rabbis have taught: Samson rebelled [against God] through his eyes, as it is said: And Samson said unto his father, Get her for me, because she is pleasing in my eyes;[19] therefore the Philistines put out his eyes, as it is said: And the Philistines laid hold on him and put out his eyes.[20] But it is not so; for behold it is written: But his father and his mother knew not that it was of the Lord![21] — When he went [to choose a wife] he nevertheless followed his own inclinations.[22] It has been taught: Rabbi says: The beginning of his [Samson's] degeneration occurred in Gaza; therefore he received his punishment in Gaza. ‘The beginning of his [Samson's] degeneration was in Gaza’, as it is written: And Samson went to Gaza, and saw there an harlot etc.;[23] ‘therefore he received his punishment in Gaza,’ as it is written: And they brought him down to Gaza.[24] But behold it is written: And Samson went down to Timnah![25] — Nevertheless the beginning of his degeneration occurred in Gaza.[26]

And it came to pass afterward, that he loved a woman in the valley of Sorek, whose name was Delilah.[27] It has been taught: Rabbi says: If her name had not been called Delilah, she was fit that it should be so called. She weakened[28] his strength, she weakened his heart, she weakened his actions. 'She weakened his strength', as it is written: And his strength went from him.[29] 'She weakened his heart', as it is written: And when Delilah saw that he had told her all his heart.[30] 'She weakened his actions' since the Shechinah departed from him, as it is written: But he wist not that the Lord had departed from him.[31]

'And when Delilah saw that he had told her all his heart'. How did she know this?[32] R. Hanin said in the name of Rab: Words of truth are recognisable. Abaye said: She knew that this righteous man would not utter the Divine Name in vain; when he exclaimed: I have been a Nazirite unto God,[33] she said: Now he has certainly spoken the truth.

And it came to pass, when she pressed him daily with her words, and urged him.[34] What means 'and urged him'? R. Isaac of the School of R. Ammi said: At the time of the consummation, she detached herself from him.

Now therefore beware, I pray thee, and drink no wine nor strong drink, and eat not any unclean thing.[35] What means 'any unclean thing'? Furthermore, had she [Samson's mother] up to then eaten unclean things? R. Isaac of the School of R. Ammi said: [She had hitherto eaten] things forbidden to a Nazirite.

But God clave the hollow place that is in Lehi.[36] R. Isaac of the School of R. Ammi said: He [Samson] lusted for what was unclean;[37] therefore his life was made dependent upon an unclean thing.[38]

And the spirit of the Lord began, etc.[39] R. Hama b. Hanina said: Jacob's prophecy became fulfilled, as it is written: Dan shall be a serpent in the way.[40]

To move him in Mahaneh-Dan.[41] R. Isaac of the School of R. Ammi said: This teaches that the Shechinah kept ringing in front of him like a bell;[42] it is written here to move him [lefa'amo] in Mahaneh-Dan, and it is written elsewhere A golden bell [pa'amon] and a pomegranate.[43] Between Zorah and Eshtaol[44] — R. Assi said: Zorah and Eshtaol are two great mountains, and Samson uprooted them and ground one against the other.

And he shall begin to save Israel.[45] R. Hama b. Hanina said:

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(1) Gen. III, 14.

(2) Ibid. 15.

(3) Num. V, 21. 'Thigh' is mentioned first.

(4) Ibid. 27. Here 'thigh' is mentioned second.

(5) Ibid. 22.

(6) If the effects were produced in the reverse order.

(7) Judg. XVI, 21.

(8) And slew Absalom, II Sam. XVIII, 15.

(9) Ibid. XV, 6.

(10) Ibid. XVIII, 14.

(11) The principle of measure for measure.

(12) Ex. II, 4.

(13) Num. XII, 15.

(14) Gen. L, 7.

(15) Ibid. 9.

(16) Ex. XIII, 19.
(17) Deut. XXXIV, 6.
(18) Isa. LVIII, 8. The verb translated ‘shall be thy rearward’ seems to be taken here in its literal sense, shall gather thee sc. to thy fathers.
(19) Judg. XIV, 3.
(20) Ibid. XVI, 21.
(21) Ibid. XIV, 4.
(22) And not the will of God.
(23) Judg. XVI, I.
(24) Ibid. 21.
(25) Ibid. XIV, 1.
(26) He lawfully married the woman in Timnah but not the woman in Gaza.
(27) Ibid. XVI, 4.
(28) Dildelah, a play on her name.
(29) Ibid. 19.
(30) Ibid. 18.
(31) Ibid. 20.
(32) He had previously told her several falsehoods; so how did she know that he had now spoken the truth?
(33) Ibid. 17.
(34) Ibid. 16.
(35) Ibid. XIII, 4.
(36) Judg. XV, 19.
(37) Philistine women.
(38) The ass's jawbone (lehi) out of which he drank in his thirst.
(39) Ibid. XIII, 25.
(40) Gen. XLIX, 17. This prophecy alluded to Samson who was of the tribe of Dan.
(41) The word in Judg. XIII, 25 for ‘move’ is commonly used of striking a bell.
(42) To direct him where he was to go.
(43) Ex. XXVIII, 34.
(44) Judg. XIII, 25.
(45) Ibid. 5. The word ‘begin’ (יחל) is connected with a similar root (חלל) meaning become void.

Talmud - Mas. Sotah 10a

The oath of Abimelech became void, as it is written: That thou wilt not deal falsely with me, nor with my son, nor with my son's son.[1]

And the child grew, and the Lord blessed him.[2] Wherewith did He bless him? — Rab Judah said in the name of Rab: With his physique which was like that of other men but his manly strength was like a fast-flowing stream.[3]

And Samson called unto the Lord, and said: O Lord God, remember me, I pray Thee and strengthen me, I pray Thee, that I may be at once avenged of the Philistines for my two eyes.[4] Rab said: Samson spoke before the Holy One, blessed be He, Sovereign of the Universe, Remember on my behalf the twenty[5] years I judged Israel, and never did I order anyone to carry my staff from one place to another.

And Samson went and caught three hundred foxes.[6] Why just foxes? — R. Aibu b. Nagari said in the name of R. Hiyya b. Abba: Samson declared: Let [the animal] come which turns backward[7] and exact punishment of the Philistines who went back on their oath.[8]

It has been taught: R. Simeon the Pious said: The width between Samson's shoulders was sixty

cubits, as it is said: And Samson lay till midnight, and arose at midnight and laid hold of the doors of the gate of the city, and the two posts, and plucked them up, bar and all, and put them upon his shoulders;[9] and there is a tradition that the gates of Gaza were not less than sixty cubits [in width]. And he did grind in the prison house.[10]

R. Johanan said: 'Grind' means nothing else than [sexual] transgression; and thus it is stated: Then let my wife grind unto another.[11] It teaches that everyone brought his wife to him to the prison that she might bear a child by him [who would be as strong as he was]. R. Papa said: That is what the proverb tells, 'Before the wine-drinker [set] wine, before a ploughman a basket of roots.'

R. Johanan also said: Whoever is faithless, his wife is faithless to him; as it is said: If mine heart have been enticed unto a woman, and I have laid wait at my neighbour's door[12] and it continues, Then let my wife grind unto another, and let others bow down upon her. That is what the proverb tells, 'He among the full-grown pumpkins and his wife among the young ones'.

R. Johanan also said: Samson judged Israel in the same manner as their Father in heaven; as it is said: Dan shall judge his people as One.[13] R. Johanan also said: Samson was called by the name of the Holy One, blessed be He; as it is said: For the Lord God is a sun and a shield.[14] According to this argument, [his name] may not be erased![15] — The intention is that [his name] was typical of the name of the Holy One, blessed be He;[16] as the Holy One, blessed be He, shields the whole world, so Samson shielded Israel during his generation.

R. Johanan also said: Balaam was lame in one leg, as it is said: And he went shefi;[17] Samson was lame in both legs, as it is said: An adder in the path.[18]

Our Rabbis have taught: Five were created after the likeness of Him Who is above, and all of them incurred punishment on account of [the feature which distinguished] them: Samson in his strength, Saul in his neck,[19] Absalom in his hair,[20] Zedekiah in his eyes, and Asa in his feet. 'Samson [was punished] in his strength', as it is written: And his strength went from him.[21] 'Saul [was punished] in his neck', as it is written: Saul took his sword and fell upon it.[22] 'Absalom [was punished] in his hair',as we shall have occasion to explain later. Zedekiah [was punished] in his eyes, as it is written: They put out the eyes of Zedekiah.[23] Asa [was punished] in his feet, as it is written: But in the time of his old age he was diseased in his feet;[24] and Rab Judah said in the name of Rab, Podagra [gout] attacked him.

Mar Zutra, son of R. Nahman, asked R. Nahman, What is Podagra like? — He answered: Like a needle in living flesh. How did he know this? — Some say he suffered from it himself; others say that he heard it from his teacher;[25] and others declare, The secret of the Lord is with them that fear Him, and He will shew them His covenant.[26]

Raba expounded: Why was Asa punished? Because he imposed forced labour[27] upon the disciples of the Sages, as it is said: Then King Asa made a proclamation unto all Judah; none was exempted.[28] What means 'none was exempted'? — Rab Judah said in the name of Rab: Even the bridegroom from his chamber and the bride from her canopy.

It is written: And Samson went down to Timnah,[29] and it is written: Behold, thy father-in-law goeth up to Timnah![30] R. Eleazar said: Since in the case of Samson he was disgraced there, it is written in connection with it 'went down;' but in the case of Judah, since he was exalted in it,[31] there is written in connection with it 'goeth up'. R. Samuel b. Nahmani said: There are two places named Timnah; one [was reached] by going down and the other by going up. R. Papa said: There is only one place named Timnah; who came to it from one direction had to descend and from another direction had to ascend, as, e.g., Wardina, Be Bari and the market-place of Neresh.[32]

She sat in the gate of Enaim.[33] R. Alexander said: It teaches that she [Tamar] went and sat at the entrance [of the hospice] of our father Abraham, to see which place all eyes [‘enaim] look. R. Hanin said in the name of Rab: It is a place named Enaim, as it states: Tappuah and Enam.[34] R. Samuel b. Nahmani said: [It is so called] because she gave eyes to her words.[35] When [Judah] solicited her, he asked her, ‘Art thou perhaps a Gentile?’ She replied: ‘I am a proselyte’. ‘Art thou perhaps a married woman?’ She replied: ‘I am unmarried’. ‘Perhaps thy father has accepted on thy behalf betrothals?’[36] She replied: ‘I am an orphan’. ‘Perhaps thou art unclean?’ She replied: ‘I am clean’.

And he planted a tamarisk tree in Beer-sheba.[37] Resh Lakish said: It teaches that he [Abraham] made an orchard and planted in it all kinds of choice fruits. R. Judah and R. Nehemiah [differ in this matter]; one said that it was an orchard and the other that it was a hospice. It is right according to him who said that it was an orchard, since it is written ‘and he planted’; but according to him who said that it was a hospice, what means ‘and he planted?’ — It is similarly written: And he shall plant the tents of his palace, etc.[38]

And he called there on the name of the Lord, the Everlasting God.[39] Resh Lakish said: Read not ‘and he called’

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(1) Gen. XXI, 23. The alliance between the Israelites and Philistines ended in the time of Samson.

(2) Judg. XIII, 24.

(3) The point underlying this piece of Rabbinic hyperbole is that it was through Samson's inordinate passion for Philistine women that he came in contact with their people and brought about Israel's release from their power.

(4) Ibid. XVI, 28.

(5) Some edd. read ‘twenty-two’ in error; v. ibid. 31.

(6) Judg. XV, 4.

(7) When a fox is hunted, it does not run ahead but in a roundabout course.

(8) Between Isaac and Abimelech; v. supra.

(9) Ibid. XVI, 3.

(10) Ibid. 21.

(11) Job XXXI, 10.

(12) Ibid. 9.

(13) Gen. XLIX, 16, the One being God.

(14) Ps. LXXXIV, 12, E.V.11 The word for sun is shemesh which is the basis of Samson's name, Shimshon.

(15) As it is forbidden to erase the Divine Name.

(16) The word sun is not God's Name but a simile.

(17) Num. XXIII, 3. (E.V. ‘ To a bare height’). The Hebrew word is explained as ‘lame’.

(18) Gen. XLIX, 17. The word for adder is shefifon which looks like a duplicated form of shefi from the root שוף , ‘to dislocate’.

(19) Cf. I Sam. X, 23.

(20) Cf. II Sam. XIV, 26. There is no Biblical reference in connection with Zedekiah and Asa.

(21) Judg. XVI, 19.

(22) I Sam. XXXI, 4. The sword passed through his neck.

(23) II Kings XXV, 7.

(24) I Kings XV, 23.

(25) His teacher was a Rabbi named Samuel who was a physician.

(26) Ps. XXV, 14. The information was revealed to him by God.

(27) In the public service.

(28) I Kings XV, 22.

(29) Judg. XIV. I.

(30) Gen. XXXVIII, 13. Why does one text say ‘down’ and the other ‘goeth up’?

(31) Perez was born there from whom David was descended.

(32) Towns in Babylonia situated on mountain slopes on the east bank of the Euphrates, v. Obermeyer, op. cit., p. 309.
(33) Gen. XXXVIII. 14.
(34) Josh. XV, 34. Enam is identified with Enaim.
(35) Tamar gave convincing replies to Judah's questions as to whether she was permitted to him.
(36) [And thou thus belongest to another man.]
(37) Gen. XXI, 33. The explanation 'hospice' is obtained by taking each letter of the word אשל 'tamarisk-tree', and making them the initials of three Hebrew words meaning 'eating, drinking, lodging'.
(38) Dan. XI, 45.
(39) Gen. l.c.

Talmud - Mas. Sotah 10b

but 'and he made to call', thereby teaching that our father Abraham caused the name of the Holy One, blessed be He, to be uttered by the mouth of every passer-by. How was this? After [travellers] had eaten and drunk, they stood up to bless him; but, said he to them, 'Did you eat of mine? You ate of that which belongs to the God of the Universe. Thank, praise and bless Him who spake and the world came into being'.

When Judah saw her, he thought her to be an harlot; for she had covered her face.[1] Because she had covered her face he thought her to be an harlot! — R. Eleazar said: She had covered her face in her fatherin-law's house;[2] for R. Samuel b. Nahmani said in the name of R. Jonathan: Every daughter-in-law who is modest in her father-in-law's house merits that kings and prophets should issue from her. Whence is this? From Tamar. Prophets [issued from her], as it is written: The vision of Isaiah the son of Amoz,[3] and kings [issued from her] through David; and R. Levi has said: This is a tradition in our possession from our fathers that Amoz and Amaziah[4] were brothers.

When she was brought forth.[5] Instead of muzeth the verb should have been mithwazzeth![6] R. Eleazar said: [The verb in the text implies] that after her proofs[7] were found, Samael[8] came and removed them, and Gabriel[9] came and restored them. That is what is written: For the Chief Musician, the silent dove of them that are afar off. Of David, Michtam[10] — R. Johanan said: At the time when her proofs were removed, she became like a silent dove. 'Of David', 'Michtam' — [that means] there issued from her David who was meek [mach] and perfect [tam] to all. Another explanation of 'Michtam' is: his wound [makkah][11] was whole [tammah], since he was born already circumcised. Another explanation of 'Michtam' is: just as in his youth [before he became king] he made himself small in the presence of anyone greater than himself to study Torah, so was he the same in his greatness.[12]

She sent to her father-in-law, saying: By the man whose these are, am I with child.[13] She ought to have told [the messenger] plainly![14] — R. Zutra b. Tobiah said in the name of Rab — another version is, R. Hama b. Bizna said in the name of R. Simeon the Pious; and still another version is, R. Johanan said in the name of R. Simeon b. Yohai: Better for a man to cast himself into a fiery furnace rather than shame his fellow in public. Whence is this? From Tamar.[15]

Discern, I pray thee.[16] R. Hama b. Hanina said: With the word 'discern' [Judah] made an announcement to his father, and with the word 'discern' an announcement was made to him. With the word 'discern' he made an announcement — Discern now whether it be thy son's coat or not;[17] and with the word 'discern' an announcement was made to him — Discern, I pray thee, whose are these.[16] The word 'na' ['I pray thee'] is nothing else than an expression of request. She said to him, 'I beg of thee, discern the face of thy Creator and hide not thine eyes from me'.[18]

And Judah acknowledged them, and said: She is more righteous than I.[19] That is what R. Hanin b. Bizna said in the name of R. Simeon the Pious: Joseph who sanctified the heavenly Name in

private[20] merited that one letter should be added to him from the Name of the Holy One, blessed be He, as it is written: He appointed it in Joseph for a testimony.[21] Judah, however, who sanctified the heavenly Name in public merited that the whole of his name should be called after the Name of the Holy One, blessed be He.[22] When he confessed and said: She is more righteous than I, a Bath Kol[23] issued forth and proclaimed, 'Thou didst rescue Tamar and her two sons from the fire. By thy life, I will rescue through thy merit three of thy descendants from the fire'. Who are they? Hananiah, Mishael and Azariah.[24] 'She is more righteous than I' — how did he know this?[25] A Bath Kol issued forth and proclaimed, 'From Me came forth secrets.'[26]

And he knew her again no more.[27] Samuel the elder, father-in-law of R. Samuel b. Ammi said in the name of R. Samuel b. Ammi: Having once known her,[28] he did not separate from her again. It is written here, 'And he knew her again no more [Yasaf], and elsewhere it is written: With a great voice increasing [Yasaf].[29]

ABSALOM GLORIED IN HIS HAIR etc. Our Rabbis have taught: Absalom rebelled [against his father] through his hair, as it is said: There was none to be so much praised as Absalom for his beauty . . . And when he polled his head, now it was at every year's end that he polled it because the hair was heavy on him therefore he polled it, he weighed the hair of his head at two hundred shekels, after the king's weight.[30] It has been taught that [the king's weight] was the weight with which the men of Tiberias and Sepphoris weigh. Therefore he was hanged by his hair, as it is said: And Absalom chanced to meet the servants of David. And Absalom rode upon his mule, and the mule went under the thick boughs of a great oak, and his head caught hold of the oak, and he was taken up between the heaven and the earth,; and the mule that was under him went on.[31] He took a sword and wished to cut himself loose;[32] but it was taught in the School of R. Ishmael, At that moment Sheol was split asunder beneath him.[33]

And the king was much moved, and went up to the chamber over the gate, and wept; and as he went, thus he said: O my son Absalom, my son, my son Absalom! would God I had died for thee, O Absalom, my son, my son.[34] And the king covered his face, and the king cried with a loud voice, O my son Absalom, O Absalom my son, my son.[35] Why is 'my son' repeated eight times? Seven to raise him from the seven divisions of Gehinnom; and as for the last, some say to unite his [severed] head to his body and others say to bring him into the World to Come.

Now Absalom in his lifetime had taken and reared up.[36] What means 'had taken'? — Resh Lakish said: He had made a bad purchase for himself.[37] The pillar which is in the king's dale, etc. — R. Hanina b. Papa said: In the deep plan of the King of the Universe;[38]

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(1) Ibid. XXXVIII, 15.

(2) So that Judah had never seen it and did not recognise her.

(3) Isa. I, 1.

(4) King of Judah, and since he was a descendant of David and Amoz was his brother, it is true that prophets and kings issued from Tamar.

(5) Gen. XXXVIII, 25.

(6) The verbal form used in the text could be translated 'was found', and the alternative suggested would have clearly indicated 'brought forth'.

(7) The signet, cord and staff.

(8) Angel of evil, later identified with Satan.

(9) One of the four Archangels.

(10) Ps. LVI, I.

(11) I.e., the place where there should have been a wound after circumcision.

(12) After he became king, he humbled himself to study. So he was meek and perfect.

(13) Gen. XXXVIII, 25.

(14) That Judah was the father of her child. Why the circumlocution?
(15) She risked being burnt to death rather than publicly shame Judah.
(16) Ibid.
(17) Ibid. XXXVII, 32.
(18) That is how 'Discern, I pray thee' is explained.
(19) Ibid. XXXVIII, 26.
(20) When he resisted Potiphar's wife.
(21) Ps. LXXXI, 6, E.V. 5. Here in the Hebrew the letter 'he', one of the letters of the Tetragrammaton, is added to Joseph's name: יהוסף.
(22) The four letters of the Tetragrammaton occur in Judah's name יהודה.
(23) V. Glos.
(24) See Dan. III.
(25) Since she might have cohabited with other men.
(26) V. Mak. 23b.
(27) Gen. XXXVIII, 26.
(28) That she was righteous.
(29) Deut. V, 19. The two verbs are really distinct, but the Rabbi connected them both with the root אסף and accordingly explained the phrase in Gen. as 'and he knew her again without ceasing', v. Sanh. 17a.
(30) II Sam. XIV, 25f.
(31) II Sam. XVIII. 9.
(32) The first half of this sentence is omitted in some edd.
(33) So that had he cut through his hair he would have fallen into Sheol.
(34) Ibid. XIX, 1. E.V. XVIII, 33.
(35) Ibid. 5, E.V. 4.
(36) Ibid. XVIII, 18.
(37) The verb signifies both took and purchased. The meaning appears to be that his conduct resulted in his having to buy a monument to preserve his memory instead of his succeeding his father; hence it was a bad bargain for him.
(38) The word 'dale' means 'deep', and 'king' is applied to God Who had decided that this should happen as a punishment for his sin with Bathsheba.

Talmud - Mas. Sotah 11a

as it is written: I will raise up evil against thee out of thine own house.[1] Similarly it is stated: So he sent him [Joseph] out of the vale of Hebron.[2] R. Hanina b. Papa said: [The meaning is:] It was through the deep plan of that righteous man [Abraham] who had been buried in Hebron; as it is written: Know of a surety that thy seed shall be a stranger in a land that is not theirs.[3]

For he said: I have no son.[4] Had he, then, no sons? Behold it is written: And unto Absalom there were born three sons and one daughter![5] — R. Isaac b. Abdimi said: [His meaning was] that he had no son fit for the kingship. R. Hisda said: There is a tradition that whoever burns his neighbour's produce will not leave a son to succeed him; and he [Absalom] had burnt [the produce] of Joab, as it is written: Therefore he said unto his servants, See, Joab's field is near mine, and he hath barley there; go and set it on fire. And Absalom's servants set the field on fire.[6]

IT IS THE SAME IN CONNECTION WITH THE GOOD. MIRIAM etc. Is this like [the other cases mentioned]? There she waited a short while [for Moses], here [the Israelites waited for her] seven days?[7] — Abaye said: Read that in connection with the good [the principle of measure for measure] does not apply. Raba said to him, But the Mishnah teaches IT IS THE SAME IN CONNECTION WITH THE GOOD! But, said Raba, the Mishnah must be understood thus: It is the same in connection with the good that there is the same measure; nevertheless the measure in the case of the good is greater than the measure in the case of punishment.[8]

And his sister stood afar off.[9] R. Isaac said: The whole of this verse is spoken with reference to the Shechinah: 'and stood', as it is written: And the Lord came and stood etc.[10] 'His sister', as it is written: Say unto wisdom, thou art my Sister.[11] 'Afar off, as it is written: The Lord appeared from afar unto me.[12] 'To know', as it is written: For the Lord is a God of knowledge.[13] 'What', as it is written: What doth the Lord require of thee?[14] 'Done', as it is written: Surely the Lord God will do nothing.[15] 'To him', as it is written: And called it Lord is peace.[16]

Now there arose a new king etc.[17] Rab and Samuel [differ in their interpretation]; one said that he was really new, while the other said that his decrees were made new. He who said that he was really new did so because it is written 'new'; and he who said that his decrees were made new did so because it is not stated that [the former king] died and he reigned [in his stead]. Who knew not Joseph — he was like one who did not know [Joseph] at all.

And he said unto his people, Behold the people of the children of Israel.[18] A Tanna taught: He [Pharaoh] originated the plan first, and therefore was punished first. He originated the plan first, as it is written: And he said unto his people; therefore he was punished first, as it is written: Upon thee, and upon thy people, and upon all thy servants.[19]

Come, let us deal wisely with him[20] — it should have been with them! — R. Hama b. Hanina said: [Pharaoh meant,] Come and let us outwit the Saviour of Israel. With what shall we afflict them? If we afflict them with fire, it is written: For, behold the Lord will come with fire,[21] and it continues, For by fire will the Lord plead etc.[22] [If we afflict them] with the sword, it is written: And by His sword with all flesh.[23] But come and let us afflict them with water, because the Holy One, blessed be He, has already sworn that he will not bring a flood upon the world; as it is said: For this is as the waters of Noah unto Me, etc.[24] They were unaware, however, that He would not bring a flood upon the whole world but upon one people He would bring it; or alternatively, He would not bring [the flood] but they would go and fall into it. Thus it says: And the Egyptians fled towards it.[25] This is what R. Eleazar said: What means that which is written: Yea, in the thing wherein they zadu [dealt proudly] against them?[26] In the pot in which they cooked were they cooked. Whence is it learnt that 'zadu' means cooking? — Because it is written: And Jacob sod [wa-yazed] pottage.[27]

R. Hiyya b. Abba said in the name of R. Simai: There were three in that plan,[28] viz. Balaam, Job[29] and Jethro. Balaam who devised it was slain; Job who silently acquiesced was afflicted with sufferings; Jethro, who fled, merited that his descendants should sit in the Chamber of Hewn Stone,[30] as it is said: And the families of scribes which dwelt at Jabez; the Tirathites, the Shimeathites, the Sucathites. These are the Kenites that came of Hammath, the father of the house of Rechab;[31] and it is written: And the children of the Kenite, Moses' father-in-law etc.[32]

And fight against us and get them up out of the land[33] — it should have read 'and we will get us up!'[34] — R. Abba b. Kahana said: It is like a man who curses himself and hangs the curse upon somebody else.

Therefore they did set over him taskmasters[35] — it should have read 'over them'! — It was taught in the School of R. Eleazar b. Simeon, It indicates that they brought a brick-mould and hung it round Pharaoh's neck; and every Israelite who complained that he was weak was told, 'Art thou weaker than Pharaoh?'

Missim ['taskmasters'] — i.e., something which forms [mesim].[36] 'To afflict him with their burdens'- it should have read 'them'! — The [meaning is] to afflict Pharaoh with the burdens of Israel.[37]

And they built for Pharaoh store cities [miskenoth]. Rab and Samuel [differ in their

interpretation]; one said, [They were so called] because they endangered [mesakkenoth] their owners,[38] while the other said because they impoverished [memaskenoth] their owners,[39] for a master has declared that whoever occupies himself with building becomes impoverished.[40]

Pithom and Raamses[35] — Rab and Samuel differ [in their interpretation];[41] one said: Its real name was Pithom, and why was it called Raamses? Because one building after another collapsed [mithroses]. The other said that its real name was Raamses, and why was it called Pithom? Because the mouth of the deep [pi tehom] swallowed up one building after another.

But the more they afflicted him, the more he will multiply and the more he will spread abroad[42] — it should have read 'the more they multiplied and the more they spread abroadð! — Resh Lakish said: The Holy Spirit announced to them. 'The more he will multiply and the more he will spread abroad'.

And they were grieved [wa-yakuzu] because of the children of Israel[42] — this teaches that they were like thorns [kozim] in their eyes.

And the Egyptians made the children of Israel to serve

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(1) Ibid. XII, 11.
(2) Gen. XXXVII, 14. Here 'vale' is also explained as deep plan.
(3) Ibid. XV, 13.
(4) II Sam. l.c.
(5) Ibid. XIV, 27.
(6) II Sam. 30.
(7) So how does the principle of measure for measure apply?
(8) The reward for a good deed exceeds the actual merit of an action and is not merely a quid pro quo as with a wrong deed.
(9) Ex. II, 4.
(10) I Sam. III, 10.
(11) Prov. VII, 4. Wisdom is an emanation from God.
(12) Jer. XXXI, 3.
(13) I Sam. II, 3.
(14) Deut. X, 12.
(15) Amos III, 7.
(16) Judg. VI, 24. The Hebrew word 'it' is the same as 'to him'.
(17) Ex. I, 8.
(18) Ex. 9.
(19) Ibid. VII, 29.
(20) Ibid. I, 10. The Hebrew is literally with him.
(21) Isa. LXVI, 15.
(22) Ibid. 16.
(23) Ibid. Some edd. quote as the proof text: With his sword drawn in his hand (Num. XXII, 23).
(24) Isa. LIV, 9.
(25) Ex. XIV, 27. So the Hebrew literally.
(26) Ibid. XVIII, II. The verb 'they dealt proudly' resembles in form another with the meaning 'they cooked' זדו.
(27) Gen. XXV, 29.
(28) To destroy Israel through the decree: Every son that is born ye shall cast in the river, Ex. I, 22.
(29) Various opinions are expressed in the Talmud regarding the age in which he lived. According to one view he was born in the year that Jacob settled in Egypt and died at the time of the Exodus, v. B.B. 15a-b.
(30) In the Temple where the Sanhedrin met.
(31) I Chron. II, 55. The various names are understood in the sense that they were eminent scholars.

(32) Judg. I, 16; v. Sanh. (Sonc. ed.) p. 722.
(33) Ex. I, 10.
(34) I.e., we will be driven out of the land.
(35) Ibid. 11, the text is literally him.
(36) Viz., bricks, referring to the brick-mould which Pharaoh had to wear.
(37) He had to carry the brick-mould as the pattern for the Israelites to work upon.
(38) Led to the destruction of the Egyptians.
(39) When they were spoiled by the Israelites before the Exodus.
(40) [According to this dictum the interpretation 'memaskenoth' is general in its application and has no particular reference to the Egyptians. Some edd. accordingly omit the last sentence.]
(41) They agreed that only one store city was built.
(42) Ex. 12. So the Hebrew literally.

Talmud - Mas. Sotah 11b

with rigour [parek].[1] R. Eleazar said: [It means] with a tender mouth [peh rak];[2] R. Samuel b. Nahmani said: [It means] with rigorous work [perikah]. And they made their lives bitter with hard service, in mortar and in brick etc. Raba said: At first it was in mortar and in brick; but finally it was in all manner of service in the field. All their service wherein they made them serve with rigour.[3] R. Samuel b. Nahmani said in the name of R. Jonathan: They changed men's work for the women and the women's work for the men; and even he who explained [parek] above as meaning 'with tender mouth' admits that here it means 'with rigorous work'.

R. Awira expounded: As the reward for the righteous women who lived in that generation were the Israelites delivered from Egypt. When they went to draw water, the Holy One, blessed be He, arranged that small fishes should enter their pitchers, which they drew up half full of water and half full of fishes. They then set two pots on the fire, one for hot water and the other for the fish, which they carried to their husbands in the field, and washed, anointed, fed, gave them to drink and had intercourse with them among the sheepfolds, as it is said: When ye lie among the sheepfolds etc.[4] As the reward for ' When ye lie among the sheepfolds', the Israelites merited the spoliation of the Egyptians, as it is said: As the wings of a dove covered with silver, and her pinions with yellow gold.[5] After the women had conceived they returned to their homes; and when the time of childbirth arrived, they went and were delivered in the field beneath the apple-tree, as it is said: Under the apple-tree I caused thee to come forth [from thy mother's womb] etc.[6] The Holy One, blessed be He, sent down someone from the high heavens who washed and straightened the limbs [of the babes] in the same manner that a midwife straightens the limbs of a child; as it is said: And as for thy nativity, in the day thou wast born thy navel was not cut, neither wast thou washed in water to cleanse thee.[7] He also provided for them two cakes, one of oil and one of honey, as it is said: And He made him to suck honey out of the rock, and oil etc.[8] When the Egyptians noticed them, they went to kill them; but a miracle occurred on their behalf so that they were swallowed in the ground, and [the Egyptians] brought oxen and ploughed over them, as it is said: The ploughers ploughed upon my back.[9] After they had departed, [the Israelite women with their babes] broke through [the earth] and came forth like the herbage of the field, as it is said: I caused thee to multiply as the bud of the field;[10] and when [the babes] had grown up, they came in flocks to their homes, as it is said: And thou didst increase and wax great and didst come with ornaments[11] — read not with ornaments [ba'adi 'adayim] but in flocks [be'edre 'adarim]. At the time the Holy One, blessed be He, revealed Himself by the Red Sea, they recognised Him first, as it is said: This is my God and I will praise Him.[12]

And the king of Egypt spake to the Hebrew midwives etc.[13] Rab and Samuel [differ in their interpretation]; one said they were mother and daughter, and the other said they were daughter-in-law and mother-in-law. According to him who declared they were mother and daughter,

they were Jochebed and Miriam; and according to him who declared they were daughter-in-law and mother-in-law, they were Jochebed and Elisheba.[14] There is a teaching in agreement with him who said they were mother and daughter; for it has been taught: 'Shiphrah'[15] is Jochebed; and why was her name called Shiphrah? Because she straightened [meshappereth] the limbs of the babe. Another explanation of Shiphrah is that the Israelites were fruitful [sheparu] and multiplied in her days. 'Pu'ah' is Miriam; and why was her name called Puah? Because she cried out [po'ah] to the child[16] and brought it forth. Another explanation of Pu'ah is that she used to cry out through the Holy Spirit[17] and say: 'My mother will bear a son who will be the saviour of Israel'.

And he said: When ye do the office of a midwife to the Hebrew women etc.[18] What means 'obnayim'?[19] R. Hanan said: He entrusted them with an important sign and told them that when a woman bends to deliver a child, her thighs grow cold like stones ['abanim'].[20] Another explains [the word 'obnayim'] in accordance with what is written: Then I went down to the potter's house, and, behold, he wrought his work on the wheels.[21] As in the case of a potter, there is a thigh on one side, a thigh on the other side and the wooden block in between, so also with a woman there is a thigh on one side, a thigh on the other side and the child in between.

If it be a son, then ye shall kill him.[22] R. Hanina said: He entrusted them with an important sign, viz., if it is a son, his face is turned downward and if a daughter, her face is turned upward.[23] But the midwives feared God, and did not as the king of Egypt spoke to them.[24] Instead of alehen ['to them'] we should have had 'lahen'![25] — R. Jose son of R. Hanina said: It teaches that he solicited them for immoral intercourse,[26] but they refused to yield. But saved the men children alive — A Tanna taught: Not only did they not put them to death, but they supplied them with water and food.[27] And the midwives said unto Pharaoh, Behold the Hebrew women are not as the Egyptian women etc.[28] What means hayoth?[29] If it is to say they were actually midwives,[30] do you infer that a midwife does not require another midwife to deliver her child! — But [the meaning is] they said to him, This people are compared to an animal [hayyah] — Judah [is called] a lion's whelp;[31] of Dan [it is said] Dan shall be a serpent;[32] Naphtali [is called] a hind let loose;[33] Issachar a strong ass;[34] Joseph a firstling bullock;[35] Benjamin a wolf that ravineth.[36] [Of those sons of Jacob where a comparison with an animal] is written in connection with them, it is written: but [in the instances where such a comparison] is not written, there is the text: What was thy mother? A lioness; she couched among lions etc.[37]

And it came to pass, because the midwives feared God, that He made them houses.[38] Rab and Samuel [differ in their interpretation]; one said they are the priestly and Levitical houses, and the other said they are the royal houses. One who says they are the priestly and Levitical houses: Aaron and Moses; and one who says they are the royal houses: for also David descended from Miriam, as it is written: And Azubah died, and Caleb took unto him Ephrath, which bare him Hur,[39] and it is written: Now David was the son of that Ephrathite etc.[40]

And Caleb the son of Hezron begat children of Azubah his wife and of Jerioth,' and these were her sons: Jesher and Shobab and Ardon.[41] 'The son of Hezron'? He was the son of Jephunneh![42] — [It means] that he was a son who turned [panah] from the counsel of the spies. Still, he was the son of Kenaz, as it is written: And Othniel the son of Kenaz, Caleb's younger brother, took it![43] — Raba said: He was the stepson of Kenaz.

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(1) Ibid. 13.

(2) They induced the Israelites to work by using smooth words to them.

(3) Ibid. 14.

(4) Ps. LXVIII, 14, E.V., 13.

(5) Ps. LXVIII, 14, E.V., 13. The dove is often used by the Rabbis as a symbol of Israel.

(6) Cant. VIII, 5. That is how the verb is interpreted here.

(7) Ezek. XVI, 4. There was no midwife present to cut the navel-string, nor was ordinary water used.
(8) Deut. XXXII, 13.
(9) Ps. CXXIX, 3.
(10) Ezek. XVI, 7.
(11) Ibid.
(12) Ex. XV, 2. The word 'this' implies that He had been previously seen; therefore it must have been by the former babes.
(13) Ibid. I, 15.
(14) She was Aaron's wife (Ex. VI, 23).
(15) Ibid. I, 15.
(16) Rashi explains: she uttered soothing words which induced the child to come forth. She blew a charm into the mother's ear and brought forth the child (Jast.).
(17) I.e., the prophetic gift.
(18) Ibid. 16.
(19) This word in the verse is translated birthstool.
(20) By means of this symptom they would be able to detect a mother who tried to conceal a birth.
(21) Jer. XVIII, 3 . The word for wheels is 'obnayim'.
(22) Ex. I, 16.
(23) At the time of birth (Nid. 31a).
(24) Ibid. 17.
(25) The latter is the more usual form since no direct speech follows.
(26) The preposition 'el, which occurs in the text, is employed in this sense.
(27) The text does not state, 'they did not kill'; therefore 'saved alive' is so explained.
(28) Ex. I, 19.
(29) The word in this verse translated lively.
(30) That is the significance the word has in Rabbinic Hebrew.
(31) Gen. XLIX, 9.
(32) Ibid. 17.
(33) Ibid. 21.
(34) Ibid. 14.
(35) Deut. XXXIII, 17.
(36) Gen. XLIX, 27.
(37) Ezek. XIX, 2.
(38) Ex. I, 21.
(39) I Chron.II, 19.
(40) I Sam. XVII, 12.
(41) I Chron. II, 18.
(42) V. Num. XIII, 6.
(43) Judg. I, 13.

Talmud - Mas. Sotah 12a

There is also evidence for this, since it is written, [And Caleb the son of Jephunneh] the Kenizzite.[1] Conclude, therefore, that Azubah is identical with Miriam; and why was her name called Azubah? Because all men forsook her ['azabuhah] at first.[2] 'Begat!'[3] But he was married to her! — R. Johanan said: Whoever marries a woman for the name of heaven,[4] the text ascribes it to him as though he had begotten her. 'Jerioth' — [she was so named] because her face was like curtains.[5] 'And these were her sons' — read not baneha [her sons] but boneha [her builders].[6] 'Jesher' [he was so called] because he set himself right [yishsher].[7] 'Shobab' — [he was so called] because he turned his inclination aside [shibbeb].[8] 'And Ardon' — [he was so called] because he disciplined [radah] his inclination. Others say: Because his face was like a rose [wered].

And Ashhur the father of Tekoa had two wives, Helah and Naarah.[9] Ashhur is identical with Caleb; and why was his name called Ashhur? Because his face was blackened [hushheru] through his fasts.[10] 'The father'- he became a father to her.[11] 'Tekoa'- he fixed [taka'] his heart on his Father in heaven.[12] 'Had two wives' — [this means] Miriam became like two wives. 'Helah and Naarah' — she was not both Helah and Naarah, but at first she was Helah [an invalid] and finally Naarah [a young girl].[13] And the sons of Helah were Zereth, Zohar and Ethnan.[14] 'Zereth' — [Miriam was so called] — because she became the rival [zarah] of her contemporaries [in beauty]. 'Zohar' — because her face was [beautiful] like the noon [zoharayim]. 'Ethnan' — because whoever saw her took a present ['ethnan] to his wife.[15]

And Pharaoh charged all his people.[16] R. Jose son of R. Hanina said: He imposed the same decree upon his own people.[17] R. Jose son of R. Hanina also said: He made three decrees: first, 'if it be a son, then ye shall kill him'; then 'every son that is born ye shall cast into the river'; and finally he imposed the same decree upon his own people.

And there went a man of the house of Levi.[18] Where did he go? R. Judah b. Zebina said that he went in the counsel of his daughter. A Tanna taught: Amram was the greatest man of his generation; when he saw that the wicked Pharaoh had decreed 'Every son that is born ye shall cast into the river', he said: In vain do we labour. He arose and divorced his wife.[19] All [the Israelites] thereupon arose and divorced their wives. His daughter said to him, 'Father, thy decree is more severe than Pharaoh's; because Pharaoh decreed only against the males whereas thou hast decreed against the males and females. Pharaoh only decreed concerning this world whereas thou hast decreed concerning this world and the World to Come.[20] In the case of the wicked Pharaoh there is a doubt whether his decree will be fulfilled or not, whereas in thy case, though thou art righteous, it is certain that thy decree will be fulfilled, as it is said: Thou shalt also decree a thing, and it shall be established unto thee![21] He arose and took his wife back; and they all arose and took their wives back.

And took to wife[18] — it should have read 'and took back'![22] R. Judah b. Zebina said: — He acted towards her as though it had been the first marriage; he seated her in a palanquin, Aaron and Miriam danced before her, and the Ministering Angels proclaimed, A joyful mother of children.[23]

A daughter of Levi.[18] How is this possible! She was one hundred and thirty years old, and he calls her 'a daughter'! (For R. Hama b. Hanina said: This[24] refers to Jochebed whose conception occurred during the journey [to Egypt] and her birth between the walls;[25] as it is said: Who was born to Levi in Egypt[26] — her birth occurred in Egypt but her conception did not occur there.)[27] — Rab Judah said: [She is called 'a daughter'] because the signs of maidenhood were reborn in her.[28]

And the woman conceived and bare a son.[29] But she had already been pregnant three months![30] — R. Judah b. Zebina said: It compares the bearing of the child to its conception; as the conception was painless so was the bearing painless. Hence [it is learnt] that righteous women were not included in the decree upon Eve.[31]

And when she saw him that he was good.[29] It has been taught: R. Meir says: His name was Tob [good]; R. Judah says: His name was Tobiah; R. Nehemiah says: [She foresaw that he would be] worthy of the prophetic gift; others say: He was born circumcised; and the Sages declare, At the time when Moses was born, the whole house was filled with light — it is written here, And when she saw him that he was good, and elsewhere it is written: And God saw the light that it was good.[32]

She hid him three months.[29] [She was able to do this] because the Egyptians only counted [the period of her pregnancy] from the time that she was restored [to youth], but she was then already pregnant three months.

And when she could not longer hide him[33] — why? She should have gone on hiding him! — But whenever the Egyptians were informed that a child was born, they would take other children there so that it should hear them [crying] and cry with them; as it is written: Take us the foxes, the little foxes etc.[34]

She took for him an ark of bulrushes[33] — why just bulrushes? R. Eleazar said: Hence [it is learnt] that to the righteous their money is dearer than their body;[35] and why so? — That they should not stretch out their hand to robbery.[36] R. Samuel b. Nahmani says: [She selected them] because they are a soft material which can withstand both soft and hard materials.[37]

And daubed it with slime and with pitch[38] — A Tanna taught: The slime was inside and the pitch outside so that that righteous child should not smell the bad odour.

And she put the child therein and laid it in the reeds [suf][38] — R. Eleazar said: In the Red [suf] Sea; R. Samuel b. Nahmani said:

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(1) Josh. XIV, 6, and not the son of Kenaz.

(2) She was an invalid so that nobody would marry her.

(3) The Hebrew text could be translated: and Caleb begat Azubah.

(4) From a pious motive, as in this case where through illness Miriam remained unmarried.

(5) She also is identified with Miriam. Through illness her face was pale like the colour of curtains (yeri'oth).

(6) Through them she attained the dignity of motherhood.

(7) Viz., Caleb escaped the error of the other spies.

(8) From following the rest of the spies.

(9) I Chron. IV, 5.

(10) He mortified himself to resist joining the other spies.

(11) To Miriam who, on account of illness, required constant attention.

(12) For will-power not to join in the evil report.

(13) I.e., she recovered and became young in appearance.

(14) I Chron. IV, 7.

(15) His passion was aroused by the sight of Miriam.

(16) Ex. I, 22.

(17) To kill the male children, because the astrologers had warned him that a boy was soon to be born who would overthrow him.

(18) Ex. II, 1.

(19) Since all the male children to be born would be killed, and the primary object of marriage was the procreation of sons.

(20) The drowned babes would live again in the Hereafter; but unborn children are denied that bliss.

(21) Job XXII, 28.

(22) His wife, according to the story just related.

(23) Ps. CXIII, 9.

(24) 'The daughter of Levi'.

(25) I.e., just as the caravan arrived at Egypt.

(26) Num. XXVI, 59. The Torah mentions that the Israelites numbered seventy who came to Egypt, whereas there are only sixty-nine names in the list. Hence this statement about Jochebed.

(27) From that time one hundred and thirty years had elapsed.

(28) Although so old, she became young in form and appearance.

(29) Ex. II, 2.

(30) Viz., before she was restored to youth, as will be explained.

(31) That she would bear children in pain (Gen. III, 16).

(32) Gen. I, 4.

(33) Ex. II, 3.
(34) Cant II, 15.
(35) She selected bulrushes because of their cheapness, although hard wood would have been better for the welfare of the child.
(36) They are frugal in expenditure upon their comforts so as not to be tempted to dishonesty for the gratification of their needs.
(37) Hard wood would be more easily split, whereas bulrushes yield under pressure.
(38) Ex. II, 3.

Talmud - Mas. Sotah 12b

It means reeds, as it is written: The reeds and flags shall wither away.[1]

And the daughter of Pharaoh came down to bathe at the river.[2] R. Johanan said in the name of R. Simeon b. Yohai: It teaches that she went down there to cleanse herself of her father's idols;[3] and thus it says: When the Lord shall have washed away the filth of the daughters of Zion etc.[4] And her maidens walked along etc.[5] R. Johanan said: The word for 'walk' means nothing else than death; and thus it says: Behold I am going to die.[6] And she saw the ark among the reeds.[2] When [the maidens] saw that she wished to rescue Moses, they said to her, 'Mistress, it is the custom of the world that when a human king makes a decree, though everybody else does not obey it, at least his children and the members of his household obey it; but thou dost transgress thy father's decree!' Gabriel came and beat them to the ground.

And sent her handmaid to fetch it[2] — R. Judah and R. Nehemiah [differ in their interpretation]; one said that the word means 'her hand' and the other said that it means 'her handmaid'. He who said that it means 'her hand' did so because it is written ammathah;[7] he who said that it means 'her handmaid' did so because the text has not yadah [her hand]. But according to him who said that it means 'her handmaid',it has just been stated that Gabriel came and beat them to the ground![8] — He left her one, because it is not customary for a king's daughter to be unattended. But according to him who said that it means 'her hand', the text should have been yadah! — It teaches us that [her arm] became lengthened; for a master has said: You find it so[9] with the arm of Pharaoh's daughter and similarly with the teeth of the wicked, as it is written: Thou hast broken [shibbarta] the teeth of the wicked,[10] and Resh Lakish said: Read not shibbarta but shirbabta [thou has lenghtened].[11]

She opened it and saw the child[12] — it should have been 'and saw'. R. Jose b. R. Hanina said: She saw the Shechinah with him.[13]

And, behold, the boy wept[12] — he is called a 'child' and then a 'boy'! — A Tanna taught: He was a child but his voice was like that of a grown boy; such is the view of R. Judah. R. Nehemiah said to him, If so, you have made our master Moses into one possessed of a blemish;[14] but it teaches that his mother made for him a canopy [such as is used at the marriage] of boys[15] in the ark, saying: 'Perhaps I may not be worthy [to be present at] his marriage-canopy'.

And she had compassion on him and said: Of the Hebrews' children is this.[12] How did she know it? — R. Jose b. R. Hanina said: Because she saw that he was circumcised. 'Is this' — R. Johanan said: It teaches that she unwittingly prophesied that 'this' one will fall [into the river] but no other will fall.[16] That is what R. Eleazar said: What means the text: And when they shall say unto you, Seek unto them that have familiar spirits and unto the wizards, that chirp and that mutter?[17] They foresee and know not what they foresee; they mutter and know not what they mutter. They saw that Israel's saviour would be punished through water; so they arose and decreed, Every son that is born ye shall cast into the river.[18] After they had thrown Moses [into the water], they said: 'We do not see that sign any longer';[19] they thereupon rescinded their decree. But they knew not that he was to be

punished through the water of Meribah.[20] That is what R. Hama b. Hanina said: What means the text: These are the waters of Meribah, because they strove?[21] These are [the waters] about which Pharaoh's magicians saw and erred; and concerning this Moses said: Six hundred thousand footmen etc.[22] Moses said to Israel, 'On my account were all of you delivered [from drowning by the edict of Pharaoh]'.

R. Hanina b. Papa said: That day[23] was the twenty-first of Nisan,[24] and the Ministering Angels spoke before the Holy One, blessed be He, 'Lord of the Universe! Shall he who will utter a song to Thee by the Red Sea on this day be punished on this day?' R. Aha b. Hanina said: That day was the sixth of Sivan,[25] and the Ministering Angels spoke before the Holy One, blessed be He, 'Lord of the Universe! Shall he who will receive the Torah on Mount Sinai on this day be punished on this day?' It is quite right according to him who said that it was the sixth of Sivan, for then it occurred three months [after his birth]; for a master has said: Moses died on the seventh of Adar[26] and was born on the seventh of Adar, and from the seventh of Adar to the sixth of Sivan is three months. But according to him who said that it was the twenty-first of Nisan, how could it have been?[27] — That year was a leap year;[28] the greater part of the first [Adar] and the greater part of the last [Nisan] and a full month in between.[29]

Then said his sister to Pharaoh's daughter, Shall I go and call thee a nurse of the Hebrew women?[30] Why just 'of the Hebrew women'? — It teaches that they handed Moses about to all the Egyptian women but he would not suck. He[31] said: Shall a mouth which will speak with the Shechinah suck what is unclean! That is what is written: Whom will He teach knowledge etc.?[32] — To whom will He teach knowledge and to whom will He make the message understandable? To them that are weaned from the milk, and drawn from the breasts.

And Pharaoh's daughter said unto her, Go etc.[33] R. Eleazar said: It teaches that she went quickly like a young woman.[34] R. Samuel b. Nahmani said: [She is called] the maid ['almah] because she made the words secret.[35]

And Pharaoh's daughter said unto her, Take this child away.[36] R. Hama b. Hanina said: She prophesied without knowing what she prophesied — Heliki ['take away'] — behold what is thine [ha sheliki].

And I will give thee thy wages.[36] R. Hama b. Hanina said: Not enough that the righteous have their loss restored to them but they also receive their reward in addition.

And Miriam the prophetess, the sister of Aaron, took etc.[37] The 'sister of Aaron' and not the sister of Moses! — R. Amram said in the name of Rab, and according to others it was R. Nahman who said in the name of Rab: It teaches that she prophesied while she yet was the sister of Aaron only[38]

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(1) Isa. XIX, 6.

(2) Ex. II, 5.

(3) Since immersion is part of the ceremony of conversion, it is assumed that she became a proselyte.

(4) Isa. IV, 4.

(5) Ex. II, 5.

(6) Gen. XXV, 32.

(7) The text could be read either as amathah 'her maid' or 'ammathah 'her arm'. The Targum of Onkelos renders by 'her arm'.

(8) Therefore they were all dead; so how could the princess send her handmaid?

(9) [The lengthening of a limb, v. Meg. 15b.]

(10) Ps. III, 8.

(11) [The reference is to Og, King of Bashan, v. Ber. 54b.]

(12) Ex. II, 6. The text is literally: she saw him the child.
(13) The suffix hu (him) is explained as God and the particle eth as 'with' and not the sign of the accusative: she saw Him with the child'.
(14) His voice would be abnormal, and this disqualified a Levite from the Temple-ministry.
(15) [Or. 'canopy of youth', i.e., a bridal canopy.]
(16) Because on that day the decree to drown the males was rescinded.
(17) Isa. VIII, 19.
(18) Ex. I, 22.
(19) Indicating that the peril to Pharaoh was averted by this action.
(20) [And that this was the meaning of the sign they had seen.]
(21) Num. XX. 13.
(22) Ibid. XI, 21. Footmen is in Hebrew ragli which can also mean 'for my sake'.
(23) [On which Moses was cast into the Sea.]
(24) The first month in the Jewish year. It was on that day later on that the Egyptians were drowned.
(25) The third month, the date of the Revelation.
(26) The twelfth month.
(27) The difference between the two dates is only one month and fourteen days.
(28) When a thirteenth month is inserted between Adar and Nisan.
(29) This gives in round figures the three months required.
(30) Ex. II, 7.
(31) Some authorities explain 'He' as referring to God.
(32) Isa. XXVIII, 9.
(33) Ex. II, 8.
(34) The word in the verse 'almah 'maid' is connected with its analogous root in Aramaic which means 'to be vigorous'.
(35) 'Alam means 'to hide'; she did not disclose her relationship to the child.
(36) Ex. II, 9.
(37) Ibid. XV, 20.
(38) Before Moses' birth.

Talmud - Mas. Sotah 13a

and said: 'My mother will bear a son who will be the saviour of Israel'. When Moses was born, the whole house was filled with light; and her father arose and kissed her upon her head, saying 'My daughter, thy prophecy has been fulfilled'; but when they cast him into the river, her father arose and smacked her upon her head, saying: 'Where, now, is thy prophecy!' That is what is written: And his sister stood afar off to know what would be done to him[1] — what would be the fate of her prophecy.

JOSEPH EARNED MERIT etc. Why the difference that first it is written: And Joseph went up to bury his father, and with him went up all the servants of Pharaoh etc.,[2] followed by, And all the house of Joseph, and his brethren, and his father's house,[3] and in the sequel it is written: And Joseph returned into Egypt, he and his brethren,[4] followed by, And all that went up with him to bury his father? — R. Johanan said: At first, before [the servants of Pharaoh] beheld the glory of the Israelites, they did not treat them with respect;[5] but in the sequel, when they beheld their glory, they treated them with respect. For it is written: And they came to the threshing-floor of Atad;[6] but is there a threshing-floor for brambles? — R. Abbahu said: It teaches that they surrounded Jacob's coffin with crowns like a threshing-floor which is surrounded with a hedge of brambles, because the sons of Esau, of Ishmael and of Keturah also came. A Tanna taught: They all came to wage war [against the Israelites]; but when they saw Joseph's crown hanging upon Jacob's coffin, they all took their crowns and hung them upon his coffin. A Tanna taught: Sixty-three crowns were hung upon Jacob's coffin.

And there they lamented with a very great and sore lamentation.[7] It has been taught: Even the

horses and asses [joined in the lamentation]. When [the cortege] arrived at the Cave of Machpelah, Esau came and wished to prevent [the interment there], saying to them, Mamre, Kiriath-arba, the same is Hebron[8] — now R. Isaac has said: Kiriath-arba [is so called] because four couples [were buried there], viz. Adam and Eve, Abraham and Sarah, Isaac and Rebekah, and Jacob and Leah — [Jacob] had buried Leah in his portion and what remains belongs to me'. They replied to him, 'Thou didst sell it'. He said to them, 'Granted that I sold my birth-right, but did I sell my plain heir's right!' They replied: 'Yes, for it is written: In my grave which I [Jacob] have digged for me',[9] and R. Johanan has said in the name of R. Simeon b. Jehozadak: The word kirah [dig] means nothing else than 'sale' [mekirah], and thus in the coast-towns they use kirah as a term for 'sale'. — He said to them, 'Produce a document [of sale] for me'. They replied to him, 'The document is in the land of Egypt. Who will go for it? Let Naphtali go, because he is swift as a hind'; for it is written: Naphtali is a hind let loose, he giveth goodly words[10] — R. Abbahu said: Read not 'goodly words' [imre shefer] but imre sefer [words of a document]. Among those present was Hushim, a son of Dan, who was hard of hearing; so he asked them, 'What is happening?' They said to him, '[Esau] is preventing [the burial] until Naphtali returns from the land of Egypt'. He retorted: 'Is my grandfather to lie there in contempt until Naphtali returns from the land of Egypt!' He took a club and struck [Esau] on the head so that his eyes fell out and rolled to the feet of Jacob. Jacob opened his eyes and laughed; and that is what is written: The righteous shall rejoice when he seeth the vengeance; he shall wash his feet in the blood of the wicked.[11] At that time was the prophecy of Rebekah fulfilled, as it is written: Why should I be bereaved of you both in one day?[12] Although the death of the two of them did not occur on the one day, still their burial took place on the same day. — But if Joseph had not occupied himself with [Jacob's burial] , would not his brethren have occupied themselves with it? Behold it is written: For his sons carried him into the land of Canaan![13] — They said [among themselves], 'Leave him [to conduct the interment]; for the honour [of our father] will be greater [when it is conducted] by kings than by commoners'.

WHOM HAVE WE GREATER THAN JOSEPH etc.? Our Rabbis have taught: Come and see how beloved were the commandments by Moses our teacher; for whereas all the Israelites occupied themselves with the spoil, he occupied himself with the commandments, as it is said: The wise in heart will receive commandments etc.[14] But whence did Moses know the place where Joseph was buried? — It is related that Serah, daughter of Asher, was a survivor of that generation. Moses went to her and asked: 'Dost thou know where Joseph was buried?' She answered him, 'The Egyptians made a metal coffin for him which they fixed in the river Nile so that its waters should be blessed'. Moses went and stood on the bank of the Nile and exclaimed: 'Joseph, Joseph! the time has arrived which the Holy One, blessed be He, swore, "I will deliver you", and the oath which thou didst impose upon the Israelites[15] has reached [the time of fulfilment]; if thou wilt shew thyself, well and good; otherwise, behold, we are free of thine oath'. Immediately Joseph's coffin floated [on the surface of the water]. Be not astonished that iron should float; for, behold, it is written: As one was felling a beam, the axe-head fell into the water etc. Alas, my master, for it was borrowed. And the man of God said: Where fell it? And he shewed him the place. And he cut down a stick and cast it in thither, and made the iron to swim.[16] Now cannot the matter be argued by a fortiori reasoning — if iron floated on account of Elisha who was the disciple of Elijah who was the disciple of Moses, how much more so on account of Moses our teacher! R. Nathan says: He was buried in the sepulchre of the kings; and Moses went and stood by the sepulchre of the kings and exclaimed. 'Joseph! the time has arrived which the Holy One, blessed be He, swore "I will deliver you", and the oath which thou didst impose upon the Israelites has reached [the time of fulfilment]; if thou wilt shew thyself, well and good; otherwise, behold, we are free of thine oath'. At that moment, Joseph's coffin shook, and Moses took it and carried it with him. All those years that the Israelites were in the wilderness, those two chests, one of the dead and the other of the Shechinah,[17] proceeded side by side, and passersby used to ask: 'What is the nature of those two chests?' They received the reply: 'One is of the dead and the other of the Shechinah'. 'But is it, then, the way of the dead to proceed with the Shechinah?' They were told,

(1) Ibid. II, 4.
(2) Gen. L, 7.
(3) Gen. L, 8.
(4) Ibid. 14. The order of the procession is now reversed.
(5) And proceeded in front of them.
(6) Ibid. 10. As a common noun ‘atad’ means ‘brambles’.
(7) Gen. L, 10.
(8) Ibid. XXXV, 27. Kiriath — ‘arba is literally ‘the burial of four’. He claimed that only four couples were to be buried there, and demanded the one remaining sepulchre for himself. The explanatory remark of R. Isaac is interpolated into Esau's words.
(9) Ibid. L, 5.
(10) Gen. XLIX, 21.
(11) Ps. LVIII, 11.
(12) Gen. XXVII, 45.
(13) Ibid. L, 13. It is not stated that Joseph did this.
(14) Prov. X, 8.
(15) To carry Joseph's bones out of Egypt (Exod. XIII, 19).
(16) II Kings VI, 5f.
(17) Aron means in Hebrew both an ark and a coffin. It here refers to the Ark of the Covenant.

Talmud - Mas. Sotah 13b

‘This one [Joseph] fulfilled all that was written in the other’.[1] But if Moses had not occupied himself with him, would not the Israelites have occupied themselves with him? Behold, it is written: And the bones of Joseph which the children of Israel brought up out of Egypt buried they in Shechem![2] Furthermore, if the Israelites had not occupied themselves with him, would not his own sons have done so? And, behold, it is written: And they became the inheritance of the children of Joseph![3] — They[4] said [to one another], ‘Leave him; his honour will be greater [when the burial is performed] by many rather than by few’; and they also said: ‘Leave him; his honour will be greater [when the burial is performed] by the great rather than by the small’.

Buried they in Shechem.[3] Why just in Shechem? — R. Hama son of R. Hanina said: From Shechem they stole him,[5] and to Shechem we will restore what is lost. The following verses are contradictory: it is written: And Moses took the bones of Joseph with him,[6] and it is written: And the bones of Joseph which the children of Israel brought up[7] etc.! — R. Hama son of R. Hanina said: Whoever performs a task without finishing it and another comes and completes it, Scripture ascribes it to the one who completed it as though he had performed it. R. Eleazar said: He[8] is likewise deposed from his greatness; for it is written: And it came to pass at that time that Judah went down.[9] R. Samuel b. Nahmani said: He also buries his wife and children; for it is written: Shua's daughter, the wife of Judah, died etc.,[10] and it is written: But Er and Onan died.[11]

Rab Judah said in the name of Rab: Why was Joseph called ‘bones’ during his lifetime?[12] Because he did not interfere to safeguard his father's honour when [his brothers] said to him, Thy servant our father[13] and he made no reply to them. Rab Judah also said in the name of Rab, and others declare that it was R. Hama son of R. Hanina: Why did Joseph die before his brothers? Because he gave himself superior airs.

And Joseph was brought down to Egypt.[14] R. Eleazar said: Read not ‘was brought down’ but ‘brought down’, because he brought Pharaoh's astrologers down from their eminence.[15] And Potiphar, an officer of Pharaoh's bought him, Rab said: He bought him for himself;[16] but Gabriel came and castrated him,[17] and then Gabriel came and mutilated him [pera’], for originally his name

is written Potiphar but afterwards Potiphera.[18]

WHOM HAVE WE GREATER THAN MOSES etc. And the Lord said unto me, Let it suffice thee.[19] R. Levi said: With the word 'suffice' [Moses] made an announcement and with the word 'suffice' an announcement was made to him. With the word 'suffice' he made an announcement: 'Suffice you';[20] and with the word 'suffice' an announcement was made to him: 'Let it suffice thee'. Another explanation of 'Let it suffice [rab] thee' is, Thou hast a master [rab], viz., Joshua.[21] Another explanation of 'Let it suffice thee' is, That people should not say: How severe the Master is and how persistent the pupil is.[22] And why so? In the School of R. Ishmael it was taught: According to the camel is the burden.[23]

And he said unto them, I am an hundred and twenty years old this day.[24] Why does the text state 'this day?' [The meaning is], This day are my days and years completed.[25] Its purpose is to teach you that the Holy One, blessed be He, completes the years of the righteous from day to day, and from month to month; for it is written: The number of thy days I will fulfil.[26] I can no more go out and come in[24] — what means 'go out and come in'? If it is to be understood literally, behold it is written: And Moses was an hundred and twenty years old when he died; his eye was not dim, nor his natural force abated;[27] it is also written: And Moses went up from the plains of Moab unto mount Nebo;[28] and it has been taught: Twelve steps were there, but Moses mounted them in one stride! — R. Samuel b. Nahmani said in the name of R. Jonathan: [It means] to 'go out and come in' with words of Torah, thus indicating that the gates of wisdom were closed against him. And Moses and Joshua went, and presented themselves in the tent of meeting.[29] A Tanna taught: That was a Sabbath when two teachers [gave discourses] and the authority was taken from one to be transferred to the other. It has further been taught: R. Judah said: Were it not for a Scriptural text, it would be impossible to utter the following. Where did Moses die? In the portion of Reuben, for it is written: And Moses went up from the plains of Moab unto mount Nebo, and Nebo was located in the portion of Reuben, for it is written: And the children of Reuben built . . . and Nebo etc.[30] — It was called Nebo because three prophets [nebi'im] died there, viz. Moses, Aaron, and Miriam. — And where was Moses buried? In the portion of Gad, for it is written: And he provided the first part for himself etc.[31] Now what was the distance between the portion of Reuben and that of Gad? Four mil.[32] Who carried him those four mil? It teaches that Moses was laid upon the wings of the Shechinah, and the Ministering Angels kept proclaiming, He executed the justice of the Lord, and His judgments with Israel,[33] and the Holy One, blessed be He, declared: Who will rise up for Me against the evil-doers? Who will stand up for Me against the workers of iniquity?[34]

Samuel[35] said [that God declared], Who is as the wise man? and who knoweth the interpretation of a thing?[36] R. Johanan said [that God declared], Where shall wisdom be found?[37] R. Nahman said [that God announced], So Moses died there etc.[38] Semalyon[39] said: So Moses died there, the great Sage of Israel.[40]

It has been taught: R. Eliezer the Elder said: Over an area of twelve mil square, corresponding to that of the camp of Israel, a Bath Kol made the proclamation, 'So Moses died there', the great Sage of Israel. Others declare that Moses never died; it is written here, 'So Moses died there', and elsewhere it is written: And he was there with the Lord.[41] As in the latter passage it means standing and ministering, so also in the former it means standing and ministering.

And He buried him in the valley in the land of Moab over against Beth-peor.[42] R. Berechyah said: Although [Scripture provides] a clue within a clue, nevertheless no man knoweth of his sepulchre.[42] The wicked Government once sent to

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(1) The Ark contained the tables of the Decalogue.

(2) Josh. XXIV,32.

(3) Josh. XXIV, 32.
(4) Joseph's sons.
(5) His brothers. Cf. Gen. XXXVII, 12.
(6) Ex. XIII, 19.
(7) Josh. XXIV, 32.
(8) Viz., he who does not finish his undertaking.
(9) Gen. XXXVIII, 1, i.e., descended from his greatness, because he began to rescue Joseph but did not complete it.
(10) Ibid. 12.
(11) Ibid. XLVI, 12. They were Judah's sons.
(12) Cf. L, 25.
(13) Ibid. XLIV, 31.
(14) Ibid. XXXIX, 1.
(15) He interpreted the dreams which baffled them.
(16) For an immoral purpose, being inflamed by Joseph's beauty.
(17) The word Hebrew for 'officer' also means eunuch.
(18) . Cf. Gen. XLI, 45.
(19) Deut. III, 26.
(20) Num. XVI, 3.
(21) The meaning is that his leadership was coming to an end and Joshua was about to succeed him.
(22) Do not petition Me more, lest the people make reflections on My nature.
(23) God is stricter with the righteous because their faith will stand the test.
(24) Deut. XXXI, 2.
(25) It was his birthday.
(26) Ex. XXIII, 26.
(27) Deut. XXXIV, 7.
(28) Ibid. 1.
(29) Deut. XXXI, 14.
(30) Num. XXXII. 37f.
(31) Deut. XXXIII, 21. It continues, For there was the lawgiver's portion reserved.
(32) A mil equalled 2,000 cubits, or 3,000 feet.
(33) Ibid.
(34) Ps. XCIV, 16. I.e., now that Moses is dead.
(35) The Rabbi of that name.
(36) Eccl. VIII, 1.
(37) Job XXVIII, 12.
(38) Deut. XXXIV, 5.
(39) Rashi explains it as the name of a wise man. Others take it as the designation of an angel who made the proclamation, v. Aruch.
(40) [ספרא רבא . Lit., 'the Great Scribe'. Moses is so designated because he wrote the Torah (Maharsha). Krauss, S., (Hagoren, VII, p. 32ff) attempts to connect this appellation with the mythological idea of a heavenly Scribe by the side of the Deity determining the fate of nations and individuals].
(41) Ex. XXXIV, 28. The word there is common to both verses.
(42) Deut. XXXIV, 6.

Talmud - Mas. Sotah 14a

the governor[1] of Beth-peor [the message], 'Shew us where Moses is buried'. When they stood above, it appeared to them to be below; when they were below, it appeared to them to be above. They divided themselves into two parties; to them who were standing above it appeared below, and to those who were below it appeared above. This is in fulfilment of what is said: 'No man knoweth of his sepulchre'. R. Hama son of R. Hanina said: Even Moses our teacher does not know where he is buried; it is written here, 'No man knoweth of his sepulchre', and it is written elsewhere, And this is

the blessing wherewith Moses the man of God blessed.[2] R. Hama son of R. Hanina also said: Why was Moses buried near Beth-peor? To atone for the incident at Peor.[3]

R. Hama son of R. Hanina further said: What means the text: Ye shall walk after the Lord your God?[4] Is it, then, possible for a human being to walk after the Shechinah; for has it not been said: For the Lord thy God is a devouring fire?[5] But [the meaning is] to walk after the attributes of the Holy One, blessed be He. As He clothes the naked, for it is written: And the Lord God made for Adam and for his wife coats of skin, and clothed them,[6] so do thou also clothe the naked. The Holy One, blessed be He, visited the sick, for it is written: And the Lord appeared unto him by the oaks of Mamre,[7] so do thou also visit the sick. The Holy One, blessed be He, comforted mourners, for it is written: And it came to pass after the death of Abraham, that God blessed Isaac his son,[8] so do thou also comfort mourners. The Holy one, blessed be He, buried the dead, for it is written: And He buried him in the valley,[9] so do thou also bury the dead.

'Coats of skin' — Rab and Samuel [differ in their interpretation]; one said that it means a material that grows from the skin, and the other a material from which the [human] skin derives pleasure.[10]

R. Simlai expounded: Torah begins with an act of benevolence[11] and ends with an act of benevolence. It begins with an act of benevolence, for it is written: And the Lord God made for Adam and for his wife coats of skin, and clothed them;[12] and it ends with an act of benevolence, for it is written: 'And He buried him in the valley'.

R. Simlai expounded: Why did Moses our teacher yearn to enter the land of Israel? Did he want to eat of its fruits or satisfy himself from its bounty? But thus spake Moses, 'Many precepts were commanded to Israel which can only be fulfilled in the land of Israel. I wish to enter the land so that they may all be fulfilled by me'. The Holy One, blessed be He, said to him, 'Is it only to receive the reward [for obeying the commandments] that thou seekest? I ascribe it to thee as if thou didst perform them'; as it is said: Therefore will I divide him a portion with the great, and he shall divide the spoil with the strong; because he poured out his soul unto death, and was numbered with the transgressors; yet he bare the sins of many, and made intercession for the transgressors.[13] 'Therefore will I divide him a portion with the great' — it is possible [to think that his portion will be] with the [great of] later generations and not former generations; therefore there is a text to declare, 'And he shall divide with the strong', i.e., with Abraham, Isaac and Jacob who were strong in Torah and the commandments. 'Because he poured out his soul unto death' — because he surrendered himself to die, as it is said: And if not, blot me, I pray thee etc.[14] 'And was numbered with the transgressors' — because he was numbered with them who were condemned to die in the wilderness. 'Yet he bare the sins of many' — because he secured atonement for the making of the Golden Calf. 'And made intercession for the transgressors' — because he begged for mercy on behalf of the sinners in Israel that they should turn in penitence; and the word pegi'ah ['intercession'] means nothing else than prayer, as it is said: Therefore pray not thou for this people, neither lift up cry nor prayer for them, neither make intercession to Me.[15]

CHAPTER II

MISHNAH. [THE HUSBAND] BRINGS HER MEAL-OFFERING[16] IN A BASKET OF PALM-TWIGS AND PLACES IT UPON HER HANDS IN ORDER TO WEARY HER. WITH ALL OTHER MEAL-OFFERINGS, THE BEGINNING AND END OF THEIR [SACRIFICE] ARE IN MINISTERING VESSELS; BUT WITH THIS, ITS BEGINNING IS IN A BASKET OF PALM-TWIGS AND ITS END IN A MINISTERING VESSEL. ALL OTHER MEAL-OFFERINGS REQUIRE OIL AND FRANKINCENSE, BUT THIS REQUIRES NEITHER OIL NOR FRANKINCENSE. ALL OTHER MEAL-OFFERINGS CONSIST OF WHEAT, BUT THIS CONSISTS OF BARLEY. THE MEAL-OFFERING OF THE 'OMER,[17] ALTHOUGH

CONSISTING OF BARLEY, WAS IN THE FORM OF GROATS; BUT THIS WAS IN THE FORM OF COARSE FLOUR. RABBAN GAMALIEL SAYS: AS HER ACTIONS WERE THE ACTIONS OF AN ANIMAL, SO HER OFFERING [CONSISTED OF] ANIMAL'S FODDER.GEMARA. It has been taught: Abba Hanin says in the name of R. Eliezer: What is the purpose [of placing the basket upon her hands]? In order to weary her so that she may retract.[18] If the Torah has such consideration[19] for them who transgress His will, how much more so for them who perform His will. But whence is it [known that the object of this regulation is] to show consideration; perhaps it is to avoid [the Divine Name on] the scroll being obliterated? — He is of the opinion

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(1) This is Rashi's explanation of the word gastera. Goldschmidt, accepting it, identifies it with the latin quaestor; but Jastrow and Krauss render 'camp', connecting it with castra.

(2) Ibid. XXXIII, 1. The word 'man' is common to both passages.

(3) V. Num. XXV, 1 ff.

(4) Deut. XIII, 5.

(5) Ibid. IV, 24.

(6) Gen. III, 21.

(7) Ibid. XVIII, 1. Since the preceding verses deal with Abraham's circumcision, it is deduced that the occasion was when he was recovering.

(8) Gen. XXV, 11.

(9) Deut. XXXIV, 6.

(10) I.e., wool and linen respectively.

(11) [Gemiluth hasadim, lit., 'doing deeds of loving kindness'. The inner meaning of the phrase is 'making good', 'requiting' — a making good to man for the goodness of God and it is connected with tenderness and mercy to all men and all classes. V. J. Pe'ah. IV.]

(12) Gen. III, 21.

(13) Isa. LIII, 12.

(14) Ex. XXXII, 32.

(15) Jer. VII, 16. [It is suggested that the application of these verses to Moses was a tacit parrying of the use made of that passage by Christian apologists. V. Moore, Judaism III, p. 166, n.254.]

(16) Num. V, 15.

(17) Lev. II, 14. The Talmud (Men. 68b) argues that it consisted of barley.

(18) And confess, if guilty.

(19) In its endeavour to make the woman avoid the serious consequences of drinking the water.

Talmud - Mas. Sotah 14b

that she is first given the water to drink and then the offering is sacrificed,[1] so that if it be [suggested that the reason is] because of the scroll, [the writing] has already been obliterated.

WITH ALL OTHER MEAL-OFFERINGS etc. The following is quoted in contradiction: How is the procedure of meal-offerings? A man brings a meal-offering from his house[2] in silver or golden baskets, places it in a ministering vessel, hallows it in a ministering vessel, adds to it its oil and frankincense, and carries it to a priest who carries it to the altar and brings it near unto the south-west corner opposite the point of the altar's horn, and that suffices. He then moves the frankincense to one side [of the vessel], takes a handful [of the flour] from a place where its oil is abundant, sets it in a ministering vessel, hallows it in a ministering vessel, gathers its frankincense and places it on the top thereof, and sets it upon the altar and fumigates it in a ministering vessel. He next salts [the handful of flour] and sets it upon the fire. When the handful has been offered, the remainder may be eaten, and the priests are allowed to mix it with wine, oil and honey, and are only forbidden to make it leaven.[3] Now here it is taught that [meal-offerings are brought only] in silver or golden baskets![4] — R. Papa said: The correct version [of the Mishnah] is: in vessels which are proper to be used as ministering vessels. It therefore follows that a basket of palm-twigs is not proper to be used as a

vessel. This would not agree with the view of R. Jose son of R. Judah; for it has been taught: As regards a ministering vessel of wood, Rabbi disqualifies it but R. Jose son of R. Judah allows it! — If you wish you may say that it is in accord even with the view of R. Jose son of R. Judah, because he is referring to [wooden vessels which are] valuable, but does he say that with regard to [wooden vessels which are] inferior![5] Does R. Jose son of R. Judah not hold with the text: Present it now unto thy governor?[6]

'Places it in a ministering vessel and hallows it in a ministering vessel'. Is the conclusion to be drawn from this that the ministering vessels only hallow when such is the intention![7] — The correct version is: places it in a ministering vessel in order to hallow it in a ministering vessel. 'Adds to it its oil and frankincense'; as it is said: He shall pour oil upon it, and put frankincense thereon.[8] 'And carries it to a priest'; for it is written: And he shall bring it to Aaron's sons etc.[9] 'Who carries it to the altar'; for it is written: And he shall bring it unto the altar.[10] Brings it near unto the south-west corner opposite the point of the altar's horn, and that suffices'. Whence is this? — For it is written: And this is the law of the meal-offering: the sons of Aaron shall offer it before the Lord, before the altar;[11] and it has been taught: 'Before the Lord' — it is possible [to think that this means] on the west [side of the altar],[12] therefore the text declares, 'Before the altar'.[13] If [Scripture only had] 'before the altar', it is possible [to think that this means] on the south side, therefore the text declares, 'Before the Lord'. So what was the procedure? He sets it on the south-west corner opposite the point of the altar's horn, and that suffices. R. Eleazar says: It is possible [to think that the meaning is] he sets it on the west of the horn or the south of the horn; but you can answer: Wherever you find two texts, one self-confirmatory and confirming the words of the other, whereas the second is self-confirmatory but annuls the words of the other, we abandon the latter and accept the former. Thus when you emphasize 'before the Lord' on the west [side of the altar],[14] you annul 'before the altar' on the south side;[15] but when you emphasize 'before the altar' on the south side,[14] you confirm 'before the Lord' on the west side.[14] What, then, is the procedure? He brings it on the south of the horn. But how do you confirm it?[16] — R. Ashi said: This Tanna holds that the whole of the altar stood in the north.[17]

What means 'and that suffices'?[18] — R. Ashi said: It was necessary [to mention this], because otherwise it may have occurred to me to say that the bringing of the meal-offering itself [to the altar without the ministering vessel] is required. Consequently we are informed [that the contrary is the correct procedure]. But say that it is really so [and the ministering vessel is not necessary]! — The text states: And it shall be presented unto the priest, and he shall bring it unto the altar[19] — as the presentation to the priest is in a [ministering] vessel, so also the bringing to the altar must be in a [ministering] vessel.

'He then moves the frankincense to one side [of the vessel]', so that none of it may be included in the handful taken of the meal-offering; as we have learnt: If, when he took a handful, there came into his hand a pebble or particle of salt or grain of frankincense, it is disqualified.[20] 'Takes a handful [of flour] from a place where its oil is abundant' — whence is this? For it is written: Of the fine flour thereof and of the oil thereof;[21] of the bruised corn thereof and of the oil thereof.[22] 'Sets it in a ministering vessel and hallows it in a ministering vessel' — for what purpose, since he has already hallowed it once? — It is analogous to the case of blood: although the knife[23] hallows it in the animal's neck, [the priest] again hallows it in a ministering vessel;[24] so here, too, there is no difference. 'Gathers its frankincense and places it on the top thereof; for it is written: And all the frankincense which is upon the meal-offering.[25] 'And sets it upon the altar

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(1) This question is discussed infra 19a. The effects of the water take place only after the offering of the meal-offering.

(2) To the Temple-court.

(3) V. Tosefta Men. I, 16f. The whole passage is explained anon.

(4) And not in ministering vessels as taught in the Mishnah.

(5) E.g., of palm-twigs.
(6) Mal. I, 8. The context is a denunciation of offering inferior animals. The same rule applies to vessels used in the Temple.
(7) On this there is a difference of opinion, one being that the vessels automatically hallow their contents, v. Men. 7a.
(8) Lev. II, 1. This is done by the person who presents the offering.
(9) Ibid. 2.
(10) Ibid. 8.
(11) Ibid. VI, 7, E.V. 14.
(12) Since this side faced the Holy of Holies which was located in the west of the Temple-area.
(13) Lit., 'before the face of the altar'. I.e., the face of the altar which was towards the south. [Since the north side of the altar was designated 'the side' יֶרֶךְ , i.e., the rear (v. Lev. I. 11) the face of the altar must denote the south side.]
(14) V. note 6.
(15) V. note 7.
(16) If the meal-offering is to be brought to the south side of the altar, it is not opposite the entrance of the Sanctuary, which is on the West.
(17) Of the Temple-area. So that the south of the altar faced the entrance of the Sanctuary and is thus described as 'before the Lord'.
(18) What else could he think was necessary?
(19) Lev. II, 8.
(20) As not being a complete handful.
(21) Ibid. 2.
(22) Ibid. 16.
(23) Which is regarded as a utensil of the Sanctuary.
(24) I.e., the basin in which the blood is received.
(25) Lev. VI, 8, E.V. 15.

Talmud - Mas. Sotah 15a

and fumigates it in a ministering vessel'. He fumigates it in a ministering vessel' [you say]![1] — The correct version is: and sets it upon the altar in a ministering vessel to fumigate it. He next salts [the handful of flour] and sets it upon the fire'; for it is written: And every oblation of thy meal-offering shalt thou season with salt.[2] 'When the handful has been offered, the remainder may be eaten'. Whence is this? — For it is written: And the priest shall burn the memorial of it etc.,[3] and it is written: And that which is left of the meal-offering shall be Aaron's and his sons'.[4] 'When the handful has been offered etc.' — this[5] is differently explained by two teachers; for it has been reported: From what time does the taking of the 'handful' render the eating of the remainder permissible? R. Hanina says: When the fire takes hold of it; R. Johanan said: When the fire burns the greater part of it. 'And the priests are allowed to mix it with wine, oil and honey' — for what reason? The text states: By reason of the anointing,[6] i.e., as a mark of eminence, in the same manner as kings take their food. 'And are only forbidden to make it leaven'; for it is written: It shall not be baked with leaven, their portion[7] — R. Simeon b. Lakish says: [It means] that even their portion must not be baked with leaven.

WITH ALL OTHER MEAL-OFFERINGS etc. But do all other meal-offerings[8] require oil and frankincense? Behold, there is the meal-offering of the sinner concerning which the All-Merciful said: He shall put no oil upon it, neither shall he put any frankincense thereon![9] — This is what he intends: All other meal-offerings require oil and frankincense, and consist of wheat in the form of fine flour; but the meal-offering of the sinner, although it does not require oil and frankincense, consists of wheat in the form of fine-flour; the meal-offering of the 'omer, although it consists of barley, requires oil and frankincense and is in the form of groats; but this one [of the suspected woman] does not require oil and frankincense, and consists of barley in the form of coarse flour.

It has been taught: R. Simeon said: It is right that the meal-offering of a sinner should require oil and frankincense, so that a sinner should not gain;[10] why, then, are they not required? That his offering should not be luxurious. It is also right that an ordinary sin-offering[11] should require drink-offerings, so that a sinner should not gain; why, then, are they not required? That his offering should not be luxurious. The sin-offering of a leper, however, and his trespass-offering do require drink-offerings because they are not due to sin. But that is not so; for, behold R. Samuel b. Nahmani said in the name of R. Jonathan: On account of seven faults does the plague of leprosy occur etc.![12] — In this case he received atonement [of his sin] by the plague[13] he suffered; and when he brings an offering, it is only to allow him to participate in what is holy.[14] According to this conclusion, the sin-offering of a Nazirite should require drink-offerings, since it is not due to a sin! He holds with R. Eliezer ha-Kappar who said: A Nazirite is also a sinner.[15]

RABBAN GAMALIEL SAYS, AS etc. It has been taught: Rabban Gamaliel[16] said to the Sages: Learned men, permit me to explain this allegorically.[17]

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(1) [Surely the fumigation does not take place at this stage! Rashi deletes the words 'in a ministering vessel', as the question is concerned only with the act of fumigation].

(2) Lev. II, 13.

(3) Ibid. 16.

(4) Ibid. 10.

(5) The meaning of the term offered used in this connection.

(6) Num. XVIII, 8. Anointing occurred at the induction of a priest and a king.

(7) Lev. VI, 10.

(8) With the exception of that of the suspected woman.

(9) Ibid. V, 11.

(10) By being spared the cost of these ingredients.

(11) Lit., 'sin-offering of (forbidden) fat', because the words ye shall eat neither fat nor blood (Lev. III, 16) are followed by Chap. IV which deals with the sin-offering.

(12) Enumerated in 'Ar. 16a, v. Shebu. 8a.

(13) Suffering, according to the Rabbis, is a means of atonement.

(14) The offerings were purificatory in their intention, and unlike an ordinary sin-offering, which is brought in expiation.

(15) Because he abstained from wine. V. Naz. 22a.

(16) [Apparently Gamaliel III, the son of R. Judah ha-Nasi, a contemporary of R. Meir; v. Chayes. Z.H., notes; and Lauterbach, JQR (N.S.), I, p. 514, where the whole passage is discussed. V. also Wahrmann, Untersuchungen, I, p. 26ff.]

(17) חמר For the term here used, v. Lauterbach op. cit. I 291ff,, 503ff, especially p. 509 and Kid. 22b.

Talmud - Mas. Sotah 15b

He had heard R. Meir say: She fed him with the dainties of the world; therefore her offering is animal's fodder.[1] Then said he to him, You may be right about a rich woman, but what of a poor woman! But [the reason is], As her actions were the action of an animal, so her offering [consisted of] animal's fodder.

MISHNAH. [THE PRIEST] TAKES AN EARTHENWARE BOWL AND POURS HALF A LOG OF WATER INTO IT FROM THE LAVER. R. JUDAH SAYS: A QUARTER [OF A LOG]. JUST AS [R. JUDAH] REDUCES THE AMOUNT OF WRITING,[2] SO HE REDUCES THE QUANTITY OF WATER. [THE PRIEST] ENTERS THE TEMPLE AND TURNS RIGHT. THERE WAS A PLACE THERE A CUBIT SQUARE IN EXTENT WITH A MARBLE TABLET, TO WHICH A RING WAS ATTACHED. HE LIFTS THIS OUT, TAKES SOME DUST FROM BENEATH IT WHICH HE PUTS [INTO THE BOWL] JUST SUFFICIENT TO BE VISIBLE ABOVE THE WATER; AS IT IS SAID, AND OF THE DUST THAT IS ON THE FLOOR OF THE TABERNACLE THE PRIEST SHALL TAKE, AND PUT IT INTO THE WATER.[3]

GEMARA. A Tanna taught: [The priest takes] a new earthenware bowl — such is the opinion of R. Ishmael. What is R. Ishmael's reason?[4] — He derives it from the common use of the word 'vessel' [here and in the law] of a leper. As with the latter new earthenware was required, so here likewise was new earthenware required. Whence is it that there [with a leper it must be new]? — For it is written: And the priest shall command to kill one of the birds in an earthen vessel over running water[5] — as it must be running water which has not been previously used, so also it must be a vessel which has not been previously used. According to this argument, as there [with a leper] it had to be running water, so also here [with a suspected woman] it had to be running water! — In the view of R. Ishmael that is indeed so; for R. Johanan said the water from the laver[6] was according to R. Ishmael spring-water, and the Sages declare that it can be ordinary water. It may, however, be objected [to this argument] that as with a leper it is necessary to have cedar wood, hyssop and scarlet,[7] [so are these required with the water of bitterness]![8] — Rabbah said: The text mentions in an earthen vessel,[9] i.e., a vessel to which I referred previously.[10] Raba said: [The Rabbis in our Mishnah] did not teach [that a used vessel may be employed] except when its exterior is not blackened [by smoke]; but if its exterior is blackened it is unfit for use. What is their reason? — It is analogous to the water: just as the water must not be changed in appearance,[11] so also the vessel must not be changed in appearance. Raba asked: How is it if the earthenware had been blackened and re-whitened by being passed through the furnace again? Do we say that since it has once been rejected, it remains rejected; or perhaps, since it has been restored, it is suitable? — Come and hear: 'R. Eleazar says: If a man twisted cedar wood, scarlet and hyssop into a cord for the purpose of carrying his bundle on his back, they are unfit [to be used in the ceremony of purification];' and yet they are here again smoothed out![12] But in that case we suppose that [some of the material] has been peeled off.[13]

[THE PRIEST] ENTERS THE TEMPLE AND TURNS RIGHT etc. For what reason? Because a Master has declared: All the turns which thou dost make must only be to the right.

THERE WAS A PLACE THERE A CUBIT etc. Our Rabbis have taught: 'And of the dust that is etc.' — it is possible to think that [the priest] may prepare [dust] from outside and bring it in; therefore there is a text to state, 'On the floor of the tabernacle'. If 'on the floor of the tabernacle', it is possible to think that he may dig for it with an axe; therefore there is a text to state 'that is'. How was it done? If [dust] is there, take of it; if none is there, put some there [and take of it]. Another [Baraitha] taught: 'And of the dust that is' — this teaches that he prepares some from outside and brings it in. 'On the floor of the tabernacle' — Issi b. Judah says: It includes the floor

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(1) V. supra p. 75.

(2) V. next Mishnah, p. 87.

(3) Num. V, 17.

(4) For requiring a new bowl.

(5) Lev. XIV, 5.

(6) [Which water was used for the water of bitterness.]

(7) V. ibid. 4.

(8) The Torah does not require these things, and so the analogy is false.

(9) [And not 'he shall take a vessel and put in it etc.']

(10) Viz., in the law of the leper. Hence it is established that a new vessel is also necessary in the ceremony of the water of bitterness.

(11) Although they do not insist on running water, it must not be discoloured by dirt.

(12) When they are disconnected. So by analogy the earthenware cannot be made fit for use by re-whitening.

(13) While it was used as a cord; therefore the restoration is not complete. But in the case of the vessel there is complete restoration and so it is allowed.

[of the Tabernacle] in Shiloh, Nob, Gideon and the permanent Temple; Issi b. Menahem says: It is unnecessary [to include the permanent Temple];[1] if in the case of a minor defile ment[2] Scripture does not differentiate [between the temporary Tabernacle and the permanent Temple], in the case of the defilement of a married woman[3] how much more so [is it unnecessary to differentiate]. Why, then, does the text state 'on the floor of the tabernacle'? He may not take it from the midst of a heap.[4]

The following question was asked: If there is no dust, how is it about putting ashes there? According to the view of Beth Shammai, the question does not arise because they said that we never find ashes called dust; but the question does arise according to the view of Beth Hillel because they said that we do find ashes called dust.[5] How is it then? Although the word 'dust' is used, it is here written 'on the floor of the tabernacle';[6] perhaps, however, the phrase 'on the floor of the tabernacle' is intended to be understood according to the interpretation of Issi b. Judah and Issi b. Menahem?[7] — Come and hear: for R. Johanan said in the name of R. Ishmael: In three places the halachah crushes the Scriptural text under heel:[8] the Torah states with dust,[9] whereas the halachah allows [the blood to be covered] with anything; the Torah states no razor,[10] whereas the legal decision is [that a Nazirite may not shave] with anything; the Torah states a book,[11] whereas the legal decision [allows] any [form of document]. Now if this[12] is so, it should also have been enumerated! — He taught [some instances] and omitted others. What else, then, did he omit?[13] — He omitted [the shaving] of a leper;[14] for it has been taught: And it shall be on the seventh day that he shall shave all his hair — that is a generalization; off his head and his beard and his eyebrows — that is a particularization; even all his hair he shall shave off[15] — that is again a generalization. Now [the rule of exegesis is]: when there is a general proposition, followed by the enumeration of particulars, and this is followed by a general proposition, include only that which resembles the particulars.[16] As the particulars refer to a part [of the body] where the hair grows and is visible, so every place where the hair grows and is visible [comes within the scope of the law]. What does it include? It includes the hair on the private part. What does it exclude? It excludes that of the arm-pit and the whole body [which is normally covered]. The halachah, however, is: he shaves himself as smooth as a gourd.[17] For we have learnt: When [the priest] comes to shave the leper, he passes a razor over all his flesh;[18] and it continues,[19] On the seventh day he shaves[20] the second shaving after the manner of the first.[21] R. Nahman b. Isaac said: [R. Johanan] enumerated instances where the halachah crushes the Scriptural text under heel; but here it crushes a Rabbinical teaching[22] under heel.[23] R. Papa said: [R. Johanan] enumerated instances where the halachah crushes the Scriptural text under heel and overthrows it; but here it crushes the text under heel and extends it.[24] R. Ashi said: According to whom is this teaching [that only the visible parts of the body are to be shaved]? It is R. Ishmael who expounds [the Torah] by the rule of generalization and particularization.[25]

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(1) In Jerusalem.

(2) I.e., entrance into the Temple-precincts while ritually unclean. This is not an offence punished by a Court with death.

(3) Which is a capital crime.

(4) It must first be scattered on the floor. [In contradiction to the second Baraitha cited which permits the bringing in dust from elsewhere and putting it forthwith into the water].

(5) This matter, with reference to covering the blood after slaughter of an animal, is discussed in Hul. 88b.

(6) So it is impossible to think that ashes could be meant.

(7) If these words intend the inclusion of temporary Sanctuaries and the Temple, then 'dust' could here signify ashes.

(8) I.e., practice goes beyond the letter of the Torah.

(9) Lev. XVII, 13.

(10) Num. VI, 5.

(11) So literally, of a letter of divorcement (Deut. XXIV, I).

(12) The use of ashes instead of dust.

(13) [He would not in enumeration just stop short at one point.]

(14) This refers to the second act of shaving. The leper was shaved twice; see Lev. XIV, 8 and 9.
(15) Lev. XIV, 9.
(16) V. Shebu (Sonc. ed.) p. 13, n. 3.
(17) I.e., all over his body.
(18) Neg. XIV. 2.
(19) Ibid 3.
(20) [This is a reading of Rashi which is preferable to that of the cur. edd: 'on the seventh day he shall shave', as this is a quotation of Neg. XIV. 3.]
(21) Over all the body.
(22) [A teaching derived from Rabbinic exegesis. MS.M. reads 'Midrash'; v. Chajes, Z.H. ntes.]
(23) And therefore R. Johanan's list of three cases is complete.
(24) [By shaving the whole body the demands of the text are not set aside but extended.]
(25) He elaborated thirteen rules of interpretation, and that quoted above is one of them. [And so according to R. Ishmael in whose name the above enumeration was reported by R. Johanan the list is complete].

Talmud - Mas. Sotah 16b

According to whom [is the teaching that he must be shaved the second time] as smooth as a gourd? It is R. Akiba who expounds [the Torah] by the rule of amplification and limitation; for it has been taught: 'And it shall be on the seventh day that he shall shave all his hair' — that is an amplification; 'off his head and his beard and his eyebrows' — that is a limitation; 'even all his hair he shall shave off — that is again an amplification. Now [the rule of exegesis is]: Where there is an amplification, followed by a limitation, and this is followed by an amplification, the amplification applies to the whole. In which respect is there an amplification? It includes all the body [to be shaved]. In which respect is there a limitation? It excludes the hair which grows inside the nostril. How is it, then, with our original question [whether ashes may be used when there is no dust]? — Come and hear: For R. Huna b. Ashi said in the name of Rab: If there is no dust there, he brings decayed herbage and hallows it! — But this is no proof. Decayed herbage may indeed be [called] dust but not ashes.

JUST SUFFICIENT TO BE VISIBLE ABOVE THE WATER. Our Rabbis have taught: Three things must be visible, viz., the dust in the ceremony of the suspected woman, the ashes in the ceremony of the red heifer[1] and the spittle in the ceremony of Halizah.[2] They said in the name of R. Ishmael, Also the blood of the bird.[3] What is R. Ishmael's reason? — Because it is written: And shall dip them in the blood of the bird etc.;[4] and it has been taught: 'in the blood' — it is possible [to think that they must be dipped] in blood and not in water; therefore the text declares '[over the running] water'. If Scripture [had only mentioned] 'water', it would be possible [to think that they must be dipped] in water and not in blood; therefore the text declares 'in the blood'. What, then, was the procedure? He brings water in which the blood of the bird is recognisable. What is the quantity? A quarter [of a log]. And [why is this instance not included in their enumeration by] the Rabbis? — That is part of the subject-matter; for thus said the All-Merciful, Dip in blood and water.[5] [How is this argument met by] R. Ishmael? — In that case, the All-Merciful should have written: 'And he shall dip in them'; so why [is it stated] in blood and in water? That [the blood] must be recognisable. And [how is this argument met by] the Rabbis? — If the All-Merciful had written: 'And he shall dip in them', I might have imagined [that he was to dip] in each separately; therefore He wrote 'in blood and in water' to indicate that they must be mixed. [How does] R. Ishmael [answer this point]? That they are to be mixed [is learnt from] another verse; it is written: And kill one of the birds in an earthen vessel over running water.[6] [How do] the Rabbis [answer this point]? — If [we had to learn it] from that passage, we might have thought that he is to kill it near a vessel, press the jugular veins,[7] and receive the blood in another vessel. Hence we are informed [by this verse that the killing must be done over the vessel containing the water].

R. Jeremiah asked R. Zera, How is it if [the bird] was so big that [its blood] effaced [all trace of]

the water, or if it was so small that [all trace of its blood] was effaced by the water? He answered: Have I not told thee not to take thyself beyond the legal decision?[8] The Rabbis estimated [the quantity of a quarter of a log] by a free bird;[9] and this is never so big that [its blood] should efface [all trace of] the water, nor so small that [all trace of its blood] should be effaced by the water.

Our Rabbis have taught: If he put the dust [in the bowl] before the water, it is invalid; but R. Simeon allows it. What is the reason of R. Simeon? — Because it is written: And for the unclean they shall take of the dust of the burning of the sin-offering;[10] and it has been taught: R. Simeon said: Was it dust and not ashes? The text changes the expression to indicate that a conclusion was to be drawn from it by the rule of analogy: it is mentioned here 'dust', and there [in the ceremony of the suspected woman] it is also mentioned 'dust'; as in the second instance the dust had to be placed over the water,[11] so also here the dust had to be placed over the water; and further, as it is valid here if he put the dust on before the water, so also there [in the ceremony of the suspected woman] it is valid if he put the dust on before the water.[12] Whence is this derived there [in the rite of the red heifer]? — There are two texts: It is written thereto,[13] consequently the ashes are first; and it is written running water in a vessel, consequently the water is first. So what was the procedure? He can put either in first. [How is this interpretation answered by] the Rabbis?[14] — 'In a vessel' — precisely so;[15] 'thereto'- that they are to be mixed. But say rather that 'thereto' means precisely so;[16] and 'in a vessel' means that the water must be poured directly into the vessel from the spring![17] — As we find that everywhere it is the qualifying element which is on top,[18] so also here[19] the qualifying element must be on top.

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(1) Num. XIX.

(2) V. Glos.

(3) Used in the purificatory rites of a leper.

(4) Lev. XIV, 6.

(5) So long as there is some blood in the water, even if it cannot be distinguished.

(6) Lev. XIV, 5.

(7) So that no blood escapes while carrying it to the other vessel.

(8) Not to raise questions about exaggerated points in connection with the decisions.

(9) Such as flies in and out of a house. [A swallow; v. Lewysohn Zoologic, p. 206ff].

(10) Num. XIX, 17. The text has the word for dust, not 'ashes'.

(11) As stated in Num. V, 17.

(12) As explained anon.

(13) Ibid., running water shall be put thereto.

(14) Who declare that the rite is invalid if the dust is placed in the bowl before the water.

(15) I.e., the water must be poured in first.

(16) The water to be poured on the ashes.

(17) It must be running water, and not poured from another vessel.

(18) [In the case of a suspected woman, and of a leper, the qualifying elements — i.e., the dust which gives the water of bitterness its efficacy and the blood of the bird — must be placed on top as indicated by the plain meaning of the Scriptural texts: Num. V, 17, and Lev. XIV, 6.]

(19) With the ashes of the red heifer.

Talmud - Mas. Sotah 17a

MISHNAH. WHEN HE COMES TO WRITE THE SCROLL, FROM WHAT PLACE DOES HE WRITE? FROM IF NO MAN HAVE LAIN WITH THEE[1] . . . BUT IF THOU HAST GONE ASIDE, BEING UNDER THY HUSBAND ETC.[2] HE DOES NOT, HOWEVER, INCLUDE, THEN THE PRIEST SHALL CAUSE THE WOMAN TO SWEAR,[3] BUT CONTINUES WITH, THE LORD MAKE THEE A CURSE AND AN OATH . . . AND THIS WATER THAT CAUSETH THE CURSE SHALL GO INTO THY BOWELS AND MAKE THY BELLY TO SWELL, AND THY THIGH TO FALL AWAY.[4] HE DOES NOT, HOWEVER, INCLUDE, AND THE WOMAN SHALL SAY, AMEN, AMEN. R. JOSE SAYS, HE MAKES NO OMISSIONS.[5] R. JUDAH SAYS, HE WRITES NONE OF ALL THIS EXCEPT, THE LORD MAKE THEE A CURSE AND AN OATH ETC. AND THIS WATER THAT CAUSETH THE CURSE SHALL GO INTO THY BOWELS ETC. AND DOES NOT INCLUDE, AND THE WOMAN SHALL SAY, AMEN, AMEN.

GEMARA. On what point do they differ? — They differ in [the interpretation of] the following verse: And the priest shall write these curses in a book.[6] R. Meir[7] is of the opinion that curses denotes [the passages which are] actually curses;[8] the curses[9] is to include the curses which result from the benedictions;[10] 'these' is to exclude the curses in Deuteronomy;[11] 'the these' is to exclude instructions [given to the officiating priest] and the responses of Amen [made by the woman]. R. Jose agrees with all that has been stated, except that he interprets the particle 'eth[12] as indicating the inclusion of instructions and responses, whereas R. Meir draws no deductions from the occurrences of the particle 'eth. R. Judah, on the other hand, expounds all the above points as implying limitation; 'curses' denotes [the passages which are] actually curses; 'the curses' is to exclude the imprecations which result from the benedictions; 'these' is to exclude the imprecations in Deuteronomy; 'the these' is to exclude instructions and responses. What is the difference that R. Meir interprets the definite article [in the curses] as implying amplification and the definite article [in the these] as implying limitation? — When the definite article occurs in connection with amplification[13] it also denotes amplification, and when it occurs in connection with limitation[14] it also denotes limitation. But R. Meir does not accept the rule that an affirmative is to be deduced as the corollary of a negative![15] — R. Tanhum said: It is written hinnaki.[16]

R. Akiba expounded: When husband and wife are worthy, the Shechinah abides with them; when they are not worthy fire consumes them.[17] Raba said: [The fire which results] from the woman is severer than that from the man.[18] What is the reason? In the case of the former [the letters aleph and shin] are consecutive, but not in the case of a man.[19]

Raba said: Why does the Torah command that dust should be provided for [the ceremony of] a suspected woman? If she be innocent, there will issue from her a son like our father Abraham, of whom it is written: Dust and ashes;[20] and if she be not innocent, she reverts to dust.[21]

Raba expounded: As a reward for our father Abraham having said: 'I am but dust and ashes', his descendants were worthy to receive two commandments, viz., the ashes of the red heifer and the dust [of the ceremony] of a suspected woman. But there is likewise dust for the covering of the blood![22] — In this case [the use of dust is merely] the completion of the commandment without any advantage [to the performer].[23]

Raba expounded: As a reward for our father Abraham having said: I will not take a thread nor a shoelatchet,[24] his descendants were worthy to receive two commandments, viz.,the thread of blue[25] and the thong of the phylacteries. It is right in the case of the thong of the phylacteries, for it is written: And all the peoples of the earth shall see that thou art called by the name of the Lord,[26] and it has been taught: R. Eliezer the Elder says: This refers to the phylactery worn upon the head;[27] but

what is [the advantage to him who performs the law] of the thread of blue? — It has been taught: R. Meir used to say: Why is blue specified from all the varieties of colours? Because blue resembles [the colour of] the sea, and the sea resembles [the colour of] heaven, and heaven resembles [the colour of] the Throne of Glory, as it is said: And they saw the God of Israel and there was under His feet as it were a paved work of sapphire stone, and as it were the very heaven for clearness,[28] and it is written: The likeness of a throne as the appearance of a sapphire stone.[29]

MISHNAH. HE WRITES NEITHER ON A [WOODEN] TABLET NOR ON PAPYRUS NOR ON

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(1) Num. V, 19, — 'be thou free from this water of bitterness'.
(2) Ibid. 20, — [This is taken to imply a curse; v. infra].
(3) Ibid. 21.
(4) Ibid. 22.
(5) And the whole Scriptural passage is included.
(6) Num. V, 23.
(7) Who is the author of the anonymous statement in the Mishnah, v. Sanh. 86a.
(8) 'The Lord make thee etc.', verse 20.
(9) According to Hebrew idiom, 'these curses' is literally 'the curses the these'.
(10) [I.e., 'if no man have lain with thee . . . be thou free' implies that 'if thou hast gone aside . . . be thou not free'].
(11) If the text of Num. V, 23 had read 'and the priest will write the curses in a book' it might have been understood as referring to the curses in Deut. XXVIII, 16ff.
(12) The sign of the accusative before 'these curses'.
(13) The phrase 'and the priest will write' is a general statement — an amplification.
(14) 'These' is a limited term.
(15) How then does he consider verse 20 to imply a curse, v. Kid. 61a-62a and Shebu. 36a.
(16) 'Be free' in Num. V, 19. Since the word is defectively spelt without the mater lectionis, and the Hebrew letter he closely resembles the letter heth, it might be taken to mean 'be strangled'; and so an imprecation is mentioned and it has not to be deduced as a corollary, v. Shebu (Sonc. ed.) p. 213, n. 6.
(17) The letters of the word for 'husband' are aleph, yod and shin, and for 'wife' aleph, shin and he. The yod and he form the Divine Name; but if omitted, only aleph and shin are left which form the word esh 'fire'.
(18) I.e., a bad wife is more destructive of domestic happiness than a bad husband.
(19) The first and second letters of the word for 'woman' or 'wife' form esh; but in the word for 'husband' or 'man' they are the first and third letters.
(20) Gen XVIII, 27.
(21) Dies from the effect of the water.
(22) Of a slaughtered animal (Lev. XVII, 13).
(23) Whereas the dust in the ceremony of the ordeal helps to restore the confidence of a husband in his wife or punishes immorality and the ashes of the red heifer serve to cleanse the unclean.
(24) Gen. XIV, 23.
(25) On the fringes of the garment (Num. XV, 38).
(26) Deut. XXVIII, 10.
(27) Hence its advantage to him who performs the precept.
(28) Ex. XXIV, 10.
(29) Ezek. I, 26. [And he who fulfils the precept is blessed, as it were, with the Divine Presence (Rashi).]

Talmud - Mas. Sotah 17b

DIFTERA[1] BUT ON A [PARCHMENT] SCROLL, AS IT IS SAID, IN A BOOK.[2] NOR DOES HE WRITE WITH A [PREPARATION OF] GUM OR VITRIOL[3] OR WITH ANYTHING WHICH INDENTS [THE PARCHMENT] BUT WITH INK,[4] AS IT IS SAID, AND BLOT OUT[5] — WRITING WHICH IS CAPABLE OF BEING BLOTTED OUT.

GEMARA. Raba said: A scroll for a suspected woman which one wrote at night is invalid. What is the reason? An analogy is drawn between two passages where the word 'law' occurs: here it is written: And the priest shall execute upon her all this law,[6] and elsewhere it is written: According to the tenor of the law which they shall teach thee, and according to the judgment.[7] As judgment [could only be delivered] in the daytime,[8] so a scroll for a suspected woman [could only be written] in the daytime. If he wrote the text not in its proper order,[9] it is invalid; for it is written: And he shall write these curses[10] — just as they are written [in the Scriptural text]. If he wrote it before she took the oath upon herself, it is invalid; as it is said: He shall cause her to swear and after that, He shall write.[11] If he wrote it in the form of a letter,[12] it is invalid — 'in a book' said the All-merciful.

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(1) Animal's hide prepared with salt and flour but not with gallnut. It was consequently more absorptive than fully prepared parchment. V. Krauss, T A. II, 262, v. Git. (Sonc. ed.) p. 87, n. 2.

(2) Num. V, 23. The book was then in the form of a scroll.

(3) [Kankantun, v. Git. (Sonc. ed.) p. 10, n. 8.]

(4) It was really black paint, consisting of lampblack mixed with oil. V. Krauss, op. cit., III, 148ff., v. Git. (Sonc. ed.) p. 70, n. 9.

(5) Num. V, 23.

(6) Num. V, 30.

(7) Deut. XVII, II.

(8) This was the rule of judicial procedure; v. Sanh. 32a.

(9) [Lit., 'backward'; probably as an incantation, v. Blau, Das altjudische Zauberwesen, pp. 146ff.]

(10) Num. V, 23.

(11) Ibid. 19 and 23.

(12) I.e., without first tracing lines to secure evenness of script, as is required with a scroll of the Law, v. Git. (Sonc. ed.) p. 20, n. 3.

If he wrote it on two folios it is invalid; the All-merciful spoke of one 'book' and not of two or three books. If he wrote one letter and blotted it out [with the water of bitterness] and then wrote another letter and blotted it out[1] it is invalid; for it is written: And the priest shall execute upon her all this law.

Raba asked: How is it if he wrote two scrolls for two suspects and blotted them in one vessel of water? Do we only require that the writing should be expressly for each case? That we have here; or perhaps it is also necessary to have obliteration expressly for each case! If, furthermore, you conclude that we also require obliteration expressly for each case, how is it if he obliterated them in two vessels and then mixed them? Do we only require that the obliteration should be expressly for each case? That we have here; or perhaps each of the women does not drink the water prepared for her! If, furthermore, you conclude that [this renders the rite invalid because] each of the women does not drink the water prepared for her, how is it if he again divided the water into two parts [after having mixed it]? Is there or is there not a retrospective differentiation?[2] — The questions remain unanswered. Raba asked: How is it if he made her drink through a straw or tube? Is that to be regarded as a mode of drinking or not? — The question remains unanswered. R. Ashi asked: How is it if some of the water was spilt or remained over? The question remains unanswered.

R. Zera said in the name of Rab: Why are two oaths mentioned in connection with a suspected woman?[3] One [was imposed] before [the writing on] the scroll was blotted out and the other after it was blotted out. Raba demurred: They are both written [in the Scriptural text] before [the inscription on] the scroll was obliterated! But, said Raba, with one oath a curse was connected[4] and not with the other. What was the formula of the oath with which a curse was connected? — R. Amram said in the

name of Rab: 'I make thee swear that thou hast not misconducted thyself, for if thou hast, may [the curses] befall thee.' Raba asked: [In this wording] the curse and the oath are distinct![5] But, said Raba, [the formula is], 'I make thee swear that if thou hast misconducted thyself, may [the curses] befall thee'.[6] R. Ashi asked: [In this wording] there is a curse but no oath! But, said R. Ashi, [The formula is], 'I make thee swear that thou hast not misconducted thyself; and that if thou hast, may [the curses] befall thee'.

MISHNAH. TO WHAT DOES SHE RESPOND 'AMEN, AMEN'? AN 'AMEN' OVER THE CURSE AND AN 'AMEN' OVER THE OATH; AN 'AMEN' WITH RESPECT TO THIS MAN[7] AND AN 'AMEN' WITH RESPECT TO ANY OTHER MAN;[8] AN 'AMEN' THAT I DID NOT GO ASTRAY AS A BETROTHED MAIDEN OR MARRIED WOMAN

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(1) He did not write out the text in full before obliterating it.

(2) Bererah v. Glos. Do we regard the water now divided as being differentiated and identical with the original quantities of water?

(3) V. Num. V, 19, 21.

(4) Verse 21 where the phrase oath of cursing occurs.

(5) [The oath here is not connected with the curse, but relates to the wife's fidelity.]

(6) [The oath relates only to the wife's conduct and is not connected with the curse.]

(7) Who is the cause of the ordeal.

(8) With whom she may have associated without her husband's knowledge.

Talmud - Mas. Sotah 18b

OR [A CHILDLESS WIDOW] WAITING FOR MY BROTHER-IN-LAW'S [DECISION WHETHER HE WOULD MARRY ME] OR TAKEN TO HIS HOUSE,[1] AND AN 'AMEN' THAT I HAVE NOT MISCONDUCTED MYSELF AND IF I HAVE MAY [THE CURSES] BEFALL ME. R. MEIR SAYS: ONE 'AMEN' IS THAT I HAVE NOT MISCONDUCTED MYSELF AND THE OTHER 'AMEN' THAT I WILL NOT MISCONDUCT MYSELF.

ALL AGREE THAT A MAN CANNOT MAKE A STIPULATION WITH HER IN RESPECT OF THE TIME BEFORE SHE WAS BETROTHED[2] OR AFTER SHE IS DIVORCED. IF SHE SECLUDES HERSELF WITH ANOTHER MAN[3] AND MISCONDUCTS HERSELF AND SUBSEQUENTLY [HER HUSBAND] TAKES HER BACK, HE CANNOT MAKE A STIPULATION WITH HER [IN RESPECT OF THIS].[4] THIS IS THE GENERAL RULE: HE CANNOT MAKE A STIPULATION WITH HER IN RESPECT OF ANY ACT OF COHABITATION WHICH DOES NOT RENDER HER PROHIBITED TO HIM.

GEMARA. R. Hamnuna said: [A childless widow] waiting for her brother-in-law's [decision whether he would marry her] who acted immorally is forbidden to her levir.[5] Whence is this? Since the Mishnah teaches: [A CHILDLESS WIDOW] WAITING FOR MY BROTHER-IN-LAW'S [DECISION WHETHER HE WOULD MARRY ME] OR TAKEN TO HIS HOUSE. This is quite right if you say that she is prohibited [to her brother-in-law] then he can make a stipulation with her;[6] but if you say that she is not prohibited to him,[7] how can he make a stipulation with her; for we have learnt: THIS IS THE GENERAL RULE: HE CANNOT MAKE A STIPULATION WITH HER IN RESPECT OF ANY ACT OF COHABITATION WHICH DOES NOT RENDER HER PROHIBITED TO HIM! In the West,[8] however, they said: The legal decision is not in agreement with R. Hamnuna. But whose [then] is the teaching concerning [A CHILDLESS WIDOW] WAITING FOR HER BROTHER-IN-LAW OR TAKEN TO HIS HOUSE? — It is R. Akiba's; for he said: No betrothal can take effect in cases which are subject to a mere negative prohibition,[9] and he regards her[10] act as equal to an incestuous union.[11]

R. Jeremiah asked: Can he make a stipulation in connection with a first marriage[12] or her marriage with his brother?[13] — Come and hear: THIS IS THE GENERAL RULE: HE CANNOT MAKE A STIPULATION WITH HER IN RESPECT OF ANY ACT OF COHABITATION WHICH DOES NOT RENDER HER PROHIBITED TO HIM. Consequently when it would render her prohibited to him he can make a stipulation with her. Draw that conclusion.[14]

R. MEIR SAYS: ONE 'AMEN' IS THAT I HAVE NOT MISCONDUCTED MYSELF etc. It has been taught: When R. Meir declares, AND THE OTHER 'AMEN' THAT I WILL NOT MISCONDUCT MYSELF, it does not imply that if she in the future misconducts herself, the water affects her now; but should she later misconduct herself, the water will bestir and affect her.

R. Ashi asked: Can a man make a stipulation with regard to remarriage?[15] [Do we argue] that for the present she is not prohibited to him [and therefore he cannot make a stipulation with her], or that it may happen that he will divorce and remarry her [and therefore can make a stipulation]? — Come and hear: ALL AGREE THAT A MAN CANNOT MAKE A STIPULATION WITH HER IN RESPECT OF THE TIME BEFORE SHE WAS BETROTHED OR AFTER SHE IS DIVORCED. IF SHE SECLUDES HERSELF WITH ANOTHER MAN AND MISCONDUCTS HERSELF AND SUBSEQUENTLY [HER HUSBAND] TOOK HER BACK, HE CANNOT MAKE A STIPULATION WITH HER [IN RESPECT OF THIS]. Hence if he takes her back and she then misconducts herself, he can make a stipulation [in respect of this]. Draw that conclusion.[16]

Our Rabbis have taught: This is the law of jealousy[17] — it teaches that a woman may drink [the water of bitterness] and do so again.[18] R. Judah says: 'This'[19] indicates that a woman does not drink and do so again. R. Judah said: It happened that Nehonia the welldigger[20] testified before us that a woman had drunk [the water of bitterness] and had done so a second time. We accepted his testimony as relating to two husbands but not one husband. The Sages, however, declared that a woman does not drink and do so again, whether it be in respect of one husband or two husbands. But for the first Tanna [cited above] it is likewise written 'This'![21] And for the latter Rabbis [cited above] it is likewise written 'the law of![22] — Raba said: In the case of the same husband and the same paramour none differ that a woman does not drink and do so again,

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(1) For the purpose of marriage, but before its consummation.

(2) That she had never acted immorally.

(3) After being divorced, and the divorce was not on account of misconduct because in that event there could be no re-marriage.

(4) In respect of what she may have done after the divorce.

(5) Because she is regarded as a wife who was unfaithful to her husband.

(6) In respect of her conduct before he married her; and if she was immoral, he may not marry her.

(7) For immorality before marriage.

(8) The Palestinian Schools.

(9) Without carrying with them the death penalty or of kareth. There is such a prohibition in connection with a childless widow's marriage (v. Deut. XXV, 5) v. Yeb. 10b.

(10) The childless widow who acted immorally.

(11) [And therefore forbidden to her brother-in-law just as a wife who misconducted herself is forbidden to her husband.]

(12) When he had remarried her after divorcing her can he make her swear that she had been faithful to him during their first marriage?

(13) After he had gone through the levirate-marriage with her, can he make her swear that she had not misconducted herself whilst living with his brother?

(14) In both of the contingencies mentioned immorality would render her prohibited; so he can make the stipulation.

(15) Since R. Meir interprets 'Amen' as referring to what may occur in the future, suppose a husband makes a condition that his wife shall not misconduct herself if he divorces her and remarries her, and after remarriage she is unfaithful?

(16) That such a stipulation is permissible.

(17) Num. V, 29. The text is literally 'law of jealousies', which is taken to mean: the law is to be applied in every instance of suspicion.

(18) If suspected a second time.

(19) The word has an exclusive meaning, and equals this is the only time the woman undergoes the ordeal.

(20) [V. B.K. (Sonc. ed.) p. 287. He however could not have testified before R. Judah who lived about 200 years later. The text must accordingly be connected with the parallel passage in J. Sotah II, where the reading is Nehemia of Shihin testified in the name of R. Akiba v. Hyman, A Toledoth, p. 924.]

(21) He permits a woman to drink a second time; why does he not interpret 'This' is an exclusive sense?

(22) Why do they not understand this as not permitting the second ordeal?

Talmud - Mas. Sotah 19a

for it is written 'This'. In the case of two husbands and two paramours none differ that a woman drinks and does so again, for it is written 'the law of. Where they differ is in the case of the same husband and two paramours, or two husbands and the same paramour. The first Tanna holds that 'the law of indicates the inclusion of them all, and 'This' indicates the exclusion of the case of the same husband and the same paramour. The Rabbis hold that 'This' indicates the exclusion of them all, and 'the law of indicates the inclusion of the case of two husbands and two paramours. R. Judah holds that 'This' is to exclude two cases and 'the law of is to include two cases. 'This' is to exclude two cases, viz., the same husband and the same paramour, and the same husband and two paramours; 'the law of is to include two cases, viz., two husbands and the same paramour, and two husbands and two paramours.

C H A P T E R I I I

MISHNAH. HE[1] TAKES HER MEAL-OFFERING OUT OF THE BASKET OF PALM-TWIGS AND PLACES IT IN A MINISTERING VESSEL AND SETS IT UPON HER HAND; AND THE PRIEST PLACES HIS HAND UNDER HERS AND WAVES IT.[2]

HAVING WAVED IT, HE BROUGHT A HANDFUL [TO THE ALTAR], FUMIGATED IT, AND THE REMAINDER WAS EATEN BY THE PRIESTS. HE [FIRST] GIVES [HER THE WATER OF BITTERNESS] TO DRINK, AND THEN SACRIFICES HER MEAL-OFFERING. R. SIMEON SAYS: HE SACRIFICES HER MEAL-OFFERING AND THEN GIVES HER TO DRINK, AS IT IS SAID, AND AFTERWARD SHALL MAKE THE WOMAN DRINK THE WATER;[3] BUT IF HE GAVE HER TO DRINK AND THEN SACRIFICED HER MEAL-OFFERING IT IS VALID.

GEMARA. R. Eleazar said to R. Joshiah his contemporary:[4] You shall not sit down[5] until you have explained the following: Whence is it that the meal-offering of a suspected woman requires to be waved? 'Whence have we it? It is written In connection therewith, And shall wave[6] — But [my question is], whence [is it that it has to be done] with [the co-operation of] the owner?'[7] — It is derived from the analogous use of the word 'hand' in connection with the peace-offering. Here it is written: 'The priest shall take out of the woman's hand', and there it is written: His own hands shall bring.[8] As in this present case it refers to the priest [who waves the offering of the suspected woman], so there it refers to the priest;[9] and as there [in the waving of the peace-offering] the owner [holds it during the rite] so here the owner [holds it]. What, then, was the procedure? — [The priest] places his hand under the hands of the owner and waves.

HAVING WAVED IT, HE BROUGHT A HANDFUL... HE [FIRST] GIVES [HER THE WATER OF BITTERNESS] TO DRINK, AND THEN SACRIFICES HER MEAL-OFFERING. But he has already offered it![10] — This is what is intended:[11] What is the procedure in connection with

meal-offerings? He waves, brings a handful [to the altar]. fumigates it and the remainder is eaten by the priests. As to the giving of the water to drink, on this R. Simeon and the Rabbis differ; because the Rabbis hold that he gives her to drink and then sacrifices her meal-offering, whereas R. Simeon holds that he sacrifices her meal-offering and then gives her to drink, as it is said: 'And afterwards shall make the woman drink'.

BUT IF HE GAVE HER TO DRINK AND THEN SACRIFICED HER MEAL-OFFERING IT IS VALID.

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(1) According to Rashi it is the husband; other commentators declare it is the priest.

(2) The offering, forward and backward, and up and down.

(3) Num. V, 26.

(4) This is added to distinguish him from an earlier Rabbi of that name.

(5) Lit., 'sit on your legs', v. Nazir (Sonc. ed.) p. 87, n. 9.

(6) Ibid. 25.

(7) In this instance, the suspected woman; and the verse declares, The priest shall take the meal-offering of jealousy out of the woman's hand and shall wave, Ibid.

(8) Lev. VII, 30.

(9) Who performs the act of waving although it is not explicitly mentioned.

(10) Since the Mishnah stated: HE BROUGHT A HANDFUL (TO THE ALTAR), FUMIGATED IT.

(11) This Mishnah is describing the order of the sacrifice without any reference to whether it comes before or after the drinking of the water.

Talmud - Mas. Sotah 19b

Our Rabbis taught: And when he hath made her drink[1] — what does this intend to tell us since It has already been stated: And he shall make the woman drink?[2] [It informs us] that if [the writing on] the scroll has been obliterated and she says: 'I refuse to drink', they exert influence upon her and make her drink by force. Such is the statement of R. Akiba. R. Simeon says: 'And afterwards shall make the woman drink' — what does this intend to tell us since it has already been stated: 'And he shall make the woman drink'? [It informs us] that it only takes place after all the rites mentioned above have been carried out, thus indicating that three things prevent [the giving of the water to drink]: [the priest] must have offered the handful, [the writing on] the scroll must have been blotted out, and [the woman] must have taken the oath. '[The priest] must have offered the handful' — R. Simeon is consistent with his opinion when he said that the priest sacrifices her meal-offering and then gives her to drink. '[The writing on] the scroll must have been blotted out' — [obviously so], for what else could he give her to drink![3] — R. Ashi said: No, it is necessary [to mention this for the case where] a trace of the inscription is recognisable.[4] '[The woman] must have taken the oath.' [This means] merely she does not drink, but they write the scroll for her [before she takes the oath]? But Raba has said: If he wrote the scroll for a suspected woman before she took the oath, what he did was Invalid! — [R. Simeon] mentioned this[5] unnecessarily. On what, then, do they differ? — There are three verses: first 'he shall make the woman drink', second 'and afterward shall make drink', and third 'and when he hath made her drink'. The Rabbis hold that the first phrase is required for the subject-matter, i.e., he gives her to drink and then sacrifices her meal-offering; the phrase 'and afterward shall make drink' is necessary [to cover the case where] a trace of the inscription is recognisable; and the third phrase indicates that if [the writing on] the scroll has been obliterated and she says 'I refuse to drink', they exert influence upon her and make her drink by force. R. Simeon, on the other hand, holds that 'and afterward shall make drink' is required for the subject-matter. i.e., he sacrifices her meal-offering and then gives her to drink. The first phrase is to indicate that if he first gave her to drink and afterward sacrificed her meal-offering it is valid; and the third phrase denotes that if [the writing on] the scroll has been obliterated and she says 'I refuse to drink', they exert influence upon her and make her drink by force. The Rabbis, however, do not hold that the text

opens with [a commandment which is only valid as] an accomplished fact.[6]

Does R. Akiba hold that they give her to drink by force? Surely it has been taught: R. Judah says: They insert iron tongs into her mouth, so that if [the writing on] the scroll has been obliterated and she says 'l refuse to drink', they exert influence upon her and make her drink by force. R. Akiba says: Do we require anything else than to prove her, and is she not actually proved![7] But so long as the priest has not offered the handful, she can retract;[8] and when he has offered the handful, she cannot retract! — But, even on your reasoning, the teaching is inconsistent. It states: 'When he has offered the handful, she cannot retract', but is she not actually proved![9] [You must perforce say] that there is no contradiction; as one case is where she retracts through trembling and the other where she retracts through defiance;[10] and this is what he means: when [she retracts] through defiance she does not drink at all; but when it is through trembling, so long as the priest has not offered the handful she is able to retract, since [the writing on] the scroll had not yet been obliterated, or even if it had been obliterated because the priests acted illegally in obliterating it; but if he had offered the handful, in which case the priests acted legally in obliterating it, she is unable to retract.[11]

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(1) Num. V. 27.

(2) Ibid. 24. In the consonantal text the two verbs look the same, but there is a grammatical difference.

(3) Since the writing was an essential ingredient of what she drank.

(4) R. Simeon insists on total obliteration.

(5) That she first takes the oath before drinking; for it must have been done before the scroll was written.

(6) A Biblical precept states what is or is not to be done, not that something should not be done but, if accomplished, it is allowed to stand. For this reason they reject R. Simeon's explanation of the first phrase.

(7) Her refusal to drink is interpreted as an admission of guilt. R. Akiba is therefore against force being used.

(8) And admit guilt, and so avoid force.

(9) By refusing to drink before the handful was offered.

(10) Only in the latter is the refusal considered an admission of guilt.

(11) [Similarly R. Akiba in stating in the first Baraitha that she is given to drink by force refers to the case when it is through trembling.]

Talmud - Mas. Sotah 20a

But R. Akiba [nevertheless] contradicts himself; he declared above that it was the obliteration [of the inscription] which prevents [her from retracting], and here he declares that [the offering of the] handful prevents her! — There are two Tannaim [who take opposite sides on this question] in the view of R. Akiba.

The question was asked, how is it if she said: 'I refuse to drink' through defiance and she retracts and says 'I am willing to drink'? Is it that since she said: 'I refuse to drink' she admitted 'I am unclean', and having presumed her self to be unclean, she is unable to retract; or perhaps, since she says 'I am willing to drink', she evidences that she first spoke in terror? — The question remains unanswered. Samuel's father said: It is necessary to put something bitter into the water. What is the reason? Scripture declares, The water of bitterness[1] — i.e., [water] which had been previously made bitter.

MISHNAH. IF, BEFORE [THE WRITING ON] THE SCROLL HAD BEEN BLOTTED OUT, SHE SAID 'I REFUSE TO DRINK', HER SCROLL IS STORED AWAY[2] AND HER MEAL-OFFERING IS SCATTERED OVER THE ASHES.[3] HER SCROLL IS NOT VALID TO BE USED IN GIVING ANOTHER SUSPECTED WOMAN TO DRINK. IF [THE WRITING ON] THE SCROLL HAS BEEN BLOTTED OUT AND SHE SAID 'I AM UNCLEAN', THE WATER IS POURED AWAY AND HER MEAL-OFFERING IS SCATTERED IN THE PLACE OF THE ASHES.[4] IF [THE WRITING ON] THE SCROLL HAD BEEN BLOTTED OUT AND SHE SAID

'I REFUSE TO DRINK', THEY EXERT INFLUENCE UPON HER AND MAKE HER DRINK BY FORCE.

SHE HAD SCARCELY FINISHED DRINKING WHEN HER FACE TURNS GREEN, HER EYES PROTRUDE AND HER VEINS SWELL;[5] AND IT IS EXCLAIMED, REMOVE HER THAT THE TEMPLE-COURT BE NOT DEFILED'.[6] IF SHE POSSESSED A MERIT, IT [CAUSES THE WATER] TO SUSPEND ITS EFFECT UPON HER. SOME MERIT SUSPENDS THE EFFECT FOR ONE YEAR, ANOTHER FOR TWO YEARS, AND ANOTHER FOR THREE YEARS. HENCE DECLARED BEN AZZAI, A MAN IS UNDER THE OBLIGATION TO TEACH HIS DAUGHTER TORAH, SO THAT IF SHE HAS TO DRINK [THE WATER OF BITTERNESS], SHE MAY KNOW THAT THE MERIT SUSPENDS[7] ITS EFFECT. R. ELIEZER SAYS: WHOEVER TEACHES HIS DAUGHTER TORAH TEACHES HER OBSCENITY. R. JOSHUA SAYS: A WOMAN PREFERS ONE KAB[8] AND SEXUAL INDULGENCE TO NINE KAB[9] AND CONTINENCE. HE USED TO SAY, A FOOLISH PIETIST, A CUNNING ROGUE, A FEMALE PHARISEE, AND THE PLAGUE OF PHARISEES[10] BRING DESTRUCTION UPON THE WORLD.

GEMARA. Rab Judah declared that Samuel said in the name of R. Meir: When I studied Torah with R. Akiba, I used to put vitriol[11] into the ink and he said nothing to me; but when I went to R. Ishmael, he said to me, 'My son, what is thy occupation?' I answered: 'I am a scribe'.[12] He told me: 'My son, be careful, because thy work is the work of Heaven; if thou omittest a single letter or addest a single letter, thou dost as a consequence destroy the whole world'.[13] I said to him, 'There is an ingredient which I put into the ink, and its name is vitriol'. He asked me, 'May we put vitriol into the ink? The Torah has said: He shall blot out,[14] i.e., writing which can be blotted out!' What did [R. Ishmael] intend to tell [R. Meir] that the latter answered him in that manner?[15] — [R. Meir] meant, Obviously, I am skilled in the rules of defective and plene spelling;[16] but I even have no reason to fear lest a fly should come and settle upon the crownlet of the letter D and obliterate it so that it makes it look like the letter R.[17] There is an ingredient which I put into the ink, and its name is vitriol. But it is not so, for it has been taught: R. Meir said: When I studied Torah with R. Ishmael, I used to put vitriol into the ink and he said nothing to me; but when I went to R. Akiba, he forbade it to me! Here is an inconsistency in [the order of the Rabbis upon whom R. Meir] attended, and an inconsistency in [the name of the Rabbi who] forbade it. It is quite right, there is no inconsistency in [the order of the Rabbis upon whom R. Meir] attended; he first went to R. Akiba, but when he was unable [to follow his arguments],[18] he went to R. Ishmael. After having studied[19] with him, he returned to R. Akiba whose reasoning he was then able to grasp. But there is an inconsistency in [the name of the Rabbi who] forbade it! — That is a difficulty.

It has been taught: R. Judah says: R. Meir used to declare that for all [kinds of script] we may put vitriol into the ink

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(1) Num. V, 18.

(2) It was not destroyed because the inscription included the Divine Name.

(3) Of the Temple-offerings.

(4) This was a special Court in the Temple where the refuse of sacrifices was destroyed.

(5) Literally, she becomes filled with veins.

(6) The reason is discussed in the Gemara.

(7) [MS.M.: 'suspended'. In the absence of such a knowledge, the woman who passed through the ordeal unscathed may be led to doubt the efficacy of the water of bitterness searching out sin, and thus indulge in further immoral practices. By realising however that merit has suspended the effects, she would pause and be in constant dread of the fate hanging over her.]

(8) Metaphorical for a scanty livelihood.

(9) Luxurious style of living.

(10) All these phrases will be explained in the Gemara.

(11) V. supra p. 90. n. 8.

(12) Of Torah-scrolls for use in the Synagogue.

(13) Such an error might turn a phrase into blasphemy.

(14) Num. V, 23.

(15) By mentioning the use of vitriol.

(16) I.e., the use of vowel letters which are sometimes added and sometimes omitted.

(17) [Changing, e.g., ד אחד 'the Lord is one' into אחר 'another.']

(18) Which, through lack of knowledge, were beyond his comprehension.

(19) [Lit., 'learned Gemara'. On the term Gemara v. B.M. (Sonc. ed.) p. 206. n. 6. Here it denotes the summary of Tannaitic teachings preserved in early Mishnas and Baraithas; v. Epistle of Sherira Gaon, p. 44.]

Talmud - Mas. Sotah 20b

except only for the portion concerning the suspected woman. R. Jacob says in his [R. Meir's] name, Except the portion of the suspected woman [written] in the Temple.[1] What is the difference between them? — R. Jeremiah said: The point between them is [whether it is permissible] to blot out from the Torah [-scroll the passage required for the rite of the water of bitterness];[2] and these teachers [differ on the same issue] as the following teachers, for it has been taught: Her scroll is not valid to be used in giving another suspected woman to drink. R. Ahi b. Joshiah says: Her scroll is valid to be used in giving another suspected woman to drink.[3] R. papa said: perhaps it is not so, the first teacher only gives his opinion there because [the scroll] was designated for Rachel and cannot therefore be re-designated for Leah, but since the text of the Torah-scroll is written without reference to any individual, we may obliterate [the passage]. R. Nahman b. Isaac said: perhaps It is not so; R. Ahi b. Joshiah only gives his opinion there in the case of a scroll which was written for the purpose of the curses; but with a Torah-scroll which is written for the purpose of study, we may not obliterate [the passage]. Does not, then, R. Ahi b. Joshiah accept what we learnt: If a man wrote [a document] to divorce his wife but changed his mind, and then met a man who resided in the same city[4] and said to him, 'My name is identical with yours and my wife's name identical with your wife's name', it is invalid [as a document] wherewith to divorce?[5] — They answer: There [in connection with divorce] the All-Merciful declared: He shall write for her[6] — we require that it should be written expressly for her; here likewise [it is stated], Shall execute upon her[7] — what is intended by the word 'execute'? The obliteration [of the writing].[8]

SHE HAD SCARCELY FINISHED DRINKING WHEN HER FACE etc. Whose [teaching] is this?[9] — It is R. Simeon's, because he said that [the priest] sacrifices her meal-offering and then gives her to drink,[10] since the water does not affect her so long as her meal-offering is not sacrificed, as it is written: A meal-offering of memorial, bringing iniquity to rememberance.[11] But cite the continuation [of the Mishnah]: IF SHE POSSESSED A MERIT, IT [CAUSES THE WATER] TO SUSPEND ITS EFFECT UPON HER — this accords with the view of the Rabbis; because if [it be supposed that it accords with the view of] R. Simeon, behold he has declared: Merit does not cause the water of bitterness to suspend its effect![12] — R. Hisda said: Whose is it, then? It is R. Akiba's, because he said: He sacrifices her meal-offering and then gives her to drink, and on the question of [the effect of] merit he agrees with the Rabbis.

AND IT IS EXCLAIMED, 'REMOVE HER' etc. What is the reason? — Perhaps she dies. Is this to say that a corpse is forbidden in the camp of the Levites?[13] But it has been taught: One who is defiled through contact with a corpse is permitted to enter the camp of the Levites; and not only did they say this of one who is defiled through contact with a corpse but even the corpse itself [may be taken there], as it is said: And Moses took the bones of Joseph with him[14] — 'with him', i.e., in his division![15] — Abaye said: [The reason is] lest she become menstruant.[16] Is this to say that a sudden fright brings on [menstruation]? — Yes, for it is written: And the queen was exceedingly grieved,[17]

and Rab said, [It means] that she became menstruant. But we have learnt: Trembling holds back [the menstrual] flow! — Fear holds it back but a sudden fright brings It on.

IF SHE POSSESSED A MERIT etc. Whose teaching is our Mishnah? It is not that of Abba Jose b. Hanan, nor of R. Eleazar b. Isaac of Kefar Darom, nor of R. Ishmael; for it has been taught: If she possess a merit, it suspends [the effect of the water] for three months, sufficiently long for pregnancy to be recognisable. Such is the statement of Abba Jose b. Hanan; R. Eleazar b. Isaac of Kefar Darom says: For nine months, as it is stated: Then she shall be free and shall conceive seed,[18] and elsewhere it declares, A seed shall serve him, it shall be related[19] — i.e., a seed which is fit to be related .[20] R. Ishmael says: For twelve months, and although there is no proof of this, yet there is some indication; because it is written, Wherefore, O king, let my counsel be acceptable unto thee, and break off thy sins by righteousness, and thine iniquities by showing mercy to the poor,'

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(1) Specially prepared for the ordeal.

(2) According to R. Jacob it is not permissible, and consequently one may use vitriol for writing that portion in the Torah-scroll.

(3) The point here also is whether the scroll must be expressly written for the ordeal.

(4) The name of the city is inserted in the document.

(5) The second woman, since it must be written expressly for the woman who is to be divorced, v. Git. 24a.

(6) Deut. XXIV. 1.

(7) Num. V, 30.

(8) Only the obliteration, but not the writing, must be expressly for the woman who is being tried.

(9) That the water takes effect as soon as she drinks it.

(10) V. supra 19a.

(11) Ibid. 15.

(12) V. supra p. 25. Consequently the above teaching cannot be R. Simeon's.

(13) The Court of the Levites in the Temple where the Court of Women and the Nicanor Gate (v. supra p. 30, n. 9.) were located.

(14) Ex. XIII, 19.

(15) Which was the camp of the Levites.

(16) As the result of her agitation.

(17) Est. IV, 4.

(18) Num. V, 28.

(19) Ps. XXII, 31.

(20) Viz., at birth, and so the period of nine months is required. Rashi explains differently.

Talmud - Mas. Sotah 21a

if there may be a lengthening of thy tranquility,[1] and it is written: All this came upon king Nebuchadnezzar,[2] and it is written: At the end of twelve months!'[3] — [The teaching is] certainly R. Ishmael's and he found a verse which mentions [the period] and repeats it; for it is written: Thus saith the Lord: For three transgressions of Edom.[4] But why [was it said] that although there is no proof of this, yet there is some indication?[5] — It may be different with heathens upon whom [God] does not execute judgment immediately.

AND ANOTHER FOR THREE YEARS etc. What sort of merit? If I answer merit of [studying] Torah, she is [in the category] of one who is not commanded and fulfils![6] — Rather must it be merit of [performing] a commandment. But does the merit of performing a commandment protect as much as that? — Surely it has been taught: The following did R. Menahem son of R. Jose expound: For the commandment is a lamp and Torah is light[7] — the verse identifies the commandment with a lamp and Torah with light; the commandment with a lamp to tell thee that as a lamp only protects temporarily, so [the fulfilment of] a commandment only protects temporarily; and Torah with light to

tell thee that as light protects permanently, so Torah protects permanently; and it states: When thou walkest it shall lead thee etc.[8] — 'when thou walkest it shall lead thee', viz., In this world; 'when, thou sleepest it shall watch over' thee , viz., in death; and when, thou awakest it shall talk with thee, viz.,in the Hereafter. Parable of a man who is walking in the middle of the night and darkness, and is afraid of thorns, pits, thistles, wild beasts and robbers, and also does not know the road in which he is going. If a lighted torch is prepared for him, he is saved from thorns, pits and thistles; but he is still afraid of wild beasts and robbers, and does not know the road in which he is going. When, however, dawn breaks, he is saved from wild beasts and robbers, but still does not know the road in which he is going. When, however, he reaches the cross-roads, he is saved from everything.[9] Another explanation is: A transgression nullifies[10] [the merit of] a commandment but not of [study of] Torah; as it is said: Many waters cannot quench love![11] — Said R. Joseph: A commandment protects and rescues[12] while one is engaged upon it; but when one is no longer engaged upon it, it protects[13] but does not rescue. As for [study of] Torah, whether while one is engaged upon it or not, it protects and rescues. Raba demurred to this: According to this reasoning, did not Doeg and Ahitophel engage upon [study of] Torah; so Why did it not protect them?[14] — But, said Raba, while one is engaged upon [study of] Torah, it protects and rescues, and while one is not engaged upon it, it protects but does not rescue. As for a commandment whether while one is engaged upon it or not, it protects but does not rescue.

Rabina said: It is certainly merit of [the study of] Torah [which causes the water to suspend its effect]; and when you argue that she is in the category of one who is not commanded and fulfils, [it can be answered] granted that women are not so commanded, still when they have their sons taught Scripture and Mishnah and wait for their husbands until they return from the Schools,[15] should they not share [the merit] with them?

What means 'the cross-roads' [in the parable related above]? — R. Hisda said: It alludes to a disciple of the Sages and the day of his death. R. Nahman b. Isaac said: It alludes to a disciple of the Sages and his fear of sin.[16] Mar Zutra said: It alludes to a disciple of the Sages when the tradition cited by him is in accord with the halachah.[17] Another explanation is: A transgression nullifies [the merit of] a commandment but not of [study of] Torah. R. Joseph said: R. Menahem son of R. Jose expounded that verse[18] as though [it were Interpreted] from Sinai, and had Doeg and Ahitophel expounded it [similarly], they would not have pursued David, as it is written, saying: God hath forsaken him, etc.[19] What verse did they expound?[20] — That he see no unclean thing in thee etc.[21] They did not know, however, that a transgression nullifies [the merit of] a commandment but not of [study of] Torah.[22] What means He would utterly be contemned?[23] — 'Ulla said: Not like Simeon the brother of Azariah nor like R. Johanan of the Prince's house[24] but like Hillel[25] and Shebna. When R. Dimi came[26] he related that Hillel and Shebna were brothers; Hillel engaged in [study of] Torah and Shebna was occupied in business. Eventually [Shebna] said to him, 'Come, let us become partners and divide [the profits]'. A Bath Kol[27] issued forth and proclaimed. If a man would give all the substance of his house etc.[28]

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(1) Dan. IV, 24.

(2) Ibid. 25.

(3) Ibid. 26.

(4) Amos I, II. The respite of a year is trebled and this period corresponds to that given in the Mishnah.

(5) The texts quoted did afford proof!

(6) The duty of Torah-study is not obligatory upon a woman; therefore she cannot acquire so much merit even if she does so, v. A.Z. 3a.

(7) Prov. VI, 23.

(8) Ibid. 22.

(9) The commandment is the torch, Torah the dawn, and death the cross-roads.

(10) Lit., 'extinguishes'.

(11) Cant. VIII. 7. This shows that a commandment has no great protective powers.
(12) 'Protects' from sufferings and 'rescues' from the urge of the evil inclination.
(13) The merit of its fulfilment can thus protect the woman against the effects of the water.
(14) [This is used in a loose sense. The question is the Torah should have 'rescued' them (Tosaf. of Sens.)
(15) These were often a distance from the home and involved a long absence. V. Ber. 17a.
(16) His study of Torah imbues him with a fear of sin which withholds him from transgression. His clear conscience serves him well at the time of death.
(17) This is proof that he had studied correctly and the consciousness of this also calms his mind at the end of his life.
(18) Viz., Prov. VI, 23.
(19) Ps. LXXI, 11, i.e., David because of his sin with Bathsheba, and so they imagined they could pursue him with impunity.
(20) To support them in their view.
(21) Deut. XXIII, 15, E.V. 14. The continuation is: and turn away from thee. Now the phrase 'unclean thing' usually means an immoral act, and it was so understood by Doeg and Ahitophel.
(22) And David was still protected by his zeal in Torah-study. This is the exposition of R. Menahem son of R. Jose.
(23) Cant. VIII, 7.
(24) Simeon studied while supported by his brother, and R. Johanan was subsidised by R. Judah II, the Prince. Each, therefore, forfeited some of the merit which accrued from his study.
(25) Who studied in the direst poverty; v. Yoma 35b.
(26) From Palestine to Babylon.
(27) V. Glos.
(28) Cant. VIII, 7. Hillel, unlike the others named, declined to barter the merit he earned by devotion to Torah.

Talmud - Mas. Sotah 21b

HENCE DECLARED BEN AZZAI: A MAN IS UNDER THE OBLIGATION TO TEACH . . . R. ELIEZER SAYS: WHOEVER TEACHES HIS DAUGHTER TORAH TEACHES HER OBSCENITY. Can it enter your mind [that by teaching her Torah he actually teaches her] obscenity! — Read, rather: as though he had taught her obscenity. R. Abbahu said: What is R. Eliezer's reason? — Because it is written: I wisdom have made subtilty my dwelling,[1] i.e., when wisdom enters a man subtilty enters with it.

And what do the Rabbis[2] make of the words 'I wisdom'? — They require them in accordance with the teaching of R. Jose son of R. Hanina; for R. Jose son of R. Hanina said: Words of Torah only remain with him who renders himself naked[3] on their behalf; as it is said: 'I wisdom have made nakedness my dwelling'. R. Johanan said: Words of Torah only remain with him who makes himself like one who is as nothing, as it is said: Wisdom shall be found from nothing.[4]

R. JOSHUA SAYS: A WOMAN PREFERS etc. What does he intend? — He means that a woman prefers one kab and sensuality with it to nine kab with continence.

HE USED TO SAY, A FOOLISH PIETIST etc. What is a foolish pietist like? — E.g., a woman is drowning in the river, and he says: 'It is improper for me to look upon her and rescue her'. What is the cunning rogue like? — R. Johanan says: He who explains his case to the judge before the other party to the suit arrives.[5] R. Abbahu says: He who gives a poor man a denar to bring his possessions to the total of two hundred zuz;[6] for we have learnt; He who possesses two hundred zuz may not take gleanings, forgotten sheaves, the produce of the corner of the field, or the poor tithe;[7] but should he lack one denar of the two hundred [zuz], even if a thousand persons give him [the gleanings, etc.] simultaneously, he may accept.[8] R. Assi said in the name of R. Johanan: [A cunning rogue is] he who gives advice to sell an estate which is inconsiderable;[9] for R. Assi said in the name of R. Johanan: If the male-orphans sold an inconsiderable estate before [the daughters established their claim at a Court], their act of selling is legal. Abaye said: [A cunning rogue is] he who gives advice

to sell property in accordance with the view of Rabban Simeon b. Gamaliel; for it has been taught: [If a man said], 'My property is for you and after you for So-and-so', and the first person went and sold it and ate up [the proceeds], the second man can recover from the purchaser. Such is the statement of Rabbi; Rabban Simeon b. Gamaliel says: The second only receives what the first left.[10] R. Joseph b. Mama said in the name of R. Shesheth: He who induces others to follow in his ways.[11] R. Zerika said in the name of R. Huna: He who is lenient with himself[12] and strict with others. 'Ulla said: He

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(1) Prov. VIII, 12. Subtilty is not desirable in a woman.

(2) Those who disagree with R. Eliezer.

(3) He neglects everything else, and is therefore destitute. The Hebrew word for 'subtilty' is connected with a root meaning 'to be naked'.

(4) Sic., Job XXVIII, 22.

(5) Such an action is illegal; v. Shebu. 31a.

(6) In order to prevent him from taking advantage of the law, so that he can retain the produce for his own kinsfolk.

(7) V. Lev. XXIII, 22, Deut. XXIV, 19.

(8) Pe'ah VIII, 8.

(9) The law of inheritance is that where the estate is small, the daughters inherit 'and the sons can go begging' (B.B. 140a).

(10) Cf. Keth. 95b; and B.B. 137a.

(11) By hypocritically pretending to be pious.

(12) In the interpretation of the Law.

Talmud - Mas. Sotah 22a

who learnt Scripture and Mishnah but did not attend upon Rabbinical scholars.[1]

It has been reported, If one has learnt Scripture and Mishnah but did not attend upon Rabbinical scholars, R. Eleazar says he is an 'Am ha-arez'[2] R. Samuel b. Nahmani says he is a boor; R. Jannai says he is a Samaritan;[3] R. Aha b. Jacob says he is a magician.[4] R. Nahman b. Isaac said: The definition of R. Aba b. Jacob appears the most probable; because there is a popular saying: The magician mumbles and knows not what he says; the tanna[5] recites and knows not what he says.

Our Rabbis taught: Who is an 'Am ha-arez? Whoever does not recite the Shema'[6] morning and evening with its accompanying benedictions; such is the statement of R. Meir. The Sages say: Whoever does not put on the phylacteries. Ben Azzai says: Whoever has not the fringe upon his garment.[7] R. Jonathan b. Joseph says: Whoever has sons and does not rear them to study Torah. Others say: Even if he learnt Scripture and Mishnah but did not attend upon Rabbinical scholars, he is an 'Am ha-arez. If he learnt Scripture but not Mishnah, he is a boor; if he learnt neither Scripture nor Mishnah, concerning him Scripture declares, I will sow the house of Israel and the house of Judah with the seed of man and with the seed of beast.[8]

My son, fear thou the Lord and the king, and mingle not with them that are given to change.[9] R. Isaac said: They are the men who learn legal decisions.[10] This is self-evident![11] — [It is not, because] you might have supposed [that the text meant], they who repeat a sin, and that it is according to the teaching of R. Huna; for R. Huna said: When a man commits a transgression and repeats it, it becomes to him something which is permissible. Therefore he informs us [that this is not the intention of the text]. A Tanna taught: The Tannaim[12] bring destruction upon the world. How can it occur to you to say that they bring destruction upon the world! Rabina said: Because they decide points of law from their teachings.[13] It has been similarly taught: R. Joshua said: Do they destroy the world? Rather do they cultivate the world, as it is said: As for the ways, the world is for him.[14] But [the reference is to] those who decide points of law from their teachings.

A FEMALE PHARISEE etc. Our Rabbis have taught: A maiden who gives herself up to prayer,[15] a gadabout widow,[16] and a minor whose months are not completed[17] — behold these bring destruction upon the world. But it is not so; for R. Johanan has said: We learnt fear of sin from a maiden [who gave herself up to prayer] and [confidence in] the bestowal of reward from a [gadabout] widow! Fear of sin from a maiden — for R. Johanan heard a maiden fall upon her face and exclaim, 'Lord of the Universe! Thou hast created Paradise and Gehinnom; Thou hast created righteous and wicked. May it be Thy will that men should not stumble through me'. [Confidence in] the bestowal of reward from a widow — a certain widow had a Synagogue in her neighbourhood; yet she used to come daily to the School of R. Johanan[18] and pray there. He said to her, 'My daughter, is there not a Synagogue in your neighbourhood?' She answered him, 'Rabbi, but have I not the reward for the steps!'[19] — When it is said [that they bring destruction upon the world] the reference is to such a person as Johani the daughter of Retibi.[20] What means 'a minor whose months are not completed'? — They explained it thus: It refers to a disciple who rebels against the authority of his teachers. R. Abba said: It refers to a disciple who has not attained the qualification to decide questions of law and yet decides them; for R. Abbahu declared that R. Huna said in the name of Rab, What means that which is written: For she hath cast down many wounded, yea, all her slain are a mighty host?[21] 'For she hath cast down many wounded' — this refers to a disciple who has not attained the qualification to decide questions of law and yet decides them; 'yea, all her slain are a mighty host' — this refers to a disciple who has attained the qualification to decide questions of law and does not decide them.

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(1) To attain higher learning in Torah. He thus makes a pretence of a scholarship which he really does not possess.

(2) Lit., 'people of the earth'; the description of those Jews who are careless about religious duties.

(3) And his bread and wine must not be used by an observant Jew.

(4) Who deceives the people.

(5) V. Glos., s.v. Tanna (b).

(6) V. Glos. For the benedictions, V. Singer P. B. pp- 39ff, 96ff.

(7) V. Num. XV, 37ff [Zeitlin, S. (JQR (NS) XXIII, p. 58) sees in this an allusion to the early Jewish Christians who, as is known from the N.T. and the early Church Fathers, objected to the Shema', phylacteries and fringes.]

(8) Jer. XXXI, 27.

(9) Prov. XXIV, 21. The word for 'that are given to change' is shonim from shanah which in later Hebrew means 'learn' or 'repeat'.

(10) And do not study with the scholars to understand their scope and derivation from Scripture.

(11) So why is it mentioned?

(12) Who only report teachings without giving their derivations, cf. Glos. s.v. (b), and supra p. 103, n. 2.

(13) [The Baraithas and Mishnas which they memorized without knowing perfectly the reasoning on which they were based.]

(14) Sic., Hab. III, 6. In Meg. 28b this is explained: Read not halichoth 'ways', but halachoth 'legal decisions', i.e., as for him (who studies) legal decisions, the world exists on account of him.

(15) In the J. Talmud there is a variant: 'gives herself up to fasting'. We seem to have here an expression of disapproval of conventual life.

(16) Her chastity is open to suspicion.

(17) Explained below.

(18) Where Services were held.

(19) I.e., for the extra distance she walked to attend the Services.

(20) She was a widow who by witchcraft made childbirth difficult for a woman and then offered prayer for her.

(21) Prov. VII, 26.

Talmud - Mas. Sotah 22b

At what age [is he qualified]? — At forty.[1] But it is not so, for Rabbah decided questions of Law![2]

— [He did so only in a town where the Rabbis] were his equals.[3]

AND THE PLAGUE OF PHARISEES etc. Our Rabbis have taught: There are seven types of Pharisees: the shikmi Pharisee, the nikpi Pharisee, the kizai Pharisee, the 'pestle' Pharisee, the Pharisee [who constantly exclaims] 'What is my duty that I may perform it?', the Pharisee from love [of God] and the Pharisee from fear. The shikmi Pharisee — he is one who performs the action of Shechem.[4] The nikpi Pharisee — he is one who knocks his feet together.[5] The kizai Pharisee — R. Nahman b. Isaac said: He is one who makes his blood to flow against walls.[6] The 'pestle' Pharisee — Rabbah b. Shila said: [His head] is bowed like [a pestle in] a mortar. The Pharisee [who constantly exclaims] 'What is my duty that I may perform it?' — but that is a virtue! — Nay, what he says is, 'What further duty is for me that I may perform it?'[7] The Pharisee from love and the Pharisee from fear — Abaye and Raba said to the tanna [who was reciting this passage], Do not mention 'the Pharisee from love[8] and the Pharisee from fear'; for Rab Judah has said in the name of Rab: A man should always engage himself in Torah and the commandments even though it be not for their own sake,[9] because from [engaging in them] not for their own sake, he will come [to engage in them] for their own sake. R. Nahman b. Isaac said: What is hidden is hidden, and what is revealed is revealed; the Great Tribunal will exact punishment from those who rub themselves against the walls.[10]

King Jannai[11] said to his wife', 'Fear not the Pharisees and the non-Pharisees but the hypocrites who ape the Pharisees; because their deeds are the deeds of Zimri[12] but they expect a reward like Phineas'.[13] MISHNAH R, SIMEON SAYS: MERIT DOES NOT CAUSE THE WATER OF BITTERNESS TO SUSPEND ITS EFFECT, AND IF YOU SAY THAT MERIT DOES CAUSE THE WATER OF BITTERNESS TO SUSPEND ITS EFFECT, YOU DISCREDIT THE WATER IN THE CASE OF ALL THE WOMEN WHO DRINK IT AND DEFAME THE PURE WOMAN WHO DRANK IT, SINCE PEOPLE WILL SAY, THEY WERE UNCLEAN, ONLY THEIR MERIT CAUSED THE WATER TO SUSPEND ITS EFFECT UPON THEM. RABBI SAYS: MERIT CAUSES THE WATER OF BITTERNESS TO SUSPEND ITS EFFECT, AND SHE NEVER BEARS A CHILD OR THRIVES, BUT SHE GRADUALLY GROWS ILL AND FINALLY DIES THROUGH THAT DEATH.[14]

IF HER MEAL-OFFERING BECAME DEFILED BEFORE IT BECAME HALLOWED IN THE [MINISTERING] VESSEL, BEHOLD IT IS LIKE ALL MEAL-OFFERINGS [SIMILARLY DEFILED] AND CAN BE REDEEMED;[15] BUT IF [IT BECAME DEFILED] AFTER IT HAD BEEN HALLOWED IN THE [MINISTERING] VESSEL, BEHOLD IT IS LIKE ALL MEAL-OFFERINGS [SIMILARLY DEFILED] AND IS DESTROYED. THE FOLLOWING HAVE THEIR MEAL- OFFERINGS DESTROYED:

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(1) Tosaphoth explains this to mean after forty years of study. It may, however, be connected with the statement in Ab. V, 24, At forty for understanding.

(2) He died at the age of forty; v. R. H. 18a.

(3) Since they were not his superiors in learning, he decided questions although less than the requisite age. [Tosaf. s.v. שויין explains that Rabbah surpassed all other scholars in his town, and the restriction applies only where there are others equal in learning to the young scholar. For further notes on the passage, v. A.Z. (Sonc. ed.) p. 101.]

(4) Who was circumcised from an unworthy motive (Gen. XXXIV). The J. Talmud (Ber. 14b) explains: who carries his religious duties upon his shoulder (shekem), i.e., ostentatiously.

(5) He walks with exaggerated humility. According to the J. Talmud: He says: Spare me a moment that I may perform a commandment.

(6) In his anxiety to avoid looking upon a woman he dashes his face against the wall. The J. Talmud explains: calculating Pharisee, i.e., he performs a good deed and then a bad deed, setting one off against the other.

(7) As though he had fulfilled every obligation.

(8) [Abaye and Raba understood 'love' and 'fear' to denote love of the rewards promised for the fulfilment of precepts

and fear of punishment for transgressing them. In J. Ber., however, they are both taken in reference to God — i.e., love of God and fear of Him.]

(9) From pure and disinterested motives.

(10) In simulated humility. Others render: who wrap themselves in their cloaks. The meaning is that hypocrisy is of no avail against the Judge Who reads the heart.

(11) Alexander Jannaeus. For his advice, given on his death-bed to his wife Salome, v. Josephus, Ant. XIII, XV, 5.

(12) Num. XXV, 14.

(13) Ibid. 11ff. [He probably had in mind the treacherous act by a group of Zealots — not Pharisees — in resisting foreign assistance — Demetrius Eucerus, King of Syria — in their struggle with Alexander Jannaeus. Josephus, op. cit. XIII, 13, 5. V. Klausner, היסטוריה 11, 128.

(14) Caused by the symptoms described in Num. V, 27.

(15) By paying its value into the Temple treasury.

Talmud - Mas. Sotah 23a

SHE WHO SAYS, 'I AM UNCLEAN TO THEE',[1] WHEN WITNESSES CAME [AND TESTIFIED] THAT SHE HAD MISCONDUCTED HERSELF, SHE WHO SAYS I REFUSE TO DRINK, WHEN THE HUSBAND REFUSES TO LET HER DRINK, AND WHEN HER HUSBAND COHABITED WITH HER ON THE JOURNEY [TO JERUSALEM]. FURTHERMORE, THE MEAL-OFFERINGS OF ALL WOMEN MARRIED TO PRIESTS ARE DESTROYED.[2] THE MEAL-OFFERING OF THE DAUGHTER OF AN ISRAELITE[3] WHO IS MARRIED TO A PRIEST IS DESTROYED. BUT THE MEAL-OFFERING OF A PRIEST'S DAUGHTER WHO IS MARRIED TO AN ISRAELITE IS EATEN. WHAT [DIFFERENCES ARE THERE IN LAW] BETWEEN A PRIEST AND A PRIEST'S DAUGHTER? THE MEAL-OFFERING OF A PRIEST'S DAUGHTER IS EATEN BUT THE MEAL-OFFERING OF A PRIEST IS NOT EATEN.[4] A PRIEST'S DAUGHTER MAY BECOME DECLASSED,[5] BUT A PRIEST DOES NOT BECOME DECLASSED.[6] A PRIEST'S DAUGHTER MAY RENDER HERSELF UNCLEAN BY CONTACT WITH THE DEAD, BUT A PRIEST MAY NOT RENDER HIMSELF UNCLEAN BY CONTACT WITH THE DEAD. A PRIEST EATS OF THE MOST HOLY [CLASS OF OFFERINGS],[7] BUT A PRIEST'S DAUGHTER MAY NOT EAT OF THE MOST HOLY.

WHAT [DIFFERENCES ARE THERE IN LAW] BETWEEN A MAN AND A WOMAN? A MAN RENDS HIS CLOTHES AND LOOSENS HIS HAIR,[8] BUT A WOMAN DOES NOT REND HER CLOTHES AND LOOSEN HER HAIR. A MAN MAY VOW THAT HIS SON WILL BECOME A NAZIRITE, BUT A WOMAN MAY NOT VOW THAT HER SON WILL BECOME A NAZIRlte.[9] A MAN MAY BE SHAVED ON ACCOUNT OF THE NAZIRITESHIP OF HIS FATHER,[10] BUT A WOMAN CANNOT BE SHAVED ON ACCOUNT OF THE NAZIRITESHIP OF HER FATHER. A MAN MAY SELL HIS DAUGHTER,[11] BUT A WOMAN MAY NOT SELL HER DAUGHTER. A MAN MAY GIVE HIS DAUGHTER IN BETROTHAL,[12] BUT A WOMAN MAY NOT GIVE HER DAUGHTER IN BETROTHAL. A MAN IS STONED NAKED, BUT A WOMAN IS NOT STONED NAKED.[13] A MAN IS HANGED,[14] BUT A WOMAN IS NOT HANGED. A MAN IS SOLD FOR HIS THEFT,[15] BUT A WOMAN IS NOT SOLD FOR HER THEFT.

GEMARA. Our Rabbis taught: The meal-offerings of all women who had married into the priesthood are to be destroyed.[16] How is this? In the case of the daughter of a priest, Levite or Israelite who had married a priest, her meal-offering is not eaten because he has a share in it,[17] nor is it treated as a holocaust[18] because she[19] has a share in it; but the handful is offered separately and the remainder separately. But there is to be applied here the rule that whatever sacrifice has a portion thereof treated as 'offerings made by fire' comes under the law of ye shall not burn![20] — R. Judah, son of R. Simeon b. Pazi said: They are burnt as fuel,[21] in accordance with the statement of R.

Eliezer; for it has been taught: R. Eliezer says: For a sweet savour[22] thou mayest not bring it [upon the altar] but thou mayest bring it as fuel. This is right for R. Eliezer who holds this opinion; but what is there to say as regards the Rabbis who do not hold this opinion? — [They declare that] it is to be treated according to the view of R. Eleazar b. Simeon; for it has been taught: R. Eleazar b. Simeon says: The handful[23] is offered separately and the remainder is scattered upon the place of the ashes.

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(1) To her husband through infidelity.

(2) Although not defiled. The law of Lev. II, 3 does not apply, v. Gemara.

(3) A non-priest.

(4) V. Lev. VI, 16.

(5) By contracting an illegal marriage. Even after divorce or in widowhood she loses her privileges.

(6) Permanently by contracting an illegal marriage. After divorce or his wife's death he regains his privileges.

(7) A sin-offering or guilt-offering.

(8) When declared a leper (Lev. XIII, 45).

(9) V. Nazir 28b.

(10) I.e., in the event of his father's death, he can go through the ceremony described in Num. VI, 18, v. Nazir 30a.

(11) As a bondwoman (Ex. XXI, 7).

(12) Without her consent when she is a minor.

(13) V. Sanh. 44b.

(14) After capital punishment (Deut. XXI, 22).

(15) Ex. XXII, 2.

(16) And not eaten by the priests.

(17) The flour belongs to him, and so the offering in fact comes under the law of Lev. VI, 16.

(18) Which is the way the meal-offering of a priest is treated

(19) Who is a non-priest.

(20) Lev. II, 11. In this verse the word mimmennu ‘of it’ appears to be superfluous, and the deduction is drawn that the parts of a sacrifice which are designated as not to be burnt upon the altar must not be burnt upon it. How, then, can it be stated that ‘the remainder’ is to be burnt separately?

(21) Upon the altar but not as part of the sacrifice.

(22) Ibid. 12.

(23) Of a meal-offering for a sin brought by a priest. Lev. VI, 16 speaks of a freewill-offering.

Talmud - Mas. Sotah 23b

And even the Rabbis only differ from R. Eleazar b. Simeon in the matter of the meal-offering brought by a sinner from among the priests which is something to be offered [in its entirety],[1] but even here[2] the Rabbis admit.[3]

[THE MEAL-OFFERING] OF THE DAUGHTER OF AN ISRAELITE WHO IS MARRIED etc. What is the reason? — Because Scripture declared: And every meal-offering of the priest shall be wholly burnt; it shall not be eaten[4] — ‘of the priest’ but not of a priest's daughter.[5]

A PRIEST'S DAUGHTER MAY BECOME DECLASSED, BUT A PRIEST DOES NOT BECOME DECLASSED. Whence have we this? — Because Scripture declared: He shall not profane his seed among his people[6] — his seed may become profaned,[7] but he himself cannot become profaned.

A PRIEST'S DAUGHTER MAY RENDER HERSELF UNCLEAN etc. What is the reason? — Scripture declared: Speak unto the priests the sons of Aaron[8] — ‘the sons of Aaron’ but not the daughters of Aaron.

A PRIEST EATS OF THE MOST HOLY — for it is written: Every male among the children of Aaron shall eat of it.[9]

WHAT [DIFFERENCES ARE THERE IN LAW] BETWEEN A MAN etc. Our Rabbis taught: [He is a leprous] man.[10] I have here only mention of a man; whence is it [that the law applies to] a woman? When it states: And the leper in whom [the plague is],[11] behold here are two.[12] If so, what does the word 'man' indicate? [It is to be applied] to the subject-matter of what follows, viz., it is a man who rends his clothes etc, [but not a woman].

A MAN MAY VOW THAT HIS SON WILL BECOME A NAZIRITE, BUT A WOMAN CANNOT VOW THAT HER SON WILL BECOME A NAZIRITE. R. Johanan said: This is a legal decision [traditionally handed down] in connection with a Nazirite.[13]

A MAN MAY BE SHAVED ON ACCOUNT OF THE NAZIRITESHIP OF HIS FATHER, BUT A WOMAN CANNOT BE SHAVED ON ACCOUNT OF THE NAZIRITESHIP OF HER FATHER. R. Johanan said: This is a legal decision [traditionally handed down] in connection with a Nazirite.[14]

A MAN MAY GIVE HIS DAUGHTER IN BETROTHAL, BUT A WOMAN CANNOT GIVE HER DAUGHTER IN BETROTHAL. Because it is written: I gave my daughter unto this man.[15]

A MAN MAY SELL HIS DAUGHTER, BUT A WOMAN MAY NOT SELL HER DAUGHTER. Because it is written: And if a man sell his daughter.[16]

A MAN IS STONED NAKED etc. What is the reason? — And stone him[17] — what means 'him'? If I say that it means him and not her, behold it is written: Then shalt thou bring forth that man or that woman![18] But [the meaning is] 'him' without his clothing but not her without her clothing.

A MAN IS HANGED etc. What is the reason? — Scripture declared: And thou hang him on a tree[19] — 'him' but not her.

A MAN IS SOLD FOR HIS THEFT, BUT A WOMAN IS NOT SOLD FOR HER THEFT. What is the reason? — Scripture declared: Then he shall be sold for his theft[20] — 'for his theft' but not for her theft.

C H A P T E R I V

MISHNAH. A BETROTHED MAIDEN AND A CHILDLESS WIDOW WAITING FOR HER BROTHER-IN-LAW [TO DECIDE WHETHER HE WILL MARRY HER] DO NOT DRINK [THE WATER OF BITTERNESS][21] AND DO NOT RECEIVE WHAT IS DUE UNDER THE MARRIAGE-SETTLEMENT; AS IT IS SAID, WHEN A WIFE, BEING UNDER HER HUSBAND, GOETH ASIDE,[22] THUS EXCLUDING A BETROTHED MAIDEN AND A CHILDLESS WIDOW WAITING FOR HER BROTHER-IN-LAW. A WIDOW WHO HAD MARRIED A HIGH PRIEST,[23] A DIVORCED WOMAN OR A HALUZAH[24] WHO HAD MARRIED AN ORDINARY PRIEST, AN ILLEGITIMATE

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(1) According to the Rabbis, this sin-offering is to be dealt with in the same manner as the ordinary meal-offering of the priest and burnt in its entirety without the handful being first removed and offered.

(2) With the meal-offering of a priest's wife which is not something to be wholly offered, since this is treated like a non-priest.

(3) That the remainder is not to be offered, but should be scattered.

(4) Lev. VI, 16.

(5) Consequently if the woman is a priest's wife but not a priest's daughter her offering is destroyed.
(6) Lev. XXI, 15.
(7) As the result of an illegal marriage.
(8) Ibid. 1.
(9) Ibid. VI, 11.
(10) Ibid. XIII, 44.
(11) Ibid. 45.
(12) Since these words are otherwise redundant after the preceding verse.
(13) V. Nazir 28b.
(14) V. Nazir 30a.
(15) Deut. XXII, 16. The subject is 'the damsel's father'.
(16) Ex. XXI, 7.
(17) Lev. XXIV, 14.
(18) Deut. XVII, 5.
(19) Ibid. XXI, 22.
(20) Ex. XXII, 2. E.V. 3.
(21) In the event of seclusion with another man after receiving due warning.
(22) Num. V. 29.
(23) All the marriages enumerated here are illegal.
(24) V. Glos.

Talmud - Mas. Sotah 24a

OR A NETHINAH[1] WHO HAD MARRIED AN ISRAELITE, AND AN ISRAELITE'S DAUGHTER WHO HAD MARRIED AN ILLEGITIMATE OR A NATHIN DO NOT DRINK [THE WATER OF BITTERNESS] AND DO NOT RECEIVE WHAT IS DUE UNDER THE MARRIAGE-SETTLEMENT.

THE FOLLOWING DO NOT DRINK AND DO NOT RECEIVE THE MARRIAGE-SETTLEMENT: SHE WHO SAYS 'I AM UNCLEAN WHEN WITNESSES CAME [AND TESTIFIED] THAT SHE HAD MISCONDUCTED HERSELF, AND SHE WHO SAYS 'I REFUSE TO DRINK'. WHEN HER HUSBAND IS UNWILLING TO LET HER DRINK, OR WHEN HER HUSBAND COHABITED WITH HER ON THE JOURNEY [TO JERUSALEM]. SHE RECEIVES THE MARRIAGE-SETTLEMENT BUT DOES NOT DRINK. IF THE HUSBANDS DIED BEFORE [THE WOMEN] DRANK, BETH SHAMMAI DECLARE THAT THEY RECEIVE THE MARRIAGE-SETTLEMENT BUT DO NOT DRINK, AND BETH HILLEL DECLARE THAT THEY EITHER DRINK OR DO NOT RECEIVE THE MARRIAGE-SETTLEMENT.

[A WIFE] WHO WAS PREGNANT BY A FORMER HUSBAND OR WAS SUCKLING A CHILD BY A FORMER HUSBAND[2] DOES NOT DRINK AND DOES NOT RECEIVE THE MARRIAGE-SETTLEMENT. SUCH IS THE STATEMENT OF R. MEIR; BUT THE RABBIS DECLARE THAT HE IS ABLE TO SEPARATE FROM HER AND TAKE HER BACK AFTER THE PERIOD [OF TWO YEARS]. A WOMAN INCAPABLE OF CONCEPTION,[3] ONE TOO OLD TO BEAR CHILDREN, AND ONE WHO IS UNFIT TO BEAR CHILDREN[4] DO NOT RECEIVE THE MARRIAGE-SETTLEMENT AND DO NOT DRINK.[5] R. ELIEZER SAYS: HE IS ABLE TO MARRY ANOTHER WIFE[6] AND HAVE OFFSPRING BY HER. AS FOR ALL OTHER WOMEN, THEY EITHER DRINK OR DO NOT RECEIVE THE MARRIAGE-SETTLEMENT.

THE WIFE OF A PRIEST DRINKS AND IS PERMITTED TO HER HUSBAND.[7] THE WIFE OF A EUNUCH[8] DRINKS. THROUGH [SECLUSION WITH] ALL PERSONS FORBIDDEN TO

HER IN MARRIAGE[9] JEALOUSY [NECESSITATING THE ORDEAL] IS ESTABLISHED WITH THE EXCEPTION OF A MINOR[10] AND ONE NOT A MAN.[11]

IN THE FOLLOWING CASES A COURT OF LAW CAN GIVE WARNING:[12] WHEN THE HUSBAND IS A DEAF-MUTE OR HAS BECOME INSANE OR IS IMPRISONED. NOT FOR THE PURPOSE OF MAKING HER DRINK DID THEY SAY THIS, BUT TO DISQUALIFY HER IN CONNECTION WITH THE MARRIAGE-SETTLE MENT. R. JOSE SAYS: ALSO TO MAKE HER DRINK; WHEN HER HUSBAND IS RELEASED FROM PRISON HE MAKES HER DRINK.

GEMARA. [In the instances enumerated by the Mishnah, the husband] does not let her drink, but he may give her a warning.[13] Whence is this learnt? — Our Rabbis taught: Speak unto the children of Israel and say[14] — [the addition of 'and say'] is to include a betrothed maiden and a childless widow waiting for her levir in the law respecting the warning. Whose is [the teaching of] our Mishnah? — It is R. Jonathan's; for it has been taught: Being under thy husband[15] excludes a betrothed maiden. It is possible to think that we are also to exclude a childless widow; therefore the text repeats the word 'man'.[16] Such is the statement of R. Joshiah. R. Jonathan says: 'Being under thy husband' excludes a childless widow. [It is possible to think that] we exclude a childless widow waiting for her levir but not a betrothed maiden; therefore there is a text to declare, When a wife, being under her husband, goeth aside,[17] thus excluding a betrothed maiden. One teacher[18] considers a betrothed maiden as more bound to him since the marriage ensues through him and they stone her on his account;[19] whereas the other teacher considers that a childless widow is more bound to [her brother-in-law] since the nuptial surrender is not lacking.[20] What, then, does R. Jonathan make of the repetition of the word 'man'? — He requires it to include the wife of a deaf-mute man, the wife of an imbecile, and the wife of

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(1) A descendant of the Gibeonites (Josh. IX) with whom Israelites were not allowed to intermarry. An illegitimate was debarred under the law of Deut. XXIII, 3, E.V. 2.

(2) Under Rabbinic Law, a pregnant woman who had been divorced or widowed should not marry for two years. This Mishnah deals with the case where she married within that period and her husband became jealous of her.

(3) Lit., 'ram-like', v. Keth. 11a.

(4) This refers to a woman who lost the capability of bearing by taking some drug and not just barren or too old to bear children.

(5) Because marriage with such as these is forbidden to one who has no children.

(6) In addition to her; he therefore regards such a marriage as valid.

(7) If proved innocent.

(8) Who became so after marriage.

(9) E.g., her father or brother.

(10) Under the age of nine years.

(11) Explained in the Gemara.

(12) Instead of the husband, when they have cause to suspect the wife.

(13) Not to associate with the man, in order to deny her right to the marriage. settlement if she disobeyed.

(14) Num. V, 12.

(15) Ibid. 19.

(16) In verse 12 any man's wife is literally: a man, a man, his wife. The addition of the word 'man' is taken to include the case of a childless widow, waiting for her levir.

(17) Ibid. 29.

(18) R. Jonathan.

(19) If she is unchaste (Deut. XXII, 24).

(20) By the death of her husband she ipso facto becomes the wife of her brother-in-law if he wishes to take her, and an act of cohabitation constitutes a marriage.

Talmud - Mas. Sotah 24b

a weak-minded man.[1] And what does R. Joshiah make of the phrase ‘being under her husband’? — He requires it to draw an analogy between a husband and wife and between a wife and husband.[2] Now the reason [given why a betrothed maiden is excluded] is because these Scriptural texts occur, otherwise I would have said that a betrothed maiden must drink; but when R. Aha b. Hanina came from the South he brought this teaching with him: Besides thine husband[3] — i.e., when intercourse with a husband had preceded intercourse with a paramour and not when intercourse with a paramour had preceded intercourse with a husband![4] — Rami b. Hama said, [It is necessary to rely upon the texts] for such a contingency as when the fiance had had intercourse with her in her father's house.[5] Similarly with a childless widow the texts would be required for the contingency as when the brother-in-law had had intercourse with her in her father-in-law's house;[6] but can you call her a childless widow waiting for her levir’? [In such circumstances], Surely she is his legal wife; for Rab has said: He[7] has acquired her [as his wife] in every respect![8] — It is as Samuel said: He has only acquired her for the objects mentioned in the Scriptural portion.[9] If that is so, are we to say that Rab agrees with R. Joshiah[10] and Samuel with R. Jonathan?[11] — Rab can reply. I even agree with R. Jonathan, because from the fact that it was necessary for the text to exclude her,[12] it follows that she is his legal wife.

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(1) V. infra 27a.

(2) This is likewise expounded infra 27a.

(3) Num. V, 20.

(4) Consequently a betrothed maiden is excluded from the law.

(5) Before marriage.

(6) After her husband's death.

(7) The levir.

(8) By cohabitation. If, e.g., he is a priest, she partakes of the heave-offering.

(9) Deut. XXV, 5-10. viz., to be his brother's heir and free himself from the ceremony of Halizah; but cohabitation would not constitute a marriage to give her the right to partake of the heave.offering if he was a priest.

(10) Who says that a childless widow waiting for her levir drinks, and that can arise in the case where the cohabitation occurred in her father's house.

(11) Who holds that she does not drink, for cohabitation does not constitute full marriage.

(12) A childless widow who cohabited with her brother-in-law.

Talmud - Mas. Sotah 25a

Similarly Samuel can reply. I even agree with R. Joshiah. because from the fact that it was necessary for the text to include her, it follows that she is not his wife at all.

The question was asked: Does a woman who transgresses [the Jewish] ethical code[1] require to be warned in order to make her lose her marriage-settlement or does she not require it? Do we say that since she transgresses the ethical code she does not require to be warned; or perhaps warning is necessary because she may reform? — Come and hear: A BETROTHED MAIDEN AND A CHILDLESS WIDOW WAITING FOR HER BROTHER-IN-LAW[2] DO NOT DRINK AND DO NOT RECEIVE WHAT IS DUE UNDER THE MARRIAGE-SETTLEMENT. [In these instances the man] does not let her drink but he may give her warning. But for what purpose [does he warn her]? Is it not to make her lose her marriage-settlement![3] — Abaye said: No; [the purpose is] to prohibit her to himself [in marriage]. R. Papa said: [The purpose is] to make her drink when she is married;[4] as it has been taught: We may not warn a betrothed maiden with the object of making her drink while she is betrothed; but we may warn a betrothed maiden with the object of making her drink when she is married.

Raba said: Come and hear: A WIDOW WHO HAD MARRIED A HIGH PRIEST, A DIVORCED WOMAN OR A HALUZAH WHO HAD MARRIED AN ORDINARY PRIEST, AN ILLEGITIMATE OR A NETHINAH WHO HAD MARRIED AN ISRAELITE, AND AN ISRAELITE'S DAUGHTER WHO HAD MARRIED AN ILLEGITIMATE OR A NATHIN DO NOT DRINK AND DO NOT RECEIVE WHAT IS DUE UNDER THE MARRIAGE-SETTLEMENT. They do not drink but they receive a warning. But for what purpose? If [you answer] to make them prohibited to the husband, behold they are already prohibited;[5] rather must it be to make them lose the marriage-settlement! — Rab Judah of Diskarta[6] said: No; [the purpose is] to prohibit her to the paramour as to the husband; as we learn: Just as she is prohibited to the husband so is she prohibited to the paramour.[7]

R. Hanina of Sura said; Come and hear: IN THE FOLLOWING CASES A COURT OF LAW CAN GIVE WARNING: WHEN THE HUSBAND IS A DEAF-MUTE OR HAS BECOME INSANE OR IS IMPRISONED. NOT FOR THE PURPOSE OF MAKING HER DRINK DID THEY SAY THIS BUT TO DISQUALIFY HER IN CONNECTION WITH THE MARRIAGE-SETTLEMENT. Conclude from this that she does require to be warned! That conclusion is to be drawn. But why did not [the other Rabbis] draw the inference from this passage? — [They thought] perhaps it is different in the circumstance where she had no cause at all to be afraid of her husband.[8]

The question was asked: If a woman transgresses [the Jewish] ethical code and the husband desired to retain her, may he do so or may he not? Do we say that the All-Merciful depends upon the husband's objection [to her conduct],[9] and in this case he does not object; or, perhaps, since [a husband normally] objects, he must object [and divorce her]? — Come and hear: IN THE FOLLOWING CASES A COURT OF LAW CAN GIVE WARNING: WHEN THE HUSBAND IS A DEAF-MUTE OR HAS BECOME INSANE OR IS IMPRISONED. Should you maintain that if the husband desired to retain her he may do so, can the Court of Law do something of which the husband may not approve?[10] — As a general rule, when a woman transgresses the ethical code, [the husband] is agreeable [to the warning].

The question was asked: If a husband retracted his warning, is the warning retracted or not?[11] Do we say that the All-Merciful depends upon the husband's warning and here the husband retracted it; or perhaps since he already gave a warning he is unable to withdraw it? — Come and hear: IN THE FOLLOWING CASES A COURT OF LAW CAN GIVE WARNING: WHEN THE HUSBAND IS A DEAF-MUTE OR HAS BECOME INSANE OR IS IMPRISONED. Should you maintain that if a husband retracted his warning his warning is retracted, can we[12] perform an action which the husband may come and retract![13] — As a general rule, a man agrees with the opinion of a Court of Law.[14]

Come and hear: And they assign to him two disciples of the Sages lest he cohabit with her on the journey.[15] Should you maintain that if a husband retracted his warning the warning is retracted, let him then withdraw it and cohabit with her! — Why are disciples of the Sages specified? Because they are learned men, so that if he wishes to cohabit with her, they say to him, ‘Withdraw your warning and cohabit with her’.[16]

Come and hear: R. Joshiah said: Three things did Ze'ira tell me as emanating from the men of Jerusalem:[17] If a husband retracted his warning the warning is retracted; if a Court of Law wished to pardon an elder who rebelled [against their decision] they may pardon him; and if the parents wished to forgive a stubborn and rebellious son[18] they may forgive him.[19] When, however, I came to my colleagues in the South, they agreed with me in respect of two but did not agree with me in respect of the rebellious elder, so that disputes should not multiply in Israel. Deduce therefrom that if a husband retracted his warning the warning is retracted. Draw that conclusion.

In this connection R. Aha and Rabina differ. One said that [the warning can be] retracted before seclusion but not after seclusion, and the other said that also after seclusion it can be retracted. The more probable view is that of him who said that it cannot be retracted. Whence is this learnt? — [It is to be inferred] from the answer which the Rabbis gave to R. Jose; for it has been taught: R. Jose says: By a fortiori reasoning [it is deduced] that a husband Is trusted with her. If a husband is trusted in the matter of his wife during menstruation where the penalty is excision, how much more so in the matter of his wife while under suspicion in connection with which there is a mere prohibition! [The Rabbis] replied to him, No; if you argue [that he may be trusted] in the case of his wife during menstruation to whom he will have a right [on her recovery], will you argue so in the case of his wife while under suspicion when he may never have a right to her![20] Now if you maintain that [a warning may be] retracted after seclusion, then it can happen that he may again have a right to her; because if he so desire, he can retract his warning and cohabit! Therefore deduce from this that after seclusion it cannot be retracted. Draw that conclusion.

IF THE HUSBANDS DIED BEFORE [THE WOMEN] DRANK, BETH SHAMMAI etc. On what point [do the two Schools] differ?

Beth Shammai are of opinion that a bond which is due for redemption is considered as having been redeemed;[21]

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(1) And thereby shows an indifference for public opinion; such a woman is put away without recovering her kethubah, v. Keth. 72a.

(2) These too had transgressed the ethical code by their act of seclusion.

(3) Consequently, without warning she would not lose it.

(4) If she secluded herself with a man after marriage, then the warning which the husband gave her for a previous action, while she was betrothed, is still valid.

(5) Since such a marriage is contrary to law.

(6) V. supra p. 26, n. 7.

(7) V. infra 27b.

(8) Since he was incapacitated; but in normal circumstances, they imagined that she would lose her marriage-settlement without a warning.

(9) Because Scripture declares, ‘and he be jealous of his wife’. If he is not jealous, is her conduct to be overlooked?

(10) The Court, representing the husband, would thereby involve him in an act which was contrary to his wish, and this is not legally possible, v. Keth. 11a.

(11) [Assuming that the husband may retain a wife who transgresses the ethical code, the question still arises whether he can retract or not in the case where he had given her a warning.]

(12) I.e., the Court.

(13) And then offer an affront to the court.

(14) But if he wishes to retract he may do so.

(15) V. supra 7a.

(16) This is a reply to the question. The husband indeed can withdraw, and that is the very reason why disciples of the Sages are specified.

(17) [Rashi: who was of the men of Jerusalem].

(18) Cf. Deut. XXI, 18ff.

(19) For further notes v. Sanh. (Sonc. ed.) p. 585.

(20) V. supra 7a.

(21) If the bond was on the security of the borrower's property, then at the time of the redemption the property is considered as automatically passing into the possession of the creditor pending payment. By analogy, the widow is automatically entitled to her marriage-settlement on the husband's death and the onus is upon the heirs to prove that she had forfeited it by producing witnesses that she had committed adultery.

Talmud - Mas. Sotah 25b

whereas Beth Hillel are of opinion that a bond which is due for redemption is not considered as having been redeemed.[1]

[A WIFE] WHO WAS PREGNANT BY A FORMER HUSBAND etc. R. Nahman said in the name of Rabbah b. Abbuha: The dispute[2] is in connection with a barren woman and one too old to bear children; but as for a woman incapable of conception, all agree that she does not drink and does not receive her marriage-settlement, as it is said: Then she shall be free and shall conceive seed[3] — i.e., one whose way it is to conceive seed, thus excluding one whose way is not to conceive seed. An objection was raised: 'If a man gives a warning to his betrothed or to his brother's childless widow, should she seclude herself [with the other man] before the marriage, she does not drink and does not receive her marriage-settlement'.[4]

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(1) As the creditor must first establish his right to the debtor's property, so the widow must prove her right to the marriage-settlement by drinking the water, since she is under suspicion; for fuller notes v. Shebu. (Sonc. ed.) p. 298, n. 5.

(2) Viz., R. Eliezer says: He is able to marry another wife and have offspring by her.

(3) Num. V, 28.

(4) V. Tosef. Sotah v, 4.

Talmud - Mas. Sotah 26a

'[A wife] who was pregnant by a former husband or was suckling a child by a former husband does not drink and does not receive the marriage-settlement.'[1] Such is the statement of R. Meir; because R. Meir says: A man may not marry a woman who is pregnant by a former husband or is suckling a child by a former husband, and if he married her he must let her go and never take her back; the Sages, on the other hand, say: He must let her go, but when the time arrives when he may marry her[2] he marries her. 'If a youth married a barren woman or one too old to bear, and he did not previously have a wife and children, she does not drink and does not receive the marriage-settlement. R. Eliezer says: He is able to marry another wife and have offspring by her'.[3] But 'if a man gives a warning to his betrothed or to his brother's childless widow and she secluded herself after marriage, she either drinks or does not receive the marriage-settlement. If the wife is pregnant or suckling a child by himself,[4] she either drinks or does not receive the marriage-settlement. And if a youth married a barren woman or one too old to bear, and he already had a wife and children, she either drinks or does not receive the marriage-settlement. The legal wife of an illegitimate,[5] the legal wife of a Nathin, the wife of a proselyte or freed slave, and a woman incapable of conception either drink or do not receive the marriage-settlement.[6] Here the woman incapable of conception is specified [among the woman who are required to drink]! It is a refutation of R. Nahman.[7]

R. Nahman can reply, [That which I stated above is a difference between] Tannaim, whereas I agree with the following Tanna. For it has been taught: R. Simeon b. Eleazar says: A woman incapable of conception does not drink and does not receive the marriage-settlement, as it is said: Then she shall be free and shall conceive seed[8] — i.e., one whose way is to conceive seed, thus excluding one whose way is not to conceive seed.[9] What, then, do the Rabbis make of the phrase 'Then she shall be free and shall conceive seed'? They require it in accordance with the following teaching: 'Then she shall be free and conceive seed' — so that if she had been barren, she now becomes visited.[10] Such is the statement of R. Akiba. R. Ishmael said to him, In that case, all barren women will seclude themselves and be visited, and since this one did not seclude herself she will be the loser![11] If so, what is the purpose of 'Then she shall be free and shall conceive seed'? If she formerly bore children in pain she will now bear with ease; if formerly girls she will now give birth to boys; if formerly short she will now bear tall children; if formerly dark she will now have fair

children.

'The legal wife of an illegitimate [either drinks or does not receive the marriage-settlement]' — this is self-evident![12] — What you might have said was that disqualified [members of the Community] should not be multiplied.[13] Therefore he informs us [that such a marriage is treated like any other].

'The wife of a proselyte or freed slave and a woman incapable of conception [either drink or do not receive the marriage-settlement]' — this is self-evident! — What you might have said was, Speak unto the children of Israel[14] — but not to proselytes. Therefore he informs us [that proselytes are included in the law]. Or as an alternative answer: And say[15] is to be interpreted as including [the wife of a proselyte, etc.].

THE WIFE OF A PRIEST DRINKS etc. This is self-evident! — What you might have said was, And she had not been violated[16] — then she is prohibited [to her husband];[17] hence if she had been violated she is permitted to him; but this woman [being the wife of a priest] is prohibited to him even if she had been violated,and consequently she does not drink. Therefore he informs us [that she does undergo the ordeal].

AND IS PERMITTED TO HER HUSBAND. This is self-evident! — R. Huna said: [This refers to a case where] she becomes ill.[18] But if she becomes ill, the water has proved her [guilty]! — [It refers to a case where] she becomes ill in other limbs.[19] What you might have said was that she had committed adultery, and the fact that the water did not affect her in the usual way was due to her having acted immorally under force and as such she is prohibited to a priest. Therefore he informs us [that she is permitted to her husband].

THE WIFE OF A EUNUCH DRINKS. This is self-evident! — What you might have said was, Besides thine husband[20] declared the All Merciful, and this man [being a eunuch] does not come within the category [of husband]. Therefore he informs us [that he is considered to be her husband for the law of the ordeal].

THROUGH [SECLUSION WITH] ALL PERSONS FORBIDDEN TO HER IN MARRIAGE JEALOUSY IS ESTABLISHED. This is self-evident!

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(1) Ibid. 6.

(2) I.e., after the lapse of two years from the birth of the child.

(3) Tosef. ibid. 5. The last sentence occurs in the Mishnah p. 120, and instead the Tosef. reads: R. Eliezer says: He is able to separate from her and take her back after a time.

(4) I.e., by the husband who gives her warning.

(5) Viz., a woman who was competent to marry such a man, and she secluded herself after warning.

(6) Tosef. ibid. 1-4.

(7) He asserted above, 'All agree that she does not drink'.

(8) Num. V, 28.

(9) Tosef. ibid. 4.

(10) The Biblical term used of barren women who conceive.

(11) By remaining loyal to her husband and avoiding all suspicion a barren woman will continue sterile!

(12) Since her marriage is legal.

(13) The purpose of the Torah cannot be to restore harmony between such a couple, since the offspring of the union would be disqualified from membership in the Community.

(14) Num. V, 12.

(15) Ibid.

(16) Num. V, 13; i.e., she had been a consenting party.

(17) V. supra 2b.
(18) After drinking the water.
(19) Not those enumerated in Num. V, 22.
(20) Ibid. 20.

Talmud - Mas. Sotah 26b

— What you might have said was, The phrase 'and she be defiled' occurs twice[1] — once with respect to the husband and the other with respect to the paramour[2] — but it only applies when she becomes prohibited [to the paramour] by this act of adultery; but where she was in any event forbidden to him, conclude that she is not [barred from marrying him]. Therefore he informs us [that she has to undergo the ordeal although the paramour was forbidden to her in any case and if guilty she cannot marry her paramour].

WITH THE EXCEPTION OF A MINOR etc. A man[3] declared the All-Merciful, not a minor. AND ONE NOT A MAN. Whom does this exclude? If I answer that it is to exclude one whose flesh is wasted,[4] behold Samuel has said: A warning [against seclusion] can be given in connection with a man who is wasting and he disqualifies for partaking of the heave-offering![5] (A warning [against seclusion] can be given in connection with him — this is self-evident! — What you might have said was, 'And a man lie with her carnally' declared the All-Merciful and such a one does not come within that category; therefore he informs us [that seclusion with him does bring the woman within the scope of the law]. And he disqualifies for partaking of the heave-offering — that is self-evident! — What you might have said was, He shall not profane his seed[6] declared the All-Merciful-one who had 'seed' can profane,[7] but one who had no 'seed' cannot profane; therefore he informs us [that he can profane].[8]) If, on the other hand, it is to exclude a gentile, behold R. Hamnuna has said: A warning [against seclusion] can be given in connection with a gentile and he disqualifies for partaking of the heave-offering! (A warning [against seclusion] can be given in connection with him — this is self-evident! — What you might have said was, The phrase 'and she be defiled' occurs twice — once with respect to the husband and the other with respect to the paramour — but it only applies when she becomes prohibited [to the paramour] by this act of adultery; but where she was in any event forbidden to him,[9] conclude that she is not [warned against seclusion]. Therefore he informs us [that a warning can be given with respect to a gentile]. And he disqualifies for partaking of the heave-offering — this is self-evident! — What you might have said was, And if a priest's daughter be married unto a stranger[10] declared the All-Merciful, i.e., when there was a legal marriage-status, but not when there is no legal marriage-status. Therefore he informs us [that a gentile] does disqualify her. This is in agreement with R. Johanan who said in the name of R. Ishmael: Whence is it that a gentile or a slave who had intercourse with a priest's daughter or Levite's daughter or an Israelite's daughter disqualifies her [for the heave-offering]? As it is said: But if a priest's daughter be a widow, or divorced[11] — only In the case of a man where her widowhood or divorce [is legally recognised],[12] thus excluding a gentile or slave where her widowhood or divorce is not [legally recognised].)[13] What, then, [does the phrase AND NOT A MAN] exclude? — R. Papa said: It excludes an animal, because there is not adultery in connection with an animal.[14]

Raba of Parazika[15] asked R. Ashi, Whence is the statement which the Rabbis made that there is no adultery in connection with an animal? — Because it is written: Thou shalt not bring the hire of a harlot or the wages of a dog etc.;[16] and it has been taught: The hire of a dog[17] and the wages of a harlot[18] are permissible, as it is said: Even both these[19] — the two [specified in the text are abominations] but not four.[20]

What is the purpose [of the Scriptural phrase] carnally?[21] — It is required for this teaching: 'Carnally' to the exclusion of something else. What means 'something else'? — R. Shesheth said: It excludes the case where he warned her against unnatural intercourse. Raba said to him, [It excludes

the case where he warned her against] unnatural intercourse? It is written: As lying with womankind![22] But, said Raba,it excludes the case where he warned her against contact of the bodies.[23] Abaye said to him, That is merely an obscene act [and not adultery], and did the All-Merciful prohibit [a wife to her husband] for an obscene act? But, said Abaye, it excludes the case where he warned her against external contact. This is quite right according to him who maintains that by sexual contact is to be understood insertion[24] inasmuch as external contact is not regarded, and consequently the Scriptural phrase is intended to exclude the latter; but according to him who maintains that sexual contact is the external contact what is there to say? — Certainly [the Scriptural phrase is intended to exclude the case where] he warned her against contact of the bodies; and should you argue that the All-Merciful made it depend upon the husband's objection [to such conduct] and behold the husband did object,[25] therefore he informs us [that the phrase ‘carnally’ is to exclude this].

Samuel said: Let a man marry

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(1) Ibid. 13f.

(2) She must be divorced by her husband and is not allowed to marry her paramour. V. Mishnah p. 135.

(3) Lie with her carnally. Num. V, 13.

(4) Tosef. Bek. V, 4, identifies the term with he who hath his stones broken in Lev. XXI, 20.

(5) If he married a priest's daughter when he was so afflicted, she loses the right to eat of the heave-offering.

(6) Lev. XXI, 15.

(7) A priest's daughter by marriage.

(8) Consequently a person who is so afflicted is regarded as ‘a man’ and cannot be intended by the Mishnah.

(9) He being a gentile.

(10) Lev. XXII, 12.

(11) Lev. XXII, 13.

(12) Does she return to her father's house and eat the heave-offering.

(13) Therefore a gentile cannot be intended by the Mishnah.

(14) She would not be prohibited to her husband for such an act.

(15) Farausag near Bagdad v. B.B. (Sonc. ed.) p. 15. n. 4. He is thus distinguished from the earlier Rabbi of that name

(16) Deut. XXIII, 19.

(17) Money given by a man to a harlot to associate with his dog. Such an association is not legal adultery.

(18) If a man had a female slave who was a harlot and he exchanged her for an animal, it could be offered.

(19) Are an abomination unto the Lord (ibid.).

(20) Viz., the other two mentioned by the Rabbis.

(21) In Num. V, 13, since the law applies to a man who is incapable.

(22) Lev. XVIII, 22. The word for ‘lying’ is in the plural and is explained as denoting also unnatural intercourse.

(23) With the other man, although there is no actual coition.

(24) Which is legally equal to complete coition.

(25) As evidenced by his warning.

Talmud - Mas. Sotah 27a

a woman of ill-repute rather than the daughter of a woman of ill-repute, since the former comes from pure stock and the latter from impure stock.[1] R. Johanan, however, said: Let a man marry the daughter of a woman of ill-repute rather than a woman of ill-repute, since the former is presumably chaste whereas the latter is not. An objection was raised: One should marry a woman of ill-repute! — Raba said: Can you possibly think that [the meaning is that] he should marry [a woman of ill-repute who is such] at the outset? But the statement should take this form: ‘If a man married [a woman of ill-repute’]; and similarly [read] ‘the daughter of a woman of ill-repute’.[2] But the legal decision is: Let a man marry the daughter of a woman of ill-repute rather than a woman of ill-repute; because R. Tahlifa, the son of the West,[3] recited in the presence of R. Abbahu, If a woman is an

adulteress, her children are legitimate since the majority of the acts of cohabitation are ascribed to the husband.

R. Amram asked: How is it if she was excessively dissolute?[4] According to him who maintains that a woman only conceives immediately before her period the question does not arise, because [the husband] may not know [when this is] and does not watch her; but the question does arise according to him who maintains that a woman only conceives immediately after the time of her purification. How is it then? Does he watch her since he knows when this occurs; or perhaps this is of no account since she is excessively dissolute?[5] The question remains unanswered.

IN THE FOLLOWING CASES A COURT OF LAW etc. Our Rabbis taught: 'Man' — why does Scripture repeat the word?[6] To include the wife of a deaf man, the wife of an imbecile, the wife of a weak-minded man, and cases where the husband has gone on a journey to a distant country or is imprisoned, that a Court of Law can give them warning to disqualify them in connection with the marriage-settlement. It is possible [to think that the warning] is also to make them drink; therefore there is a text to say: Then shall the man bring his wife.[7] R. Jose says: It is also to make the woman drink so that when the husband is released from prison he makes her drink.[8] On what do they differ? — The Rabbis are of the opinion that we require that the same man who 'warned' her must 'bring' her,[9] whereas R. Jose is of the opinion that we do not require that the same man who 'warned' her must 'bring' her.[10]

Our Rabbis taught: When a wife, being under her husband, goeth aside[11] — this is to compare a husband with a wife and a wife with a husband. For what practical purpose? — R. Shesheth said: Just as he does not make her drink if he is blind, as it is written: And it be hid from the eyes of her husband,[12] so she does not drink if she is blind. R. Ashi said: Just as a woman who is lame or armless does not drink, for it is written,

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(1) [As it is not known with whom the mother had relation.]

(2) [Since the Baraitha has to be amended in any case we might just as well amend 'a woman' into 'the daughter of a woman etc.'.]

(3) I.e., the Palestinian.

(4) Are the children legitimate?

(5) And she may deceive him although he is careful to watch her.

(6) In the Hebrew text of Num. V, 12.

(7) Ibid. 25.

(8) V. supra 24a.

(9) To the ordeal, and only the husband can bring her.

(10) And so he gives the Court power to warn her for the purpose of the ordeal.

(11) Num. V. 29.

(12) Ibid. 13. He presumably could see.

Talmud - Mas. Sotah 27b

And the priest shall set the woman before the Lord . . . and put the meal-offering in her hands,[1] so he does not make her drink if he is lame or armless. Mar son of R. Ashi said: Just as a dumb woman does not drink, for it is written And the woman shall say Amen, Amen,[2] so he does not make her drink if he is dumb.

CHAPTER V

MISHNAH. JUST AS THE WATER PROVES HER SO THE WATER PROVES HIM;[3] AS IT IS SAID, 'AND SHALL ENTERð TWICE.[4] JUST AS SHE IS PROHIBITED TO THE HUSBAND[5]

SO IS SHE PROHIBITED TO THE PARAMOUR;[6] AS IT IS SAID, DEFILED . . . AND IS DEFILED.[7] THIS IS THE STATEMENT OF R. AKIBA. R. JOSHUA SAID: THUS USED ZECHARIAH B. HAKAZAB TO EXPOUND.[8] RABBI SAYS: THE WORD DEFILED OCCURS TWICE IN THE SCRIPTURAL PORTION,[9] ONE REFERRING [TO HER BEING PROHIBITED] TO THE HUSBAND AND THE OTHER TO THE PARAMOUR.

ON THAT DAY,[10] R. AKIBA EXPOUNDED, AND EVERY EARTHEN VESSEL, WHEREINTO ANY OF THEM FALLETH, WHATSOEVER IS IN IT SHALL BE UNCLEAN,[11] IT DOES NOT STATE TAME [IS UNCLEAN] BUT YITMA',[12] I.E. TO MAKE OTHERS UNCLEAN. THIS TEACHES THAT A LOAF WHICH IS UNCLEAN IN THE SECOND DEGREE,[13] MAKES [WHATEVER IT COMES IN CONTACT WITH] UNCLEAN IN THE THIRD DEGREE. R. JOSHUA SAID: WHO WILL REMOVE THE DUST FROM THINE EYES, R. JOHANAN B. ZAKKAI, SINCE THOU SAYEST THAT ANOTHER GENERATION IS DESTINED TO PRONOUNCE CLEAN A LOAF[14] WHICH IS UNCLEAN IN THE THIRD DEGREE ON THE GROUND THAT THERE IS NO TEXT IN THE TORAH ACCORDING TO WHICH IT IS UNCLEAN![15] IS NOT R. AKIBA THY PUPIL?[16] HE ADDUCES A TEXT IN THE TORAH ACCORDING TO WHICH IT IS UNCLEAN, VIZ., 'WHATSOEVER IS IN IT SHALL BE UNCLEAN'.

ON THAT DAY R. AKIBA EXPOUNDED, AND YE SHALL MEASURE WITHOUT THE CITY FOR THE EAST SIDE TWO THOUSAND CUBITS ETC.[17] BUT ANOTHER TEXT STATES, FROM THE WALL OF THE CITY OUTWARD A THOUSAND CUBITS ROUND ABOUT.[18] IT IS IMPOSSIBLE TO SAY THAT IT WAS A THOUSAND CUBITS SINCE IT HAS BEEN ALREADY STATED TWO THOUSAND CUBITS'; AND IT IS IMPOSSIBLE TO SAY THAT IT WAS TWO THOUSAND CUBITS SINCE IT HAS BEEN ALREADY STATED 'A THOUSAND CUBITS'! HOW WAS IT THEN? A THOUSAND CUBITS FOR THE SUBURB[19] AND TWO THOUSAND CUBITS FOR THE SABBATH-LIMIT.[20] R. ELIEZER THE SON OF R. JOSE THE GALILEAN SAYS: A THOUSAND CUBITS FOR THE SUBURB AND TWO THOUSAND CUBITS FOR FIELDS AND VINEYARDS.[21]

ON THAT DAY R. AKIBA EXPOUNDED, THEN SANG MOSES AND THE CHILDREN OF ISRAEL THIS SONG UNTO THE LORD AND SPAKE, SAYING,[22] THERE WAS NO NEED FOR THE WORD 'SAYING', SO WHY WAS IT ADDED? IT TEACHES THAT THE ISRAELITES RESPONDED TO EVERY SENTENCE AFTER MOSES, IN THE MANNER OF READING HALLEL,[23] 'I WILL SING UNTO THE LORD, FOR HE HATH TRIUMPHED GLORIOUSLY,[24] ON THAT ACCOUNT IS THE WORD 'SAYING' MENTIONED. R. NEHEMIAH SAYS: IN THE MANNER OF READING THE SHEMA'[25] AND NOT HALLEL.

ON THAT DAY R. JOSHUA B. HYRCANUS EXPOUNDED: JOB ONLY SERVED THE HOLY ONE, BLESSED BE HE, FROM LOVE: AS IT IS SAID, THOUGH HE SLAY ME, YET WILL I WAIT FOR HIM.[26] AND SHOULD IT BE STILL DOUBTFUL WHETHER THE MEANING IS 'I WILL WAIT FOR HIM' OR 'I WILL NOT WAITð,[27] THERE IS ANOTHER TEXT TO DECLARE, TILL I DIE I WILL NOT PUT AWAY MINE INTEGRITY FROM ME.[28] THIS TEACHES THAT WHAT HE DID WAS FROM LOVE. R. JOSHUA [B. HANANIAH] SAID: WHO WILL REMOVE THE DUST FROM THINE EYES, R. JOHANAN B. ZAKKAI, SINCE THOU HAST BEEN EXPOUNDING ALL THY LIFE THAT JOB ONLY SERVED THE ALL-PRESENT FROM FEAR, AS IT IS SAID, THAT MAN WAS PERFECT AND UPRIGHT, AND ONE THAT FEARED GOD. AND ESCHEWED EVIL![29] DID NOT JOSHUA, THE PUPIL OF THY PUPIL,[30] TEACH THAT WHAT HE DID WAS FROM LOVE?[31]

GEMARA. [The Mishnah states: SO THE WATER PROVES] HIM. Whom? If I say that it is the husband, what has the husband done? Should you reply

(1) Num. V, 18.
(2) Ibid. 22.
(3) Her paramour.
(4) Num. V, 24, 27.
(5) He must divorce her if she is guilty.
(6) He is not allowed to marry her.
(7) Ibid. 29. The and is redundant; it is therefore employed by R. Akiba for an exegetical purpose.
(8) He similarly explained the redundant and.
(9) In verses 14 and 29. It also occurs in verse 13; but that is expounded in a different connection. V. fol. 2b, p. 5.
(10) When the preceding was taught. It was the important occasion when R. Eleazar b. Azariah was appointed Principal of the School in place of Rabban Gamaliel II. V. Ber. 27b et seq. (Rashi). V. 'Ed. (Sonc. ed.). Introduction p. XI. [Geiger, Lesestucke aus der Mischnah, p. 37: on the same day on which the previous teachings were presented.]
(11) Lev. XI, 33. The reference is to unclean creeping things.
(12) Since the text was unpointed R. Akiba read the word as yetamme', i.e., 'makes (others) unclean'.
(13) The vessel becomes unclean first and then defiles the loaf in it.
(14) [Even in holy food like that of the heave-offering.]
(15) (Even in common food.)
(16) [He was not the pupil of R. Johanan b. Zakkai, but of his disciple R. Eliezer b. Hyrcanus, yet he is so described on account of his eminence. (Maim.).]
(17) Num. XXXV, 5, defining the limits of the cities of refuge.
(18) Ibid. 4.
(19) Open spaces for cattle.
(20) Beyond the city an additional space was included equal to the extreme point one was allowed to proceed to from an inhabited spot on the Sabbath. viz., 2000 cubits. This latter space was inclusive of the suburb.
(21) This was also inclusive of the suburb.
(22) Ex. XV, 1.
(23) This will be explained in the Gemara. Hallel, lit., 'praise', is the name given to Pss. CXIII-CXVIII, cf. Suk. III, 10.
(24) Ex. XV, 1.
(25) V. Glos. The method of recital is explained in the Gemara.
(26) Job XIII, 15.
(27) There is a variant in the text which gives the alternative translation. V. R.V. margin.
(28) Ibid. XXVII, 5.
(29) Ibid. I, 1.
(30) He was the pupil of Akiba.
(31) [Buchler, Sin and Atonement, p. 140, suggests this controversy to have arisen in connection with the discussion whether the book of Job should be included in the Canon.]

Talmud - Mas. Sotah 28a

that if there be sin in him[1] the water proves him, [it may be asked] should there be sin in him on his own account does the water prove her for her own sin, and behold it has been taught: And the man shall be free from iniquity, and that woman shall bear her iniquity,[2] i.e., so long as the husband is free from iniquity the water proves his wife, but if the husband is not free from iniquity the Water does not prove his wife! — Should [the Mishnah, on the other hand, refer] to the paramour, it should have used the same phraseology as in the continuation, viz., 'Just as she is prohibited to the husband so is she prohibited to the paramour'![3] — It certainly refers to the paramour; but in the first clause since it uses the word 'HER' it uses the word HIM and in the continuation since it used the word 'HUSBAND' it used the word 'PARAMOURð.

AS IT IS SAID 'AND SHALL ENTER' TWICE. The question was asked: Does [the teacher in the Mishnah] mean 'shall enter and shall enter' or 'and shall enter and shall enter'?[4] — Come and

hear: JUST AS SHE IS PROHIBITED TO THE HUSBAND SO IS SHE PROHIBITED TO THE PARAMOUR; AS IT IS SAID, DEFILED. . . AND IS DEFILED.[5] But it is still questionable whether [the teacher in the Mishnah] draws the conclusion from the repetition of 'defiled' or from the conjunction in 'defiled . . . and is defiled'! — Come and hear: Since he states in the continuation, RABBI SAYS: THE WORD DEFILED OCCURS TWICE IN THE SCRIPTURAL PORTION, ONE REFERRING TO THE HUSBAND AND THE OTHER TO THE PARAMOUR, it follows that it is R. Akiba who expounds the conjunction 'and'. Consequently for R. Akiba there are six texts [containing the phrase 'and shall enter'][6] — one for the command regarding her[7] and one for the command regarding him;[8] one for the action regarding her and one for the action regarding him;[9] one for the notification[10] regarding her and one for the notification regarding him. For Rabbi,[11] on the other hand, there are three texts — one for the command, one for the action and one for the notification.[12] But whence does Rabbi derive the teaching: JUST AS THE WATER PROVES HER SO THE WATER PROVES HIM? — He derives it from [the following teaching]: For it has been taught: And make the belly to swell and the thigh to fall away,[13] i.e., the belly and thigh of the paramour. You say it is the belly and thigh of the paramour; perhaps it is not so, but the belly and thigh of the adulteress! Since it is stated and her belly shall swell and her thigh shall fall away,[14] here it is clearly the belly and thigh of the adulteress which are referred to; so how am I to explain 'and make the belly to swell and the thigh to fall away'? It refers to the belly and thigh of the paramour. And the other?[15] — It indicates that the priest informs her that [the water] affects the belly first and then the thigh so as not to discredit the water of bitterness.[16] And the other?[17] — If that were so, It should have been written 'her belly and her thigh'; what means 'belly and thigh' [without specification]? Conclude that the reference is to the paramour. But am I to suppose that [the phrase without specification] is intended only for this?[18] — If that were so, it should have been written 'his belly and his thigh'; what means 'belly and thigh'? Draw two inferences therefrom.[19]

R. JOSHUA SAID, THUS USED ZECHARIAH etc. Our Rabbis taught: Why is it mentioned three times in the Scriptural portion if she be defiled,[20] she be defiled,[21] and she is defiled?[22] One [to make her prohibited] to the husband, one to the paramour, and one for partaking of the heave-offering. This is the statement of R. Akiba. R. Ishmael said: It is an a fortiori conclusion; if a divorced woman,[23] who is allowed to partake of the heave-offering, is prohibited [to marry into] the priesthood, how much more must a woman who is prohibited from partaking of the heave-offering[24] be prohibited [to marry into] the priesthood![25] For what purpose[26] is it stated and she be defiled . . . and she be not defiled?[27] If she be defiled, why should she drink; and if she be not defiled, why does he make her drink! Scripture informs you that in a doubtful case she is prohibited. From this you can draw an analogy [with respect to the defilement caused] by a creeping thing:[28] if in the case of a suspected woman, where the effect is not the same should the act be in error or in presumption, under compulsion or of free will,[29] there is the consequence [of being prohibited] when there is a doubt as when there is certainty; how much more so must there be the consequence [of defilement] in a case of doubt as in a case of certainty with a creeping thing where the effect is the same whether [the contact was] in error or in presumption, or whether it was under compulsion or of free will!

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(1) By having cohabited with her after she had secluded herself with the other man.

(2) Nun,. V, 31.

(3) And state, 'so the water proves the paramour'.

(4) I.e., is the inference drawn from the redundant and or from the repetition of the word?

(5) Similarly in the first clause the deduction is drawn from the redundant and.

(6) In verses 22. 24 and 27, the conjunction 'and' duplicating each.

(7) verse 24, where God decreed that the water should have the effect of proving her.

(8) The paramour.

(9) verse 27, where the assurance is given that the water would take effect.

(10) Of the priest, in verse 22.

(11) Who draws no conclusion from 'and'.

(12) As regards the woman only in each instance.
(13) Num. V, 22. The pronoun 'thy' in the E.V. does not occur in the Hebrew. Therefore the reference is taken to be the paramour.
(14) Ibid. 27.
(15) I.e., how does R. Akiba explain the phrase 'and make the belly etc.'?
(16) V. supra 9b.
(17) How does Rabbi meet this argument?
(18) To teach that it refers to the paramour.
(19) That it refers to the paramour and also that it indicates the order in which the effect of the water is felt.
(20) Num. V, 27.
(21) Ibid. 14.
(22) Ibid. 29.
(23) Viz., a priest's daughter who had been married to a non-priest, v. Lev. XXII, 13.
(24) Because of suspected adultery.
(25) This will be explained anon.
(26) The exposition that follows is independent of the preceding.
(27) Num. V, 14.
(28) Viz., when it is doubtful whether defilement has been caused.
(29) If the woman acted in error or under force, she does not undergo the ordeal.

Talmud - Mas. Sotah 28b

And from the position you have taken up[1] [proceed to draw the following deductions]: As [the case of doubt in connection with] the suspected woman can only occur in a private domain [where seclusion takes place],[2] so [the case of doubt in connection with] a creeping thing can only occur [when the contact takes place] in a private domain.[3] And as [the case in connection with] a suspected woman is a matter where there is a rational being to be interrogated,[4] so [in the case of doubt in connection with] a creeping thing it must be a matter where there is a rational being to be interrogated.[5] Hence [the Rabbis] said: Where there is a rational being to be interrogated, should a doubtful [case of defilement] occur in a private domain it is regarded as unclean, but should it occur in a public place as clean; and when there is no rational being to be interrogated whether it occurs in a private domain or in a public place a doubtful [case of defilement] is regarded as clean.[6]

R. Akiba dealt above with [the woman being prohibited to partake] of the heave-offering, and R. Ishmael answers him with a statement about the priesthood![7] And further, whence does R. Akiba derive [the rule that the suspected woman cannot marry into] the priesthood? Should you answer that with reference to [this rule about] the priesthood a Scriptural text is not necessary,

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(1) Viz., drawing the above analogy.
(2) As distinct from a public place.
(3) If the doubt occurred about contact in a public place, there is no defilement.
(4) As to whether she had misconducted herself or not.
(5) There must have been a person present who can be questioned about the probability of the contact having taken place.14
(6) Thus the end of the cited Baraitha.
(7) Into which an adulteress cannot marry. The reply was quite irrelevant to the issue.

Talmud - Mas. Sotah 29a

since a woman about whom there is a doubt whether she is immoral is treated like an immoral woman,[1] then [for the rule about] the heave-offering a Scriptural verse should likewise be unnecessary, since a woman about whom there is a doubt whether she is immoral is treated like an

immoral woman![2] — But according to R. Akiba, there are four texts [where the word 'defiled' occurs][3] — one [to prohibit the woman] to the husband, one to the paramour, one to the priesthood and one for the heave-offering. Whereas according to R. Ishmael there are [only] three texts[4] — one [to prohibit her] to the husband, one to the paramour, and one for the heave-offering; and [the prohibition] regarding the priesthood he deduces by a fortiori reasoning. Whence, however, does R. Ishmael [know] that a text is required for the heave-offering and that [the prohibition] regarding the priesthood is to be deduced by a fortiori reasoning; perhaps [a text] is required as regards the priesthood and the heave-offering is permitted to her![5] — He can reply to you, This is proved by the analogy of the husband and paramour: just as [the prohibition] respecting husband and paramour is in force already during the lifetime [of the husband],[6] so also [the prohibition] respecting the heave-offering is likewise to come into force during his lifetime, to the exclusion of that respecting the priesthood which comes into effect after death.[7] R. Akiba, on the other hand,[8] does not accept the analogy of the husband and paramour; and even if he accepted it, a teaching which is deducible by a fortiori reasoning Scripture took the trouble to write down.[9]

R. Giddal said in the name of Rab: The [difference between] a case where there is a rational being to be interrogated and one where there is no rational being to be interrogated is derived from the following texts: And the flesh that toucheth any unclean thing shall not be eaten[10] — when the thing is certainly unclean it may not be eaten; hence when there is a doubt whether it is unclean or clean it may be eaten. Consider now the continuation: And as for the flesh, all that is clean shall eat [sacrificial] flesh[11] — [A man who is] certainly clean may eat, but when there is a doubt whether he is unclean or clean he may not eat![12] Is not, then, the conclusion to be drawn from this that in one case there is a rational being to be interrogated and not in the other?[13] The statement of R. Giddal in the name of Rab was necessary, and it was also necessary to derive [the rule of defilement caused by a creeping thing] from the case of the suspected woman; for if [it had only been based on] the teaching of Rab, I would have said that the rule was the same whether [the defilement occurred] in a private domain or a public place; therefore it was also necessary to derive it from the case of a suspected woman.[14] If, further, it [had been derived solely] from the case of the suspected woman, I would have said that the rule[15] only applied when that which was touched and that which touched it were both rational beings.[16] So it is necessary [to have Rab's teaching].[17]

ON THAT DAY R. AKIBA EXPOUNDED, AND EVERY EARTHEN VESSEL etc. Since it has no [basis in Scripture according to which it is unclean],[18] why should it be unclean? — Rab Judah said in the name of Rab, It has none from the Torah, but it has one as a deduction from a fortiori reasoning: If a tebul yom,[19] who is allowed with non-holy food,[20] disqualifies[21] the heave-offering,[22] how much more so must a loaf unclean in the second degree, which is disqualified in the case of non-holy food,[23] render the heave-offering unclean in the third degree! It can, however, be objected, This[24] applies to a tebul yom because he may be a source of primary defilement.[25] [But it may be answered,] You can draw [the necessary conclusion]

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(1) 'A harlot' (Lev. XXI, 7) whom a priest may not marry.

(2) And if a priest's daughter loses the right to eat of the heave-offering though lawfully married to a non-priest (Lev. XXII, 12), how much more must she forfeit it if she is immoral; v. Yeb. 68a.

(3) In Num. V, 17, 28 and 29. In the last verse it is preceded by 'and', which is understood as the duplication of the term.

(4) He does not expound 'and'.

(5) Why does he not apply one occurrence of the word 'defiled' to the matter of the priesthood instead of the heave-offering?

(6) She is forbidden to the paramour whilst the husband is yet alive.

(7) During the husband's lifetime she cannot in any way marry into the priesthood since a priest may not marry a divorcee; the prohibition is consequently to refer here to after the husband's death, that even then a priest may not marry the suspected woman. Since the analogy does not apply, the text cannot be applied to this prohibition.

(8) Who bases the prohibition of marriage with a priest on a text.

(9) So the fact that the rule could be arrived at by deduction does not obviate R. Akiba's contention that it is based on a text.
(10) Lev. VII, 19.
(11) Ibid., sic.
(12) Contrary conclusions are drawn from the verse.
(13) The clause 'and as for flesh etc.' speaks of a man who is the object of uncleanness and a rational being to be interrogated; whereas the former 'and the flesh that toucheth etc.' refers to where there is no rational being to be interrogated.
(14) From which it is learnt that the rule is not the same in both localities.
(15) About a doubtful case of defilement being regarded as unclean.
(16) As happens with the suspected woman.
(17) That it is sufficient if the object touched is a rational being for a doubtful case to be unclean. It is not required that the defiling agent should also be a rational being.
(18) As R. Johanan declares in the Mishnah; and yet he held it to be defiled.
(19) Lit., 'bathed during day', i.e., an unclean person who has undergone immersion but awaits sunset before he regains his state of purity. V. Lev. XXII, 7.
(20) And does not defile it.
(21) [פסול This term denotes the last degree of uncleanness which cannot communicate defilement to any other object coming into contact with it.]
(22) By touching it so that it may not be eaten by a priest. v. Yeb. 74b.
(23) [If a creeping thing touches an object which in turn comes into contact with non-holy food, the latter, which is in the second degree of uncleanness, is disqualified; v. Lev. XI, 33.]
(24) The disqualifying of the heave-offering.
(25) Lit., 'father of defilement'. By, e.g., having touched a corpse or by himself being a leper. Tebul yom cannot thus be made the basis of deduction.

Talmud - Mas. Sotah 29b

from a tebul yom [who was defiled] by a creeping thing.[1] [Should it be objected that] it applies [only] to a tebul yom [who was defiled] by a creeping thing because he belongs to that category in which there may be a primary source of defilement],[2] the case of an earthenware vessel proves [the contrary].[3] [And should it be objected that] it applies to an earthenware vessel because its interior space renders unclean,[4] the case of tebul yom proves [the contrary].[5]

Thus the original reasoning [by a fortiori] holds good, since the characteristic [of the tebul yom] is unlike the characteristic [of the earthenware vessel][6] and vice versa;[7] the point they have in common is that they are allowed with non-holy food but disqualify the heave-offering.[8] How much more, then, must a loaf unclean in the second degree, which disqualifies in the case of non-holy food, disqualify the heave-offering! ANOTHER GENERATION,[9] however, might object. What is the point common to them both? That in each there is a characteristic which makes for severity![10] But R. Johanan does not raise an objection on the ground that there is in each a characteristic which makes for severity.[11]

It has been taught: R. Jose said: Whence is it that with sacrificial food there is disqualification with the fourth degree of defilement? It is a deduction [from a fortiori reasoning]: If one lacking atonement,[12] who is permitted with the heave-offering,[13] is dis qualified as regards sacrificial food,[14] how much more does the third degree, which is disqualified with the heave-offering,[15] create a fourth degree of defilement with sacrificial food! We learnt [the rule about] a third degree of defilement with sacrificial food from the Torah and a fourth degree from a fortiori reasoning;[16] whence have we it from the Torah that there is a third degree with sacrificial food? — As it is written: And the flesh that toucheth any unclean thing shall not be eaten[17] — do we not deal here with [flesh] that touched something unclean in the second degree?[18] And the All-Merciful declared:

'It shall not be eaten'. A fourth degree [is derived] from a fortiori reasoning as we stated above.

R. Johanan said: I do not understand the Master's[19] reason[20] since its refutation is by its side, viz., food which is made unclean by contact with a tebul yom proves [the contrary], inasmuch as it is disqualified in the case of heave-offering but does not create a fourth degree of defilement with sacrificial food. For it has been taught: Abba Saul said: A tebul yom is unclean in the first degree as regards sacrificial food to create two further degrees of defilement[21] and one degree of disqualification.[22] R. Meir Says: He creates one further degree of defilement and one of disqualification. The Sages Say: Just as he disqualifies food or liquids of the heave-offering,[23] so he disqualifies sacrificial food and drinks.[24] To this R. Papa demurred: Whence is it that R. Jose holds the same view as the Rabbis? perhaps he holds the same view as Abba Saul who says [that the tebul yom] creates two further degrees of defilement and one of disqualification! — If it enter your mind that he holds the same view as Abba Saul, let him [deduce the rule about] a fourth degree of defilement with sacrificial food from the case of food that is rendered unclean by contact with a tebul yom [as follows]: If a tebul yom is himself allowed with non-holy food,[25] and yet you say that food which is unclean through him creates a fourth degree with sacrificial food,

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(1) He is then unclean in the first degree but not a source of primary cause of defilement. A creeping thing is a primary source of defilement.

(2) [A man who touches a dead body becomes a primary source of uncleanness. This does not apply to foodstuffs.]

(3) Since it can never be a primary source of defilement and yet defiles the heave-offering by contact.

(4) Without actual contact, v. Lev. XI, 33.

(5) Because he obviously cannot defile except by direct contact and yet he disqualifies the heave-offering by touching it.

(6) Since the latter unlike the former defiles by its interior space.

(7) The former, unlike the latter, being possibly a primary source of defilement.

(8) [This is difficult to explain, since an earthenware vessel does disqualify non-holy food (v. Lev. Xl, 33ff). Rashi suggests another reading which is not free from difficulty. Tosaf. of Sens explains the reference to be to a broken earthenware vessel which in respect of non-holy food communicates no defilement.]

(9) Which would not regard this as unclean.

(10) In the law relating thereto, viz., the tebul yom can be a primary source of defilement and the interior space of an earthenware vessel can render unclean.

(11) Because the characteristic of severity is peculiar to each and not common to both.

(12) E.g., a leper on his recovery, (v. Lev. XIV, 9ff). The seventh day the sacrifice had not yet been offered, and he may not partake of sacrificial food until this has been done.

(13) And does not disqualify it by his touch.

(14) I.e., he disqualifies it by his touch.

(15) As proved on a fortiori reasoning, supra.

(16) [Once the third degree is derived from the Torah, it is possible to employ the a fortiori reasoning in regard to the fourth degree. Were it not so, we should have required the a fortiori reasoning for the third degree only.]

(17) Lev. VII, 19.

(18) Since 'unclean thing' means that which had been rendered unclean by something else. The flesh was accordingly unclean in the third degree.

(19) V. Nazir (Sonc. ed.) p. 64, n. 1.

(20) R. Jose's argument as given in the preceding paragraph with respect to a fourth degree with holy food.

(21) What touches him is unclean in the second degree and what this touches is unclean in the third.

(22) If the heave-offering was touched by the object unclean in the third degree it would become disqualified but would not create a fourth degree.

(23) But does not create any further degree of defilement.

(24) [Without creating a further degree of defilement. Whereas, adopting R. Jose's arguments the food touched by the tebul yom should on a fortiori reasoning produce here a disqualification in the fourth degree.]

(25) And does not disqualify it.

then that which is unclean in the third degree through contact with what is unclean in the second degree — the second degree which is itself forbidden in the case of non-holy food[1] — must all the more create a fourth degree with the holy![2] And should you reply [as stated above], 'It can, however, be objected.It applies to a tebul yom because he may be a primary source of defilement', behold he [R. Jose] derived his argument from one lacking atonement and [he] did not raise this objection.[3]

R. Assi said in the name of Rab — another version is Rabbah b. Issi said in the name of Rab — , R. Meir, R. Jose, R. Joshua, R. Eleazar and R. Eliezer all hold the view that what is unclean in the second degree does not create a third degree with non-holy food. R. Meir — for we have learnt: Everything that requires immersion in water according to the statement of the scribes[4] defiles the holy, disqualifies the heave-offering, and is permitted with the non-holy and with the tithe. Such is the statement of R. Meir; but the Sages prohibit in the case of the tithe.[5] R. Jose — as we have stated above; for if it were so,[6] then let him derive a fourth degree with the heave-offering and a fifth with the sacrificial food.[7] R. Joshua — for we have learnt: R. Eliezer Says: He who eats food unclean in the first degree is unclean in the first degree; [if he eats] food unclean in the second degree he is unclean in the second degree; and similarly with the third degree. R. Joshua Says: He who eats food unclean in the first or second degree is unclean in the second degree; [if he eats food unclean] in the third degree, he is unclean in the second degree as regards the sacrificial food but not unclean in the second degree as regards the heave-offering. This[8] is said of non-holy food which was prepared in the purity of the heave-offering.[9] [This means, does it not,] 'When it is in the purity of the heave-offering' but not when it is in the purity of the sacrificial food?[10] Conclude, then, that he holds that [normally] what is unclean in the second degree does not create a third degree with the non-holy. R. Eleazar — for it has been taught: R. Eleazar says: The following three are alike: the first degree of defilement in the case of the sacrificial food, the non-holy and the heave-offering; it creates two further degrees of defilement and one of disqualification with the sacrificial food;[11] it creates one further degree of defilement and one of disqualification with the heave-offering;[12] and it creates one degree of disqualification with the non-holy.[13] R. Eliezer-for we have learnt: R. Eliezer Says: Hallah[14] may be taken from [dough] which is pure on account of that which is defiled. How is this? There are two portions of dough, one pure and the other defiled. He takes a quantity sufficient for hallah[15] from the dough from which its hallah had not been removed,[16] and places a piece less than the size of an egg[17] in the centre [of the defiled dough] so that [it may be considered that hallah] had been taken from the mass [of the defiled dough].

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(1) Non-holy food can become unclean in the second degree.

(2) [The advantage of this deduction consists in that it is more direct than that of R. Jose, which involves a second a fortiori reasoning to prove that there is a disqualification in the third degree in the case of the heave-offering (v. p. 145, n. 3) Tosaf.]

(3) I.e., that one lacking atonement is different since he may be a primary source of defilement. The reason R. Jose did not raise this objection is evidently because he is no longer regarded as unclean, and the same applies to a tebul yom. Consequently R. Jose cannot be said to agree with Abba Saul, but must agree with the Rabbis, hence the question of R. Johanan.

(4) Viz., things which, according to the Torah, are clean, but the Rabbis take a stricter view.

(5) To be eaten; v. Parah, XI, 5.

(6) That there was a third degree of defilement with the non-holy.

(7) From his own a fortiori reasoning cited above.

(8) That food in the third degree renders the one eating it unclean in respect of sacrificial food.

(9) I.e., when a priest took upon himself that even the non-holy food he ate should be in the same state of purity as the heave-offering. But ordinary non-holy food cannot become unclean in the third degree.

(10) [As non-holy food cannot be raised to the level of purity of sacrificial food. Rashi reads: 'but not when it is ordinary non-holy food'. This is also the reading of MS.M.]

(11) There is thus a fourth degree of defilement.

(12) There is then a third degree.

(13) And so there is no third degree with the non-holy.

(14) Part of the dough presented to the priest; v. Num. XV, 17-21.

(15) One twenty-fourth of the whole in the case of an individual and half of that proportion in the case of a baker.

(16) The pure dough.

(17) A quantity less than the size of an egg cannot communicate defilement.

Talmud - Mas. Sotah 30b

The Sages, however, forbid this. And it has also been taught: [The quantity[1] may be] equal to the size of an egg. — [Now the schoolmen] held that both [these teachings][2] refer to dough which is unclean in the first degree, and that non-holy food from which hallah had not yet been taken is not like hallah.[3] Is it not, then, to be supposed that they differ on this point: One[4] holds that a second degree of defilement does not create a third with the non-holy,[5] whereas the others hold that it does create a third degree with the non-holy?[6] R. Mari b. R. Kahana said: All agree that a second degree of defilement does not create a third with the non-holy; but here they differ with regard to non-holy food from which hallah had yet to be taken. One holds that it is like hallah;[7] the other holds that it is not like hallah. If you like I can say that all agree that non-holy food from which hallah had yet to be taken is not like hallah and a second degree of defilement does not create a third with the non-holy; and here they differ on whether it is permitted to apply the laws of defilement to non-holy food in the land of Israel.[8] One[9] holds that it is permitted to apply the laws of defilement to non-holy food in the land of Israel, the others hold that it is prohibited.[10]

ON THAT DAY R. AKIBA EXPOUNDED, [AND YE SHALL MEASURE] etc. On what do they[11] differ? — One holds that the regulations concerning the Sabbath-limit are an institution of the Torah,[12] whereas the other holds they are an institution of the Rabbis.

Our Rabbis taught: On that day R. Akiba expounded: At the time the Israelites ascended from the Red Sea, they desired to utter a Song; and how did they render the song? Like an adult who reads the Hallel [for a congregation][13] and they respond after him with the leading word.[14] [According to this explanation] Moses said: 'I will sing unto the Lord' and they responded, 'I will sing unto the Lord'; Moses said: 'For He hath triumphed gloriously' and they responded, 'I will sing unto the Lord'. R. Eliezer son of R. Jose the Galilean declares, Like a minor who reads the Hallel [for a congregation], and they repeat after him all that he Says.[15] [According to this explanation] Moses said: 'I will sing unto the Lord' and they responded, 'I will sing unto the Lord'; Moses said: 'For He hath triumphed gloriously' and they responded, 'For He hath triumphed gloriously'. R. Nehemiah declares: Like a school-teacher[16] who recites[17] the Shema' in the Synagogue, viz., he begins first and they respond after him.[18] On what do they differ? — R. Akiba holds that the word 'saying'[19] refers to the first clause;[20] R. Eliezer son of R. Jose the Galilean holds that 'saying' refers to every clause; and R. Nehemiah holds that 'and spake' indicates that they sang all together 'and saying' that Moses began first.

Our Rabbis taught: R. Jose the Galilean expounded: At the time the Israelites ascended from the Red Sea, they desired to utter a Song; and how did they render the song? The babe lay upon his mother's knees and the suckling sucked at his mother's breast; when they beheld the Shechinah, the babe raised his neck and the suckling released the nipple from his mouth, and they exclaimed: This is my God and I will Praise Him;[21] as it is said: Out of the mouths of babes and sucklings hast thou established strength.[22] R. Meir used to say: Whence is it that even the embryos in their mothers' womb uttered a song? As it is said,

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(1) [According to R. Eliezer.]

(2) [The one that holds that the quantity should be less than the size of an egg as well as the other, that it may be the size of an egg.]
(3) I.e., like heave-offering in respect of the law of defilement. [But is treated like non-holy, both on the view of R. Eliezer and the Rabbis. For this reason even if the quantity placed between the two doughs is of the size of an egg it does not communicate the defilement in the second degree, which it contracts from the defiled dough to the pure one, since there is no third degree with non-holy.]
(4) R. Eliezer.
(5) [For this reason he allows in the second teaching a quantity of the size of an egg; and the reservation in the first teaching is merely as a precaution lest the piece of dough may come in contact with impure dough after the hallah has been designated.]
(6) This shews that R. Eliezer holds that there is no third degree with non-holy food.
(7) The Rabbis consider that it can create a third degree.
(8) In Ber. 47b R. Meir defines an 'Am ha-arez (v. supra p. 110) as one who does not eat his non-holy food in a condition of ritual purity; but the Rabbis give a different definition.
(9) R. Eliezer.
(10) [And their concern is with the piece of dough placed between the two doughs which, though less than the size of an egg, can yet contract defilement.]
(11) R. Akiba and R. Eliezer, son of R. Jose of Galilee.
(12) R. Akiba takes this view; and therefore, according to him, the Torah had to make provision for the Sabbath-limit in the cities of refuge.
(13) He acts as precentor and his rendering is on their behalf so that they may thereby fulfil their duty to recite it.
(14) Lit., 'heads of chapters'. According to a statement in Suk. 38a, the response consisted of the word Hallelujah.
(15) Since he was a minor, his rendering would not exempt them from saying every word.
(16) Whose class was usually in the Synagogue and so he acted as Precentor.
(17) The word pores is lit., 'divide', and its exact meaning is disputed. V. Elbogen. Der judische Gottesdienst, pp. 514ff and the references cited there.
(18) Elbogen takes this to mean that the Precentor and Congregation read the verses alternately. Rashi's explanation is: he reads the benedictions preceding the Shema' which they repeat after him and then they read the Shema in unison. According to this explanation, Moses and the Israelites were divinely inspired so that they independently sang the same words in unison.
(19) In Ex. XV, 1.
(20) 'I will sing unto the Lord', and that only was the Israeliteðs. response.
(21) Ibid. 3.
(22) Ps. VIII, 3. E.V. 2.

Talmud - Mas. Sotah 31a

Bless ye the Lord in the Congregations, even the Lord, from the fountain of Israel.[1] But these could not behold [the Shechinah]! — R. Tanhum said: The abdomen became for them a kind of transparent medium and they did behold it.

ON THAT DAY R. JOSHUA B. HYRCANUS EXPOUNDED, JOB ONLY SERVED etc. But let him see how the word 'lo'[2] is spelt; if it is written with lamed and aleph then it means 'not', and if with lamed and waw then it means for Him'![3] But is the meaning 'not' wherever the spelling is lamed and aleph? Can it apply to: In all their affliction there was affliction to Him?[4] [The word 'lo', 'to Him'] is spelt lamed and aleph, but does it here also signify 'not'! And should you say that here too [it means 'not'], behold it continues with: And the angel of His presence saved them![5] But sometimes it has one meaning and at other times the other meaning.

It has been taught: R. Meir Says: It is declared of Job one that feared God,[6] and it is declared of Abraham thou fearest God;[7] just as 'fearing God' with Abraham indicates from love, so 'fearing God' with Job indicates from love. Whence, however, have we it in connection with Abraham

himself [that he was motived by love]? As it is written: The seed of Abraham who loved Me.[8] What difference is there between one who acts from love and one who acts from fear? — The difference is that indicated in this teaching: R. Simeon b. Eleazar says: Greater is he who acts from love than he who acts from fear, because with the latter [the merit] remains effective for a thousand generations but with the former it remains effective for two thousand generations. Here it is written: Unto thousands of them that love Me and keep My commandments[9] and elsewhere it is written: And keep His commandments to a thousand generations.[10] But in this latter passage it is likewise written: 'With them that love Him and keep His commandments to a thousand generations! — In the first verse cited [the word 'thousand'] is attached [to them that love Me,] whereas in the second verse [cited the word 'thousand'] is attached [to keep His commandments].[11]

Two disciples were once sitting in the presence of Raba. One said to him, In my dream they read to me, O how great is Thy goodness which Thou hast laid up for them that fear Thee.[12] The other said to him, In my dream they read to me, But let all those that put their trust in Thee rejoice, let them ever shout for joy, because Thou defendest them; let them also that love Thy name be joyful in Thee.[13] He replied to them, Both of you are completely righteous Rabbis, but one is actuated by love and the other by fear.

CHAPTER VI

MISHNAH. IF A MAN WARNED HIS WIFE AND SHE SECLUDED HERSELF [WITH ANOTHER MAN], EVEN IF HE HEARD [THAT SHE HAD DONE SO] FROM A FLYING BIRD,[14] HE DIVORCES HER AND GIVES HER THE MARRIAGE-SETTLEMENT.[15] SUCH IS THE STATEMENT OF R. ELIEZER. R. JOSHUA SAYS: [HE DOES NOT DO THIS] UNTIL WOMEN WHO SPIN BY MOONLIGHT DISCUSS HER.[16]

IF ONE WITNESS SAID, I SAW THAT SHE COMMITTED MISCONDUCT, SHE DOES NOT DRINK THE WATER.[17] NOT ONLY THAT, BUT EVEN A SLAVE, MALE OR FEMALE,[18] IS BELIEVED ALSO TO DISQUALIFY HER FOR THE MARRIAGE-SETTLEMENT. HER MOTHER-IN-LAW, HER MOTHER-IN-LAW'S DAUGHTER, HER ASSOCIATE-WIFE,[19] HER SISTER-IN-LAW[20] AND HER STEPDAUGHTER[21] ARE BELIEVED, NOT TO DISQUALIFY HER FOR THE MARRIAGE-SETTLEMENT BUT THAT SHE SHOULD NOT DRINK.

IT[22] IS A PROPER CONCLUSION THAT IF THE FIRST EVIDENCE [THAT THE WOMAN HAD SECLUDED HERSELF WITH THE MAN], WHICH DOES NOT PROHIBIT HER [TO HER HUSBAND] FOR ALL TIME,[23] IS NOT ESTABLISHED BY FEWER THAN TWO WITNESSES, IS IT NOT RIGHT THAT THE FINAL EVIDENCE [THAT SHE HAD MISCONDUCTED HERSELF] WHICH PROHIBITS HER TO HIM FOR ALL TIME, SHOULD NOT BE ESTABLISHED BY FEWER THAN TWO WITNESSES! THEREFORE THERE IS A TEXT TO STATE, AND THERE BE NO WITNESS AGAINST HER,[24] I.E., WHATEVER [EVIDENCE] THERE MAY BE AGAINST HER [IS BELIEVED, EVEN IF IT BE ONLY ONE WITNESS]. AND WITH RESPECT TO THE FIRST EVIDENCE [ABOUT HER SECLUSION WITH THE MAN, THAT ONE WITNESS SUFFICES MAY BE ARGUED BY] A FORTIORI REASONING AS FOLLOWS IF

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(1) Ibid. LXVIII, 27, E.V. 26. 'From the fountain' indicates those who were still in the womb.

(2) In Job XIII, 15.

(3) So how could the Mishnah state that there is a doubt about the meaning?

(4) Isa. LXIII, 9.

(5) These words prove that 'lo' in the preceding clause cannot mean 'notð

(6) Job I, 1.

(7) Gen. XXII, 12.

(8) Isa. XLI, 8, sic.
(9) Ex. XX, 6. 'Thousands' is interpreted as generations, and the plural indicates at least two thousand.
(10) Deut. VII. 9.
(11) So in the former the motive is love, in the latter fear of punishment.
(12) Ps. XXXI, 20.
(13) Ibid. V, 12.
(14) It was only a vague rumour that came to his ears. [The rumour was concerning (a) seclusion only (Rashi); (b) misconduct (Maim.). — 'A FLYING BIRD' may denote a talking bird, a parrot (v. Maim. and Strashun.)
(15) He gives this to her if he was unwilling for her to drink the water, (Rashi). [According to this interpretation the husband, if he wishes, can make her drink even on the strength of a vague rumour, even as he can on the evidence of one witness to the seclusion, according to R. Eliezer. Rashbam, however, holds that a vague rumour is not on par with one witness and the husband therefore, though he cannot make her drink, must put her away and give her the marriage-settlement. (V. Tosaf. Sens): Similarly on the view of Maimonides (v. n. 1) the divorce is compulsory. though in the absence of real evidence of misconduct she does not forfeit the marriage-settlement.]
(16) Her behaviour had given rise to public scandal.
(17) One witness is accepted and she is divorced besides losing the marriage-settlement. V. supra 2a.
(18) Whose evidence is not accepted in an ordinary case.
(19) The husband had more than one wife.
(20) Viz., the wife of her husband's brother whom she was due to marry if she was left a childless widow.
(21) All these are presumably ill-disposed towards her, and their evidence would not have been accepted in any other kind of charge.
(22) V. supra 3b.
(23) Because the water may prove her innocent.
(24) Num. V, 13.

Talmud - Mas. Sotah 31b

THE FINAL EVIDENCE [REGARDING MISCONDUCT], WHICH PROHIBITS HER TO HER HUSBAND FOR ALL TIME, IS ESTABLISHED BY ONE WITNESS, IS IT NOT PROPER THAT THE FIRST EVIDENCE, WHICH DOES NOT PROHIBIT HER TO HIM FOR ALL TIME, SHOULD BE ESTABLISHED BY ONE WITNESS! THEREFORE THERE IS A TEXT TO STATE, BECAUSE HE HATH FOUND SOME UNSEEMLY MATTER IN HER,[1] AND ELSEWHERE IT STATES, AT THE MOUTH OF TWO WITNESSES, OR AT THE MOUTH OF THREE WITNESSES, SHALL A MATTER BE ESTABLISHED;[2] AS THE 'MATTER' MENTIONED IN THIS LATTER CASE MUST BE CONFIRMED BY THE TESTIMONY OF TWO WITNESSES, SO ALSO HERE [IN THE CASE OF THE SUSPECTED WOMAN] THE 'MATTER' MUST BE CONFIRMED BY THE TESTIMONY OF TWO WITNESSES.

IF ONE WITNESS SAYS THAT SHE MISCONDUCTED HERSELF AND ANOTHER WITNESS SAYS THAT SHE DID NOT,[3] OR IF A WOMAN SAYS [OF HER] THAT SHE MISCONDUCTED HERSELF AND ANOTHER WOMAN SAYS THAT SHE DID NOT, SHE DRINKS THE WATER. IF ONE WITNESS SAYS THAT SHE MISCONDUCTED HERSELF AND TWO SAY THAT SHE DID NOT, SHE DRINKS THE WATER. IF TWO SAY THAT SHE MISCONDUCTED HERSELF AND ONE SAYS THAT SHE DID NOT, SHE DOES NOT DRINK IT.

GEMARA. [Why does the teacher in the Mishnah use] the Scriptural text: 'Because he hath found some unseemly matter in her'? He should have used [the teaching]: 'Against her' — i.e., 'against her' [in the matter of misconduct] but not in the matter of warning, 'against her' [in the matter of misconduct] but not in the matter of seclusion![4] — He does also intend to say this: Therefore there is a text to state 'against her' — i.e., 'against her' [in the matter of misconduct] but not in the matter of warning, 'against her' [in the matter of misconduct] but not in the matter of seclusion. Whence,

however, have we it that one witness is not believed in an ordinary charge of infidelity where there was neither warning nor seclusion? Here [in connection with infidelity] the word 'matter' occurs and it also occurs [in the law of evidence]; as with the latter [a charge is established] by two witnesses so [is the former established] by two witnesses.

IF ONE WITNESS SAYS THAT SHE MISCONDUCTED HERSELF. The reason [why one witness is not accepted] is because there is another who contradicts him; but where nobody contradicts him one witness is believed — Whence have we this rule? Because our Rabbis have taught: 'And there be no witness against her' — the text refers to two witnesses. You say that it refers to two witnesses; but perhaps it is not so and even one [suffices]! There is a teaching to declare, One witness shall not rise up against a man etc.[5] From the fact that it is stated: '[A] witness shall not rise up against a man,' do I not know that one is intended? Why is there a teaching to declare one witness'? This establishes the rule that wherever it is stated witness, it signifies two unless the text specifies 'one', and [in the case under discussion] the All-Merciful declares that when there are not two witnesses against her but only one, 'and she has not been violated,' she is forbidden [to her husband].[6]

But since, according to the Torah one witness is believed, how is it possible for another to contradict him? Surely 'Ulla has said: Wherever the Torah accepts the testimony of one witness, he is regarded as two, and the evidence of one is of no account when opposed by two![7] — But, said 'Ulla, read the Mishnah as, 'She does not drink';[8] and R. Isaac similarly declared that she does not drink, but R. Hiyya said that she does drink. The view of 'Ulla creates a difficulty against the statement of R. Hiyya![9] — There is no difficulty; one statement refers to evidence given simultaneously[10] and the other when one witness follows the other.[11]

We learnt: IF ONE WITNESS SAYS THAT SHE MISCONDUCTED HERSELF AND TWO SAY THAT SHE DID NOT, SHE DRINKS THE WATER. Consequently if there was one [against her] and one [for her], she would not drink; this is a refutation of R. Hiyya! — R. Hiyya can reply: And according to your view [that she does not drink] consider the next clause: IF TWO SAY THAT SHE MISCONDUCTED HERSELF AND ONE SAYS THAT SHE DID NOT, SHE DOES NOT DRINK IT. Consequently if there was one [against her] and one [for her], she would drink! But the whole [of this section of Mishnah] refers to disqualified witnesses,[12] and it is R. Nehemiah's teaching; for it has been taught: R. Nehemiah says: 'Wherever the Torah accepts the testimony of one witness, [the decision] follows the majority of persons [who testify]', so that two women against one man is identical with two men against one man. But there are some who declare that wherever a com petent witness came [and testified] first, even a hundred women are regarded as equal to one witness;[13]

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(1) Deut. XXIV, 1.

(2) Ibid. XIX, 15.

(3) At the time of seclusion.

(4) For notes v. supra 3b.

(5) Deut. XIX, 15.

(6) For notes v. supra 3b.

(7) So that the evidence of the first witness, being accepted by the Torah, must stand though it is contradicted by another.

(8) Instead of 'she drinks the water', and she is held to be guilty.

(9) If the Torah accepts one witness, why should she drink the water?

(10) If it is contradictory it is not accepted.

(11) If one witness had testified and been accepted, another cannot come subsequently and offer contradictory evidence.

(12) Viz., women and slaves; and it teaches that two witnesses of this class can discredit the evidence of a competent witness.

(13) And they cannot upset his testimony.

and with what circumstance are we dealing here?[1] For example, if it was a woman who came first [and testified]; and R. Nehemiah's statement is to be construed thus: R. Nehemiah says: 'Wherever the Torah accepts the testimony of one witness, [the decision] follows the majority of persons [who testify]', so that two women against one woman is identical with two men against one man, but two women against one man is like half and half.[2] Why, then, have we two teachings concerning disqualified witnesses?[3] What you might have said was that when we follow the majority of persons [who testify] it is for taking the severer view, but to take the lenient view we do not follow [the majority]. Therefore [the Mishnah] informs us [of one case where the accused must drink and one where she does not drink, and in each the majority is followed].

C H A P T E R V I I

MISHNAH. THE FOLLOWING MAY BE RECITED IN ANY LANGUAGE: THE SECTION CONCERNING THE SUSPECTED WOMAN,[4] THE CONFESSION MADE AT THE PRESENTATION OF THE TITHE,[5] THE SHEMA',[6] THE 'PRAYER',[7] THE GRACE AFTER MEALS,[8] THE OATH CONCERNING TESTIMONY[9] AND THE OATH CONCERNING A DEPOSIT.[10]

THE FOLLOWING ARE RECITED IN THE HOLY TONGUE:[11] THE DECLARATION MADE AT THE OFFERING OF THE FIRSTFRUITS,[12] THE FORMULA OF HALIZAH,[13] THE BLESSINGS AND CURSES,[14] THE PRIESTLY BENEDICTION,[15] THE BENEDICTION OF THE HIGH PRIEST,[16] THE SECTION OF THE KING,[17] THE SECTION OF THE CALF WHOSE NECK IS BROKEN,[18] AND THE ADDRESS TO THE PEOPLE BY THE PRIEST ANOINTED [TO ACCOMPANY THE ARMY] IN BATTLE.[19]

WHENCE IS IT THAT THE DECLARATION MADE AT THE OFFERING OF THE FIRST-FRUITS [MUST BE IN HEBREW]? [IT IS STATED]. AND THOU SHALT ANSWER AND SAY BEFORE THE LORD THY GOD,[20] AND ELSEWHERE IT IS STATED, AND THE LEVITES SHALL ANSWER AND SAY;[21] AS THE LATTER MUST BE IN THE HOLY TONGUE,[22] SO MUST THE FORMER BE IN THE HOLY TONGUE. WHENCE IS IT THAT THE FORMULA OF HALIZAH [MUST BE IN HEBREW]? [IT IS STATED]. AND SHE SHALL ANSWER AND SAY,[23] AND ELSEWHERE IT IS STATED, AND THE LEVITES SHALL ANSWER AND SAY'; AS THE LATTER MUST BE IN THE HOLY TONGUE. SO MUST THE FORMER BE IN THE HOLY TONGUE. R. JUDAH SAYS: [IT IS DERIVED FROM THE TEXT], AND SHE SHALL ANSWER AND SAY THUS[24] — I.E., SHE MUST SAY IT IN THIS LANGUAGE.

HOW WERE THE BLESSINGS AND CURSES [PRONOUNCED]? WHEN ISRAEL CROSSED THE JORDAN AND CAME TO MOUNT GERIZIM AND MOUNT EBAL WHICH ARE BY SAMARIA, (THIS IS IN THE VICINITY OF SHECHEM WHICH IS IN THE VICINITY OF THE TEREBINTHS OF MOREH, AND IT IS SAID, ARE THEY NOT BEYOND JORDAN ETC.[25] AND ELSEWHERE IT STATES, AND ABRAM PASSED THROUGH THE LAND UNTO THE PLACE OF SHECHEM UNTO THE TEREBINTH OF MOREH;[26] AS THE TEREBINTH OF MOREH MENTIONED IN THIS LATTER VERSE IS SHECHEM, SO THE TEREBINTH OF MOREH MENTIONED IN THE FORMER VERSE IS SHECHEM.) SIX TRIBES ASCENDED THE SUMMIT OF MOUNT GERIZIM, SIX TRIBES ASCENDED THE SUMMIT OF MOUNT EBAL, AND THE PRIESTS AND LEVITES WITH THE ARK WERE STATIONED BELOW IN THE CENTRE, THE PRIESTS SURROUNDING THE ARK, THE LEVITES [SURROUNDING] THE PRIESTS, AND ALL ISRAEL ON THIS SIDE AND THAT SIDE; AS IT IS SAID, AND ALL ISRAEL, AND THEIR ELDERS AND OFFICERS, AND THEIR JUDGES STOOD ON THIS

SIDE THE ARK AND ON THAT SIDE ETC.[27] THEY TURNED THEIR FACES TOWARDS MOUNT GERIZIM AND OPENED WITH THE BLESSING:BLESSED BE THE MAN THAT MAKETH NOT A GRAVEN OR MOLTEN IMAGE',[28] AND BOTH PARTIES[29] RESPOND AMEN. THEY THEN TURNED THEIR FACES TOWARDS MOUNT EBAL AND OPENED WITH THE CURSE: CURSED BE THE MAN THAT MAKETH THE GRAVEN OR MOLTEN IMAGE', AND BOTH PARTIES RESPOND 'AMENð. [SO THEY CONTINUE] UNTIL THEY COMPLETE THE BLESSINGS AND CURSES. AFTER THAT THEY BROUGHT THE STONES,[30] BUILT THE ALTAR AND PLASTERED IT WITH PLASTER, AND INSCRIBED THEREON ALL THE WORDS OF THE TORAH IN SEVENTY LANGUAGES,[31] AS IT IS SAID, VERY PLAINLY.[32] THEN THEY TOOK THE STONES[33] AND WENT

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(1) When the Mishnah teaches: IF ONE WITNESS . . . AND TWO SAY etc.

(2) One witness against one witness; if they testified simultaneously the evidence is not accepted.

(3) In these last two clauses of the Mishnah which have been explained as referring to the evidence of women and slaves.

(4) The exhortation addressed to her by the priest (Num. V, 19ff).

(5) Deut. XXVI, 13ff.

(6) V. Glos.

(7) 'The Eighteen Benedictions' recited twice daily. V. P.B. pp. 44ff.

(8) Op. cit. pp. 280ff.

(9) Against the withholding of evidence (Lev. V, 1ff.).

(10) That it had not been misappropriated if the bailee declares that it had been stolen or is missing.

(11) Hebrew.

(12) Deut. XXVI, 9ff.

(13) Ibid. XXV, 9.

(14) Ibid. XXVII, 15ff.

(15) Num. VI, 24ff.

(16) V. infra. Mishnah p. 198.

(17) V. infra, Mishnah p. 202.

(18) Deut. XXI, 7f.

(19) Ibid. XX, 3ff.

(20) Ibid. XXVI, 5.

(21) Ibid. XXVII, 14.

(22) This will be demonstrated in the Gemara.

(23) Ibid. XXV, 9.

(24) He attaches the word 'thus' to what precedes.

(25) Deut. XI, 30. The verse ends with: beside the terebinths of Moreh.

(26) Gen. XII, 6.

(27) Josh. VIII, 33.

(28) The reverse of Deut. XXVII, 15.

(29) On the two mounts.

(30) V. Deut. XXVII, 2ff.

(31) The total number of languages in the world as the Rabbis thought.

(32) Ibid. 8.

(33) After the sacrifices had been offered, the altar was taken to pieces.

Talmud - Mas. Sotah 32b

AND SPENT THE NIGHT IN THEIR PLACE.[1]

GEMARA. Whence have we it that the section concerning the suspected woman [may be recited in any language]? — As it is written: And the priest shall say unto the woman[2] — in whatever

language he speaks.

Our Rabbis taught: They explain to her in any language she understands for what reason she is about to drink the water, in what [sort of vessel] she drinks, why she had misconducted herself and in what manner she had misconducted herself. For what reason she is about to drink the water — because of [her husband's] warning and her subsequent seclusion. In what [sort of vessel] she drinks — in a potsherd.[3] Why she had misconducted herself- because of levity and childishness. And in what manner she had misconducted herself — whether in error or deliberately, under compulsion or of free will. But why all this? So as not to discredit the water of bitterness.[4]

THE CONFESSION MADE AT THE PRESENTATION OF THE TITHE. Whence have we it that this [may be recited in any language]? — As it is written: And thou shalt say before the Lord thy God, I have put away the hallowed things out of mine house,[5] and the deduction is to be drawn from the analogous use of the word 'say' in connection with the suspected woman that it may be in whatever language he speaks. R. Zebid said to Abaye, But let the deduction be drawn from the analogous use of the word 'say' in connection with the Levites[6] [as follows]: As there it means that it must be in the holy tongue so here it must be in the holy tongue! — [He answered], We deduce [the meaning of] an unqualified use of 'say' from another occurrence of an unqualified use of 'say, but we do not deduce [the meaning of] an unqualified use of 'say' from a passage where the expression 'answer and say' occurs.[7]

It has been taught: R. Simeon b. Yohai said: A man should recount what is to his credit in a low voice and what is to his discredit in a loud voice. That he is to recount what is to his credit in a low voice [is learnt] from the confession made at the presentation of the tithe, and what is to his discredit in a loud voice from the declaration made at the offering of the first-fruits.[8] But should one recount what is to his discredit in a loud voice? Surely R. Johanan has said in the name of R. Simeon b. Yohai: Why was It instituted that the 'prayer'[9] should be recited softly? So as not to put transgressors to shame;[10] for behold, Scripture made no distinction as to the place of a sin-offering or burnt-offering![11] — Do not read [in R. Simeon's statement] 'his discredit' but 'his trouble';[12] as it has been taught: And he shall cry, Unclean, unclean[13] — it is necessary [for the leper] to make his trouble known to the multitude so that the multitude may pray on his behalf; and thus everybody to whom a calamity has occurred should make it known to the multitude so that the multitude may pray on his behalf. The [above] text states: 'R. Johanan said in the name of R. Simeon b. Yohai: Why was it instituted that the 'prayer' should be recited softly? So as not to put transgressors to shame; for, behold, Scripture made no distinction as to the place of a sin-offering or burnt-offering.' But it is not so, for there is a difference in the treatment of the blood. The blood of a sin-offering [was applied] above [the red line which ran round the altar], whereas the blood of a burnt-offering [was applied] below it! — Only the priest would know that. There is, however, the difference that for a sin-offering a female animal was sacrificed and for a burnt-offering a male! — Being covered by the fat tail [the sex would not be recognised]. That is quite right with a female lamb, but what of a female goat?[14] — In that case the man brought the shame upon himself, because he should have offered a lamb but offered a goat. What, however, of the sin-offering brought for idolatry when only a goat suffices![15] — In that case let him experience shame so that he may receive atonement.

THE SHEMAð. Whence have we it that this [may be recited in any language]? As it is written: Hear, O Israel[16] — in any language you understand.

Our Rabbis taught: The Shema' must be recited as it is written.[17] Such is the statement of Rabbi but the Sages say: In any language. What is Rabbi's reason? — Scripture declares, And [these words] shall be,[18] i.e., they must remain as they are. And [what is the reason of] the Rabbis? — Scripture declares, 'Hear, O Israel' — in any language you understand. But for the Rabbis it is likewise written: 'And [these words] shall be'![19] — That indicates that one may not read it in the wrong

order.[20] And whence does Rabbi derive the rule that one may not read it in the wrong order? — From the fact that the text uses 'these words' and not merely 'words'. And the Rabbis?[21] — They draw no inference from the use of 'these words' instead of 'words'. But for Rabbi it is likewise written: 'Hear'! — He requires that for the rule: Make audible to your ears what you utter with your lips.[22] And the Rabbis? — They agree with him who said that if one has not recited the Shema' audibly he has fulfilled his obligation. It is possible to say that Rabbi holds

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(1) Viz., in Gilgal where they were again set up (Josh. IV, 20).

(2) Num. V, 21.

(3) V. supra p. 38.

(4) So that if she had offended in error or under compulsion and the water did not affect her, she should not think there would have been no effect if she had offended deliberately or of her free will.

(5) Deut. XXVI, 13.

(6) V. ibid. XXVII, 14 and Mishnah p. 157.

(7) Viz., in connection with the Levites. Consequently the analogy is drawn with the reference to the suspected woman and not the Levites.

(8) In the former he tells how he had done his duty (V. Deut. XXVI, 13f.) and in that connection the unqualified 'say' occurs. In the latter he tells of his humble ancestry (ibid. 5ff.) and in that connection 'answer and say', i.e., say aloud, occurs.

(9) V. supra p. 157, n. 4.

(10) Who confess their sins in the course of prayer.

(11) They were offered on the same side of the altar, and an onlooker would not be able to tell which offering was being sacrificed.

(12) In the declaration made over the first-fruits, the allusion was to the vicissitudes of the patriarch; and such should be spoken aloud.

(13) Lev. XIII, 45.

(14) Which has no fat tail.

(15) V. Num. XV, 27, 29.

(16) Deut. VI, 4. The word for 'Hear' also means 'understand'.

(17) Only in Hebrew.

(18) Ibid. 6.

(19) Why do they not explain them: they must remain as they are?

(20) V. supra p. 91.

(21) What do they derive from the use of 'these words'?

(22) I.e., the Shema' must be recited audibly.

Talmud - Mas. Sotah 33a

that the whole Torah may be read in any language; for if you maintain that it may be read[1] only in the holy tongue, wherefore had the All-Merciful to write 'And [these words] shall be'? — It is necessary because it is written 'Hear'.[2] It is likewise possible to say that the Rabbis hold that the whole Torah must be read in the holy tongue; for if you maintain that it can be read in any language, wherefore had the All-Merciful to write the word 'Hear'? — It is necessary because it is written 'And [these words] shall be'.[3]

THE 'PRAYER'. [It may be recited in any language because] it is only supplication, and one may pray in any language he wishes. But may the 'prayer' be recited in any language? Behold Rab Judah has said: A man should never pray for his needs in Aramaic. For R. Johanan declared: If anyone prays for his needs in Aramaic, the Ministering Angels[4] do not pay attention to him, because they do not understand that language! — There is no contradiction, one referring to [the prayer] of an individual and the other to that of a Congregation.[5] And do not the Ministering Angels understand Aramaic? Behold it has been taught: Johanan, the High Priest, heard a Bath Kol[6] issue from within

the Holy of Holies announcing, 'The young men who went to wage war against Antioch[7] have been victorious.[8] It also happened with Simeon the Righteous[9] that he heard a Bath Kol issue from within the Holy of Holies announcing, 'Annulled is the decree which the enemy intended to introduce into the Temple'. Then was Caius Caligula[10] slain and his decrees annulled. They noted down the time [when the Bath Kol spoke] and it tallied.[11] Now it was in Aramaic that it spoke! — If you wish I can say that it is different with a Bath Kol since it occurs for the purpose of being generally understood;[12] or if you wish I can say that it was Gabriel who spoke; for a Master has declared: Gabriel came and taught [Joseph] the seventy languages.[13]

THE GRACE AFTER MEALS. [That this may be recited in any language is derived from] the text: And thou shalt eat and be full, and thou shalt bless the Lord thy God[14] — in any language wherein thou utterest a benediction.

THE OATH CONCERNING TESTIMONY. [That this may be uttered in any language is derived from] the text: And if any one sin, in that he heareth the voice of adjuration[15] — in whatever language he hears it.

THE OATH CONCERNING A DEPOSIT. [That this may be uttered in any language] is derived from the analogous use of the phrase 'if any one sin' in the oath concerning testimony.[16]

THE FOLLOWING ARE RECITED IN THE HOLY TONGUE: THE DECLARATION MADE AT THE OFFERING OF THE FIRST-FRUITS, THE FORMULA OF HALIZAH, etc. down to: WHENCE IS IT THAT THE DECLARATION MADE AT THE OFFERING OF THE FIRST-FRUITS [MUST BE IN HEBREW]? [IT IS STATED], AND THOU SHALT ANSWER AND SAY BEFORE THE LORD THY GOD, AND ELSEWHERE IT IS STATED, AND THE LEVITES SHALL ANSWER AND SAY; AS THE LATTER MUST BE IN THE HOLY TONGUE, SO MUST THE FORMER BE IN THE HOLY TONGUE. But whence have we it of the Levites themselves [that they used Hebrew]? — It is derived from the analogous use of the word 'voice' in connection with Moses. Here it is written with a loud voice,[17] and elsewhere it is written: Moses spake and God answered him by a voice;[18] as in the latter passage it was in the holy tongue, so also in the other passage it means in the holy tongue.

WHENCE IS IT THAT THE FORMULA OF HALIZAH etc. What, then, do the Rabbis make of the word 'thus'?[19] — They require it to indicate that each act[20] invalidates [the ceremony by its omission]. And R. Judah?[21] — From the use of 'Kakah' instead of koh.[22] And the Rabbis? — They draw no inference from the use of 'Kakah' instead of koh.

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(1) In the synagogue (Rashi).

(2) If he were of the opinion that the Torah can only be read in Hebrew, it would necessarily apply to the Shema'. Why, then, should he draw a conclusion from shall be? He does so to oppose the inference which the Rabbis draw from Hear.

(3) Which might otherwise be taken to indicate that the Shema' must be read in Hebrew.

(4) Who convey the petitions to the Throne of Glory.

(5) With the latter, the help of the angels is not required.

(6) V. Glos. This is evidently the incident related by Josephus (Ant. XIII, X, 3) of John Hyrcanus.

(7) [Antiochus Cyzicenus, over whom the children of John Hyrcanus were victorious, v. loc. cit., and Derenbourg, Essai, p. 47.]

(8) This and the following announcements were made in Aramaic, so the angels must have understood it.

(9) Possibly the High Priest Simon, son of Boethus, also called Cantheras, as Josephus describes him (op. cit. XIX, VI, 2). [For other views v. HUCA VIII-IX, p. 300.]

(10) The name is corrupted in the text. He ordered that his statue should be placed in the Temple and worshipped (Josephus, War II, X, 1.)

(11) With the time of Caligula's assassination.

(12) And Aramaic was the vernacular of the period.
(13) V. infra. Gabriel was exceptional; but the other angels were ignorant of Aramaic.
(14) Deut. VIII, 10.
(15) Lev. V, 1.
(16) V. ibid. 21.
(17) Deut. XXVII, 14.
(18) Ex. XIX, 19.
(19) Upon which R. Judah bases the teaching that the formula must be in Hebrew.
(20) Mentioned in Deut. XXV, 9, viz., loosing the shoe, spitting in his face, and pronouncing the formula.
(21) From where does he derive this teaching?
(22) Both words signify 'thus'; and since the text has the longer form, he takes it as an indication that the formula must be in Hebrew and also that the omission of an act invalidates the ceremony.

Talmud - Mas. Sotah 33b

What, then, does R. Judah make of the phrase 'and she shall answer and say'?[1] — He requires it for the purpose of deducing that the Levites [must pronounce the blessings and curses] in the holy tongue.[2] But let him derive that from the analogous use of the word 'voice' in connection with Moses! — He had learnt [from his teacher] to draw an inference from the analogous use of the word 'answer' but not from 'voice'.[3] It has been similarly taught: R. Judah says: Wherever [in Scripture the words] 'thus', both in the form of 'koh' and 'kakah', or 'answer and say' occur, [what has to be spoken] must only be in the holy tongue. The word 'koh' is found in 'Thus ye shall bless',[4] 'kakah' in connection with Halizah, and 'answer and say' with the Levites.

HOW WERE THE BLESSINGS AND CURSES [PRONOUNCED]? WHEN ISRAEL CROSSED THE JORDAN etc. Our Rabbis taught: Are they not beyond Jordan?[5] [This means] on the other side of the Jordan and beyond; such is the statement of R. Judah. Behind the way of the coming of the sun[6] — the place where the sun dawns.[7] In the land of the Canaanites which dwell in the Arabah[6] — i.e., mount Gerizim and mount Ebal where the Cutheans[8] dwell. Over against Gilgal[6] — [this means] near Gilgal.[9] Beside the terebinths of Moreh[6] — [this means] Shechem. Elsewhere it states: And Abram passed through the land unto the place of Shechem unto the terebinth of Moreh;[10] as the terebinth of Moreh mentioned in this latter verse is Shechem, so in the former verse it means Shechem.

It has been taught:[11] R. Eleazar son of R. Jose said: In this connection I proved the Samaritan Scriptures[12] to be false. I said to them, 'You have falsified your Torah[13] but you gained nothing thereby.[14] You declare that 'the terebinths of Moreh' means Shechem; we too admit that 'the terebinths of Moreh' means Shechem. We learnt this by an inference from analogy;[15] but how have you learnt it!'[16]

R. Eleazar said: 'Are they not beyond the Jordan'? [This means] near the Jordan; because if it signified on the other side of the Jordan and beyond, is it not written: And it shall be when ye are passed over Jordan![17] 'Behind the way of the coming of the sun' — [this means] the place where the sun sets.[18] 'In the land of the Canaanites' — i.e., the land of the Hivites. 'Which dwell in the Arabah' — but do they not dwell among mountains and hills![19] 'Over against Gilgal' — but they could not see Gilgal![20] — R. Eliezer b. Jacob says: Scripture has here only the intention of pointing out to them the route for the second [part of the journey] as it had pointed out to them the route for the first [part of the journey].[21] 'The way' — [this means], Proceed along the high-road and not through fields and vineyards. 'Which dwell' — [this means], Pass through inhabited territory and not through deserts. 'In the Arabah' — [this means], Pass through the plain and not through mountains and hills.

Our Rabbis taught: How did Israel cross the Jordan? Each day [during the journey in the wilderness] the ark journeyed behind two standards,[22] but on this day [of crossing] it journeyed in front; as it is said: Behold, the ark of the covenant of the Lord of all the earth passeth over before you.[23] Each day the Levites carried the ark, but on this day the priests carried it; as it is said: And it shall come to pass, when the soles of the feet of the priests that bear the ark of the Lord etc.[24] — It has been taught: R. Jose says: On three occasions the priests carried the ark: when they crossed the Jordan, when they walked round Jericho,[25] and when they deposited it in its place.[26] —

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(1) Since he does not follow the Rabbis in basing upon it the rule that the formula must be in Hebrew.

(2) Since the phrase 'answer and say' occurs in Deut. XXVII, 14.

(3) [No inference can be drawn from the analogous use of a word (a Gezerah shawah, v. Glos.) which has not been received on tradition from a teacher.]

(4) Num. VI, 23, the priestly benediction which must be in Hebrew.

(5) Deut. XI, 30. This might have been interpreted as close to the other side of the Jordan.

(6) Ibid.; 'coming' is usually understood as 'setting', but it is here explained as 'coming up, rising'.

(7) [The East. The phrase means accordingly: Far away from the Eastern bank of the Jordan where the Israelites were at the time towards the West. The term אחרי as distinct from אחר denotes 'greatly separated'.]

(8) Samaritans, so called because they were brought by Sargon, King of Assyria, from Cuthea, to take the place of the exiled Israelites.

(9) [Not the Gilgal east of Jericho, but another place of that name identified with Juleijil, east of Mt. Gerizim; v. p. 166, n. 3.

(10) Gen. XII, 6.

(11) As Rashi remarks, the words 'it has been taught' should be deleted, as it is the continuation of the Baraitha, v. Sifre, a.l.

(12) For sifre 'Scriptures' we must read with the J. Talmud Sofre 'scribes, learned men'.

(13) The Samaritan recension of the Pentateuch. In Deut. XI, 30 it adds 'over against Shechem' which does not appear in the Hebrew version.

(14) I.e., your addition of the words was unnecessary.

(15) Gezerah shawah (v. Glos.).

(16) By tampering with the text.

(17) Ibid. XXVII, 4. This is explained: as soon as you have passed over; therefore it must have been a place close to the Jordan.

(18) [The West, and the verse means far away from the Western towards the Eastern bank of the Jordan.]

(19) Arabah signifies the plain.

(20) They lived at a distance from it; so why is this mentioned? [Rashi, who seems to have another and preferable text, explains the question: 'but they (these places) are far from Gilgal' Gilgal being East of Jericho (v. p. 165, n. 5), why then mention it, cf. also Rashi on Deut. XI, 30.]

(21) When Israel left Egypt a pillar of fire and cloud directed them; but this ceased on the death of Moses. Scripture therefore gives them directions, and its purpose is not to explain the location of Gerizim and Ebal.

(22) Of the tribes; v. Num. X, 11ff.

(23) Josh. III, 11.

(24) Ibid. 13.

(25) Ibid. VI, 6.

(26) In Solomon's Temple (I Kings VIII, 3).

Talmud - Mas. Sotah 34a

When the feet of the priests were dipped in the water, the water flowed backward; as it is said: And when they that bore the ark were come unto the Jordan . . . that the waters which came down from above stood and rose up in one heap.[1] What was the height of the water? Twelve mil by twelve mil in accordance with the dimensions of the camp of Israel.[2] Such is the statement of R. Judah; and R. Eleazar b. Simeon said to him, According to your explanation, which is swifter, man or water?

Surely water is swifter; therefore the water must have returned and drowned them![3] It rather teaches that the waters were heaped up like stacks to a height of more than three hundred mil, until all the kings of the East and West saw them; as it is said: And it came to pass, when all the kings of the Amorites, which were beyond Jordan westward, and all the kings of the Canaanites, which were by the sea, heard how that the Lord had dried up the waters of Jordan from before the children of Israel until they were passed over, that their heart melted, neither was there spirit in them any more, because of the children of Israel.[4] And also Rahab the harlot said to Joshua's messengers, For we have heard how the Lord dried up the water of the Red Sea etc.;[5] and it continues, And as soon as we heard it, our hearts did melt neither did there remain any more etc.[6]

While they were still in the Jordan, Joshua said to them, Know why you are crossing the Jordan; it is on condition that you disinherit the inhabitants of the land from before you; as it said: Then ye shall drive out all the inhabitants of the land from before you etc.[7] If you do this, well and good; otherwise the water will return and drown you [othekem].[8] — What means 'othekem'? Me and you. While they were still in the Jordan, Joshua said to them, Take you up every man of you a stone upon his shoulder, according unto the number of the tribes of the children of Israel etc.;[9] and it continues, That this may be a sign among you, that when your children ask in time to come, saying: What mean ye by these stones? etc.[10] It was to be a monument for the children that their fathers had crossed the Jordan. While they were still in the Jordan, Joshua said to them. Take you hence out of the midst of the Jordan, out of the place where the priests' feet stood firm, twelve stones, and carry them over with you, and lay them down in the lodging place, where ye shall lodge this night etc.[11] It is possible [to think that they were to deposit them] in any lodging place; therefore there is a text to state, 'Where ye shall lodge this night'.

R. Judah[12] said: Abba Halafta, R. Eliezer b. Mathia and Hananiah b. Hakinai stood upon those stones and estimated that each was equal to about forty se'ah.[13] There is a tradition that the weight which a man can raise upon his shoulder is a third of the weight he can carry;[14] so from this you may calculate what was the weight of the cluster of grapes,[15] as it is said: And they bare it upon a staff between two.[16] From the fact that it is stated upon a staff do I not know that it [was carried] between two? Why, then, is there a text to state 'between two'? [It means] on two staffs. R. Isaac said: [It means] a series of balancing poles.[17] How was it? Eight [spies] carried the grape-cluster,[18] one carried a pomegranate, one carried a fig, and Joshua and Caleb did not carry anything. If you wish I can say [that they did not carry anything] because they were the most distinguished of them,[19] or alternatively that they did not have a share in the plan.[20]

R. Ammi and R. Isaac the smith differ in opinion. One said: According to the statement of R. Judah,[21]

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(1) Josh. III, 15f.

(2) supra p. 71. So that as soon as the last Israelite had crossed over, the waters returned.

(3) If the water rose to twelve mil only to subside again, they would not have been able to traverse a sufficient distance to escape the returning water.

(4) Josh. V, 1.

(5) Ibid. II, 10.

(6) Ibid. 11.

(7) Num. XXXIII. 52.

(8) This is an unusual Hebrew form, and is taken as a combination of othi, 'me' and ethkem 'you'.

(9) Josh. IV, 5.

(10) Ibid. 6.

(11) Josh. IV, 3.

(12) The reading should be: R. Jose.

(13) The se'ah was a measure of capacity; so what is here meant is a weight equal to that of forty se'ah of wheat.

(14) . When others help to set it upon his shoulder. Consequently the weight of each was 120 se'ah.
(15) Carried by the spies.
(16) Num. XIII, 23.
(17) For four couples of carriers.
(18) [The weight of which would have been on this calculation 960 se'ahs, that is 8 times 120.]
(19) And so it was beneath their dignity.
(20) The bringing of the fruit was part of the plan to discourage the community. They would judge from its size what must be the stature of the inhabitants.
(21) That the water was twelve mil in height.

Talmud - Mas. Sotah 34b

they crossed over in the formation of their encampment, and according to the statement of R. Eleazar b. Simeon[1] they crossed over in single file.[2] The other said: According to the statement of both teachers they crossed over in the formation of their encampment. One teacher was of the opinion that man was swifter, and the other that water was swifter.[3] Send for thee men[4] — Resh Lakish said: [‘For thee’ means] from thine own mind;[5] because does anybody choose a bad position for himself?[6] That is what is written: And the thing pleased me well[7] — Resh Lakish said: It pleased me [Moses] well but not the All-Present.

That they search the land for us[8] — R. Hiyya b. Abba said: The spies aimed at nothing else than discrediting the land of Israel. Here it is written: That they may search [we-yahperu] the land for us, and elsewhere it is written: Then the moon shall be confounded [we-haferah] and the sun ashamed etc.[9]

And these were their names: of the tribe of Reuben, Shammua the son of Zaccur.[10] R. Isaac said: It is a tradition in our possession from our forefathers that the spies were named after their actions, but only with one has it survived with us: Sethur the son of Michael.[11] [He was named] Sethur because he undermined [sathar] the works of the Holy One, blessed be He; and Michael [was so named] because he suggested that God [el] was weak [mak].[12] R. Johanan said: We can also explain [the name] Nahbi the son of Vophsi.[13] [He was named] Nahbi because he hid [hikbi] the words[14] of the Holy One, blessed be He; and Vophsi [was so named] because he stepped over [pasa’] the attributes[15] of the Holy One, blessed be He.

And they went up by the South and he came unto Hebron[16] — it should have read ‘and they came’! — Raba said: It teaches that Caleb held aloof from the plan of the spies and went and prostrated himself upon the graves of the patriarchs, saying to them, ‘My fathers, pray on my behalf that I may be delivered from the plan of the spies’. (As for Joshua, Moses had already prayed on his behalf; as it is said: And Moses called Hoshea the son of Nun Joshua,[17] [meaning], May Jah save thee [yoshi'aka] from the plan of the spies.) That is the intention of what is written: But My servant Caleb, because he had another spirit with him.[18]

And there were Ahiman, Sheshai and Talmai[19] — Ahiman [was so named because he was] the strongest [meyuman] of them; Sheshai because he made the earth like pits [shehithoth];[20] Talmai because he made the earth like furrows [telamim]. Another explanation:[21] Ahiman built ‘Anath, Sheshai built Alash, and Talmai built Telbesh.[22] The children of Anak — [they are so called] because they wore the sun as a necklace [ma'anikin] owing to their stature.

Now Hebron was built seven years[19] — what means ‘was built’? If I say that it means actually built, is it possible that a man constructs a house for his younger son before his elder son; as it is written: And the sons of Ham: Cush and Mizraim?[23] But [the intention is], it was seven times more productive than Zoan. There is no worse stony ground in all the land of Israel than Hebron, and that

is why they bury the dead there; and there is none among all the countries superior to the land of Egypt, as it is said: Like the garden of the Lord, like the land of Egypt;[24] and there is no place superior to Zoan In all the land Egypt, as it is written: For his princes are at Zoan.[25] Nevertheless Hebron was seven times more productive than Zoan. But was Hebron stony ground; behold it is written: And it came to pass at the end of forty years, that Absalom said unto the king, I pray thee, let me go [and pay my vow . . . in Hebron];[26] and R. Iwya — another version is, Rabbah b. Bar Hanan-said: He went to fetch lambs from Hebron; and there is also a teaching: [The best] rams are from Moab and lambs from Hebron! — From that very fact [it is proved that the land was stony]; because the soil is thin it produces pastures[27] and the cattle grow fat there.

And they returned from spying out the land . . .

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(1) That the height was over three hundred mil.

(2) The time of crossing was much longer; consequently the heap of water had to be of greater height.

(3) For that reason they suggest different heights for the water to enable the people to escape.

(4) Num. XIII, 2. So the Hebrew literally.

(5) I.e., the plan did not emanate from God but from Moses.

(6) Would God have sanctioned a plan which He knew was to end in disaster?

(7) Deut. I, 23.

(8) Ibid. 22. The word for search is here given the meaning ‘confound’.

(9) Isa. XXIV, 23.

(10) Num. XIII, 4.

(11) Ibid. 13.

(12) Lit., ‘he made himself to be weak’ — a reverential avoidance of a disparaging reference to God. He was the man who said: ‘Even the master of the house cannot remove his furniture from there’ (infra 35a).

(13) Ibid. 14.

(14) Did not truthfully report them.

(15) He misrepresented them.

(16) Ibid. 22. So the Heb. literally.

(17) Num. XIII, 16.

(18) Ibid. XIV, 24. It continues: I will bring him into the land whereinto he went, viz. Hebron. V. Josh. XIV, 14.

(19) Num. XIII, 22.

(20) Through his heavy tread.

(21) These words should be deleted, and do not occur in the parallel passage Yoma 10a.

(22) [Identified by Obermeyer (op. cit. pp. 102-3) with ‘Anah, Alusa and Telbeth, three fortified island-towns on the Northern Euphrates.]

(23) Gen. X, 6. Canaan was the youngest of his sons and Mizraim the second.

(24) Ibid. XIII, 10.

(25) Isa. XXX, 4.

(26) II Sam. XV, 7.

(27) It does not yield any other produce.

Talmud - Mas. Sotah 35a

and they went and came.[1] R. Johanan said in the name of R. Simeon b. Yohai, It compares the going to the coming back; as the coming back was with an evil design, so the going was with an evil design.[2] And they told him and said: We came etc.,[3] and it continues, Howbeit the people are strong.[4] R. Johanan said[5] in the name of R. Meir, Any piece of slander, which has not some truth in the beginning, will not endure in the end.[6]

And Caleb stilled [wa-yahas] the people concerning Moses[7] — Rabbah said, [It means] that he won them over [hissithan] with words. When Joshua began to address them, they said to him,

‘Would this person with the lopped-off head[8] speak to us!’ [Caleb] said [to himself], If I address them [in the same strain as Joshua], they will answer me in like manner and silence me; so he said to them, ‘Is it this alone that Amram's son has done to us!’[9] They thought that he was speaking to censure Moses, so they were silent. Then he said to them, ‘He brought us out of Egypt, divided the Red Sea for us and fed us with manna. If he were to tell us, Prepare ladders and ascend to heaven, should we not obey him! Let us go up at once and possess it etc.’[10]

But the men that went up with him said: We will not be able etc.[11] R. Hanina b. Papa said: A grievous statement did they make at that moment, viz. For they are stronger than we — read not than we but than He;[12] as it were even the master of the house cannot remove his furniture from there.[13]

It is a land that eateth up the inhabitants thereof.[14] Raba expounded: The Holy One, blessed be He, said: I intended this for good[15] but they thought it in a bad sense. I intended this for good, because wherever [the spies] came, the chief [of the inhabitants] died, so that they should be occupied [with his burial] and not inquire about them.[16] (Others say that Job died then and the whole world was occupied with mourning for him.) But they thought it in a bad sense: It is a land that eateth up the inhabitants thereof.[17]

And we were in our own sight as grasshoppers, and so we were in their sight.[18] R. Mesharsheya said: The spies were liars. As regards ‘we were in our own sight as grasshoppers’, very well; but how could they know that ‘so we were in their sight’? But it is not so;[19] for when [the inhabitants] held their funeral-meal[20] they ate it beneath cedar trees, and when [the spies] saw them they climbed the trees and sat there. Then they heard them say: ‘We see men like grasshoppers in the treesð.

And all the congregation lifted up their voice and wept.[21] Rabbah said in the name of R. Johanan: That day was the ninth of Ab;[22] and the Holy One, blessed be He, said: They are now weeping for nothing, but I will fix [this day] for them as an occasion of weeping for generations.

But all the congregation bade them stone them with stones,[23] and it continues, And the glory of the Lord appeared in the tent of meeting. R. Hiyya b. Abba said: It teaches that they took stones and hurled them against Him Who is above.[24] Even those men that did bring up an evil report of the land died by the plague.[25] R. Simeon b. Lakish said: They died an unnatural death.[26] R. Hanina b. Papa said: R. Shila of Kefar Temarthah expounded; It[27] teaches that their tongue was elongated and reached down to their navel, and worms issued from their tongue and penetrated their navel and from their navel they penetrated their tongue. R. Nahman b. Isaac said: They died of croup.[28]

When[29] the last of the Israelites ascended from the Jordan, the waters returned to their place; as it is said: And it came to pass, when the priests that bore the ark of the covenant of the Lord were come up out of the midst of the Jordan, and the soles of the priests’ feet were lifted up unto the dry ground, that the waters of Jordan returned unto their place, and went over all its banks, as aforetime.[30] Consequently the ark and its bearers and the priests were on one side [of the Jordan] and the Israelites on the other![31] The ark carried its bearers and passed over [the river]; as it is said: And it came to pass, when all the people were clean passed over, that the ark of the Lord passed over, and the priests, in the presence of the people.[32] On that account was Uzza punished, as it is said: And when they came unto the threshing-floor of Chidon, Uzza put forth his hand to hold the ark.[33] The Holy One, blessed be He, said to him, ‘Uzza, [the ark] carried its bearers; must it not all the more [be able to carry] itself!’

And the anger of the Lord was kindled against Uzzah; and God smote him there for his error [shal] etc.[34] R. Johanan and R. Eleazar [differ on the interpretation of the word ‘shal’]. One said [that it means] on account of the act of error [shalu];[35] the other said [that it means] he relieved himself in its presence.[36]

And there he died by[37] the ark of God. R. Johanan said: Uzzah entered the World to Come, as it is stated 'with the ark of God' — as the ark endures for ever, so Uzzah entered the World to Come.

And David was angry, because the Lord had broken forth upon Uzzah.[38] R. Eleazar said: His face was changed [so that it became in colour] like a cake baked upon the coals [hararah]. Are we to infer from this that wherever wa-yihar occurs it has this meaning? — In other passages the word 'af [anger] is added but here it is not added.

Raba expounded: Why was David punished?[39] Because he called words of Torah 'songs', as it is said: Thy statutes have been my songs in the house of my pilgrimage.[40] The Holy One, blessed be He, said to him, 'Words of Torah, of which it is written: Wilt thou set thine eyes upon it? It is gone,[41] thou recitest as songs! I will cause thee to stumble in a matter which even school-children know.' For it is written: But unto the sons of Kohath he gave none, because the service of the sanctuary etc.;[42] and yet [David] brought it in a waggon.

And he smote of the men of Beth-Shemesh, because they looked into the ark.[43] God smote them because they looked into the ark! R. Abbahu and R. Eleazar [differ in their interpretation]; one said that they went on reaping while they prostrated themselves [before the ark];[44] the other said that they also used this [disrespectful] language to it,

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(1) Num. XIII, 25f.

(2) They planned at the outset to bring back a discouraging report.

(3) Ibid. 27.

(4) Ibid. 28.

(5) The Gemara inserts here: mnemonic — truth, alone, interment. These are keywords to assist in remembering the sequence of the passages treated.

(6) On that account the report opened with a true description of the land's fertility.

(7) Ibid. 30. I.e., he silenced them to hear something about Moses. E.V. 'before'.

(8) An allusion to the fact that he was childless. What interest could he have in the conquest since he had no children to possess the land! (Rashi).

(9) He chose his words that the people should imagine he was against Moses, and so they would listen to him. 'Alone' in this sentence is the key-word of the mnemonic.

(10) Ibid.

(11) Ibid. 31.

(12) [ממנו instead of ממנו a difference of pronounciation in the Babylonian Masora, in order to distinguish between the 1st. masc. plur and 3rd. sing, (v. Ges. K. 1910 para. m, n. 1), and cf. Ibn Ezra on Ex. I, 9.]

(13) Even God is powerless against them.

(14) Num. XIII, 32.

(15) Viz., that many Canaanites die there. Hence the word 'interment' in the mnemonic.

(16) This is how the spies were able to return unmolested.

(17) This fate would befall the Israelites if they settled there.

(18) Ibid. 33.

(19) The spies did not lie in this matter.

(20) After burying the dead, as mentioned above.

(21) Ibid. XIV, 1.

(22) Fifth month. On that date the two Temples were destroyed, and the day is observed as a fast.

(23) Ibid. 10.

(24) The word 'them' includes God,

(25) Num. XIV, 37.

(26) That is the meaning of 'by the plague'.

(27) The definite article in 'the plague' shows that it was not an ordinary epidemic.

(28) It was regarded as the severest form death could take (Ber. 8a) and was the fate of the slanderer (Shab. 33b).
(29) After this long digression there is resumed the narrative of the crossing of the Jordan.
(30) Josh. IV, 18.
(31) The text is understood in the same sense that the priests who carried the ark dipped their feet in the Jordan and the waters remained parted so long as the feet were kept there. When the Israelites had crossed, the priests lifted their feet out of the water, stepping back upon the bank. They were consequently on the other side; so how did they get over?
(32) Ibid. 11. Note that the ark 'passed over', and was not carried over.
(33) I Chron. XIII, 9.
(34) II Sam. VI, 7.
(35) [שלו error, neglect, cf. Ezra IV, 12.]
(36) Shal is connected with the root nashal 'to drop off.
(37) Lit., 'with'.
(38) II Sam. VI, 8. 'Angry' is 'wa-yihar' lit., 'be kindled'. The explanation is intended to avoid the thought that David was angered against God.
(39) That Uzzah died through him.
(40) Ps. CXIX, 54. When he fled from his enemies, he entertained himself by treating Scriptural passages as songs. He thus made a profane use of them.
(41) Prov. XXIII, 5 — i.e., the Torah is beyond human understanding.
(42) Num. VII, 9. The ark had to be carried upon the shoulders of the Levites.
(43) I Sam. VI, 19.
(44) [The phrase ראו בארון is taken to signify 'they gazed at the ark' with unbecoming interest, v. Driver, S.R., Samuel, a.l.]

Talmud - Mas. Sotah 35b

'Who embittered thee that thou wast thus embittered,[1] and what has come upon thee that thou art now appeased?' Even He smote of the people seventy men and fifty thousand men.[2] R. Abbahu and R. Eleazar [differ in their interpretation]; one said that there were only seventy men [smitten] each of whom was the equal of fifty thousand men, while the other said that there were fifty thousand men [smitten] each of whom was equal to the seventy who constituted the Sanhedrin.

And it was so, that when they that bore the ark of the Lord had gone six paces, he sacrificed an ox and a fatling,[3] and it is also written, [They sacrificed] seven bullocks and seven rams![4] — R. Papa said in the name of Samuel: [The two passages are reconciled by supposing that] at each pace an ox and a fatling [were offered] and at each six paces seven bullocks and seven rams. R. Hisda said to him, On your theory you filled the whole of the land of Israel with high places! But, said R. Hisda, at each six paces an ox and a fatling [were offered] and at each six sets of six paces seven bullocks and seven rams.

[In one place the name of the threshing-floor] is written Chidon [and in another] Nacon![5] — R. Johanan said: At first [it was called] Chidon and afterwards Nacon.[6]

In consequence [of what is related in the Scriptures], you must conclude that there were three sets of stones: one which Moses caused to be erected in the land of Moab, as it is said: Beyond Jordan, in the land of Moab, began Moses to declare etc.,[7] and elsewhere it states: Thou shalt write upon the stones all the words of this law [very plainly],[8] and the inference is drawn from the use of the analogous word [that as in the latter passage stones were employed, they were similarly employed in connection with what is narrated in the first passage]. The second set was that which Joshua caused to be erected in the midst of the Jordan, as it is said: And Joshua set up twelve stones in the midst of Jordan.[9] The third set was that which he caused to be erected in Gilgal, as it is said: And those twelve stones which they took.[10]

Our Rabbis taught: How did the Israelites inscribe the Torah? — R. Judah says: They inscribed it upon the stones, as it is stated: 'Thou shalt write upon the stones all the words of this law etc.' After that they plastered them over with plaster. R. Simeon said to him, According to your explanation, how did the nations of that period learn the Torah![11] — He replied to him, The Holy One, blessed be He, endowed them with exceptional intelligence; and they sent their scribes who peeled off the plaster and carried away [a copy of the inscription]. On that account was the verdict sealed against them [to descend] to the pit of destruction, because it was their duty to learn [Torah] but they failed to do so. R. Simeon says: They inscribed it upon the plaster and wrote below, That they teach you not to do after all [their abominations].[12] Hence you learn that if they turn in penitence they would be accepted. Raba b. Shila said: What is R. Simeon's reason? — Because it is written: And the peoples shall be as the burnings of lime[13] — i.e., on account of the matter of the plaster.[14] And [how does] R. Judah [explain this verse]? — [Their destruction will be] like plaster — as there is no other remedy for plaster except burning, so there is no other remedy for those nations [who cleave to the abominations] except burning. According to whom [is the following teaching] which has been taught: And thou carriest them away captive[15] — this is to include Canaanites who reside outside the land [of Israel] so if they turn in penitence they will be accepted.

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(1) And didst not release thyself from the Philistines.

(2) I Sam. VI, 19. [In M.T. the particle ו (‘and’) is missing.]

(3) II Sam. VI, 13.

(4) I Chron. XV, 26.

(5) Cf. II Sam. VI, 6 with I Chron. XIII, 9.

(6) Chidon means ‘a spear’, an appropriate name for the place where Uzzah lost his life; Nacon means ‘established’, and alludes to the fact that the ark was established there.

(7) Deut. I, 5. The Hebrew for ‘declare’ is be'er.

(8) Ibid. XXVII, 8. The Hebrew for ‘plainly’ is ba'er.

(9) Josh. IV, 9.

(10) Josh. IV, 20.

(11) Since the inscription was covered with plaster.

(12) Deut. XX, 18. The command to destroy was limited to those of the seven nations who resided in Canaan. Those of them who lived outside its borders could survive by giving up their abominable practices.

(13) Isa. XXXIII, 12. The word for ‘lime’ is the same as for plaster.

(14) The nations will be destroyed because they neglected to pay heed to the teachings inserted on the plaster.

(15) Deut. XXI, 10.

Talmud - Mas. Sotah 36a

According to whom is this? — According to R. Simeon.

Come and see how many miracles were performed on that day. Israel crossed the Jordan, came to mount Gerizim and mount Ebal [thus traversing a distance of] more than sixty mil, no creature was able to withstand them and whoever withstood them was immediately panic-stricken; as it is said: I will send My terror before thee, and will discomfort all the people to whom thou shalt come, etc.,[1] and it states: Terror and dread falleth upon them . . . till Thy people pass over, O Lord.[2] This alludes to the first advance [of Israel in the days of Joshua]; and ‘Till the people pass over which Thou hast gotten’[2] alludes to the second advance [in the days of Ezra]. Conclude from this that the Israelites were worthy that a miracle should be performed on their behalf during the second advance as in the first advance, but sin caused [it to be withheld].

After that they brought the stones, built the altar, and plastered it with plaster, and inscribed thereon all the words of the Torah in seventy languages; as it is said: Very plainly.[3] Then they sacrificed burnt-offerings and peace-offerings, ate and drank and rejoiced, pronounced the blessings

and the curses,[4] packed up the stones, and came and lodged in Gilgal; as it is said: Carry them over with you and lay them down in the lodging place.[5] It is possible [to think that they were to deposit them] in any lodging place; therefore there is a text to state, Where ye shall lodge this night,[5] and then it is written: And those twelve stones, which they took [out of Jordan, did Joshua set up in Gilgal].[6]

A Tanna taught: The hornet did not pass over [Jordan] with them; but behold it is written: And I will send the hornet before thee![7] — R. Simeon b. Lakish said: It stood by the bank of the Jordan and injected a virus [into the Canaanites] which blinded their eyes above and castrated them below; as it is said: Yet destroyed I the Amorite before them, whose height was like the height of the cedars, and he was strong as the oaks; yet I destroyed his fruit from above and his roots from beneath etc.[8] R. Papa said: There were two hornets, one in the period of Moses and the other in the period of Joshua; the former did not pass over [Jordan] but the other did.

SIX TRIBES ASCENDED THE SUMMIT OF MOUNT GERIZIM etc. What means and the half of them?[9] — R. Kahana said: As they were divided here [on the mounts][10] so were they divided on the stones of the ephod.[11] An objection was raised: The High priest had two precious stones on his shoulders, one on this side and one on the other side; upon them were inscribed the names of the twelve tribes, six on one stone and six on the other, as it is said: Six of their names on the one stone, [and the names of the six that remain on the other stone, according to their birth].[12] [This indicates that] the second six were to be according to their birth, but the first six were not to be according to their birth; because [the name of] Judah came first, and there were fifty letters, twenty-five on each stone. R. Hanina b. Gamaliel says:

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(1) Ex, XXIII. 27.

(2) Ibid. XV, 16.

(3) Deut. XXVII. 8.

(4) [Wilna Gaon deletes 'and the curses', and refers the blessings to the Grace after meals, since the blessings and curses on the Mounts were pronounced before the altar was built, v. Mishnah.]

(5) Josh. IV, 3.

(6) Ibid. 20.

(7) Ex. XXIII, 28.

(8) Amos II, 9.

(9) Josh. VIII, 33. The Hebrew has the definite article which seems superfluous.

(10) Simeon, Levi, Judah, Issachar, Joseph and Benjamin on Mount Gerizim, and Reuben, Gad, Asher, Zebulun, Dan and Naphtali on Mount Ebal, v. Deut. XXVII, 12-13.

(11) Six tribes in the same order on each stone; v. Ex. XXVIII, 9ff.

(12) Ibid. 10.

Talmud - Mas. Sotah 36b

They were not apportioned upon the stones as they were apportioned in the Book of Numbers[1] but as they were apportioned in the second Book of the Pentateuch.[2] How then [were they arranged]? The sons of Leah in order of seniority [on one stone, and on the other] the sons of Rachel, one on top and the other at the bottom, with the sons of the hand-maids in the centre.[3] In that case, how am I to explain 'according to their birth'? [It means that the inscription was] according to the names which their father called them and not according to the names which Moses called them — Reuben and not Reubeni, Simeon and not Simeoni, Dan and not had-Dani, Gad and not hag-Gadi.[4] This is a refutation of R. Kahana![5] The refutation [is unanswered].

What, then, is the meaning of 'and the half of them'? — It has been taught: 'The half in front of mount Gerizim was larger than that in front of mount Ebal, because [the tribe of] Levi was below

[with the ark].'[6] On the contrary, for the reason that Levi was below it must have been smaller![7] — This is what he intends: Although Levi was below [the party on mount Gerizim was still larger] because the sons of Joseph were included with them [and they were very numerous]; as it is said: And the children of Joseph spake unto Joshua, saying: Why hast thou given me but one lot and one part for an inheritance, seeing I am a great people? . . . And Joshua said unto them, If thou be a great people, get thee up to the forest.[8] He said to them, 'Go, hide yourselves in the forests that the evil eye[9] may not have sway over you'. They replied to him, 'The evil eye can bear no sway over the seed of Joseph'; for it is written: Joseph is a fruitful bough, a fruitful bough by a fountain,[10] and R. Abbahu said: Read not 'ale 'ayin [by a fountain] but 'ole 'ayin [overcoming the eye]. R. Jose b. Hanina said: [It is derived] from this passage, And let them grow [we-yidgu] into a multitude in the midst of the earth[11] — as the water covers the fish [dagim] in the sea so that the [evil] eye bears no sway over them, so the [evil] eye bears no sway over the seed of Joseph.

[It was stated above that on the stones of the ephod] were fifty letters; but there were fifty less one! — R. Isaac said: One letter was added to the name of Joseph, as it is said: He appointed it in Joseph for a testimony, when he went out over the land of Egypt.[12] R. Nahman b. Isaac objected: We require according to their birth![13] — But [the correct explanation is] that throughout the whole Torah Benjamin's name is spelt without the letter yod [before the final letter], but here [on the ephod] it was spelt complete with yod; as it is written: But his father called him Benjamin.[14]

R. Hanꞓ[15] b. Bizna said in the name of R. Simeon the Pious: Because Joseph sanctified the heavenly Name in private one letter was added to him from the Name of the Holy One, blessed be He; but because Judah sanctified the heavenly Name in public, the whole of his name was called after the Name of the Holy One, blessed be He. How was it with Joseph [that he sanctified the Name]? — As it is written: And it came to pass about this time, that he went into the house to do his work.[16] R. Johanan said: This teaches that both [Joseph and Potiphar's wife] had the intention of acting immorally. 'He went into the house to do his work' — Rab and Samuel [differ in their interpretation]. One said that it really means to do his work; but the other said that he went to satisfy his desires.[17] 'And there was none of the men of the house etc. — is it possible that there was no man in a huge house like that of this wicked [Potiphar]! — It was taught in the School of R. Ishmael: That day was their feast-day, and they had all gone to their idolatrous temple; but she had pretended to be ill because she thought, I shall not have an opportunity like to-day for Joseph to associate with me. And she caught him by his garment, saying etc.[18] At that moment his father's image came and appeared to him through the window and said: 'Joseph, thy brothers will have their names inscribed upon the stones of the ephod and thine amongst theirs; is it thy wish to have thy name expunged from amongst theirs and be called an associate of harlots?' (As it is written: He that keepeth company with harlots wasteth his substance.)[19] Immediately his bow abode in strength[20] — R. Johanan said in the name of R. Meir: [This means] that his passion subsided. And the arms of his hands were made active[20] — he stuck his hands in the ground so that his lust came out from between his finger-nails. 'By the hands of the Mighty One of Jacob'[20] — Who caused his name to be engraven upon the stones of the ephod but the Mighty One of Jacob? 'From thence is the shepherd, the stone of Israel'[21] — from there was he worthy to be made a shepherd, as it is said: Give ear, O Shepherd of Israel, Thou that leadest like the flock of Joseph.[22]

It has been taught: Joseph was worthy that twelve tribes should issue from him as they issued from his father Jacob, as it is said: These are the generations of Jacob, Joseph;[23] but his lust came out from between his finger-nails.[24] Nevertheless they[25] issued from his brother Benjamin and were given names on his own account; as it is said: And the sons of Benjamin: Bela and Becher and Ashbel etc.[26] [He was called] Bela, because [Joseph] was swallowed up [nibla'] among the peoples. [He was called] Becher, because [Joseph] was the firstborn [bekor] of his mother. [He was called] Ashbel, because God sent [Joseph] into captivity [sheba'o el]. [He was called] Gera, because [Joseph] dwelt [gar] in lodgings [in a strange land]. [He was called] Naaman, because he was especially beloved

[na'im]. [They were called] Ehi and Rosh, because [Joseph] is my brother [ahi] and chief [rosh]. [They were called] Muppim and Huppim, because [Benjamin said: Joseph] did not see my marriage-canopy [huppah] and I did not see his.[27] [He was called] Ard, because [Joseph] descended [yarad] among the peoples. Others explain [that he was called] Ard, because [Joseph's] face was like a rose [wered].

R. Hiyya b. Abba said in the name of R. Johanan: At the moment when Pharaoh said to Joseph, And without thee shall no man lift up his hand etc.,[28] Pharaoh's astrologers exclaimed: 'Wilt thou set in power over us a slave whom his master bought for twenty pieces of silver!' He replied to them, 'I discern in him royal characteristics.' They said to him, 'In that case he must be acquainted with the seventy languages'. Gabriel came and taught [Joseph] the seventy languages, but he could not learn them. Thereupon [Gabriel] added to his name a letter from the Name of the Holy One, blessed be He, and he learnt [the languages] as it is said: He appointed it in Joseph[29] for a testimony, when he went out over the land of Egypt, where I [Joseph] heard a language that I knew not.[30] On the morrow, in whatever language Pharaoh conversed with him he replied to him; but when [Joseph] spoke to him in the holy tongue he did not understand what he said. So he asked him to teach it to him; he taught it to him but he could not learn it. [Pharaoh] said to him, 'Swear to me that thou wilt not reveal this';[31] and he swore to him. When [Joseph] later said to him, My father made me swear, saying,[32] he remarked to him, 'Go, ask [to be released from] thine oath.'[33] He replied to him, 'I will also ask [to be released from my oath] concerning thee'.[34] Therefore, although it was displeasing to him, [Pharaoh] said to him, Go up and bury thy father, according as he made thee swear.[35]

What was it that Judah did?[36] — As it has been taught: R. Meir said: When the Israelites stood by the Red Sea, the tribes strove with one another, each wishing to descend into the sea first. Then sprang forward

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(1) V. I, 5ff.

(2) V. Ex. I, 2ff.

(3) On the one stone were Reuben, Simeon, Levi, Judah, Issachar and Zebulun; on the other Benjamin, Dan, Naphtali, Gad, Asher and Joseph.

(4) The latter are the tribal as distinct from the personal names.

(5) Who said that the tribes were divided on the stones of the ephod as on the two mounts; and this has been shewn to be incorrect.

(6) [The article 'the' denotes that those who stood on Ebal represented the full contingent of half the tribes. Whereas on Gerizim one of the tribes — Levi — was missing (Maharsha)].

(7) Since Levi should have been among the first six tribes.

(8) Josh. XVII, 14f.

(9) The personification of envy which causes harm to those who enjoy good fortune. Their numerical strength would excite envy.

(10) Gen. XLIX, 22.

(11) Ibid. XLVIII, 16, referring to Joseph's sons.

(12) Ps. LXXXI, 6. In this verse Joseph's name is spelt with five letters instead of the usual four, v, supra p. 50, n. 2.

(13) As explained above, viz., the name as given by Jacob; consequently we cannot use the exceptional form of his name as it occurs here.

(14) Gen. XXXV, 28; here it is spelt with the yod.

(15) In the parallel passage, supra 10b the name is Hanin.

(16) Ibid. XXXIX, 11.

(17) I.e., for an immoral purpose.

(18) Ibid. 12.

(19) Prov. XXIX. 3.

(20) Gen. XLIX, 24.

(21) Gen. XLIX, 24.

(22) Ps. LXXX, 2, E.V. 1., sic. Hence Israel is called Joseph's flock and he is the shepherd.
(23) Gen. XXXVII, 2.
(24) As mentioned above, and so his power to beget was diminished.
(25) I.e., ten sons, who, added to Joseph's two, made the total of twelve.
(26) Ibid. XLVI, 21.
(27) The derivation of Muppim has fallen out of the text, but is found in Tanhuma to Genesis (ed. Buber, p. 206), viz., his mouth (pi) was like that of our father, i.e., he learnt Torah from Joseph as from Jacob.
(28) Ibid. XLI, 44
(29) V. p. 179, n. 7.
(30) Ps. LXXXI, 6.
(31) That he was ignorant of Hebrew, and a king was expected to know every language.
(32) Ibid. L, 5, viz., that he should inter his body in Canaan.
(33) In Jewish Law only proper authorities could release a man from his oath. Pharaoh did not wish Joseph to leave Egypt to bury his father.
(34) I.e., if Pharaoh refused him permission, he would take steps to enable him to disclose the king's ignorance of Hebrew.
(35) Ibid. 6.
(36) That he sanctified God's Name publicly.

Talmud - Mas. Sotah 37a

the tribe of Benjamin and descended first into the sea; as it is said: There is little Benjamin their ruler[1] — read not rodem [their ruler] but rad yam [descended into the sea]. Thereupon the princes of Judah hurled stones at them; as it is said: The princes of Judah their council.[2] For that reason the righteous Benjamin was worthy to become the host of the All-Powerful,[3] as it is said: He dwelleth between his shoulders.[4] R. Judah said to [R. Meir]: That is not what happened; but each tribe was unwilling to be the first to enter the sea. Then sprang forward Nahshon the son of Amminadab[5] and descended first into the sea; as it is said: Ephraim compasseth me about with falsehood, and the house of Israel with deceit; but Judah yet ruleth with God.[6] Concerning him it is stated in Scripture,[7] Save me O God, for the waters are come in unto my soul. I sink in deep mire, where there is no standing etc.[8] Let not the waterflood overwhelm me, neither let the deep swallow me up etc.[9] At that time Moses was engaged for a long while in prayer; so the Holy One, blessed be He, said to him, 'My beloved ones are drowning in the sea and thou prolongest prayer before Me!' He spake before Him, 'Lord of the Universe, what is there in my power to do?' He replied to him, Speak unto the children of Israel that they go forward. And lift thou up thy rod, and stretch out thy hand etc.[10] For that reason Judah was worthy to be made the ruling power in Israel, as it is said: Judah became His sanctuary, Israel his dominion.[11] Why did Judah become His sanctuary and Israel his dominion? Because the sea saw [him] and fled.[12]

It has been taught. R. Eliezer b. Jacob says: It is impossible to declare that Levi [was stationed] below since it is stated that he was above,[13] and it is impossible to declare that he was above since it is stated that he was below;[14] so how was it? The elders of the priests and Levites were below and the rest above. R. Joshiyah said: All [the Levites] who were qualified to serve [as bearers of the ark] were below and the rest above. Rabbi says: Both [the priests and Levites] and also [the Israelites] were standing below.[15] They turned their faces towards mount Gerizim and opened with the blessing, and then towards mount Ebal and opened with the curse; for what means 'al?[16] It means 'near to'; as it has been taught: And thou shalt put pure frankincense near ['al] each row[17] — Rabbi says: 'Al means 'near to'. You declare that 'al means 'near to'; but perhaps it is not so and the signification is actually 'upon'? Since it states: Thou shalt put a veil 'al the ark,[18] conclude that 'al means 'near to'.

THEY TURNED THEIR FACES TOWARDS MOUNT GERIZIM AND OPENED WITH THE

BLESSING etc. Our Rabbis taught: There was a benediction in general and a benediction in particular, likewise a curse In general and a curse in particular.[19] [Scripture states]: to learn, to teach, to observe and to do;[20] consequently there are

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(1) Ps. LXVIII, 28, E.V. 27.

(2) Ibid. The word for council has the same root as the verb 'to stone'; so it is here understood as 'their stoners'.

(3) The Temple was erected on the territory of Benjamin, v. Yoma 12a.

(4) Deut. XXXIII, 12, i.e., God dwells in the land of Benjamin.

(5) He was the prince of the tribe of Judah (Num. VII, 12).

(6) Hos. XII, 1. The last words are rod 'im el, which are interpreted: he descended (into the sea because his trust was) with God.

(7) Kabbalah, lit., 'tradition', a term used for the Biblical canon other than the Pentateuch, v. B.K. (Sonc. ed) p. 3. n. 3.

(8) Ps. LXIX, 2f.

(9) Ibid. 16.

(10) Ex. XIV, 15f.

(11) Ps. CXIV. 2. The Temple was in the kingdom of Judah. 'His dominion' is understood as Judah's rule over Israel.

(12) Ibid. 3.

(13) On Gerizim (Deut. XXVII, 12).

(14) Josh. VIII, 33.

(15) This seems to be implied in Josh. l.c.

(16) In Deut. XXVII, 12, translated 'upon'.

(17) Lev. XXIV, 7.

(18) Ex. XL, 3. The veil was not 'upon' the ark but 'near to, i.e., in front of it.

(19) The general blessing or curse was in connection with Deut. XXVII, 26, and the particular blessing or curse for the actions specified in that chapter.

(20) Cf. ibid. v. I and Xl, 19.

Talmud - Mas. Sotah 37b

four [duties associated with each commandment]. Twice four are eight[1] and twice eight are sixteen.[2] It was similar[3] at Sinai and the plains of Moab; as it is said: These are the words of the covenant which the Lord commanded Moses etc.'[4] and it is written: Keep therefore the words of this covenant etc.[5] Hence there were forty-eight covenants in connection with each commandment.[6] R. Simeon excludes [the occasion of] Mount Gerizim and Mount Ebal[7] and includes that of the Tent of Meeting in the wilderness.[8] The difference of opinion here is the same as that of the teachers in the following: R. Ishmael says: General laws were proclaimed at Sinai and particular laws in the Tent of Meeting. R. Akiba says: Both general and particular laws were proclaimed at Sinai, repeated in the Tent of Meeting, and for the third time in the plains of Moab. Consequently there is not a single precept written in the Torah in connection with which forty-eight covenants were not made. R. Simeon b. Judah of Kefar Acco[9] said in the name of R. Simeon: There is not a single precept written in the Torah in connection with which forty-eight times six hundred and three thousand, five hundred and fifty[10] covenants were not made. Rabbi said: According to the reasoning of R. Simeon b. Judah of Kefar Acco who said in the name of R. Simeon that there is not a single precept written in the Torah in connection with which forty-eight times six hundred and three thousand, five hundred and fifty covenants were not made, it follows that for each Israelite there are six hundred and three thousand, five hundred and fifty commandments.[11] What is the issue between them? — R. Mesharsheya said: The point between them is that of personal responsibility and responsibility for others.[12]

R. Judah b. Nahmani, the lecturer[13] of Simeon b. Lakish, expounded: The whole section [of the blessings and curses] refers to none other than the adulterer and adulteress. [It states,] Cursed be the man that maketh a graven or molten image etc.[14] Does it suffice merely to pronounce cursed with such a person![15] — But it alludes to one who has immoral intercourse, and begets a son who goes to

live among heathens[16] and worships idols; cursed be the father and mother of this man since they were the cause of his sinning.[17]

Our Rabbis taught: Thou shalt set the blessing upon Mount Gerizim and the curse etc.[18] What is the purpose of this text? If it is to teach that the blessing [is to be pronounced] on Mount Gerizim and the curse on mount Ebal, it has already been said: These shall stand upon mount Gerizim to bless the people,[19] and it continues, And these shall stand upon mount Ebal for the curse![20] But [the purpose is to indicate] that the blessing must precede the curse. It is possible to think that all the blessings must precede the curses; therefore the text states 'blessing' and 'curse, I.e., one blessing precedes a curse and all the blessings do not precede the curses. A further purpose is to draw a comparison between blessing and curse to tell us that as the curse is pronounced by the Levites so the blessing must be pronounced by the Levites; as the curse is uttered in a loud voice so must the blessing be uttered in a loud voice; as the curse is said in the holy tongue[21] so must the blessing be said in the holy tongue; as the curse is in general and particular terms so must the blessing be in general and particular terms; and as with the curse both parties respond with Amen so with the blessing both parties respond with Amen.

MISHNAH. HOW WAS THE PRIESTLY BENEDICTION [PRONOUNCED]? IN THE PROVINCE[22] IT WAS SAID AS THREE BLESSINGS,[23] BUT IN THE TEMPLE AS ONE BLESSING.[24] IN THE TEMPLE THE NAME WAS UTTERED

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(1) In connection with every command there is a covenant for each of the four duties. So there were four blessings and four curses pronounced with each precept.

(2) Eight blessings and curses with the general commandment and eight with the particular commandments.

(3) Viz., there were sixteen blessings and curses implied with the covenants entered into in each of the two places named.

(4) Deut. XXVIII, 69. apart from the section at Mt. Gerizim.

(5) Ibid. XXIX, 8.

(6) Sixteen in each of the three places.

(7) Because not all the commandments formed the covenant there.

(8) After its erection God spoke to Moses from thence (Lev. I, 1).

(9) [Caphare Accho in lower Galilee, mentioned in Josephus, Wars II, 20, 6; v. Hildesheimer, Beitrage, p. 81.]

(10) The number of male Israelites, with each of whom the covenants were made.

(11) And forty-eight covenants were made in connection with each of them.

(12) If it is held according to the Rabbis that each Israelite is responsible for the conduct of the rest, then the number must be squared to get the total.

(13) It was customary for a teacher to impart the lesson to a lecturer who delivered it to the disciples.

(14) Deut. XXVII, 15.

(15) The penalty is death.

(16) [Being the offspring of an adulterous union, he is debarred from the Assembly and cannot marry an Israelite woman.]

(17) [And not only with idolatry. His heathen association will lead him to commit the other offences in this section, provoking upon his parents the enumerated curses; v., however, Rashi.]

(18) Ibid, XI, 29.

(19) Ibid. XXVII, 12.

(20) Ibid. 13.

(21) V. supra 33a.

(22) I.e., outside the Temple.

(23) As divided in Num. VI, 24ff., and after each sentence there was a response of Amen.

(24) There was no interruption because the response of Amen was not made in the Temple.

AS WRITTEN,[1] BUT IN THE PROVINCE IN ITS SUBSTITUTED NAME.[2] IN THE PROVINCE THE PRIESTS RAISE THEIR HANDS IN A LINE WITH THEIR SHOULDERS, BUT IN THE TEMPLE ABOVE THEIR HEADS, EXCEPT THE HIGH PRIEST WHO DOES NOT RAISE HIS HANDS HIGHER THAN THE PLATE.[3] R. JUDAH SAYS: ALSO THE HIGH PRIEST RAISES HIS HANDS HIGHER THAN THE PLATE, AS IT IS SAID, AND AARON LIFTED UP HIS HANDS TOWARD THE PEOPLE AND BLESSED THEM.[4]

GEMARA. Our Rabbis taught: On this wise ye shall bless[5] — i.e., in the holy tongue. You say that it means in the holy tongue; but perhaps it is not so and it means in any language! It is stated here, 'On this wise ye shall bless,' and elsewhere it is stated: These shall stand to bless the people,'[6] as in this latter passage it was in the holy tongue, so also in the former it was in the holy tongue. R. Judah says: [This deduction] is unnecessary, because it states 'on this wise' [which signifies] that they must pronounce it in this language [as written in Scripture].[7]

Another [Baraitha] taught: 'On this wise ye shall bless' — i.e., standing. You say that it means standing; but perhaps that is not so and [the benediction may be pronounced] even sitting! It is stated here, 'On this wise ye shall bless,' and elsewhere it is stated: 'These shall stand to bless' — as here it was standing so in the former passage it was standing. R. Nathan says: [This deduction] is unnecessary; behold it states: To minister unto Him and to bless in His name[8] — as [the priest] ministers standing so he blesses standing. Whence is it that the ministering itself [was performed standing]? Because it is written: To stand to minister.[9]

Another [Baraitha] taught: 'On this wise ye shall bless' — i.e., with raising of the hands. You say that it means with raising of the hands; but perhaps that is not so [and the benediction can be pronounced] without raising of the hands! It is stated here, 'On this wise ye shall bless', and elsewhere it is stated: 'And Aaron lifted up his hands toward the people and blessed them';[10] as in this latter passage it was with raising of the hands, so also in the former passage it was with raising of the hands. R. Jonathan raised the question: If [your reasoning is valid], then as in that passage[10] [the benediction was pronounced] by the High Priest, on the new moon[11] and in the service of the Community, so also here it must be the High Priest, on the new moon and in the service of the Community! R. Nathan says: [This deduction] is unnecessary; behold it states: Him and his sons for ever,[12] comparing him and his sons — as [the High Priest pronounced the benediction] with raising of the hands, so also his sons with raising of the hands. Furthermore it is written for ever,[13] and a comparison is drawn between the benediction and ministering.[14]

Another [Baraitha] taught: 'On this wise ye shall bless the children of Israel' — with the use of the Shem Hameforash.[15] You say that it means with the Tetragrammaton; but perhaps that is not so and a substituted name was used![16] There is a text to say: So shall they put My name[17] — My name which is unique to Me. It is possible to think that [the Shem Hameforash was also used] in places outside the Temple; but it is stated here, 'So shall they put My name' and elsewhere it is stated: To put His name there[18] — as in this latter passage it denotes in the Temple so also in the former passage it denotes in the Temple. R. Joshiah says: [This deduction] is unnecessary; behold it states: In every place where I cause My name to be remembered I will come unto thee.[19] Can it enter your mind that every place is intended?[20] But the text must be transposed thus: In every place where I will come unto thee and bless thee will I cause My name to be remembered; and where will I come unto thee and bless thee? In the Temple; there, in the Temple, will I cause My name to be remembered.

Another [Baraitha] teaches: 'On this wise ye shall bless the children of Israel' — I have here only the children of Israel; whence is it that proselytes, women and enfranchised slaves [are included]? There is a text to state, Ye shall say unto them[21] — i.e., to all of them.

Another [Baraitha] teaches: 'On this wise ye shall bless' — i.e., face to face.[22] You say that it means face to face; but perhaps that is not so and it means the face [of the priests] towards the back [of the people]! There is a text to state, 'Ye shall say unto them' — i.e., like a man who talks to his companion.

Another [Baraitha] teaches: 'On this wise ye shall bless — i.e., in a loud voice. But perhaps it is not so and the meaning is softly! There is a text to state, 'Ye shall say unto them' — like a man who talks to his companion.

Abbaye said: We have a tradition that [the Precentor][23] exclaims 'Kohanim!' when [at least] two are present but he does not exclaim 'Kohen!' when only one is there;[24] as it is said: Ye shall say unto them — i.e., [at least] unto two. R. Hisda said: We have a tradition that [when the Precentor is himself] a kohen he exclaims 'Kohanim!' but a lay-Israelite does not; as it is said: 'Ye shall say unto them' — the saying

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(1) The Tetragrammaton YHWH.
(2) Viz., Adonai.
(3) Worn on the forehead (Ex. XXVIII, 36).
(4) Lev. IX, 22.
(5) Num. VI. 23.
(6) Deut. XXVII, 12.
(7) V. supra 33b, p. 164.
(8) Ibid. X, 8.
(9) Ibid. XVIII, 5.
(10) Which refers to the special occasion when the Tent of Meeting was dedicated.
(11) That day on which the Tabernacle was set up was New Moon, v. Ex. XL, 2.
(12) Deut. XVIII, 5.
(13) He thus answers the argument that the benediction should only be pronounced by the High Priest and on the new moon.
(14) I.e., although Deut. XVIII, 5 only mentions ministering and not blessing, yet from the phrase to minister and to bless (ibid. X. 8) it is concluded that they are analogous.
(15) [Lit.. 'the Distinguished Name', synonymous with Shem Hameyuhad, 'the Unique Name' and generally held identical with the Tetragrammaton, uttered as written, v. Sanh. (Sonc. ed.) p. 408, n. 1.]
(16) [I.e., as read Adonai, v. Tosaf.]
(17) Num. VI, 27.
(18) Deut. XII, 5.
(19) Ex. XX, 24.
(20) [That the Divine presence will come there. Surely this is restricted to the Sanctuary or Temple; v. Rashi.]
(21) Num. VI, 23.
(22) The priests and people must face one another.
(23) When calling upon the Kohanim (v. Glos., s.v. Kohen) in the Synagogue to pronounce the benediction.
(24) [But the priest turns his face to bless the people of his own accord; v. 'Atereth Zekenim Sh. 'A. Orah Hayyim 128, 10.]

must come from one of their own body. The legal decision is in accord with the view of Abaye and not according to R. Hisda.

(Mnemonic:[1] Desires, for the benediction, platform, in the 'Service', cup, recognise, accepts hospitality, heifer.)

R. Joshua b. Levi said: Whence is it that the Holy One, blessed be He, desires the priestly benediction? As it is said: So shall they put My name upon the children of Israel; and I will bless them.[2] R. Joshua b. Levi also said: Every kohen who pronounces the benediction is himself blessed, but if he does not pronounce it he is not blessed; as it is said: I will bless them that bless thee.[3] R. Joshua b. Levi also said: Any kohen who refuses to ascend the platform[4] transgresses three positive commandments, viz., 'On this wise shall ye bless', 'Ye shall say unto them', and 'So shall they put My name'. Rab said: We have to take into consideration that he might be the son of a divorcee or the son of a Haluzah.[5] But [R. Joshua and Rab] are not at variance, one referring to a case where he ascends [the platform] occasionally,[6] the other to a case where he does not occasionally ascend it.

R. Joshua b. Levi also said: Any kohen who does not ascend [the platform] in the 'Service'[7] may not ascend later; as it is said: And Aaron lifted up his hands toward the people, and blessed them, — and he came down from offering the sin-offering and the burnt-offering and the peace-offering.[8] As in this passage [the benediction occurred] during the 'Service', so here [in the Synagogue] it must be [during the prayers relating to] the 'Service'. But that is not so, seeing that R. Ammi and R. Assi ascended [at a later point in the liturgy]! — R. Ammi and R. Assi had already moved their feet [at the proper point to ascend the platform] but did not reach there [in time]. This is as R. Oshaia taught, [The statement that the kohen may not ascend after that point in the liturgy] does not apply except when he had not moved his feet, but if he had moved his feet he may ascend. It has been similarly learnt: If he[9] is confident that he can raise his hands [for the benediction] and resume the prayers [without an error], he is permitted to do so;[10] on arguing in this connection that he surely does not move [his feet],[11] [the reply was] that he shifts a little [to one side]; so also in the present instance, if [a kohen] moves a little [to ascend at the right point, it is sufficient].

R. Joshua b. Levi also said: We give the cup of blessing[12] for the recital of the Grace after meals only to one who is of a generous disposition,[13] as it is said: He that hath a bountiful eye shall be blessed, for he giveth of his bread to the poor[14] — read not yeborak ['shall be blessed'] but yebarek [shall say the Benediction]. R. Joshua b. Levi also said: Whence is it that even the birds recognise those who have a niggardly spirit?[15] As it is said: For in vain is the net spread in the eyes of any bird.[16] R. Joshua b. Levi also said: Whoever accepts hospitality of men of niggardly spirit transgresses a prohibition; as it is said: Eat thou not the bread of him that hath an evil eye, [neither desire thou his dainties]. For as he reckoneth within himself; so is he; eat and drink, saith he to thee, [but his heart is not with thee].[17] R. Nahman b. Isaac said: He transgresses two prohibitions, 'Eat thou not' and 'Neither desire thou'. R. Joshua b. Levi also said: [The necessity for] the heifer whose neck is to be broken[18] only arises on account of the niggardly of spirit, as it is said: Our hands have not shed this blood.[19] But can It enter our minds that the elders of a Court of Justice are shedders of blood! The meaning is, [The man found dead] did not come to us for help and we dismissed him, we did not see him and let him go — i.e., he did not come to us for help and we dismissed him without supplying him with food, we did not see him and let him go without escort.[20]

Adda said in the name of R. Simlai: In a Synagogue where all the worshippers are kohanim, they all ascend the platform. For whom, then, do they pronounce the benediction? R. Zera answered: For their brethren [working] in the fields.[21] But it is not so; for Abba the son of R. Minyamin b. Hiyya taught: The people who are behind the kohanim do not come within the scope of the benediction![22] — There is no contradiction; the former refers to men who are compelled [to be absent] and the latter to men who are not compelled [to be stationed behind the kohanim]. But R. Shimi of the Fort of Shihori taught: In a Synagogue where all the worshippers are kohanim, some ascend [the platform] and the rest respond with Amen! — There is no contradiction; the latter refers to where ten remain [to respond Amen] and the former where ten do not remain.

The [above] text stated: 'Abba the son of R. Minyamin b. Hiyya taught: The people who are behind the kohanim do not come within the scope of the benediction.' It is obvious that the tall do

not create an obstruction for the short,[23] nor does the ark [where the Torah-scrolls are deposited] create an obstruction; but how is it with a partition [within the Synagogue]? — Come and hear: R. Joshua b. Levi said: Even a partition of iron does not divide between Israel and their Father in heaven. The question was asked: How is it with those standing on the side [of the kohanim]? — Abba Mar son of R. Ashi said: Come and hear: We have learnt: If he intended to sprinkle[24] in front of him

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(1) V. p. 171, n. 6.
(2) Num. VI, 27. [By blessing the people, the priests place, so to speak, to the delight of God, His name upon them (Rashi)].
(3) Gen. XII, 3.
(4) From which the benediction is pronounced.
(5) V. Glos. His father may have contracted a marriage which is forbidden to a kohen, in which case the son was disqualified.
(6) On some of the Festivals and then declines to do so on others; in which case we do not suspect him of being disqualified.
(7) I.e., the paragraph of the Eighteen Benedictions referring to the Temple-service. That is the point at which the kohen ascends the platform. V. P.B. p. 238a.
(8) Lev. IX, 22.
(9) The case is where the Precentor is the only kohen in the Synagogue. He is not required to 'raise his hands', because it might confuse him and lead to a mistake in the rendering of the prayers.
(10) V. Ber. 34a.
(11) From the reading desk to ascend the platform, so how can he 'raise his hands'?
(12) A cup of wine is used in the recital of Grace.
(13) Lit., 'good of eye', the opposite of bad of eye, i.e., envious.
(14) Prov. XXII, 9.
(15) Lit., 'narrow of eye'. Birds avoid such as these.
(16) Prov. I, 17. verse 19 continues, So are the ways of everyone that is greedy of gain.
(17) Ibid. XXIII, 6f.
(18) Cf. Deut. XXI, 1ff.
(19) Ibid. 7.
(20) A man without escort was liable to be set upon and murdered.
(21) Who were prevented by their work from being present.
(22) R.H. 35a. So how much more, they who are not present!
(23) Although the latter are shut out from the view of the kohanim, they are not excluded from the benediction.
(24) The purifying water to remove the defilement of vessels (v. Num. XIX, 18).

and he sprinkled behind him, or vice versa, the sprinkling is invalid; [but if he intended to sprinkle] in front of him and did so on the sides in front of him, his sprinkling is valid.[1]

Raba son of R. Huna said: When the Torah-scroll is unrolled[2] it is forbidden to converse even on matters concerning the law; as it is said: And when he opened it all the people stood up,[3] and standing up signifies nothing else than silence, as it is said: And I wait because they speak not, because they stand still and answer no more.[4] R. Zera said in the name of R. Hisda: [It may be derived] from this passage, And the ears of all the people were attentive unto the book of the law.[5]

R. Joshua b. Levi also said: Any kohen who has not washed his hands may not lift them up [to pronounce the benediction]; as it is said: Lift up your hands in holiness and bless ye the Lord.[6]

His disciples asked R. Eleazar b. Shammua, 'How have you prolonged your life?' He replied:

'Never have I made use of a Synagogue as a short cut,[7] nor stepped over the heads of the holy people,[8] nor lifted up my hands [as a kohen] without first uttering a benediction.' What benediction did he utter? — R. Zera said in the name of R. Hisda: '[Blessed art Thou, O Lord our God, King of the Universe] Who hast commanded us with the sanctity of Aaron and hast commanded us to bless Thy people Israel in love'.[9] When he [the priest] moves his feet [to ascend the platform] what does he say? — 'May it be pleasing before Thee, O Lord our God, that this benediction wherewith Thou hast commanded us to bless Thy people Israel may be free from stumbling and iniquity.' When he turns his face from the Congregation [to the ark after pronouncing the benediction] what does he say? — R. Hisda led R. 'Ukba forward[10] and the latter explained [that what he says is], 'Lord of the Universe, we have performed what Thou hast decreed upon us;[11] fulfil with us

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(1) Consequently those standing on the side are within the scope of the benediction.

(2) For the lection in the Synagogue.

(3) Neh. VIII, 3, describing the reading of the Torah to the assembly.

(4) Job XXXII, 16.

(5) Neh. VIII, 3.

(6) Ps. CXXXIV, 2.

(7) In Ber. 62b it is stated: If one enters a Synagogue not for the purpose of making it a short cut, he may use it in that manner. But R. Eleazar took a stricter view.

(8) I.e., made his way to his seat by passing through the students who sat on the floor. He either arrived first or sat on the outside.

(9) This formula has been adopted in the ritual; P.S. p. 238a. [Cf. Rashi, Num. VI, 23 (quoting from Midrash): Ye shall not bless them hurriedly and hastily but devoutly and with a perfect heart.]

(10) [אדבריה Rashi (Bezah. 29a), 'took him out for a walk'; R. Hananeel (a.l.): 'put the words in his mouth' — i.e., prepared the exposition for him. R. 'Ukba was Exilarch and had his public discourses prepared by R. Hisda.]

(11) [I.e., although we are not worthy to bless; v. Tikkin Tefillah., Ozar ha- Tefilloth, (Wilna, 1923) p. 941.]

Talmud - Mas. Sotah 39b

what Thou hast promised us, viz., Look down from Thy holy habitation, from heaven etc.'[1]

R. Hisda said: The kohanim are not permitted to bend their fingerjoints[2] until they turn their faces from the congregation.

R. Zera said in the name of R. Hisda: The Precentor is not permitted to exclaim 'Kohanim!'[3] until the response of Amen [to the preceding benediction] had been completed by the congregation; and the kohanim are not permitted to begin the benediction until the announcement [of 'Kohanim!'] had been completed by the Precentor; and the congregation is not permitted to respond Amen until the benediction had been completed by the kohanim, — and the kohanim are not permitted to begin another section of the bene diction until the response of Amen had been completed by the congregation [to the preceding].

R. Zera also said in the name of R. Hisda: The kohanim are not permitted to turn their faces from the congregation 'until the Precentor begins the paragraph 'Grant peace';[4] nor are they permitted to move their feet and descend until the Precentor has finished 'Grant peace'.

R. Zera also said in the name of R. Hisda: The congregation is not permitted to respond Amen until a benediction had been completed by the Precentor; and the reader is not permitted to read in the Torah until the response of Amen [to the preliminary benediction] had been completed by the congregation; and the translator[5] is not permitted to begin the translation until the verse had been completed by the reader; and the reader is not permitted to begin another verse until the translation [of the preceding verse] had been completed by the translator.

R. Tanhum said in the name of R. Joshua b. Levi: He who is to read the lection from the prophets must first read [a passage] in the Torah.[6] R. Tanhum also said in the name of R. Joshua b. Levi: He who is to read the lection from the prophets is not permitted to begin his recital until the Torah-scroll is rolled up.[7] R. Tanhum also said in the name of R. Joshua b. Levi: The Precentor is not permitted to strip the ark bare in the presence of the Congregation because of the dignity of the congregation.[8] R. Tanhum also said in the name of R. Joshua b. Levi: The congregation is not permitted to depart until the Torah-scroll is removed[9] and deposited in its place. Samuel said: [They may not depart] until [the Pre centor] has gone out.[10] There is no variance between them; the former refers to when there is another exit,[11] the latter to when there is not another exit. Raba said: Bar Ahina explained to me [that the Scriptural basis for this regulation is], Ye shall walk after the Lord your God.[12]

While the kohanim are blessing the people[13] what do the latter say? — R. Zera declared in the name of R. Hisda: Bless the Lord, ye angels of His, ye mighty in strength . . . Bless the Lord, all ye His hosts, ye ministers of His that do His pleasure. Bless the Lord, all ye His works, in all places of His dominion. Bless the Lord, O my soul.[14] What do they say [during the benediction] in the additional service of the Sabbath?[15] — R. Assi declared: A Song of Ascents, Behold, bless ye the Lord, all ye servants of the Lord . . . Lift up your hands in holiness and bless ye the Lord.[16] Blessed be the Lord Out of Zion, Who dwelleth at Jerusalem. Praise ye the Lord.[17] But they should also say: The Lord bless thee out of Zion[18] which occurs in that context! — Judah the son of R. Simeon b. Pazzi answered: Since he commenced with the blessings of the Holy One, blessed be He, he should conclude with His blessings. What do they say in the afternoon — service of a fast-day?[19] — R. Aha b. Jacob declared: Though our iniquities testify against us, work Thou for Thy name's sake . . . O Thou hope of Israel, the Saviour thereof in the time of trouble, why shouldest Thou be as a sojourner in the land . . . Why shouldest Thou be as a man astonied, as a mighty man that cannot save? etc.[20]

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(1) Deut. XXVI, 15.

(2) The fingers are outstretched during the benediction.

(3) On hearing which word they begin to bless the congregation.

(4) V. P.B., p. 53.

(5) In the ancient Synagogue the recital of each verse of the Scriptural section was followed by a translation into the vernacular.

(6) This custom is still preserved in the Synagogue, except that the lection from Scripture is read by the Precentor and not the person called up to the reading of the Law.

(7) The purpose is that they who are rolling it should not be prevented from listening to the recital.

(8) The ark was adorned with hangings, and these must not be removed so long as the worshippers are Present.

(9) [From the ark. The Scroll was removed from the synagogue after service for safe custody. The words, ‘and deposited in its place’ are difficult to explain. Rashi does not appear to have had them, nor do they occur in MS.M.]

(10) He used to carry the Scroll with him to his house for safe custody.

(11) [In which case the congregation can depart through the other exit as soon as the Scroll is removed, even before it leaves the synagogue (Rashi).]

(12) Deut. XIII, 5.

(13) On week-days according to the old usage.

(14) Ps. CIII, 20ff. Each of the Scriptural selections consists of three verses, one for each part of the priestly benediction.

(15) According to modern usage the kohanim do not utter the benediction on the Sabbath, with the exception of the Day of Atonement which falls on a Sabbath.

(16) Ibid. CXXXIV, If.

(17) Ibid. CXXXV, 21.

(18) Ibid. CXXXIV, 3.

(19) This is not the modern practice.

(20) Jer. XIV, 7ff.

Talmud - Mas. Sotah 40a

What do they say in the concluding service of the Day of Atonement?[1] — Mar Zutra declared — according to another version, there is a teaching to this effect — :Behold, thus shall the man be blessed that feareth the Lord. The Lord shall bless thee out of Zion, and thou shalt see the good of Jerusalem all the days of thy life. Yea, thou shalt see thy children's children. Peace be upon Israel.[2] Where did they say these verses? — R. Joseph answered: Between each benediction. R. Shesheth answered: At the mention of the Divine Name. R. Mari and R. Zebid differ on this matter; one said: A verse [by the congregation is to be recited] simultaneously with a verse [by the kohanim], while the other said, [The congregation recites] the whole for each verse [by the kohanim]. R. Hiyya b. Abba said: Whoever recites them outside the Temple simply errs.[3] R. Hanina b. Papa said: Know that even in the Temple it is unnecessary to recite them; for is there a servant whom one blesses without his listening! R. Aha b. Hanina said: Know that even outside the Temple it is necessary to recite them; for is there a servant whom one blesses without his face brightening![4]

R. Abbahu said: At first I used to recite them; but when I saw that R. Abba of Acco did not recite them I also did not. R. Abbahu also said: At first I used to think that I was humble; but when I saw R. Abba of Acco offer one explanation and his Amora[5] offer another without his taking exception. I considered that I was not humble. How did R. Abbahu display humility? — The wife of R. Abbahu's Amora said to R. Abbahu's wife, 'My husband has no need of [instruction from] your husband; and when he bends down[6] and straightens himself, he merely pays him respect'.[7] R. Abbahu's wife went and reported this to him, and he said to her, 'Why worry about it? Through me and him the All-Highest is praised'. Further, the Rabbis decided to appoint R. Abbahu as principal [of the Academy]; but when he saw that R. Abba of Acco had numerous creditors [pressing for payment], he said to the Rabbis, 'There is a greater [scholar than I for the office]'. R. Abbahu and R. Hiyya b. Abba once came to a place; R. Abbahu expounded Aggada[8] and R. Hiyya b. Abba expounded legal lore. All the people left R. Hiyya b. Abba and went to hear R. Abbahu, so that the former was upset. [R. Abbahu] said to him: 'I will give you a parable. To what is the matter like? To two men, one of whom was selling precious stones and the other various kinds of small ware. To whom will the people hurry? Is it not to the seller of various kinds of small ware?' Everyday R. Hiyya b. Abba used to accompany R. Abbahu to his lodging-place because he was esteemed by the Government; but on that day R. Abbahu accompanied R. Hiyya b. Abba to his lodging-place, and still his mind was not set at rest.

While the Precentor recites the paragraph 'We give thanks'[9] what does the congregation say? — Rab declared: 'We give thanks unto Thee, O Lord our God, because we are able to give Thee thanks'. Samuel declared: 'God of all flesh, seeing that we give Thee thanks'. R. Simai declared: 'Our Creator and Creator of all things in the beginning, seeing that we give Thee thanks.' The men of Nehardea[10] declared in the name of R. Simai: 'Blessings and thanksgiving to Thy great Name because Thou hast kept us alive and preserved us, seeing that we give Thee thanks'. R. Aha b. Jacob used to conclude thus: 'So mayest Thou continue to keep us alive and be gracious to us; and gather us together and assemble our exiles to Thy holy courts to observe Thy statutes and to do Thy will with a perfect heart, seeing that we give Thee thanks'. R. Papa said: Consequently let us recite them all.[11]

R. Isaac said: Let respect for the congregation be always upon thee; for behold, the kohanim had their faces towards the people and their backs towards the Shechinah.[12] R. Nahman said: It is derived from this text: Then David the king stood up upon his feet and said: Hear me, my brethren and my people.[13] If [he called them] 'my brethren' why 'my people', and vice versa? — R. Eleazar said: David told the Israelites, If you listen to me, you are my brethren; if not, you are my people and I will rule you with a rod. The Rabbis said: It is derived from the regulation that the kohanim are not permitted to ascend the platform wearing their shoes. This is one of the ten ordinances which R.

Johanan b. Zakkai instituted. What was the reason? Was it not out of respect for the congregation? — R. Ashi said: No; [the reason] there was lest the shoe-lace become untied and he proceeds to retie it, and people will say: 'He is the son of a divorcee or a Haluzah'.[14]

BUT IN THE TEMPLE AS ONE BLESSING etc.

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(1) This also is omitted in the modern ritual.

(2) Ps. CXXVIII, 4ff.

(3) They should be said only in the Temple where alone the Tetragrammaton is used, since they are a blessing upon the Divine Name.

(4) Therefore the recital of these verses, in acknowledgement, by the congregation is acceptable to God.

(5) V. Glos. Who should have conveyed the Rabbi's explanation to the disciples.

(6) To receive the teaching from the Rabbi.

(7) Because he was highly regarded by the Government. V. infra and Hag. 14a, Sanh. 14a.

(8) The non-legal part of Rabbinic lore which is the more popular, v. Glos.

(9) V. P.B. p. 51.

(10) A town in S. Babylonia where Rab founded his School.

(11) The accepted version combines them all. V. P.B. p. 51.

(12) I.e., the Ark in which the Torah-Scrolls are kept.

(13) I Chron. XXVIII, 2.

(14) Disqualified for priestly service. A derisive taunt at him for his undignified behaviour by stooping on the platform to retie his shoelace.

Talmud - Mas. Sotah 40b

For what reason is this? — Because the response of Amen was not made in the Temple.

Our Rabbis taught: Whence is it that the response of Amen was not made in the Temple? As it is said: Stand up and bless the Lord your God from everlasting to everlasting.[1] And whence is it that every benediction must be followed by an expression of praise? As it is said: And blessed be Thy glorious name which is exalted above all blessing and praise[2] — i.e., upon every benediction ascribe praise to Him.

MISHNAH. WHAT WAS THE PROCEDURE WITH THE BENEDICTIONS OF THE HIGH PRIEST?[3] THE SYNAGOGUE ATTENDANT TAKES A TORAH-SCROLL AND HANDS IT TO THE SYNAGOGUE-PRESIDENT. THE SYNAGOGUE-PRESIDENT HANDS IT TO THE DEPUTY[4] AND HE HANDS IT TO THE HIGH PRIEST. THE HIGH PRIEST STANDS, RECEIVES [THE SCROLL] AND READS [THEREIN] AFTER THE DEATH[5] AND HOWBEIT ON THE TENTH DAY.[6] THEN HE ROLLS THE TORAH-SCROLL TOGETHER, PLACES IT IN HIS BOSOM AND EXCLAIMS, 'MORE THAN I HAVE READ BEFORE YOU IS WRITTEN HERE!' THE PASSAGE 'ON THE TENTH DAY', WHICH IS IN THE BOOK OF NUMBERS, HE READS BY HEART,[7] AND HE RECITES EIGHT BENEDICTIONS IN CONNECTION THEREWITH, VIZ., OVER THE TORAH, FOR THE TEMPLE-SERVICE, FOR THE THANKSGIVING, FOR THE PARDON OF SIN, OVER THE TEMPLE, OVER ISRAEL, OVER THE PRIESTS, OVER JERUSALEM, AND THE REST OF THE PRAYER.[8]

GEMARA. Is it to be deduced from this[9] that honour may be paid to a disciple in the presence of his master? — Abaye said: [No]; all this was done for the purpose of honouring the High Priest.

THE HIGH PRIEST STANDS, RECEIVES [THE SCROLL] AND READS etc. [Since it is stated that] he stands, it follows that he had been sitting; but a Master has said: In the Temple-court the kings of the house of David alone were allowed to sit, as it is said: Then David the king went in, and

sat before the Lord, and he said: Who am I? etc!'[10] — It is as R. Hisda declared, [This occurred] in the Court of Women;[11] and here also [with the reading of the High Priest] it was in the Court of Women. An objection was raised: Where did the lection take place? In the Temple-court; R. Eliezer b. Jacob declares it was on the Temple Mount, as it is said,

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(1) Neh. IX, 5. This was the response to be used in the Temple; not Amen. [No satisfactory reason has so far been given for this regulation. Graetz MGWJ 1872, pp. 492ff., suggests that this does not mean that the response Amen was not allowed in the Temple, but that the solemnity of its service, heightened by the pronunciation of the Tetragrammaton as written, demanded a more extensive and impressive formula than the single Amen. V. also Blau, L. REJ, XXXIX, p. 188.]

(2) Ibid. The word 'above' is understood as 'upon'.

(3) What is described here followed the completion of the rites connected with the sacrifices of the Day of Atonement. The Synagogue referred to was that situated on the Temple Mount.

(4) Segan. Of the High Priest who took his place if he became defiled or incapacitated during the Day of Atonement (Rashi); v. however Sanh. (Sonc. ed.) p. 97, n. 1.

(5) I.e., Lev. XVI.

(6) Ibid. XXIII, 26-32.

(7) Num. XXIX, 7-11, to obviate the necessity of unrolling the Scroll from the former passage in Leviticus.

(8) The separate editions of the Mishnah and the J. Talmud omit 'over Jerusalem', and to complete the number eight read 'and over the rest of the prayer'.

(9) That the Torah was handed to his inferiors before being delivered to the High Priest.

(10) II Sam. VII, 18.

(11) A part of the Temple-precincts which was non-holy.

Talmud - Mas. Sotah 41a

And he read therein before the broad place that was before the water gate.[1] R. Hisda said: In the Court of Women.

AND READS [THEREIN] AFTER THE DEATH AND HOWBEIT ON THE TENTH DAY. I quote in contradiction: We may skip a passage in the Prophets but not in the Torah![2] — Abaye said: There is no contradiction; the latter teaching refers to a case where the passage skipped is sufficiently long to interrupt the translator, whereas [in the Mishnah] it is not sufficiently long to interrupt the translator.[3] On this point, however, it has been taught: We may skip a passage in the Prophets but not in the Torah. How much may be skipped [in the reading of the Prophets]? A passage which is not sufficiently long to interrupt the translator. Consequently so far as the Torah is concerned nothing at all [may be skipped]! — But Abaye said: There is no contradiction; the teaching [that we may skip a passage in the reading of the Torah] applies to where there is one theme,[4] the other teaching to where there are two themes. Thus it has been taught: We may skip [a passage] in the Torah where there is one theme and in the Prophets where there are two themes, but in either case only when it is not sufficiently long to interrupt the translator. We may not, however, skip from one Prophetical Book to another; but with a book of the Minor Prophets[5] we may skip [from one to another] except that this may not be done from the end of the Book to its beginning.[6]

THEN HE ROLLS THE TORAH-SCROLL TOGETHER, PLACES IT IN HIS BOSOM etc. Why all this?[7] — So as not to discredit the Torah-Scroll.[8]

THE PASSAGE 'ON THE TENTH DAY', WHICH IS IN THE BOOK OF NUMBERS, HE READS BY HEART. Let him roll up the Scroll and recite [the passage]![9] — R. Huna b. Judah said in the name of R. Shesheth: Because we do not roll up a Torah-scroll in the presence of a congregation.[10] Then let another Torah-scroll be brought and read [it therein]! — R. Huna b. Judah said: [No], because it would discredit the first.[11] R. Simeon b. Lakish said: Because we may not

pronounce an unnecessary benediction.[12] Do we, then, pay attention to [the reason that it would] discredit [the first Scroll]? Behold, R. Isaac the smith said: When the new moon of Tebeth[13] falls on the Sabbath, three Scrolls are brought: the first for the lection of the [Sabbath] day, the second for [the portion of] the new moon, and the third for [the portion of] Hanukkah![14] — When three men [read] in three Scrolls, there is no fear about [a Scroll] being discredited, but when one man [reads] in two Scrolls there is this fear.

AND HE RECITES EIGHT BENEDICTIONS IN CONNECTION THEREWITH etc. Our Rabbis taught: [The High Priest] pronounces a benediction over the Torah just as we do in Synagogue;[15] for the Temple-service for the thanksgiving,[16] and for the pardon of sin as usual;[17] over the Temple separately,[18] over the priests separately, over the Israelites separately — and over Jerusalem separately.

AND THE REST OF THE PRAYER. Our Rabbis taught: The rest of the prayer consists of petitions song and supplication that Thy people Israel is in need of salvation; and he concludes with, '[Blessed art Thou, O Lord,] Who hearkenest unto prayer.' From this point onward,[19] each individual brings a Torah-scroll from his house and reads therein. For what purpose is this done? To display its beauty in public.[20] MISHNAH. WHAT WAS THE PROCEDURE IN CONNECTION WITH THE PORTION READ BY THE KING? AT THE CONCLUSION OF THE FIRST DAY OF THE FESTIVAL [OF TABERNACLES] IN THE EIGHTH,[21] I.E., THE END OF THE SEVENTH,[22] THEY ERECT A WOODEN DAIS IN THE TEMPLE COURT, UPON WHICH HE SITS; AS IT IS SAID, AT THE END OF EVERY SEVEN YEARS, IN THE SET TIME etc.[23] THE SYNAGOGUE-ATTENDANT[24] TAKES A TORAH-SCROLL AND HANDS IT TO THE SYNAGOGUE PRESIDENT,[25] AND THE SYNAGOGUE-PRESIDENT HANDS IT TO THE [HIGH PRIEST'S] DEPUTY. HE HANDS IT TO THE HIGH PRIEST WHO HANDS IT TO THE KING. THE KING STANDS AND RECEIVES IT, BUT READS SITTING. KING AGRIPPA[26] STOOD AND RECEIVED IT AND READ STANDING, FOR WHICH ACT THE SAGES PRAISED HIM. WHEN HE REACHED, THOU MAYEST NOT PUT A FOREIGNER OVER THEE,[27] HIS EYES RAN WITH TEARS.[28] THEY SAID TO HIM, 'FEAR NOT, AGRIPPA, THOU ART OUR BROTHER, THOU ART OUR BROTHER!' [THE KING] READS FROM THE BEGINNING OF DEUTERONOMY UP TO THE SHEMA',[29] THE SHEMA', AND IT SHALL COME TO PASS IF YE HEARKEN,[30] THOU SHALT SURELY TITHE,[31] WHEN THOU HAST MADE AN END OF TITHING,[32] THE PORTION OF THE KING,[33] AND THE BLESSINGS AND CURSES, UNTIL HE FINISHES ALL THE SECTION. THE KING PRONOUNCES THE SAME BENEDICTIONS AS THE HIGH PRIEST, EXCEPT THAT HE SUBSTITUTES ONE FOR THE FESTIVALS INSTEAD OF ONE FOR THE PARDON OF SIN. GEMARA. Does it enter your mind [that the Mishnah means] the eighth [day of the Festival]! — Read 'the eighth [year].[34] But why all this?[35] — It is all necessary; for if the All-Merciful had only written 'at the end', I might have thought that the reckoning was to be from then[36] although they had not observed a year of release;[37] therefore the All-Merciful wrote in 'the year of release', If the All-Merciful had only written 'the year of release', I might have thought that this means the end of the year of release;[38] therefore the All-Merciful wrote 'in the set time.[39] If He had only written 'in the set timeð, I might have thought that this means at the New Year festival; therefore the All-Merciful wrote 'in the feast of tabernacles'. And if the All-Merciful had only written 'in the feast of tabernacles', I might have thought that this means on the last day of the festival; therefore the All-Merciful wrote 'when all Israel is come'[40]

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(1) Neh. VIII, 3.

(2) When read in the Synagogue.

(3) While he is translating the last passage from Lev. XVI, it would be possible to turn up chap. XXIII. v. supra p. 199, nn. 2-3.

(4) As here, since both passages deal with the Day of Atonement.

(5) These are regarded as one Book.
(6) I.e., it is not allowed to turn back in the reading.
(7) Viz., his exclamation, 'More than I have read' etc.
(8) The people should not imagine it was a defective Scroll and for that reason he read a portion by heart.
(9) Since he does not read it from the Scroll, why is it left open?
(10) In modern practice this is done.
(11) People would conclude that it had some defect, and for that reason another was brought.
(12) Over the use of the second Scroll.
(13) The tenth month.
(14) The Feast of Dedication which occurs at the end of Kislev and the beginning of Tebeth. Why are not all three portions read from one Scroll?
(15) V. P.B. p. 147.
(16) Op. cit., 50f.
(17) [As we have it in the Day of Atonement liturgy (Rashi, Yoma 70).]
(18) This and the following benedictions are not in the existing liturgy.
(19) I.e., after the High Priest had finished the benedictions.
(20) It was considered praiseworthy to possess a beautiful copy of the Torah-scroll.
(21) This is explained in the Gemara.
(22) The years were arranged in Cycles of seven, the seventh being 'the year of release' (Deut. XV, 1ff).
(23) Deut. XXXI, 10.
(24) [Hazzan. There is no certainty either in regard to the original function or rank of the Hazzan. Here he appears as second to the synagogue president; v. n. 5.]
(25) [ראש הכנסת . Identified with the **, the officer who administered the external affairs of the Synagogue; v. Krauss, Synagogale Altertumer pp. 116ff and JE II, 86.]
(26) Agrippa I. His reading occurred in the year 41 C.E. [Others ascribe this incident to Agrippa II. V. Derenbourg. op. cit. p. 217, and Buchler, Priester und der Cultus pp. 12ff.]
(27) Ibid. XVII, 15.
(28) Because on his father's side he was not of Jewish descent.
(29) I.e., down to ibid. VI, 4.
(30) Ibid. Xl. 13-25.
(31) Ibid. XIV, 22ff.
(32) Ibid. XXVI, 12ff.
(33) Ibid. XVII, 14ff.
(34) The word should have the feminine form, not masculine as in the Mishnah, to make it clear that the year and not the day is intended.
(35) Viz., the elaborate description of the time when the reading takes place as it is given in Deut. XXXI. 10.
(36) From the fortieth year after the Exodus.
(37) The observance only began seven years after the land had been divided among the Israelites.
(38) I.e., before the eighth year.
(39) The word for 'set time' usually denotes a festival; hence it refers to a festival in the eighth year.
(40) Deut. XXXI, 11. referring to the pilgrimage to the Sanctuary which was on the first day.

Talmud - Mas. Sotah 41b

, i.e., the beginning of the Festival.

THE SYNAGOGUE-ATTENDANT TAKES A TORAH-SCROLL AND HANDS IT TO THE SYNAGOGUE-PRESIDENT. Is it to be deduced from this that honour may be paid to a disciple in the presence of his master?[1] — Abaye said: [No]; all this was done for the purpose of honouring the king.

THE KING STANDS AND RECEIVES IT, BUT READS SITTING. KING AGRIPPA STOOD

AND RECEIVED IT AND READ STANDING. [Since it is stated that] he stands, it follows that he had been sitting. But a Master has said: In the Temple-court the kings of the House of David alone were allowed to sit; as it is said: Then David the king went in, and sat before the Lord, and he said etc.![2] — It is as R. Hisda declared: [This occurred] in the Court of Women, and here also [with the reading by the king] it was in the Court of Women. FOR WHICH ACT THE SAGES PRAISED HIM. Since they praised him, it follows that he acted rightly; but R. Ashi has said: Even according to him who maintains that when a Nasi[3] forgoes the honour due to him one may avail himself of the permission, when a king forgoes the honour due to him one may not avail himself of the permission; as it is said: Thou shalt set a king over thee[4] — that his authority[5] may be over thee! — It is different [with the fulfilment of] a precept.[6]

WHEN HE REACHED 'THOU MAYEST NOT PUT [etc.]'. A Tanna taught in the name of R. Nathan: At that moment[7] the enemies of Israel[8] made themselves liable to extermination, because they flattered Agrippa. R. Simeon b. Halafta said: From the day the fist of flattery prevailed, justice became perverted, conduct deteriorated, and nobody could say to his neighbour, 'My conduct is better than yours'. R. Judah the Palestinian — another version, R. Simeon b. Pazzi — expounded: It is permitted to flatter the wicked in this world, as it is said: The vile person shall be no more called liberal, nor the churl said to be bountiful[9] — consequently it is allowed in this world. R. Simeon b. Lakish said: [It may be derived] from this text: As one seeth the face of God, and thou wast pleased with me.[10] On this point he is at variance with R. Levi; for R. Levi said: A parable of Jacob and Esau: To what is the matter like? To a man who invited his neighbour to a meal, and the latter perceived that he wished to kill him. So he said to him, 'The taste of this dish of which I am partaking is like the dish I tasted in the king's palace'. The other said [to himself]. 'He is acquainted with the king!' So he became afraid and did not kill him.[11] R. Eleazar said: Every man in whom is flattery brings anger upon the world: as it is said: But they that are flatterers at heart lay up anger.[12] Not only that, but their prayer remains unheard; as it continues, They cry not for help when He chasteneth them.[13] (Mnemonic:[14] Anger, embryo, Gehinnom, in his hand, menstruant, exile).

R. Eleazar also said: As for any man in whom is flattery, even the embryos in their mothers' wombs curse him; as it is said: He that saith unto the wicked, Thou art righteous, peoples shall curse him, nations shall abhor him[15] — the word kob ['abhor'] means nothing but 'curse', as it is said: Whom God hath not cursed;[16] and le'om [nation] means nothing but 'embryo', as it is said: And the one le'om [nation] shall be stronger than the other nation.[17] R. Eleazar also said: Every man in whom is flattery will fall into Gehinnom; as it is said: Woe unto them that call evil good, and good evil etc.[18] What is Written after that? Therefore as the tongue of fire devoureth the stubble, and as the dry grass sinketh down in the flame etc.[19] R. Eleazar also said: Whoever flattereth his neighbour[20] will finally fall into his hand; if he does not fall into his hand, he will fall into the hand of his sons; and if he does not fall into his sons' hand, he will fall into the hand of his grandsons; as it is stated: And Jeremiah said to Hananiah, Amen; the Lord do so; the Lord perform thy words,[21] and it is written,

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(1) V. infra 40b.

(2) II Sam. VII, 18.

(3) The Chief of the Great Sanhedrin.

(4) Deut. XVII, 15.

(5) Lit., 'fear'.

(6) A king may forgo his honour when fulfilling it.

(7) When the Rabbis said: 'Thou art our brother'.

(8) An euphemism for Israel.

(9) Isa. XXXII. 5. This verse alludes to the Hereafter.

(10) Gen. XXXIII, 10. The words were spoken in flattery by Jacob to the wicked Esau.

(11) Similarly Jacob's words were not flattery, but spoken with the intention of frightening Esau.

(12) Job XXXVI, 13.

(13) Because their cry receives no response.
(14) V. p. 171, n. 6. The first word refers to what has just preceded.
(15) Prov. XXIV, 24.
(16) Num. XXIII, 8.
(17) Gen. XXV, 23. The context deals with the unborn sons of Rebekkah.
(18) Isa. V, 20.
(19) Ibid. 24.
(20) [Var. lec. 'the wicked']
(21) Jer. XXVIII, 6. In the Massoretic text the reading is 'The prophet Jeremiah said: Amen; the Lord etc.'

Talmud - Mas. Sotah 42a

And when he was in the gate of Benjamin, a captain of the ward was there, whose name was Irijah, the son of Shelemiah, the son of Hananiah,' and he laid hold on Jeremiah the prophet, saying: Thou fallest away to the Chaldeans. Then said Jeremiah, It is false,' I fall not away to the Chaldeans etc.,[1] and it continues, So he laid hold on Jeremiah and brought him to the princes.[2] R. Eleazar also said: Any community in which is flattery is as repulsive as a menstruant woman; as it is said: 'For the community of flatterers is galmud'[3] — and in over-sea towns they call a menstruant woman galmudah. What means galmudah? — She is separated [gemulah da] from her husband. R. Eleazar also said: Any community in which is flattery will finally go into exile. It is written here, 'For the community of flatterers is galmud', and elsewhere it is written: Then shalt thou say in thine heart, Who hath gotten me these, seeing I have been bereaved of my children, and am solitary [galmudah], an exile and wandering to and fro etc.[4]

R. Jeremiah b. Abba said: Four classes will not receive the presence of the Shechinah: the class of scoffers, the class of flatterers, the class of liars, and, the class of slanderers. The class of scoffers, as it is written: He stretched out His hand against scorners.[5] The class of flatterers, as it is written: For a flatterer shall not come before Him.[6] The class of liars, as it is written: He that speaketh falsehood shall not be established before Mine eyes.[7] The class of slanderers, as it is written: For Thou art not a God that hath pleasure in wickedness; evil shall not sojourn with Thee[8] — i.e., Thou art righteous, O Lord, evil may not sojourn in Thy habitation.

C H A P T E R V I I I

MISHNAH. AT THE TIME WHEN THE ANOINTED FOR BATTLE[9] ADDRESSES THE PEOPLE HE SPEAKS IN THE HOLY TONGUE, AS IT IS SAID, AND IT SHALL BE, WHEN YE DRAW NIGH UNTO THE BATTLE, THAT THE PRIEST SHALL APPROACH[10] — I.E., THE ANOINTED FOR BATTLE; AND SPEAK UNTO THE PEOPLE — I.E., IN THE HOLY TONGUE; AND SHALL SAY UNTO THEM, HEAR, O ISRAEL, [YE DRAW NIGH THIS DAY UNTO BATTLE AGAINST YOUR ENEMIES][11] — 'AGAINST YOUR ENEMIES' BUT NOT AGAINST YOUR BRETHREN, NOT JUDAH AGAINST SIMEON NOR SIMEON AGAINST BENJAMIN, SO THAT IF YOU[12] FALL INTO THEIR HAND THEY SHALL HAVE MERCY UPON YOU, AS IT IS SAID, AND THE MEN WHICH HAVE BEEN EXPRESSED BY NAME ROSE UP, AND TOOK THE CAPTIVES, AND WITH THE SPOIL CLOTHED ALL THAT WERE NAKED AMONG THEM, AND ARRAYED THEM, AND SHOD THEM, AND GAVE THEM TO EAT AND TO DRINK, AND ANOINTED THEM, AND CARRIED ALL THE FEEBLE OF THEM UPON ASSES, AND BROUGHT THEM TO JERICHO, THE CITY OF PALM TREES, UNTO THEIR BRETHREN; THEN THEY RETURNED TO SAMARIA ETC.[13] AGAINST YOUR ENEMIES DO YOU MARCH, SO THAT IF YOU FALL INTO THEIR HAND THEY WILL HAVE NO MERCY UPON YOU. LET NOT YOUR HEART FAINT; FEAR NOT NOR TREMBLE ETC.[14] — 'LET NOT YOUR HEART FAINT' AT THE NEIGHING OF THE HORSES AND THE BRANDISHING OF SWORDS; 'FEAR NOT' BECAUSE OF THE CRASH

OF SHIELDS AND THE TRAMP OF THE SOLDIERS' FOOTWEAR; — 'NOR TREMBLE' AT THE SOUND OF TRUMPETS; 'NEITHER BE YE AFFRIGHTED' AT THE SOUND OF BATTLE-CRIES. FOR THE LORD YOUR GOD IS HE THAT GOETH WITH YOU[15] THEY COME [RELYING] UPON THE MIGHT OF FLESH AND BLOOD, BUT YOU COME [RELYING] UPON THE MIGHT OF THE ALL-PRESENT. THE PHILISTINES CAME [RELYING] UPON THE MIGHT OF GOLIATH; BUT WHAT WAS HIS FATE? IN THE END HE FELL BY THE SWORD AND THEY FELL WITH HIM. THE AMMONITES CAME [RELYING] UPON THE MIGHT OF SHOBACH;[16] BUT WHAT WAS HIS FATE? IN THE END HE FELL BY THE SWORD AND THEY FELL WITH HIM. BUT WITH YOU IT IS OTHERWISE; 'FOR THE LORD YOUR GOD IS HE THAT GOETH WITH YOU TO FIGHT WITH YOU ETC.' [THIS ALLUDES TO] THE CAMP OF THE ARK.[17]

GEMARA. How does [the author of the Mishnah] prove his point?[18] — He proves it thus: It is stated in this connection 'and speak', and elsewhere it states: Moses spake, and God answered him by a voice;[19] as in the latter passage it was in the holy tongue, so also in the former it was in the holy tongue.

Our Rabbis taught: The priest shall approach and speak unto the people.[20] It is possible to think that any priest who so desires [may address them]; therefore there is a text to state, And the officers shall speak[21] — as the officers must have been appointed so must the priest have been appointed [for the purpose]. But I might say that it is the High Priest [who addresses them]! — It is analogous to the case of an officer; as an officer has a superior appointed over him,[22] so also the priest [who addresses the people] has a superior appointed over him.[23] But the High Priest likewise [has a superior over him]. viz., the king! — He is referring to his service.[24] But I might say that it is the deputy High Priest [who addresses them]![25] — The deputy High Priest is not considered appointed; as it has been taught: R. Hanina, the deputy of the priests,[26] said: For what is the priests' deputy appointed? If any disqualification should occur to the High Priest, he enters and functions in his stead.[27]

'And shall say unto them, Hear, O Israel'. Why must he just [open with the words] 'Hear, O Israel'? — R. Johanan said in the name of R. Simeon b. Yohai: The Holy One, blessed be He, said to Israel, Even if you only fulfilled morning and evening the commandment to recite the Shema',[28] you will not be delivered into [the enemy's] hand.

'Let not your heart faint; fear not' etc. Our Rabbis taught: He addresses them twice: once on the boundary[29] and once on the battle-field. What does he say on the boundary?

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(1) Ibid. XXXVII, 13f. Note the captain was the grandson of Hananiah.

(2) [The M.T. reads 'So I Irijah laid hold etc.']

(3) Job XV, 34. The usual translation of galmud is 'barren'.

(4) Isa. XLIX, 21.

(5) Hos. VII, 5 sic., i.e., God kept them at a distance.

(6) Job XIII, 16.

(7) Ps CI, 7.

(8) Ibid. V, 5. The Psalm deals with the evil of slander.

(9) The priest designated to accompany the army to battle.

(10) Deut. XX, 2.

(11) Ibid., 3.

(12) I.e., any Israelite falls into the hand of another Israelite in battle.

(13) II Chron. XXVIII, 15.

(14) Deut. XX, 3.

(15) Deut. XX, 4.

(16) Cf. II Sam. X, 14ff

(17) I.e., the Israelite army which was accompanied by the ark.
(18) That the priest addresses the people in Hebrew.
(19) Ex. XIX, 19.
(20) Deut. XX, 2.
(21) Ibid. 5.
(22) Viz., the judge whose decisions the officer enforces.
(23) Therefore the High Priest is excluded.
(24) In the Temple. In this sphere the High Priest is supreme.
(25) V. p. 199, n. 1.
(26) V. Aboth. (Sonc. ed.) III, 2.
(27) But so long as the High Priest could officiate, the deputy ranked as an ordinary priest.
(28) V. Glos. This also opens with 'Hear, O Israel'.
(29) Before marching into the enemy's territory.

Talmud - Mas. Sotah 42b

'Hear the words of the War-regulations and return home'.[1] What does he say to them on the battle-field? 'Let not your heart faint; fear not, nor tremble, neither be ye affrighted'. [These four expressions] correspond to the four means adopted by the nations of the world [to terrorise the enemy]: they crash [their shields], sound [trumpets], shout [battle-cries] and trample [with their horses].

THE PHILISTINES CAME [RELYING] UPON THE MIGHT OF GOLIATH etc. Goliath [was so named], said R. Johanan, because he stood with affrontery [gilluy panim] before the Holy One, blessed be He; as it is said: Choose you a man for you, and let him come down to me.[2] The word 'man' signifies none other than the Holy One, blessed be He, as it is said: The Lord is a man of war.[3] The Holy One, blessed be He, declared: Behold, I will bring about his downfall through the hand of a son of man; as it is said: David was the son of that man of Ephrath.[4]

R. Johanan said in the name of R. Meir: In three places did his mouth trap that wicked man:[5] first, 'Choose you a man for you, and let him come dawn to me';[2] second, 'If he be able to fight with me, and kill me etc.,'[6] and third, 'Am I a dog, that thou comest to me with staves?'[7] David likewise replied to him, Thou contest to me with a sword, and with a spear, and with a javelin;[8] and he continued, But, I come to thee in the name of the Lord of hosts, the God of the armies of Israel, which thou hast defied.[8]

And the Philistine drew near morning and evening.[9] R. Johanan said: To make them omit the recital of the Shema' morning and evening.

And presented himself forty days.[9] R. Johanan said: [The period] corresponds to the forty days in which the Torah was given.[10]

And there went out a champion [benayim] out of the camp of the Philistines etc.[11] What means 'benayim'? — Rab said: That he was built up [mebunneh] without any blemish. Samuel said: He was the middle one [benoni] of his brothers.[12] In the School of R. Shila they explained: He was made like a building [binyan]. R. Johanan said: He was the son of a hundred fathers and one mother [ben nane].[13] 'Named Goliath of Gath' — R. Joseph learnt: [He is so described] because all men pressed his mother like a wine-press [gath].

The text has ma'aroth[14] but we read the word as ma'arkoth! R. Joseph learnt: Because all had intercourse [he'eru] with his mother. The text has Harafah and also Orpah![15] — Rab and Samuel [differ in their interpretation]. One said that her name was Harafah and why was she called Orpah?

Because all had intercourse with her from the rear ‘orfin] — The other said: Her name was Orpah; and why was she called Harafah? Because all ground her like a bruised corn [harifoth]. Thus it states: And the woman took and spread the covering over the well's mouth and strewed harifoth [bruised corn] thereon.[16] If you like, I can derive [the meaning of harifoth] from this verse: Though thou shouldest bray a fool in a mortar with a pestle among harifoth [bruised corn].[17]

These four were born to Harafah in Gath; and they fell by the hand of David, and by the hand of his servants.[18] Who were they? — R. Hisda said: Saph, Madon, Goliath and Ishbi-benob.[19] ‘And they fell by the hand of David, and by the hand of his servants’, as it is written: And Orpah kissed her mother-in-law, but Ruth clave unto her.[20] R. Isaac said: The Holy One, blessed be He, spake, May the sons of the one who kissed[21] come and fall by the hand of the sons of the one who clave.

Raba expounded: As a reward for the four tears which Orpah dropped upon her mother-in-law, she merited that four mighty warriors should issue from her; as it is said: And they lifted up their voice and wept again.[22]

The text further has hez [the arrow] of his spear but we read ‘ez [the staff] of his spear![23] — R. Eleazar said: [It indicates that] we have not reached half [hazi] the praise of that wicked man.[24] Hence [it is learnt] that it is forbidden to recount the praise of the wicked. Then [Scripture] should not have begun to recount it at all! — [The object] is to proclaim the praise of David [who conquered such a giant].

THE AMMONITES CAME [RELYING] UPON THE MIGHT OF SHOBACH etc. [The name] is written Shobach and also Shofach![25] — Rab and Samuel [differ in their interpretation]. One said that his name was Shofach; and why was he called Shobach? Because he was made like a dove-cote [shobak].[26] The other said that his name was Shobach; and why was he called Shofach? Because whoever beheld him was [through terror] poured out [nishpak] before him like a ewer. Their quiver [‘ashpah] is an open sepulchre, they are all mighty men.[27] Rab and Samuel [differ in their interpretation]; another version is, R. Ammi and R. Assi [differ in their interpretation]. One said: At the time when they shot an arrow they made heaps upon heaps [ashpatoth] of slain; and should you say that this was only because they were only skilled in fighting, there is a text to state, They are all mighty men.[28] The other said: At the time when they relieved themselves they made heaps and heaps of excrement; and should you say that this was due to disorder of the bowels, there is a text to state, They are all mighty men.[29] R. Mari said: Infer from this that whoever has excessive excrement suffers from disorder of the bowels. What is the practical purpose of this? — He should take steps [to cure himself].

Heaviness in the heart of a man maketh it stoop [yashhennah].[30] — R. Ammi and R. Assi [differ in their interpretation]. One said, [The last word means], let him dismiss it [yissehennah] from his mind; the other said, [it means], let him talk of it [yesihenah] with others.

BUT WITH YOU IT IS OTHERWISE etc. Why all this?[31] Because the Name[32] and all His substituted names

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(1) Viz., those who are qualified for exemption. V. ibid. 5ff.

(2) I Sam. XVII, 8.

(3) Ex. XV, 3.

(4) I Sam. XVII, 12.

(5) Goliath's words brought calamity upon him.

(6) I Sam. XVII, 9. David did kill him.

(7) Ibid. 43.

(8) Ibid. 45.

(9) Ibid. 16.
(10) V. Ex. XXIV, 18. [Ginzberg (Legends, VI, p. 250) quotes in this connection Philo, who explains the forty days as corresponding to the number of days wherein Israel feasted when they received the law in the wilderness. 'For forty days' said Goliath 'I will reproach them and after that I will fight them'. V., however, Rashi.]
(11) I Sam. XVII, 4.
(12) The third of four brothers. V. infra.
(13) Nana, Pers. for mother.
(14) 'Out of the ranks', ibid. 23.
(15) Cf. II Sam. XXI, 18 and Ruth I, 4. The first is taken as a proper noun and identified with the second.
(16) II Sam. XVII, 19.
(17) Prov. XXVII, 22.
(18) II Sam. XXI, 22.
(19) V. ibid. 18, 20 (translated a man of great stature), 19 and 16.
(20) Ruth I, 14.
(21) Goliath and his brothers were sons of Orpah who is identified with Naomi's daughter-in-law.
(22) Ibid. 'Again' denotes that they wept twice, and a tear dropped from each eye on each occasion.
(23) In I Sam. XVII, 7.
(24) Scripture has not described in full the prowess of Goliath.
(25) Cf. II Sam. X, 16 and I Chron. XIX, 16.
(26) He was excessively tall.
(27) Jer. V, 16.
(28) So it was due to their extraordinary strength.
(29) As giants they ate abnormal quantities of food.
(30) Prov. XII, 25.
(31) Viz., 'For the Lord your God etc.' and not simply, Your God is with you.
(32) The Tetragrammaton.

Talmud - Mas. Sotah 43a

were deposited in the ark. Thus it states: And Moses sent them, a thousand of every tribe, to the war, them and Phinehas[1] — 'them' refers to the Sanhedrin; 'Phinehas' was the [priest] Anointed for Battle; 'with the vessels of the sanctuary' i.e., the ark and the tablets [of the decalogue] which were in it; 'and the trumpets for the alarm' i.e., the horns.[2] — A Tanna taught: Not for naught did Phinehas go to the battle [against Midian] but to exact judgment on behalf of his mother's father [Joseph]; as it is said: And the Midianites sold him into Egypt etc.[3] Is this to say that Phinehas was a descendant of Joseph? But behold it is written: And Eleazar Aaron's son took him one of the daughters of Putiel to wife; [and she bare him Phinehas]![4] Is it not to be supposed, then, that he was a descendant of Jethro who fattened [pittem][5] calves for idolatry? — No; [he was a descendant] of Joseph[6] who mastered [pitpet] his passion. But did not the other tribes despise him[7] [saying], 'Look at this son of Puti, the son whose mother's father fattened calves for idolatry; he killed a prince in Israel!'[8] But, if his mother's father was descended from Joseph, then his mother's mother was descended from Jethro; and if his mother's mother was descended from Joseph, then his mother's father was descended from Jethro. This is also proved as a conclusion from what is written: 'One of the daughters of Putiel', from which are to be inferred two [lines of ancestry].[9] Draw this conclusion.

MISHNAH. AND THE OFFICERS SHALL SPEAK UNTO THE PEOPLE, SAYING, WHAT MAN IS THERE THAT HATH BUILT A NEW HOUSE, AND HATH NOT DEDICATED IT? LET HIM GO AND RETURN TO HIS HOUSE — ETC.[10] IT IS ALL ONE WHETHER HE BUILT A BARN FOR STRAW, A STABLE FOR CATTLE, A SHED FOR WOOD, OR A STOREHOUSE;[11] IT IS ALL ONE WHETHER HE BUILT, PURCHASED, INHERITED IT OR SOMEBODY HAD GIVEN IT TO HIM AS A PRESENT.[12] AND WHAT MAN IS THERE THAT HATH PLANTED A VINEYARD, AND HATH NOT USED THE FRUIT THEREOF? ETC.[13] IT

IS ALL ONE WHETHER HE PLANTED A VINEYARD OR PLANTED FIVE FRUIT-TREES[14] AND EVEN OF FIVE SPECIES;[15] IT IS ALL ONE WHETHER HE PLANTED, BENT[16] OR GRAFTED IT, OR WHETHER HE PURCHASED, INHERITED OR SOMEBODY HAD GIVEN IT TO HIM AS A PRESENT. AND WHAT MAN IS THERE THAT HATH BETROTHED A WIFE? ETC.[17] IT IS ALL ONE WHETHER HE HAD BETROTHED A VIRGIN OR A WIDOW, OR EVEN A CHILDLESS WIDOW WAITING FOR HER BROTHER-IN-LAW, OR EVEN IF A MAN HEARD THAT HIS BROTHER HAD DIED IN BATTLE,[18] HE RETURNS HOME. ALL THESE HEAR THE PRIEST'S WORDS CONCERNING THE WAR-REGULATIONS AND RETURN HOME; BUT THEY SUPPLY WATER AND FOOD AND REPAIR THE ROADS [FOR THE ARMY].

THE FOLLOWING DO NOT RETURN HOME: HE WHO BUILT A LODGE,[19] A LOGGIA OR A VERANDAH; HE WHO PLANTED FOUR FRUIT-TREES OR FIVE TREES WHICH ARE NOT FRUIT-BEARING; HE WHO TOOK BACK HIS DIVORCED WIFE. IF A HIGH PRIEST MARRIED A WIDOW, OR AN ORDINARY PRIEST MARRIED A DIVORCEE OR A HALUZAH,[20] OR A LAY ISRAELITE MARRIED AN ILLEGITIMATE OR A NETHINAH,[21] OR THE DAUGHTER OF AN ISRAELITE MARRIED AN ILLEGITIMATE OR A NATHIN, HE DOES NOT RETURN HOME.[22] R. JUDAH SAYS: ALSO HE WHO REBUILT A HOUSE UPON ITS FOUNDATIONS DOES NOT RETURN HOME. R. ELIEZER SAYS: ALSO HE WHO BUILT A BRICK-HOUSE IN SHARON[23] DOES NOT RETURN HOME.

THE FOLLOWING DO NOT MOVE FROM THEIR PLACE.[24] HE WHO BUILT A NEW HOUSE AND DEDICATED IT, PLANTED A VINEYARD AND USED ITS FRUIT, MARRIED HIS BETROTHED, OR TOOK HOME HIS BROTHER'S CHILDLESS WIDOW; AS IT IS SAID, HE SHALL BE FREE AT HOME ONE YEAR[25] — 'AT HOME,' THIS REFERS TO HIS HOUSE; 'SHALL BE' REFERS TO HIS VINEYARD; 'AND SHALL CHEER HIS WIFE' REFERS TO HIS WIFE; WHICH HE HATH TAKEN' IS TO INCLUDE HIS BROTHER'S CHILDLESS WIDOW. THESE DO NOT SUPPLY WATER AND FOOD AND REPAIR THE ROADS [FOR THE ARMY]. GEMARA. Our Rabbis taught: 'And the officers shall speak' — it is possible to think that this refers to their own words;[26] but when it states: And the officers shall speak further,[27] behold this is to be understood as their own words; so how am I to explain 'And the officers shall speak'? Scripture alludes to the words of the priest Anointed for Battle. So what was the procedure? A priest speaks [the words] and an officer proclaims them [to the army]. One [authority] taught: A priest speaks [the words] and an officer proclaims them; another taught: A priest speaks [the words] and a priest proclaims them; while yet another taught: An officer speaks [the words] and an officer proclaims them! — Abaye said: What, then, was the procedure? From 'when ye draw nigh' down to 'and the officers shall speak'[28] a priest speaks and a priest proclaims. From 'and the officers shall speakð down to 'and the officers shall speak further'[29] a priest speaks and an officer proclaims. From 'and the officers shall speak' onwards an officer speaks and an officer proclaims.

WHAT MAN IS THERE THAT HATH BUILT A NEW HOUSE? etc. Our Rabbis taught: 'That hath built' — I have here only the case where he built; whence is it [that the law applies also to a case where] he purchased, inherited or somebody gave it to him as a present? There is a text to state, What man is there that hath built a house.[30] I have here only the case of a house; whence is it that it includes a barn for straw, a stable for cattle, a shed for wood and a storehouse? There is a text to state 'that hath built' — i.e., whatever [structure be erected]. It is possible to imagine that I am also to include one who built a lodge, loggia or verandah; there is a text to state 'a house' — as 'house' implies a place suitable for habitation so every [building for which exemption may be claimed must be] suitable for habitation. R. Eliezer b. Jacob says: [The word] 'house' [is to be interpreted] according to its usual definition; [and the fact that Scripture does not read] 'and hath not dedicated' but and hath not dedicated it[31] is to exclude a robber.[32] Is this to say that [this teaching] is not in agreement with that of R. Jose the Galilean?[33] For if it agreed with R. Jose the Galilean, behold he

has said: Fainthearted[34] i.e., he who is afraid

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(1) Num. XXXI, 6.
(2) [Shofaroth (pl. of Shofar) — i.e., the instruments which were called in those days Shofaroth and not by the biblical term hazozeroth; v. Shab. 36a (Strashun).]
(3) Gen. XXXVII, 36.
(4) Ex. VI, 25.
(5) Putiel is explained as 'one who fattened (calves) for a god'.
(6) Identified with Putiel.
(7) Phinehas.
(8) Viz., Zimri (Num. XXV. 7ff). Consequently Phinehas was considered by his contemporaries to have descended from Jethro. V. Sanh. 82b.
(9) The name Putiel is spelt with a yod which is usually the sign of the plural. Hence both the explanations given are possible, viz., Putiel can be identified either with Joseph or Jethro.
(10) Deut. XX, 5.
(11) For wine, oil, produce etc.
(12) So long as it was new to him, he was exempt from service.
(13) Ibid. 6.
(14) The minimum number to warrant exemption.
(15) May be included in the requisite number of plantings.
(16) The vine so that the end is embedded in the soil and brings forth a new shoot.
(17) Deut. XX, 7.
(18) Leaving no offspring, and it is his duty to marry the widow.
(19) Lit., 'house of the gate'.
(20) V. Glos.
(21) V. p. 119, n. 5.
(22) Because these are illegal marriages.
(23) A place in Palestine which is very sandy; so a house built there does not last long.
(24) To join the army and then claim exemption.
(25) Deut. XXIV, 5.
(26) I.e., spoken by the officers and not by the priest.
(27) Deut. XX, 8. The addition of 'further' is the basis of the deduction.
(28) I.e., the exhortation in Deut. XX, 3ff.
(29) Ibid. 5-7.
(30) This is understood as: whatever man built a new house, the present owner of it is exempt.
(31) The suffix is superfluous.
(32) A man who steals a new house is not exempt.
(33) Who exempts a sinner; v. supra p. 222.
(34) Deut. XX, 8.

Talmud - Mas. Sotah 43b

because of the transgressions he had committed![1] — You may even say that it agrees with R. Jose the Galilean, as, e.g., when the man had repented and restored the monetary value. But in that event he becomes the purchaser, and as such returns home! — Since it originally came into his possession as the result of robbery, he does not [return home].

AND WHAT MAN IS THERE THAT HATH PLANTED A VINEYARD? etc. Our Rabbis taught: 'That hath planted' — I have here only the case where he planted; whence is it [that the law applies also to a case where] he purchased, inherited or somebody gave it to him as a present? There is a text to state, And what man is there that hath planted a vineyard. I have here only the case of a vineyard; whence is it that it includes five fruit-trees and even of other kinds [of plantings]? There is

a text to state ‘that hath planted’. It is possible to think that I am also to include one who planted four fruit-trees or five trees which are not fruit-bearing; therefore there is a text to state ‘a vineyard’. R. Eliezer says: [The word] ‘vineyard’ [is to be interpreted] according to its usual definition; [and the fact that Scripture does not read] ‘one hath not used the fruit’ but ‘and hath not used the fruit thereof is to exclude one who bends or grafts [the vine]. But we have the teaching: IT IS ALL ONE WHETHER HE PLANTED, BENT OR GRAFTED IT! — R. Zera said in the name of R. Hisda: There is no contradiction, the latter referring to a permitted grafting and the former to a prohibited grafting.[2] What is an instance of this permitted grafting? If I say a young shoot on a young shoot, it follows that he ought to return home on account of [planting] the first young shoot! It must therefore be [grafting] a young shoot on an old stem. But R. Abbahu has said: If he grafted a young shoot on an old stem, the young shoot is annulled by the old stem and the law of ‘orlah[3] does not apply to it! — R. Jeremiah said: It certainly refers to a young shoot on a young shoot, and [the case of a permitted grafting is where], e.g., he planted the first [stem] for a hedge or for timber; as we have learnt: He who plants for a hedge or for timber is exempt from the law of ‘orlah.[4]

What is the distinction that a young shoot is annulled [when grafted] on an old stem[5] but not [when grafted] on a young shoot?[6]

In the former case if he reconsiders his intention with regard to it, it is incapable of retraction;[7] but in the latter case if he reconsiders his intention with regard to it, it is capable of retraction[8] since it is then analogous to [plants which] grow of themselves;[9] for we have learnt: When they grow of themselves they are liable to ‘orlah. But let him explain [the Mishnah[10] as dealing with] the case of a vineyard belonging to two partners, where each returns home on account of his own [grafting]![11] — R. Papa declared: This is to say that in the case of a vineyard belonging to two partners, the war-regulations do not apply to it.[12] Why, then, is it different with five brothers, one of whom dies in battle,[13] that they all return home? — In the latter illustration we apply the words ‘his wife’ to each one of them;[14] but in the other we cannot apply the words ‘his vineyard’ to each one of them.[15]

R. Nahman b. Isaac said: [The Mishnah deals with the] case where he grafted[16] a tree into vegetables, and this accords with the view of the teacher responsible for the following teaching: If one bends[17] a tree into vegetables — Rabban Simeon b. Gamaliel allows it in the name of R. Judah b. Gamda of Kefar Acco,[18] but the Sages forbid it. When R. Dimi came [from Palestine to Babylon] he reported in the name of R. Johanan, Whose teaching is it?[19] It is that of R. Eliezer b. Jacob. Did not R. Eliezer b. Jacob declare above, The word ‘vineyard’ [is to be interpreted] according to its usual definition? So here also ‘planted’ [is to be interpreted] according to its usual definition; hence if he planted he does [return home], but if he bends or grafts he does not.[20]

When R. Dimi came he reported that R. Johanan said in the name of R. Eliezer b. Jacob: A young shoot less than a handbreadth in height is liable for ‘orlah so long as it appears to be a year old;[21] but this only applies where there are two plants with two other plants parallel to them and one in front.[22] Should, however, the entire vineyard [consist of such shoots], then it is talked about.[23]

When R. Dimi came he reported that R. Johanan said in the name of R. Eliezer b. Jacob: A dead body affects four cubits with respect to the recital of the shema’,[24] as it is said: Whoso mocketh the poor reproacheth his Maker.[25] R. Isaac declared that R. Johanan said in the name of R. Eliezer b. Jacob: A step-daughter reared with her [step-] brothers is forbidden to marry one of them because she appears to be their sister. But this is not so since the relationship is generally known.[26]

R. Isaac also declared that R. Johanan said in the name of R. Eliezer b. Jacob: If gleanings, forgotten sheaves and the corner of the field[27] are gathered into a barn, they become subject to the tithe.[28] ‘Ulla said: He only intended this to refer to a rural district, but in the city the fact [that the owner is a poor man who collected the produce from the fields of others] is generally known.

R. Isaac also declared that R. Johanan said in the name of R. Eliezer b. Jacob: A shoot which is less than a handbreadth in height does not make the seeds forfeit;[29] but this only applies when there are two plants with two other plants parallel to them and one in front. Should, however, the entire vineyard [consist of such shoots] it does make [the seeds] forfeit.

R. Isaac also declared that R. Johanan said in the name of R. Eliezer b. Jacob:

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(1) Consequently a robber may return home.

(2) Two different species.

(3) Lit., 'circumcision', the Law of Lev. XIX, 23 forbidding the enjoyment of the fruit of a tree during the first three years of growth. Since this regulation does not apply to a young shoot grafted on an old stem, it is not regarded as a new planting.

(4) And similarly he would not have to return on account of it.

(5) And its fruit is not subject to 'orlah.

(6) [Since it has been stated that one returns on account of a young shoot grafted on to another which has been planted for timber.]

(7) An old stem can never become young again, consequently the young shoot grafted to it becomes annulled.

(8) The planter can change his mind within the first three years, and determine the purpose of the young shoot, originally grafted for timber, to be for fruit, so that it becomes itself subject to 'orlah.

(9) And at the time of their plantation there was no definite purpose in the mind of the planter whether it was for fruit or timber.

(10) Which rules that one returns on account of grafting.

(11) [Instead of the far-fetched circumstance where the first young shoot was planted for timber.]

(12) Lit., 'they do not return on account of it from the army'. The partners do not have exemption for a new planting or grafting which belongs to them jointly, so that the Mishnah cannot deal with such a case.

(13) Leaving no offspring so that his wife is due to marry one of his brothers.

(14) Since it is not determined which one will marry her.

(15) Because it belongs to them jointly.

(16) [So Rashi. Rabina is answering the question in the Mishnah exempting one who grafts, cur. edd: 'bent'.]

(17) [Tosef. Kil. I, has 'grafts'.]

(18) [Being a permissible grafting it exempts the owner.]

(19) Viz., the statement above: is to exclude one who bends or grafts (the vine).

(20) [Even in a permissible case of bending or grafting.]

(21) Because if he uses its fruit, it might seem to others that he was doing what was forbidden.

(22) Five plants so arranged are considered a vineyard, to which all agree that the law of 'orlah applies, v. Ber. 35a.

(23) It is generally known that the vineyard has this peculiarity, and he may use the fruit.

(24) It may not be recited within the four cubits.

(25) Prov. XVII, 5. To perform a precept near a corpse is to deride it, since it is denied the privilege.

(26) That they have neither father or mother in common.

(27) V. Lev. XIX, 9f. and Deut. XXIV, 19.

(28) Because people may think that it is the produce of the man's field.

(29) Under the law forbidding mixture; v. Deut. XXII, 9.

Talmud - Mas. Sotah 44a

A dead body affects four cubits with respect to communicating defilement.[1] Similarly teaches a Tanna: With a fore-court of a burial vault,[2] whoever stands within it is clean, provided there is in it a space of four cubits.[3] Such is the statement of Beth Shammai; but Beth Hillel declare, [A space of] four handbreadths'.[3] When does this[4] apply? If the entrance is from above; but if the entrance is from the side,[5] all agree that [a space of] four cubits [is necessary]. This should be just the reverse![6] On the contrary, when [the entrance is] from the side, he merely steps aside and goes out; but when it

is from above it is impossible for him to avoid forming a cover![7] — But read thus: when does [the statement of Beth Hillel] apply? To [a vault] whose entrance is from the side; but if the entrance is from above [a space of] four cubits [is necessary].[8] Now [the teaching that one is clean who stands therein] only holds good of a fore-court of a burial vault where the partitions [between the graves and the fore-court] are distinctly marked, but a corpse in general affects four cubits.[9]

AND WHAT MAN IS THERE THAT HATH BETROTHED A WIFE? etc. Our Rabbis taught: 'That hath betrothed' — it is all one whether he betrothed a virgin or a widow or a childless widow waiting for her brother-in-law; and even when there are five brothers, one of whom died in battle, they all return home.[10] [The fact that Scripture does not read] 'and hath not taken' but 'and hath not taken her' is to exclude a High Priest who married a widow, an ordinary priest who married a divorcee or a Haluzah, a lay Israelite who married an illegitimate or a Nethinah, or a daughter of an Israelite married to an illegitimate or a Nathin. Is this to say that [this teaching is] not in agreement with R. Jose the Galilean? For if it agreed with R. Jose the Galilean, behold he has said: 'Fainthearted' i.e., he who is afraid because of the transgressions he had committed![11] — You may even say that it agrees with R. Jose the Galilean, and it is in accord with Rabbah; for Rabbah said: He is certainly not guilty until he has cohabited with her. For what is the reason [of the prohibition] shall he not take?[12] So that he shall not profane [his seed].[13] Hence he does not receive the punishment of lashes[14] until he has cohabited with her. Our Rabbis taught: [The order of the phrases is] 'that hath built', 'that hath planted', 'that hath betrothed'. The Torah has thus taught a rule of conduct: that a man should build a house, plant a vineyard and then marry a wife. Similarly declared Solomon in his wisdom, Prepare thy work without, and make it ready for thee in the field, and afterwards build thine house[15] — 'prepare thy work without', i.e., a dwelling. place; 'and make it ready for thee in the field', i.e., a vineyard; 'and afterwards build thine house', i.e., a wife. Another interpretation is: 'prepare thy work without', i.e., Scripture; 'and make it ready for thee in the field', i.e., Mishnah; 'and afterwards build thine house', i.e., Gemara. Another explanation is: 'prepare thy work without', i.e., Scripture and Mishnah; 'and make it ready for thee in the field', i.e., Gemara; 'and afterwards build thine house,' i.e., good deeds. R. Eliezer, son of R. Jose the Galilean says: 'Prepare thy work without,' i.e., Scripture: Mishnah and Gemara; 'and make it ready for thee in the field,' i.e., good deeds; 'and afterwards build thine house,ð i.e., make research [in the Torah] and receive the reward.

THE FOLLOWING DO NOT RETURN HOME: HE WHO BUILT A LODGE etc. A Tanna taught: If [when rebuilding the house] he adds a row [of fresh bricks] to it, he does return home.[16]

R. ELIEZER SAYS: ALSO HE WHO BUILT A BRICK-HOUSE IN SHARON DOES NOT RETURN HOME. A Tanna taught: [The reason is] because they have to renew it twice in a period of seven years.

THE FOLLOWING DO NOT MOVE FROM THEIR PLACE: HE WHO BUILT A NEW HOUSE AND DEDICATED IT etc. Our Rabbis taught: A new wife[17] — I have here only 'a new wife'; whence is it [that the law applies also to] a widow and divorcee? There is a text to state 'wife', i.e.,in every case. Why, however, does the text state 'a new wife'? [It means] one who is new to him, thus excluding the case of a man who takes back his divorced wife, since she is not new to him.

Our Rabbis taught: He shall not go out in the host[18] — and it is possible to think that he does not go out in the host, but he supplies water and food and repairs the roads [for the army]; therefore there is a text to state, 'Neither shall he be charged with any business'. It is possible to think that I am also to include [among those who do not move from their place] the man who built a house but did not dedicate it, or planted a vineyard and did not use its fruit, or betrothed a wife but did not take her; therefore there is a text to state, 'Neither shall he be charged' — but you may charge others.[19] Since, however, it is written 'Neither shall he be charged', what is the purpose of 'He shall not go out in the

host'?[20] So that a transgression of the Law should involve two prohibitions.

MISHNAH. AND THE OFFICERS SHALL SPEAK FURTHER UNTO THE PEOPLE ETC.[21] R. AKIBA SAYS: 'FEARFUL AND FAINTHEARTEDð IS TO BE UNDERSTOOD LITERALLY VIZ., HE IS UNABLE TO STAND IN THE BATTLE-RANKS AND SEE A DRAWN SWORD. R. JOSE THE GALILEAN SAYS: 'FEARFUL AND FAINTHEARTED' ALLUDES TO ONE WHO IS AFRAID BECAUSE OF THE TRANSGRESSIONS HE HAD COMMITTED; THEREFORE THE TORAH CONNECTED ALL THESE[22] WITH HIM THAT HE MAY RETURN HOME ON THEIR ACCOUNT.[23] R. JOSE SAYS: A HIGH PRIEST WHO MARRIED A WIDOW, AN ORDINARY PRIEST WHO MARRIED A DIVORCEE OR HALUZAH, A LAY ISRAELITE WHO MARRIED AN ILLEGITIMATE OR NETHINAH, AND THE DAUGHTER OF AN ISRAELITE WHO MARRIED AN ILLEGITIMATE OR A NATHIN-BEHOLD SUCH AN ONE IS 'FEARFUL AND FAINTHEARTED'.[24]

AND IT SHALL BE, WHEN THE OFFICERS HAVE MADE AN END OF SPEAKING UNTO THE PEOPLE, THAT THEY SHALL APPOINT CAPTAINS OF HOSTS AT THE HEAD OF THE PEOPLE.[25] AND AT THE REAR OF THE PEOPLE THEY STATION GUARDS IN FRONT OF THEM AND OTHERS BEHIND THEM, WITH IRON AXES IN THEIR HANDS, AND SHOULD ANYONE WISH TO FLEE, THEY HAVE PERMISSION TO SMITE HIS THIGHS,

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(1) Whoever comes within that distance is rendered unclean.

(2) V. B.B. (Sonc. ed.) p. 422 for diagram.

(3) V. op. cit. p. 423.

(4) The more lenient requirement of the School of Hillel.

(5) [This means apparently that the sepulchral chambers surrounded the fore-court only on three sides, the fourth side being left open. V. R. Samson of Sens commentary on Oh. loc. cit.]

(6) Viz., that when the entrance is from the side the requirement should be less strict.

(7) When he climbs up to get out he may put his hands upon the graves; therefore a larger space should be required since the probability of contracting defilement is greater.

(8) [This is the end of the cited Mishnah Oh. XV, 8. What follows is from a Baraitha another version of which is to be found in Tosef. Oh. XV.]

(9) [Even according to Beth Hillel, otherwise what need for their ruling in the case of one standing in a fore-court? The Tanna of the cited Mishnah is thus in support of R. Eliezer b. Jacob.]

(10) V. supra p. 214.

(11) If that is so, the men who contracted an illegal marriage should return home.

(12) Lev. XXI, 14, referring to the women forbidden in marriage to a High Priest.

(13) Ibid. 15.

(14) And but for the verse 'and hath not taken her', they would not be exempted where there was betrothal.

(15) Prov. XXIV, 27.

(16) It is then regarded as a new house.

(17) Deut. XXIV, 5.

(18) Ibid.

(19) E.g., who have built a house and not dedicated it or betrothed a woman and not taken her to wife.

(20) The former surely includes the latter.

(21) Deut. XX, 8.

(22) Those who had exemption because of a new house etc.

(23) Otherwise anyone who claimed exemption because of sinfulness had to expose himself publicly as a transgressor.

(24) The difference in the point of view of R. Jose the Galilean and R. Jose will be explained in the Gemara.

(25) Deut. XX, 9.

BECAUSE THE BEGINNING OF FLIGHT IS FALLING,[1] AS IT IS SAID, ISRAEL IS FLED BEFORE THE PHILISTINES, AND THERE HATH BEEN A GREAT SLAUGHTER AMONG THE PEOPLE;[2] AND FURTHER ON IT STATES, AND THE MEN OF ISRAEL FLED FROM BEFORE THE PHILISTINES AND FELL DOWN SLAIN ETC.[3]

TO WHAT DOES ALL THE FOREGOING APPLY? TO VOLUNTARY WARS, BUT IN THE WARS COMMANDED BY THE TORAH[4] ALL GO FORTH EVEN A BRIDEGROOM FROM HIS CHAMBER AND A BRIDE FROM HER CANOPY.[5] R. JUDAH SAYS: TO WHAT DOES ALL THE FOREGOING APPLY? TO THE WARS COMMANDED BY THE TORAH; BUT IN OBLIGATORY WARS[6] ALL GO FORTH, EVEN A BRIDEGROOM FROM HIS CHAMBER AND A BRIDE FROM HER CANOPY.

GEMARA. What is the difference between R. Jose and R. Jose the Galilean?[7] — The issue between them is the transgression of a Rabbinical ordinance.[8] With whom does the following teaching accord: He who speaks between [donning] one phylactery and the other[9] has committed a transgression and returns home under the war-regulations? With whom [does it accord]? With R. Jose the Galilean. Who is the Tanna of the following: Our Rabbis taught: If he heard the sound of trumpets and was terror-stricken, or the crash of shields and was terror-stricken, or [beheld] the brandishing of swords and the urine discharged itself upon his knees, he returns home? With whom [does it accord]? Are we to say that it is with R. Akiba and not R. Jose the Galilean?[10] — In such a circumstance even R. Jose the Galilean admits [that he returns home], because it is written: Lest his brethren's heart melt as his heart.[11]

AND IT SHALL BE, WHEN THE OFFICERS HAVE MADE AN END etc. The phrase, BECAUSE THE BEGINNING OF FLIGHT IS FALLING should be, 'because falling is the beginning of flight'! Read [in the Mishnah]: Because falling is the beginning of flight.

TO WHAT DOES ALL THE FOREGOING APPLY? TO VOLUNTARY WARS etc. R. Johanan said: [A war] which is [designated] voluntary according to the Rabbis is commanded according to R. Judah,[12] and [a war] which is [designated] commanded according to the Rabbis is obligatory according to R. Judah.[13] Raba said:[14] The wars waged by Joshua to conquer [Canaan] were obligatory in the opinion of all; the wars waged by the House of David for territorial expansion were voluntary in the opinion of all; where they differ is with regard to [wars] against heathens so that these should not march against them. One[15] calls them commanded and the other voluntary, the practical issue being that one who is engaged in the performance of a commandment is exempt from the performance of another commandment.[16]

C H A P T E R I X

MISHNAH. [THE DECLARATION OVER] THE HEIFER WHOSE NECK IS TO BE BROKEN MUST BE IN THE HOLY TONGUE; AS IT IS SAID, IF ONE BE FOUND SLAIN IN THE EARTH . . . THEN THY ELDERS AND THY JUDGES SHALL COME FORTH.[17] THREE USED TO GO FORTH FROM THE SUPREME COURT IN JERUSALEM; R. JUDAH SAYS: FIVE, AS IT IS STATED, THY ELDERS, I.E., TWO, 'AND THY JUDGES' I.E., TWO, AND SINCE A COURT OF JUSTICE CANNOT CONSIST OF AN EVEN NUMBER, THEY ADD ONE MORE.

IF [THE CORPSE] WAS FOUND HIDDEN IN A HEAP OF STONES, OR HANGING ON A TREE, OR FLOATING UPON THE SURFACE OF THE WATER, THEY DO NOT BREAK [A HEIFER'S NECK]. BECAUSE IT IS STATED, 'IN THE EARTH' — AND NOT HIDDEN IN A HEAP OF STONES, NOR HANGING ON A TREE IN A FIELD, NOR FLOATING UPON THE SURFACE OF THE WATER. IF IT WAS FOUND NEAR TO THE FRONTIER, OR A CITY THE MAJORITY OF WHOSE INHABITANTS WERE HEATHENS, OR A CITY IN WHICH THERE

IS NO COURT OF JUSTICE, THEY DO NOT BREAK [A HEIFER'S NECK]. THEY ONLY MEASURE[18] THE DISTANCE TO A CITY IN WHICH THERE IS A COURT OF JUSTICE.

GEMARA. How does [the author of the Mishnah] prove his point?[19] — R. Abbahu said: This is what he intends: It is stated: And they shall answer and say[20] and elsewhere it is stated: And the Levites shall answer and say etc.,[21] as the answering mentioned in this latter passage was in the holy tongue, so here also it was in the holy tongue, and as to the procedure in the ceremony of the heifer whose neck was to be broken — IF ONE BE FOUND SLAIN IN THE EARTH . . . THEN THY ELDERS AND THY JUDGES SHALL COME FORTH. THREE USED TO GO FORTH FROM THE SUPREME COURT IN JERUSALEM; R. JUDAH SAYS: FIVE etc.

Our[22] Rabbis taught: 'Then thy elders and thy judges shall come forth' — 'thy elders', i.e., two, 'and thy judges', i.e., two, and since a Court of justice cannot consist of an even number, they add one more; hence there were five. Such is the statement of R. Judah; but R. Simeon says: 'Thy elders', i.e., two, and since a Court of Justice cannot consist of an even number, they add one more; hence there were three. But for R. Simeon also it is written 'and thy judges'! — He requires that for [the teaching that they must be] the most distinguished of thy judges. And [where does] R. Judah [derive the teaching that they must be the most distinguished]? — It follows from 'thy' in 'thy elders'.[23] [How does] R. Simeon [meet this argument]? — If the All-Merciful had only written 'elders', I might have thought that even old men from the market-place [would suffice]; therefore the All-Merciful wrote 'thy elders'. If, further, the All-Merciful had only written 'thy elders', I might have thought that even [members of] a minor Sanhedrin[24] [would suffice]; therefore the All-Merciful wrote 'and thy judges' i.e., the most distinguished of thy judges. [Where does] R. Judah [derive the teaching that they must be members of the Supreme Court]? — He draws an analogy between the use of the word 'elders' here and in the phrase the elders of the Congregation;[25] as it there denotes the most distinguished men of the congregation so here also it denotes the most distinguished men of the congregation. If he makes a deduction, then let him deduce the whole from there and what is the necessity of 'and thy judges'![26] — But the 'and' in 'and thy judges' [denotes that the phrase is to be used] for obtaining the requisite number. [How does] R. Simeon [meet this argument]?[27]

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(1) The Gemara reverses the wording here.

(2) I Sam. IV, 27.

(3) Ibid. XXXI, I.

(4) E.g., the conquest of Canaan and the annihilation of the Amalekites (Deut. XXV, 19).

(5) The women provided food for the troops.

(6) In defence against attack.

(7) Since they agree in defining 'fainthearted' as one afraid of his sins.

(8) R. Jose does not consider this sufficient to warrant exemption; therefore in the Mishnah he instances marriages forbidden by the Torah as the kind of transgression for which exemption may be claimed.

(9) Upon the arm and the forehead. It is forbidden to speak between the putting on of the two.

(10) Since the latter does not understand 'fainthearted' as relating to physical fear.

(11) Deut. XX, 8.

(12) They differ in terminology but agree that a bridegroom does not serve.

(13) They agree that a bridegroom must serve.

(14) Raba explains R. Johanan's statement.

(15) R. Judah.

(16) If it is to be considered a war commanded by the Torah, those engaged in it are exempt from the performance of other commandments.

(17) Deut. XXI, 1ff.

(18) The distance between the corpse and the nearest city (ibid. 2).

(19) That the declaration must be in Hebrew. The verse adduced affords no proof.

(20) Ibid. 7.

(21) Ibid. XXVII, 14.
(22) On the whole passage, v. Sanh. (Sonc. ed.) pp. 66ff.
(23) It would have been sufficient for the text to read: Then elders shall go forth.
(24) Consisting of twenty-three members, and not the Great Sanhedrin in Jerusalem of seventy-one members.
(25) E.g., in Lev. IV, 15.
(26) In Sanh. 3b it is argued that Lev. IV, 15 must be interpreted in the sense that five elders are required; that being so, why does not R. Judah use that argument and not 'and thy judges' for his opinion that five are necessary?
(27) Since he only requires three.

Talmud - Mas. Sotah 45a

He draws no deduction from 'and';[1] (for what then does the All-Merciful intend by the phrase? — They are to be the most distinguished of thy judges.)[2] But on this line of argument: 'and they shall come forth'[3] i.e., two, 'and they shall measure' i.e., two; according to R. Judah, then, there must be nine and according to R. Simeon there must be seven![4] — [No; the two phrases] are required for the following teaching:[5] 'They shall come forth' — they and not their agents; 'and they shall measure' — even if it is found obviously near to a particular city,[6] they must still measure since it is a commandment to carry out the measurement.

Our Mishnah is not in agreement with R. Eliezer b. Jacob; for it has been taught: R. Eliezer b. Jacob says: 'Thy elders' i.e., the Sanhedrin; 'thy judges' i.e., the king and High priest-the king, for it is written: The king by judgment establisheth the land;[7] and the High priest, for it is written: And thou shalt come unto the priests the Levites, and unto the judge that shall be etc.[8] The question was asked: Is R. Eliezer b. Jacob only at variance [in defining 'judges'] as the king and High priest, but as regards [the number of members of] the Sanhedrin does he agree with R. Judah or R. Simeon; or perhaps he is also at variance on that matter too and requires the whole of the Sanhedrin? — R. Joseph said: Come and hear: If they[9] found a rebellious elder[10] in Beth Pagi,[11] and he rebelled against them,[12] it is possible to think that his act of rebellion is punishable; therefore there is a text to State, Then shalt thou arise and get thee up unto the place.[13] This teaches that the 'place' determines [whether the act of rebellion is punishable].

Now how many of them had gone forth [from the Great Sanhedrin to Beth Pagi]? If I say that only a part of them had gone forth, perhaps they who remain behind are of the same opinion as the accused![14] It is therefore evident that all must go forth. And for what purpose? If for a secular object, was it possible for them all to go? For behold it is written: Thy navel is like a round goblet, wherein no mingled wine is wanting,[15] so that should a member have need to go out [from the hall where the Sanhedrin was in session], he may only do so if twenty-three [of his colleagues] remain, corresponding to the number of a minor Sanhedrin, otherwise he may not leave! Obviously, then, [they had gone forth] for a religious object. For what object? Must it not be to measure in connection with the heifer, according to the opinion of R. Eliezer b. Jacob?[16] — Abaye said to [R. Joseph], No; [they may all go forth for such a purpose as] to add to the boundaries of the city [of Jerusalem] or the Temple-courts; as we have learnt: We do not add to the boundaries of the city [of Jerusalem] or the Temple-courts except by a Court of seventy-one.[17] There is a teaching in agreement with R. Joseph: If they[18] met in Beth Pagi, and [an elder] rebelled against them; e.g., they went forth to carry out a measurement in connection with the heifer, or to add to the boundaries of the city [of Jerusalem] or the Temple-courts,[19] it is possible to think that his act of rebellion is punishable; therefore there is a text to State, Then shalt thou arise and get thee up [etc.].[13] This teaches that the 'place' determines [whether the act of rebellion is punishable]. IF [THE CORPSE] WAS FOUND HIDDEN IN A HEAP OF STONES, OR HANGING ON A TREE. Is this to say that our Mishnah agrees with R. Judah and not the Rabbis? For it has been taught: And hast forgot a sheaf in the field[20] — this excludes [a sheaf] which was hidden; such is the statement of R. Judah, but the Sages declare that 'in the field' is to include a hidden sheaf![21] — Rab said: You may even maintain that it agrees with the

Rabbis since each case is to be explained in the light of its context. [In connection with the corpse] it is written: 'If one be found slain,' i.e., wherever it be found; 'in the earth', i.e., to the exclusion of one which is hidden. The other case [of the sheaf] is to be explained in the light of the context; for it is written: 'When thou reapest thine harvest in thy field and hast forgot a sheaf. There is an analogy between the forgotten sheaf and the harvesting: as the harvesting is visible to all so the forgotten sheaf must be visible to all;[22] and the fact that the All-Merciful wrote 'in the field' is to include a hidden sheaf. Then let R. Judah likewise draw an analogy between the forgotten sheaf and the harvesting![23] — He actually does so; but [he argues], What is the purpose of 'in the field'? It is required to include standing-corn which is forgotten.[24] From where, then, do the Rabbis derive the regulation of standing-corn which is forgotten? — They derive it from, When thou reapest thine harvest in thy field [and hast forgot].[25] And [how does] R. Judah [explain this phrase]? — He requires it for the teaching of R. Abbahu in the name of R. Eleazar; for R. Abbahu said in the name of R. Eleazar: It excludes the case where sheaves were carried [by the wind] into his neighbours' field.[26] And [from where] do the Rabbis [derive this regulation]? — From the fact that Scripture has 'thy field' and not merely 'the field'. And [what of] R. Judah? — He draws no inference from 'thy field' as distinct from 'the field'. R. Jeremiah asked: How is it if sheaves were carried[27] into his own field? Is the air-space above a field identical with the field or not? — R. Kahana said to R. Papi another version is, R. Kahana said to R. Zebid, The problem is to be solved from the teaching of R. Abbahu who said in the name of R. Eleazar, 'It excludes the case where sheaves were carried [by the wind] into his neighbour's field,' implying, does it not, that only [when they are carried into] his neighbour's field they are [excluded], but [if the wind drops them] into his own field they are not![28] But according to your reasoning, [it would follow that] if the sheaves were carried into his neighbour's field [and alighted upon a stone, etc.,] they are excluded, but should they lie [upon the ground] they are not;[29] surely we require [the sheaves to be] 'in thy field', but they are not there! Rather must they [argue thus:[30] 'It excludes when the sheaves were] in his neighbour's field' even if actually lying upon the ground; and the expression 'carried' is only employed because this could have happened only if they were 'carried' [by the force of the wind].

Come and hear: If he laid hold of a sheaf to convey it into the city, placed it on top of another sheaf belonging to his neighbour and forgot it, the lower is considered to be a forgotten sheaf but not the upper. R. Simeon b. Judah says in the name of R. Simeon: Neither is a forgotten sheaf, the lower because it is hidden and the upper because it is suspended.[31] Hence they only differ as regards the lower, but with respect to the upper they all agree that it is not a hidden sheaf![32] — It is different in this circumstance, because having taken hold of it he has the right to it. If that is so,[33] why use the argument 'placed it on top of another sheaf belonging to his neighbour'? It would have been the same if he had laid it upon the field [of his neighbour]! — That is so; but he used the illustration of 'on top of another sheaf belonging to his neighbour', because of the instance of the lower sheaf [about which there was a difference of opinion]. Why, then, should he use the phrase 'because it is suspended'![34] — Read: because it is like something suspended.[35]

Abaye said: Behold I am like Ben Azzai in the streets of Tiberias.[36] So one of the Rabbis asked Abaye, If there were two corpses, one on top of the other,[37] from which is the measurement taken? [Do we argue that with] two things of the same kind [the lower] is regarded as hidden and with two things of the same kind [the upper] is not regarded as suspended, so that he takes the measurement from the upper; or perhaps with two things of the same kind [the upper] is regarded as suspended and with two things of the same kind [the lower] is not regarded as hidden, so that he takes the measurement from the lower; or perhaps with two things of the same kind [the lower] is regarded as hidden and with two things of the same kind [the upper] is regarded as suspended, so that he takes measurement neither from the lower nor the upper! — He replied to him,

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(1) I.e., he does not expound the analogy.

(2) [This passage, which is bracketed in cur. edd., is rightly omitted in some texts.]

(3) Deut. XXI, 2.
(4) The former obtained the number five from 'thy elders and thy judges' and now four more are to be added.
(5) And are not to be used to add to the number of elders.
(6) So that there is no need for measuring.
(7) Prov. XXIX, 4.
(8) Deut. XVII, 9. 'And' is understood as 'evenð; therefore the priests acted as judges; and since one in particular is specified in 'the judge' it must be the High Priest.
(9) The number of the Great Sanhedrin.
(10) One who refused to abide by the decision of the Sanhedrin, Deut. XVII, 8.
(11) A place within the walls of Jerusalem. Origen mentions that it was a village inhabited by priests.
(12) Against the decision of the local Sanhedrin to whom a disputed point of law was submitted.
(13) Deut. XVII, 8, i.e., the Temple mount, the locale of the Great Sanhedrin.
(14) How then could the rebellious elder be condemned?
(15) Cant. VII, 3, E.V. 2. This verse is applied to the Sanhedrin, called 'navel', because it sat in a place which was considered to be the centre of the world. 'Mingled wine' is defined (Shab. 77a) as diluted with two-thirds of water. Hence one third of the Sanhedrin must at least be present at a session.
(16) Who, ex hypothesi, requires the presence of the entire Sanhedrin.
(17) Sanh. I, 5.
(18) The Great Sanhedrin.
(19) So it is possible that they all went out to do the measuring.
(20) Deut. XXIV, 19.
(21) The former explains 'in the field' as lying about upon the surface of the field; the Rabbis understand it as hidden somewhere in the field.
(22) And the reaper merely overlooked it.
(23) And not maintain that it is excluded.
(24) If he forgot to cut down a portion of the corn, this remains for the poor.
(25) They connect 'forgot' with 'thy field', so that the forgetting applies also to corn standing in the field.
(26) And thinking that they were not his, he left them.
(27) Some texts read 'afu (flew) instead of zafu. The question relates to the circumstance where the sheaves did not fall upon the field but upon a stone or something similar, so that they were suspended above the field.
(28) Consequently so long as the sheaves are in his own field, they come within the law of the forgotten sheaf.
(29) And come within the law of the forgotten sheaf.
(30) With reference to the teaching of R. Abbabu.
(31) Not lying upon the ground.
(32) This conclusion would therefore answer R. Jeremiah's question.
(33) That his having taken hold of it precludes it from being regarded as a forgotten sheaf.
(34) Since it was irrelevant to the issue.
(35) It is exempt from the law of the forgotten sheaf because, having been in the owner's hand, it is like something suspended and not lying upon the ground.
(36) I.e., in his own town of Pumbeditha he felt as competent to solve difficult problems as did Ben Azzai in his city of Tiberias.
(37) The top one is not fully over the other, so that if the measurements are taken from the two, a different city would be the nearest in each case.

Talmud - Mas. Sotah 45b

You have it stated: 'If he laid hold of a sheaf to convey it into the city, placed it on top of another sheaf belonging to his neighbour and forgot it, the lower is considered to be a forgotten sheaf but not the upperð. R. Simeon b. Judah says in the name of R. Simeon: Neither is a forgotten sheaf, the lower because it is hidden and the upper because it is suspended. Now they were[1] of the opinion that these Tannaim agreed with R. Judah who said: 'In the field', i.e., to the exclusion of one which is hidden. Do they, then, not differ on this issue: One holds that with two things of the same kind [the

lower] is regarded as hidden, and the other holds it is not regarded as hidden? — No; if they were of the same opinion as R. Judah, they all agree that with two things of the same kind [the lower] is regarded as hidden; but here the difference is the same as that of R. Judah and the Rabbis. The Rabbis here agree with the Rabbis there,[2] and R. Simeon b. Judah agrees with R. Judah.[3] If that is so, why use the argument 'on top of another sheaf belonging to his neighbour'? It would have been the same if he had placed it on the earth or on pebbles! That is so; but the purpose was to let you know how strong is the position of R. Judah who said that even with two things of the same kind [the lower] is regarded as hidden.

Our Rabbis taught: 'Slain,' but not strangled,[4] 'slain,' but not one who is expiring;[5] 'in the land', but not hidden in a heap of stones; 'lying', but not hanging on a tree; 'in the earth', but not floating upon the surface of the water. R. Eleazar says: In all these cases, if the person had been slain, they break the heifer's neck. It has been taught: R. Jose b. Judah said: They asked R. Eleazar, Do you not admit that if he had been strangled and was lying upon a dung-heap,[6] they do not break the heifer's neck?[7] [Yes:] consequently [you must agree that] 'slain' indicates one who is not strangled; similarly 'in the earth' indicates one who is not hidden in a heap of stones, 'lying' one who is not hanging on a tree, 'in the earth' one who is not floating upon the surface of the water! [How does] R. Eleazar [meet this argument]? — The word 'slain' is written redundantly.[8]

IF IT WAS FOUND NEAR TO THE FRONTIER, OR A CITY THE MAJORITY OF WHOSE INHABITANTS WERE GENTILES etc. Because it is written 'be found', thus excluding what commonly occurs.[9] OR A CITY IN WHICH THERE IS NO COURT OF JUSTICE. Because we require 'the elders of that city', and such are not [forthcoming].

THEY ONLY MEASURE THE DISTANCE TO A CITY [IN WHICH THERE IS A COURT OF JUSTICE]. This is obvious! Since he stated: OR A CITY IN WHICH IS NO COURT OF JUSTICE [etc.], I know that they only measure the distance to a city in which there is a Court of Justice! — He thereby informs us what is taught in the following: Whence is it that if it was found near a city in which there is no Court of Justice, they leave [the city out] and measure to [the nearest] city which has a Court of Justice? There is a text to state, The elders of that city shall take,[10] i.e., in every case.[11]

MISHNAH. IF [THE CORPSE] WAS FOUND EXACTLY BETWEEN TWO CITIES, BOTH OF THEM BRING TWO HEIFERS [BETWEEN THEM]. SUCH IS THE STATEMENT OF R. ELIEZER;[12] BUT JERUSALEM DOES NOT BRING A HEIFER WHOSE NECK IS TO BE BROKEN. IF THE HEAD WAS FOUND IN ONE PLACE AND THE BODY IN ANOTHER PLACE, THEY CARRY THE HEAD TO THE BODY. SUCH IS THE STATEMENT OF R. ELIEZER.[13] R. AKIBA SAYS: [THEY CARRY] THE BODY TO THE HEAD. FROM WHAT PART [OF THE BODY] DO THEY MEASURE? R. ELIEZER SAYS: FROM THE NAVEL; R. AKIBA SAYS: FROM THE NOSE; R. ELIEZER B. JACOB SAYS: FROM THE PLACE WHERE HE WAS MADE A SLAIN PERSON, FROM THE NECK.

GEMARA. What is R. Eliezer's reason?[13] — He holds that it is possible to make an exact measurement; and the word 'nearest'[14] holds good of even more than one city. BUT JERUSALEM DOES NOT BRING A HEIFER WHOSE NECK IS TO BE BROKEN. Because Scripture declares, To possess it,[15] and he is of the opinion that Jerusalem was not apportioned among the tribes.

IF THE HEAD WAS FOUND IN ONE PLACE etc. In what do they differ? If I should say that they differ on the question from where the measurement is to be taken, behold since [the author of the Mishnah] states in the sequel: FROM WHAT PART [OF THE BODY] DO THEY MEASURE? it follows that we are not dealing here with the subject of measurement! — R. Isaac said: They differ because of the regulation that a meth mizwah[16] acquires his place; and thus he means to say: He

acquires his place for burial, and where the head is found in one place and the body in another, they carry the head to the body [and bury it there]. Such is the statement of R. Eliezer; but R. Akiba says, [They carry] the body to the head [and bury it there]. In what do they differ? One is of the opinion that the body is in the place where it fell and the head rolled away, while the other is of the opinion that the head remains in the place where it falls while the body falls some way off.

FROM WHAT PART [OF THE BODY] DO THEY MEASURE? In what do they differ? One is of the opinion that the source of existence is in the nose, while the other is of the opinion that the source of existence is in the navel. Is this to say [that they differ on the same point] as the following teachers: From where is the embryo formed? From the head, and thus it states: Thou art He that took me [gozi] out of my mother's womb,[17] and it further states: Cut off [gozi] thine hair and cast it away etc.[18] Abba Saul Says: It is from the navel, and its root spreads in all directions [from there]! — You may even say that Abba Saul [agrees with R. Akiba], because Abba Saul's statement only applies to the formation, that when an embryo is formed it is formed from the centre, but with respect to existence all agree that [its source is] in the nose; for it is written: All in whose nostrils was the breath of the spirit of life etc.[19]

R. ELIEZER B. JACOB SAYS: FROM THE PLACE WHERE HE WAS MADE A SLAIN PERSON, FROM THE NECK. What is the reason of R. Eliezer b. Jacob? — Because it is written: To lay thee upon the necks of the wicked that are slain.[20]

MISHNAH. WHEN THE ELDERS OF JERUSALEM[21] HAD DEPARTED AND GONE AWAY, THE ELDERS OF THAT CITY[22] TAKE A HEIFER OF THE HERD[23] WHICH HAS NOT DRAWN IN THE YOKE, AND A BLEMISH DOES NOT DISQUALIFY IT. THEY BRING IT DOWN TO A RAVINE WHICH IS STONY[24] — 'ETHAN' IS TO BE UNDERSTOOD IN ITS LITERAL SENSE OF 'HARD' — BUT EVEN IF IT BE NOT STONY, IT IS FIT [FOR THE CEREMONY]. THEY THEN BREAK ITS NECK WITH A HATCHET FROM BEHIND.[25] THE SITE MAY NEVER BE SOWN OR TILLED, BUT IT IS PERMITTED TO CARD FLAX AND CHISEL STONES THERE. THE ELDERS OF THAT CITY THEN WASH THEIR HANDS WITH WATER IN THE PLACE WHERE THE HEIFER'S NECK WAS BROKEN AND DECLARE, OUR HANDS HAVE NOT SHED THIS BLOOD, NEITHER HAVE OUR EYES SEEN IT.[26] BUT CAN IT ENTER OUR MINDS THAT THE ELDERS OF A COURT OF JUSTICE ARE SHEDDERS OF BLOOD! [THE MEANING OF THEIR STATEMENT IS], HOWEVER, [THE MAN FOUND DEAD] DID NOT COME TO US [FOR HELP] AND WE DISMISSED HIM WITHOUT SUPPLYING HIM WITH FOOD, WE DID NOT SEE HIM AND LET HIM GO WITHOUT ESCORT.[27]

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(1) The scholars who thought of solving the question from this Baraitha.

(2) Who maintained that a hidden sheaf came within the law of the forgotten sheaf.

(3) Who excludes a hidden sheaf from the law.

(4) The Hebrew for slain (halal) denotes by the sword.

(5) Not actually dead.

(6) So the body was not hanging, hidden or floating.

(7) For the reason that he was not 'slain'.

(8) It occurs four times in Deut. XXI, 1-9; emphasing that he must be 'slain' and not 'strangled'.

(9) It frequently happened that dead bodies were found in such localities.

(10) Deut. XXI, 3.

(11) The measurement must always be made and the nearest city containing 'elders' ascertained.

(12) [J. adds: BUT THE SAGES SAY ONLY ONE CITY BRINGS A HEIFER WHOSE NECK IS TO BE BROKEN BUT TWO CITIES DO NOT BRING.]

(13) For requiring two heifers if the body is found equidistant between two cities.

(14) Deut. XXI, 3.

(15) Deut. XXI, I.
(16) Lit., 'a dead body which is a commandment'; i.e., an unattended corpse, and it is the duty of whoever finds it to be concerned with its burial. The Talmud (B.K. 81b) relates that when Joshua divided out the land, he imposed a condition that a meth mizwah should be buried in whatever spot he is found.
(17) Ps. LXXI, 6.
(18) Jer. VII, 29. On the basis of the similar word in this verse, it is explained in the former as 'the place where my hair grows', i.e., the head.
(19) Gen. VII, 22.
(20) Ezek. XXI, 34.
(21) The members of the Great Sanhedrin whose duty it was to make the measurement.
(22) Which is found to be nearest the corpse.
(23) Defined in Parah I, 1 as less than a year old.
(24) The word ethan (Deut. XXI, 4) is interpreted by Maimonides in the sense given in the E.V. viz., running water.
(25) Not in front as in the act of ritual slaughter.
(26) Deut. XXI, 7.
(27) [In the J. text of the Mishnah and in MS.M. the words 'without . . . food' and 'without escort' are missing, and in the Gemara there it is stated that the reference is not, as maintained by the Babylonian scholars, to the murdered person, but to the murderer. The elders, that is to say, declare that 'he did not come to us and we dismissed him or allowed him to go unpunished.']

Talmud - Mas. Sotah 46a

THEN THE PRIESTS EXCLAIM, FORGIVE, O LORD, THY PEOPLE ISRAEL, WHOM THOU HAST REDEEMED, AND SUFFER NOT INNOCENT BLOOD TO REMAIN IN THE MIDST OF THY PEOPLE ISRAEL.[1] THERE IS NO NEED FOR THEM TO SAY, AND THE BLOOD SHALL BE FORGIVEN THEM;[2] BUT THE HOLY SPIRIT ANNOUNCES TO THEM, 'WHEN YOU ACT THUS, THE BLOOD IS FORGIVEN YOU.'

GEMARA. But that a blemish disqualified a heifer may be deduced by a fortiori reasoning from the instance of the [red] cow:[3] if a blemish disqualifies a cow which is not disqualified on account of age,[4] how much more must a blemish disqualify a heifer which is disqualified on account of age! — It is different there, because Scripture stated: Wherein is no blemish[5] — a blemish disqualifies [a red cow] but does not disqualify a heifer. According to this argument,[6] the other disqualifications on account of work having been done by it should not apply [to the red cow];[7] why, then, did Rab Judah say in the name of Rab, If a person laid a bundle of sacks upon it ,[8] it is disqualified, but with a heifer [it is not disqualified] until it draws [a load]![9] — It is different with a [red] cow, because we derive the meaning of the term 'yoke' [in connection with a red cow] from its occurrence in connection with a heifer.[10] But let [the deduction that a blemish disqualifies] a heifer be also drawn from the instance of a [red] cow on the basis of a common use of the term 'yoke'! — Behold the All-Merciful has excluded that by using the word 'wherein' [bah]. But with the heifer it is likewise written 'wherewith' [bah]![11] — This is required to exclude animals destined as sacrifices which are not disqualified by having been used for work; because it might have occurred to you to say: Let us draw a conclusion by a fortiori reasoning from the heifer: if a heifer which is not disqualified by a blemish is disqualified by having been used for work, how much more must animals destined as sacrifices, which are disqualified by a blemish, be disqualified by having been used for work! It can, however, be objected: This is right for a heifer because it is also disqualified by an age-limit! — Do you mean to say, then, that there are no animals destined as sacrifices which are disqualified by an age-limit? Hence a text is necessary for those offerings which are disqualified by an age-limit.[12] Is, however, [the regulation that] animals destined as sacrifices are not disqualified by having been used for work derived from here?[13] Surely it is derived from the following: Blind, or broken, or maimed, or having a wen, or scurvy or scabbed, ye shall not offer these unto the Lord[14] — these ye shall not offer, but you may offer animals as sacrifices which have been used for work! — [This verse][15] is

necessary, because it might have occurred to you to say: This only applies where they have been used for permissible work, but where it was for prohibited work[16] conclude that they are forbidden [as sacrifices]! So it was necessary [to have this verse from which we infer that the animals may be offered even if they had been used for prohibited work]. But it could likewise have been derived from the following: Neither from the hand of a stranger shall ye offer the bread of your God of any of these[17] — these you shall not offer, but you may offer animals which have been used for work! — [This verse][15] is necessary, because it might have occurred to you to say: This only applies when they were worked while they were still not designated as sacrifices, but when they were worked after having been designated as sacrifices conclude that they are forbidden! So it was necessary [to have this verse from which we infer that even then they are acceptable as offerings].

The above text [teaches]: 'Rab Judah said in the name of Rab: If a person laid a bundle of sacks upon it, it is disqualified; but with a heifer [it is not disqualified] until it draws [a load]'. It is objected: Yoke[18] — I have only mention of a yoke; whence is it that there are other [disqualifications on account of] work having been done by it? You may argue by a fortiori reasoning: if a heifer which is not disqualified by a blemish is disqualified by having been used for work, how much more must a [red] cow, which is disqualified by a blemish, be disqualified by having been used for various kinds of work! And if you like you may argue:[19] It is stated here 'yoke' and there [with the heifer] it is stated 'yoke', as there the various kinds of work disqualify, so here [with the red cow] the various kinds of work disqualify. But why have this alternative argument?[20] — Because you might reply [as mentioned above], 'It can, however, be objected: This is right for a heifer because it is also disqualified by an age-limit'. Or it might also [be objected] that the case of animals destined as sacrifices proves [the contrary, thus:] a blemish disqualifies them but the fact that they were used for work does not disqualify them. [Therefore the alternative line of reasoning is employed:] It is stated here 'yoke' and there [with the heifer] it is stated 'yoke'; as there the various kinds of work [disqualify], so here [with the red cow] the various kinds of work [disqualify].

Now from the same line of reasoning: You may conclude as there [with the heifer it is not disqualified] until it draws [a load], so here [with the red cow it is not disqualified] until it draws [a load]![21] — This is a matter disputed by Tannaim. Some of them deduce it from the instance of the heifer,[22] while others deduce it from [the law of the red] cow itself.[23] For it has been taught: 'Yoke' — I have mention only of a yoke; whence is it that various kinds of work [disqualify]? There is a text to state, Upon which never came yoke[24] i.e., [work] of any sort. If that is so, why is 'yoke' specified? A yoke disqualifies whether during the time of work or not during the time of work,[25] but the various kinds of work only disqualify during the time of work.[26] But say that 'upon which never came' is general and 'yoke' is particular, and where there is a case of general and particular, only what is in the particular is in the general[27] — viz., a yoke only [disqualifies] and nothing else! The phrase 'which' is inclusive [of various kinds of work], and there is a similar teaching in connection with the heifer as follows: Yoke[28] — I have mention only of a yoke; whence is it that various kinds of work [disqualify]? There is a text to state, 'Which hath not been wrought with' — i.e., [work] of any sort. If that is so, why is 'yoke' specified? A yoke disqualifies whether during the time of work or not during the time of work, but the various kinds of work only disqualify during the time of work. But say that 'which hath not been wrought with' is general and 'yoke' is particular, and where there is a case of general and particular, only what is in the particular is in the general — viz. a yoke [disqualifies] and nothing else![29] — The phrase 'which' is inclusive [of various kinds of work].

R. Abbahu said: I asked R. Johanan, To what extent must there be drawing by a yoke [to constitute a disqualification]?[30] — He replied: The full extent of the yoke. The question was asked: Does this mean its length or breadth? One of the Rabbis, named R. Jacob, answered: The statement of R. Johanan was explained to me as indicating drawing by a yoke to the extent of a handbreadth in its breadth. Then [R. Johanan] should have said: A handbreadth!-He intended to inform us that the minimum of a yoke [in its breadth] is a handbreadth. For what purpose does he deduce this? — For

buying and selling. R. Johanan b. Saul said: Why does the Torah mention that he should bring a heifer into a ravine? The Holy One, blessed be He, said: Let something which did not produce fruit[31] have its neck broken in a place which is not fertile and atone for one who was not allowed to produce fruit. What [does this last word] 'fruit' mean? If I answer [that it means] offspring, then according to this argument we should not break a heifer's neck if [the man found dead] was old or castrated! Therefore [by 'fruit' must be understood the performance of] commandments.[32]

AND BRING IT DOWN TO A RAVINE WHICH IS STONY 'ETHAN' IS TO BE UNDERSTOOD IN ITS LITERAL SENSE OF 'HARD'. Our Rabbis taught: Whence is it that 'ethan' means 'hard'? As it is said,

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(1) Deut. XXI, 8.
(2) Ibid.
(3) Num. XIX. How can the Mishnah declare that a blemish does not disqualify it?
(4) It may be more than a year old.
(5) Ibid. 2.
(6) That 'wherein' (bah) is a restrictive particle.
(7) Since it is merely stated 'upon which never came yoke' and not, as with the heifer, 'wherewith (bah) it hath not been wrought and which hath not drawn (Deut. XXI, 3), the 'wherewith' restricting it to the heifer.
(8) The red cow, and no yoke was placed upon it.
(9) Because the text states explicitly 'which hath not drawn'.
(10) And the restrictive word 'wherewith', stated with the heifer, is required for another purpose.
(11) Cf. p. 236, n. 7.
(12) E.g., the lambs offered on the Passover are specified as being of the first year, (Num. XXVIII, 19).
(13) From the restrictive particle written with the heifer.
(14) Lev. XXII, 22.
(15) The 'wherewith' stated with the heifer.
(16) E.g., on the Sabbath.
(17) Ibid. 25.
(18) Num. XIX, 2.
(19) Not by a fortiori reasoning but from the analogous occurrence of 'yoke'.
(20) Why does not the first suffice?
(21) Which refutes Rab Judah.
(22) This is the Tanna of the Baraitha cited. He will accordingly not disqualify the cow until it draws.
(23) The Tanna who follows.
(24) Num. XIX, 2.
(25) If he put the yoke on the animal to ease the load and not for the purpose of drawing it.
(26) If, e.g., he put sacks upon it not as a burden, there is no disqualification. Where, however, the sacks were placed as a load there is immediate disqualification, even though the cow did not draw. This is in agreement with Rab Judah.
(27) The general rule must be restricted in application to what is contained in the particular.
(28) Deut. XXI, 3.
(29) This is one of the principles of hermeneutics according to R. Ishmael. V. B.K., 54a.
(30) With a heifer.
(31) A heifer less than a year old could not bring forth young.
(32) Which produces a harvest of merit; and he was prevented by his murder from doing this.

Talmud - Mas. Sotah 46b

Strong [ethan] is thy dwelling-place, and thy nest is set in the rock;[1] and it states: Hear, O ye mountains, the Lord's controversy, and ye enduring foundations [ethanim] of the earth.[2] Others, however, say: Whence is it that 'ethan' means 'old'? As it is stated: It is an ethan nation, it is an ancient nation.[3]

THEY THEN BREAK ITS NECK WITH A HATCHET FROM BEHIND. What is the reason [that it is done from behind]? — He derives it by the analogous word ‘breaking’ [stated] in the case of a bird brought as a sin.offering.[4]

THE SITE MAY NEVER BE SOWN OR TILLED. Our Rabbis taught: Which is neither plowed nor sown[5] — this refers to the past; such is the statement of R. Joshiah. R. Jonathan says: It refers to the future. Raba said: Nobody disputes as to the future since it is written: It shall not be sown;[6] when they differ as to the past, R. Joshiah argues, Is it written: ‘And it shall not be tilled’?[7] And R. Jonathan argues, Is it written: ‘Which has not been tilled’?[8] And [how does] R. Joshiah [meet R. Jonathan's argument]? — The relative pronoun ‘which’ must be understood of the past.[9] And R. Jonathan? — ‘Which’ is employed in an inclusive sense.[10]

BUT IT IS PERMITTED TO CARD FLAX AND CHISEL STONES THERE. Our Rabbis taught: ‘Which is neither plowed nor sown’ — I have here only sowing; whence is it that the other kinds of agricultural work [are prohibited]? There is a text to state, ‘which is neither plowed’ — i.e., [agricultural labour] in any form. If that is so, why is it stated ‘nor sown’?[11] Its purpose is to inform us that as sowing is special since it is connected with the soil itself, so everything which is connected with the soil itself [is forbidden], to the exclusion of carding flax and chiselling stones which are not connected with the soil itself. But argue that ‘which is neither plowed’ is general and ‘nor sown’ particular, and where there is a case of general and particular, only what is in the particular is in the general — viz. sowing only [is forbidden] but nothing else! — The term ‘which’ is employed in an inclusive sense.

THE ELDERS OF THAT CITY THEN WASH THEIR HANDS etc. Our Rabbis taught: And all the elders of that city, who are nearest unto the slain man, shall wash their hands over the heifer whose neck was broken in the valley.[12] There was no need to state, ‘whose neck was broken’![13] Why, then, is ‘whose neck was broken’ added? [It signifies], Over the place of the heifer's neck where it was broken. They then declare, ‘Our hands have not shed this blood, neither have our eyes seen it’. But can it enter our minds that [the members of a] Court of Justice shed blood! [The meaning of their statement is], however, [The man found dead] did not come to us for help and we dismissed him without supplying him with food, we did not see him and let him go without an escort.It has been taught: R. Meir used to say: We may compel a person to escort [a traveller],[14] because the reward for escorting is limitless; as it is said: And the watchers saw a man come forth out of the city, and they said unto him, Shew us, we pray thee, the entrance into the city, and we will deal kindly with thee.[15] It continues, And he shewed them the entrance into the city.[16] What was the kindness they did to him? They slew the whole of the city at the edge of the sword, but let that man and his family go.

And the man went into the land of the Hittites, and built a city, and called the name thereof Luz: which is the name thereof unto this day.[17] It has been taught: That is the Luz in which they dye the blue;[18] that is the Luz against which Sennacherib marched without disturbing it,[19] against which Nebuchadnezzar marched without destroying it, and even the Angel of Death has no permission to pass through it, but when the old men there become tired of life[20] they go outside the wall and then die. For is not the matter[21] an a fortiori inference? If this Canaanite, who did not utter a word or walk a step,[22] caused deliverance to come to himself and his seed unto the end of all generations, how much more so he who performs the act of escorting by actually going with the person! How did he show them [the way]? — Hezekiah said: He just curved his mouth for them;[23] R. Johanan said: He pointed for them with his finger. There is a teaching in agreement with R. Johanan, viz., Because this Canaanite pointed with his finger, he caused deliverance to come to himself and his seed unto the end of all generations.

R. Joshua b. Levi said: Whoever is on a journey and has no escort should occupy [his mind] with Torah;[24] as it is said: For they shall be a chaplet of grace unto thy head, and chains about thy neck.[25] R. Joshua b. Levi also said: Because of the four paces with which Pharaoh accompanied Abraham, as it is said: And Pharaoh gave men charge concerning him etc.,[26] he [was allowed to] enslave the latter's descendants for four hundred years, as it is said: And shall serve them, and they shall afflict them four hundred years.[27] Rab Judah said in the name of Rab: Whoever accompanies his neighbour four cubits in a city will come to no harm [when on a journey]. Rabina accompanied Raba b. Isaac four cubits in a city; danger threatened him but he was saved.

Our Rabbis taught: A teacher [accompanies] his pupils until the outskirts[28] of a city; one colleague [accompanies] another up to the Sabbath-limit;[29] a pupil [accompanies] his master a distance without limit.[30] But how far?[31] — R. Shesheth said: Up to a parasang. This only applies when his master is not a distinguished scholar; but should his master be a distinguished scholar [he accompanies him] three parasangs.

R. Kahana once accompanied R. Shimi b. Ashi from Pum-Nahara to Be-Zinyatha.[32] When they arrived there, he said to him, 'Is it true what you say, that these palms of Babylon are from the time of Adam?' He answered: 'You have reminded me of something which R. Jose b. Hanina said, viz., What means that which is written: Through a land that no man passed through, and where no man dwelt?[33] Since no man passed through it, how could anyone dwell there, and since nobody dwelt there how could anyone pass through it! But [the meaning is], A land concerning which Adam decreed that it should be inhabited has become inhabited, and a land concerning which Adam did not so decree has not been inhabited'.[34] R. Mordecai accompanied R. Ashi from Hagronia[35] to Be-Kafi;[36] another version is to Be-Dura.[37] R. Johanan said in the name of R. Meir: Whoever does not escort others or allow himself to be escorted is as though he sheds blood; for had the men of Jericho escorted Elisha he would not have stirred up bears against the children, as it is said: And he went up from thence unto Bethel; and as he was going up by the way, there came forth little children out of the city, and mocked him, and said unto him, Go up, thou bald head; go up, thou bald head.[38] What they said to him was, 'Go up, thou who hast made this place bald for us!'[39] What means 'little children'?[40] — R. Eleazar said: Ne'arim [children] means they were bare [menu'arim] of precepts; 'little' means they were little of faith.[41] A Tanna taught: They were youths [ne'arim] but they behaved like little children. R. Joseph demurred to this: But perhaps they were so called after the name of the place; for is it not written: And the Syrians had gone out in bands, and had brought away captive out of the land of Israel a little maid,[42] and the question is asked by us a maid [na'arah] and little?[43] And R. Pedath explained: She was a little girl from a place called Ne'uran![44] — In this passage her place is not specified,[45] but in the other their place is specified.[46]

And he looked behind him and saw them, and cursed them in the name of the Lord.[47] What did he see? — Rab said: He actually looked upon them, as it has been taught: Rabban Simeon b. Gamaliel says: Wherever the Sages set their eyes there is either death or calamity.[48] Samuel said: He saw that their mothers had all become conceived with them on the Day of Atonement.[49] R. Isaac the smith said: He saw that their hair was plaited as with Amorites.[50] R. Johanan said: He saw that there was no sap of the commandments in them. But perhaps there would have been such in their descendants![51] — R. Eleazar said: Neither in them nor in their descendants unto the end of all generations.

And there came forth two she-bears out of the wood, and tore forty and two children of them.[52]

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(1) Num. XXIV, 21.

(2) Micah VI, 2. 'Foundations', being parallel to 'mountains', has a similar meaning.

(3) Jer. V, 15. The true meaning here is 'enduring', but the word is taken as defined by what follows.

(4) Cf. Lev. V, 8 where the Hebrew is 'from the back of the neck'.

(5) Deut. XXI, 4.
(6) So the Hebrew literally. They all agree that the site may not be sown or tilled after the ceremony has taken place there.
(7) Since the text has not this form, it must refer to the past.
(8) Consequently it can only refer to the future.
(9) Since it would not be used if a command were implied, and the Torah would have stated: 'it shall not be tilled'.
(10) To include all kinds of agricultural work, as explained below.
(11) Since sowing is included in agricultural labour.
(12) Deut. XXI, 6.
(13) The words seem redundant.
(14) [Or the court compels a town to provide escorts for travellers.]
(15) Judg. I, 24.
(16) Ibid. 25.
(17) Ibid. 26.
(18) For the fringes (Num. XV, 38). The purpose of this statement and what follows is to illustrate the words 'which is the name thereof unto this day', showing that the city survived destruction and still exists.
(19) By not plundering it and exiling the inhabitants.
(20) Lit., 'their mind becomes loathsome to them'.
(21) That the reward for escorting is limitless.
(22) It merely states 'he showed them'.
(23) I.e., he made inarticulate sounds.
(24) As a means of protection.
(25) Prov. I, 9. The Hebrew word for chaplet is the same as for 'escort'.
(26) Gen. XII, 20.
(27) Ibid. XV, 13.
(28) [I.e., seventy cubits and two thirds beyond the outer range of the houses of the city. V. Ned. 56a.]
(29) V. p. 136, n. 7.
(30) [It is one of those deeds of kindliness to the performance of which no maximum is set; v. next note.]
(31) [I.e., what minimum distance must he accompany his teacher?]
(32) [Lit., 'Among the Palms', the former was near the Tigris, the latter was the district of the old city of Babylon, to which Sura belonged and which was rich in palms; cf. Sanh. 96b (Obermeyer, op. cit. p. 295).]
(33) Jer. II, 6.
(34) Accordingly Adam must have decreed that those palms should grow there.
(35) Outside Nehardea.
(36) [Be Kufai. A village four parasangs west of Bagdad, v. Obermeyer, op. cit. p. 267.]
(37) [Be-Duraja, S.W. of Bagdad. This would be about two hours beyond Be Kafi; (Obermeyer, op. cit., p. 268)]. This is cited to show how far a disciple escorted his teacher.
(38) II Kings II, 23. 'He went up' implies that he was unaccompanied.
(39) He had sweetened the waters in that place (ibid. 19ff.) and so had caused loss to the people of the vicinity who had profited by selling drinkable water. Hence the ill-feeling against him.
(40) 'Little' appears to be superfluous.
(41) Because they worried about their livelihood since they could no longer sell water.
(42) Ibid. V, 2.
(43) Na'arah implies that she was young (v. Glos.).
(44) Therefore it is suggested that in the other verse ne'arim means 'men of Ne'uran'. In Josh. XVI, 7 there is a town called Naarath.
(45) It is merely stated 'out of the land of Israel', so Na'arah could possibly indicate a place name.
(46) We gather from the context that the children belonged to Jericho.
(47) II Kings II, 24.
(48) It was believed that the Rabbis were endowed with this power and the Talmud relates several anecdotes on the subject.
(49) When cohabitation is forbidden.

(50) Lit., ‘he saw they had a belorith’. They aped heathen manners. On belorith v. Sanh. (Sonc. ed.) p. 114. n. 5.
(51) So why should they have perished on that account?
(52) II Kings II, 24.

Talmud - Mas. Sotah 47a

Rab and Samuel [differ in their interpretation]; one said it was a miracle, while the other said it was a miracle within a miracle. He who said it was a miracle did so because there was a forest but there were no bears;[1] he who said it was a miracle within a miracle did so because there was no forest nor were there any bears. [But according to the latter interpretation] there need have been [provided] bears but not a forest! — [It was required] because [the bears] would have been frightened.[2]

R. Hanina said: On account of the forty-two sacrifices which Balak, king of Moab, offered,[3] were forty-two children cut off from Israel. But it is not so; for Rab Judah has said in the name of Rab: Always should a man occupy himself with Torah and the commandments even though it be not for their own sake,[4] for from [occupying himself with them] not for their own sake he comes to do so for their own sake; because as a reward for the forty-two sacrifices which Balak, king of Moab, offered,[5] he merited that Ruth should issue from him and from her issued Solomon concerning whom it is written: A thousand burnt-offerings did Solomon offer![6] And R. Jose b. Honi said: Ruth was the daughter of Eglon the son of Balak![7] — Nevertheless his desire was to curse Israel.[8] And the men of the city said unto Elisha, Behold, we pray thee, the situation of this city is pleasant, as my lord seeth etc.[9] [But how could it be so] since 'the water is naught and the land miscarrieth'! What, then, was its pleasantness? — R. Hanin said: The favour of a place in the estimation of its inhabitants. R. Johanan said: There are three kinds of favour: the favour of a locality in the estimation of its inhabitants, the favour of a woman In the estimation of her husband, and the favour of an article in the estimation of its purchaser.

Our Rabbis taught: Elisha was afflicted with three illnesses: one because he stirred up the bears against the children, one because he thrust Gehazi away with both his hands, and one of which he died; as it is said: Now Elisha was fallen sick of his sickness whereof he died.[10]

Our Rabbis have taught: Always let the left hand thrust away and the right hand draw near. Not like Elisha who thrust Gehazi away with both his hands (and not like R. Joshua b. Perahiah who thrust one of his disciples away with both his hands).[11] How is it with Elisha? As it is written: And Naaman said: Be content, take two talents,[12] and it is written: And he said unto him, Went not my heart with thee when the man turned again from his chariot to meet thee? Is it a time to receive money, and to receive garments, and oliveyards, and sheep and oxen, and manservants and maidservants?[13] But had he received all these things? Silver and garments were what he had received! — R. Isaac said: At that time Elisha was engaged [in the study of the Law concerning] the eight kinds of [unclean] creeping things;[14] so he said to [Gehazi], 'You wicked person, the time has arrived for you to receive the reward for [studying the law of] the eight creeping things.'[15] The leprosy therefore of Naaman shall cleave unto thee and unto thy seed for ever.[16] Now there were four leprous men[17] — R. Johanan said: This refers to Gehazi and his three sons. And Elisha came to Damascus[18] — why did he go there?[19] — R. Johanan said: He went to induce Gehazi to repent but he refused. He said to him, 'Repent'; but he replied: 'Thus have I received from thee that whoever sinned and caused others to sin is deprived of the power of doing penitence'. What had he done? Some say: He applied a loadstone to the idolatrous image of Jeroboam[20] and suspended it between heaven and earth. Others say: He engraved upon it the Name [of God] so that it used to exclaim, 'I [am the Lord thy God]' and 'Thou shalt have no [other God beside me]' — Still others say: He drove the Rabbis from before him, as it is written: And the sons of the prophets said unto Elisha, Behold now, the place where we dwell before thee is too strait for us[21] — hence, up to then it had not been too strait.

What[22] was the incident with R. Joshua b. Perahiah? — When King Jannaeus[23] put the Rabbis to death, Simeon b. Shetah was hid by his sister, whilst R. Joshua b. perahiah fled to Alexandria in Egypt. When there was peace,[24] Simeon b. Shetah sent [this message to him]: 'From me, Jerusalem,

the Holy city, to thee Alexandria in Egypt. O my sister, my husband[25] dwelleth in thy midst and I abide desolate'. [R. Joshua] arose and came back and found himself in a certain inn where they paid him great respect. He said: 'How beautiful is this 'aksania'![26] One of his disciples[27] said to him, 'My master, her eyes are narrow!' He replied to him, 'Wicked person! Is it with such thoughts that thou occupiest thyself !' He sent forth four hundred horns and excommunicated him.[28] [The disciple] came before him on many occasions, saying'Receive me'; but he refused to notice him. One day while [R. Joshua] was reciting the Shema', he came before him. His intention was to receive him and he made a sign to him with his hand, but the disciple thought he was repelling him. So he went and set up a brick and worshipped it. [R. Joshua] said to him, 'Repent'; but he answered him, 'Thus have I received from thee that whoever sinned and caused others to sin is deprived of the power of doing penitence'. A Master has said: The disciple practised magic and led Israel astray.

It has been taught: R. Simeon b. Eleazar says: Also human nature[29] should a child and woman thrust aside with the left hand and draw near with the right hand.[30]

MISHNAH. IF THE MURDERER WAS DISCOVERED BEFORE THE HEIFER'S NECK WAS BROKEN, IT GOES FREE AND FEEDS WITH THE HERD; BUT IF AFTER THE HEIFER'S NECK WAS BROKEN, IT IS BURIED IN THAT PLACE BECAUSE IT CAME THERE FROM THE OUTSET IN CONNECTION WITH A MATTER OF DOUBT,[31] AND ATONED FOR THE DOUBT WHICH IS NOW GONE. IF THE HEIFER'S NECK WAS BROKEN AND AFTERWARDS THE MURDERER IS DISCOVERED, BEHOLD HE IS EXECUTED.

IF ONE WITNESS SAYS 'I SAW THE MURDERER' AND ONE WITNESS SAYS 'YOU DID NOT SEE HIM';[32] OR IF A WOMAN SAYS 'I SAW HIM' AND ANOTHER WOMAN SAYS 'YOU DID NOT SEE HIM', THEY BREAK ITS NECK. IF ONE WITNESS SAYS 'I SAW HIM' AND TWO SAY 'YOU DID NOT SEE HIM', THEY BREAK ITS NECK. IF TWO SAY 'WE SAW HIM' AND ONE SAYS TO THEM 'YOU DID NOT SEE HIM', THEY DO NOT BREAK ITS NECK.[33] WHEN MURDERERS MULTIPLIED THE CEREMONY OF BREAKING A HEIFER'S NECK WAS DISCONTINUED. THAT WAS WHEN ELIEZER B. DINAI, ALSO CALLED TEHINAH B. PERISHAH, APPEARED;[34] HE WAS AFTERWARDS RENAMED 'SON OF THE MURDERER — WHEN ADULTERERS MULTIPLIED THE CEREMONY OF THE BITTER WATER WAS DISCONTINUED AND IT WAS R. JOHANAN B. ZAKKAI WHO DISCONTINUED IT, AS IT IS SAID, I WILL NOT PUNISH YOUR DAUGHTERS WHEN THEY COMMIT WHOREDOM, NOR YOUR BRIDES WHEN THEY COMMIT ADULTERY, FOR THEY THEMSELVES ETC.[35] WHEN JOSE B. JOEZER OF ZEREDAH AND JOSE B. JUDAH OF JERUSALEM DIED, THE GRAPE-CLUSTERS[36] CEASED, AS IT IS SAID, THERE IS NO CLUSTER TO EAT; MY SOUL DESIRETH THE FIRST RIPE FIG.[37]

JOHANAN THE HIGH PRIEST[38] BROUGHT TO AN END THE CONFESSION MADE AT THE PRESENTATION OF THE TITHE.[39] HE ALSO ABOLISHED THE WAKERS AND THE KNOCKERS[40]

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(1) These were miraculously created for the occasion.

(2) If there was no forest provided for them in which they could hide, they would not have dared to attack the children.

(3) Num. XXIII, 1, 14, 29.

(4) Without the expectation of reward.

(5) Although he did not offer them for their own sake.

(6) I Kings lii, 4. V. Hor. (Son. ed.) p. 75.

(7) So this was Balak's reward and not the death of the children.

(8) And so he had his reward in the death of these children.

(9) II Kings II, 19.

(10) Ibid. XIII, 14. Sick and sickness denote two, apart from his fatal illness.

(11) MSS. and old editions read Jesus the Nazarene. R. T. Herford sees in Gehazi a hidden reference to Paul. Cf. his Christianity in Talmud and Midrash, pp. 97ff.
(12) II Kings V, 23.
(13) Ibid. 26.
(14) Name of the Chapter in Mishnah Shabbath, XIV, I, cf. Lev. XI, 29ff.
(15) Referring to the eight kinds of presents he had accepted. That will be his reward in this world so that he may be punished in the Hereafter. For a fuller version v. Sanh. (Sonc. ed.) p. 735.
(16) II Kings V, 27. 'For ever' indicates the World to Come.
(17) II Kings VII, 3.
(18) Ibid. VIII, 7.
(19) V. Sanh. (Sonc. ed.) p. 734, n. 8.
(20) Cf. I Kings XII, 28.
(21) II Kings VI, I.
(22) The following paragraph is deleted in censored editions, v. Sanh. (Sonc. ed.) p. 736, n. 2.
(23) Alexander Jannaeus, king of Israel from 104 to 78 B.C.E., a persecutor of the Pharisees. The chronological discrepancy is obvious since he lived a century before Jesus, v. however, Sanh. (Sonc. ed.) loc. cit.
(24) On his death-bed the King advised the Queen to put her confidence in the Pharisees. V. Josephus, Ant. XIII, XV, 5.
(25) His teacher, R. Joshua.
(26) The word means 'inn' and 'female innkeeper'. The Rabbi intended it in the first sense, Jesus in the second.
(27) MSS.: 'Jesus'.
(28) A horn is blown at the ceremony of excommunication. The large number used on this occasion indicated the extreme severity of the penalty.
(29) One must learn to control it so as to avoid extremes.
(30) [One must not be too severe in chiding a child or reproving a wife lest they be driven to despair.]
(31) The unknown murderer.
(32) [I.e., 'I was present with you at the time of the alleged murder and testify that it did not take place.' J. reads 'I did not see it', and similarly in the following clause substitutes the first person for the second.]
(33) The single witness does not upset the evidence of two, so there is no doubt about the murderer.
(34) He was a notorious bandit who committed numerous murders; (v. Josephus, Ant. XX, 6, I; 8, 5.)
(35) Hos. IV, 14.
(36) Descriptive of Rabbis of exceptional learning. These two Rabbis flourished in the first half of the second cent. B.C.E. and were the first of the Zugoth or 'Pairs' of teachers who preserved and passed on the Torah-lore accumulated by the men of the Great Assembly. [Lauterbach. J.Z. (JQR VI, p. 32, n. 34) explains this to mean that with his death teachers ceased to act as a body, reporting only such teachings as represented the opinion of the whole group to which they belonged, but began to report rulings of individual teachers.]
(37) Micah VII, 1.
(38) John Hyrcanus who reigned over Judea from 135 to 104 B.C.E.
(39) Cf. Deut. XXVI, 13f.
(40) These terms are explained in the Gemara.

Talmud - Mas. Sotah 47b

. UP TO HIS DAYS THE HAMMER USED TO STRIKE[1] IN JERUSALEM, AND IN HIS DAYS THERE WAS NO NEED TO INQUIRE ABOUT DEMAI.[2]

GEMARA. Our Rabbis taught: Whence is it that if the heifer's neck had been broken, and the murderer is afterwards discovered, they do not set him free? There is a text to state, And no expiation can be made for the land for the blood that is shed therein, but by the blood of him that shed it.[3]

IF ONE WITNESS SAYS, 'I SAW THE MURDERER' etc. The reason [why his evidence is not accepted] is because there is somebody who contradicts him; therefore if there is nobody who

contradicts him, one witness is believed. Whence is this? — As our Rabbis taught: And it be not known who hath smitten him[4] — hence if it be known who had smitten him, even by one person at the other end of the world, they do not break the neck. R. Akiba says: Whence is it that if the Sanhedrin saw a person commit murder, but they do not recognise him, the neck of the heifer is not broken? There is a text to state, Neither have our eyes seen it;[5] but [in this case] they had seen it.[6]

Now that you admit that one witness is believed, how is it possible for another individual to contradict him? Surely 'Ulla has said: Wherever the Torah accepts the testimony of one witness, he is regarded as two [witnesses], but the evidence of one is not regarded as the evidence of two![7] 'Ulla can reply to you, Read in the Mishnah: They do not break its neck. Similarly said R. Isaac, Read in the Mishnah: They do not break its neck; but R. Hiyya said: Read in the Mishnah: They break its neck. Then R. Hiyya is in conflict with the teaching of 'Ulla! — There is no contradiction, one case referring to evidence given simultaneously[8] and the other when one witness follows the others.[9]

The Mishnah declares: IF ONE WITNESS SAYS 'I SAW THE MURDERER' AND TWO SAY 'YOU DID NOT SEE HIM', THEY BREAK ITS NECK. Consequently if there is one against one, they do not break its neck; and this is a refutation of R. Hiyya's statement![10] — But according to your own argument, cite the con tinuation: IF TWO SAY 'WE SAW HIM' AND ONE SAYS TO THEM 'YOU DID NOT SEE HIM','THEY DO NOT BREAK ITS NECK. Consequently if — there is one against one, they do break its neck![11] But our Mishnah deals entirely with disqualified witnesses,[12] and is in accord with R. Nehemiah who said,[13] Wherever the Torah accepts the testimony of one witness, [the decision] follows the majority of persons [who testify], so that two women against one woman is identical with two men against one man. But there are some who declare that wherever a competent witness came [and testified] first, even a hundred women are regarded as equal to one witness; and with what circumstance are we dealing here? For example, if it was a woman who came first [and testified]; and R. Nehemiah's statement is to be construed thus: R. Nehemiah Says: Wherever the Torah accepts the testimony of one witness, [the decision] follows the majority of persons [who testify], so that two women against one woman is identical with two men against one man, but two women against one man is like half and half. Why, then, have we two teachings concerning disqualified witnesses?[14] What you might have said was that when we follow the majority of persons [who testify] it is for taking the severer view, but to take the lenient view we do not follow [the majority]. Therefore [the Mishnah] informs us [of one case where the neck is broken and one where it is not, and in each the majority is followed].

WHEN MURDERERS MULTIPLIED etc. Our Rabbis taught: When murderers multiplied the ceremony of breaking a heifer's neck was discontinued, because it is only performed in a case of doubt; but when murderers multiplied openly, the ceremony of breaking a heifer's neck was discontinued.

WHEN ADULTERERS MULTIPLIED etc. Our Rabbis taught: And the man shall be free from iniquity[15] — at the time when the man is free from iniquity, the water proves his wife; but when the man is not free from iniquity, the water does not prove his wife. Why, then, [was it necessary for the Mishnah to add]: AS IT IS SAID, 'I WILL NOT PUNISH YOUR DAUGHTERS WHEN THEY COMMIT WHOREDOM etc'? Should you say that his own iniquity [prevents the water from proving his wife] but the iniquity of his sons and daughters does not, come and hear: 'I WILL NOT PUNISH YOUR DAUGHTERS WHEN THEY COMMIT WHOREDOM, NOR YOUR BRIDES WHEN THEY COMMIT ADULTERY'. And should you say that his sin with a married woman [prevents the water from proving his wife] but not if it was with an unmarried woman, come and hear: FOR THEY THEMSELVES GO ASIDE WITH WHORES AND WITH THE HARLOTS etc.' What means And the people that doth not understand shall be overthrown?[16] R. Eleazar said: The prophet spoke to Israel, If you are scrupulous with yourselves, the water will prove your wives; otherwise the water will not prove your wives.

When hedonists multiplied, justice became perverted,[17] conduct deteriorated and there is no satisfaction [to God] in the world. When they who displayed partiality in judgment multiplied, the command Ye shall not be afraid [of the face of man][18] became void and Ye shall not respect [persons in judgment][19] ceased to be practised; and people threw off the yoke of heaven and placed upon themselves the yoke of human beings. When they who engaged in whisperings in judgment[20] multiplied, fierceness of [the divine] anger increased against Israel and the Shechinah departed; because it is written: He judgeth among the judges.[21] When there multiplied [men of whom it is said] Their heart goeth after their gain,[22] there multiplied they who call evil good and good evil.[23] When there multiplied they 'who call evil good and good evil', woes[24] increased in the world. When they who draw out their spittle[25] multiplied, the arrogant increased, disciples diminished, and Torah went about [looking] for them who would study it. When the arrogant multiplied, the daughters of Israel began to marry arrogant men, because our generation looks only to the outward appearance. But that is not so; for a Master has declared: An arrogant person is not acceptable even to the members of his household, as it is said: A haughty man one abideth not at home[26] — i.e., even in his own house! — At first they jump round him, but in the end he becomes repugnant to them.

When there multiplied they who forced their goods upon householders,[27] bribery increased as well as miscarriage of justice, and happiness ceased. When there multiplied [judges] who said 'I accept your favour' and 'I shall appreciate your favour', there was an Increase of Every man did that which was right in his own eyes;[28] common persons were raised to eminence, the eminent were brought low, and the kingdom [of Israel] deteriorated more and more. When envious men and plunderers [of the poor] multiplied, there increased they who hardened their hearts and closed their hands from lending [to the needy], and they transgressed what is written in the Torah, viz., Beware that there be not etc.[29] When there multiplied women who had stretched forth necks and wanton eyes,[30] [the need] increased for the bitter water but it ceased [to be used]. When receivers of gifts multiplied, the days [of human life] became fewer and years were shortened; as it is written: But he that hateth gifts shall live.[31] When the haughty of heart multiplied, dissensions increased in Israel. When the disciples of Shammai and Hillel multiplied who had not served [their teachers] sufficiently, dissensions increased in Israel and the Torah became like two Toroth. When there multiplied they who accepted charity of Gentiles, Israel became on top and they below, Israel went forward and they backward.[32]

WHEN JOSE B. JOEZER DIED etc. What does 'grape-clusters' [eshkoloth] mean? — Rab Judah said in the name of Samuel: A man in whom is everything [ish she-hakol bo].

JOHANAN THE HIGH PRIEST BROUGHT TO AN END THE CONFESSION MADE AT THE PRESENTATION OF THE TITHE etc. What was his reason? — R. Jose b. Hanina said: Because people were not presenting it according to the regulation; for the Allmerciful said that they should give it to the Levites

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(1) V. note on the Gemara infra.

(2) Produce about which there is uncertainty whether it had been tithed. The Gemara will explain what is intended.

(3) Num. XXXV, 33.

(4) Deut. XXI, I.

(5) Ibid. 7.

(6) Consequently the ceremony is not performed.

(7) But according to the Mishnah, if one is contradicted by one, the former is not accepted and the neck is broken.

(8) Then one witness can contradict another.

(9) The evidence of the first witness having been accepted is regarded as that of two.

(10) He proposed that when one is against one the Mishnah should read: They break its neck.

(11) Which supports R. Hiyya and in apparent contradiction to the first clause.

(12) Women and slaves.

(13) What follows is quoted from supra 31b et seq., q.v. for notes.
(14) In the two clauses of our Mishnah which have been explained as referring to the evidence of women and slaves.
(15) Num. V, 31.
(16) Hos. IV, 14.
(17) Judges accepted bribes.
(18) Deut. I, 17.
(19) Ibid.
(20) To influence the judges in favour of one party.
(21) Ps. LXXXII, I, i.e., God is only with honest judges.
(22) Ezek. XXXIII, 31.
(23) Isa. V, 20.
(24) The word woe occurs frequently in Isa. V.
(25) As a mark of ostentation.
(26) Hab. II, 5 sic.
(27) Judges who compelled them to buy against their will.
(28) Judg. XVII, 6.
(29) Deut. XV, 9.
(30) Isa. III, 16.
(31) Prov. XV, 27.
(32) A euphemism for the reverse: Israel became below etc. This sentence has fallen out of the text in some modern editions.

Talmud - Mas. Sotah 48a

whereas we present it to the priests.[1] Then let them make the confession over the other tithes![2] — Resh Lakish said: Any household which does not make the confession over the first tithe may not make it over the other tithes. For what reason? — Abaye said: Because Scripture deals with that first;[3] This implies that they had separated it [before proceeding to the other tithes]. But surely it has been taught: He also annulled the confession and decreed in respect of demai;[4] because he sent [inspectors] throughout the Israelite territory and discovered that they only separated the great terumah[5] but as for the first and second tithes some fulfilled the law while others did not.[6] So he said to [the people], 'My sons, come, I will tell you this. Just as in [the neglect] of the "great terumah" there is mortal sin,[7] so with [the neglect] to present the terumah of the tithe and with the use of untithed produce there is mortal sin'. He thus arose and decreed for them that whoever purchases fruits from an 'Am ha-arez[8] must separate the first and second tithes therefrom. From the first tithe he separates the terumah of the tithe and gives it to a priest, and as for the second tithe he should go up and eat it in Jerusalem. With regard to the first tithe and the tithe of the poor[9] whoever demands them from his neighbour has the onus of proving [that they had not been already apportioned]![10] [Johanan] made two decrees: he abolished the confession [over the presentation of the first tithe] in the case of the Haberim[11] and decreed in regard to the demai[12] of the 'Amme ha-arez.[13]

HE ALSO ABOLISHED THE WAKERS. What does 'WAKERS' mean? — Rehabah said: The Levites used daily to stand upon the dais and exclaim, Awake, why sleepest Thou, O Lord?[14] He said to them, Does, then, the All-Present sleep? Has it not been stated: Behold, He that keepeth Israel shall neither slumber nor sleep![15] But so long as Israel abides in trouble and the Gentiles are in peace and comfort, the words 'Awake, why sleepest Thou, O Lord'? [should be uttered].[16]

AND KNOCKERS. What does 'KNOCKERS' mean? — Rab Judah said in the name of Samuel: They used to make an incision on the calf between its horns[17] so that the blood should flow into its eyes.[18] [Johanan] came and abolished the practice because it appeared as though [the animal had] a blemish. There is a Baraitha which teaches: They used to strike [the animal] with clubs as is the practice with idolatry. [Johanan] said to them, How long will you feed the altar with nebeloth![19]

[How could he have described the carcasses as] nebeloth when they had been properly slaughtered! — Rather [should they be described as] terefoth,[20] since the membrane of the brain may have been perforated. He [thereupon] arose and ordained rings for them in the ground.[21]

UP TO HIS DAYS THE HAMMER USED TO STRIKE IN JERUSALEM. On the intermediate days of the Festival.[22]

ALL HIS DAYS[23] THERE WAS NO NEED TO INQUIRE ABOUT DEMAI. As we have explained above.[24]

MISHNAH. WHEN THE SANHEDRIN CEASED [TO FUNCTION], SONG CEASED FROM THE PLACES OF FEASTING; AS IT IS SAID, THEY SHALL NOT DRINK WINE WITH A SONG ETC.[25]

WHEN THE FORMER PROPHETS[26] DIED, THE URIM AND THUMMIM[27] CEASED. WHEN [THE SECOND] TEMPLE WAS DESTROYED, THE SHAMIR AND NOPHETH ZUFIM[28] CEASED, AND MEN OF FAITH DISAPPEARED FROM ISRAEL; AS IT IS SAID, HELP, LORD, FOR THE GODLY MAN CEASETH ETC.[29] RABBAN SIMEON B. GAMALIEL SAYS: R. JOSHUA TESTIFIED THAT FROM THE DAY THE TEMPLE WAS DESTROYED, THERE IS NO DAY WITHOUT A CURSE, THE DEW HAS NOT DESCENDED FOR A BLESSING, AND THE FLAVOUR HAS DEPARTED FROM THE FRUITS. R. JOSE SAYS: THE FATNESS[30] WAS ALSO REMOVED FROM THE FRUITS. R. SIMEON B. ELEAZAR SAYS; [THE CESSATION OF] PURITY HAS REMOVED TASTE AND FRAGRANCE [FROM FRUITS]; [THE CESSATION OF] THE TITHES HAS REMOVED THE FATNESS OF CORN. BUT THE SAGES SAY: IMMORALITY AND WITCHCRAFT DESTROYED EVERYTHING.

GEMARA. How do we know that the text, [‘They shall not drink wine with a song’] — applies to the time when the Sanhedrin ceased? — R. Huna, son of R. Joshua, said: Because Scripture states: The elders have ceased from the gate, the young men from their music.[31]

Rab said: The ear which listens to song should be torn off. Raba said: When there is song in a house there is destruction on its threshold; as it is stated: Their voice shall sing in the windows, desolation shall be in the thresholds, for He hath laid bare the cedar work.[32] What means ‘for he hath laid bare [‘erah] the cedar work’? — R. Isaac said: Is a house panelled with cedar-wood a city [‘irah]?[33] But [the meaning is] even a house panelled with cedars will be overthrown [mithro'ea’].[34] R. Ashi said: Infer from this that when destruction begins, it begins on the threshold; as it is stated: ‘Desolation shall be in the thresholds’ — Or if you will, deduce it from here: And the gate is smitten with destruction.[35] Mar, son of R. Ashi said: I have personally seen him,[36] and he gores like an ox.

R. Huna said: The singing of sailors and ploughmen is permitted, but that of weavers is prohibited.[37] R. Huna abolished singing, and a hundred geese were priced at a zuz[38] and a hundred se'ahs of wheat at a zuz and there was no demand for them [even at that price];[39] R. Hisda came and [ordered R. Huna's edict to be] disregarded, and a goose was required [even at the high price of] a zuz but was not to be found.[40] R. Joseph said: When men sing and women join in it is licentiousness; when women sing and men join in it is like fire in tow.[41] For what practical purpose is this mentioned? — To abolish the latter before the former.[42]

R. Johanan said: Whoever drinks to the accompaniment of the four musical instruments[43] brings five punishments to the world; as it is stated: Woe unto them that rise up early in the morning, that they may follow strong drink, that tarry late into the night, till wine inflame them! And the harp, and the lute, the tabret and the pipe, and wine, are in their feasts; but they regard not the work of the Lord.[44] What is written after this? ‘Therefore My people are gone into captivity for lack of

knowledge' — they therefore cause captivity in the world; 'and their honourable men are famished' — they therefore bring hunger into the world; and their multitude are parched with thirst[45] — they therefore cause Torah to be forgotten by its students. And the mean man is bowed down and the great man is humbled[46] — they therefore cause humiliation to the haters of God[47] — and 'man' signifies none other than the Holy One, blessed be He, as it is said: The Lord is a man of war,'[48] 'and the eyes of the lofty are humbled' they therefore cause the humiliation of Israel. And what is written after that? Therefore

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(1) Deut. XXVI, 13 requires that the first tithe should be given to the Levites; but it is related in Yeb. 86b that because the Levites refused to join in the return from Babylon, Ezra punished them by having the tithe transferred to the priests.

(2) The second and poor tithes.

(3) The Rabbis explain the verse as follows: 'Thou shalt give it unto the Levite' i.e., the first tithe; 'and unto the stranger' i.e., the tithe of the poor; 'within thy gates' i.e., the second tithe.

(4) The reason given by R. Jose b. Hanina.

(5) The part which is separated in the first instance is the 'great terumah' or offering for the priests, to distinguish it from the 'terumah of the tithe', i.e., the tenth part given by the Levite of the tithe he receives, to the priest; then the first tithe is taken from the remainder for the Levites; after that the second tithe is removed to be eaten by the owner in Jerusalem (Deut. XIV, 22ff.); and each third year a tithe is allocated to the poor (ibid. XXVI, 12); v. Glos., s.v. Terumah.

(6) I. H. Weiss (Dor I p. 119) suggests that at that time there was a growing aversion against paying the tithe to the Levites, firstly because their status had changed from the period when the land was apportioned among the tribes and they had no share; and secondly because part of the produce had to be paid as a tax to the Government and the law of the tithe pressed very heavily upon the people.

(7) I.e., the penalty involved is death at the hands of Heaven.

(8) V. p. 110 n. 1.

(9) Since they are non-holy and may be eaten by any person.

(10) This shows that the people neglected the separation of the tithe to the Levite.

(11) The opposite of the 'Amme ha-arez. They were most scrupulous in the allocation of the tithes. The reason for his edict was, as stated, because the tithe was presented to a priest and not a Levite.

(12) 'Doubtful produce', corn purchased from a farmer about which there is a doubt whether the tithes had been apportioned.

(13) Because he learnt from his inspectors that the law was being. neglected. It could therefore be safely assumed that the 'Amme ha-arez, were not observing it. Consequently if one purchased their produce, he had the responsibility of apportioning the tithes.

(14) Ps. XLIV, 24.

(15) Ibid. CXXI, 4.

(16) Since his reign was blessed with peace and prosperity, he felt it was unnecessary for the Levites to use the words.

(17) Before it was slaughtered for the altar.

(18) To prevent it from seeing what was to happen so that it should not struggle.

(19) I.e., animals which died not by the act of ritual slaughter.

(20) Animals found to possess a disqualification during the examination which followed the act of slaughter.

(21) To hold the animals fast so that they should not struggle, and the other methods were discontinued.

(22) I.e., work used to be done on those days, which were a semi-festival, and he abolished the practice.

(23) [The actual reading in our Mishnah is 'IN HIS DAYS'.]

(24) The purchaser had the responsibility of separating the tithe himself, so there was no need to inquire whether the produce had been tithed before the sale.

(25) Isa. XXIV, 9' The authority of the Sanhedrin was ended by the Roman General Gabinius in the middle of the first cent. B.C.E. Cf. Josephus, Ant. XIV, v. 4.

(26) The phrase is explained in the Gemara.

(27) V. Ex. XXVIII, 30.

(28) Shamir is the name of a worm which tradition relates had the power of splitting the hardest stone. The Gemara will explain Nopheth Zufim, a phrase occurring in Ps. XIX, 11, lit., 'the droppings of the honeycomb'.

(29) Ps. XII, 2. That the second and not the first Temple is intended here is proved in Tosaf. to Git!. 68a.

(30) Nourishing quality.
(31) Lam. V, 14. The elders sat in the gate of the city to judge.
(32) Zeph. II, 14. The last clause is understood as: even a cedar house, i.e., even the strongly-built house, will be destroyed.
(33) So Maharsha. Rashi explains differently.
(34) Hath laid bare ('erah) is connected with a root רעע 'to be razed'.
(35) Isa. XXIV, 12.
(36) The demon of destruction, v. B.K. 21a.
(37) Singing helps the former in their work, but with the latter it is done out of frivolity.
(38) A small coin worth about sevenpence.
(39) Through the decline of feasting.
(40) The demand for geese had become so great.
(41) A woman's singing aroused sexual passion. The latter is more serious, because it implies a wilful act on the part of the men to listen to the female voices.
(42) If both cannot be suppressed at the same time, the latter should receive more attention as being the worse of the two.
(43) Mentioned in the verse to be quoted.
(44) Isa. V, 11f.
(45) Ibid. 23.
(46) Ibid. 15.
(47) A euphemism for God Himself.
(48) Ex. XV, 3.

Talmud - Mas. Sotah 48b

Sheol hath enlarged her desire and opened her mouth without measure; and their glory, and their multitude, and their pomp, and he that rejoiceth among them, descend into it.[1]

WHEN THE FORMER PROPHETS DIED. Who are the former prophets? — R. Huna said: They are David, Samuel and Solomon. R. Nahman said: During the days of David, they were Sometimes successful[2] and at other times unsuccessful; for behold, Zadok consulted it and succeeded, whereas Abiathar consulted it and was not successful, as it is said. And Abiathar went up.[3] Rabbah b. Samuel objected: [It is written], And he[4] set himself to seek God all[5] the days of Zechariah who had understanding in the vision of God.[6] Was this not by means of the urim and Thummim?[7] — No, it was through the prophets.

Come and hear: When the first Temple was destroyed — the cities with pasture land[8] were abolished, the Urim and Thummim ceased, there was no more a king from the House of David; and if anyone incites you to quote, And the governor said unto them that they should not eat of the most holy things till there stood up a priest with Urim and Thummim,[9] reply to him: [It is only a phrase for the very remote future] as when one man says to another, 'Until the dead revive and the Messiah, son of David, comes'! — But, said R. Nahman: Who are the former prophets? [The term 'former'] excludes Haggai, Zechariah, and Malachi who are the latter [prophets]. For our Rabbis have taught: When Haggai, Zechariah and Malachi died, the Holy Spirit[10] departed from Israel; nevertheless they made use of the Bath Kol.[11] On one occasion [some Rabbis] were sitting in the upper chamber of Gurya's house in Jericho; a Bath Kol was granted to them from heaven which announced, 'There is in your midst one man who is deserving that the Shechinah should alight upon him, but his generation is unworthy of it'. They all looked at Hillel the elder; and when he died, they lamented over him, 'Alas, the pious man! Alas, the humble man! Disciple of Ezra!' On another occasion they were sitting in an upper chamber in Jabneh; a Bath Kol was granted to them from heaven which announced, 'There is in your midst one man who is deserving that the Shechinah should alight upon him, but his generation is unworthy of it'. They all looked at Samuel the Little;[12] and when he died, they lamented over him, 'Alas, the humble man! Alas, the pious man! Disciple of Hillel!' At the time

of his death he also said,[13] 'Simeon and Ishmael[14] [are destined] for the sword and their colleagues for death, and the rest of the people for spoliation, and great distress will come upon the nation.' They also wished to lament over R. Judah b. Baba,[15] 'Alas, the pious man! Alas, the humble man!' But the times were disturbed and they could not lament publicly over those who had been slain by the government.

WHEN [THE SECOND] TEMPLE WAS DESTROYED, THE SHAMIR CEASED etc. Our Rabbis taught: With the Shamir Solomon built the Temple,[16] as it is said: And the house, when it was in building, was built of stone made ready at the quarry.[17] The words are to be understood as they are written;[18] such is the statement of R. Judah. R. Nehemiah asked him, Is it possible to say so? Has it not been stated: All these were of costly stones . . . sawed with saws![19] If that be so, why is there a text to State, There was neither hammer, nor axe nor any tool of iron heard in the house, while it was in the building?[20] [It means] that they prepared them outside and brought them within. Rabbi said: The statement of R. Judah is probable in connection with the stones of the Sanctuary, and the statement of R. Nehamiah in connection with [Solomon's] house. For what purpose, then, according to R. Nehemiah, was the Shamir necessary? — It was required as taught in the following: We may not write with ink upon these stones,[21] because it is said: Like the engravings of a signet,[22] nor cut into them with a knife because it is said: In their settings;[23] but he writes with ink upon them, shows the Shamir [the written strokes] on the outside, and these split of their own accord,[24] like a fig which splits open in summer and nothing at all is lost, or like a valley which splits asunder in the rainy season and nothing at all is lost.

Our Rabbis taught: The Shamir is a creature about the size of a barley-corn, and was created during the six days of Creation.[25] No hard substance can withstand it. How is it kept? They wrap it in tufts of wool and place it in a leaden tube full of barley-bran.

R. Ammi said: When the first Temple was destroyed, fringed[26] silk and white glass[27] ceased to be used. There is a teaching to the same effect: When the first Temple was destroyed, fringed silk and white glass and iron chariots ceased to be used. Some say: Also wine-jelly[28] which comes from Senir[29] and resembles cakes of figs.

AND NOFETH ZUFIM. What means NOFETH ZUFIM? — Rab said: The fine flour which floats [zofah] upon the top of a sieve [nafah] and resembles dough kneaded with honey and oil. Levi said: It is two loaves attached to [opposite sides of] an oven which keep on swelling until they touch one another.[30] R. Joshua b. Levi said: It is the honey which comes from the hills [zofim].[31] How is this known?[32] — As R. Shesheth[33] translated:[34] When the bees spring forth and fly in the heights of the world and collect honey from the herbage on the mountains.

We have learnt there:[35] Whatever is poured out[36] is clean with the exception of thick honey and batter.[37] What means zifim [thick]? — R. Johanan said: Honey used for adulteration [ziyyef]; and Resh Lakish said: It is named after its place, as it is written: Zif, Telem and Bealoth.[38] You may similarly quote, When the Zifites came and said to Saul, Doth not David etc.[39] What means Zifites? — R. Johanan said: Men who falsify their words; and R. Eliezer says: They are named after their place, as it is written: Zif Telem, and Bealoth.[38]

AND MEN OF FAITH DISAPPEARED. R. Isaac said: These are men who had faith in the Holy One, blessed be He. For it has been taught: R. Eliezer the Great[40] declares: Whoever has a piece of bread in his basket and Says. 'What shall I eat tomorrow?' belongs only to them who are little in faith. And that is what R. Eleazar said: What means that which is written: For who hath despised the day of small things?[41] [It signifies,] What is the cause that the tables of the righteous are despoiled in the Hereafter?[42] The smallness [of faith] which was in them, that they did not trust in the Holy One, blessed be He. Raba said: They are the little ones[43] among the children of the wicked of Israel

(1) Isa. V, 14.
(2) In obtaining knowledge of the future by consulting the Urim and Thummim.
(3) II Sam. XV, 24. This is explained by the Rabbis: he retired from the priesthood because he received no reply from the Urim and Thummim.
(4) Uzziah, King of Judah.
(5) [M.T. reads 'in the days of.]
(6) II Chron. XXVI, 5.
(7) Therefore there were Urim and Thummim in the days of King Uzziah, contrary to the view of R. Huna.
(8) For the Levites; v. Num. XXXV, 2.
(9) Ezra II, 63. From this verse it would appear that the Urim and Thummim continued up to the destruction of the first Temple, contrary to the view of R. Huna.
(10) Divine inspiration.
(11) V. Gios.
(12) A famous pupil of Hillel who died about a decade after the destruction of the second Temple.
(13) Under the influence of the Holy Spirit.
(14) Probably Simeon b. Gamaliel and Ishmael b. Elisha who were put to death after the capture of Jerusalem. See the full discussion in R.T. Herford, op. cit., pp. 129ff.
(15) A victim of the Hadrianic Persecution. For further notes on this passage, v. Sanh. (Sonc. ed.) p. 46.
(16) V. Git. (Sonc. ed.) p. 323, n. 2.
(17) I Kings VI, 7. The Hebrew is 'perfect stone'.
(18) I.e., the stones were naturally in a hewn state, as though they had been cut in a quarry.
(19) Ibid. VII, 9 referring to Solomon's house.
(20) Ibid. VI, 7 referring to the Temple.
(21) On the ephod and High Priest's breastplate.
(22) Ex. XXVIII, 11.
(23) Ibid. 20. Lit., 'in their fullnesses', i.e., no part of the stones may be cut away.
(24) Through the action of the Shamir the stones are split open along the written lines without any part of the stones being cut away.
(25) According to Ab. v. 9 it was one of the ten things created in the twilight of the sixth day, before the first Sabbath.
(26) Perles, Etymol. Studien, p. 51, identifies the word with the Persian parand or barand.
(27) V. B.M. (Sonc. ed.) p. 184, n. 3.
(28) Lit., congealed wine; perhaps identical with 'wine mixed with snow (Neg. I, 2).
(29) A northern peak of Mt. Hermon mentioned in the Bible as famed for its cypresses.
(30) The dough is blessed and so increases in size. The loaves float (Zaf) in the space of the oven.
(31) There is another reading: zipya which Jastrow explains as the inner cells of the honeycomb.
(32) That bees gather honey from the hills.
(33) [Var. lec. 'R. Joseph', v. B.K. (Sonc. ed.) p. 9, n. 9.]
(34) The words 'as bees do' in Deut. I, 44.
(35) Nazir 50a.
(36) If something is poured from a clean vessel into an unclean vessel, what is in the former is not defiled by the fact that the latter is unclean.
(37) Being thick the outflow connects what is in the two vessels.
(38) Josh. XV. 24.
(39) Ps. LIV, 2 (in the E.V. it is part of the heading of the Psalm).
(40) Eliezer b. Hyrcanus.
(41) Zech. IV, 10.
(42) They do not receive their full reward.
(43) Children who died young.

Talmud - Mas. Sotah 49a

who despoil the verdict upon their fathers in the Hereafter, Saying before Him, 'Sovereign of the Universe! Since thou art about to exact punishment of them, why hast Thou blunted their teeth?'[1]

R. Elai b. Jebarekya said: Had it not been for the prayer of David, all Israel would have been sellers of rubbish,[2] as it is stated: Grant them esteem, O Lord.[3]

R. Elai b. Jebarekya also said: Had it not been for the prayer of Habakkuk, two disciples of the Sages would have to cover themselves with one garment[4] and occupy themselves with Torah; as it is stated: O Lord, I have heard the report of Thee and am afraid; O Lord, revive Thy work in the midst of the years[5] — read not 'in the midst of the years [bekereb shanim]' but in the drawing together of two [bekerub shenayim].[6]

R. Elai b. Jebarekya also said: If two disciples of the Sages proceed on a journey and there are no words of Torah between them, they are deserving of being burnt with fire; as it is stated: And it came to pass, as they still went on, that, behold, a chariot of fire etc.[7] The reason [why the chariot of fire appeared] was that there was discussion [of Torah between them]; hence if there had not been such discussion, they would have deserved to be burnt.

R. Elai b. Jebarekya also said: If two disciples of the Sages reside in the same city and do not support each other in [the study of] the law, one dies and the other goes into exile;[8] as it is stated: That the manslayer might flee thither, which slayeth his neighbour without knowledge,[9] and 'knowledge' means nothing but Torah, as it is stated: My people are destroyed for lack of knowledge.[10]

R. Judah, son of R. Hiyya said: Any disciple of the Sages who occupies himself with Torah in poverty will have his prayer heard; as it is stated: For the people shall dwell in Zion at Jerusalem; thou shalt weep no more; He will surely be gracious unto thee at the voice of thy cry; when He shall hear, He will answer thee,[11] and it continues, And the Lord will give you bread in adversity and water in affliction.[12] R. Abbahu said: They also satisfy him from the lustre of the Shechinah, as it is stated: Thine eyes shall see thy Teacher.[13] R. Aha b. Hanina said: Neither is the veil[14] drawn before him, as it is said: 'Thy teacher shall no more be hidden.'

RABBAN SIMEON B. GAMALIEL SAYS IN THE NAME OF R. JOSHUA:[15] FROM THE DAY THAT THE TEMPLE WAS DESTROYED, THERE IS NO DAY etc. Raba said: And the curse of each day is severer than that of the preceding, as it is stated: In the morning thou shalt say: Would God it were even! and at even thou shalt say: Would God it were morning.[16] Which morning [would they long for]? If I say the morning of the morrow, nobody knows what it will be. Therefore [it must be the morning] which had gone.[17] How, in that case, can the world endure?[18] — Through the doxology recited after the Scriptural reading,[19] and [the response of] 'May His great Name [be blessed]' [which is uttered in the doxology] after studying Aggada;[20] as it is stated: A land of thick darkness, as darkness itself, a land of the shadow of death, without any order.[21] Hence if there are Scriptural readings, it is illumined from the thick darkness.

THE DEW HAS NOT DESCENDED FOR A BLESSING AND THE FLAVOUR HAS DEPARTED FROM THE FRUITS etc. It has been taught: R. Simeon b. Eleazar Says: [The cessation of] purity has removed taste and fragrance [from fruits]; [the cessation of] tithes has removed the fatness of corn. R. Huna once found a juicy date which he took and wrapped in his mantle. His son, Rabbah, came and said to him, 'I smell the fragrance of a juicy date'. He said to him, 'My son, there is purity in thee',[22] and gave it to him. Meanwhile [Rabbah's] son, Abba, came; [Rabbah] took it and gave it to him. [R. Huna] said to [Rabbah], 'My son, thou hast gladdened my heart[23] and blunted my teeth'.[24] That is what the popular proverb Says, 'A father's love is for his children; the children's love is for their own children.' R. Aha b. Jacob reared R. Jacob, his

daughter's son. When he grew up, [the grandfather] said to him, 'Give me some water to drink'. He replied: 'I am not thy son'.[25] That is what the popular proverb says: 'Rear me, rear me;[26] I am thy daughter's son'.

MISHNAH. DURING THE WAR WITH VESPASIAN[27] THEY [THE RABBIS] DECREED AGAINST [THE USE OF] CROWNS WORN BY BRIDEGROOMS AND AGAINST [THE USE OF] THE DRUM.[28] DURING THE WAR OF QUIETUS[29] THEY DECREED AGAINST [THE USE OF] CROWNS WORN BY BRIDES AND THAT NOBODY SHOULD TEACH HIS SON GREEK. DURING THE FINAL WAR[30] THEY DECREED THAT A BRIDE SHOULD NOT GO OUT IN A PALANQUIN[31] IN THE MIDST OF THE CITY, BUT OUR RABBIS DECREED THAT A BRIDE MAY GO OUT IN A PALANQUIN IN THE MIDST OF THE CITY.

WHEN R. MEIR[32] DIED, THE COMPOSERS OF FABLES CEASED. WHEN BEN AZZAI[33] DIED, THE ASSIDUOUS STUDENTS [OF TORAH] CEASED. WHEN BEN ZOMA[34] DIED, THE EXPOSITORS CEASED.[35] WHEN R. AKIBA[36] DIED, THE GLORY OF THE TORAH CEASED. WHEN R. HANINA B. DOSA DIED, MEN OF DEED[37] CEASED. WHEN R. JOSE KETANTA DIED, THE PIOUS MEN CEASED; AND WHY WAS HIS NAME CALLED KETANTA? BECAUSE HE WAS THE YOUNGEST[38] OF THE PIOUS MEN.[39] WHEN R. JOHANAN B. ZAKKAI[40] DIED, THE LUSTRE OF WISDOM CEASED.[41] WHEN RABBAN GAMALIEL THE ELDER DIED, THE GLORY OF THE TORAH CEASED, AND PURITY AND ABNEGATION PERISHED. WHEN R. ISHMAEL B. FABI[42] DIED, THE LUSTRE OF THE PRIESTHOOD CEASED. WHEN RABBI DIED, HUMILITY AND FEAR OF SIN CEASED.[43] R. PHINEAS B. JAIR SAYS: WHEN [THE SECOND] TEMPLE WAS DESTROYED, SCHOLARS[44] AND NOBLEMEN WERE ASHAMED AND COVERED THEIR HEAD,[45] MEN OF DEED WERE DISREGARDED, AND MEN OF ARM AND MEN OF TONGUE[46] GREW POWERFUL. NOBODY ENQUIRES,[47] NOBODY PRAYS [ON THEIR BEHALF], AND NOBODY ASKS.[48] UPON WHOM IS IT FOR US TO RELY? UPON OUR FATHER WHO IS IN HEAVEN. R. ELIEZER THE GREAT SAYS: FROM THE DAY THE TEMPLE WAS DESTROYED, THE SAGES BEGAN TO BE LIKE SCHOOL-TEACHERS,[49] SCHOOL-TEACHERS LIKE SYNAGOGUE-ATTENDANTS, SYNAGOGUE-ATTENDANTS LIKE COMMON PEOPLE, AND THE COMMON PEOPLE

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(1) Caused them suffering in this world by our death in childhood. By this plea the bereaved parents are spared punishment.

(2) Earning a precarious livelihood.

(3) Ps. IX, 21 (E.V. 'Put them in fear'). ['Them' are Israel, and the prayer is that God will bestow on them worldly goods which will secure for them the esteem of the nations.]

(4) Through poverty.

(5) Hab. III, 2.

(6) 'Thy work' is the study of Torah; and 'drawing together of two' refers to two students sharing one garment.

(7) II Kings II, 11.

(8) One being the cause of the other's death, he has, so to speak, to flee to a city of refuge; he is exiled.

(9) Deut. IV, 42.

(10) Hos. IV, 6.

(11) Isa. XXX, 19. The people dwelling in Zion symbolise students of Torah.

(12) Ibid. 20 sic.

(13) Ibid. 'Teacher' is applied to God.

(14) Hiding the glory of God from man.

(15) The wording in the Mishnah is: R. Joshua testified.

(16) Deut. XXVIII, 67.

(17) Because yesterday was less severe than today. Therefore they longed for its return.

(18) If every day is worse than the preceding day.

(19) [Kidushah-de-Sidra. Lit., 'the doxology of the order'. This name is given to the passage recited at the conclusion of the morning service which begins 'And a Redeemer shall come unto Zion' (v. P.B. p. 73) and which consists of Scriptural verses including the doxology in Hebrew and Aramaic. It was designed according to Rashi to take the place of the daily study of the law which is enjoined upon every Jew. For other explanations v. Abrahams, I., Companion to the Daily Prayer Book, p. LXXXIII.]
(20) V. p. 197, n. 1.
(21) Job X, 22. The word for 'order' is the same as that for the Scriptural reading.
(22) For that reason he was able to smell its fragrance.
(23) With his purity.
(24) By displaying more love for the son than the father, because he gave him the date.
(25) He claimed that the duty of honouring parents did not apply to grandparents, although he had been reared by him.
(26) And yet I have not the duty of a son.
(27) Which ended in the destruction of the second Temple.
(28) At wedding festivities.
(29) The text has Titus; but Neubauer's Mediaeval Jewish Chronicles, II p. 66 has the correct reading. Quietus was a Moorish prince, appointed by Trajan to command the army which overran Babylon in 116 C.E.
(30) Rashi explains: when the Temple was destroyed. More probably it refers to the last stand against Rome under Bar Kochba in 135 C.E.
(31) In which she was conveyed to her husband's house.
(32) He was renowned for his fables, V. Sanh, 38b.
(33) He was wedded to the Torah. V. supra p. 15.
(34) He was a famous expositor. V. Ber. 12b.
(35) [The text of the separately printed Mishnah adds: WHEN R. JOSHUA DIED, GOODNESS DEPARTED FROM THIS WORLD. WHEN R, SIMEON B. GAMALIEL DIED, THE LOCUST CAME AND TROUBLE INCREASED. WHEN R. ELEAZAR B. AZARIAH DIED, WEALTH DEPARTED FROM THE SAGES.]
(36) He studied every letter of the Torah and derived ideas from every peculiarity of expression.
(37) The phrase has been variously interpreted. V. Buchler, Some Types of Jewish-Palestinian Piety, pp. 79ff, He explains it as men who devoted their lives to deeds of loving kindness.
(38) I.e., the last of them. There is no other mention of him in Rabbinic literature.
(39) [J. B.K. III, makes him identical with Jose the Babylonian, the son of Akabia b. Mahalaliel. V. Derenbourg. Essai, p. 483.]
(40) His disciples called him 'the lamp of Israel'. V. Br. 28b.
(41) [On the wide sweep of his knowledge embracing the whole gamut of sciences known in his day v. B.B. 134a.]
(42) Appointed High Priest by Agrippa II in 59 C.E. He was executed in Cyrene after the destruction of the Temple (Josephus, War VI, II, 2.).
(43) Since Rabbi (Judah I, the Prince) was the redactor of the Mishnah, this paragraph is clearly a later addition. V. Bacher, Agada der Tannaiten, II, p. 222, n. 4.
(44) Haberim, v, Glos.
(45) Through the insolence of inferior Persons who grew powerful.
(46) Demagogues.
(47) Concerning Israel's plight.
(48) About the welfare of his neighbour.
(49) They deteriorated in quality.

Talmud - Mas. Sotah 49b

BECAME MORE AND MORE DEBASED; AND THERE WAS NONE TO ASK, NONE TO INQUIRE. UPON WHOM IS IT FOR US TO RELY? UPON OUR FATHER WHO IS IN HEAVEN. IN THE FOOTSTEPS OF THE MESSIAH[1] INSOLENCE WILL INCREASE AND HONOUR DWINDLE;[2] THE VINE WILL YIELD ITS FRUIT [ABUNDANTLY] BUT WINE WILL BE DEAR;[3] THE GOVERNMENT WILL TURN TO HERESY[4] AND THERE WILL BE NONE [TO OFFER THEM] REPROOF; THE MEETING-PLACE [OF SCHOLARS] WILL BE

USED FOR IMMORALITY; GALILEE WILL BE DESTROYED, GABLAN[5] DESOLATED, AND THE DWELLERS ON THE FRONTIER WILL GO ABOUT [BEGGING] FROM PLACE TO PLACE WITHOUT ANYONE TO TAKE PITY ON THEM; THE WISDOM OF THE LEARNED[6] WILL DEGENERATE, FEARERS OF SIN WILL BE DESPISED, AND THE TRUTH WILL BE LACKING; YOUTHS WILL PUT OLD MEN TO SHAME, THE OLD WILL STAND UP IN THE PRESENCE OF THE YOUNG, A SON WILL REVILE HIS FATHER, A DAUGHTER WILL RISE AGAINST HER MOTHER, A DAUGHTER-IN-LAW AGAINST HER MOTHER-IN-LAW, AND A MAN'S ENEMIES WILL BE THE MEMBERS OF HIS HOUSEHOLD;[7] THE FACE OF THE GENERATION WILL BE LIKE THE FACE OF A DOG,[8] A SON WILL NOT FEEL ASHAMED BEFORE HIS FATHER. SO UPON WHOM IS IT FOR US TO RELY? UPON OUR FATHER WHO IS IN HEAVEN.

GEMARA. Rab said: [The decree against the use of a crown] applies only to one made of salt and brimstone,[9] but if made of myrtle or roses it is permitted; and Samuel said: Also one made of myrtle or roses is prohibited, but if made of reeds or rushes it is permitted; and Levi said: Also one made of reeds or rushes is prohibited. Similarly taught Levi in his Mishnah:[10] It is also prohibited if made of reeds or rushes.

AND AGAINST [THE USE OF] THE DRUM [IRUS]. What means IRUS? — R. Eleazar said: A drum with a single bell.[11] Rabbah b. R. Huna made a tambourine for his son; his father came and broke it, saying to him, ‘It might be substituted for a drum with a single bell. Go, make for him [an instrument by stretching the skin] over the mouth of a pitcher or over the mouth of a kefiz’.[12]

DURING THE WAR OF QUIETUS THEY DECREED AGAINST [THE USE OF] CROWNS WORN BY BRIDES etc. What means ‘crowns worn by brides’? — Rabbah b. Bar Hanah said in the name of R. Johanan: A [miniature] golden city.[13] There is a teaching to the same effect: What are ‘crowns worn by brides’? — A golden city. But one may make a cap for her out of fine wool. A Tanna taught: They also decreed against [the use of] the canopy of bridegrooms. What means ‘canopy of bridegrooms’? — Crimson silk embroidered with gold. There is a teaching to the same effect. The canopy of bridegrooms is crimson silk embroidered with gold. But we may make a framework of laths and hang on it anything one desires.

AND THAT NOBODY SHOULD TEACH HIS SON GREEK. Our Rabbis taught: When the kings of the Hasmonean house fought one another,[14] Hyrcanus was outside and Aristobulus within. Each day[15] they used to let down denarii in a basket, and haul up for them [animals for] the continual offerings. An old man there, who was learned in Greek wisdom,[16] spoke with them[17] in Greek,[18] saying: ‘As long as they carry on the Temple-service, they will never surrender to you’. On the morrow they let down denarii in a basket, and hauled up a pig.[19] When it reached half way up the wall, it stuck its claws [into the wall] and the land of Israel was shaken over a distance of four hundred parasangs. At that time they declared,- ‘Cursed be a man who rears pigs and cursed be a man who teaches his son Greek wisdom!’ Concerning that year we learnt that it happened that the ‘omer[20] had to be supplied from the gardens of Zarifim and the two loaves from the valley of En-Soker.[21] But it is not so![22] For Rabbi said: Why use the Syrian language in the land of Israel? Either use the holy tongue or Greek! And R. Joseph said: Why use the Syrian language in Babylon? Either use the holy tongue or Persian! — The Greek language and Greek wisdom are distinct.[23] But is Greek philosophy forbidden? Behold Rab Judah declared that Samuel said in the name of Rabban Simeon b. Gamaliel, What means that which is written: Mine eye affecteth my soul, because of all the daughters of my city?[24] There were a thousand pupils in my father's house; five hundred studied Torah and five hundred studied Greek wisdom, and of these there remained only I here and the son of my father's brother in Assia![25] — It was different with the household of Rabban Gamaliel because they had close associations with the Government;[26] for it has been taught: To trim the hair in front[27] is of the ways of the Amorites;[28] but they permitted Abtilus b. Reuben[29] to trim his hair in front

because he had close associations with the Government. Similarly they permitted the household of Rabban Gamaliel to study Greek wisdom because they had close associations with the Government.

DURING THE FINAL WAR THEY DECREED THAT A BRIDE SHOULD NOT GO OUT IN A PALANQUIN etc. Why? — For reasons of chastity.[30]

WHEN RABBAN JOHANAN [B. ZAKKAI] DIED, [THE LUSTRE OF] WISDOM CEASED. Our Rabbis taught: When R. Eliezer died, the Torah-scroll was hidden away.[31] When R. Joshua died, counsel and thought ceased.[32] When R. Akiba died, the arms of the Torah ceased and the fountains of wisdom were stopped up. When R. Eleazar b. Azariah died, the crowns of wisdom ceased, because the crown of the wise is their riches.[33] When R. Hanina b. Dosa died, men of deed ceased. When Abba[34] Jose b. Ketanta died, the pious men ceased; and why was his name called Abba Jose b. Ketanta? Because he was the youngest of the pious men. When Ben Azzai died, the assiduous students [of Torah] ceased. When Ben Zoma died, the expositors ceased. When Rabban Simeon b. Gamaliel died, locusts[35] came up and troubles increased. When Rabbi died, troubles were multiplied twofold.

WHEN RABBI DIED, HUMILITY AND FEAR OF SIN CEASED. R. Joseph said to the tanna,[36] Do not include [when reciting this Mishnah] the word 'humility', because there is I.[37] R. Nahman said to the teacher, Do not include 'fear of sin', because there is I.[38]

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(1) Just before his advent.

(2) Jast. renders; the nobility shall be oppressed. In Sanh. 97a there is a variant: honour will be perverted; or, according to Jast. the nobility will pervert (justice).

(3) Through the spread of drunkenness.

(4) These words are omitted in the Talmud ed. of the Mishnah. The meaning is: The Roman Empire will go over to Christianity. V. Herford, op. cit., p. 207.

(5) Perhaps Gebal of Ps. LXXXIII, 8, i.e., the Northern part of Mount Seir. [Others: Gaulan, E. of the Sea of Galilee and the Upper Jordan.]

(6) Lit., 'scribes'.

(7) V. Micah VII, 6.

(8) Impervious to shame. [In some editions the whole of this passage beginning 'R. Phineas b. Jair' is introduced with 'Our Rabbis taught', and not as part of the Mishnah.]

(9) Rashi explains that it was a crown cut out of a block of salt upon which figures were traced with brimstone.

(10) His own collection of traditional teachings.

(11) Lit., 'mouth'.

(12) A vessel of the capacity of three log.

(13) According to Shab. 59a a golden crown designed in the form of Jerusalem. V. Krauss. Tal. Arch., I, p. 662 n. 961.

(14) The allusion is to the struggle between the two sons of Alexander Jannaeus, Hyrcanus had the assistance of the Romans who besieged Jerusalem.

(15) According to Josephus Ant. XIV, II, 2, this demand for animals was for the Passover only.

(16) [Sophistry, v, Graetz, Geschichte. III, 710ff.]

(17) He was in Jerusalem and addressed his words to the besiegers. He spoke in Greek because the people in the city did not understand it.

(18) Lit., 'in great wisdom'.

(19) In Josephus' version, they took the money but sent up no animals. So the men in Jerusalem 'prayed to God that He would avenge them on their countrymen. Nor did He delay that punishment, but sent a strong and vehement storm of wind that destroyed the fruits of the whole country.'

(20) The sheaf of the first fruits and the meal-offering of two tenth parts of an ephah (Lev. XXIII, 10, 13) should consist of produce grown in the vicinity of Jerusalem. But that year the surroundings were devastated and the produce had to be brought from distant places.

(21) For further notes on this passage v. B.K. (Sonc. ed.) pp. 469ff.

(22) That it is forbidden to teach Greek.
(23) The language is permitted but not the wisdom,
(24) Lam. III. 51.
(25) So Greek wisdom was studied by Rabban Gamaliel's pupils. Assia was a town east of the lake of Tiberias, v. Sanh. (Sonc. ed.) p. 151, n, 1.
(26) An exception was made in their case.
(27) Forming a fringe on the forehead and letting the curls hang down over the temples. V. Krauss, op. cit., I. p, 647 n. 845.
(28) A heathenish practice which is forbidden.
(29) Nothing more is recorded of him in Rabbinic literature.
(30) There was danger of her being attacked.
(31) A tribute to his great learning.
(32) He was a protagonist of Judaism against heathen attacks. V. Hag. 5b.
(33) Prov. XIV, 24. He was extremely wealthy. V. Shab. 54b.
(34) Abba, 'father', was a title of affection given to a number of Rabbis.
(35) Some understand this literally; others see a reference to exacting tax-gatherers who despoiled the people. [The reference is said to be to R. Simeon II b. Gamaliel II, (the father of Rabbi) and to the plague of locusts and pestilence that broke out in the year 164 C.E. — about the time of his death. V. Kerem Chemed IV, p. 220.]
(36) Who conveyed his teaching to the students, v. Glos. s.v. (b).
(37) He claimed to be humble, [V. Hor. (Sonc. ed.) p. 105.]
(38) [In the separate printed editions of the Mishnah there follows: R. PHINEAS B. JAIR USED TO SAY: HEEDFULNESS LEADS TO CLEANLINESS; CLEANLINESS LEADS TO PURITY; PURITY LEADS TO ABSTINENCE; ABSTINENCE LEADS TO HOLINESS; HOLINESS LEADS TO HUMILITY; HUMILITY LEADS TO FEAR OF SIN; FEAR OF SIN LEADS TO SAINTLINESS; SAINTLINESS LEADS TO (THE POSSESSION) OF THE HOLY SPIRIT; THE HOLY SPIRIT LEADS TO THE RESURRECTION OF THE DEAD; AND THE RESURRECTION OF THE DEAD COMETH THROUGH ELIJAH OF BLESSED MEMORY, AMEN. On this passage which has been named the Saint's Progress, v. A.Z., 20b. (Sonc. ed.) p. 106.]

Talmud - Mas. Gittin 2a

C H A P T E R I

MISHNAH. THE BEARER OF A BILL OF DIVORCE [GET] FROM [A HUSBAND IN] FOREIGN PARTS[1] [TO THE LAND OF ISRAEL] IS REQUIRED TO DECLARE [ON PRESENTING IT TO THE WIFE]. 'IN MY PRESENCE IT WAS WRITTEN AND IN MY PRESENCE IT WAS SIGNED.' RABBAN GAMALIEL SAYS: [THIS DECLARATION IS] ALSO [REQUIRED] IF HE BRINGS IT FROM REKEM OR FROM HEGAR.[2] R. ELEAZAR SAYS: EVEN IF HE BRINGS IT FROM KEFAR LUDIM TO LUD.[3] THE SAGES, HOWEVER, SAY THAT THE DECLARATION 'IN MY PRESENCE IT WAS WRITTEN AND IN MY PRESENCE IT WAS SIGNED' IS REQUIRED ONLY FROM ONE WHO BRINGS A BILL OF DIVORCE [FROM FOREIGN PARTS TO THE LAND OF ISRAEL] OR WHO TAKES IT [FROM THE LAND OF ISRAEL TO FOREIGN PARTS].[4] THE BEARER [OF SUCH A DOCUMENT] FROM ONE PROVINCE TO ANOTHER IN FOREIGN PARTS IS ALSO REQUIRED TO DECLARE, IN MY PRESENCE IT WAS WRITTEN AND IN MY PRESENCE IT WAS SIGNED.' RABBAN SIMEON B. GAMALIEL SAYS IT IS REQUIRED EVEN IF HE TAKES IT FROM ONE GOVERNORSHIP[5] TO ANOTHER. R. JUDAH SAYS: [FOREIGN PARTS EXTEND] FROM REKEM EASTWARDS, REKEM BEING INCLUDED; FROM ASKELON SOUTHWARDS, ASKELON INCLUDED; AND FROM ACCO[6] NORTHWARDS, ACCO INCLUDED. R. MEIR, [HOWEVER,] HELD THAT ACCO COUNTS AS ERETZ ISRAEL IN THE MATTER OF BILLS OF DIVORCE. THE BEARER OF A BILL OF DIVORCE [FROM ONE PLACE TO ANOTHER] IN THE LAND OF ISRAEL IS NOT REQUIRED TO DECLARE, 'IN MY PRESENCE IT WAS WRITTEN AND IN MY PRESENCE IT WAS SIGNED;' IF ITS VALIDITY IS CHALLENGED IT MUST BE ESTABLISHED THROUGH THE SIGNATURES.[7] GEMARA.

What is the reason [for this requirement]? Rabbah Says:

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(1) Lit., 'province of the sea': a name given to all countries outside of Palestine and Babylonia.

(2) The Biblical Kadesh and Bared (Gen. XVI, 14), on the southern border of Palestine, [v. Targum Onkelos loc. cit. Josephus (Ant. IV. 7, 1) who names the place Arekem (cf. הרקם in our Mishnah) identifies it with Petra. Hegar is identified by Hildesheimer, Beitrage zur Geographie Palastinas (pp. 53 and 68) with the wilderness of Shur on the South-western Palestine border of Egypt].

(3) Lydda. Two neighbouring places on opposite sides of the border. [Kefar Ludim was about two hours walking distance from Lud on the north-west, v. Kaftorhwa-Ferah (Luncz ed.) p. 128].

(4) The point of this remark is discussed infra 4b.

(5) GR. **. V. infra 4b.

(6) The modern Acre.

(7) I.e., by bringing proof that the signatures are authentic.

Talmud - Mas. Gittin 2b

It is because [the Jews in foreign parts] are [for the most part] ignorant of the rule of 'special intention'.[1] Raba says: It is because it is not easy to find witnesses who can confirm the signatures.[2] What difference does it make [in practice] which reason we adopt? — [It does] in the case where the Get has been brought by two persons;[3] or again, where it has been taken from one province to another in the Land of Israel;[4] or again, from one place to another in the same foreign country.[5] Seeing that Rabbah's reason is that Jews abroad are ignorant of the rule of 'special intention', why does he not require that the Get should be brought by two bearers, so as to bring this case into line with the general rule of the Torah regarding evidence?[6] — One witness is sufficient where the question at issue is a ritual prohibition.[7] But presumably the rule that one witness is sufficient where the question at issue is a ritual prohibition applies for instance to the case of a piece of fat of which

we do not know whether it is permitted or forbidden, there being no prima facie ground for declaring it prohibited. Here, however, since there is prima facie ground for assuming the prohibition regarding a married woman,[8] the question becomes one of prohibited sex relationship, and for disproving such a relationship the evidence of two witnesses is required?[9] — Most [of the Jews abroad] are acquainted [with the rule of 'special intention'].[10] And even if, following the practice of R. Meir, we take account of the exceptions, [it will make no difference.] for most of the scribes of the Beth din know the law, and it was the Rabbis who [on their own authority] insisted [on this declaration], and in this case,

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(1) לשמה Lit., 'for her name': the rule that the Get must from its inception have been intended expressly for that woman.

(2) In case the husband comes and questions the validity of the Get, and the declaration of the bearer is regarded as an authentication of the signatures by two witnesses.

(3) Rabbah would still require the declaration, Raba not.

(4) Here Raba would require the declaration, Rabbah not.

(5) Here Rabbah would require the declaration, Raba not.

(6) By the mouth of two witnesses a matter shall be established, Deut. XIX, 15.

(7) As opposed to a pecuniary liability.

(8) Since the recipient of the Get is a married woman she is prima facie (until we know that the Get is valid) forbidden to all other men.

(9) V. Sot. 3.

(10) Hence we do not suspect the husband of having broken this rule.

Talmud - Mas. Gittin 3a

on account of the danger of the woman becoming a 'deserted wife', those [same] Rabbis made a concession[1] [by allowing one bearer to suffice]. You call this a concession? It is rather a hardship. since if you require that the Get should be brought by two [bearers], there is no danger of the husband coming and challenging it[2] and getting it declared invalid; but if only one is required, he will be able to do so? — No. You know what a Master has told us:[3] ['On the question] how many persons must be present when he [the bearer] gives [the writ] to her [the wife], there was a difference of opinion between R. Johanan and R. Haninah, one holding that [at least] two were required, and the other that [at least] three.' This being so, [the bearer] will make sure [of the husband's intentions] from the first, and [the husband] will not come [and invalidate the Get] and bring himself into trouble later.[4] Since Raba's reason is that it is not easy to find witnesses to confirm the signatures, why does not he also require two [bearers]. so as to bring this document into line with all others [which may require such confirmation]? — One witness is sufficient where the question at issue is a ritual prohibition. But presumably the rule that one witness is sufficient where the question at issue is a ritual prohibition applies for instance to the case of a piece of fat of which we do not know whether it is permitted or forbidden, there being no prima facie ground for declaring it prohibited. Here, however, since there is prima facie ground for assuming the prohibition regarding a married woman, the question becomes one of prohibited sex relationship, and for disproving such a relationship the evidence of two witnesses is required? — By rights no witnesses should be required for confirming [the signature on] other documents[5] either, as may be inferred from the dictum of Resh Lakish, that signatures of witnesses to a document are just as reliable as if their evidence had been sifted in the Beth din. It is the Rabbis who on their own authority insisted [on two witnesses for this], and here on account of the danger of the woman becoming a 'deserted wife', these [same] Rabbis made a concession. You call this a concession? It is rather a hardship, since if you require that the Get should be brought by two bearers, there is no danger of the husband coming and challenging it and getting it declared invalid; but if only one is required, he will be able to do so? — No. You know what a certain Master has told us: ['On the question] how many persons must be present when he gives her the Get, there was a difference of opinion between R. Johanan and R.

Haninah, one holding that [at least] two were required and the other [at least] three.' This being so, the bearer will make sure of the husband's intentions, and [the husband] will not come [and invalidate the Get] and bring himself into trouble later.

Why did not Raba give the same reason that Rabbah gave? — He will tell you: Does the Mishnah then require him to declare, 'In my presence it was written in her name, in my presence it was signed in her name'? And Rabbah? — He might retort that by rights the formula ought to run thus, and the reason why it does not is because if you give the bearer too many words to say, he will leave out some. As it is he may leave something out? — He might omit one word out of three,[6] he will hardly omit one word from two.[7]

Why did not Rabbah give the reason which Raba gave? — He will tell you: If this were the reason the Mishnah should require the bearer to declare simply, 'In my presence it was signed' and no more, the fact that he has also to say, 'In my presence it was written' shows that 'Special intention' is required. And Raba? — He might retort that by rights the formula should run thus, but if it did the impression might be created that the confirmation of signatures to documents in general requires only one witness. And Rabbah? — He might rejoin that the two cases[8] are not similar. There the formula is, 'We know [this to be So-and-so's signature],' here it is, 'In my presence etc.'; there a woman is debarred,[9] here a woman is not debarred;[10] there the party concerned[11] is debarred, here the party concerned is not debarred.[12] And Raba? — He could rejoin that here also if [the bearer] says 'I know etc.' his word is accepted, and since this is so there is a danger[13] of creating the impression that confirmation of signatures to documents in general requires only one witness.

According to Rabbah, as we have seen, the reason [for requiring the declaration] is that [Jews outside the Land of Israel] are not familiar with the rule of 'special intention'. [Assuming that this is so,] who is the authority that requires the Get to be both written

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(1) To enable her to remarry.

(2) Finding some flaw in the drafting or procedure.

(3) Infra 5b.

(4) [Lit., 'do injury' to himself (i.e., to his reputation). He realises that no attack against the validity of the Get is likely to be admitted merely on his own word so as to reverse the decision of the two or three before whom it had been presented. V. Rashi and Adreth, Hiddushim a.l., and infra p. 14, n. 2.]

(5) I.e., relating to money matters.

(6) If he says 'In my presence it was written in her name' which in Hebrew is expressed in three words.

(7) The formula in the Mishnah is expressed in two Hebrew words.

(8) The case of a Get and the case of documents in general.

(9) From attesting.

(10) V. infra 23b.

(11) The party claiming on the document.

(12) Because a woman may act as bearer of her own Get. Infra 23b.

(13) If he says only, 'In my presence it was signed'.

and signed with special reference to that woman? It cannot be R. Meir, for he requires only that it should be signed, but not that it should be written with this intention, as we learn:[1] 'A Get must not be written on something still attached to the soil. If it was written on something still attached to the soil, then torn off, signed and given to the woman, it is valid.'[2] Nor again can it be R. Eleazar, for [as we know] R. Eleazar requires that it should be written but not necessarily that it should be signed with 'special intention'.[3] Nor can you maintain that after all it is R. Eleazar, and that in saying that 'special intention' is not required, he means 'not required by the Torah', but he admits that it is

required by the Rabbis. This cannot be; for there are three kinds of Get [which the Rabbis have declared invalid, though they are not invalid according to the Torah], and R. Eleazar does not include among them one which has not been signed with 'special intention', as appears from the following Mishnah:[4] Three kinds of Get are invalid, but if a woman marries on the strength of one of them, the child is legitimate. [One,] if the husband wrote it with his own hand but it was attested by no witnesses; [a second,] if there are witnesses to it but no date; [a third,] if it has a date but the signature of only one witness. These three kinds of Get are invalid, but if the woman remarries on the strength of one of them, the child is legitimate. R. Eleazar says that even though it was not attested by witnesses at all, so long as he gave it to her in the presence of witnesses it is valid, and on the strength of it she may recover her kethubah from mortgaged property, since signatures of witnesses are required to a Get only as a safeguard.[5] Are we to say then that after all R. Meir is the authority, and that he dispenses with 'special intention' only as a requirement of the Torah but not as a requirement of the Rabbis? How can this be, in view of what we have been told by R. Nahman, that R. Meir used to rule that even if the husband found a Get ready written on a rubbish heap

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(1) Infra 21b.

(2) Which shows that if the signing is in order, the writing does not matter.

(3) Because according to R. Eleazar, it is not necessary that the Get should be signed at all.

(4) V. infra 86a.

(5) This shows that R. Eleazar does not require the Get to be signed with 'special intention'.

and signed it and gave it to her, it is valid? Nor can you say that this ruling means 'valid as far as the Torah is concerned,' for in that case R. Nahman should have said not, 'R. Meir used to rule,' but 'It is a rule of the Torah'? — After all, we come back to the opinion that R. Eleazar was the authority, and [we say that] where he dispenses with the requirement of 'special intention' is in the case where there are no witnesses at all, but if [the Get] is signed, it must be signed with such intention. This accords with the statement of R. Abba, that R. Eleazar admitted that a Get which contains a flaw in itself[1] is invalid.

R. Ashi said: Shall I tell you who the authority [of the Mishnah] is? It is R. Judah, as shown by the following Mishnah: R. Judah declares the Get invalid unless it has been both written and signed on something not attached to the soil.[2] Why did we not at the outset declare R. Judah to be the authority? — We tried if possible [to base ourselves on the authority of] R. Meir because, where a Mishnah is stated anonymously [its author is] R. Meir.[3] We also try if possible [to base ourselves on the authority of] R. Eleazar, because it is generally agreed that his ruling is decisive in questions of writs of divorce.

Our Mishnah says: RABBAN GAMALIEL SAYS, THE DECLARATION MUST ALSO BE MADE BY ONE WHO BRINGS A GET FROM REKEM AND FROM HEGAR. R. ELEAZAR SAYS, EVEN IF HE BRINGS IT FROM KEFAR LUDIM TO LUD. [Commenting on this passage,] Abaye said that it refers to places adjoining[4] the Land of Israel and to places within the ambit of[5] the Land of Israel.[6] Rabbah b. Bar Hanah said: I have myself seen that placed and am able to state that the distance[7] is the same as from Be Kubi to Pumbeditha. Now [from the words of the Mishnah just quoted] we infer that the first Tanna[8] was of opinion that in these cases the declaration was not necessary. May we assume that the point of divergence between them is that one authority[9] holds that the reason why the declaration is required is because [Jews outside of the Land of Israel] are not familiar with the rule of 'special intention', and he excepts [the Jews of] these places because they are familiar,[10] whereas the other authority[11] holds that the reason [why the declaration is required] is because it is not easy to find witnesses to confirm the signatures, and he [includes the Jews of] these places because here too it is not easy?[12] — No. Rabbah can account for the difference in his way and

Raba in his way. Rabbah can account for it thus: All the authorities are agreed that the reason for requiring the declaration is because of the unfamiliarity [of the Jews outside Eretz Israel] with the rule of 'special intention', and the point of divergence between them is that the first Tanna is of opinion that in these places on account of their proximity to Eretz Israel the Jews are familiar with the rule, whereas Rabban Gamaliel held that this was so only in the case of places which lay within the ambit of Eretz Israel but not in those which merely adjoined it, and R. Eleazar would not allow it to be so even in the case of places which lay within the ambit, no distinction being made among places which belong to 'foreign parts'. Raba accounts for the difference thus: All the authorities are agreed that the reason for requiring the declaration is because it is not easy to find witnesses to confirm the signatures, and the point of divergence between them is that the first Tanna is of opinion that in these places, on account of their proximity to the Land of Israel, it is easy to find witnesses, whereas Rabban Gamaliel held that this was so only in places which lie within the ambit of Eretz Israel, but not in those which only adjoin it, and R. Eleazar would not allow it to be so even in places lying within the ambit, as no distinction is to be made among places which belong to 'foreign parts'.

Our Mishnah says: [THE SAGES SAY] THE DECLARATION, 'IN MY PRESENCE IT WAS WRITTEN AND IN MY PRESENCE IT WAS SIGNED IS REQUIRED ONLY FROM ONE WHO BRINGS A GET FROM FOREIGN PARTS AND FROM ONE WHO TAKES IT THERE. We infer from this that in the opinion of the first Tanna the bearer [of a bill of divorce] to foreign parts is not required to make the declaration. May we assume that the point of divergence between the two authorities is that one holds that the reason why the declaration is required is because [Jews in foreign parts] are not familiar with the rule of 'Special intention',

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(1) E.g., a wrong date, a wrong signature, etc.

(2) Infra 21b.

(3) V. Sanh. 86a.

(4) I.e., Rekem and Hegar.

(5) Lit., 'swallowed in'.

(6) I.e., Kefar Ludim. This place, though outside the boundary, would lie within a straight line drawn between two other places on the boundary, and so is said to be 'swallowed' in the Land of Israel.

(7) From Kefar Ludim to Lud.

(8) The authority for the first clause in the Mishnah.

(9) The first Tanna and R. Gamaliel.

(10) Being in the neighbourhood of Palestine.

(11) R. Eleazar.

(12) Because there is no commercial intercourse between the two places. (Rashi).

and he excepts the bearer of a Get from Eretz Israel because there they are familiar, whereas the other authority held the reason to be because it is not easy to find witnesses to confirm the signatures, and this applies to 'foreign parts' also? — No. Rabbah[1] can account for the difference in his way and Raba in his way. Rabbah explains thus: Both authorities are agreed that the reason for requiring the declaration is because of the unfamiliarity [of the Jews outside Eretz Israel] with the rule of 'special intention', and where they diverge is on the question whether we extend the obligation properly meant for the bearer from foreign parts to the bearer to foreign parts, one holding that we do make this extension, the other that we do not. Raba explains thus: Both authorities agree that the reason for requiring the declaration is because it is not easy to find witnesses to confirm the signatures, and the Rabbis mentioned in the second clause merely made explicit what was in the mind of the first Tanna.

Our Mishnah says: THE BEARER OF A GET FROM ONE PROVINCE TO ANOTHER IN

FOREIGN PARTS IS REQUIRED TO DECLARE, 'IN MY PRESENCE IT WAS WRITTEN AND IN MY PRESENCE IT WAS SIGNED'; from which we infer that if he takes it from one place to another in the same province 'in foreign parts'. he need not make the declaration. This conforms with the view of Raba but conflicts with that of Rabbah, [does it not]? — No. You must not infer [that if the Get is taken] from one place to another in the same province 'in foreign parts', the declaration is not required. What you have to infer is that if it is taken from one province to another in the Land of Israel the declaration is not required. But this is stated distinctly in the following clause of the Mishnah: THE BEARER OF A GET [FROM ONE PLACE TO ANOTHER] IN THE LAND OF ISRAEL IS NOT REQUIRED TO DECLARE, 'IN MY PRESENCE IT WAS WRITTEN AND IN MY PRESENCE IT WAS SIGNED'! — If I had only that to go by I should say that while this omission does not invalidate the Get retroactively. It is not permissible in the first instance; now I know that this is also the case.[2]

The objection here raised is also stated in the following form: I infer that the bearer of a Get from one province to another in the Land of Israel is not required to make the declaration. This is in conformity [is it not] with the view of Rabbah but conflicts with that of Raba? — You must not infer that [if it is taken] from one province to another in the Land of Israel the declaration is not required. The proper inference to draw is that it is not required from the bearer from one part to another of the same country in foreign parts. What then? From the bearer from one province to another in the Land of Israel it is required? Then it would be sufficient for the Mishnah to say, 'The bearer of a Get from one province to another' [without mentioning 'foreign parts']? — The fact is that it is not necessary for the bearer from one province to another in the Land of Israel either,[3] since on account of the festival pilgrimages [to Jerusalem] it is always possible to find witnesses. This may have been a good reason so long as the Temple was standing, but what of the time when there is no Temple? — Since there are [Jewish law] courts regularly established, witnesses can always be found.

We have learnt: Our Mishnah says: RABBAN SIMEON BEN GAMALIEL SAYS, EVEN THE BEARER FROM ONE GOVERNORSHIP TO ANOTHER, and commenting on this R. Isaac said that there was a certain city in Eretz Israel, 'Assasioth by name,[4] in which were two Governors at variance with each other,[5] and that is why the Mishnah had to put in the clause 'from governorship to governorship'. Now this ruling conforms with the view of Raba, [does it not,] but conflicts with that of Rabbah? — Rabbah accepts Raba's reason also.[6] Where then does a difference arise between them in practice? — If the Get was brought by two bearers, or if it was brought from one place to another in the Same province in a 'foreign country'.[7]

We have learnt: Where the bearer of a Get from foreign parts is not able to declare, 'in my presence it was written and in my presence it was signed', if the Get has been signed by witnesses, its validity can be established through the signatures.[8] We were perplexed by the expression, 'is unable to say'.

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(1) .

(2) .

(3) And yet this does not conflict with the view of Raba.

(4) [Horowitz, I. Palestine p. 63 identifies it with Essa, east of the Lake Kinnereth, which was in his view divided into two governorships, Essa and Gerasa.]

(5) So that there was no intercourse between them.

(6) So that Rabbah requires the declaration to be made in all cases in which Raba requires it, but not vice versa.

(7) In both of which cases Rabbah requires the declaration to be made but Raba does not.

(8) Infra 9a.

Shall we say it refers to a deaf-mute? But can a deaf-mute be the bearer of a Get, seeing that we learn, 'All persons are qualified to be bearers of a Get except a deaf-mute, a lunatic, and a minor'? And this difficulty was solved by R. Joseph, who said that we are dealing here with a case in which he gave the woman the Get while he was still in possession of his faculties, but before he could say the formula was struck deaf and dumb. Now this conforms with the view of Raba, [does it not,] but conflicts with that of Rabbah?[1] — [This Mishnah was formulated] after the rule [of 'special intention'] had become generally known. If that is the case, even if the bearer is able to repeat the formula, [what need is there for him to do so]? — This was a precaution in case there is a return of the abuse. If that is the case, even if the bearer is not able to repeat the formula [it should still be required]? — For a man to be suddenly struck dumb is an exceptional occurrence, and the Rabbis did not take precautions against such exceptional cases. [Is that so?] For a woman to be the bearer of her own Get is very exceptional, and yet we learn:[2] The wife can act as bearer of her own Get [to a specified Beth din], and she is equally required to declare, 'In my presence it was written and in my presence it was signed'? — The reason for this is to avoid making any distinction between bearer and bearer. If that is so, the same rule [should apply to the] husband; why then has it been taught: If the husband brings the Get personally, he is not required to declare, 'In my presence it was written and in my presence it was signed'? — The reason why the Rabbis insisted on this declaration in the first instance was to provide against the danger of the husband coming to challenge and invalidate the Get. In this case, seeing that he brings it himself, is it conceivable that he should raise objections against it?

Come and hear: Samuel put the following question to R. Huna: If a Get is brought from foreign parts by two bearers, are they required to declare, 'In our presence it was written and in our presence it was signed', or are they not? And [R. Huna] answered that they are not required, because should they declare, 'In our presence he divorced her,' would their word not be accepted? This conforms, [does it not,] with the view of Raba and conflicts with that of Rabbah? — This Mishnah was formulated after the rule [of 'special intention'] had become generally known. If that is so, even if there is only one bearer, [the declaration should not be required]? — This was a precaution in case there is a recurrence of the abuse. If that is so, the same precaution should be taken when there are two bearers? — For a Get to be brought by two persons is exceptional, and the Rabbis did not take precautions against exceptional cases. [Is this so?] For a woman to be the bearer of her own Get is very exceptional, and yet we learn: The wife can act as bearer of her own Get, but she is equally required to declare, 'In my presence, etc.'? — The reason for this is to avoid making any distinction between bearer and bearer. If that is so, the same rule should apply to the husband; why then is it taught, If the husband brings the Get personally, he is not required to declare, 'In my presence, etc.'? — The reason why the Rabbis insisted on this declaration in the first instance was to provide against the danger of the husband coming to challenge and invalidate the Get. In this case, seeing that he brings it himself, is it conceivable that he should raise objections against it?

Come and hear: If the bearer of a Get from foreign parts gave it to the wife but did not declare, 'In my presence etc.', if the genuineness of the signatures [attached to the Get] can be established, it is valid, and if not it is invalid. From this we deduce that the purpose of requiring this declaration is to make the process of divorce easier and not more difficult.[3] This conforms, [does it not,] with the opinion of Raba and conflicts with that of Rabbah? — This Mishnah was formulated after the rule [of 'special intention'] became generally known. But you yourself have maintained that it is necessary to take precautions in case there is a recurrence of the abuse? — We are dealing here with the case where the woman has remarried.[4] If so, how can you say, 'From this we deduce that this requirement is intended to make the process of divorce easier and not more difficult'? The reason why we allow the validity of the Get to be established through its signatures is because she has remarried? — We must read the passage thus: '[The Get is valid if the signatures can be confirmed.] And should you think that if she has remarried we should be more strict and force [her husband] to put her away, we must bear in mind that the purpose of requiring this declaration is to make the

process of divorce easier and not more difficult. The whole reason

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(1) [For according to Rabbah even if the signatures are authenticated it does not follow that the Get was written with 'special intention'.]

(2) Infra 23b.

(3) It saves the trouble of securing a witness to attest the signatures.

(4) And her disregard of the precaution does not warrant the enforcement of a separation.

why it is required is as a precaution against the risk of the husband coming to challenge and invalidate [the Get]. Seeing that here the [first] husband is raising no objection, shall we go out of our way to do so?'

[An identical] difference of opinion [had already been recorded] between R. Johanan and R. Joshua b. Levi,[1] one of whom held that the reason [for requiring the declaration] was because the Jews outside the Land of Israel were not familiar with the rule of 'special intention', and the other that it was because witnesses could not easily be found to confirm the signatures. We may conclude that it was R. Joshua b. Levi who gave the reason, 'because they are not familiar with the rule of "special intention",' from the following incident. R. Simeon b. Abba once brought a Get before R. Joshua b. Levi, and said to him: Am I required to declare, 'I was present when it was written and present when it was signed'? and he replied: You need not make the declaration. It was only required in former generations, when the rule of 'special intention' was not generally known, but not in these times when the rule is known. We may therefore conclude [that it was R. Joshua b. Levi who gave this reason]. [Was this a good ruling,] seeing that Rabbah accepts Raba's reason also, and further that, as we have said, precaution should be taken in case there is a recurrence of the abuse? — There was another man with him,[2] although he is not mentioned [in the passage quoted] out of respect for R. Simeon.

It has been stated: [On the question] how many persons must be present when the bearer of the Get gives it to the wife there was a difference of opinion between R. Johanan and R. Haninah, one holding that a minimum of two were required and the other a minimum of three. It may be concluded that it was R. Johanan who held that two were sufficient, [from the following incident]. Rabin son of R. Hisda brought a Get before R. Johanan, and the latter said to him: Go and give it to her in the presence of two persons, and say to them, 'In my presence it was written and in my presence it was signed.' We may therefore conclude [that R. Johanan held two to be sufficient]. May we assume that the point on which R. Johanan and R. Haninah diverge is that the one who held two persons to be sufficient considered the reason for requiring the declaration to be the general ignorance of the rule of 'special intention',[3] while the one who insisted on three considered the reason to be the difficulty of finding witnesses?[4] — [Can this be so?] We have found that it is R. Joshua who assigns as the reason ignorance of the rule of 'special intention', and so it must be R. Johanan who assigns as the reason the difficulty of finding witnesses. How then can it be R. Johanan who here says that two persons are sufficient? Moreover [is it not a fact] that Rabbah also accepts Raba's reason? No. [The reason of the declaration is because] we need witnesses who should be available to validate the Get, and the point at issue here is whether it is permitted to an agent to act as a witness and a witness as a judge. The authority who says that two persons are sufficient holds that an agent may act as witness and a witness may act as judge,[5] whereas the one who insists on three holds that while an agent may act as witness, a witness may not act as judge. But has it not been laid down that in the case of evidence required only by the Rabbis[6] [but not by the Torah] a witness may act as judge? No. The real point at issue is this, that one authority held that since a woman is qualified to bring the Get there is a danger [if only two persons are required] that we may rely upon her,[7] while the other held that everyone knows that a woman is not qualified [to complete a Beth din], and therefore there is no

danger.

It has been taught in agreement with R. Johanan: If the bearer of a Get from foreign parts gave it to the wife without declaring, 'In my presence it was written and in my presence it was signed,' if she marries again the second husband must put her away and a child born from the union is a mamzer.[8] This is the opinion of R. Meir. But the Rabbis say that the child is not a mamzer. What should be done [to rectify matters?] The bearer should take the Get back from the woman, and then present it to her in the presence of two persons, declaring at the same time, In my presence it was written, and in my presence it was signed. [Are we to suppose then that] according to R. Meir, because the bearer failed [in the first instance] to make this declaration, the second husband has to put away the woman, and the child is a mamzer? — Yes: R. Meir in this is quite consistent; for so R. Hamnuna has told us in the name of 'Ulla, that R. Meir used to affirm: If any variation whatever is made in the procedure laid down by the Sages for writs of divorce, the second husband has to put the woman away and the child is a mamzer.

Bar Hadaya once desired to act as bearer of a Get.[9] Before doing so he consulted R. Ahi, who was a supervisor of writs of divorce.[10] Said R. Ahi to him: You must watch the writing of every letter of the document. He then consulted R. Ammi and R. Assi, who said to him: This is not necessary, and if you think to be on the safe side, you must consider that by doing so you will be discrediting previous writs of divorce.[11] Rabba b. Bar Hanah once acted as bearer of a Get[12] of which half had been written in his presence and half not. He consulted R. Eleazar, who told him that even if only one line of it had been written with 'special intention' that was sufficient. R. Ashi said:

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(1) Two Amoraim of an earlier generation than Rabbah and Raba.

(2) And therefore Raba's reason did not apply.

(3) And therefore it is sufficient if two can testify to the delivery of the Get, after having heard the bearer make, in their presence, the proper declaration.

(4) And therefore we require three persons to be available (in case the husband comes and challenges the Get), since the confirmation of signatures must take place in the presence of three, constituting a kind of Beth din; (v. Keth. 21b).

(5) And therefore the bearer of the Get may join with the two witnesses of the delivery to form a Beth din.

(6) Under which category comes the confirmation of signatures. V. Keth. l.c.

(7) To form a third or to enable us to dispense with a third.

(8) The product of an incestuous union. V. Glos.

(9) From Babylon to Palestine.

(10) An expert officer was appointed to see that the procedure was in conformity with all the regulations. (Rashi).

(11) The bearers of which were not so particular.

(12) See p. 15 n. 4.

Talmud - Mas. Gittin 6a

Even if he only heard the scratching of the pen and the rustling of the sheet,[1] it is sufficient. It has been taught in agreement with R. Ashi: 'If a Get is brought from foreign parts, even if the bearer was downstairs while the scribe was upstairs, or upstairs while the scribe was downstairs, the Get is valid, or even if he was going in and out all day, the Get is valid.' [Now in the case where] he is downstairs and the scribe is upstairs [you may ask, how can this be,] seeing that the bearer cannot have seen him [while writing]?[2] Obviously [what is meant is] that he, for instance, heard the scratching of the pen and the rustling of the sheet.[3]

The Master said: 'Even if he was going in and out all day the Get is valid'. Who is referred to by 'he'? Shall I say it is the bearer? Hardly; for if the Get is valid even when he was in a different room and so did not see it at all, is there any question that it is valid when he simply was going in and out [of the same room]? [Shall I say] then it is the scribe? Surely this is self-evident. Because he leaves

the room sometimes [in the middle of writing]. is that any ground for declaring the Get invalid? — It is not [so self-evident]. It is necessary to state the case where he went out into the street and returned. You might say that another man [of the same name] has come across him and commissioned him to write a Get.[4] Now we know [that this objection is not maintained].

It has been stated: Babylonia has been declared by Rab to be in the same category with the Land of Israel in respect of writs of divorce, and by Samuel to be in the same category with foreign parts.[5] May we assume their point of divergence to be this, that one of them held the reason for requiring the declaration to be that [Jews outside the Land of Israel] are not familiar with the rule of 'special intention', so that [the Babylonians,] being familiar, [are in the same category with the Palestinians], whereas the other held the reason to be the difficulty of finding witnesses to confirm [the signatures], and the same difficulty is found [in Babylonia]? — Can you really presume this, seeing that Rabbah also accepts Raba's reason? No. Both [Rab and Samuel] agree that the Get requires confirmation. Rab, however, is of opinion that since there are Talmudical Colleges in Babylonia witnesses can always be found,[6] while Samuel is of opinion that the Colleges are taken up with their studies.[7] It has also been stated that R. Abba said in the name of R. Huna: 'In Babylonia we have put ourselves on the same level as Eretz Israel in respect of bills of divorce from the time when Rab came to Babylon.'[8] R. Jeremiah raised an objection: R. JUDAH SAYS, FOREIGN PARTS EXTEND FROM REKEM EASTWARDS, REKEM BEING INCLUDED; FROM ASKELON SOUTHWARD, ASKELON BEING INCLUDED: AND FROM ACCO NORTHWARDS, ACCO BEING INCLUDED. Now Babylon is north of Eretz Israel, as we learn from the verse of the Scripture, And the Lord said to me, Out of the north the evil shall break forth.[9] It is true, the Mishnah continues: R. MEIR SAYS, ACCO COUNTS AS PART OF THE LAND OF ISRAEL IN THE MATTER OF BILLS OF DIVORCE; but even R. Meir only excepted Acco, which is close to Eretz Israel, but not Babylon, which is remote![10] — R. Jeremiah asked the question and he himself answered [by saying that] 'Babylon is an exception.

How far does Babylon extend? — R. Papa says: On this question there is the same difference of opinion in respect of bills of divorce as there is in respect of family descent.[11] R. Joseph, however, says that the difference of opinion exists only in respect of family descent, but in respect of bills of divorce all parties are agreed that Babylonia extends to the second boat of the [floating] bridge.[12] R. Hisda required [the declaration to be made by the bearer of a Get] from Ktesifon to Be-Ardashir, but not [by one who brought it] from Be-Ardashir to Ktesifon.[13] May we presume that he considered the reason [for requiring the declaration to be that Jews in foreign parts] are not familiar with the rule of 'special intention', and that the people of Be-Ardashir are familiar? — How can you presume this, seeing that Rabbah accepts Raba's reason also? But in point of fact all authorities are agreed that confirmation [of the Get] is required, and the reason of R. Hisda is that as the people of Be-Ardashir go to Ktesifon to market, the inhabitants of the latter are familiar with their signatures,[14] but not vice versa, because the Be-Ardashir [buyers] are busy with their marketing. Rabba b. Abbuha required [the declaration to be made if the Get was brought] from one side of the street to the other; R. Shesheth if it was brought from one block [of buildings] to another; and Raba even [from one house to another] within the same block. But was it not Raba who said that the reason was because it was not easy to find witnesses to confirm the signatures? — The people of Mahuzah[15] are different, because they are always on the move.[16]

R. Hanin related the following: R. Kahana brought a Get either from Sura to Nehardea or from Nehardea to Sura, I do not know which, and consulted Rab as to whether he was required to declare, 'In my presence it was written and in my presence it was signed.' Rab said to him: You are not required,

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(1) Aliter 'the sound of the pen and the paper as they were being prepared'.

(2) [It is assumed that where the bearer is upstairs he can see the scribe who is working downstairs. V. Trani, who

preserves a reading to this effect.]
(3) And this is deemed to be sufficient.
(4) And therefore the Get was not written expressly for the woman to whom the bearer is intended to take it.
(5) חוצה לארץ lit., 'outside the Land'.
(6) As students and other people are always going from various places to the colleges.
(7) And therefore the students there do not recognise the signatures.
(8) In the year 219 C.E. [He founded, after his return the second time from Palestine, the school of Sura to which there flocked students from all parts. This gave an impetus to the study of the Law and made Babylonia a centre of learning for centuries (Rashi). Tosaf.: Since Rab came and insisted that Babylonia never ceased to be a centre of Torah study, since the days of the exile of Jehoiachin with the flower of Judea. V. II Kings XXIV, 14. Obermeyer. Die Landschaft Babylonien. p. 306, points out that the name 'Babylon' stands here, as in other places in the Talmud, for Sura which was in the neighbourhood of the old great city, Babylon, and in contradistinction to Nehardea, where he had his former seat.]
(9) Jer. I, 14.
(10) [Tosaf. appeals to this question in support of its interpretation cited n. 3.]
(11) The Jews of Babylonia being reputed to have preserved their racial purity more strictly than the Jews of any other part. v. Kid. 72a.
(12) [Over the Euphrates north of Samosata, v. Berliner, A., Beitrage p. 21; v. also Kid. 72a.]
(13) [Two neighbouring places, the former on the eastern, the latter on the western bank of the Tigris. Ktesifon was the larger place of the two, and a marketing centre for the neighbouring towns. V. Obermeyer op. cit. pp. 164ff.]
(14) Because the Be-Ardashir people often buy their goods on credit against promissory notes which they leave with the Ktesifon merchants.
(15) Where Raba had his seminary.
(16) [To sell their merchandise which was brought along the Tigris and Euphrates and caravan routes to Mahuzah which was a great trading centre. V. Obermeyer op. cit. p. 173.]

Talmud - Mas. Gittin 6b

but if you have done so, so much the better. What [did Rab] mean by these last words? — [He meant] that if the husband came and raised objections against the Get, they would pay no attention to him;[1] as it has been taught: A man once brought a Get before R. Ishmael, and asked him whether he was required to declare, 'In my presence etc. Said R. Ishmael to him: My son, from where are you? He replied: Rabbi, I am from Kefar Sisai. Whereupon R. Ishmael said to him: It is necessary for you to declare that It was written and signed in your presence, so that the woman should not require witnesses [in case the husband raises objections]. After the man left, R. Ila'i came in to R. Ishmael and said to him: Is not Kefar Sisai[2] within the ambit of the border-line of Eretz Israel, and is it not nearer to Sepphoris than Acco is, and does not the Mishnah tell us that R. MEIR HELD THAT ACCO COUNTS AS ERETZ ISRAEL IN MATTERS OF BILLS OF DIVORCE,[3] [and even the Rabbis differ from R. Meir only in regard to Acco, which is some distance away, but not in regard to Kefar Sisai which is near?][4] R. Ishmael said to him: Say nothing, my son, say nothing; now that the thing has been declared permissible, let it remain so. [Why should R. Ila'i have thought otherwise], seeing that [R. Ishmael] also gave as a reason 'that the woman should not require witnesses'? — [R. Ila'i] had not been told of these concluding words.

R. Abiathar sent to R. Hisda [the following instruction:] [The bearers of] writs of divorce from there [Babylon] to here [Eretz Israel] are not required to declare, 'In my presence it was written and in my presence it was signed.' May we presume that he was of opinion that the reason for requiring the declaration is because the [Jews outside Palestine] are not familiar with the rule of 'special intention', while these [the Babylonians] are familiar? — Can you really presume this, seeing that Rabbah accepts Raba's reason? No. All agree that [the reason is] because we require someone who can confirm the signatures if necessary, and in this case, as there are always people going to and fro between Babylon and Eretz Israel, witnesses can easily be found.

Said R. Joseph: Can it be maintained that R. Abiathar is an authority who can be relied upon? [Have we not] moreover evidence to the contrary? For it was he who sent a statement to Rab Judah, [running,] 'Jews who come from there [Babylon] to here [Eretz Israel] fulfil in their own persons the words of the Scripture: They have given a boy for a harlot and sold a girl for wine and have drunk,[5] and he wrote the words from Scripture without ruling lines under them, although R. Isaac has said that a quotation of two words [from Scripture] may be written without lines but not of three (in a Baraitha it was taught that three may be written without lines but not four)? — Said Abaye to him: Because a man does not know this rule of R. Isaac, is he therefore not to be counted a great scholar? If it were a rule established by logical deduction, we might think so.[6] But it is purely a tradition,[7] and it is a tradition which R. Abiathar had not heard. Nay more, R. Abiathar is the authority whose view was confirmed by his Master,[8] [in the following way]. Commenting on the text, And his concubine played the harlot against him,[9] R. Abiathar said that the Levite found a fly with her, and R. Jonathan said that he found a hair on her. R. Abiathar soon afterwards came across Elijah and said to him: 'What is the Holy One, blessed be He, doing?' and he answered, 'He is discussing the question of the concubine in Gibea.' 'What does He say?' said Elijah: '[He says], My son Abiathar says So-and-so, and my son Jonathan says So-and-so,' Said R. Abiathar: 'Can there possibly be uncertainty in the mind of the Heavenly One?' He replied: Both [answers] are the word of the living God. He [the Levite] found a fly and excused it, he found a hair and did not excuse it. Rab Judah explained: He found a fly in his food and a hair in loco concubitus; the fly was merely disgusting, but the hair was dangerous. Some say, he found both in his food; the fly was not her fault, the hair was.

R. Hisda said: A man should never terrorise his household. The concubine of Gibea was terrorised by her husband and she was the cause of many thousands being slaughtered in Israel. Rab Judah said in the name of Rab: If a man terrorises his household, he will eventually commit the three sins of unchastity,[10] blood-shedding,[11] and desecration of the Sabbath.[12] Rabba b. Bar Hanah said:' The three things which a man has to say to his household just before Sabbath commences, 'Have you set aside the tithe? Have you placed the 'Erub? Light the lamp,'[13]

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(1) Once the declaration was made.

(2) Or Simai, identified with Kefar Sumeija, N.W. of Kefar Hananiah ('Anan); v. Kaftor wa-Ferah, p. 270, and Klein, S., Beitrage, p. 29, n. 4.

(3) Hence the declaration should not be required.

(4) [The bracketed sentence is not in the Tosef. Git. I. whence this passage is quoted.]

(5) Joel IV, 3. [He disapproved of the practice of Babylonian students marrying before graduation and then betaking themselves to the Palestinian schools for the completion of their studies, leaving their wives and children in utter destitution. (V. Nashi and Tosaf.)]

(6) As this would show R. Abiathar to be deficient in logical acumen.

(7) [The whole regulation requiring Biblical passages to be underlined is based on an ancient oral tradition going back to Moses at Sinai; v. Soferim I.]

(8) God Himself.

(9) Judg. XIX, 2.

(10) By having intercourse with his wife when she is unclean, because she is afraid to tell him.

(11) Because the members of his household run away from him and meet with fatal accidents.

(12) Because his wife through fear of him lights the lamp after dark.

(13) V. Shah. 34a.

should be said by him gently, so that they should obey him readily. R. Ashi said: I was never taught that rule of Rabba b. Bar Hanah, but I observed it because my own sense told me to.

R. Abbahu said: A man should never terrorise his household. For there was a certain great man who terrorised his household, and in consequence they fed him with a thing to eat which is a great sin. This was R. Hanina b. Gamaliel. Do you mean to say they actually fed him with it? Why, even the beasts of the righteous are not allowed by the Holy One, blessed be He, to offend;[1] how then shall the righteous themselves be allowed so to sin? — Say, they wanted to feed him. And what was it they set before him? A piece of flesh cut from an animal still living.[2]

Mar 'Ukba[3] sent for advice to R. Eleazar, saying: Certain men are annoying me, and I am able to get them into trouble with the government; shall I do so? He traced lines on which he wrote [quoting], I said, I will take heed to my ways, that I sin not with my tongue, I will keep a curb upon my mouth while the wicked is before me;[4] [that is,] he added, although the wicked is before me, I will keep a curb on my mouth. Mar 'Ukba again sent to him saying: They are worrying me very much, and I cannot stand them. He replied [with the quotation], Resign thyself unto the Lord, and wait patiently [hitholel] for him;[5] [that is to say,] he added, wait for the Lord, and He will cast them down prostrate [halalim] before thee; go to the Beth-Hamidrash early morning and evening and there will soon be an end of them. R. Eleazar had hardly spoken the words when Geniba[6] was placed in chains [for execution].[7]

An inquiry was once addressed to Mar 'Ukba: Where does Scripture tell us that it is forbidden [in these times] to sing [at carousals]? He sent back [the following quotation] written on lines: Rejoice not, O Israel, unto exultation like the peoples, for thou hast gone astray from thy God.[8] Should he not rather have sent the following: They shall not drink wine with music, strong drink shall be bitter to them that drink it?[9] — From this verse I should conclude that only musical instruments are forbidden, but not song; this I learn [from the other verse].

R. Huna b. Nathan asked R. Ashi: What is the point of the verse, Kinah and Dimonah and Adadah?[10] — He replied: [The text] is enumerating towns in the Land of Israel. Said the other: Do l not know that the text is enumerating towns in the Land of Israel? But I want to tell you that R. Gebihah from [Be]Argiza[11] learnt a lesson from these names: 'Whoever has cause for indignation [kinah] against his neighbour and yet holds his peace [domem], He that abides for all eternity ['ade 'ad] shall espouse his cause; said the other: If that is so, the verse Ziklag and Madmanah and Sansanah[12] should also convey a lesson? — He replied: If R. Gebihah from [Be] Argiza were here, he would derive a lesson from it. R. Aha from Be Hozae[13] expounded [it as follows]: 'If a man has just cause of complaint against his neighbour for taking away his livelihood [za'akath legima] and yet holds his peace [domem], He that abides in the bush [shokni sneh] will espouse his cause.

The Exilarch[14] said to R. Huna: On what ground is based the prohibition of garlands? — He replied: This was imposed by the Rabbis on their own authority. For so we have learnt: At the time of the invasion of Vespasian they prohibited the wearing of garlands by bridegrooms and the [beating of] drums [at weddings].[15] R. Huna then got up to leave the room. R. Hisda[16] thereupon said to him [the Exilarch]: There is scriptural warrant for it: Thus saith the Lord God, The mitre shall be removed and the crown taken off this shall be no more the same; that which is low shall be exalted and that which is high abased,[17] [It may be asked, he continued] what the mitre has to do with the crown. It is to teach that when the mitre is worn by the High priest,[18] ordinary persons can wear the crown,[19] but when the mitre has been removed from the head of the High priest, the crown must be removed from the head of ordinary persons. At this point R. Huna returned, and found them still discussing the matter. He said: I swear to you that the prohibition was made by the Rabbis on their own authority, but as your name is Hisda [favour], so do your words find favour. Rabina found Mar son of R. Ashi weaving a garland for his daughter. He said to him: Sir, do you not hold with the interpretation given above of 'Remove the mitre and take off the crown'? — He replied: The men [have to follow] the example of the High Priest, but not the women.

What is the meaning of the words in this passage, 'This not this'?[20] R. 'Awira gave the following exposition, sometimes in the name of R. Ammi and sometimes in the name of R. Assi: When God said to Israel, 'Remove the mitre and take off the crown', the ministering angels said, Sovereign of the Universe, is 'this' for Israel who at Mount Sinai said 'we will do' before 'we will hear'?[21] Should not 'this' be for Israel, replied the Holy One, blessed be He, who have made low that which should be exalted and exalted that which should be low, and placed an image in the sanctuary? R. 'Awira also gave the following exposition, sometimes in the name of R. Ammi and sometimes in the name of R. Assi; What is the meaning of the verse, Thus saith the Lord, though they be in full strength and likewise many, even so shall they be sheared off[22] and he shall cross etc.?[23] If a man sees that his livelihood is barely sufficient for him, he should give charity from it, and all the more so if it is plentiful.[24] What is the meaning of the words, 'Even so they shall be sheared and he shall cross'? — In the school of R. Ishmael it was taught: Whoever shears off part of his possessions and dispenses it in charity is delivered from the punishment of Gehenna. Picture two sheep crossing a river, one shorn and the other not shorn; the shorn one gets across, the unshorn one does not.

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(1) V. Hul. 7a. The story is told there of the ass of Phineas b. Yair which refused to touch untithed corn.

(2) A piece of meat had been mislaid and the servant attempted to substitute for it flesh cut from a living animal.

(3) [Mar 'Ukba II the Exilarch. On the great influence he wielded in government circles v. Funk, Die Juden in Babylonien I pp. 106ff. and n. 4; and Halevy. Doroth, II, p. 248.]

(4) Ps. XXXIX, 2.

(5) Ibid. XXXVII, 7.

(6) Who was one of his antagonists.

(7) [V. J. Git. VI, 5.]

(8) Hos. IX, 1.

(9) Isa. XXIV, 9.

(10) Josh. XV, 22.

(11) [Obermeyer, op. cit. p. 144, locates it near Be Kathil, on the Tigris, N. of Bagdad; v. B.K. (Sonc. ed.) p. 465, n. 10.]

(12) Ibid. 31.

(13) [The modern Khuzistan, province of S.W. Persia, Obermeyer, op. cit. p. 204ff.]

(14) [Mar 'Ukba II.]

(15) V. Sot. 49a.

(16) He was R. Huna's disciple, and therefore did not like to answer in his presence.

(17) Ezek. XXI, 31.

(18) I.e., while the Temple is still standing.

(19) I.e., garland.

(20) E.V. 'This shall be no more the same', quoted above.

(21) Thus showing their devotion to God. Ex. XXIV, 7.

(22) E.V. 'cut down'.

(23) E.V. 'pass away Nah. I, 12.

(24) Translating, 'If they be . . . and all the more.'

Talmud - Mas. Gittin 7b

And though I have afflicted thee:[1] Mar Zutra said: Even a poor man who himself subsists on charity should give charity. I will afflict thee no more:[2] R. Joseph learnt: If he does that, [Heaven] will not again inflict poverty upon him.

R. JUDAH SAYS, FROM REKEM EASTWARDS etc. This would seem to imply that Acco is at the [extreme] north of Eretz Israel. Does not this conflict with the following: '[Suppose a traveller] follows the road from Acco to Chezib.[3] Then all the country on his right, east of the road, partakes of the uncleanness of the "land of the Gentiles",[4] and the obligations of tithe and sabbatical year do not apply to it, save where it is definitely known to be liable.[5] The country on his left hand, west of the

road, does not partake of the uncleanness of the "land of the Gentiles", and is subject to the rules of tithe and sabbatical year, save where [the reverse] that it is exempt, is definitely known.[6] Up to what point [does this hold good]? As far as Chezib. R. Ishmael the son of R. Jose says in the name of his father, As far as Lablabu.'[7] — Said Abaye: A narrow strip does in fact jut out [beyond Acco].[8] And is this important enough for the Tanna to define it so precisely?[9] — It is, for the Scripture also gives indications in the same way, in the following passage: And they said, Behold there is the feast of the Lord from year to year in Shiloh. which is on the north of Bethel, on the east side the highway that goeth up from Bethel to Shechem, and on the south of Lebonah;[10] And R. Papa pointed out, that it means 'the east side of the highway.'[11]

One [Baraitha] teaches: 'If a man brings a Get by boat[12] he is in the same category as if he brought it [from place to place] in Eretz Israel;'[13] and another [Baraitha] teaches that he is in the same category with one who brings it [from place to place] in foreign parts.[14] Said R. Jeremiah: The contradiction can easily be explained: the latter view is based on the ruling of R. Judah, the former on that of the Rabbis, as we have learnt: [Plants grown in] earth from foreign parts which is carried in a boat in Eretz Israel are subject to the obligations of tithe and Sabbatical year. R. Judah says: This is the case only if the boat touches bottom, but if not, the obligations do not apply.[15] Abaye says that both [authorities] follow R. Judah, and there is no contradiction between them, the one[16] referring to a boat which does not touch bottom and the other to one which does.

Said R. Ze'ira: The case of a plant pot with a hole in the bottom resting on a stand[17] may be variously decided according as we follow R. Judah or the Rabbis [in this case]. Said Rabba: This is open to question. Possibly R. Judah would say [that actual contact with the soil was necessary to make the plant liable to tithe] only in the case of a boat,

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(1) Ibid.

(2) Ibid.

(3) [The Biblical Achzib, between Acre and Tyre. Josh. XIX, 29.]

(4) Those parts of Palestine of which the population was preponderatingly Samaritan or non-Jewish, and on which a Jew could not set foot without becoming ritually unclean. V. Nazir, (Sonc. ed.) p. 204, n. 1.

(5) Because the territory is known to belong to Eretz Israel.

(6) (V. Tosef. Oh. XVIII and J. Sheh. where the reading is reversed: '. . . . East of the road does not partake of the uncleanness; west of the road does partake etc.' This reading, as the Wilna Gaon points out, is to be given preference, since Acco is situated on the West of Palestine, whereas our reading assumes that it is on the Eastern border; v. also Schwarz, J. Tebuoth ha-'Arez (ed. Luncz) p.8, n. 1.]

(7) [Tosef. loc. cit. Kalabu; neither names are definitely identified; v. Neubauer p. 233, who locates the former on the outskirts of Acco, the latter east of Tyre.] This shows that the extreme northern point is Chezih or Lablabu and not Acco.

(8) [Though Acco is on the extreme North, the narrow strip of territory jutting out beyond Acco leading to Chezib belongs to Eretz Israel (Rashi); Kaftor wa-Ferach p. 276, in name of Maimonides, reverses: Eretz Israel stretches to Chezib which is in the extreme north, but a strip of territory belonging to the land of the Gentiles juts out from Chezib to Acco; v. also Tosaf. Yom Tob, Sheb. VI, 1.]

(9) So Nashi. Tosaf., however, renders: 'Is a road so important that the Tanna in speaking of "east" and "west" had to refer to it?' which seems to suit the context better.

(10) Jud. XXI, 19.

(11) [The text might be taken to mean that Shiloh is on the N.E. of Bethel; v. Strashun a.l.]

(12) It is assumed that it was written on the boat in Eretz Israel waters.

(13) The river being reckoned an integral part of Eretz Israel.

(14) The river not being reckoned an integral part of Eretz Israel.

(15) Hal. II, 2. The laws of tithing and Sabbatical year apply only to Palestinian grown products.

(16) Who says that the Get is in the same category as one brought from place to place in foreign parts.

(17) I.e., the question whether the plant in it is subject to tithe, seeing that it does not touch the ground.

which is usually on the move, but in the case of a pot which is motionless it is not necessary. And again, perhaps the Rabbis would say that only in the boat [is there this obligation even if it is not touching bottom], since there is no air in between [the boat and the bottom], the water being reckoned as earth for purposes of contact, but not in the case of the pot where the air underneath breaks its contact with the earth. R. Nahman b. Isaac said: In regard to a boat on a river in Eretz Israel there is no difference of opinion between the authorities.[1] Where the difference arises is in the case of a boat in the open sea, as may be seen from the following: What do we reckon as Eretz Israel and what do we reckon as foreign parts? From the top[2] of the Mountains of Ammanon[3] inwards is 'Eretz Israel', and from the top of the Mountains of Ammanon outwards is 'foreign parts'. [For determining the status of] the islands in the sea, we imagine a line drawn from the Mountains of Ammanon to the Brook of Egypt.[4] All within the line belongs to Eretz Israel and all outside the line to foreign parts. R. Judah, however, holds that all islands fronting the coast of Eretz Israel are reckoned as Eretz Israel, according to the verse of Scripture, And for the western border, ye shall have the Great Sea for a border; this shall be your west border.[5] [To determine the status of] the islands on the border line,[6] we imagine a line drawn [due west] from Kapluria[7] to the Ocean[8] and another from the Brook of Egypt to the Ocean. All within these lines belong to Eretz Israel and all outside to foreign parts. How do the Rabbis expound the superfluous words, 'and for the border'? They say it is required to [bring in] the islands.[9] And R. Judah? — He will rejoin that for the inclusion of the islands no special indication is required.[10]

R. MEIR SAYS: ACCO IS IN THE SAME CATEGORY AS ERETZ ISRAEL etc. The following inquiry was propounded to R. Hiyya b. Abba: If a man sells his slave into Syria,[11] is he reckoned as selling him into foreign parts or not? — He replied: You have learnt it: R. MEIR SAYS: ACCO IS IN THE SAME CATEGORY AS ERETZ ISRAEL IN RESPECT OF BILLS OF DIVORCE; in respect of bills of divorce, that is, but not in respect of slaves. And if this is the case with Acco, how much more so with Syria, which is much further from Eretz Israel.

Our Rabbis have taught: 'In three respects Syria is in the same category as Eretz Israel and in three others in the same category as foreign parts.' (Mnemonic: 'AB Bor Rek).[12] Its earth is unclean like that of foreign parts, and to sell a slave to Syria is like selling him to foreign parts, and a Get brought from Syria is reckoned as one brought front foreign parts. [On the other hand,] it is in three respects like Eretz Israel: It is subject to the obligations of tithe and Sabbatical year like the Land of Israel, it is permissible for an Israelite to enter it in a state of ritual purity, and a field bought in Syria

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(1) All agreeing that a river in Eretz Israel is an integral part of the land.

(2) Lit., 'Whatever slopes down.'

(3) The Targum, Pseudo-Jonathan, of 'Hor the mountain', the northern boundary of Eretz Israel, Num. XXXIV, 7. [This is not to be confused with Mount Hor by the border of the land of Edom which is in the South East. Mount Ammanon is in the N.W. of Syria and is generally identified with Mount Amanus, the modern Giaour Dagh.]

(4) [Identified by Saadia with the Wady-el-Arish, twenty miles South of Gaza; v. Schwarz, op. cit. p. 27, and Rosenbaum-Silbermann's Rashi. Deut. p. 211.]

(5) Num. XXXIV, 6.

(6) I.e., due west of the coast beyond the southern and northern extremities of the border of Palestine.

(7) At the northern extremity of Mount Hor. [The place is not identified. V. Neubauer, pp. 8ff. and 433.]

(8) The Atlantic Ocean.

(9) Immediately fronting the coast.

(10) And the words 'and for the border' include the more distant islands.

(11) The Biblical Aram Zoba which was conquered by David and added by him to Eretz Israel (II Sam. VIII).

(12) Lit., 'Cloud, Pit, Empty'. Key-words to aid the memory made up of Hebrew initials of the rulings that follow.

is like one bought on the outskirts of Jerusalem.'[1]

[Our authority says that Syria] 'is subject to the obligations of tithe and Sabbatical year': [obviously] he is of opinion that the conquest of an individual[2] is a valid conquest.[3] [He further says that] 'it is permissible to enter Syria in a state of ritual purity.' How can this be, seeing that you say that its earth is unclean? — What is meant is that he may enter it in a box, chest, or portable turret, as has been taught: If one enters the land of the Gentiles in a box, chest, or portable turret, Rabbi declares him to be unclean, but R. Jose son of R. Judah does not. And even Rabbi makes this rule only for the land of the Gentiles, the soil and the air of which were proclaimed unclean by the Rabbis, but in regard to Syria they proclaimed only the soil unclean but not the air.[4]

[Our authority further says that] 'a field bought in Syria is like one bought on the outskirts of Jerusalem'. What rule of conduct can be based on this? — R. Shesheth Says: It means that a contract for selling it [to a Jew] can be drawn up even on Sabbath. What? On Sabbath? — You know the dictum of Raba, 'He tells a non-Jew to do it.' So here, he tells a non-Jew to draw up the contract. And although there is a Rabbinical prohibition[5] against telling a non-Jew to do things on Sabbath [which we may not do ourselves], where it was a question of furthering the [Jewish] settlement of Eretz Israel the Rabbis did not apply the prohibition.

Our Rabbis have taught: If a slave brings before the Beth din his deed of manumission[6] in which is written, 'Your own person and my property are made over to you', he becomes [ipso facto] his own master[7] but not owner of the property.[8]

The question was propounded: [Suppose the document ran:] 'All my property is made over to you',[9] what is the ruling? — Abaye said: Since the document makes him his own master, it makes him owner of the property also.[10] Said Raba to him: I agree that he becomes his own master, because [in respect of himself his document] is on a par with the Get of a wife. But he must not become owner of the property, because [in respect of the property his Get] requires confirmation like any other document. Abaye then corrected himself and said: Since he does not become by means of his document the owner of the property, he does not become his own master either. Said Raba to him: I agree that he should not become owner of the property, because in respect of the property [his document] requires confirmation like any other document; but he should become his own master, because [in respect of himself, his document] is on a par with the Get of a wife. The fact of the matter is, continued Raba, that both with the one [wording] and the other, he becomes his own master but not owner of the property.

Said R. Abba b. Mattena to Raba: This ruling accords with the principle laid down by R. Simeon, that a single statement may receive two diverse applications, for we have learnt: If a man assigns all his property to his slave, the latter becomes ipso facto free, but if he excepted a piece of land, however small, he does not become free.[11] R. Simeon, however, holds

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(1) Tosef Kelim B. K. I.

(2) King David, as opposed to the national conquest in the time of Joshua.

(3) I.e., the land acquired becomes an integral part of Eretz Israel.

(4) V. Nazir 55a.

(5) שבות , Lit., 'rest', an occupation prohibited by the Rabbis on Sabbath and Festivals as being inconsistent with the spirit of the celebration of the day.

(6) Lit., 'his Get'.

(7) Because if he says, 'It was written in my presence', his word is taken and no witnesses are required to confirm the validity of the Get.

(8) Because for this purpose witnesses are required to confirm the validity of the Get.

(9) This is taken to include his own person since he is part of the property.

(10) And we do not give the statement two diverse applications, one in respect of himself and one in respect of the property.

(11) Because we say that since he excepts the land he excepts the slave also.

Talmud - Mas. Gittin 9a

that in any case the slave becomes free[1] unless he declares [in writing] 'All my property is left to So-and-so my slave except one ten-thousandth part thereof.'[2] [But can Raba then rule thus, Seeing that] R. Joseph b. Manyumi said in the name of R. Nahman: Although R. Jose commended R. Simeon, the halachah follows R. Meir.[3] For it has been taught: When the discussion was reported to R. Jose, he applied to him [R. Meir] the Scriptural words, He shall be kissed upon the lips that giveth a right answer.[4]

But was this R. Nahman's opinion?[5] Has not R. Joseph b. Manyumi said in the name of R. Nahman: If a man lying dangerously ill assigned all his possessions to his slave and then recovered, he may retract the grant of the property but not the grant of freedom. He may retract the grant of the property because it is a gift made on a death bed.[6] He may not retract the grant of the freedom because the slave has already become known as a free man![7] — In fact, said R. Ashi, [R. Nahman's reason] in the former case [where he said that in practice R. Meir was to be followed] was because the document did not expressly sever the connection between the slave and his master,[8] [and not because the same statement cannot receive two applications].[9] IF ITS VALIDITY IS CHALLENGED, IT MUST BE ESTABLISHED THROUGH THE SIGNATURES. Challenged by how many? Shall I say by one person? Has not R. Johanan laid down that a challenge must come from two at least? Shall I say then two? In that case there are two on each side, and why should you give credence to one set rather than to the other? — The challenge meant is that of the husband.

MISHNAH. WHERE THE BEARER OF A GET FROM FOREIGN PARTS IS NOT ABLE TO DECLARE 'IN MY PRESENCE IT WAS WRITTEN AND IN MY PRESENCE IT WAS SIGNED, IF THE GET HAS BEEN SIGNED BY WITNESSES, ITS VALIDITY CAN BE ESTABLISHED THROUGH ITS SIGNATORIES. WRITS OF DIVORCE AND WRITS OF EMANCIPATION ARE SUBJECT TO THE SAME RULES WHEN TAKEN [FROM THE LAND OF ISRAEL TO FOREIGN PARTS] OR VICE VERSA,[10] THIS BEING ONE OF THE POINTS IN WHICH WRITS OF DIVORCE ARE ON A PAR WITH WRITS OF EMANCIPATION.

GEMARA. What is the meaning of the expression, 'IS NOT ABLE TO DECLARE'? Shall I say it means that the bearer is a deaf-mute? Can a deaf-mute then be the bearer of a Get, seeing that we have learnt:[11] 'All persons are qualified to be bearers of a Get except a deaf-mute, a lunatic, and a minor?' — R. Joseph said: Here we are dealing with a case in which he gave the woman the Get while he was still in possession of his faculties, but before he could utter the formula was struck deaf and dumb.

WRITS OF DIVORCE AND WRITS OF EMANCIPATION etc. Our Rabbis taught: 'In three points writs of divorce are on a par with writs of emancipation. One is in the matter of being taken [from Eretz Israel to foreign parts] or vice versa.[12] [Secondly,] any document witnessed by a Cuthean[13] is invalid, except writs of divorce and emancipation. [Thirdly,] all documents

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(1) Since this seems to be the plain intention of the document.

(2) Because this part may include the slave, v. B.B. 149b.

(3) R. Simeon's disputant and the anonymous first Tanna of the Mishnah, that the slave should not go free.

(4) Prov. XXIV, 26.

(5) That we do not give two diverse applications to a single statement.
(6) Which can be nullified by the dying man on recovery. v. B.B. 146b.
(7) Thus R. Nahman applies the instruction diversely to the slave and to the property.
(8) Since the grant of the slave's freedom was not specifically mentioned in the document, and we require such severance, because a Get of emancipation is on the same footing as a Get of divorce, which is termed in the Scripture 'a document of severance' or 'cutting off' (Deut. XXIV, 1).
(9) [Seeing that R. Meir denies the slave his freedom even if the property specifically excepted was land, his view being that since the master limited the scope of this document by excluding 'some thing', whatever it may be, the Get is no longer effective as an instrument of complete severance (Rashi).]
(10) Lit., or 'he who brings it'.
(11) Infra 23a.
(12) The bearer in both cases being required to declare, 'In my presence etc.'
(13) A Samaritan.

Talmud - Mas. Gittin 9b

entered in heathen courts, even if the signatures in them are those of heathens, are valid, except writs of divorce and of emancipation. According to R. Meir there are four points [the fourth being this]: If a man says, Give this Get to my wife and this writ of emancipation to my slave, he is at liberty, if he wishes, to retract from both. So says R. Meir'.[1] We can understand the Rabbis [specifying the number] three, [because they desired] to except the point stated by R. Meir. But what did R. Meir desire to except by specifying the number [four]? — [He desired] to except the following case which has been taught: If the witnesses are not able to sign their names, we make dents on the sheet and they fill them in with ink. Rabban Simeon b. Gamaliel says: This applies only to writs of divorce. With writs of emancipation and all other documents, if the witnesses are able to read and to sign their names, they sign, and if not, they do not sign. How does 'reading' come in here? — There is something omitted, and the passage should run thus: 'If the witnesses cannot read, the document is read to them and they then sign, and if they are unable to sign, dents are made for them.'

Are there no more points [of resemblance]? Is there not [for example this one]: 'If a man says, Give this Get to my wife and this writ of emancipation to my slave and he dies [before they were given], they should not be given after his death. If, however, he said, Give a maneh to So-and-so, it should be given after his death'?[2] — [The passage above was] dealing only with points which do not apply to documents in general,[3] not with such as apply to all documents. [And this is such a point;] for Rabin sent [the following message] in the name of R. Abbahu: 'Be it known to you that R. Eleazar sent to the Diaspora[4] in the name of Our Master[5] the following instruction: If a dying man said, Write down and give a maneh to So-and-so, and then died, his words are not committed to writing nor is the gift made, since perhaps he intended only to make the gift through the instrumentality of the document, and a document does not confer possession after the death [of the author].'[6]

But is there not the point of 'special intention' [in which writs of divorce and of emancipation are on a par]? For Rabbah, indeed, this raises no difficulty, since it is identical with the point of bringing to and from [Eretz Israel],[7] but for Raba it does raise a difficulty. And again, whether we accept Rabbah's view or Raba's, there is the law of mehubar?[8] — [The passage above] reckoned only the flaws laid down by the Rabbis[9] [on their own authority], not those deriving from the Torah. But [the fact of originating in] a Gentile court is a flaw [in the Get] according to the Torah, and yet this point is also reckoned above? — [We are dealing there with the case where there are] witnesses to the delivery [of the document], and the passage follows the opinion of R. Eleazar, who said that it is the witnesses to the delivery [of the Get] who really make it effective.[10] [Is that so?] It says later in the passage:[11] R. Simeon says that these also [writs of divorce signed by non-Jews] are valid; and [commenting on this] R. Zera said that R. Simeon was here following the view of R. Eleazar, who

said that the witnesses to the delivery [of the Get] make it effective; from which we gather that the first Tanna[12] was not [of this opinion]?[13]

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(1) V. infra 11b.

(2) V. infra 13a.

(3) I.e., where the points of resemblance are limited to writs of divorce or emancipation.

(4) [Heb. Golah denoting, at that time, Nehardea; v. B.B. (Sonc. ed.) p. 571, n. 7.]

(5) Rab.

(6) V. B.B. 152a. Just as in the case of writs of divorce and emancipation.

(7) Since according to Rabbah the declaration was required only because of the general ignorance of the rule regarding 'special intention'.

(8) Lit., 'attached (to the soil)', viz., that both the writ of emancipation and the writ of divorce must be written on something not attached to the soil.

(9) [The requirement of the declaration 'in my presence it was written etc.' is Rabbinical and so is the disqualification of a Samaritan for evidence purposes in case of other documents likewise only Rabbinical.]

(10) Lit., 'who cut asunder'. And therefore the fact of its originating in a heathen court is a flaw only according to the Rabbis and, not the Torah.

(11) In the Mishnah dealing with documents drawn up in heathen courts, infra 10b.

(12) In that Mishnah who says that these are not valid.

(13) That the witnesses to delivery make the Get effective, and therefore a non-Jewish signature is a flaw according to the Torah.

Talmud - Mas. Gittin 10a

Where he and the first Tanna differed was in the case where the names are obviously heathen.[1] But what of the point about retracting, which [invalidates the Get even] according to the Torah, and yet is reckoned in this passage? — The proper answer [to the original question] is that only those points are reckoned which did not apply to betrothals, but not such as are found in connection with betrothals also.[2] But this very point of retracting applies to betrothals also?[3] — We are dealing here with a case where the whole commission is to be carried out without the consent of the recipient; this is possible in the case of divorces but not of betrothals.

MISHNAH. NO DOCUMENT ATTESTED BY THE SIGNATURE OF A CUTHEAN[4] IS VALID,[5] UNLESS IT IS A WRIT OF DIVORCE OR A WRIT OF EMANCIPATION. IT IS RELATED THAT A WRIT OF DIVORCE WAS ONCE BROUGHT BEFORE RABBAN GAMALIEL AT KEFAR 'UTHNAI[6] AND ITS WITNESSES WERE CUTHEANS, AND HE DECLARED IT VALID.

GEMARA. Who is [the Tanna] of our Mishnah? For it cannot be either the first Tanna, or R. Eleazar or Rabban Simeon ben Gamaliel [in the following Baraitha]: For it has been taught: 'It is permissible to eat [on Passover] unleavened bread made by a Cuthean, and the eating of such bread satisfies the requirement of the Passover.[7] R. Eleazar forbids [the eating of such bread], because [the Samaritans] are not familiar with the minutiae of the precepts. Rabban Simeon b. Gamaliel says that in all the precepts which the Cutheans do observe they are much more particular than the Jews themselves.' Whom now does our Mishnah follow? Shall I say the first Tanna? In that case other documents also should be valid [if attested by a Cuthean]. Shall I say R. Eleazar? In that case a writ of divorce should also be invalid. Shall I say Rabban Simeon b. Gamaliel? In that case, if they observe [the regulations of documents], then other documents attested by them should also be valid, and if they do not observe [these regulations], then even a writ of divorce attested by them should not he valid. And should you reply that in fact Rabban Simeon b. Gamaliel is the authority and that our Mishnah holds that the Cutheans observe the regulations concerning writs of divorce and emancipation but not concerning other documents — in that case why [does the Mishnah] speak of

one [Cuthean witness only]? [The Get should be equally valid] even if there were two;[8] and if that were so, why has R. Eleazar said [that a Get of this kind] has been declared valid only if there is not more than one Cuthean signature to it? — The authority followed by our Mishnah is in fact R. Eleazar, and it speaks of the case where an Israelite signs last,[9]

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(1) R. Simeon holding that no danger can arise from this of heathens also being asked to witness the delivery of the Get, while the Rabbis held that there was such a danger.

(2) [The law of 'special intention' and in regard to mehubar applies to writs of betrothals equally with writs of divorce, whereas the declaration, 'In my presence it was written, etc.' is limited to Get as explained supra 2b-3a. Similarly the validity of the signature of a Samaritan witness is limited to Get (v. infra 10b); nor would the Rabbis invalidate a writ of betrothal originating in a heathen court, provided Jewish witnesses were present at the delivery.]

(3) I.e., if a man gives a written agreement of betrothal to a bearer, he can withdraw it so long as it has not been delivered.

(4) Samaritan.

(5) Because they were looked upon as untruthful.

(6) [Identified with Kefr Kud (Capar Cotani) on the border of Galilee and Samaria. V. Klein, Beitrage p. 29, n. 2.]

(7) That the unleavened bread eaten on the first night should be expressly prepared for it in accordance with the words, And ye shall watch the unleavened bread (Ex. XII, 17).

(8) I.e., if both witnesses were Samaritan and neither an Israelite.

(9) After the Samaritan.

Talmud - Mas. Gittin 10b

for we assume in that case that if the Cuthean were not a Haber[1] , the Israelite would not let him sign before him. In that case, why are not other documents also valid? Consequently the truth is that we say, 'he left room for someone senior to himself.'[2] But if that be so cannot we say here too that he left room for someone senior to himself? — Said R. Papa: This proves that the witnesses to a Get do not sign save in one another's presence.[3] What is the reason for this? — R. Ashi says that it is to prevent any infringement of the rule concerning 'all of you'.[4]

The text above [states]: 'R. Eleazar said [that a Get of this kind] has been declared valid only if there is not more than one Cuthean signature to it.' What does he teach us by this statement? Has not the Mishnah already told us that NO DOCUMENT ATTESTED BY THE SIGNATURE OF A SAMARITAN etc.? — If I had only the Mishnah to go by, I should say that even with two [Cuthean signatures the Get is valid], and that the reason why one [only is mentioned] is to show that other documents are rendered invalid even by one Samaritan signature; hence [R. Eleazar's statement] is necessary. But [is a Get] with two [Cuthean signatures] invalid? Does not the Mishnah say: IT IS RELATED THAT A WRIT OF DIVORCE WAS BROUGHT BEFORE RABBAN GAMALIEL [AT KEFAR 'UTHNAI] AND ITS WITNESSES WERE CUTHEANS, AND HE DECLARED IT VALID? — Abaye says: Read 'its witness Raba says: It is quite correct that there were two, and the fact is that Rabban Gamaliel differs [from the first authority], and there is an omission [in the Mishnah, which should] read as follows: 'Rabban Gamaliel declares [a Get] valid with two [Cuthean signatures], and it is actually related that a Get was brought before Rabban Gamaliel at Kefar 'Uthnai and its witnesses were Cutheans and he declared it valid.'

MISHNAH. ALL DOCUMENTS WHICH ARE ACCEPTED IN HEATHEN COURTS,[5] EVEN IF THEY THAT SIGNED THEM WERE GENTILES, ARE VALID [FOR JEWISH COURTS] EXCEPT WRITS OF DIVORCE AND OF EMANCIPATION. R. SIMEON SAYS: THESE ALSO ARE VALID; THEY WERE ONLY PRONOUNCED [TO BE INVALID] WHEN DRAWN UP BY UNAUTHORISED PERSONS.

GEMARA. [Our Mishnah] lays down a comprehensive rule in which no distinction is made

between a sale and a gift. We can understand that the rule should apply to a sale, because the purchaser acquires the object of sale from the moment when he hands over the money in their[6] presence, and the document is a mere corroboration; for if he did not hand over the money in their presence, they would not take the risk[7] of drawing up a document of sale for him. But with a gift [it is different]. Through what [does the recipient] obtain possession? Through this document, [is it not]? And this document is a mere piece of clay?[8] — Said Samuel: The law of the Government is law.[9] Or if you prefer, I can reply: Instead of 'except writs of divorce' in the Mishnah, read, 'except [documents] like writs of divorce.'[10]

R. SIMEON SAYS: THESE ALSO ARE VALID etc. How can this be, seeing that to heathens the act of 'severance'[11] is not applicable? — Said R. Zera: R. Simeon here accepts the view of R. Eleazar, who said that the separation is actually effected by the witnesses to the delivery [of the document]. But has not R. Abba said that R. Eleazar used to admit [that a Get] which in itself contained a flaw was invalid?[12] — We are dealing here

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(1) V. Glos. In which case R. Eleazar's objection does not apply.

(2) The Jew signed first below thinking that another Jew would sign above, but the lender got the signature of a Samaritan instead.

(3) So that it is impossible for us to say that the husband brought a Samaritan to sign without the knowledge of the Jewish witness.

(4) That if he said to ten persons, 'All of you write', one writes and all the rest sign in one another's presence, otherwise the Get is not valid; infra, 66b.

(5) ערכאות , GR. **, 'office' 'registry'.

(6) The non-Jewish judges'.

(7) Lit., 'do injury to themselves (to their reputation)'.

(8) Assuming a deed originating in a non-Jewish court does not constitute an instrument of acquisition, why should the deed be deemed valid?

(9) V. B.B. (Sonc. ed.) p. 222, n. 6.

(10) I.e., all which in themselves make the transaction effective, such as the record of a gift.

(11) Lit., 'cutting', Deut. XXIV, 1.

(12) And the signature of witnesses who are not competent to sign would be counted by R. Eleazar as a flaw because it might give the impression that these were competent as witnesses to the delivery.

Talmud - Mas. Gittin 11a

with signatures which are obviously those of heathens.[1] Can you give some examples of names which are obviously those of heathens? — Said R. Papa: For instance, Hannez and Abudina, Bar Shibthai, Bar Kidri, Batti and Nakim and Una. What then if the signatures are not obviously those of heathens? [The document, you will say,] is invalid? If so, instead of going on to say, 'THEY WERE ONLY PRONOUNCED TO BE INVALID WHEN DRAWN UP BY UNAUTHORISED PERSONS, R. Simeon should draw a distinction between [the signatures] themselves, and should continue thus: 'when I say [they are valid, I mean] when the names are obviously [heathen], but otherwise they are invalid!' — This in fact is what he does mean, viz.: 'When I say [they are valid I mean] when the names are obviously [heathen], but where they are not so, the document is on a par with one drawn up by unauthorised persons and is invalid.' Or if you like I can reply that the last clause [of the Mishnah] refers to monetary documents, and the meaning is as follows: 'Monetary documents were not pronounced to be invalid save when they were drawn up by unauthorised persons.' It has been taught: R. Eleazar said in the name of R. Jose: Thus did R. Simeon say to the Rabbis in Sidon: R. Akiba and the Sages were agreed in reference to all documents entered in heathen courts that even if those that signed them were heathens they are valid, including also writs of divorce and of emancipation. They differed only in the case where they were drawn up by unauthorised persons, R. Akiba declaring all such documents to be valid and the Sages declaring

them all invalid, save only writs of divorce and of emancipation. Rabban Simeon b. Gamaliel says that these too are valid only in places where Jews are not allowed to sign documents,[2] but where Jews are allowed to sign documents they are not valid. Why does not Rabban Simeon b. Gamaliel declare them invalid even in places where Jews are allowed to sign, for fear lest they should come to be deemed valid even in places where they are not? — Names may be confused but not places. Rabina had a mind to declare valid a document which had been drawn up in a gathering[3] of Arameans. Said Rafram to him: 'We learnt [distinctly] "COURTS".'

Raba said:[4] A document drawn up in Persian which has been handed over in the presence of Jewish witnesses is sufficient warrant for recovering from property on which there is no previous lien. But the witnesses to the transfer cannot read it? — We speak of the case where they can. But we require writing which cannot be erased? — We speak of a case where the sheet has been dressed with gall-nut juice.[5] But we require the rule [to be observed] that the gist of the document must be summarised in the last line?[6] — We speak of a case where this has been done. If so, why not recover from mortgaged property also? — [The contents of a document of this kind] do not become generally known.[7]

Resh Lakish put the following question to R. Johanan:

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(1) In which case there is no danger that their witnessing to the Get would create a wrong impression as to their competence.

(2) Where there is no danger that the witnesses who signed the Get will be deemed competent to attest delivery.

(3) I.e., not an official body.

(4) V. infra 19b.

(5) So that the ink cannot be erased.

(6) E.g., 'I have received from So-and-so all the sums mentioned above'. This was not the custom with Persian documents.

(7) Lit., 'it has no voice'. Since there are no Jewish witnesses to the deed to give publicity to the transaction, thus keeping off prospective buyers from the property; v. infra 19b. And therefore the creditor from the first never expected to recover from such property.

'If a Get[1] is attested by witnesses with heathen names, how do we proceed?' — He replied: 'The only [heathen names] that have come before us in this way were Lucus and Lus, and in both cases we declared [the Get] valid.'[2] This ruling applies strictly to names like Lucus and Lus[3] which are never borne by Israelites, but not to heathen names which are also borne by Israelites.[4] He [thereupon] raised an objection [from the following]: 'Writs of divorce brought from foreign parts and attested by signatures, even if the names are like those of heathens, are valid, because most Jews in foreign parts bear heathen names!'[5] — There the reason is as given, because most Jews in foreign parts bear heathen names.[6] According to another version, Resh Lakish put the question to R. Johanan on the lines of the Baraitha [just quoted],[7] and he answered him by quoting [the second] clause of the Baraitha.[8]

MISHNAH. IF A MAN SAYS: GIVE THIS WRIT OF DIVORCE TO MY WIFE AND THIS BILL OF EMANCIPATION TO MY SLAVE, HE IS AT LIBERTY IF HE PLEASES TO COUNTERMAND BOTH INSTRUCTIONS.[9] THIS IS THE RULING OF R. MEIR. THE SAGES, HOWEVER, SAY THAT HE MAY COUNTERMAND IN THE CASE OF THE GET BUT NOT IN THAT OF THE WRIT OF EMANCIPATION, ON THE PRINCIPLE THAT A BENEFIT MAY BE CONFERRED ON A MAN IN HIS ABSENCE BUT A DISABILITY MAY BE IMPOSED ON HIM ONLY IN HIS PRESENCE; FOR IF HE DOES NOT WANT TO MAINTAIN HIS SLAVE HE IS NOT BOUND TO DO SO,[10] BUT IF HE DOES NOT WANT TO GIVE MAINTENANCE

TO HIS WIFE HE IS STILL ROUND TO DO SO. SAID R. MEIR TO THEM: DOES HE NOT DISQUALIFY HIS SLAVE FROM EATING THE PRIESTLY HEAVE-OFFERING [BY EMANCIPAT[10] NG HIM] IN THE SAME WAY AS HE DISQUALIFIES HIS WIFE [BY DIVORCING HER]?[11] — THEY REPLIED: [THE SLAVE IS DISQUALIFIED] BECAUSE HE IS THE PRIEST'S PROPERTY.

GEMARA. R. Huna[12] and R. Isaac b. Joseph were sitting [studying] before R. Jeremiah whilst R. Jeremiah was sitting and dozing, when R. Huna remarked that we learn from the ruling of the Rabbis [in our Mishnah] that if a man seizes the goods [of a third party] on behalf of a creditor, he acquires [them].[13] Said R. Isaac b. Joseph to him: Even if by doing so he causes loss to others?[14] — He replied: Yes. At this point R. Jeremiah woke up [and overheard them]. He said: Youngsters, this is what R. Johanan said: If a man seizes goods on behalf of a creditor when by so doing he causes loss to others, he does not acquire. If you ask [how this can be reconciled with] our Mishnah,[15] [the answer is that] for a man to say 'give' is equivalent to saying 'acquire on behalf of'.

R. Hisda says: [The case of the man] who seizes goods on behalf of a creditor and by so doing causes loss to others admits of the same difference of opinion as we find between R. Eliezer and the Rabbis. For we learnt:[16] If a man garners the corner [of his field], and said: This is for such-and-such a poor man, he acquires it on his behalf. The Sages, however, say that he must give it to the first poor man that comes along. Said Amemar (others say it was R. Papa:)

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(1) Coming from Palestine.

(2) I.e., I relied upon the witnesses to delivery.

(3) Lucius and Gaius (Jast.).

(4) Because in that case the witnesses, even if Gentiles, might be presumed to be competent.

(5) This apparently contradicts R. Johanan.

(6) Hence it is safe to presume that the witness with a Gentile name is a Jew, but this is not the case in Palestine.

(7) Viz., 'What is the rule about writs of divorce brought from foreign parts with heathen signatures.'

(8) Viz., 'they are valid etc.'

(9) Because this is a disability for both of them, and the agent does not become possessed of the bills, on the principle that 'a disability may not be inflicted on a man save in his presence.'

(10) Hence emancipation involves no disability for the slave.

(11) Vid. Lev. XXII, 11; Num. XVIII, 11. So that emancipation does involve a disability for the slave even as divorce for the wife.

(12) Tosaf. points out that this is not the R. Huna usually mentioned in the Talmud, who was much senior to R. Jeremiah.

(13) For the creditor and the owner cannot recover from him any more than he can withdraw the bill of emancipation from the agent.

(14) I.e., if the man had other creditors also.

(15) Which seems to say that he does become legal possessor.

(16) For notes v. B.M. (Sonc. ed.) p. 49 ff.

Talmud - Mas. Gittin 12a

Perhaps the two cases are not on all fours. R. Eliezer's reason there [for allowing the owner of the field to acquire on behalf of the poor man] may be only because if he desires he can declare his field public property and so become himself a poor man and entitled to [the gleanings], and since he can acquire it for himself [we concede that] he can acquire it for his fellow; whereas [this reasoning] does not apply to our present case. And the Rabbis' reason in the case of the poor man may be only that in the text it is written thou shalt not glean, for the poor man,[1] 'thou shalt not glean for the poor man', but here they would not [apply the same principle]. What lesson then does R. Eliezer derive from these words, 'thou shalt not glean, for the poor'? — He sees in them an admonition to a poor

man [who himself owns a field] in regard to his own gleanings.[2]

FOR IF HE CHOOSES NOT TO MAINTAIN HIS SLAVE, etc. We understand from this, [do we not,] that a master can say to his slave: Work for me but I will not support you! — [No!] Here we deal with the case in which the master says: Keep what you can earn as the equivalent of your maintenance. Similarly in the case of the woman[3] we likewise must suppose that the husband says to her: Keep what you can earn as the equivalent of your maintenance. [But if this is so] why, in the case of the wife should he not [be permitted to refuse to maintain her]? — Because she cannot earn enough [for her keep]. But a slave too may not be able to earn enough for his keep? — If a slave's [work] is not worth the food he eats, what do his master and mistress want him for!

Come and hear: If a slave has fled to one of the cities of refuge,[4] his master is under no obligation to support him; and moreover whatever he earns belongs to his master. We understand from this, do we not, that a master can say to a slave, 'Work for me, but I will not support you'? — We are dealing here with the case in which the master said to him, 'You may keep what you earn as the equivalent of your maintenance'. In that case why does it say that what he earns belongs to the master? — This applies to what he earns over and above his keep. There is surely no need to tell us that? — [There is, because otherwise] you might think that, since the master does not give him anything when he does not earn, he should not take anything from him when he does earn; but now you know [that this is not so]. But why should this rule apply specially to cities of refuge? — I might think [that cities of refuge are an exception],[5] because the words 'that he might live' [used in connection with them[6] are interpreted to mean that] special provision must be made [for one who is exiled there]; but now I know [that they are no exception].[7] But now look at the continuation [of the passage quoted]: But if a woman is exiled to a city of refuge, her husband is under obligation to maintain her. Obviously this speaks of a case where the husband did not say to her, ['You may keep your earnings etc.',] because if he did, why should he have to support her? And since that is the case here, then we presume that the first part of the passage also deals with the case in which the master did not say to the slave, ['Keep your earnings' etc.]?[8] — No. [The cases considered are those in which the master or husband] did say so, and the reason In the case of the wife[9] is because she cannot keep herself. But look at the further continuation [of the passage]: If he says to her, I allow you to keep your earnings in place of your maintenance, he is within his rights. This shows, does it not, that the preceding clause deals with the case where he did not say so? — We interpret [the last clause] thus: If she can earn sufficient [for a living] and he said to her: Keep your earnings in place of your maintenance, he is within his rights. What is the point of bringing in the case where she can earn sufficient [for a living]? — You might think that even so she should not go about to earn a living because, as Scripture says, the honour of the king's daughter [i.e. the Jewish woman] lies it privacy;[10] but now you know [that this is not so].

May we say that the same difference of opinion is found between the Tannaim [mentioned in the following passage]? [For it was taught:] Rabban Simeon b. Gamaliel says: A slave can say to his master in a year of scarcity, 'Either maintain me or let me go free'; whereas the Sages say that the master can do as he pleases. Shall we say that the point at issue between them is this, that the one authority holds that a master can say to his slave, 'Work for me but I will not support you', and the other holds that he cannot? — Do you really think so? In that case why does it say, 'either maintain me or let me go free'? It should Say, 'either maintain me or let me keep my earnings in place of my maintenance'. And besides, why should the rule apply specially to years of scarcity? The fact is that the case put is one in which the master has said to the slave, 'Keep your earnings as the equivalent of your maintenance',[11] and in a year of scarcity he cannot earn enough. [In that case] Rabban Simeon b. Gamaliel holds that the slave can say to the master, 'Either maintain me or let me go free, so that people may see me and have pity on me', whereas the Rabbis hold the view that those who pity free men pity also slaves.[12]

Come and hear: Rab said: If a man dedicates to the Sanctuary[13] the hands of his slave, that slave may borrow money, eat, work and repay [his loan with his earnings].[14] We may conclude from this, [may we not,] that the master can say to the slave, 'Work for me, but I will not maintain you'? — [No.] The case contemplated here is one in which the master provides the slave with his keep. If so, why

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(1) Lev. XXIII, 22. [They join 'for the poor man' with 'Thou shalt not gleam on the principle of Siddur she-nehelak, mentioned in the Mishnah of H. Eliezer b. Jose the Galilean, that a context which has been disrupted by a disjunctive accent is reconnected for exegetical purposes.]

(2) He must leave gleanings in his own field.

(3) Mentioned in our Mishnah.

(4) Having killed someone by accident.

(5) To the rule that the master may take the slave's earnings.

(6) Deut. IV. 42.

(7) In respect of allowing the slave the excess of his earnings over and above his keep.

(8) Which proves that a master can say to a slave 'work for me but I will not support you'.

(9) That the husband has still to keep her.

(10) Ps. XLV, 14.

(11) And both authorities hold that the master may not say, 'Work for me etc.'

(12) And therefore there is no need to let him go free.

(13) Lit., 'sanctifies'; cf. Lev. XXVII.

(14) Cf. p. 44, nn. 1-2.

does he borrow for his food? — He borrows for extras. But the Sanctuary can say to him, 'Just as you could do without extras hitherto, so you can do without extras now'? — The Sanctuary itself prefers this, so that its slave should be in good condition. You say that he works and pays from his earnings. How can he do this, seeing that every penny as he earns it becomes sanctified?[1] — [He keeps on paying his earnings] before they amount to a perutah.[2] This view [that Rab's dictum refers to the case where the master provides the slave's keep] is borne out by this other dictum of Rab: If a man sanctifies the hands of his slave, that same slave can go on working for his keep, for if he does not work, who will look after him? If you say that the first dictum refers to the case where the master provides [the slave's keep], and that in consequence a master is not at liberty [to say to his slave, 'Work for me, but I shall not maintain you'], and that the latter dictum refers to a case where he does not provide for him, all is plain; but if you say that the first dictum refers to the case where the master does tot provide the slave's keep, and [so we rule that] he can say [to the slave, 'You must work for me etc.', what is the sense of saying [in the second dictum], 'if he does not work who will look after him?' Let anyone who will look after him![3] We conclude therefore that the ruling is that a master cannot say [to his slave, 'Work for me, but I shall not support you.']

Come and hear: R. Johanan says that if a man cuts off the hand of another man's slave, he must make good to his master his 'loss of time'[4] and the cost of his medical attendance, and the slave must live on charity. We understand from this,[5] [do we not,] that the master can say to the slave, 'Work for me, but I shall not maintain you'? — No. Here we are dealing with a case in which the master does provide the slave's keep. If that is so, why [does it say that] he must live on charity? — This refers to extras. If that is so, it should say not 'live on' but 'be supported by'? We therefore conclude that the master can say [to the slave, 'You must work for me etc.']. This proves it.

The Master said: 'He must make good to his master "loss of time" and the cost of his medical attendance'. [What need is there to tell me this in] the case of the 'loss of time', which is obvious? — The 'loss of time' is mentioned because the medical costs [had to be mentioned]. Surely the

medical costs go to the slave, for he needs them for his cure? — This must be stated in view of a case where it was calculated that he requires five days [treatment] and by the application of a painful remedy he was cured in three. You might think that in this case [the whole of the estimated medical cost goes to the slave since] the extra pain is his; but now know [that it does not].

It has been taught R. Eliezer said: We said to R. Meir, Is it not a benefit for the slave to obtain his liberty? — He replied, It is a disability for him, since if he was the slave of a priest he can no longer eat of the terumah. We said to him: If the priest chooses not to give him his keep, is he not at liberty to do so?[6] — He replied: If the slave of a priest runs away, or if the wife of a priest flouts her husband,[7] they can still eat of the terumah, but this one cannot. For a woman, however, certainly it is a disadvantage [to be divorced] since she becomes disqualified to eat the terumah [if she was married to a priest] and forfeits her maintenance [in any case].[8] What did they mean by their question and what was the point of [R. Meir's] remark, [If a priest's slave runs away etc.]? — What he said in effect was this: 'You have refuted me in the matter of maintenance,[9] but what answer can you give in the matter of the terumah? For if you should say that, if the master likes, he can throw the writ of emancipation to the slave and so disqualify him [and therefore giving the writ to a bearer is not a disadvantage to the slave], [I answer that] the slave can [prevent this by] leaving him and running away.[10]

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(1) I.e., as the property of the Sanctuary, it must not be touched by outsiders.

(2) Because a sum less than a perutah cannot become sanctified.

(3) As much as to say: Let him starve!

(4) V. Ex. XXI, 19 and B.K. 83b.

(5) From the fact that the master takes the money he is capable of earning even in his maimed condition, while he is living on charity.

(6) And what does he lose therefore by being emancipated?

(7) I.e., refuses him his conjugal rights.

(8) Tosef. Git. I.

(9) I.e., I admit that the slave does not necessarily lose maintenance by being emancipated.

(10) And as he is still a priest's slave, lie can still eat the priestly dues.

Talmud - Mas. Gittin 13a

Seeing then that a priest's slave who runs away and a priest's wife who flouts her husband can still eat of the terumah while this one [who is emancipated] cannot, [is it not a disadvantage to him to be emancipated]?' This was a good rejoinder, [was it not]? — Said Raba: That is the point of the answer of the Rabbis [recorded] in the Mishnah, 'BECAUSE HE IS HIS PROPERTY,' [by which they meant to say] that if the master wants lie can take four zuz from a non-priestly Israelite [as the price of the slave], and so disqualify him wherever he is. Let us grant that R. Meir has made out his case with regard to the slave of a priest; how does he make it out with regard to the slave of an ordinary Israelite? — Said R. Samuel son of R. Isaac: [Emancipation is a disadvantage to the slave] because it disqualifies him from marrying a Gentile bondwoman. [On the contrary it is a benefit] because it qualifies him to marry a free woman? — A slave prefers a common woman; she allows him to take liberties, she is at his beck and call, she is not coy with him.

MISHNAH. IF A MAN SAYS, GIVE THIS GET TO MY WIFE, THIS DEED OF EMANCIPATION TO MY SLAVE, AND DIES [BEFORE THEY ARE GIVEN], THEY ARE NOT TO BE GIVEN AFTER HIS DEATH. [IF HE SAID], GIVE A MANEH TO SO-AND-SO AND DIED, THE MONEY SHOULD BE GIVEN AFTER HIS DEATH.

GEMARA. R. Isaac b. Samuel b. Martha said in the name of Rab: [This money is] only [to be given] if it has actually been put aside in a special place.[1] With what case are we dealing here? Shall

I say the man was in health [when he gave the instruction]? What difference does it make that the money is available, seeing that the recipient has not yet performed the act of 'pulling'?[2] And if he was on his death bed, why must the money have been put on one side? Even if it has not been put on one side, it is to be given, because the instruction of a man on his death bed has the same force as a written document formally handed over![3] R. Zebid said: We are in fact [dealing here] with the case of a man in health, and [our Mishnah is] in agreement with [the following dictum enunciated by] R. Huna in the name of Rab: [If a man says], You owe me a maneh, give it to So-and-so, [if he said this] in the presence of the third party,[4] [the last named] becomes legally entitled to it.[5] R. Papa said that we are indeed dealing here with the case of a man on his death bed, and [the Mishnah is] in agreement with another dictum of Rab, Viz.: 'If a man on his death bed says, Give a maneh to So-and-so out of my belongings, if he said, give this maneh, it is to be given, but if he said simply a maneh it is not to be given, because perhaps he was thinking of a buried maneh. The law is, however, that we do not suspect that anything is buried. Why did not R. Papa take the same view as R. Zebid?

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(1) Lit., 'heaped up in a corner'.

(2) Meshikah, v. Glos. Until this has been performed, the donor can retract, as also his heir.

(3) V. B.B. 151a.

(4) Lit., 'in the presence of these three'.

(5) [V. B.B. (Sonc. ed.) p. 616, nn. 15-16. This principle known as Ma'amad shlashtan which provides for the transfer of claims to a third party is assumed by R. Zebid to apply only to deposits because they are considered to be in the legal possession of the owner wherever they may be at the time. Similarly in the Mishnah it is necessary for the money to be specially set aside.]

Talmud - Mas. Gittin 13b

— R. Papa was of opinion that Rab's dictum was meant to apply equally whether [the sum in question was] a loan[1] or a deposit. Why did not R. Zebid adopt the view of R. Papa? — Because [the language of] the Mishnah is not consistent with [the theory that it speaks of a man on his death bed]. How do we make this out? — Because it says: IF A MAN SAYS, GIVE THIS GET TO MY WIFE AND THIS DEED OF EMANCIPATION TO MY SLAVE, AND DIES BEFORE THEY WERE GIVEN, THEY ARE NOT TO BE GIVEN AFTER HIS DEATH. The reason is that he died; had he continued alive, they would have been given. And the reason why we say this[2] is that he said 'Give' [and not merely 'write']; had he not said 'give', they would not have to be given,[3] whereas in the case of a man on his death bed, although he did not use the word 'give', [the Get] is still to be given, as we learn [from the following Mishnah]: 'At first it was laid down that if a man was being led out in fetters [to execution] and said, "Write a Get for my wife", [the Get] was to be written and delivered. Later they laid down that the same rule applied to one who was leaving for a sea journey or joining a caravan [across the desert]. R. Simeon Shezuri said: It also applies to a man lying dangerously ill.'[4] To this R. Ashi demurred: How do we know, he said, that our Mishnah adopts the View of R. Simeon Shezuri? Perhaps it adopts the view of the Rabbis.[5]

The text above stated: 'R. Huna said in the name of Rab: If a man says, You owe me a maneh, give it to So-and-so, [if he said this] in the presence of the third party, [the last-named] becomes legally entitled to it.' [Commenting on this,] Raba said, This dictum of Rab appears to be sound where [the money in question] is a deposit but not where it is a loan.[6] But, by God! Rab said that it applies even where it is a loan. It has also been stated that Samuel said in the name of Levi: If a man says. You owe me some money, give it to So-and-so, [if he said so] in the presence of the third party. [the last-named] becomes the legal owner. What is the reason? — Amemar said: [The borrower in such case] is regarded as having pledged himself at the time of borrowing the money to repay it either to the lender or to anyone coming on his behalf. Said R. Ashi to Amemar: But on your showing, if the lender transferred the debt to children who had not yet been born when the loan was

made, they would not acquire possession?[7] For even according to R. Meir, who said that it is possible to transfer possession of things that do not yet exist,[8] [the transference must be] to something that is existing, not to something that does not yet exist: The truth is, said R. Ashi,

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(1) [Though it cannot be regarded as being in the possession of the creditor, since the debtor is entitled to spend it. Consequently where a transfer is made by means of ma'amad shlashtan there would be no need for the money in question to be specially set aside.]

(2) That they would have to be given if he continued alive.

(3) Even had he lived.

(4) V. infra 65b.

(5) And therefore in the case of the dying man also the rule applies only in the case where he said 'give'.

(6) V. supra p. 47. nn. 2 and 3.

(7) Because the borrower could not be considered to have pledged himself to repay them.

(8) E.g., fruit that will grow on a tree hereafter, v. B.M. 33b.

Talmud - Mas. Gittin 14a

that for the sake of the benefit which the borrower derives from the difference [in time of payment] between the old debt and the new one, he willingly pledges himself to the new creditor.[1] Said Huna Mar the son of R. Nehemiah to R. Ashi: If that is so, what of people like those from the house of Bar Eliashib, who force their debtors to pay at once? Do they not acquire possession in such a case as this?[2] And if you say they do, then you apply different standards to different people? — The truth is, said Mar Zutra, that there are three laws which the Rabbis have laid down arbitrarily without [giving] a reason. One is this one. A second is the one laid down by Rab Judah in the name of Samuel: If a [dying] man assigns in writing all his property to his wife, he only makes her a trustee for it.[3] The third is the one laid down by R. Hananiah: If a man celebrates the marriage of his son who is over age in a special house, the son becomes the owner of the house.[4]

Rab once said to R. Aha Bardala: You have a kab of saffron of mine, give it to So-and-so, and I am telling you in his presence that I do not mean to change my mind. Are we to understand from this that if he had desired to change his mind he could have done so? — What Rab meant was that instructions such as these[5] cannot be retracted. But this has already been laid down by Rab, since R. Huna said in the name of Rab: If a man says to another, You have a maneh of mine in your possession, give it to So-and-so, if he says this in the presence of the third party, [the latter] becomes legal owner? — If I had only that dictum to go by, I should suppose that this rule applies only to a big gift, but that for a small one it is not necessary for the third party to be present: now I know [that this is not so].

Some market gardeners [who were in partnership] once squared accounts with one another, and found that one had five staters[6] too much. Said the others to him in the presence of the owner of the land, 'Give it to the owner of the land' ,[7] and they duly acquired' from him.[8] Afterwards he reckoned up by himself, and found that he had nothing over. He went to consult R. Nahman. Said [the latter] to him: What can I do for you? For one thing, there is the rule laid down by R. Huna in the name of Rab,[9] and for another thing, they[10] duly 'acquired' from you. Said Raba to him: Does this man say. I am unwilling to pay? What he pleads is, I do not owe the money. Whereupon R. Nahman said: If so, possession has been transferred in error, and in such a case the money must always be returned.

It has been stated: If a man says to another, 'Take to So-and-so the maneh which I owe him', Rab says. he continues to be responsible for it, and he is not at liberty to retract the commission, whereas Samuel says that since he is still responsible he is at liberty to retract. May we presume that the point at issue between them is this, that one authority[11] was of opinion that 'take' is equivalent to 'accept on behalf of',[12] and the other[13] was of opinion that 'take' is not equivalent to 'accept on behalf of'?

— No. Both are agreed that 'take' is equivalent to 'accept on behalf of', and the point at issue is this, that one was of opinion that we make one ruing[14] because of another,[15] and the other was of opinion that we do not. It has been taught in agreement with Rab:[16] If a man says to another, Take to So-and-so the maneh which I owe him, give So-and-so the maneh which I owe him, take to So-and-so the maneh which he has given me in trust, give So-and-so the maneh which he has given me in trust, he remains responsible for the money, yet if he wishes to retract the commission he is not at liberty to do so. Why should he not be able to retract in the case of trust money, on the plea that [the depositor] does not desire his money to be in the hand of another [party]? — R. Zera answered: We assume that [the sender in this case] is known as a man who denies [his obligations].[17] R. Shesheth had some money owing to him in Mahuza for some cloaks [which he had sold there]. He said to R. Joseph b. Hama [who was going there]: When you come back from there, bring the money with you. [R. Joseph] went [to them] and they gave him the money. They said to him: 'Give us a quittance'.[18] At first he said, 'yes', but afterwards he excused himself. When he returned, R. Shesheth said to him: You acted quite rightly,[19] not to make yourself a borrower [who] is the slave of the lender.[20] According to another version he said to him: You acted quite rightly: 'a borrower is the slave of the lender.'[21]

R. Ahi the son of R. Josiah had a silver cup[22] in Nehardea.

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(1) Even if the latter had not yet been born at the time of the loan.

(2) If the debt is transferred to them.

(3) And not absolute owner.

(4) For fuller notes v. B.B. (Sonc. ed.) pp. 616 ff.

(5) Made in the presence of the third party.

(6) A silver stater = half a zuz.

(7) [Trani adds: for ground-tax.]

(8) [So Trani. That is, they made him obligate himself by means of a Kinyan (v. Glos.) to carry out his undertaking: cur. edd. 'he' is evidently an error.]

(9) [That a transfer of claims made in the presence of the third party takes immediate effect.]

(10) [So cur. edd.]

(11) Nab.

(12) For this reason he may not retract, though he still continues to he responsible, as the creditor did not give him the permission to entrust the money to the bearer.

(13) Samuel.

(14) That he is at liberty to retract: lit., 'that we say since'.'

(15) That he is still responsible.

(16) Tosef. Git. I.

(17) And therefore the recipient is satisfied that the money should be in the hands of the hearer.

(18) Lit., 'let us obtain a kinyan from you', relieving us of all further responsibility.

(19) In refusing to assume responsibility.

(20) Prov. XXII, 7.

(21) I.e., my debtors are still under obligation to me.

(22) [GR. **, v. Krauss. TA. II, 415.]

Talmud - Mas. Gittin 14b

He said to R. Dosethai the son of R. Jannai and to R. Jose b. Kifar [who were going there]: When you come back from there, bring it with you. They went and got it [from the people who had it]. They said to them: 'Give us a quittance'. They said, 'No'. 'Then give it back', they said. R. Dosethai the son of R. Jannai was willing, but R. Jose b. Kifar refused. They gave him a thrashing,[1] and said to R. Dosethai: 'See what your friend[2] is doing'. He replied: 'Thrash him well'.[3] When they returned to R. Ahi, R. Jose said: 'Look, sir, not only did he not assist me, but he said to them, "Thrash him

well". 'He said to R. Dosethai: 'Why did you do so?' He replied: 'Those people are like posts, and their hats as long as themselves.[4] Their voice comes from their boots,[5] and their names are outlandish — Arda and Arta and Pili Baris.[6] If they give the order to arrest, you are arrested; to kill, you are killed. If they had killed [poor] Dosethai, who would have given Jannai my father a son like me?' 'Have these men', he asked, 'influence with the Government?' 'Yes', he replied. 'Have they a retinue [mounted on] horses and mules?'[7] 'Yes'. 'If that is so', he said, 'you acted rightly'.

If a man said to another, Take a maneh to So-and-so, and he went and looked for him, but did not find him [alive], one [Baraitha] teaches he must return the money to the sender, and another [Baraitha] teaches he must give it to the heirs of the man to whom it was sent. Shall we say that the point at issue [between the two authorities] is that one is of opinion that 'take' is equivalent to accept on behalf of', and the other that it is not? — Said R. Abba b. Memel: No. Both are agreed that 'take' is not equivalent to accept on behalf of', and there is no difference of opinion between them, as the one speaks of a sender who is in health and the other of one who is on a death bed.[8] R. Zebid said: Both speak of a sender who is on a death bed, but the one [has in mind the case] where the recipient is alive at the time when the money was given [to the bearer], and the other [the case] where he was not alive at the time. R. Papa says: Both speak of a case where the sender was in health,[9] but the one [had in mind the case] where the recipient died while the sender was still alive,[10] and the other [the case] where the sender died[11] while the recipient was still alive.[12]

May we assert that the question whether 'take' is equivalent to accept on behalf of' is one on which there was a difference of opinion among the Tannaim, as it has been taught: [If a man said to another,] Take a maneh to So-and-so, and he went and looked for him and did not find him [alive], he must return the money to the sender. If the sender has also died meanwhile, R. Nathan and R. Jacob say that he should return it to the heirs of the sender; or as some say, to the heirs of the person to whom the money was sent; R. Judah the Prince said in the name of R. Jacob, who said it in the name of R. Meir, that it is a religious duty to carry out the wishes of the deceased: The Sages say that the money should be divided: while here [in Babylon][13] they say that the bearer should use his own discretion. R. Simeon the Prince said: I had to deal with a case of this kind, and it was decided that the money should be returned to the heirs of the sender. May we regard the point at issue here as being this, that the first Tanna was of opinion that 'take' is not equivalent to 'accept on behalf of', and that R. Nathan and R. Jacob were of the same opinion and also held that even where the sender has died in the meanwhile we do not in this case say that it is a religious duty to carry out the wishes of the deceased; that the 'some' [authorities] held that 'take' is equivalent to 'accept on behalf of'; that R. Judah the Prince speaking in the name of R. Jacob who again spoke in the name of R. Meir held that 'take' is not equivalent to 'accept on behalf of', only where the sender has died [in the meanwhile] we do say that it is a religious duty to carry out his wishes; that the Sages who say they should divide are in doubt [as to which principle to adopt], while here [in Babylon, other authorities] think that the bearer can best estimate for himself; and as for R. Simeon the Prince, he simply desired to give an illustration? — No. If the sender is in health, all authorities are agreed [that 'take' is not equivalent to 'accept on behalf of']. Here, however, we are dealing [with the case] where [the sender is] on a death bed, and the dispute here is analogous to the dispute between R. Eleazar and the Rabbis. For we learnt: If a man divides his property among his heirs by word of mouth, R. Eleazar says that whether he is in health or dangerously ill, immovable property can be transferred to the new owners only by money payment, by document, or by act of possession, and movable property only by 'pulling', whereas the Sages say that transference of ownership is effected in both cases by his mere word of mouth. Said [the Sages] to him: There is the case of the mother of the sons of Rokel who was ill and said, Let my brooch be given

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(1) Lit., 'they vexed him'.

(2) Lit., 'the master'.

(3) Al. 'He deserves his thrashing'.

(4) Lit., ‘they are a cubit and their hats are a cubit’.
(5) Lit., ‘they speak from their middles’.
(6) [On this passage. and for an attempt to explain the names mentioned, v. Rappaport, Kerem Chemed VII p. 199.]
(7) Lit., ‘have they horses and mules running before them’.
(8) Whose verbal instructions have the character of a written deposition. v. supra 15a.
(9) And his verbal instructions have not the force of a written deposition.
(10) And it goes back to the sender.
(11) (At which point the gift takes immediate effect because the carrying out of the wishes of the dead is deemed a religious obligation.]
(12) And the money now goes to the heirs of the recipient.
(13) [This is quoted by Chajes in support of Sherira's view in his Epistle that Babylon was a centre of Torah studies from the earliest days, ever since the first deportation of Jews in 596 B.C.E. V. supra p. 17, n. 3 and Halevy, Doroth II, pp. 82ff.]

Talmud - Mas. Gittin 15a

to my daughter, it is worth twelve maneh; and then she died and the Sages carried out her instruction? He replied: The sons of Rokel — may their mother bury them![1] The first Tanna [in our passage] holds with R. Eleazar,[2] and R. Nathan and R. Jacob also hold with R. Eleazar, [so much so] that although the owner dies, we do not say that it is a religious duty to carry out his wishes. ‘Some’ [authorities] hold with the Rabbis. R. Judah speaking in the name of R. Jacob who himself spoke in the name of R. Meir held with R. Eleazar, only where the sender had died in the meanwhile he applied the principle of carrying out the wishes of the deceased. The Sages said the money should be divided, because they were in doubt. ‘Here’ [in Babylon] they said that the bearer could best estimate for himself, while R. Simeon the Prince merely desired to give an illustration.

A question was asked in the Beth Hamidrash: Was R. Simeon the Prince really a prince,[3] or did he speak in the name of the Prince? — Come and hear: R. Joseph said that the halachah follows the ruling of R. Simeon the Prince. But the question still remains whether he was a Prince or only spoke in the name of a Prince? — Let it stand over.

The text above says: R. Jose said that the halachah follows the ruling of R. Simeon the Prince. But is it not an established rule that the words of a man on his death bed have the same force as if they were written and delivered? [R. Joseph] understands [the Baraitha] to be speaking of the case [where the sender was] in good health. But R. Simeon said it should be returned ‘to the heirs of the sender’. though all are agreed it is a fixed rule that it is a religious duty to carry out the instructions of the deceased? — Read[4] : ‘returned to the sender’.

C H A P T E R I I

MISHNAH. IF THE BEARER OF A GET FROM ‘FOREIGN PARTS’ DECLARES: ‘IT WAS WRITTEN IN MY PRESENCE BUT NOT SIGNED IN MY PRESENCE’, [OR]. ‘IT WAS SIGNED IN MY PRESENCE BUT NOT WRITTEN IN MY PRESENCE’, [OR] ‘THE WHOLE OF IT WAS WRITTEN IN MY PRESENCE BUT ONLY ONE OF THE WITNESSES SIGNED IN MY PRESENCE’,[5] [OR] ‘ONLY HALF WAS WRITTEN IN MY PRESENCE THOUGH BOTH WITNESSES[6] SIGNED IN MY PRESENCE’ — IN ALL THESE CASES THE GET IS INVALID.[7] IF ONE [PERSON] DECLARES ‘IT WAS WRITTEN IN MY PRESENCE AND ANOTHER SAYS, ‘IT WAS SIGNED IN MY PRESENCE . THE GET IS INVALID. IF TWO [PERSONS] DECLARE, ‘IT WAS WRITTEN IN OUR PRESENCE AND ANOTHER SAYS, ‘IT WAS SIGNED IN MY PRESENCE’, IT IS INVALID: R. JUDAH, HOWEVER, DECLARES IT VALID. IF ONE DECLARES, ‘IT WAS WRITTEN IN MY PRESENCE’ AND TWO SAY, ‘IT WAS SIGNED IN OUR PRESENCE’, IT IS VALID.

GEMARA. Why this repetition? Is it not all included in what we have already learnt: The bearer of a Get from 'foreign parts' is required to declare, 'In my presence it was written and in my presence it was signed'?[8] — If I had only that to go by, I might think that [though] he is required [to make this declaration], yet if he omitted [to do so the Get is still] valid. Now I know that [this is not the case].

ONLY HALF OF IT WAS WRITTEN IN MY PRESENCE THOUGH BOTH WITNESSES SIGNED IN MY PRESENCE. Which half is referred to? If you say the first half, what of the dictum of R. Eleazar, that if only one line[9] is written with special reference to the woman for whom it is intended, the rest requires no such ['special intention']? — R. Ashi therefore said that the second half is meant.

THE WHOLE WAS WRITTEN IN MY PRESENCE BUT ONLY ONE WITNESS SIGNED IN MY PRESENCE. R. Hisda said: Even if two other persons attest the signature of the second witness, the Get is still invalid. What is the reason for this? — In regard to both signatures alike[10] we must either insist on confirmation[11] or follow the regulation of the Rabbis.[12] Raba demurred strongly to this [reasoning]. Is there anything, he said, which is declared valid on the word of one witness[13] and invalid on the word of two? No, said Raba; what we must say is that even

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(1) As much as to say, they are men of such bad character that their name is not fit to be mentioned in the Beth Hamidrash, and they do not form a precedent. For fuller notes v. B.B. (Sonc. ed.) p. 679.

(2) Who makes no distinction between a man in health or dying, while 'take' is not treated as 'accept on behalf'.

(3) Nasi, the title of the officially recognised head of the Jewish community in Palestine under the Roman Empire, corresponding to the Resh Galutha in Babylonia. [The name of Simeon the 'Prince' does not occur elsewhere, hence the question whether his designation was 'the Prince' or whether the words 'in the name of the Prince' are omitted from the text. For a similar omission cf. B.K. 39b, 1, v. Tosaf.]

(4) .

(5) Lit., 'half of it was signed in my presence'.

(6) Lit., 'the whole of it was signed'.

(7) The rule being that it must all be written and signed by two witnesses in his presence.

(8) Which implies that it was completely written and completely signed in his presence. (Rashi).

(9) Viz., the line containing the name of the man and of his wife and the date.

(10) Lit., 'the whole of it'.

(11) By the attestation of two witnesses. V. supra 2b.

(12) Which requires a declaration from the bearer.

(13) Viz, the bearer, whose word is taken if he says that he recognises the signature of the witness; supra 3a.

if the bearer and another person confirm the signature of the second witness,[1] [the Get] is invalid,[2] because this might be taken as a precedent for the attestation of other documents, and in this way three-quarters[3] of a sum in dispute might be assigned on the word of one witness.[4] R. Ashi strongly demurred to this [reasoning]. Is there anything. he said, which if stated by one persons is valid, but becomes invalid if another joins with him? No, said R. Ashi, what we have to say is that even if the bearer Says. 'I myself am the second witness', [the Get] is invalid, because in regard to both signatures alike we must either insist on confirmation or follow the regulation of the Rabbis.

We learnt: [IF HE DECLARES.] 'THE WHOLE WAS WRITTEN IN MY PRESENCE BUT ONLY ONE WITNESS SIGNED IN MY PRESENCE', THE GET IS INVALID. What now about the other witness? Do we presume that there is no-one who attests his signature? That cannot be; for even where one [person declares] IT WAS WRITTEN IN MY PRESENCE' AND ANOTHER

SAYS 'IT WAS SIGNED IN MY PRESENCE', in which case one testifies to the whole of the writing and the other to the whole of the signing [— even in that case the Get] is invalid; how much more so then if only half [of the signing is attested]? No; this shows that the proper explanation is either that of Raba or of R. Ashi, and that R. Hisda's is to be excluded.[5] And R. Hisda? — He can rejoin: On your theory,[6] what need is there to specify the case of 'in my presence it was written but not signed' [etc.]? Obviously the Mishnah was giving first a weaker and then a stronger instance;[7] so here, the Mishnah gives first a weaker and then a stronger instance.[8]

R. Hisda said: An embankment five handbreadths deep and a fence [on it] five handbreadths high are not reckoned together [to form a single partition of ten handbreadths];[9] the whole of the ten must be contained either in the embankment or in the fence. Meremar, however, in an exposition, [taught] that an embankment of five handbreadths and a fence on it of five handbreadths are reckoned together; and the law is that they are reckoned together.

Ilfa inquired: Can the hands be half clean and half unclean, or can they not be? How is this question to be understood? Does it mean that two persons wash their hands from a revi'ith?[10] Regarding this we have already learnt that a revi'ith is sufficient for washing the hands of one [person] and even of two.[11] Is the case then that he washes one hand at a time? In regard to this too we have learnt[12] that if a man washes one hand by pouring water over it and the other by dipping [it in a river] the hands are clean. Is it then that he washes a half of his hand at a time? Regarding this it has been laid down in the school of R. Jannai that the hands cannot be made clean by halves. — The question may still be asked in regard to the case where the water is still dripping [from one hand[13] when he washes the second]. And suppose the water is dripping, what does it matter? Have we not learnt:

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(1) I.e., declare that they know this to be his signature.

(2) In spite of the fact that if the bearer testifies alone, it is valid.

(3) Lit., 'deducting a fourth'.

(4) If a document is brought into court signed by two witnesses, A and B, of whom B is dead, and if A together with a third party attests the signature of B, then if money were to be awarded on the strength of that document, three-quarters of it would be awarded on the evidence of the one witness A, which is against the rule, as each witness must be responsible for a half, v. Keth. 21b.

(5) The Mishnah quoted above ('if he says the whole was written in my presence but only one witness signed in my presence') has just been shown to be superfluous, and we are therefore entitled to infer some lesson from it. That inference, however, should be restricted to a minimum, and therefore the opinions of Raba and R. Ashi are preferable to that of R. Hisda.

(6) That an apparent superfluity must be made the basis of some lesson.

(7) Lit., 'not only this (but) also this'. I.e., first 'in my presence it was not signed (at all)', and then 'in my presence only one witness signed', the first case being contained in the second.

(8) First where one attests the writing and the other the signatures, and then where one signature is left unattested.

(9) So as to enclose a space which can be considered as 'private domain' for the purposes of transportation on Sabbath.

(10) A quarter of a log, about 1 1/2 eggs; the minimum required for the ritual washing of the hands before meals.

(11) Naz. 382. Yad. I, 2.

(12) Yad. II, 1.

(13) So that it is possible still to regard the hands as being washed together.

Talmud - Mas. Gittin 16a

'A jet of water [from a jug] or water flowing down a slope, or dripping water, does not form a connection so as to make [the water] unclean[1] or clean?[2] — The question is still required for the case where the dripping is considerable.[3] But regarding this also we have been taught that where the dripping is considerable, it does form a connection. — Perhaps this dictum refers only to a mikweh,[4]

and follows the opinion of R. Judah: For we learnt: 'If a mikweh contains exactly forty se'ahs of water and two persons bathe in it, if they both are in the water together they are both clean, but if one enters after the other has left, the first is clean but the second not'.[5] R. Judah said that if the feet of the first were still touching the water [when the second entered]. the second is also clean.[6]

R. Jeremiah said: It has been laid down that if a person plunges the greater part of his body in water drawn [through a pipe],[7] or if three logs of such water are poured over the greater part of the body of a clean person, he is unclean.[8] R. Jeremiah then propounded: Suppose he plunges half of his [body into such water] and three logs of it fall on the other half, is he unclean? This question was left unanswered. R. Papa said: It has been laid down that if a sick person had a seminal emission and nine kabs of water are thrown over him, he is clean. R. papa then asked: If he dips half his [body in water] and [water is] thrown over the other half, is he clean? This question was also left unanswered.

IF ONE DECLARES, 'IT WAS WRITTEN IN MY PRESENCE AND THE OTHER, etc.' R. Samuel b. Judah said in the name of R. Johanan: This rule applies only to the case where the Get was not brought by both as joint bearers, but if it is brought by both of them

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(1) I.e., if water is falling or dripping from a receptacle containing 'clean' water into one containing 'unclean' it does not thereby communicate the uncleanness of the lower to the upper.

(2) [I.e., if a mikweh has less than 40 se'ahs, water dripping from another mikweh it cannot make up the deficiency; but v. Tosaf. s.v. הניצוק]

(3) Lit., 'enough to make wet'.

(4) V. Glos. And not to the washing of the hands.

(5) [Because the first had taken away some water on the body and thus rendered the mikweh deficient from the minimum of 40 se'ahs.]

(6) [On the principle גוד אחית (lit., 'stretch and bring down') whereby a partition is supposed to be prolonged so as to reach down to the ground. Similarly here the first man is treated as forming part of the partition of the mikweh reaching down to the mikweh proper. This principle may be adopted even if that of חיבור 'connection' is not.]

(7) Or any vessels. And not flowing in directly without any artificial intermediary.

(8) For eating terumah. V. Shab. 14a.

it is valid. We conclude that he was of opinion that if a Get was brought by two bearers from 'foreign parts', they are not required to declare 'In our presence it was written and in our presence it was signed.'[1] Said Abaye to him: Taking this view [as correct], let us look at the clause which follows: IF TWO SAY, 'IT WAS WRITTEN IN OUR PRESENCE', AND ONE SAYS, 'IT WAS SIGNED IN MY PRESENCE', IT IS INVALID; R. JUDAH, HOWEVER, DECLARES IT TO BE VALID. The reason, you say, why the Rabbis declare it invalid is because it was not brought by both of them as bearers. Are we to suppose then that if both of them did act as bearers, the Rabbis hold the Get to be valid? — He replied: That is so. In the case then where both do not act as bearers of the Get, what is the ground of the difference [between R. Judah and the Rabbis]? — One authority [the Rabbis] held that there is a risk of the procedure [in the case of a Get] being taken as an example for allowing one witness to confirm [signatures] of documents in general, and the other held that there is no such danger.

Another version [of the above passage is as follows]. R. Samuel b. Judah said in the name of R. Johanan: Even if both witnesses have acted as bearers of the Get, it is invalid. We conclude that he was of opinion that if two persons act as joint bearers of a Get from 'foreign parts', they are required to declare, 'In our presence it was written and in our presence it was signed'. Said Abaye to him: Accepting this view [as correct], let us look at the next clause: IF TWO SAY, 'IT WAS WRITTEN IN OUR PRESENCE, AND ONE SAYS, 'IT WAS SIGNED IN MY PRESENCE', IT IS INVALID.

R. JUDAH, HOWEVER, DECLARES IT VALID. Then the Rabbis declare it invalid even if both have acted as bearers? — He replied: That is so. What is the point at issue between R. Judah and the Rabbis? — One authority [the Rabbis] was of opinion that the reason why the declaration is required is because [the Jews outside Palestine] are not familiar with the rule of 'special intention',[2] and the other [R. Judah], because witnesses cannot easily be found to attest the signatures.[3] May we infer from this that the dispute between Rabbah and Raba goes back to the Tannaim? — No. Raba adopts the first version of the passage just quoted.[4] Rabbah, [adopting the second], can maintain that both authorities require the declaration on account of the rule of 'special intention', and here we are dealing with the period when this had become generally known, and the point at issue between R. Judah and the Rabbis is whether there is a danger of a reversion to the former ignorance, one [the Rabbis] holding that there was such a danger and it was necessary to take precautions against it, and the other that it was not. But according to this, R. Judah should join issue in the first clause[5] also? — This is in fact the case, as has been stated: 'Ulla said that R. Judah differed from the Rabbis in the first case also. R. Oshiah raised an objection to 'Ulla. [It has been taught:] R. Judah declares [the Get] valid in this case, and not in the other. Does he not mean by this, [he said,] to except the case where one says 'It was written in my presence' and one says 'it was signed in my presence'? — No. He means to except the case where one says, 'It was signed in my presence but not written in my presence'. I might think that since R. Judah does not think it necessary to guard against the danger of a recurrence of the ignorance,[6] so also he does not think it necessary to guard against the danger of confusing writs of divorce with other documents through allowing confirmation by one witness.[7] Now I know [that this is not the case]. It has also been stated:[8] Rab Judah said: In the matter of a Get which is brought by two bearers from 'foreign parts', we find a difference of opinion between R. Judah and the Rabbis.

Rabbah b. Bar Hanah was once ill, and Rab Judah and Rabbah went to inquire how he was. While with him, they put to him the question: If two bearers' bring a Get from 'foreign parts', are they required to declare, 'In our presence it was written and in our presence it was signed', or are they not required? — He replied: They are not required. For if they were to say, 'In our presence he divorced her', would we not take their word? At this point a Gueber[9] came in

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(1) Since the reason for this declaration (which is because there may not be witnesses available to attest the signatures, v. supra 2b) does not apply where there are two bearers.

(2) And therefore where there are two bearers, they must make the whole declaration.

(3) And therefore two bearers are not required.

(4) According to which two bearers are not required.

(5) If one says that it was written in his presence and one that it was signed in his presence. Since the bearers are two and he does not fear the reversion to their former ignorance.

(6) By declaring the Get invalid if one declares that he has seen it written and one that he has seen it signed.

(7) If one witness is allowed to confirm the signature to the Get.

(8) In support of the second version of R. Johanan.

(9) A member of the fanatical sect of fire-worshippers who became powerful in the Persian Empire in the fourth century.

and took away their lamp;[1] whereupon Rabbah b. Bar Hanah ejaculated: 'O All Merciful One! either in Thy shadow or in the shadow of the son of Esau!'[2] This is as much as to say, [is it not,] that the Romans are better than the Persians? How does this square with what R. Hiyyah taught: 'What is the point of the verse, God understood her way and he knew her place?[3] It means that the Holy One, blessed be He, knew that Israel would not be able to endure the persecution of the Romans, so he drove them to Babylon'?[4] — There is no contradiction. One dictum refers to the period before the Guebers came to Babylon, the other to the period subsequent to their coming.[5]

IF ONE SAYS, IT WAS WRITTEN IN MY PRESENCE' AND TWO SAY IT WAS SIGNED IN OUR PRESENCE , IT IS VALID. R. Ammi said in the name of Johanan: This applies only to the case in which the Get is produced by the witness to the writing [as bearer]. since in that case there is the equivalent of two witnesses[6] to the writing and two to the signing. If, however, it is produced by the witnesses to the signing [as bearers], [the Get] is invalid. This would show, [would it not,] that he is of opinion that if two [bearers] bring a Get from 'foreign parts', they are required to declare, 'It was written in our presence and signed in our presence'? Said R. Assi to him: Accepting this view, look at the preceding clause: IF TWO SAY, 'IT WAS WRITTEN IN OUR PRESENCE' AND ONE SAYS, 'IT WAS SIGNED IN MY PRESENCE', IT IS INVALID: R. JUDAH, HOWEVER, DECLARES IT VALID. Do the Rabbis declare it invalid even if the Get is produced by both [as bearers]? — He replied: That is so. At another time R. Assi found R. Ammi poring [over the Mishnah] and saying that even if the Get [is produced] by the witnesses to the signing [as bearers],[7] it is valid. This seemed to show that he was of opinion that if two [bearers jointly] brought a Get from foreign parts, they are not required to declare, 'It was written in our presence and signed in our presence'. Said R. Assi to him: If that is so, what of the preceding clause: IF TWO SAY, 'IT WAS WRITTEN IN OUR PRESENCE' AND ONE SAYS, 'IT WAS SIGNED IN MY PRESENCE', THE GET IS INVALID; R. JUDAH, HOWEVER, DECLARES IT VALID. The reason why the Rabbis declare it invalid is because the Get is not produced by both [as bearers]. If then it is produced by both [as bearers], do the Rabbis declare it valid? — He replied: That is so. But, said R. Assi, at another time you told me differently? — He said: This is a peg which cannot be dislodged.[8]

MISHNAH. IF [A GET WAS] WRITTEN BY DAY AND SIGNED ON THE [SAME] DAY, WRITTEN BY NIGHT AND SIGNED ON THE [SAME] NIGHT, WRITTEN BY NIGHT AND SIGNED ON THE DAY [FOLLOWING],[9] IT IS VALID. IF IT WAS WRITTEN BY DAY AND SIGNED ON THE NIGHT [FOLLOWING],[10] IT IS INVALID. R. SIMEON, HOWEVER, DECLARES IT VALID, SINCE R. SIMEON USED TO SAY THAT ALL DOCUMENTS WRITTEN BY DAY AND SIGNED ON THE [FOLLOWING] NIGHT ARE INVALID EXCEPT BILLS OF DIVORCE.

GEMARA. It has been stated: Why did [the Rabbis] ordain that bills of divorce should be dated? — R. Johanan says: Lest [the husband] might shield his sister's daughter:[11] Resh Lakish said: So that he should not sell the increment of his wife's property.[12] Why did Resh Lakish not give the reason that R. Johanan gave? — He might argue

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(1) Because it was some Gueber festival on which the lighting of fire was forbidden.

(2) I.e., the Roman Empire.

(3) Job XXVIII, 23.

(4) Apparently this refers to the larger number of Jews inhabiting Babylon as compared with Palestine in the day of R. Hiyya.

(5) [After 226 when Ardashir I, having defeated the last of the Parthian kings. Artaban V, established the Sassanid dynasty that held sway over Babylon for several centuries. The Sassanides, whose original home was Haber near Shiraz, S. Persia, (hence the name הגבר , Gueber) were ardent and zealous supporters of the Zoroastrian faith and very

intolerant of the other faiths their antipathy to which found expression in persecution; v. Keth. 63b and Kid. 73a, Obermeyer op. cit. p. 262, and B.K. (Sonc. ed.) p. 699. n. 2 (where the date should be 226) and n. 3.]

(6) Because the bearer who makes the declaration is regarded as equivalent to two witnesses.

(7) And not the witness to the writing.

(8) I.e., you may take this as fixed and certain.

(9) Which is still the same date, the Jewish day being from evening to evening.

(10) Which is a different date.

(11) Who is his wife. If she misconducted herself, he might, out of affection for his sister, say that it was after he had given her the divorce.

(12) Lit., 'on account of the usufruct'. The so-called 'property of sucking' (mulug) which was settled on the wife at the time of marriage but of which the husband was to have the usufruct so long as they were married. (V. Glos. and B.B., Sonc. ed., p. 206, n. 7). If the Get was undated, he might wrongfully assert that he had sold the increment before the divorce.

Talmud - Mas. Gittin 17b

that adultery is exceptional.[1] And why did R. Johanan not give the reason that Resh Lakish gave? — He was of opinion that the increment of the wife's property belongs to the husband until the Get is actually delivered.[2] On the theory of Resh Lakish we can understand why R. Simeon should declare valid [a Get signed on the following night].[3] But on the theory of R. Johanan, what is R. Simeon's reason for declaring such a Get valid?[4] — R. Johanan might answer that his theory is not meant to square with the view of R. Simeon but with the view of the Rabbis. On the theory of R. Johanan[5] we understand why R. Simeon and the Rabbis differ;[6] but on the theory of Resh Lakish, why should there be any difference between them? — They differ with regard to the increment that accrues between the time of writing [the Get] and the time of signing it.[7] But have we not been told just the opposite [with regard to R. Johanan and Resh Lakish]? For it has been stated: 'From what point of time can the divorced woman begin to draw the increment? R. Johanan says: From the time [when the Get] is written; Resh Lakish says: From the time when it is delivered'? — Reverse the names.

Said Abaye to R. Joseph: [We have learnt that] three kinds of Get are invalid,[8] but if a woman marries again on the strength of them [and bears a child], the child is legitimate. This being so, what good have the Rabbis done with their regulation [that the Get should be dated]? — They at least raise an initial bar against her marrying again.[9] Suppose the husband cut off the date and gave it to her? — He replied: We do not take precautions against a fraud [of this kind]. Suppose it is dated only by the septennate,[10] by the year, by the month, by the week? — He replied: It is valid. What good then have the Rabbis done with their regulation? — It is of value [where a question arises] about the septennate before or the septennate after.[11] For if you say this is of no value, [I might retort,] even when the day is specified, do we know whether the morning or the evening is meant? What [it does is] to distinguish it from the day before and the day after. So here, [by specifying the septennate] we are enabled to distinguish it from the septennate before and the septennate after [should a question arise about them].

Rabina said to Raba: If a man writes a Get

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(1) And therefore it was unnecessary to make a special regulation dealing with it.

(2) Hence dating the Get would not help the wife to recover the increment from the purchasers as long as the woman could not produce evidence when she received the Get.

(3) Because according to R. Simeon he loses his title to the increment when he decides to divorce her; v. infra 18b.

(4) Seeing that it gives him an improper opportunity of shielding his sister's daughter.

(5) That the Rabbis required the Get to be dated so that the husband should not shield the wife and R. Simeon so that he should not draw the increment.

(6) On the question of a Get signed on the following night.

(7) The Rabbis holding that the husband is entitled to it till the time of signing. Hence if it is dated the previous day he loses a day, and therefore the Get is invalid. For R. Simeon, however, who holds that the husband loses his title from the time he decided to divorce her, this objection does not apply.
(8) One of them being an undated Get; infra 86a.
(9) Because the scribes will be unwilling to write and the witnesses to sign a Get without a date.
(10) The seven-year period between one Sabbatical year and the next.
(11) E.g., if the alleged unchastity took place in the septennate before, or if the husband continued to draw the increment in the septennate after.

Talmud - Mas. Gittin 18a

and puts it in his pocket, thinking that he may yet make friends with his wife[1] [and eventually gives it to her], what is the ruling? — He replied: A man does not meet trouble half way.[2] Said Rabina to R. Ashi: In the case of writs of divorce from 'foreign parts' which are written in Nisan and do not reach their destination till Tishri, what good have the Rabbis done with their regulation?[3] — He replied: People hear of such documents.[4]

It has been stated: From what point do we commence to count [the three months] from a divorce?[5] Rab says: From the time [the Get] is delivered; Samuel says: From the time it is written. R. Nathan b. Hoshia strongly demurred to this opinion. According to Samuel, are people to say, [he asked,] here are two women in the same house,[6] one of whom may marry and the other may not? — Said Abaye to him: [That is so]: the one like the other must go by the date of her Get.[7] It has been taught in accordance with Rab and it has been taught in accordance with Samuel. It has been taught in accordance with Rab: If a man sends a Get to his wife and the bearer lingers on the road three months, she has to wait three months from the time the Get is delivered to her, nor do we concern ourselves lest it should have become an 'old Get',[8] because the husband has not been alone with her in the interval. It has been taught in accordance with Samuel: If a man entrusts to a third party a Get for his wife, and says to him, 'Do not give it to her till three months have passed', she is at liberty to marry from the moment he has given it to her, nor do we concern ourselves lest it should have become an 'old Get', since he has not been alone with her in the interval.

R. Kahana, R. Papi and R. Ashi acted on the principle that the Get is valid from the time of writing; R. Papi and R. Huna the son of R. Joshua that it is valid from the time of delivery. The law is that it is valid from the time of writing.

It has been stated: From what point does a Kethubah [marriage settlement][9] fall under the law of the Sabbatical year?[10] Rab says: From the moment when the woman takes part payment and converts [the rest into a loan];[11] Samuel says: [From the moment when] she takes part payment even though she does not convert [the rest into a loan], or converts [the whole into a loan] without taking part payment. It has been taught in accordance with Rab and it has been taught in accordance with Samuel. It has been taught in accordance with Rab: From what point does a Kethubah fall under the law of the Sabbatical year? From the moment when the woman takes part payment and converts [the rest into a loan]; if she takes part payment and does not convert [the rest into a loan], or converts [it all into a loan] and does not take part payment, it does not fall under the law of the Sabbatical year; she must both take part payment and convert the rest into a loan. It has been taught in accordance with Samuel: ['The fines] for violation,[12] for wife-slander,[13] and for seduction,[14] and a wife's Kethubah, if converted into loans, are subject to the law of the Sabbatical year, but otherwise are not subject. From what point are they regarded as converted into loans? From the time [the case is] brought into court.' Samuel said: A Kethubah is on a par with a deed drawn up by the Beth din. Just as a deed drawn up by a Beth din may be written by day and signed on the following night,[15] so a Kethubah may be written by day and signed on the following night. The Kethubah[16] of R. Hiyya b. Rab was written by day and signed the following night. Rab himself was present and made no

objection. Are we to infer from this that he is of the same opinion as Samuel? — They were engaged on that matter during the whole of the interval; [and in such a case it is permissible], as it has been taught: R. Eleazar son of R. Zadok said: This rule [not to sign documents on the following night] applies only where [the parties concerned] were not engaged on that matter during the whole of the interval; but if they were so engaged, the document so signed is valid.

R. SIMEON DECLARES IT VALID. Raba said: What is R. Simeon's reason? — He was of opinion that so soon as the husband makes up his mind to divorce the wife, he is not entitled any more to the increment from her property. Resh Lakish said: R. Simeon declared [the Get] valid only if it was signed on [the night] immediately [following], but if it was not signed till ten days afterwards it is not valid.

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(1) Lit., 'if he should pacify her, she would be appeased.'

(2) I.e., such a case is hardly likely to occur. Unless a man is intent on divorcing his wife he does not as a rule write a writ of divorce.

(3) Because even with the date the husband will now find it easy to shelter the wife in case of misconduct, and, further, the date places at a disadvantage persons who in the interval between the writing and the giving of the Get have inadvertently bought the increment of the wife's property from the husband, as she can now recover this from them. V. Tosaf. s.v.

(4) And know that the Get was given long after it was written, and in those cases, evidence as to the date of delivery is decisive.

(5) A divorced woman was required to wait three months before remarrying to make sure she was not with child. V. Yeb. 42a.

(6) Two wives of one man who gave them both writs of divorce on the same day before going abroad, but one Get bore an earlier date than the other.

(7) Lit., 'For this one, her Get affords proofs, and for this one her Get etc.'

(8) If after writing a Get and before delivering it the husband has intercourse with his wife, such a Get is called an 'old Get' and is not valid; v. infra 76b.

(9) V. Glos.

(10) V. Deut. XV. The Sabbatical year brought release from the obligation to repay loans, but not the kethubah.

(11) By drawing up a bond in which the balance is recorded as a loan.

(12) V. Deut. XXIII, 28, 29.

(13) Lit,, 'fine'. V. Deut. XXIII, 13-19.

(14) V. Ex. XXII, 15,16.

(15) As it is only a record of a decision arrived at by the court.

(16) V. Glos. s.v. (b).

since there is a possibility that he made it up with her [in the interval].[1] R. Johanan, however, says that even if it was signed ten days later [it is valid, because] if he had made it up with her, people would have got to know.

It has been stated: If a man said to ten persons, 'Write a Get for my wife', according to R. Johanan, two of them sign as witnesses and the rest [simply] because he made it a condition,[2] while according to Resh Lakish, all of them sign as witnesses. How are we to understand this? Are we to suppose that he did not say to them 'all of you [write]'? [This cannot be] because we have learnt: If he says to ten persons, 'Write a Get for my wife' [without saying 'all of you'], one writes and [only] two sign![3] — We suppose then that he used the words 'all of you'. What is the practical difference between R. Johanan and Resh Lakish?[4] — The practical difference arises where two of them signed on the same day and the rest ten days later. According to the authority [R. Johanan] who said [that the rest only sign] because he made it a condition, [the Get is] valid, but according to the authority

who says [that they all sign] as witnesses, [the Get is] invalid. Or again [there is a difference] where, for example, one of the persons [who signed it] was found to be a relative or in some way disqualified [from acting as witness]. According to the authority who said [that the rest sign] because he made it a condition, [the Get is] valid, but according to the authority who says [that they all sign] as witnesses [it is] invalid.[5] If [the relative or disqualified person] signs first, some say [that the Get is] valid and some that [it is] invalid. Some say [it is] valid because [the person thus signing may be regarded as fulfilling] the condition. Some say [it is] invalid because [otherwise] a precedent may be set for the signing of documents in general.

A certain man said to ten persons, [All of you][6] write a Get for my wife, and two signed on the same day and the rest ten days later. [The question of its validity] came before R. Joshua ben Levi. He said:

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(1) Cf. p. 66, n. 3.

(2) The fulfilment of which he insisted upon, because it was his intention to shame her in the presence of all these people.

(3) V. infra 66b.

(4) Since all have in any case to sign.

(5) According to Sanhedrin 9a, if there are a hundred witnesses and one of them is a relative or otherwise disqualified, the evidence is not accepted.

(6) These words are not in the text, but, as Rashi points out, they are necessary for the sense, because if they were not used, according to all authorities it is necessary for only two to sign.

Talmud - Mas. Gittin 19a

R. Simeon's authority[1] is good enough to follow in an emergency.[2] But did not Resh Lakish say that R. Simeon declared [the Get] valid only if it was signed [the night] immediately [following] but not if it was signed ten days later? — On that point he [R. Joshua ben Levi] agreed with R. Johanan. But did not R. Johanan say that only two [of them sign] as witnesses and the rest [simply because he made it] a condition?[3] — On that point he agreed with Resh Lakish.

MISHNAH. THE GET MAY BE WRITTEN WITH ANY MATERIAL, WITH DEYO,[4] WITH SAM,[5] WITH SIKRA,[6] WITH KUMUS[7] AND WITH KANKANTUM[8] OR WITH ANYTHING WHICH IS LASTING. IT MAY NOT RE WRITTEN WITH LIQUIDS OR WITH FRUIT-JUICE OR WITH ANYTHING THAT IS NOT LASTING. [THE GET] MAY BE WRITTEN ON ANYTHING — ON AN OLIVE LEAF [ETC.] [HE MAY WRITE IT] ON THE HORN OF AN OX AND GIVE HER THE OX, OR ON THE HAND OF A SLAVE AND GIVE HER THE SLAVE. R. JOSE THE GALILEAN SAYS: [A GET IS] NOT [TO BE WRITTEN] ON ANYTHING LIVING OR ON FOODSTUFF.

GEMARA. DEYO: this is ink.[9] SAM: this is paint.[10] SIKRA: Rabbah b. Bar Hanah says: Its name is dekarta [red paint]. KUMUS: this is gum. KANKANTUM: Rabbah b. Samuel says: This is blacking used by bootmakers. ANYTHING THAT IS LASTING. What do these words add [to the list]? — They add the content of the following [teaching] which R. Hanina learnt: If [the Get is] written with the juice of wine-lees[11] or gall-nut [juice], it is valid.

R. Hiyya taught: If the Get is written with lead, with black pigment or with coal,[12] it is valid.

It has been stated: If a man goes over red paint writing with ink on Sabbath, R. Johanan and Resh Lakish both agree that he is punishable on two counts, one for writing and one for effacing.[13] If he goes over ink with ink or red paint with red paint, he is not punishable.[14] If he goes over ink with red paint, some say he is punishable and some say he is not punishable. Some say he is punishable

because he effaces [the previous writing], some say he is not punishable because he only spoils [the previous writing]. Resh Lakish inquired of R. Johanan: If witnesses are unable to sign their names, is it permissible to write the names for them in red paint and let them go over in ink? Does the upper writing count as writing or not? — He replied: It does not count as writing. But, said he, has not your honour[15] taught us that in respect of Sabbath observance the upper writing is counted as writing?[16] — He replied: Because we have a certain idea, shall we base our practice upon it?[17]

It has been stated: If the witnesses are unable to sign their names, Rab says that incisions are made for them on the sheet[18] which they fill in with ink, and Samuel says that a copy is made with lead. 'With lead'? How can this be, seeing that R. Hiyya has taught that if the Get is written with lead, with black pigment or with coal it is valid?[19] — There is no contradiction; the one case speaks of lead, the other of water in which lead has been soaked. R. Abbahu said that the copy is made with water in which ground gall-nuts[20] have been soaked. But has not R. Hanina taught that if the Get is written with juice of wine-lees or of gall-nuts it is valid? — There is no contradiction: in the one case the sheet has been prepared with gall-nut juice, in the other not; gall-nut water does not show on gall-nut water.[21] R. Papa says [that the copy may be made] with spittle, and so R. Papa actually showed Papa the cattle dealer. All this applies only to writs of divorce, but not to other documents;[22] for a man who actually did this with another document was ordered by R. Kahana to be flogged.

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(1) That it may be written by day and signed by night.

(2) Supposing the husband has gone away or she has married again.

(3) And therefore it should he valid even according to the Rabbis.

(4) 'Ink',

(5) 'Paint'.

(6) Lit., 'red'.

(7) GR. ** , 'gum'.

(8) Calcanthum, vitriol. These terms are explained infra.

(9) [Chiefly made in Talmudic days of soot hardened into a tough pitchy substance by means of olive oil or balsam-gum, and finally dissolved in liquid before use; v. Blau, Buchwesen, pp. 153ff.]

(10) [Orpiment; v. Krauss, op. cit. III, pp. 150 and 511.]

(11) [מי תריא meaning uncertain: either rain water or juice of some fruit.]

(12) [So Jast. Rashi 'with coal or blacking used by bootmakers'. Here too the Hebrew terms שחור and שיחור are of uncertain meaning, but the Syriac 'Shekiro' for vitriol is in favour of Rashi; Krauss, op. cit. p. 311.]

(13) The effacement of writing on Sabbath is an offence if it is done with the purpose of writing afresh, otherwise not.

(14) Because he neither writes nor effaces.

(15) Lit., 'our master'.

(16) When ink is written over red paint.

(17) I.e., shall we go so far as to permit a doubtful action on Sabbath, or similarly count such a signature as valid in the case of a Get?

(18) [נייר , a leaf of white papyrus. v, however Krauss, op. cit. III, pp. 146ff.]

(19) And therefore lead counts as writing, and so if it is gone over in ink, we have writing on top of writing, which is not permissible.

(20) [מי מילין , juice made from the rind of the ash-tree (GR. **), a popular writing material prepared by the Romans, v. Kraus, op. cit. III, 148.]

(21) And therefore where the sheet has been prepared with gall-nut juice, it is permissible to make a copy with gall-nut water.

(22) For which it is necessary to find witnesses who can sign their names.

Talmud - Mas. Gittin 19b

It has been taught in accordance with Rab: If witnesses are unable to sign their names, incisions are made for them on the sheet which they fill in with ink. Said Rabban Simeon b. Gamaliel: This

applies only to writs of divorce; but in the case of writs of emancipation and other documents, if the witnesses are able to read and to sign, they sign, and if not they do not sign. How does 'reading' come in here? — There is an omission which is to be supplied as follows: 'If the witnesses are unable to read, the document is read to them and they sign, and if they are unable to sign etc.' Said Rabban Simeon b. Gamaliel: 'This refers only to writs of divorce; but in the case of writs of emancipation and other documents, if they are able to read and sign, they sign, and if not, they do not sign.' Said R. Eleazar: What is the reason of R. Simeon [for ruling so]? In order that the daughters of Israel may not become 'deserted'[1] wives. Raba said: The halachah is according to the ruling of R. Simeon b. Gamaliel. R. Gamda, however, said in the name of Raba that the halachah is not according to his ruling. According to whose ruling then is it? According to that of the Rabbis?[2] Was not a man who actually followed this course with regard to another document ordered to be flogged by R. Kahana? — Explain [that as referring to the rule] about reading,[3] Rab Judah used to exert himself[4] so as to read [a document submitted to him] and [only then] sign. Said 'Ulla to him: This is not necessary, for R. Eleazar, the Master of the Land of Israel,[5] used to have the document read to him and then sign. R. Nahman also had [the document] read to him by the scribes of the court judges and then signed. This procedure was correct for R. Nahman and the scribes of the court judges, because they were afraid [of him][6] but it would not be with R. Nahman and any other scribes, or with the scribes of the court judges and any other person.

When R. Papa was called upon to deal with a Persian document drawn up in a heathen registry, he used to give it to two heathens to read, one without the other, without telling them what it was for,[7] and [if they agreed] he would recover on [the strength of] it even from mortgaged property. R. Ashi said: R. Huna b. Nathan has told me that Amemar has laid down that a Persian document signed by Israelite witnesses is sufficient warrant for recovering even from mortgaged property. But they are not able to read it? — [We speak of the case] where they are able. But the writing has to be such that it cannot be altered [without leaving a mark], and here it is not so?[8] — [We speak of a sheet which has been treated] with gall-nuts. But the rule is that the gist of the document has to be repeated in the last line, and that is not the case here?[9] — [We speak of the case where] it is repeated. But when all is said and done, what does this statement teach us? That [a document] may be written in any language? This we have already learned:[10] If a Get is written in Hebrew and signed in Greek,[11] or written in Greek and signed in Hebrew, it is valid. — If I had only that to go by, I should say that this is the case only with writs of divorce, but not with other documents. Now I know [that this applies to other documents also].

Samuel said: If a man gives his wife a blank sheet and says to her, 'This is thy Get', she is divorced, because we consider it possible that he may have written it with gall-nut water.[12] An objection was raised [from the following]: [If a man said to his wife], 'Here is your Get', and she took it and threw it into the sea or the fire or destroyed it in any other way, and if he then in turn said that it was a sham promissory note[13] or an amanah[14] ' she is none the less divorced, and he has no power to prevent her from remarrying.[15] [Is not] the reason for this that there was some writing on the sheet, so that if there was no writing [she was] not [divorced]?[16] — When Samuel said she is divorced, he meant, only after we have tested [the sheet] with violet water.[17] If the letters come to light, then obviously there was writing, and if not, then there is nothing in it. And if the letters do come to light, what of it? It is only now that they come to light?[18] Samuel also only said, 'we consider it possible.'[19]

Rabina said: Amemar has told me that Meremar has laid down in the name of R. Dimi that the two persons in whose presence the Get is delivered[20] must read it. An objection was raised [from the following passage]: [If a man said to his wife] 'Here is your Get', and she took it and threw it into the sea or the fire or destroyed it in some other way, and if he then in turn said that it was a sham promissory note or an amanah, she is [none the less] divorced and he has no power to prevent her from remarrying. Now if you say that they [the witnesses to the delivery] are required to read it, can

he possibly say this after they have read it? — The ruling is still necessary for the case in which after the witnesses have read it he takes it from them and puts it under his coat and takes it out again. It might be argued in that case that he has changed it [for some other document], but now I know [that this argument is of no avail].

A certain man threw a document to his wife and it fell between the jars. Afterwards a mezuzah[21] was found there. Said R. Nahman: A mezuzah is not usually found among the jars.[22] This reasoning holds good if only one was found, but if there were two or three we say that just as mezuzahs got there so a Get may have got there, and that the Get itself was removed by mice.

A certain man went to the synagogue and took a scroll of the Law and gave it to his wife saying. 'Here is thy Get'. Said R. Joseph: Why should we take any notice of it? Shall we say that the Get was written in gall-nut water [on the outside of the scroll]? Gall-nut water does not make any mark on [a sheet treated with] gall-nut

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(1) Agunah, v. Glos.

(2) Who allow all documents to be signed by witnesses who cannot write.

(3) That provided they can sign their names, though they cannot read, they may still act as witnesses if the document is read to them.

(4) Being nearly blind, owing to old age.

(5) V. Nid. 20a.

(6) And therefore could be relied upon to read correctly. R. Nahman was himself the chief judge in Nehardea, having been appointed by the Exilarch, who was his father-in-law, v. infra 67b.

(7) Lit., 'talking, in his simplicity'.

(8) As this was not insisted on in the Persian courts.

(9) V. supra 11a.

(10) Infra 87b.

(11) I.e., in Greek script.

(12) And the writing has faded.

(13) Lit., 'persuasion', פמים , (Cf. Grk. **). A bond which A gives B merely that the latter may make a show with it.

(14) A bond given for money which has not yet been borrowed but may be borrowed later, v. Keth. 19b.

(15) Tosef. Git. VI.

(16) As otherwise it would have been stated above, 'If he said that there was no writing on it'. This refutes Samuel.

(17) מים דנרא , decoction of the bark of the pomegranate tree. V. fast. s.v דנרא .

(18) And when she was divorced there was no writing.

(19) I.e., the divorce is only a doubtful one, sufficient to prohibit her to a priest, but not to allow her to remarry.

(20) V. supra 5b.

(21) V. Glos.

(22) And therefore we presume that what he threw was a mezuzah and not a Get.

Talmud - Mas. Gittin 20a

water.[1] Shall we say that the scroll is itself a Get because of the portion it contains relating to 'cutting off'?[2] We require that it should be written for that woman specifically,[3] which is not here the case. If you should plead that possibly he gave, beforehand, a fee[4] to the scribe [to write the passage in the scroll specifically for her], this also is unavailing, since we require [the insertion[5] of] his name and her name, the name of his town and the name of her town, which we do not [find here]. What does [then] R. Joseph teach us here?[6] — That gall-nut water makes no writing on [a sheet treated with] gall-nut water.

R. Hisda said: If a Get was written not expressly for a certain woman, and the writing was then gone over with a pen with specific reference to that woman, the same difference of opinion may arise

as we find between R. Judah and the Rabbis. For it has been taught: If a scribe [copying a scroll of the Law] had to write in a certain place the Tetragrammaton[7] and intended to write instead the name Judah[8] and by mistake left out the letter daleth [thus actually writing the Tetragrammaton], he may go over the letters with his pen and so sanctify the Name. This is the opinion of R. Judah, but the Sages say that such a Name is not of the choicest. Said R. Aha b. Jacob: The analogy is not altogether sound; for perhaps the Rabbis ruled thus in regard to the Tetragrammaton on account of the maxim indicated in the words, This is my God and I will beautify him,[9] but here they would not [object]. R. Hisda said: I am able to invalidate all the bills of divorce ever written. Said Raba to him: How so? Is it because the Scripture says, And he shall write,[10] and in this case it is she who writes for him?[11] Perhaps the Rabbis declare him to be the owner [of the money which she gives to the scribe].[12] Is it because it is written, And he shall give,[13] and here he does not give her anything [of any value]? Perhaps the delivery of the Get is referred to. That this is so is proved by the instruction sent from Eretz Israel: 'If the Get was written on something from which it is forbidden to derive any benefit,[14] it is still valid.'

The text above [stated:] 'The instruction was sent from Eretz Israel: If the Get is written on something from which it is forbidden to derive a benefit, it is still valid'. R. Ashi said: We have also learned [to the same effect]: [A Get may be written] ON AN OLIVE LEAF.[15] But perhaps an olive leaf is different because [although worth nothing in itself] it may yet be combined [with other things to enhance the value of the whole]?[16]

It has been taught: Rabbi said that if the Get is written on something from which it is forbidden to derive a benefit, it is still valid. Levi went about stating this ruling in the name of Rabbi, and it was not approved.[17] He then stated it in the name of the main body of the Rabbis[18] and it was approved. From this we may conclude that the law follows his ruling.[19]

Our Rabbis have taught: '[The Scripture says] And he shall write ["the writ of divorce"], which implies that he is not to grave it.' From this we would conclude that graving is not counted as writing. This, however, seems to be in contradiction with the following: A slave who produces a deed engraved on a tablet or a board is legally emancipated, but not if the writing is woven into a woman's headband or a piece of embroidery?[20] — Said 'Ulla in the name of R. Eleazar: There is no contradiction. Graving is invalid if the letters are in relief,[21] but valid if they are hollowed out.[22] [You say that if the letters are] in relief it is not [valid]. Does not this contradict the following? 'The writing [on the High priest's plate][23] was not sunk in but projected like that on gold coins.' And is not [the inscription on] gold denarii in relief? — [It was] like [the inscription on] gold denarii and yet not like it. [It was] like it in the fact that it projected, but it was unlike it because there [in gold denarii the metal is hollowed] round the letters,[24] but here [in the High Priest's plate] the letters themselves[25] were hollowed out.

Rabina inquired of R. Ashi: Does a stamp scrape out or does it force together?[26] — He replied: It makes a depression. [Rabina] thereupon raised the following objection: [It has been taught] 'The writing [on the High Priest's plate] was not sunk in but was in relief, like the [inscription on] gold denarii'. Now if a stamp makes a depression round the letters,

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(1) At that time all parchment scrolls of the Law were treated in this way. Hence there was no proper writing from the outset, and consequently no Get.

(2) Deut. XXIV, 1.

(3) Lit., 'he shall write for her' (which means) 'in her name'.

(4) Lit., 'a zuz'.

(5) [his rendering omits the word שינה which is inserted in the text only inadvertently as a quotation from infra 80a; v. Rashi.

(6) Seeing that all this is obvious.

(7) The four letters Yod, He, Waw, He.
(8) The five letters Yod, He, Daleth, Waw, He.
(9) Ex. XV, 2. The words are expounded to signify. 'Beautify thyself before Him in the performance of religious duties'.
(10) Deut. XXIV, 1.
(11) By paying the scribe's fee, which she was required to do according to the Rabbinical rule, v. B.B. 168a.
(12) According to the principle. 'The Beth din has power to expropriate'. V. infra 36b.
(13) Deut. ibid.
(14) E.g.. a leaf of a tree of 'orlah (v. Glos.). Such things had naturally no monetary value.
(15) Which is also worthless.
(16) E.g., a pile of olive leaves may be bought for lying on or for feeding cattle. The Mishnah affords then no support to the message from Eretz Israel.
(17) Lit., 'it was not praised'.
(18) Lit., 'of many'.
(19) Because when it was not approved at first, Levi took the trouble to obtain additional authority.
(20) So Rashi. Jastrow, however, (s.v. אנדכתרי) translates, 'a slave does not go free in virtue of wearing a freedman's cap or of a vindicto (manumission by declaration before a court).'
(21) Lit., 'if he carved out the interior (of the plate)'.
(22) Lit., 'if he carved out the thighs (of the letters)'.
(23) V. Ex. XXVIII, 36.
(24) Lit., 'the interior'.
(25) Lit., 'the thighs'. They were pressed forward from the back and so projected in front.
(26) If it scrapes out the metal round the letters, the use of it is not writing; but it is if the letters are formed by compression.

Talmud - Mas. Gittin 20b

it does not write, and [for the plate] 'writing' was required?[1] — It was like [the inscription on] gold denarii and yet not like it. It was like it in the fact that it stood out, but not like it in the fact that there [in a coin] the pressure is applied on the same side [as the inscription], but here [in the plate] it was from the other side.

Raba inquired of R. Nahman: If a man writes a Get on a plate of gold and says to his wife, 'Receive herewith your Get and receive herewith your kethubah', what is the ruling? — He replied: Both her Get and her kethubah have been legally received by her. [Raba] thereupon raised an objection. [We have been taught,] If a man says, 'Receive herewith your Get and the rest can go to your kethubah', the Get has been legally received by her and the rest goes to the kethubah. Now the reason is that there is something over, but otherwise not? — No. The same rule applies even if there is nothing over, and what this [statement] teaches us is that even if there is something over, if he tells her [to take that in payment of her kethubah] she takes it, but if not, not. For what reason? — Because [in that case the rest] is [reckoned merely as] the margin of the Get.

Our Rabbis taught: [If a man says to his wife.] 'Here is your Get, but the sheet belongs to me', she is not divorced,[2] [but if he said.] On condition that you return the sheet to me, she is divorced.[3] R. Papa inquired: Suppose he says, [On condition that] the space between the lines, or between the words [is to belong to me], what is the ruling? — This question was left over. But cannot the question be decided from the fact that the Divine Law said 'a writ', that is to say one writ, and not two or three?[4] — The difficulty still remains in the case where it is all linked together.[5]

Rami b. Hama propounded: Suppose a slave [is brought into court] who is known to have belonged to the husband, and a Get is written on his hand and he comes before us as the slave of the wife, how are we to decide? Do we presume that the husband transferred the slave to the wife [along with the Get],[6] or do we argue that perhaps he went to her of his own accord? — Said Raba: Cannot

the question be decided on the ground that the writing is such as to admit of falsification?[7] But does not Raba's difficulty apply also to our Mishnah which says that a Get may be written ON THE HAND OF A SLAVE? — We understand that the Mishnah presents no difficulty to Raba. [The Mishnah was speaking of a case] where [the Get was] delivered before witnesses,[8] in accordance with the ruling of R. Eleazar.[9] The difficulty,[10] however, arises on [the question of] Rami b. Hama![11] — According to Rami b. Hama there is no difficulty, as he is speaking of the case [where the Get was] tattooed [on the slave's hand].[12] If you take that line, you can say that the Mishnah also presents[13] no difficulty, as it was speaking of tattooing. What then is the answer [to Rami b. Hama's question]? — Come and hear: Resh Lakish has laid down that there is no presumptive title to living creatures.[14]

Rami b. Hama inquired: If a tablet was known to have belonged to the wife, and a Get is written on it, and it is produced by the husband, what do we decide? Do we say that she made it over to him, or do we argue that a woman does not know how to make over things [temporarily]?[15] — Said Abaye: Come and hear: He[16] also testified regarding a small village adjoining Jerusalem in which lived an old man who used to lend money to all the people of the village, and he used to write the bond and others signed it, and the case was brought before the Sages and they declared the bonds valid. Now how could they do this, seeing that there must be a 'writ of transfer'.[17] Obviously the reason is that we say that he made over the bonds to them.[18] Said Raba: What is the difficulty? Perhaps

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(1) Ex. XXVIII, 30.

(2) Because he has to 'give' her the writ, and here there is no giving.

(3) Because a gift which is made conditionally on its being returned is still counted a gift.

(4) And in this case he makes it into several.

(5) I.e., by long letters like the final nun, which obliterate the spaces between the lines.

(6) V. Mishnah 19a.

(7) And therefore it is no Get.

(8) Who read it, and who could testify in case of falsification.

(9) Who says that the witnesses to delivery make the Get effective.

(10) Which Raba put to him.

(11) Because he was speaking of the case where there were no witnesses to delivery.

(12) And so could not be effaced.

(13) [So Var. lec., cur. edd., read 'to Raba'.]

(14) Lit., 'those kept in folds', because they are liable to stray; hence their being found in a certain man's possession is not presumptive evidence that he is the owner, and the same applies to a slave, v. B.B. 36a.

(15) Of such a nature where the transfer is a mere legal fiction designed to place the tablet in the temporary ownership of the husband to enable him to write the Get on it. Consequently the Get is not valid since it must be written on material belonging to the husband.

(16) R. Judah b. Baba. V. 'Ed. II, 3.

(17) ספר מקנה (Jer. XXXII, 10). which is taken to mean 'a document written by the transferor'. V. Kid. 26a.

(18) And they returned them to him. So here we may say that even if the wife does not intend to leave the tablet in the husband's hands permanently, yet for the time being she has given it to him, and he can therefore 'give' it to her as a Get.

an old man is different, because he knows how to make over things. But no, said Raba; [we decide] from the following: 'If the signature of the security [for another] appears below the signatures to the bond, the lender may recover from his [the security's] unmortgaged property.[1] Said R. Ashi: What is the difficulty? Perhaps a man is different, because he knows how to make over things. No, said R. Ashi; we decide from the following: A woman may write her own Get[2] and a man may write his own receipt,[3] because a document is only rendered valid by its signatures.[4]

Raba said: If a man writes a Get for his wife and entrusts it to his slave, and also writes a deed assigning the slave to her, she becomes the legal owner of the slave and she is divorced by the Get. Why should this be? The slave is a moving courtyard,[5] and a moving courtyard cannot transfer ownership. And should you reply that we speak of a slave who stands still, has not Raba laid down that things which do not transfer ownership when moving do not transfer it when standing or sitting? The law, however, is [that the Get is valid if the slave] is bound.[6]

Raba also said: If a man wrote a Get for his wife and put it in his courtyard and then wrote a deed assigning her the courtyard, she becomes owner of the courtyard and is divorced by the Get. Both of these statements of Raba are necessary. For if he had confined himself to the first statement, about the slave, I should have said that this applies strictly to a slave, but in the case of a courtyard [I should declare the Get invalid], so as not to set a precedent for a courtyard which comes into her possession subsequently.[7] And again, if he had stated only the rule about a courtyard, I should have said that this applies strictly to a courtyard, but in the case of a slave I should debar one who is bound so as not to set a precedent for one who is not bound. Now I know [that this is not so].

Said Abaye: Let us see. From what expression in the Scripture do we infer the rule about a courtyard? From the words 'her hand'.[8] Therefore, just as, if he gives the Get into her hand, the husband can divorce her with her consent or without her consent, so if he places it in the courtyard he should be able to divorce her with her consent or without her consent. But the gift [of the courtyard] can be made only with her consent and not against her will.[9] R. Shimi b. Ashi demurred to this objection. There is, [he said,] the case of her appointing an agent to receive the Get from the husband,[10] which appointment can be made only with her will but not against her will, and yet the agent is duly authorised?[11] And Abaye? — He rejoins: The rule of agency is not derived from the term 'her hand'; the rule regarding agency is derived from the superfluous letter in the word we-shilhah[12] ['and he send her'].[13] Or if you prefer, I can reply that we find cases where an agent for receiving [the Get is also appointed] without the consent [of the wife], since a father can accept a Get for his daughter who is still a child[14] without her consent.

ON AN OLIVE LEAF etc. We understand the ruling (in the case of a Get written] on the hand of a slave[15]

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(1) V. B. B. (Sonc. ed.) p. 773, n. 12. In this case the lender gives the bond to the security who is the transferor to sign, and then takes it back from him.

(2) And then give it to the husband, who gives it back to her.

(3) For the kethubah, and give it to the wife, who then signs it and returns it to him.

(4) V. infra 22b.

(5) Giving it to the slave is like putting it in a courtyard and telling her to take it from there, only the slave is moving from place to place; on the transfer of ownership by means of a court, v. B.M. 9b.

(6) For then he is indeed on a par with the courtyard.

(7) If the husband places the Get in the courtyard of a third party which subsequently comes into possession of the wife, the Get is not effective, v. infra 24a and 63b.

(8) The term 'her hand' in Deut. XXIV. 1, is taken to include courtyard, v. B.M. 9b.

(9) And therefore the dictum of Raba falls to the ground, does it not?

(10) שליח לקבלה . In which case the woman is divorced from the very moment the agent receives the Get.

(11) Lit., 'he becomes an agent for receiving'.

(12) Lit., '(instead of) and he send (it is written) and he send her'. V. Kid. 410.

(13) Deut. XXIV, 1, (v. infra, 62b), and consequently there is no warrant for insisting on drawing an analogy between 'hand' and 'agency'.

(14) I.e., under twelve years of age, v. Keth. 47a.

(15) That the slave is then given to her.

, because it is not possible to cut off the hand [and give it to her]. But where [it is written] on the horn of an ox [why need the ox be given to her]? Let the husband cut it off and give it to her? — Scripture says, He shall write and give to her.[1] [This means that the Get must be on something] which requires only to be written on and to be given [to make it effective]: it excludes [something like] this which requires to be written on, to be cut off, and to be given [before it can become effective].

R. JOSE THE GALILEAN SAYS etc. What is the reason of R. Jose the Galilean? — As it has been taught: [From the word] sefer[2] I understand [that the husband must give the wife] a 'book'.[3] How do I know that any thing will serve the purpose? Because it says, 'and he write her', that is to say, any form of written document — If so why does it specify 'book'? To show that, just as a 'book' is not animate and does not eat, so the document used for the Get must be inanimate and not a thing which eats. What do the Rabbis [who allow this say to this]? — [They can reply:] If the text had written be sefer ['in a book'], your deduction would be correct, but as it writes sefer it refers only to the record [sefirath,][4] of the circumstances. What do the Rabbis make of the word we-kathab ['and he shall write']?[5] — They require it to [deduce therefrom the rule that a woman] is divorced by a written document and not by a money gift. For you might think that her separation from her husband is to be effected in the same way as her union with him:[6] just as the union was effected by a money payment,[7] so also the separation. Now I know [that this is not so]. From whence then does R. Jose derive this lesson?[8] — From the words 'a writ of cutting off': a written [document] effects the 'cutting' [separation] and not anything else. What then do the Rabbis make of these words?[8] — They deduce from them that [for a Get] we require something which genuinely cuts off the husband from the wife, as it has been taught: '[If a man says to his wife], Here is your Get on condition that you never drink wine, that you never go to your father's house, this is no "cutting off".[9] But if he says, on condition that you do not do so for thirty days, this is "cutting off".' Whence does R. Jose derive this lesson?[8] — From [the fact that the text uses the word] kerithuth when it might use the simpler form kareth.[10] What do the Rabbis make of this?[8] — They do not stress the difference between kerithuth and kareth.

MISHNAH. [A GET] MUST NOT BE WRITTEN ON SOMETHING STILL ATTACHED TO THE SOIL. IF, HOWEVER, IT WAS WRITTEN ON SOMETHING STILL ATTACHED TO THE SOIL AND THEN DETACHED AND SIGNED AND GIVEN TO THE WIFE, IT IS VALID. R. JUDAH DECLARES IT INVALID UNLESS IT IS BOTH WRITTEN AND SIGNED ON SOMETHING NOT ATTACHED TO THE SOIL. R. JUDAH B. BATHYRA SAYS THAT [A GET] MUST NOT BE WRITTEN ON A SHEET FROM WHICH WRITING HAS BEEN ERASED[11] NOR ON DIFTERA,[12] BECAUSE WRITING ON IT CAN BE ALTERED [WITHOUT BEING NOTICEABLE]. THE SAGES, HOWEVER, DECLARE SUCH A GET VALID.

GEMARA. IF IT IS WRITTEN ON SOMETHING ATTACHED TO THE SOIL. Does not the Mishnah say just before this that it must not be so written? — Rab Judah said in the name of Samuel: It may be so written if a place is left blank for the substantive part.[13] The same statement was made by R. Eleazar in the name of R. Oshiah: It may [be so written] if a place is left blank for the substantive part. The same statement was also made by Rabbah b. Bar Hanah in the name of R. Johanan: It may [be so written] if a place is left blank for the substantive part. And [our Mishnah] follows R. Eleazar, who says that it is the witnesses to delivery who [make the Get] effective, and it is to be interpreted as follows: 'The formal[14] part [of the Get] must not be written [on something attached to the soil] lest one should come to write thereon the substantive part also. If, however, the formal part was written [on something still attached to the soil] and then detached and the substantive part was then filled in and [the Get] given to her, it is valid.' Resh Lakish, however, said:

Our Mishnah says distinctly, AND SIGNED'. [This shows that] it follows the view of R. Meir who said that the signatures of the witnesses make [the Get] effective, and it is to be interpreted as follows: 'The substantive part must not be written [on something still attached to the soil] for fear lest the signatures should also be affixed to it [while in that state]. If, however, the substantive part was so written, and the Get was then detached and signed and given to her, it is valid.'

If it is written on the surface of an earthenware flowerpot with a hole at the bottom[15] it is valid, because he can take the pot and give it to her.[16] If it is written on a leaf inside a flowerpot with a hole at the bottom, Abaye says it is valid and Raba says it is not valid. Abaye says it is valid

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(1) Deut. XXIV, 1.

(2) E.V. 'writ'. Deut. XXIV. 1.

(3) I.e., of Parchment.

(4) Lit., 'telling'.

(5) Which includes any form of written document.

(6) In Deut. XXIV,2 the two words denoting separation and union, ויצא והיתה lit., 'she shall deport' and 'she shall be (another man's wife) occur in close juxtaposition, hence the suggested comparison.

(7) A money gift is one of the forms of betrothal. V. Kid. ad init.

(8) Lit., 'and the other'.

(9) Because there is always some link between him and her. V. infra 83b.

(10) Both words mean 'cutting off', the former however being the reduplicated and intensive form.

(11) Because if the text is altered it will not be noticeable.

(12) A kind of skin. V. infra 22a.

(13) תורף viz., the names and the date, v. B.M. (Sonc. ed.) p. 35, n. 4.

(14) תופם , GR. **, v. B.M. (Sonc. ed.), p. 35, n. 3.

(15) Which might therefore be regarded as still attached to the soil.

(16) And there is in fact no detaching from the soil.

Talmud - Mas. Gittin 22a

because he can take the whole pot and give it to her. Raba says it is not valid, because [if we declare it so], there is a danger lest he should pluck the leaf [and give it to her].

If a flowerpot belongs to one person and the seeds in it to another, then if the owner of the pot sells the pot to the owner of the seeds, as soon as the latter pulls it into his possession[1] he becomes the legal owner. If, however, the owner of the seeds sells [the seeds] to the owner of the pot, [the latter] does not acquire possession [of them] till he performs some act of hazakah.[2] If the pot and the seeds both belong to the same man and he sells them to another, [the latter,] as soon as he has performed hazakah on the seeds, [ipso facto] acquires possession of the pot. This accords with the rule which we have learned:[3] Movable property is transferred along with immovable property through money payment, through deed of assignment, and through hazakah. If he performs hazakah on the pot, he does not acquire possession even of the pot:[4] hazakah must be performed if at all on the seeds. If the inside of the pot is in Eretz Yisrael but the leaves of the plant extend outside of Eretz Yisrael,[5] Abaye says that we go by the inside,[6] and Raba says that we go by the leaves. If the plant has taken root, all authorities agree [that it is subject to tithe]. Where they differ is when the plant has not taken root. But is there no difference in the case where it has taken root? Have we not learnt: 'If two gardens adjoin, one being higher than the other, and vegetables grow on the slope between,[7] R. Meir says they belong to the upper garden and R. Judah to the lower'? — The reason for the difference in that case is stated [in the Mishnah itself]: 'Said R. Meir: If the owner of the upper garden wants to take away his earth, there will be no vegetables. To which R. Judah rejoined: If the owner of the lower one wants to fill in his garden [to the level of the higher], there would be no vegetables there.'[8] But we may still [question whether] there is not a difference in the case where

[the plant] has taken root, seeing that it has been taught: 'If part of a tree is in Eretz Yisrael and part of it outside, then titheable and non-titheable produce are mixed up in it. This is the view of Rabbi. Rabban Simeon b. Gamaliel, however, holds that that part of its fruit which grows in the place liable to tithe[9] is titheable, and that part which grows in the place not liable to tithe[10] is non-titheable.'[11] Now here we speak, [do we not], of a tree of which part of the branches are in Eretz Yisrael and part outside?[12] — No: [we speak of one of which] some of the roots are in Eretz Yisrael and some outside. What then is the reason of Rabban Simeon b. Gamaliel? — [He speaks of a case] where a piece of hard stone separates [the roots inside and outside]. What is the reason of Rabbi? — He holds that in spite of this the saps mix again [higher up]. What is their difference in principle? — One holds that the air mingles the saps, and the other holds that each side remains separate.[13]

R. JUDAH B. BATHYRA SAYS etc. R. Hiyya b. Assi said in the name of 'Ulla: There are three kinds of skins, mazzah, hifa, and diftera. Mazzah, as its name implies,[14] [is a skin] that has been neither salted nor treated with flour nor with gall-nut. What bearing has this distinction upon the halachah? — In respect of carrying on Sabbath — How much of it may be carried? As learnt by R. Samuel b. Judah: Enough to wrap a small weight [of lead] in.[15] How much is that? — Abaye answered: About a 'fourth of a fourth' of Pumbeditha. Hifa [is skin] that is salted but not treated with flour or gall-nut. What bearing has this upon the halachah? — In respect of carrying on Sabbath. How much of it may be carried? — Even as we have learnt: '[The permitted quantity of skin] is enough to make an amulet[16] out of.' Diftera [is skin] which is salted and treated with flour but not with gall-nut.[17] What bearing has this upon the halachah? — In respect of carrying on Sabbath. How much of it may be carried? — Enough for writing a Get upon.

BUT THE SAGES DECLARE IT VALID. Who are 'THE SAGES'? — Rab Eleazar [the Amora] said:

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(1) The recognised form of transfer of movable articles, y. Glos. s.v. meshikah.

(2) As for immovable property. V. glos.

(3) Kid. 26a.

(4) Because hazakah does not effect transfer of movable articles.

(5) The pot being exactly on the border.

(6) In determining whether it is subject to tithe.

(7) Being thus rooted in the soil of the upper garden while the leaves spread out into the air space of the lower.

(8) But they agree that in ordinary cases we go by the root, v. B.M. 118b.

(9) I.e., in Eretz Yisrael.

(10) I.e., outside Eretz Yisrael.

(11) B.B. 27b.

(12) But the whole of the roots are either on one side or the other, and yet they differ,

(13) Where however, the entire roots are in Eretz Yisrael all agree that the position of the branches is of no consequences.

(14) Lit., 'unleavened bread'.

(15) To save it from wearing away.

(16) A small ornament used as a charm.

(17) [Cf. Gk. ** . The list includes only hides that are partly prepared for writing, and therefore omits קלף which has gone through the whole process and hence is no longer regarded as hide, but as parchment. (Rashi)].

R. Eleazar [the Tanna] is meant, for he said that it is the witnesses to the delivery who make [the Get] effective. R. Eleazar further said: R. Eleazar declared [such a Get] valid only if brought [by the woman] before the Beth din immediately,[1] but not if it is brought ten days later, because in that case we have to consider the possibility that there was some condition in it and she altered it.[2] R. Johanan,

however, said [that it is valid] even if produced ten days later, because if there was any condition in it the witnesses [to the delivery] will still remember it. R. Eleazar further said: R. Eleazar declared valid a document [of this kind] only if it was a Get,[3] but no other documents,[4] in virtue of the Scriptural verse, And thou shalt put them in an earthenware vessel, in order that they may stand many days.[5] R. Johanan, however, held that even other documents of this nature are valid.[6] But does not Scripture say, 'In order that they may stand'? — That is merely a piece of good advice.

MISHNAH. ALL [PERSONS] ARE QUALIFIED TO WRITE A GET, EVEN A DEAF-MUTE, A LUNATIC AND A MINOR. A WOMAN MAY WRITE HER OWN GET AND A MAN HIS OWN RECEIPT [FOR THE KETHUBAH], SINCE THE DOCUMENT IS MADE EFFECTIVE ONLY BY THE SIGNATURES ATTACHED TO IT.[7]

GEMARA. [How can a deaf-mute etc. be qualified to write] seeing that they do not understand[8] [what they are doing and therefore will not write with special reference to the woman in question]? — Said R. Huna:

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(1) I.e., on the same day, in order to notify them that she obtained her divorce.

(2) And meanwhile the witnesses to the delivery have forgotten it.

(3) Because once it has been produced in the Beth din the matter is known, and therefore the Get need not be kept.

(4) E.g., bonds and promissory notes. These are necessary for substantiating the claim at a later date and there is a possibility of altering any condition contained in them without necessarily arousing the suspicion of the witnesses. (Rashi).

(5) Jer. XXXII, 14.

(6) [Consistent with his view that witnesses will recall any condition that might have been inserted. (Tosaf.)].

(7) Lit., 'by them that sign it'.

(8) Lit., 'not men of knowledge'.

Talmud - Mas. Gittin 23a

(They are permitted] only if an adult is standing by them [and telling them to write for such-and-such a purpose]. Said R. Nahman to him: If that is so, then if a heathen [writes] while a Jew stands by him, [the Get] ought still to be valid? And should you say that this actually is so, has it not been taught that a heathen is not qualified [for this purpose]? — A heathen will follow his own idea.[1] Later R. Nahman corrected himself, saying: What I said was all wrong. For since [the Mishnah] expressly disqualifies a heathen from being the bearer [of a Get],[2] we may infer that he is qualified to write one. But is it not taught that he is disqualified? — That is in accordance with the view of R. Eleazar, who said that the witnesses to delivery make [the Get] effective and [consequently] that it must be written with 'special intention'[3] and certainly the heathen will follow his own idea.

R. Nahman said: R. Meir used to say that even if [the Get] was found on a rubbish heap and was then signed and given to the wife, it is valid.[4] Raba raised an objection to this: [The Scripture says], 'he shall write for her', [which we interpret to mean] 'expressly for her name' — Does not this refer to the actual writing of the Get? — No: it refers to the signing by the witnesses, Raba raised another objection: [We have learnt that] 'any Get that is not written expressly for the woman [to be divorced] is invalid'? — Read 'that is not signed expressly.' He again raised an objection: [It has been taught] When he writes, it is as if he writes it expressly 'for her name.' Does not this mean that if he writes the substantive part 'for her name' it is reckoned as if he had written the formal part also 'for her name'? — No: what it means is that if he has it signed expressly 'for her name', it is as if he had written it also expressly 'for her name'. Or if you prefer I can answer that these teachings follow R. Eleazar who says that the witnesses to delivery make [the Get] effective.

Rab Judah said in the name of Samuel that [a deaf-mute etc. is qualified to write] only if he leaves

the formal part a blank. So too said R. Haga in the name of 'Ulla: [A deaf-mute etc. is qualified to write] only if he leaves the formal part a blank. [The Mishnah thus] follows R. Eleazar. R. Zerika, however, said in the name of R. Johanan: This is not Torah.[5] What does he mean by saying, 'This is not Torah'? — Said R. Abba: Here [the Mishnah] makes known to us that there is no force in [the ruling that the Get should be written with] 'special intention', and it follows the view of R. Meir who said that it is the signatures of the witnesses which make [the Get] effective. But did not Rabba b. Bar Hana say in the name of R. Johanan that [the Mishnah] follows Rabbi Eleazar? — Two Amoraim[6] report R. Johanan differently.

MISHNAH. ALL [PERSONS] ARE QUALIFIED TO ACT AS BEARERS OF A GET EXCEPT A DEAF-MUTE, A LUNATIC, AND A MINOR, A BLIND MAN AND A HEATHEN. IF AFTER BEING ENTRUSTED [WITH THE GET BUT BEFORE DELIVERING IT] THE MINOR BECAME OF AGE OR THE DEAF-MUTE RECOVERED HIS SPEECH OR THE BLIND PERSON HIS SIGHT OR THE LUNATIC HIS REASON OR THE HEATHEN BECAME A PROSELYTE, [THE GET] IS [STILL] INVALID. BUT IF THE BEARER [BEING ORIGINALLY] OF SOUND SENSES BECAME A DEAF-MUTE AND THEN RECOVERED HIS SPEECH, OR [BEING] WITH SIGHT BECAME BLIND AND RECOVERED HIS SIGHT, OR [BEING] SANE BECAME INSANE AND RECOVERED HIS REASON, [THE GET] IS VALID. THE GENERAL PRINCIPLE IS THAT ANY BEARER WHO COMMENCES AND FINISHES [HIS MISSION] IN FULL POSSESSION OF HIS MENTAL FACULTIES[7] IS QUALIFIED.

GEMARA. We understand a deaf-mute, a lunatic, and a minor being disqualified, because they do not know what they are doing; also a heathen, because in any case he himself cannot release.[8] But why should a blind person be disqualified? — R. Shesheth says: Because he does not know from whom he takes [the Get] and to whom he delivers it. R. Joseph strongly demurred to this. In that case, [he said,] how is it permitted to a blind man to associate with his wife, or to any men to associate with their wives at night time? Is it not by recognising the voice? So here, [a blind person] can recognise the voice! No, said R. Joseph; the fact is that here we are speaking of [a Get brought from] foreign parts, [the bearer of which] has to declare, 'In my presence it was written and in my presence it was signed', and a blind man cannot say this. Said Abaye to him: If that is so, then a person who becomes blind [after receiving the Get] ought to be qualified, and yet [the Mishnah] states expressly that IF [BEING] WITH SIGHT HE BECAME BLIND AND RECOVERED HIS SIGHT [THE GET] IS VALID, which shows [it is valid] only if he recovered his sight, but if he did not recover his sight that he is not qualified? — He is qualified even if he does not recover his sight. Since, however, the Mishnah employed the formula, 'OR [BEING] SANE HE BECAME INSANE AND RECOVERED HIS REASON' — which was necessary in that case because the reason [why it is valid] is because he recovers his reason, but if he does not recover it, [the Get] is not valid — it uses a similar wording in the next clause: 'BEING WITH SIGHT HE BECAME BLIND AND RECOVERED HIS SIGHT. Said R. Ashi: There is an indication of this in [the language of] the Mishnah itself, since it says: THIS IS THE GENERAL PRINCIPLE; ANY BEARER WHO IS IN FULL POSSESSION OF HIS MENTAL FACULTIES AT THE BEGINNING AND END [OF HIS MISSION] IS QUALIFIED, and it does not say, 'anyone who is qualified at the beginning and end [of his mission].' This shows [that what was said above about the bearer who becomes blind, is correct].[9]

A question was put to R. Ammi: May a slave be made an agent on behalf of a woman to receive her writ of divorce from her husband? — He replied: Since the [Mishnah] declares a heathen disqualified,[10]

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(1) And not write with special reference to the woman concerned, even if he is told.

(2) Infra.

(3) Since he considers signatures not essential for the Get, the words and he write for her are to be interpreted as

requiring writing with ‘special intention’, v. infra.
(4) According to another interpretation we translate above, instead of ‘and certainly the heathen etc.’ ‘But will not the heathen etc.’ the words being an objection raised by R. Nahman's interlocutor, and the next statement is R. Nahman's reply.
(5) By allowing a deaf-mute etc. to write.
(6) K. Zerika and Rabbah b. Bar Hanah.
(7) Lit., ‘of knowledge’.
(8) Since tbe Jewish law of marriage and divorce does not apply to him, and he cannot do on behalf of another what he cannot do on behalf of himself.
(9) [The stress is laid on the possession of mental faculties at the beginning and the end but not of sight provided it was there at the beginning enabling him to make the necessary declaration.]
(10) To become the bearer of the Get, which includes his acting as the wife's agent to receive the Get.

Talmud - Mas. Gittin 23b

we may infer that a slave is qualified. R. Assi said in the name of R. Johanan: A slave cannot be appointed an agent by a woman to receive a Get on her behalf from her husband, because he does not come within the [provisions of the Jewish] law in regard to divorce and marriage. R. Eleazar strongly demurred to this. Your reason, [he said,] is [that the slave cannot be an agent to do for another] a thing which he cannot do for himself. This would imply that he can be an agent for a thing which he can do for himself. How does this square with the fact that a heathen or a Samaritan can give terumah for himself, as we have learnt: ‘If a heathen or a Samaritan gives terumah from his own produce, what is so given is genuine terumah,[1] and yet we also learn [in another place]: ‘If a heathen gives terumah from the produce of an Israelite even with the latter's permission, what is so given is not regarded as terumah’?[2] The reason is, is it not, that Scripture says, you also shall give your heave-offering,[3] and we take the superfluous word ‘also’ to indicate that just as you are Israelites, — so your agents must be Israelites?[4] — In the school of R. Jannai they replied: No! [The proper inference from the word ‘also’ is]: Just as you are sons of the Covenant, so must your agents be sons of the Covenant.[5]

R. Hiyya b. Abba said in the name of R. Johanan: A slave cannot he made an agent by a woman to receive a Get on her behalf from her husband because he does not come within [the provisions of the Jewish] law in regard to divorce and marriage, and [this] in spite of the fact that we have a teaching: [If a man says to his female slave], ‘You are a slave, but your child is free’, if she was pregnant at the time she acquires freedom for it [the child].[6] What is the point of [quoting]: ‘if she was pregnant, she acquires freedom for it’?[7] — When R. Samuel b. Judah came [from Palestine], he said: R. Johanan said two things. [One was the dictum regarding a Get quoted above]. The other was this: It seems a reasonable view that a slave can receive a writ of emancipation on behalf of another slave from the master of that slave but not from his own master.[8] And if someone should whisper in your ear[9] that there is a halachah laid down which contradicts this, [viz.] ‘If she was pregnant, she acquires freedom for it,’[10] reply to him that two great authorities in their generation, R. Zera and R. Samuel b. Isaac, explained the matter. One said that this [teaching] follows the opinion of Rabbi who said that if a man emancipates the half of his slave, the slave acquires [freedom in regard to the one half], and the other said [in further explanation] that the reason of Rabbi [for applying this to the present case] is that he looks upon the embryo as part of the mother, and therefore the master [in freeing the child] as it were made her owner of one of her own limbs. MISHNAH. EVEN THE WOMEN WHOSE WORD IS NOT ACCEPTED AS EVIDENCE[11] IF THEY SAY THE HUSBAND [OF A CERTAIN WOMAN] IS DEAD ARE ACCEPTED AS BEARERS OF HER GET. NAMELY, HER MOTHER-IN-LAW, HER MOTHER-IN-LAW'S DAUGHTER, HER HUSBAND'S OTHER WIFE,[12] HER HUSBAND'S BROTHER'S WIFE, AND HER HUSBAND'S DAUGHTER.[13] WHY IS A GET DIFFERENT FROM [A REPORT OF] DEATH? BECAUSE THE WRITING AFFORDS PROOF. A WOMAN MAY BE THE BEARER OF HER OWN GET,[14]

ONLY SHE IS REQUIRED TO DECLARE,[15] 'IN MY PRESENCE IT WAS WRITTEN AND IN MY PRESENCE IT WAS SIGNED.'

GEMARA. [How can you say this] seeing that it has been taught: Just as these women's word is not accepted as evidence that her husband is dead, so they are not accepted as bearers of her Get? — R. Joseph replied: There is no contradiction. The one rule is for Eretz Yisrael, the other for outside Eretz [Yisrael]. In Eretz Yisrael, where we do not rely upon her [word],[16] such a woman is permitted to bring the Get: outside Eretz [Yisrael], where we should have to rely upon her [word],[17] she is not permitted to bring it. Said Abaye to him: On the contrary, the opposite is more reasonable: in Eretz Yisrael, where if the husband comes and challenges [the Get] we take note of his objection,[18] it could be argued that the woman has been deliberately trying to make mischief, and therefore she should not be trusted, but outside, where if the husband comes and challenges [the Get] we do not pay any attention to him,[19] she should be trusted.[20] It has been taught in accordance with the view of Abaye: R. Simeon b. Eleazar says in the name of R. Akiba: That a woman may be trusted to bring her own Get may be established a fortiori. For since those women whose word [the Rabbis] declared to be inacceptable as evidence that her husband is dead can be trusted as bearers of her Get, does it not follow that she herself whose word is accepted as evidence that her husband is dead should be trusted to bring her own Get?

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(1) Ter. III, 9.

(2) Ibid. I, 1.

(3) Num. XVIII, 28.

(4) Which shows that the implication is wrong, and so the original idea must also be wrong.

(5) And a slave was regarded as a 'son of the Covenant', on the strength of Deut. XXIX, 9ff., Ye are standing all this day before the Lord your God . . . from the hewer of thy wood to the drawer of thy water . . . . to enter into the covenant of the Lord. Thus a slave can be an agent.

(6) Tem. 25a.

(7) As this refers to a writ of emancipation, how can we derive a ruling from it for a writ of divorce?

(8) I.e., if the slave to be emancipated belongs to the same master as he himself. The reason is that he is regarded as merely the hand of his master, and therefore does not become owner of the writ on behalf of his fellow-slave.

(9) Seeking to mislead you.

(10) Which shows that a slave can accept a writ of emancipation on behalf of another slave even from his own master.

(11) Lit., 'who are not believed'.

(12) Lit., 'her rival'.

(13) These women are suspect of bearing a grudge against the wife and of harbouring a desire to spite her.

(14) To a place which the husband specifies.

(15) Before a Beth din in the place specified.

(16) Because witnesses to the signatures are always available.

(17) I.e. on the declaration, 'In my presence' etc.

(18) The declaration 'in my presence' etc., not having been made.

(19) Because the Get has been certified by virtue of the declaration in my presence etc.

(20) Because she cannot be trying to make mischief.

Talmud - Mas. Gittin 24a

And on the same basis it may be concluded that just as they are required to declare, 'In our presence it was written, and in our presence it was signed', so she is required to declare, 'In my presence etc.' [which shows that the rule refers to outside of Eretz Yisrael]. R. Ashi said: Our Mishnah also bears out [this view], since it says, THE WIFE HERSELF MAY BRING HER GET, ONLY SHE IS REQUIRED TO SAY etc., which shows that it refers to outside Eretz Yisrael. Does then R. Joseph take the earlier clause [in the Mishnah][1] and the later one[2] to refer to Eretz Yisrael, and the middle one[3] to outside Eretz [Yisrael]? — Yes; he refers the earlier and later clauses to Eretz Yisrael and the

middle clause to outside. On what does he base this view [about the middle one]? — Because the Mishnah says, WHY IS A GET DIFFERENT FROM [THE REPORT OF] DEATH? BECAUSE THE WRITING AFFORDS PROOF, and it does not say, 'the writing and the declaration[4] afford proof.'[5]

THE WIFE HERSELF MAY ACT AS BEARER etc. Is not the wife divorced as soon as the Get comes into her hand?[6] — R. Huna said: This rule is for the case where he says to her, 'You will not be divorced by this [Get] except in the presence of such-and-such a Beth din.' But all the same, when she comes there she is divorced?[7] — In fact, said R. Huna b. Manoah in the name of R. Aha the son of R. Ika: [the rule is for the case] where he says to her: When you come there, put it on the ground and take it up again.[8] If so, he as much as says to her: Take your Get from the floor, and has not Raba laid down that if he says, Take your Get from the floor, it is no divorce?[9] No. [The rule applies to the case] where he said to her, 'Be my agent for taking [the Get] till you come there, and when you come there be your own agent for receiving [it, and take it].' But in this case the agent cannot return to [report to] the sender?[10] — He says to her: Be my agent for taking [the Get] till you come there, and when you come there appoint an agent for receiving [it].[11] — This is all very well on the view that a woman may appoint an agent to receive her Get from the agent of her husband, but on the view that a woman may not appoint an agent to receive her Get from the agent of her husband[12] what is to be said?[13] — What is the reason for the latter view? That it shows a contempt for the husband;[14] and in this case the husband is [evidently] not particular.[15] This is a valid answer according to the view that such a proceeding is forbidden because it shows a contempt for the husband, but on the view that the reason is because of [the resemblance of this agent to] a courtyard which comes [into her possession] subsequently,[16] what are we to say? — He says to her: Be my agent for taking [the Get] till you come there, and when you come there appoint another agent for taking it[17] and [later] receive your Get from him. Or if you prefer I can say that he says to her: Be my agent for taking [it] till you come there, and when you come there declare in presence of the Beth din, 'In my presence it was written and in my presence it was signed,' and [then] make the Beth din an agent [for receiving] and they will give it to you.

CHAPTER III

MISHNAH. ANY BILL OF DIVORCE WHICH IS NOT WRITTEN [EXPRESSLY] FOR THE WOMAN [FOR WHOM IT IS INTENDED] IS INVALID. FOR INSTANCE, IF A MAN PASSING THROUGH THE STREET HEARS THE VOICE OF A SCRIBE DICTATING[18] 'SO-AND-SO DIVORCES SO-AND-SO FROM SUCH AND SUCH A PLACE' AND HE SAYS 'THAT IS MY NAME AND THAT IS THE NAME OF MY WIFE, IT IS NOT A VALID [DOCUMENT] TO DIVORCE HIS WIFE WITH. MOREOVER: IF HE WROTE [A GET] TO DIVORCE HIS WIFE AND CHANGED HIS MIND AND A FELLOW-TOWNSMAN MET HIM AND SAID TO HIM, MY NAME IS THE SAME AS YOURS AND MY WIFE'S NAME THE SAME AS YOUR WIFE'S', IT IS NOT VALID [FOR THE SECOND] ONE TO DIVORCE HIS WIFE WITH.

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(1) Where it states a blind man is qualified to bring a Get.

(2) Where a wife is declared competent to bring her own Get.

(3) 'Even the women whose word etc.'

(4) Lit., 'mouth'.

(5) [Because the clause refers to Eretz Yisrael no declaration is required. Abaye, on the other hand, may argue that there is no need to mention 'declaration' which is common to both Get and the report of death, since the latter too is accompanied by a 'declaration' made by the woman. (Rashi)].

(6) What need has she then to bring it before the Beth din?

(7) And she is still not the same as a bearer who has to make the declaration.

(8) Thus she is a bearer till she comes there and is divorced by the act of lifting the Get from the ground.

(9) Because he must 'give' it to her.

(10) Lit., 'the message has not returned to the owner'. Because meanwhile she has become a principal in the transaction and has ceased to be an agent, whereas the law of agency requires that the agent should report to the principal that he has carried out his charge. V. infra 63b.
(11) Here she never ceased being an agent and can well report to the husband, the sender.
(12) V. 63b.
(13) The wife should not be able to appoint an agent to receive the Get on her behalf from herself who is the agent of her husband.
(14) As much as to say she considers it beneath her dignity to accept it in person from the agent appointed by her husband.
(15) Since this procedure was at his express instructions.
(16) [V. supra 21a. The courtyard might be treated as the husband's agent to take the Get to the wife and on coming into her possession it becomes her agent for receiving it; and should it be ruled that a woman may appoint an agent to receive her Get from the agent of her husband, we might be led to rule that a courtyard which comes into her possession subsequently confers possession. The fact, however, is that it does not, because a courtyard comes under the category of 'hand' (v. loc. cit.) and at the time when the husband placed the Get in the courtyard, not being hers, it could not be considered her 'hand'].
(17) Her task as the husband's agent ceases at that moment and she can report back to her husband that she has discharged her mission.
(18) Lit., 'causing (the pupils) to read;' to train them in drafting the formula of a Get.

Talmud - Mas. Gittin 24b

MOREOVER: IF HE HAD TWO WIVES WITH THE SAME NAME AND WROTE A GET WITH WHICH TO DIVORCE THE ELDER, HE MUST NOT USE IT TO DIVORCE THE YOUNGER. MOREOVER: IF HE SAID TO THE SCRIBE,[1] WRITE AND I WILL DIVORCE WHICHEVER I CHOOSE,' IT IS NOT VALID TO DIVORCE THEREWITH EITHER.

GEMARA. [The second clause of the Mishnah puts the case where] HE WROTE [A GET] TO DIVORCE HIS WIFE AND CHANGED HIS MIND. What then is the case put in the first clause? — R. Papa said: We are dealing there with scribes practising [to write bills of divorce]. R. Ashi said: The language of the Mishnah bears this out, since it says 'DICTATING' and not 'reading', which shows that R. Papa is right.

What is the point of the word MOREOVER? — The school of R. Ishmael taught: 'Not only is a Get invalid that has not been written for purposes of divorce [but for practice]. but also one that has been written for purposes of divorce [but not of this man's wife]; and not only is this [one invalid] that has not been written for the purposes of his divorce, but even the other one that has been written for the purposes of his divorce is invalid; and not only is this [one invalid] which has not been written for divorcing this [wife], but even the other one which has been written for divorcing this [wife] is invalid'. What is the reason? — If [the Scripture] had written, 'he shall give a writ of divorce into her hand,' I should say that this excludes the first case [mentioned above] where [the Get is not written] for the purpose of effecting a divorce, but that if a husband writes [a Get] to divorce his wife and then changes his mind, seeing that the document is meant to effect a divorce I should say it is valid; therefore the Divine Law says, 'and he write'[2] . And if it had merely said and he write, I should have said that this excludes the case where he does not write [the Get] for her,[3] but if he has two wives [and writes for one or other of them] in which case he does [in a way] write for her, I should say that it is valid: therefore the text says, for her, that is to say. for her name. Why then is the last case specified?[4] — To show that there is no [such thing as] a retrospective decision.[5]

IF HE WROTE A GET WITH WHICH TO DIVORCE THE ELDER, HE MUST NOT USE IT TO DIVORCE THE YOUNGER. It is the younger only whom he must not divorce with it, but he may divorce with it the elder.[6] Raba said: This means to say that if there are two men named Joseph

b. Simeon living in a town, either can claim from a third party on the strength of a bond [written in his name].[7] Said Abaye to him: On your reasoning, from the first clause of the Mishnah which says that if a man says to another MY NAME IS THE SAME AS YOURS [and takes a Get from him]. HE MAY NOT USE IT TO DIVORCE HIS WIFE, I understand that it is the second only who may not use it but the first may; but how can this be seeing that it is laid down[8] [in reference to the case of two men named Joseph b. Simeon] that a third party cannot claim against either of them on the strength of the bond?[9] The truth is that [in regard to the latter kind of Get written by one man and used by another] we say it is valid [if used by the first] only if there are witnesses to the delivery,[10] [the Mishnah] following R. Eleazar. So too [in regard to the former kind of Get where the two wives have the same name the Get is valid if given to the one for whom it was written] only if there are witnesses to the delivery, [the Mishnah following] R. Eleazar.[11]

Raba said: All the kinds [of Get mentioned in our Mishnah] disqualify [the woman named in them from living with her husband] if he is a priest,[12] except the first,[13] Samuel said that the first also disqualifies. Samuel applies here the principle which he had elsewhere laid down, that wherever the Rabbis have declared a Get invalid, it does not effect divorce but it does disqualify [the wife of a priest from living with him], and wherever they have declared a halizah[14] invalid it does not release[15] [the sister-in-law] but it does disqualify her from [marrying] any of the brothers-in-law. In the West[16] they said in the name of R. Eleazar: [If the halizah was performed with] the left hand or by night, it does not release [the woman] but it does disqualify her;[17]

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(1) לבלר , Librarius.

(2) I.e., with intent to divorce.

(3) For this particular wife.

(4) Since this would seem to be included in the previous two.

(5) Bererah, (v. Glos.).

(6) In spite of the danger of her being confused with the younger.

(7) I.e., either can claim that he is the Joseph b. Simeon mentioned in the bond.

(8) B.B., 172a.

(9) Because he can plead that the other is meant. So here the husband can plead that another man of the same name wrote the Get.

(10) And not merely to the signing.

(11) [Where, however, there are witnesses to the signing only, the Get cannot be used to divorce therewith even the elder, and similarly in the case of two men named Joseph b. Simeon living in the same town neither can claim from a third party on the strength of a bond.]

(12) The law being that a priest must not marry a divorced woman. Lev. XXI, 7.

(13) Because it was never intended to be a Get.

(14) V. Glos.

(15) I.e., enable her to marry someone else.

(16) Eretz Yisrael.

(17) From marrying her brother. in-law.

Talmud - Mas. Gittin 25a

[if it was performed to] a minor or with a sock,[1] it does not release [the woman] but neither does it disqualify her. Ze'iri said: None of the kinds [of Get] mentioned disqualify the woman [from living with her husband if a priest] save the last.[2] So did Rab also lay down: None of these disqualify save the last. R. Johanan, however, said that even the last does not disqualify.[3] R. Johanan follows the principle he has enunciated elsewhere, since R. Assi said in the name of R. Johanan: If two brothers divide an inheritance, they are reckoned as having purchased each his share from the other,[4] and each restores his share to the other at the Jubilee.[5] And both statements [of R. Johanan] are necessary. For if I had only the statement about the Get to go by. I should say that in that case there

can be no retrospective decision [as to which (wife) he meant] because we require the [Get to be written] for 'her', [namely] for the name [of the woman concerned], but there [in the case of an estate], the All Merciful said that it is a sale which has to be returned at the Jubilee but not an inheritance or a gift.[6] If again I had only the Statement regarding the field to go by, I might say that he takes the stricter line,[7] or again that he thinks the property should revert to its original state,[8] but here [in the case of a Get] this does not apply.[9] [Hence both statements were] necessary.

R. Hoshaiah put a question to Rab Judah: If a man said to a scribe, Write [a Get] for whichever [of my wives] shall go out of doors first, what is the ruling? — He replied: We have learnt: MOREOVER: IF HE SAID TO THE SCRIBE, WRITE AND I WILL DIVORCE WHICHEVER I CHOOSE, IT IS NOT VALID TO DIVORCE THEREWITH [EITHER]. We infer from this that there is no such thing as a retrospective decision. [R. Hoshaiah] raised an objection [against this from the following passage]: If a man says to his sons, 'I am going to kill the paschal lamb for whichever of you will first enter Jerusalem',[10] as soon as the first of them enters with his head and the greater part of his body. he becomes entitled to his portion[11] and makes his brothers entitled to their portions along with him.[12] — He replied: Hoshaiah, my son, what has the Paschal lamb to do with bills of divorce? In this connection it has been recorded that R. Johanan said that the reason is to make them eager to perform the mizwoth.[13] This is also indicated [by the language of the passage itself], which states, as soon as the first has entered with his head and the greater part of his body, he becomes entitled to his portion and makes his brothers entitled to theirs along with him.' If now you say that the father mentally reckoned them all as of his company[14] from the first, this is intelligible. But if you say that he did not so reckon them, can they be counted in after the lamb is killed? Have we not learnt: 'Persons can be counted in to a company and withdraw until the lamb is killed [but not after].'?[15] It has also been taught to the same effect: It happened once that the daughters came before the sons. the former showing themselves diligent and the latter slack.[16]

Abaye said: [R. Hoshaiah] questioned him [Rab Judah] with reference to the case where he leaves the choice to another,[17] and Rab Judah answers him by citing the case where he retains the choice in his own hands, and then R. Hoshaiah raises an objection from the case where he leaves the choice to others again! — Said Raba: What is the difficulty? Perhaps according to the authority who says there is [such a thing as] retrospective decision, it makes no difference whether he leaves the choice to another or retains it in his own hand; in either case he holds there is retrospective decision; whereas according to the authority who says there is no [such thing as] retrospective decision it makes no difference whether he keeps the choice in his own hand or leaves it to others: in either case he holds there is no retrospective decision. Said R. Mesharsheya to Raba: But is there not R. Judah, who holds that when the man keeps the choice in his own hands we do not decide retrospectively but when he leaves the choice to others he holds that we do decide retrospectively? That [R. Judah] holds that he is permitted to decide retrospectively when he keeps the choice in his own hands [is shown by the following Baraitha]. For it was taught: If a man buys wine from the Cutheans, he can say. 'Two logs which I intend to set aside [from each hundred] are to be the priest's due;[18] ten [logs] the first tithe;[19] and nine [logs][20] the second tithe,'[21]

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(1) Or 'a shoe made of felt'.

(2) Because we say that possibly there is such a thing as a retrospective decision, and therefore this Get has a certain validity.

(3) Since there certainly is no such thing as retrospective decision.

(4) [For the portion chosen by each brother for himself could not be considered as having retrospectively become the very inheritance designated for him, because he does not uphold bererah, v. B.K.. (Sonc. ed.) P. 399 and notes.]

(5) In accordance with Lev. XXV, 13.

(6) And therefore we may say retrospectively that each son took the part which the father intended.

(7) I.e., his reason for deciding as he did was because he was not absolutely certain that there is retrospective decision, and so he wished to be on the safe side.

(8) Where the estate belonged to the person in spite of the fact that normally there is retrospective decision.
(9) And we have to say that his reason is because there is no such thing as retrospective decision.
(10) I.e., as assumed at present he alone shall have a real right to a portion in it.
(11) From which we should infer that the father selects him retrospectively.
(12) Pes. 89a.
(13) Precepts. The father never had any intention of making the first entry into Jerusalem determine the title to the Paschal lamb.
(14) The company which was to eat that particular lamb. V. Ex. XII, 4: According to every man's eating ye shall make your count for the lamb.
(15) Pes. ibid.
(16) But it does not say that the sons were not reckoned in, which proves that the father originally counted all his sons in.
(17) I.e., the husband leaves the choice to the woman who will first go out of doors.
(18) The amount of the terumah is not specified in the Scripture, but the Rabbis considered two parts in a hundred a fair proportion.
(19) For the Levites, v. Num. XVIII, 21.
(20) From the remaining ninety.
(21) To be consumed in Jerusalem. V. Deut. XIV, 22ff.

Talmud - Mas. Gittin 25b

and he then begins[1] to drink from it at once. This is the ruling of R. Meir. R. Judah and R. Jose and R. Simeon, however, prohibit [him from doing so].[2] That [according to R. Judah] we do decide retrospectively where he leaves the choice to others [is shown by the following Mishnah].[3] For we learnt: 'What is the status of the woman [who has received a conditional Get[4] from a sick husband] during those days [between the giving of the Get and his death]? R. Judah says that she is a married woman in every respect,'[5] and yet when the husband dies the Get takes effect.[6] R. Mesharsheya said further to Raba: There is also R. Simeon who holds that when the man keeps the choice in his own hands we do not decide retrospectively, but when he leaves the choice to others he holds that we do. That according to R. Simeon we do not decide retrospectively when he keeps the choice in his own hands [is shown] by [the teaching] just quoted. That [according to him] where he leaves the choice to others we do so decide is shown by the following [teaching]: [If a man says to a woman], I betroth thee by means of this intercourse[7] on condition that thy father consents, even if the father does not consent she is betrothed. R. Simeon b. Judah said in the name of R. Simeon that if the father consents she is betrothed,

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(1) v. Tosaf. s.v.
(2) Which shows that he cannot decide retrospectively. (For fuller notes v. B.K. (Sonc. ed.) p. 399.)
(3) Infra 83b.
(4) I.e., if he says to her, 'This shall be thy Get from now if I die.' V. infra 72a.
(5) And therefore if the husband is a priest she may eat terumah.
(6) Hence when God, to whom he has left the choice, decides that he should die, it is decided retrospectively that she was divorced from the moment he gave her the Get.
(7) This being one of the methods of affiancing; v. Kid. ad. init.

Talmud - Mas. Gittin 26a

and if not she is not betrothed.[1] — Raba answered him: Both according to R. Judah and according to R. Simeon, it makes no difference whether he keeps the choice in his own hands or leaves it to another: in either case we do decide retrospectively. There [in the case of the Cuthean wine], however, the reason [for their prohibiting] is as given [in the Mishnah quoted]: 'They said to R. Meir, Do you not admit that if the wine-skin should burst [and the wine be spilt][2] the man would be found to have drunk wine which had not been freed for ordinary use? He answered them: Wait till it

does burst.'[3]

MISHNAH. IF [A SCRIBE] WRITES OUT FORMULAS OF BILLS OF DIVORCE[4] HE MUST LEAVE BLANK SPACES FOR THE NAME OF THE MAN AND THE NAME OF THE WOMAN AND THE DATE. [IF HE WRITES FORMULAS OF] BONDS OF INDEBTEDNESS HE MUST LEAVE BLANK SPACES FOR THE NAME OF THE LENDER, THE NAME OF THE BORROWER, THE AMOUNT LENT AND THE DATE. [IF HE WRITES] FORMS OF CONTRACTS OF SALE HE MUST LEAVE BLANK SPACES FOR THE NAME OF THE VENDOR, THE NAME OF THE PURCHASER, THE PURCHASE MONEY, THE PROPERTY AND THE DATE, TO PREVENT HARD SHIP.[5] R. JUDAH DECLARES ALL. SUCH [FORMULAS] INVALID [EVEN IF THE BLANKS HAVE BEEN LEFT]. R. ELEAZAR DECLARES ALL OF THEM VALID [IF THE BLANKS HAVE BEEN LEFT] EXCEPT WRITS OF DIVORCE, BECAUSE SCRIPTURE SAYS, HE SHALL WRITE FOR HER, WHICH MEANS, EXPRESSLY FOR HER.

GEMARA. Rab Judah said in the name of Samuel: [The scribe] must also leave space for the words. 'You are permitted to [marry] any man.'[6] And [the Mishnah] follows R. Eleazar who said that the witnesses to delivery make [the Get] effective and the [Get] must [consequently][7] be written expressly for the woman concerned. And it was necessary [for Samuel to tell us here that the Mishnah follows R. Eleazar although he has already twice told us so]. For if he had only told us so on the first occasion,[8] [I might think that the reason why we interpret] that [Mishnah] so as to make it agree with R. Eleazar is to reconcile the contradiction between the first statement of the Mishnah, '[A Get] must not be written' etc. and the second, 'If it was written [on something attached to the soil it is valid],' but [all the same] in connection with the next [Mishnah][9] where it also says that a Get is made effective only by the signatures attached to it, I might think that [the Mishnah is there] following R. Meir who said that the witnesses to the signatures make [the Get] effective[10] [unless Samuel told us the contrary]. If again Samuel had only told us there [that the Mishnah] follows R. Eleazar, [I might think that that is because] there also it is possible to interpret [the Mishnah] in this way, but here [in speaking of the scribe who writes out formulas] since the last [ruling] given is that of R. Eleazar, I should say that the first [ruling, 'If a scribe writes our formulas of bills of divorce etc.'] is not that of R. Eleazar.[11] Therefore [Samuel] had to tell us this also.[12]

TO PREVENT HARDSHIP. Hardship to whom? — R. Jonathan said: Hardship to the scribe, [the Mishnah] following R. Eleazar who said that the witnesses to delivery make [the Get] effective. By rights therefore it should not be permitted to write [beforehand] even the formula of the Get, but to make matters easier for the scribes the Rabbis allowed it. R. JUDAH DECLARED THEM ALL INVALID: he forbade the formulas for fear that the substantive part might also be written in and [he forbade the scribes to write] the formulas of bonds of indebtedness for fear [that they might also write] the formulas of bills of divorce. R. ELEAZAR DECLARED ALL OF THEM VALID EXCEPT BILLS OF DIVORCE: he forbade the formulas for fear that the substantive part might also be written, but he did not forbid the writing of bonds out of fear [that it might lead to the writing] of bills of divorce.

BECAUSE SCRIPTURE SAYS, 'HE SHALL WRITE FOR HER.' Rut do not the words 'for her' in the text refer to the substantive part of the Get? — Explain [R. Eleazar's reason thus]: Because it is written 'he shall write for her', which means 'expressly for her', [therefore we forbid the writing of the form for fear it may lead to the writing of the substantive part].

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(1) Keth. 73b. Which shows that we do decide retrospectively where he leaves the choice to others.

(2) So that it will no longer be possible to set aside the various dues.

(3) Lit., 'when it does burst'. I.e., the danger is remote and there is no need to provide against it.

(4) In order to have them ready at hand whenever the

(5) Lit., 'on account of the takkanah (adjustment)': an expression used in connection with regulations laid down by the Rabbis without Scriptural warrant to prevent abuses or for the smoother working of social relations. The question what hardship is meant is discussed in the Gemara.
(6) Because this is also an essential part of the Get.
(7) V. supra 23a.
(8) Supra 21b, in connection with the Mishnah 'A Get must not be written on something attached to the soil'.
(9) 'All persons are qualified to write a Get,' supra 22b.
(10) And there is no need to leave a blank space for the substantive part.
(11) And there is no need to leave a blank space for 'You are permitted etc.', except for the names, for the reason given infra.
(12) That the first ruling too follows R. Eleazar, he being represented by two varying opinions.

Talmud - Mas. Gittin 26b

Does not R. Eleazar here contradict himself?[1] — Two Tannaim report R. Eleazar differently.

R. Shabbathai said in the name of R. Hezekiah: [The words TO PREVENT HARDSHIP] mean 'to prevent quarrelling', [the Mishnah] following R. Meir who said that the signatures of the witnesses make [the Get] effective. and by rights it should be permitted to the scribe to write [beforehand] even the substantive part, but in that case it might happen that a woman might hear a scribe [reading over] what he had written and she might think that her husband had told him to write and so fall out with him. R. Hisda said in the name of Abimi: It is for the relief of deserted wives. Some say [that this interpretation] follows R. Meir, and some say that it follows R. Eleazar. Some say it follows R. Meir who held that the witnesses to the signatures make [the Get] effective, and therefore by rights it is permissible to put in beforehand even the substantive part of the Get, only it may happen sometimes that a husband falls out with his wife and in a passion throws her [the Get] and then makes her remain a deserted wife.[2] Some again say it follows R. Eleazar who held that the witnesses to delivery make [the Get] effective, and therefore by rights even the formula [of the Get] should not be written beforehand,[3] only it may happen sometimes that the man wants to go abroad and does not find a scribe ready and so he leaves her [without giving her the Get] and thus makes her a deserted wife [if he is lost].[4]

AND FOR THE DATE. The Mishnah makes no distinction between [a Get which dissolves] a marriage and [a Get which dissolves] a betrothal. In the case of [a Get which dissolves] a marriage this is a proper [regulation], whether on the view [that the date is required] to prevent a man shielding his sister's daughter or on the view that [it is required] on account of the usufruct.[5] In [a Get which dissolves] a betrothal, however, the regulation certainly is reasonable on the view that the date is required to prevent a man shielding his sister's daughter, but on the view that it is required on account of the usufruct — does the law of usufruct apply to a betrothed woman?[6] — R. Amram said: I heard a certain remark from 'Ulla, who said 'it is to safeguard the interest of the child', and I did not know what he meant. [I discovered it, however], when I came across the following statement:[7] If a man says, 'Write a Get for my fiancee, I will divorce her with it after I marry her,' it is no Get. And commenting on this 'Ulla said: What is the reason? Because people may say that her Get came [before] her child.[8] So here, [the date has to be put in] lest people should say that her Get [came] before her child.

R. Zera said in the name of R. Abba b. Shila who said it in the name of R. Hamnuna the Elder who had it from R. Adda b. Ahaba who had it from Rab: The halachah follows the ruling of R. Eleazar.[9] Rab designated R. Eleazar 'the happiest of the wise men.' Does then the [halachah] follow him in regard to other documents also?[10] Has not R. Papi said in the name of Raba: If an authentication of the Beth din[11] is written before the witnesses have testified to their signatures, it is invalid? The reason is that it seems to contain a falsehood.[12] So here, the documents seem to contain a falsehood?

— This is no objection, as shown by the statement of R. Nahman, who said: R. Meir used to say that even if a man found [a Get] on a rubbish heap and had it signed and delivered to the wife, it is valid. And even the Rabbis do not differ from R. Meir save in regard to writs of divorce, which have to be written with 'special intention', but not in regard to other documents, since R. Assi said in the name of R. Johanan: If a man gives a bond for a loan and repays the loan [on the same day], he may not use the same bond for another loan because the obligation contained in it is already cancelled. The reason is that the obligation contained in it is cancelled, but the fact that it may appear to contain a falsehood[13] is of no concern.

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(1) By laying down in the first clause of this Mishnah that the formulas may be written and in the second that they may not.

(2) Because since the Get is written but not signed she is neither divorced nor married.

(3) For fear that it may lead to the writing of the substantive part.

(4) Because according to Jewish law death cannot be presumed.

(5) V. supra 17a.

(6) There are no provisions entitling the bridegroom to the usufruct of his bride's property.

(7) Yeb. 52a.

(8) I.e., that she was divorced while still only affianced, and that therefore her child was born out of wedlock.

(9) That even the formula of the Get may not be written beforehand.

(10) The formulas of which he allows to be written out beforehand.

(11) Certifying that the signatures to such-and-such a document are genuine.

(12) Since it runs: 'While we sat as a court of three there came before us So-and-so who testified to their signatures etc.'

(13) In not being written originally for the loan which is now being contracted.

Talmud - Mas. Gittin 27a

MISHNAH. IF THE BEARER OF A GET LOSES IT. ON THE WAY, IF HE FINDS IT AGAIN IMMEDIATELY IT IS VALID, AND IF NOT IT IS NOT VALID.[1] IF HE FINDS IT IN A HAFISAH OR IN A DELUSKAMA[2] OR[3] IF HE RECOGNISES IT, IT IS VALID.

GEMARA. Is there not a contradiction [between this Mishnah and the following]:[4] 'If a man finds bills of divorcement of wives or of emancipation of slaves or wills or deeds of gift or receipts, he should not deliver them,[5] for I say that after they were written [the writer] changed his mind and decided not to give them'. I infer from this, do I not, that if he had said 'Give them,'[6] they are to be given, even if a long interval had elapsed? — Rabbah replied: There is no difficulty. Here [in our Mishnah the reference] is to a place where caravans pass frequently, there [the other] to a place where caravans do not frequently pass.[7] And even in a place where caravans frequently pass, [the Get is invalid] only if there are presumed to be two men named Simon ben Joseph in the same town. For if you do not [understand Rabbah thus], then there is a contradiction between this statement of Rabbah and another of his. For a Get was once found in the Beth din of R. Huna in which was written, 'In Shawire, a place by the canal Rakis', and R. Huna said: The fear that there may be two Shawires is to be taken into account;[8] and R. Hisda said to Rabbah: Go and look it up carefully, because to-night R. Huna will ask you about it, and he went and looked up and found that we had learnt [in a Mishnah]: 'Any document which has passed through a Beth din is to be returned'.[9] Now the Beth din of R. Huna was on a par with a place where caravans pass frequently, and Rabbah decided that the document should be delivered. From this we conclude that if there are known to be two men named Simon ben Joseph in the town it is [not to be returned], but otherwise it is.[10] In the case of a Get which was found 'among the flax' in Pumbeditha, Rabbah acted according to the rule just laid down.[11] Some say it was found in the place where flax was soaked, and although there were two persons of the same name known to be in the place, he ordered it to be returned because it was not a place where caravans passed frequently. Some again say that it was the place where flax was sold, and there were not two persons of the same name known to be there though caravans did pass

frequently.

R. Zera pointed to a contradiction between the Mishnah and the following Baraitha, and also resolved it. We learn here: IF THE BEARER OF A GET LOSES IT ON THE WAY AND FINDS IT AGAIN IMMEDIATELY, IT IS VALID, AND IF NOT IT IS NOT VALID. This seems to contradict the following: If a man finds a bill of divorce in the street, if the husband acknowledges it he should deliver it to the woman, but if the husband does not acknowledge it he should give it neither to one nor to the other.[12] It says here at any rate

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(1) Because perhaps it is not the same one but another with the same names.

(2) Names of receptacles, explained infra 28a.

(3) V. Rashi.

(4) B.M. 18a. For fuller notes on this whole section, v. B.M. (Sonc. ed.) pp. 110-115.

(5) Either to the writer or the recipient.

(6) As in the case of a Get sent by a bearer.

(7) And therefore other documents containing the same names may also have been dropped.

(8) And therefore the claimant may not be the person who dropped the Get and it is not to be delivered.

(9) Because if the writer had not meant it to be delivered, he would not have brought it to the Beth din to be confirmed.

(10) Because two men of the same name were not known to be in that town.

(11) That the Get is to he delivered unless there are two reasons — of the place and of the name — to the contrary.

(12) B.M. 18b.

that when the husband acknowledges it he should give it to the woman, even if a long time has elapsed? — R. Zera answered himself by saying that [in the Mishnah] here we speak of a place where caravans pass frequently and there [the other passage] of a place where caravans do not pass frequently. Some add [in quoting the answer of R. Zera]: And even [the Mishnah says] it should not be delivered only if there are presumed to be two men of the same name, which is the view of Rabbah. Some again report R. Zera as having said 'even though there are not presumed etc., he should not deliver,' and so as differing from Rabbah. We can understand why Rabbah did not raise the difficulty in the form in which it was raised by R. Zera: he thought there was more force in opposing one Mishnah to another.[1] But why did not R. Zera raise it in the form in which it was raised by Rabbah? — R. Zera might answer: Does the [other Mishnah] state, 'If the husband has said, Give, it is to be given even after the lapse of some time'?[2] possibly what it means is that if he has said 'give' it is given only in the recognised way, i.e. immediately.[3] R. Jeremiah said: [The Get is delivered after a lapse of time only] if, for instance, the witnesses say, 'We have never signed more than one Get in the name of Joseph ben Simeon.' If that is so, what does [the Mishnah] tell us? — You might think that we [still do not declare the Get valid] for fear that the name may happen to be the same and the witnesses may happen to be the same. Now we know [that we disregard this possibility]. R. Ashi said: [The Get is delivered after a lapse of time only] if the bearer can say, 'there is a hole at the side of such-and-such a letter,' which is a precise distinguishing mark. And that is, provided he says, 'at the side of such-and-such a letter', which is a precise distinguishing mark, and not simply 'a hole'. [R. Ashi ruled thus] because he was not certain if the rule about distinguishing marks[4] is derived from the Torah or was laid down by the Rabbis [on their own authority].[5]

Rabbah b. Bar Hanah lost a Get in the Beth Hamidrash. He said [to the Beth din]: If you want a distinguishing mark, I can give one, and if you want me to recognise it by sight, I can do so. They gave it back to him. He said: I do not know if they gave it back because I was able to give a distinguishing mark,[6] and they thought that the rule about such marks[7] was derived from the Torah, or because I was able to recognise it by sight. And for this only a Talmudical student would be

trusted, but not any ordinary person.

AND IF NOT IT IS NOT VALID. Our Rabbis have taught: What is it that we call 'not immediately'? R. Nathan says: If he has allowed an interval to elapse long enough for a caravan to pass by and encamp. R. Simeon b. Eleazar says: [It is called 'immediately'] so long as someone stands there and sees that no-one passes there; some say, that no-one has stopped there. Rabbi says: [If he waits long enough] for the Get to be written. R. Isaac says: Long enough to read it. According to others, to write and to read it. Even if a considerable time did elapse, if there are [precise] distinguishing marks they are taken as evidence, e.g., if the bearer says that there is a hole at the side of such-and-such a letter. The general characteristics [of the Get], however, are no evidence, e.g., if he said that it was long or short. If the bearer found it tied up in a purse, a bag, or a ring,

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(1) Viz., our Mishnah and the Mishnah from Baba Mezi'a.

(2) This being the assumption made above.

(3) Hence there is no contradiction in the Mishnah from Baba Mezi'a, and therefore R. Zera raised the difficulty from a Baraitha.

(4) That a claimant to a lost article could make good his claim by mentioning a sign, and had not necessarily to bring witnesses.

(5) I.e., if the Torah required witnesses and the Rabbis dispensed with this on their own authority, in the case of a Get, in view of the grave implications involved, a very clear mark would be required.

(6) Though it was not a precise mark.

(7) That it was sufficient for a claimant to give a sign, and therefore even a Get should be restored.

or among his clothes, even after a considerable time, it is valid.

It has been stated: Rab Judah said in the name of Samuel: The halachah is that [the found Get is valid] if no-one has stopped there, whereas Rabbah b. Bar Hanah said the halachah is [that it is valid] if no-one has passed by there. Why does not Rab Judah say that the halachah follows [this] Master,[1] and Rabbah b. Bar Hanah say that it follows [the other] Master?[2] — Because there is another reading which reverses the names.[3]

IN A HAFISAH OR A DELUSKAMA. What is a hafisah? — Rabbah b. Bar Hanah says: A small pouch. What is a deluskama? — The kind of box used by old men.[4]

MISHNAH. IF, WHEN THE BEARER OF A GET LEFT, THE HUSBAND WAS AN OLD MAN OR SICK, HE SHOULD YET DELIVER IT TO THE WIFE ON THE PRESUMPTION THAT HE IS STILL ALIVE. IF THE DAUGHTER OF AN ORDINARY ISRAELITE[5] IS MARRIED TO A PRIEST AND HER HUSBAND GOES ABROAD, SHE GOES ON EATING OF THE TERUMAH ON THE PRESUMPTION THAT HE IS STILL ALIVE.[6] IF A MAN SENDS A SIN-OFFERING FROM ABROAD IT IS SACRIFICED ON THE ALTAR ON THE PRESUMPTION THAT HE IS STILL ALIVE.[7]

GEMARA. Raba said: [This Mishnah] speaks only of an old man who has not reached the years of 'strength'[8] and of a man who is just ill, because most invalids recover, but not if he has attained 'years of strength' or was in a dying condition, because most persons in a dying condition die. Against this [opinion] Abaye raised the following objection: 'If when the bearer left the husband was old, even a hundred years old, he yet gives it to the wife on the presumption that he is alive.' This is a refutation. I might, however, still answer that if a man reaches such an age he is altogether exceptional.[9] Abaye pointed out to Rabbah a contradiction. We learn: IF, WHEN THE BEARER LEFT, THE HUSBAND WAS OLD OR SICK, HE SHOULD YET DELIVER IT TO THE WIFE

ON THE PRESUMPTION THAT HE IS STILL ALIVE. This seems to contradict the following [Baraitha]: 'If a priest said to his wife, "Here is thy Get [to come into force] an hour before my death",[10] she is forbidden to eat the priestly dues immediately'?[11] — He replied: Do you compare terumah with bills of divorce? To terumah there is an alternative,[12] but to the Get there is no alternative.[13] Why not oppose two statements regarding terumah itself? For we learn here: IF THE DAUGHTER OF AN ORDINARY ISRAELITE IS MARRIED TO A PRIEST AND HER HUSBAND GOES ABROAD, SHE GOES ON EATING THE TERUMAH DUES ON THE PRESUMPTION THAT HE IS STILL ALIVE. Does not this contradict the following [Baraitha]: 'If a Priest says to his [non-priestly] wife, "Here is thy Get [to come into force] an hour before my death", she is forbidden to eat the terumah immediately'? — R. Adda the son of R. Isaac answered: There the case is different, because he prohibited her to himself one hour before his death.[14] R. Papa strongly demurred to this, saying: How do you know that he will die first? Perhaps she will die first?[15] In fact, said Abaye. the solution of the contradiction is that the one passage follows R. Meir who disregards the chance of dying, and the other follows R. Judah who takes this chance into account, as we have learnt:[16] If a man buys wine from the Cutheans, he can say, Two logs which I intend to set aside are to be reckoned as terumah [on a hundred], ten logs as first tithe, and nine logs as second tithe, and then begin to drink at once. This is the view of R. Meir. R. Judah, R. Jose and R. Simeon forbid him to do this.[17] Raba said:

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(1) The opinion assigned to 'some say'; supra.

(2) The opinion assigned to R. Simeon, supra.

(3) The opinions assigned to R. Simeon and 'some say'.

(4) To keep documents in. [The word is also frequently spelt Geluskama, probably from Grk. ** receptacle.]

(5) One who is not a kohen.

(6) Although if a widow she would not be allowed to eat terumah (v. Glos.).

(7) Although if he is dead the animal should not be sacrificed.

(8) I.e., eighty years, in allusion to Ps. XC, 10.

(9) And may go on living.

(10) [Lit., 'his death', a euphemism. V. Tosef. Git. IV (Zuckemandel p. 330), where some texts read 'my death'.]

(11) As we fear at every moment that he will die within the next hour.

(12) I.e., she can eat other food.

(13) There is no alternative way of saving her from becoming a 'deserted wife'.

(14) But his chance of dying does not enter into consideration.

(15) I.e., we have to take the chance of his dying into consideration, as otherwise it would not be a Get.

(16) V. Supra 25a.

(17) Because they take into account the chance of the skin bursting, whereas R. Meir does not.

Talmud - Mas. Gittin 28b

We disregard the chance of his having died,[1] but take into account the chance that he may die.[2] Said R. Adda b. Mattena to Raba: What of the wine-skin [in the case of the terumah, the chance of which breaking is] like the chance that the man may die[3] and yet the authorities differ in regard to it?[4] — Said R. Judah from Diskarta:[5] A wine-skin is different, because it can be handed over to someone to keep. R. Mesharshe ya strongly objected to this, saying: Your security himself requires a security.[6] — In fact, said Raba, the chance that he has died we do not take into account:[7] whether we take into account the chance that he may die is a question on which Tannaim differ.[8]

IF A PERSON SENDS A SIN-OFFERING FROM ABROAD etc. But is not laying-on of hands required?[9] R. Joseph replied that [the Mishnah refers] to an offering sent by a woman,[10] R. Papa said that it refers to the sin-offering of a bird.[11]

[All three clauses in the Mishnah] are necessary. For if the rule [that the person in question is

presumed to be alive] were stated merely in regard to a Get, I should say the reason is because there is no alternative,[12] but in the case of terumah where there is an alternative, it does not apply. And if the rule had been stated with regard to terumah, I should say that the reason is because sometimes there is no alternative,[13] but in the case of the sin-offering of the bird I should say that, as there is a doubt [whether the person who sent it is still alive], we should not [take the risk of] bringing profane things into the Temple court. Hence [all three clauses] are necessary.

MISHNAH. THREE STATEMENTS WERE MADE BY R. ELEAZAR B. PERATA BEFORE THE SAGES, WHO FORMALLY APPROVED OF THEM. [HE SAID] THAT [PEOPLE IN] A BESIEGED TOWN, [PEOPLE] IN A SHIP STORM-TOSSED AT SEA, AND A MAN WHO HAS BEEN BROUGHT TO COURT TO BE TRIED [FOR HIS LIFE] ARE PRESUMED TO BE ALIVE [SO LONG AS THEY ARE NOT KNOWN TO BE DEAD]. [PEOPLE, HOWEVER,] IN A BESIEGED TOWN WHICH HAS BEEN CAPTURED OR [IN] A SHIP WHICH HAS BEEN LOST AT SEA OR A MAN WHO HAS BEEN LED OUT TO EXECUTION ARE PRESUMED TO BE EITHER ALIVE OR DEAD ACCORDING TO WHICHEVER VIEW ENTAILS THE GREATER RIGOUR. [HENCE] THE DAUGHTER OF AN ORDINARY ISRAELITE WHO HAS MARRIED A PRIEST OR THE DAUGHTER OF A PRIEST WHO HAS MARRIED AN ORDINARY ISRAELITE MAY NOT EAT OF THE TERUMAH [IF THE HUSBAND HAS DISAPPEARED IN THIS WAY].[14]

GEMARA. R. Joseph said: This rule [with regard to a man led out to execution] applies only to Israelite courts,[15] but in the case of a heathen court once he is condemned to execution, [there is no question that] he is executed.[16] Said Abaye to him: Do not the heathen courts sometimes take a bribe? — He replied: If they do, it is only before the writ is signed with the words Pursi shanmag,[17] but after it has been signed pursi shanmag they will not take a bribe.

An objection was raised [from the following]: 'Whenever two persons come forward and say, We testify against So-and-so that he was condemned to death in such-and-such a Beth din, So-and-so and So-and-so being the witnesses against him, such a man has to be put to death'?[18] — Perhaps [a condemned person] who escapes is different.[19] Come and hear: If he heard [a report] from an Israelite court that So-and-so died or was put to death, they allow his wife to marry again [If, however, the report came] from heathen[20] jailers that he died or was put to death, they do not allow his wife to marry again. Now what is meant here by 'died' and 'put to death'? Shall I say these terms are to be taken literally? Then why in the case of heathens is the wife not allowed to marry again, seeing that it is a recognised principle that [the word of] a heathen speaking without ulterior motive[21] is to be accepted [in questions relating to marriage]?[22] I must therefore understand the words 'died' and 'put to death' in the sense of 'Taken out to die'[23] or 'to be put to death'; and yet it states [that if the report comes] from an Israelite court they do allow the wife to marry again?[24] — [The passage quoted means] really 'died' and really 'put to death', and as for your question why in such a case [if the report comes] from a heathen court is she not allowed to marry again, seeing that it is a recognised principle with us that [the word of] a heathen speaking without ulterior motive is to be accepted, [the answer is that] this applies only to a matter in which they themselves have not participated,[25] but where the matter is one in which they themselves have participated, they are prone to indulge in falsehood.[26]

[The following is] another version [of the above passage]. R. Joseph said: This rule applies only to heathen courts,

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(1) Before the bearer delivers the Get, as in the former case.

(2) At any moment, as in the latter case where he gives her the divorce to come into force an hour before his death.

(3) Referring as it does to a contingency of the future.

(4) R. Meir not taking this chance into account.

(5) Deskarah, N.E. of Bagdad.
(6) I.e. perhaps the other person will also neglect to look after the wine-skin.
(7) So that our Mishnah agrees with all.
(8) R. Meir and R. Simeon, and the Baraitha will represent the view of R. Simeon.
(9) According to Lev. I, 4: And he (the bringer of the sacrifice) shall lay his hands on the head of the sin. offering.
(10) Who was not required to lay on hands, v. Kid. 36a.
(11) Which did not require laying-on of hands. V. Lev. I, 14.
(12) V. supra. p. 112, n. 7.
(13) E.g., if she is very poor.
(14) In the former case we presume the husband to be dead, in the latter, to be alive.
(15) Because new evidence may come to light and he may be tried again and acquitted. V. Sanh. 42b.
(16) And therefore we do not presume him to be alive for any purposes.
(17) According to Jastrow puris nameh, Persian for 'investigation paper', 'verdict'.
(18) Which seems to show that after condemnation by an Israelite court we do not assume the possibility that he might have subsequently been acquitted as a result of new evidence; v. Mak. 7a.
(19) The passage speaks of one who escaped justice. His flight is a proof of his guilt.
(20) קומנטריסין cf. Lat. commentariensis, registrars of prisoners, jailers (Jast.).
(21) Lit., 'talking in his simplicity'.
(22) And therefore we regard the first husband as dead.
(23) [By some means other than the four prescribed deaths, v. Sanh. 81b; or in the case of a heathen court, by casting into a furnace, (Rashi)].
(24) Which seems to contradict the Mishnah as interpreted by R. Joseph.
(25) And which therefore they cannot boast about.
(26) E.g., that their Court has executed a Jew, though they have not actually seen the execution. [This reading follows Rashi, cur. edd.: to hold firm to their falsehood.]

Talmud - Mas. Gittin 29a

but in the case of an Israelite court once it condemns him to execution he is executed. Said Abaye to him: In an Israelite court also it is possible that some circumstance may be found in his favour [after his condemnation]? — Such a circumstance happens before the sentence is pronounced; after the sentence is pronounced it does not happen.[1] May we say that this view is supported by the following: Whenever two persons come forward and say. We testify against So-and-so that he was condemned to death in such-and-such a Beth din, So-and-so and So-and-so being witnesses against him, such a man has to be put to death'? — Perhaps a condemned man who has escaped is different. Come and hear: If he heard [a report] from an Israelite court that So-and-so died or was put to death, they allow his wife to marry again. [If, however, the report came], from a heathen court that he died or was put to death, they do not allow his wife to marry again. Now what is meant here by 'died' and 'put to death'? Shall I say these terms are to be taken literally? Then why in the case of a heathen court is the wife not allowed to marry again, seeing that it is a recognised principle that [the word of] a heathen speaking without ulterior motive is to be accepted [in questions relating to marriage]? I must therefore understand the words 'died' and 'put to death' in the sense of 'taken out to die' or 'to be put to death'; and yet it states [that if the report comes] from an Israelite court they do allow the wife to marry again![2] [The passage means] really 'died' and really 'put to death',[3] and as for your question why in such a case [if the report comes] from a heathen court is she not allowed to marry again, seeing that it is a recognised principle with us that the word of a heathen speaking without ulterior motive is to be accepted, [the answer is that] this applies only to a matter in which the heathen has not participated, but where the matter is one in which they have themselves participated, he is prone to indulge in falsehood.

MISHNAH. IF THE BEARER OF A GET IN ERETZ YISRAEL FALLS ILL, HE CAN SEND IT ON BY ANOTHER. IF, HOWEVER, [THE HUSBAND] SAID TO HIM, TAKE FOR ME[4]

SUCH-AND-SUCH AN ARTICLE FROM HER, HE MAY NOT SEND IT [THE GET] ON BY ANOTHER, SINCE THE HUSBAND MAY NOT WANT HIS PLEDGE TO BE IN THE HAND OF ANOTHER.

GEMARA. R. Kahana said: We have learnt specifically. IF HE FALLS ILL, Cannot I see that for myself? — [Unless R. Kahana had pointed this out] you might think that the same rule applies even if he does not fall ill, and that [the Mishnah] merely mentioned a usual case. Hence he tells us [that this is not so], How [am I to] understand [the Mishnah]? If the husband said to the bearer simply 'take this [Get]', then surely even if he did not fall ill he can send it on by another? If, however, the husband said, 'You take this,' then even if he did fall ill he cannot send it on by another? And if [the Mishnah] follows R. Simeon b. Gamaliel, then even if he fell ill [although the husband merely said 'take'] he cannot [send it on by another], as it has been taught: 'If a man said, Take this Get to my wife, [the bearer] can send it on by another. If he said, You take this Get to my wife, [the bearer] cannot send it on by another. R. Simeon b. Gamaliel said: In either case one agent cannot appoint another'? — If you like I can answer that he said 'Take,' for [even this formula authorises the bearer to send it on by another] only if he falls ill; or if you like I can say that he said 'You take', for only where he falls ill it is different:[5] and if you like I can say that the Mishnah is in agreement with R. Simeon b. Gamaliel,[6] only where the bearer falls ill it is different.

We learnt: IF THE BEARER OF A GET IN ERETZ YISRAEL FALLS ILL, HE CAN SEND IT ON BY ANOTHER. Does not this contradict the following? [For we learnt:] 'If a man says to two persons, "Give a Get to my wife," or to three persons, "Write a Get and give it to my wife," they are to write and give it':[7] [which implies, does it not, that] they themselves are [to write it] but not an agent [of theirs]? — Abaye replied: There the reason is that they should not put the husband to shame,[8] but here the husband is not particular.[9] Raba said: [The reason there is that he only gave them] verbal instructions, and verbal instructions cannot be transmitted to an agent. Does any difference arise in practice between the two? — It does: in the case of a gift,[10] their difference being in principle the same as that between Rab and Samuel, Rab holding that a gift is not on all fours with a Get and Samuel holding that it is.

IF THE HUSBAND SAID TO HIM, TAKE FOR ME SUCH-AND-SUCH AN ARTICLE FROM HER. Resh Lakish said: Here Rabbi meant [merely] to teach us that the borrower may not lend the article he has borrowed further, nor may the hirer hire it out further.[11] Said R. Johanan to him: This even schoolchildren know. What we should say is that sometimes [if the bearer did send the Get on by another bearer] the Get itself is no Get, because he puts himself in the same position as the bearer who was told by the husband not to divorce the wife except in the lower room and he divorced her in the upper room, or who was told not to divorce her except with the right hand and he divorced her with the left. Now both authorities are agreed that where she goes out to meet him [the second bearer] and gives him the article and then takes from him the Get, it is a perfectly valid Get.[12] Where they differ is in the case where the husband said to the bearer,

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(1) [I.e., it may happen but rarely (Rashi)].

(2) Which supports R. Joseph.

(3) And so the passage does not support R. Joseph.

(4) When delivering the Get to her.

(5) This formula prohibits the agent from sending it on only when he is well, but not when he falls ill.

(6) That an agent may not appoint an agent.

(7) Infra 66a.

(8) Because if they tell a third party to write it. more people will know that the husband is unable to write it himself.

(9) As there is nothing to be particular about

(10) If a man said to two or three persons. 'Write me a deed of gift for So-and-so.' Here the question of saving the face of the donor does not arise, as the donor was not supposed to write out his own deed of gift. (V. B.B., 167b).

(11) The ruling in the Mishnah is merely intended to state a prohibition, without affecting the validity of the Get should the bearer send it on by someone else.
(12) [Although the husband may not approve of his pledge being in the possession of a third party, the Get is not invalidated since there has been no departure from the husband's instructions in regard to the delivery of the Get itself.]

Talmud - Mas. Gittin 29b

Take the article from her and then give her the Get,[1] and he went and gave her the Get and then took from her the article. In such a case R. Johanan declares [the Get] invalid even if [delivered] by [the first bearer] himself, and all the more if by his agent, whereas Resh Lakish declares it valid even if [delivered] by the agent and all the more so if by [the first bearer] himself.[2]

MISHNAH. IF THE BEARER OF A GET FROM FOREIGN PARTS FALLS ILL, HE GOES BEFORE A BETH DIN AND APPOINTS AN AGENT AND SENDS HIM[3] [ON WITH THE GET,] DECLARING BEFORE THEM, 'IN MY PRESENCE IT WAS WRITTEN AND IN MY PRESENCE IT WAS SIGNED.' THE LAST AGENT IS NOT REQUIRED TO MAKE THIS DECLARATION: HE MERELY DECLARES, 'I AM THE MESSENGER OF THE BETH DIN.'[4]

GEMARA. The Rabbis said to Abimi the son of R. Abbahu: Enquire of R. Abbahu, Can the agent of the original bearer appoint a further agent or not? — He replied: You have no need to ask this. For since it says [in the Mishnah], 'THE LAST AGENT [and not 'the second'] you may conclude that he may appoint another agent. What you should ask, however, is whether, when he appoints an agent, he does so before a Beth din or even without a Beth din. They said to him: We have no need to ask this, since [the Mishnah] says, HE SAYS, I AM THE MESSENGER OF THE BETH DIN. R. Nahman b. Isaac reported the discussion thus: The Rabbis said to Abimi the son of R. Abbahu: Enquire of R. Abbahu, When the agent of the original bearer appoints a second agent, does he do so before the Beth din or even without the Beth din? — He replied: You ought to ask [first] whether he can appoint a second agent at all. They said: This we have no need to ask, since the Mishnah speaks of 'THE LAST AGENT, which shows that the second bearer can appoint a third. What, however, we want to know is whether he must do so before the Beth din or whether he does not need the Beth din. He said to them: This also you need not ask, since it says, HE SAYS, I AM THE MESSENGER OF THE BETH DIN. Rabbah said: A bearer in Eretz Yisrael can appoint any number of further bearers[5] [without needing any Beth din].[6] R. Ashi said: If the first one dies,[7] they all cease to function. Mar son of R. Ashi said: This statement of my father dates from his youth.[8] If the husband dies, is there any substance left in them? From whom do they all derive their status? From the husband. As long as the husband is alive, they are all agents; if the husband dies they all cease to be agents.

A certain man wanted to send a Get to his wife. The messenger said to him, I do not know her. So the husband said to him, Go and give it to Abba b. Manyumi who knows her, and he will go and give it to her. The man took the Get,[9] but did not find Abba b. Manyumi [in town]. He found R. Abbahu and R. Hanina b. Papa and R. Isaac Nappaha [sitting as a Beth din] with R. Safra also present. They said to him: Transmit your commission to us, so that when R. Abba b. Manyumi comes we can give him [the Get] and he can go and give it to the woman. Said R. Safra to them: But this man has not been made an agent for effecting the divorce?[10] They were nonplussed. Said Raba: R. Safra tripped up[11] three ordained Rabbis. R. Ashi, however, said: How did he trip them up? Did the husband say to the man, Abba b. Manyumi [shall deliver the Get] and not you?[12] According to another version, Raba said: R. Safra thinks he has tripped up, but he is mistaken, three ordained Rabbis. Said R. Ashi: Where is the mistake? What did the husband say to the bearer? 'Abba b. Manyumi [shall give it] and not you.'[13]

A certain man sent a Get to his wife, telling the bearer not to give it to her till thirty days had passed. Before the thirty days had passed, the man found he could not carry out the commission. He

therefore consulted Raba. Said Raba: Why is a bearer who falls ill [allowed to appoint another bearer]? Because he is prevented by circumstances [from carrying out his commission]. This man also is prevented by circumstances [from carrying out his commission]. So he said to the man: Transmit your commission to us, so that after thirty days we can appoint a bearer who will give the Get to the wife. Said the Rabbis to Raba: But he is not [at this moment] commissioned to effect the divorce? — He replied: Since he can divorce her after thirty days, he is practically [now] an agent commissioned to divorce her. They rejoined: Do we not take account of the chance that the husband may have made friends with her [within the thirty days]? Have we not learnt: '[If a man says, This is a Get] from now onward if I do not come within twelve months, if he dies within the twelve months, it is a Get,'[14] and in discussing this we raised the question. Do we not take account of the chance that he may [in the meantime] have made friends with her, and Rabba son of R. Huna said: Abba Mari has explained in the name of Rab that this applies to the case where the husband says [on handing the Get to the agent].[15] 'Her word is to be accepted if [on being challenged] she says, I did not come [near him within the twelve months]'?[16] Raba was nonplussed. Later it turned out that the woman in this case was only betrothed. Raba thereupon said: If they said in regard to a married woman [that there is a chance of his making it up with her], it does not follow that they said so in regard to a betrothed woman.[17]

Said Raba: The real question is this.

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(1) The validity of the Get was apparently made conditional upon the carrying out of the procedure.

(2) Resh Lakish is of the opinion that the husband did not intend his instructions to be treated as strict orders of procedure.

(3) Var. lec., 'He appoints a court and sends it on (by another agent)'.

(4) And therefore presumably the Get is in order.

(5) I.e., the second may appoint a third, and so forth.

(6) Since the first need not declare, 'In my presence it was written etc.,' the last need not declare, 'I am the messenger of the Beth din'. [Rabbah (Var. lec. Raba) extends the ruling of the Mishnah to Eretz Yisrael where it might be maintained the second could not appoint a third since his own appointment need not necessarily have been made in the presence of a Beth din (Trani)].

(7) Before the Get was delivered to the woman.

(8) And is open to criticism.

(9) Lit., 'came'.

(10) But only for giving the Get to Abba b. Manyumi, and therefore he cannot hand it to another.

(11) Lit., 'hamstrung'.

(12) 'Was not therefore the bearer also an agent for delivering the Get?

(13) And therefore he was no agent for delivering the Get.

(14) Infra 76a.

(15) Whom he commissioned to hand over the Get to the wife at the end of the twelve months.

(16) But otherwise we do take this chance into account, and the man is not an agent for divorcing her.

(17) And the man therefore is an agent and can commission us.

Talmud - Mas. Gittin 30a

When the Beth din appoint an agent, do they do so in the presence of the original agent or not in his presence? He himself decided the matter [saying]: They can do so either in his presence or not. [A message] was sent from there [Eretz Yisrael]: [They may do so] either in his presence or not in his presence.

A certain man once said: This shall be a Get if I do not come within thirty days. He did come, but could not get across the river, so he cried out, 'See, I have come, see, I have come.' Samuel said: This is no 'coming'.[1]

A certain man said to the Beth din, If I do not make it up with her in thirty days, it will be a Get. He went and tried to make up with her, but she would not be reconciled. Said R. Joseph: Has he offered her a bag[2] of gold coins and yet not been able to appease her?[3] According to another version, R. Joseph said: Must he offer her a bag of gold coins? He has done his best to make it up with her, but she would not be reconciled. [The latter version] fits in with the view that in the matter of a Get allowance is made for circumstances over which one has no control,[4] and the [former] with the view that no such allowance is made. MISHNAH. IF A MAN LENDS MONEY TO A PRIEST OR A LEVITE OR A POOR MAN ON CONDITION THAT HE CAN RECOUP HIMSELF FROM THEIR DUES,[5] HE MAY DO SO, IN THE PRESUMPTION THAT THEY ARE STILL ALIVE, AND HE DOES NOT TAKE INTO ACCOUNT THE CHANCE THAT THE PRIEST OR THE LEVITE MAY HAVE DIED OR THE POOR MAN MAY HAVE BECOME RICH. IF [HE KNOWS THAT] THEY HAVE DIED, HE MUST OBTAIN THE PERMISSION OF THE HEIRS. IF HE MADE THE LOAN IN THE PRESENCE OF THE BETH DIN, HE NEED NOT OBTAIN PERMISSION FROM THE HEIRS.

GEMARA. [Can he do this] even if the dues have not come into the hands [of those who are entitled to them]?[6] — Rab said: [The Mishnah speaks of] priests and Levites with whom he is familiar.[7] Samuel says: He conveys possession to them through a third party.[8] ‘Ulla said: This ruling is based on the view of R. Jose, who said that [in many places] possession is reckoned to have been acquired though strictly speaking it has not been acquired.[9] [The reason why] all [the authorities] do not concur with Rab is because the Mishnah does not mention [the man's] acquaintance. [The reason why] all do not concur with Samuel is because the Mishnah does not mention transferring possession. [The reason why] all do not concur with ‘Ulla is because we do not base a ruling on the opinion of an individual [Rabbi].[10]

Our Rabbis have taught: ‘If a man lends money to a priest or a Levite or a poor man, on condition that he may recoup himself from their dues, he may do so in the presumption that they are still alive. He may stipulate with them to get the benefit of a lower market price,[11] and this is not reckoned as taking interest. The seventh year does not release it. If he desires to retract, he is not permitted to do so. If he gave up all hope of recovering[12] [but afterwards found that he could recover],[13] he does not appropriate any dues [in payment of the debt]. because dues are not set aside from that which has been given up as lost.’

The Master says: ‘He may stipulate to get the benefit of a lower market price.’ Surely this is self-evident?[14] — He informs us that even though he did not stipulate this expressly, he is reckoned as having done so.

‘This is not reckoned as interest’: why so? — Since when he has nothing he does not give, when he has something [and gives less][15] this is not counted as interest.

‘The seventh year does not release it’: because we do not apply here the verse, he shall not press.[16]

‘If he desires to retract, he is not permitted’: R. Papa said: This rule applies only to the owner vis-a-vis the priest, but if the priest wants to retract, he may, as we have learnt:[17] If he [the purchaser] has given him [the seller] money but has not yet pulled into his possession the produce, he can retract.[18]

‘If the owner has given up all hope of recovering he does not appropriate any dues, because dues are not set aside from that which has been given up as lost’: Is not this obvious? — It required to be stated for the case where the corn was in stalk [before it was blighted]. You might think that in that case the corn is counted as something [of value].[19] Now I know [that this is not so].

It has been taught: R. Eleazar b. Jacob says: If a man lends a priest or a Levite money in the presence of the Beth din and they die [before repaying], he sets aside dues for them as belonging to the whole tribe [and recovers therefrom].[20] [If he lent] to a poor man before the Beth din and he died, he sets aside dues for him as belonging to the poor of Israel [and recovers therefrom]. R. Ahi said: As belonging to all the poor.[21] What is the practical difference between them?

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(1) Because allowance is not made in the case of a Get for unforeseen circumstances, or, if it is, this circumstance, not being unusual, should have been provided for.

(2) Lit., 'a tarkabful (two kabs)'.

(3) I.e., has he done his very best?

(4) I.e., he can plead that he has not a bag of gold coins.

(5) Lit., 'that he may set apart for them what would be their share', i.e., instead of paying them their dues, heave-offering, tithe, or poor-man's tithe, respectively, he would utilize them as part or whole payment of his debt. He would sell the heave-offering to another priest, since it is forbidden to a lay Israelite, whilst he would retain the tithe or poor-man's tithe for himself, after having set aside the 'heave-offering of the tithe' which too is forbidden to a lay Israelite.]

(6) Because in this case they do not yet belong to them, so how can they he given back in payment of the debt?

(7) Makkire Kehunah, lit., 'acquaintances of priesthood', to whom he is accustomed to give the dues year by year, so that they have a presumptive ownership without having handled the dues; v. B.B. (Sonc. ed.) p. 513, n. 11.

(8) I.e., he transfers the dues, after setting them aside, to a third party on their behalf, and the latter returns them to him in payment of the debt.

(9) V. infra 59b, and B.M. 12b.

(10) Such as R. Jose here, where the majority do not concur with him.

(11) I.e., if at the time when he sets aside the dues the price is lower than when he lent the money, he may give himself the benefit of the drop by appropriating a larger amount of produce.

(12) Because his corn appeared to be blighted. and the condition was that he should recoup himself from the crop of that year.

(13) Because he obtained a harvest after all.

(14) What objection can there be to such a proceeding? V. B.M. 72b.

(15) I.e., keeps more for himself

(16) Deut. XV, 2; since he cannot claim anything from the debtors.

(17) V. B.M. 44a.

(18) The owner is regarded as purchasing the dues from the priest or Levite. The latter has received the money, but the former has not yet handled the goods.

(19) Because if the corn was in the stalk it has a chance of recovering.

(20) The rest of the tribe being regarded as his heirs, and so liable for the debt.

(21) Lit., 'the Poor of the world'.

Talmud - Mas. Gittin 30b

— Where there are Cuthean poor.[1] If the poor man became rich, he does not set aside dues for him, and that man becomes possessor of what he has.[2] Why did the Rabbis safeguard [the lender] in the case of the poor man dying[3] and not in the case of his becoming rich?[4] — It is a common thing for people to die, but not to become rich.[5] R. Papa said: This is borne out by the common saying: 'If [you hear that] your neighbour has died, believe it: if [you hear that] he has become rich, do not believe it.'

IF HE DIES, HE MUST OBTAIN PERMISSION FROM THE HEIRS. It has been taught: Rabbi says. Heirs that have inherited. Are there any heirs that do not inherit? — R. Johanan explained it to mean heirs that inherit land[6] but not money.'[7] R. Jonathan said: If he left a mere needleful[8] [of land], the other can recoup himself only to the extent of a needleful,[9] and if he left an axeful,[10] the other

can recoup himself to the extent of an axeful. R. Johanan said: Even if he only left a needleful he can recoup himself to the extent of an axeful,[11] as in the incident of the small field of Abaye.[12]

Our Rabbis have taught: If an Israelite says to a Levite, 'I have set aside a tithe for you.' he need not be concerned about the priest's due in the tithe.[13] If, however, he said, 'I have set aside a kor as tithe for you,' he has to concern himself about the priest's due in the tithe. What does all this mean? — Abaye said: It means this. If an Israelite said to a Levite, 'I have set aside tithe for you, and here is money for it', he has no need to worry lest the Levite should have made[14] that produce the priestly due on produce received by him from elsewhere.[15] If, however, he said, 'I have set aside a kor of tithe for you and here is the money for it', he has to worry lest the Levite should have [already] made it the priestly due on tithe from elsewhere.[16] Are we then dealing with rogues who take money and make it [the produce] priestly due on tithe from elsewhere?[17] — In fact, said R. Mesharsheya the son of R. Idi, [the Baraitha] means this: If the Israelite said to the son of a [deceased] Levite, I have set aside tithe for your father and here is the money for it, he need not worry lest the father had made it priestly due on tithe from elsewhere. If, however, he said, I have set aside a kor of tithe for your father and here is the money, he has to worry lest the father had made it priestly due on tithe from elsewhere.[18] Can we than suspect Haberim[19] of setting aside the priestly due from produce in another place?[20] — In fact, said R. Ashi, it means this: If a son of a [deceased] Israelite says to a Levite, My father told me [before his death] that he had set aside tithe for you or for your father, he [the Levite] has to worry about the priest's due in it, since as [the quantity is] indefinite, the owner's father may not have made it available for ordinary use [by setting aside the priestly due in it]. If, however, he says, I have a kor of tithe set aside for you or for your father, there is no need to worry lest the priestly due is still contained in it, since as [the quantity] is definite, he may be sure that the owner made it right [before his death]. But has the owner the right to set aside the terumah from the Levite's tithe? — Yes. Such is the ruling of Abba Eleazar b. Gamala, as it has been taught: Abba Eleazar b. Gamala says. It is written, And your heave-offering shall be reckoned to you.[21]

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(1) And in the opinion of the first Tanna, the Samaritans were not genuine proselytes and could not inherit the poor man who died.

(2) I.e., he need not repay the debt.

(3) By allowing him to set aside dues and recover.

(4) By not forcing the poor man to repay, although he is no longer entitled to any dues.

(5) And we do not legislate for exceptional cases.

(6) Who are thus liable to pay their father's debts.

(7) [For a creditor cannot recover his debt from immovable property of orphans. v. B.K. 8b.]

(8) I.e., a mere patch of land.

(9) This refers to the case where the loan was made before the Beth din. V. Tosaf. s.v. תניא .

(10) I.e., enough to be worth working.

(11) I.e., the amount of his debt.

(12) V. Keth. 91b. A man who owed a hundred zuz left a field worth fifty. The creditor seized it and the heirs induced him to quit it by paying fifty. He again seized it and they again paid. So here, he recovers again and again.

(13) V. Num. XVIII, 26, according to which the Levite had himself to set aside a tithe from his own tithe for the priest.

(14) [As soon as he had made it over to the owner, before he actually received the money.]

(15) Because it was not yet specified.

(16) Because it is specific.

(17) [Before they receive the money. and so prevent the Israelite from using it. V. Tosaf. s.v. הילך .]

(18) After learning that the kor had been set aside for him.

(19) V. Glos., s.v. Haber. All Levites were presumed to be Haberim.

(20) Lit., 'from that which is not brought near'. It was forbidden to a Haber to say. 'The produce which I have in such-and-such a place shall be terumah for this before me, for fear that produce is not extant at the time.

(21) Num. XVIII, 27.

Talmud - Mas. Gittin 31a

Scripture speaks of two heave-offerings, one the 'great terumah'[1] and the other the terumah from the Levite's tithe. Just as the 'great terumah' is set aside by estimate[2] and by intention,[3] so the terumah of the tithe is set aside by estimate and by intention; and just as the owner has the right to set aside the 'great terumah', so he has the right to set aside the terumah of the tithe.[4]

MISHNAH. IF A MAN SETS ASIDE PRODUCE WITH THE IDEA OF RECKONING IT AS TERUMAH AND TITHE,[5] OR MONEY WITH THE IDEA OF RECKONING IT AS SECOND TITHE,[6] HE CAN GO ON SO RECKONING IN THE PRESUMPTION THAT THEY ARE STILL EXISTING. IF THEY ARE LOST, HE HAS TO PROVIDE AGAINST THE RISK[7] FOR TWENTY-FOUR HOURS.[8] THIS IS THE RULING OF R. ELEAZAR [B. SHAMMUA]. R. JUDAH SAYS: WINE [SO SET ASIDE] HAS TO BE EXAMINED AT THREE SEASONS OF THE YEAR:[9] WHEN THE EAST WIND BEGINS TO BLOW AT THE END OF THE FEAST [OF TABERNACLES], WHEN THE BERRIES FIRST APPEAR [ON THE VINE], AND WHEN THE JUICE BEGINS TO FORM IN THE GRAPES.

GEMARA. What is meant by FOR TWENTY-FOUR HOURS? — R. Johanan says: The twenty-four hours before his examining.[10] R. Eleazar b. Antigonus says in the name of R. Eleazar son of R. Jannai:

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(1) V. Glos.

(2) It was not necessary to measure out the fiftieth part usually given for the terumah.

(3) A man could mentally set aside one portion of a heap of produce as terumah and immediately eat of the rest.

(4) Even before giving it to the Levite.

(5) Lit., 'of setting aside on their account', i.e., with the idea of making it terumah or tithe for other produce.

(6) The tithe which had to be turned into money to be spent in Jerusalem. V. Deut. XIV, 22-27.

(7) That he may have been eating untithed produce in reliance on the produce which has been lost.

(8) The meaning of this is discussed in the Gemara.

(9) To see that it has not turned sour.

(10) I.e., he can assume that it has been lost not more than twenty-four hours, and he puts aside fresh tithe etc. only for what he has consumed in that period.

Talmud - Mas. Gittin 31b

The twenty-four hours from his setting aside. We learnt: IF THEY ARE LOST, HE PROVIDES AGAINST THE RISK FOR TWENTY-FOUR HOURS. If this means twenty-four hours from his last examination, the expression is intelligible.[1] But if it means twenty-four hours from the setting-aside, it should say not for twenty-four hours but up to twenty-four hours,[2] should it not? — This is a difficulty.

THIS IS THE RULING OF R. ELEAZAR [B. SHAMMU'A]. R. Eleazar [b. Pedath] Says: R. Eleazar's colleagues did not concur with him, as we have learnt: 'If a ritual bath was measured and found to be too small, all the purifications that have been made in it, whether it is in a private or a public placed are retrospectively ineffective.'[3] Cannot I see for myself that they do not concur?[4] — But for R. Eleazar, I might think that 'retrospectively' means 'for twenty-four hours back'. Now I know [that this is not so].

R. JUDAH SAYS, AT THREE SEASONS OF THE YEAR etc. A Tanna taught: when the east wind [blows] at the conclusion of the festival in the cycle of Tishri.[5] It has been taught: R. Judah says: Produce is sold at three seasons of the year — before sowing time, at sowing time,[6] and shortly before[7] Passover. Wine is also sold at three seasons — shortly before Passover, shortly before

Pentecost, and shortly before Tabernacles. Oil is sold from Pentecost onwards. What is the legal bearing of this remark? — Raba, or, some say R. Papa says: As a guide to partners.[8] After that, what is the rule? — Raba said: Every day is the season [for selling it].

And it came to pass when the sun arose that the Lord prepared a sultry East wind [harishith].[9] What is the meaning of harishith? — Rab Judah said: When it blows it makes furrows in the sea.[10] Said Rabbah to him: If that is so, what do you make of the words, And the sun beat upon the head of Jonah that he fainted?[11] No, said Rabbah; [what it means is that] when it blows it stills all other winds.[12] Similarly it is written, How thy garments are warm when the earth is still by reason of the south wind,[13] [in explanation of which] R. Tahlifa son of R. Hisda said in the name of R. Hisda: When are thy garments warm? When He maketh the earth still from the south; for when the wind from this quarter blows, it stills all other winds before it.

R. Huna and R. Hisda were once sitting together when Geniba passed by them. Said one of them: Let us rise before him, for he is a learned man. Said the other: Shall we rise before a quarrelsome man?[14] When he came up to them he asked them what they were discussing. They replied: We were talking about the winds. He said to them: Thus said R. Hanan b. Raba in the name of Rab: Four winds blow every day and the north wind blows with all of them, for were it not so the world would not be able to exist for a moment. The south wind is the most violent of all, and were it not that the Son of the Hawk[15] keeps it back, it would devastate the whole world; for so it says, Doth the hawk soar by thy wisdom, and stretch her wings towards the south?[16]

Raba and R. Nahman b. Isaac were once sitting together, when R. Nahman b. Jacob passed by in a gilt carriage and wearing a purple cloak. Raba went to meet him, but R. Nahman b. Isaac did not stir, for he said: 'Perhaps it is one of the court of the Exilarch, and Raba needs them but I do not.'[17] When he saw R. Nahman b. Jacob approaching he bared his arm and said, 'The south wind[18] is blowing.' Raba said: Thus said Rab: A woman bears prematurely [when this wind blows]. Samuel said: Even pearls in the sea rot away. R. Johanan said: Even the seed in a woman's womb putrefies. Said R. Nahman b. Isaac: All these three Rabbis derived their statements from the same verse of Scripture, viz., Though he be fruitful among his brethren, an east wind shall come, the breath of the Lord coming up from the wilderness, and his spring shall become dry and his fountain shall be dried up, he shall spoil the treasure of all pleasant vessels.[19] 'The spring' is the source of a woman; 'the fountain shall be dried up' refers to the seed in the woman's womb; 'the treasure of all pleasant vessels' is the pearl in the sea.

Raba said: This one comes from Sura where they examine the Scripture minutely. What is the meaning of the words, 'Though he be fruitful [yafri] among his brethren'? — Raba said: Even

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(1) He assumes that it was lost twenty-four hours after he set it aside, and must put aside fresh tithe etc. for all he has consumed in the interval.

(2) Reckoning backwards.

(3) And not only for twenty-four hours back, Mik. II, 2.

(4) With R. Eleazar in our Mishnah.

(5) The year was divided into the four tekufoth or cycles — of Tishri. Tebeth. Nisan and Tammuz — each of which commenced on a fixed date of the solar year. Tabernacles fell sometimes in the cycle of Tishri and sometimes in that of Tammuz; v. Sanh. (Sonc. ed.) p. 49, n. 5.

(6) At the end of sowing time. V. Tosaf. s.v. לפני .

(7) Lit., 'in the dividing of,' i.e., in the middle of the period during which the laws of the festival were compounded.

(8) I.e., at these seasons a man may sell without consulting his partner, and if the price subsequently rises the latter has no ground of complaint against him.

(9) Jonah IV. 8.

(10) The word harishith being connected with harash, 'to plough'.

(11) Ibid. This shows that the wind cannot have been violent.
(12) Harishith being connected with harash, ‘to be still’.
(13) Job XXXVII, 17.
(14) Geniba was at variance with Mar ‘Ukba, the Exilarch. V. supra p. 23, n. 4.
(15) An angel so named. Cf. B.B. 25a.
(16) Job XXXIX. 26.
(17) Being the son-in-law of the Exilarch (Rashi). [Tosaf.: ‘Being a wealthy man’; Tosaf. being of the opinion that it was R. Nahman b. Jacob who was the Exilarch's son-in-law. For an explanation of Rashi's view, v. Hyman. Toledoth II p. 930.]
(18) Al. ‘east wind’. Al. ‘a she-devil’.
(19) Hos. XIII, 15.

the pin in the handle of the plough[1] becomes loose [rafia]. R. Joseph said: Even a peg in a wall becomes loose. R. Aha b. Jacob said: Even a cane in a wicker basket becomes slack.[2]

C H A P T E R I V

MISHNAH. IF A MAN AFTER DISPATCHING A GET TO HIS WIFE MEETS THE BEARER, OR SENDS A MESSENGER AFTER HIM, AND SAYS TO HIM, THE GET WHICH I HAVE GIVEN TO YOU IS CANCELLED, THEN IT IS CANCELLED. IF THE HUSBAND MEETS THE WIFE BEFORE [THE BEARER] OR SENDS A MESSENGER TO HER AND SAYS, THE GET I HAVE SENT TO YOU IS CANCELLED, THEN IT IS CANCELLED. ONCE, HOWEVER, THE GET HAS REACHED HER HAND, HE CANNOT CANCEL IT. IN FORMER TIMES A MAN WAS ALLOWED TO BRING TOGETHER A BETH DIN[3] WHEREVER HE WAS AND CANCEL THE GET. RABBAN GAMALIEL THE ELDER, HOWEVER, LAID DOWN A RULE THAT THIS SHOULD NOT BE DONE, SO AS TO PREVENT ABUSES.[4]

GEMARA. [The Mishnah] does not say 'meets him,' but simply 'MEETS', that is to say, even accidentally; and we do not say in that case that he merely desires to annoy his wife.[5] OR SENDS A MESSENGER AFTER HIM etc. Why state this?[6] — You might think that the commission given to the second has no more force than that given to the first and therefore should not countermand it. Now I know [that this is not so]. IF HE MEETS HIS WIFE BEFORE THE BEARER etc. Why state this? — You might think that although we rejected [above the idea] that he desires to annoy [his wife]. this is only when he says to the bearer [that the Get is cancelled]. but [if he says so] to [the wife] herself he certainly does mean merely to annoy her. Now I know [that this is not so]. OR SENDS A MESSENGER TO HER. Why state this? — You might think that while he would not put himself out merely to annoy her, yet if he sends a messenger, to whose trouble he is indifferent, he certainly desires merely to annoy her. Now I know [that this is not so]. ONCE THE GET HAS REACHED HER HAND HE CANNOT CANCEL IT. Is not this self-evident? — It required to be stated in view of the case where he made efforts from the very first to cancel it. You might think that in this case, subsequent events prove him to have actually annulled [the Get]. Now I know [that this is not so]. Our Rabbis have taught: [If he says,] 'It is canceled [batel]', 'I don't want it,' his words take effect. [If he said,] 'It is invalid', 'it is no Get,' his words are of no effect.[7] This means to say, does it not, that the expression batel[8] is equivalent to 'let it be canceled.'[9] How can this be, seeing that Rabbah b. Aibu has said in the name of R. Shesheth (or, according to others, Rabbah b. Abbuah said), If the recipient of a gift says after it has come into his possession. 'This gift is to be cancelled,' 'let it be cancelled', 'I don't want it,' his words are of no effect,[10] but if he said, 'It is canceled [batel],' 'it is no gift', his words have effect. This shows, does it not, that batel means 'cancelled from the outset'?[11] — Abaye replied: The expression batel

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(1) Which fastens the handle to the blade.

(2) The meaning is that this wind causes things which are usually closely united like brothers to fall apart, the word yafri (פרה) being interpreted as yarfi (רפה) 'loosens' or 'slackens'.

(3) I.e. , three persons.

(4) Lit., 'for the better ordering of society'. Lest the bearer should give it to her in ignorance that it was annulled and she marry on the strength of it.

(5) By holding up the Get for a month or two; for had he been intent on annulling it he would have made a special effort to overtake the bearer.

(6) It seems self-evident.

(7) Because he is describing its character wrongly.

(8) Present tense.

(9) And not a description of its character.

(10) [As he cannot by a mere declaration annul a thing already in his possession].
(11) [And therefore the gift had never passed into possession. Applying this mutatis mutandis in the case of a Get, batel should have no effect, because it is a wrong description of the character of the Get].

Talmud - Mas. Gittin 32b

has two meanings: it means 'canceled already' and it means 'will be canceled'. If used either of a Get or of a gift, it is used in the sense most effective for the purpose.

Abaye said: We have it on authority that the bearer of a gift is on the same footing as the bearer of a Get. The outcome of this [principle] is that the expression 'take' has not the same force as 'take on behalf of.'[1]

Rabina found R. Nahman b. Isaac leaning against the bolt of the door and revolving the question: What of the expression 'batel'?[2] This was left unanswered. R. Shesheth said or, according to others, it has been laid down in a Baraitha: [If a man said] 'This Get shall not avail', 'shall not release [the woman]', 'shall not part',[3] 'shall not dismiss' , 'shall not divorce', 'let it be a potsherd', 'let it be like a potsherd,' his words take effect.[4] If he said, 'It does not avail', 'it does not free', 'it does not part', 'it does not dismiss', 'it does not divorce', 'it is a potsherd', 'it is like a potsherd', his words are of no effect.[5] The question was raised: What of the expression 'Behold it is a potsherd'? — Rabina said to R. Aha the son of Raba, or, according to others, R. Aha the son of Raba said to R. Ashi: How does this differ from the expression, 'Behold it is sanctified', 'behold it is common property'?[6]

Can the man afterwards [use the same Get to] divorce with or not? — R. Nahman says that he may use it again to divorce with, R. Shesheth says he may not. The law is according to the ruling of R. Nahman. Is that so? Has it not been laid down that the law [in the case of a betrothed woman] is according to the ruling of R. Johanan, who said that she may retract?[7] — Are [the two cases] parallel? There it is a case of words merely on each occasion: one set of words comes and cancels another.[8] Here, even granted that the husband cancels the commission of the bearer, he surely does not cancel the Get itself.

IN FORMER TIMES etc. It has been stated: How many must be present at the cancelling? — R. Nahman says two, R. Shesheth says three. R. Shesheth says three, because the Mishnah speaks of a 'BETH DIN'; R. Nahman says two, because two are also called a Beth din. Said R. Nahman: What is my ground for saying this? Because we have learnt: ' [He says:] I hand over in the presence of you

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(1) I.e., if a man says. Take this gift to So-and-so, the bearer does not become a recipient, and the giver may still retract, even as in the case of a Get.
(2) Without the words 'it is'.
(3) Lit., 'will not cause to leave'.
(4) Because he is correctly stating his intention.
(5) Because he is wrongly describing the Get.
(6) Which does take effect.
(7) If a man said to her, 'Be betrothed to me at the end of thirty days' time with this money,' and she consented, she may retract within the thirty days. Just as the betrothal is there cancelled, so the Get should be here.
(8) Her 'I will not' cancels her 'I will'.

Talmud - Mas. Gittin 33a

So-and-so and So-and-so the judges in such-and-such a place.'[1] And R. Shesheth? — [He may rejoin:] Is the Tanna to reckon them out like a pedlar selling his wares?[2] Said R. Nahman [again]: What is my ground for saying so? Because we have learnt: 'And the judges sign below or the

witnesses.'[3] Are not the judges here placed on a par with the witnesses, so that just as two witnesses suffice, So two judges suffice? And R. Shesheth? — [He can reply:] Is this an argument? Judges and witnesses each follow their own rule. [And if you ask] why [the Mishnah] mentions both witnesses and judges, it is to teach us that it makes no difference if they word the document as judges[4] and then sign as witnesses or if they word the document as witnesses[5] and then sign as judges.

TO PREVENT ABUSES, What is referred to? — R. Johanan said: To prevent illegitimacy. Resh Lakish said: To prevent wife-desertion. 'R. Johanan said to prevent illegitimacy,' for he held with R. Nahman who said [that the Get could be cancelled] before [a Beth din of] two: [the proceedings] of two are not generally known, so she, not having heard and not knowing [that the Get is cancelled] might go and marry again, and bear illegitimate children.[6] 'Resh Lakish said to prevent wife-desertion,' for he again held with R. Shesheth who said [that he has to cancel it] before [a Beth din of] three. The proceedings of three are generally known, so she hearing and knowing [that the Get was cancelled] would remain unmarried, and we have therefore to save her from being a deserted wife.[7]

Our Rabbis have taught: If [the husband] did cancel [the Get before a Beth din] it is cancelled.[8] This is the ruling of Rabbi. Rabban Simeon b. Gamaliel, however, says that he can neither cancel it nor add any additional conditions, since if so, what becomes of the authority of the Beth din?[9] And is it possible then, that where a Get is according to the Written Law cancelled we should, to save the authority of the Beth din, [declare it valid and] so allow a married woman to marry another? — Yes. When a man betroths a woman, he does so under the conditions laid down by the Rabbis, and in this case the Rabbis annul his betrothal. Said Rabina to R. Ashi: This is quite right if the husband had originally betrothed his wife with money.[10] But if he had betrothed her by the act of marriage,[11] what can we say? — The Rabbis declared the act of marriage to be retrospectively nonmarital.

Our Rabbis have taught: 'If a man said to ten persons, Write a Get for my wife,[12] he can countermand the order to each of them separately.[13] This is the ruling of Rabbi. Rabban Simeon b. Gamaliel, however, says that he can only countermand the order when they are together.'[14] What is the point at issue between them? — The point at issue is whether if part of an evidence has been nullified the whole of it is nullified. Rabbi was of opinion that if part of an evidence has been nullified

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(1) Sheb. X, 14, v. infra 36a in connection with the prosbul.

(2) I.e., the fact that he says twice 'So-and-so' is of no significance.

(3) Ibid.

(4) I.e., 'We, So-and-so, acting as a Beth din. '

(5) I.e., 'This is a record of the testimony given before us . . .'

(6) Heb. Mamzerim, v. Glos.

(7) Hence the enactment of R. Gamaliel the Elder.

(8) In spite of the regulation of Rabban Simeon b. Gamaliel.

(9) Lit., 'how is the power of the Beth din (left) unimpaired.' The Beth din of Rabban Gamaliel which made the regulation.

(10) Because the Beth din can declare the money he gave her as kiddushin, public property (hefker,) v. infra 36b.

(11) V. Kid. 2a.

(12) In which case one writes and two sign. Infra 66b.

(13) In spite of the regulation of Rabban Gamaliel.

(14) As to do otherwise would be to disregard the regulation.

the whole of it is not nullified. If therefore those [who have not heard the order countermanded] go

and write [the Get] and give it to her, their action is quite proper.[1] Rabban Simeon b. Gamaliel was of opinion that if part of an evidence is nullified the whole is nullified. [If therefore] those [who] do not know [that the order is countermanded] go and write [the Get] and give it to her, then they are enabling a married woman to marry again. Or if you like I can say that both Rabbi and Rabban Simeon b. Gamaliel are agreed that if part of an evidence is nullified the whole is not nullified, and the reason of Rabban Simeon b. Gamaliel here is that in his opinion a thing which is done in the presence of ten can only by undone in the presence of ten.[2]

The question was raised: Suppose he said 'All of you write,'[3] what are we to say?[4] Do we say that the reason of Rabban Simeon b. Gamaliel [for forbidding in the case where he did not say 'all of you'] is that in his opinion if part of an evidence is nullified the whole is nullilied,[5] and since he said to these 'all of you,' they cannot write the Get and give it [without these two],[6] or is his reason that in his opinion a thing which has been done in the presence of ten can only be undone in the presence of ten, and therefore even if he said 'all of you' [he can only countermand the order when they are all together]?[7] — Come and hear: If a man said to two persons, Give a Get to my wife, he can countermand the order to one without the other. This is the ruling of Rabbi. Rabban Simeon b. Gamaliel, however, says that he can only countermand it to both of them together.[8] Now two here are equivalent to 'all of you,'[9] and yet we see that Rabbi and Rabban Simeon differ?[10] — Said R. Ashi: If the two are witnesses to the Get, then Rabban Simeon would also admit [that he can countermand separately].[11] Here, however, we are dealing with witnesses to the taking of the Get.[12] This opinion is borne out by the conclusion of the passage quoted: 'If he told each of them separately [in the first instance], he can countermand to them separately.'[13] For if you say that it speaks of witnesses to the taking of the Get, this is intelligible.[14] But if you say that it speaks of the witnesses to the writing of the Get, how can these be joined together [if they were at first separate]? Has not the Master said: 'Their [separate] evidences are not combined [to form a whole]; they must both see [the event] together'?[15] — [This, however, is not conclusive], since perhaps [the teaching quoted] follows the view of R. Joshuah b. Korhah.[16]

R. Samuel b. Judah said: I have heard R. Abba give rulings on both [these points],[17] one following Rabbi and the other following Rabban Simeon b. Gamaliel, but I do not know which one follows Rabbi and which Rabban Simeon b. Gamaliel. Said R. Joseph: We are able to throw light on this. For when R. Dimi came [from Palestine], he reported to us that Rabbi once in an actual case decided according to the ruling of the Sages,[18] and R. Parta the son of R. Eleazar b. Parta and the grandson of the great R. Parta said to him: If that is so, what authority do you leave to the Beth din,[19] and Rabbi thereupon reversed his decision and followed the ruling of R. Simeon b. Gamaliel.[20] And since the ruling in this case follows Rabban Simeon b. Gamaliel,[21] in the other it follows Rabbi. R. Josiah from Usha was also of opinion that the ruling in one case followed the opinion of Rabbi and in the other of Rabban Simeon b. Gamaliel. For Rabbah b. Bar Hanah said: We were sitting five elders before R. Josiah from Usha and a certain man came before him whom he compelled to give a Get against his will, and he said to them [the witnesses, after compelling him], Go and conceal yourselves [from him] and write her [the Get]. Now if you assume that he ruled according to the opinion of Rabbi, if they did conceal themselves what difference did it make?[22] This shows that [in this point] he followed Rabban Simeon b. Gamaliel. But should you assume further that in the other point also he held with Rabban Simeon b. Gamaliel, [we can ask,] why should they have hidden themselves? It would have been sufficient if they had separated.[23] This shows that he held with Rabbi in regard to one point and with Rabban Simeon b. Gamaliel in regard to the other. Raba, however, said in the name of R. Nahman that the halachah follows Rabbi in both points. But does not R. Nahman hold that the authority of the Beth din must be upheld? Did not R. Nahman say in the name of Samuel,

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(1) Because as the Get has not been annulled the regulation is not disregarded.

(2) Hence the practical difference between Rabbi and Rabban Simeon b. Gamaliel is that according to the former he can

at least prevent any two from signing, whereas according to the latter he cannot even do this, unless he forbids them all together.

(3) In which case one must write and all sign. Infra, 66b.

(4) Does Rabban Simeon still forbid him from preventing one or two separately?

(5) And therefore if we allowed this harm would ensue, as the rest might sign when they had no right to do so.

(6) And therefore no harm can ensue and he may do this.

(7) And the two whom he forbids can disregard his instruction.

(8) Tosef. Git. III.

(9) As one cannot sign the Get without the other.

(10) And Rabban Simeon requires that they must all be together.

(11) Because no harm can possibly ensue, as one signature by itself is worthless.

(12) I.e., he appointed the two as bearers to take the Get to the wife, in which case one might take it to her without the other, being unaware that the husband had countermanded the commission.

(13) As countermanding the order to one does not affect the order to the other.

(14) Since no question of evidence arises in connection with the act of taking the Get.

(15) Keth. 26b; B.B. 32a. Similarly here both witnesses must receive in each other's presence the mandate to write the Get.

(16) Who holds that they need not be together.

(17) Viz., the annulling of the Get in another place and the countermanding of one witness not in the presence of the other.

(18) That if the judges estimated an article at a sixth more or less than its real value, the sale is invalid. Keth. 99b.

(19) v. supra p. 135. n. 1.

(20) Which shows that the authority of the Beth din is in all cases to be upheld.

(21) Viz., that the annulment in another place is ineffective, since, if not, the authority of the Beth din is not upheld. (V. Tosaf. s.v. **).

(22) He can find two other persons and annul it in their presence.

(23) Because he cannot countermand it to each witness separately.

Talmud - Mas. Gittin 34a

'If orphans [under age] desire to divide the property left to them by their father, the Beth din appoints for each of them a guardian who sees that he obtains a fair share. When they grow up, however, they are able to object,' and did not R. Nahman, speaking in his own name, hold that they are not at liberty to object, because if they are, what becomes of the authority of the Beth din? — The question there was one of money, here it is one of a forbidden act.[1]

Giddal b. Re'ilai sent a Get to his wife. The bearer went and found her weaving. He said to her, Here is your Get. She said to him: Go away now at any rate and come again tomorrow. He went back to him and told him, whereupon he exclaimed, Blessed be He who is good and does good![2] Abaye said, 'Blessed is He who is good and does good,' and the Get itself is not cancelled,[3] and Raba said, 'Blessed is He who is good and does good,' and the Get is cancelled. What is the point at issue between them? — The point at issue is the revealing of intention in respect of a Get. Abaye holds that the revealing of intention in respect of a Get makes a difference, and Raba held that it makes no difference. Said Raba: What makes me take this view? Because R. Shesheth compelled a man to consent to give a Get, and the man said afterwards [to the witnesses], I heard R. Shesheth say to you, 'Let the Get be cancelled,' and R. Shesheth forced him to give another Get.[4] And did R. Shesheth then, asked Abaye, cancel other men's bills of divorce? In fact the man himself cancelled it, and the reason why he used these words[5] was on account of his [R. Shesheth's] beadles.[6]

Said Abaye: What makes me take my view? Because Rab Judah once forced the son-in-law of R. Jeremiah Bira'ah to give his wife a Get, and he cancelled it, whereupon he forced him again. He cancelled it again and he again forced him to give it, and he said to the witnesses, stuff grass[7] into

your ears and write it.[8] Now if you assume that the revealing of intention makes a difference in a Get, do they not see him running after them? And Raba? — [He will reply that they may think] the reason why he ran after them was to tell them to make sure to give it to her so that he could put an end to his troubles.

Said Abaye further: What makes me take this view? Because there was a man who said to the witnesses, If I do not come within thirty days, this shall be a Get. He came on the thirtieth day, but could not get across the river,[9] and he called to them, 'See that I have come, see that I have come,' and Samuel said that this was no coming.[10] And Raba? — [He can rejoin,] In that case did he want to annul the Get? What he wanted was but to fulfil his condition, and his condition was not fulfilled.[11]

A certain man said [on writing a Get for his betrothed], If I do not marry her within thirty days, this shall be a Get. When the thirtieth day came, he said, See, I am busy making the preparations. Now why should we have any doubts [about the validity of the Get]? If because the man was forcibly prevented [from marrying], force majeure is no plea in regard to a Get. If again because he revealed his intention [of annulling it], on this point there is a difference of opinion between Abaye and Raba.[12]

A certain man said [on writing a Get for his betrothed]. If I do not marry by the first day of Adar, this will be a Get. When the first of Adar came he said, I meant the first of Sivan. Now should we have any doubts about the validity of the Get? If because he was forcibly prevented, force majeure does not invalidate a Get. If because he revealed his intention, on this point there is a difference of opinion between Abaye and Raba.[13]

The law[14] follows Nahman, and the law follows Nahman,[15] and the law[16]

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(1) Viz., of allowing a married woman to marry again, and where this was involved the Rabbis disregarded the authority of the Beth din.

(2) In giving him a chance to change his mind.

(3) But can still be used to divorce the woman.

(4) Because he had made it clear that he did not desire the Get to be given.

(5) I.e., why he mentioned R. Shesheth.

(6) Who beat him and asked him why he had cancelled it. Thus according to Abaye there was here not a mere revealing of intention but an actual annulment.

(7) Lit., 'pumpkins'.

(8) That you may not hear the annulment.

(9) Lit., 'the ferry prevented him', as there was no ferry available for him to cross.

(10) This proves that his revealing of his intention to annul the Get made no difference.

(11) By calling 'See, I have come' he 'did not mean to annul the Get, but simply to announce that he had endeavoured to fulfil the condition which should invalidate the Get.

(12) According to Abaye, the revealing of his intention makes no difference, according to Raba he reveals his intention not to annul the Get but to fulfil his condition. Both, however, agree that the Get is valid.

(13) V. preceding note.

(14) That the Get can be annulled in the presence of two.

(15) Who said that the halachah is according to Rabbi in both points in dispute.

(16) In regard to the revealing of intention.

follows Nahmani.[1]

MISHNAH. ORIGINALLY THE HUSBAND WAS ALLOWED TO GIVE [IN THE GET] AN ADOPTED NAME[2] OF HIMSELF OR OF HIS WIFE, OR AN ADOPTED TOWN OF HIMSELF OR OF HIS WIFE.[3] RABBAN GAMALIEL THE ELDER MADE A REGULATION THAT HE SHOULD WRITE, 'THE MAN SO-AND-SO OR BY WHAT EVER NAMES HE IS KNOWN,'[4] 'THE WOMAN SO-AND-SO OR BY WHATEVER NAMES SHE IS KNOWN,' TO PREVENT ABUSES.[5]

GEMARA. Rab Judah said in the name of Samuel: The Jews from overseas sent to Rabban Gamaliel the following inquiry: If a man comes here from Eretz Yisrael whose name is Joseph but who is known here as Johanan, or whose name is Johanan but who is known here as Joseph, how is he to divorce his wife? Rabban Gamaliel thereupon made a regulation that they should write in the Get, The man So-and-so or by whatever names he is known, the woman So-and-so or by whatever names she is known, to prevent abuses.[6] R. Ashi said: This is necessary only if the man is known to have two [or more] names. Said R. Abba to R. Ashi: R. Mari and R. Eleazar concur with you in this. It has been taught in agreement with R. Ashi: If a man has two wives, one in Judea and the other in Galilee, and he has two names by one of which he is known in Judea and by the other in Galilee, and if he divorces his wife in Judea under the name which he bears in Judea and his wife in Galilee under the name which he bears in Galilee, the divorce is not effective: it does not become so until he divorces his wife in Judea under the name he bears in Judea with the addition of the name he bears in Galilee, and his wife in Galilee under the name he bears in Galilee with the addition of the name he bears in Judea.[7] If, however, he goes away to another place[8] and gives a divorce under one of the names only, the divorce is effective. But did you not just say, 'with the addition of the name he bears in Galilee'?[9] This shows that the one rule[10] applies where he is known [to have more than one name], and the other rule[11] applies where he is not known [to have more than one name].

There was a woman who was known to most people as Miriam but to a few as Sarah, and the Nehardeans ruled that [in a Get she should be referred to as] 'Miriam or any other name by which she may be called' and not 'Sarah or any other name by which she may be called.'[12] MISHNAH. A WIDOW HAS [BY RIGHTS] NO POWER TO RECOVER [HER KETHUBAH][13] FROM THE PROPERTY OF ORPHANS SAVE ON TAKING AN OATH.[14] BUT THEY [THE RABBIS] REFRAINED FROM IMPOSING AN OATH ON HER.[15] RABBAN GAMALIEL THE ELDER THEREUPON MADE A REGULATION THAT SHE SHOULD TAKE ANY VOW[16] WHICH THE ORPHANS CHOSE TO IMPOSE ON HER AND SO RECOVER HER KETHUBAH. AND [SIMILARLY] WITNESSES SIGN THEIR NAMES TO A GET TO PREVENT ABUSES.[17] HILLEL THE ELDER ALSO INSTITUTED THE PROSBUL[18] TO PREVENT ABUSES.

GEMARA. Why is this rule [about an oath] laid down with reference to a widow, seeing that it applies to everybody, since it is an established rule that 'one who seeks to recover payment from the property of orphans[19] cannot recover save on taking an oath'?[20] — There is a special reason for the mention of a widow. For it might occur to you to say that

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(1) Abaye, so called because he was brought up by Rabbah b. Nahmani, who called him by the name of his father (Rashi). [According to Aruch, Abaye's real name was Nahmani after his grandfather. but he was nicknamed Abaye ('Little father') by his uncle Rabbah b. Nahmani, who had adopted him at an early age, in order to avoid confusion with his grandfather.]

(2) Lit., 'he used to change'.

(3) Supposing he had changed his residence temporarily and assumed another name.

(4) According to Tosaf., this means that all his other names should be specifically mentioned. V. Infra

(5) Lit., 'for the better ordering of society.'

(6) I.e., to prevent people in case she remarries, from saving that the first husband never divorced her.

(7) This seems to confirm the opinion of Tosaf., that all the names must be written in the Get.

(8) Neither in Judea nor Galilee.

(9) Which shows that his other names must be included.
(10) That his other name must be included.
(11) That one name is sufficient.
(12) This would seem to show that the Mishnah is to be taken in its literal sense and not as interpreted by Tosaf.
(13) V. Glos.
(14) That she had not received any part of the kethubah.
(15) V. infra.
(16) E.g., a vow to abstain from certain kinds of food if it should be found that she had already received any part of the kethubah.
(17) V. infra. Lit., 'for the better ordering of society.'
(18) V. Glos. and infra.
(19) For a debt incurred by their father.
(20) B.B. 5b; Keth. 872.

Talmud - Mas. Gittin 35a

in order [to render marriage] more attractive[1] the Rabbis made a concession in her case. We are told [therefore that this is not so].

THEY [THE RABBIS] REFRAINED FROM IMPOSING AN OATH ON HER. What was the reason of this refusal? Shall we say it is to be found in the incident reported by R. Kahana, or, according to others by Rab Judah in the name of Rab, viz., that in a year of scarcity a certain man deposited a denar of gold with a widow, who put it in a jar of flour. Subsequently she baked the flour and gave [the loaf] to a poor man. In course of time the owner of the denar came and said to her, 'Give me back my denar, and she said to him: May death seize upon one of my sons[2] if I have derived any benefit for myself from your denar, and not many days passed — so it was stated — before one of her sons died. When the Sages heard of the incident they remarked: If such is the fate of one who swears truly, what must be the fate of one who swears falsely! Why was she punished? Because she had derived advantage from the place of the denar.[3] How then could the Sages speak of her as one who had sworn truly? — What they meant was, One who might be said to have sworn truly. If that is the reason [why the Rabbis refrained from imposing an oath], why only to a widow? Why not also to a divorced woman? Why has R. Zera said in the name of Samuel, 'This rule applies only to a widow, but to a divorced woman an oath is administered'? — There is a special reason in the case of a widow, because she finds a justification for herself [for swearing falsely] on account of the trouble she has taken on behalf of the orphans.[4]

Rab Judah stated in the name of R. Jeremiah b. Abba: Rab and Samuel were both agreed that this rule applied only to an oath imposed in the Beth din, but outside the Beth din an oath may be imposed on a widow.[5] Is this so? Is it not a fact that Rab would not enforce payment of a kethubah [by orphans] to a widow?[6] — This is a difficulty. This is the version given in Sura. In Nehardea the version is as follows, Rab Judah said in the name of Samuel: This rule applies only to an oath imposed in the Beth din, but outside the Beth din an oath may be imposed on a widow. Rab, however, held that even outside the Beth din an oath may not be imposed on her. [This dictum of] Rab [is] in conformity with his expressed view, for Rab would not enforce payment of a kethubah to a widow. Why did he not make her take a vow[7] and so let her recover? — In the time of Rab, vows were not treated lightly.

A certain woman appealed to R. Huna [to enforce payment of her kethubah]. He said to her, What can I do for you, seeing that Rab would not enforce payment of a kethubah to a widow? She said to him: Is not the only reason the fear that perhaps I have already received part of my kethubah? By the Lord of Hosts I swear that I have not received a penny from my kethubah. Said R. Huna: Rab would admit [that we enforce payment] where the widow takes the oath spontaneously.[8]

A certain woman appealed to Rabbah son of R. Huna [to enforce payment of her kethubah]. He said to her: What can I do for you seeing that Rab would not enforce payment of a kethubah and my father also would not enforce payment of a kethubah to a widow? She said to him: At least grant me maintenance. He replied: You are not entitled to maintenance either, since Rab Judah has said in the name of Samuel: If a woman claims her kethubah in the Beth din, she has no claim to maintenance.[9] She said to him: Turn his seat upside down![10] He gives me [the worst of] both authorities.[11] They turned his seat over[12] and put it straight again, but even so he did not escape an illness. Rab Judah said to R. Jeremiah Bira'ah: impose a vow on her in the Beth din and administer an oath to her outside the Beth din, and see that the report reaches my ears, since I desire to make this a precedent.[13]

[The text above stated:] 'R. Zera said in the name of Samuel: This rule applies only to a widow, but to a divorced woman an oath is administered.' Cannot then a divorced woman recover her kethubah on [merely] taking a vow? Was not [a communication] sent from there[14] saying that 'So-and-so the daughter of So-and-so received a Get from the hand of Aha b. Hedia who is also known as Ayah Mari and took a vow binding herself to abstain from all produce whatsoever if she should be found to have received of her kethubah anything besides a blanket, a book of the Psalms, a copy of Job and a copy of Proverbs much worn,

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(1) To women in general by making it easier for them to recover their kethubahs.

(2) Lit., 'May the poison of death have benefit from one of the sons of this woman.'

(3) Which saved her the corresponding quantity of flour.

(4) For which she considers she is entitled to some compensation.

(5) Within the Beth din she would be required to take a scroll of the Law or a pair of phylacteries in her hand and swear by one of the divine Names, but outside the Beth din these solemnities would be dispensed with.

(6) Surely he could have had an oath imposed on her outside the Beth din.

(7) In accordance with the regulation if Rabban Gamaliel. V. Mishnah.

(8) Lit., 'jumps forward'.

(9) V. Keth. 542.

(10) [May he be humiliated (Rashi) — a curse the allusion of which is not quite clear. Goldschmidt connects it with the action of overturning the seat of one who died.]

(11) I.e., you follow Rab in refusing to collect the kethubah and Samuel in refusing maintenance.

(12) [That the force of the curse should find itself spent in its literal fulfilment].

(13) Rab Judah was a disciple of Samuel, and desired to impose his ruling on R. Huna and the other disciples of Rab.

(14) From Eretz Yisrael to Babylon.

and we valued them at five maneh. When she presents herself to you, empower her to collect the rest.'[1] — R. Ashi said: The Get in that case was one given by a brother-in-law.[2]

RABBAN GAMALIEL THE ELDER MADE A REGULATION THAT SHE SHOULD TAKE A VOW, etc. R. Huna said: This rule applies only if she is not married again, but if she is married, she cannot take the vow. What is the reason why she cannot take it if she is married? Because her husband may annul it.[3] Even if she is not married, cannot the husband annul it when she marries again? — A husband cannot annul vows taken previously to his marriage with her.[4] But is there not a possibility that she may apply to a Sage[5] and obtain release from him? — R. Huna held that the particulars of the vow must be stated to the Sage.[6] R. Nahman held that even after the [second] marriage [she may take the vow]. But if she is married there is no question that the husband can annul the vow? — The vow must be taken by her in the presence of a company.[7]

An objection [against R. Huna's ruling] was raised [from the following]: If she has married again, she may recover her kethubah provided she has taken a vow. Does not this mean 'if she takes a vow now'? — No; it means, if she has taken a vow before [the second] marriage. But has it not been taught: 'If she marries again, she can take a vow and recover her kethubah'? — There is a difference on this point between Tannaim, since there is an authority who holds that a vow which has been taken in the presence of a company can be annulled, and there is an authority who holds that it cannot be annulled.[8]

The question was raised in the Academy: Is it necessary to state the particulars of the vow [on seeking annulment] or is it not necessary? — R. Nahman said that it is not necessary, R. Papa said that it is necessary. R. Nahman said that it is not necessary, because if you say that it is, it may happen that the applicant will not state the case fully[9] and the Sage will act on what he has been told.[10] R. Papa said it is necessary, to prevent forbidden things being done.[11]

We have learnt:[12] 'If [a priest] marries a woman whom he should not,[13] he is disqualified [from participating in the Temple service] until he vows to have no benefit [from his wife]:'[14] and in this connection it was taught, he can take the vow and participate in the service and give the divorce when he descends.[15] Now if you say that it is not necessary to state particulars of the vow, is there not a possibility that he may apply to a Sage and obtain release?[16]

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(1) Apparently the couple had gone from Babylon to Palestine and the husband had given the divorce there, but his property was in Babylon.

(2) Who divorced her after having married her as levir, and the kethubah to which she was entitled was that given by the first husband, and therefore she claimed it as a widow and not as a divorced woman.

(3) In accordance with the law laid down in Num. XXX, 8.

(4) This rule is based on the words, And if she vowed in her husband's house in Num. XXX, 11.

(5) If a vow was found to be impossible of fulfilment, a Sage was empowered to discover a loophole for remitting it, v. Ned. 21ff.

(6) And if the woman stated that her reason was to obtain money to which she was not entitled, he would certainly not release her.

(7) Lit., 'many', i.e., ten or more, R. Nahman holding that such a vow could not be remitted.

(8) And this authority therefore allows her to recover the kethubah on taking such a vow even after she is married.

(9) Lit., 'will cut short his account.'

(10) And he may grant release where it should be withheld or vice versa.

(11) E.g., to prevent the woman from obtaining money wrongfully or to prevent someone from doing a wrong act from which he has vowed to abstain.

(12) Bek. 45b.

(13) Lit., 'in transgression', e.g., a divorced woman.

(14) I.e., to divorce her (Rashi).

(15) From the altar after finishing the service.

(16) So that retrospectively he proves to have taken part in the service when disqualified.

Talmud - Mas. Gittin 36a

— We assume that the vow is taken by him in the presence of a company. This is a valid reason for one who holds that a vow which has been taken in the presence of a company cannot be annulled. But what are we to say to one who holds that it can be annulled? — We must say that the vow is imposed on the authority[1] of the company. For Amemar has said: The law is that even according to those who hold that a vow made in the presence of a company cannot be annulled, one made on the authority of a company cannot be annulled. This, however, is the case only with a vow relating to some optional action, but if it interferes with a religious duty, it can be annulled. A case in point is that of the teacher of children whom R. Aha bound by a vow on the authority of a company [to give

up teaching], because he maltreated the children, but Rabina reinstated him because no other teacher could be found as thorough as he was.

WITNESSES SIGN A GET TO PREVENT ABUSES. [Is this rule only] to prevent abuses?[2] It derives from the Scripture, does it not, since it is written, And subscribe the deeds and seal them?[3] — Rabbah said: [All the same this reason] is necessary on the view of R. Eleazar, who said that the witnesses to delivery make [the Get] effective. The Rabbis nevertheless ordained that there should be witnesses to sign [as well], to prevent abuses, since sometimes the witnesses [to delivery] may die or go abroad. R. Joseph said: You may even say [that this reason is necessary] on the view of R. Meir,[4] [and what] they ordained was that the witnesses should subscribe their names in full,[5] to prevent abuses, as it has been taught: At first the witness used simply to write, 'I, So-and-so,[6] subscribe as witness. 'If then his writing could be found on other documents,[7] the Get was valid, but if not, it was invalid. Said Rabban Gamaliel: A most important regulation was laid down [by the Rabbis], that the witnesses should write their names in full in a Get, to prevent abuses.[8] But is not a mark enough? Did not Rab [sign by] drawing a fish and R. Hanina by drawing a palm-branch, R. Hisda with a Samek,[9] R. Hoshaia with an Ayin, and Rabbah son of R. Huna by drawing a sail?[10] — The Rabbis are different, because their marks are well known. How did they make these signs known to begin with? — On letters.[11]

HILLEL INSTITUTED THE PROSBUL. We have learnt elsewhere: A prosbul prevents the remission of debts [in the Sabbatical year]. This is one of the regulations made by Hillel the Elder. For he saw that people were unwilling to lend money to one another and disregarded the precept laid down in the Torah, Beware that there he not a base thought in thine heart saying, etc.[12] He therefore decided to institute the prosbul. The text of the prosbul is as follows: 'I hand over to you, So-and-so, the judges in such-and-such a place, [my bonds], so that I may be able to recover any money owing to me from So-and-so at any time I shall desire';[13] and the prosbul was to be signed by the judges or witnesses.[14]

But is it possible that where according to the Torah the seventh year releases Hillel should ordain that it should not release? — Abaye said: He was dealing with the Sabbatical year in our time,[15] and he went on the principle laid down by Rabbi, as it has been taught: Rabbi says: [It is written], Now this is the matter of the release; [every creditor] shall release.[16] The text indicates here two kinds of release,[17] one the release of land[18] and the other the release of money. When the release of land is in operation the release of money is to be operative, and when the release of land is not operative the release of money is not to be operative.[19]

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(1) Lit., 'by the knowledge' or 'will of'; i.e., they say to him, 'We administer this vow to you on our responsibility.'

(2) And so of Rabbinical sanction only.

(3) Jer. XXXII, 44.

(4) That the witnesses who sign the Get make it effective.

(5) I.e., their name and that of their father, e.g., Reuben ben Jacob, and not merely their own name, which would be sufficient from the point of view of the Torah. [V. Strashun and cf. following note].

(6) [Without specifying his name (Rashi). The term 'So-and-so' however, hardly bears this interpretation. Tosef. Git, VII omits 'So-and-so' and reads simply 'I am witness'; cf. previous note].

(7) Through which his identity could be established.

(8) Because now it would be possible to find witnesses who recognised their signatures.

(9) One letter of his Hebrew name.

(10) Al. 'boat'; al. 'mast'.

(11) ** 'discs', 'tablets', 'official letters'.

(12) Deut. XV, 9. The verse proceeds, The seventh year is at hand, and thine eye be evil against thy poor brother and give him nought.

(13) Even after the Sabbatical year.

(14) Sheb. x, 3. [The principle underlying the prosbul is founded on the passage 'that which is thine with thy brother thine hand shall release' (Deut. XV, 2). From this there had been derived the law that the operation of the year of release did not affect debts of which the bonds had been delivered to the Court before the intervention of the year of release (v. Sifre. a.l. and infra p. 38), such debts being regarded as virtually exacted' and hence not coming under the prohibition 'he shall not exact'. By a slight extension of this precedents the prosbul was instituted, which in effect amounted to entrusting the Court with the collection of the debt. Without actually handing over the bond to the court, as required by the existing law, the creditor could secure his debt against forfeiture by appearing in person before the Beth din and making the prescribed declaration. For a fuller examination of the nature and legal effect of the prosbul as well as a survey of the proposed derivations of the term, v. Blau, L. Prosbul im Lichte der Griechischen Papyri und der Rechtsgeschichte.]
(15) After the destruction of the first Temple.
(16) Deut. XV, 2.
(17) By the juxtaposition of the two words, שמיטה ('release') and שמוט ('shall release').
(18) At the Jubilee. V. Lev. XXV, 13.
(19) The Jubilee was not operative in the time of the Second Temple because the land was not fully occupied by Israel. But v. Tosaf. s.v. בזמן .

Talmud - Mas. Gittin 36b

The Rabbis, however, ordained that it should be operative, in order to keep alive the memory of the Sabbatical year, and when Hillel saw that people refrained from lending money to one another, he decided to institute the prosbul.[1]

But is it possible that where according to the Torah the seventh year does not release, the Rabbis should ordain that it does release?[2] — Abaye replied: It is a case of 'sit still and do nothing'.[3] Raba, however, replied: The Rabbis have power to expropriate [for the benefit of the public][4] For R. Isaac has said: How do we know that the Rabbis have power to expropriate? Because it says, And that whosoever came not within three days according to the counsel of the princes and the elders, all his substance should be forfeited, and himself separated from the congregation of the captivity.[5] R. Eleazar said: We derive it from here: These are the inheritances which Eleazar the priest and Joshua the son of Nun and the heads of the fathers' houses etc.[6] Now why is the word 'fathers' [here] put next to 'heads'?[7] To show that just as fathers transmit to their children whatever property they wish, so the heads transmit to the public whatever they wish.

The question was raised: When Hillel instituted the prosbul, did he institute it for his own generation only or for future generations also? What is the practical bearing of this question?[8] — [In case we should desire] to abolish it. If you say that Hillel instituted the prosbul only for his own generation, then we may abolish it, but if for future generations also, [this would not be easy] since one Beth din cannot annul the decisions of another unless it surpasses it in wisdom and in numbers.[9] What [then is the answer]? — Come and hear, [since] Samuel has said: We do not make out a prosbul save either in the Beth din of Sura[10] or in the Beth din of Nehardea.[11] Now if you assume that Hillel instituted the prosbul for all generations, then it should be made out in any Beth din? — perhaps when Hillel instituted it for all generations, he meant it to be issued by a Beth din like his [Samuel's] or like that of R. Ammi and R. Assi, which are strong enough to enforce payment [where necessary], but not for the ordinary Beth din.

Come and hear: Samuel said: This prosbul is an assumption[12] on the part of the judges; if I am ever in a position, I will abolish it.[13] He abolish it? How so, seeing that one Beth din cannot annul the decision of another unless it is superior to it in wisdom and numbers? — What he meant was: If ever I am in a stronger position than Hillel, I will abolish it.[14] R. Nahman, however, said: I would confirm it. Confirm it? Is it not already firmly established? — What he meant was: I will add a rule that even if it [the prosbul] is not actually written it shall be regarded as written.

The question was raised [in the Academy]: Does this word ‘ulbana mean ‘assumption’ or ‘convenience’?[15] — Come and hear, for ‘Ulla once exclaimed:[16] O shameless [‘alubah][17] bride, to be false under the very bridal canopy![18] Said R. Mari the son of Samuel's daughter [in reference to this]: What scriptural verse indicates this? The verse, While the king sat at his table my spikenard sent forth its fragrance.[19] Rab said: The [sacred author] still shows his love for us by writing ‘sent forth’ and not ‘made foul’.

Our Rabbis taught: ‘They who suffer insults [ne'elabin],[20] but do not inflict them, who hear themselves reviled and do not answer back, who perform [religious precepts] from love and rejoice in chastisement, of such the Scripture says, And they that love him are like the sun when he goeth forth in his might.’[21]

What is the meaning of the word ‘prosbul’? — R. Hisda says: Pruz buli u-buti.[22]

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(1) Which therefore meant rescinding only a regulation of the Rabbis, not a precept of the Torah.

(2) For by so doing they rob creditors of their just due.

(3) They do not tell the debtors to commit an actual trespass hut merely to refrain from paying debts.

(4) Lit., ‘(Anything declared) hefker (ownerless) by the Beth din is hefker’.

(5) Ezra, X, 8.

(6) Josh. XX, 51.

(7) It would have been sufficient to say, ‘heads of the tribes’.

(8) In any case the regulation goes in till it is rescinded.

(9) A.Z. 36a.

(10) The Beth din of Rab.

(11) His own Beth din.

(12) Heb. ‘ulbana. The meaning of this word is discussed later.

(13) Which shows that Hillel ordained it only for his own generation.

(14) Even without a superior Beth din.

(15) I.e., did Samuel mean that it was an assumption on the part of the judges to seize money wrongfully, or that it was a convenience for the judges that creditors did not ask them to secure payment of their debts for them before the seventh year.

(16) In reference to the making of the Golden Calf.

(17) This proves that the root ‘alab means ‘to be shameless’ or ‘arrogant’.

(18) I.e., shameless Israel, to be false to God while the Shechinah still hovered over them at Mount Sinai.

(19) Cant. I, 12.

(20) A further proof that the root ‘alab means ‘to insult’.

(21) Judg. V, 31.

(22) This seems to conceal the Greek ** (before the Council).

Talmud - Mas. Gittin 37a

Buli means the rich, as it is written, And I will break the pride of your power,[1] and R. Joseph explained: These are the bula'oth[2] in Judah. Buti means the poor, as it is written, Thou shalt surely lend him sufficient.[3] Raba asked a certain foreigner,[4] What is the meaning of prosbul? He replied: The porsa[5] of the matter.

Rab Judah said in the name of Samuel: Orphans do not require a prosbul. So too Rami b. Hama learnt: Orphans do not require a prosbul, because Rabban Gamaliel[6] and his Beth din are the parents of orphans.

We have learnt elsewhere: A prosbul is not made out unless [the debtor has] some land. If he has

none, the creditor can present him with a spot from his own.[7] How much is a 'spot'? — R. Hiyya b. Ashi said in the name of Rab: Even a stalk of a carob [is enough]. Rab Judah said: Even if he only lends him a space sufficient for his stove and oven, a prosbul may be made out on the strength of it. Is this so? Has not Hillel[8] learnt: 'A prosbul may be made out only [if the debtor] has a flowerpot with a hole in it', that is, if it has a hole, a prosbul may be made out,[9] but otherwise not. Now why should this be, seeing that the place it occupies [belongs to the debtor]?[10] — This rule applies only where the pot rests on some sticks.[11] R. Ashi would transfer to the debtor the trunk[12] of a date tree and then write a prosbul for the creditor. The Rabbis of the Academy of R. Ashi used to transfer their debts[13] to one another.[14] R. Jonathan transferred his debt to R. Hiyya b. Abba. Do I require anything more? he asked him. You do not, he replied.

Our Rabbis taught; If the debtor has no land but one who is security for him has land, a prosbul may be made out for him. If neither he nor his security has land but a man who owes him money has land, a prosbul may be made out for him. [This is based] on the ruling of R. Nathan, as it has been taught: R. Nathan says: If a man lends another a maneh, and this one lends to a third, how do we know that the Beth din can take from the last [named] and give to the first [creditor]? Because it says, And he shall give it unto him in respect of whom he has been guilty.[15]

We have learnt elsewhere: The seventh year brings release from a debt, whether contracted with a bond or without a bond.[16] Both Rab and Samuel explain that 'with a bond' here means that the debtor has given a lien on his property [for the debt] and 'without a bond' means that he has given no lien. A fortiori then does the seventh year release from a debt contracted verbally. R. Johanan and R. Simeon b. Lakish, however, explain that 'with a bond' means a bond that does not contain a lien clause,[17] and 'without a bond' means a debt contracted verbally. A bond which secures a lien, however, is not cancelled.[18] It has been taught in agreement with R. Johanan and R. Simeon b. Lakish: A bond for a debt is cancelled [by the seventh year], but if it contains a lien clause it is not cancelled. It has further been taught: If the debtor has specified a certain field to the lender [as security] for his loans, it is not cancelled. Nay more: Even if he writes [only] 'All my property is security and guarantee for you,' it is not cancelled.

A relative of R. Assi had a bond containing a lien clause. He came before R. Assi and said to him: Is this cancelled [by the seventh year] or not? — He replied: It is not cancelled. He left him and went to R. Johanan [and asked the same question]. [R. Johanan] replied: It is cancelled. R. Assi went to R. Johanan and asked him: Is it cancelled or not cancelled? — He replied: It is cancelled. But you yourself [once] said[19] that such a bond is not cancelled? — He replied: Because we have an opinion of our own [different from what we have learnt], are we to act on it? Said R. Assi: But there is a Baraitha in support of your opinion? — He replied: perhaps that follows Beth Shammai, who said[20] that a bond which is perfectly in order[21] is like one which has already been put into operation.

We have learnt elsewhere: If a man lends another money on a pledge or if he hands his bonds to the Beth din, the debts are not cancelled [by the seventh year].[22] That this should be so in the latter case we understand, because it is the Beth din which seizes the debtor's property.[23] But why should it be so in the case of a loan given on a pledge? — Raba replied: Because [the lender] is already in possession of it.[24] Said Abaye to him: If that is so, suppose a man lends another money[25] and lives in his courtyard, in which case he is also in possession, is the debt in this case too not cancelled?[26] — He replied: A pledge[27] is different, because the holder becomes also its owner, according to the dictum of R. Isaac, who said, How do we know that a creditor becomes the owner of a pledge [given for the debt]? Because it says, And it shall be righteousness unto thee.[28] If he is not the owner, what righteousness is there [in restoring the pledge]? Hence we learn that a creditor becomes owner of the pledge.

We have learnt elsewhere:[29]

(1) Lev. XXVI, 19.
(2) City councils, Gr. **.
(3) Deut. XV, 8. The Hebrew root for lend is 'abat, which is somewhat fancifully connected with buti. The prosbul benefits the rich because it secures them their loans, and the poor because it enables them to borrow. [Goldschmidt suggests in this connection the derivation from ** and ** 'provision against loss'].
(4) Heb. la'oza, a man speaking a foreign languages. Possibly we should translate 'linguist'.
(5) Cf. Gr. ** 'manner', 'order'.
(6) Who was the supreme authority at the time when the Baraitha was first taught.
(7) [In which case the debt is regarded as having been refunded to the court who virtually hold the land in payment of the debt on behalf of the creditor, v. p. 148, n. 4.].
(8) Not the author of the prosbul.
(9) Because the earth-pot is then connected with the soil and so the debtor may be regarded as possessing land.
(10) And it is therefore analogous to the stove, on which a prosbul may he made out.
(11) It occupies no place on the ground, in which case unless it has a hole to connect it with the soil, it cannot serve as basis for a prosbul.
(12) Al. 'branch'.
(13) Lit., 'commit their words'; i.e., the verbal instructions relating to the recovery of their debts.
(14) I.e., used to appoint one another a Beth din for the receiving of their debts without the formality of writing out a prosbul.
(15) Num. V, 7. Hence the land of A's debtor can serve as the basis for a prosbul against A.
(16) Sheb. X, 1.
(17) I.e., a mortgage on his property.
(18) Because it is looked upon as having been already enforced, so that there really is no debt.
(19) supra.
(20) Sot. 25a.
(21) Lit., 'which is ready to be enforced.'
(22) Sheb. X, 2.
(23) And the Beth din have power to expropriate, and therefore the creditor is not guilty of 'exaction' in recovering after the seventh year.
(24) And he does not 'exact' anything from the debtor.
(25) On the security of his courtyard. V. Tosaf. [Evidently in the case where the debt was contracted verbally.]
(26) [Whereas in B.M. 67b it is stated that the debt in such a case is cancelled, (Tosaf.).]
(27) Of movable property (Rashi).
(28) Deut. XXIV, 13. The 'righteousness' is in restoring the pledge to the poor man at sunset.
(29) Sheb. X, 8.

Talmud - Mas. Gittin 37b

If a man repays another money which he owes him in the seventh year, the other should say to him, I remit it.[1] If the debtor then says, 'All the same [take it]', he may take it from him. [This rule is based on] the text, Now this is the word[2] of the release.[3] Rabbah said: The creditor may tie him up[4] till he says so. Abaye raised an objection [from the following]: When [the debtor] offers him the money he should not say, This is in payment of my debt, but, 'It is my [money] and I make you a present of it'? — Rabbah replied: Yes; he ties him up until he says so.

Abba b. Martha, who was the same as Abba b. Manyumi,[5] was pressed by Rabbah for repayment of money he had lent him. He brought it to him in the seventh year.[6] Rabbah said, I remit it. So he took it and went away. Abaye afterwards found Rabbah looking sad. He said to him, Why are you sad? He told him what had happened. So Abaye went [to Abba] and said to him, Did you offer money to Rabbah? I did, he said. And what did he say to you? — I remit it. And did you say to him, Even so take it? — He replied, I did not. Abaye thereupon said to him: If you had said to him, All

the same take it, he would have taken it. Now at any rate go and offer it to him and say, All the same take it. He went and offered it to him, saying, All the same take it. He took it from him and said, This rabbinical student did have the sense to see this from the beginning!

Rab Judah said in the name of R. Nahman: We take a man's word if he says, I had a prosbul and lost it. What is the reason? Since the Rabbis have instituted a prosbul, a man would not [as we say] 'leave on one side permitted [food] and eat forbidden.'[7] When such a man came before Rab, he said to him, Have you had a prosbul and lost it? This is a case for opening thy mouth for the dumb.[8] We have learnt [in opposition to this]: 'Similarly if a creditor produces a bond for a debt without a prosbul, he cannot recover payment'?[9] — There is a difference on this point between Tannaim, since it has been taught: If a man produces a bond for a debt [after the seventh year] he must show a prosbul with it. The Sages, however, say that this is not necessary.[10]

MISHNAH. SHOULD A [NON-JEWISH] SLAVE [OF A JEW] BE CARRIED OFF BY ROBBERS AND RANSOMED [BY A THIRD PARTY],[11] IF [HE IS RANSOMED] AS A SLAVE HE GOES BACK TO SLAVERY, BUT IF [HE IS RANSOMED] AS A FREE MAN HE DOES NOT GO BACK TO SLAVERY. RABBAN SIMEON B. GAMALIEL SAYS THAT IN EITHER CASE HE GOES BACK TO SLAVERY.

GEMARA. With what case are we here dealing? Shall we say that the ransom was effected before [the owner of the slave] had given up hopes [of recovering him]? If so, even if [he is ransomed] as a free man, why should he not go back to slavery?[12] Shall we say then it was after the owner had given up hopes of recovering him? Then even if [he is ransomed] as a slave, why should he go back to slavery?[13] — Abaye said: The case indeed is one in which [the master] has not yet given up hopes. If then [he is ransomed] as a slave he goes back to slavery to his first master. If [he is ransomed] as a free man, he is no longer enslaved either to the first master or to the second; to the second, because he ransomed him as a free man, to the first because [if people know that he is to go back to slavery] perhaps they will refrain from ransoming him.[14] RABBAN SIMEON B. GAMALIEL SAYS, IN EITHER CASE HE GOES BACK TO SLAVERY, [since] he holds that, as it is a religious duty to ransom free men, so it is a religious duty to ransom slaves.[15] Raba said that the case dealt with is indeed where [the owner] has given up hopes of recovery. If then [he is ransomed] as a slave, he becomes enslaved to the second master. If he [is ransomed] as a free man, he becomes enslaved neither to the first master nor to the second; not to the second, because he ransomed him as a free man, and not to the first either, because he has given up hopes of recovering him. RABBAN SIMEON B. GAMALIEL SAYS, IN EITHER CASE HE GOES BACK TO SLAVERY, adopting in this the view [also] held by Hezekiah, who said: Why was it laid down that in either case he should go back to slavery? So that slaves should not go and throw themselves into the hands of robber bands and so liberate themselves from their masters.

An objection was raised [against Raba from the following]: Rabban Simeon b. Gamaliel said to them, Just as it is a religious duty to redeem free men, so it is a religious duty to redeem slaves. Now if we adopt the view of Abaye that the case dealt with is where [the owner] has not yet given up hope of recovery — we understand why Rabban Simeon b. Gamaliel said, 'Just as etc.'[16] But on the view of Raba, that the case is one where [the owner] has given up hope, why, 'just as'? [Rabban Simeon's reason] is the dictum of Hezekiah! — To which Raba can reply; Rabban Simeon b. Gamaliel was not certain to what the Rabbis were referring, and he argued with them thus: If you are speaking of the case where [the owner] has not yet given up hope, then I say 'just as [etc.]': and if you speak of the case where he has given up hope, then I apply the dictum of Hezekiah.

Now on the view of Raba that the case referred to is where [the owner] has given up hope and that the slave [if ransomed as a slave becomes enslaved] to the second master, [we have to ask], from whom does the second master acquire him? [You must say], From the brigands. Is the brigand

himself his rightful owner? — Yes; he was his owner in respect of his labour. For Resh Lakish has said; How do we know that one heathen can own another in respect of his labour? — It says, Moreover of the strangers that shall sojourn among you, of them shall ye acquire.[17] [This indicates that] you may acquire from them,

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(1) The release of the seventh year, according to the Rabbis, took place only at the end. Hence the word 'seventh year' here is explained to mean 'in the period when the rule of the seventh year is in force,' and the repayment is supposed to be offered after the seventh year (Rashi).

(2) Heb. dabar (E.V. 'manner').

(3) Deut. XV, 2.

(4) Lit., 'hang him'.

(5) [Martha was the name of his mother by whose name he was designated, because she it was who once cured him from the bite of a mad dog, v. Yoma 84a].

(6) V. supra, n. 4.

(7) I.e., he would not have neglected in the first instance to obtain a prosbul, and then afterwards come and claimed the money wrongfully.

(8) I.e., where the judges suggest a plea to one of the parties. The expression is taken from Prov, XXXI, 8.

(9) Even if he pleads that he lost the prosbul.

(10) But he can plead that he lost it.

(11) Jews.

(12) Because whatever the ransomer may stipulate with the captor, the slave is still the property of his master.

(13) Viz., to his first master, seeing that he has ceased to be his property.

(14) The implication is that there is some merit in restoring the slave to freedom.

(15) I.e., from heathen masters, so that they may resume the performance of certain precepts in the service of their Jewish masters. Hence since it is a religious duty, there is no fear that people will refrain from ransoming him.

(16) I.e., it was necessary for R. Simeon to adduce this reason.

(17) Lev. XXV, 45.

but they cannot acquire from you nor can they acquire from one another. Shall I then say that they cannot acquire one another? [What do you mean by saying,] Shall I say that they cannot acquire one another? Have you not just said that they cannot acquire from one another?[1] — What it means is this: They cannot acquire [slaves] from one another as far as their person is concerned.[2] Shall I say also that they cannot acquire them for [their] labour? You may conclude [that this is not so] by an argument a fortiori. A heathen may acquire an Israelite [for his labour];[3] surely then all the more so another heathen. But may I not say that such acquisition can only be by purchase,[4] but not by hazakah?[5] — R. Papa said: The territory of Ammon and Moab became purified [for acquisition by the Israelites] through [the occupation of] Sihon.[6] We have satisfied ourselves that a heathen [can acquire] a heathen [by act of possession]. How do we know that a heathen [can acquire] an Israelite [in the same way]? — From the text, And he took some of them captive.[7]

R. Shaman b. Abba said in the name of R. Johanan: A slave who escapes from prison becomes a free man, and what is more, his master may be compelled to make out a deed of emancipation for him. We have learnt: RABBAN SIMEON B. GAMALIEL SAYS, IN EITHER CASE HE RETURNS TO SLAVERY, and Rabbah b. Bar Hanah has stated in the name of R. Johanan that wherever Rabban Simeon b. Gamaliel records a statement in our Mishnah, the halachah is in accordance with him, except in the matters of the surety,[8] of Sidon,[9] and the latter proof.[10] Now on the view of Abaye [that the Mishnah speaks of the case where the master has not yet given up hope of recovering], there is no conflict [between the two statements of R. Johanan], since he makes the latter[11] refer to [the period] before [the master has] given up hope and the former [to the period] after he has given up hope. But on the view of Raba that [the latter also] refers to [the period] after [the

master] has given up hope, there is a conflict, is there not, between the two statements of R. Johanan? — Raba can reply: What is R. Simeon's reason? The statement of Hezekiah [that the slave may give himself up to raiders]. But this does not apply to one who escapes; seeing that he risks his life [to do so], is it likely that he will throw himself into the hands of raiders?

A female slave of Mar Samuel was carried off [by raiders]. Some [Israelites] ransomed her as a slave and sent her to him, along with a message saying, We hold with Rabban Simeon b. Gamaliel,[12] but even if you hold with the Rabbis [you may accept her], because we have ransomed her as a slave. They thought that he had not yet given up hope [of recovering her], but this was not correct, as he had given up hope [of recovering her], and Samuel not only refrained from making her a slave again but he did not even require her to obtain a deed of emancipation. In this he followed his own maxim that 'if a man declares his slave common property,[13] he becomes a free man and does not require a deed of emancipation, since it says, Every man's servant that is bought for money.'[14] Does this mean the servant of a man and not of a woman? No; it means that a slave over whom his master still has control is called a slave, but a slave over whom his master has no control is not called a slave.

A female slave of R. Abba b. Zutra was carried off by raiders. A certain [heathen] from Tarmud[15] ransomed her in order to marry her. They[16] sent a message to him [R. Abba] saying, If you wish to act well, send her a deed of emancipation. What was the point of this message? If they were able to redeem her,[17] why did they want a deed of emancipation?[18] If they were not able to ransom her, of what good would a deed of emancipation be? — The fact was that it was possible to ransom her, and if he sent them a deed of emancipation, they would club together and [find the money] to ransom her. Or if you like I can say that they were not [at first] able to ransom her, but if the master would send her a deed of emancipation she would go down in the esteem of the heathen[19] and he would consent to her ransom. But has not a Master said that the heathen like the cattle[20] of Israel better than their [own] wives? — This is their real sentiment, but they think it beneath their dignity to show it.

There was a certain female slave in Pumbeditha who was used by men for immoral purposes — Abaye said: Were it not that Rab Judah has said in the name of Samuel that whoever emancipates his [heathen] slave breaks a positive precept, I would compel her master to make out a deed of emancipation for her. Rabina said; In such a case, Rab Judah would agree [that this is proper], in order to check immorality. And would not Abaye [act in the same way] to prevent immorality, seeing that R. Hanina b. Kattina has reported in the name of R. Isaac that the master of a certain woman who was half slave and half free[21]

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(1) And still less from an Israelite, so how can they acquire at all?

(2) So that if he escapes he becomes free without a deed of emancipation.

(3) This is based on the verse, And if a stranger or sojourner with thee be waxen rich etc. Lev. XXV, 47.

(4) [Lit., 'money.' Lev. XXV, 47. from which we learn that a heathen may acquire an Israelite as slave, speaks expressly of 'purchase money', v. verse 51.]

(5) This word seems here to have the double meaning of 'presumptive title' (supposing that the original owner has given up hopes of recovering him), and 'act of possession,' e.g., making the slave serve him. The question thus remains. — Was the brigand the rightful owner?

(6) Israel were forbidden to occupy the territory of Ammon and Moab (Deut. II, 9, 19). Sihon had taken some of the land of Moab (Num. XXI, 26), and this the Israelites were permitted to conquer from him and occupy. (Cf. Jud. XI, 15 ff.). This shows that a heathen can acquire ownership by act of possession.

(7) Num. XXI, 1. The lesson is derived from the fact that the Israelites taken by the king of Arad are called 'captives'.

(8) V. B.B. 173a.

(9) V. infra 74a and notes.

(10) V. Sanh. 31a.

(11) That in any case the slave returns to slavery.

(12) That even if we ransomed her for freedom, she must again become a slave.

(13) Which is equivalent to giving up hope of recovery.
(14) Ex. XII, 44.
(15) Palmyra.
(16) The Jewish authorities in the district.
(17) I.e., if the heathen was willing to surrender her for a ransom.
(18) They could redeem her back into slavery.
(19) Because it would become generally known that she was the slave of a Jew.
(20) And therefore the slaves also.
(21) Cf. infra 42a.

Talmud - Mas. Gittin 38b

was compelled by the Beth din to emancipate her, the reason being, as R. Nahman b. Isaac stated, that they used her for immoral purposes? — Can you compare the two cases? In this latter case, the woman [if not emancipated] is not qualified to marry either a slave or a free man;[1] in the other case, it is possible for the master to appoint her his slave, and he will look after her.

The text above stated: Rab Judah said in the name of Samuel: Whoever emancipates his heathen slave breaks a positive precept, since it is written, They shall be your bondmen for ever.[2] An objection was raised [against this from the following]: 'On one occasion R. Eliezer came into the synagogue and did not find [the quorum of] ten there, and he immediately emancipated his slave to make up the ten'? — Where a religious duty [has to be performed], the rule does not apply.

Our Rabbis taught: 'They shall be your bondmen for ever': This is optional. Such is the opinion of R. Ishmael. R. Akiba, however, holds that it is an obligation. Now perhaps R. Eliezer held with the one who says that it is optional?[3] — Do not imagine such a thing, since it has been taught distinctly: R. Eliezer says that it is obligatory.

Rabbah said: For these three offences men become impoverished: for emancipating their [heathen] slaves, for inspecting their property on Sabbath, and for taking their main Sabbath meal at the hour when the discourse is given in the Beth Hamidrash. For so R. Hiyya b. Abba related in the name of R. Johanan, that there were two families in Jerusalem, one of which used to take its main meal on Sabbath [at the hour of the discourse] and the other on the eve of Sabbath,[4] and both of them became extinct.

Rabbah said in the name of Rab; If a man sanctifies his slave, he becomes a free man. What is the reason? Because he does not sanctify[5] his body,[6] nor does he say that he is sanctified in respect of his money value. What he must mean, therefore, is that he is to become a member of the 'holy people'.[7] R. Joseph, however, reported Rab as saying; If a man declares his slave common property he becomes a free man. The one who applies this rule where the slave is sanctified would apply it all the more where he is declared common property; but he who applies it where the slave is declared common property, would not necessarily apply it where he is sanctified, because the master may have been referring to his money value.

The question was asked: [Does a slave who is thus liberated] require a deed of emancipation or not? — Come and hear: R. Hiyya b. Abin said in the name of Rab; Both the one and the other become free men, and they require deeds of emancipation. Rabbah said: I raise an objection against my own statement[8] from the following: 'If a man sanctifies his property and some slaves are included in it, the treasurers [of the Sanctuary] are not allowed to emancipate them,[9] but they must sell them to others,[10] and these others are allowed to emancipate them. Rabbi says: My view is that the slave can pay his own purchase price[11] and liberate hiniself,[12] because the treasurer in that case as it were sells him to himself'? — Do you seek to confute Rab from the Mishnah? Rab is himself

[considered] a Tanna and is allowed to differ.

Come and hear [an objection to Rabbah]: 'Notwithstanding no devoted thing . . . whether of man etc. [shall be redeemed];[13] these are his Canaanitish men-servants and maid-servants'?[14] — We are presuming in this case that he says, [I vow] their money value.[15] If that is so, cannot I say the same in the other case also? — If that were so, what of the words 'the treasurers are not allowed to liberate them'? Why are the treasurers mentioned?[16] And further: 'But they can sell them to others, and these others are allowed to liberate them.' Why are 'others' mentioned? And again: 'Rabbi says: My view is that he may pay his own purchase price and so liberate himself, because the treasurer in that case as it were sells him to himself.' Now if only his money value is devoted, what is the point of the words, 'because as it were he sells him to himself'?

Come and hear: If a man sanctifies his slave, he [the slave] may go on supporting himself from his own labour, because only his money value has been sanctified![17]

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(1) Being forbidden to the one as a Jewess and to the other as a slave.

(2) Lev. XXV, 46.

(3) And if so, what need to explain his action on the around that where a religious duty is to be performed the rule does not apply?

(4) Instead of in the daytime. So Rashi. According to others, however, 'used to dine on Friday afternoon.' This, as Rashi points out, was actually forbidden, because it prevented a man entering on the Sabbath with a good appetite.

(5) I.e., devote to the Sanctuary.

(6) Since it cannot be used either for a sacrifice or for repairing the Temple.

(7) Deut. XIV, 2.

(8) Made in the name of Rab, that a slave who is sanctified becomes free.

(9) Because their persons are not acquired by the Sanctuary.

(10) This shows that the slave's money value is sanctified.

(11) v. Kid. 23b.

(12) Hence Rabbi also holds that the money value is sanctified.

(13) Lev. XXVII, 28.

(14) As this objection is from the Scripture, it cannot he answered like the last.

(15) And he does not mention sanctification.

(16) Lit., 'What have they to do'. If the slaves are not sanctified.

(17) And he remains the slave of his master. This is in opposition to Rab.

— Whose opinion is this? It is the opinion of R. Meir, who holds that when a man says a thing he must mean something by it[1] That this view is probably correct is shown by the succeeding clause: Similarly if a man sanctifies himself he maintains himself from his own labour, since he has sanctified only his money value. Now if you say that this follows R. Meir, there is no difficulty.[2] But if you say it follows the Rabbis,[3] we can indeed understand [the rule] in reference to the slave, because he has a purchase price, but has the man himself a purchase price?[4]

May we say that the same difference[5] is found between Tannaim [in the following passage]:[6] If a man sanctifies his slave, then making use of him does not constitute me'ilah [trespass].[7] Rabban Simeon b. Gamaliel says: Use of his hair constitutes trespass.[8] Now is not the point at issue between the two authorities this, that one holds that the slave is sanctified and the other that he is not? — Do you really think so? Why then the expressions, 'constitutes trespass' and 'does not constitute trespass'? It should be, 'he is sanctified' and 'he is not sanctified'? No. Both hold that he is sanctified,[9] and the point at issue here is that the one puts him in the same class with fixed property and the other with movable property.[10] If that is so, while they differ with regard to his hair should

they not differ with regard to his whole body? — The truth is, both hold that a slave is in the same category as fixed property, and they differ here in respect of his hair which is ready for cutting, the one holding that such hair is regarded as already cut, and the other that it is not.

Shall we say that the difference between these Tannaim[11] is the same as the difference between these other Tannaim, as we have learnt: R. Meir says, There are certain things which both are and are not in the same category as fixed property,[12] but the Sages do not agree with him. For instance, if a man says, I entrusted to you ten vines laden with fruit , and the other says, There were only five, R. Meir requires him to take an oath,[13] but the Sages say that anything attached to the soil is in the same category as the soil.[14] And [commenting on this] R. Jose son of R. Haninah said that the practical difference between them arose in the case of grapes which were ripe for gathering, R. Meir holding that they were regarded as already gathered and the Rabbis that they were not so regarded? — You may even say that R. Meir [does not differ in the case of the hair]. For R. Meir would apply this principle[15] only to the case of grapes which would spoil by being left, but not to hair which improves the longer it is left.

When R. Hiyya b. Joseph went up [to Palestine], he reported this dictum[16] of Rab to R. Johanan. Said the latter: Did Rab really say that? But did not R. Johanan himself say the same?[17] Has not ‘Ulla said in the name of R. Johanan: If a man declares his slave common property, he becomes a free man, but he requires a deed of emancipation? — What R. Johanan meant was, Did Rab really take the same view as I [take]? Others report that [R. Hiyya] did not give him the whole of Rab's statement,[18] and he said to him, And did not Rab say that he requires a deed of emancipation? In this R. Johanan would be consistent, since ‘Ulla said in the name of R. Johanan, If a man declares his slave common property, he becomes a free man, but he requires a deed of emancipation.

The text above [stated]: ‘Ulla said in the name of R. Johanan: If a man declares his slave common property, he becomes a free man, but requires a deed of emancipation.’ R. Abba raised the following objection against ‘Ulla: ‘If a proselyte dies [without heirs] and Israelites seize[19] his property,[20] if there are slaves included in it, whether grown up or not grown up, they become their own masters as free men. Abba Saul. however, says that the grown-ups become their own masters as free men[21] but the minors become the property of whoever first seizes them.’[22] Now who has written a deed of emancipation for these?[23] — ‘Ulla replied: This Rabbi seems to imagine that people do not study the law. But what after all is the reason [why the slaves require no deed of emancipation]? — R. Nahman replied: ‘Ulla was of opinion that the slave of a proselyte comes under the same rule as his wife. Just as his wife is liberated[24] [after his death] without a Get, so his slave is liberated without a deed of emancipation. But if that is so, the same rule[25] should apply to an Israelite? — Scripture says, And ye shall make them (Canaanitish slaves) an inheritance for your children after you to hold for a possession.[26] If that is the case, then if a man declares his slave common property and then dies, the slave should also [not require a deed of emancipation].[27] How is it then that Amemar has said that if a man declares his slave common property and then dies, nothing can be done for the slave?[28] — [This saying] of Amemar is indeed a difficulty.

R. Jacob b. Idi said in the name of R. Joshua b. Levi: The halachah follows Abba Saul.[29] R. Zera asked R. Jacob b. Idi:

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(1) Lit., ‘a man does not utter his words idly’. Even though, taken in their literal sense, his words are meaningless. So here, if he declares his slave sanctified, since the person of the slave cannot be sanctified, we take it to mean that his money value is sanctified in the first instance, v, ‘Ar. 5a.

(2) Because, since he cannot sanctify himself, we suppose the man to mean that he sanctifies his money value.

(3) Who say that the words ‘I sanctify So-and-so’ actually mean, ‘I sanctify the purchase price of his person,’ I.e. the price which he may fetch when sold as a slave.

(4) Surely the freeman cannot be sold as slave.

(5) As to the rule where one sanctifies his slave.
(6) Sanh. 15a
(7) The technical word for applying holy things to secular purposes.
(8) V. infra.
(9) For his money value, contrary to the opinion of Rab.
(10) Me'ilah could not be committed against fixed property; v. Me'i, 18b.
(11) As to whether hair that is ripe for cutting is to be regarded as cut.
(12) I.e., though still attached to the soil, they are subject to the rule of movable and not of fixed property.
(13) That he was not responsible for the other five,
(14) In the case of landed property, an oath was not required of the defendant who admitted part of the claim; v. Shebu. 42b.
(15) That something ready to be done is regarded as already done.
(16) That if a man declares his slave common property, he goes free.
(17) And if so, why was he so surprised?
(18) He merely reported Rab's ruling as reported by R. Joseph and not the whole of it as reported by R. Hiyya b. Abin, supra 38b.
(19) Lit., 'plunder'.
(20) If a proselyte dies without (Jewish) issue, any Israelite may seize his property and become his heir.
(21) I.e., they are allowed to marry Jewesses.
(22) Kid. 232.
(23) Which is required according to R. Johanan.
(24) I.e., becomes free to marry again.
(25) That the slaves whom he leaves behind should become free.
(26) Lev. XXV, 46.
(27) Because the sons never have been his owners.
(28) To enable him to marry either a slave woman or a Jewess; having been declared common property he is deemed partly free, yet he needs a deed of emancipation to complete his freedom, which deed however cannot be made out for him by the heirs, since they have never been his owners. V. infra 402.
(29) That the grown-up slaves become free, but not the child-slaves.

Talmud - Mas. Gittin 39b

Did you actually hear this [from R. Joshua], or do you infer it [from something he said]? — Infer it from what? [he replied]. — From the following statement of R. Joshua b. Levi: 'They put the following question to Rabbi: If a man says, I give up hope of recovering my slave So-and-so,[1] what [is the status of the latter]? Rabbi said to them, In my view he has no remedy[2] save through a deed [of emancipation].' Referring to this R. Johanan said: What was Rabbi's reason? He laid stress on the occurrence of the word 'to her' [in the Scripture] in connection both with a slave and a wife,[3] and drew the lesson that just as a woman requires a document [a Get] [to enable her to marry],[4] so does a slave [who has been declared public property]. Now, [continued R. Zera] I assume that you draw [from Rabbi's statement the inference that] just as the woman [is released (by the deed) from] a ritual prohibition[5] and not a monetary obligation, so the slave [is one who is released from] a ritual prohibition and not [from] a monetary obligation.[6] [R. Jacob replied:] Suppose I have only made an inference, what [difference does it make]? — He replied: On the contrary, you can draw just the opposite inference: Just as the woman can be either a grown-up or a child, so the slave[7] can be either a grown-up or a child. [R. Jacob then] said to him: I heard it distinctly [from R. Joshua b. Levi].

R. Hiyya b. Abba, however, said in the name of R. Johanan that the halachah does not follow Abba Saul. Said R. Zera to R. Hiyya b. Abba: Did you actually hear this [from R. Johanan], or do you infer it [from something you heard]? — Infer it from what? [he said.] — From the following statement of R. Joshua b. Levi: 'The following question was put to Rabbi: If a man says, I give up hope of recovering my slave So-and-so, what [is the status of the latter]? Rabbi said to them: In my

view he has no remedy save through a deed of emancipation. Referring to this R. Johanan said: What was Rabbi's reason? He laid stress on the occurrence in the Scripture of the words 'to her' in connection [both with a slave] and with a wife, drawing the lesson that just as a [divorced] wife requires a document [to enable her to marry], so does a slave [who has been declared public property].' Now [continued R. Zera], I assume that you draw from Rabbi's statement the inference that just as the wife may be either grown-up or not grown-up, so the slave may be either grown-up or not grown-up. [R. Hiyya replied:] Suppose I have only made an inference, what [difference does it make]? — He replied: On the contrary, you can draw just the opposite inference: just as the woman is [released from] a ritual prohibition and not a monetary obligation, so the slave is one who is [released from] a ritual prohibition and not a monetary obligation. R. Hiyya then said: I heard it distinctly [from R. Johanan].

The Master said: '[Rabbi] said to them, In my view he has no remedy save through a deed of emancipation.' But has it not been taught: 'Rabbi says, The slave can also offer his own purchase price and so liberate himself, because the treasurer [of the sanctuary] as it were sells him to himself'?[8] — What he meant was this: [A liberated slave can become enabled to marry] either by ransoming himself or by obtaining a deed of emancipation; and in this case[9] the ownership has ceased.[10] Rabbi thus rejects the view of the following Tanna. It has been taught, namely: R. Simeon says in the name of R. Akiba, May we presume that money payment completes her emancipation in the same way as a deed completes her emancipation?[11] [This cannot be,] since it says, and she be not at all redeemed.[12] The keywords of the whole section[13] are because she was not free.[14] This shows that a document completes her emancipation, but not a money payment.[15]

Rami b. Hama said in the name of R. Nahman that the halachah [in this matter] follows R. Simeon, and R. Joseph b. Hama said in the name of R. Johanan that the halachah does not follow R. Simeon. R. Nahman b. Isaac once came across Raba b. She'ilta as he was standing at the entrance of the synagogue, and said to him, Does the halachah follow R. Simeon or does it not? — He replied, I say that it does not, but the Rabbis who have come from Mahuza report that R. Zera said in the name of R. Nahman that it does. When I was in Sura I came across R. Hiyya b. Abin and said to him, Tell me now what were the essential facts of the case.[16] He said to me: There was a certain female slave whose master was at the point of death. So she came crying to him and saying, How long am I to go on being a slave? He thereupon took his cap and threw it to her saying, Go and acquire this and acquire yourself with it.[17] The case was brought before R. Nahman and he said, His action was null and void. Those who were present thought that R. Nahman's reason for his decision was that the halachah follows R. Simeon,[18] but this is not correct; his reason was that the man used an article belonging to the transferor.[19]

R. Samuel b. Ahithai said in the name of R. Hamnuna the Elder, who said it in the name of R. Isaac b. Ashian who said it in the name of R. Huna who said it in the name of R. Hamnuna: The halachah follows R. Simeon. This, however, is not correct; the halachah does not follow R. Simeon.

R. Zera said in the name of R. Hanina who said it in the name of R. Ashi;[20] Rabbi said, If a slave marries a free woman in the presence of his master,

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(1) This is equivalent to saying, 'I declare him common property.

(2) To enable him to marry, cf. n. 5.

(3) V. Infra 41b.

(4) Even if the husband declared her common property.

(5) Viz., the prohibition of marrying.

(6) Hence Rabbi must have been speaking of grown-up slaves who can acquire their own persons (v. supra) and, as soon as they are declared common property by the owner, cease to be his possession. In their case, the deed affects only a prohibition in that it permits them to marry a Jewess. In the case of minors, however, upon whose persons the owner still

retains his claim even after having declared them common property, the deed affects money matters, and to such a deed Rabbi was not referring, it not being like that of the woman. Consequently the prohibition of marrying does not apply to children.

(7) Who is liberated by the death of his master.

(8) Supra 38b. This shows that money payment is also effective.

(9) Of the man who declares his slave common property.

(10) Hence there is no-one from whom the slave can purchase his freedom and his only remedy is through a document.

(11) The reference is to a female slave who is half emancipated and betrothed to a Hebrew slave. The question under discussion is, if some other person has intercourse with her after she has been redeemed by a money payment but before she has received a deed of emancipation, is he to suffer the death penalty for having violated a free woman who is betrothed, or is he merely to bring a guilt-offering in accordance with the rule laid down in Lev. XIX, 20.

(12) Lev. loc. cit.

(13) Lit., 'the whole section is closely linked with.'

(14) The verse runs: And whosoever lieth carnally with a woman that is a bondmaid betrothed to a husband, and not at all redeemed nor freedom given her, they shall be punished, they shall not be put to death, because she was not free. The words 'not at all redeemed' (lit., 'redeemed she was not redeemed') are interpreted to mean, 'she was redeemed and yet not redeemed,' i.e., redeemed with money but not with a document.

(15) As much as to say, she has not the status of a free woman until she receives her deed of emancipation.

(16) In which R. Nahman decided that the halachah follows R. Simeon.

(17) His intention was to transfer her to herself by means of a kinyan (v. Glos.) of which the cap was the symbol.

(18) That a deed is necessary in such a case to enable her to marry an Israelite.

(19) And the rule is that to make the kinyan valid, the article must belong to the transferee, v. B.M. 47b.

(20) The mention of R. Ashi in this connection is very strange.

Talmud - Mas. Gittin 40a

he automatically becomes a free man.[1] Said R. Johanan to him: Are you really sure of that?[2] What I have learnt is, if a man writes a deed of betrothal[3] for his female slave, R. Meir says that she becomes betrothed and the Sages say that she is not betrothed.[4] The explanation is similar to that given by Rabbah son of R. Shilah, who said [in an analogous case], 'When his master puts the phylacteries on him.'[5] So here, the slave becomes free when the master actually gives him a wife.[6]

But is it possible that there can be an action involving a breach of the law which a man would not allow to be done on behalf of his slave but would perform on his own behalf?[7] — R. Nahman b. Isaac said; We are assuming here that in giving her the deed of betrothal] he says, Become free with this and be betrothed with this.[8] R. Meir held that this expression ['be betrothed'] includes emancipation, and the Rabbis held that it does not include emancipation.

R. Joshua b. Levi said: If a servant puts on phylacteries in the presence of his master, he becomes a free man. An objection was raised; 'If his master borrows [money] from his slave, or if his master appoints him administrator of his affairs, or if he puts on phylacteries in the presence of his master, or if he reads three verses in his presence in the synagogue, he does not [thereby] become a free man'? — Rabbah son of R. Shila explained that [R. Joshua b. Levi was speaking of the case] where his master [himself] put the phylacteries on him.[9]

When R. Dimi came [from Palestine] he reported [the following ruling] in the name of R. Johanan: If a man when on the point of death says, I do not want my female slave So-and-so to be used as a slave after my death, the heirs can be compelled to make out for her a deed of emancipation. R. Ammi and R. Assi [expostulated with him] saying, Do you not admit that her children will be slaves?[10] When R. Samuel b. Judah came, he said in the name of R. Johanan: If a man when on the point of death says, My female slave So-and-so has given me great satisfaction, let something be done to satisfy her, the heirs may be compelled to satisfy her.[11] The reason is that it is

a religious duty to carry out the wishes of the deceased.

Amemar said: If a man declares his slave common property, nothing can be done for the slave.[12] Why so? Because he no longer possesses his body, but he is still bound by the prohibition,[13] and this he cannot transfer to him. Said R. Ashi to Amemar: But has not 'Ulla said in the name of R. Johanan and R. Hiyya b. Abin in the name of Rab, In either case[14] he becomes a free man and requires a deed of emancipation? — He replied: He requires one, but nothing can be done for him.

According to another version, Amemar said: If a man declares his slave common property and then dies, nothing can be done for the slave. Why so? Because he no longer owns his body, but he is still bound by the prohibition, and this he cannot bequeath to his son. Said R. Ashi to Amemar: But when R. Dimi came he reported a ruling of R. Johanan [which conflicts with this]?[15] — R. Dimi's statement was erroneous.[16] Where, he rejoined, was the error? That the man did not say distinctly that the slave should be emancipated? But if he had done so, then they would have had to write her a deed of emancipation, [would they not]? — Said Amemar: I hold with R. Samuel b. Judah.[17]

A certain settlement of slaves was sold [by their Jewish masters] to heathens. When the second masters died, they applied to Rabina,[18] and he said to them, Go and find the sons of your first masters, and they will write you out deeds of emancipation. The Rabbis expostulated with Rabina, saying, Has not Amemar laid down that if a man declares his slave common property and then dies, nothing can be done for the slave? — He replied: I adopt the view of R. Dimi. But, they said to him, R. Dimi's statement was erroneous! — He replied: What was the mistake? That the man did not say distinctly that the slave should be emancipated. But if he had said so, the heirs would have had to emancipate her, [would they not]?[19] The law is as stated by Rabina.

A certain slave was owned by two men [in partnership], and one of them emancipated his half. The other thereupon thought to himself: If the Rabbis hear of this, they will force me to give him up.[20] So he went and transferred him to his son who was still under age. R. Joseph the son of Raba submitted the case to R. Papa. He sent him back answer: As he has done so it shall be done to him; his dealing shall return upon his own head.[21] We all know that a child is fond of[22] money. We shall therefore appoint for him a guardian,

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(1) Because we assume that if the master had not emancipated him he would not allow him to do this.

(2) That Rabbi said this.

(3) 'Behold thou art betrothed to me.'

(4) Because we do not assume that he has emancipated her. The Sages here would include Rabbi.

(5) Infra.

(6) As in this case there can be no doubt that he has emancipated him.

(7) Viz., his marrying his female slave before making out for her a deed of emancipation.

(8) Where, however, he says merely 'Be betrothed' it is assumed that he had emancipated her already.

(9) The master would not have conferred upon him this dignity had he not already emancipated him.

(10) I.e. , the expression, 'do not use her as a slave,' only means that they should not make her work too hard, not that she should be freed.

(11) Even to the point of emancipating her.

(12) To enable him to marry either a free woman or a slave. [According to Tosaf., however, he may still marry a slave. V. Tosaf. s.v. וכתב].

(13) To marry a Jewess, which remains in force until the slave obtains a deed of emancipation.

(14) Whether sanctified or declared common property. V. supra 38b, 39a.

(15) Viz., that the heirs can be compelled to write a deed of emancipation, though they could claim to no ownership of the body of the slave in view of the father's instructions. V. supra.

(16) As shown by R. Ammi and R. Assi supra.

(17) According to whose version of R. Johanan's ruling, the heirs can use their own judgment.

(18) To make them eligible for marrying Jewesses.
(19) And so here, though the first masters declared them free as far as they were concerned, the heirs can nevertheless write them a deed of emancipation.
(20) Lit., 'cause me to lose him', i.e., to allow him to purchase the other half of himself from me.
(21) Obad. I, 15.
(22) Lit., 'is attracted to'.

Talmud - Mas. Gittin 40b

and [the slave] will rattle some coins before the child, and [the guardian] will write out a deed of emancipation for the slave in his name.[1]

Our Rabbis have taught: If a man says, 'I have made my slave So-and-so free' , 'he is hereby declared free', 'I declare him free,' then he becomes a free man. [If he says,] 'I shall make him free,' Rabbi says that he acquires possession [of himself],[2] but the Sages say that he does not.[3] R. Johanan explained that in every case we suppose a deed to have been made out.[4]

Our Rabbis have taught: If a man says, 'I have given such-and-such a field to So-and-so'; 'It is presented to So-and-so'; 'I declare it to be his,' then it is his. If he says, 'I shall give it to So-and-so,' R. Meir[5] says that he acquires ownership of it, but the Sages say that he does not acquire ownership. R. Johanan explained that in every case we suppose a deed to have been given.

Our Rabbis have taught: If a man says, 'I have made my slave So-and-so free,' and the slave says, 'You have not freed me', we take into account the possibility that he has presented him a deed of emancipation through a third party.[6] If, however, the master says, 'I have written and given to him,' and he says, 'He has not written for me nor given to me,' this is a case where the admission of the litigant is worth the evidence of a hundred witnesses. If a man says, 'I have given such-and-such a field to So-and-so', and the latter says, 'He has not given it to me,' we take into account the possibility that he may have presented it to him through a third party. If he says, 'I have written [a deed] and presented it to him,' and the other says, 'He has not written nor presented to me,' then in that case the admission of the litigant is worth the evidence of a hundred witnesses. [In such a case] who is entitled to the produce? — R. Hisda says the donor is entitled to the produce, whereas Rabbah says that the produce is entrusted to a third party.[7] There is no conflict between the two rulings; the one applies to the father, the other to the son.[8]

MISHNAH. IF A MAN MAKES HIS SLAVE SECURITY[9] [FOR A DEBT] TO ANOTHER MAN AND HE EMANCIPATES HIM, IN STRICT JUSTICE THE SLAVE IS NOT LIABLE FOR ANYTHING, BUT TO PREVENT ABUSES[10] HIS MASTER IS COMPELLED TO EMANCIPATE HIM. AND HE GIVES A BOND FOR HIS PURCHASE PRICE. RABBAN SIMEON B. GAMALIEL SAYS THAT HE DOES NOT GIVE A BOND BUT HE EMANCIPATES HIM.[11]

GEMARA. IF A MAN MAKES HIS SLAVE SECURITY FOR A DEBT AND HE EMANCIPATES HIM. Who emancipates him? — Rab says, his first master. In strict justice the slave is then not liable for anything to his second master, according to the dictum of Raba, that 'sanctification,[12] leaven,[13] and emancipation release from a creditor's lien.'[14] To prevent abuses, however, [that is to say, for fear] lest he should find him in the street

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(1) A minor could not be compelled to emancipate his slaves, nor could his guardian do so for him. On the other hand, a minor was competent to sell movables. Hence if the slave could induce him to sell to him his half, well and good, and the function of the guardian was only to see that he obtained a fair price. According to Tosaf., the deed is made out in the name of the guardian. V. Tosaf. s.v. 2031.

(2) Along with the deed of emancipation in which these words are written.

(3) Because this is only a promise that he will liberate him subsequently by means of another deed.

(4) But if it is merely a verbal declaration, the master can retract.

(5) Var. lec.; Rabbi.

(6) Without the slave's knowledge. In such a case the slave would be liberated on the principle that a benefit may be conferred on a man without his knowledge.

(7) Who puts it on one side till the 'coming of Elijah', i.e., till the truth of matter is ascertained.

(8) We accept the disclaimer of the man who is alleged to have received the gift, but not of his son, as witnesses may still be found to prove that the gift was actually made.

(9) אפותיקי , Gr. **.

(10) Lit., 'for the better ordering of the world'.

(11) The whole of this Mishnah is explained in the Gemara.

(12) If a man pledges an animal as security and then devotes it for a sacrifice.

(13) If a man borrows from a Gentile on the security of leaven and the Passover intervenes, rendering the leaven forbidden for use.

(14) V. B.K. 90a.

Talmud - Mas. Gittin 41a

and say to him 'you are my slave,'[1] his second master is compelled to emancipate him, the slave giving him a bond for his purchase price.[2] R. Simeon b. Gamaliel says that it is not the slave but the one who emancipates him who has to give a bond. In regard to what point do the two authorities join issue? — In regard to the person who injures an object pledged as security to another, one[3] holding that he is liable [to make it good] and the other that he is not liable.[4] It has also been stated [elsewhere]: On the question of the man who injures an object which has been pledged as security to another, we find a difference of opinion between R. Simeon b. Gamaliel and the Rabbis.

'Ulla explains [as follows]: Who emancipates him? His second master. In strict justice the slave is still not liable for the performance of religious precepts [incumbent on free men only]. To prevent abuses,[5] however — since he has been reported to be free — his first master is compelled to liberate him, and he [the servant] gives him a bond for his purchase price.[6] R. Simeon b. Gamaliel says that he does not give the bond, but the one who emancipates him gives the bond. On what point do the two authorities join issue? — On the question of damage which is not recognisable,[7] the one[8] holding [that in the eye of the law] this is genuine damage and the other that it is not.[9]

Why did not 'Ulla accept the explanation of Rab? — He will say to you, Can you call the second his master?[10] Why did not Rab adopt the explanation of 'Ulla? — He will say to you, Do you call the second the one who emancipates him?[11]

It has been stated: If a man makes a field of his security [for a debt] to another, and it is flooded by a river, Ammi Shapir Na'eh[12] says in the name of R. Johanan that he cannot recover his debt from the remaining property of the debtor. The father of Samuel, however, says that he can recover from the remainder of his property. Said R. Nahman b. Isaac: Because he is Ammi Shapir Na'eh he makes pronouncements which are not commendable.[13] But we must explain his reported ruling to refer to the case where the debtor has said to the creditor: 'You shall not be able to recover save from this'.[14] It has been taught to the same effect: If a man makes a field of his security for a debt to another and it is flooded by a river, [the creditor] may recover from the remainder of his property. If, however, he said to him, 'You shall not be able to recover save from this', he cannot recover from the remainder of his property. Another [Baraitha] taught: If a man makes his field security for a debt to his creditor or for a woman's kethubah, they may recover from the remainder of his property.[15] R. Simeon b. Gamaliel, however, says that [while] a creditor may so recover a woman cannot recover from the remainder, because it is not seemly for a woman to keep on coming to court.[16]

MISHNAH. ONE WHO IS HALF A SLAVE AND HALF FREE[17] WORKS FOR HIS MASTER AND FOR HIMSELF ALTERNATE DAYS.[18] THIS WAS THE RULING OF BETH HILLEL. BETH SHAMMAI SAID: YOU HAVE MADE MATTERS RIGHT FOR THE MASTER BUT NOT FOR THE SLAVE. IT IS IMPOSSIBLE FOR HIM TO MARRY A FEMALE SLAVE BECAUSE HE IS ALREADY HALF FREE.[19]

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(1) And so defame his children.

(2) To compensate him for the loss of his security.

(3) R. Simeon.

(4) V. B.K. 33b.

(5) I.e., lest he should marry a Jewess while in this state.

(6) In so far as this is in excess of the debt.

(7) Here, the emancipation of the slave, v. infra 53a.

(8) R. Simeon.

(9) Therefore the second has to give no bond, but the slave must do so in return for the benefit he has received in being emancipated.

(10) And the Mishnah says, 'His master is compelled'.

(11) Seeing that he was not his master, how could he be said to emancipate him?

(12) So called on account of his beauty (v. n. 7) Rash. Nid. 19b.

(13) A play on the word shapir, which means 'beautiful', 'commendable', as also does na'eh.

(14) For this reason he cannot recover from any other property.

(15) I.e., the debtor can sell this field and let the creditors recover from the rest of his property.

(16) And for this reason the husband specially made this field responsible, so that she should not have to go to law with the purchasers of his other fields, not knowing which had bought first and which last.

(17) Explained in the Gemara; v. n. 9 and p. 178, n. 9.

(18) Lit., 'serves his master one day and himself one day'.

(19) And so an Israelite.

Talmud - Mas. Gittin 41b

IT IS IMPOSSIBLE FOR HIM TO MARRY A FREE WOMAN BECAUSE HE IS HALF A SLAVE.[1] SHALL HE THEN REMAIN UNMARRIED?[2] BUT WAS NOT THE WORLD ONLY MADE TO BE POPULATED, AS IT SAYS, HE CREATED IT NOT A WASTE, HE FORMED IT TO BE INHABITED?[3] TO PREVENT ABUSES,[4] THEREFORE, HIS MASTER IS COMPELLED TO LIBERATE HIM AND HE GIVES HIM A BOND FOR HALF HIS PURCHASE PRICE. BETH HILLEL THEREUPON RETRACTED [THEIR OPINION AND] RULED LIKE BETH SHAMMAI.

GEMARA. Our Rabbis taught: If a man emancipates half his slave,[5] Rabbi says that the latter becomes his own master to that extent, and the Rabbis say that he does not. Rabbah says: The dispute [between them relates only to the case] where [the master has made out] a deed of emancipation. Rabbi holds, [since it says] And she be not at all redeemed nor freedom given her,[6] we apply the same rule to a deed as to money.[7] Just as with money the slave can acquire either the half or the whole of himself,[8] so with a deed, he can acquire either the half or the whole of himself. The Rabbis, however, base their ruling on the occurrence of the word 'to her' [in connection both with a female slave] and with a [divorced] wife.[9] Just as a wife cannot be divorced by halves, so a slave cannot acquire himself by halves. With money, however, both agree that he can so acquire himself. May we say that the point at issue between them [Rabbi and the Rabbis] is this, that [where a ruling may be based either on an analogy or a gezerah shawah][10] one holds that preference is to be given to the analogy and the latter to the gezerah shawah? — No; both agree that preference is to be given to the gezerah shawah,[11] but there is a special reason [for not doing so here, because the validity of the

gezerah shawah] may be questioned thus: [This rule[12] may well apply to] a woman since she cannot be liberated by money, but how infer from her to a slave who is liberated by money?

R. Joseph said that [the dispute between Rabbi and the Rabbis is where] the half-emancipation is made for money payment. Rabbi holds that the words 'redeeming she is not redeemed' indicate that she is [half] redeemed but not [wholly] redeemed, whereas the Rabbis hold that the Torah was here using an ordinary form of speech.[13] Where, however, [the half-emancipation is made by] a deed, both [according to R. Joseph] agree that the slave does not acquire [that half of himself].

An objection was raised [from the following]: if a man emancipates half his slave with a deed, Rabbi says that the slave acquires that half of himself, while the Rabbis say that he does not acquire it. Is not this a refutation of R. Joseph? — It is. [And I infer from this Baraitha] that Rabbi and the Rabbis differ only where the emancipation is effected by a deed, but where it is effected by money payment they do not differ; in which case there will be a double refutation of R. Joseph?[14] — R. Joseph may reply: [What the Baraitha shows is] that they differ in regard to a deed, and this applies also to money payment; and the reason why their difference is mentioned only in regard to a deed is to show to what lengths Rabbi is prepared to go.[15] But why should not their difference be mentioned with reference to money payment to show to what lengths the Rabbis are prepared to go?[16] — It prefers [to note] the strength [of this conviction] where it leads to a permission.[17] Come and hear: 'And redeemed': I might take this to mean 'entirely [redeemed]', therefore it says, 'she was not redeemed'. If 'she was not redeemed,' I might think it means 'not at all'? Therefore it says, 'And redeemed'. How then do we explain? She is redeemed and yet not redeemed, with money or with the equivalent of money. I only know so far that this is the case[18] with money [payment]; how do know that it is so with a deed? It says, 'And redeemed she was not redeemed, nor was her freedom given to her,' and in another place it says, And he shall write for her a bill of divorcement.[19] Just as there the woman is liberated by a deed, so here. I only know so far that a half-emancipation [can be effected] by money or a full one[20] by a deed. How do I know that a half-emancipation [can be effected] by a deed? It says, 'And redeemed she be not redeemed or her freedom be not given to her.' The deed is here put on the same footing as money payment, [whence I conclude that] just as with money either a half or a full emancipation [can be effected], so with a deed. Now there is no difficulty here if we accept the view of R. Joseph after he was refuted:[21] this [Baraitha] agrees with Rabbi.[22] But on the view of Rabbah[23] we must say that the first half[24] agrees with all and the second[25] only with Rabbi?[26] — To which Rabbah replies: That is so: the first half agrees with all and the second is according to Rabbi [only]. R. Ashi said: It follows Rabbi [throughout].[27] But then, what of the Mishnah, which says, ONE WHO IS HALF A SLAVE AND HALF FREE? This presents no difficulty on the view of Rabbah, because he can suppose it to refer to [one who has been emancipated] by money payment, and it represents the view of all, but on the view of R. Joseph[28] are we to say that it represents the view of Rabbi and not of the Rabbis? — Rabina replied:

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(1) And so not an Israelite.

(2) Lit., 'shall he abstain'.

(3) Isa. XLV, 18.

(4) Lit., 'for the better ordering of the world'.

(5) He says 'I emancipate half of you'.

(6) Lev. XIX, 20.

(7) Applying the word 'redeemed' to emancipation for money payment and freedom' to emancipation by deed and drawing an analogy (hekkesh) between the two.

(8) As derived infra from the same verse.

(9) Nor freedom given to her (lah) (Lev. XIX, 20), and And he write for her (lah) (Deut. XXIV, 1). The inference is drawn on the strength of the hermeneutical rule called gezerah shawah (v. Glos.).

(10) V. supra n. 2.

(11) Because the inference in this case is either based on a redundancy in the text or else on a very ancient tradition.

(12) That there is no half-liberation by means of a deed.
(13) Lit., 'speaking in the language of human beings.' i.e., using the words 'redeemed she was not redeemed,' to mean simply, 'she was not at all redeemed,' so that we cannot learn from these words that half-emancipation can be obtained by money payment.
(14) Who said that the Rabbis do not admit half-emancipation even with money payment.
(15) Lit., 'to show the strength of Rabbi'. Namely, even to the extent of ignoring the gezerah shawah which points in the other direction.
(16) Even to the extent of ignoring the analogy which points in the other direction.
(17) Here, the permission of the slave to emancipate half of himself, whereas the strength of the Rabbis' conviction leads them to prohibit him.
(18) That a slave can be half emancipated.
(19) Deut. XXIV, 1.
(20) Because there is no half-liberation by a deed for a wife.
(21) I.e., after the first half of his statement, that Rabbi dues nut admit half emancipation with a deed, had been refuted, but he had defended the other half, that the Rabbis did not admit it for money.
(22) Who also said, according to the revised opinion, that half-emancipation could be effected either with a deed or with money.
(23) Who said that according tithe Rabbis there is no half-emancipation by deed.
(24) Which states that money effects half-emancipation.
(25) Which states that even a deed effects half-emancipation.
(26) And not the Rabbis who do not admit half-emancipation by deed.
(27) Rabbi holding that the slave obtains half-emancipation in both cases.
(28) According to whom the Rabbis hold that there is no half-emancipation whether by money or by deed.

Talmud - Mas. Gittin 42a

The Mishnah [according to R. Joseph] is speaking of a slave belonging to two partners.[1]

Rabbah says: The dispute [between Rabbi and the Rabbis] concerns the case where [the master] liberates the half of the slave and keeps the other half, but if he liberates one half and sells the other half or makes a gift of it to someone[2] since, the slave emerges completely from his ownership, both Rabbi and the Rabbis would agree that he acquires [the half of himself]. Said Abaye to him: And do they not differ even [where the master parts] with the whole? Has not one [authority] taught: 'If a man assigns in writing his property to two of his slaves,[3] they acquire ownership and emancipate one another,'[4] while it has been taught by another, If a man says, 'All my property is made over to my slaves So-and-so and So-and-so', they do not acquire ownership even of themselves? Now are we not to say that the one [authority][5] concurs with Rabbi and the other with the Rabbis? — No; both concur with the Rabbis, [only] the one [refers to the case] where [the man] assigned the whole [of his property to both slaves],[6] while the other [refers to the case] where he says half [to one and] half [to the other].[7] But the second clause goes on: 'If he says, half [to one] and half [to the other] they do not acquire ownership.' Does not this show that the first clause refers to the case where he says 'the whole'? — This second clause explains the first, [thus:] 'They do not acquire ownership even of themselves. When is this so? If, for instance, he says, half [to one] and half [to the other].' This supposition is reasonable, since if we assume the first clause [to refer to the case] where he says 'the whole', seeing that where he says 'the whole they do not acquire ownership, is it necessary [to tell us that they do not do so] where he says 'half and half'? — This is not a conclusive argument. [It may be that] the second clause was put in to make clear [the reference in] the first: lest you might think that the first clause [refers to] where he said half [to one] and half [to the other], leaving us to infer that where he said 'the whole' they acquire ownership, he adds in the second clause, 'where he says half and half,' which shows that the first clause [speaks of the case] where he says 'the whole,' and even so they do not acquire ownership. Or if you like I can say that there is no contradiction, as the one authority is speaking of one document[8] and the other of two documents. [If he is speaking of]

one document, what is the point of 'half [to one] and half [to the other]'? Even if he said, '[Let each take] the whole,' they do not acquire ownership?[9] — This in fact is what he does say, [as what he means is:] 'They do not acquire even themselves. When do we say this? [When he makes out] only one deed. If, however, [he makes out] two deeds, they do acquire ownership. And if he says half [to one] and half [to the other], even with two deeds they do not acquire ownership.'[10] If you like again I can say that there is no contradiction; in the one case [the two deeds] are given at one and the same time, in the other case one after the other.[11] [If that is so], I can understand why the second does not acquire ownership, because the first has already become his owner; but why does not the first acquire both himself and the other? No; the best [solutions are] those which were given first. R. Ashi said:[12] The case is different there, because he calls them 'my slaves'.[13] Said Rafram to R. Ashi: perhaps he means, 'who were my slaves'? Have we not learnt: If a man assigns in writing all his property to his slave, the latter becomes free; if he excepts a piece of land however small, he does not become free.[14] R. Simeon says: He becomes free in all cases unless the master says, 'The whole of my property is assigned to my slave So-and-so except one ten-thousandth part thereof'?[15] Now the reason for this is that he added these words, otherwise he would be free.[16] But [it may be asked], why, seeing that he calls him 'my slave'? Obviously he means, 'who was hitherto my slave'; so here he means, 'who were hitherto my slaves'.

[If a slave who is half-emancipated] is gored by an ox, if it is on a day on which he belongs to the master, the [compensation[17] goes] to the master, if on the day when be belongs to himself, it goes to himself. If that is so, then on his master's day he should be allowed to marry a slave-woman and on his own day a free woman? — We do not apply this principle where a religious prohibition is involved.

Come and hear: If [an ox] kills one who is half a slave and half free, the owner gives half the fine[18] to his master

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(1) And even the Rabbis would admit that one of them can liberate the half belonging to him, since, as far as he is concerned, this is a complete liberation, analogous to that if a wife.

(2) At the same time as or just before he liberates him.

(3) By means of two deeds which he gives to a messenger on their behalf at the same time, so that each is entitled to a half.

(4) I.e., each emancipates the half of the other which he has acquired.

(5) Who says that a slave is emancipated by halves.

(6) In which case even the Rabbis admit that they acquire ownership, because, as they are both liberated at once, they emerge completely from his ownership.

(7) In which case they do not emerge from his ownership, even if he presented both of the deeds at the same moment, because it is possible that he assigns the same half of his property to both, and so half of each of them is still left enslaved.

(8) In which case they are not liberated, just as two women cannot become divorced with one Get.

(9) Because two slaves cannot be emancipated with one deed.

(10) Because they do not emerge completely from the ownership of the master.

(11) In both cases the whole being assigned to both.

(12) R. Ashi seeks to reconcile the two authorities cited above.

(13) In the deed they are designated as slaves, hence it is to be assumed that it was not his intention to liberate them but merely to make them a present of his property, which, however, as slaves they are not competent to acquire.

(14) Since we do not know which fraction was excepted, the slave acquires no land, and since he acquires no land he does not acquire himself, since we cannot divide the assignment of himself from the assignment of the land, v. supra p. 30.

(15) R. Simeon holds that we can in this case divide the assignments, but we do not know whether the ten-thousandth part does not refer to the slave himself.

(16) Lit., 'acquire'.

(17) The so-called ‘damage’ (nezek), the depreciation in his money value.
(18) Of thirty pieces of silver, according to Ex. XXI, 32.

Talmud - Mas. Gittin 42b

and half the ransom[1] to his heirs.[2] Why [should this be so]? Let us say that on his master's day [the money goes] to his master and on his own day to himself? — The case is different here, because the principal[3] is consumed —[4] What sort of case is it then in which the principal is not consumed?[5] — If, for instance, [the ox] wounded him on his hand, causing it to shrivel, but so that it will eventually be healed. This answer is satisfactory if we accept the view of Abaye, who said that he is compensated [in such circumstances] both for the larger incapacitation and the smaller incapacitation.[6] But on the view of Raba who said that he is only compensated for his incapacitation from day to day,[7] [it may be objected that] we are dealing with an ox, and an ox [makes the master liable] only for payment of damage?[8] — If you like I can say [that this rule[9] applies only] when the blow is given by a man,[10] and if you like I can say that the passage above is only an expression of opinion,[11] and it is one with which Raba does not hold.

The question was raised: If an [emancipated] slave[12] has not yet received his deed of emancipation, is a fine to be paid for him or not [if he is killed by a goring ox]? Thirty shekels of silver he shall give to his master[13] said the All-Merciful, and this [man] is not his master; or do I say that since the slave is still short of a deed of emancipation, we do call him a master? — Come and hear: If an ox kills one who is half a slave and half free, the owner gives half the fine to the master and half the ransom to the slave's heirs. Now this is so, is it not, on the basis even of the later teaching?[14] — No; only on the basis of the earlier teaching.[15]

Come and hear: If a man knocks out a tooth of his slave and also blinds him of an eye, the slave is liberated on account of the tooth and receives compensation for the eye.[16] If now you say that a fine must be paid for him and the fine belongs to his master, seeing that when others injure him they pay the master, when the master himself injures him is he to pay to the slave?[17] — Perhaps this passage agrees with the authority who says that he does not need a deed of emancipation, since it has been taught: For all these [maimings][18] a slave is liberated; he requires, however, a deed of emancipation from his master. R. Meir says he does not require one; R. Eliezer says he does require one; R. Tarfon says he does not require one; R. Akiba says he does require one. Those who determine [the issue] in the presence of the Sages[19] say: The opinion of R. Tarfon is to be preferred in the case of a tooth and an eye, because the Torah [itself] conferred on him [his freedom in this case];[20] but the opinion of R. Akiba in the case of the other members, because [the liberation] in that case is a fine imposed by the Sages [on the master]. A fine, you call it? They deduce it from the text of the Scripture![21] — Let us say, therefore, because it is a deduction of the Sages.[22]

The question was raised: If a [liberated] slave [of a priest] is still short of a deed of emancipation, may he eat terumah or not? The All-Merciful has laid down that [terumah may be eaten] by [one who is] the purchase of his [the priest's] money,[23] and this one is no longer ‘the purchase of his money’; or perhaps since he is short of a deed of emancipation do we still call him ‘the purchase of his money’? — Come and hear: R. Mesharsheya has said:[24] If the child of a priestess has become interchanged with the child of her female slave, both may eat terumah[25] and must take their portion together from the threshing floor.[26] When the changelings grow up, they emancipate one another.[27] Are these two cases parallel? In the latter case, should Elijah[28] come and declare one of them to be a slave, we should call him ‘the purchase of his money’; but in the other case he is not the ‘purchase of his money’ at all.

The question was raised: If a man sells his slave in respect of the fine only,[29] he sold or not sold? The question is pertinent whether we adopt the view of R. Meir or whether we adopt that of the

Rabbis.[30] It is a question for R. Meir, [since we may say that] when R. Meir laid down that a man can transfer something which does not yet exist,[31] [he was thinking] for instance of the fruit of a date tree which is expected to come into existence later, but in this case who can tell if the slave will actually be gored? And even if he is gored, how can we tell that the owner of the ox will pay?

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(1) Due to him as a free man, according to Ex. XXI, 30.

(2) The Gemara discusses later what heirs a slave can have.

(3) I.e., the slave himself.

(4) And the division of days no longer applies here.

(5) For which the owner of the ox, according to the first passage cited above, pays to the master or to the slave, as the case may be.

(6) The larger incapacitation is his depreciation in money value were he to be sold immediately on his injury as slave, technically known as 'nezek' (damage). The smaller incapacitation is the money which, even with his injured hand, he could earn as a watcher in a cucumber field if he were not confined to his bed.

(7) That is to say, for the money which he loses through not being able to follow his usual occupation, and not his depreciation in money value, v. B.K. 86a.

(8) And not for the kind of compensation mentioned by Raba, which comes only under the head of 'incapacitation'.

(9) That on his master's day the money goes to the master and on his own day to himself.

(10) Who is liable also for incapacitation. The wording of the first passage will thus have to be amended.

(11) And not a Mishnah or Baraitha.

(12) Belonging to the classes mentioned above (sanctified, declared common properly, and half free) whose master can be forced to emancipate him but who still requires a deed of emancipation.

(13) Ex. XXI, 32.

(14) The reference is to the ruling given by Beth Hillel after they had been convinced by Beth Shammai that the master of a half-free slave could be forced to emancipate him, supra 43b.

(15) When Beth Hillel said that he could not be forced, and was therefore still master in the full sense of the term. This, however, is not the halachah.

(16) As being now a free man, v. Ex. XXI, 26. It is being, however, assumed at the present stage that the slave still needs a deed to complete his emancipation.

(17) We must say therefore that as soon as the tooth is knocked out he is no longer a slave, though he has not yet received a deed of emancipation. Hence we infer that a fine need not be paid for him either if he is killed by a goring ox.

(18) The Rabbis enumerated twenty-four maimings for the infliction of which by the master the slave obtained his freedom. V. Kid. 242, b.

(19) Who precisely these were is not recorded.

(20) Ex. XXI, 26, 27.

(21) In Kid. loc. cit.

(22) And not on a par with an express statement of the Torah.

(23) Lev. XXII, 11.

(24) [Or 'reported'. The passage quoted is actually a Mishnah. This is apparently another example of a ruling of a Tannaitic teaching reported by an Amora which found subsequently its way into the Mishnah, cf. Hoffmann, D. Die Erste Mishnah, pp. 156ff.]

(25) One as a priest and the other as the slave of a priest.

(26) The Rabbis ordained that a priest's slave should not collect the terumah from the threshing floor unless his master was with him, for fear that he might himself claim to be a priest.

(27) And yet until the deed of emancipation is given the one of them who was a slave could eat the terumah.

(28) Who can ascertain the truth of matter.

(29) I.e., he sells only his right to receive the thirty shekels, should the slave be gored to death.

(30) On the question whether it is possible to transfer ownership of something that does not yet exist.

(31) Lit., 'that has not come into the world'.

perhaps he will confess and release himself.[1] It is also a question for the Rabbis, [since we may say that] when the Rabbis said that a man cannot transfer something which does not yet exist, they were thinking for instance of the fruit of a date tree which at this moment at any rate does not exist, but in this case the ox exists and the slave exists. What [is the answer]? — R. Abba said: Come and hear: Such as are born in his house.[2] What is the point of these words? If the 'purchase of his money' can eat [terumah] how much more so one born in the house? If that were so, I should say, Just as the 'purchase of his money' must be one who has a money value, so the one 'born in his house' must have a money value. How then should I know that even one who has no money value[3] [may eat the terumah]? Because it says, 'such as are born in the house': in all circumstances. I might still maintain that one who is born in the house may eat whether he has a money value or not, but the purchase of his money' may eat only if he has a money value, but if he has no money value he may not eat. Therefore it says, 'The purchase of his money and one born in his house'. Just as one born in the house may eat whether he has a money value or not, so the purchase of his money may eat whether he has a money value or not. Now if you say that a slave who is sold by his master in respect of the fine only is actually sold, [the question can be asked], Is there a slave who is not worth selling for his fine?[4] — Yes, there is the one who has not long to live.[5] But he is still capable of waiting on him?[6] — We suppose him also to be loathsome or covered with boils.[7]

The question was raised: If one who is half a slave and half free affiances a free woman, how do we decide? Should you point out that if a son of Israel says to a daughter of Israel, 'Be affianced to half of me,'[8] she is affianced, [I may reply that this is so] because she is qualified for the whole of him, but this one is not qualified for the whole of him.[9] If again you point out that when an Israelite affiances half a woman she is not affianced,[10] [I may reply that this is so] because he left something over from his acquisition, but the slave leaves nothing over from his acquisition.[11] What [are we to say]? — Come and hear: If an [ox] kills one who is half a slave and half free, the owner gives half the fine to the master and half the ransom to the heirs of the slave. Now if you say that his betrothal is null and void, whence come heirs to him? — R. Adda b. Ahabah said: [We speak of the case] where [the ox] made him terefah,[12] and by 'heirs' is meant himself. Raba said: There are two objections to this answer. One is that it distinctly says 'heirs', and further [the sum paid] is a 'ransom', and Resh Lakish has laid down that a 'ransom' is only paid after death! — No, said Raba: [what we must say is that] he ought to receive the ransom, but he does not.[13] Raba said: Just as, if one affiance's half a woman, she is not affianced, so if a woman who is half a slave and half free is affianced, her betrothal is no betrothal. Rabbah son of R. Huna stated in a discourse: Just as if a man affiances half a woman she is not affianced, so if a woman who is half a slave and half free is affianced, she is not really betrothed. Said R. Hisda to him: Are the two cases similar? In the one [the man] leaves something over from his acquisition, in the other he leaves nothing over from his acquisition. Rabbah son of R. Huna thereupon called upon a public orator,[14] who discoursed as follows: 'This stumbling-block is under thy hand.[15] A man does not fully understand the words of the Torah until he has come to grief over them.[16] Although they have said that if a man affiances half a woman she is not affianced, yet if one who is half a slave and half free is affianced, her betrothal is a genuine one. What is the reason [for the difference]? In the one case he leaves something over from his acquisition, in the other case he leaves nothing over from his acquisition.' R. Shesheth, however, said: Just as if a man affiances half a woman she is not affianced, so if a woman who is half a slave and half free is affianced, her betrothal is no genuine one. If someone should whisper to you [the teaching], 'Who is the designated bondwoman?[17] The one who being half bondwoman and half free is betrothed to a Hebrew slave,'[18] which shows that she is capable of being betrothed, say to him, Go to R. Ishmael who says that [the Torah here speaks] of a Canaanitish bondwoman who is betrothed to a Hebrew slave.[19] Now is a Canaanitish bondwoman capable of being betrothed? We say therefore that by 'betrothed' R. Ishmael means 'allocated'.[20] So here too 'betrothed' means 'allocated'. R. Hisda said: If [a woman] half slave and half free is affianced to Reuben and then emancipated and then affianced to Simeon[21] and both of them [Reuben and Simeon] die, she may contract a levirate marriage with Levi

(1) The rule was that if a man admitted in the Beth din that he was liable to a fine before the evidence was brought against him, he was quit, v. B.K. 74b.

(2) This passage is a midrashic exposition of the verse, But if a priest buy any soul, the purchase of his money, he shall eat of it (the terumah); and such as are born in his house, they shall eat of his bread. Lev. XXII, 11.

(3) E.g., through being diseased or incapacitated.

(4) And if so, how can we speak of 'he purchase of his money' who is worth nothing?

(5) Lit., 'torn' (terefah): a name properly applied to animals which owing to certain disablements, e.g. the loss of certain limbs or the piercing of certain membranes, could not possibly live more than twelve months. A fine had not to be paid in respect of such a one.

(6) And therefore still has a money value.

(7) So that he is fit for nothing.

(8) Meaning, If I desire, I shall take a second wife, v. Kid. 72.

(9) Viz., for that part of him which is slave, and therefore she is not affianced.

(10) Since he should have affianced the whole of her, as a woman cannot have two husbands, v. Kid. ibid.

(11) And therefore she is affianced.

(12) I.e., unable to live more than twelve months. V. supra, note 2.

(13) Since he is as dead and has no heirs to whom to transmit it, as he cannot legally affiance a free woman.

(14) Lit., 'caused an Amora to stand by him'; the so-called 'Amora' or 'Meturgeman' who received the heads of the discourse from the Rabbi and then expatiated on them to the public.

(15) Isa. III, 6 (E.V. 'Let this ruin be under thy hand'). The term 'stumbling-block' is here applied to the Torah.

(16) Lit., 'been tripped up over them.' Rabbah b. R. Huna was referring to himself and acknowledging his mistake.

(17) I.e., the woman referred to in Lev. XIX, 20, by the words נחרפת לאיש (E.V. 'bondwoman betrothed to a man').

(18) Ker. 11a.

(19) Ibid.

(20) The word being used loosely and not in its strict legal sense which does not apply to a bondwoman.

(21) Reuben's brother.

Talmud - Mas. Gittin 43b

, and we do not place her in the category of the widow of two husbands.[1] For whichever way you take it, if the affiancing of Reuben was effective then the affiancing of Simeon was not effective, and if the affiancing of Simeon was effective then the affiancing of Reuben was not effective.[2]

It has been stated: If [a woman] who is half slave and half free was affianced to Reuben and then emancipated and became affianced to Simeon, R. Joseph said in the name of R. Nahman that [by means of the emancipation] the affiancing of the first is nullified,[3] whereas R. Zera said in the name of R. Nahman that it was consummated.[4] Said R. Zera: My view is the more probable since it is written, They shall not be put to death for she us not freed;[5] which implies that if she has been freed they are to be put to death. Said Abaye to him: And on the view of the Tanna of the school of R. Ishmael who said that [the verse speaks] of a Canaanitish bondwoman who is affianced to a Hebrew slave, are we to say that in this case also if she has been freed they are to be put to death?[6] What of course you have to assume in that case is that after she was freed she became affianced again.[7] Here too then we speak of a case where she was freed and became affianced again.[8]

R. Huna b. Kattina said: There was an actual case of a woman who was half slave and half free whose master they compelled to liberate her. Whose authority did they follow? — That of R. Johanan b. Baroka, who said: In reference to both of them [man and woman] the verse says. And God blessed then and God said unto them, Be fruitful and multiply etc.[9] — Said R. Nahman b. Isaac: This is not so; [the reason was that] they used her for immoral purposes.[10]

MISHNAH. IF A MAN SELLS HIS SLAVE TO A HEATHEN OR OUTSIDE THE LAND [OF ISRAEL] HE GAINS HIS FREEDOM.[11]

GEMARA. Our Rabbis have taught: If a man sells his slave to a heathen he gains his freedom, but he [still] requires a deed of emancipation[12] from his first master. Said Rabban Simeon b. Gamaliel: This is the rule if he did not make out a deed of oni.[13] If, however, he made out a deed of oni for him, this constitutes his emancipation. What is meant by oni? — R. Shesheth said: If he writes in it to this effect, viz., 'If you run away from him, I have no claim on you.'

Our Rabbis taught: 'If a man borrows money from a heathen giving his slave as pledge, so soon as the heathen has fixed' to him his nimus, he gains his freedom [if he escapes]. What is meant by 'his nimus'?[14] — R. Huna b. Judah said: It means, his collar.[15] R. Shesheth raised an objection [against this explanation from the following]: Metayers,[16] tenants,[17] and hereditary metayers, and a heathen who has mortgaged his field to an Israelite, even though he did fix to him a nimus, are not liable to tithe.'[18] If now you assume that nimus means a chain, can a chain be applied to a field? No, said R. Shesheth; what it means is a time limit.[19] Then the time limit has two opposite effects?[20] — There is no contradiction; in the one case [of the slave] we suppose the period to have terminated, in the other not. In the case of a slave whose period has expired do we need to be told [that he gains his freedom]? — No. Both refer to the case where the period has not expired, and still there is no contradiction, [since in] the one case the body [is transferred and in] the other only the increment.[21]

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(1) According to Yeb. 31b, if a woman's husband dies without issue and his brother makes formal declaration betrothing her but dies before marrying her, a second brother may not marry her but must give her halizah.

(2) If we suppose that a woman half slave and half free can be affianced, she was affianced to Reuben, and could not afterwards be affianced to Simeon. If again we suppose that such a woman cannot be affianced, she was not affianced to Reuben at all and therefore could be affianced to Simeon. In either case she was only affianced to one.

(3) Even if we regard it as effective, because the emancipation makes her as it were a new creature.

(4) So that if a man now has intercourse with her he is punishable with death and is not merely condemned to bring a guilt-offering, as laid down in Lev. XIX, 21.

(5) Ibid. 20.

(6) This cannot be, seeing that, as a bondwoman, she was never properly affianced.

(7) And then you can infer from the text that if she was freed they are to be put to death (if she thereafter commits adultery).

(8) And it is the betrothal of the second which is effective and not of the first.

(9) Gen. I, 28. This shows that marriage is as much incumbent on the woman as on the man.

(10) V. supra 382.

(11) If he escapes from his new master or if his first master is ordered by the Beth din to redeem him. V. infra.

(12) In order to marry an Israelitish woman.

(13) Prob. Gr. ** 'sale'.

(14) Prob. Gr. ** lit., 'law', 'custom', i.e., what the law or custom requires. v. Jast. [Buchler REJ, XLVIII, p. 32ff., brilliantly connects the words with the Gr. ** = 'enjoyment of possession', an act conferring 'ownership'.]

(15) Hung round the neck of a slave to show to whom he belongs. Al. 'bracelet', 'seal'.

(16) I.e., Israelites who lease land in Eretz Israel from heathens for a fixed proportion of the produce.

(17) Who lease land for a fixed payment in kind.

(18) Because in each case the land still belongs to the heathen proprietor, and this action does not signify Jewish ownership.

(19) Viz., the time within which the heathen should have paid his debt.

(20) Lit., 'there is a contradiction from "time" to "time"'. In the case of the field the expiry of the time does not remove it from the ownership of the first proprietor, in the case of the slave it does.

(21) In the case of the slave the body itself is sold at the expiry of the time (if the debt is not paid), and since the master transgressed a regulation of the Sages by selling his slave to a heathen they penalised him by cancelling his ownership even before the expiry of the time. But the field itself is not sold (to the Israelite) if the loan is not repaid at the expiry of

the time, only the increment, and therefore it does not become liable to tithe.

Talmud - Mas. Gittin 44a

Or if you like I can say that it refers to the case where he borrowed on condition that he should pledge and he did not pledge.[1]

Our Rabbis taught: If [a heathen] seizes the slave [of a Jew] on account of money owing to him, or if he is taken by the sicaricon,[2] he does not become free [if he escapes]. Is this really the rule if he is seized on account of debt?[3] [If so,] it would seem to conflict with the following: 'If the king's officers seize the corn in a man's granary, if it is on account of a debt due from him he must give tithe for it,[4] but if it is on account of anparuth,[5] he is not under obligation to give tithe?' — There the case is different, because they confer some advantage on him.[6] Come and hear: 'Rab said: If a man sells his slave to a heathen parhang[7] he becomes free [if he escapes]!' — There the reason is that he ought to have persuaded him to take something else, and he did not do so.

The text above [stated]: 'Rab said that if a man sells his slave to a heathen parhang he becomes free. What was he to do? — He should have persuaded him to take something else and he did not do so.' R. Jeremiah raised the question: Suppose he sold him for thirty days,[8] how do we decide? — Come and hear: Rab said, 'If a man sells his slave to a heathen parhang he becomes free'. — That refers to a heathen' parhang who is not likely to return. If he sells him [for all purposes] except for work,[9] how [do we decide]? If he sells him [for all purposes] save where a breach of the Jewish law is involved,[10] how [do we decide]? If he sells him [for work at all times] save on Sabbaths and festivals, how [do we decide]? If he sells him to a resident alien[11] or non-observant Israelite,[12] how [do we decide]? [If] to a Cuthean, how [do we decide]? — One of these questions at any rate may be definitely answered — A resident alien is on the same footing as a heathen. As for a Cuthean and a nonobservant Israelite, some say he is [on the same footing] as a heathen, and some [that he is on the same footing] as an Israelite.[13]

A question was asked of R. Ammi: If a slave throws himself into the hands of bandits and his master is unable to procure his return through the agency either of an Israelite or Gentile court, is he at liberty to receive payment for him [if offered]? — Said R. Jeremiah to R. Zerika: Go outside and look through your notes.[14] He went out, looked, and found that it was taught: If a man sells his house [in the land of Israel] to a heathen, the money paid for it is forbidden. If, however, a heathen forcibly takes a house of an Israelite, and the latter is unable to recover it either in a heathen or a Jewish court, he may accept payment for it and he may make out a deed for it and present it in heathen courts,[15] since this is like rescuing [money] from their hands.[16] But perhaps this applies only to a house, because since [a man] cannot do without a house he will not be induced[17] to sell it, but since [a man] can do without a slave, shall we say that [if we make this rule] he may be induced to sell? — R. Ammi sent back answer; From me, Ammi son of Nathan, the rule is issued to all Israel that if a slave throws himself into the hands of bandits and his master is unable to recover him either in a Jewish or a heathen court , [his master] is permitted to accept payment for him, and he may make out a deed and present it in heathen courts, because this is like rescuing [money] from their hands.

R. Joshua b. Levi said: If a man sells his slave to a heathen he can be penalised [by having to ransom him for] as much as a hundred times his value. Is the expression 'a hundred' here used exactly or loosely? — Come and hear, since Resh Lakish has said: If a man sells an ox to a heathen, he can be penalised by having to ransom it for as much as ten times its value.[18] Perhaps the rule for a slave is different, because every day he is kept away from religious observances. According: to another version R. Joshua b. Levi said: If a man sells his slave to a heathen he may be penalised by having to ransom him for as much as ten times his value. Is the expression 'ten' here used exactly or loosely? Come and hear, since Resh Lakish has said: If a man sells an ox to a heathen, he can be

penalised by having to ransom it for as much as a hundred times its value.[19] — The rule for a slave is different, because he is not restored to him. The reason then why in the case of an animal [the penalty is so high] is because it is returned to him. If so, the excess penalty should be the bare value of the animal?[20] — In fact the real reason is [that for a man to sell] a slave is unusual, and the Rabbis did not prescribe for unusual cases.[21]

R. Jeremiah enquired of R. Assi: If a man sells his slave and then dies, is there ground for penalising his son after him ? It is true you can point [to the rule that] if a priest mutilates the ear of a firstling[22] and then dies, his son is penalised after him; but this may be because he has broken a rule based on the Torah, whereas here we are dealing with a rule of the Rabbis.

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(1) At the expiry of the time. In the case of the field which the heathen offers to pledge to the Israelite, so long as the Israelite does not actually take it in pledge he may eat of the produce without giving tithe, because the field still belongs to the heathen. But if the Israelite offers to pledge the slave to the heathen and the latter has not yet taken him in pledge, should the slave escape the Sages forbade the Jew from claiming him as a punishment for offering to pledge him to a heathen (Rashi).

(2) Usually taken as = sicarius, brigands who infested Judea after the revolt of Bar Cochba. More probably a corruption of ** the Imperial fiscus in Judea. V. infra p. 252, n. 2.

(3) Lit., ‘and for his debt, no’.

(4) Which shows that this is regarded as a kind of sale, and the seller is therefore penalised.

(5) [This apparently means a debt payable by instalments, with the condition of forfeiture on missing one payment, distraint on account is which was reckoned as misappropriation. V. infra p. 272.]

(6) [By making him after all quit of the debt, therefore he is liable to give tithe. But in the case of the slave where the cancellation of the master's ownership is merely a punitive measure for transgressing the Rabbinic regulation, no such penalty can be inflicted where the slave was taken against his will.]

(7) Apparently, forced labour exacted by the Government or bandits.

(8) I.e., do we regard this as a breach of the regulation of the Rabbis and penalise him?

(9) I.e, he sells him to marry to a Canaanitish bond woman.

(10) Lit., ‘save for the precepts’.

(11) A heathen who settles in the land of Israel on condition of abstaining from idolatry, but without adopting the Jewish religion.

(12) Heb. מומר Lit. , ‘a changed (Israelite.)’ a Jew who neglects the practices without discarding the beliefs of Judaism.

(13) Because they kept certain of the commandments.

(14) Lit., ‘your mekilta’ (measure) a record of halachahs made by R. Zerika for his private use.

(15) For the signatures to be confirmed, although as a rule the Rabbis depreciated resulting to heathen courts.

(16) Which answers the question propounded to R. Ammi.

(17) By the knowledge that he can keep the money.

(18) A.Z. 15. This shows that the ‘hundred’ mentioned in the case of a slave is a hyperbole.

(19) And the same should apply to a slave.

(20) Because this is all the advantage that one who sells an ox has over one who sells a slave.

(21) To impose a particularly heavy fine.

(22) And so disqualifies it for being brought as a sacrifice. and thus enables himself to consume it as common flesh.

Talmud - Mas. Gittin 44b

If again you point [to the rule] that if a man prepares to do work during the half-festival[1] and then dies, his son is not penalised after him, the reason may be because he did not actually do anything forbidden. What do we say here?[2] Did the Rabbis penalise only the man but he no longer exists, or did they penalise his money and this does exist?[3] — He replied: [The answer is to be found in] what you have already learnt: ‘If a field has been cleared of thorns in the seventh year it can be sown on the expiration of the seventh year. If it has been manured or if cattle have been turned out[4] there in

the seventh year, it must not be sown at the expiration of the seventh year';[5] and [commenting on this] R. Jose son of R. Hanina said: We lay down that if he manured it and then died, his son may sow it. From this [we may infer] that the Rabbis penalised him but not his son.

Abaye said: We have it on tradition that if a man renders unclean stuff belonging to another which he desired to keep ritually clean, and then dies, [the Rabbis] have not penalised his son after him. What is the reason? Damage which is not perceptible[6] is not legally counted as damage [according to the Torah], and the penalty for it is Rabbinical in origin, and the Rabbis penalised the man who does the damage, but they did not penalise his son. OR ABROAD. Our Rabbis taught: 'If a man sells his slave abroad, he becomes free but he requires a deed of emancipation from his second master. Rabban Simeon b. Gamaliel says: Sometimes he becomes free and sometimes he does not become free. For instance, if the master says, I have sold my slave So-and-so to So-and-so an Antiochian, he does not become free.[7] If he says, To an Antiochian in Antioch, he does become free'. But has it not been taught: '[If a man says,] I have sold him to an Antiochian, he becomes free, but if he says, to an Antiochian living in Lydda,[8] he does not become free'? — There is no contradiction: in the one case we suppose he has a house in Eretz Israel, in the other that he has only a place of stay in Eretz Israel.[9]

R. Jeremiah put the question: If a Babylonian [Jew] marries a woman from Eretz Yisrael and she brings him in[10] male and female slaves and his intention is to return [to Babylon], what is the rule?[11] We have to ask this whether we accept the view that the husband has the right, or whether we accept the view that the wife has the right.[12] We have to ask it on the view that the wife has the right. Shall we say that since she has the right they are regarded as hers,[13] or perhaps since they are made over to him as far as the increment[14] is concerned they are regarded as his?[15] The question has equally to be asked on the view that the husband has the right. Seeing that he has the right, are they to be regarded as his, or since he does not acquire the body[16] are they still regarded as hers? — This must stand over.

R. Abbahu said: R. Johanan taught me, If a servant accompanies[17] his master to Syria[18] and his master sells him there, he becomes free. But R. Hiyya teaches that he loses his right?[19] There is no contradiction: in the one case we presume that his master intended to return,[20] in the other that he did not intend to return, as it has been taught: 'A slave must leave Eretz Israel with his master for Syria . . ., Must leave, you say? Assuredly he need not leave, seeing that we have learnt, 'Not all may take out.'[21] What [you mean is]: 'if a slave accompanies his master[22] from Eretz Israel to Syria and his master sells him there, if it was his master's intention to return he is compelled to emancipate him,[23] but if it was not his intention to return, he is not compelled.'

R. 'Anan said: I was told by Mar Samuel two things, one in relation to this point,[24] and one in relation to the statement, If a man sells his field in the Jubilee year, Rab says that it is sold but must be immediately returned,[25] whereas Samuel says that it is not sold in the first instance. In one case [he said] the purchase money is returned and in the other case it is not returned,[26] and I do not know which is which. Said R. Joseph: Let us see.[27] Since it is stated in the Baraitha that if a man sells his slave abroad he becomes free and requires a deed of emancipation from his second master, we infer that the second master became his legal owner and that the purchase money is not to be returned,[28] and therefore that when Samuel said in the other case [of the field] that the field is not sold in the first instance, the money is returned.

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(1) Work, the neglect or postponement of which would involve definite loss, was allowed to be done on the intermediate days of Passover and Tabernacles. If, however, a man deliberately brought a piece of work before the festival into such a condition that it would be spoilt if not finished during the festival, he was not allowed to finish it.

(2) Where the dead man did do a forbidden act.

(3) In she hands of the son, who therefore has to redeem the slave.

(4) For manuring purposes.
(5) Sheb. IV, 2.
(6) Such as rendering stuff ritually unclean.
(7) Because we presume that the Antiochian lives or is going to live in Eretz Israel.
(8) A town in Eretz Israel, on the border of Syria.
(9) But his real home is abroad, and therefore the slave sold to him becomes free.
(10) As that part of her dowry known as the 'property of the iron flock,' (Zon barzel, v. Glos) which the husband took over from her at a fixed valuation which was to be returned to her in case of his death or a divorce.
(11) Are they regarded as sold abroad or not?
(12) In case if a divorce, there is a difference of opinion among the authorities whether she has the right to claim the return of the original property, or whether he has the right to make her the money payment stipulated, v. Yeb. 66b.
(13) And therefore are not sold, and so may safely be taken to Babylon.
(14) In this case, the labour of the slaves.
(15) And he is regarded as having purchased them from the wife, and therefore they may not be taken to Babylon.
(16) I.e., complete ownership of the slaves, since if he dies or divorces her, they are returned to her.
(17) Of his own free will.
(18) The Biblical Aram Zoba, which was conquered by King David, but was not regarded as an integral part of Eretz Israel.
(19) By leaving Eretz Israel.
(20) And the slave followed him on that assumption.
(21) Keth. 110b. The rule is there laid down that a master cannot force his slave to leave Eretz Israel with him.
(22) Of his own free will.
(23) Even though the slave accompanied him voluntarily.
(24) Of a slave sold abroad.
(25) In accordance with the law of the Jubilee, Lev. XXV, 10, 12.
(26) These are the two things told by Samuel to R. 'Anan.
(27) The emphasis is on the 'us'.
(28) For otherwise he ought to obtain his deed of emancipation from the first master.

Talmud - Mas. Gittin 45a

Rab 'Anan, however, was not acquainted with this Baraitha,[1] and as to Samuel's dictum, how could he infer from it that, the field not being sold, the money was to be returned? Perhaps, though the field was not sold, the money was to be regarded as a gift, on the analogy of a man who affiances his sister, in regard to which it has been stated. 'If a man affiances his sister,[2] Rab says that the [betrothal] money is to be returned, while Samuel says that it is to be regarded as a gift'.

Said Abaye to R. Joseph: Why should you want us to penalise the purchaser?[3] Let us penalise the vendor! — He replied. It is not the mouse that is the thief but the hole. If there were no mouse, he retorted, how should the hole come by it? — It is only reasonable that where the forbidden stuff is found,[4] there we should impose the penalty.

A certain slave escaped from abroad to Eretz Israel and was pursued by his master. The [latter eventually] came before R. Ammi, who said to him, Let him make you out a bond for his value, and you must make out a deed of emancipation for him; otherwise I will make you forfeit him in accordance with the view of R. Ahi son of R. Josiah. For it has been taught: '[It is written], They shall not dwell in thy land lest they make thee sin against me, etc.[5] Shall I say that the text speaks of a heathen who has undertaken not to practise idolatry? [This cannot be, because] it is written, Thou shalt not deliver unto his master a servant which is escaped from his master unto thee.[6] What is to be done with him? He shall dwell with thee etc.'[7] R. Josiah found it difficult to accept this explanation, because instead of 'from his master' it should be 'from his father'.[8] Therefore R. Josiah explained the verse to speak of a man who sells his slave abroad. R. Ahi son of R. Josiah in turn found it

difficult [to accept this explanation], because instead of ‘which is escaped unto thee’ it should be ‘which is escaped from thee.’ R. Ahi son of R. Josiah therefore explained the verse to speak of a slave who escapes from abroad to Eretz Israel.[9]

Another [Baraitha] taught: ‘Thou shalt not deliver unto his master a servant’: Rabbi says that the verse is speaking of a man who buys a slave on the understanding that he will emancipate him.[10] How are we to understand this? — R. Nahman b. Isaac said: He makes out a deed in these terms: ‘When I buy you, you shall be regarded as having been your own master [retrospectively] from now.

A slave of R. Hisda's escaped to the Cutheans. He sent word to them that they should return him. They quoted to him in return the verse, ‘Thou shalt not deliver unto his master a servant’.[11] (He quoted to them in return, So thou shalt do with his ass and so thou shalt do with his garment; and so shalt thou do with every lost thing of thy brother's.[12] But, they retorted, it is written, ‘Thou shalt not deliver unto his master a servant’?) He sent to them to say: That refers to a slave who escapes from abroad to Eretz Israel, as explained by R. Ahi son of R. Josiah. Why did he quote to them the interpretation of R. Ahi son of R. Josiah [and not rather that of Rabbi]?[13] — Because this accords more with the literal meaning of the verse.[14]

Abaye lost an ass among Cutheans. He sent to them saying, Send it back to me. They sent to him saying, Give us a mark of identification. He sent word to then, that its belly was white. They sent him back word: Were you not Nahmani,[15] we would not send it to you. Have not all asses white bellies?

MISHNAH. CAPTIVES SHOULD NOT BE REDEEMED FOR MORE THAN THEIR VALUE, TO PREVENT ABUSES.[16] CAPTIVES SHOULD NOT BE HELPED TO ESCAPE, TO PREVENT ABUSES.[17] RABBAN SIMEON B. GAMALIEL SAYS [THAT THE REASON IS] TO PREVENT THE ILL-TREATMENT OF FELLOW CAPTIVES.[18]

GEMARA. The question was raised: Does this prevention of abuses relate to the burden which may be imposed on the community or to the possibility that the activities [of the bandits] may be stimulated? — Come and hear: Levi b. Darga ransomed his daughter for thirteen thousand denarii of gold.[19] Said Abaye: But are you sure that he acted with the consent of the Sages? perhaps he acted against the will of the Sages.

CAPTIVES SHOULD NOT BE HELPED TO ESCAPE, TO PREVENT ABUSES. RABBAN SIMEON B. GAMALIEL SAYS, THE REASON IS TO PREVENT THE ILL-TREATMENT OF FELLOW CAPTIVES. What practical difference does it make which reason we adopt? — The difference arises where there is only one captive.[20]

The daughters of R. Nahman used to stir a cauldron with their hands when it was boiling hot.[21] R. ‘Ilish was puzzled about it. It is written [he said], One man among a thousand have I found, but a woman among all those have I not found:[22] and here are the daughters of R. Nahman![23] A misfortune happened to them and they were carried away captive, and he also with them. One day a man was sitting next to him who understood the language of birds. A raven came and called to him, and R. ‘Ilish said to him, What does it say? It says, he replied, "’Ilish, run away, ‘Ilish, run away". He said, The raven is a false bird, and I do not trust it. Then a dove came and called. He again asked, What does it say? It says, the man replied, "’Ilish, run away, ‘Ilish run, away." Said [‘Ilish]: The community of Israel is likened to a dove;[24] this shows that a miracle will be performed for me. He then [said to himself], I will go and see the daughters of R. Nahman; if they have retained their virtue, I will bring them back. Said he to himself: Women talk over their business in the privy. He overheard them saying, These men are [our] husbands just as the Nehardeans [were] our husbands. Let us tell our captors to remove us to a distance from here, so that our husbands may not come and

hear [where we are] and ransom us. R. 'Ilish then rose and fled, along with the other man. A miracle was performed for him, and he got across the river,[25] but the other man was caught and put to death. When the daughters of R. Nahman came back, he said, They stirred the cauldron by witchcraft.

MISHNAH. NEITHER SHOULD SCROLLS OF THE LAW, PHYLACTERIES AND MEZUZOTH[26] BE BOUGHT FROM HEATHENS AT MORE THAN THEIR VALUE,

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(1) About the slave, to enable him to solve the question himself.
(2) An action in itself null and void.
(3) Who buys the slave.
(4) Viz., in the hands of the purchaser.
(5) Ex. XXIII, 33.
(6) Deut. XXIII, 16.
(7) Which shows that heathens who do not practise idolatry are allowed to dwell in the land.
(8) Another reading is. 'From his god'. The meaning is in either case the same.
(9) In which case he is not to be delivered to his master.
(10) And from that moment he is compelled to free him.
(11) The passage in brackets is omitted in some texts.
(12) Deut. XXII, 3.
(13) Who was a greater authority.
(14) And the Samaritans had more regard for the Written Law than for the Rabbis.
(15) V. supra 34a. The meaning is: If we did not know you for a pious man who would not deceive us.
(16) Lit., 'for the good order of the world'. I.e., so that the captors should not demand excessive ransoms.
(17) Lest captors might put their captives in chains and otherwise maltreat them.
(18) Lit., 'for the good of the captives'. And not of captives in general.
(19) This shows that if an individual is willing to pay more he may do so, and the reason is because of the burden imposed on the community.
(20) In this case the reason of Rabban Simeon b. Gamaliel does not apply, and according to him the captive may be helped to escape.
(21) Without scalding their hands, apparently on account of their piety.
(22) Eccl. VII, 28.
(23) Who apparently are righteous.
(24) E.g., in the verse, Open to me, my sister, my love, my dove, my undefiled (Cant. V, 2).
(25) Lit., 'the ferry'.
(26) V. Glos.

Talmud - Mas. Gittin 45b

TO PREVENT ABUSES.[1]

GEMARA. R. Budia said to R. Ashi: [The Mishnah says that] they must not be bought at more than their value, but [presumably] they may be bought at their value. This would show that a scroll of the Law which is found in the possession of a heathen may be read?[2] — Perhaps it can be bought to be stored away. R. Nahman said: We have it on tradition that a scroll of the Law which has been written by a Min[3] should be burnt, and one written by a heathen should be stored away. One that is found in the possession of a Min should be stored away; one that is found in the possession of a heathen according to some should be stored away and according to others may be read. With regard to a scroll of the Law which has been written by a heathen, it has been taught by one authority that it should be burnt, and it has been taught by another authority that it should be stored away, and it has been taught by another authority that it may be read. There is, however, no contradiction. The view that it should be burnt follows R. Eliezer, who said that the intention of the heathen is normally idolatrous;[4] the view that it should be stored away follows the Tanna of the following passage: For

R. Hamnuna the son of Raba of Pashrunia learnt that a scroll of the Law, phylacteries and mezuzoth written by a Min,[5] an informer, a heathen, a slave, a woman, a minor, a Cuthean[6] and an irreligious Jew[7] are disqualified, since it says. And thou shalt bid them . . . and thou shalt write them,[8] which indicates that those who are subject to 'bind' may 'write', but those who do not 'bind' may not 'write'. The statement that such a scroll may be read follows the Tanna [of the following passage] where it has been taught: Scrolls of the Law may be bought from heathens in all places, provided only that they are written in the prescribed manner. A case arose of a heathen in Sidon who used to write scrolls of the Law, and Rabban Simeon b. Gamaliel permitted them to be bought from him.[9] Seeing that Rabban Simeon b. Gamaliel requires the tanning of the parchment to have been for the specific purpose,[10] will he not require the writing to have been for the specific purpose? For it has been taught: If a man overlays the phylacteries with gold or covers them with the skin of an unclean animal, they are disqualified; [if with] the skin of a clean animal, they are fit for use, even though he did not tan it for the specific purpose. Rabban Simeon b. Gamaliel says: Even if covered with the skin of a clean animal they are disqualified unless it has been tanned for the specific purpose![11] — Rabbah b. Samuel explained that [the heathen of Sidon was] a proselyte who had reverted to his previous errors.[12] But that is worse, for he is a Min?[13] R. Ashi said: It means one who reverted to his old religion out of fear.[14]

Our Rabbis taught: 'The price offered may exceed their value to the extent of a tropaic.'[15] How much is a tropaic? — R. Shesheth says: An aster.[16]

An Arab woman brought a bag of phylacteries to Abaye. Let me have them, he said, at a couple of dates for a pair. She became furious and took them and threw them into the river. Said Abaye: I should not have made them look so cheap to her as all that.

MISHNAH. IF A MAN DIVORCES HIS WIFE BECAUSE OF ILL FAME, HE MUST NOT REMARRY HER.[17] IF BECAUSE SHE MAKES A VOW,[18] HE MUST NOT REMARRY HER. R. JUDAH SAYS: [IF HE DIVORCES HER] FOR VOWS WHICH SHE MADE PUBLICLY, HE MAY NOT REMARRY HER, BUT IF FOR VOWS WHICH SHE DID NOT MAKE PUBLICLY, HE MAY REMARRY HER.[19] R. MEIR SAYS, [IF HE DIVORCES HER] FOR A VOW WHICH REQUIRES THE INVESTIGATION OF A SAGE,[20] HE MAY NOT REMARRY HER, BUT IF FOR ONE WHICH DOES NOT REQUIRE THE INVESTIGATION OF A SAGE, HE MAY REMARRY HER.[21] R. ELIEZER SAYS THAT ONE WAS ONLY FORBIDDEN ON ACCOUNT OF THE OTHER. R. JOSE SON OF R. JUDAH SAID: A CASE HAPPENED IN SIDON OF A MAN WHO SAID TO HIS WIFE, KONAM,[22] IF I DO NOT DIVORCE YOU, AND HE DID DIVORCE HER,[23] AND THE SAGES PERMITTED HIM TO REMARRY HER — ALL THIS TO PREVENT ABUSES.[24]

GEMARA. R. Joseph b. Manyumi said in the name of R. Nahman: The rule [that he must not remarry her] applies only if he says to her, 'I am divorcing you on account of your evil name',

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(1) Lit., 'for the good order of the world'. Viz., so that an excessive price should not be demanded.

(2) A question on which a difference of opinion is expressed lower down.

(3) Apparently this name is applied here to a heathen bigot or fanatic, v. Glos.

(4) So that the scroll was written for an idolatrous purpose.

(5) In some texts this word is omitted.

(6) The Cutheans (Samaritans) kept certain of the commandments, but were not regarded as genuine proselytes.

(7) Heb. מומר , V. supra p. 190, n. 9.

(8) Deut. VI, 8, 9.

(9) Tosef. A.Z. III.

(10) Lit., 'for its own name,' which of course could not be done by a heathen.

(11) V. Sanh. 48b.

(12) He knew that they must be written for the specific purpose.
(13) V. supra p. 199, n. 1.
(14) Of the other heathens.
(15) I.e., we are not particular to this amount.
(16) Half a denar.
(17) Even if the scandal proves to be unfounded. The reasons for this and the following rules are discussed in the Gemara.
(18) A habit of which he may disapprove, even though the vow may be annulled.
(19) R. Judah was of opinion that vows made publicly could not be annulled.
(20) [I.e., one which can be remitted only by a Sage after due investigation by him of the circumstances in which the vow was made, (cf. supra 35b) and which the husband could not annul on his own account.]
(21) [R. Eliezer differs from R. Meir, and holds that a man may not remarry his wife if he divorces her for a vow which does not require the investigation of a Sage, and since he is forbidden in this case, he is forbidden in the other also.]
(22) A species of vow. V. infra.
(23) The bearing of this on the subject in hand is discussed in the Gemara.
(24) Lit., 'for the good order of the world'. The Gemara discusses which part of the Mishnah these words refer to.

Talmud - Mas. Gittin 46a

'I am divorcing you on account of your vow'. His view was that the reason [why he must not remarry her] was to prevent [him making] mischief subsequently.[1] If he uses these words to her he can make mischief for her,[2] but if not, he cannot make mischief for her.[3] Some there are who report: R. Joseph b. Manyumi said in the name of R. Nahman: He has to say to her, 'Understand that I am divorcing you on account of your evil name'; 'I am divorcing you on account of your vowing'. His view was that the reason [why he must not remarry her] is to prevent the daughters of Israel from becoming dissolute or too prone to vows;[4] hence he is required to address her thus.[5]

There is a teaching in support of the first version and a teaching in support of the second version. It has been taught in support of the first version: R. Meir says: Why has it been laid down that if a man divorces his wife on account of ill fame or on account of a vow he must not remarry her? For fear that she may go and marry another and then it may be discovered that the charge against her was unfounded and he will say, Had I known this was the case, I would not have divorced her even for a hundred manehs, and so the Get becomes retrospective]y void[6] and her children [from the second husband] illegitimate. Therefore they say to him [when he comes to give the divorce], Know that a man who divorces his wife on account of ill fame must not remarry her, or [if he divorces her] on account of a vow he must not remarry her.[7] It has been taught in support of the second version: R. Eleazar son of R. Jose says: Why has it been laid down that if a man divorces his wife on account of a scandal he should not remarry her, or on account of a vow that he should not remarry her? In order that the daughters of Israel should not become dissolute or too prone to vows.[8] Therefore they tell him: Say to her, Understand that I am divorcing you on account of your ill fame, I am divorcing you on account of a vow.

R. JUDAH SAYS: IF HE DIVORCES HER FOR VOWS WHICH SHE MADE PUBLICLY, HE MAY NOT REMARRY HER,[9] BUT IF FOR A VOW WHICH SHE DID NOT MAKE PUBLICLY, HE MAY REMARRY HER.[10] R. Joshua b. Levi said: What is the reason of R. Judah [for holding that a vow made publicly may not be annulled]? Because the Scripture says, And the children of Israel smote them not, because the princes of the congregation had sworn unto them.[11] And what do the Rabbis[12] [make of this verse]? — [They reply:] Did the oath there become binding upon them at all? Since they [the Gibeonites] said, We are come from a far country,[13] whereas they had not come from one, the oath was never binding; and the reason why the Israelites did not slay them was because [this would have impaired] the sanctity of God's name.[14]

How many form a 'public'?[15] — R. Nahman says, three, R. Isaac says, ten. R. Nahman says three, [interpreting] 'days' [to mean] two and 'many' three.[16] R. Isaac says ten, because the Scripture calls ten a 'congregation'.[17]

R. MEIR SAYS, EVERY VOW THAT REQUIRES etc. It has been taught: 'R. Eleazar says: A vow requiring [investigation] was made a ground for prohibition only on account of a vow which does not require [investigation].[18] What is the point at issue [between R. Meir and R. Eleazar]? — R. Meir held that a man does not mind the indignity of his wife appearing in a Beth din,[19] whereas R. Eleazar held that a man is averse to subjecting his wife to the indignity of appearing in a Beth din.[20]

R. JOSE SON OF R. JUDAH SAID, A CASE HAPPENED IN SIDON etc. What has preceded that this should be given as an illustration?[21] — There is a lacuna, and the Mishnah should run thus: 'These rules apply only in the case where the wife vowed, but if he vowed he may remarry, and R. Jose son of R. Judah adduced a case which happened in Sidon of a man who said to his wife, Konam if I shall not divorce you, and he did divorce her, and the Sages permitted him to remarry her, to prevent abuses.'

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(1) [I.e., attacking the validity of the second marriage, which the woman might contract, and the legitimacy of the ensuing offspring by saying that if he had known that the charge against her was false, or that the vow could have been annulled, he would not have divorced her. V. infra.]

(2) By saying that he gave the Get under a misapprehension. But if he cannot remarry her, he has no motive to do so.

(3) And therefore there is no reason why we should forbid him to remarry her.

(4) Since the possibility of their being divorced in this way will act as a deterrent.

(5) But even if he does not, he still may not remarry her, this being her punishment.

(6) As having been given under a misunderstanding.

(7) And if in spite of this he divorces her, he shows that he is not fond of her, and cannot subsequently say that the Get was given under a misapprehension.

(8) As explained p. 201, n. 7.

(9) Because such a vow cannot be annulled and the woman is punished for making it.

(10) R. Judah holds that the reason why he must not remarry her is to prevent the women becoming too prone to vows, and this reason does not apply if the vow in question is one that can be annulled.

(11) Josh. IX, 18. The reference is to the Gibeonites who were spared although belonging to the 'seven nations'. Had the oath not been given in public, a way could have been found to annul it, since it was given under a misapprehension.

(12) Who hold that vows made publicly may be annulled.

(13) Josh. IX. 9.

(14) Since the princes had sworn to them by the Lord, ibid.

(15) רבים , lit., 'many'.

(16) In the verse, And if a woman have an issue of her blood many days (Lev. XV, 25), 'many' denoting there 'three', v. Nid. 73a.

(17) Num. XIV, 27: How long shall I bear with this evil congregation, where the reference is to ten of the twelve spies, v. Sanh. 2a.

(18) V. infra n. 6.

(19) To be questioned about her vow. R. Meir was of opinion that the reason of the prohibition was to prevent the husband from making mischief subsequently, and this he could do only if the vow was one which he could not annul but which a Sage could remit.

(20) And therefore by rights we should not prohibit remarrying if the divorce was given on the ground of a vow of this kind, since the husband cannot afterwards make mischief. R. Eleazar, however, holds that if the vow is one which the husband could have annulled (though he did not know it at the time), he can make mischief, and we do prohibit the remarriage, and since we prohibit in this case we prohibit also in the other.

(21) Hitherto the Mishnah has spoken of vows made by the wife, and R. Jose gives an instance of a vow made by a husband.

What konam[1] was there here? — R. Huna said: We suppose he said, Every species of produce shall be forbidden to me if I do not divorce you.

AND THEY PERMITTED HIM TO REMARRY HER. This surely is self-evident? — You might think that we should prohibit him on account of the dictum of R. Nathan, as it has been taught: R. Nathan says: To make a vow is like building a high place[2] and to keep it[3] is like bringing an offering thereon. Therefore we are told [that this is not so].

TO PREVENT ABUSES. What prevention of abuses is there here? — R. Shesheth said that the words refer to the earlier clauses [of the Mishnah]:[4] Rabina said that they refer indeed to the last clause, and the meaning is, There was no ground for forbidding this on the score of preventing abuses.

MISHNAH. IF A MAN DIVORCES HIS WIFE BECAUSE [HE FINDS HER] TO BE INCAPABLE OF BEARING,[5] R. JUDAH SAYS HE MAY NOT REMARRY HER,[6] BUT THE SAGES SAY THAT HE MAY REMARRY HER.[7] IF SHE MARRIES AGAIN AND HAS CHILDREN FROM THE SECOND HUSBAND AND THEN DEMANDS HER KETHUBAH SETTLEMENT FROM THE FIRST,[8] R. JUDAH SAYS, HE CAN SAY TO HER, THE LESS YOU SAY THE BETTER.[9]

GEMARA. This would seem to show that R. Judah takes into account the possibility of mischief-making and the Rabbis do not take it into account. But we have found the opposite opinions ascribed to them, as we have learnt: If a man divorces his wife on account of ill fame or on account of a vow she has made, he must not remarry her. R. Judah says: If the vow was made publicly, he may not remarry her, but if it was not made publicly he may remarry her.[10] This seems to show that the Rabbis take account of the possibility of mischief-making and R. Judah does not take account of it? — Samuel said: Reverse the names.[11] But since the Mishnah goes on to say, IF SHE MARRIES AGAIN AND HAS CHILDREN FROM THE SECOND HUSBAND, AND THEN DEMANDS HER KETHUBAH SETTLEMENT FROM THE FIRST, R. JUDAH SAYS THAT HE CAN SAY TO HER, THE LESS YOU SAY THE BETTER, we can conclude that R. Judah does take into account the possibility of mischief making? — Reverse the names here also.[12] Abaye said. There is no need to reverse, since R. Judah in that[13] case concurs both with R. Meir and with R. Eleazar. In the case [of a vow] which requires [the investigation of a Sage] he concurs with R. Eleazar,[14] and in the case [of a vow] which does not require [investigation] he concurs with R. Meir.[15] Raba said: Is there a contradiction between the statements of R. Judah and no contradiction between the statements of the Rabbis?[16] — No, said Raba; Between the statements of R. Judah there is no contradiction, as has been explained. Between the statements of the Rabbis there is also no contradiction. For who are the Sages [here]? R. Meir, who said that we require the condition to be duplicated,[17] and here we are dealing with a case where he did not duplicate his condition.[18]

MISHNAH. IF A MAN SELLS HIMSELF AND HIS CHILDREN TO A HEATHEN, HE IS NOT TO BE REDEEMED. HIS CHILDREN, HOWEVER, ARE TO BE REDEEMED AFTER THE DEATH OF THEIR FATHER.

GEMARA. R. Assi said: This rule applies only if he sold himself a second and a third time. Certain [Jews of] Bemekse[19] borrowed money from heathens, and when they were unable to pay the latter seized them for slaves. They appealed to R. Huna, who said: What can I do, seeing that we have learnt IF A MAN SELLS HIMSELF AND HIS CHILDREN TO A HEATHEN HE IS NOT TO BE REDEEMED? R. Abba thereupon said to him: You have taught us, Master, that this applies only if he has so sold himself a second and a third time. R. Huna replied: These men do this habitually.

A certain man sold himself to the Lydians[20] and then appealed to R. Ammi saying,

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(1) The effect of a konam is to declare something forbidden to him who utters it in the same way as sanctified stuff. (Konam is probably derived from Aramaic kenom 'self', 'person' and is thus the object of an elliptical sentence, 'I pledge (myself) my person with So-and-so (that I will, or will not, do this or that)'; v. Cooke, North Semitic Inscriptions p. 34; and Ned. 2a.)

(2) In the periods when the high places were forbidden, i.e., when the Temple stood.

(3) Instead of seeking absolution from a wise man.

(4) The prohibition to remarry.

(5) אילונית lit., 'ramlike', manlike, v. Keth. 11a.

(6) For fear that she may marry another and bear him children and the first husband may then say that he only divorced her with the intention of remarrying her if she should become capable of bearing, and so throw suspicion on the validity of the Get. But if he knows from the outset that he cannot remarry her, he will not do this.

(7) As this danger is too remote to need providing against.

(8) Which she did not receive on divorce, v. Keth. 100b.

(9) Lit., 'your silence is better than your speech'.

(10) Mishnah, supra 45b.

(11) In the first clause of our Mishnah.

(12) In the second clause of our Mishnah.

(13) In the earlier Mishnah.

(14) That a man does not like his wife to be brought before the Beth din. Hence in this case he cannot say, 'if I had known etc.' and there is no likelihood of his making trouble if she marries another.

(15) That the husband will be fully cognisant of the kind of vow which he can annul, and so in this case also there is no likelihood of his making trouble. Where, however, there is a possibility of his making trouble, R. Judah will agree that we have to provide against it.

(16) They seem to contradict themselves as much as R. Judah.

(17) I.e., expressed both positively and negatively. V. infra, 75a.

(18) I.e., he did not say 'I divorce you because you are barren, and if you are not barren this is no Get', so that the condition has no effect upon the Get.

(19) [A frontier town on the South-western border of Babylon. (Obermeyer. op. cit. p. 334)]-

(20) לודאי A tribe of cannibals (Rashi). [Or 'ludarii' [ludi], people who arrange and hire men for gladiatorial contests to kill off with the finishing stroke the enraged beasts; v. Graetz, Geschichte, IV, p. 238, and Krauss, AT, I. p. 701.]

Redeem me. So he said:[1] We have learnt, IF A MAN SELLS HIMSELF AND HIS CHILDREN TO A HEATHEN HE IS NOT TO BE REDEEMED, BUT HIS CHILDREN ARE TO BE REDEEMED AFTER THE DEATH OF THEIR FATHER, to prevent their going astray.[2] All the more so then here, where there is a danger of their being killed. The Rabbis said to R. Assi: This man is a non-observant Israelite, who has been seen eating non-Jewish meat.[3] He said to them: possibly he did so because he wanted[4] [meat, and could get no other]? They said: There have been times when he had the choice of permitted and forbidden meat and he left the former and took the latter. He thereupon said to the man: Be off; they will not let me ransom you.

Resh Lakish[5] once sold himself to the Lydians. He took with him a bag with a stone in it, because, he said, it is a known fact that on the last day they grant any request [of the man they are about to kill] in order that he may forgive them his murder.[6] On the last day they said to him, What would you like? He replied: I want you to let me tie your arms and seat you in a row and give each one of you a blow and a half with my bottle. He bound them and seated them, and gave each of them a blow with his bag which stunned him. [One of them] ground his teeth at him. Are you laughing at me? he said. I have still half a bag left for you. So he killed them all and made off. As he was once seated [on the ground] eating and drinking,[7] his daughter said, Don't you want something to recline on? He replied: Daughter, my belly is my cushion.[8] At his death he left a kab[9] of saffron, and he applied to himself the verse, And they shall leave to others their substance.[10]

MISHNAH. IF A MAN SELLS HIS FIELD TO A HEATHEN, HE HAS TO BUY [YEARLY] THE FIRSTFRUITS FROM HIM AND BRING THEM TO JERUSALEM,[11] TO PREVENT ABUSES.[12]

GEMARA. Rabbah said: Although a heathen cannot own property in the land of Israel so fully as to release it from the obligation of tithe, since it says, For mine is the land,[13] as much as to say, mine is the sanctity of the land,[14] yet a heathen can own land in the Land of Israel so fully as to have the right of digging in it pits, ditches and caves, as it says, The heavens are the heavens of the Lord, but the earth he gave to the sons of man.[15] R. Eleazar, however, said: Although a heathen can own land so fully in the land of Israel as to release it from the obligation of tithe, since it says, [The tithe of] thy corn,[16] which implies, 'and not the corn of the heathen,' yet a heathen cannot own land in the Land of Israel so fully as to have the right of digging in it pits, ditches and caves, since it says, The earth is the Lord's.[17] What is the point at issue between them? — One[18] holds that [we interpret the word 'thy corn'] to mean 'thy corn and not the corn of the heathen' and the other holds that we interpret it to mean, 'thy storing and not the storing of the heathen.'[19] Rabbah said: Whence do I derive my view? Because we have learnt: Gleanings, forgotten sheaves, and produce of the corner belonging to a heathen are subject to tithe unless he has declared them common property.[20] How are we to understand this? Are we to say that the field belongs to an Israelite and the produce has been gathered by a heathen? If so, what is the meaning of 'unless he declared them common property,' seeing that they are already such?[21] We must therefore say that the field belongs to a heathen and an Israelite has gathered the produce, and the reason why he has to give no tithe from them is because he declared them common property, but otherwise he would be liable![22] — This is not conclusive. I may still hold that [the field spoken of] belongs to an Israelite and that a heathen has gathered the produce; and as for your argument that it is already declared common property, granted that it is such in the eyes of the Israelite, is it such in the eyes of the heathen?[23]

Come and hear: If an Israelite bought a field from a heathen before the produce was a third grown and sold it back to him after it was a third grown, it is subject to tithe,[24] because it was so already[25] [before he sold it back]. The reason is [is it not] because it was so already, but otherwise it would not be subject?[26] — We are dealing here with a field in Syria, and [the author of this dictum] took the

view that the annexation of an individual[27] is not legally counted as annexation.[28] Come and hear: 'If an Israelite and a heathen buy a field in partnership.

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(1) [R. Ammi to the scholars present. The word 'to him' in current editions is to be deleted, v. Bah.]

(2) By learning the ways of the heathen, of which there was not so much danger when their father was alive.

(3) Lit., 'nebelah and terefah', i.e., meat from an animal not killed according to the Jewish rite or disqualified on account of some physical defect. V. Glos.

(4) Lit., 'for desire' to satisfy the appetite.

(5) In his early years Simeon b. Lakish was a brigand.

(6) Lit., 'his blood'. [Aruch 'that his blood may be sweet'. By fulfilling his wishes they will enjoy his blood without remorse].

(7) It was one of the characteristics of Resh Lakish that he never made provision for the morrow.

(8) It was his custom to lie on his stomach. Cf. Zeb. 5.

(9) A small measure.

(10) Ps. XLIX, 11.

(11) This is the rendering of Rashi. According to another reading, which Tosaf. considers preferable, we should translate 'Anyone who buys it from him has to bring the firstfruits etc.'

(12) I.e., to deter people from selling their land to heathens, or to stimulate them to redeem it if they have sold it.

(13) Lev. XXV, 23.

(14) That is to say, it remains holy even in the hand of the heathen, and tithe must be brought from it.

(15) Ps. CXV, 16.

(16) Deut. XIV, 23.

(17) Ps. XXIV, 1.

(18) R. Eleazar.

(19) [The obligation for tithing comes into force only after the crop has been finally turned into corn (v. Ma'as I, 6); and according to Rabbah the verse exempts only such corn as has been at that time in the ownership of the non-Jew. Where, however, a Jew had been responsible for the final process as owner, there is liability although the crop grew in soil belonging to a non-Jew, because a non-Jew cannot own property in Eretz Israel so fully as to release it from the obligation to tithe.]

(20) Pe'ah IV, 9.

(21) Ipso facto, even without any declaration on the part of the owner, v. Lev. XIX. 9, 10.

(22) Which would show that normally a field sold to a heathen is still subject to tithe.

(23) [Consequently should a Jew buy these gleanings from the non-Jew, he will have to give tithes unless the original owner had declared them common property.]

(24) Should another Jew buy the produce from the heathen and turn it into grain.

(25) The rule was that produce became liable for tithe as soon as it was a third grown. R.H. 12.

(26) Which would show that normally a field sold to a heathen is not subject to tithe.

(27) King David. V. supra p. 25, n. 3.

(28) [And ownership of a field in Syria by a heathen does release the produce from the tithing obligation, which is there merely of rabbinic origin.]

Talmud - Mas. Gittin 47b

tebel and hullin[1] are inextricably mixed up in it.[2] This is the view of Rabbi. Rabban Simeon b. Gamaliel says that the part belonging to the heathen is exempt [from tithe], and the part belonging to the Israelite is subject to it'.[3] Now [are we not to say that] the extent of their difference consists in this, that the one authority [R. Simeon] holds that a distinction can be made retrospectively,[4] while the other holds that no distinction can be made retrospectively, but both are agreed that a heathen can own land in the land of Israel so fully as to release it from the obligation of tithe?[5] — Here too we are dealing with land in Syria, and [R. Simeon] took the view that the annexation of an individual is not legally regarded as annexation. R. Hiyya b. Abin said: Come and hear. IF ONE SELLS HIS FIELD TO A HEATHEN, HE MUST BUY FROM HIM THE FIRSTFRUITS AND TAKE THEM

TO JERUSALEM, TO PREVENT ABUSES. That is to say, the reason is to prevent abuses, but the Torah itself does not prescribe this?[6] — R. Ashi replied: There were two regulations. At first they [the sellers of the fields] used to bring the firstfruits as enjoined in the Torah. When [the Sages] saw that they made the recital [over them][7] and still sold [fields], being under the impression that the fields still retained their holiness, they ordained that [the firstfruits] should not be brought. When they saw that those who were short of money still sold and the fields remained in the hands of the heathen, they ordained that they should be brought.[8]

It has been stated: If a man sells his field in respect of the produce only,[9] R. Johanan says that [the purchaser] brings the firstfruits and makes the recital [over them],[7] while Resh Lakish says that he brings them but makes no recital.[10] R. Johanan who says that he brings and recites is of the opinion that the possession of the increment is equivalent to possession of the [parent] body, while Resh Lakish who says that he brings without reciting is of opinion that the possession of the increment is not equivalent to the possession of the [parent] body.[11]

R. Johanan raised an objection against Resh Lakish [from the following]: [And thou shalt rejoice in all the good which the Lord hath given to thee] and to thy house:[12] this teaches that a man brings the firstfruits of his wife[13] and makes the recital! — Resh Lakish rejoined: There is a special reason there,[14] because the text says 'his house'.[15] According to another report, Resh Lakish raised an objection against R. Johanan [by quoting to him]: 'And to thy house:' this shows that a man brings the firstfruits of his wife and makes the recital. This, [continued Resh Lakish,] is the rule in the case of the wife, because the text says and to thy house, but in other cases not! — R. Johanan replied: I derive my reason also from the same verse.[16] He [then] raised an objection [from the following]: 'If while he was on the road bringing the firstfruits of his wife he heard that his wife had died, he brings them and makes the recital,' which means, [I take it], that if she did not die he does not make the recital?[17] — No, [he replied]; the rule is the same even if she did not die, but it had to be stated also in regard to the case of her dying, [for this reason]. It might have occurred to us that [in this case] we should as a precaution prohibit [the husband from reciting] on account of the ruling of R. Jose b. Hanina who laid down that if a man gathered his grapes and commissioned another man to bring them [to Jerusalem] and the person commissioned died on the way, he [himself] brings them but does not make the recital, because it says, and thou shalt take . . .[18] and thou shalt bring,[19] which implies that the taking and the bringing must be performed by the same person.[20] We are therefore told [that we do not take this precaution].

R. Johanan and Resh Lakish are herein true to their own principles, as stated elsewhere: If a man sells his field

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(1) Tebel is produce from which tithe and other dues have not yet been separated. Hullin is produce which may be consumed without scruple by laymen.

(2) Even if they each take the produce of a separate half of the field.

(3) Tosef. Ter. II.

(4) Lit., 'there is bererah', (v. Glos.). I.e., we suppose that the part which the heathen took eventually was intended for him from the beginning.

(5) Which refutes Rabbah.

(6) I.e., according to the Torah, the heathen is the legal owner, and therefore tithe need not be brought, which refutes Rabbah.

(7) V. Deut. XXVI, 1-11.

(8) So that they should be impelled to buy the fields back.

(9) I.e., on the understanding that the purchaser is to acquire the produce for a certain number of years but not to become owner of the soil.

(10) Because the recital contains the words the fruit of the ground which thou, O Lord, hast given me, which could be said with propriety only by the owner of the soil.

(11) As appears later, the difference here between R. Johanan and Resh Lakish in respect to firstfruits refers to the time when the law of Jubilee was no longer in force, i.e., after the tribes of Reuben and Gad were carried off by Sennacherib (v. 2 Kings XV, 29) till the rebuilding of the Second Temple.
(12) Deut. XXVI, 11.
(13) From the so-called 'property of mulug' (v. Glos.) which belonged to the wife but of which the husband had the management and usufruct. 'House' here as in many cases is taken by the Rabbis as equivalent to 'wife'.
(14) Why the firstfruits are brought by one who does not own the soil.
(15) The Torah has made a special exception in the case of the wife's produce.
(16) I.e., R. Johanan takes the case of the wife as being not exceptional but typical.
(17) Presumably because his relation to the field is still that of purchaser.
(18) Deut. XXVI, 2 and 10.
(19) This is implied in the text, which thou shalt bring (ibid) cf. verse 10.
(20) And here the husband having in the interval been transformed from a purchaser into an heir is in a way no longer the same person.

Talmud - Mas. Gittin 48a

in the period when the law of the Jubilee is in force,[1] R. Johanan says that he brings the firstfruits and makes the recital, while Resh Lakish says that he brings them without making the recital. R. Johanan who says that he brings them and makes the recital takes the view that the possession of the increment is equivalent to the possession of the [parent] body, while Resh Lakish, who says that he brings without making the recital, takes the view that the possession of the increment is not equivalent to the possession of the [parent] body. It was necessary [to state the difference between R. Johanan and Resh Lakish] in both cases. For if it had been stated only in the latter case,[2] I might have said that Resh Lakish rules as he does there because when the purchaser buys[3] [the field] he actually has in mind only the produce,[4] but in the other case, where he has in mind the land itself, I might think that he agrees with R. Johanan. if again I had only the other case I might think that there [only] R. Johanan rules in this way, but in this case he agrees with Resh Lakish. Hence [both] had to be [stated].

Come and hear:[5] If a man buys a tree and the soil under it, he brings the firstfruits from it and makes the recital![6] — We are speaking here of the period when the Jubilee is not observed. Come and hear:[5] 'If a man buys two trees in another man's field, he brings the firstfruits but does not make the recital,'[7] which implies that if he buys three[8] he does make the recital? — There too we speak of the period when the Jubilee is not observed. Now, however, that R. Hisda has stated that the controversy [between R. Johanan and Resh Lakish] refers only to the period of the second Jubilee,[9] but In the period of the first Jubilee[10] both agree that he [the purchaser] had to bring and recite, since they still could not rely on the fields being returned, there is no difficulty: the one [R. Johanan] speaks of the first Jubilee and the other of the second Jubilee. Shall we say that we find in the following passage[11] the same difference between Tannaim: 'How do we know that if a man buys a field from his father and then sanctifies it and his father subsequently dies,[12] it is reckoned as "a field of possession"?[13] Because Scripture says, And if he sanctifies . . . a field which he hath bought which is not of the field of his possession [he shall give thine estimation].[14] [This signifies] a field which is not capable of becoming a "field of possession,"[15] [and we therefore] except [from this rule] such a one as this which is capable of becoming a "field of his possession".[16] This is the opinion of R. Judah and R. Simeon. R. Meir says: From where do we know that if a man buys a field from his father and his father dies and he then subsequently sanctifies the field, it is reckoned as a field of his possession? Because it says, If he sanctifies a field which he hath bought which is not of the field of his possession. [This signifies] a field which is not a "field of possession", and we therefore except from this rule such a one as this which is [now] a field of his possession.'[17] Now R. Judah and R. Simeon, [while agreeing that in the case] where his father died and then he sanctified the field[18] [it is reckoned a 'field of possession'], do not require a text to indicate this.[19] Is not then the point at issue

between them this: R. Meir held that the possession of the increment is equivalent to the possession of the [parent] body, and in this case therefore on the death of his father he does not inherit anything, and therefore if his father died and he sanctified it subsequently a text is necessary to indicate [that it is 'a field of his possession'],[20] whereas R. Judah and R. Simeon held that the possession of the increment is not equivalent to the possession of the [parent] body, and in this case on the death of his father he does inherit the field, and therefore if he sanctifies it after the death of his father no text is necessary [to indicate that it is 'a field of his possession'], and where a text is required is to indicate [that it is 'a field of his possession' even] when he sanctified it before the death of his father?[21] — R. Nahman b. Isaac said: All the same I may still maintain that in general R. Judah and R. Simeon held that the possession of the increment is equivalent to the possession of the parent body, but in this case R. Judah and R. Simeon found a text which they interpreted [to the contrary effect]: The Divine Law [they said,] might have written, 'If he sanctifies a field which he has bought, which is not his possession.' What is the force of the words, 'Which is not of the field of his possession'? [It signifies], one which is not capable of becoming the field of his possession, [and we] except from the rule one that is capable of becoming the field of his possesslon.[22]

R. Joseph said: Had R. Johanan not maintained that the possession of the increment is not equivalent to the possession of the [parent] body, he would not have had a leg to stand on[23] in the Beth Hamidrash. For R. Assi said in the name of R. Jonathan that if brothers divide an inheritance they stand to one another in the relation of purchasers and have to restore their shares to one another at the Jubilee.[24] Now [this being so], should you assume [that the possession of the increment is] not equivalent to the possession of the [parent] body, then you would not find anyone qualified to bring firstfruits save an only son who had inherited from an only son up to the days of Joshua son of Nun.[25]

Raba said: Both Scripture and a Baraitha support Resh Lakish. Scripture,

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(1) In which case there is no question that the purchaser does not become owner of the soil, as he has to return the land at the Jubilee.

(2) Where the land is purchased in the epoch of the Jubilee.

(3) Lit., 'he descends into'.

(4) I.e., he never for a moment imagines himself to be the owner of the land.

(5) An argument against Resh Lakish.

(6) Bek. I, 11. Although the land is returnable at the Jubilee.

(7) Ibid. I, 6.

(8) In which case he automatically acquires the land under and between the trees, v. B.B. 81a.

(9) I.e., the period of the Second Temple, when the Jews observed the law of the Jubilee strictly.

(10) [I.e., of the first Temple, where it was not strictly observed (Rashi). Maim., Yad Bikkurim IV, 6. takes the first and second Jubilee in a literal sense — the first and second Jubilee cycles observed by the Jews].

(11) B.B. 72b.

(12) Before the Jubilee, when the field would automatically revert to him.

(13) And not one of 'purchase', and therefore liable to be redeemed at a lower rate. V. Lev. XXVII, 16-23.

(14) Lev. XXVII, 22, 23.

(15) E.g., one which he bought from any other man and which would have to be restored to him or to his heirs at the Jubilee.

(16) By inheritance.

(17) But not one which is only capable of becoming such subsequently.

(18) The case put by R. Meir.

(19) While R. Meir does.

(20) And not a field of purchase, in spite of the fact that he originally purchased it from his father.

(21) In spite of the fact that he purchased it from his father.

(22) For fuller notes on the whole of this passage, v. B.B. (Sonc. ed.) pp. 285ff.

(23) Lit., ‘he would not have found his hands and feet.’

(24) B.K. 69b and supra 25a.

(25) So that the property had never been divided, for as soon as it was divided it was in effect sold, and had no owner capable of bringing firstfruits.

Talmud - Mas. Gittin 48b

where it says, According to the number of years of the crops he shall sell unto thee.[1] A Baraitha, as it has been taught: A firstborn son receives a double portion of a field which [was due to] be restored to his father at the Jubilee.[2]

Abaye said: We have it on tradition that a husband [before going to law] about property belonging to his wife requires authorization from her.[3] This, however, is the case only if the suit does not concern the produce. But if the suit concerns the produce, while he is putting forward claims to the produce he can put forward claims to the land itself as well.

C H A P T E R V

MISHNAH. COMPENSATION FOR DAMAGE[4] IS PAID OUT[5] OF [PROPERTY OF] THE BEST QUALITY, A CREDITOR OUT OF LAND OF MEDIUM QUALITY, AND A WOMAN'S KETHUBAH OUT OF LAND OF THE POOREST QUALITY. R. MEIR, HOWEVER, SAYS THAT A WOMAN'S KETHUBAH IS ALSO PAID OUT OF MEDIUM [QUALITY LAND]. PAYMENT CANNOT BE RECOVERED FROM MORTGAGED PROPERTY WHERE THERE ARE FREE ASSETS AVAILABLE, EVEN IF THEY ARE ONLY LOWEST GRADE LAND. PAYMENT FROM ORPHANS CAN BE RECOVERED ONLY FROM LOWEST GRADE LAND. INDEMNIFICATION FOR PRODUCE CONSUMED[6] AND FOR THE BETTERMENT OF PROPERTY [DURING WRONGFUL TENURE] [AND PAYMENT] FOR THE MAINTENANCE [BY A MAN'S HEIRS] OF HIS WIDOW AND DAUGHTERS[7] IS NOT ENFORCED FROM MORTGAGED PROPERTY, TO PREVENT ABUSES.[8] THE FINDER OF A LOST ARTICLE CANNOT BE REQUIRED TO TAKE AN OATH, TO PREVENT ABUSES.[8]

GEMARA. [COMPENSATION . . . PROPERTY OF THE BEST QUALITY.] Is this only an ordinance to prevent abuses?[9] It derives from the Scripture, as it is written, The best of his field and the best of his vineyard he shall pay![10] — Abaye replied: This statement holds good only if we take the view of R. Ishmael who said that according to the Torah the assessment is made on the property of the claimant of damage;[11] we are then told here that to prevent abuses[12] we make the assessment on the property of the defendant. What statement of R. Ishmael is referred to? — As it has been taught: ‘The best of his field and the best of his vineyard he shall pay’: [that is to say,] the best of the field of the claimant and the best of the vineyard of the claimant.[13] So R. Ishmael. R. Akiba said: The whole purpose of the text is to allow compensation for damage to be recovered from the best property [of the defendant]: and all the more so in the case of the Sanctuary.[14]

Now according to R. Ishmael,[15] if [a man's beast] ate the vegetables from a rich bed, he [naturally] repays the value of a rich bed, but if it ate from a poor bed is he to repay the value of a rich one? — R. Idi b. Abin said: We are dealing here with a case where it ate one bed out of a number and we do not know whether it was a rich one or a poor one; in this case he repays the value of the best. Said Raba. Seeing that if where we know that it ate a poor one he repays only the value of a poor one, here, where we do not know, is he to pay the value of a rich one? Does not the onus probandi fall on the claimant? — R. Aha b. Jacob therefore suggested

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(1) Lev. XXV, 15. This indicates that, at the time of the Jubilee, the crops were sold, not the land.

(2) A firstborn takes a double portion only of property which was actually in possession of the father at the time of death,

not of that which is to accrue subsequently. If, therefore, he takes a double portion of this field, it shows that his father, in spite of having sold it, was still reckoned as owner.

(3) Because although he owns the produce (v. Glos. s.v. Mulug), this is not equivalent to owning the land itself.

(4) Cf. Ex. XXII, 4.

(5) Lit., 'they value'.

(6) [If A wrongfully acquires a field from B and sells it to C who was unaware that it was stolen and C spends money on improving it and a crop is produced, B may come and seize the field, crop and improvements, after paying C his costs in connection with the improvements. B is then entitled to recover from A the price he paid him for the field even from A's mortgaged property, but the value of the crop and increased value of the field due to the improvements only from A's unmortgaged property.]

(7) V. Keth. 52b.

(8) Lit., 'for the good order of the world'. [This refers to all the rulings given in this Mishnah and supplies the connecting link between this chapter and the preceding one, as well as the reason for its inclusion in this tractate (v. Tosaf).]

(9) I.e., is its sanction only Rabbinic?

(10) Ex. XXII, 4.

(11) I.e., he can claim only property of the same quality as the best of his own, even if this is not equal to the best of the defendant's.

(12) The abuse to be prevented is explained lower down.

(13) The meaning of this is discussed presently.

(14) B.K. 6b. This is explained lower down.

(15) Who apparently says that according to Scripture damage is to be estimated in all cases as if done to the best of the claimant's land.

Talmud - Mas. Gittin 49a

that the case here considered is one where the best of the claimant is equal [in quality] to the worst of the defendant, in which case R. Ishmael held that we assess on the land of the claimant,[1] whereas R. Akiba held that we assess on the land of the defendant.[2] What is R. Ishmael's reason? — The word 'field' occurs both in the earlier[3] and the later[4] clause; just as in the earlier clause it refers to the field of the claimant, so in the later it refers to the field of the claimant. R. Akiba, on the other hand, held that the words, from the best of his field he shall make restitution mean, from the best of him who makes restitution. What does R. Ishmael say to this? — [He says that] the gezerah shawah[5] has its lesson and the text has its lesson. The lesson of the gezerah shawah is what we have said.[6] The lesson of the text is that if the defendant has high grade and low grade land and his low grade land is not equal to the best of the claimant, he pays him from the best.[7]

'R. Akiba says: The whole purpose of the text is to allow compensation for damage to be recovered from the best property of the defendant; and all the more so in the case of the Sanctuary.' What is the meaning of 'all the more so in the case of the Sanctuary'? Are we to say that [this rule applies] where our ox has gored the ox of the Sanctuary? [This cannot be, because] the Divine Law says, [if one man's ox hurt] the ox of one's neighbour,[8] but not an ox of the Sanctuary.[9] Shall we say then that what is meant is that if a man says, 'I take upon myself to give a maneh for the repair of the Temple,' the treasurer can come and collect it from the best [of his land]? Surely he is in no better position than a creditor, and a creditor has a right to collect only from the medium property![10] And should you contend that R. Akiba holds that a creditor can collect from the best like a [claimant for] damages, we may still object, how can you draw an analogy from a [private] creditor, who is at an advantage in that he can claim compensation for damages, to the Sanctuary, which has no right [ever] to claim compensation for damages?[11] — I may still say that [these words refer to the case where] our ox gored the ox of the Sanctuary, for R. Akiba held the same view as R. Simeon b. Menasya, as it has been taught: R. Simeon b. Menasya says: If an ox of the Sanctuary gores an ox of a layman, there is no liability, but if the ox of a layman gores an ox of the sanctuary, whether it was

tam[12] or mu'ad,[12] the owner has to pay compensation in full.[13] If that is the case, why should you say that R. Akiba and R. Ishmael differ [as to what is to be done] when the best of the claimant is equal to the worst of the defendant? Perhaps in that case both agree that we assess on the land of the claimant,[14] and their dispute here[15] is the same as that between R. Simeon b. Menasya and the Rabbis, R. Akiba adopting the same view as R. Simeon b. Menasya and R. Ishmael adopting the view of the Rabbis?[16] — If that were the case, why should R. Akiba have said 'The whole purpose of the text etc.,'[17] and again, what means 'All the more so in the case of the Sanctuary'?[18] And besides, R. Ashi has told us,

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(1) I.e., the quality of the field paid by the defendant as damages need not exceed the best quality of the claimant's estate. Hence in this case, he can claim only the worst of the defendant's.

(2) Who therefore has to pay out of his best.

(3) If a man shall cause a field or vineyard to be eaten. Ex. XXII, 4.

(4) Of the best of his own field shall he make restitution. Ibid.

(5) Of 'field' 'field'. V. Glos.

(6) That we assess on the estate of the claimant.

(7) Even though this is much better than the best of the claimant.

(8) Ex. XXI, 35.

(9) For the damage to which there is no liability.

(10) As laid down in our Mishnah.

(11) As stated supra.

(12) V. Glos.

(13) B.K. 37b, q.v. for notes.

(14) And where the claimant's best equals the defendant's worst, the latter will perhaps suffice according to all opinions.

(15) In the Baraitha quoted supra 48b.

(16) I.e., R. Akiba differed from R. Ishmael only in the second part of his statement, regarding the Sanctuary, but not the first.

(17) Which indicates that the interpretation of the verse (Ex. XXII, 4) is the point at issue.

(18) [As according to the view requiring full payment in all cases, the quality of the payment for damage done to sacred property may be higher than that paid for damage done to ordinary property, and in fact nothing less than the very best of the defendant's estate would suffice.]

Talmud - Mas. Gittin 49b

It has been taught expressly: From the best of his field and the best of his vineyard he shall make restitution:[1] this means the best of the field of the claimant and the best of the vineyard of the claimant. So R. Ishmael. R. Akiba, however, says it means, the best of the field of the defendant and the best of the vineyard of the defendant.[2]

Rabina said: We may maintain after all that the Mishnah follows R. Akiba,[3] who said that according to the Torah we assess on the land of the defendant, and it also follows here R. Simeon whose custom it was to expound the reasons of Scriptural injunctions,[4] and its later clause gives the reason for the earlier,[5] thus: Why is compensation for damage assessed on the best property? To pre vent abuses, as it has been taught: R. Simeon said: Why was it laid down that compensation for damages should be paid out of the best land? As a deterrent to those who plunder or take by violence,[6] so that a man should say to himself, Why should I plunder or take by violence, seeing that to-morrow the Beth din will come down[7] on my property and take my best field, basing themselves on what is written in the Torah, 'from the best of his field and the best of his vineyard he shall make restitution'? For that reason they laid down that compensation for damages should be assessed on the best land.

Why did they lay down that a creditor should recover only from medium land? So that a man, on

seeing his neighbour possessed of a fine field or a fine house, should not be tempted to say, I will induce him to borrow money of me so that I can get them on account of my debt. For this reason they laid down that a creditor should recover only from medium land. But if that is so, he should be allowed to recover only from the lowest grade? — This would be closing the door in the face of borrowers.

A woman's Kethubah can be collected only from land of the poorest quality. So R. Judah; R. Meir, however, says, from medium land also. R. Simeon said: Why did they lay down that a woman's Kethubah is to be collected from poor land? Because the woman wants to be married more than the man wants to marry. Another explanation is that a woman is put away whether she will or not, but a man puts her away only if he wants to. How is this 'another explanation'?[8] — [What it means is]: Should you say that just as when the husband divorces the wife the Rabbis provided that she should obtain a Kethubah from him, so when she leaves him they should provide for him a Kethubah from her, then I would point out[9] that a woman is divorced whether she wants to be or not, but a man divorces only if he wants to, since he can always keep her waiting for a Get.

A WOMAN'S KETHUBAH ONLY FROM LAND OF THE POOREST QUALITY. Mar Zutra the son of R. Nahman said: This is the rule only [where the Kethubah is recovered] from the orphans,[10] but from the husband himself it can be demanded out of medium property. If [the Mishnah refers to] orphans, why does it specify a woman's Kethubah, seeing that the same applies to all payments, as we have learnt, 'PAYMENTS FROM ORPHANS CAN BE RECOVERED ONLY FROM LOWEST GRADE LAND.' Are we not [therefore obliged to say] that the Mishnah is referring to the husband himself?[11] — In point of fact it is to the orphans, and there was a reason for specifying the woman's Kethubah. For I might have thought that the Rabbis granted her a concession in order that she might look more favourably on suitors.[12] We are therefore told [that this is not so].

Raba said: Come and hear: R. MEIR SAYS, A WOMAN'S KETHUBAH CAN ALSO BE COLLECTED FROM MEDIUM QUALITY LAND. From whom? Shall I say from the orphans? Does R. Meir then not accept [the rule] which we have learnt: PAYMENT FROM ORPHANS CAN BE RECOVERED ONLY FROM THE LOWEST GRADE? We must say therefore that he means, from the husband himself; from which we can infer that in the opinion of the Rabbis[13] [payment can be claimed even from the husband] only in poor land. — No; [R. Meir] indeed [also referred] to orphans, and there is a special reason why [in his opinion] a woman's Kethubah [should be collected even from their medium land], namely, to make her favourably disposed to suitors. Abaye said: Come and hear: COMPENSATION FOR DAMAGE IS PAID OUT OF [PROPERTY OF] THE BEST QUALITY, A CREDITOR OUT OF LAND OF MEDIUM QUALITY, AND A WOMAN'S KETHUBAH OUT OF LAND OF THE POOREST QUALITY. [Collected] from whom? Shall we say, from orphans? If so, why only the woman's Kethubah [from the poorest land]? Why not [all the claims of] others as well? — R. Aha b. Jacob said: We are dealing here with a case where a man became surety for compensation for damage due from his son, for his son's debt, and for his daughter-in-law's Kethubah. Each item then follows its own rule.[14] Compensation and debts which are usually paid in the lifetime [of the person responsible] are paid in this case also as though in the lifetime of the person responsible.[15] The woman's Kethubah which is usually paid after the death of the person responsible — and by whom? by the orphans — is paid in this case as after the death of the person responsible.[16] But cannot this rule be derived from the fact that a surety for a Kethubah is not responsible [for its payment]?[17] — We speak of a kabbelan [go-between].[18] This solves the problem for one who holds that a kabbelan is responsible even though the borrower has no property,[19] but what answer is to be given to one who holds that if the borrower has property he is responsible but if the borrower has no effects he is not responsible?[20] — If you like I can say that in this case we suppose [the son to have] had property[21] which was subsequently destroyed,[22] or if you like I can say that in respect of his son a man would in all cases regard himself as responsible.

It has been stated [elsewhere]: With regard to a surety[23] for a Kethubah, all authorities are agreed that he does not become responsible.[24]

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(1) Ex. XXII, 4.

(2) For all this section v. B.K. (Sonc. ed.) pp. 21-24.

(3) And not R. Ishmael, as we have been presuming hitherto.

(4) E.g., that of 'he shall not multiply wives to himself,' B.M. 115a.

(5) Although the rule laid down in the earlier derives from the Torah and not merely from the Rabbis.

(6) [המסנין , i.e. who appropriate forcibly but offer payment, in contradistinction from גזלנין , who plunder without compensating the owner; v. B.K. 62a.]

(7) Lit., 'jump', 'come forward'.

(8) This being a fresh point, not a reason why the Kethubah is to be paid out of the worst land.

(9) Lit., 'come and hear'.

(10) After the death of the husband.

(11) In case of divorce.

(12) Lit., 'for the sake of favour.' This would more naturally mean, that she should find favour in the eyes of the men, and so indeed it is taken by R. Hananel. V. Tosaf. s.v.

(13) With whom he joins issue on this point.

(14) Viz., compensation for damage from the best property and debts from the second best, as they would have been by the son himself had he been alive.

(15) Viz., by the father if the son dies without having paid.

(16) Viz., from the lowest grade property, as it would be by orphans. In ordinary cases, however, a husband, according to R. Aba b. Jacob, pays the Kethubah from medium property.

(17) V. infra.

(18) V. Glos. The meaning is that he entered into an agreement with his daughter-in-law that she could claim either from him or from his son at will.

(19) At the time when the debt is contracted.

(20) Since no one would guarantee a loan where it is known that the debtor has no means wherewith to repay. A guarantee in such a case cannot therefore be taken seriously. V. B.B. 174b. And the presumption is here that the husband had no effects when the contract was made. (V. Tosaf.).

(21) When the liability was contracted.

(22) Lit., 'blighted'.

(23) 'Areb., v. Glos.

(24) Because she has not actually parted with anything.

Talmud - Mas. Gittin 50a

With regard to a kabbelan for a debt, all are agreed that he does become responsible.[1] With regard to a surety for a debt and a kabbelan for a Kethubah there is a difference of opinion, some holding that even though [the debtor] had no property they become responsible, and others holding that if he had effects they become responsible, but if he had no effects they do not. The law in all these cases is that even if [the debtor] had no property [the surety or go-between] becomes responsible, save in the case of the surety for a Kethubah, who does not become responsible even if [the husband] has effects. The reason is that he performs a pious action,[2] and he does not cause the woman any loss.[3]

Rabina said:[4] Let us look at the basis of our regulation. It is that more than the man desires to marry the woman desires to be married. Now if you suppose [that the Mishnah refers] to orphans [when it says that the woman collects from the poorest land], then the reason would be that they are orphans. Is this not a refutation of Mar Zutra? — It is.[5]

Mar Zutra the son of R. Nahman said in the name of R. Nahman: If a claim is made from orphans on the strength of a bond [given by their father], even though the best land is mentioned in it,

payment can be recovered only from the worst. Abaye said: The proof of this[6] is that although a creditor has ordinarily the right to collect from medium land, from orphans he can recover only from the worst land. Said Raba to him: Is this really so?[7] According to Scriptural law, a creditor can claim only from the worst land, as laid down by 'Ulla; for 'Ulla said, 'The Torah has enacted that a creditor should collect from the worst land. For it says Thou shalt stand without, and the man[8] etc. What would a man naturally bring out in such a case? His least valuable articles. Why then did they [the Rabbis] say that a creditor should collect from medium property? So as not to place obstacles in the way of borrowers. Where orphans are concerned, however, they left the law as it was laid down in the Torah.'[9] But here, since according to the Torah he can claim from the best land,[10] [I should say that] from orphans also he can claim from the best land? How can Raba [maintain this], seeing that Abram [of] Hozae[11] learnt, 'Claims on orphans can be recovered only from their poorest land, even if these are in [compensation] for damage,' and the law that compensation for damage can be claimed from the best is of the Torah? — We are presuming here[12] that the best of the claimant was only equal to the worst of the defendant, and are following R. Ishmael who said that the law of the Torah is that we should assess on the property of the claimant, but to prevent abuses the Rabbis ordained that the assessment should be made on the property of the defendant, and where orphans were concerned [the Rabbis] left the law as laid down in the Torah. Still did not R. Eliezer the Nabatean state that 'payment recoverable from the property of orphans can be claimed only from their worst land, even if it is the best'? Now what is meant by the words, 'even if it is the best'? Does it not mean, 'even if the best is stipulated in the bond'?[13] — No; what is meant by 'the best' here is the strips of the best,[14] even as [mentioned also by] Raba. For Raba said: 'If the damage was done to the worst land, the claimant recovers from the best; if to the strips of the best, he recovers from the medium.'[15] Where orphans however were concerned the Rabbis left the law as laid down in the Torah.[16]

PAYMENT FROM ORPHANS CAN BE RECOVERED ONLY FROM THE POOREST LAND. R. Ahadboi b. Ammi asked: Are the orphans spoken of here minors, or are grown-ups also included? [That is to say,] were the Rabbis here taking a measure for [the protection of] orphans,[17] in which case they meant it to apply only to minor orphans but not to grown-ups, or was their reason that a lender does not ordinarily take into account the risk of the debtor dying and leaving his property to his orphans, so that there is no question of placing obstacles[18] in the way of borrowers,[19] and [consequently the regulation applies] to grown-ups also? — Come and hear what Abaye the elder stated, viz., that the orphans spoken of here mean grown-ups, and a fortiori the rule applies to minors. But perhaps this statement [was made] in connection with the administering of an oath,[20] because a grown-up is also like a child in relation to his father's affairs,[21] and this is not [the rule for payment out of] lowest-grade land? The law however is

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(1) In all circumstances.

(2) By enabling a marriage to be consummated.

(3) In so far as she does not actually part with anything. For fuller notes on this section v. B.B. (Sonc. ed., p. 770.

(4) Referring to the original statement of Mar Zutra, that save in the case of orphans, a Kethubah is collected from medium land.

(5) And we therefore interpret the Mishnah to mean that a Kethubah is in all cases collected only from the worst land.

(6) That such a stipulation is of no avail where orphans are concerned.

(7) That such a stipulation is of no avail.

(8) Deut. XXIV, 11.

(9) V. B.K. 8a.

(10) In virtue of the stipulation.

(11) V. infra p. 413, n. 1.

(12) In the teaching of R. Abram of Hozae.

(13) This refutes Mar Zutra's ruling.

(14) Strips of good land adjoining a river reserved for pasturage and therefore liable to be overflowed, and so of less real

value than even the worst land. V. Tosaf.

(15) This land being so very inferior.

(16) This last statement is not part of Raba's statement but explains the reason of R. Eleazar the Nabatean.

(17) So that their guardians should exert themselves to dispose of their worst land.

(18) Lit., 'so that this should bar the door'.

(19) Even if the lender knows that in case of the borrower dying he will only be able to recover from the worst land, whether the orphans are minors or grown up.

(20) I.e., with the rule that anyone claiming from orphans a debt contracted by their father, even if he produced a bond, had to take an oath. V. Shebu. 41b.

(21) I.e., he cannot be expected to know whether his father had paid the debt or not.

Talmud - Mas. Gittin 50b

that the orphans spoken of are grown-ups, and the rule applies a fortiori to minors, whether in connection with an oath or [with payment out of] the worst land.

PAYMENT CANNOT BE RECOVERED FROM MORTGAGED PROPERTY WHEN THERE ARE FREE ASSETS AVAILABLE. R. Ahadboi b. Ammi asked: What is the rule in the case of a gift? Are we to say that this regulation was made for the protection of purchasers[1] against loss and it therefore does not apply to a gift,[2] where there is no question of loss to purchasers, or do we say this even in the case of a gift for if the recipient did not derive some benefit from it it would not have been given to him and therefore his loss is on the same footing as the loss of the purchaser? — [In reply] Mar Kashisha the son of R. Hisda said to R. Ashi: Come and hear 'If a dying man says, Give two hundred zuz to So-and-so, three hundred to So-and-so, and four hundred to So-and-so, we do not say that one who is mentioned earlier in the deed has a superior title to one who is mentioned later.[3] Consequently if a bond is produced against the donor [after his death], the claimant can collect from all of them. If, however, he said, Give two hundred zuz to So-and-so and then[4] to So-and-so and then to So-and-so, we do say that whoever is mentioned earlier in the deed has the better title. Consequently if a bond is produced against the donor, the claimant collects first from the last recipient; if he has not enough, he comes on to the one before him, and if he has not enough, to the one before him;'[5] and even though [so it would appear] the first was given medium land and the last poor land, [the claimant] has to collect from the poor before the medium.[6] This shows, [does it not], that the Rabbis meant their regulation to apply to a gift also?[7] — [Not necessarily, as] we may here be speaking of the payment of debts [and not of a gift].[8] But the man said 'give'? — He meant, 'Give in payment of my debt.' If so, we can see whose bond is prior? — We assume there is no bond. But [the passage quoted] says, 'Whoever is mentioned earlier in the deed'? — This means, the deed containing his instructions. Or if you like I can say the reference is also to a gift, and still there is no difficulty, since the words 'he collects from the last' mean, 'only the last [of the three] is the ultimate loser.'[9] Or if you like again I can say that the gifts of all were equal.[10]

INDEMNIFICATION FOR PRODUCE CONSUMED CANNOT BE ENFORCED etc. What is the reason? — 'Ulla said in the name of Resh Lakish: Because these[11] were not mentioned [in the deed of sale].[12] Said R. Abba to 'Ulla: But what of the maintenance of a woman and her daughters which is taken as written[13] and yet [the Mishnah] states that it is not enforceable? — He replied: The regulation[14] was so framed from the outset they are taken as written so far as concerns free assets but not so far as concerns property on which there is a lien. R. Assi also stated in the name of R. Johanan[15] that [the reason is] because they were not mentioned in the deed. Said R. Zera to R. Assi: But what of the maintenance of wife and daughters which also is taken as written and yet [the Mishnah] states that it is not enforceable? — He replied. The regulation was so framed from the outset: they are taken as written where free assets are concerned, but not where there is a lien on the property. R. Hanina, however, said: [The reason is] because they are not of a definite [amount].[16] The question was raised: In order [that a debt may be enforceable from property on which there is a

lien] does R. Hanina require that it should be both definite and written down,

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(1) Who bought land from a man after he had contracted a debt to a third party.

(2) And recovery can he made from land which has been given away, even if there are free assets available.

(3) Tosaf. points out that if the three gifts were equal we should say that he intended the earlier to take precedence, as otherwise he would have said, Give six hundred zuz to So-and-so and So-and-so and So-and-so.

(4) Lit., 'and after him.'

(5) V. B.B. 138a.

(6) In spite of the fact that a creditor can collect from medium land.

(7) Since the last gift was a 'free' asset by comparison with the first.

(8) I.e., we do not say in the case of a gift that a creditor cannot collect from the gift when there are free assets available.

(9) [The phrase, that is to say, does not mean that he collects only from the last, for where the first was the recipient of medium land and the last poor land, he would certainly be entitled to collect from the first, since the rabbinic regulation does not apply to a gift. What the phrase does mean is that only the last is the ultimate loser because the first can, after all, come on to him for what the creditor has taken from him.]

(10) And only in this case can the first recipient force the creditor to recover first of all from the last.

(11) The improvements and crops.

(12) Implying that if they were, it would be enforceable. The deed is that given by the robber to the purchaser. V. supra p. 216, n. 3.

(13) V. Mishnah Keth. 52b.

(14) Relating to the maintenance of wife and daughters.

(15) Who here consequently agrees with Resh Lakish.

(16) [The exact quantity of the produce to be raised hereafter could not be known when the field was first appropriated, and therefore subsequent purchasers could not be expected to allow a sufficient margin for their indemnification. On this view, they would not be enforceable even if mentioned in the deed.]

Talmud - Mas. Gittin 51a

or is it sufficient that it should be definite even without being written down? — Come and hear: It has been stated: If a man dies and leaves two daughters and a son, and if the first [daughter] took her tenth of the property[1] before the son died but the second had not time to take her tenth before the son died, R. Johanan says that the second has forfeited [her tenth].[2] R. Hanina remarked to him: The [Rabbis] went even further than this by laying down that payment may be enforced for [marriage] provision[3] though not for maintenance, and how can you say then that the second forfeits her tenth?[4] Now [marriage] provision is a definite sum but it is not written down, and we see [that R. Hanina says that] it is enforceable? — There is a special reason in the case of [marriage] provision; it gets talked about and therefore it is as good as written.[5] R. Huna b. Manoah raised an objection [from the following]: 'If [both husbands] died,[6] the daughters[7] are maintained from free assets, but she[8] is maintained [also] from mortgaged property, because she is in the position of a creditor'?[9] — We presume that in this case there was a formal transfer.[10] If that is the case, then the daughters[7] also should draw on mortgaged property]? — We presume that the transfer was made on behalf of the one but not of the others. On what ground do you decide thus? — Because the daughter of his wife who was already born at the time of the transfer can benefit from the transfer, but his own daughter who was not yet born at the time of the transfer cannot benefit from it. But are we not to assume that both had already been born at the time of the transfer, [and if you ask how can this be, I answer,] supposing he had divorced her and then taken her back?[11] — No; what we must say is that his own daughter who is entitled to maintenance on the strength of the stipulation of the Beth din[12] derives no benefit from the transfer, whereas his wife's daughter who is not entitled to maintenance on the strength of the stipulation of the Beth din does derive benefit from the transfer.[13] Is then his own daughter to be in an inferior position? — No; since his daughter is entitled to maintenance on the strength of the stipulation of the Beth din, we presume that [at his death] he gave her a purse of money.[14] Come and hear: R. Nathan says: When [does this rule about consumable produce etc.

apply]? When the purchase of the second[15] preceded the betterment of the first. But if the betterment of the first preceded the purchase of the second, [the former] can recover from property on which there is a lien. We see therefore that the reason is because he did not improve the field first [and not because the produce is not mentioned in the deed or is not a definite sum]? — This is a point on which Tannaim also differed, as it has been taught: Indemnification for produce consumed and for betterment of land and [outlay] for maintenance of widow and daughters cannot be enforced from property on which there is a lien, to prevent abuses, since they are not written in any deed.[16] R. Jose said: What prevention of abuses is there here,[17] seeing that they are not definite?[18]

THE FINDER OF A LOST ARTICLE CANNOT BE REQUIRED TO TAKE AN OATH. R. Isaac said: [If a man says to another], 'You found two purses tied together,' and the other says, 'I found only one,' he can be forced to swear, [If he says,] 'You found two oxen tied together,' and the other says. 'There was only one,' he cannot be forced to swear. Why this difference? Because oxen can get loose from one another, but purses cannot.[19] [If he says.] 'You found two oxen tied together,' and the other says. 'I did find, and I restored to you one of them,' he has to take an oath.[20] Does then R. Isaac not accept the rule that A FINDER OF A LOST ARTICLE CANNOT BE REQUIRED TO TAKE AN OATH, TO PREVENT ABUSES?

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(1) The rule was that an orphan daughter was entitled to a tenth of her father's property on becoming of age or marrying, apart from her maintenance up to that time.

(2) Because she now becomes joint heiress to the whole property.

(3) I.e. from anyone who should have bought property from the brother.

(4) If she can recover from others, how can we ask her to give up what is already in her hands?

(5) Hence we may still maintain that R. Hanina requires both written and definite.

(6) The case is one in which a woman with a daughter marries a man with the stipulation that he will maintain her daughter for a definite period, and within the period he divorces her and she marries another man with the same stipulation. Each husband has then to give the full allowance for the daughter's maintenance according to stipulation, v. Keth. 101b.

(7) Which this woman bore to them.

(8) The woman's daughter.

(9) Because the term of years was definite, although there was no written contract. This contradicts 'Ulla.

(10) A Kinyan, v. Glos. Which would naturally he recorded in writing.

(11) And afterwards made the agreement along with the transfer. Hence the transfer cannot be the reason.

(12) The rule that an unmarried orphan daughter is entitled to maintenance, v. Keth. 52b.

(13) An thus the transfer is after all the reason.

(14) In settlement of her maintenance dues, and this is why the transfer does not apply to her.

(15) I.e., one who bought a second field from the robber on which the first purchaser wishes to distrain.

(16) And no-one would buy land if he was afraid it might be claimed on account of obligations not recorded in writing.

(17) Why introduce here this consideration?

(18) This alone is sufficient to debar enforcement from mortgaged property, which shows that R. Jose holds that even if they were written they would not be enforceable.

(19) Hence in the case of the purses the claimant could be positive, but not in the case of the oxen, and the oath is administered only if the claimant is positive.

(20) That he has restored one of them, since he has admitted part of the charge, which was that he found two. There is another reading (preferred by Tosaf.) 'It has also been taught to the same effect, (If a man says,) 'You found two oxen together' and the other says, 'I only found one,' he does not take an oath. If the first says, 'You found two purses tied together' and the other says. 'I did, and I gave you back one of them,' he has to take an oath.' V. p. 281, n. 4.

Talmud - Mas. Gittin 51b

— He adopted the view of R. Eliezer b. Jacob, as it has been taught: R. Eliezer b. Jacob says, There are times when a man has to take an oath on account of his own plea. For instance: If a man says,

'Your father lent me a maneh and I returned him half of it,' he has to take an oath, this being the kind of person who has to take an oath on account of his own plea. The Sages, however, say that he is on the same footing as one who restores a lost article, and he is exempt [from an oath].[1] But does R. Eliezer b. Jacob not hold that one who restores a lost article is exempt? — Rab said: [He speaks of a case] where the claim is made by a minor.[2] Does any weight attach to the claim of a minor, seeing that we have learnt, 'An oath is not administered on the claim of a deaf-mute, an idiot or a minor'?[3] — By 'minor' R. Eliezer means here a grown-up, and the reason why he calls him 'minor' is because in respect of the affairs of his father he is no better than a minor. If that is the case, why does he say, 'on account of his own plea'? It is the plea of someone else? — He means, the plea of someone else and his own admission. But all charges can be called 'the plea of someone else and his own admission'? — The truth is that they [R. Eliezer and the Rabbis] differ over the point raised by Rabbah; for Rabbah said: Why did the Torah lay down that one who admits part of the charge against him should take an oath [that he is not liable for the rest]?[4] The presumption is that a man will not be brazen enough in the presence of his creditor [to deny a debt outright]. Now this man would like to deny the whole, and the reason why he does not deny the whole is because he is not brazen enough.[5] On the other hand, he would also like to admit the whole, and the reason why he does not do so is to gain time, as he thinks to himself, When l have money I will pay him.[6] The All-Merciful therefore said: Impose an oath on him, so that he will admit the whole. Now R. Eliezer was of opinion that whether he is dealing with [the lender] himself or with his son, [the debtor] would not be brazen enough [to deny the debt outright], and therefore in neither case is he like one who restores a lost article.[7] The Rabbis, however, were of opinion that he would not be brazen enough [to deny the debt to the creditor] himself but he would to his son. Hence since he is not so brazen, he is regarded as one restoring a lost article.[8]

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(1) Shebu. 42a; Keth. 18a.

(2) Which he calls 'his own plea'.

(3) Shebu. 38b.

(4) V. Ex. XXII, 10.

(5) Hence when he acknowledges part, he is not trusted in regard to the rest.

(6) Hence we are willing to trust his oath.

(7) Against whom no claim is brought in the first instance.

(8) Because he acts spontaneously. For fuller notes on this passage v. Shebu. (Sonc. ed.) pp. 258-9, and B.M. pp. 8 and 9. [R. Eliezer b. Jacob will accordingly also accept the ruling of the Mishnah that no data are required of a restorer of a lost article. Consequently he cannot be in agreement with R. Isaac, who in turn will have to fall back on the Baraitha cited above for his sole support. This argument leads Tosaf. to give preference to the reading cited supra p. 230, n. 1.]

Talmud - Mas. Gittin 52a

MISHNAH. IF ORPHANS BOARD WITH A HOUSEHOLDER OR IF THEIR FATHER APPOINTED A GUARDIAN FOR THEM, IT IS HIS DUTY TO TITHE THEIR PRODUCE. A GUARDIAN WHO WAS APPOINTED BY THE FATHER OF THE ORPHANS IS REQUIRED TO TAKE AN OATH [WHEN THEY COME OF AGE],[1] BUT IF HE WAS APPOINTED BY THE BETH DIN HE NEED NOT TAKE AN OATH. ABBA SAUL, SAYS THAT THE RULE IS THE REVERSE.[2]

GEMARA. A contradiction was pointed out [between this Mishnah and the following]: [Thus] ye [also shall offer]:[3] [that means to say,] you and not partners,[4] you and not metayers,[5] you and not guardians, you and not one who tithes from property not his own! — R. Hisda replied: There is no contradiction; in the one case the produce referred to is meant for consumption, in the other for storing.[6] So it has been taught: 'Guardians set aside terumah and tithe [from the produce of their wards] which is meant for consumption[7] and not for storing. They can also sell on their behalf cattle, slaves, male and female, houses, fields and vineyards in order to purchase food with the money but

not to put it aside. They can also sell for them produce, wine, oil and flour, to purchase [other] food with the money but not to set it aside. They can make for them a lulab[8] and willow,[9] a sukkah[10] and fringes and anything else involving a defined outlay (this includes a shofar),[11] and they can buy for them a scroll of the Law, phylacteries and mezuzoth[12] and anything involving a defined outlay (which includes a megillah).[13] They cannot, however, undertake on their behalf to give charity or to redeem captives or to do anything involving an unspecified outlay (which includes comforting mourners). Guardians are not allowed to enter into lawsuits concerning the property of orphans, or to entail obligations on it or to secure benefit for it.' Why can they not secure benefit? — It means, to entail obligations for the purpose of procuring benefits for the property of orphans.[14] 'The guardians are not at liberty to sell a distant [field] of their wards in order to redeem one that is near by[15] or to sell in a bad [year] with the idea of redeeming in a good one,[15] since there is a risk that the crops may be struck with blight.[16] The guardians are not at liberty to sell fields and buy slaves with the proceeds, but they can sell slaves and buy fields with the proceeds. Rabban Simeon b. Gamaliel says that they may not even sell slaves and buy fields, since there is a risk that they will not be left in peaceable possession.[17] The guardians are not empowered to emancipate slaves; they may, however, sell them to others who can emancipate them. Rabbi says: I maintain that the slave may pay his own purchase money and become free, since then the owner as it were sells him to himself.[18] The guardian must give an account of his guardianship at its close. Rabban Simeon b. Gamaliel, however, says that this is not necessary. Women, slaves and minors should not be made guardians: if, however, the father of the orphans chooses to appoint one, he is at liberty to do so.'

There was a certain guardian in the neighbourhood of R. Meir who was selling land and buying slaves [with the proceeds], but R. Meir forbade him. A voice said to him[19] in a dream, 'l want to destroy, and will you build'? Even so, however, he paid no heed, saying, Dreams are of no effect either one way or the other.[20]

There were two men who, being egged on by Satan, quarrelled with one another every Friday afternoon. R. Meir once came to that place and stopped them from quarrelling there Friday afternoons. When he had finally made peace between them, he heard Satan say: Alas for this man[21] whom R. Meir has driven from his house!

A certain guardian in the neighbourhood of R. Joshua b. Levi was selling land and buying cattle with the proceeds. [The Rabbi] said nothing to him, being of the same mind as R. Jose, as it has been taught: R. Jose said: All my life I have never called my wife my wife nor my ox my ox but my wife my house and my ox my field.[22]

Certain orphans who boarded with an old woman had a cow which she took and sold. Their relatives appealed to R. Nahman saying, What business had she to sell it? He said to them: We learnt: IF ORPHANS BOARD WITH A HOUSEHOLDER.[23] [But, they said, the cow] is now worth more[24] [than she sold it for]. [He replied,] It has become more valuable in the possession of the purchaser. But, they said, they have not yet received the money. If so, he replied, we can apply the rule of R. Hanilai b. Idi following Samuel. For R. Hanilai b. Idi said in the name of Samuel that the property of orphans is on the same footing as that of the Sanctuary, and is not transferred save on the payment of money.[25]

The wine of Rabbana 'Ukba the orphan was 'pulled'[26] [by purchasers who bought it at] four zuz [the cask]. The price [of wine] subsequently rose, so that it was worth six zuz. The case was brought before R. Nahman who said: Here the rule of R. Hanilai b. Idi applies; for R. Hanilai b. Idi said in the name of Samuel that the property of orphans is on the same footing as that of the Sanctuary, and is not transferred save through money payment.[25]

If purchasers have 'pulled[26] the produce of orphans [without paying], and [the price

subsequently] rises, the rule of R. Hanilai b. Idi applies.[27] If [the price] falls, then surely a layman should not be more privileged than the Sanctuary.[28] If vendors have sold produce to orphans by 'pulling',[29] and [the price subsequently] rose, then we say that the layman should not be more privileged than the Sanctuary.[30] If [the price] falls, the students were inclined to think that here the rule of R. Hanilai b. Idi would apply,[31] but R. Shisha the son of R. Idi said to them: This would be detrimental to them, since they may one day require produce and no-one will sell to them unless they pay money down. If the orphans give money for produce [without taking delivery] and [the price] subsequently falls, then we say that a layman should not be more privileged than the Sanctuary.[32] If it rises, the students were inclined to think that the rule of R. Hanilai b. Idi would apply,[33] but R. Shisha b. Idi said to them: This might be detrimental to them,

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(1) That he is not retaining any of their property.

(2) All these rules are also 'to prevent abuses'.

(3) Num. XVIII, 28, speaking of the tithe given by the levite to the priest.

(4) I.e., not one partner for another.

(5) Since they are not the owners of the produce.

(6) And therefore the tithing can wait.

(7) Because otherwise it could not be eaten.

(8) V. Glos.

(9) Used with the palm branch on Tabernacles. This word is omitted in some readings.

(10) V. Glos.

(11) V. Glos.

(12) V. Glos.

(13) V. Glos.

(14) Because perhaps their plans will go wrong and they will cause loss to the orphans.

(15) V. 'Ar. 30a.

(16) And so what appears to be a good bargain may result in loss.

(17) As their title to the fields may be disputed.

(18) V. supra 38b.

(19) Lit., 'they showed him'.

(20) Lit., 'words of dreams neither cause to ascend or descend.

(21) Meaning himself.

(22) Hence buying cattle was equivalent to buying land.

(23) Which shows that such a householder is on the same footing as a guardian, who has the right to sell cattle.

(24) And this should warrant the cancellation of the sale.

(25) Hence the transaction could still be cancelled.

(26) As a sign of transference of ownership. V. Glos. s.v. Meshikah.

(27) And the orphans can retract.

(28) I.e., the purchasers could not withdraw even if the vendor was a layman (v. B.M. 44a), still less then in this case.

(29) Lit., 'They made pull to orphans' i.e., the orphans 'pulled' the produce they purchased.

(30) I.e., the vendors could not withdraw even if the purchaser was a layman, still less here.

(31) And the orphans could pay the lower price and keep the wine.

(32) And even a layman could withdraw in such a case.

(33) And the vendors should not be able to retract.

Talmud - Mas. Gittin 52b

since the sellers would be able to say to them, Your wheat has been burnt in the storehouse.[1] If [purchasers] have given money to orphans for produce and [the price] rises [before delivery has been made], then we say that the layman should not be more privileged than the Sanctuary.[2] If [the price] falls, then the students thought that here the rule of R. Hanilai b. Idi would apply,[3] but R. Shisha the son of R. Idi said to them, This might be detrimental to them, for they might sometimes want money,

and no-one would give them before they delivered the produce.

R. Ashi said: I and R. Kahana signed as witnesses to the deed of sale of the mother of the orphan Ze'ira, who sold some land in order to pay the poll tax without giving public notice.[4] For the Nehardeans have ruled that to raise money for the poll tax, for food and for burial, land may be sold without public notice.[5]

Amram the dyer was the guardian of [some] orphans. The relatives came to R. Nahman and complained that he was [buying] clothes[6] for himself from the property of the orphans. He said: [He dresses so] in order to command more respect.[7] [But, they said,] he eats and drinks out of their [money], as he is not a man of means. I would suggest, [he replied], that he had a valuable find. [But, they said,] he is spoiling [their property].[8] He said: Bring evidence that he is spoiling it and I will remove him. For R. Huna our colleague said in the name of Rab: If a guardian spoils the orphans' property we remove him. For it has been stated: 'If a guardian spoils the property, R. Huna says in the name of Rab that we remove him, while the School of R. Shilah say that we do not remove him.' The law, however, is that we remove him.

A GUARDIAN WHO WAS APPOINTED BY THE FATHER OF THE ORPHANS IS REQUIRED TO TAKE AN OATH. What is the reason? — If he were not to derive some benefit from this, he would not become a guardian, and he will not be deterred by the requirement of an oath, IF, HOWEVER, THE BETH DIN APPOINTED HIM HE IS NOT REQUIRED TO TAKE AN OATH. [The reason is that] he assumes the office only to oblige the Beth din, and if an oath is to be imposed on him he would refuse. ABBA SAUL SAYS THAT THE RULE IS THE REVERSE. What is the reason? — If the Beth din appoint him he is to take an oath, because for the sake of the benefit he derives from the reputation of being a trustworthy man on whom the Beth din relies he is not deterred by [the prospect of] an oath. [If, however,] the father of the orphans appoints him, he does not take an oath, as it was simply a friendly action between the two, and if you impose an oath on him he would refuse. R. Hanan b. Ammi said in the name of Samuel: The law follows Abba Saul.

It has been taught: R. Eliezer b. Jacob says that both should take an oath, and so is the halachah.[9] R. Tahalifa the Palestinian[10] stated in the presence of R. Abbahu: A guardian who was appointed by the father of the orphans is required to take an oath, because he receives a fee. The Rabbi said to him: You have brought a kab and measured it out for him?[10] Rather say, 'because he is like one who receives a fee'.[11]

MISHNAH. ONE WHO RENDERS UNCLEAN [ANOTHER'S FOODSTUFFS][12] OR MIXES [TERUMAH WITH THEM][13] OR MAKES A LIBATION [WITH HIS WINE],[14] IF HE DOES SO INADVERTENTLY, IS FREE FROM LIABILITY, BUT IF DELIBERATELY IS LIABLE [TO COMPENSATE HIM].[15]

GEMARA. It has been stated: [With regard to the expression] 'MAKES A LIBATION', Rab says that it means literally making a libation[16] [to a heathen deity], while Samuel says that it means only mixing [Jewish with heathen wine].[17] Why did the one who says it means mixing not accept the view that it means making a libation? — He will tell you the latter offence involves a heavier penalty.[18] What does the other say [to this]? — Even as R. Jeremiah. For R. Jeremiah said that he [a robber] acquires possession from the moment he lifts the wine from the ground, whereas he does not become liable to capital punishment until he actually pours out the wine.[19] Why does the one who says that it means making a libation not accept the view that it means mixing? — He will tell you, mixing wine

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(1) I.e., suppose the produce was accidentally burnt, the orphans could not say that they were not yet the owners of it and demand their money back, v. B.M. (Sonc. ed.) p. 282, n. 7.

(2) And delivery could not be demanded even from a layman in such a case; the sale can accordingly be cancelled.

(3) And the purchasers should not be able to retract.
(4) It was usual to give thirty days' notice of the sale of property.
(5) V. B.M. (Sonc. ed.) p. 620, n. 4.
(6) Lit., 'he clothes and covers'.
(7) Lit., 'that his words should be heard'.
(8) E.g., by cutting down trees.
(9) [Read with Trani הלכה not הלכתא or cur. edd.]
(10) Lit., 'the son of the West'.
(11) I.e., what proof have you that he received a fee?
(12) Whether terumah or ordinary food.
(13) Thus rendering them forbidden to a layman.
(14) The meaning of this is discussed infra.
(15) Unclean terumah could not be eaten and could be used by the priests only for feeding cattle or for fuel. Non-sacred food also if unclean was rejected by the stricter sort (Perushim). Food mixed with terumah became prohibited to a layman and therefore had to be sold to a priest at a loss. Wine poured out in libation was forbidden. Hence in all these cases loss was involved.
(16) I.e., stirring it with his hand as preparatory to pouring it out.
(17) Which was sufficient to make it prohibited.
(18) Viz., the death penalty; and the rule is that a lighter penalty is not inflicted when a heavier one is involved for the same offence.
(19) I.e., the defendant has become liable for the payment of the wine in the capacity of a robber even before he commenced to commit the capital offence of idolatrous libations, and since the civil liability is neither for the same act nor for the same moment which occasions the liability for capital punishment, each liability stands.

Talmud - Mas. Gittin 53a

is practically the same as mixing terumah. What says the other [to this]? — [He says that the penalty for this is of the nature of] a fine,[1] and we do not base rules for imposing fines on mere inference.[2] But those who hold that the imposition of fines can be based on mere inference — why do they require all the items to be specified? They are all necessary. For if [the Mishnah] had mentioned only one who renders foodstuffs unclean, then, supposing the food was terumah, I would say that the reason [why compensation has to be made] is because he spoils it completely,[3] and if the food was non-sacred, because it is forbidden to cause uncleanness to non-sacred food in Eretz Israel,[4] but one who mixes ordinary food with terumah I should say need not make compensation. Again, if one who mixes ordinary food with terumah had been mentioned I should say the reason is because this is a common occurrence,[5] but in the case of one who renders foodstuffs unclean, which is not a common occurrence, I should say the rule does not apply. If again both one who renders unclean and one who mixes had been specified, I should say the reason with them [for requiring compensation] is that no heavier penalty is involved, but I should not apply this rule to one who makes a libation, where a heavier penalty is involved. Therefore we are told [that we apply here] the principle of R. Jeremiah.[6]

But if we accept [the teaching] learnt by the father of R. Abin, 'At first they said, The one who renders unclean and the one who makes a libation, but later they added also the one who mixes,' why do I require all the items?[7] — They are still necessary. For if only the one who renders unclean had been mentioned, I should have said that the reason is because no greater penalty is involved, but I should not have applied the rule to one who makes a libation, where a greater penalty is involved. If again the one who makes a libation had been mentioned, I should have said this was because the stuff is spoilt entirely, but I should not have applied the rule to one who renders unclean, where the stuff is not spoilt entirely. If again these two had been mentioned, I should say the reason is because the loss involved is considerable, but I should not apply the rule to one who mixes, where the loss involved is small.[8] Hence all were necessary.

Hezekiah said: The rule of the Torah is that one who commits these offences whether inadvertently or deliberately is liable to pay compensation. The reason is that damage of which there is no visible sign[9] is legally accounted as damage.[10] Why then did the Rabbis lay down that [if one does these things] inadvertently he is not liable? So that they should tell [the victims].[11] If that is the reason, then one who does these things presumptuously should also be quit? — How can you think so? Seeing that he deliberately tries to injure him, will he not certainly tell him?[12] R. Johanan said that the rule of the Torah is that whether one commits these offences innocently or deliberately he is not liable, the reason being that damage of which there is no visible sign is not legally accounted damage. Why then did the Rabbis ordain that [one who does them] presumptuously is liable? So that it should not become a common thing for a man to go and render unclean the foodstuffs of his neighbour and say, I have no liability.

We have learnt: 'If priests render the sacrifice piggul[13] in the Sanctuary, if they did so presumptuously they are liable [to make compensation];'[14] and in connection therewith it was taught: 'To prevent abuses.'[15] Now if you hold that damage which is not visible is legally accounted damage, then it should say, 'if they did so innocently they are not liable, to prevent abuses'?[16] — This in fact is what is meant: 'If they act presumptuously they are liable; from which we infer that if they acted innocently they are not liable, to prevent abuses.' R. Eleazar [raised the following as] an objection: 'If one does work with the waters of purification and with the heifer of purification,[17] he is exempt before the earthly court but liable before the heavenly court.'[18] Now if you maintain that damage which is invisible is legally accounted as damage, then he should be liable also before the earthly court? — He raised the objection and he himself answered it, thus: [The work referred to in the case of] the heifer [was] that he brought it into the stall with the intention of letting it suck and then threshing with it;[19] in the case of the water [the work referred to was] that he balanced weights against it.[20] But has not Raba said that water of purification

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(1) Kenas v. Glos. Because the damage done is not visible. This point is discussed infra.

(2) But the rule must be stated expressly in each case. Lit., 'we do not derive from Kenas'.

(3) I.e., as food for the priest. V. supra p. 236, n. 7.

(4) On account of the Perushim. V. p. 236, n. 7.

(5) And therefore it was deemed necessary to impose a fine.

(6) From which we learn that the lighter penalty stands in this case, v. supra p. 237. n. 4.

(7) Surely if there is liability for libation which involves a heavier penalty there must be a penalty for mixing.

(8) Because the stuff can still be sold to a priest at no great sacrifice.

(9) E.g., here, where the stuff is in exactly the same condition after the offence has been committed as before.

(10) And the Torah in the case of damage done by man makes no distinction between innocent and presumptuous, v. B.K. 85b.

(11) And so save them from eating terumah etc. unwittingly.

(12) Since his whole purpose is to vex him.

(13) V. Lev. XIX, 7: And if it (the flesh of the peace-offering) be eaten on the third day, it is an abomination (piggul). The Rabbis derived from the language of the text the rule that the flesh became piggul even if there was merely an intention of eating it on the third day.

(14) To the bringer of the sacrifice, who now has to bring a new one.

(15) Lit., 'for the good order of the world'. I.e., this is a Rabbinic, not a Scriptural rule.

(16) So that they should tell the owners. Because according to the Torah they are liable. V. supra, n. 2.

(17) The 'red heifer': v. Num. XIX. It was forbidden to do any work work with it.

(18) V. B.K. 56a. I.e., he is punished by the hands of heaven but not with any earthly punishment.

(19) I.e., he had not yet done with it any work for which the earthly court could punish him, but he is punished by heaven for his intention.

(20) We assume that the exact weight of the water was known to him. In this case he had done no actual work with the water.

against which weights have been balanced is not disqualified? — There is no contradiction; the one [Raba] speaks of weighing against the water, the other of weighing in it.[1] When he weighs in it he is doing work with it,[2] and if damage which is intangible is legally accounted damage he should be punishable also in a human court? — We must say therefore that both speak of weighing against the water, and still there is no contradiction: the one [R. Eleazar] speaks of where he forgot for the moment [that it was water of purification][3] and the other of where he did not forget.

R. Papa raised an objection [from the following]: If a man robbed another of a coin which afterwards was withdrawn from circulation,[4] or terumah which became unclean, or leaven and the Passover intervened,[5] he can say to him, Here is your property, take it.[6] Now if you say that damage of which there is no visible sign is legally accounted as damage, this [man] is a robber, and ought to pay the value in full?[7] — This is a refutation.

May we say that Tannaim also [differ on this point]? [For it was taught:] If one defiles [another's foodstuffs] or mixes terumah with them or pours a libation from his wine, whether inadvertently or deliberately, he is liable [to make compensation]. So R. Meir. R. Judah says: If inadvertently he is not liable, if deliberately he is liable. Is not the point at issue between them this, that the one authority holds that damage of which there is no visible sign is legally accounted damage, while the other holds that it is not legally accounted damage? — R. Nahman b. Isaac said: Both agree that damage of which there is no visible sign is not legally accounted damage, and here the point at issue between them is whether the inadvertent [act] should be penalised on account of the presumptuous one,[8] one holding that the innocent act is penalised on account of the presumptuous one and the other that it is not so penalised.

A contradiction was now pointed out between two statements of R. Meir, and also between two statements of R. Judah. For it has been taught: 'If one cooks food on Sabbath, if by inadvertence he may eat it, but if deliberately he may not. So R. Meir. R. Judah says: If [it was cooked] inadvertently he may eat it after the expiration of Sabbath, but if deliberately he may never eat it. R. Johanan ha-Sandalar[9] says: If [it was cooked] inadvertently it may be eaten after the expiration of the Sabbath by others but not by the one who cooked it, if deliberately it may never be eaten either by him or by others'.[10] One statement of R. Meir seems to contradict another[11] and one statement of R. Judah seems to contradict another? — Between the two statements of R. Meir there is no contradiction: where he imposes a fine is for [innocently breaking] a regulation of the Rabbis[12] but not for [breaking] a rule of the Torah.[13] But pouring a libation is forbidden by the Torah, and yet he imposes a fine for doing so [innocently]? — This is because of the special seriousness of the sin of idolatry. Between the statements of R. Judah there is no contradiction: where he imposes no fine is for [breaking] a rule of the Rabbis, but for [breaking] a rule of the Torah he imposes a fine.[14] But pouring a libation is forbidden by the Torah and he imposes no fine for doing so? — Because of the seriousness of the sin of idolatry people keep clear of it.

But even in respect of rules of the Torah one statement of R. Meir was contrasted with another. For it has been taught: 'If a man plants a tree on Sabbath, if inadvertently, he may keep it, but if deliberately, it must be uprooted. If in the Sabbatical year, however, whether he plants it inadvertently or deliberately, it must be uprooted. This is the ruling of R. Meir.[15] R. Judah says: In the Sabbatical year, if inadvertently, he may keep it,[16] but if deliberately he must uproot it: [if planted] on Sabbath, whether inadvertently or deliberately, he must uproot it'! — While you are looking for contradictions,[17] why not point one out in this statement itself? See now: the one [planting on Sabbath] and the other [planting in the Sabbatical year] are both forbidden by the Torah; why then should there be a difference between them? But the reason for that, you must say, is as was taught: Said R. Meir: Why do I say that [if he plants inadvertently] on Sabbath he may keep it and if

deliberately he must uproot it, whereas [if he plants] in the Sabbatical year whether inadvertently or deliberately he must uproot it? Because Israel reckon from the Sabbatical year[18]

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(1) Like butchers, who place meat in water to see how far it will rise, and judge the weight accordingly.

(2) And so disqualifying it.

(3) Lit., 'he diverted his mind'. And since it says, the water shall be to you for a charge, this disqualifies the water, though it does not render him liable to an earthly court.

(4) By the Government.

(5) Rendering the leaven forbidden for any use, v. Pes. II, 2.

(6) And he has no further liability, although the property has meanwhile become worthless, because the robbed article is deemed to have been all the time in the possession of the owner; v. B.K. 96b.

(7) [Since there has been a change in the misappropriated goods they passed into the possession of the robber who should therefore have to make full restitution, Tosaf. V. B.K. 91bff. The words 'this man is a robber' are nevertheless difficult, and best left out with MS.M.]

(8) Even though according to strict justice he should not be so penalised.

(9) 'The sandal-maker'.

(10) B.K. 71a. (Sonc. ed.) pp. 408-9. q.v. for notes.

(11) For cooking innocently on the Sabbath he imposes no fine but for defiling foodstuffs he does impose one.

(12) Defiling foodstuffs etc. A fine is necessary because people are more careless about Rabbinical ordinances.

(13) Breaking the Sabbath.

(14) Because the offence is more serious.

(15) Which shows that he does impose a fine for breaking a rule of the Torah innocently.

(16) Which shows that R. Judah does not impose a fine for innocently breaking a rule of the Torah, so that he also contradicts himself in the same way as R. Meir.

(17) Lit., 'on your view'.

(18) E.g., for the years of 'uncircumcision' (v. Lev. XIX, 23ff.) Hence they remember if a tree was planted in the Sabbatical year, and if it were allowed to remain they might take it as a precedent, and so it was necessary to impose a fine in this case.

Talmud - Mas. Gittin 54a

, but they do not reckon from Sabbaths. An alternative reason is that Israel are suspect with regard to the Sabbatical year but not with regard to Sabbath. Why give an alternative reason? — What he meant was this. Should you object that it sometimes happens that the thirtieth day [before the New Year of the Sabbatical year][1] falls on Sabbath, so that if he plants on that day he has a year [before the New Year], but otherwise not, then I give you an alternative reason that[2] Israel are suspect with regard to the Sabbatical year but not with regard to Sabbath.[3] Between the statements of R. Judah there is also no contradiction, since in the district of R. Judah the Sabbatical year was regarded as very important.[4] For [when] a certain man there called after another, 'You are a stranger[5] and your mother was a stranger,' he retorted, 'I do not eat fruit of the Sabbatical year like you.

Come and hear [a proof that R. Meir does not impose a fine for innocently breaking a Rabbinical rule]: 'If a layman [inadvertently] ate terumah, even unclean, he must make restitution with [ritually] clean non-sacred food. If he pays unclean non-sacred food, what is the law? Symmachus said in the name of R. Meir that if [he paid it] unknowingly this is accounted restitution,[6] but if deliberately it is not so accounted, whereas the Sages said that in either case it is accounted restitution, but he has still to pay clean non-sacred food.'[7] We were puzzled over this to know why [according to Symmachus] his restitution is not complete. Surely he deserves thanks[8] for eating something which a priest cannot eat even when he is unclean[9] and repaying him with something which he can eat at least when he is unclean![10] Thereupon Raba, or as some say Kadi,[11] said that there is a lacuna, and we should read thus: 'If one ate unclean terumah, he repays in anything.[12] If he ate clean terumah he repays clean non-sacred food. If he repaid unclean non-sacred food, what is the law? Symmachus said in the name

of R. Meir that if [he repaid] without knowing, this is accounted a full restitution, but if deliberately it is not accounted a full restitution, whereas the Sages say that in either case it is full restitution, but he has still to pay him clean non-sacred food.' On this R. Aha son of R. Ika said that [R. Meir and the Sages] differ here on the question whether the innocent [act should be penalised on account of the presumptuous, R. Meir holding that the innocent act is not penalised on account of the presumptuous one[13] and the Sages holding that it is![14] — Is this reasoning sound?[15] Here the man wants to pay, and shall we get up and fine him?

Come and hear: 'If the blood [of a sacrifice] has become unclean and was yet sprinkled on the altar, if it was done without knowing then the sacrifice has been accepted [for the bringer of the sacrifice], but if deliberately, the sacrifice has not been accepted'?[16] — R. Meir can reply: Is there any comparison? There the man[17] really desires to make atonement,[18] and shall we get up and penalise him?

Come and hear: 'If a man separates tithe on Sabbath,[19] if inadver tently, the food may be eaten, but if deliberately, it may not be eaten'? — Is there any comparison? There the man is trying to do his duty, and shall we get up and penalise him? Come and hear: 'If a man dips vessels[20] on Sabbath, if inadvertently they may be used, but if deliberately they may not be used'? — Is there any comparison? There the man is desirous of purifying his vessels, and shall we get up and fine him?

A contradiction was also pointed out between two statements of R. Judah with regard to rules of the Rabbis. For it has been taught:

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(1) If a tree was planted more than thirty days before the entry of the Sabbatical year, that period was counted as one of the years of 'uncircumcision'. Hence if the thirtieth day before the Sabbatical year fell on a Sabbath, and he planted on it, this would be remembered and might be taken as a precedent. How then can you say that the Jews do not reckon from Sabbaths?

(2) Lit., 'come and hear'.

(3) [So that there is a special reason for R. Meir's ruling in the case of planting in the Sabbatical year and it cannot be contrasted with his ruling in the case of cooking on Sabbath.]

(4) And therefore in this particular case he sees no need to impose a fine for unwittingly breaking it.

(5) I.e., proselyte.

(6) It receives the character of unclean terumah.

(7) As a fine, but this does not become terumah; v. Yeb. 90a.

(8) Lit., 'may blessing come upon him.'

(9) Unclean terumah could in no circumstances be eaten, but it could only be used as food for cattle or for fuel.

(10) Viz., unclean non-sacred food.

(11) Or, 'an unknown authority'; v. B.K. (Sonc. ed.) p. 3, n. 3.

(12) I.e., clean or unclean non-sacred food. Although, as stated supra p. 243 n. 6, the food receives the character of terumah, he nevertheless had the intention to repay him food which he could eat at all times (Rashi).

(13) And therefore if he repaid without knowing that it was unclean he is not penalised by having to pay again.

(14) [This proves that R. Meir does not penalise the innocent for the presumptuous where the breach of a rabbinical law is concerned. Here the transgression involved is rabbinical, since according to the Torah he has discharged his liability by repaying the amount he had eaten. V. Yeb. 90a.]

(15) Lit., 'how so'. i.e., can we ascribe this to R. Meir as a general principle, seeing that here there is a special reason, namely that here etc.

(16) And the Rabbis ordained that the flesh may not be eaten, though expiration has been made for the bringer of the sacrifice.

(17) I.e., the priest.

(18) I.e., he desires to do a meritorious action, which is not the case with one who mixes terumah with other food, etc. Hence we do not penalise his error.

(19) This was forbidden by the Rabbis but not by the Torah, v. Bezah 36a.

(20) For ritual purification. This also was forbidden by the Rabbis on Sabbath; v. Bezah, 18a.

Talmud - Mas. Gittin 54b

If these nuts [of 'uncircumcision']1 fell among others and were then broken, whether [the act was done] inadvertently or deliberately they are not merged in the mass.2 This is the ruling of R. Meir and R. Judah. R. Jose and R. Simeon, however, say that if [it was done] inadvertently they are merged, but if deliberately they are not. Now here is a case where according to the rule of the Torah [the forbidden element] loses its identity [if its proportion is not more than] one to two, and it is the Rabbis who decreed [that the proportion must be less than one to two hundred], and yet R. Judah imposes the line [in the case of innocent transgression]? — R. Judah there is influenced by the special consideration that [without this penalty] the offender may act with guile.3 A contradiction was also pointed out between two statements of R. Jose. For we have learnt: If a sapling of 'uncircumcision or of the mixed plants of the vineyard becomes mixed up with other saplings, its fruit should not be gathered,4 but if gathered it becomes merged in two hundred and one times the quantity [of permitted fruit], provided, however, that the gathering was not done with that purpose in view. R. Jose says, Even if it was gathered deliberately, it is merged in two hundred and one times [its own quantity!]5 — [This is no difficulty] since with reference to this it has been recorded: Raba said: The presumption is that a man does not make his whole vineyard forbidden for the sake of a single sapling.6 So too when Rabin came [from Palestine] he said in the name of R. Johanan: The presumption is that a man will not make his whole vineyard forbidden for the sake of a single sapling.

MISHNAH. PRIESTS WHO MADE THE FLESH IN THE SANCTUARY PIGGUL,7 IF THEY DID SO DELIBERATELY ARE LIABLE TO PAY COMPENSATION.8

GEMARA. Our Rabbis taught: If a man is helping another to prepare ritually clean things, and he says to him, The clean things that I have prepared with you have been defiled, or if he is helping him with sacrifices and he says to him, The sacrifices with which I have been helping you have been rendered piggul, his word is taken. If, however, he says, The clean things which I was assisting you to prepare on such and such a day have become unclean, or the sacrifices with which I was assisting you on such and such a day have been rendered piggul, his word is not taken. Why is the rule different in the first case from that of the second? — Abaye replied: So long as it is in his power to do [again what he says he has done], his word is taken.9 Rab said: [Where we do not believe is] if, for instance, he came across him and said nothing to him and then came across him again and told him.10

A certain man said to another: The clean things which I helped you to prepare on such and such a day have become unclean. He applied to R. Ammi, who said to him: According to the strict letter of the law, you need not believe him. R. Assi observed to him: Rabbi, this is what you say, but R. Johanan has distinctly said in the name of R. Jose: What can I do, seeing that the Torah has declared him credible?11 Where has it declared him credible? — R. Isaac b. Bisna replied: The proof is from the high priest on the Day of Atonement, since if he says [that his sacrifice12 was] 'piggul', we believe him. Now how do we know [that he made it 'piggul' when he was doing the service], seeing that it is written, And there shall be no man in the tent of meeting?13 The reason must therefore be that he is credible. But perhaps this is because we heard him make it 'piggul'?14 — If he were not credible, we could not believe him even if we heard him, since he might have said this after performing the ceremony.15 But perhaps it means that we saw him through the pispas?16 — This is indeed a difficulty.17

A certain man appeared before R. Ammi and said to him: In a scroll of the Law which I have written for So-and-so I have not written the names [of God] with proper intention.18 He asked him:

Who has the scroll? — He replied: The purchaser. Whereupon he said to him: Your word is good to deprive you of your fee, but it is not good to spoil a scroll of the Law. Said R. Jeremiah to him: Granted that he has lost his fee for the names, is he to lose it for the whole of the scroll? He replied: Yes, because a scroll in which the names of God have not been written with proper intention is not worth anything. But cannot he go over them with a pen and so sanctify them? What authority would allow this? Not, we would say, R. Judah; for we have learnt, 'Suppose the scribe had to write the tetragrammaton, and he intended [instead] to write Yehwdah [Judah][19] and he made a mistake and left out the daleth,[19] he can go over it with a pen and sanctify it. So R. Judah. The Sages, however, say that this name is not of the best'? — You may even say that he is in accord with R. Judah. For R. Judah would allow this only in the case of one mention of the Name, but not throughout a whole scroll, because it would make it look bizarre.

A certain man came before R. Abbahu saying, I have written a scroll of the Law for So-and-so but did not prepare the parchments for the purpose.[20] He asked him, Who has the scroll? — He replied, The purchaser. He said to him: Since your word is good to deprive you of your fee, it is also good to spoil the scroll.

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(1) I.e., in the first three years after the planting of the tree. V. Lev. XIX, 23. Certain species of nuts, on account of their particular value, as long as they are whole do not lose their identity in whatever large mass they may happen to become mixed up. When cracked, however, they are treated like ordinary nuts and are neutralized if their proportion to the permitted element is not more than one to one hundred. 'V. 'Orlah III, 6-8.

(2) Lit., 'they do not rise in the scale', i.e., they are not neutralized, but still retain their identity as something forbidden.

(3) I.e., he will mix them purposely and pretend that it was done innocently.

(4) Because it still retains its identity as long as it is attached to the soil, and is not merged in the field as a whole.

(5) V. 'Orlah, I, 6. Which seems to conflict with R. Jose's ruling with regard to the nuts.

(6) By planting in it one sapling of 'uncircumcision' without some clear sign. Such a thing being exceptional, we do not impose a special penalty for an offence to which it may accidentally lead.

(7) By declaring at the time of bringing the sacrifice that they intended the flesh to be eaten after the prescribed time. V. Supra, p. 239, n. 5.

(8) I.e., to provide a fresh sacrifice, since the first owing to their action has not brought expiation.

(9) We understand the Baraitha therefore to be speaking of a case where he says this while he is still helping the other; e.g., while the blood is being sprinkled he may say that the killing was piggul. We then believe him because he can still render the sprinkling piggul.

(10) Because then we suppose that he merely says this to vex him. But otherwise we do believe him, even if he only says so afterwards. According to Raba we have to translate, 'If a man was helping . . . and afterwards said etc.'

(11) Even when he declares if after some time.

(12) I.e. his ceremonies in the inner shrine. V. Lev. XVI, 12-17.

(13) Ibid. 17.

(14) He was heard to say, e.g., that he sprinkles the blood with the intention to burn the fat after the specified time.

(15) In which case it would not be piggul.

(16) One of two small gateways between the inner part of the Temple (hekal) and the place where the knives were kept. Zeb. 55. He was seen through the pispas to make the piggul declaration whilst sprinkling the blood.

(17) Against the dictum of R. Isaac b. Bisna.

(18) V. infra.

(19) Thus leaving the letters of the divine name, YHWH, written however without proper intention.

(20) Which would disqualify the scroll. V. supra 20a.

Talmud - Mas. Gittin 55a

What is the difference between this case and that of R. Ammi? — In that case it might be argued that the scribe mistakenly adopted the view of R. Jeremiah,[1] but here, since he stakes the whole of his fee and yet comes and tells, we presume that he is telling the truth.

MISHNAH. R. JOHANAN B. GUDGADA TESTIFIED[2] THAT A DEAF-MUTE GIRL WHO HAS BEEN GIVEN IN MARRIAGE BY HER FATHER CAN BE PUT AWAY WITH A GET,[3] AND THAT

A MINOR [ORPHAN] DAUGHTER OF A LAY ISRAELITE MARRIED TO A PRIEST CAN EAT OF THE TERUMAH,[4] AND THAT IF SHE DIES HER HUSBAND INHERITS HER, AND THAT IF A BEAM WHICH HAS BEEN WRONGFULLY APPROPRIATED IS BUILT INTO A PALACE[5] RESTITUTION FOR IT MAY BE MADE IN MONEY,[6] SO AS NOT TO PUT OBSTACLES IN THE WAY OF PENITENTS, AND THAT A SIN-OFFERING WHICH HAS BEEN WRONGFULLY OBTAINED, SO LONG AS THIS IS NOT [KNOWN] TO MANY,[7] MAKES EXPIATION, TO PREVENT LOSS TO THE ALTAR.[8]

GEMARA. Raba said: From the testimony of R. Johanan b. Gudgada we learn that if a man said to the witnesses [to the Get],[9] See this Get which I am about to give to her [my wife], and then he said to his wife, Take this bond, the divorce is valid. For did not R. Johanan b. Gudgada affirm that the consent of the wife is not necessary? So here we do not require her knowledge.[10] Surely this is obvious? [It required to he stated] because you might have thought that his saying to her 'take this bond' rendered the Get void. [Raba therefore] teaches us that if he had meant to annul it he would have said so to the witnesses, and the reason why he spoke so to the wife was because he was ashamed [to call it a Get].

THAT A MINOR [ORPHAN] DAUGHTER OF A LAY ISRAELITE. A deaf-mute woman, however, [according to this] cannot eat.[11] What is the reason? — As a precaution against a deaf-mute priest giving a deaf-mute woman [terumah] to eat.[12] And suppose she does? She would only be like a child eating forbidden meat?[13] — It is a precaution against the possibility of a deaf-mute priest giving terumah to a wife in possession of her faculties. But allow him at least to give her terumah which is such only by the rule of the Rabbis?[14] — This is a precaution against the risk of her eating terumah which is such according to the Torah.

AND THAT IF A BEAM WRONGFULLY APPROPRIATED HAS BEEN BUILT INTO A PALACE. The Rabbis taught: If a man wrongfully takes a beam and builds it into a palace, Beth Shammai say that he must demolish the whole palace and restore the beam to its owner. Beth Hillel, however, say that the latter can claim only the money value of the beam, so as not to place obstacles in the way of penitents.[15]

THAT A SIN OFFERING WHICH HAS BEEN WRONGFULLY OBTAINED. 'Ulla said: According to the rule of the Torah, whether the [fact is generally] known or not, [the offering] does not make expiation, the reason being that Renunciation[16] does not of itself confer ownership [on the robber].[17] Why then was it laid down that if [the fact is] not known the offering is expiatory? — So that the priests should not be grieved.[18] Said the Rabbis to 'Ulla: But our Mishnah says TO PREVENT LOSS TO THE ALTAR? — He replied to them: When the priests are grieved the altar is not attended to. Rab Judah, however, said: According to the rule of the Torah, whether the fact [of its having been wrongfully acquired] is known or not known, the offering is expiatory, the reason being that Renunciation does of itself confer ownership [on the robber].

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(1) That he would lose only the fee for the names, and he was willing to risk this to annoy the purchaser.

(2) V. 'Ed. VII, 9.

(3) Although being deaf-mute she is not capable of giving consent, and although her marriage having been contracted by her father is a binding one.

(4) Although her marriage is valid only by the rule of the Rabbis and not of the Torah. But she may eat only such as is terumah in Rabbinic law alone, but not what is terumah in Biblical law, which does not recognise her as the priest's wife.

(5) Or any other building.
(6) Instead of the actual beam being restored. V. infra.
(7) [Three persons (v. J. a.l.)].
(8) Lit., 'for the good order of the altar'. This is discussed in the Gemara infra.
(9) Not in the wife's presence.
(10) Which in this case includes consent.
(11) As otherwise R. Johanan b. Gudgada would have stated the rule in reference to such a one.
(12) The marriage of a deaf-mute priest to a deaf-mute woman was valid only by Rabbinical rule, and therefore she was not permitted to eat terumah.
(13) Nebelah, v, Glos. And according to some authorities the Beth din do not step in to prevent this, v. Yeb. 114a.
(14) The marriage, valid in rabbinical law, should be recognised in regard to such terumah.
(15) As if they had to destroy the whole building they would not offer to make restitution.
(16) Ye'ush. The abandonment by the owner of the hope of recovery.
(17) Unless there has also been a change of ownership from the robber to a third party.
(18) When they find out that they have eaten from a non-sacred animal that has been killed within the temple precincts, the flesh of which was forbidden, v. B.K. 67a.

Talmud - Mas. Gittin 55b

Why then was it laid down that if [the fact is] known it is not expiatory?[1] In order that people should not say that the altar is fed from [the proceeds of] robbery. If we accept 'Ulla's view we quite understand why the Mishnah says 'SIN-OFFERING'.[2] But if Rab Judah's view is right, why does it say 'SIN-OFFERING'? The same would apply to a burnt-offering also?[3] — A stronger instance is taken: not only is this the case with a burnt-offering which is entirely [consumed on the altar], but even in the case of a sin-offering where only the fat and blood are put on the altar and the rest is eaten by the priests, even there they applied the rule, in order that people should not say that the altar is fed from robbery.

We learnt: THAT A SIN-OFFERING WHICH HAS BEEN WRONGFULLY OBTAINED, SO LONG AS THIS IS NOT KNOWN TO MANY, MAKES EXPIATION SO AS NOT TO CAUSE LOSS TO THE ALTAR. This raises no difficulty if we accept the view of 'Ulla, but on the view of Rab Judah we ought to have the opposite?[4] — This in fact is what he means: if [the fact is] not known it is expiatory, but if it is known it is not expiatory, to prevent loss to the altar.[5]

Raba raised an objection [from the following]: 'If a man stole [a beast] and sanctified it and then slaughtered and sold it, he makes twofold restitution but not four and fivefold.[6] And with reference to this it was taught: If [after dedication] he should kill the animal outside the precincts, his penalty is kareth.'[7] Now if you say that Renunciation does not of itself confer ownership [on the robber], how does kareth come in?[8] — R. Shezbi replied: It means, the kareth decreed by the Rabbis. They laughed at him: Is there such a thing, [they said,] as kareth decreed by the Rabbis? — Said Raba to them: When a great man has said something, do not laugh at him; he means, kareth which comes to him through their regulation; for it was the Rabbis who declared it to be in his possession[9] so that he might be liable for it. Raba further said: What I should like to know is this: When the Rabbis declared him to be the owner, did they mean this to apply from the time of stealing or from the time of sanctifying? What practical difference does it make? [It makes a difference] in respect of the fleece and the young;[10] what is the law? — Raba then [answered his own question] saying: It is reasonable to suppose that it is from the time that he sanctified them, so that a sinner should not profit from his offence.

MISHNAH. THERE WAS NO SICARICON[11] IN JUDEA FOR THOSE KILLED IN WAR.[12] AS FROM [THE TERMINATION OF] THE SLAUGHTER OF THE WAR[13] THERE HAS BEEN SICARICON THERE. HOW DOES THIS RULE APPLY? IF A MAN BUYS A FIELD FROM

THE SICARICON AND THEN BUYS IT AGAIN FROM THE ORIGINAL OWNER, HIS PURCHASE IS VOID,[14] BUT IF HE BUYS IT FIRST FROM THE ORIGINAL OWNER AND THEN FROM THE SICARICON IT IS VALID. IF A MAN BUYS [A PIECE OF A MARRIED WOMAN'S PROPERTY][15] FROM THE HUSBAND AND THEN BUYS IT AGAIN FROM THE WIFE, THE PURCHASE IS VOID,[16] BUT IF HE BUYS IT FIRST FROM THE WIFE AND THEN FROM THE HUSBAND IT IS VALID. THIS WAS [THE RULING] OF THE FIRST MISHNAH.[17] THE SUCCEEDING BETH DIN,[18] HOWEVER, LAID DOWN THAT IF A MAN BUYS PROPERTY FROM THE SICARICON HE HAD TO GIVE THE ORIGINAL OWNER A QUARTER [OF THE VALUE].[19] TH[19] S,[20] HOWEVER, IS ONLY THE CASE WHEN THE ORIGINAL OWNER IS NOT IN A POSITION TO BUY IT HIMSELF, BUT IF HE IS HE HAS THE RIGHT OF PRE-EMPTION. RABBI ASSEMBLED A BETH DIN AND THEY DECIDED BY VOTE THAT IF THE PROPERTY HAD BEEN IN THE HANDS OF THE SICARICON TWELVE MONTHS, WHOSOEVER FIRST PURCHASED IT ACQUIRED THE TITLE, BUT HE HAD TO GIVE A QUARTER [OF THE PRICE] TO THE ORIGINAL OWNER.

GEMARA. If there was no sicaricon for those killed in the war is it possible that there should have been after the termination of the war? — Rab Judah said: It means that the rule of sicaricon was not applied.[21] For R. Assi has stated: They [the Roman Government] issued three successive decrees. The first was that whoever did not kill [a Jew on finding him] should himself be put to death. The second was that whoever killed [a Jew] should pay four zuz.[22] The last was that whoever killed a Jew should himself be put to death.[23] Hence in the first two [periods], [the Jew], being in danger of his life, would determine to transfer his property[24] [to the sicaricon] but in the last [period] he would say to himself, Let him take it today; tomorrow I will sue him for it.[25]

R. Johanan said: What is illustrative of the verse, Happy is the man that feareth alway, but he that hardeneth his heart shall fall into mischief?[26] The destruction of Jerusalem came through a Kamza and a Bar Kamza;[27] the destruction of Tur Malka[28] came through a cock and a hen; the destruction of Bethar came through the shaft of a leather. The destruction of Jerusalem came through a Kamza and a Bar Kamza in this way. A certain man had a friend Kamza and an enemy Bar Kamza. He once made a party and said to his servant, Go and bring Kamza. The man went and brought Bar Kamza. When the man [who gave the party] found him there he said, See, you tell tales about me; what are you doing here? Get out. Said the other: Since I am here, let me stay, and I will pay you for whatever I eat and drink.

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(1) This is not distinctly stated in the Mishnah, but is clearly implied.

(2) Because only in this case where the priests eat of the flesh is there any danger of their becoming grieved.

(3) Which is wholly burnt,

(4) Viz., ‘a sin-offering . . . if this is generally known, makes no expiation’.

(5) By giving it a bad name.

(6) B.K. 68b (Sonc. ed.) p. 395, q.v. for notes.

(7) V. Glos. For killing a sacred animal outside the precincts of the Temple.

(8) Because when he dedicated it the animal was not his, and therefore when he killed it it was not sacred.

(9) When he dedicated it.

(10) If he was declared owner from the time of the theft, then the fleece was grown or the calf was born while the animal was in his possession, and he has not to make restitution for these.

(11) This word is usually regarded as being connected with the Latin sicarius, and is explained to mean a Roman soldier who threatened to kill a Jew but let him go on being given some of his property. Jastrow, however, very plausibly suggests that it is a corruption of GR. **, the Imperial fiscus which after the war of Bar Cochba confiscated and appropriated the property of Jews who had fought against the Romans.

(12) The Gemara will explain the meaning of this passage. It is not clear whether only the war of Bethar is meant or the earlier war against Titus as well.

(13) V. infra in the Gemara.

(14) Because we say that the owner only sold it out of fear, and with a mental reservation.
(15) Settled on her by her Kethubah. V. B.B. 49b.
(16) Because we assume that she only consented to the sale to oblige her husband.
(17) V. Sanh. (Sonc. ed.) p. 163, n. 7.
(18) Lit., 'the Beth din of those who came after them.'
(19) It being estimated that the sicaricon would take a quarter less than the real value.
(20) That a purchase from the sicaricon is valid.
(21) [I.e., the heirs could not come and invalidate the sale to the third party. According to J. and Tosef. this rule was instituted in order to promote the settlement of Jews in Judea שוב המדינה , otherwise Jews would be afraid to purchase fields from the sicaricon for fear that the heirs would come and claim the return of their property.]
(22) As a fine.
(23) [Halevy Doroth, I.e., attempts on the basis of Josephus Wars VI, 9, 2; VII, 6; VII, 6.6, to place the three decrees shortly after the year 70 C.E.]
(24) And therefore the purchase of it from the sicaricon by a third party was valid. [The phrase גמר ומקני is here used in a loose sense and is not to be taken literally. It signifies that the owner despairs of the field and will make no attempt to recover it. Similarly in the case of the Mishnah, the heirs to those fields that had been seized of those killed in the war, had given up all hope of recovering the fields. Though legally, since there has been no actual transfer, they could by rights reclaim the fields when the opportunity presented itself it was nevertheless ruled that the sale to the third party is valid for the reason stated in n. 3. This removes the contradiction which Solomon Adreth points out in his Hiddushin between our Talmud and the Tosefta.]
(25) And since the original owner had not waived his title, the purchase by a third party was not valid. [And similarly in the case of the heirs of those who are killed after the war, since they do not despair, the law of sicaricon applies. That is, the non-Jew who seized the land is treated as an ordinary robber and his sale of the field to a third party is invalid. The reason of שוב המדינה is not applicable in this case since the heir himself will see to it to recover the property. For attempts to solve the problems connected with the subject, v. Elbogen MGWJ. 1925, pp. 349ff. Feist, MGWJ. 71, pp. 138, Gulak, Tarbiz, V, p. 23ff., and Halevy, Doroth, I.e., p. 130e.]
(26) Prov. XXVIII, 14. What follows illustrates the endless misery and mischief caused by hardness of heart.
(27) Lit., 'locust and son of locust'. The meaning is that a very trivial cause set in motion the train of events which led to the destruction of Jerusalem; and similarly with the slaughter which accompanied and followed the war of Bar Cochba.
(28) ['The Mountain of the King'. V. Pseudo-Jonathan, Judges IV, 5, where Mt. Ephraim is rendered by Tur Malka. According to Horowitz, Palestine, p. 240, it denotes the whole mountainous region stretching from the Valley of Jezreel to the south of Judah, including the mountains of Samaria, known also by the Hebrew name Har ha-Melek. (V. also Buchler, JQR, XVI, pp. 180ff.) There is still some uncertainty whence this name was derived. Was it perhaps because this region lay within the great conquests of John Hyrcanus that it was given the name? v. p. 77a n. 3a. The destruction of Tur Malka is placed by Buchler, op. cit. p. 186ff. during the war 66-70].

Talmud - Mas. Gittin 56a

He said, I won't. Then let me give you half the cost of the party. No, said the other. Then let me pay for the whole party. He still said, No, and he took him by the hand and put him out. Said the other, Since the Rabbis were sitting there and did not stop him, this shows that they agreed with him. I will go and inform against then, to the Government. He went and said to the Emperor, The Jews are rebelling against you. He said, How can I tell? He said to him: Send them an offering and see whether they will offer it [on the altar]. So he sent with him a fine calf.[1] While on the way he made a blemish on its upper lip, or as some say on the white of its eye, in a place where we [Jews] count it a blemish but they do not. The Rabbis were inclined to offer it in order not to offend the Government. Said R. Zechariah b. Abkulas to them: People will say that blemished animals are offered on the altar. They then proposed to kill Bar Kamza so that he should not go and inform against them, but R. Zechariah b. Abkulas said to them, Is one who makes a blemish on consecrated animals to be put to death? R. Johanan thereupon remarked: Through the scrupulousness[2] of R. Zechariah b. Abkulas our House has been destroyed, our Temple burnt and we ourselves exiled from our land.[3]

He [the Emperor] sent against them Nero the Caesar.[4] As he was coming he shot an arrow towards the east, and it fell in Jerusalem. He then shot one towards the west, and it again fell in Jerusalem. He shot towards all four points of the compass, and each time it fell in Jerusalem. He said to a certain boy: Repeat to me [the last] verse of Scripture you have learnt. He said: And I will lay my vengeance upon Edom by the hand of my people Israel.[5] He said: The Holy One, blessed be He, desires to lay waste his House and to lay the blame on me.[6] So he ran away and became a proselyte, and R. Meir was descended from him .[7]

He then sent against them Vespasian the Caesar[8] who came and besieged Jerusalem for three years. There were in it three men of great wealth, Nakdimon b. Gorion, Ben Kalba Shabua' and Ben Zizith Hakeseth. Nakdimon b. Gorion was so called because the sun continued shining for his sake.[9] Ben Kalba Shabua 'was so called because one would go into his house hungry as a dog [keleb] and come out full [sabea']. Ben Zizith Hakeseth was so called because his fringes [zizith] used to trail on cushions [keseth]. Others say he derived the name from the fact that his seat [kise] was among those of the nobility of Rome. One of these said to the people of Jerusalem, I will keep them in wheat and barley. A second said, I will keep them in wine, oil and salt. The third said, I will keep them in wood. The Rabbis considered the offer of wood the most generous,[10] since R. Hisda used to hand all his keys to his servant save that of the wood, for R. Hisda used to say, A storehouse of wheat requires sixty stores of wood [for fuel]. These men were in a position to keep the city for twenty-one years.

The biryoni[11] were then in the city. The Rabbis said to them: Let us go out and make peace with them [the Romans]. They would not let them, but on the contrary said, Let us go out and fight them. The Rabbis said: You will not succeed. They then rose up and burnt the stores of wheat and barley so that a famine ensued. Martha the daughter of Boethius was one of the richest women in Jerusalem. She sent her man-servant out saying, Go and bring me some fine flour. By the time he went it was sold out. He came and told her, There is no fine flour, but there is white [flour]. She then said to him, Go and bring me some. By the time he went he found the white flour sold out. He came and told her, There is no white flour but there is dark flour. She said to him, Go and bring me some. By the time he went it was sold out. He returned and said to her, There is no dark flour, but there is barley flour. She said, Go and bring me some. By the time he went this was also sold out. She had taken off her shoes, but she said, I will go out and see if I can find anything to eat. Some dung stuck to her foot and she died.[12] Rabban Johanan b. Zakkai applied to her the verse, The tender and delicate woman among you which would not adventure to set the sole of her foot upon the ground.[13] Some report that she ate a fig left by R. Zadok, and became sick and died. For R. Zadok observed fasts for forty years in order that Jerusalem might not be destroyed, [and he became so thin that] when he ate anything the food could be seen [as it passed through his throat.] When he wanted to restore himself, they used to bring him a fig, and he used to suck the juice and throw the rest away. When Martha was about to die, she brought out all her gold and silver and threw it in the street, saying, What is the good of this to me, thus giving effect to the verse, They shall cast their silver in the streets.[14]

Abba Sikra[15] the head of the biryoni in Jerusalem was the son of the sister of Rabban Johanan b. Zakkai. [The latter] sent to him saying, Come to visit me privately. When he came he said to him, How long are you going to carry on in this way and kill all the people with starvation? He replied: What can I do? If I say a word to them, they will kill me. He said: Devise some plan for me to escape. Perhaps I shall be able to save a little. He said to him: Pretend to be ill, and let everyone come to inquire about you. Bring something evil smelling and put it by you so that they will say you are dead. Let then your disciples get under your bed, but no others, so that they shall not notice that you are still light, since they know that a living being is lighter than a corpse. He did so, and R. Eliezer went under the bier from one side and R. Joshua from the other. When they reached the door, some men wanted to put a lance through the bier. He said to them: Shall [the Romans] say. They

have pierced their Master? They wanted to give it a push. He said to them: Shall they say that they pushed their Master? They opened a town gate for him and he got out.

When he reached the Romans[16] he said, Peace to you, O king, peace to you, O king. He [Vespasian] said: Your life is forfeit on two counts, one because I am not a king and you call me king, and again, if I am a king, why did you not come to me before now? He replied: As for your saying that you are not a king,

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(1) Lit., 'a third calf'. (a) Reached a third of its growth, (b) the third-born, (c) in its third year.

(2) Lit., 'the humility'.

(3) [V. Josephus, Wars, II, 17, 2, who ascribes the beginning of the war to the refusal to accept the offering of the Emperor in 66 C.E.]

(4) Nero himself never came to Palestine,

(5) Ezek., XXV, 14.

(6) Lit., 'to wipe his hand'.

(7) [This story may be an echo of the legend that Nero who had committed suicide was still alive and that he would return to reign (v. JE. IX, 225).]

(8) [Who ultimately was known as the Caesar; v. Halevy, Doroth. I.e. p. 2.]

(9) It is related in Ta'anith, 19b, that this Nakdimon once prayed that the sun might continue shining (nakad) to enable him to discharge a certain debt he had incurred on behalf of the people, and his prayer was granted.

(10) Lit., 'they praised'.

(11) Perhaps == palace guards (from biryah). The reference is obviously to the Zealot bands who defended Jerusalem.

(12) From the shock.

(13) Deut. XXVIII, 57.

(14) Ezek. VII, 19.

(15) [Lit., Father of the Sicarii.' His real name was Ben Batiah, Ekah Rab, I. The term sicarii here is not to he confused with the sicaricon mentioned in the Mishnah, V. Rosenthal, MGWJ, 1893, p. 58].

(16) Lit. 'there'.

in truth you are a king, since if you were not a king Jerusalem would not be delivered into your hand, as it is written, And Lebanon shall fall by a mighty one.[1] 'Mighty one' [is an epithet] applied only to a king, as it is written, And their mighty one shall be of themselves[2] etc.; and Lebanon refers to the Sanctuary, as it says, This goodly mountain and Lebanon.[3] As for your question, why if you are a king, I did not come to you till now, the answer is that the biryoni among us did not let me. He said to him; If there is a jar of honey round which a serpent is wound, would they not break the jar to get rid of the serpent?[4] He could give no answer. R. Joseph, or as some say R. Akiba, applied to him the verse, [God] turneth wise men backward and maketh their knowledge foolish.[5] He ought to have said to him: We take a pair of tongs and grip the snake and kill it, and leave the jar intact.[6]

At this point a messenger came to him from Rome saying, Up, for the Emperor is dead, and the notables of Rome have decided to make you head [of the State]. He had just finished putting on one boot. When he tried to put on the other he could not. He tried to take off the first but it would not come off. He said: What is the meaning of this? R. Johanan said to him: Do not worry: the good news has done it, as it says, Good tidings make the bone fat.[7] What is the remedy? Let someone whom you dislike come and pass before you, as it is written, A broken spirit drieth up the bones.[8] He did so, and the boot went on. He said to him: Seeing that you are so wise, why did you not come to me till now? He said: Have I not told you? — He retorted: I too have told you.

He said; I am now going, and will send someone to take my place. You can, however, make a request of me and I will grant it. He said to him: Give me Jabneh and its Wise Men,[9] and the family

chain of Rabban Gamaliel,[10] and physicians to heal R. Zadok. R. Joseph, or some say R. Akiba, applied to him the verse, '[God] turneth wise men backward and maketh their knowledge foolish'. He ought to have said to him; Let them [the Jews] off this time. He, however, thought that so much he would not grant, and so even a little would not be saved.

How did the physicians heal R. Zadok? The first day they let him drink water in which bran had been soaked; on the next day water in which there had been coarse meal;[11] on the next day water in which there had been flour, so that his stomach expanded little by little.

Vespasian sent Titus who said, Where is their God, the rock in whom they trusted?[12] This was the wicked Titus who blasphemed and insulted Heaven. What did he do? He took a harlot by the hand and entered the Holy of Holies and spread out a scroll of the Law and committed a sin on it. He then took a sword and slashed the curtain. Miraculously blood spurted out, and he thought that he had slain himself,[13] as it says, Thine adversaries have roared in the midst of thine assembly, they have set up their ensigns for signs.[14] Abba Hanan said: Who is a mighty one like unto thee, O Jah?[15] Who is like Thee, mighty in self-restraint,[16] that Thou didst hear the blaspheming and insults of that wicked man and keep silent? In the school of R. Ishmael it was taught; Who is like thee among the gods [elim]?[17] Who is like thee among the dumb ones [illemim]. Titus further took the curtain and shaped it like a basket and brought all the vessels of the Sanctuary and put them in it, and then put them on board ship to go and triumph with them in his city, as it says, And withal I saw the wicked buried, and they that come to the grave and they that had done right went away from the holy place and were forgotten in the city.[18] Read not keburim [buried] but kebuzim [collected]; read not veyishtakehu [and were forgotten] but veyishtabehu [and triumphed]. Some say that keburim [can be retained], because even things that were buried were disclosed to them. A gale sprang up at sea which threatened to wreck him. He said: Apparently the power of the God of these people is only over water. When Pharaoh came He drowned him in water, when Sisera came He drowned him in water. He is also trying to drown me in water. If he is really mighty, let him come up on the dry land and fight with me. A voice went forth from heaven saying; Sinner, son of sinner, descendant of Esau the sinner, I have a tiny creature in my world called a gnat. (Why is it called a tiny creature? Because it has an orifice for taking in but not for excreting.) Go up on the dry land and make war with it. When he landed the gnat came and entered his nose, and it knocked against his brain for seven years. One day as he was passing a blacksmith's it heard the noise of the hammer and stopped. He said; I see there is a remedy. So every day they brought a blacksmith who hammered before him. If he was a non-Jew they gave him four zuz, if he was a Jew they said, It is enough that you see the suffering of your enemy. This went on for thirty days, but then the creature got used to it.[19] It has been taught: R. Phineas b. 'Aruba said; I was in company with the notables of Rome, and when he died they split open his skull and found there something like a sparrow two sela's in weight. A Tanna taught; Like a young dove two pounds in weight. Abaye said; We have it on record that its beak was of brass and its claws of iron. When he died he said: Burn me and scatter my ashes over the seven seas so that the God of the Jews should not find me and bring me to trial.

Onkelos son of Kolonikos[20] was the son of Titus's sister. He had a mind to convert himself to Judaism. He went and raised Titus from the dead by magical arts, and asked him; 'Who is most in repute in the [other] world? He replied: Israel. What then, he said, about joining them? He said: Their observances are burdensome and you will not be able to carry them out. Go and attack them in that world and you will be at the top as it is written, Her adversaries are become the head[21] etc.; whoever harasses Israel becomes head. He asked him:

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(1) Isa. X, 34.

(2) Jer. XXX, 21.

(3) Deut. III, 25.

(4) So you should have broken down the walls to get rid of the biryoni.

(5) lsa. XLIV, 25.
(6) So they were waiting for some opportunity to get rid of the biryoni.
(7) Prov. XV, 30.
(8) Ibid. XVII, 22.
(9) I.e., leave to found a seminary at Jabneh (Jamnia).
(10) That the R. Gamaliel dynasty be spared. R. Johanan was particularly solicitous for R. Gamaliel and his family, as they were supposed to be of the house of David.
(11) Coarse bran mixed with flour (Rashi).
(12) Deut. XXXII, 37.
(13) Euphemism for God.
(14) Ps. LXXIV, 4.
(15) Ibid. LXXXIX, 9.
(16) Lit., 'and hard'.
(17) Ex. XV, 11.
(18) Eccl. VIII, 10.
(19) Lit., 'since it trod, it trod.'
(20) V. A.Z. (Sonc. ed.) p. 55, n. 1.
(21) Lam. I, 5.

Talmud - Mas. Gittin 57a

What is your punishment [in the other world]? He replied: What decreed for myself. Every day my ashes are collected and sentence is passed on me and I am burnt and my ashes are scattered over the seven seas. He then went and raised Balaam by incantations. He asked him: Who is in repute in the other world? He replied: Israel. What then, he said, about joining them? He replied: Thou shalt not seek their peace nor their prosperity all thy days for ever.[1] He then asked: What is your punishment? He replied: With boiling hot semen.[2] He then went and raised by incantations the sinners of Israel.[3] He asked them: Who is in repute in the other world? They replied: Israel. What about joining them? They replied: Seek their welfare, seek not their harm. Whoever touches them touches the apple of his eye. He said: What is your punishment? They replied: With boiling hot excrement, since a Master has said: Whoever mocks at the words of the Sages is punished with boiling hot excrement. Observe the difference between the sinners of Israel and the prophets of the other nations who worship idols. It has been taught: Note from this incident how serious a thing it is to put a man to shame, for God espoused the cause of Bar Kamza and destroyed His House and burnt His Temple.

'Through a cock and a hen Tur Malka was destroyed'. How? — It was the custom that when a bride and bridegroom were being escorted a cock and a hen were carried before them, as if to say, Be fruitful and multiply like fowls. One day a band of Roman soldiers passed by and took the animals from them, so the Jews fell on them and beat them. So they went and reported to the Emperor that the Jews were rebelling, and he marched against them. There came against them one Bar Daroma[4] who was able to jump a mile, and slaughtered them. The Emperor took his crown and placed it on the ground, saying, Sovereign of all the world, may it please thee not to deliver me and my kingdom into the hands of one man. Bar Daroma was tripped up by his own utterance, as he said, Hast not thou, O God, cast us off and thou goest not forth, O God, with our hosts.[5] But David also said thus? — David wondered if it could be so. He went into a privy and a snake came, and he dropped his gut [from fright] and died. The Emperor said: Since a miracle has been wrought for me, I will let them off this time. So he left them alone and went away. They began to dance about and eat and drink and they lit so many lamps that the impress of a seal could be discerned by their light a mile away from the place. Said the Emperor; Are the Jews making merry over me? And he again invaded them. R. Assi said; Three hundred thousand men with drawn swords went in to Tur Malka, and slaughtered for three days and three nights, while on the other side dancing and feasting was going on, and one did not know about the other.

The Lord hath swallowed up all the habitations of Jacob and hath not pitied.[6] When Rabin came he said in the name of R. Johanan; These are the sixty thousand myriads of cities which King Jannai had in the King's Mountain.[7] For R. Judah said in the name of R. Assi: King Jannai had sixty myriads of cities in the King's Mountain, and in each of them was a population as large as that of the Exodus, save in three of them which had double as many. These were Kefar Bish,[8] Kefar Shihlayim,[9] and Kefar Dikraya.[10] [The first was called] Kefar Bish [evil village] because they never gave hospitality to visitors. The second was called Kefar Shihlayim because they made their living from shihlayim [watercress]. Kefar Dikraya [village of males] according to R. Johanan, was so called because women used to bear males first and finally a girl and then no more. 'Ulla said: I have seen that place, and it would not hold even sixty myriads of reeds. A certain Min said to R. Hanina: You tell a lot of lies.[11] He replied: Palestine is called 'land of the deer'.[12] Just as the skin of the hind cannot hold its flesh,[13] so the Land of Israel when it is inhabited can find room but when it is not inhabited it contracts.

Once when R. Manyumi b. Helkiah and R. Helkiah b. Tobiah and R. Huna b. Hiyya were sitting together they said: If anyone knows anything about Kefar Sekania of Egypt,[14] let him say. One of them thereupon said; Once a betrothed couple [from there] were carried off by heathens who married them to one another. The woman said: I beg of you not to touch me, as I have no Kethubah[15] from you. So he did not touch her till his dying day. When he died, she said: Mourn for this man who has kept his passions in check more than Joseph, because Joseph was exposed to temptation only a short time, but this man every day. Joseph was not in one bed with the woman but this man was; in Joseph's case she was not his wife, but here she was. The next then began and said: On one occasion forty bushels [of coin] were selling for a denar, and the number went down one, and they investigated and found that a man and his son had had intercourse with a betrothed maiden on the Day of Atonement, so they brought them to the Beth din and they stoned them and the original price was restored. The third then began and said: There was a man who wanted to divorce his wife, but hesitated because she had a big marriage settlement. He accordingly invited his friends[16] and gave them a good feast and made them drunk and put them all in one bed. He then brought the white of an egg and scattered it among them and brought witnesses[17] and appealed to the Beth din. There was a certain elder there of the disciples of Shammai the Elder, named Baba b. Buta, who said: This is what I have been taught by Shammai the Elder, that the white of an egg contracts when brought near the fire, but semen becomes faint from the fire. They tested it and found that it was so, and they brought the man to the Beth din and flogged him and made him pay her Kethubah. Said Abaye to R. Joseph: Since they were so virtuous, why were they punished? — He replied: Because they did not mourn for Jerusalem, as it is written; Rejoice ye with Jerusalem and be glad for her, all ye that love her, rejoice for joy with her all ye that mourn over her.[18]

'Through the shaft of a litter Bethar[19] was destroyed.' It was the custom when a boy was born to plant a cedar tree and when a girl was born to plant a pine tree, and when they married, the tree was cut down and a canopy made of the branches. One day the daughter of the Emperor was passing when the shaft of her litter broke, so they lopped some branches off a cedar tree and brought it to her. The Jews thereupon fell upon them and beat them. They reported to the Emperor that the Jews were rebelling, and he marched against them.

He hath cut off in fierce anger all the horn of Israel.[20] R. Zera said in the name of R. Abbahu who quoted R. Johanan: These are the eighty [thousand][21] battle trumpets which assembled in the city of Bethar when it was taken and men, women and children were slain in it until their blood ran into the great sea. Do you think this was near? It was a whole mil[22] , away. It has been taught: R. Eleazar the Great said: There are two streams in the valley of Yadaim,[23] one running in one direction and one in another, and the Sages estimated that [at that time] they ran with two parts water to one of blood. In a Baraitha it has been taught: For seven years the Gentiles fertilised[24] their vineyards with the blood

of Israel without using manure.

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(1) Deut. XXIII, 7.
(2) Because he enticed Israel to go astray after the daughters of Moab. V. Sanh. 106a.
(3) [MS.M. Jesus].
(4) Lit., 'Son of the South'.
(5) Ps. LX, 12.
(6) Lam. II, 2.
(7) V. supra, p. 251, n. 4.
(8) [Identified with Kafarabis in Upper Idumea mentioned in Josephus Wars, IV, 9, 9. V. Buchler op. cit. p. 191].
(9) [Identified with Sachlin near Ascalon. Klein, D. ZDPV. 1910, 35.]
(10) [Dikrin, N. of Beth Gubrin (Eleutheropolis); v. EJ. 9, 1132].
(11) Referring to the exaggerated statements about the King's Mountain.
(12) E.V. 'glorious', Jer. III, 19; a play on the word צבי , which means either 'glorious' or 'deer'.
(13) Because after the hind is killed the skin shrinks.
(14) [Klein, S. Beitrage, p. 20, n. 1. suggests the reading נוצרים (Nazarenes) instead of מצרים (Egypt). It is thus the Kefar Sekania (Suchnin) in Galilee (v. A.Z., Sonc. ed. p. 85. n. 1) a place with Nazarene associations. It was probably to contrast the erstwhile loyalty of the place to the then prevailing defection that the incidents that follow were related].
(15) According to Rabbinic law it is forbidden or a man to live with his wife unless he made out for her a kethubah.
(16) 'Shoshbin' 'best men', 'Groomsmen'; v. B.B. (Sonc. ed.) p. 618, n. 10.
(17) To prove that they had abused his wife.
(18) Isa. LXVI, 10.
(19) In Southern Palestine, the centre of the revolt of Bar Cochba.
(20) Lam. II, 3.
(21) This word is bracketed in the text.
(22) [J., reads 'four mils'. The site of Bethar is still uncertain, v. JE. s.v.].
(23) [Rappaport, 'Erech Millin refers this to the Roman devastation of the Jewish quarter in Alexandria in the days of Alexander Tiberius. The Valley of Yadayim ('Hands') is thus the Delta of the Nile. Graetz, Geschichte IV, p. 425 places this in the Bar Cochba war and identifies the Valley with Beth Rimmon Valley.]
(24) Lit., 'gathered the vintage from.'

Talmud - Mas. Gittin 57b

R. Hiya b. Abin said in the name of R. Joshua b. Korhah: An old man from the inhabitants of Jerusalem told me that in this valley Nebuzaradan the captain of the guard killed two hundred and eleven myriads,[1] and in Jerusalem he killed ninety-four myriads on one stone, until their blood went and joined that of Zechariah,[2] to fulfil the words, Blood toucheth blood.[3] He noticed the blood of Zechariah bubbling up warm, and asked what it was. They said: It is the blood of the sacrifices which has been poured there. He had some blood brought, but it was different from the other. He then said to them: If you tell me [the truth], well and good, but if not, I will tear your flesh with combs of iron. They said: What can we say to you? There was a prophet among us who used to reprove us for our irreligion, and we rose up against him and killed him, and for many years his blood has not rested. He said to them: I will appease him. He brought the great Sanhedrin[4] and the small Sanhedrin[5] and killed them over him, but the blood did not cease. He then slaughtered young men and women, but the blood did not cease. He brought school-children and slaughtered them over it, but the blood did not cease. So he said; Zechariah, Zechariah. I have slain the best of them; do you want me to destroy them all? When he said this to him, it stopped. Straightway Nebuzaradan felt remorse. He said to himself: If such is the penalty for slaying one soul, what will happen to me who have slain such multitudes? So he fled away, and sent a deed to his house disposing of his effects and became a convert. A Tanna taught: Naaman was a resident alien;[6] Nebuzaradan was a righteous proselyte;[7] descendants of Haman learnt the Torah in Benai Berak; descendants of Sisera taught

children in Jerusalem; descendants of Sennacherib gave public expositions of the Torah. Who were these? Shemaya and Abtalion.[8] [Nebuzaradan fulfilled] what is written, I have set her blood upon the bare rock that it should not be covered.[9] The voice is the voice of Jacob and the hands are the hands of Esau:[10] 'the voice' here refers to [the cry caused by] the Emperor Hadrian[11] who killed in Alexandria of Egypt sixty myriads on sixty myriads, twice as many as went forth from Egypt. 'The voice of Jacob': this is the cry caused by the Emperor Vespasian[12] who killed in the city of Bethar four hundred thousand myriads, or as some say, four thousand myriads. 'The hands are the hands of Esau:' this is the Government of Rome which has destroyed our House and burnt our Temple and driven us out of our land. Another explanation is [as follows]: 'The voice is the voice of Jacob:' no prayer is effective unless the seed of Jacob has a part in it. 'The hands are the hands of Esau:' no war is successful unless the seed of Esau has a share in it. This is what R. Eleazar said:[13] Thou shalt be hid from the scourge of the tongue;[14] this means, thou shalt be protected from the heated contests[15] of the tongue.

Rab Judah said in the name of Rab: What is meant by the verse, By the rivers of Babylon there we sat down, yea, we wept when we remembered Zion?[16] This indicates that the Holy One, blessed be He, showed David the destruction both of the first Temple and of the second Temple. Of the first Temple, as it is written, 'By the rivers of Babylon there we sat, yea we wept'; of the second Temple, as it is written, Remember, O Lord, against the children of Edom[17] the day of Jerusalem, who said, rase it, rase it, even unto the foundation thereof.[18]

Rab Judah said in the name of Samuel, or it may be R. Ammi, or as some say it was taught in a Baraitha; On one occasion four hundred boys and girls were carried off for immoral purposes. They divined what they were wanted for and said to themselves, If we drown in the sea we shall attain the life of the future world. The eldest among them expounded the verse, The Lord said, I will bring again from Bashan, I will bring again from the depths of the sea.[19] 'I will bring again from Bashan,' from between the lions' teeth.[20] 'I will bring again from the depths of the sea,' those who drown in the sea. When the girls heard this they all leaped into the sea. The boys then drew the moral for themselves, saying, If these for whom this is natural act so, shall not we, for whom it is unnatural? They also leaped into the sea. Of them the text says, Yea, for thy sake we are killed all the day long, we are counted as sheep for the slaughter.[21] Rab Judah, however, said that this refers to the woman and her seven sons.[22] They brought the first before the Emperor and said to him, Serve the idol. He said to them: It is written in the Law, I am the Lord thy God.[23] So they led him away and killed him. They then brought the second before the Emperor and said to him, Serve the idol. He replied: It is written in the Torah, Thou shalt have no other gods before me.[24] So they led him away and killed him. They then brought the next and said to him, Serve the idol. He replied: It is written in the Torah, He that sacrifices unto the gods, save unto the Lord only, shall be utterly destroyed.[25] So they led him away and killed him. They then brought the next before the Emperor saying, Serve the idol. He replied: It is written in the Torah, Thou shalt not bow down to any other god.[26] So they led him away and killed him. They then brought another and said to him, Serve the idol. He replied: It is written in the Torah, Hear, O Israel, the Lord our God, the Lord is one.[27] So they led him away and killed him. They then brought the next and said to him, Serve the idol. He replied; It is written in the Torah, Know therefore this day and lay it to thine heart that the Lord He is God in heaven above and on the earth beneath; there is none else.[28] So they led him away and killed him. They brought the next and said to him, Serve the idol. He replied: It is written in the Torah, Thou hast avouched the Lord this day . . . and the Lord hath avouched thee this day;[29] we have long ago sworn to the Holy One, blessed be He, that we will not exchange Him for any other god, and He also has sworn to us that He will not change us for any other people. The Emperor said: I will throw down my seal before you and you can stoop down and pick it up,[30] so that they will say of you that you have conformed to the desire[31] of the king. He replied; Fie on thee, Caesar, fie on thee, Caesar; if thine own honour is so important, how much more the honour of the Holy One, blessed be He! They were leading him away to kill him when his mother said: Give him to me that I may kiss him a little. She said to him: My

son, go and say to your father Abraham, Thou didst bind one [son to the] altar, but I have bound seven altars. Then she also went up on to a roof and threw herself down and was killed. A voice thereupon came forth from heaven saying, A joyful mother of children.[32]

R. Joshua b. Levi said: [The verse, 'Yea, for thy sake we are killed all the day long'] can be applied to circumcision, which has been appointed for the eighth [day]. R. Simeon b. Lakish said: It can be applied to the students of the Torah who demonstrate the rules of shechitah on themselves; for Raba said: A man can practise anything on himself except shechitah,[33] and something else. R. Nahman b. Isaac said that it can be applied to the students who kill themselves for the words of the Torah, in accordance with the saying of R. Simeon b. Lakish; for R. Simeon b. Lakish said: The words of the Torah abide only with one who kills himself for them, as it says, This is the Torah, when a man shall die in the tent etc.[34]

Rabbah b. Bar Hanah said in the name of R. Johanan: Forty se'ahs

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(1) V. II Kings XXV, 8ff.

(2) The son of Jehoiada the high priest. V. II Chron. XXIV, 22.

(3) Hos. IV, 2.

(4) The high court of 71 members.

(5) The lesser court of 23 members.

(6) One who merely abstains from idolatry but does not keep the commandments.

(7) Who accepts all the laws of Judaism with no ulterior motive.

(8) The predecessors of Hillel and Shammai. V. Aboth, I.

(9) Ezek. XXIV, 8.

(10) Gen. XXVII, 22.

(11) [Graetz, Geschichte, IV, p. 426, on the basis of parallel passages emends; 'Trajan', the reference being to the massacre of Alexandrian Jews by Trajan as a result of an insurrection. V. Suk. 51b.]

(12) This seems a mistake here for Hadrian. [V. J. Ta'an. IV.]

(13) The remark made above that through malicious speech the Temple was destroyed etc. (Rashi). [Maharsha refers it to the efficacy of the 'voice of Jacob.']

(14) Job V, 21.

(15) Apparently this means 'slander'. [According to Maharsba render: 'Thou shalt be protected (find refuge) in the heated contests of the tongue', i.e., prayer'.]

(16) Ps. CXXXVII, 1.

(17) Stands for Rome.

(18) lbid. 7.

(19) Ps. LXVIII, 23.

(20) בין שן of which בשן is taken as a contraction.

(21) Ibid, XLIV, 23.

(22) The same story is related of Antiochus Epiphanes in the second book of the Maccabees.

(23) Ex. XX, 2.

(24) Ibid, 3.

(25) Ibid, XXII, 19.

(26) Ibid, XX, 5.

(27) Deut. VI, 4.

(28) Ibid, IV, 39.

(29) Deut. XXVI, 17, 18.

(30) The seal had engraved on it the image of the king and by stooping down to pick it up he will make it appear as if he is worshipping the image (Rashi).

(31) Lit., 'accept the authority'.

(32) Ps. CXIII, 9.

(33) For fear that he might accidentally cut his throat.

(34) Num. XIX, 14. The meaning in the context is of course quite different.

Talmud - Mas. Gittin 58a

of phylactery boxes[1] were found on the heads of the victims of Bethar. R. Jannai son of R. Ishmael said there were three chests each containing forty se'ahs. In a Baraitha it was taught: Forty chests each of three se'ahs. There is, however, no contradiction; the one was referring to the phylactery of the head, the other to that of the arm.[2]

R. Assi said; Four kabs of brain were found on one stone. 'Ulla said: Nine kabs. R. Kahana — or some say Shila b. Mari — said: Where do we find this in the Scripture? [In the verse], O daughter of Babylon that art to be destroyed, happy shall he be that rewardeth thee . . . happy shall he be that taketh and dasheth thy little ones against the rock.[3]

[It is written]: The precious sons of Zion, comparable to fine gold.[4] What is meant by 'comparable to fine gold'? Shall l say it means that they were covered with gold? [This can hardly be] seeing that in the school of R. Shila it was stated that two state weights of fine gold came down into the world, one of which went to Rome and the other to the rest of the world! No: what it means is that they used to eclipse fine gold with their beauty. Before that the notables of the Romans used to keep an amulet set in a ring in front of them when they had sexual intercourse, but now they brought Israelites and tied them to the foot of the bed. One man asked another: Where is that written [in the Scripture]? He replied: Also every sickness and every plague which is not written in the book of this law.[5] Said the other: How far am I from that place? — He replied: A little,[6] a page and a half. Said the other: If I had got so far, I should not have wanted you.

Rab Judah reported Samuel as saying in the name of Rabban Simeon b. Gamaliel; What is signified by the verse, Mine eye affecteth my soul, because of all the daughters of my city?[7] There were four hundred synagogues in the city of Bethar, and in every one were four hundred teachers of children, and each one had under him four hundred pupils,[8] and when the enemy entered there they pierced them with their staves, and when the enemy prevailed and captured them, they wrapped them in their scrolls and burnt them with fire.

Our Rabbis have taught: R. Joshua b. Hananiah once happened to go to the great city of Rome,[9] and he was told there that there was in the prison a child with beautiful eyes and face and curly locks.[10] He went and stood at the doorway of the prison and said, Who gave Jacob for a spoil and Israel to the robbers?[11] The child answered, Is it not the Lord, He against whom we have sinned and in whose ways they would not walk, neither were they obedient unto his law.[12] He said: I feel sure that this one will be a teacher in Israel. I swear that I will not budge from here before I ransom him, whatever price may be demanded. It is reported that he did not leave the spot before he had ransomed him at a high figure, nor did many days pass before he became a teacher in Israel. Who was he? — He was R. Ishmael b. Elisha.

Rab Judah said in the name of Rab: It is related that the son and the daughter of R. Ishmael b. Elisha were carried off [and sold to] two masters. Some time after the two met together, and one said, I have a slave the most beautiful in the world. The other said, I have a female slave the most beautiful in the world. They said: Let us marry them to one another and share the children. They put them in the same room. The boy sat in one corner and the girl in another. He said: I am a priest descended from high priests, and shall I marry a bondwoman? She said: I am a priestess descended from high priests, and shall I be married to a slave? So they passed all the night in tears. When the day dawned they recognised one another and fell on one another's necks and bemoaned themselves with tears until their souls departed. For them Jeremiah utters lamentation, For these I am weeping, mine eye, mine eye drops water.[13]

Resh Lakish said: It is related of a certain woman named Zafenath bath Peniel (she was called Zafenath because all gazed [zofin] at her beauty, and the daughter of Peniel because she was the daughter of the high priest who ministered in the inner shrine)[14] that a brigand abused her a whole night. In the morning he put seven wraps round her and took her out to sell her. A certain man who was exceptionally ugly came and said: Show me her beauty. He said: Fool, if you want to buy her buy, for [I tell you that] there is no other so beautiful in all the world. He said to him: All the same [show her to me]. He took seven wraps off her, and she herself tore off the seventh and rolled in the dust, saying, Sovereign of the universe, if Thou hast not pity on us why hast thou not pity on the sanctity of Thy Name? For her Jeremiah utters lamentation, saying, O daughter of my people, gird thee with sackcloth and wallow thyself in ashes; make thee mourning as for an only son, for the spoiler shall suddenly come upon us.[15] It does not say upon thee,' but 'upon us:' the spoiler is come, if one may say so, upon Me and upon thee.

Rab Judah said in the name of Rab: 'What is signified by the verse, And they oppress a man and his house, even a man and his heritage?[16] A certain man once conceived a desire for the wife of his master, he being a carpenter's apprentice. Once his master wanted to borrow some money from him. He said to him: Send your wife to me and I will lend her the money. So he sent his wife to him, and she stayed three days with him. He then went to him before her. Where is my wife whom I sent to you? he asked. He replied: I sent her away at once, but I heard that the youngsters played with her on the road. What shall I do? he said. If you listen to my advice, he replied, divorce her. But, he said, she has a large marriage settlement. Said the other: I will lend you money to give her for her Kethubah. So he went and divorced her and the other went and married her. When the time for payment arrived and he was not able to pay him, he said: Come and work off your debt with me. So they used to sit and eat and drink while he waited on them, and tears used to fall from his eyes and drop into their cups. From that hour the doom was sealed; some, however, say that it was for two wicks in one light.[17]

IF A MAN BUYS FROM THE SICARICON etc. Rab said: This holds good only where he [the original owner] said to him[18] [mere ly]: Go, take possession[19] and acquire ownership. If, however, he gave him a written deed, he does acquire title. Samuel said: Even with a written deed he does not acquire title, unless he expressly makes himself responsible.[20]

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(1) Not counting the straps (Rashi). [Others: 'capsules'; each phylactery box of the head contains four capsules or sections, v Aruch.]

(2) [Rashi assumes that the phylactery of the head consisting as it does of four capsules had a wider base than that of the arm.]

(3) Ps. CXXXVII, 8, 9. The 'dashing against the rock' will be 'measure for measure'.

(4) Lam. IV, 2.

(5) Deut. XXVIII, 61.

(6) Al. 'go on' (Jastrow).

(7) Lam. III, 51.

(8) This is obviously a conventional expression for 'very many'.

(9) [Perhaps in the year 95, v. Hor. (Sonc. ed.) p. 70, n. 12. Tosef. Hor. II omits Rome.

(10) Lit., 'his curly hair arranged in locks.

(11) Isa. XLII, 24.

(12) Ibid.

(13) Lam. I, 16.

(14) Heb. 'Pene'.

(15) Jer. VI, 26.

(16) Mic. II, 2.

(17) I.e., one woman marrying two men.

(18) To the buyer.
(19) By doing a little work on the property.
(20) For reimbursing him if his title should prove invalid.

Talmud - Mas. Gittin 58b

It has been taught in agreement with Samuel: 'R. Simeon b. Eleazar says: If a man buys [a married woman's property] from the wife and then buys it again from the husband, his purchase is effective. But if he first buys from the husband and then from the wife the purchase is invalid,[1] unless she expressly makes herself responsible.' Are we to say that this confutes Rab's view? — Rab can answer you: What is meant by 'making herself responsible'? Giving a written deed.[2]

Our Rabbis have taught: If a man bought [property] from the sicaricon and had the use of it[3] for three years in the presence of the original owner,[4] and then sold it to another, the original owner has no claim against the [second] purchaser. How are we to understand this? If the [second] purchaser pleads, He bought it from you,[5] the rule would be the same in the case of the first [purchaser].[6] If he does plead, He bought it from you, then the rule does not apply to the second either?[7] — R. Shesheth said: We do in fact assume that he does not advance this plea, [and yet the rule applies] because in a case like this we [the Beth din] suggest a plea to the heir and suggest a plea to the purchaser;[8] whereas the first if he pleads [of his own accord] can acquire a title, but otherwise not.

Our Rabbis have taught: 'If [a heathen] seizes the land[9] [of an Israelite] on account of a debt or of an anparuth[10] this rule of sicaricon does not apply to it;[11] [and land seized] on account of anparuth must remain in his hands twelve months.'[12] But you just said that the rule of sicaricon does not apply to it? — What he means is, [Land bought from] the sicaricon itself must remain in his hands twelve months.[13] R. Joseph said: I have authority for saying that there is no anparuth in Babylonia. But we see that there is? — You should say, the law of anparuth[14] does not apply in Babylonia. Why so? — Since there is a Court and yet [the victim] does not go and complain, we presume that he has waived his claim.

Giddal son of Re'ilai took a field[15] from the owners of a certain stretch[16] on condition of paying the tax on it.[17] He paid in advance the money for three years. The first owners eventually[18] came back and said to him: You paid the tax for the first year and have had the produce. Now we will pay and I will have the produce. They appealed to R. Papa, who was minded to make him out a warrant against the owners of the stretch.[19] R. Huna the son of R. Joshua, however, said to R. Papa: This will mean applying the law of sicaricon?[20] No, said R. Huna the son of R. Joshua; he has risked his money and lost.[21]

THIS WAS THE FIRST MISHNAH. THE SUCCEEDING BETH DIN RULED THAT ONE WHO BUYS FROM THE SICARICON SHOULD GIVE THE ORIGINAL OWNER A QUARTER. Rab said: This means either a quarter in land or a quarter In money;[22] Samuel said: It means a quarter in land,[23] which is [equivalent to] a third of the money. What is the ground of their difference? — One [Samuel] holds that he buys the land for a quarter less than its value,[24] and the other that he buys the land for a fifth less than its value.[25] An objection was raised: 'This was the first Mishnah. The succeeding Beth din laid down that one who purchases from the sicaricon gives to the original owner a fourth, the latter having his choice of taking the payment either in land or in money. When is this the case? So long as he is not himself in a position to buy. But if the original owner is in a position to buy, he has the right of pre-emption. Rabbi assembled a Beth din and they decided by vote that if the property had been in the hands of the sicaricon twelve months the first comer had the right to purchase, but he had to give the original owner either a fourth in land or a fourth in money'?[26] — R. Ashi replied: That teaching applies, after the money has come into his hands.[27]

Rab said:

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(1) I.e., apparently, even if she gives him a written deed.
(2) Without a guarantee of reimbursement.
(3) Lit., 'he ate'.
(4) Without him protesting.
(5) In which case the onus probandi would be on the claimant.
(6) I.e., this plea would be valid in the mouth of the first purchaser, and a fortiori in that of the second. Why then was not the rule stated in connection with the first?
(7) On the principle that, to confer usucaption, occupation, even if unchallenged, must be supported by a plea of right. V. B.B. 41a.
(8) On the ground that they were not likely to know whether the first had in fact purchased it or not.
(9) Lit., 'he who comes'.
(10) A debt payable by instalments, v. supra 44a.
(11) If he retains it for twelve months and then sells it to a Jew, the purchaser cannot be quit of the original owner by giving him merely a quarter, but he has to return him the whole, since he has never waived his title. [Trani reverses: The original owner has no claim to the field since he could have redeemed it, or in the case of anparuth recovered it at court (v. infra) and therefore it is to be assumed that he waived his right to the field. This interpretation is more in keeping with the reading, 'the rule of sicaricon does not apply', which varies but slightly from that of the Mishnah, whereas in Rashi's interpretation it is taken in a different sense.]
(12) Apparently, as in the case of the sicaricon.
(13) Before it can be sold to a Jew.
(14) That the purchaser has to restore the land gratis to the original owner.
(15) The owners of which had gone away.
(16) Who were assessed for the land-tax jointly.
(17) I.e., the pro rata share of that field.
(18) After one year.
(19) For the two years' tax which he had paid in advance.
(20) [By making the other owners pay him, just as the purchaser of a field from the sicaricon pays the original owner a quarter; and this is not right, since there is no question of sicaricon here, as no one forced him to pay three years' tax in advance.]
(21) Lit., 'he has put his money on the horn of the deer', an expression used for a risky speculation.
(22) [That is, the quarter of the purchase price is repaid to the original owner either in land or in money (v. Tosaf.).]
(23) A quarter of the field bought.
(24) I.e., he buys land which is worth four manehs for three manehs. Hence a quarter of the value of the land is equal to a third of the purchase price.
(25) I.e., he buys land which is worth five manehs for four manehs. Hence he returns either a fifth of the land which is the equivalent of the quarter of the purchase price, or one maneh.
(26) As stated by Rab, and in contradiction of Samuel.
(27) I.e., it is a fourth of the total sum paid by the purchaser both to the sicaricon and to the owner.

Talmud - Mas. Gittin 59a

I was in that assembly of Rabbi, and my vote was taken first. [How could this be], seeing that we have learnt: 'In [taking decisions on] money matters and cases of cleanness and uncleanness, they commence from the principal [of those present]; in capital cases, they commence from the side'?[1] Rabbah the son of Raba, or as some say R. Hillel the son of R. Wallas said: The voting at the court of Rabbi was different, as in all cases it commenced from the side.[2]

Rabbah the son of Raba, or as some say R. Hillel the son of R. Wallas also said: Between Moses and Rabbi we do not find one who was supreme both in Torah and in worldly affairs.[3] Is that so?

Was there not Joshua? — There was Eleazar [with him]. But there was Eleazar?[4] — There was Phinehas [with him]. But there was Phinehas?[5] — There were the Elders[6] [with him]. But there was Saul?[7] — There was Samuel [with him]. But Samuel died [before Saul]? — We mean, [supreme] all his life. But there was David? — There was Ira the Jairite[8] [with him]. But he died [before David]? — We mean, [supreme] all his life. But there was Solomon? — There was Shimei ben Gera[9] with him. But he killed him? — We mean, all his life. But there was Hezekiah? — There was Shebnah[10] [with him]. But he was killed?[11] — We mean, all his life. But there was Ezra? — There was Nehemiah son of Hachaliah with him. R. Aha son of Raba said: I too say that between Rabbi and R. Ashi there was no-one who was supreme both in Torah and in worldly affairs. Is that so? Was there not Huna b. Nathan [with him]? — We do not count Huna b. Nathan because he used to defer to R. Ashi.

MISHNAH. A DEAF-MUTE CAN HOLD CONVERSATION BY MEANS OF GESTURES.[12] BEN BATHYRA SAYS THAT HE MAY ALSO DO SO BY MEANS OF LIP-MOTIONS,[13] WHERE THE TRANSACTION CONCERNS MOVABLES. THE PURCHASE OR SALE EFFECTED BY YOUNG CHILDREN[14] IN MOVABLES IS VALID.

GEMARA. R. Nahman said: The difference between Ben Bathyra and the Rabbis is only on the question of movables, but where a Get is concerned both agree that gestures [must be used].[15] Surely this is obvious; Ben Bathyra says distinctly 'MOVABLES'? — You might take this to mean 'where movable also are concerned'; hence we are told [that this is not so].

THE PURCHASE OR SALE EFFECTED BY YOUNG CHILDREN IN MOVABLES. What is the youngest age [at which they can do so]?[16] — R. Judah pointed out to R. Isaac his son: About six or seven. R. Kahana said: About seven or eight. In a Baraitha it was taught: About nine or ten. There is no contradiction: Each [child] varies according to his intelligence. What is the reason [why this is allowed in the case of movables]? — R. Abba b. Jacob said in the name of R. Johanan: In order that they may procure ordinary necessities.[17]

And he said to him that was over the meltaha. Bring forth vestments for all the worshippers of Baal.[18] What is meltaha?[19] — R. Abba b. Jacob said in the name of R. Johanan: Something which is drawn out thin by fingering[20] [nimlal we-nimtah]. When R. Dimi came [from Palestine] he said in the name of R. Johanan: Bonias son of Nonias[21] sent to Rabbi a sibni and a homes[22] and salsela and malmela.[23] The sibni and homes [folded tip] into the size of a nut and a half, the salsela[24] and malmela into the size of a pistachio-nut[25] and a half. What is malmela? Something which fingering draws out thin.[26]

Up to what point [can advantage be taken of] their mistake? — R. Jonah said in the name of R. Zera: Up to a sixth, as with a grown-up.[27] Abaye inquired: What of the gift of such a one?[28] — R. Yemar replied. His gift is no gift. Mar, the son of R. Ashi, however, said that it is a valid gift. The [members of the Academy] communicated this statement to R. Mordecai with the names reversed.[29] He replied: Go and tell the son of the Master[30] that this does not correspond with the facts. As the Master was once standing with one foot on the ground and one on the steps[31] we asked him, What of his gift, and he answered us, His gift is a valid gift, no matter whether made when he is ill or when he is well, whether it is a big gift or a small one.

MISHNAH. THE FOLLOWING RULES WERE LAID DOWN IN THE INTERESTS OF PEACE.[32] A PRIEST IS CALLED UP FIRST TO READ THE LAW[33] AND AFTER HIM A LEVITE AND THEN A LAY ISRAELITE, IN THE INTERESTS OF PEACE. AN 'ERUB[34] IS PLACED IN THE ROOM WHERE IT HAS ALWAYS BEEN PLACED,[35] IN THE INTERESTS OF PEACE.[36]

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(1) I.e., from the youngest, as Rab would be, v. Sanh. 32a.
(2) On account of his humility.
(3) Lit., 'Torah and greatness in one place'.
(4) After the death of Joshua.
(5) After the death of Eleazar.
(6) V. Jud. II, 7.
(7) According to the Talmudic tradition ('Er. 53a), Saul was well versed in the Torah but he did not expound.
(8) Chief Minister to David, II. Sam. XX, 26; cf. M.K. 16b.
(9) V. II Sam. XIX, 18.
(10) V. Sanh. 26a.
(11) By Sennacherib. For fuller notes v. Sanh. (Sonc. ed.) p. 227.
(12) Lit., 'Can gesticulate and be gesticulated to'.
(13) Lit., 'can speak with movements (of the mouth) and be spoken to by movements'. This is not as clear as gesticulations with the fingers.
(14) From six to nine or ten, v. infra 63b.
(15) In spite of the fact that a deaf-mute may betroth by means of lip motions.
(16) Lit., 'up to what age (are they in this matter regarded as children).'
(17) Lit., 'for the provision of his livelihood'.
(18) II Kings X, 22. As R. Abba b. Jacob has just been mentioned, another saying recorded by him in the name of R. Johanan is adduced.
(19) E.V. 'vestry'.
(20) I.e., fine linen.
(21) In 'Er. 85, the name is given as Bonias b. Bonias.
(22) Head-coverings of fine linen. [Aruch reads: subni and homes subni. For subni cf. Gr. ** (sabanum) a 'head-cover'; homes is derived from Gr. ** (half). On this reading the meaning is, he sent him a full size subanum and a half size sabanum. V. Krauss, TA I, p. 521.]
(23) Names of various kinds of fine linen.
(24) Cf. Heb. סלסל 'to turn', 'to plait', hence 'to weave'.
(25) Rashi: 'Acorn'.
(26) The word is derived from מלל 'to crush', 'to rub between fingers'. [The reference is to the head-coverings made from fine elastic material worn by the Egyptian and Ethiopian nobility in antiquity. Krauss, op cit. p. 522].
(27) Provided the error is rectified. The rule was that if an article was inadvertently bought or sold for more than a sixth of its value, the transaction could be declared void, v. B.M. 49b.
(28) Since the consideration stated in connection with buying and selling does not apply in the case of a gift.
(29) I.e., making R. Ashi's son say that the gift was no gift.
(30) R. Ashi, whose disciple was R. Mordecai.
(31) Leading up to the Academy.
(32) Lit., 'on account of ways of peace'.
(33) At the public reading in the synagogue etc.
(34) Lit., 'mixture', 'combination', a measure introduced to enable tenants in a courtyard to have unrestricted access to the premises of other tenants. This is done by depositing some food in which all have a share in the house of one of the tenants. V. 'Er. VI-VII.
(35) Lit., 'an old house'.
(36) Between the residents, each of whom might want to have the erub in his own room.

Talmud - Mas. Gittin 59b

THE PIT WHICH IS NEAREST THE [HEAD OF THE] WATERCOURSE[1] IS FILLED FROM IT FIRST,[2] IN THE INTERESTS OF PEACE. [THE TAKING OF] BEASTS, BIRDS AND FISHES FROM SNARES [SET BY OTHERS] IS RECKONED AS A KIND OF ROBBERY,[3] IN THE INTERESTS OF PEACE. R. JOSE SAYS THAT IT IS ACTUAL ROBBERY.[4] [TO TAKE AWAY] ANYTHING FOUND BY A DEAF-MUTE, AN IDIOT OR A MINOR IS RECKONED AS A

KIND OF ROBBERY,[5] IN THE INTERESTS OF PEACE. R. JOSE SAYS: IT IS ACTUAL ROBBERY. IF A POOR MAN GLEANS ON THE TOP OF AN OLIVE TREE, [TO TAKE THE FRUIT] THAT IS BENEATH HIM[6] IS COUNTED AS A KIND OF ROBBERY.[7] R. JOSE SAYS IT IS ACTUAL ROBBERY. THE POOR OF THE HEATHEN MAY NOT BE PREVENTED FROM GATHERING GLEANINGS,[8] FORGOTTEN SHEAVES,[9] AND THE CORNER OF THE FIELD,[10] IN THE INTERESTS OF PEACE.

GEMARA. [A PRIEST IS CALLED UP FIRST TO READ THE LAW]. What is the warrant for this? — R. Mattenah said: Because Scripture says, And Moses wrote this law and gave it to the priests the sons of Levi.[11] Now do we not know that the priests are the sons of Levi? What it means therefore is that the priests [are first] and then the sons of Levi. R. Isaac Nappaha said: We derive it from this verse, viz., And the priests the sons of Levi shall draw near.[12] Now do we not know that the priests are the sons of Levi? What it signifies therefore is that the priests are first and then the sons of Levi. R. Ashi derived it from this verse, The sons of Amram were Aaron and Moses, and Aaron was separated to sanctify him as most holy.[13] R. Hiyya b. Abba derived it from the following, And thou shalt sanctify him,[14] This implies, [Give him precedence] in every matter which involves sanctification. A Tanna of the school of R. Ishmael taught: 'And thou shalt sanctify him', to wit, [give him precedence] in every matter involving sanctification, to open proceedings, to say grace first, and to choose his portion first.[15]

Said Abaye to R. Joseph: Is this rule only [a Rabbinical one] in the interests of peace? It derives from the Torah? — He answered: It does derive from the Torah, but its object is to maintain peace. But the whole of the Law is also for the purpose of promoting peace, as it is written, Her ways are ways of pleasantness and all her paths are peace?[16] — No, said Abaye; we have to understand it in the light of what was said by the Master,[17] as it has been taught: Two persons wait for one another with the dish,[18] but if there are three they need not wait.[19] The one who breaks bread[20] helps himself to the dish[21] first, but if he wishes to pay respect to his teacher or to a superior he may do so.[22] Commenting on this, the Master said: This applies only to the table,[23] but not to the synagogue, since there such deference[24] might lead to quarrelling. R. Mattenah said: What you have said about the synagogue is true only on Sabbaths and Festivals, when there is a large congregation, but not on Mondays and Thursdays.[25] Is that so? Did not R. Huna read as kohen[26] even on Sabbaths and Festivals? — R. Huna was different, since even R. Ammi and R. Assi who were the most distinguished kohanim of Eretz Israel paid deference to him.

Abaye said: We assume the rule to be that if there is no kohen there, the arrangement no longer holds.[27] Abaye further said: We have it on tradition that if there is no Levite there, a kohen reads in his place. Is that so? Has not R. Johanan said that one kohen should not read after another, because this might cast a suspicion on the first,[28] and one Levite should not read after another because this might cast a suspicion on both? — What we meant was that the same kohen [should read in the place of the Levite].

Why just in the case of the Levites should there be a reflection on both of them? Because, [you say,] people will say that one [or other] of them is not a Levite? If one kohen reads after another, they will also say that one of them is not a kohen? — We assume that it is known that the father of the second was a kohen.[29] But in the same way we may say that it is known that the father of the second [Levite] was a Levite?[30] — They might say that he [the father] married a bastard or a nethinah[31] and disqualified his offspring. In the same way they might say that [the father of the second priest] married a divorced woman or a haluzah[32] and disqualified his offspring? — In any case [if he were suspect] would he read as Levi?[33] And who would suspect him? Those who remain in the synagogue?[34] They see [that he counts as one of the seven]![35] — It must be then, those who go out of synagogue.[36]

The Galileans sent to inquire of R. Helbo: After them [the kohen and levi,]

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(1) I.e., nearest the river which feeds the watercourse.
(2) And meanwhile he owner of the pit has the right to dam the watercourse.
(3) And whatever is taken has to be returned to the one who laid the snare, though according to the Torah the latter has not acquired ownership till it has actually come into his possession.
(4) And the culprit becomes disqualified from giving evidence.
(5) Although these cannot legally acquire ownership.
(6) That has fallen as a result of his gleaning.
(7) Although he does not become owner till he has actually handled it.
(8) Lev. XIX, 9ff.
(9) Deut. XXIV, 19.
(10) Lev. XIX, 9ff.
(11) Deut. XXXI, 9.
(12) Deut. XXI, 5.
(13) I Chron. XXIII, 13.
(14) Lev. XXI, 8.
(15) Where he has to divide an article with a lay Israelite.
(16) Prov. III, 17.
(17) His teacher, Rabbah b. Nahmani.
(18) [When one interrupts his eating, the other must wait till he resumes. This was according to the old custom when all guests ate from the same dish.]
(19) If one of them interrupts his eating.
(20) And says the Grace, generally the host.
(21) Lit., 'stretches forth his hand'.
(22) V. 'Er. 47a.
(23) Lit., 'meal'.
(24) By a priest to a teacher or a superior, because it might be misunderstood by other people. Hence here the rule of the Torah requires to be reinforced.
(25) On which days the Torah is also read, v. B.K. 82a.
(26) I.e., first, although only a lay Israelite; v. Glos.
(27) Lit., 'the bundle is separated,' i.e., it is not necessary to call up a Levite first; (v. Rashi).
(28) This is explained immediately.
(29) And therefore it is only the first on whom suspicion falls.
(30) And the second Levite was called up not as Levi but as Yisrael. The order of calling up is, Kohen, Levi, Yisrael.
(31) A descendant of the Gibeonites, v. Sanh. (Sonc. ed.) p. 340, n. 12.
(32) V. Glos.
(33) If he was disqualified from being called up first qua kohen, he would not be called up earlier than third.
(34) Till the reading of the law is finished.
(35) And therefore know that the reason why another priest or Levite was called up was not because he was disqualified.
(36) Before the reading of the Law is concluded.

Talmud - Mas. Gittin 60a

who are to be called up? He did not know what to reply, so he went and asked R. Isaac Nappaha. who said to him: After them are called up the scholars who are appointed Parnasim[1] of the community, and after them scholars who are qualified to be appointed Parnaasim of the community, and after them the sons of scholars whose fathers had been appointed Parnasim of the community and after them heads of synagogues[2] and members of the general public.

The Galileans sent to inquire of R. Helbo: Is it permissible to read separate humashin [of each book of the Torah][3] in the synagogue in public? He did not know what to answer, so he inquired in

the Beth Hamidrash. They settled the question in the light of what R. Samuel b. Nahmani had said in the name of R. Johanan, that a scroll of the Law which is short of one flap may not be read from. This, however, is not conclusive: in that case something essential was lacking, in this case nothing essential is lacking. Rabbah and R. Joseph both concurred in ruling that separate humashin should not be read from out of respect for the congregation. Rabbah and R. Joseph also concurred in ruling that a scroll containing only the haftarahs[4] should not be read from on Sabbath. What is the reason? Because it is not proper to write [sections of the prophets separately]. Mar son of R. Ashi said: It is forbidden also to carry them on Sabbath, for the reason that they are not fitting to be read from.[5] This, however, is not correct: it is permitted to carry them and it is permitted to read from them. For R. Johanan and R. Simeon b. Lakish used to look through a book of Aggada on Sabbath. Now Aggada is not meant to be written down?[6] We say, however, that since this cannot be dispensed with,[7] when it is a time to work for the Lord, they break thy Torah.[8] Here too, since it cannot be dispensed with,[9] we say, 'when it is a time to work for the Lord, they break the law.'

Abaye asked Rabbah: Is it permitted to write out a scroll [containing a passage] for a child to learn from? This is a problem alike for one who holds that the Torah was transmitted [to Moses] scroll by scroll,[10] and for one who holds that the Torah was transmitted entire. It is a problem for one who holds that the Torah was transmitted scroll by scroll: since it was transmitted scroll by scroll, may we also write separate scrolls, or do we say that since it has all been joined together it must remain so? It is equally a problem for one who holds that the Torah was transmitted entire: since it was transmitted entire, is it improper to write [separate scrolls], or do we say that since we cannot dispense with this we do write them? — He replied: We do not write. What is the reason? — Because we do not write.[11] He then raised an objection: 'She[12] also made a tablet of gold on which was written the section of the Sotah'?[13] — R. Simeon b. Lakish had [already] explained in the name of R. Jannai: Only the first letters[14] [of each word were written there]. He then raised [the following objection]: 'As he[15] writes he looks at the tablet and writes what is written in the tablet'? — Read, 'He writes according to what is written in the tablet.' He then raised [the following objection]: 'As he writes he looks at the tablet and writes what is written in the tablet, If one lay, if one did not lie.'[16] — What is meant is that it was written irregularly.[17] On this point Tannaim differ [as we were taught]: 'A scroll should not be written for a child to learn from; if, however, it is the intention of the writer to complete it, he may do so. R. Judah says: He may write from Bereshith[18] to [the story of the generation of the] Flood, or in the Priests' Law[19] up to, And it came to pass on the eighth day.'[20] R. Johanan said in the name of R. Bana'ah: The Torah was transmitted in separate scrolls, as it says, Then said I, Lo I am come, in the roll of the book it is written of me.[21] R. Simeon b. Lakish said: The Torah was transmitted entire, as it says, Take this book of the law.[22] What does the other make of this verse 'Take etc.'? — This refers to the time after it had been joined together. And what does the other [Resh Lakish] make of the verse, 'in a roll of the book written of me'? — That is [to indicate] that the whole Torah is called a roll, as it is written, And he said unto me, what seest thou? And I answered, I see a flying roll.[23] Or perhaps [it is called roll] for the reason given by R. Levi, since R. Levi said: Eight sections were given forth[24] on the day on which the Tabernacle was set up. They are: the section of the priests,[25] the section of the Levites,[26] the section of the unclean,[27] the section of the sending of the unclean [out of the camp],[28] the section commencing 'After the death',[29]

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(1) [Plur. of Parnas. In Galilee the office of Parnas was connected with the political organization of the town and its title denoted usually a general leader of the people and sometimes also a member of the council. Elsewhere the function of the Parnas was that of a charity overseer. V. Buchler, Sepphoris, pp. 14ff.]

(2) [The archisynagogos, the supreme authority over the synagogues in the town. V. Sot. (Sonc. ed,) p. 202, n. 5.]

(3) Plur. of Humesh, one of the five books of the Pentateuch. In olden days these too were written on scrolls.

(4) The portions from the prophets read after the weekly portion of the Law.

(5) On the principle that what may not be used on Sabbath may not be carried.

(6) According to the rule laid down infra.

(7) As otherwise the Aggada might be forgotten.

(8) Ps. CXIX, 126. E.V. 'It is a time to work for the Lord, for they have broken thy commandments.'
(9) Since some congregations cannot obtain a complete copy of the Prophets.
(10) I.e., as each section was transmitted to Moses, he wrote it down, and in the end joined all the sections together.
(11) I.e., there is no reason, it is a tradition.
(12) Queen Helena of Adiabene, v. Yoma 37a, and Nazir 119b.
(13) Unfaithful wife. V. Num. V, 11ff. This proves that separate sections may be written.
(14) Lit., 'Alphabetically'.
(15) The priest who transcribes the section of the Sotah.
(16) This should be, If thou hast gone aside . . . if thou hast nor gone aside. Ibid. 19, 20.
(17) Only the beginnings of the verses were in full and the later words with first letter only.
(18) 'In the beginning'. Gen. I, 1.
(19) Leviticus.
(20) Lev., IX, 1. I.e., the whole of the rules of the sacrifices, and so with any other complete section.
(21) Ps. XL, 8. According to the Rabbis, this is a reference to the story of Lot and his daughters, to which David here appeals as a proof against his calumniators that his coming was heralded in the Torah, he being descended from Ruth the Moabite.
(22) Deut. XXXI, 26.
(23) Zech. V, 2. This is interpreted by the Rabbis to refer to the Torah.
(24) And written by Moses on separate rolls, before the writing down of the whole Torah.
(25) Lev. XXI, containing the rules of uncleanness for the priests.
(26) Num. VIII, 5-26. The Levites were required for the service of song on that day.
(27) Who would be required to keep the Passover in the second month, Num. IX, 9-14.
(28) Ibid. V, 1-4. This also had to take place before the Tabernacle was set up.
(29) Lev. XVI, dealing with the service of the Day of Atonement, which, as stated in the text, was transmitted immediately after the death of the two sons of Aaron.

Talmud - Mas. Gittin 60b

the section dealing with the drinking of wine [by priests],[1] the section of the lights[2] [of the candlestick], and the section of the red heifer.[3] R. Eleazar said: The greater portion of the Torah is contained in the written Law[4] and only the smaller portion was transmitted orally,[5] as it says, Though I wrote for him the major portion of [the precepts of] my law, they were counted a strange thing.[6] R. Johanan. on the other hand, said that the greater part was transmitted orally and only the smaller part is contained in the written law, as it says, For by the mouth of these words.[7] But what does he make of the words, 'Though I write for him the major portion of my law'? — This is a rhetorical question: Should I have written for him the major portion of my law? [Even now] is it not accounted a strange thing for him? And what does the other make of the words, 'For by the mouth of these words'? — That implies that they are difficult to master.[8]

R. Judah b. Nahmani the public orator[9] of R. Simeon b. Lakish discoursed as follows: It is written, Write that these words,[10] and it is written, For according to the mouth of these words.[11] 'What are we to make of this? — It means: The words which are written thou art not at liberty to say by heart, and the words transmitted orally thou art not at liberty to recite from writing. A Tanna of the school of R. Ishmael taught: [It is written] These:[12] these thou mayest write, but thou mayest not write halachoth.[13] R. Johanan said: God made a covenant with Israel only for the sake of that which was transmitted orally, as it says, For by the mouth of these words I have made a covenant with thee and with Israel.[14]

AN 'ERUB SHOULD BE PLACED IN THE ROOM WHERE IT HAS ALWAYS BEEN PLACED, IN THE INTERESTS OF PEACE. 'What is the precise reason?[15] Shall we say it is out of respect for the owner of the room? Then what of the shofar[16] which at first was in the house of Rab Judah and later in that of Rabbah and then in the house of R. Joseph and then in the house of Abaye

and finally in the house of Raba? — The real reason is, so as not to excite suspicion.[17]

THE PIT WHICH IS NEAREST THE HEAD OF THE WATERCOURSE. It has been stated: ['Where fields] adjoin a river, Rab says that the owners lower down have the right to draw off water first, while Samuel says that the owners higher up have the right to draw off water first. So long as the water is allowed to flow, both agree that no problem arises.[18] Where they differ is on the question of damming for the purpose of watering. Samuel says that those above can draw off water first, for they can say 'We are nearer to the source', while Rab holds that those below can draw off first, for they can say 'The river should be allowed to take its natural course'.[19] 'We have learnt: THE PIT WHICH IS NEAREST TO THE HEAD OF THE WATERCOURSE MAY BE FILLED FROM IT FIRST, IN THE INTERESTS OF PEACE![20] — Samuel explained this on behalf of Rab to refer to a watercourse which passes close to a man's pit.[21] If so, what is the point of the remark? — You might think that the others can say to him, 'Close up the mouth of your pit so as to take in water only in due proportion'; we are therefore told [that this is not so].

R. Huna b. Tahalifa said: Seeing that the law has not been determined one way or the other, each must fend for himself.[22] R. Shimi b. Ashi presented himself before Abaye with a request that he should give him lessons.[23] He replied: I use my time for my own studies. Then, he said, would your honour teach me at night. He said: I have to do some irrigation. Said the other: I will irrigate for your honour by day, and do you teach me by night. Very well, he said. So he went to the people higher up and said to them: The people lower down have the right to draw water first. Then he went to those lower down and said, The people higher up have the right to draw water first. Meanwhile he had dammed the watercourse and irrigated Abaye's fields. 'When he presented himself before Abaye, the latter said to him: You have acted on my behalf according to two contradictory authorities;[24] and Abaye would not taste of the produce of that year.

Certain peasants in Be Harmal[25] went and dug a trench from the upper waters of the canal Shanwatha and brought it round [their fields] to the lower waters. Those higher up came and complained to Abaye, saying, They are spoiling our river.[26] He said to them: Deepen the bed a little [before it reaches them]. They said to him: If we do this, our trenches will be dry.[27] He then said to the first set: Leave the river alone.[28]

[THE TAKING OF] BEASTS, BIRDS AND FISHES. If loose or close nets are used,

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(1) Ibid. X, 8-11.

(2) Num. VIII, 1-4.

(3) Ibid. XIX. These last three injunctions came into force as soon as the Tabernacle was set up.

(4) Either explicitly or implicitly.

(5) I.e., as a pure tradition, without any basis in the written law.

(6) Hos. VIII, 12.

(7) Ex. XXXIV, 27. E.V. 'for by the tenor of these words.'

(8) As if they had not been written down.

(9) The so-called meturgeman. V. Glos.

(10) Ex. XXXIV, 27.

(11) Ibid.

(12) Ibid.

(13) I.e., the Oral Law.

(14) Ex. XXXIV, 27.

(15) I.e., what reason have we for thinking that this promotes peace and good fellowship?

(16) Which was used for announcing the advent of the Sabbath. According to another explanation it was a receptacle in which were placed the contributions sent on behalf of the students of the Yeshibah.

(17) Lest, if people come into the room where they have been used to see the 'erub and miss it, they will think that the

residents of the court have neglected to make an ‘erub.

(18) All having an equal right to draw at any time.

(19) Till they have drawn off the water they require.

(20) Which seems to support the opinion of Samuel.

(21) So that he could fill it without damming.

(22) Lit., ‘Whoever is stronger (whether by argument or force) prevails.’ V. B.B. 34b.

(23) Lit., ‘let the Master allow’ me to sit for awhile.’

(24) Rab and Samuel.

(25) [Near Pumbeditha. v. Aruch, s.v. בר שניא , in name of Hai Gaon.]

(26) Owing to its longer course, the current of the river was now slower, and the waters above the trench were not carried off and overflowed the adjoining fields.

(27) If there was not much water, the level of the river would fall and it would not flow into the trenches.

(28) Lit., ‘depart from there.’

Talmud - Mas. Gittin 61a

there is no difference of opinion between the Rabbis and R. Jose.[1] Where they differ is when fishhooks and traps[2] [are used].

[TO TAKE AWAY] ANYTHING FOUND BY A DEAF-MUTE, AN IDIOT OR A MINOR . . . R. JOSE SAYS THAT THIS IS ACTUAL ROBBERY. R. Hisda says: [R. Jose means], actual robbery according to the Rabbis.[3] ‘What [then] is the practical effect of R. Jose's ruling? — That the article can be recovered by process of law.[4]

IF A POOR MAN IS GLEANING THE TOP OF AN OLIVE TREE, TO TAKE THE FRUIT BENEATH HIM. A Tanna taught: If the poor man had gathered the fruit and placed it on the ground with his hands, to take it is actual robbery.[5] R. Kahana was once going to Huzal[6] when he saw a man throwing sticks [at a tree] and bringing dates down,[7] so he went and picked up some and ate them. Said the other to him: See, Sir, that I have thrown them down with my own hands. He said to him: You are from the same place as R. Josiah.[8] and he applied to him the verse, The righteous man is the foundation of the world.[9]

THE POOR OF THE HEATHEN ARE NOT PREVENTED FROM GATHERING GLEANINGS, FORGOTTEN SHEAVES AND THE CORNER OF THE FIELD, TO AVOID ILL FEELING. Our Rabbis have taught: ‘We support the poor of the heathen along with the poor of Israel, and visit the sick of the heathen along with the sick of Israel, and bury the poor of the heathen along with the dead of Israel,[10] in the interests of peace’.

MISHNAH. A WOMAN MAY LEND TO ANOTHER WHO IS SUSPECTED OF NOT OBSERVING THE SABBATICAL YEAR[11] A FAN OR A SIEVE OR A HANDMILL OR A STOVE, BUT SHE SHOULD NOT SIFT OR GRIND WITH HER. THE WIFE OF A HABER[12] MAY LEND TO THE WIFE OF AN ‘AM HA-AREZ[12] A FAN OR A SIEVE AND MAY WINNOW AND GRIND AND SIFT WITH HER, BUT ONCE SHE HAS POURED WATER OVER THE FLOUR SHE SHOULD NOT TOUCH ANYTHING WITH HER, BECAUSE IT IS NOT RIGHT TO ASSIST THOSE WHO COMMIT A TRANSGRESSION.[13] ALL THESE RULES[14] WERE LAID DOWN ONLY IN THE INTERESTS OF PEACE. HEATHENS MAY BE ASSISTED[15] IN THE SABBATICAL YEAR BUT NOT ISRAELITES, AND GREETING MAY BE GIVEN TO THEM, IN THE INTERESTS OF PEACE.[16]

GEMARA. Why is the rule in the first case[17] different from that in the second?[18] — Abaye said: Most ‘amme ha-arez separate their tithes.[19] Raba said: [We are speaking] here of the ‘am ha-arez [specified] by R. Meir[20] and the cleanness and uncleanness recognised [only] by the Rabbis,[21] as it

has been taught: Who is an ‘am ha-arez? One who does not insist on eating ordinary food in a ritually clean condition.[22] So R. Meir. The Sages, however, say it is one who does not tithe his produce. But since it says in the later clause of the Mishnah, ONCE SHE HAS POURED WATER OVER THE FLOUR SHE SHOULD NOT TOUCH ANYTHING WITH HER,[23] does not this show that the earlier clause[24] is not speaking of cleanness and uncleanness?[25] — Both the earlier and the later clause speak of cleanness and uncleanness, the former, however, of the uncleanness of ordinary food and the latter of that of the hallah.[26]

The following was adduced in contradiction:[27]

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(1) As these, having a hollow, certainly confer ownership on the one who set them, and to take the contents would be robbery.

(2) Made of little joists.

(3) And not according to the Torah.

(4) But the robber is not disqualified from giving evidence, whereas according to the Rabbis the article cannot even be recovered by process of law.

(5) Because by handling it he had acquired possession.

(6) [Between Neahardea and Sura (Obermeyer, op. cit. p. 300).]

(7) So Rashi. Tosaf., however, translates, ‘was throwing down twigs (which he cut of) from a tree, and dates fell off,’ which certainly renders the incident more intelligible.

(8) And have learnt from his teaching.

(9) Prov. X, 25. E.V., ‘the righteous is an everlasting foundation.’

(10) I.e., if there is no-one else to bury them, but not in the same cemetery.

(11) I.e., of keeping produce which has been gathered after the inauguration of the Sabbatical year.

(12) V. Glos.

(13) In the case of the Sabbatical year, by breaking the precept of eating produce of the year; in the case of the ‘am ha-arez, the (Rabbinical) precept of preserving the loaf from uncleanness.

(14) That assistance may be given other than at the time of the actual breaking of the precept.

(15) To what extent is discussed in the Gemara.

(16) V. supra p. 279, n. 1.

(17) Not to grind with one who does not observe the Sabbatical year.

(18) That grinding may be done with the wife of an ‘am ha-arez.

(19) And with the ordinary ‘am ha-arez this would be forbidden.

(20) Whereas the first clause deals with a woman who is suspected in regard to the Sabbatical year.

(21) Being only Rabbinic we need not be so particular.

(22) Even though he is careful about tithes.

(23) Apparently because the water renders the flour capable of becoming unclean.

(24) That she shall not sift etc.

(25) I.e., that the reason is not anything to do with uncleanness, and must therefore be because of tithe.

(26) Lit. , ‘loaf’: ‘the first of the dough’ which had to be offered as a heave-offering. Num. XV, 19. As this was a precept of the Torah, greater care had to be exercised not to assist in its transgression.

(27) Of the statement that it is permitted to help an ‘am ha-arez to grind.

Talmud - Mas. Gittin 61b

‘It is allowed to grind corn and to deposit it with those who eat produce of the Sabbatical year and those who eat their produce in uncleanness,[1] but not for those who eat the produce of the Sabbatical year and for those who eat their produce in uncleanness’? — Abaye replied: ‘We are dealing there with a priest who is suspected of eating terumah in uncleanness, the uncleanness there being of a kind recognised by the Torah. If that is so, how could the food be entrusted to him? ‘Would not that contradict the following: ‘Terumah may be entrusted to an Israelite ‘am ha-arez but not to a priest ‘am ha-arez, because he might take liberties with it?’[2] — R. Elai said: ‘We are speaking here of

[produce in] an earthenware vessel with a close fitting cover.[3] But is there not a danger that his wife might move it while niddah?[4] — R. Jeremiah replied: [Even so] there is no contradiction: in the one case we speak of produce which has become capable of receiving uncleanness,[5] in the other of produce which is not so capable.[6] A further contradiction was raised:[7] 'If a man takes wheat to a miller who is a Cuthean[8] or a heathen, it is presumed to remain in its original condition[9] as regards tithe or Sabbatical produce, but not as regards uncleanness'?[10] — 'What refutation is there here? Have you not just explained that the reference is to produce which has not been rendered capable of receiving uncleanness?[11] 'What then was the point of the question? — Because the questioner wanted to adduce another contradiction[12] [as follows]; [You have just said], It is presumed to have remained in its original condition as regards tithe and Sabbatical year, that is to say, we have no fear of its having been changed. This seems to contradict the following: If a man [a haber] gives produce to his mother-in-law [the wife of an 'am ha-arez],[13] he tithes what he gives to her[14] and what he takes back from her, because she is suspected of changing anything that becomes spoilt?[15] — There the reason is as was stated: 'R. Judah said; She is anxious for the well-being of her daughter and she is ashamed for her son-in-law.' But in general are we not afraid [of food being changed]? Have we not learnt:[16] 'If a student gives produce to the mistress of his boarding house, he tithes what he gives to her and what he takes back from her, because she is likely to change it'? — There she finds an excuse for herself, saying. Let the student eat hot and I will eat cold.[17] And still we ask, in general are we not afraid? Has it not been taught: 'The wife of a haber can grind along with the wife of an 'am ha-arez, when she is ritually unclean,[18] but not when she is ritually clean.[19] R. Simeon b. Eleazar says; Even when she is ritually unclean she should not grind with her, because the other

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(1) We do not fear lest they exchange it for some produce of their own or defile it by touching it.

(2) Being used to eating terumah.

(3) Which does not become unclean by touching, v. Hul. 24b.

(4) V. Glos. This is known as hesset, a defilement communicated by moving an object without actually touching it.

(5) By means of a liquid, v. Lev. XI, 38.

(6) And it is this which may be entrusted to a priest who is suspected of eating terumah in uncleanness.

(7) V. Demai III, 4.

(8) V. Glos.

(9) I.e., not to have been exchanged or mixed.

(10) I.e., it may have been touched by the miller, whereas in the first Baraitha it is permitted.

(11) I.e., grain on which water has not yet fallen.

(12) I.e., not on the point of uncleanness but of tithe etc.

(13) To prepare a dish for him.

(14) So that she should not through him eat something untithed.

(15) Demai III, 6.

(16) [This is no Mishnah, and preference is to be given to והתניא in MS.M.]

(17) Al. 'Is the student to eat hot and I cold?' V. Tosaf.

(18) Because she is not likely to put anything in her mouth.

(19) Because being clean she might inadvertently put untithed food in her mouth.

is likely to give her something which she may put in her mouth.' Seeing now that she [the wife of the 'am ha-arez] is capable of stealing,[1] will she not also exchange? — R. Joseph said; There too she finds an excuse [for stealing] by saying, The ox eats of his threshing.[2]

R. Jose b. ha-Meshullam testified[3] in the name of R. Johanan his brother who had it from R. Eleazar b. Hisma, that a hallah[4] is not to be set aside [by a baker haber] for an 'am ha-arez in ritual purity,[5] but [the baker] can make his ordinary dough[6] in ritual purity and take from it enough for a hallah and put it in a double basket[7] or on a tray,[8] and when the am ha-arez comes he can take both and [the baker] need not be afraid [that any harm will ensue].[9] Again, [olive pressers who are kaberim] should not set aside terumah from his olives in ritual purity,[10] but they can prepare his olives in ritual purity[11] and take from them sufficient for terumah, and put it in the vessels of a haber, and when the am ha-arez comes he can take both of them, and the others need not fear [lest harm should ensue]. Now what is the reason [for these concessions]? — R. Johanan said; To enable the baker and the olive presser to earn a livelihood. And both statements were necessary. For if I had been given only the one about the baker, I might have said that the reason [why the concession was made in his case] is because he does not earn much, and that this does not apply to an olive presser who gets a good wage. And again, if I had been given only the statement about the olive presser. I might have said that the reason is because he has not constant employment, and that this does not apply to a baker who has constant employment. Hence both were necessary.

The Master said above: 'He takes from it enough for a hallah and puts it in an inverted basket or on a tray. and when the 'am ha-arez comes he can take both and the other need not be afraid.' But he surely ought to be afraid that he has touched it? — We suppose that we say to him, Mind you don't touch it or it will become tebel[12] again. But he must be afraid that he will not listen to him? — Seeing that his whole object is to keep it right,[13] will he not then listen to him?

The Master said above; 'He can take from it sufficient for terumah and put it in the vessels of a haber, and when the 'am ha-arez comes, he can take both, and the other need not fear.' But surely he ought to be afraid lest he has touched it? In the other case, it is true, [we can find a reason why he should not], because it has some distinguishing mark,[14] but here what distinguishing mark is there? — That he puts it in a vessel made of baked ordure, of stone, or of earth. If that is so, why does it say. 'in vessels of a haber'? Those of an 'am ha-arez would do as well? — That in fact is what is meant; vessels of an 'am ha-arez which a haber can also use.[15]

ASSISTANCE MAY BE GIVEN TO HEATHENS IN THE SABBATICAL YEAR. Assistance may be given to them? Has not R. Dimi b. Shishna said in the name of Rab; It is not right to hoe with heathens in the Sabbatical year nor to give a double greeting[16] to heathens? — It is quite correct; what is meant is, just to say to them, Ahzuku![17] Thus R. Judah used to say to them, Ahzuku! R. Shesheth used to say to them, Asharta![18]

'Nor to give double greeting to heathens.' R. Hisda used to give them greeting first. R. Kahana used to say; Peace [to you,] sir. GREETING MAY BE GIVEN TO THEM, IN THE INTERESTS OF PEACE. Seeing that we may encourage them at their work, do we need to be told that we may give them greeting? — R. Yeba said; The rule had to be stated only for their feast days. For it has been taught; 'A man should not enter the house of a heathen on his feast day, nor give him greeting.[19] Should he meet him in the street, he should greet him in a mumbling tone and with downcast head.' As R. Huna and R. Hisda were once sitting together. Geniba[20] began to pass by. Said one to the other, Let us rise before him, since he is a learned man.[21] The other replied; Shall we rise before one who is quarrelsome? At this point he came up to them and said, Peace to you, kings, peace to you, kings. They said to him; Whence do you learn that the Rabbis are called kings? He

replied; Because it is written, By me [wisdom][22] kings reign.[23] They then said; And whence do you learn that double greeting is to be given to kings? He replied; From what Rab Judah said in the name of Rab; 'How do we know that double greeting should be given to a king? Because it says, Then the spirit came upon Amasai who was chief of the thirty etc.[24] They said to him; Would you care for a bite with us? He replied; Thus said Rab Judah in the name of Rab; It is forbidden to a man to taste anything until he has given food to his beast, as it says [first]. And I will give grass in thy field for thy cattle, and then, Thou shalt eat and be full.[25] [

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(1) By giving her something without her husband's permission.

(2) V. Deut. XXV, 4.

(3) V. supra 55a.

(4) V. supra p. 117, n. 6.

(5) Since the priest relying on the haber may think that it is clean, whereas the whole of the dough has already become unclean in the hands of the 'am ha-arez.

(6) Which does not become capable of ritual uncleanness till water has been poured on it, v. Lev. XI, 38.

(7) I.e., a basket with a horizontal partition in the middle and open at both ends.

(8) But not in the kind of receptacle ordinarily used for this purpose. V. infra.

(9) I.e., it will be quite safe for the priest to eat it.

(10) Lest the priest relying on them should think that they are clean, whereas they may have already become unclean through the touch of the 'am ha-arez.

(11) Before they were passed through the vat and so were not yet capable of becoming unclean.

(12) Produce from which the dues have not yet been separated. V. Glos.

(13) To have the hallah separated in such a way that it will be fit for the priest.

(14) Being put in an exceptional kind of vessel, so that he is likely to remember our warning.

(15) I.e., vessels which are not capable of receiving uncleanness.

(16) I.e. , 'Peace, Peace.'

(17) Lit., 'be strong.' or 'be assisted' — a gesture of encouragement.

(18) Lit., 'firmness', 'strength'.

(19) Lest he might take it a; a compliment to his god.

(20) V. supra. p. 7, where it is stated that Geniba used always to annoy Mar 'Ukba.

(21) Lit., 'son of the law'.

(22) I.e., the Torah.

(23) Prov. VIII, 15.

(24) I Chron. XII, 19. The verse continues, Peace, peace be upon thee.

(25) Deut. XI, 15.

Talmud - Mas. Gittin 62b

C H A P T E R V I

MISHNAH. IF A MAN SAYS [TO ANOTHER], RECEIVE THIS GET ON BEHALF OF MY WIFE, OR, CONVEY THIS GET TO MY WIFE, IF HE DESIRES TO RETRACT [BEFORE THE WIFE RECEIVES IT] HE MAY DO SO. IF A WOMAN SAYS [TO A MAN], RECEIVE MY GET ON MY BEHALF, [AND HE DOES SO]. IF [THE HUSBAND] DESIRES TO RETRACT HE IS NOT AT LIBERTY TO DO SO.[1] CONSEQUENTLY [WHAT IS THE HUSBAND TO DO?][2] IF THE HUSBAND SAID TO HIM, I AM NOT AGREEABLE THAT YOU SHOULD RECEIVE IT ON HER BEHALF, BUT CONVEY IT AND GIVE IT TO HER, THEN IF HE DESIRES TO RETRACT HE MAY DO SO.[3] R. SIMEON B. GAMALIEL SAYS: EVEN IF THE WIFE SAYS [MERELY]. TAKE FOR ME,[4] [AND HE DOES SO]. HE IS NOT AT LIBERTY TO RETRACT.

GEMARA. R. Aha the son of R. 'Awia said to R. Ashi: The reason why [in the first case the husband may retract] is because she [the wife] did not make [the man] her agent for receiving [the

Get], from which we infer that if she had made him the agent for receiving [the Get], the husband would not be at liberty to retract. This would show that 'convey' is equivalent to 'take possession of' [would it not]?[5] — No; I may still maintain that 'convey' is not equivalent to 'take possession',[6] and nevertheless it was necessary to specify the case where the husband said, Receive this Get on behalf of my wife.[7] For I might have argued that since the husband is not competent to make him an agent for receiving the Get,[8] therefore even if the Get reached her hand it would not be valid, and we are therefore told that in saying 'receive' he also implied 'and convey'.

We learnt: IF A WOMAN SAYS, RECEIVE A GET ON MY BEHALF, IF HE DESIRES TO RETRACT HE IS NOT AT LIBERTY TO DO SO. Does not this apply equally whether the husband [on handing the Get] used the expression of 'receiving' or of 'conveying'?[9] — No; only if he said 'receive'.[10] Come and hear: CONSEQUENTLY IF THE HUSBAND SAID TO HIM, I AM NOT AGREEABLE THAT YOU SHOULD RECEIVE IT ON HER BEHALF, BUT HERE, CONVEY IT AND GIVE IT TO HER, THEN IF HE DESIRES TO RETRACT HE MAY DO SO. The reason is, is it not, that he Says. 'I am not agreeable', but if he does not say, 'I am not agreeable'. then if he desires to retract he may not do so, which would show that 'convey' ' is equivalent to 'take possession'? — Perhaps we should read, Here you are.[11]

It goes without saying that a man may be an agent for conveying the Get, seeing that a husband may himself convey a Get to his wife.[12] A woman may [similarly] be an agent for receiving, seeing that a woman receives a Get from the hand of her husband. What of a man becoming agent for receiving and a woman agent for conveying? — Come and hear: IF A MAN SAYS, RECEIVE THIS GET ON BEHALF OF MY WIFE OR CONVEY THIS GET TO MY WIFE, IF HE DESIRES TO RETRACT HE MAY DO SO. IF A WOMAN SAYS, RECEIVE MY GET ON MY BEHALF, IF HE DESIRES TO RETRACT HE MAY NOT DO SO. Does not this mean, where there is the same agent for both, which would show that the one who is qualified for conveying is also qualified for receiving? — No; we speak of two agents.

Come and hear; CONSEQUENTLY IF THE HUSBAND SAID TO HIM, I AM NOT AGREEABLE THAT YOU SHOULD RECEIVE IT ON HER BEHALF, BUT CONVEY IT AND GIVE IT TO HER, THEN IF HE DESIRES TO RETRACT HE MAY DO SO. Now here he says this to the same agent [as she appointed], and this shows that he is qualified to receive as to convey. We can conclude from this that a man is qualified to receive, [as is also natural,] since a father may receive a Get on behalf of his minor daughter.[13] Whether a woman may become an agent for conveying is still a question. R. Mari said: Come and hear: 'Even the women whose word cannot be taken if they report her husband to be dead can be trusted to bring her her Get,.[14] 'and there they are agents for conveying. R. Ashi said: We could infer the same from the last clause [of that Mishnah], which runs, 'A woman herself may bring her Get, only she is required to declare, in my presence it was written and in my presence it was signed;' and we explained this to mean that she conveyed it.[15]

It has been stated: '[If a woman says to her agent]. Bring me my Get, and [he says to the husband]. Your wife said to me, Receive my Get on my behalf, and the husband said, Here you are as she said,' in such a case R. Nahman said in the name of Rabbah b. Abbahu, who had it from Rab, that even when the Get reached her hand it would not be valid.[16] From this we should conclude that the husband was relying on his [the agent's] word,[17] since if he was relying on the wife's word,[18] she would at any rate be divorced when the Get reached her hand. Said R. Ashi: Is that so?

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(1) The woman becomes divorced as soon as the Get came into the hands of her agent.

(2) In the latter case if he wants to retain the possibility of retracting.

(3) Because now he is no longer the wife's agent but his agent.

(4) Instead of 'receive for me'.

(5) For otherwise, the Get would still belong to the husband and he could withdraw it so long as it had not reached the

wife's hand, v. supra 14a.

(6) And therefore the bearer is the husband's agent and not the wife's, and the husband may retract in any case.

(7) From which we should naturally infer that the case dealt with is one where the wife did not make him her agent.

(8) On the principle that a disadvantage cannot be imposed on a man without his consent.

(9) And if he used the latter, this would show that 'convey' is equivalent to 'take possession of'.

(10) In which case the bearer still remains the agent of the wife.

(11) הילך , instead of הולך 'take'. By saying 'here you are', he accepts the man as the agent of the wife.

(12) And whatever a man may do his agent may do for him.

(13) V. Keth. 46b.

(14) Supra 24b.

(15) Ibid. and 5a.

(16) Because the wife had not made him an agent for receiving the Get and the husband had not made him an agent for taking the Get.

(17) I.e., he really supposed the wife to have told the agent to receive the Get.

(18) That is to say, if he had allowed for the possibility of his wife having told the agent to bring the Get, and had accordingly made him his agent for conveying it.

Talmud - Mas. Gittin 63a

I grant you that if the statement had been in the reverse form, thus, '[If the wife said]. Receive my Get on my behalf, and [he said], Your wife told me to bring it, and the husband says. Here you are as she said,' and if R. Nahman had said in the name of Rabbah b. Abbuha in the name Rab, 'Once the Get comes into his hand, she is divorced,' then I could infer that he relies upon her word;[1] or again, if he had said, '[Once the Get reaches] her hand [she is divorced]', I could have inferred that the husband relies upon the agent's word.[2] As it is, however, the reason why [the Get is not valid] is because the agent completely nullified his agency by saying 'I am willing to be an agent for receiving and not for conveying'.[3]

R. Huna b. Hiyya said [in refutation of R. Nahman]: Come and hear: IF A MAN SAYS, RECEIVE THIS GET ON BEHALF OF MY WIFE, OR, CONVEY THIS GET TO MY WIFE, IF HE DESIRES TO RETRACT HE MAY DO SO. The reason [why the Get is not effective] is that he desires to do so; if he does not [and lets the Get reach her], the Get is valid. Now why should this be, seeing that the husband is not competent to appoint an agent for receiving the Get? The reason must be because we say that once he has made up his mind to divorce her, he says to himself, Let her be divorced in any way possible.[4] So here also, since he made up his mind to divorce her, he says to himself, Let her be divorced in any way possible?[5] — Are the two cases comparable? In that case [of the Mishnah], a man knows that he cannot appoint an agent for receiving the Get and decides to give it to the agent for the purpose of conveying; but here he gives it under a misapprehension.[6]

Raba said: Come and hear: If a girl under age said, Receive my Get on my behalf, it is not effective until it reaches her hand.[7] Now at any rate [according to this] when it reaches her hand she is divorced, and yet why should this be, seeing that the husband did not make him an agent for conveying?[8] We say however, that since the husband made up his mind to divorce her, he says to himself, Let her be divorced in any way possible;[9] so here, since he made up his mind to divorce her, he says, Let her be divorced in any way possible?[10] — But are these two cases comparable? There, a man knows that a minor cannot appoint an agent, and therefore he decides to give it to the agent for the purpose of being conveyed on his own behalf; but here he gives it under a misapprehension.

Come and hear: [If a woman says to an agent], Bring me my Get, and [the agent says to the husband], Your wife told me to receive her Get for her, or if the wife says, Receive my Get for me, and he says, Your wife told me to bring her Get, and the husband says to him, Convey and give it to her, take possession on her behalf and receive on her behalf, if he desires to retract he may do so, but

once the Get reaches her hand she is divorced.[11] Now does not here the husband's saying 'receive' correspond to the agent's saying 'receive', and the husband's saying 'convey' to the agent's saying 'convey'?[12] — No; 'receive' corresponds to 'bring' and convey' to 'receive'.[13] If 'receive corresponds to 'bring', then [if the husband relies on the wife's word] the Get should be effective as soon as it comes into the agent's hand;[14] [and since this is not so] it shows that he relies on his word?[15] — How can you say so? In that case[16] he says to him, 'Here you are, as she said;[17] in this case does he say, 'Here you are as she said?[18]

Our Rabbis taught: [If a woman says to an agent], Receive my Get for me, and [he says to the husband], Your wife told me to receive her Get for her, and the husband says, Convey it and give it to her, take possession of it on her behalf, or receive it on her behalf, if he desires to retract he is not at liberty to do so.[19] R. Nathan says: If he says, Convey and give it to her, he can retract,[20] but if he says, Take possession of it and receive it for her, he cannot retract. Rabbi says, [If he uses] any of these formulas he cannot retract, but if he says, I am not agreeable that you should receive for her, but convey it and give it to her, then if he desires to retract he may do so.[21] Does not Rabbi merely repeat the first Tanna?[22] — If you like I can say that [he did so because] he desired to add the clause about not being agreeable, or if you like I can say that the repetition is meant to inform us that the first Tanna is Rabbi.

The question was raised: According to R. Nathan, is 'here you are' equivalent to 'take possession' or not? Come and hear: IF A MAN SAYS, RECEIVE THIS GET ON BEHALF OF MY WIFE OR CONVEY THIS GET TO MY WIFE, IF HE DESIRES TO RETRACT HE MAY DO SO. IF A WOMAN SAYS, RECEIVE A GET ON MY BEHALF, IF HE DESIRES TO RETRACT HE IS NOT AT LIBERTY TO DO SO.

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(1) Because if he had taken the agent's word that she told him to bring it, she would not be divorced even when it came into her hand.

(2) And so makes him an agent for conveying it.

(3) And so when the husband says, 'here you are as she said,' he cannot become his agent [or conveying either. For fuller notes v. B.M. (Sonc. ed.) pp. 440ff

(4) And when he says 'receive' he implies also 'convey'.

(5) And similarly, once the Get has reached her, he makes the wife's agent retrospectively his agent for conveying.

(6) Thinking that the wife has appointed him her agent for receiving when she has not.

(7) V. infra 65a.

(8) And the girl being a minor has no power to make him an agent for receiving.

(9) I.e., he makes him his agent nor conveying retrospectively.

(10) This refutes R. Nahman.

(11) V. Tosef. Git. IV.

(12) [I.e., we suppose that if the agent says he was appointed to receive, the husband says to him 'receive', and if he says he was appointed to bring, the husband says to him 'convey'. The fact that in the former case when the Get reaches her hand she is divorced show's that though the woman had appointed him to bring it to her, when the husband says receive' this is equivalent to 'convey'; all the more so then is the divorce valid if he says, 'here it is as she said'. This refutes R. Nahman.]

(13) And we suppose the husband to be relying on the wife's word, who made him in the first case an agent for receiving and in the second an agent for bringing, and for this reason the woman becomes divorced at least when the Get reaches her hand.

(14) Because the wife made him agent for receiving.

(15) [That he was made by the woman an agent for bringing and when the husband says 'receive' he means 'receive and convey', as inferred supra in the hypothetical case posited by R. Ashi.]

(16) The case posited by R. Ashi.

(17) [Which on the statement of the agent makes him an agent for conveying, and should we decide, in that case, that the woman is divorced on receiving the Get, this will prove that he relies on the agent's word.]

(18) [The husband merely says 'take possession on her behalf' or receive on her behalf', which can only be taken in conjunction with the statement of the agent who said that he was appointed agent for bringing. Had, however, the husband said 'here you are as she said', the divorce, it might indeed be said, would become immediately effective, the husband relying on her word.]
(19) 'Convey' being equivalent to 'take possession of', so that as soon as it comes into the agent's hand it is effective.
(20) 'Convey' not being regarded as equivalent to 'take possession of'.
(21) V. Tosef. Git. IV.
(22) In the first part of his statement.

Talmud - Mas. Gittin 63b

Does not this mean, if he said, 'here you are',[1] the opinion recorded being that of R. Nathan?[2] — No; It means, if he said 'convey',[3] the opinion recorded being that of Rabbi.

Come and hear: CONSEQUENTLY IF THE HUSBAND SAID, I AM NOT AGREEABLE THAT YOU SHOULD RECEIVE IT FOR HER, BUT CONVEY IT AND GIVE IT TO HER, THEN IF HE DESIRES TO RETRACT HE MAY DO SO. Now the reason why he may retract is because he said, I am not agreeable etc., and if he did not say so he may not retract. Does not this mean, after he says, 'Here you are , the opinion recorded being that of R. Nathan? — No; it means [even] after he says, 'Convey', the opinion recorded being that of Rabbi.

Come and hear: '[If a man says], Convey this Get to my wife, if he desires to retract he may do so, but if he says, Here is[4] this Get for my wife, if he desires to retract he may not do so.' What authority do you find for the view that if the husband says 'convey' he is at liberty to retract? R. Nathan; and he lays down that if the husband says 'here you are' he is not at liberty to retract. This proves conclusively that 'here you are' is [according to R. Nathan][5] equivalent to 'take possession'.

It has been stated: [If the wife says], Receive my Get for me, and [the agent says to the husband], Your wife told me to receive her Get for her, and the husband says, Convey and give it to her, R. Abba said in the name of R. Huna, who had it from Rab, that he becomes both her agent and his agent, and [in case of need][6] she must perform halizah.[7] This would seem to show that Rab was in doubt whether 'convey' is equivalent to 'take possession' or not.[8] Yet how can this be, seeing that it has been stated: [If a man says], Take this maneh to so-and-so to whom I owe it, Rab says that he is responsible for it [till it is delivered][9] and he cannot retract?[10] — [There is still a doubt, but] in that case the doubt concerns the ownership of money, and Rab takes the more lenient view,[11] in this case it concerns a religious offence[12] and he takes the more stringent view.

Rab said: A woman cannot appoint an agent to receive her Get from the agent of her husband. R. Haninah, however, said that a woman may appoint an agent to receive her Get from the agent of her husband. What is Rab's reason? — If you like I can say, to avoid showing contempt for the husband, and if you like I can say, because of [the resemblance of the agent to] a courtyard which comes [in to her possession] subsequently.[13] What difference does it make in practice which reason we adopt? — The difference arises in the case where she had appointed her agent first.[14]

A certain man sent a Get to his wife, and the bearer found her kneading [flour]. He said to her, Here is your Get. She replied You take it.[15] R. Nahman thereupon said: If [I knew that] R. Haninah is right. I would count this a valid Get. Said Raba to him: And even if R. Haninah is right, would you count this valid? There has been no time for the agent to return to the husband [and report]?[16] They sent to consult R. Ammi,[17] and he replied: The husband's commission has not been performed.[18] R. Hiyya b. Abba, however, said: We must consider the matter. They again sent to consult R. Hiyya b. Abba.[17] He said: How many more times will they send? Just as they are unable to decide, so we are unable to decide. The danger of forbidden relationship,[19] is involved, and wherever a sex prohibition

is involved, the woman must perform halizah.[20] In a case which actually happened, R. Isaac b. Samuel b. Martha declared both a new Get and halizah to be required. [Why] both? — A Get [if she desired to marry while the husband] was alive, and halizah [if she wanted to marry] after his death.

There was a certain woman named Nafa'atha, and the witnesses to the Get[21] wrote it Tafa'atha. R. Isaac b. Samuel b. Martha thereupon said in the name of Rab: The witnesses have discharged their commission.[22] Rabbah strongly demurred to this, saying. Did the husband say to them, Write out a piece of clay and give it to her? No, said Rabbah. [This is not so,] but in truth, if the witnesses had written a proper Get and it had been lost [before being given to her], then we should say that they had discharged their commission. R. Nahman strongly demurred to this, saying: Did he say, Write it and put it in your bag?[23] The fact is, said R. Nahman, that the Get can be written and given a hundred times [till it comes right].

Raba inquired of R. Nahman: If a man said [to the witnesses], Write [the Get] and give it to a bearer, how do we decide? Have they been discharged,[24] or did he merely want to save them trouble? Rabina asked R. Ashi: Suppose he adds the words, 'And let him take it,' what do we say? — These questions can stand over.

R. SIMEON B. GAMALIEL SAID: EVEN IF THE WIFE SAYS [MERELY] 'TAKE FOR ME' [AND HE DOES SO], HE IS NOT AT LIBERTY TO RETRACT.

Our Rabbis taught: 'Take for me, carry for me,' 'keep for me'[25] are all equivalent to receive.

MISHNAH. A WOMAN WHO SAYS [TO AN AGENT] 'RECEIVE MY GET FOR ME' REQUIRES TWO SETS OF WITNESSES, TWO [WITNESSES] TO SAY, IN OUR PRESENCE SHE TOLD HIM, AND TWO TO SAY, IN OUR PRESENCE HE RECEIVED [THE GET] AND TORE IT.[26] IT IS IMMATERIAL IF THE FIRST SET ARE IDENTICAL WITH THE LAST

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(1) הילך .

(2) Who would accordingly hold that 'here you are' is equivalent to 'take possession'.

(3) הולך .

(4) Lit., 'here you are'.

(5) And a plus forte raison according to Rabbi.

(6) I.e., if the husband dies childless before she receives the Get.

(7) But must not marry the husband's brother, because it is doubtful whether she was not divorced before the husband's death, (v. Glos.).

(8) If it is equivalent to 'take possession', the man is still agent for the wife, and the Get is valid as soon as it comes into his hands.

(9) Because the creditor did not tell him to send it.

(10) Which would show that 'convey' is equivalent to 'take possession'; v. supra 14a.

(11) I.e., the one more favourable to the recipient.

(12) The possibility of a man marrying the divorced wife of his brother.

(13) After the Get had been placed in it. A Get must either be given into a woman's hand or placed in property belonging to her, (v. infra 77a). If the husband threw the Get into a courtyard not belonging to the wife and it subsequently came into her possession while the Get was still there, the Get is not valid. There is a certain analogy between this and the wife appointing an agent to receive from the husband's agent, so that if the latter were permitted, people might think that the former was also permitted. v. supra p. 95, n. 9,

(14) There is now no analogy with the courtyard. but the reason of contempt still applies.

(15) Lit., 'let it be in your hand' , i.e., she appointed him her agent for receiving it.

(16) V. supra p. 95, n. 3, And consequently the second agency nullifies the first.

(17) In Palestine.

(18) Lit., 'the agency has not returned to the husband'.

(19) Viz,, of a man marrying his brother's divorcee.
(20) And not marry the husband's brother.
(21) Who were commissioned to write and deliver it.
(22) After delivering it to her, and have no power to make out a new, and proper Get.
(23) So that it should not be lost.
(24) And if the bearer loses it they must not write another,
(25) Lit., 'let it be for me in thy hand.'
(26) The point of this is discussed in the Gemara.

Talmud - Mas. Gittin 64a

OR IF THERE WAS ONE MAN IN THE FIRST SET AND ONE IN THE SECOND AND THE SAME MAN JOINED WITH BOTH OF THEM.

GEMARA. It has been stated: If the husband says, [I gave you the Get] in deposit, and the depository says, [You gave it to me] to divorce [your wife with], which is to be believed? — R. Huna said: The husband's word is to be taken. R. Hisda said: The depository's word is to be taken. R. Huna said the husband's word is to be taken, because if he had meant to give it to him for divorcing the wife, he would have given it to the wife herself.[1] R. Hisda said the depository's word is to be taken, because we see that the husband trusted him.

R. Abba raised an objection against R. Huna from the following: 'The admission of the litigant is equivalent to the testimony of a hundred witnesses, and the depository is more credible than either litigant. If, for instance, one says one thing and one another, the depository's word is to be taken'?[2] — Money is different, because the claim to it can be waived.[3] But it is taught [in the passage cited], 'And so with gittin'?[4] — This refers to money gittin.[5] But it is taught [in the passage cited]: 'And so with shetaroth'?[6] — Were they both taught together?[7]

We have learnt: A WOMAN WHO SAYS [TO AN AGENT] 'RECEIVE MY GET FOR ME' REQUIRES TWO SETS OF WITNESSES, TWO TO SAY, IN OUR PRESENCE SHE TOLD HIM, AND TWO TO SAY, IN OUR PRESENCE HE RECEIVED AND TORE IT. Why so? Cannot we take the word of the depository?[8] — Does he produce the Get that we should take his word?[9] This explains why witnesses are required for the telling. Why are they required for the receiving?[10] Rabbah replied: Who is the authority for this? R. Eleazar, who held that the witnesses to the delivery [of the Get] make it effective. Why must he tear it? — R. Judah answered in the name of Rab: This was taught in the time of the persecution.[11] Rabbah said: R. Huna admits that if the wife says, The depository told me that he gave it to him to divorce with, her word is to be taken. [How can this be?] Is there any statement which we would not accept from the depository himself and yet we would accept from her on his behalf? — What it should be is: If she said, in my presence he gave it to him to divorce me with, her word is taken, because if she liked she could have said that he gave it to her direct.[12]

If the husband says [that he gave it to the depository] to divorce with, and the depository says [it was given] to divorce with, and the wife says, He gave it to me but it has been lost, R. Johanan says: This is a statement bearing on forbidden relationships, and a statement bearing on a forbidden relationship must be substantiated by not less than two witnesses. But why so? Why not believe the depository? — Is he able to produce the Get that we should believe him? Then let us believe the husband, in accordance with what R. Hiyya b. Abin said in the name of R. Johanan: If a husband says, I have divorced my wife, his word can be taken? — Does he here say, I have divorced her?[13] Then let us say that the presumption is that the agent carries out his commission, since R. Isaac has said: If a man says to his agent, Go and betroth for me any woman you please,[14] and the agent dies, the man is forbidden to marry any woman in the world,[15] because the presumption is that the agent

carries out his commission?

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(1) We presume that they are all in the same town.

(2) Kid. 65b; B.M. 3b.

(3) And by trusting the depository, we maintain that the claimant waived his claim to the money, since if he likes he can make a present of the money to whomsoever be wishes, but he cannot make a present of his wife to another man.

(4) Which usually means bills of divorce,

(5) V. Glos. s.v. Get,

(6) Another word for documents', Since these must refer to money, it would seem that the gittin mentioned above do not refer to money.

(7) They are separate Baraithas and the two words are used by two different authorities, but in the same sense.

(8) I.e., the agent.

(9) Having torn the Get (v. infra) he is no longer in a position to deliver it to her and therefore his word is not to be taken.

(10) Seeing that he himself produces the Get in our presence.

(11) Lit 'the decree', forbidding the Jews to practise their religion. [V. Tosef. Keth. IX. Jew's were deprived of the right to draft their own legal documents after the War 70, and also during the Hadrianic persecutions. V. Blau, L. Ehescheidung, II pp. 58ff.]

(12) And the rule is that we believe a plea where a stronger one could equally well have been adduced without fear of contradiction.

(13) He appointed an agent to hand it over to her.

(14) Lit,, 'unspecified'.

(15) Lest she should be of a prohibited degree of consanguinity with the woman whom the agent betrothed, v. Nazir 12a.

Talmud - Mas. Gittin 64b

— That is so where [it has the effect of making the law] more stringent, but not where [it makes it] more lenient.[1] Then let us believe the woman herself, in accordance with R. Hamnuna; for R. Hamnuna said: If a woman says to her husband, You have divorced me, her word is taken, since the presumption is that a woman would not have the impudence to say this in the face of her husband [if it were not true]? — That is so where she has no confirmation; but where she has some confirmation,[1] she certainly would not shrink from doing so.

MISHNAH. IF A YOUNG GIRL[2] IS BETROTHED,[3] BOTH SHE AND HER FATHER MAY RECEIVE HER GET.[4] R. JUDAH, HOWEVER, SAID THAT TWO [DIFFERENT] HANDS CANNOT TAKE POSSESSION TOGETHER: HER FATHER ALONE MAY RECEIVE HER GET. ONE WHO IS NOT ABLE TO KEEP HER GET IS NOT CAPABLE OF BEING DIVORCED.[5]

GEMARA, What is the difference in principle [between the Rabbis and R. Judah]? — The Rabbis held that the All-Merciful conferred upon her an extra hand, whereas R. Judah held that where her father can act, her own hand counts as nothing.

ONE WHO IS NOT ABLE TO KEEP HER GET, etc. Our Rabbis taught: A child[6] who knows how to keep her Get can be divorced, but if she does not know how to keep her Get she cannot be divorced. Whom do we mean by a child who knows how to keep her Get? One who keeps her Get and something else. What is the meaning of this? — R. Johanan said: It means, one who keeps something else in place of her Get.[7] R. Huna b. Manoah strongly demurred to this, saying, Such a one is a mere idiot? No, said R. Huna b. Manoah, quoting R. Aha the son of R. Ika: It means one who can distinguish between her Get and another object.

Rab Judah said in the name of R. Assi: [A child which if offered] a stone throws it away [but if

offered] a nut takes it becomes possessor of anything given to itself[8] but not [of anything given to it to give] to another.[9] [If when given] an article [to play with] it will return it after a time [when asked], it can become possessor either for itself or for others. When I stated this in the presence of Samuel, he said to me, Both cases are just the same. What is the meaning of 'both cases are just the same'? — R. Hisda replied: In either case the child becomes possessor for itself but not for others. R. Hinnena Waradan[10] raised an objection: How can [all the residents][11] become partners in an alley-way?[12] One of them places a jar of wine there, saying, This is for all the residents of the alley-way, and he may confer possession upon them through his grown-up son or daughter or through his Hebrew manservant or maidservant. Now how are we to understand this maidservant? If she has grown two hairs,[13] what is she doing with him?[14] We must suppose therefore that she has not yet grown two hairs, and yet we are told that she can take possession on behalf of others?[15] — The case of partnership in an alley-way is different, because [the prohibition of taking things out there] is only Rabbinical.[16] R. Hisda said: Waradan was reduced to silence. What could he have answered? — [He could have said that] the Rabbis gave to their regulations

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(1) As here.

(2) A Na'arah, v. Glos. From twelve years and a day to twelve and a half years plus one day.

(3) V. Glos. s.v. Erusin.

(4) [I.e. , either she or her father, so Rashi, Being a na'arah (v. Glos.), she is no longer a minor and therefore is competent to receive her Get. Her father, however, still retains the right since she is still under his authority. As to a minor, i,e., who has not reached 12 years and one day, opinions differ: Rashi does not declare her competent to receive her Get, where she has a father, whereas Tosaf, (s.v. נערה) holds that there is no difference in this respect between a na'arah and a minor, na'arah being specified in the Mishnah to emphasise the extreme view of R. Judah.]

(5) She being still strictly speaking a minor. For the reason v, infra. [Here too opinions differ, Rashi: not even if her father receives the Get on her behalf, whereas Rabbenu Tam allows her divorce to be effected through her father, v. Tosaf.]

(6) Less than twelve years and one day.

(7) If the Get should be lost.

(8) So that the donor cannot take it back.

(9) And the donor can take it back.

(10) [I.e. , from Baradan, on the Eastern bank of the Tigris, two hours distance from N. of Bagdad (Obermeyer op. cit. p. 269)].

(11) In the courts abutting on an alley-way.

(12) So as to be allowed to carry articles into it and through its whole extent on Sabbath, v. 'Er. 73b.

(13) I.e., reached the age of puberty.

(14) Since it is his duty to emancipate her.

(15) Which seems to refute the dictum of Samuel.

(16) And therefore it does not matter if she did not strictly obtain possession.

Talmud - Mas. Gittin 65a

the force of rules of the Torah. What could the other say to this? — That the Rabbis gave to their regulations the force of rules of the Torah in matters which have some basis in the Torah, but not in a matter which has no basis in the Torah.[1]

R. 'Awia raised an objection: What device may be adopted [to avoid paying an extra fifth][2] for second tithe? A man can say to his grown-up son and daughter, or to his Hebrew manservant or maidservant, Take this money and redeem with it this second tithe.[3] Now how are we to understand this maidservant? If she has grown two hairs, how comes she to be with him? We must say, therefore, that she has not grown two hairs?[4] — We are speaking here of tithe in the present epoch,[5] which is Rabbinical. But is the rule regarding a Hebrew maidservant in force in the present epoch? Has it not been taught: 'The laws relating to a Hebrew servant are in force only when the Jubilee is

observed'? — We must therefore say that [it refers to tithe from] a pot which has no hole at the bottom,[6] [the rule regarding] which is Rabbinical.[7]

Raba said: There are three grades in a child.[8] [If on being given] a stone he throws it away but [on being given] a nut he takes it, he can take possession for himself but not for others. A girl of corresponding age can be betrothed so effectively as not to be released [on becoming of age] without definitely repudiating the betrothal.[9] Pe'utoth[10] can buy and sell movables with legal effect, and a girl of the corresponding age can be divorced from a betrothal contracted by her father.[11] When they reach the age at which vows are tested,[12] their vows and their sanctifications are effective, and a girl of corresponding age performs halizah.[13] The [landed] property of his [deceased] father, however, he cannot sell till he is twenty.

MISHNAH. IF A YOUNG GIRL[14] SAYS [TO AN AGENT], RECEIVE MY GET FOR ME, IT IS NO GET TILL IT REACHES HER HAND. CONSEQUENTLY IF [THE HUSBAND] WISHES TO RETRACT HE IS [TILL THEN] AT LIBERTY TO RETRACT, SINCE A MINOR CANNOT APPOINT AN AGENT. IF HER FATHER SAID TO HIM, GO AND RECEIVE MY DAUGHTER'S DIVORCE FOR HER, THE HUSBAND [AFTER GIVING IT TO HIM] IS NOT AT LIBERTY TO RETRACT.[15] IF A MAN SAYS, GIVE THIS GET TO MY WIFE IN SUCH-AND-SUCH A PLACE AND HE GIVES IT TO HER IN AN OTHER PLACE, [THE GET IS] INVALID.[16] [IF HE SAYS,] SHE IS IN SUCH-AND-SUCH A PLACE, AND HE GIVES IT TO HER IN ANOTHER PLACE, [IT IS] VALID. IF A WOMAN SAYS, RECEIVE MY GET IN SUCH-AND-SUCH A PLACE AND HE RECEIVES IT FOR HER IN ANOTHER PLACE, [IT IS] INVALID. R. ELEAZAR,[17] HOWEVER, DECLARES IT VALID. [IF HE SAYS,] BRING ME MY GET FROM SUCH-AND-SUCH A PLACE AND HE BRINGS IT FROM SOMEWHERE ELSE, [IT IS] VALID.

GEMARA. Why does R. Eleazar make a distinction between the first ruling,[18] which he does not dispute and the second ruling, which he does dispute? — The husband who divorces of his own free will, [when he specifies the place] is particular;[19] the wife, who is divorced willy-nilly, [when she specifies the place] is merely giving a direction.[20]

MISHNAH. [IF A WOMAN SAYS TO AN AGENT], BRING ME MY GET, SHE MAY EAT TERUMAH[21] TILL THE GET REACHES HER HAND. [IF, HOWEVER, SHE SAYS,] RECEIVE FOR ME MY GET, SHE IS FORBIDDEN TO EAT TERUMAH IMMEDIATELY.[22] [IF SHE SAYS,] RECEIVE FOR ME MY GET IN SUCH-AND-SUCH A PLACE, SHE CAN EAT TERUMAH TILL THE GET REACHES THAT PLACE. R. ELEAZAR[23] SAYS THAT SHE IS FORBIDDEN IMMEDIATELY.

GEMARA [Although he receives the Get in another place] nevertheless [you say here] that it is a Get, whereas previously[24] it was stated that it would not be a Get?[25] — This ruling applies to a case where, for instance, she said, Receive my Get for me in Matha Mehasia,[26] but sometimes you may find him in Babylon.[27] What she means therefore is, Take it from him wherever you find him,

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(1) Like that of carrying from one domain into another in an alley-way.

(2) The rule was that if a man redeemed his second tithe (which otherwise had to he taken to Jerusalem), he had to add a fifth to its value, but not if he redeemed someone else's.

(3) So as to give it back to him. Our texts add here in brackets the words, 'And he eats it without adding a fifth.' V. M.Sh. IV, 4.

(4) And yet she can take possession of the tithe on his behalf, which seems to refute Samuel.

(5) Since the destruction of the Temple.

(6) So that the earth in it is not attached to the soil.

(7) Even in the epoch of the Jubilee.

(8) In case of a boy, under thirteen years and one day.
(9) Mi'un, the refusal of a woman to continue the work contracted by her, a fatherless girl, during her minority. Such a refusal annuls the marriage, but if she is betrothed at a younger age, the betrothal automatically lapses on her becoming of age.
(10) Young children from six to eight or nine, according to their intelligence. V. supra 59a.
(11) I.e.,if she is an orphan she can receive the divorce herself.
(12) In the case of a boy, at twelve years and one day, and eleven years and one day with a girl. If they make a vow at this age, they are examined to see whether they understand the nature of their vow.
(13) If the brother of her betrothed dies without children.
(14) A ketannah. Less than twelve years and a day old.
(15) And the Get is effective as soon as it comes into his hand.
(16) For the reason, v. infra.
(17) Var. lec. R. Eliezer.
(18) That if the husband told him to give the Get in one place and he gave it in another, it is invalid.
(19) Because he does not want himself to be talked about in another place.
(20) And similarly if the husband says, She is in such-and-such a place.
(21) V. Glos. If she is the wife of a priest.
(22) Because the Get becomes effective as soon as it reaches his hand, and he may meet the husband soon after he leaves her.
(23) Var. lec. R. Eliezer.
(24) In the preceding Mishnah.
(25) According to the Rabbis.
(26) A suburb of Sura.
(27) In the neighbourhood of Sura, v. supra p. 17, n. 3.

but it will not be a Get till you come to Matha Mehasia.

R. ELEAZAR SAYS THAT SHE IS FORBIDDEN IMMEDIATELY. This is self-evident, [is it not,] since she is only giving him a direction [to find the husband]? — The statement was required for the case where she said to him, 'Go to the east because he is in the east', and he went to the west. You might argue in that case that [as] he is certainly not in the west [she should be permitted to eat the terumah]. We are therefore told that while going in that direction he may still come across him, and he may give him the Get.

If a man said to his agent, Make me an 'erub[1] with dates and [the other] made an 'erub with figs, or [if he told him to make] with figs and he made with dates, one [Baraitha] taught that the 'erub is effective, while another taught that it is not effective. Rabbah said: This need cause no difficulty: the one [Baraitha] follows the Rabbis and the other follows R. Eleazar. The one follows the Rabbis, who said [in the case of the Get] that [the wife] is particular. The other follows R. Eleazar, who said that she merely gives him a direction.[2] R. Joseph, however, said: Both [Baraithas] follow the Rabbis; the one [who says that the 'erub is effective] means, when the fruit is his own,[3] the other, when it is someone else's.[4] Said Abaye to him: But what will you make of the following that has been taught: 'If a man says to his agent, Make me an 'erub in a tower,[5] and he made one in the dovecote, or if he told him to make in the dovecote and he made it in the tower,' in regard to which it was taught by one [Baraitha] that his 'erub is effective and by another that it is not? In that case what difference does it make whether it is his own or his neighbour's?[6] — There too there is [a difference between] the fruit of the tower and the fruit of the dovecote.[7]

MISHNAH. IF A MAN SAYS, 'WRITE A GET AND GIVE IT TO MY WIFE, DIVORCE HER,'[8] 'WRITE A LETTER AND GIVE HER,' THEN THOSE SO INSTRUCTED SHOULD

WRITE AND GIVE HER.[9] IF HE SAID, 'RELEASE HER', 'PROVIDE FOR HER', 'DO THE CUSTOMARY[10] THING FOR HER', 'DO THE PROPER THING FOR HER', HIS WORDS ARE OF NO EFFECT.[11]

GEMARA. Our Rabbis taught: [If he said], 'Send her away,'[12] 'Let her go,'[13] 'Drive her out,' then they should write and give her. If he said, 'Release her,' 'provide for her,' 'Do the customary thing for her,' 'Do the proper thing for her,' his words are of no effect. It has been taught: R. Nathan said: If he said, 'Patteruha,' his words take effect; if he said 'Pitruha', his words are of no effect.[14] Raba said: R. Nathan being a Babylonian distinguishes between pitruha and patteruha, but our Tanna being from Eretz Yisrael does not distinguish.[15]

The question was raised: If he said, 'Put her out,'what is the law?[16] If he said 'Izbuha',[17] what is the law? If he said, 'Hattiruha,'[18] what is the law? If he said, 'Let her be,' what is the law? If he said, 'Confer a benefit on her,' what is the law? If he said, 'Do to her according to the law,' what is the law? — One of these questions may at any rate be answered, since it has been taught: If a man says, 'Do to her according to the law,' 'Do to her the proper customary thing,' 'Do to her the proper thing,' his words are of no effect.

MISHNAH. ORIGINALLY THEY LAID DOWN THAT IF A MAN WAS BEING LED OUT TO EXECUTION[19] AND SAID, WRITE A GET FOR MY WIFE,[20] THEY MAY WRITE AND GIVE [IT TO HER].[21] LATER THEY ADDED, ALSO IF HE WERE LEAVING FOR A SEA VOYAGE OR FOR A CARAVAN JOURNEY. R. SIMEON SHEZURI SAID, ALSO IF HE WERE DANGEROUSLY ILL.

GEMARA. Geniba was being led out to execution. On his way out he said, Give four hundred zuz to Rabbi Abina of the wine [which I have] of Neharpania.[22] Said R. Zera:

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(1) I.e., place some food two thousand cubits from the town boundary. V. Glos.

(2) So here, in saying 'dates' he merely meant some kind of fruit.

(3) As in that case the Rabbis would admit that he is not particular.

(4) Who allowed him specifically to use one kind and not the other.

(5) Meaning presumably that he told him to place it in the tower at the end of two thousand cubits from the town boundary.

(6) I.e., even if it is his neighbour's, can we suppose that he will be particular?

(7) The reference is not to the place where the 'erub is to be placed but from where to take the fruit for the 'erub. And if the fruit was his neighbour's, he might be particular.

(8) Lit., 'drive her out'.

(9) Because the word 'Get' has in popular usage become synonymous with a bill of divorce. Similarly the word 'driving out' (gerushin) is commonly used for divorce, while the name 'letter' is applied to the Get in the document itself.

(10) GR. ** .

(11) Because all these expressions can apply to other things equally with divorce.

(12) This is the biblical expression, Deut. XXIV, 1.

(13) Shabkuha. This expression is also found in the Get.

(14) Patteruha is the imperative pa'el of the Aramaic word petar, one of the meanings of which is 'to divorce'. Pitruah is the imperative kal of the Hebrew word patar which means 'to declare quit' from a liability (Rashi) v. next note.

(15) And he would take patteruha to be the imperative pi'el of the Hebrew word patar, with the same meaning as the kal (Rashi).

(16) The doubt arises because we find in the Scripture the expression 'and she go forth from his house'.

(17) The Hebrew equivalent of the Aramaic word Shabkuha (let her go) which above was declared to be legitimate.

(18) Which might either mean 'make her permitted to all other men,' and so would be legitimate, or 'release her from a vow.'

(19) Lit., 'who goes forth in chains (GR. **)'.

(20) Without adding, 'and give it to her'.

(21) Because we suppose he was too agitated to express himself clearly.

(22) [Also known as Harpania, a rich agricultural town in the Mesene district, S. of Babylon. (Obermeyer, op. cit. p. 197).]

Talmud - Mas. Gittin 66a

Let R. Abina put his pack on his shoulder and go off to R. Huna his teacher,[1] since R. Huna had laid down that a man's Get[2] is on the same footing as his gift; just as if he recovers he can withdraw his gift, so if he recovers he can withdraw his Get. Similarly [we may argue], just as in the case of his Get, even though he did not express himself clearly, if he says 'write' even though he does not say also 'give' [it is sufficient], so with his gift, since he has said 'give', even though no token was given,[3] [it is sufficient]. R. Abba strongly demurred to this [dictum of R. Huna], saying, [Shall I argue on this principle that] just as a gift may take effect after death, so a Get may take effect after death?[4] — Is there any comparison? A gift can take effect after death, but is there such a thing as a Get after death?[5] No; R. Abba's real difficulty was this. [Geniba's gift] was a gift made by one about to die of part of his property, and a gift made by one about to die of part of his property needs to be confirmed by a token gift.[6] This would seem to show that according to R. Huna[7] it does not need to be confirmed by a token gift, and yet we know for a fact that it does require a token gift? — There is a special reason here, because he was giving his last dispositions.[8] This again would show that in R. Abba's opinion even where one gives his last dispositions, there must be a token gift, and we know for a fact that this is not the case? — No; the real difficulty of R. Abba is this. He did not say, [Give] wine,[9] nor did he say, [Give] the money value of wine.[10] What he said was 'of the wine'.[11] — What does the other [R. Zera] [make of this]? — [He says that] he used the expression 'of the wine' to make his title more secure.[12] They sent from there [Palestine] to say, 'Of the wine' makes his title more secure.

MISHNAH. IF A MAN HAD BEEN THROWN INTO A PIT AND CRIED OUT[13] THAT WHOEVER HEARD HIS VOICE SHOULD WRITE A GET FOR HIS WIFE, THE GET SHOULD BE WRITTEN AND PRESENTED TO HER.

GEMARA. But is there not a possibility that it may be a demon? — Rab Judah said: We assume that he can be seen to have the appearance of a man. But the demons also can look like men? — We assume that they see his shadow. But they also have a shadow? — We assume they see a shadow of a shadow. But perhaps they also have a shadow of a shadow? — R. Hanina said: Jonathan my son has taught me that they have a shadow, but not a shadow of a shadow. But perhaps it is her rival?[14] — A Tannah of the school of R. Ishmael taught: In time of danger[15] we can write and [give a Get], even if we do not know him.[16]

MISHNAH. IF A MAN IN HEALTH SAYS, WRITE A GET FOR MY WIFE,[17] HIS INTENTION IS MERELY TO PLAY WITH HER. IT ONCE HAPPENED WITH A MAN IN GOOD HEALTH WHO SAID, WRITE A GET FOR MY WIFE, AND THEN WENT UP ON TO A ROOF AND FELL DOWN FROM IT AND DIED, AND RABBAN SIMEON B. GAMALIEL SAID THAT IF HE HAD THROWN HIMSELF DOWN THIS WAS A GET,[18] BUT IF THE WIND HAD BLOWN HIM OVER IT WAS NO GET.

GEMARA. The instance adduced disproves the rule, [does it not]?[19] — There is a lacuna, and the Mishnah should run thus: 'If his subsequent conduct reveals his intention [to kill himself], the Get is valid. IT ONCE HAPPENED WITH A MAN IN GOOD HEALTH WHO SAID, WRITE A GET FOR MY WIFE, AND THEN WENT UP TO A ROOF AND FELL DOWN FROM IT AND DIED, AND RABBAN SIMEON B. GAMALIEL SAID: IF HE HAD THROWN HIMSELF DOWN THIS WAS A GET, B UT IF THE WIND HAD BLOWN HIM OVER IT WAS NO GET.

A certain man went into the synagogue and found a teacher of children and his son sitting there and a third man sitting by them. He said to them: I want two of you to write a Get for my wife. Before the Get was given[20] the teacher died. [The question arose], Do people usually make a son their agent in the place of his father or not?[21] — R. Nahman said: People do not make a son the agent in the place of his father, while R. Papi said that people do make a son their agent in the place of his father.[22] Raba said: The law is that people do make a son the agent in place of the father.

MISHNAH. IF A MAN SAID TO TWO PERSONS, GIVE A GET TO MY WIFE,[23]

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(1) Who would confirm his title.

(2) Given on a sick bed.

(3) I.e., there was no kinyan. v. Glos.

(4) The wife becomes automatically released on the death of her husband, so that no Get can be effective after death. The Get is in fact meant to take effect before death, to release the wife from the obligation of halizah.

(5) Where the husband made such a stipulation.

(6) Because by giving only part, he shows that he has in mind the possibility of recovery, and therefore the gift is on the same footing as one given by a healthy person, v. B.B. 151b.

(7) Since R. Huna would, it is held, confirm the title to the gift.

(8) Lit., 'ordering by reason of death'.

(9) To the value of four hundred zuz.

(10) I.e., sell four hundred zuz worth and give him the money.

(11) I.e., money from wine, which has no meaning.

(12) So that he should have a lien on the whole of the wine in case any of it went sour or the money obtained from the sale of it was lost, the words 'of wine' including both the wine and its money value.

(13) Giving his name and the name of his town.

(14) Who wants her to obtain a Get so that she may marry again and become forbidden to her present husband.

(15) As in the case of one who is in imminent danger of death.

(16) I.e., whether he is the man who he says he is.

(17) Without adding, Give it to her.

(18) Because, having had the intention to commit suicide, he was on the same footing as one in imminent danger of death.

(19) Since the rule is given without qualification.

(20) Lit., 'At the end'.

(21) The husband had gone away, and the question was whether when the man said 'two of you', his words could apply equally to the son alone as well as to the father alone in conjunction with the third man, or to the father only, the son being ineligible when the father was present.

(22) And the son can form the second man to write the Get.

(23) But did not say write'.

Talmud - Mas. Gittin 66b

OR TO THREE PERSONS, WRITE A GET AND GIVE IT TO MY WIFE, THEY SHOULD WRITE AND GIVE IT. IF HE SAID TO THREE PERSONS, GIVE A GET TO MY WIFE,[1] THEY MAY TELL OTHERS TO WRITE[2] BECAUSE HE HAS MADE THEM A BETH DIN.[3] THIS IS THE VIEW OF R. MEIR, AND THIS IS THE HALACHAH WHICH R. HANINA A MAN OF ONO[4] BROUGHT [FROM R. AKIBA IN] PRISON:[5] 'I HAVE IT FROM MY TEACHERS THAT IF A MAN SAYS TO THREE PERSONS, GIVE A GET TO MY WIFE, THEY MAY TELL OTHERS TO WRITE IT, BECAUSE HE HAS CONSTITUTED THEM A BETH DIN. R. JOSE SAID: WE SAID TO THE MESSENGER, WE ALSO HAVE IT ON TRADITION FROM OUR TEACHERS THAT EVEN IF HE SAID TO THE GREAT BETH DIN IN JERUSALEM,[6] GIVE A GET TO MY WIFE, 'THEY SHOULD LEARN[7] AND WRITE AND GIVE IT. IF A MAN SAYS

TO TEN PERSONS, WRITE A GET AND DELIVER IT TO MY WIFE, ONE WRITES, AND TWO SIGN AS WITNESSES. [IF HE SAID,] ALL OF YOU WRITE, ONE WRITES AND ALL SIGN. CONSEQUENTLY IF ONE OF THEM DIES, THE GET IS INVALID.

GEMARA. R. Jeremiah b. Abba said: An inquiry was sent from the school of Rab[8] to Samuel: Would our teacher inform us: If a man said to two persons, Write and deliver a Get to my wife, and they told a scribe and he wrote it and they themselves signed it, what is the law?[9] — He sent back word: She must leave [her second husband],[10] but the matter requires further study. What did he mean by saying that the matter requires further study? Shall we say it is because only a verbal instruction[11] was given to them,[12] and Samuel is in doubt whether a verbal instruction can be passed on to another agent or not? Has not Samuel said in the name of Rabbi that the halachah follows R. Jose who said that verbal instructions cannot be passed on to another agent?[13] — No; what Samuel wanted to know was this. [When the husband said to the men], 'write', did he mean their signatures or the Get?[14] — Cannot this be determined from the Mishnah: IF A MAN SAID TO TWO PERSONS, GIVE A GET TO MY WIFE, OR IF HE SAID TO THREE, WRITE A GET AND GIVE [IT] TO MY WIFE, THEY SHOULD WRITE AND DELIVER [IT]? — Here too he was in doubt whether 'WRITE' meant their signatures or the actual Get. Surely it is obvious that it must be the Get, from what we read in the later clause: R. JOSE SAID, WE SAID TO THE MESSENGER, WE TOO HAVE IT ON TRADITION FROM OUR TEACHERS THAT EVEN IF HE SAID TO THE GREAT BETH DIN IN JERUSALEM, GIVE A GET TO MY WIFE, THEY SHOULD LEARN AND WRITE AND GIVE TO HER.[15] Now if you say that the writing of the Get is meant, this creates no difficulty, but if you say it is the writing of the signatures, surely there is no Beth din, the members of which do not know how to sign their names? — Yes; this might happen in a new Beth din.

Now if we adopt the opinion that 'write' means 'write your signatures,' but as to the actual Get, it is in order even if written by others [how can this be seeing that] Samuel said in the name of Rabbi that the halachah is in accordance with R. Jose who said that verbal instructions cannot be passed on to another agent? — We might reply that if we adopt the opinion that 'write' means the signatures, then as far as the writing of the Get is concerned it is as though the husband had given instructions that they should tell [the scribe], and R. Jose admits that [the Get written by the scribe is valid] where he said, Tell [the scribe to write it].

But does R. Jose admit that it is valid where he says to them, Tell [the scribe]? Have we not learnt: 'If the scribe wrote and there was one witness [besides], the Get is valid,'[16] and R. Jeremiah said in regard to this, Our Version is, If the scribe signs,[17] and R. Hisda said, Whom does the Mishnah follow? R. Jose, who said that verbal instructions cannot be passed on to another agent.[18] Now if you assume that R. Jose admits [that the Get is valid] where he says, Tell [the scribe], then a calamity may result, since sometimes he will say to two persons,

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(1) Without saying 'write'.

(2) And sign.

(3) And they have authority to do this.

(4) In Benjamin near Lydda. I Chron. VIII, 12.

(5) Var. lec. Which R. Hanina sent from prison.

(6) The Synhedrion.

(7) How to write.

(8) [Probably after the death of Rab (247 C.E.) or simply 'from the school'.]

(9) Are the words THEY SHOULD WRITE in the Mishnah to be taken literally or do they denote merely the signatures.

(10) If she has married again on the strength of the Get.

(11) Lit., 'words'.

(12) And they were not given the actual Get to deliver.

(13) And therefore if these tell a scribe to write the Get it is invalid, v. supra 29a.

(14) If he meant them to write only the signatures the Get is valid, and therefore he was in doubt.

(15) Infra 71b.

(16) [Our Mishnah text actually reads: WRITE AND GIVE, but this Gemarah reading is supported by the J. Mishnah.]

(17) He signs the Get as witness, in conjunction with another witness.

(18) Consequently we may safely assume that the scribe was commissioned to sign by the husband himself, and there is no fear that the agent told him to do so on his own authority, so as not to offend the scribe.

Talmud - Mas. Gittin 67a

Tell the scribe to write and So-and-so and So-and-so to sign, and out of fear of offending the scribe they will agree that one of them should sign and the scribe with him, which is not what the husband said?[1] — Since a Master has said[2] [that a Get of this kind[3] is] valid but this should not be done in Israel, it is not usual.[4] But is there not the possibility that he may say to two persons, Tell the scribe to write and do you sign, and they will go and in order not to offend the scribe let the scribe sign along with one of them, which is not what the husband said? — We say here also: Such a Get is valid, but this should not be done in Israel.[5] This is a sufficient answer for one who holds that it is valid but should not be done, but to one who holds that it is valid and may be done what are we to say? — The truth is that R. Jose laid down two [disqualifications],[6] and Samuel concurred with him in regard to one and differed from him in regard to the other.[7] The text above [states]: 'Samuel said in the name of Rabbi that the halachah is in accordance with R. Jose, who said that verbal instructions cannot be passed on to an agent'. R. Simeon son of Rabbi said to him: Seeing that R. Hanina of Ono and R. Meir take a different view from R. Jose, what was Rabbi's reason for saying that the halachah follows R. Jose? — He replied: Say nothing, my son, say nothing; you have never seen R. Jose. Had you seen him, [you would know] that he always had good ground for his views.[8] For so it has been taught: Issi b. Judah used to specify the distinctive merits of the various Sages. R. Meir [he said], was wise and a scribe.[9] R. Judah was wise when he desired to be.[10] R. Tarfon was a heap of nuts.[11] R. Ishmael was a well-stocked shop.[12] R. Akiba was a storehouse with compartments.[13] R. Johanan b. Nuri was a basket of fancy goods.[14] R. Eleazar b. Azariah was a basket of spices.[15] The Mishnah of R. Eliezer b. Jacob [the Elder] was little and good.[16] R. Jose always had his reasons. R. Simeon used to grind much and let out little. A Tanna [explained this to mean that] he used to forget little, and what he let go from his mind was only the bran.[17] So too said R. Simeon to his disciples: My sons, learn my rules,[18] since my rules are the cream of the cream[19] of R. Akiba's. The text above [states]. 'If a man said to two persons, Tell the scribe to write and So-and-so and So-and-so to sign, R. Huna said in the name of Rab that [the Get is] valid, but this should not be done in Israel.' Said 'Ulla to R. Nahman (or, according to others, R. Nahman said to 'Ulla): Seeing that [the Get is] valid, why should this not be done in Israel? — He replied: We are afraid lest she might suborn witnesses.[20] But do we entertain any such fear? Has it not been taught: Once the witnesses have signed to a deed of purchase of a field or the Get of a woman, the Sages entertain no doubts about their reliability? They would not do anything wrong,[21] but they might say something.

If a man said to two persons, Tell the scribe to write and do you sign, R. Hisda said [that the Get would be] valid but this should not be done; Rabbah b. Bar Hanah said that it is valid and this may be done; R. Nahman said it is valid and this may not be done; R. Shesheth said it is valid and this may be done; Rabbah said it is valid and this may not be done; R. Joseph said it is valid and this may be done.

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(1) He appointed special witnesses for the signature. This proves that the view that the scribe may witness the Get is not compatible with the view that the husband can say to the agent, Tell the scribe.

(2) Infra.

(3) 'Tell the scribe to write and So-and-so etc., to sign.'

(4) And therefore R. Jose would not make provision against so remote a danger.
(5) And therefore this also is unusual.
(6) That the Get is invalid whether he told three persons to write and they told a scribe to write, or whether he told two persons to tell a scribe to write and two persons to sign, and they did so.
(7) [Samuel agreed that if he did not say 'tell the scribe' the Get is invalid, since oral instructions cannot he committed to an agent, but he held that if he did say so the Get would he valid. Hence, as regards the query sent to Samuel, if the word 'write' meant only the signature, they would he able to tell the scribe to write. And it was with reference to this that Samuel required the matter to he studied further.]
(8) Lit., 'his depth is with him', or 'his nomikon (logic)'.
(9) This was his profession. V. Sotah, 20.
(10) I.e. , when he was not too hasty, he could be even wiser than R. Meir (Tosaf.).
(11) When he was asked a question, his instances came out like a heap of nuts toppling over one another.
(12) Where it is not necessary to keep the customer waiting while the article required is brought from outside.
(13) All his learning being classified under various heads Scripture, Halachah, Aggadah, etc. like different kinds of corn in a storehouse.
(14) Apparently this indicates that while his knowledge was well arranged like that of R. Akiba, it was not so well unified and correlated.
(15) Apparently, less in quantity than R. Johanan's.
(16) Lit., 'a kab and fine'. So that wherever he gives an opinion, the halachah follows him.
(17) I.e., those statements which were not followed by the halachah.
(18) Lit., 'measures'.
(19) Lit., 'the terumah of the terumah'.
(20) To say this to the scribe and the witnesses in the name of her husband.
(21) E.g., sign their own names.

Talmud - Mas. Gittin 67b

Some reverse [the names in] the last two statements.

IF HE SAID TO TEN PERSONS, WRITE A GET. Our Rabbis taught: If he says to ten persons, Write a Get and give it to my wife, one writes on behalf of all of them. [If he says,] All of you write, one writes In the presence of all of them. If he says [to ten], Take a Get to my wife, one takes it on behalf of all of them. If he says, All of you take it, one takes it in the company of the rest. The question was raised: If he enumerated them [one by one], what is the law? — R. Huna said: Enumeration is not the same as saying 'all of you'; R. Johanan said in the name of R. Eleazar from Ruma[1] that enumeration is the same as saying 'all of you'. R. Papa said: They are not in conflict: the one speaks of where he enumerated all of them and the other of where he enumerated only some of them. Some explain this in one way and some explain it in the opposite way.[2]

Rab Judah made a regulation that in a Get [which the husband had ordered with the word] 'all of you' [they should insert[3] the words, He said to us], Write either all of you or any one of you; Sign either all of you or any two of you; Convey all of you or any one of you.[4] Raba said: Sometimes a man cuts his words short and says 'all of you' without adding, 'any one of you,' and he can afterwards come and declare the Get invalid. Raba therefore said that [they should insert the words], Write any one of you, Sign any two of you, Convey any one of you.[5]

C H A P T E R V I I

MISHNAH. IF A MAN IS SEIZED WITH A KORDIAKOS[6] AND SAYS, WRITE A GET FOR MY WIFE, HIS WORDS ARE OF NO EFFECT. IF HE SAYS, WRITE A GET FOR MY WIFE, AND IS THEN SEIZED WITH A KORDIAKOS AND THEN SAYS, DO NOT WRITE IT, HIS LATER WORDS ARE OF NO EFFECT. IF HE IS STRUCK DUMB, AND WHEN THEY SAY TO

HIM, SHALL WE WRITE A GET FOR YOUR WIFE, HE NODS HIS HEAD, HE IS TESTED WITH THREE QUESTIONS.[7] IF HE SIGNIFIES 'NO' AND 'YES' PROPERLY EACH TIME, THEN THE GET SHOULD BE WRITTEN AND GIVEN FOR HIM.

GEMARA. What is kordiakos? — Samuel said: Being overcome[8] by new wine from the vat. Then why does it not Say. If one is overcome by new wine? — The mode of expression teaches us that this spirit [which causes the dizziness] is called kordiakos. Of what use is this [knowledge]? — For a charm. What is the remedy for it? Red[9] meat broiled on the coals, and wine highly diluted.

Abaye said: My mothers told me that for a sun-stroke [fever] the remedy is on the first day to take a jug of water, [if it lasts] two days to let blood, [if] three days to take red meat broiled on the coals and highly diluted wine. For a chronic heat stroke, he should bring a black hen and tear it lengthwise and crosswise and shave the middle of his head and put the bird on it and leave it there till it sticks fast, and then he should go down [to the river] and stand in water up to his neck till he is quite faint, and then he should swim out and sit down. If he cannot do this, he should eat leeks and go down and stand in water up to his neck till he is faint and then swim out and sit down. For sunstroke one should eat red meat broiled on the coals with wine much diluted. For a chill[10] one should eat fat meat broiled on the coals with undiluted wine. When the household of the Exilarch wanted to annoy R. Amram the Pious,[11] they made him lie down in the snow. On the next day they said, What would your honour like us to bring you? He knew that whatever he told them they would do the reverse, so he said to them, Lean meat broiled on the coals and wine much diluted. They brought him fat meat broiled on the coals and undiluted wine. Yaltha[12] heard and took him in to the bath, and they kept him there till the water turned to the colour of blood[13] and his flesh was covered with bright spots. R. Joseph used to cure the shivers by working at the mill, R. Shesheth by carrying heavy beams. He said: Work is a splendid thing to make one warm.[14]

The Exilarch once said to R. Shesheth, Why will your honour not dine with us? He replied: Because your servants are not reliable, being suspected of taking a limb from a living animal. You don't say so,[15] said the Exilarch. He replied, I will just show you. He then told his attendant to steal a leg from an animal and bring it. When he brought it to him he said [to the Servants of the Exilarch], place the pieces of the animal before me. They brought three legs and placed them before him. He said to them, This must have been a three-legged animal. They then cut a leg off an animal and brought it. He then said to his attendant, Now produce yours. He did so, and he then said to them, This must have been a five-legged animal. The Exilarch said to him, That being the case, let them prepare the food in your presence[16] and then you can eat it. Very good, he replied. They brought up a table and placed meat before him, and set in front of him a portion with a dangerous bone.[17] He felt it and took and wrapped it in his scarf. When he had finished they said to him

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(1) [In the neighbourhood of Zepphoris. V. Klein, NB p. 22.]

(2) Some say that if he enumerated all of them this is equivalent to saying 'all of you'. whereas if he enumerated only some, this shows that he abandoned his intention of making all of them responsible, and it is sufficient if any two of those enumerated sign. Others explain that if he enumerated some, this shows that he was particular that all these should sign, whereas if he enumerated all without saying 'all of you,' this shows that he desired any two to sign, but in the presence of the rest.

(3) To provide against the possibility that the husband may insist that he meant that it should be signed by all.

(4) Should one of them be absent at the writing or fail to sign the Get.

(5) Omitting 'all of you'.

(6) A kind of delirium in which he does not know exactly what he is saying. V. Infra. Apparently == GR. **, which, however, is not found in this sense. Goldschmidt derives it from GR. **

(7) Lit., 'three times', to see if he is still compos mentis.

(8) Lit., 'bitten'.

(9) I.e.. without much fat. (5) V. Kid. 31b.

(10) Lit., ‘snow’.
(11) Because he used to vex them with his numerous restrictions.
(12) The daughter of the Exilarch and wife of R. Nahman.
(13) From the perspiration.
(14) Lit., ‘to make warm its master’.
(15) Lit., ‘who will say’.
(16) According to another reading ‘in the presence of your servant,’ as R. Shesheth was blind.
(17) Lit., ‘the portion which chokes the mother-in-law’. According to Rashi, this was a part above the hind leg containing a very small bone.

Talmud - Mas. Gittin 68a

. A silver cup has been stolen from us.[1] In the course of their search for it they found the meat wrapped in his scarf, whereupon they said to the Exilarch, See, sir, that he does not want to eat, but only to vex us. He said, I did eat, but I found in it the taste of a boil. They said to him, No animal with a boil has been prepared for us to-day. He said to them, Examine the place [where my portion came from].[2] since R. Hisda has said that a white spot on black skin or a black spot on white skin is a mark of disease.[3] They examined and found that it was so. When he was about to depart they dug a pit and threw a mat over it, and said to him, Come, sir, and recline. R. Hisda snorted behind him.[4] and he said to a boy. Tell me the last verse you have learnt.[5] The boy said. Turn thee aside to thy right hand or to thy left.[6] He said to his attendant, What can you see? He replied. A mat thrown across [the path]. He said, Turn aside from it. When he got out, R. Hisda said to him, How did you know, sir? He replied. For one thing because you, sir, snorted [behind me], and again from the verse which the boy quoted, and also because the servants are suspect of playing tricks.[7]

I gat me sharim and sharoth,[8] and the delights of the sons of men, Shidah and shidoth.[9] ‘Sharim and Sharoth’, means diverse kinds of music; ‘the delights of the sons of men’ are ornamental pools and baths. ‘Shidah and shidoth’: Here [in Babylon] they translate as male and female demons. In the West [Palestine] they say [it means] carriages.

R. Johanan said: There were three hundred kinds of demons in Shihin, but what a shidah is I do not know.[10]

The Master said: Here they translate ‘male and female demons’. For what did Solomon want them? — As indicated in the verse, And the house when it was in building was made of stone made ready at the quarry, [there was neither hammer nor axe nor any tool of iron heard in the house while it was in building];[11] He said to the Rabbis, How shall I manage [without iron tools]? — They replied, There is the shamir[12] which Moses brought for the stones of the ephod. He asked them, Where is it to be found? — They replied, Bring a male and a female demon and tie them together; perhaps they know and will tell you. So he brought a male and a female demon and tied them together. They said to him, We do not know, but perhaps Ashmedai the prince of the demons knows. He said to them, Where is he? — They answered, He is in such-and-such a mountain. He has dug a pit there, which he fills with water and covers with a stone, which he then seals with his seal. Every day he goes up to heaven and studies in the Academy of the sky and then he comes down to earth and studies in the Academy of the earth, and then he goes and examines his seal and opens [the pit] and drinks and then closes it and seals it again and goes away. Solomon thereupon sent thither Benaiahu son of Jehoiada, giving him a chain on which was graven the [Divine] Name and a ring on which was graven the Name and fleeces of wool and bottles of wine. Benaiahu went and dug a pit lower down the hill and let the water flow into it[13] and stopped [the hollow] With the fleeces of wool, and he then dug a pit higher up and poured the wine into it[14] and then filled up the pits. He then went and sat on a tree. When Ashmedai came he examined the seal, then opened the pit and found it full of wine. He said, it is written, Wine is a mocker, strong drink a brawler, and whosoever

erreth thereby is not wise,[15] and it is also written, Whoredom and wine and new wine take away the understanding.[16] I will not drink it. Growing thirsty, however, he could not resist, and he drank till he became drunk, and fell asleep. Benaiahu then came down and threw the chain over him and fastened it. When he awoke he began to struggle, whereupon he [Benaiahu] said, The Name of thy Master is upon thee, the Name of thy Master is upon thee. As he was bringing him along, he came to a palm tree and rubbed against it and down it came. He came to a house and knocked it down. He came to the hut of a certain widow. She came out

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(1) A mere pretext in order to search him.

(2) I.e., the skin.

(3) Of the flesh.

(4) As a signal.

(5) For an omen; cf. supra 56a.

(6) II Sam. II, 21.

(7) Lit., 'of not being good'.

(8) E.V. 'men-singers and women-singers'.

(9) Eccl. II. 8.

(10) Al. 'the real mother of the demons I do not know'.

(11) I Kings VI, 7.

(12) A fabulous worm which could cut through the sharpest stone. [So Maimonides, Aboth, v. 6. and Rashi, Pes. 54a, though none of the old Talmudic sources states explicitly whether the Shamir was a living creature or a mineral. The Testament of Solomon, however, seems to regard it as a stone. V. Ginzberg Legends, V, p. 55, n. 105, and VI, p. 299, n. 82, also Aboth, (Sonc. ed.) p. 63, n. 6.]

(13) From Ashmedai's pit by means of a tunnel connecting the two.

(14) So that it should flow into Ashmedai's pit.

(15) Prov. XX, 1.

(16) Hos, IV, 11.

and besought him, and he bent down so as not to touch it, thereby breaking a bone. He said, That bears out the verse, A soft tongue breaketh the bone[1] He saw a blind man straying from his way and he put him on the right path. He saw a drunken man losing his way and he put him on his path. He saw a wedding procession making its way merrily and he wept. He heard a man say to a shoemaker, Make me a pair of shoes that will last seven years, and he laughed. He saw a diviner practising divinations and he laughed. When they reached Jerusalem he was not taken to see Solomon for three days. On the first day he asked, Why does the king not want to see me? They replied, Because he has overdrunk himself. So he took a brick and placed it on top of another. When they reported this to Solomon he said to them, What he meant to tell you was, Give him more to drink. On the next day he said to them, Why does the king not want to see me? They replied, Because he has over-eaten himself. He thereupon took one brick from off the other and placed it on the ground. When they reported this to Solomon, he said, He meant to tell you to keep food away from me. After three days he went in to see him. He took a reed and measured four cubits and threw it in front of him, saying, See now, when you die you will have no more than four cubits in this world. Now, however, you have subdued the whole world, yet you are not satisfied till you subdue me too. He replied: I want nothing of you. What I want is to build the Temple and I require the shamir. He said: It is not in my hands, it is in the hands of the Prince of the Sea who gives it only to the woodpecker,[2] to whom he trusts it on oath. What does the bird do with it? — He takes it to a mountain where there is no cultivation and puts it on the edge of the rock which thereupon splits, and he then takes seeds from trees and brings them and throws them into the opening and things grow there. (This is what the Targum means by nagar tura).[3] So they found out a woodpecker's nest with young in it, and covered it over with white glass. When the bird came it wanted to get in but could not, so it went and brought

the shamir and placed it on the glass. Benaiahu thereupon gave a shout, and it dropped [the shamir] and he took it, and the bird went and committed suicide on account of its oath.

Benaiahu said to Ashmedai, Why when you saw that blind man going out of his way did you put him right? He replied: It has been proclaimed of him in heaven that he is a wholly righteous man, and that whoever does him a kindness will be worthy of the future world. And why when you saw the drunken man going out of his way did you put him right? He replied, They have proclaimed concerning him in heaven that he is wholly wicked, and I conferred a boon on him in order that he may consume [here] his share [in the future].[4] Why when you saw the wedding procession did you weep? He said: The husband will die within thirty days, and she will have to wait for the brother-in-law who is still a child of thirteen years.[5] Why, when you heard a man say to the shoemaker, Make me shoes to last seven years, did you laugh? He replied: That man has not seven days to live, and he wants shoes for seven years! Why when you saw that diviner divining did you laugh? He said: He was sitting on a royal treasure: he should have divined what was beneath him.

Solomon kept him with him until he had built the Temple. One day when he was alone with him, he said, it is written, He hath as it were to'afoth and re'em,[6] and we explain that to'afoth means the ministering angels and re'em means the demons.[7] What is your superiority over us?[8] He said to him, Take the chain off me and give me your ring, and I will show you. So he took the chain off him and gave him the ring. He then swallowed him,[9] and placing one wing on the earth and one on the sky he hurled him four hundred parasangs. In reference to that incident Solomon said, What profit is there to a man in all his labour wherein he laboureth under the sun.[10]

And this was my portion from all my labour.[11] What is referred to by 'this'? — Rab and Samuel gave different answers, one saying that it meant his staff and the other that it meant his apron.[12] He used to go round begging, saying wherever he went, I Koheleth was king over Israel in Jerusalem.[13] When he came to the Sanhedrin, the Rabbis said: Let us see, a madman does not stick to one thing only.[14] What is the meaning of this? They asked Benaiahu, Does the king send for you? He replied, No. They sent to the queens saying, Does the king visit you? They sent back word, Yes, he does. They then sent to them to say, Examine his leg.[15] They sent back to say, He comes in stockings, and he visits them in the time of their separation and he also calls for Bathsheba his mother. They then sent for Solomon and gave him the chain and the ring on which the Name was engraved. When he went in, Ashmedai on catching sight of him flew away, but he remained in fear of him, therefore is it written, Behold it is the litter of Solomon, threescore mighty met, are about it of the mighty men of Israel. They all handle the sword and are expert in war, every man hath his sword upon his thigh because of fear in the night.[16]

Rab and Samuel differed [about Solomon]. One said that Solomon was first a king and then a commoner,[17] and the other that he was first a king and then a commoner and then a king again.

For blood rushing to the head the remedy is to take shurbina[18] and willow and moist myrtle and olive leaves and poplar and rosemary and yabla[19] and boil them all together. The sufferer should then place three hundred cups on one side of his head and three hundred on the other. Otherwise he should take white roses with all the leaves on one side and boil them and pour sixty cups over each side of his head. For migraine one should take a woodcock and cut its throat with a white zuz[20] over the side of his head on which he has pain, taking care that the blood does not blind him, and he should hang the bird on his doorpost so that he should rub against it when he goes in and out.

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(1) Prov. XXV, 15.

(2) Lit., 'Cock of the prairie'.

(3) Lit., 'One that saws the rock': the rendering in Targum Onkelos of the Hebrew דוכיפת generally rendered by hoopoe; Lev. XI, 19.

(4) That there may remain no share for him to enjoy in the hereafter.
(5) Before he can give her halizah (v. Glos.) and enable her to marry again.
(6) Num. XXIV, 8. E.V., ‘the strength of a wild ox’.
(7) So Targum Onkelos.
(8) That you should be a standard of comparison for Israel.
(9) Al. ‘it’ (the ring).
(10) Eccl. I, 3. [No satisfactory explanation has yet been given of the name of Ashmedai. Ginzberg (JE. II s.v. Asmodeus) gives it an Aramaic derivation. Kaminka JQR. (NS) XIII. p. 224 connects it with Smerdis, the magician, a hero in a Persian legend preserved by Herodotus, which has many points of similarity with the Ashmedai story.]
(11) Ibid. II, 10.
(12) Al. ‘his platter’, v. Sanh. (Sonc. ed.) p. 110 and notes.
(13) Ibid. I, 12.
(14) I.e., if Solomon were mad, he would show it by other things as well.
(15) Because a demon's legs are like those of a cock, v. Ber. 6a.
(16) Cant. III, 7, 8.
(17) That is to say, that though he was restored to his kingdom, he did not rule over the unseen world as formerly, v. Sanh. loc. cit.
(18) A kind of cedar.
(19) A certain herb, cynodon.
(20) I.e., a white silver coin.

Talmud - Mas. Gittin 69a

. For a cataract he should take a scorpion with stripes of seven colours and dry it out of the sun and mix it with stibium in the proportion of one to two and drop three paint — brushfuls into each eye — not more, lest he should put out his eye. For night blindness[1] he should take a string made of white hair and with it tie one of his own legs to the leg of a dog, and children should rattle potsherds behind him saying ‘Old dog, stupid cock’. He should also take seven pieces of raw meat from seven houses and put them on the doorpost and [let the dog] eat them on the ashpit of the town. After that he should untie the string and they should say, ‘Blindness of A, son of the woman B, leave A, son of the woman B,’ and they should blow into the dog's eye. For day blindness he should take seven milts from the insides of animals and roast them in the shard of a blood-letter, and while he sits inside the house another man should sit outside and the blind man should say to him, ‘Give me to eat, and the other, the seeing man, should answer, ‘Take and eat,’ and after he has eaten he should break the shard, as otherwise the blindness may come back. To stop bleeding at the nose he should bring a kohen whose name is Levi and write Levi backwards, or else bring any man and write, I Papi Shila bar Sumki, backwards, or else write thus: Ta'am deli beme kesaf, ta'am deli be-me pegam.[2] Or else he can take root of clover and the rope of an old bed and papyrus and saffron and the red part of a palm branch and burn them all together and then take a fleece of wool and weave two threads and steep them in vinegar and roll them in the ashes and put them in his nostrils. Or he can look for a watercourse running from east to west and stand astride over it and pick up some clay with his right hand from under his left leg and with his left hand from under his right leg and twine two threads of wool and rub them in the clay and put them in his nostrils. Or else he can sit under a gutter pipe while they bring water and pour over him saying, ‘As these waters stop, so may the blood of A, son of the woman B, stop’. To stop blood coming from the mouth he should [first] be tested with a wheat straw. If the blood sticks, It comes from the lungs and can be cured, but if not it comes from the liver and cannot be cured. Said R. Ammi to R. Ashi: But we have learnt the opposite:[3] ‘[The animal is trefa] if the liver has been removed and nothing of it is left, or if the lung is pierced or defective’?[4] — He replied: Since it comes away from his mouth, we assume that the liver has been entirely dissolved [in the lung].[5]

The Master just said: If it comes from the lung, there is a remedy for it. What is the remedy? Let

him take seven handfuls of hashed beets and seven handfuls of mashed leeks and seven handfuls of jujube berry and three handfuls of lentils and a handful of camon and a handful of flax[6] and a quantity equal to all these of the ileum of a first-born animal and let him cook the mixture and eat it, washing it down with strong beer made in [the month of] Tebeth.[7] For toothache Rabbah b. R. Huna says that he should take the top of a garlic with one stalk only and grind it with oil and salt and put it on his thumb nail on the side where the tooth aches and put a rim of dough round it, taking care that it does not touch his flesh, as it may cause leprosy. For swollen glands,[8] R.Johanan said that pellitory leaves are as good as mamru[9] and the root of pellitory better than mamru, and he should put them in his mouth. This is to prevent it from spreading. To soften it he should take bran that came to the top of the sieve and lentils with the earth still on them and clover and hemlock flower and the bud of cuscuta, and he should put about the size of a nut in his mouth. To make it burst, someone should blow into his throat seeds of unripe dates, through a wheat straw. To make the flesh close he should bring dust from the shadow of a privy and knead it with honey and eat. This is effective. For catarrh[10] he should take about the size of a pistachio of gum-ammoniac and about the size of a nut of sweet galbanum and a spoonful of white honey and a Mahuzan natla[11] of clear[12] wine and boil them up together; when the gum-ammoniac boils, it is all boiled enough. If he cannot manage this, let him take a revi'ith of milk of a white goat

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(1) [Shabrire, a shaf'el form of ברר 'clear', a euphemism for 'blindness'. In this infliction, ascribed to the demons, a distinction was made between day-shabrire and night-shabrire which is said to correspond with hemeralopia and nyctalopia. V. Preuss, Biblisch-talmudische Medizin, p. 312, and A.Z., (Sonc. ed.) p. 64, n. 4.]

(2) Lit., 'The taste of the bucket in water of silver, the taste of the bucket in water of blemish'.

(3) Hul. 42a.

(4) This would show that if the blood comes from the lungs it is more fatal than from the liver.

(5) And the blood is really from the liver.

(6) [Var. lec. 'spices'].

(7) In the winter when the brew is made strong.

(8) So Rashi. Jast.: 'jaws'.

(9) A kind of herb.

(10) [So Rashi. Preuss (op. cit. p. 198) Pleurisy.]

(11) About a revi'ith (1/4 log).

(12) I.e., not dark.

Talmud - Mas. Gittin 69b

and let it drip on three stalks of carob and stir it with a piece of stem of marjoram; when the stem of marjoram is boiled it is all boiled enough. He can also take the excrement of a white dog and knead it with balsam, but if he can possibly avoid it he should not eat the dog's excrement as it loosens the limbs. For gira[1] he should take an arrow of Lilith[2] and place it point upwards and pour water on it and drink it. Alternatively he can take water of which a dog has drunk at night, but he must take care that it has not been exposed.[3] For [drinking] water which has been exposed let him take an anpak of undiluted wine. For an abscess, an anpak of wine with purple-coloured aloes. For palpitations of the heart he should take three barley-cakes and streak them with liamak[4] which has been made less than forty days before, and eat it and wash it down with wine well diluted. Said R. Aha from Difti to Rabina: This will make his heart palpitate all the more! — He replied: I was speaking of heaviness of heart. For palpitations of the heart he should take three cakes of wheat and streak them with honey and eat them and wash them down with strong wine. For pressure of the heart he should take the size of three eggs of mint and an egg of camon and an egg of sesame and eat them. For pain in the stomach he should take three hundred long pepper grains and every day drink a hundred of them in wine. Rabin of Naresh[5] used for the daughter of R. Ashi a hundred and fifty of our grains; it cured her. For intestinal worms, an anpak[6] of wine with bay leaves. For white intestinal worms he should take eruca seed and tie it in a piece of cloth and soak it in water and drink it, taking care not to

swallow the pips, since they may pierce his bowels. For looseness of the bowels, moist polio in water. For constipation, dry polio in water. The mnemonic[7] is, 'dry twigs stop the stream'. For swelling of the spleen, let him take seven leeches and dry them in the shade and every day drink two or three in wine. Alternatively he may take the spleen of a she-goat which has not yet had young, and stick it inside the oven and stand by it and say, 'As this spleen dries, so let the spleen of So-and-so son of So-and-so' dry up'. Or again he may dry it between the rows of bricks in a house and repeat these words. Or again he may look out for the corpse of a man who has died on Sabbath and take his hand and put it on the spleen and say, 'As this hand is withered so let the spleen of So-and-so son of So-and-so wither.'[8] Or again, he can take a fish and fry it in a smithy and eat it in the water of the smithy[9] and wash it down with the water of the smithy. A certain goat which drank from the water of a smithy was found on being killed to have no spleen. Another remedy is to open a barrel of wine expressly for him.[10] Said R. Aha the son of Raba to R. Ashi: If he has a barrel of wine, he will not come to consult your honour.[11] No; [what you should say is that] he should take regularly a bite early in the morning, as this is good for the whole body. For anal worms he should take acacia and aloe juice and white-lead and silver dross[12] and an amulet-full of phyllon[13] and the excrement of doves and tie it all up in linen rags in the summer or in cotton rags in the winter.[14] Alternatively, let him drink strong wine well diluted. For hip disease[15] let him take a pot of fish brine and rub it sixty times[16] round one hip and sixty times round the other. For stone in the bladder let him take three drops of tar and three drops of leek juice and three drops of clear wine and pour it on the membrum of a man or on the corresponding place in a woman — Alternatively he can take the ear of a bottle and hang it on the membrum of a man or on the breasts of a woman. Or again he can take a purple thread which has been spun by a woman of ill repute or the daughter of a woman of ill repute and hang it on the membrum of a man or the breasts of a woman. Or again he can take a louse from a man and a woman and hang it on the membrum of a man and the corresponding place in a woman; and when he makes water he should do so on dry thorns near the socket of the door, and he should preserve the stone that issues, as it is good for all fevers. For external fever[17] he should take three sacks of date stones and three sacks of adra[18] leaves and boil each separately while sitting between them and put them in two basins and bring a table and set them on it and bend first over one and then over the other until he becomes thoroughly warmed, and then he should bathe himself in them, and in drinking thereof[19] afterwards he should drink only of the water of the adra leaves but not of the date stones, as they cause barrenness. For internal fever he should take seven handfuls of beet from seven beds and boil them with their earth and eat them and drink adra leaves in beer

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(1) Perhaps a kind of fever.

(2) Probably a kind of meteoric stone.

(3) For fear a snake may have injected venom into it.

(4) A Persian sauce of milk.

(5) [Identical with Nars on the canal of the same name, on the East bank of the Euphrates. Obermeyer op. cit. p. 307.]

(6) About a revi'ith.

(7) For remembering when to use the dry and when the moist.

(8) Mentioning his own name and the name of his mother.

(9) Used for cooling the metal.

(10) I.e., he should drink plenty of wine.

(11) The wine he has would protect him from such a disease.

(12) Used for cooling the metal.

(13) A kind of scent often carried by women in a little case attached to their necklaces.

(14) Applying it to the affected part.

(15) [Apparently lumbago. v. Preuss, op. cit. p. 355.]

(16) [A round number, I. e., many times, v. Preuss, loc. cit. n. 5.]

(17) I.e., eruptions.

(18) [A species of cedar, probably Spanish juniper.]

(19) [As is usual after a hot bath, v. Shab. 41a.]

or grapes from a vine trailed on a palm tree in water. For lichen,[1] he should take seven Arzanian wheat stalks[2] and roast them over a new hoe and smear himself with the juice that exudes from them. R. Shimi b. Ashi used this remedy for a heathen for something else,[3] and it cured him.

Samuel said: If a man has been wounded by a Persian lance[4] there is no hope for him. All the same, however, he should be given fat roast meat and strong wine, as this may keep him alive long enough to enable him to give his last instructions. R. Idi b. Abin said: If a man has swallowed a wasp there is no hope for him. It is as well, however, to give him a revi'ith of Shamgaz vinegar[5] to drink, as this may keep him alive long enough to enable him to give his last instructions.

R. Joshua b. Levi said: If a man eats beef with turnips and sleeps in the moon on the nights of the fourteenth and fifteenth of the month in the cycle of Tammuz,[6] he is liable to ahilu.[7] To this a gloss was added: If one gorges himself with anything, he is liable to ahilu. R. Papa said: This applies even to dates. Is not this obvious? — [Not so: for] you might argue thus: Seeing that a Master has said, Dates fill and warm and promote digestion and strengthen and do not spoil the taste,[8] I might think [that dates are] not [included]; hence we are told [that they are]. What is ahilu? — R. Eleazar said: A burning in the bones.[9] (What is meant by a burning of bones? — Abaye replied: A burning in the bones.)[10] What is the remedy for it? — Abaye said: I have been told by my mother that all medicines are to be taken either three days or seven or twelve, but with this he must go on till he is cured. All other medicines must be taken on an empty stomach; this one, however, [is different]. After he has eaten and drunk and relieved himself and washed his hands, they must bring him a handful of shatitha[11] with lentils, and a handful of old wine, and mix them together, and he must then eat it and wrap himself in his cloak and sleep, and he must not be disturbed till he wakes of himself. When he wakes he must remove his cloak, otherwise the illness will return.

Elijah once said to R. Nathan: Eat a third and drink a third and leave a third for when you get angry, and then you will have had your fill.[12]

R. Hiyya taught: If a man wants to avoid stomach trouble, he should take tibbul[13] regularly summer and winter. In a meal which you enjoy indulge not too freely, and do not wait too long to consult nature.

Mar ‘Ukba said: If a man drinks white tilia,[14] he will be subject to debility. R. Hisda said: There are sixty kinds of wine; the best of all is red fragrant wine, the worst is white tilia. Rab Judah said: If a man sits by the fire on the mornings of Nisan and rubs himself with oil and then goes out and sits in the sun, he will be liable to debility.

Our Rabbis taught: If a man lets blood and then has marital intercourse his children [born therefrom] will be weaklings. If both man and wife let blood before intercourse their children will be liable to ra'athan.[15] R. Papa said: This is the case only if they did not take anything to eat [in between], but if they took something to eat, there is no harm. Rabbah b. Bar Huna said: If a man immediately on returning from a journey has marital intercourse, his children will be weaklings. The Rabbis taught: On coming from a privy a man should not have sexual intercourse till he has waited long enough to walk half a mil, because the demon of the privy is With him for that time; if he does, his children will be epileptic. The Rabbis taught: If a man has sexual intercourse standing, he will be liable to convulsions; if sitting, to spasms;[16] if she is above and he below, he will be subject to delaria [diarrhoea]. What is delaria![17] R. Joshua b. Levi says: The cure for diarrhoea is dardara. What is dardara? — Abaye said: The ‘crocus of thorns’.[18] R. Papa used to crunch it in his teeth and swallow it: R. Papi used to crunch it and spit it out.

Abaye said: One who is not conversant with the 'way of the world'[19] should take three kefizi[20] of safflower and grind it and boil it in wine and drink it. R. Johanan said: This is just what restored me to my youthful vigour.

Three things weaken a man's strength, namely, anxiety, travelling and sin. Anxiety, as it is written, My heart fluttereth, my strength faileth me.[21] Travelling, as it is written, He weakened my strength it, the way.[22] Sin, as it is written, My strength faileth because of mine iniquity.[23]

Three things enfeeble a man's body, namely, to eat standing, to drink standing, and to have marital intercourse standing.

Five are nearer to death than to life, namely, one who eats and rises immediately, or who drinks and rises immediately, or who lets blood and rises immediately, or who rises immediately on waking or after marital intercourse.

If one does the following six things [together], he will die immediately: if he comes weary from a journey, lets blood and has a bath and drinks himself drunk and lies down to sleep on the floor and has marital intercourse. R. Johanan said: That is, if he does them in this order; Abaye said: If he does them in this order he will die; if not in this order he will fall ill. Is that so? Did not [a certain] Me'orath do three of these things to her slave and he died? — He was a weakling.

There are eight things which in large quantities are harmful but in small quantities are beneficial, namely, travelling, the 'way of the world', wealth, work, wine, sleep, hot baths, and blood-letting.

Eight things cause a diminution of seed, namely, salt, hunger, scalls, weeping, sleeping on the ground, lotus, cucumbers out of season, and bloodletting below, which is as bad as any two. A Tanna taught: As it is as bad as any two below, so it is as good as any two above. R. Papa said:

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(1) A kind of skin disease.

(2) Which were noted for their size.

(3) I.e., leprosy.

(4) The tip of which was usually poisoned.

(5) [Shamgaz is probably the name of a place. Others simply: Strong vinegar.]

(6) I.e., the three summer months. v. p. 128, n. 7.

(7) A chili or fever. V. infra.

(8) I.e.,make one fastidious.

(9) Lit., 'a fire of bones'.

(10) [Abaye is but giving an Aramaic version of R. Eleazar's definition in Hebrew.]

(11) A kind of sauce made with flour and honey.

(12) As much as to say, Otherwise when you fall into a passion you will burst.

(13) Lit., 'dippings': bread or other food dipped in wine or vinegar as a relish.

(14) An inferior kind of wine.

(15) A kind of skin disease.

(16) Reading אלריא , s.v. Aruch, curt. edd. read דלריא (delaria) v. infra.

(17) The answer to this question seems to have dropped out of the text.

(18) Cantharus tinctorius.

(19) A euphemism for marital intercourse.

(20) A small measure.

(21) Ps. XXXVIII, 11.

(22) Ibid. CII, 24.

(23) Ibid. XXXI, 11.

: 'Below' means below the middle,[1] and 'above' means above the middle. In regard to cucumbers out of season a gloss was added: As they are bad out of season, so they are good in season. R. Papa said: 'In season' means Tammuz; 'out of season' means Tebeth; round about Nisan and Tishri they are neither good nor bad.

IF HE SAYS, WRITE A GET FOR MY WIFE, AND IS THEN SEIZED WITH A KORDIAKOS AND THEN SAYS, DO NOT WRITE, HIS LAST WORDS ARE OF NO EFFECT. R. Simeon b. Lakish said: The Get may be written immediately;[2] R. Johanan, however, said that it is not to be written till he comes to himself again. What is the reason of Resh Lakish? — Because it is stated, HIS LAST WORDS ARE OF NO EFFECT. To this R. Johanan replies that the words HIS LAST WORDS ARE OF NO EFFECT' mean that when he recovers the scribe need not consult him again, but all the same the Get is not written until he comes round. In what do they differ in principle? — Resh Lakish puts the man on a par with one who is asleep and R. Johanan with a madman. Why should not R. Johanan put him on the same footing as a sleeper? — A sleeper needs no treatment, this man does. Why does not Resh Lakish put him on the same footing as a madman? — For a madman we have no cure, for this man we have, namely red flesh broiled on the coals and wine much diluted.[3] But can R. Johanan have said this, seeing that Rab Judah has said in the name of Samuel, If a man had two passages[4] or the greater part of two passages cut and he indicated by a gesture[5] that they should write a Get for his wife, the Get should be written and given,[6] and it has also been taught, 'If people saw him hacked or nailed to a cross and he indicated by a gesture, Write a Get for my wife, they should write and deliver it'? — Are the two cases comparable? In that case his mind was clear, and only physical weakness had set in,[7] but here his mind is clouded. But did Samuel really say this? Did not Rab Judah say in the name of Samuel: If he had two passages or the greater part of two passages cut and ran away, those who saw him can testify that he is dead.[8] Now if we presume that he is alive [after the passages have been cut],[9] why can they testify that he is dead? — We say that he is alive, but he is bound to die. But if that is the case, [the man who cut his throat] [accidentally] should be exiled [to a city of refuge] on account of him; why then has it been taught, 'If one cut [accidentally] two passages or the greater part of two passages of [the throat of] another, he is not exiled'? — It has been explained in regard to this that R. Oshaia said: We consider it possible that the wind troubled him or that he hastened his own death.[10] What difference does it make which reason we adopt? — There is a difference where he killed him in a marble room and he struggled,[11] or where he killed him outside and he did not struggle.

IF HE IS STRUCK DUMB AND THEY SAY TO HIM, SHALL WE WRITE A GET FOR YOUR WIFE etc. But is there not a possibility that he was seized [just then] with an involuntary nodding of the head in a negative or a positive sense?[12] — R. Joseph b. Manyumi said, in the name of R. Nahman: [We suppose that] we question him at intervals. But perhaps the involuntary nodding seized him at the same intervals? — We suppose that we ask him two [questions requiring a] negative [answer] and one [requiring an] affirmative [answer], or two [requiring an] affirmative and one a negative [answer]. In the school of R. Ishmael it was taught: They talk to him about the requirements of the summer season in the rainy season and of the rainy season in the summer season. What is referred to here? Shall we say winter coat and summer coat? Perhaps just then he was seized with a shiver or a perspiration?[13]

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(1) E.g., the legs and thighs.

(2) After the last words are uttered.

(3) As supra p. 415.

(4) The windpipe and the oesophagus.

(5) I.e., he nodded assent when they asked him.

(6) Apparently the questioner puts such a man on the same footing as one suffering from kordiakos. But in this case it is not easy to see why the question was not raised against the Mishnah itself and not against R. Johanan (v. Tosaf.).
(7) Lit., 'had begun with him'.
(8) So that his wife can marry again.
(9) So that his Get is valid.
(10) And therefore we do not hold the man who cut his throat guilty even of accidental homicide.
(11) In which case his death could not have been due to the wind, and therefore if we adopt the first reason the other man would be guilty of homicide.
(12) Lit., 'a bending of no, no"! or "yes, yes"! I.e., sideways or forwards, so that he was not giving any answer to the question.
(13) And even if he asked for a summer coat in winter or vice-versa, his answer might still be rational.

Talmud - Mas. Gittin 71a

— The proper way is to ask him about fruit.[1]

R. Kahana said in the name of Rab: If a deaf-mute can signify his meaning by writing, a Get may be written and given to his wife.[2] Said R. Joseph: What does this tell us [that we do not know already]? We have learnt: IF A MAN IS STRUCK DUMB AND WHEN THEY SAY TO HIM, SHALL WE WRITE A GET FOR YOUR WIFE, HE NODS HIS HEAD, HE IS TESTED WITH THREE QUESTIONS. IF HE SIGNIFIES 'NO' AND 'YES' PROPERLY EACH TIME, THEN THE GET SHOULD BE WRITTEN AND GIVEN FOR HIM?[3] — R. Zera replied to him: You have quoted a statement about an illem [mute]. An illem is different, as it has been taught: One who can speak but not hear is called heresh,[4] and one who can hear but not speak is called illem, and both are considered to be in possession of their faculties for all purposes. What is your warrant for saying that one who can speak but not hear is called heresh, and one who can hear but not speak is called illem? — Because it is written, But I am as a deaf man [heresh] I hear not, and I am as a dumb man [illem] that openeth not his mouth.[5] Or if you like I can say that we know it from the colloquial description[6] of a dumb man as Ishtekil Miluleh.[7]

R. Zera said: If I do find any difficulty [in R. Kahana's remark] it is this, that it has been taught: 'If he do not utter it.[8] This excludes a mute who cannot utter'. Now why should this be, seeing that [according to R. Kahana] he can signify by writing? — Abaye replied to him: You are speaking of testimony, and testimony comes under a different rule, because the All-Merciful has said that it must be from their mouths,[9] and not from their writing.

[The following] was raised in objection [to Abaye's statement]: In the same way as he[10] is tested in connection with a Get, so he is tested in connection with business transactions, with testimony, and with bequests. Now 'testimony' is mentioned here? — R. Joseph b. Manyumi said in the name of R. Shesheth: This applies only to testimony regarding the status of a woman,[11] with which the Rabbis were not so strict. But it also says 'bequests'?[12] — R. Abbahu said: It refers to the inheritance of his eldest son.[13] But it also says 'in connection with business transactions', and this presumably means anyone's? — No, it refers only to his own.

[The following] was then raised in objection: The directions of a deaf-mute given by gestures, by lip-movements, and by writing are to be followed only in regard to the transfer of movables, but not to a Get?[14] — There is in truth a difference of opinion on this point between Tannaim, as it has been taught: R. Simeon b. Gamaliel says: This[15] is the case only with one who was a deaf-mute from the outset, but one who was originally whole and became a deaf-mute after marriage can write a Get for himself which others can sign.[16]

But cannot one who was originally a deaf-mute give a Get? As he married her by gesture, cannot

he also divorce her by gesture? — If [we were speaking] of his wife, this would indeed be the case, but [in fact] we are dealing with his sister-in-law.[17] His sister-in-law from whom? Are we to say, one who fell to his lot from his [de ceased] brother who was also a deaf-mute? [In that case], just as she was married by gesture,[18] so she can be put away by gesture! No; it is one who fell to his lot from a brother in possession of his faculties.[19] Alternatively I may say that she did fall to his lot from a brother who was a deaf-mute, and we forbid the [wife of a] deaf-mute to be divorced by gesture so as not to set a precedent for [the wife of] one who was sound. If that is the case, should we not forbid him to divorce his wife also?[20] — A sister-in-law can be confused with a sister-in-law, but not with a wife. But do we indeed forbid [a deaf-mute] because [of a sound one]?

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(1) I.e., whether he wants freshly plucked fruit when they are out of season.

(2) I.e., if he was whole at the time of marriage and so made a proper betrothal. If he was deaf and dumb before marriage, he betroths by gesture and can also divorce by gesture, v. infra.

(3) And writing is surely as effective as nodding.

(4) In Biblical phraseology. Whereas in Rabbinical language heresh generally denotes a deaf-mute, and it is to a deaf-mute that R. Kahana refers.

(5) Ps. XXXVIII, 14.

(6) Lit., ‘as men say’.

(7) I.e., ‘his speech has been taken away from him’.

(8) Lev. V, 1, of one who is called on to testify and withholds his evidence.

(9) Deut. XIX, 15, ‘At the mouth of two witnesses . . . shall a matter be established’.

(10) The reference is to one who is struck dumb.

(11) I.e., whether she may contract a certain marriage or not on his evidence regarding the death of her husband.

(12) Which presumably means, giving evidence about other people's bequests.

(13) I.e., his signifying that his eldest son should not have a double portion (Rashi), or that one of his sons was the eldest (Tosaf).

(14) This refutes R. Kahana.

(15) That the directions of a deaf-mute are not to be followed in regard to a Get.

(16) In agreement with R. Kahana.

(17) A deaf and dumb man cannot give halizah (v. Glos.), because he cannot say ‘I do not desire to marry her’. He must therefore contract the levirate marriage, and as the betrothal of the first husband was effected by word of mouth, he cannot undo it by a gesture or by writing.

(18) By the first husband.

(19) And as the betrothal of the first husband was effected by word of mouth, he cannot undo it by a gesture or by writing.

(20) Lest she should set a precedent for the sister-in-law.

Talmud - Mas. Gittin 71b

Have we not learnt, ‘If two brothers, deaf-mutes, were married to two sisters who were not deaf-mutes or to two sisters who were deaf-mutes or to two sisters one of whom was a deaf-mute and the other not, and similarly if two sisters who were deaf-mutes were married to two brothers who were not deaf-mutes or to two brothers who were deaf-mutes or to two brothers one of whom was a deaf-mute and the other not, these sisters[1] are free from the obligation of halizah or levirate marriage.[2] If however, the women were not related to one another, they must contract the marriage,[3] and if [the second husband] desires to put her away[4] he may do so’?[5] — The truth is that the first answer is the best.

R. Johanan said: R. Simeon b. Gamaliel's colleagues[6] differed from him. Abaye said: We have also learnt to the same effect:[7] If the wife became insane, he cannot put her away. If he became deaf and dumb or insane, he can never put her away.[8] What is meant by never’? Surely it means, even if he can signify his intention in writing? — R. Papa said: But for the statement of R. Johanan, I would

have said that R. Simeon b. Gamaliel intended only to explain the statement of the previous Tanna, and that 'never' means, 'even though we see that he is intelligent'.[9] Or, I might have said, the word 'never' indicates the lesson taught by R. Isaac. For R. Isaac said: According to the rule of the [written] Torah, an insane wife can be divorced, being on the same footing as a sound woman who is divorced without her own consent. Why then did the Rabbis lay down that she should not be divorced? In order that she should not be used for immoral purposes.[10]

MISHNAH. IF THEY SAID TO HIM, SHALL WE WRITE A GET FOR YOUR WIFE, AND HE SAID TO THEM, WRITE, AND IF THEY THEN TOLD A SCRIBE AND HE WROTE AND WITNESSES AND THEY SIGNED, EVEN THOUGH THEY HAVE ALREADY WRITTEN AND SIGNED IT AND GIVEN IT TO HIM AND HE IN TURN HAS GIVEN IT TO HER, THE GET IS VOID UNLESS HE HIMSELF HAS SAID TO THE SCRIBE 'WRITE' AND TO THE WITNESSES, 'SIGN'.

GEMARA. The reason [why it is invalid] is because he did not say 'give' [instead of 'write'].[11] We presume, therefore, that if he said 'give' they [may tell others to write and] give.[12] Whose view is this? R. Meir's, who said that verbal instructions can be entrusted to an agent.[13] Read now the later clause: UNLESS HE HAS SAID TO THE SCRIBE, 'WRITE' AND TO THE WITNESSES 'SIGN'. This brings us round to the view of R. Jose who said that verbal instructions cannot be entrusted to an agent. Are we to say then that the first clause follows R. Meir and the second R. Jose? — Yes; the first follows R. Meir and the second R. Jose. Abaye, however, said: The whole follows R. Meir, and we are dealing here [in the last clause] with the case where he did not say 'give'.[14] If that is the case, it should say, 'he must say, Give'?[15] — In fact the case here is one in which he did not tell three persons.[16] If that is the case, it should say, 'He must tell three'? — Hence the whole follows R. Jose, and the case here is one in which he did not say, 'Tell'.[17] If that is the case, it should say, 'He must say, Tell'? And besides, does R. Jose admit that the Get is valid where he says 'tell'? Have We not learnt: 'If a scribe wrote and a witness signed, it is valid', and R. Jeremiah explained that what is meant is that the scribe [also] signed, and R. Hisda said, Whom does this Mishnah follow?

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(1) The widow of any of the brothers who died without issue.

(2) That is to say, although the marriage was contracted at least on one side by gesture only, it is sufficiently valid to release the wife's sister from the obligation of giving halizah to or to bar her from marrying the husband, v. Yeb. I, 1.

(3) Not being able to give halizah because either he or she cannot recite the requisite formula.

(4) I.e., after having Performed the levir marriage.

(5) V. Yeb. 110b. Which shows that we do not forbid a deaf-mute to divorce the wife of his deceased brother who was also a deaf-mute.

(6) The representatives of the anonymous view mentioned in the Baraitha cited supra p. 338.

(7) The view of the Rabbis which R. Simeon opposes.

(8) Yeb. 110b.

(9) But not, 'even though he can write', so that this Mishnah would not differ from R. Simeon.

(10) The insertion of the word 'never' in the second clause is not intended to exclude the deaf-mute's divorce by writing, but is meant to indicate that the rule regarding the husband has the sanction of the Torah, whereas the one regarding the wife mentioned in the first clause has the sanction only of the Rabbis.

(11) V. Rashi a.I.

(12) That is to say, if there were three of them, in which case the word 'give' constitutes them a Beth din to write and deliver the Get.

(13) I.e., that the agent is at liberty to instruct someone else to carry out the instructions which were given to him, v. supra 29b.

(14) I.e., in such a case the Get is invalid unless he tells the scribe etc.

(15) Instead of 'write'. And there is no need to mention the case of his telling the scribe personally.

(16) And if he told only two, even if he used the word 'give', they would not be at liberty to tell a scribe.

(17) I.e., tell the scribe to write etc.

R. Jose, who said that instructions are not transmitted to a messenger? Now if you should assume that R. Jose admits that the Get is valid where he said 'tell,'[1] then serious results may sometimes ensue, for it may happen that he says to two persons, 'Tell the scribe to write and So-and-so and So-and-so to sign', and they, in order not to offend the scribe, let him sign, and this is not what the husband said?[2] — The best view therefore is that the first clause follows R. Meir and the later one R. Jose.

R. Ashi said: The whole follows R. Jose, and [the last clause] forms a climax: Not only where he omitted to say 'give' [is the Get invalid] but even where he said 'give', and not only where he did not tell three persons but even where he told three persons, and not only where he did not say 'tell' but even where he said 'tell' [the Get is invalid till he says to the scribe etc.].

It has been taught in accord with R. Ashi: 'In the case where the scribe wrote and the witnesses signed for her name, though they had written and signed it and given it to him and he had given it to her, the Get is void unless they had heard him saying with his own voice to the scribe, Write, and to the witnesses, Sign'. The word 'hear' excludes the opinion [mentioned above], that R. Jose admits that the Get is valid where the husband said 'tell'. 'His voice' excludes the statement made by R. Kahana in the name of Rab.[3]

MISHNAH. [IF A MAN SAYS] THIS IS YOUR GET IF I DIE, THIS IS YOUR GET [IF I DIE][4] FROM THIS ILLNESS, THIS IS YOUR GET AFTER [MY] DEATH, HIS WORDS ARE OF NO EFFECT.[5] [IF HE SAYS], FROM TODAY IF I DIE, FROM NOW IF I DIE, THE GET IS VALID.[6] [IF HE SAYS], FROM TODAY AND AFTER [MY] DEATH, IT IS BOTH A GET AND NO GET, AND IF HE DIES [WITHOUT ISSUE] SHE MUST GIVE HALIZAH[7] BUT SHE CANNOT MARRY THE HUSBAND'S BROTHER.[8] [IF HE SAID], THIS IS YOUR GET FROM TODAY IF I DIE FROM THIS ILLNESS, AND HE THEN GOT UP AND WENT ABOUT AND FELL SICK AND DIED, WE MUST ESTIMATE [THE PROBABLE CAUSE OF HIS DEATH]; IF HE DIED FROM THE FIRST ILLNESS, THE GET IS VALID, BUT OTHERWISE NOT.

GEMARA. [IF HE SAID, THIS IS YOUR GET IF I DIE etc.] This would indicate that the formula 'IF I DIE' is equivalent to 'AFTER [MY] DEATH'; yet in the next clause we are told that [the Get is valid if he says] 'FROM TODAY IF I DIE, FROM NOW IF I DIE', which would indicate that it is not equivalent to 'AFTER DEATH'! — Abaye explained that the expression 'IF I DIE' can have two implications, viz., either 'as from now' or 'as from the time of my death'. If he [further] said to her 'from to-day', it is equivalent to saying to her 'as from now'; if he did not say to her 'from to-day', it is equivalent to saying to her 'from the time of my death'.

IF HE SAID, THIS IS YOUR GET IF I DIE, HIS WORDS ARE OF NO EFFECT. R. Huna said: The wife none the less must give halizah. But it is taught 'HIS WORDS ARE OF NO EFFECT'? — His words are of no effect to the extent that she remains prohibited to all other men and also to the brother-in-law. But since in the later case[9] it says specifically that SHE GIVES HALIZAH, we understand that in the earlier case[10] [where it does not say so] she may also marry the brother-in-law? — The Mishnah follows the view of the Rabbis and R. Huna that of R. Jose, who said that the date of the document is sufficient indication.[11] If we follow the View of R. Jose, she should not require to give halizah either?[12] perhaps you will aver that R. Huna was uncertain whether the halachah follows R. Jose or not.[13] But can you indeed say so? For once when Rabbah b. Abbuha was ill, R. Huna and R. Nahman went to visit him, and R. Huna said to R. Nahman, Ask Rabbah b. Abbuha whether the halachah follows R. Jose or not,[14] and R. Nahman answered, I do not know R. Jose's reason, and how can I ask him the halachah, whereupon R. Huna said, You ask him

the halachah and I will tell you the reason. He therefore asked him, and he replied: Thus said Rab: the halachah is according to R. Jose. When he came out he [R. Huna] said to him, The reason of R. Jose is this; he held that the date of the document is sufficient indication. [This then cannot be R. Huna's reason]! — We must suppose therefore that he was uncertain

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(1) I.e., where the scribe signed on the instructions not of the husband but of his agent.

(2) V. supra 67a and notes.

(3) That a deaf-mute may give instructions in writing.

(4) [The bracketed words are supplied from the printed texts of the Mishnayoth. Rashi, however, omits these words and takes the phrase 'THIS IS YOUR GET FROM THIS ILLNESS' to mean that the Get is to take effect after this illness.]

(5) Because there is no such thing as a Get after death.

(6) The Get in this case comes retrospectively into force at the moment of his death.

(7) For fear it was no Get.

(8) As levir, for fear it was a Get.

(9) Where he says, 'FROM TODAY AND AFTER MY DEATH'.

(10) Where it is laid down that his words are of no effect.

(11) Lit., 'is the proof thereof'. The document referred to is one in which a man assigns all his property to his sons in his lifetime, intending to keep the usufruct for himself. According to the Rabbis, if he desires to transfer to them the body of the property at once, he must insert the words 'from to-day and after my death': according to R. Jose this is not necessary, the date of the document being sufficient to give this indication. V. B.B. 136a.

(12) Since the date makes it a valid Get immediately.

(13) And therefore he treated the document as a 'Get and no Get'.

(14) In the matter of transference of property.

whether R. Jose meant his ruling to apply to a verbal declaration[1] or not. But was he uncertain? Have we not learnt, 'If a man said, This is your Get if I do not return within twelve months from now,[2] and he died within the twelve months, the Get is not valid',[3] and in this connection it was taught: 'Our Rabbis allowed her to marry', and we stated [in the Beth Hamidrash], Who are 'our Rabbis'? and Rab Judah said in the name of Samuel, The Beth din which permitted oil,[4] and they took the same view as R. Jose?[5] — We must therefore say that R. Huna's uncertainty was as to whether the halachah follows R. Jose where the declaration was made by word of mouth or not. But can he have been in doubt about this, seeing that Raba has said, If a man says, 'This is thy Get if I die', or 'supposing I die', the Get is valid, but if he said, 'When I die,' or 'After [my] death,' the Get is not valid. Now, how are we to understand this? Are we to suppose that he [also] said 'from to-day',and [that Raba adopted the view of] the Rabbis? Surely there is no need to tell us this, seeing that we have learnt, IF HE SAID, FROM TO-DAY IF I DIE, THE GET IS VALID. We must therefore suppose that he does not say to her 'from to-day', and that Raba adopted the view of R. Jose; which shows that the halachah is in accordance with R. Jose,[6] [does it not]? — Raba was quite sure on the point, R. Huna was uncertain. Alternatively I may suppose [Raba to have meant that] the man does say 'from to-day', and that he was giving the view of the Rabbis, and that his purpose was to explain in regard to these various expressions that 'supposing I die' is equivalent to 'if I die', and 'when I die' to 'after [my] death'.

Some connect [R. Huna's remark] with the latter clause [of the Mishnah], thus: IF A MAN SAYS, THIS IS YOUR GET AFTER [MY] DEATH, HIS WORDS ARE OF NO EFFECT: R. Huna said, If we accept the view of R. Jose, she must give halizah. Surely this is obvious: since in the later case[7] the ruling of the Rabbis [requires her to] give halizah, in the earlier case also the ruling of R. Jose [must require her to] give halizah? — You might think that in this case R. Jose concurs with Rabbi who said that it is an unexceptionable Get[8] and that she would not require to give halizah either, R. Huna therefore tells us that neither did Rabbi concur with R. Jose nor R. Jose with Rabbi. Rabbi did

not concur with R. Jose because he stated expressly 'a Get like this is valid', to exclude one allowed by R. Jose.[8] R. Jose did not concur with Rabbi, because he stated expressly, 'a Get like this is valid', to exclude one allowed by Rabbi. In what connection did Rabbi use these words? — As it has been taught: [If a man says,] From to-day and after my death, this is a Get and no Get. So the Rabbis; but Rabbi says, A Get like this is valid.[9] In what connection did R. Jose use these words? — As we have learnt: [If a man says,] Write and give a Get to my wife if I do not come within twelve months from now, if then they wrote it within the twelve months and gave it after the twelve, it is no Get. R. Jose, however, said: A Get like this is valid.[10]

IF HE SAYS, THIS IS YOUR GET FROM TO-DAY IF I DIE AND HE GETS UP AND GOES ABOUT etc. R. Huna said: His[11] Get is on the same footing as his gift; just as if he gets up he can withdraw his gift, so if he gets up he can withdraw his Get. And just as his Get, even though he does not express his intention precisely, is valid once he says 'write', even though he does not add 'give', so his gift is valid as soon as he says 'give' even though no token gift is made.[12] We have learnt: IF HE SAYS, THIS IS YOUR GET FROM TO DAY IF I DIE FROM THIS ILLNESS, AND HE THEN GOT UP AND WENT ABOUT AND FELL SICK AND DIED, WE MUST ESTIMATE THE PROBABLE CAUSE OF HIS DEATH: IF HE DIED FROM THE FIRST ILLNESS, THE GET IS VALID, BUT OTHERWISE NOT. Now if you say that if he gets up he can retract, why do I require an estimate? We see that he has got up?[13] — Mar the son of R. Joseph said in the name of Raba: We suppose he has passed from one illness into another.[14] But it says that 'HE GETS UP'? — He gets up from one illness and falls into another. But it says 'HE GOES ABOUT'? — It means that he goes with a crutch;

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(1) I.e., where the words 'THIS IS YOUR GET IF I DIE' if used at all were not inserted in the document, but spoken by word of mouth.

(2) Which is equivalent to saying 'if I die'.

(3) V. infra 76b.

(4) R. Judah Nesi'a, (the Prince), the grandson of Rabbi, permitted the oil of heathens to be used. A.Z. 37a.

(5) Which shows that according to R. Jose the formula 'if I die' spoken by word of mouth makes the Get valid, and R. Huna could not have been uncertain on this point.

(6) Even when the declaration was made by word of mouth.

(7) Where he said, 'from to-day and after death'.

(8) V. infra.

(9) To exclude where he said merely 'after death', which, according to R. Jose is sufficient.

(10) V. infra 76b. But not where he said 'from to-day and after death', since the words 'after death' may be interpreted as retracting the words 'from to-day'. Although in the matter of transference of property R. Jose will hold the gift valid, because the declaration there can be explained as intended to reserve the usufruct for the donor during his lifetime.

(11) The reference is to a sick person on the point of death.

(12) V. supra p. 66a and notes.

(13) And the Get is ipso facto annulled.

(14) [Since in the Mishnah it was specifically made conditional on his dying, (v. Tosaf.). Trani is of the opinion that in every case the Get is rendered void, any deposition made by a dying man being understood to be conditional. The same holds good of a gift.]

and this is to show us that it is when he goes on a crutch that an estimate must be made, but that in the other case we do not even require to estimate.[1] Are we to understand from this that the gift of a sick person who passes from one illness to another [and dies] is valid? — Yes, since R. Eleazar has said in the name of Rab, The gift of a sick person who passes from one illness into another is valid.

Rabbah and Raba did not concur in this opinion of R. Huna,[2] as they were afraid it might lead

people to think that a Get could be given after death.[3] But is it possible that where a Get is invalid according to the Torah[4] we should, for fear [of misleading people], declare it effective for making a married woman marriageable? — Yes; whoever betroths a woman does so on the conditions laid down by the Rabbis, and the Rabbis have nullified the betrothal of such a one.[5] Said Rabina to R. Ashi: This can well be where he betrothed by means of a money gift, but if he betrothed by means of intercourse what can we say? — He replied: The Rabbis declared his intercourse to be fornication.[6]

Our Rabbis taught: If he says, This is thy Get from to-day if I die from this illness, and the house fell on him or a serpent bit him, it is no Get. If he said, If I do not get up from this illness, and the house fell on him or a serpent bit him, it is a Get. Why is the rule different in the first case and in the second?[7] — They sent from there[8] to say [in answer to an inquiry], If a lion consumed him, we cannot consider [it a Get].[9]

A certain man sold a field to his neighbour, guaranteeing him against any accident that might happen to it. Eventually they [the Government] turned a river through it. He consulted Rabina, who said to him, You must go and clear it for him, since you have guaranteed him against any accident which may happen to it. Thereupon R. Aha b. Tahalifa remarked to Rabina: It is an exceptional kind of accident. Various opinions were taken[10] and the matter was at last laid before Raba, who said, it is an exceptional kind of accident. Rabina raised [the following] objection against Raba: '[Where he said] If I do not get up from this illness, and the house fell on him or a serpent bit him, this is a Get'? — Raba replied: Why do you not quote the earlier clause, where it says, 'It is no Get'? — Said R. Aha from Difti to Rabina: Because the first clause conflicts with the second, may we not raise an objection from the latter? — He replied: That is so; since the first clause conflicts with the second, the latter was not discussed in the Beth Hamidrash, and it is not authentic. [You must therefore] follow your own reason.[11]

R. Papa and R. Huna the son of R. Joshua bought some sesame on the bank of Nehar Malka,[12] and they hired some boatmen to bring it across[13] with a guarantee against any accident that might happen to it. After a time the Nehar Malka canal was stopped up. They said to them: Hire asses and deliver the stuff to us, since you have guaranteed us against any accident. They appealed to Raba, who said to them: White ducks[14] who want to strip men of their clothes, it is an exceptional kind of accident.[15]

MISHNAH. SHE[16] SHOULD NOT CONSORT WITH HIM[17] SAVE IN THE PRESENCE OF WITNESSES, THOUGH A SLAVE OR A BONDWOMAN IS SUFFICIENT — NOT, HOWEVER, HER OWN BONDWOMAN, SINCE SHE CAN TAKE LIBERTIES WITH HER OWN HANDMAID.[18] WHAT IS HER STATUS DURING THOSE DAYS?[19] R. JUDAH SAYS THAT

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(1) And even if he passes from one illness to another, we presume that he died from the first illness.

(2) That a sick man on getting up can withdraw his Get, even if he had not used the formula 'if I die'. But v. Tosaf. 72b s.v. אמר .

(3) When they see a Get which would become void if he recovered taking effect after his death if he does not recover.

(4) Because the condition that he should die is not fulfilled.

(5) By means of this Get.

(6) V. supra, 33a.

(7) [The answer to the questions left unanswered here is supplied by the Jerusalem Talmud. In the first case he did not die from that illness. Whereas in the second, where the emphasis was on his 'getting up', the Get is valid since he did not after all 'get up'. Our Talmud however, did not evidently accept this distinction, seeing that in both cases the words 'from this illness' form part of the condition, and thus rejects the Baraitha. Tosaf.]

(8) Palestine.

(9) Because this is an exceptional accident which he cannot have had in his mind when he said 'if I die'.

(10) Lit., 'the matter was circulated'.

(11) Which would tell you that he did not have such an exceptional accident in his mind.
(12) [Alfasi reads Nehar Malka Saba, the Grand Canal connecting the Euphrates with the Tigris, (Obermeyer op. cit. p. 171). V. also B.M. (Sonc. ed.) p. 609, n. 5.]
(13) To Naresh (v. supra p. 330, n. 1.) the home of R. Papa. The boats had for this purpose to sail up the Euphrates and thence pass into the canal Nars (loc. cit. p. 171).
(14) I.e., greybeards (Rashi). Cf. Keth. 85a. [Obermeyer loc. cit. Pelican, a bird which owing to its large pouch on its lower jaw for the storage of fish is a symbol among orientals for greediness.]
(15) And therefore they are not responsible.
(16) A woman to whom her husband has given a Get with the words 'from now if I die'.
(17) Because if she is still his wife and he has intercourse with her she will require a second Get, and if she is not his wife he commits an offence by consorting privately with an unmarried woman.
(18) Lit., 'her heart in her is proud towards her handmaid', i.e., she feels no shame in her presence.
(19) Between the delivery of the Get and his death.

Talmud - Mas. Gittin 73b

SHE IS REGARDED AS A MARRIED WOMAN IN EVERY RESPECT; R. JOSE SAYS THAT SHE IS BOTH DIVORCED AND NOT DIVORCED.

GEMARA. Our Rabbis taught: If people have observed that she consorted with him in the dark or slept with him under the foot of the bed, they do not suspect them of having engaged in something else',[1] but they do suspect them of loose conduct, and they do not suspect that he has betrothed her. R. Jose son of R. Judah, however, says, They also suspect him of having betrothed her. What is the meaning of this?[2] — R. Nahman said in the name of Rabbah b. Abbuha, The meaning is this: If they saw him have intercourse with her, they suspect he has done so as a method of betrothing her.[3] If he [afterwards] gave her money, they suspect that it was on account of fornication, as we say that he gave it her for her hire; but we do not suspect it was for betrothal. R. Jose son of R. Judah, however, says that in this case also we have to suspect that it may have been for betrothal. On which of these views can we justify the statement made by Rabbah b. Bar Hanah in the name of R. Johanan: 'The difference[4] arises only in the case where they saw her have intercourse, but if they did not see her have intercourse, both sides agree that she does not require from him a second Get'. On which view can this be justified? — On both views.[5]

Abaye strongly demurred to the explanation [given by R. Nahman]. Is the giving of money, [he said,] mentioned?[6] — No, said Abaye; the meaning is this. If they saw her have intercourse they suspect[7] her of fornication but do not suspect it was for betrothal. R. Jose son of R. Judah says, We also suspect that it may have been for betrothal. On which of these views can we justify the statement made by Rabbah b. Bar Hanah in the name of R. Johanan: 'The difference arises only in the case where they saw her have intercourse, but if they did not see her have intercourse, both sides agree that she does not require from him a second Get'? On which view can this be justified? On the view of R. Jose.[8] Raba strongly demurred to this, [saying,] If so, what is the point of 'also'?[9] — No, said Raba; the meaning is this. R. Jose, son of R. Judah, says that even if they did not see her have Intercourse,[10] we still suspect he may have betrothed her. On which of these views can we justify the statement of Rabbah b. Bar Hanah in the name of R. Johanan: 'The difference arises where they saw her have intercourse, but if they did not see her have intercourse, both sides agree that she does not require from him a second Get?' On whose view is this justified? — On neither.[11]

WHAT IS HER STATUS DURING THOSE DAYS? R. JUDAH SAYS THAT SHE IS REGARDED AS A MARRIED WOMAN IN ALL RESPECTS; R. JOSE SAYS THAT SHE IS DIVORCED AND NOT DIVORCED. A Tanna taught:[12] Provided he dies.[13] And when he dies will it be a Get?[14] Is it not an established maxim that there is no Get after death? — Rabbah replied: We presume that what he said to her was, [This will be a Get] from the time that I am still in the world.[15]

Our Rabbis taught: In the days between,[16] her husband is entitled to her finds and the product of her labour, he can annul her vows, he inherits her,

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(1) I.e., sexual intercourse.

(2) I.e., how explain the apparent contradiction between the various clauses.

(3) Intercourse being one of three methods of betrothal, v. Kid. 2a, she will now require another Get.

(4) Between Beth Hillel and Beth Shammai, infra 81a. If a man has divorced his wife and she stays in the same inn with him, Beth Hillel require him to give her a second Get, but Beth Shammai do not.

(5) Because both the first Tanna and R. Jose agree that where she was not seen to have intercourse a second Get is not required.

(6) In the Baraitha quoted, and how could so essential a point have been omitted?

(7) The word 'suspect' is used loosely here, and is equivalent to 'put it down to'.

(8) For according to the first Tanna a second Get is not required even where they saw her. This therefore must also be the view of Beth Hillel, as the first Tanna is not likely to follow Beth Shammai in preference to Beth Hillel with whom the halachah generally rests.

(9) In the observation of R. Jose. Since the assumption that this is a case of fornication saves her from the necessity of another Get, R. Jose should have merely said, 'They suspect him of having betrothed her'.

(10) But only consort with him.

(11) Since the first Tanna does not require a second Get even where she was seen, and R. Jose requires it even where she was not seen.

(12) In connection with the statement of R. Jose.

(13) If he does not die, she remains a married woman, with certain consequences which are discussed presently.

(14) I.e., if it was not a Get at some time during his life, how can it become one upon his death?

(15) Which denoted the period immediately preceding his death. R. Judah being of the opinion that the Get comes into force only at the moment before his death, whereas according to R. Jose the Get is in doubtful operation all the time as every moment from the time of delivery may be deemed as the possible moment before his death. Tosaf. suggests a slight change in reading, according to which the rendering would be: '(When he says, "from to-day if I die", this is equivalent to saying) from the time that I am in the next world'.' According to Rabbah the dispute of R. Judah and R. Jose is not concerned with the opening case when he said 'from now if I die', where all would agree that the Get becomes retrospectively valid at the time of his death.

(16) The giving of the Get and his death.

Talmud - Mas. Gittin 74a

, and he defiles himself for her [corpse];[1] in a word, she is his wife in all respects, save that she does not require from him a second Get.[2] This is the view of R. Judah. R. Meir says that if she has intercourse [with another man], judgment on it must be suspended.[3] R. Jose says that its character is doubtful,[4] while the Sages say that she is divorced and not divorced, provided only that he dies. How would the difference between R. Meir and R. Jose work out in practice? — R. Johanan says: In respect of a guilt-offering brought out of doubt;[5] according to R. Meir the man does not bring a guilt-offering out of doubt,[6] according to R. Jose he does. 'The Sages say that she is divorced and not divorced': the Sages say the same thing as R. Jose, do they not? — A practical difference arises in the application of the rule laid down by R. Zera; for R. Zera said in the name of Rabba b. Jeremiah who had it from Samuel: Wherever the Sages have said that a woman 'is divorced and not divorced', the husband is under obligation to maintain her.

MISHNAH. [IF A MAN SAYS], THIS IS YOUR GET ON CONDITION THAT YOU GIVE ME TWO HUNDRED ZUZ, SHE IS DIVORCED THEREBY AND SHE HAS TO GIVE [HIM THE MONEY]. [IF HE SAYS], ON CONDITION THAT YOU GIVE [IT] ME WITHIN THIRTY DAYS FROM NOW, IF SHE GIVES HIM WITHIN THIRTY DAYS SHE IS DIVORCED, BUT IF NOT SHE IS NOT DIVORCED. RABBAN SIMEON B. GAMALIEL SAID: IT HAPPENED IN SIDON

THAT A MAN SAID TO HIS WIFE, THIS IS YOUR GET ON CONDITION THAT YOU GIVE ME [BACK] MY ROBE, AND HIS ROBE WAS LOST, AND THE SAGES SAID THAT SHE SHOULD GIVE HIM ITS VALUE IN MONEY.

GEMARA. What precisely is meant by the words 'AND SHE HAS TO GIVE HIM'? — R. Huna says it means, 'and she shall [thereafter] give him'; Rab Judah says it means, 'when she gives him'. What difference does it make in practice which view we adopt? — It makes a difference if the Get is torn or lost [before the money is given]. According to R. Huna who said it means that she is [thereafter] to give, she does not require from him a second Get,[7] according to Rab Judah who said that it means 'when she gives', she requires from him a second Get.[8] In connection with betrothals also we have an analogous statement, as we have learnt: 'If a man says to a woman, Behold thou art betrothed to me on condition that I give thee two hundred zuz, she is betrothed to him and he is to give her the money,[9] 'and in the discussion thereon it was said, What is meant by 'he is to give', and R. Huna said, It means, he shall [thereafter] give,while Rab Judah said, It means, When he gives. What practical difference does it make which view we adopt? — A difference arises if she puts forth her hand and receives betrothal money from another. According to R. Huna who said that it means, 'he shall [thereafter] give', the giving is a mere condition, and he has only to fulfil his condition,[10] whereas according to Rab Judah who said that it means 'when he gives', the betrothal takes effect only when he gives, but at the time it is no betrothal. And both cases required to be stated. For if the rule had been stated only in regard to betrothal, I might have thought that in that case R. Huna said that it means 'and he is to give', because his intention is to bring her nearer [to himself],[11] but in the case of divorce where his intention is to put her away [from himself][12] I might have thought that he accepts the view of Rab Judah. If again it had been stated in regard only to divorce, I might have thought that in that case R. Huna said it means 'he shall [thereafter] give' because he would not be shy to ask her,[13] but in the case of betrothal where she might be diffident to ask him, I might have thought that he would accept the view of Rab Judah. Again, if the rule had been stated in connection only with betrothal, I might have thought that Rab Judah said that in that case It means 'when she gives' because she is diffident to ask him, but in the case of divorce where he would not be shy to ask her I might have thought that he accepts the view of R. Huna. And if the rule had been stated only in connection with divorce, I might have thought that in that case Rab Judah says it means 'when she gives', because his intention is to put her away [from him], but in the case of betrothal where his intention is to bring her nearer [to him] I might have thought that he accepts the view of R. Huna. Therefore [both statements] were necessary.

An objection was raised [If a man says,] This is your Get on condition that you give me two hundred zuz, even though the Get is torn or lost she is divorced, though she cannot marry any other man until she gives him the money.[14] Further it has been taught: [If a man says,] This is your Get on condition that you give me two hundred zuz and he dies, if she has already given [before he dies] she is not in any way tied to the brother-in-law, but if she has not yet given she is tied to the brother-in-law. Rabban Simeon b. Gamaliel Says, She can give the money to his father or his brother or to one of the relatives.[15] Now the two authorities here differ only to this extent, that one holds that '[give] me' means 'to me but not to my heirs', and the other holds that it means 'to me or even to my heirs', but both hold that it is a mere condition. This would seem to be a refutation of Rab Judah! — Rab Judah, however, may answer: Who is the authority for this view? It is Rabbi, since R. Huna has said in the name of Rabbi, The formula 'on condition' is equivalent to 'from now';[16] but the Rabbis join issue with him, and I follow the Rabbis.

R. Zera said: When we were in Babylon, we used to state that [the ruling] which R. Huna said in the name of Rabbi, that the formula 'on condition' is equivalent to 'from now', is disputed by the Rabbis. When I went up [to Eretz Yisrael], I found R. Assi sitting and saying in the name of R. Johanan, All agree that the formula 'on condition' is equivalent to 'from now'; a difference of opinion arose only with regard to the formula 'from to-day and after [my] death',

(1) Even if he is a priest.

(2) If he had intercourse with her and died subsequently, since the Get takes effect just immediately before his death.

(3) If the husband dies, she was divorced at the time, and there is no penalty for the intercourse; if the husband recovers, the man has to bring a sin-offering.

(4) If the husband dies, R. Jose is doubtful whether retrospectively the Get had or had not taken effect when the intercourse took place, and consequently whether the man is or is not liable to a guilt-offering.

(5) I.e. where he is in doubt as to whether the sin has been committed or not. V. Lev. V, 17ff.

(6) If the husband dies.

(7) Because the Get takes effect retrospectively whenever the money is paid.

(8) The Get comes into force only from the moment of payment, but since at that time the Get is no longer in existence it has no effect.

(9) Kid. 60a.

(10) When his betrothal takes retrospective effect, so that that of the second is null and void.

(11) And therefore he meant it to take effect at once.

(12) Which he wishes to delay as long as possible.

(13) And therefore he does not mean to make the operation of the Get conditional on the receipt of the money, but intends it to take effect at once.

(14) Because she may after all not give, so that the Get will never take effect retrospectively.

(15) Tosef. Git. V.

(16) And makes the Get take effect retrospectively as soon as the condition is fulfilled.

Talmud - Mas. Gittin 74b

, as it has been taught: '[If he says] From to-day and after [my] death, it is a Get and no Get. This is the opinion of the Sages. Rabbi says, One like this is a Get'.[1] Now if Rab Judah is right in saying that they differ [as to the effect of] 'on condition', instead of joining issue [in the Baraitha] on the question of 'from now and after my death', let them join issue on 'on condition'? — This is to show you how far Rabbi is prepared to go.[2] But let them differ about 'on condition' to show how far the Rabbis are prepared to go?[3] — The Tanna [of the Baraitha] preferred to make the stronger instance one of permission.

ON CONDITION THAT YOU GIVE ME WITHIN THIRTY DAYS FROM NOW. Surely this is obvious? — You might think that he is really not particular and that he only wants to urge her on.[4] We are told therefore that this is not so.

RABBAN SIMEON B. GAMALIEL SAID: IT HAPPENED IN SIDON etc. Of what statement is this given as an illustration?[5] — There is a lacuna, and we should read thus: If he said to her, On condition that you give me my robe, and his robe was lost, we rule that he meant his particular robe and nothing else. Rabban Gamaliel says that she can give him the money value; and [in confirmation] R. Simeon b. Gamaliel further said that a case happened in Sidon where a man said to his wife, This is your Get on condition that you give me my robe, and his robe was lost, and the Sages said that she should give him the money value of it.

R. Assi inquired of R. Johanan: [If a man said,] This is your Get on condition that you give me two hundred zuz, and he then changed his mind and said, You can keep the money,[6] what is the law? This is equally a problem whether we adopt the view of the Rabbis or whether we adopt that of Rabban Simeon b. Gamaliel. From the standpoint of the Rabbis it is a problem, because [we may hold that] the Rabbis only ruled as they did in the other case [of the robe] because he did not forgo his claim, but here we see that he tells her that she can keep the money. Or we may also hold that Rabban Simeon b. Gamaliel ruled as he did only because she made it good for him with a money payment, but where she pays him nothing at all he would not say [that she is divorced]? — He

replied: She is not divorced. He [R. Assi] therefore raised [the following] objection: If a man says to another Konam[7] be whatever benefit you have of me unless you give my son a kor of wheat and two barrels of wine, R. Meir says he is forbidden [to have any benefit of him] until he gives, but the Sages say that such a man also may release himself from his own Vow without consulting a wise man by saying to himself, I regard myself as having received them [on his behalf]?[8] — Are these two cases parallel? In that case his intention is to give her trouble and he has not done so, but in this case he was trying to obtain some positive advantage and found he could do without it.

A certain man said to his metayer, The general rule is that [a metayer] irrigates [the land] three times [a year] and takes a fourth of the produce [as his share]. [I want] you to irrigate four times and take a third. Before [he had finished irrigating] the rain came. R. Joseph said, He has not actually irrigated [the fourth time].[9] Rabbah said, There was no need [for a fourth irrigation].[10] May we say that R. Joseph adopted the point of view of the Rabbis[11] and Rabbah that of Rabban Simeon b. Gamaliel? — Can you really maintain this, seeing that it is a fixed rule with us that the law follows Rabbah,[12] and in this matter the halachah does not follow Rabban Simeon b. Gamaliel?[13] — No. There can be no question that the law is as determined by the Rabbis.[14] R. Joseph follows the Rabbis without question, while Rabbah can say to you, My view can be justified even from the standpoint of the Rabbis. For the reason why the Rabbis ruled as they did in that case was only because his intention was to give her trouble,[15] but here he was after some advantage and he found that he could do without it.

We have learnt in another place: At first a man [who had bought a house from another in a walled city] used to hide himself on the last day of the twelve-month period, so that [the house] should become his for ever.[16] Hillel the Elder, therefore, ordained that he [the owner] should throw his money into a certain chamber and that [having done so] he should be at liberty to break the door open and enter, and the other whenever he liked should come and take his money.[17] Raba remarked upon this: From this regulation of Hillel we may learn that if a man said, This is your Get on condition that you give me two hundred zuz, and she gave it to him, if he accepted the money willingly she is divorced, but if she had to force it on him she is not divorced. For since Hillel found it necessary to ordain in this instance that a gift forced on the donee should be accounted a gift,

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(1) V. supra 72b. And since they differ on ‘from today etc.’ we presume that they agree on ‘on condition’. V. Tosaf. s.v.

(2) In permitting her to marry again.

(3) In forbidding her to marry.

(4) To fulfil the condition the sooner.

(5) Lit., ‘what did he teach that he states an incident’. Seeing that there has been no mention of money so far.

(6) Lit., ‘they are forgiven thee’.

(7) V. Glos.

(8) V. Ned. 24a. Which shows that to waive the claim is equivalent to receiving the money.

(9) And decided in favour of the owner, assigning the metayer only a fourth.

(10) And decided in favour of the metayer, since after all the field had been properly watered.

(11) That the condition must be fulfilled to the letter.

(12) V. B.B. 114b.

(13) V. infra p. 75a.

(14) The rain being to irrigation as money to the robe.

(15) As a man who divorces his wife may be presumed to dislike her, we suppose that the reason why he made it a condition that she should give him money was in order to annoy her and not because he wanted to make some Profit.

(16) V. Lev. XXV, 29, 30.

(17) V. ‘Ar. 31b.

, we conclude that in general a gift forced on the donee is not accounted a gift. R. Papa (or as some say R. Shimi b. Ashi) strongly demurred to this, [saying:] But perhaps Hillel thought there was need for a special regulation only where the money was given not in the donee's presence, but where it was made to him personally, the gift would be effective whether he was willing to receive it or not? According to another version, Raba said: From the regulation of Hillel we may infer that if he said, This is your Get on condition that you give me two hundred zuz and she gave them to him, whether he accepted them willingly or she forced them on him, the transfer is effective. For Hillel felt the need for a special regulation only where the money was given not in his presence, but if given to him personally the gift, whether accepted or forced on one, is effective. To this R. Papa (or some say R. Shimi b. Ashi) strongly demurred, [saying], Perhaps even if made to him personally the gift if made with his consent is effective but if against his will not, and Hillel made only the adjustment which was required?[1]

Rabbah b. Bar Hanah said in the name of R. Johanan: Wherever Rabban Simeon b. Gamaliel gives a ruling in our Mishnah, the halachah follows him, save in the matters of the 'Areb',[2] of 'Sidon'[3] and of the 'later proof'.[4]

Our Rabbis taught: If a man says, This is your Get on condition that the paper belongs to me, she is not divorced;[5] if he says, On condition that you return me the paper, she is divorced.[6] Why this difference between the two cases?[7] — R. Hisda replied: The authority followed here is Rabban Simeon b. Gamaliel, who said [in an analogous case that] she should give the money value; so here too, it is possible for her to make it right for him with a money payment.[8] Abaye strongly demurred to this, saying: I grant you that Rabban Simeon b. Gamaliel meant this ruling to apply where the object for which compensation is given cannot be produced,[9] but would he have said the same where it can be produced? No, said Abaye: the authority followed here is R. Meir, who said that a condition to be binding must be duplicated,[10] and here he has not duplicated his condition.[11] Raba strongly objected to this, saying, The reason [according to you] is that he did not duplicate the condition, so that if he had duplicated the condition it would not have been a Get. Let us see now. Whence do we derive [the rule governing] conditions? From [the condition] of the children of Gad and the children of Reuben.[12] Therefore just as there the condition was mentioned before the act conditional on it,[13] so in all cases the condition should be mentioned before the act, and that excludes the present case where the act is mentioned before the condition.[14] No, said Raba: the reason is that the act is mentioned before the condition. R. Ada b. Ahabah strongly objected to this, saying, The reason [according to you] is that the act was mentioned before the condition, so that if the condition were mentioned before the act it would not be a divorce. Let us see now. Whence do we derive the rule of conditions? From that of the sons of Gad and the sons of Reuben. Therefore just as there the condition relates to one thing and the act to another,[15] so it should be in all cases, to exclude such a one as this

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(1) He found that the owners hid themselves and consequently made the necessary regulation. And if it had been a common thing to refuse the payment when offered, he would have ordained that the gift should be effective in this case also, and therefore the money for the Get cannot be forced on him against his will.

(2) 'Surety'. V. B.B. 173a, on the law of recovering from a surety if the borrower has assets.

(3) Our own Mishnah.

(4) I.e., evidence brought after the time allowed by the Beth din. Sanh. 31a.

(5) Because he does not carry out the injunction, 'he shall give into her hand', Deut. XXIV, I.

(6) V. supra 20b.

(7) [It is assumed that in the latter case the Get comes into force only after the return of the paper when the condition has been fulfilled. Hence the question.]

(8) And as the condition can be fulfilled the Get is valid.

(9) As in the case of the lost robe.

(10) I.e., expressed both affirmatively and negatively. Kid. 61a

(11) And therefore it is a Get unconditionally.

(12) Num. XXXII, 20ff, 'If ye shall do this thing . . . then this land shall be unto you a possession; and if ye shall not do so . . . behold ye have sinned, etc.

(13) ['If ye shall do this thing . . . (condition), then his land shall be unto you a possession' (act).]

(14) [He said first 'this is your Get and then added the condition that 'the paper belongs to me'.]

(15) The condition to crossing the Jordan, and the act to their taking possession of the land of Sihon and Og.

Talmud - Mas. Gittin 75b

where both the condition and the act relate to the same thing?[1] No, said R. Ada b. Ahabah: the reason [why she is divorced] is because the condition and the act relate to the same thing. R. Ashi, however, said: The authority followed here is Rabbi; for R. Huna has said in the name of Rabbi: The formula on condition' is equivalent to 'from now'.[2]

Samuel laid down that a Get given by a man on a sick bed[3] should run, 'If I do not die, this will not be a Get, and if I die it will be a Get'. Why not rather say, If I die it will be a Get and if I do not die it will not be a Get?[4] — A man does not like to commence with a mention of evil for himself. But why should he not say, This will not be a Get if I do not die?[5] — The condition must be mentioned before the act. Raba strongly questioned [Samuel's dictum]: Let us see, he said; whence do we derive the rule for conditions? From the condition of the sons of Gad and the sons of Reuben. Therefore just as there the affirmative comes before the negative, so it should be in all cases, which would exclude this one where the negative comes before the affirmative? No, said Raba; the Get should run as follows: 'If I do not die it will not be a Get: if I die it will be a Get, if I do not die it will not be a Get.' [We write] 'If I do not die it will not be a Get', so as to avoid his commencing with a mention of evil for himself. [Then we say] 'If I die it will be a Get, if I do not die it will not be a Get', so that the affirmative may precede the negative.

MISHNAH. [IF A MAN SAYS], HERE IS YOUR GET ON CONDITION THAT YOU LOOK AFTER MY FATHER, ON CONDITION THAT YOU GIVE SUCK TO MY CHILD, (HOW LONG IS SHE TO GIVE IT SUCK? TWO YEARS.[6] R. JUDAH SAYS, EIGHTEEN MONTHS), IF THE CHILD DIES OR THE FATHER DIES,[7] THE GET IS VALID. [IF HE SAYS], THIS IS YOUR GET ON CONDITION THAT YOU LOOK AFTER MY FATHER FOR TWO YEARS, ON CONDITION THAT YOU GIVE SUCK TO MY CHILD FOR TWO YEARS, THEN IF THE CHILD DIES OR IF THE FATHER SAYS, I DON'T WANT YOU TO LOOK AFTER ME, EVEN THOUGH SHE HAS GIVEN NO CAUSE FOR COMPLAINT, THE GET IS NOT VALID. RABBAN SIMEON B. GAMALIEL, HOWEVER, SAYS THAT A GET LIKE THIS IS VALID. RABBAN SIMEON B. GAMALIEL LAID IT DOWN AS A GENERAL RULE THAT WHEREVER THE OBSTACLE DOES NOT ARISE FROM HER SIDE, THE GET IS VALID.

GEMARA. Do we require so long a period [as two years]? The following seems to contradict this: If she waited on him one day, or gave the child suck one day, the Get is valid?[8] — R. Hisda replied: There is no contradiction; one statement gives the view of the Rabbis, the other that of Rabban Simeon b. Gamaliel. Our Mishnah gives the view of Rabban Simeon b. Gamaliel,[9] and the Baraitha that of the Rabbis.[10] But since the later clause in our Mishnah states the view of Rabban Simeon b. Gamaliel, it follows [does it not] that the earlier clause states a view which is not that of Rabban Simeon b. Gamaliel? — We must say therefore that the Baraitha gives the view of Rabban Simeon b. Gamaliel, who insists only on a minimum fulfilment of[11] conditions, while the Mishnah gives the view of the Rabbis. Raba said: There is no contradiction; in the one case [the Mishnah] we suppose he mentions no time limit, in the other case he mentions a definite time limit.[12] Upon which R. Ashi remarked: Wherever no time limit is mentioned,it is the same as mentioning a limit of one day.[13]

We have learnt: HOW LONG IS SHE TO GIVE IT SUCK? TWO YEARS, RABBI JUDAH

SAYS, EIGHTEEN MONTHS. If we accept the view of Raba, this creates no difficulty, but if we accept that of R. Ashi, why should we require two years or eighteen months? One day should be enough? — What it means is this: One day in the next two years, to exclude the period after two years; one day in the next eighteen months, to exclude the period after eighteen months. An objection was raised [against this from the following]: [IF HE SAYS] THIS IS YOUR GET ON CONDITION THAT YOU LOOK AFTER MY FATHER FOR TWO YEARS, ON CONDITION THAT YOU SUCKLE MY CHILD FOR TWO YEARS, THEN IF THE CHILD DIES, OR THE FATHER SAYS, I DON'T WANT YOU TO LOOK AFTER ME, EVEN THOUGH SHE GAVE NO CAUSE FOR COMPLAINT, THE GET IS NOT VALID.

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(1) The Get itself which has to be returned and so become a Get.

(2) [Contrary to what has been assumed hitherto (p. 357, n. 7) the Get therefore, is valid retrospectively, when she returns the paper, the gift of which is regarded as a temporary one.]

(3) In order to release the wife from all ties to her brothers-in-law.

(4) So as to commence with the affirmative condition.

(5) Why did Samuel insist on the exact words of the formula?

(6) I.e., until it is two years old, (v. Keth. 60b). The words in brackets are best taken as a parenthesis.

(7) According to Rashi, this means, before the time has expired; according to Tosaf., even before she has commenced her duties.

(8) V. Tosef. Cit. V.

(9) Who said above that if the robe is lost she can give the money value, which shows that in his opinion, the husband's object in making a condition is to obtain some substantial advantage, and therefore she may have to suckle the child for as much as two years.

(10) Who said that she must give the robe itself, which shows that the condition is to be taken au pied de la lettre, and therefore one day is sufficient.

(11) Lit., ‘who is lenient in regard to’.

(12) He said one day.

(13) [R. Ashi has no intention for the present to reconcile the Mishnah and Baraitha; he merely disagrees with Raba's opinion.]

Talmud - Mas. Gittin 76a

This creates no difficulty for Raba, who may say that the previous clause[1] speaks of the case where he does not mention any time limit and this where he does.[2] But on R. Ashi's view, why should the ruling be different in the first case from that in the second?[3] — This is indeed a difficulty.

Our Rabbis taught: [If a man says,] This is your Get on condition that you look after my father for two years, or on condition that you suckle my child for two years, even though the condition is not fulfilled, the Get is valid because he did not say to her, [first] ‘if you look after’ [and then] ‘if you do not look after’, ‘if you suckle’ and ‘if you do not suckle’.[4] This is the view of R. Meir. The Sages, however, say that if the condition is fulfilled it is a Get and if not it is no Get. Rabban Simeon b. Gamaliel says: There is no condition in the Scriptures which is not duplicated.[5] According to one explanation, he addressed this remark to R. Meir, and according to another he addressed it to the Sages. According to one view he addressed his remark to R. Meir, and what he meant was this: There is no condition in the Scriptures which is not duplicated. Hence in this connection we have two texts from which the same inference may be drawn, and wherever we have two texts from which the same inference may be drawn, we do not base a rule upon them.[6] According to another explanation he addressed his remark to the Rabbis, and what he meant was this: There is no condition in the Scripture which is not duplicated and we base our rules upon them.

A contradiction was raised [from the following]: [If a man said], This is your Get on condition that you look after my father for two years, on condition that you suckle my child for two years, then if

the father or the child dies the Get is not valid. This is the view of R. Meir. The Sages, however, say that although the condition has not been fulfilled the Get is valid, since she can say to him, Produce your father and I will wait on him, produce your child and I will suckle it. Now, R. Meir would seem to be in contradiction with himself, and the Rabbis would also seem to be in contradiction with themselves? — Between the two statements of R. Meir there is no contradiction: the former [speaks of] where [the man] did not double his condition, the latter of where he did double it. Between the two statements of the Rabbis there is also no contradiction; for by the 'Sages' here mentioned we understand Rabban Simeon b. Gamaliel, who said that wherever the obstacle does not arise from her side the Get is valid.

Our Rabbis taught: If a man said to his wife in the presence of two witnesses, Here is your Get[7] on condition that you look after my father for two years, and he subsequently said to her in the presence of two witnesses, Here is your Get on condition that you give me two hundred zuz, the second statement does not nullify the first,[8] and she has the option of either waiting on the father or giving the husband the two hundred zuz. If, however, he said to her in the presence of two witnesses, Here is your Get on condition that you give me two hundred zuz, and he subsequently said to her in the presence of two witnesses, Here is your Get on condition that you give me three hundred zuz, the second statement nullifies the first, nor can one of the first two witnesses and one of the second combine to form a pair.[9] To which ruling [does this last statement belong]? It cannot be the second one, because [the first condition there] is nullified?[10] Rather it is the first one. But in this case it is self-evident?[11] — You might think that all [the witnesses who can help] to establish that there was a condition can be joined together. We are therefore told [that this is not so].

MISHNAH. [IF A MAN SAYS,] THIS IS YOUR GET IF I DO NOT RETURN WITHIN THIRTY DAYS, AND HE WAS ON THE POINT OF GOING FROM JUDEA TO GALILEE, IF HE GOT AS FAR AS ANTIPRAS[12] AND THEN TURNED BACK, HIS CONDITION IS BROKEN.[13] [IF HE SAYS,] HERE IS YOUR GET ON CONDITION THAT I DO NOT RETURN WITHIN THIRTY DAYS, AND HE WAS ON THE POINT OF GOING FROM GALILEE TO JUDEA, IF HE GOT AS FAR AS KEFAR 'UTHNAI[14] AND THEN TURNED BACK, THE CONDITION IS BROKEN. [IF HE SAID,] HERE IS YOUR GET ON CONDITION THAT I DO NOT RETURN WITHIN THIRTY DAYS, AND HE WAS ON THE POINT OF GOING INTO FOREIGN PARTS, IF HE GOT AS FAR AS ACCO [ACRE] AND TURNED BACK HIS CONDITION IS BROKEN. [IF HE SAID,] HERE IS YOUR GET SO SOON AS I SHALL HAVE KEPT AWAY FROM YOUR PRESENCE THIRTY DAYS, EVEN THOUGH HE CAME AND WENT CONSTANTLY, SO LONG AS HE WAS NOT CLOSETED WITH HER, THE GET IS VALID.

GEMARA. [IF HE GOT AS FAR AS ANTIPRAS,] This would seem to imply that Antipras is in Galilee,[15] which [apparently] contradicts the following: 'Antipras is in Judea and Kefar 'Uthnai in Galilee. The space between the two is subject to the disabilities of both[16] so that [if he gets there and returns] she is divorced

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(1) 'If the child dies . . . the Get is valid'.

(2) [For the fact of his mentioning a time limit shows that he is particular about the child being suckled for two years. So Rashi; but v. Tosaf.]

(3) I.e., in the first case also, if the child dies before she has suckled it one day, why should not the Get be void?

(4) I.e., he did not state the condition both affirmatively and negatively, after the model of the condition of the sons of Gad and Reuben.

(5) E.g., Gen. XXIV, 3ff.; Num. XIX, V, 19ff.; Is., I, 19, 20.

(6) V. Sanh. (Sonc. ed.) p. 458, n. 9.

(7) I.e., showing it to her without giving it to her.

(8) Because the condition is of an entirely different nature.

(9) To testify that there was a certain condition attached to the Get though not inserted in writing.
(10) And even if the two witnesses to that condition came together, their evidence would be of no effect.
(11) Because they cannot both testify to the same thing.
(12) Antipatris, on the borders of Judea and Galilee.
(13) This is explained infra, in the Gemara.
(14) On the borders of Galilee and Judea, v. supra p. 34, n. 4.
(15) The Gemara understands the Mishnah thus: If he actually went to Galilee but did not stay there thirty days, the Get is void, as his condition has not been fulfilled. If, however, he returns before reaching Galilee, he has not broken his condition, and is still able to fulfil it by going to Galilee and remaining there thirty days. Hence, since by going to Antipras and returning at once he makes the Get void, Antipras must be in Galilee, and similarly Kefar 'Uthnai must be in Judea.
(16) That is to say, we reckon the condition as both broken and not broken, to the wife's disadvantage.

Talmud - Mas. Gittin 76b

and not divorced?[1] — Abaye replied: [We suppose that] he makes two conditions with her, thus: If I reach Galilee, this will be a Get at once, and also if I remain on the road thirty days and do not return it will be a Get. If then he reached Antipras and came back, so that he did not get to Galilee nor did he remain on the road thirty days, his condition has been broken.

HERE IS YOUR GET ON CONDITION THAT I DO NOT RETURN WITHIN THIRTY DAYS [AND HE GOT AS FAR AS ACCO]. This would imply that Acco is in foreign parts.[2] But how can this be, seeing that R. Safra has said: When the Rabbis took leave of one another,[3] they did so in Acco, because it is forbidden for those who live in Eretz Yisrael to go out of it? — Abaye replied: He made two conditions with her, thus: If I reach foreign parts, this will be a Get at once, and if I remain on the road and do not return within thirty days it will be a Get. If he got as far as Acco and returned, so that he neither reached foreign parts nor remained on the road thirty days, his condition is broken.

HERE IS YOUR GET SO SOON AS I SHALL KEEP AWAY etc. But he does not keep away?[4] — R. Huna replied: What is meant by 'PRESENCE here? Marital intercourse. And why is it called PRESENCE'? A polite expression is used. R. Johanan, however, said: The word 'PRESENCE is to be taken literally. For it does not say that [if he comes and goes] she is divorced, but 'THE GET IS VALID', that is to Say, it does not become an 'old' Get[5] and when thirty days have passed [without his seeing her] it is a valid Get. It has been taught in accordance with R. Johanan: '[If he says,] Here is your Get so soon as I shall keep away from your presence thirty days, even though he was constantly coming and going, so long as he was not closeted with her the Get is valid, and we have no fear of its being an 'old' Get, since he was not closeted with her.' But is there not the possibility that he made it up with her?[6] — Rabbah son of R. Huna replied: Thus said my father, my teacher, in the name of Rab: This rule applies where he gives an undertaking[7] that he will accept her word if she says he did not come [to her]. Some attach this statement to the Mishnah,[8] thus: [If a man says, this is your Get] from now if I do not return within twelve months, and he died within the twelve months, the Get is valid. But is there not the possibility that he made it up with her? Rabbah son of R. Huna replied: Thus said my father, my teacher in the name of Rab: The rule applies where he gives an undertaking that he will accept her word if she says that he did not come to her. Those who attach this statement to the Mishnah would without question attach it to the Baraitha[9] also. But those who attach it to the Baraitha might hesitate to attach it to the Mishnah, because [as far as we know] he has not come to see her.[10]

MISHNAH. [IF A MAN SAYS,] THIS IS YOUR GET IF I DO NOT RETURN WITHIN Twelve MONTHS, AND HE DIES WITHIN TWELVE MONTHS, IT IS NO GET.[11] [IF HE SAYS,] THIS IS YOUR GET FROM NOW IF I DO NOT RETURN WITHIN TWELVE MONTHS, AND HE

DIES WITHIN TWELVE MONTHS, IT IS A GET. [IF HE SAYS,] IF I DO NOT COME WITHIN TWELVE MONTHS, WRITE A GET AND GIVE IT TO MY WIFE, AND THEY WROTE A GET BEFORE TWELVE MONTHS HAD PASSED AND GAVE IT AFTER, IT IS NO GET. [IF HE SAID,] WRITE A GET AND GIVE IT TO MY WIFE IF I DO NOT COME WITHIN TWELVE MONTHS, AND THEY WROTE IT BEFORE THE TWELVE MONTHS HAD PASSED AND GAVE IT AFTER, IT IS NO GET. R. JOSE, HOWEVER, SAYS THAT A GET LIKE THAT IS VALID.[12] IF THEY WROTE IT AFTER TWELVE MONTHS AND DELIVERED IT AFTER TWELVE MONTHS AND HE DIED, IF THE DELIVERY OF THE GET PRECEDED HIS DEATH THE GET IS VALID, BUT IF HIS DEATH PRECEDED THE DELIVERY OF THE GET IT IS NOT VALID. IF IT IS NOT KNOWN WHICH WAS FIRST, THE WOMAN IS IN THE CONDITION KNOWN AS 'DIVORCED AND NOT DIVORCED'.[13]

GEMARA. A Tanna taught: 'Our Rabbis allowed her to marry'.[14] Who are meant by 'our Rabbis'? — Rab Judah said in the name of Samuel: The Beth din which permitted the oil [of heathens].[15] They concurred with R. Jose, who said that the date of the document is sufficient indication.[16]

R. Abba the son of R. Hiyya bar Abba said in the name of R. Johanan: R. Judah the Prince, the son of Rabban Gamaliel the son of Rabbi, gave this ruling, but none of his colleagues [saya'to] agreed with him, or, as others report, [his ruling did not find acceptance] during the whole of his life [sha'ato].

R. Eleazar asked a certain elder [who had been present there]: When you permitted her to marry, did you permit her to do so at once,[17] or after twelve months?[18] Did you permit it at once, since there is no chance of his coming again, or did you permit it only after twelve months, when his condition would be fulfilled? — But should not this question be attached to the Mishnah: [IF HE SAYS, THIS IS YOUR GET] FROM NOW IF I DO NOT COME WITHIN TWELVE MONTHS, AND HE DIED WITHIN TWELVE MONTHS, THIS IS A GET: would it be a Get at once, seeing that he will not come again, or only after twelve months when his condition will have been fulfilled? — Indeed it might have been, but it was put in this way because he [the old man] asked had been present on that occasion.[19]

Abaye said: All are agreed that if he Says, 'When the sun issues from its sheath'

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(1) The condition not having been broken, the Get is valid to the extent that she may not eat terumah. The condition having been broken, the Get is invalid and she cannot marry again on the strength of it.

(2) V. supra 7b.

(3) I.e., those who came from abroad to study were escorted by those of Palestine as far as Acre.

(4) Since it says, IF HE CAME AND WENT etc.

(5) A Get is called 'old' if after it was written the husband and wife were closeted together. Such a Get is invalid. V. infra 79b.

(6) And so after divorcing her he may bring a charge that he was closeted with her in this period.

(7) At the time of making the condition.

(8) Infra.

(9) For since we see him coming and going, the undertaking is all the more necessary.

(10) And therefore perhaps the undertaking is not necessary.

(11) And the levirate law still applies to her if the husband dies without issue.

(12) The reason is given in the Gemara.

(13) v. supra.

(14) Even though he did not say 'from now', since it is understood that he meant this.

(15) V. supra 72b.

(16) V. supra 72a.

(17) As soon as the death of the husband was announced.
(18) I.e., had she to wait twelve months to he free from the levirate obligation.
(19) [When the vote was taken to grant her permission to remarry; v. A.Z. 37a.]

he means that [the Get is to take effect only] when the sun does come out, and if he dies in the night it would be a Get after death.[1] If, again, he says, 'On condition that the sun issues from its sheath,' he means it to take effect as from now, since R. Huna has said in the name of Rabbi, The formula 'on condition' Is equivalent to 'as from now'. Where opinions differ is when he says 'if it shall issue', One authority[2] adopts the view of R. Jose who said that the date of the document is sufficient indication, so that his words are analogous to 'from to-day if I die, from now if I die,'[3] while the other[4] did not accept the view of R. Jose, and his words are analogous to the bare 'if I die'.[5]

WRITE A GET AND GIVE IT TO MY WIFE, IF I DO NOT COME WITHIN TWELVE MONTHS, IF THEY WROTE etc. Said R. Yemar to R. Ashi: May we conclude from this that in R. Jose's opinion, if one writes a Get subject to a certain condition [even if the condition is not fulfilled] the document is a valid one? — No; I may still hold that it is not valid, and R. Jose has a special reason here, because he ought to have said 'If I do not come, write and deliver', and he actually said, 'Write and deliver if I do not come', and [we presume him] therefore to have meant, Write from now and deliver if I do not come. The Rabbis, however, do not differentiate between the two forms.

Our Rabbis taught: [If he says, 'This is your Get if I do not return] till after the septennate,' we wait an extra year;[6] 'till after a year', we wait a month; 'till after a month', we wait a week. If he Says, 'till after the Sabbath',[7] what [do we do]? — When R. Zera was once sitting before R. Assi, or, as others report, when R. Assi was sitting before R. Johanan, he said: The first day of the week and the second and third are called 'after the Sabbath'; the fourth and fifth days and the eve of Sabbath are called 'before the Sabbath.'

It has been taught: [If he says] 'Till after the festival', we wait thirty days. R. Hiyya went forth and preached this in the name of Rabbi, and he was commended [for doing so].[8] He then preached it in the name of the majority and was not commended.[9] This shows that the law is not as laid down by him.[10]

C H A P T E R V I I I

MISHNAH. IF A MAN THROWS A GET TO HIS WIFE WHILE SHE IS IN HER HOUSE OR IN HER COURTYARD,[11] SHE IS THEREBY DIVORCED. IF HE THROWS IT TO HER INTO HIS HOUSE OR INTO HIS COURTYARD, EVEN THOUGH HE IS WITH HER ON THE SAME BED, SHE IS NOT THEREBY DIVORCED. IF HE THROWS IT INTO HER LAP OR INTO HER WORK-BASKET,[12] SHE IS THEREBY DIVORCED.

GEMARA. What is the Scriptural warrant for this rule? — As our Rabbis taught: 'And give it in her hand:[13] this only tells me that [the Get may be placed] in 'her hand'. Whence do I learn that [it may also be placed] on her roof, or in her courtyard or enclosure? The text says significantly. 'And he shall give', which means, in any manner.[14] It has been taught in a similar manner regarding a thief: His hand:[15] this tells me on]y that [he is liable if the theft is found] in his hand. Whence do I learn that [he is equally liable if it is found] on his roof, or in his courtyard or his enclosure? From the significant words, 'If it be found at all', which means, under all circumstances.[16] And [both expositions are] necessary. For had I only the one regarding the Get, l should have said that the reason is because [she is divorced] against her will,[17] but [that this rule does] not apply to a thief who cannot become such against his will.[18] And had I been given the rule in regard to the thief only, I should have said [that it applied to him] because the All-Merciful imposed a fine upon him,[19] but not to a Get. Hence both were necessary.

It says]. HER COURTYARD. [How can this be, Seeing that] whatever a woman acquires belongs

to her husband? — R. Eleazar said: We presume him to have given her a written statement that he has no claim on her property. But suppose he did do so, what difference does it make, seeing that it has been taught.[20] 'If a man says to another [a partner.] I have no claim on this field, I have no concern in it, I entirely dissociate myself from it, his words are of no effect'?[21] — The school of R. Jannai explained: We suppose him to have given her this written statement while she was still betrothed, and we adopt [at the same time] the maxim of R. Kahana; for R. Kahana said that a man may stipulate beforehand that he will not take up a prospective inheritance from an outside source.[22] This too is based on a ruling of Raba, who said: If one says.

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(1) And therefore of no effect.

(2) R. Judah the Prince.

(3) And therefore in the case of the Mishnah, where he said 'IF I DO NOT RETURN', if he died within the twelve months the Get takes effect retrospectively.

(4) The Tanna of our Mishnah.

(5) Where the Get is not valid (v. supra 72a), and similarly in the case of the Mishnah, the Get takes effect only after twelve months and should he die in the meantime the Get is no Get.

(6) To allow for the 'after'.

(7) Sabbath in Hebrew denotes either week or Sabbath.

(8) Lit., 'it was praised'. Because he reported this ruling as the opinion of one individual which need not be accepted.

(9) For reporting a non-recognised teaching in the name of many.

(10) Cf. supra p. 77 and notes.

(11) I.e., the so-called 'property of plucking' (v. Glos. s.v. mulug) of which the husband has the usufruct while the wife retains the ownership.

(12) GR. **.

(13) Deut. XXIV, 1.

(14) For notes v. B.M. (Sonc. ed.) p. 58.

(15) Ex. XXII, 3.

(16) For notes v. op. cit. p. 56.

(17) And therefore her courtyard serves the purpose equally with her hand.

(18) Hence, if, for instance, an animal entered his courtyard and he locked it in without touching it, I might think that he would not be liable.

(19) To repay double. Ex. loc. cit. This would indicate that the law was in general more severe with him.

(20) Cf. B.B. 43a.

(21) [Unless and until he makes it over as a gift.]

(22) I.e., not his father, or next-of-kin according to the Torah.

Talmud - Mas. Gittin 77b

I do not care to avail myself of the regulation of the Sages, in a case like this he is allowed to have his way. What did he mean by 'in a case like this'? — He was referring to the case mentioned by R. Huna in the name of Rab; for R. Huna said in the name of Rab, A woman is at liberty to say to her husband, You need not maintain me and I will not work for you.[1]

Raba said: Does not her hand also belong to her husband? The fact is that her hand and her Get become hers simultaneously. So also her courtyard and her Get become hers simultaneously. Said Rabina to R. Ashi: Can Raba have found any difficulty about the woman's hand?[2] Granted that the husband owns the labour of her hands, does he own the hand itself? — He replied: Raba's difficulty was [really] with the hand of a slave. For on the view of the authority who holds that a slave may acquire his freedom by means of a document which he receives himself,[3] [we may ask,] how can this be, seeing that the hand of the slave is like that of the master? Only we must suppose that his hand and his deed of emancipation become his simultaneously. So here, her Get and her courtyard become hers simultaneously.

A certain man who was lying very ill wrote a Get for his wife on the eve of the Sabbath and had not time to give it to her [before Sabbath]. On the next day his condition became critical.[4] Raba was consulted, and he said: Go and tell him to make over to her the place where the Get is, and let her go and close and open a door there and so take formal possession of it, as we have learnt:[5] 'If one does anything in the way of locking up or fencing or breaking open, this constitutes formal occupation.'[6] Said R. 'Ilish to Raba: But whatever a woman acquires belongs to her husband? — He was nonplussed. Eventually it transpired that she was only betrothed. Thereupon Raba said: If this rule was laid down for a married woman,[7] is it to apply to a betrothed woman? Later Raba corrected himself and said: No matter whether she is married or betrothed, her Get and her courtyard become hers simultaneously. But this is just what Raba said?[8] — When he did say it first, it was in connection with this incident.

WHILE SHE IS IN HER HOUSE. 'Ulla said: That is so, provided she is standing by the side of her house or by the side of her courtyard. R. Oshaia said: She may even be in Tiberias and her courtyard in Sepphoris or she may be in Sepphoris and her courtyard in Tiberias; she is still divorced. But it says. WHILE SHE IS IN HER HOUSE OR IN HER COURTYARD? — What it means is, While she is virtually in her own house or in her own courtyard on account of the fact that the courtyard is being kept [for her] with her knowledge and consent, and therefore she is divorced.

May we say that the point at issue between them[9] is this, that the one authority ['Ulla] holds that [the rule about] a courtyard is derived from 'her hand', and the other from its being regarded as analogous to her agent?[10] — No; both are agreed that the [rule about] a courtyard is derived from 'her hand'. One, however, interprets the analogy thus: just as her hand is close to her, so her courtyard must be close to her. And the other? — He will rejoin: Since her hand is attached to her, has her courtyard also to be attached to her? But [you must say] it is like her hand in this sense. Just as her hand is kept for her with her knowledge, so her courtyard must be kept for her with her knowledge, and what we exclude therefore is a courtyard which is kept for her [even] without her knowledge.[11]

A certain man threw a Get to his wife as she was standing in a courtyard and it went and fell on a block of wood. R. Joseph thereupon said: We have to see. If the block was four cubits by four, it forms a separate domain, but if not, it is one with the courtyard. What case are we dealing with? Are we to say that the courtyard is hers? If so, what does it matter if the block is four cubits by four?[12] Is the courtyard his? Then if it is not four by four what does it matter?[13] — [R. Joseph's ruling] applies where he lent her the place, since men will usually lend one place but not two places.[14] Further, we do not say [that it is one with the court] save only if it is not ten handbreadths high; but if it is ten handbreadths high, we do not say so, even if it is not four cubits by four. Nor even so do we say that it is included save only if it has no

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(1) The regulation having been made for her benefit, she is not bound to avail herself of it. So too in the case of an heir-at-law outside those mentioned in the Torah, v. B.K. 8b.

(2) That he had to give a special reason for legalising it.

(3) Kid. 22.

(4) Lit., 'the world was heavy for him'. And he was anxious to divorce her so that she should not become subject to the levirate law, but he could not give her the Get, as it was not allowed to be carried on Sabbath.

(5) B.B. 42a.

(6) [And by obtaining possession of the courtyard the Get automatically passes into her possession on the principle that movable property may be acquired along with immovable property; v. Kid. 26a (Rashi).]

(7) That to the husband belongs whatever the woman acquires.

(8) Why then was he nonplussed?

(9) 'Ulla and R. Oshaia.

(10) And therefore she may be at any distance from it; v. supra 21a and B.M. 10b.

(11) Which would include her slave. V. infra.

(12) In either case she is divorced.

(13) In either case she is not divorced.

(14) [Therefore where the block was four cubits by four it forms a separate domain and is not one with the courtyard lent to her.]

Talmud - Mas. Gittin 78a

individual name,[1] but if it has a special name [it is not included] even though it is not ten handbreadths high and is not four cubits by four.

EVEN THOUGH HE IS WITH HER ON THE SAME BED. Raba said: This applies only if the bed is his, but if it is her bed, she is divorced. It has been taught to the same effect: R. Eliezer says: If it is on his bed she is not divorced, but if it is on her bed she is divorced. And if it is on her bed is she divorced? Is it not a case of the vessels of the purchaser in the domain of the vendor?[2] This shows [does it not] that if [the article purchased is placed in] the vessels of the purchaser standing in the domain of the vendor, the purchaser acquires possession?[3] — This, however, is not conclusive, as we may suppose the bed to be ten handbreadths high.[4] But there is the place of the legs?[5] — Men are not particular about the place of the legs.

IF HE THROWS IT INTO HER LAP OR INTO HER WORK-BASKET SHE IS THEREBY DIVORCED. Why so? This is a case of the vessels of the purchaser in the domain of the vendor? — Rab Judah said in the name of Samuel: We suppose, for instance, that her work-basket was hanging from her. So too R. Eleazar said in the name of R. Oshaia: We suppose, for instance, that her work-basket was hanging from her. R. Simeon b. Lakish said that [it would be sufficient] if it was tied to her even without hanging from her. R. Adda b. Ahabah said: If, [or instance, her work-basket was between her legs.[6] R. Mesharsheya son of R. Dimi said: If her husband was a seller of handbags.[7] R. Johanan said: The place occupied by the folds of her dress is acquired by her and the place occupied by her work-basket is acquired by her. Raba said: What is R. Johanan's reason? Because a man is not particular about the place occupied by the folds of her dress or the place occupied by her work-basket. If has also been taught to the same effect: 'If he threw her [the Get] into her lap or into her work-basket or into anything like her work basket, she is thereby divorced.' What is added by 'anything like her work-basket'? — It adds the dish from which she eats dates.

MISHNAH. IF HE SAID TO HER, TAKE THAT BOND, OR IF SHE FOUND IT BEHIND HIM AND READ IT AND IT TURNED OUT TO BE HER GET, IT IS NO GET, UNTIL HE SAYS TO HER, THERE IS YOUR GET. IF HE PUT IT INTO HER HAND WHILE SHE WAS ASLEEP AND WHEN SHE WOKE UP SHE READ IT AND FOUND IT WAS HER GET, IT IS NO GET UNTIL HE SAYS TO HER, THAT IS YOUR GET.

GEMARA. And suppose he says to her, That is your Get, what does it matter?[8] It is the same as if he said, Pick up your Get from the floor, and Raba has laid down that [if a man says,] Pick up your Get from the floor, his words are of no effect?[9] — We must suppose that she pulls it out from behind him.[10] And suppose even that she pulls it out, do we not require that 'he give it into her hand,'[11] and this condition is not fulfilled? — The rule would apply where he jerked his side towards her and she pulled it out.[12] It has been taught to the same effect: 'If he said to her, Take this bond [and she did so], or if she pulled it out from behind him[13] and on reading it found it was her Get, it is no Get until he says to her, That is your Get. This is the ruling of Rabbi. R. Simeon b. Eleazar Says: It does not become a Get until he takes it from her and gives it to her again, saying, That is your Get. If he puts it into her hand while she is asleep and when she wakes she reads it and finds it is her Get, it is no Get until he says to her, That is your Get. So Rabbi. R. Simeon b. Eleazar Says, [It is no Get] until he

takes it from her and gives it to her again saying, That is your Get.' [Both cases] required [to be stated]. For if only the former had been stated, I might say that Rabbi ruled [as he did there] because she was at the time capable of being divorced, but where he put it into her hand while she was asleep, seeing that she was not at the time capable of being divorced, I might think that he accepts the view of R. Simeon b. Eleazar. If again only the latter case had been stated, I might have thought that R. Simeon b. Eleazar meant his ruling to apply to that case only,[14] but in the other he accepts the view of Rabbi. Hence [both statements were] necessary.

Raba said: If he wrote a Get for her and put it in the hand of her slave while he was asleep and she was watching him, it is a Get,[15] but if he is awake it is no Get,[16] But why should this be, seeing that he is a 'moving courtyard', and a 'moving courtyard' does not confer ownership? And should you reply that the fact of his being asleep makes a difference, has not Raba said, That which does not confer ownership when moving about does not confer ownership when standing still or sitting? — [The law is as stated by Raba][17] when the slave is bound.[18]

MISHNAH. IF SHE WAS STANDING ON PUBLIC GROUND AND HE THREW IT TO HER, IF IT LANDS NEARER TO HER SHE IS DIVORCED, BUT IF IT LANDS NEARER TO HIM SHE IS NOT DIVORCED. IF IT LANDS MIDWAY,[19] SHE IS DIVORCED AND NOT DIVORCED.[20] SIMILARLY WITH BETROTHALS AND SIMILARLY WITH A DEBT. IF A MAN SAYS TO HIS DEBTOR, THROW ME MY DEBT [IN PUBLIC GROUND] AND HE THROWS IT, IF IT LANDS NEARER TO THE LENDER, IT BECOMES THE PROPERTY OF THE LENDER; IF IT LANDS NEARER TO THE BORROWER, HE STILL OWES THE MONEY; IF IT LANDS MIDWAY, THEY DIVIDE.

GEMARA. How are we to understand NEARER TO HIM and how are we to understand NEARER TO HER? — Rab said: Within four cubits of her is nearer to her, within four cubits of him is nearer to him.[21] How are we to understand 'MIDWAY'? — R. Samuel son of R. Isaac replied: If, for instance, they were both within four cubits of the Get. In that case let us see which was there first?[22] And should you retort that perhaps both came together — it is impossible that they should come exactly at the same moment?[23] — R. Kahana therefore said: We suppose here that they are exactly eight cubits from each other,

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(1) Lit., 'an attached name', but is merely referred to as 'the block'.

(2) Concerning which there is a difference of opinion whether the purchaser acquires the article of purchase put therein; v. B.B. (Sonc ed.) 85b p. 348 q.v. for notes.

(3) I.e, we decide the question in B.B. From here.

(4) And so it forms a domain of its own and is not merely a vessel.

(5) The place occupied by the legs which belongs to the husband.

(6) In which case he would not be particular about the place occupied by it, even if it rested on the ground.

(7) In which case also he would not be particular about the place occupied by it.

(8) In the case where she found the Get behind him.

(9) V. supra 24a.

(10) From where it was stuck between his girdle and his robe.

(11) Deut. XXIV, 3.

(12) As this is also a kind of giving.

(13) Not merely 'found it' as our reading in the Mishnah has it.

(14) Because she was not at the time capable of being divorced.

(15) Because the slave is reckoned as her courtyard and it is being kept for her.

(16) Because the slave when awake is regarded as looking after himself.

(17) Var. lec., 'We must say that Raba means.'

(18) V. supra 212.

(19) Lit., 'half by half'.

(20) V. supra p. 350.
(21) On the principle that a man's four cubits in a public ground acquire possession, v. B.M. 102.
(22) And so established a prior right to the four cubits.
(23) Lit., 'to be exact'.

Talmud - Mas. Gittin 78b

and the Get extends from the four cubit space nearer to him into the four cubit space nearer to her.[1] But then it is still [partly] attached to him?[2] — Therefore Rabbah and R. Joseph [gave a different reply], both saying that we are dealing here with a case where there are two groups of witnesses, one of which says that it was nearer to her and the other that it was nearer to him. R. Johanan said: The words of our text are NEARER TO HER [which can include] even a hundred cubits away, and NEARER TO HIM, [which can include] even a hundred cubits away.

How are we to understand MIDWAY? — R. Shaman b. Abba said: It was explained to me by R. Johanan that where he is able to look after it[3] but she is not able to look after it, this is NEARER TO HIM. Where she is able to look after it, but he is not, this is NEARER TO HER. If both of them are able to look after it, or neither of them is able [separately][4] to look after it, this is MIDWAY. The Rabbis repeated this explanation before R. Johanan as having been given by R. Jonathan.[5] He thereupon remarked: Do our colleagues in Babylon also know how to give this explanation? It has been taught to the same effect: 'R. Eliezer says: Even though it is nearer to her than to him and a dog came and ran off with it, she is not divorced.' She is not divorced, you say? How long is she to go on keeping it?[6] No; what he means to say is this: If it is nearer to her than to him, yet so placed that if a dog came and tried to make off with it he could save it but she could not, she is not divorced. Samuel said to Rab Judah: Shinena,[7] it must be so near that she can stoop down and pick it up, but do you not actually [declare it valid] until it comes into her hand.[8] R. Mordecai said to R. Ashi: There was an actual case of this kind,[9] and she was compelled to give halizah.

SO TOO IN REGARD TO BETROTHALS. R. Assi said in the name of R. Johanan: This rule[10] was made with reference to bills of divorce and not to anything else. R. Abba thereupon pointed out to R. Assi the statement, SO TOO IN REGARD TO BETROTHALS. [He replied]: There is a special reason for that, because it is written, she may go forth and be [another man's wife].[11] He raised an objection: SIMILARLY WITH A DEBT. IF THE LENDER SAYS [TO THE BORROWER], THROW ME MY DEBT, AND HE THROWS IT, IF IT LANDS NEARER TO THE LENDER IT BECOMES THE PROPERTY OF THE LENDER; IF IT LANDS NEARER TO THE BORROWER, HE STILL OWES THE MONEY; IF IT LANDS MIDWAY, THEY DIVIDE? — The case we are dealing with here is when he says, Throw me what you owe me and be quit. If that is all [he rejoined], what need was there to state it? — It is necessary [to state it] when he says, Throw me my debt in the same way as a Get. Still, what need is there to state even this? — You might think that he can say to him, I was only making fun of you; therefore we are told [that this is no plea].

R. Hisda said: If the Get is in her hand and the string[12] in his hand, and he is able to pull it with a jerk to himself, she is not divorced, but if not, she is divorced. What is the reason? We require a 'cutting off', and this is not realised.[13] Rab Judah said: If she held her hand sloping[14] and he threw it to her, even if the Get reached her hand she is not divorced. Why so? When it falls to the ground it falls within four cubits of her? — We assume that it does not come to rest there. But should she not be divorced by dint of its having come into the air of the four cubits? [And since this is not so] may we decide from this the question raised by R. Eleazar, whether the four cubits spoken of include the air above them or not? May we decide that they do not include the air? — [No;] we suppose here that she is standing on the brink of a river, so that from the outset it is liable to be lost [if it falls from her hand].[15]

(1) I.e., part of it is nearer to him and part nearer to her.
(2) And it is requisite that the whole should be given to her.
(3) E.g., to prevent a dog snatching it.
(4) V. Tosaf., s.v.
(5) R. Jonathan was a Babylonian, R. Johanan a Palestinian.
(6) As much as to say, Surely from the moment it comes near her she is divorced.
(7) Lit., 'sharp one', i.e., scholar with keen sharp mind. For other interpretations v. B.K. (Sonc. ed.) p. 60, n. 2.
(8) Though it was near to her people might malign her by saying it was far away.
(9) Where it landed nearer to her.
(10) That it is sufficient for the document to land near the person to whom it is thrown.
(11) Deut. XXIV, 2. Her 'being another man's wife' is put on the same footing as her 'going forth'.
(12) Tied round the Get.
(13) V. B.M. 7a.
(14) Lit., 'like a gutter'. Gr. **:.
(15) And in such a case the air certainly does not confer possession.

Talmud - Mas. Gittin 79a

MISHNAH. IF SHE WAS STANDING ON A ROOF AND HE THREW IT UP TO HER, AS SOON AS IT REACHES THE AIRSPACE OF THE ROOF, SHE IS DIVORCED. IF HE WAS ABOVE AND SHE BELOW AND HE THREW IT TO HER, ONCE IT HAS LEFT THE SPACE OF THE ROOF, EVEN THOUGH [IMMEDIATELY AFTERWARDS] THE WRITING WAS EFFACED[1] OR IT WAS BURNT,[2] SHE IS DIVORCED.

GEMARA. [AS SOON AS IT REACHES THE AIR-SPACE OF THE ROOF etc.] But it is not yet in safe keeping?[3] — Rab Judah said in the name of Samuel: We speak of a roof which has a parapet. 'Ulla b. Menashia said in the name of Abimi: The reference here is to [the air space] within three handbreadths of the roof, since any space less than three handbreadths from the roof is reckoned as the roof.

IF HE WAS ABOVE etc. But it is not yet in safe keeping?[4] — Rab Judah said in the name of Samuel: [The rule applies] if for instance the lower partitions[5] overtop the upper ones.[6] So too R. Eleazar said in the name of R. Oshaia, If, for instance the lower partitions overtop the upper ones; and so too 'Ulla said in the name of R. Johanan, If, for instance, the lower partitions overtop the upper ones. Said R. Abba to 'Ulla: With whose view does this accord? With that of Rabbi, who said that being embraced [by the air space] is equivalent to coming to rest [upon the ground]?[7] — He replied: You can even say that it has the authority of the Rabbis, since the Rabbis might differ from Rabbi only in the case of Sabbath, but here the deciding factor is whether it is in safe keeping, and in fact it is in safe keeping.[8] So too, when R. Assi said in the name of R. Johanan, For instance, if the lower partitions overtop the higher, R. Zera said to R. Assi, With whose view does this accord? With that of Rabbi, who said that being embraced by the air space is equivalent to coming to rest [on the ground,] and he replied, You can even say that it has the authority of the Rabbis, since the Rabbis might differ from Rabbi only in the case of the Sabbath, but here the deciding factor is whether it is in safe keeping, and in fact it is in safe keeping.

THOUGH THE WRITING WAS EFFACED. R. Nahman said in the name of Rabbah b. Abbuha: This applies only if it was effaced while [the Get was] falling,[9] but if it was effaced while [the Get was] ascending it is not so. Why? Because from the outset it was not destined to come to rest [in that way].[10]

OR IT WAS BURNT. R. Nahman said in the name of Rabbah b. Abbuha: This applies only if the Get was thrown before the fire was started, but if the fire was started first, it is not so. Why is this?

Because from the outset it was destined to be burnt.

R. Hisda said: Spaces marked off from one another[11] remain distinct for purposes of bills of divorce.[12] Said Rami b. Hama to Raba: Whence does the old man derive this idea? — He replied: It is from our Mishnah: If SHE WAS STANDING ON THE ROOF AND HE THREW IT TO HER, AS SOON AS THE GET REACHES THE AIR SPACE OF THE ROOF SHE IS DIVORCED. Now with what circumstances are we dealing? Are we to say that the roof is hers and the courtyard is hers? If so, why do I require even the air space of the roof? What then? His roof and his courtyard? In that case, even if it reaches the air space of the roof, what of it? Obviously therefore we must suppose the roof to be hers and the courtyard to be his. Now let us look at the next clause: IF HE WAS ABOVE AND SHE BELOW AND HE THREW IT TO HER, SO SOON AS IT LEFT THE SPACE OF THE ROOF, EVEN THOUGH THE WRITING WAS EFFACED OR IT WAS BURNT SHE IS DIVORCED. Now if the roof is hers and the courtyard his, why is she divorced? It must be therefore that the roof is his and the courtyard hers. Now can it be that the first clause speaks of where the roof is hers and the courtyard his, and the second of where the roof is his and the courtyard hers? [Hardly so;] and it must be that he lends her a place,[13] [and this shows] that men will lend one place but not two places! — He replied: Is this conclusive? Perhaps each case stands on its own footing, the first clause speaking of where the roof is hers and the courtyard his, and the second of where the roof is his and the courtyard hers.[14]

Raba said: There are three cases in which a Get forms an exception to a general rule.[15] One is the rule laid down by Rabbi that being embraced [by the air space] is equivalent to coming to rest on the ground, regarding which the Rabbis joined issue with him. They only differed with regard to Sabbath, but here [in the case of a Get] the decisive factor is whether it is in safe keeping, and in fact it is in safe keeping. The second is the rule laid down by R. Hisda: If a man stuck in private ground a pole, on the top of which was a basket, and he threw up something[16] and it came to rest on it, even if it is a hundred cubits high he is liable, because private ground extends upwards to the sky. This applies only to Sabbath, but here[17] the decisive factor is whether it is in safe keeping, and in fact it is not in safe keeping.[18]

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(1) E.g., by rain.

(2) By a fire in the courtyard.

(3) Because it may be blown away by the wind before landing.

(4) Because it may be blown by the wind outside of the court.

(5) Those of the courtyard.

(6) Those of the roof. Hence even when the Get was thrown over the parapet of the roof, it was still within the enclosure of the courtyard.

(7) Shab. 97. The discussion there relates to an article thrown from one point to another in public ground across private ground, Rabbi holding that this constitutes a change of domain, v. also B.K. 70b.

(8) Being all the time surrounded by the partitions of the courtyard, and the question of change of domain does not arise.

(9) Over the parapet.

(10) And therefore so long as it was ascending it is not regarded as having been ‘given’.

(11) E.g., a roof and a courtyard.

(12) I.e., if the outer one was lent to the wife for the purpose of receiving the Get therein, it does not follow that the inner one was lent with it.

(13) The roof or the courtyard as the case may be.

(14) But where it is not originally hers but lent to her by the husband it may be assumed that the loan of the one includes the other.

(15) Lit., ‘three measures’, ‘norms’, in regard to a Get.

(16) From a public domain.

(17) If the husband throws a Get into a basket on top of a high pole stuck in her ground.

(18) Because it may be blown by the wind outside the court.

The third is the rule laid down by Rab Judah in the name of Samuel; A man should not stand on one roof and gather rain water from his neighbour's roof, because just as dwellings are distinct below so they are distinct above. This applies to Sabbath, but in regard to a Get the decisive factor is whether the owner is particular, and to this extent men are not particular.[1]

Abaye said: If there are two courtyards one within the other, the inner one belonging to her and the outer one to him, and the outer partitions are higher than the inner ones, if he throws it to her, as soon as it reaches the air-space of the partitions of the outer one she is divorced, the reason being that the inner one itself is protected by the partitions of the outer one. The same, however, does not hold good with baskets; if there were two baskets one inside the other, the inner one belonging to her and the outer one to him and he threw the Get to her, even if it came into the air space of the inner one[2] she is not divorced, the reason being that it has not come to rest.[3] And supposing even that it comes to rest, what of it? It is a case of the vessels of the purchaser in the domain of the vendor?[4] — We are speaking here of a basket which has no bottom.[5]

MISHNAH. BETH SHAMMAI SAY THAT A MAN MAY DIVORCE HIS WIFE WITH AN OLD GET, BUT BETH HILLEL FORBID THIS. WHAT IS MEANT BY AN OLD GET? ONE AFTER THE WRITING OF WHICH HE WAS CLOSETED WITH HER. GEMARA. What is the ground of their difference? — Beth Shammai hold that we are not to prohibit her [to marry again] out of fear that people may [afterwards] say that her Get came before her child,[6] whereas Beth Hillel hold that we do prohibit her for fear people will say her Get came before her child. R. Abba said in the name of Samuel: If she married [on the strength of such a Get][7] she need not leave [the second husband]. According to another report, R. Abba said in the name of Samuel, If she was divorced [with such a Get], she has full liberty to marry again.[8]

MISHNAH. IF THE GET WAS DATED BY A REIGN WHICH OUGHT NOT TO COUNT,[9] BY THE EMPIRE OF MEDIA,[10] BY THE EMPIRE OF GREECE,[11] BY THE BUILDING OF THE TEMPLE OR BY THE DESTRUCTION OF THE TEMPLE,[12] OR IF BEING IN THE EAST THE WRITER DATED IT FROM THE WEST, OR BEING IN THE WEST HE DATED IT FROM THE EAST, THE WOMAN [WHO MARRIES AGAIN ON THE STRENGTH OF IT] MUST LEAVE BOTH HUSBANDS[13] AND REQUIRES A GET FROM BOTH AND HAS NO CLAIM EITHER FOR A KETHUBAH OR FOR INCREMENT[14] OR FOR MAINTENANCE OR FOR WORN CLOTHES[15] FROM EITHER OF THEM: IF SHE TAKES THESE FROM EITHER OF THEM SHE MUST RETURN THEM. A CHILD BORN TO HER FROM EITHER OF THEM IS A MAMZER.[16] NEITHER OF THEM [IF A PRIEST] IS TO DEFILE HIMSELF FOR HER: NEITHER OF THEM HAS A RIGHT TO HER FINDS OR TO THE PRODUCT OF HER LABOUR, AND NEITHER CAN ANNUL HER VOWS. IF SHE IS THE DAUGHTER OF A LAY ISRAELITE SHE IS DISQUALIFIED FOR MARRYING A PRIEST.[17]

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(1) And if he lends her one roof for receiving the Get, this is held to include the next adjoining to it.

(2) But was then destroyed before it came to rest at the bottom of the basket.

(3) And the sides of a basket do not afford safe keeping.

(4) V. supra 782.

(5) I.e., the outer basket has no bottom, so that the inner basket rests on the ground and is not in the husband's domain.

(6) Suppose he used the Get to divorce her a year or two after it was written and she had had a child from him in the meanwhile.

(7) Without the permission of the Beth din.

(8) I.e., the Beth din do not prevent her.

(9) [Lit., ‘unworthy’; v. the Gemara infra. Mishnayoth texts read ‘another’; i.e., he dated the Get by a Government not

corresponding to the country in which the Get was written.]

(10) I.e., by the Achemenid era.

(11) I.e., by the Seleucid era, beginning 311 B.C., v. A.Z. (Sonc. ed.) p. 42, n. 7.

(12) [The reference is, according to Blau Ehescheidung I, p. 66, to the First Temple, since documents were dated from the destruction of the Second, v. A.Z. 92].

(13) I.e., she must leave the second husband and cannot remarry the first.

(14) Her 'property of plucking' (v. Gloss. s.v. Mulug); she loses the right to be redeemed from captivity, which the Sages assigned to her in lieu of such increment.

(15) From what she brought in with her dowry.

(16) V. Glos.

(17) Being regarded as a 'loose woman'.

Talmud - Mas. Gittin 80a

IF SHE IS THE DAUGHTER OF A LEVITE, SHE BECOMES DISQUALIFIED FOR EATING TITHE,[1] AND IF THE DAUGHTER OF A PRIEST FOR EATING TERUMAH.[2] THE HEIRS NEITHER OF THE ONE HUSBAND NOR THE OTHER INHERIT HER KETHUBAH,[3] AND IF THEY DIE BROTHERS OF BOTH ONE AND THE OTHER OF THEM [IF NECESSARY] TAKE HALIZAH BUT NEITHER CAN MARRY HER. IF HIS NAME OR HER NAME OR THE NAME OF HIS TOWN OR THE NAME OF HER TOWN WAS WRONGLY GIVEN, SHE MUST LEAVE BOTH HUSBANDS AND ALL THE ABOVE PENALTIES APPLY TO HER.

IF ANY OF THE NEAR RELATIVES CONCERNING WHOM IT IS LAID DOWN THAT THEIR RIVALS[4] ARE PERMITTED TO MARRY [WITHOUT GIVING HALIZAH] WENT AND MARRIED AND IT WAS THEN FOUND THAT THIS ONE[5] WAS INCAPABLE OF BEARING,[6] THE ONE WHO MARRIED MUST LEAVE BOTH HUSBANDS[7] AND ALL THESE PENALTIES APPLY TO HER. IF A MAN MARRIES HIS SISTER-IN-LAW AND HER RIVAL[8] THEN WENT AND MARRIED ANOTHER MAN AND IT WAS FOUND THAT THE FIRST ONE WAS INCAPABLE OF BEARING, THE OTHER MUST LEAVE BOTH HUSBANDS AND ALL THESE PENALTIES APPLY TO HER.[9]

IF A SCRIBE WROTE A GET FOR THE HUSBAND AND A RECEIPT FOR THE WIFE[10] AND BY MISTAKE GAVE THE GET TO THE WIFE AND THE RECEIPT TO THE HUSBAND AND THE TWO EXCHANGED THEM AND AFTER A TIME THE GET WAS PRODUCED BY THE MAN AND THE RECEIPT BY THE WOMAN, SHE MUST LEAVE BOTH HUSBANDS AND ALL THESE PENALTIES APPLY TO HER. R. ELEAZAR[11] SAID: IF [IT IS PRODUCED] AT ONCE,[12] IT IS NO GET, BUT IF [IT IS PRODUCED] AFTER A TIME, IT IS A GET; IT IS NOT IN THE POWER OF THE FIRST TO RENDER VOID THE RIGHT OF THE SECOND.[13]

GEMARA. What is meant by A REIGN WHICH OUGHT NOT TO COUNT? — The empire of the Romans.[14] Why is it called A REIGN WHICH OUGHT NOT TO COUNT? — Because it has neither a script nor a language [of its own].[15]

'Ulla said: Why was it laid down that [the year of] the reign should be stated in a Get? For the sake of keeping on good terms with the Government. And for the sake of keeping on good terms with the Government is the woman to leave her husband and the child to be a mamzer.? — Yes. R. Meir in this is quite consistent, since R. Hamnuna said in the name of 'Ulla: R. Meir used to say, If any alteration is made in the form which the Sages fixed for bills of divorce, the child is a mamzer.[16]

BY THE EMPIRE OF GREECE. All [these eras] had to be mentioned.[17] For if I had been told only the REIGN WHICH OUGHT NOT TO COUNT, I might have thought that the objection to it is that it bears sway now, but in regard to the Empire of Media and Greece I might think that what is

past is past.[18] And if I had been told the empires of Media and Greece, I might have thought that the objection is that they were once empires, but as regards the building of the Temple, what is past is past. And if I had been told the building of the Temple, I might have thought that the objection is because they might say that the Jews are recalling their former glory, but this does not apply to the mention of the destruction of the Temple, which recalls their sorrow.[19] Hence all were necessary.

IF BEING IN THE EAST THE WRITER DATED IT FROM THE WEST. Who is referred to? Is it the husband? Then this is the same as IF HIS NAME OR HER NAME OR THE NAME OF HIS TOWN OR OF HER TOWN WAS WRONGLY GIVEN! It must be then the scribe; and so Rab said to his scribe, and R. Huna also said to his scribe, When you are in Shili,[20] write 'at Shili', even though you were commissioned in Hini, and when you are in Hini, write 'at Hini', even though you were commissioned in Shili.[21]

Rab Judah said in the name of Samuel:

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(1) V. Yeb. 912.

(2) v. Sot. 28A.

(3) The kethubah referred to here is a stipulation made by her with her husband that, should she die in his lifetime, her sons should inherit her property over and above their share in their father's inheritance, v. Yeb. 91A.

(4) I.e., (potential) co-wives. Cf. 1. Sam. I, 6. The reference is to two women within the forbidden degrees of consanguinity who married two brothers, v. Yeb. 22.

(5) The wife of the brother still living.

(6) Her marriage consequently was void, and hence the sister-in-law could have married the deceased husband's brother and had no right to contract another marriage without giving halizah.

(7) I.e., she must leave her husband and cannot marry the brother-in-law.

(8) I.e., another wife of the dead brother. Where there are two wives, only one may contract the levirate marriage.

(9) V. Yeb. 94b.

(10) To hand over to the husband on payment of her kethubah.

(11) [Var. lec. 'R. Eliezer'.]

(12) Explained in the Gemara.

(13) Because we suspect collusion between the wife and the first husband.

(14) [The reference is to the Eastern Roman Empire; v. next note].

(15) V. A.Z. (Sonc. ed.) p. 50, n. 2.

(16) Cf. supra, 5b.

(17) To make it clear that the Get should be dated according to the era of the State where it is made out.

(18) And therefore dating by it would cause no jealousy on the part of the Government.

(19) On the eras mentioned in this passage v. A.Z. (Sonc. ed.) p. 42, n. 7, and p. 47, n. 2.

(20) Shili and Hini were two places within walking distance of each other. V. B.B. (Sonc. ed.) p. 753, n. 6.

(21) The local of the deed is the place where the deed is written and this must be entered in the deed, not the place where the transaction recorded took place.

Talmud - Mas. Gittin 80b

This[1] is the ruling of R. Meir, but the Sages say that even though he dated it only by the term of office of the Santer[2] in the town, she is divorced. A certain Get was dated by the term of office of the prefect[3] of Bashcar.[4] R. Nahman son of R. Hisda sent to Rabbah to inquire how to deal with it. He sent him back reply: Such a one even R. Meir would accept. What is the reason? Because he is an official of the proper Government. But why should he be different from the Santer in the town? — To date it that way is an insult to them,[5] but to date it this way is a compliment to them.

R. Abba said in the name of R. Huna who had it from Rab: This is the ruling of R. Meir, but the Sages say that the child is legitimate. The Sages, however, agree with R. Meir that if his name or her

name or the name of his town or her town was wrongly given, the child is a mamzer. R. Ashi said: We find this also implied in our Mishnah: IF HIS NAME OR HER NAME OR THE NAME OF HIS TOWN OR HER TOWN WAS WRONGLY GIVEN, SHE MUST LEAVE BOTH HUSBANDS AND ALL THESE PENALTIES APPLY TO HER. Now who is the authority for this statement? Shall I say R. Meir? If so, the two rulings[6] might have been run into one? We conclude therefore that it was the Rabbis.

IF ANY OF THE NEAR RELATIVES CONCERNING WHOM etc. [They are penalised] if they MARRY, which implies, 'but not if they misconduct themselves'.[7] May we take this as a refutation of R. Hamnuna, who said that if a woman while waiting for her brother-in-law misconducted herself, she is forbidden to her brother-in-law?[8] — No; [it means,] if they marry, and the same is the rule if they misconduct themselves; and the reason why the word MARRY was used was as a polite expression. Some report the discussion thus: [They are penalised] if they marry, and the same rule [we should say,] applies if they misconduct themselves. May we presume then that the Mishnah supports R. Hamnuna, who said that if a woman while waiting for her brother-in-law misconducted herself she is forbidden to her brother-in-law? — No; the rule applies only where they actually married, because in that case they may be confused with a woman whose husband went abroad.[9]

IF A MAN MARRIES HIS SISTER-IN-LAW etc. Both cases[10] required to be stated. For had I only the first one, I might say the reason [why she is penalised][11] is because the precept of levirate marriage has not been carried out, but here where this precept has been carried out I might say that the rule does not apply. If again I had been told only in this case, I might have said that the reason is because she was put at his disposal,[12] but in the other case where she is not put at his disposal[13] I might say that she should not be penalised. Hence [both statements were] necessary.

IF THE SCRIBE WROTE AND BY MISTAKE GAVE THE GET TO THE WIFE AND THE RECEIPT TO THE HUSBAND . . . R. ELEAZAR SAYS, IF [IT WAS PRODUCED] AT ONCE etc. How do we define AT ONCE and how do we define AFTER A TIME? — Rab Judah said in the name of Samuel: The whole of the time during which they are sitting and dealing with that matter is called AT ONCE; once they have risen it is called AFTER A TIME. R. Adda b. Ahabah, however, said: So long as she has not married, it is called AT ONCE, but once she has married, it is called AFTER A TIME. We have learnt: IT IS NOT IN THE POWER OF THE FIRST TO RENDER VOID THE RIGHT OF THE SECOND. Now if we take the view of R. Adda b. Ahabah, it is quite correct to mention here the SECOND; but on Samuel's view, what are we to make of SECOND? —

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(1) That the year of the current reign must be mentioned.

(2) Probably = Senator: an elder whose office it was to decide questions regarding boundaries between fields, v. B.B. (Sonc. ed.) p. 270, n. 10.

(3) [Pers. Astandar, a district (astan) deputy (dar) of the king. Obermeyer op. cit. p. 92.]

(4) More correctly Kashkar (Jastrow). [According to Obermeyer loc. cit. Kashkar was the name given to the whole of the Mesene district (S. E. Babylon) of which it was the capital during the Sassanian period.]

(5) Viz., to the Government, the Santer being a minor official.

(6) This and the one regarding the year of the reign.

(7) [In which case she is forbidden to her brother-in-law for fear people will say that he had already given her halizah before she remarried and is now taking her unto himself as a wife, which. is not allowed.]

(8) V. Yeb. 81a.

(9) [If such a woman was informed on good authority that her husband had died and she married again and then her husband returned, she is forbidden to go back to him, for fear people might say that the husband had in reality divorced her before she remarried and that now he is taking her back, which is forbidden (v. Deut. XXIV, 4). If the sister-in-law in this case were allowed to marry the brother-in-law after marrying another, this might create a precedent (cf. n. 2), but not if she misconducted herself.]

(10) This and the one about the forbidden degrees.

(11) And forbidden to the brother-in-law.

(12) Lit., 'thrown before him', after the death of her husband, and therefore should not have remarried till she made sure that the levirate marriage of her rival was in order.

(13) [Her potential rival exempts her forthwith on the death of her husband from levirate marriage and halizah.]

Talmud - Mas. Gittin 81a

It means, the prospective right of the second.

MISHNAH. IF A MAN WROTE A GET WITH WHICH TO DIVORCE HIS WIFE AND THEN CHANGED HIS MIND, BETH SHAMMAI SAY THAT HE HAS THEREBY DISQUALIFIED HER FOR MARRYING A PRIEST.[1] BETH HILLEL, HOWEVER, SAY THAT EVEN THOUGH HE GAVE IT TO HER ON A CERTAIN CONDITION, IF THE CONDITION WAS NOT FULFILLED, HE HAS NOT DISQUALIFIED HER FOR MARRYING A PRIEST.

GEMARA. R. Joseph the son of R. Manasseh of Dewil sent an inquiry to Samuel saying: Would our Master instruct us with regard to the following problem. If a rumour spread that So-and-so, a priest, has written a Get for his wife, but she still lives with him and looks after him, what are we to do?[2] — He sent back a reply: She must leave him, but [first] the case must be examined. What are we to understand by this? Shall we say that we examine whether we can put a stop to the rumour or not? [This cannot be] because Samuel lived in Nehardea, and in Nehardea it was not the rule [of the Beth din] to put a stop to rumours.[3] But we do examine whether people speak of 'giving' also as 'writing'.[4] But granted that they call 'giving' 'writing', do they not also call 'writing' itself 'writing'? — That is so; and [the reason why she has to leave him is] because if it is found that 'giving' is called 'writing', perhaps the people [when they say he has 'written'] mean that he has 'given' [her the Get].[5] And still must she leave him? Has not R. Ashi said: We pay no regard to any rumour [that is spread] after the marriage? — When it says 'she must leave', it means 'she must leave the second husband'.[6] If that is so, you cast a slur on the children of the first?[7] — Since it is from the second that we separate her and we do not separate her from the first, people will say that he divorced her just before his death.[8]

Rabbah b. Bar Hanah reported R. Johanan as saying in the name of Rabbi Judah b. Ila'i: What a difference we can observe between the earlier generations and the later! (By the earlier generations he means Beth Shammai, and by the later R. Dosa). For it has been taught : 'A woman who has been carried away captive may still eat terumah,[9] according to the ruling of R. Dosa. Said R. Dosa: What after all has this Arab done to her? Because he squeezed her breasts, has he disqualified her for marrying a priest?'[10] Rabbah b. Bar Hanah further quoted R. Johanan as saying in the name of Rabbi Judah b. Ila'i: What a difference we can observe between the earlier generations and the later! The earlier generations used to bring in their produce by way of the kitchen garden[11] so as to make it liable to tithe, whereas the later generations bring in their produce over roofs and through enclosures so as not to make it liable for tithe, R. Jannai laid down that tebel[12] is not liable for tithe[13] until it has come in front of the house, since it says, I have put away the hallowed things out of mine house.[14] R. Johanan, however, says that even a courtyard[15] imposes the liability, as it says, That they may eat within thy gates and be filled.[16]

MISHNAH. IF A MAN HAS DIVORCED HIS WIFE AND THEN STAYS WITH HER OVER NIGHT IN AN INN, BETH SHAMMAI SAY THAT SHE DOES NOT REQUIRE FROM HIM A SECOND GET, BUT BETH HILLEL SAY THAT SHE DOES REQUIRE A SECOND GET FROM HIM. THIS, HOWEVER, IS ONLY WHEN THE DIVORCE IS ONE AFTER MARRIAGE; [FOR BETH HILLEL] AGREE THAT IF THE DIVORCE IS ONE AFTER BETROTHAL,[17] SHE DOES NOT REQUIRE A SECOND GET FROM HIM, BECAUSE HE WOULD NOT [YET] TAKE LIBERTIES WITH HER.

GEMARA. Rabbah b. Bar Hanah said in the name of R. Johanan: The difference of opinion [recorded here] relates only to the case where she was seen to have intercourse,

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(1) A priest being forbidden to marry a divorced woman.

(2) Shall we make her leave him so that people should not say that a priest has been allowed to divorce his wife and take her back?

(3) V. infra 89.

(4) In which case the rumour is a serious one.

(5) And we adopt the more rigorous construction.

(6) Supposing the first husband died and she afterwards married a priest, which, if she was really divorced, she may not do.

(7) If they were born after the alleged divorce.

(8) And there can be no question about the qualifications of his children.

(9) V. Glos.

(10) Whereas Beth Shammai disqualified her merely because her husband had written a Get, even if he did not give it.

(11) Where it would come in sight of the house.

(12) Produce from which the sacred dues have not yet been separated. V. Glos.

(13) I.e., it may be consumed casually, but not for a fixed meal. V. Tosaf. s.v. דרך.

(14) Deut. XXVI, 12.

(15) As soon as it comes in the courtyard.

(16) Ibid. 12.

(17) V. Glos. s.v. Erusin.

Beth Shammai holding that a man [in such a case] will not scruple to commit fornication, whereas Beth Hillel hold that a man will scruple to commit fornication.[1] Where, however, she was not seen to have intercourse, both agree that she does not require a second Get from him.

We learn: [BETH HILLEL] AGREE THAT IF THE DIVORCE IS ONE AFTER BETROTHAL, SHE DOES NOT REQUIRE A SECOND GET FROM HIM, BECAUSE HE WOULD NOT TAKE LIBERTIES WITH HER. Now [if a second Get is required] where she was seen to have intercourse, what difference does it make whether it was after betrothal or after marriage?[2] — We must suppose therefore that the Mishnah speaks of a case where she was not seen to have intercourse, and that R. Johanan was giving the view of the following Tanna, as it has been taught: 'R. Simeon b. Eleazar said: Beth Shammai and Beth Hillel were of accord that where she was not seen to have intercourse she does not require from him a second Get. Where they differed was when she was seen to have intercourse, Beth Shammai holding that a man would not scruple [in such a case] to commit fornication, and Beth Hillel holding that a man would scruple to commit fornication'. But according to the Mishnah, which we have explained to refer to the case where she was not seen to have intercourse, what are we to say is the [ground of] difference [between Beth Shammai and Beth Hillel]? — We must suppose there were witnesses to their being alone together but no witnesses to the intercourse, in which case Beth Shammai hold that we do not regard the witnesses to their being alone together as being ipso facto witnesses to their intercourse, whereas Beth Hillel hold that we do regard the witnesses to their being alone together as being ipso facto witnesses to their intercourse.[3] Beth Hillel admit, however, that if the divorce is one after betrothal she does not require a second Get from him, because since he would not take liberties with her we do not regard them as being ipso facto witnesses to intercourse.[4] But did R. Johanan say this?[5] Did not R. Johanan say that the halachah follows the anonymous Mishnah,[6] and we have explained the Mishnah to be referring to the case where she was not seen to have intercourse? — Different Amoraim report R. Johanan's opinion differently.

MISHNAH. IF A MAN MARRIES A [DIVORCED] WOMAN ON THE STRENGTH OF A 'BALD' GET,[7] SHE MUST LEAVE BOTH HUSBANDS AND ALL THE ABOVE-MENTIONED PENALTIES APPLY TO HER. A 'BALD' GET MAY BE COMPLETED BY ANYONE'S SIGNATURE.[8] THIS IS THE VIEW OF BEN NANNOS, BUT R. AKIBA SAYS THAT IT MAY BE COMPLETED ONLY BY RELATIVES WHO ARE QUALIFIED TO TESTIFY ELSEWHERE.[9] WHAT IS A 'BALD' GET? ONE WHICH HAS MORE FOLDS THAN SIGNATURES.[10]

GEMARA. What is the reason for [invalidating] A 'BALD' GET? — As a precaution, in case he said 'All of you [write]'.[11]

A 'BALD' GET MAY BE COMPLETED BY ANYONE'S SIGNATURE. Why does R. Akiba not permit a slave [to sign]? — Because this might lead people to say that he is competent to bear witness [in general]. But in the same way they might be led to say that a near relative is competent to bear witness? — The fact is that the reason why he does not allow a slave is because people might be led to think him of Israelite parentage.[12] According to this a robber who could prove his Israelitish descent[13] should be competent. Why then do we learn here: R. AKIBA SAYS, IT MAY BE COMPLETED ONLY BY RELATIVES WHO ARE QUALIFIED TO TESTIFY ELSEWHERE, which would imply that a relative may testify but not a robber? — We must say therefore that the reason in the case of a slave is that people might be led to say that he has been emancipated; and similarly in the case of a robber people might be led to say that he has reformed himself. But as to a relative what objections can be raised? Everyone knows that a relative is a relative.

R. Zera said in the name of Rabbah b. She'ilta who had it from R. Hamnuna the elder who had it from R. Adda b. Ahabah: If a 'bald' Get has seven folds and six witnesses, or six folds and five witnesses, or five folds and four witnesses, or four folds and three witnesses, then Ben Nannos and R. Akiba differ [as to how it is to be completed]. But if it has three folds and two witnesses both agree that only a relative may complete it. Said R. Zera to Rabbah b. She'ilta: Let us see now. Three in a folded Get correspond to two in a plain Get.[14] Seeing then that a relative is forbidden to sign the latter, should he not be forbidden to sign the former also? — He replied: I was also perplexed by this, and I asked R. Hamnuna, who in turn asked R. Adda b. Ahabah, who replied, Don't bother about three on a folded Get, since these are not required by the Torah.[15] It has been taught to the same effect: A 'bald' Get which has seven folds but six witnesses, six folds and five witnesses, five folds and four witnesses, or four folds and three witnesses is judged differently by Ben Nannos and R. Akiba, to the extent that if it was completed by a slave Ben Nannos says that the child [born from a marriage contracted on the strength of such a Get] is legitimate while R. Akiba says that it is a mamzer. If, however, it has three folds and two witnesses, both agree that only a relative may complete it.

R. Joseph read [in the statement of R. Zera] 'a competent witness' [instead of 'relative']. But in the Baraitha it says 'relative'? — R. Papa said: Read, 'a competent witness'.

R. Johanan said: Only one relative has been declared eligible to sign as witness on it but not two, for fear lest it should be confirmed on the strength of the signatures of two relatives and one competent witness.[16] Said R. Ashi: This is indicated in the Baraitha also

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(1) And therefore he meant the intercourse to be a method of betrothal, and since he has married her again he must give her a second Get.

(2) In either case according to Beth Hillel he has married her again.

(3) And we take the mere fact of their having been alone together as sufficient proof that they have married again.

(4) And therefore do not presume that they have married again.

(5) That where she was not seen to have intercourse she does not require a second Get even according to Beth Hillel.
(6) I.e., not stated in the name of any particular authority, so that it may be regarded as the view of the majority and therefore authoritative.
(7) V. note 7.
(8) I.e., even of persons who ordinarily are not eligible to give evidence.
(9) I.e., who are not disqualified on other grounds, such as being a robber etc.
(10) If the husband did not wish to act too impetuously, he could have the Get written in folds, the scribe folding the paper over after every two or three lines and a witness signing on the back. If any fold was left without a signature. the Get was called 'bald' and was not valid, v. B.B. (Sonc. ed.) p. 699 nn. 1-3 and 6 and diagram p. 704.
(11) In which case we presume that the number of folds corresponds to the number of persons who were present at the time, and that one of these neglected to sign. As stated supra 66b, this would invalidate the Get.
(12) Lit., 'raise him in regard to the pedigree'.
(13) Lit., 'who has a pedigree'.
(14) Three being the minimum for a folded Get as two for a plain one, in order to protract the proceedings for the reason stated supra p. 391. n. 7.
(15) And therefore a concession was made in this case.
(16) If doubt is thrown on the validity of the Get, it can be established by proving the genuineness of three of the signatures on it, provided at least two of these are not relatives. If two relatives had signed, it might happen that these were the two whose signatures were confirmed

Talmud - Mas. Gittin 82a

by the fact that it goes by steps from one number to the next,[1] which shows [that it is as R. Johanan said]. Abaye said: It also shows that the relative may sign where he pleases, at the beginning or in the middle or at the end; we gather this from the fact that no fixed place is assigned to him. It also shows that the Get can be confirmed on the strength of any three signatures and we do not require three next to one another, for if you should suppose that we do require them to be together, a place could be assigned to the relative before or between or after every two competent ones,[2] and several [relatives] should be allowed.[3]

When a party came before R. Ammi,[4] she said, Go and complete it with the signature of a slave from the street.[5]

C H A P T E R I X

MISHNAH. IF A MAN ON DIVORCING HIS WIFE SAYS TO HER, YOU ARE HEREBY FREE TO MARRY ANY MAN BUT SO-AND-SO, R. ELIEZER PERMITS HER [TO MARRY ON THE STRENGTH OF THIS GET], BUT THE RABBIS FORBID HER. WHAT MUST HE DO? HE MUST TAKE IT BACK FROM HER AND GIVE IT TO HER AGAIN SAYING, YOU ARE HEREBY FREE TO MARRY ANY MAN. IF HE WROTE IT[6] IN THE GET, EVEN THOUGH HE SUBSEQUENTLY ERASED IT, IT IS INVALID.

GEMARA. The question was raised: Has the word BUT here the force of 'except' or of 'on condition'? Shall we say it means 'except', and it is where he said 'except [So-and-so]' that the Rabbis differ from R. Eliezer, on the ground that he has left an omission in the Get,[7] but that where he says 'on condition [that you do not marry So-and-so]' they agree with R. Eliezer, placing this condition on a par with any other?[8] Or should we say perhaps that [BUT here] means 'on condition', and it is where he says 'on condition' that R. Eliezer differs from the Rabbis,[9] but where he says except' he agrees with them, on the ground that he has left an omission in the Get? — Rabina replied: Come and hear: 'All houses are defiled by strokes of leprosy but those of heathen'.[10] Now if you say that it means 'on condition', are we to understand that it is only on condition that the houses of heathens are not defiled that the houses of Israelites are defiled, which would imply that if the

houses of heathens are defiled the houses of Israelites are not defiled? And besides, can the houses of heathens be defiled, seeing that it has been taught: 'And I put the plague of leprosy. in a house of the land of your possession:[11] [this implies] that the land of your possession is defiled by plague of leprosy, but houses of heathens are not defiled by plague of leprosy' ? — We must understand therefore that 'but' means 'except'; and this may be taken as proved.

The Mishnah is not in agreement with the Tanna of the following [passage]. where it is taught: R. Jose said in the name of R. Judah: R. Eliezer and the Rabbis were agreed that if a man on divorcing his wife said to her, You are hereby permitted to any man except So-and-so, she is not divorced. Where they differed was if a man on divorcing his wife said to her, You are hereby permitted to marry any man on condition that you do not marry So-and-so

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(1) The Baraitha does not instance the case where the folds are more in number than the witnesses by two.

(2) I.e., in such a way that two competent ones should always be together.

(3) Because there would now be no danger that out of any three signatures two might be those of relatives.

(4) With a 'bald' Get, all the witnesses who had signed still being present.

(5) Thus showing that the halachah followed Ben Nannos.

(6) This reservation is discussed infra.

(7) In not making her free to marry any man.

(8) And the Get is effective at once, while the condition has to be fulfilled later. V. supra 74a.

(9) Because this condition is held to be on a par with other conditions.

(10) Neg. XII, 1.

(11) Lev. XIV, 34.

Talmud - Mas. Gittin 82b

. in which case R. Eliezer allowed her to marry anyone except that man and the Rabbis forbade her [to marry at all on the strength of that Get]. What is R. Eliezer's reason? — He puts the condition on the same footing as any other condition. And the Rabbis? — They say that any other condition does not involve an omission in the Get, but this one involves an omission in the Get.

And in the Mishnah, where, as we have decided, he means 'except', what is the reason of R. Eliezer? — R. Jannai answered in the name of a certain elder: Because the text says. She shall depart from his house and go and be another man's wife,[1] which implies that if he permitted her to marry only one other man she is divorced. And the Rabbis? — The word 'man' here means any other man. R. Johanan, however, says that R. Eliezer derived his reason from this verse: Neither shall they [the priests] take a woman put away from her husband.[2] This shows that even though she is only divorced from her husband [without being permitted to any other man], she is disqualified from the privileges of priesthood, which shows that the Get is valid.[3] And the Rabbis? — The prohibition of priestly privileges is on a different footing.[4]

R. Abba raised the question: What is the rule [if a man uses these words] in betrothing?[5] The answer is not self-evident whether we adopt the view of R. Eliezer or that of the Rabbis. If we adopt R. Eliezer's view, are we to say that R. Eliezer ruled as he did here [in the case of divorce] only because this is indicated in the Scripture, but in the case of betrothal we require an effective acquisition?[6] Or shall we say that R. Eliezer applies the principle of she shall depart and be [married]?[7] Again, if we adopt the view of the Rabbis, are we to say that the Rabbis ruled as they did here [in the case of divorce] only because we require a 'cutting off',[8] but in the other case any kind of acquisition is sufficient, or shall we say that they apply the analogy of 'she shall depart and be'? — After stating the problem he himself solved it, saying: Whether we adopt the view of R. Eliezer or that of the Rabbis, we require that the analogy of 'she shall depart and be' should hold good.

Abaye said: If we can assume that the answer of R. Abba was sound, then if Reuben came and betrothed a woman with a reservation in favour of [his brother] Simeon, and then Simeon came and betrothed her with a reservation in favour of Reuben, and both of them died, she contracts a levirate marriage with Levi, [the third brother] and I do not call her 'the wife of two dead',[9] the reason being that the betrothal of Reuben was effective but the betrothal of Simeon was not effective.[10] And in what circumstances would she be the wife of two dead?[11] — If, for instance, Reuben came and betrothed her with a reservation in favour of Simeon and then Simeon came and betrothed her without any reservation, in which case the betrothal of Reuben availed to make her forbidden to all other men and the betrothal of Simeon to make her forbidden to Reuben.[12]

Abaye raised the question: If he said to her, 'You are hereby permitted to any man except Reuben and Simeon', and then said 'to Reuben and Simeon' what is to be done? Do we say that [by these words] he permits what he had forbidden,[13] or are we to say that he both permits what he had forbidden and forbids what he had permitted?[14] And assuming the answer to be

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(1) Deut. XXIV, 2.

(2) Lev. XXI, 7.

(3) Hence if he permits her to one man only, she is divorced.

(4) Being subject to numerous regulations, and therefore we cannot argue from it to a Get in general.

(5) I.e., 'Be betrothed to me so as to be forbidden to any man except So-and-so.'

(6) In the phraseology of the Mishnah, a woman is 'acquired' by means of betrothal. Kid. ad. init.

(7) Deut. XXIV, 2. On the strength of this analogy, whatever applies to divorce applies also to betrothal.

(8) V. Deut. l.c. and supra p. 83.

(9) If a man makes the formal declaration to marry his deceased childless brother's wife, and dies before doing so, she is called 'the wife of two dead', and must not marry a second brother but must give him halizah. v. Yeb. 31b.

(10) Because when he forbade her to all the world except Reuben, the condition was null, as she was already forbidden to all the world by her betrothal with Reuben.

(11) In similar circumstances.

(12) And so whichever of them has died first, the other has promised to marry her.

(13) I.e., he means, You are permitted to Reuben and Simeon also.

(14) I.e., he means now, You are permitted only to Reuben and Simeon.

that he permits what he had forbidden, if he says only 'To Reuben',[1] what is to be done? Do we take the words 'To Reuben' to apply also to Simeon, presuming that why he now says Reuben is because he had been mentioned first, or does he mean Reuben and Reuben only? And assuming that he means Reuben only, if he says 'To Simeon' what is to be done? Do we take the words 'To Simeon' to apply to Reuben also, presuming that why he now says Simeon is because he had just mentioned him, or does he mean Simeon and Simeon only? R. Ashi asked,[2] If he said, Also to Simeon, what are we to do? Do we take 'also' to mean 'besides Reuben', or 'besides everyone else' [but not Reuben]? — These questions are left undecided.

Our Rabbis taught: After the demise of R. Eliezer, four elders came together to confute his opinion. They were R. Jose the Galilean, R. Tarfon, R. Eleazar b. Azariah, and R. Akiba. R. Tarfon argued as follows:[3] Suppose this woman went and married the brother of the man to whom she had been forbidden and he died without children, would not the first be found to have uprooted an injunction from the Torah?[4] Hence you may conclude that this is no 'cutting off'.[5] R. Jose the Galilean then argued as follows: Where do we find the same thing should be forbidden to one and permitted to another? What is forbidden is forbidden to all alike and what is permitted is permitted to all alike. Hence we may conclude that this is no 'cutting off'. R. Eleazar b. Azariah then argued as follows: 'Cutting off' means something which completely cuts him off from her. Hence you may

conclude that this is no cutting off'. R. Akiba then argued as follows: Suppose this woman went and married some other man and had children from him and was then widowed or divorced from him, and she afterwards went and married this man to whom she had been forbidden, would not her original Get have to be declared void and [consequently] her children bastards? From this we conclude that this is no cutting off'. Or alternatively I may argue: Suppose the man to whom she was forbidden was a priest and the man who divorced her died, then in respect of the priest she would be a widow[6] and in respect of all other men a divorcee.[7] There then follows an argument a fortiori: Seeing that she would have been forbidden to the priest qua divorcee, though this involves but a minor [transgression],[8] should she not all the more as a married woman, which is a much more serious affair,[9] be forbidden to all men?[10] From this we may conclude that this is no 'cutting off'. R. Joshua said to them: You should not seek to confute the lion after he is dead.[11] Raba said: All these objections can be countered except that of R. Eleazar b. Azariah, in which there is no flaw. It has been taught to the same effect: R. Jose said: I consider the argument of R. Eleazar b. Azariah superior to all the others.

The[12] Master said above: R. Tarfon argued thus: Suppose she went and married the brother of the man to whom she was forbidden and he died without children, would not the first be found to have uprooted an injunction from the Torah? Uprooting, [you say]? He uprooted?[13] — You should read, He stipulates to uproot an injunction from the Torah. He stipulates? Is there any word about it? Can she not do without marrying the brother of that man? — You should read, He may possibly cause an injunction to be uprooted from the Torah. But in that case a man should be forbidden to marry his brother's daughter, since perhaps he will die without children and he will thus cause an injunction to be uprooted from the Torah?[14] — This is the flaw in the argument. In what case then [does R. Tarfon assume R. Eliezer to differ from the Rabbis]? Is it where the husband says 'except'? In that case R. Eliezer would allow her to marry him,[15] as it has been taught: 'R. Eliezer agreed that if a man divorced his wife Saying to her, You are hereby permitted to any man except So-and-so, and she went and married some other man and was widowed or divorced, she is permitted to marry the man to whom she had been forbidden.' It must be therefore where he says 'on condition'.[16]

'R. Jose the Galilean argued as follows: Where do we find that the same thing should be forbidden to one and permitted to another? What is forbidden is forbidden to all and what is permitted is permitted to all'. Is that so? What of terumah and holy meats which are forbidden to one class[17] and permitted to another?[18] — We are speaking of sexual prohibitions. But what of forbidden degrees of consanguinity? — We speak of marriage. But there is the case of a married woman?[19] — This is the flaw in the argument. In what case then [does R. Jose assume R. Eliezer to differ from the Rabbis]? Is it where he says 'on condition' [that you do not marry So-and-so]? She is permitted to him in the way of fornication![20] — It must be then where he says 'except'.[21]

'R. Akiba argued as follows: Suppose she went and married some other man and had children from him and was then widowed or divorced and she went and married the man to whom she had been forbidden, would not her original Get have to be declared void and her children bastards?' If that is so, then wherever there is a condition in the Get she should not marry, for fear lest she should not fulfil the condition and the Get would prove to be void and her children bastards. This is the flaw in the argument. In what case then [does R. Akiba suppose R. Eliezer to differ from the Rabbis]? It cannot be where he says 'except', because there R. Eliezer permits her, as it has been taught, 'R. Eliezer agrees that if a man divorced his wife saying to her, You are hereby permitted to any man except So-and-so, and she went and married some other man and became widowed or divorced, she is permitted to the man to whom she was originally forbidden'?[22] — It must be therefore if he says 'on condition'. 'Alternatively [R. Akiba argued]: Suppose the man to whom she was forbidden was a priest and the man who divorced her died, then she would be a widow in respect of the priest and a divorcee in respect of all other men. There thus follows an argument a fortiori. Seeing then that she would be forbidden to the priest qua divorcee, though this involves but a minor [transgression],

should she not all the more as a married woman, which is a much more serious affair, be forbidden to all men'. In what case then [does R. Akiba assume R. Eliezer to have differed from the Rabbis]? Is it where he says 'on condition'?

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(1) To supplement his first statement.

(2) On the assumption that in the last case he means 'to Simeon only'.

(3) Lit., 'answered and said'.

(4) Because now she cannot fulfil the law of the levirate marriage.

(5) V. supra p. 83.

(6) Because as far as he went she had never been divorced.

(7) And consequently still forbidden to the priest, since she had at any rate been divorced from her husband. V. supra.

(8) The marriage of a divorcee to a priest involves the breach of an ordinary prohibition which carries with it no death penalty.

(9) Involving, as it does, the penalty of death.

(10) In virtue of this peculiar divorce, she becomes at the time of divorce on one side a divorcee in respect of men in general, while on the other side she remains a married woman in respect of the priest. Seeing that the divorced side was sufficient to prohibit her to the priest, should not the married side be sufficient to prohibit her to all other men?

(11) As much as to say, If R. Eliezer had been alive, he could have found answers to your objections.

(12) The flaws in the objections are now pointed out.

(13) That is to say, he has done nothing positive to this effect.

(14) Because the widow cannot possibly marry the husband's brother.

(15) Viz., the divorcee to marry the brother of the second husband, in the case put by R. Tarfon, so that there would be no point in his objection.

(16) Where failure to fulfill the condition renders the Get void.

(17) Laymen.

(18) Priests.

(19) Who is permitted to her husband and forbidden to others.

(20) And therefore there is no point in his objection.

(21) Which forbids her to the said man also in the way of fornication.

(22) And so there is no point in R. Akiba's objection.

Talmud - Mas. Gittin 83b

In that case she is for purposes of fornication a divorcee in respect of him?[1] — It must be therefore where he says 'except'. Now if R. Akiba [thought that the difference is where he says] 'except', why did he not bring [merely] the objection which applied to that case,[2] and if [he thought that it was where he says] 'on condition', why does he not bring [merely] the objection applying to that case?[3] — R. Akiba had heard one report according to which R. Eliezer said 'except', and another according to which he said 'on condition'. For the version which gave 'except' he had one objection, and for the version which gave 'on condition' he had another objection. And what is the flaw [in the second objection of R. Akiba]? We cannot say it is that the prohibition of her marrying a priest is on a special footing,[4] because R. Eliezer also bases his ruling[5] on the priestly prohibition?[6] — Raba follows the version which R. Jannai gave in the name of a certain elder.[7]

'R. Joshua said to them, You should not seek to confute the lion after he is dead.' This would imply that R. Joshua concurred with him. But how can this be, seeing that he himself also brought an objection against him?[8] — What he meant was this: I also have objections to bring, but whether for me or for you, it is not fitting to seek to confute the lion after he is dead. What was the objection of R. Joshua? — As it has been taught: R. Joshua said: Scripture compares her status before the second marriage to the one before the first marriage.[9] Just as before the first marriage she must not be tied to any other man, so before the second marriage she must not be tied to any other man.

[To revert to] the above text: ‘R. Eliezer agreed that if a man divorced his wife saying to her, You are permitted any man except So-and-so, and she went and married some other man and became widowed or divorced, she is then permitted to marry the man to whom she was at first forbidden.’ R. Simeon b. Eleazar argued against R. Eliezer's view, saying, Where do we find that what one man renders forbidden can be made permissible by another?[10] But are there no such cases? Is there not that of the sister-in-law who is rendered forbidden[11] by the husband and permissible by the brother-in-law?[12] — In that case it is really the brother-in-law who makes her forbidden, since as far as the husband is concerned she is permitted.[13] But what of vows, where the one who makes the vow forbids and the wise man permits?[14] — [This is not really so], as R. Johanan has said that the wise man does not release except where there is a change of mind.[15] But there is the husband's power of disallowing, since the wife vows but the husband disallows?[16] — The answer to that is provided by what R. Phineas said in the name of Raba; for R. Phineas said in the name of Raba: A woman who makes a vow always does so subject to the consent of her husband.

‘R. Eleazar b. Azariah argued as follows: "Cutting off"[17] means something that cuts him off from her. From this we conclude that this is not "cutting off".’ What do the [other] Rabbis[18] make of this ‘cutting off’? — They require it for the ruling contained in the following, as had been taught: ‘[If a man says], This is your Get on condition that you never drink wine, on condition that you never go to your father's house, this is not "cutting off".[19] [If he says], For thirty days, this is "cutting off".’ And the other [R. Eleazar]? — We can learn this, [he says,] from the use of the form kerithuth in place of kareth.[20] And the Rabbis? — They do not stress the difference between kareth and kerithuth.[21]

Raba said: [If a man said,] This is your Get on condition that you do not drink wine all the days of my life, this is no ‘cutting off’, but if he said, All the days of So-and-so's life, this is ‘cutting off’. Why this difference? [If you say that where he says] ‘the life of So-and-so’, it is possible that he may die and she may fulfil the condition, [I may rejoin that where he says] ‘my life’, there is also a possibility that he may die and she may fulfil the condition? — We should read therefore, [If he says,] All the days of your life,[22] this is no ‘cutting off’, but if he says, All the days of my life or of So-and-so's life, this is cutting off’.

Raba put the following question to R. Nahman: [If he says], To-day you are not my wife, but to-morrow you will be my wife, what is to be done? The answer is not clear whether we accept the view of R. Eliezer[23] or that of the Rabbis. We ask: If we adopt the view of R. Eliezer, are we to say that in that case R. Eliezer ruled as he did, because as he permitted her she is permitted in perpetuity, but here[24] he would not do so, or are we to say that he makes no difference? And we ask, if we adopt the view of the Rabbis, are we to say that in that case the Rabbis ruled as they did because she is not entirely separated from him, but here they would say that once she is separated she is separated?[25] Having asked the question he himself answered it:

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(1) As in respect of all other men, and therefore the a fortiori argument adduced above does not apply.

(2) Viz., the first of his objections.

(3) Viz., the second of his objections.

(4) And therefore we cannot argue from the case where the man to whom she is forbidden is a priest to cases in general.

(5) In our Mishnah that the Get is valid as it stands.

(6) V. supra, 82b.

(7) That R. Eliezer bases his ruling on the text ‘and she marry another man’, v. supra.

(8) V. infra.

(9) Because it is written, When a man taketh a wife (Deut. XXIV, 1), referring to the first marriage, and afterwards, and she be another man's wife (ibid. 2), referring to the second marriage.

(10) As here, where the first man makes her forbidden to a certain man, and the second renders her permissible, v. Tosef. Git. VII.

(11) To all other men.
(12) By means of halizah (v. Glos.).
(13) As soon as he is dead.
(14) By remitting the vow, v. supra 36b.
(15) By pointing out the consequences of the vow, so that the one who made it can say, Had I known this I would not have vowed, and the revision renders the vow void retrospectively.
(16) The vow, that is to say, is not rendered void, only the husband disallows her observing it; v. Ned, 68a.
(17) Deut. XXIV, 1.
(18) Viz., R. Tarfon, R. Jose the Galilean and R. Akiba.
(19) Because she is tied to him till her death.
(20) I.e., the use of the double form where the single would have sufficed implies that another lesson may be learnt in addition to this.
(21) V. supra p. 83.
(22) V. note 10.
(23) Who says in our Mishnah that a substantive reservation in the Get does not necessarily invalidate it.
(24) Where the divorce is only for one day.
(25) And the condition is worthless.

Talmud - Mas. Gittin 84a

It is reasonable to suppose that whether [we adopt the view of] R. Eliezer or of the Rabbis, [we should decide that] once she is separated from him she is separated.

Our Rabbis taught: [If a man says.] This is your Get on condition that you marry So-and-so, she should not marry, but if she does marry she need not leave the second husband. What does this mean? — R. Nahman said: What it means is this: She must not marry that man, for fear that people should say that men may make presents of their wives. If, however, she marries anyone else, she need not leave him. And do we not as a precaution make her part from him, and [are we not afraid that] we may be permitting a married woman to another?[1] R. Nahman thereupon said: What is meant is this: She must not marry that man, for fear people should say that men can make presents of their wives, but if she does marry him she need not part from him since we do not separate them merely as a precaution.[2] Said Raba to him: [According to you] it is that man whom she must not marry, which implies that she may marry another. But [how can this be] seeing that she has to carry out his condition? And should you say that it is possible for her to marry [another] to-day and be divorced to-morrow,[3] and so fulfil the condition, comparing this case to that in regard to which you joined issue with Rab Judah, as it has been stated: If a man says, I forbid myself to sleep to-day if l shall sleep to-morrow, Rab Judah says that he should not sleep to-day lest perhaps he should sleep to-morrow, whereas R. Nahman says that he may sleep today and we disregard the possibility of his sleeping to-morrow?[4] But how can you compare the two cases? In that case [of the sleeper] the matter lies in the man's own hands, since if he likes he can keep himself from sleeping by pricking himself with thorns, but in this case does it lie with her whether she is divorced or not?[5] — No, said Raba; [what we must say is] that she must not marry either that man or any other; she must not marry him for fear people should say that men may make presents of their wives, nor must she marry another since she has to fulfil the condition. If, however, she marries that man, she need not part from him since we do not separate them merely out of precaution, whereas if she marries another she must leave him since she is required to fulfil the condition. It has been taught in accordance with Raba: This woman must not marry either that man or any other. If, however, she has married him she need not part from him, but if she marries another she must part from him.

Our Rabbis taught: [If a man says.] ‘This is your Get on condition that you go up to the sky’, ‘on condition that you go down to the abyss’, ‘on condition that you swallow a reed four cubits long’ ‘on condition that you bring me a reed of a hundred cubits’, on condition that you cross the great sea on

foot,' this is no Get. R. Judah b. Tema, however, says that one like this is a Get. And R. Judah b. Tema laid it down as a general principle that if any condition impossible at any time of fulfilment was laid down by him at the outset, he must be regarded as merely trying to put her off,[6] and [the Get] is valid.

R. Nahman said in the name of Rab that the halachah follows the view of R. Judah b. Tema. R. Nahman b. Isaac said: This is indicated by [the language of] the Mishnah,[7] since it says, 'Wherever a condition possible at any time of fulfilment is laid down at the outset, it is a valid condition.' This implies that if it is impossible of fulfilment it is void,[8] and so we may conclude.

The question was raised: [If a man says,] 'Here is your Get on condition that you eat swine's flesh,' what is the law? — Abaye replied: That is exactly a case in point.[9] Raba, however, replied: It is possible for her to eat and be scourged.[10] Abaye stresses the words 'general principle' [used by R. Judah b. Tema], so as to cover [the eating of] swine's flesh; Raba stresses the words 'one like this is a Get' to exclude [the eating of] swine's flesh.

Objection was raised [against Raba] from the following: [If a man says,] 'Here is your Get on condition that you have intercourse with So-and-so', if the condition has been fulfilled this is a Get, otherwise not. [If he says,] 'On condition that you do not have intercourse with my father or your father', we disregard the possibility of her having intercourse with them.[11] Now this ruling does not contain the words 'On condition that you have intercourse with my father or your father',[12] This is intelligible from the standpoint of Abaye,[13] but creates a difficulty from the standpoint of Raba?[14] — Raba may reply to you: There is a reason why [the eating of] swine's flesh should be a valid condition, because it is possible for her to eat it and be scourged. 'So-and-so' also it is possible for her to persuade by a money present [to marry her]. But does it lie with her to have intercourse with his father or her father? Even supposing that she would commit the offence, would his father or her father commit the offence? We must therefore say that according to Raba the words 'general principle' [in the statement of R. Judah b. Tema] are meant to cover the case of his father and her father,[15] and the words 'one like this is a Get', to exclude the case of swine's flesh,[16]

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(1) Seeing that she has not carried out the condition, the Get may be void and she may still be the wife of the first husband.

(2) I.e., out of fear that people will say this.

(3) And then marry the man mentioned in the Get.

(4) V. Ned. 14b. And so here we disregard the possibility that she will after all not be divorced and not carry out her condition.

(5) By the second man. So as to be able to marry the man mentioned in the Get.

(6) I.e., to annoy her.

(7) In B.M. 94a.

(8) And therefore its non-fulfilment does not affect the validity of the document.

(9) Of a condition which R. Judah b. Tema would declare void.

(10) And R. Judah would not declare the condition void, and the Get would not be valid till it had been fulfilled.

(11) And the Get is valid at once.

(12) Which is prohibited.

(13) Since in this case the condition would be void.

(14) For in his view R. Judah b Tema would still make the validity of the Get depend on the fulfilment of the condition.

(15) Which is also considered a condition that cannot be fulfilled.

(16) Which is considered one capable of fulfilment,

while according to Abaye 'general principle' covers swine's flesh and 'one like this' excludes

'So-and-so'.[1]

An objection was brought [from the following]: [If he says], 'Here is your Get on condition that you eat swine's flesh', or, supposing she was a lay woman, 'on condition that you eat terumah', or, supposing she was a nazirite, 'on condition that you drink wine', then if the condition has been fulfilled this is a Get, and if not it is not a Get.[2] This is consistent with the view of Raba but conflicts with that of Abaye, [does it not]? — Abaye may reply to you: Do you imagine that this ruling represents a unanimous opinion? This represents the view of the Rabbis. But could he [Abaye] not base his view on the ground that [such a Get contains] a stipulation to break an injunction laid down in the Torah, and wherever a stipulation is made to break an injunction laid down in the Torah, the condition is void?[3] — R. Adda the son of R. Ika replied: When we say that where a stipulation is made to break an injunction laid down in the Torah the condition is void, we refer for instance to a stipulation to withhold the food, raiment and marriage duty [of a married woman], where it is the man who nullifies the injunction, but here it is she who nullifies it, Rabina strongly demurred to this [saying], Is not her whole purpose in nullifying only to carry out his condition, so that in point of fact it is he who nullifies? No, said Rabina. When we say that wherever a stipulation is made to break an injunction laid down in the Torah the condition is void, we mean, for instance, [a stipulation] to withhold her food, raiment and marriage duty, where he is unquestionably nullifying [the injunction]. But in this case [will anyone tell her that] she is absolutely bound to eat? She need not eat and will not be divorced.

WHAT MUST HE DO? HE MUST TAKE IT FROM HER, etc. Who is the authority for this ruling?-Hezekiah said: It is R. Simeon b. Eleazar, as it has been taught: R. Simeon b. Eleazar says, [It is no Get] until he takes it from her and again gives it to her saying, Here is your Get.[4] R. Johanan said, You may even hold that it is Rabbi;[5] your colleague[6] has suggested that there is a special reason here, since she has already become possessed of it[7] to the extent of being disqualified in regard to the priesthood.[8]

IF HE WROTE IT IN THE GET. R. Safra said: The words here are[9] IF HE WROTE IT IN THE GET. Surely this is self-evident? It says, IF HE WROTE IT IN THE GET?-You might think that this is the case[10] only [if he inserts them] after the substantive part of the Get[11] [has been written],[12] but where [he made the reservation] before the substantive part [has been written], then even [if he made it] orally [the Get] should be invalid. Therefore [R. Safra] tells us [that this is not so]. Raba on the other hand held that the rule[13] applies only if [he made the reservation] after the substantive part [was written], but if before the substantive part was written then even if made orally [the Get] is invalid. Raba was quite consistent in this, as he used to say to the scribes who wrote bills of divorce, Silence the husband till you have written the substantive part [of the Get].[14]

Our Rabbis taught: All conditions [written] in a Get make it invalid. This is the view of Rabbi. The Sages, however, say that a condition which would render it invalid if stated orally makes it invalid if written, but one which does not invalidate it if stated orally does not invalidate it if written. [Hence] the word 'except'[15] which invalidates it [if expressed] orally also invalidates it [if inserted] in writing, whereas ['on condition'] which does not invalidate it [if expressed] orally does not invalidate it [if inserted] in writing.

R. Zera said: They disagree only where [the reservation is inserted] after the substantive part [was written], Rabbi holding that we disallow 'on condition' in virtue of having disallowed 'except',[16] while the Rabbis considered that we need not disallow 'on condition' in virtue of having disallowed 'except'. If, however, [the reservation is inserted] after the substantive part [has been written].

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(1) Since she may be able to persuade him with money to marry her, the condition is considered capable of fulfilment.

(2) Though the condition cannot be fulfilled without incurring the liability of a flogging.

(3) V. B.M. 51a; 94a.
(4) Supra 78a.
(5) Who in that case held that he need not actually give it to her again.
(6) R. Kahana, R. Johanan was apparently speaking to some disciples of his from Babylon, whence R. Kahana also came; V. B.K. 117a. V, also Tosaf. s.v,
(7) By his first delivery of it,
(8) Even though she is not yet divorced, she is treated as a divorcee and must not marry a priest should the husband die without giving her the Get a second time as required.
(9) Lit., 'we learn here'.
(10) Viz., that merely speaking them does not invalidate the Get,
(11) His name and her name, the name of his town and her town. V. supra.
(12) And a fortiori if before.
(13) That words which invalidate when written do not invalidate if only spoken.
(14) Lest he should say something which might invalidate it.
(15) V. supra.
(16) I.e., for fear one might be confused with the other.

Talmud - Mas. Gittin 85a

, both sides agree that [the Get is still] valid. As for the Mishnah which says. IF HE HAS WRITTEN IT, and which we have explained as referring to 'except', so that 'on condition' would not invalidate [the Get], if you like I can say that it is assuming it [to be inserted] before the substantive part [has been written], so that it concurs with the Rabbis, or if you like I can say that it is assuming it [to be inserted] after the substantive part [has been written], so that it concurs with both authorities. Raba, however, said that they [Rabbi and the Rabbis] disagree in the case where [the reservation is inserted] after the substantive part has been written, Rabbi holding that we disallow the insertion in this case in virtue of having disallowed it before the substantive part [has been written], while the Rabbis considered that we need not disallow one in virtue of the other; but if [it is inserted] before the writing of the substantive part, both sides agree that [the Get is] invalid. As for the Mishnah which says. IF HE HAS WRITTEN IT. and which we have explained as referring to 'except', so that 'on condition' would not invalidate [the Get], it is assuming it to be inserted after [the writing] of the substantive part, and it follows the Rabbis.

The father of R. Abin recited before R. Zera: 'If he wrote the Get with [the insertion of] a condition, the unanimous ruling is that it is invalid,' [He said to him:] The unanimous ruling is that it is invalid? [How can this be] seeing that there is a dispute on the subject? What you must say is, The unanimous ruling is that it is valid. And in what circumstances? If the words are inserted after the writing of the substantive part. Why did not R. Zera say to him, [Say,] This is invalid, [the ruling then being] according to Rabbi? — [R. Zera reasoned] that the tanna[1] had been taught to say 'The unanimous ruling is', and that he might confuse 'valid' and 'invalid', but that he would not confuse 'this is' with 'the unanimous ruling is'.[2]

MISHNAH. [IF HE SAID,] YOU ARE HEREBY PERMITTED TO ANY MAN RUT MY FATHER AND YOUR FATHER, MY BROTHER AND YOUR BROTHER, A SLAVE. A HEATHEN, OR ANYONE TO WHOM SHE IS INCAPABLE OF BEING BETROTHED, THE GET IS VALID.[3] [IF HE SAYS.] YOU ARE HEREBY PERMITTED TO ANYONE BUT A HIGH PRIEST (SUPPOSING SHE WAS A WIDOW) OR, (SUPPOSING SHE WAS A DIVORCEE OR A HALUZAH),[4] AN ORDINARY PRIEST, OR, (SUPPOSING SHE WAS A BASTARD OR A NETHINAH),[5] A LAY ISRAELITE, OR, (SUPPOSING SHE WAS OF ISRAELITISH BIRTH). A BASTARD OR A NATHIN, OR ANYONE WHO IS CAPABLE OF BETROTHING HER ALBEIT IN TRANSGRESSION OF THE LAW,[6] THE GET IS INVALID.

GEMARA. The general statement in the first clause brings under the rule all other persons who become liable to kareth[7] [by having intercourse with her]; the general statement in the second clause brings under the rule all other persons who are forbidden [to marry her] only in virtue of a negative command,[8] (such as, for instance, an Ammonite, a Moabite,[9] a Nathin, an Egyptian and an Edomite).[10] Raba inquired of R. Nahman: [If he says, you may marry anyone] except [that you may not] be betrothed to a minor, what is the law?[11] Do we emphasise the fact that at the present at any rate he is not capable of betrothing her[12] or rather the fact that he will one day be capable? — He replied: [We have a teaching:] 'A girl under age can be divorced [after her father's death] even though her betrothal was contracted by her father.'[13] Now why should this be, seeing that we require that her separation should be on the same footing as her union?[14] The reason must be, because she will one day be capable of betrothal; so here we say that he will one day be capable of betrothal.[15]

[Suppose he says, You may marry anyone] except those still to be born, what is the law? Do we lay stress on the fact that as yet at any rate they are not born, or on the fact that one day they will be born? — He replied: We have the answer in our Mishnah: [IF HE SAID, ANY MAN BUT] A SLAVE, A HEATHEN, [IT IS VALID]. Now if we suppose [that this constitutes a reservation in the Get], then [the excepting of] a slave and a heathen also [should constitute a reservation in the Get], since it is possible for them to become proselytes?-[To this Raba rejoined:] Those are not bound to become proselytes in the ordinary course of things, these will be born in the ordinary course of things. [If he said she may marry anyone] except the husband of her sister, what is the law? Do we lay stress on the fact that now at any rate she is not eligible for him, or rather perhaps on the fact that possibly her sister will die and she will become eligible for him? — He replied: We have [the answer] in our Mishnah: [ANY MAN BUT] A SLAVE, A HEATHEN. Now [the excepting] of a slave and heathen also [should constitute a reservation] since they can become proselytes? — [He rejoined]: Conversion is not a usual occurrence, death is.

[If he said, you may marry] excepting you commit fornication, what is the law? Do we lay stress on the fact that he left no reservation in the sphere of marriage, or on the fact that he did leave a reservation in the sphere of intercourse? — He replied: We have [the answer] in our Mishnah: [ANY MAN BUT] MY FATHER AND YOUR FATHER. Now to what [does the exception apply]? Shall I say to marriage? But are his father and her father capable of marrying her? It must be then to fornication, and when he excepts his father and her father this is no reservation,[16] which shows that when he excepts anyone else, it is counted as a reservation? — [He rejoined:] perhaps the exception refers after all to marriage, since he may transgress the law and marry her.

[If he says], Excepting unnatural intercourse, what is the law? Do we lay stress on the fact that he made no reservation in the sphere of natural intercourse, or on the fact that the text says, as with a woman?[17] [If he says], Except [that I reserve to myself] the right of annulling your vows, what is the law? Do we lay stress on the fact that he has left no reservation in the sphere of marriage, or rather perhaps on the text, her husband may establish it or her husband may make it void?[18] [If he says], Except that you may not eat terumah,[19] what is the law? Do we lay stress on the fact that he has left no reservation in the sphere of marriage, or on the fact that it is written the purchase of his money [shall eat of it]?[20] Suppose he said, Excepting that I shall inherit you, what is the law? Do we lay stress on the fact that he has left no reservation in the sphere of marriage or that the text says, to his kinsman and he shall inherit it?[21] [If he says,] Except for your being betrothed by a document, what is the law? Do we say that it is possible for one to betroth her by a money present or by intercourse,[22] or rather perhaps do we go by the text and she shall depart and marry,[23] which indicates that all kinds of marrying are on the same footing? — These questions are left undecided.

MISHNAH. THE ESSENCE OF THE GET IS THE WORDS, BEHOLD YOU ARE HEREBY PERMITTED TO ANY MAN.

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(1) The father of R. Abin.
(2) Hence he emended the word ‘invalid’ into ‘valid’, but not ‘the unanimous ruling is’ into ‘this is’, although the latter in itself would have been preferable.
(3) Because the expression ‘you are permitted to any man’ still covers all possible cases and there is no reservation.
(4) V. Glos.
(5) Fem. of Nathin. A descendant of the Gibeonites who were accepted into the community of Joshua, but who were forbidden to intermarry with the Israelites. V. Josh. X, and Sanh. (Sonc. ed.) p. 340. n. 12.
(6) [The act of betrothal, that is to say, is valid, though they are not allowed to marry. Whereas with those enumerated in the first part of the Mishnah the betrothal is of no effect and no divorce is necessary to separate them.]
(7) I.e., those mentioned in Lev. XX. For kareth, v. Glos.
(8) Which carries with it only flogging but no death penalty nor kareth.
(9) V. Deut. XXIII,4.
(10) Ibid, 8. The words in brackets are omitted in some texts.
(11) I.e., does this constitute a reservation invalidating the Get or not.
(12) And therefore that it is no reservation.
(13) I.e., even though her marriage was a binding one.
(14) Lit., ‘[the rule of] she shall go forth and be’. And therefore only her father should have power to receive her Get for her.
(15) And the Get is invalid, owing to the reservation it contains.
(16) Since she is in any case forbidden to them.
(17) Lev. XX, 13. The Hebrew is משכבי, lit., ‘lyings’, the plural form being taken to indicate both natural and unnatural intercourse.
(18) Num. XXX, 13.
(19) If she marries a priest. V. Glos.
(20) Lev, XXII, 11. And since she may not eat of it she is not the ‘purchase of his money’, and therefore is not fully permitted to marry ‘any man’.
(21) Num. XXVII, 11. Since he is to inherit her, she thus remains in a sense his wife.
(22) V. Kid. 2a.
(23) Deut. XXIV, 2.

Talmud - Mas. Gittin 85b

. R. JUDAH SAYS: [HE MUST ADD,] AND THIS SHALL BE TO YOU FROM ME A WRIT OF DIVORCE AND A LETTER OF RELEASE AND A BILL OF DISMISSAL. WHEREWITH YOU MAY GO AND MARRY ANY MAN THAT YOU PLEASE. THE ESSENCE OF A DEED OF EMANCIPATION IS THE WORDS, BEHOLD YOU ARE HEREBY A FREE WOMAN, BEHOLD YOU BELONG TO YOURSELF.

GEMARA. There is no question that if a man says to his wife, Behold you are hereby a free woman, his words are of no effect,[1] and if he says to his bondwoman, Behold you are hereby permitted to any man, his words are of no effect.[2] If he said to his wife, Behold you belong to yourself, what are we to say? Does he mean, you belong to yourself entirely, or only as far as your work is concerned? — Rabina said to R. Ashi: Come and hear: Since we have learnt: THE ESSENCE OF A DEED OF EMANCIPATION IS THE WORDS, BEHOLD YOU ARE HEREBY A FREE WOMAN, BEHOLD YOU BELONG TO YOURSELF. Now seeing that a slave whose body belongs [to his master] becomes his own owner when he says to him, Behold you belong to yourself, how much more so with a wife whose body does not belong to him?

Rabina asked R. Ashi: If a man said to his slave, I have no concern with you, what [are we to say]? — R. Hanin said to R. Ashi, or, according to another report, R. Hanin of Huzna'ah[3] said to R. Ashi: Come and hear, as it has been taught:[4] If a man sells his slave to a heathen, he thereby becomes emancipated, but he requires a deed of emancipation from his first master. Rabban Simeon

b. Gamaliel said: This is the case only if he did not write out an oni for him, but if he wrote out an oni for him, this is his deed of emancipation. What is an oni? — R. Shesheth said: If he gave him a written statement saying. If you escape from him, I have no concern with you.[5]

RABBI JUDAH SAYS. [HE MUST ADD], AND THIS SHALL BE TO YOU FROM ME A WRIT OF DIVORCE AND A LETTER OF RELEASE. What is the ground of the difference [between the Rabbis and R. Judah]? — The Rabbis held that an indication[6] which is not definite can still count as an indication,[7] and so though he did not insert the words 'and this', the circumstances show that he was divorcing her with this Get. R, Judah on the other hand held that an indication not definite does not count as an indication, and the reason why the Get is valid is because he has inserted the words 'and this' , which show that he was divorcing her with this Get, but if he did not insert these words, people will say that he divorced her by word of mouth, and the document is merely a corroboration.

Abaye said: The one who writes out the Get should not spell ודין which might be read we-din [and it is just], but ודן.[8] He should not spell איגרת which might be read igarath [a roof], but אגרת.[9] He should not write לימהך[10] which might be read li-mehak [to me from this], nor should he spell למחך[11] which might be understood 'as a joke'. The words and דיתיהוויין, and דיתיצביין[12] should have each three yods [at the end], as two might be read di-tehewjan[13] [that they may be] and de-tezibjan[13] [whom they may like]. The waw of the words תירוכין[14] and שבוקין[15] should be lengthened[16] as otherwise the words might be read terikin [those who are divorced] and shebikin [those that are released].[17] The waw of כדו[18] should also be lengthened so as not to read כדי which means 'in vain'. He should not write לאיתנסבא which might be read la-yithnesseba [she shall not be married], but לההתנסבא.[19]

The question was raised: Are the words 'and this' required or not? — Come and hear: Raba laid down the formula of the Get thus: '[We are witnesses] how So-and-so son of So-and-so dismissed and divorced his wife from this day and for all time'. We see that he does not mention 'and this'. But if we are to go by this, we might ask, did he mention all the rest of the Get? Nevertheless we require the rest, and so we require [this also].

The words 'from this day' are to rule out the view of R. Jose who said that the date of the document is sufficient indication.[20] The words 'for all time',

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(1) Because she is already free.

(2) Because not having been emancipated as far as work is concerned, she cannot marry an Israelite.

(3) [Or Hozae, the modern Khuzistan, S.W. Persia. V. Kid. 6b.]

(4) Supra 43b, q.v.

(5) Which shows that these words confer emancipation.

(6) Heb. 'yadayim', 'hands'.

(7) Lit., 'hands which do not prove are still counted hands', v. Kid. 5b.

(8) We-den, 'and this'.

(9) Iggereth, 'a letter'.

(10) In place of li-mehak למהך 'to go'. [In other words, Abaye rules out the matres lectionis in these three words, in view of the ambiguity they may give rise to.]

(11) [The ה and ח are interchangeable letters in Semitic languages.]

(12) Di-tehewjen, di-tezbijen, 'that you may marry', 'whom you please'.

(13) Third pers. plur. fem.

(14) Terukin, 'release',

(15) Shebukin, 'divorce',

(16) So as not to look like a yod.

(17) I.e., not an abstract noun but a participle passive.

(18) Kedu, ‘accordingly’.
(19) Le-hithnasseba, ‘to be married’,
(20) Supra 72a.

Talmud - Mas. Gittin 86a

are to rule out the formula about which Raba questioned R. Nahman, viz., if he said, ‘To-day you are not my wife but to-morrow you will be my wife’.[1]

THE ESSENCE OF A DEED OF EMANCIPATION IS THE WORDS, BEHOLD YOU ARE HEREBY A FREE WOMAN, BEHOLD YOU BELONG TO YOURSELF. Rab Judah laid down the following formula for the deed of sale of a slave: ‘This slave is legally adjudicated to bondage, and is absolved and dissociated from all freedom and claims and demands of the King and the Queen,[2] and there is no mark of any [other] man upon him, and he is clear of all blemishes and from any boil that may come out within two years,[3] whether new or old.’ What is the remedy for such a boil? — Abaye said: [A mixture of] ginger and silver dross and sulphur and vinegar of wine and olive oil and white naphtha laid on with a goose's quill.

MISHNAH. THE FOLLOWING THREE BILLS OF DIVORCE ARE INVALID BUT IF A WOMAN MARRIES ON THE STRENGTH OF THEM THE CHILD [BORN OF SUCH MARRIAGE] IS LEGITIMATE: [ONE.] IF THE HUSBAND WROTE IT WITH HIS OWN HAND BUT IT WAS ATTESTED BY NO WITNESSES; [A SECOND]. IF THERE ARE WITNESSES TO IT BUT NO DATE; [A THIRD,] IF IT HAS A DATE BUT THE SIGNATURE OF ONLY ONE WITNESS. THESE THREE BILLS OF DIVORCE ARE INVALID, BUT IF SHE MARRIES THE CHILD IS LEGITIMATE. R. ELEAZAR, HOWEVER, SAYS THAT EVEN THOUGH IT WAS NOT ATTESTED BY WITNESSES AT ALL, SO LONG AS HE GAVE IT TO HER IN THE PRESENCE OF WITNESSES IT IS VALID,[4] AND ON THE STRENGTH OF IT SHE MAY RECOVER HER KETHUBAH FROM MORTGAGED PROPERTY, SINCE SIGNATURES OF WITNESSES ARE REQUIRED ON THE GET ONLY AS A SAFEGUARD.[5]

GEMARA. Are these all?[6] Is there not also the ‘old’ Get?[7] — With an ‘old’ Get she need not part [from her second husband], with one of these she must. This is a good answer for one who holds that with one of these she must part, but to one who holds that she need not part,[8] what can we reply? — With an ‘old’ Get her marriage is permitted in the first instance,[9] with one of these only retrospectively. But there is a ‘bald’ Get?[10] — With such a Get the child born is a bastard, but here the child is legitimate. This answer is satisfactory if we adopt the view of R. Meir, (who said that wherever any alteration is made in the form prescribed by the Sages for bills of divorce, the child is a bastard).[11] but if we accept the view of the Rabbis what reply can be made? — With a ‘bald’ Get she must part [from the second husband], here she need not. This is a satisfactory answer if we accept the view that here she need not part, but if we adopt the view that here also she must part, what reply can be given? — The Mishnah is not dealing with a folded Get.[12] But there is the Get with an improper reign inserted?[13] — There she must leave the husband, here she need not leave him. This is a good enough reason for one who holds that here she need not part, but to one who holds that she must part what answer can be made? — (There the child is a bastard, here the child is legitimate. This accords well enough with the view of R. Meir, but if we adopt the view of the Rabbis what can be said?)[14] — We must suppose that the Mishnah follows R. Meir, so that there the child is a bastard but here it is legitimate.

[Which kinds of Get] are excluded by the specific number mentioned at the beginning of the ruling, and which by the specific number mentioned at the end? — The first number excludes those we have mentioned.[15] The second number excludes the one regarding which it has been taught: ‘If a man brings a Get from abroad and gives it to the wife without saying, In my presence it was written

and in my presence it was signed'. [the second husband] must put her away and the child is a bastard. This is the opinion of R. Meir.[16] The Sages, however, say that the child is not a bastard.[17] What should the man do? He should take it from her and give it to her again in the presence of two witnesses and say, In my presence it was written and in my presence it was signed.[18]

IF THE HUSBAND WROTE WITH HIS OWN HAND BUT IT WAS ATTESTED BY NO WITNESSES. Rab said: It is definitely stated here, WITH HIS OWN HAND. To what [was Rab referring]? Shall I say to the first clause of the ruling?[19] Then what has he told us? It says distinctly, WITH HIS OWN HAND? [Shall l say] to the middle clause?[20] [In this case it can hardly matter],[21] since it is attested by witnesses? — He must refer then to the last clause, IF IT HAS A DATE BUT THE SIGNATURE OF ONLY ONE WITNESS.

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(1) Supra 83b.

(2) As an offender against the law, v. B.M. 80a.

(3) So Rashi; others; four years. Jastrow, however, translates 'any boil, even up to a white spot'.

(4) R. Eleazar holding that the witnesses to delivery make the Get effective. V. supra 17b.

(5) Lit., 'for the good order of the world', In case the witnesses die and the husband challenges the validity of the Get.

(6) Bills of divorce which are invalid without however rendering the offspring of the subsequent marriage illegitimate.

(7) V. supra 79b.

(8) V. the discussion infra.

(9) V. supra.

(10) V. supra 81b.

(11) The words in brackets are omitted in some texts, but they seem to be requisite for the argument.

(12) V. supra 81b.

(13) Lit, 'the rule regarding the peace of the government'. V. supra 79b.

(14) The words in brackets are omitted in some texts, and appear to be superfluous.

(15) The Mishnah adopting the view of R. Meir that in these cases the child is a bastard.

(16) The Mishnah here too adopting the view of R. Meir.

(17) Although the Get is up to this point ineffective.

(18) V. supra. 5b.

(19) I.e., to the case where there are no witnesses.

(20) Where there is no date.

(21) Whether he wrote it with his own hand or not.

Talmud - Mas. Gittin 86b

[Rab tells us that in this case the child is legitimate only] if [the Get is] written with his own hand, but if the scribe has written it and there is only one witness, the child is not [legitimate]. Samuel, however, said that even if the scribe had written it and there was [the signature of only] one witness, [the child is] legitimate, since we have learnt, If the scribe wrote and there was the signature of a witness, the Get is valid.[1] And Rab? — [He might rejoin:] Is there any comparison? There her marriage is permitted in the first instance,[2] but here only retrospectively.[3] And Samuel? — [He can rejoin:] There is no difficulty;[4] there we assume that the scribe is fully competent,[5] here that he is not so competent.[6] So too R. Johanan said: The Mishnah definitely stated, WITH HIS OWN HAND. Said R. Eleazar to him, But it is attested by the signature of witnesses?[7] — He replied: [I refer] to the last clause.

Rab sometimes ruled [in such cases] that [the woman] should leave [the second husband] and sometimes that she need not leave him. How was this? If she had children [he ruled that] she need not leave,[8] if she had no children she must leave. Mar Zutra b. Tobia raised an objection [from the following]: 'If any of these[9] had been doubtfully betrothed or doubtfully divorced, they must give halizah but cannot marry the brother-in-law'. What is meant by 'doubtfully' betrothed? If, for

instance, he had thrown to her the betrothal token, and it was doubtful whether it landed nearer to him or nearer to her, this is a doubtful betrothal. A doubtful divorce is where he wrote [the Get] with his own hand but it was not attested with the signature of witnesses, or if it was attested but had no date, or if it had a date but the signature of only one witness; this is a doubtful divorce. Now if you say that [a woman so divorced] should not leave [her second husband],[10] then her co-wife[11] on the strength of such a one might come to marry the brother-in-law?[12] — [He replied]: Let her marry him; it is of no consequence, since the only danger is of breaking a rule of the Rabbis.[13] Levi said: In neither case need she leave [the second husband]. So too said R. Johanan: In neither case need she leave the second husband. So too R. Johanan said to the sons of R. Halafta of Huna:[14] Thus said your father, In neither case need she leave, and the karzith in the stacked corn does not spoil the water of purification.[15] What is a karzith? — Abaye explained: The large fly found among the stacks,[16] R. Daniel the son of R. Kattina raised an objection against this [from the following]: 'All birds spoil the water of purification [by drinking of it] except the pigeon, because it swallows the water completely.'[17] Now if what has been said is correct, it should say, 'except the pigeon and the karzith?' — The authority could not speak definitely, as the big one does not spoil but the small one does spoil. Up to what size [is it reckoned small]? — R. Jeremiah (or it may have been R. Ammi) said, Up to the size of an olive.

R. ELEAZAR SAYS THAT EVEN THOUGH etc. Rab Judah said in the name of Rab: The halachah follows R. Eleazar in the matter of bills of divorce.[18] When [he continued] I stated this in the presence of Samuel, he said, In the matter of [commercial] documents also. Rab however, said, Not in the matter of documents. But it is stated [in the Mishnah]: SHE MAY RECOVER HER KETHUBAH FROM MORTGAGED PROPERTY?[19] — R. Eleazar gave two rulings. and Rab concurred with him in one but differed from him in regard to the other. So too R. Jacob b. Idi said in the name of R. Joshua b. Levi: The halachah follows R. Eleazar in bills of divorce. R. Jannai, however, said that such a document has not even a tincture of a Get in it.[20] Does not R. Jannai accept the ruling of R. Eleazar? — What he meant was, According to the Rabbis, such a document has not even a tincture of a Get. So too R. Jose son of R. Haninah said in the name of Resh Lakish: The halachah follows R. Eleazar in the matter of bills of divorce. R. Johanan, however, said that such a document has not even a tincture of a Get. Are we to say that R. Johanan does not accept the ruling of R. Eleazar? — What he meant was, According to the Rabbis such a document has not even the tincture of a Get.

R. Abba b. Zabda sent to Mari b. Mar saying, Inquire of R. Huna whether the halachah follows R. Eleazar in the matter of bills of divorce or not. Before he could do so, R. Huna died, but Rabbah his son said to him, Thus said my father in the name of Rab: The halachah follows R. Eleazar in the matter of bills of divorce. Moreover our teachers who are well versed in the halachah said in the name of our Master,[21] The halachah follows R. Eleazar in the matter of bills of divorce, since R. Hama b. Guria said in the name of Rab, The halachah follows R. Eleazar in the matter of bills of divorce. According to another version: And our Colleagues[22] that are well versed in the halachah and the disciples of our Teacher [Rab] said that the halachah follows R. Eleazar in the matter of bills of divorce. For R. Hisda said in the name of R. Hama b. Guria in the name of Rab that the halachah follows R. Eleazar in the matter of bills of divorce. So too when Rabin came [from Palestine] he said, R. Eleazar[23] says that the halachah follows R. Eleazar in the matter of bills of divorce.

MISHNAH. IF TWO MEN SENT [TO THEIR WIVES] TWO BILLS OF DIVORCE WITH THE SAME NAMES AND THEY BECAME MIXED UP [THE BEARER] MUST GIVE BOTH OF THEM TO EACH OF THE WOMEN. CONSEQUENTLY, IF ONE OF THEM WAS LOST THE OTHER BECOMES VOID.[24] IF FIVE MEN WROTE JOINTLY IN THE SAME DOCUMENT, SO-AND-SO DIVORCES SO-AND-SO AND SO-AND-SO SO-AND-SO, AND IF THE WITNESSES DULY SIGNED BELOW, ALL ARE VALID AND THE GET IS TO BE GIVEN TO EACH OF THE WOMEN. IF THE SCRIBE WROTE OUT THE FORMULA[25] FOR EACH ONE

AND THE WITNESSES SIGNED BELOW, THE ONE TO WHICH THE SIGNATURES ARE ATTACHED[26] IS [ALONE] VALID.

GEMARA. Who is the authority [for this rule]?[27] — R. Jeremiah said: It is not R. Eleazar. For if we were to follow R. Eleazar, since he holds that it is the witnesses to delivery[28] that make [the Get] effective, [they could not do so in this case] since they do not know with which [Get] either of the women is divorced. Abaye said: It is possible to ascribe this ruling to R. Eleazar also, since I may say, Granting that R. Eleazar requires the Get to be written in the name of that particular woman, does he also require it to be given in the name of that particular woman?[29]

IF FIVE WROTE JOINTLY etc, What is meant by JOINTLY and what is meant by FORMULA? — R. Johanan said: If there is one date for all it is a 'joint' [Get], if there is a separate date for each it is a formula [Get]. Resh Lakish, however, said

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(1) V. supra 66b.
(2) And so we suppose that the scribe not only wrote but also signed.
(3) If he wrote himself, and therefore if the scribe wrote without signing, the child is not legitimate.
(4) Even if we assume in each case that the scribe wrote without signing.
(5) And knows that he is not to write save on definite instruction from the husband. V. supra. 71b-72a.
(6) And he might have written on the instruction of a third party, in which case the Get is invalid. V. supra ibid.
(7) R. Eleazar thought he referred to the middle clause.
(8) So as not to cast a slur on the children.
(9) Women within the fifteen forbidden degrees of consanguinity to the deceased husband's brother, v. Yeb. 30b and supra p. 383. n. 5.
(10) Because the divorce is regarded as valid.
(11) I.e., the co-wife of one of those women of forbidden degrees of consanguinity who was divorced with such a Get.
(12) Since she is no longer regarded as a co-wife of a woman forbidden to the brother-in-law.
(13) Biblically the Get is valid,
(14) [Read with var. lec. Haifa.]
(15) By drinking from it; v. Num. XIX. For explanation, v. infra.
(16) [So Rashi. It is not clear what species of insect is referred to; v. Lewysohn, Zoologie p. 315.]
(17) Whereas others let some drip back from their beaks, and so spoil the water.
(18) That the witnesses to delivery render them effective.
(19) Which would seem to show that the rule applies to commercial documents also.
(20) And does not disqualify the woman from marrying a priest on her husband's death, much less does it enable her to marry again.
(21) Rab.
(22) R. Hisda being one of them.
(23) The Amora of that name.
(24) Since we do not know for which it was meant.
(25) **, V. infra in the Gemara.
(26) Lit., 'with which the witnesses are read'.
(27) That the matter may be rectified by giving both documents to each woman.
(28) I.e., the delivery by the bearer to the woman.
(29) [Once the Get has been written in the name of the woman there is no need for such a special intention to accompany the delivery of the Get.]

: Even if there is one date for all it is still called a formula [Get],[1] and a 'joint' [Get] is where he writes 'We, So-and-so and So-and-so have divorced our wives So-and-so and So-and-so'[2] R. Abba strongly demurred to this. If we accept the view of R. Johanan, he said, that a 'joint' [Get] is one

where there is the same date for all, have we not to consider the possibility that when the witnesses sign they are attesting only the last? Has it not been taught: 'If witnesses subscribe to an expression of kind regards in a Get, [the Get] is invalid, since we apprehend that they may have attested the expression of kind regards'?[3] — Has it not been stated in connection with this: R. Abbahu said: It was explained to me by R. Johanan that if it is written 'they gave him greeting,'[4] it is invalid, but if 'and they gave', it is valid? So here we suppose that what is written is, 'So-and-so and So-and-so and So-and-so'.[5] Moreover, if we accept the view of R. Johanan that a 'formula' [Get] is one where there is a separate date for each, why [should it be invalidated][6] as being a 'formula' [Get]? Why not rather as being one which is 'written by day and signed by night'?[7] — Mar Kashisha the son of R. Hisda said to R. Ashi: We state as follows in the name of R. Johanan, that [this rule applies] where it is written with each one, On the first day of the week, on the first day of the week.[8]

Rabina said to R. Ashi: On the view of Resh Lakish — that a 'formula' [Get] is also one in which there is one date for all, and that a 'joint' [Get] is one in which it is written thus: 'We, So-and-so and So-and-so have divorced our wives So-and-so and So-and-so, it follows that two women would be divorced with the same Get, and the Torah has laid down that he must write 'for her', [which implies, for her] and not for her and her neighbour? — [We must suppose] that he further writes, So-and-so divorced So-and-so and So-and-so divorced So-and-so. Rabina thereupon said to R. Ashi: How does this differ from the case regarding which it has been taught: 'If a man makes over all his property in writing to two of his slaves, they acquire possession and emancipate one another'?[9] — [He replied]:Have we not explained this to apply only where he writes two deeds.[10]

It has been taught in agreement with R. Johanan and it has been taught in agreement with Resh Lakish. It has been taught in agreement with R. Johanan: 'If five men wrote in the same Get, So-and-so divorces So-and-so and So-and-so So-and-so and So-and-so So-and-so, and one date [is written] for all of them and the witnesses are subscribed below, all are valid and the document must be given to each woman. If there is a [separate] date for each one and the witnesses are subscribed at the bottom, the one to which the signatures are attached is [alone] valid. R. Judah b. Bathyra says that if there is a space between them it is invalid but if not it is valid, since the date does not constitute a division'. It has been taught in agreement with Resh Lakish: 'If five persons wrote jointly in the same Get, We, So-and-so and So-and-so have divorced our wives So-and-so and So-and-so, So-and-so divorcing So-and-so and So-and-so divorcing So-and-so, and there is one date for all and the witnesses are signed below, all are valid and the document must be given to each one. If there is a [separate] date for each one or space between one and another and the witnesses are signed at the bottom, the one to which the signatures are attached is valid. R. Meir says that even if there is no space between them it is invalid since the date makes a division,' But on the view of Resh Lakish why is it required here that there be a [separate] date for each one,[11] seeing that he has said that even if there is one date for all it is still a 'formula' [Get]? — That is the case only where they were not lumped together at the beginning,[12] but here where they were lumped together at the beginning, if the various parts are separated by dates, there is a division, but otherwise not.

MISHNAH, IF TWO BILLS OF DIVORCE ARE WRITTEN [ON THE SAME SHEET] SIDE BY SIDE AND THE SIGNATURES OF TWO WITNESSES IN HEBREW[13] RUN FROM UNDER ONE TO UNDER THE OTHER AND THE SIGNATURES OF TWO WITNESSES IN GREEK[14] RUN FROM UNDER ONE TO UNDER THE OTHER,[15] THE ONE TO WHICH THE TWO FIRST SIGNATURES ARE ATTACHED IS [ALONE] VALID.[16] IF THERE IS ONE SIGNATURE IN HEBREW AND ONE IN GREEK AND THEN AGAIN ONE IN HEBREW AND ONE IN GREEK RUNNING FROM UNDER ONE [GET] TO UNDER THE OTHER,[17] BOTH ARE INVALID.

GEMARA. Why should not one be rendered valid by the signature Reuben [under it] and the other by the signature 'son of Jacob witness'[18] [under it] seeing that we have learnt, 'The signature "son of So-and-so, witness" [renders a document] valid'? — We suppose that he writes 'Reuben son of'

under the first Get and ‘Jacob witness’ under the second. But cannot the first be rendered valid by ‘Reuben son of’ and the second by ‘Jacob witness’, since we have learnt, ‘The subscription, "So-and-so witness" [renders the document] valid’? — We suppose he did not add ‘witness’. Or alternatively I may say that he does add ‘witness’, but we know that this is not the signature of Jacob.[19]

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(1) And only the last one is valid, because this separates all the others from the signatures.

(2) In this case the signatures can apply to all.

(3) And not to the Get itself, v, B. B. 176a.

(4) Lit., ‘they inquired (of his welfare)’.

(5) Hence there is no separation.

(6) As far as the upper names are concerned.

(7) Which is invalid. V. supra, 17a. The questioner presumes that the various divorces bear different dates, with the result that all the divorces except the last have not been signed on the same day as written.

(8) I.e., they are all written and signed on the same day.

(9) Supra 42a. Here too the two slaves are emancipated with the one document; and it is a principle that the emancipation of slaves is regulated by the same laws as those of divorce.]

(10) Ibid.

(11) In order to make it a ‘formula’ Get, with only the last one being valid.

(12) With the formula ‘we, So-and-so’.

(13) Lit., ‘Hebrew witnesses’.

(14) Lit., ‘Greek witnesses’.

(15) All the signatures being under one another.

(16) The Gemara discusses why the other is not also valid.

(17) As neither has two names attached immediately beneath it.

(18) I.e., supposing the signature is ‘Reuben son of Jacob’ and ‘Reuben’ comes under the first Get on the right and son of Jacob’ under the second on the left. We can then suppose that we have two distinct signatures, one for each Get.

(19) But of his son.

Talmud - Mas. Gittin 87b

But perhaps he signed the name of his father? — A man would not omit his own name and sign the name of his father. But perhaps he uses it as a mark?[1] Did not Rab [for his signature] draw a fish, R. Hanina a palm branch, R. Hisda a samek, R. Hoshaya an ayin, and Rabbah son of R. Hanah a mast?[2] — A man would not take the liberty of using his father's name as a mark. But cannot the one Get be rendered valid by two Hebrew signatures and the other by two Greek signatures,[3] since we have learnt, ‘A Get written in Hebrew and signed in Greek or written in Greek and signed in Hebrew is valid’? And should you object that since [the second Get] is separated [from its signatures] by two lines[4] it is not valid, has not Hezekiah said: If he filled up the space[5] [with the signatures of] relatives,[6] it is still valid? — Ze'iri has in fact taught that both of them are valid. What then [is the reason of] our Tanna? — [He thinks perhaps] the [Greek] signatures are reversed,[7] so that all are subscribed to the one Get.

ONE SIGNATURE IN HEBREW AND ONE IN GREEK. But cannot one Get be rendered valid by one Hebrew signature and one Greek and the other also by one Hebrew signature and one Greek, since we have learnt that if there is one Hebrew signature and one Greek the document is valid? — Ze'iri has in fact taught that both are valid. What then [is the reason of] our Tanna? — He thinks that perhaps one of the signatures is reversed,[8] so that there are three signatures to one Get and only one to the other.

MISHNAH. IF SOME OF THE GET WAS LEFT OVER [FROM THE FIRST SHEET] AND IS WRITTEN ON THE NEXT SHEET[9] AND THE WITNESSES [SIGN] BELOW, [THE GET IS]

VALID. IF THE WITNESSES HAVE SIGNED AT THE TOP OF THE SHEET OR AT THE SIDE OR ON THE BACK OF AN UNFOLDED GET,[10] IT IS INVALID. IF THE TOP OF ONE GET IS FASTENED TO THE TOP OF ANOTHER AND THE WITNESSES' SIGNATURES ARE BETWEEN THE TWO, BOTH OF THEM ARE INVALID.[11] IF THE TWO ARE ATTACHED END TO END AND THE WITNESSES' SIGNATURES ARE BETWEEN, THE ONE ON WHICH THE WITNESSES SIGNATURES FOLLOW DIRECTLY[12] IS VALID. IF THE TOP OF ONE IS ATTACHED TO THE BOTTOM OF THE OTHER AND THE WITNESSES SIGNATURES ARE IN THE MIDDLE, THE ONE IN WHICH THE SIGNATURES COME AT THE END IS VALID. A GET OF WHICH THE TEXT IS IN HEBREW AND THE SIGNATURES IN GREEK, OR THE TEXT IN GREEK AND THE SIGNATURES IN HEBREW, OR WHICH HAS ONE HEBREW SIGNATURE AND ONE GREEK, OR WHICH WAS WRITTEN BY A SCRIBE AND SIGNED BY ONE WITNESS, IS VALID. IF A MAN SIGNS, 'SO-AND SO, WITNESS,' IT IS VALID. IF HE SIGNS, 'SON OF SO-AND-SO, WITNESS, IT IS VALID, IF HE SIGNS, 'SO-AND-SO SON OF SO-AND-SO WITHOUT ADDING 'WITNESS', IT IS VALID. THIS WAS THE CUSTOM OF THE MORE ELEGANT CIRCLES[13] IN JERUSALEM.[14] IF HE WROTE HIS OWN FAMILY NAME AND HERS,[15] THE GET IS VALID.

GEMARA. [IF SOME OF THE GET IS WRITTEN ON THE NEXT SHEET.] But is there not a danger that these were originally two distinct bills, and he has kept the date of the first and the witnesses of the last and cut off the date of the second and the signatures of the first?[16] — R. Abba said in the name of Rab: We suppose there is a space at the bottom.[17] But is there not a danger that he has cut off the date of the second?[18] — As R. Abba in the name of Rab answered in the previous instance, that we suppose there is a space at the bottom,

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(1) As special signature for the left hand text.

(2) V. supra 36a.

(3) Rashi says that a 'Greek' signature means one in which the name of the father comes before the name of the son, but it is more natural to suppose that it means simply one written in the Greek way, i.e., from left to right, so that the substantive signature would come under the left-hand Get and he separated from it by two lines containing the names of the fathers of the Hebrew signatories.

(4) Since the signatures to the first would come partly under this Get. V. previous note.

(5) Between the text and the signatures.

(6) Who are not eligible as witnesses.

(7) I.e., that they may have written from right to left, so as to correspond with the Hebrew signatures.

(8) One of the witnesses either Greek or Hebrew might have, under the influence of the preceding signatures, signed in a reverse manner respectively either to the left or to the right, with the result that three of the signatures belong to one document only.

(9) I.e., the next column of the roll.

(10) V. supra.

(11) Because the signatures do not follow immediately on either document.

(12) I.e., without turning the document upside down.

(13) נקיי תדעת v. Sanh. (Sonc. ed.) p. 131, n. 2.

(14) I.e., to sign only 'So-and-so son of So-and-so'. According to another reading, this sentence is placed after the next, and the custom referred to will then be that of writing the family name. V. Tosaf. 88a s.v. וכך.

(15) Or any other descriptive name instead of his father and her father.

(16) I.e., the bottom of the first sheet and the top of the second, taking care that the text shall still be continuous.

(17) Which shows that it has not been cut off.

(18) By 'date' we must understand all that part which is already found on the first sheet.

so here we suppose that there is a space at the top. But perhaps he changed his mind [before

completing it] and then after all wrote [the rest subsequently]?[1] — We suppose that 'You are hereby' comes at the end of one sheet and 'permitted' at the top of the next. But perhaps he just happened [to change his mind at that point]? — Such a possibility[2] we do not apprehend. R. Ashi said: We assume that we can tell from the bottom of the roll.[3]

IF THE WITNESSES HAVE SIGNED AT THE TOP OF THE SHEET etc. Is that so? Did not Rab sign at the side? — It is all right if the top of the signature is towards the text.[4] In that case why does it state IF THE TOP OF ONE IS FASTENED TO THE TOP OF THE OTHER AND THE SIGNATURES ARE BETWEEN, BOTH OF THEM ARE INVALID? Cannot we see which signature is turned towards the text,[5] and declare that Get valid? We suppose there that the signatures run from one to the other like a cross bar.[6] Then what about the next clause: IF THE TOP OF ONE IS ATTACHED TO THE BOTTOM OF THE OTHER AND THE WITNESSES' SIGNATURES ARE IN THE MIDDLE, THE ONE IN WHICH THE SIGNATURES COME AT THE END IS VALID? If they run from one to the other like a bar, they are read neither with one nor with the other? — The fact is that Rab only signed thus on letters.[7]

A GET OF WHICH THE TEXT IS IN HEBREW AND THE SIGNATURES IN GREEK . . . OR WHICH WAS WRITTEN BY A SCRIBE AND SIGNED BY ONE WITNESS IS VALID. R. Jeremiah said: What we have learnt [in explanation of this] is, if the scribe signed.[8] R. Hisda said: Who is the authority for this ruling? R. Jose. A certain marriage kethubah was brought before R. Abbahu in which the handwriting of the text and the signature of one witness could be identified. He thought of declaring it valid, but R. Jeremiah said to him, What we have learnt is that the scribe signed.[9]

IF HE WROTE HIS FAMILY NAME AND HER FAMILY NAME, IT IS VALID. Our Rabbis taught: The family name of ancestors allowed in bills of divorce is one which has been in use at any time in the past ten generations. R. Simeon b. Eleazar says: If it has been in use within three generations, it is valid, but if only beyond that, [the Get is] invalid. Whose authority is followed in the dictum of R. Hanina: 'An ancestral family name which has been in use within three generations may be inserted in bills of divorce'? — The authority of R. Simeon b. Eleazar. R. Huna said: Where do we find this in the Scripture? [In the verse], When thou shalt beget children and children's children, and ye shall have been long in the land.[10]

R. Joshua b. Levi said: The land of Israel was not laid waste until seven Courts of Justice had sanctioned idolatry, namely, [those of] Jeroboam son of Nebat, Baasha son of Ahiah, Ahab son of Omri,[11] Jehu son of Nimshi, Pekah son of Remaliah,[12] Menahem son of Gadi, and Hoshea son of Elah, as it says, She that hath borne seven languisheth, she hath given up the ghost, her sun is gone down while it was yet day, she hath been ashamed and confounded.[13] R. Ammi said: Where is this intimated in the Torah? — [In the verse], When thou shalt beget children and children's children.[14]

R. Kahana and R. Assi said to Rab: It is written of Hoshea son of Elah: And he did that which was evil in the sight of the Lord yet not as the kings of Israel,[15] and it is also written, Against him came up Shalmaneser king of Assyria[16] etc.? — He replied to them: Jeroboam had stationed guards on the roads[17] to prevent the Israelites from going up [to Jerusalem] for the festivals, and Hoshea disbanded them, and for all that the Israelites did not go up to the festivals. Thereupon God decreed that for those years during which the Israelites had not gone up to the festival they should go a corresponding number into captivity.

R. Hisda said in the name of Mar 'Ukba, or, according to others, R. Hisda said in the name of R. Jeremiah: Meremar discoursed as follows. What is the point of the words, Therefore hath the Lord watched over the evil and brought it upon us: for the Lord our God is zaddick [righteous].[18] Because the Lord is righteous, does He therefore watch over the evil and bring it upon us? The truth is that

God did a kindness [zedakah] with Israel by driving forth the captivity of Zedekiah while the captivity of Jeconiah was still intact — For it is written of the captivity of Jeconiah, And the harash [craftsmen] and the masger [smiths] a thousand.[19] [They were called] harash [dumb] because when they opened their mouths all became as it were dumb, [and they were called] masger [closer] because if they once closed [a discussion], no-one would re-open it. How many were they? — A thousand. 'Ulla said: [The righteousness consisted] in anticipating by two years [the numerical value of] we-noshantem ['and ye grow old'].[20]

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(1) In which case it is as if he annulled the first part so rendering the Get invalid, v. supra, 32b. But v. Tosaf. s.v. ודלמא.

(2) That he would break off in the middle of a sentence.

(3) That it has not been cut.

(4) [Because then it cannot be the signature of another document at right angles to the first, whereas our Mishnah speaks of a case where the foot of the signature is towards the text which may indicate that it belongs to another document which has been removed.]

(5) Presuming that, the signatures are written parallel to the text.

(6) And therefore there is no sure clue to which they belong.

(7) V. supra 66b.

(8) For notes v. supra 66b, 71b.

(9) With the witness.

(10) Deut. IV, 25. As much as to say, beyond three generations it is reckoned as antiquated.

(11) Ahab is made responsible rather than Omri as being more prominent.

(12) Shallum, Zechariah and Zimri are not reckoned as they reigned less than a year.

(13) Jer. XV, 9.

(14) ['When thou shalt beget' indicating one generation, and 'children', 'children's' and 'children' two each, (Tosaf.)].

(15) II Kings XVII, 2.

(16) Ibid. 4.

(17) V. B.B. 121b, Ta'an. 28a.

(18) Dan. IX, 14.

(19) II Kings XXIV, 16. The Rabbis take this to refer to the men of learning.

(20) In Deut. IV, 25. The numerical value of the letters of this word is 852. For the sake of these two years, the curse of 'Ye shall soon utterly perish' (Ibid. 26) was not fulfilled in them.

Talmud - Mas. Gittin 88b

R. Aha b. Jacob said: This shows [that the word] soon' [used] by the Master of the Universe means eight hundred and fifty-two years.[1]

MISHNAH. A GET GIVEN UNDER COMPULSION [EXERCISED] BY AN ISRAELITE COURT IS VALID, BUT BY A HEATHEN COURT IS INVALID. A HEATHEN COURT, HOWEVER, MAY FLOG A MAN AND SAY TO HIM, DO WHAT THE ISRAELITE [AUTHORITIES] COMMAND YOU, (AND IT IS VALID).[2]

GEMARA. R. Nahman said in the name of Samuel: A Get given under compulsion [exercised] by an Israelite court with good legal ground[3] is valid, but if without sufficient legal ground, it is invalid,[4] but it still disqualifies [the woman for a priest].[5] If enforced by a heathen court on good legal grounds, it is invalid, but disqualifies; if without sufficient legal ground, there is no tincture of a Get about it. How can you have it [both ways]? If the [heathens are] competent to apply compulsion, then it should actually be valid. If they are not competent to apply compulsion, it should not disqualify! — R. Mesharsheya explained: According to the strict rule of the Torah, a Get enforced by a heathen court is valid, and the reason why [the Rabbis] declared it invalid was to prevent any [Jewish woman] from attaching herself to a heathen and so releasing herself from her

husband.[6] If that is so, [why did Samuel say that] if it is enforced [by a heathen court] without sufficient legal ground, it has not even the tincture of a Get? Let it at least be on a par with the similar Get exacted by an Israelite court, and disqualify the woman [for] a priest? — The truth is that R. Mesharsheya's [explanation] is erroneous.[7] And what is the reason? — [A Get enforced by a heathen court] on legal grounds is liable to be confused with [a Get enforced by] an Israelite court on legal grounds,[8] but [a Get enforced by a heathen court] without proper grounds will not be confused with [a Get enforced by] a Jewish court with legal grounds.

Abaye once found R. Joseph sitting in court and compelling certain men to give a bill of divorce. He said to him: Surely we[9] are only laymen,[10] and it has been taught: R. Tarfon used to say: In any place where you find heathen law courts,[11] even though their law is the same as the Israelite law, you must not resort to them since it says , These are the judgments which thou shalt set before them,[12] that is to say, 'before them' and not before heathens. Another explanation, however, is that it means 'before them' and not before laymen? — He replied: We are carrying out their commission,[13] just as in the case of admissions and transaction of loans.[14] If that is the case [he rejoined], we should do the same with robberies and injuries?[15] — We carry out their commission in matters which are of frequent occurrence, but not in matters which occur infrequently.[16]

MISHNAH. IF COMMON REPORT IN THE TOWN DECLARES A WOMAN TO BE BETROTHED, SHE IS REGARDED [BY THE BETH DIN] AS BETROTHED;[17] IF TO BE DIVORCED, SHE IS REGARDED AS DIVORCED.[18] [THIS, HOWEVER, IS ONLY THE CASE] PROVIDED THE REPORT HAS NO QUALIFICATION.[19] WHAT IS MEANT BY A QUALIFICATION? [IF THE REPORT IS,] SO-AND-SO DIVORCED HIS WIFE CONDITIONALLY, HE THREW HER THE BETROTHAL MONEY, BUT IT IS UNCERTAIN WHETHER IT LANDED NEARER TO HER OR NEARER TO HIM — THIS IS A QUALIFICATION.[20]

GEMARA. And do we [on the strength of such a report] declare her[21] prohibited to her husband? Has not R. Ashi said that we take no notice of reports spread after marriage? — What [the Mishnah] means is this: 'If common report declares her to be betrothed, we regard her as betrothed; if it declares her to have been betrothed and then divorced,

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(1) For fuller notes on this passage v. Sanh. (Sonc. ed.) p. 239.

(2) [The bracketed words are left out in some texts without however affecting the meaning.]

(3) Cf. Keth. 77a.

(4) And she cannot marry again on the strength of it.

(5) She must not marry a priest if her husband dies before giving her another Get, or if her husband is a priest she must leave him.

(6) By inducing the non-Jew to go and extort a Get from him; v. B.B. 48a.

(7) בדותא v. B.M., (Sonc. ed.) p. 47, n. 1. And the heathen court is in fact not competent to enforce the giving of a Get.

(8) And if we allowed the woman after receiving such a Get to live with a priest, it might be thought that she is allowed also after receiving a similar Get enforced by a Jewish court.

(9) In Babylonia.

(10) I.e., not fully ordained, v. Glos. s.v,. Hedyot, this being impossible outside the Land of Israel. V. Sanh. 14a.

(11) אגוריאות cf. Gr. **, 'market-place'.

(12) Ex. XXI, 1.

(13) Of the Sanhedrin in Palestine.

(14) Claims supported by witnesses attesting the defendant's former admission of his liability, or who were actually present at the time of the transaction. V. Sanh. 2b.

(15) Whereas the law is that for them ordained judges are necessary. V. ibid.

(16) V. B.K. 84b.

(17) And she must not marry another man without receiving a Get from the first.
(18) Apparently this means that if the husband is a priest, she can no longer continue to live with him. But v. the Gemara infra.
(19) אמתלא, a reason for correcting the report.
(20) And no attention is paid to the report.
(21) The one reported to have been divorced.

Talmud - Mas. Gittin 89a

, she is regarded as divorced.'[1] On what ground? Because the report[2] is accompanied by its own neutralisation.

Raba said: If she was reported in the town to have misconducted herself,[3] we take no notice, as we can put it down to mere looseness of behaviour which has been observed in her. [The same difference of opinion is found] between Tannaim: 'If she ate in the street, if she quaffed[4] in the street, if she suckled in the street,[5] in every case R. Meir says that she must leave her husband. R. Akiba says she must do so as soon as gossips who spin in the moon begin to talk about her. R. Johanan b. Nuri thereupon said to him: If you go so far, you will not leave our father Abraham a single daughter who can stay with her husband,[6] whereas the Torah says, If he find in her some unseemly thing,[7] and it further says, At the mouth of two witnesses or at the mouth of three witnesses shall a thing be established;[8] and just as there the 'thing'[9] must be clearly ascertained, so here it must be clearly ascertained.

Our Rabbis taught: [If the report is] that she was lain with we take no notice of it;[10] [if that she is] a married woman, we take no notice; [if that she is] a betrothed woman, we take no notice; [if the name of] the man is not mentioned, we take no notice of it; [if the report is that she has been betrothed] in another town, we take no notice; [if that] she is a bastard, we take no notice; [if that] she is a bondwoman, we take no notice. [If there is report that] So-and-so sanctified his possessions or declared them common property, we take no notice. 'Ulla said: It is not sufficient that a mere rumour should have been heard; [we take notice] only if lights have been seen burning and couches spread and people entering and leaving, and then they said, So-and-so is being betrothed to-day. 'Being betrothed' 'you say? Perhaps even so she was not betrothed?[11] — You should say: [People say that] So-and-so was betrothed to-day. So Levi also taught: 'It is not enough that a mere rumour should be spread; [we only take notice] if lights have been seen burning and couches spread and women spinning by lamplight and congratulating her and saying [to one another], So-and-so is being betrothed to-day.' 'Being betrothed' do you say? Perhaps after all she was not betrothed? — R. Papa said: You must say, [and what they say is] , 'So-and-so has been betrothed to-day'. Rabbah b. Bar Hanah said in the name of R. Johanan: It is not enough that there should be a mere rumour. If, however, lights have been seen burning and couches spread and people entering and leaving, then if they say something[12] this is a report', but if they do not say something this is a qualification.[13] How can this be, seeing that they have not said anything? — [The object of this statement is] to repudiate the view of Rabbah b. R. Huna who said that the 'qualification' referred to can be something said ten days later. [R. Johanan here] tells us that if [in such conditions] people said nothing at the time, this is a qualification of the report, but if they said something [of a qualifying nature] after ten days, this is no qualification. R. Abba said in the name of R. Huna: It is not sufficient to hear a mere rumour; we take notice only if on asking, Who told So-and-so, we are informed, So-and-so, and he again heard from So-and-so, and so on until our inquiries bring us to a reliable statement. But a reliable statement is valid evidence?'[14] — The fact is that when R. Samuel b. Judah came, he said in the name of R. Abba who had it from R. Huna who had it from Rab: It is not enough that they should have merely heard a rumour; it is requisite that they should inquire, Where did So-and-so learn this, and they should be told, He heard it from So-and-so who heard it from So-and-so, and they have gone abroad.

Abaye said to R. Joseph: Do we suppress a report[15] or not? — He replied: Since R. Hisda has said that [the Beth din takes no notice] till they hear it from reliable persons, we may infer that we do suppress a report.[16] On the contrary, he rejoined; since R. Shesheth has said that even if spread only by women it is a report to be considered, we may infer that we do not suppress a report. He replied: It depends on the place. In Sura they suppress a report, in Nehardea they do not suppress a report.

A certain woman was reported to have become engaged to a Rabbinical student. R. Hama sent for her father and said to him, Tell me the facts of the case. He replied: He affianced her conditionally, [on condition, that is,] that he would not go to Be Hozai,[17] and he went there. He thereupon said: Since at the time when the report was first spread there was no qualification, it is not in your power to add one now.[18] A certain woman was reported to have been affianced with the flesh sticking to date stones by the well of Be Shifi. R. Idi b. Abin sent to inquire of Abaye what was to be done in such a case. He replied: Even those authorities who say that as a rule we should not suppress a report would here advise that it should be suppressed, because people will then say that the Rabbis examined her engagement gift and found that it did not contain the value of a perutah.[19]

A certain woman was reported to have become engaged

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(1) And may marry anyone without a Get from the fiance.

(2) That she was betrothed.

(3) With a heathen or a slave, and so disqualified herself for marrying a priest.

(4) So Jast. Rashi: walks with outstretched neck.

(5) I.e. if she was reported to have done so before marrying a priest (Tosaf.).

(6) Because enemies may always spread false reports about her.

(7) Deut. XXIV, 1.

(8) Ibid. XIX, 15.

(9) The matter testified to.

(10) To prohibit her to marry a high priest.

(11) I.e., the report does not definitely say that she was betrothed.

(12) I.e., that she has been betrothed.

(13) Which deprives the report of its force.

(14) And more than a mere report.

(15) If after investigation we cannot confirm it.

(16) If there is a prima facie ground for considering it wrong.

(17) V. supra p. 413, n. 1.

(18) And she cannot become engaged again till she is divorced from the first.

(19) V. Kid. 2a. So that she never was really engaged to the first. Hence no harm can ensue from the suppression of the report.

to one of the sons of a certain man. Raba thereupon said: Even those authorities who hold that we should not as a rule suppress a report would advise that here we should suppress it, as people will only say that the Rabbis examined her engagement and found that it was contracted by a minor.

A certain woman was reported to have become engaged to a minor who looked like an adult. In connection with this R. Mordecai said to R. Ashi: In a similar case which occurred, they said that he had not yet attained to 'the divisions of Reuben',[1] referring to the verse, Among the divisions of Reuben there were great searchings of heart.[2]

PROVIDED THE REPORT HAS NO QUALIFICATION. Rabbah b. R. Huna said: The

'qualification' they had in mind might be made ten days later. R. Zebid said: If there is room for a qualification,[3] we suspect a qualification. R. Papa raised to R. Zebid an objection from the following: PROVIDED THE REPORT HAS NO QUALIFICATION? — He replied: It means, provided there is no room for a qualification. Said R. Kahana to R. Papa: Do you not concur with this, seeing that we have learnt,[4] 'If a woman [who heard from one witness that her husband had died] became betrothed and then her husband turned up, she is allowed to return to him'.[5] Now is not the reason [for disregarding the report] because we say that the second betrothed her conditionally?[6] — There is a special reason there, namely that the husband challenges the betrothal.[7] If that is the case, then why cannot she return to him even if she married the second? — By marrying she committed an offence[8] and therefore the Rabbis penalised her, but in becoming betrothed she committed no offence and therefore the Rabbis did not penalise her.

R. Ashi said: A report which has not been confirmed in the Beth din[9] is no report. R. Ashi further said: We pay no heed to reports spread after marriage. This implies that we do pay heed to reports spread after betrothal? — R. Habiba said: We pay no attention to reports spread after betrothal either. The law is that we pay no heed to such reports.

R. Jeremiah b. Abba said: The disciples of Rab sent to Samuel saying: Would our Master be so good as to instruct us. If a woman was reported to have been engaged to one man, and then another came and betrothed her with full formality,[10] what is to be done? He sent back reply: She must leave him, but I want you to ascertain the facts and inform me. What did he mean by saying, 'I want you to ascertain the facts'? Shall I say his object was that if it turned out that the first betrothal was not a valid one the report should be suppressed? How can this be seeing that Samuel was located in Nehardea, and in Nehardea it was not the custom to suppress a report?[11] — His object must therefore have been that if it turned out that the first betrothal was a valid one she would not require a Get from the second. In this he joined issue with R. Huna, who said that if a married woman put out her hand and took the betrothal money from another, she thereby became engaged. [This again is based] on the dictum of R. Hamnuna who said: If a woman says to her husband, You have divorced me, her word is to be accepted, since the presumption is that a woman would not be so brazen as to say this in front of her husband [if it was not true].[12] And the other [Samuel]?- [He can reply:] R. Hamnuna would maintain this only where she speaks in the presence of the husband, but if he is not present she would certainly be impudent enough to say this. Suppose they could not ascertain the truth of the matter, what [was to happen]? — R. Huna said: The first would have to divorce her and the second could then marry her; but it would not be right for the second to divorce her and the first to marry her. What is the reason? Because people might say that here is a man who is taking back a woman who has been betrothed to him and divorced.[13] R. Shinnena[14] the son of R. Idi, however, said that it is allowable also for the second to divorce her and the first to marry her, because people would merely say that the Rabbis had examined the betrothal [of the second] and found it invalid .[15]

Suppose she was reported [to have become betrothed] to both one[16] and the other, what is to be done? — R. papa said: In this case also the first must divorce her and the second can then marry her. Amemar, however, said that she is allowed to marry either,

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(1) I.e., to years of discretion. People would conclude that in spite of his appearance he was not yet grown-up, and therefore the suppression of the report would do no harm.

(2) Jud. V, 15. The verse is rendered thus: 'Among the divisions of Reuben it is only the grownups who are rational'.

(3) I.e., if the circumstances were such that the report might have been qualified, though it actually was not.

(4) Yeb. 92a.

(5) Here apparently is a case of a report without qualification that a woman is engaged being disregarded.

(6) Viz., on condition that her husband had divorced her, and although this qualification was not actually added to the report, there was room for it, and therefore we allow it to neutralise the report.

(7) He is there to say that he never divorced his wife in the first instance, and therefore the betrothal to the second was

invalid.

(8) Although in such a case the Rabbis permitted her to marry, yet they expected her to make further inquiries, and if after she married the first husband turned up, they penalised her, v. Yeb. 87b.

(9) And found to have some substance.

(10) Lit., 'betrothed according to the Torah'. I.e., in the presence of witnesses.

(11) And though in Sura, the place of Rab, it was the custom, Samuel would naturally rule according to the custom of his own place.

(12) V. supra 64b.

(13) After having become the wife of another man, in violation of Deut. XXIV, 2.

(14) Al. Shisha.

(15) And so no scandal would arise,

(16) The betrothal to the second was also based on mere report.

Talmud - Mas. Gittin 90a

and the law is that she is allowed to marry either.

MISHNAH. BETH SHAMMAI SAY: A MAN SHOULD NOT DIVORCE HIS WIFE UNLESS HE HAS FOUND HER GUILTY OF SOME UNSEEMLY CONDUCT, AS IT SAYS, BECAUSE HE HATH FOUND SOME UNSEEMLY THING[1] IN HER.[2] BETH HILLEL, HOWEVER, SAY [THAT HE MAY DIVORCE HER] EVEN IF SHE HAS MERELY SPOILT HIS FOOD,[3] SINCE IT SAYS,[4] BECAUSE HE HATH FOUND SOME UNSEEMLY THING IN HER.[5] R. AKIBA SAYS, [HE MAY DIVORCE HER] EVEN IF HE FINDS ANOTHER WOMAN MORE BEAUTIFUL THAN SHE IS, AS IT SAYS, IT COMETH TO PASS, IF SHE FIND NO FAVOUR IN HIS EYES.[6]

GEMARA. It has been taught: Beth Hillel said to Beth Shammai: Does not the text distinctly say 'thing'?[7] Beth Shammai rejoined: And does it not distinctly say 'unseemliness'? Beth Hillel replied: Had it said only 'unseemliness' without 'thing', I should have concluded that she should be sent away on account of unseemliness, but not of any [lesser] 'thing'. Therefore 'thing' is specified. Again, had it said only 'thing' without 'unseemliness', I should have concluded that [if divorced] on account of a 'thing' she should be permitted to marry again, but if on account of 'unseemliness', she should not be permitted to remarry. Therefore 'unseemliness' is also specified. And what do Beth Shammai make of this word 'thing'?[8] — [They use it for the following lesson.] It says here 'thing', and it says in another place 'thing', viz. in the text, 'By the mouth of two witnesses or by the mouth of three witnesses a thing shall be established':[9] just as there two witnesses are required, so here two witnesses are required. And Beth Hillel? — [They can retort:] Is it written 'unseemliness in a thing'? And Beth Shammai? — Is it written, 'either unseemliness or a thing'? And Beth Hillel? — For this reason it is written 'unseemliness of a thing', which can be taken either way.[10]

R. AKIBA SAYS, EVEN IF HE FOUND ANOTHER. What is the ground of the difference here [between the various rulings]? — It is indicated in the dictum of Resh Lakish, who said that ki[11] has four meanings- 'if', 'perhaps', 'but', 'because'. Beth Shammai held that we translate here: 'It cometh to pass that she find no favour In his eyes, because he hath found some unseemly thing in her,' while R. Akiba held that we translate, 'Or if again he hath found some unseemly thing in her'.[12] R. Papa asked Raba: If he has found in her neither unseemliness nor any [lesser] thing, [and still divorces her], what are we to do [according to Beth Hillel]? — He replied: Since in the case of a man who has committed a rape the All-Merciful has specifically laid down that 'he may not put her away all his days',[13] which implies that [if he does so] all his days he is under obligation to take her back, in that case only has the All-Merciful made this the rule, but here, what is done is done.[14] R. Mesharsheya said to Raba: If a man has made up his mind to divorce his wife, but she still lives with him and waits on him, what are we to do with him?- [He replied:] We apply to him the verse, Devise not evil

against thy neighbour, seeing he dwelleth securely by thee.[15]

It has been taught: R. Meir used to say: As men differ in their treatment of their food, so they differ in their treatment of their wives. Some men, if a fly falls into their cup, will put it aside and not drink it. This corresponds to the way of Papus b. Judah who used, when he went out, to lock his wife indoors. Another man, if a fly falls into his cup, will throw away the fly and then drink the cup. This corresponds to the way of most men who do not mind their wives talking with their brothers and relatives. Another man, again, if a fly falls into his soup, will squash it and eat it. This corresponds to the way of a bad man who sees his wife go out with her hair unfastened and spin cloth in the street

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(1) Lit., 'unseemliness of a thing'.

(2) Deut. XXIV, 1. [The emphasis is on 'unseemliness', (cf. Mishnah ed. Lowe), 'as it says "unseemliness"'), and ערות דבר is taken to mean, דבר ערוה 'a thing of unseemliness'].

(3) ['Bad cooking is a more serious ground for divorce than some modern ones' (Moore, Judaism II, 124, 4, 1.) It has been suggested that the expression is merely figurative pointing to some indecent conduct].

(4) [The emphasis is on 'thing'. (cf. loc. cit. 'as it says "thing"'), and the phrase is taken literally, 'the unseemliness of a thing'.]

(5) V. the discussion in the Gemara infra.

(6) Ibid.

(7) Which implies that he may divorce her for any cause.

(8) Which on their view is apparently superfluous.

(9) Deut. XIX, 15.

(10) To imply both that a 'thing' is sufficient warrant for divorcing, and that he cannot be compelled to divorce unless there is sufficient evidence of misconduct.

(11) Translated here 'if' (he find), 'because' (he hath found etc.).

(12) This being an alternative reason to her not finding favour in his eyes.

(13) Deut. XXII, 19.

(14) And he is not forced to take her back.

(15) Prov. III, 29.

Talmud - Mas. Gittin 90b

with her armpits uncovered and bathe with the men. Bathe with the men, you say? — It should be, bathe in the same place as the men. Such a one it is a religious duty to divorce, as it says, because he hath found some unseemly thing in her . . . and he sendeth her out of his house and she goeth and becometh another man's wife.[1] The text calls him 'another', implying that he is not the fellow of the first; the one expelled a bad woman from his house, and the other took a bad woman into his house. If the second is lucky,[2] he will also send her away, as it says, and the latter husband hateth her,[3] and if not she will bury him, as it says, or if the latter husband die;[4] he deserves to die since the one expelled a wicked woman from his house and the other took her into his house.

For a hateful one put away:[5] R. Judah said: [This means that] if you hate her you should put her away. R. Johanan says: It means, He that sends his wife away is hated. There is really no conflict between the two, since the one speaks of the first marriage and the other of the second, as R. Eleazar said: If a man divorces his first wife, even the altar sheds tears, as it says,[6] And this further ye do, ye cover the altar of the Lord with tears, with weeping and with sighing, insomuch that he regardeth not the offering any more, neither receiveth it with good will at your hand. Yet ye say, Wherefore? Because the Lord hath been witness between thee and the wife of thy youth, against whom thou hast dealt treacherously, though she is thy companion and the wife of thy covenant.[7]

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(1) Deut. XXIV, 1, 2.

(2) Lit., 'has merit'.

(3) Ibid. 2.
(4) Ibid.
(5) Mal. II, 16.
(6) Ibid. 13, 14.
(7) [On the subject of Jewish divorce discussed in the closing section of this tractate v. Abrahams, I. Studies in Pharisaism and the Gospels, First Series, pp. 66ff.]

Talmud - Mas. Kiddushin 2a

C H A P T E R I

MISHNAH. A WOMAN IS ACQUIRED [IN MARRIAGE] IN THREE WAYS AND ACQUIRES HER FREEDOM[1] IN TWO. SHE IS ACQUIRED BY MONEY, BY DEED, OR BY INTERCOURSE. 'BY MONEY': BETH SHAMMAI MAINTAIN, A DENAR[2] OR THE WORTH OF A DENAR; BETH HILLEL RULE, A PERUTAH OR THE WORTH OF A PERUTAH.[3] AND HOW MUCH IS A PERUTAH? AN EIGHTH OF AN ITALIAN ISSAR.[4] AND SHE ACQUIRES HER FREEDOM BY DIVORCE OR BY HER HUSBAND'S DEATH. A YEBAMAH[5] IS ACQUIRED BY INTERCOURSE, AND ACQUIRES HER FREEDOM BY HALIZAH[6] OR BY THE YABAM'S DEATH.[7]

GEMARA. A WOMAN IS ACQUIRED. Why does he [the Tanna] state here, 'A WOMAN IS ACQUIRED,' Whilst elsewhere[8] he teaches 'A man may betroth' [etc.]?[9] — Because he wishes to state 'MONEY'; and how do we know that money effects betrothal? By deriving the meaning of 'taking' from the field of Ephron:[10] Here it is written: If any man take a wife;[11] whilst there it is written: I will give thee money for the field: take it of me.[12] Moreover, 'taking' is designated acqui sition, for it is written, the field which Abraham acquired;[13]

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(1) Lit., 'acquires herself.'

(2) V. Glos.

(3) I.e., goods to its value.

(4) V. Glos. The ordinary issar = 1124th of a denar (denarius); the Italian issar = 1116th.

(5) v. Glos.

(6) V. Glos.

(7) v. Glos.

(8) At the beginning of Chapter II, infra 41a.

(9) Thus here too he should have stated: 'A woman is betrothed.' 'Betroth' in this sense, and as it is generally used in the Talmud, is the first stage of marriage. A betrothed woman could not be freed without a divorce, though cohabitation was still forbidden. V. Glos. s.v. erusin. As far as practicable in this translation, 'betrothed' is employed to denote this first stage, and 'marriage' to denote the second (nissu'in), after which the couple may live together.

(10) Lit., 'taking,' 'taking' is deduced from the field of Ephron. This method of exegesis is designated 'gezerah shawah,' whereby the use of the same word in two passages indicates that their laws or connotations are similar.

(11) Deut. XXII, 13.

(12) Gen. XXIII, 13. Just as 'take' in the latter verse refers to money, so in the former too: the wife is 'taken,' i.e., betrothed by money.

(13) Gen. XLIX, 30. The quotation is not exact in the Talmud.

Talmud - Mas. Kiddushin 2b

alternatively, men shall acquire fields for money;[1] therefore, he teaches: A WOMAN IS ACQUIRED. Then let him state there,[2] 'A man acquires'? — He [the Tanna] first employs Biblical phraseology, but subsequently, the Rabbinical idiom. Now what does the Rabbinical term connote?[3] — That he [the husband] interdicts her to all [men] as hekdesh.[4] But, why not teach here, 'A man acquires'?[5] — Because he desires to teach the second clause, AND ACQUIRES HER FREEDOM, which refers to her [the woman], he therefore teaches the first clause likewise with reference to her. Then let him state, 'A man acquires . . . and makes [her] acquire'?[6] — Because there is the husband's death where it is not he who frees her, but it is Heaven who confers [her freedom] on her.[7] Alternatively, were it taught 'he acquires.' I might have thought, even against her will, hence It is stated 'A WOMAN IS ACQUIRED,' implying only with her consent, but not without.[8] Now, why does he [the Tanna] choose to teach shalosh? Let him teach sheloshah?[9] — Because he desires to

state derek [way], which is feminine, as it is written, and thou shalt shew them the way wherein [bah] they must walk.[10] 'If so, when we learnt, a zab[11] is examined in seven [shiv'ah] ways [derakim.]':[12] let him [the Tanna] employ sheva'?[13] — Because he desires to state derek, which we find designated as masculine, as it is written, they shall come out against thee in one way [be-derek ehad], and flee before thee seven ways [shiv'ah derakim].[14] If so, the verses are contradictory, and the Mishnahs likewise? — The verses are not contradictory: here [the first verse quoted], the reference being to the Torah,[15] which is a feminine noun, as it is written: The law [torah] of the Lord is perfect [temimah], restoring [meshibath] the soul:[16] the feminine form is employed. There, however, the reference is to war, and it is the practice of man to wage war, not of woman — therefore the masculine is employed. The Mishnahs are [likewise] not contradictory: here, since the reference is to a woman, It is couched in the feminine form. There, the reference being to a man, since it is the nature of a man to be examined, but not of a woman, for a woman becomes unclean even through an accident,[17] the masculine form is employed.

Now, why does he employ shalosh? on account of derakim [ways]! Then let him teach debarim [things] and sheloshah?[18] — Because he wishes to mention INTERCOURSE, which is designated 'way', as it is written, and the way of a man with a maid. . . Such is the way of an adulterous woman.[19] Now, that answers for intercourse; but what can you say of MONEY AND DEED? — [They are] on account of INTERCOURSE.[20] And are two taught on account of one?[21] — These too are adjuncts of intercourse.[22]

Alternatively I can say: The author of this [Mishnah] is R. Simeon. For it was taught: R. Simeon said: Why did the Torah state, If any man take a wife,[23] and not 'if a woman be taken to a man'? Because it is the way of a man to go in search of a woman, but it is not the way of a woman to go in search of a man. This may be compared to a man who lost an article: who goes in search of whom? The loser goes in search of the lost article.[24] Now, as to what we learnt: 'a zab is examined in seven ways': let it state [seven] 'things'?[25] — There we are informed this: it is the nature [way] of excessive eating to cause gonorrhoea, and it is the nature [way] of excessive drinking to cause gonorrhoea. Further, as to what we learnt: 'The citron is comparable to a tree in three ways'[26] — let him state [in three] things? — Because he wishes to teach the second clause: and to vegetables in one way.[27] Then in the second clause too' let him state, [and to vegetables in one] 'thing'?

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(1) Jer. XXXII, 44.

(2) Infra 41a.

(3) The Heb. mekaddesh literally means 'consecrates.' Why is this employed by the Rabbis for betrothal?

(4) V. Glos.; hekdesh is forbidden for secular use.

(5) Granted that Biblical usage demands a verb of acquisition, yet just as the Mishnah on 41a states: 'a man betroths,' so here too it should have been, 'a man acquires.'

(6) Both clauses referring to his action.

(7) Hence this could not be referred to as his (voluntary) action.

(8) By referring it to her, the Tanna shews that the validity of acquisition is dependent on her consent.

(9) Shalosh (three) is used with fem. substantives; sheloshah with masc. ones, which is the more usual.

(10) Ex. XVIII, 20: bah is feminine (in her), the masc. being bo.

(11) V. Glos, cf. p. 3, n. 1.

(12) Pl. of derek.

(13) Shiv'ah with masc., sheva' with fem. substantives.

(14) Deut. XXVIII, 27: in both clauses the numerals are masculine.

(15) When Jethro said to Moses, and thou shalt shew them the way wherein they must walk, by 'way' he meant the Torah.

(16) Ps. XIX, 8; both the adjective and the participle are feminine.

(17) A man is unclean as a zab only if the discharge comes of itself, without being caused by external factors (technically called accidents); e.g., the eating of certain foods, physical overstrain, etc.; seven such factors might have caused the

discharge, and consequently he had to be examined in respect of these. But a woman is unclean even then; hence there is no purpose in examining her.

(18) A woman is acquired by three things; debarim is masc.

(19) Prov. XXX, 19 f.

(20) Since derek is required for cohabitation, it is also used for the others.

(21) Surely the idiom should be primarily adapted to the majority?

(22) They are not separate and complete acts, but preliminaries to cohabitation.

(23) Deut. XXII, 13.

(24) But the lost article does not seek the loser. Thus, man having lost his rib, he seeks to recover it. — Since R. Simeon says 'It is the way of a man, etc.' he also teaches: 'A WOMAN IS ACQUIRED IN THREE WAYS. 'Derek' (way) is applicable to something that happens in conformity with nature or normal practice.

(25) Because generally speaking the masculine is preferable.

(26) Viz., in respect of 'orlah (q.v. Glos.), fourth year fruits, and the year of release. The fruit gathered in the fourth year of a tree's planting was to be eaten in Jerusalem, like the second tithe (v. note 4). Special laws governed the produce of every seventh year (v. Lev, XXV, 1-7), but the definitions of 'seventh year' varied. In respect to trees it meant the fruit that grew in the seventh year, even if not harvested until the eighth; while in speaking of vegetables it applies to the time of gathering: the citron is assimilated to trees in this matter.

(27) Viz., in respect of tithing. In the first, second, fourth, and fifth years after the 'year of release', the first and second tithe were separated, the first being given to the Levite and the second eaten by its owners in Jerusalem; in the third and sixth years the first and third tithes were due, the latter being given to the poor. Here too, trees were determined by the time when their fruit grew; vegetables by their gathering; the citron was assimilated to vegetables in this matter.

Talmud - Mas. Kiddushin 3a

— There we are informed this: that the nature [way] of a citron is like that of vegetables. Just as it is the nature of vegetables to grow by means of all waters,[1] and its tithing is determined by the time when it is gathered;[2] so is it the nature of the citron to grow by means of all waters, and [therefore] its tithing is determined by its gathering.[3] Again, when we learnt: A koy[4] is, in some ways, similar to beasts of chase;[5] and in other ways to cattle; and [again], in some ways to both beasts of chase and cattle, and in other ways to neither beasts of chase nor cattle[6] — let it be taught, [in some] 'things'? Moreover, when we learnt: This is one of the ways wherein women's divorce deeds are similar to slaves' writs of liberation[7] — let him state, [this is one of the] 'things' etc.? — But [answer thus]: wherever a distinction is drawn, 'ways' is employed: wherever there is no distinction, 'things' [respects] is taught.[8] This may be proved too, for the second clause teaches: R. Eliezer maintained: The citron is equal to trees in all things.[9] This proves it.

What does the number of the first clause exclude, and what does the number of the second exclude?[10] — The number of the first clause excludes huppah.[11] But according to R. Huna, who maintained: Huppah [as an act of betrothal] acquires [a woman], by inferring it a minori,[12] what does it exclude? — It excludes barter.[13] I might have thought, since we learn the meaning of 'taking' from Ephron's field:[14] then just as a field may be acquired by barter, so may a woman too be acquired by barter: hence we are informed [otherwise]. And let us say: That indeed is so? — Barter is possible with less than a perutah's worth;[15] whilst a woman will not cede herself [in marriage] for less than a perutah's worth.[16]

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(1) I.e., artificial irrigation, which is normally impossible in the case of wheat and the vine.

(2) V. nn. 3 and 4.

(3) Thus by employing 'way,' the Tanna teaches the reason of its similarity in tithing, viz., because it is also similar in the nature (way) of its growth.

(4) [Generally taken as a cross between a goat and some species of gazelle; v. Lewysohn, Zoologie, p. 115.]

(5) Heb. hayyah, beast of chase, opposed to behemah, cattle. The Rabbis were uncertain whether the koy should be considered of the genus of cattle or a beast of chase.

(6) Its heleb (hindquarter fat) is forbidden like that of cattle, its blood must be covered after slaughter, like that of a beast of chase, it must be ritually killed before it is fit for food, like both, it must not be made to copulate with either. — Since its status is undetermined, we impose the stringencies of both beasts of chase and cattle.
(7) Viz., if one is brought from overseas, the messenger must declare, 'It was written and attested in my presence.'
(8) E.g., in some respects the citron is similar to trees; in others to vegetables: hence a distinction is drawn. The same applies to the other passages quoted. But if one thing is entirely like another, we employ 'things' (dabar).
(9) Thus 'way' is not used here, since no distinction is drawn.
(10) It is unnecessary to state, A WOMAN . . . THREE WAYS . . . TWO, since these are actually enumerated. The explicit statement of the number must therefore emphasize that only three ways are valid, not more.
(11) If a father delivers his daughter to huppah as an act of betrothal (kiddushin), it is not valid as such. (Rashi). [The word חופה from the root חפף , denotes the baldachin or canopy wherein the bridegroom received the bride at the nuptials. A good deal of uncertainty exists as to the signification of this ceremony; (v. Shulhan 'Aruk, Eben ha-'Ezer, I, XV, 1). Rashi, it appears, regards huppah as a mere symbol of traditio puellae, a handing over of the maiden by the father to the husband into whose control she now passes, (cf. Keth. 48a), in contradistinction to Maim., (Yad, Ishuth, X, 1), who saw in it a symbol of the marital union, copula carnalis, cf. Neubauer J. pp. 57 and 226ff.]
(12) V. infra 50.
(13) A woman cannot be bartered, i.e., become betrothed in exchange for an article. — On 'barter' v. infra 28a, Mishnah.
(14) V. supra 2a.
(15) V. B.M. 47a.
(16) Because it is derogatory to her dignity.

Talmud - Mas. Kiddushin 3b

The number of the second clause excludes halizah.[1] For I might have thought, this may be inferred a minori from a yebamah: if a yebamah, who is not freed by divorce, is freed by halizah; then this one [a married woman], who is freed by divorce, is surely freed by halizah. Therefore we are informed [otherwise]. And let us say: That indeed is so? — Scripture states, [then he shall write her] a writ of divorcement:[2] Thus, a 'writ' may divorce her, but nothing else may divorce her.

BY MONEY. Whence do we know this? Moreover, when we learned, A father has a privilege over his daughter [if a minor] in respect of her kiddushin[3] by money, deed, or intercourse:[4] How do we know that she can be acquired by money and that the money belongs to her father? — Said Rab Judah in Rab's name, Because Scripture saith, then she shall go out for nothing, without money:[5] no money is due to this master [when she leaves his control], but money is due to another master, viz., her father.[6] Yet perhaps it belongs to her?[7] — How now! her father receives her kiddushin [on her behalf], for it is written, [and the damsel's father shall say. . .] I gave my daughter unto this man;[8] shall she take the money? [Surely not!] But perhaps this applies only to a minor [ketannah], who has no power to accept kiddushin; but as for a na'arah,[9] who is empowered to accept kiddushin — let her betroth herself and take the money![10] — The Writ saith, in her youth[11] in her father's house:[12] teaching, all the profit of youth belongs to her father.

If so, when R. Huna said in Rab's name: Whence do we know that a daughter's labour belongs to her father? — From the verse: And if a man shall sell his daughter to be a maidservant:[13] just as a maidservant's labour belongs to her master, so does a daughter's labour belong to her father; learn it rather from, 'in her youth, in her father's house'? But [you must answer], that refers to the annulment of vows.[14] So here too, [you must admit] that it is written in reference to annulment of vows![15] And should you argue, We may learn therefrom[16] — but civil law[17] cannot be deduced from ritual law.[18] And should you say, we may learn it from kenas[19] — but civil law cannot be deduced from kenas?[20] And should you say: We may learn it from [the indemnity payable for her] shame and depreciation[21] — yet shame and depreciation are different, since her father has an interest therein.[22] — But [answer thus:] it is logical that when a limitation is made,

(1) V. Glos. The marriage bond cannot be dissolved by halizah.
(2) Deut. XXIV, 1.
(3) V. Glos.
(4) He can accept money or a deed as her kiddushin, the former belonging to him, or deliver her to intercourse, v. Keth. 46b.
(5) Ex. XXI, 11: this refers to a Hebrew maidservant.
(6) When she leaves him on marriage. Hence her father has a right to the money given as kiddushin.
(7) The verse merely implying that no money is payable when she leaves this master, but it is when she leaves another master, viz., her father. But nothing shews that the money belongs to her father, which would follow only if Scripture had written: 'without money to him'.
(8) Deut. XXII, 16; thus shewing that the privilege rests entirely with him.
(9) V. Glos.
(10) A minor cannot enter into a legal contract; hence it is but equitable that her father has full power over her in respect to marriage. But a na'arah can make valid transactions and acquire property; the father therefore should have no rights in respect to her kiddushin. — Though the verse quoted, dealing with the slandering of a woman's honour, explicitly refers to a na'arah — Then shall the father of the na'arah (E.V. damsel) etc., — she may have been betrothed while a minor.
(11) I.e., when a na'arah, to which the Heb. term bi-ne'ureha corresponds.
(12) Num. XXX, 17.
(13) Ex. XXI, 7.
(14) Teaching that the father can annul his unmarried daughter's vows, if a na'arah; but it has no bearing on her labour.
(15) Not kiddushin.
(16) Just as a father can annul his daughter's vows, so has he a title to her betrothal money.
(17) Lit., 'money'.
(18) Lit., 'prohibition'. The title to betrothal money is purely a question of civil law, whereas the binding character of vows and their annulment belong to ritual law.
(19) Lit., 'fine'; v. Glos. If a man seduces, violates, or slanders a na'arah, he must pay a fixed fine to her father: Ex. XXII, 15f; Deut. XXII, 13-19; 28f. Hence in the case of kiddushin too the money belongs to her father.
(20) This is a general principle. Kenas is not regarded as equitable indemnification for loss sustained, for then the amounts would vary, but as a Biblical decree. As such, it stands in a category by itself, and ordinary civil law cannot be compared with it.
(21) Besides the fixed kenas, the seducer must pay her father for the shame she sustained and her loss in social standing, which has a monetary value. These are ordinary payments for injury inflicted and therefore provide a basis for analogy.
(22) For her father could inflict these on her by marrying her to a man suffering from repulsive disfigurement.

Talmud - Mas. Kiddushin 4a

it applies to an analogous going forth.[1] But the one departure is dissimilar to the other: there [sc. a maidservant] she passes from her master's authority completely; whereas here she yet wants being given over for huppah?[2] — Nevertheless, she passes out of his control in respect of annulment of vows; for we learnt: A betrothed maiden — her father and husband [together] may annul her vows.[3]

Now, this verse: 'and she shall go out for nothing' — does it come to teach this? Surely it is needed for what was taught, viz., 'And she shall go out for nothing' — this refers to the days of bagruth;[4] without money — to the days of na'aruth![5] — Said Rabina: If so, Scripture should have written, en kesef [without money]; why write, eyn kesef[6] — [To teach:] no money is due to this master, but money is due to another, viz., her father.[6] And how do you know that such exegesis is permissible?[7] — Because it was taught: [If a priest's daughter also be married unto a stranger, she may not eat of an offering of the holy things. But if the priest's daughter be a widow, or divorced,] and have no [eyn] child [. . . she shall eat of her father's meat].[8] I only know [that] her own child [disqualifies her]; whence do I know [the same of] her child's child?[9] From the verse: 'and have no [eyn] child', [teaching] examine her [for issue].[10] Again, I only know [that] legitimate seed

[disqualifies her]: whence do I know it of illegitimate [pasul] seed?[11] From the verse, and have no [eyn] child: examine her [for any issue whatsoever]. But you have employed this for her child's child? — For her child's child no verse is required, because grand-children are as children;[12] [hence] the verse is required only for her illegitimate seed.

Now, how does the Tanna[13] himself know that such exegesis is permissible? — I will tell you. It is written: Baalam doth not consent [me'en],[14] and my husband's brother doth not consent [me'en][15] neither of which contain a yod, whereas here [in the verses under discussion] a yod is written:[16] this proves that it [sc. the yod] comes for exegesis. Now, it is necessary to state that in the case of a na'arah, both her kiddushin and her labour belong to her father.[17] For had Scripture written that her kiddushin belongs to her father, I might have thought, That is because she takes no pains with it; but her labour, for which she toils, I would say is her own. And if we were told about her labour, that is because she lives thereby;[18] but her kiddushin, which comes from elsewhere, I would think is hers: thus both are necessary.

The [above] text [says:] 'And she shall go out for nothing — this refers to the days of bagruth; without money — to the days of na'aruth.' Then Scripture should have written na'aruth, which renders bagruth superfluous?[19] — Said Rabbah: One comes and illumines the other.[20] For this may be compared to the case of toshab and sakir,[21] as was taught: Toshab means one [a Hebrew slave] acquired in perpetuity;[22] sakir, one purchased for a period of [six] years.[23] Now, let toshab be stated, but not sakir, and I would reason: if one acquired in perpetuity may not eat, how much more so one purchased only for a period of [six] years?[24] Were it so, I would say, toshab is one purchased for a limited period, but one acquired in perpetuity may eat. Therefore sakir comes and illumines [the meaning of] toshab, [teaching] that though he is purchased for ever, he may not eat. Said Abaye to him: How compare! There they are two persons, and even had Scripture [explicitly] written, a toshab whose ear was bored,[25] and then added the other, sakir would be something which might be inferred a minori; and a thing which is derived a minori Scripture [often] takes the trouble to write. But here [in the case of a maidservant] she is only one person: having departed in na'aruth, what business has she with him in bagruth? — But, said Abaye, it is necessary only for the majority of a [constitutionally] barren woman:[26] I might have thought, she [a Hebrew maidservant] is freed only by na'aruth, but not by bagruth: hence we are informed [otherwise]. Mar, son of R. Ashi, demurred: But does this not follow a minori? If symptoms [of na'aruth], which do not free her from parental authority,[27] free her from her master's authority: then bagruth, which liberates from parental authority, surely liberates her from her master's authority! — But, said Mar, son of R. Ashi: This is necessary only in respect of the sale itself of a barren woman:[28] I might have thought, with one who will [subsequently] produce evidence of na'aruth, the sale is valid: but with one who will not produce such evidence[29] the sale is altogether invalid:

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(1) After all, the matter is deduced from 'and she shall go out for nothing' without money, the reasoning being as follows: The verse teaches that only for a maidservant is no payment due for gaining her freedom. Now, if it were due, it would obviously be her master's; hence when we learn that elsewhere, sc. marriage, payment is due, it is likewise due to the master whom she leaves, viz., her father.

(2) Before which her father is still entitled to her labour, and acts as her heir.

(3) But the father no longer enjoys undivided control.

(4) V. Glos.

(5) V. Glos. Thus the verse merely teaches that something else, not money, frees her, but implies no other exclusion.

(6) Rabina assumes that 'without money' could be written, אן (en); the inserted yod י (אין eyn) is superfluous, so expresses a further limitation.

(7) I.e., that the yod (י) may be regarded as superfluous?

(8) Lev. XXII, 12f.

(9) Her own being dead.

(10) [עיין לה , a play on the word אין or an interchange of the א with the ע, as is frequent in Semitic languages].

See if she has any descendants. This is deduced from the superfluous yod.

(11) 'Illegitimate' not in the modern sense, but e.g., a child born of adultery.

(12) This is deduced in Yeb. 62b.

(13) V. Glos.

(14) Num. XXII, 14.

(15) Deut. XXV, 7.

(16) It is assumed that me'en is derived from en.

(17) These were deduced from two separate verses on 3b.

(18) She must work for her keep, hence her earnings belong to her father, who keeps her. — Tosaf. in Git. 47b s.v. יוולביתך

(19) If she is freed at na'aruth, which is earlier, surely she is freed at bagruth!

(20) The two phrases must refer to two ages, na'aruth and bagruth. But if only one were written — and she shall go out for nothing — I would apply it to bagruth only.

(21) The reference is to Lev. XXII, 10: a toshab (E.V. sojourner) of the priest, or a sakir (E.V. hired servant), shall not eat of the holy thing.

(22) I.e., until Jubilee; v. Ex. XXI, 5f.

(23) V. ibid. 2.

(24) For the former is more of the priest's chattel (v. Lev. XXII, 11) than the latter.

(25) V. Ex. ibid.

(26) She has no symptoms of na'aruth, and attains her majority (bagruth) at the age of twenty.

(27) V. p. 7.

(28) I.e., a minor who shews symptoms of constitutional barrenness.

(29) V. n. 5.

Talmud - Mas. Kiddushin 4b

therefore the verse: 'and she shall go out for nothing etc.', teaches us [otherwise]. Now, according to Mar, son of R. Ashi, who objected, does this not follow a minori, but we have said: Scripture takes pains to write something which could be inferred a minori? — That is only if no other answer is possible; but if it is, we answer.[1]

But this Tanna adduces it[2] from the following. For it was taught: When a man taketh a wife, and hath intercourse with her, then it shall be, if she find no favour in his eyes, because he hath found some unseemly thing in her, etc.;[3] 'taking' is only by means of money, and thus it is written: I will give the money for the field: take it of me.[4] But does this not follow a minori: if a Hebrew maidservant, who cannot be acquired by intercourse, can be acquired by money; this one [a wife], who may be acquired [in marriage] by intercourse, can surely be acquired by money? Let a yebamah prove [the contrary:] she may be acquired by intercourse, yet she is not acquired by money. As for a yebamah, that may be because she cannot be acquired by deed: will you say the same of this one [a wife], who can be acquired by deed? Therefore Scripture teaches: 'when a man taketh, etc.'[5] But what need of a verse for this: it has been inferred![6] — Said R. Ashi: Because one can argue, The deduction is vitiated ab initio:[7] whence do you adduce it? From a Hebrew maidservant! As for a Hebrew maidservant, that [her acquisition is by money] is because she is freed by money: will you say the same of this one [a wife], who is not freed by money? Therefore Scripture teaches: 'when a man taketh a wife'.

Now, both 'and she shall go out for nothing'[8] and 'when a man taketh' must be written. For had Scripture written: 'when a man taketh', I would have thought, the kiddushin given to her by the husband is her own: therefore Scripture [also] writes, 'and she shall go out for nothing.' And had Scripture written: 'and she shall go out for nothing,' I would have thought, if she [the wife] gives him [the husband] money and betroths him,[9] it is valid kiddushin:[10] therefore Scripture wrote, 'when a man taketh', but not, 'when a woman taketh'.[11] 'And hath intercourse with her': this teaches that

she may be acquired by intercourse. But does this not follow a minori? If a yebamah, who cannot be acquired by money, is acquired by intercourse; then this one [a wife], who is acquired by money, can surely be acquired by intercourse! — Let a Hebrew maidservant prove [the contrary], for she may be acquired by money, yet she is not acquired by intercourse. As for a Hebrew maidservant, that is because her acquisition is not for conjugal purposes; will you say the same of this one, who is acquired for conjugal purposes? Therefore it is stated: 'and has intercourse with her'. But what need of a verse: it has been inferred? — Said R. Ashi: Because one can argue, the deduction is vitiated ab initio: whence do you adduce it? From a yebamah! As for a yebamah, that is because she already stands tied;[12] can you say [the same] of this one, who does not stand tied? Therefore it is taught: 'and hath intercourse with her'.

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(1) By making the verse apply to something else.

(2) Sc. that kiddushin is effected by money.

(3) Deut. XXIV, 1.

(4) Gen. XXIII, 13.

(5) That 'taking' means by money.

(6) A minori, the refutation from yebamah being refuted itself.

(7) Without referring to a yebamah.

(8) V. supra 3b and 4a.

(9) Saying to him, 'I am betrothed unto thee in virtue of the money I give thee.'

(10) Since that verse does not shew who must give the money.

(11) Hence he must give the money.

(12) To the yabam (q.v. Glos.), on account of her deceased husband, hence cohabitation merely completes the bond.

Talmud - Mas. Kiddushin 5a

And whence do we know that [a woman may be acquired] by deed too? But may it not be inferred a minori: if money, which cannot free, effects betrothal;[1] then deed, which frees,[2] can surely tie? — [No.] As for money, that is because hekdesh and second tithe[3] can be redeemed therewith;[4] can you say likewise of a deed, by which hekdesh and second tithe cannot be redeemed, for it is written, [and if he that sanctified the field will in any wise redeem it,] then he shall add the fifth part of the money of thy estimation, and it shall be assured to him.[5] Therefore Scripture saith, And when she is departed [out of his house, she may go] and be [another man's wife]:[6] thus 'be — coming' [betrothed] is assimilated to 'departure' [divorce]; just as the 'departure' is by deed, so is 'becoming' too. Then let 'departure be assimilated to 'becoming': just as the 'becoming' may be by money, so the 'departure' too may be effected by money? — Abaye replied: Then it will be said: Money unites and money sunders:[7] shall the defender become the prosecutor![8] If so, of deed too it will be said: Deed sunders and deed unites: shall the prosecutor become the defender! — The contents[9] of each deed are distinct.[10] Then here too, [the purpose of] this money is distinct and that of the other is distinct? — Nevertheless, the impress [of the coin] is the same.

Raba said: Scripture saith, then he shall write her [a writ of divorcement]:[11] [hence], she can be divorced by writing, not by money. Say rather, she can be divorced by 'writing', but not betrothed by writing? — But it is written, and when she is departed, she may go and be, etc., assimilating etc.[12] And why do you choose thus?[13] — It is logical: when treating of divorce, one excludes [a particular method of] divorce; but when dealing with divorce, shall one exclude [a form of] marriage? [Surely not!]

Now, according to R. Jose the Galilean, who utilises this verse ['then he shall write, etc.'], for a different purpose,[14] how do we know that she cannot be divorced by money? — The Writ saith, 'a writ of divorcement' — a deed can divorce her, but nothing else can divorce her. Now, how do the Rabbis employ this word 'divorcement'?[15] — They employ it [to shew] that it must be an instrument

which [completely] sunders them from each other. Even as it was taught: [If the husband says,] 'Behold, here is your divorce, on condition that you drink no wine or do not visit your father's house for ever,' that is no 'divorcement':[16] 'for thirty days,' that is a 'divorcement'.[17] And R. Jose the Galilean?[18] — He deduces it from the use of kerithuth instead of koreth.[19] And the Rabbis?[20] — In their opinion, the use of kerithuth instead of koreth has no particular significance.

Now, one could not be inferred from another; yet let one be inferred from two others?[21] — Which could be inferred: should Scripture omit deed, that it might be inferred from the others? But as for the others, that is because their pleasure is great![22] Should Scripture omit intercourse, that it might be inferred from the others? But as for the others, that is because their powers of acquisition are great![23] Should Scripture omit money, that it might be inferred from the others? But as for the others, that is because they have compulsory powers![24] And should you argue, money too has compulsory powers over a Hebrew maidservant[25] — nevertheless, we do not find this in respect to conjugal relationship.[26] R. Huna said: Huppah acquires [a woman], a minori. If money, which does not authorize one to eat terumah,[27] effects possession;[28] then huppah, which authorizes one to eat terumah, surely effects possession![29] Yet does not money authorize the eating [of terumah]? But 'Ulla said: By Biblical law, an arusah[30] may eat of terumah, for it is said: And if a priest acquire any soul, the purchase of his money, [he shall eat out],[31] and this one [a betrothed woman] too is the purchase of his money. Why then did they [the Sages] say that she may not eat [thereof]? For fear lest a cup [of wine of terumah] be mixed for her[32] in her father's house,[33] and she give it to drink to her brothers and sisters. But argue thus: if money, which does not complete [marriage],[34] acquires [in marriage],[35] then huppah, which completes [marriage], surely acquires! As for money, [it may be asked,] that is because hekdeshoth[36] and second tithe are redeemed therewith![37] Let then intercourse prove it.[38] As for intercourse, that is because it acquires in the case of a yebamah! Then let money prove it.[39] And thus the argument revolves: the distinguishing feature of one is not that of the other, nor is the distinguishing of this one that of the other; the feature common to both is that they acquire elsewhere, and acquire here [in marriage]; so do I adduce huppah, which acquires elsewhere[40] and acquires here too.[41] [No.]

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(1) Lit., 'brings in' — a woman, into the bond of matrimony.

(2) I.e., the deed of divorce, which frees a woman from marriage.

(3) v. p. 4, n. 4.

(4) When an article of hekdesh cannot itself be used in the Temple service, it is redeemed, reverts to a secular status, and the redemption money is dedicated to the Temple. Similarly, if the second tithe cannot be carried to Jerusalem, it is redeemed, becomes secular, and the redemption money is consumed in Jerusalem. — Since then money is potent in respect of these, it may also effect marriage.

(5) Lev. XXVII, 19. The text gives only a paraphrase of this, then he shall give the money and it shall be assured to him; v. Tosaf. Shab. 128a s.v. ונתן also p. 276, n. 4.

(6) Deut. XXIV, 2.

(7) Lit., 'money leads in and money leads out.'

(8) It is illogical that the same thing should have two opposing effects.

(9) Lit., 'words'.

(10) Hence it is not the same instrument in both cases.

(11) Deut. XXIV, 1.

(12) Supra, proving that she can be married by writing.

(13) To exclude money for divorce and include deed for marriage; perhaps one should reverse it?

(14) Git. 21b.

(15) Lit., 'cutting off.

(16) Since she remains bound in a particular respect to her husband all her life.

(17) Fur after that she is completely cut off from him.

(18) How does he know this?

(19) He regards the longer form as more emphatic; hence it teaches that the cutting apart must be absolute, as in the

Baraitha.
(20) Why state the whole phrase, when the word keritkuth itself is sufficient?
(21) It was proved above that no one method of acquisition may be inferred from another a minori, hence a verse is necessary for each. Now the Talmud asks, Only two are required then the third follows by analogy: just as the two are methods of acquisition elsewhere, and also in marriage, so is the third. For each effects possession elsewhere, money and deed in ordinary purchases, and cohabitation in the case of a yebamah.
(22) Both money and cohabitation confer pleasure upon the recipient, but a deed does not.
(23) Both give a title to land and slaves, which cohabitation does not.
(24) Cohabitation acquires a yebamah even against her will, and a deed divorces a woman likewise even against her desire.
(25) A father can sell his daughter, the transaction being effected by money, against her will (Rashi). Tosaf.: Having bought a Hebrew maidservant, her master can declare that the money paid was for betrothal, even against her will and that of her father.
(26) According to Rashi's interpretation, the sense is obvious. Tosaf.: Money has no power of matrimonial compulsion at the outset, for in the first place the money is given for a maidservant, not a wife.
(27) V. Glos. If a priest betroths an Israelite's daughter with money, she may not eat terumah until the huppah.
(28) Of a woman in marriage, and she becomes an arusah (q.v. Glos.).
(29) To make a woman an arusah.
(30) V. Glos.
(31) Lev. XXII, 11.
(32) Wine was diluted before drinking.
(33) Cohabitation being forbidden until huppah, the arusah naturally lived in her father's house until then.
(34) The money makes her an arusah only, and her father is still her heir, and entitled to her labour; v. supra.
(35) Effecting betrothal, which is marriage in so far as divorce is required to free her.
(36) V. Glos. hekdesh, pi. hekdeshoth.
(37) V. p. 12, n. 5.
(38) Which acquires a woman though lacking this power.
(39) Which cannot acquire a yebamah, yet effects betrothal.
(40) After betrothal.
(41) I.e., it can effect the first stage of marriage, sc. betrothal.

Talmud - Mas. Kiddushin 5b

The feature common to both is that they confer much pleasure![1] Let deed then prove it.[2] As for deed, that is because it frees an Israelitish daughter![3] Then let money and cohabitation prove it. And thus the argument revolves: the distinguishing feature of one is not that of another, nor is the distinguishing feature of this one that of the other:[4] the feature common to all is that they acquire in general and here too; so do I adduce huppah, that it acquires in general and here too. [No.] As for the common feature, it is that they have powers of compulsion.[5] And R. Huna?[6] — Money at least has no compulsory powers in matrimonial relationships.

Raba said: There are two refutations of the matter:[7] firstly, we learnt THREE, not ‘four’; and secondly, can then huppah complete [marriage] but through [prior] kiddushin; are we then to deduce huppah, when not as a result of kiddushin, from the same when preceded by kiddushin? — Abaye answered him: As for your objection, we learnt THREE, not ‘four’: [only] what is explicitly stated [in Scripture] is taught, but not what is not explicitly stated.[8] And as to your objection; can then huppah complete [marriage] but through [prior] kiddushin — that indeed is R. Huna's argument: if money_ which cannot complete [marriage] after money,[9] nevertheless acquires; then huppah, which completes [marriage] after money, can surely acquire.[10]

Our Rabbis taught: How [is a woman acquired] by money? If a man gives her [a woman] money or its equivalent and declares to her, ‘Behold, thou art consecrated unto me,’ [or] ‘thou art betrothed

unto me', [or] 'Behold, thou art a wife unto me' — then she is betrothed.[11] But if she gives him [money or its equivalent] and says 'Behold, I am consecrated unto thee,' 'I am betrothed unto thee,' 'I am a wife unto thee,' she is not betrothed. R. Papa demurred: Thus it is only when he both gives [the money] and makes the declaration [that the betrothal is valid]; but if he gives [it] and she speaks, she is not betrothed. Then consider the second clause: But if she gives [it] to him, and she makes the declaration, the kiddushin is not valid. [Hence,] it is only when she both gives [the money] and speaks, but if he gives the money and she speaks, the kiddushin is valid? — The first clause is exact, while the second is mentioned incidentally.[12] But may a statement be made in the second clause contradictory to the first?[13] — But this is its meaning: If he gives [the money] and he speaks, the kiddushin is obviously valid; [but] if he gives, and she speaks, it is accounted as though she both gives and speaks, so that the kiddushin is not valid. Alternatively, if he gives and speaks, she is betrothed; if she gives and speaks, she is [certainly] not betrothed; but if he gives and she speaks, it is doubtful, and as a Rabbinical measure we fear [the validity of the kiddushin].[14]

Samuel said: In respect to kiddushin, if he gave her money or its equivalent and declares, 'Behold, thou art consecrated,' 'Behold, thou art betrothed,'[or] 'Behold, thou art a wife,' — then she is betrothed. [If he declares,] 'Behold, I am thy husband,' 'Behold, I am thy master,'[15] 'Behold, I am thy arus,'[16] — there are no grounds for fear.[17] The same applies to divorce: If he gives her [the document of divorce] and declares, 'Behold, thou art sent forth,' 'Behold, thou art divorced,'[18] [or] 'Thou art [henceforth] permitted to any man, — then she is divorced. [But if he declares,] 'I am not thy husband,' 'I am not thy master,' 'I am not thy arus,' there are no grounds for fear.[19]

R. Papa said to Abaye: Shall we say that in Samuel's opinion inexplicit abbreviations are [valid] abbreviations?[20] But we learnt: If one declares, 'I will be,' he becomes a nazir. Now we pondered thereon: but perhaps he meant, 'I will fast'?[21] And Samuel answer — ed: That is only if a nazir was passing before him.[22] Thus, it is only because a nazir was passing before him, but not otherwise.[23] — The circumstances here are that he said 'unto me.' If so, what does he inform us?[24] — His teaching is with respect to these

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(1) Cf. p. 14, n. 5; no pleasure however, is derived from huppah.

(2) Which gives us pleasure, yet effects betrothal.

(3) I.e., it effects divorce.

(4) Regarding money and cohabitation as one proposition, and deed as another.

(5) V. supra p. 14, nn. 7, 8.

(6) How does he dispose of this?

(7) Sc. R. Huna's statement.

(8) Money and deed, though deduced by exegesis, are regarded as explicit, since they are intimated in Scripture. But huppah is only inferred a minori.

(9) I.e., when betrothal (erusin) is effected by money, the marriage cannot he completed by giving money a second time.

(10) A woman in the first stage of marriage — kiddushin.

(11) Lit., 'consecrated,' i.e., she becomes an arusah.

(12) In contrast to the first, but its implication is not to be stressed.

(13) Even if mentioned incidentally, it must be essentially, and in its implications, correct.

(14) She is neither married nor unmarried, and if another man betroths her she must be divorced by both, since we do not know her rightful husband.

(15) Heb. בעל = husband.

(16) V. Glos.

(17) It is definitely not valid betrothal, as below. Consequently, if another betroths her, the second kiddushin is valid.

(18) The Heb. verb גרש, garesh, literally means 'to expel', 'drive forth'.

(19) The divorce is definitely invalid.

(20) Lit., 'handles'. In the above, the formulas are abbreviations, since he declares 'Behold, thou art betrothed,' omitting 'unto me. Moreover, their purport is not explicit and beyond doubt, for he may have been speaking and acting on another

man's behalf, yet Samuel rules that since he was the speaker, she is betrothed to him, thus shewing that he holds these to be valid.

(21) Lit., 'I will be in a fast'.

(22) Then it is obvious that he meant, 'I will be like him.'

(23) Which proves that Samuel holds that abbreviations must be beyond doubt.

(24) It is obvious.

Talmud - Mas. Kiddushin 6a

latter expressions.[1] [For] here it is written, when any man taketh [a woman],[2] but not that he taketh himself [as a husband], and there it is written, and when he send her away,[3] but not that he sends himself away.

Our Rabbis taught: [if one declares,] 'Behold, thou art my wife,' 'Behold, thou art my arusah,' 'Behold, thou art acquired to me,' she is betrothed; 'Behold, thou art mine,' 'Behold, thou art under my authority,' 'Thou art tied unto me,' she is betrothed. Then let them all be combined and taught in one clause?[4] — The tanna[5] heard each three separately, and memorized them [in that order]. The scholars propounded: [What if one declares,] 'Thou art singled out for me,'[6] 'Thou art designated unto me,'[7] 'Thou art my help,'[8] 'Thou art meet for me,'[9] 'Thou art gathered in to me,' 'Thou art my rib,'[10] 'Thou art closed in to me,'[11] 'Thou art my replacement,'[12] 'Thou art kept [seized] unto me,' [or,] 'Thou art taken by me'? — One at least you may solve. For it was taught: If one declares, 'Thou art taken by me,' she is betrothed, for it is written, when a man taketh a wife.[13]

The Scholars propounded: What of 'Thou art my harufah [betrothed]?[14] — Come and hear: For it was taught: If a man declares, 'Be thou my harufah,' she is betrothed,for in Judea an arusah is called harufah. Is Judea then the greater part of the world?[15] — It is meant thus: If he declares, 'Be thou my harufah,' she is betrothed, for it is said: 'that is a bondmaid, neherefeth [betrothed] to a man'; moreover, in Judea an arusah is called harufah. Is [the practice in] Judea to support Scripture![16] — But it means thus: If he says in Judea, 'Be thou my harufah,' she is betrothed, because in Judea an arusah is called harufah.

What are the circumstances:[17] shall we say, that he was not speaking to her about her divorce or kiddushin,[18] how does she know what he means?[19] But if he was speaking to her about her divorce or kiddushin, then even if he said nothing at all [but gave her money], she is also [betrothed]. For we learnt: If a man was speaking to a woman on matters concerning her divorce or betrothal, and gave her her divorce or kiddushin, but made no explicit declaration — R. Jose said: It is sufficient; R. Judah maintained: He must make an explicit declaration. Whereon R. Huna said in Samuel's name: The halachah[20] agrees with R. Jose! — I will tell you: after all, it refers to a case where he was speaking to her about her divorce or betrothal; now, had he given her [the money or the deed of divorce] and remained silent, that indeed would be so.[21] But the circumstances here are that he gave [them] to her and made one of these declarations. And this is the problem: did he employ these expressions in the sense of kiddushin, or perhaps he meant them in reference to work?[22] The questions stand over.

The [above] text [stated]: 'If a man was speaking to a woman on matters concerning her divorce or betrothal, and gave her her divorce or kiddushin, but made no explicit declaration — R. Jose said: It is sufficient; R. Judah maintained: He must make an explicit declaration'. Said Rab Judah in Samuel's name: Providing that they were engaged on that topic [when the divorce or kiddushin was given]. R. Eliezer said likewise in R. Oshaia's name: Providing that they were engaged on that topic.[23]

This is disputed by Tannaim; Rabbi said: Providing that they were engaged on that topic; R.

Eleazar son of R. Simeon said: Even if they were not engaged on that topic. But if they were not engaged on that topic, how does she know what he meant? — Abaye answered: [They travelled] from one matter to another in the same topic.[24] R. Huna said in Samuel's name: The halachah agrees with R. Jose. R. Yemar asked R. Ashi: Then when Rab Judah said in Samuel's name: He who does not know the peculiar nature of divorce and betrothal[25] should have no business with them[26] — [does it hold good] even if he is ignorant of this ruling of R. Huna in Samuel's name? — Even so, he replied.

'The same applies to divorce: If he gives her [the document of divorce,] and declares, "Behold, thou art sent forth," "Behold, thou art divorced," [or] "Thou art permitted to any man," — then she is divorced.'[27] Now it is obvious, if he gives a divorce to his wife and says to her, 'Behold, thou art a free woman,'

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(1) Sc. 'I am thy husband,' etc., that these are certainly invalid.
(2) Deut. XXIV, 5.
(3) Ibid. 2.
(4) Instead of stating 'she is betrothed' twice.
(5) V. Glos. s.v. (b.).
(6) Rashi translates: 'Thou art one with me'; cf. Gen. II, 24: and they shall be one flesh.
(7) Heb. מיועדת. meyu'edeth, cf. Ex. XXI, 8: if she please not her master who hath designated her (ye'adah, E.V. betrothed her) for himself
(8) Cf. Gen. II, 18; It is not good that man should be alone; I will make him an help meet for (נגד, neged) him.
(9) נגדתי, negdathi from neged; preceding note. [Or, 'my counterpart' — another possible rendering of neged (against), v. Yeb. 63a.]
(10) Cf. Gen. II, 21: and he took one of his ribs.
(11) סגורתי Cf. ibid.: . . . and closed up the flesh ויסגור.
(12) תחתי, tahti; cf. ibid.: instead thereof תחתינה.
(13) Deut. XXIV, 1.
(14) Cf. Lev. XIX, 20: That is a bondmaid, betrothed (נחרפת neherefeth=harufah); this really applies to a bondmaid designated for her master.
(15) Surely local practice cannot settle the law for all places.
(16) Its validity being derived from Scripture, surely no local practice is required as further proof!
(17) Of the above expressions, concerning which the scholars were in doubt.
(18) ['Divorce' is mentioned here merely incidentally as part of a current phrase 'ashggarath lashon'. The text of Tosaf. Ri did not seem to have it.]
(19) Even if these terms imply kiddushin, she may not know that he intends them in that sense: consequently her consent is lacking.
(20) V. Glos.
(21) She would certainly be betrothed or divorced.
(22) E.g., 'thou art one with me,' to cooperate with me in work; similarly the rest.
(23) But if they had passed on to some other topic, all agree that she is not betrothed or divorced. [Although the woman's consent is not necessary by law in the case of divorce, she must nevertheless be aware of the character of the document that is being given to her, Tosaf. Ri; v. Git.78a.]
(24) E.g., they were no longer speaking of marriage, but about dowry, means of livelihood, etc.
(25) I.e., the laws by which they are governed.
(26) To celebrate a marriage or function as a Rabbi in divorce proceedings.
(27) Supra 5b; Samuel's dictum.

Talmud - Mas. Kiddushin 6b

his words are null.[1] If he says to his female slave, 'Thou art permitted to all men,' his words are [likewise] null.[2] [But] what if he says to his wife, 'Behold, thou art for thyself,' do we say, he meant

it in respect of labour; or perhaps he meant it absolutely?[3] — Said Rabina to R. Ashi: Come and hear: For we learnt: The essential part of a deed of manumission is, 'Behold, thou art a free man,' 'Behold, thou art for thyself.' Now if a heathen[4] slave, whose body belongs to him [his master], yet when he says to him, 'Behold, thou art for thyself,' he means it absolutely; how much more so in the case of a wife, who does not belong bodily to him.

Rabina asked R. Ashi: What if he says to his slave, 'I have no concern with you'? Do we say, he means, 'I have absolutely no concern with you;'[5] or perhaps he says it to him in reference to work? — R. Nahman observed to R. Ashi-others state, R. Huna of Hoza'ah[6] to R. Ashi: Come and hear: If one sells his [heathen] slave to a heathen, he is emancipated,[7] and requires a deed of manumission from his first master.[8] Said R. Simeon b. R. Gamaliel: When does this hold good? If he [the vendor] did not make out for him an oni;[9] but if he did, that is his [deed of] emancipation.[10] What is meant by 'oni'? — Said R. Shesheth: If he wrote for him, 'When you escape from him [the heathen buyer], I have no concern with you.'[11]

Abaye said: If a man betroths [a woman] with a debt,[12] she is not betrothed;[13] with the benefit of a debt,[14] she is betrothed; yet this may not be done, as it constitutes an evasion of usury.[15] This 'benefit of a debt,' how is it meant? Shall we say, that he fixed [the interest] as a loan, he having said, [I am lending you] four [zuz] for five.[16] — but that is real usury![17] Moreover, it is, in point of fact, a debt![18] — This holds good only if he extended the term [for repayment].[19] Raba said: [If he says,] 'Take this maneh[20] on condition that you return it to me,' — in respect to purchase, he acquires no title;[21] in the case of a woman,[22] she is not betrothed; in the matter of a redemption of the firstborn,[23] the firstborn is not redeemed: in respect of terumah,[24] he fulfils the duty of 'giving', yet it is forbidden to act thus, as it looks like a priest who assists in the threshing floor.[25] What is Raba's opinion: if he holds that a gift on condition that it be returned is a valid gift, then even the others too [are valid]; whilst if he holds that it is not a valid gift, then even in the case of terumah it is not [valid]? Furthermore, It was Raba who ruled: A gift on condition that it is returned is valid. For Raba said: [If one says to another,] 'Here you have this citron, on condition that you return it to me,' if [the other] takes and [then] returns it, he fulfils his duty; if not, he does not fulfil [it]![26] — But said R. Ashi: in the case of all it [the conditional gift] is valid, with the exception in that of a woman, because a woman cannot be acquired by barter.[27] R. Huna Mar, son of R. Nehemiah, said to R. Ashi: We teach in Raba's name even as you [have stated].

Raba said: [If a woman says,] 'Give a maneh to So-and-so,

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(1) Because this expression applies only to liberation from bondage.

(2) Because this applies to divorce.

(3) In the sense of divorce.

(4) Lit., 'Canaanite.'

(5) I.e., you are free.

(6) [Be Hozai, the modern Khusiztan, S.W. of Bagdad. V. Git. (Sonc. ed.) p. 413, n. 1.]

(7) A Gentile slave in a Jewish household was practically a semi-Jew, being obliged to fulfil those precepts which are incumbent on women. The master who sold him to a Gentile, thus freeing him from that obligation, was punished by being forced to buy him back, even at a greatly enhanced price, and the slave then became free.

(8) To be accounted a free man and a Jew — as a slave he was circumcised-that he might marry a free Jewess.

(9) Prob. = Gr. '**.

(10) And nothing else is needed.

(11) This proves that the expression connotes freedom.

(12) Saying, 'Thou art betrothed unto me by the debt you owe me.

(13) Because something must be actually given as kiddushin or betrothal, whereas money formerly lent had already passed into her possession before then.

(14) The meaning of this is discussed below.

(15) Since the lender thereby benefits from the loan.
(16) And he now offers the remission of the fifth zuz for kiddushin.
(17) Not merely an evasion.
(18) [Since she owes him the zuz which he offers to remit as kiddushin.]
(19) Rashi and others: If the creditor extended the period of repayment to the woman, and said to her, 'You might have given money to a third party, or to myself, to persuade me to this extension; hence by this extension I, on my own accord, am saving you this expenditure and thus confer a financial benefit upon you here and now, and by that benefit I betroth you.' Similarly, if he remits the entire debt and says to her, 'I betroth you by the benefit that has now accrued to you by this remission,' his declaration is valid. But when he betroths her with money owing, he is offering a past benefit, hence the betrothal is invalid. R. Tam: If a woman owes money, and a third party gives the creditor a sum of money for an extension, and betroths her with that benefit which he has conferred upon her, for which he has actually given something.
(20) V. Glos.
(21) V. infra 26a; real estate is acquired by money, but not if it is stipulated that the money shall be returned.
(22) If it was offered as kiddushin.
(23) Lit., 'son,' v. Ex. XIII, 13.
(24) V. Glos. If terumah is given to the priest on this condition.
(25) Of an Israelite, in order to receive the terumah. The Rabbis considered this undignified, and enacted that such a priest should not receive terumah. Now, if a priest accepts terumah on this condition, he offers an inducement to the Israelite to give it to him in the future too, and therefore Raba forbade the practice, though valid if done.
(26) The reference is to Lev. XXIII, 40: And ye shall take you on the first day (of the Feast of Tabernacles) the fruit of goodly trees (interpreted by the Rabbis as referring to the citron), branches of palm trees etc. The Rabbis ruled that this 'taking' requires one's own fruit, and to this Raba alludes. If the recipient carries out the stipulation, it was his for the period of 'taking', and so he fulfils his duty; otherwise, it was not his even then, and his duty is not fulfilled. Thus Raba holds a conditional gift valid.
(27) V. infra 28a; the article given as barter was generally returned, and so when money is thus given as kiddushin, it looks like barter.

Talmud - Mas. Kiddushin 7a

and I will become betrothed to thee,'[1] she is betrothed by the law of a surety:[2] a surety, though he personally derives no benefit [from the loan], yet obligates himself [to repayment]; so this woman too, though she personally derives no benefit [from the money], obligates and cedes herself [in betrothal]. [If a man says,] 'Take this maneh and be betrothed to So-and-so,'[3] she is betrothed by the law of a Canaanite slave:[4] a Canaanite slave, though he himself loses nothing,[5] yet acquires himself [his freedom]; so this man too though he personally loses nothing, acquires this woman. [If the woman declares,] 'Give a maneh to So-and-so, and I will become betrothed to him,' she is betrothed by the laws of both: a surety, though he personally derives no benefit, obligates himself, so this woman too' though she personally derives no benefit, cedes herself. [And should you object:] How compare: as for a surety, he who acquires a title[6] loses money,[7] — but shall this man acquire the woman at no cost to himself? Then let a Canaanite slave prove it, who loses no money[5] and yet acquires himself. [And if you demur:] How compare: there, he who gives possession[8] acquires [the money given for the slave's freedom]; but here, shall this woman cede herself though she acquires nothing whatsoever? Then let a surety prove it: though he personally receives no benefit, he obligates himself.

Raba propounded: What [if a woman declares,] 'Here is a maneh and I will become betrothed unto thee?'[9] Mar Zutra ruled in R. Papa's name: She is betrothed. R. Ashi objected to Mar Zutra: If so, property which ranks as security [real estate] is acquired as an adjunct to property which does not rank as security [movables];[10] whereas we learnt the reverse: Property which does not rank as security may be acquired in conjunction with property which ranks as security by money, deed, or hazakah?[11] — Said he to him: Do you think that she said to him, 'Along with'?[12] Here the reference

is to an important personage: in return for the pleasure [she derives] from his accepting a gift from her, she completely cedes herself.[13] It has been stated likewise in Raba's name: The same applies to monetary matters.[14] Now, both are necessary: had we been informed this of kiddushin [only], that is because a woman is pleased [even] with very little, in accordance with Resh Lakish's dictum, for Resh Lakish said: It is better to dwell in grief with a load[15] than to dwell in widowhood;[16] but as for money, I would say it is not so. And if we were informed this of monetary matters, that is because it is subject to remission;[17] but as for kiddushin, I would say it is not so.[18] Hence both are necessary. Raba said: [If a man declares,] 'Be thou betrothed to half of me,' she is betrothed: 'half of thee be betrothed to me,' she is not betrothed. Abaye demurred before Raba: Why does 'half of thee be betrothed to me' differ, that she is not betrothed? Because Scripture said, [when a man take] a wife,[19] but not half a wife? Then here too Scripture saith, 'a man', but not half a man? — How now! he rejoined. There, a woman is not eligible to two [men]; but is not a man eligible to two [women]? Hence this is what he said to her: 'Should I desire to marry another, I may do so.' Mar Zutra, son of R. Mari, said to Rabina: Yet let the kiddushin spread through the whole of her.[20] Has it not been taught: If one declares, 'Let the foot of this [animal] be a burnt-offering,' the whole of it is a burnt-offering? And even on the view that it is not all a burnt-offering, that is only if one dedicates a limb[21] upon which life is not dependent; but if he dedicates a limb upon which life is dependent [e.g., the heart], it is all a burnt-offering![22] — How compare? There it is an animal, whereas here we have an independent[23] mind.[24] This can only be compared with R. Johanan's dictum: An animal belonging to two partners: — if one [of them] dedicates half, and then purchases it [the other half] and dedicates it, it is holy, yet cannot be offered up;[25] and it establishes [the sanctity of] a substitute,[26] and the substitute is as itself.[27] This proves three things:

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(1) And he does, and says to her, 'Thou art betrothed unto me by the maneh I gave to So-and-so.'

(2) One who stands surety for the repayment of a debt by the debtor.

(3) Who had deputed him, but that the agent gave his own money instead of that of the principal.

(4) V. infra 22b.

(5) When another gives his master money for his freedom.

(6) Viz., the creditor, to the obligation of the surety.

(7) I.e., he first gives money to the debtor.

(8) Sc. the master, who cedes the slave to himself.

(9) And the man accepted it, saying: 'Be thou betrothed unto me therewith'.

(10) A creditor could collect his debt out of the debtor's real estate, even if sold after the debt was contracted, but not out of movables, if sold; hence the former is termed property which ranks as security, the latter, property which does not rank as security. Human beings are on a par with the former, and R. Ashi assumed that the woman is acquired in conjunction with the maneh.

(11) V. infra 26a for explanatory notes.

(12) 'Here is this maneh and acquire me along with it.'

(13) Though normally the man must give the money (supra 5b), yet if he is eminent his acceptance confers pleasure, which in turn is considered of financial value.

(14) If A says to B, 'Give money to C, in return for which my field is sold to you,' the sale is valid, by the law of surety: 'Take a maneh, and let your field be sold to C,' C acquires it by the law of a Canaanite slave; 'Give money to C and let him thereby acquire my field,' he acquires it by the laws of both — all as explained with reference to kiddushin.

(15) So Jast.; Rashi, 'two bodies'.

(16) I.e., a woman prefers an unhappy married life to a happy single life.

(17) The purchase price can be altogether remitted, as in the case of a gift.

(18) A woman cannot forego the money of kiddushin. Since it is such a strong obligation, I would think that it must pass from the man who betroths to the woman who is betrothed.

(19) Deut. XXIV, 1.

(20) When he says: 'half of thee betrothed to me.'

(21) Lit., 'thing'.

(22) And surely life is dependent on half a woman's body.

(23) Lit., ‘another’.
(24) The woman refuses to let the kiddushin spread through the whole of her.
(25) Since it was not fit for offering originally, as the half belonging to the other partner was yet secular. Hence it must now be sold, and an animal purchased with the proceeds and sacrificed. Thus the sanctity of the half does not spread over the whole, since the partner does not wish it.
(26) The reference is to Lev. XXVII, 33: neither shall he change it (sc. a consecrated animal): and if he changed it at all, then both it and the change thereof shall be holy. Thus here too, if one substituted another animal for this one, the substitute also is holy.
(27) It may not be sacrificed, but must be sold, as in n. 7.

Talmud - Mas. Kiddushin 7b

[i] Live animals may be rendered [permanently] rejected;[1] [ii] that which is rejected ab initio is rejected;[2] [iii] rejection applies to monetary sanctity.[3]

Raba propounded: What [if one declares,] ‘Thy half [be betrothed to me] for half a perutah, and thy [other] half for half a perutah’? Since he says to her, ‘for half a perutah,’ he divided it;[4] or perhaps, he was proceeding with his enumeration?[5] Should you rule, he was proceeding with his enumeration: what [if he declares,] ‘Thy half [be betrothed unto me] for a peru!ah, and thy [other] half for a perutah’? Since he said to her, ‘for a perutah’ ‘and a perutah’, he divided his proposal;[6] or perhaps, providing it was on the same day, he was proceeding with his enumeration? Should you answer: Providing it was on the same day, he was proceeding with his enumeration: What [if he declares,] ‘Thy half [be betrothed to me] for a perutah to-day, and thy [other] half for a perutah tomorrow’? Since he said to her, ‘To-morrow,’ he divided it; or perhaps he meant thus: the kiddushin commence immediately, but shall not be completed until to-morrow? [Further,] what [if he says], ‘Thy two halves for a perutah’: here he certainly proposed to her in once; or perhaps a woman cannot be betrothed at all by halves? The questions stand over.

Raba propounded: What [if he declares,] ‘Thy two daughters [be betrothed] to my two sons for a perutah’? Do we consider the giver and the receiver, so that there is money;[7] or perhaps, we consider them [who betroth and are betrothed], and there is not? The question stands over.

R. Papa propounded: What [if he declares,] ‘Thy daughter and thy cow [be mine] for a perutah’? Do we say [it means,] thy daughter for half a perutah, and thy cow for half a perutah:[8] or perhaps [he meant,] ‘Thy daughter by a perutah, and thy cow by meshika’?[9] The question stands over.

R. Ashi propounded: What [if one declares,] ‘Thy daughter and thy land [be mine] for a perutah’? Does he mean, ‘Thy daughter for half a perutah and thy land for half a perutah’; or perhaps, ‘Thy daughter for a perutah, and thy land by hazakah’?[10] The question stands over.

A certain man betrothed [a woman] with silk.[11] Rabbah ruled: No valuation is necessary;[12] R. Joseph maintained: It must be valued. Now, if he declared to her, ‘[Be thou betrothed to me] for whatever it is worth,’ all agree that valuation is unnecessary.[13] If he declared to her, ‘[Be thou betrothed to me] for fifty [zuz],’ and this [the silk] is not worth fifty: then of course it is not worth it![14] They differ only if he stipulated fifty and it was worth fifty. Rabbah maintained: [Prior] valuation is unnecessary, since it is worth fifty: R. Joseph said: [Prior] valuation is required: Since the woman has no expert knowledge of its value, she does not rely thereon.[15] Others state: They disagree in the case of ‘for whatever it is worth’ too. R. Joseph maintained: The equivalent of money must be as money itself: just as the latter is definite,

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(1) As here: the animal having been rendered ineligible when dedicated, since half remained secular, it remains so even when the other half too is dedicated. There is an opposing view that only a dead animal can be rendered permanently

ineligible, v. Yoma 64a.

(2) This animal was not eligible to be dedicated by a single partner from the very outset. There is an opposing view that an animal can be rendered unfit only if it was originally rejected permanently.

(3) This animal was sanctified from the very outset only for its value, i.e., that the money which its sale would furnish should be expended for a sacrifice; nevertheless it becomes permanently ineligible for the altar. This excludes the view that might have been held that only an animal that was fit in the first place to be dedicated to the altar can be rendered permanently ineligible.

(4) I.e., he betrothed her as two separate halves, and neither is valid.

(5) He meant that as he was betrothing her entirely for a perutah, he was thereby betrothing each half for half a perutah.

(6) For it is less plausible here to assume that he was proceeding with his enumeration, since he could have betrothed her entirely for the first perutah.

(7) A perutah is given and received by one person; less than a perutah is not money.

(8) And therefore the kiddushin is invalid.

(9) V. Glos. and infra 25b.

(10) V. Glos. and infra 26a.

(11) In accordance with the Mishnah on 2a: 'OR THE WORTH OF A PERUTAH.'

(12) The silk need not be valued beforehand so that the woman might know how much it is worth.

(13) Since they are obviously worth at least a perutah.

(14) And the kiddushin is invalid.

(15) That it is worth so much, unless it is assessed by experts.

Talmud - Mas. Kiddushin 8a

so must the equivalent be definite.[1]

R. Joseph said: Whence do I know it? For it was taught: [If there be yet many years, according unto them he shall give back the price of his redemption] out of the money with which he was acquired:[2] thus he[3] may be acquired by money, but not by produce or utensils. Now, what is meant by 'produce or utensils'? Shall we say, that he cannot be acquired through these at all? But Scripture saith, 'he shall return the price of his redemption,' to include the equivalent of money as money?[4] Whilst if they are worth less than a perutah, why specify 'produce and utensil'? The same applies to money too? Hence it must surely mean that they are worth a perutah, but since they are not definite, they cannot [acquire the slave].[5] And the other?[6] — This is its meaning: he can be acquired in virtue of money, but not in virtue of produce or utensils. And what is that? Barter.[7] But according to R. Nahman, who ruled: produce cannot effect a barter,[8] what can be said? — But after all it means that they are not worth a perutah: and as to your objection, why specify 'produce and utensils'? The same applies to money? He [the Tanna] proceeds to a climax.[9] [Thus:] It is unnecessary [to state] that money, only if worth a perutah is it valid,[10] not otherwise. But as for produce and utensils, I might argue, Since the benefit derived is immediate,[11] he resolves and lets himself be acquired. Therefore we are informed [otherwise].

R. Joseph said: How do I know it? For it was taught: [If one declares,] 'This calf be for my son's redemption,'[12] 'this garment be for my son's redemption,' his declaration is invalid.[13] 'This calf, worth five sela's,[14] be for my son's redemption,' or 'this garment, worth five sela's, be for my son's redemption,' — his son is redeemed. Now, how is this redemption meant? Shall we say that it [the calf or the garment] is not worth [five sela's]? does it rest with him![15] Hence it must surely mean even if it is worth [it]; yet since it was not defined, it is not valid![16] — No. After all, it means that it was not worth [it], but, we suppose the priest accepted it [for the full value], as in the case of R. Kahana, who accepted a scarf for a son's redemption,[17] observing to him,[18] 'To me it is worth five sela's' R. Ashi said: This holds good only of, e.g., [a man like] R. Kahana, who is a great man and needs a scarf[19] for his head; but not of people in general.[20] Thus it happened that Mar, son of R. Ashi, bought a scarf from the mother of Rabbah of Kubi[21] worth ten for thirteen.

R. Eleazar said: [If a man declares,] 'Be betrothed to me with a maneh,' and he gives her a denar, she is betrothed, and he must complete [the amount]. Why? Since he stipulated a maneh but gave her a denar, it is as though he had said to her 'on condition' [that I give you a maneh], and R. Huna said in Rab's name: He who says on condition,' is as though he says 'from now'.[22] An objection is raised: [If a man declares,] 'Be betrothed to me with a maneh,' and is proceeding with the counting out [of the money], and either party wishes to retract, even at the last denar he [or she] can do so![23] — The reference here is to one who declares, 'With this maneh.'[24] But since the second clause refers to 'this maneh,' the first treats of an unspecified maneh? For the second clause teaches: If he declares to her, 'Be thou betrothed unto me by this maneh,' and it is found to be a maneh short of a denar or containing a copper denar,[25] she is not betrothed: [if it contained] a debased denar,[26] she is betrothed, but he must change it. — No: the first and the second clauses [both] refer to 'with this maneh,' 'the second [being] explanatory of the first. [Thus:] if either party wishes to retract, even at the last denar, he [or she] can do so. How so? E.g., if he said to her, 'for this maneh.' Reason too supports this view, for should you think that the first clause refers to an unspecified maneh: seeing that it is not kiddushin in the case of an unspecified maneh: is it necessary [to teach it] in the case of 'for this maneh?' — As for that,it does not prove it: the second clause may be stated in order to illumine the first, that you should not say: The first clause deals with 'this maneh,' but in the case of an unspecified maneh it is valid kiddushin: therefore the second clause is taught with reference to 'this maneh,' whence it follows that the first refers to an unspecified maneh, yet even so, the kiddushin is null. R. Ashi said:[27] If he is proceeding with the counting it is different, because [then we assume] her mind is set on the whole sum.

This 'copper denar,' how is it meant? If she knew thereof, then she understood and accepted? — This is only if he gave it to her at night, or she found it among the other zuz. How is this 'debased denar' meant? If it has no currency, is it not the same as a copper denar?[28] — Said R. Papa, E.g.,it circulates with difficulty.[29]

Raba said in R. Nahman's name: If he says to her, 'Be thou betrothed to me with a maneh,' and gives her a pledge on it, she is not betrothed:

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(1) Its value must be exactly known.

(2) Lev. XXV, 51; this refers to the redemption of a Hebrew slave.

(3) The Hebrew slave.

(4) 'He shall return' implies that a return may be made in any way desired, i.e., by goods of monetary value; obviously then he can be purchased on the same terms.

(5) And the same holds good of a woman.

(6) Rabbah: How does he refute this proof?

(7) Whatever is given for a slave, be it money or property, must be given as money. Produce and utensils too can be given under that designation, but not in the nature of barter, in exchange for the slave: for barter can acquire only movables, whereas human beings rank as real estate.

(8) An article must be given, but not produce.

(9) Lit., 'he says, it is unnecessary.'

(10) Lit., 'yes'.

(11) They can be put to immediate use, unlike money, which must first be expended.

(12) V. infra p. 138.

(13) Lit., 'he has said nothing.'

(14) Sela' — Biblical Shekel.

(15) To assign to it an artificial valuation — surely not!

(16) For the only possible difference between the two clauses is that in the first it was not formally valued, whereas in the second it was.

(17) Although it was certainly not worth five sela's.

(18) The father who redeemed his son.
(19) [A sudarium, which served as a distinctive head-gear for scholars. V. Krauss, T.A., I, 167.] Hence he would be willing to pay an enhanced price for it when necessary.
(20) I.e., a priest cannot place a fictitious price upon an article unless it may conceivably be worth it for him.
(21) Neubauer, Geographie, p. 397, is unable to identify this. [MS.M.: Raba b. Kahana.]
(22) Thus here it is as though he said: 'Be betrothed to me immediately for a denar, on condition that I give you a maneh later.'
(23) The kiddushin being invalid until the whole sum is given. This contradicts the view that the first denar immediately effects betrothal.
(24) Therefore the woman desires the whole of that maneh before she consents.
(25) A maneh — a hundred silver denarii.
(26) E.g., underweight.
(27) Answering the objection against R. Eleazer.
(28) Why then is she betrothed?
(29) Only few people accept it.

Talmud - Mas. Kiddushin 8b

here is neither a maneh nor a pledge.[1] Raba raised an objection against R. Nahman: 'If he betroths her with a pledge she is betrothed'? — There the reference is to a pledge belonging to others, and it is in accordance with R. Isaac. For R. Isaac said: How do we know that a creditor has a title to a pledge? Because it is written, [And if the man be poor, thou shalt not sleep with his pledge: thou shalt surely restore to him the pledge when the sun goeth down . . .] and it shall be accounted unto thee a charitable deed:[2] if he has no title thereto, whence is his charity? This proves that the creditor has a title to the pledge.[3]

The sons of R. Huna b. Abin bought a female slave for copper coins. Not having them [the coins] at hand, they gave a silver ingot in pledge. Subsequently the slave's value increased,[4] so they came before R. Ammi. Said he to them: There are neither coins nor an ingot.[5]

Our Rabbis taught: [If a man says to a woman,] 'Be thou betrothed unto me with a maneh,' and she takes and throws it into the sea, the fire, or into anything where it is lost, she is not betrothed. Then if she throws it down before him — it is valid kiddushin? But she [thereby] declares to him, 'Take it: I do not want it!' — He [the Tanna] proceeds to a climax.[6] [Thus:] It is unnecessary [to state that] if she throws it down before him it is not kiddushin; but if she throws it into the sea or the fire, I might argue, Since she is now liable for it, she has certainly permitted herself to be betrothed: and the reason that she acted thus was because she thought, 'I will test this man, whether he is hot-tempered or not.' Therefore we are informed [otherwise].

Our Rabbis taught: [If a man says to a woman,] 'Be thou betrothed unto me with a maneh,' [and she replies,] 'Give it to my father' or 'thy father,' she is not betrothed; 'on condition that they accept it for me,' she is betrothed. 'My father' is mentioned to shew you how far-reaching is the first clause;[7] 'your father,' to shew how far-reaching is the second.[8] [If he says] 'Be thou betrothed unto me with a maneh', [and she replies] 'Give it to So-and-so', she is not betrothed. 'On condition that So-and-so accepts it for me', she is betrothed. And both these cases are necessary. For if we were taught the law with respect to 'my father' and 'thy father', [I might have thought that] only there is she betrothed when she replies, on condition that they accept it for me,' because she relies upon them, thinking, 'They will [certainly] act as agents for me'; but in the case of 'So-and-so,' it is not thus. While if we were taught the case of 'So-and-so', [I might have thought that] only there is the kiddushin invalid when she says: 'Give it to So-and-so,' because she Is not sufficiently intimate with him to present it [the maneh] to him as a gift.[9] But as for 'my father' or 'thy father,' with whom she is intimate, I might think that she was making a gift of it to them. Thus both are necessary.

Our Rabbis taught: [If he says,] 'Be thou betrothed unto me with a maneh,' [and she replies,] 'Place it on a rock', she is not betrothed; but if the rock was hers, she is betrothed. R. Bibi asked: What if the rock belonged to both of them? The question stands over. [If he says,] 'Be thou betrothed unto me for a loaf of bread', [and she replies,] 'Give it to the dog', she is not betrothed; but if it was her dog, she is betrothed. R. Mari asked: What if the dog was pursuing her? [Do we say that] in return for the benefit of saving herself from it she resolves and cedes herself to him; or perhaps she can say to him, 'By Biblical law you were indeed bound to save me'? The question stands over. [If he says,] 'Be thou betrothed unto me with a loaf,' [and she replies,] 'Give it to the poor man': she is not betrothed, even if he was a poor man who relies on her. Why? — She can say to him, 'Just as I have a duty towards him, so hast thou a duty to him'.

A man was selling

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(1) I.e., she neither received the maneh nor did he actually give her a pledge, since that must be returned. [V. Tosaf.; Asheri: Where there is no liability there can be no pledge, for no man can pledge himself for something which he does not owe. Similarly here, since he does not owe her the maneh, for he may retract if he wishes to do so, the pledge is no pledge.]

(2) Deut. XXIV, 12f.

(3) It is legally his whilst in his possession. Therefore he may validly offer it as kiddushin.

(4) And the vendor wished to withdraw from the bargain.

(5) As on p. 30, n. 6: the coins have not been received, whilst the ingot was not given to effect the purchase. Therefore it can be cancelled.

(6) V. p. 28, n. 7.

(7) Even then, she is not betrothed.

(8) Even then, she is betrothed.

(9) Therefore her reply was a contemptuous rejection of the proposal.

glass beads, when a woman came and said to him, 'Give me a string [of these].' 'If I give it you,' he replied: 'will you become betrothed to me?' 'Oh, indeed do give it to me,' she retorted. Said R. Hama: Every [such expression,] 'Oh, indeed do give it to me' means nothing.[1] A man was drinking wine in a tavern, when a woman came and said to him, 'Give me a cup.' 'If I give you,' he replied: 'will you become betrothed to me?' 'Oh, indeed do let me have a drink,' she retorted. Said R. Hama: Every [such expression,] 'Oh, indeed do let me have a drink' means nothing.

A man was throwing down dates from a palm tree, when a woman came and said to him, 'Throw me down two'. 'If I throw them down to you, he replied: 'will you become betrothed to me?' 'Oh, indeed do throw them down,' she retorted. Said R. Zebid: Every [such expression,] 'Oh, indeed, do throw them down' means nothing.

The scholars propounded: What [if she replies,] 'Give me,' 'let me drink,' or 'throw them down?'[2] — Rabina ruled: She is betrothed;[3] R. Sammia b. Raktha said: By the royal crown, she is not betrothed. And the law is: She is not betrothed. The law is also: the silk needs no valuation;[4] and the law agrees with R. Eleazar;[5] and the law agrees with Raba's dictum in R. Nahman's name.[6]

Our Rabbis taught: By deed: how so? If A writes for B on a paper or a shard, even if not intrinsically worth a perutah, 'Thy daughter be consecrated unto me,' 'thy daughter be betrothed unto me,' [or] 'thy daughter be my wife,' she is betrothed. R. Zera b. Mammel demurred: But this deed is dissimilar from a deed of purchase: there the vendor writes, 'My field is sold to thee,' whereas here the husband writes, 'Thy daughter be consecrated unto me!'[7] — Raba replied: There

[the form is determined] by Scriptural context, and here [likewise] by Scriptural context. There it is written, and he sell some of his possessions:[8] thus Scripture made it dependent on the vendor: whereas here it is written, when a man [taketh a woman],[9] thus making it dependent upon the husband. But there too it is written, men shall buy fields for money?[10] — Read: Men shall transmit [i.e., sell].[11] Now, why do you read 'transmit'? because it is written: 'and he sell'! Then here too read: If a man be taken, for it is written: I gave my daughter unto this man for wife?[12] — But said Raba: These are traditional laws, which the Rabbis supported by Scriptural verses.[13] Alternatively, there too it is written, so I took the deed of the purchase.[14]

Raba said in R. Nahman's name: If one writes on a paper or shard, even if not intrinsically worth a perutah, 'Thy daughter be consecrated unto me,' 'thy daughter be betrothed unto me,' [or] 'thy daughter be my wife,' whether [she accepts it] through her father or herself, she is betrothed by his [sc. her father's] consent,[15] providing that she has not attained her majority.[16] If he writes on a paper or a shard, even if not intrinsically worth a perutah, 'Behold, thou art consecrated unto me,' 'Behold, thou art my wife,' 'Behold, thou art betrothed unto me,' she is betrothed, whether [it is accepted] by her father or herself, with her consent, providing that she is of age.

R. Simeon b. Lakish propounded: What if a deed of betrothal was not written expressly for her sake?[17] Do we assimilate modes of betrothal[18] to divorce:[19] just as

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(1) She merely emphasized her request, but did not consent. In this and the following stories, the answer was expressed by the repetition of the verb, — an expression of impatience.

(2) Without repeating the verb; v. p. 32, n. 2.

(3) These answers denote assent.

(4) V. supra 8b.

(5) Who rules on 8a: If a man says: 'Be thou betrothed unto me with a maneh', and gives her a denar, she is betrothed, and he must complete the amount.

(6) Who ruled, here is neither a maneh nor a pledge; v. supra 8a bottom and 8b.

(7) And he is in the position of the vendor; how then do we know that such a deed is valid?

(8) Lev, XXV, 25.

(9) Deut. XXIV, 2.

(10) Jer. XXXII, 44.

(11) This requires a mere change of punctuation, the letters remaining the same.

(12) Deut. XXII, 16.

(13) But they are not actually deduced from them.

(14) Jer. ibid. 11; this shews that Jeremiah, the purchaser, received the deed, which must have been drawn up by the vendor.

(15) I.e., if she accepts it herself, she must have had her father's authority.

(16) I.e., she is not yet a bogereth (q.v. Glos.), and so still under her father's control,

(17) It was originally written for another woman. In the case of divorce, such a document is invalid. E.g., if a husband indites a divorce for his wife and does not use it, the same may not be used by another man to divorce his wife, even if all the relevant particulars, viz., names and places and date, coincide.

(18) Lit., 'becoming' (a wife).

(19) Lit., 'goings forth' (from the married state).

divorce must be expressly for her sake,[1] So must betrothal be too; or perhaps, different modes of betrothal are assimilated to each other: just as betrothal by money need not be for her sake,[2] so betrothal by deed need not be for her sake? — After putting the question he, himself, decided it: betrothal is assimilated to divorce, for Scripture writes, and when she is departed [i.e., divorced] . . . she may be [another man's wife].[3]

It has been stated: If it [the deed of betrothal] is written for her sake, but without her knowledge: Raba and Rabina rule: She is betrothed; R. Papa and R. Sherabia say: She is not betrothed. Said R. Papa: I will explain their reason and I will explain mine. I will explain their reason: Because It is written, and when she is departed. . . she may be [another man's wife], assimilating betrothal to divorce: just as divorce must be [written] for her sake yet without her consent,[4] so must betrothal be for her sake, yet without her consent. And I will explain my reason: And when she departeth . . . then she shall be [etc.]: this assimilates betrothal to divorce: as in divorce, the giver's knowledge is required,[5] so in betrothal, the giver's knowledge is required.[6]

An objection is raised: Deeds of erusin and nissu'in[7] may only be written with the knowledge of both. Surely actual deeds of erusin and nissu'in are meant? — No: [the reference is to] deeds of apportionment,[8] and it is in accordance with R. Giddal's dictum in Rab's name, viz., How much do you give your son? — So much. How much do you give your daughter? — So much. If they [thereupon] arose and made a betrothal, they acquire a title [to the promised sums], and these are the things which are acquired by a verbal undertaking.[9]

OR BY INTERCOURSE. Whence do we know this? — R. Abbahu said in R. Johanan's name: Because Scripture saith, If a man be found lying with a woman] who had intercourse with a husband,[10] thus teaching that he became her husband through intercourse. R. Zera said to R. Abbahu-others state, Resh Lakish said to R. Johanan: Is this what Rabbi taught unsatisfactory, [viz.,] [When a man taketh a wife] and hath intercourse with her:[11] this teaches that she is acquired by intercourse? — If from there, I might have thought: He must first betroth her [e.g., by money] and then cohabit with her:[12] [therefore] we are informed [otherwise]. R. Abba b. Mammel objected: If so,[13] when Scripture decrees stoning in the case of a betrothed maiden,[14] how is it conceivable? If he [first] betrothed and then cohabited with her, she is a be'ulah;[15] if he betrothed but did not cohabit with her, it is nothing.[16] The Rabbis answered this before Abaye; It is possible if the arus cohabited with her unnaturally.[17] Thereupon Abaye observed to them: Even Rabbi and the Rabbis dispute [this matter] only in reference to a stranger: but as for the husband, all agree that if he cohabits with her unnaturally he renders her a be'ulah! (What is this?[18] For it was taught: If ten men cohabited [unnaturally] with her [sc. a betrothed maiden] and she is still a virgin, all are stoned. Rabbi said: I maintain, the first is stoned, but the rest are strangled.)[19] R. Nahman b. Isaac said: It would be possible if he betrothed her by deed: since it completely sunders,[20] it completely unites.[21]

And R. Johanan: How does he utilize this, and hath intercourse with her? — He needs that [to shew]: she [a wife] is acquired by cohabitation, but not a Hebrew bondmaid. For I might have thought, it may be inferred a minori from a yebamah: if a yebamah, who cannot be acquired by money, is acquired by cohabitation; this one [Hebrew bondmaid] who can be acquired by money, may surely be acquired by cohabitation. [No.] As for a yebamah, that is because she is already tied![22] — I might have argued, since it is written: If he take him another [wife],[23] Scripture compared her [the bondsmaid] to the ‘other’ [the wife]: just as the other is acquired by intercourse, so is a Hebrew bondsmaid acquired thus; therefore we are informed [otherwise].[24]

And Rabbi: how does he know this conclusion? — If so,[25] Scripture should have written; and hath intercourse: why [state] ‘and hath intercourse with her?’ Thus both are deduced.[26] But according to Raba, who said: Bar Ahina explained it to me: ‘When a man taketh a woman and hath intercourse with her’: [this teaches:] kiddushin[27] that can be followed by[28] intercourse is [valid] kiddushin, that which cannot be followed by intercourse is not [valid] kiddushin;[29] what can one say?[30] — If so,[31] Scripture should have written, or ‘hath intercourse with her’: why [state], ‘and hath intercourse with her?’[32] Thus all are inferred.

And Rabbi: how does he employ this phrase,’ who had intercourse [be'ulath] with a husband?’ —

He utilizes it [to teach:] her husband renders her a be'ulah unnaturally,[33] but not a stranger.[34] But does Rabbi hold this view? Has it not been taught: If ten men cohabited [unnaturally] with her [sc. a betrothed maiden] and she is still a virgin, all are stoned. Rabbi said: I maintain, the first is stoned, but the rest are strangled.[35]

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(1) Deduced from, then he shall write her a bill of divorcement (Deut. XXIV, 2).

(2) I.e., the money is not minted expressly to betroth that woman.

(3) Thus, betrothal and divorce are stated in proximity to each other, shewing that they are compared.

(4) In ancient Jewish law a wife's consent to divorce was not required. In the Middle Ages this was amended, and her consent became necessary.

(5) I.e., the husband's, who gives the woman her freedom.

(6) I.e., the woman's, who gives herself in marriage.

(7) v. Glos. for both.

(8) I.e., the amounts which the parents promise to settle on their son or daughter on marriage,

(9) Normally, a promise is binding only if the recipient performs an act of acquisition. i.e., he takes an article, not necessarily the thing promised, from the promisor. Here, however, the promise itself is binding. And the Baraitha quoted teaches that the witnesses may not draw up bonds to that effect unless both parties consent.

(10) Deut. XXII, 22.

(11) Ibid. XXIV, 1.

(12) But that cohabitation alone is not betrothal.

(13) That this verse might be interpreted as meaning that both betrothal and cohabitation are necessary, but that without the latter she is not even betrothed.

(14) Who commits adultery.

(15) I.e., no longer a virgin, whereas stoning is only for a virgin; v. Deut. XXII, 23f.

(16) She is not betrothed on this hypothesis.

(17) Leaving her a virgin.

(18) Concerning which Rabbi and the Rabbis are in dispute.

(19) Which is the punishment for committing adultery with a be'ulah. Thus the Rabbis regard her as a virgin all the time, whereas Rabbi maintains that she is a be'ulah after the first. This dispute, however, applies only to strangers.

(20) I.e., a deed is the only thing required for divorce.

(21) Lit., 'brings in.' Yet it might be that money betrothal must be followed by cohabitation.

(22) To the yabam, v. Deut. XXV, 5.

(23) Ex. XXI, 10: 'another' i.e., in addition to the Hebrew bondsmaid.

(24) By 'and he hath intercourse with her', as above.

(25) That the verse teaches only that intercourse is one of the methods of betrothal.

(26) (i) that a woman may be acquired by intercourse and (ii) a Hebrew bondsmaid cannot be so acquired.

(27) Implied by, when a man taketh.

(28) Lit., 'that is given over to.'

(29) V. infra 51a.

(30) For the verse is needed for this purpose.

(31) That the only purpose of the verse is to shew that a bondsmaid cannot be acquired by intercourse.

(32) 'And' implies that the taking — i.e., kiddushin — and the cohabitation are interdependent.

(33) I.e., by unnatural cohabitation.

(34) Because 'be'ulah' is connected with 'a husband': if she had cohabited with her husband, no matter how, she is a be'ulah.

(35) V. supra.

Talmud - Mas. Kiddushin 10a

— Said R. Zera: Rabbi admits in respect to the fine, that they must all pay.[1] Wherein does it differ from the death penalty?[2] — There it is different, because Scripture writes, then the man alone that lay with her shall die.[3] And the Rabbis: how do they employ this word 'alone'? — They need it even

as it was taught: [If a man be found lying with a woman married to a husband], then they shall both of them die:[4] [this implies,] they must both be equal as one:[5] this is R. Josiah's view. R. Jonathan maintained: 'then the man alone that lay with her shall die'.[6] And R. Johanan: how does he know this ruling?[7] — If so,[8] Scripture should have written, who had intercourse with a man; why [state], 'who had intercourse with a husband'? Hence both are inferred.[9]

The scholars propounded: Does the beginning of intercourse acquire [the woman] or the end of intercourse? The practical difference is, e.g., if he performed the first stage of intercourse, and then she stretched out her hand and accepted kiddushin from another man;[10] or whether a High Priest may acquire a virgin by intercourse.[11] What then [is our ruling]? — Said Amemar in Raba's name: The mind of him who has intercourse is set on the completion of intercourse.[12] The scholars propounded: Does intercourse effect nissuin or erusin? The practical difference is in respect of his being her heir, defiling himself on her account and annulling her vows. If you say it effects nissu'in, he [the husband] succeeds her as heir, must[13] defile himself for her,[14] and can annul her vows.[15] But if you say that it effects only erusin, he does not succeed her as heir, may not defile himself on her account, and cannot annul her vows. What is our ruling? — Said Abaye: Come and hear: A father has a privilege over his daughter [if a minor] in respect of her kiddushin by money, deed or intercourse. And he is entitled to her findings, her labour, and the annulment of her vows; he can accept her divorce;[16] but he does not enjoy usufruct during her lifetime.[17] If she was married,[18] her husband's rights exceeds his,[19] in that he enjoys the usufruct during her lifetime. Now, intercourse is taught, and yet he [the Tanna] also teaches: If she was married![20] — 'If she married' may have been taught in reference to the other [privileges]. Raba said: Come and hear: A maiden aged three years and a day may be betrothed by intercourse, and if the yabam has intercourse with her, he acquires her. The penalty of adultery may be incurred through her: [if a menstruant,] she defiles him who has connections with her,

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(1) If a man violates an unbetrothed virgin he must pay a fine of fifty shekels: (Deut. XXII, 28f.) if a number of men violate her unnaturally, leaving her a virgin, they must all pay the same, as for a virgin.

(2) That there Rabbi regards her a be'ulah.

(3) Ibid. 25; now, this is superfluous. since the next verse states: But unto the damsel thou shalt do nothing; hence it teaches that only the first man is stoned, but after he seduces her, even unnaturally, she is a be'ulah, and her ravishers are strangled.

(4) Ibid. 22.

(5) Rashi: both must have attained their majority and be liable to punishment, thus excluding an adult who violates a minor. Tosaf.: they must both be liable to the same death penalty; the reference is to R. Meir's view on this matter, q.v. Sanh. 66b.

(6) I.e., the man stands in a separate category, and need not be equal to the woman.

(7) That only the husband renders her a be'ulah by unnatural intercourse etc.

(8) That the verse teaches only that cohabitation acquires a woman.

(9) The emphasis on 'husband' shews that only he renders her a be'ulah etc.

(10) If the beginning acquires, she belongs to the first; if not, to the second.

(11) A High Priest must marry a virgin; Lev. XXI, 13. Now, if the first stage acquires, he may betroth her by intercourse; but if the last stage, he may not, because immediately after the first stage she ceases to be a virgin, yet does not belong to him.

(12) Hence the last stage is necessary.

(13) Or 'may', v. Sotah, 3a.

(14) Even if he is a priest.

(15) Alone, without her father.

(16) Even without her authority, if she was divorced whilst an arusah, and a na'arah.

(17) If she inherit property through her maternal relations, her father has no claim to its usufruct while she is alive.

(18) Lit., 'became a nesu'ah'.

(19) The husband's rights over his wife after nissu'in are greater than the father's over his daughter before nissu'in.

(20) Subsequent to intercourse; this proves that intercourse only effects erusin.

Talmud - Mas. Kiddushin 10b

so that he in turn defiles that upon which he lies, as a garment which has lain upon [a zab].[1] If she married[2] a priest, she may partake of terumah;[3] if any of the forbidden degrees[4] interdicted by Scripture cohabited with her, they are executed on her account,[5] but she is exempt;[6] if an unfit person[7] cohabits with her, he disqualifies her from priesthood.[8] Thus [here too] intercourse is taught,[9] and also 'if she married'! — This may be its meaning: If this marriage[10] was with a priest, she may partake of terumah.

Come and hear: Johanan b. Bag Bag had already sent [word] to R. Judah b. Bathyra at Nisibis:[11] I have heard of you that you maintain, An arusah, the daughter of an Israelite [betrothed to a priest], may eat terumah. He sent back: And do you not rule likewise? I am certain of you that you are well versed in the profundities[12] of the Torah [and able] to infer a minori. Do you not know: if a Gentile bondmaid, whose intercourse does not permit her to eat of terumah,[13] yet her money[14] permits her to eat of terumah; then this one [an arusah], whose intercourse [with a priest] permits her to eat of terumah, surely her money[15] permits her to eat terumah. But what can I do, seeing that the Sages ruled: An arusah, the daughter of an Israelite, may not eat terumah until she enters huppah?[16] How so? If [the reference is to] intercourse following huppah, and money followed by huppah, in both cases she may certainly eat. But if to intercourse with huppah, and money without huppah: here there are two, while there is only one,[17] Hence it must surely refer to both intercourse and money without huppah. Now, if you say that it [intercourse] effects nissu'in, it is well: hence it is obvious to him that Intercourse is stronger than money.[18] But if you say that it effects only kiddushin [i.e., erusin], why is he certain in the one case and doubtful in the other? — Said R. Nahman b. Isaac: After all, I can tell you that [the reference is to] intercourse with huppah and money without huppah. And as to your objection, here there are two, while there is only one: nevertheless the a minori proposition holds good, and it was thus he sent word to him: If a Gentile bondmaid, whose intercourse does not permit her to eat of terumah even after huppah, yet her money even without huppah authorizes her to eat terumah,' then this one, whose intercourse when accompanied by huppah permits her to eat terumah, Surely her money even without intercourse permits her to eat terumah. But what can I do, seeing that the Sages ruled: An arusah, the daughter of an Israelite, may not partake of terumah until she enters huppah, on account of 'Ulla's statement.[19] And [Johanan] b. Bag Bag?[20] — In the case of a Gentile bondmaid he omits nothing of her acquisition;[21] but here he has left undone part of her acquisition.[22] Rabina said: By Biblical law he was quite certain that she may eat, and it was only by Rabbinical law that he [R. Johanan b. Bag Bag] sent word to him [that she is forbidden], and he sent thus to him: I have heard of you that you rule: An arusah, the daughter of an Israelite, may eat of terumah, and you disregard the possibility of nullification.[23] He sent back: And do you not rule likewise? I am certain that you are well versed in the profundities of the Torah, [and able] to infer a minori. Do you not know: if a Gentile bondmaid, whose intercourse does not permit her to eat terumah, yet her money does, and we do not fear the possibility of nullification;[24] then this one [sc. an arusah], whose intercourse permits her to eat terumah,[25] surely her money does, and we may disregard the possibility of nullification. But what can I do, seeing that the Sages ruled: An arusah, the daughter of an Israelite, may not partake of terumah

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(1) A man who has sexual connections with a menstruant woman defiles that upon which he lies, even if he does not actually touch it. But the degree of uncleanliness it thereby acquires is not the same as that of the bedding upon which she herself or a zab (v. Glos.) lies. For in the latter case, the bedding in turn defiles any person or utensil with which it comes into contact; whereas in the former, it can only defile foodstuffs and liquids. This is the same degree of uncleanliness possessed by a garment which has lain upon or been borne by a zab, v. Nid. 44b.

(2) V. n. 8.

(3) As an Israelite's adult daughter who married a priest. But if she is less than three years old, she is sexually immature,

so that the marriage cannot be consummated, and hence she may not eat terumah.
(4) E.g., her father or brother.
(5) If they are of those forbidden on pain of death.
(6) Being a minor.
(7) E.g., a heathen or bastard.
(8) I.e., she may not marry a priest.
(9) Proving that intercourse only effects erusin.
(10) Sc. the intercourse mentioned in the first clause.
(11) A city in N.E. Mesopotamia; its Jewish population was already of importance during the second Temple. J.E. s.v.; Obermeyer, p. 229.
(12) Lit., 'chambers'.
(13) If a priest cohabits with her without having previously acquired her with money.
(14) I.e., the money given for her by a priest.
(15) Whereby she is acquired as an arusah.
(16) I.e., becomes a nesu'ah.
(17) How can money without huppah be deduced from intercourse and huppah?
(18) And it certainly authorises her to eat terumah, and he proceeds to deduce that money has the same power.
(19) V. supra 5a bottom.
(20) Does he not accept this a minori deduction?
(21) Once he gives the money, she is absolutely his.
(22) After intercourse she still lacks huppah before he ranks as her heir and may defile himself on her account.
(23) Through a bodily defect discovered in the woman, which may invalidate the betrothal. Hence this has no bearing on the question of the status conferred by intercourse, since all admit that even an arusah may, Biblically speaking, eat terumah.
(24) A bodily defect which may entitle the priest to cancel the purchase.
(25) [Since the arus would not have had intercourse with her without first making enquiries concerning her (Tosaf.).]

Talmud - Mas. Kiddushin 11a

until she enters huppah, on account of 'Ulla's statement. And the son of Bag Bag?[1] — He disregards the possibility of nullification in the case of slaves: if there are open bodily defects — then he has seen them.[2] If on account of concealed bodily defects, what does it matter to him? He needs him for work, and so does not care. If he [the slave] is found to be a thief or a rogue,[3] he is his.[4] What can you say: he was discovered to be an armed robber or proscribed by the State[5] — these are well known.[6] Let us see: both agree that she [an arusah] may not eat:[7] wherein then do they differ? — They differ where he [the husband] accepted [bodily defects],[8] or he [the father] delivered [her to the husband's messengers to be taken to her husband's home],[9] or if they [the father's messengers] were on the way with [the husband's messengers to escort the bride to her new home].[10]

'BY MONEY: BETH SHAMMAI MAINTAIN, BY A DENAR etc. What is Beth Shammai's reason? — Said R. Zera: Because a woman is particular about herself and will not [permit herself to] become betrothed with less than a denar. Abaye objected to him: If so, then e.g., R. Jannai's daughters, who are particular about themselves and will not become betrothed with less than a tarkabful[11] of denarii, if she stretches out her hand and accepts a zuz from a stranger [as kiddushin], is the kiddushin indeed invalid?[12] — He replied: If she stretches out her hand and accepts. I do not say thus: I refer to a case where he betroths her at night,[13] or if she appoints an agent.[14] R. Joseph said: Beth Shammai's reason is in accordance with Rab Judah's dictum in R. Assi's name, viz., Wherever 'money'[15] is mentioned in Scripture: Tyrian coinage is meant; whereas the Rabbinical usage[16] refers to provincial coinage.[17]

It was stated above: Rab Judah said in R. Assi's name: Whenever 'money' is mentioned in Scripture: Tyrian coinage is meant; whereas the Rabbinical usage refers to provincial coinage. Now,

is this a universal rule?

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(1) Does he not admit the force of this argument?

(2) And the purchaser cannot invalidate the transaction.

(3) Jast.: a swindler; Tosaf.: a gambler; Rashi: a kidnapper. The last might suit the context here, but not elsewhere.

(4) The purchaser's: he cannot annul the purchase, because the average slave is one of these.

(5) I.e., under sentence of death. fast.: levied for royal service.

(6) And the purchaser would not buy him in ignorance.

(7) For R. Judah b. Bathyra also admits that she may not eat, in accordance with 'Ulla.

(8) According to Johanan b. Bag Bag, she may then eat terumah, since there is no fear of nullification; in the opinion of R. Judah b. Bathyra she is forbidden, since 'Ulla's reason holds good here.

(9) 'Ulla's reason no longer holds good since her brothers and sisters are not then with her, but there is still the possibility of nullification.

(10) V. preceding note, which applies here too.

(11) Tarkab — two kabs (later = three kabs): 1 kab = 1/6th of a se'ah.

(12) Surely not!

(13) And she does not see what is given her.

(14) To accept kiddushin on her behalf, without telling him what is the minimum which he shall accept.

(15) Lit., 'silver'.

(16) Lit., 'that — sc. money of their (sc. the Rabbis') words.'

(17) Viz., current coinage. The latter is an eighth of the former; i.e., a provincial shekel = 1/8th of a Tyrian shekel, a provincial denar = 1/8th of a Tyrian, etc.; v. J.E. IX, 351, and Zuckermann, Tal. Mun. pp. 15-33. Tyrian is further to be identified with Jerusalem (coins). Krauss, T.A., 11-405 and n. 639 a.l., v. B.K. (Sonc. ed.) p. 204, n. 11. Now, since kiddushin by money is Biblical (supra 2a), it cannot be a copper perutah, for there were no copper coins in the Tyrian system: hence, the perutah being excluded, it is evident that a coin of considerable value is required, and this was fixed at a denar.

Talmud - Mas. Kiddushin 11b

But what of a claim, concerning which it is written: If a man shall deliver unto his neighbour money or utensils to keep etc.[1] yet we learnt: 'The oath taken before judges [is imposed] for a [minimum] claim of two silver [ma'ahs] and an admission of a perutah'?[2] — There it is similar to 'utensils': just as 'utensils' implies [at least] two, so must 'money' refer to two [coins],[3] and just as 'money' implies something of worth,[4] so does 'utensils' mean something of worth.[5] But [what of the second] tithe, in regard to which it is written, [Then thou shalt turn it into money] and bind up the money in thine hand,[6] yet we learnt: 'If one changes a sela' of second tithe [copper] coins . . .'?[7] — 'The money' is an extension,[8] But what of hekdesh,[9] concerning which it is written, then he shall give the money, and it shall be assured to him,[10] yet Samuel said: If hekdesh worth a maneh is redeemed with the equivalent of a perutah, it is redeemed?[11] — There too, we deduce the meaning of 'money' from tithes.[12]

But what of a woman's kiddushin, concerning which it is written: When a man taketh a wife, and marry her,[13] and we deduce the meaning of 'taking' from the field of Ephron,[14] yet we learnt: BETH HILLEL RULE, BY A PERUTAH OR THE WORTH OF A PERUTAH; shall we say [then] that R. Assi ruled in accordance with Beth Shammai?[15] — But if stated, it was stated thus: Rab Judah said in R. Assi's name: Whenever a fixed sum of money is mentioned in the Torah, Tyrian coinage is meant; whereas the Rabbinical usage refers to provincial currency.[16] Then what does he teach us? We have already learnt it: The five sela's mentioned in connection with a firstborn,[17] the thirty of a slave,[18] the fifty of a ravisher and a seducer,[19] and the hundred of a slanderer[20] — all these are [computed] by the holy shekel according to the Tyrian maneh![21] — He wishes to state, 'whereas the Rabbinical term refers to provincial currency,' which we did not learn. For we learnt: If one boxes his neighbour's ears,[22] he must pay him a sela'. Now, you should not say, what is a sela'? Four

zuz,'[23] but what is a sela'? Half a zuz, for it happens that people call half a zuz 'istira'.[24]

R. Simeon b. Lakish said: Beth Shammai's reason is in accordance with Hezekiah. For Hezekiah said: Scripture saith, then shall he let her be redeemed[25] — this teaches that she deducts from her redemption [money] and goes out [free]. Now, if you say that he [the master] gave her a denar,[26] it is well: hence she can go on deducting until a perutah. But if you say that he gave her a perutah: what can be deducted from a perutah?[27] But perhaps Scripture ordered thus: if he gave her a denar, she can go on deducting until a perutah; [but] if he gave her a perutah, she cannot deduct at all?

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(1) Ex. XXII, 6; in B.K. 107a it is deduced from this verse that an oath is imposed upon a defendant only if he admits part of the claim and denies part.

(2) Rashi: This proves that no particular sum is meant by the term 'money,' but that in all cases it was left for the Rabbis to determine. For if a particular sum is meant, granted that a ma'ah is the smallest Tyrian coin, why two? Tosaf. and others: the smallest Tyrian coin is a denar, whereas a ma'ah = 1/6th of a denar. (Though the actual coin is not mentioned in the quotation, ma'ah is assumed, because 'two' is in the fem. form, agreeing with ma'ah, whereas denar is masc.).

(3) So that the claim must be at least for two silver pieces, i.e., ma'ahs.

(4) I.e., two ma'ahs.

(5) So that if a man claimed two needles, one of which was admitted, no oath is imposed, since these are not worth two ma'ahs (Rashi). Tosaf. and others with different reading of the text: just as 'utensils' implies something of value, so does 'money' apply to that likewise, and a ma'ah is a coin of value; whilst 'two' is likewise deduced from the plural, 'utensils'. [Whereas according to Rashi's reading the minimum value required in the case of 'utensils' is determined by the significance attached to the word 'money', according to that of Tosaf., the value of 'utensils' is judged by their own merits, so that even a couple of needles are to be treated as things of worth in view of the use to which they can be put].

(6) Deut. XIV, 25, q.v.

(7) A dispute follows as to how many of the coins should be changed. Now, this shews that in the first place the tithe was redeemed with copper coins, though Scripture mentions 'money' in this connection.

(8) Shewing that even copper coins may be used.

(9) V. Glos.

(10) V. B.M. (Sonc. ed.) p. 321, n. 1.

(11) V. n. 2; the same applies here.

(12) Since in the latter instance the money extends the law to copper coins, these are valid for the redemption of hekdesh too.

(13) Deut. XXIV, 1.

(14) V. p. 1, n. 12. Thus it is as though 'money' were written in this passage.

(15) It is a fixed principle that in all disputes between these two schools the halachah agrees with Beth Hillel.

(16) But no fixed sum is mentioned for kiddushin.

(17) V. Num. XVIII, 15f: Nevertheless the firstborn of man thou shalt surely redeem . . . for the money of five shekels. — 'Shekels' is the Biblical term for sela'.

(18) Ex. XXI, 32: If the ox gore a manservant or a maidservant he (the owner) shall give unto their master thirty shekels of silver.

(19) Deut. XXII, 28f: If a man find a damsel that is a virgin which is not betrothed, and lay hold on her, and lie with her, and they be found; then the man that lay with her shall give unto the damsel's father fifty shekels of silver.

(20) Ibid. 13 et seqq.: If a man take a wife . . . and hate her . . . and bring an evil name upon (i.e., slander) her, and say: I took this woman, and . . . I found not in her tokens of virginity . . . then the elders of that city shall amerce him in a hundred shekels of silver.

(21) 1 Tyrian maneh = 25 holy shekels.

(22) Others: shouts into his neighbour's ear.

(23) I.e., the Tyrian currency.

(24) A silver coin, equal to the provincial sela' = 1/2 zuz.

(25) Ex. XXI, 8; v. infra 14b, 15a for the full reference.

(26) In buying her. The money given for a Hebrew maidservant may also be regarded as kiddushin, since in virtue thereof he can take her to wife; v. Ex. ibid.

(27) Seeing that it is the smallest coin.

Talmud - Mas. Kiddushin 12a

— You cannot think so, [for] it is similar to designation:[1] just as designation, though he [the master] can designate her or not, as he will, yet where he may not designate her, the sale is invalid;[2] so here too, where he cannot deduct, the sale is invalid.[3] And a woman's kiddushin, according to Beth Shammai, is deduced from a Hebrew maidservant: just as a Hebrew maidservant cannot be acquired for a perutah,[4] so a woman cannot be betrothed by a perutah.[5] Then say half a denar, or two perutahs? — Since a perutah was excluded, it was fixed at a denar.[6] Raba said: This is Beth Shammai's reason, [viz.,] that the daughters of Israel should not be treated as hefker.[7] AND BETH HILLEL RULE, BY A PERUTAH. R. Joseph thought to rule, A perutah, whatever it is.[8] Said Abaye to him: But thereon we learnt: AND HOW MUCH IS A PERUTAH? AN EIGHTH OF AN ITALIAN ISSAR. And should you answer: That was only in the time of Moses, but nowadays it is as generally estimated — but when R. Dimi came,[9] he said: R. Simai computed in his time: how much is the perutah? An eighth of an Italian issar.[10] And when Rabin came, he said: R. Dosethai, R. Jannai and R. Oshiah estimated: how much is a perutah? A sixth of an Italian issar! — R. Joseph answered him: If so,[11] when we learnt,[12] Go out and estimate: how many perutahs are there in two sela's? More than two thousand. Seeing that there are not even two thousand, can he [the Tanna] call it more than two thousand?[13] Thereupon a certain old man said to him, I learnt it, close on two thousand. But even so, it is only one-thousand-five-hundred-thirty-six! — Since it passes beyond half [a thousand], it is called close on two thousand.

It was just stated: When R. Dimi came, he said: R. Simai computed in his time, How much is a perutah? An eighth of an Italian issar. And when Rabin came, he said: R. Dosethai, R. Jannai, and R. Oshiah estimated: How much is the perutah? A sixth of an Italian issar. Said Abaye to R. Dimi: Shall we say that you and Rabin differ in the dispute of the following Tannaim? For it was taught: The perutah which the Sages mentioned is an eighth of an Italian issar. [Thus:] one denar =six silver ma'ahs; one ma'ah =two pundion, one pundion = two issars, one issar = two musmis, one musmis = two kuntrunk, one kuntrunk =two perutahs.[14] Hence the perutah is an eighth of an Italian [Roman] issar. R. Simeon b. Gamaliel said: three hadrisin = one ma'ah, two hanzin = one hadris, two shamnin = one hanez, two peutahs = one shamin:[15] hence a perutah equals one sixth of an Italian issar.[16] Shall we say that you agree with the first Tanna, whilst Rabin holds with R. Simeon b. Gamaliel? — He replied: Both Rabin and I agree with the first Tanna, yet there is no difficulty: here the issar bears its full value; there, it had depreciated. Here the issar bears its full value, twenty-four going to the zuz; there it had depreciated, thirty-two going to the zuz.[17]

Samuel said: If a man betrothed a woman[18] with a date, even if a kor[19] stood at a denar,[20] she is nevertheless betrothed: we fear that it may be worth a perutah in Media.[21] But we learnt: BETH HILLEL RULE, BY A PERUTAH OR THE WORTH OF A PERUTAH?[22] — There is no difficulty: the one refers to certain kiddushin; the other to doubtful kiddushin.[23]

A certain man betrothed [a woman] with a bundle of tow cotton. Now, R. Simi b. Hiyya sat before Rab and examined it: if worth a perutah, it is well:[24] if not, not. Now, if not worth a perutah, it is not well? But Samuel said: 'We fear [etc.]'! — There is no difficulty: in the former case it is certain kiddushin; in the latter doubtful kiddushin. A certain man betrothed [a woman] with a black marble stone. Now, R. Hisda was sitting and appraising it: if worth a perutah, it is well;[25] if not, not. Now, if not worth a perutah, it is not well? But Samuel said: 'We fear [etc.]'! — R. Hisda did not accept Samuel's [view]. Said his mother to him: But on the day he betrothed her it was worth a perutah![26] It does not rest entirely with you, replied he, to render her forbidden to the other man.[27]

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(1) sugh or sughh, the betrothal of a Hebrew handmaid to her master or his son in virtue of having been bought, no other

than the purchase money being necessary.
(2) I.e., she cannot be sold, e.g., to her brother, since she may not be designated to him.
(3) Since Scripture teaches that a deduction is made, the sale must be capable of one.
(4) As just proved.
(5) V. Glos.
(6) For the exclusion of a perutah shews that a sum of considerable value is required.
(7) V. Glos., which is acquired without much trouble; thus to acquire a woman by merely a perutah would be derogatory to her status.
(8) No matter how it is debased in the course of time, providing that it is called a perutah.
(9) To Babylon. R. Dimi was a fourth century Amora of Palestine, who settled in Babylon on account of Constantine's decree of banishment against the Jewish teachers of Palestine. But even before this scholars regularly travelled to and fro between the Palestine and the Babylonian academies, and R. Dimi and Rabin (i.e., R. Abin) were specially designated for this task, to provide a cultural link between the two. I. Halevy, Doroth, II, 467-473.
(10) A woman having been betrothed for a perutah, he stated that it must be equal to an eighth of an Italian issar, and was not satisfied with the mere designation of a perutah.
(11) That the perutah must not be less than this.
(12) In the Sifra, a Midrashic commentary on Leviticus, also called 'The Law of the priests.'
(13) The table is given below.
(14) These are Roman coins, the names being corrupted. Kuntrunk. < quadrans (**), a Roman value equal to three Roman ounces, also called terunicius; musmis or messimis < semissis = 1/2 as; pundion < dupundium = two ases.
(15) Hadris is perhaps a corruption of darosah = 1 3/4 as; hanez < nez (blossom); shamnim < shamin (Heb. hbhna, shemini — an eighth) 1/8 of an Italian issar. [For a full discussion of these terms, v. Krauss, TA, pp. 408ff.]
(16) For the issar = 1/2 4th denar; now one denar = six ma'ahs = a hundred and forty-four perutahs, according to his table; therefore one perutah — 1/6th issar.
(17) Thus one denar = a hundred and ninety-two perutahs, in accordance with the first Tanna. The perutah remained stable, but the issar fluctuated. In R. Simai's age the issar was at par, i.e., twenty-four =one denar: therefore one perutah = 1/8th issar. But in the age of R. Dosethai etc., it had slumped to 1/3 2nd of a denar, therefore one perutah =1/6th of an issar.
(18) Lit., 'her'.
(19) A measure of capacity; v. J.E. XII, 489, Table 3.
(20) So that one date is worth far less than a perutah.
(21) Where dates were very dear. Or perhaps Media is mentioned as an example of elsewhere.
(22) And in Samuel's view anything may be worth a perutah somewhere.
(23) If the article is worth a perutah where it is given, the woman is certainly betrothed, and another man's betrothal is invalid. But if it is not worth a perutah there, she is in a position of doubt: she cannot be free without a divorce, yet should another betroth her before she is divorced, his act may be valid, and she then requires a divorce from both, being in the meantime forbidden to both and to everyone else.
(24) The betrothal is valid.
(25) The kiddushin is valid.
(26) Though by the time you came to value it, it had depreciated.
(27) To whom one had, in the meantime, become betrothed. I.e., your evidence cannot be accepted.

Talmud - Mas. Kiddushin 12b

For is this not comparable to the case of Judith, R. Hiyya's wife, who had severe travail in childbirth.[1] Said she to him: My mother told me: 'Your father accepted kiddushin on your behalf [from another man] when you were a child.'[2] He replied to her: It does not rest entirely with your mother to forbid you to me. The Rabbis protested to R. Hisda: Why so? But there are[3] witnesses In Idith[4] who know that on that day it was worth a perutah! — Nevertheless, at present they are not before us. Is this not analogous to R. Hanina's dictum, For R. Hanina said: Her witnesses are in the north,[5] yet she is to be forbidden![6] Abaye and Raba, [however], do not agree with this ruling of R. Hisda: if they [the Rabbis] were lenient in respect of a captive woman,[7] who suffered disgrace under

her captors,[8] shall we be [equally] lenient in the case of a married woman?[9] Some of that family remained in Sura,[10] and the Rabbis held aloof from them;[11] not because they agreed with Samuel, but because they agreed with Abaye and Raba.[12]

A certain man betrothed [a woman] with a myrtle branch in a market place. Thereupon R. Aha b. Huna sent [a question] to R. Joseph: How is it in such a case? — He sent back: Have him flagellated, in accordance with Rab; and demand a divorce, in accordance with Samuel.[13] For Rab punished any man who betrothed [a woman] in a market place, or by intercourse,[14] or without [previous] shiddukin,[15] or who annulled a divorce,[16] or who lodged a protest against a divorce,[17] or harassed a messenger of the Rabbis,[18] or per — mitted a ban to remain upon him thirty days,[19] and a son-in-law who dwelt in his mother-in-law's house thirty days.[20] Only him who dwelt, but not him who merely passed by [his mother-in-law's house]? But a certain son-in-law passed by his mother-in-law's door, for which R. Shesheth chastised him? — There his mother-in-law was [already] under suspicion through him. The Nehardeans maintained: For all these Rab inflicted no punishment, excepting for betrothing [a woman] by intercourse without shiddukin — others state, even with shiddukin, on account of licentiousness.[21]

A certain man betrothed [a woman] with a mat of myrtle twigs. Said they to him, 'But it is not worth a perutah!'[22] 'Then let her be betrothed for the four zuz it contains,' replied he.[23] Having taken it, she remained silent. Said Raba: It is silence after receipt[24] of the money, and such silence has no significance.[25] Raba said: Whence do I know[26] this? For it was taught: If he says to her, 'Take this sela' as a bailment ,' and then he says to her, 'Be thou betrothed unto me therewith', [if he made the declaration] when giving the money [and she accepted it without protest], she is betrothed; after giving the money: if she consented, she is betrothed; if not, she is not betrothed. What is meant by 'she consented,' 'she did not consent'? Shall we say: 'she consented' means that she said 'yes', and 'she did not consent,' that she said: 'no'? Then it follows that the first clause means

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(1) [She used to give birth to twins, v. Yeb. 65b.]

(2) And therefore I am forbidden to you.

(3) So cur. edd. Ri, Bah and Tosaf. read: but people say that there are; v. also Tosaf. a.I. s.v. tv.

(4) So cur. edd. Tosaf. reads: in Arith, i.e., in the west, sc. in Palestine, which lies to the west of Babylon. Levy, Worterbuch, s.v. , אורי , mentions a conjecture that the word may mean 'north', and denotes generally a distant, unknown country.

(5) Heb. Istan, v. B.B. (Sonc. cd.) p. 568, n. 9.

(6) Surely not! for the allusion v. Keth. 23a.

(7) To whom R. Hanina's dictum applied.

(8) [Or, 'who makes herself look repulsive in the presence of her captors' so as to keep them away from her.]

(9) Tosaf. explains thus (on a reading which omits the phrase 'who... captors'): Even if witnesses attest her captivity, a priestly marriage is forbidden her only by Rabbinical law, for fear that she was outraged by her captors; hence we are lenient where the existence of such witnesses is only alleged. But in the case under discussion, should witnesses attest that the stone was worth a perutah when given, she is certainly a married woman and forbidden to others; therefore regard must be paid to the allegation that such witnesses exist elsewhere.

(10) The woman married another, and her descendants were in Sura. — Sura was a town in Southern Babylon between the canals, and seat of the famous academy founded by Rab. V. Obermeyer 283 et seqq.

(11) From contracting a marriage with them.

(12) That the alleged existence of witnesses could not be disregarded; hence these were tainted with the suspicion of bastardy.

(13) For the myrtle branch may be worth a perutah elsewhere.

(14) Notwithstanding the Mishnah.

(15) V. Glos. He regarded these as licentiousness.

(16) After sending it to his wife, but before she received it, in which case it is annulled. But the messenger may not know of this and deliver the divorce, and the wife contract another marriage.

(17) A divorce had to be given of the husband's free will. Even when he was forced (e.g., for refusal of conjugal rights, Keth. V. 6; impotence, Ned. XI, 12), he had to declare that he was giving it voluntarily. Yet he might secretly lodge a protest before witnesses that he was giving it under compulsion, in which case it was invalid.
(18) Sent to summon him to court.
(19) Without seeking its remission by expressing his regret at the offence which had occasioned it and undertaking to amend his ways. Buchler in MGWJ 1934 (Festschrift) p. 129, observes that as far as known the ban, during the days of Jamnia and Usha (first century) was imposed only on scholars, but that in the early amoraic period all were subject to it, as here (v. note 3, a.l.).
(20) Contrary to modern belief, the love between these two was regarded as so strong as to endanger their morals; cf. Pes. 113a.
(21) Tosaf.: this view is relied upon nowadays, in that sons-in-law live with their mothers-in-law.
(22) Matting must have been extremely cheap. Tosaf. Ri, however, translates: a bundle of myrtle twigs.
(23) The money was wrapped up in the mat or bundle.
(24) Lit., 'the giving'.
(25) Though normally silence gives consent. For when she took the matting, she knew that it was not worth a perutah, and therefore it was unnecessary for her to reject the proposal. Her subsequent silence makes no difference.
(26) Lit., 'say'.

Talmud - Mas. Kiddushin 13a

that even if she said 'no,' it is [valid] kiddushin. But why, seeing that she said 'no'? Hence surely, 'she consented' means that she said 'yes', whilst 'she did not consent, that she kept silence; thus proving that silence after receipt of money has no significance. A difficulty was raised thereon at Pum Nehara[1] in the name of R. Huna, son of R. Joshua. How compare? There it was given her as a deposit: [therefore] she thought, 'If I throw it away and it is broken, I am liable for it.' But here he gave it to her as kiddushin: if she did not want it [as such], she should have thrown it away! — R. Ahai retorted: Do then all women know the law? Here too she might have thought, 'If I throw it away and it is broken, I will be held responsible for it.' R. Aha b. Rab sent [an inquiry][2] to Rabina: What is the ruling in such a case? He sent back: We have not heard this [objection] of R. Huna, son of R. Joshua;[3] but you, who have heard it,[4] must have regard to it.[5] A certain woman was selling silk skeins,[6] when a man came and snatched one away from her. 'Give it back to me,' she exclaimed. 'If I give it to you,' he queried, 'will you become betrothed to me?' She took it and was silent. Thereupon R. Nahman ruled: She can say: 'Indeed, I took it, and 'twas my own I took'.[7] Raba objected before R. Nahman: If he betroths her with [an article] of robbery, violence, or theft,[8] or if he snatches a sela' from her hand and betroths her, she is [validly] betrothed? — There it means that he had discussed the preliminaries [of marriage].[9] And how do you know that we draw a distinction between one who discussed the preliminaries and one who did not? — Because it was taught: If one says to a woman,[10] 'Take this sela' which I owe thee,' and then he says: 'Be thou betrothed unto me therewith': [if he said this] when giving the money and she consented, she is betrothed; if she did not consent , she is not betrothed; after giving the money, even if she consented, she is not betrothed. Now, what is the meaning of 'she consented,' 'she did not consent'? Shall we say: 'she consented' means that she said 'yes', 'she did not consent', that she said 'no': but if she remained silent, the kiddushin is valid? Then it should simply have been taught: 'she is betrothed',just as there.[11] But [we must say,] 'she consented' means that she said 'yes,' whilst 'she did not consent,' that she was silent, and it was taught that she is not betrothed. What is the reason? Because she can say: 'Indeed, I took it, and 'twas mine I took.' But in that case, this [Baraitha], 'If he betroths her with robbery, violence, or theft, or if he snatches a sela' from her hand and betroths her, she is betrothed,' presents a difficulty. Hence it must surely be inferred that in the one case he had discussed the preliminaries,[12] whereas in the other he had not.

When R. Assi died, the Rabbis went up to assemble his legal traditions. Said one of the Rabbis, R. Jacob by name, to them: Thus did R. Assi say in R. Mani's name: Just as a woman cannot be

acquired by less than a perutah's worth, so can real estate not be acquired with less than a perutah's worth. But, they protested to him, it was taught: Although a woman cannot be acquired for less than a perutah's worth, land can be acquired for less than a perutah's worth? — That was taught only in respect to barter, he answered them. For it was taught: Acquisition can be effected through an article, even if it is not worth a perutah.[13] Again they sat and related: In reference to Rab Judah's statement in Rab's name, [that] one who does not know the peculiar nature of divorce and betrothal should have no business with them,[14] R. Assi said in R. Johanan's name: And they[15] are more harmful to the world than the generation of the flood, for it is written: By swearing, and lying, and killing, and stealing, and committing adultery, they spread forth, and blood toucheth blood.[16] How does this imply [it]? — As R. Joseph translated:[17] They beget children by their neighbour's wives,[18] thus piling evil upon evil.[19] And it is written: Therefore shall the land mourn and everyone that dwelleth therein shall languish, with the beasts of the field and the fowls of heaven: yea, the fishes of the sea also shall be taken away.[20] Whereas in the case of the generation of the flood nought was decreed against the fish of the sea, for it is written, of all that was in the dry land, died:[21] [implying] but not the fish in the sea, whilst here even the fish of the sea [are to be destroyed]. But perhaps that is only when all these are perpetrated?[22] — You cannot think so, for it is written, for because of swearing the land mourneth.[23] Yet perhaps swearing stands alone, and these others [combined] alone?

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(1) A town lying. as its name signifies, at the mouth of a canal (Nehar Sura = 'the Sura canal'), where it debouches into another, not far from Humanya on the Tigris. It had an all-Jewish population. Obermeyer, pp. 194 et seqq.

(2) MS.M. reads: Such an occurrence happened, (and) R. Ahab. Rab sent etc.

(3) Rashi: we have heard it neither from him nor from anyone else in his name — which is not very satisfactory, seeing that they were evidently aware of it, whoever their informant was. Kaplan, Redaction of the Talmud, p. 138 translates: We have not found the view of R. Huna the son of R. Joshua as logically correct.

(4) I.e., agree with the force of the objection; v. preceding note.

(5) Therefore the kiddushin has at least doubtful validity (v. p. 47, n.10); Tosaf. Ri the Elder. — Kaplan. loc. cit., assumes that R. Aha b. Rab, Rabina and R. Ahai, otherwise known as the Sabora R. Ahai of Hatim, appear here as contemporaries. On the strength of this he identifies Rabina with Rabina b. R. Huna, the last president of Sura, and not Rabina, the colleague of R. Ashi. Actually however, there is nothing here to indicate that they were contemporaries, the reply of R. Ahai possibly having been made at a later date.

(6) Others: beads, silk fillets.

(7) Hence she is not betrothed.

(8) v. p. 263, n. 3.

(9) Then her silence is consent.

(10) Lit., 'her'.

(11) Sc. in the Baraitha quoted at the bottom of 12b.

(12) Then she is betrothed.

(13) Barter (Heb. halifin) is a system of symbolic exchange, the article with which it is effected symbolically representing the larger article or the money which is actually the purchase price: consequently it may be worth less than a perutah. But when acquisition is effected through money itself, or an article valued as money, what is not worth a perutah does not rank as such.

(14) V. supra 6a for notes.

(15) Who take part in these matters without sufficient knowledge.

(16) Hos. IV, 2.

(17) So Targum, Pseudo.Jonathan, v. B.K. (Sonc. ed.) p. 9, n. 9.

(18) Understanding 'spread forth' in that sense; cf. Ex. I, 12: But the more they afflicted them, the more they multiplied and spread forth.

(19) So interpreting 'blood toucheth blood.' — Men of insufficient knowledge who take part in the solemnising of marriage and divorce likewise cause this, married women often being declared free illegally.

(20) Ibid. 3.

(21) Gen. VII, 22.

(22) Viz., those enumerated in the first verse quoted, but not for adultery alone.

(23) Jer. XXIII, 10. This shews that a single crime is sufficient.

Talmud - Mas. Kiddushin 13b

— Is it then written 'and they spread forth':[1] 'they spread forth is written.[2]

Again they sat and related: In reference to what we learnt: If a woman brought her sin-offering [after childbirth] and then died, her heirs must bring her burnt-offering,[3] Rab Judah said in Samuel's name: Providing that she had separated it[4] during her lifetime, but not otherwise; thus proving that in his opinion the hypothecary obligation[5] is not Biblical.[6] [But] R. Assi said in R. Johanan's name: Even if she did not separate it during her lifetime, thus proving that he holds that hypothecary obligation is Biblical.[7] But they have already disputed this matter once. For Rab and Samuel both maintained: A debt [contracted] by word of mouth cannot be collected from heirs or purchasers;[8] while R. Johanan and Resh Lakish both rule: A debt [contracted] by word of mouth can be collected both from heirs and purchasers? — Both are necessary. For if it were stated in the latter case [alone]: Only there [I would say] did Samuel rule [thus] because it is not a debt decreed in Scripture; but in the former instance I might say that he agrees with R. Johanan and Resh Lakish.[9] And if we were taught this [dispute] in the former instance: only there, [I would say,] did R. Johanan rule [thus], because a debt decreed in Scripture is as one indited in a bond; but in the latter case, I might say that he agrees with Samuel. Hence both are necessary.

R. Papa said: The law is: A debt [contracted] by word of mouth can be collected from heirs, but not from purchasers. It can be collected from heirs: because the hypothecary obligation involved is Biblical. And it cannot be collected from the purchasers: because it [the debt] is not generally known.[10]

AND SHE ACQUIRES HER FREEDOM BY DIVORCE OR HER HUSBAND'S DEATH. As for divorce, It is well, since it is written, then he shall write her a bill of divorcement;[11] but whence do we know [that she is freed by] her husband's death? — It is logic: he [the husband] bound her; hence he frees her. But what of consanguineous relations, whom he binds, and nevertheless does not free?[12] — But since Scripture decreed that a yebamah without children is forbidden [to the outside world], it follows that if she has children she is permitted. Yet perhaps, if she has no children she is forbidden to the world but permitted to the yabam, whereas if she has children she is forbidden to all? — But since Scripture states that a widow is forbidden to a High Priest,[13] it follows that she is permitted to an ordinary priest.[14] Yet perhaps [she is forbidden] to a High Priest by a negative injunction, and to all others by an affirmative precept?[15] — What business has this [alleged] affirmative precept? If her husband's death has effect, let her be entirely free; and if not, let her remain in her original status![16] Why not? It [sc. her husband's death] withdraws her from [the penalty of] death and places her under [the interdict of] an affirmative precept. For this may be analogous to consecrated animals rendered unfit [for sacrifice], which originally [before they became unfit] involved a trespass-offering[17] and might not be sheared or worked with; yet when they are redeemed, they no longer involve a trespass-offering, but may still not be sheared or worked with?[18] — But [it is known] since Scripture said, [And what man is there . . . his house,] lest he die in the battle and another man take her.[19] To this R. Shisha son of R. Idi demurred: Perhaps who is meant by 'another man: the yabam?[20] — Said R. Ashi, There are two answers to this: firstly, the yabam is not designated 'another man': and furthermore, it is written. And if the latter husband hate her, and write her a bill of divorcement . . . or if the latter husband die:[21] thus death is compared to divorce: just as divorce completely frees[22] her, so does death completely free her.

A YEBAMAH IS ACQUIRED BY INTERCOURSE. Whence do we know [that she is acquired] by intercourse? — Scripture saith,

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(1) The conjunction would denote that they must be combined.
(2) Without a conjunction, shewing that that itself merits the punishment stated in the following verse.
(3) These two sacrifices were due after childbirth; v. Lev. XII, 8.
(4) Sc. an animal, for a burnt-offering.
(5) Involved by debt.
(6) E.g., if a man borrows money, we do not say that his property is automatically mortgaged for its repayment, so that in the event of his death his heirs are Biblically liable, since they inherit mortgaged property, unless the debtor explicitly mortgages his goods in a bond, v. B.B. 175b. For here too, the woman is under an obligation to God to bring a sacrifice, yet since she did not separate an animal for it, no obligation lies on the heirs.
(7) I.e., every debt carries with it a pledge of the debtor's property in favour of the creditor.
(8) If the debtor's land was sold, the property not having been mortgaged for repayment, the creditor cannot collect from the vendees.
(9) The sacrifice being a Scriptural precept, the liability is stronger than that of an ordinary debt.
(10) Lit., 'has no voice.' Therefore to safe-guard the vendee's interests, the Rabbis deprived the creditor of his rights.
(11) Deut. XXIV, 1.
(12) A woman may not marry her father-in-law even after her husband's death; thus the interdict which he imposed on her by marriage remains even when he dies.
(13) Lev. XXI, 14.
(14) And by the same reasoning, to all other men.
(15) Lev. XXI, 24 is in the form of a negative injunction, the violation of which is punished by flagellation (malkoth), whereas that of an affirmative precept goes unpunished by Biblical law. Tosaf.: the affirmative precept may be the verse: Therefore shall a man . . . cleave to his wife (Gen. II, 24). implying, but not to his neighbour's wife (cf. Sanh. 58a). — An interdict implied by an affirmative precept is itself regarded as such, and not as a negative command.
(16) As a married woman she is forbidden to others by a negative precept under pain of death (Lev. XVIII, 20: XX, 10; Deut. XXII, 22); there are no grounds for supposing that her husband's death leaves the interdict but changes its nature.
(17) For secular use, e.g., ploughing with them.
(18) V. Bek. 15a. This proves that a certain fact may leave the interdict but change its penalty, and the same may apply to the husband's death.
(19) Deut. XX, 7.
(20) But not others.
(21) Ibid. XXIV, 3.
(22) Lit., 'permits.'

Talmud - Mas. Kiddushin 14a

Her husband's brother shall go in unto her, and take her to him to wife.[1] Then perhaps she is like a wife in all respects?[2] — You may not think so. For it was taught: I might think that money or deed can complete her acquisition, just as intercourse does; therefore it is written, and perform the duty of an husband's brother unto her:[3] teaching, intercourse alone completes the acquisition of her, but money or deed does not complete the acquisition of her. Yet perhaps what is the purpose of 'and perform the duty of an husband's brother unto her'? It is that he can take her by force?[4] — If so, Scripture should have stated: 'and perform the duty of a husband's brother',[5] why [add] 'unto her'? Hence both are learnt from it.[6]

[AND ACQUIRES HER FREEDOM] BY HALIZAH. Whence do we know it?[7] — From the verse: And his name shall be called in Israel, The house of him that hath his shoe loosed:[8] once there has been the loosening of the shoe in her case, she is permitted to all Israel. Does then this [word] 'Israel' come to teach this? But it is necessary for what R. Samuel b. Judah learnt: [Halizah must be performed] at a Beth din of [naturally born] Israelites, but not at a Beth din of proselytes. — 'In Israel' is written twice.[9] Yet it is still required for what was taught: R. Judah said: We were once sitting before R. Tarfon, when a woman came to perform halizah. Thereupon he instructed us, Do all of you respond and say: 'He that hath his shoe loosed, he that hath his shoe loosed'?[10] — That is

derived from, and his name shall be called.[11]

OR THE YABAM'S DEATH. How do we know it? — A fortiori: if a married woman, who is [forbidden to others] on pain of strangulation, is freed[12] by her husband's death; then a yebamah, who is [forbidden only] by a negative precept,[13] is surely [freed by the yabam's death]. As for a married woman, [it may be asked] that is because she is freed[14] by divorce! Will you say [the same] of this one a yebamah], who is not freed [from the Levirate tie] by divorce? — She too is freed by halizah.[15] But [refute it thus]: as for a married woman, that is because he who binds her frees her![16] — Said R. Ashi: In her case too, he who binds her frees her: the yabam binds her, the yabam frees her.[17]

Now, let a married woman be freed by halizah, a minori: if a yebamah, who is not freed by divorce, is freed by halizah; then this one [a married woman], who is freed by divorce, is certainly freed by halizah! — Scripture saith, [then he shall write her] a deed of divorcement,[18] thus, a deed may divorce her, but nothing else can divorce her. Now, let a yebamah be freed by divorce, a minori: if a married woman, who is not freed by halizah, is freed by divorce: then this one [a yebamah], who is freed by halizah, is surely freed by divorce! — Scripture states: Thus [shall it be done, etc.][19] and 'thus' intimates indispensableness.[20] Now, wherever there is an intimation of indispensableness, do we not infer a minori? But what of the Day of Atonement, where 'lot' and 'statute' are written,[21] yet it was taught: [And Aaron shall present the goat upon which the lot fell for the Lord,] and offer him for a sin-offering:[22] the lot renders it a sin-offering, but designation does not render it a sin-offering.[23] For I might have thought, Does not [the reverse] follow a minori: if designation sanctifies where lot does not,[24] how much the more would designation satisfy where lot does! Therefore it is said: 'and offer him for a sin-offering,' teaching, the lot renders it a sin-offering, but designation does not render it a sin-offering. Thus, it is only because Scripture excluded it [designation]; but otherwise we would infer a minori, notwithstanding that statute is written![25] — Scripture saith, '[then he shall write] her [a deed of divorcement]': for 'her', but not for a yebamah. Yet perhaps 'her' teaches that it must be for her sake?[26] — 'Her' is written twice.[27] Yet even so they are needed: one 'her' [intimating that it must be] for her sake; and the other 'her' teaching, but not for her and her companion?[28] — But Scripture saith, '[the house of him that hath a] shoe [loosed]:' only a shoe [can set her free], but nothing else can.[29] Does 'shoe' come to teach this? But it is necessary for what was taught: 'And she shall loose his shoe:[30] I know only [that she must loosen] his shoe; whence do I know [that it may be] any man's shoe?[31] From the verse: '[the house of him that hath] the shoe [loosed]:' 'shoe' is an extension.[32] 'If so, who state, 'his shoe'? — 'His shoe' [intimates that it must fit him, [thus] excluding one [too] large, in which he cannot walk, and one [too] small, which does not cover the greater part of his foot, excluding

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(1) Ibid. XXV, 5.

(2) To be acquired by money or deed too?

(3) I.e., have intercourse with her. Ibid. This is really a repetition of the first part of the verse, and therefore emphasizes intercourse.

(4) That being taught by the repetition.

(5) This would have sufficed to emphasize intercourse alone as a means of acquisition.

(6) 'unto her' implying even against her will.

(7) The passage a.I. does not state that halizah frees her, but merely that it must be performed if the yabam refuses her.

(8) Ibid. 10.

(9) In Deut. XXV, 7 and 10.

(10) Heb. haluz ha-na'al, haluz ha-na'al — i.e., those present must actually say these words as part of the ceremony.

(11) Leaving 'in Israel' free for another purpose.

(12) Lit., 'permitted'.

(13) Ibid. 5: the wife of the dead shall not marry without unto a stranger.

(14) Lit., 'goes out'.

(15) Thus another means of freedom being found for each, the a fortiori argument holds good.
(16) But a yebamah is forbidden to others on account of her dead husband, whereas it is to be proved that the yabam's death frees her.
(17) But for the existence of the yabam, her husband's death would have freed her. Hence it is really he who is responsible.
(18) Deut XXIV, 1.
(19) Ibid. XXV, 9.
(20) The emphatic 'thus' indicates that the ceremony prescribed is indispensable. and that nothing else can achieve the same result.
(21) And it is a principle that 'statute' likewise indicates indispensableness.
(22) Lev. XVI, 9.
(23) If he merely designates it a sin-offering, without having previously chosen it by lot, it is invalid.
(24) Sc. in the case of the two pigeons, one a sin-offering and the other a burnt-offering. brought for the offences enumerated in Lev. V, 1-4. If he designates each for a particular sacrifice, the designation stands and cannot be revoked. But if he casts lots, it is of no avail, and he can then sacrifice each as he wishes.
(25) And this shall be a statute for ever unto you; Lev. XVI, 29.
(26) V. p. 34. n. 8.
(27) In Deut. XXIV. 1 and 3.
(28) If a man has two wives of the same name, he cannot divorce both with the same document, even though it is expressly written for them, v. Git.87a.
(29) Rashi: because 'shoe' is superfluous, as the verse could have read: 'the house of him that was loosed'.
(30) Deut. XXV, 9.
(31) Which the yabam is wearing.
(32) Shewing that any person's may be used. The E.V. has 'his shoe' here too, but 'his' is not in the original.

Talmud - Mas. Kiddushin 14b

a sandal consisting of a mere sole, which has no heel! — If so,[1] Scripture should have written 'shoe'; why 'the shoe'? That both may be inferred therefrom.[2]

MISHNAH. A HEBREW SLAVE IS ACQUIRED BY MONEY AND BY DEED; AND ACQUIRES HIMSELF BY YEARS,[3] BY JUBILEE,[4] AND BY DEDUCTION FROM THE PURCHASE PRICE.[5] A HEBREW MAIDSERVANT IS MORE [PRIVILEGED] IN THAT SHE ACQUIRES HERSELF BY 'SIGNS'.[6] HE WHOSE EAR IS BORED[7] IS ACQUIRED BY BORING, AND ACQUIRES HIMSELF BY JUBILEE OR HIS MASTER'S DEATH.

GEMARA. A HEBREW SLAVE IS ACQUIRED BY MONEY. How do we know this? — Scripture states, [he shall give back the price of his redemption] out of the money that he was bought for:[8] this teaches that he was acquired by money. We have [thus] learnt[9] it in the case of a Hebrew slave sold to a heathen, since his sole method of acquisition is by money:'[10] how do we know it of one sold to an Israelite?[11] — Scripture states: Then shall he let her be redeemed:[12] this teaches that she deducts [part] of her redemption money and goes out [free].[13] We have thus learned it in the case of a Hebrew bondmaid: since she is betrothed with money,[14] she is acquired with money; how do we know it of a Hebrew Slave? — The Writ saith, If thy brother, an Hebrew man, or an Hebrew woman be sold unto thee, and serve thee six years:[15] thus a Hebrew manservant is assimilated to a Hebrew maidservant. We have now learnt it of one sold by Beth din,[16] since he was sold against his will;[17] how do we know it of one who sells himself? — We learn [identity of law from] the repeated use of 'sakir'.[18] Now, that is well according to him who accepts the deduction of the repeated use of 'sakir';[19] but according to him who does not , what can be said? — Scripture states, and if a stranger or sojourner with thee be waxen rich,[20] thus continuing[21] the preceding section,[22] so that [the subject] above may be deduced from [that] below.[23]

And which Tanna does not admit the deduction from the repeated use of sakir? — The following Tanna. For it was taught: He who sells himself may be sold for six years or more than six years; if sold by Beth din, he may be sold for six years only. He who sells himself may not be bored;[24] if sold by Beth din, he may be bored. He who sells himself, has no gift made to him;[25] if sold by Beth din, a gift is made to him.[26] To him who sells himself, his master cannot give a Canaanite bondmaid;[27] if sold by Beth din, his master can give him a Canaanite bondmaid. R. Eleazar[28] said: Neither may be sold for more than six years; both may be bored; to both a gift is made; and to both the master may give a Canaanite bondmaid. Surely they differ on this point: the first Tanna does not admit the deduction of the repeated use of sakir, while R. Eleazar does?[29] Said R. Tabyomi in Abaye's name: All admit the deduction of the repeated use of sakir, but here they differ on the following: What is the reason of the first Tanna, who maintained, He who sells himself may be sold for six years or more than six years? [Because] Scripture expressed a limitation In connection with one sold by Beth din: and he shall serve thee six years:[30] 'he,' but not one who sells himself. And the other?[31] — 'And he shall serve thee' [intimates] 'thee', but not thine heir.[32] And the other?[33] — Another 'served thee' is written.[34] And the other?[35] — That comes [to teach] that the master must be willing [to make a gift].[36]

What is the reason of the first Tanna who maintained that one who sells himself is not bored? Because Scripture expressed a limitation in connection with one sold by Beth din: and his master shall bore his ear through with an awl,[37] [implying] his ear, but not the ear of him who sold himself.[38]

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(1) That its only purpose is to shew that any persons shoe may be used.

(2) The def. art. shews that a shoe is the means of freeing her, and nothing else can.

(3) I.e., when he has served six years. Ex. XXI, 2.

(4) If this intervened before he had completed his six years of servitude.

(5) At any time by a pro rata repayment, taking into account the time he still has to serve.

(6) Of puberty.

(7) I.e., a slave who refuses his freedom at the expiration of six years; v. Ex. XXI, 5f.

(8) Lev. XXV, 51.

(9) Lit., 'found'.

(10) It is stated infra 26a, that movables are acquired by meshikah (v. Glos.); this, however, holds good only of a Jewish purchaser, not a Gentile, who can acquire them only by giving the money.

(11) The whole discussion turns on the question which act formally consummates the transaction. Though a purchase is naturally effected by money, in the case of some property the delivery of money does not consummate the transaction, and both sides may retract. On the other hand, meshikah (q.v. Glos.) in the case of movables completes the transaction even before the delivery of the purchase price, which ranks as an ordinary loan. Hence the question here: how do we know that the delivery of money consummates the purchase of a Hebrew slave?

(12) Ex. XXI, 8.

(13) [R. Tam: Just as she acquires herself by money so is she acquired by money.] Rashi: Since Scripture writes, 'then shall he let (or cause) her to be redeemed', not, then shall she be redeemed, it shews that the master must help her redemption by accepting less than he paid for her, on a pro rata basis, as explained on p. 59, n. 6; hence she must have been bought with money — otherwise, from what is a deduction to be made? Of course, as pointed out on p. 59, n. 12, it is understood that money was paid. But the point is this: This exegesis shews that immediately on repaying the money she becomes free and no other formality is necessary. But if the purchase itself required some form of acquisition apart from the payment of the purchase price, e.g., deed, she would require the same on buying herself back (Maharam).

(14) Which is also a form of acquisition.

(15) Deut. XV, 12.

(16) For 'if thy brother be sold' implies by someone else, viz., Beth din, for theft: v. Ex. XXII, 2.

(17) Therefore, a strong form of acquisition, e.g., the symbolical act of hazakah (v. infra 26a and Glos.) is unnecessary, and the delivery of money suffices.

(18) Hired servant; this word is used in connection with both. One who sells himself, Lev. XXV, 39f: And if thy brother

. . . sell himself unto thee . . . as an hired servant (sakir) he shall be with thee. One sold by Beth din, Deut. XV, 12-18: If thy brother . . . be sold unto thee . . . it shall not seem hard unto thee, when thou lettest him go free from thee; for to the double of the hire of a hired servant (sakir, E.V. 'hireling') hath he served thee six years. The use of 'sakir' in both cases teaches that the same method of purchase holds good in both cases.

(19) Lit., 'who infers 'sakir' from 'sakir'.

(20) Lev. XXV, 47.

(21) Lit., 'adding to'.

(22) Lit., 'subject'.

(23) It is an exegetical principle that when a passage commences with 'and', this conjunction links it to the previous portion, and a law stated in one applies to the other too. Thus this 'and' links vv. 39-46, dealing with a Hebrew slave who sells himself to a Jew, with vv.47-55, treating of one who sells himself to a non-Jew. Just as the purchase of the latter is consummated by money, so is that of the former too.

(24) He must accept his freedom at the end of six years, and the provisions of Ex. XXI, 5f (q.v.) do not apply to him.

(25) By his master, on attaining his freedom.

(26) Deut. XV, 13f: And when thou lettest him go free from thee, . . . thou shalt furnish him liberally out of thy flock etc.

(27) To beget slaves for him.

(28) This is the reading of most editions: Tosaf. (15a s.v.Ishtu) gives another reading, R. Eliezer, which will refer to R. Eliezer b. Hyrcanus. There were several Tannaim of the first name, and the halachah may agree with them; but if Tosaf.'s reading is correct, the halachah is definitely not so, for it is a principle that the halachah never agrees with R. Eliezer b. Hyrcanus when he is in dispute with others (v. B.M. 59b, (Sonc. ed.) pp. 352f, for reason).

(29) Hence they are alike in all respects.

(30) Deut. XV, 12: this refers to a person sold by Beth din; v. p. 60, n. 4.

(31) R. Eleazar: does he not admit the force of this limitation?

(32) Other than a son; v. infra 17b.

(33) The first Tanna: does he not admit that the word is required for the latter purpose.

(34) Ibid. 18, quoted p. 60, n. 6; in Heb. the same word is used here for both tenses, the difference being indicated by the so-called waw conversive; v. Davidson, Heb. Grammar, ** 23, 3.

(35) R. Eleazar: how does he utilize the second 'served thee?'

(36) 'Served thee' in v. 18 is written in connection with this.

(37) Ex. XXI, 6; the whole passage a.l. refers to one sold by Beth din; v. pp. 64ff.

(38) Rashi: Because 'his ear' is superfluous, as it is written in Deut. XV,17: then thou shalt take on owl, and thrust it through his ear unto the door.

Talmud - Mas. Kiddushin 15a

And the other?[1] — That comes for the purpose of a gezerah shawah.[2] For it was taught: R. Eliezer said: How do we know that the boring must be through the right ear? Here is said: 'ear': and elsewhere is said, [and the priest shall take some of the blood . . . and put it upon the tip of the right] ear etc.,:[3] just as there the right is meant, so here too, the right is meant. And the other?[4] — If so,[5] Scripture should have written 'ear'; why 'his ear'?[6] And the other?[7] — That is needed: 'his ear', but not her ear.[8] And the other? — He deduces that from, but if the bondsman shall plainly say:[9] the bondsman, but not the bondmaid. And the other? — He needs that [to teach]: he must say it while yet a slave.[10] And the other? — That is derived from 'the bondsman' [instead of] bondsman.[11] — And the other? — [The difference between] the bondsman and bondsman affords no basis for exegesis.

What is the reason of the first Tanna who maintained, He who sells himself, no gift is made to him? — Scripture expressed a limitation in connection with one sold by Beth din: thou shalt furnish him liberally;[12] 'him', but not one who sells himself. And the other?[13] — He needs that: 'him', but not his heirs.[14] ('His heirs': why not? The All-Merciful designated him a hired servant [sakir]: just as the wages of a hired servant belong to his heirs,[15] So here too, his wages[16] belong to his heirs? — But [say thus:]) 'him', but not his creditor.[17] [This is necessary,] because elsewhere we agree with R.

Nathan, as it was taught: R. Nathan said: How do we know that if a man claims from another and then one claims [the same amount] from a third, that we collect from the last named and give it to the first [creditor]? From the verse, and he shall give it unto him to whom he is indebted.[18] Therefore 'him' comes to exclude that [from the case of a slave]. And the other? — Elsewhere we do in fact disagree with R.Nathan.[19]

What is the reason of the first Tanna who maintained, To him who sells himself, his master cannot give a Canaanite bondsmaid? Scripture expressed a limitation in connection with one sold by Beth din: If his master give him a wife,[20] [implying], him, but not one who sells himself. And the other? — 'Him' [intimates] even against his will. And the other?[21] — That is deduced from, for to the double of the hire of a hired servant [hath he served thee].[22] For it was taught: 'For to the double of the hire of a hired servant hath he served thee:' a hired servant works by day only, whereas a Hebrew slave works by day and night. Yet can you really imagine that a Hebrew slave works by day and night: is it not written, because he is well with thee,[23] [teaching] that he must be [on a par] with thee in food and drink? and R. Isaac answered thus: From this follows that his master can give him a Canaanite bondmaid.[24] And the other?[25] — If from there, I might have said: That is only with his consent, but not against his will; therefore we are told [otherwise].

Then which Tanna does not accept the deduction from the repetition of 'sakir'? — It is this Tanna. For it was taught: And if thy brother sell himself unto thee . . . he shall serve thee unto the years of jubilee. And then . . . he shall returns unto his family, etc.:[26] R. Eliezer b. Jacob said: Of whom does Scripture speak? If of him who sells himself — then it was already stated.[27] If of him whose ear was bored — that too was already stated.[28] Hence Scripture refers [here] only to him whom Beth din sold two or three years before jubilee, [thus teaching] that jubilee liberates him. Now, should you think that he [R. Eliezer b. Jacob] accepts the deduction of the repeated use of 'sakir', why is it [the verse cited] necessary; let him make the aforementioned deduction?[29] — Said R. Nahman b. Isaac: After all, he does make this deduction; nevertheless it [the verse quoted] is necessary. I might have thought, only he who sells himself,[30] because he committed no offence; but as for one sold by Beth din, who committed an offence, I might say: Let him be punished; therefore we are informed [that it is not so].

The Master said: 'If of him whose ear was bored — that too was already stated.' What is this?[31] — For it was taught: [It shall be a jubilee unto you;] and ye shall return every man unto his possession, and ye shall return every man unto his family.[32] To what does Scripture refer? If to one who sells himself — it was already stated;[33] if to one sold by Beth din — that [too] was already stated.[34] Hence the Writ can only refer to one whose ear was bored two or three years before jubilee, [teaching] that jubilee liberates him. How is this implied?[35] — Said Raba b. Shila: Scripture saith, [and ye shall return every] man: now, what thing is practised in the case of a man but not of a woman? Say: boring. Now, [both cases,] one sold by Beth din, and one who was bored,[36] must be written. For had we been informed [this] of him whom Beth din sold, [I might say] that is because his term had not expired;[37] but as for him whose ear was bored, seeing that his term had already expired, I might have said: let him be punished![38] And if we were informed [this] of him whose ear was bored, [I might say] that is because he had already served six years; but as for him who has been sold by Beth din, who had not yet served six years, I might have argued: he is not [liberated]. Thus both are necessary.

Now, both 'and ye shall return' and '[and he shall serve him] for ever'[39] must be written .[40] For had the All-Merciful written 'for ever' [only], I would have thought, literally for ever; therefore the All-Merciful wrote 'and ye shall return'. And had the All-Merciful written 'and ye shall return' [only], I would have thought: when is that?[41] If he had not served six years [after being bored]; but if he had already served six years, his last phase should not be more stringent than his first: just as his first phase[42] was for six years, so should his last be for six years [only]; hence 'for ever' teaches us,

for the eternity of jubilee.[43]

Then [the question again arises,] which Tanna does not accept the deduction of 'sakir', 'sakir'? — It is Rabbi. For it was taught:

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(1) R. Eleazar: What does 'his ear' teach, on his view?

(2) V. Glos.

(3) Lev. XIV, 25, also in v. 28. This refers to a poor leper, and the whole section on the sprinkling etc., is superfluous, since is stated in vv. 14ff., in connection with a leper of means: hence it is for the purpose of exegesis (Rashi).

(4) The first Tanna: whence does he know this?

(5) That its only purpose is the gezerah shawah.

(6) Surely to intimate the limitation stated above.

(7) R. Eleazar: why state, 'his'?

(8) Teaching that a Hebrew bondsmaid cannot be bored.

(9) Ex. XXI, 5f., q.v.

(10) I.e., before the expiration of his six years.

(11) The def. art. emphasizes that he must still be a slave when he refuses his freedom. Hence the substantive itself excludes a bondsmaid.

(12) Deut. XV, 14.

(13) R. Eleazar: how does he utilize 'him'?

(14) If the slave dies before his master makes him the gift.

(15) If he dies before receiving them.

(16) Of which this gift is part.

(17) If the slave owes money, the gift is not to be given to his creditor. — The Wilna Gaon substitutes the following for the bracketed passage: And the other? (The first Tanna: whence does he exclude the heirs?) — 'Him' is written twice, (of that wherewith the Lord thy God hath blessed thee thou shalt give unto him). And the other? — That is needed: 'him', but not his creditor.

(18) Num. V, 7: translating, and he (the last debtor) shall give it unto him (the first creditor), to whom he (the second creditor) is indebted. By analogy, the master ought to deliver the gift direct to the slave's creditor.

(19) Hence no particular verse is needed for a slave.

(20) Ex. XXI, 4.

(21) The first Tanna: how does he know this?

(22) Deut. XV, 18.

(23) Ibid. 16.

(24) This must be the night service referred to.

(25) Why deduce it from 'him'?

(26) Lev. XXV, 39f: the word translated 'sell himself may also mean 'be sold.'

(27) 'He shall serve thee unto the year of Jubilee', when he obviously returns to his family.

(28) The Talmud asks below, where?

(29) From which the same follows.

(30) Is thus prematurely liberated by jubilee.

(31) I.e., where was it stated?

(32) Lev. XXV, 10.

(33) As mentioned in the passage above. — It should be observed that the Talmud refers to a law as 'already stated,' even when it occurs further on in the chapter or book, as here; thus it is the equivalent of 'stated elsewhere.'

(34) Then he shall return unto his family (Ibid. 41), interpreted above as referring to this case.

(35) In the verse.

(36) Each two or three years before jubilee.

(37) Lit., 'his time (for freedom) had not come,' and it was his good fortune that the jubilee supervened.

(38) For voluntarily choosing servitude when he might have been free. — This hypothetical reasoning may appear curious: but it arises out of the Jewish insistence on the fundamental freedom of man.

(39) Ex. XXI, 6.

(40) Both refer to one whose ear was bored: the first, by inference; the second, explicitly (vv. 5, 6). On the surface, they are contradictory.

(41) That he must wait for jubilee.

(42) I.e., when first sold.

(43) I.e., , he is a slave until then, no matter how long.

Talmud - Mas. Kiddushin 15b

And if he be not redeemed by these, etc.:[1] Rabbi said: He may be redeemed by these, but not by Six [years].[2] For I might have argued, Does it not follow a minori: if he[3] who cannot be redeemed by these[4] is redeemed by six [years], then this one, who may be redeemed by these, is surely redeemed by six years? Therefore it is written: 'by these': teaching, he may be redeemed by these, but not by six years. Now, should you think that he [Rabbi] accepts the deduction from 'sakir', used twice, why does he Say, 'if he who cannot be redeemed by these': let us deduce [similarity of law from] the repetition of sakir?[5] — Said R. Nahman b. Isaac: After all, he does accept the deduction of 'sakir', 'sakir'; yet here it is different, because Scripture saith, [one of his brethren] shall redeem him.[6] [implying] him, but not another.[7]

And what Tanna disagrees with Rabbi? — R. Jose the Galilean and R. Akiba. For it was taught: 'And if he be not redeemed by these' — R. Jose the Galilean said: If 'by these', it is for freedom, if by strangers,[8] it is for servitude.[9] R. Akiba said: If 'by these',it is for servitude: if by strangers, it is for freedom. What is the reason of R. Jose the Galilean? — Scripture saith, 'And if he be not redeemed by these' — but by a stranger — 'then he shall go out in the year of jubilee'.[10] While R. Akiba interprets: 'And if he be not redeemed by any but these, then he shall go out in the year of jubilee'. And R. Jose the Galilean?[11] — Is it then written: 'by any but these'?[12] But they differ in respect of the following verse: Or his uncle, or his uncle's son may redeem him:[13] this is redemption by relations; or if he be waxen rich:[13] this is self redemption: and he shall be redeemed:[13] this is redemption by strangers. Now, R. Jose the Galilean holds: a verse is interpreted with what precedes it. [Hence] link[14] redemption by relations with self-redemption: just as self-redemption is for freedom, so is that by relatives. While R. Akiba maintains: a verse is interpreted with what follows: [hence] link redemption by strangers with self redemption: just as the latter is for freedom, so is the former. If so, why state 'by these'?[15] — But for 'by these', I would have said: the verse is interpreted with what precedes and what follows it, so that [the redemption of] all is for freedom. If so, the difficulty remains in[16] its place?[17] — But they differ on a matter of logic. R. Jose the Galilean holds: It is logical that redemption by strangers is for servitude; for should you say it is for freedom, they will refrain from redeeming him. While R. Akiba holds: It is logical that redemption by kinsmen is for servitude: for should you say that it is for freedom, he will go every day and sell himself![18] R. Hiyya b. Abba said: These are the views of R. Jose the Galilean and R. Akiba: but the Sages maintain, [The redemption of] all is for freedom. Who are the Sages? — Rabbi, who employs this 'by these' for a different exegesis,[19] while the verse is interpreted with both what precedes and what follows it.[20]

And Rabbi, how does he utilize this [verse] 'then he shall go out in the year of jubilee'? — He needs it for what was taught: 'Then he shall go out in the year of jubilee':

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(1) Lev. XXV, 54: the section deals with the Hebrew slave of a Gentile, and 'these' refers to his relatives, mentioned in vv. 48f.

(2) I.e., he is not set free after six years of service.

(3) Sc. a Hebrew slave sold to a Jew.

(4) Redemption by relatives is not mentioned in his case.

(5) V. p. 60, n. 6.

(6) Ibid. 48.

(7) Sc. a slave sold to a Jew.
(8) Lit., 'the rest of people.'
(9) If a relation redeems him, he goes free; if a stranger, he becomes his slave.
(10) And until then he is the stranger's slave.
(11) How does he refute R. Akiba?
(12) Surely not! This is the reading in the curr. edd. Other versions, more plausibly: And R. Akiba: is it then written, etc.? This is both more logical and in keeping with what follows.
(13) Lev. XXV, 49.
(14) Lit., 'cast.'
(15) Which implies: if he is not redeemed by these, but by relatives, then he shall go out etc.; this contradicts R. Akiba.
(16) Lit., 'reverts to.'
(17) Since this verse may mean that he is free no matter who redeems him, how can R. Akiba interpret v. 54 as meaning that if redeemed by relatives it is for servitude?
(18) And it is unfair to saddle his relations with the duty of redeeming him.
(19) As stated supra.
(20) Hence contrari-wise, R. Jose the Galilean and R. Akiba reject Rabbi's deduction.

Talmud - Mas. Kiddushin 16a

this refers to a heathen who is under your rule.[1] Yet perhaps it is not so, the reference being to a heathen who is not under your rule? — You can answer; [if so,] what can be done to him?[2] Hence Scripture speaks only of a heathen who is under your rule.

AND BY DEED. Whence do we know it? — Said 'Ulla, Scripture saith, If he take him another [wife]:[3] thus the Writ assimilated her [the Hebrew bondmaid] to another [wife]: just as the other [sc. the wife] is acquired by deed, so is a Hebrew maidservant acquired by deed. Now, that is well on the view that the deed of a Hebrew bondmaid is written by her master;[4] but on the view that her father writes it, what can be said? For it has been stated: As to the deed of a Hebrew bondmaid, who writes it? R. Huna maintained: The master writes it; R. Hisda said: Her father writes it. [Hence] it is well according to R. Huna; but on R. Hisda's view, what can be said? — R. Aha b. Jacob answered: Scripture saith, she shall not go out as the menservants do:[5] [implying,] but she may be acquired as [heathen] menservants are;[6] and what is that? By deed. Then say: but she may be acquired as [heathen] menservants are, and what is that? Hazakah![7] — Scripture saith, And ye shall make them [the heathen slaves] an inheritance for your children after you:[8] only they [are acquired] by hazakah, but not another.[9] Then say: Only they [are acquired] by deed, but not another? — But it is written, she shall not go out as menservants do.[10] And why do you prefer it so?[11] — It is logical that 'deed' is included [as a means of acquisition], since it divorces an Israelite daughter.[12] On the contrary, one should rather include hazakah, since it acquires the property of a proselyte?[13] — Still we do not find it in marriage relationship.[14] Alternatively, if 'he take another' serves that very purpose.[15] And R. Huna: how does he expound this [verse,] She shall not go out as the menservants do?[16] — He employs that as intimating that she does not go out [free] through [the loss of her] outstanding limbs, as a [heathen] slave.[17] And R. Hisda?[18] — If so, Scripture should have written: 'she shall not go out as menservants'; why, as the going out of menservants?[19] That both may be inferred.[20]

AND ACQUIRES HIMSELF BY YEARS. For it is written, six years he shall serve: and in the seventh he shall go out free for nothing.[21] AND BY JUBILEE. For it is written, he shall serve with thee unto the year of jubilee.[22]

AND BY DEDUCTION FROM THE PURCHASE PRICE. Hezekiah said: Because Scripture saith, Then shall he let her be redeemed:[23] this teaches that she makes a deduction from her redemption money and goes out [free].[24]

A Tanna taught: And he may acquire himself by money, its equivalent, and by deed. Now, as for money, 'tis well, for it is written, [he shall give back the price of his redemption] out of the money he was bought for.[25] As for its equivalent too — Scripture wrote, 'he shall give back the price of his redemption,' to include the equivalent of money as being equal to money.[26] But this deed, how is it meant? Shall we say that he [the slave] indites a bond for the [redemption] money? Then it is money! But if it is [a deed of] manumission, why is a deed necessary? Let him say to him in the presence of two, or in the presence of a Beth din, 'Go'? — Said Raba: This proves that a Hebrew slave belongs bodily [to his master]:[27] hence if the master remits his deduction,[28] the deduction is not remitted.[29]

A HEBREW MAIDSERVANT IS MORE [PRIVILEGED] THAN HE. Resh Lakish said: A Hebrew bondmaid is freed[30] from her master's authority by her father's death, a minori: if signs,[31] which do not free her from her father's authority, free her from the authority of her master;[32] then how much the more death, which frees her from her father's authority, should free[33] her from her master's authority! R. Hoshea raised an objection: A HEBREW MAIDSERVANT IS MORE [PRIVILEGED] THAN HE, IN THAT SHE ACQUIRES HERSELF BY 'SIGNS'; but if this [Resh Lakish's dictum] be so, let her father's death also be stated? — He [the Tanna] teaches [some ways,] and omits[34] [others]. But what else does he omit, that he omits this?[35] — He omits her master's death.[36] If it is on account of her master's death[37] — that is no omission; since that applies to a male [slave] too, it is not taught. Then let it be taught![38] — That which may be fixed is taught;[39] that which can not be fixed is not taught. But 'SIGNS', which are not fixed,[40] are nevertheless taught? — Said R. Safra: They are not fixed above, yet are fixed

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(1) Lit., 'hand.' Even then, the Jew must remain his slave until jubilee.

(2) How can he be forced to provide facilities for redemption?

(3) Ex. XXI, 10; i.e., in addition to the Hebrew bondmaid.

(4) I.e., he who acquires her, just as the husband writes the deed to acquire his wife.

(5) Ibid. 7; the comparison is with heathen slaves, who go free if their master blinds them or knocks out their teeth (vv. 26f). Hebrew slaves, however, are not freed, but merely compensated.

(6) Lit., 'as the acquisition of menservants.'

(7) Glos. and V. infra 22b.

(8) Lev. XXV, 46.

(9) Sc. Hebrew slaves. The Heb. והתנחלתם we-hithnahaltem, is really applicable to land, and intimates that heathen slaves are transmitted and acquired like land, viz. , by hazakah.

(10) From which it was deduced that she can be acquired by deed.

(11) Lit., 'what (reason) do you see' (for interpreting it thus)? Perhaps Lev. XXV, 46 teaches, only they are acquired by deed, but not another, while Ex. XXI, 7 intimates, she shall not go out . . . but may he acquired as menservants, viz., by hazakah?

(12) Hence, just as it is effective in one instance, so also in another, viz., the acquisition of a slave. — Tosaf.: he could also have said: Because it brings a Jewish daughter into the married state, which is more appropriate, both then referring to acquisition, but a 'deed' is explicitly stated in connection with divorce. A proselyte who dies without Jewish issue has no legal heirs and his property after death falls to the first occupier by means of hazakah.

(13) And since it can acquire in one case, it can do so in another.

(14) And the purchase of a Hebrew bondmaid is also this: v. p. 45, nn. 7, 9.

(15) To shew that 'she shall not go out etc.', teaches that she may be acquired by deed, as is implied by the analogy of 'another'.

(16) Since on his view, 'if he take another' is sufficient to shew that she is acquired by deed.

(17) V. p. 68, n. 4, which is extended to outstanding limbs.

(18) Surely that is the purpose of the verse!

(19) Lit., translation.

(20) The law itself, as stated by R. Huna; while the emphasis on going out' shews that she may, however, come in, i.e., be acquired as they are.

(21) Ex. XXI, 2.

(22) Lev. XXV, 40.
(23) Ex. XXI, 8.
(24) V. p. 60, n. 1, and the same applies to a bondman.
(25) Lev. XXV, 51.
(26) He shall return implies that a return may be made in any way desired.
(27) [In so far as the master could assign to him a Canaanite maidservant for procreation. Nahmanides, quoted by S. Adreth, Kiddushin, a.l.]
(28) I.e., the sum due for the remainder of the term of bondage.
(29) And the master can reclaim him whenever he wishes. Therefore it is insufficient merely to dismiss him, but he must give him a deed.
(30) Lit., 'acquires herself.'
(31) I.e., evidence of puberty.
(32) As stated in the Mishnah, 14b.
(33) In that he does not transmit his rights to her earnings to his heirs.
(34) Lit., 'leaves over.'
(35) It is reasonable that several items are omitted, but not just one.
(36) For his heirs do not inherit her; infra 17b.
(37) That you say the Tanna also omits her father's death.
(38) That the maid is freed by her father's death, since nothing else is omitted.
(39) The term of six years and the proportionate repayment of the purchase price and the Jubilee are all fixed and ascertainable.
(40) Not all women receive the evidences of puberty at the same age.

Talmud - Mas. Kiddushin 16b

below.[1] For ii was taught: If a male, aged nine years, grew two hairs,[2] it is a mole;[3] from nine years and a day until twelve years and a day, remaining in him,[4] they are a mole. R. Jose son of R. Judah said: They are a 'sign'.[5] At thirteen years and one day, all admit that they are a 'sign'.[6]

R. Shesheth objected: R. Simeon said: Four are presented with gifts [on becoming free], three in the case of a man, and three in the case of a woman. And you cannot say four in the case of either, because 'signs' do not apply to a man, nor boring to a woman.[7] Now if this[8] be correct, the father's death should also be taught? And if you answer: Here too he teaches [some] and omits [others] — but he states 'four'?[9] And if you answer: He teaches [only] that which is fixed, but not that which is not fixed — but what of 'signs', which are not fixed and which he nevertheless teaches? And if you reply: Here too it is as R. Safra — but there is the master's death, which is likewise not fixed, and yet taught? — The master's death too is not taught. Then what are the four? — [i] Years, [ii] jubilee,[10] [iii] jubilee for him whose ear was bored, and [iv] a Hebrew bondmaid [freed] by 'signs'. Reason too supports this view. For the second part teaches: 'And you cannot say four in the case of either, because "signs" do not apply to a man, nor boring to a woman. Now if it be so,[11] then in the case of a woman at least four may be found.[12] This proves it.

R. 'Amram objected: Now, the following are furnished with gifts: He who is freed by [six] years, by jubilee, and by his master's death, and a Hebrew bondsmaid [freed] by 'signs'. But if this be correct, the father's death too should be taught. And should you answer: He teaches and leaves over-but he states 'the following'?[13] And should you reply: He teaches that which is fixed, but not that which is not fixed — but what of 'signs', which are not fixed, and which he nevertheless teaches? And should you answer: Here too, it is as R. Safra — but there is the master's death! This refutation of Resh Lakish is indeed a refutation. But Resh Lakish reasoned a minori! — It is an a minori which can be refuted. For one can refute it [thus]: as for 'signs', that is because there is a physical change [in her];[14] will you say [the same] of her father's death, seeing that there is no physical change?[15]

One [Baraitha] taught: The outfit of a Hebrew male slave[16] belongs to himself, and that of a Hebrew female slave to herself. While another [Baraitha] taught: the outfit of a Hebrew female slave, and her findings, belong to her father, and the master can claim only for loss of time.[17] Now surely one [Baraitha] refers to where she was liberated by 'signs',[18] while the other means that she was liberated by her father's death?[19] — No: both [Baraithas] refer to liberation by 'signs', yet there is no difficulty. In the one case she has a father, in the other she has not.

Now, as for [teaching,] 'The outfit of a female slave belongs to herself,' that is well, [for] it is to exclude her brothers,[20] For it was taught: And ye shall make them [the heathen slaves] an inheritance for your sons after you[21] — 'them' for your sons, but not your daughters for your sons. Hence we learn that one cannot transmit his rights in his daughters to his sons. But as for 'the outfit of a male slave belongs to himself — that is obvious! to whom else should it belong? — Said R. Joseph: I see here a yod [turned into a] town.[22] Abaye said: Thus did R. Shesheth say: Who is the authority for this? Totai. For it was taught: Totai said: [Thou shalt furnish] him [liberally][23] — him, but not his creditor.[24]

[To turn to] the main text [above:] 'Now, the following are furnished with gifts: — He who is freed by years, jubilee, and his master's death, and a Hebrew bondmaid [freed] by "signs". But no gift is made to a runaway, or him who is freed by a deduction from his purchase price. R. Meir said: No gift is made to a runaway; but he who is freed by a deduction from the purchase price is furnished with a gift. R. Simeon said: Four are presented with gifts, three in the case of a man, and three in the case of a woman. And you cannot say four in the case of either, because "signs" do not apply to a man, nor boring to a woman'. How do we know this? — For our Rabbis taught: I might think that only he who is freed by six [years] is furnished with a gift; how do I know to include one who is freed by jubilee or by his master's death, and a Hebrew bondmaid [freed] by signs? From the verses, thou shalt let hint go free from thee. And when thou lettest him go free from thee.[25] [Again] I might think that I include a runaway and one who goes out through a deduction from the purchase price — therefore it is stated: 'and when thou lettest hint go free from thee,' teaching, only he whose dismissal is from thee,[26] thus excluding a runaway and one who is freed by deduction from the purchase price, whose dismissal is not from thee.[27] R. Meir said: A runaway is not furnished with a gift, since his dismissal is not from thee: but one who is freed by deduction from the purchase price, whose dismissal is from thee,[28] [is presented with a gift]. A runaway? But he must complete [his term]?[29] For it was taught: How do we know that a runaway is bound to complete [his term]? From the verse, six years he shall serve.[30]

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(1) [They serve as evidence whenever they appear after a certain age, but not if they appear before.]

(2) The normal evidence of puberty.

(3) But not signs of puberty; hair grows out of a mole.

(4) All the time, and not falling out.

(5) Of puberty. But had they fallen out, he too admits that it is only a mole.

(6) Even if they subsequently fall out.

(7) R. Shesheth assumes that the four are: (i) one who is freed on the expiration of six years; (ii) by jubilee; (iii) he whose ear was bored, freed by his master's death; and (iv) a Hebrew bondmaid freed by 'signs.'

(8) Resh Lakish's ruling.

(9) Which shews that the number is exact.

(10) If it comes before the end of six years.

(11) That the master's death is taught, as originally assumed.

(12) (i) Her master's death; (ii) six years; (iii) jubilee, and (iv) 'signs.'

(13) Which indicates only those.

(14) Having attained puberty, she is not really the same person who was sold.

(15) Surely not.

(16) I.e., the gifts with which he is sent away at the end of six years.
(17) Involved in her finding.
(18) Her father still being alive — then the gift belongs to her father.
(19) Which supports Resh Lakish.
(20) Though it would have belonged to her father, had he lived, he does not transmit it as a legacy to his sons, her brothers.
(21) Lev. XXV, 46.
(22) 'A mountain out of a molehill': the yod, being only a small letter, has grown into a whole town! The Tanna has swelled his Baraitha by the inclusion of superfluous matter.
(23) Deut. XV, 14.
(24) The gift must not be passed on to the slave's creditor, and that is the Baraitha's teaching.
(25) Ibid. 12, 13 ; the repetition teaches that whatever the cause of his freedom, he must be furnished with a gift.
(26) I.e., with the master's good will.
(27) Since the master is bound to accept a refund, even against his will.
(28) So he regards it.
(29) After which he should certainly receive a present.
(30) Ex. XXI, 2; he must complete the period.

I might think, even if he fell sick,[1] therefore, it is stated, and in the ‘seventh he shall go outfree’! — R. Shesheth answered: The reference here is to one who escaped, and then jubilee supervened:[2] I might have thought, since jubilee would have emancipated him, we apply to him, ‘his dismissal is from thee,’ and do not punish but furnish him with a gift. Therefore we are informed [that it is not so].

The Master said: ‘I might think, even if he fell sick, therefore it is stated: "and in the seventh he shall go out free ". ‘Even if he was sick the whole of the six [years]? But it was taught: If he was sick three years and served three years , he is not bound to complete [his term]; but if he was ill the whole of the six years, he is bound to make it up! — R. Shesheth replied: This means that he was able to perform needle-work.[3]

This is self-contradictory. You say: ‘If he was sick three years and served three years, he is not bound to complete [his term]’: which implies, if four years he must complete [it]. Then consider the second clause: ‘but if he was ill the whole of the six years, he is bound to make it up’ — implying, if [only] four, he is not? — This is its meaning:[4] if he was four years ill, it is accounted as though he were indisposed the whole of the six years, and he must make it up.

Our Rabbis taught : With how much is he [the freed slave] presented? With five sela's [worth] of each kind,[5] which is fifteen sela's in all: this is R. Meir s view. R. Judah maintained: Thirty, as the thirty [paid] for a [heathen] slave.[6] R. Simeon said: Fifty, as the fifty of ‘arakin.[7]

The master said: ‘With five sela's [worth] of each kind, which is fifteen sela's: this is R. Meir's view.’ Does then R. Meir come to teach us arithmetic? — He tells us this: He may not indeed diminish his total, but if he gives him less of one kind and more of another, we have no objection. What is R. Meir's reason? — He learns the meaning of ‘empty’ from a firstborn:[8] just as there, five sela's is meant , so here too five sela's is meant. Then perhaps five sela's in all? — Were ‘empty’ written at the end [of the verse],[9] [it would be] as you say. Now, however, that ‘empty’ is written at the beginning,[10] apply [the word] ‘empty’ to ‘flock’, ‘threshing-floor,’ and ‘wine-press’ individually. But let us learn the meaning of ‘empty’ from the pilgrimage burnt-offering?[11] — Scripture saith, as the Lord thy God hath blessed thee [thou shalt give unto him].[12]

‘R. Judah maintained: Thirty, as the thirty [paid] for a [heathen] slave.’ What is R. Judah's reason? — He learns the meaning of ‘giving’ from a slave:[13] just as there, thirty is meant, so here too, thirty is meant. But let us learn the meaning of ‘giving’, from ‘arakin:[14] just as there, fifty, so here too, fifty? — Firstly, because if you seize much, you cannot hold; if you seize little, you can hold;[15] moreover, one should rather deduce slave from slave. ‘R. Simeon said: Fifty, as the fifty of ‘arakin.’ What is R. Simeon's reason? — He learns the meaning of ‘giving’ from ‘arakin: just as there, fifty, so here too, fifty. But perhaps [the comparison is] with the least [sum] of ‘arakin?[16] — It is written, as the Lord thy God hath blessed thee.[17] But let us learn the meaning of ‘giving’ from a slave: just as there, thirty, so here too thirty: [for] firstly, if you seize much, you cannot hold; if you seize little, you can hold; and moreover, one should rather deduce slave from slave? — R. Simeon deduces ‘poverty’ from ‘poverty’.[18]

Now, as for R. Meir, it is well: for that reason[19] ‘flocks, threshing floor’ and ‘wine.press’ are [specifically] stated. But on the views of R. Judah and R. Simeon, why are these necessary?[20] — They are necessary, even as it was taught: I might think that the gift can be made only of flocks, the threshing-floor, and the wine-press: how do I know that all things are included? From the verse: ‘as [i.e., with whatever] the Lord thy God hath blessed thee thou shalt give unto him’. If so, why state ‘flocks, threshing-floor, and wine-press’? To inform you: just as these are distinguished in that they

fall within the scope of ‘blessing’, so must everything [given to the slave] fall within the scope of ‘blessing’, thus excluding cash money:[21] this is R. Simeon's view. R. Eliezer b. Jacob said: excluding mules.[22] And R. Simeon?[23] — Mules are themselves capable of improvement. And R. Eliezer b. Jacob?[24] — One can engage in business with money.[25] Now, they are [all] necessary. For had Scripture mentioned ‘flocks’, I would have thought, only livestock [may be given], but not agricultural produce: [therefore] Scripture wrote ‘threshing.floor’. And had it written ‘threshing-floor’, I would have said, only agricultural produce; [therefore] Scripture wrote ‘threshing-floor’. And had it written ‘threshing-floor’, I would have said, only agricultural produce, but not livestock: hence Scripture wrote ‘flocks’. Why do I need ‘wine-press’?

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(1) During the period, he is bound to make up for it after the six years.

(2) Immediately — say, a day after.

(3) I.e., light work — then he is not bound to complete his term. — Krauss, T.A. 1, 159 translates: Schneiderhandwerk, hand tailoring.

(4) Of the second clause.

(5) Viz., ‘out of thy flock, and out of thy threshing floor (i.e., grain), and out of thy winepress’ — Deut. XV, 14.

(6) Killed by an ox, v. Ex. XXI, 32.

(7) V. Glos. If one vows his own worth to the Temple. he must pay according to a fixed scale, which in the case of an adult man is fifty sela's; Lev. XXVII, 3.

(8) Here: thou shalt not let him go empty — Deut. XV, 13 ; firstborn; All the firstborn of thy sons thou shalt redeem. And none shall appear before me empty — Ex. XXXIV, 20. A firstborn is redeemed with five shekels — Num. XVIII, 16.

(9) ‘Thou shalt furnish . . . thy wine-press; and thou shalt not let him go empty.

(10) Before the enumeration of the three kinds.

(11) Lit., ‘the burnt offering of appearing’ cf. Ex. XXIII, 14, 15: Three times thou shalt keep a feast unto me in the year . . . and none shall appear before me empty. This is interpreted in Hag. 2a and 6a that a burnt-offering must be brought, the minimum value of which must be either two silver ma'ahs or one silver ma'ah according to Beth Shammai and Beth Hillel respectively. Why then not assume the same here?

(12) Deut. XV, 14; hence the deduction of the larger sum from the firstborn.

(13) Here: thou shalt give unto him; slave: If the ox gore a manservant or a maidservant, he shall give unto that master thirty shekels of silver — Ex. XXI, 32.

(14) Actually, ‘giving’ is not mentioned in the whole passage on ‘arakin (Lev. XXVII, 1-8). It is probable, however, that the Talmud here relies on a Baraitha in Hul. 139a, which states that the verse, then he shall give thine estimation in that day, as a holy thing unto the Lord (v. 23) refers to the valuation of man, notwithstanding that the section as a whole (vv. 22f) deals with the sanctification of fields (S. Strashun).

(15) I.e., given a choice of two deductions, select that which gives the smaller number.

(16) Five shekels, Lev. XXVII, 6.

(17) V. p. 75, n. 5.

(18) [Or, ‘he learnt on tradition (from his teacher; the deduction of) ‘arakin ‘poverty" (from) ‘poverty" ‘it being the rule that no one may draw a conclusion from a qezerah shawah on one's own authority, v. Pes. 66a and Rashi.] Not ‘giving’ from ‘giving’. — Slave: and if thy brother be waxen poor with thee, and sell himself unto thee — Lev. XXV, 39: ‘arakin: but if he be poorer than thy estimation etc., — ibid. XXVII, 8. Hence the two passages illumine each other, and shew that a slave's gift is fifty sela's.

(19) Sc. the deduction of ‘empty’ should be applied to each kind separately.

(20) Since the sum is learnt from elsewhere, while the gift need not be of these three in particular, as stated in the following Baraitha.

(21) These may be blessed by God in respect of natural increase. But money has no natural increase.

(22) Which were considered unproductive; cf. Meg. 13 b, Gen. Rab.41 ; the mule was held to be a hybrid. cf. Pes. 54a: Adam took two animals (of different kinds) . . . and from them ‘came forth a mule’: v. Lewysohn, Zoologie, p. 144.

(23) Why does he not exclude mules?

(24) Why does he not exclude money?

(25) And it is thus capable of a blessing.

— According to one Master, to exclude money; according to the other, to exclude mules.

Our Rabbis taught : 'As the Lord thy God hath blessed thee': I might think, if the house was blessed on his account 'a gift is made to him; but if the house was not blessed on his account, no gift is made to him; therefore Scripture states, thou shalt surely furnish him [etc.], teaching, in all cases.[1] If so, what is intimated by 'as [the Lord thy God] hath blessed thee'? Give him according to thy blessing.[2] R. Eleazar b. Azariah said: The matter is as it is written: if the house was blessed on his account, a gift is made to him; if the house was not blessed on his account, no gift is made to him. If so, what is intimated by 'thou shalt surely furnish him'? The Torah employed human idiom.[3]

Our Rabbis taught: A Hebrew male slave serves [his master's] son, but does not serve [his] daughter;[4] a Hebrew female slave serves neither son nor daughter; one who was bored, or is sold to a heathen, serves neither son nor daughter. The Master said: 'A Hebrew male slave serves [his master's] son, but not [his] daughter.' How do we know this? — For our Rabbis taught: [If thy brother . . . be sold unto thee,] he shall serve thee six years[5] — thee, but not thine heir'.[6] You say: 'thee, but not thine heir': yet perhaps it is not so, but 'thee, but not thy son'? When it is said, six years he shall serve,[7] the son is included;[8] then how am I to interpret,[9] he shall serve thee six years? Thee, but not thine heir. Why do you choose[10] to include the son and exclude the brother? I include the son, because he arises in his father's place to designate her,[11] and in respect of an ancestral field.[12] On the contrary, I should include the brother, since he takes his brother's place for yibum?[13] Is there yibum excepting in the absence of a son? but if there is a son, there is no yibum. Now it is only because there is this refutation; but otherwise, the brother would be preferable? Yet it [the reverse] may be inferred from the fact that here [in the case of a son] there are two [points in his favour], whereas there, only one? — [The preference for a son in respect of] an ancestral field is likewise inferred from this same refutation: is there yibum excepting in the absence of a son?[14]

'A Hebrew female slave serves neither son nor daughter.' Whence do we know this? — Said R. Papa, Because Scripture writes, [And . . . if he say unto thee, I will not go out from thee . . . then thou shalt take an awl, and thrust it through his ear . . .] and also unto thy bondwoman thou shalt do likewise:[15] thus Scripture assimilated her to one who is bored. Just as the latter serves neither son nor daughter, so the former too serves neither son nor daughter. Now this [verse,] 'and also unto thy bondwoman thou shalt do likewise' — does it come to teach this? But it is required for what was taught: And also unto thy bondwoman thou shalt do likewise — i.e., furnish [her with] a gift. You say, furnish a gift; yet perhaps it is not so, but in respect to boring? When it is stated: But if the manservant shall plainly say,[16] boring is already dealt with:[17] how then do I interpret[18] and also unto thy bondwoman thou shalt do likewise? In respect of a gift! If so,[19] Scripture should write, 'and also to thy bondwoman likewise;[20] why state, 'thou shalt do'? [Hence] both may be inferred.

'One who was bored, or is sold to a heathen, serves neither son nor daughter.' One who was bored, for it is written, and his master shall bore his ear through with an awl: and he shall serve him for ever,[21] — but neither son nor daughter. Whence do we know it of one who is sold to a heathen? — Said Hezekiah, because Scripture writes, And he shall reckon with his purchaser[22] — but not with his purchaser's heirs. Raba said: By Biblical law, a heathen is his father's heir, for it is said: 'and he shall reckon with his purchaser', [implying,] but not with his purchaser's heirs, whence it follows that he has heirs. [But the succession of] a proselyte [to the estate of] a heathen is not in accordance with Biblical law but by the law of the Soferim.[23] For we learnt: If a proselyte and a heathen succeed their father, a heathen: the proselyte may say to the heathen, 'You take the idols, I [will take] money'; 'you take the wine of libation[24] and I will take fruit.' But once they[25] have come into the proselyte's possession, this [exchange] is forbidden.[26] Now, should you think that [the proselyte

succeeds] by Biblical law, even if they have not yet come into his possession, when he takes [the money or the produce], he takes something in exchange for an idol![27] Hence it [his succession] is [only] by Rabbinical law, the Rabbis having enacted a preventive measure, lest he return to his evil ways.[28] It has been taught likewise: When was this said? If they inherited [the property]. But if they went into partnership,[29] it is forbidden.[30] A heathen [succeeds] a proselyte, or a proselyte [succeeds] a proselyte, neither by Biblical law nor by the law of the Soferim. For we learnt:[31] If a man borrows money from a proselyte whose children were converted together with him, he must not return it to his children,[32] and if he does, the spirit of the Sages is not pleased with him. But it was taught:[33] The spirit of the Sages is pleased with him? — There is no difficulty. The former refers to where his [sc. the child's] conception and birth were not In sanctity:[34]

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(1) Expressed by the emphasis in the doubling of the verb (translated here, 'surely'; E.V. 'liberally').

(2) Rashi: the amounts stated above are the minimum, but should be increased proportionately to the blessing received.

(3) Where this repetition of the verb is quite common, and has no particular significance, v. B.M. 31b.

(4) If the master died within the six years, leaving one of these as his heir.

(5) Deut. XV, 12.

(6) Other than the son.

(7) Ex. XXI, 2.

(8) Lit., 'stated,' since 'thee' is not mentioned.

(9) Lit., 'fulfil'.

(10) Lit., 'see'.

(11) Sc. a female slave, as his wife; v. p. 45, n. 9.

(12) If one sanctifies an ancestral field, he can redeem it at a fixed rate, proportionate to its area, after which it belongs to him for good. If he does not redeem it, the Temple treasurer sells it, and it belongs to the purchaser until jubilee, when it becomes the property of the priests. But if the sanctifier's son redeems it, it is as though he himself does so, and it remains his for good.

(13) V. Glos.

(14) But it is not explicitly stated. For fuller notes, v. B.B. (Sonc. ed.) pp. 449ff.

(15) Deut. XV, 16f.

(16) Ex. XXI, 5.

(17) I.e., manservant excludes maidservant.

(18) Lit., 'fulfil'.

(19) That the only purpose of the verse is as stated before.

(20) Which would suffice for the analogy.

(21) Ex. XXI, 6.

(22) Lev. XXV,50; the verse treats of redeeming a Jewish slave from a heathen owner.

(23) Lit., 'scribes,' the designation of the early body of teachers beginning with Ezra and ending with Simeon the Just, though sometimes it would appear to apply to later Talmudists too; e.g., in R.H. 19a. The Rabbis derive the word from safar, to count: hence the body who counted the letters of the Torah or grouped subjects by number; e.g., four chief causes of damage, thirty-nine principal modes of labour forbidden on the Sabbath (infra 30a; Sanh. 106b). Weiss, Dor, I, 50, maintains that they were so called on account of their skilled calligraphy; and also, because they taught from a scroll (sefer). This body has been identified with the Men of the Great Synagogue (Z. Frankel, Darke ha-Mishnah, p. 8; N. Krochmal, More Nebuke ha-Zeman, ch. X, 186). Weiss op. cit. p. 58 maintains that they were separate bodies, though their objects were alike. The Soferim were the theoretical scholars who interpreted the law; the Men of the Great Synagogue were the practical legislators.

(24) Wine handled by a Gentile, so called as he might have dedicated the wine for a libation to a heathen deity.

(25) Sc. the idols or the wine.

(26) Because one may not benefit from these in any way.

(27) For if he inherits by Biblical law, he automatically has a half-share in everything, whether he has taken possession or not.

(28) For the sake of the estate. — The reason that he cannot succeed by Biblical law is that 'a proselyte is as a new-born babe,' who has no kinsmanship whatsoever with any of his pre-conversion relations.

(29) In a business, or in property, among which were idols and forbidden wine.

(30) Which proves that he does not inherit by Biblical law, for in that case it would be partnership.

(31) [This is no Mishnah, hence Var. lec. 'it has been taught'.]

(32) Because they are not his heirs.

(33) [This is a Mishnah, Sheb. X, 9, hence Var. lec., 'we learnt'.]

(34) I.e., before the father's conversion. If the debtor returns the money to his child, he ipso facto recognises him as heir against the desire of the Rabbis, who held that there is absolutely no relationship between them.

Talmud - Mas. Kiddushin 18a

the latter to where his conception was not In sanctity, but his birth was.[1] R. Hiyya b. Abin said in R. Johanan's name: A heathen succeeds his father by Biblical law, since it is written, because I have given Mount Seir unto Esau for an inheritance.[2] Yet perhaps an apostate Israelite is different?[3] — But [it follows] from this: Because I have given Are unto the children of Lot as a heritage.[4] Now, R. Hiyya b. Abin, why does he not agree with Raba? — Is it then written: 'And he shall reckon with his purchaser' but not with his purchaser's heirs! And Raba, why does he not agree with R. Hiyya b. Abin? — There it is different, [it being] on account of Abraham's honour.[5]

Our Rabbis taught: A Hebrew bondman has features which a Hebrew bondwoman lacks, and there are features in a Hebrew bondwoman which a Hebrew bondman lacks. A Hebrew bondman has [these] features, viz.: he goes out [free] through [the passage of six] years, by jubilee, and by his master's death, which is not so in the case of a Hebrew bondwoman. And a Hebrew bondwoman has [these] features, viz.: a Hebrew bondwoman goes out by 'signs', she cannot be sold and re-sold, and is redeemed against her will, which is not so in the case of a Hebrew bondman.

The Master said: 'A Hebrew bondman has features which a Hebrew bondwoman lacks.' But the following contradicts this: A HEBREW MAIDSERVANT IS MORE [PRIVILEGED] THAN HE, IN THAT SHE ACQUIRES HERSELF BY 'SIGNS'![6] — Said R. Shesheth: E.g., if he designated her [as his wife].[7] 'He designated her?' But that is obvious: she needs a divorce! — I might have thought, The regulations[8] are not annulled in her case. Hence we are informed otherwise. If so, why does she go out free by 'signs'? — This is its meaning: If he [her master] did not designate her, she goes out free by 'signs' too.

'And she cannot be sold and re-sold.' Hence it follows that a Hebrew male slave may be sold and re-sold. But it was taught: [If he have nothing, then he shall be sold] for his theft,[9] but not for his double repayment;[10] 'for his theft,' but not for his refuted testimony;[11] for his theft': having been sold once, he may not be sold again! — Said Raba: There is no difficulty: the latter refers to one theft, the former to two thefts. Abaye demurred: 'for his theft' may imply even many thefts![12] But, said Abaye, there is no difficulty; the latter refers to one man, the former to two men.[13]

Our Rabbis taught: If his theft was thousand [zuz], and he was [only] worth five hundred, he is sold and then sold again.[14] If his theft was five hundred, whereas he is worth thousand, he is not sold at all. R. Eliezer said: If his theft corresponded to his purchase price,[15] he is sold; if not, he is not sold. Raba said: In this matter R. Eliezer triumphed over the Rabbis. For why is it different if his theft was five hundred and he was worth thousand, that he is not sold: because Scripture said: 'then he shall be sold' — all of him, but not half? Then here too,[16] Scripture ordered, 'he shall be sold for his theft,' but not for half his theft.

'And is redeemed against his will.' Raba thought to interpret: against the master's will. Said Abaye to him: How so — that a bond is drawn up for him for her value? But why:[17] he holds a pearl in his hand — shall we give him a shard?[18] But, said Abaye, against her father's will,[19] on account of the family disgrace. If so, in the case of a Hebrew bondman too, let the members of his family [be forced

to redeem him] on account of the family disgrace? — Then he will go and sell himself again. Then here too, he [the father] will go and sell her again? — Was it not taught: She cannot be sold and then sold again? And this agrees with R. Simeon. For it was taught: A man may sell his daughter for marital relationship, and then repeat it;[20] for servitude, and then repeat it,[21] for marriage after servitude,[22] but not for servitude after marriage. R. Simeon said: Just as a man cannot sell his daughter for servitude after marriage, so a man cannot sell his daughter for servitude after servitude. Now this enters into the dispute of the following Tannaim. For it was taught: [To sell her unto a strange people he shall have no power], seeing he hath dealt deceitfully with her [be-bigedo bah]:[23]

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(1) Then the Rabbis are pleased that he returns it (Rashi).

(2) Deut. II, 5.

(3) Esau having been such. — Though all people, including Abraham and his descendants, were accounted as Noachides until the Revelation, and thus not subject to Jewish law (cf. Sanh. p. 384, n. 6), it would appear that this was not held to apply to inheritance, probably because Palestine itself was given to the Jews as a heritage from Abraham.

(4) Deut. II, 9.

(5) For that reason the descendants of Lot, Abraham's nephew, were given the privilege of inheritance.

(6) 'More privileged' implies that 'signs' are additional.

(7) Then she is not freed by these.

(8) Relating to a Hebrew bondwoman.

(9) Ex. XXII, 2.

(10) A convicted thief had to repay double; ibid. 3.

(11) Lit., 'his scheming.' If one preferred a false charge, he was punished with the same penalty that he had sought to impose; v. Deut. XIX, 19. But if he falsely testified to theft, though he thereby sought to have the accused sold as a slave, if he could not make restitution, he is nevertheless not sold himself.

(12) 'Theft' being understood generically.

(13) If he robs one man, even twice, and is charged with both thefts simultaneously, he can only be sold once. But if he robs two men, each of whom sues him at court at different times, he may be sold twice. Tosaf. reverses it.

(14) This is the reading of curr. edd. The Wilna Gaon and Maim. read: he is sold but not sold again. This is preferable, and agrees with the previous statements.

(15) Being neither more nor less.

(16) If his theft was thousand and he is worth five hundred.

(17) Must he accept it?

(18) With a double meaning: he holds something of value, must he accept something valueless; also, must he accept the shard on which such a bond may be written?

(19) If he can afford it, he is forced to redeem her (Rashi). Tosaf.: the family is compelled to redeem her against her father's desire, who may not wish to have her back at home and to keep her.

(20) One may accept kiddushin on behalf of his daughter, a minor: and if she is widowed or divorced while an arusah (q.v. Glos.) he can do so again, on each occasion the money of kiddushin belonging to himself.

(21) If she became free through six years, jubilee, or her master's death, and is still a minor (ketannah).

(22) Having been freed from servitude, she can then be given in marriage.

(23) Ex. XXI, 8.

Talmud - Mas. Kiddushin 18b

once he spread his cloak over her,[1] he can no longer sell her: this is R. Akiba's view.[2] R. Eliezer said: seeing he hath dealt deceitfully with her — having dealt deceitfully with her,[3] he may not sell her [again]. Wherein do they differ? R. Eliezer maintains: the traditional text [i.e., letters without vowels] is authoritative;[4] R. Akiba maintains: the text as read is authoritative; whereas R. Simeon holds: both the traditional text and the vocalization are authoritative.[5]

Rabbah b. Abbuhah propounded: Does designation[6] effect nissu'in or erusin? The difference is in respect of inheriting her property, defiling himself on her account, and annulling her vows.[7] What is

the law? — Come and hear: 'Seeing that he hath dealt deceitfully with her [be-bigedo bah]: once he spread his cloak over her, he can no longer sell her'. Thus, he merely may not sell her, yet may indeed designate her.[8] But if you say, it effects nissu'in, once she was married,[9] her father has no more authority over her. Hence we may surely infer that it effects erusin. R. Nahman b. Isaac said: The reference here is to kiddushin in general,[10] and this is its meaning: Once her father delivers her to one who becomes responsible for 'her food, raiment and conjugal rights,'[11] he may no longer sell her.

Come and hear: He [the father] may not sell her to relations.[12] On the authority of R. Eliezer it was said: He may sell her to relations. And both agree that he may sell her, if a widow, to a High Priest, and if divorced, or a haluzah,[13] to a common priest.[14] Now [as to] this widow, how is it meant? Shall we say, that she accepted kiddushin for herself: can she be called a widow![15] Then It means that her father betrothed her — but a man cannot sell his daughter for servitude after marriage! And thereon R. Amram said in R. Isaac's name: The reference here is to the kiddushin of designation,[16] and [was taught] according to R. Jose son of R. Judah, who maintained: The original money was not given as kiddushin.[17] But if you say: It effects nissu'in: once she is married, her father no longer has any authority over her! — What then: it effects erusin? [Then how say,] 'and both agree' etc.; surely a man cannot sell his daughter to servitude after marriage! Then what can you answer: her own erusin differs from her father's?[18] Then even if you say that it effects nissu'in: her own nissu'in differs from her father's. How now? As for erusin differing from erusin, that is well;[19] but can nissu'in differ from nissu'in?[20]

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(1) I.e., given her in marriage; for this idiom cf. Ruth III, 9: spread therefore thy skirt over thy handmaid (i.e., take me in marriage).

(2) Deriving be-bigedo fr. beged, a garment.

(3) I.e., disgracefully, by selling her into slavery.

(4) V. Sanh. (Sonc. ed.) p. 4, n. 4.

(5) The traditional text is be-bagedo, seeing that he hath deceived, i.e., sold her; it is vocalised be-bigedo, with his garment, i.e., having married her.

(6) V. p. 45, n. 9.

(7) The heir of an arusah is her father; of a nesu'ah, her husband. A priest must (or may, v. Sotah 3a) defile himself on account of his deceased wife, if a nesu'ah, but not if an arusah. The vows of an arusah, if a na'arah (q.v. Glos.) can only be annulled by her husband and father jointly; those of a nesu'ah, by her husband alone.

(8) I.e., give her in marriage.

(9) I.e., with nissu'in.

(10) I.e., not a bondmaid's designation by her master.

(11) The phrasing is Biblical; cf. Ex. XXI, 10. I.e., once he accepted. kiddushin on her behalf.

(12) Who cannot designate her on account of consanguinity.

(13) V. Glos.

(14) Though these too may not designate her: v. Lev. XXI, 7 (this was extended to a haluzah too) and 14. The betrothal of consanguineous relations is forbidden, and if performed, invalid; that of a High Priest to a widow, or a common priest to a divorced woman or a haluzah, is likewise forbidden, but if performed, valid. Hence the difference.

(15) Surely not, since her actions have no validity. — The reference in the whole passage is necessarily to a minor, for only then can he sell her.

(16) I.e., her father sold her, then her master designated her and died, leaving her a widow.

(17) When one buys a bondmaid, the money he pays is not for the purpose of betrothal; and when he designates her, it is by the labour she owes him, not by the money he has given. Therefore her father can resell her after her master's death, and it is not regarded as servitude after betrothal, since he himself did not accept the original money as kiddushin.

(18) When her father receives kiddushin on her behalf, he loses his authority to sell her subsequently. But when she herself receives it (as explained p. 84, n. 10, that she is betrothed in virtue of the labour she owes her master), and thus receive the kiddushin — viz., the renunciation of her labour — herself, her father retains the right to sell her.

(19) For she does not altogether pass out of her father's control after erusin, e.g., in respect of inheritance and annulment

of vows (p. 83, n. 1). Therefore it may be said that he loses the right to sell her only after he himself accepts kiddushin, but not after she does so by means of designation.

(20) Since nissu'in completely frees her from her father's authority, it does not matter at whose instance it is effected.

Talmud - Mas. Kiddushin 19a

Now, according to R. Nahman b. Isaac, who maintained: Even on the view of R. Jose son of R. Judah, the original money was given for kiddushin,[1] how can he explain it? — He explains it as agreeing with R. Eliezer, who held: It is only for servitude after servitude that he may not sell her, but he can sell her to servitude after marriage.

Resh Lakish propounded: Can a man designate [his bondmaid] for his son, a minor? The All-Merciful said, his son,[2] — his son, whatever his state; or perhaps, 'his son' must be similar to himself: just as he is an adult, so must his son be an adult?[3] — Said R. Zera, Come and hear: [And a man that committeth adultery with another man's wife]:[4] 'a man' excludes a minor; 'that committeth adultery with another man's wife' excludes the wife of a minor. But if you say that he can designate, if so, we find matrimonial relationship in the case of a minor.[5] What then: he cannot designate? Why does Scripture exclude it?[6] [Then on the contrary] solve [the problem] from this that he can designate![7] — Said R. Ashi: The reference here is to a yabam, aged nine years and a day, who had intercourse with his yebamah, who is tied[8] to him by Scriptural law.[9] I might have thought, since she is tied to him by Biblical law and his intercourse is intercourse,[10] he who has intercourse with her incurs the penalty for [adultery with] a married woman: hence we are informed [that it is not so].

What is our decision on the matter? — Come and hear: For R. Aibu said in R. Jannaiðs name: Designation can be performed only by an adult; designation is only by consent.[11] [Are these] two [statements]?[12] — He states the reason: What is the reason that designation can be performed only by an adult? Because designation is only by consent. Alternatively, what is the meaning of, 'by consent'? 'By her consent.' For Abaye son of R. Abbahu[13] recited: [If she please not her master,] who hath not espoused her [ye'adah]: this teaches that he must inform her [that he intends to designate her.][14] He recited it and he explained it: This refers to betrothal by designation, and is in accordance with R. Jose son of R. Judah, who maintained, The original money was not given as kiddushin.[15] R. Nahman b. Isaac said: Even if you say that it was given as kiddushin,[16] here it is different, because Scripture expressed [betrothal by the word] ye'adah.[17]

What is the reference to R. Jose son of R. Judah? — For it was taught: '[If she please not her master,] who hath espoused her to himself,[18] then he shall let her be redeemed': [this teaches,] there must be sufficient time [left] of the day to necessitate redemption.[19] Hence R. Jose son of R. Judah ruled: If there is sufficient time in that day for her to do work to the value of a perutah, she is betrothed. This proves that in his opinion the original money was not given as kiddushin.[20] R. Nahman b. Isaac said: You may even say that it was given as kiddushin, yet here it is different, since Scripture said: 'then he shall let her be redeemed.'[21]

Raba said in R. Nahman's name: A man can say to his daughter, a minor, 'Go forth and receive thy kiddushin.' [This follows] from R. Jose son of R. Judah['s dictum]. Did he not say: The original money was not given as kiddushin? Yet when he [the master] leaves her a perutah's worth [of her labour] it is kiddushin;[22] [hence] here too It is not different.

Raba also said in R. Nahman's name, If a man betroths [a woman] with a debt upon which there is a pledge,[23] she is betrothed. [This follows] from R. Jose son of R. Judah['s dictum]: did he not say: The original money was not given as kiddushin? [Hence] this [her labour] is a loan,[24] and she herself is a pledge,

(1) So that when her master designates her, her father is deemed to have received the kiddushin.
(2) And if he espouse her unto his son — Ex. XXI, 9.
(3) I.e., thirteen years and a day.
(4) Lev. XX, 10.
(5) Why then should the penalty for adultery — execution — not apply?
(6) Since a minor cannot have a wife.
(7) For that is the only way in which it is conceivable that a minor shall be married.
(8) Lit., 'fit'.
(9) And therefore he acquires her by intercourse, though normally a minor's action has no force. Nine years and a day is the minimum age at which a male's intercourse counts, i.e., can engender.
(10) V. preceding note.
(11) Of the man; the first half solves Resh Lakish's problem.
(12) Actually, it is only one law: since the man's consent is necessary, it follows that he must be an adult, for a minor's consent is not recognised in law.
(13) [The name occurs nowhere else. MS.M. has 'Abimi' in the place of 'Abaye'].
(14) Connecting ye'adah with de'ah, knowledge, information. [MS.M. reads: לידעה instead of ליעדה cf. cur. edd.]
(15) V. p. 84, n. 10; consequently, her father's consent is absent, and therefore he must inform her to obtain her consent (Rashi).
(16) So that the father's consent is automatically given when he sells her; nevertheless she too must be informed, and her consent obtained.
(17) Which has an affinity. with de'ah; v. n. 5.
(18) The written text is lo tk, 'not'; but it is also read lo uk, 'to himself.'
(19) If her master wishes to designate her on the very last day of her servitude, her labour still owing must be worth at least a perutah, so that she could be redeemed therefrom. Otherwise he cannot designate her.
(20) For if it were, he could betroth her at any time within the six years.
(21) Which shews that espousal and redemption are interdependent.
(22) Thus, it is she, a minor, who actually receives the kiddushin, and it is valid because in the first place her father, by selling her, authorized her ipso facto to receive it.
(23) And he betroths her by her pleasure at his remission of the debt, even if he does not actually return the pledge. The pledge referred to is one voluntarily given when the debt was contracted (Tosaf.). [Asheri: He betroths her with the debt itself (cf. supra p. 21, n. 9) and nevertheless where it is secured by a pledge it is not regarded as spent, and the betrothal is valid.]
(24) I.e., she owes it to her master, as any other debt.

Talmud - Mas. Kiddushin 19b

yet when he [the master] leaves her a perutah's worth [of her labour] and designates [her therewith], it is kiddushin; so here too, It is not different.

Our Rabbis taught: How is the law of designation [carried out]? He [her master] declares to her in the presence of two people, 'Behold, thou art designated unto me,'[1] [or] 'Behold, thou art betrothed unto me,'[or] 'Behold, thou art become an arusah unto me: even at the end of the six [years] ,[2] even just before sunset. He must then treat her as a wife, not as a bondmaid. R. Jose son of R. Judah said: If there is sufficient time In that day for her to do work to the value of a perutah, she is betrothed; if not, she is not betrothed. This may be compared to a man who says to a woman, 'Be thou betrothed unto me from now and after thirty days,'[3] and then another man comes and betroths her within the thirty days: [the law of designation teaches] that she is betrothed to the first. On whose view is this analogous? Shall we say, on R. Jose son of R. Judah's? But [he maintained:] If there is sufficient time in that day for her to do work to the value of a perutah, she is betrothed; if not, she is not betrothed![4] — Said R. Aha the son of Raba: It is analogous on the view of the Rabbis.[5] But that is obvious?[6] — I might have thought, But he [her master] did not say 'from now';[7] hence we are informed [that it is not so].[8]

Another [Baraitha] taught: If a man sells his daughter and then goes and betroths her to another man, her master is powerless,[9] and she is betrothed to the second: this is R. Jose son of R. Judah's view. But the Sages maintain: If he wishes to designate her, he can do so. This may be compared to a man who declares to a woman, 'Behold, thou art betrothed unto me after thirty days,' and another man comes and betroths her within the thirty days, then she is betrothed to the second.[10] On whose view is this analogous? Shall we say, on the Rabbis'? But they maintain: If he wishes to designate her, he can do so! — But, said R. Aha the son of Raba, it is analogous on the view of R. Jose son of R. Judah.[11] But that is obvious? — I might have argued, But he did not say to her, 'After thirty days';[12] hence we are informed otherwise.[13]

Another [Baraitha] taught: If a man sells his daughter and stipulates,' on condition that he [her master] shall not designate [her],' the condition is binding:[14] this is R. Meir's opinion. But the Sages maintain: If he wishes to designate her, he can do so, because he [her father] has stipulated contrary to what is written in the Torah, and he who makes a stipulation contrary to what is decreed in the Torah, his stipulation is null. Does then R. Meir hold that this stipulation is valid? But it was taught: If a man says to a woman, 'Behold, thou art betrothed unto me on condition that thou hast no claims upon me of sustenance, raiment, and conjugal rights' — she is betrothed, but the condition is null: this is R. Meir ðs view. R. Judah said: In respect of financial matters,[15] his condition is binding. — Said Hezekiah: Here it is different, because the Writ saith, [and if a man sell his daughter] to be a bondwoman:[16] sometimes he can sell her to be only a bondwoman.[17] And the Rabbis? How do they utilize this, 'to be a bondwoman'! — They employ it, even as was taught: 'To be a bondwoman': this teaches that he can sell her to unfit persons.[18] But does this not follow a fortiori: if he can betroth her to unfit persons,[19] shall he not sell her to unfit persons?[20] — As for betrothing her to unfit persons, that may be because a man can betroth his daughter as a na'arah: shall he then sell her to unfit persons, seeing that a man cannot sell his daughter as a na'arah?[21] Therefore Scripture states: 'to be a bondmaid', teaching that he can sell her to unfit persons. R. Eliezer said: If it is to teach that he can sell her to unfit persons — behold, it was already said: 'if she displease her master [so that he hath not espoused her],' which means, she was displeasing in respect of marriage.[22] What then is taught by, 'to be a bondwoman'? It teaches that he may sell her

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(1) So Bah.

(2) On the very last day, but before she actually completes it.

(3) I.e., kiddushin begin at this moment, but are not completed until thirty days, as though it were a long ceremony requiring all this time.

(4) Which proves that kiddushin do not commence at the beginning of her servitude, but only at the last moment. Hence here too, kiddushin commence at the end of the thirty days, and therefore if another man betroths her in the meantime, she is betrothed to the second.

(5) Since they maintain that the designation takes effect even when she can no longer do a perutah's worth of work, it must have commenced as soon as she was sold: otherwise, what effects her betrothal now? Hence the same applies to this.

(6) That this analogy may be drawn, the cases being so alike.

(7) Therefore in the analogous case, even if he says: 'Thou art betrothed unto me after thirty days,' and another man betroths her within the thirty days, she is betrothed to the first.

(8) The above explanation follows Rashi. Tosaf. explains it quite differently: This may be compared etc. Hence here too, if another man betroths her before her master designates her, she is not betrothed to the second, and the subsequent designation of her master takes effect, because the original money was given for kiddushin. 'On whose . . . she is not betrothed': which proves that he must actually give her something (sc. her labour, which is worth a perutah) at the end, when he designates her; therefore another man's intervention is valid, and she is betrothed to the second. 'Said R. Aha . . . the Rabbis:' just as there, so here too, and the intervention of another man before the master's designation is not valid. The rest is similar to Rashi's explanation.

(9) Lit., 'he has laughed at the master.'

(10) Rashi and Tosaf. differ here as in the preceding passage.
(11) Rashi: just as her betrothal to the second is valid because her master did not designate her from the time he bought her, so here too. Tosaf. reverses the premise and the conclusion.
(12) Rashi: Her master did not state that he would designate her after a certain period, therefore the second man's betrothal is valid. But if one says: 'Be betrothed to me after thirty days,' I might have thought that she is betrothed to him, and the second man's betrothal is invalid. Tosaf.: her master did not state that he would designate her only after a certain period, and therefore I would have thought that the designation commences immediately, and the second man's betrothal is invalid.
(13) Rashi: Since Scripture empowered him to designate her as a result of the purchase, it is as though he had said that he would subsequently designate her; therefore the cases are entirely analogous. Tosaf.: Since he did not explicitly state, 'from now,' the designation commences only later; hence she is betrothed to the second.
(14) Lit., 'fulfilled'.
(15) Viz., sustenance and raiment.
(16) Ex. XXI, 7.
(17) Hence the stipulation is not contrary to Scripture.
(18) I.e., who are forbidden to intermarry with Jews of unblemished birth, e.g.. a bastard, to whom he can sell her only for servitude and not designation.
(19) I.e., if he betroths her to a bastard, though it is forbidden, the betrothal is valid.
(20) Surely he can; then why deduce it from Scripture? It might be argued that whereas such betrothal is valid only if performed, we desire to prove now that one may at the very outset sell his daughter to an unfit person, and this vitiates the argument. But this rebuttal is fallacious: it is logical to distinguish in marriage between what is permitted at the very outset and what is valid only if done in defiance of the law; but there are no grounds for drawing this distinction in respect to a sale, and if the sale is valid when done, there is no reason for saying that it is not permitted in the first place (Maharsha). S. Strashun explains it differently.
(21) But only as a ketannah (q.v. Glos.). Hence his power of betrothal is greater than that of sale.
(22) I.e., forbidden to her master.

Talmud - Mas. Kiddushin 20a

to [consanguineous] relations.[1] But does this not follow a fortiori: If he can sell her to unfit persons,[2] shall he not sell her to relations?[3] As for selling her to unfit persons, that may be because if he[4] wishes to designate her [in spite of the interdict] he can do so;[5] shall he then sell her to [consanguineous] relations, seeing that if he wishes to designate her, he cannot? Therefore the Writ saith, 'to be a bondwoman,' teaching that he can sell her to relations. And R. Meir?[6] — [That he can sell her] to unfit persons he deduces from the same verse from which R. Eliezer deduces it; and in the matter of relations he agrees with the Rabbis, who maintain: He may not sell her to relations.

One [Baraitha] taught: He may sell her to his father, but may not sell her to his son. Another [Baraitha] taught: He may sell her neither to his father nor to his son. As for saying: 'He may sell her neither to his father nor to his son,' that is well, agreeing with the Rabbis. But 'he may sell her to his father but may not sell her to his son' — with whom does this agree; neither with the Rabbis nor with R. Eliezer? — After all, it agrees with the Rabbis: they admit [that he can sell her] where there is a possibility[7] of designation.[8]

Our Rabbis taught: If he come in by himself [be-gapo], he shall go out by himself [be-gappo][9] — he comes in with his [whole] body [be-gufo] and goes out with his [whole] body.[10] R. Eliezer b. Jacob said: Having come in single, he goes out single. What is meant by 'he comes in with his [whole] body and goes out with his [whole] body'? — Said Raba: It means that he is not freed through [the loss of his] outstanding limbs, as a [heathen] slave. Abaye protested: But that is deduced from, 'she shall not go out as the bondmen do'?[11] — If from there, I would have thought, He must pay for his eye, and then he goes free;[12] hence we are informed [otherwise]. 'R. Eliezer b. Jacob said: Having come in single, he goes out single.' What is meant by 'he goes out single'? —

Said R. Nahman b. Isaac: This is meant: If he has a wife and children [when entering service], his master may give him a heathen[13] bondmaid;[14] if he has no wife and children, his master may not give him a heathen bondmaid.

Our Rabbis taught: If he was sold for a maneh, and appreciated [in value] and stood at two hundred [zuz], how do we know that he is assessed only at a maneh?[15] — Because it is written, [He shall give back the price of his redemption] out of the money that he was bought for.[16] If he was sold for two hundred and depreciated and stood at a maneh, how do we know that he is assessed only at a maneh? — Because it is written, according unto his years [shall he give back the price of his redemption].[17] Now, I know this only of a slave sold to a heathen: since he may be redeemed by his kinsmen, his [the master's] hand is nethermost.[18] How do we know it of one who is sold to a Israelite! — Because sakir [an hired servant] is stated twice, for the purpose of a gezerah shawah.[19]

Abaye said: Behold I am like Ben ‘Azzai in the streets of Tiberias.[20] One of the scholars said to Abaye: Consider: these verses may be interpreted leniently and stringently: why do you choose to interpret them leniently [to the slave's advantage]; let us interpret them stringently?[21] — You cannot think so, since the All-Merciful favoured[22] him. For it was taught: Because he is well with thee:[23] he must be with [i.e., equal to] thee in food and drink, that thou shouldst not eat white bread and he black bread, thou drink old wine and he new wine, thou sleep on a feather bed and he on straw. Hence it was said: Whoever buys a Hebrew slave is like buying a master for himself. Yet perhaps that is only in respect to food and drink, that he should not be grieved, but in the matter of redemption, let us be stringent with him, [as follows] from R. Jose son of R. Hanina. For R. Jose son of R. Hanina said: Come and see how hard are the results[24] of [violating the provisions of] the seventh year. A man who trades in seventh year produce must eventually sell his movables, for it is said: In this year of jubilee ye shall return every man unto his possession,[25] and in juxtaposition thereto, and if thou sell aught ‘into thy neighbour, or buy of thy neighbour's hand,[26] [which refers to] what is acquired from hand to hand.[27] If he disregards this,[28] he eventually sells his estates, for it is said: If thy brother be waxen poor, and sell some of his possession.[29] He has no opportunity [of amending his ways][30] until he sells his house, for it is said: And if a man sell a dwelling house in a walled city.[31] (Why state there ‘if he disregards this,’ but here, ‘He has no opportunity’? — In accordance with R. Huna. For R. Huna said: Once a man has committed a transgression and repeated it, it is permitted to him. ‘Permitted to him!’ — can you think so? But say, it becomes to him as permitted.)[32] It is not brought home to him[33] until he sells his daughter, for it is said, and if a man sell his daughter to be a bondwoman;[34] (and though [the sale of] his daughter is not mentioned in this section, yet he teaches us that one should [even] sell his daughter and not borrow on usury. What is the reason? — His daughter makes a deduction and goes free,[35] whereas this [his debt] waxes ever larger.)[36] it is not brought home to him until he borrows on interest, as it is written, and if thy brother be waxen poor, and his hand fail with thee,[37] in proximity to which [is stated,] Take thou no usury of him or increase.[38] It is not brought home to him until he sells himself, as it is said, and if thy brother be waxen poor with thee and sells himself unto thee.[39] And not even to thee, but to a proselyte, as it is said [and sell him — self] unto the proselyte.[40] And not even to a righteous proselyte,[41] but to a resident alien,[42] as it is said, or to the resident alien.[43] The family of a proselyte[44] means a heathen. When it is said: To the stock,[45]

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(1) Though designation is altogether impossible, for even if performed it is invalid.

(2) I.e., who are forbidden to all.

(3) Who are interdicted only to her.

(4) The master.

(5) I.e., his designation is valid.

(6) Since he utilizes ‘to be a bondmaid’ otherwise, how does he know these rulings?

(7) Lit., ‘side’.

(8) His father can designate her for his son, her uncle. But his son can neither betroth her himself nor designate her for

his son.
(9) Ex. XXI, 3.
(10) Explained below.
(11) Ibid. 7, the same applying to the Hebrew bondman.
(12) Whereas a heathen slave is freed but not compensated.
(13) Lit., ‘Canaanitish’.
(14) To beget slaves for him.
(15) For the purpose of redemption.
(16) Lev. XXV, 51.
(17) Ibid. 52; this implies, he must repay the value of the unexpired term, i.e., his depreciated worth.
(18) I.e., he is at a disadvantage, the lower value always being the basis for redemption.
(19) A slave sold to a Jew: as an hired servant (sakir) . . . he shall be with thee — ibid. 40; a slave sold to a heathen: according to the time of an hired servant (sakir) he shall be with him — Ibid. 50. The same word used in both sections denotes that the same law applies to both.
(20) Said humorously ‘I am ready to face all comers!’ Ben ‘Azzai was the keen scholar, able to answer all questions; cf. Bek. 28a.
(21) Applying v. 51 to a case of depreciation, and v. 52 to appreciation, so that the slave is always assessed on his higher value.
(22) Lit., ‘was lenient to’.
(23) Deut. XV, 16.
(24) Lit., ‘dust’.
(25) Lev. XXV, 13: this concludes the sections on the seventh year and jubilee.
(26) Ibid. 14.
(27) I.e., movables, implying that the one is a punishment for transgressing the other.
(28) Lit., ‘if he does not perceive’ — that the enforced sale is a punishment.
(29) Ibid. 25; ‘possession,’ Heb. אחוזה , applies to land.
(30) Lit., ‘it does not come to his hand.’
(31) Ibid. 29.
(32) Repetition of sin blunts the finer perception of right and wrong. — This is perhaps sin's greatest punishment; cf. Ab. (Sonc. ed.) p. 44: the punishment of transgression is transgression. Having violated the law of the seventh year so often, he ceases to regard it as an offence, and hence has no opportunity of amendment.
(33) Lit., ‘it does not come to his hand.’
(34) Ex. XXI, 7.
(35) The more time elapses the less the obligation.
(36) Hence, since the chapter speaks about borrowing money, it is assumed that he had already sold his daughter.
(37) Lev. XXV, 35.
(38) Ibid. 36.
(39) Ibid. 39.
(40) Lev. XXV, 47.
(41) I.e., one who accepts all the laws of Judaism.
(42) One who accepts some laws of Judaism for the sake of certain rights.
(43) E.V.: sojourner.
(44) Ibid.
(45) Ibid.

Talmud - Mas. Kiddushin 20b

it refers to one who sells himself to the service of the idol itself![1] — Said he to him: But there the Writ led him back.[2] For the School of R. Ishmael taught: Since this man went and became an acolyte in the service of idolatry, I might have said: Let us cast a stone after the fallen, therefore it is said, after that he is sold he shall be redeemed,’ one of his brethren shall redeem him.[3] Yet perhaps ‘he shall be redeemed’ so as not to be absorbed by the heathens, but in respect to redemption we should

be stringent with him, in accordance with R. Jose son of R. Haninah? — Said R. Nahman b. Isaac: Two verses are written: [i] if there be yet increases in the years;[4] [ii] and if there remains but little in the years:[5] are there then increased [i.e., prolonged] years and decreased [i.e., shortened] years?[6] But [the meaning is:] if his value increases, [then his redemption shall be] out of the money that he was bought for; if his value decreases, [the basis of redemption is] according unto his years [yet remaining]. But perhaps the meaning is this: If he served two [years], four remaining, he must repay him for four years 'out of the money that he was bought for'; while if he served four [years], two remaining, he must repay him for two, 'according unto his years'?[7] — If so, Scripture should write, If there be yet many years [shanim] . . . If there remain but few years [shanim]: why 'in years' [ba-shanim]? [To teach:] if his value increased in [these] years, [his redemption is] 'out of the money that he was bought for'; if his value decreased in [these] years, [he is redeemed] 'according unto his years'. Said R. Joseph: R. Nahman[8] interpreted these verses as Sinai.[9] (Mnemonic: Slave, House, Half, Slave, Relations.)[10] R. Huna b. Hinena asked R. Shesheth: Can a Hebrew slave sold to a heathen be half redeemed, or can he not be half redeemed?[11] Do we learn the meaning of 'his redemption', from a field of possession:[12] just as a field of possession cannot be half redeemed,[13] so he too cannot be half redeemed; or perhaps, we may interpret it in his favour,[14] but not to his disadvantage?[15] — He answered him: Did you not say there,[16] he shall be sold entirely, but not half; hence here too, he shall be redeemed,[17] entirely.

Abaye said: Should you rule that he can be half redeemed, it will be found [both] to his advantage and disadvantage. 'To his advantage': If he [the heathen] bought him for a hundred [zuz], and he [the slave] then refunded him fifty, half of his Value,[18] then he appreciated and stood at two hundred: if you say that he can be half redeemed, he pays him [an additional] hundred[19] and goes out [free]; but if you say, he cannot be half redeemed, he must pay him a hundred and fifty, and [then] go out.[20] But you said: 'if his value increased, [his redemption is] out of the money that he was bought for'! — Suppose he was dear [when bought], then slumped, then rose again.[21] 'It will be found to his disadvantage': If he bought him for two hundred [zuz], he [the slave] refunded a hundred, half of his value, and then slumped to a hundred. If you say, he can be half redeemed, he must pay him fifty and go out; but if you say that he cannot be half redeemed, then this hundred was a bailment in his [the master's] charge:[22] hence he [the slave] gives it to him and goes out [free].

R. Huna b. Hinena asked R. Shesheth: If a man sells a house in a walled city,[23] can he half redeem it or not? Do we learn the meaning of 'his redemption' from a 'field of possession':[24] just as 'a field of possession' cannot be half redeemed, so this too cannot be half redeemed; or perhaps, where [Scripture] revealed it,[25] it revealed it; where not, it did not? — He answered him: From the exegesis of R. Simeon we learn that he can borrow and redeem, and redeem half. For it was taught: [And if a man shall sanctify unto the Lord part of the field of his possession.] And if he [that sanctified the field] will indeed redeem it:[26] this teaches that he can borrow and redeem, and redeem half.[27] Said R. Simeon: What is the reason? Because we find in the case of him who sells 'a field of possession', that [since] he has a great privilege, in that if jubilee comes and it has not been redeemed, it reverts to its owners, his rights are weakened in [so far] that he cannot borrow and redeem, and redeem half; hence he who sanctifies ['a field of possession'] whose rights are impaired in that if jubilee comes and it has not been redeemed, it goes out to the priests at jubilee, [therefore] his privilege is strengthened in [so far] that he may borrow and redeem, and redeem half. Hence this one too, who sells a house in a walled city, since his rights are impaired so that if a complete year elapsed and it is not redeemed, it is absolutely [sold], therefore his privilege is strengthened in that he can borrow and redeem, and redeem half.

He raised an objection: 'And if he will indeed redeem it': this teaches that he may borrow and redeem, and redeem half. For I might have thought, does it [the reverse] not follow a minori: if he who sells 'a field of possession', whose privilege is great in that if jubilee comes and it has not been redeemed it reverts to its original owner, yet his power is impaired in that he cannot borrow and

redeem, and redeem half; then he who sanctifies, whose rights are impaired in that if jubilee comes and it has not been redeemed it goes out to the priests at jubilee, it surely follows that his rights are [also] impaired so that he cannot borrow and redeem, and redeem half. As for one who sells 'a field of possession', that is because his privilege is weak in that he [cannot] redeem it immediately;[28] will you say [the same] of one who sanctifies, whose privilege is strong, that he can redeem it immediately? Let one who sells a house in a walled city prove it, whose privilege is strong to redeem it immediately, and yet he cannot borrow and redeem, and redeem half![29] — There is no difficulty:

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(1) E.g., to cut wood for its altar, etc., though not accepting it as a god. — Now, reverting to the original question: since he had to sell himself as a punishment for trading in seventh year produce, why should we not interpret the verse stringently, to his disadvantage?

(2) To the compassion of his brethren.

(3) Ibid. 48 — a lesson in tolerance.

(4) Ibid. 51.

(5) Ibid. 52. The translations here would seem to indicate the meanings of the verses as understood by R. Nahman.

(6) The length of years does not vary!

(7) The verse may not refer to a rise or fall in values, but be meant literally, as the E.V.

(8) Cur. ed.: b. Isaac, but Rashal deletes it: in this case, it must be deleted in the previous passage. (Rashal points out that b. Isaac is omitted in some editions, but apart from that, his reason for deletion is not very cogent).

(9) Very profoundly, as though he were present when they were first promulgated as Sinai.

(10) A mnemonic is a group of letters or words, each being an abbreviation or the key word of a series of subjects, to facilitate their remembering.

(11) Can he repay half his redemption money and serve only half the remainder of his term?

(12) An ancestral field. Here: he shall give back the price of his redemption-Lev. XXV, 52, 'field of possession': and find sufficient for his redemption — ibid. 26.

(13) And he find sufficient to redeem it, written in reference to an ancestral field, implies that the whole must be redeemed.

(14) Lit., 'leniently'.

(15) Lit., 'stringently'.

(16) Supra 18a, q.v.

(17) Ibid. 48.

(18) Not yet having served at all.

(19) Since he owes him his servitude for only half the time.

(20) Since he owes him his service for the whole period, the fifty paid being in the nature of a deposit.

(21) He was bought for two hundred, and then slumped to a hundred, whereupon the slave refunded fifty for half redemption, not yet having served at all, and then his value rose again to two hundred.

(22) But actually belonging to the slave.

(23) V. Lev. XXV, 29-33.

(24) An inherited field: v. p. 95, n. 5; a house in a walled city, ibid. 29: for a full year shall be his redemption (E.V. shall he have the right of redemption).

(25) That the whole must be redeemed.

(26) Ibid. XXVII, 16, 19. 'Indeed' is expressed by the doubling of the verb.

(27) Intimated by the emphasis on 'redeem'.

(28) But must leave it at least two years with the vendees.

(29) This last sentence contradicts R. Shesheth.

Talmud - Mas. Kiddushin 21a

the one agrees with the Rabbis, the other with R. Simeon.[1] One [Baraitha] taught: He [who sells a house in a walled city] may borrow and redeem, and redeem half. Another taught: He may not borrow and redeem, nor redeem half. There is no difficulty: the latter agrees with the Rabbis, the former with R. Simeon.

(Mnemonic; Harash, Habash, Zeman.)[2] R. Aha, son of Raba, said to R. Ashi: It[3] can be refuted: as for one who sells a house in a walled city, that[4] is because his privilege is impaired, that he can never redeem it [any longer];[5] will you say the same of him who sanctifies, whose privilege is great, that he can redeem it for ever?[6] — R. Aha Saba [the Elder] remarked to R. Ashi: Because one can say: Let the argument revolve, and infer it by what is common [to both. Thus!] Let him who sells 'a field of possession' prove it, whose privilege is great, that he can redeem it for ever, and yet he may not borrow and redeem, or redeem half. As for him who sells 'a field of possession', that is because his rights are impaired, in that he [cannot] redeem it immediately. Then let one who sells a house in a walled city prove it.[7] And thus the argument revolves: the feature of one is not that of the other. What is common to both [cases] is that they[8] may be redeemed, and he [the vendor] cannot borrow and redeem, nor redeem half. So may I also adduce the case of one who sanctifies [an inherited field]: it may be redeemed, and he cannot borrow and redeem, nor redeem half. Mar Zutra son of R. Mari said to Rabina: This may be refuted. What is their common feature? That their privileges are impaired. for they [cannot] redeem it in the second year;[9] will you say [the same] of him who sanctifies, seeing that his privilege is strong to redeem in the second year? — Rabina answered him: Because one may reply. Let a Hebrew slave sold to a heathen prove it: his rights are unimpaired. for he may be redeemed in the second year, and yet he cannot borrow and redeem, nor redeem by half.[10]

R. Huna b. Hinena propounded of R. Shesheth: If one sells a house in a walled city, can [the house] be redeemed by relations or not? Do we learn the meaning of 'his redemption' from 'a field of possession':[11] just as 'a field of possession' cannot be half redeemed, yet can be redeemed by relations,[12] so this too cannot be half redeemed, yet can be redeemed by relations; or perhaps, 'redemption' is written only in reference to half,[13] but not in reference to relations? — It cannot be redeemed [by relations], answered he. He objected before him: And in all [the land of your possession] ye shall effect a redemption for the land:[14] this is to include houses and Hebrew slaves.[15] Surely that means houses in a walled city? — No. It means houses in villages. But of houses in villages it is explicitly stated, they shall be reckoned with the fields of the country?[16] — That is to make an obligation,[17] and is in accordance with R. Eliezer. For it was taught: [If thy brother be waxen poor, and sell some of his possessions, then shall his kinsman that is next unto him come,] and shall redeem that which his brother hath sold:[18] that is an option.[19] You say, an option: yet perhaps it is not so, but an obligation? Hence it is taught: And if a man have no kinsman.[20] But is there a man in Israel who has no kinsman?[21] Hence it must refer to him who has [a kinsman,] who [however] refuses to repurchase it, [thus shewing] that he has [merely] an option. R. Eliezer said: 'and he shall redeem that which his brother hath sold' [implies] an obligation. You say, an obligation; yet perhaps it is not so, but an option? — Hence it is taught: and in all . . . ye shall effect a redemption.[22] The Rabbis said to R. Ashi, or as others state, Rabina said to R. Ashi: On the view that it includes houses in walled cities, it is well;[23] but on the view that it includes houses in villages, why 'in all'?[24] This is indeed a difficulty.

Abaye raised an objection before him: Why is 'he shall redeem him,' 'he shall redeem him,' 'he shall redeem him', stated three times?[25] To include all cases of redemption, that they are to be redeemed in this order.[26] Surely that refers to houses in walled cities and Hebrew slaves? — No: to houses in villages and 'fields of possession'. 'Houses in villages and fields of possession!' these are explicitly provided for, 'they shall be reckoned with the fields of the country'? — It is as R. Nahman b. Isaac said [elsewhere], to teach that the nearer the relation, the greater his precedence; so here too, it is to shew that the nearer the relation, the greater is his precedence.[27] Whereon was R. Nahman's dictum stated? — On what was propounded: Can a Hebrew slave sold to an Israelite be redeemed by kinsmen or not? On Rabbi's view, that is no question, since he said: He who cannot be redeemed by these [sc. relations] can be redeemed by [the passage of] years,[28] thus proving that he cannot be redeemed. Our question is on the opinion of the Rabbis. What is the law? Do we infer 'sakir', 'sakir'[29] and do not interpret [the emphasis of, one of his brethren] may redeem him;[30] or perhaps,

'may redeem him' implies him, but not another?[31] — Come and hear:' 'In all . . . ye shall effect a redemption': this is to include houses and Hebrew slaves. Surely that means houses in a walled city, and Hebrew slaves sold to Israelites? No; it means Hebrew slaves sold to heathens. But of a Hebrew slave sold to a heathen it is explicitly stated, or his uncle, or his uncle's son, may redeem him?[32] —

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(1) R. Shesheth's answer having been deduced from R. Simeon's dictum. — R. Simeon holds that the reason of a Scriptural law must be sought, and when found it may modify it and provide a basis for other laws; but the Rabbis disagree. Hence R. Simeon argues that one's very disabilities require compensating privileges, and finds this embodied in the laws of the sanctification of 'a field of possession', from which the same principles are applied to analogous cases. Whereas the Rabbis argue that when Scripture impairs one's privileges in one direction they are weakened in all, a minori, the sanctification of an inherited field being explicitly excepted by Scripture.

(2) Harash — R.AHa son of Raba to R. Ashi; Habash = R.AHa Saba said to R. ASHi; Zeman = Mar Zutra son of R. Mari said to Rabina.

(3) The argument in the Baraitha cited above that would derive the case of one who sanctifies from the sale of a house in a walled city.

(4) Sc. his inability to borrow and redeem, and redeem half.

(5) After the first year; Lev. XXV, 30.

(6) I.e., until jubilee, if the Temple Treasurer has not sold it in the meanwhile.

(7) He can redeem it immediately, and yet cannot borrow etc.

(8) The properties.

(9) One who sells an inherited field cannot redeem it before the third year; and the vendor of a house in a walled city cannot redeem it after the first year.

(10) As supra 20b.

(11) For the quotations v. p. 96, n. 3.

(12) Lev. XXV, 25.

(13) And find sufficient for his redemption (Lev. XXV, 26); 'sufficient' shews that the whole must be redeemed.

(14) Ibid. 24.

(15) That they can be redeemed by relations.

(16) Ibid. 31; i.e., the same law applies to them as to 'a field of possession.

(17) Not only have the relations the right, but also the duty of redemption.

(18) Ibid. 25.

(19) Lit., 'a permitted thing'.

(20) Ibid. 26.

(21) Every Jew must have relatives, if he goes back far enough.

(22) This emphasis — since it is already stated elsewhere — proves that redemption is a duty.

(23) Since redemption by relations is not mentioned there.

(24) Which implies even in those cases where it is not explicitly provided for.

(25) In reference to the redemption of a Jewish slave from a heathen master: Ibid. 48, 49.

(26) This is assumed to mean that in all cases where redemption is stated it may be by relatives.

(27) I.e., in the same order of priority as the kinsmen enumerated in Lev. XXV, 48, 49.

(28) Supra, 15b, q.v.

(29) V. p. 92, n. 5; hence he can be redeemed by kinsmen.

(30) Ibid. 48, referring to a Hebrew slave sold to a heathen.

(31) Sc. a Hebrew slave sold to an Israelite.

(32) Ibid. 49.

Talmud - Mas. Kiddushin 21b

That is to make it an obligation, and even on R. Joshua's view.[1] Come and hear: Why is 'he shall redeem him,' 'he shall redeem him,' 'he shall redeent him,' stated three times? To include all cases of redemption, that they must be redeemed in this order. Surely that refers to houses in walled cities, and Hebrew slaves sold to Israelites? — No: to houses in villages and fields of possession. 'Houses

in villages'! but there it is explicitly stated: 'they shall be reckoned with the fields of the country'? — Said R. Nahman b. Isaac: It is to teach, the nearer the kinsman, the greater his precedence. HE WHOSE EAR IS BORED IS ACQUIRED BY BORING. For it is written, then his master shall bore his ear through with an awl, etc.[2]

AND ACQUIRES HIMSELF BY JUBILEE OR BY HIS MASTER'S DEATH. For it is written: 'and he shall serve'[2] him — but not his son or daughter; for ever' — until the eternity of jubilee.[3]

Our Rabbis taught: '[With] an awl': I only know [that he can be bored with] an awl. Whence do I know to extend [the law to] a prick,[4] thorn, needle, borer, or stylus? From the verse, then thou shalt take,[5] which includes everything that may be taken by hand: this is the opinion of R. Jose son of R. Judah. Rabbi said: Just as an awl is specified, as being of metal, so must everything [used for this purpose] be of metal. Alternatively, [thou shalt take] the awl[6] is to teach[7] [that] the great awl [is meant].[8] R. Eleazar said: Judan Berabbi[9] used to expound: When it [his ear] was bored, only the lobe was bored. But the Sages maintained: A Hebrew slave, [who is] a priest, cannot be bored, as he is thereby blemished;[10] and should you say that the lobe is bored, how is he thereby blemished?[11] Hence he was bored through the upper part of his ear. Wherein do they differ? — Rabbi interprets [by the method of] general propositions and particularizations.[12] [Thus:] 'Then thou shalt take' — this is a generalization;[13] 'an awl' — this is a specification: 'through his ear unto the door' is again a generalization. Now [in a sequence of] generalization, specification and generalization, you can include[14] only what is similar to the specification: just as the specification is explicit as of metal, so must everything [used for this purpose] be of metal. R. Jose interprets [by the method of] amplification and limitation.[15] [Thus:] Then thou shalt take — this is an amplification;[16] an awl — this is a limitation; . . . through his ear unto the door is again an amplification. [A sequence of] amplification, limitation and amplification extends [the law to] everything. What is included? All things. And what is excluded? Chemicals.[17]

The Master said: "'The awl" is to teach that the great awl [is meant].' How is this implied? — As Raba said: [Therefore the children of Israel eat not the sinew of the hip which is upon the hollow of] the thigh[18] implies the right thigh;[19] so here too, 'the awl' implies the most distinguished of awls.

'R. Eleazar said: Judan Berabbi used to expound: When it [his ear] was bored, only the lobe was bored. But the Sages maintained: A Hebrew slave [who is] a priest, cannot be bored, because he is thereby blemished.' Then let him be blemished! — Rabbah son of R. Shila said: Scripture saith, and he shall return unto his own family:[20] i.e., to the established rights of his family.[21]

The Scholars propounded: A Hebrew slave [who is] a priest — can his master give him a heathen bondwoman?[22] Is it an anomaly,[23] and so there is no difference between priests and Israelites; or perhaps, priests are different, since the Writ imposes additional precepts upon them?[24] — Rab said: It is permitted; Samuel ruled: It is forbidden. R. Nahman said to R. 'Anan: When you were at Mar Samuel's academy you wasted your time in chess.[25] Why did you not refute him with this: 'But the Sages maintained: A Hebrew slave, a priest. cannot be bored, as he is thereby blemished.' Now if you say that his master cannot give him a heathen bondmaid,it[26] follows because we require [that he should say]. I love my master, my wife. and my children,[27] which is absent. Nothing more is possible.[28]

The scholars propounded: May a priest take a 'a woman of goodly form'?[29] Is it an anomaly.[30] and so there is no difference between priests and Israelites: or perhaps. priests are different, since the Writ imposes additional precepts upon them? — Rab said: He is permitted; while Samuel maintained, He is forbidden. With respect to the first intercourse there is universal agreement that it is permitted, since the Torah only provided[31] for man's evil passions;[32] their dispute refers to the second intercourse. Rab ruled: It is permitted; and Samuel ruled,it is forbidden. Rab ruled: It is

permitted: since it was [once] allowed, it remains so. But Samuel said, it is forbidden; because she is a proselyte, and so ineligible to [marry] a priest. Others state, with respect to the second intercourse it is generally agreed that it is forbidden, since she is a proselyte. Their dispute refers to the first intercourse: Rab maintained, It is permitted, since the Torah only provided for man's evil passions. Whilst Samuel ruled: that it is forbidden: where one can read, then thou shalt bring her home to thine house,[33] we also read, and seest among the captives. [etc.];[34] but where we cannot read: 'Then thou shalt bring her home to thine house,' we do not read: 'and seest among the captives [etc.].'

Our Rabbis taught: 'And thou seest among the captives' — when taking her captive;[35] a woman — even married; 'of beautiful countenance' — the Torah only provided for human passions: it is better for Israel to eat flesh of

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(1) Who maintained that the redemption of an inherited field by relations is merely a privilege.

(2) Ex. XXI, 6.

(3) V. supra 17b.

(4) I.e., a sharpened piece of wood.

(5) Deut. XV, 17, likewise referring to the boring of a slave.

(6) Lit., translation; E.V. disregards the def. art. of the text.

(7) Lit., 'bring'.

(8) This is explained below.

(9) Berobbi, Beribbi, a contraction of Be Rabbi, was a title of scholars, generally applied to disciples of R. Judah ha-Nasi (Rabbi par excellence) and his contemporaries, but also to some of his predecessors, and occasionally to the first Amoraim (Jast. s.v.); v. Nazir (Sonc. ed.) p. 64. n. 1.

(10) And unfit for service in the Temple.

(11) A hole in the lobe is not a blemish.

(12) In all cases such as the one under discussion Rabbi regards the verse as consisting of a generalization followed by a specification and then again by a generalization. In that case we say that the generalization includes only what is similar to the specification, as explained in the text.

(13) I.e., it implies anything that may be taken, as above.

(14) Lit., 'judge'.

(15) I.e., the general term is an amplification, extending the law to all things; the limitation that follows limits the law to such things as are similar to itself; hence these two alone are sufficient to arrive at the result deduced by Rabbi. Consequently, if a further amplification is added, it includes even dissimilar things, while the limitation can only exclude one or two things which are entirely unlike, v. Shebu. (Sonc. ed.) p. 12, n. 3.

(16) Extending the law to anything that may be taken.

(17) A chemical, e.g., an acid, may not be placed on the ear to burn it through.

(18) Gen. XXXII, 33.

(19) The def. art. implies the well-known, the most important, hence the right, which is the stronger side.

(20) Lev. XXV, 41.

(21) But if he is bored, he loses his established rights of officiating in the Temple.

(22) To produce slaves.

(23) That a heathen bondwoman may be given to any Hebrew slave.

(24) Hence they have a higher degree of sanctity.

(25) Lit., 'you played in chess'; Iskumdre (the 'Aruk reads: iskundre) Pers. iskodar, **; v. Perles, Etymologische Studien, p. 113. R. Han. translates: dog-racing. Krauss, T.A. III, 113 regards it as the dice (Wurfel) in various games of chance.

(26) The law that a Hebrew slave who is a priest is not bored.

(27) Ex. XXI, 5.

(28) This refutation is absolute.

(29) V. Deut. XXI, 11. A priest may not marry a proselyte: how is it here?

(30) Lit., 'a new,' unexpected law.

(31) Lit., 'spoke'.

(32) The permission to take a beautiful captive is a concession to human failings, which priests share equally with Israelites.

(33) Deut. XXI, 12, i.e., take her permanently.

(34) Ibid. 11; i.e., permission to satisfy one's lust.

(35) Permission is granted only if the woman was originally taken for lust, but not if she was taken for enslavement.

Talmud - Mas. Kiddushin 22a

[animals] about to die, yet [ritually] slaughtered, than flesh of dying animals which have perished;[1] 'and thou hast a desire' — even if she is not beautiful; 'unto her' — but not her and her companion;[2] 'and thou shalt take' — thou hast marriage rights[3] over her;[4] 'to thee to wife,' [teaching] that he must not take two women, one for himself and another for his father, or one for himself and another for his son: 'then thou shalt bring her home [to thine house].' teaching that he must not molest her on the [field of] battle.[5]

Our Rabbis taught: But if the servant shall plainly say,[6] he must say and reiterate [it]. If he declares [thus] at the beginning of the sixth year. but not at the end, he is not bored, for it says. 'I will not go out free': [hence] he must say it when about to depart. If he says it at the end of the six[th year], but not at the beginning, he is not bored, for it is said: 'But If the slave shall plainly say': he must say it while still a slave.

The Master said: 'If he declared [thus] at the beginning of the six[th year] but not at the end, he is not bored, for it is said: I will not go out free; [hence] he must say it when about to depart.' Why choose [to learn this] from 'I will not go out free': deduce it because we require [that he shall say]. 'I love my master, my wife, and my children,' which is absent.[7] Furthermore, 'if he says it at the end of the six[th year], but not at the beginning, he is not bored, for it is said . . . "the slave"': is he then not a slave at the end of the sixth year?[8] — Said Raba: [It means,] At the beginning of the last perutah['s worth of service], and at the end thereof.[9]

Our Rabbis taught: If he has a wife and children, but his master has no wife and children, he may not be bored, for it is said, because he loveth thee and thine house.[10] If his master has a wife and children, but he has no wife and children, he may not be bored, for it is said: 'I love my master, my wife, and my children'. If he loves his master but his master does not love him, he may not be bored, for it is said: 'because he is well with thee.'[11] If his master loves him but he does not love his master,[12] he may not be bored, for it is said: 'because he loveth thee'. If he is an invalid but his master is no invalid, he may not be bored, for it is said, because he is well with thee.[13] If his master is an invalid but he is no invalid, he may not be bored, for it is said, with thee.[14]

R. Bibi b. Abaye propounded: What if both are invalids? Do we require, 'with thee' [to be applicable], and it is; or perhaps we require, 'because he is well with thee,' which is absent? The question stands.

Our Rabbis taught: 'Because he is well with thee': he must be with [i.e., equal to] thee in food and drink, that thou shouldst not eat white bread and he black bread, thou drink old wine and he new wine, thou sleep on a feather bed and he on straw. Hence it was said: Whoever buys a Hebrew slave is like buying a master for himself.

Our Rabbis taught: Then he shall go out from thee, he and his children with him:[15] R. Simeon said: if he is sold, are then his sons and daughters[16] sold?[17] Hence [we learn] that the master is liable for his children's keep.[18] Similarly you read: If he is married, then his wife shall go out with him:[19] R. Simeon said: If he is sold, is then his wife sold? Hence we learn that the master is responsible for his wife's keep. Now, both are necessary. For if we were informed [this] of his children, [I would

say] that is because they cannot work for a living;[20] but as for his wife, who can work for a living, I would say: Let her earn her keep. While if we were informed [this] of his wife, that is because it is not meet for her to go begging; but as for his children, for whom it may be seemly to go begging,[21] I might say: It is not so. Hence both are necessary.

Our Rabbis taught:

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(1) Without ritual slaughter. The first too is repulsive, but sanctioned.

(2) The warrior must not take two.

(3) Lit., 'taking'.

(4) Though she is a heathen, and does not voluntarily accept conversion. — Also, she can only be taken as a legal wife.

(5) Nevertheless one is able to bridle his desire in the knowledge that he will be able to satisfy it at home. Rashi. — War cannot be humanized, nor primitive passions subdued. Yet the Rabbis endeavoured to curb them as far as possible and minimize their evil effects: the captive was to be kindly treated, given the full legal status of a wife, and unmolested in actual battle, — possibly because in cool blood he would altogether recoil from his intentions.

(6) Ex. XXI, 5: 'plainly' is expressed in Hebrew by the doubling of the verb.

(7) The passage is now assumed to mean: if he declares thus at the beginning of the six years.

(8) I.e., on the last day of his term.

(9) When there is no longer left for him a perutah's worth of labour to perform, he is no longer regarded as slave.

(10) Deut. XV, 26; 'thine house'= household, i.e., a wife and children.

(11) Ibid.

(12) Yet he desires to remain on account of his wife and children.

(13) 'Well' understood in the sense of healthy.

(14) I.e., just as thou art.

(15) Lev. XXV, 41.

(16) 'And daughters' is absent in the 'Aruk and in Rashi's commentary on the Pentateuch, where this is quoted.

(17) Why state that they go out?

(18) And at Jubilee they 'go out', i.e., his liability ceases.

(19) Ex. XXI, 3.

(20) Lit., 'work and eat' — the reference is to minors.

(21) Being minors, they suffer no disgrace thereby. — The existence of house-to-house begging in Talmudic times follows from certain passages: Pe'ah, VIII, 7; Shab. 2a, 151b; Sifre, Deut. 116 and elsewhere. But women did not beg, and in consequence it was held more meritorious to support a needy woman than a man (Hor. III, 7; J.D. 251, 8).

Talmud - Mas. Kiddushin 22b

If it were stated, ['Then thou shalt take an awl,] and place his ear unto the door,'[1] I would think, Let a hole be bored against his ear through the door; [hence,] only the door, but not his ear. 'Not his ear!' is it not written: 'and his master shall bore his ear through with an awl':[2] — But I would say, the ear is to be bored outside and then placed on the door and a hole bored through the door opposite the ear:[3] therefore it is stated, ['and thou shalt thrust it] through his ear unto the door'. How so? He continues boring until the door is reached.

'The door': I understand [from this,] whether it is removed [from its hinges] or not: therefore it is stated, ['unto the door, or unto] the doorpost';[4] just as the doorpost must be standing,[5] so must the door be standing.

Rabban Johanan b. Zakkai used to expound this verse as precious stone.[6] Why was the ear singled out[7] from all the other limbs of the body? The Holy One, blessed be He, said: This ear, which heard my Voice on Mount Sinai when I proclaimed, For unto me the children of Israel are servants, they are my servants,[8] and not servants of servants, and yet this [man] went and acquired a master for himself[9] — let it be bored! R. Simeon b. Rabbi too expounded this verse as a precious stone. Why

were the door and doorpost singled out from all other parts[10] of the house? The Holy One, blessed be He, said: The door and the doorpost, which were witnesses in Egypt when I passed over the lintel and the doorposts and proclaimed, For unto me the children of Israel are servants, they are my servants,[11] and not servants of servants, and so I brought them forth from bondage to freedom, yet this [man] went and acquired a master for himself — let him be bored in their presence!

MISHNAH. A HEATHEN SLAVE IS ACQUIRED BY MONEY, DEED, OR BY HAZAKAH,[12] AND REACQUIRES HIMSELF BY MONEY THROUGH THE AGENCY OF OTHERS,[13] AND BY DEED, THROUGH HIS OWN AGENCY:[14] THIS IS R. MEIR'S VIEW. THE SAGES MAINTAIN: BY MONEY, THROUGH HIS OWN AGENCY, AND BY DEED, THROUGH THE AGENCY OF OTHERS;[15] PROVIDING THAT THE MONEY IS FURNISHED BY OTHERS.[16] GEMARA. How do we know this? — Because it is written: And ye shall make them [the heathen slaves] an inheritance for your children after you, to possess as an inheritance;[17] just as a 'field of possession' is acquired by hazakah,[18] so is a heathen slave acquired by money, deed, or hazakah. If so, just as 'a field of possession' reverts to its [original] owner at jubilee, so should a heathen slave revert to his [former] owner at jubilee? Therefore it is stated, of them shall ye take your bondmen for ever.[19]

A Tanna taught: [He may be acquired] by halifin[20] too. And our Tanna?[21] — What is absent in the case of movables he teaches; what is present in the case of movables he does not teach.[22]

Samuel said: A heathen slave may be acquired by meshikah.[23] How so? If he [the purchaser] seizes him [the slave] and he goes to him, he acquires him; if he [merely] calls him and he goes to him, he does not acquire him. As for our Tanna, it [the omission of meshikah] is well: what is absent in the case of movables he teaches; what is present in the case of movables he does not teach.[24] But according to the outside Tanna,[25] let meshikah be taught?[26] — He teaches only what applies to both land and movables, but meshikah, which is possible in the case of movables but not of land, he does not teach. 'How so? If he seizes him and he goes to him he acquires him; if he [merely] calls him and he goes to him, he does not acquire him.' But it was taught: How [is an animal acquired] by mesirah?[27] If he seizes it by its hoof, hair, the saddle which is upon it, the saddle-bag upon it, the halter in its mouth, or the bell round its neck, he acquires it. How [does one acquire] by meshikah? He calls it and it comes, or he strikes it with a stick and it runs before him, immediately it lifts a foreleg and a hindleg, he acquires it. R. Assi-others state, R. Aha — said: It must walk its full length before him![28] — I will tell you: an animal walks by its master's volition; a slave, by his own.[29] R. Ashi said: A slave who is a minor is as an animal.[30]

Our Rabbis taught: How [is a heathen slave acquired] by hazakah? If he unlooses his shoes for him [the purchaser], or carries his baggage after him to the baths; if he undresses, washes him, anoints,[31] scrapes,[32] dresses him, puts on his shoes, or lifts him, he acquires him. R. Simeon said: Let hazakah not be greater than lifting, for lifting acquires everywhere. What does he mean? — Said R. Ashi: [The first Tanna implies,] if he [the slave] lifts his master, he acquires him; if his master lifts him, he does not acquire him. Thereupon R. Simeon observed: Hazakah should not be greater[33] than lifting, seeing that lifting acquires everywhere.[34]

Now that you say that if he lifts his master he acquires him — if so, a heathen bondmaid should be acquired by intercourse?[35] — When do we say this, when one derives pleasure and the other pain;[36] but here both derive pleasure. Then what can be said of unnatural intercourse?[37] Said R. Ahaiy b. Adda of Aha:[38] Who is to tell us that both do not derive pleasure? Moreover, it is written, [Thou shalt not lie with mankind] with the lyings of a woman:[39] thus the Writ compared unnatural to natural intercourse.

R. Judah the Indian was a proselyte who had no heirs. He fell sick and Mar Zutra went and paid

him a sick visit.[40] Seeing him in extremis[41] he said to his [R. Judah's] slave, 'Remove me my shoes and take them to my house'.[42] Some maintain, He [the slave] was an adult:[43]

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(1) Deut. XV, 17: that is the translation if the preposition ב and the conjunction קרשו removed from באזנו and ובדלת respectively.

(2) Ex. XXI, 6.

(3) I.e., from the other side of the door (Rashi).

(4) Ibid.

(5) Otherwise it is not a doorpost.

(6) [The phrase apart from the older interpretation 'pearl' has been also taken to denote (a) according to the method of the Dorshe Hamuroth (v. Sot. Sonc. ed. p. 80, n. 7.); (b) a 'changed' or 'figurative' meaning. V. Lauterbach J.Z. J.Q.A. (N.S.) I. pp. 503ff.] I.e., he deduced from it an important ethical principle — man's freedom.

(7) Lit., 'different'.

(8) Lev. XXV, 55.

(9) When he might have been free.

(10) Lit., 'vessels'.

(11) Though this was not said then, it does in fact summarize the purpose of Israel's liberation from Egyptian bondage.

(12) V. Glos. The latter two even if the money has not been paid; then the purchase price is an ordinary debt, which does not affect the validity of the transaction.

(13) They must give the money to his master to purchase his freedom. But if they give it to him even with the stipulation that his master shall have no rights therein, it is the master's, because R. Meir holds that a heathen slave cannot legally acquire anything without passing it on to his master.

(14) He himself must receive the deed of emancipation.

(15) Who receive the deed for him.

(16) The money is given to him specifically for that purpose, and he gives it to his master. But if the slave finds money, or has it given him, it belongs to his master.

(17) Lev. XXV, 46.

(18) Like all other landed property.

(19) Ibid.

(20) V. Glos.

(21) Why does he omit halifin?

(22) The three methods of acquisitions taught are all ineffective for ordinary movables, whereas halifin can acquire these too.

(23) V. Glos.

(24) Meshikah gives a title to movables.

(25) I.e., the Tanna of the Baraitha, which was not included in Rabbi's compilation of the Mishnah, but taught 'without'.

(26) If Samuel is right, just as halifin is taught.

(27) V. Glos.

(28) Thus, when an animal comes in answer to a call it is acquired; why not a slave?

(29) Even when he obeys a call, he does so by his own desire, unless the master forcibly seizes him.

(30) He has no volition of his own and therefore may be acquired by a summons.

(31) Massaging with oil was an essential part of the bath. It was and is common in the Orient, and amongst the Romans and Greeks, and had its cause in the hot climate, which causes all living bodies to emit an unpleasant odour; v. Krauss, T.A., I, 229 and 233.

(32) With a kind of brush to tone up the circulation.

(33) More effective.

(34) Lifting is one of the methods of acquiring movables: there, of course, the purchaser lifts the article to be acquired. Hence here too, if the master lifts the slave, i.e., the article to be acquired, he gains a title to him.

(35) Which is also a form of lifting.

(36) I.e., the slave does an act of servitude from which he personally derives no pleasure.

(37) Where only the male derives pleasure.

(38) [A village near Mount Hermon, Horowitz. I. S. Palestine. s.v.]

(39) Lev. XVIII, 22: lit., translation; 'lyings' is understood to refer to two forms of coition, natural and unnatural.

(40) Lit., 'to enquire concerning him'.

(41) Lit., 'he saw that the world weighed very heavily upon him.'

(42) He wished the slave to be in his service when his master died, so as to acquire him by hazakah.

(43) And Mar Zutra wished that he should not be without a master for a single moment at his master's death, as he would thereby become free.

Talmud - Mas. Kiddushin 23a

one [R. Judah] departed to death, and the other [the slave] departed [from his former master] to life.[1] Others maintain, He was a minor, and this was not in accordance with Abba Saul. For it was taught: If a proselyte dies [without heirs] and Israelites take possession of his property, which includes slaves, whether adults or minors, they gain their liberty.[2] Abba Saul said: Adults acquire their freedom, but as for minors, whoever takes possession of them [even afterwards] gains a title to them.[3]

AND REACQUIRES HIMSELF BY MONEY etc. . . . BY MONEY ONLY THROUGH THE AGENCY OF OTHERS, but not through his own. What are the circumstances? Shall we say, without his [the slave's] knowledge? Then consider: we know that R. Meir maintains, It is to a slave's disadvantage to leave his master for freedom;[4] and we learned: One may obtain a privilege for a person in his absence, but cannot so act to his disadvantage.[5] Hence it obviously means with his knowledge [consent], and we are informed this: only through the agency of others [can he be emancipated thus,] but not through his own, thus proving that a slave has no rights of acquisition apart from his master.[6] If so, cite the second clause: BY DEED THROUGH HIS OWN AGENCY: only through his own agency, but not through that of others. But if with his consent, why not through the agency of others? And should you answer, what is meant by THROUGH HIS OWN AGENCY? Through his own agency too, and we are thus informed that his deed [of emancipation] and his hand [i.e., the right to acquire for himself] come simultaneously[7] — But it was not taught so? For it was taught: By deed through his own agency, but not that of others: this is R. Meir's view? — Said Abaye: After all, [it means] without his knowledge. Yet money is different: since he [the master] may acquire him [the slave] against his will, he can liberate him[8] against his will. If so, the same applies to deed? — This deed is separate and that deed is separate.[9] But here too, this money is separate and that money is separate?[10] — The impress is nevertheless the same.[11] Raba said: In the case of money, its receipt by the master effects it [his liberation]: but as for deed, its receipt by others effects it.[12]

THE SAGES MAINTAIN: BY MONEY THROUGH HIS OWN AGENCY. Only through his own agency, but not through the agency of others? Why? Granted that it is without his knowledge, yet consider: we know that the Rabbis hold that it is to his advantage to go out from his master's authority to liberty, and we learnt: You may obtain a privilege for a person in his absence, but can act to his disadvantage only in his presence. And should you answer, what is meant by THROUGH HIS OWN AGENCY? Through his own agency too, and we are thus informed that a slave has rights of acquisition independently of his master. — If so, cite the second clause: BY DEED, THROUGH THE AGENCY OF OTHERS, [implying] but not through his own: but it is an establish — ed law that his deed and hand come simultaneously?[13] And should you answer, what is the meaning of, THROUGH THE AGENCY OF OTHERS? Through the agency of others too, and we are thus informed that it is to the slave's advantage to leave his master for freedom: if so, they should be combined and taught together: By money and by deed through the agency of others or his own? — But [it means this:] By money, both through the agency of others and his own; by deed, through the agency of others but not his own, and it agrees with R. Simeon b. Eleazar. For it was taught: R. Simeon b. Eleazar said: By deed too only through the agency of others, but not his own.[14] Thus there are three differing opinions in the matter.[15]

Rabbah said: What is R. Simeon b. Eleazar's reason? — He learns the meaning of 'lah' [to her] here from a [married] woman:[16] just as a woman [is not freed] until she withdraws the divorce into a domain that is not his [her husband's],[17] so a slave too [is not freed] until he withdraws his deed [of emancipation] into a domain that is not his [the master's].

Rabbah propounded:

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(1) I.e., with the death of R. Judah he automatically passed into Mar Zutra's possession.

(2) Having been for a moment without a master, they remain permanently free.

(3) Hence Mar Zutra's care that they should be in his service at the actual moment of death does not agree with Abba Saul's view. So Rashi, on the basis of the reading in current edition. Alfasi, Asheri, and R. Tam read: and this was (even) in accordance with Abba Saul. Though they could not gain their liberty, he put them into his service lest another take possession of them.

(4) For as the slave of a priest he may eat terumah, which is now forbidden him. Again, as a slave he is permitted to live with a heathen bondmaid: this too will now be forbidden. — These are the reasons given in Git.11b.

(5) Such an action being invalid.

(6) As explained in the note on the Mishnah, q.v.

(7) In the very moment of taking the deed he is free, and hence can accept it on his own behalf. Otherwise, his acceptance would be just as though his master held it, and he would not be free.

(8) Lit., 'give him possession' — of himself.

(9) The wording of the two deeds, purchase and manumission, are different: consequently the same reasoning does not apply.

(10) Being given for different purposes.

(11) There is nothing in the coins themselves to shew their different purposes.

(12) In the case of money the master accepts it on his own behalf, not on that of the slave's; therefore the latter's consent is unnecessary. But deed is accepted by others on the slave's behalf; therefore his consent is required.

(13) V. p. 111, n. 1.

(14) He does not hold that the deed and his rights of acquisition come simultaneously.

(15) (i) R. Meir: By money, through the agency of others, even without his knowledge, but not through his own; and by deed through his own agency but not of others. (ii) R. Simeon b. Eleazar: Both by money and deed, through the agency of others but not his own. (iii) The Rabbis in our Mishnah: Both by money and deed, through the agency of others and his own. Hence both are not combined because the second clause is not the Rabbis' statement but R. Simeon b. Eleazar's.

(16) Here: a bondmaid . . . whose freedom was not given (to) her (lah) — Lev. XIX, 20; a married woman; then he shall write (to) her (lah) a bill of divorcement; Deut. XXIV, 1.

(17) As it is written, and give it in her hand (ibid.), and she does not belong bodily to her husband.

Talmud - Mas. Kiddushin 23b

According to R. Simeon b. Eleazar,[1] can a heathen slave appoint an agent to receive his deed of emancipation from his master:[2] since he deduces 'lah', 'lah', from a [married] woman, he [the slave] is as a married woman:[3] or perhaps, a woman, who can accept the divorce herself, can also appoint an agent; whereas a slave, who cannot accept his deed of emancipation himself, cannot[4] appoint an agent either! After propounding, he solved it himself: We deduce 'lah', 'lah', from a [married] woman, [hence] he is as a married woman. If so, when R. Huna son of R. Joshua said: These priests are agents of the All-Merciful One, for should you think they are ours, is there aught which we ourselves may not do while they may do [it on our behalf]?[5] — is there not? What of a slave, who cannot accept his deed of manumission himself, can yet appoint an agent? — But that [analogy] is fallacious: an Israelite has no connection with the laws of sacrifices at all;[6] whereas a slave has a connection with deeds of manumission. For it was taught: It appears correct that a slave can accept his companion's deed from his companion's master, but not from his own.[7]

PROVIDING THAT THE MONEY IS FURNISHED BY OTHERS. Shall we say that they differ in this: R. Meir holds, A slave has no powers of acquisition distinct from his master, nor a wife distinct from her husband; whereas the Rabbis maintain, A slave can acquire independently of his master and a wife of her husband? — Said Rabbah in R. Shesheth's name: All hold that a slave cannot acquire independently of his master, nor a wife of her husband. But the circumstances are here that a stranger gave him[8] a maneh, saying, 'On condition that your master has no right to it.' R. Meir maintains, When he says to him, 'Acquire [it,]' the slave acquires it and [ipso facto] his master; and when he says to him, 'on condition [etc.],' he says nothing.[9] Whereas the Rabbis hold, Since he stipulates, 'on condition,' the stipulation is effective.[10] But R. Eleazar said: In such a case all agree that the slave acquires it and [ipso facto] his master. But the circumstances are here that a stranger gave him a maneh, saying: 'On condition that you obtain your freedom therewith.' R. Meir holds that when he says to him, 'Acquire [it],' the slave acquires it and [ipso facto] his master; when he says: 'on condition,' he says nothing. Whereas the Rabbis maintain, He did not give possession of it [even] to him [the slave], since he said to him, 'Only on condition that you gain your freedom therewith.'

Now, R. Meir is self contradictory, and the Rabbis likewise. For it was taught:

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(1) Who maintains that a slave cannot receive his own deed.

(2) Tosaf. gives two interpretations: (i) Obviously, as stated above, another person must accept it on his behalf. This, however, may be only if the slave does not explicitly appoint him his agent, but if he does, he becomes legally as himself, and just as he himself cannot accept the deed, his agent cannot either. (ii) When another person accepts it on his behalf, must he be his agent, just as the person who accepts a woman's divorce on her behalf must be distinctly appointed by her for that purpose? If so, on the view that it is to the slave's advantage to be freed, the agency is tacitly assumed: while if we hold that it is to his disadvantage, he must be expressly appointed. Or possibly, he does not act in the character of an agent at all, since the slave himself could not have accepted it. In that case, not only is an express appointment unnecessary, but even if the slave actually protests against it, his protest is unavailing.

(3) And just as she can appoint an agent, so can he (or, so must he — v. preceding note).

(4) Or, need not.

(5) V. Ned. 35b. The question is: When a priest offers a sacrifice on behalf of an Israelite, does he act as his agent or as God's? The practical difference is where an Israelite vows to derive no benefit from a certain priest: on the first alternative, the priest may not offer his sacrifices for him; on the second, he may.

(6) He cannot offer a sacrifice for himself or for another Israelite.

(7) In the first case the deed leaves the master's possession, but not in the second.

(8) Lit., 'caused him to acquire'.

(9) I.e., the stipulation is invalid.

(10) Hence he can be liberated by money through his own agency.

Talmud - Mas. Kiddushin 24a

A woman cannot redeem second tithe without [adding] a fifth. R. Simeon b. Eleazar said on R. Meir's authority: A woman can redeem second tithe without [adding] a fifth.[1] Now, how is this meant? Shall we say, [she redeems it] with her husband's money, the second tithe also being her husband's — then she merely acts as her husband's agent.[2] But if with her money[3] and his tithe, the Divine Law said, [And if] a man [will redeem aught of his tithe, then he shall add there to the fifth part thereof],[4] but not his wife?[5] Hence it surely refers to such a case, viz., that a stranger gave her a maneh, and said,'On condition that you redeem the tithe therewith,' and thus we learn that they hold contrary opinions.[6] — Said Abaye: Then reverse it.[7] Raba said: After all, you need not reverse it, but here the reference is to tithe which came [to her] from her father's estate,[8] R. Meir following his opinion that tithe is sacred property,[9] so that her husband does not acquire it.[10] The Rabbis too are in accord with their view that tithe is secular property, [the usufruct of which] her husband acquires. Therefore she is [merely] deputising for her husband.

A Tanna taught: He [the heathen slave] goes out [free] through [the loss of] his eye, tooth, and projecting limbs which do not return.[11] Now, as for [the loss of] his tooth or eye, it is well: these are written.[12] But how do we know [the loss of] the projecting limbs? — By analogy with tooth and eye: just as these are patent blemishes, and do not return, so [is he freed for the loss of] all [limbs which are] patent blemishes and do not return. But let us say that 'tooth' and 'eye' are two laws[13] which come as one,[14] and whenever two verses come as one, they do not illumine [other cases].[15] — Both are necessary. For had the All-Merciful mentioned 'tooth' [only], I would have argued, [It refers] even

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(1) Second tithe produce was eaten in Jerusalem, or it was redeemed and the money expended in Jerusalem. When one redeemed his own, he added a fifth of its value, but not when he redeemed second tithe belonging to another, unless the owner deputed him. It is assumed that this Baraitha refers to the crops of her husband's field.

(2) And must certainly add a fifth.

(3) Money, the principal of which by the terms of the marriage settlement belonged to her, while her husband enjoyed its usufruct. This money, and all other property held by a wife on the same terms, are designated 'property of plucking' (v. Glos. s.v. mulug).

(4) Lev. XXVII, 31.

(5) I.e., his wife ranks as a stranger.

(6) To those they hold on the question of a slave's freedom. — The rights of a slave and a woman are similar: either they can both acquire independently or both can not.

(7) The first Tanna rules that she does not add a fifth; R. Meir holds that she must add a fifth.

(8) Lit., 'the house of the wife'. I.e., she inherited it as her father's heir. Property acquired by a woman after marriage is likewise 'property of plucking'.

(9) Lit., 'money'.

(10) V. infra 52b and 54b. Since it really belongs to God, the Rabbis did not enact that the husband should enjoy its usufruct; hence it is entirely her own, and when she redeems it with her husband's money, no fifth is necessary. (For redeeming one's own tithe with money belonging to another is the same in law as redeeming another Person's tithe with one's own money.)

(11) Lit., 'tips of limbs'. Once lost, just as the eyes and teeth.

(12) Ex. XXI, 26f.

(13) Lit., 'verses'.

(14) I.e., to teach the same thing. For this analogy could be drawn only if one were mentioned.

(15) For otherwise, only 'eye' or 'tooth' should have been mentioned, and by analogy the other, as well as all limbs the loss of which has the same result, would be included.

Talmud - Mas. Kiddushin 24b

to a milk tooth;[1] therefore the All-Merciful wrote 'eye'.[2] And had the All-Merciful written 'eye', I would have thought,just as the eye is created with him, so must all [for whose loss he is emancipated] be created with him [i.e., at birth], but not a tooth. Thus both are necessary.[3] But let us say, [And] if [a man] smite[4] — that is a general proposition;[5] 'the tooth . . . the eye' — that is a specification; and in a general proposition followed by a specification the former includes only that contained in the latter: hence, only 'tooth' and 'eye' but nothing else! — 'He shall let him go free' is another general proposition. And in a sequence of generalization, specification and generalization, you can only include[6] what is similar to the specification: just as the specification is explicit as a patent blemish and does not return, so for all [limbs whose loss are] patent blemishes and do not return [the slave is freed]. If so, [say] just as the specification is explicit as a patent blemish, ceases to do its work,[7] and does not return, so for all [limbs whose loss are] patent blemishes, cease to function, and do not return [the slave is freed]! Why [then] was it taught: If he [the master] plucked out his [the slave's] beard and thereby loosened his [jaw.] bone,[8] the slave is liberated on their account?[9] — 'He shall let him go free' is an amplification.[10] But if it is an amplification, even if he

struck his hand and it withered, but it will ultimately heal,[11] he should also [be freed]? Why was it taught: If he struck his hand and it withered, but it will ultimately heal, the slave is not freed on its account? — If so,[12] of what use are 'tooth' and 'eye'?[13]

Our Rabbis taught: On account of all these[14] a slave gains his freedom, yet he needs a deed of emancipation:[15] this is R. Simeon's opinion. R. Meir said: He does not need one. R. Eleazar said: He does need one; R. Tarfon said: He does not need one. R. Akiba said: He needs one. Those who sought to make a compromise before the Sages said: R. Tarfon's view is preferable in respect of tooth and eye, seeing that the Torah conferred the privilege [of freedom] upon him [as compensation];[16] and R. Akiba's view in respect of other limbs, since it is a punishment of the Sages [that the slave is freed]. 'A punishment'? Surely [Scriptural] verses are [here] expounded![17] — But [say thus:] since it is an exposition of the Sages.[18]

What is R. Simeon's reason? — He learns the meaning of 'sending' here from a [married] woman:[19] just as a woman [is sent forth] by deed, so is a slave too [sent forth] by deed. And R. Meir?[20] — Were 'to freedom' written at the end [of the verse, it would be] as you say;[21] since, however, it is written: 'to freedom shall he send him away', it implies that he is free at the very outset.[22]

Our Rabbis taught: If he smites his eye and blinds it, [or] his ear, and deafens it, the slave goes out [to freedom] on their account; near[23] his eye, so that he cannot see, [or] near his ear, and he can not hear,[24] the slave does not go out [free] on their account. R. Shaman said to R. Ashi: Are we to assume that sound is nothing?[25] But Rami b. Ezekiel learnt: If a cock stretches its head into the cavity of a glass vessel, crows there and breaks it, he [its owner] must pay for it in full. Also, R. Joseph said: The scholars of Rab[26] said: If a horse neighs or an ass brays and breaks utensils in a house, he [their owner] must pay for half the damage![27] — Man is different, he replied; since he is an intelligent being, he frightens himself.[28] As it was taught: If one frightens his neighbour,[29] he is exempt by the law of man, yet liable by the law of Heaven.[30] E.g., if he blows into his ear and deafens him, he is exempt; but if he seizes him, blows into his ear, and deafens him, he is liable.

Our Rabbis taught: If he strikes his eye and dims it,[31] [or] his tooth, and loosens it: if he can [nevertheless] still use them, the slave does not go out free on their account; if not, the slave goes out free on their account. Another [Baraitha] taught: If his eye [sight] was dim, and he [altogether] blinds him,[32] or his tooth was loose, and he knocks it out: if he could use them before, the slave goes out free on their account; if not, the slave does not go free on their account. Now, both are necessary. For if we were taught the first [only], [I would say] that is because his eyesight was originally sound and now it is weak; but here [in the second Baraitha], seeing that his eyesight was impaired before too, I would say [that he does] not [go free]. And if we were taught the second: that is because he completely blinds him; but there [in the first Baraitha] that he does not completely blind him, l would say [that he does] not [go free]. Hence both are necessary. Our Rabbis taught: If his master is a doctor and he asks him to paint his eye [with an ointment], and he blinds him,[33] [or] to drill his tooth, and he knocks it out, he laughs at his master and goes out free. R. Simeon b. Gamaliel said: and he destroy it[34] [implies], only when he intends to destroy. And the Rabbis: how do they employ 'and he destroy it'? — They need it for what was taught: R. Eleazar said: If he inserts his hand in his bondmaid's womb[35] and blinds the child within her, he is free [from punishment].[36] What is the reason? — Because Scripture said: 'and he destroy it', [implying], only when he intends to destroy it. And the other?[37] — He deduces this from 'and he destroy it', [instead of] 'and he destroy'.[38] And the other? — He does not interpret 'he destroy', [and] 'he destroy it'.[39]

R. Shesheth said: If he has a blind eye and he [the master] removes it, the slave is freed on its account. And a Tanna supports this: Perfection[40] and male sex are required in animals[41] but not In birds. I might think, [even] if its wing is palsied, its foot cut off, or its eye picked out [the bird is still

fit]: therefore it is said: And if [the burnt sacrifice be . . .] of fowls,[42] but not all fowls.[43]

R. Hiyya b. Ashi said in Rab's name: If he had

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(1) Which does return; e.g., if the slave was a minor.

(2) Just as an eye does not return, so must the tooth also be one which does not return.

(3) And therefore they are not two verses with the same purpose.

(4) Ex. XXI, 26f.

(5) Implying that the slave is freed for the destruction of any limb.

(6) Lit., 'judge'.

(7) The eye is blinded and the tooth cannot masticate.

(8) This appears to be the meaning of the phrase, and is so understood in J.D. 267, 30, where, 'from the jaw' is added. Jast. s.v. דלדל translates: he loosened a tooth in the slave's jaw. But there seems no sufficient reason for translating עצם here as tooth.

(9) Though the bone still functions.

(10) Not merely a generalization, and therefore it teaches the inclusion of bodily hurts which are not completely similar to the loss of an eye or tooth.

(11) Lit., 'return' — to its normal state.

(12) That nothing at all is excluded.

(13) Hence it must be to exclude injuries which are not permanent.

(14) Viz., the twenty-four projecting limbs.

(15) To legalise his marriage with a free Jewess.

(16) Therefore no deed is required.

(17) To prove the inclusion of other limbs too. Hence they too have Scriptural force.

(18) I.e., the law is derived by Rabbinical exegesis. — The requirement of a deed is only a Rabbinical measure, lest his former master reclaim him as his slave. Hence it is unnecessary in the case of his tooth and eye, for all know that Scripture gave him his freedom. But not all are aware of the Rabbinical exegesis which extended the law to other limbs too; hence the slave needs a document to prove his freedom. — R. Tam. V. also below for another explanation.

(19) Here: To freedom shall he send him away (yeshallehenu); a married woman: then he shall write her a bill of divorce. and send her (we-shillehah, the same verb as yeshallehenu) out of his house — Deut. XXIV, 1.

(20) Does he not accept this exegesis?

(21) For then one might argue: he shall send him — in the manner that a woman is sent away, viz., by deed — and only then is he free.

(22) I.e., as soon as he is assaulted he automatically becomes free, and hence no deed is required. — Now, this can apply only to the loss of his eye or tooth, which are distinctly stated in that verse. But the other limbs are included only because 'he shall send him away' is an extension (v. supra); hence in respect of those, R. Simeon's exegesis, assimilating the freedom of a slave to that of a woman, may still hold good. Therefore those who compromised ruled that a deed is unnecessary when he loses his eye or tooth, but is necessary in all other cases (Riba in Tosaf.).

(23) Lit., 'against'.

(24) I.e., he forcibly strikes a wall or any other object near his ear, and the shock or noise paralyses his optical or aural nerves, rendering him blind or deaf.

(25) Because he was blinded by sound he is not freed.

(26) Be Rab may either mean the students of Rab's college, which he founded and which continued to flourish several centuries after his death, or, scholars in general.

(27) V. B.K. 18b. Thus second is a positive action, for which liability is incurred.

(28) He should be able to control his nerves.

(29) Thereby causing damage.

(30) I.e., legally, he is exempt; morally, he is liable. This proves that in law he is not regarded as having caused the damage.

(31) Seriously impairing his eyesight, but not blinding him.

(32) Lit., 'it'.

(33) Accidentally.

(34) Ex. XXI, 26.

(35) Lit., ‘bowels’ — in order to deliver her of child.

(36) The child, on birth, is not emancipated. There he does not intend doing anything to its eye at all, but here he does.

(37) R. Simeon b. Gamaliel: does he not admit that the word is needed for such a case?

(38) ‘And he destroy’ implies that he must intend to destroy: ‘and he destroy it’ implies that even if he is doing something to it, his intention must be destructive.

(39) I.e., ‘it’ has no particular significance.

(40) I.e., freedom from blemish.

(41) For burnt-offerings.

(42) Lev. I, 14 ‘of is partitive, excluding some fowls.

(43) Thus, though blindness does not disqualify, the loss of a blind eye does. A similar principle operates in the case of a slave.

Talmud - Mas. Kiddushin 25a

an additional [freak] finger and he [his master] cut if off, the slave goes out free. Said R. Huna: Provided that it is counted upon the hand.[1]

[Some] scholars of Nizunia[2] absented themselves from R. Hisda's session.[3] Thereupon he instructed R. Hamnuna, ‘Go put them under the ban.’[4] He went and said to them, ‘Why did you[5] not attend the session?’ ‘Why should we attend?’ replied they, ‘when we ask him questions which he cannot answer?’ ‘Have you ever asked me anything,’ he retorted: ‘which I could not solve?’ [Thereupon] they asked him: What if a slave's stones are castrated by his master, is it an open blemish or not? As he was unable to answer it,[6] they said to him, ‘What is your name?’ ‘Hamnuna,’ he replied. ‘You are not Hamnuna, but Karnuna,’ jeered they.[7] When he came before R. Hisda, he said to him: They asked you a Mishnah. For we learnt: As to the twenty-four tips of limbs of a man, none of these become unclean on account of raw flesh.[8] And these are they: the tips of the fingers of the hands and [the toes of] the feet, the tips of the ears, the tip of the nose, the tip of the membrum, and the nipples of a woman;[9] R. Judah said: Also those of a man. Now, it was taught thereon: For [the loss of] all these a slave obtains his freedom. Rabbi said: For castration too; Ben ‘Azzai said: [For] the [loss of the] tongue too.[10]

The master said: ‘Rabbi said: For castration too.’ Castration of what: shall we say: Castration of the membrum? But that is identical with the [loss of the] membrum. Hence it surely means castration of the stones.[11]

‘Rabbi said: Castration too’. And Rabbi, [does he] not [include] the tongue? But the following contradicts it. If he [a priest] is sprinkling,[12] and the sprinkling[-water] spurts on to his [the unclean man's] mouth, — Rabbi said: He has [validly] besprinkled him;[13] but the Sages maintain: He has not [validly] besprinkled him. Surely that means upon his tongue?[14] — No: upon his lips. ‘Upon his lips!’ but that is obvious? — I might have thought, sometimes his lips are tightly pressed together.[15] Hence we are informed [that they are still regarded as exposed]. But it was taught: on his tongue? Moreover, it was taught: and if the greater length of the tongue was removed;[16] Rabbi said: [even] the greater length of the speaking part of the tongue![17] — But [answer thus:] Rabbi said: Castration too,[18] and the tongue goes without saying. Ben ‘Azzai said: [The loss of the] tongue, but not castration. Then to what does ‘too’ refer?[19] — To the first clause.[20] If so, Ben ‘Azzai's statement should have been given priority? — The Tanna [first] heard Rabbi's view and inserted it[21] [in the teaching]; then he learnt Ben ‘Azzai's view and inserted it, while the teaching remained unchanged.[22]

‘Ulla said: All agree in the matter of uncleanliness that the tongue is [considered] exposed as far as reptiles are concerned. What is the reason? The Divine Law said: And whomsoever [he that hath the issue] toucheth,[23] and this too can be touched. With respect to tebilah[24] it is as hidden.[25] What is

the reason? Scripture saith, then he shall bathe his flesh in water:[26] just as the flesh is exposed, so must all [which requires contact with the water] be exposed. They differ in respect to sprinkling: Rabbi compares it to uncleanliness, whereas the Rabbis compare it to tebillah. And both differ on this verse: And the clean person shall sprinkle upon the unclean [etc.].[27] Rabbi holds, [the verse reads thus:] And the clean person shall sprinkle upon the unclean on the third day, and on the seventh day and purify him.[28] Whereas the Rabbis maintain, [the verse is read thus:] and on the seventh day he shall purify him, and he shall wash his clothes and bathe himself in water.[29] And the Rabbis too: let it be compared with uncleanliness? — purification should be learned from purification.[30] And Rabbi: let it be compared to tebillah? — 'And he shall wash his clothes' disconnects the subject.[31]

Now, does Rabbi hold that it [the tongue] is as concealed in respect of tebillah? But Rabin said in the name of R. Adda in R. Isaac's name: It once happened that a bondmaid of Rabbi's household performed tebillah, ascended [from the water], and a bone was found between her teeth, whereupon Rabbi ordered her [to perform] a second tebillah.[32] — Granted that we do not require the water to enter, we insist that there shall be room for it to enter.[33] And it is in accordance with R. Zera, who said: Whatever is fit for [perfect] mixing, the mixing is not indispensable; whatever is not fit for [perfect] mixing, the mixing is indispensable.[34] [

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(1) I.e., it is on a level with the other fingers and in the same row.

(2) A town lying close to Sura. Obermeyer, op. cit., p. 298.

(3) [Who became head of the School of Sura after the death of Rab Judah.]

(4) Lit., 'cause them to withdraw' and live in retirement — a mild form of excommunication. Presumably he knew that their absence was due to dissatisfaction with his teaching methods.

(5) Lit., 'the Rabbis'.

(6) Lit., 'he did not have it in his hand'.

(7) Rashi connects Karnuna with karona, the market: 'you have frittered your time away in the market place, gossiping, otherwise you could have answered us.' Tosaf. Ham-nuna = a hot fish; Kar-nuna = a cold fish. 'you are a cold fish, not hot' — your knowledge is lifeless.

(8) V. Lev. XIII, 10: 'and there be quick raw flesh in the rising'.

(9) Each being counted separately, we have twenty-four, apart from the woman's addition,

(10) Because it is seen when one peaks; hence its loss is a patent blemish.

(11) That is the conclusion of R. Hisda's reply.

(12) V. Num. XIX, 17, 19.

(13) I.e., he is clean, though the sprinkling must be upon the revealed parts of his body.

(14) Shewing that Rabbi regards the tongue as an exposed limb, and thus contradicting his exclusion of the tongue in the case of a slave.

(15) And they ceased to be exposed. — At this stage, that may be assumed as the reason of the Sages.

(16) In the case of a firstling, that is a blemish, which permits the animal to be eaten as hullin (q.v. Glos).

(17) There too, exposed blemishes are required, and we see that Rabbi regards the loss of the tongue as such.

(18) Though the testicles are always hidden.

(19) Ben 'Azzai said: 'The loss of the tongue too'; this appears an addition to Rabbi's ruling, but it is now obvious that it cannot be.

(20) I.e., the enumeration preceding Rabbi's statement.

(21) Lit., 'fixed it'.

(22) Lit., 'it did not move from its place', i.e., it was not altered so as to give Ben 'Azzai's statement the precedence it logically requires.

(23) Lev. XV, 11; though this refers to a zab (v. Glos.), the same holds good of defilement by a reptile, and this verse shews that it must touch an exposed part of the person.

(24) V. Glos.

(25) In tebillah, the whole of the exposed part of a person must come into contact with the water; but not the tongue, for it is regarded as concealed.

(26) Ibid.13.

(27) Num. XIX, 29.

(28) By linking 'the unclean' with 'purify him', he deduces that whatever part can become unclean may be validly sprinkled; hence the tongue is included.

(29) They connect 'shall purify' i.e., sprinkle, with 'bathe himself, i.e., tebillah. Hence sprinkling must be on the same part which needs tebillah, thus excluding the tongue.

(30) . I.e., the two phrases bearing on cleanliness must be coupled.

(31) Therefore 'shall purify' cannot be linked with 'bathe himself.'

(32) Which shews that the water must enter the mouth.

(33) I.e., though the water need not pass through the crevices between the teeth, yet it must be possible, whereas the bone rendered it impossible.

(34) In Men. 103b it is stated: A meal offering of more than sixty 'esronim ('isaron pl. 'esronim = one tenth of an ephah) cannot be offered in one utensil, because it cannot be perfectly mixed with the oil. Hence if sixty-one 'esronim are vowed, sixty are brought in one vessel, and one in another. Now the Talmud objects, But we learnt that the offering is valid even if not mixed at all? R. Zera's dictum is the answer, and the same principle applies here.

Talmud - Mas. Kiddushin 25b

This[1] is disputed by Tannaim. And that which is bruised, or crushed, or broken, or cut [ye shall not offer unto the Lord][2] — all these refer to the stones: that is R. Judah's opinion. To the stones and not to the membrum![3] But all these refer to the stones too: that is R. Judah's opinion. R. Eliezer b. Jacob said: They all refer to the membrum.[4] R. Jose said: 'Bruised and crushed' refer to the stones too,[5] whereas 'broken or cut' refer only to the membrum but not to the stones.[6]

MISHNAH. LARGE CATTLE[7] ARE ACQUIRED BY MESIRAH[8] SMALL CATTLE[9] BY LIFTING: THIS IS THE OPINION OF R. MEIR AND R. ELIEZER.[10] BUT THE SAGES RULE: SMALL CATTLE ARE ACQUIRED BY MESHIKAH.

GEMARA. Rab lectured in Kimhunia:[11] Large cattle are acquired by meshikah. Samuel, meeting Rab's disciples, said to them, Did Rab rule that large cattle are acquired by meshikah? But we learnt: BY MESIRAH, and Rab too [previously] ruled, by mesirah! Did he then retract from that [view]? — He ruled in accordance with this Tanna. For it was taught: But the Sages maintain, Both [large cattle and small] are acquired by meshikah. R. Simeon said: Both by lifting. R. Joseph demurred: If so, how can an elephant be acquired, according to R. Simeon? — Said Abaye to him: By halifin, or by renting its place.[12] R. Zera said: He [the purchaser] brings four utensils and places them under its feet.[13] Then you may infer from this that when the purchaser's utensils are in the vendor's domain [and a bought commodity is placed in them] the purchaser obtains a title.[14] — The reference here is to an alley.[15]

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(1) The question whether castration of testicles is a patent blemish and so frees the slave.

(2) Lev. XXII, 24.

(3) Surely if the membrum is cut or broken it is a patent blemish!

(4) But not to the testicles, which in his view are concealed and do not disqualify the animal.

(5) As then they are more noticeable.

(6) For these are less noticeable. — A slave is freed when his master blemishes him in such a way that an animal would thereby be unfit for a sacrifice, and thus the question of his stones is disputed by these Tannaim.

(7) Of the bovine race — cows, oxen, etc.

(8) Delivery, the vendor gives it over to the purchaser.

(9) Sheep, goats etc.

(10) So the reading in cur. edd. S. Strashun and Alfasi read Eleazar, the reference being to R. Eleazar h. Shammua', a contemporary of R. Meir.

(11) Neubauer, Geographie, p. 397 identifies Kimhunia with Gamach, a town in upper Armenia; Obermeyer, op. cir. p.

296, (v. also n. 4. a.l.) rejects this identification and places it in the vicinity of Sura.

(12) It then becomes his temporarily, and the elephant too; v. Mishnah on 26a.

(13) I.e., causes the elephant to step upon them; he is then regarded as having placed it in his utensils, so acquiring it.

(14) For presumably the elephant was standing in the vendor's grounds. But this question is disputed in B.B. 85a.

(15) Adjoining a public thoroughfare: this is a 'no man's land'.

Talmud - Mas. Kiddushin 26a

Alternatively, [this refers] to bundles of faggots.[1]

MISHNAH. PROPERTY WHICH OFFERS SECURITY[2] IS ACQUIRED BY MONEY, BY DEED OR BY HAZAKAH. [PROPERTY] WHICH DOES NOT OFFER SECURITY[3] CAN BE ACQUIRED ONLY BY MESHIKAH. PROPERTY WHICH DOES NOT OFFER SECURITY MAY BE ACQUIRED IN CONJUNCTION WITH PROPERTY WHICH PROVIDES SECURITY BY MONEY, DEED, OR HAZAKAH;[4] AND IT OBLIGATES THE PROPERTY WHICH PROVIDES SECURITY, TO TAKE AN OATH CONCERNING THEM.[5]

GEMARA. BY MONEY: Whence do we know it? — Said Hezekiah: Scripture saith, men shall acquire fields with money.[6] Yet perhaps [the purchase is invalid] unless there is a deed [too], since it continues, and subscribe the deeds, and attest them? — Were 'acquire' written at the end, it would be as you say; now, however, that 'acquire' is written at the beginning,[7] money gives a title, while the deed is merely evidence.[8]

Rab said: This was taught only of a place where a deed is not indited; but where it is, money alone gives no title. Yet if he [the vendee] distinctly stipulates,[9] it is so.[10] E.g., when R. Idi b. Abin bought land he used to say: 'If I wish, I acquire it by money; if I wish, I acquire it by deed.' [Thus:] 'If I wish, I acquire it by money,' so that should you desire to retract [after I have paid], you cannot. 'And if I wish, I acquire it by deed,' so that should I desire to withdraw,[11] I can.

AND BY DEED. How do we know it? Shall we say, because it is written, and subscribe the deeds, and attest them, and call witnesses[12] — but you have said that the deed is merely evidence? — But from this verse, so I took the deed of purchase.[13]

Samuel said: This was taught only of a deed of gift. But in the case of sale, no title is obtained until the money is paid.[14] R. Hamnuna objected: By deed: E.g., if he [the vendor] writes for him [the vendee] on paper or a shard,[15] even if worth less than a perutah. 'My field is sold unto you,' 'my field is given unto you,' it is sold and gifted![16] — He raised the objection. and he answered it: This refers to one who sells his field because of its poor quality.[17] R. Ashi said: He really wished to present it to him as a gift; why then did he indite it with the phraseology of purchase? In order to strengthen his rights therein.[18]

AND BY HAZAKAH. How do we know it? — Said Hezekiah: Scripture saith, and dwell in the cities that ye have taken:[19] how did ye take it? By dwelling therein.[20] The School of R. Ishmael taught: And ye shall possess it, and dwell therein:[21] whereby shall ye possess it? By dwelling therein.

PROPERTY WHICH DOES NOT PROVIDE SECURITY CAN BE ACQUIRED ONLY BY MESHIKAH. Whence do we know it? — Because it is written, and if thou sell aught unto thy neighbour, or buy of thy neighbour's hand,[22] [intimating] that an article is acquired [by passing] from hand to hand.[23] But according to R. Johanan, who maintained, By Biblical law, money gives a title,[24] what can be said? — The Tanna teaches the Rabbinical enactment.[25]

PROPERTY WHICH DOES NOT PROVIDE SECURITY [etc.]. How do we know it? — Said Hezekiah, Because Scripture saith, And their father gave them gifts . . . with fenced cities in Judah.[26] The scholars propounded: Need they [the movables] be heaped up [upon the land] or not?[27] — Said R. Joseph, Come and hear: R. Akiba said: Land, whatever its size, is liable to pe'ah[28] and first fruits,[29]

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(1) Not less than three handbreadths high. When he causes the elephant to step upon them, he is regarded as having lifted it.

(2) Real estate which may be mortgaged for debts, and remain liable to seizure even if subsequently sold.

(3) I.e., movables, because the creditor cannot distrain upon them if sold.

(4) If one sells land and movables, as soon as the purchaser acquires the land by one of these three methods, the movables automatically become his. — Hazakah, lit., 'taking possession,' e.g., if the vendee performs some small labour therein, such as digging, threshing, closing or making a gap in its fences.

(5) In litigation over real estate, no oath is administered; whereas for movables it is. In a dispute concerning both, since an oath is taken for the latter, it is taken for the former too.

(6) Jer. XXXII, 44.

(7) I.e., before the mention of deeds,

(8) Of the sale.

(9) That either money or deed shall suffice. [Tosaf. Ri: either the vendor or buyer, whoever makes the terms, is at an advantage.]

(10) Lit., 'he has stipulated'.

(11) After paying, but before the deed is drawn up.

(12) Jer. XXXII, 44.

(13) Ibid. 11; this shews that the deed itself consummates the purchase.

(14) Unless otherwise stipulated (Rashi).

(15) Shards were used for this purpose in very ancient times: v. Krauss, T.A. 111, 147f, and n. 113a, 1.

(16) Thus the deed suffices even for a sale. — The meaning is assumed to be, it is sold or gifted.

(17) Being anxious to get rid of it, he is desirous that the deed itself shall consummate the transaction, so that the vendee may not withdraw.

(18) Should the donor's creditors seize it for debt, the recipient would be able to claim its value, as stated in the deed, from him. Hence it is literally meant: it is both sold and gifted.

(19) Jer. XL, 10.

(20) I.e., by hazakah, possession.

(21) Deut. XI, 31.

(22) Lev. XXV, 14.

(23) I.e., by meshikah.

(24) In the case of movables.

(25) That only meshikah gives a title. The reason of the enactment was this: should money itself transfer the purchase to the vendee, even before he takes possession, and a fire break out on the vendor's premises where the goods lie, he will not trouble to save them. V. B.M. 47b.

(26) II Chron. XXI, 3; thus, they acquired the gifts, which were movables, in conjunction with the fenced cities, sc. real estate.

(27) When they are to be acquired along with it.

(28) V. Glos.

(29) V. Deut. XXVI, 2.

Talmud - Mas. Kiddushin 26b

[is fit] for a prosbul[1] to be written thereon, and that property which does not provide security [movables] shall be acquired along with it. But if you say: They must be heaped thereon, for what is a very small piece of land fit? — R. Samuel b. Bisna explained it in R. Joseph's presence: E.g., if he sticks a needle therein.[2] Said R. Joseph to him. You annoy us:[3] has the Tanna troubled to teach us

about a needle! — Said R. Ashi: who tells us that he did not suspend a pearl on it, worth a thousand zuz?

Come and hear: R. Eleazar said: It once happened that a certain Meronite[4] in Jerusalem had a large quantity of movables, which he desired to give away. He was thereupon informed that he had no other means but to transfer them along with land. What did he do? He went and bought beth sela'[5] near Jerusalem and declared: 'The north of this belongs to So-and-so, and together with it go a hundred sheep and a hundred barrels';[6] on his death his directions were carried out. But if you say: They [the movables] must be heaped up thereon, for what is beth sela' fit? — Do you think that by beth sela' literally a sela' [coin] is meant? What is sela'? A large area; and why was it called sela'? Because it was as hard as a rock.[7]

Come and hear: For Rab Judah said in Rab's name: It once happened that a certain man who fell ill in Jerusalem (that is in accordance with R. Eleazar's view) — others state, he was in good health, which agrees with the Rabbis[8] — had a large quantity of movables, which he desired to dispose of as a gift. Thereupon he was told that he had no other option but to transfer it along with land. What did he do? He went and purchased [a field] a quarter [kab's sowing] in area[9] and declared: 'Let a square handbreadth[10] belong to So-and-so, and with it go a hundred sheep and a hundred barrels':[11] on his death, the Sages confirmed his testimony. Now, if you say that they [the movables] must be heaped up thereon, for what is a square handbreadth fit? — The reference here is to money.[12] Reason too supports this. For should you think that a hundred sheep and a hundred barrels are meant literally, he should have transferred them by barter![13] What then: money? Then he could have transferred it to him by meshikah? But [it must mean] that the recipient is absent; then here too,[14] it means that the recipient is absent. Then he should have transferred it to him by another?[15] — He could not rely thereon, fearing that the other would steal and consume it. Then what is meant by 'he had no other option'? — It means this: in view [of the fact] that he has no confidence [in a stranger], there is no other course but to transfer it in virtue of real estate.

Come and hear: Rabban Gamaliel and some elders were once travelling in a ship. Said Rabban Gamaliel to the elders, 'Let the tenth which I am to measure out

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(1) V. Glos. The prosbul was a deed whereby a creditor transferred his debts to the Beth din, which were then regarded as though already collected from the debtor, so that the seventh year did not cancel them. This was done only if the debtor possessed land. — This measure was instituted by Hillel, who saw that people refused to lend money when the seventh year was approaching, with consequent hardships for the poor; v. Git. 36a.

(2) Which is acquired along with the land.

(3) Or, insolent man!

(4) A townsman of Meron in Galilee, south of Giscala. The reading here and in the MS. F of B.B. 156b is מדוני .

(5) This may have several meanings: (i) a piece of land the size of a sela', the coin; (ii) a piece of land comprising just one rock, upon which it would be impossible to place anything; and (iii) a piece of rocky soil. The first or second is assumed to be meant.

(6) In B.B. 156b it continues: and the south part to So-and-so, etc.

(7) So that it could be bought very cheaply.

(8) R. Eleazar maintains that a gift, even if made by a very sick person on point of death, is not validly transferred by mere words, but the recipient must perform an act of acquisition. Hence the following story can refer even to a sick person. But the Rabbis hold this unnecessary in the case of a sick person, whose verbal testimony suffices; hence what is related must have happened to a man in good health.

(9) On the basis that two sela'im (twelve kabs) of seed are required for 5,000 sq. cubits; 'Er. 23b.

(10) A handbreadth one sixth of a cubit.

(11) And the recipient acquired the land by one of the recognised methods.

(12) He gave them money worth all that, and money could actually be placed thereon.

(13) Halifin v. Glos. Coin cannot be so acquired (B.M. 46a).

(14) I.e., even if sheep and barrels are meant literally.
(15) Who would accept it on his behalf.

Talmud - Mas. Kiddushin 27a

be given to Joshua,[1] and its place [where it is lying] be rented to him; and the other tenth which I am to measure out be given to Akiba b. Joseph, that he shall acquire it on behalf of the poor,[2] and its place be rented to him'.[3] This proves that they must be heaped up thereon.[4] — [No:] there it was different, for he did not wish to give them trouble.[5] Come and hear: For Raba b. Isaac said in Rab's name: There are two [different kinds of] deeds. [Thus: If a man declares,] 'Acquire a title to this field on behalf of So-and-so, and indite a deed for him,'[6] he can retract from the deed[7] but not from the field. [But if he stipulates,] 'on condition that you indite a deed for him,' he can retract from both the deed and the field.[8] R. Hiyya b. Abin said in R. Huna's name: There are three [kinds of] deeds. Two, as just stated. The third: If the vendor anticipates [payment] and indites a deed for him [the vendee], in accordance with what we learnt: A deed may be written for the vendor[9] even though the vendee is not with him,[10] then as soon as he takes possession of the land, the deed is vested [in the vendee] wherever it is.[11] This proves that they need not be heaped up thereon![12] — A deed is different, as it is the bit of the land.[13] But thereon it was taught: This is [an example of] what we learnt, PROPERTY WHICH DOES NOT PROVIDE SECURITY MAY BE ACQUIRED IN CONJUNCTION WITH PROPERTY WHICH PROVIDES SECURITY BY MONEY, BY DEED OR BY HAZAKAH. This proves that they need not be heaped up thereon! This proves it.

The scholars propounded: Is 'by dint' [thereof] necessary or not?[14] — Come and hear: For all these [cases] are taught,[15] and yet 'by dint of is not mentioned. And on your view; is 'Let him acquire it' taught?[16] But it must mean, only when he says: 'Acquire it'; then here too, [it may mean] only when he says: 'By dint of.'[17] Now, the law is: they need not be heaped thereon, whereas 'Acquire it,' and 'By dint of are essential.

The scholars propounded: What if the field is sold and the movables are gifted?[18] — Come and hear: 'The tenth which I am to measure out to be given to Joshua and its place be rented to him.' This proves it.[19]

The scholars propounded: What if the field [is transferred] to one person, and the movables to another?[20] — Come and hear: 'A tenth which I am to measure out be given to Akiba b. Joseph, that he shall acquire it on behalf of the poor, and its place be rented to him.'[21] [This does not solve it:] What is meant by 'rented'? Rented for the tithe.[22] Alternatively, R. Akiba was different, for he was the hand of the poor.[23]

Raba said: This was taught[24] only if he [the purchaser] had paid the money for them all. But if he had not paid the money for them all, he acquires only to the extent of his money. It was taught in agreement with Raba. The power of money is superior to that of a deed, and the power of a deed is superior to that of money. The power of money is superior [etc.], in that hekdesh[25] and the second tithe[26] are redeemed therewith, which is not so in the case of deed.[27] And the power of a deed is superior, for a deed can free an Israelite daughter,[28] which does not hold good of money. And the power of both is superior to that of hazakah, and the power of hazakah is superior to that of both. The power of both is superior [etc.], in that both give a title to a Hebrew slave, which is not so in the case of hazakah. And the power of hazakah is superior to that of both: For with hazakah, if A sells B ten fields [situate] in ten countries, as soon as B takes possession[29] of one, he acquires all.

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(1) I.e., R. Joshua b. Hanania, who was a Levite.
(2) It was either the third or the sixth year after the year or release (shemittah), when a tithe must be given to the poor. R. Akiba was the charity overseer.

(3) And they were to obtain a title in virtue of the place. — Rashi states: R. Gamaliel had forgotten to separate the tithes before leaving home, nor had he authorized his household to do so, and he was afraid that they might eat thereof before his return. Tosaf.: It was the time when all tithes had to be given up (likewise at the end of the third and the sixth years: though the tithes were separated before, they might be kept in the house of the Israelite until then), and R. Gamaliel chose this way of giving it. In that case it would appear that the tithes had already been separated, but the phrase, 'which I am to measure out' suggests otherwise; v. Rashal and Maharsha. v. B.M. (Sonc. ed.) p. 62 and notes.
(4) Otherwise, why specify the particular spot where they lie?
(5) The place being rented to them, they could remove the tithes at their convenience. But had he rented some other place to them, he might have wanted the spot where they were lying.
(6) As evidence of ownership.
(7) Should he say: 'I do not wish him to have proof that the field is his.'
(8) For they are interdependent.
(9) Viz., my field is sold to X.
(10) Either where the vendee has already formally obtained a title thereto, or, according to Abaye, even without it, the mere attesting of such a deed causing the transfer.
(11) Though not actually on the land.
(12) For fuller notes v. B.B. (Sonc. ed.) p. 309.
(13) Like the bit used for leading a horse. I.e., the deed is valueless in itself, but a part of the land transaction, of which it is evidence. But other movables, valuable in themselves, possibly need not be heaped up on the land.
(14) אגב i,e., must the vendor or donor state that the movables are to be acquired in virtue of the land?
(15) On 26b: a hundred sheep etc.
(16) Though it is certain that that must be said.
(17) And they are omitted because they are taken for granted.
(18) Can the latter be acquired through the former?
(19) For the tithe was gifted, whereas the place was rented, which is a temporary sale.
(20) Can one say: 'Acquire the field, and in virtue thereof let So-and-so acquire the movables'?
(21) Thus the tenth was for the poor, while the place was rented to R. Akiba.
(22) And no other purpose. Hence it was really rented to the poor.
(23) I.e., he was their representative.
(24) That movables are acquired along with land.
(25) The plural hekdashoth, sacred objects, viz., animals dedicated to the altar which had subsequently received a blemish, or any object consecrated for Temple use.
(26) V. p. 4, n. 4.
(27) The writing of a deed obligating the owner with their redemption value does not redeem them.
(28) From the marriage bond, viz., divorce.
(29) By means of hazakah, which is the meaning of hehezik.

Talmud - Mas. Kiddushin 27b

When is this? If he has paid him for all; but if he has not paid the money for all, he gains a title only to the extent of his money. This supports Samuel. For Samuel said: If A sells B ten fields [situate] in ten countries, as soon as B takes possession of one, he then acquires all. Said R. Aha, son of R. Ika: The proof is: if he delivered him ten cows [tied] by one cord,[1] and said to him, 'Acquire them': would he not acquire then, [all]?[2] — How compare? he objected. There the tie is in his hand,[3] whereas here the tie is not in his hand. Others state, R. Aha, son of R. Ika, said: The proof that he does not acquire [them all][4] is: if he delivered him ten cows [tied] by one cord and said to him, 'Acquire this one: would he acquire them all?[5] — How compare: there they are separate entities; but here, The earth is one block.[6]

AND THEY OBLIGATE THE PROPERTY etc. 'Ulla said: How do we derive [the law of] the superimposed oath[7] from the Torah? — Because it is said: And the woman shall say: Amen, Amen.[8] And we learnt: To what does she say: Amen? Amen to the curse,[9] Amen to the oath,[10] Amen that

[she was] not [unfaithful] by this man,[11] Amen that [she was] not [unfaithful] by any other man.[12] Amen that I did not go aside as an arusah, a nesu'ah, when waiting for the yabam,[13] or as a kenusah.[14] Now, how is this arusah meant? Shall we say that he [the arus] warned her[15] when an arusah and makes her drink [the bitter waters][16] likewise as an arusah, — but we learnt: An arusah and one who waits for the yabam neither drink nor receive their kethubah:[17] why? Because the Divine Law said, [and if thou hast not gone aside to uncleanliness,] being under thy husband,[18] which [condition] is absent![19] But if it means that he warned her as an arusah, she privily closeted herself [with the man against whom she was warned] likewise when an arusah, and he makes her drink when a nesu'ah[20] — then can the water test her? Surely Scripture said: And the man shall be free from iniquity,[21] [which means,] when the husband himself is free from sin, water tests his wife; if the husband himself is not free from sin, water cannot test his wife![22] Hence [it is possible only] by means of superimposition.[23]

Now, we have found this [a superimposed oath] in the case of sotah,[24] which belongs to ecclesiastical law.[25] How do we know it of civil law? — The School of R. Ishmael taught: A minori: if we superimpose [an oath] in the case of a sotah,

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(1) Lit., 'bit'.

(2) E.g., if he seized one of them by its hair (Tosaf.). [Or by taking hold of the cord, on the view (supra 25b), that large cattle are acquired by Mesirah (Tosaf. Ri)].

(3) The animals are all tied together.

(4) In contradiction to Samuel.

(5) Surely not.

(6) All land is regarded as ultimately connected.

(7) I.e., an oath which would not be taken by itself, except in conjunction with another which must be taken in any case?

(8) Num. V, 22; this refers to the priest's adjuration concerning the charge of adultery.

(9) Ibid. 21.

(10) Ibid. 19.

(11) With whom she was now accused of having committed adultery.

(12) I.e., that she was not unfaithful in general.

(13) In the period between her husband's death and either her marriage, (yibum) or her emancipation (halizah) from the yabam.

(14) Lit., 'gathered in,' the designation of a yebamah after her marriage to the yabam.

(15) Lit., 'was jealous of her'; v. ibid.14; i.e., he formally expressed his jealousy in the presence of two witnesses and forbade her to closet herself privily with the object of his suspicions.

(16) V. Num. V, 24.

(17) I.e., they are divorced or given halizah, but forfeit their marriage settlements.

(18) Ibid. 19.

(19) For neither may live with her husband (viz., the arus or yabam) until the marriage ceremony is completed.

(20) I.e., after his warning was ignored, he completed and consummated the marriage, and then subjected her to the water ordeal. — If a woman disregards her husband's warning he must not live with her; hence he himself sinned in consummating the marriage.

(21) Ibid. 31.

(22) This interpretation is put upon the sentence because in its literary sense it is unnecessary; why would we have thought that the husband bears blame?

(23) I.e., it is impossible that an oath shall be taken by itself for misconduct whilst an arusah. She can swear in the first place only because she is charged with adultery when a nesu'ah, and upon this another oath is superimposed, viz., that she was not unfaithful as an arusah too.

(24) A wife charged with adultery, v. Glos.

(25) **איסורא** , lit., 'prohibition,' is used in contradistinction to tbunn money, i.e., civil law dealing with financial questions only.

though it [the oath] cannot be demanded of her on the evidence of one witness [only];[1] then in the case of a monetary claim, where a demand [for an oath] can be made on the evidence of one witness,[2] it surely follows that we superimpose [an oath]. Now, we have thus learnt this of a positive claim; how do we know it of a case of doubt?[3] — It was taught: R. Simeon b. Yohai said: An oath was ordered without [the Temple Court],[4] and an oath was ordered within [the Temple Court]: just as in the oath decreed within, doubt was made equal to certainty;[5] so also in the oath decreed without, doubt was made equal to certainty.

How far does the superimposed oath [go]? — Said Rab Judah in Rab's name: Even if he demands of him, 'Swear to me that you are not my slave.'[6] But he indeed is placed under the ban! For it was taught: If one calls his neighbour 'slave',[7] let him be placed under the ban; 'mamzer',[8] . . . he receives forty [lashes]; 'wicked', [rasha'] he may strive[9] against his very livelihood![10] — But, said Raba: [He may demand of him:] 'Swear to me that you were not sold to me as a Hebrew slave'. But that is a proper claim? he owes him money![11] — Raba follows his general view. For Raba said: A Hebrew slave belongs bodily [to his master].[12] If so, it is the equivalent of land?[13] — I might have thought, Only land is it usual for people to sell secretly: had he sold it, it would not be generally known; but as for this,[14] had he sold himself, it would have been known.[15] Therefore we are informed [that it is not so].

MISHNAH. WHATEVER CAN BE USED AS PAYMENT FOR ANOTHER OBJECT, AS SOON AS ONE PARTY TAKES POSSESSION THEREOF, THE OTHER ASSUMES LIABILITY FOR WHAT IS GIVEN IN EXCHANGE.[16] HOW SO? IF ONE BARTERS AN OX FOR A COW, OR AN ASS FOR AN OX, AS SOON AS ONE PARTY TAKES POSSESSION, THE OTHER BECOMES LIABLE FOR WHAT IS GIVEN IN EXCHANGE.[17]

GEMARA. What is the barter? Money![18] Then this proves that coin can become [an object of] barter.[19] — Said Rab Judah: This is its meaning: Whatever is assessed as the value of another object,[20]

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(1) At least two witnesses must testify to her closeting herself (v. Sotah 2a).

(2) If A claims money from B and produces one witness to support his claim, B must swear that it is false; Sheb. 40a.

(3) E.g., A and B are partners in a business; when they come to dissolve partnership, A cannot demand that B shall swear that he did not purloin anything from the business, in order to satisfy his doubts. If, however, B is bound to swear on account of another matter, he must swear on this too. Now, it cannot be argued that this too follows a fortiori from sotah, where the charge of adultery is likewise only doubtful. For the principal oath in connection with sotah is entirely due to doubt; hence the superimposed oath is likewise. But in money matters the principal oath is imposed for a positive claim only.

(4) All oaths provided for in Scripture were taken without the Temple Court, except the oath of a sotah.

(5) In respect of swearing a superimposed oath.

(6) And if he must in any case swear on another matter, he must swear on this too.

(7) Probably as a result of his liaison with a heathen bondmaid.

(8) Bastard; v. Glos.

(9) Lit., 'descend'.

(10) So Rashi, V. also MGWJ. Festschrift, 1934, p. 127, n. 1; also the whole art. a.l. Buchler, Familienreinheit u. Sittlichkeit im zweiten Jahrundert, which discusses this Baraitha at considerable length.

(11) I.e., he is really claiming his service, which is an ordinary monetary claim, and there is nothing remarkable in the defendant's having to take a superimposed oath. Hence this is not a fitting answer to the question, 'How far does a superimposed oath go?'

(12) V. supra, p. 70, n. 2. Hence it is not an ordinary claim of money.

(13) For a heathen slave, belonging bodily to his master, ranks as real estate (v. supra 22b) and the same will apply to a

Hebrew slave according to Raba's dictum. But then it is already stated in the Mishnah.

(14) The claim under discussion.

(15) Lit., 'It has a sound.' Hence the claim is prima facie false, and no superimposed oath is taken, for this too requires some verisimilitude (Tosaf.).

(16) I.e., for the halipin, or barter thereof.

(17) Even before it actually reaches his hands.

(18) For it is assumed that WHATEVER CAN BE USED AS PAYMENT refers to, or at least includes, money. Hence the Mishnah teaches: If A exchanges a cow for B's money, the money not being given as payment but as barter, just as an ox might have been given, immediately A receives the money, B accepts the risks of anything that may happen to the cow, which is now in his possession. That is so, notwithstanding that had the money been given as payment, A's receipt thereof would not have transferred ownership of the cow to B.

(19) This is disputed by Amoraim in B.M. 46a, hence the Mishnah refutes the opposing view.

(20) I.e., anything but money, which needs no assessment.

Talmud - Mas. Kiddushin 28b

as soon as one party takes possession, the other assumes liability for what is given in exchange. This follows too from the statement, HOW SO? IF ONE BARTERS AN OX FOR A COW, OR AN ASS FOR AN OX. This proves it. Now, on the original hypothesis, that coin can effect a barter, what is meant by HOW SO?[1] — It means this: And produce too can effect a barter. HOW SO? IF ONE BARTERS AN OX FOR A COW, OR AN ASS FOR AN OX, as soon as one party takes possession, the other assumes liability for what is given in exchange. Now, this agrees with R. Shesheth, who maintained: Produce can effect a barter. But on R. Nahman's view, viz., that produce cannot effect a barter, what can be said? — It means this: Money sometimes ranks as [an object of] barter. HOW SO? IF ONE BARTERS THE MONEY OF AN OX FOR A COW, OR THE MONEY OF AN ASS FOR AN OX.[2] What is the reason? — He agrees with R. Johanan, who said: Biblically speaking, money effects a title. Why then was it decreed that only meshikah gives possession? As a precautionary measure, lest he say to him, 'Your wheat was burnt in the loft.'[3] Now, the Rabbis enacted a preventive measure only for a usual occurrence, but not for an unusual occurrence.[4] Now, according to Resh Lakish, who maintains that meshikah is explicitly required by Biblical law: it is well if he agrees with R. Shesheth, who rules [that] produce can effect a barter; then he can explain it as R. Shesheth. But if he holds with R. Nahman, that produce cannot effect a barter, whilst money does not effect a title [at all], how can he explain it?[5] — You are forced to say that he agrees with R. Shesheth.[6]

MISHNAH. THE SANCTUARY'S[7] TITLE TO PROPERTY [IS ACQUIRED] BY MONEY; THE TITLE OF A COMMON MAN TO PROPERTY BY HAZAKAH.[8] DEDICATION TO THE SANCTUARY IS EQUAL TO DELIVERY TO A COMMON PERSON. GEMARA. Our Rabbis taught: How is the Sanctuary's title [acquired] by money? If the [Temple] treasurer pays money for an animal, even if the animal is at the world's end, he acquires it; whereas a common person gains no title until he performs meshikah. How is dedication to the Sanctuary equal to delivery to a common person? If one declares, 'This ox be a burnt-offering,' 'This house be hekdesh,' even if they are at the world's end, it [hekdesh] acquires them; whereas a common person gains no title[9]

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(1) I.e., why is an instance given which does not illustrate the use of money as barter?

(2) E.g., A sells an ox to B for a certain sum of money, and B takes possession, thereby becoming indebted to A for the purchase price. Then B says: 'I will give you a cow for the purchase price of the ox,' to which A agrees. Now, though this is theoretically a fresh transaction, viz., B sells a cow to A, the money owing by B for the ox being regarded as though delivered to him by A for the cow, and it is a principle that the delivery of money alone does not consummate a purchase, it does so here, and neither can retract, i.e.,it is barter, not payment.

(3) V. p. 126, n. 7.

(4) Such a transaction as described in note 2; consequently, the Biblical law operates.

(5) For, as we have seen, on the original hypothesis either of these is involved.

(6) The whole passage occurs again in B.M. 46a-b.

(7) Lit., 'the Highest'.

(8) This is explained in the Gemara.

(9) In similar circumstances.

Talmud - Mas. Kiddushin 29a

until he performs meshikah or hazakah. If one [a common person] performs meshikah with it when it is worth a maneh,[1] but has no time to redeem it [pay the money] until it rises to two hundred [zuz,] he must pay two hundred.[2] What is the reason? — [Scripture saith,] Then he shall pay the money, and it shall be assured to him.[3] If he performs meshikah when it is worth two hundred and has no time to redeem it until it falls to a maneh, he must pay two hundred. What is the reason? — That the rights of a layman should not be stronger[4] than those of hekdesh.[5] If he redeems it when it is worth two hundred, and has no time to perform meshikah before it falls to a maneh, he must pay two hundred.[6] What is the reason? — [Scripture saith,] 'Then he shall pay the money, and it shall be assured to him.' If he redeems it at a maneh, and has no time to perform meshikah before it rises to two hundred, what he has redeemed is redeemed, and he pays only a maneh. Why? here too, let us say: The rights of a layman should not be stronger than those of hekdesh?[7] — Must not a common person submit [to the curse,] 'He who punished [etc.]?'[8] MISHNAH. ALL OBLIGATIONS OF THE SON UPON THE FATHER,[9] MEN ARE BOUND, BUT WOMEN ARE EXEMPT. BUT ALL OBLIGATIONS OF THE FATHER UPON THE SON, BOTH MEN AND WOMEN ARE BOUND. ALL AFFIRMATIVE PRECEPTS LIMITED TO TIME,[10] MEN ARE LIABLE AND WOMEN ARE EXEMPT. BUT ALL AFFIRMATIVE PRECEPTS NOT LIMITED TO TIME ARE BINDING UPON BOTH MEN AND WOMEN. AND ALL NEGATIVE PRECEPTS, WHETHER LIMITED TO TIME OR NOT LIMITED TO TIME, ARE BINDING UPON BOTH MEN AND WOMEN; EXCEPTING, YE SHALL NOT ROUND [THE CORNERS OF YOUR HEADS],[11] NEITHER SHALT THOU MAR [THE CORNER OF THY BEARD],[12] AND, HE SHALL NOT DEFILE HIMSELF[13] TO THE DEAD.[14]

GEMARA. What is the meaning of ALL OBLIGATIONS OF THE SON UPON THE FATHER? Shall we say, all which the son is bound to perform for his father? Are then women [i.e., daughters] exempt? But it was taught: [Every man, his mother and his father ye shall fear:][15] 'every man:' I know this only of a man; whence do I know it of a woman? When it is said: 'Every man, his mother and his father ye shall fear' — behold, two are [mentioned] here.[16] — Said Rab Judah: This is the meaning: ALL OBLIGATIONS OF THE SON, [WHICH LIE] UPON THE FATHER to do to his son, MEN ARE BOUND, BUT WOMEN [MOTHERS] ARE EXEMPT. We thus learnt [here] what our Rabbis taught: The father is bound in respect of his son, to circumcise, redeem,[17] teach him Torah, take a wife for him, and teach him a craft. Some say, to teach him to swim too, R. Judah said: He who does not teach his son a craft, teaches him brigandage, 'Brigandage'! can you really think so! — But it is as though he taught him brigandage.[18]

'To circumcise him.' How do we know it? — Because it is written: And Abraham circumcised his son Isaac.[19] And if his father did not circumcise him, Beth din[20] is bound to circumcise him, for it is written: Every male among you shall be circumcised.[21] And if Beth din did not circumcise him, he is bound to circumcise himself, for it is written: And the uncircumcised male who will not circumcise the flesh of his foreskin, that soul shall be cut off.[22]

How do we know that she [the mother] has no such obligation? — Because it is written, ['And Abraham circumcised his son . . .] as God had commanded him': 'him,' but not 'her' [the mother]. Now, we find this so at that time;[23] how do we know it for all times?[24] — The School of R. Ishmael taught: whenever 'command' is stated,[25] its only purpose is to denote exhortation for then and all

time.[26] Exhortation, as it is written. But charge Joshua, and encourage him, and strengthen him.[27] Then and for all time, as it is written, front the day that the Lord gave commandment, and onward throughout your generations.[28]

'To redeem him.' How do we know it? — Because it is written, and all the firstborn of man among thy sons shalt thou redeem.[29] And if his father did not redeem him, he is bound to redeem himself, for it is written, [nevertheless the firstborn of man] thou shalt surely redeem.[30] And how do we know that she [his mother] is not obliged [to redeem him]? — Because it is written, thou shalt redeem [tifdeh] [which may also be read] thou shalt redeem thyself [tippadeh]: one who is charged with redeeming oneself is charged to redeem others; whereas one who is not charged to redeem oneself is not charged to redeem others. And how do we know that she is not bound to redeem herself?[31] — Because it is written, thou shalt redeem [tifdeh], [which may be read] thou shalt redeem thyself the one whom others are commanded to redeem, is commanded to redeem oneself: the one whom others are not commanded to redeem is not commanded to redeem oneself. And how do we know that others are not commanded to redeem her? — Because the Writ saith, 'and all the firstborn of man among thy sons shalt thou redeem':'[32] 'thy sons', but not thy daughters.

Our Rabbis taught: If there is himself to redeem[33] and his son to redeem, he takes precedence over his son. R. Judah said: His son precedes him, for the precept in respect to the latter lies [primarily] upon his father, whereas that concerning his son lies [primarily] upon himself. Said R. Jeremiah: All agree,

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(1) A hundred zuz.

(2) This refers to an article sold by hekdesh. A common person has to perform meshikah, as for an ordinary secular article; nevertheless he gains no title if it advances in price before he pays.

(3) But not before. Actually there is no such verse; but v. B.M. (Sonc. ed.) p. 321, n. 1: the deduction will likewise be from 'shekel', i.e., the shek,el alone (viz., money) gives the title. But in Shab. 128a s.v. i,bu Tosaf. states that the deduction is from Lev. XXVII, 19: then he shall add the fifth part of the money of thy estimation unto it, and it shall be assured to him,

(4) Lit.,'stricter'.

(5) For meshikah of secular property immediately vests the title in the purchaser, rendering him liable for its full value as at the time of meshikah.

(6) I.e., he cannot claim a rebate.

(7) And in a private transaction the vendor can retract if the article appreciates after the money is paid but before meshikah.

(8) V. B.M. 44a; though the vendor may withdraw, a curse is pronounced: 'He who punished the generation of the flood . . . will punish him who does not stand by his word.'

(9) The meaning of this is discussed in the Gemara.

(10) Literally, caused by the time. Which are performed at particular times or seasons.

(11) Lev. XIX, 27.

(12) Ibid.

(13) Ibid. XXI, 1.

(14) In the Mishnaic language these are turned into substantives by the use of bal (not) joined to the second pers. impf. of the relevant verb. — These ordinances are binding upon men only.

(15) Lev. XIX, 3.

(16) I.e., the Plural 'ye'.

(17) If the son is a firstborn.

(18) Having no occupation, he must take to theft.

(19) Gen. XXI, 4.

(20) V. Glos.

(21) Gen. XVII. 10; this is command in general terms, not particularly to the father, and hence is applied to Beth din.

(22) Ibid. 14.

(23) That Abraham, not Sarah, was commanded.
(24) Lit., 'for generations'.
(25) As here: as God had commanded him.
(26) Lit., 'for immediately and for generations'. [Rashi renders: to denote exhortation, to be zealous in the fulfilment of the command, that it comes into force immediately, and that it is binding for all generations.]
(27) Deut. III ,28.
(28) Num. XV, 23.
(29) Ex. XIII, 13.
(30) Num. XVIII, 15. The deduction is from the emphatic 'surely', expressed in Hebrew by the doubling of the verb.
(31) Though 'among thy sons' is explicitly stated, the verse may imply that a father is bound to redeem his son only, but the daughter must redeem herself when she grows up.
(32) Ex. XXXIV, 20.
(33) His father not having done so.

Talmud - Mas. Kiddushin 29b

if only five sela's are available, he takes precedence over his son. What is the reason? A precept affecting his own person is more important. They differ when there are five sela's [worth of property] sold[1] and five sela's free. R. Judah holds: A debt decreed in Scripture is as one indited in a bond:[2] hence, with these five sela's [that are free] he redeems his son, while the priest goes and seizes the five sela's [worth] that is sold on account of himself [the father]. But the Rabbis maintain, A debt decreed in Scripture is not as one indited in a bond; therefore a precept touching his own person is more important.[3]

Our Rabbis taught: If one has his son to redeem and the duty of making the festival pilgrimage,[4] he must [first] redeem his son and then make the Festival pilgrimage. R. Judah said: He must first make the Festival pilgrimage and then redeem his son, for the one is a passing precept[5] whereas the other is not a passing precept. As for R. Judah, it is well, the reason being as he states. But what is the reason of the Rabbis? — Because Scripture states: All the firstborn of thy sons thou shalt redeem,[6] and only then is it stated, and none shall appear before me empty.[7]

Our Rabbis taught: How do we know that if one has five [firstborn] sons by five wives, he is bound to redeem them all? From the verse: 'All the firstborn of thy sons thou shalt redeem.' But that is obvious, [since] the Divine Law made it dependent upon the opening of the womb?[8] — I might have argued, Let us learn the meaning of 'firstborn' here from inheritance.[9] Just as there, the beginning of his strength [is meant], so here too;[10] therefore we are informed [that it is not so].

'To teach him Torah.' How do we know it? — Because it is written. And ye shall teach them your sons.[11] And if his father did not teach him, he must teach himself, for it is written, and ye shall study.[12] How do we know that she [the mother] has no duty [to teach her children]? — Because it is written, we-limaddetem [and ye shall teach], [which also reads] u-lemadetem [and ye shall study]:[13] [hence] whoever is commanded to study, is commanded to teach; whoever is not commanded to study, is not commanded to teach. And how do we know that she is not bound to teach herself? — Because it is written, we-limaddetem [and ye shall teach] — u-lema — detem [and ye shall learn]: the one whom others are commanded to teach is commanded to teach oneself; and the one whom others are not commanded to teach, is not commanded to teach oneself. How then do we know that others are not commanded to teach her? — Because it is written: 'And ye shall teach them your sons' — but not your daughters.[14]

Our Rabbis taught: If he has himself to teach and his son to teach, he takes precedence over his son. R. Judah said: If his son is industrious, bright,[15] and retentive,[16] his son takes precedence over him. Thus R. Jacob, son of R. Aha b. Jacob, was once sent by his father [to study] under Abaye. On

his return he [his father] saw that his learning was dull. 'I am better than you,' said he to him; 'do you [now] remain here, so that I can go'. Abaye heard that he was coming. Now, a certain demon haunted Abaye's schoolhouse, so that when [only] two entered, even by day, they were injured. He [Abaye] ordered, 'Let no man afford him hospitality;[17] perhaps a miracle will happen [in his merit].' So he [R. Aha b. Jacob] entered and spent the night in that schoolhouse, during which it [the demon] appeared to him in the guise of a seven-headed dragon. Every time he [the Rabbi] fell on his knees [in prayer] one head fell off. The next day he reproached them: 'Had not a miracle occurred, you would have endangered my life.'

Our Rabbis taught: If one has to study Torah and to marry a wife, he should first study and then marry. But if he cannot [live] without a wife, he should first marry and then study. Rab Judah said in Samuel's name: The halachah is, [A man] first marries and then studies. R. Johanan said: [With] a millstone around the neck, shall one study Torah! Yet they do not differ: the one refers to ourselves [Babylonians]; the other to them [Palestinians].[18]

R. Hisda praised R. Hamnuna before R. Huna as a great man. Said he to him, 'When he visits you, bring him to me. When he arrived, he saw that he wore no [head-]covering.[19] 'Why have you no head-dress?' asked he. 'Because I am not married,' was the reply. Thereupon he [R. Huna] turned his face away from him. 'See to it that you do not appear before me [again] before you are married,' said he. R. Huna was thus in accordance with his views. For he said: He who is twenty years of age and is not married spends all his days in sin. 'In sin' — can you really think so? — But say, spends all his days in sinful thoughts.

Raba said, and the School of R. Ishmael taught likewise: Until the age of twenty, the Holy One, blessed be He, sits and waits. When will he take a wife? As soon as one attains twenty and has not married, He exclaims, 'Blasted be his bones!'[20]

R. Hisda said: The reason that I am superior to my colleagues is that I married at sixteen.[21] And had I married at fourteen,

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(1) [Before the birth of his son, v. Tosaf.]

(2) Hence the five sela's he owes for his own redemption is like a written liability, contracted before he sold the land, and therefore his creditor, i.e., the priest to whom the redemption money is due, can distrain upon this property.

(3) For a creditor can distrain upon mortgaged property that is sold only if he holds a note against the debt.

(4) On Passover, Pentecost, and Tabernacles every male was to visit the Temple at Jerusalem: Deut. XVI, 16.

(5) When the Festival is gone it cannot be carried out.

(6) Ex. XXXIV, 20.

(7) Ibid. With reference to the Festival pilgrimage.

(8) Ibid. 19.

(9) Here, as stated; inheritance: Deut. XXI, 17: Bur he shall acknowledge . . . the firstborn, by giving him a double portion of all that he hath; for he is the beginning of his strength.

(10) I.e., his own firstborn.

(11) Deut. XI, 19.

(12) Deut. V, 1. The education of children in olden times was in their parents' hands, organized teaching being for adults only. The defects of this system were obvious, and schools were established in Jerusalem and later in the provinces for children from the ages of six or seven and upwards. These reforms are variously ascribed to R. Simeon b. Shetah and the High Priest Joshua b. Gamala; v. Halevy, Doroth I, 111, p. 466 and note a.l.

(13) [So Rashi. The derivation may however be based on the analogy of Deut. XI, 9 and V, 1.]

(14) Differing opinions were held on the desirability of educating women. R. Eliezer's strong opposition is well-known (Sot. III, 4), though the probability is that he referred to advanced Talmudic education only. The laws referring to women's obligation to certain prayers imply that they must have been instructed in the elements of Judaism at least; and it is noteworthy that in the ideal state ascribed to Hezekiah's reign, women were fully educated (Sanh. 94b).

(15) Var. lec. filled (with a desire to learn).
(16) Lit., ‘his learning endures in his hand.’
(17) Lit., ‘lodging place’, so that he might be compelled to spend the night in the academy.
(18) Rashi: The Babylonian scholars used to travel to Palestine, the home of the Mishnah; hence they were free of household worries, and so might marry before study. But the Palestinians, studying at home and bearing family responsibilities, could make no progress if married, and so they were bound to study first. Tosaf. reverses the interpretation.
(19) A sudarium with which married men used to cover their heads. V. supra p. 29, n. 5.
(20) [MS.M. תיפח נפשו , ‘May he be blasted’.]
(21) So that my mind was entirely free for study.

Talmud - Mas. Kiddushin 30a

I would have said to Satan, An arrow in your eye.[1] Raba said to R. Nathan b. Ammi: Whilst your hand is yet upon your son's neck,[2] [marry him], viz., between sixteen and twenty-two. Others state, Between eighteen and twenty-four. This is disputed by Tannaim. Train up a youth in the way he should go:[3] R. Judah and R. Nehemiah [differ thereon]. One maintains, [‘Youth’ means] between sixteen and twenty-two; the other affirms, Between eighteen and twenty-four.

To what extent is a man obliged to teach his son Torah? — Said Rab Judah in Samuel's name: E.g., Zebulun, the son of Dan, whom his grandfather taught Mikra [Scripture], Mishnah, Talmud,[4] halachoth and aggadoth.[5] An objection is raised: If he [his father] taught him Mikra, he need not teach him Mishnah; whereon Raba said: Mikra means Torah?[6] — Like Zebulun b. Dan, yet not altogether so. Like Zebulun b. Dan, whom his grandfather taught: yet not altogether so, for whereas there [he was taught] Mikra, Mishnah, Talmud, halachoth and aggadoth, here [i.e., as a general rule] Mikra alone [suffices].

Now, is the grandfather under this obligation? Surely it was taught: And ye shall teach them your sons,[7] but not your sonsð sons. How then do I interpret[8] [the verse], and thou shalt make them known unto thy sons, and thy sons’ sons?[9] As shewing that to him who teaches his son Torah, the Writ ascribes merit as though he had taught him, his son and his son's son until the end of all time![10] — He agrees with the following Tanna. For it was taught: ‘And ye shall teach them your sons’: hence I only know, your sons. How do I know your sons sons? From the verse: ‘and thou shalt make them known unto thy sons and thy sons’ sons’. If so, why state, ‘thy sons’? — To teach: ‘thy sons, but not thy daughters.

R. Joshua b. Levi said: He who teaches his grandson Torah, the Writ regards him as though he had received it [direct] from Mount Sinai, for it is said; ‘and thou shalt make them known unto your sons and your sons’ sons’, which is followed by, that is the day that thou stoodest before the Lord thy God in Horeb.[11] R. Hiyya b. Abba found R. Joshua b. Levi wearing a plain cloth upon his head[12] and taking a child to the synagogue [for study].[13] ‘What is the meaning of all this?’ he demanded.[14] ‘Is it then a small thing,’ he replied: ‘that it is written: ‘and thou shalt make them known to your sons and your sons’ sons’; which is followed by, that is the day that thou stoodest before the Lord thy God in Horeb’? From then onwards R. Hiyya b. Abba did not taste meat[15] before revising [the previous day's lesson] with the child and adding [another verse]. Rabbah son of R. Huna did not taste meat until he took the child to school.

R. Safra said on the authority of R. Joshua b. Hanania: What is meant by, and thou shalt teach them diligently [we-shinnantem] unto thy children?[16] Read not we-shinnantem, but we-shillashtem: [you shall divide into three]: one should always divide his years into three: [devoting] a third to Mikra, a third to Mishnah, and a third to Talmud. Does one then know how long he will live? — This refers only to days.[17]

The early [scholars] were called soferim[18] because they used to count all the letters of the Torah.[19] Thus, they said, the waw in gahon[20] marks half the letters of the Torah; darosh darash,[21] half the words; we-hithggalah,[22] half the verses. The boar out of the wood [mi-ya'ar] doth ravage it:[23] the 'ayin of ya'ar[24] marks half of the Psalms.[25] But he, being full of compassion, forgiveth their iniquity,[26] half of the verses.

R. Joseph propounded: Does the waw of gahon belong to the first half or the second? Said they [the scholars] to him, Let a Scroll of the Torah be brought and we will count them! Did not Rabbah b. Bar Hanah say,[27] They did not stir from there until a Scroll of the Torah was brought and they counted them? — They were thoroughly versed in the defective and full readings,[28] but we are not.

R. Joseph propounded: Does wehithgalah belong to the first half or the second? Said Abaye to him, For the verses, at least, we can bring [a Scroll] and count them! — In the verses too we are not certain. For when R. Aha b. Adda came,[29] he said: In the West [Palestine] the following verse is divided into three: And the Lord said unto Moses, Lo, I come unto thee in a thick cloud [etc.].[30]

Our Rabbis taught: There are five thousand, eight hundred and eighty-eight verses in the Torah;[31] the Psalms exceed this by eight;[32] while Chronicles[33] are less by eight.

Our Rabbis taught: And thou shalt teach them diligently[34] [means] that the words of the Torah shall be clear-cut in your mouth, so that if anyone asks you something, you should not shew doubt and then answer him, but [be able to] answer him immediately, for it is said,

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(1) I defy you! being absolutely free from impure thoughts. In the Bible, Satan has the general connotation of adversary (v. I Kings V, 18; I Sam. XXIX, 4; Ps. CIX, 4), and at first he is not regarded as a distinct being. In Job, however, he does appear so, viz., as the celestial prosecutor; but even then, he cannot act independently, but requires God's permission. It is only later that he appears as an independent agent (I Chron. XXI, 2). The early portions of the Talmud mention him very rarely. but gradually belief in him spread. the popular concepts possibly forcing their way upwards from the lower classes. V. J.E. art. Satan.

(2) While you have yet power and influence over him.

(3) Prov. XXII, 6; i.e., marry him.

(4) The discussion of the Mishnah.

(5) V. Glos.

(6) The Pentateuch. In the earliest terminology we find Torah and Mikra opposed, the former referring to the Pentateuch and the latter to the other Books of the Bible (v. J.E., 'Bible, Canon', III, 142); here they are identified.

(7) Deut. XI, 19.

(8) Lit., 'fulfil'.

(9) Ibid. IV, 9.

(10) Lit., 'generations'.

(11) Ibid. 10.

(12) But not a sudarium, V. supra p. 142, n. 2,

(13) In Talmudic times the teaching took place in the synagogue.

(14) Why was he so hasty to go out as not to don Proper headgear?

(15) [אומצא, a piece of grilled meat usually taken at breakfast].

(16) Deut. VI, 7.

(17) Rashi: two days in the week to Mikra, two to Mishnah, and two to Talmud. Tosaf., more plausibly: each day itself should be divided into three. — Actually, scholars have always confined themselves to Talmud: but as the Babylonian Talmud is an amalgam of the three, this dictum is held to be fulfilled; v. Sanh. 24a. Furthermore, the early part of the morning liturgy contains passages from all three.

(18) Rashi quotes, and the families of scribes — Soferim — which dwelt at Jabez; I Chron. II, 55. The term is generally applied to the band of Scholars from the Babylonian exile, who propagated the knowledge of the Torah and interpreted

it.

(19) To safeguard the correctness of the text. Soferim is taken in the original sense of its root safar, ‘to count’.

(20) Whatsoever goeth upon the belly (iujd) — Lev. XI, 42.

(21) Lev. X, 16: And Moses diligently enquired after — darosh darash — the goat of the sin-offering.

(22) Lev. XIII, 33: we-hithggalah, then he shall be shaven. [In M.T. the words ‘he placed on him’ (Lev. VIII, 8) is given as the middle verse.]

(23) Ps. LXXX, 14.

(24) יער .

(25) It is not stated whether letters or words are meant: S. Strashun observes that he counted the words, and found that the first half exceeds the second by nearly 2,000; hence the reference is to letters, and there is such a reading too.

(26) Ps. LXXVIII, 38.

(27) On another occasion.

(28) E.g., the long i and long o are sometimes indicated by a yod and waw respectively; then the reading is called ‘full’; sometimes they are omitted; then it is called defective.

(29) From Palestine to Babylon.

(30) Ex. XIX, 9.

(31) I.e., the Pentateuch. In M.T. we have 5,845. [The difference is explained by the fact that the Palestinian had more verses than the Babylonian. v. Ned. (Sonc. ed.) p. 118. n. 7. and Graetz MGWJ XXXIV. pp. 97ff.]

(32) Tosaf. observes that even if the Psalms are divided into verses of three words, there are still more in the Pentateuch. [The M.T. has 2,527, and the difference could be accounted as in the case of the Pentateuch. The difficulty however remains in regard to Chronicles where M.T. has only 1,765.]

(33) Wilna Gaon emends: Daniel and Chronicles.

(34) Weshinnantam < shannen, to be keen.

Talmud - Mas. Kiddushin 30b

say unto wisdom, Thou art my sister;[1] and it is also said, Bind them upon thy fingers; write them upon the table of thine heart;[2] and it is also said: As arrows are in the hand of a mighty man, so are the children of thy youth;[3] and it is also said, sharp arrows of the mighty;[4] and it is also said: Thine arrows are sharp; the peoples fall under thee;[5] and it is also said: Happy is the man that hath his quiver full of them; They shall not be ashamed, when they speak with their enemies in the gate.[6] What is meant by ‘with their enemies in the gate’? — Said R. Hiyya b. Abba, Even father and son, master and disciple, who study Torah at the same gate[7] become enemies of each other; yet they do not stir from there until they come to love each other, for it is written, [Wherefore it is said it, the book of the wars of the Lord,] love[8] is be-sufah;[9] read not ‘be-sufah’ but ‘be-sofah’.[10]

Our Rabbis taught: We-samtem[11] [reads] sam tam [a perfect remedy]. This may be compared to a man who struck his son a strong blow, and then put a plaster on his wound, saying to him, ‘My son! As long as this plaster is on your wound you can eat and drink at will, and bathe in hot or cold water, without fear. But if you remove it, it will break out into sores.’ Even so did the Holy One, blessed be He, speak unto Israel: ‘My children! I created the Evil Desire,[12] but I [also] created the Torah, as its antidote; if you occupy yourselves with the Torah, you will not be delivered into his hand, for it is said: If thou doest well,[13] shalt thou not be exalted?[14] But if ye do not occupy yourselves with the Torah, ye shall be delivered into his hand, for it is written, sin coucheth at the door.[15] Moreover, he is altogether preoccupied with thee [to make thee sin], for it is said, and unto thee shall be his desire.[16] Yet if thou wilt, thou canst rule over him, for it is said, and thou shalt rule over him.[16]

Our Rabbis taught: The Evil Desire is hard [to bear], since even his Creator called him evil, as it is written, for that the desire of man's heart is evil from his youth.[17] R. Isaac said: Man's Evil Desire renews itself daily against him, as it is said, [every imagination of the thoughts of his heart] was only evil every day.[18] And R. Simeon b. Levi[19] said: Man's Evil Desire gathers strength against him daily and seeks to slay him, for it is said: The wicked watcheth the righteous, and seeketh to slay him;[20]

and were not the Holy One, blessed be He, to help him [man], he would not be able to prevail against him, for it is said: The Lord will not leave him in his hand.[21]

The School of R. Ishmael taught: My son, if this repulsive [wretch][22] assail thee, lead him to the schoolhouse: if he is of stone, he will dissolve; if iron, he will shiver [into fragments], for it is said: Is not my word like as fire? saith the Lord,' and like a hammer that breaketh the rock in pieces?[23] If he is of stone, he will dissolve, for it is written: Ho, everyone that thirsteth, come ye to the waters;[24] and it is said: The waters wear the stones.[25]

'To take a wife for him.' How do we know it? — Because it is written: Take ye wives, and beget sons and daughters; and take wives for your sons, and give your daughters to husbands.[26] As for [marrying] his son, it is well, for it rests with him;[27] but with respect to his daughter, does it then rest with him?[28] — This is his meaning: Let her be dowered, clothed and adorned, that men should eagerly desire her.[29] 'To teach him a craft.' Whence do we know it? — Said Hezekiah: Scripture saith, See to a livelihood with the wife whom thou lovest.[30] If 'wife' is literal, [this teaches,] just as he [the father] is bound to take a wife for him, so is he bound to teach him a craft [for a livelihood]; if it is [a metaphor for] Torah, then just as he is bound to teach him Torah, so is he bound to teach him a craft.

'And some say, [He must teach him] to swim in water too. What is the reason? — His life may depend on it.

'R. Judah said: He who does not teach him a craft teaches him brigandage. "Brigandage"! can you think so? — But it is like teaching him brigandage'. Wherein do they differ? — They differ where he teaches him business.[31]

BUT ALL OBLIGATIONS OF THE FATHER UPON THE SON etc., What is meant by 'ALL OBLIGATIONS OF THE FATHER UPON THE SON? Shall we say, all precepts which the father is bound to perform for his son — are then women bound thereby? But it was taught: 'The father is obliged in respect of his son, to circumcise and redeem him': only the father, but not the mother? — Said Rab Judah, This is its meaning: All precepts concerning a father, which are incumbent upon a son to perform for his father, both men and women are bound thereby. We have [thus] learnt here what our Rabbis taught: [Ye shall fear every man his father, and his mother]:[32] 'man,'I know it only of man; how do I know it of woman?[33] When it is said: 'Ye shall fear,' two are mentioned. If so, why state man? A man possesses the means to fulfil this, but a woman has no means of fulfilling this, because she is under the authority of others.[34] R. Idi b. Abin said in Rab's name: If she is divorced, both are equal.[35] Our Rabbis taught: It is said: Honour thy father and thy mother;[36] and it is also said: Honour the Lord with thy substance:[37] thus the Writ assimilates the honour due to parents to that of the Omnipresent. It is said: 'Ye shall fear every man his father, and his mother'; and it is also said: The Lord thy God thou shalt fear, and him thou shalt serve;[38] thus the Writ assimilates the fear of parents to the fear of God. It is said: And he that curseth his father, or his mother, shall surely be put to death;[39] and it is also said: Whosoever curseth his God shall bear his sin:[40] thus the Writ assimilates the blessing[41] of parents to that of the Omnipresent. But in respect of striking, it is certainly impossible.[42] And that is but logical,[43] since the three[44] are partners in him [the son].

Our Rabbis taught: There are three partners in man, the Holy One, blessed be He, the father, and the mother. When a man honours his father and his mother, the Holy One, blessed be He, says: 'I ascribe [merit] to them as though I had dwelt among them and they had honoured Me.'

It was taught: Rabbi said: It is revealed and known to Him Who decreed, and the world came into existence,[45] that a son honours his mother more than his father,

(1) Prov. VII, 4; be as clear in your wisdom — i.e., learning — as in the knowledge that your sister is interdicted to you. Or possibly the deduction is from the second half of the verse: and call understanding thy familiar friend — i.e., be fully versed and familiar therein.
(2) Prov. VII, 3.
(3) The disciples, Ps. CXXVII, 4.
(4) The scholars, Ibid. CXX, 4.
(5) Ps. XLV, 6.
(6) PS. CXXVII, 5.
(7) I.e., at the same academy. Alternatively, in the same subject.
(8) והב , connected by a play on words with אהב , to love.
(9) Num. XXI, 24.
(10) 'At the end thereof.' 'The book of the wars of the Lord' — i.e., disputations on Biblical interpretation — eventually leads to love.
(11) Deut. XI, 18: Therefore shall ye lay up (we-samtem) these my words etc.
(12) Thus Cain defended himself for murdering Abel by arguing that God himself had implanted the evil desire in him (Tan., Bereshit, 25, ed. Buber, p. 10). It is generally understood as man's evil impulses. Occasionally it is personified, as here, and identified with Satan (B.B. 16a); on the other hand, in Ber. 16b it is clearly distinguished as a separate entity.
(13) I.e., engagest in the study of the Torah.
(14) Gen. IV, 7; sc. above the Evil Desire.
(15) Gen. IV, 7; so the E.V. Possibly the Talmud translates: at the door of sin-i.e., when one yields to the Evil Desire — one lies lost — i.e., becomes its slave.
(16) Ibid.
(17) Gen. VIII, 21.
(18) Ibid. VI, 5.
(19) In Suk. 52a the reading is: R. Simeon b. Lakish.
(20) Ps. XXXVII, 32.
(21) Ibid. 33.
(22) The Evil Desire.
(23) Jer. XXIII, 29.
(24) Isa. LV, 1; i.e., the Torah.
(25) Job XIV, 19.
(26) Jer. XXIX, 6.
(27) Lit., 'it is in his hand'- one can always find a bride for his son.
(28) One cannot easily obtain a husband for his daughter. How then does Jeremiah say, and give your daughters to husbands?
(29) Lit., 'spring upon her'.
(30) Ecc. IX, 9.
(31) The first Tanna, though mentioning a craft, merely desires a means of livelihood, and includes business too. But R. Judah's emphasis on a craft shews that he does not consider business sufficient. — In a country living by agriculture and industry R. Judah thought commerce too precarious. V. Krauss, T.A. 250-252 on trade. He makes the interesting point (p. 252) that whilst reference is frequently made to a po'el batel פועל בטל , an unemployed landworker, one never hears of an unemployed artisan.
(32) Lev. XIX, 3.
(33) That a daughter too must fear her parents.
(34) Viz., her husband, who may render it impossible for her to shew due reverence to her parents.
(35) The duty rests upon her just as much as upon her brother.
(36) Ex. XX, 12.
(37) Prov. III, 9.
(38) Deut. VI, 13.
(39) Ex. XXI, 17.
(40) Lev. XXIV, 15.

(41) A euphemism for cursing.
(42) To assimilate them, for the Almighty cannot be struck.
(43) That parents should be likened to the Almighty.
(44) God, father and mother.
(45) Viz., God: this phrase is liturgical.

Talmud - Mas. Kiddushin 31a

because she sways him by words; therefore the Holy One, blessed be He, placed the honour of the father before that of the mother. It is revealed and known to Him Who decreed, and the world came into existence, that a son reverences his father more than his mother, because he teaches him Torah, therefore the Holy One, blessed be He, put the fear [reverence] of the mother before that of the father.

A tanna[1] recited before R. Nahman: When a man vexes his father and his mother, the Holy One, blessed be He, says: 'I did right in not dwelling among them, for had I dwelt among them, they would have vexed Me.'

R. Isaac said: He who transgresses in secret is as though he pressed the feet of the Shechinah for it is written: Thus saith the Lord, The heaven is my throne, and the earth is my footstool.[2] R. Joshua b. Levi said: One may not walk four cubits with haughty mien,[3] for it is said, the whole earth is full of His glory.[4] R. Huna son of R. Joshua would not walk four cubits bareheaded, saying: The Shechinah is above my head.

A widow's son asked R. Eliezer: If my father orders, 'Give me a drink of water,' and my mother does likewise, which takes precedence? 'Leave your mother's honour and fulfil the honour due to your father,' he replied: 'for both you and your mother are bound to honour your father.'[5] Then he went before R. Joshua, who answered him the same. 'Rabbi,' said he to him, 'what if she is divorced?' — 'From your eyelids it is obvious that you are a widow's son,'[6] he retorted: 'pour some water for them into a basin, and screech for them like fowls!'[7]

'Ulla Rabbah[8] lectured at the entrance to the Nasi's house:[9] What is meant by, All the kings of the earth shall make admission unto Thee, O Lord, For they have heard the words of Thy mouth?[10] Not the word of Thy mouth, but 'the words of Thy mouth' is said. When the Holy One, blessed be He, proclaimed, lam [the Lord thy God] and Thou shalt have none [other Gods before me],[11] the nations of the world said: He teaches merely for His own honour. As soon as He declared: Honour thy father and thy mother,[12] they recanted and admitted [the justice of] the first command [too]. Raba said, [This may be deduced] from the following: The beginning of Thy word is true:[13] 'the beginning of Thy word,' but not the end![14] But from the latter portion of Thy declaration it may be seen that the first portion is true.[15] It was propounded of R. 'Ulla: How far does the honour of parents [extend]? — He replied: Go forth and see what a certain heathen, Dama son of Nethinah by name, did in Askelon. The Sages once desired merchandise from him, in which there was six-hundred-thousand [gold denarii] profit, but the key was lying under his father, and so he did not trouble him.[16] Rab Judah said in Samuel's name: R. Eliezer was asked: How far does the honour of parents [extend]? — Said he, Go forth and see what a certain heathen, Dama son of Nethinah by name, did in Askelon. The Sages sought jewels for the ephod, at a profit of six-hundred-thousand [gold denarii] — R. Kahana taught: at a profit of eight-hundred-thousand — but as the key was lying under his father's pillow, he did not trouble him. The following year the Holy One, blessed be He, gave him his reward. A red heifer was born to him in his herd.[17] When the Sages of Israel went to him [to buy it], he said to them, 'I know you, that [even] if I asked you for all the money in the world you would pay me. But I ask of you only the money which I lost through my father's honour.' Now, R. Hanina observed thereon, If one who is not commanded [to honour his parents], yet does so, is thus

[rewarded], how much more so one who is commanded and does so! For R. Hanina said: He who is commanded and fulfils [the command], is greater than he who fulfils it though not commanded.[18]

R. Joseph[19] said: Originally, I thought, that if anyone would tell me that the halachah agrees with R. Judah, that a blind person is exempt from the precepts,I would make a banquet[20] for the Rabbis, seeing that I am not obliged, yet fulfil them. Now, however, that I have heard R. Hanina's dictum that he who is commanded and fulfils [the command] is greater than he who fulfils it though not commanded; on the contrary, if anyone should tell me that the halachah does not agree with R. Judah, I would make a banquet for the Rabbis.

When R. Dimi came,[21] he said: He [Dama son of Nethinah] was once wearing a gold embroidered silken cloak and sitting among Roman nobles, when his mother came, tore it off from him, struck him on the head, and spat in his face, yet he did not shame her.

Abimi, son of R. Abbahu recited: One may give his father pheasants as food, yet [this] drives him from the world; whereas another may make him grind in a mill

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(1) V. Glos. s.v. (b).

(2) Isa. LXVI, 1. By transgressing secretly he avers that God's presence is not there, and thus would confine the feet of the Shechinah into a narrower place than what they occupy, viz., the whole earth.

(3) Lit., ‘upright stature.

(4) Ibid. VI, 3.

(5) This does not imply that the husband need not honour his wife (v. B.M., Sonc. ed., p. 352, n. 4) but that the wife must obey her husband, just as a son his father.

(6) The eyelids having fallen out with weeping — probably not to be taken literally, but he sensed that the question was merely theoretical.

(7) A sarcastic answer.

(8) Or, the Great ‘Ulla.

(9) It would seem to have been a public place where popular lectures were given.

(10) Ps. CXXXVIII, 4.

(11) Ex. XX, 2f.

(12) Ibid. 12.

(13) Ps. CXIX, 160.

(14) Surely not!

(15) I.e., just.

(16) To wake him to take the key. The Jerusalem adds that his father's feet were lying on the chest containing the merchandise and so he could not break it.

(17) V. Num. XIX.

(18) V. A.Z. (Sonc. ed.) p. 6, n. 1.

(19) He was blind.

(20) Lit., ‘a festival’.

(21) V. p. 46, n. 6.

Talmud - Mas. Kiddushin 31b

and [this] brings him to the world to come![1]

R. Abbahu said: E.g., my son Abimi has fulfilled the precept of honour. Abimi had five ordained sons[2] in his father's lifetime, yet when R. Abbahu came and called out at the door, he himself speedily went and opened it for him, crying, ‘Yes, yes,’[3] until he reached it. One day he asked him, ‘Give me a drink of water.’ By the time he brought it he had fallen asleep. Thereupon he bent and stood over him until he awoke. It so happened that Abimi succeeded in interpreting, A song of

Asaph.[4]

R. Jacob b. Abbahu asked Abaye: 'I, for instance, for whom my father pours out a cup [of wine] and my mother mixes it[5] on my returning from the school, what am I to do'?[6] — 'Accept it from your mother,' he replied: 'but not from your father; for since he is a scholar, he may feel affronted.'[7]

R. Tarfon had a mother for whom, whenever she wished to mount into bed, he would bend down to let her ascend;[8] (and when she wished to descend, she stepped down upon him).[9] He went and boasted thereof in the school. Said they to him, 'You have not yet reached half the honour [due]: has she then thrown a purse before you into the sea without your shaming her?'

When R. Joseph heard his mother's footsteps he would say: 'I will arise before the approaching Shechinah.'

R. Johanan said: Happy is he who has not seen them.[10] R. Johanan's father died when his mother conceived him, and his mother died when she bore him. And Abaye was likewise. But that is not so, for Abaye said, my Mother told me. . ! — That was his foster-mother. R. Assi had an aged mother. Said she to him, 'I want ornaments.' So he made them for her. 'I want a husband.' — 'I will look out for you. 'I want a husband as handsome as you.' Thereupon he left her and went to Palestine. On hearing that she was following him he went to R. Johanan and asked him, 'May I leave Palestine[11] for abroad?'[12] 'It is forbidden,' he replied. 'But what if it is to meet my mother?' 'I do not know', said he. He waited a short time and went before him again. 'Assi', said he, 'you have determined to go; [may] the Omnipresent bring you back in peace.' Then he went before R. Eleazar and said to him, 'Perhaps, God forbid, he was angry?' 'What [then] did he say to you?' enquired he. 'The Omnipresent bring you back in peace', was the answer. 'Had he been angry', he rejoined, 'he would not have blessed you'. In the meanwhile he learnt that her coffin was coming.[13] 'Had I known', he exclaimed: 'I would not have gone out.'

Our Rabbis taught: He must honour him in life and must honour him in death. 'In life', e.g., one who is heeded in a place on account of his father should not say: 'Let me go, for my own sake', 'Speed me, for my own sake', or 'Free me, for my own sake', but all 'for my father's sake.' 'In death', e.g., if one is reporting something heard from his mouth, he should not say: 'Thus did my father say', but, 'Thus said my father, my teacher, for whose resting place may I be an atonement.'[14] But that is only within twelve months [of his death].[15] Thereafter he must say: 'His memory be for a blessing, for the life of the World to come.'

Our Rabbis taught: A Sage must change his father's name and his teacher's name, but the interpreter does not change his father's name and his teacher's name.[16] Whose father? Shall we say, the father of the interpreter?[17] — Is then the interpreter not obliged [to honour his parents]? — But, said Raba, [it means] the name of the Sage's father or the name of the Sage's teacher. As when Mar, son of R. Ashi, lectured at the college sessions; he said [to the interpreter]: My father, my teacher [said thus], whereas his interpreter said: Thus did R. Ashi say.[18]

Our Rabbis taught: What is 'fear' and what is 'honour'?[19] 'Fear' means that he [the son] must neither stand in his [the father's] place nor sit in his place, nor contradict his words, nor tip the scales against him.[20] 'Honour" means that he must give him food and drink, clothe and cover him, lead him in and out. The Scholars propounded:

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(1) The Jerusalem Talmud amplifies this. A man once fed his father on pheasants (which were very expensive). On his father's asking him how he could afford them, he answered: 'What business is it of yours, old man; grind (i.e., chew) and eat!' On another occasion it happened that a man was engaged in grinding in a mill, when his father was summoned for royal service. Said his son to him, 'Do you grind for me, and I will go in your stead, the royal service being very hard.'

(2) Ordination (Heb. semichah, lit., 'laying of the hands') was the conferment of authority to exercise Rabbinical functions.
(3) I.e., I am coming to open it.
(4) Ps. LXXIX, 1. The whole psalm is a lament for the defilement of the Temple and a series of national disasters. Hence the question arises, surely the superscripture should have been, 'A dirge of Asaph'? By divine inspiration Abimi explained it that Asaph uttered song because the Almighty had allowed His wrath to be appeased by the defilement and other indignities which the Temple had suffered. Otherwise, only the total destruction of His people would have sufficed. So Rashi, quoting some anonymous commentators. Tosaf., quoting the Midrash, explains it otherwise.
(5) Their wines were diluted, being too strong to be drunk neat.
(6) Am I to permit it, or do I fail in the honour due to them?
(7) Though he loves you and does it willingly, he may feel that his son should not permit a scholar to perform these services for him.
(8) By stepping upon him.
(9) The passage between brackets is omitted in Asheri and Alfasi.
(10) His parents, because it is so difficult to honour them adequately. — Of course, he is not to be understood literally. Also, it was a form of self comfort for not having known his parents.
(11) Lit., 'the land,' par excellence, the familiar designation of Palestine.
(12) Lit., 'outside the land'.
(13) She died on the way.
(14) [May I make atonement for all the punishment in the Hereafter that may have to come upon him. (Rashi).]
(15) [It is held that punishment in the Hereafter does not extend beyond the first twelve months after death.]
(16) When scholars lectured, they did not speak directly to their audiences, but through the medium of interpreters, to whom they whispered their statements and who in turn spoke them aloud to the assembled congregations frequently with embellishments of their own. Now, the Sage, when whispering to the interpreter a teaching he heard from his father, must not refer to his father by name but by the formula 'my father and teacher'; but the interpreter need not do so.
(17) If the Sage cites a dictum of the interpreter's father.
(18) But not: Thus said the Sage's father.
(19) Referring to Lev. XIX, 2: Ye shall fear every man his mother, and his father; and Ex. XX, 12: Honour thy father, etc.
(20) Should his father be in dispute with another scholar, his son must not side with his opponent (Rashi). In J.D. 240, 2, it is translated: he must not make a decision in deference to his view, i.e,, if his father differs from another scholar, he must not even say: I agree with my father. — These last two, however, hold good only in the father's presence, but otherwise he may state his view freely; yet even then, it is preferable that he should avoid mentioning his father's name when refuting his view, if possible.

At whose expense?[1] Rab Judah said: The son's. R. Nahman b. Oshaia said: The father's. The Rabbis gave a ruling to R. Jeremiah — others state, to R. Jeremiah's son — in accordance with the view that it must be at the father's expense. An objection is raised: It is said: Honour thy father and thy mother;[2] and it is also said: Honour the Lord with thy substance:[3] just as the latter means at personal cost,[4] so the former too. But if you say: At the father's [expense], how does it affect him?[5] — Through loss of time.[6]

Come and hear: Two brothers, two partners, a father and son, a master and disciple, may redeem second tithe for each other,[7] and may feed each other with the poor tithe.[8] But if you say, at the son's expense, he is thus found to fulfil his obligations with what belongs to the poor? — This refers only to an extra quantity.[9] If so, could it be taught thereon, R. Judah said: A curse may alight upon him who feeds his father with poor tithe! But if the reference is to an extra quantity, what does it matter?[10] — Even so, the matter is humiliating [to the father].

Come and hear: R. Eliezer was asked: How far does the honour of parents [extend]? — Said he: That he should take a purse, throw it in his presence into the sea, and not shame him.[11] But if you say, at the father's expense,[12] what does it matter to him? — It refers to a potential heir. As in the case of Rabbah son of R. Huna: R. Huna tore up silk in the presence of his son Rabbah, saying: 'I will go and see whether he flies into a temper or not. But perhaps he would get angry,[13] and then he [R. Huna] would violate, Thou shalt not put a stumbling-block before the blind?[14] — He renounced his honour for him.[15] But he [R. Huna] violated, Thou shalt not destroy [the trees thereof. . .]?[16] — He did it in the seam.[17] Then perhaps that was why he displayed no temper? — He did it when he was [already] in a temper.[18]

R. Ezekiel taught his son Rami: If criminals condemned to be burnt [become mixed up] with others sentenced to be stoned, R. Simeon said: They are executed[19] by stoning, because burning is severer. Thereupon Rab Judah his son said to him: Father, teach it not thus. For, why state the reason because burning is severer? This follows from the fact that the majority are for stoning.[20] But teach it thus: If [criminals condemned] to be stoned are mixed up with [others sentenced] to burning. Said he to him, If so, consider the second clause: But the Sages say: They are executed by burning, because stoning is severer. But why particularly because stoning is severer: deduce it from the fact that the majority are to be burnt? — There, he answered him, the Rabbis oppose[21] R. Simeon: As to what you say that burning is severer, that is not so, stoning being severer. Said Samuel to Rab Judah: Keen scholar![22] speak not thus to your father. For it was taught: If one's father is [unwittingly] transgressing a precept of the Torah, he must not say to him, 'Father, thou transgressest a Biblical precept', but, 'Father, it is thus written in the Torah.' 'It is thus written in the Torah' — but he surely grieves him?[23] But he must say to him, 'Father, such and such a verse Is written in the Torah.'[24]

Eleazar b. Mathia said: If my father orders me, 'Give me a drink of water', while I have a precept to perform, I disregard[25] my father's honour and perform the precept, since both my father and I are bound to fulfil the precepts. Issi b. Judah maintained: If the precept can be performed by others, it should be performed by others, while he should bestir himself for his father's honour. Said R. Mattena: The halachah agrees with Issi b. Judah.

R. Isaac b. Shila said in R. Mattena's name in the name of R. Hisda: If a father renounces the honour due to him, it is renounced; but if a Rabbi renounces his honour, it is not renounced. R. Joseph ruled: Even if a Rabbi renounces his honour, it is renounced, for it is said: And the Lord went before them by day.[26] Said Raba: How compare! There, with respect to the Holy One, blessed be He, the world is His and the Torah is His; [hence] He can forego His honour.

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(1) Lit., ‘from whose’ — must he feed him, etc.
(2) Ex. XX, 12.
(3) Prov. III, 9.
(4) Lit., ‘defect in the purse’.
(5) His pocket — i.e., what personal loss is there?
(6) Lit., ‘work’.
(7) With their own money, and need not add a fifth, as is the case when one redeems his own second tithe (v. Lev. XXVII, 31). Now, though these are closely attached, they are nevertheless separate persons, and so e.g., when the master redeems for his disciple, he is not regarded as redeeming his own.
(8) E.g., if the father is poor, the son may give him poor tithe.
(9) The son must furnish him with an average quantity of food, if his father needs more, he may give him poor tithe.
(10) Surely there is no objection to it!
(11) Supra 31a. There a different answer is quoted; v. 31b, in the story of R. Tarfon.
(12) So that the purse referred to is his father's.
(13) And in his anger affront his father (Rashi).
(14) Lev. XIX, 14. By causing him to fail in the honour due to him, R. Huna would violate this injunction, which is interpreted as meaning that one must not lead another into sin.
(15) So that even if his son affronted him, he would not transgress.
(16) Deut. XX, 19; this is a general prohibition against causing unnecessary damage.
(17) As it could be easily resewn, there was no real damage.
(18) When he could not have noticed this, and yet he did not affront his father.
(19) Lit., ‘judged’.
(20) For, ‘if criminals condemned to be burnt become mixed up with others sentenced to be stoned,’ implies that the latter are in the majority, as the smaller number is lost (i.e., mixed up) in the larger.
(21) Lit., ‘say to’.
(22) Others translate: man of long teeth, v. B.K. (Sonc. ed.) p. 60, n. 1.
(23) For it is the same as telling him that he is transgressing.
(24) Not directly stating the law, but leaving it for his father to understand. This does not shame him.
(25) Lit., ‘lay aside’.
(26) Ex. XIII, 21. Thus the Almighty renounced His honour and constituted Himself their Guide.

Talmud - Mas. Kiddushin 32b

But here, is then the Torah his [the Rabbi's]?[1] Subsequently Raba said: Indeed, the Torah is his [the scholar's], for it is written, and in his law doth he meditate day and night.[2]

But that is not so. For Raba was serving drink at his son's wedding, and when he offered a cup to R. Papa and R. Huna son of R. Joshua, they stood up before him; but [when he offered] R. Mari and R. Phineas son[3] of R. Hisda, they did not stand up before him. Thereupon he was offended and exclaimed: ‘Are these Rabbis and the others not!’[4] It also happened that R. Papa was serving drink at the wedding of Abba Mar, his son; when he offered a cup to R. Isaac son of Rab Judah, he did not rise before him, whereupon he was offended![5] — Even so, they should have shewn him respect.

R. Ashi said: Even on the view that if a Rabbi renounces his honour it is renounced, yet if a Nasi[6] renounces his honour, his renunciation is invalid. An objection is raised: It once happened that R. Eliezar, R. Joshua and R. Zadok were reclining[7] at a banquet of Rabban Gamaliel's son,[8] while Rabban Gamaliel was standing over them and serving drink. On his offering a cup to R. Eliezer, he did not accept it; but when he offered it to R. Joshua, he did. Said R. Eliezer to him, ‘What is this, Joshua: we are sitting, while Rabban Gamaliel is standing over us and serving drink!’ ‘We find that even a greater than he acted as servitor’, he replied: ‘Abraham was the greatest man of his age,[9] yet it is written of him, and he stood over them.[10] And should you say that they appeared to him as Ministering Angels — they appeared to him only as Arabs.[11] Then shall not R. Gamaliel Berabbi[12]

stand over us and offer drink! Said R. Zadok unto them: 'How long will you disregard the honour of the Omnipresent and occupy yourselves with the honour of men! The Holy One, blessed be He, causeth the winds to blow,[13] the vapours to ascend, the rain to fall, the earth to yield, and sets a table before every one; and we — shall not R. Gamaliel Berabbi stand over us and offer drink'! — But if stated, it was thus stated: R. Ashi said: Even on the view that if a Nasi renounces his honour it is valid, yet if a king renounces his honour it is not, for it is said, thou shalt surely set a king over thee,[14] teaching that his authority[15] shall be over thee.[16]

Our Rabbis taught: Thou shalt rise up before the hoary head;[17] I might think, even before an aged sinner; therefore it is said, and honour the face of a zaken,[18] and 'zaken' can only refer to a Sage,[19] for it is said: Gather unto me seventy men of the elders of Israel.[20] R. Jose the Galilean said: 'Zaken' [means] only he who has acquired wisdom,[21] for it is said: The Lord possessed me [sc. wisdom personified] as the beginning of his way.[22] I might think that one might stand up before him [even] at a great distance: therefore it is written, . . . thou shalt rise up, and thou shalt honour,[23] [implying], I ordered one to rise up only where it confers honour.[24] I might think that one must honour him with money,[25] therefore it is written: 'thou shalt rise up and thou shalt honour': just as rising up involves no monetary loss, so does honouring also mean without monetary loss. I might think that one must rise up before him out of a privy or a bathhouse, therefore it is written 'thou shalt rise up and thou shalt honour', [implying] I ordered to rise up only in a place where it confers honour. I might think that one may shut his eyes as though he has not seen him: therefore it is taught, . . . thou shalt rise up, and thou shalt fear thy God:[26] of what is known to the heart only it is said, and thou shalt fear thy God.[27] R. Simeon b. Eleazar said: How do we know that the Sage must not trouble [the people]?[28] From the verse, . . . old man and thou shalt fear.[29] Issi b. Judah said: Thou shalt rise up before the hoary head implies even any hoary head,[30] But is not R. Jose the Galilean identical with the first Tanna? — They differ in respect to a young sage: the first Tanna holds that a young sage is not [included in the precept], whereas R. Jose the Galilean holds that he is. What is R. Jose the Galilean's reason? — He can tell you: should you think as the first Tanna asserts, if so, the All-Merciful should have written: 'Thou shalt rise up before the hoary headed zaken and honour [him]'; why did the All-Merciful divide them? To teach that the one [hoary head] is not identical with the other [zaken], and vice versa. This proves that even a young sage [is included]. And the first Tanna?[31] — That is because it is desired to place 'old man' in proximity to 'and thou shalt fear'.[32] Now, what is the first Tanna's reason? — Should you think as R. Jose the Galilean maintains, if so, the All-Merciful should have written,

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(1) Surely not. A Rabbi is honoured on account of his learning, which comes from the Almighty; hence he cannot renounce his honour.

(2) Ps. I, 2; Raba makes his refer to the student of the Law, Thus: at first, 'But his delight is in the law of the Lord'; having studied it, he acquires it for himself and it becomes his law.

(3) Var. lec., 'sons', making it refer to R. Mari too.

(4) 'You consider yourselves too great to rise: are then the others not Rabbis too?'

(5) But if a scholar can renounce his honour, these had in fact done so by serving the drink at all; why then did they resent it that honour was not shewn them?

(6) V. Glos.

(7) People were reclining in ancient days at meals.

(8) Rabban Gamaliel was the Nasi.

(9) Lit., 'generation'.

(10) Gen. XVIII, 8; referring to the three angels who appeared to him by the oaks of Mamre.

(11) According to Talmudic tradition, when he bade them wash their feet (ibid. v. 4) it was because he suspected them of being Arabs, who worship the dust of their feet.

(12) Supra p. 101, n. 8.

(13) This phrase is now liturgical, but that 'wind' is used instead of 'winds'.

(14) Deut. XVII, 15.

(15) Lit., ‘fear’,
(16) Hence he cannot renounce the honour and reverence due to him.
(17) Lev. XIX, 32.
(18) Ibid. E.V. old man.
(19) To the Rabbis one was not a Sage unless he was also upright (cf. Prov. IX, 10: The fear of the Lord is the beginning of wisdom).
(20) Num. XI, 16.
(21) Reading zaken as an abbreviation, Zeh kanah hokemah, this one has acquired wisdom.
(22) Prov. VIII, 22.
(23) Lev. XIX, 32. The words ‘thou shalt rise’ are made to apply to zaken.
(24) But no sense of being honoured is experienced when a person rises at a distance.
(25) I.e., by giving him money.
(26) Ibid.
(27) Ibid. 14. Man cannot know whether he sees or not, but God does. V. B.M. (Sonc. ed.) p. 348, nn. 4, 5.
(28) He must not intentionally pass by the masses, in order that they should rise, if he has an alternative route.
(29) By disregarding the accents, this is read as a prohibition to the Sage.
(30) Not particularly that of a scholar.
(31) How does he explain the dividing up of the verse?
(32) In accordance with the teaching of R. Simeon b. Eleazar.

Talmud - Mas. Kiddushin 33a

‘Thou shalt rise up before and honour the hoary head; thou shalt rise up before and honour the old man.ð And since It is not written thus, it follows that they are identical.[1]

The Master said: ‘I might think that one must honour him with money, therefore it is written: "thou shalt rise up and thou shalt honourð: just as rising up involves no monetary loss, so does honouring also mean without monetary loss.’ But is there no monetary loss involved in rising? Does it not refer [even] to him who is piercing pearls,[2] and whilst he rises up before him he is disturbed from his work?[3] — But rising is compared to honouring: just as honouring involves no cessation of work,[4] so rising too means such as involves no cessation of work. And honouring is compared to rising too: just as rising involves no monetary loss,[5] so honouring means such as involves no monetary loss. Hence it was said: Artisans may not rise[6] before scholars whilst engaged in their work. Must they not? But we learnt: All artisans rise before them, give them greeting,[7] and exclaim to them, ‘Our brethren, men of such and such a place, enter in peace.’[8] — Said R. Johanan: Before them they must stand up, yet before scholars they may not.

R. Jose b. Abin said: Come and see how beloved a precept is in its time;[9] for behold, they rose up before them, yet not before scholars. But perhaps it is different there, for otherwise you may cause them to offend in the future![10]

The Master said: ‘I might think that one must rise up before him out of a privy or a bath-house.’ Is it then not so? But R. Hiyya was sitting in a bath-house, when R. Simeon son of Rabbi passed by, but he did not rise before him, whereat he was offended and went and complained to his father, ‘I taught him two-fifths of the Book of Psalms,[11] yet he did not rise up before me!’ It also happened that Bar Kappara — others state, R. Ishmael son of R. Jose — was sitting in a bath-house, when R. Simeon b. Rabbi entered and passed by, yet he did not rise before him. Thereat he was offended and went and complained to his father. ‘I taught him two-thirds of a third of "The Law of Priests".’[12] Said he to him, ‘perhaps he was sitting and meditating thereon’.[13] Thus, it is only because he might have been sitting and meditating thereon; but otherwise, it would not be [excusable]? — There is no difficulty: the one refers to the inner chambers, the other to the outer chambers.[14] That is logical too. For Rabbah b. Bar Hanah said: One may meditate [on learning] everywhere except at the baths and in a

privy.[15] [That however does not follow:] maybe it is different when [done] involuntarily.[16]

'I might think one may shut his eyes as though he has not seen him.' Are we then dealing with the wicked! — But [say thus:] I might think that one may shut his eyes before the obligation arises,[17] so that when it does, he will not see him that he should stand up before him; therefore it is stated: 'thou shalt rise up and thou shalt fear'.

A Tanna taught: Which rising up shews honour? Say, that is four cubits.[18] Said Abaye: That was said only of one who is not his distinguished teacher;[19] but as for his teacher par excellence,[20] as far as his eyes reach.[21] Abaye used to rise as soon as he saw the ear of R. Joseph's ass approaching. Abaye was riding an ass, making his way on the bank of the River Sagya.[22] Now, R. Mesharsheya and other scholars were sitting on the opposite bank, and they did not rise before him. Thereupon he expostulated with them: 'Am I not your teacher par excellence!' 'It was thoughtlessness on our part, replied they to him.

'R. Simeon b. Eleazar said: How do we know that the Sage must not trouble [the people]? From the verse: "old man and thou shalt fear".' Abaye said: We have it [on tradition] that if he [the Sage] takes a circuitous route,[23] he will live [long]. Abaye took a circuitous route. R. Zera did likewise. Rabina was sitting before R. Jeremiah of Difti[24] when a certain man passed by without covering his head.[25] How impudent is that man! he exclaimed. Said he to him: Perhaps he is from the town of Mehasia,[26] where scholars are very common.[27]

'Issi b. Judah said: "Thou shalt rise up before the hoary head" implies even any hoary head.' R. Johanan said: The halachah is as Issi b. Judah. R. Johanan used to rise before the heathen[28] aged, saying: 'How many troubles have passed over these!' Raba would not rise up, yet he shewed them respect.[29] Abaye used to give his hand to the aged. Raba sent his messengers.[30] R. Nahman sent his guardsmen, [for] he said: 'But for the Torah, how many Nahman b. Abba[31] are there in the market place!'[32]

R. Aibu said in R. Jannai's name:

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(1) Hence one must actually be old in addition to learned.

(2) For stringing together.

(3) And piercing pearls (or perhaps diamond cutting) being highly paid work, this involves a monetary loss.

(4) Honouring implies to shew respect, speak with reverence, but not to cease from work.

(5) Since it does not, as just stated, involve cessation of work.

(6) This refers either to employees, in which case they may not rise up, since their time is not their own; or to men engaged on their own work, so that the passage must be translated, . . . need not (Tosaf.).

(7) Lit., 'enquire after their welfare'.

(8) This refers to those who brought their first fruits to the Temple, who were thus greeted by the workers in Jerusalem, v. Bik. III, 3.

(9) I.e., when it is being performed.

(10) If they are not shewn honour they may resent it, saying: 'They hold us of no account', and so not come again.

(11) So Rashi. Tosaf.: Two books of the five into which it may be divided, viz., Chs. I-XLI, XLII-LXXII, LXXIII-LXXXIX, XC-CVI, CVII-CL. Each of these divisions end with 'amen,' except the last, which marks the end of the book as a whole,

(12) תורת כהנים . The Midrashic exposition of Leviticus, so called because many of its laws refer to priests. It was presumably divided into three sections, and he had taught him two-thirds of one of these. — The work is also known as the Sifra. [Albeck, Untersuchungen uber die halakischen Midraschim, p. 89, n. 1, however, questions this identification, but regards the תורת כהנים as denoting the book of Leviticus itself.]

(13) And failed to notice you.

(14) In the inner chambers men are nude, and so exempt: in the outer they are clothed, and must pay their usual respects.

(15) Since the Rabbi suggested that they might have been meditating on their studies, they must have been in the outer chamber,
(16) They may have been in the inner chamber, yet involuntarily their thoughts wandered to their studies — not an unlikely supposition of men to whom the study of the Torah was one of the most vital objects in life.
(17) I.e., if he knows that the Sage is coming his way, but he has not arrived yet.
(18) When the Sage comes within four cubits of him he must rise, for then it is evident that he is rising in his honour.
(19) I.e., either a greater scholar than himself, even if he has never studied under him, or one of his own rank from whom he has learnt something, but not the greater part of his knowledge. Tosaf. Ri.
(20) His principal teacher.
(21) As soon as he comes into sight he must rise.
(22) Obermeyer. p. 225 suggests that סגיא is a corruption for סניא , or more correctly שניא or שוניא , an important canal passing Pumbeditha and joining the Euphrates with the Tigris.
(23) So as to avoid the assembly and save them the trouble of rising.
(24) Obermeyer, p. 197 conjectures that this is identical with Dibtha, in the neighbourhood of Wasit, north of Harpania.
(25) As a sign of respect; on headcovering v. supra 29b.
(26) A town near Sura on the Euphrates.
(27) There are so many, and they are met with so frequently, that the inhabitants fail to shew them proper respect. [Rashi's text reads: who are familiar with the Rabbis.]
(28) Lit., 'Aramean'.
(29) In speech.
(30) To help up the aged.
(31) [Read with MS.M., כי אנא ,' 'like me', instead of בר אבא , 'b. Abba'.]
(32) I.e., his pre-eminence was due solely to his learning, and therefore it was not meet that he himself should help up the aged.

Talmud - Mas. Kiddushin 33b

A scholar may rise before his master only morning and evening, that his glory may not exceed the glory of Heaven.[1] An objection is raised: R. Simeon b. Eleazar said: How do we know that a Sage must not trouble [the people]? From the verse: 'old man and thou shalt fear'. But if you say, morning and evening only, why should he not trouble [them]; It is an obligation! Hence it surely follows [that one must rise] all day? — No. After all, morning and evening only, yet even so, as far as possible, one should not trouble [the people].

R. Eleazar said: Every scholar who does not rise before his master is stigmatized as wicked, will not live long, and forget his learning, as it is said, but it shall not be well with the wicked, neither shall he prolong his days which are as a shadow, because he feareth not before God.[2] Now, I do not know what this fear is, but when it is said, [Thou shalt rise up before the hoary head . . .] and fear thy God,[3] then lo! fear means rising. But perhaps it means the fear of usury and [false] weights![4] — R. Eleazar infers [his dictum] from the use of pene ['before'] in both cases.[5]

The scholars propounded: What if his son is his teacher? Must he rise before his father? — Come and hear: For Samuel said to Rab Judah: Keen scholar![6] rise before your father![7] — R. Ezekiel was different, because he had [many] good deeds to his credit, for even Mar Samuel[8] too stood up before him. Then what did he tell him?[9] — He said thus to him: Sometimes he may come behind me;[10] then do you stand up before him,[11] and do not fear for my honour.

The scholars propounded: What if his son is his teacher; must his father stand up before him? — Come and hear: For R. Joshua h. Levi said: As for me, it is not meet that I should stand up before my son, but that the honour of the Nasi's house [demands it].[12] Thus the reason is that I am his teacher:[13] but if he were my teacher, I would rise before him.[14] — [No]. He meant thus: As for me, it is not meet that I should stand up before my son, even if he were my teacher, seeing that I am his father,

but that the honour of the Nasi's house [demands it].

The scholars propounded: Is riding the same as walking,[15] or not? — Said Abaye: Come and hear: If the unclean person sits under a tree and the clean person stands, he is defiled; if the unclean person stands under the tree and the clean person sits, he remains clean; but if the unclean person sat down, the clean one is defiled. And the same applies to a leprous stone.[16] Now, R. Nahman b. Cohen said: This proves that riding is the same as walking.[17] This proves it.[18]

The scholars propounded: Must one rise before a Scroll of the Law? — R. Hilkiah, R. Simon and R. Eleazar say: It follows a fortiori: if we rise before those who study it, how much more before that itself! R. Elai and R. Jacob b. Zabdi were sitting when R. Simeon b. Abba passed by, whereupon they rose before him. Said he to them: [You should not have risen;] firstly, because you are Sages, whereas I am but a haber:[19] moreover, shall then the Torah rise before its students![20] Now, he held with R. Eleazar, who said: A scholar must not stand up before his teacher when he [the disciple] is engaged in studying. Abaye condemned[21] this [teaching].

[And . . . when Moses went out unto the Tent . . . all the people rose up and stood . . .] and looked after Moses, until he was gone into the tent.[22] R. Ammi and R. Isaac, the Smith — one maintained: [It was] in a derogatory fashion; the other said: In a complimentary way. He who explained it in a derogatory fashion, as is known.[23] But he who interpreted it in a complimentary manner — said Hezekiah: R. Hanina son of R. Abbahu told me in R. Abbahu's name in the name of R. Abdimi of Haifa: When the Hakam [Sage][24] passes, one must rise before him [at a distance of] four cubits, and when he has gone four cubits beyond [him], he sits down; when an Ab Beth-din[25] passes, one must stand up before him as soon as he comes in sight,[26] and immediately he passes four cubits beyond he may sit down; but when the Nasi passes, one must rise as he comes in sight and may not sit down until he takes his seat, for It is written, [and all the people stood . . .] and looked after Moses, until he was gone into the tent.

ALL AFFIRMATIVE PRECEPTS LIMITED TO TIME etc. Our Rabbis taught: Which are affirmative precepts limited to time? Sukkah,[27] lulab,[28] shofar,[29] fringes,[30]

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(1) One rises only twice a day, morning and evening, in God's honour.

(2) Ecc. VIII, 13.

(3) Lev. XIX, 32.

(4) For there too fear of God is mentioned: Take thou no usury of him nor increase, but fear thy God (Lev. XXV, 36). In respect to false weights Rashi quotes, Thou shalt have a perfect and just weight (Deut. XXV, 15), but Tosaf. observes that fear of God is not mentioned there, and mentions the reading miksholoth , מכשולו , stumbling-blocks: the reference then is to Lev. XIX, 14: thou shalt not put a stumbling-block before the blind, but fear thy God. But S. Strashun explains that there is a misprint in Rashi, and the text to be quoted is, Just balances, just weights . . . shall ye have: I am the Lord your God. (Lev. XIX, 36). 'I am the Lord your God' implies fear; cf. B.M. 61b.

(5) But is not written In connection with usury. Though it is used in connection with the stumbling-block, yet shewing fear before God has more in common with rising before a Sage than refraining from putting a stumbling-block before the blind (Tosaf.).

(6) V. supra p. 156, n. 12.

(7) Though Rab Judah was his father's teacher, v. supra 32a.

(8) Samuel himself who was Rab Judah's teacher.

(9) Surely Rab Judah should have understood it himself, seeing that even his teacher rose before him.

(10) [MS.M.: Sometimes I may come behind him.]

(11) Though you have already risen once for me.

(12) His son had married into the Nasi's family.

(13) So it is assumed.

(14) Even apart from his high marriage connections. [The reference is probably to his son R. Joseph; cf. B.B. 10b.]

(15) So that disciples must rise before their teacher when he rides past.
(16) The reference is to a leper, who defiles a clean person when both are under the same covering overhead, but only if the leper is sitting. The boughs of a tree form such a covering. The same applies to a leprous stone. (Stones too could be leprous; v. Lev. XIV, 33-48.) If a man, bearing a leprous stone, sits under a tree, he defiles a clean man standing there; but if he stands with the stone, the other remains clean.
(17) For the stone itself is always, as it were, seated on its bearer, yet it defiles only if its bearer sits down, but not if standing. This proves that the bearer only is regarded. Hence if a leper is sitting on an animal which is standing or walking, he does not cause defilement, since the bearer (sc. the animal) is not sitting.
(18) The same applying to the problem under discussion.
(19) [A title of a non-ordained scholar in contradistinction to a Sage (חכים), an ordained scholar. R. Simeon (Shaman) b. Abba, through one cause or another, did not succeed in obtaining his Ordination, v. Sanh. 24a.]
(20) They were actually studying just then, so he referred to them as the Torah itself.
(21) Lit., 'cursed'.
(22) Ex. XXXIII, 8.
(23) Lit., 'as it exists'. It being a disparagement of Moses, the Talmud does not wish to elaborate thereon, but merely remarks that its meaning is known. It is explained in Shek. V, 13 and elsewhere: They said: 'See how thick his legs are, how fat his neck — all acquired out of our wealth!'
(24) V. Hor. (Sonc. ed.) p. 101, n. 8.
(25) Lit., 'father of Beth din,' v. loc. cit., n. 6.
(26) Lit., 'as far as his eyes see.'
(27) Lev. XXIII, 42: Ye shall dwell in booths (sukkoth) seven days.
(28) The taking of the palm-branch (lulab) together with three other species on the Festival of booths; v. ibid. 40.
(29) The ram's horn, to be blown on New Year; v. ibid. 24; Num. XXIX, 1.
(30) V. Num. XV, 38; this is limited to time, because fringes are unnecessary on night garments.

Talmud - Mas. Kiddushin 34a

and phylacteries.[1] And what are affirmative precepts not limited to time? Mezuzah,[2] 'battlement',[3] [returning] lost property,[4] and the 'dismissal of the nest.'[5]

Now, is this a general principle? But unleavened bread,[6] rejoicing [on Festivals],[7] and 'assembling',[8] are affirmative precepts limited to time, and yet incumbent upon women.[9] Furthermore, study of the Torah, procreation, and the redemption of the son, are not affirmative precepts limited to time, and yet women are exempt [therefrom]?[10] — R. Johanan answered: We cannot learn from general principles, even where exceptions are stated. For we learnt: An 'erub[11] and a partnership,[12] may be made with all comestibles, excepting water and salt. Are there no more [exceptions]: lo, there are mushrooms and truffles! But [we must answer that] we cannot learn from general principles, even where exceptions are stated.

AND AFFIRMATIVE PRECEPTS LIMITED TO TIME, WOMEN ARE EXEMPT. Whence do we know it? — It is learned from phylacteries: just as women are exempt from phylacteries, so are they exempt from all affirmative precepts limited to time. Phylacteries [themselves] are derived from the study of the Torah: just as women are exempt from the study of the Torah, so are they exempt from phylacteries. But let us [rather] compare phylacteries to mezuzah?[13] — phylacteries are assimilated to the study of the Torah in both the first section and the second;[14] whereas they are not assimilated to mezuzah in the second section.[15] Then let mezuzah be assimilated to the study of the Torah?[16] — You cannot think so, because it is written, [And thou shalt write them upon the mezuzah of thine house . . .] That your days may be multiplied:[17] do then men only need life, and not women! But what of sukkah, which is an affirmative precept limited to time, as it is written, ye shall dwell in booths seven days,[18] yet the reason [of woman's exemption] is that Scripture wrote ha-ezrah,[19] to exclude women,[20] but otherwise women would be liable? — Said Abaye, It is necessary: I would have thought, since it is written: 'ye shall dwell in booths seven days', 'ye shall dwell' [meaning]

even as ye [normally] dwell [in a house]: just as [normal] dwelling [implies] a husband and wife [together], so must the sukkah be [inhabited by] husband and wife![21] — But Raba said,

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(1) V. Deut. VI, 8; the reason is the same as that of fringes.

(2) V. ibid. 9. Mezuzah, doorpost, and then by transference, the receptacle containing 'these words' affixed to the doorpost.

(3) Deut. XXII, 8.

(4) Ex. XXIII, 4; Deut. XXII, 1-3.

(5) V. Deut. XXII, 6f.

(6) To eat which on the first evening of Passover is a positive command: Ex. XII, 18.

(7) Deut. XVI, 14.

(8) On the Festival of Tabernacles in the seventh year; v. Deut. XXXI, 12.

(9) The latter two explicitly include women; unleavened bread is deduced in Pes. 43b.

(10) Procreation is deduced in Yeb,65b; the others are deduced supra 29b.

(11) V. Glos.

(12) All the inhabitants of the same side street provided some foodstuff, e.g., flour, of which one large dish was prepared and placed in a court-yard of one of the houses. This turned all the court-yards into a single domain, and carrying from one into the other on the Sabbath was then permitted. That dish was called the 'erub (of court-yards). 'Erub means something which joins, combines, Fr. 'arab, to commingle. Similarly, several side streets could be combined.

(13) Which is obligatory upon women.

(14) The first section is Deut. VI, 4-9; the second: XI, 13-21; so-called because these are the first two of the four Pentateuchal passages contained in the phylacteries, and the only two written in the mezuzah. In the first section, Deut. VI, 7f: And thou shalt teach them diligently unto thy children . . . and thou shalt bind them for a sign upon thine hand. In the second section, XI. 18f: and ye shall bind them . . . and ye shall teach them etc.

(15) Phylacteries are mentioned in v. 18, and mezuzah in v. 20, so that v. 19, which treats of study, breaks the connection.

(16) Just as women are exempt from the latter, so from the former too. — Study and mezuzah are stated consecutively, viz., in vv. 19 and 20.

(17) Ibid, 21.

(18) Lev. XXIII, 42.

(19) R.V. 'homeborn'.

(20) Suk. 28a.

(21) Hence ha-ezrah teaches otherwise.

Talmud - Mas. Kiddushin 34b

It[1] is necessary [for another reason]: I might have thought, we derive [identity of law from the employment of] 'fifteen' here and in connection with the Feast of unleavened bread:[2] just as there, women are liable, so here too. Hence it is necessary.

But what of pilgrimage,[3] which is an affirmative command limited to time, yet the reason [of woman's exemption] is that Scripture wrote, [Three times in the year all] thy males [shall appear before the Lord thy God],[4] thus excluding women; but otherwise women would be liable? — It is necessary: I would have thought, we learn the meaning of 'appearance' from 'assembling'.[5]

Now, instead of deriving an exemption from phylacteries, let us deduce an obligation from [the precept of] rejoicing?[6] Said Abaye: As for a woman, her husband must make her rejoice.[7] Then what can be said of a widow?[8] It refers to her host.[9] Now, let us learn [liability] from [the precept of] 'assembling'?[10] Because unleavened bread and 'assembling' are two verses [i.e., precepts] with the same purpose,[11] and wherever two verses have the same purpose, they cannot throw light [upon other precepts].[12] If so, phylacteries and pilgrimage are also two verses with one purpose,[13] and cannot illumine [other precepts]? — They are both necessary: for had the Divine Law stated

phylacteries but not pilgrimage, I would have thought, let us deduce the meaning of 'appearance' from 'assembling'.[14] While had the Divine Law written pilgrimage but not phylacteries, I would have reasoned, Let phylacteries be assimilated to mezuzah.[15] Thus both are necessary.[16] If so, unleavened bread and 'assembling' are also necessary? — For what are they necessary? Now, if the Divine Law stated 'assembling' but not unleavened bread, it were well:[17] for I would argue, let us deduce 'fifteen', 'fifteen', from the feast of Tabernacles.[18] But let the Divine Law write unleavened bread, and 'assembling' is unnecessary, for I can reason, If it is incumbent upon children,[19] how much more so upon women! Hence it is a case of two verses with the same purpose, and they cannot throw light [upon other precepts].

Now, that is well on the view that they do not illumine [other cases]. But on the view that they do, what may be said?[20] Furthermore, [that] affirmative precepts not limited to time are binding upon women; how do we know it? Because we learn from fear:[21] just as fear is binding upon women, so are all affirmative precepts not limited to time incumbent upon women. But let us [rather] learn from the study of the Torah?[22] — Because the study of the Torah and procreation[23] are two verses which teach the same thing,[24] and wherever two verses teach the same thing, they do not illumine [others].

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(1) The deduction from ha-ezrah.

(2) Here, Lev. XXIII, 39: on the fifteenth day of the seventh month; Passover, ibid. 6: and on the fifteenth day of the same month is the feast of unleavened bread unto the Lord.

(3) Lit., 'appearance' — before the Lord on Passover, Pentecost and Tabernacles.

(4) Ex. XXIII, 17.

(5) 'Appearance' is mentioned in both cases. Pilgrimage, as quoted in last note; assembling, Deut. XXXI, 11f: when all Israel is come to appear before the Lord thy God. . . assemble the people, men and women, etc.

(6) That too is occasioned by the Season, yet is obligatory upon women; v. Deut. XVI, 14.

(7) I.e., the duty lies not on the woman herself, but on her husband, to make her rejoice.

(8) Who is explicitly mentioned in the same verse, q.v.

(9) Lit., 'the one with whom she dwells'. I.e., the master of the house where she lives must make her rejoice.

(10) Just as that is an affirmative precept limited to time and yet incumbent upon women, so are all etc.

(11) Lit., 'that come as one,' i.e., both are affirmative precepts occasioned by the season, and in both it is stated that they include woman.

(12) V. note 7.

(13) Both teaching that women are exempt.

(14) Just as the 'assembling' includes women, so does pilgrimage.

(15) Since they are written together, and so women are liable to the former as to the latter.

(16) The reason why two verses which teach the same thing cannot illumine other precepts is that if they were meant to do so one only would be sufficient, for the second could be deduced; and similarly all other precepts. But this obviously does not hold good when each is necessary in itself; in that case, therefore, both together throw light upon other cases.

(17) I.e., the latter would be unnecessary.

(18) Thus shewing that women are exempt from eating unleavened bread; v. supra.

(19) V. Deut. XXXI, 12, 'and the children'.

(20) Let us deduce liability of women in regard to all affirmative precepts limited to time.

(21) I.e., the precept to fear one's parents, Lev. XIX, 3, which, as deduced supra 29a, applies to both sexes.

(22) Which is occasioned by time and yet not obligatory upon women.

(23) Likewise not limited in time and not incumbent upon women.

(24) Viz., that women are exempt.

Talmud - Mas. Kiddushin 35a

But according to R. Johanan b. Beroka, who maintained, Concerning both [Adam and Eve] it is said: And God blessed them: and God said unto them, Be fruitful and multiply,[1] what can be said? — Because the study of the Torah and redemption of the firstborn are two verses with one purpose, and

such do not illumine [others]. But according to R. Johanan b. Beroka too, let procreation and fear be regarded as two verses with one purpose,[2] which do not illumine [other cases]?[3] — Both are necessary. For if the Divine Law wrote fear and not procreation, I would argue, The Divine Law stated, [Be fruitful, and multiply, and replenish the earth,] and conquer it: only a man, whose nature It is to conquer, but not a woman, as it is not her nature to conquer.[4] And if Scripture wrote procreation and not fear, I would reason: A man, who has the means to do this [sc. to shew fear to his parents] is referred to, but not a woman, seeing that she lacks the means to fulfil this;[5] and that being so, she has no obligation at all.[6] Thus both are necessary. Now, that is well on the view that two verses with the same teaching do not illumine [others]: but on the view that they do, what can be said?[7] — Said Raba, The Papunians[8] know the reason of this thing, and who is it? R. Aha b. Jacob. Scripture saith, And it shall be for a sign unto thee upon thine hand, and for a memorial between thine eyes, that the Torah of the Lord may be in thy mouth:[9] hence the whole Torah is compared to phylacteries: just as phylacteries are an affirmative command limited to time, and women are exempt, so are they exempt from all positive commands limited to time.[10] And since women are exempt from affirmative precepts limited to time, it follows that they are subject to those not limited to time.[11] Now, that is well on the view that phylacteries are a positive command limited to time; but what can be said on the view that they are not?[12] — Whom do you know to maintain that phylacteries are an affirmative precept not limited to time? R. Meir. But he holds that there are two verses with the same teaching, and such do not illumine [others].[13] But according to R. Judah, who maintains that two verses with the same teaching illumine [others], and [also] that phylacteries are a positive command limited to time, what can be said? — Because unleavened bread, rejoicing [on Festivals], and 'assembling' are three verses with the same teaching,[14] and such do not illumine [others].[15]

AND ALL NEGATIVE PRECEPTS etc. Whence do we know it? — Said Rab Judah in Rab's name, and the School of R. Ishmael taught likewise, Scripture saith, When a man or a woman shall commit any sin that men commit [. . . then that soul shall be guilty]:[16] thus the Writ equalised woman and man in respect of all penalties [decreed] in the Torah.[17] The School of R. Eliezer taught: Scripture saith, [Now these are the judgments] which thou shalt set before them:[18] The Writ equalised woman and man in respect of all civil laws in Scripture.[19] The School of Hezekiah taught: Scripture saith, [but if the ox were wont to gore . . .] and he kill a man or woman [the ox shall be stoned, and his owner also shall be put to death];[20] the Writ placed woman on a par with man in respect of all death sentences [decreed] in Scripture. Now, it is necessary [that all three should be intimated]. For if the first [only] were stated, [l would say] that the All-Merciful had compassion upon her [woman], for the sake of atonement;[21] but as for civil law, I might argue that it applies only to man, who engages in commerce, but not to woman, who does not. While if the second [alone] were intimated, that is because oneðs livelihood depends thereon;[22] but as for ransom ,[23] I might argue,

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(1) Gen. I, 28; this is the command of procreation.

(2) Viz., both are affirmative precepts not occasioned by time and both are incumbent upon women.

(3) So that on the contrary only these are obligatory, but not others.

(4) And as this is stated together with procreation, the same ruling governs both.

(5) V. p. 148. n. 5.

(6) Even when she can fulfil it. e.g., if she is unmarried.

(7) This is the conclusion of the objection introduced by 'furthermore', supra 34b.

(8) I.e., scholars of Papunia, between Bagdad and Pumbeditha, possibly on the River Papa, whence the name; Obermeyer, p. 242.

(9) Ex. XIII, 9. The 'sign' and 'memorial' refer to the phylacteries.

(10) Now, a direct comparison of this nature, in which the 'Torah of the Lord' is practically identified with the 'sign' and the 'memorial,' is stronger than a mere analogy of the type hitherto discussed, and so outweighs any opposite conclusions arrived at by analogy.

(11) For otherwise, this comparison should be written in connection with the latter, e.g., study of the Torah, whence I would deduce that woman are exempt from all such precepts (and from precepts limited to time too, a fortiori).

(12) This question is disputed in Shab. 61a.

(13) I.e, he does not employ the comparison, but deduces by analogy from pilgrimage, as above. Unleavened bread and 'assembling' do not furnish any opposite conclusion, for they are two verses with the same teaching.

(14) These are three positive commands limited to time and binding upon women.

(15) This is admitted by all. According to this, Abaye's contention that the precept of rejoicing relates to a woman's husband or her host (supra 34b) is rejected.

(16) Num. V, 6.

(17) Negative precepts involve flagellation.

(18) Ex. XXI, 1.

(19) This is not adduced as a source of the Mishnah, since it deals with a different subject, but as a parallel to the last statement.

(20) Ibid. 29.

(21) The first refers to sacrifice for sin, and the woman is given the same opportunity of atoning as man.

(22) Viz., on the protection afforded by civil law.

(23) The last law quoted treats of the ransom paid by the owner of the ox; vv.29H

Talmud - Mas. Kiddushin 35b

it applies only to man, who is subject to precepts, but not to woman, who is not subject to them.[1] And if the last [alone] were intimated, — since there is loss of life, the All-Merciful had compassion upon her;[2] but in the first two I might say that it is not so.[3] Thus they are [all] necessary.

EXCEPTING, YE SHALL NOT ROUND [THE CORNER OF YOUR HEADS] NEITHER SHALT THOU MAR, etc. As for defiling oneself to the dead, that is well, because it is written: Speak unto the priests the sons of Aaron: [There shall none defile himself for the dead among his people]:[4] [hence], the sons of Aaron, but not the daughters of Aaron. But how do we know [that she is exempt from] the injunction against rounding [etc.] and marring [etc.]? — Because It is written, ye shall not round the corner of your heads, neither shalt thou mar the corners of thy beard:[5] whoever is included in [the prohibition of] marring is included in [that of] rounding; but women, since they are not subject to [the prohibition of] marring, are not subject to [that of] rounding. And how do we know that they are not subject to [the injunction against] marring? — Either by common sense, for they have no beard. Or, alternatively, [from] Scripture. For Scripture saith, ye shall not round the corner of your heads, neither shalt thou mar the corner of thy beard; since Scripture varies its speech,[6] for otherwise the Divine Law should write, 'the corner of your beards'; why, 'thy beard'? [To intimate], 'thy beard,' but not thy wife's beard. Is it then not?[7] But it was taught: The beard of a woman and that of a saris[8] who grew hair, are like a [man's] beard in all matters. Surely that means in respect to marring? — Said Abaye: You cannot say that it is in respect to marring, for we learn 'corner' 'corner' from the sons of Aaron:[9] just as there, women are exempt; so here too, women are exempt. But if we hold that 'the sons of Aaron' is written with reference to the whole section,[10] let the Writ refrain[11] from it,[12] and it[13] follows a fortiori. For I can argue, If [of] priests, upon whom Scripture imposes additional precepts, [we say] 'the sons of Aaron' but not the daughters of Aaron, how much more so of Israelites! — But for the gezerah shawah I would reason that the connection is broken.[14] Then now too let us say that the connection is broken; and as for the gezerah shawah,[15] — that is required for what was taught: 'They shall not shave': I might think that if he shaves it with scissors,[16] he is liable [for violating the injunction]: therefore it is stated, thou shalt not mar.[17] I might think that if he plucks it [his hair] out with pincers or a remover, he is liable:[18] therefore it is stated: 'they shall not shave'.[19] How then is it meant? Shaving which involves marring, viz., with a razor.[20] If so,[21] let Scripture write, ['ye shall not round the corner of your heads, neither shalt thou mar] that of thy beard'? why [repeat] 'the corner of thy beard'? Hence both are inferred.[22]

Then when it was taught: ‘The beard of a woman and that of a saris who grew hair, are like a [man's] beard in all respects’: to what law [does it refer]? — Said Mar Zutra: To the uncleanliness of leprosy.[23] ‘The uncleanliness of leprosy!’ But that is explicitly stated: If a man or a woman have a plague upon the head or the beard?[24] — But, said Mar Zutra, [it is] in respect of purification from leprosy.[25] But purification from leprosy too is obvious; since she is liable to uncleanliness [through her beard], she needs [the same] purification! — It is necessary:[26] I might have assumed, it is written with separate subjects:[27] [thus:] ‘If a man or a woman have a plague upon the head’; while ‘or the beard’ reverts to the man [alone]; therefore we are informed [otherwise].

Issi taught: Women are exempt from the injunction against baldness too.[28] What is Issi's reason? — Because he interprets thus: Ye are sons of the Lord your God: ye shall not cut yourselves, nor make any baldness between your eyes for the dead. For thou art an holy people unto the Lord thy God:[29] [the implied limitation] ‘sons’ but not daughters [is] in respect of baldness. You say, in respect of baldness; yet perhaps it is not so, but rather in respect of cutting? When it is said: ‘For thou art an holy people unto the Lord thy God,’ cutting is referred to;[30] hence, how can I interpret [the implication] ‘sons’ but not daughters? In respect to baldness. And why do you prefer[31] to include cutting and exclude baldness? I include cutting which is possible both where there is hair and where there is no hair, and I exclude baldness which is possible only in the place of hair.[32] Yet perhaps ‘sons’ but not daughters applies to both baldness and cutting, while ‘For thou art an holy people unto the Lord thy God’ relates to incision![33] — Issi holds that incision [seritah] and cutting [gedidah]

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(1) Actually, of course, she is subject to certain precepts, as stated on 29a, but not liable to as many as man (Tosaf.).

(2) And imposed upon the owner the payment of ransom for the death of a woman as for that of a man.

(3) Sc. that woman is the same as man.

(4) Lev. XXI, 1.

(5) Lev. XIX, 27.

(6) Using the plural in the one case and the singular in the other.

(7) Is not a woman's beard subject to this prohibition?

(8) V. Glos.

(9) With reference to Israelites in general: nor shalt thou mar the corner of thy beard; in the section relating to priests: neither shall they shave off the corner of their beard (Lev. XXI, 5), it being assumed that the phrase ‘sons of Aaron’ of v. I applies to the whole section. The employment of ‘corner’ in both cases teaches similarity of law.

(10) V. n. 5.

(11) Lit., ‘keep silent’.

(12) Sc. the gezerah shawah of ‘corner’.

(13) Sc. that ‘thou shalt not mar’ does not apply to women.

(14) Viz., that ‘the sons of Aaron’ in v. I does not refer to ‘they shall not shave the corner of their beards’ in v. 5.

(15) Which appears to intimate that it is not.

(16) I.e., clipped the hair very close.

(17) Lev. XIX, 27: thus the first verse quoted, Lev. XXI, 5, in reference to Priests, is illumined by the second in reference to Israelites. ‘Mar’ can only refer to the action of a razor, which removes the hair completely.

(18) In respect of ‘thou shalt not mar’.

(19) In reference to priests, and this illumines the injunction ‘thou shalt not mar’. Plucking hairs one by one is not shaving.

(20) Now since the gezerah shawah is wanted for this, I may still say ‘the sons of Aaron’ in Lev. XXI, 1, does not refer to ‘and they shall not shave the corner of their beards’ in v. 5, the connection being broken.

(21) That the gezerah shawah merely defines ‘shaving’ and ‘marring’, but does not shew to whom they apply.

(22) Viz., definition and scope.

(23) The symptoms of leprosy of the skin differ from those of the hair; cf. Lev. XIII, 1-17 with vv. 29-37. The Baraitha teaches that if a woman or a saris grows a beard, though normally their chins are free from hair, the test of leprosy are the symptoms of the latter, not of the former,

(24) Lev. XIII, 29. Why should the Baraitha state it?
(25) When a woman becomes clean from leprosy of the beard, she must undergo the same ritual as a man, viz., the beard must be shaved off (v. 33) — S. Strashun.
(26) The Baraitha refers to the uncleanliness of leprosy, as first stated, yet it is necessary.
(27) Lit., 'on (different) sides'.
(28) V. Lev. XXI, 5.
(29) Deut. XIV, 1f.
(30) For 'people' includes men and women; since this is the reason of the previous injunctions, one at least must apply to women too.
(31) Lit., 'what (reason) do you see?'
(32) Since the prohibition of baldness is necessarily more limited, it is logical that the exclusion of daughters shall relate thereto.
(33) Lev, XXI, 5: and they (sc. the priests) shall not make any incision (Heb. sarateth, E.V. cuttings) in their flesh. It is now assumed that making incisions (seritah) is not identical with cutting (gedidah), one being by hand and the other with a knife.

Talmud - Mas. Kiddushin 36a

are identical.[1]

Abaye said: This is Issi's reason, viz., he learns 'baldness', 'baldness', from the sons of Aaron:[2] just as there, women are exempt, so here too, women are exempt. But if we hold that the phrase ['the sons of Aaron'] relates to the whole section, let Scripture refrain from it,[3] and it [woman's exemption] follows a fortiori. For I may argue, If [of] priests, upon whom the Writ imposes additional precepts, [we say] 'the sons of Aaron' but not the daughters of Aaron, how much more so of Israelites! — But for the gezerah shawah I would think the connection is broken.[4] Then now too, let us say that the connection is broken; and as for the gezerah shawah, that is required for what was taught: They shall not make a baldness:[5] I might think that even if one makes four or five bald patches he is liable for only one [transgression]; therefore it is stated, karhah [a baldness],[6] intimating liability for each separate act. What is taught by, 'upon their head'? Because it is said: 'Ye shall not cut yourselves, nor make any baldness between your eyes for the dead': I might think that one is liable only for between the eyes. Whence do I know to include the whole head? Therefore it is stated: 'upon their head,' to teach liability for the [whole] head as for between the eyes. Now, I know this only of priests,[7] upon whom Scripture imposes additional precepts; whence do we know it of Israelites? — Karhah [baldness] is stated here, and karhah is also stated below; just as there, one is liable for every act of making baldness, and for the [whole] head as for between the eyes, so here too, one is liable for every act of baldness and in respect of the whole head as for between the eyes. And just as below, [baldness] for the dead [is meant], so here too it is for the dead![8] If so,[9] let Scripture write kerah [baldness]:[10] why karhah? That both may be inferred.

Raba said: This is Issi's reason, viz., he learns [the applicability of] 'between your eyes' from phylacteries:[11] just as there, women are exempt, so here too, women are exempt.

Now, why does Raba not say as Abaye? — [The distinction between] kerah and karhah is not acceptable to him. And why does Abaye reject Raba's reason? — He can tell you. Phylacteries themselves are learnt from this: just as there, ['between the eyes' means] the place where a baldness can be made [viz.,] on the upper part of the head,[12] so here too' the place for wearing [phylacteries] is the upper part of the head.[13] Now, according to both Abaye and Raba, how do they interpret this [verse], 'Ye are sons [etc.']?[14] — That is wanted for what was taught: 'Ye are sons of the Lord your God'; when you behave as sons[15] you are designated sons; if you do not behave as sons, you are not designated sons: this is R. Judah's view. R. Meir said: In both cases you are called sons, for it is said, they are sottish children;[16] and it is also said: They are children in whom is no faith;[17] and it is also

said, a seed of evil-doers, sons that deal corruptly;[18] and it is said, and it shall come to pass that, in the place where it was said unto them, Ye are not my people, it shall be said unto them, Ye are the sons of the living God.[19] Why give these additional quotations?[20] For should you reply, only when foolish are they designated sons, but not when they lack faith — then come and hear: And it is said: 'They are sons in whom is no faith'. And should you say, when they have no faith they are called sons, but when they serve idols they are not called sons — then come and hear: And it is said: 'a seed of evil-doers, sons that deal corruptly.' And should you say, they are indeed called sons that act corruptly, but not good sons — then come and hear: And it is said, and it shall come to pass that, in the place where it was said unto them, Ye are not my people, it shall be said unto them, Ye are the sons of the living God.[21]

MISHNAH. THE [RITES OF] LAYING HANDS, WAVING, BRINGING NEAR [THE MEAL-OFFERING], TAKING THE HANDFUL, BURNING [THE FAT], WRINGING [THE NECK OF BIRD SACRIFICES], RECEIVING AND SPRINKLING [THE BLOOD], ARE PERFORMED[22] BY MEN BUT NOT BY WOMEN, EXCEPTING THE MEAL-OFFERING OF A SOTAH[23] AND A NEZIRAH,[24] WHERE THEY [THEMSELVES] DO PERFORM WAVING.

GEMARA. THE [RITES OF] LAYING [HANDS], because it is written: Speak unto the sons of Israel. . . and he shall lay [his hand upon the head of the burnt-offering]:[25] thus the sons of Israel lay [hands], but not the daughters of Israel.

WAVING: Speak unto the sons of Israel . . ' [the fat with the breast, it shall he bring, that the breast] may be waved [etc.]:[26] hence, the sons of Israel wave, but not the daughters of Israel.

BRINGING NEAR [THE MEAL-OFFERING]: For it is written: And this is the law of the meal-offering: the sons of Aaron shall offer it:[27] the sons of Aaron, but not the daughters of Aaron.

TAKING THE HANDFUL. For it is written: And he shall bring it to Aaron's sons the priests: and he shall take thereout his handful [of the fine flour thereof].[28] the sons of Aaron, but not the daughters of Aaron.

BURNING [THE FAT]. Because it is written: And Aaron's sons shall burn it:[29] the sons of Aaron, but not the daughters of Aaron.

WRINGING [THE NECK OF BIRD SACRIFICES]. Because it is written, and he shall wring [off his head,] and burn it [on the altar]: thus wringing is assimilated to burning.[30]

RECEIVING [THE BLOOD]. Because it is written, and the priests, Aaron's sons, shall bring [the blood]:[31] and a Master said,

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(1) Both are either by hand or with an instrument.

(2) I.e., baldness is mentioned in Deut. XIV. If., in connection with Israelites, and in Lev. XXI, 5, in reference to the priests. Here too it is assumed that 'the sons of Aaron' in v. 1. applies to the whole section,

(3) This gezerah shawah.

(4) V. p. 174, n. 4.

(5) Lev. XXI, 5. Heb. lo yikrehu.

(6) The verb is followed by its cognate object, though this is unnecessary.

(7) 'Upon their head' referring to them.

(8) I.e., Lev, XXI, 5 refers to such a case.

(9) That the gezerah shawah does not also exclude women.

(10) A shorter form.

(11) Deut. XI, 18: and they shall be for frontlets between your eyes.

(12) I.e., where the hair grows.
(13) But not on the forehead above the nose, as 'between your eyes' would seem to imply.
(14) Since they derive Issi's dictum from another source.
(15) Obediently and lovingly.
(16) Jer. IV, 22.
(17) Deut. XXXII, 20.
(18) Isa. I, 4.
(19) Hos. II, 1.
(20) Lit., 'why 'and it is said'?'
(21) This whole passage expresses the firm belief that Israel can never be entirely rejected by God for all time. That in turn is based on the conviction that the Jew will never sin so completely as to render a return to God impossible, and the final verse quoted refers to such a religious regeneration.
(22) The meaning of these is made clear in the texts quoted in the Gemara.
(23) V. Glos.
(24) V. Glos,
(25) Lev. I, 2, 4.
(26) Ibid. VII, 29f.
(27) Ibid. VI, 7. ['Offer it', i.e., 'bring it near' the altar, v. Sotah 14b.]
(28) Ibid. II, 2.
(29) Sc. the fat, etc., mentioned in the preceding verses. — Ibid. III, 5.
(30) Hence it may not be done by women.
(31) Ibid. I, 5.

Talmud - Mas. Kiddushin 36b

'and they shall bring' refers to the receiving of the blood.

AND SPRINKLING. The sprinkling of what?[1] If that of the [red] cow — Eleazar is written in connection therewith?[2] If [that sprinkled] on the inner precincts [of the Temple],[3] is but the anointed priest is stated in connection therewith![4] — But it refers to the sprinkling of a bird's [blood], which is inferred a minori from an animal:[5] if an animal, for the slaughtering of which a priest was not specified,[6] yet a priest was specified for its sprinkling; then a fowl, for the wringing of whose neck a priest was appointed,[7] it surely follows that one [a priest] is specified for its sprinkling![8]

EXCEPTING THE MEAL-OFFERING OF A SOTAH AND A NEZIRAH. R. Eleazar said to R. Josiah his contemporary:[9] Do not sit down on your haunches[10] until you have told me this law: How do we know that the meal.offering of a sotah requires waving? [You ask,] 'How do we know!' it is written in the very section, and he shall wave the offering [before the Lord].[11] But [the question is,] how do we know that the waving must be by the owner?[12] — The meaning of 'hand' is deduced from a peace-offering. Here is written: Then the priest shall take [the jealousy- offering] out of the woman's hand:[11] while there [in reference to peace-offerings] it is written, his hands [sc. the owner's] shall bring [the offerings of the Lord made by fire]:[13] just as here the priest [is stated], so there too the priest [is meant]; and just as there the owner [is specified], so here too the owner [is required]. How so? The priest inserts his hand under the owner's and waves. We have found [this in the case of] sotah; how do we know [it of] a nezirah? — The meaning of 'palm' [kaf] is derived from sotah.[14]

MISHNAH. EVERY PRECEPT WHICH IS DEPENDENT ON THE LAND IS PRACTISED ONLY IN THE LAND [PALESTINE]; AND THAT WHICH IS NOT DEPENDENT ON THE LAND IS PRACTISED BOTH WITHIN AND WITHOUT THE LAND [IN THE DIASPORA],[15]

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(1) Lit., 'of where'.
(2) Num. XIX, 4: and Eleazar shall . . . sprinkle of her blood. Eleazar was the vice High Priest, and this shews that even

all other male priests are excluded; surely it is superfluous to state that women are debarred!
(3) The sprinkling on the veil and on the golden altar, mentioned in particular cases.
(4) Lev. IV, 5f: And the priest that is anointed shall take of the bullock's blood. . . and sprinkled of the blood . . . before the veil of the sanctuary. The difficulty is as explained in the previous note.
(5) Lit., 'a young of the herd'.
(6) An Israelite too may slaughter it, for it is written: And he shall kill the bullock before the Lord: and the priests . . . shall bring (i.e., receive) the blood — Lev. I, 5. Hence priests are required only from the reception of the blood and onward, but not for the actual slaughtering.
(7) Ibid. I, 15. Wringing the neck of a fowl is the equivalent of slaughtering an animal.
(8) And then the analogy between wringing and burning (supra 36a bottom) is extended to sprinkling. — Actually, the Gemara could state that it refers to the sprinkling of animals' blood, but it goes further and teaches it even of bird sacrifices, though there it is not explicitly mentioned. Moreover, if the Mishnah referred to animals' blood, zerikoth should have been employed, not hazza'oth (the verb zarak being generally used in the Bible for the sprinkling of the blood of animals). Maharsha.
(9) R. Eleazar was an Amora of the third century. There was a Tanna of the second century named R. Josiah, and Rashi assumes that he was still living when R. Eleazar made the following remark; hence the Talmud observes that R. Josiah referred to here was the Amora, his contemporary, not the Tanna.
(10) I.e., do not sit down at all (Tosaf. Naz.24b, s.v. אמר) v. Nazir (Sonc. ed.) p. 87, n. 9.
(11) Num. V, 25; the reference is to sotah.
(12) I.e., by the woman herself.
(13) Lev. VII, 30.
(14) Sotah, Num. V, 18: and he (the priest) shall put the offering of memorial in her palms (E.V. hands); nazir, (and the same applies to a nezirah), ib. VI, 19: and he (the priest) shall put them upon the palms (E.V. hands) of the Nazirite. The employment of 'palm' in both cases teaches that their provisions are identical.
(15) The Gemara explains the meaning of 'DEPENDENT' and 'NOT DEPENDENT'.

Talmud - Mas. Kiddushin 37a

EXCEPT 'ORLAH[1] AND KILAYIM.[2] R. ELEAZAR SAID: HADASH[3] TOO.[4]

GEMARA. What is the meaning of 'DEPENDENT' and 'NOT DEPENDENT'? Shall we say: 'DEPENDENT' refers to those [precepts] where 'coming' is written, and 'NOT DEPENDENT' to those where 'coming' is not stated?[5] But phylacteries and the [redemption of] the firstling of an ass are practised both within and without the land, though 'coming' is written in connection with them?[6] — Said Rab Judah: This is its meaning: every precept which is a personal obligation[7] is practised both within and without the Land; but what is an obligation of the soil[8] has force only within the Land.

How do we know these things? — For our Rabbis taught: These are the statutes[9] — this refers to the [Rabbinic] interpretations;[10] and the judgments — to civil law; which ye shall observe — to [the study of the] Mishnah; to do — to actual practice; in the land: I might think that all precepts are binding in the Land only — therefore it is stated, all the days that ye live upon the earth. If 'all the days', I might think that [all precepts] must be practised both within and without the Land — therefore it is taught: 'in the land'. Now, since the Writ extends and limits [the duration of the precepts], go forth and learn from what is stated in that passage: Ye shall utterly destroy all the places, wherein the nations served their God:[11] just as [the destruction of] idolatry is singled out as being a personal duty, and is obligatory both within and without the land,[12] so everything which is a personal duty is incumbent both within and without the land.

EXCEPTING ORLAH AND KIL'AYIM [etc.]. The scholars propounded: Does R. Eleazar disagree in the direction of leniency or [greater] stringency? 'In the direction of stringency,' the first Tanna stating thus: EXCEPTING 'ORLAH AND KIL' AYIM, concerning which there is a

traditional law, though one might argue that it is a duty connected with the soil, but hadash is practised only in the Land, but not without. What is the reason? 'Dwelling' implies after taking possession and settling down.[13] Whereon R. Eleazar comes to say that hadash too applies both within and without the Land: What is the reason? 'Dwelling' implies wherever you may be living.[14] Or perhaps, he differs in the direction of leniency, the first Tanna stating thus: EXCEPTING 'ORLAH AND KIL'AYIM, concerning which there is a traditional law,[15] and all the more so hadash, for 'dwelling' implies wherever you are living.[16] Whereon R. Eleazar comes to say that hadash is practised only in the land, for 'dwelling' implies after taking possession and settling down. While to what does TOO refer? To the first [clause].[17]

Come and hear: For Abaye said: which Tanna disagrees with R. Eleazar [in our Mishnah]? R. Ishmael. For it was taught: This is to teach you that wherever 'dwelling' is stated, it means only after taking possession and settling down:[18] this is R. Ishmael's opinion. Said R. Akiba to him: But the Sabbath, in connection with which 'dwellings' is stated,[19] is yet binding both within and without the land?[20] The Sabbath, replied he to him, is inferred a minori: if light precepts must be practised both within and without the land, surely the Sabbath, which is more stringent! Since Abaye said: 'Which Tanna disagrees with R. Eleazar? R. Ishmael,' it follows that R. Eleazar differs in the direction of [greater] stringency.[21] This proves it.

Now consider: to what does R. Ishmael refer? To libations. But in the case of libations

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(1) V. Glos.

(2) V. Glos. Though dependent on the land, these are binding in the diaspora too.

(3) V. Glos.

(4) It may not he eaten before the bringing of the 'omer (q.v. Glos); v. Lev. XXIII, 10-14.

(5) I.e., 'dependent' means that Scripture made the performance of the particular precept conditional upon entering Palestine; e.g., Lev. XIX, 23: And when ye shall come into the land, and shall have planted etc.

(6) Ex. XIII, 11ff.: And . . . when the Lord shall bring thee (in Heb. 'bring' is the causative form of 'come' — 'make thee come') into the land . . . then every firstling of an ass thou shalt redeem with a lamb . . . and it shall be for a sign upon thine hand, and for frontlets between thine eyes (i.e., phylacteries).

(7) I.e., which throws no obligation upon the soil or its produce, but on the person himself.

(8) Arising out of land produce, e.g., tithes.

(9) Deut. XII, 1.

(10) I.e., laws not explicitly stated in the Bible but derived by Rabbinic exegesis.

(11) Ibid. 2.

(12) Since 'all the days etc.,' immediately precedes this,

(13) The section on hadash is concluded with the passage: it shall be a statute for ever throughout your generations in all your dwellings (Lev. XXIII, 14). Now, it might be held that 'in all your dwellings' implies that hadash is binding even without Palestine. This Tanna, however, on the present hypothesis, maintains that on the contrary it teaches that even in Palestine it came into force only after the Israelites had conquered the land and settled down in dwellings, but not while they were fighting and dividing up the country.

(14) V. preceding note.

(15) But no Biblical intimation.

(16) So that its exception is intimated in the Bible,

(17) I.e., R. Eleazar said that hadash too is included in the general principle that all precepts dependent etc.

(18) The reference is to Num. XV, 2ff.: When ye come into the land of your dwellings, which I give unto you (lakem, plural), and will make an offering burnt by fire unto the Lord . . . then shall he that offereth ... offer a meal-offering . . . and wine for the drink-offering (libations). Before the erection of the Temple, sacrifices might be offered at either private or public bamoth (high places), one of which was at Gilgal. Now, R. Ishmael deduces from the phrase 'unto you', which is in the plural, that the reference is to a public bamah (sing. of bamoth), and only there were libations required. Consequently, 'dwellings' cannot mean wherever you dwell, since the public bamah was in one place only, but as stated in the text, and it teaches that though there was a public bamah at Gilgal during the fourteen years of conquest and

division, libations were to be brought only after that, when all had settled down in dwellings.

(19) Rashi: Ye shall kindle no fire throughout your habitations on the Sabbath day — Ex. XXXV, 3. Tosaf.: it is the Sabbath of the Lord in all your dwellings. — Lev. XXIII, 3. (Heb. moshaboth is variously translated dwellings or habitations in the E.V.)

(20) Hence dwellings implies extension, in all places. The same holds good of libations, which are accordingly to be offered at private bamoth too. Hence the passage is thus interpreted: Now that you are in the wilderness and have a tabernacle, private bamoth are altogether forbidden. But when ye come unto the land of your habitations, before a tabernacle is erected (as it was subsequently at Shiloah), private bamoth for sacrifice will be permitted, and there too libations will be required.

(21) For the first suggested meaning of the Mishnah must be the correct one.

Talmud - Mas. Kiddushin 37b

both ‘coming’ and ‘dwelling’ are written![1] — It means thus: This is to teach that wherever ‘coming’ and ‘dwelling’ are stated, it means only after taking possession and settling down: that is R. Ishmael's opinion. If so, [when the Baraitha proceeds:] Said R. Akiba to him, ‘But the Sabbath, in connection with which dwellings is stated’ [etc.], and he answered him, ‘The Sabbath is inferred a minori’, he should have answered him, ‘I spoke of "coming" and "dwelling"’? — He gives him a twofold answer.[2] Firstly, I refer to ‘coming’ and ‘dwelling’. Moreover, as to what you say: ‘Behold the Sabbath, in connection with which "dwellings" is stated’ — the Sabbath is inferred a minori.

Wherein do they differ? — In whether they offered libations in the wilderness: R. Ishmael maintains that they did not offer libations in the wilderness, whereas R. Akiba holds that they did offer libations in the wilderness.[3]

Abaye said: This Tanna of the School of Ishmael contradicts[4] another Tanna of the School of Ishmael. For the School of Ishmael taught: Since unspecified ‘comings’ are stated in the Torah, whilst the Writ explained in the case of one [that it means] after posses — sion and settling down,[5] so all mean after possession and settling down.[6] And the other?[7] — Because [the appointment of a] king and [the offering of] first-fruits are two verses with the same teaching,[8] and any two verses with the same teaching do not illumine [others]. And the other?[9] — Both are necessary. For if the Divine Law wrote the case of a king but not first-fruits, I would argue, Since there is enjoyment [of crops] in the case of first-fruits, [the obligation comes] immediately.[10] And if the case of first-fruits were stated but not that of a king, I would reason, Since it is a king's way to conquer, [he must be appointed] immediately [on entering the land]. And the other? — Let the Divine Law state the case of a king, and then first-fruits become unnecessary, for I would reason: If a king, who is for conquest, [is appointed only] after possession and settling down, how much more so are first-fruits [obligatory only then]! And the other? — If it were thus written: I would say: It [first-fruits] is analogous to hallah;[11] hence we are informed [that it is not so].

Now that you say that a personal duty must be practised both within the Land and without the Land, what is the purpose of ‘dwelling,’ which the Divine Law wrote in connection with the Sabbath?[12] — It is necessary. I would say: Since it is written in the chapter on Festivals, it requires sanctification, like the Festivals;[13] hence we are informed[14] [that it is not so]. What is the purpose of ‘dwelling’ written by the Divine Law in connection with forbidden fat and blood?[15] — It is necessary. I might say: Since it is written in the section on sacrifices, as long as sacrifices are practised, heleb[16] and blood are forbidden, but not when they are no longer practised. Hence we are informed [otherwise].

What is the purpose of ‘dwelling’ written by the Divine Law in connection with unleavened bread and bitter herbs?[17] — It is necessary. I might have thought, since it is written: They shall eat it [the Paschal lamb] with unleavened bread and bitter herbs:[18] it holds good only when the Passover

sacrifice is [offered], but not otherwise. Hence we are informed [that it is not so].

What is the purpose of 'coming' which the Divine Law wrote in connection with phylacteries and the firstling of an ass?[19] — That is needed for what the School of Ishmael taught: Perform this precept, for thou shalt enter the land on its account.

Now, on the view that 'dwelling' implies wherever you live,[20] it is well: hence it is written, and they did eat of the [new] produce of the land on the morrow after the passover:[21] they ate on the morrow after the Passover, but not before, which shews

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(1) How then can he infer as above? Possibly 'dwelling' alone denotes extension, in all places, yet here it implies limitation, because 'coming' too is mentioned.

(2) Lit., 'He says to him, 'One thing, and furthermore",'

(3) Thus: (explaining R. Akiba first:) since libations were offered in the wilderness (naturally at the public bamah, for private bamoth were at that time forbidden), the verse under discussion cannot teach that libations would be required at the public bamoth when they entered Palestine, for they were already obligatory before them. Hence it can refer only to the private bamoth during the fourteen years of conquest and allotment (for thereafter private bamoth were illegal); and so dwelling must be an extension, implying wherever you dwell. According to R. Ishmael, however, the verse can teach that libations would be incumbent at the public bamoth, for hitherto, in the wilderness, they had been forbidden (and the fact that public bamoth are now referred to follows from the plural 'you', as stated on p. 182, n. 4); consequently 'dwelling' can only mean after settling down.

(4) Lit., 'excludes that of.

(5) In reference to the appointment of a king, Deut. XVII, 14: When thou art come unto the land which the Lord thy God giveth thee, and shalt possess it, and shalt dwell therein.

(6) Thus in his view 'coming' itself implies this, without the addition of dwelling.

(7) The first Tanna: why does he insist on both?

(8) The fuller definition is also stated with respect to first-fruits, ibid, XXVI, 1: And it shall be, when thou art come in unto the land which the Lord thy God giveth thee for an inheritance, and possessest it, and dwellest therein.

(9) Does he not admit this?

(10) For what does it matter whether one is settled or not? If one enjoys a harvest, the first to ripen should be an offering!

(11) V. Glos. All admit that this became incumbent immediately they entered the land, cf. Num. XV, 18 and Sifre a.l.

(12) V. Ex. XXXV, 3.

(13) V. Lev. XXIII. The Festivals were dependent on the sanctification of the month in which they fell, which could be done only by the Sanhedrin in Judah.

(14) By the word 'dwellings', which applies to all places.

(15) Lev. III, 17: It shall be a perpetual statute throughout your generations in all your dwellings, that ye shall eat neither fat nor blood.

(16) I.e., the forbidden fat.

(17) Ex. XII, 20: In all your habitations shall ye eat unleavened bread. — Bitter herbs are mentioned because they generally go together with unleavened bread, but actually 'dwelling' is not found in connection therewith, and in fact the obligation nowadays (i.e., after the destruction of the Temple) to eat them is only Rabbinical; in Rashi's text 'bitter herbs' seem to have been absent (S. Strashun).

(18) Num. IX, 11.

(19) Since these are independent of Palestine.

(20) So that dwelling written in connection with hadash (Lev. XXIII, 14) does not teach that this holds good only after settling down.

(21) Josh. V, 11. E.V. translates 'old corn'; 'old' is not in the text, and the Gemara assumes that the reference is to the new corn, for otherwise, on the morrow after the passover is pointless.

that the 'omer[1] was first offered and then they ate. But on the view that ['dwelling' implies] after possession and settling,[2] they could have eaten immediately? — They did not need to, for it is written, and the children of Israel did eat the manna forty years, until they came to a land inhabited; they did eat the manna, until they came unto the borders of the land of Canaan.[3] Now, it is impossible to say [literally], 'until they came unto the land inhabited,' since it is also said: '[until they came] unto the borders of the land of Canaan';[4] conversely, 'unto the borders of the land of Canaan' cannot be understood [literally], since it is also said: 'until they came unto a land inhabited!' How then [are these to be reconciled]? Moses died on the seventh of Adar and the manna ceased to descend, but they used the manna which was in their vessels until the sixteenth of Nisan.[5]

Another [Baraitha] taught: 'And the children of Israel did eat the manna forty years'. Did they then eat [it] forty years: surely they ate it but forty years less thirty days?[6] But it is to teach you that they experienced the taste of manna in the cakes which they brought forth from Egypt.

Another [Baraitha] taught: On the seventh of Adar Moses died, and on the seventh of Adar he was born. How do we know that he died on the seventh of Adar? For it is written: [i] So Moses the servant of the Lord died there;[7] [ii] And the children of Israel wept for Moses in the plains of Moab thirty days;[8] [iii] Moses thy servant is dead; now therefore arise, go over [this Jordan];[9] [iv] Pass through the midst of the camp, and command the people, saying: Prepare you victuals; for within three days ye are to pass over this Jordan;[10] and [v] and the people came up out of Jordan on the tenth day of the first month;[11] deduct[12] the preceding thirty three days,[13] thus you learn that Moses died on the seventh of Adar.[14]

And how do we know that he was born on the seventh of Adar? — For it is said: And he [Moses] said unto them, I am an hundred and twenty years old this day; I can no more go out and come in.[15] Now, 'this day' need not be stated;[16] why then is it stated? It teaches that the Holy One, blessed be He, sits and completes the years of the righteous [exactly] from day to day and month to month, as it is said,the number of thy days I will fulfil.[17]

It was taught: R. Simeon b. Yohai said: The Israelites were given three precepts[18] on their entry into the Land,[19] yet they are practised both within and without the Land, and it is logical that they shall be thus binding. If hadash, which is not permanently forbidden,[20] nor is [all] benefit thereof prohibited,[21] and its interdict can be raised,[22] is [nevertheless] operative both within and without the Land;[23] then kil'ayim, which are permanently forbidden,[24] of which [all] benefit is prohibited,[25] and the interdict of which cannot be raised, it surely follows that it has force both within and without the land; and the same logic applies to 'orlah on two [grounds].[26] R. Eleazar son of R. Simeon said:

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(1) V. GIos,

(2) So that the law of hadash was inoperative when they first entered Palestine.

(3) Ex. XVI, 35. 'Land inhabited' refers to cis-Jordania, not Gilead on the east of the Jordan, though two and a half tribes did settle there.

(4) But not Canaan itself.

(5) Hence 'until they came to a land inhabited' refers to the actual period of eating it, while it descended only 'until they came to the borders etc.', where Moses died.

(6) For they came to the wilderness of Sin on the fifteenth of the second month (Ex. XVI, 1), complained of the lack of food (ibid. 2f.), and received the manna on the following day (ibid. 6f, 13). As they ate it until the sixteenth of the first month forty years later, these forty years were short by one month.

(7) Deut. XXXIV, 5.

(8) Ibid. 8.

(9) Josh. I, 2.

(10) Ibid, 11. The month of Nisan.

(11) Ibid. IV, 19.

(12) From the 10th Nisan.
(13) N. ii and iv.
(14) From Adar 7th to Nisan 10th are 33 days.
(15) Deut. XXXI, 2.
(16) Obviously he gave his age as on that day.
(17) Ex. XXIII, 26. Hence he was then exactly a hundred and twenty years old, which was the day of his death; consequently he was born on that day too.
(18) Hadash, 'orlah and kil'ayim.
(19) Since there was no sowing, planting, or harvesting in the wilderness.
(20) But only up to and including the sixteenth of Nisan, the day on which the 'omer is offered.
(21) Though it may not be used for human consumption, it may be given to animals.
(22) Lit., 'permitted'. Even on the sixteenth itself, by the offering of the 'omer.
(23) Interpreting dwelling in Lev. XXIII, 14, 'wherever you live'.
(24) If diverse seeds are sown, their produce is forbidden for all time.
(25) Not only consumption.
(26) The third does not apply, 'orlah not being permanently forbidden.

Talmud - Mas. Kiddushin 38b

All precepts which the Israelites were commanded [to practise] before their entry into the Land[1] are operative both within and without the Land; after their entry into the Land, are operative only within the Land, except release of money [debts] and liberation of slaves:[2] though they were commanded concerning these after their entry into the Land,is they are practised both within and without the Land. But the release of debts is a personal duty?[3] — It is necessary [to state it] Only because of what was taught. Rabbi said: And this is the manner of release: release [thou] [every creditor, etc.][4] the Writ speaks of two releases, the release of soil and the release of debt.[5] At the time when you release soil, you release debts; and at the time when you do not release soil, you do not release debts.[6] But perhaps it means thus: in the place that you must release soil [sc. Palestine], you must release debts; but in the place where you do not release soil [sc. in the Diaspora], you do not release debts?[7] Therefore it is stated, because the Lord's release hath been proclaimed,[8] teaching, under all circumstances.[9]

[Again], liberation of slaves is a personal obligation? — I might have thought, since it is written, and ye shall proclaim liberty throughout the land,[10] it holds good only in the Land, but not without; therefore it is stated, it is a jubilee,[11] implying, under all circumstances. If so, what is taught by 'the land'? — When liberation [of slaves] is in force in the Land, it is in force without; when it is not in force in the Land,[12] it is not in force without.

We learnt elsewhere: Hadash is forbidden by Scriptural law everywhere; [the prohibition of] 'orlah [without palestine] is a halachah, and [that of] kil'ayim is from the words of the Scribes.[13] What is meant by halachah? — Rab Judah said in Samuel's name: It is a law of the country.[14] 'Ulla said in R. Johanan s name: It is a halachah of Moses from Sinai.[15] Said 'Ulla to Rab Judah: On my view that it is a halachah of Moses from Sinai,[16] it is well; therefore we distinguish between doubtful 'orlah and doubtful kil'ayim. For we learnt: Doubtful 'orlah[17] is forbidden in the Land, permitted in Syria,[18] whilst outside the Land one may enter [a Genthe's field] and make a purchase,[19] providing, however, that he does not see him [the Gentile] gather ['orlah].[20] Whereas in respect to kil'ayim we learnt: If a vineyard is planted with vegetables,[21] and vegetables are sold outside it:[22] in the Land they are forbidden; in Syria, permitted; in the Diaspora he [the Gentile owner of the vineyard] may enter and gather them,[23] providing, however, that he [the Jew] does not personally[24] gather [them][25] But on your view,

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(1) I.e., which rank as personal duties.

(2) The first in the seventh (Deut. XV, 1f) and the second in the jubilee year (Lev. XXV, 10). (15) This is questioned by the Gemara below.
(3) And therefore in force before they entered Palestine (Rashi).
(4) Deut. XV, 2.
(5) Deduced from the repetition of the word 'release'.
(6) By 'release of soil' is meant the return of land at jubilee (Lev. XXV, 10, 23, 28). Obviously this did not operate in the wilderness, when they had no land, and therefore debt release was inoperative too, though it is a personal obligation.
(7) Even in Temple times.
(8) Ibid.
(9) This follows from the emphasis suggested by the quotation.
(10) Lev. XXV, 10,
(11) Ibid,
(12) I.e., when there is no Temple.
(13) V. p. 79, n. 7. Biblically the law applies only to Palestine.
(14) It is practised voluntarily in the Diaspora.
(15) It is a compulsory prohibition going back to Moses, handed down by tradition, though not stated in the Bible.
(16) And so has the force of Biblical Law, v. infra p. 190, n. 11.
(17) Fruit of which it is not known whether it is of the first three years of planting or not.
(18) Syria was not originally part of Palestine but conquered by David (I Chron. XIX, 18f); and it is disputed whether David's conquest (technically called the conquest of an individual) conferred the full sanctity of Palestine upon it. This Tanna holds that it did not; consequently the law of 'orlah is not so stringent there, and so doubtful 'orlah is permitted. Yet one may not procure it in the first place, since Syria is not absolutely distinct from Palestine in sanctity.
(19) Of fruit, even if he knows that the Gentile sells 'orlah.
(20) [Of fruit which may be doubtful 'orlah.]
(21) Between the vines, which renders both forbidden as kil 'ayim of the vineyard.
(22) And there is a reasonable fear that they may be from the vineyard.
(23) And sell to a Jew.
(24) Lit., 'with his hand'.
(25) Comparing these two, we see that 'orlah is treated more stringently than kil 'ayim.

Talmud - Mas. Kiddushin 39a

let it be taught in both cases either that he [the Jew] may enter and make a purchase, or that he [the Gentile] may enter and gather [them]?[1] — Samuel did indeed say to R. 'Anan, Read in both cases either that he [the Jew] may enter and make a purchase, or that he [the Gentile] may enter and gather [them]. Mar son of Rabbana recited it in the direction of leniency: In both cases he [the Gentile] may enter and gather them, provided that he [the Jew] does not personally gather.

Levi said to Samuel: Arioch,[2] Supply me with doubtful ['orlah] and I will eat [thereof].[3] R. Awia and Rabbah son of R. Hanan supplied each other with doubtful ['orlah].[4] The keen scholars of Pumbeditha[5] said. There is no 'orlah in the Diaspora. When Rab Judah sent [this ruling] to R. Johanan, he sent back: Conceal[6] [the law of] doubtful ['orlah],[7] destroy certain ['orlah], and proclaim that these fruits must be hidden,[8] and whoever maintains that there is no 'orlah in the Diaspora, he will have no offspring nor posterity 'that shall cast the line by lot in the congregation of the Lord'.[9] But with whom do they [the 'keen scholars'] hold? — With what was taught: R. Eleazar son of R. Jose said on the authority of R. Jose b. Durmaskah, who stated it on the authority of R. Jose the Galilean, who said it on the authority of R. Johanan b. Nuri, who said it on the authority of R. Eleazar the Great: There is no 'orlah in the Diaspora. Is there not? But we learnt: R. ELEAZAR SAID, HADASH TOO?[10] — Read, HADASH.[11]

R. Assi said in R. Johanan's name: [The prohibition of] 'orlah in the Diaspora is a halachah of Moses from Sinai.[12] Said R. Zera to R. Assi: But we learnt: Doubtful 'orlah is forbidden in the Land

but permitted in Syria.[13] He was momentarily non — plussed;[14] [then] he answered him,[15] Perhaps it [the Mosaic halachah] was thus given: Doubtful [‘orlah] is permitted [in the Diaspora], certain [‘orlah] is forbidden.

R. Assi said in R. Johanan's name: One is flagellated for [violating the prohibition of] kil'ayim [in the Diaspora] by Biblical law. But we learnt,[16] kil ‘ayim [is forbidden] by the words of the Soferim?[17] — There is no difficulty: the one refers to kil'ayim of the vineyard, and the other to the grafting of [heterogeneous] tree[s].[18] That agrees with Samuel. For Samuel said: My statutes ye shall keep:[19] [that implies] the statutes which I decreed for you in former times.[20] Thou shalt not let thy cattle gender with a diverse kind: thou shalt not sow thy field with two kinds of seeds.’[21] just as [the prohibition of] ‘thy cattle’ [means] by copulation, so is [that of] ‘thy field’ by grafting;[22] and just as [the law in regard to] ‘thy cattle’ is in force both within and without the Land, so is [that concerning] ‘thy field’ in force alike within and without the Land. But still, ‘thy field’ is written![23] — That is to exclude [diverse] seeds in the Diaspora.[24]

R. Hanan and R. ‘Anan were walking along a path, when they saw a man sowing [diverse] seeds together. Said one to the other, ‘Come, Master, let us ban him.’[25] ‘You are not clear [on this law],’ he replied. Again they saw another man sowing wheat and barley among vines. Said one to the other, ‘Come, Master, let us ban him.’ ‘You are not thoroughly versed [in this law],’ he rejoined. ‘Do we not fully accept R. Josiah's dictum, that [he is not guilty] unless he sows wheat, barley, and grape-stone in the [same] hand-throw?’[26] R. Joseph mixed seeds and sowed [them].[27] Thereupon Abaye protested: But we learnt: Kil'ayim is forbidden [in the] Diaspora by the words of the Scribes! — There is no difficulty, answered he. That [the Mishnah quoted] refers to kil'ayim of the vineyard; this [my action] is with kil'ayim of seeds. Kil'ayim of the vineyard, of which in the Land [all] benefit is forbidden, are also Rabbinically prohibited outside the Land; kil'ayim of seeds, however, of which [even] in palestine benefit is not forbidden,[28] are not prohibited by the Rabbis in the Diaspora. Subsequently R. Joseph said: My former statement was incorrect,[29] for Rab sowed the scholars’ garden[30] in separate beds.[31] What is the reason? Surely in order [to avoid] the mixture of kil'ayim?[32] Said Abaye to him: Now that were indeed well if we were informed

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(1) Since ‘orlah and kil'ayim are alike, neither having Biblical force.

(2) A playful nickname, v. Gen. XIV, 9, Arioch king of Ellasar; by a pun, Ellasar was read al assur, and the phrase applied to Samuel: he was king, but not in ritual law. When Rab and Samuel differ in respect to civil law, the halachah agrees with Samuel; in ritual law, with Rab. V. Shab. 53a Marginal glosses. [S. Funk, Die Juden in Babylonian, I. p. 42, n. 2. takes the term to denote ‘the Tall’, and as a variant of Arika, a cognomen by which Rab was known, on account of his extraordinary stature.]

(3) I.e., gather fruit in my absence, so that I do not know whether it is ‘orlah; Others (mentioned in Tosaf. Ri) translate: supply me (with certain ‘orlah), Levi holding that the prohibition of ‘orlah is inoperative in the Diaspora.

(4) [By exchanging fruit cut by one in the absence of the other.]

(5) A great academy town in Babylon. The term ‘keen scholars’ denotes Eyfa and Abimi, the son of Rahaba (Sanh. 17b).

(6) Lit., ‘shut’.

(7) It is permitted, but since there is already a tendency to treat ‘orlah lightly, do not teach this publicly.

(8) I.e., not eaten.

(9) Micah II, 5.

(10) Since he adds hadash, he.evidently agrees with the first Tanna that ‘orlah is forbidden.

(11) I.e., only hadash, but not ‘orlah.

(12) Various views are held as to the exact meaning of this phrase. Some take it in its literal sense as indicating that the law in question was actually handed down from Moses. Others understand it more figuratively in the sense of a traditional law, whilst its alleged Mosaic origin is not to be taken literally’. V. Weiss, Dor., I. [For a full discussion of this phrase as well as of all the passages where it occurs, v. Bacher, W., Kohler-Festschrift pp. 56ff.]

(13) But if certain ‘orlah is forbidden in the Diaspora by Mosaic law, how can we be lenient in doubtful ‘orlah? (It is a general principle that when in doubt, we are stringent if the law is Biblical or Mosaic, lenient if it is only Rabbinical).

(14) [Lit., ‘was appalled for a who’, quoted from Dan. IV, 26.]
(15) Or possibly, the questioner himself suggested it.
(16) Cur. ed. read: R. Eleazar b. R. Jose said to him, But we learnt. This is obviously incorrect, since R. Eleazar b. R. Jose was a Tanna of an earlier generation, and so the Wilna Gaon deletes it. But Asheri reads: R. Eleazar said to R. Assi, which will refer to R. Eleazar b. Pedath, his contemporary.
(17) V. p. 79, n. 7.
(18) In the latter case diverse growths are actually grafted on each other: that is Biblically forbidden. But in kil'ayim of the vineyard diverse seeds are grown near each other, and though their roots may even intertwine, there is no actual grafting; that is forbidden by Rabbinic law only.
(19) Lev. XIX, 19.
(20) I.e., to the children of Noah. This follows because Scripture does not state, ye shall keep my statutes (E.V., which does translate thus, disregards the order of the Hebrew) but gives precedence to ‘my statutes,’ implying that they were already long in existence.
(21) Ibid.
(22) I.e., in both cases the actual fusion of diverse species is forbidden.
(23) Implying specifically thine, viz., Palestine.
(24) I.e., the planting of diverse seeds in a vineyard is not Biblically forbidden outside Palestine. That follows because the verb ‘to sow’ is more applicable to the sowing of seeds, and with that ‘thy field’ is linked. Nevertheless the analogy, which intimates that grafting is referred to, which is possible only in the case of trees, also shews that grafting is forbidden in the Diaspora too.
(25) For violating Rabbinic law.
(26) I.e., he must have two species of grain and the seed of the vine in his hand and cast them simultaneously into the soil.
(27) Not in a vineyard.
(28) Though diverse seeds may not be sown in Palestine, yet if sown one may benefit from (though not consume) the produce.
(29) Lit., ‘was nothing’.
(30) A vegetable garden for the benefit of his disciples.
(31) For different species.
(32) And this was outside Palestine.

Talmud - Mas. Kiddushin 39b

[that he sowed] four [species] on the four sides of the bed and one [species] in the middle.[1] Here, however,[2] he did so on account of beauty, or [to save] the attendant trouble.[3]

MISHNAH. HE WHO PERFORMS ONE PRECEPT IS WELL REWARDED,[4] HIS DAYS ARE PROLONGED, AND HE INHERITS THE LAND,[5] BUT HE WHO DOES NOT PERFORM ONE PRECEPT, GOOD IS NOT DONE TO HIM, HIS DAYS ARE NOT PROLONGED, AND HE DOES NOT INHERIT THE LAND.[6]

GEMARA. But a contradiction is shewn: These are the things the fruit of which man eats in this world,[7] while the principal remains for him for the future world. Viz., honouring one's parents, the practice of loving deeds, hospitality to wayfarers,[8] and making peace between man and his neighbour; and the study of the Torah surpasses them all.[9] — Said Rab Judah: This is its meaning: HE WHO PERFORMS ONE PRECEPT in addition to his [equally balanced] merits[10] IS WELL REWARDED, and he is as though he had fulfilled the whole Torah. Hence it follows that for these others [one is rewarded] even for a single one![11] — Said R. Shemaiah: That teaches that if there is an equal balance, it tips the scale.[12]

Yet is it a fact that he who performs one precept in addition to his [equally balanced] merits is rewarded? But the following contradicts it: He whose good deeds outnumber his iniquities is

punished,[13] and is as though he had burnt the whole Torah, not leaving even a single letter;[14] while he whose iniquities outnumber his good deeds is rewarded,[15] and is as though he had fulfilled the whole Torah, not omitting even a single letter! — Said Abaye: Our Mishnah means that a festive day and an evil day are prepared for him,[16] Raba said: This latter agrees with R. Jacob, who said: There is no reward for precepts in this world.[17] For it was taught: R. Jacob said: There is not a single precept in the Torah whose reward is [stated] at its side which is not dependent on the resurrection of the dead.[18] [Thus:] in connection with honouring parents it is written, that thy days may be prolonged, and that it may go well with thee.[19] In reference to the dismissal of the nest[20] it is written, that it may be well with thee, and that thou mayest prolong thy days.[21] Now, if one's father said to him, 'Ascend to the loft and bring me young birds,' and he ascends to the loft, dismisses the dam and takes the young, and on his return falls and is killed — where is this man's happiness[22] and where is this man's prolonging of days? But 'in order that it may be well with thee', means on the day that is wholly good; and 'in order that thy days may be long', on the day that is wholly long.[23]

Yet perhaps there was no such happening?[24] — R. Jacob saw an actual occurrence. Then perhaps he[25] was meditating upon a transgression? — The Holy One, blessed be He, does not combine an evil thought with an [evil] act.[26] Yet perhaps he was meditating idolatry, and it is written, that I may take the house of Israel in their own heart?[27] — That too was precisely his point: should you think that precepts are rewarded in this world, why did the [fulfilment of these] precepts not shield him from being led to [such] meditation?[28]

Yet R. Eleazar said: Those who are engaged[29] on a precept are never harmed?[30] — There, when they are going [to fulfil the precept], it is different.[31] But R. Eleazar said: Those who are engaged on a precept are never harmed, either when going or returning? — It was a rickety ladder, so that injury was likely,[32] and where injury is likely one must not rely on a miracle, for it is written, and Samuel said: How can I go? if Saul hear it, he will kill me.[33]

R. Joseph said: Had Aher[34] interpreted this verse[35] as R. Jacob, his daughter's son, he would not have sinned.[36] Now, what happened with Aher? Some say, he saw something of this nature.[37] Others say, he saw the tongue of Huzpith the Interpreter dragged along by a swine.[38] 'The mouth that uttered pearls licks the dust!' he exclaimed. [Thereupon] he went forth and sinned.[39]

R. Tobi son of R. Kisna pointed out a contradiction to Raba: We learnt: HE WHO PERFORMS ONE PRECEPT IS WELL REWARDED; hence, only if he [actively] performs it, but not otherwise. But the following contradicts this: If he sits and commits no transgression he is rewarded as though he has fulfilled a precept! — Said he to him: There it means, e.g., that he was tempted[40] and successfully resisted.[41] As in the case of R. Hanina b. Pappi, whom a certain matron urged [to immorality]. He pronounced a certain [magical] formula, whereupon his body was covered with boils and scabs;[42] but she did something and he was healed. So he fled and hid himself in a bath-house in which when [even] two entered, even in daytime, they would suffer harm.[43] The next morning the Rabbis asked him, 'Who guarded you?' Said he to them, 'Two

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(1) I.e., sowing different species in the same bed, yet taking care according to the regulation to leave sufficient space between each for their roots not to intertwine; v. Shab. 84b. The only possible reason would then be that kil'ayim are forbidden outside Palestine.

(2) Since he did not observe this regulation.

(3) In fetching vegetables, he would know the place of each species.

(4) Lit., 'good is done to him'.

(5) I.e., the future world.

(6) The Mishnah is explained in the Gemara.

(7) I,e., he is rewarded for them in this world.

(8) [This does not occur in the Mishnah, Pe'ah I, whence the passage is quoted, and is omitted in MS.M.]

(9) Thus, only for these is one rewarded in this world, whereas the Mishnah states this of any precept. To the Rabbis study was not only a means to religious observance (cf. infra 40b: study is great, as it leads to action), but a religious act in itself, — indeed, one of the most important, as is shewn by this and numerous other passages in the Talmud. Nevertheless, they were far from believing that religious sincerity might be replaced by mere intellectualism; v. M. Joseph, Judaism as Creed and Life, p. 360.
(10) I.e., his good deeds and bad are exactly balanced, and then he performs a precept, thus tipping the scale.
(11) Even if he has no other good deeds to his credit — surely not!
(12) If one's good deeds and bad are exactly equal, yet among the good deeds is one of those enumerated above, it causes the former to preponderate.
(13) Lit., 'evil is done to him'.
(14) Thus he is purged of his sins in this world, that he may wholly enjoy the next.
(15) For his good deeds in this world, that he may wholly suffer punishment in the next.
(16) By 'good is done to him' the Mishnah means that he is punished in this world; this punishment is regarded as a festive day for him, since he thereby wholly enjoys the next. Conversely the second half of the Mishnah.
(17) But our Mishnah disagrees, and is literally meant, referring to this world.
(18) Which shews that the reward spoken of is in the next world. R. Jacob appears to identify the next world with resurrection; v. Sanh. (Sonc. ed.) p. 601, n. 3.
(19) Deut. V, 16.
(20) V. Ibid. XXII, 6f; that precept is always technically so named.
(21) Ibid.
(22) Lit., 'the goodness of his days'.
(23) I.e., both refer to the next world, not to this, and thereby emphasize that regard comes only then, but not in this world.
(24) R. Jacob bases his deduction on a hypothetical event which may never have happened.
(25) The one who was involved in this occurrence.
(26) For punishment. — I.e., one is not punished for mere intention.
(27) Ezek. XIV, 5: 'heart' implies intention; the reference is to idolatry; v. preceding verse, and thus we see that even the intention of idolatry is punished.
(28) Cf. Aboth IV, 2: 'the reward of a precept is a precept, and the punishment of transgression is transgression, for precept draws precept and transgression draws transgression'.
(29) Lit., 'sent'.
(30) How then could this have happened?
(31) But he was returning, having taken the bird etc.
(32) Lit., 'established'.
(33) 1 Sam. XVI, 2; he did not rely upon the fact that his mission was by God's command.
(34) Elisha b. Abuyah, a great scholar and R. Meir's teacher, who turned against the Torah, whereupon he was dubbed Aher, a different man, a stranger.
(35) The promise of reward and long life.
(36) He interpreted it literally, as referring to this world, and seeing that the promise was not fulfilled turned unbeliever.
(37) Stated above.
(38) Lit., 'a different thing' — a euphemism for swine, the unmentionable. — Huzpith was one of the martyrs slain in the Hadrianic persecution, after the fall of Bethar; v. Dor. II, 119. The Interpreter was a functionary who interpreted the public readings of the Torah to the people.
(39) According to this, it was the eternal question, why do the righteous suffer, which is even put into the mouth of Moses (Ber. 7a), which led him to religious apostasy. For other conjectures v. J.E. s.v. Elishah ben Abuyah.
(40) Lit., 'a matter of transgression came to his hand.'
(41) Lit., 'he was saved from it,'
(42) Belief in magic was very widespread in ancient times, and was even entertained by scholars. On the whole the Talmud was strongly opposed to it, as 'impairing the Divine Agencies' (Sanh. 67b; cf. Tosef. Sotah, XIV, 3; Sotah, IX, 3), and being bound up with idolatry. Nevertheless, in case of need it was resorted to and permitted, so long as pagan means were not employed. Thus healing by means of an amulet was permitted and its use regulated by law (Shab. 61a-b). Here, on the other hand, a Rabbi uses magic to cover himself with boils in order to resist immoral demands, and

it is obviously permitted. The most potent means was an incantation, as here, particularly one which employed the name of God. V. Blau, Das altjudische Zauberwesen, pp. 117-146.
(43) From demons; yet he stayed there the night alone, and was unhurt.

Talmud - Mas. Kiddushin 40a

Imperial [armour] bearers[1] guarded me all night.'[2] Said they to him, 'Perhaps you were tempted with immorality and successfully resisted?' For it was taught: He who is tempted with immorality and successfully resists, a miracle is performed for him.

[Bless ye the Lord, ye messenger's of his:] Ye mighty in strength, that fulfil his word, hearkening unto the voice of his word.[3] E.g., R. Zadok and his companions. R. Zadok was summoned by a certain matron [to immorality]. Said he to her, 'My heart is faint and I am unable; is there aught to eat?' She answered him, 'There is unclean food.' 'What am I to deduce from this?'[4] he retorted: 'that he who commits this [immorality] may eat this.'[5] She then fired the oven and was placing it [the forbidden meat] therein, when he ascended and sat in it. Said she to him, 'What is the meaning of this?' 'He who commits the one [immorality] falls into the other [the fire — of Gehenna]', was his reply. 'Had I known that it is so heinous,' said she, 'I would not have tormented you'.

R. Kahana was selling [work-] baskets, when a certain matron made [immoral] demands upon him. Said he to her, 'I will first adorn myself.' He [thereupon] ascended and hurled himself[6] from the roof towards earth, but Elijah came and caught him.[7] 'You have troubled me [to come] four hundred parasangs', he reproved him. 'What caused me [to do it],'[8] he retorted; 'is it not poverty?'[9] so he gave him a shifa[10] [full] of denarii.[11]

Raba pointed out a contradiction to R. Nahman. We learnt: These are the things the fruit of which man enjoys in this world, while the principal remains for him for the future world: Viz., honouring one's parents, the practice of loving deeds, and making peace between man and his neighbour, while the study of the Torah surpasses them all. Now, in reference to honouring one's parents it is written, that thy days may be long, and that it may go well with thee.[12] Of the practice of loving deeds it is written: He that pursueth after righteousness and loving kindness findeth life, righteousness and honour.[13] Of peacemaking it is said: Seek peace and pursue it;[14] and R. Abbahu said: We learn 'pursuing' from 'pursuing'. Here it is written: 'Seek peace and pursue it'; and elsewhere it is written: He that pursueth after righteousness and loving kindness.[15] Of the study of the Law it is written, for that is thy life, and the length of thy days.[16] But with respect to the dismissal of the nest[17] it is also written, that it may be well with thee, and that thou mayest prolong thy days:[18] then let this too be taught? — He teaches [some] and omits [others]. [What!] the Tanna states: 'These are the things,'[19] yet you say that he teaches [some] and omits [others]! — Said Raba, R. Idi explained it to me: Say ye of the righteous, when he is good, that they shall eat the fruit of their doings:[20] is there then a righteous man who is good and a righteous man who is not good? But he who is good to Heaven and good to man, he is a righteous man who is good; good to Heaven but not good to man, that is a righteous man who is not good.[21] Similarly you read: Woe unto the wicked [man] [that is] evil; for the reward of his hands shall be given unto him:[22] is there then a wicked man that is evil and one that is not evil? But he that is evil to Heaven and evil to man, he is a wicked man that is evil; he who is evil to Heaven but not evil to man, he is a wicked man that is not evil.

Merit has both stock and fruit,for it is said: Say ye of the righteous, when he is good etc.[23] Transgression has stock but not fruit,[24] for it is said: Woe unto the wicked when he is evil etc.[25] Then how do I interpret,[26] Therefore shall they [sc. the wicked] eat of the fruit of their own way, and be filled with their own devices?[27] Transgression which bears fruit[28] has fruit; that which does not bear fruit has no fruit.[29] Good intention is combined with deed,[30] for it is said: Then they that feared the Lord spoke one with another: and the Lord hearkened, and heard, and a book of remembrance

was written before him, for them that feared the Lord, and that thought upon his name.[31] Now, what is the meaning of 'that thought upon his name'? — Said R. Assi: Even if one [merely] thinks of performing a precept but is forcibly prevented the Writ ascribes it to him as though he has performed it. Evil intention is not combined with deed,[32] for it is said: If I regarded iniquity in my heart, The Lord would not hear.[33] Then how do I interpret, behold, I will bring evil upon this people, even the fruit of their thoughts?[34] Intention which bears fruit[35] the Holy One, blessed be He, combines with deed;[36] Intention which does not bear fruit the Holy One, blessed be He, does not combine with deed. Then what of the verse, that I may take the house of Israel in their own heart?[37] — Said R. Aha b. Jacob: That refers to idolatry, for a Master said: Idolatry is so heinous that he who rejects it is as though he admits [the truth of] the whole Torah.[38] 'Ulla said: [This is to be explained] as R. Huna. For R. Huna said: Once a man does wrong and repeats it, it is permitted him. 'It is permitted him'! can you really think so? — But it becomes to him as something permitted.[39]

R. Abbahu said on R. Hanina's authority: Better had a man secretly transgress than publicly profane God's[40] name, for it is said: As for you, O house of Israel, thus saith the Lord God: Go ye, serve every one his idols, and hereafter also, if ye will not hearken unto me: but my holy name shall ye not profane.[41]

R. Il'ai the Elder said: If a man sees that his [evil] desire is conquering him, let him go to a place where he is unknown, don black and cover himself with black,[42] and do as his heart desires,[43] but let him not publicly profane God's name.[44] But that is not so, for we learnt: He who is careless[45] of his Master's honour, it were well for him that he had not come Into the world. Now, to what does this refer? — Rabbah said: To one who gazes at the [rain]bow.[46] R. Joseph said: To one who secretly transgresses![47] — There is no difficulty: the one means where he can subdue his evil desires; the other, where he cannot.

We learnt elsewhere: Credit is not allowed[48] for the profanation of the [Divine] Name, whether It is unwitting or intentional.[49] What is meant by 'credit is not allowed?' — Said Mar Zutra: They [sc. Heaven] do not act like a shopkeeper.[50] Mar the son of Rabina said: This is to teach that if it [sc. one's account of sin and merit] is equally balanced, [the profanation of God's name] tips the scale.[51]

Our Rabbis taught: A man should always

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(1) Var. lec.: Imperial Ethiopian (guards).

(2) Probably meaning, 'a special Providence watched over me'.

(3) Ps. CIII, 20.

(4) [From the fact that there is only unclean food available (Rashi). Others: 'What does it matter'?]

(5) The former is as heinous as the latter.

(6) Lit., 'fell'.

(7) V. note 5.

(8) Lit., 'caused it for me'.

(9) Which forces me to go hawking baskets among women.

(10) Jast. name of a measure, xestes. Rashi: name of a utensil.

(11) Elijah was supposed to appear among men very frequently, particularly to pious men, who were privileged to know his identity. Cf. Git. 70a, Sanh. 113a, Yoma 19b, et passim.

(12) Deut. V, 16.

(13) Prov. XXI, 21: 'life' is understood to refer to the next world, 'righteousness and honour' to the rewards in this.

(14) Ps. XXXIV, 25.

(15) Hence, just as the latter is rewarded in both worlds (v. n. 8), so is the former.

(16) Deut. XXX, 20: 'thy life' refers to this world, 'length of thy days', to the next.

(17) V. Deut. XXII, 6-7.

(18) Ibid.

(19) Which implies only these.
(20) Isa. III, 10.
(21) Hence the verse refers to the first, in connection with whom 'they shall eat the fruit of their doings', i.e., be rewarded in this world. But dismissing the dam is 'good to Heaven' only, i.e., it is obedience to God's will, but of no benefit to man.
(22) Ibid. 11.
(23) 'The fruit of his doings' implies reward over and above his merits.
(24) I.e., one is punished only according to his desserts.
(25) Only 'the reward of his hands' is mentioned, but not more.
(26) Lit., 'fulfil'.
(27) Prov. I, 31.
(28) E.g., when a great man sins he sets an evil example which is copied by others.
(29) In both, the principle of 'measure for measure' operates.
(30) And both are rewarded.
(31) Mal. III, 16.
(32) There is no punishment for mere intention.
(33) Ps. LXVI, 18; i.e., when it remained a mere intention 'in my heart', it was overlooked.
(34) Jer. VI, 19.
(35) I.e., which is followed by action.
(36) Punishing both.
(37) Ezek. XIV, 5. This shows that there is punishment for mere thought.
(38) Hence mere intention is punished.
(39) The blunting of man's finer perceptions which make him unable to distinguish between right and wrong is in itself sin's punishment. Cf. Yoma 39a: Sin dulls the heart of man; also Aboth: the punishment of sin is sin. — Hence, when the Writ intimates that evil intention is punished, it refers to a wrong twice committed: the intention to commit it a third time is then punished, even if not carried out. For by then it is not regarded as evil, and its non-performance is not due to repentance but because there was no need for it.
(40) Lit., 'Heaven's'.
(41) Ezek. XX, 39.
(42) His sombre garments may subdue his lust.
(43) If he is still unable to resist.
(44) By sinning where he is known.
(45) Lit., 'has no compassion'.
(46) Which was regarded as the manifestation of God's glory, and to gaze upon it was disrespectful (cf. Ex. XXIV, 9-11).
(47) Because he thereby shews that he fears man more than God.
(48) אין מקיפין , v. also n. 6.
(49) Cf. Mishnah, Aboth, IV, 5.
(50) Who gives long credit and then demands payment for many items; but every profanation is punished immediately.
(51) If his wrongdoings included this. God does not wait — i.e., 'give credit' — until another sin is committed, for that itself tips the scale. — Maharsha. [Rashi's explanation מקיפין is here understood in the sense of comparing, balancing the sins against the good deeds.]

Talmud - Mas. Kiddushin 40b

regard himself as though he were half guilty and half meritorious: if he performs one precept, happy is he for weighting himself down in the scale of merit; if he commits one transgression, woe to him for weighting himself down in the scale of guilt, for it is said, but one sinner destroyeth much good:[1] [i.e.,] on account of a single sin which he commits much good is lost to him.[2] R. Eleazar son of R. Simeon said: Because the world is judged by its majority, and an individual [too] is judged by his majority [of deeds, good or bad], if he performs one good deed, happy is he for turning the scale both for[3] himself and for the whole world on the side of merit; if he commits one transgression, woe to

him for weighting himself and the whole world in the scale of guilt, for it is said: 'but one sinner, etc.' — on account of the single sin which this man commits he and the whole world lose much good.

R. Simeon b. Yohai said: Even if he is perfectly righteous all his life but rebels at the end, he destroys his former [good deeds], for it is said: The righteousness of the righteous shall not deliver him in the day of his transgression.[4] And even if one is completely wicked all his life but repents[5] at the end, he is not reproached with his wickedness,[6] for it is said, and as for the wickedness of the wicked, he shall not fall thereby in the day that he turneth from his wickedness.[7] Yet let it be regarded[8] as half transgressions and half meritorious deeds! — Said Resh Lakish: It means that he regretted his former deeds.[9]

MISHNAH. HE WHO IS VERSED IN BIBLE, MISHNAH, AND SECULAR PURSUITS[10] WILL NOT EASILY[11] SIN, FOR IT IS SAID, AND A THREEFOLD CORD IS NOT QUICKLY BROKEN.[12] BUT HE WHO LACKS BIBLE, MISHNAH AND SECULAR PURSUITS DOES NOT BELONG TO CIVILISATION.

GEMARA. R. Eleazar son of R. Zadok said: To what are the righteous compared in this world? To a tree standing wholly in a place of cleanness, but its bough overhangs to a place of uncleanness; when the bough is lopped off, it stands entirely in a place of cleanness. Thus the Holy One, blessed be He, brings suffering upon the righteous in this world,[13] in order that they may inherit the future world, as it is said, and though thy beginning is small, yet thy latter end shall greatly increase.[14] And to what are the wicked compared in this world? To a tree standing wholly in a place of uncleanness, but a branch thereof overhangs a place of cleanness: when the bough is lopped off, it stands entirely in a place of uncleanness. Thus the Holy One, blessed be He, makes them prosper[15] in this world,[16] in order to destroy and consign them to the nethermost rung, for it is said: There is a way which seemeth right unto man, But at the end thereof are the ways of death.[17]

R. Tarfon and the Elders were once reclining in the upper storey of Nithza's house, in Lydda,[18] when this question was raised before them: Is study greater, or practice? R. Tarfon answered, saying: Practice is greater. R. Akiba answered, saying: Study is greater, for it leads to practice. Then they all answered and said:[19] Study is greater, for it leads to action.[20]

It was taught: R. Jose said: Great is learning, since it preceded hallah[21] by forty years, terumoth[21] and tithes by fifty-four years, shemittin[22] by sixty-one, and jubilees by one hundred and three.[23] A hundred and three? but it was a hundred and four![24] — He maintains that jubilee effects a release[25] at the beginning thereof. And just as learning preceded practice, so does the judgment thereof [in the next world] take precedence over that of practice,[26] in accordance with R. Hamnuna. For R. Hamnuna said: The beginning of man's judgment is in respect of study[27] alone, for it is said: The rejection[28] of water[29] is the beginning of judgment.[30] And just as the judgment thereof takes precedence over that of practice, so does the reward thereof, for it is said: And he gave them the lands and nations; and they took the labour of the people in possession: that they might keep [yishmeru] his statutes, and observe his laws.[31]

BUT HE WHO LACKS BIBLE, MISHNAH [etc.]. R. Johanan said: And he is unfit to testify.[32]

Our Rabbis taught: He who eats in the market-place is like a dog; and some say that he is unfit to testify.[33] R. Idi b. Abin said: The halachah agrees with the latter.[34]

Bar Kappara lectured: A bad tempered man

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(1) Ecc, IX, 18.

(2) Viz., his meritorious deeds, being now outbalanced.
(3) Lit., 'of.
(4) Ezek. XXXIII, 12.
(5) The Heb. lit., means, 'but performs repentance, which demands more than mere regret but actual righting of wrongs committed.
(6) Lit., 'he is not reminded of his wickedness'.
(7) Ibid.
(8) Where the righteous rebels at the end.
(9) In that case his righteous past is completely disregarded.
(10) Heb. derek erez, lit., 'the way of the earth,' i.e., industry or commerce.
(11) Lit., 'quickly'.
(12) Ecc. IV, 12.
(13) Thus purging them of the little sin they do commit lopping off the branch inclining to an unclean place.
(14) Job VIII, 7.
(15) Lit., 'furnishes them with goodness'.
(16) Thus rewarding them for the little good they perform-lopping off the branch inclining to the place, that it may be disregarded in the next world.
(17) Prov. XIV, 12. — An attempt to answer the eternal question, why the wicked prosper and the righteous suffer.
(18) V. Sanh. (Sonc. ed.) p. 502, n. 3.
(19) Probably, that was their final decision.
(20) This was a practical problem during the Hadrianic persecution, when both study and practical observance were forbidden, and the question was for which risks should sooner be taken. — Weiss. Dor., II, 125, Graetz, Geschichte, IV, p. 429.
(21) V. Glos.
(22) Plural of shemittah, q.v. Glos.
(23) The Torah was given to Israel two months after the Exodus from Egypt, whereas liability to hallah came into force forty years later, when they entered Palestine; terumoth and tithes fourteen years later after Palestine was conquered and allotted to the tribes; shemittah and jubilee seven and forty-nine years respectively after that.
(24) The jubilee is the fiftieth year, and it is assumed that its provisions (q.v. Lev. XXV, 8-13, 28, 33, 39-42, 47, 55) became operative only at the end of that year.
(25) I.e., its laws, which generally speaking effected the release of slaves and land, came into force.
(26) I.e., one is first judged for learning, and then in respect to the fulfilment of precepts.
(27) Lit., 'words of the Torah'.
(28) Lit., 'he who frees himself.
(29) I.e., the Torah; cf. Isa. LV, 1.
(30) Prov. XVII, 14; it is here so translated.
(31) Ps. CV, 44f.; v. supra 37a, where it is stated that 'ye shall keep' (tishmeru) refers to the study of the Mishnah. Thus study is mentioned before observance.
(32) Being so uncultivated he has no self-respect and is ready to testify falsely.
(33) He too lacks self-respect.
(34) Lit., with the 'some say'.

Talmud - Mas. Kiddushin 41a

gains nothing but [the ill effect of] his temper;[1] but a good man is fed with the fruit of his deeds. And he who lacks Bible, Mishnah and worldly pursuits, vows not to benefit from him, as it is said: Nor sitteth in the seat of the scoffers:[2] his seat is the seat of scoffers.[3]

CHAPTER II

MISHNAH. A MAN CAN BETROTH [A WOMAN] THROUGH HIMSELF OR THROUGH HIS AGENT. A WOMAN MAY BE BETROTHED THROUGH HERSELF OR THROUGH HER

AGENT. A MAN MAY GIVE HIS DAUGHTER IN BETROTHAL WHEN A NA'ARAH [EITHER] HIMSELF OR THROUGH HIS AGENT.

GEMARA. If he can betroth THROUGH HIS AGENT, is it necessary [to state] THROUGH HIMSELF? — Said R. Joseph: [This inclusion intimates that] it is more meritorious through himself than through his agent. Even as R. Safra [himself] singed an [animal's] head,[4] Raba salted shibbuta.[5] Some say that in this matter there is even a prohibition,[6] in accordance with Rab Judah's dictum in Rab's name; for Rab Judah said in the name of Rab: A man may not betroth a woman before he sees her, lest he [subsequently] see something repulsive in her, and she become loathsome to him, whereas the All-Merciful said, but thou shalt love thy neighbour as thyself.[7] And as to R. Joseph's statement,[8] it relates to the second clause: A WOMAN MAY BE BETROTHED THROUGH HERSELF OR THROUGH HER AGENT. Now, if she can be betrothed through her agent, is it necessary [to state] through herself? — Said R. Joseph: [This inclusion intimates that] it is more meritorious through herself than through her agent. Even as R. Safra [himself] singed an [animal's] head; Raba salted shibbuta. But there is no prohibition in this case,in accordance with Resh Lakish, who said: It is better to dwell with a load of grief than to dwell in widowhood.[9] A MAN MAY GIVE HIS DAUGHTER IN BETROTHAL WHEN A NA'ARAH. Only when a na'arah, but not when a minor: this supports Rab. For Rab Judah said in Rab's name: One may not give his daughter in betrothal when a minor, [but must wait] until she grows up and says: ‘I want So-and-so’.

Whence do we know [the principle of] agency?[10] — For it was taught: [When a man taketh a wife and . . . she find no favour in his eyes . . . then he shall write her a bill of divorcement . . .] and he shall send [her out of his house]:[11] this teaches that he may appoint an agent; then she shall send:[12] this teaches that she may appoint an agent; then he shall send, then he shall send her:[13] this teaches that the agent can appoint an agent.[14] Now, we have thus found [the principle of agency] in divorce: how do we know it in respect to kiddushin? And should you answer that it is derived from divorce [by analogy]; [I would answer] as for divorce, [agency may operate] because it can take place against her [the wife's] consent?[15] — Scripture saith, then she shall depart . . . and she shall be [another man's wife], thus assimilating marriage to divorce; just as an agent may be appointed for divorce, so may one be appointed for marriage.

Now, as to what we learnt: If one instructs his agent. ‘Go forth and separate [terumah]’: he must separate according to the owner's intentions;[16] and if he does not know the owner's intentions, he must make an average separation, [viz.,] one-fiftieth.

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(1) Leanness (Rashi): had temper affects the health and the body becomes lean, but achieves nothing else!

(2) Ps. I, 1.

(3) Lacking these three, he can do nothing else but scoff and be ribald.

(4) In preparation for the Sabbath, though another could have done it for him.

(5) Name of a fish, conjectured by Jast. to be mullet.

(6) Against appointing an agent when he can do it himself.

(7) Lev. XIX, 18.

(8) That it is merely preferable, but there is no prohibition.

(9) V. supra p. 24, n. 7. I.e., for a woman even an unhappy marriage is better than singleness — hence there is no prohibition against being betrothed through a deputy.

(10) Lit., ‘sending’, i.e., that one can send another person to act on his behalf.

(11) V. Deut. XXIV, 1.

(12) Disregarding the mappik, which makes we-shillehah (שלחה) the third pers. masc. with the pronominal suffix, and reading it as third pers. fem.

(13) ‘Send’ is stated twice, in vv. 1 and 3.

(14) Rashi: these deductions are made because Scripture should have written, then he shall divorce. ‘Send’ intimates that the husband or wife can send, i.e., appoint a person to act on their behalf.

(15) But v. p. 35, n. 2.
(16) By Biblical law there is no fixed standard for terumah. The Rabbis, however, ruled that on the average it is one fiftieth of the crops: a generous man gives one fortieth, and a mean person not less than one sixtieth.

Talmud - Mas. Kiddushin 41b

If he decreases by ten or increases it by ten,[1] his separation is valid.[2] How do we know this?[3] And should you answer that it is derived from divorce, [I would rejoin:] as for divorce, that [may be] because it is a secular matter![4] — Scripture saith, [Thus] ye also [shall offer an heave-offering] [where] 'ye' [alone would have sufficed],[5] to include an agent.[6]

But let Scripture write [it] in respect to terumah, and these [marriage and divorce] would come and be derived from it? — Because one can refute [the analogy], since it is possible by [mere] intention.[7]

Again, as to what we learnt: If a company lose their Paschal sacrifice[8] and instruct one [of their number], 'Go out, seek it, and slaughter it on our behalf; and he goes, finds, and slaughters it, while they [also] take [an animal] and slaughter [it]: if his is slaughtered first, he eats of his, and they eat[9] with him.[10] How do we know it?[11] And should you answer that it is derived from these, [I would rejoin:] as for these, [that may be] because they rank as secular in relation to sacred animals![12] — It is learnt from R. Joshua b. Karhah['s dictum]. For R. Joshua b. Karhah said: How do we know that a man's agent is as himself? Because it is said, and the whole assembly of the congregation shall kill it [the Passover sacrifice] at even:[13] does then the whole assembly really slaughter? surely, only one person slaughters [an animal]:[14] hence it follows that a man's agent is as himself.

Now, let the Divine Law write [the principle of agency] in respect to sacrifices, and these others can come and be derived from them? — Because it may be refuted: as for sacrifice, that is because most of their operations are through an agent.[15]

One cannot be derived from another: but let one be derived from two [others]?[16] — Which can be thus derived? Should the Divine Law not state it of sacrifices, that it may be derived from these others? As for these, [it might be argued] that [sc. agency] is because they rank as secular in comparison with sacrifices. Should the Divine Law omit it in the case of divorce, that it may be derived from the others: as for these, that is because intention has force in their case.[17] But let the Divine Law not write it of terumah, and it could be derived from the others![18] — That indeed is so. Then what is the purpose of 'ye', 'ye also'?[19] — It is needed for R. Jannai's dictum, viz., 'Ye also': just as ye are members of the covenant,[20] so must your agents be members of the covenant. For this, what need have I of a verse? It may be derived from R. Hiyya b. Abba's dictum in R. Johanan's name! For R. Hiyya b. Abba said in R. Johanan's name: A [heathen] slave cannot become an agent to receive a divorce from a woman's husband, because he himself is not subject to the law of marriage and divorce![21] — It is necessary. I might think that a slave [is ineligible], since he is not empowered to free [a married woman] at all.[22] But a heathen, since he is qualified to [separate] terumah of his own [crops], as we learnt: If a heathen or Cuthean[23] separates terumah, it is valid: I might think that he can also be appointed an agent [for a Jew]; hence we are informed [otherwise]. Now, according to R. Simeon who exempts [them],[24] for we learnt: A heathen's terumah creates a [forbidden] mixture,[25] and one is liable to an [additional] fifth on its account.[26] But R. Simeon exempts [it][27] — what is the need of ye', ye also'? — It is necessary: I might reason, Since a Master said: 'Ye', but not tenant-farmers;[28] 'ye,' but not partners;[29] 'ye,' but not guardians;[30] ye,' but not one who separates terumah upon what is not his,[31] then I might also say, ye,' but not your agents.[32] Hence we are informed [that it is not so].

Now, that is well according to R. Joshua b. Karhah.[33] But according to R. Nathan, who utilises

this verse for a different exegesis, what can be said? For it was taught: R. Nathan said: How do we know that all Israel [may] fulfil their obligations[34]

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(1) Giving one fortieth or one sixtieth.
(2) Lit., 'his terumah is terumah,' because he can maintain that he so judged the owner.
(3) That one can appoint an agent for this purpose.
(4) Whereas terumah being sacred, its separation may be stricter and require the actual owner.
(5) Lit., 'Scripture saith, ye, also ye.'
(6) It is a principle of exegesis that od (also) is an extension.
(7) A person may decide to separate a part of his grain (e.g., that in the right or left corner) as terumah and then eat the rest. This is obviously a leniency, and it may be argued that that is why one can also appoint an agent.
(8) The passover sacrifice was eaten by a group of people who had joined and arranged beforehand to eat a particular animal: unless one had thus 'counted himself in' before it was killed he could not eat thereof.
(9) Cur. ed.: eat and drink, but Wilna Gaon deletes 'and drink'.
(10) Since he was their agent. — Their own sacrifice is unfit.
(11) The principle of agency in sacrifices.
(12) Even terumah, for sacrifices have a higher degree of sanctity.
(13) Ex. XII, 6.
(14) Though it is eaten by several.
(15) From the receiving of the blood onward, everything in connection with sacrifices was performed by priests acting on behalf of the Israelites who offered them.
(16) By shewing that the factor common to both is also present in the third.
(17) Terumah, v. p. 206, n. 5; sacrifices: If one resolves to declare an animal a sacrifice, it is so, even without an explicit declaration. — Shebu. 26b.
(18) Sc. marriage and sacrifices, since either of the above refutations then apply.
(19) V. supra.
(20) With Abraham, Gen. XVII, 2; i.e., Jews. V. B.M. (Sonc. ed.) p. 415, n. 5.
(21) In the Jewish sense. This shews that it is mere logic that one cannot act as an agent where he cannot be a principal, and the same applies to the others.
(22) Lit.,' he is not a person of freeing at all.' It is impossible for a slave to free a married woman, sc. his wife, by divorce, since he cannot marry.
(23) After the overthrow of the Northern Kingdom of Israel and the deportation of its inhabitants the land was repopulated by various peoples, some of whom came from Cuth and gave their name to the new settlers as a whole. These accepted a form of semi-Judaism. Their status in respect to Jewry fluctuated; at times they were accepted as Jews, at others they were rejected. Finally they were definitely excluded from the Jewish people.
(24) Even if a Gentile does separate terumah, it is not valid and remains hullin.
(25) I.e., if it falls into a quantity of hullin less than a hundred times as much as itself, and cannot be separated, the whole ranks as terumah, and is forbidden to an Israelite.
(26) If an Israelite eats terumah unwittingly, he must make restoration of the principal plus a fifth; Lev. XXII, 14.
(27) Sc. the terumah separated by a Gentile on his crops from the law of terumah, i.e., he does not regard it as terumah at all.
(28) A tenant-farmer who leases land and pays a percentage of the crops as rent cannot separate terumah upon the landlord's share without his authority.
(29) Likewise, one partner in a field cannot separate terumah for the other without the latter's consent.
(30) Of orphans estates.
(31) This gives the reason for the preceding: tenant-farmers, etc., cannot separate terumah for the other's crops, because one may not separate for what is not his.
(32) I.e., under no circumstances can one separate terumah upon crops not belonging to him, even when authorised by their owner.
(33) Supra.
(34) Lit., 'go forth' (from their obligation).

by a single paschal sacrifice?[1] Because it is said: 'and the whole assembly of the congregation of Israel shall kill it at even': does then the whole assembly slaughter: surely, only one slaughters! But from this [it follows] that all Israel [may] fulfil their obligations by a single Paschal sacrifice. Then how does he know that an agent [may be appointed] for sacrifices? — From that itself.[2] Yet perhaps it is different there, because he [the slaughterer] is a partner therein? — But [it is derived] from this: they shall take to them every man a lamb, according to their fathers' houses, a lamb for an household.[3] But perhaps there too [the reason is] that he has a share therein? — If so, what is the need of two verses? [Hence,] if it has no purpose where it is relevant, apply the matter to where it does not belong.[4] But this [the latter verse quoted] is needed for R. Isaac's dictum. For R. Isaac said: A man [sc. an adult] can acquire[5] [on behalf of others], but a minor cannot acquire![6] — That is deduced from, according to every man's eating [ye shall make your count for the lamb].[7] But that is still required for intimating that a paschal sacrifice may be slaughtered [even] for a single person![8] — He agrees with the view that the passover lamb may not be slaughtered for an individual.[9]

Then when R. Giddal said in Rab's name, How do we know that a man's agent is as himself? Because it is written, [and ye shall take] one prince of every tribe [to divide the land for inheritance]:[10] let him derive agency from this [former verse]? — Now, is it reasonable that this [division of the land] was on the principle of agency! Surely minors are not subject thereto?[11] But [it must be interpreted] in accordance with Raba son of R. Huna. For Raba son of R. Huna said in the name of R. Giddal in Rab's name: How do we know that a right can be conferred upon a man in his absence? Because it is written, and one prince of every tribe [etc.].[12] Now, is that logical? Was it [the division, altogether] advantageous [to each]? Surely it also involved disadvantages, for some like mountain land but not the plain, and others prefer the plain but not the mountain land?[13] But it[14] is in accordance with Raba son of R. Huna, who said in the name of R. Giddal in Rab's name: How do we know that when orphans [i.e., minors][15] come to divide their father's estate, Beth din appoints a guardian on their behalf, whether to their advantage or disadvantage? ([You say,] 'To their disadvantage'! Why? — But [say thus:] to their [subsequent] disadvantage, but with the [original] intention that it shall be to their advantage.)[16] — From the verse, [and ye shall take] one prince of every tribe.[17]

R. Nahman said in Samuel's name: When orphans come to divide their father's estate, Beth din appoints a guardian for them,[18] and they select[19] a fair portion for each [orphan]; yet when they grow up, they can protest against [the division of the guardian]. R. Nahman, stating his own opinions ruled: When they grow up they cannot protest, for if so, wherein lies the strength of Beth din's authority?[20] Now, does then R. Nahman accept [this reasoning,] if so, wherein lies the strength of Beth din's authority? But we learnt: If the judges' valuation was at one sixth too little or at one sixth too much,[21] their sale is null. R. Simeon b. Gamaliel said: Their sale is valid, [for] otherwise, wherein lies the strength of Beth din's authority? Whereon R. Huna b. Hinena said in R. Nahman's name: The halachah agrees with the Sages! — There is no difficulty:

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(1) Though each receives an infinitesimal portion thereof, less than the size of an olive, which is the minimum that is called eating. In his view, the actual eating of the sacrifice was unessential, the main thing being the sprinkling of the blood.

(2) The fact remains that one slaughtered for all.

(3) Ex. XII, 3 thus one was to 'take', i.e., slaughter, on behalf of a whole household.

(4) This is a principle of Talmudic exegesis: if a teaching is unnecessary in its place, apply it elsewhere. Thus here too, both verses teach the principle of agency when the agent himself shares therein. Two verses being unnecessary, apply one to where the agent has no share at all in the matter of his agency.

(5) A Paschal lamb.

(6) [Although the minor himself has to to be counted in for the partaking of the Paschal lamb, he cannot acquire a share

on behalf of others (Tosaf.)]
(7) Ibid. 4.
(8) Deducted from ‘manðs’, singular.
(9) V. Pes. 91b.
(10) Num. XXXIV, 18: each prince acted as agent for the whole tribe.
(11) And among those who received a portion in Palestine were minors; this proves that the princes were not acting as agents.
(12) By their division they conferred rights of ownership, though the recipients (i.e., the individuals) were not present.
(13) And one cannot act disadvantageously on another's behalf without his authorisation. Hence the princes were not proceeding on this principle either.
(14) The interpretation of the verse . . . one prince’, etc.
(15) [According to Maim. Yad, Nahaloth, X, 4. there were also some adults among them, for had they all been orphans, there would be no division of the estate, seeing that it would still have to be administered by a guardian. V. Maggid Mishneh a.l. and Tosaf. Ri.]
(16) I.e., this guardian acts in their behalf at law, and his acts are valid even if they subsequently tend to their loss, providing that his intentions in the first place were good.
(17) Who were to divide the land as fairly as possible, their actions being valid even if certain individuals were displeased.
(18) [Wilna Gaon: for the minors; cf. n. 3.]
(19) [Apparently the Beth din, cf. Maim. loc. cit. In the parallel passage Yeb. 67b, however, the reading is ‘he selects’ i.e., the guardian.]
(20) A guardian might just as well be appointed by a private individual, if the former's action can be overthrown.
(21) The judges made a valuation of a debtor's property, sold it and assigned the proceeds to the creditor in the former's absence, and erred in a sixth.

Talmud - Mas. Kiddushin 42b

In the one case, they [the judges] erred; in the other, they[1] did not err. If they did not err, against what can they [the orphans] protest? — They can protest against the sites.[2]

R. Nahman said: When brothers divide, they rank as purchasers from each other:[3] [for an error of] less than a sixth, the transaction is valid; exceeding a sixth, it is null; [exactly] one sixth, it is valid, but the amount of error[4] is returnable.[5] Said Raba: When you say that [for an error of] less than a sixth the transaction is valid, that is only if one did not appoint an agent;[6] but if he appointed an agent, he can plead, ‘I sent you to benefit, not to injure me’.[7] And when you say, exceeding a sixth, the transaction is null, that is only if one did not say: ‘We will divide according to Beth din's valuation’; but if this was stipulated,[8] the transaction is valid. For we learnt: If the judges’ valuation was at one sixth too little or at one sixth too much, their sale is null. R. Simeon b. Gamaliel said: Their sale is valid.[9] And when you say: ‘one-sixth, it is valid, but the amount of error is returnable’, that holds good only of movables, but as for real estate, the law of overreaching does not apply to land. Again, this was said of real estate only if the division was by valuation,[10] but not if the division was made by cord.[11] That is in accordance with Rabbah, who said,[12] Everything which [shews an error] in measure, weight or number, even if less than the standard of overreaching, is returnable.

Now, when we learnt: He who sends forth a conflagration by a deaf-mute, idiot, or minor, is not liable [for the damage caused] by law of man, yet liable by the law of Heaven.[13] But if he sends it by a normal[14] person, the latter is [legally] liable. Yet why so? Let us say that a man's agent is as himself.[15] — There it is different, for there is no agent for wrongdoing, for we reason: [When] the words of the master and the words of the pupil [are in conflict], whose are obeyed?[16]

Then when we learnt:[17] If the agent does not carry out his instructions,[18] the agent is liable for trespass: if he carries out his instructions, the sender[19] is liable for trespass.[20] Thus, at least, if he

carries out the sender's instructions, the latter is liable for trespass. Yet why? Let us say: There is no agent for wrongdoing. — A trespass-offering is different, because the meaning of 'sin' is derived from terumah: just as an agent can be appointed for [separating] terumah, so can one be appointed in respect of trespass.[21] Then let us learn [a general law] from it?[22] — [We cannot,] Because trespass and mis — appropriation[23] are two verses with the same teaching,[24] and such cannot illumine [other cases].[25] 'Trespass,' as stated. What is the reference to misappropriation? — For it was taught:[26] 'For every word[27] of trespass': Beth Shammai maintain: This is to intimate liability for [expressed] intention as for actual deed.[28] But Beth Hillel rule: He is not responsible unless he actually misappropriates it, for it is said, ['to see] whether he have not put his hand,' etc. Said Beth Shammai to Beth Hillel, But it is said: 'For every word of trespass'! Beth Hillel retorted to Beth Shammai: But is it not said: 'to see whether he have not put his hand unto his neighbour's goods?' Said Beth Shammai to Beth Hillel: If so, what is the purpose of, 'for every word of trespass?' For I might think, I know it only of himself [the bailee]; how do I know it if he instructs his slave or agent?[29] Therefore it is said: 'For every word of trespass.'[30]

Now, that is well according to Beth Hillel. But according to Beth Shammai who interpret this verse as [shewing] that intention is as deed,

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(1) [The guardians or the Beth din. v. p. 210, n. 7.]

(2) E.g., he who received a field in the south may demand it in the north, because he possesses another one there from a different source.

(3) [Had they ranked as heirs, the division would have to be exact to a farthing (Tosaf. Ri.)]

(4) Lit., 'overreaching'.

(5) v. B.M. 49b.

(6) To act at the division on his behalf, but acted himself. The reading in cur. edd. is 'if he did not appoint him an agent, but if he appointed him an agent' etc. This might mean that one brother appointed the other to act on his behalf. Asheri, however, omits the pronominal suffix.

(7) Thus he can repudiate him.

(8) Lit., 'but if he said, we will" etc.'

(9) Raba agrees with the latter, not as R. Nahman supra.

(10) All the land was valued, and then each took land to the value of his share. Thus one might have received a field twice as large as his brother's, the latter's being of choicer quality.

(11) I.e., by area, all the fields being of equal quality, and an error was made in measurement.

(12) In B.M. 56b and B.B. 90a the reading is Raba.

(13) I.e., morally, though not legally.

(14) Lit., 'sane'.

(15) So that the sender is liable.

(16) Obviously the master's. Hence if A instructs B to do wrong, B acts of his own accord, for were he merely carrying out instructions, he would obey God's behests in preference.

(17) Cur. edd: When it was taught. But BAH points out that the quotation that follows is a Mishnah in Me'il. 20a.

(18) Lit., 'did not do his sending'.

(19) Lit., 'the house owner'.

(20) A has money of hekdesh (q.v. Glos.) in his possession, and thinking it is secular, instructs B to make a purchase therewith. If B buys what he was told, A is liable; if he buys something else, he himself is liable, since he was not acting on A's behalf. — For converting sacred property to secular use-technically called withdrawing it from the ownership of hekdesh-one is liable to a trespass-offering.

(21) Terumah, Lev. XXII, 9: They shall therefore keep my charge, lest they bear sin for it: trespass, v, 15: If any one commit a trespass, and sin unwittingly in the holy things of the Lord. The employment of 'sin' in both cases intimates that the principle of agency operates for the latter as for the former.

(22) Viz., that one can appoint an agent for wrongdoing, and be legally responsible, just as in the case of trespass.

(23) Lit., 'the putting forth of the hand.' The language is based on Ex. XXII, 7, q.v.

(24) In both the principle of agency operates, though they are transgressions.

(25) V. supra p. 169, n. 7.
(26) If the thief be not found, then the master of the house shall come near unto God, to see whether he have not put his hand unto his neighbour's goods. For every word of trespass etc. Ibid. 7f.
(27) Lit., translation; E.V.: 'matter'.
(28) The passage refers to a gratuitous bailee, who is not liable for theft unless he has previously misappropriated the deposit to his own use ('put his hand,' etc.,), in which case he becomes responsible for every mishap. Beth Shammai maintains that 'for every word' teaches that even if he merely says that he will put it to his own use he is liable.
(29) That he becomes liable on account of their misappropriation.
(30) Thus here too the principle of agency operates, though misappropriation is obviously wrong.

Talmud - Mas. Kiddushin 43a

let us learn from it?[1] — Because trespass and killing and selling are two verses with the same teaching, and such do not illumine others. 'Trespass,' as said. What is the reference to 'killing and selling'? — Scripture saith, [If a man shall steal an ox, or a sheep,] and kill it, or sell it; [he shall pay five oxen for an ox etc.,]:[2] just as selling is done through another,[3] so may the killing be [done] by another.[4] The School of R. Ishmael taught: 'or' extends the law to an agent.[5]

[Again,] that is well on the view that two verses with the same purpose cannot teach [concerning others]; but on the view that they can, what may be said? — The Divine Law revealed [the matter] in reference to [sacrifices] slaughtered without [the tabernacle]: blood shall be imputed unto that man: he hath shed blood:[6] 'that [man', who slaughtered without], but not his agent.

Now, we have found this of [sacrifices] slaughtered without: how do we know it of the whole Torah?[7] — It is derived from [sacrifices] slaughtered without. Instead of learning from [sacrifices] slaughtered without, let us learn from these others?[8] — The Divine Law reiterated, and that man shall be cut off: since it is irrelevant for its own subject,[9] apply its teaching to the rest of the Torah.[10]

But he who maintains that two verses with the same purpose do not teach,[11] how does he interpret the [limiting demonstrative] 'that' written twice?[12] — One is to exclude the case of two men who hold the knife and slaughter [the sacrifice without].[13] The other: 'that [man],' but not one who is compelled; 'that [man],' but not one in ignorance; 'that [man],' but not one led into error.[14] And the other?[15] — That follows from ha-hu, where hu would suffice.[16] And the other?[17] — He does not admit the exegesis of ha-hu [as opposed to] hu.[18]

Now, when it was taught: If he says to his agent, 'Go forth and slay a soul,' the latter is liable, and his sender is exempt. Shammai the Elder said on the authority of Haggai the prophet:[19] His sender is liable, for it is said, thou hast slain him with the sword of the children of Ammon.[20] What is Shammai the Elder's reason? — He holds that two verses with the same purpose throw light [on others], and he rejects the exegesis of ha-hu [as opposed to] hu.[21] Alternatively, he accepts that exegesis;[22] and what is meant by liable? He is liable by the laws of Heaven. Hence it follows that the first Tanna holds him exempt even by the law of Heaven![23] — But they differ in respect to a greater or a lesser penalty.[24] Another alternative: there it is different, because the Divine Law revealed it [thus:] 'and thou hast slain him with the sword of the children of Ammon'.[25] And the other?[26] — It counts to you as 'the sword of the children of Ammon: you cannot be punished for the sword of the children of Ammon, so will you not be punished for [the death of] Uriah the Hittite. What is the reason? He was a rebel against sovereignty, for he said to him [David], and my lord Joab, and the servants of my lord, are encamped in the open field,' [shall I then go into mine house, to eat and to drink, and to lie with my wife?][27] Raba said: Should you say that Shammai holds that two verses with the same purpose illumine [others], and that he does not admit the exegesis of hu, ha-hu: [yet] he agrees that if one says to his agent, 'Go forth and have incestuous Intercourse, [or] 'eat heleb',[28] the latter is liable and his sender exempt, because we never find in the whole Torah that while one

derives pleasure [from wrongdoing] another is liable.

It has been stated: Rab said: An agent can be a witness;[29] the school of R. Shila maintained: An agent cannot become a witness. What is the reason of the school of R. Shila? Shall we say, because he does not [explicitly] instruct him, 'Be a witness for me'? If so, if he betroths a woman in the presence of two, and does not instruct them, 'You are my witnesses', is the betrothal really invalid? — But [the reasons are these:] Rab said: An agent can be a witness,for he [the principal] [thereby] strengthens the matter.[30] Whereas the school of R. Shila maintained: An agent cannot become a witness; since a Master said: 'A man's agent is as himself,' he ranks as his own person.[31]

An objection is raised: If one says to three, 'Go forth and betroth the woman on my behalf,' one is an agent and the other two are witnesses: that is the view of Beth Shammai. But Beth Hillel rule: They are all his agents, and an agent cannot be a witness. Thus, their disagreement is only in respect of three,[32] but as for two, all agree that they cannot [be witnesses]![33] — He [Rab] holds with the following Tanna. For it was taught: R. Nathan said: Beth Shammai maintains: An agent and one witness [can attest an action]; but Beth Hillel rule: An agent and two witnesses [are required]. Does then Rab rule according to Beth Shammai?[34] — Reverse it.[35] R. Aha son of Raba taught it reversed: Rab said: An agent cannot be a witness; the school of R. Shila ruled: An agent can be a witness. And the law is that an agent can be a witness.

Raba said in R. Nahman's name: If one says to two, 'Go forth and betroth a woman for me,' they are both his agents and his witnesses.[36] It is likewise so in respect to divorce;[37]

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(1) Sc. trespass, as above.

(2) Ex. XXI, 37 (E.V. XXII, 1).

(3) There must be another person, viz. the buyer.

(4) I.e., even if the thief does not personally kill it, but instructs another, he is liable.

(5) As in preceding note. — Hence on both exegeses, we have two verses with the same purpose.

(6) Lev. XVII, 4.

(7) That one cannot be an agent to violate a law of the Torah.

(8) Sc. trespass and killing and selling, that agency does operate.

(9) I.e., the emphasis on that man as excluding an agent is unnecessary, as it is intimated in the first half of the verse.

(10) V. p. 209, n. 3.

(11) So that non-agency for wrongdoing follows from the fact that the principle does operate in the case of trespass and misappropriation, as above.

(12) For these are now unnecessary.

(13) Implied by the sing., 'that man'.

(14) 'That man' denotes that he is fully aware of the forbidden nature of his action and does it of his own free will.

(15) Who holds that the limitation excludes an agent; how does he know these?

(16) Hu is either a pronoun = he, or demonstrative, = that. Ha-hu is hu written with the addition of the def. art., which form is used in this verse. In his opinion, hu alone would suffice, and the addition of ha indicates further limitation.

(17) How does he utilise the additional def. art?

(18) No particular emphasis is implied therein.

(19) An indication that the view expressed is very ancient.

(20) II Sam. XII, 9: the reference is to David, who encompassed the death of Uriah the Hittite through the Ammonites, for which the prophet Nathan held him personally responsible. Weiss, Dor. I, p. 150 deduces from the story in Josephus. Ant. XIV, 9, concerning Herod's trial, when the Sanhedrin would have had him executed because he ordered the execution of certain freebooters, though he certainly did not carry them out in person, that Shammai's view was thus based on ancient practice. It is doubtful, however, whether this proves anything. Such an execution, had it taken place, would have been for State reasons, which override the letter of the law. In the same way those who counselled Alexander Jannai to massacre eight hundred of his former opponents were subsequently executed too. [V. Zeitlin. JQR (N.S.) VIII, p. 150, for an ingenious suggestion that this statement is to be attributed to Shemaiah who figured in Herod's

trial instead of Shammai.]

(21) Hence the principle of agency operates even for wrongdoing.

(22) So that there is no agency for wrongdoing.

(23) Surely not.

(24) The first Tanna holds the sender liable to a lesser penalty only, as an indirect cause, whereas Shammai regards him as the actual murderer and liable to the severest penalty.

(25) But elsewhere there is no agency for transgression.

(26) The first Tanna: how does he explain the implication of the verse?

(27) Ibid. XI, 11; thus he disobeyed David's orders, v. 8.

(28) V. Glos.

(29) If A instructs B to betroth a woman on his behalf, for which two witnesses are required, or to repay a debt to C on his behalf, B can carry out his instructions and simultaneously be a witness to the act.

(30) By appointing the agent a witness too.

(31) And the principal obviously cannot attest his own act.

(32) Who can be divided in the manner suggested by Beth Shammai.

(33) Which contradicts Rab.

(34) Surely not, it being a principle that the halachah always agrees with Beth Hillel.

(35) Applying Beth Shammai's view to Beth Hillel.

(36) In accordance with the law just stated.

(37) If a man instructs two persons to divorce his wife on his behalf, they act both as agents and as witnesses to the divorce.

Talmud - Mas. Kiddushin 43b

and also in monetary cases.[1] Now, these are all necessary. For if we were informed [thus] of kiddushin, [I would say] that is because they come to render her forbidden;[2] but as for divorce, we might fear that he [one of these] desired her for himself.[3] Again, if we were informed [thus] of divorce, that may be because a woman is not eligible to two men; but as for a monetary matter, I might argue that these [witnesses] are sharing therein. Thus they are [all] necessary.

What is his[4] opinion? If he holds that he who lends [money] to his neighbour in the presence of witnesses must repay him [likewise] before witnesses, then these[5] are interested witnesses, for should they say: 'We did not repay him,' he [the debtor] can say to them, 'Then pay me!'[6] — But after all, he holds that he who lends money to his neighbour before witnesses need not repay him before witnesses, and since they can plead. 'We returned it to the debtor,' they can also testify, 'We repaid the creditor.' Now, however, that the Rabbis have instituted an oath of equity,[7] these witnesses [sc. the agents] must swear that they repaid him [the creditor], the creditor swears that he did not receive it [the repayment], and the debtor must repay the creditor.[8]

A MAN MAY GIVE HIS DAUGHTER [etc.]. We learnt elsewhere: A na'arah, who is betrothed[9] she or her father can accept her divorce. Said R. Judah: Two hands cannot have a privilege simultaneously, but [only] her father can accept her divorce. And she who cannot take care of her Get[10] cannot be divorced.[11] Resh Lakish said: Just as they differ in respect to divorce, so they differ in respect to kiddushin. R. Johanan maintained: They differ in respect to divorce [only], but as for kiddushin, all agree that her father [alone can accept kiddushin on her behalf] but not she herself. R. Jose son of R. Hanina said: What is R. Johanan's reason according to the Rabbis? As for divorce, since she reverts thereby to[12] parental control,[13] both she herself and her father [can accept it]. But kiddushin, which frees her from paternal authority, only her father [can accept it], but not she herself. But what of a declaration,[14] whereby she is freed from paternal control,[15] yet we learnt:

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(1) Two men appointed agents to repay a debt can testify thereto.

(2) Through their testimony she is forbidden to all men, including themselves; what purpose can they have in lying?

(3) Lit., ‘Cast his eye upon her’ — and hence may be giving false testimony.
(4) R. Nahman's.
(5) Sc. the agents sent to repay.
(6) For he may have entrusted them the money before witnesses, which is the same as lending it to them. Hence they are personally concerned, and as such, inadmissible as witnesses. Cur. ed. proceed: But after all, he holds, etc. BAH gives the following version: Whilst if he holds that he who lends money to his neighbour before witnesses need not repay him before witnesses, what is the purpose of these witnesses? — But after all, he holds that when one lends money to his neighbour before witnesses he need not repay him before witnesses. Now, if he pleads, ‘I myself repaid you,’ that indeed is so (and further witnesses are not required). The circumstances here are that he pleads, ‘I repaid you by an agent,’ and for that very reason he requires witnesses. Whilst the witnesses themselves (who in this case are alleged to have been entrusted with the money for repayment), since they can plead, etc., (continuing as in our text).
(7) Lit., ‘oath of inducement’, v. B.M. (Sonc. ed.) p. 20 n. 4. By Biblical law, one must take an oath in respect of a rejected claim only if he partially admits it, but not if he entirely denies it. Hence, when the debtor pleads that he entrusted the money to two in the absence of witnesses, and they maintain that they returned it, thus altogether rejecting his claim, they are not liable to an oath. But the Rabbis imposed an oath even then: this is called an oath of equity.
(8) Notwithstanding the witnesses’ oath. For the creditor can plead: ‘I lent the money to the debtor, and thereby expressed my willingness to abide by his oath that he repaid me. But I cannot be forced to accept the oath of other persons.’ The witnesses, on the other hand, cannot simply testify that they repaid the creditor, without swearing, because if they maintained that they had returned the money to the debtor, they would have to swear an oath of equity, and so become interested witnesses.
(9) V. Glos.
(10) V. Glos.
(11) I.e., an idiot cannot be divorced, even by her father's acceptance of the deed. V. Git. (Sonc. ed.) p. 304. n. 7.
(12) Lit., ‘brings herself into.’
(13) Being only a na'arah and betrothed, not married.
(14) מאמר ma'amar. This is the technical term for the yabam's formal betrothal of his yebamah. which is accompanied by the gift of money, which is valid by Rabbinical law only, for by Biblical law cohabitation alone is recognised (supra 2a).
(15) If a betrothed maiden is widowed and the yabam makes a declaration, she is henceforth free from paternal control.

Talmud - Mas. Kiddushin 44a

No declaration may be made to a minor [widowed] from erusin[1] except with her father's consent;[2] whereas in the case of a na'arah, either her own or her father's consent [is required]![3] But if stated, it was thus stated: R. Jose son of R. Hanina said: What is R. Johanan's reason according to the Rabbis? Kiddushin, which requires her consent, [only] her father [can accept it] but not she;[4] divorce, which is even against her will, either she or her father [can accept it].[5] But a declaration [too] requires her consent, yet it is taught, either she or her father [can accept it]? — There the reference is to a declaration which is [made] against her will, and it is in agreement with Rabbi. For it was taught: If one makes a declaration to his yebamah without her consent,[6] Rabbi ruled: He acquires her;[7] but the Sages say: He does not.

What is Rabbi's reason? — He deduces it from intercourse with a yebamah: just as intercourse with a yebamah [acquires her even] against her will, so here too [sc. declaration, it is valid even] against her will. But the Rabbis hold: We learn from [ordinary] kiddushin: just as kiddushin must be with her[8] consent, so here too her consent is required. Wherein do they differ? — Rabbi maintains: The provisions of a yebamah are to be learnt from a yebamah. But the Rabbis hold: Kiddushin should be learned from kiddushin.[9]

Reason too supports R. Johanan's answer,[10] since the second clause states: Which is not so in the case of kiddushin.[11] Shall we then say that this refutes Resh Lakish?[12] — Resh Lakish can answer you: That agrees with R. Judah, who ruled: Two hands cannot have a privilege simultaneously.[13] If

R. Judah, [why state,] 'which is not so in the case of kiddushin'; let him teach, which is not so in the case of divorce?[14] — That indeed is so: [but] as he teaches [the law of] declaration, which is similar to kiddushin, he also states: 'which is not so in the case of kiddushin'. Now, on R. Judah's view, why does declaration differ?[15] — Because she already stands tied [to the yabam].[16] Now that you have arrived at this [distinction], R. Johanan['s view] also need not cause you any difficulty at the very outset:[17] a declaration is different, because she already stands tied.

We learnt: A MAN MAY GIVE HIS DAUGHTER IN BETROTHAL WHEN A NA'ARAH, HIMSELF OR THROUGH HIS AGENT: only HIMSELF OR THROUGH HIS AGENT, but not through herself or her agent:[18] this refutes Resh Lakish? — Resh Lakish can answer you: This too is in accordance with R. Judah. Can you then interpret this as R. Judah['s ruling]? But the second clause[19] teaches: If one says to a woman, 'Be thou betrothed unto me with this date, be thou betrothed unto me with this one etc.'[20] Now we said thereon: Which Tanna [rules thus concerning] 'Be thou betrothed, be thou betrothed?'[21] And Rabbah replied: It is R. Simeon, who maintained, 'Unless he declared to each separately,' [I take] an oath.'[22] And should you answer: It is all the opinion of R. Judah, who, however, agrees with R. Simeon in the matter of detailed enumeration,[23] yet does he hold thus? Surely it was taught: This is the rule: For a comprehensive statement only one [sacrifice] is incurred; for a detailed enumeration each one separately involves liability:[24] this is R. Meir's opinion. R. Judah said: [If he declares, 'I take] an oath [that I am] not indebted to you, not to you, not to you,' he is liable in respect of each separately. R. Eleazar said: [If he declares, 'I am] not [indebted] to you, not to you, not to you, and not to you: [for this I take] an oath': he is liable in respect of each.[25] R. Simeon said: He is never liable [for each separately] unless he declares [I take] an oath to each separately![26] — But the whole is in accordance with R. Simeon, who in the matter of agency agrees with R. Judah.[27]

R. Assi did not go to the Beth Hamidrash.[28] Meeting R. Zera, he asked him, 'What has been taught to-day in the schoolhouse?' 'I too did not go,' he replied: 'but R. Abin was present, and he told me that the entire band [of disciples] agreed with R. Johanan;[29] and though Resh Lakish cried like a crane,[30] and when she is departed . . she may be [another man's wife],[31] none heeded him.' 'Is R. Abin reliable?' he asked him, 'Yes,' he replied: 'as from the sea into the frying pan!'[32] R. Nahman b. Isaac said: I [read in this story] neither R. Abin b. R. Hiyya nor R. Abin b. Kahana, but simply R. Abin. What does it matter? — In proving a self-contradiction.[33]

Raba asked R. Nahman:

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(1) V. Glos.

(2) Otherwise it has no validity.

(3) This means that even where her action serves to free her from her father's control, her action has validity.

(4) In general, the consent of the person who cedes the woman is required. In the case of an adult that person is the woman herself; in the case of a na'arah or a minor it is her father.

(5) Seeing that their consent is not necessary, it does not matter who actually accepts the deed.

(6) Forcing the money of betrothal upon her and declaring, 'Behold, thou art betrothed unto me.'

(7) Though she belongs to him in any case and cannot be free without halizah, she now requires a divorce too.

(8) The woman's.

(9) And a declaration takes the form of ordinary kiddushin.

(10) That the reference is to a declaration which was made against her will.

(11) Viz., only her father can receive her kiddushin.

(12) Since a distinction is drawn between a declaration and kiddushin, because the former does not require her consent whereas the latter does, the same applies to kiddushin and divorce.

(13) Hence in the case of kiddushin only her father may receive it.

(14) Which would be more remarkable: even in divorce, which does not require the wife's consent, R. Judah rules that only her father can accept it.

(15) That he agrees that she herself can receive it.
(16) Hence the further step of a declaration is an easier one, and can be made either to her father or to herself.
(17) Sc. the difficulty raised above from the teaching relating to the yabam's declaration.
(18) Which proves that a na'arah who has a father cannot betroth herself, in refutation of Resh Lakish.
(19) Infra 46a.
(20) The Mishnah continues: if a single one of them is worth a perutah, she is betrothed, but not otherwise. — For since he stated: 'Be thou betrothed' before each date separately, it is not the equivalent of saying: 'Be thou betrothed unto me with all these dates.'
(21) That because he repeats it, each declaration is separately regarded.
(22) Shebu. 36b. If five men demand the return of their deposits from a certain person, who falsely denies liability, and takes an oath, 'I swear that I did not receive a deposit from you, not from you, not from you, etc., he incurs a separate sacrifice on account of each (v. Lev. V, 21.26). R. Simeon maintained: He incurs only one sacrifice for all, unless he declares to each one separately, 'An oath that I did not receive a deposit from you,' 'An oath that I did not receive a deposit from you,' etc., — Hence the Mishnah on 46a, which is a sequel to 41a, agrees with R. Simeon, not R. Judah.
(23) Viz., that each statement is regarded as separate only if it is separately enumerated, as above.
(24) The meaning of these terms is discussed in Shebu. 38a.
(25) By adding 'and' before the last (which is absent in R. Judah's premise) and employing the word 'oath' after the enumeration, he makes his declaration equivalent to a number of separate statements.
(26) Thus R. Judah definitely disagrees with R. Simeon.
(27) Viz., only her father can accept kiddushin, but not she herself. — 'Agency' here does not refer to the question whether she can appoint an agent, as it is generally admitted that a na'arah certainly cannot (infra b), but whether she herself can rank as her father's agent (since Scripture vested the power in him — supra 3b.) — Maharsha.
(28) V. Glos.
(29) Supra 43b.
(30) I.e., vehemently protested.
(31) Deut. XXIV, 2: from this it is deduced that marriage and divorce are on a par (supra 5a), and thus it supports Resh Lakish.
(32) כמין ימא לטיגני He had as little time to forget as a fish that is caught in the sea and put straight into the pan. [Others explain the phrase as names of two places next to each other. Horowitz Palestine, p. 323 n. 9. takes it as a corruption of comminatio litigo, R. Zera cautioning R. Assi to occasion no strife by impugning the authority of R. Abin.]
(33) Should a statement by either of these contradict this assertion of R. Abin, it does not matter, as a different person may be meant.

Talmud - Mas. Kiddushin 44b

Can a na'arah appoint an agent to receive a divorce from her husband?[1] Does she rank as her father's hand, or as his court-yard?[2] Does she rank as her father's hand: just as her father can appoint an agent, so can she too appoint an agent. Or perhaps, she is as her father's court-yard, and [hence] she is not divorced until the Get actually reaches her hand. Now, is Raba doubtful about this? But Raba said: If he [the husband] writes a Get and places it in her slave's hand,[3] and he is asleep while she watches over him, it is a [valid] divorce; but if he is awake, it is not a [valid] divorce.[4] Now, why is it not a [valid] divorce if he is awake? [Surely] because he is as a court-yard guarded without her instructions. But if you think that she [a na'arah] is as her father's court-yard, then she should not be divorced even when the Get reaches her hand, since she is as her father's courtyard that is guarded without his instructions! Hence it must be obvious to him [Raba] that here she is as her father's hand, but this is his problem: is she as strong as her father's hand, so that she can appoint an agent, or not? — She cannot appoint an agent, he answered him.

He raised an objection: If a minor [ketannah] says: 'Accept my divorce on my behalf,' it is not a valid divorce until it reaches her hand.[5] Hence in the case of a na'arah it is a [valid] divorce![6] — The reference here is to one who has no father.[7] But since the second clause teaches: If her father says to him [the agent], 'Go and accept the Get for my daughter', should her husband wish to retract,[8] he

cannot:[9] this proves that the first clause refers to one who has a father? — The text is defective, and should read thus: If a minor says: 'Accept my Get for me,' it is not a [valid] divorce until it reaches her hand; but in the case of a na'arah it is a [valid] divorce. When is that said? If she has no father. But if she has a father and he says: 'Go and accept the Get for my daughter', and [then] the husband wishes to retract, he cannot.

It has been stated: If a minor [ketannah] is betrothed without her father's knowledge,[10] Samuel said: She requires both Get and mi'un.[11] Said Karna: This is inherently open to objection:[12] if Get, why mi'un, and if mi'un, why Get?[13] Said they [the scholars] to him: But there is Mar 'Ukba and his Beth din at Kafri.[14] Then they reversed it[15] and sent it to Rab. Said he to them, 'By God! she requires both Get and mi'un, yet Heaven forfend that[16] the seed of Abba b. Abba[17] should say thus.'[18] And what is the reason? — Said R. Aba son of R. Ika: She needs a divorce, in case her father consented to the kiddushin,[19] while she needs mi'un, in case her father did not consent to the kiddushin, and it is said that the kiddushin with her sister [by the same man] is invalid.[20]

R. Nahman said: Providing that they negotiated [with the father].[21] 'Ulla said: She does not even require mi'un.[22] [What!] even though there were negotiations?[23] — He who learnt this did not learn the other.[24] Others say: 'Ulla said: If a minor [ketannah] is betrothed without her father's knowledge, she does not even require mi'un.[25]

R. Kahana objected: And if [any among] all these[26] died, protested,[27] were divorced,[28] or found to be constitutionally barren,[29] their fellow-wives are permitted [to the yabam]. Now, who betrothed her?[30] Shall we say, her father betrothed her? is then mi'un sufficient? She requires a proper Get![31] Hence it must surely mean that she betrothed herself, yet it is taught that she requires mi'un![32] — He raised the objection and he [himself] answered it: [We] suppose she had been treated as an orphan during her father's lifetime.[33]

R. Hamnuna objected: He [her father] may not sell her to relations. On the authority of R. Eleazar it was said: He may sell her to relations.

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(1) That she shall be divorced immediately the Get reaches his hand.

(2) The question is posited on the view of the Rabbis (supra 43b) that in the case of a betrothed na'arah either her father or she herself can receive the divorce. It further postulates that the power is actually vested in him, her own being in virtue of his, and the problem is whether she is regarded as his hand or as his domain. For if the Get is placed in his domain she is divorced, and so it may be that the Rabbis reason that she herself is no worse (being under her father's authority), and on that score only can she accept her divorce.

(3) The reference is to an adult wife.

(4) V. Git. 77a-b: the divorce may be placed in the wife's domain, e.g., her court-yard. But it must be guarded through her own will, not at the instance of another person. Now, a Gentile slave is as her domain: if he is asleep and she watches over him, he is guarded through her. But if he is awake he guards himself, and so falls within the latter category.

(5) Because a minor cannot appoint an agent.

(6) As soon as her deputy receives it.

(7) Then a na'arah can certainly appoint an agent, since she is not under paternal authority. But Raba's question refers to a na'arah who has a father.

(8) After the deputy receives it.

(9) Because she is already divorced by the agent's acceptance.

(10) All agree that such betrothal is invalid.

(11) V. Glos.

(12) Lit., 'there is something within itself.

(13) Get is necessary where the marriage is valid by Biblical law, or where there is a Biblical tie; whereas mi'un dissolves a marriage that has Rabbinical force only.

(14) Let us ask him. [If Nehardea, the home of Samuel, is too distant to send for information, let us ask Mar 'Ukba in

Kafri which is nearer to us. The reference is to ‘Ukba I. v. Funk. op. cit. I Note iv.] Kafri is a town in S. Babylon, Obermeyer, op. cit., p. 316.
(15) Ascribing Samuel's view to Karna and vice versa — possibly to see whether Karna's opinion expressed in Samuel's name would carry more weight.
(16) Lit., ‘have compassion upon.’
(17) Samuel's father.
(18) As reported to him.
(19) Then her betrothal is valid by Biblical law.
(20) If she is given a divorce, it will be assumed that her father consented to the betrothal, which had Biblical force. Consequently, should the same man then betroth her sister, it is quite invalid, since she is his divorced wife's sister (v. Lev. XVIII, 18, which is interpreted as applying to such a case). But her father may not have consented, and so neither the betrothal nor the divorce are Biblical, wherefore her sister's betrothal is valid and requires a divorce for its dissolution. (He could not keep the sister, for fear that the first marriage was legal.) Hence she needs mi'un, to draw attention to this possibility.
(21) And he consented (Tosaf. of Ri the Elder). Hence, when he subsequently betroths her without her father's knowledge, her father may thereafter consent, whereby the kiddushin becomes retrospectively valid, and so she needs a divorce. But otherwise she needs no divorce.
(22) Because a minor's action in her father's lifetime has not even Biblical force.
(23) Surely R. Nahman's reasoning is plausible.
(24) He who learnt that ‘Ulla differed from Samuel did not learn R. Nahman's proviso, and so assumed that Samuel gave his ruling even if there were no previous negotiations.
(25) It is one and the same, whether or not there were previous negotiations.
(26) The consanguineous relations enumerated in Yeb. 25, q.v. If A has a number of wives, one of whom, C, is interdicted to B, his brother, on the score of consanguinity, e.g., she is B's daughter, and A dies childless, all his other wives are exempt from yibum or halizah (q.v. Glos.), providing that C is alive and married to him at the time of his death.
(27) I.e., declared mi'un.
(28) Before his death.
(29) Even after his death; the marriage of such is invalid.
(30) This wife who protested.
(31) Since her father's betrothal is Biblically valid.
(32) Though her father was and is still alive (v. p. 224, n. 11.). This contradicts the last ruling reported in the name of ‘Ulla. — Mi'un only applies to the marriage of a minor.
(33) If a father marries (not merely betroths) his daughter as a minor and she is widowed or divorced as a minor, he has no more authority over her, and she is technically regarded as an orphan in her father's lifetime. If she then betroths herself while still a minor, her marriage is Rabbinically valid, and she can dissolve it on attaining her majority by mi'un.

Talmud - Mas. Kiddushin 45a

And both agree that he may sell her, as a widow, to a High priest, and as divorced or a haluzah, to an ordinary priest. Now, this widow, — what are the circumstances? Shall we say that her father betrothed her? Can he [subsequently] sell her? But a man cannot sell his daughter to servitude after marriage![1] Hence it must surely mean that she betrothed herself, and yet he calls her a widow?[2] — R. Amram replied in R. Isaac's name: The reference here is to kiddushin of designation, and it is in accordance with R. Jose son of R. Judah, who maintained: The original money was not given for the purpose of kiddushin.[3]

It was stated: If he [who betrothed her without her father's knowledge] dies, and she falls before his brother for yibum — R. Huna said in Rab's name: She must perform mi'un on account of his declaration, but requires no mi'un on account of his levirate tie.[4] How so? If he [the yabam] makes her a declaration, she requires Get, halizah, and mi'un. She needs a Get, lest her father consented to the kiddushin of the second [the yabam];[5] she needs halizah in case her father consented to the first

[brother's] kiddushin;[6] she needs mi'un, lest her father did not consent to the kiddushin of either the first or the second, and so it be said: Kiddushin with her sister has no validity.[7] But if he does not make a declaration to her, she merely requires halizah. For what will you say: let her also require mi'un, lest it be said that kiddushin with her sister is not valid[8] — but all know that [marriage with] the sister of a haluzah is [forbidden] by Rabbinical law [only],[9] for Resh Lakish said: Here Rabbi taught: The sister of a divorced woman is [forbidden] by Biblical law, whereas the sister of a haluzah, by Rabbinical law.[10]

Two men were drinking wine under willows[11] in Babylonia. [when] one of them took a goblet of wine, gave it to his fellow and said: 'Let thy daughter be betrothed to my son.' Said Rabina: Even on the view that we fear that the father may [subsequently] have consented,[12]

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(1) Supra 18a.

(2) Shewing that the marriage is valid.

(3) V. supra 15b for notes on the whole passage.

(4) If the yabam makes a betrothal declaration to her, which, as already stated (supra p. 218, n. 8), is the Rabbinical equivalent of kiddushin in the case of a yabam, she needs mi'un in addition to the Get she requires. R. Huna proceeds to explain himself.

(5) The yabam's declaration was in the form of an ordinary betrothal. Hence, if the father did not consent to the first brother's kiddushin but did consent to the second's, she is betrothed to him, and needs a Get to dissolve the union.

(6) So that she is the second brother's yebamah. and requires halizah to gain her freedom.

(7) As on p. 224, n. 5. — Rashi observes that even if her father consented to the kiddushin of the first but not of the second, she needs mi'un, for she is only a haluzah in respect to the second, and his kiddushin with her sister is valid, whereas on account of the divorce it will be said that her sister's kiddushin is not valid. Hence the Talmud states: 'lest her father did not consent to the kiddushin of the first' unnecessarily — probably in order to achieve symmetry of style (but v. Tosaf.).

(8) On account of the halizah, which may be assumed to be certainly required by Biblical law.

(9) Hence if he does betroth her sister all know that it is Biblically binding, and a divorce is required.

(10) V. Yeb. 41a.

(11) Others: under an awning of mats.

(12) Supra.

Talmud - Mas. Kiddushin 45b

we [certainly] do not say: 'Perhaps the son consented.'[1] But perhaps, urged the Rabbis to Rabina, he [the son] had appointed him [the father] his agent? — A man is not so insolent as to appoint his father an agent. But perhaps he [the son] had shewn a desire for her in his presence?[2] Said Rabbah b. Simi to them: The Master [Rabina] has [once] distinctly stated that he does not accept this view of Rab and Samuel.[3]

A certain man betrothed [a minor] with a bunch of vegetables in a market place.[4] Said Rabina. Even on the view that we fear lest her father consented, that is only [when it is done] in an honourable manner, but not contemptuously. R. Aba of Difti asked Rabina: What displayed contempt? the vegetables, or [the fact that it was done in] a market-place?[5] The practical difference arises if he betroths her with money in the market place, or with a bunch of vegetables at home. What then? — Both, he replied, are contemptuous.[6]

A certain man insisted, '[Our daughter must be married] to my relation;' whereas she [his wife] maintained, 'To my relation.' She nagged him until he told her that she could be [married] to her relation. Whilst they were eating and drinking,[7] his relation went up to a loft and betrothed her. Said Abaye: It is written: The remnant of Israel shall not do iniquity, nor speak lies.[8] Raba said: It is a presumption that one does not trouble to prepare a banquet and then destroy it.[9] Wherein do they

differ? — They differ in the case where he did not trouble.[10] If she [a minor] became betrothed with her father's consent, and her father departed overseas, and she arose and married[11] Raba said: She may eat terumah[12] until her father comes and protests [against the nissu'in].[13] R. Assi said: She may not eat, lest her father return and protest, and so a zarah[14] will retrospectively be found to have eaten terumah. Such a case occurred, and Rab paid regard to[15] R. Assi's opinion. R. Samuel b. Isaac said: Yet Rab admits that if she dies he [her husband] is her heir,[16] [because] the ownership of money is vested in its possessor.[17]

If she became betrothed with [her father's] knowledge and married without his knowledge, and her father is present,[18] — R. Huna said: She may not eat [terumah]; R. Jeremiah b. Abba said: She may eat. 'R. Huna said: she may not eat': even on Rab's view that she may eat [in the first case], that is only there, since the father is absent;[19] but here, that the father is present, the reason he is silent is that he is angry.[20] 'R. Jeremiah b. Abba said: She may eat': even according to R. Assi, who ruled that she may not eat: it is only there, for her father might return and protest; but here, since he is silent, [it shows that] he does consent.

If she became betrothed and married without her father's knowledge, and her father is present, — R. Huna said: She may eat [terumah]: R. Jeremiah b. Abba said: She may not eat. Said 'Ulla: This [ruling] of R. Huna is 'as vinegar to the teeth, and as smoke to the eyes':[21] if there, that her kiddushin was Biblically valid,[22] you say that she may not eat, how much more so here!

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(1) After his father betrothed him without his knowledge. — A father is very anxious to see his daughter married, but a man takes more care. One has no rights over his son's marriage, unless he is authorised.

(2) And then his father need not be formally appointed an agent, on the principle: one can confer a benefit on another without the latter's knowledge.

(3) That we fear her father's subsequent consent; hence we certainly do not fear the son's subsequent consent or his previous intimation. This is the true reason of Rabina's ruling. His statement, 'even on the view, etc.,' was merely to give it wider acceptance.

(4) Without her father's knowledge.

(5) To betroth with vegetables is contemptuous treatment: likewise it is undignified to betroth in a market place (bizayon, used in the text, connotes both contemptuous and undignified). Now, to what would the father really take exception?

(6) And the father's subsequent consent need not be feared.

(7) At the betrothal festivities, before the actual betrothal.

(8) Zeph. III, 13; hence the father, having given his word, certainly did not consent now. — She was a minor.

(9) It had been prepared for the wife's relation and would now be lost! Hence the father certainly did not consent. (Or, he had certainly not instructed his daughter secretly beforehand to accept the kiddushin.)

(10) According to Abaye there is no fear of the father's consent; according to Raba, there is.

(11) Her betrothed, i.e., nissu'in were performed (q.v. Glos.).

(12) If her husband is a priest, though she is not; v. Lev. XXII, 11, which includes such.

(13) Though she may not eat terumah until after the huppah (v. Glos.), which took place without her father's consent, we take his consent to the huppah for granted, since he consented to the kiddushin, unless he returns and objects.

(14) V. Glos.

(15) Lit., 'feared'.

(16) A husband is his wife's heir after nissu'in, but not after kiddushin.

(17) Before nissu'in, the money certainly belongs to her father, and is therefore deemed in his possession. Since we do not know whether he will give the huppah his retrospective consent, it remains so.

(18) Lit., 'here'.

(19) Hence his consent may be taken for granted.

(20) That she became married without asking him.

(21) Prov. X, 26.

(22) Since she had her father's consent at kiddushin.

[Hence] the disciple's view[1] is preferable. Raba said: What is R. Huna's reason? Because she was treated as an orphan during her father's lifetime.[2]

It was stated: If a minor became betrothed without her father's knowledge: Rab said: Both she and her father can repudiate [it]. R. Assi said: Her father, but not she herself. R. Huna — others state, Hiyya b. Rab-raised an objection to R. Assi: [If a man entice a virgin . . . she shall surely . . . be his wife]. If her father utterly refuse [to give her unto him]:[3] I only know that her father [can refuse]: how do I know [it of] herself? Because it is stated: 'If he utterly refuse', [implying] in all cases![4] — Said Rab to them '[the scholars before whom the objection was raised]: Be not misguided![5] He can answer you that [we] suppose he did not entice her for the purpose of marriage. If he did not entice her with marital intent, is then a verse necessary![6] — Said R. Nahman b. Isaac: It is to teach that he [her seducer] must pay the fine as for an enticed maiden.[7] R. Joseph said to him: That being so,[8] it was consequently taught: He shall surely pay a dowry for her to be his wife:[9] [this means] that she needs kiddushin from him. But had he seduced her with marital intent, why is kiddushin required?[10] — Said Abaye: [This does not follow:] She may need kiddushin with her father's knowledge.[11]

MISHNAH. HE WHO SAYS TO A WOMAN, 'BE THOU BETROTHED UNTO ME WITH THIS DATE, BE THOU BETROTHED UNTO ME WITH THIS ONE' — IF ANY ONE OF THEM IS WORTH A PERUTAH, SHE IS BETROTHED; IF NOT, SHE IS NOT BETROTHED, [IF HE SAYS,] 'WITH THIS AND WITH THIS AND WITH THIS ONE' — AND THEY ARE ALL TOGETHER WORTH A PERUTAH, SHE IS BETROTHED; IF NOT, SHE IS NOT BETROTHED. IF SHE EATS THEM ONE BY ONE, SHE IS NOT BETROTHED UNLESS ONE OF THEM IS WORTH A PERUTAH.[12]

GEMARA. Which Tanna taught: 'BE THOU BETROTHED, BE THOU BETROTHED'? — Said Rabbah: R. Simeon, who maintained, Unless he declares ['I take] an oath' to each one separately.[13]

WITH THIS AND WITH THIS AND WITH THIS ONE [- AND THEY ARE ALL TOGETHER WORTH A PERUTAH, SHE IS BETROTHED; IF NOT, SHE IS NOT BETROTHED. IF SHE EATS THEM ONE BY ONE, SHE IS NOT BETROTHED UNLESS ONE OF THEM IS WORTH A PERUTAH]. To what does this refer? Shall we say, to the first clause — why particularly if she eats them; even if she lays them down it is also thus, since he says: 'BE THOU BETROTHED UNTO ME WITH THIS ONE'?[14] But if to the second clause — [and that] even [if there is a perutah's worth] in the first [only]? But it is a debt![15] — Said R. Johanan: Behold a table, meat and knife, yet we have no mouth to eat![16] Rab and Samuel said: After all, it refers to the first clause, but it teaches what is most noteworthy.[17] [Thus:] It is unnecessary to teach that if she lays them down she is [betrothed] only if [one] is worth a perutah, and not otherwise. But if she eats them, I might argue that since her benefit is immediate, she resolves to cede herself [even for less than a perutah]. Hence we are informed [otherwise]. R. Ammi said: After all, it applies to the second clause; and what is meant by, UNLESS ONE OF THEM IS WORTH A PERUTAH? Unless the last is worth a perutah. Said Raba: From R. Ammi's [explanation] three [corol — laries] may be inferred; [i] If one betroths with a debt, she is not betrothed;[18] [ii] If one betroths [a woman] with a debt and a perutah [i.e., cash], her mind is set upon the perutah,'[19]

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(1) The opinion of R. Jeremiah b. Abba, R. Huna's disciple.

(2) Since her father saw her becoming betrothed and married, and did not protest, he must either have renounced his authority over her or tacitly consented, for otherwise he would not have maintained silence so long.

(3) Ex. XXII, 15f.

(4) 'Utterly' is expressed in Heb. by the doubling of the verb, and indicates extension. The objection assumes that he enticed her for the purpose of kiddushin, since intercourse itself may be such (supra 2a).

(5) Lit., ‘go not after the reverse’ (of what is right).
(6) That her father or she herself can refuse to marry him — surely that is obvious.
(7) Even if she herself refuses him.
(8) That the verse refers to enticement without marital intent.
(9) Ibid.
(10) That itself was betrothal.
(11) Even if her enticement had been for the same purpose.
(12) The meaning of this is discussed in the Gemara.
(13) V. supra 44a for notes.
(14) So that each statement is separate; v, p. 221, n. 1.
(15) If he says: ‘Be thou betrothed unto me with this one and this one, etc.,’ and she eats them one by one, his statement must be considered as a whole. Now, as soon as she eats one she cannot be betrothed by it, since his statement was as yet incomplete, and it becomes a debt, which cannot effect kiddushin.
(16) The Mishnah stands before us, but it is inexplicable.
(17) Lit., ‘it states it is unnecessary (to teach this, but even this).
(18) Otherwise there is no need to particularise the last.
(19) For here he betroths her with all the dates. But those she has eaten are a debt, as explained above, whilst the last, worth a perutah, is the coin actually given. Since the betrothal is valid, we must assume that she regards the last only, for if she regarded the debt and wished to be betrothed thereby, she could not.

Talmud - Mas. Kiddushin 46b

[iii] Money in general is returnable.[1]

It was stated: If one betroths his sister:[2] Rab said: The money is returnable; Samuel ruled: The money is a gift. Rab said: The money is returnable: one knows that kiddushin with a sister is invalid, hence he resolved and gave it as a deposit. Then let him tell her that it is a deposit? — He thought that she would not accept it. But Samuel holds, the money is a gift; one knows that kiddushin with a sister is invalid, and therefore he resolved and gave it as a gift. Then let him tell her that it is a gift? — He thought that she would feel humiliated.

Rabina raised an objection: If one separates his hallah[3] from the flour, it is not hallah,[4] and is robbery in the priest's hand.[5] Now why is it robbery in the priest's hand? Let us say that a man knows that hallah is not separated from flour, and therefore he resolved and gave it as a gift? — There it is different, as it may result in wrong.[6] For the priest may happen to possess less than five quarters of flour and this besides; he will then knead them together and think that his dough is fit [to be eaten], and thus come to eat it in the state of tebel.[7] But you say that a man knows that hallah is not separated from flour! — He knows, yet not fully.[8] He knows that hallah is not separated from flour, yet not fully: for he thinks, What is the reason? Because of the priest's trouble;[9] well, the priest has forgiven his trouble.[10]

Yet let it be terumah [i.e., hallah], but that it shall not be eaten until hallah has been separated[11] for it from elsewhere?[12] Did we not learn: [If one separates terumah] from a perforated [pot] for [the produce grown in] an unperforated pot,[13] it is terumah,[14] but it may not be eaten until terumah and tithes are separated for it from elsewhere![15] In respect of two utensils he will obey, but not in respect of one.[16] Alternatively: the priest will indeed obey; but the owner[17] will think that his dough has been made fit,[18] and so come to eat it in a state of tebel.[19] But you have said that ‘a man knows that hallah is not separated from flour’? — He knows, but not fully. He knows that hallah is not separated from flour. Yet he does not know: for he thinks, what is the reason? On account of the priest's trouble: but he [the priest] has undertaken that trouble.[20]

Yet let it be terumah [i.e., hallah], but that he [the Israelite] shall make another separation.[21] Did

we not learn: [If one separates terumah] from an unperforated pot upon [the contents of] a perforated one, it is terumah,[22] yet he must make another separation.[23] — But we have explained it that he obeys in respect to two utensils, but not in respect of one.[24]

Does he then not obey? Surely we learnt: If one separates a cucumber [as terumah] and it is found to be bitter, or a melon, and it is found to be putrid, it is terumah, but he must make another separation.[25] — There it is different, for by Biblical law it is proper terumah,[26] by R. Elai's [dictum]. For R. Ilai said: How do we know that if one separates from inferior [produce] for choice, the terumah is valid?[27] Because it is said, and ye shall bear no sin by reason of it, whet ye have heaved from it the best thereof[28] now, if it is not hallowed, why bear sin?[29] Hence it follows that if one separates from inferior for choice [produce], his separation is terumah.

Raba said [reverting to the Mishnah]:

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(1) If one gives money for kiddushin, which for some reason is invalid, the money is not a gift but a deposit, and returnable; otherwise, even if the first only is worth a perutah, the kiddushin is valid. For when he completes his statement, the first dates, already eaten, are neither a debt, since they need not be returned, nor a gift, not having been given as such. It would therefore be as though he had stated: Be thou betrothed unto me with this (the first date), but let not the betrothal take effect until I have given you some more,' in which case she becomes betrothed when she receives the others even if the first has been consumed.

(2) Which of course is invalid.

(3) V. Glos.

(4) Since Scripture wrote, Of the first of your dough (Num. XV, 20).

(5) If he does return it.

(6) Lit., 'desolation'.

(7) v. Glos. Five quarters of a kab of flour is the smallest quantity liable to hallah; further, even a priest must separate hallah on dough from which no separation has been made, though he keeps it for himself. Now, if he possesses less, and this completes the quantity, he thinks that it is hallah, and so not liable, and therefore kneads it together with the rest without separating hallah.

(8) Lit., 'he knows and does not know'.

(9) I.e., he should have it ready, without the trouble of kneading it.

(10) And he thinks therefore that it is hallah after all.

(11) Lit., 'brought forth',

(12) I.e., from a different dough.

(13) Produce grown in a pot whose bottom is perforated and is thus connected with the earth is liable to terumah; if unperforated, it is not liable. — Thus he separates what is liable for what is not.

(14) In the sense that the priest need not return it.

(15) Since it is actually tebel, as there was no liability for the unperforated pot. — Produce becomes real terumah only when the separation is made on account of corn that is liable thereto. — Hence the same would apply to hallah.

(16) When a priest is told that the produce separated as terumah from a perforated pot upon an unperforated one is not really terumah, and is itself liable, he obeys, as he recognises a distinction between the two. But when told that the hallah separated from flour is not hallah, though the separation is from the same utensil, he will refuse to separate hallah upon that itself.

(17) I.e., the Israelite who separated it in the first place.

(18) Whereas it has not.

(19) And for this reason the dough must be returned.

(20) Since he accepted it.

(21) Without making it necessary for the priest to return it.

(22) In the sense that the priest need not return it.

(23) The rule is that both that which is separated as terumah and that for which it is separated must be liable to terumah. Here the former is not, and hence another separation must be made. — The same should apply here.

(24) V. p. 232, n. 9; the same holds good of an Israelite,

(25) Though the separation was made from the same utensil which contained the rest. It is obvious that we do not fear that he will disobey, for if we did, the first would have to be returned to ensure a second separation.
(26) Hence it cannot be returned, as the Israelite will mix it with the other produce, which is forbidden. On the other hand, even if he refuses to make a second separation, no harm is done, since the first was Biblically valid and the produce is no longer tebel.
(27) Lit., 'his terumah is terumah'.
(28) Num. XVIII, 32. This implies that one bears sin if he does not heave the best.
(29) For his action would simply be void.

This was taught only if he said to her, ‘With this and with this and with this.’ But if he said to her, ‘[Be thou betrothed unto me] with these,’ even if she eats [them one by one], she is betrothed:[1] when she eats, she eats her own.[2] It was taught in accordance with Raba: [If he says] ‘Be thou betrothed unto me with an acorn, a pomegranate and a nut’; or if he says to her, ‘Be thou betrothed unto me with these’ — if they are all together worth a perutah, she is betrothed; if not, she is not betrothed. ‘[Be thou betrothed unto me] with this and this and this’ — if they are all together worth a perutah, she is betrothed; if not, she is not betrothed. ‘With this one’ whereupon she took and ate it; ‘with this one’ — and she took and ate it; ‘and also with this one, and also with this one’ — she is not betrothed unless one of them is worth a perutah. Now, what is meant by this [clause], ‘with an acorn, a pomegranate, and or a nut’? Shall we assume that he said to her, ‘either’ with an acorn, a pomegranate, or a nut’? ‘If they are altogether worth a perutah she is betrothed’! But he said: ‘or’! Again if it means, ‘with an acorn and a pomegranate and a nut’ — then it is identical with ‘with this and with this!’[3] Hence it must surely mean that he said to her, ‘With these’. But since the second clause teaches: ‘or if he said to her, "Be thou betrothed unto me with these,"’ it follows that the first clause does not refer to ‘with these’! Hence it [must be taken] as [an] explanatory [clause]. ‘Be thou betrothed unto me with an acorn, a pomegranate and a nut’, that is, where he said: ‘Be betrothed unto me with these’.[4] Now, the final clause teaches: ‘With this one and she took and ate it: if one of them is worth a perutah she is betrothed, but not otherwise. Whereas the first clause draws no distinction whether she eats or lays it down. This proves that whenever he says to her, ‘with these,’ if she eats, she eats her own. This proves it.

[Reverting to the final clause of the Mishnah,] That is well on the view that it refers to the second clause, and what is meant by, UNLESS ONE OF THEM IS WORTH A PERUTAH? Unless the last is worth a perutah. Then here too [in the Baraitha just quoted] it means, unless the last is worth a perutah. But according to Rab and Samuel, who maintain that it refers to the first clause, it being necessary to state the case of eating: here comprehensive statements are given, but not detailed enumerations?[5] — This agrees with Rabbi, who said: There is no difference between ‘the size of an olive, the size of an olive,’ and ‘the size of an olive and the size of an olive’: they are [both] detailed enumerations.[6]

Rab said: If one betroths [a woman] with a debt, she is not betrothed:[7] a loan is given to be expended.[8] Shall we say that this is disputed by Tannaim: If one betroths [a woman] with a debt, she is not betrothed; but some say she is betrothed. Surely they differ in this: one Master holds that a loan is given to be expended, whereas the other holds that it is not?[9] — Now, is that plausible? Consider the second clause: And both agree in respect to purchase that he acquires it;[10] but if you say that a loan is given to be expended, wherewith does he acquire it? — Said R. Nahman: Huna our companion relates this [Baraitha] to another matter. We suppose the reference here is to the case where he said to her, ‘Be thou betrothed unto me with a maneh,’ and the maneh was found to be short of a denar:[11] one Master holds that she is bashful to claim it;[12] the other, that she is not.[13] If so, when R. Eleazar said: [If he declares,] ‘Be thou betrothed unto me with a maneh,’ and he gives her a denar, she is betrothed, and he must make it up — shall we say that he stated this ruling in dependence upon Tannaim?[14] — I will tell you: when the maneh lacks [but] a denar, she may be bashful to claim it; when the maneh is short of ninety-nine, she is [certainly] not bashful to claim it.[15]

An objection is raised: If he says to a woman, ‘Be thou betrothed unto me with the deposit which I have in thy possession,’ and she goes and finds that it is stolen or destroyed; if the value of a perutah is left thereof, she is betrothed; if not, she is not betrothed. But in the case of a debt, even if a perutah's worth thereof[16] is not left, she is betrothed. R. Simeon b. Eleazar said on R. Meir's authority: A debt

(1) If they are collectively worth a perutah.
(2) The kiddushin begins to take effect as soon as she accepts the first one.
(3) Why state it twice.
(4) [MS.M. has a much shorter and simpler text: Now what is meant by this (clause) 'with an acorn . . . or a nut'? E.g., where he said 'be betrothed unto me with these', and the final clause teaches 'with this one' etc.]
(5) How do they explain, 'unless one of them is worth a perutah'? For the clause, 'With this and this and this' is a comprehensive statement, in so far as it is taught that if they are all together worth, etc. Hence there is no clause in the Baraitha equivalent to the first clause in the Mishnah. Now, according to R. Ammi, it is well, since in the Mishnah too 'If she eats' refers to the second clause, viz., likewise to his comprehensive statement. But according to Rab and Samuel it must refer to a detailed enumeration, viz., by this, by this (not and by this); but such a clause is absent in the Baraitha.
(6) If one sacrifices an animal with the expressed intention of eating the size of an olive thereof after the time limit, the sacrifice is 'abomination', and he is liable to kareth (q.v. Glos.); if to eat it without the boundaries fixed for its eating, the sacrifice is unfit, but he is not liable to kareth. In the case of a combined intention, the latter ruling applies. R. Judah rules: The intention first expressed determines its particular law. Thereon Rabbi said: There is no difference whether he declares, 'I will eat the size of an olive after time, the size of an olive without the boundaries,' or 'I will eat the size of an olive after time and the size of an olive, etc.': both are detailed enumerations, the first of which determines its law according to R. Judah, and not comprehensive statements (i.e., combined intentions). Consequently, this clause of our Baraitha, 'With this one, etc.,' was not taught by the same Tanna as the former, but in agreement with Rabbi that even when he adds the copulative and with this one, each is a separate declaration: 'Be thou betrothed unto me with this one,' 'Be thou betrothed unto me with this one.' Hence when it is stated: 'If she ate, etc. ,'the same holds good even with greater force if she lays down each (v. Rab and Samuel's reasoning on 46a, which likewise applies here).
(7) Even if the money loaned is actually now in her possession.
(8) The debtor may expend it as he desires, and is not bound to put it in a business so that it should always be at hand when the creditor demands its return. Hence this money which she actually possesses is her own, and he gives her nothing at all. v. supra p. 21, n. 9.
(9) As explained in the previous note.
(10) If A sells land to B, B can acquire it in virtue of money he lent him previously (land being acquired by money, supra 26a), if A possesses the actual money loaned.
(11) The denar is the loan referred to.
(12) Hence she is not betrothed.
(13) She relies upon receiving it, and so the betrothal is valid.
(14) I.e., knowing that it is disputed by Tannaim.
(15) Hence all agree that she is betrothed.
(16) Of the actual money he lent her.

Talmud - Mas. Kiddushin 47b

is the same as a deposit. Now, they differ only in so far as one Master holds that a debt, even if a perutah's worth thereof is not left [is valid kiddushin], whereas the other holds it is [valid] only if a perutah's worth thereof is left, but not otherwise: but all agree that if one betroths [a woman] with a debt [the money being still in her possession], she is betrothed! — Said Raba: Is it logical that this [Baraitha] is correct;[1] surely it is corrupt! [For] what are the circumstances of this deposit? If she guaranteed against loss,[2] it is identical with a loan.[3] If she did not guarantee against loss — if so, instead of the second clause teaching, 'but in the case of debt, even if a perutah's worth thereof is not left, she is betrothed' — let a distinction be made and taught in the case [of deposit] itself: when is that? Only if she did not guarantee against loss; but if she did, even if a perutah's worth thereof is not left, she is betrothed. But amend it thus: in the case of debt, even if a perutah's worth thereof is left, she is not betrothed. R. Simeon b. Eleazar said on R. Meir's authority: Debt is as a deposit.

Wherein do they differ? — Said Rabbah: I found the Rabbis at the schoolhouse sitting and explaining. They differ as to whether a loan vests in its owner [sc. the creditor] in respect of return,

and likewise in respect of unpreventable accidents: one Master holds that a loan vests in the debtor, and likewise in respect of unpreventable accidents; and the other holds that it vests in the creditor, and even so in respect of unpreventable accidents.[4] But I told them , As for unpreventable accidents, all agree that it vests in the debtor. What is the reason? It is no worse than a loaned article:[5] if for a loaned article, which is returnable as it is, one is liable in respect of unpreventable accidents, how much more so for a debt![6] But here they [merely] differ as to whether a loan vests in its owner in respect of return.

If so, when R. Huna said: If one borrows an axe from his neighbour, if he clave [wood] therewith, he acquires it;[7] if not, he does not acquire it — shall we say that he gave his ruling as dependent upon [a dispute of] Tannaim?[8] — No. They differ only in respect of a [monetary] loan, which is not returnable as it is; but with the loan of an article which is returnable as it is, all agree [on the prin — ciple] 'if he clave therewith he indeed [acquires it,] but if he did not cleave therewith he does not acquire it'.[9]

Shall we say that this [Rab's dictum] is disputed by Tannaim? [For it was taught: If a man says to a woman:] 'Be thou betrothed unto me with a note of debt,' or if he has a loan in the hands of others[10] and transfers it to her,[11] R. Meir said: She is betrothed; the Sages ruled: She is not betrothed. Now, how is this 'note of debt' meant? Shall we say, a note of debt against others; then it is identical with 'a loan in the hands of others?' Hence it must surely mean a note against her debt,[12] and thus they differ in respect to betrothing [a woman] by a debt! — After all, it means a note of debt against others, and here they differ both on a debt contracted with a bond and a debt contracted verbally.[13] Concerning a debt contracted with a bond, wherein do they differ? In the dispute of Rabbi and the Rabbis. For it was taught: A note[14] is acquired by delivery; this is Rabbi's view.[15] But the Sages say: Whether he writes [a bill of sale] without delivering [the note itself] or whether he delivers it without writing [a bill of sale], he does not acquire it unless he both indites [a bill of sale] and delivers [the original note]. One Master agrees with Rabbi; the other does not agree with Rabbi.[16] Alternatively, none accept Rabbi's view, while here they differ in R. Papa's [dictum]. For R. Papa said: When one sells a note to his neighbour he must write for him [in the conveyance]: 'Acquire it together with all its obligations': one Master agrees with R. Papa; the other does not agree with R. Papa.[17] Alternatively, all agree with R. Papa. But here they differ over Samuel's dictum. For Samuel said:

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(1) Lit., 'to be accepted.'

(2) To pay for any mishap.

(3) If lost or stolen, since it must be made good, just like a debt.

(4) All agree that a loan is given for expenditure: consequently, had she expended anything at all thereof, the betrothal is not valid. But here she had expended nothing of it: R. Simeon b. Eleazar holds that in such a case it vests in the creditor, and he can immediately demand its return, if he desires. Hence it is now that he gives it to the woman, and so she is betrothed. Likewise, should an unpreventable accident befall the money, the debtor is not responsible, since it is accounted as being in the creditor's possession. The first Tanna's view is the reverse.

(5) 'Milweh' applies to a monetary loan; 'She'elah', to the loan of an article.

(6) Which is certainly more in the debtor's possession, seeing that he is not bound to return the same coins.

(7) In the sense that it belongs to him for the period of the loan, and the lender cannot retract.

(8) Viz., that it agrees only with R. Meir. But according to the first Tanna, since an untouched loan does not stand in the creditor's possession and he cannot demand its return, the same applies here even if he did not cleave wood with it.

(9) Other coins may be substituted, but as for a loaned article, which must be returned itself, all agree that only if he clave therewith does he acquire, and not otherwise.

(10) I.e., he is a creditor.

(11) Lit., 'gave her (written) authority over them' to collect the debt for herself.

(12) I.e., against a debt she owes to him.

(13) The latter being 'a loan in the hands of others'.

(14) Lit., 'letters'.

(15) If A delivers his note against B to C, C acquires it forthwith.

(16) The circumstances being that he gave her the note, but did not write a bill of sale hereon.

(17) The circumstances being that he gave her the original note and wrote a bill of sale, but did not include this 'obligation' clause in it.

Talmud - Mas. Kiddushin 48a

If one sells a note of debt to his neighbour and then renounces it [the debt], it is renounced; and even an heir can renounce it.[1] One Master agrees with Samuel; the other does not agree with Samuel.[2] Alternatively, all agree with Samuel,[3] and here they differ in respect to the woman. One Master holds, The woman has full confidence [in him], reasoning, he will not leave me in the lurch and renounce [the debt] in favour of another; whereas the other Master holds, The woman too has no confidence.

Wherein do they differ concerning a debt contracted verbally? — In [the law of] R. Huna in Rab's name. For R. Huna said in Rab's name: [If A says to B,] 'The maneh which I have in your possession, give it to C': [if said] 'in the presence of the three of them' [viz., A, B and C], he acquires it. One Master holds, Rab ruled thus only of a deposit, but not of a loan;[4] and the other maintains that there is no difference between a deposit and a loan.[5]

[Again,] Shall we say that this[6] is disputed by Tannaim? [For it was taught: If he says:] 'Be thou betrothed unto me with a note:' R. Meir said: She is not betrothed; R. Eleazar said: She is betrothed; the Sages ruled: The paper is valued: if it is worth a perutah, she is betrothed; if not, she is not betrothed. How is this note meant: shall we say, a note of debt against others — then R. Meir is self-contradictory?[7] Hence it must mean her own note of debt,[8] and thus they differ in respect to betrothal by debt! — Said R. Nahman b. Isaac: The meaning here is that he betroths her with a deed unattested by witnesses,[9] R. Meir being in harmony with his view that the witnesses who sign dissolve [the marriage]; while R. Eleazar is in agreement with his opinion that the witnesses to the delivery dissolve it;[10] while the Rabbis are in doubt whether it is as R. Meir or R. Eleazar; therefore the paper is valued, [and] if it is worth a perutah she is betrothed, and if not, she is not betrothed.[11]

Alternatively, [we] suppose, that it was not written specifically for her sake, and they differ in respect to Resh Lakish's [view]. For Resh Lakish propounded: What if a deed of betrothal is not written expressly for her [the betrothed's] sake? Do we assimilate betrothal to divorce: just as divorce must be expressly for her sake, so must betrothal be likewise; or perhaps, [different] forms of betrothal are assimilated to each other: just as betrothal by money need not be for her sake, so betrothal by deed need not be for her sake? After propounding, he resolved it: Betrothal is assimilated to divorce, [for Scripture writes] and when she is departed . . . she may be [another man's wife].[12] One Master agrees with Resh Lakish; the other does not.[13]

Alternatively, all agree with Resh Lakish, and here the circumstances are that it [the deed] was written expressly for her sake but without her knowledge, and they differ in the same dispute as Raba and Rabina, R. Papa and R. Sherabia. For it was stated: If it is written for her sake but without her knowledge, — Raba and Rabina maintain: She is betrothed; R. Papa and R. Sherabia rule: She is not betrothed.[14]

Shall we say that it [Rab's dictum] is dependent on the following Tannaim? For it was taught: [If a woman says to a man,] 'Make me a necklace, earrings and [finger] rings, and I will be betrothed unto thee,'[15] as soon as he makes them, she is betrothed: this is R. Meir's view. But the Sages rule: She is not betrothed until the money reaches her hand. What is meant by this 'money'? Shall we say, those self-same valuables? hence it follows that in the first Tanna's view even those self-same valuables [need] not [reach her hand]; then wherewith is she betrothed?[16] Hence it must surely refer to

different money,[17] which proves that they differ over betrothal by debt. For it is assumed that all hold that wages are a liability from beginning to end, hence it is a debt;[18] surely then they differ in this: one Master holds, If he betroths [a woman] with a debt, she is betrothed, while the other holds that she is not? — No: all agree that if he betroths with a debt, she is not betrothed, but here they differ as to whether wages are a liability from beginning to end. One Master holds,

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(1) Tosaf. suggests that the reason is that the sale of an IOU is only Rabbinically valid, and is therefore not strong enough to annul the first creditor's right of renunciation. [According to R. Tam (v. R. Nissim on Keth. 85b) it is based on the dual conception of the lien of the creditor or the debtor: (a) שעבוד הגוף a lien on his person; (b) שעבוד נכסים a lien on his property — a conception that has its parallel in the Greek and Old Babylonian Systems of Law. Whilst the latter is assignable, the former is not, and whenever the creditor chooses to renounce the inalienable part of his lien, the other automatically lapses; v. Neubauer. J. op. cit. pp. 112-114, n. 1.]

(2) The first Tanna agrees: hence the woman relies upon it, and the betrothal is valid.

(3) [And therefore in the case of an ordinary transaction of real estate, a note does not rank as money to confer possession upon the purchaser.]

(4) Hence in the case under discussion the woman is not betrothed.

(5) V. Git. (Sonc. ed.) p. 47. n. 3.

(6) Rab's dictum, supra 47a.

(7) V. supra 47b.

(8) Recording her debt.

(9) V. supra 2a; that is the note referred to here, but that it was not signed; it was, however, given to her in the presence of witnesses.

(10) This refers to a Get (q.v. Glos.) bearing no signature of witnesses. R. Meir holds that it is invalid, For only these witnesses give it its power of dissolution. R. Eleazar rules that it is valid, for the dissolution is really effected by the witnesses who attest its delivery. v. Git. 3b. The same applies to a deed of betrothal.

(11) Rashi and Tosaf. observe that the last clause must be omitted, For since we are in doubt, even if it is not worth a perutah she stands as doubtfully betrothed, and needs a divorce to free her.

(12) V. supra 95 for notes.

(13) Whilst the Rabbis are in doubt on the point.

(14) V. supra 9b for notes.

(15) In return for his labour, the gold being her own.

(16) Surely she must actually receive something!

(17) I.e., in addition to the jewels she must receive money.

(18) When a man does work, as he completes each perutah's worth his employer is liable for the payment of it. Consequently, when this goldsmith makes the jewellery, as soon as he finishes each perutah's worth of labour, she becomes indebted to him to the amount of a perutah, so that when he completes the work entirely, the fee, which is to effect betrothal, is a retrospective debt.

Talmud - Mas. Kiddushin 48b

Wages are a liability only at the end;[1] whilst the other holds that wages are a liability from beginning to end. Alternatively, all hold that wages are a liability from beginning to end, and that betrothal by debt is invalid, but here they dispute whether an artisan gains a title to the improvement of the utensil; one Master holds that an artisan does acquire title to the improvement of the utensil, and the other holds that an artisan does not acquire title to the improvement of the utensil.[2] Alternatively, all hold that an artisan does not obtain a title to the improvement of the utensil, and that wages are a liability from beginning to end, and that betrothal with debt is not valid, but the circumstances here are that he added a particle [of metal] of his own: one Master holds, [When one betroths a woman with a] debt and a perutah, her mind is set upon the perutah;[3] the other holds, her mind is set upon the debt.[4] And [they differ] in the [same] dispute as the following Tannaim. For it was taught: '[Be thou betrothed unto me] with the wage [owing to me] for the work I have done for thee, ' she is not betrothed; with 'the wage for what I will do for thee,' she is betrothed. R. Nathan said: 'With the

wage for what I will do for thee,' she is not betrothed; how much more so, 'with the wage [owing to me] for the work I have done for thee.' R. Judah the Prince said: In truth it was stated, whether [he declared], 'with the wage for what I have done,' or 'with the wage for what I will do for thee,' she is not betrothed; yet if he adds a consideration of his own, she is betrothed.[5] The first Tanna and R. Nathan differ in respect to wages.[6] R. Nathan and R. Judah the Prince differ in respect to [betrothal by] debt and a perutah: one holds that then her mind is set upon the debt, whereas the other holds that it is set upon the perutah.

MISHNAH. [IF A MAN SAYS TO A WOMAN], BE THOU BETROTHED UNTO ME WITH THIS CUP OF WINE,' AND IT IS FOUND TO BE OF HONEY, OR 'OF HONEY' AND IT IS FOUND TO BE OF WINE; 'WITH THIS SILVER DENAR,' AND IT IS FOUND TO BE OF GOLD, OR 'OF GOLD' AND IT IS FOUND TO BE OF SILVER; 'ON CONDITION THAT I AM WEALTHY,' AND HE IS FOUND TO BE POOR, OR 'POOR' AND HE IS FOUND TO BE RICH; SHE IS NOT BETROTHED. R. SIMEON SAID: IF HE DECEIVES HER TO [HER] ADVANTAGE,[7] SHE IS BETROTHED.

GEMARA. Our Rabbis taught: [Where he says] 'Be thou betrothed unto me with this cup' — one [Baraitha] taught: with that and its contents;[8] another taught; with that, but not with its contents; another taught: with its contents, but not with that itself. Yet there is no difficulty: one refers to water, another to wine, and the third to brine.[9]

IF HE DECEIVES HER TO [HER] ADVANTAGE, SHE IS BETROTHED, But does not R. Simeon agree [that if one sells] wine, and it is found to be vinegar, or, vinegar and it is found to be wine, both [the vendor and the purchaser] can retract?[10] This proves that some prefer wine and others prefer vinegar. So here too, some are pleased with silver and not with gold?[11] Said R. Shimi b. Ashi: I came across Abaye sitting and explaining this to his son: We deal here with a case where, for example, he said to his agent, 'Lend me a silver denar and go and betroth So-and-so on my behalf,' and he went and lent him a gold denar. One Master holds, [He was] particular [about this;][12] the other, that he merely indicated the place to him.[13] If so,[14] 'BE THOU BETROTHED UNTO ME' — BE THOU BETROTHED UNTO him is required; IF HE DECEIVES HER TO [HER] ADVANTAGE' — IF HE DECEIVES him TO [HIS] ADVANTAGE is required, 'IT IS FOUND [TO BE OF GOLD]' — but at the very outset it was of gold![15] — But, said Raba, I and a lion of our company, viz., R. Hiyya b. Abin, explained it, What are the circumstances here? If she said to her agent, 'Go forth and accept kiddushin on my behalf from So-and-so, who has proposed to me, "Be thou betrothed unto me with a silver denar"'; and went and was given a gold denar. One Master holds [she was] particular [about this]; the other, that she indicated the place to him. And what is [the meaning of] 'IT IS FOUND'?[16] It was wrapped up in a cloth.[17]

Abaye said: R. Simeon,[18] R. Simeon b. Gamaliel, and R. Eleazar, all hold that one merely indicates the place.[19] R. Simeon, as stated. 'R. Simeon b. Gamaliel:' for we learnt:

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(1) When the work is returned the whole wages become a simultaneous liability; hence there is no debt, and the betrothal is valid.

(2) When a man is employed by the hour, day, etc., all agree that his wages are a liability from beginning to end. Here, however, we deal with a case where he contracted for the work irrespective of time. In respect to this we have two views: one view is that the artisan acquires title to the increase in the value of the material upon which he works as a result of the improvements he effects, and when he gives it back, he is really selling it for the agreed cost of his labour. Hence, the woman is betrothed, since she receives something for which she would have to pay now. The other view is that he does not so acquire; consequently, his wages are a liability and debt, just as those of a time worker; and so she is not betrothed.

(3) His labour is a debt, whilst his own additional material is certainly like a coin given now. Since we assume that her mind is set upon the perutah, she is betrothed.

(4) Because its value exceeds his small addition.
(5) This proves that in R. Nathan's opinion she is not betrothed even then.
(6) Whether they are a liability from beginning to end or only at the end, but if the work is already done and in her possession, it is certainly a debt, on all views.
(7) The object being better than described.
(8) That is understood to be his meaning, and if they are together worth a perutah, she is betrothed.
(9) Or, oil. If the cup is filled with water, her mind is set upon the cup, hence that must be worth a perutah. With wine, she thinks of the wine, not the cup; with brine, (or oil) which must remain for some time in the cup, her mind is set upon both (Rashi).
(10) This is a Mishnah in B.B. 83b.
(11) Tosaf.: she may need the silver for its metal.
(12) He wanted to borrow only a silver denar, not gold; hence the betrothal is invalid.
(13) I.e., he intimated to him that he was to betroth that woman with money, but was not particular about the exact coin.
(14) That the reference in the Mishnah is to the agent.
(15) The agent knew full well that he was giving a gold denar.
(16) For here too it was thus given at the very outset.
(17) And it was discovered to be gold only upon reaching the woman's hand.
(18) I.e., b. Yohai.
(19) In circumstances similar to the above.

Talmud - Mas. Kiddushin 49a

A plain divorce [bears] its witnesses on the inside; a folded one [bears] its witnesses on the outside.[1] If the signatures of a plain one are written on the outside, or of a folded one on the inside, both are invalid. R. Hanina b. Gamaliel said: If the signatures of a folded one are written on the inside it is valid, because it can be converted into a plain one.[2] R. Simeon b. Gamaliel said: It all depends on local custom.[3] Now, we pondered thereon: does not the first Tanna agree that local custom [is the determining factor]? To which R. Ashi[4] replied: In the place where a plain one is customary and a folded one is made, or in the place where a folded one is customary and a plain one is made, all agree that the objection [is valid]. Where do they differ? Where both are customary, and he [the husband] instructs him [the scribe], 'Make me a plain one,' and he goes and makes him a folded one. One Master holds that he particularised; the other, that he indicated a place to him.[5]

'R. Eleazar' — for we learnt: If a woman says: 'Accept a divorce on my behalf at such and such a place,' and he accepts it elsewhere: R. Eleazar ruled it valid. This shews that he holds that she merely indicated a place to him.

'Ulla said: The controversy [in the Mishnah] refers to a monetary advantage. But in an advantage of birth,[6] all agree that she is not betrothed. What is the reason? 'I do not want a shoe too large for my foot.' It was taught likewise. R. Simeon admits that if he deceives her by a superiority of birth she is not betrothed. R. Ashi said: This follows from our Mishnah too. For it states:[7] 'On condition that I am a priest,' and he is found to be a Levite, or 'a Levite', and he is found to be a priest, 'a Nathin,'[8] and he is found to be a mamzer,[9] or a mamzer', and he is found to be a Nathin [she is not betrothed]; and R. Simeon does not disagree. Mar, son of R. Ashi, demurred: If so, when it is stated: 'on condition that I have a daughter or maidservant [meguddeleth][10] that is grown up', whereas he has none; or on condition that he has not, and he has, which is a monetary advantage, does he not disagree there either! But [what you must say is that] he differs in the first clause,[11] and the same is understood of the second;[12] so here too [in respect to superiority] of birth, he differs in the first clause, and the same applies to the last clause. How compare! There, since both refer to a financial advantage, he differs in the first clause and the same is understood of the last. Here, however, that it is superiority of birth, if it is so that he disagrees, it should be taught. Alternatively, here too superior birth [is meant]. Do you think that meguddeleth means literally an adult; meguddeleth means of

superior breeding,[13] for she [the woman betrothed] can say: 'It does not please me that she should take up my words and carry them about to the neighbours.'[14]

Our Rabbis taught: 'On condition that I am a karyana,'[15] once he has read three verses [of the Pentateuch] in the synagogue,[16] she is betrothed. R. Judah said: He must be able to read and translate it. Even if he translates it according to his own understanding! But it was taught: R. Judah said: If one translates[17] a verse literally, he is a liar; if he adds thereto, he is a blasphemer and a libeller.[18] Then what is meant by translation? Our [authorised] translation.[19] Now, that is only if he said to her 'karyana'. But if he says: 'I am a kara,'[20] he must be able to read the Pentateuch, Prophets and Hagiographa with exactitude.[21] [If he says,] 'On condition that I am learned' — Hezekiah said: [In] Halachoth.[22] R. Johanan ruled: In Torah.[23] An objection is raised: What is Mishnah?[24] R. Meir said: Halachoth. R. Judah said: Midrash.[25]

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(1) V. B.B. 160a.

(2) By leaving it unsewn.

(3) If it is customary to write a folded divorce, a plain one is invalid, and vice versa. For when a husband authorizes the scribe to write a divorce, it is tacitly understood that he wants it written in accordance with local custom; for notes v. B.B. 160a.

(4) Rashal in B.B. 165a reads Abaye. R. Ashi, being later than Abaye, is obviously an incorrect reading in an argument by the latter, unless it is assumed that Abaye merely made the statement cited above, the Talmud itself elaborating it; v. Kaplan, Redaction of the Talmud, p. 222.

(5) I.e., gave him a general intimation that he wanted a divorce to be indited.

(6) E.g., if he says, on condition that I am a mamzer (q.v. Glos.). and is found to be a Nathin, i.e., of higher caste.

(7) Infra b.

(8) V. Glos.

(9) V. Glos.

(10) V. infra p. 249, n. 8.

(11) Viz., in the Mishnah on 48b.

(12) Infra b.

(13) So Rashi.

(14) And because she is of superior breeding she has access to them and is listened to, where she would not be otherwise.

(15) I.e., able to read the Bible.

(16) In Talmudic times the reading of the Pentateuch, which was an important part of Sabbath and Festival services, was performed by a number of congregants, each of whom read not less than three verses, and not by a Reader, as to-day.

(17) This refers to the public translations in the synagogue alongside the Reading of the Law, which was also a feature of ancient times.

(18) Meharef and megaddef are synonyms. [Tosaf. In the name of R. Hananel cites Ex. XXIV. 10: **ויראו את אלקי ישראל** of which the literal rendering 'they saw the God of Israel' conveys a lie, as God cannot be seen, whilst the added words in the rendering 'they saw the angel of the God of Israel' involves a blasphemy; for further examples v. Harkavy, A., Teshuboth ha-Geonim, pp. 124ff.]

(19) The Aramaic translation known as Targum Onkelos; v. Bacher, Die Terminologie der Tannaiten, pp. 205 et seq., also art. 'Targum' in J.E.

(20) Likewise 'reader', but the word implies wider erudition.

(21) Of course, with full understanding.

(22) Rashi: traditional laws dating back to Moses. The probable meaning is traditional statements of laws in general, such as form the Mishnah, but without the exegetical knowledge of their derivation from the Bible, particularly the Pentateuch, v, Glos. s.v. Halachah.

(23) This is now assumed to mean the written law, i.e., the Pentateuch.

(24) 'Learning' a word of the same root as in the phrase 'that I am learned'.

(25) Exegesis. The exegetical literature, e.g., Sifra and Sifre, containing the laws derived from the Pentateuch and the manner of derival. — Thus on both views the knowledge of the Torah alone is insufficient.

Talmud - Mas. Kiddushin 49b

— What is meant by Torah? The exegesis [Midrash] of the Torah. Now, that is only if he says to her [‘on condition that I am] tinyana [learned]:’ but if he says to her, I am a tanna, he must have learned law, Sifra, Sifre and Tosefta.[1] ‘On condition that I am a disciple [talmid],’ we do not say, such as Simeon b. ‘Azzai and Simeon b. Zoma,[2] but one who when asked a single question on his studies in any place can answer it,[3] even in the Tractate Kallah.[4] ‘On condition that I am a Sage,’ we do not say, like the Sages of Jabneh[5] or like R. Akiba and his companions, but one who can be asked a matter of wisdom[6] in any place and he can answer it. ‘On condition that I am mighty,’ we do not say, [he must be] like Abner the son of Ner[7] and Joab son of Zeruiah,[8] but as long as he is feared by his companions on account of his strength. ‘On condition that I am wealthy,’ we do not say, like R. Eleazar b. Harsom and R. Eleazar b. Azariah,[9] but as long as he is honoured by his fellow citizens on account of his wealth. ‘On condition that I am righteous,’ even if he is absolutely wicked, she is betrothed, for he may have meditated repentance in his thoughts. ‘On condition that I am wicked,’ even if he is completely righteous, she is betrothed, for he may have meditated idolatry in his mind.

Ten kabs of wisdom descended to the world: nine were taken by Palestine and one by the rest of the world. Ten kabs of beauty descended to the world: nine were taken by Jerusalem and one by the rest of the world. Ten kabs of wealth descended to the world: nine were taken by the early Romans and one by the rest of the world. Ten kabs of poverty descended to the world: nine were taken by Babylon and one by the rest of the world. Ten kabs of conceit descended to the world: nine were taken by Elam[10] and one by the rest of the world. But did not conceit descend to Babylon! But it is written: Then lifted I up mine eyes, and saw, and behold, there came forth two women, and the wind was in their wings; now they had wings like the wings of a stork: and they lifted up the ephah between the earth and the heaven. Then said I to the angel that talked with me, Whither do these bear the ephah? And he said unto me, To build her a house in the land of Shinar.[11] Whereon R. Johanan said: This refers to hypocrisy and conceit, which descended to Babylon! — Yes, it did come down hither, but made its way thither [to Elam]. This follows too because it is written, to build her a house:[12] this proves it. But that is not so, for a Master said: A sign of conceit is poverty, and poverty is found in Babylon! — By poverty,[13] poverty of learning is meant,[14] as it is written, we have a little sister, and she hath no breasts,[15] whereon R. Johanan said: This refers to Elam, which was privileged to study but not to teach.[16]

Ten kabs of strength descended to the world: nine were taken by the Persians, etc. Ten kabs of vermin descended to the world: nine were taken by Media, etc. Ten kabs of witchcraft descended to the world: nine were taken by Egypt,[17] etc. Ten kabs of sores descended to the world: nine were taken by swine, etc. Ten kabs of immorality descended to the world: nine were taken by Arabia, etc. Ten kabs of impudence descended to the world: nine were taken by Mesene.[18] Ten kabs of gossip descended to the world: nine were taken by women, etc. Ten kabs of drunkenness[19] descended to the world: nine were taken by Ethiopians, etc. Ten kabs of sleep descended to the world: nine were taken by slaves,[20] and one by the rest of the world.

MISHNAH. ‘[BE THOU BETROTHED UNTO ME] ON CONDITION THAT I AM A PRIEST,’ AND HE IS FOUND TO BE A LEVITE, OR ‘A LEVITE’ AND HE IS FOUND TO BE A PRIEST; A NATHIN,’[21] AND HE IS FOUND TO BE A MAMZER,[22] OR ‘A MAMZER’ AND HE IS FOUND TO BE A NATHIN; ‘A TOWNSMAN, AND HE IS FOUND TO BE A VILLAGER, OR ‘A VILLAGER’ AND HE IS FOUND TO BE A TOWNSMAN; ‘ON CONDITION THAT MY HOUSE IS NEAR TO THE BATHS,’ AND IT IS FOUND TO BE FAR, OR ‘FAR’ AND IT IS FOUND TO BE NEAR; ON CONDITION THAT HE HAS A DAUGHTER OR MAIDSERVANT[23] THAT IS GROWN UP,[24] AND HE HAS NOT, ‘OR ON CONDITION THAT I HAVE [THEM] NOT’, AND HE HAS; ‘ON CONDITION THAT HE HAS NO SONS’, AND HE

HAS, OR 'ON CONDITION THAT HE HAS SONS, AND HE HAS NONE-IN ALL THESE CASES, EVEN IF SHE DECLARES, IT WAS MY INTENTION TO BECOME BETROTHED TO HIM NOTWITHSTANDING,' SHE IS NOT BETROTHED. IT IS LIKEWISE SO IF IT WAS SHE WHO DECEIVES HIM.

GEMARA. A certain man sold his property with the intention of emigrating to Palestine, but when selling he said nothing.[25] Said Raba: That is a mental stipulation,[26] and such is not recognised.[27] How does Raba know this? Shall we say, from what we learnt:

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(1) Sifra is a halachic commentary on Leviticus, also known as Torath Kohanim, the Law of the Priests. Sifre is a similar work on Numbers and Deuteronomy. In Sanh. 86a R. Johanan ascribes all anonymous passages in them to R. Judah and R. Simeon respectively. Tosefta ('addition') is a collection of laws not included by Rabbi in his compilation of the Mishnah, and of lesser authority. A number of Rabbis had such collections, but only those of R. Hiyya and R. Oshaia were considered authentic. The relation of the Tosefta to the Mishnah is one of the unsolved problems of Talmudic literature, but it is highly probable that part of it at least was intended as an elaboration of the Mishnah.

(2) These, though disciples, i.e., not ordained as Rabbis, were renowned for their wide erudition. Cf. Sotah, 49b, Yeb. 63b.

(3) [ואומרו Lit., 'he says it', Kaplan, op. cit. p. 203 explains this term as denoting the ability to discuss the point in question, and not merely to quote correctly from some text.]

(4) One of the extra-canonical tractates. Rashi: though it is short and not difficult, it is enough if he can answer a question in it. Others (v. Tosaf. Ri) the laws of Festivals (Kallah was the name given to the general assemblies in Elul and Adar, when the laws of the Festivals were popularly expounded.), in which most people were well-versed. V. J.E. s.v. Kallah; v. [Higger, M. מסכתות כלה pp. 13ff.].

(5) A town to the north west of Jerusalem, whither R. Johanan b. Zakkai transferred the great Sanhedrin after the fall of Jerusalem; v. Sanh. (Sonc. ed.) p. 204 n. 8.

(6) Rashi: a matter dependent on logic.

(7) Formerly Ishbosheth's chief general against David, but subsequently he went over to David; II Sam. II, 8 seqq; III, 12 seqq.

(8) David's chief general.

(9) Who were credited with enormous wealth: V. Yoma 35b and Shab. 54b.

(10) V. Sanh. (Sonc. ed.) p. 138, n. 1.

(11) Zech. V, 9f. Shinar is Babylon.

(12) Rashi offers two explanations: (i) the inf. 'to build' implies that it was only an intention, not subsequently carried out; (ii) the sing. 'her', instead of 'them', intimates that only one took up her permanent residence in Babylon, viz., hypocrisy.

(13) Which betokens conceit.

(14) The conceited man is too proud to seek learning from others.

(15) Cant. VIII, 8.

(16) V. Sanh. (Sonc. ed.) p. 238. n. 5. Which proves that their conceit prevented them from attaining sufficient knowledge to teach.

(17) Cf. Sanh. (Sonc. ed.) p. 460. n. 6.

(18) The island formed by the Euphrates, the Tigris and the Royal Canal.

(19) Var. lec, 'blackness'.

(20) Cf. B.M. 64b-65a.

(21) V. Glos.

(22) V. Glos.

(23) V. supra p. 245.

(24) [Meguddeleth, others: 'a hairdresser' Tosaf. Ri].

(25) And subsequently he was prevented from going.

(26) Lit., 'it is words that are in the heart'.

(27) Lit., 'words that are in the heart are no words'. Even though we know that that was his reason, e.g., he had mentioned it previously.

Talmud - Mas. Kiddushin 50a

[If his oblation be a burnt-offering of the herd, he shall offer it with a tale without blemish:] he shall offer it [at the door etc.]:[1] this teaches that he is compelled.[2] I might think, against his will-hence it is taught: 'with his free will'.[3] How is this possible? He is compelled, until he declares, 'I am willing'. Yet why, seeing that in his heart he is unwilling! Hence it must surely be because we rule; A mental affirmation is not recognised! — But perhaps it is different there, for we ourselves are witnesses that he is pleased to gain atonement. But [it follows] from the second clause: and you find it likewise in the case of women's divorce and slaves' manumission: he [the husband or master] is compelled, until he declares,'I am willing.'[4] Yet why: seeing that in his heart he is unwilling! Hence it must surely be because we say: A mental declaration is not recognised! — But perhaps it is different there, because it is a religious duty to obey the words of the Sages! — But, said R. Joseph, [it is deduced] from the following: If one betroths a woman and [then] declares, 'I thought her to be a priest's daughter, whereas she is the daughter of a Levite,' or 'a Levite's daughter and she is the daughter of a priest'; 'is poor, whereas she is wealthy', or 'is wealthy whereas she is poor' 'she is betrothed, because she has not deceived him. Yet why, seeing that he declares, 'I thought [etc.]'? But it must be because we say: A mental stipulation! — Said Abaye to him: Perhaps it is different there, for it [the ruling] is in the direction of stringency![5] — But, said Abaye, [it is deduced] from this: IN ALL THESE CASES, EVEN IF SHE DECLARES, 'IT WAS MY INTENTION TO BECOME BETROTHED TO HIM NOTWITHSTANDING', SHE IS NOT BETROTHED. Yet why, seeing that she declares, ' IT WAS MY INTENTION'? — But perhaps it is different there, for since he stipulated, it does not rest with her to set aside his stipulation! — But, said R. Hiyya b. Abin, this occurred at R. Hisda's,[6] and R. Hisda [went] to R. Huna's [academy, to discuss the matter], and it was solved from the following: If one says to his agent, 'Bring me [money] from the window [sill] or the chest,' and he brings it to him, even if the master says: 'I was thinking only of this [purse],'[7] yet since he brought him the money from this [place], the master is guilty of trespass.[8] Yet why, seeing that he says: 'I was thinking [etc.]ð? Hence it must surely be because we say that a mental declaration is null. Yet perhaps it is different there, because he comes to free himself from a sacrifice? — Then let him declare that he did it intentionally.[9] But it is unusual for a person to declare himself wicked? — Then let him say: 'I reminded myself.'[10] For it was taught: If the principal recollects [that it is of hekdesh] but not his agent, the latter is guilty of trespass.[11]

A certain man sold his property with the [express] intention of migrating to Palestine.[12] He migrated, but could not settle down. Said Raba: When one goes there, it is with the intention of settling, and this man has not settled.[13] Others state [that he ruled]: [He sold it] with the intention of migrating, and he has done so.[14] A certain man sold his property with the [express] intention of migrating to Palestine. Eventually he did not go. Said R. Ashi: He could have gone had he desired.[15] Others state [that R. Ashi declared]: Had he desired, could he have not gone?[16] Wherein do they differ? — They differ where an impediment cropped up on the road.[17]

MISHNAH. IF HE SAYS TO HIS AGENT, 'GO FORTH AND BETROTH TO ME SO-AND-SO IN SUCH AND SUCH A PLACE, AND HE GOES AND BETROTHS HER ELSEWHERE, SHE IS NOT BETROTHED. 'SHE IS IN SUCH AND SUCH A PLACE, AND HE BETROTHS HER ELSEWHERE, SHE IS BETROTHED.

GEMARA. Now, we learned the same of divorce: If he says: 'Give my wife a divorce in such and such a place,' and it is given to her elsewhere, it is invalid. 'She is in such and such a place,' and it is given to her elsewhere, it is valid. And both are necessary. For if we were informed this of kiddushin, where he comes to unite her to himself,[18] [he may have thought:] 'in this place I am popular and nothing will be said against me, but in that place I am hated and slander[19] will be piled up against me.'[20] But in respect to divorce, seeing that he comes to drive her away, I might argue

that he does not care.[21] And if we were informed this of divorce, [I might argue] in this place he is willing to be disgraced, but not in the other; [whereas] in respect to betrothal, I might argue that he does not care. Thus [both are] necessary. MISHNAH. IF HE BETROTHS A WOMAN ON CONDITION THAT SHE HAS NO VOWS UPON HER, AND IT IS FOUND THAT SHE HAS, SHE IS NOT BETROTHED, IF HE MARRIES HER[22] UNCONDITIONALLY, AND IT WAS FOUND SHE HAD VOWS UPON HER, SHE IS DIVORCED[23] WITHOUT HER KETHUBAH.[24] [IF HE BETROTHS HER] ON CONDITION THAT SHE HAS NO BLEMISHES, AND BLEMISHES ARE FOUND IN HER, SHE IS NOT BETROTHED. IF HE MARRIES HER UNCONDITIONALLY AND BLEMISHES ARE FOUND IN HER, SHE IS DIVORCED WITHOUT HER KETHUBAH. ALL BLEMISHES WHICH INCAPACITATE PRIESTS [TO SERVE AT THE ALTAR] RENDER WOMEN UNFIT.[25]

GEMARA. And we learned this likewise [in the tractate] on Kethuboth.[26] Here he [the Tanna] desires [to give the ruling on] betrothal, and settlements are taught incidentally to betrothal. There settlements are necessary [to be dealt with], and betrothal is taught incidentally to settlements.

MISHNAH. IF HE BETROTHS TWO WOMEN WITH THE VALUE OF A PERUTAH, OR ONE WOMAN WITH LESS THAN A PERUTAH'S WORTH, EVEN IF HE SUBSEQUENTLY SENDS GIFTS,[27]

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(1) Lev. I, 3: the second ‘he shall offer it’ is superfluous.

(2) To fulfil his vow.

(3) E.V. that he may be accepted.

(4) This refers to those who are compelled to free their wives or slaves.

(5) I.e., we may be uncertain whether a mental stipulation is valid or not. Consequently she is betrothed, in the sense that she is not free to remarry. Nevertheless, if she accepts kiddushin from another, she may be betrothed to the second, the betrothal of the first being null on account of the mental condition, and so she will require a divorce from both.

(6) I.e., he was requested to give a judicial ruling on such a matter.

(7) Whereas he brought the money from a different purse lying in the same place.

(8) The money brought to him was sacred money, for the unwitting secular use of which one is liable to a trespass-offering. Now, if this is done through an agent: if the agent carries out instructions, the principal is liable; if he does not carry out instructions, he himself is liable. (The liability is incurred not for actual use, but for taking it to use it, whereby it is removed from the ownership of hekdesh.)

(9) Which involves no sacrifice.

(10) After my servant went to expend it on my instructions.

(11) Hence if he wished to free himself by a lie he could have had recourse to this statement which is considered effective, and so we believe him that he meant a different purse; and yet he, not his agent, is liable, which proves that a mental declaration is not valid.

(12) Stating thus at the time of the sale.

(13) Hence the sale is null.

(14) Hence notwithstanding his return the sale stands.

(15) Hence the sale is valid.

(16) Surely he could (Rashi) — hence the sale stands. [Others: (even) if he desires he cannot go. Hence the sale is null. V, Joseph Karo on Tur. H.M. 206, and commentaries a.l.]

(17) E.g., it became infested with highwaymen. According to the first version, R. Ashi declared that he nevertheless could have gone, e.g., by joining a large company of travellers; hence the sale stands. But according to the second version, ‘could he have not gone,’ it is implied that there was nothing to prevent him. Here, however, there was, and so the sale is null.

(18) Lit., ‘bring her near’.

(19) Lit., ‘words’.

(20) Hence he was particular that she should be betrothed only where he stated.

(21) And when he says. ‘Divorce her in such and such a place,’ he merely indicates where she is to be found.

(22) This refers to nissu'in. q.v. Glos.
(23) Lit., ‘goes forth’.
(24) V. Glos.
(25) And they can be divorced without their kethubah.
(26) The Tractate dealing with women's settlements.
(27) Heb. siblonoth, cf. Gr. ** ‘dona sponsalitia’, the gifts which one usually sent his betrothed.

Talmud - Mas. Kiddushin 50b

SHE IS NOT BETROTHED, BECAUSE THEY WERE SENT ON ACCOUNT OF THE FIRST KIDDUSHIN.[1] IT IS LIKEWISE SO IF A MINOR BETROTHS.[2]

GEMARA. And it is necessary [to state both]. For if we were informed the case of a perutah's worth [for two women], [I might argue,] since money has gone forth from him, he may err [and think the kiddushin valid]. But [with respect to] less than a perutah's worth, I might say that he knows that kiddushin with less than a perutah's worth is invalid, and so when he sends gifts, he sends them as kiddushin.[3] And if these two cases were taught, that is because one may not be clear on a perutah's worth and less;[4] but when a minor betroths, all know that such betrothal is nothing; hence when he sends gifts, I might reason that he sends them as kiddushin. We are therefore informed otherwise.

It was stated: R. Huna said: We pay regard to[5] gifts: and Rabbah said likewise: We pay regard to gifts.[6] Rabbah said: An objection is raised against our teaching: EVEN IF HE SUBSEQUENTLY SENDS GIFTS, SHE IS NOT BETROTHED! — Abaye answered him: There the reason is as stated: BECAUSE THEY WERE SENT ON ACCOUNT OF THE FIRST KIDDUSHIN. Others state, Rabbah said: Whence do I know it?[7] From the reason stated: BECAUSE THEY WERE SENT ON ACCOUNT OF THE FIRST KIDDUSHIN: hence, it is [only] here, because he may err;[8] but elsewhere,[9] they [the gifts] may be kiddushin. And Abaye?[10] — The most remarkable case is taught.[11] It is unnecessary to state in general [that gifts are not betrothal], Seeing that he has not entered into the state of kiddushin at all.[12] But even here, when he has entered the state of kiddushin,[13] I might think that they [the gifts] are kiddushin:[14] hence we are informed [that it is not so].

What is our decision on the matter — R. Papa said: In that place where one [first] betroths and then sends gifts, we pay regard thereto;[15] but in that place where gifts are [first] sent and then one betroths, we have no fear. ‘[Where] one [first] betroths and then sends gifts’. — But that is obvious! — It is necessary [to state it] only where the majority [first] betroth and then send gifts; but the minority first send gifts and then betroth: I might argue, Let us pay regard to the minority; hence we are informed [otherwise].[16]

R. Aha son of R. Huna propounded to Raba: What if a deed of settlement became known in the market place?[17] — He replied: Simply because a marriage settlement becomes known in the market place we are to assume her a married woman! What is our decision thereon? — Said R. Ashi: ‘Where betrothal is [first] performed and then a kethubah[18] is written, we pay regard thereto; but in the place where they first write a kethubah and then betroth. we have no fear. In the place where there is [first] betrothal and then writing’ — but that is obvious! — It is necessary to state it only where scribes are rare: I might have thought that he just chanced to find a scribe:[19] hence we are informed [otherwise].

MISHNAH. IF ONE BETROTHS A WOMAN AND HER DAUGHTER OR A WOMAN AND HER SISTER SIMULTANEOUSLY,[20] THEY ARE NOT BETROTHED. AND IT ONCE HAPPENED TO FIVE WOMEN, AMONGST WHOM WERE TWO SISTERS, THAT A MAN GATHERED A BASKET OF FIGS, WHICH WAS THEIRS, AND WHICH WAS OF THE

SEVENTH YEAR,[21] AND DECLARED, BE — HOLD, BE YE ALL BETROTHED UNTO ME WITH THIS BASKET, AND ONE ACCEPTED IT ON BEHALF OF ALL: THE SAGES RULED, THE SISTERS ARE NOT BETROTHED.

GEMARA. Whence do we know it? — Said Rami b. Hama: Because Scripture saith, and thou shalt not take a woman to her sister, to be a rival to her [li-zeror]:[22] The Torah decreed that when they become rivals[23] to each other, he can have no marital connection with [even] one of them.[24] Said Raba to him: If so, how is it written, even the souls that do them shall be cut off from among their people:[25] but if kiddushin with her is not valid, is he then liable to kareth?[26] But, said Raba, the verse refers to consecutive [marriage],[27] and our Mishnah is in accordance with Rabbah, who said: That which cannot be [done] consecutively cannot be [done] simultaneously.

The text [stated]: 'Rabbah said: That which cannot be [done] consecutively cannot be done simultaneously.' Abaye raised an objection against him:

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(1) But not as new kiddushin.

(2) And sends gifts on attaining his majority.

(3) And the fact that no declaration accompanies them makes no difference, such being unnecessary when preceded by marriage negotiations: v. supra 6a.

(4) He may have over-estimated the value of the article.

(5) Lit., 'fear'.

(6) If a marriage is arranged, and the would-be husband sends gifts in the presence of witnesses, we fear that these may be meant as kiddushin, and so she is a doubtful married woman. Should another man then betroth her, both must divorce her.

(7) That we pay regard to gifts.

(8) Thinking the first kiddushin valid.

(9) Where no kiddushin preceded the gifts.

(10) Does he accept this proof?

(11) Lit., 'he (the Tanna) says: "It is unnecessary".'

(12) The man not having given her previously any token of kiddushin.

(13) By actually offering something as such.

(14) For he discovered his error.

(15) If the gifts are first sent, we fear that they were meant for kiddushin.

(16) So the text in cur. edd. This however involves a difficulty: 'I might argue, let us fear the minority' implies that we are to impose a stringent ruling on that account, whereas here, by regarding the minority, we are lenient. Ri, quoted in Tosaf. s.v. dðv gives another reading: where gifts are first sent and then betrothal is performed — then it is obvious that she is not betrothed. It is necessary to state it only where the majority first send gifts and then betroth, yet a minority do the reverse. I might argue, let us fear the minority, so she is betrothed. Hence we are informed otherwise.

(17) A marriage settlement (kethubah) between a certain man and woman was seen, though it was not known whether they had actually become betrothed, and then she accepted kiddushin from another.

(18) V. Glos.

(19) And had the settlement drawn up before the betrothal, to take advantage of the scribe's presence.

(20) Saying, 'Be ye both betrothed unto me'.

(21) The Talmud discusses this below.

(22) Lev. XVIII, 18.

(23) Heb. zaroth, the technical designation of wives of the same husband in their relationship toward each other.

(24) It is now assumed that the verse refers to a simultaneous betrothal.

(25) Ibid. 29.

(26) V, Glos. in fact, he is not married to either, and so may take the sister.

(27) Lit., 'this after this'.

If one gives excessive tithes, his produce is made fit, but his tithes are unfit.[1] But why; let us say: That which cannot be [done] consecutively cannot be [done] simultaneously?[2] — Tithes are different, he replied, because it is possible in the case of half [grains]; for if one declares, 'Let half of each grain be sanctified [as tithe], it is sanctified.[3] But cattle tithes are impossible in halves,[4] and also impossible consecutively;[5] yet Rabbah said: If two [animals] came forth at the tenth, and he [their owner] proclaimed them both as 'tenth', the tenth and the eleventh are intermingled![6] — Cattle tithe is different, because it is valid in error. For we learnt: If the ninth was proclaimed 'tenth', the tenth, 'ninth', and the eleventh, 'tenth', all three are sanctified.[7] But what of the thanksgiving-offering which can neither be in error nor consecutively,[8] yet it was stated: If the thanksgiving-offering is slaughtered over eighty loaves, — Hezekiah said: Forty out of the eighty are sanctified; R. Johanan said: Not even forty out of the eighty are sanctified![9] — Was it not stated thereon: R. Joshua b. Levi[10] said: All agree that if he declared: 'Let forty out of the eighty be sanctified,' they are sanctified; 'forty are not to be sanctified unless eighty are sanctified,' they are not sanctified? They differ only where no specific statement is made:[11] one Master holds that his intention is [to arrange] for the risks;[12] the other, that his intention is for a large offering.[13] Now, why need Raba explain the Mishnah as Rabbah; let him deduce it from the fact that it cannot be followed by[14] intercourse?[15] — He [merely] explains it according to the view of Rami b. Hama.[16]

It was stated: Kiddushin which cannot be followed by intercourse, — Abaye says: It is valid kiddushin;[17] Raba said: It is not valid kiddushin. Raba said: Bar Ahina explained it to me: When a man taketh a woman and has intercourse with her;[18] [this teaches:] kiddushin[19] that can be followed by intercourse is [valid] kiddushin; that which cannot be followed by intercourse is not [valid] kiddushin.

We learnt: IF HE BETROTHS A WOMAN AND HER DAUGHTER OR A WOMAN AND HER SISTER SIMULTANEOUSLY, THEY ARE NOT BETROTHED. This implies, [if he betroths] one of a woman and her daughter or of a woman and her sister [without specifying which], she is betrothed: yet why, seeing that it is kiddushin which may not be followed by intercourse? Hence this refutes Raba! — Raba can answer you: Yet even on your view, consider the second clause: AND IT ONCE HAPPENED TO FIVE WOMEN, AMONGST WHOM WERE TWO SISTERS, THAT A MAN GATHERED A BASKET OF FIGS, WHICH WAS THEIRS, AND WHICH WAS OF THE SEVENTH YEAR, AND HE DECLARED, 'BEHOLD, YE ARE ALL BETROTHED UNTO ME WITH THIS BASKET, AND ONE ACCEPTED IT ON BEHALF OF ALL: THE SAGES THEN RULED, THE SISTERS ARE NOT BETROTHED. Thus, it is only the sisters who are not betrothed, but the strangers are. Now how is it meant? Shall we say that he declared: 'All of you'[20] — it is a case of 'you and the ass acquire', and such does not acquire.[21]

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(1) Lit., 'spoiled'. After measuring off four measures, he separated one whole measure as tithe, instead of the half (= one tenth) due. Actually. however, only half becomes tithe, while the other half remains ordinary, untithed produce (tebel), and the two are inextricably mixed up. No man may eat tebel, not even a priest or a Levite, and hence the whole tithe is forbidden until it is made fit by a further proportionate separation.

(2) For if he first separates half a measure as tithe and then another half, the second is certainly not tithe. Accordingly, when he separates the whole simultaneously, none of it is tithe, on Rabbah's principle: why then is the produce fit?

(3) Hence, when he separates excessive tithes, it is as though he declared that only half of each grain in the whole measure shall be tithe. But one cannot betroth half a woman.

(4) One cannot count off nine animals and then declare the two halves of the next two as tithe.

(5) After declaring the tenth tithe, the eleventh cannot be declared likewise.

(6) One is actual tithe, and the other is treated as a peace-offering, though it is not known which is which. Yet why so? If he declares the tenth tithe and then the eleventh too, the second declaration is invalid. Why then is his simultaneous declaration valid?

(7) This is not the same as the case mentioned in the previous note, where the eleventh is deliberately and knowingly

called ‘tenth’. — Hence, just as the eleventh is sanctified when it is designated ‘tenth’ in error, so are the tenth and the eleventh sanctified when designated simultaneously. But if one marries a second sister after the first in error, the second marriage is invalid; consequently they are invalid simultaneously.

(8) The thanksgiving-offering was accompanied by forty loaves, which were likewise sanctified (v. Lev, VII, 12ff: and Men. 76a). Now, if the animal is sacrificed to sanctify certain loaves, which, however, are not really those intended, they are not sanctified. Again, if after forty loaves are sanctified another forty are declared holy, the declaration is invalid.

(9) The controversy is assumed to centre on Rabbah's dictum. Hezekiah, R. Johanan's teacher, thus contradicts Rabbah.

(10) In ‘Er. 50a and Men. 78b the reading is R. Zera, and the same is required here.

(11) I.e., he merely declares that the slaughtering of the sacrifice shall hallow the loaves.

(12) He brings eighty so that if the forty sanctified loaves become unfit for any reason the other forty may replace them. Hence forty are sanctified.

(13) That the eighty should be sanctified: hence none are. This therefore has no bearing on Rabbah's dictum.

(14) Lit., ‘is not given over to’.

(15) For even if he betroths only one, but without specifying which, he cannot take either, for fear she is the sister of the betrothed, and Raba says below that such kiddushin is invalid.

(16) Who bases the ruling of the Mishnah on Lev. XVIII, 18.

(17) Hence he must divorce both, because of doubt.

(18) Deut. XXIV, 1.

(19) Implied by, when a man taketh, i.e., betroths.

(20) I.e., ‘All of you be betrothed to me’.

(21) If one bestows gifts upon a living person and an unborn child simultaneously, not even the first acquires his gift, because the second cannot, — metaphorically, ‘you and the ass acquire them’. Hence here too, since the sisters cannot acquire aught thereof as kiddushin, the others cannot either.

Talmud - Mas. Kiddushin 51b

Hence it must surely mean that he said: ‘One of you,’[1] and it is taught that the sisters are not betrothed.[2] On Raba's view, the first clause is difficult; on Abaye's, the second. Abaye reconciles it according to his opinion. IF HE BETROTHS A WOMAN AND HER DAUGHTER OR A WOMAN AND HER SISTER SIMULTANEOUSLY, THEY ARE NOT BETROTHED; but if [he betrothed] one of a woman and her daughter or of a woman and her sister, she is betrothed. But if he says: ‘She of you who is eligible for intercourse, let her be betrothed unto me,’ she is not betrothed.[3] And thus IT ONCE HAPPENED TO FIVE WOMEN, AMONG WHOM WERE TWO SISTERS, THAT A MAN GATHERED A BASKET OF FIGS AND SAID, ‘She of you who is eligible [for intercourse], let her be betrothed unto me’: THE SAGES THEN RULED: THE SISTERS ARE NOT BETROTHED, Raba reconciled it with his opinion: If a man betroths one of a woman and her daughter or a woman and her sister, it is as though he betrothed A WOMAN AND HER DAUGHTER OR A WOMAN AND HER SISTER SIMULTANEOUSLY, AND THEY ARE NOT BETROTHED. AND IT THUS HAPPENED TO FIVE WOMEN, AMONG WHOM WERE TWO SISTERS, THAT A MAN GATHERED A BASKET OF FIGS AND DECLARED, ‘Behold, all of you, and one of the two sisters, are betrothed unto me with this basket’: THEN THE SAGES RULED: THE SISTERS ARE NOT BETROTHED.

Come and hear: If he gives his daughters in betrothal without specifying which, bogeroth[4] are not included.[5] But minors are included: yet why, Seeing that it is kiddushin which cannot be followed by intercourse?[6] which refutes Raba! — Raba can answer you: Here the circumstances are that there are only one bogereth and one minor. But ‘bogeroth’[7] is taught! — By bogeroth, bogeroth in general are meant.[8] If so,[9] why state it? — We refer to the case where she [the bogereth] appointed him [her father] an agent.[10] I might have thought that when he accepted kiddushin he did it on her behalf: hence we are informed that a man does not put aside that by which he benefits.[11] But do we not refer [even] to where she said to him, ‘Let my kiddushin be yours!’ — Even so, a man does not leave undone an obligation [sc. marrying his daughter] which falls [primarily] upon himself,[12] to perform

one which does not.[13]

Come and hear: If one has two groups of daughters by two wives, and he declares, 'I have given in betrothal my senior daughter, but do not know whether the senior of the seniors[14] or the senior of the juniors, or the junior of the seniors who is senior to the senior of the juniors,' all are forbidden, excepting the junior of the juniors: this is R. Meir's opinion![15] — Here the circumstances are that they were [originally] known, and [only] subsequently mixed up.[16] This maybe proved, for it is taught: 'I do not know,' not, it is not known. This proves it. If so, why state it? — To counter R. Jose, who said: A man does not permit himself to be brought into doubt;[17] hence we are informed that one does bring himself into doubt.

Come and hear: If a man betrothed one of two sisters and does not know which, he must give a divorce to both![18] — Here [too] the circumstances are that they were [originally] known but only subsequently intermingled. This too may be proved, for it is taught: 'he does not know,' not, it is not known. If so, why state it? — The second clause is necessary: If he dies, and has one brother, he must perform halizah[19] with both; if he has two [brothers], one performs halizah and the other yibum;[20] yet if they forestall [the Rabbis' ruling] and marry them, they are not compelled to divorce them,[21] [Thus:] only halizah and then yibum [is permissible], but not yibum and then halizah, because he may infringe [the interdict against] the sister of one bound to him by the Levirate tie.[22]

Come and hear: If two [strangers] betroth two sisters, and neither knows which, each must give two divorces![23] — Here too it means that they were [originally] known but [only] subsequently mixed up. This may be deduced too, for it is taught: 'neither knows,' not, it is not known: this proves it. If so, why state it?The second clause is necessary: If each dies, and each had one brother, this one must perform halizah with both, and the other must perform halizah with both. If one had one brother and the other two brothers,

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(1) I.e., let the three strangers and one of you be betrothed to me.

(2) Proving that kiddushin which cannot be followed by intercourse is invalid.

(3) For neither is eligible.

(4) V. Glos.

(5) Because a father has no marriage rights over his adult daughters.

(6) As explained on p. 258, n. 2.

(7) Plural.

(8) I.e., in general when a man betroths his daughter without naming her, an adult is not meant.

(9) That he has only one adult and one minor daughter.

(10) To accept kiddushin on her behalf.

(11) Sc. the kiddushin of his minor daughter which belongs to him, whereas that of a bogereth is her own.

(12) Sc. the betrothal of his minor daughter.

(13) A bogereth can see to herself.

(14) From the earlier wife.

(15) This refutes Raba, since intercourse cannot follow such betrothal.

(16) He betrothed a particular daughter, but forgot which.

(17) V. Ned. 61b. So that all of whom there can be the least doubt are definitely excluded, and only the senior of the seniors is forbidden to strangers.

(18) Which again refutes Raba.

(19) V. Glos.

(20) V. Glos.

(21) Lit., 'they are not taken out of their hands'.

(22) Lit., 'he comes into contact with the sister etc'. — Thus: A betrothed X or Y, who are sisters, but does not remember which. On A's death, his brothers B and C perform halizah and yibum with X and Y respectively. Now, when B performs halizah with X, C may marry (perform yibum) Y. For if A had betrothed Y, she is C's yebamah, whom he

must marry; while if A had betrothed X, Y is a stranger to C, and he may certainly marry her. For though Y is then the sister of X, who was bound to him by the Levirate tie, and such is forbidden, that tie has already been dissolved by the halizah which B performed. But before the tie is dissolved by halizah marriage is forbidden; hence only that order is permissible, viz., halizah by one brother first and then yibum by the second, (Of course, that is only permissive: the second too may perform halizah, if he does not wish to marry her.) The prohibition mentioned in this note is only Rabbinical, and therefore not insisted upon if the brothers marry both sisters without consulting a Rabbi previously, Yeb. 23b,

(23) This too refutes Raba: v. p. 258, n. 2.

Talmud - Mas. Kiddushin 52a

the one [brother] must perform halizah with both, and of the two, one must perform halizah [first] and the other yibum; yet if they forestall [the Rabbis' ruling] and marry, they are not compelled to divorce them. Thus, only halizah and then yibum, but not yibum and then halizah, because he may infringe [the interdict against] a yebamah's marriage to a stranger.[1]

Come and hear: For Tabyumi learned: If A has five sons and B five daughters, and A declares; 'One of your daughters be betrothed to one of my sons,'[2] each requires five divorces. If one dies, each requires four divorces and halizah from one of them![3] And should you answer, here too it means that they were [originally] known and only subsequently mixed up — but it is taught: 'One of your daughters to one of my sons!'[4] This refutation of Raba is indeed a refutation. Now, the law agrees with Abaye in Y'AL KGM.[5]

IT HAPPENED TO FIVE WOMEN. Rab said: Four deductions follow from the Mishnah; yet Rab was sure only of three:[6] — [i] If one betroths [a woman] with seventh year produce, she is betrothed;[7] [ii] If he betroths her with a stolen article, even her own, she is not betrothed.[8] How does this follow? — Because it is stated: IT WAS THEIRS, AND IT WAS OF THE SEVENTH YEAR: thus, it is only because It was of the seventh year, and thus hefker;[9] but if of any other year,[10] it is not so.[11] [iii] A woman can be an agent for her companion,[12] even when she thereby becomes her rival.[13] And what is the fourth? — Kiddushin which cannot be followed by intercourse. — Then let him count it?[14] — Because he is doubtful whether it is [to be explained] according to Abaye or Raba.[15]

When R. Zera went up [to Palestine, from Babylon], he recited this pronouncement [of Rab] before R. Johanan. Said he to him: Did then Rab say thus! But did he himself not say [likewise]? Surely R. Johanan said: If one stole[16] [an article] and the owner did not abandon hope,[17] both cannot consecrate it: the one [the thief], because it is not his;[18] the other, because it is not [actually] in his possession! — He meant thus: Did Rab [truly] rule as I [did]?

An objection is raised: If one betroths a woman with an article of robbery, violence, or theft,[19] or if he snatches a sela' out of her hand and betroths her therewith, she is betrothed? — There it refers to her own robbery.[20] But since the second clause teaches 'or if he snatches a sela' out of her hand,' it follows that the first clause refers to robbery in general? — It is an explanation. If one betroths a woman with robbery. How so? If he snatches an article out of her hand and betroths her therewith.

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(1) Lit., 'a yebamah to the market place'. — The general reasoning is the same as in the previous case. When the one brother frees both sisters by halizah, the others may perform halizah and yibum. But before the one brother has performed his task, one of the sisters may be his yebamah, and so neither of the other two brothers can perform yibum.

(2) His sons had authorised him.

(3) This contradicts Raba.

(4) Shewing that there was doubt at the very outset.

(5) An abbreviation of six laws; v. Sanh. (Sonc. ed.) p. 159, n. 3. The K stands for kiddushin which cannot be followed

by coition. In every other controversy between Abaye and Raba the halachah is as the latter.

(6) As explained below — Lit., 'he held three in his hand.'

(7) Though it is free to all.

(8) 'Even her own' — and we do not say that her acceptance proves that she has forgiven him and renounced her rights therein, so that it ceases to be stolen property.

(9) V. Glos. Hence it is not stolen.

(10) Lit., 'the other years of the septennate.'

(11) But the betrothal is invalid.

(12) To accept kiddushin on her behalf.

(13) Zarah, q.v. Glos.

(14) Why is he in doubt?

(15) Supra 51a and b. According to their respective interpretations the Mishnah proves either that it is valid or that it is not; but Rab was not sure which interpretation was correct.

(16) Gazal denotes theft by violence.

(17) Of its return. Yi'ush is a technical term, despair or abandonment, whereby a stolen (or lost) article formally passes out of its first ownership into that of the person actually in possession. — The thief is then liable for having removed it from the ownership of the victim.

(18) But it is technically his if the owner abandons it.

(19) An article of robbery is one stolen by violence; 'theft' denotes stolen in secret; 'violence', an article forcibly taken from its owner and paid for.

(20) I.e., he robbed her, cf. p. 262, n. 7: the argument rejected there is admitted here.

Talmud - Mas. Kiddushin 52b

But our Mishnah [deals with] her own robbery,[1] yet Rab said: She is not betrothed?

There is no difficulty: in the one case, he had [previously] negotiated [with her for marriage];[2] in the other, he had not negotiated.

A certain woman was washing her feet in a bowl of water, when a man came, snatched a zuz from his neighbour, threw it to her and exclaimed: 'Thou are betrothed unto me!' Then that man went before Raba, who said to him; None pay regard to R. Simeon's dictum, viz.: Robbery in general involves the owner's abandonment.[3]

A certain aris[4] betrothed [a woman] with a handful of onions.[5] When he came before Raba he said to him, 'Who renounced it in your favour?'[6] Now, that applies only to a handful;[7] but as for a bunch, he [the aris] can say to him [the landowner], 'As I have taken a bunch, do you take one: one bunch is the same as another.'[8]

A certain agent-brewer[9] betrothed [a woman] with a measure of beer.[10] Then the owner of the beer came and found him. Said he to him, 'Why did you not give [her] of this [beer, which is] stronger?' When he came before Raba, he said to him. 'Go to the better' was said only in reference to terumah.[11] For it was taught: In which case was it ruled that if one separates [terumah] without [the owner's] knowledge, his separation is valid? If one enters[12] his neighbour's field, gathers [the crops] and separates [terumah] without permission: and he [the owner] resents it as [akin to] theft, his separation is not valid; otherwise, it is. And how does one know whether he resents it as theft or not? If the owner comes and finds him, and says to him, 'Go to the better [produce]': and better [crops] are found, the separation is valid;[13] if not, it is invalid.[14] If the owner gathers [crops] and adds [to that already separated], in both cases his separation is valid. But here he acted thus[15] through shame;[16] hence she is not betrothed.

MISHNAH. IF ONE [A PRIEST] BETROTHS [A WOMAN] WITH HIS PORTION;[17]

WHETHER [IT IS OF] THE HIGHER OR OF THE LOWER SANCTITY,[18] SHE IS NOT BETROTHED.[19] [IF] WITH SECOND TITHE,[20] WHETHER UNWITTINGLY OR DELIBERATELY, HE DOES NOT BETROTH [HER]: THIS IS R. MEIR'S VIEW.[21] R. JUDAH SAID: IF UNWITTINGLY, HE HAS NOT BETROTHED [HER]; IF DELIBERATELY, HE HAS. [IF] WITH HEKDESH,[22] IF DELIBERATELY, HE HAS BETROTHED HER; IF UNWITTINGLY, HE HAS NOT: THIS IS R. MEIR'S VIEW. R. JUDAH SAID: IF UNWITTINGLY, HE HAS BETROTHED HER; IF DELIBERATELY, HE HAS NOT.[23]

GEMARA. Shall we say that our Mishnah does not agree with R. Jose the Galilean? For it was taught: [If any one sin] and commit a trespass against the Lord [. . . then he shall bring his guilt-offering]:[24] this is to include lower grade sacrifices as his [the individual's] property:[25] this is R. Jose the Galilean's opinion! — You may even say that it agrees with R. Jose the Galilean: he stated [that view] only whilst it [the animal to be sacrificed] is alive, but not after it is killed. What is the reason? When they[26] acquire [thereof], it is from the table of the Most High that they acquire [it].[27] This may be deduced too; because it is stated: IF ONE BETROTHS [A WOMAN] WITH HIS PORTION, WHETHER [IT IS OF] THE HIGHER OR OF THE LOWER SANCTITY, HE HAS NOT BETROTHED HER.[28]

Our Rabbis taught: After R. Meir's demise, R. Judah announced to his disciples, 'Let not R. Meir's disciples enter hither, because they are disputatious and do not come to learn Torah but to overwhelm one with halachoth.'[29] Yet Symmachus forced his way through and entered. Said he to them: Thus did R. Meir teach me: If one betroths [a woman] with his portion, whether of the higher or of the lower sanctity, he has not betrothed [her]. Thereupon R. Judah became incensed with them and exclaimed: 'Did I not say to you, Let not R. Meir's disciples enter hither, because they are disputatious and do not come to learn Torah but to overwhelm me with halachoth: how then does a woman come to be in the Temple Court?'[30] Said R. Jose, Shall it be said: Meir is dead, Judah angry, and Jose silent: what is to become of the words of the Torah? Cannot a man accept kiddushin on his daughter's behalf in the Temple Court? And cannot a woman authorize a messenger to receive her kiddushin in the Temple Court? Again, what if she forces herself in?[31]

It was taught: R. Judah said: She is betrothed;[32] R. Jose ruled: She is not betrothed. Said R. Johanan: Both derive [their views] from the same verse: This shall be thine of the most holy things, reserved from the fire.[33] R. Judah holds, 'thine' [implies] for all thy needs;[34] whereas R. Jose maintains it is as [what is offered on] 'the fire':[35] just as the fire is for consumption only,[36] so that too is for consumption [by the priest] only.[37]

R. Johanan said:

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(1) Since it states 'IT WAS THEIRS'.

(2) Then she accepts it as kiddushin, and thereby it ceases to be robbery, as explained.

(3) V. n. 1. I.e., if we do not know whether the owner abandons the article or not, we assume that he does. Raba told him that this ruling is disregarded: hence the betrothal was invalid.

(4) A tenant-farmer, who pays a certain percentage of his crops as rent.

(5) Rashi. Jast.: leaves of onions, leek.

(6) The onions belong partly to the landlord; did he renounce his portion? I.e., it is theft, and the betrothal is invalid.

(7) Being an indeterminate quantity.

(8) Hence the kiddushin would be valid.

(9) Rashi: who brewed beer from dates supplied to him, receiving a fixed percentage of the profits.

(10) Others, reading 'pirzuma', the second run of barley beer.

(11) V. n. 6. infra.

(12) Lit., 'descends into'.

(13) For this proves that he meant what he said.

(14) For he thus sarcastically shewed his resentment. Now, this criterion applies only to terumah, since it must be separated in any case.
(15) Bidding him take stronger beer.
(16) Being ashamed to express an objection.
(17) Of the sacrifices.
(18) Sacrifices were of two degrees of sanctity: the higher (holy of holies), e.g., the sin-offering, and the lower (less holy), e.g., the peace-offering. The former were eaten by priests only; the latter, partly by priests and partly by their Israelite owners.
(19) Because it is regarded as God's, not the priests'.
(20) Which the Israelite separated and ate in Jerusalem.
(21) He regards second tithe too as God's.
(22) V. Glos.
(23) The reasons are explained in the Gemara.
(24) Lev. V, 21. The trespass referred to is repudiation of liability with a false oath.
(25) If one swears falsely that he did not vow a peace-offering, which is of the lower sanctity, he incurs this sacrifice. Though this law does not hold good in respect to God's property (deduced from, 'and deal falsely with his neighbour' ibid.), the phrase 'against the Lord' shews that even where there is an element of sanctity this sacrifice is involved. Hence it includes lower grade sacrifices, and thus teaches that these rank as the individual's property; this contradicts the ruling of the Mishnah.
(26) The owner and the Priest.
(27) I.e., having been sacrificed, it is certainly God's.
(28) 'HIS PORTION' implies that it is already divided — viz., after its death.
(29) To prove one ignorant.
(30) Sacrifices of the higher sanctity might not be taken out of the Temple Court, not even into the women's compartment. Rashi observes that women were forbidden to enter the Temple Court. Tosaf. holds this to be an error, and explains: how then does a woman come to be in the Temple Court for such a purpose? For that is too unusual to be dealt with.
(31) And accepts kiddushin, though she has no right to be there at all, according to Rashi; or, 'forces' is used metaphorically: what if she insists on entering there for that purpose, though it is unusual? (so presumably understood by Tosaf.)
(32) When given the priests' portion as kiddushin.
(33) Num. XVIII, 9.
(34) Which includes betrothal.
(35) Sc. on the altar.
(36) The portion belonging to God is consumed by fire on the altar, and cannot be disposed of in any other way.
(37) And he cannot put it to any other use.

Talmud - Mas. Kiddushin 53a

A vote was taken [among scholars] and it was resolved: He who betroths with his portion, whether of the higher or of the lower sanctity, has not betrothed. But Rab maintained: The dispute continues.[1] Said Abaye: Reason supports R. Johanan. For it was taught: How do we know that meal-offerings may not be apportioned as against sacrifices?[2] From the verse, and every meal-offering that is baked in the oven . . . shall all the sons of Aaron have.[3] I might think that meal-offerings may not be apportioned as against sacrifices, seeing that they cannot replace them in poverty, yet meal-offerings may be apportioned as against fowl-offerings, since they do replace them in poverty:[4] therefore it is stated, and all that is dressed in the frying pan . . . shall all the sons of Aaron have.[5] I might think that meal-offerings cannot be apportioned as against fowl-offerings, since the latter are blood species and the former a species of flour, but that fowl-offerings may be apportioned as against [animal] sacrifices, since both are blood species; therefore it is stated, and in the baking pan.[6] I might think, fowl-offerings may not be apportioned as against animal sacrifices, since the preparation of the former is by hand, whereas that of the latter is with a utensil;[7] but that meal-offerings can be

apportioned as against meal-offerings,[8] since the preparation of both is by hand:[9] therefore it is stated, and every meal-offering mingled with oil . . . shall all the sons of Aaron have.[10] I might think that a baking pan [offering] shall not be apportioned as against a frying pan [offering], or a frying pan [offering] as against a baking pan [offering], because one is made soft and the other hard;[11] but that one baking pan [offering] may be apportioned as against another,[12] and one frying pan [offering] against another, since both are hard or soft respectively; therefore it is said, or dry, shall all the sons of Aaron have.[13] Now, I might think that sacrifices of the higher sanctity[14] may not be [so] apportioned, yet those of the lower sanctity may be;[15] therefore it is stated: '[shall all the sons of Aaron have], a man as his brother,' and in proximity thereto,if [he offers it] for a thanksgiving:[16] just as higher sanctity sacrifices may not be [so] apportioned, so also offerings of the lower sanctity. 'A man' [teaches]: a man takes a share, even if he has a blemish, but not a minor, even if he is without blemish. Now, who is the author of an anonymous teaching in the Sifra? R. Judah:[17] And he states that it is not capable of apportionment at all.[18] This proves it.

Said Raba: And was it not taught as Rab too? But it was taught: The modest withdrew their hands, but the greedy shared.[19] [No.] By 'shared' is meant snatched [other priests' shares]. As the second clause states: It happened that one snatched his own and his neighbour's portion, and he was called Ben Hamzan[20] [robber] until the day of his death. Said Rabbah son of R. Shila: What verse [have we]?[21] — Rescue me, O my Lord, out of the hand of the wicked, Out of the hand of the unrighteous and violent [homez].[22] Rabbah said, [We learn it] from the following: learn to do well, seek judgment, set right the man of violence.[23]

WITH SECOND TITHE, WHETHER UNWITTINGLY OR DELIBERATELY, HE HAS NOT BETROTHED [HER]: THIS IS R. MEIR'S VIEW. R. JUDAH SAID: IF UNWITTINGLY, HE HAS NOT BETROTHED [HER]; IF DELIBERATELY, HE HAS etc. How do we know this? Said R. Aha son of Raba on the authority of tradition:[24] and all the tithe of the land, whether of the seed of the land, or the fruit of the tree, is the Lord's: it is holy unto the Lord:[25] 'unto the Lord', and not for betrothing a woman therewith. But what of the terumah of the tithe,[26] whereof it is written, thus ye shall also offer an heave-offering unto the Lord [of all your tithes],[27] — yet we learnt: If one betroths with terumoth,[28] she is betrothed? — That is because 'unto the Lord' is not written there.[29] But what of hallah,[30] whereof it is written, [of the first of your dough] ye shall give unto the Lord,[31] — yet we learnt: If one betroths [a woman] with terumoth,[32] she is betrothed? — That is because 'holy' is not written there. But what of the seventh year, whereof it is written: For it is a jubilee; it shall be holy unto you,[33] yet we learnt: If one betroths with seventh year produce, [the woman is] betrothed?[34] — That is because 'unto the Lord' is not written there. But what of terumah, whereof it is written: Israel is holy unto the Lord, the first-fruits [i.e., terumah] of his produce,[35] — yet we learnt: If one betroths [a woman] with terumoth, she is betrothed? — That refers to Israel.

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(1) There was no vote on the matter, in which case R. Judah would have revoked his ruling.

(2) One priest to receive meal-offerings and another portions of animal sacrifices to the equivalent value.

(3) Lev. VII, 9f; this implies that all the priests must share in the meal-offerings themselves.

(4) V. Lev. V, II.

(5) Ibid. This insistence that every kind of meal-offering shall be divided among all the priests shews that under no circumstance may they be divided against anything else.

(6) Lev. VII, 9. This being unnecessary for meal-offerings, which have already been dealt with in two verses, apply its teaching to the case under discussion.

(7) Fowl-offerings had their necks wrung by hand; animal sacrifices were slaughtered with a knife.

(8) One kind against another.

(9) The priest taking a handful of the meal and burning it on the altar-ibid. V, 12.

(10) I.e., each kind must be divided by all,

(11) The mahabath (baking pan) was very shallow, and the flour mingled with oil formed a thin dough which was fried by the fire; but the marhesheth (frying pan) was deep: this caused a thick dough which the fire could only cook.

(12) Do you take my portion in A's offering and give me your portion in B's.
(13) This further insistence teaches that each must keep his own.
(14) As the meal-offering.
(15) Do you take my portion of A's peace-offering and I will take yours in B's.
(16) Which is of lower sanctity.
(17) V. p. 247, n. 1.
(18) As explained: one portion cannot be exchanged for another. This proves that in his final opinion the priest's portion is not his own, to do as he likes with, but a gift from God to be consumed.
(19) This describes the state in the Temple after the death of Simeon the Just. Raba assumes that 'shared' means that they traded in their portions, bartering one for another. This must agree with R. Judah, who regards the priest's portion as his private property, to be used as he wishes, and shews that there was no majority decision.
(20) [A violent person. Ben (lit., 'son') expressing an attributive idea. V. Gesenius-Kautzsch Hebrew Grammar, 128t.]
(21) That hamzan connotes a man of violence, a robber.
(22) Ps. LXXI, 4.
(23) Isa. I, 17.
(24) I.e., it came to him anonymously; Kaplan, Redaction of the Talmud, p. 227.
(25) Lev, XXVII, 30.
(26) The tithe was given to the Levite, who further gave a tenth thereof, called the terumah of the tithe, to the priest.
(27) Num. XVIII, 28.
(28) Plur. of terumah, and this including the terumah of the tithe, v. infra 58a.
(29) It is the emphatic 'it is the Lord's' which teaches that it may not be used for betrothal.
(30) V. Glos.
(31) Num. XV, 21; unto the Lord is the same word in Heb. as it is the Lord's.
(32) Pl. of terumah; hallah is included in that term.
(33) Lev. XXV, 12.
(34) V. Mishnah on 50b re the man who betrothed five women with seventh year produce: the strangers among them were legally betrothed.
(35) Jer. II, 3.

Talmud - Mas. Kiddushin 53b

But does that not follow automatically?[1] Rabin the Elder explained it before Rab:[2] Scripture saith, it is [hu] — it must remain in its natural form.[3]

[IF] WITH HEKDESH, IF DELIBERATELY, HE HAS BETROTHED HER; IF UNWITTINGLY, HE HAS NOT: THIS IS R. MEIR' S VIEW. R. JUDAH SAID: IF UNWITTINGLY, HE HAS BETROTHED HER; IF DELIBERATELY, HE HAS NOT. R. Jacob said: I heard from R. Johanan two [reasons on the laws concerning] the unwitting [use of] tithes [for betrothal], according to R. Judah, and the unwitting [use of] hekdesh, on R. Meir's view, [that] in both cases a woman is not betrothed therewith. One [reason] is that the woman does not wish it;[4] the other, that both do not desire it. But I do not know which is which.[5] Said R. Jeremiah: Let us consider. As for tithes, she is unwilling because of the trouble of the journey;[6] he, however, is pleased that the woman should become his without effort.[7] But as for hekdesh, both are unwilling that hekdesh should be secularised through them.[8] But R. Jacob maintained: The logic is the reverse. Can we not argued as for tithes, she is unwilling on account Of the trouble of the journey, whilst he is unwilling on account of the risks of the journey.[9] But as for hekdesh: it is indeed well that she is unwilling that hekdesh is secularised through her;[10] but is he then unwilling that the woman should become his without effort?[11]

Raba asked R. Hisda: The woman [it is said.] is not betrothed; does the money[12] pass out into hullin? — Seeing that the woman is not betrothed,[13] how is the money to pass out into hullin? R. Hiyya b. Abin asked R. Hisda: How is it in the case of purchase?[14] — In the case of purchase too, he

replied, he gains no title. Thereupon he raised an objection: A shopkeeper ranks as a private individual: this is R. Meir's view. R. Judah maintained: A shopkeeper is as a money-changer.[15] Thus, they differ only in so far as one Master holds that a shopkeeper ranks as a money-changer. and the other regards him as a private individual. Yet all [including R. Meir] agree that if he expends it, trespass is committed?[16] — He argues on R. Judah's opinion. In my view, even if he expends it there is no trespass;[17] but even on your view,[18] you should at least agree with me that a shopkeeper is as a private individual. To which he answered him: No; he is as a money-changer.

Rab said:

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(1) Since Israel is likened to terumah and as such designated 'holy to the Lord', it follows that the same applies to terumah.

(2) The reason of the Mishnah with reference to the second tithe.

(3) I.e., the tithe must be used just as it is given to the Levite, viz., consumed by him, and not diverted to another purpose.

(4) Had she known what it was, she would not have accepted it as kiddushin, and therefore it is betrothal in error.

(5) For which opinion he gave the first reason, and for which the second — The practical difference is this: where the first reason applies — if the woman explicitly declares that she had no objection, the betrothal is valid, and it may be assumed that the man too was willing.

(6) It has to be taken to Jerusalem.

(7) Giving her the tithe actually saves him trouble.

(8) When he gives her hekdesh he withdraws it from its sacred ownership and it becomes secular (hullin). But since this involves a sacrifice, it may be assumed that both are unwilling.

(9) Rashi offers two explanations: (i) Since the tithe must be consumed in Jerusalem, he must bear the risks of the road-risks to which a woman is more exposed than a man, for until it reaches Jerusalem it has no value. For if she redeems it, the money must be carried to Jerusalem, and so he is in the same position. (ii) Even if he bears no responsibility for the risks of the road, yet if she loses it she may be resentful with him for having betrothed her with something of which she derived no benefit, and therefore he too is displeased. Tosaf. accepts the second.

(10) Since she has no particular benefit therefrom — he would have given her something else.

(11) I.e., without any outlay of his own for the present.

(12) Which is hekdesh.

(13) So that his statement is null.

(14) On R. Meir's view, what if one unwittingly buys an article with money belonging to hekdesh; does he acquire it or not?

(15) Me'il. 21b. If the Temple treasurer deposits money of hekdesh with a money-changer and it is bound up, he may not use it; if he does, he is liable for trespass, not the treasurer. If loose, he may use it, for the treasurer knows that he is continually in need of change, and by giving it to him loose he tacitly authorizes him to use it: therefore, if he does, the treasurer is liable. But if he deposits it with a private individual, whether loose or bound up, the bailee may not expend it; therefore if he does use it he is liable. A shopkeeper stands midway between the two.

(16) Now, one is liable for trespass only if the money actually becomes hullin: but that in turn demands that the action shall be effective and the purchase valid.

(17) Because his action is invalid. (Consequently R. Meir must hold that trespass is possible only when one eats food of hekdesh.)

(18) That expenditure is trespass.

Talmud - Mas. Kiddushin 54a

We have scrutinised R. Meir['s views] from every angle, and have not found that hekdesh, unwittingly used, is not secularised; if deliberately, it is.[1] But our Mishnah refers to priestly tunics which were not worn out, since they stand[2] to be used, for the Torah was not given to angels.[3] Come and hear: Worn out priestly tunics involve trespass: this is R. Meir's view. Surely the same holds good even if they are not worn out?[4] — No: only when they are worn out.[5]

Come and hear: Trespass can be committed with the new ones, but not with the old. R. Meir said: Trespass can be committed with the old too; for R. Meir used to say: Trespass can be committed with the surplus of the Chamber.[6] Yet why; let us say, since they stand to be used, for the Torah was not given to angels [no trespass is committed with them]. For the walls of the city and its towers came out of the Chamber surplus, as we learnt: The city wall and its towers and all city requirements were provided for out of the chamber surplus![7] — Say not 'R. Meir', but 'R. Judah'.[8]

Come and hear: For it was taught: R. Ishmael b. R. Isaac said: If the stones of Jerusalem fall out [of their place in the walls], no trespass is incurred with them: this is R. Meir's view! — Say not, 'R. Meir', but, 'R. Judah'. If R. Judah, is then Jerusalem [the city itself] sanctified? But we learnt: 'As the lamb', 'As the Temple sheds of cattle' or 'As the wood', 'As the [altar] fire', 'As the altar', 'As the Temple', [or] 'As Jerusalem . . .' R. Judah said: He who says: 'Jerusalem', has said nothing.[9] And should you answer, that is because he did not say: 'As Jerusalem',[10] — surely it was taught: R. Judah said: He who says: 'as Jerusalem' has said nothing, unless he relates his vow to that which is sacrificed in Jerusalem![11] —

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(1) I.e., not a single statement by R. Meir elsewhere warrants this assumption, which is implicit in R. Johanan's explanation of the Mishnah.

(2) Lit., 'were given'.

(3) Lit., 'ministering angels'. Since the tunics are still fit For service, their unwitting use is no trespass, because they were sanctified in the first place on this tacit understanding. For the priests cannot be expected to disrobe immediately they finish the service and not wear them a moment after. Consequently, they do not pass out of the ownership of hekdesh through unwitting use, and therefore R. Meir holds that she is not betrothed.

(4) Thus proving that their unwitting use involves trespass. (There is no liability to a trespass-offering for the deliberate use of hekdesh.)

(5) Being unfit for service, they are not to be used.

(6) There was an annual tax of one shekel for the public sacrifices payable between the first of Adar and the first of Nisan. The money was placed in a chamber and with it were bought sacrifices between Passover and Pentecost. If the tax was paid between the second of Nisan and the first of Sivan in the year it fell due, it was placed in special chests, which bore the inscription, 'New shekels', with which were bought sacrifices between Pentecost and Tabernacles. The same applied to the shekels paid between the second of Sivan and first of Tishri. The chests were then placed in the shekel chamber where they were divided into three baskets, (v. Shek. III, I, 2.) If the tax was not paid in the year it was due but in the following, it was placed in other chests marked 'old shekels.' These, together with the surplus from the chamber fund each year, were not used for sacrifices but for general town purposes, such as repairing the walls, etc.

(7) This proves that though the money might be used for that, yet if it was unwittingly employed for another purpose, liability is incurred. Hence the same should apply to the priestly tunics.

(8) For R. Judah does indeed hold the view expressed in the last note, as shewn in our Mishnah too,

(9) I.e., the vow is invalid; v. Ned. (Sonc. ed.) p. 27.

(10) I.e., Jerusalem itself is sanctified, and so a vow that something (e.g., food) shall be as Jerusalem is valid and renders the object forbidden. But R. Judah's reason is that the vower omitted 'as'.

(11) For notes v. Ned. (Sonc. ed.) p. 28, n. 3,

Talmud - Mas. Kiddushin 54b

Two Tannaim differ as to R. Judah's view.[1]

'Ulla said on Bar Pada's authority: R. Meir used to say that hekdesh, deliberately used, is secularised; unwittingly, it is not secularised.[2] And only in respect to sacrifice was it said that it is secularised by unwitting [misuse].[3] But since it is not secularised, whereby does he become liable to a sacrifice?[4] But when Rabin came [from Palestine], he explained it in Bar Pada's name: R. Meir used to say that hekdesh, deliberately used, is secularised; unwittingly, is not secularised. And only

in respect of consumption was it said that it is secularised by unwitting misuse.[5]

R. Nahman said in R. Adda b. Ahaba's name: The halachah agrees with R. Meir in respect to [second-] tithe, since the Tanna taught his view anonymously;[6] and the halachah is as R, Judah in respect to hekdesh, since the Tanna taught his view anonymously.

[We learnt anonymously] as R. Meir in respect to [second-] tithe. To what is the reference? For we learnt. Fourth year vintage:[7] Beth Shammai maintain: It is not subject to a fifth[8] or removal;[9] Beth Hillel rule: It is. Beth Shammai rule: The law of fallings and gleanings apply to it;[10] Beth Hillel say: It is all for the vault.[11] What is Beth Hillel's reason? — They deduce the meaning of 'holy' from [second-] tithe:[12] just as tithe is subject to a fifth and removal, so is fourth year vintage too. While Beth Shammai do not deduce the meaning of 'holy' from tithe. Now, when Beth Hillel rule that it is as [the second-] tithe, with whom do they hold? If with R. Judah, why is it all for the vault, but he maintains that the [second-] tithe is secular property?[13] Hence surely [they agree] with R. Meir.[14]

'[We learnt anonymously] as R. Judah in respect to hekdesh.' To what is the reference? — For we learnt: If he [the Temple treasurer] sends it[15] by a responsible person[16] and recollects[17] before it reaches the shopkeeper's hands, the latter is guilty of trespass when he expends it.[18] Yet did we not learn [anonymously] as R. Judah in respect to [second-] tithe? But we learnt: If one redeems his own second-tithe, he must add a fifth,[19] whether it was his [in the first place] or given to him as a gift.[20] Whose [view] is this? Shall we say: R. Meir's? Can one give it as a gift: surely he maintains that [second-] tithe is sacred property? Hence it must surely be R. Judah's![21] — No. After all, it is R. Meir's, but the circumstances are that [the donor] gave it to him [mixed up] in its tebel,[22] and he holds that unseparated gifts[23] rank as unseparated.[24]

Come and hear: If one redeems his own fourth year plantings,[25] he must add a fifth, whether it was [originally] his or given to him as a gift. Who is the author of this? Shall we say: R. Meir? Can one give it away; surely he deduces the meaning of 'holy' from second-tithe?[26] Hence it must surely be R. Judah![27] — [No.] After all, it is R. Meir; but here the circumstances are that he gave it in its budding stage;[28] and this does not agree with R. Jose, who maintained: Budding fruit is forbidden [as 'orlah],because it counts as fruit.[29] Come and hear: If he drew into his possession the [second-] tithe [of another] to the value of a sela', and had no time to redeem it[30] before it appreciated to two, he must pay a sela'[31] and thus profits a sela', and the second-tithe is his.[32] Now, whose view is this? Shall we say: R. Meir's; why does he profit a sela', Scripture saith, And he shall give the money, and it shall be assured to him?[33] Hence it must surely be R. Judah's! — It is indeed R. Judah's, but here we have one anonymous teaching, whereas there we have two.[34] But if an anonymous [ruling] was intentionally taught,[35] what does it matter whether there is one or two? — Said R. Nahman b. Isaac, The halachah is as R. Meir, since we learnt his view in Behirta.[36]

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(1) According to the first who deals with trespass, R. Judah holds Jerusalem to be sanctified; according to the second, on vows, it is not.

(2) I.e., 'Ulla agrees with R. Johanan supra 53b.

(3) The Torah decreeing a sacrifice (Lev. V, 15). as though it were converted to hullin. Nevertheless it actually remains hekdesh.

(4) Seeing that his act is null.

(5) I.e., when the object is actually consumed; then it has obviously passed out of the ownership of hekdesh.

(6) As explained below. It is a general principle that if the view of an individual is found cited in a Mishnah anonymously, that is the halachah.

(7) The first three year's vintage of a vineyard, as the first three years' crop of any tree, was forbidden; the fourth year's was permitted, but on the same terms as second-tithe, viz., it had to be eaten in Jerusalem.

(8) If one redeems it and expends the money in Jerusalem, he need not add a fifth, which is necessary in the case of second-tithe.

(9) If an Israelite separated tithes but did not render them to their rightful owners, he might not keep them in his own house beyond the end of the third and the sixth years of the Septennate, but had to remove and give them to their owners. Likewise, second-tithe might not be kept in the house after that, but had to be taken to Jerusalem. This does not apply to fourth year vintage.
(10) Heb. peret and ‘olleloth respectively. Peret, single grapes that fall off during vintaging; ‘olleloth, small single bunches, which must not be vintaged but left for the poor, v. Lev, XIX, 10.
(11) I.e., it must all be gathered, to be made into wine.
(12) Fourth year produce, Lev. XIX, 24: But in the fourth year all the fruit thereof shall be holy; second-tithe, ibid. XXVII, 30: and all the tithe of the land, . . is the Lords; it is holy unto the Lord.
(13) With respect to fallings and gleanings it is written: Lev. XIX, 10: and thou shalt not glean thy vineyard, neither shalt thou gather the fallen fruit of thy vineyard. ‘Thy’ excludes sacred property, which is God's. But if Beth Hillel agree with R. Judah, second-tithe is secular, and since fourth year vintage is assimilated thereto, that also is likewise.
(14) And since the halachah is always as Beth Hillel, that is the equivalent of an anonymous teaching as R. Meir.
(15) Money of hekdesh.
(16) Pikeah, lit., ‘bright’, ‘understanding’, connotes the opposite of a deaf-mute, idiot, or minor, who are irresponsibles.
(17) That it is hekdesh.
(18) But not the treasurer; for since he recollected that it was hekdesh, its expenditure is not unwitting as far as he is concerned, and a trespass-offering is incurred only for unwitting misuse: v. Lev. V, 15, and sin through ignorance. This proves that it becomes hullin by unwitting, not deliberate use. For if deliberate use likewise secularises it, the treasurer should he liable, since its secularisation was pursuant to his action, which at the outset was unwitting.
(19) Lev, XXVII, 31: and if a man will redeem aught of his tithe, he shall add unto it the fifth part thereof.
(20) ‘His’, that it was separated of his own produce; ‘given to him as a gift,’ that somebody had tithed his produce and then given him the tithe.
(21) And it was taught anonymously.
(22) l.e., he gave him untithed corn, which therefore contained some second-tithe.
(23) ‘Gifts’ is the technical term for the priestly and Levitical dues, and here includes the second-tithe, though that belonged to the Israelite.
(24) There is an opposing view that they rank as already separated. According to that, if A gives B untithed corn (tebel), what should be separated is already separated, and therefore since on the present hypothesis this agrees with R. Meir that second-tithe is sacred property and cannot be given away, the tithe in it remains A's. Hence it is explained that he holds that it ranks as unseparated and so it can be given to B together with the rest.
(25) V. p. 273, n, 10.
(26) V. supra. Hence it is sacred property.
(27) Thus we have an anonymous Mishnah in agreement with R. Judah in respect to second-tithe.
(28) When the fruit is recognisable, after the flower has dropped off.
(29) On that view fourth year fruit, being sacred property, could not be given away. But here we hold that the term ‘fourth year fruit’ is as yet inapplicable, because it is not fruit at all.
(30) By paying the owner the money.
(31) , Because he acquired it by meshikah (v. Glos.) and it appreciated in his possession.
(32) Because the second-tithe is secular property, hence it is acquired by meshikah.
(33) Hence tithe is acquired only by money, not meshikah. Actually there is no such verse, and this would appear to be a free paraphrase of Lev. XXVII, 19: then he shall add the fifth part of the money of thy estimation unto it, and it shall be assured to him; Tosaf. Shab. 128a s.v. i,bu. V. supra p. 12, n. 6. — The verse refers to the redemption of a sanctified field, and since R. Meir regards the second-tithe as sacred property, its teaching applies to that too.
(34) The anonymous Mishnah agreeing with R. Meir is found twice, in M.Sh. V, 3 and ‘Ed. IV, 5; that agreeing with R. Judah is found only in M.Sh. IV, 6.
(35) Thus, to shew that it is the halachah; v. p. 273. n. 9.
(36) Lit., ‘selected (Mishnah).’ another name for ‘Eduyyoth. This consists of testimonies by scholars on traditional laws, which were examined and declared authentic.

Talmud - Mas. Kiddushin 55a

We learnt elsewhere: If an animal is found between Jerusalem and Migdal Eder[1] or an equal distance [from the city] in any direction: the males are burnt-offerings; the females are peace-offerings.[2] Now, can males be only burnt-offerings and not peace-offerings![3] — Said R. Oshaia: The reference here is to one who comes to accept responsibility for its value; and this is its meaning: we fear that they may be burnt-offerings; it being in accordance with R. Meir, who ruled: Hekdesh can be deliberately converted into hullin.[4] But can [an object of] intrinsic sanctity[5] be redeemed? Did we not learn: There cannot be consecutive trespasses in respect of sacred objects,[6] excepting in the case of [consecrated] animal[s] and vessels of ministry.[7] How so? If a man rode on a [dedicated] cow, then his neighbour came and rode, and then another came and rode, all are guilty of trespass. If he drank out of a golden goblet, then his neighbour came and drank, and then another, all are guilty of trespass? — The latter[8] is according to R. Judah; the former,[9] R. Meir. But from R. Judah we may understand R. Meir's view. Does not R. Judah maintain that hekdesh may be unwittingly converted into hullin, and yet intrinsic sanctity cannot be secularised;[10] hence according to R. Meir too, although hekdesh, by deliberate misuse, is secularised, yet intrinsic sanctity cannot be secularised![11] — There he does not intend to withdraw it into hullin; here he does.[12] But when do you know R. Meir to hold this? [Only] in the case of higher sanctity;[13] do you know him [to hold this view] in respect to lower sanctity?[14] — Said one of the Rabbis to him [the questioner], R. Jacob by name, It follows a fortiori: If objects of the higher sanctity can be secularised, surely those of the lower sanctity can be! It was stated likewise. R. Hama b. ‘Ukba[15] said in R. Jose son of R. Hanina's name: R. Meir used to assert, Hekdesh is secularised by deliberate conversion, but is not secularised by unwitting conversion; this applies to objects of both higher and lower sanctity, a fortiori: if objects of higher sanctity can be secularised, surely those of lower sanctity can be.

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(1) Gen, XXXV, 21. Lit., ‘Fold Tower,’ a place not far from Jerusalem, on the road to Bethlehem.

(2) Most cattle that wandered out of Jerusalem had been consecrated for sacrifices, and cattle found within this distance were feared to have strayed out. The females are peace-offerings, since only males could be burnt-offerings (Lev. I, 3).

(3) Surely not. They may be the latter: how can they be sacrificed as burnt-offerings?

(4) The animal itself can certainly not be sacrificed. But if a person wishes to accept responsibility, redeem it, and so clear up all doubt, he must reckon with the possibility of its being a burnt-offering. Hence he must bring two animals or two sums of money and declare: ‘If this found animal is a burnt-offering, let it be redeemed by one animal, or by one sum, which shall be likewise a burnt-offering, and the other shall be a peace-offering. Whereas if it is a peace-offering, let it be redeemed by the second, and the first be a burnt- offering, while the animal found becomes hullin.

(5) Lit., ‘sanctity of the body,’ i.e., an animal which is sacred and without blemish, so that it can be offered on the altar; as opposed to monetary sanctity, e.g., a consecrated animal which subsequently receives a blemish; it cannot be sacrificed itself, but must be redeemed and another animal bought with the money, which is sacrificed.

(6) For when the first commits trespass they become hullin and cease to be subject to further trespass.

(7) Used in the Temple. These do not become hullin when secularly used, because they cannot be redeemed as long as they are fit for their purpose.

(8) The Mishnah just quoted.

(9) On the finding of an animal.

(10) For the latter Mishnah, which agrees with R. Judah, must refer to unwitting use, since no offering is incurred for deliberate misuse, and yet it teaches that animals of intrinsic sanctity involve consecutive trespasses, which proves that they are not secularised by the first misuse.

(11) For unwitting misuse, in R. Judah's opinion, is the same as deliberate misuse in R. Meir's.

(12) I.e,, deliberate conversion, according to R. Meir, is stronger than unwitting misuse, on R. Judah's opinion, and therefore it secularises even intrinsic sanctity.

(13) I.e., anything which is entirely used in the service of the Temple. E.g., an article consecrated for Temple repair, and a sacrifice of the higher sanctity, which belonged entirely to God, none of it being eaten by its owner.

(14) And the Mishnah on a strayed animal refers to such, since it may be a peace-offering, which is of the lower sanctity.

(15) Cur. ed.: Akiba; but a R. Hama b. R. Akiba is unknown in the Talmud.

Talmud - Mas. Kiddushin 55b

Now, R. Johanan was astonished thereat:[1] is then a man bidden, 'Arise and sin, that you may achieve merit!'[2] But, said R. Johanan, we wait until it is blemished;[3] then two animals are brought, and a stipulation made.[4]

The Master said: 'Males are burnt-offerings.' But perhaps it is a thanksgiving-offering?[5] — A thanksgiving-offering too is brought .[6] But then loaves are required?[7] — Loaves too are brought. Yet perhaps it is a guilt-offering?[8] — A guilt-offering requires a two year old [animal], whereas a yearling was found. Then perhaps it is a guilt-offering of a leper or a nazir?[9] — These are rare. Yet perhaps it is a Passover sacrifice? — One takes great care of the Passover sacrifice in its season,[10] and when not in its season[11] it is a peace — offering.[12] Yet perhaps it is a firstling or tithe? — In what respect? That it may be eaten when blemished?[13] Here too, it is eaten when blemished.[14]

The Master said: 'Females are peace-offerings.' But perhaps it is a thanksgiving-offering? — He brings a thanksgiving-offering. But then loaves are required? — Loaves too are brought. But perhaps it is a sin-offering? — A sin-offering is a yearling, whereas a two year old was found. Yet perhaps it is a sin-offering which has passed its year?[15] — That is rare. Then what if a yearling is found? — It was taught: Hanina b. Hakinai said: A yearling she-goat is [sacrificed] as a sin-offering. 'As a sin-offering' — can you think so![16] — But, said Abaye, it is [treated] as a sin-offering:[17] it is led into a stable and left to perish.

Our Rabbis taught: An animal may not be bought with second-tithe money;[18]

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(1) At R. Oshaia's explanation, supra a, top.

(2) For even if deliberate conversion is effective in respect of intrinsic sanctity, it is nevertheless forbidden; Men. 101a.

(3) When it loses its intrinsic sanctity — i.e., it may no longer be sacrificed, and as such must be redeemed, whereby it becomes hullin.

(4) V. p. 277, n. 1.

(5) Which may likewise be a male.

(6) I.e., two animals are sanctified; cf. p. 277, n. 1.

(7) V. Lev, VII, 2.

(8) And that cannot be settled by bringing a third, because a guilt-offering cannot be vowed but must be incurred by sin.

(9) V. Glos. These were yearlings.

(10) Animals were separated for that purpose on the tenth of Nisan and sacrificed on the fourteenth. During this time they were carefully guarded, and could not have strayed.

(11) I.e., if these are not sacrificed then.

(12) Which he does bring.

(13) I.e., the fear that it may be a firstling or tithe can affect only the question of their redemption when blemished; for these cannot be redeemed, even when blemished, but must be eaten in semi-sanctity, i.e., they must not be killed in the general abattoirs nor weighed with the ordinary weights, in order to emphasize their character.

(14) In the same manner as firstlings and tithes.

(15) Having been lost a long time.

(16) It may not be one, nor is a stipulation possible (v. p. 277, n. 1), since a sin-offering cannot be vowed.

(17) Which for any reason may not be sacrificed, e.g., if its owner dies.

(18) Without Jerusalem. Either because it may become emaciated through the journey (one explanation by Rashi), or for fear that its owner may be tempted to keep it at home for breeding (Tosaf.).

Talmud - Mas. Kiddushin 56a

and if one does buy: if unwittingly, the money must be returned to its place;[1] if deliberately, it must be brought up and consumed in the Place.[2] R. Judah said: That holds good if he intentionally bought it in the first place for a peace-offering;[3] but if it was his intention to turn the second-tithe money

into hullin,[4] whether unwittingly or deliberately,[5] the money must be returned to its place.[6] But did we not learn: R. JUDAH SAID: IF DELIBERATELY, HE HAS BETROTHED [HER]?[7] — Said R. Eleazar: The woman knows that the second-tithe money does not become hullin through her [acceptance thereof as kiddushin], and so she will go up and expend[8] it in Jerusalem.[9]

R. Jeremiah demurred: But what of unclean cattle, slaves, and real estate, in regard to which a man knows that second-tithe money is not secularised by [the purchase of] them; yet we learnt: Unclean cattle, slaves, and land may not be bought with second-tithe money, even in Jerusalem; and if he does purchase [them], he must eat to the value thereof?[10] But [say] here [in the Mishnah] the reference is to a woman, a haberah,[11] who knows.[12]

The Master said: 'If he does purchase [them], he must eat to the value thereof.' Yet why: let the money return to its place, as there? — Said Samuel:

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(1) The owner. The vendor is compelled to return the money, which must have been given in error. For the purchaser would surely rather carry money than drive an animal to Jerusalem,

(2) Sc. Jerusalem.

(3) Like all animals purchased with second-tithe money.

(4) I.e., he bought the animal intending to eat it outside Jerusalem (Rashi). Tosaf.: He stipulated that the animal should remain hullin, while the vendor should expend the money in Jerusalem.

(5) Whether he knew the money was of second-tithe or not.

(6) If unwittingly, because it was a transaction in error, as above; if deliberately, as a punishment to the vendor for acting as an accessory (Rashi). Tosaf.: In both cases, for fear that the vendor may eat the animal outside Jerusalem, thinking that the stipulation is invalid.

(7) V. Mishnah 52b. This shews that since there is no error, the Rabbis did not nullify the transaction as a penalty (Rashi). Tosaf.: This shews that we do not fear that the woman may expend the money outside Jerusalem, as otherwise his act would be nullified: why then do we fear it in the case of the vendor?

(8) Lit., 'eat'.

(9) Hence there is no question of penalizing anyone (Rashi). Tosaf.: But the vendor thinks that since when one usually buys an animal with second-tithe money, the animal becomes sanctified and the money hullin, so is it now, the stipulation being unable to abrogate normal practice.

(10) I.e., he must take fresh money and declare, 'Wherever the first money is, let it be redeemed by this,' and expend it in Jerusalem. But we do not assume that the vendor himself will take the money thither.

(11) Fem. of haber, associate, one who is learned and very strict in all matters of tithes and laws of purity. Some suggest that the unsettled state of Palestine during the Maccabean wars led to the neglect of tithes and Levitical purity by the masses, the so-called 'am ha-'arez (lit., 'people of the land'), and this, in turn, by reaction, was responsible for the promotion of associations (haburoth), the members of which (haberim) were pledged strictly to observe these laws, V. J.E. art, 'Haber'.

(12) That second-tithe money does not become hullin by her acceptance, and therefore she will expend it in Jerusalem. But the average seller does not know these laws.

Talmud - Mas. Kiddushin 56b

This [holds good] if he [the vendor] has fled. Thus, the reason is that he has fled, but otherwise, we penalize the vendor:[1] but let us penalize the purchaser?[2] — Not the mouse steals, but the hole steals![3] Yet but for the mouse, what harm is done by the hole! — It is reasonable that where the transgression lies, there we impose a penalty.[4]

MISHNAH. IF HE BETROTHS [A WOMAN] WITH 'ORLAH, OR KIL'AYIM[5] OF THE VINEYARD, OR AN OX CONDEMNED TO BE STONED,[6] OR THE HEIFER WHICH IS TO BE BEHEADED,[7] OR A LEPER'S BIRD-OFFERINGS,[8] OR A NAZIRITE'S HAIR, OR THE FIRSTLING OF AN ASS, OR MEAT [SEETHED] IN MILK,[9] OR HULLIN[10] SLAUGHTERED

IN THE TEMPLE COURT, SHE IS NOT BETROTHED.[11] IF HE SELLS THEM AND BETROTHS [HER] WITH THE PROCEEDS,[12] SHE IS BETROTHED.[13]

GEMARA. WITH 'ORLAH: How do we know it? — Because it was taught: They shall be as uncircumcised unto you: it shall not be eaten:[14] thus I know only the prohibition of eating; whence do we know [that all] benefit [is forbidden], [i.e.,] that one must derive no benefit therefrom, [e.g.,] not dye nor kindle a lamp therewith? From the verse: 'Then ye shall count the fruit thereof as uncircumcised,' which includes all.

[WITH] KIL'AYIM OF THE VINEYARD. How do we know it? — Said Hezekiah, Scripture saith, [Thou shalt not sow thy vineyard with divers seeds:] lest [the fruit of thy seed which thou hast sown, and the fruit of thy vineyard,] be defiled [tikdash]:[15] i.e., tukad esh [it shall be burnt in fire]. R. Ashi said: [Interpret,] Lest it be as sanctified.[16] If so, just as a sanctified object transfers its character to its purchase price,[17] and itself becomes hullin, so should kil'ayim of the vineyard transfer its character to its purchase price, and itself become hullin?[18] Hence it must clearly be [explained] as Hezekiah.

[WITH] AN OX CONDEMNED TO BE STONED. How do we know it? — Because it was taught: From the implication of the verse, the ox shall be surely stoned,[19] do I not know that it is nebelah,[20] which is forbidden as food? Why then is it stated, and his flesh shall not be eaten?[19] It informs you that if it was killed after the trial was ended,[21] it may not be eaten, How do we know that benefit [is forbidden]? From the verse, and the owner of the ox shall be clear. How is this implied? — Said Simeon b. Zoma: As a man may say to his friend, 'So-and-so has gone out clear from his property, and has no benefit whatsoever from it.' Now, how do you know that this [verse], 'and his flesh shall tot be eaten,' comes [to teach the law] if it is [ritually] killed after the trial is ended: perhaps where it is killed after sentence, it is permitted, and this [verse], 'and it shall not be eaten,' refers[22] to when it is indeed stoned, and [its teaching is that of] R. Abbahu in R. Eleazar's name. For R. Abbahu said in R. Eleazar's name: Wherever it is said: It shall not, be eaten, thou shalt not eat, ye shall not eat, the prohibitions of both eating and benefit [in general] are understood, unless the writ expressly states [otherwise], as it does in the case of nebelah![23] — That is only where the prohibition of food is derived from, it shall not be eaten;[24] but here the prohibition of eating follows from, 'it shalt surely be stoned': for should you think that it is written to intimate prohibition of benefit, Scripture should state, 'and he shall not benefit',[25] or, 'it shall not be eaten': why add, 'its flesh'? [To shew that] even if it is slaughtered like [other] flesh, it is [still] forbidden.

Mar Zutra objected: Yet perhaps that is only if one examines a stone, [finds its edge perfectly free from a notch] and kills therewith, for it looks like stoning; but not if it is slaughtered with a knife? — Is then a knife stipulated in the Torah?[26] Moreover, it was taught: One may slaughter with everything,[27] with a stone, glass, or a reed haulm.

But now that the prohibitions of both eating and benefit are derived from, 'it shall not be eaten,' what is the purpose of this [clause], 'and the owner of the ox shall be clear'?[28] — In respect of the benefit of its skin.[29] I might think, 'its flesh shall not be eaten' is written: [hence] its flesh is forbidden while its hide is permitted. Now, according to those Tannaim who employ this verse: 'and the owner of the ox shall be clear', as referring to half ransom and indemnification for children,[30] how do they know [that] the benefit of the hide [is forbidden]? — From 'eth besaro' ['its flesh'], meaning, that which is joined to its flesh.[31] And the other?[32]

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(1) By making him return the money.

(2) That he should spend an equal sum in Jerusalem, or go to the vendor and declare, 'The money you hold is redeemed by this money I have,' and then expend the new money in Jerusalem (Tosaf.).

(3) The vendor makes possible this misuse of the money.

(4) The transgression, i.e., the money wrongly expended, lies with the vendor: hence he is penalized by the cancellation of the sale.
(5) V. Glos.
(6) V. Ex. XXI, 28f.
(7) V. Deut. XXI, 1-9.
(8) V. Lev. XIV, 1ff.
(9) Ex. XXIII, 19.
(10) V. Glos.
(11) Because all benefit of these is forbidden; hence she receives nothing of value.
(12) Lit., 'their money'.
(13) Because their forbidden character is not transferred to the money.
(14) Lev. XIX, 23.
(15) Deut. XXII, 9.
(16) Hence forbidden. Thus on both versions all benefit of kil'ayim is forbidden.
(17) Lit., 'holds its money', i.e., if sold, its prohibition passes on to the money paid.
(18) Whereas the Mishnah states that its prohibition is not transferable.
(19) Ex. XXI, 28,
(20) V. Glos.
(21) I.e., after sentence.
(22) Lit., comes.
(23) Deut. XIV, 21: Ye shall not eat any nebelah: thou mayest give it unto the stranger . . . or sell it unto a foreigner. Now, a stoned ox is nebelah, and so I might think that benefit is permitted; therefore Scripture states that its flesh shall not be eaten, thus intimating the contrary. And as to the verse 'and the owner of the ox shall be clear', it is needed for some other deduction v. infra.
(24) Then R. Abbahu's exegesis shews that 'eating' includes all benefit.
(25) When both eating and general benefit are to be forbidden, it is reasonable that the former only is mentioned as including the latter. But when only the latter is needed, the former already being known, surely benefit should be expressly stated?
(26) The Torah does not state that only a knife must be used in ritual killing: hence no distinction can be drawn.
(27) Which has a cutting edge free from notches. — Nevertheless, it had to be sharp enough to cut through the wind pipe and the gullet without undue delay; v, J.D. 23, – 4.
(28) Which was interpreted in the same way; supra.
(29) Teaching that even that is forbidden.
(30) Ransom, v. Ex. XXI, 28-30, 35f; it might be thought, by comparing these verses, that half ransom is payable. Payment for child: v. ibid. 22; I might think that the same holds good when the damage is done by a man's ox. Therefore 'and the owner of the ox shall be clear' (E.V. quit) teaches that he is free from both.
(31) Regarding eth, the sign of the acc., as an extending particle.
(32) What does eth teach on his view?

Talmud - Mas. Kiddushin 57a

He does not interpret eth.[1] As it was taught: Simeon the Imsonite[2] — others state, Nehemiah the Imsonite, — interpreted every eth in the Torah,[3] but as soon as he came to, thou shalt fear [eth] the Lord thy God,[4] he refrained.[5] Said his disciples to him, 'Master, what is to happen with all the ethin[6] which you have interpreted?' 'Just as I received reward for interpreting [them],' he replied: 'so do I receive reward for retracting.'[7] Subsequently[8] R. Akiba came and taught: Thou shalt fear [eth] the Lord thy God, that is to include scholars.[9]

THE HEIFER WHICH IS BEHEADED: How do we know it? — Said the School of R. Jannai: 'Forgiveness' is stated in connection therewith,[10] as with sacrifices.[11]

A LEPER'S BIRD-OFFERINGS: How do we know it? — For the School of R. Ishmael taught:

Qualifying and atoning [sacrifices] are mentioned within [the Temple], and qualifying and atoning [sacrifices] are mentioned without: just as with the qualifying and atoning [sacrifices] mentioned within [the Temple], qualifying is made equal to atoning [sacrifices], so with the qualifying and atoning [sacrifices] mentioned without, the qualifying [sacrifice] is made equal to that which atones.[12] It was stated: From what time are a leper's birds forbidden?[13] R. Johanan maintained: From the time of slaughter;[14] Resh Lakish said: From the time they are taken.[15] 'R. Johanan maintained, From the time of slaughter,' it is the slaughter that renders it forbidden. 'Resh Lakish said: From the time they are taken' — it is learned from the heifer that is to be beheaded. Just as the heifer that is to be beheaded is [forbidden] while it yet lives,[16] so are the leper's birds [forbidden] while yet alive. And from what time is the heifer that is to be beheaded itself forbidden? — Said R. Jannai: I have heard a time limit for it, but have forgotten it: while our colleagues maintain,[17] Its descent to the rugged valley,[18] that renders it forbidden.[19] If so, just as the heifer that is to be beheaded is not forbidden from the time it is taken, so are the leper's birds not forbidden from when they are taken? — How now! There it has another determining point;[20] but here, is there any other determining point?[21]

R. Johanan raised an objection to Resh Lakish: Of all clean birds ye may eat:[22] this includes the bird that is set free.[23] But these are they of which ye shall not eat:[24] that includes the slaughtered bird.[25] But should you think that it is forbidden while yet alive, is it necessary [to state it] after slaughter? — You might argue: It is analogous to sacrifices, which are forbidden whilst alive,[26] yet the slaughtering comes and qualifies them [as food]; therefore we are told [otherwise].

He raised an objection: If it is slaughtered and found to be trefa,[27] he must take a companion for the second,[28] and benefit from the first is permitted. But should you think that it is forbidden while yet alive, why may one benefit from the first![29] — The circumstances here are, e.g., it was found to be trefa in its inwards,[30] so that no sanctity fell upon it at all.

He raised an objection: If it is slaughtered without the hyssop, the cedar wood and the scarlet thread,[31] — R. Jacob said: Since it was set aside for its religious purposes it is forbidden; R. Simeon said: Since it was not slaughtered according to its regulations, it is permitted. Now, they differ only in so far as one Master holds that an unfit slaughtering[32] is designated slaughtering;[33] while the other Master holds that such is not designated slaughtering; but all agree at least that it is not forbidden while yet alive? — It is [a controversy of] Tannaim. For the School of Ishmael taught: 'Qualifying' and 'atoning' are mentioned within [the Temple], and 'qualifying' and 'atoning' are mentioned without: just as with the 'qualifying' and 'atoning' mentioned within, 'qualifying' is made equal to 'atoning', so with the 'qualifying' and 'atoning' mentioned without, 'qualifying' is made equal to 'atoning'.[34]

The text [above stated]: 'Of all clean birds ye may eat: this includes the bird that is set free. But these are they which ye shall not eat: that includes the slaughtered bird.' But may I not reverse it? — Said R. Johanan on the authority of R. Simeon b. Yohai: We do not find live creatures [permanently] forbidden.[35] R. Samuel son of R. Isaac demurred: Do we not? But

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(1) As indicating extension or having any particular significance apart from its grammatical one.

(2) Jast. conjectures that it may mean from Amasia, in Pontus.

(3) As an extending particle.

(4) Deut. VI, 13.

(5) Considering it impossible that this fear should be extended to another.

(6) Pl. of eth.

(7) Lit., 'separating' (myself from them). Since the eth in one verse has no particular significance, it can have none elsewhere. — It is a tribute to his character that although he must have interpreted an enormous number, he was prepared to admit his error and set them all aside.

(8) Lit., ‘until’.
(9) Who are the depositaries of God's word; hence the verse exhorts obedience to religious authority.
(10) V. Deut. XXI, 8.
(11) Betrothal with which is invalid.
(12) ‘Qualifying’ means a sacrifice whose purpose it is to qualify one to enter the Temple and partake of sacred food, i.e., to purify him from uncleanness; ‘atoning’, a sacrifice to atone for sin. Now, in his purification rites, a leper brought birds, which were sacrificed without the Temple (Lev. XIV, 2ff.) and an animal guilt-offering, which was sacrificed within the Temple (vv. 10-13). Though technically called a guilt-offering, its purpose was nevertheless purificatory, since he had not sinned. Again, the purpose of the beheaded heifer, whose rites were performed without the Temple, was atonement. Whilst within the Temple, all other guilt-offerings, excepting the leper's, had the same object. Now, just as Scripture draws no distinction between a leper's guilt-offering (qualifying) and other guilt-offerings (atonement) which are sacrificed within the Temple, so is no distinction drawn between ‘qualifying’ and ‘atoning’ without the Temple, i.e., between a leper's birds and the beheaded heifer. Since therefore betrothal with the latter is invalid, it is likewise so with the former.
(13) That no benefit may be derived from them.
(14) Then the slaughtered one becomes forbidden, while the other (v. Lev, XIV, 7), is likewise forbidden from then until it is actually freed. — Tosaf.
(15) I.e., set aside for that purpose. On the bird that is freed v. preceding note
(16) Like all sacrifices, which are forbidden as soon as they are dedicated.
(17) Lit., ‘take it up to say’.
(18) V. Deut. XXI, 4 and Sot. (Sonc. ed.) p. 235, n. 6,
(19) But not as soon as it is taken.
(20) Whilst alive, viz., its descent etc.
(21) If not from when it is taken, what other point of demarcation during its lifetime is possible?
(22) Deut. XIV, 11.
(23) ‘All’ is an extension.
(24) Ibid. 12.
(25) Both referring to the leper's birds.
(26) From when they are dedicated.
(27) V. Glos.
(28) But not a fresh pair.
(29) For perhaps it was not trefa when taken, in which case, being fit for its ultimate purpose. it became forbidden. How then was that prohibition lifted?
(30) The type of trefa which must have been with it from the very beginning when taken.
(31) V. Lev. XIV, 4.
(32) I.e., unfit to achieve its object, owing to the absence of the hyssop etc.
(33) Hence it is forbidden.
(34) V. p. 284, n. 9. Hence, just as sacrifices (‘atoning’) are forbidden while alive, so are the leper's birds (‘qualifying’) too. Thus the School of Ishmael disagrees with R. Jacob and R. Simeon.
(35) Hence ‘they which ye shall not eat’ cannot include the bird that is freed.

Talmud - Mas. Kiddushin 57b

what of a designated animal[1] and a worshipped animal,[2] which though living creatures, are yet forbidden?[3] — They are forbidden only in respect of the Most High, but are indeed permitted for ordinary use.[4] R. Jeremiah demurred: But animals, active or passive participants in bestiality attested by witnesses, are living creatures and yet forbidden?[5] But, said R. Johanan, we do not find as a rule live creatures that are [permanently] forbidden.[6]

The School of R. Ishmael taught: Because Scripture saith, and he shall let go the living bird it to the open field:[7] just as the field is permitted, so is this [bird] too permitted. Does ‘field’ come to teach this? But it is required for what was taught. ‘Field’ [teaches] that one must not stand in Joppa[8]

and cast it into the sea, or in Gabbath[9] and cast it to the wilderness, or stand without the city and throw it into the city; but he must stand within the city and throw it beyond the wall. And the other?[10] — If so, Scripture should write, 'field': why 'the field'? Hence both are inferred. Raba said: The Torah did not order, 'Send it away', for a stumbling-block.[11]

WITH A NAZIRITE'S HAIR, How do we know it? Because Scripture saith, He shall be holy, he shall let the locks of the hair of his head grow long,[12] [teaching], his growth shall be holy.[13] If so, just as a holy object stamps its purchase price[14] and itself passes out into hullin, so should the nazirite's hair stamp its purchase price and itself pass out into hullin?[15] — Do we then read kodesh? We read kadosh.[16]

WITH THE FIRSTLING OF AN ASS. Shall we say that our Mishnah does not agree with R. Simeon? For it was taught: Benefit is forbidden from the firstling of an ass: this is R. Judah's opinion; but R. Simeon permits it! — Said R. Nahman in Rabbah b. Abbuha's name: This means after its neck was broken,[17] and so agrees with all.[18]

MEAT [SEETHED] IN MILK. How do we know it? — For the School of R. Ishmael taught: Thou shalt not seethe a kid in its mother's milk [is stated] three times:[19] one is a prohibition against eating, one a prohibition of benefit [in general], and one a prohibition of seething.[20] Our Mishnah does not agree with the following Tanna. For it was taught: R. Simeon b. Judah[21] said: Meat [seethed] in Milk may not be eaten, but benefit is permitted, for it is said: For thou art an holy people unto the Lord thy God. Thou shalt not seethe a kid in its mother's milk;[22] whilst elsewhere it is said: And ye shall be holy men unto me: [therefore ye shall not eat any flesh that is torn of beasts in the field; ye shall cast it to the dogs.]:[23] just as there it may not be eaten, yet benefit is permitted, so here too.

AND HULLIN SLAUGHTERED IN THE TEMPLE COURT. How do we know it? — Said R. Johanan on R. Meir's authority: The Torah decreed, slaughter mine [i.e., sacrifices] in mine [i.e., the Temple] and thine [i.e., hullin] in thine [i.e., without the Temple]: just as mine [slaughtered] in thine is forbidden,[24] so is thine [slaughtered] in mine forbidden. If so, just as thine in mine is punished by kareth,[25] so is mine in thine punished by kareth? — Scripture saith, and he hath not brought it unto the door of the tent of meeting, to offer it as a sacrifice unto the Lord . . . then he shall be cut off:[26] for a sacrifice [slaughtered without] there is punishment of kareth, but not for hullin slaughtered in the Temple Court. [That being so,] it [the analogy] may be refuted: as for mine in thine [being forbidden], that is because it is punished by kareth! — But, said Abaye, [it is deduced] from this: and he shall kill it [at the door of the tabernacle of the congregation],[27] and he shall kill it [before the tabernacle of the congregation],[28] and, and he shall kill it [before the tabernacle of the congregation],[29] are three superfluous verses.[30] Now, why are they stated? Because it is said: If the place [which the Lord thy God shall choose to put his name there] shall be far from thee . . . then thou shalt kill [of thy herd etc.],[31] [teaching] you may kill far from the place [sc. the Temple], but not in the place, thus excluding hullin, [viz.,] that it may not be killed in the Temple Court. Again, I know this only of unblemished animals, which are eligible to be sacrificed: whence do I know to include blemished ones? I include blemished animals, since they are of a fit species.[32] Whence do I know to include beasts?[33] I include beasts, since they require shechitah,[34] as a [domestic] animal,[35] How do I know to include birds?[36] Therefore it is stated, and he shall kill it, and he shall kill it, and he shall kill it.[37] I might think, One may not kill [hullin in the Temple Court]; yet if he does, it is permitted [to eat it]: therefore it is stated: If the place be far from thee, then thou shalt kill . . . and thou shalt eat: you may eat what you kill far from the place, but not what you kill in the place, thus excluding hullin killed in the Temple Court.[38] Now, I know this only of unblemished animals,

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(1) An animal designated as an idolatrous sacrifice.

(2) One itself worshipped as an idol.

(3) As sacrifices.

(4) Lit., ‘for a layman’.
(5) These are stoned, and benefit is forbidden as soon as they are sentenced.
(6) Hence it is illogical to reverse it.
(7) Lev. XIV, 7.
(8) Jaffa. On the sea coast.
(9) Later name For Gibbethon, in the territory of Dan. It bordered on the desert.
(10) The School of R. Ishmael: how do they know this?
(11) To order it to be freed and at the same time forbidden is a stumbling-block before any person who may capture and eat it, ignorant of its nature.
(12) Num. VI, 5.
(13) Hence forbidden.
(14) If sold; i.e., the money becomes sacred.
(15) Whereas the Mishnah (q.v. 56b) states the reverse.
(16) Not a nominal form but a verbal form. I.e., he himself is not holiness, but in a holy state, and hence not as strong as holiness itself, which teaches that his sanctity is nontransferable. — Actually, the word as written (ase) might read kodesh, but according to tradition (masorah) it is read kadosh.
(17) If unredeemed; v. Ex. XIII. 13.
(18) The Baraitha adds that R. Simeon agrees in that case.
(19) Ex. XXIII, 19; XXXIV, 26; Deut. XIV, 21.
(20) Even without the intention of eating it.
(21) Rashi (infra 58a) appears to read: R. Simeon b. Yohai. But in Bek. 10a the reading is, R. Simeon b. Judah on the authority of R. Simeon (i.e., b. Yohai).
(22) Deut. ibid.
(23) Ex. XXII, 30: ‘casting to the dogs’ is benefit.
(24) The consecrated animal is forbidden while yet alive, and becomes permitted through the sprinkling of its blood on the altar, which is absent if it is not killed in the Temple. The prohibition, dating from while it is alive, is naturally of benefit in general.
(25) V. Glos.
(26) Lev. XVII, 4.
(27) Lev. III, 2.
(28) Ibid. 8.
(29) Ibid. 13.
(30) They all refer to the killing of peace-offerings, and all imply a limitation: it, i.e., the peace-offering, is to be killed by the Tabernacle, but not others.
(31) Deut. XII, 21.
(32) I.e., fit for sacrifice.
(33) Hayyah, wild beast (e.g., the deer), as opposed to behemah, domestic animal.
(34) V. Glos.
(35) Hence, both may not be done in the Temple Court.
(36) Shechitah is not explicitly stated in the Bible in their case.
(37) One intimates that beasts shall not be killed in the Temple Court; one, fowls; as for the third, two explanations are offered: (i) that it excludes blemished animals; or (ii) that it teaches that these may not be eaten if killed within the Temple. — Hence, when the Baraitha states: I include blemished animals because . . . beasts because . . . the meaning is that these might be deduced by analogy, but for the three verses quoted.
(38) That it may not be eaten.

Talmud - Mas. Kiddushin 58a

which are eligible to be sacrificed; how do I know to include blemished ones? I include blemished animals, seeing that they are of a fit species. And how do I know to include beasts? I include beasts, because they require shechitah, as domestic animals. How do I know to include birds? Therefore it is stated, and he shall kill it, and he shall kill it, and he shall kill it.[1] I might think, One may not kill

[hullin in the Temple]; yet if he does, he may cast it to dogs: therefore it is taught, [ye shall not eat any flesh that is torn of beasts in the field], ye shall cast it to the dogs:[2] 'it' ye may cast to the dogs, but not hullin killed in the Temple Court.

Mar Judah met R. Joseph and R. Samuel, son of Rabbah b. Bar Hanah, standing by the door of Rabbah's academy. Said he to them: It was taught: If one betroths [a woman] with the firstling of an ass, meat [seethed] in milk, or hullin killed in the Temple Court, R. Simeon maintained: She is betrothed; while the Sages rule: She is not betrothed. This proves that in R. Simeon's opinion hullin killed in the Temple Court is not Biblically forbidden.[3] But the following contradicts it: R. Simeon said: Hullin that was killed in the Temple Court must be burned, and likewise a beast of chase killed in the Temple Court![4] They were silent. When they came before Rabbah [and put the difficulty to him], he exclaimed: That controversialist [Mar Judah] has prompted you! The circumstances here[5] are that it was killed and found to be trefa. R. Simeon following his general view. For it was taught: If one kills[6] a trefa,[7] or if one kills [an animal] and it is discovered to be a trefa, both being hullin in the Temple Court,--R. Simeon holds that benefit is permitted; but the Sages forbid it.[8]

IF HE SELLS THEM AND BETROTHS HER WITH THE PROCEEDS, SHE IS BETROTHED. How do we know it? — Since the Divine Law revealed in reference to idolatry, [and thou shalt not bring an abomination into thine house,] lest thou be a cursed thing like it,[9] [which means,] whatever you produce out of it is as itself,[10] it follows that all other objects forbidden in the Torah are permitted.[11] Let us [rather] learn from it?[12] — Because idolatry and seventh year [produce] are two verses that come with the same teaching, and such do not illumine [others].[13] Idolatry, as stated. What about seventh year [produce]? — It is jubilee; it shall be holy unto you:[14] just as a holy object stamps its purchase price [with its own sacred character]. so does seventh year [produce] likewise. If so, just as a holy object stamps its purchase price but itself becomes hullin, so does the seventh year [produce] stamp its purchase price and itself becomes hullin?[15] Therefore it is stated: 'it shall be,' [meaning], it shall remain [be] in its present form. How so? If one buys meat with seventh year produce, both must be removed [from the house] in the seventh year;[16] [if he purchases] fish with the meat, the meat passes out [from seventh year provisions] and the fish enters [i.e., takes its place]; [if he barters] the fish for wine, the fish passes out and the wine enters; oil for the wine, the wine passes out and the oil enters. Thus, how is it? The last on each occasion is stamped with [the nature of] the seventh year, while the [original] produce itself remains forbidden. Now, that is well on the view that [two verses with the same teaching] do not illumine [others]; but on the view that they do, what can be said? — Limitations are written. Here it is written: 'lest thou be a cursed thing like it';[17] and there it is written, it is jubilee: [thus,] only it, but nothing else.[18]

MISHNAH. IF ONE BETROTHS [A WOMAN] WITH TERUMOTH,[19] TITHES, [PRIESTLY] GIFTS, THE WATER OF PURIFICATION AND THE ASHES OF PURIFICATION,[20] SHE IS BETROTHED, EVEN IF AN ISRAELITE.[21]

GEMARA. 'Ulla said: The benefit of disposal[22] does not rank as money. R. Abba [thereupon] raised an objection against 'Ulla: IF ONE BETROTHS [A WOMAN] WITH TERUMOTH, TITHES, [PRIESTLY] GIFTS, THE WATER OF PURIFICATION AND THE ASHES OF PURIFICATION, SHE IS BETROTHED, EVEN IF AN ISRAELITE![23] — He answered: This refers to an Israelite who inherited tebalim[24] from his maternal grandfather[25] [who was] a priest. Now he [Tanna of the Mishnah] holds that unseparated gifts are as though already separated.[26]

R. Hiyya b. Abin asked R. Huna: Does the benefit of disposal rank as money or not? — Said he to him: We have learned it: IF ONE BETROTHS [A WOMAN] WITH TERUMOTH, TITHES, [PRIESTLY] GIFTS, THE WATER OF PURIFICATION AND THE ASHES OF PURIFICATION, SHE IS BETROTHED, EVEN IF AN ISRAELITE. But did we not interpret it as referring to an Israelite who inherited tebalim from his maternal grandfather [who was] a priest, he questioned?

(1) I.e., since the three verses shew that these may not be killed in the Temple Court, just as an unblemished animal, they also shew that they are like it too in that they may not be eaten.
(2) Ex. XXII, 30.
(3) For if it were, it is worthless, since one may derive no benefit from it. But if it is Biblically permitted, she receives something of value, and is betrothed; when the Rabbis then forbid all benefit from it, they cannot thereby nullify a betrothal that is Biblically valid. — The reason of this Rabbinical interdict is that one seeing it may mistake it for a sacrifice that became unfit after it was killed, so that its blood could not be sprinkled, and think that one may benefit from such, whereas that is forbidden.
(4) But burial is insufficient. Now, if the interdict is only Rabbinical, why this stringency? Granted that it may be necessary in the case of an animal, which can be mistaken for a sacrifice which became unfit after it was killed (which must be burned, not buried), yet why demand it for a beast of chase, which cannot be mistaken? Hence the interdict must be Biblical: then it is logical that the Rabbis were stringent in the method of disposal.
(5) With the case of betrothal.
(6) I.e., by ritual shechitah.
(7) Perceptible as such even before it is killed.
(8) In R. Simeon's view, if the slaughter does not qualify it for food, because it is otherwise forbidden, it is not slaughter at all, and no interdict which would normally result from the killing takes effect. Therefore one may benefit therefrom and it is valid for betrothal.
(9) Deut. VII, 26.
(10) I.e., if an idol is sold, the money too is accursed, viz., forbidden.
(11) Sc. the money received for them if sold.
(12) That others are similar.
(13) V. p. 169, n. 7.
(14) Lev. XXV, 12.
(15) In the sense that it is no longer subject to seventh year prohibitions.
(16) I.e., private ownership must be renounced.
(17) The text as emended by Maharsha.
(18) I.e., the peculiar laws of idolatry and seventh year produce as stated here do not apply to anything else.
(19) Plur. of terumah, v. Glos.
(20) V. Num. XIX.
(21) I.e., even if he who betroths is an Israelite; that is the assumed meaning. Now, an Israelite has no direct benefit in these, save the indirect one of being able to dispose of them to whatever priest or Levite he desires; and she too has only the same benefit. Since the Mishnah rules that the betrothal is valid, it follows that this benefit of disposal is considered to possess a monetary value.
(22) V. preceding note; lit., 'the benefit of pleasure' — the pleasure of disposing to whomever one desires.
(23) This proves the reverse; v. n. 5.
(24) Pl. of tebel, q.v. Glos.; lit., 'tebalim fell to him'.
(25) Lit., 'from the house of the father of his mother'.
(26) Even a priest had to separate the priestly gifts. but retained them for himself. Hence the priestly dues contained in these tebalim belong to the heir, who may sell, since he cannot eat them himself, and so they rank as money. But ordinary gifts which must be given away do not rank as money.

Talmud - Mas. Kiddushin 58b

— He replied: You are huza'ah.[1] So he was ashamed, for he thought that he meant it with reference to the subject.[2] I meant this, he reassured him, R. Assi of Huzal[3] agrees with you.

Shall we say that it[4] is a controversy of Tannaim? [For it was taught.] He who steals his neighbour's tebel must pay him the value of his tebel:[5] this is Rabbi's view. R. Jose son of R. Judah said: He must pay only for the hullin it contains. Surely they differ in this: one Master holds that disposal rights are money, while the other maintains that they are not? — No: all agree that disposal

rights are not money, but here, however, the reference is to tebalim which he inherited from the house of his maternal grandfather, a priest, and they differ as to whether unseparated [priestly] dues are regarded as separated: one Master holds that they are regarded as separated,[6] and the other that they are not. Alternatively, all agree that they are regarded as separated, and disposal rights have no monetary value. Here, however, they differ in respect to Samuel's dictum, for Samuel said: One grain of wheat frees the whole stack:[7] One Master accepts Samuel's ruling; the other does not accept it.[8] Another alternative: All reject Samuel's dictum, but here this is Rabbi's reason, viz., the Rabbis penalized the thief. Another alternative: all agree with Samuel; but here this is R. Jose son of R. Judah's reason: The Rabbis penalized the owner, for he should not have tarried with his tebel.[9]

We learnt: IF ONE BETROTHS [A WOMAN] WITH TERUMOTH, TITHES, [PRIESTLY] GIFTS, THE WATER OF PURIFICATION AND THE ASHES OF PURIFICATION, SHE IS BETROTHED, EVEN AN ISRAELITE. But the following is opposed thereto: If one accepts payment for judging, his judgments are null; for testifying, his testimony is worthless; for sprinkling and mixing [with water] the ashes [of the Red Heifer],[10] his water is cavern water[11] and his ashes are ashes of a hearth![12] — Said Abaye. There is no difficulty: here it [the Mishnah] refers to payment for bringing [the ashes] and drawing [the water];[13] there, payment for sprinkling and mixing [are meant].[14] This may be proved too, for here it is stated: WITH THE WATER OF PURIFICATION AND THE ASHES OF PURIFICATION,[15] while there it is taught, for sprinkling and mixing. This proves it.

CHAPTER III

MISHNAH. IF HE SAYS TO HIS NEIGHBOUR, 'GO FORTH AND BETROTH ME SUCH A WOMAN,' AND HE GOES AND BETROTHS HER TO HIMSELF, SHE IS BETROTHED TO THE SECOND. LIKEWISE, IF HE SAYS TO A WOMAN, 'BE THOU BETROTHED UNTO ME AFTER THIRTY DAYS,' AND ANOTHER COMES AND BETROTHS HER WITHIN THE THIRTY DAYS, SHE IS BETROTHED TO THE SECOND: THUS AN ISRAELITE'S DAUGHTER [BETROTHED] TO A PRIEST MAY EAT TERUMAH.[16] [BUT IF HE DECLARES, BE THOU BETROTHED UNTO ME [FROM NOW AND AFTER THIRTY DAYS,'[17] AND ANOTHER COMES AND BETROTHS HER WITHIN THE THIRTY DAYS, SHE IS BETROTHED AND NOT BETROTHED [TO BOTH]:[18] AN ISRAELITE'S DAUGHTER [THUS BETROTHED] TO A PRIEST, OR A PRIEST'S DAUGHTER TO AN ISRAELITE, MAY NOT EAT TERUMAH.[19]

GEMARA. IF HE SAYS TO HIS NEIGHBOUR . . . A Tanna taught: What he did is done, but that he has behaved toward him as a cheat. And our Tanna?[20] — When he states: AND HE GOES,[21] he indeed means, He goes in cheating fashion. Why is it taught here, IF HE SAYS TO HIS NEIGHBOUR,

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(1) This is explained in the text.

(2) Deriving the word from huza, 'shrub', he understood him to say 'You are a shrubcutter'; i.e., your suggestion shows that your knowledge is only fit for this work.

(3) An ancient town below Nehardea, but nearer to Sura, within whose province it lay in matters of jurisdiction. Obermeyer, p. 299f.

(4) The question whether disposal rights rank as money.

(5) Including the terumoth and tithes which were yet to be separated. Ran in Ned. 84b explains: including the value of the disposal rights of the terumoth and tithes.

(6) Hence they have a monetary value to the Israelite, and so the thief must pay for them.

(7) [The removal of one single grain is sufficient to raise the prohibition that rests on the stack, as far as a non-priest is concerned, though the precept of 'giving' terumah is not fulfilled except on setting aside for the priest an amount varying between one fortieth to one sixtieth.]

(8) It is now understood that the reference is to one's ordinary produce, not to a legacy. Now, Rabbi agrees with Samuel: hence the robbed person can say: 'It was all mine, for I would have separated only one grain.' According to this, the controversy refers only to the value of terumah, which, notwithstanding Samuel's dictum, varied from one fortieth to one sixtieth. But the thief is certainly not liable for the tithe it contains, on all views, since that must be one tenth.
(9) But should have separated the dues when the obligation arose.
(10) An unclean person. v. Num. XIX, 17ff.
(11) I.e., useless, for running ('living') water is specified; ibid. 17.
(12) I.e., like ashes of any substance, not those of the red heifer, hence unfit. — This shews that they have no monetary value, since payment is forbidden.
(13) That is permitted.
(14) Which is forbidden.
(15) [They were, that is to say, still unmixed, and he betrothed her with them. Tosaf. Ri.]
(16) Because she is certainly betrothed to him.
(17) As though it were a long ceremony, commencing immediately but requiring thirty days for its completion.
(18) I.e., she is not free from either, nor may she live with either; v. p. 47. n. 10.
(19) Her status being undetermined.
(20) Does he too not condemn him?
(21) Lit., 'AND HE WENT'.

Talmud - Mas. Kiddushin 59a

whilst elsewhere[1] it is taught. 'If he says to his agent'?[2] — We are informed of something noteworthy here, and likewise there. We are informed of something noteworthy here: for if 'his agentð were stated: I might think, Only his agent is stigmatised a cheat, because he relies upon him, thinking, 'He will perform my bidding';[3] but as for his neighbour, seeing that he does not rely upon him,[4] I might say that he is not a cheat. There too we are taught what is noteworthy. For if it were stated: 'If he says to his neighbour.' I might think, Only if his neighbour betroths her elsewhere is she not betrothed, because he thinks that he will not trouble;[5] but as for his agent, who will trouble. I might think, He merely indicates the place to him.[6] Hence we are taught [otherwise].

Rabin[7] the pious went to betroth a certain woman for his son, but betrothed her for himself. But was it not taught. What he did is done, but that he has behaved toward him as a cheat? — They would not give her to him [his son]. Then he should have informed him![8] — He feared that in the meantime another man might come and betroth her.

Rabbah b. Bar Hanah gave money to Rab [and] instructed him, 'Buy this land for me,' but he went and bought it for himself. But did we not learn, What he did is done, yet he has behaved toward him as a cheat? — It was a stretch of land belonging to lawless[9] men;[10] for Rab they shewed respect. but would not for Rabbah b. Bar Hanah. Then he should have informed him? He feared that in the meantime another person might come and buy it.

R. Giddal was negotiating for a certain field, when R. Abba went and bought it. Thereupon R. Giddal went and complained about him to R. Zera, who went [in turn] and complained to R. Isaac Nappaha.[11] 'Wait until he comes up to us for the Festival,' said he to him. When he came up he met and asked him, 'If a poor man is examining[12] a cake[13] and another comes and takes it away from him, what then?' 'He is called a wicked man,' was his answer: 'Then why did you, Sir, act so?' he questioned him. 'I did not know [that he was negotiating for it],' he rejoined. 'Then let him have it now,' he suggested. 'I will not sell it to him,' he returned, 'because it is the first field [which I have ever bought]. and it is not a [good] omen;[14] but if he wants it as a gift, let him take it.' Now, R. Giddal would not take possession,[15] because it is written: But he that hateth gifts shall live,[16] nor would R. Abba, because R. Giddal had negotiated for it; and so neither took possession, and it was called 'The Rabbis' field'.[17]

LIKEWISE, IF ONE SAYS TO A WOMAN, BE THOU BETROTHED UNTO ME etc. What if another does not come and betroth her within these thirty days? — Rab and Samuel both rule: She is betrothed, even if the money [of betrothal] is consumed. What is the reason? This money is neither like a loan nor like a deposit. It is not like a deposit. [because] a deposit is consumed in its owner's possession,[18] whereas this is consumed in her possession. Again, it is not like a loan, [because] a loan is given to be expended,[19] whereas this was given to her for betrothal.

What if another does not come and betroth her, but she herself retracts? — R. Johanan said: She can retract, [because] words can come and nullify words.[20] Resh Lakish maintained: She cannot retract, [because] words cannot come and nullify words — R. Johanan refuted Resh Lakish: If he annuls,[21] if before he [his agent] has made a separation, his separation is invalid. Now here it is speech against speech,[22] yet one comes and nullifies the other? — Giving money into a woman's hand is different, because it is like action, and words cannot come and annul action.

He refuted him: If one sends a divorce to his wife, and then overtakes the messenger or sends [another] messenger after him and says to him, 'The divorce which I gave you is null,' it is indeed null. Now, giving the divorce into the messenger's hand is like giving money into a woman's hand, and yet it is taught: 'it is indeed null'? — There too, as long as the divorce has not reached her hand, it is speech against speech, and so one comes and annuls the other.

Resh Lakish objected to R. Johanan: All utensils become liable to[23] their uncleanness by intention, but ascend thence only by a change in substance.[24]

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(1) Mishnah supra 50a.

(2) 'Agent' or 'messenger' implies that he sends him to a particular place to betroth her; 'neighbour', that he gives him a general commission, but does not send him: 'should you meet her, betroth her to me.'

(3) Lit., 'sending'.

(4) Because he did not actually send him.

(5) To go elsewhere, therefore he specifies that particular place.

(6) But does not insist upon it.

(7) Var. lec., R. 'Amram.

(8) To clear himself of unjust suspicions.

(9) Lit., 'strong'.

(10) Who would not allow any person to own a field near theirs.

(11) Or, the smith.

(12) Lit., 'turning over'.

(13) To buy it.

(14) To sell.

(15) Lit., 'descend to it'.

(16) Prov. XV. 27.

(17) [For the use of the students of the law, v. supra p. 192, n. 6.]

(18) In that he bears the loss.

(19) I.e., if one lends money to a woman and subsequently proposes it for kiddushin, the money was to have been spent before it was to effect betrothal, and therefore is theoretically non-existent.

(20) Her refusal can nullify his betrothal.

(21) If one appoints an agent to separate his terumah, and then cancels his authority.

(22) Both the appointment and the annulment are by words.

(23) Lit., 'go down to'.

(24) Lit., 'change (brought about) by action'. Utensils may become unclean only when they are finished for use; if they require smoothing, scraping, etc., they are not liable to uncleanness, unless their owner declares his intention to use them as they are. On the other hand, having done so, it is not enough that he subsequently declares he will not use them thus,

in order to free them from their liability to uncleanness, unless he actually begins smoothing them. Or, if utensils are unclean, it is insufficient for him to declare that he will not use them any more, so that they should cease to be regarded as utensils, but must render them unfit for use by an act, e.g., break or make a hole in them.

Talmud - Mas. Kiddushin 59b

An act can nullify both act and intention,[1] but intention can nullify neither act nor intention.[2] Now, it is well that it [intention] cannot nullify an act, because speech cannot nullify action; yet let it nullify intention?[3] — Intention, in respect to uncleanliness, is different, because it ranks as action, and in accordance with R. Papa. For R. Papa pointed out a contradiction. It is written, and if one put [yitten], whereas we read, and if it be put [yuttan]:[4] how is this [to be reconciled]? 'If it be put' [must be] similar to 'if one put': just as when one puts, he desires it, so when it is put, he must desire it.[5] R. Zebid recited this discussion in reference to the following: Likewise, if she authorized her agent to betroth her, and went and betrothed herself: if hers came first, her kiddushin is valid; if her agent's came first, her own kiddushin is not valid.[6] Now, what if she did not betroth herself, but retracted?[7] R. Johanan said: She can retract; Resh Lakish maintained: She cannot retract. R. Johanan said: She can retract: Speech comes and nullifies speech — Resh Lakish said: She cannot retract: speech cannot come and nullify speech R. Johanan refuted Resh Lakish: If he annuls, if he does so before he [his agent] has made a separation, his separation is invalid? — Said Raba: Here the circumstances are, e.g., that the owner anticipated [his agent] by separating terumah for his stacks, so that it is action. Resh Lakish refuted R. Johanan: All utensils become liable to their uncleanness by intention, but ascend thence only by a changeful act. An act can nullify both act and intention, but intention can nullify neither act nor intention. Now, it is well that it cannot nullify an act, because speech cannot nullify action; yet let it nullify intention? — He replied: Intention, in respect to uncleanness, is different, because it ranks as action, and in accordance with R. Papa. For R. Papa pointed out a contradiction. It is written: 'and if one put [yitten],' whereas we read: 'and if it be put [yuttan]': how is this [to be reconciled]? 'If it be put' [must be] similar to 'if one put': just as when one puts, he desires it, so when it is put, he must desire it.

R. Johanan objected to Resh Lakish: If one sends a divorce to his wife, and then overtakes the messenger or sends a messenger after him and says. 'The divorce which I gave you is null,' it is null. This is a refutation of Resh Lakish. It is indeed a refutation. Now, the law is as R. Johanan., even in the first [dispute]; for though we might argue [there]. 'Giving money into a woman's hand is different, for it is like an action,' yet even so, speech comes and nullifies speech. But one law contradicts another! For you say; The law is as R. Johanan, while we have an established principle that the law is as R. Nahman, For the scholars propounded: Can he change his mind and divorce therewith?[8] R. Nahman said: He can change his mind and divorce therewith; R. Shesheth ruled: He cannot change his mind and divorce therewith — And it is an established [principle] that the law is as R. Nahman![9] — Granted that he nullified it as far as the messenger is concerned, he did not nullify its efficacy as a divorce.[10]

SHE IS BETROTHED TO THE SECOND. Rab said: She is permanently betrothed to the second; Samuel ruled: She is betrothed to the second until [the end of the] thirty days, after which the betrothal of the second is lifted and that of the first is completed. R. Hisda sat, and found it difficult: Wherewith is the betrothal of the second lifted? — Said R. Joseph to him, You, Sir, learn this in connection with the first clause, and so find it difficult; but Rab Judah learns it in connection with the second clause, and finds no difficulty: FROM NOW AND AFTER THIRTY DAYS. etc. Rab said: She is permanently betrothed yet not betrothed; whereas Samuel ruled: She is betrothed and not betrothed only until [the end of the] thirty days, after which the betrothal of the second loses force and that of the first is completed. Now, Rab is in doubt whether it is a stipulation or a withdrawal;[11] whereas Samuel is certain that it is a stipulation. Now, this enters into the controversy of the following Tannaim: [If one declares, 'Be thou divorced] from to-day and after my death,' it is a

divorce and not a divorce: this is the view of the Sages.[12] Rabbi ruled: It is indeed a divorce.[13] Then let Rab say: The halachah agrees with the Rabbis, and let Samuel say: The halachah is as Rabbi? — It is necessary. For if Rab said: The halachah is as the Rabbis, I might argue. [That is only] there, seeing that he comes to alienate her;[14] but here, that he comes to attach her [to himself]. I would say that he agrees with Samuel that it is a stipulation.[15] And if Samuel said: The halachah is as Rabbi, I would argue, That is only there, because there is no divorce after death;[16] but here, seeing that the kiddushin can take effect thirty days later, I might say that he agrees with Rab. Thus it is necessary.

Abaye said: On Rab's view, If one came and said to her, 'Behold, thou art betrothed to me from now and after thirty days'; then another came and said to her, 'Behold, thou are betrothed unto me from now and after thirty days':[17]

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(1) E.g.. if he first slightly smoothed a utensil, shewing that he considered this enough, or declared his intention to use it without smoothing, and then began to smooth it properly, the latter act nullifies the former, and until he finished it is not liable to uncleanness.

(2) If he first declares his intention not to smooth it, or begins using it without smoothing, and then declares that he will smooth it, and so it is unfinished, his second intention cannot nullify his first, or his action.

(3) On R. Johanan's view that speech nullifies speech.

(4) Lev. XI, 38. Foodstuffs, e.g., grain, cannot become unclean unless they receive moisture after being harvested. Now, the text as it stands may be read יתן 'one puts', which implies that a person must actually wet it; but the traditional reading יותן 'it be put', implying even if water accidentally falls thereon.

(5) I.e., if it falls there in circumstances that the owner may be assumed to be pleased therewith, it becomes liable to uncleanliness. Thus Scripture intimates that mere thought has the force of action.

(6) V. infra 79a.

(7) cancelling her agent's authority. Rashi states: Whether she retracts in the agent's presence or not, Tosaf., more plausibly, explains: she retracted without informing the agent; for if she informed him it is obvious that she can withdraw.

(8) With a Get which he had annulled after giving it to the agent.

(9) Which proves that his second declaration does not nullify the validity of the document.

(10) I.e., he never intended to nullify the document itself, but merely the messenger's authority.

(11) When one declares, 'Be thou betrothed unto me from now and after thirty days', we do not know whether he means, 'Be thou betrothed unto me from now, providing that I am still willing in thirty days' time'; or, 'Be thou betrothed unto me from now — not after thirty days.' If the first is correct, when after thirty days he signifies his willingness, his betrothal was valid from the very beginning, and so the subsequent betrothal of another is null. But if the second is correct, this is the same as the first clause, and the second betrothal is valid. Hence her status remains permanently doubtful.

(12) Because we are doubtful: he might have meant, 'B thou divorced from to-day, providing that I die,' in which case it is valid, or, 'Be thou divorced from to-day — no! only after my death': then it is invalid. If he dies childless, she may not marry her brother-in-law, lest it was a divorce; nor is she free to marry a stranger, lest it was not, and so must be freed by halizah, q.v. Glos.

(13) For it was certainly a stipulation.

(14) And as it is hard for him, he postpones it as much as possible, and therefore he may have retracted.

(15) Because he certainly desires the betrothal to take effect as early as possible.

(16) That is generally known, and therefore it must have been a stipulation.

(17) Which ended within the thirty.

Talmud - Mas. Kiddushin 60a

then another came and said to her, 'Behold, thou art betrothed to me from now and after thirty days':[1] she requires a divorce from the first and the second, but not from the last. For on either alternative:[2] if it is a stipulation, that of the first is [valid] kiddushin, but not those of the second and third; if it is withdrawal, that of the last is kiddushin, but not of the first and the second.[3] But is this

not obvious? — I might say. This expression implies both stipulation and withdrawal, and she requires a divorce from each:[4] hence we are informed [otherwise]. 'Ulla said in R. Johanan's name: Even a hundred have a hold on her.[5] R. Assi said likewise in R. Johanan's name: Even a hundred have a hold on her. R. Mesharasheya son of R. Ammi said to R. Assi: I will explain R. Johananðs reason to you: they made themselves like a row of bricks, each leaving room for the next. R. Hanina raised an objection: [If one declares, 'Be thou divorced] from to-day and after my death,' it is a divorce and not a divorce, and if he dies, she must perform halizah, but not yibum.[6] Now, on Rab's view it is well, for this supports him; according to Samuel too, [there is no difficulty,] for [he may say], This agrees with the Rabbis, whereas I hold with Rabbi.[7] But according to R. Johanan who maintains that something is left over: every divorce which leaves something in her [tied to her husband] is entirely invalid:[8] then let him perform yibum? — Said Raba: The divorce is to free [her], and death is likewise; [hence] what the divorce leaves [undone] is completed by death — Abaye demurred: How compare! Divorce frees her from the yabam's authority, whereas death places her in the yabam's authority? But, said Abaye, there, what is the reason? As a preventive measure, on account of 'From to-day, if I die,' which is certainly a valid divorce.[9] Then let us enact that [if he says,] 'from to-day, if I die,' she shall perform halizah[10] on account of 'from to-day and after death!'[11] — Should you say that she must perform halizah, she may submit to yibum.[12] Then here too, if you say that she must perform halizah, she may submit to yibum? — Then let her, and it does not matter, seeing that it[13] is only a Rabbinical precaution.[14]

MISHNAH. IF ONE SAYS TO A WOMAN. 'BEHOLD, THOU ART BETROTHED UNTO ME[15] ON CONDITION THAT I GIVE THEE TWO HUNDRED ZUZ,' SHE IS BETROTHED, AND HE MUST GIVE IT. ON CONDITION THAT I GIVE THEE WITHIN THIRTY DAYS FROM NOW: IF HE GIVES HER WITHIN THIRTY DAYS, SHE IS BETROTHED; IF NOT, SHE IS NOT BETROTHED. ON CONDITION THAT I POSSESS TWO HUNDRED ZUZ, SHE IS BETROTHED, PROVIDING HE POSSESSES [THEM]. 'ON CONDITION THAT I SHEW THEE TWO HUNDRED ZUZ,' SHE IS BETROTHED, AND HE MUST SHEW HER. BUT IF HE SHEWS HER [MONEY LYING] ON THE COUNTER,[16] SHE IS NOT BETROTHED.[17]

GEMARA. It was stated: R. Huna said: [The Mishnah means] and he must give it;[18] Rab Judah said: When he gives it:[19] 'R. Huna said, and he must give it': it is a condition, [and so] he fulfils the condition and goes on.[20] 'Rab Judah said: When he gives it': when he gives it, the kiddushin is valid; nevertheless now it is not kiddushin. Wherein do they differ? — They differ where she stretches out her hand and accepts kiddushin from another: on R. Huna's view it is not kiddushin; on Rab Judah's it is kiddushin. Now, we learnt similarly with reference to divorce. If one says to his wife, 'Behold here is thy divorce on condition that thou givest me two hundred zuz,' she is divorced, and must give [it]. It was stated: R. Huna said: And she must give it; Rab Judah said: When she gives it. 'R. Huna said: And she must give it': it is a condition, [and so] she proceeds to fulfil the condition. 'Rab Judah said: When she gives it': when she gives it to him, then it is a divorce; now, however it is not a divorce.

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(1) Or simply, 'Behold, thou art betrothed unto me. ð 'From now,' etc., is only mentioned as a parallel to the first two (Rashi).

(2) Lit., 'what will you?'

(3) Hence only the first and last are in doubt.

(4) The first may have meant to retract, so that the second's kiddushin is valid, whilst the second himself may have stipulated, in which case his is valid. Again, both the first and second may have retracted, so the third's is valid; thus all three are in doubt.

(5) The kiddushin of each has partial force, because the declaration means, Let the kiddushin commence now, but be completed only in thirty days' time. On this view there is no question of stipulation or withdrawal.

(6) V. p. 301. n. 1.

(7) V. supra 59b.

(8) Cf. supra p. 13, n. 10.
(9) And yibum is then forbidden. But when he says: ‘From to-day and after my death,’ people may confuse it with the other. Hence the Rabbis forbade yibum in both cases.
(10) Though actually it is unnecessary.
(11) Which, being invalid, leaves her tied to the yabam, and necessitates halizah; and, as stated, these two may be confused.
(12) Thinking that there is a real tie.
(13) Sc. the law that she must not submit to yibum.
(14) Lit., ‘fear’.
(15) E.g., with this perutah.
(16) Of a money-changer.
(17) Because it is understood that his own is meant.
(18) I.e., she is betrothed immediately, and then this obligation lies on him.
(19) Only then is she betrothed.
(20) I.e., when he can.

Talmud - Mas. Kiddushin 60b

Wherein do they differ? — They differ where the divorce document is torn or lost [before the money is given]: according to R. Huna, it is a divorce; according to Rab Judah, it is not a divorce. Now, it is necessary [to state both cases]. For if we were told this of kiddushin [only, I would say] in that case R. Huna says thus, because he comes to attach her [to himself];[1] but as for divorce, where he comes to alienate her, I might say that he agrees with Rab Judah. And if the latter were taught: only there does R. Huna rule thus, for he [the husband] is not ashamed to demand it of her; but here [in the case of marriage], seeing that she is ashamed to demand it of him, I would argue that he agrees with Rab Judah. Thus both are necessary.

An objection was raised: ‘Here is thy divorce, on condition that thou givest me two hundred zuz,’ she is divorced even though the document is torn or lost;[2] yet she may not marry another until she has given it. Again, it was taught: ‘Here is thy divorce on condition that thou givest me two hundred zuz,’ and then he dies, if she gave it [before his death], she is not bound to the yabam; if not, she is bound to the yabam.[3] R. Simeon b. Gamaliel said: She can give it to his brother, father, or one of his relations.[4] Now, they differ only in so far as one Master holds, ‘To me’ [implies] ‘but not to my heirs’, whilst the other rules: ‘Even to my heirs’; but all agree that it is a condition, which refutes Rab Judah! — Rab Judah answers you: Who is the authority for this? Rabbi. For R. Huna said in Rabbi's name:[5] He who says. ‘On condition,’ is as though he says: ‘From now’;[6] but the Rabbis disagree with him, and I hold with the Rabbis.

The text [says]: R. Huna said in Rabbi's name: He who says. ‘on condition,’ is as though he says: ‘From now.’ R. Zera observed: When we were in Babylon[7] we used to say: With reference to R. Huna's dictum in Rabbi's name, ‘One who says: "on condition," is as though he says: "from now"’: the Rabbis dispute it. When I went up thither [Palestine], I found R. Assi sitting and expounding in R. Johanan's name: All agree that if he says: ‘on condition,’ it is as though he says: ‘From now’. They differ only in respect of ‘from to-day and after death’. And it was taught even so: ‘From to-day and after [my death]’: it is a divorce, yet not a divorce: this is the view of the Sages. Rabbi said: This indeed is a divorce.[8] Now, according to Rab Judah who maintains that they differ in respect of ‘on condition’ too’ instead of disputing in [the case of] ‘from to-day and after [my] death,’ let them dispute in respect of ‘on condition?’ — That is to teach you the extent of Rabbi's view,[9] that even in the case of ‘from to-day and after death,’ it is a valid divorce. Then let them dispute with reference to ‘on condition,’ to shew you the extent of the Rabbis’ view? — The extent of what is permitted is more important.[10]

ON CONDITION THAT I GIVE THEE WITHIN THIRTY DAYS FROM NOW' etc. But it is obvious? — I might have thought that it is not a condition,[11] and he said it to urge her on; hence we are told [that it is not so.]

ON CONDITION THAT I POSSESS TWO HUNDRED ZUZ' etc. But let us fear that he may possess it [secretly]? Moreover, it was taught: We fear that he may possess it? — There is no difficulty: The one refers to certain kiddushin; the other, to doubtful kiddushin.[12] 'ON CONDITION THAT I SHEW THEE TWO HUNDRED ZUZ' etc. A Tanna taught: Her purpose was to see none but his.

BUT IF HE SHEWS HER [MONEY LYING] ON THE COUNTER, SHE IS NOT BETROTHED. But it is obvious? — It is necessary [to teach it] only even when he holds the money in an investment.[13] MISHNAH. [IF HE SAYS TO HER 'BE THOU BETROTHED UNTO ME][14] ON CONDITION THAT I OWN A BETH KOR[15] OF LAND',[16] SHE IS BETROTHED, PROVIDING THAT HE DOES OWN IT. ON CONDITION THAT I OWN IT IN SUCH AND SUCH A PLACE', IF HE OWNS IT THERE SHE IS BETROTHED, BUT IF NOT SHE IS NOT BETROTHED. 'ON CONDITION THAT I SHEW THEE A BETH KOR OF LAND,' SHE IS BETROTHED, PROVIDING THAT HE DOES SHEW IT TO HER. BUT IF HE SHEWS IT TO HER IN A PLAIN,[17] SHE IS NOT BETROTHED.

GEMARA. But let us fear that he may possess it? Moreover, it was taught. We fear that he may possess it? — There is no difficulty: the one refers to certain kiddushin; the other, to doubtful kiddushin.[18]

Why must it be taught with respect to both land and money? — It is necessary: for if we were told this of money, [I would say] that is because people are accustomed to hide money;[19] but as for land I would say: If he possesses land, it is known:[20] hence we are informed [otherwise].

ON CONDITION THAT I POSSESS IT IN SUCH AND SUCH A PLACE,' IF HE POSSESSES IT. etc. But it is obvious? — I might argue that he can say to her, 'What does it matter to you? I will take the trouble of bringing [its produce where you want it].' Hence we are informed [that it is not so].

ON CONDITION THAT I SHEW THEE A BETH KOR OF LAND. A Tanna taught: Her meaning was to see none but his.

BUT IF HE SHEWS IT TO HER IN A PLAIN, SHE IS NOT BETROTHED. But that is obvious? — It is necessary [to teach it] only if he holds it on a farming tenancy.[21]

With respect to hekdesh we learnt:

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(1) Therefore we assume that both are anxious for the kiddushin to be valid as early as possible, and determine that the first perutah shall effect it.

(2) By the time the condition is fulfilled. This contradicts Rab Judah.

(3) If her husband dies childless.

(4) Whereupon the divorce is retrospectively valid.

(5) The reading supra 8a is Rab, which is more correct per se, since Rab was his teacher. But as a Tanna is necessary here, it is referred to Rabbi.

(6) V. p. 29, n. 8.

(7) R. Zera hailed from Babylon. and went to study in Palestine.

(8) V. supra 59b.

(9) Lit., 'Rabbi's strength.'

(10) I.e., it is more important to shew how far one maintains that a particular act is valid, rather than the opposing view how far it is invalid, for one must be more positive to permit than to forbid.

(11) That it be given within the thirty days.

(12) If he is not openly in possession of the stipulated sum she is not betrothed with certainty; v. p. 47. n. 10.

(13) He was trading with another man's capital at a fixed percentage of profit and loss, so that he had a proprietary interest therein. Nevertheless she is not betrothed.

(14) E.g., with this perutah.

(15) An area which requires thirty se'ahs of seed, which is estimated at 1500 cubits X 50 cubits.

(16) Lit., 'earth'.

(17) Which does not belong to him.

(18) v. p. 305. n. 5.

(19) Hence even if he is not openly in possession of it, she is doubtfully betrothed.

(20) Lit., 'it has a voiceð.

(21) Paying an agreed percentage of the crops in rent; v. p. 305, n. 6.

Talmud - Mas. Kiddushin 61a

He who sanctifies his field when Jubilee is in force, must pay [for its redemption] fifty silver shekels for [an area requiring] a homer of barley seed.[1] If it contains ravines ten handbreadths deep, or rocks ten handbreadths high, they are not measured with it;[2] if less than this, they are measured therewith. Now, we pondered thereon: Granted that they are not sanctified together with the [rest of the] field, yet let them be sanctified separately? And should you answer, whatever is less than a beth kor is not counted.[3] But the following contradicts it: [And if a man shall sanctify unto the Lord part of a] field [of his possession, etc.]:[4] why is this stated? Because it is said, the sowing of a homer of barley shall be valued at fifty [shekels of silver]; [hence] l know it only if he sanctifies in such a manner;[5] how do I know to include a lethek.[6] half a lethek, a se'ah, tarkab[7] half a tarkab, and even a quarter [se'ah]? Because it is stated: 'a field,' whatever its size! — Said Mar 'Ukba b. Hama: The reference here is to ravines filled with water, because they are unfit for sowing. This may be proved too, because it is taught analogous to high rocks.[8] This proves it. If so, [it is the same] even if less than this?[9] — Those are called basins of the field[10] and ridges[11] of the field.[12]

With respect to purchase we learnt: If one says to his neighbour, 'I sell you a beth kor of land,' and it contains ravines ten handbreadths deep or rocks ten handbreadths high, they are not measured with it. And Mar 'Ukba b. Hama said: Even if they are not filled with water. What is the reason? — Said R. Papa: Because a man does not wish to pay his money for one field and it should appear as two or three plots.[13] How is it here:[14] do we compare it with hekdesh or purchase? — It is rational that we compare it to hekdesh. because he can say to her, 'I will exert myself[15] sow it, and bring [you the crop].' MISHNAH. R. MEIR SAID: EVERY STIPULATION WHICH IS NOT LIKE THAT OF THE CHILDREN OF GAD AND THE CHILDREN OF REUBEN IS NOT A [VALID] STIPULATION, BECAUSE IT IS WRITTEN. AND MOSES SAID UNTO THEM, IF THE CHILDREN OF GAD AND THE CHILDREN OF REUBEN WILL PASS WITH YOU OVER THE JORDAN, [. . . THEN YE SHALL GIVE THEM THE LAND OF GILEAD FOR A POSSESSION]. AND IT IS ALSO WRITTEN. BUT IF THEY WILL NOT PASS OVER WITH YOU ARMED, THEN THEY SHALL HAVE POSSESSIONS AMONG YOU IN THE LAND OF CANAAN.[16] R. HANINA B. GAMALIEL MAINTAINED: THE MATTER HAD TO BE STATED. FOR OTHERWISE IT IMPLIES THAT THEY SHOULD HAVE NO INHERITANCE EVEN IN CANAAN.[17]

GEMARA. R. Hanina b. Gamaliel says well to R. Meir? — R. Meir answers you: Should you think that it does not come for [teaching] a double stipulation, it [Scripture] should write, 'but if they will not pass over . . . they shall have possession among you': why state, 'in the land of Canaan'?

(1) Whatever its actual value, in accordance with Lev. XXVII, 16.
(2) As part of the total area.
(3) Because that is the smallest area mentioned in Scripture.
(4) Ibid.
(5) I.e., this area.
(6) Half a kor.
(7) =Three kabs =half a se'ah.
(8) Where sowing is impossible.
(9) Ten handbreadths high or deep.
(10) Into which the water runs off.
(11) Lit., 'spine'.
(12) But are not considered as distinct. For fuller notes v. B.B. (Sonc. ed.) pp. 429ff.
(13) Such deep ravines etc. break up the field.
(14) In our Mishnah, if the field contains such deep ravines which are not waterlogged.
(15) Lit., 'trouble'.
(16) Num. XXXII, 29f; but not Gilead. Though the second follows from the first, Moses stated both contingencies explicitly. Again, the positive ('will pass') precedes the negative ('will not pass'). and the condition ('if they pass over') precedes the apodosis ('then ye shall give' etc.). Hence every stipulation, to be valid, requires these three factors: (i) it must be double, stating both contingencies; (ii) the positive must precede the negative; and (iii) the condition must be stated before the act (Rashi. Raabad, Adreth and Tur). Maim. interprets: the condition must be stated before the act is agreed upon, but not after.
(17) But if the negative clearly follows from the positive, the condition need not be doubled. Rashi holds that he differs on this point only, agreeing on the other two, while Tosaf. maintains that he differs on all three.

Talmud - Mas. Kiddushin 61b

This proves that it comes to necessitate a double stipulation. And R. Hanina b. Gamaliel? — If the Divine Law did not write, 'in the land of Canaan,' I would think that 'they shall have possession among you' in the land of Gilead, but nothing at all of the land of Canaan. And R. Meir? — 'Among you' implies, 'wherever you have possessions'.[1] It was taught: R. Hanina b. Gamaliel said: For example, to what may this matter be compared? To a man who divided his estate among his sons, and directed, 'That son shall inherit that field, that son shall inherit that field, while that son shall pay two hundred zuz and inherit that field.[2] But if he does not give it, he shall inherit the rest of my estate together with his brothers.' Now, what causes him to receive an inheritance together with his other brethren in the rest of the estate? His doubling [of the stipulation] effects it for him.[3] But the illustration is not similar to our Mishnah. There he states. [FOR OTHERWISE] IT IMPLIES THAT THEY SHOULD HAVE NO INHERITANCE EVEN IN CANAAN, which proves that the doubling served a purpose in respect of Gilead too;[4] whereas here he states: 'What causes him to receive an inheritance together with his other brethren in the rest of the estate? His doubling [of the stipulation] effects it for him,' which proves that the doubling is efficacious [only] in respect to the rest of the estate? — There is no difficulty: the former was before R. Meir told him [the implication of], 'then they shall have possession therein;'[5] the latter [the illustration], after R. Meir told him [the implication of], 'then they shall have possession therein'.[6]

As for R. Meir, it is well: hence it is written: If thou doest well, shalt thou not be rewarded? and if thou doest not well, sin coucheth at the door.[7] But according to R. Hanina, what is its purpose?[8] — I might have thought, If thou doest well, there is reward, but if thou doest not well, there is neither reward nor punishment. Hence we are informed [otherwise].

Now, as for R. Meir, it is well: hence it is written, then thou shalt be clear from this my oath;[9] but according to R. Hanina b. Gamaliel, what is its purpose?[10] — It is necessary: I might think, If she were willing but not they [sc. her family], he was to bring her against their will. Hence we are

informed [otherwise]. What is the purpose of, 'and if the woman be not willing?'[9] — It is necessary: I might think, If they [her family] were willing but not she, he should bring her against her will. Hence we are informed [otherwise].

Now, as for R. Meir, it is well: hence it is written. If ye walk in my statutes . . . and if ye shall reject my statutes.[11] But according to R. Hanina b. Gamaliel, what is its purpose? — It is necessary. I might think, 'if ye walk in my statutes', [ye shall have] a blessing; 'but if ye shall reject my statutes,' neither a blessing nor a curse. Hence we are informed [otherwise].

Now, as for R. Meir, it is well: hence it is written: If ye be willing and obedient etc. . . . but if ye refuse and rebel.[12] But according to R. Hanina b. Gamaliel, what is its purpose? — It is necessary. I might think, 'If ye be willing,' [it will be] well; 'but if ye refuse,' [it will be] neither well nor good. So we are informed [that it is not so].

What is the meaning of,

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(1) I.e., Canaan; hence R. Hanina's hypothetical assumption is impossible. — From the whole discussion it appears that even if they did not pass over they would still have a portion of Palestine. This is most unreasonable, and so Tosaf. explains the verses as follows: If they pass over armed at the head of the forces, bearing the brunt of the battle, they will be favoured with the special grant of Gilead. But if they merely take an equal share with their brethren in the conquest, they will receive the same as the rest, viz., a portion of Palestine proper.

(2) Which is worth more than his due share.

(3) [For but for the second claim, it might be maintained that if he does not give the two hundred zuz he can claim a share only in the third field, but receives nothing from the other two fields assigned to his two brothers. Similarly, in the verses under discussion, but for the second claim, it would be assumed that the Gaddites and Reubenites in the case of their non-fulfilment of the condition would share with the rest of the tribes the district of Gilead, while forfeiting all claim to the land of Canaan.]

(4) ['EVEN' implies that, but for this doubling, they would, on nonfulfillment of the condition, have no share in Gilead.]

(5) [R. Hanina in the Mishnah was but countering R. Meir's argument which he understood to be that the whole of the verses in question are required for the purpose of the doubling of the condition, and he thus said that the doubling was necessary, for without it, it would be assumed that they would have no share at all, even in the land of Canaan.]

(6) [When he learnt that R. Meir based his deduction from 'in the land of Canaan', he rejoined that these words are necessary to indicate that they would, on fulfilment of the condition, receive a share in the land of Canaan, as supra.]

(7) Gen. IV, 7.

(8) For one follows from the other.

(9) Ibid. XXIV. 8.

(10) Since it follows from the general context of the oath, q.v. (Tosaf.).

(11) Lev. XXVI, 3, 15.

(12) Isa. I, 19f.

'ye shall be fed with the sword'?[1] — Said Raba: Coarse salt, hard baked barley bread, and onions; for a Master said: Stale bread baked in a large oven with salt and onions is as harmful to the body as swords.

Now, as for R. Hanina b. Gamaliel, it is well: hence it is written: If no man have lain with thee, and if thou hast not gone aside to uncleanness, be thou free.[2] But according to R. Meir, it should [also] state, 'be thou strangled'?[3] — Said R. Tanhum: hinnaki is written.[4] [Then] as for R. Meir, it is well: hence it is written hinnaki. But according to R. Hanina b. Gamaliel. what is its purpose?[5] — It is necessary: I might think, If no man have lain [with thee] . . . be thou free; but if a man have lain [with thee], be thou neither free nor strangled, but merely [guilty of violating] a prohibition. Hence we are informed [otherwise].

As for R. Meir, it is well: hence it is written: He shall purify himself therewith on the third day, and on the seventh day, [then] he shall be clean: but if he purify not himself etc.[6] But according to R. Hanina b. Gamaliel, what is its purpose? — It is necessary: I might think, The precept of sprinkling is [that it be performed] on the third and the seventh [days]; yet if it is done only on one of these days, it is done [and effective]. Therefore we are told [that both days are essential]. What is the purpose of, and the clean person shall sprinkle upon the unclean on the third day, and on the seventh day?[7] — It is necessary: I might think, the third excludes the second, and the seventh excludes the sixth, because thereby one diminishes the days of purification; but if it is performed on the third and the eighth days. thereby increasing the period of purification. I might say that it is well. Hence we are informed [otherwise].[8] What is the purpose of, 'and on the seventh day he shall purify him'? — It is necessary: I might think, that [sc. sprinkling on these days] is only for sacred food,[9] but for terumah even one is sufficient: hence we are told [that it is not so]. MISHNAH. IF HE BETROTHS A WOMAN AND THEN DECLARES, 'I THOUGHT THAT SHE WAS A PRIEST'S DAUGHTER, WHEREAS SHE IS OF A LEVITE.' OR OF A LEVITE WHEREAS SHE IS OF A PRIEST; 'POOR', WHEREAS SHE IS WEALTHY, OR 'WEALTHY', WHEREAS SHE IS POOR, SHE IS BETROTHED, SINCE SHE DID NOT DECEIVE HIM. IF HE SAYS TO A WOMAN, BEHOLD, BE THOU BETROTHED UNTO ME AFTER I BECOME A PROSELYTE,' OR 'AFTER THOU BECOMEST A PROSELYTE, AFTER I AM LIBERATED,' OR 'AFTER THOU ART LIBERATED, AFTER THY HUSBAND DIES'. OR, 'AFTER THY SISTER DIES.'[10] OR 'AFTER THY YABAM PERFORMS HALIZAH FOR THEE'; SHE IS NOT BETROTHED. LIKEWISE, IF HE SAYS TO HIS NEIGHBOUR, IF THY WIFE BEARS A FEMALE, LET HER BE BETROTHED UNTO ME,' SHE IS NOT BETROTHED. (IF HIS WIFE, HOWEVER, IS PREGNANT, THE CHILD BEING DISCERNIBLE, HIS WORDS ARE VALID, AND IF SHE BEARS A FEMALE, SHE IS BETROTHED.)[11]

GEMARA. We learnt elsewhere: Terumah must not be separated from detached [corn] for that which is attached,[12] and if he does separate, his separation is not terumah. R. Assi asked R. Johanan: What if one declares, 'The detached produce of this furrow be terumah for the detached produce of this one, when it is plucked',[13] and then it is plucked? — He answered him: Whatever [act] lies in his power, is not as though that act were lacking.[14] He raised an objection: IF ONE SAYS TO A WOMAN, BEHOLD, THOU ART BETROTHED UNTO ME AFTER I BECOME A PROSELYTE, OR, 'AFTER THOU BECOMEST A PROSELYTE,' 'AFTER I AM LIBERATED, OR, 'AFTER THOU ART LIBERATED,' 'AFTER THY HUSBAND DIES,' OR, 'AFTER THY SISTER DIES,' OR, AFTER THY YABAM PERFORMS HALIZAH FOR THEE.' SHE IS NOT BETROTHED. As for all, it is well, for they are not in his power; but [to be] a proselyte surely lies in his power! — [To become] a proselyte is not in his power either. For R. Hiyya b. Abba said in R. Johanan's name:

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(1) Ibid., so translated here.

(2) Num. V. 19; but the reverse contingency is left to be understood.

(3) If thou hast gone aside, etc.; i.e., the reverse.

(4) Which also suggests, hinnaki, be thou strangled. v. Shebu (Sonc. ed.) p. 213, n. 6 and Sot. (Sonc. ed.) P- 89, n. 2.

(5) Why write a word capable of two readings?

(6) Num. XIX, 12.

(7) Ibid. 19. This difficulty arises on all views: why repeat third and seventh?

(8) By this repetition.

(9) I.e., sacrifices, which require a very high degree of purity.

(10) I.e., his own wife, whether living with him or divorced.

(11) From R. Hanina's statement infra but is evident that the bracketed passage must be deleted.

(12) Produce is not liable to terumah until it is harvested, but not while it is yet attached to the soil, and one may not separate from what is liable for what is not liable.

(13) That refers to both clauses.

(14) Since it rests with him to harvest the produce, it is accounted as already harvested, and his declaration is valid.

Talmud - Mas. Kiddushin 62b

A proselyte requires three [Israelites].[1] What is the reason? Judgment [mishpat] is written in connection therewith, as for a lawsuit:[2] who can say that these three will assemble for him?[3]

R. Abba b. Memel demurred thereto:[4] If so, if a man gives a perutah to his [heathen] bondmaid and says to her, 'Behold, thou art betrothed unto me after I liberate thee,' is it indeed [valid] kiddushin?[5] — How compare! There, she is originally like an animal,[6] whereas now [after liberation] she is an independent mind. Then when R. Oshaia said: If he gives his wife a perutah and says to her, 'Behold, thou art betrothed unto me after I divorce thee,' she is not betrothed: according to R. Johanan. is she indeed betrothed? — Granted that it rests with him to divorce, is it in his power to betroth her?[7] [From this answer, then,] solve R. Oshaia's problem. [Viz.] [What] if one gives two perutoth to a woman: With one he says to her, 'Be thou betrothed unto me to-day.' and with the other, 'Be thou betrothed unto me after I divorce thee': from this [then] deduce that it is not [valid] kiddushin! — [No.] Perhaps. just as kiddushin can be effective now, it can be effective afterwards.[8]

It was taught as R. Johanan: One must not separate from detached [produce] for attached; and if one does separate, his separation is not terumah. How so? If he declares, 'The detached produce of this furrow be terumah for the attached produce of that one,' or 'the attached produce of this furrow be terumah for the detached produce of that one', his statement is null. But if he declares, 'when it is cut off,' and then it is cut off, his declaration is valid. R. Eliezer b. Jacob went further.[9] Even if he declares, 'The detached produce of this furrow be terumah for the attached produce of this one,' or, 'the attached produce of this furrow be terumah for the detached produce of this one when it [the attached] is a third grown and cut off,' and it then grows to a third [of its full maturity] and is cut off, his declaration is valid.[10] Rabbah said: R. Eliezer b. Jacob ruled thus only of fodder,[11] but not of leek-like plants.[12] R. Joseph said: [He ruled thus] even of soft plants.[13] Where is it implied that this word 'agam' connotes leek-like plants? — R. Eleazar answered, because Scripture saith, is it to bow down his head as a rush [ke-agmon]?[14]

With whom does the following agree? For we learnt: IF ONE SAYS TO HIS NEIGHBOUR. 'IF THY WIFE BEARS A FEMALE, LET HER BE BETROTHED UNTO ME.' SHE IS NOT BETROTHED — whereon R. Hanina said: This was taught only if his wife is not pregnant; but if she is, his declaration is valid, — with whom [does it agree]? — If it is according to Rabbah, it means that her child was discernible; if as R. Joseph, even if her child is not discernible.[15] Others state, Rabbah said: R. Eliezer b. Jacob ruled thus only of the fodder of a naturally watered field, but not of the fodder of an artificially irrigated field.[16] R. Joseph said: Even of the fodder of an artificially irrigated field. With whom does the following agree? For we learnt: IF ONE SAYS TO

HIS NEIGHBOUR. 'IF THY WIFE BEARS A FEMALE, LET HER BE BETROTHED UNTO ME,' SHE IS NOT BETROTHED, whereon R. Hanina said: This was taught only if his wife was not pregnant; but if she was, his declaration is valid with whom [does it agree]? — It means that her child was discernible, and agrees with all.[17]

Abaye said: R. Eliezer b. Jacob, Rabbi, and R. Meir, all hold that one may transmit the title to an object which has not come into the world.[18] R. Eliezer b. Jacob, as stated. Rabbi, for it was taught:

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(1) For the ceremony of conversion, v. Yeb. 47a.

(2) Lev. XXIV, 22: Ye shall have one manner of judgment (mishpat), as well as for the proselyte (so understood here; E.V. 'stranger') as for the homeborn. 'Mishpat' really means a judgment in a civil suit, for which three are required.

(3) Hence it is not in his power. Views on proselytes varied in ancient Israel, v. J.E. X. pp. 221ff. But as it may, the answer given here shews that one encountered real difficulties before he could be converted, and often was denied it altogether.

(4) Sc. R. Johanan's ruling.

(5) Surely not, though it does rest with him.

(6) In that she has no independent will.

(7) Surely not.

(8) That is R. Oshaia's problem: seeing that he can betroth her now he can do so for the kiddushin to become effective after divorce. But if he gives his wife kiddushin, to take effect after he divorces her, no part of his declaration is valid there and then.

(9) Lit., 'said more than this'.

(10) Though before it is a third grown it is not regarded as produce at all, and even if he harvested it then he could not tithe it (R.H. 13a), and so it is something as yet non-existent; moreover, it does not rest with him to make it grow. Yet R. Eliezer b. Jacob maintains that his declaration is valid, for one can transmit title of what is yet non-existent. (Here by his declaration he transmits a title to priests.)

(11) I.e., corn which can be cut before it is a third grown and used for fodder.

(12) Jast.: soft, bending plants, which cannot be used as fodder.

(13) Rabbah holds that soft plants have no real worth at all before they are a third grown; R. Joseph holds that even so it is sufficient for R. Eliezer b. Jacob's view to operate.

(14) Isa. LVIII, 5.

(15) 'Discernible' and 'not discernible' are compared respectively to fodder, which can be put to use, and to soft plants. which cannot (before they are a third grown). On both views, however, R. Hanina's interpretation implies that one can transmit the title of an object which is as yet non-existent, and hence agrees with R. Eliezer b. Jacob.

(16) The former is more certain than the latter, which permits human error and neglect.

(17) Since the development of the embryo does not depend on artificial means, it is similar to the fodder of a naturally watered field.

(18) I.e., as yet non-existent.

Talmud - Mas. Kiddushin 63a

Thou shalt not deliver unto his master a servant [which is escaped from his master]:[1] Rabbi said: The Writ refers to one who buys a slave on condition that he emancipates him.[2] How so? Said R. Nahman b. Isaac: E.g., if he wrote for him, 'When I buy you, you belong to yourself from now.'[3]

R. Meir, for it was taught: If one says to a woman, 'Behold, thou art betrothed unto me after I become a proselyte', or, 'after thou becomest a proselyte', 'after I am freed,' or 'after thou art freed,' 'after thy husband dies,' or, 'after thy sister dies,' 'after thy yabam performs halizah for thee,' she is not betrothed. R. Meir said: She is betrothed.[4] R. Johanan the sandal maker said: She is not betrothed. R. Judah the Nasi[5] said: [By rights] she is betrothed, yet why did they [the Sages] say, she is not betrothed? Because of bad feeling.[6] Then let R. Judah the Nasi be counted too? — Rabbi and R. Judah the Nasi are identical. And let R. Akiba be counted too? For we learnt: [If a woman says to

her husband,] 'Konam be my work for thy mouth,'[7] he need not annul it.[8] R. Akiba said: He should annul it, lest she do for him more than she is obliged to do for him![9] — But was it not stated thereon, R. Huna son of R. Joshua said: It means that she vowed, 'Let my hands be sanctified to their Maker,'[10] and her hands are in existence?[11]

MISHNAH. IF ONE SAYS TO A WOMAN, BEHOLD. THOU ART BETROTHED UNTO ME ON CONDITION THAT I SPEAK TO THE GOVERNOR ON THY BEHALF', OR 'THAT I WORK FOR THEE AS A LABOURER', IF HE SPEAKS TO THE GOVERNOR ON HER BEHALF OR WORKS FOR HER AS A LABOURER, SHE IS BETROTHED; IF NOT, SHE IS NOT BETROTHED.

GEMARA. Resh Lakish said: Providing that he gives [her] the value of a perutah.[12] But not in payment [of speaking etc.]? Surely it was taught: '[Be thou betrothed unto me] in payment for that I drove thee on an ass,' or 'seated thee in the carriage or ship,' she is not betrothed.[13] 'In payment for that I will drive thee on an ass, or 'seat thee in a carriage or ship,' she is betrothed? And should you answer: Here too it means that he gives her the value of a perutah: but it states: 'in payment?' Again, it was taught: [If a woman says,] 'Sit with me as a companion, and I will become betrothed unto thee,' 'jest before me,' 'dance before me', 'do as was done in this public game',[14] we assess it: if it is worth a perutah, she is betrothed; if not, she is not betrothed. And should you answer, here too it means that he gives her the value of a perutah [in addition]; surely it states, we assess it, thus refuting Resh Lakish? — Resh Lakish can answer you: The Tanna of this Baraitha[15] holds, Wages are a liability only at the end; whereas our Tanna holds, Wages are a liability from beginning to end.[16] Now, what compels Resh Lakish to explain our Mishnah on the basis that wages are a liability from beginning to end and that he gives her [a perutah in addition]? — Said Raba: [For otherwise,] our Mishnah presents a difficulty to him: why state particularly, ON CONDITION: state, 'in payment for'? Hence this proves that wherever 'on condition' [is taught], it means that he gives her [something in addition].

MISHNAH. [IF HE SAYS,] 'ON CONDITION THAT [MY] FATHER CONSENTS,' IF HIS FATHER CONSENTS, SHE IS BETROTHED; IF NOT, SHE IS NOT BETROTHED. IF HIS FATHER DIES, SHE IS BETROTHED; IF THE SON DIES, THE FATHER IS INSTRUCTED TO SAY THAT HE DOES NOT CONSENT.[17]

GEMARA. What is meant by 'ON CONDITION THAT [MY] FATHER CONSENTS?' Shall we say, providing that my father [explicitly] says 'yes'? Then consider the middle clause: IF HIS FATHER DIES, SHE IS BETROTHED. Surely he did not say 'yes!' Hence [it must mean]

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(1) Deut. XXIII, 16.

(2) Or, for the purpose of emancipating him. If his master goes back on his word and the slave escapes, the Court must not deliver him up again.

(3) Thus he transmits to the slave something which, as far as he is concerned, is as yet non-existent, viz., his rights over him. (Such fall within the category of things which have not yet come into the world.) Since Rabbi applies the verse to such a case, he evidently holds such transmission valid.

(4) Though all these are non-existent at the time.

(5) The Prince.

(6) [Which such betrothal engenders in the mind of the sister and the husband whose death seems to be keenly awaited. R. Judah the Nasi refers to these two cases. In the other cases he agrees with R. Meir.]

(7) Forbidden be it by a vow, v. Ned. 85a.

(8) Since she must work for him, her vow is null in any case.

(9) For the extent of her obligation v. Ket. 64b. The vow in respect of the excess is binding, hence R. Akiba rules that her husband should annul it. This shews that he holds that one may make a binding declaration in respect of what is not yet in existence.

(10) In the sense that they may do nothing for her husband.
(11) Lit., 'in the world'.
(12) And stipulates, 'on condition that I speak' etc.
(13) Because this payment is a debt, which cannot effect kiddushin; v. supra 6b.
(14) Jast. Which games are alluded to is not stated. Rashi: Make for me such a masonry.
(15) Lit., 'this outside Tanna'.
(16) V. supra 48a.
(17) So that the kiddushin is null ab initio and she is not bound to the yabam.

Talmud - Mas. Kiddushin 63b

'on condition that my father is silent.'[1] Then consider the last clause: IF THE SON DIES. THE FATHER IS INSTRUCTED TO SAY THAT HE DOES NOT CONSENT: yet why, seeing that he was silent?[2] Hence [it must mean that] he said to her, on condition that my father does not [explicitly] object': thus the first clause has one meaning, while the middle and the last clauses have a different meaning? — Said R. Jannai. Even so, Resh Lakish observed: This proves that in R. Jannai's opinion we strain the Mishnah by giving two different connotations [to the same phrase], so that it agrees with one Tanna, rather than give it one connotation by making it reflect [the views of] two Tannaim.[3] R. Joseph b. Ammi said: After all, it has one connotation, and what is meant by 'ON CONDITION THAT [MY] FATHER CONSENTS'? On condition that he does not protest within thirty days from now.[4]

MISHNAH. [IF A MAN DECLARES,] 'I HAVE GIVEN MY DAUGHTER IN BETROTHAL, BUT DO NOT KNOW TO WHOM I HAVE BETROTHED HER,' AND THEN ONE COMES AND STATES, I BETROTHED HER, HE IS BELIEVED. IF ONE SAYS, I HAVE BETROTHED HER,' AND ANOTHER [ALSO] SAYS, 'I BETROTHED HER,' BOTH MUST GIVE A DIVORCE;[5] BUT IF THEY WISH, ONE GIVES A DIVORCE AND THE OTHER MARRIES HER.

GEMARA. Rab said: HE IS BELIEVED to give her a divorce, but he is not believed to take her. He is believed to give her a divorce: no man sins without profit.[6] But he is not believed to take her: passion may have mastered him. R. Assi said: He is even believed to take her. Yet R. Assi admits that if she declares, 'I have been betrothed, but do not know to whom,' and one comes and says: 'I betrothed her,' he is not believed to take her.[7] We learnt: BUT IF THEY WISH, ONE GIVES A DIVORCE AND THE OTHER TAKES HER: this refutes Rab! — Rab can answer you. There it is different: since another is with him, he is indeed afraid.[8] It was taught as R. Assi: 'I have given my daughter in betrothal, but do not know to whom I betrothed her,' and one comes and says: 'I betrothed her,' he is believed, even to take her. If he takes her and [then] another comes and says: 'I betrothed her,' it does not rest with the latter to forbid her to him [the first]. [But] if a woman says: 'I have been betrothed, but do not know to whom,' and one comes and declares, 'I betrothed her,' he is not trusted to take her, because she will shield him.[9]

The Scholars propounded: Can we stone [her] on his statement?[10] — Rab said: We do not stone [her]; R. Assi said: We stone [her]. Rab said: We do not stone [her]: the Divine Law gave credence to the father in respect of an interdict[11] but not of execution. R. Assi maintained, We stone [her]: The Divine Law gave credence to the father in the whole matter. R. Assi said: Yet I admit that if she herself says: 'I was betrothed,' we do not stone [her].[12] R. Assi said further: These rulings of mine break roofs![13] [For one may argue:] If you say that we stone her where one who comes to take her may take her,[14] how much the more should she be stoned where one who comes to take her may not take her![15] Yet it is not so. The Divine Law gave credence to the father, but it gave no credence to her.[16] But R. Hisda ruled: In both cases we do not stone. Now, R. Hisda follows his opinion [elsewhere]. For R. Hisda said: [If a man declares,] 'This my son is nine years and a day.' [or] 'this

my daughter is three years and a day,' he is believed in respect of sacrifice, but not in respect of flagellation or [other] punishment.[17] It was taught as R. Hisda: [If a man declares,] 'This my son is thirteen years and a day,' [or] this my daughter is twelve years and a day,'[18]

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(1) I.e., does not explicitly object.

(2) And the Kiddushin became effective.

(3) For it could be explained that he simply said: 'on condition that my father consents' and that the first and the middle and last clauses represent two differing views as to its meaning: the Tanna of the first explains it to mean that his father is silent; whereas the one of the middle and last, that his father does not explicitly object.

(4) I.e., within any agreed period, and CONSENTS and DOES NOT CONSENT mean within that period.

(5) To free her for others.

(6) Why should he want to divorce her if she is not his wife?

(7) The reason is stated below.

(8) [He is afraid to lie for fear that the father who gave her in betrothal will remember that he was not the man, but the other, and thus expose him].

(9) If her father betrothed her one is afraid to lie, because he will certainly expose him if he remembers that this was not the man; hence he is believed. But a woman, in her eagerness for marriage, may conceal his falsehood, and he may count upon this: hence he is disbelieved.

(10) Lit., 'at his hand'. If her father declares that he gave her in betrothal, but does not produce witnesses, and then she is unchaste, is he believed to the extent of stoning the daughter for adultery? V. Deut. XXII, 21.

(11) By his declaration he interdicts her to all men.

(12) For subsequent unchastity.

(13) They are paradoxical.

(14) Viz., when her father states that he does not know to whom he betrothed her. The fact that another is permitted to take her shews that the father is not so absolutely believed as to render her forbidden to all, including the claimant; yet she is stoned for unchastity.

(15) Viz., when she herself declares that she does not know to whom she was betrothed. Since the claimant may not take her, we evidently regard her as a married woman absolutely. Surely then we should stone her for unchastity?

(16) Hence she is not stoned; nevertheless, the claimant may not take her, because she rendered herself, by her declaration, forbidden to all.

(17) The intercourse of a male or female of these ages (and upwards) is regarded as such in respect of adultery, incest, etc. Now, if these were committed unintentionally, so that a sacrifice is incurred, the father's statement is accepted. But if intentionally and attested by witnesses, thus involving flagellation or death, according to the nature of the offence, the father's uncorroborated statement is not believed. They themselves, being minors, are in any case exempt, but the reference is to their adult partners.

(18) At these ages they are adults.

Talmud - Mas. Kiddushin 64a

he is believed in respect of vows, haramim,[1] sanctifications, and 'arakin;[2] but not in respect of flagellation and [other] punishments.

MISHNAH. [IF A MAN DECLARES.] 'I HAVE GIVEN MY DAUGHTER IN BETROTHAL,'[3] 'I GAVE HER IN BETROTHAL AND DIVORCED HER WHILST A MINOR,' AND SHE IS [NOW] A MINOR,[4] HE IS BELIEVED.[5] 'I GAVE HER IN BETROTHAL AND DIVORCED HER WHILST A MINOR,' AND SHE IS NOW AN ADULT, HE IS DISBELIEVED.[6] 'SHE WAS TAKEN CAPTIVE AND I REDEEMED HER,[7] WHETHER SHE IS A MINOR OR AN ADULT[8] HE IS DISBELIEVED.

GEMARA. Wherein do the first and the second clauses differ? — In the first clause, it is in his hand;[9] in the second, it is not in his hand. Is it not? Surely it is in his power to marry her to a halal,[10] whereby he unfits her for the priesthood![11] — That is no difficulty: it [our Mishnah] agrees with R.

Dosethai b. Judah, who maintained: The daughters of Israel are a purifying mikweh for halallim.[12]

But it is in his power[13] to marry her to a mamzer?[14] — This agrees with R. Akiba, who maintained, Kiddushin has no validity[15] with those [marriages forbidden by] negative injunctions.[16] But it is in his power to marry her, if a widow, to a High Priest, and in accordance with R. Simai; for it was taught: R. Simai said: [The issue] of all [marriages forbidden by a negative injunction] R. Akiba declared [to be] mamzer, excepting that of a widow [married] to a High Priest, since the Torah said, [a widow . . .] he shall not take, and he shall not profane [his seed]:[17] he renders [his seed] profane,[18] but not mamzer![19] — This is according to R. Yeshebab, who said: Come, let us cry out against Akiba son of Joseph[20] who declared: He who has no entry in Israel,[21] the issue is mamzer.[22] Now, on R. Yeshebab's view, it is well if he states an independent opinion [of R. Akiba's ruling].[23] But if he [merely] comes to combat R. Simai,[24] then it is [still] in his [the father's] power to marry her to a person forbidden by a positive injunction?[25] R. Ashi answered: Is it logical that the first clause [states that he is believed] because it is in his power? Granted that it is in his power to betroth her, is it in his power to divorce her? Moreover, if this person [to whom he desires to betroth her] says that he has no pleasure in her, can he then betroth her against his will? But, said R. Ashi, in the first clause the Divine Law declared him trustworthy, as R. Huna [said]. For R. Huna said in Rab's name: How do we know that a father is believed to interdict his daughter[26] by Biblical law? Because it is said: I gave my daughter unto this man [to wife]:[27] [with the words] 'unto a man,' he renders her forbidden [to all];[28] with 'this [one]', he frees her. [Now,] the Divine Law believed the father in regard to marriage[29] but in regard to captivity it did not believe him.

MISHNAH. IF A MAN SAYS AT THE TIME OF HIS DEATH I HAVE SONS, HE IS BELIEVED;[30] 'I HAVE BROTHERS,' HE IS DISBELIEVED.[31]

GEMARA. This shews that he is believed to free, but not to bind. Shall we say [then] that our Mishnah does not agree with R. Nathan? For it was taught: if at the time of betrothal one declares that he has sons, but at the time of his death he asserts that he has no sons; If at the time of betrothal he declares that he has brothers, while at the time of his death he declares that he has no brothers: he is believed to free, but not to bind: this is Rabbi's view. R. Nathan said: He is believed to bind too! — Said Raba, there it is different: since he retracts at the time of his death, I assume that he may be speaking truth. Abaye asked him: Does it [the reverse] not follow a minori: If there, though he contradicts his [former] words, you say that he may be speaking truth; surely it is all the more so in our Mishnah, where he does not contradict his [former] words! But, said Abaye, our Mishnah treats of one who is not presumed[32] to possess brothers or sons: hence we rule, since he is not presumed to possess either brothers or sons, if he says. 'I have sons,' he is believed;[33] but if he declares, 'I have brothers,' he is disbelieved, [because] it does not rest solely with him to forbid her to the whole world. [Whereas] the Baraitha refers

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(1) V. Glos.

(2) V. Glos. As they are of age, their vows, etc., are valid, and the father is believed on the question of age.

(3) Rashal adds: a minor (ketannah). and it is likewise so in Asheri and Alfasi.

(4) When he makes this declaration.

(5) She may therefore not marry a priest; v. Lev. XXI, 7.

(6) The reason is explained in the Gemara.

(7) A woman taken captive above the age of three years and a day may not marry a priest, lest she was ravished in captivity.

(8) When he makes this declaration.

(9) Since she is now a minor, he can betroth her even now and accept a divorce on her behalf, thus disqualifying her from the priesthood. Hence he is believed.

(10) 'Profaned'; the issue of a widow married to a High Priest in violation of Lev. XXI. 14.

(11) She may not marry a priest after that; infra 74b.

(12) Pl. of halal. If a halal marries a Jewess born in legitimate wedlock, his daughter may marry a priest. Now, since his daughter is fit, his widow too (i.e., the Jewess herself) is fit, according to the principle: you may marry the widow of any man whose daughter you may marry. — Of course, a father can in any case render his daughter, a minor, unfit by marrying and divorcing her; but that is only for a priestly marriage, yet if he is a priest she may still eat terumah, whereas when he declares that she was taken into captivity he desires to disqualify her from terumah too. (Rashi)
(13) Lit., 'his hand'.
(14) V. Glos. This likewise renders her unfit, even to eat terumah.
(15) Lit., 'cannot take hold on'.
(16) Which includes a mamzer, Deut. XXIII, 3. Since the kiddushin is invalid, it does not disqualify her from the priesthood.
(17) Lev. XXI, 14f.
(18) I.e., hallel.
(19) Since the child is not mamzer, the kiddushin, though forbidden, is valid, because it is a principle that the issue of marriage that cannot be valid is mamzer. Further, being valid, it disqualifies her from the priesthood.
(20) I.e., R. Akiba.
(21) I.e., with whom marriage is forbidden.
(22) Thus in his view, R. Akiba holds that even the issue of a High Priest and a widow is mamzer, whence it follows that the marriage is entirely invalid, which in turn implies that she is not disqualified from terumah, as above. Thus the Mishnah agrees with R. Akiba as R. Yeshebab explains his view,
(23) I.e., the issue of all interdicted marriages, no matter how forbidden, is mamzer.
(24) Who excepted the issue of a widow and a High Priest; yet he too refers only to unions forbidden by a negative injunction.
(25) V. Deut. XXIII, 8f: Thou shalt not abhor an Edomite . . . thou shalt not abhor an Egyptian. The children of the third generation that are born unto them shall enter into the assembly of the Lord. The 'third generation' after conversion is meant; hence the first and second are forbidden, and since that is implied by a positive statement, the interdict too ranks as a positive injunction. — Such a marriage, on the present hypothesis, is valid, and disqualifies her from terumah, v. infra 74b.
(26) To all men, by maintaining that he betrothed her to a particular one.
(27) Lit., 'unto a man, this one'. Deut. XXII, 16.
(28) Even to this particular man.
(29) Provided she is not a bogereth. The whole section speaks of a na'arah.
(30) And his wife is exempt from yibum.
(31) And even if he is childless his wife is free to marry a stranger.
(32) Lit., 'it is not established to us'.
(33) Since he does not change her present status; and he is believed even if a man subsequently claims to be his brother.

Talmud - Mas. Kiddushin 64b

to one who is presumed to have brothers but not sons. So we argue. Why should he lie? Why does he say it?[1] to free her from the yabam! Then he could Say, 'I will free her by a divorce [just before my death].' Now, Rabbi holds that [the argument,] 'why should I lie' is as [strong as] witnesses, so that the witnesses come and cancel[2] the presumption. But R. Nathan holds, [The argument,] 'why should I lie' is [only] as [strong as] a presumption, and one presumption cannot come and completely cancel another.[3] MISHNAH. IF ONE GIVES HIS DAUGHTER IN BETROTHAL WITH OUT SPECIFYING WHICH, THE BOGEROTH[4] ARE NOT INCLUDED. IF ONE HAS TWO GROUPS OF DAUGHTERS BY TWO WIVES, AND HE DECLARES, I HAVE GIVEN IN BETROTHAL MY ELDEST DAUGHTER, BUT DO NOT KNOW WHETHER THE ELDEST OF THE SENIORS OR THE ELDEST OF THE JUNIORS, OR THE YOUNGEST OF THE SENIORS WHO IS OLDER THAN THE SENIOR OF THE JUNIORS, ALL ARE FORBIDDEN, EXCEPT THE YOUNGEST OF THE JUNIORS: THIS IS R. MEIR'S OPINION. R. JOSE SAID: THEY ARE ALL PERMITTED, EXCEPT THE ELDEST OF THE SENIORS. I HAVE BETROTHED MY YOUNGEST DAUGHTER, BUT DO NOT KNOW WHETHER THE YOUNGEST OF THE

JUNIORS OR THE YOUNGEST OF THE SENIORS, OR THE ELDEST OF THE JUNIORS WHO IS YOUNGER THAN THE YOUNGEST OF THE SENIORS,' THEY ARE ALL FORBIDDEN, EXCEPT THE ELDEST OF THE SENIORS; THIS IS R. MEIR'S VIEW. R. JOSE SAID: THEY ARE ALL PERMITTED, EXCEPT THE YOUNGEST OF THE JUNIORS.

GEMARA. But minors are [apparently] included; this proves that kiddushin that cannot be followed by intercourse is kiddushin?[5] — The circumstances are that there is only a bogereth and a minor. But 'BOGEROTH' is taught! — By 'bogeroth', bogeroth in general are meant. Then it is obvious: what business have bogeroth [here]?[6] — We refer here to where she [the bogereth] appointed him [her father] an agent. I might have thought that when he accepted kiddushin he did so on her behalf; hence we are informed that a man does not put aside something by which he benefits to do something by which he does not benefit. But do we not refer [even] to where she said to him, 'Let my kiddushin be yours!' — Even so, a man does not put aside a good deed which [primarily] rests on him and perform one which is not incumbent upon him.[7]

IF ONE HAS TWO GROUPS OF DAUGHTERS. Now, it is necessary.[8] For if we were told the first one, [I would say only] here does R. Meir rule [so], for since there is yet a younger one than this, he calls this one 'elder', but in the latter [clause], I might say that he agrees with R. Jose that only the youngest of all he calls 'young'. Again, if the latter [clause only] were stated: I would say that only there does R. Jose rule thus, but in the former he agrees with R. Judah.[9] Thus both are necessary.

Shall we say that R. Meir holds that a man places himself in a position of doubt, while R. Jose maintains that he does not?[10] But we know them [to hold] the reverse. For we learnt: If one vows, '[This be forbidden me] until Passover,' it is forbidden until it arrives; 'until Passover shall be', it is forbidden until it is gone.[11] 'Until pene [before][12] Passover': R. Meir ruled: It is forbidden until it comes; R. Jose said: Until it is gone![13] — Said R. Hanina b. Abdimi in Rab's name: The passage [on vows] must be reversed. And it was taught even so: This is a general principle: That which has a fixed time. and one vows, until' — R. Meir said: It means, Until it goes; R. Jose said: Until it comes.

Abaye said: The controversy refers [only] to two groups of daughters; but in the case of one group, all agree that 'elder' and 'younger' are literal,[14] [for] the middle one is called by name. R. Adda b. Mattena said to Abaye: If so,

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(1) That he has sons.

(2) Lit., 'eradicate'.

(3) Thus: before marriage it was generally held that he had brothers but not sons, though there were no witnesses. Now, when he declared at betrothal that it was the reverse, we believe him; because he had no need to lie, since he could always free his wife from the yabam by a divorce. But the controversy arises where he retracts his words at death. Rabbi holds that the argument whereby we believed him at betrothal is as strong as witnesses, and completely eradicates the general pre-marriage presumption and establishes her as a woman not bound to a yabam. Hence it does not rest with him at death to interdict her. But R. Nathan holds that this argument does not completely eradicate the former presumption. Nevertheless, if he persists in his former statement we believe him; since, however, he reverses it at death, the original presumption holds good, and she is forbidden.

(4) Plur. of bogereth, v. Glos.

(5) V. supra 51a.

(6) For in any case the father has no authority over them, Now, it is well if the actual plural is meant, so that the Mishnah is necessary for its corollary that minors are included, thus shewing that kiddushin that cannot be followed etc. But if there is only one, neither the teaching itself nor its corollary is necessary.

(7) For notes on the whole passage and the Mishnah V. supra. 51b.

(8) For both clauses to be stated.

(9) By inverting the former reasoning.

(10) The meanings of 'my elder daughter' and 'my younger daughter' are doubtful. Thus R. Meir, by extending their scope, holds that he intends his words to bear a meaning which can be attributed to them only with doubt; whereas R. Jose maintains that he intends them to bear only that meaning which they certainly possess.

(11) I.e., the tense is regarded as future perfect — until it shall have been.

(12) [Of doubtful meaning, as each day of Passover is the one before the next day succeeding it (Rashi). For other interpretations. v. Ned. (Sonc. ed.) p. 191. n. 3,]

(13) Thus R. Meir includes even a doubtful meaning, while R. Jose excludes it.

(14) I.e., the oldest and the youngest respectively.

Talmud - Mas. Kiddushin 65a

let the middle one of the second [junior] group be permitted?[1] — The meaning here is that there are only an elder and a younger [daughter].[2] And reason supports this too: for if it is so,that there is [a middle one], let her be mentioned![3] But even on your view; the middle one of the first [senior] group, who is certainly doubtful and forbidden[4] — is she mentioned? — How compare! There [even] the one younger than her is taught as being forbidden, and the same applies to this [middle] one, who is older than her; but here,[5] if it is so that there is [a middle one], let her be mentioned! R. Huna, son of R. Joshua, said to Raba:[6] But Passover is as one group, and yet they differ? — There, he replied, they differ merely on language: one Master holds, 'until pene Passover' means until [just] before Passover, and the other maintains, until it has passed.[7]

MISHNAH. IF HE SAYS TO A WOMAN, 'I HAVE BETROTHED THEE,' AND SHE SAYS, THOU HAST NOT BETROTHED ME: HER RELATIONS[8] ARE FORBIDDEN TO HIM,[9] BUT HIS RELATIONS ARE PERMITTED TO HER. IF SHE SAYS, 'THOU HAST BETROTHED ME,' AND HE MAINTAINS, 'I HAVE NOT BETROTHED THEE,' HER RELATIONS ARE PERMITTED TO HIM. BUT HIS RELATIONS ARE FORBIDDEN TO HER. 'I HAVE BETROTHED THEE,' AND SHE REPLIES, THOU HAST BETROTHED NONE BUT MY DAUGHTER,' THE RELATIONS OF THE SENIOR [THE MOTHER] ARE FORBIDDEN TO HIM, WHILST HIS ARE PERMITTED TO THE SENIOR; THE JUNIOR'S RELATIONS ARE PERMITTED TO HIM, AND HIS RELATIONS ARE PERMITTED TO THE JUNIOR.[10] I HAVE BETROTHED THY DAUGHTER,' AND SHE REPLIES, 'THOU HAST BETROTHED NONE BUT MYSELF'; THE JUNIOR'S RELATIONS ARE FORBIDDEN TO HIM, WHILST HIS RELATIONS ARE PERMITTED TO THE JUNIOR; THE SENIOR'S RELATIONS ARE PERMITTED TO HIM, WHILST HIS RELATIONS ARE FORBIDDEN TO THE SENIOR.

GEMARA. IF HE SAYS TO A WOMAN, I HAVE BETROTHED THEE etc. Now, it is necessary.[11] For if we were informed this of him,[12] [that is] because a man does not care,[13] and so it happens that he speaks [thus].[14] But as for her, I might argue, were she not certain of her statement, she would not have made it,[15] and so her relations are forbidden to him. Hence we are informed [that it is not so].

I HAVE BETROTHED THEE,' AND SHE REPLIES ['MY DAUGHTER'] etc. Why do I need this too? — It is necessary. I might think, By Scriptural law the Merciful One gave credence to the father;[16] hence by Rabbinical law credence was given to her [sc. the mother], and so her daughter is interdicted on her statement. Hence we are informed [otherwise].

I HAVE BETROTHED THY DAUGHTER etc. What is the purpose of this too? Since the one is taught, the other is taught too.[17]

It was stated: Rab said: We force [him to divorce her]; Samuel said: We request. To what [does this refer]? Shall we say: To the first clause: there is neither compulsion nor request?[18] But if to the second clause:[19] as for requesting him, that is well; but we compel why? He can protest. 'I do not

wish to be forbidden to her rela — tions![20] — But these rulings were stated in reference to each other.[21] Samuel said: He is asked to give her a divorce; Rab said: If he gives a divorce of his own accord,[22] he is compelled to pay the kethubah.[23] It was stated likewise: R. Aha b. Adda said in Rab's name — others state. R. Aha b. Adda said in R. Hamnuna's name in Rab's name: We compel and request. Both?[24] — This is the meaning: He is requested to grant a divorce; but if he gives a divorce of his own accord, he is compelled to pay the kethubah.

Rab Judah said: If a man betroths in the presence of one witness, we disregard[25] his kiddushin.[26] Rab Judah was asked: What if both admit it?[27] He answered 'Yes' and 'no', being uncertain.[28] It was stated: R. Nahman said in Samuel's name: If a man betroths in the presence of one witness, we disregard his kiddushin even if both admit it. Raba objected before R. Nahman: IF ONE SAYS TO A WOMAN, 'I HAVE BETROTHED THEE,' AND SHE SAYS, THOU HAST NOT BETROTHED ME: HER RELATIONS ARE FORBIDDEN TO HIM, WHILST HIS RELATIONS ARE PERMITTED TO HER. Now, if there are witnesses, why are his relations permitted to her? And if there are no witnesses, why are her relations forbidden to him?[29] Hence it surely means that there is one witness![30] — [No.] The meaning is that he says to her, 'I betrothed thee in the presence of So-and-so,[31] who have [since] gone overseas.'

He raised an objection: If one divorces his wife and then stays overnight with her in an inn: Beth Shammai rule: She does not require a second divorce from him; while Beth Hillel maintain: She does require a second divorce from him.[32] What are the circumstances? If there are witnesses,[33] what is Beth Shammai's reason? And if there are no witnesses, what is Beth Hillel's reason?[34] Hence it must surely mean that there is one witness![35] — Yet according to your view, consider the second clause: But they agree that if she was divorced after erusin,[36] she does not require a second divorce from him, because he is not intimate with her.[37] Now if you think that one witness is believed, what does it matter whether [the divorce was] from erusin or nissu'in? Hence the meaning here is that we have witnesses of privacy, but not of intercourse. Beth Shammai maintain: we do not

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(1) This refers to the first clause of the Mishnah. There the middle one can be called 'elder' only by comparison with the youngest of all, which is the same as in the case of one group only.

(2) In the junior group.

(3) Sc. 'I do not know whether the middle one of the juniors'.

(4) Since she is a senior in comparison to those of the second group.

(5) With reference to the second group.

(6) Var. lec.: R. Adda b. Mattena said to Abaye.

(7) Taking pene to mean 'the turn', v. p. 325. n. 6.

(8) E.g., sister, mother, daughter.

(9) Because he himself has thrown an interdict upon them in respect of himself; v. p. 319. n. 8.

(10) Notwithstanding her mother's statement, because she has no power to cast an interdict upon her daughter.

(11) That all be taught.

(12) Viz., that when he says: 'I have betrothed thee,' his relations are not forbidden to her.

(13) If the relations of a particular woman are interdicted to him, he can marry someone else.

(14) Untruthfully.

(15) Since, unless he divorces her, she cannot marry at all.

(16) V. Mishnah 64a top.

(17) For the sake of parallelism.

(18) She is permitted to marry in any case-even his relations.

(19) Where she says: 'Thou hast betrothed me'.

(20) For if he divorces her, he establishes the presumption that she was his wife, and those relations who are interdicted even after divorce, e.g., a sister, are now forbidden to him.

(21) The reference is to the second clause, but Rab and Samuel do not dispute but supplement one another.

(22) And thus tacitly admits having betrothed her,

(23) v. Glos,
(24) Surely that is self-contradictory!
(25) Lit., 'have no fear of,
(26) She is not betrothed.
(27) Do we normally disregard because we disbelieve a single witness, but here, since both parties admit it, they are betrothed? Or perhaps kiddushin in the presence of one witness only is invalid?
(28) Lit., 'it was weak in his hand'. His answer vacillated.
(29) For unattested kiddushin is invalid,
(30) That proves that kiddushin in the presence of one witness is valid, since he is forbidden to her relations.
(31) In the presence of two witnesses.
(32) V. Git. 81a.
(33) That he betrothed her anew by intercourse.
(34) V. p. 328, n. 10.
(35) And they both admit, Beth Hillel holding that betrothal in the presence of one witness is valid.
(36) V. Glos.
(37) Lit., 'his heart is not bold towards her' — the marriage never having been consummated.

Talmud - Mas. Kiddushin 65b

say. The witnesses of privacy are likewise witnesses of intercourse;[1] Beth Hillel hold: The witnesses of privacy are likewise witnesses of intercourse.[2] But they certainly agree that if she was divorced from erusin, we do not say that the witnesses of privacy are likewise witnesses of intercourse, because he is not intimate with her.

R. Isaac b. Samuel b. Martha said on Rab's authority: If a man betroths in the presence of one witness, we disregard his kiddushin even if both admit it. Rabbah son of R. Huna said: If a man betroths in the presence of one witness, the Great Court rules: We disregard his kiddushin. Who is the Great Court? — Rab.[3] Others state, Rabbah b. R. Huna said in Rab's name: If a man betroths in the presence of one witness, the Great Court rules: We disregard his kiddushin. Who is the Great Court? — Rabbi.[4]

R. Ahadaboi b. Ammi raised an objection: If two come from overseas with a woman and chattels;[5] and one maintains. 'This is my wife, this is my slave, and these are my chattels', whilst the other says: 'this is my wife, this my slave, and these are my chattels'. while the woman claims, 'These two are my slaves and the chattels are mine', she requires two divorces, and collects her kethubah out of the chattels. How is this meant? If this one has witnesses and the other has witnesses,[6] can she claim, 'These two are my slaves and the chattels are mine!' Hence it surely means that there is one witness?[7] — Now, is that logical? Is one witness believed when he is rebutted?[8] But as for permitting her to the world,[9] all agree that she is permitted; here, however, the meaning is this: she needs two divorces in order to collect her kethubah from the chattels,[10] and it is according to R. Meir, who ruled: Movables are mortgaged for the kethubah.[11]

What is the result of the matter? — R. Kahana maintained, We disregard his kiddushin; R. Papa said: We pay heed to his kiddushin.[12] R. Ashi said to R. Kahana: What is your opinion? that we learn the meaning of 'dabar' [matter] here from civil matters?[13] If so, just as there the admission of the litigant is as a hundred witnesses,[14] then here too the admission of the litigant is as a hundred witnesses![15] — There, he replied, he does no injury to others; here, however, injury is done to others.[16]

Mar Zutra and R. Adda the elder, sons of R. Mari b. Issur, divided their property between them. Then they went before R. Ashi and asked him: When the Divine Law said: 'at the mouth of two witnesses . . . shall a matter be established,' is it so that they [the litigants] cannot retract if they

wish, whereas we do not desire to retract; or perhaps, a transaction can be established [i.e., given legal force] only by witnesses? — Witnesses were created only against liars, he answered them.[17]

Abaye said: If one witness says to a person[18] 'You ate heleb'.[19] while he is silent, he [the witness] is believed.[20] Now, a Tanna supports this: If one witness says to a person. 'You ate heleb,' and he replies, 'I did not eat,' he is not liable. Thus, it is only because he answered: 'I did not,' but if he is silent, he is believed.

Abaye also said: If one witness says to a person. Your clean [food] has been defiled,' and he is silent, he [the witness] is believed.[21] Now, a Tanna supports this: If one witness declares, 'They have been defiled',[22] and he [their owner] replies, 'They have not been defiled,'[23] he is not liable.[24] Thus, it is only because he says: 'No'; but if he is silent, he is believed.

Abaye also said: If one witness says to a person,

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(1) I.e., we do not assume that since he is intimate with her he certainly cohabited in their privacy.

(2) And, moreover, we assume that this intercourse was not unchaste but for the purpose of betrothal; v. Git. 81b.

(3) Rab, on his return to Babylon after studying in Palestine, was recognised as the greatest scholar of his time.

(4) Par excellence, i.e., R. Judah the Nasi, compiler of the Mishnah.

(5) Lit., 'a bundle'.

(6) Of betrothal.

(7) And she requires a divorce.

(8) Surely not! Even if she only denies it he is disbelieved, and no divorce is necessary.

(9) I.e., to marry another.

(10) She can collect her kethubah only if both voluntarily divorce her, in which case she is in any circumstance entitled to the chattels, v. supra a.

(11) Hence she can collect it from the parcel of goods. and this is what the Baraitha informs us, v. Keth. 80b.

(12) She is in the position of a doubtfully married woman; v. p. 47, n. 10.

(13) Lit., 'money'. Here — Deut. XXIV, 1: When a man taketh a wife and . . . she find no favour in his eyes, because he hath found some unseemly matter (dabar) in her; civil suits — ibid. XIX, 15: at the mouth of two witnesses . . . shall a matter (dabar) be established. Hence, just as there two are needed, so for marriage.

(14) No stronger proof is required.

(15) Since both parties admit, the marriage should be valid.

(16) In that their marriage interdicts their consanguineous relations

(17) They are not essential for the validity of a transaction.

(18) Lit., 'him'.

(19) V. Glos.

(20) This offence involves a sin-offering; since the accused is silent, he is liable.

(21) And the owner must treat it as defiled, eating it only when he himself is unclean.

(22) Var. lec.: 'you have been defiled'.

(23) Var. lec.: 'I etc.

(24) To a sacrifice; the reference is to flesh of sacrifices, which may not be eaten when defiled, or when the eater is unclean.

Talmud - Mas. Kiddushin 66a

'Bestiality was committed with your ox,' and he is silent, he is believed.[1] And a Tanna supports it: Or [an ox] with which a transgression was committed, or which had killed [a person] on the testimony of one witness, or by admission of its owner, he [the one witness] is believed.[2] How is this 'on the testimony of one witness' meant? If the owner admits, then it is 'by admission of the owner'? Hence it surely means that he is silent.

Now, it is necessary.[3] For if he told us this first one, [I would argue:] if he were not certain thereof himself, since he [otherwise] sacrifices[4] hullin in the Temple Court, he would not bring [an offering].[5] But as for 'Your clean food has been defiled,' we might say, the reason of his silence was that it is fit for him when he himself is unclean.[6] And if we were told of this: that is because he causes him a loss whilst he is clean;[7] but as for bestiality having been committed with his ox, he may say [to himself]. 'Not all oxen are for the altar.'[8] Thus all are necessary.

The scholars propounded: What if his wife [is charged with having] committed adultery on the testimony of one witness, and he [the husband] is silent?[9] — Abaye said: He is believed;[10] Raba said: He is disbelieved, because it is a sexual matter, and no sexual matter can be established by less than two.[11] Abaye said: Whence do I know[12] it? For there was a certain blind man who used to recite Baraithas in systematic order before Mar Samuel. One day it was late, but he did not come; so he sent a messenger for him. While the messenger was going by one road, he came by another. When the messenger returned, he stated that his [the blind man's] wife had committed adultery. When he came before Mar Samuel he said to him, 'If you believe him, go and divorce[13] her; if not, do not divorce her.' Now surely, 'if you believe him' means that he is not a robber?[14] And Raba?[15] — If you believe him as two [witnesses],[16] go and divorce her; if not, do not divorce her.

Abaye also said: Whence do I know it? Because it was taught. It once happened that King Jannai[17] went to Kohalith in the wilderness[18] and conquered sixty towns there. On his return he rejoiced exceedingly and invited all the Sages of Israel. Said he to them, 'Our forefathers ate mallows[19] when they were engaged on the building of the [second] Temple; let us too eat mallows in memory of our forefathers.' So mallows were served on golden tables, and they ate. Now, there was a man there, frivolous, evilhearted and worthless, named Eleazar son of Po'irah, who said to King Jannai. 'O King Jannai, the hearts of the Pharisees[20] are against thee.' 'Then what shall I do?' 'Test them[21] by the plate between thine eyes.'[22] So he tested them by the plate between his eyes. Now, an elder, named Judah son of Gedidiah, was present there. Said he to King Jannai. 'O King Jannai! let the royal crown suffice thee, and leave the priestly crown to the seed of Aaron.' (For it was rumoured that his mother had been taken captive in Modi'im.)[23] Accordingly, the charge was investigated, but not sustained,[24] and the Sages of Israel[25] departed in anger.[26] Then said Eleazar b. Po'irah to King Jannai: 'O King Jannai! That is the law even for the most humble man in Israel, and thou, a King and a High Priest, shall that be thy law [too]!'[27] 'Then what shall I do?' 'If thou wilt take my advice, trample then, down.'[28] 'But what shall happen with the Torah?' 'Behold, it is rolled up and lying in the corner: whoever wishes to study. Let him go and study!' Said R. Nahman b. Isaac: Immediately a spirit of heresy was instilled into him,[29] for he should have replied. 'That is well for the Written Law;[30] but what of the Oral Law?'[31] Straightway, the evil burst forth[32] through Eleazar son of Po'irah,[33] all the Sages of Israel were massacred, and the world was desolate until Simeon b. Shetah came and restored the Torah to its pristine [glory].[34] Now, how was it?[35] Shall we say that two testified that she was captured and two that she was not? what [reason] do you see to rely upon the latter rely upon the former?[36] Hence it must surely mean [that her captivity was attested] by one witness, and the reason [that his evidence was rejected] was that two rebutted him; but otherwise, he would have been believed.[37] And Raba? [He will reply:] After all, there were two against two, but it is as R. Aba b. R. Manyomi said [elsewhere]: that it refers to witnesses of refutation [hazamah]; so here too, there were witnesses of refutation.[38] Alternatively, this agrees with R. Isaac, who said: They substituted a bondmaid for her.[39] Raba said:

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(1) The ox is rendered unfit as a sacrifice.

(2) 'Is believed' is absent in Zeb. 70b and Bek. 41a, whence this is quoted, but it is presupposed there, 'With which a transgression was committed' refers to bestiality in Bek. 41a; in Zeb. 70b it is a general term including bestiality.

(3) To state all three cases.

(4) Lit., prepares'. Var. lec.: eats.

(5) A sin-offering can be brought only when it is incurred, but if a person dedicates a sin-offering without being liable, it

remains hullin. Hence this man would not be silent, thus admitting it, if the witnesses were false.
(6) Therefore he does not trouble to deny it. Yet actually the witness may not be believed, and the food remains fit even for a ritually clean person.
(7) Therefore he would deny it, if it were untrue.
(8) So that it is not worth while denying it; yet his silence may not imply agreement.
(9) When the witness testifies.
(10) In that the husband may not retain her as his wife, but must divorce her.
(11) E.g., marriage or divorce are invalid unless attested by two. This case too is a sexual matter.
(12) Lit., 'say'.
(13) Lit., 'send her forth'.
(14) I.e., that he is not ineligible to testify in general. Thus, since he did not rebut the witness, but was silent, he was to divorce his wife.
(15) How does he explain this?
(16) Then you are certain that he is right.
(17) I.e., John Hyrcanus, not Alexander Jannai, though Abaye held these to be identical, Ber. 29a; Halevi, Doroth, I, 3, p. 397, n. 13. [Friedlaender, I, JQR (N.S.) IV. pp. 443ff assigns the whole incident to Alexander Jannai].
(18) [In the course of his trans-Jordanic campaign.]
(19) The food of the very poor.
(20) The traditional, orthodox party, as opposed to the Sadducees.
(21) Lit., 'raise them up'. [הקם להם the phrase is difficult, and is so rendered by Graetz III, 678. Rashi takes it literally and explains: make them stand on their feet by wearing the plate on which the Divine Name is inscribed.]
(22) Worn by the High Priest; i.e., by their reactions toward your office as High Priest.
(23) In the days of Antiochus Epiphanes; Modi'm (Modim) was the birthplace of the Hasmoneans. As a son of a captive woman he would not be eligible for the priesthood.
(24) Lit., 'found'.
(25) [Identical with the Pharisees; v. Lauterbach, JQR (N.S.) VI, pp. 88ff.]
(26) Rashi: under the King's anger. Weiss, Dor, I, p. 133: in anger at the false accusation.
(27) There is probably a lacuna in the narrative, which may be supplied from Josephus. Ant. XIII, 10, – 6: The Rabbis sentenced him to flagellation, in accordance with the law of slander; but Eleazar urged that this was altogether inadequate in view of Jannai's exalted position, and proved that they secretly held with the slanderer (Goldschmidt). — In fact, the status of a person is taken into account when bodily injury is sustained (B.K. 83b), but not for slander.
(28) Destroy them.
(29) Jannai.
(30) I.e., the Pentateuch.
(31) The whole of the Rabbinical elaboration and development of the Written Law, so called because it was originally not committed to writing but preserved by oral tradition.
(32) Lit., 'blossomed'.
(33) [MS.M. adds 'and through Judah v. Gedidiah'.]
(34) In the reign of Queen Alexandra. The reference is probably to the educational reforms of setting up schools for children from the age of five or six. In B.B. 21a this is ascribed to Joshua son of Gamala, whereas in J. Keth. chapter VIII. end, it is attributed to Simeon b. Shetah. The latter was probably afraid to move himself in the matter, knowing that his actions were suspected by the Sadducees, and so he put himself in the background and worked through Joshua, who was persona grata with the ruling party. The whole Baraitha is carefully analysed and discussed in Halevi, Doroth, I, 3, pp. 397ff
(35) How was the charge found to be untrue?
(36) The Rabbis were extremely strict on the question of family purity, and therefore in such a case the former two witnesses could not be ignored (Tosaf.).
(37) This proves Abaye's point.
(38) Hazamah means refutation which takes the form of 'You who testify to having witnessed this at a certain place on a particular date were with us then elsewhere.' In that case the second witnesses were always believed; v. B.K. 72b.
(39) Sc. his mother, the captors being ignorant of it. Thus there was no real contradiction: two witnesses attested the capture of one whom they thought to be Hyrcanus's mother, and another two attested that it was a bondmaid.

Whence do I know it?[1] Because we learnt: R. Simeon said: It once happened that the water reservoir of Discus in Jabneh, which stood in the presumption of being full, was measured and found wanting.[2] Everything which had been rendered clean thereby. R. Tarfon declared clean and R. Akiba unclean.[3] Said R. Tarfon: This mikweh[4] stands in the presumption of being full,[5] and you come to declare it wanting because of a doubt: you must not declare it wanting on the strength of doubt. Said R. Akiba, This man[6] stands in the presumption of unclean, and you wish to declare him clean on the strength of doubt:[7] do not purify him on the strength of doubt.[8] R. Tarfon said: This may be compared to one [a priest] who stood and sacrificed on the altar, when he was discovered to be the son of a divorced woman or a haluzah, in which case his service [hitherto] is fit.[9] Said R. Akiba: This may be compared to one who stood and sacrificed on the altar, when it was learned that he was [physically] blemished, in which case his service is [retrospectively] unfit. Said R. Tarfon: You have compared it to a man with a blemish, while I have compared it to the son of a divorced woman or a haluzah. Let us then consider, to whom is it similar: if it is similar to the son of a divorced woman or a haluzah, we shall judge it like [the law] of a son of a divorced woman or a haluzah; if it is similar to a man with a blemish, we shall judge it like [the law] of one who has a blemish. [Thereupon] R. Akiba began to argue:[10] the unfitness of a mikweh is by one, and the unfitness of a man with a blemish is by one;[11] hence let not the son of a divorced woman or a haluzah prove it, since his unfitness [must be attested] by two. Again, the unfitness of a mikweh is in itself, and that of a man with a blemish is in himself: let not the son of a divorced woman or a haluzah prove it, seeing that his unfitness is through others.[12] Said R. Tarfon to him, 'Akiba! whoever separates himself from you is as though he separated himself from life!' Now, this case of a man with a blemish — whose unfitness is by one, how is it meant? If he contradicts him, is he [the witness] believed![13] Hence it must mean that he is silent, and by analogy, in the case of a son of a divorced woman or of a haluzah, he is also silent; and it is taught: 'The unfitness of a mikweh is by one, and the unfitness of a man with a blemish is by one; but let not the son of a divorced woman or of a haluzah prove it, since his unfitness [must be attested] by two!'[14] But Abaye maintains, After all, it means that he contradicts him; yet as to your argument. Why is he believed? [the answer is] because he can say to him, 'Strip, and I will shew you [the blemish].' And that is meant when it is taught: 'The unfitness of a mikweh is in itself and the unfitness of a man with a blemish is in himself,[15] but let not the son of a divorced woman or a haluzah prove it — whose unfitness is through others.'

And how do we know that the service of the son of a divorced woman or a haluzah is [retrospectively] fit? — Said Rab Judah in Samuel's name, Because Scripture saith, and it shall be unto him, and to his seed after him, [the covenant of an everlasting priesthood]:[16] this applies to both fit and unfit seed.[17] Samuel's father said, [It is deduced] from the following: Bless, Lord, his substance [helo], and accept the work of his hands:[18] accept even the profaned [hullin] in his midst.[19] R. Jannai said, [It is deduced] from this: And thou shalt come unto the priest that shall be in those days:[20] now, could you then imagine that a man should go to a priest who was not of his days? But this [must refer to one who] was [originally assumed to be] fit, and then became profane.[21]

How do we know that the service of a man with a blemish is [retrospectively] invalid? — Said Rab Judah in Samuel's name: Because Scripture saith, Wherefore say. Behold, I give unto him my covenant of perfection:[22] when he is perfect,[23] but not when he is wanting.[24] But shalom [peace] is written! — Said R. Nahman: The waw of shalom is broken off [in the middle].[25]

MISHNAH. WHEREVER THERE IS KIDDUSHIN AND THERE IS NO TRANSGRESSION,[26] THE ISSUE FOLLOWS THE STATUS OF THE MALE: SUCH IS THE CASE WHEN THE DAUGHTER OF A PRIEST, A LEVITE OR AN ISRAELITE IS MARRIED TO A PRIEST, A LEVITE OR AN ISRAELITE.[27] BUT WHEREVER THERE IS KIDDUSHIN AND THERE IS

TRANSGRESSION, THE ISSUE FOLLOWS THE STATUS OF THE INFERIOR;[28] THIS IS THE CASE WHEN A WIDOW IS MARRIED TO A HIGH PRIEST, OR A DIVORCED WOMAN OR A HALUZAH TO AN ORDINARY PRIEST, OR A MAMZERETH OR A NETHINAH[29] TO AN ISRAELITE, AND THE DAUGHTER OF AN ISRAELITE TO A MAMZER OR A NATHIN.[30] AND WHATEVER [WOMAN] WHO CANNOT CONTRACT KIDDUSHIN WITH THAT PARTICULAR PERSON[31] BUT CAN CONTRACT KIDDUSHIN WITH ANOTHER PERSON, THE ISSUE IS MAMZER. THIS IS THE CASE WHEN ONE HAS INTERCOURSE WITH ANY RELATION PROHIBITED IN THE TORAH.[32] AND WHATEVER [WOMAN] WHO CAN NOT CONTRACT KIDDUSHIN WITH THAT PARTICULAR PERSON OR WITH OTHERS, THE ISSUE FOLLOWS HER STATUS.; THIS IS THE CASE WITH THE ISSUE OF A BONDMAID OR A GENTILE WOMAN.

GEMARA. WHEREVER THERE IS KIDDUSHIN. R. Simeon[33] said to R. Johanan: Is it then a general principle that wherever there is kiddushin and there is no transgression the issue follows the status of the male? But what of

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(1) That one witness is invalid in sexual matters, even if he is not rebutted.

(2) It was used as a ritual bath, which requires a minimum of forty se'ahs.

(3) R. Tarfon maintains that the reservoir is regarded as containing the standard quantity until it is actually found to be short, while R. Akiba holds that its shortage is retrospectively assumed.

(4) Ritual bath.

(5) Until it is found otherwise.

(6) Who performed his ablutions therein.

(7) For we do not know whether the bath contained the requisite quantity when he bathed therein or not.

(8) It is a general principle that in a case of doubt we retain the status quo. Here, however, by applying this principle to the bath and the man respectively, we obtain contradictory results, and hence the controversy of R. Tarfon and R. Akiba.

(9) Though it will be unfit in the future, nevertheless that unfitness does not operate retrospectively.

(10) Lit., 'judge'.

(11) A single person testifying that the mikweh is deficient, or that a priest has a blemish, disqualifies them, v. infra.

(12) His mother.

(13) Surely not!

(14) This supports Raba.

(15) I.e., it can he directly ascertained.

(16) Num. XXV, 13.

(17) But nevertheless, only if the service has already been performed.

(18) Deut. XXXIII, 11.

(19) Deriving חילו from חול 'profane'; cf. however, Mak, (Sonc. ed.) p. 79 n. 10. This refers to the tribe of Levi, hence the priesthood. The son of a divorced woman or a haluzah by a priest is a halal, which is connected here with helo and hullin.

(20) Deut. XXVI, 3.

(21) I.e., was proved to be such, The verse intimates that until he is proved profane, the 'going to him' for service, etc. is valid.

(22) Num. XXV, 12 (sic).

(23) I.e., unblemished,

(24) I.e., blemished,

(25) Being written with a broken waw (ו) instead of שלום (with a complete waw); this intimates that it must be read without it too, שלם shalem, = whole, perfect, sound.

(26) I.e., the betrothal is valid and permitted.

(27) The child has the father's status.

(28) Lit., 'the defective'.

(29) Fem. of mamzer and Nathin respectively.

(30) In all these cases the betrothal is valid, though forbidden,

(31) I.e., the kiddushin, even if contracted, is invalid.

(32) E.g., a sister, mother, etc. A married woman too is included.

(33) Probably, R. Simeon b. Lakish.

Talmud - Mas. Kiddushin 67a

a proselyte who marries a mamzereth, where the kiddushin is valid and there is no sin, and yet the issue follows the status of the inferior?[1] For it was taught: If a proselyte marries a mamzereth, the issue is mamzer: this is the view of R. Jose! He replied: Do you think that our Mishnah agrees with R. Jose?[2] Our Mishnah is according to R. Judah, who maintained: A proselyte may not marry a mamzereth; hence there is kiddushin, but there is transgression, [and so] the issue follows the status of the inferior. Then let it be taught [in the Mishnah]?[3] — 'WHEREVER' of the second clause is taught as an extension.[4] Alternatively, it is after all, according to R. Jose, but 'THIS IS THE CASE'[5] is taught as a limitation.[6] Does then the 'THIS IS THE CASE' imply that there are no others? But what of a halal[7] who marries the daughter of an Israelite, where there is kiddushin and there is transgression, yet the issue follows the male?[8] — That is no difficulty: he [the Tanna of our Mishnah] holds with R. Dosethai son of R. Judah.[9] But what of an Israelite who marries a halalah,[10] where there is kiddushin and there is no transgression, and yet the issue follows the male? — 'WHEREVER' is stated in the first clause as an extension.[11] Then let it be explicitly taught? — Because it cannot be [conveniently] taught. [For] how shall it be stated: 'The daughter of a priest, a Levite, or an Israelite or a halalah who marries a priest, a Levite, or an Israelite?' Is then a halalah eligible to [marry] a priest?[12]

But there is the case of Rabbah b. Bar Hanah. For Rabbah b. Bar Hanah said in R. Johanan's name: If an Egyptian of the second degree[13] marries an Egyptian woman of the first degree, her son ranks as third degree![14] — 'WHEREVER' of the first clause is stated as an extension; whereas according to R. Dimi, who maintained that he belongs to the second degree,[15] 'THIS IS THE CASE' is taught as a limitation.

But there is [the following]: For when Rabin came,[16] he said in the name of R. Johanan: In the case of [other] nations, follow the male;[17] if they become proselytes, follow the more inferior status[18] of the two! — 'THIS IS THE CASE' is taught as a limitation.

[Reverting to the authorship of the Mishnah:] How now! If you say that our Mishnah agrees with R. Judah, it is well: then 'WHEREVER' of the first clause includes an Israelite who marries a halalah[19] and the case of Rabbah b. Bar Hanah; while 'THIS IS THE CASE' excludes the cases of R. Dimi and Rabin.[20]

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(1) Viz., it is mamzer.

(2) Who permits this union in the first place.

(3) Among the cases enumerated in this category

(4) I.e., to include cases not explicitly enumerated.

(5) Lit., 'and which is it? It is . . .

(6) Notwithstanding that a general principle is stated, the 'THIS IS THE CASE', teaches that it applies only to the cases enumerated.

(7) V. Glos.

(8) Hence this should be included in the first clause.

(9) That the daughter of this union may marry a priest, v. infra 74b, thus she does not follow the male.

(10) Fem. of halal.

(11) V. p. 338. n. 6.

(12) Surely not. Hence halalah could not be added simply, and so the Tanna implicitly includes it by stating 'WHEREVER'.

(13) I.e., the second generation after conversion, his father having been a proselyte.

(14) Hence, eligible to an ordinary Jewess, v. Deut. XXIII, 8. Thus, here we have kiddushin and no transgression, and the issue follows the male.

(15) Thus following the mother.

(16) V. p. 46, n. 6.

(17) If a man and a woman among them of two different peoples marry, the issue takes the father's status, v. infra.

(18) Thus, though their kiddushin is valid and involves no transgression, the status of the male is not invariably followed.

(19) His daughter may marry a priest, thus following her father's status. This union is permitted.

(20) As above.

Talmud - Mas. Kiddushin 67b

[Again] 'WHEREVER' of the second clause includes a proselyte who marries a mamzereth. But if you say that it agrees with R. Jose: 'WHEREVER' of the first clause is [to be explained] as we have said: 'THIS IS THE CASE' [likewise] as we have said: but what is 'WHEREVER of the second clause to include?[1] — Now on your view, according to R. Judah, what is the purpose of the 'THIS IS THE CASE' of the second clause? Hence [you must say] because the first clause states 'THIS IS THE CASE', the second likewise states: THIS IS THE CASE. So here too, because the first clause states 'WHEREVER,' the second does likewise state WHEREVER.

The [above] text [states]: 'When Rabin came, he said in the name of R. Johanan: In the case of [other] nations, follow the male; if they become proselytes, follow the more inferior status of the two'. What is meant by 'In the case of [other] nations, follow the male'? — As it was taught: How do we know that if a member of one of the nations[2] has intercourse with a Canaanitish woman[3] and begets a son, you may buy him as a slave?[4] Because it is said: Moreover of the children of the residents that do sojourn among you, of them shall ye buy.[5] I might think that even if a Canaanite has intercourse with a woman of other nations and begets a son, you may buy him for a slave; therefore it is said, which they have begotten in your land:[6] only of those who are begotten in your land, but not of those who dwell in your land.[7]

'If they become proselytes, follow the more inferior status of the two.' In which case? Shall we say, in the case of an Egyptian who marries an Ammonitess? What inferior status is there? [The Torah decreed,] An Ammonite [shall not enter unto the assembly of the Lord . . . even to the tenth generation],[8] but not an Ammonitess![9] — But [it means] an Ammonite who marries an Egyptian woman: now, if [the issue] is male, he follows[10] him [the father];[11] and if [the issue] is female, she follows her [the mother].[12]

WHATEVER [WOMAN] WHO CANNOT CONTRACT KIDDUSHIN WITH THAT PARTICULAR PERSON. How do we know it? — For R. Hiyya b. Abin said in R. Johanan's name, the matter eventually being ascribed to the authority of R. Jannai, while R. Aha son of Raba said that it was eventually ascribed to the authority of R. Jose the Galilean: Scripture saith, And when she is departed out of his house, she may go and be married to a strange man:[13] 'to a stranger', but not to relations.[14] R. Abba demurred to this: Yet say: 'a strange [man]', but not [her husband's] son?[15] — Of a son it is explicitly written: A man shall not take his father's wife;[16] what then is the purpose of 'a strange [man]' This proves, [it is to teach], to strangers, but not to relations. Yet perhaps both refer to the [husband's] son, one [treating of it] at the outset, the other, if performed![17] — [That it is interdicted] at the outset is deduced from a wife's sister: if one may not betroth a wife's sister, who is [forbidden on pain of] kareth;[18] how much the more so is this of those on account of whom death by Beth din is incurred![19] — Then perhaps both refer to a wife's sister, one [forbidding it] at the outset, the other, if performed![20] — That indeed is so. [Then] we have found [this] of a wife's sister; how we do know it of other consanguineous relations? — We learn then from a wife's sister: just as a wife's

sister is distinguished in that she is a consanguineous relation with whom a deliberate offence[21] involves kareth, and an unwitting offence involves a sin-offering, and kiddushin with her is invalid;[22] so with every consanguineous relation, with whom a deliberate offence involves kareth and an unwitting offence a sin-offering, kiddushin is invalid. Now, as for all [others], it is well: they may be [so] derived; but as for a married woman and a brother's wife, it [the analogy] can be refuted [thus:] As for a wife's sister, that [the invalidity of kiddushin] is because she is not permitted [even] where there is a precept;[23] will you say [the same] of a brother's wife, who is permitted where there is a precept? [The analogy with] a married woman too may be refuted: as for these, that [the invalidity of kiddushin] is because she cannot be permitted whilst they who cast the interdict upon her are alive;[24] will you say [the same] of a married woman, who can be permitted during the lifetime of him who renders her forbidden?[25] — But, said R. Jonah others state, R. Huna son of R. Joshua — Scripture saith, For whosoever shall do any of these abominations, even the souls that do them shall be cut off:[26] thus all consanguineous relations are assimilated to a wife's sister: just as kiddushin with a wife's sister is invalid, so is kiddushin with all other consanguineous relations invalid. If so,

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(1) No other case of kiddushin being legally recognised but forbidden, where the issue follows the status of the inferior, is known, barring those enumerated in the Mishnah.

(2) Other than the seven which inhabited Palestine at the time of the Conquest. Deut. XX, 16f.

(3) I.e., a member of the seven nations.

(4) The law of Deut. XX, 16f does not apply to him.

(5) Lev. XXV, 45. This is preceded by (v. 44) of the nations that are round about you (i.e., not the seven nations), of them shall ye buy bondmen and bondmaids. Hence, 'Moreover,' etc., implies not only of them, but even of the residents etc. Since the members of the seven races are excluded (Deut. XX. 16f), it must mean, not only the pure members of the other nations, but even those borne by Canaanitish women.

(6) Lev. XXV, 45.

(7) The Canaanites. Thus in both cases the issue takes the status of the father.

(8) Deut. XXIII, 4.

(9) The 'of more inferior status of the two' implies that they are both inferior, but one more so than another. But an Ammonitess has no inferior status at all, for she may marry a Jew immediately after her conversion.

(10) Lit., 'cast him after.'

(11) And ranks as an Ammonite; neither he nor any of his male descendants will be permitted to marry a Jewess.

(12) And counts as an Egyptian woman of the second generation; the following generation will be permitted to marry a Jew or a Jewess. But she does not take her father's status to count as an Ammonitess, in which case she herself could marry a Jew.

(13) Deut. XXIV, 2.

(14) Who are interdicted by the laws of incest; i.e., marriage with these is invalid.

(15) Only then is kiddushin invalid. But kiddushin with any other consanguineous relation, though forbidden, may be valid.

(16) Ibid. XXIII, 1 (E.V. XXII, 30); 'shall not take' intimates that such 'taking.' viz., betrothal, is invalid.

(17) One shews that this marriage may not be contracted in the first place. Yet I might think that if contracted it is valid and necessitates a divorce for its dissolution; therefore the other shews that even if performed it is not recognised.

(18) V. Glos.

(19) The latter includes a husband's son.

(20) Lev. XVIII, 28, thou shalt not take a woman to a sister, teaches that kiddushin is forbidden; and Deut. XXIV, 2 'to a strange man' implying but not to relations, may intimate that such kiddushin is invalid if contracted. But with respect to other relations enumerated in Lev. XVIII, 7-17 in connection with which Scripture does not say: 'thou shalt not take' — a term implying 'betrothal' — kiddushin with them, though forbidden, may be valid.

(21) I.e., coition,

(22) Even when performed.

(23) If A and B, two brothers, are married to C and D, two sisters, respectively, and A dies childless, B may not take C, though if she were not his wife's sister it would be incumbent upon him (Deut. XXV, 5ff.).

(24) Even if one divorces his wife, her sister is still prohibited as long as the former lives.

(25) I.e., — by her husband's divorce. And thus the question remains, whence do we know that kiddushin is invalid with consanguineous relations?

(26) Lev. XVIII, 29; the chapter enumerates the forbidden consanguineous relations.

Talmud - Mas. Kiddushin 68a

even a niddah too?[1] Why then did Abaye say: All agree that if one has inter — course with a niddah or a sotah,[2] the issue is not mamzer? — Said Hezekiah, Scripture saith, [and if any man lie with her,] and her menstruation[3] be upon him:[4] even during her 'menstruation' betrothal with her is valid.[5]

Consider: one can assimilate [all other consanguineous relations] to niddah, and one can assimilate her to a wife's sister:[6] what [reason] do you see to assimilate them to a wife's sister:[7] assimilate them to niddah? — [In a choice between] leniency and stringency, we assimilate to the case of stringency.[8]

R. Aha b. Jacob said: It is inferred a minori from yebamah: if kiddushin with a yebamah is invalid,[9] though she is [interdicted only] by a negative precept, how much the more so with those who are forbidden on pain of death or kareth! If so, should not others, interdicted [only] by negative precepts. be the same?[10] — Said R. Papa, of those interdicted by negative precepts it is explicitly stated: If there be to a man two wives, the one beloved, and the other hated.[11] Now is there before the Omnipresent a hated [woman] or a beloved one![12] But 'beloved' means beloved in her marriage, and 'hated' means hated in her marriage;[13] yet the Divine Law states: 'and if there be.'[14]

Now R, Akiba, who maintained, kiddushin with those who are interdicted by a negative precept is invalid, — to what does he apply, 'if there be'? — To [the betrothal of] a widow to a High Priest, and in accordance with R. Simai. For it was taught: R. Simai said: [The issue] of all [marriages forbidden by a negative injunction] R. Akiba declared mamzer, excepting that of a widow [married] to a High Priest, since the Torah said, [a widow . . . he shall not take,] and he shall not profane [his seed]:[15] he renders [his seed] profane, but not mamzer. But on the view of R. Yeshebab, who said: Come, and let us cry out against Akiba son of Joseph, who declared: He who has no entry in Israel, the issue is mamzer — it is well if R. Yeshebab comes to combat R. Simai; then it is right. But if he states an independent opinion, this including even those who are interdicted by a positive precept, to what can he apply it?[16] — To a non-virgin[17] [married] to a High Priest.[18] And wherein does it differ?[19] — Because it is a positive precept unapplicable[20] to all.[21] And the Rabbis: instead of explaining [the verse][22] as referring to those forbidden by negative precepts, let them refer it to those forbidden by positive precepts?[23] — Those who are forbidden by positive precepts, — how are they conceivable? If both are Egyptian women, both are 'hated'? If one is an Egyptian woman and the other a Jewess — we require that the 'two wives' shall be of one people: if [one is] a non-virgin [married] to a High Priest, — is it then written, [If] there be [two wives] to a priest?[24] And R. Akiba?[25] — You are forced to leave it to the verse to explain itself.[26]

AND WHATEVER [WOMAN] WHO CANNOT CONTRACT KIDDUSHIN etc. How do we know [it of] a Canaanitish bondmaid?[27] — Said R. Huna, Scripture saith, Abide ye here with ['im] the ass[28] — it is a people ['am] like unto an ass.[29] We have thus found that kiddushin with her is invalid:

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(1) If one betroths a woman during her menstruation the kiddushin should be invalid, and as a corollary, the issue conceived during menstruation should be mamzer, these two being interdependent. The prohibition of intercourse with a niddah is also stated in that passage.

(2) V. Glos. The sotah is forbidden to her own husband too, and to this Abaye refers.

(3) E.V. 'impurity'

(4) Lev. XV, 24.
(5) Lit., 'there is (being) — sc. betrothal — with her.' The verb 'to be' is understood to mean betrothal.
(6) Both being mentioned in Lev. XVIII.
(7) So that the kiddushin is not legally recognised.
(8) Owing to the doubt.
(9) V. Yeb. 23b.
(10) Granted that they cannot be deduced a minori, yet they follow by analogy.
(11) Deut. XXI. 15.
(12) Surely it is unthinkable that God will change the law of inheritance because a man loves one woman or hates another! Hence one general law that the firstborn receives a double portion of the patrimony would have sufficed.
(13) I.e., the marriages being permitted and forbidden respectively.
(14) Intimating that the kiddushin is recognised.
(15) Lev. XXI, 14f,
(16) Sc. 'hated' and 'beloved'. For notes on this passage v. supra 64a.
(17) A woman who is not a virgin.
(18) Forbidden in Lev. XXI, 23f.
(19) Why is she different from an Egyptian or an Edomite woman, since all three are interdicted by a positive command?
(20) Lit., 'not alike'.
(21) And not as stringent.
(22) 'And if there be'.
(23) Since by analogy with yebamah kiddushin with the former should be invalid.
(24) Hence the verse cannot refer to a woman who is forbidden by a positive precept.
(25) How does he overcome these difficulties?
(26) It cannot refer to those who are interdicted by negative precepts, since the analogy with yebamah teaches otherwise. Hence it must refer exclusively to one of those just mentioned, in spite of their improbability
(27) That kiddushin with her is invalid.
(28) Gen. XXII, 5; said by Abraham to his slaves.
(29) By reading עם ('am) for עם ('im); a mere chattel of the master.

Talmud - Mas. Kiddushin 68b

how do we know that the issue takes her status? — Because Scripture saith, the wife and her children shall be her master's.[1] How do we know [it of a freeborn] Gentile woman? — Scripture saith, neither shalt thou make marriages with them.[2] How do we know that her issue bears her status? — R. Johanan said on the authority of R. Simeon b. Yohai, Because Scripture saith, For he will turn away thy son from following me:[3] thy son by[4] an Israelite woman is called thy son, but thy son by a heathen is not called thy son.[5] Rabina said: This proves that thy daughter's son by a heathen is called thy son.[6] Shall we say that Rabina holds that if a heathen or a [non-Jewish] slave cohabits with a Jewess the issue is mamzer?[7] — [No.] Granted that he is not [regarded as] fit,[8] he is not mamzer either, but merely stigmatised as unfit.[9]

Now, that [verse] refers to the seven nations![10] whence do we know it of other nations? — Scripture saith, 'For he will turn away [thy son],' which includes all who may turn [him] away. That is well according to R. Simeon, who interprets the reason of Scripture.[11] But on the view of the Rabbis,[12] what is the reason?[13] — Scripture saith, and after that thou shalt go in unto her, and be her husband, [etc.],[14] whence it follows that before that kiddushin with her is invalid.

We have thus found that kiddushin with her is not recognised. How do we know that her child is as herself? — Scripture saith, If there be to a man [two wives] . . . and they bare to him [children]:[15] where we read 'if there be',[16] we also read: 'and they bare to him';[17] but where we do not read: 'If there be', we do not read: 'and they bare to him'. If so, is not a [heathen] bondmaid likewise? — Yes, it is even thus. Then what is the purpose of 'the wife and her children shall be her master's'? —

For what was taught:

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(1) Ex. XXI, 4. This refers to a Gentile bondmaid given as wife to a Hebrew slave. The children remain slaves when their father is freed, shewing that they bear their mother's status.
(2) Deut. VII, 3. The verse implies that such marriage is not recognised.
(3) Ibid. 4.
(4) Lit., 'who comes'.
(5) [Although the text speaks both of the case of a Jewess becoming the wife of a heathen, and of a heathen becoming the wife of a Jew, yet it gives only one reason for the prohibition of intermarriage: viz., lest 'he turn aside thy son from following after me', a reason which, as it stands appears applicable only to one prohibition. Hence the verse must be taken not as expressing the fear lest the Jewish partner in a heathen marriage may turn aside from God, since this is evident and is equally applicable to both cases, but states an additional reason for the prohibition with reference to the offspring — the fear that the heathen father 'will turn aside thy son' i.e., the son of thy daughter who is legally a Jew 'from following after me'; whereas in the case where a Jew marries a heathen woman the fear does not arise, since the child follows her status, and is not considered 'thy son' Rashi.] Tosaf.: Since Scripture states 'son' and not 'seed' which would include the son's son, it is evident that the fear is only for thy 'son' born of a Jewess, but not his son, born of a Gentile. That must be because his son is a heathen too, like the mother.
(6) [According to Rashi's interpretation (n. 5), whereas R. Johanan's main emphasis is on the heathen status of the offspring of a heathen woman by a Jew, Rabina stresses the other inference — the status of the offspring of a Jewish woman by a heathen. v. Strashun.] Tosaf. I.e., a Jew. This follows because Scripture does not say: for he will turn away thy son and thy daughter. Now, 'and thy daughter' would likewise imply, but not thy daughter's son, as in n. 5, whence we would learn that her son by a heathen is also a heathen. Since he is not excluded, it follows that Scripture objects to his being 'turned away' too, because he is a Jew (Tosaf.)
(7) For, since he is called 'thy son', he is a Jew, not a heathen. Yet he is the issue of a Jewess by one with whom kiddushin is not recognised, and therefore mamzer, in accordance with the Mishnah. — In that case his status is worse, for as a mamzer he can never marry a legitimately born Jewess (Deut. XXIII, 3), whereas as a Gentile he can become a proselyte and marry a Jewess.
(8) V. next note.
(9) Pasul. As such only a priestly marriage is barred to him.
(10) V. Deut. VII, 1, 2.
(11) In the sense that when we know the reason of a precept, we may extend it to all other cases where the same applies, and conversely, exclude those where it does not.
(12) Who oppose this.
(13) Seeing that for he will turn away too refers to the seven nations.
(14) Deut. XXI, 13. The verse refers to a woman captured in war; since the members of the seven nations were to be utterly exterminated, this must allude to a member of other nations, 'After that' means after her period of mourning. etc.
(15) Deut. XXI, 25.
(16) I.e., kiddushin is valid; v. p. 343, n. 4.
(17) The child takes his status.

Talmud - Mas. Kiddushin 69a

If he says to his bondmaid, 'Behold, thou art free, but thy child [yet to be born] shall be a slave,' the 'child is as herself: this is the view of R. Jose the Galilean; the Sages maintain: His words are valid,[1] for it is said: 'the wife and her children shall be her master's'. How does this teach it?[2] — Said Raba: This refers to R. Jose the Galilean's [ruling].[3]

MISHNAH. R. TARFON SAID: MAMZERIM[4] CAN BE PURIFIED.[5] HOW? IF A MAMZER MARRIES[6] A BONDMAID, HER SON IS A SLAVE;[7] IF HE IS FREED, IT IS FOUND THAT THE SON IS A FREE MAN.[8] R. ELIEZER SAID: BEHOLD, HE IS A SLAVE, A MAMZER.[9]

GEMARA. The Scholars propounded: Does R. Tarfon say [thus] at the very outset,[10] or only if it

is already done?[11] — Come and hear: They [the Sages] said to R. Tarfon: You have purified the males,[12] but you have not purified the females.[13] Now, if you say that he means at the very outset, let a mamzereth[14] too be married to a slave?[15] — A slave has no paternity.[16]

Come and hear: For R. Simlai's host was a mamzer, and he [R. Simlai] said to him, 'Had I known you earlier,[17] I would have removed the stigma from[18] your sons.' Now, if you say that it [sc. R. Tarfon's device] is at the very outset, it is well: but if you say, only when already done, what is it [that he could advise him]?[19] — He would have advised him by saying to him, 'Go and steal, and then be sold as a Hebrew slave.'[20] Were there then Hebrew slaves in R. Simlai's time?[21] Surely a Master said: [The institution of] a Hebrew slave is practised only when Jubilee is practised?[22] Hence it surely follows that R. Tarfon means at the very outset. This proves it. Rab Judah said in Samuel's name: The halachah is as R. Tarfon.

R. ELIEZER SAID: BEHOLD, HE IS A SLAVE, A MAMZER, R. Eleazar said: What is R. Eliezer's reason? Because Scripture saith, [A mamzer . . . even to the tenth generation shall none enter] to him [into the assembly of the Lord]:[23] [this teaches,] follow his ineligibility.[24] And the Rabbis?[25] — That refers to an Israelite who marries a mamzereth. For I might think, it is written, by their families, by their father's house:[26] [therefore] 'to him' comes and excludes it.[27] And R. Eliezer?[28] — Surely, though it is written: 'by their families, by their father's house,' yet 'to him' comes and excludes it; so here too, though it is written , 'the wife and her children shall be her master's,' yet 'to him' comes and excludes it.[29] And the Rabbis? — Every child in the womb of a heathen bondmaid is like the young in an animal's womb.[30]

C H A P T E R I V

MISHNAH. TEN GENEALOGICAL CLASSES WENT UP FROM BABYLON:[31] PRIESTS, LEVITES, ISRAELITES, HALALIM,[32] PROSELYTES, FREEDMEN, MAMZERIM, NETHINIM,[33] SHETHUKI[34] AND FOUNDLINGS. PRIESTS, LEVITES AND ISRAELITES MAY INTERMARRY[35] WITH EACH OTHER. LEVITES, ISRAELITES, HALALIM, PROSELYTES, AND FREEDMEN MAY INTERMARRY. PROSELYTES AND FREEDMEN, MAMZERIM AND NETHINIM, SHETHUKI AND FOUNDLINGS, ARE ALL PERMITTED TO INTERMARRY. NOW, THESE ARE THEY: SHETHUKI: HE WHO KNOWS HIS MOTHER BUT NOT HIS FATHER; FOUNDLING: HE WHO WAS GATHERED IN FROM THE STREETS AND KNOWS NEITHER HIS FATHER NOR HIS MOTHER, ABBA SAUL USED TO CALL THE SHETKUKI 'BEDUKI'.[36]

GEMARA. TEN GENEALOGICAL CLASSES WENT UP FROM BABYLON. Why is it particularly taught: WENT UP FROM BABYLON; let him state, migrated to Eretz Yisrael? He thereby tells us something en passant. As it was taught: then shalt thou arise and get thee up unto the place which the lord thy God shall choose:[37] this teaches that the Temple is higher than the rest of Eretz Yisrael, and Eretz Yisrael is higher than all [other] countries. As for the Temple being higher than the rest of Eretz Yisrael, it is well: even as it is written,

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(1) Lit., 'fulfilled'.

(2) The verse is assumed to be quoted by the Sages.

(3) Thus: only when the wife, i.e., the bondmaid, belongs to the master does the issue belong to him; but if she is free, the children are likewise.

(4) Pl. of mamzer.

(5) From their inferior status, which forbids them and their descendants ever to marry Jews.

(6) 'Marries' denotes a legal union; v. A. Buchler, MGWJ 1934 p. 133. n. 2.

(7) But not mamzer.

(8) Hence, permitted to marry a Jewess.

(9) And on obtaining his freedom he remains a mamzer.
(10) That this may be done in order to purify a mamzer.
(11) Because a mamzer is after all a Jew, and possibly may not marry a bondmaid.
(12) They can go where they are unknown, claim to be slaves, and marry bondmaids.
(13) Because a woman does not leave her home and disguise her identity in order to enter upon a forbidden marriage.
(14) Fem. of mamzer.
(15) Since none forbid her.
(16) The issue is not recognised as his, but as hers, and therefore if a mamzereth is married to a slave it will still remain mamzer.
(17) Before your marriage.
(18) Lit., 'purified'.
(19) He would surely not counsel him to do something that is forbidden in the first place!
(20) To whom a bondmaid is permitted. Of course, the same objection may still be raised: surely he would not advise him to steal! But then one could answer that he would advise him to sell himself, in accordance with the view that then too his master can give him a heathen bondmaid, supra 14b (Rashi).
(21) Lit., 'years'.
(22) Which it was not then.
(23) Deut. XXIII, 3.
(24) All his issue, no matter how born, share his own unfitness.
(25) R. Tarfon: how does he explain this?
(26) Num. IV, 2, and therefore the issue has the status of the father.
(27) I.e., this issue follows the mother, not the father.
(28) Does he not admit this?
(29) That in this case the child is not exclusively the master's, i.e., a slave, but also belongs to his father's rank and is a mamzer.
(30) Which has no connection with the male at all.
(31) After the first exile.
(32) V. Glos. s.v. halal.
(33) v. Glos. s.v. Nathin.
(34) Lit., 'the silenced one.' The Mishnah proceeds to define them.
(35) The language is Biblical: may come in unto each other; cf. Deut. XXIII, 2-4.
(36) Lit., 'one requiring examination.' The Gemara discusses this.
(37) Deut. XVII, 8, sc. the Temple.

Talmud - Mas. Kiddushin 69b

[If there arise...] matters of controversy in thy gates: then thou shalt arise and go up.[1] But how do we know that Eretz Yisrael is higher than all [other] countries? — Because it is written: Therefore behold, the days come, saith the Lord, that they shall no more say: As the Lord liveth, which brought up the children of Israel out of the land of Egypt; but, as the Lord liveth, which brought up and which led the seed of the house of Israel out of the north country, and from all the countries whither I had driven them.[2]

Then why particularly state, WENT UP FROM BABYLON: let him teach, went up to Eretz Yisrael? — This supports R. Eleazar. For R. Eleazar said: Ezra did not go up from Babylon until he made it like pure sifted flour: then he went up.[3] Abaye said: We learnt: THEY WENT UP voluntarily; Raba said: We learnt: He [Ezra] brought them up [against their will]. And they differ over R. Eleazar ['s dictum,] viz.: Ezra did not go up from Babylon until he made it like pure sifted flour: then he went up. Abaye rejects it, Raba accepts it.[4] Alternatively, all accept R. Eleazar's dictum, but they differ in this: One Master [Abaye] holds that he [merely] separated them, whereupon they voluntarily ascended [to Palestine]:[5] the other Master holds that [even so] he led them up against their will.

Now, on the view that they went up [voluntarily], it is well: thus Rab Judah said in Samuel's name: All countries are as dough in comparison with Palestine,[6] and Palestine is as dough relative to Babylon.[7] But on the view that he [forcibly] led them up, they were indeed known?[8] — Granted that they were known to that gener — ation, they were not known to another generation. On the view that they went up, it is well: hence it is written: And I gathered them together to the river that runneth to Ahava; and there we encamped three days; and I viewed [i. e., scrutinized] the people, and the priests, and found there none of the sons of Levi.[9] But on the view that he brought them up — surely he was most careful with them![10] — Granted that he had been careful with the unfit,[11] yet he had not been careful with the fit.

PRIESTS, LEVITES, AND ISRAELITES. How do we know that they had come up? — Because it is written, so the priests, and the Levites, and some of the people, and the singers, and the porters, and the Nethinim, dwelt in their cities, and all Israel in their cities.[12]

HALALIM, PROSELYTES AND FREEDMEN. How do we know halalim? For it was taught: R. Jose said: A presumptive right [hazakah] is powerful, as it is said: And of the children of the priests: the children of Habaiah, the children of Hakkoz, the children of Barzillai, which took a wife of the daughters of Barzillai the Gileadite, and was called after their name. These sought their register among those that were reckoned by genealogy, but they were not found: therefore were they deemed polluted and put from the priesthood. And the Tirshatha[13] said unto them, that they should not eat of the most holy things, till there stood up a priest with Urim and with Thummim.[14] Now he[15] said to them, Behold, ye remain in your presumptive rights: whereof did ye eat in Exile? of the sacred food [eaten] in the country.[16] So now too [ye may partake] of the sacred food [consumed] in the country.[17]

But on the view that we promote from terumah to family purity,[18] those who ate terumah, they would come to promote them? — There it was different, because their presumptive status was weakened.[19] Then what is meant by 'Great is a presumptive right?'[20] — Because originally they ate Rabbinical terumah, and now they were to eat Biblical terumah.[21] Alternatively, after all they would now too eat only Rabbinical terumah,[22] not Biblical; for when do we promote front terumah to family purity? [Only when it is terumah] by Biblical law, but we do not promote [when it is terumah] by Rabbinical law. If so, why [state], 'Great is a presumptive right?' — Because formerly[23] there was no cause to forbid it on account of Biblical terumah,' but now,[24] though it might have been forbidden on account of Biblical terumah,[25] they [nevertheless] ate of Rabbinical, but not of Biblical [terumah]. But it is written: 'and the Tirshatha said unto them, that they should not eat of the most holy things': thus, only of the most holy things[26] might they not eat, but everything else they might eat? — This is what he said: [They were to eat] neither what is called kodesh [holy], nor what is called kodashim [holies]. 'Neither what is called kodesh', as it is written: There shall no stranger eat kodesh;[27] 'nor what is called kodashim,' as it is written: And if a priest's daughter be married unto a stranger, she shall not eat of the heave-offerings of the kodashim,[28] and a Master said [explaining this:] the priestly dues[29] of sacrifices

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(1) Ibid. 8; 'In thy gates' implies anywhere in Palestine, whence one had to 'go up' to the Temple.

(2) Jer. XXIII, 7f.

(3) He intentionally took those of inferior rank so that they should not remain in Babylon, where, owing to the absence of leaders, they might mingle with the rest of the nation. Therefore the Tanna states: WENT UP FROM BABYLON, intimating that in that itself he had a purpose, apart from the rebuilding of Palestine, viz., to purge the Jews in Babylon.

(4) For such purging could only be effected by compulsion.

(5) In order to become mixed up with the others.

(6) Dough is a mixture of flour and water. I.e., the Jews there have not such a pure descent as those in Palestine.

(7) Cf. n. 2. Halevi, Doroth, 1, 3, p. 104 conjectures that this was due to the incessant wars with the Greeks, when many

Jews and Jewesses were taken captive by the enemy, and the general weakening of Jewish observance during the Hellenizing period and later when the Sadducees ruled the country. The Jews in Babylon, however, were free from all this.

(8) In Palestine too, and restrained from intermarrying, so that Palestine remained just as pure as Babylon.

(9) Ezra VIII, 15. He had to scrutinize them, since those of inferior descent voluntarily joined them.

(10) He knew who they were; why scrutinize them?

(11) I.e., those of low descent.

(12) Ibid. II, 70.

(13) According to tradition it was Nehemiah.

(14) Ezra II, 61-63 [So to speak, 'never' since there was no Urim and Thummim in the second Temple. v. Sot. 48a'.]

(15) The Tirshatha.

(16) Gebul. country, is a technical term denoting any part of Palestine outside the Temple and Jerusalem. The reference is to terumah.

(17) But not sacrifices. This shews that 'they were deemed polluted' means that they were accounted halalim, who may not partake of sacrifices.

(18) If a priest is seen eating terumah in his town, where he is known, we assume that he is of pure descent, and permit another priest to marry his daughter.

(19) When it was seen that other priests ate sacrifices and they did not, it would be known that their genealogy was suspect (Rashi). Tosaf.: their status was weakened because they had failed to prove their pure descent.

(20) The phrase implies that it leads to some extraordinary concession. But since there was no reason to fear that continuance in their right would lead to error, R. Jose should simply have stated that a presumptive right in the past gives a claim for the future.

(21) Outside Palestine terumah is required by Rabbinical law only.

(22) Terumah on fruit and vegetables, which even in Palestine is only Rabbinical.

(23) Since outside Palestine there was none available.

(24) Lit., 'at the end'.

(25) On their return to Palestine. If they were permitted to eat Rabbinical, they might come to eat Biblical terumah.

(26) Which implies sacrifices of the higher sanctity; v. p. 264, n. 11.

(27) Lev. XXII, 10; E.V. 'of the holy things,' i.e., terumah, to which the whole passage refers.

(28) Ibid. 12; E.V. holy things.

(29) Lit., 'that which was separated', viz., the breast and shoulder.

Talmud - Mas. Kiddushin 70a

she shall not eat.

PROSELYTES AND FREEDMEN. How do we know it? — Said R. Hisda, Because Scripture saith, and all such as had separated themselves unto them from the filthiness of the heathen of the land.[1]

MAMZERIM. How do we know it? — Because it is written: And Sanballat the Horonite, and Tobiah the slave, the Ammonite, heard it:[2] and it is [also] written, [Moreover in those days the nobles of Judah sent many letters unto Tobiah . . .] For there were many in Judah sworn unto him, because he [Tobiah] was the son-in-law of Shechaniah the son of Arah; and his son Jehohanan had taken the daughter of Meshullam the son of Berchiah to wife.[3] Now he [the Tanna of our Mishnah] holds that if a heathen or a slave has intercourse with the daughter of an Israelite, the issue is mamzer.[4] That is well on the view that the issue is mamzer; but on the view that it is legitimate [kasher], what can be said? Moreover, how do you know that they had sons:[5] perhaps they did not have sons? Again, how do you know that they were [originally] here [in Babylon] and then migrated; perhaps they were there [in Palestine, from the beginning]? — But [it is learnt] from this: And these were they which went up from Tel-melah, Tel-harsha, Cherub, Addon, and Immer: but they could not shew their fathers' houses, nor their seed, whether they were of Israel.[6] Now 'Tel-melah'[7] refers

to those people whose deeds were like those of Sodom, which was turned into a salt heap: 'Tel-harsha,'[8] to those who cry out 'Father,'and their mothers silence them;[9] but they could not shew their fathers' houses, nor their seed [i.e., their mothers], whether they were of Israel — this refers to foundlings, gathered in from the streets. 'Cherub, Addon and Immer':[10] R. Abbahu said: The Lord said: 'I said that Israel should be as precious to me as the cherub, whereas they made themselves like the leopard.'[11] Others state, R. Abbahu said: The Lord said: 'Though they have made themselves like the leopard, yet they are as precious to me as a cherub.'

Rabbah b. Bar Hanah said: He who takes a wife who is not fitting for him,[12] the Writ stigmatizes him as though he had ploughed the whole world and sown it with salt, as it is said: And these were they which went up front Tel-melah, Tel-harsha.[13]

Rabbah son of R. Adda said in Rab's name: He who takes a wife for the sake of money will have unworthy children, as it is said: They have dealt treacherously against the Lord; for they have borne strange children. And should you think, their money is saved [to them], — therefore it is stated: Now shall the new moon devour them with their portions.[14] And should you say, his portion, but not hers:[15] therefore it is stated: 'their portions'. And should you say [only] after a long time — therefore it is said: 'the new moon'. What does this imply? — Said R. Nahman b. Isaac: A month comes and a month goes and their money is lost.

Rabbah son of R. Adda also said — others state, R. Salla said in R. Hamnunaðs name: He who marries a wife who is not fit for him, Elijah binds him and the Holy One, blessed be He, flagellates him. And a Tanna taught: Concerning all these[16] Elijah writes and the Holy One, blessed he He, attests: 'Woe to him who disqualifies his seed, blemishes his family and him who takes to wife one who is not fit for him, Elijah binds and the Holy One, blessed be He, flagellates.'[17] And he who [continually] declares [others] unfit is [himself] unfit and never speaks in praise [of people]. And Samuel said: With his own blemish he stigmatizes [others] as unfit.

A certain man from Nehardea entered a butcher's shop in Pumbeditha and demanded, 'Give me meat!' 'Wait until Rab Judah b. Ezekiel's attendant takes his,' was the reply: 'and then we will serve you.' 'Who is Judah b. Shewiskel,[18] he exclaimed: 'to take precedence over me and be served before me!' When they went and told Rab Judah, he pronounced the ban against him. Said they to him, 'He is wont to call people slaves,' whereupon he had him proclaimed a slave. Thereupon that man went and summoned him to a lawsuit before R. Nahman. When the writ of summons was brought, he [Rab Judah] went before R. Huna [and] asked him, 'Shall I go or not?'[19] 'Actually,' he replied: 'you need not go, being a great man; yet in honour of the Nasi's house,[20] arise and go.' On his arrival there he found him making a railing.[21] Said he to him, Do you not accept R. Huna b. Idi's dictum in Samuel's name, Once a man is appointed head of a community, he may not do [manual] labour in the presence of three?[22] — 'I am [merely] making a small portion of a gundritha,'[23] he replied. 'Is not ma'akeh,[24] as written in the Torah, or mehizah,[25] as used by the Rabbis, good enough?'[26] he retorted. Said he to him, 'Sit you down on a karpita [seat].' 'Is not safsal, as used by the Rabbis, or iztaba, as commonly used,[27] good enough?' he asked. 'Will you partake of ethronga [citron],' he proceeded, 'Thus did Samuel say,' was his reply: 'he who says 'ethronga', is a third [puffed up] with arrogance: either ethrog, as it is called by the Rabbis, or ethroga, as it is popularly called.' 'Will you drink anbaga [cup of wine]?' he asked him. 'Are you then dissatisfied with isharagus, as it is called by the Rabbis, or anpak, as it is popularly pronounced?' he reproved him. 'Let [my daughter] Donag come and serve drink,' he proposed. 'Thus said Samuel,' he replied: 'One must not make use of a woman.' '[But] she is only a child!' — 'Samuel distinctly said: One must make no use at all of a woman, whether adult or child.' 'Will you send a greeting to [my wife] Yaltha,' he suggested. 'Thus said Samuel,' he replied, [To listen to] a woman's voice is indecent.' 'It is possible through a messenger?' 'Thus said Samuel,' he retorted

(1) Ezra VI, 21.
(2) Neh. II, 10.
(3) Ibid. VI, 17f. Shechaniah was a Jew.
(4) And we have a case of such intercourse in the verses quoted.
(5) Viz., Tobiah and his own son, by these Jewesses.
(6) Ibid. VII, 61.
(7) Lit., 'saltheap'.
(8) Lit., 'heap of silence'.
(9) Because they do not know their fathers — there are called shethuki in the Mishnah.
(10) 'Addon immer', changing 'Immer' to 'Amar', means, 'The Lord (Adon) saith'.
(11) Which is not particular to copulate with its own mate. So Israel, thereby producing mamzerim. The allusion to the deeds of Sodom is similar.
(12) I.e., of an unfit stock.
(13) Deriving harsha fr. harash, to plough. Because 'they could not shew' etc., i.e., they were ashamed of their unseemly marriages and strove to conceal them, they turned the world into a ploughed heap sown with salt.
(14) Hos. V. 7. 'Strange' — i.e., from the ways of decency.
(15) Because she did nothing wrong.
(16) Priests, Levites, and Israelites who marry a wife that is of unfit stock.
(17) Wilna Gaon deletes this; according to which render, 'and takes to wife'.
(18) A wilful and contemptuous mispronunciation of Ezekiel, meaning, the glutton (fr. shewiski, roast meat, i.e., the eater of roast meat).
(19) His eminent position entitled him to refuse to recognise R. Nahman's jurisdiction over himself.
(20) R. Nahman was the son-in-law of the Resh Galutha, the official head of Babylonian Jewry. R. Huna refers to the latter as nasi, which strictly speaking was the corresponding title of the head of Palestinian Jewry; cf. Hul. 124a.
(21) To the roof of his house, in accordance with Deut. XXII, 8.
(22) To preserve the dignity of his position.
(23) Balustrade.
(24) The Heb. for the same.
(25) Lit., 'barrier', the Rabbinical term.
(26) Lit., 'is it hateful?' — why such high-flown language?
(27) Others reverse it.

Talmud - Mas. Kiddushin 70b

'One must not enquire after a woman's welfare.' 'Then by her husband!' 'Thus said Samuel,' said he, 'One must not enquire after a woman's welfare at all.' His wife sent [word] to him, 'Settle his case for him, lest he make you like any ignoramus!' 'What means your traveling hither?' he asked him. 'You sent me a writ of summons,' he replied. 'Seeing that I do not even know your way of speech,' he exclaimed: 'would I send you a writ of summons!' Thereupon he drew out the summons from his bosom and shewed [it] to him: 'Behold the man and behold the summons!' he said. 'Yet since you have come here.' he said: 'let us discuss the matter, that it may not be said that the Rabbis shew favour to each other.' Then he asked him, 'Why did you place that man under the ban?' 'Because he abused the Rabbis' messenger.' 'Then you should have punished him [by stripes], for Rab punished [with stripes] him who abused a messenger of the Rabbis.' — 'I dealt with him more severely.'[1] 'Why did you have it proclaimed that he is a slave?' He answered: 'Because he was wont to call [other] people slaves, and he who declares [others] unfit is [himself] unfit, and never speaks good [of anyone]; and Samuel said: With his own blemish he stigmatizes [others] as unfit.' 'But how did Samuel say this: only that one must suspect; yet did he say that he is to be [thus] proclaimed?' At this stage his opponent said to Rab Judah, 'You call me a slave, — I who am descended from the royal house of the Hasmoneans!' — 'Thus said Samuel,' he retorted: 'Whoever says: "I am descended from the house of the Hasmoneans is a slave.'[2] Said he[3] to him, 'Do you not agree with what was said by R. Abba in the name of R. Huna in Rab's name: Every scholar who proceeds to

give a ruling:[4] if he has stated it before the event, he is heeded; if not, he is not heeded?'[5] — 'But there is R. Mattenah who supports me,' he replied. Now, R. Mattenah had not seen Nehardea for thirteen years, but on that day he visited it. Said he[6] to him, 'Do you remember what Samuel said when he stood with one foot on the bank and one foot on the bridge?'[7] — 'Thus said Samuel', he replied: 'He who claims, "I am descended from the royal house of the Hasmoneans", is a slave, because there remained of them only one maiden who ascended a roof, lifted up her voice and cried out', "Whoever says I am descended from the house of the Hasmoneans is a slave"; then she fell from the roof and died.' So he[8] was proclaimed a slave. On that day many kethuboth were torn up in Nehardea.[9] When he [Rab Judah] issued, they came out after him to stone him.[10] [But] he threatened them, 'If you will be silent, be silent; if not, I will disclose against you what Samuel said: There are two families in Nehardea, one called The House of Jonah [dove] and the other, The House of 'Urbathi [raven-like]; and the sign thereof is, The unclean is unclean and the clean clean.'[11] Thereupon they threw away the stones out of their hands, which created a stoppage in the royal canal.[12]

[At that time] Rab Judah announced in Pumbeditha: Adda and Jonathan are slaves; Judah b. Papa is mamzer: Bati b. Tobiah in his arrogance refused to accept a deed of manumission. Raba proclaimed in Mahuza:[13] The members of Bela, Dena, Tela, Mela and Zega[14] — all these are unfit. Rab Judah said: The members of Guba are Gibeonites; Durnunitha[15] is a village of Nethinim.[16] R. Joseph said: This Be Kubi [in the Vicinity] of Pumbeditha consists entirely of slaves.[17]

Rab Judah said in Samuel's name: Pashur son of Immer[18] had four hundred slaves — others say, four thousand slaves — and all became mixed up in the priesthood, and every priest who displays impudence is [descended] from none but them. Said Abaye: And they all dwell in the Wall[19] of Nehardea.[20] Now he [Rab Judah] differs from R. Eleazar. For R. Eleazar said: If you see a priest with brazen forehead, have no suspicions of him,[21] for it is said: Thy people are as the quarrelsome among priests.[22]

R. Abin b. R. Adda said in Rab's name: Whoever takes a wife who is not fit for him,[23] when the Holy One, blessed be He, causes His divine Presence to rest [on Israel], He testifies concerning all the tribes [that they are His people],[24] but does not testify unto him, for it is said: The tribes of the Lord are a testimony unto Israel:[25] when is it 'a testimony unto Israel'? When the tribes are 'tribes of the Lord'.[26] R. Hama b. R. Hanina said: When the Holy One, blessed be He, causes His divine Presence to rest, it is only upon families of pure birth in Israel, for it is said: At that time, saith the Lord, will I be the God of all the families of Israel[27] — not unto all Israel, but unto 'all the families of Israel', is said[28] — and they shall be my people. Rabbah son of R. Huna said: This is the extra advantage which Israel possesses over proselytes.[29] For in respect to Israel it is written, and I will be their God, and they shall be my people;[30] whereas of proselytes it is written, for who is he that hath boldness to approach unto me? Saith the Lord. And ye shall be my people', and I will be your God.[31]

R. Helbo said: Proselytes are as injurious to Israel as a scab, for it is said: And the stranger shall join himself with them, and they shall cleave [we-nispehu] to the house of Jacob.[32] Here it is written: 'wenispehu'; whilst elsewhere it is written. [This is the law for all manner of plague of leprosy . . .] and for a rising, or for a scab [sappahath].[33]

R. Hama b. Hanina said: When the Holy One, blessed be He,

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(1) Tosaf. in Yeb. 52a suggests that the reason was because he had insulted the Rabbi himself.

(2) Because the dynasty was wiped out by Herod, who, in spite of ascending the throne, was always regarded by the Jew's as an Idumean slave. He, to exalt his children, called them Hasmoneans, v. B.B. 3b.

(3) Probably R. Nahman.

(4) In his teacher's name.

(5) I.e., when he gives a traditional ruling bearing on his own case, he is believed only if he had stated it before the same arose.
(6) Rab Judah.
(7) Or 'on the ferry-boat'.
(8) Rab Judah's litigant.
(9) Of women who belonged to that family, and accordingly bore the status of slaves, so that their marriage was invalid.
(10) For revealing their inferiority.
(11) The dove is a clean bird (i.e., fit for food); the raven is unclean. The House of Jonah is of pure descent; the other is not. Descendants of the two families were probably widespread in Nehardea, but their origin was forgotten: hence the threat.
(12) So many were there.
(13) On the Tigris, not far from Ktesifon; it is discussed at great length in Obermeyer, pp. 161-186.
(14) These are either places or family names. Probably they are contemptuous nicknames, which may mean, old rags, barrels, patches, stuffings and grape skins.
(15) The name of a place.
(16) From which it derives its name, 'dura' _ village, so Rashi, according to cur. ed. 'Nethinim villagers'.
(17) Who had intermingled with the populace, though they had never been formally manumitted.
(18) A priestly contemporary of Jeremiah who had him put in the stocks because of his dire prophecies of national disaster; (Jer. XX 1-6).
(19) Heb. Shura, the large circumvallation. v. next note.
(20) Var. lec.: in Sura and Nehardea.
(21) I.e., of an impure family descent.
(22) Hos. IV, 4.
(23) I.e., of an unfit stock.
(24) [Read preferably with MS.M. 'When the Holy One, blessed be He, testifies, He testifies concerning etc.,' omitting 'causes His divine Presence to rest.']
(25) Ps. CXXII. 4.
(26) Worthily married and born.
(27) Jer. XXXI, 1.
(28) The limitation must exclude those of questionable birth.
(29) Lit., 'which is between Israel and proselytes.'
(30) Ezek. XXXVII, 27; i.e., God calls them first, and they accept the call.
(31) Jer. XXX, 21f; i.e., they must first call upon God, Who willingly accepts them. There is no spirit of exclusiveness in this: God first appeared unto Israel; thereafter, He is ready to accept all who call upon Him.
(32) Isa. XIV, 1.
(33) Lev. XIV, 55. We-nispehu is thus connected with sappahath, and the former verse is translated: and they shall be as a scab to the house of Jacob. — Rashi states: because their lax observance of precepts sets a bad example to true born Jews. Tosaf. suggests the reverse: proselytes are more observant, and expose the laxity of other Jews! Cf. infra p. 387.

Talmud - Mas. Kiddushin 71a

purifies the tribes, He will first purify the tribe of Levi, for it is said: And he shall sit as a refiner and purifier of silver, and he shall purify the sons of Levi, and purge them as gold and silver; and they shall offer unto the Lord offerings in righteousness.[1] R. Joshua b. Levi said: Money purifies mamzerim,[2] for it is said. And he shall sit as a refiner and purifier of silver.[3] What is meant by, and they shall offer unto the Lord offerings in righteousness? — Said R. Isaac: The Holy One, blessed be He, shewed charity[4] to Israel, in that a family once mixed up[5] remains so.[6]

The [above] text [states]: Rab Judah said in Samuel's name: All countries are as dough in comparison with Palestine, and Palestine is as dough relative to Babylon. In the days of Rabbi[7] it was desired to render Babylon as dough vis a vis Palestine.[8] Said he to them, You are putting thorns between my eyes![9] If you wish, R. Hanina b. Hama will join [issue] with you. So R. Hanina b. Hama

joined [issue] with them and said to them, 'I have this tradition from R. Ishmael son of R. Jose who stated on his father's authority: All countries are as dough in comparison with Palestine, and Palestine is as dough relative to Babylon.'[10]

In the days of R. Phineas it was desired to declare Babylon as dough vis a vis Palestine.[11] Said he to his slaves, 'When I have made two statements in the Beth Hamidrash, take me up in my litter and flee.' When he entered he said to them, A fowl does not require slaughter by Biblical law. Whilst they were sitting and meditating thereon, he said to them, All countries are as dough in comparison with Palestine, and Palestine is as dough relative to Babylon. [Thereupon] they [his slaves] took him up in his litter and fled. They ran after, but could not overtake him. Then they sat and examined [their genealogies], until they came to danger;[12] so they refrained.[13]

R. Johanan said: By the Temple! It is in our power;[14] but what shall I do, seeing that the greatest men of our time are mixed up therein. [Thus] he holds with R. Isaac, who said: Once a family becomes mixed up, it remains so.[15] Abaye said: We have learnt likewise: There was a family, Beth ha-Zerifa, in Transjordania, which Ben Zion[16] forcibly expelled.[17] There was another, which Ben Zion forcibly admitted.[18] Such as these, Elijah will come to declare unclean or clean, to expel and admit.[19] [Hence, only] such as these, who are known; but once a family becomes mixed up, it remains so. It was taught: There was yet another, which the Sages declined to reveal, but the Sages confided it to their children and disciples once a septennate — others say, twice a septennate. Said R. Nahman b. Isaac: Reason supports the view that it was once a septennate. Even as it was taught: [If one vows,] 'Behold, I will be a nazir[20] if I do not reveal the families [which are impure],' he must be a nazir, and not reveal the families.[21]

Rabbah b. Bar Hanah said in R. Johanan's name: The [pronunciation of the Divine] Name of four letters the Sages confide to their disciples once a septennate — others state, twice a septennate. Said R. Nahman b. Isaac: Reason supports the view that it was once a septennate, for it is written, this is my name for ever [le'olam][22] which is written le'allem.[23] Raba thought to lecture upon it at the public sessions. Said a certain old man to him, It is written, le'allem [to be kept secret].

R. Abina opposed [two verses]: It is written: 'this is my mame'; but it is also written: 'and this is my memorial'?[24] — The Holy One, blessed be He, said: I am not called as I am written: I am written with yod he, but I am read, alef daleth.[25]

Our Rabbis taught: At first [God's] twelve-lettered Name[26] used to be entrusted to all people. When unruly men increased,[27] it was confided to the pious of the priesthood,[28] and these 'swallowed it'[29] during the chanting of their brother priests.[30] It was taught: R. Tarfon said: 'I once ascended the dais[31] after my mother's brother, and inclined my ear to the High Priest, and heard him swallowing the Name during the chanting of his brother priests.

Rab Judah said in Rab's name: The forty-two lettered Name[32] is entrusted only to him who is pious,[33] meek, middle-aged,[34] free from bad temper, sober,[35] and not insistent on his rights. And he who knows it, is heedful thereof,[36] and observes it in purity, is beloved above and popular below, feared by man,[37] and inherits two worlds, this world and the future world.[38]

Samuel said on the authority of an old man: Babylon stands in the presumption of being fit, until you know wherewith it became unfit;[39] other countries are presumed to be unfit, until you know wherewith they are fit.[40] As for Palestine, he who has the presumption of unfitness is unfit; he who has the presumption of fitness is fit. But this is self contradictory: you say, he who has the presumption of unfitness is unfit — hence, when undetermined,[41] he is fit; then you teach, he who has the presumption of fitness is fit hence, when undetermined, he is unfit? — Said R. Huna b. Tahlifa in Rab's name: There is no difficulty:

(1) Mal. III, 3.
(2) By means of their wealth they intermarry with Israel, and having thus mingled, they will not be separated in the future.
(3) I.e., those who married by means of their silver, He will purify by retaining them in Israel.
(4) Heb. zedakah: the same word denotes righteousness and charity, because charity is righteousness.
(5) With illegitimate elements.
(6) And no attempt is to be made to excise it.
(7) C. 135-220 C.E.
(8) To declare the families of Palestine of purer birth, so that if a Babylonian desired to marry into a Palestine family he would have to prove the purity of his own descent. — It was thought that by now the Palestinian families were pure, and so it was due to the honour of Palestine to make this change; Halevi, Doroth, 1, 3, p. 105.
(9) Rabbi was a descendant of Hillel, a Babylonian, and so this would cast a stigma upon his birth.
(10) I.e., a mere declaration cannot change an historical fact.
(11) Since he was a contemporary of Rabbi (R. Judah I), this is probably the same as referred to above.
(12) They discovered that some powerful families were of impure birth, and it would endanger their own lives to reveal it.
(13) Lit., 'separated themselves.'
(14) To reveal the families of impure birth in Palestine.
(15) V. p. 359, n. 10.
(16) A person of great importance and power. In 'Ed. VIII, 7 the reading is 'bene Zion,' the citizens of Jerusalem.
(17) I.e., he declared them unfit, so that other families would not intermarry with them.
(18) Lit, 'brought near.' He compelled their pure birth to be recognised.
(19) 'Ed. (Sonc. ed.) p. 50 notes 4-6.
(20) V. Glos.
(21) This shews how inadvisable and dangerous such action might be; hence once a septennate would have been enough.
(22) Ex. III, 15.
(23) Defectively without a waw, hence to be read le'allem, To be kept secret.
(24) Ibid. This implies that he gave him two names. One, His real Name, and the other, by which He was to be generally designated.
(25) The Tetragrammaton is yod he waw he; but it is read adonai _ alef dateth nun yod.
(26) V. n. 6 [This would suggest that they also hesitated to write or pronounce this latter name in full, but wrote or pronounced it merely Ad or Alef dateth. Lauterbach. J.Z. Proceedings of the Americas Academy for Jewish Research 1930-1931. p. 43.]
(27) And it was not fit that they should pronounce this.
(28) [To utter it at the priestly benediction, v. Sot. 38a.]
(29) I.e., pronounced it indistinctly.
(30) [I.e., while they were chanting the Tetragrammaton at the benediction.]
(31) Where the priests stood when they blessed the people.
(32) Maim. in 'Moreh' I, 62, conjectures that these multiliteral Names, of which no trace is found, were perhaps composed of several other divine names; also that not only the names were communicated, but their real meanings too. [On these names v. further Blau L. Das altjudische Zauberwesen pp. 137ff and Bacher. JE XI 264.]
(33) [צנוע denotes simply a modest man careful to carry out his religious obligations, a pious man, and not a member of a particular sect — an Essene. v. Buchler Types, pp. 59ff.]
(34) Lit., 'stands in the middle of his days'.
(35) Lit., 'he does not get angry, does not get drunk'.
(36) Not to use it lightly.
(37) Lit., 'his fear lies upon mankind.'
(38) In general the name of God was regarded more than a mere designation, but represented His nature or character and His relation to His people. It thus came to partake of His essence, His glory and power. This probably explains the mystic awe with which its pronunciation was surrounded, on the one hand, and the powers attributed to the right manipulation thereof on the other. Cf. Sanh. 91a: 'He who pronounces the Divine Name according to its letters loses his

portion in the world to come; also 65b and 67b on the human powers of creation by means of the Sefer Yezirah, which Rashi a.l. explains was effected by combinations of the Divine Name. [On this subject v. Marmorstein The Old Rabbinic Doctrine of God, I, p. 17.]

(39) I.e., a Babylonian Jew is presumed to be of pure descent and fit to marry into any Jewish family, unless we definitely know the contrary.

(40) As stated on 76a; the four preceding generations must be examined.

(41) I.e., there is no presumption at all about him.

Talmud - Mas. Kiddushin 71b

here it is to permit him to take a wife; there it is to take the wife from him.[1]

R. Joseph said: He whose speech is Babylonian is permitted to take a wife [of superior birth]. But nowadays that there are dissemblers, we fear [them].[2]

Ze'iri was evading R. Johanan, who was urging him, 'Marry my daughter.'[3] One day they were travelling on a road, when they came to a pool of water. Thereupon he placed R. Johanan on his shoulder and carried him across. Said he to him: 'Our learning is fit but our daughters are not? [On] what is your view [based]? Shall we say, because we learned, TEN GENEALOGICAL CLASSES WENT UP FROM BABYLON: PRIESTS, LEVITES [etc.]? Did then all the priests, Levites and Israelites go up? just as some of these were left, so were some of those [the unfit enumerated in the Mishnah] left [in Babylon].'[4] He [however] overlooked what R. Eleazar said: Ezra did not go up from Babylon until he made it like pure fine flour: then he went up.[5]

'Ulla visited Rab Judah in Pumbeditha. Seeing that R. Isaac, the son of Rab Judah, was grown up, yet unmarried,[6] he asked him, 'Why have you not taken a wife for your son?' 'Do I then know whence to take one?' he replied.[7] 'Do we know whence we are descended?' he retorted. 'Perhaps from those of whom it is written: They ravished the women in Zion, the maidens in the cities of Judah.[8] And should you answer: If a heathen or slave has intercourse with the daughter of an Israelite, the issue is fit, — then perhaps [we are descended] from those of whom it is written, that lie upon beds of ivory, and stretch themselves [seruhim] upon their couches.[9] Now, R. Jose son of R. Hanina said: This refers to people who pass water before their beds naked.[10] But R. Abbahu derided this: If so, see what is written: Therefore shall they now go captive the first that go captive[11] — because they pass water before their beds naked they shall go captive with the first that go captive! But, said R. Abbahu, this refers to people who eat and drink together, join their couches, exchange their wives and make their couches foul [masrihim] with semen that is not theirs.'[12] 'Then what shall I do?' he 'asked. 'Go after the peaceful,'[13] he replied.[14] As the Palestinians[15] make a test: When two quarrel, they see which becomes silent first and say: This one is of superior birth.

Rab said: Silence [peaceableness] in Babylon, is [the mark of][16] pure birth. But that is not so, for Rab visited the family of Shihla[17] and examined them; surely that means as to their genealogy? — No, by silence. He said thus to them:[18] Examine [them], whether they are silent [peaceable] or not. Rab Judah said in Rab's name: If you see two people continually quarreling, there is a blemish of unfitness in one of them, and they are [providentially] not allowed to cleave to each other.[19]

R. Papa the elder said on Rab's authority: Babylon is healthy; Mesene[20] is dead; Media is sick, and Elam is dying.[21] And what is the difference between sick and dying? — Most sick are [destined] for life; most dying are for death.[22]

How far does Babylon extend?[23] — Rab said: As far as the river 'Azak;[24] Samuel said: as far as the river Wani.[25] How far on the upper [reaches of] Tigris? Rab said: as far as Bagda[26] and Awana; Samuel said: as far as Moxoene.[27] Is then Moxoene itself not included? Surely R. Hiyya b. Abba

said in Samuel's name: Moxoene is as the land of Exile[28] in respect to genealogy? — But as far as and including Moxoene. How far on the lower reaches of the Tigris? — Said R. Samuel: As far as lower Apamea.[29] There were two Apameas, an upper and a lower; one was fit [in respect to marriage] and the other unfit, and one parasang lies between them; and they [their inhabitants] were particular with each other, and did not even lend fire to each other.[30] And the sign whereby [you may recognise] the unfit is the one that speaks [the] Mesene [dialect].

How far [does it extend] on the upper reaches of the Euphrates? — Rab said: To Fort Tulbakene.[31] Samuel said: To the bridge of Be-pherat;[31] R. Johanan said: As far as the ford of Gizama.[32] Abaye — others state, R. Joseph — cursed Rab's [definition].[33] Only Rab's, but not Samuel's![34] — But he cursed Rab's, and all the more so Samuel's. Alternatively, he cursed [only] Rab's, after all, and not Samuel's, and the bridge of Be-Pherat [originally] lay below;

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(1) I.e., to order him to divorce her. When one wishes to marry a woman of proved pure descent, he must prove his own fitness, if he lacks the established presumption. On the other hand, if he is married to such, he is not compelled to divorce her unless his own unfitness is established.

(2) This is not accepted as sufficient proof.

(3) Ze'iri being a Babylonian, whilst R. Johanan was only a Palestinian, he did not wish to marry his daughter, since the former are of purer birth.

(4) So that both are equal.

(5) V. p. 350, n. 2.

(6) On the importance of not leaving marriage too late cf. supra, 29b, 30a.

(7) I do not know who is of pure descent.

(8) Lam. V, 11.

(9) Amos VI, 4.

(10) Are bereft of the sense of modesty.

(11) Ibid. 7.

(12) The children of such are mamzerim.

(13) Lit., ‘silence’.

(14) Take someone from a peaceful family — those who are quarrelsome are probably unfit!

(15) Lit., ‘children of the West.’

(16) Lit., ‘that is’.

(17) The reading is doubtful; cur. odd.: vinegar dealers.

(18) To those who were with him.

(19) I.e., join in marriage.

(20) The island formed by the Euphrates, the Tigris and the Royal Canal.

(21) The Jews of Babylon are of pure descent; in Mesene they are all unfit (mamzerim); in the other two they are mixed.

(22) The majority of Media are pure; the majority of Elam are mamzerim.

(23) In respect of family purity.

(24) On the east of the Tigris.

(25) [Nahrewan, the grand canal east of the Tigris that flows parallel to it. Obermeyer. op. cit. p. 79. Both are given as eastern boundaries of Babylon.]

(26) [‘Aruch reads: Okbara and Awana. Both towns now on the western bank of the Tigris, but originally on its eastern bank, constituted the northern boundary of Babylon; loc. cit. p. 82.]

(27) A town west of the upper Tigris sources.

(28) Sc. Babylon. Rashi observes that Pumbeditha is so called in R.H. 23b.

(29) On the right bank of the Tigris; v. Obermeyer p. 86.

(30) To avoid intimacy which might lead to marriage.

(31) V. Obermeyer pp. 94-96; S. Funk, Die Juden in Bob. I, p. 13, n. 2, and infra, n. 8.

(32) Obermeyer p. 97 on the basis of other readings identifies this with Gidama, mentioned in Suk. 18a. Since R. Johanan's definition is not controverted, this must have been higher up than the other two, v. next note.

(33) Obermeyer p. 94 assumes that the Fort Tulbakene was lower than Pumbeditha, where both Abaye and R. Joseph

were heads of the academy. Hence, this excluded Pumbeditha, which aroused their vehement opposition.
(34) Samuel's definition shut out even more, the bridge of Be-Pherat (for which v. Obermeyer p. 97) lying lower than Fort Tulbakene.

Talmud - Mas. Kiddushin 72a

but now the Persians have set it higher.[1]

Abaye said to R. Joseph: How far does it extend on this [sc. the west] side of the Euphrates? Said he to him: What is your motive [in asking]: on account of Biram?[2] The most distinguished [families] of Pumbeditha took [wives] from Biram!

R. Papa said: Just as they differ over family purity, so they differ over divorce.[3] But R. Joseph said: They differ only in respect to genealogy, but as for divorce, all agree that it is as far as the second willow clump beyond the bridge.[4]

Rami b. Abba said: Habil Yamma[5] is the glory[6] of Babylon.[7] Shunya[8] and Gubya[9] are the glory of Habil Yamma. Rabina said: Zizura[10] too. It was taught likewise: Hanan b. Pinhas said: Habil Yamma is the glory of Babylon: Shunya and Gubya and Zizura are the glory of Habil Yamma. Said R. Papa: But nowadays Cutheans[11] have become mixed up with them. That [however] is not so: one [a Cuthean] sought a wife from them, but they did not give him.[12] What is Habil Yamma? — Said R. Papa: The Euphrates land near Borsif.[13]

A certain man said: 'I come from Shot-Mishot.'[14] R. Isaac Nappaha[15] stood up on his feet and declared: Shot-Mishot lies between the rivers.[16] And what if it is situated between the rivers? — Said Abaye in the name of R. Hama b. 'Ukba in the name of R. Jose son of R. Hanina: Between the rivers is as the Exile [sc. Babylon] in respect of genealogy. And where is that situated? — Said R. Johanan: From Ihi de Kira and upwards. But R. Johanan said: [The upper limit of Babylon is] as far as the ford of Gidama?[17] — Said Abaye: A strip issues [beyond that limit].[18]

R. Ika b. Abin said in the name of R. Hananel in Rab's name: Halwan and Nahawand are as the Exile in respect to genealogy.[19] Said Abaye to them [his disciples]: Disregard him: a yebamah has fallen to him there.[20] Is it then my [dictum]? he replied; it is R. Hananel's! So they went and enquired of R. Hananel, who said to them: Thus did Rab say: Halwan and Nahawand are as the Exile in respect to genealogy. Now, he differs from R. Abba b. Kahana, who said: What is meant by, [and the king of Assyria carried Israel away into Assyria,] and put them in Halah, and in Habor, on the river of Gozan, and in the cities of the Medes?[21] Halah is Hulwan; Habor is Adiabene;[22] the river of Gozan is Ginzak;[23] the cities of the Medes are Hamadan[24] and its environs; others state, Nahawand and its environs. What are its environs? — Said Samuel: Karag, Moschi,[25] Hidki and Rumki. Said R. Johanan: And all these are unfit.[26] Now, it was assumed that Moschi is identical with Moxoene [so the difficulty arises]: Surely R. Hiyya b. Abin said in Samuel's name, Moxoene is as the Exile in respect to genealogy? — Hence Moschi is distinct from Moxoene.

And three ribs were in his mouth between his teeth:[27] Said R. Johanan: This refers to Hulwan, Adiabene and Nesibin,[28] which it [Persia] sometimes swallowed and sometimes spat out.[29]

And behold another beast, a second, like to a bear:[30] R. Joseph recited: This refers to the Persians, who eat and drink like a bear, are fleshy like a bear, overgrown with hair like a bear, and have no rest like a bear. When R. Ammi saw a Persian riding he would say: 'There is a wandering bear!'

Rabbi said to Levi:[31] 'Shew me the persians.' — 'They are like the armies of the House of David,' he replied. 'Shew me the Guebers.'[32] — 'They are like the destroying angels.' 'Shew me the

Ishmaelites.' — 'They are like the demons of the privy.' 'Shew me the scholars of Babylon.' — 'They are like the Ministering Angels.'

When Rabbi was dying he said: 'There is [a town] Humania[33] in Babylon, which consists entirely of Ammonites; there is Misgaria[34] in Babylon, consisting entirely of mamzerim; there is Birka[35] in Babylon, which contains two brothers who interchange their wives; there is a Birtha di Satya[36] in Babylon: to-day they have turned away from the Almighty: a fishpond overflowed on the Sabbath, and they went and caught the fish on the Sabbath, whereat R. Ahi son of R. Josiah declared the ban against them, and they renounced Judaism.[37] There is a Fort Agama[38] in Babylon wherein dwells Adda b. Ahabah:

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(1) Above Fort Tulbakene; hence Abaye and R. Joseph were not opposed to this.

(2) Which lay on the west of the Euphrates, some miles N.W. of Pumbeditha.

(3) If one brings a divorce from any country except Palestine and Babylon, he must declare that it was written and attested in his presence. R. Papa maintains that the controversies on the boundaries of Babylon apply to this too.

(4) Or, to the second boat of the (floating) bridge (Jast.).

(5) Lit., 'district of the sea: the entire region of Babylon which is traversed by river and canals. Obermeyer, pp. 118f.

(6) Lit., 'the adornment in purple.'

(7) Rashi: its inhabitants are of the purest birth in Babylon. It may also mean in general that it is the finest and most fertile district, as it actually was.

(8) A canal district in the vicinity of Pumbeditha; Obermeyer, pp. 122ff.

(9) A region behind Babylonia as one travels eastwards from the Tigris; Obermeyer p. 127.

(10) A district not far from the Tigris, the waters of whose canal debouched into the Tigris between Bagdad and Madain, ibid p. 125.

(11) V. p. 207, n. 9. [According to Obermeyer (p. 120) the reference is to the Christians that emigrated during the third and fourth centuries from Syria and Mesopotamia into Babylon.]

(12) Hence the rumour arose. Others explain: he (R. Papa) sought a wife etc., and in his spleen declared them impure! This is not very plausible (Rashi).

(13) The region traversed by the right arm of the Euphrates, which flows before Borsif (Babel). Ibid. p. 315. V. Sanh. (Sonc. ed.) p. 748, n. 7.

(14) He wished to marry a Babylonian woman; Shot-Mishot, or Samosata, is one of the fords of the Euphrates.

(15) Or, the smith.

(16) Jast. observes: between the Euphrates and the Tigris. Obermeyer. pp. 100-1, thinks this altogether unlikely. 'Between the rivers' is the Talmudic idiom for a region of island formation, and here applies to the Euphrates region from Hit (Ihi de Kira) to Anah.

(17) Which is below Ihi de Kira.

(18) Which includes Shot-Mishot.

(19) Though these are in Media, Halwan lay on the great historic route from Babylon to Media, some forty-one parasangs from Bagdad. Nahawand was situated in the middle of Media, about fourteen parasangs from Hamadan in a southerly direction. Its Jewish community may have consisted then of Babylonian colonists, and hence the genealogical purity here ascribed to it. Obermeyer, pp. 106-8.

(20) And he asserts their pure birth because he wishes to marry her.

(21) II Kings XVIII, 11.

(22) A district of Assyria between the rivers Lycus and Caprus (fast.); v. also Obermeyer, p. 10.

(23) Rawlinson identifies this with Shiz, near the present-day town of Maragha, south-east of Urmiasee; ibid.

(24) Ektabana, capital of Media.

(25) So Obermeyer, p. 11. who treats this as two names. Jast. translates: the Fort of Moschi.

(26) I.e., of impure descent. Thus this identification disagrees with Rab.

(27) Dan. VII, 5.

(28) Or Nesibis, as it was generally called. A town in Mesopotamia, not included in the 'Exile' proper, which possessed an important Jewish community; ibid. p. 129.

(29) I.e., sometimes it ruled over them, sometimes not; v. ibid.

(30) Ibid.
(31) [Levi b. Sisi visited Babylonia, his original home, on his return to Palestine. Rabbi his teacher asked him for some information about the people of that country.]
(32) [The fanatical sect of Persian fireworshippers, v. Git. (Sonc. ed.) p. 63. n. 2.]
(33) On the right bank of the Tigris, below Shekanzib; Obermeyer, p. 192.
(34) Unidentified.
(35) Identified with Baratha by the river al-Melik: v. ibid. p. 73, n. 2.
(36) V. ibid. where it is identified with Baratha, which belongs to Greater Bagdad.
(37) [So Jast. Aliter: 'they were destroyed'.]
(38) Probably in the vicinity of Pumbeditha; ibid. p. 237, n. 3.

Talmud - Mas. Kiddushin 72b

to-day he sits in Abraham's lap;[1] to-day Rab Judah was born in Babylon.' (For a Master said: When R. Akiba died, Rabbi was born; when Rabbi died, Rab Judah was born; when Rab Judah died, Raba was born; when[2] Raba died, R. Ashi was born.[3] This teaches that a righteous man does not depart from the world until [another] righteous man like himself is created, as it is said, the sun riseth and the sun goeth down:[4] before Eli's sun was extinguished, the sun of Samuel of Ramoth rose, as it is said, and the lamp of God was not yet gone out, and Samuel was laid down [etc.].)[5]

The Lord hath commanded concerning Jacob, that they that are round about hint should be his adversaries.[6] Said Rab Judah: E.g., Humania [in its relation] to Pum-Nehara.[7]

And it came to pass, when I prophesied, that Pelatiah the son of Benaiah died. Then fell I down upon my face, and cried with a loud voice, and said: Ah Lord God![8] Rab and Samuel — one said: It was in his favour;[9] the other, that it was in his disfavour. He who said that it was in his favour [explains it] as follows: For the governor[10] of Mesene was Nebuchadnezzar's son-in-law. He sent [word] to him: 'Of all the captivity which you have brought for yourself, you have sent none to stand before us.' He wanted to send him of the Israelites, [but] Pelatiah son of Benaiah said to him, 'We, who are more worthy [of higher rank], let us stand before thee here; and let our slaves go thither.' Thus the prophet cried, 'That he who did good for Israel should die in middle age!' And he who maintained that it was in his disfavour — for it is written, [Moreover the spirit lifted me up,] and brought me unto the east gate of the Lord's house, which looketh eastward: and behold, at the door of the gate five and twenty men; and I saw in the midst of them Joazaniah the son of Azzur, and Pelatiah the son of Benaiah, princes of the people.[11] And it is said: And he brought me into the inner court of the Lord's house, and behold, at the door of the Temple of the Lord, between the porch and the altar, were about five and twenty men, with their backs toward the temple of the Lord, and their faces toward the east.[12] Now, from the implication of what is said: 'and their faces toward the east,' do I not know that their backs were toward the west?[13] Why then is it stated: 'with their backs toward the temple of the Lord'? This teaches that they uncovered themselves and committed a nuisance against the Most High. Therefore the prophet said: 'Shall he who did this evil in Israel die [peacefully] on his bed!'[14]

It may be proved that it was Samuel who interpreted it to his discredit. For R. Hiyya b. Abin said in Samuel's name: Moxoene is as the Exile in respect to genealogy. As for Mesene, no fear was entertained for it, either on account of slavery or bastardy,[15] but that the priests who dwelt there were not scrupulous about divorced women![16] — After all, I may tell you that it was Samuel who explained it in his favour; yet Samuel is consistent with his view: for he said: If one renounces ownership of his slave, he goes out free and does not require a deed of manumission, for it is said, but every man's slave that is bought for money:[17] a man's slave, but not a woman's slave?[18] Hence [it means this]: a slave whose master has authority over him is called a slave; a slave whose master has no authority over him is not called a slave.[19]

Rab Judah said in Samuel's name: This[20] is R. Meir's view. But the Sages maintain: All countries have the legal status of fitness. Amemar permitted R. Huna b. Nathan to take a wife from Hozae.[21] Said R. Ashi to him: [On] what [do you base] your ruling? Because Rab Judah said in Samuel's name: This is R. Meir's view. But the Sages maintain: All countries have the legal status of fitness? But the School of R. Kahana did not learn thus,[22] and the School of R. Papa did not learn thus, and the School of R. Zebid did not learn thus? Nevertheless he did not accept this [ruling] from him, because he had heard it [sc. his own view] from R. Zebid of Nehardea.

Our Rabbis taught: Mamzerim and Nethinim will become pure in the future: this is R. Jose's view. R. Meir said: They will not become pure. Said R. Jose to him: But was it not already stated: And I will sprinkle clean water upon you, and ye shall be clean?[23] R. Meir replied. When it is added, from all your filthiness and from all your idols,[23] [it implies] but not from bastardy. Said R. Jose to him: When it is [further] said, will I cleanse you,[23] you must say: From bastardy too.

As for R. Meir, it is well: hence it is written, and the bastard shall dwell in Ashdod.[24] But according to R. Jose, why 'and the bastard shall dwell in Ashdod'? — As R. Joseph translated it: The house of Israel shall dwell in security in their land, where [formerly] they were as strangers.[25]

Rab Judah said in Samuel's name: The halachah agrees with R. Jose. R. Joseph said: Had not Rab Judah ruled in Samuel's name that the halachah is as R. Jose, Elijah would have come and sent entire gangs away from us.[26] Our Rabbis taught: A proselyte may marry a mamzereth: this is R. Jose's view. R. Judah ruled: A proselyte may not marry a mamzereth. A proselyte, a freed slave, and a halal are permitted to [marry] a priest's daughter. What is R. Jose's reason? — 'Assembly' [kahal] is written five times:[27]

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(1) Some say that this is a euphemism for death, in which case R. Adda b. Ahabah, who is frequently mentioned in the Talmud, is not meant, for he lived long after Rabbi's death. Others explain it as referring to circumcision; then it does refer to him.

(2) Maim. reads: before.

(3) In all cases, on the same day.

(4) Ecc. I, 5.

(5) I Sam. III, 3. Metaphorically. Eli's sun was not yet extinguished. etc.,

(6) Lam. I, 17.

(7) As stated above, Humania was entirely a non-Jewish town, while Pum-Nehara had an all-Jewish population. The former was inimical to the latter.

(8) Ezek. XI, 13.

(9) That the prophet cried out.

(10) [Istandar, A high Persian military and administrative rank, v. Funk, Schwarz Festschrift p. 433.]

(11) Ezek. XI, 1.

(12) Ibid. VIII, 16.

(13) The hekal, the Temple proper, was to the west of the Temple court, where they stood.

(14) The mention of twenty-five in both places shews that the same group is referred to.

(15) It was not feared that slaves or mamzerim had intermarried with the Jews there. — This shews that Samuel did not agree that the slaves of the Israelites were sent thither.

(16) Disregarding the injunction of Lev. XXI, 7.

(17) Ex. XII, 44.

(18) Surely not!

(19) Hence, when their masters renounced ownership and sent them to Mesene, they ipso facto ceased to be slaves.

(20) Sc. the Mishnah on 69a, which implies that only Babylon enjoys the legal status of unquestioned family purity, as explained by R. Eleazar in the Gemara.

(21) [Khuzistan, province S. of Babylon which lay outside the boundaries of Babylon as defined by the Amoraim supra.]

(22) On the contrary, they taught in Samuel's name that all countries are presumed to be unfit; supra 71b.

(23) Ezek. XXXVI. 25.

(24) Zech. IX, 6. I.e., apart from other Jews, because they will remain impure and forbidden to marry.

(25) So he translates mamzer. Joshua counted Ashdod as part of the land of Israel (Josh. XIII, 1-3); but it was not conquered, and so they were as strangers there. Now they should possess it. [V. Targum Pseudo-Jonathan on the Prophets, a.l.; cf. also Geiger, Urschrift p. 52ff who proves from here that, ממזר is a compound word from מעם זר 'a strange people', and had originally an ethnical connotation, which was subsequently transferred to denote offspring from forbidden marriages.]

(26) Of mamzerim or their descendants. The lit., translation is: necks and necks (tied together) by chains. According to another reading: necks (tied) by chains and chains.

(27) V. Deut. XXIII, 3f and 9. 'Assembly' in v. 2 is not counted, because it does not deal with unfitness on account of birth.

Talmud - Mas. Kiddushin 73a

one refers to priests, one to Levites, one to Israelites; one to permit a mamzer [to intermarry] with a shethuki;[1] and one to permit a shethuki to [intermarry] with an Israelite.[2] As for the assembly of proselytes it is not designated 'assembly'.[3] But R. Judah argues: Priests and Levites are deduced from one 'assembly';[4] hence [one] is left in respect of an assembly of proselytes.[5] Alternatively, it indeed is so that they [sc. Priests and Levites] are two 'assemblies'; [but that] a mamzer [may intermarry] with a shethuki, and a shethuki with an Israelite, is deduced from one 'assembly': A mamzer shall not enter into the assembly of the Lord:[6] only a certain mamzer may not enter, but a doubtful mamzer may enter; [and again,] only into a certain assembly he may not enter, but he may enter into a doubtful assembly.[7] Another alternative: These too are two 'assemblies';[8] but R. Judah's opinion is [derived] from this: For the assembly, there shall be one statute for you, and for the ger [proselyte] that sojourneth with you.[9] But in R. Jose's view, 'one statute' breaks across the subject.[10]

'A proselyte, a freed slave and a halal are permitted to [marry] a priest's daughter.' This supports Rab. For Rab Judah said in Rab's name: Fit women [sc. daughters of priests] were not admonished against being married to the unfit.[11]

R. Zera lectured in Mahuza: A proselyte may marry a mamzereth. Thereupon everyone pelted him with stones.[12] Said Raba: Is there anyone who lectures thus in a place where proselytes abound! [Now] Raba lectured in Mahuza: A proselyte may marry a priest's daughter, [whereupon] they loaded him with silks. Then he lectured to them again: A proselyte is permitted [to intermarry] with a mamzereth. Said they to him: You have destroyed your first [teaching]. He replied: I have done what is best for you: if one [a proselyte] wishes, he can marry here [sc. a mamzereth]; if he wishes, he can marry there [sc. a priest's daughter]. Now, the law is: A proselyte is permitted to a priest's daughter and he is permitted to a mamzereth. He is permitted to a priest's daughter: fit women were not admonished against being married to the unfit.[13] And he is permitted to a mamzereth, in accordance with R. Jose.

NOW, THESE ARE THEY: SHETHUKI: HE WHO KNOWS [etc.] Raba said: By Biblical law a shethukiis considered fit. What is the reason? The majority are fit for her [sc. the mother],[14] while only a minority are unfit for her.[15] Now, if they went to her, then he who separates himself [from a mass] separates himself from out of the majority. What will you say: that she went to them? Then it is kabua',[16] and every case of kabua' is as half and half, whilst the Torah said: 'A mamzer shall not enter': only a certain mamzer may not enter, but a doubtful mamzer may enter; only into a certain assembly may he not enter, but he may enter into a doubtful assembly.[17] Then what is the reason that they [the Rabbis] ruled that a shethuki is unfit? — For fear lest he marry his paternal sister. If so, a shethuki should not marry a shethukith,[18] for fear lest he marry his paternal sister? — Do all such go [eternally] a-whoring?[19] Then let him not marry the daughter of a shethukith, lest he marry his

paternal sister? But [you must answer that] it is rare: then here too,[20] it is rare![21] — But [the reason is:] a higher standard was set up in respect to genealogy.

Raba also said: By Biblical law, a foundling is fit. What is the reason? A married woman ascribes [an illegitimate child] to her husband.[22] What [fear] is there?[23] [Because of] a minority of arusoth[24] and a minority whose husbands have gone overseas?[25] But since there are unmarried [women], and also [children thrown away] on account of poverty,[26] it is half and half, and the Torah said: 'A mamzer shall not enter into the assembly of the Lord': only a certain mamzer may not enter, but a doubtful mamzer may; only into a certain assembly may he not enter, but he may enter into a doubtful one. Why then did they [the Rabbis] rule that a foundling is unfit? Lest he marry his paternal sister.[27] If so, one foundling should not marry another, lest he marry his sister by his father or and his mother? — Do all these go throwing [their children away]![28] Let him not marry the daughter of a foundling, lest he marry his sister? But [you must answer that] it is rare: then here too[29] it is rare![30] — But [the reason is:] a higher standard was set up in respect to genealogy.

Rabbah son of R. Huna said: If he [the foundling] is found circumcised,

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(1) Though the former is certainly unfit, while the latter is doubtful.

(2) Though the former is of doubtful fitness while the latter is certainly fit. The last two are deduced by translating as in the text infra.

(3) Since there is no verse left to teach their inclusion, and hence the relevant prohibitions do not apply to them.

(4) Since both are of the tribe of Levi.

(5) That these too are included.

(6) Ibid. 3.

(7) V. n. 3.

(8) As R. Jose says: 'assembly' has to be stated twice for the marriage of a mamzer with a shethuki, and of a shethuki with an Israelite.

(9) Num. XV, 15. Now, 'for the assembly' is superfluous: hence it teaches that ger (proselyte) is included in the term wherever it is found.

(10) Shewing that 'ger' is not included in 'assembly'.

(11) I.e., to those who may not marry into the priesthood. Thus, whereas a priest may not marry the daughter of a halal, freedman or proselyte, the daughter of a priest may marry one of these. — This does not refer to the ordinary unfit, such as mamzerim or Nethinim.

(12) Mahuza contained many proselytes, whom this offended.

(13) V. n. 1.

(14) I.e., who might be the child's father.

(15) Since we know that the mother was unmarried, the only men whose issue is mamzer are mamzerim and consanguineous relations; for a heathen or slave does not produce mamzer. Thus only a minority are unfit in this respect.

(16) V. Glos.

(17) The following example illustrates the principles of 'separation' and kabua' (fixed). If there are ten butcher shops in a street, nine of which supply kasher meat (ritually fit), and one supplies trefa meat (not fit), and a piece of meat is found in that street, it is assumed to be kosher, following the majority. If, however, meat is bought in one of the shops, but it is not known of which, it is accounted as though there were an equal number of each, and on the usual principle in such cases, unfit. For in the first instance the meat was 'separated' from its appointed place, sc. the shop, whereas in the second it remained fixed (kabua') until purchased, when the doubt arose. Here too, all men are jointly looked upon as a mass stationed in one place. If one goes to the mother of this child, he 'separated himself from the majority, hence was probably eligible. But even if she goes to him, so that the minority count as much as the majority, it is still a matter of equal doubt, which in the case of mamzer is not forbidden.

(18) Fem. of shethuki.

(19) Are we to assume that every child of unknown parentage has the same father-surely not!

(20) With respect to a shethuki marrying an ordinary person.

(21) That he should chance upon his paternal sister, and therefore the possibility is disregarded. Hence the question

remains, why is a shethuki forbidden?
(22) And would not cast him away.
(23) That the foundling may be mamzer?
(24) Pl. of arusah.
(25) And the foundling may be theirs.
(26) Lit., 'hunger,' — the child may be legitimately born. — The child of an unmarried woman is not mamzer.
(27) But there is no fear of his maternal sister, for since we know his intended mother-in-law as a virtuous woman, we do not suspect her of adultery and that this may be her son (Rashi). Of course, the same might be urged of his intended father-in-law, but that it is easier for a man to conceal an illegitimate liaison than for a woman (Maharsha).
(28) Are we to assume all foundlings the children of the same mother or father!
(29) With respect to a foundling marrying an ordinary person.
(30) V. p. 374, n. 4.

Talmud - Mas. Kiddushin 73b

he is not [forbidden] on account of [the law of] a foundling.[1] If his limbs are set, he is not [forbidden] as a foundling. If he has been massaged with oil, fully powdered, has beads hung on him, wears a tablet [with an inscription] or an amulet,[2] he is not considered a foundling. If he is suspended on a palm tree, if a wild beast can reach him, he is [forbidden] as a foundling;[3] if not, he is not considered a foundling. [If exposed on] a sorb bush: near a town, he is considered a foundling;[4] if not, he is not a foundling. [If found in] a synagogue near a town where many congregate, it is not a foundling; otherwise, it is.[5]

Amemar said: [If found in] a pit of date stones,[6] he is considered a foundling; in the swift current of the river, he is not a foundling;[7] in shallow water,[8] he is a foundling: in the side passages off public thoroughfares, he is not a foundling; in a public thoroughfare, he is a foundling.[9] Said Raba: But in famine years he is not considered a foundling. This [dictum] of Raba, to what [does it refer]? Shall we say, to a public thoroughfare? because it is in famine years one [the mother] is to kill him! Again, if it refers to the side passages off a public thoroughfare, why particularly famine years? [It is so] even without famine years! — But Raba's [dictum] was stated in reference to what Rab Judah said in the name of R. Abba in the name of R. Judah b. Zabdi in Rab's name: As long as he [the exposed child] is in the street, his father and mother are believed concerning him;[10] but if he has been gathered in from the street, they are not believed concerning him. What is the reason? — Said Raba: Because he has already acquired the name of a foundling. Then Raba also said: But in famine years, even if he has been gathered in from the street: his father and mother are believed concerning him.

R. Hisda said: Three are believed there and then,[11] and these are they: a foundling, a midwife, and she who frees her companions [from the suspicion of uncleanness]. A foundling, as stated.[12] A midwife, as was taught: A midwife is believed when she states: 'This one issued first and this one issued second.'[13] When is that? [Only] if she did not go out [from the chamber of confinement] and return; but if she went out and then returned, she is not believed. R. Eliezer said: If she was known to have been at her post, she is believed; if not, she is not believed. Wherein do they differ? — They differ where she turned her face away.[14]

What is the reference to her who frees her companions? — For we learnt: If three women were sleeping in one bed, and blood was found under one of them, they are all unclean.[15] If one examined herself and was found to be unclean, she is unclean, while the others are clean. Said R. Hisda: [That means] that she examined herself forthwith.[16]

Our Rabbis taught: A midwife is believed when she affirms, 'This one is a priest, this one is a Levite, this one a Nathin, this one a mamzer.'[17] When is that? Only if no protest is raised: but if a

protest is raised, she is not believed. What kind of a protest? Shall we say, a protest by one person? Surely R. Johanan said: A protest is invalid if made by less than two? Hence it means a protest by two. Alternatively, I may say [that] after all that it was a protest by one. Yet when did R. Johanan say: A protest is invalid if made by less than two? Only where we have a presumption of fitness;[18] but if there is no presumption of fitness,[19] even one is believed.

A vendor[20] is believed when he says: 'To this one I sold [it] and to this one I did not sell.' When is that? Only if his ware is in his hand; but if his ware is no longer in his hand, he is not believed.

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(1) If he were not fit, his parents would not trouble to circumcise him.

(2) The last three are for identification.

(3) Were he legitimate, his parents would have taken greater care of him.

(4) Sorb bushes near a town were held to be haunted by demons.

(5) Synagogues far from town and when infrequented were likewise thought to be haunted.

(6) Where these are deposited as fodder.

(7) Parents would not trouble to place him in the middle of the river, where ships abound, if he were not fit.

(8) Formed by melting snow which affords no passage to ships.

(9) For it is dangerous to leave a child there.

(10) In their claim that he is their child.

(11) When the doubt first arises, but not afterwards.

(12) The parents' claim is admitted only while he is in the street, but not after.

(13) When twins are born.

(14) According to the first Tanna she is believed, but not in R. Eliezer's opinion, for by turning her back on the mother she left her post.

(15) In sleep they do not keep to the same spot all the time, and any one might have discharged the blood.

(16) שיעור וסת , v. Nid. 14b.

(17) If several women of different genealogical status are confined together.

(18) Which the protest seems to overthrow.

(19) As here, when the identity of the babes is in question.

(20) Lit., 'the owner of the ware'.

Talmud - Mas. Kiddushin 74a

Then let us see whose money he holds? — This arises only when he holds [money] from both, and states: 'one [paid me] with my consent, and the other against my will,' and it is not known[1] which was with his consent and which against his will.

A judge is believed when he says: 'I have ruled in favour of this one; I have ruled against that one.' When is that? Only if the litigants are [yet] standing before him; but if they are no longer standing before him, he is not believed. Then let us see who holds the judgment writ in favour?[2] — This arises only if their judgment writ was torn. Then let us rejudge them? — [It is a case of] the judges' discretion.[3]

R. Nahman said: Three are believed with respect to a first-born. These are they: The midwife, the father and the mother. The midwife, [only] immediately. The mother, the first seven days;[4] the father, for all time. As it was taught: He shall acknowledge [the firstborn]:[5] [i.e.,] he shall acknowledge him before others. Hence R. Judah said: A man is believed when he says: 'This son is my first — born. And just as he is believed when he says: 'This son is my firstborn,' so is he believed when he says: 'This is the son of a divorced woman', 'this is the son of a haluzah'.[6] But the Sages say: He is not believed.[7]

ABBA SAUL USED TO CALL THE SHETHUKI 'BEDUKI'. What is [implied by] BEDUKI?[8]

Shall we say that we examine his mother, and if she maintains, 'I cohabited with a fit person,' she is believed? Then with whom [does this agree]? with R. Gamaliel! But we learnt it once. For we learnt: If she [an unmarried woman] is pregnant and is asked: 'What is the nature of this child?' and she replies, 'He is from So-and-so, who is a priest': R. Gamaliel and R. Eliezer said: She is believed; R. Joshua said: We do not live by her words.[9] Now, Rab Judah said in Samuel's name: The halachah agrees with R. Gamaliel![10] — One is to declare her [the mother] fit; the other is to declare her daughter fit.[11] Now, that is well on the view that he who declares her [the mother] fit, declares the daughter unfit.[12] But on the view that he who declares her fit declares her daughter fit [too], what does Abba Saul come to teach us? — Abba Saul's [ruling] is more remarkable than R. Gamaliel's. For if from there,[13] I might argue, [It is only] there, where most [men] are fit for her;[14] but here, that most [men] are unfit for her,[15] I might say, [she is] not [believed].[16] Hence it is necessary. Said Raba: The halachah agrees with Abba Saul.

MISHNAH. ALL WHO ARE FORBIDDEN TO ENTER INTO THE ASSEMBLY[17] MAY INTERMARRY WITH EACH OTHER; R. JUDAH FORBIDS IT. R. ELEAZAR SAID: CERTAIN [UNFITS] ARE PERMITTED [TO INTERMARRY] WITH CERTAIN [UNFITS].[18] CERTAIN [UNFITS] WITH DOUBTFUL [UNFITS], DOUBTFUL WITH CERTAIN, OR DOUBTFUL WITH DOUBTFUL, ARE FORBIDDEN. NOW, THESE ARE THE DOUBTFUL: SHETHUKI, FOUNDLINGS AND CUTHEANS.[19]

GEMARA. What is meant by 'ALL WHO ARE FORBIDDEN TO ENTER INTO THE ASSEMBLY'? Shall we say: Mamzerim and Nethinim, Shethuki and Foundlings? Surely that is taught in the first clause:[20] Mamzerim and Nethinim, Shethuki and Foundlings, are permitted to intermarry! Again, [when it states] 'R. JUDAH FORBIDS IT', to what does this refer? Shall we say, to certain with doubtful — but since the last clause states: R. ELEAZAR SAID: CERTAIN [UNFITS] ARE PERMITTED [TO INTERMARRY] WITH CERTAIN [UNFITS]; DOUBTFUL WITH CERTAIN, OR DOUBTFUL WITH DOUBTFUL, ARE FORBIDDEN, this proves that R. Judah does not hold thus. And should you answer: R. JUDAH FORBIDS IT refers to [the marriage of] a proselyte and a mamzereth, is it then taught, a proselyte with a mamzereth: ALL ARE FORBIDDEN TO ENTER INTO THE ASSEMBLY is taught![21] — Said Rab Judah,

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(1) [Var. lec. 'he does not know', i.e., the seller does not recollect the matter; v. Tosaf.]

(2) The court issued a written verdict to each litigant.

(3) Where the verdict cannot be determined by reference to any law, the judge must use his own discretion, v. Keth. 85b. In such a case we cannot be certain that a re-trial will give the same verdict.

(4) On the eighth day the child is circumcised, and from then the right of recognition rests with the father.

(5) Deut. XXI, 57.

(6) Where the father is a priest, and thus declares the son a halal.

(7) This refers only to the son of a divorced woman etc. (Rashi) [V. however B.B. (Sonc. ed.) p. 530. n. 8.]

(8) Lit., 'examined.'

(9) I.e., she is disbelieved.

(10) Then why repeat it?

(11) R. Gamaliel refers to the woman herself, who has a presumptive status of fitness. Yet if she bare a daughter, a doubt is entertained, and the daughter may not marry a priest since there is no such presumption in her favour. But Abba Saul rules that the daughter too is fit.

(12) V. Keth. 13b. Hence Abba Saul goes beyond R. Gamaliel.

(13) Sc. the Mishnah of R. Gamaliel.

(14) E.g., if she is unbetrothed.

(15) E.g., if she is an arusah, so that all except the arus are unfit, in that a child by them is mamzer.

(16) When she asserts that the child is by the arus.

(17) I.e., to marry a legitimately born Jew: the language is Biblical, Deut. XXIII, 2-4.

(18) E.g., a mamzer with a Nathin.

(19) V. Glos. In Talmudic times their status fluctuated and the Rabbis seem to have been undecided how to regard them. As this Mishnah shews, they were still regarded as Jews, though falling within the category of 'doubtful' in respect of genealogy. In later times they were declared non-Jews absolutely.

(20) The Mishnah on 69a.

(21) V. supra 72a. And this does not include a proselyte.

Talmud - Mas. Kiddushin 74b

This is its meaning: ALL WHO ARE FORBIDDEN TO ENTER INTO THE ASSEMBLY of priesthood — namely,[1] A female proselyte less than three years and one day, this disagreeing with R. Simeon b. Yohai[2] — MAY INTERMARRY WITH EACH OTHER.[3] Then let us relate it to one aged three years and a day, so agreeing even with R. Simeon b. Yohai? — If so, its refutation is at its side. [For we would then argue thus:] It is only because she is three years and a day; but if less than three years and one day, since she may enter into the assembly of priests, she is forbidden [to intermarry] with the others?[4] But what of [the case of her] who is less then three years and a day, according to R. Simeon b. Yohai, who, though she may enter into the assembly of priests, may yet intermarry with the others![5]

[But] is it a general principle that all who are forbidden to enter into the assembly of priesthood may intermarry with each other? But what of a widow, a divorced woman, a halalah and a zonah,[6] who are forbidden to enter into the assembly of priesthood,[7] and yet may not intermarry with these others? Furthermore, [the principle implies,] but one who is permitted [to marry into the priesthood] is forbidden [to intermarry with these]; but a proselyte is permitted to a priest's daughter, yet also permitted to a mamzereth![8] — But, said R. Nathan b. Hoshaia: This is what [the Mishnah] means: One whose daughter a priest may not marry — and who is that? a proselyte married to a proselyte, this agreeing with R. Eliezer b. Jacob[9] — may intermarry with these others.[10] Now, is it a general principle that one whose daughter a priest may not marry may intermarry with these? But what of [the case of] a halal who marries an Israelite's daughter, though a priest may not marry his daughter, yet he may not intermarry with these others?[10] — That is no difficulty: [our Tanna teaches] according to R. Dosethai b. Judah.[11] But what of a halal who marries a halalah, though a priest may not marry his daughter, yet he may intermarry with these others.[10] Furthermore, [the principle implies,] but one whose [daughter] is permitted [to marry a priest] is forbidden [to intermarry with these]; but what of a proselyte who marries an Israelite's daughter, though a priest may marry his daughter, yet he may intermarry with these others![12] — But, said R. Nahman in Rabbah b. Abbuha's name: Here they differ with respect to a mamzer from a sister and a mamzer from a married woman. The first Tanna holds that even a mamzer from a sister is mamzer; while R. Judah holds: from a married woman it is mamzer, but not from a sister.[13] Then what does he [the Tanna of our Mishnah] inform us? We have [already] learnt it: Who is mamzer? All who are subject to 'he shall not enter':[14] this is R. Akiba's view. Simeon the Temanite said: Whoever involves the penalty of kareth at the hands of Heaven;[15] and the halachah is as his ruling. R. Joshua said: Whoever involves the penalty of death by the Court![16] — But, said Raba, they differ in reference to an Ammonite and a Moabite convert, and this is its meaning: ALL WHO ARE FORBIDDEN TO ENTER INTO THE ASSEMBLY, — and who are they? an Ammonite and a Moabite proselyte — MAY INTERMARRY WITH EACH OTHER. If so, what is meant by R. JUDAH FORBIDS IT?[17] — This is its meaning: Though R. JUDAH FORBIDS a proselyte [to intermarry] with a mamzereth, that is only a proselyte who is eligible to enter into the assembly, but not Ammonite and Moabite proselytes, who are not eligible to enter into the assembly.

Our Rabbis taught: A male aged nine years and a day,[18] [whether he be] an Ammonite, Moabite, Egyptian or Edomite convert, or a Cuthean, Nathin, halal or mamzer, who has intercourse with the daughter of a priest, a Levite or an Israelite, he disqualifies her.[19] R. Jose said: He whose seed [i.e., issue] is unfit [for the priesthood] disqualifies,[20] but he whose issue is not unfit does not disqualify.

R. Simeon b. Gamaliel said:

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(1) Lit., ‘who is it?’

(2) ‘ASSEMBLY,’ according to this, refers to the priesthood, and this Tanna holds that even if a child less than three years and a day becomes a proselyte she is forbidden to a priest, thus disagreeing with R. Simeon b. Yohai, infra 78a.

(3) And R. Judah's statement can thus refer to the marriage of a proselyte and mamzereth.

(4) Sc. mamzer, etc.

(5) For since she may marry a mamzer, it follows that the assembly of proselytes is not designated ‘assembly’ (v. supra a); hence the same holds good if she becomes a proselyte before that age.

(6) Lev. XXI, 7: ‘harlot’. For the definition, v. Yeb. 61b.

(7) A widow may not marry a High Priest; the others are interdicted to all priests.

(8) As in n. 3.

(9) Infra 77a.

(10) Sc. mamzer, etc.

(11) Ibid. and supra 64a.

(12) Sc. mamzer, etc.

(13) The Mishnah does not refer to a proselyte at all, but to the question whether these two illegitimate children may intermarry. A sister is interdicted on pain of kareth, q.v. Glos; adultery with a married woman is punishable by death. The first Tanna treats the issue of both as mamzer, and he states, those who are forbidden to enter the assembly as mamzerim may intermarry. But R. Judah maintains that only the latter, forbidden on pain of death, is mamzer, but not the former; hence they may not intermarry.

(14) I.e., even the issue of a union interdicted by a mere negative precept.

(15) The child of such a union so forbidden.

(16) Thus this dispute is taught elsewhere (Yeb. 49a); why repeat it here?

(17) Surely these may marry a mamzer, since these do not come under the category of ‘assembly’.

(18) Before that he cannot engender.

(19) The first, to eat terumah; the other two, to marry a priest.

(20) The woman with whom be cohabits.

Talmud - Mas. Kiddushin 75a

One whose daughter you [i.e., a priest] may marry, you may marry his widow; but one whose daughter you may not marry, you may not marry his widow.

Wherein do the first Tanna and R. Jose differ? — Said R. Johanan: They differ in respect to a [converted] Egyptian of the second [generation],[1] and both learn it from none but a High Priest with a widow. The first Tanna holds, it is like a High Priest with a widow: just as a High Priest with a widow, since his intercourse is sinful, he disqualifies her;[2] so all whose intercourse is sinful disqualify. While R. Jose holds, It is like a High Priest with a widow: just as a High Priest with a widow, his issue is unfit,[3] [and] he disqualifies [the widow]; so all whose issue is unfit disqualify, thus excluding an Egyptian of the second generation, whose issue is not unfit, for the Writ saith, The children of the third generation that are born unto them shall enter into the assembly of the Lord.[4]

‘R. Simeon b. Gamaliel said: He whose daughter you, [i.e., a priest] may marry, you may marry his widow; but he whose daughter you may not marry, you may not marry his widow.’ Wherein do R. Jose and R. Simeon b. Gamaliel differ? — Said ‘Ulla: They differ in respect to an Ammonite and a Moabite proselyte;[5] and both learn it from none but a High Priest with a widow. For R. Jose maintains, It is like a High Priest with a widow: just as a High Priest with a widow, his issue is disqualified, and he disqualifies [the widow]; so all whose issue is disqualified, disqualify. While R. Simeon b. Gamaliel maintains, It is like a High Priest with a widow; just as a High Priest with a widow, all his issue is disqualified,[6] so everyone, all whose, issue, even the females, are disqualified [disqualifies his wife], thus excluding Ammonite and Moabite proselytes, whose females are eligible

to enter into the assembly; for a Master said: An Ammonite [. . . shall not enter, etc.], but not an Ammonitess; a Moabite [shall not enter, etc.],[7] but not a Moabitess.

R. Hisda said: All agree that the widow of a member of a suspected family[8] is unfit for the priesthood. [For] who is the most lenient of these Tannaim? R. Simeon b. Gamaliel. Yet he says: He whose daughter you may marry, you may marry his widow; but he whose daughter you may not marry, you may not marry his widow. What does this exclude? It excludes the widow of a suspected family, [teaching] that she is unfit for the priesthood.[9] This conflicts with the following Tannaim: For we learnt: R. Joshua and R. Judah b. Bathyra testified[10] concerning the widow of a member of a suspected family, that she is fit for the priesthood. What is the reason? Because it is a double doubt,[11] and a double doubt [inclines] to a lenient ruling.[12]

CERTAIN [UNFITS] ARE PERMITTED [TO INTERMARRY] WITH CERTAIN [UNFITS]. Rab Judah said in Rab's name: The halachah is as R. Eleazar. When I stated it before Samuel, he observed to me, Hillel taught: Ten genealogical classes went up from Babylon and all are permitted to intermarry;[13] yet you say that the halachah is as R. Eleazar! Now, both Rab and Samuel are self-contradictory. For it was stated: If an arusah becomes pregnant:[14] Rab maintained: The child is mamzer;[15] while Samuel ruled: The child is shethuki and forbidden to a mamzereth! — Reverse it: Rab maintained: The child is shethuki; and Samuel ruled: The child is mamzer. What is the need of two?[16] — It is necessary. For if it were stated in this case [of our Mishnah, I would say, only] here does Rab rule thus, because the majority are eligible to her;[17] but there, that the majority are unfit for her,[18] I might argue that he agrees with Samuel. Again, If it were stated in the latter case, [only] there does Rab rule thus, because he [the issue] may be imputed to the arus; but in this [the former], I would say that he agrees with Samuel. Hence both are necessary.

Alternatively, you need not reverse it after all, and what does Rab mean by mamzer? Not that he may marry a mamzereth, but that he is forbidden to a daughter of Israel.[19] Now, when Samuel rules: The child is shethuki [it means] that he is forbidden to a daughter of Israel? If so, that is Rab's view! — But what is meant by shethuki? That he is 'silenced' from the rights of priesthood.[20] Surely that is obvious? If he is 'silenced' from the rights of an Israelite,[21] need it [be said] from the rights of priesthood! — But what is meant by shethuki? He is 'silenced' from his father's estate.[22] Surely that is obvious; do we then know who his father is? — This arises only where he has taken possession.[23] Alternatively, what is meant by shethuki? Beduki [examined]. That is [to say] we examine his mother, and if she maintains, 'I cohabited with a fit person,' she is believed.[24] With whom does this agree? — With R. Gamaliel? But Samuel has already stated it once! For we learnt: If she [an unmarried woman] was pregnant, and was asked: 'What is the nature of this child?' And she replied: 'He is by So-and-so, who is a priest': R. Gamaliel and R. Eliezer said: She is believed; R. Joshua said: We do not live by her words.[25] And Rab Judah said in Samuel's name: The halachah agrees with R. Gamaliel? — It is necessary. For if [I were to deduce] from there, I would argue, 'There, most men are fit for her;[26] but here, most men are unfit for her,[27] I would say [she is] not [believed]. Hence both are necessary.

It was taught: And thus did R. Eleazar say: A Cuthean may not marry a Cuthean. What is the reason? — Said R. Joseph: He was treated as a proselyte after ten generations. For it was taught: A proselyte, until ten generations, may marry a mamzereth; thereafter he is forbidden [to marry] a mamzereth. Others state: [He is permitted] until the name of heathenism has completely fallen away from him. Said Abaye to him: How compare! There it is a proselyte of ancient [stock] and a recent mamzereth, so it will be said: He is an Israelite marrying a mamzereth,' whereas here they are both alike? — But when R. Dimi came,[28] he said: R. Eleazar agrees with R. Ishmael,

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(1) V. Deut. XXIII, 8f. The first Tanna holds that he disqualifies her; but R. Jose holds that he does not, since his issue, being of the third generation, is not unfit.

(2) As in n. 1.
(3) I.e, halal.
(4) Ibid.
(5) A male proselyte of these peoples may never intermarry with a Jew; a female, however, is permitted. R. Jose holds that his intercourse renders the woman unfit; R. Simeon b. Gamaliel, that it does not.
(6) Including females.
(7) Deut. XXIII, 4.
(8) עיסה , 'mixed dough'. I.e., a family in which a forbidden element is suspected to have entered; v. 'Ed. (Sonc. ed.) p. 48, n. 2 and Keth. 14a and b.
(9) For her husband might be a halal, in which case his daughter must not marry a priest; hence his widow too is forbidden.
(10) V. 'Ed. VIII, 3.
(11) Lit., 'the doubt of a doubt.' Thus, the unfitness even of her husband is only doubtful; and since her unfitness is through him, we regard it as a still weaker doubt, i.e., a double doubt.
(12) We always give a lenient ruling in such a case.
(13) Rashi: 'all' means the forbidden classes; Tosaf. explains: each category is permitted to marry within itself; on both views 'doubtful' may intermarry with 'doubtful,' thus disagreeing with R. Eleazar. — On 'Hillel taught' both Rashi and Tosaf. Ri observe: in the Baraitha based on this Mishnah of 'TEN GENEALOGICAL CLASSES'. Weiss. Dor. I, p. 175 (1924 ed.) conjectures that this might have been taught when Herod destroyed the ancient Book of genealogical records, of which this may be an extract. (The verb shanah employed here generally refers to a Mishnah, not a Baraitha.)
(14) And it is unknown whether by her arus or a stranger.
(15) Since the majority of men are forbidden to her, we regard it as certain that the child was born in adultery, and so it is a certain mamzer. Thus Rab treats a doubt as a certainty, which agrees with the first Tanna on 74a, that doubt and certainty may intermarry, and not with R. Eleazar.
(16) Why teach this conflict of Rab and Samuel twice?
(17) The Mishnah treats of a shethuki born of an unmarried woman; since most men are fit for her, it is unlikely that the issue is mamzer, and therefore must not intermarry with mamzer.
(18) Since she is an arusah.
(19) I.e., any Jewess. Thus this corresponds to Rab's ruling that the halachah is as R. Eleazar.
(20) If the arus is a priest, this child does not enjoy the privileges of priesthood, e.g., of eating terumah.
(21) He cannot marry a daughter of an Israelite.
(22) He does not inherit the estate of the arus.
(23) Claiming that the arus was his father. We might think that he retains it unless the contrary is proved. Hence Samuel teaches otherwise.
(24) Cf. supra 74a.
(25) I.e., she is disbelieved.
(26) Since she is unmarried.
(27) Since she is betrothed.
(28) V. p. 46, n. 6.

Talmud - Mas. Kiddushin 75b

and R. Ishmael agrees with R. Akiba. [Thus:] R. Eleazar agrees with R. Ishmael, who maintained: Cutheans are proselytes [through fear] of lions.[1] And R. Ishmael agrees with R. Akiba, who said: If a heathen or a slave has intercourse with the daughter of an Israelite, the issue is mamzer.[2] But does R. Ishmael hold with R. Akiba? Surely R. Johanan said on R. Ishmael's authority: How do we know that a heathen or a slave who has intercourse with the daughter of a priest, a Levite, or an Israelite, disqualifies her?[3] Because it is said: But if a priest's daughter be a widow, or divorced, [and have no child. . . she shall eat of her father's bread,]:[4] [this holds good only of] one who comes within the ambit of widowhood. and divorce; thus excluding a heathen or a slave, who does not come within the ambit of widowhood and divorce.[5] Now should you think that he holds with R. Akiba — if he [the issue] is mamzer, is it necessary [to deduce] that he [the heathen] disqualifies by his

intercourse![6] But R. Eleazar agrees with R. Ishmael who maintained that Cutheans are proselytes [through fear] of lions, and he also agrees with R. Akiba, who said: If a heathen or a slave has intercourse with a Jewess, the issue is mamzer.

Yet does R. Eleazar hold with R. Akiba? But R. Eleazar said: Though Beth Shammai and Beth Hillel differ with respect to co-wives,[7] they agree that mamzer is only from one who is forbidden on the score of consanguinity on pain of kareth![8] — But when Rabin came,[9] he said in the name of R. Hiyya in R. Johanan's name — others state, in the name of R. Abba b. Zabda in R. Hanina's name — others state, in the name of R. Jacob b. Idi in R. Joshua b. Levi's name: There are three opposing views in this matter: — [i] R. Ishmael holds: Cutheans are proselytes [through fear] of lions, and the priests who became mixed up in them were unfit priests, as it is said, and they made unto them from among themselves [mikezotham] priests of the high places,[10] whereon Rabbah b. Bar Hanah commented: from the most unworthy[11] of the people [sc. priests], and on that account they were disqualified. [ii] R. Akiba holds: Cutheans are true proselytes, and the priests who became mixed up in them were fit priests, as it is said: 'and they made unto them from among themselves priests of the high places,' which Rabbah b. Bar Hanah interpreted:[12] from the choicest[13] of the people. Yet why did they interdict them? — Because they subjected arusoth to yibum,[14]

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(1) Cf. II Kings, XVII, 25. Therefore they are to be regarded as heathens.

(2) Thus the Cuthean (male) may be the issue of a Cuthean and a Jewess, hence mamzer; while the female may be born of two Cutheans, hence a heathen. Now a mamzer is a Jew, though debarred from a legitimately-born Jewess, and may not marry a heathen.

(3) If she is a priest's daughter, from eating terumah: the other two, from marrying a priest. Or, if she had been formerly married to a priest, who had died and left her with a son, who would otherwise entitle her to eat terumah, she is now forbidden.

(4) I.e., terumah, Lev. XXII, 13.

(5) I.e., only when she cohabits with one whose death leaves her a widow, or who can divorce her, does she remain fit to eat terumah. But not when she cohabits with a heathen or slave, for since these cannot legally marry her, they cannot give her the status of widowhood or divorce. — Where a woman is disqualified from eating terumah, she is certainly ineligible to marry a priest.

(6) Surely not, since the former involves even a greater degree of unfitness.

(7) V. Yeb. 13a.

(8) And a heathen or slave is not thus forbidden.

(9) V. p. 46, n. 6.

(10) II Kings XVII, 32.

(11) Lit., 'thorns', Heb. kozim: i.e.,the unfit priests.

(12) On R. Akiba's view.

(13) Var. lec.: 'nobles', Heb. kezinim, which shews the connection with kezotham.

(14) V. Glos.

Talmud - Mas. Kiddushin 76a

but exempted married women.[1] What was their interpretation?[2] — The wife of the dead shall not marry without [ha-huzah] unto a stranger:[3] she who sat 'without' shall not marry a stranger; but she who did not sit 'without' may marry a stranger.[4] And R. Akiba follows his view, for he maintained, There is mamzer from those who are subject [only] to negative injunctions.[5] [iii] Some state, because they are not thoroughly versed in the [minute] details of precepts. Who is meant by 'some state?' — Said R. Idi b. Abin: It is R. Eliezer. For it was taught: The unleavened bread of a Cuthean is permitted,[6] and one fulfils his obligation therewith on Passover;[7] but R. Eliezer forbids it,[8] because they are not thoroughly versed in the [minute] details of precepts. R. Simeon b. Gamaliel said: Every precept which Cutheans have adopted, they observe it with minute care, [even] more than the Israelites. But here [in respect to marriage], wherein are they not well-versed? — Because they are

not well-versed in the law of betrothal and divorce.[9]

R. Nahman said in Rabbah b. Abbuha's name: A mamzer by a sister and a mamzer by a brother's wife became mixed up among them [the Cutheans].[10] What does he inform us? — That there is mamzer from those who are liable to kareth.[11] Then let one [only] be taught?[12] — The actual event happened thus. Raba said: A [heathen] slave and a bondmaid were mixed up in them. Now, on whose account is the interdict? On account of the bondmaid![13] Then let one [only] be taught! — The actual event happened thus.

MISHNAH. HE WHO MARRIES A PRIEST'S DAUGHTER[14] MUST INVESTIGATE HER DESCENT[15] UP TO FOUR MOTHERS, WHICH ARE EIGHT. [VIZ.,] HER MOTHER AND HER MOTHER'S MOTHER, HER MOTHER'S PATERNAL GRANDMOTHER[16] AND HER MOTHER, HER FATHER'S MOTHER AND THIS ONE'S MOTHER, HER FATHER'S PATERNAL GRANDMOTHER AND HER MOTHER.[17] [IN THE CASE OF] THE DAUGHTER OF A LEVITE OR AN ISRAELITE, ONE MORE IS ADDED.[18] WE MAKE NO INVESTIGATION FROM THE ALTAR AND UPWARDS, FROM THE DUKAN [DAIS] AND UPWARDS, NOR FROM THE SANHEDRIN AND UPWARDS.[19] AND ALL WHOSE PARENTS WERE ESTABLISHED TO HAVE BEEN AMONG THE PUBLIC OFFICERS[20] OR CHARITY OVERSEERS ARE PERMITTED TO MARRY INTO THE PRIESTHOOD, AND THEIR DESCENT IS NOT INVESTIGATED. R. JOSE SAID: ALSO WHOEVER WAS SIGNED AS A WITNESS IN THE OLD COURT[21] OF SEPPHORIS.[22] R. HANINA B. ANTIGONUS SAID: ALSO ONE WHO WAS RECORDED IN THE KING'S LIST OF OFFICERS.[23]

GEMARA. Why are the women investigated but not the men? — When women quarrel among themselves, they quarrel [only] about immorality,[24] so that if there is anything,[25] it is not generally known.[26] But when men quarrel among themselves, they quarrel over birth;[27] if there is anything, it is generally known.

Now, let her too investigate his [forbears]? — This supports Rab. For Rab Judah said in Rab's name: Fit women were not admonished not to marry the unfit.[28]

R. Adda b. Ahabah recited: Four mothers, which are twelve.[29] In a Baraitha it was taught:' Four mothers, which are sixteen.[30] Now, as for R. Adda b. Ahabah, it is well;

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(1) Altogether, even from halizah.

(2) That led them to this ruling.

(3) Deut. XXV, 5. On this translation, hahuzah is a locative adverb governed by 'marry'.

(4) Taking ha-huzah as an adjective qualifying wife: the dead man's wife who is without, shall not marry a stranger. A 'wife who is without' is an arusah, who may not live with her husband until nissu'in. [V. Samaritan version of the Bible, a.l. and Montgomery, The Samaritans, p. 185.]

(5) For actually we reject that interpretation, translating as the E.V., and so even a nesu'ah is interdicted by a negative injunction, and the issue is mamzer. Hence though R. Akiba holds that the Cutheans are true proselytes, yet they contain mamzerim, which precludes intermarriage with them. Hence the interdiction of marriage with them, as explained anon.

(6) To be eaten on Passover.

(7) One had to eat at least the size of an olive of unleavened bread of flour specially guarded and prepared for the fulfilment of the precept, 'on the fourteenth day of the month at even, ye shall eat unleavened bread' (Ex. XII, 18). This Tanna holds that Cutheans know and are particular about this.

(8) I.e., one does not fulfil his obligation therewith.

(9) Thus, a woman may have been validly betrothed, yet they thought it invalid and permitted her to marry another, the issue by whom is mamzer. Another Cuthean, however, may be quite legitimate; therefore R. Eleazar forbids Cutheans to marry each other.

(10) Therefore one Cuthean may not marry another.

(11) By specifying a mamzer from an incestuous union with a sister, his intention is to teach that the issue of such, though forbidden only on pain of kareth, is mamzer, in opposition to the view (Yeb. 49a) that only when the union involves death by the court is the issue mamzer (v. Rashi).
(12) E.g., that a mamzer by a sister was mixed up among them.
(13) For, as shewn on 75b, R. Eleazar holds that the issue of a slave and a Jewess is legitimate; hence he must have declared the prohibition because of the bondmaid, whose issue has the status of a slave (supra 66b), and is forbidden to a Jew or Jewess.
(14) Lit., 'a priestly woman'.
(15) Lit., 'after her.'
(16) Lit., 'and her father's mother'.
(17) Thus the four are: her mother, her mother's paternal grandmother, her father's mother, and her father's paternal grandmother. Further, the mother of each of these is added, which gives eight. All these are examined, to see that none are unfit for a pure marriage.
(18) I.e., one generation further removed on the maternal side in both lines: to her mother and her mother's mother we add her mother's maternal grandmother, and to her father's grandmother, we add one mother more.
(19) If a priest, one of her forbears, was known to have served at the altar, or a Levite to have sung on the dais in the Temple, which was part of the Temple service, or if one was a member of the Sanhedrin, it is unnecessary to trace her descent any further.
(20) I.e., judges in ordinary courts, apart from the Sanhedrin (v. Gemara).
(21) ערכי הישנה , v. next note.
(22) Rashi's text appears to omit 'witness' in which case it means whoever stood on the list of judges. On both versions, the reason is that they were particular that these should be only men of proved purity of descent. [The meaning of the phrase ערכי הישנה is doubtful. Schurer II. 1. p. 138 (Eng. ed.) renders it 'the ancient government', **, the reference being to the old government in Sepphoris, the members of which were all Israelites, in contradistinction to the later government set up by the Romans, in his view, in the days of Hadrian, which was of a mixed or heathen composition (Buchler JQR, XVI, p. 160 dates the change in the composition of the government to the days of Agrippa II). Render accordingly 'whoever was recognised as a member of the old government'. Another possible meaning is 'old archives' or 'old family registers'. v. Buchler Priester & Cultus, pp. 198ff.]
(23) Heb. isteratya; the Gemara discusses this.
(24) One accuses the other of immorality, but not of a blemished descent.
(25) Objectionable in their pedigree.
(26) Lit., 'it has no voice.'
(27) Each throwing up the other's blemished descent.
(28) V. supra p. 373, n. 1. — Hence it is unnecessary for her to investigate his ancestors.
(29) Adding one mother to each. V. p. 388, nn. 9 and 10.
(30) Adding one more mother and the grandmother to each.

Talmud - Mas. Kiddushin 76b

he may relate it [his teaching] to the daughter of a Levite or an Israelite.[1] But must we say that the Baraitha disagrees [with the Mishnah]? — No: What is meant by ONE MORE? one more pair.[2]

Rab Judah said in Rab's name: This [sc. the Mishnah] is R. Meir's view. But the Sages maintain: All families stand in the presumption of fitness.[3] But that is not so, for R. Hama b. Guria said in Rab's name: Our Mishnah refers to where it[4] is contested![5] — The one who recited the former [in Rab's name] did not recite the latter.[6] Others state, Rab Judah said in Rab's name: This is R. Meir's view. But the Sages maintain: All families stand in the presumption of fitness. R. Hama b. Guria said in Rab's name: If it is contested, he must investigate her descent.[7]

WE MAKE NO INVESTIGATION FROM THE ALTAR AND UPWARDs. What is the reason? — Had she[8] not been examined, he would not have been promoted [to that dignity].

NOR FROM THE DAIS AND UPWARDS. What is the reason? — Because a Master said: For there sat those who certified the genealogy of the priestly and the Levitical families.[9] NOR FROM THE SANHEDRIN AND UPWARDS. What is the reason? — For R. Joseph learnt: Just as the court must be pure in righteousness, so must it be pure from any [genealogical] blemish.[10] Said Meremar: What verse teaches this?[11] Thou art all fair, my love; and there is no blemish in thee.[12] Perhaps a literal blemish [is meant]? — Said R. Aha b. Jacob: Scripture saith, that they may stand there with thee:[13] 'with thee' [implies,] like unto thee.[14] Yet perhaps that was on account of the Shechinah?[15] But[16] said R. Nahman: Scripture saith, so shall it be easier for thyself, and they shall bear the burden with thee:[17] 'with thee' [implies,] like unto thee.

ALL WHOSE PARENTS WERE NOT ESTABLISHED TO HAVE BEEN AMONG THE PUBLIC OFFICERS. Are we to say that [judges] were not appointed of [genealogically] unfit persons? But the following contradicts it: All are fit to adjudicate in civil matters, but not all are eligible to judge capital cases. Now, we pondered thereon: What does 'all' include? And Rab Judah said: It includes mamzer. — Said Abaye: In Jerusalem.[18] And so did R. Simeon b. Zera recite in Kiddushin of the School of Levi:[19] In Jerusalem.

OR CHARITY OVERSEERS, ARE PERMITTED TO MARRY [INTO THE PRIESTHOOD]. What is the reason? — Since they quarrel with people, for a Master said: Pledges are taken for charity, even on Sabbath eve,[20] if there were [a blemish in his family], it would be known.

R. Adda b. Ahabah's host was a proselyte, and he and R. Bibi were at variance, each claiming, I must carry on the administration of the town. So they went before R. Joseph. Said he to them, We learn it: One from among thy brethren shalt thou set king over thee:[21] all appointments[22] which thou makest must be only from the midst of thy brethren. Said R. Adda b. Ahabah to him: Even if his mother is a Jewess? — If his mother is a Jewess, he replied, we apply to[23] him, 'from the midst of thy brethren'. Therefore let R. Bibi, who is a great man, give his attention to Heavenly matters,[24] and do you, Sir, pay attention to affairs of the town.[25] Said Abaye: Therefore, when one provides a scholar with residence in his boarding house, let him provide it for one like R. Adda b. Ahabah, who is able[26] to argue[27] in his favour.

R. Zera took trouble over them [sc. proselytes]; Rabbah b. Abbuhah took trouble over them. In the west [Palestine] not even an Inspector of Measures[28] was appointed of them. In Nehardea, not even an irrigation superintendent was appointed of them.

R. JOSE SAID: EVEN ONE WHO WAS etc. What is the reason? They [first] investigated, and then allowed them to attest.

R. HANINA B. ANTIGONUS etc. Rab Judah said in Samuel's name: [This refers to the officers] in the armies of the House of David. Said R. Joseph: What verse teaches this?[29] And they who were reckoned by genealogy for service in war.[30] And what is the reason?[31] — Said Rab Judah in Rab's name: In order that their own merit and the merit of their fathers might aid them. But there was Zelek the Ammonite;[32] surely that means that he was descended from Ammon? — No: that he dwelt in Ammon. But there was Uriah the Hittite;[33] surely that means that he was descended from Heth? — No: that he dwelt among the Hittites. But there was Ittai the Gittite.[34] And should you answer, here too it means that he dwelt in Gath, — but R. Nahman said: Ittai the Gittite came and destroyed it.[35] Moreover, Rab Judah said in Rab's name, David had four hundred children, all the offsprings of 'beautiful women,'[36] all with hair trimmed in front[37] and locks growing long;[38] and all sat in golden chariots and went at the head of armies, and they were the strong men[39] of the House of David! — They merely went to terrorise [the opposing armies].[40]

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(1) As stated in the Mishnah.

(2) A mother and grandmother, which gives sixteen.
(3) Without investigation.
(4) The bride's pedigree.
(5) Two witnesses testify that it is rumoured that her descent is blemished, in which even the Rabbis would agree that investigation is required; why then does Rab ascribe the Mishnah only to R. Meir?
(6) If the Mishnah is assumed to reflect R. Meir's view, it means even if her purity is uncontested; if it is assumed to mean only where it is contested, it agrees even with the Rabbis.
(7) Even in the view of the Rabbis.
(8) The mother of the priest who served at the altar.
(9) And priests or Levites of impure descent were not permitted to sing in the Temple service or pronounce the priestly blessing. — Rashi states that this took place in the Hall of Hewn Stones, and the examiners were the Sanhedrin. Weiss, Dor p. 175, n. 2. inclines to the view that a special priestly court was set up for this purpose (Cf. 'the priestly court' mentioned in Keth. 12a), which sat in a place behind the veil. Wilna Gaon takes an intermediate position: this special court made the investigations, but the actual verdict was pronounced by the Sanhedrin.
(10) This refers to the larger or smaller Sanhedrin (v. Sanh. 2a), but not to an ordinary court.
(11) Lit., 'what is its verse?'
(12) Cant. IV, 7.
(13) Num. XI, 16: this refers to the seventy elders, who, together with Moses, were traditionally regarded as the first great Sanhedrin of seventy one.
(14) Of pure descent.
(15) The Divine Presence. For these were endowed with the power of prophecy (v. 25); yet subsequent Sanhedrins may not require unstained birth?
(16) So the reading in Sanh. 36b, and as required here.
(17) Ex. XVIII, 22. This likewise refers to the setting up of courts, and no mention is made of prophecy.
(18) Our Mishnah refers to Jerusalem, where only men of unsullied birth were permitted to be judges.
(19) I.e., in Levi's Baraitha on the Tractate Kiddushin. Z. Frankel, Darke ha'Mishnah, p. 313, and Weiss, Dor, II. 191-2 maintain that this was in opposition to Rabbi's Mishnah; Halevi, Doroth, II. 119-121 proves that it was not opposed but explanatory of and complementary to Rabbi's compilation.
(20) Charity was compulsory, and if one failed to pay his quota a pledge was forcibly taken from him; this naturally led to quarrels with the overseer.
(21) Deut. XVII, 55.
(22) Lit., 'settings.'
(23) Lit., 'read of.'
(24) Rashi: the charity collections and distribution, synagogue administration.
(25) E.g., taxation etc.
(26) Lit., 'knows'.
(27) Lit., 'turn (things) about.'
(28) Kori fr. kor, a measure.
(29) Lit., 'what is its verse?'
(30) I Chron. VII, 40.
(31) Why insist on pure birth?
(32) II Sam. XXIII, 37.
(33) II Sam. XXIII, 39.
(34) Ibid. XV, 19.
(35) Sc. Milcom, the idol of the Ammonites, and the whole point of R. Nahman's dictum is that he did this as a heathen. V. 'A. Z. 44a.
(36) Captured in war; v. Deut. XXI, 10-14.
(37) In Roman fashion, with a fringe on the forehead and curls hanging down on the temples.
(38) [Belurith (etym. obscure) a heathen fashion of growing locks from the crown of the head, hanging down in plaits at the back, v. Krauss, T.A. I 645.]
(39) Lit., men of fists.'
(40) But did not actually fight.

Talmud - Mas. Kiddushin 77a

MISHNAH. THE DAUGHTER OF A MALE HALAL IS UNFIT FOR THE PRIESTHOOD FOR ALL TIME.[1] IF AN ISRAELITE MARRIES A HALALAH, HIS DAUGHTER IS FIT FOR THE PRIESTHOOD. IF A HALAL MARRIES THE DAUGHTER OF AN ISRAELITE, HIS DAUGHTER IS UNFIT FOR THE PRIESTHOOD.[2] R. JUDAH SAID: THE DAUGHTER OF A MALE PROSELYTE IS AS THE DAUGHTER OF A MALE HALAL. R. ELIEZER B. JACOB SAID: IF AN ISRAELITE MARRIES A FEMALE PROSELYTE, HIS DAUGHTER IS FIT FOR THE PRIESTHOOD, AND IF A [MALE] PROSELYTE MARRIES THE DAUGHTER OF AN ISRAELITE, HIS DAUGHTER IS FIT FOR THE PRIESTHOOD. BUT IF A MALE PROSELYTE MARRIES A FEMALE PROSELYTE, HIS DAUGHTER IS UNFIT FOR THE PRIESTHOOD. [THE SAME LAW APPLIES TO] A PROSELYTE AS TO FREED SLAVES, EVEN UNTO TEN GENERATIONS, [HIS DAUGHTER IS UNFIT] UNLESS HIS MOTHER IS OF ISRAELITE STOCK.[3] R. JOSE SAID: ALSO IF A MALE PROSELYTE MARRIES A FEMALE PROSELYTE, HIS DAUGHTER IS FIT FOR THE PRIESTHOOD.

GEMARA. Why [state], FOR ALL TIME? — I might think, It is analogous to an Egyptian and an Edomite: just as there, after three generations [the interdict is lifted], so here too after three generations [the daughter is fit for the priesthood]. Therefore we are informed [otherwise].

IF AN ISRAELITE MARRIES A HALAL. How do we know it? — Said R. Johanan on the authority of R. Ishmael:[4] Here it is stated, and he shall not profane his seed among his people;[5] and there it is stated, he shall not defile himself, being a chief man among his people:[6] just as there, males but not females,[7] so here too, males but not females.[8] If so, let a High Priest's daughter [from a widow] be permitted [to marry a priest]? — Is it then written: '[and he shall not profane] his son'? 'His seed' is written, viz., he shall not profane his seed among his people.[9] Then let the daughter of his son be permitted? — It is written, he shall not profane his seed: [hence] his seed is assimilated to himself: just as his own daughter is unfit, so is his son's daughter unfit — Then let his daughter's daughter [too] be interdicted?[10] — If so, what is effected by the gezerah shawah?

IF A HALAL MARRIES THE DAUGHTER OF AN ISRAELITE, HIS DAUGHTER IS UNFIT. But that is stated in the first clause: THE DAUGHTER OF A MALE HALAL IS UNFIT FOR THE PRIESTHOOD FOR ALL TIME? — Because the former clause teaches: IF AN ISRAELITE MARRIES A HALALAH, the latter clause also states: IF A HALAL MARRIES THE DAUGHTER OF AN ISRAELITE.[11] Our Mishnah does not agree with R. Dosethai b. Judah. For it was taught: R. Dosethai b. Judah said: Just as the sons of Israel are a mikweh of purification for [female] halaloth, so are the daughters of Israel a mikweh of purification for [male] halalim.[12] What is R. Dosethai b. R. Judah's reason? — Scripture saith, 'he shall not profane his seed among his people': he profanes [his seed] among one people, but not among two peoples.[13]

Our Rabbis taught 'He shall not profane his seed:' I know [it] only [of] his seed; how do I know it of herself?[14] — Say, a minori: if his seed, that committed no sin, is profaned, she, who commits sin, how much the more so that she is profaned! Let him himself refute it: he commits sin, yet he is not profaned![15] As for himself, that is because he is not profaned in all other cases;[16] will you say [the same] of her, seeing that she is profaned in all other cases?[17] And should you desire to object, [then one can answer,] Scripture saith, 'he shall not profane his seed,' [which means,] This one shall not become profaned, who was [originally] fit and is [now] profaned.[18] What is meant by, 'and should you desire to object?' — [This:] and should you say, one can refute [it thus]: as for his seed, that is because he is conceived[19] in sin; [therefore] Scripture saith, 'he shall not profane his seed:' this one shall not become profaned, who was [originally] fit and is [now] profaned.

Our Rabbis taught: What is a halalah? One who was born of unfit persons. What is meant by unfit

persons? Shall we say, unfit for him?[20] But what of him who takes back his divorced wife,[21] though she is unfit for him, yet her children are fit, as it is written, she is an abomination:[22] 'she is an abomination but her children are no abomination! — Said Rab Judah This is its meaning: What is a halalah? — One who was born of a priestly disqualification.[23] Only one who was born [of such a forbidden union], but not one who was not born [thus]? But what of a widow, a divorced woman or a zonah,[24] who were not born [thus], and yet [each] is a halalah.[25] — Said Rabbah, This is its meaning: Who is the halalah mentioned, that never enjoyed a period of eligibility? She who was born of a priestly disqualification. What is the meaning of 'mentioned?' — Said R. Isaac b. Abin: This is its meaning: Who is the halalah primarily [disqualified] by the words of the Torah, and who needs no Rabbinical definition?[26] One who was born of a priestly disqualification.

Our Rabbis taught [If a High Priest has intercourse with] a widow, a widow, a widow,[27] he incurs only one penalty.[28] [If a priest has intercourse with] a divorced woman, a divorced woman, a divorced woman, he incurs only one penalty. [If he has intercourse with] a widow, a divorced and profane woman, and a harlot [zonah],[29] if they [these disqualifications] are in this order,[30] he [the High Priest] is liable [for each intercourse]. But if she [first] committed harlotry,[31] was then profaned,[32] subsequently divorced, and finally widowed, he incurs only one penalty. The Master said: '[If a High Priest has intercourse with] a widow, a widow, a widow, he incurs only one penalty.' How is this widow meant? Shall we say that he has intercourse with Reuben's widow, with Simeon's widow, and with Levi's widow, why does he incur only one penalty?

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(1) I.e., the daughter of a halal, or of the son or grandson of a halal, and of his male descendants for all generations, cannot marry a priest.

(2) This is implicit in the first statement.

(3) Lit., 'from Israel.'

(4) So the text as amended; cur. ed. Simeon.

(5) Lev. XXI, 15.

(6) Ibid. 4.

(7) Only males are forbidden to defile themselves through the dead.

(8) I.e., only the males are disqualified by a forbidden priestly marriage, but not the females; hence the daughters of the former are unfit for the priesthood, but not of the latter.

(9) Hence the gezerah shawah merely shews that the female offsprings of his female descendants are permitted, but not his own daughters.

(10) By the same reasoning.

(11) For the sake of parallelism.

(12) That their issue is eligible for the priesthood, v. supra p. 321. n. 3.

(13) I.e., only when he and his wife are of 'one people,' i.e., both halalim (profaned) is his seed halel too: but if his wife is of a different people, i.e., not a halalah, his seed is not halal either.

(14) That she is forbidden to a priest, after his death.

(15) [A priest who marries a woman forbidden to him is not disqualified from the priesthood, v. Bek. 45b and Git. 36b.]

(16) Even if he cohabits with a bondmaid or a harlot, he is not degraded from the priesthood.

(17) If a woman cohabits with a Cuthean, halal, etc., she is disqualified from the priesthood; supra 74b.

(18) Rashi: 'he shall not profane' is primarily applicable to the profaning of a person who was hitherto fit, viz., his wife. But, his seed is born profaned; hence, though the seed is mentioned in the verse too, the verb nevertheless relates to his wife.

(19) Lit., 'formed'.

(20) I.e., even if an Israelite marries a woman interdicted to him particularly (excluding a mamzereth, who is forbidden to all), the issue is halal.

(21) After she married another.

(22) Deut. XXIV, 4.

(23) I.e., of a person disqualified to marry a priest.

(24) V. Glos.

(25) When she marries a priest, or in the case of a widow, when she marries a High Priest.
(26) Lit., 'by the words of the soferim': v. p. 79, n. 7. — I.e., when Scripture says: They shall not take a woman that is profaned (halalah). (Lev. XXI, 7), it presupposes a recognised definition of halalah, even before the Rabbis extended its scope by their exegesis.
(27) To be explained anon.
(28) Viz., flagellation, the penalty for transgressing a negative injunction.
(29) The verse is quoted direct from Lev. XXI, 14, and the translation is accordingly that of the E.V.
(30) Thus: a widow remarried and was divorced; then she married a priest, whereby she was profaned; after this, e.g., she committed incest, thus becoming a zonah.
(31) Becoming a zonah.
(32) By marrying a priest.

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Behold, they are separate persons and separate names! Again, if he has intercourse three times with the same widow, what are the circumstances? If he was not warned, it is obvious that he incurs only one penalty.[1] But if he was warned for each, why does he incur only one penalty? Did we not learn: If a nazir[2] drinks wine all day, he incurs only one penalty; if he is admonished, 'Do not drink,' 'do not drink,'[3] and he drinks, he is liable for each! — This arises only if he has intercourse with Reuben's widow, who was Simeon's widow who had been Levi's widow: I might think, Behold, they are separate names! We are therefore told that we require separate persons,[4] which is absent.

[If he has intercourse with] a widow, a divorced and profane woman, and a harlot. What is this Tanna's opinion? If he holds, one prohibition can fall on another,[5] then it is the reverse too.[6] Whilst if he holds, one prohibition cannot fall on another, it is not so even in this order![7] — Said Raba: This Tanna does not hold that one prohibition can fall upon another, but he does accept [the validity of] a prohibition of wider scope.[8] [Thus:] a widow is interdicted to a High Priest, but permitted to an ordinary priest; when she becomes divorced, since a prohibition is added in respect of an ordinary priest, it is added in respect of a High Priest; yet she is still permitted to partake of terumah. When she becomes profane, since a prohibition of eating terumah is added, a prohibition is added in respect of a High Priest. But what wider prohibition is there on account of zonah?[9] — Said R. Hama son of R. Kattina: Because the designation of harlotry [zenuth] disqualifies in the case of an Israelite.[10]

A Tanna recited before R. Shesheth: Whoever is included in [a virgin of his own people] shall he take [to wife],[11] is included in '[a widow, etc.,] he shall not take'; but whoever is not included in, 'shall he take,' is not included in, 'he shall not take':[12] this excludes a High Priest who marries his sister, a widow.[13] Said he to him: He who told you this, on whose authority is it? R. Simeon's, who maintains that one prohibition cannot fall upon another. For it was taught if one eats nebelah[14] on the Day of Atonement, he is exempt.[15] For if according to the Rabbis, — surely they maintain that one prohibition falls upon another. [He replied:] You may even say [that it agrees with] the Rabbis: When do the Rabbis maintain that one prohibition can fall upon another? Only a stringent prohibition upon a lighter one,[16] but a light prohibition cannot fall upon a more stringent one.[17]

Others state: This agrees with the Rabbis, who maintain, One prohibition can fall upon another; but when do they rule thus? Only that a more stringent prohibition [can fall] upon a lighter one; but a light one cannot fall upon a more stringent one. For if it is R. Simeon: seeing that a stringent prohibition cannot fall upon a light one, need a light prohibition upon a more stringent be stated? — I might think that a prohibition in connection with priesthood is different;[18] hence we are informed [that it is not so].[19]

R. Papa said to Abaye: When an Israelite has intercourse with his sister, he [certainly] renders her a zonah,' [but] does he render her a halalah [too] or not?[20] Do We says [it follows] a minori: if one

becomes a halalah by those who are forbidden to her by [only] negative injunctions, how much more so by those who are forbidden on pain of kareth. Or perhaps, a halalah results from a priestly interdict only? — He answered: A halalah results from a priestly interdict only.

Rab said: How do we know this ruling[21] stated by the Rabbis [that] a halalah is only from a priestly interdict? Because it was taught: Let a divorced woman not be stated in reference to a High Priest, and it could be inferred a minori from an ordinary priest; for I would argue, If she is forbidden to an ordinary priest, can there be a question of[22] a High Priest? Why then is it stated? [To teach,] Just as a divorced woman is distinct from zonah and halalah in respect of an ordinary priest,[23] so is she distinct in reference to a High Priest. [But] that is obvious: is it [the sanctity of a High Priest] in any way diminished?[24] But [it is rather to teach] just as a divorced woman is distinct from zonah and a halalah in respect of an ordinary priest,[23] so is a widow distinct from a divorced woman, a halalah and a zonah in respect of a High Priest.[25] Why is halalah stated?[26] [To shew that] halalah results from a priestly interdict only.[27] Why is zonah stated?[26] — Zonah is stated here;[28] and it is also stated there:[29] just as here, his seed is profaned,[30] so there too, his seed is profaned.

Said R. Ashi: Therefore if a priest has intercourse with his sister,

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(1) A penalty was not imposed unless the transgression was preceded by a warning as to implications of the offence. 'Not warned' means not warned for each intercourse separately.

(2) V. Glos.

(3) Before each time he drinks.

(4) For separate punishments.

(5) A thing, being forbidden on one score, can also be forbidden on another, so that two prohibitions are violated. Thus here, though she is forbidden as a divorced woman, the interdict of a harlot is also operative, if she becomes one after her divorce.

(6) Even if this order is not followed; v. 396 n. 9.

(7) No separate penalty is incurred for each.

(8) איסור מוסיף . I.e., which applies to more people. Then it can fall upon another prohibition even in respect of the person to whom the first also applies. For a fuller discussion of the various types of prohibitions, v. Shebu. (Sonc. ed.) p. 127. n. 1.

(9) What is now prohibited which was not before?

(10) If the wife of an Israelite commits adultery, he may not live with her. Thus, though in the case under discussion the prohibition of a zonah adds nothing, an extra penalty is incurred because harlotry in general is a wider prohibition.

(11) Lev. XXI, 14.

(12) I.e., the High Priest transgresses the latter only on account of a woman who would be permitted to him if she were a virgin.

(13) He is not liable because she is a widow, but because she is a sister.

(14) V. Glos.

(15) From kareth, the penalty for eating on the Day of Atonement. For nebelah is already forbidden by a negative injunction, and so the interdict of the Day of Atonement remains inoperative.

(16) E.g., the prohibition of eating on the Day of Atonement is more stringent than that of eating nebelah.

(17) The interdict against one's sister is graver than that of widow to a High Priest.

(18) Because Scripture imposed many additional injunctions upon priests from which others are free.

(19) Consequently the author may be R. Simeon, after all.

(20) So that the priest who has intercourse with her is flagellated separately on each score.

(21) Lit., 'thing'.

(22) Lit., 'is it necessary for?'

(23) If a divorced woman is also a zonah, the priest is doubly punished.

(24) Surely it is not less than that of an ordinary priest!

(25) If a widow is also one or all of these, he is punished on each score.

(26) In reference to a High Priest, seeing that she is prohibited to the ordinary priest.

(27) Because 'halalah' is superfluous. Rashi observes: this may be deduced from the Scriptural order, which places 'halalah' after 'divorced woman' and 'widow' who are forbidden to priests only, but not after zonah, a type of prohibition forbidden also to an Israelite, v. supra p. 398, n. 2, which shews that halalah results from an interdict confined to priests.
(28) Viz., in respect of a High Priest.
(29) In respect of an ordinary priest.
(30) As it is written, he shall not profane his seed.

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he renders her zonah, not halalah. But if he again has intercourse with her, he renders her halalah.[1]

Rab Judah said: If a High Priest [has intercourse] with a widow, he is flagellated twice, once on account of, he shall not take,[2] and again on account of, he shall not profane.[3] Then let him be flagellated on account of, 'he shall not profane his seed'? — This means, if he does not consummate the intercourse.[4] Raba raised an objection: [If a High Priest has intercourse with] a widow and divorced woman,[5] he is flagellated on account of two injunctions.[6] Surely that means, two injunctions and no more? — No: two injunctions for the one, and two for the other.[7] If so, consider the second clause: [For] a divorced woman and haluzah[8] he is liable only on account of one? — This is its meaning: he is liable only on account of one [designation], yet after all, for two injunctions. Now, is a haluzah [forbidden only] by Rabbinical law?[9] Surely it was taught: [They shall not take a woman that is a harlot. . . and a woman] that is divorced.[10] I know it only of a divorced woman: how do I know it of a haluzah? Because it is said: 'and a woman'.[11] — It is Rabbinical, and the verse is a mere support.[12]

Abaye said: When he[13] betroths,[14] he is flagellated; [and] when he cohabits, he is flagellated. When he betroths he is flagellated on account of, 'he shall not take';[15] when he cohabits he is flagellated on account of, 'he shall not profane'.[16] Raba said: if he cohabits, he is flagellated;[17] if he does not cohabit, he is not flagellated [at all], because it is written, he shall not take . . . and he shall not profane: why must he not take? In order that he shall not profane.[18] And Abaye admits in the case of one who remarries his divorced wife,[19] that if he betroths but does not cohabit, he is not flagellated: the Divine Law saith, [he may not] take her again to be his wife,[20] which is absent here. And Raba admits in respect to a High Priest with a widow, that if he cohabits without betrothing, he is flagellated: the Divine Law saith, 'and he shall not profane his seed among his people', whereas he has profaned [it]. And both admit in the case of one who takes back his divorced wife, that if he cohabits without betrothal, he is not flagellated: The Torah forbade it by way of marriage.[21]

R. JUDAH SAID: THE DAUGHTER OF A MALE PROSELYTE IS LIKE THE DAUGHTER OF A HALAL. It was taught: R. Judah said: The daughter of a male proselyte is like the daughter of a male halal. And logic proves[22] it. If a halal, who [though he] comes from a fit origin,[23] [yet] his daughter is unfit;[24] then a proselyte, who comes from an unfit origin, his daughter is surely unfit! As for a halal, [it may be argued,] that is because his own formation is in sin![25] Then let [the union of] a High Priest with a widow prove it, for his formation was not in sin, yet his daughter is unfit.[26] As for a High Priest and a widow, that is because his cohabitation was in sin! Then let a halal prove it.[27] And so the argument revolves: the distinguishing feature of one is not that of the other; the feature common to both is that they are not as the majority of the community; so also do I adduce the proselyte, who is not as the majority of the community, and his daughter is unfit! [No:] what is the feature common to both? That they have an element[28] of sin![29] — Do not say, let [the union of] a High Priest with a widow prove it, but say: let a [converted] Egyptian of the first generation prove it.[30] As for a [converted] Egyptian of the first generation, that is because he is ineligible to enter into the assembly [at all]! Then let a halal prove it. And so the argument revolves, the distinguishing feature of one not being that of the other. The feature common to both is that they are not as the

majority of the congregation and their daughter is unfit. So do I also adduce a proselyte, who is not as the majority of the community, and his daughter is unfit! [No:] As for the feature common to both, it is that they disqualify[31] by their intercourse. And R. Judah?[32] — A proselyte too disqualifies by his intercourse, and he deduces it by analogy from this very argument.[33]

R. ELIEZER B. JACOB SAID: A PROSELYTE [etc.]. It was taught: R. Simeon b. Yohai said: A female proselyte less than three years and a day is eligible to the priesthood, as it is said: But all the women children . . . keep alive for yourselves;[34] now, was not Phinehas among them?[35] But the Rabbis [interpret]: 'keep them alive for yourselves' as bondmen and bondwomen.

Now, all deduce from the same verse: Neither shall they take for their wives a widow, nor her that is put away [i.e., divorced] but they shall take virgins of the seed of the house of Israel.[36] R. Judah holds: all the seed must be from Israel.[37] R. Eliezer b. Jacob holds: 'of the seed' [implies] even part of the seed.[38] R. Jose holds: whoever was conceived[39] in Israel.[40] R. Simeon b. Yohai holds: [It means] one whose virginity matured[41] in Israel.[42]

R. Nahman said to Raba:

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(1) [Since as a result of the first intercourse she becomes forbidden to him also as zonah of the type which is interdicted only to priests.]

(2) Lev. XXI, 14.

(3) As explained on p. 395, n. 7, this refers primarily to the interdicted woman; hence he is punished for profaning her in violation of the negative injunction.

(4) So that there is no issue.

(5) The same woman being both.

(6) Lit., 'designations' (of negative precepts). Although one woman, she is forbidden by two separate injunctions, and he is punished for each.

(7) He is punished twice, as stated above, on account of her widowhood, and twice because she is divorced.

(8) Who is the same person.

(9) Since you say that he is flagellated only on account of one, viz., a divorced woman.

(10) Ibid. 7.

(11) 'And a woman' is superfluous, and its purpose is to include a haluzah. This shews that the interdict of her is Scriptural.

(12) But not the actual source of the law.

(13) A High Priest or an ordinary priest.

(14) An interdicted woman.

(15) 'To take' implies formal betrothal.

(16) V. p. 400, n. 5.

(17) Twice, as Abaye.

(18) Hence the first is dependent upon the second.

(19) After she married another. This does not refer particularly to a priest.

(20) Deut. XXIV, 4; i.e., 'not take' (sc. betrothal) is transgressed only when the marriage is consummated and she becomes his wife.

(21) Lit., 'taking'. [MS.M. adds: And both agree in the case of him who takes his haluzah (v. Glos.) that if he betroths and has no intercourse, he is not flagellated, for the Torah has prohibited it by way of, 'building up of a house', referring to Deut. XXV, 9.]

(22) Lit., 'gives'.

(23) I.e., his father is a Jew.

(24) For the priesthood.

(25) Being the issue of a forbidden union.

(26) As supra, 77a.

(27) When he marries and cohabits with the daughter of a Levite or an Israelite, there is no sin, and yet the halal's

daughter is unfit.
(28) Lit., ‘side’.
(29) The union of a High Priest and a widow, and the birth of a halal, are all attended by sin. But that is not true of a proselyte.
(30) There is no element of sin, yet his daughter is unfit, for only the third generation may marry with Jews.
(31) A Jewess from the priesthood; supra 74b.
(32) How does he answer this?
(33) If the daughter of a halal who comes from a fit origin is unfit, how much more should the daughter of a proselyte who is of an unfit origin be unfit?
(34) Num. XXXI, 18; it refers to the war captives.
(35) And though he was a priest, these children were permitted in marriage.
(36) Ezek. XLIV, 22. The reference is to priests.
(37) Which excludes the daughter of a proselyte.
(38) Even if one side only is of Jewish birth, the daughter is fit.
(39) Lit., ‘sown’.
(40) Therefore even if both father and mother are converts, the daughter is fit, since she was conceived in Israel.
(41) Lit., was sown’.
(42) I.e., who becomes converted before three years and a day. At that day her virginity is mature, in that if destroyed it does not return.

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This verse, the first part refers to a High Priest and the second to an ordinary priest?[1] — Yes, he replied. And is a verse thus written? — Even so, he replied, for it is written, and the lamp of God was not yet gone out, and Samuel was laid down [to sleep] in the Temple of the Lord.[2] But sitting was [permitted] in the Temple only to the Kings of the Davidic dynasty?[3] Hence [it must mean:] and the lamp of God was not yet gone out in the Temple of the Lord, and Samuel was laid down in his place.[4]

And a widow that is the widow of a priest they shall take.[5] Only of a priest, but not of an Israelite? — This is the meaning of ‘of a priest they shall take:’ those of the other priests[6] may take. It was taught likewise: . . . of a priest they shall take’: [i.e.,] those of the other priests may take. R. Judah interpreted: of those who can give [their daughters] in marriage to the priesthood they may take.[7] R. Judah is in harmony with his view, for he said: THE DAUGHTER OF A MALE PROSELYTE IS AS THE DAUGHTER OF A MALE HALAL: when you may marry his daughter, you may marry his widow; and when you may not marry his daughter, you may not marry his widow.[8] R. JOSE SAID: ALSO IF A MALE PROSELYTE MARRIES A FEMALE PROSELYTE. R. Hamnuna said on ‘Ulla's authority: The halachah is as R. Jose. And Rabbah b. Bar Hanah said likewise: The halachah is as R. Jose; but since the day that the Temple was destroyed, the priests have insisted on[9] a superior status, in accordance with R. Eliezer b. Jacob.[10] R. Nahman said: Huna told me: If he [a priest] comes to take counsel, we give him a ruling in accordance with R. Eliezer b. Jacob; but if he marries,[11] we do not compel him to divorce her,[12] in accordance with R. Jose.

MISHNAH. IF A MAN DECLAREs, ‘THIS SON OF MINE IS A MAMZER,’ HE IS DISBELIEVED. AND EVEN IF BOTH [THE HUSBAND AND WIFE] ADMIT THAT THE CHILD WITHIN HER IS MAMZER,[13] THEY ARE DISBELIEVED. R. JUDAH SAID: THEY ARE BELIEVED.

GEMARA. Why [state], EVEN IF BOTH [etc.]?[14] — He leads to a climax.[15] It goes without saying that he [the father], who cannot be certain thereof[16] [is disbelieved]; but even she [the mother], who is certain, is [also] disbelieved. And it goes without saying that they are disbelieved where he [the child] enjoys the presumption of fitness; but even [in the case of] an embryo, who does

not enjoy the presumption of fitness, they are [still] disbelieved.

R. JUDAH SAID: THEY ARE BELIEVED. As it was taught: He shall acknowledge [the firstborn]:[17] [i.e.,] he shall acknowledge him before others. Hence R. Judah said: A man is believed when he says: 'This son is my first born.' And just as he is believed when he says: 'This son is my firstborn,' so is he also believed when he says, 'This is the son of a divorced woman'; 'this is the son of a haluzah.' But the Sages say: He is not believed.[18]

R. Nahman b. Isaac asked Raba: As for R. Judah, it is well: for that reason it is written: 'he shall acknowledge'. But on the view of the Rabbis, what is the purpose of, 'he shall acknowledge'? — Where acknowledgment is necessary.[19] In respect of what [is he believed]? to give him a double portion?[20] That is obvious, and what is the need of a verse; for if he desired to make him a gift, could he not do so? — This refers to property which he [the father] inherits [only] subsequently.[21] But according to R. Meir, who maintained: One can transmit property that is non-existent, what is the purpose of 'he shall acknowledge'? — Where he inherits it while he was dying.[22]

MISHNAH. IF A MAN AUTHORIZES HIS AGENT TO GIVE HIS DAUGHTER IN BETROTHAL,[23] AND THEN HE HIMSELF GOES AND GIVES HER IN BETROTHAL TO ANOTHER, IF THE [BETROTHAL] BY HIM WAS FIRST, HIS BETROTHAL IS VALID; IF THE AGENT'S WAS FIRST, THE LATTER'S BETROTHAL IS VALID. BUT IF IT IS UNKNOWN,

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(1) For the first half prohibits marriage to a widow, while the second half 'and a widow that is a widow of a priest they shall take' permits it.

(2) I Sam. III, 3.

(3) And the same applies. of course, to lying.

(4) The sense of the verse is to be divided though the text itself does not indicate this.

(5) Ezek. XLIV, 22.

(6) I.e., but not a High Priest, of whom the first half of the verse speaks. Thus of (n) is understood as a partitive preposition.

(7) I.e., they may take the widow of a man whose daughter was fit for the priesthood, thus excluding the widow of a proselyte.

(8) V. supra 75a.

(9) Lit., 'practised'.

(10) Perhaps because the fall of the Temple robbed them of their higher dignity in respect to the sacrificial service, they found it necessary to safeguard it in other ways.

(11) The daughter of proselytes.

(12) Lit., 'we do not withdraw her from his hand.'

(13) That it was conceived in adultery.

(14) This appears to add nothing to the first clause.

(15) Lit., 'he states: "it is unnecessary (to teach this)'.

(16) The child's paternity.

(17) Deut. XXI, 17.

(18) V. supra 74a.

(19) E.g., if the son was overseas and his status unknown.

(20) Deut. XXI, 17,

(21) Lit., 'which falls to him afterwards', i.e., after declaring that this is his firstborn. — Now, when he declares thus, he cannot gift this legacy, which, as far as he is concerned, is non-existent; and yet he is believed in respect of a double portion for the son recognised by him as his firstborn.

(22) Though he could not make a gift just then, his previous recognition is valid. Tosaf. observes that a dying man's gift is valid, but that he is physically unable to make one. For fuller notes v. B.B. (Sonc. ed.) pp. 530ff

(23) I.e., accept kiddushin on her behalf.

BOTH MUST GIVE HER A DIVORCE;[1] BUT IF THEY WISH, ONE GIVES A DIVORCE, AND THE OTHER MARRIES HER. LIKEWISE, IF A WOMAN AUTHORIZES HER AGENT TO GIVE HER IN BETROTHAL, AND SHE GOES AND BETROTHS HERSELF [TO ANOTHER]: IF HER OWN PRECEDED, HER BETROTHAL IS VALID; IF HER AGENT'S PRECEDED, HIS BETROTHAL IS VALID. AND IF THEY DO NOT KNOW, BOTH MUST GIVE HER A DIVORCE; BUT IF THEY WISH, ONE GIVES A DIVORCE AND THE OTHER MARRIES HER. GEMARA. And [both] are necessary. For if we were told [this] of him [the father], that is because a man is well-informed in matters of genealogy;[2] but as for a woman, who is not well-informed in matters of genealogy, I would say that her kiddushin is invalid.[3] And if we were told this of her, that is because a woman carefully investigates and [then] marries; but as for him [her father], I might argue that he does not care.[4] Thus they are necessary.

It was stated: If her father gives her in betrothal on the road, and she betroths herself in the town [to another], and she is now a bogereth,[5] Rab said: Behold, she stands[6] a bogereth before us![7] Samuel said: We regard[8] the kiddushin by both.[9] When [did the betrothals take place]? Shall we say, within the six [months],[10] — can Rab say in this case, 'Behold, she stands a bogereth before us' — surely she has only now become a bogereth![11] But if after six months, — can Samuel say in this case, 'We regard the kiddushin by both' — surely Samuel said: Between the states of na'arah and bogereth there is only six months! This arises only if the betrothal took place on the day that completed the six [months]: Rab said: 'Behold she stands a boger'eth before us' — since she is now a bogereth, [we assume] she was a bogereth in the morning too. But Samuel maintains, she may have brought the 'evidences' [of bogereth][12] only just now.

Now, according to Samuel, wherein does it differ from mikweh?[13] For we learnt: If a mikweh is measured and found to be deficient:[14] all acts of purification which have heretofore been effected through it, whether in private or in public ground, are unclean![15] — There it is different, because we can argue, Let the unclean person [or thing] stand in his presumptive status,[16] and say that he did not perform tebillah.[17] On the contrary, let the mikweh stand in its presumptive status,[18] and say that it was not deficient?[19] — But it is deficient before you! Then here too, she stands a bogereth before you! — She has [only] just now matured. Then there too, [let us say, only] just now has it become deficient? — There, there are two unfavourable conditions;[20] here, there is [only] one.[21]

Again, according to Samuel, wherein does it differ from 'barrel'? For it was taught: If one was wont to examine a barrel [of wine][22] in order continually to separate [terumah for other barrels] in reliance thereon,[23] and then it was found to be acid:[24] for full three days it is certain; there after it is doubtful.[25] Now, we opposed 'barrel' to 'mikweh': why is the latter certain and the former doubt — ful?[26] And R. Hanina of Sura answered: Who is the authority of [the Baraitha about the] 'barrel'? R. Simeon, who also in the case of the mikweh makes it doubtful. For it was taught: All acts of purification which have been heretofore effected through it, whether in private or in public ground, are unclean. R. Simeon ruled: In public ground, they are clean; in private ground, they are in suspense.[27] But in the view of the Rabbis it is retrospectively tebel![28] — There it is different, because one can say: 'Let the tebel stand in its presumptive status and say that it was not made fit.' On the contrary, let the wine stand in its presumptive status and say that it had not turned acid? — But lo! it is acid before you. Then here too, she stands a bogereth before you? — She has [only] just now become a bogereth. Then here too [let us say,] 'It has [only] just now turned acid'? — There, there are two unfavourable conditions;[29] but here there is only one.[30]

Shall we say: It is a dispute of Tannaim?

(1) If she desires to marry a third.
(2) Therefore when he gives her in betrothal, he is sure of his son-in-law's lineage and cancels his agent's authority.
(3) For when she accepts betrothal for herself she may feel uncertain of the man's birth, and therefore tacitly implies that if her agent betroths her to one of purer descent her own act shall be null.
(4) He is not so anxious for a pure match. Hence he did not cancel his agent's authority, but gave her in betrothal himself provisionally, in case his agent would not succeed in securing her betrothal.
(5) She is found on the same day to be a bogereth, over whom her father has no authority.
(6) Lit., 'is'.
(7) Hence the kiddushin by her is certainly invalid.
(8) Lit., 'fear'.
(9) V. p. 47, n. 10.
(10) That generally elapse between the state of a na'arah and that of a bogereth.
(11) But she must have been a na'arah when the betrothals took place.
(12) V. Nid. 47a.
(13) V. Glos.
(14) In water; a mikweh, to be ritually fit, must contain not less than forty se'ahs.
(15) If a doubt of uncleanness arises in private ground, the object in doubt is declared unclean; in public ground, it is clean, v. Sot. 28b. Here, wherever it is, the objects are unclean. This proves that we do not regard it as a matter of doubt, but assume that since the mikweh is deficient now, it was so before too. Then, by analogy, why not assume that since the woman is a bogereth now, she was one from the beginning of the day?
(16) Of uncleanness.
(17) Being in doubt, we have recourse to the status quo.
(18) Which is that it contains the full quantity.
(19) When immersion was performed.
(20) The person's presumptive uncleanness and the present deficiency of the mikweh.
(21) Viz., her present maturity. But on this day, which completes the six months between the na'arah and the bogereth states, she has no presumptive status for either, since it is the day of change.
(22) Every now and then, to see whether it had turned acid.
(23) By declaring, 'Let a certain quantity of wine in this barrel be terumah for another.'
(24) This Tanna regards wine and acid as two different commodities, and one cannot be terumah for the other.
(25) The meaning is disputed in B.B. 96a, two views being stated, (i) For the first three days after the last examination before the present one it was certainly wine, and any separation made then is valid. Afterwards it is doubtful; hence on the one hand, another separation must be made; on the other, what was already separated is forbidden to a lay Israelite, as it may still have been wine, (ii) For three days before this present examination it was certainly acid, and any separation made then is invalid. But before that it is doubtful, as explained in (i); for fuller notes v. B.B. (Sonc. ed.) p. 399.
(26) The mikweh is held to have been certainly deficient (v. p. 407, n. 1) hitherto, but we recognise a period of doubt for the barrel, as explained in the preceding note.
(27) I.e., doubtful.
(28) V. Glos. sc. the wine for which terumah was separated from this barrel hitherto. This contradicts Samuel, as before.
(29) (i) The presumptive status of the tebel; and (ii) its present acidity.
(30) V. p. 407, n. 7.

Talmud - Mas. Kiddushin 79b

[For it was taught:] Who can collect from whom? He can collect from them without proof, but they cannot collect from him without proof: this is R. Jacob's view. R. Nathan said: If he is well, he must produce proof that he was sick; and if he is sick, they must produce proof that he was well.[1] Shall we say that Rab rules in accordance with R. Nathan;[2] while Samuel agrees with R. Jacob?[3] — Rab can tell you: I agree[4] even with R. Jacob. R. Jacob rules thus only there, since one can say: 'Let the money stand in its presumptive owner — ship'; but here, can we say: 'Let the body stand in its presumptive state'?[5] And Samuel can say: I agree even with R. Nathan: R. Nathan rules thus only

there, since people in general are presumed to be well; [hence] he who withdraws himself from the generality must bring proof. But here, does she then withdraw herself from a previous presumptive status?[6]

Shall we say that it is a dispute of these Tannaim: [For it was taught:] If her father gives her in betrothal on the road, while she betroths herself in the town, and she is a bogereth:[7] one [Baraitha] taught: Behold, she stands a bogereth before us; and another taught: We fear [the validity of] the kiddushin of both. Surely one agrees with Rab, and the other with Samuel? — No. Both agree with Samuel: here she repudiates him [her father];[8] there she does not.[9] Then let us say, since the Baraithas do not differ, the amoraim too do not differ?[10] — Now, is that reasonable; surely R. Joseph son of R. Menasia of Dabil[11] gave a practical ruling in accordance with Rab, whereupon Samuel was offended and exclaimed: 'For everyone [wisdom] is meted out in a small measure, but for this scholar it was meted out in a large measure!'[12] Now, should you think that they do not differ, why was he offended? — Perhaps he gave his ruling where she repudiated him [her father].

Mar Zutra said to R. Ashi: Thus did Amemar say: The law is as Samuel; but R. Ashi said: The law agrees with Rab. And [the final ruling is:] The law is as Rab.

MISHNAH. IF A MAN EMIGRATED OVERSEAS TOGETHER WITH HIS WIFE, AND THEN HE, HIS WIFE, AND HIS CHILDREN RETURNED,[13] AND HE DECLARED, 'BEHOLD, THIS IS THE WOMAN WHO EMIGRATED WITH ME OVERSEAS, AND THESE ARE HER CHILDREN', HE NEED NOT BRING PROOF IN RESPECT OF THE WOMAN OR OF THE CHILDREN.[14] [IF HE DECLARES.] SHE DIED [ABROAD] AND THESE ARE HER CHILDREN,' HE MUST BRING PROOF OF THE CHILDREN, BUT NOT OF THE WOMAN.[15] [IF HE SAID,] 'I MARRIED A WOMAN OVERSEAS, AND BEHOLD, THIS IS SHE, AND THESE ARE HER CHILDREN: HE MUST BRING PROOF OF THE WOMAN,[16] BUT NOT OF THE CHILDREN.[17] [IF HE SAID,] 'SHE DIED, AND THESE ARE HER CHILDREN: HE MUST BRING PROOF OF THE WOMAN AND OF THE CHILDREN.

GEMARA. Rabbah son of R. Huna said: And in all cases it means that they cling to her.[18]

Our Rabbis taught: [If a man declares,] 'I married a woman overseas, he must bring proof about the woman, but not about the children; he must bring proof about the adults, but not about the minors.[19] Now, when is this said? In the case of one wife. But in the case of two wives,[20] he must bring proof about the woman and about the children whether adults or minors.[21]

Resh Lakish said:

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(1) If a man dangerously ill writes off all his property, without leaving anything for himself, it is an implied condition that the gift shall be valid only if he dies; should he recover, the deed is null, though no stipulation was made. If a man in good health indites such a conveyance, it is valid. The dispute here refers to a case where a man, now well, pleads that the deed was written when he was sick, while the beneficiaries deny it; v. B.B. 153b.

(2) That the present state is also assumed to be the former state, unless the contrary is proved.

(3) That the present does not prove the past.

(4) Lit., 'say'.

(5) The body has none, since it is liable to natural change.

(6) Surely not, since it is natural for her to change on that day.

(7) As on p. 407, n. 7.

(8) Maintaining that she was a bogereth when he accepted kiddushin on her behalf; then only her own betrothal is valid.

(9) Then the kiddushin of both is regarded.

(10) Rab referring to the former case, Samuel to the latter.

(11) There is a Dabil in Armenia, with which this may be identical. On Jews in Armenia v. Obermeyer, p. 296. n. 4.

(12) He is so sure of his superior knowledge that he disregards betrothal by her father, though it may have been valid.
(13) He was childless when he emigrated.
(14) That the former is of pure birth, since her pedigree was already investigated when he married her, as supra 76a, or that the latter are her children (Rashi). Tosaf.: He need not prove that the children are both his and hers.
(15) Rashi: he must prove that the children are of that woman, but not that she was of good birth.
(16) That she is of good birth.
(17) That they are from this woman.
(18) The children are minors, who cling to this woman. Then her motherhood does not require proof.
(19) Who cling to her.
(20) He affirms that he married two wives, of whom one died, while these are the children of the survivor.
(21) The clinging of the young children does not prove her parentage, since she may be their foster-mother.

Talmud - Mas. Kiddushin 80a

This was taught only in respect of Sanctities of the border,[1] but not in respect of genealogy.[2] But R. Johanan maintained: Even in respect of genealogy. Now, R. Johanan is in accord with his view [elsewhere]. For R. Hiyya b. Abba said in R. Johanan's name: We flagellate on the strength of presumption, we stone and burn on the strength of presumption, but we do not burn terumah on the strength of presumption. We flagellate on the strength of presumption, as Rab Judah. For Rab Judah said: If a woman was presumed a niddah by her neighbours, her husband is flagellated on her account as a niddah.[3] We stone and burn on the strength of presumption, as Rabbah son of R. Huna. For Rabbah son of R. Huna said: If a man, woman, boy and girl lived[4] in a house [together],[5] they are stoned and burnt on each other's account.[6] R. Simeon b. Pazzi said in R. Joshua b. Levi's name on Bar Kappara's authority: It once happened that a woman came to Jerusalem carrying an infant on her back; she brought him up and he had intercourse with her, whereupon they were brought before Beth din and stoned. Not because he was definitely her son, but because he clung to her.

But we do not burn terumah on the strength of presumption. For R. Simeon b. Lakish said: We burn [terumah] on the strength of presumption; whereas R. Johanan maintained, we do not. Now, they are in accord with their opinions. For we learnt: If a child is found at the side of a dough, and there is dough in his hand, R. Meir declares it clean; the Sages declare it unclean, because it is a child's nature to dabble.[7] Now, we pondered thereon: What is R. Meir's reason? [And the answer was:] He holds, most children dabble, yet there is a minority who do not, while the dough stands in the presumption of cleanness:[8] hence combine the minority with the presumption, and the majority is weakened. But the Rabbis [argue]: the minority is as non-existent:[9] [now, where there are] a majority and a presumption [opposed to each other], the majority is stronger.[10] Said Resh Lakish on R. Oshaia's authority: That is the presumption[11] on the strength of which terumah is burnt:[12] R. Johanan maintained: This is not the presumption on the strength of which terumah is burnt.[13]

Then on account of which presumption is terumah burnt, in R. Johanan's opinion?[14] — As it was taught: If there is a dough in a house wherein reptiles and frogs breed,[15] and pieces are found in the dough:[16] if they are mostly reptiles, it is unclean; if mostly frogs, it is clean.[17]

It was taught in accordance with R. Johanan: Two things lack the intelligence to be questioned, yet the Sages accounted them as though they possess it:[18] a child, and another. A child, as stated.[19] And another: what is it? — If there is dough in a house which contains fowls and unclean fluid, and holes are found

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(1) 'Border' (gebul) is the technical term for Palestine outside Jerusalem. 'Sanctities of the border' are terumah, i.e., sacred food which may be consumed outside the Temple and Jerusalem. — If the man is a priest, we rely upon the fact that the children cling to this woman, who is known to be of good birth, and they may eat terumah.
(2) His daughters may not marry into the priesthood unless he proves that they are of this woman.

(3) V. Glos. If he cohabits with her, though there are no actual witnesses of her menstruation.
(4) Lit., 'were brought up'.
(5) As husband and wife, son and daughter.
(6) If the son cohabits with his mother, they are stoned; if the daughter with her father, they are burnt. Now, there is no actual proof of their relationship, save the general presumption.
(7) Rashi: the child certainly took the piece from the dough, and since it is his nature to dabble among refuse and unclean things. he is probably unclean (which is regarded as a certainty) and so defiles the dough. Tosaf.: the child is certainly unclean (because women, even when menstruants, fondle children; Tosaf. Toh. III) and the only question is whether he took the dough himself or it was given him. The Rabbis declare the large dough unclean, because it is a child's nature to dabble with food, and so he probably took it himself.
(8) As long as we do not know that it was defiled.
(9) I.e., it is completely disregarded.
(10) The majority argument favours the uncleanness of the dough. whereas its presumptive status is that it is clean.
(11) Sc. that it is a child's nature to dabble.
(12) If the dough is terumah it is burnt.
(13) And when the Sages declare it unclean they mean it must be kept in suspense without burning it. Thus we have here stated the opinions of R. Johanan and Resh Lakish mentioned supra.
(14) The words 'This is not the presumption etc.' implies that there is a presumption on account of which terumah is burnt.
(15) Dead reptiles are unclean and defile food; frogs are clean, cf. Lev. XI, 29ff.
(16) Evidently caused by these.
(17) And because of the presumption which is based on a majority of a definite number before us, i.e., the greater number of reptiles, this dough, if terumah is burnt, whereas in the case of the child we have no majority immediately available to go by. v. Hul. 11a.
(18) As stated, on p. 407. n. I, when a doubt of uncleanness arises in private ground, the object in doubt is unclean. That is only if that which causes the defilement has the intelligence to be questioned about it; if not, the object is clean, v. Sot. 28b.
(19) Legally a child lacks understanding; yet since the dough is declared unclean, the child is evidently considered to possess intelligence.

Talmud - Mas. Kiddushin 80b

all over the dough,[1] the matter is in suspense: it may neither be eaten [as clean] nor burnt [as unclean].[2]

R. Joshua b. Levi said: We learnt this only of white [i.e., colourless] liquid; but as for red liquid, had it [the fowl] picked at the dough,[3] it would certainly be known. Yet perhaps the dough absorbed it? — Said R. Johanan: Beribbi[4] heard this thing, but not its explanation [which is this]: We learned this only of clear fluid in which a child's reflection may be seen but not of turbid fluid.[5]

MISHNAH. A MAN MAY NOT BE ALONE WITH TWO WOMEN, BUT ONE WOMAN MAY BE ALONE WITH TWO MEN. R. SIMEON SAID: EVEN ONE MAN MAY BE ALONE WITH TWO WOMEN, IF HIS WIFE IS WITH HIM,[6] AND HE MAY SLEEP WITH THEM IN AN INN, BECAUSE HIS WIFE WATCHES HIM. A MAN MAY BE ALONE WITH HIS MOTHER AND HIS DAUGHTER, AND HE MAY SLEEP WITH THEM IN IMMEDIATE BODILY CONTACT;[7] BUT WHEN THEY GROW UP, SHE MUST SLEEP IN HER GARMENT AND HE IN HIS.

GEMARA. What is the reason? — Tanna debe Eliyahu[8] [states]: Because women are temperamentally light-headed.[9]

How do we know it?[10] Said R. Johanan on the authority of R. Ishmael, Where do we find an

allusion to yihud[11] in the Torah? — For it is written: If thy brother, the son of thy mother, entice thee [etc.]:[12] does then only a mother's son entice, and not a father's son? But it is to tell you: a son may be alone with his mother, but not with any other woman interdicted in the Torah. To what does the plain meaning of the verse refer?[13] — Said Abaye, It [Scripture] proceeds to a climax.[14] Thus: It goes without saying [that one should disregard] his father's son, for he may hate him[15] and give him evil counsel. But as for his mother's son, who does not hate him,[16] I might say, let him obey him. Therefore we are told [that it is not so].

Our Mishnah does not agree with Abba Saul. For it was taught: Within the first thirty days [of a child's birth] it may be carried out [for burial] in one's bosom,[17] and buried by one woman and two men,[18] but not by one man and two women. Abba Saul said: Even by one man and two women! — You may even say [that it agrees with] Abba Saul: in the time of grief one's passions are subdued.[19] But the Rabbis hold with R. Isaac, who said: Wherefore doth a living man mourn, a man that is in his sins?[20] even in a man's grief, his lusts prevail against him.[21] And Abba Saul?[22] — That is written with reference to one who complains of His [God's] measures, and this is its meaning: Why should he complain of His dispensation; has he then prevailed over his sin?[23] The life which I gave him is sufficient for him.[24] And the Rabbis?[25] — Even as the story of a certain woman: It once happened that she took him out.[26] BUT ONE WOMAN. Rab Judah said in Rab's name: We learnt this only of respectable persons; but as for profligates, [she may not be alone] even with ten. It once happened that ten men carried her [a married woman] out on a bier.[27] R. Joseph said: The proof is that ten people assemble and steal a joist, yet are not ashamed of each other.

Shall we say that the following supports him: Two scholars were sent with him,[28] lest he has intercourse with her on the way.[29] Thus, Only scholars, but not men in general?[30] — Scholars are different, because they know

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(1) Made by the fowls' beaks.

(2) If it is terumah. This suspense is because the fowls may have drunk the fluid, and then picked at the dough with the liquid still dripping on their beaks. Since this and the case of the child are bracketed together, it follows that there too the matter is in suspense, which agrees with R. Johanan.

(3) With a dripping beak.

(4) V. p. 101, n. 8. Here referring to R. Joshua b. Levi.

(5) Both refer to coloured liquid. If clear, it soaks in easily, and the dough is therefore unclean. Turbid liquid, however, must leave some traces; hence it is clean.

(6) [Var. lec.: 'Even one man may be alone with two women; and if his wife is with him he may sleep with them in an inn etc.']

(7) I.e., a young boy with his mother and a young girl with her father.

(8) This is the name of a Midrash, consisting of two parts, called Seder Eliyahu Rabbah (large) and Seder Eliyahu Zuta (small) respectively.

(9) And even two may yield to temptation.

(10) The interdict against being alone with women.

(11) I.e., the prohibition of being alone with a woman.

(12) Deut. XIII, 6.

(13) R. Johanan's exegesis is obviously not intended to be the plain rendering of the text and does not really dispose of the difficulty.

(14) Lit., 'it says, it is unnecessary (to state the one).'

(15) Because be reduces his patrimony.

(16) Neither affects the other's heritage.

(17) I.e., without a special form of coffin.

(18) Not more than three are necessary in all.

(19) Lit., 'broken'.

(20) Lam. III, 39.

(21) Translating the verse: Of what avail is grief (to subdue lust)? As long as man lives, he must strive to conquer his desire for sin.
(22) How does he translate the verse?
(23) Lit., 'above'.
(24) Even if he suffers. — This is similar to the E.V.
(25) Assuming this interpretation to be correct — and it is certainly nearer to the text — what is their reason?
(26) Rashi: a woman carried out a live child, pretending that he was dead, so that she might satisfy her lust unsuspected. R. Han. explains it otherwise.
(27) As dead: but she was alive, and committed adultery with all.
(28) Lit., were given over to him.'
(29) This refers to a woman charged with adultery, who was tried by the water of bitterness (Num. V, 11-31). Until pronounced innocent she was interdicted to her husband too, and when he took her to Jerusalem for the ordeal two scholars accompanied him.
(30) Which proves that we fear adultery with them.

Talmud - Mas. Kiddushin 81a

to warn him.[1]

Rab Judah said in Rab's name: We learnt this[2] only in town; but on a road, three are necessary, lest one has a call of nature, and so the other is left alone with a forbidden woman. Shall we say that the following supports him: Two scholars were sent with him, lest he has intercourse with her on the way. Two, and he [the husband] himself — that is three? — There it is in order that they may be witnesses against him.[3]

Rab and Rab Judah were walking on a road, and a woman was walking in front of them. Said Rab to Rab Judah, 'Lift your feet before Gehenna.'[4] 'But you yourself said that in the case of respectable people it is well,' he protested. 'Who says that respectable people mean such as you and I?' he retorted. 'Then such as who?' — E.g., R. Hanina b. Pappi and his companions.'[5]

Rab said: We flagellate on account of privacy, but do not interdict on account of same.[6] R. Ashi said: This was said only of privacy with an unmarried woman, but not with a married woman, lest a stigma be cast upon her children.[7] Mar Zutra punished and proclaimed.[8] R. Nahman of Parahetia[9] said to R. Ashi: You too should punish and proclaim! — Some may hear of the one but not of the other.

Rab said: We flagellate on account of an evil rumour,[10] because it is said. Nay [al], my sons; for it is no good report that I hear.[11] Mar Zutra laid a cord about his shoulders[12] and recited to him, 'Nay, my sons'.

Rabbah said: If her husband is in town we have no fear on account of privacy. R. Joseph said: If the door opens to the street, we have no fear on account of privacy. R. Bibi visited R. Joseph. Having dined,[13] he said to them [the servants], 'Remove the ladder from under Bibi.'[14] But Rabbah said: If her husband is in town, we have no fear on account of privacy? — R. Bibi was different, because she was his best friend,[15] and intimate with him.

R. Kahana said: If there are men without [i.e., in the outer chamber] and women within, we have no fear of privacy.[16] If there are men in the inner chamber and women in the outer, we have fear of privacy.[17] In a Baraitha the reverse was taught.[18] Said Abaye: Now that R. Kahana ruled thus, while the Baraitha taught the reverse, let us[19] act stringently. Abaye made a partition of jugs;[20] Raba made a partition of canes.

Abin[21] said: The sorest spot of the year[22] is the festival.[23] Certain [redeemed] captive women came to Nehardea. They were taken to the house of R. Amram the pious, and the ladder was removed from under them.[24] As one passed by,[25] a light fell on the sky lights;[26] [thereupon] R. Amram seized the ladder, which ten men could not raise, and he alone set it up and proceeded to ascend. When he had gone half way up the ladder, he stayed his feet and cried out, 'A fire at R. Amram's!' The Rabbis came and reproved him, 'We have shamed you!'[27] Said he to them: 'Better that you shame Amram in this world than that you be ashamed of him in the next.' He then adjured it [the Tempter] to go forth from him, and it issued from him in the shape of a fiery column. Said he to it: 'See, you are fire and I am flesh, yet I am stronger[28] than you.'[29]

R. Meir used to scoff at transgressors.[30] One day Satan appeared to him in the guise of a woman on the opposite bank of the river. As there was no ferry, he seized the rope[31] and proceeded across. When he had reached half way along the rope, he [Satan] let him go[32] saying: 'Had they not proclaimed in Heaven, "Take heed of R. Meir and his learning," I would have valued your life[33] at two ma'ahs.'[34]

R. Akiba used to scoff at transgressors. One day Satan appeared to him as a woman on the top of a palm tree. Grasping the tree, he went climbing up: but when he reached half-way up the tree he [Satan] let him go, saying: 'Had they not proclaimed in Heaven, "Take heed of R. Akiba and his learning," I would have valued your life at two ma'ahs.'

Pelimo used to say every day, 'An arrow in Satan's eyes!'[35] One day — it was the eve of the Day of Atonement — he disguised himself as a poor man and went and called out at his door; so bread was taken out to him. 'On such a day,' he pleaded, 'when everyone is within, shall I be without?' Thereupon he was taken in and bread was offered him. 'On a day like this,' he urged, 'when everyone sits at table,[36] shall I sit alone!' He was led and sat down at the table. As he sat, his body was covered with suppurating sores, and he was behaving repulsively.[37] 'Sit properly,' he rebuked him.

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(1) But not because we fear adultery with others; v. Sot. 7a.

(2) That a woman may be alone with two men.

(3) If he cohabits, in which case she does not submit to the ordeal, v. loc. cit.

(4) Speed on ahead of her, lest we be tempted.

(5) V. supra 39b bottom.

(6) Rashi: one is flagellated for being alone with an unmarried woman, but she is not forbidden to her husband on that account. Tosaf.: an unmarried woman is not interdicted to a priest as a zonah (q.v. Glos.) for being alone with a man.

(7) Who may be suspected of bastardy.

(8) He punished privacy with a married woman, yet had it proclaimed that she had not committed adultery.

(9) [Not identified. MS.M.: Parazika, (Farausag) near Bagdad.]

(10) If one is rumoured to be doing wrong, he is flagellated.

(11) I Sam. II, 24. Al (אַל) introduces a negative injunction, and Rab translates: there is a negative injunction, my sons, in respect of a report that is not good.

(12) [I.e., inflicted punishment on the one who was subject to an evil report. The punishment for the offence mentioned here has no basis in the Bible, but belongs to the category of makkath marduth 'a beating for rebellion' instituted by the Rabbis for the enforcement of discipline, and which was not hedged about by the regulations which governed the infliction of the 'forty stripes' prescribed in the Bible]

(13) [Lit., ,'wrapt the bread', with allusion to the custom of placing salt or vegetables between slices of bread.]

(14) They were in an upper chamber, and then R. Joseph and his wife descended, leaving R. Bibi above. Before R. Joseph left the house he gave this order, so that R. Bibi should not go down and be alone with his wife.

(15) The ancient equivalent of 'best man' — here 'best woman — at marriage, v. B.B. 144b.

(16) The men can have no plausible excuse for going to the women, since their natural way leads to the street.

(17) The men's path lies through the women's chamber, and as stated before, one man may not be alone with a number of

women.

(18) When men are in the outer chamber, we fear that one may pass into the inner chamber without the others noticing it. But if men are in the inner chamber, we are not afraid that a woman from the outer chamber will enter, because in any case one woman may be alone with two men; nor do we fear that a man may enter the women's chamber, since others will follow him, as that is their natural exit.

(19) This is the reading in the Asheri; cur. edd. 'I shall'.

(20) Where men and women assembled together, e.g.. for a sermon or at a wedding (Rashi).

(21) The Aruch reads: Abaye.

(22) When immorality is most to be feared.

(23) Because various people congregate then.

(24) They were lodged in an upper chamber; cf. story of R. Bibi and R. Joseph supra.

(25) The skylight which divided the upper from the lower storey.

(26) Which revealed her beauty to R. 'Amram below.

(27) You have made us put you to shame by revealing your burning passion.

(28) Lit., 'better'.

(29) On Satan as an independent being v. p. 142, n. 5.

(30) He maintained that they could easily subdue their evil desires if they wished.

(31) Rashi: a rope stretched from bank to bank over a plank bridge.

(32) By resuming his normal shape he freed him from temptation.

(33) Lit., 'blood'.

(34) A small coin, v. supra 12a. — i.e., I would have destroyed you as a worthless thing.

(35) Cf. supra 30a top.

(36) Lit., 'at the tray'.

(37) Wriggling, or perhaps scratching himself.

Talmud - Mas. Kiddushin 81b

Said he, 'Give me a glass [of liquor],' and one was given him. He coughed and spat his phlegm into it. They scolded him, [whereupon] he swooned and died.[1] Then they [the household] heard people crying out, 'Pelimo has killed a man, Pelimo has killed a man!'[2] Fleeing, he hid in a privy; he [Satan] followed him, and he [Pelimo] fell before him. Seeing how he was suffering, he disclosed his identity and said to him, why have you [always] spoken thus?[3] Then how am I to speak?[4] You should say: 'The Merciful rebuke Satan.'[5]

Every time R. Hiyya b. Abba fell upon his face[6] he used to say, 'The Merciful save us from the Tempter.' One day his wife heard him. 'Let us see,' she reflected, 'it is so many years that he has held aloof from me: why then should he pray thus?'[7] One day, while he was studying in his garden, she adorned herself and repeatedly walked up and down before him. 'Who are you?' he demanded. 'I am Harutha,[8] and have returned to-day,' she replied. He desired her. Said she to him, 'Bring me that pomegranate from the uppermost bough.' He jumped up, went, and brought it to her. When he re-entered his house, his wife was firing the oven, whereupon he ascended and sat in it. 'What means this?' she demanded. He told her what had befallen. 'It was I,' she assured him; but he paid no heed to her until she gave him proof.[9] 'Nevertheless,' said he, 'my intention was evil.'[10]

That righteous man [R. Hiyya b. Ashi] fasted all his life, until he died thereof. Even as it was taught: Her husband hath made then, void, and the Lord shall forgive her:[11] of whom does the Writ speak?[12] Of a woman who made a nazirite vow and her husband heard of it and annulled it; but though she was unaware that her husband had annulled it , she drank wine and defiled herself through the dead.[13] When R. Akiba came to this verse, he wept. If of him who intended to eat swine's flesh but chanced upon sheep's flesh, yet the Torah decreed that he requires atonement; how much more so of him who intended to eat swine's flesh and actually ate swine's flesh![14] Similarly, you read: Though he knew it not, yet he is guilty, and shall bear his iniquity.[15] When R. Akiba came

to this verse, he wept. If of him who intended to eat shuman[16] but chanced upon heleb,[17] yet the Torah said: 'though he knew it not, yet he is guilty, and shall bear his iniquity': how much more so of him who intended to eat heleb and actually ate heleb! Issi b. Judah said: 'Though he knew it not, yet he is guilty, and shall bear his iniquity' — for this thing[18] all grief-stricken must grieve.

A MAN MAY BE ALONE WITH HIS MOTHER. Rab Judah said in R. Assi's name: A man may be alone with his sister, and dwell with his mother and daughter [alone]. When he stated it in Samuel's presence, he said: One may not be alone with any person interdicted in the Torah, [and] even with an animal. We learnt: A MAN MAY BE ALONE WITH HIS MOTHER AND His DAUGHTER, AND HE MAY SLEEP WITH THEM IN IMMEDIATE BODILY CONTACT, — this refutes Samuel? — Samuel can answer you: And on your view, [how explain] what was taught: '[As regards] a sister, a mother-in-law, and all other forbidden relations of the Torah, one may be alone with them only when there are witnesses', thus, only in the presence of witnesses, but not otherwise? But [you must say] it is [a controversy of] Tannaim. For it was taught: R. Meir said: Guard me from my daughter; R. Tarfon said: Guard me from my daughter-in-law. But a certain disciple scoffed at him. Said R. Abbahu on the authority of R. Hanina b. Gamaliel, 'It did not take long[19] before that disciple offended through his mother-in-law.'

'Even with an animal.' Abaye cleared them from the whole field.[20] R. Shesheth had them put on the other side of the bridge. R. Hanan of Nehardea visited R. Kahana at Pum Nehara.[21] Seeing him sitting and studying while an animal stood before him, he said to him, 'Do you not agree, "even with an animal"?' 'I was thoughtless,' he replied.[22]

Raba said: A man may be alone with two yebamoth;[23] two co-wives, a woman and her mother-in-law, a woman and her mother-in-law's daughter, a woman and her husband's daughter,[24] and with a woman and a child who knows the meaning of intercourse but will not yield herself thereto.[25]

WHEN THEY GROW UP, SHE MUST SLEEP IN HER GARMENT, etc. What is the age?[26] Said R. Ada son of R. 'Azza in R. Assi's name: For a girl, nine years and a day; for a boy, twelve years and a day. Others state: for a girl, twelve years and a day; for a boy, thirteen years and a day.[27] And in both cases they must be, 'breasts fashioned and thine hair was grown.'[28] Rafram b. Papa said in R. Hisda's name: This was taught only of one [a girl] who is not shy of standing nude before him [her father]; but if she is shy of standing nude before him, it is forbidden [for them to sleep in bodily contact]. What is the reason? Temptation stirs[29] her.[30]

R. Aha b. Abba[31] visited R. Hisda, his son-in-law, and took his granddaughter and sat her on his lap. Said he to him, 'Do you not know that she is betrothed?' 'Then you have violated Rab's [dictum].' For Raba Judah said in Rab's name-others state, R. Eleazar [said] — One may not betroth his daughter while she is a minor, [but must wait] until she grows up and says: 'I want So-and-so.' 'But you too have transgressed Samuel's [ruling], for Samuel said: One must not handle[32] a woman. 'I agree with Samuel's other [dictum],' he retorted. For Samuel said,

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(1) Feigned death.

(2) It was a ventriloquial trick of Satan.

(3) Cursing me.

(4) To drive you from me?

(5) Cf. Zech. III, 2: The Lord rebuke thee, o Satan.

(6) In Talmudic times after the 'Eighteen Benedictions' each person prayed privately for whatever he desired; these prayers are called 'supplications' (tahanunim), and one fell on his face when saying them. V. Elbogen, Der Judische Gottesdienst, pp. 73 ff.

(7) Surely he can restrain his passions.

(8) A well known prostitute of that town.
(9) The pomegranate.
(10) Lit., ‘for a forbidden thing’.
(11) Num. XXX, 13. This refers to the annulment of vows.
(12) How can forgiveness be necessary for breaking a vow when it has ceased to be binding?
(13) Both of which a nazir may not do.
(14) Lit., ‘it came up in his hand to eat, etc.’
(15) Lev. V, 17.
(16) Permitted fat.
(17) Forbidden fat.
(18) That one bears iniquity for sinning unintentionally.
(19) Lit., ‘there were not a few days’.
(20) When he had to pass through it, or when he was studying there.
(21) V. p. 51, n. 1.
(22) Tosaf. observes that these are cases of superstringency, but actually Jews are not suspected of pederasty or bestiality, v. infra.
(23) PI. of yebamah, q. v. Glos.
(24) All these are held to dislike each other, and so each will be afraid.
(25) The child is old enough to talk about it, but not old enough to experience desire.
(26) When they must not sleep in bodily contact?
(27) At these ages they attain their religious majority too.
(28) Ezek. XVI, 7 — desire is not awakened before then.
(29) Lit., ‘clothes’.
(30) Her shyness proves that she is sex conscious.
(31) Var. lec.: Hanan b. Raba.
(32) Lit., ‘make use of.

Talmud - Mas. Kiddushin 82a

All [is to be done] for the sake of Heaven.[1]

MISHNAH. AN UNMARRIED MAN MUST NOT BE AN ELEMENTARY TEACHER,[2] NOR MAY A WOMAN BE AN ELEMENTARY TEACHER. R. ELEAZAR SAID: ONE ALSO WHO HAS NO WIFE MUST NOT BE AN ELEMENTARY TEACHER.[3] R. JUDAH SAID: AN UNMARRIED MAN MUST NOT TEND CATTLE, NOR MAY TWO UNMARRIED MEN SLEEP TOGETHER UNDER THE SAME COVER,[4] BUT THE SAGES PERMIT IT.

GEMARA. What is the reason? Shall we say, on account of the children?[5] surely it was taught: Said they to R. Judah, Israel are not suspected of either pederasty or bestiality? — But an unmarried man [is forbidden] on account of the children's mothers, and a woman on account of their fathers.[6]

R. ELEAZAR SAID: ONE ALSO WHO HAS NO WIFE. The scholars propounded: [Does it mean,] one who has no wife at all,[7] or whose wife does not live with him? — Come and hear: Also one who has a wife but she does not live with him may not be an elementary teacher.

R. JUDAH SAID: AN UNMARRIED MAN MUST NOT TEND etc. It was taught: They said to R. Judah: Israel is suspected of neither pederasty nor bestiality.

MISHNAH. ONE WHOSE BUSINESS IS WITH WOMEN MUST NOT BE ALONE WITH WOMEN;[8] AND ONE SHOULD NOT TEACH HIS SON A WOMAN'S TRADE.[9] R. MEIR SAID: ONE SHOULD ALWAYS TEACH HIS SON A CLEAN AND EASY CRAFT, AND PRAY TO HIM TO WHOM [ALL] WEALTH AND PROPERTY BELONG. FOR NO CRAFT DOES NOT

CONTAIN [THE POTENTIALITIES OF] POVERTY AND WEALTH, FOR NEITHER POVERTY NOR WEALTH IS DUE TO THE CRAFT, BUT ALL DEPENDS ON ONES MERIT. R. SIMEON B. ELEAZAR SAID: HAVE YOU EVER SEEN A WILD BEAST OR A BIRD WITH A CRAFT? YET THEY ARE SUSTAINED WITHOUT ANXIETY. NOW, THEY WERE CREATED ONLY TO SERVE ME, WHILE I WAS CREATED TO SERVE MY MASTER: SURELY THEN I SHOULD MAKE A LIVING WITHOUT ANXIETY! BUT BECAUSE I HAVE ACTED EVILLY AND DESTROYED MY LIVELIHOOD.[10] ABBA GURION OF ZADIAN[11] SAID ON THE AUTHORITY OF ABBA GURIA: ONE SHOULD NOT TEACH HIS SON [TO BE] AN ASS-DRIVER, CAMEL-DRIVER, WAGGONER,[12] SAILOR, SHEPHERD, OR SHOPKEEPER, BECAUSE THEIR PROFESSION IS THE PROFESSION OF ROBBERS.[13] R. JUDAH SAID IN HIS NAME:[14] MOST ASS-DRIVERS ARE WICKED,[15] WHILE MOST CAMEL-DRIVERS ARE WORTHY MEN;[16] AND MOST SAILORS ARE PIOUS.[17] THE BEST OF DOCTORS ARE DESTINED FOR GEHENNA,[18] AND THE WORTHIEST OF BUTCHERS IS AMALEK'S PARTNER.[19]

R. NEHORAI SAID: I ABANDON EVERY TRADE IN THE WORLD AND TEACH MY SON TORAH ONLY, FOR MAN ENJOYS THE REWARD THEREOF IN THIS WORLD WHILE THE PRINCIPAL REMAINS TO HIM FOR THE WORLD TO COME. BUT ALL OTHER PROFESSIONS ARE NOT SO; FOR WHEN A MAN COMES TO SICKNESS OR OLD AGE OR SUFFERING AND CANNOT ENGAGE IN HIS CRAFT, HE MUST DIE OF STARVATION, WHEREAS THE TORAH IS NOT SO, FOR IT GUARDS HIM FROM ALL EVIL IN HIS YOUTH AND GIVES HIM A FUTURE AND HOPE IN HIS OLD AGE. OF HIS YOUTH WHAT IS SAID? BUT THEY THAT WAIT UPON THE LORD SHALL RENEW THEIR STRENGTH;[20] OF HIS OLD AGE WHAT IS SAID? THEY SHALL STILL BRING FORTH FRUIT IN OLD AGE.[21] AND THUS IT IS SAID OF OUR FATHER ABRAHAM, AND ABRAHAM WAS OLD . . . AND THE LORD BLESSED ABRAHAM WITH EVERYTHING.[22] WE FIND THAT OUR FATHER ABRAHAM OBSERVED THE WHOLE TORAH BEFORE IT WAS GIVEN, FOR IT IS SAID, BECAUSE THAT ABRAHAM OBEYED MY VOICE, AND KEPT MY CHARGE, MY COMMANDMENTS, MY STATUTES, AND MY LAWS.[23]

GEMARA. Our Rabbis taught: He whose business is with women has a bad character. E.g., goldsmiths,[24] carders,[25] [handmill] cleaners,[26] pedlars, wool-dressers, barbers,[27] launderers, bloodletters,[28] bath attendants and tanners. Of these neither a king nor a High Priest may be appointed. What is the reason? Not because they are unfit, but because their profession is mean.

Our Rabbis taught: Ten things were said of a blood-letter. He walks on his side,[29] has a conceited spirit, and leans back[30] when sitting, has a grudging eye and an evil eye;[31] he eats much and excretes little;[32] and he is suspected of adultery, robbery[33] and bloodshed.[34]

Bar Kappara taught: One should always teach his son a clean and easy craft. What is it? — Said Rab Judah:

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(1) To show my affection for my daughter's little girl.

(2) [The text is difficult. Rashi takes it as an elliptical phrase ‘An unmarried man shall not train himself to be a teacher of children; Krauss, T.A. p. 217, suggests: An unmarried man shall not teach as assistant to the Bible teacher; v. also Low, L. Gesammelte Schriften III. p. 17, n. 1.]

(3) This is discussed in the Gemara.

(4) Lit., ‘cloak’.

(5) Whom they teach — is it feared that they will commit pederasty with them?

(6) The children were brought to school by their parents.

(7) I.e., a widower.

(8) Even many, because he is intimate with them.

(9) I.e., a trade in women's requirements.
(10) Much of man's troubles are of his own making. — 'I have acted evilly' states this general truth, and is not to be confused with the doctrine of Original Sin, which is foreign to Judaism.
(11) [Identified with Bethsaida in Galilee, v. Klein, MGWJ. 1915, p. 167.]
(12) [In the separate editions of the Mishnah: a barber.]
(13) They lend themselves to fraud. — Drivers, because when sent on long journeys they hire themselves to others in time that is not their own; shepherds, because they lead their flocks into others' fields; shopkeepers, because it is easy to supply adulterated goods. — This probably reflects the actual state of the times.
(14) Abba Guria's.
(15) As explained in the previous note.
(16) Their way lies through the desert, the awe of which leads to humility and a Godfearing spirit.
(17) The dangers of the sea turn their thoughts to God.
(18) Rashi: being unafraid of sickness they are haughty before the Almighty. Again, their treatment is sometimes fatal; while on the other hand, by refusing treatment to the poor they may indirectly cause their death; or it is probable that it is not directed against healing as such, but against the 'advanced' views held by physicians in those days, (v. Jewish Chronicle, 1-3-35.)
(19) When they have animals of doubtful fitness for food they grudge their loss and sell them as fit.
(20) Isa. XL, 31.
(21) Ps. XCII, 15.
(22) Gen. XXIV, 1.
(23) Ibid. XXVI, 5.
(24) Who make trinkets for women.
(25) Who comb wool for women's garments.
(26) Used by housewives.
(27) Women take their children to them.
(28) Lit., 'a scraper', one who makes incisions in the skin to draw off blood.
(29) I.e., haughtily, putting on 'side'.
(30) Lit., 'suspends himself.
(31) He is miserly, and casts an evil eye upon people, so that they should need his services.
(32) [Because he joins his patients at the meals which follow the operation, and which must be the best food.]
(33) [His women patients rob their husbands in order to pay him for his services.]
(34) [By drawing off too much blood.]

Talmud - Mas. Kiddushin 82b

Quilting.[1]

It was taught: Rabbi said: No craft can disappear from the world — happy is he who sees his parents in a superior craft, and woe to him who sees his parents in a mean craft. The world cannot exist without a perfume-maker and without a tanner-happy is he whose craft is that of a perfume-maker, and woe to him who is a tanner by trade. The world cannot exist without males and without females-happy is he whose children are males, and woe to him whose children are females.[2]

R. Meir said: One should always teach his son a clean and easy craft, and earnestly pray to Him to Whom [all] wealth and property belong, for neither poverty nor wealth comes from one's calling, but from[3] Him to whom wealth and property belong, as it is said: The silver is mine, and the gold is mine, saith the Lord of hosts.[4]

R. SIMEON B. ELEAZAR SAID, HAVE YOU EVER SEEN [etc.]. It was taught: R. Simeon b. Eleazar said: In my whole lifetime I have not seen a deer engaged in gathering fruits, a lion carrying burdens, or a fox as a shopkeeper, yet they are sustained without trouble, though they were created only to serve me, whereas I was created to serve my Maker. Now, if these, who were created only to

serve me are sustained without trouble, how much more so should I be sustained without trouble, I who was created to serve my Maker! But it is because I have acted evilly and destroyed my livelihood, as it is said, your iniquities have turned away these things.[5]

R. NEHORAI SAID: I ABANDON EVERY TRADE etc. It was taught: R. Nehorai said: I abandon all trades in the world and teach my son only Torah, for every trade in the world stands a man in stead only in his youth, but in his old age he is exposed to hunger. But the Torah is not so: it stands by him in his youth and gives him a future and hope in his old age. Of the time of his youth what Is said? But they that wait upon the Lord shall renew their strength; they shall mount up with wings as eagles.[6] Of his old age what is said? They shall still bring forth fruit in old age; they shall be full of sap and green.[7]

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(1) Stitching in furrows; cf. supra 17a on needlework being easy.

(2) Probably not prejudice against the female sex, but because daughters were a greater anxiety — a dowry had to be found for them, and they easily got into mischief; cf. Sanh. 100b, the quotation from the Book of Ben Sira.

(3) Lit., 'to'.

(4) Hag. II, 8.

(5) Jer. V, 25.

(6) Isa. XL, 31.

(7) Ps. XCII, 15.

Talmud - Mas. Baba Kama 2a

C H A P T E R I

MISHNAH. THE PRINCIPAL CATEGORIES OF DAMAGE[1] ARE FOUR: THE OX,[2] THE PIT,[3] THE 'SPOLIATOR' [MAB'EH][4] AND THE FIRE.[5] THE ASPECTS OF THE OX ARE [IN SOME RESPECTS] NOT [OF SUCH LOW ORDER OF GRAVITY] AS THOSE OF THE 'SPOLIATOR';[6] NOR ARE [IN OTHER RESPECTS] THOSE OF THE 'SPOLIATOR' [OF SUCH LOW ORDER OF GRAVITY] AS THOSE OF THE OX;[6] NOR ARE THE ASPECTS OF EITHER OF THEM, IN WHICH THERE IS LIFE, [OF SUCH LOW ORDER OF GRAVITY] AS THOSE OF THE FIRE WHICH IS NOT ENDOWED WITH LIFE;[6] NOR ARE THE ASPECTS OF ANY OF THESE, THE HABIT OF WHICH IS TO BE MOBILE AND DO DAMAGE, [OF SUCH LOW ORDERS OF GRAVITY] AS THOSE OF THE PIT OF WHICH IT IS NOT THE HABIT TO MOVE ABOUT AND DO DAMAGE.[6] THE FEATURE COMMON TO THEM ALL IS THAT THEY ARE IN THE HABIT OF DOING DAMAGE; AND THAT THEY HAVE TO BE UNDER YOUR CONTROL SO THAT WHENEVER ANY ONE [OF THEM] DOES DAMAGE THE OFFENDER IS LIABLE TO INDEMNIFY WITH THE BEST OF HIS ESTATE.[7]

GEMARA. Seeing that PRINCIPAL CATEGORIES are specified, it must be assumed that there are derivatives. Are the latter equal in law to the former or not?

Regarding Sabbath we learnt: The principal classes of prohibited acts are forty less one.[8] 'Principal classes' implies that there must be subordinate classes. Here the latter do in law equal the former; for there is no difference between a principal and a subordinate [prohibited act] with respect either to the law of sin-offering[9] or to that of capital punishment by stoning.[10] In what respect then do the two classes differ? — The difference is that if one simultaneously committed either two principal [prohibited] acts or two subordinate acts one is liable [to bring a sin-offering] for each act, whereas if one committed a principal act together with its respective Subordinate, one is liable for one [offering] only. But according to R. Eliezer who imposes the liability [of an offering] for a subordinate act committed along with its Principal,[11] to begin with why is the one termed 'Principal' and the other 'Subordinate'? — Such acts as were essential in the construction of the Tabernacle are termed 'Principal',[12] whereas such as were not essential in the construction of the Tabernacle are termed 'Subordinate.'

Regarding Defilements we have learnt:[13] The Primary Defilements: The [Dead] Reptile,[14] the Semen Virile[15]

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(1) Explicitly dealt with in Scripture.

(2) Ex. XXI, 35.

(3) Ibid. 33.

(4) Cf. p. 9.

(5) Ex. XXII. 5.

(6) Hence the latter, if not specifically dealt with, would not have been derived from the former.

(7) When money is not tendered; cf. infra p. 33.

(8) Shab. VII, 2.

(9) Cf. Lev. IV, 27-35.

(10) Num. XV, 32-36.

(11) Shab. 75a.

(12) On account of their being stated in juxtaposition in Scripture; v. Ex. XXXV, 2-XXXVI, 7.

(13) Kel. I, 1.

(14) Lev. XI, 29-32.

(15) Ibid. XV, 17.

and the Person who has been in contact with a human corpse.[1] [In this connection] their Resultants[2] are not equal to them in law; for a primary defilement[3] contaminates both human beings and utensils,[4] while Resultants defile only foods and drinks,[5] leaving human beings and utensils undefiled.

Here [in connection with damages] what is the [relationship in] law [between the principal and the secondary kinds]? — Said R. Papa: Some of the derivatives are on a par with their Principals whereas others are not.

Our Rabbis taught: Three principal categories [of damage] have been identified in Scripture with Ox: The Horn, The Tooth, and The Foot. Where is the authority for 'Horn'? For our Rabbis taught: If it will gore.[6] There is no 'goring' but with a horn, as it is said: And Zedekiah the son of Chenaanah made him horns of iron, and said, Thus saith the Lord, With these shalt thou gore the Arameans;[7] and it is further said, His glory is like the firstling of his bullock, and his horns are like the horns of a unicorn: with them he shall gore the people together etc.[8]

Why that 'further' citation? — Because you might perhaps say that Pentateuchal teachings cannot be deduced from post-Pentateuchal texts;[9] come therefore and hear: His glory is like the firstling of his bullock, and his horns are like the horns of a unicorn etc.[8] But is that a [matter of] deduction? Is it not rather merely an elucidation of the term 'goring'[10] as being effected by a horn?[11] — [Were it not for the 'further' citation] you might say that the distinction made by Scripture between [the goring of a] Tam[12] and [that of a] Mu'ad[13] is confined to goring effected by a severed horn,[14] whereas in the case of a horn still naturally attached, all goring is [habitual and consequently treated as of a] Mu'ad; come therefore and hear: His glory is like the firstling of his bullock, and his horns are like the horns of a unicorn, etc.[8]

What are the derivatives of Horn? — Collision, Biting, [malicious] Falling and Kicking.

Why this differentiation? If Goring is termed Principal because it is expressly written, If it will gore,[15] why should this not apply to Collision, as it is also written, If it will collide?[16] — That collision denotes goring, as it was taught: The text opens with collision[16] and concludes with goring[17] for the purpose of indicating that 'collision' here denotes 'goring'.

Why the differentiation between injury to man, regarding which it is written If it will gore,[18] and injury to animal regarding which it is written if it will collide?[19] — Man who possesses foresight is, as a rule, injured [only] by means of [wilful] 'goring',[20] but an animal, lacking foresight, is injured by mere 'collision'. A [new] point is incidentally made known to us, that [an animal] Mu'ad to injure man is considered Mu'ad in regard to animal,[21] whereas Mu'ad to injure animal is not considered Mu'ad in regard to man.[20]

'Biting': is not this a derivative of Tooth? — No; Tooth affords the animal gratification from the damage while Biting affords it no gratification from the damage.

'Falling and Kicking'; are not these derivatives of Foot? — No; the damage of foot occurs frequently while the damage of these does not occur frequently.

But what then are the derivatives which, R. Papa says, are not on a par with their Principals? He can hardly be said to refer to these, since what differentiation is possible? For just as Horn does its damage with intent and, being your property, is under your control, so also these [derivatives] do

damage with intent and, being your property, are under your control! The derivatives of Horn are therefore equal to Horn, and R. Papa's statement refers to Tooth and Foot.

'Tooth' and 'Foot'- where in Scripture are they set down? — It is taught: And he shall send forth[22] denotes Foot, as it is [elsewhere] expressed, That send forth the feet of the ox and the ass.[23] And it shall consume[22] denotes Tooth as [elsewhere] expressed, As the tooth consumeth

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(1) Num. XIX, 11-22.

(2) I.e., the objects rendered defiled by coming in contact with any Primary Defilement.

(3) Such as any one of these three and the others enumerated in Kelim I.

(4) Cf. Lev. XI, 32-33.

(5) V. ibid. 34.

(6) Ex. XXI, 28.

(7) I Kings XXII, 11.

(8) Deut. XXXIII, 17.

(9) [דברי קבדה 'words of tradition'; i.e. the teachings received on tradition from the prophets, a designation for non-Pentateuchal, primarily prophetic, texts. V. Bacher, op. cit., I, 166, II, 185.] The meaning of Ex. XXI, 28, should therefore not he deduced from I Kings XXII, 11.

(10) Which might surely he obtained even from post- Pentateuchal texts.

(11) Hence again why that 'further' citation?

(12) 'Innocuous,' i.e., an animal not having gored on more than three occasions; the payment for damage done on any of the first three incidents (of goring] is half of the total assessment and is realised out of the body of the animal that gored, cf. Ex. XXI, 35 and infra 16b.

(13) 'Cautioned,' i.e., after it had already gored three times, and its owner had been duly cautioned, the payment is for the whole damage and is realised out of the owner's general estate; v. Ex. XXI, 36, and infra 16b.

(14) As was the case in the first quotation from Kings.

(15) V. p. 2, n. 13.

(16) Ex. XXI, 35.

(17) Ibid. 36.

(18) V. p. 2, n. 13.

(19) V. p. 3; n. 10.

(20) As it is more difficult to injure a man than an animal.

(21) Cf. infra 205.

(22) Ex. XXII, 4.

(23) Isa. XXXII, 20.

Talmud - Mas. Baba Kama 3a

to entirety.[1]

The Master has [just] enunciated: 'And he shall send forth denotes Foot , as it is [elsewhere] expressed, That send forth the feet of the ox and the ass.' His reason then is that the Divine Law[2] [also] says, That send forth the feet of the ox and the ass, but even were it not so, how else could you interpret the phrase?[3] It could surely not refer to Horn which is already [elsewhere] set down,[4] nor could it refer to Tooth since this is likewise [already] set down?[3] — It was essential[5] as otherwise it might have entered your mind to regard both [phrases][6] as denoting Tooth: the one when there is destruction of the corpus and the other when the corpus remains unaffected; it is therefore made known to us that this is not the case. Now that we have identified it with Foot, whence could be inferred the liability of Tooth in cases of non-destruction of the corpus? From the analogy of Foot;[7] just as [in the case of] Foot no difference in law is made between destruction and non-destruction of corpus, so [in the case of] Tooth no distinction is made between destruction and non-destruction of corpus.

The Master has [just] enunciated: ‘And it shall consume denotes Tooth, as elsewhere expressed, As the tooth consumeth to entirety.’ His reason then is that the Divine Law [also] says, As the tooth consumeth to entirety, but even were it not so, how else could you interpret the phrase? It could surely not refer to Horn which is already elsewhere set down,[4] nor could it refer to Foot, since this is likewise elsewhere set down?[3] — It is essential,[8] as otherwise it might have entered your mind to regard both phrases[6] as denoting Foot: the one when the cattle went of its own accord and the other[9] when it was sent by its owner [to do damage]; it is, therefore, made known to us that this is not so. Now that we have identified it with Tooth, whence could be inferred the liability of Foot in cases when the cattle went of its own accord? — From the analogy of Tooth;[10] just as in the case of Tooth there is no difference in law whether the cattle went of its own accord or was sent by its owner, so [in the case of] Foot there is no difference in law whether the cattle went of its own accord or was sent by its owner.

But supposing Divine Law had only written, And he shall send forth,[11] omitting And it shall consume, would it not imply both Foot and Tooth? Would it not imply Foot, as it is written, That send forth the feet of the ox and the ass? Again, would it not also imply Tooth, as it is written, And the teeth of beasts will I send upon them?[12] — If there were no further expression I would have said either one or the other [might be meant], either Foot, as the damage done by it is of frequent occurrence, or Tooth, as the damage done by it affords gratification.[13] Let us see now, they are equally balanced, let them then both be included, for which may you exclude?[14] — It is essential [to have the further expression], for [otherwise] it might have entered your mind to assume that these laws [of liability] apply only to intentional trespass,[15] exempting thus cases where the cattle went of its own accord; it is, therefore, made known to us that this is not the case.

The derivative of Tooth, what is it? — When [the cattle] rubbed itself against a wall for its own pleasure [and broke it down], or when it spoiled fruits [by rolling on them] for its own pleasure. Why are these cases different? Just as Tooth affords gratification from the damage [it does] and, being your possession, is under your control, why should not this also be the case with its derivatives which similarly afford gratification from the damage [they do] and, being your possession are under your control? — The derivative of Tooth is therefore equal to Tooth, and R. Papa's statement [to the contrary][16] refers to the derivative of Foot.

What is the derivative of Foot? — When it did damage while in motion either with its body or with its hair, or with the load [which was] upon it, or with the bit in its mouth, or with the bell on its neck. Now, why should these cases be different? Just as Foot does frequent damage and, being your possession, is under your control, why should not this also be the case with its derivatives which similarly do frequent damage and, being your possession, are under your control? The derivative of Foot is thus equal to Foot, and R. Papa's statement [to the contrary][17] refers to the derivative of the Pit.

What is the derivative of Pit? It could hardly be said that the Principal is a pit of ten handbreadths deep and its derivative one nine handbreadths deep, since neither nine nor ten is stated in Scripture! — That is no difficulty: [as] And the dead beast shall be his[18] the Divine Law declares, and it was quite definite with the Rabbis[19] that ten handbreadths could occasion death, whereas nine might inflict injury but could not cause death . But however this may be, is not the one [of ten] a principal [cause] in the event of death, and the other [of nine] a principal [cause] in the event of [mere] injury? — Hence [Rab Papa's statement] must refer to a stone, a knife and luggage which were placed on public ground and did damage. In what circumstances? If they were abandoned [there], according to both Rab and Samuel,[20] they would be included in [the category of] Pit;[21]

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(1) I Kings XIV, 10. [‘Galal’, E.V.: ‘dung’, is interpreted as ‘marble’, ‘ivory’, which teeth resemble; cf. Ezra V, 8. V.

Tosaf. a.l.]
(2) [Lit., 'The Merciful One,' i.e., God, whose word Scripture reveals. V. Bacher, Exeg. Term., II, 207f.]
(3) V. p. 4, n. 6.
(4) Ex. XXI, 35-36.
(5) To cite the verse from Isaiah.
(6) Send forth and consume, cf. n. 2.
(7) Where no term expressing 'Consumption' is employed.
(8) To cite the verse from Kings.
(9) I.e., 'He shall send forth'.
(10) Where no term expressing 'sending forth' is employed.
(11) V. p. 4, n. 6.
(12) Deut. XXXII, 24.
(13) And thus there would be no definite sanction for action in either.
(14) V., however, infra p. 17, that Tooth and Foot were recorded in Scripture not for the sake of liability but to be immune for damage done by them on public ground.
(15) As signified by, 'He shall send forth'.
(16) Cf. supra p. 2.
(17) V. p. 6, n. 6.
(18) Ex. XXI, 34.
(19) Infra 50b.
(20) Infra p. 150.
(21) Being, like Pit, a public nuisance.

Talmud - Mas. Baba Kama 3b

if [on the other hand] they were not abandoned, then, according to Samuel, who maintains that all public nuisances come within the scope of the law applicable to Pit, they would be included in Pit, whereas according to Rab, who maintains that in such circumstances they rather partake of the nature of Ox, they are equivalent in law to Ox.[1]

[And even according to Samuel] why should [the derivatives of Pit] be different? Just as Pit is from its very inception a source of injury, and, being your possession, is under your control, so is the case with these [derivatives] which from their very inception [as nuisances] also are sources of injury and being your possession, are under your control! — The derivative of Pit is therefore equal to Pit, and R. Papa's statement [to the contrary] refers to the derivative of 'Spoliator'. But what is it? If we are to follow Samuel, who takes 'Spoliator' to denote Tooth,[2] behold we have [already] established that the derivative of Tooth equals Tooth;[3] if on the other hand Rab's view is accepted, identifying 'Spoliator' With Man,[2] what Principals and what derivatives could there be in him? You could hardly suggest that Man [doing damage] while awake is Principal, but becomes derivative [when causing damage] while asleep, for have we not learnt:[4] 'Man is in all circumstances Mu'ad,[5] whether awake or asleep'? — Hence [R. Papa's statement[6] will] refer to phlegm[7] [expectorated from mouth or nostrils]. But in what circumstances? If it did damage while in motion, it is [man's] direct agency! If [on the other hand] damage resulted after it was at rest, it would be included, according to both Rab and Samuel,[8] in the category of Pit! — The derivative of 'Spoliator' is therefore equal to 'Spoliator'; and R. Papa's statement [to the contrary][6] refers to the derivative of Fire.

What is the derivative of Fire? Shall I say it is a stone, a knife and luggage which having been placed upon the top of one's roof were thrown down by a normal wind and did damage? Then in what circumstances? If they did damage while in motion, they are equivalent to Fire; and why should they be different? Just as Fire is aided by an external force, and, being your possession, is under your control, so also is the case with these [derivatives] which are aided by an external force, and, being your possession, are under your control! — The derivative of Fire is therefore equal to Fire; and R.

Papa's statement [to the contrary][6] refers to the derivative of Foot.

'Foot'! Have we not established that the derivative of Foot is equal to Foot?[9] — There is the payment of half damages done by pebbles [kicked from under an animal's feet] — a payment established by tradition.[10] On account of what [legal] consequence is it designated 'derivative of Foot'?[11] So that the payment should likewise be enforced [even] from the best of the defendant's possessions.[12] But did not Raba question whether the half-damage of Pebbles is collected only from the body of the animal or from any of the defendant's possessions?[13] — This was doubtful [only] to Raba, whereas R. Papa was [almost] certain about it [that the latter is the case]. But according to Raba, who remained doubtful [on this point], on account of what [legal] consequence is it termed 'derivative of Foot'?[14] — So that it may also enjoy exemption [where the damage was done] on public ground.[15]

THE SPOLIATOR [MABEH] AND THE FIRE etc. What is [meant by] MAB'EH? — Rab said: MAB'EH denotes Man [doing damage], but Samuel said: MAB'EH signifies Tooth [of trespassing cattle]. Rab maintains that MAB'EH denotes Man,[16] for it is written: The watchman said: The morning cometh, and also the night — if ye will enquire, enquire ye.[17] Samuel [on the other hand] holds that MAB'EH signifies Tooth, for it is written: How is Esau searched out! How are his hidden places sought out![18] But how is this deduced?[19] As rendered by R. Joseph:[20] How was Esau ransacked? How were his hidden treasures exposed?[21]

Why did not Rab agree with [the interpretation of] Samuel? — He may object: Does the Mishnah employ the term NIB'EH[22] [which could denote anything 'exposed']?

Why [on the other hand] did not Samuel follow [the inter pretation of] Rab? — He may object: Does the Mishnah employ the term BO'EH[23] [which could denote 'an enquirer']?

But in fact the Scriptural quotations could hardly bear out the interpretation of either of them. Why then did not Rab agree with Samuel? — THE OX [in the Mishnah] covers all kinds of damage done by ox.[24] How then will Samuel explain the fact that ox has already been dealt with? — Rab Judah explained: THE OX [in the Mishnah] denotes Horn, while MAB'EH stands for Tooth; and this is the sequence in the Mishnah: The aspects of Horn, which does not afford gratification from the injury [are not of such order of gravity] as those of Tooth which does afford gratification from the damage;[25]

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(1) The derivatives of which are equal to the Principal.

(2) Infra p. 9.

(3) Supra p. 7.

(4) Infra p. 136.

(5) I.e., civilly liable in full for all misdeeds.

(6) V. p. 6, n. 6.

(7) I.e., the derivative of Man.

(8) V. p. 7, n. 4.

(9) Supra p. 7.

(10) Cf. infra p. 80.

(11) Since it pays only half the damage.

(12) Unlike half damages in the case of Horn where the payment is collected only out of the body of the animal that did the damage.

(13) Infra p. 83.

(14) V. p. 8, n. 10.

(15) Just as is the case with Foot, cf. infra p. 17.

(16) As possessing freedom of will and the faculty of discretion and enquiry, i.e., constituting a cultural and rational

being; idiots and minors are thus excluded, cf. infra p. 502.

(17) תבעון בעיו Isa. XXI, 12; the root in each case being the same.

(18) נבעו Ob. I, 6; the root in each case being the same.

(19) I.e., how could a term denoting 'seeking out' stand for Tooth?

(20) Who was exceptionally well conversant with Targumic texts. Some explain it on account of his having been blind (v. infra p. 501), and thus unable to cite the original Biblical text because of the prohibition to recite orally passages from the Written Law, cf. Git. 60a. [Others ascribe the edition of the Targum on the prophets to him, v. Graetz (Geschichte IV, 326.]

(21) נבעו (E.V.: sought out), translated exposed, indicates exposure and may therefore designate Tooth which is naturally hidden but becomes exposed in grazing.

(22) In the passive voice.

(23) In the kal denoting mere action; the causative (hiph'il) is used with reference to Tooth which the animal exposes in grazing.

(24) Cattle, including Tooth.

(25) And therefore the liability of Tooth could not he derived from that of Horn.

Talmud - Mas. Baba Kama 4a

nor are the aspects of Tooth, which is not prompted by malicious intention to injure, [of such order of gravity] as those of Horn which is prompted by malicious intention to do damage.[1] But can this not be deduced a fortiori? If Tooth, which is prompted by no malicious intention to injure, involves liability to pay, how much more so should this apply to Horn, which is prompted by malicious intention to do damage? — Explicit [Scriptural] warrant for the liability of Horn is, nevertheless, essential, as otherwise you might have possibly thought that I assume [immunity for Horn on] an analogy to the case of man- and maid-servants. Just as a man- and maid-servant, although prompted by malicious intention to do damage, do not devolve any liability [upon their masters],[2] so is the law here [in the case of Horn]. R. Ashi, however, said: Is not the immunity in the case of damage done by man-and maid-servants due to the special reason that, but for this, a servant provoked by his master might go on burning down[3] another's crops, and thus make his master liable to pay sums of money day by day?[4] — The sequence [of the analysis in the Mishnah] must accordingly be [in the reverse direction]: The aspects of Horn, which is actuated by malicious intention to do damage, are not [of such low order of gravity] as those of Tooth, which is not actuated by malicious intention to do damage; again, the aspects of Tooth which affords gratification while doing damage are not [of such low order of gravity] as those of Horn, which affords no gratification from the damage.[5] But what about Foot? Was it entirely excluded [in the Mishnah]? — [The generalisation,][6] Whenever damage has occurred, the offender is liable, includes Foot. But why has it not been stated explicitly? — Raba therefore said: THE OX [stated in the Mishnah] implies Foot,[7] while MAB'EH stands for Tooth; and this is the sequence [in the Mishnah]: The aspects of Foot, which does frequent damage, are not [of such low order of gravity] as those of Tooth, the damage by which is not frequent: again, the aspects of Tooth, which affords gratification from the damage, are not [of such low order of gravity] as those of Foot, which does not afford gratification from the damage.[8] But what about Horn? Was it entirely excluded [in the Mishnah]? — [The generalisation,] Whenever damage has occurred, the offender is liable, includes Horn. But why has it not been stated explicitly? — Those which are Mu'ad ab initio are mentioned explicitly [in the Mishnah] but those which initially are Tam,[9] and [only] finally become Mu'ad, are not mentioned explicitly.

Now as to Samuel, why did he not adopt Rab's interpretation [of the Mishnaic term MAB'EH]? — He may object: If you were to assume that it denotes Man, the question would arise, is not Man explicitly dealt with [in the subsequent Mishnah]: 'Mu'ad cattle and cattle doing damage on the plaintiff's premises and Man'?[10] But why then was Man omitted in the opening Mishnah? — [In that Mishnah] damage done by one's possessions is dealt with, but not that done by one's person.

Then, how could even Rab uphold his interpretation, since Man is explicitly dealt with in the subsequent Mishnah?[10] — Rab may reply: The purpose of that Mishnah is [only] to enumerate Man among those which are considered Mu'ad. What then is the import of [the analysis introduced by] THE ASPECTS ARE NOT etc.? — This is the sequence: The aspects of Ox, which entails the payment of kofer [for loss of human life],[11] are not [of such low order of gravity] as those of Man who does not pay [monetary] compensation for manslaughter;[12] again, the aspects of Man who [in case of human bodily injury] is liable for [additional] four items,[13] are not [of such low order of gravity] as those of Ox, which is not liable for those four items.[14]

THE FEATURE COMMON TO THEM ALL IS THAT THEY ARE IN THE HABIT OF DOING DAMAGE. Is it usual for Ox [Horn][15] to do damage? — As Mu'ad. But even as Mu'ad, is it usual for it to do damage? — Since it became Mu'ad this became its habit. Is it usual for Man to do damage? — When he is asleep. But even when asleep is it usual for Man to do damage? — While stretching his legs or curling them this is his habit.

THEIR HAVING TO BE UNDER YOUR CONTROL. Is not the control of man's body [exclusively] his own?[16] — Whatever view you take,[17] behold Karna taught: The principal categories of damage are four and Man is one of them. [Now] is not the control of a man's body [exclusively] his own? You must therefore say with R. Abbahu who requested the tanna[18] to learn, 'The control of man's body is [exclusively] his own,'

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(1) And therefore the liability of Horn could not be derived from that of Tooth.

(2) Cf. infra p. 502.

(3) But v. infra pp. 47 and 112.

(4) Yad. IV, 6; and the suggested analogy is thus untenable.

(5) So that neither Horn nor Tooth could he derived from each other.

(6) Infra p. 36, v. Tosaf.

(7) And not Horn as first suggested.

(8) So that neither Foot nor Tooth could he derived from each other.

(9) As is the case with Horn.

(10) V. infra 15b.

(11) Lit., 'Ransom', i.e., monetary compensation for manslaughter, cf Ex. XXI, 30; v. Glos.

(12) V. Num. XXXV, 31-32. Hence Man could not be derived from Ox.

(13) I.e., Pain, Healing, Loss of Time and Degradation; cf. infra p. 473.

(14) Ox is liable only for Depreciation.

(15) According to Rab who takes Ox as including Horn.

(16) The phrase in the Mishnah is thus inappropriate to man.

(17) Even if you take Mab'eh as Tooth.

(18) [The term here designates one whose special task was to communicate statements of older authorities to expounding teachers, v. Glos.]

that here also it is to be understood that the control of man's body is his own.[1]

R. Mari, however, demurred: Say perhaps MAB'EH denotes water [doing damage], as it is written, As when the melting fire burneth, fire tib'eh [causeth to bubble] water?[2] — Is it written, 'Water bubbles'? It is written, Fire causes bubbling.[3] R. Zebid demurred: Say then that MAB'EH denotes Fire, as it is fire to which the act of 'tib'eh' in the text is referred? — If this be so what is then the explanation of THE MAB'EH AND THE FIRE? If you suggest the latter to be the interpretation of the former,[4] then instead of 'FOUR' there will be 'three'? If however, you suggest that OX constitutes two [kinds of damage],[5] then what will be the meaning of [the Mishnaic text]: NOR ARE

THE ASPECTS OF EITHER OF THEM [OX and MAB'EH] IN WHICH THERE IS LIFE? Is there any life in fire? Again, what will be conveyed by [the concluding clause] AS THOSE OF THE FIRE?

R. Oshaia: taught There are thirteen principal categories of damage: The Unpaid Bailee and the Borrower, the Paid Bailee and the Hirer, Depreciation, Pain [suffered]. Healing, Loss of Time, Degradation and the Four enumerated in the Mishnah, thus making [a total of] thirteen. Why did our Tanna mention [only the Four and] not the others? According to Samuel,[6] this presents no difficulty, as the Mishnah mentions only damage committed by one's possessions and not that committed by one's person, but according to Rab[7] let the Mishnah also mention the others? — In the mention of Man all kinds of damage committed by him are included. But does not R. Oshaia also mention Man?[8] — Two kinds of damage could result from Man: Man injuring man is treated as one subject, and Man damaging chattel[9] as another.

If this be so let R. Oshaia similarly reckon Ox twice, as two kinds of damage could result also from Ox: [i] Ox damaging chattel[9] and [ii] Ox injuring man? — But is that a logical argument? It is quite proper to reckon Man in this manner as Man damaging chattel pays only for Depreciation, while Man injuring man may also have to pay for four other kinds of damage,[10] but how can Ox be thus reckoned when the liability for damage done by it to either man or chattel is alike and is confined to [only one kind of damage, i.e.] Depreciation?

But behold, are not the Unpaid Bailee and the Borrower, the Paid Bailee and the Hirer, within the sphere of Man damaging chattel and they are nevertheless reckoned by R. Oshaia? — Direct damage and indirect damage are treated by him independently.

R. Hiyya taught: There are twenty-four principal kinds of damage: Double Payment,[11] Fourfold or Fivefold Payment,[12] Theft,[13] Robbery,[14] False Evidence,[15] Rape,[16] Seduction,[17] Slander,[18] Defilement,[19] Adulteration,[20] Vitiation of wine,[21] and the thirteen enumerated above by R. Oshaia,[22] thus making [the total] twenty-four.

Why did not R. Oshaia reckon the twenty-four? — He dealt only with damage involving civil liability but not with that of a punitive nature. But why omit Theft and Robbery which also involve civil liability? — These kinds of damage may be included in the Unpaid Bailee and the Borrower.[23] Why then did not R. Hiyya comprehend the former in the latter? — He reckoned them separately, as in the one case the possession of the chattel was acquired lawfully,[24] while in the other[25] the acquisition was unlawful.

[Why did not R. Oshaia]

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(1) The Mishnaic wording refers to the other categories.

(2) Isa. LXIV, 1.

(3) Hence the term ‘tib'eh’ describes not the act of water but that of fire.

(4) The Mab'eh and the Fire will thus constitute one and the same kind of damage.

(5) And the other two will be: Pit and Fire.

(6) Who takes Mab'eh to denote Tooth and not Man; supra p. 9.

(7) Who takes Mab'eh to denote Man; supra p. 9.

(8) Why does he not include in Man all kinds of damage committed by him?

(9) Lit., ‘cattle’.

(10) I.e., Pain, Healing, Loss of Time and Degradation.

(11) As fine for theft; cf. Ex. XXII, 3.

(12) Fines for the slaughter or sale of a stolen sheep and ox respectively; cf. Ex. XXI, 37.

(13) I.e., the restoration of stolen goods or the payment of their value.

(14) I.e., the unlawful acquisition of chattels by violence; cf. Lev, V, 23.
(15) Cf. Deut. XIX, 19; v. Mak. I.
(16) I.e., fifty shekels of silver; cf. Deut. XXII, 28-29.
(17) Cf. Ex. XXII, 15-16.
(18) I.e., a defaming husband; v. Deut. XXII, 13-19.
(19) Of terumah (v. Glos.) which makes it unfit for human consumption.
(20) Of ordinary grain with that of terumah restricting thereby the use of the mixture to priestly families.
(21) Through idolatrous application by means of libation which renders all the wine in the barrel unfit for any use whatsoever; the last three heads of damage are dealt with in Git. V, 3.
(22) V. p. 13.
(23) I.e., when these are guilty of larceny; cf. Ex. XXII, 7.
(24) I.e in the case of the Unpaid Bailee and Borrower.
(25) I.e., in the case of Theft and Robbery.

Talmud - Mas. Baba Kama 5a

deal with False Evidence, the liability for which is also civil? — He holds the view of R. Akiba who maintains that the liability for False Evidence [is penal in nature and] cannot [consequently][1] be created by confession.[2] But if R. Oshaia follows R. Akiba why does he not reckon Ox as two distinct kinds of damage: Ox damaging chattel and Ox injuring men, for have we not learnt that R. Akiba said: A mutual injury arising between man and [ox even while a] Tam is assessed in full and the balance paid accordingly?[3] This distinction could, however, not be made, since it is elsewhere[4] taught that R. Akiba himself has qualified this full payment.[5] For R. Akiba said: You might think that, in the case of Tam injuring man, payment should be made out of the general estate; it is therefore stated, [This judgment] shall be done unto it,[6] to emphasise that the payment should only be made out of the body of the Tam and not out of any other source whatsoever.

Why did R. Oshaia omit Rape, Seduction and Slander, the liabilities for which are also civil?[7] — What particular liability do you wish to refer to? If for actual loss, this has already been dealt with under Depreciation; if for suffering, this has already been dealt with under Pain; if for humiliation, this has already been dealt with under Degradation; if again for deterioration, this is already covered by Depreciation. What else then can you suggest? The Fine.[8] With this [type of liability] R. Oshaia is not concerned.

Why then omit Defilement , Adulteration and Vitiation of wine, the liabilities for which are civil? — What is your view in regard to intangible damage?[9] If [you consider] intangible damage a civil wrong, defilement has then already been dealt with under Depreciation; if on the other hand intangible damage is not a civil wrong, then any liability for it is penal in nature, with which R. Oshaia is not concerned.

Are we to infer that R. Hiyya considers intangible damage not to be a civil wrong? For otherwise would not this kind of damage already have been reckoned by him under Depreciation? — He may in any case have found it expedient to deal with tangible damage and intangible damage under distinct heads.

It is quite conceivable that our Tanna[10] found it necessary to give the total number [of the principal kinds of damage] in order to exclude those of R. Oshaia;[11] the same applies to R. Oshaia who also gave the total number in order to exclude those of R. Hiyya;[12] but what could be excluded by the total number specified by R. Hiyya? — It is intended to exclude Denunciation[13] and Profanation of sacrifices.[14]

The exclusion of profanation is conceivable as sacrifices are not here reckoned; but why is

Denunciation omitted? — Denunciation is in a different category on account of its verbal nature with which R. Hiyya is not concerned. But is not Slander of a verbal nature and yet reckoned? — Slander is something verbal but dependent upon some act.[15] But is not False Evidence a verbal effect not connected with any act and yet it is reckoned? — The latter though not connected with any act is reckoned because it is described in the Divine Law as an act, as the text has it: Then shall ye do unto him as he had purposed to do unto his brother.[16]

It is quite conceivable that the Tanna of the Mishnah characterises his kinds of damage as Principals in order to indicate the existence of others which are only derivatives: but can R. Hiyya and R. Oshaia characterise theirs as Principals in order to indicate the existence of others which are derivatives? If so what are they? — Said R. Abbahu: All of them are characterised as Principals for the purpose of requiring compensation out of the best of possessions.[17] How is this uniformity [in procedure] arrived at? — By means of a uniform interpretation of each of the following terms: 'Instead',[18] 'Compensation',[19] 'Payment',[20] 'Money'.[21]

THE ASPECTS OF THE OX ARE [IN SOME RESPECTS] NOT [OF SUCH LOW ORDER OF GRAVITY] AS THOSE OF THE 'SPOLIATOR' [MAB'EH]. What does this signify? — R. Zebid in the name of Raba said: The point of this is: Let Scripture record only one kind of damage[22] and from it you will deduce the liability for the other![23] In response it was declared: One kind of damage could not be deduced from the other.[24]

NOR ARE THE ASPECTS OF EITHER OF THEM IN WHICH THERE IS LIFE. What does this signify? R. Mesharsheya in the name of Raba said: The point of it is this:

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(1) Penal liabilities are created only by means of impartial evidence and never by that of confession; cf. infra 64b.

(2) Mak. 2b.

(3) V. infra p. 179.

(4) Infra pp. 180 and 240.

(5) Lit., 'broke the [full] force of his club' (Jast.); Rashi: 'of his fist'.

(6) Ex. XXI. 31.

(7) Cf. Keth. 40a.

(8) V. Deut, XXII, 29; Ex. XXII, 6; and Deut. XXII, 19.

(9) Cf. Git. 53a.

(10) Opening the Tractate.

(11) I.e., the additional nine kinds enumerated by him supra p. 13.

(12) I.e the eleven added by him supra. p. 14.

(13) Cf. infra 62a and 117a.

(14) Cf. Lev. VII, 18 and Zeb. I, 1 and II, 2-3.

(15) The consummation of the marriage rite according to R. Eliezer, or the bribery of false witnesses according to R. Judah; cf. Keth. 46a.

(16) Deut. XIX, 19.

(17) Cf. Ex. XXII, 4.

(18) I.e., for occurring in Ex. XXI, 36, and elsewhere.

(19) I.e., an expression such as, He shall give, cf. EX XXI, 32 and elsewhere.

(20) As in Ex. XXII, 8 and elsewhere.

(21) Such as, e.g., in Ex. XXI, 34 and elsewhere. [One of these four terms occurs with each of the four categories of damage specified in the Mishnah and likewise with each of the kinds of damage enumerated by R. Oshaia and R. Hiyya, thus teaching uniformity in regard to the mode of payment in them all.]

(22) I.e., Ox.

(23) I.e., Mab'eh.

(24) V. supra pp. 11-12.

Talmud - Mas. Baba Kama 5b

Let Scripture record only two kinds of damage[1] and from them you will deduce a further kind of damage?[2] In response it was declared: Even from two kinds of damage it would not be possible to deduce one more.[3]

Raba, however, said: If you retain any one kind of damage along with Pit [in Scripture], all the others but Horn will be deduced by analogy;[4] Horn is excepted as the analogy breaks down, since all the other kinds of damage are Mu'ad ab initio.[5] According, however, to the view that Horn on the other hand possesses a greater degree of liability because of its intention to do damage,[6] even Horn could be deduced. For what purpose then did Scripture record them all? For their [specific] laws: Horn, in order to distinguish between Tam and Mu'ad;[7] Tooth and the Foot, to be immune [for damage done by them] on public ground;[8] Pit, to be immune for [damage done by it to] inanimate objects;[9] and, according to R. Judah who maintains liability for inanimate objects damaged by a pit,[10] in order still to be immune for [death caused by it to] man;[11] Man, to render him liable for four [additional] payments [when injuring man];[12] Fire, to be immune for [damage to] hidden goods;[13] but according to R. Judah, who maintains liability for damage to hidden goods by fire,[13] what [specific purpose] could be served?

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(1) I.e., Ox and Mab'eh.

(2) I.e., Fire.

(3) For the reason stated in the Mishnah.

(4) To the feature common in Pit and the other kind of damage.

(5) I.e., it is usual for them to do damage, whereas Horn does damage only through excitement and evil intention which the owner should not necessarily have anticipated; cf. infra p. 64.

(6) Cf. supra p. 11 and infra p. 64.

(7) Infra p. 73.

(8) Infra p. 94.

(9) Infra 52a.

(10) Infra 53b.

(11) Infra 54a.

(12) Infra p. 473; cf. also supra pp. 12 and 13.

(13) Infra 61b.

Talmud - Mas. Baba Kama 6a

— To include [damage done by fire] lapping his neighbour's ploughed field and grazing his stones.[1]

THE FEATURE COMMON TO THEM ALL . . . What else is this clause intended to include? — Abaye said: A stone, a knife and luggage which, having been placed by a person on the top of his roof, fell down through a normal wind and did damage.[2] In what circumstances [did they do the damage]? If while they were in motion, they are equivalent to Fire! How is this case different? Just as Fire is aided by an external force[3] and, being your possession, is under your control, so also is the case with those which are likewise aided by an external force and, being your possessions are under your control. If [on the other hand, damage was done] after they were at rest, then, if abandoned, according to both Rab and Samuel, they are equivalent to Pit.[4] How is their case different? Just as Pit is from its very inception a source of injury, and, being your possession is under your control, so also is the case with those[5] which from their very inception [as nuisances] are likewise sources of injury, and, being your possession are under your control.[6] Furthermore, even if they were not abandoned, according to Samuel who maintains that we deduce [the law governing] all nuisances from Pit,[4] they are [again] equivalent to Pit? — Indeed they were abandoned, still they are not equivalent to Pit. Why [is liability attached] to Pit if not because no external force assists it? How then can you assert

[the same] in the case of those[5] which are assisted by an external force? — Fire,[7] however, will refute [this reasoning]. But [you may ask] why [is liability attached] to Fire if not because of its nature to travel and do damage?[8] — Pit, however, will refute [this reasoning]. The argument is [thus endlessly] reversible [and liability[9] can be deduced only from the Common Aspects].[10]

Raba said: [This clause is intended] to include a nuisance which is rolled about [from one place to another] by the feet of man and by the feet of animal [and causes damage]. In what circumstances [did it do the damage]? If it was abandoned, according to both Rab and Samuel,[11] it is equivalent to Pit! How does its case differ? Just as Pit is from its very inception a source of injury, and is under your control, so also is the case with that which from its very inception [as a nuisance] is likewise a source of injury, and is under your control. Furthermore, even if it were not abandoned, according to Samuel,[11] who maintains that we deduce [the law governing] all nuisances from Pit, it is [again] equivalent to Pit? — Indeed it was abandoned, still it is not equivalent to Pit: Why [is liability attached] to Pit if not because the making of it solely caused the damage? How then can you assert [the same] in the case of such nuisances,[12] the making of which did not directly cause the damage?[13] — Ox, however, will refute [this reasoning]. But [you may ask] why [is liability attached] to Ox if not because of its habit to walk about and do damage? — Pit will refute [this reasoning]. The argument is [thus endlessly] reversible as the aspect of the one is not comparable to the aspect of the other, [and liability[14] therefore can be deduced only from the Common Aspects].

R. Adda b. Ahabah said: To include that which is taught:[15] 'All those who open their gutters or sweep out the dust of their cellars

[into public thoroughfares] are in the summer period acting unlawfully, but lawfully in winter; [in all cases] however, even though they act lawfully, if special damage resulted they are liable to compensate.' But in what circumstances? If the damage occurred while [the nuisances were] in motion, is it not man's direct act?[16] If, on the other hand, it occurred after they were at rest, [again] in what circumstances? If they were abandoned, then, according to both Rab and Samuel,[17] they are equivalent to Pit! How does their case differ? Just as Pit is from its very inception a source of injury, and, being your possession, is under your control, so also is the case with those which are likewise from their very inception [as nuisances] sources of injury and, being your possession, are under your control. Furthermore, even if they were not abandoned, according to Samuel,[17] who maintains that we deduce [the law governing] all nuisances from Pit, they are [again] equivalent to Pit? — Indeed they were abandoned, still they are not equivalent to Pit: Why [is liability attached] to Pit if not because of its being unlawful?[18] How then could you assert [the same] in the case of those which [in winter] are lawful? —

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(1) As this damage is rather an unusual effect from fire and special reference is therefore essential.

(2) Cf. supra p. 8.

(3) I.e., the blowing wind.

(4) Infra 28b; v. supra p. 7.

(5) I.e., stone, knife and luggage referred to above.

(6) Cf. supra p. 7.

(7) Which is also assisted by an external force, i.e. the wind, but nevertheless creates liability to pay.

(8) Which cannot he said of stone, knife and luggage.

(9) Even when the nuisance has, like Fire, been assisted by an external force and is, like Pit, unable to travel and do damage.

(10) Referred to in the Mishnaic quotation.

(11) Infra 28b and supra p. 7.

(12) Which have been rolling about from one place to another.

(13) But the rolling by man and beast.

(14) Even in the case of nuisances that roll about.

(15) Cf. infra 30a.
(16) The liability for which is self-evident under the category of Man.
(17) Infra 28b and supra p. 7.
(18) It being unlawful to dig a pit in public ground.

Talmud - Mas. Baba Kama 6b

Ox,[1] however, will refute [this reasoning]. But, you may ask, why [is liability attached] to Ox if not because of its nature to walk about and do damage? — PIt will refute [this reasoning]. The argument is [thus endlessly] reversible [and liability[2] can be deduced only from the Common Aspects].

Rabina said: To include that which we have learnt: 'A wall or a tree which accidentally fell into a Public thoroughfare and did damage, involves no liability for compensation. If an order had been served [by the proper authorities] to fell the tree and pull down the wall within a specified time, and they fell within the specified time and did damage, the immunity holds goods, but if after the specified time, liability is incurred.'[3] But what were the circumstances [of the wall and the tree]? If they were abandoned, then according to both Rab and Samuel,[4] they are equivalent to Pit! How is their case different? Just as Pit does frequent damage and is under your control, so also is the case with those which likewise do frequent damage and are under your control. Furthermore, even if they were not abandoned, according to Samuel.[4] who maintains that we deduce [the law governing] all nuisances from Pit, they are [again] equivalent to Pit? — Indeed they were abandoned, still they are not equivalent to Pit: Why [is liability attached] to Pit if not because of its being from its very inception a source of injury? How then can you assert [the same] in the case of those which are not sources of injury from their inception? — Ox, however, will refute [this reasoning]. But [you may ask] why [is liability attached] to Ox if not because of its nature to walk about and do damage? — Pit will refute [this reasoning]. The argument is [thus endlessly] reversible [and liability[5] can be deduced only from Common Aspects].

WHENEVER ANYONE OF THEM DOES DAMAGE THE OFFENDER IS [HAB] LIABLE. 'The offender is HAB!' — 'The offender is HAYYAB'[6] should be the phrase? — Rab Judah, on behalf of Rab, said: This Tanna [of the Mishnaic text] was a Jerusalemite who employed an easier form.[7]

TO INDEMNIFY WITH THE BEST OF HIS ESTATE. Our Rabbis taught: Of the best of his field and of the best of his vineyard shall he make restitution[8] refers to the field of the plaintiff and to the vineyard of the plaintiff, this is the view of R. Ishmael. R. Akiba says: Scripture only intended that damages should be collected out of the best,[9] and this applies even more so to sacred property.[10]

Would R. Ishmael maintain that the defendant, whether damaging the best or worst, is to pay for the best? — R. Idi b. Abin said: This is so where he damaged one of several furrows and it could not be ascertained whether the furrow he damaged was the worst or the best,in which case he must pay for the best. Raba, however, [demurred] saying: Since where we do know that he damaged the worst, he would only have to pay for the worst, now that we do not know whether the furrow damaged was the best or the worst, why pay for the best? It is the plaintiff who has the onus of proving his case by evidence. R. Aha b. Jacob therefore explained: We are dealing here with a case where the best of the plaintiff's estate equals in quality the worst of that of the defendant;[11] and the point at issue is [as follows]: R. Ishmael maintains that the qualities are estimated in relation to those of the plaintiff's estate;[12] but R. Akiba is of the opinion that it is the qualities of the defendant's possessions that have to be considered.[13]

What is the reason underlying R. Ishmael's view? — The term 'Field' occurs both in the latter clause[14] and the earlier clause of the verse;[15] now just as in the earlier clause it refers to the

plaintiff's possessions, so also does it in the latter clause. R. Akiba, however, maintains that [the last clause,] Of the best of his field and of the best of his vineyard shall he make restitution[16] clearly refers to the possessions of the one who has to pay. R. Ishmael [on the other hand,] contends that both the textual analogy[17] of the terms and the plain textual interpretation are complementary to each other. The analogy of the terms is helpful towards establishing the above statement[18] while the plain textual interpretation helps to qualify [the application of the above[18] in] a case where the defendant's estate consists of good and bad qualities, and the plaintiff's estate likewise comprises good quality, but the bad of the defendant's estate is not so good as the good quality of the estate of the plaintiff;[19] for in this case the defendant must pay out of the better quality of his estate, as he cannot say to him, 'Come and be paid out of the bad quality' [which is below the quality of the estate of the plaintiff], but he is entitled to the better quality [of the defendant].

'R. Akiba said: Scripture only intended that damages be collected out of the best, and this applies even more so to sacred property.' What is the import of the last clause? It could hardly be suggested that it refers to a case where a private ox gored an ox consecrated [to the Sanctuary], for does not the Divine Law distinctly say, The ox of one's neighbour,[20] excluding thus [any liability for damage done to] consecrated chattel? Again, it could hardly deal with a personal undertaking by one to pay a maneh to the Treasury of the Temple, thus authorising the treasurer to collect from the best; for surely he should not be in a better position than a private creditor

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(1) Which it is similarly lawful to keep, but which when doing damage creates nevertheless a liability to pay.

(2) Even in the cases referred to by R. Adda b. Ahabah.

(3) B.M. 117b.

(4) Infra 28b.

(5) Even in the case of the wall and the tree.

(6) A slight variation in the Hebrew text: a disyllable instead of a monosyllable.

(7) Preferred a contracted form.

(8) Ex. XXII, 4.

(9) Of the defendant's estate.

(10) I.e., property dedicated to the purposes of the sanctuary.

(11) The amount of damages, however, would never be more than could be proved to have been actually sustained.

(12) I.e., the quality of the field paid by the defendant as damages need not exceed the best quality of the plaintiff's estate. Hence, in the case in hand, the worst of the defendant's will suffice.

(13) The quality of the payment must therefore always he the best of the defendant's estate,

(14) I.e., of the best of his field . . . Ex, XXII,4.

(15) If a man shall cause a field or a vineyard to be eaten, ibid.

(16) Ex. XXII,4.

(17) The (Gezerah Shawah, v. Glos.

(18) 'That the qualities are estimated in relation to those of the plaintiff's estate.'

(19) The bad quality could not thus be tendered.

(20) Ex. XXI, 35.

Talmud - Mas. Baba Kama 7a

who can collect nothing better than the medium quality.[1] If, however, you hold that R. Akiba authorises the payment of all loans out of the best, [the treasurer of the Temple could still hardly avail himself of this privilege as] the analogy between these two kinds of liability could be upset as follows: A private creditor is at an advantage in that for damages he will surely be paid out of the best, but is not the Temple Treasury at a very great disadvantage in this respect?[2] — It may still be maintained that it applies to the case where a private ox gored a consecrated ox, and in answer to the difficulty raised by you — that the Divine Law definitely says The ox of one's neighbour, thus exempting for damage done to consecrated property — it may be suggested that R. Akiba shares the

view of R. Simeon b. Menasya as taught:[3] R. Simeon b. Menasya says: In the case of a consecrated ox goring a private one, there is total exemption; but for a private ox, whether Tam or Mu'ad, goring a consecrated ox, full damages must be paid.[4] If this is R. Akiba's contention, whence could it be proved that the point at issue between R. Ishmael and R. Akiba is as to the best of the plaintiff's equalling the worst of the defendant's? Why not say that on this point they are both of opinion that the qualities are estimated in relation to the plaintiff's possessions,[5] whereas the disagreement between them is on the point at issue between R. Simeon b. Menasya and the Rabbis [i.e., the majority against him], R. Akiba holding the view of R. Simeon b. Menasya, and R. Ishmael that of the Rabbis? — If so, what would be the purport of the first clause of R. Akiba, 'Scripture only intended that damages be collected out of the best'?[6] Again, would not then even the last clause 'And this even more so applies to sacred property' be rather illogically phrased?[7] Furthermore, R. Ashi said: It was explicitly taught: Of the best of his field and of the best of his vineyard shall he make restitution[8] refers to the field of the plaintiff and to the vineyard of the plaintiff: this is the view of R. Ishmael. R. Akiba [on the other hand] says: The best of the defendant's field and the best of the defendant's vineyard.

Abaye pointed out to Raba the following contradiction: Scripture records, Out of the best of his field and out of the best of his vineyard shall he make restitution[8] [thus indicating that payment must be made] only out of the best and not out of anything else; whereas it is taught: He should return,[9] includes payment in kind,[10] even with bran?[11] — There is no contradiction: the latter applies when the payment is made willingly, while the former refers to payments enforced [by law]. 'Ulla the son of R. Elai, thereupon said: This distinction is evident even from the Scriptural term, He shall make restitution,[8] meaning, even against his will. Abaye, on the other hand, said to him: Is it written yeshullam[12] ['Restitution shall be made']? What is written is yeshallem[13] ['He shall make restitution'], which could mean of his own free will! — But said Abaye: [The contradiction can be solved] as the Master[14] [did] in the case taught: An owner of houses, fields and vineyards[15] who cannot find a purchaser [is considered needy and] may be given the tithe for the poor[16] up to half the value of his estate.[17] Now the Master discussed the circumstances under which this permission could apply: If property in general, and his included, dropped in value, why not grant him even the value of more [than the half of his estate's value], since the depreciation is general? If, on the other hand, property in general appreciated, but his, on account of his going about looking here and there for ready money, fell in price,

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(1) Git. V, 1.

(2) On account of the absolute immunity, as stated, for damage done to Temple property.

(3) Infra p. 212.

(4) R. Akiba thus maintains that the Temple Treasury will, for any damage sustained, be reimbursed out of the best of the defendant's estate.

(5) And where the plaintiff's best equals the defendant's worst, the latter will perhaps suffice according to all opinions.

(6) Which indicates that the interpretation of the Scriptural verse (Ex. XXII, 4) is the point at issue.

(7) As according to the view requiring full payment in all cases, the quality of the payment for damage done to sacred property may he higher than that paid for damage done to ordinary property, and in fact nothing less than the very best of the defendant's estate would suffice.

(8) Ex. XXII, 4.

(9) Ex. XXI, 34.

(10) Otherwise the Scriptural text would be superfluous, as payment in specie is evident in an earlier clause.

(11) Infra 9a.

(12) ישלם

(13) ישלם~

(14) Rabbah (Rashi).

(15) The value of which amounted to 200 zuz.

(16) Cf. Deut. XIV, 28-29; this tithe is distributed among those who possess less than two hundred zuz; Pe'ah VIII, 8.

(17) I.e., 100 zuz to enable him to sell his property for half its value which, it is assumed, he can at any time realise.

Talmud - Mas. Baba Kama 7b

why give him anything at all?[1] And the Master thereupon said: No; the above law is applicable to cases where in the month of Nisan[2] property has a higher value, whereas in the month of Tishri[3] it has a lower value. People in general wait until Nisan and then sell, whereas this particular proprietor, being in great need of ready money, finds himself compelled to sell in Tishri at the existing lower price; he is therefore granted half because it is in the nature of property to drop in value up to a half, but it is not in its nature to drop more than that. Now a similar case may also be made out with reference to payment for damage which must be out of the best. If the plaintiff, however, says: 'Give me medium quality but a larger quantity', the defendant is entitled to reply: 'It is only when you take the best quality which is due to you by law that you may calculate on the present price; failing that, whatever you take you will have to calculate according to the higher price anticipated.'[4] But R. Aha b. Jacob demurred: If so, you have weakened the right of plaintiffs for damages in respect of inferior quality. When the Divine Law states out of the best,[5] how can you maintain that inferior qualities are excluded?[6] R — Aha b. Jacob therefore said: If any analogy could he drawn,[7] it may be made in the case of a creditor. A creditor is paid by law out of medium quality; if, however, he says: 'Give me worse quality but greater quantity,' the debtor is entitled to say, 'It is only when you take that quality which is due to you by law that you may calculate on the present price, failing that, whatever you take you will have to calculate according to the higher price anticipated.' R. Aha, son of R. Ika, demurred: If so, you will close the door in the face of prospective borrowers. The creditor will rightly contend, 'Were my money with me I would get property according to the present low price; now that my money is with you, must I calculate according to the anticipated higher price?' — R. Aha, son of R. Ika, therefore said: If any analogy could be drawn,[7] it is only with the case of a Kethubah[8] [marriage settlement][9] which, according to the law, is collected out of the worst quality. But if the woman says to the husband: 'Give me better quality though smaller quantity,' he may rejoin: 'It is only when you take the quality assigned to you by law that you may calculate in accordance with the present low price; failing that, you must calculate in accordance with the anticipated higher price.,

But be it as it is, does the original difficulty[10] still not hold good? — Said Raba: Whatever article is being tendered has to be given out of the best [of that object].[11] But is it not written: 'The best of his field'?[12] — But when R. Papa and R. Huna the son of R. Joshua had arrived from the house of study[13] they explained it thus: All kinds of articles are considered 'best', for if they were not to be sold here they would be sold in another town;[14] it is only in the case of land which is excepted therefrom that the payment has to be made out of the best, so that intending purchasers jump at it.

R. Samuel b. Abba of Akronia[15] asked of R. Abba: When the calculation[16] is made, is it based on his own [the defendant's] property or upon that of the general public? This problem has no application to R. Ishmael's view that the calculation is based upon the quality of the plaintiff's property;[17] it can apply only to R. Akiba's view[17] which takes the defendant's property into account.[18] What would, according to him, be the ruling? Does the Divine Law in saying, 'the best of his field' intend only to exclude the quality of the plaintiff's property from being taken into account, or does it intend to exclude even the quality of the property of the general public? — He [R. Abba] said to him:[19] The Divine Law states, 'the best of his field' how then can you maintain that the calculation is based on the property of the general public?

He[20] raised an objection: [It is taught,] If the defendant's estate consists only of the best, creditors of all descriptions are paid out of the best; if it is of medium quality, they are all paid out of medium quality; if it is of the worst quality, they are all paid out of the worst quality. [It is only] when the defendant's possessions consist of both the best, the medium, and the worst [that] creditors for

damages are paid out of the best, creditors for loans out of the medium and creditors for marriage contracts out of the worst. When [however] the estate consists only of the best and of the medium qualities, creditors for damages are paid out of the best while creditors for loans and for marriage contracts will be paid out of the medium quality. [Again] if the estate consists only of the medium and the worst qualities, creditors for either damages or loans are paid out of the medium quality whereas those for marriage contracts will be paid out of the worst quality.

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(1) Since, in reality, his property is worth 200 zuz.

(2) It being the beginning of Spring and the best season for transactions in property, both for agricultural and building purposes.

(3) I.e., about October, being the end of the season.

(4) The scriptural verse, 'He shall return', introducing payment in kind, would thus authorise the calculation on the higher price anticipated whenever the plaintiff prefers a quality different from that assigned to him by law.

(5) Ex. XXII, 4.

(6) From the option of the plaintiff.

(7) To the case made out by the Master regarding the Tithe of the Poor referred to above.

(8) V. Glos.

(9) Git. V, 1.

(10) Raised by Abaye supra p. 24.

(11) I.e., when bran is tendered it is the best of it which has to he given.

(12) Confining it thus to land, for if otherwise why altogether insert 'of his field'?

(13) בי רב. V. Sanh. (Sonc. ed p. 387, n. 7.

(14) And could therefore be tendered.

(15) [Or Hagronia, a town near Nehardea, v. Obermeyer, J. Die Landschaft Babylonian, p. 265.]

(16) Of the best, medium and worst qualities, out of which to pay creditors for damages, loans and marriage-contracts respectively.

(17) Cf. supra p. 22.

(18) I.e., his estate is divided into three categories; best, medium and worst, out of which the payments will respectively be made.

(19) I.e., to R. Samuel, the questioner.

(20) I.e., R. Samuel.

Talmud - Mas. Baba Kama 8a

If, however, the estate consists only of the best and of the worst qualities, creditors for damages are paid out of the best whereas those for loans and marriage contracts are paid out of the worst quality. Now[1] the intermediate clause states that if the estate consists only of the medium and the worst qualities, creditors for either damages or loans are paid out of the medium quality whereas marriage contracts will be paid out of the worst quality. If, therefore, you still maintain that the calculation is based only upon the qualities of the defendant's estate, is not the medium [when there is no better with him] his best? Why then should not the creditors for loans be thrown back on the worst quality? — This [intermediate clause] deals with a case where the defendant originally possessed[2] property of a better quality but has meanwhile disposed of it. And R. Hisda likewise explained this [intermediate clause] to deal with a case where the defendant originally possessed[2] property of a better quality but has meanwhile disposed of it. This explanation stands to reason, for it is taught elsewhere: If the estate consisted of the medium and the worst qualities, creditors for damages are paid out of the medium quality whereas those for loans and marriage contracts will be paid out of the worst quality. Now these [two Baraithas] do not contradict each other, unless we accept [the explanation that] the one deals with a case where the defendant originally owned property of a better quality but which he has meanwhile disposed of, while the other states the law for a case where he did not have[3] property of a quality better than the medium in his possession. It may, however, on the other hand be suggested that both [Baraithas] state the law when a better quality was not disposed of[4] and there is

yet no contradiction, as the second [Baraitha] presents a case where the defendant's medium quality is as good as the best quality of the general public,[5] whereas in the first [Baraitha] the medium quality was not so good as the best of the public.[6] It may again be suggested that both [Baraithas] present a case where the defendant's medium quality was not better than the medium quality of the general public and the point at issue is this: the second [Baraitha] bases the calculation upon the qualities of the defendant's estate,[7] but the first bases it upon those of the general public.[8]

Rabina said: The point at issue is the view expressed by 'Ulla.[9] For 'Ulla said: Creditors for loans may, according to Pentateuchal Law, be paid out of the worst, as it is said, Thou shalt stand without, and the man to whom thou dost lend shall bring forth the pledge without unto thee.[10] Now it is certainly in the nature of man [debtor] to bring out the worst of his chattels. Why then is it laid down that creditors for loans are paid out of the medium quality?[11] This is a Rabbinic enactment made in order that prospective borrowers should not find the door of their benefactors locked before them. Now this enactment referred to by 'Ulla is accepted by the first [Baraitha] whereas the second disapproves of this enactment.[12]

Our Rabbis taught: If a defendant[13] disposed of all his land[14] to one or to three persons at one and the same time, they all have stepped into the place of the original owner.[15] [If, however, the three sales took place] one after another, creditors of all descriptions will be paid out of the [property purchased] last;[16] if this property does not cover [the liability], the last but one purchased estate is resorted to [for the balance]; if this estate again does not meet [the whole obligation], the very first purchased estate is resorted to [for the outstanding balance].

'If the defendant disposed of all his land to one' — under what circumstances [was it disposed of]? It could hardly be suggested [that it was effected] by one and the same deed, for if in the case of three persons whose purchases may have been after one another,[17] you state that, 'They all have stepped into the place of the original owner,' what need is there to mention one person purchasing all the estate by one and the same deed? It therefore seems pretty certain [that the estate disposed of to one person was effected by] deeds of different dates. But [then] why such a distinction?[18] Just as in the case of three purchasers [in succession] each can [in the first instance] refer any creditor [to the very last purchased property], saying, '[When I bought my estate] I was careful to leave [with the defendant] plenty for you to be paid out of,'[19] why should not also one purchaser [by deeds of different dates] be entitled to throw the burden of payment on to the very last purchased property, saying, '[When I acquired title to the former purchases] I was very careful to leave for you plenty to be paid out of'? — We are dealing here with a case where the property purchased last was of the best quality;[20] also R. Shesheth stated that [this law applies] when the property purchased last was of the best quality. If this be the case, why [on the other hand] should not creditors of all kinds come and be paid out of the best quality [as this was the property purchased last]? — Because the defendant may say to the creditors: 'If you acquiesce and agree to be paid out of the qualities respectively allotted to you by law, you may be paid accordingly, otherwise I will transfer the deed of the worst property back to the original owner — in which case you will all be paid out of the worst.'[21] If so,

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(1) Here begins R. Samuel's argument.

(2) I.e., at the time when the loan took place, in which case the creditors then obtained a claim on the medium quality by the process of law.

(3) At the time when the loan took place, in which case the medium (in the absence of a better quality) was relatively the best, and therefore not available to creditors for loans.

(4) But was either retained, as is the case in the second Baraitha, or on the other hand not owned at all at the time of the loan as is the case in the first Baraitha.

(5) In such a case it is considered the best quality to all intents and purposes, as the calculation is based upon the general standard of quality.

(6) It is thus termed only medium and creditors for loans have access to it.

(7) Hence in the absence of a better quality in his own estate, that property which is termed medium in comparison to the general standard is the best in the eye of the law.
(8) According to which it is but medium.
(9) Git. 50a.
(10) Deut XXIV, 11.
(11) Git. V, 1.
(12) Maintaining that creditors for loans will always he paid out the worst quality.
(13) I.e., a debtor for damages, loans and marriage-settlements.
(14) Consisting of best, medium and worst qualities.
(15) So that creditors for damages, for loans and for marriage-settlements will he paid according to their respective rights.
(16) Whether it be best, medium or worst.
(17) Though on one and the same day; cf, Keth. 94a.
(18) I.e., why should the legal position of one purchaser be worse than that of three?
(19) As, according to a Mishnaic enactment (Git. V, 1), 'Property disposed of by a debtor could not he resorted to by his creditors so long as there are with him available possessions undisposed of.'
(20) In which case it is not in the interest of the purchaser that the last purchase should he available to any one of the creditors.
(21) At the hands of the debtor, according to the Mishnaic enactment, Git. V, 1.

Talmud - Mas. Baba Kama 8b

why should the same not be said regarding creditors for damages?[1] It must therefore he surmised that we deal with [a case where the vendor has meanwhile died, and, as his] heirs are not personally liable to pay,[2] the original liability [which accompanied the purchased properties] must always remain upon the purchaser;[3] who could consequently no longer [threaten the creditors and] say this: ['If you acquiesce . . .'?][4] — But the reason the creditors cannot be paid out of the best is that the vendee may [repudiate their demand and] say to them: 'On what account have the Rabbis enacted that "property disposed of by a debtor can not be attached by his creditors so long as there are available possessions still not disposed of"[5] if not for the sake of protecting my interests? In the present instance I have no interest in availing myself of this enactment.' Exactly as Raba, for Raba elsewhere said: Whoever asserts, 'I have no desire to avail myself of a Rabbinical enactment' such as this is listened to.[6] To what does 'such as this' refer? — To R. Huna, for R. Huna said: A woman is entitled to say to her husband, 'I don't expect any maintenance from you[7] and I do not want to work for you.'[8]

It is quite certain that if the vendee[9] has sold the medium and worst qualities and retained the best, creditors of all descriptions may come along and collect out of the best quality. For this property was acquired by him last; and, since the medium and worst qualities are no more in his possession, he is not in a position to say to the creditors: 'Take payment out of the medium and worst properties, as I have no interest in availing myself of the Rabbinic enactment.'[10] But what is the law when the vendee disposed of the best quality and retained the medium and the worst? — Abaye at first was inclined to say: Creditors of all descriptions are entitled to come and collect out of the best.[11] But Raba said to him.[12] Does not a vendee selling [property] to a sub-vendee assign to him all the rights [connected] therewith] that may accrue to him?[13] Hence just as when the creditors come to claim from the vendee, he is entitled to pay them out of the medium and the worst [respectively], irrespective of the fact that when the medium and the worst qualities were purchased by him, the best property still remained free with the original vendor, and in spite of the enactment that properties disposed of cannot be distrained on [at the hands of the vendee] so long as there is available [with the debtor] property undisposed of,[14] the reason of the exception being that the vendee is entitled to say that he has no interest in availing himself of this enactment, so is the subvendee similarly entitled to say to the creditors: 'Take payment out of the medium and the worst.'[15] For the sub-vendee

entered into the sale only upon the understanding that any right that his vendor may possess in connection with the purchase should also be assigned to him.

Raba said:[16] If Reuben disposed of all his lands to Simeon who in his turn sold one of the fields to Levi, Reuben's creditor may come and collect out of the land which is in the possession either of Simeon or Levi. This law applies only when Levi bought medium quality; but if he purchased either the best or the worst the law is otherwise, as Levi may lawfully contend: 'I have purposely been careful to buy the best or the worst, that is, property which is not available for you.'[17] Again, even when he bought medium quality the creditor will not have this option unless Levi did not leave [with Simeon] medium quality of a similar nature,in which case he is unable to plead, 'l have left for you ample land with Simeon;' but if Levi did leave with Simeon medium quality of a similar nature the creditor is not entitled to distrain on Levi who may lawfully contend, 'I have left for you ample land [with Simeon] to satisfy your claim from it.

Abaye said:[18] If Reuben had disposed of a field to Simeon with a warranty [of indemnity],[19] and an alleged creditor of Reuben came to distrain on it from Simeon, Reuben is entitled by law to come forward and litigate with the creditor, nor can the latter say to him: 'You [Reuben] are no party to me;'[20] for Reuben will surely say to him: 'If you will deprive Simeon of the field purchased by him from me, he will turn on me.'[21] There are some who say: Even if there were no warranty there the same law applies, as Reuben may say to the alleged creditor: 'I don't want Simeon to have any grievance against me.'

And Abaye further said:[22] If Reuben sold a field to Simeon without a warranty [for indemnity]

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(1) I.e., they also should thus not he paid out of the best; like creditors for loans they would still he paid out of the medium quality, as the worst quality they could never lose.

(2) I.e., when no land was left in the inherited estate.

(3) For even by transferring the worst quality to the heirs he would not escape any liability affecting him.

(4) Since the liability upon him will thereby not be affected, why then should they, in such circumstances, not resort to the very best property purchased?

(5) Git. V, 1.

(6) Keth. 83a.

(7) Maintenance is a Rabbinical enactment for married women in exchange for their domestic work; cf. Keth. 47b.

(8) Keth. 58b.

(9) Who at successive sales purchased the whole estate of a debtor, and the last purchase was property of the best quality.

(10) As supra p. 31.

(11) At the hands of the sub-vendee, since nothing else of the same estate is with him to be offered to the creditors

(12) Cf. 'Ar. 31b.

(13) I.e., the vendee.

(14) Git. V, 1.

(15) At the hands of the vendee.

(16) Cf. Keth. 92b.

(17) Cf. supra p. 29.

(18) Cf. Keth. 92b and B.M. 14a.

(19) In case it is distrained on by the vendor's creditors.

(20) For he who has no personal interest in a litigation can be no pleader in it; cf. infra 70a.

(21) To be indemnified for the warranty.

(22) Keth. 92b-93a.

and there appeared claimants [questioning the vendor's title], so long as Simeon had not yet taken possession of it he might withdraw; but after he had taken possession of it he could no longer withdraw. What is the reason for that? — Because the vendor may say to him: 'You have agreed to accept a bag tied up with knots.'[1] From what moment [in this case] is possession considered to be taken? — From the moment he sets his foot upon the landmarks [of the purchased field]. This applies only to a purchase without a warranty. But if there is a warranty the law is otherwise. Some, however, say: Even if there is a warranty the same law applies, as the vendor may still say to him: 'Produce the distress warrant[2] against you and I will indemnify you.'

R. Huna said: [The payment for damages is] either with money or with the best of the estate.[3] R. Nahman objected to R. Huna [from the Baraitha]: He should return[4] shows that payment in kind is included, even with bran?[5] — This deals with a case where nothing else is available. If nothing else is available, is it not obvious? — You might have thought that we tell him to go and take the trouble to sell [the bran] and tender the plaintiff ready money. It is therefore made known to us [that this is not the case.].

R. Assi said: Money is on a par with land. What is the legal bearing of this remark? If to tell us what is best, is this not practically what R. Huna said?[6] It may, however, refer to two heirs[7] who divided an inheritance, one taking the land and the other the money. If then a creditor[8] came and distrained on the land, the aggrieved heir could come forward and share the money with his brother. But is this not self-evident? Is the one a son [to the deceased] and the other one not a son? There are some who argue [quite the reverse]: The one brother may say to the other, 'I have taken the money on the understanding that if it be stolen I should not be reimbursed by you, and you also took the land on the understanding that if it be distrained on there should be no restitution to you out of anything belonging to me.' It[9] will therefore refer to two heirs[7] who divided lands among themselves after which a creditor[8] came along and distrained on the portion of one of them.[10] But has not R. Assi already once enunciated this law? For it was stated;[11] [In the case of] heirs who divided [the land of the inheritance among themselves], if a creditor[8] came along and distrained on the portion of one of them, Rab said: The original apportionment becomes null and void. Samuel said: The portion is waived; but R. Assi said: The portion is refunded by a quarter in land or by a quarter in money.[12] Rab, who said that the partition becomes null and void, maintains that heirs, even after having shared, remain[13] co-heirs;[14] Samuel, who said that the portion is waived, maintains that heirs, after having shared, stand to each other in the relationship of vendees, each being in the position of a purchaser without a warranty [of indemnity];[15] R. Assi, who said that the portion is refunded by a quarter in land or by a quarter in money, is in doubt as to whether heirs, after having shared, still remain co-heirs[16] or stand in the relationship of vendees;[15] and on account of that [doubt] there must be refunded a quarter in land or a quarter in money.[17] What then is the meaning of 'Money is on a par with land'?[18] — In respect of being counted as 'best'. But if so, is not this practically what R. Huna said? — Read 'And so also said R. Assi . . .'

R. Zera said on behalf of R. Huna: For [the performance of] a commandment one should go up to a third. A third of what?

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(1) I.e., you bought it at your own risk; the sale is thus the passing not of ownership but of possession.

(2) **טירפא**, document conferring the right of seizure of a debtor's property sold after the loan (Jast.).

(3) R. Huna refers either to the last clause of the Mishnah on p. 1 or to the problem raised by Abaye on p. 24.

(4) Ex. XXI, 34.

(5) Cf. supra p. 24.

(6) The text should thus run, 'And so also said R. Assi . . .'

(7) Lit. 'brothers'.

(8) Of the deceased.

(9) I.e., R. Assi's statement.

(10) [In which case R. Assi stated that the other can offer in refundment either money or land.]
(11) B.B. 107a.
(12) Cf. Bek. 48a.
(13) In this respect.
(14) So that all of them have to share the burden of the debt and if the portion of the one was distrained on, the portion of the other constitutes the whole inheritance which has equally to he distributed accordingly.
(15) Who cannot thus be reimbursed for the distress effected upon the portion assigned to any one of them.
(16) V. p. 34. n. 11.
(17) On the principle that in such and similar matters the two parties should equally have the benefit of the doubt (Rashi, according to one interpretation).
(18) Stated above by R. Assi.

Talmud - Mas. Baba Kama 9b

You could hardly suggest 'a third of one's possessions,' for if so when one chanced to have three commandments [to perform at one and the same time] would one have to give up the whole of one's possessions? — R. Zera therefore said: For [performing a commandment in] an exemplary manner one should go up to a third of [the ordinary expense involved in] the observance thereof.

R. Ashi queried: Is it a third from within [the ordinary expense][1] or is it a third from the aggregate amount?[2] This stands undecided.

In the West[3] they said in the name of R. Zera: Up to a third, a man must perform it out of his own,[4] but from a third onwards he should perform it in accordance with the special portion the Holy One, blessed be He, has bestowed upon him.[5] MISHNAH. WHENEVER I AM UNDER AN OBLIGATION OF CONTROLLING [ANYTHING IN MY POSSESSION], I AM CONSIDERED TO HAVE PERPETRATED ANY DAMAGE THAT MAY RESULT.[6] WHEN I AM TO BLAME FOR A PART OF THE DAMAGE I AM LIABLE TO COMPENSATE FOR THE DAMAGE AS IF I HAD PERPETRATED THE WHOLE OF THE DAMAGE.

THE [DAMAGED] PROPERTY MUST BE OF A KIND TO WHICH THE LAW OF SACRILEGE[7] HAS NO APPLICATION. THE [DAMAGED] PROPERTY SHOULD BELONG TO PERSONS WHO ARE UNDER [THE JURISDICTION OF] THE LAW.[8] THE PROPERTY SHOULD BE OWNED. THE PLACE [OF THE DAMAGE] IS IMMATERIAL, WITH THE EXCEPTION OF PREMISES OWNED BY THE DEFENDANT OR PREMISES OWNED [JOINTLY] BY THE PLAINTIFF AND THE DEFENDANT. WHENEVER DAMAGE HAS OCCURRED, THE OFFENDER IS LIABLE TO INDEMNIFY WITH THE BEST OF HIS ESTATE.

GEMARA. Our Rabbis taught: 'WHENEVER I AM UNDER AN OBLIGATION OF CONTROLLING [ANYTHING IN MY POSSESSION], I AM CONSIDERED TO HAVE PERPETRATED ANY DAMAGE [THAT MAY RESULT]. How is that? When an ox or pit which was left with a deaf-mute, an insane person or a minor, does damage, the owner is liable to indemnify. This, however, is not so with a fire.' With what kind of case are we here dealing? If you say that the ox was chained and the pit covered, which corresponds in the case of fire to a hot coal, what difference is there between the one and the other? If on the other hand the ox was loose and the pit uncovered which corresponds in the case of fire to a flame, the statement 'This, however, is not so with a fire,' would here indicate exemption, but surely Resh Lakish said in the name of Hezekiah: They[9] have not laid down the law of exemption unless there was handed over to him[10] a coal which he has blown up, but in the case of a flame there will be full liability, the reason being that the danger is clear![11] — Still, the ox may have been chained and the pit covered and the fire likewise in a coal, yet your contention, 'Why should we make a difference between the one and the other?'

could be answered thus: An ox is in the habit of loosening itself; so also a pit is in the nature of getting uncovered; but a hot coal, the longer you leave it alone, the more it will get cooler and cooler. According to R. Johanan, however, who said[11] that even when there has been handed over to him[10] a flame the law of exemption applies, the ox here would likewise be loose and the pit uncovered; but why should we make a difference between the one and the other? — There, in the case of the fire, it is the handling of the deaf-mute that causes the damage, whereas here, in the case of the ox and the pit, it is not the handling of the deaf-mute that causes the damage.

Our Rabbis taught: There is an excess in [the liability for] Ox over [that for] Pit, and there is [on the other hand] an excess in [the liability for] Pit over [that for] Ox. The excess in [the liability for] Ox over [that for] Pit is that Ox involves payment of kofer[12] and the liability of thirty [shekels] for the killing of a slave;[13] when judgment [for manslaughter] is entered [against Ox] it becomes vitiated for any use,[14] and it is in its habit to move about and do damage, whereas all this is not so in the case of Pit. The excess in [the liability for] Pit over [that for] Ox is that Pit is from its very inception a source of injury and is Mu'ad ab initio which is not so in the case of Ox.[15]

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(1) I.e., 33-1/3 per cent. of the cost of ordinary performance, the cost of the ordinary performance and that of the exemplary performance would thus stand to each other as 3 to 4.

(2) I.e., 50 per cent. of the cost of the ordinary performance; the cost of the ordinary performance and that of the exemplary performance would thus stand to each other as 2 to 3.

(3) Palestine.

(4) I.e., whether he possesses much or little.

(5) Cf. Shittah Mekubezeth and Nimmuke Joseph a.l. According to Rashi and Tosaf. a.l.: 'The cost up to a third remains man's loss in this world (as the reward for that will he paid only in the world to come); but the cost from a third onwards (if any) will he refunded by the Holy One, blessed be He, in man's lifetime.'

(6) From neglecting the obligation to control.

(7) Of consecrated things. cf. Lev. V, 15-16.

(8) Lit., 'sons of the Covenant', excluding heathens who do not respect the covenant of the law; v. infra p. 211, n. 6.

(9) I.e., the Rabbis of the Mishnah, v. infra 59b.

(10) I.e., to a deaf-mute, an insane person or a minor.

(11) Infra 59b.

(12) Cf. Ex. XXI, 29-30; v. Glos.

(13) Ibid. XXI, 32.

(14) V. infra p. 255.

(15) Cf. supra p. 3, nn. 6-7.

Talmud - Mas. Baba Kama 10a

There is an excess in [the liability for] Ox over [that for] Fire and there is [on the other hand] an excess in [the liability for] Fire over [that for] Ox. The excess in [the liability for] Ox over [that for] Fire is that Ox involves payment of kofer and the liability of thirty [shekels] for the killing of a slave; when judgment [for manslaughter] is entered against Ox it becomes vitiated for any use;[1] if the owner handed it over to the care of a deaf-mute, an insane person or a minor he is still responsible [for any damage that may result];[2] whereas all this is not so in the case of Fire. The excess in [the liability for] Fire over [that for] Ox is that Fire is Mu'ad ab initio which is not so in the case of Ox.

There is an excess in [the liability for] Fire over [that for] Pit, and there is [on the other hand] an excess in [the liability for] Pit over [that for] Fire. The excess in [the liability for] Pit over [that for] Fire is that Pit is from its very inception a source of injury; if its owner handed it over to the care of a deaf-mute, an insane person or a minor, he is still responsible [for any damage that may result],[2] whereas all this is not so in the case of Fire. The excess in [the liability for] Fire over [that for] Pit is that the nature of Fire is to spread and do damage and it is apt to consume both things fit for it and

things unfit for it, whereas all this is not so in the case of Pit.

Why not include in the excess of [liability for] Ox over [that for] Pit [the fact] that Ox is [also] liable for damage done to inanimate objects[3] which is not so in the case of Pit?[4] — The above [Baraitha] is in accordance with R. Judah who enjoins payment for damage to inanimate objects [also] in the case of Pit.[5] If it is in accordance with R. Judah, look at the concluding clause, 'The excess in [the liability for] Fire over [that for] Pit is that the nature of Fire is to spread and do damage, and it is apt to consume both things fit for it and things unfit for it; whereas all this is not so in the case of Pit.' 'Things fit for it:' are they not 'of wood'? 'Things unfit for it: are they not 'utensils'?[6] Now 'all this is not so in the case of Pit'. But if the statement is in accordance with R. Judah, did you not say that R. Judah enjoins payment for damage to inanimate objects [also] in the case of Pit? The Baraitha is, therefore, indeed in accordance with the Rabbis, but it mentions [some points] and omits [others].[7] What else does it omit that it omits that [particular] point?[8] — It also omits the law of hidden goods.[9] On the other hand you may also say that the Baraitha can still be reconciled with R. Judah, for 'things unfit for it' do not include utensils,[10] but do include [damage done by fire] lapping his neighbour's ploughed field and grazing his stones.[11]

R. Ashi demurred: Why not include, in the excess of liability for Ox Over [that for] Pit, [the fact] that Ox is [also] liable for damage done to consecrated animals that have become unfit [for the altar],[12] whereas this is not so in the case of Pit?[13] No difficulty arises if you assume that the Baraitha is in accordance with the Rabbis; just as it had omitted that point,[14] it omitted this point too. But if you maintain that the Baraitha is in accordance with R. Judah, what else did it omit that it omits this [one] point?-It omitted [Ox] trampling upon newly broken land.[15] [No! this is no argument,] for as to [Ox] trampling upon newly broken land there is no omission there, for this [is included in that which] has already been stated, 'It is in its habit to move about and do damage.'[16]

WHEN I HAVE PERPETRATED A PART OF THE DAMAGE. Our Rabbis taught: 'When I have perpetrated a part of the damage I become liable for the compensation for the damage as if I had perpetrated the whole of the damage. How is that? If one had dug a Pit nine handbreadths deep and another came along and completed it to a depth of ten handbreadths, the latter person is liable.' Now this ruling is not in accordance with Rabbi; for it was taught:[17] If one had dug a pit nine handbreadths deep and another came along and completed it to a depth of ten handbreadths, the latter person is liable. Rabbi says: The latter person is liable in cases of death,[18] but both of them in cases of injury![19] — R. Papa said: The Mishnaic ruling[20] deals with cases of death and is unanimous.[21] Some read: May we say that the Mishnah is not in accordance with Rabba? — R. Papa thereupon said: It deals with cases of death and is unanimous.

R. Zera demurred: Are there no other instances?[22] Behold there is [the case] where an ox was handed over to the care of five persons and one of them was careless, so that the ox did damage; that one is liable! — But in what circumstances? If without the care of that one, the ox could not be controlled, is it not obvious that it is that one who perpetrated the whole of the damage?[23] If, [on the other hand] even without the care of that one, the ox could be controlled, what, if anything at all, has that one perpetrated?

R. Shesheth, however, demurred: Behold there is [the case] where a man adds a bundle [of dry twigs to an existing fire]! — But in what circumstances?

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(1) V. p. 37, n. 6.

(2) Cf. supra p. 36.

(3) Lit., 'utensils'.

(4) Cf. supra pp. 17 and 18.

(5) V. supra p. 18 and infra 53b.

(6) Metal or earthenware.
(7) Such as the distinction between Ox and Pit with reference to inanimate objects
(8) As a Tanna would not, in enumeration, just stop short at one point.
(9) For damage to which, according to the Rabbis, there is no liability in the case of Fire; cf. supra p. 18 and infra 61b.
(10) V. p. 38, n. 6.
(11) V. supra p. 18.
(12) On account of a blemish, cf, Lev. XXII, 20 and Deut. XV, 21-22; such animals have to be redeemed, in accordance with Lev. XXVII, 11-13 and 27.
(13) Cf. infra 53b.
(14) I.e., with reference to inanimate objects.
(15) Which is impossible in the case of Pit.
(16) And therefore, if the Baraitha were in accordance with R. Judah, the question, 'What else did it omit etc.', would remain unanswered.
(17) Cf. Tosaf, B.K. VI, 3 and infra 51a.
(18) As without the additional handbreadth done by him the pit would have been nine handbreadths deep which could not occasion any fatal accident; cf, supra p. 7.
(19) For even a pit nine handbreadths deep could occasion injuries.
(20) Which declares the latter person 'who perpetrated part of the damage' liable.
(21) I.e., is even in accordance with Rabbi.
(22) To illustrate the perpetration of a part of the damage involving liability for the whole of the damage.
(23) And not a part of it.

Talmud - Mas. Baba Kama 10b

If without his co-operation the fire would not have spread, is it not obvious [that he is totally to blame]? If [on the other hand] even without his co-operation the fire would have spread, what, if anything at all, has he perpetrated?

R. Papa demurred: Behold there is that case which is taught: 'Five persons were sitting upon one bench and did not break it; when, however, there came along one person more and sat upon it, it broke down; the latter is liable' — supposing him, added R. Papa, to have been as stout as Papa b. Abba.[1] But under what circumstances? If without him the bench would not have broken, is it not obvious [that he is totally to blame]? If, on the other hand, without him it would also have broken, what, if anything at all, has he perpetrated? Be this as it may, how can the Baraitha be justified? — It could hold good when, without the newcomer, the bench would have broken after two hours, whereas now it broke in one hour. They[2] therefore can say to him: 'If not for you we would have remained sitting a little while longer and would then have got up.'[3] But why should he not say to them: 'Had you not been [sitting] there, through me the bench would not have broken'?[4] — No; it holds good when he [did not sit at all on the bench but] merely leaned upon them and the bench broke down. Is it not obvious [that he is liable]? — You might have argued '[Damage done by] a man's force is not comparable with [that done directly by] his body.'It is therefore made known to us that [a man is responsible for] his force [just as he] is [for] his body, for whenever his body breaks [anything] his force also participates in the damage.[5]

Are there no other instances? Behold there is that which is taught:[5] When ten persons beat a man with ten sticks, whether simultaneously or successively, so that he died, none of them is guilty of murder. R. Judah b. Bathyra says: If [they hit] successively, the last is liable, for he was the immediate cause of the death![6] — Cases of murder are not dealt with here.[7] You may also say that controversial cases are not dealt with.[7] Are they not? Did not we suggest that the Mishnah is not in accordance with Rabbi?[8] — That the Mishnah is not in accordance with Rabbi but in accordance with the Rabbis, we may suggest;[9] whereas that it is in accordance with R. Judah b. Bathyra, and not in accordance with the Rabbis, we are not inclined to suggest.[9]

I AM LIABLE TO COMPENSATE FOR THE DAMAGE. ‘I become liable for the replacement of the damage’ is not stated but ‘. . . TO COMPENSATE FOR THE DAMAGE’. We have thus learnt here that which the Rabbis taught elsewhere:[10] ‘“To compensate for damage" imports that the owners [plaintiffs] have to retain the carcass as part payment’. What is the authority for this ruling? — R. Ammi said: Scripture states, He that killeth a beast yeshallemennah [shall make it good];[11] do not read yeshallemennah [‘he shall pay for it’], but yashlimennah[12] [‘He shall complete its deficiency’]. R.Kahana infers it from the following: If it be torn in pieces, let him bring compensation up to [‘ad][13] the value of the carcass,’ he shall not make good that which was torn.[14] ‘Up to’ the value of the carcass[15] he must pay, but for the carcass itself he has not to pay. Hezekiah infers it from the following: And the dead shall be his own,[16] which refers to the plaintiff. It has similarly been taught in the school of Hezekiah: And the dead shall be his own,[16] refers to the plaintiff. You say ‘the plaintiff’. Why not the defendant? You may safely assert: ‘This is not the case.’ Why is this not the case? — Abaye said: If you assume that the carcass must remain with the defendant, why did not the Divine law, stating He shall surely pay ox for ox,[17] stop at that? Why write at all And the dead shall be his own?[18] This shows that it refers to the plaintiff.

And all the quotations serve each its specific purpose. For if the Divine Law had laid down [this ruling only in] the verse ‘He that killeth a beast shall make it good,’ the reason of the ruling would have been assigned to the infrequency of the occurrence,[19] whereas in the case of an animal torn in pieces [by wild beasts]’[20] which is [comparatively] of frequent occurrence, the opposite view might have been held;[21] hence special reference is essential.[20] If [on the other hand] this ruling had been made known to us only in the case of an animal torn in pieces.[22] it would have been explained by the fact that the damage there was done by an indirect agency,[23] whereas in the case of a man killing a beast, where the damage was done by a direct agency, the opposite view might have been held. Again, were this ruling intimated in both cases, it would have been explained in the one case on account of its infrequency,[24] and in the other account of the indirect agency,[25] whereas in the damage to which ‘And the dead shall be his own’[26] refers, which is both frequent and direct,[27] an opposite view might have been taken. If [on the other hand] this ruling had been intimated only in the case referred to by ‘And the dead shall be his own, it would have been explained by the fact of the damage having been done only by man's possession,[28] whereas in cases where the damage resulted from man's person[29] an opposite view might have been taken. Hence all quotations are essential.

R.Kahana said to Rab: The reason [for the ruling] is that the Divine Law says ‘And the dead shall be his own’, and but for this I might have thought that the carcass shall remain with the defendant [yet how can this be]? If, when there are with him[30] several carcasses he is entitled to pay him[31] with them, for the Master stated: He shall return,[32] includes payment in kind, even with bran,[33] what question then about the carcass of his own animal? — No, the verse is required only for the law regarding the decrease of the value of the carcass[34]

May we say that the decrease of the value of the carcass is a point at issue between Tannaitic authorities? For it has been taught: If it be torn in pieces, let him bring it for witness:[35]

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(1) Who was very corpulent, cf. B.M. 84a. [According to Zacuto's Sefer ha-Yuhasin, the reference there is not to R. Papa but to Papa b. Abba]

(2) I.e., the five persons that had previously been sitting upon the bench.

(3) Therefore he is to he regarded as having perpetrated the whole, and not merely a part, of the damage.

(4) And why should he alone be liable?

(5) V. infra pp. 79-80.

(6) Sanh. 78a and infra p. 139. [Why then was this ruling of R. Judah not taken as a further illustration of the Mishnaic principle?]

(7) In the Mishnah before us (which presents the law of civil action and not that of murder).
(8) Cf. supra p. 39.
(9) As it is the view of the majority that prevails; Ex. XXIII, 2.
(10) Tosef. B.K. I. 1.
(11) ישלמנה Lev. XXIV, 18.
(12) Changing the vowels of the Hebrew verb; ישלמנה into ישלימנה
(13) Similarly by changing the vowel; the monosyllable עד (witness) is read עד 'up to'.
(14) Ex. XXII, 12.
(15) I.e., the amount required to make up the deficiency.
(16) Ex. XXI, 36.
(17) Ex. XXI, 36.
(18) Ibid; since it is self-evident that the defendant, having paid for the ox, claims the carcass.
(19) For a man to kill a beast with intent to cause damage to his neighbour.
(20) Ex. XXII, 12.
(21) In the interest of the plaintiff.
(22) V. p. 42, n. 11.
(23) I.e., not by the bailee himself but by a wild beast.
(24) I.e., man killing an animal.
(25) I.e., when the animal in charge was torn by beasts.
(26) I.e.,in the case of a goring ox, Ex. XXI, 36.
(27) The ox being his property, makes the owner responsible for the damage as if it were perpetrated by himself,
(28) I.e., by his cattle.
(29) Such as in Lev. XXIV, 18 and Ex. XXII, 12.
(30) I.e.,with the defendant.
(31) I.e., the plaintiff.
(32) EX.XXI, 34.
(33) Cf. supra p. 24.
(34) That is to he sustained by the plaintiff, since it becomes his from the moment of the goring.
(35) Ex.XXII, 12.

Talmud - Mas. Baba Kama 11a

Let him[1] bring witnesses that it had been torn by sheer accident and free himself. Abba Saul says: Let him[2] [in all cases] bring the torn animal[3] to the Court. Now is not the following the point at issue: The latter maintains that a decrease in value of the carcass will be sustained by the plaintiff,[4] whereas the former view takes it to be sustained by the defendant? — No, it is unanimously held that the decrease will be sustained by the plaintiff. Here, however, the trouble of [providing[5] for bringing up] the carcass [from the pit] is the point at issue,[6] as [indeed] taught: Others say, Whence [could it be derived] that it is upon the owner of the pit to bring up the [damaged] ox from his pit? We derive it from the text, 'Money shall he return unto to the owner. And the dead beast'. . .[7] Abaye said to Raba: What does this trouble about the carcass mean? If the value of the carcass in the pit is one zuz,[8] whereas on the banks[9] its value will be four [zuz], is he not taking the trouble [of bringing up the carcass] solely in his own interests? — He [Raba], however, said: No, it applies when in the pit its value is one zuz, and on the banks its value is similarly one zuz. But is such a thing possible? Yes, as the popular adage has it, 'A beam in town costs a zuz and a beam in a field costs a zuz'.

Samuel said: No assessment is made in theft and robbery[10] but in cases of damage;[11] I, however, maintain that the same applies to borrowing,[12] and Abba[13] agrees with me. It was therefore asked: Did he mean to say that 'to borrowing the law of assessment does apply and Abba agrees with me,' Or did he perhaps mean to say that 'to borrowing the law of assessment does not apply and Abba agrees with me'? — Come and hear: A certain person borrowed an axe from his neighbour and broke it. He came before Rab, who said to him, 'Go and pay [the lender] for his sound axe.'[14] Now,

can you not prove hence[15] that [the law of] assessment does not apply [to borrowing]?[16] — On the contrary, for since R. Kahana and R. Assi [interposed and] said to Rab, 'Is this really the law?' and no reply followed, we can conclude that assessment is made. It has been stated: 'Ulla said on behalf of R. Eleazar: Assessment is [also] made in case of theft and robbery; but R. Papi said that no assessment is made [in these cases]. The law is: No assessment is made in theft and robbery, but assessment is made in cases of borrowing, in accordance with R. Kahana and R. Assi.

'Ulla further said on behalf of R. Eleazar: When a placenta comes out [from a woman] partly on one day and partly on the next day, the counting of the days of impurity[17] commences with the first day [of the emergence]. Raba, however, said to him: What is in your mind? To take the stricter course? Is not this a strictness that will lead to lenience, since you will have to declare her pure[18] by reckoning from the first day? Raba therefore said: 'Out of mere apprehension, notice is taken of the first day [to be considered impure], but actual counting commences only with the second day.' What is the new point made known to us? That even a part of an [emerging] placenta contains a fetus. But have we not learnt this elsewhere:[19] 'A placenta coming partly out of an animal[20] renders [the whole of] it unfit for consumption,[21] as that, which is a sign of a fetus in humankind is similarly a sign of a fetus in an animal'? — As to this Mishnaic statement I might still have argued

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(1) I.e.,the paid bailee who is defending himself against the depositor.

(2) V. p 43 n. 15.

(3) [עד :עדודה being an unaugmented passive participle from the root דדע, v. Halpern, B. ZAW, XXX, p. 57.]

(4) I.e., when the deposited animal has been torn not by accident, in which case the paid bailee has to indemnify. The torn animal is thus brought at once to the Court to ascertain its value at the time of the mishap.

(5) I.e , the expenses involved.

(6) Abba Saul maintains that the defendant has to do it, whereas the other view releases him from this.

(7) Ex. XXI, 34; the subject of the last clause is thus joined to the former sentence as a second object.

(8) A coin; V. Glos.

(9) Of the pit.

(10) In which case payment must b e made in full for the original value of the damaged article.

(11) Where the carcass may he returned to the plaintiff.

(12) Treated in Ex. XXII, 13.

(13) [I.e., Rab whose full name was Abba].

(14) B.M. 96b.

(15) When the value of the broken axe vas not taken into account, but full payment for the axe in its original condition was ordered.

(16) Since Rab ordered the borrower to pay in full for the original value of the axe.

(17) Which are seven for a male child and fourteen for a girl; cf. Lev. XII. 2 and 5.

(18) I.e., after the expiration of the 7 or 14 days for a male or female child respectively, when there commence 33 or 66 days of purity for a boy or girl respectively; cf. Lev. ibid. 4-5.

(19) Hul. 68a.

(20) Before the animal was slaughtered.

(21) As it is considered to contain a fetus which when born is subject to the law of slaughtering on its own accord.

that it is quite possible for a part of a placenta to emerge without a fetus, but that owing to a [Rabbinic] decree a part of a placenta is in practice treated like the whole of it;[1] it is therefore made known to us[2] that this is not the case.

'Ulla further said on behalf of R. Eleazar: A first-born son who has been killed within thirty days [of his birth] need not be redeemed.[3] The same has been taught by Rami b. Hama: From the verse, Shalt thou surely redeem[4] one might infer that this would apply even when the firstborn was killed

within thirty days [of his birth]; there is therefore inserted the term 'but'[5] to exclude it.

'Ulla further said on behalf of R. Eleazar: [Title to] large cattle is acquired by 'pulling'.[6] But did we not learn, . . . by 'delivery'?[7] — He[8] follows another Tanna; for it has been taught:[9] The Rabbis say: Both one and the other[10] [are acquired] by 'pulling'. R. Simeon says: Both one and the other by 'lifting up'.

'Ulla further said on behalf of R. Eleazar: In the case of heirs[11] who are about to divide the estate among themselves, whatever is worn by them will [also] be assessed [and taken into account], but that which is worn by their sons and daughters is not assessed [and not taken into account].[12] R. Papa said: There are circumstances when even that which is worn by the heirs themselves is not assessed. This exception applies to the eldest of the heirs,[13] as it is in the interest of them all that his words should be respected.

'Ulla further said on behalf of R. Eleazar: One bailee handing over his charge to another bailee does not incur thereby any liability.[14] This ruling unquestionably applies to an unpaid bailee handing over his charge to a paid bailee in which case there is a definite improvement in the care; but even when a paid bailee hands over his charge to an unpaid bailee where there is definitely a decrease in the care, still he thereby incurs no liability, since he transfers his charge to a responsible person.

Raba, however, said: One bailee handing over his charge to another bailee becomes liable for all consequences. This ruling unquestionably holds good in the case of a paid bailee handing over his charge to an unpaid bailee where there is a definite decrease in the care; but even when an unpaid bailee hands over his charge to a paid bailee, where there is definitely an improvement in the care, still he becomes liable for all consequences, as the depositor may say [to the original bailee]: You would be trusted by me [should occasion demand] an oath [from you], but your substitute would not be trusted by me in the oath [which he may be required to take].[15]

'Ulla further said on behalf of R. Eleazar: The law is that distraint may be made on slaves.[16] Said R. Nahman to 'Ulla: Did R. Eleazar apply this statement even in the case of heirs[17] [of the debtor]? — No, Only to the debtor himself. To the debtor himself? Could not a debt be collected even from the cloak upon his shoulder?[18] — We are dealing here with a case where a slave was mortgaged,[19] as in the case stated by Raba, for Raba said:[20] Where a debtor mortgaged his slave and then sold him [to another person], the creditor may distrain on him [in the hands of the purchaser]. But where an ox was mortgaged and afterwards sold, the creditor cannot distrain on it [in the hands of the purchaser], the reason [for the distinction] being that in the former case the transaction of the mortgage aroused public interest[21] whereas in the latter case no public interest was aroused.[22]

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(1) On account of mere apprehension, lest no distinction will he made between the emergence of the whole of the placenta and a part of it.

(2) In the statement of 'Ulla on behalf of R. Eleazar,

(3) Notwithstanding Num. XVIII, 15-16.

(4) Ibid. 15.

(5) Hebrew 'Ak אך being a particle of limitation.

(6) I.e., by the buyer; v, Glos. s.v. Meshikah.

(7) l.e., by the seller handing over the bit to the buyer; Kid. 25b.

(8) I.e., 'Ulla on behalf of R. Eleazar.

(9) Cf. Kid. 25b and B.B. 86b.

(10) I.e. Large and small cattle.

(11) Lit., 'brothers'.

(12) As it would be a degradation to them to be forced to appear before the court.

(13) In charge of the administration of the affairs of the heirs.

(14) Cf.B.M. 36a.
(15) The original bailee has thus committed a breach of the trust.
(16) Cf. B.B. 128a.
(17) Who inherited the slaves; v. supra p. 31.
(18) Why then speak about slaves?
(19) By the debtor who had meanwhile died.
(20) Infra 33b and B.B. 44b.
(21) So that the purchaser was no doubt aware of it and should consequently not have bought it.
(22) So that the purchaser is not to blame.

Talmud - Mas. Baba Kama 12a

After R. Nahman went out 'Ulla said to the audience: 'The statement made by R. Eleazar refers even to the case of heirs.' R. Nahman said: 'Ulla escaped my criticism'. A case of this kind arose in Nehardea and the judges of Nehardea[1] distrained [on slaves in the hands of heirs]. A further case took place in Pumbeditha and R. Hana b. Bizna distrained [on slaves in the hands of heirs]. But R. Nahman said to them: 'Go and withdraw [your judgments], otherwise I will distrain on your own homes [to reimburse the aggrieved heirs].'[2] Raba, however, said to R. Nahman: 'There is 'Ulla, there is R. Eleazar, there are the judges of Nehardea and there is R. Hana b. Bizna [who are all joining issue with you]; what authorities is the Master following?' — He said to him:[3] 'I know of a Baraitha, for Abimi learned: "A prosbul[4] is effective only when there is realty[5] [belonging to the debtor] but not when he possesses slaves[6] only. Personalty is transferred along with realty[7] but not along with slaves."'[6]

May we not say that this problem is a point at issue between the following Tannaim? [For it was taught:] 'Where slaves and lands are sold, if possession is taken of the slaves no title is thereby acquired to the land, and similarly by taking possession of the lands no title is acquired to the slaves. In the case of lands and chattels, if possession is taken of the lands title is also acquired to the chattels,[7] but by taking possession of the chattels no title is acquired to the lands. In the case of slaves and chattels, if possession is taken of the slaves no title is thereby acquired to the chattels,[8] and similarly by taking possession of the chattels no title is acquired to the slaves. But [elsewhere] it has been taught: 'If possession is taken of the slaves the title is thereby acquired to the chattels.'[9] Now, is not this problem the point at issue: the latter Baraitha[9] maintains that slaves are considered realty [in the eye of the law], whereas the former Baraitha[10] is of the opinion that slaves are considered personalty? — R. Ika the son of R. Ammi, however, said: [Generally speaking] all [authorities] agree that slaves are considered realty. The [latter] Baraitha stating that the transfer [of the chattels] is effective, is certainly in agreement; the [former] Baraitha stating that the transfer [of the chattels] is ineffective, may maintain that the realty we require is such as shall resemble the fortified cities of Judah in being immovable. For we have learnt: 'Property which is not realty may be acquired incidentally with property which is realty[11] through the medium of either [purchase] money, bill of sale or taking possession.' [And it has been asked:][12] What is the authority for this ruling? And Hezekiah thereupon said: Scripture states, And their father gave them great gifts of silver and of gold and of precious things with fortified cities in Judah.[13] [Alternatively] there are some who report: R. Ika the son of R. Ammi said: [Generally speaking] all [authorities] agree that slaves are considered personalty. The [former] Baraitha stating that the transfer [of the chattels] is ineffective is certainly in agreement; the [latter] Baraitha stating that the transfer of the chattels is effective deals with the case when the chattels [sold] were worn by the slave.[14] But even if they were worn by him, what does it matter? He is but property[15] in motion, and property in motion cannot be the means of conveying anything it carries. Moreover, even if you argue that the slave was then stationary, did not Raba say that whatsoever cannot be the means of conveying while in motion cannot be the means of conveying even while in the state of standing or sitting?[16] — This law applies to the case where the slave was put in stocks. But behold has it not been taught: 'If

possession is taken of the land, title is thereby acquired also to the slaves'?[17] — There the slaves were gathered on the land.[18] This implies that the Baraitha which stated that the transfer of the slaves is ineffective,[19] deals with a case where the slaves were not gathered on the land. That is all very well according to the version that R. Ika the son of R. Ammi said that slaves are considered personalty; there is thus the stipulation that if they were gathered on the land, the transfer is effective, otherwise ineffective. But according to the version which reads that slaves are considered realty, why the stipulation that the slaves be gathered on the land?

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(1) Generally referring to R. Adda b. Minyomi; Sanh. 17b.

(2) As he considered them to have acted against established law, and so ultra vires; cf infra pp. 584ff. and Sanh. 33a.

(3) I.e., R. Nahman to Raba.

(4) ** i.e., an official declaration made in court by a lender to the effect that the law of limitation by the Sabbatical year shall not apply to the loans contracted by him; cf. Sheb. X. 4 and Git. 36a. V. Glos.

(5) As realty even when sold by the debtor could be distrained on in the hands of the purchasers; cf. Git. 37a.

(6) As these are considered personalty. They cannot therefore be distrained on in the hands of heirs.

(7) I.e., the acquisition of land confers title to chattels bought at the same time. Kid. 26a; v. infra, p. 49.

(8) Slaves seem thus to be not realty.

(9) In this Baraitha slaves are treated like realty.

(10) Stating that by taking possession of slaves no title is acquired to chattels.

(11) Lit, 'property which affords no surety may be acquired along with property which does afford surety' (to creditors in case of non-payment of debts); Kid 26a.

(12) Kid. 26a.

(13) II Chron. XXI,3: with עִם is taken in the sense by means of.

(14) They are therefore part and parcel of the slave.

(15) Lit., a courtyard.

(16) Git. 21a, 68a; B.M. 9b.

(17) Apparently on account of the fact that these are treated like personalty.

(18) In which case even if they are not personalty their transfer has to he valid.

(19) When only incidental to the transfer of land.

Talmud - Mas. Baba Kama 12b

Did not Samuel say that if ten fields in ten different countries are sold, as soon as possession is taken of one of them, the transfer of all of them becomes effective?[1] — But even if your reasoning be followed [that it is in accordance with the version reading that slaves are considered personalty], why again the stipulation that the slaves be gathered on the land? Has it not been established that the personalty' need not be gathered on the land? You can therefore only say that there is a distinction in law between movable personalty[2] and immovable personalty. Likewise here also [we say] there is a distinction in law between movable realty[3] and immovable realty: slaves [if realty] are movable realty whereas there [in the case of the ten fields] land is but one block.

THE [DAMAGED] PROPERTY MUST BE OF A KIND TO WHICH THE LAW OF SACRILEGE HAS NO APPLICATION etc. So long as [the penalty of] Sacrilege does not apply. Who is the Tanna [of this view]? — R. Johanan said: This is so in the case of minor sacrifices according to R. Jose the Galilean, who considers them to be private property; for it has been taught: If a soul sin and commit a trespass against the Lord and lie unto his neighbour.[4] . . this indicates also minor sacrifices,[5] as these are considered private property;[6] so R. Jose the Galilean. But, behold, we have learnt: If one betroths [a woman] by means of the priestly portion, whether of major sacrifices or of minor sacrifices, the betrothal is not valid.[7] Are we to say that this Mishnah is not in accordance with R. Jose the Galilean?[8] — You may even reconcile it with R. Jose the Galilean; for R. Jose the Galilean confines his remark to sacrifices that are still alive, whereas, in the case of sacrifices that have already been slaughtered, even R. Jose the Galilean agrees that those who are

entitled to partake of the flesh acquire this right as guests at the divine table.[9] But so long as the sacrifice is still alive, does he really maintain that it is private property? Behold, we have learnt: A firstling, if unblemished, may be sold only while alive; but if blemished [it may be sold] both while alive and when slaughtered. It may similarly be used for the betrothal of a woman.[10] And R. Nahman said on behalf of Rabbah b. Abbuha:[11] This is so only in the case of a firstling at the present time,[12] in which, on account of the fact that it is not destined to be sacrificed, the priests possess a proprietary right; but at the time when the Temple still existed, when it would have been destined to be sacrificed, the law would not have been so.[13] And Raba asked R. Nahman: [Was it not taught:] If a soul sin and commit a trespass against the Lord and lie unto his neighbour. . .;[14] this indicates also minor sacrifices, as these are considered private property;[15] this is the view of R. Jose the Galilean? And Rabina replied that the latter case[16] deals with firstlings from outside [Palestine] and is in accordance with R. Simeon, who maintains that if they were brought [to Palestine] in an unblemished condition, they will be sacrificed.[17] Now this is so only if they were brought [to Palestine, which implies that] there is no necessity to bring them there in the first instance for that specific purpose.[18] Now, if it is the fact that R. Jose the Galilean considers them private property while alive,

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(1) Kid. 27a.

(2) That is to he acquired along with realty; v. Kid. 27a.

(3) Which needs to be gathered on the land.

(4) Lev. V, 21.

(5) E.g., peace offerings, as these belong partly to the Lord and partly to the neighbour; some parts thereof are burnt on the altar but the flesh is consumed by the original owners.

(6) Pes. 90a.

(7) Kid. 52b.

(8) For according to him the flesh is private property and alienable,

(9) I.e., as merely invited without having in them any proprietary rights.

(10) M.Sh. I, 2.

(11) Tem. 7b.

(12) When no sacrifices are offered.

(13) The priests would not have had in it a proprietary right nor have been able to use it for the betrothal of a woman.

(14) Lev, V, 21.

(15) Even in Temple times, since the text requires the offender to bring a trespass offering.

(16) Where they are considered private property.

(17) Tem. III. 5.

(18) And since they need not be brought and sacrificed they are considered the private property of the priests as stated by R. Jose the Galilean.

Talmud - Mas. Baba Kama 13a

why [did Rabina] not reply that the one[1] is in accordance with R. Jose the Galilean,and the other[2] in accordance with the Rabbis?[3] — It was said in answer: How can you refer to priestly gifts? Priestly gifts are altogether different[4] as those who are entitled to them enjoy that privilege as guests at the divine table.[5]

[To refer to] the main text : If a soul sin and commit a trespass against the Lord and lie unto his neighbour:[6] this indicates also minor sacrifices; this is the view of R. Jose the Galilean. Ben ‘Azzai says that it indicates [also] peace-offerings. Abba Jose b. Dostai said that Ben ‘Azzai meant to include only the firstling.

The Master said:[6] ‘Ben Azzai says that it indicates [also] peace-offerings.’ What does he mean to exclude? It can hardly be the firstling, for if in the case of peace-offerings which are subject to the

laws of leaning,[7] libations[8] and the waving of the breast and shoulder,[9] you maintain that they are private property, what question could there be about the firstling?[10] — R. Johanan therefore said: He meant to exclude the tithe,[11] as taught: In the case of the firstling, it is stated, Thou shalt not redeem;[12] it may, however, if unblemished be sold while alive, and if blemished [it may be sold] alive or slaughtered; in the case of the tithe it is stated, It shall not be redeemed,[13] and it can be sold neither alive nor slaughtered neither when unblemished nor when blemished.[14] Rabina connected all the above discussion with the concluding clause: 'Abba Jose b. Dostai said that Ben 'Azzai meant to include only the firstling.' What does he mean to exclude? It can hardly be peace-offerings, for if the firstling which is holy from the very moment it opens the matrix,[15] is private property, what question could there be about peace-offerings?[16] — R. Johanan therefore said: He meant to exclude the tithe, as taught:[17] In regard to the firstling it is stated, Thou shalt not redeem;[18] it may, however, if unblemished be sold while alive and if blemished [it may be sold] alive or slaughtered; in regard to the tithe it is stated, It shall not be redeemed,[19] and it can be sold neither while alive nor when slaughtered, neither when unblemished nor blemished. But does he not say, 'The firstling alone'?[20] This is a difficulty indeed!

Raba [on the other hand] said: What is meant by 'THE [DAMAGED] PROPERTY MUST BE OF A KIND TO WHICH THE LAW OF SACRILEGE HAS NO APPlication' is that the property is not of a class to which the law of sacrilege may have any reference[21] but is such as is owned privately . But why does not the text say. 'Private property'? — This is a difficulty indeed!

R.Abba said: In the case of peace-offerings that did damage,[22] payment will be made[23] out of their flesh but no payment could be made out of their emurim.[24] Is it not obvious that the emurim will go up [and be burnt] on the altar? — No; we require to be told that no payment will be made out of the flesh for the proportion due from the emurim. But according to whose authority is this ruling made? If according to the Rabbis,[25] is this not obvious? Do they not maintain that when payment cannot be recovered from one party, it is not requisite to make it up from the other party? If according to R. Nathan,[26] [it is certainly otherwise] for did he not say that when no payment can be made from one party, it has to be made up from the other party? — If you wish, you may say: The ruling was made in accordance with R. Nathan; or, if you wish, you may say that it was made in accordance with the Rabbis. You may say that it was made in accordance with the Rabbis,for their ruling is confined to a case where the damage was done by two separate agencies,[27] whereas, in the case of one agency,[28] the plaintiff may be justified in demanding payment from whatever source he finds it convenient. Alternatively you may say that the ruling was made in accordance with R. Nathan, for it is only there [in the case of an ox pushing another's ox in a pit] that the owner of the damaged ox is entitled to say to the owner of the pit, 'I have found my ox in your pit; whatever is not paid to me by your co-defendant must be made up by you;'

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(1) Maintaining that a firstling is the private property of the priest.

(2) I.e., the statement of R. Nahman that a firstling is not the private property of the priest.

(3) The opponents of R. Jose the Galilean.

(4) Even R. Jose regards them in no case as the property of the priest; all the Rabbis including R. Jose are thus unanimous on this matter. Hence Rabina was unable to explain the one Baraitha in accordance with R. Jose and the other in accordance with the Rabbis.

(5) Even while the firstling is still alive.

(6) Lev. V, 21.

(7) Ibid. III, 2.

(8) Num. XV, 8-II.

(9) Lev. VII, 30-34.

(10) The sacredness of which is of a lower degree and is not subject to all these rites. Consequently it should thus certainly be considered private property. It, of course, deals with a firstling outside Palestine which is not destined to he sacrificed.

(11) Of cattle dealt with in Lev. XXVII, 32-33.
(12) Num. XVIII, 17, the text is taken not to include alienation, in which case the sanctity of the firstling is not affected.
(13) Lev XXVII, 33; in this case, on account of Gezerah Shawah. i.e. a similarity of phrases between ibid. and verse 28, the right of alienation is included; cf, Bek. 32a.
(14) Tem. 8a. Because it is not private property.
(15) Ex. XIII, 12.
(16) That they should certainly be private property.
(17) Tem. 8a.
(18) Num. XVIII, 17.
(19) Lev. XXVII, 33.
(20) Excluding thus everything else, even peace-offerings.
(21) I.e. is not holy at all.
(22) While still Tam, when the payment must be made out of the body of the doer of the damage, v. infra p. 73.
(23) According to R. Jose the Galilean who maintains, supra p. 50, that minor sacrifices are considered private property.
(24) The part which has to he burnt on the altar; cf. Lev. III, 3-4.
(25) Infra 53a. where in the case of an ox pushing somebody else's animal into a pit, the owner of the pit pays nothing, though the owner of the ox does not pay full damages.
(26) Who makes the owner of the pit also pay.
(27) I.e., the ox and the pit, v. p. 53. n. 12.
(28) Such as in the case of peace-offerings dealt with by R. Abba.

Talmud - Mas. Baba Kama 13b

but in the case in hand, could the plaintiff say, 'The flesh did the damage and the emurim did no damage'?[1]

Raba said: In the case of a thanksgiving-offering that did damage,[2] payment will be made[3] out of the flesh but no payment could be made out of its bread.[4] 'Bread'! Is this not obvious?[5] — He wanted to lead up to the concluding clause: The plaintiff partakes of the flesh,[6] while he, for whose atonement the offering is dedicated,[7] has to bring the bread. Is not this also obvious? — You might have thought that since the bread is but an accessory to the sacrifice,[4] the defendant may be entitled to say to the plaintiff. 'If you will partake of the flesh, why should I bring the bread?' It is therefore made known to us [that this is not the case, but] that the bread is an obligation upon the original owner of the sacrifice.

THE [DAMAGED] PROPERTY SHOULD BELONG TO PERSONS WHO ARE UNDER [THE JURISDICTION OF] THE LAW. What [person] is thereby meant to be excepted? If a heathen,[8] is not this explicitly stated further on: 'An ox of an Israelite that gored an ox of a heathen is not subject to the general law of liability for damage'?[9] — That which has first been taught by implication is subsequently explained explicitly.

THE PROPERTY SHOULD BE OWNED. What is thereby excepted? — Rab Judah said: It excepts the case [of alternative defendants] when the one pleads. 'It was your ox that did the damage,' and the other pleads. 'It was your ox that did the damage.' But is not this explicitly stated further on: If two oxen pursue another ox, and one of the defendants pleads. 'It was your ox that did the damage,' and the other defendant pleads, 'It was your ox that did the damage,' no liability could be attached to either of them?[10] — What is first taught by implication is subsequently explained explicitly. In a Baraitha it has been taught: The exception refers to ownerless property.[11] But in what circumstances? It can hardly be where an owned ox gored an ownerless ox, for who is there to institute an action? If on the other hand an ownerless ox gored an owned ox, why not go and take possession of the ownerless doer of the damage? — Somebody else has meanwhile stepped in and already acquired title to it.[12] Rabina said: It excepts an ox which gored and subsequently became

consecrated or an ox which gored and afterwards became ownerless.[12] It has also been taught thus: Moreover said R. Judah:[13] Even if after having gored, the ox was consecrated by the owner, or after having gored it was declared by him ownerless, he is exempt, as it is said, And it hath been testified to his owner and he hath not kept it in, but it hath killed a man or a woman; the ox shall be stoned.[14] That is so only where conditions are the same at the time of both the manslaughter and the appearance before the Court.[15] Does not the final verdict also need to comply with this same condition? Surely the very verse, The ox shall be stoned, circumscribes also the final verdict! — Read therefore: That is so only when conditions are the same at the time of the manslaughter and the appearance before the Court and the final verdict.[15]

WITH THE EXCEPTION OF PREMISES OWNED BY THE DEFENDANT: Because he may argue against the plaintiff, 'What was your ox doing on my premises?' OR PREMISES OWNED [JOINTLY] BY PLAINTIFF AND DEFENDANT. R. Hisda said on behalf of Abimi: [Where damage is done] in jointly owned courts, there is liability for Tooth and Foot,[16] and the [Mishnah] text is to be read thus: WITH THE EXCEPTION OF PREMISES OWNED BY THE DEFENDANT, where there is exemption. but in the case of PREMISES OWNED [JOINTLY] BY PLAINTIFF AND DEFENDANT, WHENEVER DAMAGE HAS OCCURRED,[17] THE OFFENDER IS LIABLE. R. Eleazar [on the other hand] said: There is no liability there for Tooth and Foot,[16] and the text is to be understood thus: WITH THE EXCEPTION OF PREMISES OWNED BY THE DEFENDANT OR [OF] PREMISES OWNED [JOINTLY] BY PLAINTIFF AND DEFENDANT, where there is also exemption. But WHENEVER DAMAGE HAS OCCURRED [otherwise] THE OFFENDER IS LIABLE etc. introduces Horn.[18] This would be in conformity with Samuel,[19] but according to Rab, who affirmed that ox in the Mishnaic text was intended to include all kinds of damage done by ox,[20] what was meant to be introduced by the clause, THE OFFENDER IS LIABLE? — To introduce that which our Rabbis have taught: WHENEVER DAMAGE HAS OCCURRED THE OFFENDER IS LIABLE introduces liability in the case of a paid bailee and a borrower, an unpaid bailee and a hirer, where the animal in their charge did damage, Tam paying half-damages and Mu'ad paying full damages. If, however, a wall[21] broke open at night, or robbers took it by force and it went out and did damage, there is exemption.

The Master said: 'WHENEVER DAMAGE HAS OCCURRED, THE OFFENDER IS LIABLE introduces liability in the case of an unpaid bailee and a borrower, a paid bailee and a hirer'. Under what circumstances? If the ox of the lender damaged the ox of the borrower, why should not the former say to the latter: 'If my ox had damaged somebody else's, you would surely have had to compensate;[22] now that my ox has damaged your own ox, how can you claim compensation from me?' Again, if the ox of the borrower damaged the ox of the lender, why should not the latter say to the former: 'If my ox had been damaged by somebody else's, you would surely have had to compensate me for the full value of the ox,[23] now that the damage resulted from your ox, how can you offer me half damages?[24] — It must therefore still be that the ox of the lender damaged the ox of the borrower, but we deal with a case where he [the borrower] has taken upon himself responsibility for the safety of the ox

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(1) Hence the flesh need not pay for the emurim.

(2) While still Tam, in which case the payment must he made out of the body of the damage-doer, as infra p. 73.

(3) In accordance with R. Jose the Galilean that minor sacrifices are private property.

(4) I.e., accompanying the offering, cf. Lev. VII, 12-13.

(5) That the bread need not pay, since the bread did not do any damage.

(6) After the offering of the sacrifice.

(7) I.e.,(as a rule) the defendant.

(8) Who does not recognise the covenant of Law, and who does not consider himself bound to control his own cattle from doing damage to others.

(9) V. infra p. 211 and note 6.

(10) V. infra 35a. ‘Owned’ thus means ‘known to belong to a particular defendant.’
(11) Tosef. B.K. I, 1.
(12) In which case the plaintiff will recover nothing.
(13) Infra p. 254.
(14) Ex. XXI, 29.
(15) I.e., where the ox is privately owned all through.
(16) For which there is no liability in a public thoroughfare; cf. supra p. 17.
(17) Even by Tooth and Foot.
(18) For which there is liability even in a public thoroughfare
(19) Who maintains, supra pp. 9-11, that Mab'eh in the Mishnaic text denotes Tooth, and Ox signifies Foot, whereas Horn has not been dealt with explicitly.
(20) Supra p. 10; so that Horn has already been dealt with in the first Mishnah.
(21) Of a sound structure, cf. infra 55b-56a
(22) The borrower being responsible for the damage done by the ox whilst under his charge. V. infra 44b
(23) As laid down in Ex. XXII. 13.
(24) I.e., in the case of the borrower's ox having been Tam.

Talmud - Mas. Baba Kama 14a

but not responsibility for any damage [that it may do].[1] If so, explain the concluding clause: ‘If a wall broke open at night, or if robbers took it by force and it went out and did damage, there is exemption.’ From this it may surely be inferred that [if this had happened] in the daytime, the borrower would have been liable. Why so, if he did not take upon himself responsibility for any damage [that it may do]? — The meaning must be as follows: [But] if he has taken upon himself responsibility for damage [that it may do], he would be liable to compensate, yet, if a wall broke open at night, or if robbers took it by force and it went out and did damage there is exemption [in such a case]. Is it really so?[2] Did not R. Joseph learn: In the case of jointly owned premises or an inn, there is liability for Tooth and for Foot? Is not this a refutation of R. Eleazar? — R. Eleazar may answer you as follows: Do you really think so? Are Baraithas not divided [in their opinions] on the matter?[3] For it was taught:[4] ‘Four general rules were stated by R. Simeon b. Eleazar to apply to the laws of torts: [In the case of damage done in] premises owned by the plaintiff and not at all by the defendant, there is liability in all; if owned by the defendant and not at all by the plaintiff, there is total exemption; but if owned by the one and the other, e.g., jointly owned premises or a valley, there is exemption for Tooth and for Foot, whereas for goring, pushing, biting, falling down, and kicking, Tam pays half-damages and Mu'ad pays full damages; if not owned by the one and the other, e.g., premises not belonging to them both, there is liability for Tooth and for Foot, whereas for goring, pushing, biting, falling down, and kicking, Tam pays half-damages and Mu'ad pays full damages.’ It has thus been taught here that in the case of jointly owned premises or a valley there is exemption for Tooth and Foot.[5]

Do then the two Baraithas contradict each other? — The latter Baraitha speaks of a case where the premises were set aside by the one and the other[6] for the purposes of both keeping fruits and keeping cattle in, whereas that of R. Joseph deals with premises set aside for keeping fruits in but not cattle, in which case so far as Tooth is concerned the premises are in practice the plaintiff's ground.[7] In fact the context points to the same effect. In the Baraitha here[8] the jointly owned premises are put on the same footing as an inn whereas in the Baraitha there[9] they are put on the same footing as a valley. This is indeed proved. R. Zera, however, demurred: In the case of premises which are set aside for the purpose of keeping fruits [of the one and the other].[10] how shall we comply with the requirement, and it feed in another man's field,[11] which is lacking in this case? — Abaye said to him: Since the premises are not set aside for keeping cattle in, they may well be termed ‘another man's field.’[12]

R. Aha of Difti[13] said to Rabina: May we say that just as the Baraithas[14] are not divided on the

matter so also are the Amoraim[15] not divided on the subject?[16] He answered him: Indeed, it is so; if, however, you think that they are divided [in their views].[17] the objection of R. Zera and the answer of Abaye form the point at issue.[18]

[To revert] to the above text: 'Four general rules were stated by R. Simeon b. Eleazar to apply to the laws of torts: [Where damage is done in] premises owned by the plaintiff, and not at all by the defendant, there is liability in all.' It is not stated 'for all'[19] but 'in all', i.e., in the whole of the damage; is it not in accordance with R. Tarfon who maintains that the unusual damage occasioned by Horn in the plaintiff's premises will be compensated in full.[20] Read, however, the concluding clause: 'If not owned by the one and the other, e.g., premises not belonging to them both, there is liability for Tooth and for Foot.' Now, what is the meaning of 'not owned by the one and the other'? It could hardly mean 'owned neither by the one nor by the other, but by somebody else,' for have we not to comply with the requirement, and it feed in another man's field,[21] which is lacking in this case? It means therefore, of course, not owned by them both, but exclusively by the plaintiff,' and yet it is stated in the concluding clause, 'Tam pays half-damages and Mu'ad pays full damages,' which follows the view of the Rabbis who maintain that the unusual damage occasioned by Horn in the plaintiff's premises will still be compensated only by half-damages.[22] Will the commencing clause be according to R. Tarfon and the concluding clause according to the Rabbis? — Yes, even as Samuel said to Rab Judah: Shinena,[23] leave this Baraitha alone,[24] and follow my view that the commencement of the Baraitha is according to R. Tarfon and its conclusion according to the Rabbis. Rabina, however, said in the name of Raba: The whole Baraitha is according to R. Tarfon; what is meant by 'not owned by the one and the other' is that the right of keeping fruits there is owned not by both, the one and the other, but exclusively by the plaintiff, whereas the right of keeping cattle there is owned by both, the one and the other. In the case of Tooth the premises are in practice the plaintiff's ground,[25] whereas in the case of Horn they are jointly owned ground.[26] If so, how are the rules four in number?[27] Are they not only three? — R. Nahman b. Isaac replied:

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(1) In which case the lender still remains liable for any damage his ox may do.

(2) That R. Eleazar exempts Tooth and Foot doing damage in jointly owned premises.

(3) And my view is supported by one of them.

(4) Tosef. B.K. I, 6.

(5) Thus fully supporting the view of R. Eleazar and contradicting the teaching of R. Joseph's Baraitha.

(6) I.e., by both plaintiff and defendant.

(7) For the defendant had no right to allow his cattle to be there, and is therefore liable for Tooth, etc.

(8) I.e., of R. Joseph.

(9) Recording the view of R. Simeon b. Eleazar.

(10) I.e., by both plaintiff and defendant.

(11) Ex. XXII, 4; implying that the field should belong exclusively to the plaintiff.

(12) For the defendant had no right to allow his cattle to be there, and is therefore liable for Tooth, etc.

(13) [Identified with Dibtha near the famous city of Washit on the Tigris, Obermeyer, op. cit. p. 197].

(14) I.e., that of R. Joseph and that of R. Simeon b. Eleazar.

(15) R. Hisda and R. Eleazar.

(16) R. Hisda deals with a case where the keeping of cattle has not been permitted, while R. Eleazar deals with the case when the premises have been set aside for that also.

(17) When the premises have been set aside not for cattle, but for the keeping of fruit.

(18) R. Hisda is of Abaye's opinion. whereas R. Eleazar prefers R. Zera's reasoning.

(19) Which would mean for all kinds of damage.

(20) Cf. infra 24b.

(21) Ex. XXII, 4, indicating that the field has to belong to the plaintiff.

(22) Cf. infra 24b.

(23) [Lit., (i) 'sharp one', i.e, scholar with keen and sharp mind; (ii) 'long-toothed', denoting a facial characteristic; (iii) 'translator', Rab Judah being so called on account of his frequent translation of Mishnaic terms into the vernacular

Aramaic, Golomb, D. Targumno I, Introduction, XLVff.]

(24) [Give up your attempt to harmonize the two contradictory clauses.]

(25) As the right to keep fruits there is exclusively the plaintiff's.

(26) For they both may keep cattle there.

(27) Since in principle they are only three in number: (a) exclusively the plaintiff's premises. (b) exclusively the defendant's, and (c) partnership premises.

Talmud - Mas. Baba Kama 14b

The rules are three in number, but the places to which they apply may be divided into four.[1]

MISHNAH. THE VALUATION [IS MADE] IN MONEY [BUT MAY BE PAID] BY MONEY'S WORTH, IN THE PRESENCE OF THE COURT AND ON THE EVIDENCE OF WITNESSES WHO ARE FREE MEN AND PERSONS UNDER THE JURISDICTION OF THE LAW. WOMEN ARE ALSO SUBJECT TO THE LAW OF TORTS. [BOTH] THE PLAINTIFF AND DEFENDANT ARE INVOLVED IN THE PAYMENT.

GEMARA. What is the meaning of THE VALUATION IN MONEY? Rab Judah said: This valuation must be made only in specie. We thus learn here that which has been taught by our Rabbis elsewhere:[2] In the case of a cow damaging a garment while the garment also damaged the cow, it should not be said that the damage done by the cow is to be set off against the damage done to the garment and the damage done to the garment against the damage done to the cow, the respective damages have to be estimated at a money value.

BY MONEY'S WORTH. [This is explained by what] our Rabbis taught [elsewhere]:[2] 'MONEY'S WORTH' implies that the Court will not have recourse for distraint save to immovable property. Nevertheless if the plaintiff himself seized some chattels beforehand, the Court will collect payment for him out of them.

The Master stated: "'MONEY'S WORTH" implies that the Court will not have recourse for distraint save to immovable property. How is this implied? Rabbah b. 'Ulla said: The article of distress has to be worth all that is paid for it [in money].[3] What does this mean? An article which is not subject to the law of deception?[4] Are not slaves and deeds also not subject to the law of deception?[4] — Rabbah b. 'Ulla therefore said: An article, title to which is acquired by means of money.[5] Are not slaves[6] and deeds[7] similarly acquired by means of money.[6] R. Ashi therefore said: 'Money's worth' implies that which has money's worth,[8] whereas chattels are considered actual money.[9] Rab Judah b. Hinena pointed out the following contradiction to R. Huna the son of R. Joshua: It has been taught: 'MONEY'S FORTH implies that the Court will not have recourse for distraint save to immovable property; behold, was it not taught: He shall return[10] includes 'money's worth', even bran?[11] — [In the former Baraitha] we are dealing with a case of heirs.[12] If we are dealing with heirs read the concluding clause: 'If the plaintiff himself seized some chattels beforehand, the Court will collect payment for him out of them.' Now, if we are dealing with heirs, how may the Court collect payment for him out of them? — As already elsewhere[13] stated by Raba on behalf of R. Nahman, that the plaintiff seized [the chattels] while the original defendant was still alive, so here too, the seizure took place while the defendant was still alive.

IN THE PRESENCE OF THE COURT,[14] [apparently] exempts a case where the defendant sold his possessions before having been summoned to Court. May it hence be derived that in the case of one who borrowed money and sold his possessions before having been summoned to Court , the Court does not collect the debt out of the estate which has been disposed of?[15] — The text therefore excepts a Court of laymen.[16]

ON THE EVIDENCE OF WITNESSES, thus excepting a confession of [an act punishable by] a fine for which subsequently there appeared witnesses, in which case there is exemption. That would accord with the view that in the case of a confession of [an act punishable by] a fine, for which subsequently there appeared witnesses, there is exemption;[17] but according to the opposite view that in the case of a confession of [an act punishable by] a fine for which subsequently appeared witnesses, there is liability,[17] what may be said [to be the import of the text]? — The important point comes in the concluding clause:

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(1) [I.e.. partnership premises may he subdivided into two: (a) where both have the right to keep fruit, as well as cattle; (b) where the right to keep fruit is exclusively the plaintiff's.]

(2) Tosef. B.K., I.

(3) 'Money's worth' would thus mean 'property which could not be said to be worth less than the price paid for it,' and is thus never subject to the law of deception. This holds good with immovable property; cf. B.M. 56a.

(4) Cf. B.M. ibid.

(5) Kid. 26a.

(6) Cf. Kid. 23b.

(7) [Tosaf. deletes 'deeds' as these are not acquired by money but by Mesirah (v. Glos.). cf. B.B. 76a.]

(8) I.e., immovable property.

(9) As these could easily be converted into money, v. supra p. 26.

(10) Ex. XXI, 34.

(11) Supra p. 24.

(12) Who have to pay only out of the realty of the estate but not out of the personalty; cf. supra p. 31.

(13) Keth. 84b.

(14) Is taken to mean 'the payment in kind is made out of the possessions which are in the presence of the Court', i.e., not disposed of.

(15) Whereas the law is definitely otherwise as in B.B. X, 8.

(16) IN THE PRESENCE OF THE COURT does not refer to payment in kind but to the valuation which has to be made by qualified judges, v. infra 84b.

(17) Infra p. 429.

Talmud - Mas. Baba Kama 15a

FREE MEN AND PERSONS UNDER THE JURISDICTION OF THE LAW. 'FREE MAN' excludes slaves;[1] 'PERSONS UNDER THE JURISDICTION OF THE LAW'[2] excludes heathens. Moreover, it was essential to exclude each of them. For if the exemption had been stated only in reference to a slave, we would have thought it was on account of his lack of [legal] pedigree[3] whereas a heathen who possesses a [legal] pedigree[4] might perhaps have been thought not to have been excluded. Had, on the other hand, the exemption been referred only to a heathen, we should have thought it was on account of his not being subject to the commandments [of the Law], whereas a slave who is subject to the commandments[5] might have been thought not to have been excluded. It was thus essential to exclude each of them independently.

WOMEN ARE ALSO SUBJECT TO THE LAW OF TORTS. Whence is derived this ruling? — Rab Judah said on behalf of Rab, and so was it also taught at the school of R. Ishmael:[6] Scripture states, When a man or woman shall commit any sin.[7] Scripture has thus made woman and man equal regarding all the penalties of the Law. In the School of Eleazar it was taught: Now these are the ordinances which thou shalt set before them.[8] Scripture has thus made woman and man equal regarding all the judgments of the Law. The School of Hezekiah and Jose the Galilean taught: Scripture says. It hath killed a man or a woman.[9] Scripture has thus made woman and man equal regarding all the laws of manslaughter in the Torah. Moreover, [all the quotations] are necessary: Had only the first inference[10] been drawn, [I might have said that] the Divine Law exercised mercy towards her so that she should also have the advantage of atonement, whereas judgments which

concern as a rule man who is engaged in business, should not include woman. Again, were only the inference regarding judgments to have been made, we might perhaps have said that woman should also not be deprived of a livelihood, whereas the law of atonement should be confined to man, as it is he who is subject to all commandments, but should not include woman, since she is not subject to all the commandments.[11] Moreover, were even these two inferences to have been available, [we might have said that] the one is on account of atonement and the other on account of livelihood, whereas regarding manslaughter [it might have been thought that] it is only in the case of man, who is subject to all commandments, that compensation for the loss of life must be made, but this should not be the case with woman. Again, were the inference only made in the case of compensation for manslaughter, [it might have been thought to apply] only where there is loss of human life, whereas in the other two cases, where no loss of human life is involved, I might have said that man and woman are not on the same footing. The independent inferences were thus essential.

THE PLAINTIFF AND DEFENDANT ARE INVOLVED IN THE PAYMENT.

It has been stated:[12] The liability of half-damages[13] is said by R. Papa to be civil, whereas R. Huna the son of R. Joshua considers it to be penal.[14] R. Papa said that it is civil, for he maintains that average cattle cannot control themselves not to gore.[15] Strict justice should therefore demand full payment [in case of damage].[16] It was only Divine Law that exercised mercy [and released half payment] on account of the fact that the cattle have not yet become Mu'ad. R. Huna the son of R. Joshua who said that it is penal, on the other hand maintains that average cattle can control themselves not to gore.[17] Justice should really require no payment at all.[18] It was Divine Law that imposed [upon the owner] a fine [in case of damage] so that additional care should be taken of cattle. We have learnt: THE PLAINTIFF AND THE DEFENDANT ARE INVOLVED IN PAYMENT. That is all very well according to the opinion which maintains that the liability of half-damages is civil. The plaintiff [who receives only half his due] is thus indeed involved in the payment. But according to the opinion that the liability of half-damages is penal, in which case the plaintiff is given that which is really not his due, how is he involved in the payment? — This may apply to the loss caused by a decrease in the value of the carcass [which is sustained by the plaintiff].[19] 'A decrease in the value of the carcass'! Has not this ruling been laid down in a previous Mishnah : 'To compensate for the damage'[20] implying that the owners [plaintiffs] have to retain the carcass as part payment?[21] — One Mishnah gives the law in the case of Tam whereas the other deals with Mu'ad. Moreover these independent indications[22] are of importance: For were the ruling laid down only in the case of Tam, it might have been accounted for by the fact that the animal has not yet become Mu'ad, whereas in the case of Mu'ad I might have thought that the law is different; if on the other hand the ruling had been laid down only in the case of Mu'ad, it might have been explained as due to the fact that the damage is compensated in full, whereas in the case of Tam I might have thought that the law is otherwise. The independent indications were thus essential.

Come and hear: What is the difference [in law] between Tam and Mu'ad? In the case of Tam, half-damages are paid, and only out of the body [of the tort-feasant cattle], whereas in the case of Mu'ad full payment is made out of the best of the estate.[23] Now, if it is so [that the liability of half-damages is penal] why not mention also the following distinction, 'That in the case of Tam no liability is created by mere admission,[24] while in the case of Mu'ad liability is established also by mere admission'? — This Mishnah stated [some points] and omitted [others]. But what else did it omit that the omission of that particular point should be justified?[25] — It also omitted the payment of half-kofer [for manslaughter].[26] The absence of half-kofer [for manslaughter], however, is no omission, as the Mishnah may be in accordance with R. Jose the Galilean who maintains that Tam is not immune from half-liability for kofer [for manslaughter].[27]

Come and hear:

(1) From giving evidence,
(2) V. supra p. 36. n. 3.
(3) As his issue were considered the property of the owner, there being no parental relationship between him and them; cf. infra p. 508.
(4) Of free descent; cf. Yeb. 62a.
(5) Applicable to females; v. Hag. 4a.
(6) Cf. Kid. 35a.
(7) Num. V, 6. This quotation deals with certain laws of atonement.
(8) Ex. XXI. I.
(9) Ibid. XXI, 29.
(10) Dealing with atonement.
(11) Positive precepts prescribed for a definite time or certain periods do not as a rule apply to females; cf. Kid. 29a.
(12) Keth. 41a.
(13) Paid for damage done by (Horn of) Tam
(14) קנס Kenas, v. Glos.
(15) Lit. 'are not presumed to he safe'.
(16) As it was the effect of carelessness on the part of the owner.
(17) Lit., are presumed to be safe'.
(18) Since the owner could not have expected that his cattle would start goring.
(19) Who is in this way involved in the payment.
(20) Supra p. 36.
(21) Supra, p. 42.
(22) That it is the plaintiff who has to sustain any loss occasioned by a decrease in the value of the carcass.
(23) Mishnah, infra 16b.
(24) As penal liabilities are not created by admission; v. supra 5a.
(25) V. supra p. 39, n. I.
(26) [While a Mu'ad has to pay full compensation (Kofer, v. Glos.) for manslaughter. Ex XXI, 25-30, a Tam does not compensate even by half; v. infra 41b.]
(27) infra 26a.

Talmud - Mas. Baba Kama 15b

'My ox committed manslaughter on A'; or 'killed A's ox' '[in either case] a liability to compensate is established by this admission.[1] Now does this Mishnah not deal with the case of Tam?[2] — No, only with Mu'ad. But what is the law in the case of Tam? Would it really be the fact that no liability is established by admission?[3] If this be the case, why state in the concluding clause, 'My ox killed A's slave,'[4] no liability is created by this admission?[5] Why indeed not indicate the distinction in the very same case by stating: 'the rule that liability is established by mere admission is confined to Mu'ad, whereas in the case of Tam no liability is created by mere admission'?[6] — The Mishnah all through deals with Mu'ad.

Come and hear: This is the general rule: In all cases where the payment is more than the actual damage done, no liability is created by mere admission.[5] Now does this not indicate that in cases where the payment is less than the damage,[7] the liability will be established even by mere admission?[8] — No , this is so only when the payment corresponds exactly to the amount of the damages. But what is the law in a case where the payment is less than the damage? Would it really be the fact that no liability is established by admission? If this be the case, why state: 'This is the general rule: In all cases where the payment is more than the actual damage done, no liability is created by mere admission'?[9] Why not state simply: 'This is the general rule: In all cases where the payment does not correspond exactly to the amount of the damages . . ., which would [both] imply 'less' and imply 'more'?[10] This is indeed a refutation.[11] Still the law is definite that the liability of half-damages is penal. But if this opinion was refuted, how could it stand as a fixed law? — Yes!

The sole basis of the refutation is in the fact that the Mishnaic text[9] does not run '. . . where the payment does not correspond exactly to the amount of the damages'. This wording would, however, be not altogether accurate, as there is the liability of half-damages in the case of pebbles[12] which is, in accordance with a halachic tradition, held to be civil. On account of this fact the suggested text has not been adopted.

Now that you maintain the liability of half-damages to be penal. the case of a dog devouring lambs, or a cat devouring hens is an unusual occurrence,[13] and no distress will be executed in Babylon[14] — provided, however, the lambs and hens were big; for if they were small, the occurrence would be usual?[15] Should, however, the plaintiff[16] seize chattels belonging to the defendant, it would not be possible for us to dispossess him of them. So also were the plaintiff to plead 'fix me a definite time for bringing my case to be heard in the Land of Israel,' we would have to fix it for him; were the other party to refuse to obey that order, we should have to excommunicate him. But in any case, we have to excommunicate him until he abates the nuisance, in accordance with the dictum of R. Nathan. For it was taught:[17] R. Nathan says: Whence is it derived that nobody should breed a bad dog in his house, or keep an impaired ladder in his house? [We learn it] from the text, Thou bring not blood upon thine house.[18] M I S H N A H. THERE ARE FIVE CASES OF TAM AND FIVE CASES OF MU'AD. ANIMAL IS MU'AD NEITHER TO GORE, NOR TO COLLIDE, NOR TO BITE, NOR TO FALL DOWN NOR TO KICK.[19] TOOTH, HOWEVER, IS MU'AD TO CONSUME WHATEVER IS FIT FOR IT; FOOT IS MU'AD TO BREAK [THINGS] IN THE COURSE OF WALKING; OX AFTER BECOMING MU'AD; OX DOING DAMAGE ON THE PLAINTIFF'S PREMISES; AND MAN,[20] SO ALSO THE WOLF, THE LION, THE BEAR, THE LEOPARD, THE BARDALIS [PANTHER] AND THE SNAKE ARE MU'AD. R. ELEAZAR SAYS: IF THEY HAVE BEEN TAMED, THEY ARE NOT MU'AD; THE SNAKE, HOWEVER, IS ALWAYS MU'AD.

GEMARA. Considering that it is stated TOOTH IS MU'AD TO CONSUME . . ., it must be assumed that we are dealing with a case where the damage has been done on the plaintiff's premises.[21] It is also stated[22] ANIMAL IS MU'AD NEITHER TO GORE . . . meaning that the compensation will not be in full, but only half-damages will be paid, which is in accordance with the Rabbis who say that for the unusual damage done by Horn [even] on the plaintiff's premises only half-damages will be paid.[23] Read now the concluding clause: OX AFTER HAVING BECOME MU'AD, OX DOING DAMAGE ON THE PLAINTIFF'S PREMISES, AND MAN, which is in accordance with R. Tarfon who said that for the unusual damage done by Horn on the plaintiff's premises full compensation must be paid.[23] Is the commencing clause according to the Rabbis and the concluding clause according to R. Tarfon? — Yes, since Samuel said to Rab Judah, 'Shinena,[24] leave the Mishnah alone[25] and follow my view: the commencing clause is in accordance with the Rabbis, and the concluding clause is in accordance with R. Tarfon.' R. Eleazar in the name of Rab, however, said:

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(1) Keth. 41a.

(2) And if the liability is created by admission it proves that it is not penal but civil.

(3) On account of its being penal.

(4) And the fine of thirty shekels has to he imposed; v, Ex. XXI, 32.

(5) Keth. 41a.

(6) Because it is considered penal.

(7) Such, e.g., as in the case of Tam.

(8) This proves that the penalty is not penal but civil, and this refutes R. Huna b. R. Joshua.

(9) Keth. 41a.

(10) Not to be civil.

(11) Of the view maintaining the liability of Tam to be penal.

(12) Kicked from under an animal's feet and doing damage; cf. supra p. 8.

(13) Falling thus under the category of Horn; as supra p. 4.
(14) As penal liabilities could be dealt with only in the Land of Israel where the judges were specially ordained for the purpose; Mumhin, v. Glos. s. v. Mumhe; cf. infra. 27b, 84a-b.
(15) And would come within the category of Tooth, the payment for which is civil.
(16) Even in Babylon.
(17) Infra 46a and Keth. 41b.
(18) Deut. XXII, 8.
(19) These are the five cases of Tam, v. supra p. 3.
(20) These are the five cases of Mu'ad, v. Glos.
(21) For if otherwise there is no liability in the case of Tooth; cf. Ex. XXII, 4, and supra, 5b.
(22) In the commencing clause of the Mishnah.
(23) Cf. supra 14a; infra 24b.
(24) V. supra p. 60, n. 2.
(25) Cf. supra p. 60, n. 3.

Talmud - Mas. Baba Kama 16a

The whole Mishnah is in accordance with R. Tarfon. The commencing clause deals with premises set aside for the keeping of the plaintiff's fruits whereas both plaintiff and defendant may keep there their cattle. In respect of Tooth the premises are considered [in the eye of the law] the plaintiff's.[1] whereas in respect of Horn they are considered their common premises.[2] R. Kahana said: I repeated this statement in the presence of R. Zebid of Nehardea, and he answered me, 'How can you say that the whole Mishnah is in accordance with R. Tarfon? Has it not been stated TOOTH IS MU'AD TO CONSUME WHAT EVER IS FIT FOR IT? That which is fit for it is included,[3] but that which is unfit for it is not included.[4] But did not R. Tarfon say that for the unusual damage done by Horn on the plaintiff's premises full compensation must be paid?' — It must, therefore, still be maintained that the Mishnah is in accordance with the Rabbis, but there are some phrases missing there; the reading should be thus: 'There are five cases of Tam,'[5] all the five of them may eventually become Mu'ad.[6] Tooth and Foot are however Mu'ad ab initio, and their liability is confined to damage done on the plaintiff's premises.'[7] Rabina demurred: We learn later on: What is meant by [the statement] OX DOING DAMAGE ON THE PLAINTIFF'S PREMISES [etc.]?[8] It is all very well if you say that this damage has previously been dealt with;[9] we may then well ask 'What is meant by it?' But if you say that this damage has never been dealt with previously, how could it be asked 'What is meant by it?'[10] — Rabina therefore said: The Mishnah is indeed incomplete, but its meaning is this: 'There are five cases of Tam,'[5] all the five of them may eventually become Mu'ad[11] — Tooth and Foot are Mu'ad ab initio.[12] In this way Ox is definitely Mu'ad. As to Ox doing damage on the plaintiff's premises there is a difference of opinion between R. Tarfon and the Rabbis.[13] There are other damage-doers which like these cases are similarly Mu'ad, as follows: The wolf, the lion, the bear, the leopard. the panther, and the snake.' This very text has indeed been taught: 'There are five cases of Tam; all the five of them may eventually become Mu'ad. Tooth and Foot are Mu'ad ab initio. In this way Ox is definitely Mu'ad. As to Ox doing damage on the plaintiff's premises there is a difference of opinion between R. Tarfon and the Rabbis. There are other damage-doers which like these are similarly Mu'ad, as follows: The wolf, the lion, the bear, the leopard, the panther and the snake.'

Some arrived at the same interpretation by having first raised the following objection: We learn THERE ARE FIVE CASES OF TAM AND FIVE CASES OF MU'AD; are there no further instances?[14] Behold there are the wolf, the lion, the bear, the leopard, the panther and the snake![15] — The reply was: Rabina said: The Mishnah is incomplete and its reading should be as follows: There are five cases of Tam; all the five of them may eventually become Mu'ad — Tooth and Foot are Mu'ad ab initio. In this way Ox is definitely Mu'ad. As to Ox doing damage on the plaintiff's premises there is a difference of opinion between R. Tarfon and the Rabbis. There are other damage-doers which like these are similarly Mu'ad, as follows: The wolf, the lion, the bear, the

leopard, the panther and the snake.

NOR TO FALL DOWN. R. Eleazar said: This is so only when it falls down on large pitchers, but in the case of small pitchers it is a usual occurrence.[16] May we support him [from the following teaching]: 'Animal is Mu'ad to walk in the usual manner and to break or crush a human being, or an animal, or utensils'? — This however may mean, through contact sideways.[17] Some read: R. Eleazar said: Do not think that it is only in the case of large pitchers that it is unusual, whereas in the case of small pitchers it is usual. It is not so, for even in the case of small pitchers it is unusual. An objection was brought: '. . . or crush a human being, or an animal or utensils?'[18] — This[19] may perhaps mean through contact sideways.[20] Some arrived at the same conclusion by having first raised the following objection: We have learnt: NOR TO FALL DOWN.[18] But was it not taught: '. . . or crush a human being, or an animal or utensils'?[18] R. Eleazar replied: There is no contradiction: the former statement deals with a case of large pitchers,[21] whereas the latter deals with small pitchers.[22]

THE WOLF, THE LION, THE BEAR, THE LEOPARD AND THE BARDALIS [PANTHER].[23] What is bardalis? — Rab Judah said: nafraza.[24] What is nafraza? — R. Joseph said: apa.[25] An objection was raised: R. Meir adds also the zabu'a.[26] R. Eleazar adds, also the snake.[27] Now R. Joseph said that zabu'a means apa![28] — This, however, is no contradiction, for the latter appellation [zabu'a] refers to the male whereas the former [bardalis] refers to the female,[29] as taught elsewhere: The male zabu'a [hyena] after seven years turns into a bat,[30] the bat after seven years turns into an arpad,[31] the arpad after seven years turns into kimmosh,[32] the kimmosh after seven years turns into a thorn, the thorn after seven years turns into a demon. The spine of a man after seven years turns into a snake,[33] should he not bow[34] while reciting the benediction, 'We give thanks unto Thee'.[35] The Master said: 'R. Meir adds also the zabu'a;

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(1) As nobody else had the right to keep there fruits.

(2) Since both plaintiff and defendant had the right to keep there their cattle.

(3) In the category of Tooth.

(4) In the category of Tooth, but being unusual falls under the category of Horn; cf. supra 15b; infra 16b and 19b.

(5) I.e., 'goring', 'colliding', 'biting', 'falling down' and 'kicking'.

(6) These constitute the five cases of Mu'ad.

(7) Cf. Ex. XXII, 4, and supra, 5b. ['OX DOING DAMAGE ON THE PLAINTIFF'S PREMISES' refers thus to Tooth and not to Horn.]

(8) [With reference to damage done by Horn, infra, 24b.]

(9) [In Our Mishnah, i.e.,the damage of Horn on the plaintiff's premises.]

(10) Cf. infra 24b.

(11) [The first clause of the Mishnah thus enumerates the five cases of Mu'ad as well as of Tam.]

(12) [But are not included in the 'five cases of Mu'ad', the clause being added only in parenthesis.]

(13) As infra p. 125.

(14) Of Mu'ad.

(15) Which are Mu'ad ab initio.

(16) And would thus not fall under the category of Horn but under that of Foot; cf, supra p. 4.

(17) Whereas to fall down upon pitchers may perhaps in all cases be unusual.

(18) Is usual.

(19) [So MS.M. Cur.edd, insert 'R. Eleazar said this etc.']

(20) V. p. 70. n. 5.

(21) Which is unusual.

(22) Which is usual.

(23) **

(24) נפרזא D.S. נפריא from נפר 'to run' or 'jump'.

(25) [אפא contraction of אפעא (hyena)].

(26) [Lit., 'the many-coloured'. Another term for hyena on account of its coloured stripes.]

(27) To those which are enumerated in the Mishnah as Mu'ad ab initio.
(28) If zabu'a means apa, how could bardalis, which is mentioned independently, also mean apa.
(29) So Rashi's second interpretation; others reverse.
(30) The male zabu'a is subject to undergo constant and rapid changes in the evolution of its physique, so that on account of these various transformations it has various appellations, such as bardalis, nafraza and apa [For parallels in ancient Greek and Roman literature for this belief, v. Lewysohn. Zoologie, p. 77.]
(31) I.e., a species of bat; cf. Targum Jonathan Lev, XI, 19, where Heb. עטלף is rendered ערפדא.
(32) I.e., a species of thorn (Jast.).
(33) Which is the symbol of ingratitude.
(34) And thus not appreciate the favours of eternal God bestowed upon mortal man. [This is but a quaint way of indicating the depths into which human depravity, which has its source in ingratitude to the Creator, may gradually sink.]
(35) Cf. P.B. p. 51.

Talmud - Mas. Baba Kama 16b

R. Eleazar adds also the snake.' But have we not learned: R. ELEAZAR SAYS, IF THEY HAD BEEN TAMED, THEY ARE NOT MU'AD; THE SNAKE, HOWEVER, IS ALWAYS MU'AD?[1] — Read 'the snake'.[2] Samuel said: In the case of a lion on public ground seizing and devouring [an animal]. there is exemption;[3] but for tearing it to pieces and then devouring it there is liability to pay. In 'seizing and devouring there is exemption' on account of the fact that it is as usual for a lion to seize its prey as it is for an animal to consume fruits and vegetables; it therefore amounts to Tooth on public ground where there is exemption.[3] The 'tearing' [of the prey into pieces] is however not unusual with the lion.[4]

Should it thus be concluded that the tearing of prey is unusual [with the lion]? But behold, it is written: The lion did tear in pieces enough for his whelps?[5] — This is usual only when it is for the sake of his whelps. [But the text continues:] And strangled for his lionesses?[5] — This again is only when it is for the sake of his lionesses. [But the text further states:] And filled his holes with prey?[5] — [This too is usual only when it is done] with the intention of preserving it in his holes. But the text concludes: And his dens with ravin?[5] — [This again is only] when the intention is to preserve it in his dens. But was it not taught: 'Similarly in the case of a beast entering the plaintiff's premises, tearing an animal to pieces and consuming its flesh, the payment must be made in full'?[6] — This Baraitha deals with a case where the tearing was for the purpose of preservation. But behold, it is stated: 'consuming [its flesh]'? — It was by an afterthought that the beast consumed [it]. But how could we know that? Again, also in the case of Samuel why not make the same supposition?[7] — R. Nahman b. Isaac therefore said: Alternative cases are dealt with [in the Baraitha]: . . . If it either tears to pieces for the purpose of preservation, or seizes and devours [it], the payment must he in full.' Rabina, however, said that Samuel dealt with a case of a tame lion, and was following the view of R. Eleazar,[8] that that was unusual [with such a lion] If so, even in the case of seizing there should be liability! — Rabina's statement has, therefore, no reference to Samuel's case but to the Baraitha, which we must thus suppose to deal with a tame lion and to follow the view of R. Eleazar, that that was unusual [with such a lion].[9] If so, [no more than] half-damages should be paid![10] — [The lion dealt with] has already become Mu'ad. If so, why has this Baraitha been taught in conjunction with the secondary kinds of Tooth,[11] whereas it should have been taught in conjunction with the secondary kinds of Horn? This is indeed a difficulty.

M I S H N A H. WHAT IS THE DIFFERENCE [IN LAW] BETWEEN TAM AND MU'AD? IN THE CASE OF TAM ONLY HALF-DAMAGES ARE PAID AND ONLY OUT OF THE BODY [OF THE TORT-FEASENT CATTLE], WHEREAS IN THE CASE OF MU'AD FULL PAYMENT IS MADE OUT OF ['ALIYYAH][12] THE BEST [OF THE ESTATE].

GEMARA. What is 'Aliyyah? — R. Eleazar said: The best of the defendant's estate as stated in

Scripture: And Hezekiah slept with his fathers and they buried him [be-ma'aleh] in the best of the sepulchres of the sons of David;[13] and R. Eleazar said: be-ma'aleh means, near the best of the family, i.e., David and Solomon. [Regarding King Asa it is stated:] And they buried him in his own sepulchres which he had made for himself in the city of David and laid him in the bed which was filled with [besamim u-zenim][14] sweet odours and divers kinds of spices.[15] What is besamim u-zenim? — R. Eleazar said: Divers kinds of spices. But R. Samuel b. Nahmani said: Scents which incite all those who smell them to immorality.[16]

[Regarding Jeremiah it is stated:] For they have digged a ditch to take me and hid snares for my feet.[17] R. Eleazar said: They maliciously accused him of [having illicit intercourse with] a harlot. But R. Samuel b. Nahmani said: They maliciously accused him of having [immoral connections with] another man's wife. No difficulty arises if we accept the view that the accusation was concerning a harlot, since it is written: For a harlot is a deep ditch.[18] But according to the view that the accusation was concerning another man's wife, how is this expressed in the term 'ditch' [employed in Jeremiah's complaint]?[17] — Is then another man's wife [when committing adultery] excluded from the general term of 'harlot'? [On the other hand] there is no difficulty on the view that the accusation was concerning another man's wife, for Scripture immediately afterwards says: Yet Lord, Thou knowest all their counsel against me to slay me;[19] but according to the view that the accusation was concerning a harlot, how did they thereby intend 'to slay him'?[20] — [This they did] by throwing him into a pit of mire.[21]

Raba gave the following exposition: What is the meaning of the concluding verse: But let them be overthrown before Thee; deal thus with them in the time of Thine anger?[22] — Jeremiah thus addressed the Holy One, blessed be He: Lord of the Universe, even when they are prepared to do charity, cause them to be frustrated by people unworthy of any consideration so that no reward be forthcoming to them for that charity.[23]

[To come back to Hezekiah regarding whom it is stated:] And they did him honour at his death:[24] this signifies that they set up a college[25] near his sepulchre. There was a difference of opinion between R. Nathan and the Rabbis. One said: For three days,

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(1) [Which seems to exclude the other animals enumerated in the Mishnah?]

(2) Do not read 'also the snake', but 'the snake', i.e. 'only the snake', excluding 'the hyena' introduced by R. Meir, as well as the other animals enumerated.

(3) Cf. Ex XXII, 4 and supra 5b.

(4) And falls thus under the category of Horn which is not immune even on public ground, cf. supra p. 67 and infra 19b.

(5) Nah. II, 13.

(6) Cf. infra 19b.

(7) [Why then doses he state that, where the lion tore and consumed, there is payment?]

(8) Supra p. 68.

(9) And comes therefore within the category of Horn, for which there is liability even on public grounds.

(10) For in the case of Horn only half-damages are paid on the first three occasions.

(11) I.e., infra 19b.

(12) עלייה

(13) II Chron. XXXII, 33. [The word במעלה (E.V.: 'ascent') is tendered as 'the best' from עלה 'to go up', 'to excel'.]

(14) בשמים וזנים

(15) II Chron. XVI, 14.

(16) [Deriving זנים from זנה to commit whoredom'.]

(17) Jer. XVIII, 22.

(18) Prov. XXIII, 27.

(19) Jer. XVIII, 23; referring to the death penalty prescribed for such an offence. See Lev. XX, 10.

(20) Since no death penalty is attached to that sin,
(21) Jer. XXXVIII, 6.
(22) Ibid. XVIII, 23.
(23) Cf. however Keth. 68a.
(24) II Chron. XXXII, 33.
(25) [Of students to study the law.]

and the other said: For seven days. Others, however, said: For thirty days.[1]

Our Rabbis taught: And they did him honour at his death, in the case of Hezekiah the king of Judah, means that there marched before him thirty-six[2] thousand [warriors] with bare shoulders;[3] this is the view of R. Judah. R. Nehemiah, however, said to him: Did they not do the same before Ahab?[4] [In the case of Hezekiah] they placed the scroll of the Law upon his coffin and declared: 'This one fulfilled all that which is written there.' But do we not even now do the same [on appropriate occasions]?[5] — We only bring out [the scroll of the Law] but do not place [it on the coffin].[5] It may alternatively be said that sometimes we also place [it on the coffin] but do not say. 'He fulfilled [the law] . . .'

Rabbah b. Bar Hanah said: I was once following R. Johanan for the purpose of asking him about the [above] matter. He, however, at that moment went into a toilet room. [When he reappeared and] I put the matter before him, he did not answer until he had washed his hands, put on phylacteries and pronounced the benediction.[6] Then he said to us: Even if sometimes we also say. 'He fulfilled [the law] . . .' we never say. 'He expounded [the law] . . .' But did not the Master say: The importance of the study of the law is enhanced by the fact that the study of the law is conducive to [the] practice [of the law]?[7] — This, however, offers no difficulty; the latter statement deals with studying [the law], the former with teaching [the law].

R. Johanan said in the name of R. Simeon b. Yohai:[8] What is the meaning of the verse: Blessed are ye that sow beside all waters, that send forth thither the feet of the ox and the ass?[9] Whoever is occupied with [the study of] the law and with [deeds of] charity, is worthy of the inheritance of two tribes,[10] as it is said: Blessed are ye that sow. . . Now, sowing [in this connection] signifies 'charity'. as stated, Sow to yourselves in charity, reap in kindness;[11] again, water [in this connection] signifies 'the law' as stated, Lo, everyone that thirsteth, come ye to the waters.[12]

'He is worthy of the inheritance of two tribes:' He is worthy of an inheritance[13] like Joseph, as it is written: Joseph is a fruitful bough . . . whose branches run over the wall;[14] he is also worthy of the inheritance of Issachar, as it is written: Issachar is a strong ass.[15] There are some who say, His enemies will fall before him, as it is written: With them he shall push the people together, to the ends of the earth.[16] He is worthy of understanding like Issachar, as it is written: And of the children of Issachar which were men that had understanding of the times to know what Israel ought to do.[17]

C H A P T E R I I

M I S H N A H. WITH REFERENCE TO WHAT IS FOOT MU'AD?[18] [IT IS MU'AD:] TO BREAK [THINGS] IN THE COURSE OF WALKING. ANY ANIMAL IS MU'AD TO WALK IN ITS USUAL WAY AND TO BREAK [THINGS]. BUT IF IT WAS KICKING OR PEBBLES WERE FLYING FROM UNDER ITS FEET AND UTENSILS WERE [IN CONSEQUENCE] BROKEN, [ONLY] HALF-DAMAGES WILL BE PAID. IF IT TROD UPON A UTENSIL AND BROKE IT, AND A FRAGMENT [OF IT] FELL UPON ANOTHER UTENSIL WHICH WAS ALSO BROKEN, FOR THE FIRST UTENSIL FULL DAMAGES MUST BE PAID,[19] BUT FOR THE SECOND, [ONLY] HALF-DAMAGES WILL BE PAID.[20]

POULTRY[21] ARE MU'AD TO WALK IN THEIR USUAL WAY AND TO BREAK [THINGS]. IF A STRING BECAME ATTACHED TO THEIR FEET, OR WHERE THEY HOP ABOUT AND BREAK UTENSILS, [ONLY] HALF-DAMAGES WILL BE PAID.[20]

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(1) Cf. M.K. 27b.

(2) This figure was arrived at by the numerical value of וְלֹ occurring here in the text.
(3) [As sign of mourning for a righteous man and scholar.]
(4) [Although he was an evil doer.] See Targum on Zech. XII, 11, and Meg. 3a.
(5) Cf., e.g., M. K. 25a and Men. 32b.
(6) V. P.B. p. 4.
(7) Meg. 27a; Kid. 40b; thus indicating that the practice of the law is superior to its study.
(8) V. A.Z. 5b.
(9) Isa. XXXII, 20.
(10) [Joseph and Issachar: the former is compared to an ox (Deut. XXXIII, 17) and the latter to an ass (Gen. XLIX, 14).]
(11) Hos X, 12.
(12) Isa. LV, 1.
(13) So MS.M. The printed editions have 'canopy'. [Rashi connects it with the descriptions of 'branches running over the wall.']
(14) Gen XLIX, 22.
(15) Ibid. 14.
(16) Deut. XXXIII, 17.
(17) I Chron. XII, 32.
(18) Referring to supra p. 68.
(19) As it is subject to the law of 'Foot'.
(20) Since it was broken not by the actual body of the animal (or poultry) but by its agency and force in some other object, it comes within the purview of the law of 'Pebbles'; v. Glos, Zeroroth
(21) Lit. 'The cocks'.

Talmud - Mas. Baba Kama 17b

G E M A R A. Rabina said to Raba: Is not FOOT [Mentioned in the commencing clause] identical with ANIMAL [mentioned in the second clause]?[1] — He answered him: [In the commencing clause the Mishnah] deals with Principals[2] whereas [in the second clause] derivatives are introduced.[3] But according to this, the subsequent Mishnah stating, 'Tooth is Mu'ad . . . Any animal is Mu'ad . . .'[4] what Principals and what derivatives could be distinguished there?[5] — Raba, however, answered him humorously, 'I expounded one [Mishnah], it is now for you to expound the other.' But what indeed is the explanation [regarding the other Mishnah]? — R. Ashi said: [In the first clause, the Mishnah] speaks of 'Tooth' of beast, whereas [in the second place] 'Tooth' of cattle is dealt with. For it might have been thought that since he shall put in be'iroh [his cattle][6] is stated in Scripture, the law concerning Tooth should apply only to cattle, but not to beast; it is therefore made known to us that beast is included in the term 'animal'. If so, cattle[7] should be dealt with first! — Beast, which is deduced by means of interpretation, is more important [to the Mishnah which thus gives it priority]. If so, also in the opening Mishnah [dealing with FOOT, the same method should have been adopted] to state first that which is not recorded [in Scripture]?[8] — What a comparison! There [in the case of Tooth] where both [beast and cattle] are Principals, that which is introduced by means of interpretation is preferable; but here [in the case of Foot], how could the Principal be deferred and the derivative placed first?[9] You may alternatively say: Since [in the previous chapter the Mishnah] concludes with 'Foot',[10] it commences here with 'Foot'.

Our Rabbis taught: An animal is Mu'ad to walk in its usual way and to break [things]. That is to say, in the case of an animal entering into the plaintiff's premises and doing damage [either] with its body while in motion, or with its hair while in motion, or with the saddle [which was] upon it, or with the load [which was] upon it, or with the bit in its mouth, or with the bell on its neck,[11] similarly in the case of an ass [doing damage] with its load, the payment must be in full. Symmachus says: In the case of Pebbles[12] or in the case of a pig burrowing in a dunghill and doing damage. the payment is [also] in full.

[In the case of a pig] actually doing damage, is it not obvious [that the payment must be in full]?[13] — Read therefore: 'When it had caused [something of the dunghill] to fly out so that damage resulted therefrom, the payment will be in full.' But have Pebbles ever been mentioned [in this Baraitha, that Symmachus makes reference to them]? — There is something missing [in the text of the Baraitha where] the reading should be as follows: Pebbles, though being quite usual [with cattle, involve nevertheless] only half-damages; in the case of a pig digging in a dunghill and causing [something of it] to fly out so that damage resulted therefrom, only half-damages will therefore be paid. Symmachus, however, says: In the case of Pebbles, and similarly in the case of a pig digging in a dunghill and causing [something of it] to fly out so that damage resulted therefrom, the payment must he in full.

Our Rabbis taught: In the case of poultry flying from one place to another and breaking utensils with their wings. the payment must be in full: but if the damage was done by the vibration that resulted from their wings, only half-damages will be paid.[14] Symmachus. however, says: [In all cases] the payment must be in full.[15]

Another [Baraitha] taught: In the case of poultry hopping upon dough or upon fruits which they either made dirty or picked at, the payment will be in full; but if the damage resulted from their raising there dust or pebbles, only half damages[14] will be paid. Symmachus. however, says: [In all cases] the payment must be in full.

Another [Baraitha] taught: In the case of poultry flying from one place to another, and breaking vessels with the vibration from their wings, only half-damages will be paid. This anonymous Baraitha records the view of the Rabbis.[16]

Raba said: This fits in very well with [the view of] Symmachus who maintains that [damage done by an animal's] force[17] falls under the law applicable to [damage done by its] body;[18] but what about the Rabbis? If they too maintain that [damage done by an animal's] force is subject to the same law that is applicable to [damage done by its] body. why then not pay in full? If on the other hand it is not subject to the law of damage done by a body,. why pay even half damages? — Raba [in answer] said: It may indeed be subject to the law applicable to damage done by a body, yet the payment of half damages in the case of Pebbles is a halachic principle based on a special tradition.[19]

Raba said: Whatever would involve defilement in [the activities of] a zab[20] will in the case of damage involve full payment, whereas that which in [the activities of] a zab would not involve defilement,[21] will in the case-of damage involve only half damages. Was Raba's sole intention to intimate to us [the law of] Pebbles?[22] — No, Raba meant to tell us the law regarding cattle[23] drawing a waggon [over utensils which were thus broken].[24] It has indeed been taught in accordance with [the view expressed by] Raba: An animal is Mu'ad to break [things] in the course of walking. How is that? In the case of an animal entering into the plaintiff's premises and doing damage either with its body while in motion, or with its hair while in motion, or with the saddle [which was] upon it, or with the load [which was] upon it, or with the bit in its mouth, or with the bell on its neck, similarly in the case of an ass [doing damage] with its load, or again, in the case of a calf drawing a waggon [over utensils which were thus broken], the payment must be in full.

Our Rabbis taught: In the case of poultry picking at a cord attached to a pail so that the cord was snapped asunder and the bucket broken, the payment must be in full.

Raba asked: In the case of [cattle] treading upon a utensil which has not been broken at once, but which was rolled away to some other place where it was then broken, what is the law? Shall we go by the original cause [of the damage in our determination of the law], which would thus amount to damage done by the body,[25] or shall only [the result, i.e.] the breaking of the utensil be the

determining factor, amounting thus to Pebbles? — But why not solve the problem from a statement made by Rabbah?[26] For Rabbah said:[27] If a man threw [his fellow's] utensil from the top of a roof and another one came and and broke it with a stick [before it fell upon the ground. where it would in any case have been broken], the latter is under no liability to pay, as we say. 'It was only a broken utensil that was broken by him.' [Is not this the best proof that it is the cause of the damage which is the determining factor?][28] — To Rabbah that was pretty certain, whereas to Raba it was doubtful.

Come and hear: 'Hopping [with poultry] is not Mu'ad.[29] Some however say: It is Mu'ad.'[30] 'Could 'hopping' [in itself] be thought [in any way not to be habitual with poultry]? Does it not therefore mean: 'Hopping that results in making [a utensil] fly [from one place to another so that it is broken] . . . 'so that the point at issue is this: The latter view maintains that the original cause [of the damage] is the determining factor[30] but the former maintains that only [the result, i.e.,] the breaking of the utensil is the determining factor?[31] — No,

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(1) Wherefore then this redundancy?

(2) I.e. damage done by the actual foot.

(3) I.e. damage done by other parts of the body of the animal, cf. supra p. 6.

(4) [Infra 19b.

(5) For both clauses deal with actual 'eating'.

(6) Ex. XXII, 4. [בעיר תבעירה in Aramaic denotes, 'a grazing animal', 'cattle' (Rashi).]

(7) Which is more obvious.

(8) I.e. damage done by other parts of the body of the animal.

(9) 'Foot' is therefore put in the first place.

(10) Supra p. 68.

(11) CF. supra, p. 6.

(12) See supra p. 8.

(13) Why then was it deemed necessary to give it explicit treatment?

(14) As this kind of damage is subject to the law of Pebbles.

(15) For he maintains that even in the case of Pebbles full payment has to be made.

(16) Who hold that in the case of Pebbles only half payment is made.

(17) Such as in the case of Pebbles.

(18) Which is subject to the law of 'Foot'.

(19) See also supra 8.

(20) I.e., one afflicted with gonorrhoea who is subject to the laws of Lev. XV, 1-15; 19-24. Defilement is caused by him both by actual bodily touch and indirectly.

(21) E.g when the zab throws some article on a person levitically clean.

(22) Is not this obvious?

(23) Lit. 'calf'.

(24) That there is in such a case full payment, because if a zab were to sit in a waggon that passed over clean objects, defilement would have been extended to them — the damage and the defilement respectively being regarded as having been caused by the body and not by its force.

(25) Being therefore subject to the law of 'Foot'.

(26) Who was a predecessor of Raba.

(27) Cf. infra 26b.

(28) Seeing that the latter is under no obligation to compensate, but the whole liability to pay is upon the one who threw the utensil from the top of the roof.

(29) The payment for damage will therefore not be in full.

(30) Payment will thus be in full.

(31) Thus constituting Pebbles, for which payment will not be in full.

the ‘hopping’ only caused pebbles to fly, so that the point at issue is the same as that between Symmachus and the Rabbis.[1]

Come and hear: ‘In the case of poultry picking at a cord attached to a pail so that the cord was snapped asunder and the bucket[2] broken, the payment must be in full.’ Could it not be proved from this [Baraitha] that it is the original cause of the damage that has to be followed? — You may, however, interpret [the liability of full payment] to refer to the damage done to the cord.[3] But behold, is not [the damage of] the cord unusual [with poultry[4] and only half damages ought to be paid]? — It was smeared with dough.[5] But, does it not say ‘and the bucket [was] broken’?[6] This Baraitha must therefore be in accordance with Symmachus, who maintains that also in the case of Pebbles full payment must be made. But if it is in accordance with Symmachus, read the concluding clause: Were a fragment of the broken bucket to fly and fall upon another utensil, breaking it, the payment for the former [i.e., the bucket] must be in full, but for the latter only half damages will be paid. Now does Symmachus ever recognise half damages [in the case of Pebbles]? If you, however, submit that there is a difference according to Symmachus between damage occasioned by direct force[7] and that caused by indirect force,[8] what about the question raised by R. Ashi:[9] Is damage occasioned by indirect force according to Symmachus subject to the same law[10] applicable to direct force, or not subject to the law of direct force?[11] Why is it not evident to him that it is not subject to the law of direct force? Hence the above Baraitha is accordingly more likely to be in accordance with the Rabbis, and proves thus that it is the original cause that has to be followed [as the determining factor]![12] R. Bibi b. Abaye, however, said: The bucket [that was broken] was [not rolled but] continuously pushed by the poultry [from one place to another, so that it was broken by actual bodily touch].[13]

Raba [again] queried: Will the half damages in the case of ‘Pebbles’ be paid out of the body [of the tort-feasant animal][14] or will it be paid out of the best of the defendant's estate?[15] Will it be paid out of the body [of the tort-feasant animal] on account of the fact that nowhere is the payment of half damages made out of the best of the defendant's estate, or shall it nevertheless perhaps be paid out of the best of the defendant's estate since there is no case of habitual damage being compensated out of the body [of the tort-feasant animal]? — Come and hear: ‘Hopping [with poultry] is not Mu'ad. Some, however, say: It is Mu'ad.’ Could ‘hopping’ be said [in any way not to be habitual with poultry]? Does it not therefore mean: ‘Hopping and making [pebbles] fly,’ so that the point at issue is as follows: The former view maintaining that it is not [treated as] Mu'ad, requires payment to be made out of the body [of the tort-feasant poultry][14] whereas the latter view maintaining that it is [treated as] Mu'ad, will require the payment [of the half damages for Pebbles] to be made out of the best of the defendant's estate?[15] — No, the point at issue is that between Symmachus and the Rabbis.[16]

Come and hear: In the case of a dog taking hold of a cake [with live coals sticking to it] and going [with it] to a stack of grain where he consumed the cake and set the stack on fire, full payment must be made for the cake,[17] whereas for the stack only half damages will be paid.[18] Now, what is the reason [that only half damages will be paid for the stack] if not on account of the fact that the damage of the stack is subject to the law of Pebbles?[19] It has, moreover, been taught in connection with this [Mishnah] that the half damages will be collected out of the body [of the tort-feasant dog]. [Does not this ruling offer a solution to the problem raised by Raba?] — But do you really think [the law of ‘Pebbles’ to be at the basis of this ruling]?[20] According to R. Eleazar [who maintains[21] that the payment even for the stack will be in full and out of the body of the tort-feasant dog], do we find anywhere full payment being collected out of the body [of tort-feasant animals]? Must not this ruling[20] therefore be explained to refer to a case where the dog acted in an unusual manner in handling the coal,[22] R. Eleazar being of the same opinion as R. Tarfon, who maintains[23] that [even] for the unusual damage by Horn, if done in the plaintiff's premises, the payment will be in full?[24] — This explanation, however, is not essential. For that which compels you to make R. Eleazar maintain the same opinion as R. Tarfon, is only his requiring full payment [out of the body of the dog]. It may

therefore be suggested on the other hand that R. Eleazar holds the view expressed by Symmachus, that in the case of Pebbles full damages will be paid; and that he further adopts the view of R. Judah who said[25] that [in the case of Mu'ad, half of the payment, i.e.] the part of Tam, remains unaffected, [i .e., is always subject to the law of Tam]; the statement that payment is made out of the body [of the dog] will therefore refer only to [one half] the part for which even Tam would be liable. But R. Samia the son of R. Ashi said lo Rabina: I submit that the view you have quoted in the name of R. Judah is confined to cases of Tam turned into Mu'ad [i.e. Horn],[25] whereas in cases which are Mu'ad ab initio[26]

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(1) I.e., whether full or half payment has to be made for damage caused by Pebbles.

(2) Probably by rolling to some other place, where it finally broke.

(3) Whereas for the bucket only half damages will perhaps be paid.

(4) Being thus subject to the law of 'Horn'.

(5) In which case it is not unusual with poultry to pick at such a cord.

(6) Thus clearly indicating that the payment is in respect of the damage done to the bucket.

(7) Such as in the case of a bucket upon which pebbles were thrown directly by an animal.

(8) I.e., a second bucket damaged by a fragment that fell from a first bucket, which was broken by pebbles thrown by an animal.

(9) Infra 19a.

(10) I.e., to full payment.

(11) But merely to half damages.

(12) I.e., though the bucket rolled to some other place where it broke, the case is still subject to the law of Foot.

(13) And coming within the usual category of Foot.

(14) As in the case of Tam; cf. supra, p. 73.

(15) As in the case of Foot; cf. supra, p. 9.

(16) I.e., whether full or half damages are to be paid in the case of Pebbles.

(17) Being subject to the law applicable to Tooth, cf. supra p. 68.

(18) Infra 21b.

(19) Because the damage to the stack was not done by the actual body of the dog but was occasioned by the dog through the instrumentality of the coal, which, after having been put on a certain spot, spread the damage near and far.

(20) Of half damages for the stack.

(21) In a Baraitha.

(22) By taking it in its mouth and applying it to the stack, in which case it is subject to the law of 'Horn'.

(23) Supra p. 59 and infra 24b.

(24) [Though the payment will still be made out of the body of the tort-feasant animal.)

(25) Infra 39a. 45b.

(26) Such as Foot (and Pebbles at least according to Symmachus).

Talmud - Mas. Baba Kama 18b

you have surely not found him maintaining so! You can therefore only say that R. Eleazar's statement regarding full payment deals with a case where the dog has already become Mu'ad [to set fire to stacks in an unusual manner][1] and the point at issue will be that R. Eleazar maintains that there is such a thing as becoming Mu'ad [also] regarding [the law of] Pebbles[2] whereas the Rabbis maintain that there is no such thing as becoming Mu'ad in the case of Pebbles.[3] But If so what about another problem raised [elsewhere][4] by Raba: 'Is there such a thing as becoming Mu'ad regarding [the law of] Pebbles,[5] or is there no such thing as becoming Mu'ad in the case of Pebbles?'[6] Why then not say that according to the Rabbis there could be no such thing as becoming Mu'ad in the case of Pebbles, whereas according to R. Eleazar there may be a case of becoming Mu'ad even in the case of Pebbles? — Raba, however, may say to you: The problem raised by me [as to the possibility of becoming Mu'ad] is of course based on the view of the Rabbis who differ [in this respect] from Symmachus, whereas here [in the case of the dog] both the Rabbis and R. Eleazar may hold the view

of Symmachus who maintains that Pebbles always involve payment in full. The reason, however, that the Rabbis order only half damages [to be paid][7] is on account of the fact that the dog handled the coal in an unusual manner[8] while it had not yet become Mu'ad [for that]. The point at issue between them[9] would be exactly the same as between R. Tarfon and the Rabbis.[10] But R. Tarfon who took the view that the payment will be in full may perhaps never have intended to make it dependent upon the body [of the tort-feasant cattle]?[11] — Cer tainly so, for he derives his view from [the law of] Horn on public ground[12] and it only stands to reason that Dayyo,[13] [i.e. it is sufficient] to a derivative by means of a Kal wa-homer[14] to involve nothing more than the original case from which it has been deduced.[15] But behold, R. Tarfon is expressly not in favour of the Principle of Dayyo?[13] — He is not in favour of Dayyo only when the Kal wa-homer would thereby be rendered completely ineffective[16] , but where the Kal wa-homer would not be rendered ineffective he too upholds Dayyo.[17]

To revert to the previous theme:[18] Raba asked: Is there such a thing as becoming Mu'ad regarding [the law of] Pebbles, or is there no such thing as becoming Mu'ad in the case of Pebbles? Do we compare Pebbles to Horn [which is subject to the law of Mu'ad] or do we not do so since the law of Pebbles is a derivative of Foot[19] [to which the law of Mu'ad has no application]?

Come and hear: "Hopping is not Mu'ad [with poultry]. Some, however, say: It is Mu'ad.' Could 'hopping' be thought [in any way not to be habitual with poultry]? It, therefore, of course means 'Hopping and making thereby [pebbles] fly.' Now, does it not deal with a case where the same act has been repeated three times, so that the point at issue between the authorities will be that the one Master [the latter] maintains that the law of Mu'ad applies [also to Pebbles] whereas the other Master [the former] holds that the law of Mu'ad does not apply [to Pebbles]? — No, it presents a case where no repetition took place; the point at issue between them being the same as between Symmachus and the Rabbis.[20]

Come and hear: In the case of an animal dropping excrements into dough. R. Judah maintains that the payment must be in full, but R. Eleazar says that only half damages will be paid. Now, does it not deal here with a case where the act has been repeated three times, so that the point at issue between the authorities will be that R. Judah maintains that the animal has thus become Mu'ad whereas R. Eleazar holds that it has not become Mu'ad?[21] — No, it deals with a case where no repetition took place, the point at issue between them being the same which is between Symmachus and the Rabbis. But is it not unusual [with an animal to do so]?[22] — The animal was pressed for space [in which case it is no more unusual]. But why should not R. Judah have explicitly stated that the Halachah is in accordance with Symmachus and similarly R. Eleazar should have stated that the Halachah is in accordance with the Rabbis?[23] — [A specific ruling in regard to] excrements is of importance, for otherwise you might have thought that since these [excrements formed a part of the animal and] were poured out from its body, they should still be considered as a part of its body,[24] it has therefore been made known to us that this is not so.[25]

Come and hear: Rami b. Ezekiel learned:[26] In the case of a cock putting its head into an empty utensil of glass where it crowed so that the utensil thereby broke, the payment must be in full, while R. Joseph on the other hand said[26] that it has been stated in the School of Rab that in the case of a horse neighing or an ass braying so that utensils were thereby broken, only half damages will be paid. Now, does it not mean that the same act has already been repeated three times,

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(1) Being thus subject to the law applicable to Horn whereas in the case of Pebbles not accompanied by an unusual act, R. Eleazar would maintain the view of the Rabbis that the payment will not be in full.

(2) When thrown by an unusual act and repeated on more than three occasions; the payment would thus then have to be in full.

(3) But that in spite of all repetitions of the damage the payment will never exceed half damages on account of the

consideration that the case of Pebbles in the usual way is always Mu'ad ab initio and yet no more than half damages is involved.

(4) Cf. infra p. 86.

(5) So that in the case of an animal making pebbles fly (by means of an unusual act) on more than three occasions, the payment will be in full, on the analogy with Horn

(6) The payment will thus never exceed half damages on account of the fact that the repetition on three occasions renders the act usual and makes it subject to the general laws of Pebbles, requiring half damages in the case of any usual act of an animal making pebbles fly.

(7) In the case of the dog.

(8) Coming thus within the category of Horn.

(9) I.e., between the Rabbis and R. Eleazar.

(10) With reference in damage done by Horn (Tam) on the Plaintiff's premises; cf. supra pp. 59. 84; infra p. 125.

(11) For since the payment is in full why should it not be out of the best of the defendant's estate? Cf. however supra p. 15, infra p. 180; but also pp. 23,212.

(12) Infra 24b.

(13) Lit., 'It is sufficient for it'.

(14) Lit. 'From Minor to Major'; v. Glos.

(15) Which was Horn on public ground where the payment in the case of Tam is made out of the body of the tort-feasant animal.

(16) Such as, e.g., to make on account of Dayyo, the payment in the case of Tam doing damage on the plaintiff's premises only for half damages — a payment which would be ordered even without a Kal wa-homer.

(17) The full payment in the case of Tam on the plaintiff's premises which is deduced from the Hal wa-homer, will therefore be collected only out of the body of the tort-feasant animal, on the strength of the Dayyo.

(18) Supra p. 85.

(19) Cf. supra 3b; v. also p. 85, n. 5.

(20) I.e., whether the payment for Pebbles generally be in full or half; cf. supra 17b.

(21) And thus the problem propounded by Raba is a point at issue between Tannaim.

(22) The case must accordingly come under the category of Horn where only half damages should he paid in the first three occasions.

(23) Why deal at all with the specific case of an animal dropping excrements?

(24) Any damage done by them should thus be compensated in full on the analogy of any other derivative of Foot proper.

(25) I.e., it does not come under the category of Foot proper but under that of Pebbles.

(26) Cf. Kid. 24b.

Talmud - Mas. Baba Kama 19a

so that the point at issue [between the contradictory statements] will be that the one Master [the former] maintains that the law of Mu'ad applies [also to Pebbles][1] whereas the other Master [the latter] holds that the law of Mu'ad does not apply [to Pebbles]?[2] — No, we suppose the act not to have been repeated, the point at issue being the same as that between Symmachus and the Rabbis. But is it not unusual [for a cock to crow into a utensil]?[3] — There had been some seeds there [in which case it was not unusual].

R. Ashi asked: Would an unusual act[4] reduce Pebbles [by half, i.e.,] to the payment of quarter damages or would an unusual act not reduce Pebbles to the payment of quarter damages?[5] — But why not solve this question from that of Raba, for Raba asked [the following]:[6] Is there such a thing as becoming Mu'ad in the case of Pebbles[7] or is there no such thing as becoming Mu'ad in the case of Pebbles?[8] Now, does not this query imply that no unusual act [affects the law of Pebbles]?[9] — Raba may perhaps have formulated his query upon a mere supposition as follows: If you suppose that no unusual act [affects the law of Pebbles], is there such a thing as becoming Mu'ad [in the case of Pebbles] or is there no such thing as becoming Mu'ad? — Let it stand undecided.

R. Ashi further asked: Is [damage occasioned by] indirect force, according to Symmachus,[10] subject to the law applicable to direct force or not so? Is he[11] acquainted with the special halachic tradition [on the matter][12] but he confines its effect to damage done by indirect force or is he perhaps not acquainted at all with this tradition? — Let it stand undecided.

IF IT WAS KICKING OR PEBBLES WERE FLYING FROM UNDER IT'S FEET AND UTENSILS WERE BROKEN, [ONLY] HALF DAMAGES WILL BE PAID. The following query was put forward: Does the text mean to say: 'If it was kicking so that damage resulted from the kicking, or in the case of pebbles flying in the usual way ... [only] half damages will be paid,' being thus in accordance with the Rabbis;[13] or does it perhaps mean to say: 'If it was kicking so that damage resulted from the kicking, or when pebbles were flying as a result of the kicking . . . [only] half damages will be paid.' thus implying that in the case of pebbles flying in the usual way, the payment would be in full, being therefore in accordance with Symmachus?[14]

Come and hear the concluding clause: IF IT TROD UPON A UTENSIL AND BROKE IT, AND A FRAGMENT [OF IT] FELL UPON ANOTHER UTENSIL WHICH WAS ALSO BROKEN, FOR THE FIRST UTENSIL FULL COMPENSATION MUST BE PAID, BUT FOR THE SECOND, [ONLY] HALF DAMAGES. Now, how could the Mishnah be in accordance with Symmachus,[14] who is against half damages [in the case of Pebbles]? If you, however, suggest that THE FIRST UTENSIL refers to the utensil broken by a fragment that flew off from the first [broken] utensil, and THE SECOND refers thus to the utensil broken by a fragment that flew off from, the second [broken] utensil, and further assume that according to Symmachus there is a distinction between damage done by direct force and damage done by indirect force [so that in the latter case only half damages will be paid], then [if so] what about the question of R. Ashi: 'Is [damage occasioned by] indirect force, according to Symmachus, subject to the law of direct force or not subject to the law of direct force?' Why is it not evident to him [R. Ashi] that it is not subject to the law applicable to direct force? — R. Ashi undoubtedly explains the Mishnah in accordance with the Rabbis, and the query[15] is put by him as follows: [Does it mean to say:] 'If it was kicking so that damage resulted from the kicking, or in the case of pebbles flying in the usual way . . . [only] half damages will be paid', thus implying that [in the case of Pebbles flying] as a result of kicking, [only] quarter damages would be paid on account of the fact that an unusual act reduces payment [in the case of Pebbles][16] or [does it perhaps mean to say:] 'If it was kicking so that damage resulted from the kicking or when pebbles were flying as a result of the kicking . . .half damages will be paid,' thus making it plain that an unusual act does not reduce payment [in the case of Pebbles]? — Let it stand undecided.

R. Abba b. Memel asked of R. Ammi, some say of R. Hiyya b. Abba, [the following Problem]: In the case of an animal walking in a place where it was unavoidable for it not to make pebbles fly [from under its feet], while in fact it was kicking and in this way making pebbles fly and doing damage, what would be the law? [Should it be maintained that] since it was unavoidable for it not to make pebbles fly there, the damage would be considered usual;[17] or should it perhaps be argued otherwise, since in fact the damage resulted from kicking[18] that caused the pebbles to fly? — Let it stand undecided.

R. Jeremiah asked R. Zera: In the case of an animal walking on public ground and making pebbles fly from which there resulted damage, what would be the law? Should we compare this case[19] to Horn[20] and thus impose liability; or since, on the other hand, it is a derivative of Foot, should there be exemption [for damage done on public ground]? — He answered him: It stands to reason that [since] it is a secondary kind of Foot [there is exemption on Public ground].[21]

Again [he asked him]: In a case where the pebbles were kicked up on public ground but the

damage that resulted therefrom was done in the plaintiff's premises, what would be the law? — He answered him: if the cause of raising [the pebbles] is not there [to institute liability],[22] how could any liability be attached to the falling down [of the pebbles]? Thereupon he [R. Jeremiah] raised an objection [from the following]: In the case of an animal walking on the road and making pebbles fly either in the plaintiff's premises or on public ground, there is liability to pay. Now, does not this Baraitha deal with a case where the pebbles were made both to fly up on public ground and to do damage on public ground?[23] — No, though the pebbles were made to fly on public ground, the damage resulted on the plaintiff's premises. But did you not say [he asked him further, that in such a case there would still be exemption on account of the argument].'If the cause of raising [the pebbles] is not there [to institute liability], how could any liability be attached to the falling down [of the pebbles]?' He answered him: 'I have since changed my mind [on this matter].'[24]

He raised another objection: IF IT TROD UPON A UTENSIL AND BROKE IT, AND A FRAGMENT [OF IT] FELL UPON ANOTHER UTENSIL WHICH WAS ALSO BROKEN, FOR THE FIRST UTENSIL FULL COMPENSATION MUST BE PAID, BUT FOR THE SECOND [ONLY] HALF DAMAGES. And it was taught on the matter: This ruling is confined to [damage done on] the plaintiff's premises, whereas if it took place on public ground there would be exemption regarding the first utensil though with respect to the second there would be liability to pay. Now, does not the Baraitha present a case where the fragment was made both to fly up on public ground and to do damage on public ground?[25] — No, though the fragment was made to fly on public ground, the damage resulted on the plaintiff's premises.

But did you not say [that in such a case there would still be exemption on account of the argument]: 'If the cause of raising [the pebbles] is not there [to institute liability], how could any liability be attached to the falling down [of the pebbles?]'

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(1) The compensation is therefore in full.

(2) Consequently only half damages will be paid.

(3) Coming thus under the category of Horn only half damages should be paid in the case of Tam.

(4) Done by an animal making pebbles fly through kicking.

(5) But the compensation of half damages will be made in all cases of Pebbles.

(6) Supra p. 85.

(7) For compensation in full.

(8) And no more than half damages will ever be paid

(9) For if otherwise, and quarter damages will be paid in the first instance of an unusual act in the case of Pebbles, how could the compensation rise above half damages?

(10) Who orders full compensation in the case of Pebbles; supra p. 79.

(11) I.e., Symmachus.

(12) Ordering only half damages; v supra p. 79.

(13) Who, against the view of Symmachus, order only half damages to be paid, supra p. 79.

(14) Who orders full compensation in the case of Pebbles; ibid.

(15) As to the reading of the Mishnaic text.

(16) As queried by R. Ashi himself, supra p. 88.

(17) Coming thus under the law applicable to Pebbles in the usual way.

(18) Which is an unusual act and should thus be subject to the query put forward by Raba regarding pebbles that were caused to fly by means of an unusual act.

(19) On account of the liability only for half damages.

(20) Where there is liability even on public ground.

(21) Cf. supra p. 9.

(22) Since it took place on public ground.

(23) Which is a refutation of R. Zera's first ruling.

(24) I.e., on the last point.

(25) Which shows that there is liability for Pebbles, i.e., for 'the second utensil,' on public ground, against the ruling of R. Zera.

Talmud - Mas. Baba Kama 19b

— He answered him: 'I have since changed my mind [on this matter].''

But behold R. Johanan said that in regard to the liability of half damages there is no distinction between the plaintiff's premises and public ground. Now, does not this statement also deal with a case where the pebbles were made both to fly up on public ground and to do damage on public ground? — No, though the pebbles were made to fly up on public ground, the damage resulted on the plaintiff's premises. But did you not say [that in such a case there would still be exemption on account of the argument], 'If the cause of raising [the pebbles] is not there [to institute liability], how could any liability be attached to the falling down [of the pebbles]?' — He answered him: 'I have since changed my mind [on this matter].' Alternatively, you might say that R. Johanan referred only to [the liability attached to] Horn.[1]

R. Judah [II] the Prince and R. Oshaia had both been sitting near the entrance of the house of R. Judah, when the following matter was raised between them: In the case of an animal knocking about with its tail, [and doing thereby damage on public ground] what would be the law? — One of them said in answer: Could the owner be asked to hold the tail of his animal continuously wherever it goes?[2] But if so, why in the case of Horn shall we not say the same: 'Could the owner be asked to hold the horn of his animal continuously wherever it goes?' — There is no comparison. In the case of Horn the damage is unusual, whereas it is quite usual [for an animal] to knock about with its tail.[3] But if it is usual for an animal to knock about with its tail, what then was the problem?[4] — The problem was raised regarding an excessive knocking about.[5]

R. 'Ena queried: In the case of an animal knocking about with its membrum virile and doing thereby damage,[6] what is the law? Shall we say it is analogous to Horn?[7] For in the case of Horn do not its passions get the better of it, as may be said here also? Or shall we perhaps say that in the case of Horn, the animal is prompted by a malicious desire to do damage, whereas, in the case before us, there is no malicious desire to do damage?[8] — Let it stand undecided.

POULTRY ARE MU'AD TO WALK IN THEIR USUAL WAY AND TO BREAK [THINGS]. IF A STRING BECAME ATTACHED TO THEIR FEET OR WHERE THEY HOP ABOUT AND BREAK UTENSILS, [ONLY] HALF DAMAGES WILL BE PAID. R. Huna said: The ruling regarding half damages applies only to a case where the string became attached of itself, but in a case where it was attached by a human being the liability would be in full. But in the case where the string was attached of itself, who would be liable to pay the half damages? It could hardly be suggested that the owner of the string[9] would have to pay it, for in what circumstances could that be possible? If when the string was kept by him in a safe place [so that the fact of the poultry taking hold of it could in no way be attributed to him], surely it was but a sheer accident?[10] If [on the other hand] it was not kept in a safe place, should he not be liable for negligence [to pay in full]? It was therefore the owner of the poultry who would have to pay the half damages. But again why differentiate [his case so as to excuse him from full payment]? If there was exemption from full payment on account of [the inference drawn from] the verse, If a man shall open a pit,[11] which implies that there would be no liability for Cattle opening a Pit, half damages should [for the very reason] similarly not be imposed here as [there could be liability only when] Man created a pit but not [when] Cattle [created] a pit? — The Mishnaic ruling [regarding half damages] must therefore be applicable only to a case where the poultry made the string fly [from one place to another, where it broke the utensils, being thus subject to the law of Pebbles]; and the statement made by R.Huna will accordingly refer to a case which has been dealt with elsewhere [viz.]: In the case of an ownerless

string, R. Huna said that if it had become attached of itself to poultry [and though damage resulted to an animate object tripping over it while it was still attached to the poultry] there would be exemption.[12] But if it had been attached to the poultry by a human being, he would be liable to pay [in full]. Under what category of damage could this liability come?[13] — R. Huna b. Manoah said: Under the category of Pit, which is rolled about by feet of man and feet of animal.[14]

MISHNAH. WITH REFERENCE TO WHAT IS TOOTH MU'AD?[15] [IT IS MU'AD] TO CONSUME WHATEVER IS FIT FOR IT. ANIMAL IS MUA'D TO CONSUME BOTH FRUITS AND VEGETABLES. BUT IF IT HAS DESTROYED CLOTHES OR UTENSILS, [ONLY] HALF DAMAGES WILL BE PAID.[16] THIS RULING APPLIES ONLY TO DAMAGE DONE ON THE PLAINTIFF'S PREMISES, BUT IF IT IS DONE ON PUBLIC GROUND THERE WOULD BE EXEMPTION.[17] WHERE, HOWEVER, THE ANIMAL HAS DERIVED SOME BENEFIT [FROM THE DAMAGE DONE BY IT], PAYMENT WILL [IN ANY CASE] BE MADE TO THE EXTENT OF THE BENEFIT. WHEN WILL PAYMENT BE MADE TO THE EXTENT OF THE BENEFIT? IF IT CONSUMED [FOOD] IN THE MARKET, PAYMENT TO THE EXTENT OF THE BENEFIT WILL BE MADE; [BUT IF IT CONSUMED] IN THE SIDEWAYS OF THE MARKET, THE PAYMENT WILL BE FOR THE ACTUAL. DAMAGE DONE BY THE ANIMAl. [SO ALSO IF IT CONSUMED] AT THE ENTRANCE OF A SHOP, PAYMENT TO THE EXTENT OF THE BENEFIT WILL BE MADE, [BUT IF IT CONSUMED] INSIDE THE SHOP, THE PAYMENT WILL BE FOR THE ACTUAL DAMAGE DONE BY THE ANIMAL.

GEMARA. Our Rabbis taught: Tooth is Mu'ad to consume whatever is fit for it. How is that? In the case of an animal entering the plaintiff's premises and consuming food that is fit for it or drinking liquids that are fit for it, the payment will be in full. Similarly in the case of a wild beast entering the plaintiff's premises, tearing an animal to pieces and consuming its flesh, the payment will be in full. So also in the case of a cow consuming barley, an ass consuming horse-beans, a dog licking oil, or a pig consuming a piece of meat, the payment will be in full. R. Papa [thereupon] said: Since it has been stated that things which in the usual way would be unfit as food [for particular animals] but which under pressing circumstances are consumed by them,[18] come under the designation of food, in the case of a cat consuming dates, and an ass consuming fish, the payment will similarly be in full.

There was a case where an ass consumed bread and chewed also the basket[19] [in which the bread had been kept]. Rab Judah thereupon ordered full payment for the bread, but only half damages for the basket. Why can it not be argued that since it was usual for the ass to consume the bread, it was similarly usual for it to chew at the same time the basket too? — It was only after it had already completed consuming the bread, that the ass chewed the basket. But could bread be considered the usual food of an animal? Here is [a Baraitha] which contradicts this: If it [the animal] consumed bread, meat or broth, only half damages will be paid.[20] Now, does not this ruling refer to [a domestic] animal?[21] — No, it refers to a wild beast. To a wild beast? Is not meat its usual food? — The meat was roasted.[22] Alternatively, you may say: It refers to a deer.[23] You may still further say alternatively that it refers to a [domestic] animal, but the bread was consumed upon a table.[24]

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(1) Where indeed there is no distinction between public ground and the plaintiff's premises; (cf. however, the views of R. Tarfon, supra 14a;18a and infra 24b). but in regard to Pebbles, there is a distinction, and liability is restricted to the plaintiff's premises, according to the ruling of R. Zera.

(2) There will therefore be no liability.

(3) Coming thus under the category of Foot, for which there is no liability on public ground.

(4) Why should it not be regarded as a derivative of Foot?

(5) Whether it is still usual for it or not.

(6) On public ground.

(7) And there will be liability.

(8) It should therefore come under the category of Tooth and Foot, for which there is no liability on public ground.

(9) Not being the owner of the poultry.
(10) He should consequently be freed altogether.
(11) Ex. XXI, 33. (5) I.e., no responsibility is involved in cattle creating a nuisance. Cf. infra 48a; 51a.
(12) As there was no owner to the string, while the owner of the poultry could not be made liable for damage that resulted from a nuisance created by his poultry on the principle that Cattle, creating a nuisance, would in no way involve the owner in any obligation.
(13) Since that human being was neither the owner of the poultry nor the owner of the string, and the damage did not occur at the spot where he attached the string.
(14) For which there is liability, as explained supra p. 19.
(15) V. supra p. 68.
(16) For being an unusual act, it comes under the category of Horn.
(17) Cf. supra p. 17.
(18) E.g., horse-beans by an ass, or meat by a pig.
(19) Or 'split it', 'picked it to pieces' (Rashi).
(20) On the ground that the act was unusual and as such would come under the category of Horn.
(21) This shows that bread is not the usual food of animal.
(22) Which is in such a state not usually consumed even by a wild beast.
(23) Which, as a rule, does not feed on meat.
(24) Which was indeed unusual.

Talmud - Mas. Baba Kama 20a

There was a case where a goat, noticing turnips upon the top of a cask, climbed up there and consumed the turnips and broke the jar. — Raba thereupon ordered full payment both for the turnips and for the jar; the reason being that since it was usual with it to consume turnips it was also usual to climb up [for them].

Ilfa stated: In the case of an animal on public ground stretching out its neck and consuming food that had been placed upon the back of another animal, there would be liability to pay; the reason being that the back of the other animal would be counted as the plaintiff's premises. May we say that the following teaching supports his view: 'In the case of a plaintiff who had a bundle [of grain] hanging over his back and [somebody else's animal] stretched out its neck and consumed [the grain] out of it, there would be liability to pay'? — No, just as Raba elsewhere referred to a case where the animal was jumping [an act which being quite unusual would be subject to the law of Horn[1]], so also this teaching might perhaps similarly deal with a case of jumping.

With reference to what was Raba's statement made? — [It was made] with reference to the following statement of R. Oshaia: In the case of an animal on public ground going along and consuming, there would be exemption, but if it was standing and consuming there would be liability to pay. Why this difference? If in the case of walking [there is exemption, since] it is usual with animal to do so, is it not also in the case of standing usual with it to do so? — [It was on this question that] Raba said: 'Standing' here implies jumping [which being unusual was therefore subject in the law of Horn].[1]

R. Zera asked: [In the case of a sheaf that was] rolling about, what would he the law? (In what circumstances? — When, e.g., grain had originally been placed in the plaintiff's premises, but was rolled thence into public ground [by the animal, which consumed the grain while standing on public ground], what would then be the law?)[2] — Come and hear that which R. Hiyya taught: 'In the case of a bag of food lying partly inside and partly outside [of the plaintiff's premises], if the animal consumed inside, there would be liability [to pay], but if it consumed outside there would be exemption.' Now, did not this teaching refer to a case where the bag was being continually rolled?[3] — No; read . '...which the animal consumed, for the part which had originally been lying inside[4]

there would be liability but for the part that had always been outside there would be exemption.' You might alternatively say that R. Hiyya referred to a bag containing long stalks of grass.[5]

ANIMAL IS MUA'D TO CONSUME BOTH FRUITS AND VEGETABLES. BUT IF IT HAS DESTROYED CLOTHES OR UTENSILS, [ONLY] HALF DAMAGES WILL BE PAID. THIS RULING APPLIES ONLY TO DAMAGE DONE ON THE PLAINTIFF'S PREMISES, BUT IF IT IS DONE ON PUBLIC GROUND THERE WOULD BE EXEMPTION. To what ruling does the last clause refer? — Rab said: [It refers] to all the cases [dealt with in the Mishnah, even to the destruction of clothes and utensils];[6] the reason being that whenever the plaintiff himself acted unlawfully,[7] the defendant, though guilty of misconduct, could be under no liability to pay. Samuel on the other hand said: It refers only to the ruling regarding [the consumption of] fruits and vegetables,[8] whereas in the case of clothes and utensils[9] there would be liability [even when the damage was done on public ground]. [The same difference of opinion is found between Resh Lakish and R. Johanan, for] Resh Lakish said: [It refers] to all the cases [even to the destruction of clothes and utensils].[10] In this Resh Lakish was following a view expressed by him in another connection, where he stated:[11] In the case of two cows on public ground, one lying down and the other walking about, if the one that was walking kicked the one that was lying there would be exemption [since the latter too misconducted itself by laying itself down on public ground], whereas if the one that was lying kicked the one that was walking there would be liability to pay. R. Johanan on the other hand said: The ruling in the Mishnah refers only to the case of fruits and vegetables, whereas in the case of clothes and utensils there would be liability [even when the damage was done on public ground]. Might it thus be inferred that R. Johanan was also against the view expressed by Resh Lakish even in the case of the two cows? — No; [in that case] he could indeed have been in full agreement with him; for while in the case of clothes [and utensils] it might be customary with people to place [their] garments [on public ground] whilst having a rest near by, [in the case of the cows] it is not usual [for an animal to lie down on public ground].[12]

WHERE, HOWEVER, THE ANIMAL HAS DERIVED SOME BENEFIT [FROM THE DAMAGE DONE BY IT]. PAYMENT WILL [IN ANY CASE] BE MADE TO THE EXTENT OF THE BENEFIT. How [could the extent of the benefit be] calculated? — Rabbah said: [It must not exceed] the value of straw [i.e. the coarsest possible food for animals]. But Raba said: The value of barley[13] on the cheapest scale [i.e. two-thirds of the usual price]. There is a Baraitha in agreement with Rabbah, and there is another Baraitha in agreement with Raba. There is a Baraitha in agreement with Rabbah [viz.]: R. Simeon b. Yohai said: The payment [to the extent of the benefit] would not be more than the value of straw.[14] There is a Baraitha in agreement with Raba [viz.]: When the animal derived some benefit [from the damage done by it], payment would [in any case] be made to the extent of the benefit. That is to say, in the case of [an animal] having consumed [on public ground] one kab[15] or two kabs [of barley], no order would be given to pay the full value of the barley [that was consumed], but it would be estimated how much might an owner be willing to spend to let his animal have that particular food [which was consumed] supposing it was good for it, though in practice he was never accustomed to feed it thus. It would therefore follow that in the case of [an animal] having consumed wheat or any other food unwholesome for it, there could be no liability at all.

R.Hisda said to Rami b. Hama: You were not yesterday with us in the House of Study[16] where there were discussed some specially interesting matters. The other thereupon asked him: What were the specially interesting matters? He answered: [The discussion was whether] one who occupied his neighbour's premises unbeknown to him would have to pay rent[17] or not. But under what circumstances? It could hardly be supposed that the premises were not for hire,[18] and he [the one who occupied them] was similarly a man who was not in the habit of hiring any,[19] for [what liability could there be attached to a case where] the defendant derived no benefit and the plaintiff sustained no loss? If on the other hand the premises were for hire and he was a man whose wont it was to hire

premises, [why should no liability be attached since] the defendant derived a benefit and the plaintiff sustained a loss? — No; the problem arises in a case where the premises were not for hire, but his wont was to hire premises. What therefore should be the law? Is the occupier entitled to plead [against the other party]: 'What loss have I caused to you [since your premises were in any case not for hire]?'

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(1) Which could not be exempted from liability even on public ground.

(2) If we were to go by the place of the actual consumption there would be exemption in this case, whereas if the original place whence the food was removed is also taken into account, there would be liability to pay.

(3) According to this Baraitha, the place of actual consumption was the basic point to be considered.

(4) Though removed by the animal and consumed outside.

(5) Which was lying partly inside and partly outside, and as, unlike grain, it constituted one whole, the place of the consumption was material.

(6) For which there would be no liability on public ground, although, being unusual, it would come under the category of Horn.

(7) By allowing his clothes or utensils to be on public ground.

(8) Cf. supra p. 17.

(9) As the damage would come under the category of Horn.

(10) V. p. 97, n. 5.

(11) V. infra 32a.

(12) It was therefore a misconduct on the the part of the animal to lie down, which makes it liable for any damage it caused, whilst it is not entitled to payment for any damage sustained.

(13) I.e., the value of the food actually consumed by the animal.

(14) Even when the animal consumed barley, as it might be alleged that straw would have sufficed it.

(15) A certain measure: v. Glos.

(16) Lit. 'in our district,' 'domain' בחהומא This word is omitted in some texts, v. D. S. a.l.

(17) For the past.

(18) And would in any case have remained vacant.

(19) As he had friends who were willing to accommodate him without any pay.

Talmud - Mas. Baba Kama 20b

Or might the other party retort: 'Since you have derived a benefit [as otherwise you would have had to hire premises], you must pay rent accordingly'? Rami b. Hama thereupon said to R. Hisda: 'The solution to the problem is contained in a Mishnah.' — 'In what Mishnah?' He answered him: 'When you will first have performed for me some service.'[1] Thereupon he, R. Hisda, carefully lifted up his[2] scarf and folded it. Then Rami b. Hama said to him: [The Mishnah is:] WHERE, HOWEVER, THE ANIMAL HAS DERIVED SOME BENEFIT [FROM THE DAMAGE DONE BY IT,] PAYMENT WILL [IN ANY CASE] BE MADE TO THE EXTENT OF THE BENEFIT. Said Raba: How much worry and anxiety is a person [such as Rami b. Hama] spared whom the Master [of all] helps! For though the problem [before us] is not at all analogous to the case dealt with in the Mishnah, R. Hisda accepted the solution suggested by Rami b. Hama. [The difference is as follows:] In the case of the Mishnah the defendant derived a benefit and the plaintiff sustained a loss, whereas in the problem before us the defendant derived a benefit but the plaintiff sustained no loss. Rami b. Hama was, however, of the opinion that generally speaking fruits left on public ground have been [more or less] abandoned by their owner [who could thus not regard the animal that consumed them there as having exclusively caused him the loss he sustained, and the analogy therefore was good].

Come and hear: 'In the case of a plaintiff who [by his fields] has encircled the defendant's field on three sides, and who has made a fence on the one side as well as on the second and third sides [so that the defendant is enjoying the benefit of the fences], no payment can be enforced from the defendant [since on the fourth side his field is still open wide to the world and the benefit he derives

is thus incomplete].'[3] Should, however, the plaintiff make a fence also on the fourth side, the defendant would [no doubt] have to share the whole outlay of the fences. Now, could it not he deduced from this that wherever a defendant has derived benefit, though the plaintiff has thereby sustained no loss,[4] there is liability to pay [for the benefit derived]? — That case is altogether different, as the plaintiff may there argue against the defendant saying: It is you that [by having your field in the middle of my fields] have caused me to erect additional fences[5] [and incur additional expense].

Come and hear: [In the same case] R. Jose said: [It is only] if the defendant [subsequently] of his own accord makes a fence on the fourth side that there would devolve upon him, a liability to pay his share [also] in the existing fences [made by the plaintiff].[6] The liability thus applies only when the defendant fences [the fourth side], but were the plaintiff to fence [the fourth side too] there would be no liability [whatsoever upon the defendant]. Now, could it not be deduced from this that in a case where, though the defendant has derived benefit, the plaintiff has [thereby] sustained no loss, there is no liability to pay? — That ruling again is based on a different principle, since the defendant may argue against the plaintiff saying: 'For my purposes a partition of thorns of the value of zuz[7] would have been quite sufficient.'

Come and hear: '[A structure consisting of] a lower storey and an upper storey, belonging respectively to two persons, has collapsed. The owner of the upper storey thereupon asks the owner of the lower storey to rebuild the ground floor, but the latter does not agree to do so. The owner of the upper storey is then entitled to build the lower storey and to occupy it until the owner of the ground floor refunds the outlay.'[8] Now, seeing that the whole outlay will have to be refunded by the owner of the lower storey, it is evident that no rent may be deducted [for the occupation of the lower storey]. Could it thus not be inferred from this ruling that in a case where, though the defendant has derived a benefit, the plaintiff has [thereby] sustained no loss,[9] there is no liability to pay? — That ruling is based on a different principle as the lower storey is by law accessory to the upper storey.[10]

Come and hear: [In the same case] R. Judah said: Even this one who occupies another man's premises without an agreement with him must nevertheless pay him rent.[11] Is not this ruling a proof that in a case where the defendant has derived benefit, though the plaintiff has [thereby] sustained no loss, there is full liability to pay? — That ruling is based on a different principle, since we have to reckon there with the blackening of the walls [in the case of newly built premises, the plaintiff thus sustaining an actual loss].

The problem was communicated to R. Ammi and his answer was: 'What harm has the defendant done to the other party? What loss has he caused him to suffer? And finally what indeed is the damage that he has done to him?' R. Hiyya b. Abba, however, said: 'We have to consider the matter very carefully.' When the problem was afterwards again laid before R. Hiyya b. Abba he replied: 'Why do you keep on sending the problem to me? If I had found the solution, would I not have forwarded it to you?'

It was stated: R. Kahana quoting R. Johanan said: [In the case of the above problem] there would be no legal obligation to pay rent; but R. Abbahu similarly quoting R. Johanan said: There would be a legal obligation to pay rent. R. Papa thereupon said: The view expressed by R. Abbahu [on behalf of R. Johanan] was not stated explicitly [by R. Johanan] but was only arrived at by inference. For we learnt: He who misappropriates a stone or a beam belonging to the Temple Treasury[12] does not render himself subject to the law of Sacrilege.[13] But if he delivers it to his neighbour, he is subject to the law of Sacrilege,[14] whereas his neighbour is not subject to the law of Sacrilege.[15] So also when he builds it into his house he is not subject to the law of Sacrilege until he actually occupies that house for such a period that the benefit derived from that stone or that beam would amount to the value of a perutah.[16] And Samuel thereupon said that the last ruling referred to a case where the

stone or the beam was [not fixed into the actual structure but] left loose on the roof.[17] Now, R. Abbahu sitting in the presence of R. Johanan said in the name of Samuel that this ruling proved that he who occupied his neighbour's premises without an agreement with him would have to pay him rent.[18] And he [R. Johanan] kept silent. [R. Abbahu] imagined that since he [R. Johanan] remained silent, he thus acknowledged his agreement with this inference. But in fact this was not so. He [R. Johanan] paid no regard to this view on account of his acceptance of an argument which was advanced [later] by Rabbah; for Rabbah[19] said: The conversion of sacred property even without [the] knowledge [of the Temple Treasury] is [subject[20] to the law of Sacrilege][21]

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(1) 'Then will I let you know the source.' The service thus rendered would on the one hand prove the eagerness of the enquirer and on the other make him appreciate the answer;.

(2) I.e.. the other's.

(3) B.B. 4b.

(4) Such as in the case before us where the fences were of course erected primarily for the plaintiff's own use.

(5) I.e., the fencing which was erected between the field of the defendant and the surrounding fields that belong to the plaintiff. This interpretation is given by Rashi but is opposed by the Tosaf. a.l. who explain the case to refer to fencing set up between the fields of the plaintiff and those of the surrounding neighbours.

(6) B.B. 4b.

(7) A small coin; v. Glos.

(8) B.M. 117a.

(9) [Since in this case the owner of the ground floor refused to build.]

(10) The occupation of the newly-built lower storey by the owner of the upper storey is thus under the given circumstances a matter of right.

(11) B.M. 117a.

(12) But which has been all the time in his possession as he had been the authorized Treasurer of the Sanctuary; v. Hag. 11a and Mei. 20a

(13) Since the offender was the Treasurer of the Temple and the possession of the consecrated stone or beam has thus not changed hands, no conversion has been committed in this case. As to the law of Sacrilege, v. Lev. V, 15-16, and supra, p. 50.

(14) For the conversion that has been committed.

(15) Since the article has already been desecrated by the act of delivery.

(16) Mei. V, 4. Perutah is the minimum legal value; cf. also Glossary.

(17) [As otherwise the mere conversion involved would render him liable to the law of Sacrilege.]

(18) For if in the case of private premises there would be no liability to pay rent, why should the law if Sacrilege apply on account of the benefit of the perutah derived from the stone or the beam?

(19) Cf. B.M. 99b, where the reading is Raba.

(20) As nothing escapes the knowledge of Heaven which ordered the law of Sacrilege to apply to all cases of conversion.

(21) Dealt with in Lev. V, 15-16.

Talmud - Mas. Baba Kama 21a

just as the use of private property under an agreement [is subject to the law of Contracts].

R. Abba b. Zabda sent [the following message] to Mari the son of the Master:[1] 'Ask R. Huna as to his opinion regarding the case of one who occupies his neighbour's premises without any agreement with him, must he pay him rent or not?' But in the meanwhile R. Huna's soul went to rest. Rabbah b. R. Huna thereupon replied as follows: 'Thus said my father, my Master, in the name of Rab: He is not legally bound to pay him rent; but he who hires premises from Reuben may have to pay rent to Simeon.' But what connection has Simeon with premises [hired from Reuben, that the rent should be paid to him]? — Read therefore thus: '. . . [Reuben] and the premises were discovered to be the property of Simeon, the rent must be paid to him.' But [if so], do not the two statements [made above in the name of Rab] contradict each other? — The latter statement [ordering payment to Simeon]

deals with premises which were for hire,[2] whereas the former ruling [remitting rent in the absence of an agreement] refers to premises which were not for hire. It has similarly been stated: R. Hiyya b. Abin quoting Rab said, (some say that R. Hiyya b. Abin quoting R. Huna said): 'He who occupies his neighbour's premises without any agreement with him is not under a legal obligation to pay him rent. He, however, who hires premises from the representatives of the town must pay rent to the owners.' What is the meaning of the reference to 'owners'? — Read therefore thus: '. . . [representatives of the town,] and the premises are discovered to be the property of [particular] owners, the rent must be paid to them.' But [if so,] how can the two statements be reconciled with each other? The latter statement [ordering payment to the newly discovered owners] deals with premises which are for hire,[2] whereas the former ruling [remitting rent in the absence of an agreement] refers to premises which are not for hire.

R.Sehorah slated that R. Huna quoting Rab had said: He who occupies his neighbour's premises without having any agreement with him is under no legal obligation to pay him rent, for Scripture says, Through emptiness[3] even the gate gets smitten.[4] Mar, son of R. Ashi, remarked: I myself have seen such a thing[5] and the damage was as great as though done by a goring ox. R. Joseph said: Pre mises that are inhabited by tenants[6] keep in a better condition. What however is the [practical] difference between them?[7] — There is a difference between them in the case where the owner was using the premises for keeping there wood and straw.[8]

There was a case where a certain person built a villa upon ruins that had belonged to orphans. R. Nahman thereupon confiscated the villa from him [for the benefit of the orphans]. May it therefore not be inferred that R. Nahman is of the opinion that he who occupies his neighbour's premises without having any agreement with him must still pay him rent? — [The case of the orphans is based on an entirely different principle, as] that site had originally been occupied by certain Carmanians[9] who used to pay the orphans a small rent.[10] When the defendant had thus been advised by R. Nahman to go and make a peaceful settlement with the orphans, he paid no heed. R. Nahman therefore confiscated the villa from him.

WHEN WILL PAYMENT BE MADE TO THE EXTENT OF THE BENEFIT? [IF IT CONSUMED [FOOD] . . . IN THE SIDEWAYS OF THE MARKET, THE PAYMENT WILL BE FOR THE ACTUAL DAMAGE DONE BY THE ANIMAL.] Rab thereupon said: [The last ruling ordering payment for the actual damage done extends] even to a case where the animal itself [stood in the market place but] turned its head to the sideways [where it in this wise consumed the food]. Samuel on the other hand said: Even in the case of the animal turning its head to the sideways no payment will be made for the actual damage done.[11] But according to Samuel, how then can it happen that there will be liability to pay for actual damage? — Only when, e.g., the animal had quitted the market place altogether and walked right into the sideways of the market place. There are some [authorities] who read this argument [between Rab and Samuel] independent of any [Mishnaic] text: In the case of an animal [standing in a market place but] turning its head into the sideways [and unlawfully consuming food which was lying there], Rab maintains that there will be liability [for the actual damage] whereas Samuel says that there will be no liability [for the actual damage]. But according to Samuel, how then can it happen that there will be liability to pay for actual damage? — Only when, e.g., the animal had quitted the market place altogether and had walked right into the sideways of the market place. R. Nahman b. Isaac raised an objection: [SO ALSO IF IT CONSUMED] AT THE ENTRANCE OF A SHOP, PAYMENT TO THE EXTENT OF THE BENEFIT WILL BE MADE.[12] How could the damage in this case have occurred unless, of course, by the animal having turned [its head to the entrance of the shop]? Yet the text states, PAYMENT TO THE EXTENT OF THE BENEFIT. [That is to say,] only to the extent of the benefit [derived by the animal] but not for the actual damage done by it?[13] — He raised the objection and he himself[14] answered it: The entrance to the shop might have been at a corner [in which case the animal had access to the food placed there without having to turn its head].

There are some [authorities], however, who say that in the case of an animal turning [its head to the sideways of the market place] there was never any argument whatsoever that there would be liability [for the actual damage done]. The point at issue between Rab and Samuel was in the case of a plaintiff who left unfenced a part of his site abutting on public ground, and the statement ran as follows: Rab said that the liability for the actual damage done could arise only in a case where [the food was placed in the sideways of the market to which] the animal turned [its head]. But in the case of a plaintiff leaving unfenced a part of his site abutting on public ground [and spreading out there fruits which were consumed by the defendant's animal] there would be no liability to pay [for the loss sustained].[15] Samuel, however, said that even in the case of a plaintiff leaving unfenced a part of his site abutting on to the public ground, there would be liability to pay [for the loss sustained]. Might it not be suggested that the basic issue [between Rab and Samuel] would be that of a defendant having dug a pit on his own site [and while abandoning the site still retains his ownership of the pit]?[16] Rab who here upholds exemption [for the loss sustained by the owner of the fruits] maintains that a pit dug on one's own site is subject to the law of Pit [so that fruits left on an unfenced site adjoining the public ground constitute a nuisance which may in fact be abated by all and everybody],[17] whereas Samuel who declares liability [for the loss sustained by the owner of the fruits] would maintain that a pit dug on one's own site could never be subject to the law of Pit![18] — Rab could, however, [refute this suggestion and] reason thus: [In spite of your argument] I may nevertheless maintain

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(1) Cf. infra 97a; B.M. 64b.

(2) In which case the owner sustains a loss and rent must be paid.

(3) The Hebrew word She'iyyah שאייה rendered ‘emptiness’, is taken to be the name of a demon that haunts uninhabitated premises; cf. Rashi a.l.

(4) Isa. XXIV, 12.

(5) Lit ‘. . . him referring, to the demon.

(6) Who look after premises.

(7) I.e., between the reason adduced by Rab and that given by R. Joseph.

(8) In which case the premises had in any case not been empty and thus not haunted by the so-called demon ‘She'iyyah’. There would therefore be liability to pay rent. But according to the reason given by R. Joseph that premises inhabited by tenants keep in better condition as the tenants look after their repairs, there would even in this case be no liability of rent upon the tenant who trespassed into his neighbour's premises that had previously been used only for the keeping of wood and straw and thus liable to fall into dilapidation.

(9) I.e., persons who came from Carmania. According to a different reading quoted by Rashi a.l. and occurring also in MS.M., it only means ‘Former settlers’.

(10) In which case the plaintiffs suffered an actual loss, however small it was.

(11) Since the body of the animal is still on public ground.

(12) Supra p. 94.

(13) Supporting thus the view of Samuel but contradicting that of Rab.

(14) I.e., R. Nahman b. Isaac.

(15) But only for the benefit the animal derived from the fruits.

(16) The fruits kept near the public ground are a public nuisance and equal a pit, the ownership of which was retained and which was dug on a site to which the public has full access.

(17) Cf. infra 30a.

(18) Since the pit still remains private property.

that in other respects a pit dug on one's own site is not subject to the law of Pit, but the case before us here is based on a different principle, since the defendant is entitled to plead [in reply to the plaintiff]: ‘You had no right at all to spread out your fruits so near to the public ground as to involve

me in liability through my cattle consuming them.' Samuel on the other hand could similarly contend: In other respects a pit dug on one's own site may be subject to the law of Pit, for it may be reasonable in the case of a pit for a plaintiff to plead that the pit may have been totally overlooked [by the animals that unwittingly fell in]. But in the case of fruits [spread out on private ground], is it possible to plead with reason that they may have been overlooked? Surely they must have been seen.[1]

May it not be suggested that the case of an animal 'turning its head [to the sideways]' is a point at issue between the following Tannaitic authorities? For it has been taught: In the case of an animal [unlawfully] consuming [the plaintiff's fruits] on the market, the payment will be [only] to the extent of the benefit; [but when the fruits had been placed] on the sideways of the market, the payment would be assessed for the damage done by the animal. This is the view of R. Meir and R. Judah. But R. Jose and R. Eleazar say: It is by no means usual for an animal to consume [fruits], Only to walk [there]. Now, is not R. Jose merely expressing the view already expressed by the first-mentioned Tannaitic authorities[2] , unless the case of an animal 'turning its head [to the sideways]' was the point at issue between them, so that the first-mentioned Tannaitic authorities[2] maintained that in the case of an animal 'turning its head [to the sideways]' the payment will still be fixed to the extent of the benefit it had derived, whereas R. Jose would maintain that the payment will be in accordance with the actual damage done by it?[3] — No; all may agree that in the case of an animal 'turning its head [to the sideways]' the law may prevail either in accordance with Rab or in accordance with Samuel; the Point at issue, however, between the Tannaitic authorities here [in the Baraitha] may have been as to the qualifying force of in another man's field.[4] The first Tannaitic authorities[2] maintain that the clause, And it [shall] feed in another man's field, is meant to exclude liability for damage done on public ground, whereas the succeeding authorities[5] are of the opinion that the clause And it [shall] feed in another man's field exempts [liability only for damage done to fruits which had been spread on] the defendant's domain.[6] On the defendant's domain! Is it not obvious that the defendant may plead: What right had your fruit to be on my ground?[7] — But the point at issue [between the authorities mentioned in the Baraitha] will therefore be in reference to the cases dealt With [above][8] by Ilfa[9] and by R. Oshaia.[10]

MISHNAH. IF A DOG OR A GOAT JUMPS DOWN FROM THE TOP OF A ROOF AND BREAKS UTENSILS [ON THE PLAINTIFF'S GROUND] THE COMPENSATION MUST BE IN FULL, FOR ANY OF THEM IS CONSIDERED MU'AD IN RESPECT OF THAT DAMAGE].[11] IF [HOWEVER] A DOG TAKES HOLD OF A CAKE [WITH LIVE COALS STICKING TO IT] AND GOES [WITH IT] TO A BARN, CONSUMES THE CAKE AND SETS THE BARN ON FIRE, [THE OWNER OF THE DOG] PAYS FULL COMPENSATION FOR THE CAKE,[12] WHEREAS FOR THE BARN [HE] PAYS [ONLY] HALF DAMAGES.

GEMARA. The reason of [the liability in the commencing clause] is that the dog or goat has jumped [from the roof][13] , but were it to have fallen down[14] [from the roof and thus broken utensils] there would be exemption. It can thus be inferred that the authority here accepted the view that the inception of [potential] negligence resulting in [mere] accident carries exemption.

It has been explicitly taught to the same effect: 'If a dog or goat jumps down from the top of a roof and breaks utensils [on the plaintiff's ground] the compensation must be in full; were it, however, to have fallen down[15] [and thus broken the utensils] there would be exemption.' This ruling seems to be in accord with the view that where there is negligence at the beginning[16] but the actual damage results from [mere] accident[17] there is exemption,[18] but how could the ruling be explained according to the view that upholds liability? — The ruling may refer to a case where the utensils had, for example, been placed very near to the wall so that were the animal to have jumped it would by jumping have missed them altogether; in which case there was not even negligence at the beginning.[19]

R. Zebid in the name of Raba, however, said: There are certain circumstances where there will be liability even in the case of [the animal] falling down. This might come to pass when the wall had not been in good condition.[20] Still what was the negligence there? It could hardly be that the owner should have borne in mind the possibility of bricks falling down[21] [and doing damage], for since after all it was not bricks that came down but the animal that fell down, why should it not be subject to the law applicable to a case where the damage which might have been done by negligence at the inception actually resulted from accident?[22] — No, it has application where the wall of the railing was exceedingly narrow.[23]

Our Rabbis taught: In the case of a dog or goat jumping [and doing damage], if it was in an upward direction[24] there is exemption;[25] but if in a downward direction there is liability.[26] In case, however, of man or poultry jumping [and doing damage], whether in a downward or upward direction, there is liability.[27]

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(1) And since they were kept on private ground they could not be considered a nuisance. The animal consuming them there has indeed committed trespass.

(2) I.e., R. Meir and R. Judah; for the point at issue could hardly be the case of consumption on public ground where none would think of imposing full liability for the actual damage done, but it must be in regard to the sideways of the market.

(3) For in the case of turning the head it was none the more lawful to consume the fruits.

(4) Ex. XXII, 4.

(5) R. Jose and R. Eleazar.

(6) [But there would be no exemption according to R. Jose for consuming fruits even on the market.]

(7) There should thus be no need of explicit exemption.

(8) Supra p. 96.

(9) Dealing with an animal stretching out its head and consuming fruits kept on the back of the plaintiff's animal, in which case R. Meir and R. Judah impose the liability only to the extent of the benefit, whereas R. Jose and R. Eleazar order compensation for the actual damage sustained by the plaintiff.

(10) Imposing liability in the case of an animal jumping and consuming fruits kept in baskets: R. Meir and R. Judah thus limit the liability to the extent of the benefit derived, whereas R. Jose and R. Eleazar do not limit it thus.

(11) Coming thus within the purview of the law of Foot.

(12) Being subject to the law of Tooth.

(13) An act which is usual with either of them and thus subject to the law of Foot.

(14) By mere accident.

(15) By mere accident.

(16) For the owner should have taken precautions against its jumping.

(17) Since it fell down.

(18) Cf. infra 56a; 58a; B.M. 42a and 93b.

(19) But mere accident all through.

(20) The defendant is thus guilty of negligence.

(21) From the wall, which the defendant kept in a dilapidated state.

(22) Where opinions differ.

(23) Or very sloping. It was thus natural that the animal would be unable to remain there very long, but should slide down and do damage.

(24) An act unusual with any of them.

(25) From full compensation, whereas half damages will be paid in accordance with the law applicable to Horn.

(26) I.e., complete liability, as the act is usual with them and is thus subject to the law of Foot.

(27) As the act is quite usual with poultry, and as to man, he is always Mu'ad, v. supra p. 8.

But was it not [elsewhere] taught: 'In the case of a dog or goat jumping [and doing damage], whether in a downward or upward direction, there is exemption'?[1] — R. Papa thereupon interpreted the latter ruling[2] to refer to cases where the acts done by the animals were the reverse of their respective natural tendencies: e.g, the dog [jumped] by leaping and the goat by climbing. If so, why [complete] exemption?[3] — The exemption indeed is only from full compensation while there still remains liability for half damages.[3]

IF A DOG TAKES HOLD etc. It was stated: R. Johanan said: Fire [involves liability] on account of the human agency that brings it about.[4] Resh Lakish, however, maintained that Fire is chattel.[5] Why did Resh Lakish differ from R. Johanan? — His contention is: Human agency must emerge directly from human force whereas Fire does not emerge from human force.[6] Why, on the other hand, did not R. Johanan agree with Resh Lakish?[7] — He may say: Chattel contains tangible properties, whereas Fire[8] has no tangible properties.

We have learnt:[9] IF A DOG TAKES HOLD OF A CAKE [TO WHICH LIVE COALS WERE STUCK] AND GOES [WITH IT] TO A BARN, CONSUMES THE CAKE AND SETS THE BARN ALIGHT, [THE OWNER] PAYS FULL COMPENSATION FOR THE CAKE, WHEREAS FOR THE BARN [HE] PAYS [ONLY] HALF DAMAGES. This decision accords well with the view that the liability for Fire is on account of the human agency that caused it; in the case of the dog, there is thus some liability upon the owner of the dog as the fire there was caused by the action of the dog.[10] But according to the principle that Fire is chattel, [why indeed should the owner of the dog be liable?] Could the fire be said to be the chattel of the owner of the dog? — Resh Lakish may reply: The Mishnaic ruling deals with a case where the burning coal was thrown by the dog [upon the barn]: full compensation must of course be made for the cake,[11] but only half will be paid for the damage done to the actual spot upon which the coal had originally been thrown,[12] whereas for the barn as a whole there is exemption altogether.[13] R. Johanan, however, maintains that the ruling refers to a dog actually placing the coal upon the barn: For the cake[11] as well as for the damage done to the spot upon which the coal had originally been placed the compensation must be in full,[14] whereas for the barn as a whole only half damages will be paid.[15]

Come and hear: A camel laden with flax passes through a public thoroughfare. The flax enters a shop, catches fire by coming in contact with the shopkeeper's candle and sets alight the whole building. The owner of the camel is then liable. If, however, the shopkeeper left his candle outside [his shop], he is liable. R. Judah says: In the case of a Chanucah candle[16] the shopkeeper would always be quit.[17] Now this accords well with the view that Fire implies human agency: the agency of the camel could thus be traced in the setting alight of the whole building. But according to the view that Fire is chattel, [why should the owner of the camel be liable?] Was the fire in this case the chattel of the owner of the camel? — Resh Lakish may reply that the camel in this case [passed along the entire building and] set every bit of it on fire.[18] If so, read the concluding clause: If, however, the shopkeeper left his candle outside [his shop] he is liable. Now, if the camel set the whole of the building on fire, why indeed should the shopkeeper be liable? — The camel in this case stood still [all of a sudden].[19] But [it is immediately objected] if the camel stood still and yet managed to set fire to every bit of the building, is it not still more fitting that the shopkeeper should be free but the owner of the camel fully liable?[20] — R. Huna b. Manoah in the name of R. Ika [thereupon] said: The rulings apply to [a case where the camel] stood still to pass water;[21]

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(1) Because the act is considered unusual with them.

(2) That exempts in acts towards all directions.

(3) For though the acts are unusual, they should be subject to the law of Horn imposing payment of half damages for unusual occurrences.

(4) Lit., 'his fire is due to his arrows'. Damage done by Fire equals thus damage done by Man himself.

(5) Lit., 'his property'.

(6) Since it travels and spreads of itself.
(7) That Fire is chattel.
(8) I e., the flame; cf. Bez. 39a.
(9) Supra p. 109.
(10) All the damage to the barn that resulted from the fire is thus considered as if done altogether by the dog that caused the live coals to start burning the barn.
(11) On account of the law applicable to Tooth.
(12) For the damage to this spot is solely imputed to the action of the dog throwing there the burning coal. The liability, however, is only for half damages on account of the law of Pebbles to which there is subject any damage resulting from objects thrown by cattle: cf. supra P. 79.
(13) Since the fire in this case could not be said to have been the obnoxious chattel of the owner of the dog [Nor could it be treated as Pebbles, since it spread of itself.]
(14) As the damage to this spot is directly attributed to the action of the dog.
(15) For any damage that results not from the direct act, but from a mere agency of chattels, is subject to the law of Pebbles ordering only half damages to be paid.
(16) Which has to be kept in the open thoroughfare; see infra p. 361.
(17) Ibid.
(18) The damage done to every bit of the building is thus directly attributed to the action of the camel.
(19) V. n. 4.
(20) For not having instantly driven away the camel from such a dangerous spot.
(21) And while it was impossible to drive it away quickly from that spot, the camel meanwhile managed to set every bit of the building on fire.

Talmud - Mas. Baba Kama 22b

[so that] in the commencing clause the owner of the camel is liable, for he should not have overloaded [his camel],[1] but in the concluding clause the shopkeeper is liable for leaving his candle outside [his shop].

Come and hear: In the case of a barn being set on fire, where a goat was bound to it and a slave [being loose] was near by it, and all were burnt, there is liability [for barn and goat].[2] In the case, however, of the slave being chained to it and the goat[3] near by it and all being burnt, there is exemption [for barn and goat].[4] Now this is in accordance with the view maintaining the liability for Fire to be based upon human agency: there is therefore exemption here [since capital punishment is attached to that agency].[4] But, according to the view that Fire is chattel, why should there be exemption? Would there be exemption also in the case of cattle killing a slave?[5] — R. Simeon b. Lakish may reply to you that the exemption refers to a case where the fire was actually put upon the body of the slave[6] so that no other but the major punishment is inflicted.[7] If so, [is it not obvious?] Why state it at all? — No; it has application [in the case] where the goat belonged to one person and the slave to another.[8]

Come and hear: In the case of fire being entrusted to a deaf-mute, an idiot or a minor[9] [and damage resulting], no action can be instituted in civil courts, but there is liability[10] according to divine justice.[11] This again is perfectly consistent with the view maintaining that Fire implies human agency, and as the agency in this case is the action of the deaf mute [there is no liability]; but according to the [other] view that Fire is chattel, [why exemption?] Would there similarly be exemption in the case of any other chattel being entrusted to a deaf-mute, an idiot, or a minor?[12] — Behold, the following has already been stated in connection therewith:[13] Resh Lakish said in the name of Hezekiah that the ruling[11] applies only to a case where it was a [flickering] coal that had been handed over to [the deaf-mute] who fanned it into flame, whereas In the case of a [ready] flame having been handed over there is liability on the ground that the instrument of damage has been fully prepared. R. Johanan, on the other hand, stated that even in the case of a ready flame there is

exemption, maintaining that it was only the handling by[14] the deaf-mute that caused [the damage]; there could therefore be no liability unless chopped wood, chips and actual fire were [carelessly] given him.

Raba said: [Both] Scripture and a Baraitha support [the View of] R. Johanan. 'Scripture': For it is written, If fire break out;[15] 'break out' implies 'of itself' and yet [Scripture continues], He that kindled the fire[16] shall surely make restitution.[17] It could thus be inferred that Fire implies human agency. 'A Baraitha': For it was taught. The verse,[17] though commencing with damage

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(1) To the extent that the flax should penetrate the shop.

(2) But not for the slave, who should have quitted the spot before it was too late; cf. infra 27a.

(3) Whether chained or loose.

(4) Infra 43b and 61b. For all civil actions merge in capital charges and the defendant in this case is charged with murder (since the slave was chained and thus unable to escape death), and thus exempt from all money payment arising out of the charge; cf. infra 70b.

(5) V. Ex. XXI, 32, where the liability of thirty shekels is imposed upon the owner.

(6) The defendant has thus committed murder by his own hands.

(7) V. p.113. n. 8.

(8) Though the capital charge is not instituted by the owner of the goat, no damages could be enforced for the goat, since the defendant has in the same act also committed murder, and is liable to the graver penalty.

(9) Who does not bear responsibility before the law.

(10) Upon the person who entrusted the fire to the deaf-mute, etc. Mishnah, infra 59b.

(11) Cf. supra p. 38.

(12) Supra p. 36; infra 59b.

(13) Supra 9b.

(14) Lit., 'the tongs of'.

(15) Ex. XXII, 5.

(16) The damage that resulted is thus emphatically imputed to human agency.

(17) Ex. XXII 5.

done by property,[1] concludes with damage done by the person[2] [in order] to declare that Fire implies human agency.

Raba said: The following difficulty confronted Abaye:According to the view maintaining that Fire implies human agency, how [and when] was it possible for the Divine law to make exemption[3] for damage done by Fire to hidden things?[4] He solved it thus: Its application is in the case of a fire which would ordinarily not have spread beyond a certain point, but owing to the accident of a fence collapsing not on account of the fire, the conflagration continued setting alight and doing damage in other premises where the original human agency is at an end.[5] If so, even regarding unconcealed goods is not the human agency at an end?[6] — Hence the one maintaining that Fire implies human agency also holds that Fire is chattel,[7] so that liability for unconcealed goods would arise in the case where the falling fence could have been, but was not, repaired in time [to prevent the further spread of the fire], since it would equal chattel[8] left unguarded by the owner.[9] But if the one who holds that fire implies human agency also maintains that Fire is chattel,[7] what then is the practical point at issue?[10] — The point at issue is whether Fire[11] will involve the [additional] Four Items.[12]

[THE OWNER OF THE DOG] PAYS FULL COMPENSATION FOR THE CAKE WHEREAS FOR THE BARN [HE] PAYS [ONLY] HALF DAMAGES. Who is liable [for the barn]? — The owner of the dog. But why should not the owner of the coal also be made liable?[13] — His [burning] coal was [well] guarded by him.[14] If the [burning] coal was well guarded by him, how then did the

dog come to it? — By breaking in. R. Mari the son of R. Kahana thereupon said: This ruling implies that the average door is not beyond being broken in by a dog.[15]

Now in whose premises was the cake devoured? It could hardly be suggested that it was devoured in the barn of another party,[16] for do we not require And shall feed in the field of another[17] [the plaintiff], which is not the case here? — No, it applies where it was devoured in the barn of the owner of the cake. You can thus conclude that [the plaintiff's food carried in] the mouth of [the defendant's] cattle

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(1) I.e., by fire breaking out of itself.

(2) As implied in the clause, He that kindled the fire.

(3) Since in the case of Man doing damage such an exemption does not exist.

(4) V. supra pp. 18 and 39 and infra 61b.

(5) It is in this case (where the human agency is at an end) that there is exemption for hidden goods but liability for unconcealed articles.

(6) And there should therefore be exemption for damage done to all kinds of property.

(7) So that whenever the human agency is at an end, there would still be a possibility of liability being incurred.

(8) Lit., 'his ox'.

(9) Cf. infra 55b.

(10) I.e., what is the difference in law whether the liability for Fire is for the principles of human agency and chattel combined, or only on account of the principle of chattel? The difference could of course be only in the case where the human agency involved in Fire was not yet brought to an end. For otherwise the liability according to both views would only be possible on account of the principle of chattel, a principle which is according to the latest conclusion maintained by all.

(11) In cases where the human agency was not yet at an end.

(12) I.e., Pain, Healing, Loss of Time and Degradation, which in the case of Man, but not Ox, injuring men are paid in addition to Depreciation which is a liability common in all cases; v. supra p. 12. According to R. Johanan who considers Fire a human agency, the liability will be not only for Depreciation but also for the additional Four Items: whereas Resh Lakish maintains that only Depreciation will be paid, as in the case of damage done by Cattle.

(13) Since it was his coal that did the damage.

(14) He is therefore not to blame.

(15) For if otherwise the breaking in should be an act of unusual occurrence that should be subject to the law applicable to Horn, involving only the compensation of half damages for the consumption of the cake.

(16) I.e., a barn not belonging to the owner of the cake.

(17) Ex. XXII, 4.

Talmud - Mas. Baba Kama 23b

is still considered [kept in] the plaintiff's premises.[1] For if it is considered to be in the defendant's premises why should not he say to the plaintiff: What is your bread doing in the mouth of my dog?[2] For there had been propounded a problem: Is [the plaintiff's food carried in] the mouth of [the defendant's] cattle considered as kept in the premises of the plaintiff, or as kept in the premises of the defendant? (Now if you maintain that it is considered to be in the defendant's premises, how can Tooth, for which the Divine Law imposes liability,[3] ever have practical application? — R. Mari the son of R. Kahana, however, replied: [It can have application] in the case where [the cattle] scratched against a wall for the sake of gratification [and pushed it down], or where it soiled fruits [by rolling upon them] for the purpose of gratification.[4] But Mar Zutra demurred: Do we not require, As a man taketh away dung till it all be gone,[5] which is not the case here?[6] — Rabina therefore said; [It has application] in the case where [the cattle] rubbed paintings[7] off [the wall]. R. Ashi similarly said: [It may have application] in the case where the cattle trampled on fruits [and spoilt them completely].[7])

Come and hear: If he incited a dog against him [i.e. his fellowman], or incited a serpent against

him [to do damage], there is exemption.[8] For whom is there exemption? — There is exemption for the inciter, but liability upon the owner of the dog. Now if you contend that [whatever is kept in] the mouth of the defendant's cattle is considered [as kept in] the defendant's premises, why should he not say to the plaintiff: What is your hand doing in the mouth of my dog?[9] — Say, therefore, there is exemption also for the inciter;[10] or if you like, you may say: The damage was done by the dog baring its teeth and wounding the plaintiff.[11]

Come and hear: If a man caused another to be bitten by a serpent, R. Judah makes him liable whereas the Sages exempt him.[8] And R. Aha b. Jacob commented:[12] Should you assume that according to R. Judah the poison of a serpent is ready at its fangs, so that the defendant [having committed murder is executed by] the sword,[13] whereas the serpent [being a mere instrument] is left unpunished, then according to the view of the Sages, the poison is spitten out by the serpent of its own free will, so that the serpent [being guilty of slaughter] is stoned,[14] whereas the defendant, who caused it, is exempt.[15] Now if you maintain that [whatever is kept in] the mouth of the defendant's cattle is considered [to be in] the defendant's premises, why should not the owner of the serpent say to the plaintiff: 'What is your hand doing in the mouth of my serpent?' — Regarding [the] killing [of the serpent] we certainly do not argue thus. Whence can you derive [this]? — For it was taught: Where a man enters another's premises without permission and is gored there to death by the owner's ox, the ox is stoned,[14] but the owner is exempted [from paying] kofer[16] [for lost life].[17] Now 'the owner is exempted [from paying] kofer.' Why? Is it not because he can say, 'What were you doing on my premises?' Why then regarding the ox should not the same argument be put forward [against the victim]: 'What had you to do on my premises?' — Hence, when it is a question of killing [obnoxious beasts] we do not argue thus.

The goats of Be Tarbu[18] used to do damage to [the fields of] R.Joseph. He therefore said to Abaye: 'Go and tell their owners that they should keep them indoors.' But Abaye said: 'What will be the use in my going? Even if I do go, they will certainly say to me "Let the master construct a fence round his land."' But if fences must be constructed, what are the cases in which the Divine Law imposed liability for Tooth?[19] — [Perhaps only] when the cattle pulled down the fence and broke in, or when the fence collapsed at night. It was, however, announced by R. Joseph, or, as others say, by Rabbah: 'Let it be known to those that go up from Babylon to Eretz Yisrael as well as to those that come down from Eretz Yisrael to Babylon, that in the case of goats that are kept for the market day but meanwhile do damage, a warning is to be extended twice and thrice to their owners. If they comply with the terms of the warning well and good, but if not, we bid them: "Slaughter your cattle immediately[20] and sit at the butcher's stall to get whatever money you can."'

MISHNAH. WHAT IS TAM, AND WHAT IS MU'AD? — [CATTLE BECOME] MU'AD AFTER [THE OWNER HAS] BEEN WARNED FOR THREE DAYS [REGARDING THE ACTS OF GORING],[21] BUT [RETURN TO THE STATE OF] TAM AFTER REFRAINING FROM GORING FOR THREE DAYS; THESE ARE THE WORDS OF R. JUDAH. R. MEIR, HOWEVER, SAYS: [CATTLE BECOME] MU'AD AFTER [THE OWNER HAS] BEEN WARNED THREE TIMES [EVEN ON THE SAME DAY], AND [BECOME AGAIN] TAM WHEN CHILDREN KEEP ON TOUCHING THEM AND NO GORING RESULTS.

GEMARA. What is the reason of R. Judah?[22] — Abaye said: [Scripture states, Or, if it be known from yesterday, and the day before yesterday, that he is a goring ox, and yet his owner does not keep him in . . .[23]]: 'Yesterday', denotes one day; 'from yesterday' — two;[24] and 'the day before yesterday' — three [days]; 'and yet his owner does not keep him in' — refers to the fourth goring. Raba said: 'Yesterday' and 'from yesterday'[25] denote one day; 'the day before yesterday' — two, 'and he [the owner] does not keep him in,' then, [to prevent a third goring,] he is liable [in full].[26] What then is the reason of R. Meir?[27] — As it was taught: R. Meir said:

(1) And liability for the consumption of the food is not denied.
(2) [I.e., why should I be liable for the bread consumed in my (the defendant's) premises?]
(3) Ex. XXII, 4.
(4) Cf. supra p. 6.
(5) I Kings XIV, 10.
(6) On account of the fact that the corpus is in any of these cases not being destroyed; v. supra pp. 4-5.
(7) In which case there is total destruction of the corpus.
(8) Sanh. IX, 1; v. also infra 24b.
(9) For which the dog is not much to blame since it was incited to do it.
(10) I.e., both inciter and dog-owner will not be made liable.
(11) In which case his hand has never been kept in the mouth of the dog.
(12) Sanh. 78a.
(13) V. Sanh. IX. 1.
(14) In accordance with Ex. XXI, 28-29.
(15) Being a mere accessory.
(16) Lit., 'atonement', v. Glos.
(17) Contrary to the ruling of Ex. XXI, 30.
(18) A p.n. of a certain family.
(19) Ex. XXII. 4.
(20) Without waiting for the market day.
(21) Committed by his cattle.
(22) Making the law of Mu'ad depend upon the days of goring.
(23) Ex. XXI, 36.
(24) The Hebrew term מתמול denoting 'From yesterday' is thus taken to indicate two days.
(25) Expressed in the one Hebrew word מתמול.
(26) According to Rashi a.l. even for the third goring. But Tosaf. a.l. and Rashi B.B. 28a explain it to refer only to the goring of the fourth time and onwards.
(27) That the number of days is immaterial.

Talmud - Mas. Baba Kama 24a

If for goring at long intervals [during three days], there is [full] liability, how much more so for goring at short intervals.[1] They,[2] however, said to him: 'A zabah[3] disproves your argument, as by noticing her discharges at long intervals [three cases of discharge in three days], she becomes [fully] unclean,[4] whereas by noticing her discharges at short intervals [i.e. on the same day] she does not become [fully unclean].'[5] But he answered them: Behold, Scripture says: And this shall be his uncleanness in his issue.[6] Zab[7] has thus been made dependent upon [the number of] cases of 'noticing', and zabah upon that of 'days'. But whence is it certain that 'And this'[6] is to exempt zabah from being affected by cases of 'noticing'?[8] Say perhaps that it meant only to exempt zab from being affected by the number of 'days'?[9] — The verse says, And of him that hath on issue, of the man, and of the woman.[10] Male is thus made analogous to female: just as female is affected by [the number of] 'days' so is man affected by 'days'.[11] But why not make female analogous to male [and say]: just as male is affected by cases of 'noticing',[8] so also let female be affected by cases of 'noticing'?[8] — But Divine Law has [emphatically] excluded that by stating, 'And this'.[12] On what ground, however, do you say [that the Scriptural phrase excludes the one and not the other]? — It only stands to reason that when cases of 'noticing' are dealt with,[13] cases of 'noticing' are excluded;[14] [for is it reasonable to maintain that] when cases of 'noticing' are dealt with,[13] 'days' should be excluded?[15]

Our Rabbis taught: What is Mu'ad? After the owner has been warned for three days;[16] but [it may return to the state of] Tam, if children keep on touching it and no goring results; this is the dictum of R. Jose. R. Simeon says: Cattle become Mu'ad, after the owner has been warned three times,[17] and the statement regarding three days refers only to the return to the state of Tam.

R. Nahman quoting Adda b. Ahabah said: 'The Halachah is in accordance with R. Judah regarding Mu'ad, for R. Jose agrees with him.[18] But the Halachah is in accordance with R. Meir regarding Tam,[19] since R. Jose agrees with him [on this point].' Raba, however, said to R. Nahman: 'Why, Sir, not say that the Halachah is in accordance with R. Meir regarding Mu'ad for R. Simeon agrees with him, and the Halachah is in accordance with R. Judah regarding Tam, since R. Simeon agrees with him [on this point]?' He answered him: 'I side with R. Jose, because the reasons of R. Jose are generally sound.'[20]

There arose the following question: Do the three days [under discussion] apply to [the goring of] the cattle [so that cases of goring on the same day do not count as more than one], or to the owner [who has to be warned on three different days]?[21] The practical difference becomes evident when three sets of witnesses appear on the same day [and testify to three cases of goring that occurred previously on three different days]. If the three days apply to [the goring of] the cattle there would in this case be a declaration of Mu'ad;[22] but, if the three days refer to the warning given the owner, there would in this case be no declaration of Mu'ad, as the owner may say: 'They have only just now testified against me [while the law requires this to be done on three different days].'

Come and hear: Cattle cannot be declared Mu'ad until warning is given the owner when he is in the presence of the Court of Justice. If warning is given in the presence of the Court while the owner is absent, or, on the other hand, in the presence of the owner, but outside the Court, no declaration of Mu'ad will be issued unless the warning be given before the Court and before the owner. In the case of two witnesses giving evidence of the first time [of goring], and another two of the second time, and again two of the third time [of goring], three independent testimonies have been established. They are, however, taken as one testimony regarding haza mah.[23] Were the first set found zomemim,[24] the remaining two sets would be unaffected; the defendant would, however, escape [full] liability[25] and the zomemim would still not have to pay him [for conspiring to make his cattle Mu'ad].[26] Were also the second set found zomemim, the remaining testimony would be unaffected; the defendant would escape [full] liability[25] and the zomemim would still not have to compensate him [for conspiring to make his cattle Mu'ad].[26] Were the third set also found zomemim, they would all have to share the liability [for conspiring to make the cattle Mu'ad];[27] for it is with reference to such a case that it is stated, Then shall ye do unto him as he had thought to have done unto his brother.[28] Now if it is suggested that the three days refer to [the goring of] the cattle [whereas the owner may be warned in one day], the ruling is perfectly right [as the three pairs may have given evidence in one day].[29]

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(1) I.e., by goring three times in one and the same day.

(2) The other Rabbis headed by R. Judah his opponent.

(3) I.e., a woman who within the eleven days between one menstruation period and another had discharges on three consecutive days; cf. Lev.XV, 25-33.

(4) For seven days.

(5) I.e., for more than one day.

(6) Lev. XV, 3. This text checks the application of the a fortiori in this case as the explanation goes on.

(7) I.e., a male person afflicted with discharges of issue on three different occasions; cf. Lev. XV, 1-15.

(8) On one and the same day.

(9) So that he is affected only by that of the cases of 'noticing'.

(10) Lev. XV, 33.

(11) So that if one discharge lasted with him two or three days, it will render him zab proper.

(12) Lev. XV, 3.

(13) In Lev. ibid.

(14) Regarding zabah.

(15) In the case of zab.

(16) Regarding three acts of goring by their cattle.
(17) For three acts of goring.
(18) Thus constituting a majority against R. Meir on this point.
(19) I.e., the return to the state of Tam.
(20) Lit., 'his depth is with him.' v. Git. 67a.
(21) Regarding three acts of goring committed by his cattle even on one day.
(22) Though the evidence was given in one day.
(23) I.e., proved alibi of a set of witnesses, v. Mak. (Sonc. ed.) p. 1, n. 1.
(24) I.e., proved to have been absent at the material time of the alleged goring; v. Glos.
(25) As his cattle 'would have to be dealt with as Tam.
(26) In accordance with law of retaliation. Deut. XIX, 19. Since regarding the declaration of Mu'ad all the three pairs of witnesses constitute one set, and the law of hazamah applies only when the whole set has been convicted of an alibi.
(27) I.e., the half damages added on account of the declaration of Mu'ad, whereas the original half damages on account of Tam will be imposed only upon the last pair of witnesses.
(28) Deut. XIX. 19.
(29) And since they waited until the last day when they were summoned by the plaintiff of that day, it is plain that their object in giving evidence was to render the ox Mu'ad.

Talmud - Mas. Baba Kama 24b

But if it be suggested that the three days refer to the warning given the owner,[1] why should not the first set say: 'Could we have known that after three days there would appear other sets to render the cattle Mu'ad?'[2] — R. Ashi thereupon said: I repeated this argument to R. Kahana, and he said to me: 'And even if the three days refer to [the goring of] the cattle,[3] is the explanation satisfactory? Why should not the last set say: "How could we have known that all those present at the Court[4] had come to give evidence against the [same] ox? Our aim in coming was only to make the defendant liable for half damages."?'[5] — [But we may be dealing with a case where] all the sets were hinting to one another[6] [thus definitely conspiring to act concurrently]. R. Ashi further said that we may deal with a case where all the sets appeared [in Court] simultaneously.[7] Rabina even said: 'Where the witnesses know only the owner but could not identify the ox.'[8] How then can they render it Mu'ad?[9] — By saying: 'As you have in your herd an ox prone to goring, it should be your duty to control the whole of the herd.'

There arose the following question: In the case of a neighbour's dog having been set on a third person, what is the law? The inciter could undoubtedly not be made liable,[10] but what about the owner of the dog? Are we to say that the owner is entitled to plead: 'What offence have I committed here?' Or may we retort: 'Since you were aware that your dog could easily be incited and do damage you ought not to have left it [unguarded]'?

R. Zera [thereto] said: Come and hear: [CATTLE BECOME AGAIN] TAM, WHEN CHILDREN KEEP ON TOUCHING THEM AND NO GORING RESULTS, implying that were goring to result therefrom there would be liability [though it were caused by incitement]! — Abaye however said: Is it stated: If goring results therefrom there is liability? What perhaps is meant is: If goring does result therefrom there will be no return to the state of Tam, though regarding that [particular] goring no liability will be incurred.

Come and hear: If he incited a dog or incited a serpent against him, there is exemption.[11] Does this not mean that the inciter is free, but the owner of the dog is liable? — No, read: '. . . the inciter too is free.'[12]

Raba said: Assuming that in the case of inciting a neighbour's dog against a third person, the owner of the dog is liable, if the incited dog turns upon the inciter, the owner is free on the ground

that where the plaintiff himself has acted wrongly, the defendant who follows suit and equally acts wrongly [against the former] could not be made liable [to him]. R. Papa thereupon said to Raba: A statement was made in the name of Resh Lakish agreeing with yours; for Resh Lakish said:[13] 'In the case of two cows on public ground, one lying and the other walking, if the walking cow kicks the other, there is no liability [as the plaintiff's cow had no right to be lying on the public ground], but if the lying cow kicks the other cow there will be liability.' Raba, however, said to him: In the case of the two cows I would always order payment[14] as [on behalf of the plaintiff] we may argue against the defendant: 'Your cow may be entitled to tread upon my cow, she has however no right to kick her.'

MISHNAH WHAT IS MEANT BY 'OX DOING DAMAGE ON THE PLAINTIFF'S PREMISES'?[15] IN CASE OF GORING, PUSHING, BITING, LYING DOWN OR KICKING, IF ON PUBLIC GROUND THE PAYMENT[16] IS HALF, BUT IF ON THE PLAINTIFF'S PREMISES R. TARFON ORDERS PAYMENT IN FULL[17] WHEREAS THE SAGES ORDER ONLY HALF DAMAGES.

R.TARFON THERE UPON SAID TO THEM: SEEING THAT, WHILE THE LAW WAS LENIENT TO TOOTH AND FOOT IN THE CASE OF PUBLIC GROUND ALLOWING TOTAL EXEMPTION[18] , IT WAS NEVERTHELESS STRICT WITH THEM REGARDING [DAMAGE DONE ON] THE PLAINTIFF'S PREMISES WHERE IT IMPOSED PAYMENT IN FULL, IN THE CASE OF HORN, WHERE THE LAW WAS STRICT REGARDING [DAMAGE DONE ON] PUBLIC GROUND IMPOSING AT LEAST THE PAYMENT OF HALF DAMAGES, DOES IT NOT STAND TO REASON THAT WE SHOULD MAKE IT EQUALLY STRICT WITH REFERENCE TO THE PLAINTIFFS PREMISES SO AS TO REQUIRE COMPENSATION IN FULL? THEIR ANSWER WAS: IT IS QUITE SUFFICIENT THAT THE LAW IN RESPECT OF THE THING INFERRED[19] SHOULD BE EQUIVALENT TO THAT FROM WHICH IT IS DERIVED:[20] JUST AS FOR DAMAGE DONE ON PUBLIC GROUND THE COMPENSATION [IN THE CASE OF HORN] IS HALF, SO ALSO FOR DAMAGE DONE ON THE PLAINTIFF'S PREMISES THE COMPENSATION SHOULD NOT BE MORE THAN HALF. R. TARFON, HOWEVER, REJOINED: BUT NEITHER DO I

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(1) In which case the three sets dealt with could not have given their evidence in one and the same day, but each set on the day the respective goring took place.

(2) Why then should the first set ever be made responsible for the subsequent rendering of the cattle Mu'ad.

(3) In which case the three pairs may have given their evidence in one day.

(4) I.e., the witnesses that constituted the former sets.

(5) The former sets, however, cannot plead thus since they waited with their evidence until the last day, when they appeared to the summons of the plaintiff of that day, in which case it is more than evident that all that concerned that plaintiff regarding the evidence of the earlier times of goring was solely to render the ox Mu'ad.

(6) And all gave evidence in one and the same day. Rashi a.l. maintains that this would still prove that the three days refer to the goring of the cattle and not to warning the owner. According to an interpretation suggested by Tosaf., however, the first and second sets who also appeared on the third day together with the third set, had already given their evidence on the first and second day respectively. The requirement of the three days could thus accordingly refer to warning the owner.

(7) Cf. n. 2.

(8) In which case the sole intention of all the sets of witnesses was the declaration of Mu'ad. They could not have intended to make the defendant liable for half damages since half damages in the case of Tam is paid only out of the body of the goring ox which the witnesses in this case were unable to identify. This explanation holds good only regarding the intention of the last set of witnesses, whereas the former sets, if for the declaration of Mu'ad they would necessarily have to record their evidence before the third time of goring, could then not have foreseen that the same ox (whose identity was not established by them) would continue goring for three and four times. Rashi thus proves that the three days refer not to warning the owner but to the times of goring committed by the cattle.

(9) Since the identity of the goring ox could not be established.
(10) For he, not having actually done the damage, is but an accessory.
(11) Cf. supra p. 117.
(12) Meaning thus that both inciter and owner are free.
(13) Supra p. 98.
(14) Even in the case of the walking cow kicking the lying cow.
(15) Referred to supra p. 68.
(16) While in the state of Tam; cf. supra p. 73.
(17) V. supra p. 68.
(18) Supra p. 17.
(19) I.e., Horn doing damage on the plaintiff's premises.
(20) I.e., Horn doing damage on public ground.

Talmud - Mas. Baba Kama 25a

INFER HORN [DOING DAMAGE ON THE PLAINTIFF'S PREMISES] FROM HORN [DOING DAMAGE ON PUBLIC GROUND]; I INFER HORN FROM FOOT: SEEING THAT IN THE CASE OF PUBLIC GROUND THE LAW, THOUGH LENIENT WITH REFERENCE TO TOOTH AND FOOT, IS NEVERTHELESS STRICT REGARDING HORN, IN THE CASE OF THE PLAINTIFF'S PREMISES, WHERE THE LAW IS STRICT WITH REFERENCE TO TOOTH AND FOOT, DOES IT NOT STAND TO REASON THAT WE SHOULD APPLY THE SAME STRICTNESS TO HORN? THEY, HOWEVER, STILL ARGUED: IT IS QUITE SUFFICIENT IF THE LAW IN RESPECT OF THE THING INFERRED IS[1] EQUIVALENT TO THAT FROM WHICH IT IS DERIVED.[2] JUST AS FOR DAMAGE DONE ON PUBLIC GROUND THE COMPENSATION [IN THE CASE OF HORN] IS HALF, SO ALSO FOR DAMAGE DONE ON THE PLAINTIFF'S PREMISES, THE COMPENSATION SHOULD NOT BE MORE THAN HALF.

GEMARA. Does R. Tarfon really ignore the principle of Dayyo?[3] Is not Dayyo of Biblical origin as taught:[4] How does the rule of Kal wa-homer[5] work? And the Lord said unto Moses, If her father had but spit in her face, should she not be ashamed seven days?[6] How much the more so then in the case of divine [reproof] should she be ashamed fourteen days? Yet the number of days remains seven, for it is sufficient if the law in respect of the thing inferred[7] be equivalent to that from which it is derived![8] — The principle of Dayyo is ignored by him [R. Tarfon] only when it would defeat the purpose of the a fortiori,[9] but where it does not defeat the purpose of the a fortiori, even he maintains the principle of Dayyo. In the instance quoted there is no mention made at all of seven days in the case of divine reproof; nevertheless, by the working of the a fortiori, fourteen days may be suggested: there follows, however, the principle of Dayyo so that the additional seven days are excluded, whilst the original seven are retained. Whereas in the case before us[10] the payment of not less than half damages has been explicitly ordained [in all kinds of premises]. When therefore an a fortiori is employed, another half-payment is added [for damage on the plaintiff's premises], making thus the compensation complete. If [however] you apply the principle of Dayyo, the sole purpose of the a fortiori would thereby be defeated.[11] And the Rabbis?[12] — They argue that also in the case of divine [reproof] the minimum of seven days has been decreed in the words: Let her be shut out from the camp seven days.[13] And R. Tarfon?[14] — He maintains that the ruling in the words, 'Let her be shut out etc.', is but the result of the application of the principle of Dayyo[15] [decreasing the number of days to seven]. And the Rabbis? — They argue that this is expressed in the further verse: And Miriam was shut out from the camp.[16] And R. Tarfon? — He maintains that the additional statement was intended to introduce the principle of Dayyo for general application so that you should not suggest limiting its working only to that case where the dignity of Moses was involved, excluding thus its acceptance for general application: it has therefore been made known to us [by the additional statement] that this is not the case.

R. Papa said to Abaye: Behold, there is a Tanna who does not employ the principle of Dayyo even when the a fortiori would thereby not be defeated, for it was taught: Whence do we know that the discharge of semen virile in the case of zab[17] causes defilement [either by 'touching' or by 'carrying']?[18] It is a logical conclusion: For if a discharge[19] that is clean in the case of a clean person is defiling in the case of zab,[20] is it not cogent reasoning that a discharge[21] which is defiling in the case of a clean person,[22] should defile in the case of zab? Now this reasoning applies to both 'touching' and 'carrying',[23] But why not argue that the a fortiori serves a useful purpose in the case of 'touching', whilst the principle of Dayyo can be employed to exclude defilement by mere 'carrying'?[24] If, however, you maintain that regarding 'touching' there is no need to apply the a fortiori on the ground that [apart from all inferences] zab could surely not be less defiling than an ordinary clean person,[25] my contention is [that the case may not be so, and] that the a fortiori may [still] be essential. For I could argue: By reason of uncleanness that chanceth him by night[26] is stated in Scripture to imply that the law of defilement applies only to those whose uncleanness has been occasioned solely by reason of their discharging semen virile, excluding thus zab, whose uncleanness has been occasioned not [solely] by his discharging semen virile but by another cause altogether.[27] May not the a fortiori thus have to serve the purpose of letting us know that zab is not excluded?[28] — But where in the verse is it stated that the uncleanness must not have [concurrently] resulted also from any other cause?[29]

Who is the Tanna whom you may have heard maintain that semen virile of zab causes [of itself] defilement by mere 'carrying'? He could surely be neither R. Eliezer, nor R. Joshua, for it was taught:[30] The semen virile of zab causes defilement by 'touching', but causes no defilement by mere 'carrying'. This is the view of R. Eliezer. R. Joshua, however, maintains that it also causes defilement by mere 'carrying', for it must necessarily contain particles of gonorrhoea.[31] Now, the sole reason there of R. Joshua's view is that semen virile cannot possibly be altogether free from particles of gonorrhoea, but taken on its own it would not cause defilement. The Tanna who maintains this[32] must therefore be he who is responsible for what we have learnt: More severe than the former [causes of defilement][33]

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(1) V. p. 125, n. 5.

(2) V. ibid. n. 6. [As in whatever way the argument is put the result is the same — namely, inferring Horn on the plaintiff's premises from Horn on public ground.]

(3) The Hebrew term meaning 'it is sufficient for it', and denoting the qualification applied by the Rabbis to check the full force of the a fortiori; v. Glos.

(4) B.B. II 1a; Zeb. 69b.

(5) The technical term for the logical inference, 'From minor to major,' v. Glos.

(6) Num. XII, 14.

(7) I.e., in the case of Divinity.

(8) I.e., the case of her father. [Hence, even in the case of Divinity, no more than seven days are inferred proving that Dayyo has a Biblical basis.]

(9) I.e., render it completely ineffective.

(10) Regarding compensation whether it be half or full in the case of Horn doing damage.

(11) V. p. 126, n. 9.

(12) I.e., the Sages in the Mishnah: how do they meet R. Tarfon's objection?

(13) Num. XII, 14.

(14) How can he state that no mention is made of seven days in connection with divine reproof?

(15) But not a decree per se.

(16) Num. XII, 15.

(17) A person afflicted with gonorrhoea: cf. Lev. XV, 1-15.

(18) As is the case with gonorrhoeal discharge.

(19) Such as saliva.

(20) Cf. Lev. XV, 8, and Niddah, 55b.
(21) Such as semen virile.
(22) Cf. Lev. XV, 16-17, and supra p. 2.
(23) As it is based on the law applicable to the saliva of zab.
(24) As is the case with the law applicable to semen virile of a clean person.
(25) Whose semen virile causes defilement by touching.
(26) Deut. XXIII, 11.
(27) I.e., by the affliction of gonorrhoea. [I may therefore have assumed that the semen virile of a zab causes no defilement, not even by 'touching'.]
(28) And since the a fortiori would still serve a useful purpose regarding defilement by 'touching', why should not the principle of Dayyo be employed to exclude defilement by mere 'carrying'? Hence this Tanna does not resort to Dayya even where the employment thereof would not render the a fortiori ineffective.
(29) The law applicable to semen virile to cause defilement by 'touching' is thus per se common with all kinds of persons. The inference by means of the a fortiori would therefore indeed be rendered useless if Dayyo, excluding as a result defilement by 'carrying', were admitted.
(30) Naz. 66a.
(31) Which defile both by 'touching' and by 'carrying'.
(32) That semen virile of zab defiles by mere 'carrying' even on its own.
(33) I.e., the three primary Defilements: Dead Reptile, Semen Virile and the Person contaminated by contact with a corpse, all of which do not defile by mere carrying'. v. supra p. 2.

Talmud - Mas. Baba Kama 25b

are the gonorrhoeal discharge of zab, his saliva, his semen virile, his urine and the blood of menstruation, all of which defile whether by 'touching' or by mere 'carrying'.[1] But why not maintain that the reason here is also because the semen virile of zab cannot possibly be altogether free from particles of gonorrhoea? — If this had been the reason, semen virile should have been placed in juxtaposition to gonorrhoeal discharge. Why then was it placed in juxtaposition to saliva if not on account of the fact that its causing defilement is to be inferred from the law applicable to his saliva?[2]

R. Aha of Difti said to Rabina: Behold there is this Tanna who does not employ the principle of Dayyo even when the purpose of the a fortiori would thereby not be defeated. For it was taught: Whence do we learn that mats[3] become defiled if kept within the tent where there is a corpse? — It is a logical conclusion: For if tiny [earthenware] jugs that remain undefiled by the handling of zab[4] become defiled when kept within the tent where there is a corpse,[5] does it not follow that mats, which even in the case of zab become defiled,[6] should become defiled when kept within the tent where there is a corpse.[7] Now this reasoning applies not only to the law of defilement for a single day,[8] but also to defilement for full seven[9] [days]. But why not argue that the a fortiori well serves its purpose regarding the defilement for a single day,[10] whilst the principle of Dayyo is to be employed to exclude defilement for seven days? — He [Rabina] answered him: The same problem had already been raised by R. Nahman b. Zachariah to Abaye, and Abaye answered him that it was regarding mats in the case of a dead reptile[11] that the Tanna had employed the a fortiori, and the text should run as follows: 'Whence do we learn that mats[12] coming in contact with dead reptiles[13] become defiled? It is a logical conclusion: for if tiny [earthenware] jugs that remain undefiled by the handling of zab,[14] become defiled when in contact with dead reptiles,[15] does it not follow that mats which even in the case of zab become defiled,[16] should become defiled by coming in contact with dead reptiles?' But whence the ruling regarding mats[17] kept within the tent of a corpse? — In the case of dead reptiles it is stated raiment or skin,[15] while in the case of a corpse it is also stated, raiment . . . skin:[18] just as in the case of raiment or skin stated in connection with dead reptiles,[15] mats [are included to] become defiled, so is it regarding raiment . . . skin stated in connection with a corpse[18] that mats similarly become defiled. This Gezerah shawah[19] must necessarily be 'free',[20] for

if it were not 'free' the comparison made could be thus upset: seeing that in the case of dead reptiles [causing defilement to mats], their minimum for causing uncleanness is the size of a lentil,[21] how can you draw an analogy to corpses where the minimum to cause uncleanness is not the size of a lentil but that of an olive?[22] — The Gezerah shawah must thus be 'free'. Is it not so? For indeed the law regarding dead reptiles is placed in juxtaposition to semen virile as written, Or a man whose seed goeth from him,[23] and there immediately follows, Or whosoever toucheth any creeping thing. Now in the case of semen virile it is explicitly stated, And every garment, and every skin, whereon is the seed of copulation.[24] Why then had the Divine Law to mention again raiment or skin in the case of dead reptiles?[25] It may thus be concluded that it was [inserted] to be 'free' [for exegetical purposes].[26] Still it has so far only been proved that one part [of the Gezerah shawah][27] is 'free'. This would therefore be well in accordance with the view maintaining[28] that when a Gezerah shawah is 'free', even in one of its texts only, an inference may be drawn and no refutation will be entertained. But according to the view holding[29] that though an inference may be drawn in such a case, refutations will nevertheless be entertained, how could the analogy [between dead reptiles and corpses] be maintained?[30] — The verbal congruity in the text dealing with corpses is also 'free'. For indeed the law regarding corpses is similarly placed in juxtaposition to semen virile, as written, And whoso toucheth any thing that is unclean by the dead or a man whose seed goeth from him etc.[23] Now in the case of semen virile it is explicitly stated, And every garment, and every skin, whereon is the seed of copulation. Why then had the Divine Law to mention again raiment . . . skin in the case of corpses?[31] It may thus be concluded that it was [inserted] to be 'free' for exegetical purposes.[26] The Gezerah shawah is thus 'free' in both texts. Still this would again be only in accordance with the view maintaining[32] that when an inference is made by means of reasoning [from an analogy] the subject of the inference is placed back on its own basis.[33] But according to the view that when an inference is made [by means of an analogy] the subject of the inference must be placed on a par with the other in all respects, how can you establish the law [that mats kept in the tent of a corpse become defiled for seven days,[34] since you infer it from dead reptiles where the defilement is only for the day]?[35] — Said Raba: Scripture states, And ye shall wash your clothes on the seventh day,[36] to indicate that all defilements in the case of corpses cannot be for less than for seven [days].

But should we not let Tooth and Foot involve liability for damage done [even] on public ground because of the following a fortiori: If in the case of Horn[37] where [even] for damage done on the plaintiff's premises only half payment is involved, there is yet liability to pay for damage done on public ground, does it not necessarily follow that in the case of Tooth and Foot where for damage done on the plaintiff's premises the payment is in full, there should be liability for damage done on public ground? — Scripture, however, says, And it shall feed in another man's field,[38] excluding thus [damage done on] public ground.

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(1) Kelim I, 3.

(2) It is thus proved that semen virile of zab causes of itself defilement by 'carrying' and not on account of the particles of gonorrhoea it contains.

(3) Which are not included among the articles referred to in Num. XXXI, 20.

(4) [As he is unable to insert even his small finger within. Earthenware is susceptible to levitical uncleanness only through the medium of its interior. Lev. XI, 33.]

(5) As stated in Num. XIX, 15; and every open vessel . . . is unclean.

(6) In accordance with Lev. XV, 4.

(7) Shab. 84a.

(8) Lit., 'defilement (until) sunset,' which applies to defilements caused by zab; v. Lev. XV, 5-11.

(9) Usual in defilements through a corpse; cf. Num. XIX, 11-16.

(10) [As is the case with the bed of a zab (cf. Lev. XV, 4), since it is derived from zab.]

(11) But not at all regarding corpses; the whole problem thus concerns only defilement for a day; v. infra.

(12) As mats are not included among the articles referred to in Lev. XI, 32.

(13) The minimum quantity for defilement by which is the size of a lentil, a quantity which can easily pass through the

opening of the smallest bottle.
(14) As he is unable to insert even his small finger within. Earthenware is susceptible to levitical uncleanness only through the medium of its interior. Lev. XI, 33.
(15) Lev. XI, 32: . . . whether it be any vessel of wood or raiment or skin . . . it shall be unclean until the even.
(16) In accordance with Lev. XV, 4.
(17) Which are not included among the articles referred to in Num. XXXI, 20.
(18) Num. XXXI, 20: And as to every raiment and all that is made of skin . . . ye shall purify.
(19) The technical term for (an inference from) a verbal congruity in two different portions of the Law; v. Glos.
(20) Heb. מופנה (Mufnah), 'free', that is, for exegetical use, having no other purpose to serve, but solely intended to indicate this particular similarity in law.
(21) Hag. 11a; Naz. 52a.
(22) Naz. 49b.
(23) Lev. XXII, 4.
(24) Ibid. XV, 17.
(25) Lev. XI, 32.
(26) Thus to make the Gezerah shawah irrefutable.
(27) I.e., in the case of dead reptiles.
(28) Nid. 22b.
(29) Shab. 131a; Yeb. 70b.
(30) Since the refutation referred to above may be entertained.
(31) Num. XXXI, 20.
(32) Yeb. 78b.
(33) Becoming subject to the specific laws applicable to its own category. [So here mats in the tent of a corpse, though derived by analogy from reptiles, are subject to the laws of defilement by corpses. i.e., a defilement of 7 days.]
(34) Usual in defilements through a corpse; cf. Num. XIX, 11-16.
(35) Lev. XI, 32.
(36) Num. XXXI, 24.
(37) While in the state of Tam; cf. supra p. 73.
(38) Ex. XXII, 4.

Talmud - Mas. Baba Kama 26a

But have we ever suggested payment in full? It was only half payment that we were arguing for![1] — Scripture further says, And they shall divide the money of it[2] [to indicate that this[3] is confined to] 'the money of it' [i.e.. the goring ox] but does not extend to compensation [for damage caused] by another ox.[4]

But should we not let Tooth and Foot doing damage on the plaintiff's premises involve the liability for half damages only because of the following a fortiori: If in the case of Horn, where there is liability for damage done even on public ground, there is yet no more than half payment for damage done on the plaintiff's premises,[5] does it not follow that, in the case of Tooth and Foot where there is exemption for damage done on public ground,[6] the liability regarding damage done on the plaintiff's premises should be for half compensation only? — Scripture says, He shall make restitution,[7] meaning full[8] compensation.

But should we not [on the other hand] let Horn doing damage on public ground involve no liability at all, because of the following a fortiori: If in the case of Tooth and Foot where the payment for damage done on the plaintiff's premises is in full there is exemption for damage done on public ground.[6] does it not follow that, in the case of Horn where the payment for damage done on the plaintiff's premises, is only half, there should be exemption for damage done on public ground? — Said R. Johanan: Scripture says. [And the dead also] they shall divide,[9] to emphasise that in respect of half payment there is no distinction between public ground and private premises.[10]

But should we not let [also] in the case of Man ransom be paid [for manslaughter][11] because of the following a fortiori: If in the case of Ox where there is no liability to pay the [additional] Four Items,[12] there is yet the liability to pay ransom [for manslaughter,[13] does it not follow that in the case of Man who is liable for the [additional] Four Items,[12] there should be ransom [for manslaughter]? — But Scripture states, Whatsoever is laid upon him: upon him[13] excludes [the payment of ransom] in the case of Man [committing manslaughter].

But should we not [on the other hand] let Ox involve the liability of the [additional] Four Items because of the following a fortiori: If Man who by killing man incurs no liability to pay ransom[14] has, when injuring man, to pay [additional] Four Items,[15] does it not follow that, in the case of Ox where there is a liability to pay ransom [for killing man],[16] there should similarly be a liability to pay the [additional] Four Items when injuring [man]? — Scripture states, If a man cause a blemish in his neighbour,[17] thus excluding Ox injuring the [owner's] neighbour.

It has been asked: In the case of Foot treading upon a child [and killing it] in the plaintiff's premises, what should be the law regarding ransom? Shall we say that this comes under the law applicable to Horn, on the ground that just as with Horn in the case of manslaughter being repeated twice and thrice it becomes habitual with the animal,[18] involving thus the payment of ransom,[19] so also seems to be the case here[20] with hardly any distinction; or shall it perhaps be argued that in the case of Horn there was on the part of the animal a determination to injure, whereas in this case the act was not prompted by a determination to injure? — Come and hear: In the case of an ox having been allowed [by its owner] to trespass upon somebody else's ground and there goring to death the owner of the premises, the ox will be stoned, while its owner must pay full ransom whether [the ox was] Tam or Mu'ad. This is the view of R. Tarfon. Now, whence could R. Tarfon infer the payment of full ransom in the case of Tam, unless he shared the view of R. Jose the Galilean maintaining[21] that Tam involves the payment of half ransom for manslaughter committed on public ground, in which case he[22] could rightly have inferred ransom in full [for manslaughter on the plaintiff's premises] by means of the a fortiori from the law applicable to Foot?[23] This thus proves that ransom has to be paid for [manslaughter committed by] Foot. R. Shimi of Nehardea, however, said that the Tanna[24] might have inferred it from the law applicable to [mere] damage done by Foot.[25] But [if so] cannot the inference be refuted? For indeed what analogy could be drawn to damage done by Foot, the liability for which is common also with Fire [whereas ransom does not apply to Fire]?[26] — [The inference might have been] from damage done to hidden goods [in which case the liability is not common with Fire].[27] Still what analogy is there to hidden goods, the liability for which is common with Pit [whereas ransom for manslaughter does not apply to Pit]?[28] — The inference might have been from damage done to inanimate objects[29] [for which there is no liability in the case of Pit].[30] Still what analogy is there to inanimate objects, the liability for which is again common with Fire? — The inference might therefore have been from damage done to inanimate objects that were hidden [for which neither Fire nor Pit involve liability]. But still what comparison is there to hidden inanimate objects, the liability for which is common at least with Man [whereas ransom is not common with Man]?[31] — Does this therefore not prove that he[32] must have made the inference from ransom [for manslaughter] in the case of Foot,[33] proving thus that ransom has to be paid for manslaughter committed by Foot? — This certainly is proved.

R. Aha of Difti said to Rabina: It even stands to reason that ransom has to be paid in the case of Foot. For if you say that in the case of Foot there is no ransom, and that the Tanna[34] might have made the inference from the law applicable to mere damage done by Foot,[35] his reasoning could easily be refuted. For what analogy could be drawn to damage done by Foot for which there is liability in the case of Foot [whereas this is not the case with ransom]? Does this [by itself] not show that the inference could only have been made from ransom in the case of Foot,[36] proving thus that ransom has to be paid for [manslaughter conmitted by] Foot? — It certainly does show this.

MISHNAH. MAN IS ALWAYS MU'AD WHETHER [HE ACTS] INADVERTENTLY OR WILFULLY, WHETHER AWAKE OR ASLEFP.[37] IF HE BLINDED HIS NEIGHBOUR'S EYE OR BROKE HIS ARTICLES, FULL COMPENSATION MUST [THEREFORE] BE MADE.

GEMARA. Blinding a neighbour's eye is placed here in juxtaposition to breaking his articles [to indicate that] just as in the latter case only Depreciation will be indemnified, whereas the [additional] Four Items [of liability][38] do not apply, so also in the case of inadvertently blinding his neighbour's eye only Depreciation will be indemnified, whereas the [additional] Four Items do not apply.

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(1) On the analogy to Horn where the liability is only for half damages in the case of Tam. The Scriptural text may have been intended to exclude only full compensation.

(2) Ex. XXI, 35.

(3) I.e., the division of compensation.

(4) With the exception of course of damage done by Pebbles according to the Rabbis, who by the authority of a special Mosaic tradition order the payment of half damages; cf. supra p. 80.

(5) In accordance with the Rabbis who differ from R. Tarfon; v. supra p. 125.

(6) Supra p. 132.

(7) Ex. XXII, 4.

(8) Lit., ‘good’, ‘perfect’.

(9) [Ex. XXI, 35; the phrase being superfluous, as the text could have read, They shall divide the money of it and the dead.]

(10) Cf. supra p. 92.

(11) V. Supra p. 12.

(12) I.e., Pain, Medical Expenses, Loss of Time and Degradation, in addition to Depreciation, when injuring a human being; v. supra ibid.

(13) Ex. XXI, 30.

(14) V. supra p. 12.

(15) V. p. 133, n. 8.

(16) V. Ex. XXI, 30.

(17) Lev. XXIV, 19.

(18) Which becomes Mu'ad; v. supra p. 119.

(19) Ex. XXI, 30.

(20) With Foot, which is always considered Mu'ad; v. supra p. 11.

(21) Supra p. 66 and infra 48b.

(22) I.e., R. Tarfon.

(23) In the same way as he derived compensation in full for damage done by Horn on the plaintiff's premises, as argued by him, supra p. 125. [Thus: If in the case of Tooth and Foot, where there is no liability at all involved on public ground, there is liability to pay full ransom on the plaintiff's premises, does it not follow that Horn, which does involve at least payment of half ransom on public ground, should on the plaintiff's premises be liable to pay full ransom.]

(24) V. p. 134, n. 9.

(25) And not from the law applicable to manslaughter committed by Foot, in which case there may be no ransom at all. [Thus: If in the case of Foot, which involves no liability for damage on public ground, there is liability to pay in full in the plaintiff's premises, does it not follow that, in the case of Horn, involving as it does payment of half ransom on public ground, there should be payment of full ransom in plaintiff's premises.]

(26) For the person liable for arson may, in such a case, be indicted for manslaughter; cf. supra pp. 37-38 and p. 113.

(27) [Thus: If in the case of Foot, which involves no liability at all on public ground, there is full liability for hidden goods on the plaintiff's premises, does it not follow that, in the case of Horn, which involves liability to pay half damages on public ground, there should be payment of full ransom in plaintiff's premises?] Cf. supra p. 18.

(28) As stated supra p. 37.

(29) Cf. notes 2 and 4.

(30) V. supra p. 18.

(31) For all civil complaints are merged in the capital accusation of manslaughter; cf. supra, p. 113 and Num. XXXV, 32.
(32) I.e., R. Tarfon.
(33) V. supra. 134, n. 10.
(34) I.e., R. Tarfon
(35) V. supra p. 135, n. 2.
(36) V, supra p. 134, n. 10.
(37) Cf. supra p. 8.
(38) I.e., Pain, Medical Expenses, Loss of Time and Degradation; cf. supra p. 133 n. 8.

Talmud - Mas. Baba Kama 26b

. Whence is this ruling[1] deduced? Hezekiah said, and thus taught a Tanna of the School of Hezekiah: Scripture states, Wound instead of a wound[2] — to impose the liability [for Depreciation] in the case of inadvertence as in that of willfulness, in the case of compulsion as in that of willingness. [But] was not that [verse] required to prescribe [indemnity for] Pain even in the case where Depreciation is independently paid? — If that is all,[3] Scripture should have stated, 'Wound for a wound',[4] why state, [wound] instead of a wound,[5] unless to indicate that both inferences be made from it?

Rabbah said: In the case of a stone lying in a person's bosom without his having knowledge of it, so that when he rose it fell down — regarding damage, there will be liability for Depreciation[6] but exemption regarding the [additional] Four Items;[7] concerning Sabbath[8] [there will similarly be exemption] as it is [only] work that has been [deliberately] purposed that is forbidden by the Law;[9] in a case of manslaughter[10] there is exemption from fleeing [to a city of refuge];[11] regarding [the release of] a slave,[12] there exists a difference of opinion between R. Simeon b. Gamaliel and the Rabbis, as it was taught:[13] If the master was a physician and the slave requested him to attend to his eye and it was accidentally blinded, or [the slave requested the master] to scrape his tooth and it was accidentally knocked out, he may now laugh at the master, for he has already obtained his liberty. R. Simeon b. Gamaliel, however, says: [Scripture states] and [he] destroy it,[14] to make the freedom conditional upon the master intending to ruin the eye of the slave.

If the person, however, had at some time been aware of the stone in his bosom but subsequently forgot all about it, so that when he rose it fell down, — in the case of damage there is liability for Depreciation;[15] but though the exemption regarding the [additional] Four Items still holds good,[16] in the case of manslaughter[17] he will have to flee [to a city of refuge], for Scripture says, at unawares,[18] implying the existence of some [previous] knowledge [as to the dangerous weapon] and in the case before us such knowledge did at a time exist: concerning Sabbath,[19] however, there is still exemption; regarding [the release of] a slave the difference of opinion between R. Simeon b. Gamaliel and the Rabbis[20] still applies.

Where he intended to throw the stone to a distance of two cubits, but it fell at a distance of four,[21] if it caused damage, there is liability for Depreciation; regarding the [additional] Four Items there is still exemption;[16] so also concerning Sabbath,[19] for work [deliberately] planned is required [to make it an offence];[22] in the case of manslaughter,[23] And if a man lie not in wait,[24] is stated by Divine law, excluding a case where there was mention to throw a stone to a distance of two cubits but which fell at a distance of four.[25] Regarding [the release of] a slave, the difference of opinion between R. Simeon b. Gamaliel and the Rabbis[20] still applies. Where the intention was to throw the stone to a distance of four[21] cubits but it fell eight cubits away, — if it caused damage there will be liability for Depreciation; regarding the [additional] Four Items there is still exemption;[16] concerning Sabbath, if there was express intention that the stone should fall anywhere, there is liability for an offence,[21] but in the absence of such express intention no offence was committed;[26] in the case of manslaughter,[27] And if a man lie not in wait,[28] excludes a case where there was intention to throw a stone to a

distance of four cubits, but which fell at a distance of eight. Regarding [the release of] a slave the difference of opinion between R. Simeon b. Gamaliel and the Rabbis[29] still applies.

Rabbah again said: In the case of one throwing a utensil[30] from the top of a roof and another one coming and breaking it with a stick [before it fell upon the ground where it would in any case have been broken], the latter is under no liability to pay; the reason being that it was only a utensil which was already certain to be broken that was broken by him.

Rabbah further said: In the case of a man throwing a utensil[31] from the top of the roof while there were underneath mattresses and cushions which were meanwhile removed by another person, or even if he [who had thrown it] removed them himself, there is exemption; the reason being that at the time of the throwing [of the utensil] his agency had been void of any harmful effect.[32]

Rabbah again said: In the case of one throwing a child from the top of the roof and somebody else meanwhile appearing and catching it on the edge of his sword, there is a difference of opinion between R. Judah b. Bathyra and the Rabbis.[33] For it was taught: In the case of ten persons beating one [to death] with ten sticks, whether simultaneously or consecutively, none of them

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(1) That Man is Mu'ad to pay Depreciation for damage done by him under all circumstances.

(2) [Literal rendering of Ex. XXI, 25, which is superfluous having regard to Lev. XXIV, 19, If a man maim his neighbour, as he hath done so shall it be done to him.]

(3) That one is not merged in the other; cf. infra 85a.

(4) Expressed in Hebrew only by two words פצע בפצע

(5) For which three words are employed in the Hebrew text.

(6) For Man is Mu'ad to pay Depreciation even for damage done while asleep.

(7) On account of the absence of a purpose to do damage.

(8) I.e., if while unaware of the stone in his bosom he carried it with him into the open public thoroughfare, thus violating the Sabbath; cf. Shab. 96b.

(9) V. infra 60a; Hag. 10b.

(10) I.e., if, when the stone fell down, it killed a human being; v. Num. XXXV. 9-34.

(11) Since he never had any knowledge of the stone being in his bosom, he could in no way be made responsible criminally for the accidental manslaughter.

(12) I.e., when the stone in falling down destroyed the eye or the tooth of a slave; v. Ex. XXI. 26-27.

(13) Kid. 24b.

(14) Ex. XXI, 26.

(15) For Man is Mu'ad to pay Depreciation even for damage done while asleep.

(16) On account of the absence of a will to do damage.

(17) I.e., if when the stone fell down, it killed a human being; v. Num. XXXV, 9-34.

(18) Num. XXXV, 11, 15.

(19) I.e., if while unaware of the stone in his bosom he carried it with him into the open public thoroughfare, thus violating the Sabbath; cf. Shab. 96b.

(20) Supra p. 137.

(21) For the minimum of distance to constitute the violation of Sabbath by throwing an object in a public thoroughfare is four cubits; v. Shab. 96b.

(22) v. supra p. 137, n. 7.

(23) I.e., if when the stone fell down, it killed a human being; v. Num. XXXV, 9-34.

(24) Ex. XXI, 13.

(25) [According to one interpretation of Rashi, this is a case for exile; according to another, a case which is excluded from enjoying the protection of the city of refuge: v. Mak. 7b.]

(26) V. p. 137, n. 7.

(27) V. p. 138 n.3.

(28) Ex. XXI, 13.

(29) V. supra p. 137.
(30) Belonging to another. According to the interpretation of Rashi a.l. the utensil was thrown by its owner; cf. however, Rashi, supra 17b.
(31) Belonging to another.
(32) Lit., 'he had let his arrow off', it had spent its force; i.e., when the act of throwing took place it was by no means calculated to do any damage.
(33) According to R. Judah, the latter who caught it on the edge of his sword will be guilty of murder, but according to the Rabbis, no one is guilty of it.

Talmud - Mas. Baba Kama 27a

is guilty of murder: R. Judah b. Bathyra, however says: If consecutively the last is liable, for he was the immediate cause of the death.[1] In the case where an ox meanwhile appeared and caught the [falling] child on its horns there is a difference of opinion between R. Ishmael the son of R. Johanan b. Beroka and the Rabbis.[2] For it was taught: Then he shall give for the redemption of his life[3] [denotes] the value of the [life of] the killed person. R. Ishmael the son of R. Johanan b. Beroka interprets it to refer to the value of the [life of] the defendant.[2]

Rabbah further said: In the case of one falling from the top of the roof and [doing damage by] coming into close contact with a woman, there is liability for four items,[4] though were she his deceased brother's wife[5] he would thereby not yet have acquired her for wife.[6] The Four Items [in this case] include: Depreciation, Pain, Medical Expenses and Loss of Time, but not Degradation. for we have learnt:[7] There is no liability for Degradation unless there is intention [to degrade].

Rabbah further said: In the case of one who through a wind of unusual occurrence fell from the top of the roof [upon a human being] and did damage as well as caused degradation, there will be liability for Depreciation[8] but exemption from the [additional] Four Items:[9] if, however, [the fall had been] through a wind of usual occurrence and damage as well as degradation was occasioned, there is liability for Four Items[4] but exemption from Degradation.[7] If he turned over [while falling][10] there would be liability also for Degradation for it was taught: From the implication of the mere statement, And she putteth forth her hand,[11] would I not have understood that she taketh him? Why then continue in the text and she taketh him?[12] — In order to inform you that since there existed an intention to injure though none to cause degradation [there is liability even for Degradation]. Rabbah again said: In the case of one placing a live coal on a neighbour's heart and death resulting, there is exemption;[13] if, however, it was put upon his belongings[14] which were [thereby] burnt, there is liability.[15] Raba said: Both of the two [latter cases] have been dealt with in Mishnah. Regarding the case 'on a neighbour's heart' we learnt:[16] If one man held another fast down in fire or in water, so that it was impossible for him to emerge and death resulted, he is guilty [of murder]. If, however, he pushed him into fire or into water, and it was yet possible for him to emerge but death resulted, there is exemption. Regarding the case 'Upon his belongings' we have similarly learnt:[17] [If a man says to another,] 'Tear my garment;' 'Break my jug;'[18] there is nevertheless liability [for any damage done to the garment or to the jug]. But if he said, '. . . upon the understanding that you will incur no liability,' there is exemption. Rabbah, however, asked: If a man placed a live coal upon the heart of a slave[19] [and injury[20] results therefrom], what should be the law?[21] Does it come under the law applicable in the case of a coal having been placed upon the body of the master himself,[22] or to that applicable in the case of a coal having been placed upon a chattel of his?[23] Assuming that it is subject to the law applicable in the case of a coal having been placed upon the heart of the master himself,[22] what should be the law regarding a live coal placed upon an ox [from which damage resulted]? — He himself answered the query thus: His slave is on a par with his own body,[22] whereas his ox is on a par with his chattels.[23]

CHAPTER III

MISHNAH. IF A MAN PLACES A [KAD] PITCHER ON PUBLIC GROUND AND ANOTHER ONE COMES AND STUMBLES OVER IT AND BREAKS IT, HE IS EXEMPT. IF THE OTHER ONE WAS INJURED BY IT, THE OWNER OF THE [HABITH] BARREL IS LIABLE TO COMPENSATE FOR THE DAMAGE.

GEMARA. To commence with PITCHER[24] and conclude with BARREL![25] And we have likewise learnt also elsewhere:[26] If one man comes with his [habith] barrel and another comes with his beam and [it so happened that] the [kad] pitcher of this one breaks by [collision with] the beam of that one, he is exempt.[26] Here [on the other hand] the commencement is with barrel[25] and the conclusion with pitcher![24] We have again likewise learnt elsewhere: In the case of this man coming with a [habith] barrel of wine and that one proceeding with a [kad] pitcher of honey, and as the [habith] barrel of honey cracked, the owner of the wine poured out his wine and saved the honey into his barrel, he is entitled to no more than his service.[27] Here again the commencement is with pitcher[25] and the conclusion with barrel![25] R. Papa thereupon said: Both kad and habith may denote one and the same receptacle. But what is the purpose in this observation?[28] — Regarding buying and selling.[29] But under what circumstances? It could hardly be thought to refer to a locality where neither kad is termed habith nor habith designated kad, for are not these two terms then kept there distinct? — No, it may have application in a locality where, though the majority of people refer to kad by the term kad and to habith by the term habith, yet there are some who refer to habith by the term kad and to kad by the term habith. You might perhaps have thought that the law[30] follows the majority.[31]

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(1) Cf. supra p. 41.

(2) Infra pp. 224-5. According to R. Ishmael compensation for manslaughter will have to be made by the owner of the ox, but according to the Rabbis there will be no payment, as the child at the time of the fatal fall was devoid of any value.

(3) Ex. XXI, 30.

(4) For since the falling down was caused by a wind of usual occurrence, it is considered wilful.

(5) V. Deut. XXV, 5, and Yeb. VI, 1.

(6) Cf. Kid. I, 1, and Yeb. 56a.

(7) Infra, 86b.

(8) For Man is Mu'ad to pay Depreciation even for damage done while asleep.

(9) On account of the absence of a will to do damage.

(10) Intending thus to fall upon a human being standing below so as to escape the worst effects of his falling, but without intention to degrade.

(11) Deut. XXV, 11.

(12) Ibid.

(13) Since the person upon whose heart the live coal had been placed was able to remove it.

(14) Lit., ‘garment’.

(15) [In this case, the failure of the owner to remove the coal could be explained as due to his belief that he could claim compensation.]

(16) Sanh. 76b.

(17) Infra p. 531.

(18) This does not imply release from liability, as he might have meant, ‘You may tear, if you wish it,’ with all the consequences it involves.

(19) In the presence of his master; cf. Tosaf. a.l.

(20) Not death.

(21) Regarding compensation, as he could have removed it.

(22) In which case there is exemption.

(23) Where there is liability.

(24) Heb. Kad.

(25) Heb. Habith.
(26) Infra p. 169.
(27) V. infra p. 685.
(28) How can it affect law.
(29) The two terms may be interchanged in contracts as they are synonyms.
(30) Regulating technical terms in contracts of sale.
(31) Who keep the two terms distinct.

Talmud - Mas. Baba Kama 27b

It is therefore made known to us that we do not follow the majority[1] in [disputes on] matters of money.[2]

AND ANOTHER ONE COMES AND STUMBLES OVER IT AND BREAKS IT, HE IS EXEMPT. Why exempt? Has not one to keep one's eyes open when walking? — They said at the school of Rab, even in the name of Rab: The whole of the public ground was filled with barrels.[3] Samuel said: It is with reference to a dark place that we have learnt [the law in the Mishnah]. R. Johanan said: The pitcher was placed at the corner of a turning.[4] R. Papa said: Our Mishnah is not consistent unless in accordance with Samuel or R. Johanan, for according to Rab why exemption only in the case of stumbling [over the pitcher]? Why not the same ruling even when one directly broke it? — R. Zebid thereupon said in the name of Raba: The same law applies even when the defendant directly broke it; for AND STUMBLES was inserted merely because of the subsequent clause which reads, IF THE OTHER ONE WAS INJURED BY IT, THE OWNER OF THE BARREL IS LIABLE TO COMPENSATE FOR THE DAMAGE; and which of course applies only to ‘stumbling’ but not to direct breaking, in which case it only stands to reason that it is the plaintiff who is to blame for the damage he caused to himself. It was therefore on this account that ‘stumbling’ was inserted in the commencing clause.

R.Abba said to R. Ashi: In the West[5] the following [explanation] is stated in the name of R. ‘Ulla: [The exemption[6] is] because it is not the habit of men to look round while walking on the road.[7] Such a case occurred in Nehardea[8] where Samuel ordered compensation [for the broken utensil] and so also in Pumbeditha[8] where Raba similarly ordered compensation to he paid. We understand this in the case of Samuel who abided by the dictum he himself propounded,[9] but regarding Raba are we to say that he [also] embraced the view of Samuel? — R. Papa thereupon said: [In the case of Raba] the damage was done at the corner of an oil factory; and since it was usual to keep there barrels, he[10] ought to have kept his eyes open while walking there.[11]

R.Hisda dispatched [the following query] to R. Nahman: As there has already been fixed a fine[12] of three sela's[13] for kicking with the knee; five for kicking with the foot; thirteen for a blow with the saddle of an ass — what is the fine for wounding with the blade of the hoe or with the handle of the hoe? — The reply was forwarded [as follows]: ‘Hisda, Hisda! Is it your practice in Babylon to impose fines?[14] Tell me the actual circumstances of the case as it occurred.’ He[15] thereupon dispatched him thus: There was a well belonging to two persons. It was used by them on alternate days.[16] One of them, however, came and used it on a day not his. The other party said to him: ‘This day is mine!’ But as the latter paid no heed to that, he took a blade of a hoe and struck him with it. R. Nahman thereupon replied: No harm if he would have struck him a hundred times with the blade of the hoe. For even according to the view that a man may not take the law in his own hands[17] for the protection of his interests, in a case where an irreparable loss is pending[18] he is certainly entitled to do so.

It has indeed been stated: Rab Judah said: No man may take the law into his own hands for the protection of his interests, whereas R. Nahman said: A man may take the law into his own hands for

the protection of his interests. In a case where an irreparable loss is pending, no two opinions exist that he may take the law into his own hands for the protection of his interests: the difference of opinion is only where no irreparable loss is pending. Rab Judah maintains that no man may take the law into his own hands for the [alleged] protection of his interests, for since no irreparable loss is pending let him resort to the Judge; whereas R. Nahman says that a man may take the law into his own hands for the protection of his interests, for since he acts in accordance with [the prescriptions of the] law, why [need he] take the trouble [to go to Court]?

R. Kahana [however] raised an objection; Ben Bag Bag said;[19] Do not enter [stealthily] into thy neighbour's premises for the purpose of appropriating without his knowledge anything that even belongs to thee, lest thou wilt appear to him as a thief. Thou mayest, however, break his teeth and tell him, 'I am taking possession of what is mine.'[20] [Does not this prove that a man may take the law into his own hands[21] for the protection of his rights?[22]] — He[23] thereupon said

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(1) Cf. infra p. 263 and B.B. 92b.

(2) As the defendant is entitled to plead that he belongs to the minority.

(3) Such a public nuisance may thus be abated.

(4) The defendant is thus not to blame.

(5) I.e., in Eretz Yisrael, which is West of Babylon.

(6) For breaking the pitcher.

(7) Probably because the roads in Eretz Yisrael were in better condition than in Babylon; v. Shab. 33b; A. Z. 3a.

(8) A town in Babylon.

(9) That were the pitcher to have been in a visible place there would be liability.

(10) The defendant.

(11) And was thus to blame for the damage he had done.

(12) Cf. infra 90a, dealing with some other fixed fines.

(13) Sela' is a coin equal to one sacred or two common shekels; v. Glos.

(14) For the judicial right to impose fines is confined to Palestinian judges; cf. supra p. 67 and infra 84b.

(15) R. Hisda.

(16) Cf. B.B. 13a.

(17) I.e., resort to force.

(18) As where there is apprehension that the Court will be unable to redress the wrong done, e.g., in case all the water in the well will be used up.

(19) V. Ab. (Sonc. ed.) p. 76. n.7.

(20) Cf. Tosef. B.K. X.

(21) Since it is definitely stated that he may break his teeth . . . [The case dealt with here is where the loss is not irreparable, otherwise, as stated above, he would be allowed to enter even without permission.]

(22) Thus contradicting the view of Rab Judah.

(23) Rab Judah.

Talmud - Mas. Baba Kama 28a

: It is true that Ben Bag Bag supports thy view; but he is only one against the Rabbis[1] who differ from him. R. Jannai [even] suggested that 'Break his teeth' may also mean to bring him before a court of justice. But if so, why 'and thou mayest tell him?' Should it not read 'and they[2] will tell him'? Again, 'I am taking possession of what is mine'; should it not be 'he is taking possession of what is his'? — This is indeed a difficulty.

Come and hear: In the case of an ox throwing itself upon the back of another's ox so as to kill it, if the owner of the ox that was beneath arrived and extricated his ox so that the ox that was above dropped down and was killed, there is exemption. Now, does not this ruling apply to Mu'ad[3] where no irreparable loss is pending? — No, it only applies to Tam[4] where an irreparable loss is indeed

pending. But if so, read the subsequent clause: If [the owner of the ox that was beneath] pushed the ox from above, which was thus killed, there would be liability to compensate. Now if the case dealt with is of Tam,[5] why liability? — Since he was able to extricate his ox from beneath, which in fact he did not do,[he had no right to push and directly kill the assailing ox].[6]

Come and hear: In the case of a trespasser having filled his neighbour's premises with pitchers of wine and pitchers of oil, the owner of the premises is entitled to break them when going out and break them when coming in. [Does not this prove that a man may take the law into his own hands for the protection of his rights?][7] — R. Nahman b. Isaac explained: He is entitled to break them [and make a way][8] when going out [to complain] to the Court of Justice, as well as break them when coming back to fetch some necessary documents.

Come and hear: Whence is derived the ruling that in the case of a [Hebrew] bondman whose term of service, that had been extended by the boring of his ear,[9] has been terminated by the arrival of the Jubilee year[10] if it so happened that his master, while insisting upon him to leave, injured him by inflicting a wound upon him, there is yet exemption? We learn it from the words, And ye shall take no satisfaction for him that is . . . come again . . .[11] implying that we should not adjudicate compensation for him that is determined to 'come again' [as a servant].[12] [Does not this prove that a man may take the law into his own hands for the protection of his interests?][7] — We are dealing here with a case where the servant became suspected of intending to commit theft.[13] But how is it that up to that time he did not commit any theft and just at that time[14] he became suspected of intending to commit theft? — Up to that time he had the fear of his master upon him, whereas from that time[14] he is no more subject to his master's control.[10] R. Nahman b. Isaac said: We are dealing with a bondman to whom his master assigned a Canaanite maidservant as wife:[15] up to the expiration of the term this arrangement was lawful[15] whereas from that time this becomes unlawful.[16]

Come and hear:IF A MAN PLACES A PITCHER ON PUBLIC GROUND AND ANOTHER ONE COMES AND STUMBLES OVER IT AND BREAKS IT, HE IS EXEMPT. Now, is not this so only when the other one stumbled over it, whereas in the case of directly breaking it there is liability?[17] — R. Zebid thereupon said in the name of Raba: The same law applies even in the case of directly breaking it; for 'AND STUMBLES' was inserted merely because of the subsequent clause which reads, IF THE OTHER ONE WAS INJURED BY IT, THE OWNER OF THE BARREL IS LIABLE TO COMPENSATE FOR THE DAMAGE, and which, of course, applies only to stumbling but not to direct breaking, as then it is of course the plaintiff who is to blame for the damage he caused to himself. It was therefore on this account that 'stumbling' was inserted in the commencing clause.

Come and hear: Then thou shalt cut off her hand,[18] means only a monetary fine. Does not this ruling apply even in a case where there was no other possibility for her to save [her husband]?[19] — No, it applies only where she was able to save [him] by some other means.[20] Would indeed no fine be imposed upon her in a case where there was no other possibility for her to save [her husband]? But if so, why state in the subsequent clause: 'And putteth forth her hand,[21] excludes an officer of the Court of Justice [from any liability for degradation caused by him while carrying out the orders of the Court]'? Could not the distinction be made by continuing the very case[22] [in the following manner]: 'Provided that there were some other means at her disposal to save [him],[20] whereas if she was unable to save [him] by any other means there would be exemption'? — This very same thing was indeed meant to be conveyed [in the subsequent clause:] 'Provided that there were some other means at her disposal to save [him],[23] for were she unable to save [him] by any other means, the resort to force in her case should be considered as if exercised by an officer of the Court[24] [in the discharge of his duties] and there would be exemption.'

Come and hear:[25] In the case of a public road passing through the middle of a field of an

individual, who appropriates the road but gives the public another at the side of his field, the gift of the new road holds good, whereas the old one will not thereby revert to the owner of the field. Now, if you maintain that a man may take the law into his own hands for the protection of his interests, why should he not arm himself with a whip and sit there?[26] — R. Zebid thereupon said in the name of Raba: This is a precaution lest an owner [on further occasions] might substitute a round- about way[27] [for an old established road]. R. Mesharsheya even suggested that the ruling applies to an owner who actually replaced [the old existing road by] a roundabout way.[27] R. Ashi said: To turn a road [from the middle] to the side [of a field] must inevitably render the road roundabout, for if for those who reside at that side it becomes more direct, for those who reside at the other side it is made far [and roundabout]. But if so, why does the gift of the new road hold good? Why can the owner not say to the public authorities: 'Take ye yours [the old path] and return me mine [the new one]'? — [That could not be done] because of Rab Judah, for Rab Judah said:[28] A path [once] taken possession of by the public may not be obstructed.

Come and hear: If an owner leaves Pe'ah[29] on one side of the field, whereas the poor arrive at another side and glean there, both sides are subject to the law of Pe'ah. Now, if you really maintain that a man may take the law into his own hands for the protection of his interests why should both sides be subject to the law of Pe'ah?[30] Why should the owner not arm himself with a whip and sit?[31] — Raba thereupon said: The meaning of 'both sides are subject to the law of Pe'ah' is that they are both exempt from tithing,[32] as taught:[33] If a man, after having renounced the ownership of his vineyard, rises early on the following morning and cuts off the grapes,[34] there applies to them the laws of Peret,[35] 'Oleloth,[36] 'Forgetting'[37] and Pe'ah[38] whereas there is exemption from tithing.[39]

MISHNAH. IF HIS PITCHER BROKE ON PUBLIC GROUND AND SOMEONE SLIPPED IN THE WATER OR WAS INJURED BY THE POTSHERD HE IS LIABLE [TO COMPENSATE]. R. JUDAH SAYS: IF IT WAS DONE INTENTIONALLY HE IS LIABLE, BUT IF UNINTENTIONALLY HE IS EXEMPT.

GEMARA. Rab Judah said on behalf of Rab: The Mishnaic ruling refers only to garments soiled in the water.[40]

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(1) I.e., the majority of Rabbis.

(2) I.e., the Judges.

(3) In which case the Court would order compensation in full.

(4) Where compensation is only for a half, the plaintiff losing the other half.

(5) V. p. 145, n. 9.

(6) [Although there was the danger of his losing the full value of his ox.]

(7) Thus contradicting the view of Rab Judah.

(8) But no more.

(9) Ex. XXI, 6.

(10) Lev. XXV, 10, and Kid. 14b, 15a.

(11) Num. XXXV, 32.

(12) According to another rendering quoted by Rashi, it means 'that has to return' to his family, as prescribed in Lev. XXV, 10.

(13) In which case an irreparable loss is pending.

(14) I.e., the arrival of the Jubilee year.

(15) Ex. XXI, 4; Kid. 15a.

(16) Cf. Onkelos on Deut. XXIII, 18; hence the Master may use force to eject him.

(17) Thus opposing the view of R. Nahman.

(18) Deut. XXV, 12.

(19) Thus proving that even where irreparable loss is pending, as in this case, it is not permitted to take the law into one's own hands.

(20) In which case she acted ultra vires, i.e beyond the permission granted by law.
(21) Deut. XXV, 11.
(22) Dealing with a woman coming to rescue her husband.
(23) V. p. 147. n. 6.
(24) Lit. 'her hand is like the hand of the officer'.
(25) B. B. 99b.
(26) To keep away intruders; v. p. 147 n. 5.
(27) Which is of course not an equitable exchange in accordance with the law.
(28) B.B. 12a; 26b; 60b and 100a.
(29) I.e., the portion of the harvest left at a corner of the field for the poor in accordance with Lev. XIX. 9; XXIII, 22; v. Glos.
(30) Thus proving that even where irreparable loss is pending, as in this case, it is not permitted to take the law into his own hands.
(31) I.e., keeping the poor away from the Pe'ah on the former side.
(32) But they will by no means belong to the poor, for the portion left on the former side remains the owner's property.
(33) Infra 94a; Ned. 44b.
(34) So that ownership has been re-established.
(35) I.e.. grapes fallen off during cutting which are the share of the poor as prescribed in Lev. XIX, 10.
(36) Small single bunches reserved for the poor in accordance with Lev. XIX, 10, and Deut. XXIV, 21.
(37) I.e., produce forgotten in the field, belonging to the poor in accordance with Deut. XXIV, 19.
(38) I.e the portion of the harvest left at a corner of the field for the poor in accordance with Lev. XIX, 9; XXIII, 22; v. Glos.
(39) V. infra 94a. For the law of tithing applies only to produce that has never been abandoned even for the smallest space of time; v. Rashi and Tosaf. a.l.
(40) Rab maintains that the Mishnah deals with a case where the water of the broken pitcher has not been abandoned, so that it still remains the chattel of the original owner who is liable for any damage caused by it

Talmud - Mas. Baba Kama 28b

For regarding injury to the person there is exemption, since it was public ground[1] that hurt him.[2] When repeating this statement in the presence of Samuel he said to me: 'Well, is not [the liability for damage occasioned by] a stone, a knife or luggage[3] derived from Pit?[4] So that I adopt regarding them all [the interpretation]: An ox[4] excluding man, An ass[4] excluding inanimate objects! This qualification[5] however applies only to cases of killing, whereas as regards [mere] injury, in the case of man there is liability, though with respect to inanimate objects there is [always] exemption?'[6] — Rab [however, maintains[7] that] these statements apply only to nuisances abandoned [by their owners],[8] whereas in cases where they are not abandoned they still remain [their owner's] chattel.[9]

R. Oshaia however raised an objection: 'And an ox or an ass fall therein'.[4] 'An ox' excluding man; 'an ass' excluding inanimate objects. Hence the Rabbis stated: If there fell into it an ox together with its tools and they thereby broke, [or] an ass together with its equipment which rent, there is liability for the beast but exemption as regards the inanimate objects.[10] To what may the ruling in this case be compared? To that applicable in the case of a stone, a knife and luggage[11] that had been left on public ground and did damage. (Should it not on the contrary read, 'What case may be compared to this ruling?'[12] — It must therefore indeed mean thus: 'What may [be said to] be similar to this ruling? The case of a stone, a knife and luggage that had been left on public ground and did damage'.) 'It thus follows that where a bottle broke against the stone there is liability.' Now, does not the commencing clause[13] contradict the view of Rab,[14] whereas the concluding clause[15] opposes that of Samuel?[16] — But [even] on your view, does not the text contradict itself, stating exemption in the commencing clause[13] and liability in the concluding clause![15] Rab therefore interprets it so as to accord with his reasoning, whereas Samuel [on the other hand] expounds it so as to reconcile it with his view. Rab in accordance with his reasoning interprets it thus: The [above]

statement[13] was made only regarding nuisances that have been abandoned, whereas where they have not been abandoned there is liability.[17] It therefore follows that where a bottle broke against the stone there is liability. Samuel [on the other hand] in reconciling it with his view expounds it thus: Since you have now decided that a stone, a knife and luggage [constitute nuisances that] are equivalent [in law] to Pit, it follows that, according to R. Judah who orders compensation for inanimate objects damaged by Pit,[18] where a bottle smashed against the stone there is liability.

R. Eleazar said: This ruling[15] refers only to a case where the person stumbled over the stone and the bottle broke against the stone. For if the person stumbled because of the public ground, though the bottle broke against the stone, there is exemption.[19] Whose view is here followed? — Of course not that of R. Nathan[20] . There are, however, some who [on the other hand] read: R. Eleazar said: Do not suggest that it is only where the person stumbled upon the stone and the bottle broke against the stone that there is liability, so that where the person stumbled because of the public ground, though the bottle broke against the stone, there would be exemption. For even in the case where the person stumbled because of the public ground, provided the bottle broke against the stone there is liability. Whose view is here followed? — Of course that of Nathan.[20]

R. JUDAH SAYS: IF IT WAS DONE INTENTIONALLY HE IS LIABLE, BUT IF UNINTENTIONALLY HE IS EXEMPT. What does INTENTIONALLY denote? — Rabbah said: [It is sufficient[21] if there was] an intention to bring the pitcher below the shoulder.[22] Said Abaye to him: Does this imply that R. Meir[23] imposes liability even when the pitcher slipped down [by sheer accident]? — He answered him:[24] 'Yes, R. Meir imposes liability even where the handle remained in the carrier's hand.' But why? Is it not sheer accident, and has not the Divine Law prescribed exemption in cases of accident as recorded,[25] But unto the damsel thou shalt do nothing?[26] You can hardly suggest this ruling to apply only to capital punishment, whereas regarding damages there should [always] be liability, for it was taught:[27] If his pitcher broke and he did not remove the potsherds, [or] his camel fell down and he did not raise it, R. Meir orders payment for any damage resulting therefrom, whereas the Sages maintain

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(1) Lit 'ground of the world'.

(2) Whereas the water was only the remote cause of it.

(3) Even when not abandoned; cf. supra p. 7.

(4) Ex. XXI, 33.

(5) Excluding man.

(6) For killing and injury could not be distinguished in the case of inanimate objects. How then could Rab make him liable for soiled garments (and exempt for injury to the person)?

(7) The difference in principle between Samuel and Rab is that the former maintains that nuisances of all kinds, whether abandoned by their owners or not, are subject to the law applicable to Pit, in which case there is no liability either for damage done to inanimate objects or death caused to human beings, whereas the view of Rab is that only abandoned nuisances are subject to these laws of Pit, but nuisances that have not been abandoned by their owners are still his chattels, and as such have to be subject to the law applicable to ox doing damage, in which case no discrimination is made as to the nature of the damaged objects, be they men, beasts or inanimate articles; cf. also supra p. 38.

(8) In which case they are equal (in law) to Pits dug on public ground.

(9) They are thus subject to the law applicable to ox; v. supra p. 18.

(10) V. infra 52a.

(11) Even when not abandoned; cf. supra p. 7.

(12) Since the case of stone, knife and luggage is far less obvious than this case which is explicitly dealt with in Scripture.

(13) Making a stone, a knife and luggage subject to the law applicable to Pit.

(14) Who maintains that unless they have been abandoned they are subject to the law of Ox.

(15) Imposing liability in the case of a bottle having been smashed against the stone.

(16) According to whom it should be subject to the law applicable to Pit imposing no liability for damage done to

inanimate objects.

(17) Even for damage done to inanimate objects, as they are subject not to the law of Pit but to that applicable to Ox.

(18) Supra p. 18.

(19) Since it was ownerless ground that was the primary cause of the accident.

(20) Who holds that where no payment can be exacted from one defendant, the co-defendant, if any, will himself bear the whole liability; cf supra p. 54 and infra 53a

(21) To constitute liability.

(22) Though there was no intention whatever to break it.

(23) Who is usually taken to have been the author of anonymous Mishnaic statements, especially when contradicting those of R. Judah b. Il'ai, his colleague.

(24) I.e., Rabbah to Abaye.

(25) Deut. XXII, 26.

(26) For so far as she is concerned it was a mishap.

(27) Infra 55a.

Talmud - Mas. Baba Kama 29a

that no action can be instituted against him in civil courts though there is liability[1] according to divine justice. The Sages agree however, with R. Meir that, in the case of a stone, a knife and luggage which were left on the top of the roof and fell down because of a wind of usual occurrence[2] and did damage, there will be liability.[3] R. Meir [on the other hand] agrees with the Sages that, regarding bottles that were placed upon the top of the roof for the purpose of getting dry and fell down because of a wind of unusual occurrence[4] and did damage, there is exemption.[5] [Does not this prove that even regarding damages all agree that there is exemption in cases of sheer accident?] — Abaye therefore said: It is on two points that they[6] differ [in the Mishnah]; they differ regarding damage done at the time of the fall [of the pitcher] and they again differ regarding damage occasioned [by the potsherds] subsequently to the fall. The difference of opinion regarding damage done at the time of the fall of the pitcher arises on the question whether stumbling implies negligence [or not];[7] one Master[8] maintaining that stumbling does imply negligence, whereas the other Master[9] is of the opinion that stumbling does not [necessarily] imply negligence.[10] The point at issue in the case of damage occasioned [by the potsherds] subsequently to the fall, is the law as applicable to abandoned nuisances;[11] one Master[8] maintaining that for damage occasioned by abandoned nuisances there is liability,[12] whereas the other Master[9] maintains exemption.[13] But how can you prove this?[14] — From the text which presents two [independent] cases [as follows]; SOMEONE SLIPPED IN THE WATER OR WAS INJURED BY THE POTSHERD; for indeed is not one case the same as the other,[15] unless it was intended to convey, 'Someone slipped in the water while the pitcher had been falling[16] or was injured by the potsherd subsequently to the fall.'

Now that the Mishnah presents two independent cases, it is only reasonable to assume that the Baraitha[17] similarly deals with the same two problems. That is all very well as regards the 'pitcher' where the two [problems] have application [in the case of damage done] at the time of the fall or subsequently to the fall [respectively]. But how in the case of the 'camel'? For though concerning damage occasioned subsequently to the fall, it may well have application where the carcass has been abandoned,[18] yet in the case of damage done at the time of the fall, what point of difference can be found?[19] — R. Aha thereupon said: [It deals with a case] where the camel was led in water along the slippery shore of a river.[20] But under what circumstances? If where there was another [better] way, is it not a case of culpa lata?[21] If on the other hand there was no other way [to pass through], is it not a case of no alternative? — The point at issue can therefore only be where the driver stumbled and together with him the camel also stumbled.

But in the case of abandoning nuisances,[22] where could [the condition of] intention [laid down by R. Judah] come in? — Said R. Joseph: The intention [in this case] refers to the retaining of the

ownership of the potsherd.[23] So also said R. Ashi, that the intention [in this case] refers to the retaining of the ownership of the potsherd.

R. Eleazar said: 'It is regarding damage done at the time of the fall that there is a difference of opinion.' But how in the case of damage done subsequently to the fall? Would there be unanimity that there is exemption? Surely there is R. Meir who expressed [his opinion][24] that there is liability! What else [would you suggest? That in this case] there is unanimity [imposing] liability? Surely there are the Rabbis who stated [their view] that there is exemption! — Hence, what he means [to convey by his statement] 'damage done at the time of the fall', is that there is difference of opinion 'even regarding damage done at the time of the fall', making thus known to us [the conclusions arrived at] by Abaye.[25]

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(1) For not having removed the potsherds or the camel that fell down.

(2) Which the defendant should have anticipated.

(3) For carelessness.

(4) Which could hardly have been anticipated.

(5) For in this case the defendant is not to blame for carelessness.

(6) I.e., R. Judah and the anonymous view which is that of R. Meir.

(7) As it was owing to the defendant having stumbled that his pitcher gave way.

(8) I.e., R. Meir.

(9) I.e., R. Judah.

(10) 'INTENTIONALLY' stated in the Mishnah would thus mean where there was intention actually to break the pitcher, for if the intention was merely to bring the pitcher below the shoulder it would come under the term 'UNINTENTIONALLY', the ground advanced by R. Judah is that in the case of stumbling and breaking a pitcher and doing thereby damage, no negligence was necessarily involved.

(11) Of which the defendant is no longer the owner.

(12) For the liability in the case of Pit is also where it has been dug in public ground and is thus ownerless.

(13) For he holds that the liability in the case of Pit is only where the defendant had dug it in his own ground and though he subsequently abandoned it he retained the ownership of the pit itself; cf. supra p. 107; and infra 50a.

(14) That the points at issue are twofold.

(15) Why then would one case not have sufficed?

(16) And the water was still in the process of being poured out.

(17) Supra p. 152.

(18) The point at issue thus consisting in the law applicable to abandoned nuisances.

(19) For the problem whether 'stumbling' implies negligence or not has surely no application where it was not the driver but the camel that stumbled.

(20) The stumbling of the camel is thus imputed to the driver.

(21) I.e., grave fault, which has nothing to do with the problem of stumbling.

(22) Which is the second point at issue between R. Judah and R. Meir.

(23) [R. Judah therefore means this: If he had the intention of retaining the shards he is liable; if he had no intention to do so but abandoned them, he is exempt.]

(24) Supra p. 152.

(25) Supra p. 153.

Talmud - Mas. Baba Kama 29b

R. Johanan, however, said: 'It is regarding damage occasioned after the fall [of the pitcher] that there is a difference of opinion.' But how in the case of damage done at the time of the fall? Would there be unanimity [granting] exemption? Surely R. Johanan's statement further on[1] that we should not think that the Mishnah[2] [there] follows the view of R. Meir who maintains that stumbling constitutes carelessness, implies that R. Meir imposes liability.[3] What else [would you suggest? That there] be unanimity [imposing] liability? Surely the very statement made further on[1] by R. Johanan

[himself] that we should not think that the Mishnah[2] [there] follows the view of R. Meir, implies that the Rabbis would exempt![3] — Hence what he [R. Johanan] intends to convey to us is that abandoned nuisances have only in this connection been exempted from liability by the Rabbis since the very inception [of the nuisances][4] was by accident, whereas abandoned nuisances in other circumstances involve liability [even according to the Rabbis].[5]

It was stated: In the case of abandoned nuisances [causing damage], R. Johanan and R. Eleazar [differ]. One imposes liability and the other maintains exemption. May we not say that the one imposing liability follows the view of R. Meir,[6] whereas the other, who maintains exemption follows that of the Rabbis?[6] — As to R. Meir's view no one could dispute [that there should be liability].[7] Where they differ is as to the view of the Rabbis. The one who exempts does so because of the Rabbis,[8] while the other who imposes liability can say to you, 'It is I who follow the view even of the Rabbis, for the Rabbis who declare abandoned nuisances exempt do so only in one particular connection, where the very inception [of the nuisances][9] had been by accident, whereas abandoned nuisances in other connections involve liability.' May it not be concluded that it was R. Eleazar who imposed liability? For R. Eleazar said in the name of R. Ishmael:[10] There are two [laws dealing with] matters that are really not within the ownership of man but which are regarded by Scripture as if they were under his ownership. They are [the following]: Pit in public ground,[11] and Leaven after midday [on Passover eve].[12] It may indeed be concluded thus.[13]

But did R. Eleazar really say so? Did not R. Eleazar express himself to the contrary? For we have learnt;[14] 'If a man turns up dung that had been lying on public ground and another person is [subsequently] injured thereby, there is liability for the damage.' And R. Eleazar thereupon said: This Mishnaic ruling applies only to one who [by turning over the dung] intended to acquire title to it. For if he had not intended to acquire title to it there would be exemption. Now, does not this prove that abandoned nuisances are exempt? — R. Adda b. Ahabah suggested [that the amendment made by R. Eleazar] referred to one who has restored the dung to its previous position.[15] Rabina [thus] said: The instance given by R. Adda b. Ahabah may have its equivalent in the case of one who, on coming across an open pit, covered it, but opened it up again. But Mar Zutra the son of R. Mari said to Rabina: What a comparison! In the latter case, [by merely covering the pit] the [evil] deed of the original [offender] has not yet been undone, whereas in the case before us [by removing the dung from its place] the [evil] deed of the original [offender] has been undone! May it not therefore [on the other hand] have its equivalent only in the case of one who, on coming across an open pit, filled it up [with earth] but dug it out again, where, since the nuisance created by the original [offender] had already been completely removed [by filling in the pit], it stands altogether under the responsibility of the new offender? — R. Ashi therefore suggested [that the amendment made by R. Eleazar] referred to one who turned over the dung within the first three [handbreadths][16] of the ground [in which case the nuisance created by the original offender is not yet considered in law as abated]. But what influenced R. Eleazar to make the [Mishnaic] ruling[17] refer to one who turned over the dung within the first three [handbreadths of the ground], and thus to confine its application only to one who intended to acquire title to the dung,[18] excluding thereby one who did not intend to acquire title to it? Why not indeed make the ruling refer to one who turned over the dung above the first three handbreadths, so that even where one did not intend to acquire title to it the liability should hold good? — Raba [thereupon] said: Because of a difficulty in the Mishnaic text[17] [which occurred to him]: Why indeed have 'turning up' in the Mishnaic text and not simply 'raising,'[19] if not to indicate that 'turning up' implies within the first three handbreadths [of the ground].

Now [then] that R. Eleazar was the one who maintained liability,[20] R. Johanan would [of course] be the one who maintained exemption. But could R. Johanan really maintain this? Surely we have learnt: If a man hides thorns and broken glass [in public ground], or makes a fence of thorns, or if a man's fence falls upon public ground and damage results therefrom to another person, there is liability for the damage.[21] And R. Johanan thereupon said: This Mishnaic ruling refers to a case

where the thorns were projecting into the public thoroughfare. For if they were confined within private premises[22] there would be exemption. Now, why should there be exemption in the case where they were confined within private premises if not because they would only constitute a nuisance on private premises? Does this then not imply that it is only a nuisance created upon public ground that involves liability, proving thus that abandoned nuisances do involve liability? — No, it may still be suggested that abandoned nuisances are exempt. The reason for the exemption in the case of thorns confined to private premises is, as it has already been stated in this connection,[21] that R. Aha the son of R. Ika said: Because it is not the habit of men to rub themselves against walls.[23]

But again, could R. Johanan [really] maintain this?[24] Surely R. Johanan stated:[25] The halachah is in accordance with anonymous Mishnaic rulings. And we have learnt: If a man digs a pit in public ground, and an ox or ass falls in and dies, there is liability.[26] [Does this not prove that there is liability for a pit dug in public ground?] — [It must] therefore [be concluded that] R. Johanan was indeed the one who maintained liability. Now then that R. Johanan was the one who maintained liability, R. Eleazar would [of course] be the one who maintained exemption. But did not R. Eleazar say

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(1) Infra p. 166.

(2) Dealing with the case of the two potters, infra p. 166.

(3) For damage done at the time of the fall.

(4) I.e., when the pitcher gave way or the camel fell down.

(5) The statement made by R. Johanan that it was regarding damage occasioned after the fall (of the pitcher) that there was a difference of opinion would thus mean that the difference of opinion between R. Meir and the other Rabbis was only where the inception of the nuisance was with a fall, i.e. with an accident, as where the nuisance had originally been wilfully exposed to the public there would be liability according to all opinions.

(6) V. p. 155, n. 1.

(7) For R. Meir imposes liability for abandoned nuisances even where their very inception was by accident; v. Rashi, but also Tosaf. 29a.

(8) Supra p. 153.

(9) As when the pitcher gave way or the camel fell down.

(10) Pes. 6b.

(11) Which is not the property of the defendant, but for which he is nevertheless responsible on account of his having dug it.

(12) Lit., ‘from the sixth hour upwards’, when in accordance with Pes. I. 4, it becomes prohibited for any use and is thus rendered ownerless, but for its destruction the original owner is still held responsible.

(13) That according to R. Eleazar abandoning nuisances does not release from responsibility.

(14) Infra p. 161.

(15) In which case the defendant did not aggravate the position.

(16) According to the principle of Labud, which is the legal consideration of separated parts as united, one substance is not regarded as removed from another unless a space of not less than three handbreadths separates them.

(17) Infra p. 161.

(18) Lit., ‘and the reason is because he intended’, etc.

(19) Which would necessarily mean above the first three handbreadths of the ground level.

(20) In the case of abandoned nuisances that have caused damage.

(21) Infra p. 159.

(22) Although he subsequently abandoned it to the public.

(23) It is therefore the plaintiff himself who is to blame.

(24) That abandoning nuisances releases from responsibility.

(25) Shab. 46a.

(26) Infra 50b.

in the name of R. Ishmael etc.[1] [which proves that abandoned nuisances do involve liability]? — This presents no difficulty. One view[2] is his own whereas the other[3] is that of his master.

MISHNAH. IF A MAN POURS OUT WATER INTO PUBLIC GROUND AND SOME OTHER PERSON IS INJURED BY IT, THERE IS LIABILITY FOR THE DAMAGE. IF HE HIDES THORNS AND BROKEN GLASS, OR MAKES A FENCE OF THORNS, OR, IF A FENCE FALLS INTO THE PUBLIC GROUND AND DAMAGE RESULTS THEREFROM TO SOME OTHER PERSONS, THERE IS [SIMILARLY] LIABILITY FOR THE DAMAGE.[4]

GEMARA. Rab said: This Mishnaic ruling[5] refers only to a case where his garments[6] were soiled in the water. For regarding injury to himself there should be exemption, since it was ownerless ground that hurt him.[7] [But] R. Huna said to Rab: Why should not [the topmost layer of the ground mixed up with private water] be considered as private clay?[8] — Do you suggest [the ruling to refer to] water that has not dried up? [No.] It deals with a case where the water has already dried up. But why [at all] two [texts[9] for one and the same ruling]?[10] — One [text] refers to the summer season whereas the other deals with winter, as indeed [explicitly] taught [elsewhere]: All those who open their gutters or sweep out the dust of their cellars [into public thoroughfares] are, in the summer period, acting unlawfully, but lawfully in winter; [in all cases] even though when acting lawfully, if special damage resulted, they are liable to compensate.[11]

IF HE HIDES THORNS etc., R. Johanan said:[4] This Mishnaic ruling refers only to a case where the thorns were projecting into the public ground. For if they were confined within private premises there would be no liability. On what account is there exemption [in the latter case]? — R. Aha the son of R. Ika [thereupon] answered:[12] Because it is not the habit of men to rub themselves against walls.

Our Rabbis taught: If one hid thorns and broken glasses in a neighbour's wall and the owner of the wall came and pulled his wall down, so that they fell into the public ground and did damage, the one who hid them is liable. R. Johanan [thereupon] said: This ruling refers only to an impaired wall.[13] For in the case of a strong wall the one who hid [the thorns] should be exempt while the owner of the wall would be liable.[14] Rabina commented: This ruling[15] proves that where a man covers his pit with a neighbour's lid and the owner of the lid comes and removes his lid, the owner of the pit would be liable [for any damage that may subsequently be caused by his pit]. Is not this inference quite obvious?[16] — You might perhaps have suggested this ruling[15] [to be confined to the case] there, where the owner of the wall had no knowledge of the identity of the person who hid the thorns in the wall, and was accordingly unable to inform him of the intended pulling down of the wall, whereas in the case of the pit, where the owner of the lid very well knew the identity of the owner of the pit, [you might have argued] that it was his duty to inform him [of the intended removal of the lid].[17] It is therefore made known to us [that this is not the case].[18]

Our Rabbis taught: The pious men of former generations used to hide their thorns and broken glasses in the midst of their fields at a depth of three handbreadths below the surface so that [even] the plough might not be hindered by them. R Shesheth[19] used to throw them into the fire.[20] Raba threw them into the Tigris. Rab Judah said: He who wishes to be pious must [in the first instance particularly] fulfil the laws of [Seder] Nezikin.[21] But Raba said: The matters [dealt with in the Tractate] Aboth;[22] still others said: Matters [dealt with in] Berakoth.[23]

MISHNAH. IF A MAN REMOVES HIS STRAW AND STUBBLE INTO THE PUBLIC GROUND TO BE FORMED INTO MANURE, AND DAMAGE RESULTS TO SOME OTHER PERSON, THERE IS LIABILITY FOR THE DAMAGE, AND WHOEVER SEIZES THEM FIRST ACQUIRES TITLE TO THEM. R. SIMEON B. GAMALIEL SAYS: WHOEVER CREATES ANY

NUISANCES ON PUBLIC GROUND CAUSING [SPECIAL] DAMAGE IS LIABLE TO COMPENSATE, THOUGH WHOEVER SEIZES OF THEM FIRST ACQUIRES TITLE TO THEM. IF HE TURNS UP DUNG THAT HAD BEEN LYING ON PUBLIC GROUND, AND DAMAGE [SUBSEQUENTLY] RESULTS TO ANOTHER PERSON, HE IS LIABLE FOR THE DAMAGE.

GEMARA. May we say that the Mishnaic ruling[24] is not in accordance with R. Judah? For it was taught: R. Judah says: When it is the season of taking out foliage everybody is entitled to take out his foliage into the public ground and heap it up there for the whole period of thirty days so that it may be trodden upon by the feet of men and by the feet of animals; for upon this understanding did Joshua make [Israel][25] inherit the Land. — You may suggest it to be even in accordance with R. Judah, for R. Judah [nevertheless] agrees that where [special] damage resulted, compensation should be made for the damage done. But did we not learn that R. Judah maintains that in the case of a Chanukah candle[26] there is exemption on account of it having been placed there with authorization?[27] Now, does not this authorization mean the permission of the Beth din?[28] — No, it means the sanction of [the performance of] a religious duty[29] as [indeed explicitly] taught: R. Judah says: In the case of a Chanukah candle there is exemption on account of the sanction of [the performance of] a religious duty.

Come and hear: In all those cases where the authorities permitted nuisances to be created on public ground, if [special] damage results there will be liability to compensate. But R. Judah maintains exemption![30] — R. Nahman said: The Mishnah[31] refers to the time when it is not the season to take out foliage and thus it may be in accordance with R. Judah. — R. Ashi further [said]:

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(1) That there is liability for a pit dug in public ground, though it is ownerless.

(2) That abandoning nuisances releases from responsibility.

(3) That abandoning nuisances does not release from responsibility.

(4) Supra p. 158.

(5) Which, according to Rab, deals with a case where the water has not been abandoned, but remained still the chattel of the original owner.

(6) Those of the person who was injured.

(7) Whereas the water was but the remote cause of it.

(8) Lit., ‘his clay’. i.e., of the owner of the water.

(9) The one here and the other supra p. 149.

(10) Expounded by Rab here as well as supra pp. 149-150.

(11) Supra pp. 19-20.

(12) V. p. 159, n. 3.

(13) Which was likely to be pulled down.

(14) For not having taken proper care to safeguard the public.

(15) As stated in the Baraitha quoted.

(16) Why then had Rabina to make it explicit?

(17) Failing that, the sole responsibility should then fall upon him.

(18) But that the responsibility lies upon the owner of the pit.

(19) Who was stricken with blindness; cf. Ber. 58a.

(20) V. Nid. 17a.

(21) [By being careful in matters that may cause damage.]

(22) [Matters affecting ethics and right conduct. Var. lec., ‘Rabina’.]

(23) [The Tractate wherein the benedictions are set forth and discussed.]

(24) Imposing liability in the commencing clause.

(25) B.M. 118b. Why then liability for the damage caused thereby during the specified period permitted by law?

(26) Placed outside a shop and setting aflame flax that has been passing along the public road.

(27) Infra p. 361.

(28) A permission which has similarly been extended in the case of the dung during the specified period and should accordingly effect exemption.
(29) Which is of course absent in the case of removing dung to the public ground, where liability must accordingly be imposed for special damage.
(30) Does not this prove that mere authorization suffices to confer exemption? Cf. n. 2.
(31) V. p. 161, n. 5.

Talmud - Mas. Baba Kama 30b

The Mishnah states, HIS STRAW AND STUBBLE which are slippery [and may never be removed into public ground even according to R. Judah].

WHOEVER SEIZES THEM FIRST ACQUIRES TITLE TO THEM. Rab said: Both to their corpus and to their increase [in value],[1] whereas Ze'ire said: Only to their increase but not to their corpus.[2] Wherein is the point at issue?[3] — Rab maintains that they [the Rabbis] extended the penalty to the corpus on account of the increase thereof, but Ze'ire is of the opinion that they did not extend the penalty to the corpus on account of the increase thereof.

We have learnt: IF HE TURNS UP DUNG THAT HAD BEEN LYING ON PUBLIC GROUND AND DAMAGE [SUBSEQUENTLY] RESULTS TO ANOTHER PERSON, HE IS LIABLE FOR THE DAMAGE. Now, [in this case] it is not stated that 'Whoever seizes it first acquires title to it.'[4] — [This ruling has been] inserted in the commencing clause, and applies as well to the concluding clause. But has it not in this connection[5] been taught [in a Baraitha]: They are prohibited [to be taken possession of] on account of [the law of] robbery?[6] — When [the Baraitha] states 'They are prohibited on account of robbery' the reference is to all the cases [presented] in the Mishnaic text[7] and [is intended] to [protect] the one who had seized [of them] first, having thereby acquired title [to them]. But surely it was not meant thus, seeing that it was taught:[8] 'If a man removes straw and stubble into the public ground to be formed into manure and damage results to another person, he is liable for the damage, and whoever seizes them first acquires title to them, as this may be done irrespective of [the law of] robbery. [However] where he turns up dung on public ground and damage [subsequently] results to another person, he is liable [to compensate] but no possession may be taken of the dung on account of [the law of] robbery'?[6] — R. Nahman b. Isaac [thereupon] exclaimed: What an objection to adduce from the case of dung! [It is only in the case of] an object that is susceptible to increase [in value] that the penalty is extended to the corpus[9] for the purpose of [discouraging any idea of] gain, whereas with regard to an object that yields no increase there is no penalty [at all].[10]

The question was asked: According to the view that the penalty extends also to the corpus for the purpose of [discouraging the idea of] gain,[9] is this penalty imposed at once[11] or is it only after some gain has been produced that the penalty will be imposed? — Come and hear: An objection was raised [against Rab] from the case of dung![12] But do you really think this [solves the problem]? The objection from the case of dung was raised only before R. Nahman expounded the underlying principle;[13] for after the explanation given by R. Nahman what objection indeed could there be raised from the case of dung?[14]

Might not one suggest [the argument between Rab and Ze'ire to have been] the point at issue between [the following] Tannaim? For it was taught: If a bill contains a stipulation of interest,[15] a penalty is imposed so that neither the principal nor the interest is enforced; these are the words of R. Meir, whereas the Sages maintain that the principal is enforced though not the interest.[16] Now, can we not say that Rab adopts the view of R. Meir[17] whereas Ze'ire follows that of the Rabbis?[18] — Rab may explain [himself] to you [as follows]: 'I made my statement even according to the Rabbis: for the Rabbis maintain their view only there, where the principal as such is quite lawful, whereas here

in the case of nuisances the corpus itself is liable to do damage.' Ze'ire [on the other hand] may explain [himself] to you [thus]: 'I made my statement even in accordance with R. Meir; for R. Meir expressed his view only there, where immediately, at the time of the bill having been drawn up, [the evil had been committed] by stipulating the usury, whereas here in the case of nuisances, who can assert that [special] damage will result?'

Might not one suggest [the argument between Rab and Ze'ire to have been] the point at issue between these Tannaim? For it was taught: If a man removes straw and stubble into the public ground to be formed into manure and damage results to another person, he is liable for the damage, and whoever seizes them first acquires title to them. They are prohibited [to be taken possession of] on account of [the law of] robbery. R. Simeon b. Gamaliel says: Whoever creates any nuisances on public ground and causes [special] damage is liable to compensate, though whoever takes possession of them first acquires title to them, and this may be done irrespective of [the law of] robbery. Now, is not the text a contradiction in itself? You read, 'Whoever seizes them first acquires title to them,' then you state [in the same breath], 'They are prohibited [to be taken possession of] on account of [the law of] robbery'! It must therefore mean thus: 'Whoever seizes them first acquires title to them,' viz., to their increase, whereas, 'they are prohibited to be taken possession of on account of [the law of] robbery,' refers to their corpus. R. Simeon b. Gamaliel thereupon proceeded to state that even concerning their corpus, 'whoever seizes them first, acquires title to them.' Now, according to Ze'ire, his view must unquestionably have been the point at issue between these Tannaim,[19] but according to Rab, are we similarly to say that [his view] was the point at issue between these Tannaim? — Rab may say to you: 'It is [indeed] unanimously held that the penalty must extend to the corpus for the purpose [of discouraging the idea] of gain; the point at issue [between the Tannaim] here is whether this halachah[20] should be made the practical rule of the law'.[21] For it was stated: R. Huna on behalf of Rab said: This halachah[20] should not be made the practical rule of the law,[22] whereas R. Adda b. Ahabah said: This halachah[20] should be made the practical rule of the law. But is this really so? Did not R. Huna declare barley [that had been spread out on public ground] ownerless, [just as] R. Adda b. Ahabah declared

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(1) While on public ground.

(2) Which thus still remains the property of the original owner.

(3) I.e., what is the principle underlying it?

(4) This clause, if omitted purposely, would thus tend to prove that the penalty attaches only to straw and stubble and their like, which improve while lying on public ground, but not to dung placed on public ground, apparently on account of the fact that in this case there is neither increase in quantity nor improvement in quality while lying on public ground. This distinction appears therefore to be not in accordance with the view of Rab, maintaining that the penalty extend not only to the increase but also to the corpus of the object of the nuisance.

(5) I.e. in connection with the latter clause.

(6) Which shows that the penalty does not extend to the corpus.

(7) Even to straw and stubble.

(8) [V. D.S. a.l.]

(9) According to the view of Rab.

(10) For, since there is no gain, nobody is likely to be tempted to place dung on public ground.

(11) Even before any gain accrued.

(12) Although no increase will ever accrue there, thus proving that according to Rab the penalty is imposed on the corpus even before it had yielded any gain.

(13) That there is no penalty at all with regard to an object that yields no increase; whereas the query is based on the principle laid down by R. Nahman.

(14) Where no increase will ever accrue.

(15) Which is against the biblical prohibition of Ex. XXII, 24.

(16) Cf. B.M. 72a.

(17) Extending the penalty also to the corpus.

(18) I.e., the Sages who maintain that the penalty attaches only to the increase.

(19) For R. Simeon b. Gamaliel is certainly against his view.

(20) To extend the penalty to the corpus.

(21) As to whether people should be encouraged to avail themselves of it, or not.

(22) For the sake of not disturbing public peace.

Talmud - Mas. Baba Kama 31a

the refuse of boiled dates [that had been placed on public ground] ownerless? We can well understand this in the case of R. Adda b. Ahabah who acted in accordance with his own dictum, but in the case of R. Huna, are we to say that he changed his view? — These owners [in that case] had been warned [several times not to repeat the nuisance].[1]

MISHNAH. IF TWO POTTERS WERE FOLLOWING ONE ANOTHER AND THE FIRST STUMBLED AND FELL DOWN AND THE SECOND STUMBLED BECAUSE OF THE FIRST, THE FIRST IS LIABLE FOR THE DAMAGE DONE TO THE SECOND.

GEMARA. R. Johanan said: Do not think [that the Tanna of] this Mishnah is R. Meir who considers stumbling as implying carelessness that involves liability.[2] For even according to the Rabbis who maintain [that stumbling is] mere accident for which there is exemption,[2] there should be liability here where he[3] had [meanwhile had every possibility] to rise and nevertheless did not rise. [But] R. Nahman b. Isaac said: You may even say that [the Mishnah speaks also of a case] where he[3] did not yet have [any opportunity] to rise, for he[3] was [surely able] to caution[4] and nevertheless did not caution. R. Johanan, however, considers that where he[3] did not yet have [any opportunity] to rise, he[3] could hardly be expected to caution as he was [surely] somewhat distracted.

We have learnt: If the carrier of the beam was in front, the carrier of the barrel behind, and the barrel broke by [colliding with] the beam, he[5] is exempt. But if the carrier of the beam stopped suddenly, he is liable.[6] Now, does this not mean that he stopped for the purpose of shouldering the beam as is usual with carriers, and it yet says that he is liable, [presumably] because [he failed] to caution?[7] — No, he suddenly stopped to rest [which is rather unusual in the course of carrying]. But what should be the law[8] in the case where he stopped to shoulder the beam? Would there then be exemption? Why then state in the subsequent clause,[9] 'Where he, however, warned the carrier of the barrel to stop, he is exempt'? Could the distinction not be made in the statement of the same case [in the following manner]: 'Provided that he stopped to rest; but if he halted to shift the burden on his shoulder, he is exempt'? — It was, however, intended to let us know that even where he stopped to rest, if he warned the carrier of the barrel to stop, he is exempt.

Come and hear: If a number of potters or glass-carriers were walking in line and the first stumbled and fell and the second stumbled because of the first and the third because of the second, the first is liable for the damage [occasioned] to the second, and the second is liable for the damage [occasioned] to the third. Where, however, they all fell because of the first, the first is liable for the damage [sustained] by them all. If [on the other hand] they cautioned one another, there is exemption. Now, does this teaching not deal with a case where there has not yet been [any opportunity] to rise?[10] — No, [on the contrary] they [have already] had [every opportunity] to rise. But what should be the law[8] in the case where they [have not yet] had [any opportunity] to rise? Would there then be exemption? If so, why state in the concluding clause, 'If [on the other hand] they cautioned one another, there is exemption'? Could the distinction not be made in the statement of the same case [in the following manner]: 'Provided that they have already had every opportunity to rise; but if they have not yet had any opportunity to rise, there is exemption'? — This is what it intended to let us know: That even where they [have already] had [every opportunity] to rise, if they cautioned one another, there is exemption.

Raba said: The first is liable for damage [done] to the second whether directly by his person[11] or by means of his chattels,[12] whereas the second is liable for damage to the third only if done by his person[13] but not if caused by his chattels. [Now,] in any case [how could these rulings be made consistent]? [For] if stumbling implies carelessness, why should not also the second be liable [for all kinds of damage]?[14] If [on the other hand] stumbling does not amount to carelessness, why should even the first not enjoy immunity?

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(1) It was therefore a specially aggravated offence.

(2) Supra pp. 153 and 155.

(3) The first potter.

(4) The second potter to stop.

(5) The carrier of the beam.

(6) Infra p. 169.

(7) Which would thus support the interpretation given by R. Nahman and contradict the view expounded by R. Johanan.

(8) According to the view of R. Johanan.

(9) Infra p. 170.

(10) V. p. 166, n. 7.

(11) Being subject to the law applicable to damage done by Man.

(12) Which are subject to the law applicable to Pit.

(13) V. p. 167, n. 4

(14) Even if caused by his chattels.

Talmud - Mas. Baba Kama 31b

— The first was certainly [considered] careless,[1] whilst, as to the second, he is liable for damage done by his person, [that is,] only where he [has already] had [the opportunity] to rise and did [nevertheless] not rise; for damage caused by his chattels he is [however] exempt, as he may say to him:[2] It is not I who dug this pit.[3]

An objection was raised [from the following Baraitha]: All of them are liable for damage [done] by their person,[4] but exempt for damage [caused] by their chattels.[4] Does [this Baraitha] not refer even to the first?[5] — No, with the exception of the first. But is it not stated, 'All of them ...'? — R. Adda b. Ahabah said: 'All of them' refers to [all] the plaintiffs.[6] [But] how is this? If you maintain that the first [is] also [included], we understand why the Baraitha says 'All of them'. But if you contend that the first is excepted, what [meaning could there be in] 'All of them'? Why [indeed] not say 'The plaintiffs'? — Raba [therefore] said: The first[7] is liable for both injuries inflicted upon the person of the second and damage caused to the chattels of the second, whereas the second[8] is liable to compensate the third only for injuries inflicted upon his person but not for damage[9] to his chattels; the reason being that the [person of the] second is subject to the law applicable to Pit, and no case can be found where Pit would involve liability for inanimate objects.[10] This accords well with the view of Samuel, who holds that all nuisances are [subject to the law applicable to] Pit.[11] But according to Rab who maintains that it is only where the nuisance has been abandoned that this is so, whereas if not [abandoned] it is not so,[12] what reason could be advanced?[13] — We must therefore accept the first version,[14] and as to the objection raised by you [from the Baraitha], 'All of them are liable',[15] it has already been interpreted by R. Adda b. Minyomi in the presence of Rabina to refer to a case where inanimate objects have been damaged by the chattels [of the defendant].[16]

The Master stated: 'Where, however, they all fell because of the first, the first is liable for the damage [sustained] by them all.' How [indeed can they all] fall [because of the first]? — R. Papa said: Where he blocked the road like a carcass, [closing the whole width of the road]. R. Zebid said: Like a blind man's staff.[17]

MISHNAH. IF ONE COMES WITH HIS BARREL AND AN OTHER COMES WITH HIS BEAM AND THE PITCHER[18] OF THIS ONE BREAKS BY [COLLISION WITH] THE BEAM OF THIS ONE, HE[19] IS EXEMPT, FOR THE ONE IS ENTITLED TO WALK [THERE AND CARRY BEAMS] AND THE OTHER IS ENTITLED TO WALK [THERE AND CARRY BARRELS]. WHERE THE CARRIER OF THE BEAM WAS IN FRONT, AND THE CARRIER OF THE BARREL BEHIND, AND THE BARREL BROKE BY [COLLISION WITH] THE BEAM, THE CARRIER OF THE BEAM IS EXEMPT.[20]

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(1) [Since stumbling implies carelessness.]

(2) To the third.

(3) I.e., the nuisance was created not by the second, but caused by the first who fell.

(4) Whether to the person or to the chattels of the plaintiff.

(5) Who, according to Raba, is liable for damage caused even by his chattels to the person of the second as being subject to the law applicable to Pit. This Baraitha thus refutes Raba.

(6) The first is thus, as a matter of course, not included.

(7) Being subject to the law applicable to damage done by Man.

(8) Should be subject to the law applicable in Pit.

(9) Though done by the person of the second.

(10) Supra p. 18.

(11) Supra p. 150. [The person of the second may therefore be treated as Pit.]

(12) But is subject to the law applicable to Ox where damage to inanimate objects is also compensated.

(13) For the person of the second, though lying on the ground, has surely never been abandoned by him. Why then exemption for damage done by him to inanimate objects?

(14) Of the statement of Raba, according to which the first is liable for damage done whether by his person or by his chattels, whereas the second is liable for damage done only by his person but not if done by his chattels.

(15) For damage done by their person, but exempt for damage done by their chattels, including thus also the first.

(16) Which are subject to the laws of Pit involving no liability for inanimate objects. Were, however, the person of the plaintiff to have been injured, there would be no exemption even if the injury were caused by the chattels of the first, as expounded by Raba.

(17) [With which the blind gropes his way on either side of the road.]

(18) Cf. supra p. 142.

(19) The owner of the beam.

(20) For the carrier of the barrel who was behind should not have proceeded so fast.

BUT IF THE CARRIER OF THE BEAM [SUDDENLY] STOPPED, HE IS LIABLE.[1] IF, HOWEVER, HE CRIED TO THE CARRIER OF THE BARREL, HALT!' HE IS EXEMPT. WHERE, HOWEVER, THE CARRIER OF THE BARREL WAS IN FRONT, AND THE CARRIER OF THE BEAM BEHIND AND THE BARREL BROKE BY [COLLISION WITH] THE BEAM, HE IS LIABLE.[2] IF, HOWEVER, THE CARRIER OF THE BARREL [SUDDENLY] STOPPED, HE IS EXEMPT. BUT WHERE HE CRIED TO THE CARRIER OF THE BEAM, 'HALT!' HE IS LIABLE. THE SAME APPLIES TO ONE CARRYING A [BURNING] CANDLE WHILE ANOTHER WAS PROCEEDING WITH FLAX.

GEMARA. Rabbah b. Nathan questioned R. Huna: If a man injures his wife through conjugal intercourse, what is [the legal position]? Since he performed this act with full permission is he to be exempt [for damage resulting therefrom], or should perhaps greater care have been taken by him? — He said to him. We have learnt it: ... FOR THE ONE IS ENTITLED TO WALK [THERE AND CARRY BEAMS] AND THE OTHER IS ENTITLED TO WALK [THERE AND CARRY BARRELS].[3] Raba [however] said: There is an a fortiori [to the contrary]: If in the case of the Wood,[4] where this one [the defendant] was entering [as if] into his own domain, and the other [the plaintiff] was [similarly] entering [as if] into his own domain, it is nevertheless considered [in the eye of the law][4] that he entered his fellow's [the plaintiff's] domain, and he is made liable, should this case[5] where this one [the defendant][6] was actually entering the domain of his fellow [the plaintiff][7] not be all the more [subject to the same law]?[8] But surely [the Mishnah] states, . . . FOR THE ONE IS ENTITLED TO WALK THERE [AND CARRY BEAMS] AND THE OTHER IS ENTITLED TO WALK [THERE AND CARRY BARRELS, indicating exemption where the entry was sanctioned]! — There, both of the parties were simultaneously [active against each other], whereas here[9] it was only he[10] that committed the deed. Is she[11] [considered] not [to have participated in the act at all]? Is it not written, The souls that commit them shall be cut off from among their people?[12] — [It is true that] enjoyment is derived by both of them, but it is only he to whom the active part can be ascribed.

WHERE THE CARRIER OF THE BEAM WAS IN FRONT etc. Resh Lakish stated:[13] In the case of two cows on public ground, one lying down [maliciously] and the other walking about, if the one that was walking kicked the one that was lying, there is exemption [since the latter too misconducted itself by laying itself down on public ground], whereas if the one that was lying kicked the one that was walking, there is liability to pay. May not [the following be cited in] support of this:[14] WHERE THE CARRIER OF THE BEAM WAS IN FRONT AND THE CARRIER OF THE BARREL BEHIND, AND THE BARREL BROKE BY [COLLISION WITH] THE BEAM, HE IS EXEMPT. BUT IF THE CARRIER OF THE BEAM [SUDDENLY] STOPPED HE IS LIABLE. For surely [this latter case] here is similar to that of the lying cow kicking the walking cow,[15] and liability is stated! — But do you really think that this [liability] need be proved?[14] [The Mishnaic text however] not only fails to be of any support [in this respect], but affords a contradiction to Resh Lakish, [in whose view] the reason [even for the liability] is that the lying cow kicked the walking cow, thus [implying] that [the latter] sustained damage [because of the former cow] through sheer accident, and there would be exemption. Now, [the case of] the Mishnah surely deals with accidental damage, and still states liability? — The Mishnah [deals with a case] where the beam blocked the [whole] passage as if by a carcass,[16] whereas here [in the case dealt with by Resh Lakish] the cow was lying on one side of the road so that the other cow should have passed on the other side.[17]

But the concluding clause may [be taken to] support Resh Lakish. For it is stated, BUT IF THE CARRIER OF THE BARREL WAS IN FRONT AND THE CARRIER OF THE BEAM BEHIND, AND THE BARREL BROKE BY [COLLISION WITH] THE BEAM, HE IS LIABLE. IF, HOWEVER, THE CARRIER OF THE BARREL [SUDDENLY] STOPPED, HE IS EXEMPT.

Now, surely this case resembles that of the walking cow kicking the lying cow,[18] and the text states exemption? — No! The Mishnah [deals with the case where the damage was done in a usual manner as] he[19] was passing in the ordinary way, whereas here [in the case dealt with by Resh Lakish] it may be argued for the lying cow,[20] 'Even if you are entitled to tread upon me, you have still no right to kick me.'[21]

MISHNAH. IF TWO [PERSONS] WERE PASSING ONE ANOTHER ON PUBLIC GROUND, ONE [OF THEM] RUNNING AND THE OTHER WALKING OR BOTH OF THEM RUNNING, AND THEY WERE INJURED BY EACH OTHER, BOTH OF THEM ARE EXEMPT.[22]

GEMARA. Our Mishnah is not in accordance with Issi b. Judah. For it has been taught: Issi b. Judah maintains that the man who had been running is liable, since his conduct was unusual. Issi, however, agrees [that if it were] on a Sabbath eve before sunset there would be exemption, for running at that time is permissible. R. Johanan stated that the halachah is in accordance with Issi b. Judah. But did R. Johanan [really] maintain this? Has R. Johanan not laid down the rule that the halachah is in accordance with [the ruling of] an anonymous Mishnah?[23] Now, did we not learn . . . ONE [OF THEM] RUNNING AND THE OTHER WALKING OR BOTH OF THEM RUNNING . . . BOTH OF THEM ARE EXEMPT? — Our Mishnah [deals with a case] of a Sabbath eve before sunset. What proof have you of that? — From the text, OR BOTH OF THEM RUNNING . . . BOTH OF THEM ARE EXEMPT; [for indeed] what need was there for this to be inserted? If in the case where one was running and the other walking there is exemption, could there be any doubt[24] where both of them were running?[25] It must accordingly mean thus: ' Where one was running and the other walking there is exemption; provided, however, it was on a Sabbath eve before sunset. For if on a weekday, [in the case of] one running and the other walking there would be liability, [whereas where] both of them were running even though on a weekday they would be exempt.'

The Master stated: 'Issi, however, agrees [that if it were] on a Sabbath eve before sunset there would be exemption, for running at that time is permissible.' On Sabbath eve, why is it permissible? — As [shown by] R. Hanina: for R. Hanina used to say:[26]

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(1) For he is to blame.

(2) For the carrier of the beam, who was in this case second, should have taken care to keep at a reasonable distance.

(3) This proves that where the act is sanctioned no liability is involved.

(4) Referring to Deut. XIX,5: As when a man goeth into the wood with his neighbour to hew wood, and his hand fetcheth a stroke with the axe to cut down the tree and the head slippeth from the helve and lighteth upon his neighbour ... cf. also infra p. 175

(5) I.e., the problem in hand.

(6) The husband.

(7) The wife.

(8) Of liability.

(9) V. p. 170 n. 6.

(10) I.e the husband.

(11) I.e the wife.

(12) Lev. XVIII, 29. [The plural indicates that both are regarded as having participated in the act.]

(13) Supra pp. 98 and 124.

(14) I.e., that misconduct involves liability for damage that may result.

(15) As here, too, the offender is to blame for misconduct.

(16) Consequently the liability extends even to accidental damage.

(17) [There could therefore be no liability attached except where the lying cow maliciously kicked her, but not for accidental damage.]

(18) In that there was contributory misconduct on the part of the plaintiff and his cow respectively.

(19) The carrier of the beam.

(20) Lit ‘she can say to her’.
(21) It was therefore requisite that Resh Lakish should express his rejection of this plausible argument.
(22) So long as they had no intention of injuring each other.
(23) Cf. supra p. 158.
(24) That there should be exemption.
(25) Where there was contributory negligence.
(26) Cf. Shab. 119a.

Talmud - Mas. Baba Kama 32b

‘Come, let us go forth to meet the bride, the queen!’ Some [explicitly] read:’. . . to meet Sabbath, the bride, the queen.’ R. Jannai, [however,] while dressed in his Sabbath attire used to remain standing and say: ‘Come thou, O queen, come thou, O queen!’

MISHNAH. IF A MAN SPLITS WOOD ON PRIVATE PREMISES[1] AND DOES DAMAGE ON PUBLIC GROUND, OR ON PUBLIC GROUND AND DOES DAMAGE ON PRIVATE PREMISES,[2] OR ON PRIVATE PREMISES[3] AND DOES DAMAGE ON ANOTHER'S PRIVATE PREMISES, HE IS LIABLE.

GEMARA. And [all the cases enumerated] are necessary [as serving respective purposes]. For if the Mishnah had stated only the case of splitting wood on private premises and doing damage on public ground, [the ruling could have been ascribed to the fact] that the damage occurred at a place where many people were to be found, whereas in the case of splitting wood on public ground and doing damage on private premises, since the damage occurred in a place where many people were not to be found, the opposite ruling might have been suggested.[4] Again, if the Mishnah had dealt only with the case of splitting wood on public ground and doing damage on private premises,[5] [the ruling could have been explained] on the ground that the act[6] was even at the very outset unlawful, whereas in the case of splitting wood on private premises[3] and doing damage on public ground, [in view of the fact] that the act[6] [as such] was quite lawful, the opposite view might have been suggested.[4] Again, if the Mishnah had dealt only with these two cases [the ruling could have been explained in] the one case on account of the damage having occurred at a place where many people were to be found, and [in] the other on account of the unlawfulness of the act,[6] whereas in the case of splitting wood on private premises[3] and doing damage on another's private premises, since the damage occurred in a place where many people were not to be found and the act[6] was quite lawful even at the very outset, the opposite view might have been suggested.[4] It was [hence] essential [to state explicitly all these cases].

Our Rabbis taught: ‘If a man entered the workshop of a joiner without permission and a chip of wood flew off and struck him in the face and killed him, he [the joiner] is exempt.[7] But if he entered with [the] permission [of the joiner], he is liable.’ Liable for what? — R. Jose b. Hanina said: He is liable for the four [additional] items,[8] whereas regarding the law of refuge[9] he is [still] exempt on account of the fact that the [circumstances of this] case do not [exactly] resemble those of the Wood.[10] For in the case of the Wood the one [the plaintiff] was entering [as if] into his own domain and the other [the defendant] was [similarly] entering [as if] into his own domain, whereas in this case the one [the plaintiff] had [definitely] been entering into his fellow's [the defendant's] workshop. Raba [however,] said: There is an a fortiori [to the contrary]: If in the case of the Wood where the one [the plaintiff] was entering to his own [exclusive] knowledge and that one [the defendant] was similarly entering of his own accord, it is nevertheless considered [in the eye of the law][10] as if he had entered with the consent of his fellow [the defendant] who thus becomes liable to take refuge, should the case before us, where the one [the plaintiff] entered the workshop with the knowledge of his fellow [the joiner], be not all the more subject to the same liability? Raba therefore said: What is meant by being exempt from [being subject to the law of] refuge is that the sin could not be expiated

by mere refuge; the real reason of the statement of R. Jose b. Hanina being this: that his offence,[11] though committed inadvertently, approaches wilful carelessness.[12] Raba [on his own part] raised [however] an objection: If an officer of the Court inflicted on him[13] an additional [unauthorized] stroke, from which he died, he [the officer] is liable to take refuge on his account.[14] Now, does not [the offence] here committed inadvertently approach wilful carelessness?[12] For surely he had to bear in mind that a person might sometimes die just through one [additional] stroke. Why then state, 'he is liable to take refuge on his account'? — R. Shimi of Nehardea there upon said: [The officer committed the offence as he] made a mistake in [counting] the number [of strokes]. [But] Naba tapped R. Shimi's shoe[15] and said to him: Is it he who is responsible for the counting [of the strokes]? Was it not taught: The senior judge recites [the prescribed verses],[16] the second [to him] conducts the counting [of the strokes], and the third directs each stroke to be administered?[17] — No, said R. Shimi of Nehardea; it was the judge himself who made the mistake in counting.

A [further] objection was raised: If a man throws a stone into a public thoroughfare and kills [thereby a human being], he is liable to take refuge.[18] Now, does not [the offence] here committed inadvertently approach wilful carelessness?[19] For surely he had to bear in mind that on a public thoroughfare many people were to be found, yet it states, 'he is liable to take refuge'? — R. Samuel b. Isaac said: The offender [threw the stone while he] was pulling down his wall.[20] But should he not have kept his eyes open? — He was pulling it down at night . But even at night time, should he not have kept his eyes open? — He was [in fact] pulling his wall down in the day time, [but was throwing it] towards a dunghill. [But] how are we to picture this dunghill? If many people were to be found there, is it not a case of wilful carelessness?[19] If [on the other hand] many were not to be found there, is it not sheer accident?[21] — R. Papa [thereupon] said: It could [indeed] have no application unless in the case of a dunghill where it was customary for people to resort at night time, but not customary to resort during the day, though it occasionally occurred that some might come to sit there [even in the day time]. [It is therefore] not a case of wilful carelessness since it was not customary for people to resort there during the day. Nor is it sheer accident since it occasionally occurred that some people did come to sit there [even in the day time].

R. Papa in the name of Raba referred [the remark of R. Jose b. Hanina] to the commencing clause: 'If a man entered the workshop of a joiner without permission and a chip of wood flew off and struck him in the face and killed him, he is exempt.' And R. Jose b. Hanina [thereupon] remarked; He would be liable for the four [additional] items,[22] though he is exempt from [having to take] refuge.[23] He who refers this remark to the concluding clause[24] will, with more reason, refer it to the commencing clause,[25] whereas he who refers it to the commencing clause[25] maintains that, in the [case dealt with] in the concluding clause where the entrance had been made with [the] permission [of the joiner], he would be liable to take refuge.[23] But would he be liable to take refuge [in that case]?[24] Was it not taught: If a man enters the workshop of a smith and sparks fly off and strike him in the face causing his death, he [the smith] is exempt[26] even where the entrance had been made by permission of the smith? — [In this Baraitha] here, we are dealing with an apprentice of the smith. Is an apprentice of a smith to be killed [with impunity]? — Where his master had been urging him to leave but he did not leave. But even where his master had been urging him to leave, [which he did not do,] may he be killed [with impunity]? — Where the master believed that he had already left. If so, why should not the same apply also to a stranger?

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(1) I.e., his own premises.

(2) Of a neighbour.

(3) V. p. 173, n. 5.

(4) Lit., 'I might have said no'.

(5) V. p. 173. n. 6.

(6) Of splitting wood.

(7) From fleeing to the city of refuge. Cf. Num. XXXV, 11-28,Deut. XIX, 4-6; and supra p. 137.

(8) In the case of mere injury; cf. supra p. 133.
(9) Laid down in the case of manslaughter.
(10) Referred to in the verse, As when a man goes into the wood with his neighbour to hew wood, and his hand fetcheth a stroke with the axe to cut down the tree, and the head slippeth from the helve and lighteth upon his neighbour, that he die, he shall flee unto one of those cities, and live; Deut. XIX, 5. Cf. also supra p. 170.
(11) I.e., that of the joiner.
(12) In which case the taking of refuge is insufficient; cf. e.g. Num. XXXV, 16-21, and Deut. XIX, 11-13.
(13) On an offender sentenced to lashes.
(14) The victim's. Mak. III, 14.
(15) To draw his attention.
(16) Deut. XXVIII, 58 etc.; Ps LXXVIII, 38.
(17) Lit., says, "Smite him". Mak. 23a.
(18) Ibid. II. 2.
(19) In which case the taking of refuge is insufficient; cf. e.g. Num XXXV, 16-21 and Deut. XIX, 11-13.
(20) Cf. Mak. 8a.
(21) Why then be subject to the law of refuge?
(22) In the case of mere injury; cf. supra p. 133.
(23) In the case of manslaughter.
(24) Where the entrance had been made with the knowledge of the joiner.
(25) Where the entrance had been made without any imitation.
(26) From having to take refuge.

Talmud - Mas. Baba Kama 33a

— A stranger need not fear the master-smith[1] whereas the apprentice is in fear of his master.[2] R. Zebid in the name of Raba referred [the remark of R Jose b. Hanina] to the following: [The verse,] And [it] lighteth [upon his neighbour],[3] excludes [a case] where the neighbour brings himself [within the range of the missile]. Hence the statement made by R. Eliezer b. Jacob: If a man lets [fly] a stone out of his hand and another [at that moment] puts out his head [through a window] and receives the blow [and is killed], he is exempt.[4] [Now, it was with reference to this case that] R. Jose b. Hanina said: He is exempt from having to take refuge,[5] but he would be liable for the four [additional] items.[6] He who refers this remark to this [last] case will with more reason refer it to the cases dealt with previously,[7] whereas he who refers it to those dealt with previously[7] would maintain that in this [last] case[8] the exemption is from all [kinds of liability].

Our Rabbis taught: If employees come to [the private residence of] their employer to demand their wages from him and [it so happens that] their employer's ox gores them or their employer's dog bites them, with fatal results, he [the employer] is exempt [from ransom].[9] Others,[10] however, maintain that employees have the right to [come and] demand their wages from their employer. Now, what were the circumstances [of the case]? If the employer could be found in [his] city [offices], what reason [could be adduced] for [the view maintained by] the 'Others'.[10] If [on the other hand] he could be found only at home, what reason [could be given] for [the anonymous view expressed by] the first Tanna? — No, the application [of the case] is where the employer could [sometimes] be found [in his city offices] but could not [always] be found [there]. The employees therefore called at his [private] door, when the reply was 'Yes'. One view[11] maintains that 'Yes' implies: 'Enter and come in.' But the other view[12] maintains that 'Yes' may signify: 'Remain standing in the place where you are.' It has indeed been taught in accordance with the view[12] maintaining that 'Yes' may [in this case] signify: 'Remain standing in the place where you are.' For it has been taught: 'If an employee enters the [private] residence of his employer to demand his wages from him and the employer's ox gores him or the employer's dog bites him, he [the employer] is exempt even where the entrance had been made by permission.' Why should there indeed be exemption[13] unless in the case where he called at the door and the employer said: 'Yes'? This thus proves that 'Yes' [in such a

case] signifies: ‘Remain standing in the place where you are.

MISHNAH. IN THE CASE OF TWO TAM OXEN INJURING EACH OTHER, THE PAYMENT OF THE DIFFERENCE WILL BE IN ACCORDANCE WITH THE LAW OF HALF-DAMAGES.[14] WHERE BOTH WERE MU'AD THE PAYMENT OF THE DIFFERENCE WILL BE IN FULL.[14] WHERE ONE WAS TAM AND THE OTHER MU'AD THE PAYMENT OF THE DIFFERENCE FOR DAMAGE DONE BY MU'AD TO TAM WILL BE ON THE BASIS OF FULL COMPENSATION, WHEREAS THE PAYMENT OF THE DIFFERENCE FOR DAMAGE DONE BY TAM TO MU'AD WILL BE IN ACCORDANCE WITH THE LAW OF HALF-DAMAGES. SIMILARLY IN THE CASE OF TWO PERSONS INJURING EACH OTHER, THE PAYMENT OF THE DIFFERENCE WILL BE IN FULL. WHERE MAN HAS DAMAGED MU'AD AND MU'AD HAS INJURED MAN, THE PAYMENT OF THE DIFFERENCE WILL BE IN FULL. BUT WHERE MAN DAMAGED TAM AND TAM INJURED MAN, THE PAYMENT OF THE DIFFERENCE FOR DAMAGE DONE BY MAN TO TAM WILL BE ON THE BASIS OF FULL COMPENSATION, WHEREAS THE PAYMENT OF THE DIFFERENCE FOR DAMAGE DONE BY TAM TO MU'AD WILL BE IN ACCORDANCE WITH THE LAW OF HALF-DAMAGES. R. AKIBA, HOWEVER, SAYS: EVEN IN THE CASE OF TAM INJURING MAN THE PAYMENT OF THE DIFFERENCE WILL BE IN FULL.[15]

GEMARA. Our Rabbis taught: [The words of the Torah] According to this judgement shall be done unto it[16] [imply that] the judgement in the case of Ox damaging ox applies also in the case of Ox injuring man. Just as where Ox has damaged ox half-damages are paid in the case of Tam and full compensation in the case of Mu'ad, so also where Ox has injured man only half damages will be paid in the case of Tam and full compensation in the case of Mu'ad. R. Akiba, however, says: [The words,] ‘According to this judgement’ refer to [the ruling that would apply to the circumstances described in] the latter verse[17] and not in the former verse.[18] Could this then mean that the [full] payment is to be made out of the best [of the estate]?[19] [Not so; for] it is stated ‘Shall it be done unto it [self],’ to emphasise that payment will be made out of the body of Tam, but no payment is to be made out of any other source whatsoever.[20] According to the Rabbis then, what purpose is served by the word ‘this’? — To exempt from liability for the four [additional] items.[21] Whence then does R. Akiba derive the exemption [in this case] from liability for the four [additional] items? — He derives it from the text, And if a man cause a blemish in his neighbour[22] [which indicates that there is liability only where] Man injures his neighbour but not where Ox injures the neighbour [of the owner]. And the Rabbis?[23] — Had the deduction been from that text we might have referred it exclusively to Pain,[24] but as to Medical Expenses and Loss of Time[25] we might have held there is still a liability to pay. We are therefore told[26] [that this is not the case].

MISHNAH. IF AN OX [TAM] OF THE VALUE OF ONE HUNDRED ZUZ HAS GORED AN OX OF THE VALUE OF TWO HUNDRED ZUZ AND THE CARCASS HAD NO VALUE AT ALL, THE PLAINTIFF WILL TAKE POSSESSION OF THE [DEFENDANT'S] OX [THAT DID THE DAMAGE].[27]

GEMARA. Who is the author of our Mishnah? — It is R. Akiba, as it has been taught: The ox [that did the damage] has to be assessed by the Court of law;[28] this is the view of R. Ishmael. R. Akiba, however, says: The [body of the] ox becomes transferred [to the plaintiff]. What is the point at issue? — R. Ishmael maintains that he [the plaintiff] is but a creditor and that he has only a claim of money against him [the defendant], whereas R. Akiba is of the opinion that they both [the plaintiff and defendant] become the owners in common of the ox[29] [that did the damage]. They [thus also] differ as to the interpretation of the verse, Then they shall sell the live ox and divide the money of it.[30] R. Ishmael maintains that it is the Court on which this injunction is laid by Divine Law,[31] whereas R. Akiba is of the opinion that it is the plaintiff and defendant on which it is laid.[32] What is the practical difference between R. Ishmael and R. Akiba? — There is a practical difference between

them where the plaintiff consecrated the ox [that did the damage].[33]

Raba put the following question to R. Nahman: Should the defendant meanwhile dispose of the ox, what would be the law according to R. Ishmael? [Shall we say that] since R. Ishmael considers the plaintiff to be a creditor whose claim [against the defendant] is only regarding money, the sale is valid, or that

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(1) Who should thus have borne in mind that the stranger might not yet have left the place. The smith should therefore not yet have allowed the the sparks to fly off.
(2) Who should not resonably have expected him to have still been there.
(3) Deut. XIX, 5; v. supra, p. 175, n. 3.
(4) Cf. Mak. 8a.
(5) In the case of manslaughter.
(6) Since it was an act of negligence to throw a stone where people are to be found.
(7) In the case of the joiner, who at least knew that a newcomer had entered his workshop.
(8) Dealt with by R. Eliezer b. Jacob, where the defendant is to blame as he put out his head after the stone had already been in motion.
(9) For which cf. Ex. XXI, 30. The vicious beast is, however, stoned; v. supra p. 118.
(10) According to Hor. 13b, the views of R. Meir were sometimes quoted thus; cf. however Ber. 9b; Sot. 12a; A.Z. 64b.
(11) I.e., that of 'Others'.
(12) Put forward by the first Tanna.
(13) Where the entrance had been made by permission.
(14) Cf. supra p. 73.
(15) Cf supra p. 15.
(16) Ex. XXI, 31.
(17) Ibid. XXI, 29 dealing with Mu'ad.
(18) Ibid. XXI, 28 dealing with Tam.
(19) As in the case of an injury done by Mu'ad. Cf. supra, p. 73.
(20) Cf. supra p. 15.
(21) V. supra p. 133.
(22) Lev. XXIV, 19.
(23) [Wherefore apply 'this' to deduce exemption from the four items, since that is already derived from this latter verse?]
(24) The liability for which is not in respect of an actual loss of value.
(25) The liability for which is in respect of an actual loss of money sustained.
(26) By the expression 'this'.
(27) As the full value of it corresponds in this case to the amount of half-damages.
(28) And if its value is not less than the amount of the half-damages, the defendant will have to pay that amount in full, whereas where the value of the ox that did the damage is less than the amount of the half-damages, the defendant will have to pay no more than the actual value of the ox that did the damage.
(29) Where its value is more than the amount of the half-damages.
(30) Ex. XXI, 35.
(31) I.e., to sell the live ox which is still the property of the defendant.
(32) As the live ox became their property in common where its value had been more than the amount of the half-damages.
(33) [According to R. Ishmael the consecration is of no legal effect, whereas R. Akiba would declare it valid.]

Talmud - Mas. Baba Kama 33b

since the ox is mortgaged to the plaintiff,[1] the defendant has no right [to dispose of it]? — He replied: The sale is not valid. But has it not been taught: In the case of [the defendant] having disposed of the ox, the sale is valid? — The plaintiff will still be entitled to come forward and

distrain on it [from the purchaser].[2] But if he is entitled to come forward and distrain on it, to what purpose is the sale valid? — For the ploughing [the ox did with the purchaser].[3] Can we infer from this that in the case of a debtor having sold his chattels, a Court of law will distrain on them for a creditor?[4] — The case there [of the ox][5] is altogether different, since the ox is regarded as if [the owner] had mortgaged it [for half-damages]. But did Raba not say[6] that where a debtor has mortgaged his slave and then sold him [to a third person] the creditor is entitled to distrain on him, whereas where an ox has been mortgaged and then sold [to a third party] the creditor cannot distrain on it?[7] — Is not the reason in the case of the slave that the transaction has been widely talked about?[8] So also in the case of this ox; since it gored it has been talked about, and the name 'The ox that gored' given it.

R. Tahlifa the Western[9] recited in the presence of R. Abbahu: 'Where he sold the ox, the sale is not valid, but where he consecrated it [to the altar], the consecration holds good.' Who sold it? Shall I say the defendant? [In that case the opening clause,] 'Where he sold the ox, the sale is not valid', would be in accordance with the view of R. Akiba that the ox becomes transferred [to the plaintiff], while [the concluding clause.] 'Where he consecrated it, the consecration holds good' could follow only the view of R. Ishmael who said that the ox has to be assessed by the Court. If [on the other hand, it has been disposed of by] the plaintiff, would not [the opening clause.] 'Where he sold the ox, the sale is not valid', be in accordance with the view of R. Ishmael, while [the concluding clause.,] 'Where he consecrated it, the consecration holds good' could follow only the view of R. Akiba? — We may still say that it was the defendant [who disposed of it], and yet [both rulings] will be in agreement with all. 'Where he sold the ox, the sale is valid' [may be explained] even in accordance with R. Ishmael, for the ox is mortgaged to the plaintiff. 'Where he consecrated it, the consecration holds good,' [may again be interpreted] even in accordance with R. Akiba, on account of [the reason given] by R. Abbahu; for R. Abbahu [elsewhere] stated:[10] An extra precaution was taken[11] lest people should say that consecrated objects could lose their status even without any act of redemption.[12]

Our Rabbis taught: If an ox does damage while still Tam, then, as long as its case has not been brought up in Court, if it is sold the sale is valid; if it is consecrated, the consecration holds good; if slaughtered and given away as a gift, what has been done is legally effective. But after the case has come into Court,[13] if it is sold the sale is not valid; if consecrated, the consecration does not hold good; if slaughtered and given away as a gift, the acts have no legal effect; so also where [other] creditors stepped in first and distrained on the ox [while in the hands of the defendant], no matter whether the debt had been incurred before the goring took place or whether the goring had occurred before the debt was incurred, the distraint is not legally effective, since the compensation [for the damage][14] must be made out of the body of the ox [that did it].[15] But in the case of Mu'ad doing damage there is no difference whether the case had already been brought into Court or whether it had not yet come into Court; if it has been sold, the sale is valid; if consecrated, the consecration holds good; if slaughtered and given away as a gift, what has been done is legally effective, where [other] creditors have stepped in and distrained on the ox, no matter whether the debt had been contracted before the goring took place or whether the goring had taken place before the debt was incurred, the distraint is legally effective, since the compensation is paid out of the best of the general estate [of the defendant].[16]

The Master stated: 'If it is sold, the sale is valid'. [This can refer] to ploughing [done by the ox while with the vendee]. 'If consecrated, the consecration holds good'; on account of the reason given by R. Abbahu. 'If slaughtered and given away as a gift, what has been done is legally effective'. We can quite understand that where it has been given away as a gift the act should be legally effective, in respect of the ploughing [meanwhile done by the ox]. But in the case of it having been slaughtered, why should [the claimant] not come and obtain payment out of the flesh? Was it not taught: '[The] live [ox]:[17] this states the rule for when it was alive; whence do we know that the same holds good

even after it has been slaughtered? Because it says further: And they shall sell the ox,[17] i.e., in all circumstances'? — R. Shizbe therefore said: What is referred to must be the diminution in value occasioned by its having been slaughtered.[18] R. Huna the son of Joshua thereupon said: This proves that if a man impairs securities mortgaged to his creditor, he incurs no liability. Is this not obvious?[19] — It might perhaps have been suggested that it was only there[20] where the defendant could argue, ' I have not deprived you of anything at all [of the quantity]', and could even say, 'it is only the mere breath [of life] that I have taken away from your security' [that there should be exemption], whereas in the case of impairing securities in general there should be liability; we are therefore told [that this is not the case]. But has not this been pointed out by Rabbah? For has not Rabbah stated: 'If a man destroys by fire the documents of a neighbour, he incurs no liability'?[21] — It might perhaps have been suggested that it was only there where the defendant could contend 'It was only a mere piece of paper of yours that has actually been burnt' [that there should be exemption], whereas in the case [of spoiling a field held as security] by digging there pits, ditches and caves there should be liability; we are therefore told that [this is not so, for] in the case here the damage resembles that occasioned by digging pits, ditches and caves,[22] and yet it is laid down that 'what has been done is legally effective'.

'Where [other] creditors stepped in first and distrained on the ox [in the hands of the defendant] no matter whether the debt had been incurred before the goring took place or whether the goring had taken place before the debt was incurred, the distraint is not legally effective, since the compensation must be made out of the body of the ox [that did the damage].' We understand this where the goring has taken place before the debt was incurred, in which case the plaintiff for damages has priority. But [why should it be so] where the debt has been contracted before the goring took place, [seeing that in that case] the creditor for the debt has priority?

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(1) For if payment were not forthcoming the plaintiff would be entitled to distrain on the ox to the extent of the amount of the half-damages.

(2) V. p. 181, n. 8.

(3) Who will thus not have to pay for the use of the animal, [or, who will be permitted to put the ox to such service, v. Wilna Gaon, Glosses.]

(4) Whereas according to established law this is usually the case only with immovable property, cf. supra p. 62 but also B.B. 44b.

(5) That did damage by goring while still in the state of Tam.

(6) Supra p. 47. Cf. also B.B. 44b.

(7) Why then distrain on the ox in the case of goring when it had already been sold?

(8) V. B.B. loc. cit.

(9) The Palestinian.

(10) 'Ar. 33a.

(11) In the case of one who consecrates property on which there is a lien of a kethubah or a debt.

(12) It is therefore a better policy to declare the consecration valid and prescribe a nominal sum for redemption.

(13) Since when the ox is legally transferred to the plaintiff.

(14) Which will be only half of the actual amount of the loss sustained.

(15) Cf. supra p. 73.

(16) Cf. Tosef. B.K. V.

(17) Ex. XXI. 35.

(18) For which the defendant is thus not made responsible.

(19) That such an inference could be made; why then the special statement made by R. Huna?

(20) In the case of the ox that had been slaughtered.

(21) Infra p. 570.

(22) Since the damage is visible.

Moreover, even where the goring had taken place before the debt was contracted, was not the creditor actually first [in taking possession of the ox]?[1] Can it be concluded from this that where a creditor of a subsequent date has preceded a creditor of an earlier date in distraining on [the property of the debtor], the distraint is of no legal avail?[2] — No; I may still maintain that [in this case][3] the distraint holds good, whereas in the case there,[4] it is altogether different; as the plaintiff [for damages] may argue,[5] 'Had the ox already been with you [before it gored], would I not have been entitled to distrain on it while in your hands? For surely out of the ox that did the damage I am to be compensated.'

Our Rabbis taught: Where an ox[6] of the value of two hundred [zuz] gored an ox of the same value of two hundred [zuz] and injured it to the amount of fifty zuz, but it so happened that the injured ox [subsequently] improved and reached the value of four hundred zuz, since it can be contended that but for the injury it would have reached the value of eight hundred zuz, compensation will be [still] paid as at the time of the damage.[7] Where it has depreciated, the compensation will be paid in accordance with the value at the time of the case being brought into Court.[8] Where it was the ox which did the damage that [subsequently] improved, the compensation will still be made in accordance with the value at the time of the damage.[9] Where it has [on the other hand] depreciated, the compensation will be made in accordance with the value at the time of the case being brought into Court.[10]

The Master has said: 'Where it was the ox which did the damage that [subsequently] improved, the compensation will still be made as at the time of the damage.' This ruling is in accordance with R. Ishmael, who maintains that the plaintiff is a creditor and he has a pecuniary claim against him [the defendant]. Read now the concluding clause: 'Where it [on the other hand] depreciated, the compensation will be made in accordance with the value at the time of the case being brought into Court'. This ruling, on the other hand, follows the view of R. Akiba, that they both [plaintiff and defendant] become the owners in common [of the ox that did the damage]. [Is it possible that] the first clause should follow the view of R. Ishmael and the second clause follow that of R. Akiba? — No; the whole teaching follows the view of R. Akiba, for we deal here with a case where the improvement was due to the defendant having fattened the ox.[11] If the improvement was due to fattening, how could you explain the opening clause, 'where . . . the injured ox [subsequently] improved and reached the value of four hundred zuz . . . compensation will be paid as at the time of the damage'? For where the improvement was due to the act of fattening [by the owner], what need could there have been to state [that compensation for the original damage has still to be paid]? — R. Papa thereupon said: The ruling in the opening clause[12] applies to all cases, whether where the ox improved by special fattening or where it improved by itself: the statement of the rule was required for the case where the ox improved by itself — even then compensation will be paid as at time of the damage. The ruling in the concluding clause,[13] however, could apply only to a case where the improvement was due to special fattening.

'Where it[14] has depreciated, the compensation will be made in accordance with the value at the time of the case being brought into Court.' Through what can it have depreciated? Shall I say that it has depreciated through hard work? In that case [surely] the defendant can say, 'You cause it to depreciate![15] Could you expect me to pay for it?' — R. Ashi thereupon said: The depreciation [referred to] is due to the injury, in which case the plaintiff is entitled to contend, '[The evil effect of] the horn of your ox is still buried within the suffering animal.'[16]

MISHNAH. WHERE AN OX[17] OF THE VALUE OF TWO HUNDRED [ZUZ] GORED AN OX OF THE SAME VALUE OF TWO HUNDRED [ZUZ] AND THE CARCASS HAD NO VALUE AT ALL, R. MEIR SAID THAT IT WAS WITH REFERENCE TO THIS CASE THAT IT IS WRITTEN, AND THEY SHALL SELL THE LIVE OX AND DIVIDE THE MONEY OF IT.[18] R.

JUDAH, HOWEVER, SAID: THIS IS CERTAINLY THE HALACHAH,[19] BUT WHILE YOU FULFIL [BY THIS RULING THE INJUNCTION], 'AND THEY SHALL SELL THE LIVE OX AND DIVIDE THE MONEY OF IT,' YOU DO NOT FULFIL [THE NEXT INJUNCTION], 'AND THE DEAD OX ALSO THEY SHALL DIVIDE.'[20] THE CASE DEALT WITH BY SCRIPTURE IS THEREFORE WHERE AN OX OF THE VALUE OF TWO HUNDRED [ZUZ] GORED AN OX OF THE SAME VALUE OF TWO HUNDRED [ZUZ] AND THE CARCASS WAS WORTH FIFTY ZUZ: ONE PARTY WOULD HERE GET HALF OF THE LIVING OX TOGETHER WITH HALF OF THE DEAD OX[21] AND THE OTHER PARTY WOULD SIMILARLY GET HALF OF THE LIVING OX TOGETHER WITH HALF OF THE DEAD OX.

GEMARA. Our Rabbis taught: Where an ox of the value of two hundred [zuz] gored an ox of the same value of two hundred [zuz] and the carcass was worth fifty zuz, one party would get half of the living ox together with half of the dead ox and the other party would similarly get half of the living ox together with half of the dead ox. This is the [case of the goring] ox dealt with in the Torah, according to the view of R. Judah. R. Meir, however, says; This is not the [case of the goring] ox dealt with in the Torah, but where an ox of the value of two hundred [zuz] gored an ox of the same value of two hundred [zuz] and the carcass was of no value at all — this is the case regarding which it is laid down, 'And they shall sell the live ox and divide the money of it.' But how could I [in this case] carry out [the other direction],'And the dead ox also they shall divide'? [This only means that] the diminution [in value] brought about by the death[22] has to be [compensated] to the extent of one-half out of the body of the living ox. Now, since [in the former case][23] according to both R. Meir and R. Judah one party will get a hundred and twenty-five [zuz][24] and the other party will similarly get a hundred and twenty-five [zuz], what is the [practical] difference between them? — Raba thereupon said: The difference arises where[25] there has been a decrease in the value of the carcass,[26] R. Meir maintains that the loss in the value of the carcass has to be [wholly] sustained by the plaintiff,[27] whereas R. Judah is of the opinion that the loss in the value of the carcass will be borne by the defendant to the extent of a half.[28] Said Abaye to him:[29] If this be the case, will it not turn out that according to R. Judah

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(1) Why should then the plaintiff for damages override the right of another creditor who had already taken possession of the ox?

(2) Whereas this is a point on which opinions differ; cf. Keth. 94a.

(3) Dealing with two creditors for loans.

(4) Where one of the creditors was a plaintiff for damages.

(5) Against the other creditor.

(6) In the state of Tam.

(7) And the defendant cannot put up the increase in the value of the injured ox as a defence, for but for the injury the ox might have reached the value of even eight hundred zuz.

(8) To the detriment of the defendant.

(9) This view apparently maintains that the plaintiff does not become an owner of a definite portion in the ox that did the damage, but becomes entitled merely to a certain sum of money to be collected out of the body of that ox.

(10) Seemingly because the plaintiff is according to this ruling regarded as having become at the time the goring took place an owner of a definite portion in the ox which has subsequently depreciated. For if he became entitled to a certain sum of money in the body of that ox, why should he suffer on account of depreciation?

(11) In which case it is only reasonable that the plaintiff should not be entitled to any share in the improvement that resulted from the fattening carried out by the defendant.

(12) Dealing with the case where it was the injured ox that improved and increased in value.

(13) Giving the law where the ox that had done the damage improved.

(14) I.e., the ox that had been injured, dealt with in the opening clause.

(15) By hard work.

(16) The depreciation is thus a direct result of the injury for which the defendant is responsible.

(17) In the state of Tam.

(18) Ex. XXI, 35.
(19) That half-damages should be paid in the case of Tam.
(20) As in the case specified by R. Meir the carcass had no value at all.
(21) Amounting altogether to one hundred and twenty-five zuz. The plaintiff would thus get seventy-five zuz in respect of the damage that amounted to one hundred and fifty zuz. Together with the fifty of the carcass of his ox the sum total will be one hundred and twenty-five zuz.
(22) Of the animal attacked resulting from the injuries inflicted upon it.
(23) Specified by R. Judah, where the carcass was worth fifty zuz.
(24) I.e., half of the value of the living ox and half of the value of the carcass.
(25) Since the death of the attacked ox.
(26) Before it has been sold.
(27) As according to R. Meir, the defendant has no interest whatsoever in the carcass.
(28) Since according to R. Judah, both the defendant and the plaintiff have to divide the value of the carcass.
(29) Raba.

Talmud - Mas. Baba Kama 34b

[injury by] Tam would involve a more severe penalty than [injury by] Mu'ad?[1] And should you maintain that this indeed is so,[2] as we have learned: R. Judah says: In the case of Tam there is liability [where the precaution taken to control the ox has not been adequate] whereas in the case of Mu'ad there is no liability,[3] it may be contended that you only heard R. Judah maintaining this with reference to precaution, which is specified in Scripture,[4] but did you ever hear him say this regarding compensation? Moreover, it has been taught: R. Judah says: One might say that where an ox of the value of a maneh [a hundred zuz] gored an ox of the value of five sela' [i.e., twenty zuz] and the carcass was worth a sela' [i.e., four zuz], one party should get half of the living ox[5] together with half of the dead ox[6] and the other party should similarly get half of the living ox and half of the dead ox?[7] [This cannot be so]; for we reason thus: Has Mu'ad been singled out[8] to entail a more severe penalty or a more lenient one? You must surely say: [to entail] a more severe penalty. Now, if in the case of Mu'ad no payment is made but for the amount of the damage, should this not the more so be true in the case of Tam the [penalty in respect of which is] less severe?[9] — R. Johanan therefore said: The practical difference between them[10] arises where there has been an increase in the value of the carcass, one Master[11] maintaining that it will accrue to the plaintiff whereas the other Master holds that it will be shared equally [by the two parties].[12]

And it is just on account of this view that a difficulty was felt by R. Judah: Now that you say that the Divine Law is lenient to the defendant, allowing him to share in the increase [of the value of the carcass] , you might then presume that where an ox of the value of five sela' [i.e. twenty zuz] gored an ox of the value of a maneh [a hundred zuz] and the carcass was valued at fifty zuz, one party would take half of the living ox[13] together with half of the dead ox[14] and the other party would similarly take half of the living ox and half of the dead ox?[15] Say [this cannot be so, for] where could it elsewhere be found that an offender should [by order of the Court] be made to benefit as you would have the offender here in this case to benefit? It is moreover stated, He shall surely make restitution,[16] [emphasising that] the offender could only have to pay but never to receive payment. Why that additional quotation?[17] — [Otherwise] you might have thought this principle to be confined only to a case where the plaintiff was the loser,[18] and that where no loss would be incurred to the plaintiff — as e.g. where an ox of the value of five sela' gored an ox similarly of the value of five sela' [i.e. twenty zuz] and it so happened that the carcass [increased in value and] reached the amount of thirty zuz — the defendant should indeed be entitled to share in the profit;[18] hence the verse, He shall surely make full restitution, is adduced [to emphasise that in all cases] an offender could only have to pay but never to receive payment.

But R. Aha b. Tahlifa said to Raba: If so [that the principle to compensate by half for the decrease

in value brought about by the death is maintained only by R. Meir], will it not be found that according to R. Judah Tam will involve the payment of more than half damages,[19] whereas the Torah [emphatically] stated, And they shall sell the live ox and divide the money of it? — [No;] R. Judah also holds that the decrease in value brought about by the death will be [compensated] by half in the body of the living ox.[20] Whence could he derive this?[21] — From [the verse], And the dead ox also they shall divide.[22] But did not R. Judah derive from this verse that one party will take half of the living ox together with half of the dead ox and the other party will similarly take half of the living ox and half of the dead ox?[23] — If that were all, the text could have run, 'And the dead ox [they shall divide].' Why insert 'also'? It shows that two lessons are to be derived from the verse.[24] MISHNAH. THERE ARE CASES WHERE THERE IS LIABILITY FOR OFFENCES COMMITTED BY ONE'S CATTLE[25] THOUGH THERE WOULD BE NO LIABILITY SHOULD THESE OFFENCES BE COMMITTED BY ONESELF. THERE ARE, AGAIN, CASES WHERE THERE IS NO LIABILITY FOR OFFENCES COMMITTED BY ONE'S CATTLE[25] THOUGH THERE WOULD BE LIABILITY WERE THESE OFFENCES COMMITTED BY ONESELF. FOR INSTANCE, IF CATTLE HAS BROUGHT INDIGNITY [UPON A HUMAN BEING] THERE IS NO LIABILITY,[26] WHEREAS IF THE OWNER CAUSES THE INDIGNITY THERE WOULD BE LIABILITY.[27] SO ALSO IF AN OX PUTS OUT THE EYE OF THE OWNER'S SLAVE OR KNOCKS OUT HIS TOOTH THERE IS NO LIABILITY,[28] WHEREAS IF THE OWNER HIMSELF HAS PUT OUT THE EYE OF HIS SLAVE OR KNOCKED OUT HIS TOOTH HE WOULD BE LIABLE [TO LET HIM GO FREE].[29] AGAIN, IF AN OX HAS INJURED THE FATHER OR MOTHER OF THE OWNER THERE IS LIABILITY,[30] THOUGH WERE THE OWNER HIMSELF TO INJURE HIS FATHER OR HIS MOTHER[31] THERE WOULD BE NO [CIVIL] LIABILITY.[32] SO ALSO WHERE CATTLE HAS CAUSED FIRE TO BE SET TO A BARN ON THE DAY OF SABBATH THERE IS LIABILITY,[30] WHEREAS WERE THE OWNER TO SET FIRE TO A BARN ON SABBATH[33] THERE WOULD BE NO [CIVIL] LIABILITY, AS HE WOULD BE SUBJECT TO A CAPITAL CHARGE.[32]

GEMARA. R. Abbahu recited in the presence of R. Johanan:[34] Any work [on the Sabbath] that has a destructive purpose entails no penalty [for the violation of the Sabbath], with the exception, however, of the act of inflicting a bodily injury, as also of the act of setting on fire. Said R. Johanan to him: Go and recite this outside[35] [for the exception made of] the act of inflicting a bodily injury and of setting on fire is not part of the teaching; and should you find grounds for maintaining that it is,[36] [you may say that] the infliction of a bodily injury refers to where the blood was required to feed a dog;[37] and in the case of setting on fire, where there was some need of the ashes.[37]

We have learnt: WHERE CATTLE HAS CAUSED FIRE TO BE SET TO A BARN ON THE DAY OF SABBATH THERE IS LIABILITY, WHEREAS WERE THE OWNER TO HAVE SET FIRE TO A BARN ON SABBATH THERE WOULD BE NO [CIVIL] LIABILITY. Now, the act of the owner is here placed on a level with that of Cattle; which would show, would it not, that just as in the act of Cattle there was certainly no intention to satisfy any need,

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(1) For in the case of Mu'ad it is certainly the plaintiff who has to bear the whole loss occasioned by a decrease in the value of the carcass; cf. supra p. 65.

(2) And Tam will indeed involve a penalty more severe than that involved by Mu'ad.

(3) B.K. IV, 9.

(4) For which cf. infra, p. 259.

(5) Amounting to fifty zuz.

(6) That would amount to another ten zuz.

(7) The result would be that the plaintiff whose injured ox had altogether been worth twenty zuz would get damages amounting to sixty zuz.

(8) In Scripture; cf. Ex. XXI, 36.

(9) Why should then the defendant in the case of Tam share the loss occasioned by a decrease in the value of the carcass

which he would not have to do in the case of Mu'ad?
(10) R. Meir and R. Judah.
(11) R. Meir, according to whom the defendant has no interest in the carcass.
(12) V. supra p. 189, n. 7.
(13) Amounting to ten zuz.
(14) That would amount to another twenty-five zuz.
(15) The result would be that the defendant instead of paying compensation would make a profit out of the offence, as in lieu of his ox which did the damage and which was worth twenty zuz he would get a total of thirty-five zuz.
(16) Ex. XXI, 36.
(17) I.e., why is not the first objection sufficient?
(18) Of the ten zuz that make the carcass worth more than the ox while alive.
(19) As e.g.. where an ox of the value of fifty zuz gored another's ox of the value of forty zuz and the carcass was worth twenty zuz, in which case the actual damage amounted to twenty zuz, half of which would be ten zuz, whereas if the plaintiff will get half of the living ox and half of the dead ox he shall be in receipt for damages, in addition to the value of the carcass, not of ten but of fifteen zuz.
(20) The sum total received by the plaintiff will therefore never be more than half of the actual loss sustained by him after allowing him, of course, the full value of the carcass of his ox.
(21) Since he is in disagreement with R. Meir as to the implication of the last clause of Ex. XXI, 35.
(22) Ex. XXI, 35.
(23) I.e., that the decrease in value brought about by the death will be compensated for by half in the body of the living ox. V. Supra p. 189.
(24) Viz., the principle laid down in the preceding note and the principle maintained by R. Judah, that the defendant as well as the plaintiff has an interest in the carcass and will share the profits of any increase in its value.
(25) Lit., 'ox'.
(26) As explained supra p. 134.
(27) Cf. B. K. VIII 1-2.
(28) To the law laid down in Ex. XXI, 26-27.
(29) In accordance with ibid, cf. also supra p. 137.
(30) For damages.
(31) Involving thus a capital charge, for which cf Ex. XXI, 15.
(32) As wherever a capital charge is involved by an offence, all civil liabilities that may otherwise have resulted from that offence merge in the capital charge; cf. supra p. 113.
(33) For which cf. Ex. XXXI, 14-15; but v. also ibid. XXXV, 2-3, Mekilta a.l. and Yeb. 7b, 33b and Shab. 70a.
(34) Cf. Shab. 106a.
(35) [I.e., your teaching is fit only for outside and not to be admitted within the Beth Hamidrash; v. Sanh. (Sonc. ed.) p. 425.]
(36) Cf. Shab. 75a; v. also B.K. VIII, 5.
(37) Which case involves the violation of the Sabbath because the purpose has not been altogether destructive.

Talmud - Mas. Baba Kama 35a

so also the owner similarly had no intention to satisfy thereby any need, and yet it is stated THERE WOULD BE NO [CIVIL] LIABILITY AS HE WOULD BE SUBJECT TO A CAPITAL CHARGE?[1] No; it is the act of Cattle, which is placed on the same level as that of the owner himself, to show that just as in the act of the owner there had surely been the intention to satisfy some need, so also in the act of Cattle there must have been the intention to satisfy some need.[2] But how is this possible in the case of Cattle? — R. Iwiya replied: The case here supposed is one of an intelligent animal which, owing to an itching in the back, was anxious to burn the barn so that it might roll in the [hot] ashes. But how could we know [of such an intention]? [By seeing that] after the barn had been burnt, the animal actually rolled in the ashes. But could such a thing ever happen? — Yes, as in the case of the ox which had been in the house of R. Papa, and which, having a severe toothache, went into the brewery, where it removed the lid [that covered the beer] and drank beer

until it became relieved [of the pain]. The Rabbis, however, argued in the presence of R. Papa: How can you say that [the Mishnah places the act of] Cattle on a level with [the act of] the owner himself? For is it not stated: IF CATTLE HAS BROUGHT INDIGNITY [UPON A HUMAN BEING] THERE IS NO LIABILITY,[3] WHEREAS IF THE OWNER CAUSES THE INDIGNITY THERE IS LIABILITY? Now, if we are to put the act of Cattle on a level with that of the owner himself, how are we to find intention [in the case of Cattle]?[4] — Where, for instance, there was intention to do damage, as stated by the Master[5] that where there was intention to do damage though no intention to insult, [liability for insult will attach]. Raba, however, suggested that the Mishnah here[6] deals with a case of inadvertence, [resembling thus Cattle which acts as a rule without any specific purpose] and [the law[7] was laid down] in accordance with the teaching at the School of Hezekiah. For it was taught at the School of Hezekiah:[8] [Scripture places in juxtaposition] He that killeth a man . . . and he that killeth a beast[9] .....[to imply that] just as in the case of killing a beast you can make no distinction whether it was inadvertent or malicious, whether intentional or unintentional, whether by way of coming down or by way of coming up,[10] so as to exempt from pecuniary obligation, but [in all cases] there is pecuniary liability,[11] so also in the case of killing man you should make no distinction whether it was inadvertent or malicious, whether intentional or unintentional, whether by way of coming down or by way of coming up so as to impose a pecuniary liability, but [in all cases] there should be exemption from pecuniary obligation.[12] Said the Rabbis to Raba: How can you assume that the ruling in the Mishnah refers to an inadvertent act?[13] Is it not stated there [that were the owner to have set fire to a barn on Sabbath there would be no civil liability] AS HE WOULD BE SUBJECT TO A CAPITAL CHARGE?[14] — It only means to say this: Since if he would have committed it maliciously he would have been liable to a capital charge, as, e.g., where he had need of the ashes, there should be exemption [from civil liability] even in such a case as this where he did it inadvertently.[15]

MISHNAH. IF AN OX WAS PURSUING AN OTHER'S OX WHICH WAS [AFTERWARDS FOUND TO BE] INJURED, AND THE ONE [PLAINTIFF] SAYS, 'IT WAS YOUR OX THAT DID THE DAMAGE, WHILE THE OTHER PLEADS, 'NOT SO, BUT IT WAS INJURED BY A ROCK [AGAINST WHICH IT HAD BEEN RUBBING ITSELF]',[16] THE BURDEN OF PROOF LIES ON THE CLAIMANT. [SO ALSO] WHERE TWO [OXEN] PURSUED ONE AND THE ONE DEFENDANT ASSERTS, 'IT WAS YOUR OX THAT DID THE DAMAGE', WHILE THE OTHER DEFENDANT ASSERTS, 'IT WAS YOUR OX THAT DID THE DAMAGE',

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(1) Which would show that setting fire on Sabbath even for purely destructive purposes is a violation of the Sabbath, supporting thus the view of R. Abbahu and contradicting that of R. Johanan.

(2) Though with cattle there would really be no legal difference whatsoever whether this was the case or not.

(3) V. p. 192, n. 2.

(4) Being as it is altogether devoid of the whole conception of insult.

(5) Supra p. 141.

(6) Which exempts man setting fire on Sabbath from any civil liability involved.

(7) Exempting from civil liability in the case of Man.

(8) Keth. 35a, 38a; Sanh. 79b and 84b.

(9) Lev. XXIV, 21.

(10) Which, however, forms a distinction in the case of unintentional manslaughter with reference to the liability to take refuge, for which cf. Mak. 7b.

(11) As indeed stated supra p. 136.

(12) Even when there is no actual death penalty involved, and likewise in the Mishnah the man setting fire though inadvertently is exempt from all civil liability, so that you cannot infer therefrom that death penalty is attached to setting fire on Sabbath even for destructive purposes. V. supra p. 192. n. 8.

(13) In which case the capital punishment could never be applied.

(14) V. p. 192, n. 8.

(15) On the basis of the teaching of Hezekiah.

(16) Denying thus any liability.

Talmud - Mas. Baba Kama 35b

NEITHER OF THE DEFENDANTS WILL BE LIABLE. BUT WHERE BOTH OF THE [PURSUING] OXEN BELONGED TO THE SAME OWNER,[1] LIABILITY WILL ATTACH TO BOTH OF THEM. WHERE, HOWEVER, ONE [OF THE OXEN] WAS BIG AND THE OTHER LITTLE[1] AND THE CLAIMANT MAINTAINS THAT THE BIG ONE DID THE DAMAGE,[2] WHILE THE DEFENDANT PLEADS, 'NOT SO, FOR IT WAS THE LITTLE ONE THAT DID THE DAMAGE', OR AGAIN WHERE ONE [OX] WAS TAM AND THE OTHER MU'AD AND THE CLAIMANT MAINTAINS THAT THE MU'AD DID THE DAMAGE[3] WHILE THE DEFENDANT ASSERTS, 'NOT SO, FOR IT WAS THE TAM THAT DID THE DAMAGE,' THE BURDEN OF PROOF LIES ON THE CLAIMANT. [SO ALSO] WHERE THERE WERE TWO INJURED OXEN, ONE BIG AND ONE LITTLE, SIMILARLY TWO PURSUERS, ONE BIG AND ONE LITTLE, AND THE PLAINTIFF ASSERTS THAT THE BIG ONE INJURED THE BIG ONE AND THE LITTLE ONE THE LITTLE ONE, WHILE THE DEFENDANT CONTENDS, 'NOT SO, FOR [IT WAS] THE LITTLE ONE [THAT INJURED] THE BIG ONE AND THE BIG ONE [THAT INJURED] THE LITTLE ONE'; OR AGAIN WHERE ONE WAS TAM AND THE OTHER MU'AD, AND THE PLAINTIFF MAINTAINS THAT THE MU'AD INJURED THE BIG ONE AND THE TAM THE LITTLE ONE, WHILE THE DEFENDANT PLEADS, 'NOT SO, FOR [IT WAS THE] TAM [THAT INJURED] THE BIG ONE AND THE MU'AD [THAT INJURED] THE LITTLE ONE,' THE BURDEN OF PROOF FALLS ON THE CLAIMANT.

GEMARA. R. Hiyya b. Abba stated: This [Mishnaic ruling][4] shows that [in this respect] the colleagues differed from Symmachus who maintained[5] that money of which the ownership cannot be decided has to be equally divided [between the two parties]. Said R. Abba b. Memel to R. Hiyya b. Abba: Did Symmachus maintain his view even where the defendant was as positive as the claimant?[6] — He replied: Yes, Symmachus maintained his view even where the defendant was as positive as the claimant. But [even if you assume otherwise],[7] how do you know that the Mishnah is here dealing with a case where the defendant was as positive as the claimant?[8] — Because it says, THE PLAINTIFF STATES 'IT WAS YOUR OX THAT DID THE DAMAGE', WHILE THE DEFENDANT PLEADS 'NOT SO. . . '[9] R. Papa, however, demurred to this, saying: If in the case presented in the opening clause the defendant was as positive as the claimant, we must suppose that in the case presented in the concluding clause the defendant was similarly as positive as the claimant. [Now,] read the concluding clause; WHERE, HOWEVER, ONE OX WAS BIG AND THE OTHER LITTLE, AND THE PLAINTIFF ASSERTS THAT THE BIG ONE DID THE DAMAGE WHILE THE DEFENDANT PLEADS 'NOT SO, FOR IT WAS THE LITTLE ONE THAT DID THE DAMAGE'; OR AGAIN WHERE ONE OX WAS TAM AND THE OTHER MU'AD, AND THE CLAIMANT MAINTAINS THAT THE MU'AD DID THE DAMAGE, WHILE THE DEFENDANT PLEADS, 'NOT SO, FOR IT WAS THE TAM THAT DID THE DAMAGE', THE BURDEN OF PROOF IS ON THE CLAIMANT. [Now this implies, does it not, that] where he does not produce evidence he will get paid in accordance with the pleading of the defendant. May it now not be argued that this [ruling] is contrary to the view of Rabbah b. Nathan, who said that where the plaintiff claims wheat and the defendant admits barley, he is not liable [for either of them]?[10] — You conclude then that the Mishnah deals with a case where one party was certain and the other doubtful.[11] Which then was certain and which doubtful? It could hardly be suggested that it was the plaintiff who was certain, and the defendant who was doubtful, for would this still not be contrary to the view of Rabbah b. Nathan?[12] It would therefore seem that it was the plaintiff who was doubtful[11] and the defendant certain. And if the concluding clause deals with a case where the plaintiff was doubtful and the defendant certain, we should suppose that the opening clause[13] likewise deals with a case where the plaintiff was doubtful and the defendant certain. But could Symmachus indeed have

applied his principle even to such a case,[14] that the Mishnah thought fit to let us know that this view ought not to be accepted? — [Hence it must be said:] No; but that the concluding clause [deals with a case where] the plaintiff was doubtful and the defendant certain, and the opening clause[13] [presents a case where it was] the plaintiff who was certain and the defendant doubtful.[15] But [even in that case] the opening clause is not co-ordinate with the concluding clause?[16] — I can reply that [a case where the plaintiff is] certain and [the defendant] doubtful[17] and [a case where the claimant is] doubtful and [the defendant] certain[18] are co-ordinate[19] whereas [a case where the claimant is] certain and [the defendant also] certain is not co-ordinate with [a case where the claimant is] doubtful and [the defendant] certain.[20]

The above text states: 'Rabbah b. Nathan said: Where the plaintiff claimed wheat and the defendant admitted barley, he is not liable [for either of them].'[21] What does this tell us? Have we not already learnt [in a Mishnah]: where the plaintiff claimed wheat and the defendant admitted barley he is not liable?[22] If we had only [the Mishnah] there[22] to go by, I might have argued that the exemption was only from the value of the wheat,[23] while there would still be liability for the value of barley;[24] we are therefore told by Rabbah b. Nathan that the exemption is complete.

We have learnt: WHERE THERE WERE TWO INJURED OXEN, ONE BIG AND THE OTHER LITTLE etc. [Now this implies that] where he does not produce evidence he will get paid in accordance with the pleading of the defendant. But why not apply here [the principle of complete exemption laid down in the case of] wheat and barley? — The plaintiff[25] is entitled to get paid [only where he produces evidence to substantiate the claim], but will have nothing at all [where he fails to do so]. But has it not been taught; He will be paid for [the injury done to] the little one out of the body of the big and for [the injury done to] the big one out of the body of the little one? — Only where he had already seized them.[26] We have learnt: IF ONE WAS TAM AND THE OTHER MU'AD, AND THE PLAINTIFF CLAIMS THAT THE MU'AD INJURED THE BIG ONE[27] AND THE TAM THE LITTLE ONE WHILE THE DEFENDANT PLEADS, 'NOT SO, FOR [IT WAS THE] TAM [THAT INJURED] THE BIG ONE AND THE MU'AD [THAT INJURED] THE LITTLE ONE', THE BURDEN OF PROOF FALLS ON THE CLAIMANT. [Now this implies that] where he does not produce evidence he will get paid in accordance with the pleading of the plaintiff. But why should [the principle of complete exemption laid down in the case of] wheat and barley not be applied here? —

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(1) And were in the state of Tam, in which case the half-damages are paid only out of the body of the ox that did the damage, as supra p. 73.

(2) And the body of the big one should secure the payment of the half damages.

(3) And the compensation should thus be made in full.

(4) That it is the claimant on whom falls the onus probandi.

(5) Infra p. 262 and B.M. 2b, 6a, 98b, 100a; B.B. 141a.

(6) In which case not the defendant but only the Court is in doubt.

(7) And suggest that where the defendant has been positive even Symmachus admits that the claimant will get nothing unless by proving his case.

(8) For in the cases dealt with in the Mishnah the defendant is usually unable to speak positively, as in most cases he was not present at the place when the alleged damage was done; cf. also Tosaf. a.l.

(9) Which is apparently a definite defence.

(10) For the claim of wheat has been repudiated by the defendant while the claim for barley admitted by him has tacitly been dispensed with by the plaintiff. The very same thing could be argued in the case of the Mishnah quoted above, where the claim was made in respect of the big one or the Mu'ad, and the defence admitted the little one or the Tam respectively.

(11) In which case the argument contained in the preceding note could no more be maintained.

(12) For surely the plaintiff, by his definite claim in respect of the big one or the Mu'ad, has tacitly waived his claim in respect of the little one or the Tam respectively.

(13) Where the defendant pleads that 'the pursued ox was injured by a rock...' .
(14) Which is really an absurdity, to maintain that a plaintiff pleading mere supposition against a defendant submitting a definite denial should in the absence of any evidence be entitled to any payment whatsoever.
(15) [How then could R. Hiyya maintain that our Mishnah deals with a case where both were certain in their pleas.]
(16) [If so, what is the objection of R. Papa to R. Hiyya's statement, since even on his view there is a lack of co-ordination between these two clauses in the Mishnah.]
(17) As in the case dealt with in the commencing clause.
(18) Which is the case in the concluding clause.
(19) Lit 'are one thing'.
(20) R. Papa was therefore loth to explain the commencing clause as dealing with a case where the defence as well as the claim was put forward on a certainty, but preferred to explain it as presenting a law-suit where, though the claim had been put forward positively, the defence was urged tentatively.
(21) V. p. 197. n. 2.
(22) Shebu. 38b.
(23) Which was denied by the defendant.
(24) Admitted by the defendant.
(25) In the case of the oxen.
(26) In which case the principle of complete exemption maintained by Rabbah b. Nathan apparently does not apply.
(27) V. p. 196. n. 1.

Talmud - Mas. Baba Kama 36a

The plaintiff is entitled to get paid [only where he produces evidence to substantiate the claim] but [failing that he] will have nothing at all. But has it not been taught: He will be paid for [the injury done to] the little one in accordance with the regulations applying to Mu'ad and for [the injury done to] the big one out of the body of the Tam? — Only where he had already seized them.

BUT WHERE BOTH OF THE [PURSUING] OXEN BELONGED TO THE SAME OWNER, LIABILITY WILL ATTACH TO BOTH OF THEM. Raba of Parazika[1] said to R. Ashi: It can be concluded from this that where oxen in the state of Tam [belonging to the same owner] did damage, the plaintiff has the option to distrain either on the one or the other! — [No, replied R. Ashi, for] we are dealing here [in the Mishnah] with a case where they were Mu'ad.[2] If where they were Mu'ad how do you explain the concluding clause: WHERE, HOWEVER, ONE [OF THE OXEN] WAS BIG AND THE OTHER LITTLE AND THE CLAIMANT MAINTAINS THAT THE BIG ONE DID THE DAMAGE WHILE THE DEFENDANT PLEADS 'NOT SO, FOR IT WAS THE LITTLE ONE THAT DID THE DAMAGE' THE BURDEN OF PROOF FALLS ON THE CLAIMANT. For indeed where they were Mu'ad what difference could there be [whether the big one or the little one did the damage] since at all events he has to pay the full value of the ox? — He thereupon said to him: The concluding clause presents a case where they were Tam, though the opening clause deals with a case where the oxen were Mu'ad. Said R. Aha the Elder to R. Ashi: If the commencing clause deals with a case where the oxen were Mu'ad,[2] what is the meaning of 'LIABILITY WILL ATTACH TO BOTH OF THEM'? Should not the text run, 'The owner will be liable'? Again, what is the meaning of 'BOTH OF THEM'? — [The commencing clause also] must therefore deal with a case where the oxen were Tam, and the ruling stated follows the view of R. Akiba, that plaintiff and defendant become the owners in common [of the attacking ox].[3] Now this is so where 'BOTH OF THEM' [the oxen] are with the owner, in which case he cannot possibly shift the claim [from one to the other].[4] But if 'BOTH OF THEM' are not with him he may plead,[5] 'Go and produce evidence that it was this ox [which is still with me][6] that did the damage, and then I will pay you.'

CHAPTER I V

MISHNAH. IF A [TAM] OX HAS GORED FOUR OR FIVE OXEN ONE AFTER THE OTHER,

COMPENSATION SHOULD IN THE FIRST INSTANCE BE MADE [OUT OF THE BODY OF THE OX] FOR THE LAST OFFENCE. SHOULD THERE BE A SURPLUS,[7] COMPENSATION IS TO BE PAID ALSO FOR THE PENULTIMATE OFFENCE; SHOULD THERE STILL BE A SURPLUS, COMPENSATION IS TO BE MADE TO THE ONE BEFORE; THE LATER THE LIABILITY THE PRIOR THE CLAIM.[8] THIS IS THE OPINION OF R. MEIR. R. SIMEON SAYS: IF AN OX OF THE VALUE OF TWO HUNDRED [ZUZ] HAS GORED AN OX OF THE SAME VALUE OF TWO HUNDRED [ZUZ] AND THE CARCASS HAS NO VALUE AT ALL, THE PLAINTIFF WILL GET A HUNDRED ZUZ AND THE DEFENDANT WILL GET A HUNDRED ZUZ [OUT OF THE BODY OF THE OX THAT DID THE DAMAGE].[9] SHOULD THE SAME OX HAVE GORED ANOTHER OX OF THE VALUE OF TWO HUNDRED [ZUZ], THE SECOND CLAIMANT WILL GET A HUNDRED ZUZ, WHILE THE FORMER CLAIMANT WILL GET ONLY FIFTY ZUZ[10] AND THE DEFENDANT WILL HAVE FIFTY ZUZ [IN THE BODY OF HIS OX].[11] SHOULD THE OX HAVE GORED YET ANOTHER OX OF THE VALUE OF TWO HUNDRED [ZUZ], THE THIRD CLAIMANT WILL GET A HUNDRED [ZUZ] WHILE THE SECOND WILL GET ONLY FIFTY [ZUZ][10] AND THE FIRST TWO PARTIES[12] WILL HAVE A GOLD DENAR[13] [EACH IN THE BODY OF THE OX THAT DID THE DAMAGE].[11] GEMARA. Who is the author of our Mishnah? It is in accordance neither with the view of R. Ishmael nor with that of R. Akiba![14] For if it is in accordance with R. Ishmael, who maintains that they [the claimants of damages] are like any other creditors, how can it be said that THE LATER THE LIABILITY THE PRIOR THE CLAIM? Should it not be, the earlier the liability the prior the claim?[15] If, on the other hand, it is in accordance with R. Akiba who maintains that the ox becomes the common property [of the plaintiff and the defendant], how can it be said that, IN THE CASE OF THERE BEING A SURPLUS[16]

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(1) [Identified with Faransag, near Bagdad, v. Obermeyer, op. cit., p. 269.]

(2) In which case the whole estate of the defendant can be distrained upon for the payment of damages; supra p. 73.

(3) Cf. supra p 181.

(4) So that there is no warrant for Raba of Parazika's inference.

(5) Against the plaintiff.

(6) And not the other ox that has been lost.

(7) In the body of the ox.

(8) Lit., 'the later always profits' as it is he who has the right of priority.

(9) As explained supra pp. 187-8.

(10) For the reason v. Gemara, infra p. 203.

(11) As the defendant and the first claimant became the owners of the ox in common.

(12) I.e the defendant and the first claimant.

(13) I.e., twenty-five zuz.

(14) For which cf. supra p. 181.

(15) As is usually the case with other creditors: v. p. 185.

(16) V.p. 201, n. 1.

Talmud - Mas. Baba Kama 36b

COMPENSATION WILL BE MADE FOR THE PENULTIMATE OFFENCE? Should it not be 'Compensation will be made [proportionately] for each offence'? — Raba replied: The Mishnah is indeed in accordance with R. Ishmael, who holds that claimants [of damages] are like any other creditors; and as to your objection to the statement 'THE LATER THE LIABILITY THE PRIOR THE CLAIM', which you contend should be 'The earlier the liability the prior the claim', [it can be argued] that we deal here with a case where each plaintiff has [in turn] seized the goring ox for the purpose of getting paid [the amount due to him] out of its body, in which case each has in turn acquired [in respect of the ox] the status of a paid bailee, liable for subsequent damages done by it.[1] But if so, why does it say. SHOULD THERE BE A SURPLUS COMPENSATION IS TO BE PAID

ALSO FOR THE PENULTIMATE OFFENCE? Should it not be: 'The surplus will revert to the owner'?[2] — Rabina therefore said: The meaning is this: Should there be an excess in the damage done to him[3] over that done to the subsequent plaintiff, the amount of the difference will revert to the plaintiff in respect of the preceding damage.[4] So too, when Rabin returned [from Eretz Yisrael] he stated on behalf of R. Johanan that it was for the failure [to carry out their duty] as bailees that liability was incurred [by the earlier plaintiffs to the later].

How then have you explained the Mishnah? As being in accordance with R. Ishmael! If so, what of the next clause: R. SIMEON SAYS: WHERE AN OX OF THE VALUE OF TWO HUNDRED [ZUZ] HAS GORED AN OX OF THE SAME VALUE OF TWO HUNDRED [ZUZ] AND THE CARCASS HAD NO VALUE AT ALL, THE PLAINTIFF WILL GET A HUNDRED ZUZ AND THE DEFENDANT WILL SIMILARLY GET A HUNDRED ZUZ [OUT OF THE BODY OF THE OX THAT DID THE DAMAGE]. SHOULD THE SAME OX HAVE GORED ANOTHER OX OF THE VALUE OF TWO HUNDRED [ZUZ], THE SECOND CLAIMANT WILL GET A HUNDRED ZUZ, WHILE THE FORMER CLAIMANT WILL GET ONLY FIFTY ZUZ, AND THE DEFENDANT WILL HAVE FIFTY ZUZ [IN THE BODY OF THE OX]. SHOULD THE OX HAVE GORED YET ANOTHER OX OF THE VALUE OF TWO HUNDRED [ZUZ], THE THIRD PLAINTIFF WILL GET A HUNDRED [ZUZ], WHILE THE SECOND PLAINTIFF WILL GET FIFTY [ZUZ] AND THE FIRST TWO PARTIES WILL HAVE A GOLD DENAR [EACH IN THE BODY OF THE OX THAT DID THE DAMAGE]. This brings us back [does it not] to the view of R. Akiba, who maintains that the ox becomes the common property [of the plaintiff and the defendant].[5] Will then the first clause be in accordance with R. Ishmael and the second clause in accordance with R. Akiba? — That is so, since even Samuel said to Rab Judah, 'Shinena,[6] leave this Mishnah alone[7] and accept my explanation. that its first clause is [in accordance with] R. Ishmael and its second clause [in accordance with] R. Akiba.' (It was also stated that R. Johanan said: An actual case in which they would differ is where the plaintiff consecrates the goring ox [to the Temple].)[8]

We have learnt elsewhere:[9] If a man boxes another man's ear, he has to give him a sela'[10] [in compensation]. R. Judah in the name of R. Jose the Galilean says: A hundred zuz. A certain man having [been summoned for] boxing another man's ear, R. Tobiah b. Mattena sent an inquiry to R. Joseph, as to whether a Tyrian sela'[11] is meant in the Mishnah[12] or merely a sela' of [this] country.[13] He sent back a reply: You have learnt it: AND THE FIRST TWO PARTIES WILL HAVE A GOLD DENAR [EACH]. Now, should you assume that the Tanna is calculating by the sela'[13] of [this] country, [we may ask,] why does he not continue the division by introducing a further case where the amount [left for the first two] will come down to twelve [zuz] and one sela'?[14] To which R. Tobiah replied: Has then the Tanna to string out cases like a peddler?[15] What, however, is the solution?[16] — The solution was gathered from the statement made by Rab Judah on behalf of Rab:[17] 'Wherever money[18] is mentioned in the Torah, the reference is to Tyrian money, but wherever it occurs in the words of the Rabbis it means local[19] money.' The plaintiff upon hearing that said to the judge: 'Since it will [only] amount to half a zuz,[12] I do not want it; let him give it to the poor.' Later, however, he said; 'Let him give it to me, as I will go and obtain a cure for myself with it.' But R. Joseph said to him: The poor have already acquired a title to it, for though the poor were not present here, we [in the Court, always] act as the agents[20] of the poor, as Rab Judah said on behalf of Samuel:[21] Orphans

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(1) As supra p. 57, and infra p. 255.

(2) Since it is not the owner but the claimant in regard to the penultimate offence who has to he liable in respect of the last offence.

(3) I.e., to the penultimate plaintiff.

(4) As e.g. where an ox of the value of a hundred zuz gored successively the ox of A the ox of B and the ox of C, and the damages amount to fifty, thirty and twenty zuz respectively, C will be paid the sum of twenty, B only ten, which is the

difference between the compensation due to him and that due from him to C, and A will get twenty, which again is the difference between the compensation due to him from the owner (of the ox that did the damage) and that owing from him to B. All the payments together, which are twenty to A, ten to B and twenty to C, make only fifty, so that the balance of the value of the ox will go to its owner.

(5) For if otherwise, why should the first two parties (the owner and the first claimant) always be treated alike?

(6) Cf. supra p. 60, n. 2.

(7) And do not try to make it self-consistent.

(8) V. supra p. 181. [This bracketed passage is to be deleted with Rashi, v. D.S. a.l.]

(9) Infra p. 520

(10) A Palestinian coin, v. Glos.

(11) Four zuz, v. infra p. 521, n. 6.

(12) As stated by the anonymous view.

(13) Half a zuz.

(14) I.e. where the last claimant will have a maneh, the next fifty zuz, the rest one gold denar, and the first claimant and the owner 12 zuz and one sela' each.

(15) Who cries the whole list of his wares. Cf. Git. 33a.

(16) As to the exact meaning of sela'.

(17) Cf. Kid. 11b and Bek. 50b.

(18) [Lit 'silver'. The market value of silver coinage was determined by Tyre, v. Krauss, op. cit., II, 405]

(19) Lit., 'the country'.

(20) Lit., 'hand'.

(21) Git. 37a.

Talmud - Mas. Baba Kama 37a

do not require a prosbul:[1] and so also Rami b. Hama learned that orphans do not require a prosbul,[2] since Rabban Gamaliel and his Court of law are the representatives[3] of orphans.

The scoundrel Hanan, having boxed another man's ear, was brought before R. Huna, who ordered him to go and pay the plaintiff half a zuz.[4] As [Hanan] had a battered zuz he desired to pay the plaintiff the half zuz [which was due] out of it. But as it could not be exchanged, he slapped him again and gave him [the whole zuz].

MISHNAH. IF AN OX WAS MU'AD TO DO DAMAGE TO ITS OWN SPECIES BUT WAS NOT MU'AD TO DO DAMAGE TO ANY OTHER SPECIES [OF ANIMALS] OR IF IT WAS MU'AD TO DO DAMAGE TO THE HUMAN SPECIES BUT NOT MU'AD TO ANY SPECIES OF BEASTS, OR IF IT WAS MU'AD TO SMALL [CATTLE] BUT NOT MU'AD TO LARGE [CATTLE], IN RESPECT OF DAMAGE DONE TO THE SPECIES TO WHICH IT WAS MU 'AD THE PAYMENT WILL HAVE TO BE IN FULL, BUT IN RESPECT OF DAMAGE DONE TO THAT TO WHICH IT WAS NOT MU' AD, THE COMPENSATION WILL BE FOR HALF THE DAMAGE ONLY. THEY[5] SAID BEFORE R. JUDAH: HERE IS ONE WHICH WAS MU 'AD TO DO DAMAGE ON SABBATH DAYS BUT WAS NOT MU 'AD TO DO DAMAGE ON WEEK DAYS.[6] HE SAID TO THEM: FOR DAMAGE DONE ON SABBATH DAYS THE PAYMENT WILL HAVE TO BE IN FULL, WHEREAS FOR DAMAGE DONE ON WEEK DAYS THE COMPENSATION WILL BE FOR HALF THE DAMAGE ONLY. WHEN [CAN THIS OX] RETURN TO THE STATE OF TAM? WHEN IT REFRAINS [FROM GORING] ON THREE [CONSECUTIVE] SABBATH DAYS.

GEMARA. It was stated: R. Zebid said: The proper reading of the Mishnah [in the first clause is], 'BUT WAS NOT MU 'AD . . .';[7] whereas R. Papa said: The proper reading is 'IT IS NOT [THEREFORE] MU 'AD. . .'[8] R. Zebid, who said that'... BUT WAS NOT MU' AD . . .'is the proper reading of the Mishnah, maintained that until we know the contrary[9] such an ox is considered

Mu'ad [to all species]. But R. Papa, who said that '. . . IT IS NOT [THEREFORE] MU 'AD. . .' is the correct reading of the Mishnah, maintained that even though we do not know the contrary the ox is not considered Mu 'ad [save to the species to which it had actually been Mu'ad]. R. Zebid inferred his view from the later clause [of the Mishnah], whereas R. Papa inferred his view from the opening clause. R. Zebid inferred his view from the later clause which states, IF IT WAS MU 'AD TO SMALL [CATTLE] BUT NOT MU 'AD TO LARGE [CATTLE]. Now this is quite in order if you maintain that BUT WAS NOT MU'AD' is the reading in the Mishnah, implying thus that in the absence of definite knowledge to the contrary the ox should be considered Mu'ad [to all species]. This clause would then teach us [the further point] that even where the ox was Mu 'ad to small [cattle] it would be Mu 'ad also to large [cattle] in the absence of knowledge to the contrary. But if you maintain that '. . . IT IS NOT [THEREFORE] MU'AD . . .' is the correct reading of the Mishnah, implying that even though we know nothing to the contrary the ox would not be considered Mu 'ad, could it not then be argued thus: Since in the case where the ox was Mu 'ad to do damage to small creatures of one species it would not be considered Mu 'ad with reference to small creatures of another species even if we have no definite knowledge to the contrary, was there any need to state that where the ox was Mu 'ad to small [cattle] it would not be considered Mu 'ad to big [cattle]?[10] — R. Papa, however, may say to you: It was necessary to state this, since otherwise you might have been inclined to think that since the ox started to attack a particular species, it was going to attack the whole of that species without making a distinction between the large creatures of that species and the small creatures of that species, it was therefore necessary to let us know that [with reference to the large creatures] it would not be considered Mu'ad. R. Papa on the other hand based his view on the opening clause, which states: WHERE IT WAS MU 'AD TO THE HUMAN SPECIES IT WOULD NOT BE MU 'AD TO ANY SPECIES OF BEASTS. Now this would be quite in order if you maintain that 'IT IS NOT [THEREFORE] MU'AD . . .' is the text in the Mishnah denoting that even where we have no knowledge to the contrary the ox would not be considered Mu 'ad [to other species]; it was therefore necessary to make it known to us that even where the ox was Mu 'ad to the human species and though we knew nothing to the contrary, it would still not be Mu'ad to animals. But if you maintain that '. . . BUT WAS NOT MU 'AD . . .' is the correct reading of the Mishnah, implying that in the absence of knowledge to the contrary the ox would be considered Mu 'ad [to all species], could we not then argue thus: Since in the case where the ox was Mu'ad to one species of beast it would in the absence of knowledge to the contrary be considered Mu 'ad also to any other species of beast, was there any need to state that where the ox was Mu 'ad to the human species it would also be considered Mu 'ad to animals?[11] — R. Zebid may, however, say to you: The opening clause refers to the reversion of the ox to the state of Tam, as, e.g., where the ox had been Mu 'ad to man and Mu 'ad to beast but has subsequently refrained from [doing damage to] beast, having stood near cattle on three different occasions without goring. It might then have been argued that since it has not refrained from injuring men, its refraining from goring cattle should [in the eye of the law] not be considered a proper reversion [to the state of Tam].[12] We are therefore told that the refraining from goring cattle is in fact a proper reversion.

An objection was raised [from the following]: Symmachus says: If an ox is Mu'ad to man it is also Mu'ad to beast, a fortiori: if it is Mu'ad to injure man, how much more so is it Mu'ad to injure beast? Does this not prove that the view of the previous Tanna was that it would not be Mu'ad?'[13] — R. Zebid may, however, say to you: Symmachus was referring to the reversion to the state of Tam, and what he said to the previous Tanna was this: 'Referring to your statement that the refraining [from goring] beasts is a proper reversion, [I maintain that] the refraining [from goring] beasts is not a proper reversion, [and can prove it] by means of an argument a fortiori from the case of man. For since it has not refrained from [attacking] man, will it not assuredly continue attacking beasts?

R. Ashi said: Come and hear: THEY SAID BEFORE R. JUDAH: HERE IS ONE WHICH IS MU 'AD TO DO DAMAGE ON SABBATH DAYS BUT NOT MU 'AD TO DO DAMAGE ON WEEK DAYS. HE SAID TO THEM: FOR DAMAGE DONE ON SABBATH DAYS, THE PAYMENT

WILL HAVE TO BE IN FULL, WHEREAS FOR DAMAGE DONE ON WEEK DAYS THE COMPENSATION WILL BE FOR HALF THE DAMAGE ONLY. Now this is quite in order if you maintain that '. . . BUT WAS NOT MU'AD . . .' is the correct reading. The disciples were thus putting a question before him and he was replying to them accordingly. But If you contend that '. . .IS NOT [THEREFORE] MU 'AD . . .' is the correct text, [would it not appear as if his disciples] were giving instruction to him?[14] Again, what would then be the meaning of his reply to them?[15] R. Jannai thereupon said: The same can also be inferred from the opening clause, where it is stated: IN RESPECT OF DAMAGE DONE TO THE SPECIES TO WHICH IT WAS MU 'AD, THE PAYMENT WILL HAVE TO BE IN FULL, BUT IN RESPECT OF DAMAGE DONE TO THAT TO WHICH IT WAS NOT MU 'AD, THE COMPENSATION WILL BE FOR HALF THE DAMAGE ONLY. Now, this would be in order if you maintain that 'BUT IT WAS NOT MU 'AD . . .'[16] is the correct text, in which case the clause just quoted would be explanatory. But if you maintain that '. . . IT IS NOT [THEREFORE] MU'AD . . .'[17] is the correct text, this statement is complete in itself, and why then the further statement 'IN RESPECT OF DAMAGE DONE TO THE SPECIES TO WHICH IT WAS MU 'AD, THE PAYMENT WILL HAVE TO BE IN FULL, BUT IN RESPECT OF DAMAGE DONE TO THAT TO WHICH IT WAS NOT MU 'AD, THE COMPENSATION WILL BE FOR HALF THE DAMAGE ONLY? Have we not been told before how that in the case of Mu 'ad the payment is for half the damage whereas in the case of Mu'ad the payment has to be in full?[18] Yet even if you adopt the view of R. Papa,[19] where the animal gored an ox, an ass and a camel [successively] it would still become Mu 'ad to all [species of beasts].[20]

Our Rabbis taught: If the animal sees an ox and gores it, another ox and does not gore it, a third ox and gores it, a fourth ox and does not gore it, a fifth ox and gores it, a sixth ox and does not gore it, the animal becomes Mu'ad to alternate oxen.

Our Rabbis taught: If an animal sees an ox and gores it, an ass and does not gore it, a horse and gores it a camel and does not gore it, a mule and gores it, a wild ass and does not gore it, the animal becomes Mu'ad to alternate beasts of all species.

The following question was raised: If the animal [successively] gored

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(1) Cf. supra p. 48, n. 4 and Glos.

(2) V. p. 204, n. 16.

(3) Lit., 'father'.

(4) As stated by the anonymous view.

(5) The disciples.

(6) Apparently we are to supply the words, 'what is the rule regarding it' the remark being intended as a question. But v. infra p. 208.

(7) As indeed rendered in the Mishnaic text.

(8) The Mishnah should accordingly open thus: 'If an ox is Mu'ad to do damage to its own species, it is not (therefore) Mu'ad to any other species (of animals)' etc., etc.

(9) E.g., by letting other animals pass in front of it and seeing that it does not gore them.

(10) Since it is much less likely to attack big animals than small ones. Why then, on R. Papa's reading, have this clause at all in the Mishnah?

(11) Which it would be more ready to attack than human beings.

(12) Cf. supra p. 119.

(13) In contradiction to the view of R. Zebid.

(14) I.e., we have to read their remark as a statement and not as a question.

(15) After they had already decided the question in the wording of the problem.

(16) V. p. 205, n. 6.

(17) V. p. 206, n. 1

(18) Cf. supra p. 73.

(19) That in absence of knowledge to the contrary it is not Mu ‘ad.
(20) And we should not require three gorings for each.

Talmud - Mas. Baba Kama 37b

one ox, a [second] ox, and a [third] ox, an ass, and a camel, what is the legal position? Shall the last ox be counted together with the [first two] oxen, in which case the animal that gored will still be Mu'ad only to oxen whereas to any other species it will not be considered Mu'ad, or shall perhaps the last ox be counted together with the ass and camel, so that the animal that gored will become Mu'ad to all species [of beasts]? [Again,[1] where an animal has successively gored] an ass, a camel, an ox, another ox, and a [third] ox, what is the legal position? Shall the first ox be counted together with the ass and camel, so that the animal that gored will become Mu'ad to all species [of beasts], or shall it perhaps [rather] be counted together with the [other] oxen, in which case it will still be Mu'ad only to oxen, but not Mu'ad to any other species [of beasts]? [Again, where the consecutive gorings took place on] one Sabbath, [the next] Sabbath and [the third] Sabbath, and then on the [subsequent] Sunday and Monday, what is the legal position? Shall the last Sabbath be counted together with the [first two] Sabbaths, in which case the ox that gored would still be Mu'ad only for Sabbaths, whereas in respect of damage done on week days it would not yet be considered Mu ‘ad, or shall it perhaps be counted together with Sunday and Monday and thus become Mu'ad in respect of all the days [of the week]? [Again, where the consecutive gorings took place on] a Thursday, the eve of Sabbath and the Sabbath, then on [the next] Sabbath and [the third] Sabbath, what is the legal position? Shall the first Sabbath be counted together with Thursday and the eve of Sabbath and the goring ox thus become Mu ‘ad for all days, or shall perhaps the first Sabbath be counted together with the subsequent Sabbaths, in which case the goring ox would become Mu ‘ad only for Sabbaths? — These questions must stand over.

If [an ox has] gored an ox on the fifteenth day of a particular month, and [another ox] on the sixteenth day of the next month, and [a third ox] on the seventeenth day of the third month, there would he a difference of opinion between Rab and Samuel.[2] For it was stated:[3] If the symptom of menstruation has once been noticed on the fifteenth day of a particular month, [then] on the sixteenth day of the next month, and [then] on the seventeenth day of the third month, Rab maintained that a periodical recurrence[4] has thereby been established,[5] whereas Samuel said [that this periodicity is not established] until the skipping is repeated [yet] a third time.[6]

Raba said: Where an ox upon hearing the sound of a trumpet gores and upon hearing [again] the sound of a trumpet gores [a second time], and upon hearing [again] the sound of a trumpet gores [a third time], the ox will become Mu'ad with reference to the hearing of the sound of trumpets. Is not this self-evident? — You might have supposed that [the goring at] the first [hearing of the sound of the] trumpet [should not be taken into account as it] might have been due merely to the sudden fright that came over the ox.[7] We are therefore told [that it would be taken into account].[8]

MISHNAH. IN THE CASE OF PRIVATE OWNER'S[9] CATTLE[10] GORING AN OX CONSECRATED TO THE TEMPLE, OR CONSECRATED CATTLE GORING A PRIVATE OX, THERE IS NO LIABILITY, FOR IT IS STATED: THE OX OF HIS NEIGHBOUR,[11] NOT [THAT IS TO SAY] AN OX CONSECRATED TO THE TEMPLE. WHERE AN OX BELONGING TO AN ISRAELITE HAS GORED AN OX BELONGING TO A CANAANITE, THERE IS NO LIABILITY,[12] WHEREAS WHERE AN OX BELONGING TO A CANAANITE GORES AN OX BELONGING TO AN ISRAELITE, WHETHER WHILE TAM OR MU ‘AD,[13] THE COMPENSATION IS TO BE MADE IN FULL.[14]

GEMARA. The [ruling in the] Mishnah is not in accordance with [the view of] R. Simeon b. Menasya; for it was taught: Where a private ox has gored consecrated cattle or where consecrated

cattle has gored a private ox, there is not liability, as it is stated: The ox of his neighbour,[15] not [that is to say] an ox consecrated to the Temple. R. Simeon b. Menasya, however, says: Where consecrated cattle has gored a private ox there is no liability, but if a private ox has gored consecrated cattle, whether while Tam or Mu 'ad, payment is to be made for full damage.[16] I might ask, what was the principle adopted by R. Simeon? If the implication of 'his neighbour'[15] has to be insisted upon,[17] why then even in the case of a private ox goring consecrated cattle should there not be exemption? If on the other hand the implication of 'his neighbour' has not to be insisted upon, why then in the case of consecrated cattle goring a private ox should there also not be liability? If, however, you argue that he[18] does in fact maintain that the implication of 'his neighbour' has to be insisted upon, yet where a private ox has gored consecrated cattle there is a special reason for liability inferred by means of an a fortiori argument from the case of private cattle [as follows]: If where a private ox has gored private cattle there is liability, should not there be all the more liability where it has gored consecrated cattle? Why then [did he] not employ the principle of Dayyo[19] [i.e. that it was sufficient] that the object[20] to which the inference is made should be on the same footing as the object from which it was made?[21] And since Tam involves there the payment of half damages, [why then should it not] here also involve the payment of half damages [only]? — Resh Lakish therefore said: Originally all cases came under the law of full compensation;[22] when Scripture therefore particularised 'his neighbour' in the case of Tam, it meant that it was only where damage had been done to a neighbour that Tam would involve half damages [only], thus implying that where the damage had been done to consecrated property, whether by Tam or Mu'ad. the compensation must be in full;

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(1) Assuming that in the previous case we decide that the last ox will be counted with the first two oxen.

(2) According to Rab it would become Mu'ad to gore every month by missing a day, so that if in the fourth month it gores on the eighteenth day, the compensation would have to be in full, whereas according to Samuel the compensation would still be a half, as the animal could not become Mu'ad until the act of missing a day is repeated three times, so that full compensation would begin with the goring on the nineteenth day of the fifth month.

(3) Nid. 67a.

(4) [MS.M. adds 'in skipping', cf. Rashi.]

(5) And the menstruation could accordingly be expected on the eighteenth day of the fourth month.

(6) I.e., until in the fourth month the menstruation recurs on the eighteenth day, in which case it would be expected on the nineteenth day of the fifth month,

(7) So that full compensation should begin with the fifth occasion.

(8) And full liability will commence with the fourth goring at the sound of a trumpet.

(9) [Mishnah text: 'of an Israelite'.]

(10) Lit., 'ox'.

(11) Ex. XXI, 35.

(12) As Canaanites did not recognise the laws of social justice, they did not impose any liability for damage done by cattle. They could consequently not claim to be protected by a law they neither recognised nor respected, cf. J. T. a.l. and Maim. Yad, Niz. Mam. VIII, 5. [In ancient Israel as in the modern state the legislation regulating the protection of life and property of the stranger was, as Guttmann. M. (HUCA. III 1 ff.) has shown, on the basis of reciprocity. Where such reciprocity was not recognised, the stranger could not claim to enjoy the same protection of the law as the citizen.]

(13) I.e., the ox that did the damage.

(14) So that they should guard their cattle from doing damage. (Maim. loc. cit.)

(15) V. p. 211, n. 5.

(16) Cf. supra p. 23.

(17) To mean the ox of his peer, of his equal. [This would not exclude Gentiles in general as the term רעהו, his neighbour applies also to them (cf. Ex. XI, 2); cf. next page.]

(18) R. Simeon

(19) V. supra p. 126.

(20) Viz. consecrated cattle.

(21) Viz. private cattle.

(22) As in the case of Mu ‘ad where in contradistinction to Tam no mention was made of ‘his neighbour’: cf. Ex. XXI, 36.

Talmud - Mas. Baba Kama 38a

for if this was not its intention, Scripture should have inserted [the expression] ‘his neighbour’ in the text dealing with Mu'ad.[1]

WHERE AN OX BELONGING TO AN ISRAELITE HAS GORED AN OX BELONGING TO A CANAANITE THERE IS NO LIABILITY etc. But I might here assert that you are on the horns of a dilemma. If the implication of ‘his neighbour’ has to be insisted upon, then in the case of an ox of a Canaanite goring an ox of an Israelite, should there also not be exemption? If [on the other hand] the implication of ‘his neighbour’ has not to be insisted upon, why then even in the case of an ox of an Israelite goring an ox of a Canaanite, should there not be liability? — R Abbahu thereupon said: The Writ says, He stood and measured the earth; he beheld and drove asunder the nations,[2] [which may be taken to imply that] God beheld the seven commandments[3] which were accepted by all the descendants of Noah, but since they did not observe them, He rose up and declared them to be outside the protection of the civil law of Israel [with reference to damage done to cattle by cattle].[4] R. Johanan even said that the same could be inferred from this [verse], He shined forth from Mount Paran,[5] [implying that] from Paran[6] He exposed their money to Israel. The same has been taught as follows: If the ox of an Israelite gores an ox of a Canaanite there is no liability,[7] but if an ox of a Canaanite gores an ox of an Israelite whether the ox [that did the damage] was Tam or whether it had already been Mu ‘ad, the payment is to be in full, as it is said: He stood and measured the earth, he beheld and drove asunder the nations,[2] and again, He shined forth from Mount Paran.[5] Why this further citation? — [Otherwise] you might perhaps think that the verse ‘He stood and measured the earth’ refers exclusively to statements [on other subjects] made by R. Mattena and by R. Joseph; come therefore and hear: ‘He shined forth from Mount Paran,’ implying that from Paran[8] he exposed their money to Israel.

What was the statement made by R. Mattena [referred to above]? — It was this. R. Mattena said: He stood and measured the earth; He beheld etc.[9] What did He behold? He beheld the seven commandments[10] which were accepted by all the descendants of Noah, and since [there were some clans that] rejected them, He rose up and exiled them from their lands.[11] But how can the word in the text[12] be [etymologically] explained to mean ‘exile’? — Here it is written ‘"wa-yatter" the nations’ and in another place it is [similarly] written, ‘"le-natter" withal upon the earth,’[13] which is rendered in the Targum[14] ‘to leap withal upon the earth’.

What was the statement made by R. Joseph [referred to above]? — It was this. R. Joseph said: ‘He stood and measured the earth; he beheld’ etc. What did He behold? He beheld the seven commandments which had been accepted by all the descendants of Noah, and since [there were clans that] rejected them He rose up and granted them exemption. Does this mean that they benefited [by breaking the law]? And if so, will it not be a case of a sinner profiting [by the transgression he committed]? — Mar the son of Rabana[15] thereupon said: ‘It only means that even were they to keep the seven commandments [which had first been accepted but subsequently rejected by them] they would receive no reward.’ Would they not? But it has been taught:[16] ‘R. Meir used to say, Whence can we learn that even where a gentile occupies himself with the study of the Torah he equals [in status] the High Priest? We find it stated: . . . which if a man do he shall live in them;[17] it does not say "priests, Levites and Israelites", but "a man", which shows that even if a gentile occupies himself with the study of the Torah he equals [in status] the High Priest.’ — I mean [in saying that they would receive no reward] that they will receive reward not like those who having been enjoined perform commandments, but like those who not having been enjoined perform good deeds: for R. Hanina has stated:[18] Greater is the reward of those who having been enjoined do good deeds than of

those who not having been enjoined [but merely out of free will] do good deeds.[19]

Our Rabbis taught: The Government of Rome had long ago sent two commissioners to the Sages of Israel with a request to teach them the Torah. It was accordingly read to them once, twice and thrice. Before taking leave they made the following remark: We have gone carefully through your Torah, and found it correct with the exception of this point, viz. your saying that if an ox of an Israelite gores an ox of a Canaanite there is no liability,[20] whereas if the ox of a Canaanite gores the ox of an Israelite, whether Tam or Mu 'ad, compensation has to be paid in full. In no case can this he right. For if the implication of 'his neighbour' has to be insisted upon, why then in the case of an ox of a Canaanite goring an ox of an Israelite should there also not be exemption? If [on the other hand] the implication of 'his neighbour' has not to be insisted upon, why then even in the case of an ox of an Israelite goring an ox of a Canaanite, should there not be liability? We will, however, not report this matter to our Government.[21]

When R. Samuel b. Judah lost a dauther the Rabbis[22] said to 'Ulla: 'Let us go in and console him.' But he answered them: 'What have I to do with the consolation of the Babylonians,[22] which is [almost tantamount to] blasphemy? For they say "What could have been done," which implies that were it possible to do anything they would have done it.' He therefore went alone to the mourner and said to him: [Scripture says,] And the Lord spake unto me, Distress not the Moabites, neither contend with them in battle.[23] Now [we may well ask], could it have entered the mind of Moses to wage war without [divine] sanction? [We must suppose] therefore that Moses of himself reasoned a fortiori as follows: If in the case of the Midianites who came only to assist the Moabites[24] the Torah commanded 'Vex the Midianites and smite them,'[25]

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(1) V. p. 212, n. 8.

(2) Hab. III, 6.

(3) V. A.Z. (Sonc. ed.) p. 5, n. 7.

(4) The exemption from the protection of the civil law of Israel thus referred only to the Canaanites and their like who had wilfully rejected the elementary and basic principles of civilised humanity

(5) Deut. XXXIII, 2. [The Mount at which God appeared to offer the Law to the nations, who, however, refused to accept it. V. A.Z. 2b.]

(6) On account of what occurred thereat.

(7) V. p. 211, n. 6.

(8) Cf. A. Z. 2a.

(9) Hab. III, 2.

(10) V. p. 213, n. 3.

(11) As described in Deut. II, 10-23.

(12) I.e., wa-yatter.

(13) Lev. XI, 21.

(14) Targum Onkelos, the Aramaic version of the Hebrew Bible; cf. J.E. s.v.

(15) [Ms.M.: Rabina.]

(16) Sanh. 59a; A. Z. 3a.

(17) Lev. XVIII, 5.

(18) Infra p. 501. and Kid. 31a.

(19) [For the idea underlying this dictum v. A.Z. (Sonc. ed.) p. 6, n. 1.]

(20) V. p. 211, n. 6.

(21) [The same incident is related with some variations in J.B.K. IV, 4, and Sifre on Deut. XXXIII, 3, where R. Gamaliel (II) is mentioned as the Sage before whom the Commissioners appeared, Graetz, Geschichte, IV, 108, places this in the days of Domitian (81-96) whose distrust of the Jews led him to institute an inquisition into their beliefs and teachings; Halevy, Doroth I.e. 350, in the days of Nerva who wished to find out whether there was any truth in the slander against the Jews encouraged by Domitian.]

(22) I.e., Babylonian Rabbis.

(23) Deut. II, 9.
(24) Cf. Num. XXII, 4.
(25) Ibid XXV, 17.

Talmud - Mas. Baba Kama 38b

in the case of the Moabites [themselves] should not the same injunction apply even more strongly? But the Holy One, blessed be He, said to him: The idea you have in your mind is not the idea I have in My mind. Two doves have I to bring forth from them;[1] Ruth the Moabitess and Naamah the Ammonitess. Now cannot we base on this an a fortiori argument as follows: If for the sake of two virtuous descendants the Holy One, blessed be He, showed pity to two great nations so that they were not destroyed, may we not be assured that if your honour's daughter had indeed been righteous and worthy to have goodly issue, she would have continued to live?

R. Hiyya B. Abba said that R. Johanan had stated:[2] The Holy One, blessed be He, does not deprive any creature of any reward due to it, even if only for a becoming expression: for in the case of the [descendants of the] elder [daughter][3] who named her son 'Moab',[4] the Holy One, Blessed be He, said to Moses, Distress not the Moabites, neither contend with them in battle, [implying that] while actual hostilities against them were forbidden, requisitioning from them was allowed, whereas in the case of the younger [daughter][3] who called her son 'Ben Ammi',[5] the Holy One, Blessed be He, said to Moses: And when thou comest nigh over against the children of Ammon, distress them not, nor meddle with them at all,[6] thus implying that they were not to be subjected even to requisitioning.

R. Hiyya B. Abba further said that R. Joshua b. Korha had stated:[7] At all times should a man try to be first in the performance of a good deed, as on account of the one night by which the elder [daughter][8] preceded the younger she preceded her by four generations [in having a descendant] in Israel: Obed, Jesse, David and Solomon.[9] For the younger [had no descendant in Israel] until [the advent of] Rehoboam, as it is written: And the name of his mother was Naamah the Ammonitess.[10]

Our Rabbis taught: If cattle of an Israelite has gored cattle belonging to a Cuthean[11] there is no liability. But where cattle belonging to a Cuthean gored cattle belonging to an Israelite, in the case of Tam the payment will be for half the damage, whereas in the case of Mu'ad the payment will be in full. R. Meir, however, says: Where cattle belonging to an Israelite gored cattle belonging to a Cuthean there is no liability, whereas in the case of cattle belonging to an Israelite, whether in the case of Tam or in that of Mu'ad, the compensation is to be in full. Does this mean to say that R. Meir maintains that the Cutheans were lion-proselytes?[12] But if [so], an objection would be raised [from the following]:[13] All kinds of stains [found on women's underwear] brought from Rekem[14] are [levitically] clean.[15] But R. Judah considers them unclean, as the inhabitants [of that place] are mainly proselytes[16] who are in error;[17] from among Gentiles[18] they are considered clean. But [where they were brought] from among Israelites[19] or from Cutheans [after having been obtained from private places all agree in declaring them unclean.[20] But where they were brought from Cutheans who had already abandoned them to the public at large][21] R. Meir considers them unclean,[22] whereas the Sages consider them clean, for [even] they[23] were not suspected of being lax in [the exposing of women's stained underwear]. Now does this not prove that R. Meir was of the opinion that Cutheans were true proselytes? — R. Abbahu thereupon said: This was only a pecuniary disability that R. Meir[24] imposed upon them, so that [Israelites] should not intermingle with them.

R. Zera raised an objection [from the following]: These are the damsels through whom the fine[25] is imposed: If a man has connexion with a girl that is a bastard,[26] a Nethinah[27] or a Cuthean.[28] Now if you maintain that R. Meir imposed a pecuniary disability on them, why then not impose it in this case too,[29] so that [Israelites] should not mix with them? Abaye thereupon said:

(1) The Moabites and the Ammonites, who must therefore be saved.
(2) Naz. 23b and Hor. 10b.
(3) Of Lot; cf. Gen. XIX, 30-38.
(4) Lit., 'From father'.
(5) Lit., 'The son of my people'
(6) Deut. II, 19.
(7) Naz. ibid; and Hor. 11a.
(8) V. p. 216, n. 6.
(9) Cf. Ruth IV, 13-22.
(10) I Kings XIV, 31.
(11) I.e., members of the mixed tribes who had been settled on the territory of the former Kingdom of Israel by the Assyrian king and who were subsequently a great hindrance to the Jews who returned from the Babylonian captivity to revive their country and their culture; cf. II Kings, XVII. 24-41; Ezra IV, 1-24 and Neh. III, 33; IV, V, VI, 13.
(12) I.e., they accepted some of the Jewish practices not out of appreciation or with sincerity but simply out of the fear of the lions, which as stated in Scripture had been slaying them; cf. II Kings, XVII, 25.
(13) Nid. VII. 3.
(14) A place mainly inhabited by heathens who are not subject to the laws of purity and menstruation. [Rekem is identified by Targum Onkelos Gen. XVI, 14, with Kadesh; by Josephus (Ant. IV, 7, 1), with Petra.]
(15) As the underwear might naturally be supposed to have been worn by a heathen woman.
(16) Who are subject to all the laws of Scripture and whose menstrual discharge defiles any garment which comes in contact with it.
(17) And have lapsed from the observance of the Law.
(18) Those who have never embraced the religion of Israel and have thus never been subject to the laws of purity and menstruation.
(19) Who as a rule do not expose to the public garments stained with menstrual discharge.
(20) For both Israelites and Cutheans are subject to the laws of purity and menstruation.
(21) The bracketed passage follows the interpretation of this Mishnah given in Nid. 56b.
(22) For Cutheans in contradistinction to Israelites were, according to R. Meir, suspected of being lax in the matter of exposing to the public garments stained with menstrual discharge.
(23) I.e. Cutheans.
(24) Who in other respects considered them true proselytes.
(25) For seduction in accordance with Ex. XXII, 15-16, or for rape in accordance with Deut. XXII, 28-29.
(26) Cf. Deut. XXII, 29 and ibid. XXIII, 3.
(27) A Gibeonite, v. Glos.
(28) Keth. III, 1.
(29) By not allowing them to recover compensation for seduction.

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[No exception was made in this case] so that the sinner[1] should not profit thereby. But let him pay the amount of the fine to the poor?[2] — R. Mari said: It would [in that case have remained] a pecuniary obligation without definite claimants[3] [and would thus never have been discharged].[4] MISHNAH. IF AN OX OF AN OWNER WITH UNIMPAIRED FACULTIES GORES AN OX OF A DEAF-MUTE, AN IDIOT OR A MINOR,[5] THE OWNER IS LIABLE. WHERE, HOWEVER, AN OX OF A DEAF-MUTE, AN IDIOT OR A MINOR HAS GORED AN OX OF AN OWNER WHOSE FACULTIES ARE UNIMPAIRED, THERE IS NO LIABILITY.[6] IF AN OX OF A DEAF-MUTE AN IDIOT OR A MINOR[7] HAS GORED, THE COURT OF LAW APPOINT A GUARDIAN, IN WHOSE PRESENCE WITNESSES WILL BE ABLE TO TESTIFY [THAT THE OX HAS GORED SO THAT IT WILL EVENTUALLY BE DECLARED MU'AD]. IF THE DEAF-MUTE RECOVERS HIS HEARING [OR SPEECH], OR IF THE IDIOT BECOMES SANE, OR IF THE MINOR COMES OF AGE, THE OX PREVIOUSLY DECLARED MU'AD WILL

RETURN TO THE STATE OF TAM: THESE ARE THE WORDS OF R. MEIR. R. JOSE, HOWEVER, SAYS THAT THE OX WILL REMAIN IN STATUS QUO. IN THE CASE OF A STADIUM OX[8] [KILLING A PERSON], THE DEATH PENALTY IS NOT IMPOSED [UPON THE OX], AS IT IS WRITTEN: IF AN OX GORE,[9] EXCLUDING CASES WHERE IT IS GOADED TO GORE.

GEMARA. Is not the text in contradiction with itself? [In the first clause] you state, IF AN OX OF A DEAF-MUTE, AN IDIOT OR A MINOR GORES AN OX BELONGING TO ONE WHOSE FACULTIES ARE UNIMPAIRED THERE IS NO LIABILITY, implying that a guardian is not appointed in the case of Tam to collect [the payment of half-damages] out of its body.[10] But read the following clause: IF AN OX OF A DEAF-MUTE, AN IDIOT OR A MINOR HAS GORED, THE COURT OF LAW APPOINT A GUARDIAN IN WHOSE PRESENCE WITNESSES WILL BE ABLE TO TESTIFY [SO THAT IT WILL EVENTUALLY BE DECLARED MU'AD]. Now, does this not prove that a guardian is appointed in the case of Tam to collect [the payment of half-damages] out of its body? — Raba replied [that the text of the concluding clause] should be understood thus: If the oxen are presumed to be gorers, then a guardian is appointed and witnesses will give evidence for the purpose of having the cattle declared Mu'ad, so that should another goring take place,[11] the payment would have to come from the best [of the general estate].[12]

From the best of whose estate [would the payment have to come]? — R. Johanan said: From the best [of the estate] of the orphans;[13] R. Jose b. Hanina said: From the best [of the estate] of the guardian. But did R. Johanan really say so? [Has it not been stated that] R. Judah said in the name of R. Assi:[14] The estate of the orphans[13] must not be distrained upon unless where usury is consuming it, and R.. Johanan said: [Unless there is a liability] either for a bond bearing interest or to a woman for her kethubah,[15] [so as to save from further payment] on account of [her] maintenance?[16] — You must therefore reverse names [to read as follows]: R. Johanan said: From the best [of the estate] of the guardian, whereas R. Jose b. Hanina said: From the best [of the estate] of the orphans. Raba, however, objected, saying: Because there is a contradiction between R. Johanan in one place and R. Johanan in another place, are you to ascribe to R. Jose b. Hanina an erroneous view?[17] Was not R. Jose b. Hanina a judge, able to penetrate to the innermost intention of the Law? — We must therefore not reverse the names, [and the contradiction between the two views of R. Johanan[18] can be reconciled by the consideration that] a case of damage is altogether different.[19] R. Johanan stated that the payment must be made out of the best [of the estate] of the orphans, because if you were to say that it is to be out of the best [of the estate] of the guardians

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(1) The seducer.

(2) So that the sinner should not benefit, but why pay the money to the Cuthean if R. Meir was inclined to impose a disability upon Cutheans?

(3) Any poor man claiming the money could be put off by the plea that he (the seducer) wished to give it to another poor man.

(4) If the Cuthean would not have been entitled to claim it.

(5) Usually up to the age of thirteen. These three form a category for themselves as they are not subject to the obligations of either civil or criminal law.

(6) In the case of Tam: v. the discussion in Gemara.

(7) By evidence having been delivered in the presence of the appointed guardian.

(8) [**, the arena used for wild beast hunts and gladiatorial contests, v. Krauss, op. cit. III, 119.]

(9) Ex. XXI, 28.

(10) Cf.supra p. 73.

(11) But no payment will be made for damage done while the ox was Tam.

(12) V. p. 219, n. 6.

(13) Who were minors.

(14) ‘Ar. 22a.

(15) I.e., marriage settlement; v. Glos.

(16) For as long as the widow does not collect her kethubah, she receives her maintenance from the property of the orphans, v. Keth. XI, 1.

(17) [Raba regarded it as an adopted ruling not to distrain upon the estate of orphans. V. Asheri, a.l.]

(18) I.e., here and in ‘Ar. 22a.

(19) Presumably on account of public safety and public interest it is more expedient not to postpone payment until the orphans come of age.

Talmud - Mas. Baba Kama 39b

people would certainly refrain from accepting this office and would do nothing at all [in the matter]. R. Jose b. Hanina, however, said that the payment should be made out of the best [of the estate] of the guardians. and that these should be reimbursed out of the estate of the orphans when the latter will have come of age.

Whether [or not] guardians could be appointed in the case of Tam to collect payment out of its body, is a point at issue between the following Tannaim: In the case of an ox whose owner has become a deaf-mute, or whose owner became insane or whose owner has gone abroad,[1] Judah b. Nakosa said on behalf of Symmachus that it would have to remain Tam[2] until witnesses could give evidence in the presence of the owner. The Sages, however, say that a guardian should be appointed in whose presence the evidence may be given. Should the deaf-mute recover his faculty [of hearing or speech], or the idiot become sane, or the minor come of age, or the owner return from abroad, Judah b. Nakosa said on behalf of Symmachus that the ox would revert to the state of Tam[3] until evidence is given in the presence of the owner, whereas R. Jose said that it would retain its status quo. Now, we have here to ask, what is the meaning of ‘it would have to remain Tam’[4] in the dictum of Symmachus? It could hardly mean that the ox cannot become Mu'ad at all, for since it is stated in the concluding clause, ‘The ox would revert to the state of Tam’, it is implied that it had formerly been Mu'ad. What then is the meaning of, ‘it would have to remain Tam’?[4] We must say, ‘It would remain Tam [complete],’[5] that is, we do nothing to diminish its value, which would, of course, show that [Symmachus holds] no guardian is appointed in the case of Tam to collect payment out of its body. ‘The Sages, however, say that a guardian should be appointed in whose presence evidence may be given’, from which it follows that [they hold] a guardian may be appointed in the case of Tam to collect payment out of its body.

And what is the point at issue in the concluding clause? The point at issue there is [whether or not a change of] control[6] should cause a change [in the state of the ox].[7] Symmachus maintains that [a change in] control causes a change [in the state of the ox],[7] whereas R. Jose holds that [a change of] control causes no change [in the state of the ox].

Our Rabbis taught: Where an ox of a deaf-mute, an idiot or a minor has gored, R. Jacob pays half-damages. What has R. Jacob to do with it?[8] — But read, ‘R. Jacob orders the payment of half-damages.’ With what case are we here dealing? If with a Tam, is this not obvious?[9] For does not any other owner similarly pay half-damages? If [on the other] hand we are dealing with a Mu'ad, then where proper precautions were taken to control it, why should any payment be made at all?[10] And if no precautions were taken to control it, why should not damages be paid in full? — Raba thereupon said: We are in fact dealing with a Mu'ad, and with a case where precautions of some inferior sort[11] were taken to control the ox, but not really adequate precautions. R. Jacob concurred with R. Judah who said[12] that [even in the case of Mu'ad, half of the payment, i.e.] the part due from Tam remains unaffected [being still subject to the law of Tam]; he also concurred with R. Judah in holding[13] that to procure exemption from the law of Mu'ad even inadequate precautions are sufficient;[14] and he furthermore followed the view of the Rabbis[15] who said that a guardian could be appointed in the case of Tam to collect payment out of its body.[16] Said Abaye to him:[17] Do they[18]

really not differ? Has it not been taught: 'Where the ox of a deaf-mute, an idiot or a minor has gored, R. Judah maintains that there is liability to pay and R. Jacob says that the payment will be only for half the damage'? — Rabbah b. 'Ulla thereupon said: The 'liability to pay' mentioned by R. Judah is here defined [as to its amount] by R. Jacob.[19] But according to Abaye who maintained that they did differ, what was the point at issue between them? — He may tell you that they were dealing with a case of Mu'ad that had not been guarded at all, in regard to which R. Jacob would concur with R. Judah on one point but differ from him on another point. He would concur with him on one point, in that R. Judah lays down that [even with Mu'ad half of the payment, i.e.] the part due from Tam remains unaffected; but he would differ from him on another point, in that R. Judah lays down that a guardian should be appointed in the case of Tam to collect payment out of its body, whereas R. Jacob is of the opinion that a guardian could not be appointed and there could therefore be no payment except the half [which should be subject to the law] of Mu'ad.[20] Said R. Aha b. Abaye to Rabina: All would be very well according to Abaye who maintained that they differ;[21] he is quite right [in explaining the earlier statement of R. Jacob[22] to apply only to Mu'ad].[23] But according to Raba who maintained that they do not differ, why should the former statement [of R. Jacob] be referred only to Mu'ad? Why not also to Tam,

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(1) Lit., 'the Province of the Sea'.
(2) בתמותו
(3) V. the discussion which follows.
(4) In the commencing clause.
(5) Reading בתמימותו instead of בתמותו.
(6) Such as from guardian to owner.
(7) I.e., from the state of Mu'ad to that of Tam.
(8) That he personally should have to pay compensation.
(9) Why then state this at all?
(10) Since so far as the owner was concerned the damage occurred by accident.
(11) For the various degrees of precaution cf. infra 55b.
(12) Supra p. 84 and infra p. 260.
(13) Infra p. 259.
(14) But this would not be sufficient in the case of Tam. Where therefore such a precaution has been taken to control a Mu'ad, the half-damages for which the Tam is liable would be enforced, but not the additional damages for which the Mu'ad is liable.
(15) The Sages, whose view was explained supra.
(16) Hence R. Jacob's ruling for the payment of half-damages.
(17) I.e., to Raba.
(18) R. Jacob and R. Judah.
(19) Who thus makes precise what R. Judah left unspecified.
(20) Which is paid out of the general estate.
(21) I.e., that R. Jacob maintained that no guardian could be appointed in the case of Tam, and R. Judah that he could.
(22) Where the view of R. Judah was not mentioned at all.
(23) Where no precaution to control the ox has been taken.

Talmud - Mas. Baba Kama 40a

if he[1] follows the view of R. Judah,[2] in a case where the precautions taken to control the ox were of an inferior kind and not really adequate,[3] or if he[1] follows the view of R. Eliezer b. Jacob,[4] where no precautions to control the ox had been taken at all,[5] as it has been taught: R. Eliezer b. Jacob says: Whether in the case of Tam or in the case of Mu'ad, if precautions of [at least] some inferior sort have been taken to control the ox, there would be no liability. The new point made known to us by R. Jacob would thus have been that guardians should be appointed even in the case of Tam to collect payment out of its body. [Why then did Raba explain the former statement of R. Jacob to refer only

to Mu'ad? Why did he not explain it to refer to Tam also?] — [In answer] he[6] said: Raba made[7] one statement express two principles [in which R. Jacob is in agreement with R. Judah].[8]

Rabina stated that [the question whether or not a change of] control should cause a change [in the state of the ox] might have been the point at issue between them,[9] e.g., where after the ox had been declared Mu'ad, the deaf-mute recovered his faculty, or the idiot became sane, or the minor came of age, [in which case] R. Judah would maintain that the ox should remain in its status quo whereas R. Jacob would hold that [a change of] control should cause a change [in the state of the ox].

Our Rabbis taught: In the case of guardians, the payment [for damages] will be out of the best of the general estate, though no kofer[10] will be paid by them. Who is the Tanna who holds that [the payment of] kofer is but an act of atonement[11] [which would justify the exemption in this case], as [minor] orphans are not subject to the law of atonement? — R. Hisda said: It is R. Ishmael the son of R. Johanan b. Beroka. For it was taught: [The words,] Then he shall give for the ransom of his life[12] [indicate] the value [of the life] of the person killed. But R. Ishmael the son of R. Johanan b. Beroka interprets it to refer to the value [of the life] of the defendant. Now, is this not the point at issue between them,[13] that the Rabbis consider kofer to constitute a civil liability[14] whereas R. Ishmael the son of R. Johanan b. Beroka holds kofer to be of the nature of propitiation?[15] — R. Papa said that this was not the case. For we may suppose all to agree that kofer is a kind of propitiation, and the point at issue between them here is merely that the Rabbis hold that this propitiatory payment should be fixed by estimating the value [of the life] of the person killed, whereas R. Ishmael the son of R. Johanan b. Beroka maintains that it should be fixed by estimating the value of [the life of] the defendant. What reason have the Rabbis for their view? — The expression 'laying upon' is used in the later context[16] and the same expression 'laying upon' is used in an earlier context;[17] just as there it refers to the plaintiff, so does it here also refer to the plaintiff. But R. Ishmael the son of R. Johanan b. Beroka argued that it is written, 'Then he shall give for the ransom of his life' [referring of course to the defendant]. And the Rabbis? — [They reply,] Yes, it does say 'The ransom of his life', but the amount must be fixed by valuing [the life of] the person killed.

Raba in his conversations with R. Nahman used to praise R. Aha b. Jacob as a great man. He[18] therefore said to him: 'When you come across him, bring him to me.' When he[19] later came to see him he[18] said to him: 'You may put problems to me', whereupon he[19] asked him: 'If an ox of two partners [kill a person] how is the payment of kofer to be made? Shall this one pay kofer and the other one kofer? But one kofer is mentioned by Divine Law and not two kofers! Shall this one [pay] half of the kofer and the other one half of the kofer? A full kofer is commanded by Divine Law and not half of a kofer!' While he[20] was still sitting and pondering over this, he[21] further asked him: We have learnt:[22] 'In the case of debtors for valuations[23] the Sanctuary treasury may demand a pledge, whereas in the case of those who are liable to sin-offerings or for trespass-offerings[24] no pledge can be enforced.' Now, what would be the law in the case of those liable to kofer? [Shall it be said that] since kofer is a kind of propitiation it should be subject to the same ruling as sin-offerings and trespass-offerings,[24] the matter being of serious moment to the defendant so that there is no necessity of enforcing a pledge from him; or [shall it] perhaps [be argued that] since it has to be given to a fellow man it is [considered] a civil liability, and as it does not go to the Temple treasury,[25] it is consequently not taken too seriously by the defendant, for which [reason there may appear to be some] necessity for requiring a pledge? Or, again, since the defendant did not [in this case] himself commit the wrong, for it was his chattel that did the wrong [and committed manslaughter], the whole matter might be considered by him as of no serious moment, and a pledge should therefore be enforced? — He[26] said to him: 'Leave me alone; I am still held prisoner by your first problem [that has not yet been answered by me].'

Our Rabbis taught: If a man borrowed an ox on the assumption that it is in the state of Tam but is subsequently discovered to have already been declared Mu'ad, [if goring is repeated while still with

the borrower] the owner will pay one half of the damages and the borrower will pay [the other] half of the damages. But if it was declared Mu'ad while in the possession of the borrower, and [after it] was returned to the owner [it gored again] , the owner will pay half the damages while the borrower is exempt from any liability whatsoever.

The Master stated: 'If a man borrowed an ox on the assumption that it is in the state of Tam but was subsequently discovered to have already been declared Mu'ad, [if goring is repeated] the owner will pay one half of the damages and the borrower will pay [the other] half of the damages.' But why should the borrower not plead against the owner, 'I wanted to borrow an ox, I did not want to borrow a lion?' — Rab said: we are dealing here with a case where the borrower knew the ox to be a gorer.[27] Still why can he not plead against him: 'I wanted to borrow an ox in the state of Tam but I did not want to borrow an ox that had already been declared Mu'ad'? — [This could not be pleaded] because the owner might argue against him: 'In any case, even had the ox been still Tam, would you not have to pay half-damages? Now, also, you have to pay one half of the damages.' But still why can he not plead against him: 'Had the ox been Tam, damages would have been paid out of its body'?[28] — [This could similarly not be pleaded] because the owner might contend: 'In any case would you not have had to reimburse me [to the full extent of] the value of the ox?'[29] Why can he still not plead against him:

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(1) I.e., R. Jacob.

(2) That an inferior degree of precaution is not sufficient in the case of Tam; v. infra p.259.

(3) Hence the liability to pay half-damages, a guardian being appointed to collect payment out of the body of the Tam.

(4) That a precaution of even an inferior degree suffices with Tam as well as with Mu'ad.

(5) V. p. 223, n. 10.

(6) I.e., Rabina.

(7) [So MS.M. deleting 'he means thus' in cur. edd. of Rashi.]

(8) [By explaining R. Jacob's earlier statement as referring to Mu'ad, he informs us that he shares the views of R. Judah both in regard to the question of precaution and that of the part due from Tam in case of a Mu'ad ox, whilst incidentally we also learn that guardians are appointed in case of Tam etc.]

(9) Between R. Jacob and R. Judah in the second cited Baraitha.

(10) Lit., 'atonement', or 'a sum of money', i.e., compensation paid for manslaughter committed by a beast in lieu of the life of the owner of the beast, as appears from Ex. XXI, 29-30; v. Glos.

(11) And not an ordinary civil obligation like damages.

(12) Ex. XXI, 30

(13) I.e., between R. Ishmael and the other Rabbis his opponents.

(14) The payment must therefore correspond to the value of the loss sustained through the death of the person killed.

(15) For since it was the life of the owner of the beast that should be redeemed the payment must surely correspond to the value of his life.

(16) Ex. XXI, 30.

(17) Ibid. XXI, 22.

(18) R. Nahman.

(19) R. Aha b. Jacob.

(20) V. p. 225, n. 6.

(21) V. ibid., n. 7.

(22) 'Ar. 21a.

(23) I.e. vows of value dealt with in Lev. XXVII, 2-8.

(24) Which are intended to procure atonement and which will consequently not be put off.

(25) [Lit., 'To the (Most) High.' Read with MS.M. 'Since it has to be given to a fellow man and not to the Treasury, it is a civil liability.']

(26) R. Nahman.

(27) Though he did not know that the ox had been declared Mu'ad.

(28) And not from my own estate.

(29) In payment of the ox you borrowed from me.

Talmud - Mas. Baba Kama 40b

'Were the ox to have been Tam I would have admitted [the act of goring] and become exempt from having to pay'?[1] Moreover even according to the view[2] that the payment of half-damages [for goring in the case of Tam] is a civil liability,[3] why should the borrower still not argue: 'Had the ox been Tam I would have caused it to escape to the pasture'?[4] — We must therefore suppose the case to have been one where the Court of law stepped in first and took possession of the ox. But if so why should the owner pay one half of the damages? Why not plead against the borrower: 'You have allowed my ox to fall into the hands of a party against whom I am powerless to bring any legal action'? — [This could not be pleaded] because the borrower might retort to him: 'Were I even to have returned the ox to you, would the Court of Law not have taken it from you?' But why should the owner still not plead against the borrower: 'Were you to have returned it to me, I would have caused it to escape to the pasture'?[5] — [This could not be pleaded] because the borrower might argue against him: 'In any case would the damages not have been paid out of the best [of your general estate]?'[6] This indeed could be effectively argued [by the borrower] where the owner possessed property, but what could be argued in the case where the owner possessed no property? — What therefore the borrower could always argue against the owner is [as follows]: 'Just as I am under a personal obligation to you,[7] so am I under a personal obligation[7] to that party [who is your creditor], in virtue of the rule of R. Nathan, as it was taught,[8] 'R. Nathan says: Whence do we conclude that if A claims a maneh[9] from B, and B [claims a similar sum] from C, the money is collected from C and [directly] handed over to A? From the statement of Scripture:[10] And give it unto him against whom he hath trespassed.[11]

'If it was declared Mu'ad while in the possession of the borrower, and [after it] was returned to the owner [it gored again], the owner will pay half damages while the borrower is exempt from any liability whatsoever.' Does this concluding clause [not appear to prove that a change in the] control [of the ox][12] causes a change [in its status], while the preceding clause [tends to prove that a change in the] control [of the ox][13] causes no change [in its status]? — R. Johanan thereupon said: The contradiction [is obvious]; he who taught one clause certainly did not teach the other clause [in the text of the Baraitha]. Rabbah, however, said: Since the opening clause [tends to prove that a change in the] control[13] does not cause a change [in the status], the concluding clause [may also maintain that a change in the] control does not cause a change [in the status]. For the ruling in the concluding clause could be based on the fact that the owner may argue against the borrower, 'You had no legal right to cause my ox to be declared Mu'ad.'[14] R. Papa, however, said: Since the concluding clause [proves that a change in the] control[15] [of the ox] causes a change [in its status], the opening clause [may also maintain that a change in the] control [of the ox] causes a change [in its status]. For the ruling in the opening clause could be based upon the reason that wherever the ox is put, it bears the name of its owner upon it.[16]

IN THE CASE OF A STADIUM OX [KILLING A PERSON], THE DEATH PENALTY IS NOT IMPOSED [UPON THE OX] etc. The question was raised: What [would have been the position of such an ox] with reference to [its being sacrificed upon] the altar? — Rab said that it would have been eligible, whereas Samuel maintained that it would have been ineligible. Rab considered it eligible since it committed manslaughter only by compulsion, whereas Samuel considered it ineligible since it had been used as an instrument for the commission of a crime.

An objection was raised:[17] [Ye shall bring your offering] of the cattle[18] excludes an animal that has copulated with a woman and an animal that has copulated with a man;[19] even of the herd[18] excludes an animal that has been used as an instrument of idolatry; of the flock[18] excludes an animal that has been set apart for idolatrous purposes; and of the flock excludes an animal that has gored

[and committed manslaughter]. R. Simeon remarked upon this: If it is laid down that an animal that has copulated with a woman[19] [is to be excluded] why was it necessary to lay down that an animal goring [and committing manslaughter is also excluded]?[20] Again, if it is laid down that an animal that gored [and committed manslaughter is to be excluded], why was it necessary to lay down that an animal copulating with a woman [is also excluded]?[20] [The reason is] because there are features in an animal copulating with a woman which are not present in an animal goring [and committing manslaughter], and again there are features in an animal goring [and committing manslaughter] which are not present in the case of an animal copulating with a woman. In the case of an animal copulating with a human being the law makes no distinction between a compulsory[21] and a voluntary act [on the part of the animal],[22] whereas in the case of an animal goring [and committing manslaughter] the law does not place a compulsory act on the same footing as a voluntary one. Again, in the case of an animal goring [and committing manslaughter] there is liability to pay kofer,[23] whereas in the case of an animal copulating with a woman there is no liability to pay kofer.[24] It is on account of these differences that it was necessary to specify both an animal copulating with a woman and an animal goring [and committing manslaughter]. Now, it is here taught that in the case of an animal copulating with a human being the law makes no distinction between a compulsory and a voluntary act, whereas in the case of an animal goring [and committing manslaughter the law] does not place a compulsory act on the same footing as a voluntary one. What rule are we to derive from this? Is it not the rule in respect of eligibility for becoming a sacrifice [upon the altar]?[25] — No; the rule in respect of stoning.[26] This indeed stands also to reason, for if you maintain that it is with reference to the sacrifice that the law does not place a compulsory act on the same footing as a voluntary one in the case of an animal goring, [I would point out that with reference to its eligibility for the altar] the Scripture says nothing explicitly with regard either to a compulsory act or a voluntary act on its part. Does it therefore not [stand to reason that what we are to derive from this is] the rule in respect of stoning?

The Master stated: 'In the case of an animal goring [and committing manslaughter] there is liability to pay kofer, whereas in the case of an animal copulating with a woman there is no liability to pay kofer.' What are the circumstances? It could hardly be that while copulating with a woman it killed her, for what difference could be made between killing by means of a horn and killing by means of copulating? If on the other hand the act of copulating did not result in manslaughter, is the exemption from paying kofer not due to the fact that no killing took place? — Abaye said: We suppose, in fact, that it deals with a case where, by the act of copulating, the animal did not kill the woman, who, however, was brought to the Court of Law and by its orders executed. [In such a case] you might perhaps have thought

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(1) For since the liability of half-damages in the case of Tam is only of a penal nature, confession by the defendant would have annulled the obligation; cf. supra. p. 62.

(2) V. supra p. 64.

(3) And confession would bring no exemption.

(4) And since the payment in the case of Tam is only out of its body he would have evaded it.

(5) V. p.227, n. 7.

(6) For in fact the ox had already been declared Mu'ad in the hands of the owner.

(7) To return the ox.

(8) Pes. 31a; Git. 37a; Keth. 19a, 82a; Kid. 15a.

(9) 100 zuz; cf. Glos.

(10) Num. V,7.

(11) Pointing thus to the last creditor.

(12) I.e. from the hands of the borrower to those of the owner.

(13) I.e, from the hands of the owner to those of the borrower.

(14) And it is because of this fact but not because of the change in the control that the ox reverts to the state of Tam.

(15) V. p. 228, n. 8.

(16) The ox therefore did not, by leaving the owner and coming into the hands of a borrower, undergo any change at all.
(17) From Bek. 41a;Tem. 28a.
(18) Lev. I, 2.
(19) Cf. Lev., XVIII, 23 and ib. XX,15-16.
(20) Since in both cases the animal is to be killed where the crime has been testified to by witnesses.
(21) As in the case of animal copulating with man.
(22) V. p. 229, n. 7.
(23) V. p. 224. n. 6.
(24) See the discussion which follows.
(25) Since this was the point under consideration, which solves the question as to the eligibility of a stadium ox for the altar.
(26) [In respect of which the difference between compulsory goring and voluntary goring is admitted.]

Talmud - Mas. Baba Kama 41a

that the execution amounted to manslaughter on the part of the animal; we are therefore told [that this is not the case]. Raba on the other hand held that [we deal here with a case where] while copulating with a woman the animal did kill her, and as for the objection what difference could be made between killing committed by means of horns and killing committed by means of copulating, [the answer would be that] in the case of Horn the animal purposes to do damage, whereas in this case [of copulating] the intention of the animal is merely for self-gratification. What is the point at issue [between these two explanations]?[1] — [Whether kofer should be paid] in the case of Foot treading upon a child in the premises of the plaintiff [and killing it].[2] According to Abaye there would be liability to pay kofer, whereas according to Raba no payment of kofer would have to be made.[3]

It was taught in accordance with the view of Rab: An ox trained for the arena [that killed a person] is not liable [to be stoned] to death , and is eligible for the altar, for it had been compelled [to commit the manslaughter].

MISHNAH. IF AN OX GORES A MAN AND DEATH RESULTS, IN THE CASE OF MU'AD THERE IS LIABILITY TO PAY KOFER,[4] BUT IN THE CASE OF TAM, THERE IS NO LIABILITY TO PAY KOFER. IN BOTH CASES, HOWEVER, THE OXEN ARE LIABLE [TO BE STONED] TO DEATH.[5] THE SAME [JUDGMENT APPLIES] IN THE CASE OF A [MINOR] SON AND THE SAME [JUDGMENT APPLIES] IN THE CASE OF A [MINOR] DAUGHTER.[6] BUT WHERE THE OX HAS GORED A MANSERVANT OR A MAIDSERVANT [AND DEATH HAS RESULTED], COMPENSATION HAS TO BE GIVEN TO THE AMOUNT OF THIRTY SELA',[7] WHETHER THE KILLED SERVANT WAS WORTH A HUNDRED MANEH[8] OR NOT WORTH ANY MORE THAN ONE DENAR.[9]

GEMARA. But since when it was still the state of Tam it had to be killed [for manslaughter], how could it ever have been possible to declare it Mu'ad? — Rabbah said: We are dealing here with a case where, e.g. it had been estimated that it[10] might have killed three[11] human beings.[12] R. Ashi, however, said that such estimation amount to nothing,[13] and that we are therefore dealing here with a case where the ox gored and endangered the lives of three human beings.[14] R. Zebid [on the other hand] said: [The case is one] where, for instance, it killed three animals.[15] But is an ox [which has been declared] Mu'ad to kill animals also Mu'ad to kill men?[16] — R. Shimi therefore said: [The case is one] where for instance it killed three heathens.[15] But is an ox [which has been declared] Mu'ad to gore persons who are heathens also Mu'ad with reference to those who are Israelites? — R. Simeon b. Lakish therefore said: [The case is one] where, for instance, it killed three persons who had already been afflicted with fatal organic diseases.[15] But is an ox [which has been declared] Mu'ad with reference to persons afflicted with fatal organic diseases also Mu'ad regarding persons in sound

condition? — R. Papa therefore said: [The case is one where] the ox [on the first occasion] killed [a sound person] but escaped to the pasture,[17] killed again [a sound person] but similarly escaped to the pasture. R. Aha the son of R. Ika said: [The case is one] where, for instance, [two witnesses alleged in every case an alibi against the three pairs of witnesses who had testified to the first three occasions of goring,[17] and] it so happened that [after evidence had been given regarding the fourth time of goring the accusation of the alibi with reference to the first three times of goring fell to the ground as] a new pair of witnesses gave evidence of an alibi against the same two witnesses who alleged the alibi [against the three sets of witnesses who had testified to the first three occasions of goring]. Now this explanation would be satisfactory [if the three days required for] the declaration of Mu'ad refer to [the goring of] the ox[18] [so as to make sure that it has an ingrained tendency].[19] But if the three days are needed to warn the owner,[18] why should he not plead [against the plaintiff], 'I was not aware [that the evidence as to the first three gorings was genuine]'? — [This could not be pleaded where] e.g., it was stated [by the very last pair of witnesses] that whenever the ox had [gored and] killed he[20] had been present [and witnessed every occasion]. — Rabina said: [The case of an ox not being stoned after any of the first three fatal gorings might be] where, though recognising the owner of the ox[20] [the witnesses who testified to the first three time of goring] did not at that time recognise the identity of the ox [also].[17] But what could the owner[20] have done [where the ox that gored and killed had not been identified]?[21] — [He is culpable because] they could say to him: 'Knowing that an ox inclined to gore has been among your herd, you ought to have guarded the whole of your herd.'

IN BOTH CASES, HOWEVER, THE OXEN ARE LIABLE [TO BE STONED] TO DEATH. Our Rabbis taught: From the implication of the statement The ox shall be surely stoned[22] would I not have known that it becomes nebelah[23] and that by becoming nebelah it should be forbidden to be consumed for food?[24] Why then was it necessary to state further And his flesh shall not be eaten?[25] Scripture must therefore have intended to tell us that were the ox to be slaughtered after the sentence has been passed upon it, it would be forbidden to be consumed as food. This rule is thus established as regards food; whence could it be derived that it would also be forbidden for any [other] use whatsoever? The text therefore says, But the owner of the ox shall be quit.[25] How does this bear [on the matter in hand]? — Simeon B. Zoma said: [The word 'quit' is used here] as in [the colloquial expression,] So-and-so went out quit from his possessions without having any benefit of them whatsoever.

But how do we know that 'his flesh shall not be eaten' refers to a case where the ox has been slaughtered after the sentence had been passed on it, to indicate that it should be forbidden to be used as food? Why not rather suppose that where it has been slaughtered after the sentence had been passed on it, the ox would be eligible to be used for food, and take the words 'his flesh shall not be eaten' as referring to a case where the ox had already been stoned, and indicating that it should [then] be forbidden for any use whatsoever?[26] Such an implication is even in conformity with the view of R. Abbahu, for R. Abbahu said on behalf of R. Eleazar:[27] Wherever Scripture says either it shall not be eaten[28] or thou shalt not eat[29] or you shall not eat,[30] a prohibition both in respect of food and in respect of any [other] use is implied, unless where Scripture makes an explicit exception, as it did make an exception in the case of a thing that dies of itself, which may be given unto a stranger or sold unto a heathen![24] — It may, however, be argued against this that these words [of R. Abbahu] hold good only where the prohibition both in respect of food and in respect of any [other] use is derived from the one Scriptural text, [viz.,] 'it shall not be eaten', but here where the prohibition in respect of food is derived from '[the ox] shall be surely stoned', should you suggest that [the words] 'his flesh shall not be eaten' were meant as a prohibition for any use, [we may ask] why then did the Divine Law not plainly state 'No benefit shall be derived from it'? Or again, why not merely say, 'It shall not be eaten'? Why [the additional words] 'his flesh', if not to indicate that even where it had been made and prepared to resemble other meat, as where the ox was slaughtered, it should still be forbidden. Mar Zutra strongly demurred to this: Why not [he said] take this prohibition

(1) Given by Abaye and Raba respectively.
(2) Discussed supra p. 134.
(3) Since the intention of the animal was not to do damage.
(4) Ex. XXI, 30.
(5) Ibid. 28-29.
(6) Ibid. 31
(7) Ibid. 32.
(8) V. Glos.
(9) V. Glos.
(10) The ox.
(11) As Mu'ad could be only on the fourth occasion; cf. however Rashi a.l.; also Tosaf. a.l. and supra p. 119.
(12) Whom the ox pursued but who had a very narrow escape from death by running away to a safe place.
(13) Since no actual goring took place.
(14) Who, however, did not die until after the ox gored again on the fourth occasion, and it was on account of this delay that the ox was not stoned previously.
(15) In which case the ox should not be put to death.
(16) Cf. supra p. 4, and p. 205.
(17) The ox thus escaped death.
(18) Cf. supra p.121
(19) As in this case also the first three times of goring took place on three successive days.
(20) I.e. the defendant.
(21) How then could this be called warning?
(22) Ex. XXI. 28.
(23) I.e.. the carcass of an animal not ritually slaughtered.
(24) In accordance with Deut XIV, 21.
(25) V. p. 233, n. 6.
(26) For without this implication it would have followed the general rule that an animal which was not slaughtered in accordance with the requirements of the law could be used for any purpose but food; cf. Deut. XIV, 21 and Lev. VII, 24.
(27) Pes. 21b; Kid. 56b.
(28) Such e.g. as in Ex. XIII,3.
(29) See Lev. XVII, 12 but also Pes. 22a.
(30) Cf. e.g., Gen. XXXII, 33 and Pes. 22a and Hul. 100b.

to refer to a case where the slaughterer prepared[1] a piece of sharp flint and with it slaughtered the ox, which was thus dealt with as if it has been stoned, whereas where it had been slaughtered by means of a knife the prohibition should not apply? — To this it may be replied: Is a knife specifically mentioned in Scripture? Moreover we have learnt:[2] If one slaughters with a hand-sickle, with a flint or with a reed, the act of slaughtering has been properly executed.[2]

And now that the prohibition in respect both of food and of any [other] use has been derived from [the text] 'his flesh shall not be eaten', what additional teaching is afforded to me by [the words] 'The owner of the ox shall be quit'? — [The prohibition of] the use of the skin. For otherwise you might have been inclined to think that it was only the flesh that had been proscribed from being used, whereas the skin should be permitted to be used; we are therefore told [that this is not the case but] that 'the owner of the ox shall be quit.' But what of those Tannaim who employ this [text], 'The owner of the ox shall be quit' for deriving other implications (as we will indeed have to explain infra);[3] whence do they derive the prohibition against the making use of the skin? — They derive it from [the auxiliary term in the Hebrew text] 'eth his flesh', meaning, 'together with that which is joined to its flesh', that is, its skin. This Tanna,[4] however, does not stress [the term] 'eth' for legal

expositions, as it has been taught:[5] Simeon the Imsonite, or as others read, Nehemiah the Imsonite, used to expound [the term] 'eth'[6] wherever it occurred in the Torah. When, however, he reached, Thou shalt fear eth the Lord thy God,[7] he abstained.[8] His disciples said to him: Rabbi, what is to be done with all the expositions of [the term] 'eth' which you have already given?[6] He said to them: Just as I have received reward for the [previous] expositions so have I received reward for the [present] abstention. When R. Akiba, however, came, he taught: 'Thou shalt fear eth the Lord thy God' implies that the scholarly disciples are also to be feared.

Our Rabbis taught: 'But the owner of the ox shall be quit' means, according to the view of R. Eliezer, quit from [paying] half kofer.[9] Said R. Akiba to him: Since any actual liability in the case of the ox itself [being a Tam] is not paid except out of its body,[10] [why cannot the owner say to the plaintiff,] 'Bring it to the Court of Law and be reimbursed out of it' ?[11] R. Eliezer then said to him: 'Do I really appear so [simple] in your eyes that [you should take] my exposition to refer to a case of an ox liable [to be stoned] to death? My exposition referred only to one who killed the human being in the presence of one witness or in the presence of its owner.'[12] In the presence of its owner! Would he not be admitting a penal liability?[13] — R. Eliezer maintains that kofer partakes of a propitiatory character.[14]

Another [Baraitha] teaches: R. Eliezer said to him: Akiba, do I really appear so [simple] in your eyes that [you take] my exposition to refer to an ox liable [to be stoned] to death? My exposition referred only to one who had been intending to kill a beast but [by accident] killed a man, [or where it had been intending to kill] an Egyptian and killed an Israelite, [or] a non-viable child and killed a viable child.[15] Which of the answers, was given first? — R. Kahana in the name of Raba said that [the answer about] intention was given first, whereas R. Tabyomi in the name of Raba said that [the answer about] having killed [the man in the presence of one witness etc.] was given first. R. Kahana, who in the name of Raba said [that the answer about] intention was given first, compared him to a fisherman who had been catching fishes in the sea;

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(1) Lit., 'tested', that is, to see whether it was fit for ritual slaughetering.

(2) Hul. 15b.

(3) V. pp.236-239.

(4) Who needs the whole of the text to imply the prohibition of the skin.

(5) Kid. 57a; Bek. 6b and Pes 22b.

(6) To imply some amplification of the statement actually made.

(7) Deut VI. 13

(8) Being loth to put any being whatsoever on a par with God.

(9) In the case of Tam.

(10) As supra p. 73.

(11) But since the ox is put to death and the carcass including also the skin is proscribed for any use whatsoever, is it not evident that no payment could be made in the case of Tam killing a human being? Why then give a special indication to this effect?

(12) [In which case the ox is not stoned (v. Zeb. 71a: Rashi and Tosaf. s.v. עַל פִּי).]

(13) For the payment of half-damages in the case of Tam is, as decided supra p. 67 of a penal character and as such liability for it could in any case not be established by the admission of the defendant, for which cf. supra p. 62 and infra p. 429.

(14) And liability to it would thus have been established even by the admission of the defendant.

(15) V. supra p. 232. n.11.

Talmud - Mas. Baba Kama 42a

when he caught big ones he took them and when he [subsequently] caught little ones he took them also.[1] But R. Tabyomi, who in the name of Raba said that [the answer about] having killed [the man

in the presence of one witness etc.] was given first, compares him to a fisherman who was catching fishes in the sea and when he caught little ones he took them, but when he [subsequently] caught big ones he threw away the little ones and took the big ones.[2]

Another [Baraitha] teaches: 'And the owner of the ox shall be quit' [implies] according to the statement of R. Jose the Galilean, quit from compensating [in the case of Tam killing] embryos . Said R. Akiba to him: Behold Scripture states: If men strive together and hurt a woman with child etc.,[3] [implying that only] men but not oxen [are liable for killing embryos]![4] Was not this a good question on the part of R. Akiba? — R. 'Ulla the son of R. Idi said: [The implication drawn by R. Jose] is essential. For otherwise it might have occurred to you to apply [R. Akiba's] inference 'Men but not oxen' [exclusively to such] oxen as are comparable to men: Just as men are Mu'ad,[5] so also here the oxen referred to are Mu'ad, whereas in the case of Tam there should be liability. The Divine Law has therefore stated, 'The owner of the ox shall be quit', implying exemption [also in the case of Tam]. Said Raba thereupon: Is the native born to be on the earth and the stranger in the highest heavens?[6] No, said Raba. [The implication drawn by R. Jose] is essential [for this reason, that] you might have been inclined to apply the inference 'Men but not oxen' only to oxen which could be compared to men — just as men are Mu'ad so the oxen here referred to are Mu'ad — and to have extended the exemption to cases of Tam by an argument a fortiori. Therefore the Divine Law purposely states [further], The owner of the ox shall be quit [to indicate that only] in the case of Tam will there be exemption whereas in the case of Mu'ad there will be liability. Said Abaye to him: If that is so, why not argue in the same way in the case of payment for degradation; thus: [Scripture says] 'Men',[7] excluding oxen which could be compared with men: just as the men are Mu'ad so the oxen [thus exempted] must be Mu'ad, and a fortiori exemption is extended to cases of Tam. Thereupon the Divine Law on another occasion purposely states, 'The owner of the ox shall be quit' [to indicate that only] in the case of Tam will there be exemption, whereas in the case of Mu'ad there will be liability [for degradation]? Now you could hardly say that this is indeed the case, for if so why not teach that, 'the owner of the ox shall be quit' [means], according to R. Jose the Galilean, quit from compensating [both in the case of Tam killing] embryos and [in the case of it having caused] degradation?[8] — Abaye and Raba both therefore said: [You might have been inclined to suppose that] in the case of 'men' it is only where no mischief[9] [resulted to the woman] that a liability to pay [for the embryo is imposed] upon them whereas where a mischief [resulted to the woman] no civil liability[10] [is imposed] upon them,[11] but that it is not so with oxen, as in their case even if mischief [results to the woman] a liability to pay is imposed.[12] The Divine Law has therefore on another occasion purposely stated, The owner of the ox shall be quit, to indicate exemption [in all cases]. R. Adda b. Ahabah demurred to this, saying: Does then the matter of civil liability[13] depend upon the non-occurrence of mischief to the woman? Does this matter not depend upon intention [of the defendant]?[14] — R. Adda b. Ahabah therefore said: [You might have been inclined to think thus:] In the case of men where their purpose was to kill one another, even if mischief results to a woman, a civil liability[13] will be imposed, whereas where they purposed to kill the woman herself [who was in fact killed], no civil liability[13] would be imposed. In the case of oxen, however, even where their purpose was to kill the woman [who is indeed killed by them] a civil liability should be imposed for the embryo. [To prevent your reasoning thus] the Divine Law on another occasion purposely states, 'The owner of the ox shall be quit' to indicate exemption [altogether in the case of oxen]. And so also R. Haggai upon returning from the South, came [to the College] and brought the teaching [of a Baraitha] with him stating the case in accordance with the interpretation given by R. Adda b. Ahabab.

Another [Baraitha] teaches: 'The owner of the ox shall be quit' [implies], according to the statement of R. Akiba, quit from compensating for [the killing of] a slave.[15]

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(1) So also here where the better answer was given first and the inferior one later. The answer about intention is considered the better one.

(2) Here also when R. Eliezer subsequently found a better answer he withdrew the answer which he had given first.
(3) Ex. XXI, 22.
(4) Why then a special implication to exempt Tam?
(5) V. supra p. 68.
(6) I.e., how would it be possible to have exemption in the case of Mu'ad and liability in the case of Tam?
(7) Deut. XXV, 11.
(8) But Mu'ad is liable.
(9) I.e., death.
(10) For the embryo.
(11) As all civil claims would merge in the capital charge; cf. supra p. 113 and infra p. 427, n. 2.
(12) For the civil liability of the owner should not be affected by the ox having to be put to death.
(13) V. p. 238, n. 4.
(14) For where he intended to kill another person and it was only by accident that the woman and her embryo were killed, there would, according to R. Adda b. Ahabah, be no capital charge but a civil liability; cf. for such a view infra p.252 and Sanh. 79a.
(15) V. supra p. 232.

Talmud - Mas. Baba Kama 42b

But why should R. Akiba not argue against himself,[1] Since any actual liability in the case of the ox itself [being a Tam] is not paid except out of its body [why should not the owner say to the plaintiff] 'Bring it to the Court of Law and be reimbursed out of it'? — R. Samuel son of R. Isaac thereupon said: [This creates no difficulty; the case is one] where the owner of the ox slaughtered it before [the passing of the sentence].[2] You might suggest in that case that payment should be made out of the flesh; we are therefore told that since the ox [as such] had been liable [to be stoned] to death, no payment could be made out of it even where it was slaughtered [before the passing of the sentence]. But if so, why [did not R. Akiba think of this reply to the objection he made] to R. Eliezer[3] also, viz. that the owner of the ox slaughters it beforehand? — He could indeed have done this, but he thought that R. Eliezer[3] also probably had another explanation better than this which he would tell him. But why did R. Eliezer [himself] not answer him that he referred to a case where the owner slaughtered the ox beforehand? — He could answer: It was only there where the ox aimed at killing a beast but [by accident] killed a man, in which case it is not liable [to be stoned] to death, and you might therefore have thought there was a liability [for kofer], that there was a need for Scripture to indicate that there is [in fact] no liability. But here where the ox had originally been liable [to be stoned] to death, no Scriptural indication should be needed [to exempt from liability] even where the ox has meanwhile been slaughtered.[4] But should not the same argument be employed also regarding the exposition of R. Akiba?[5] — R. Assi therefore said: The explanation of this matter was delivered to me from the mouth of a great man, to wit, R. Jose b. Hanina [who said]: You might be inclined to think that since R. Akiba said, 'Even in the case of Tam injuring Man the payment of the difference must be in full',[6] the compensation for killing a slave should also be paid out of the best [of the general estate]. Divine Law therefore states, The owner of the ox shall be quit, [implying that this is not the case]. Said R. Zera to R. Assi: Did R. Akiba himself not qualify this liability? For it was taught:[7] R. Akiba says, As it might be thought that this full payment[8] has to be made out of the best [of the general estate], it is therefore further stated, According to this judgment shall it be done unto him,[9] [to emphasize that] payment is to be made out of its body, but no payment is to be made out of any other source whatsoever? — Raba therefore [gave a different explanation] saying: The implication is still essential, for otherwise you might have thought that since[10] I have to be more strict in the case of [killing] a slave than in the case of a freeman — for in the case of a freeman worth one sela' the payment[11] will be one sela', and of one worth thirty the payment will be thirty, whereas in the case of a slave even where he was worth one sela' the payment will have to be thirty[10] — there should be compensation for [the killing of] a slave[12] even out of the best of the estate,[13] the Divine Law therefore states, ' The owner of the ox should be quit' [implying that this is

not the case]. It was taught in accordance with [the explanation given by] Raba: 'The owner of the ox should be quit' [implies], according to the statement of R. Akiba, quit from compensation for [the killing of] a slave. But is this not strictly logical?[14] For since there is liability [to pay compensation] for [the killing of] a slave and there is liability [to pay compensation] for [the killing of] a freeman;[11] just as where there is liability [to pay compensation] for [the killing of] a freeman a distinction has been made by you between Tam and Mu'ad,[15] why then in the case where compensation has to be paid for [the killing of] a slave should you similarly not make a distinction between Tam and Mu'ad? This conclusion could moreover be arrived at by the a fortiori argument: If in the case of [killing] a freeman where the compensation[11] is for the whole of his value a distinction has been made by you between Tam and Mu'ad,[15] then in the case of [killing] a slave where the compensation amounts only to thirty [sela'] should it not stand to reason that a distinction must be made by us between Tam and Mu'ad? — Not so, because (on the other hand] I am[16] more strict in the case of [killing] a slave than in that of [killing] a freeman. For in the case of a freeman, where he was worth one sela' the compensation will be one sela',[17] [where he was worth] thirty the compensation will be thirty, whereas in the case of a slave even where he was worth one sela' the compensation has to be thirty.[16] This might have inclined us to think that [even in the case of Tam] there should be liability. It was therefore [further stated], The owner of the ox shall be quit, implying quit from compensation for [the killing of] a slave.

Our Rabbis taught: [It is written,] But it hath killed a man or a woman.[18] R. Akiba says: What does this clause come to teach us? If that there is liability for the goring to death of a woman as of a man, has it not already been stated, if an ox gore a man or a woman?[19] It must therefore have intended to put the woman on the same footing as the man: just as in the case of a man the compensation[17] will go to his heirs, so also in the case of a woman the compensation will go to her heirs.[20] Did R. Akiba thereby mean [to put forward the view] that the husband was not entitled to inherit her? But has it not been taught: 'And he shall inherit her;[21] this shows that the husband is entitled to inherit his wife. This is the view of R. Akiba'?[22] — Resh Lakish therefore said: R. Akiba[23] stated this[24] only with reference to kofer which, since it has not to be paid save after [the] death [of the victim], is regarded as property in anticipation,[25] and a husband is not entitled to inherit property in anticipation as he does property in actual possession.[26] But why [should kofer not be paid except after death]?[27] — Scripture says: But it hath killed a man or a woman; the ox shall be stoned, and its owner also shall be put to death. If there be laid on him a ransom.[28] But did R. Akiba not hold that damages [for injury also are not inherited by the husband]? Has it not been taught:[29] If one hurt a woman so that her embryo departed from her, compensation for Depreciation and for Pain should be given to the woman, compensation for the value of the embryo to the husband.[30] If the husband is not [alive], his due should be given to his heirs, and if the woman is not [alive at the time of payment] her due should be given to her heirs. [Hence] if the woman was a slave that had been emancipated[31]

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(1) Exactly as he argued against R. Eliezer, supra p.236.

(2) In which case the flesh could legitimately be used as food; cf. infra p. 255.

(3) Supra p. 236.

(4) This was the reason why R. Eliezer answered as he did, and not as suggested here that the ox was slaughtered before the sentence had been passed on it.

(5) And if so, the original problem will recur: Why should R. Akiba not argue against himself as he did against R. Eliezer, supra p. 236.

(6) Supra p. 179.

(7) Cf. supra p. 180.

(8) In the case of Tam injuring a human being.

(9) Ex. XXI, 31.

(10) In the case of Mu'ad.

(11) I.e. kofer.

(12) In the case of Tam.
(13) There can thus no more arise the question, 'Since any actual liability in the case of the ox itself (being Tam) is not paid except out of its body, (why should not the owner say to the plaintiff) "Bring it to the Court and be reimbursed out of it"?' Cf. supra p. 236.
(14) Wherefore then the special inference from the verse?
(15) That in the case of Mu'ad, kofer is paid, but not in the case of Tam.
(16) In the case of Mu'ad.
(17) V. p. 241, n. 3.
(18) Ex. XXI, 29.
(19) Ibid. 28.
(20) Not to her husband.
(21) Num. XXVII, 11.
(22) B.B. 111b.
(23) [So MS. M., v. Rashi.]
(24) That the husband does not inherit the compensation due to the woman.
(25) As at the last moment of her life the liability for kofer was neither a chose in possession nor even a chose in action
(26) Cf. B. B. 113a and 125b.
(27) Why not say that as soon as the blow was ascertained to have been fatal the payment of kofer should be enforced?
(28) Implying that the payment of money as kofer is, like the killing of the ox, not enforced before the victim has actually died.
(29) Infra p. 280.
(30) V. Ex. XXI, 22.
(31) And the husband was of the same category.

Talmud - Mas. Baba Kama 43a

or a proselytess the defendant would be the first to acquire title [to all the claims and thus be released from any liability]? — Rabbah thereupon said: We deal [in this latter case] with a divorced woman.[1] So also said R. Nahman [that we deal here] with a divorced woman. [But] I might [here] object: If she was divorced, why should she not also share in the compensation for the value of the embryo?[2] — R. Papa thereupon said: The Torah awarded the value of embryos to the husband even where the cohabitation had taken place not in a married state, the reason being that Scripture says: According as the cohabitator[3] of the woman will lay upon him.[4]

But why should not Rabbah refer the ruling[5] to the case where the payment of the compensation had been collected in money, and R. Nahman to the case where it had been collected out of land? For did Rabbah not say[6] that where an outstanding debt had been collected[7] out of land, the first-born son would take in it [a double portion],[8] but where it had been collected in money the first-born son would not [take in it a double portion]?[9] Or again did R. Nahman not say[10] that [on the contrary] where the debt had been collected in money the first-born would take [in it a double portion],[11] but where it has been collected out of land, the first-born son would not [take in it a double portion]?[12] — It could, however, be answered that these statements were made on the basis of the despatch of the Western Sages according to the view of the Rabbis,[13] whereas in the case here [where Rabbah and R. Nahman interpreted it to have referred to a divorced woman] they were stating the law as maintained by Rabbi.[14]

R. Simeon b. Lakish said: Where an ox killed a slave without purposing to do so, there would be exemption from the payment of thirty shekels, since it is written, He shall give unto their master thirty shekels of silver, and the ox shall be stoned,[15] [implying that] where the ox would be liable to be stoned the owner is to pay thirty shekels, but where the ox would not be liable to be stoned[16] the owner need not pay thirty shekels. Rabbah [similarly] said: Where an ox killed a freeman without purposing to do so there would be exemption from kofer, for it is written[17] The ox should be stoned

and its owner also shall be put to death. If there be laid on him a ransom, [implying that] where the ox has to be stoned[16] the owner has not to pay kofer. Abaye raised an objection to this [from the following Mishnah]:[18] If a man says: 'My ox has killed so-and-so' or 'has killed so-and-so's' ox, [in either case] the defendant has to pay in virtue of his own admission. Now, does the payment [in the former case][19] not mean kofer [though the ox would not become liable to be stoned through the owner's admission]?[20] — No; [it means for] the actual value.[21] If [it means payment for] the pecuniary loss, read the concluding clause: [If he says], 'My ox has killed so-and-so's slave,' the defendant is not liable to pay in virtue of his own admission.[22] Now, if [the payment referred to in the first clause was meant for] the pecuniary loss, why is there no liability [to pay for the pecuniary loss in the case of a slave]?[23] — He, however, said to him: I could have answered you that the opening clause refers to the actual value[24] [of the killed person],[25] whereas the concluding clause refers to the fixed fine [of thirty shekels]. As, however, I have no intention to answer you by means of forced interpretations, [I will say that] both clauses do in fact refer to the actual value [of the killed person].

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(1) For otherwise the husband would inherit her claim for damages.

(2) Since she was his wife no more.

(3) The Hebrew term בעל ('husband' E.V.) is thus understood.

(4) Ex. XXI, 22.

(5) That the damages will be paid to her heirs and not to the husband.

(6) B.B. l24b.

(7) After the death of a creditor.

(8) In accordance with Deut. XXI. 17.

(9) Because the debt collected after the death of the father was not a chose in possession in the lifetime of the creditor, and the first-born takes a double portion only 'of all that' his father 'hath' at the time of death. A husband is in a similar position, as he too has the right to inherit only chooses in possession at the lifetime of his wife.

(10) V. p. 243, n. 10.

(11) For the money collected is considered in the eye of the law as the money which was lent to the father of the debtor.

(12) V. p. 243, n. 13.

(13) V. p. 243, n. 10.

(14) That debts collected after the death of a creditor whether in species or out of land will be subject to the law of double portion in the case of a first-born and similarly to the law of a husband inheriting his wife. v. B.B. (Sonc. ed.) p. 518.

(15) V. Ex. XXI, 32.

(16) As e.g., where it killed a human being by accident.

(17) Ex. XXI, 29.

(18) Keth. III, 9.

(19) Where the defendant admitted that his ox killed a man.

(20) Without the corroboration of witnesses; v. supra p. 236, n. 8.

(21) I.e., the pecuniary loss sustained through the man's death. [It is distinguished from kofer in that the payment of the latter is an act of atonement to be compounded in no circumstance; v. Tosaf. s. v. מאי.]

(22) As the payment of thirty shekels in the case of a slave is of the nature of a penalty which could not be inflicted on the strength of the word of mouth of the defendant.

(23) Does this not prove that in the case of manslaughter committed by cattle no payment for the pecuniary loss would have to be made if you except kofer in the case of a freeman, and the thirty shekels in the case of a slave?

(24) I.e. the pecuniary loss sustained through his death.

(25) Which has to be paid even where kofer could for some reason or other not be imposed upon the defendant.

Talmud - Mas. Baba Kama 43b

But [it is only in the case of] a freeman where kofer may sometimes be paid on the strength of the defendant's own admission — as where witnesses appeared and testified to the ox having killed [a

freeman] without, however, knowing whether it was still Tam or already Mu'ad and the owner admits it to have been Mu'ad, in which case kofer would be paid on the strength of his own admission[1] — that [we say] where witnesses are not at all available payment will be made for the actual value [of the loss]. [Whereas] in the case of a slave where the fixed fine could never be paid through the defendant's own admission — since even where witnesses appear and testify to the ox having killed [a slave], without knowing whether it had still been Tam or already Mu'ad, and the owner admits that it had already been Mu'ad, no fine would be paid — [we say] where no witnesses at all are available there will be no payment even for the amount of the value [of the loss].

R. Samuel son of R. Isaac raised an objection [from the following teaching]: Wherever there is liability in the case of a freeman,[2] there is liability in the case of a slave both for kofer and for stoning. Now, how could kofer ever be [paid] in the case of a slave?[3] Does it therefore not surely mean the payment for the amount of the value [of the loss]?[4] — Some say that he raised the objection and he himself answered it, others say that Rabbah said to him: What is meant is as follows: Wherever there is liability for kofer [i.e.] in the case of a freeman killed intentionally [by the ox] as testified by witnesses, there is [a similar] liability for the fine in the case of a slave, and wherever there is liability for the amount of the value [of the loss, i.e.,] in the case of a freeman killed unintentionally, as testified by witnesses, there is also liability for the amount of the value [of the loss] in the case of a slave killed unintentionally, as testified by witnesses.[5] Raba, however, said to him: If so,[6] why in the case of Fire unintentionally[7] burning a human being [to death], as testified by witnesses, should there also not be liability to pay the amount of the value [of the loss]? And how did Raba know that no payment would be made [in this case]? Shall we say from the following Mishnah: '[Where fire was set to a barn and] a goat had been bound to it and a slave was loose near by it and all were burnt [with the barn] there would be liability.[8] But where the slave had been chained to it, and the goat loose near by it and all were burnt with it there would be no liability.'[9] [But how could Raba prove his point from this case here?][10] Did Resh Lakish not state that this case here should be explained as one where e.g., the defendant put the actual fire upon the body of the slave so that [no other[11] but] the major punishment had to be inflicted? But [it may perhaps be suggested that Raba derived his point] from the following [Baraitha]: For it has been taught: 'The excess in [the liability] for Fire over [that for] Pit is that Fire is apt to consume both things fit for it and things unfit for it, whereas this is not so in the case of Pit.'[12] It is not, however, said that 'in the case of Fire [where a human being has been burnt to death] unintentionally there is liability to pay for the pecuniary loss, whereas it is not so in Pit'.[13] But might [the Baraitha] not perhaps have stated [some points] and omitted [others]? — It must therefore have been that Raba himself was questioning whether in the case of Fire [burning a human being] unintentionally there would be payment for the amount of the value [of the loss] or whether there would be none. Should we say that it was only in the case of cattle — where if the manslaughter was unintentional kofer would be paid — that for unintentional manslaughter the amount of the value [of the loss] is to he paid — whereas in the case of Fire — where for intentional manslaughter no kofer would be paid[14] — there should be no payment of the amount of the value [of the loss] for unintentional manslaughter? Or [shall we] perhaps [rather say that] since in the case of Cattle [killing a person] unintentionally where no kofer is paid, the value [of the loss] is nevertheless paid, so should it also be with Fire where no kofer would be paid for intentional manslaughter, that nevertheless the value [of the loss] caused by unintentional manslaughter should be paid? But as no information was available to us [on this matter], it remained undecided.

When R. Dimi arrived [from Palestine] he said on behalf of R. Johanan: [The word] kofer [I understand]. What is taught by [the expression] If kofer?[15] It implies the inclusion of [the payment of] kofer in cases where there was no intention[16] [to kill] just as kofer [is paid] where there was intention. Abaye however said to him: If so , the same could now surely also be argued in the case of a slave: viz.: What is taught by [the expression] If a slave?[15] [It implies] that a slave killed unintentionally is subject to the same law as a slave, killed intentionally? If that is so, why did Resh

Lakish say that where an ox killed a slave unintentionally there would be exemption from the thirty shekels? He replied: Would you confute one person's view by citing another?[17]

When Rabin arrived [from Palestine] he said on behalf of R. Johanan: [The word] a slaves [I understand], What is taught by [the expression] If a slave? [It implied] that a slave [killed] unintentionally is subject to the same law as a slave [killed] intentionally. Now as regards Resh Lakish [who was of a different view in this respect] shall we also assume that just as he drew no lesson from the distinction between 'a slave' and 'if a slave', so he drew no lesson from the distinction between 'kofer' and 'if kofer'? — I may say that this was not so. From the distinction between 'a slave' and 'if a slave'[18] he did not draw a lesson, whereas from the distinction between 'kofer' and 'if kofer' he did draw a lesson. Why this difference? The expressions 'a slave' and 'if a slave' do not occur in the context dealing with payment,[19] whereas the expressions 'kofer' and 'if kofer' do occur in a context dealing with payment.

THE SAME JUDGMENT APPLIES IN THE CASE OF A SON OR IN THAT OF A DAUGHTER. Our Rabbis taught: [The text] Whether it have gored a son or have gored a daughter[20] [implies] that there is liability in the case of little ones just as in that of grown-ups. But surely this is only logical! For since there is a liability in the case of Man killing man there is similarly a liability in the case of Cattle killing man, just as where Man has killed man no distinction is made between [the victims being] little ones or grown-ups,[21] so also where Cattle killed man no distinction should be made between [the victims being] little ones or grown-ups? Moreover there is an a fortiori argument [to the same effect]; for if in the case of Man killing man where the law did no make [murderers who are] minors liable as [it did make] grown-ups,[22] it nevertheless imposed there liability for little ones as for grown-ups,

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(1) As the ox in this case would be subject to be stoned, [and where the ox is stoned, the owner pays kofer].

(2) I.e. kofer.

(3) V. p. 244, n. 6.

(4) [This shows that pecuniary loss is paid in the case of a slave on his own admission even as in the case of a freeman.]

(5) [Though in the case of self-admission there will still be a distinction between the death of a freeman and that of a slave (by an ox) in regard to the payment of pecuniary loss.]

(6) [That there is payment of pecuniary loss, even where kofer is not payable.]

(7) [If intentionally, the civil liability would merge with the graver capital charge.]

(8) For the barn and the goat but not for the slave, as he should have run away.

(9) Infra 61b.

(10) By not extending the ruling in the second clause to refer also to the barn but confining it to the goat which should have run away, and to the slave, on the alleged ground that no compensation should be paid for the value of the loss occasioned by fire burning a human being to death.

(11) The ruling of exemption in the second clause is thus extended even to the barn.

(12) Supra p. 38.

(13) For which see supra p. 18 and infra 50b.

(14) For it merges with the graver capital charge.

(15) Ex. XXI, 30; for it is surely neither an optional nor a conditional liability.

(16) ['If' אם implying a case where kofer is imposed, though the ox is not stoned, i.e. where there was no intention (contrary to the view of Rabbah, supra); v. Malbim on Ex. XXI, 30.]

(17) As R. Johanan and Resh Lakish might perhaps have differed on this point.

(18) In Ex. XXI, 32.

(19) It could thus hardly have any bearing on the law of payment.

(20) Ibid. 31.

(21) Cf. Nid. 44a.

(22) See Lev. XXIV, 17 and Mek. on Ex. XXI, 12.

now in the case of Cattle killing man where the law made small cattle [liable] as [it did make] big cattle,[1] should it not stand to reason that there is liability for little ones as there is for grown-ups?[2] — No, [for it could have been argued that] if you stated this ruling in the case of Man killing man it was [perhaps] because [where Man injured man] there was liability for the four [additional] items,[3] but how would you be able to prove the same ruling in the case of Cattle where there could be no liability for the four [additional] items? Hence it is further laid down: Whether it have gored a son or have gored a daughter to impose liability for little ones as for grown-ups. So far I know this only in the case of Mu'ad.[4] Whence do I know it in the case of Tam? — We infer it by analogy: Since there is liability for killing Man or Woman and there is similarly liability for killing Son or Daughter, just as regarding the liability for Man or Woman you made no discrimination between Tam and Mu'ad,[5] so also regarding the liability for Son or Daughter you should make no discrimination between Tam and Mu'ad. Moreover there is an a fortiori argument [to the same effect]; for if in the case of Man and Woman who are in a disadvantageous position when damages had been done by them,[6] you have nevertheless made there no discrimination between Tam and Mu'ad, in the case of Son and Daughter who are in an advantageous position when damage has Been done by them,[7] should it not stand to reason that you should make no discrimination between Tam and Mu'ad? — [No,] you cannot argue thus. Can we draw an analogy from a more serious to a lighter case so as to be more severe [with regard to the latter]? If[8] the law is strict with Mu'ad which is a more serious case, how can you argue that it ought to be [equally] strict with Tam which is a lighter case? Moreover, [you could also argue that] the case of Man and Woman [is graver] since they are under obligation to observe the commandments [of the Law],[9] but how draw therefrom an analogy to the case of Son and Daughter seeing that they are exempt from the commandments?[10] It was therefore necessary to state [further]: Whether it have gored a son, or have gored a daughter; [the repetition of the word 'gored' indicating that no discrimination should be made between] goring in the case of Tam and goring in the case of Mu'ad, between goring in the case of killing and goring in the case of mere injury.

MISHNAH. IF AN OX BY RUBBING ITSELF AGAINST A WALL CAUSED IT TO FALL UPON A PERSON [AND KILL HIM], OR IF AN OX WHILE TRYING TO KILL A BEAST [BY ACCIDENT] KILLED A HUMAN BEING, OR WHILE AIMING AT A HEATHEN[11] KILLED AN ISRAELITE, OR WHILE AIMING AT NON-VIABLE INFANTS KILLED A VIABLE CHILD, THERE IS NO LIABILITY.

GEMARA. Samuel said: There is exemption [for the ox in these cases] only from [the penalty of being stoned to] death, but there is lability [for the owner] to pay kofer.[12] Rab, however, said: There is exemption here from both liabilities.[13] But why [kofer]?[14] Was not the ox Tam?[15] — Just as [in an analogous case] Rab said that the ox was Mu'ad to fall upon human beings in pits,[16] so also [in this case we say that] the ox was Mu'ad to rub itself against walls [which thus fell] upon human beings. But if so, why should the ox not be liable to [be stoned to] death? It is correct in this other case where we can explain that the ox was looking at some vegetables and so came to fall [into a pit],[17] but here what ground could we give [for assuming otherwise than an intention to kill on the part of the ox]? — Here also [we may suppose that] the ox had been rubbing itself against the wall for its own gratification.[17] But how can we know this?[18] — [By noticing that] even after the wall had fallen the ox was still rubbing itself against it.

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(1) Cf. infra p. 380, and 'Ed. VI, 1.

(2) Why then was it necessary for Scripture to make this explicit in Ex. XXI, 31?

(3) For which cf. supra p. 12.

(4) As verse 31 follows 29 and 30 which deal with Mu'ad.

(5) As clearly seen in verses 29 and 30.

(6) I.e. they are liable to pay for it. Cf. supra p. 63 but also infra p. 502.

(7) For which they are not liable to pay; see infra p. 502.
(8) [Some texts omit, 'If . . . . Moreover,' v. D.S. a.l.]
(9) Cf. however, supra p. 64, but also Kid. I, 7.
(10) So long as they are minors and have not reached puberty for which cf. Nid. 52a.
(11) Cf. supra p. 211, n. 6.
(12) As also maintained by R. Johanan, supra p. 248, and still earlier by R. Eliezer, supra p. 237.
(13) For the reason v. supra 244
(14) In the case dealt with first in the Mishnah.
(15) In killing a human being by rubbing itself against a wall and thus causing it to fall. In the case of Tam no kofer is paid; see Ex. XXI, 28.
(16) Infra p. 274.
(17) And as intention to kill was lacking, no death penalty could be attached.
(18) Seeing that the ox was Mu'ad to rub itself against walls.

Talmud - Mas. Baba Kama 44b

But granted all this, is this manner of damage[1] not on a par with that done by Pebbles[2] [where there would be no liability for kofer]?[3] — R. Mari the son of R. Kahana thereupon said: [We speak of] a wall gradually brought down by the constant pushing of the ox.[4]

It has been taught in accordance with Samuel and in refutation of Rab: There are cases where the liability is both for [stoning to] death and kofer: there are other cases, where there is liability for kofer but exemption from [stoning to] death; there are again [other] cases where there is liability [for stoning to] death but exemption from kofer; and there are still other cases where there is exemption both from [stoning to] death and from kofer. How so? In the case of Mu'ad [killing a person] intentionally, there is liability both for [stoning to] death and for kofer.[5] In the case of Mu'ad [killing a person] unintentionally there is liability for kofer but exemption from [stoning to] death. In the case of Tam [killing a person] intentionally there is liability [for stoning to] death but exemption from kofer. In the case of Tam [killing a person] unintentionally, there is exemption from both penalties. Whereas in case of injury [caused by the ox] unintentionally, R. Judah says there is liability to pay [damages], but R. Simeon says there is no liability to pay.[6] What is the reason of R. Judah? — He derives [the law of damages from] that of kofer: just as for kofer there is liability even where there was no intention [to kill], so also for damages for injuries there is liability even where there was no intention [to injure]. R. Simeon, on the other hand, derived [the law of damages] from that of the killing of the ox: just as the stoning of the ox is not required where there was no intention [to kill], so also damages are not required where there was no intention [to injure]. But why should R. Judah also not derive [the ruling in this case] from [the law applying to the] killing [of the ox]? It is proper to derive [a ruling regarding] payment from [another ruling regarding] payment, but it is not proper to derive [a ruling regarding] payment from [a ruling regarding] killing. Why then should R. Simeon also not derive [the ruling in this case] from [the law applying to] kofer? — It is proper to derive a liability regarding the ox[7] from another liability that similarly concerns the ox,[8] thus excluding kofer which is a liability that concerns only the owner.[9]

OR IF THE OX WHILE TRYING TO KILL A BEAST [BY ACCIDENT] KILLED A HUMAN BEING . . . THERE IS NO LIABILITY. Where, however, the ox had aimed at killing one human being and [by accident] killed another human being, there would be liability. [This implication of] the Mishnah is not in accordance with R. Simeon. For it has been taught: R. Simeon says: Even where [the ox] aimed at killing one person and [by accident] killed another person there would be no liability. What was the reason of R. Simeon? — Scripture states: The ox shall be stoned and its owner also shall be put to death,[10] [implying that only] in those cases in which the owner would be subject to be put to death [were he to have committed murder], the ox also would be subject to be put to death. Just as therefore in the case of the owner the liability arises only where he was aiming at the

particular person [who was actually killed], so also in the case of the ox the liability will arise only where it was aiming at the particular person [who was actually killed]. But whence do we know that this is so even in the case of the owner himself?[11] — Scripture States: And lie in wait for him and rise up against him[12] [which indicates that he is not liable] unless he bad been aiming at the particular person [whom he killed]. What then do the Rabbis[13] make of [the words,] 'And lie in wait'? — It was said at the School of R. Jannai: They except [on the strength of them a manslaughter committed by] a stone being thrown into a crowd.[14] How is this to be understood? If you say that there were [in the crowd] nine heathens and one Israelite, why not except the case on the ground that the majority [in the crowd] were persons who were heathens?[15] And even where they were half and half, does not an accused in a criminal charge have the benefit of the doubt? — The case is one where there were nine Israelites and one heathen. For though in this case the majority [in the crowd] consisted of Israelites, still since there was among them one heathen he was an essential part [of the group], and essential part[16] is reckoned as equivalent to half, and where there is a doubt in a criminal charge the accused has the benefit.

MISHNAH. WHERE AN OX OF A WOMAN, OR AN OX OF [MINOR] ORPHANS, OR AN OX OF A GUARDIAN, OR AN OX OF THE WILDERNESS, OR AN OX OF THE SANCTUARY, OR AN OX OF A PROSELYTE WHO DIED WITHOUT [LEGAL] HEIRS,[17] [HAS KILLED A PERSON], IT IS LIABLE TO [BE STONED TO] DEATH. R. JUDAH SAYS: IN THE CASE OF AN OX OF THE WILDERNESS, AN OX OF THE SANCTUARY AND AN OX OF A PROSELYTE WHO DIED [WITHOUT HEIRS] THERE WOULD BE EXEMPTION FROM [STONING TO] DEATH SINCE THESE HAVE NO [PRIVATE] OWNERS.

GEMARA. Our Rabbis taught: [The word] ox occurs seven times [in the section dealing with Cattle killing man][18] to include the ox of a woman, the ox of [minor] orphans, the ox of a guardian, the ox of the wilderness, the ox of the Sanctuary and the ox of a proselyte who died without [legal] heirs. R. Judah, however, says: An ox of the wilderness, an ox of the Sanctuary and an ox of a proselyte who died without heirs are exempt from [stoning to] death since these have no [private] owners.

R. Huna said: The exemption laid down By R. Judah extends even to the case where the ox gored and was only subsequently consecrated to the Temple, or where the ox gored and was only subsequently abandoned. Whence do we know this? — From the fact that R. Judah specified both an ox of the wilderness and an ox of a proselyte who died without heirs. Now what actually is 'an ox of a proselyte who died'? Surely since he left no heirs the ox remained ownerless, and this [category] would include equally an ox of the wilderness and an ox of the proselyte who died without heirs? We must suppose then that what he intended to tell us [in mentioning both] was that even where the ox gored but was subsequently consecrated, or where the ox gored but was subsequently abandoned, [the exemption would still apply] and this may be taken as proved. It has also been taught to the same effect:[19] R. Judah went even further, saying: Even if after having gored, the ox was consecrated or after having gored it became ownerless, there is exemption, as it has been said, And it hath been testified to his owner and he hath not kept him in, but that he hath killed a man or a woman, the ox shall be stoned.[20] This applies only when no change of status has taken place between the manslaughter and the appearance before the Court.[21] Does not the final verdict also need to comply with this same condition? Does not the same text, The ox shall be stoned,[22] [apply also to] the final verdict? — Read therefore: That is so only when no change in status has taken place between the manslaughter, the appearance before the Court, and the final verdict.

MISHNAH. IF WHILE AN OX [SENTENCED TO DEATH] IS BEING TAKEN OUT TO BE STONED ITS OWNER DECLARES IT SACRED, IT DOES NOT BECOME SACRED;[23] IF HE SLAUGHTERS IT, ITS FLESH IS FORBIDDEN [FOR ANY USE].[23] IF, HOWEVER. BEFORE THE SENTENCE HAS BEEN PRONOUNCED THE OWNER CONSECRATES IT, IT IS

CONSECRATED, AND IF HE SLAUGHTERS IT, ITS FLESH IS PERMITTED [FOR FOOD].

IF THE OWNER HANDS OVER HIS CATTLE TO AN UNPAID BAILEE OR TO A BORROWER, TO A PAID BAILEE OR TO A HIRER, THEY ENTER INTO ALL LIABILITIES IN LIEU OF THE OWNER: IN THE CASE OF MU'AD THE PAYMENT WOULD HAVE TO BE IN FULL, WHEREAS IN THE CASE OF TAM HALF DAMAGES WOULD BE PAID.

GEMARA. Our Rabbis taught: If an ox has killed [a person], and before its judgment is pronounced its owner sells it,

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(1) Being done not by the body of the ox but by something set in motion by it.

(2) Dealt with supra p. 79.

(3) [Kofer is imposed only where death was caused by the body of the ox even as is the case with 'goring'.]

(4) And was thus the whole time as it were a part of the body of the ox.

(5) Ex. XXI, 29-30.

(6) Cf. Tosef. B.K. IV.

(7) I.e. a liability to make good the damage done by the ox.

(8) Such as the death of the ox for the manslaughter it committed.

(9) As kofer is the ransom of his life.

(10) Ex. XXI, 29.

(11) Committing murder.

(12) Deut. XIX, II.

(13) Who differ from R. Simeon on this point. v. Sanh. 79a.

(14) And a person was killed.

(15) For in matters of judgment the principle of 'majority' is as a rule the deciding factor. [That does not mean to imply that the killing of a heathen was no murder. The Mekilta in Ex. XXI, 12 states explicitly that the crime is equally condemnable irrespective of the religion and nationality of the victim. But what it does mean is that the Biblical legislation in regard to crime did not apply to heathens. As foreigners they fully enjoyed their own autonomous right of self-help, i.e., blood feuds or ransom, prohibited by the Law to the Jews, and accordingly were not governed by the provisions made in the Bible relating to murder, v. Guttmann, loc. cit. p. 16 ff and supra p. 211, n. 6.]

(16) Lit., 'fixed'. For a full discussion of this passage, v. Sanh. (Sonc. ed.) p. 531 and notes a.l.

(17) The ox thus becoming ownerless.

(18) Ex. XXI, 28-32.

(19) Supra p. 55.

(20) Ex. XXI, 29.

(21) Supra p. 56.

(22) Ex. XXI, 29.

(23) Cf. supra p. 234.

the sale holds good; if he declares it sacred, it is sacred; if it is slaughtered, its flesh is permitted [for food]; if a bailee returns it to the house of its owner, it is an effective restoration. But if after its sentence had already been pronounced the owner sold it, the sale would not be valid; if he consecrates it, it is not consecrated; if it is slaughtered its flesh is forbidden [for any use]; if a bailee returns it to the house of its owner, it is not an effective restoration. R. Jacob, however, says: Even if after the sentence had already been pronounced the bailee returned it to its owner, it would be an effective restoration. Shall we say that the point at issue[1] is that in the view of the Rabbis it is of no avail to plead[2] regarding things which became forbidden for any use, 'Here is your property before you',[3] whereas in the view of R. Jacob it can be pleaded even regarding things forbidden for any use, 'Here is your property before you'? — Rabba said: Both parties in fact agree that even regarding things forbidden for any use, the plea, 'Here is your property before you' can be advanced, for if it is

as you said,[4] why did they not differ in the case of leaven[5] on Passover?[6] But the point at issue here [in the case before us] must therefore be whether [or not] sentence may be pronounced over an ox in its absence. The Rabbis maintain that no sentence can be pronounced over an ox in its absence, and the owner may accordingly plead against the bailee: 'If you would have returned it to me [before the passing of the sentence], I would have caused it to escape to the pastures, whereas you have allowed my ox to fall into the hands of those[7] against whom I am unable to bring any action'. R. Jacob, however, maintains that the sentence can be pronounced over the ox even in its absence, and the bailee may accordingly retort to the owner: 'In any case the sentence would have been passed on the ox.' What is the reason of the Rabbis? — [Scripture says]: The ox shall be stoned and its owner also shall be put to death[8] [implying that] the conditions under which the owner would be subject to be put to death [were he to have committed murder], are also the conditions under which the ox would be subject to be put to death; just as in the case of the owner [committing murder, the sentence could be passed only] in his presence,[9] so also [the sentence] in the case of an ox [could be passed only] in its presence. But R. Jacob [argues]: That applies well enough to the case of the owner [committing murder], as he is able to submit pleas, but is the ox also able to submit pleas?[10]

WHERE AN OWNER HAS HANDED OVER HIS CATTLE TO AN UNPAID BAILEE OR TO A BORROWER etc. Our Rabbis taught: The following four [categories of persons] enter into all liabilities in lieu of the owner, viz., Unpaid Bailee and Borrower, Paid Bailee and Hirer. [If cattle so transferred] kill [a person] if they are Tam, they would be stoned to death, but there would be exemption from kofer,[11] whereas in the case of Mu'ad, they would be stoned and the bailees in charge would be liable to pay kofer. In all cases, however, the value of the ox would have to be reimbursed to the owner by all of the bailees with the exception of the Unpaid Bailee. I would here ask with what circumstances are we dealing? If where the ox [was well] guarded, why should all of them[12] not be exempt [from having to reimburse the owner]? If on the other hand it was not guarded well, why should even the Unpaid Bailee not be liable?[13] — It might be said that we are dealing here with a case where inferior precautions[14] were taken to control the ox but not really adequate precautions.[15] In the case of an Unpaid Bailee his obligation to control was thereby fulfilled, whereas the others did thereby not yet fulfil their obligation to control. Still I would ask, whose view is here followed? If that of R. Meir

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(1) I.e. between R. Jacob and the Rabbis.

(2) Against a depositor or against a person who was robbed of an article, before it became prohibited for any use.

(3) The reason is that, by becoming forbidden for any use, the things, though not undergoing any change in their external size and appearance, do not remain (in the eyes of the law) the same things as were previously deposited with the bailee or misappropriated by the robber, their status then having been different.

(4) That R. Jacob and the Rabbis differ on this point.

(5) Stolen before the eve of Passover.

(6) I.e. whether the leaven might be returned by the robber after the approach of Passover when it became forbidden for any use; cf. infra pp. 561, 572.

(7) I.e. the Court of Law.

(8) Ex. XXI, 29.

(9) For which cf. Num. XXXV, 12.

(10) That its presence should be required.

(11) Ex. XXI, 28.

(12) With the exception, however, of the borrower who is liable even for accidents.

(13) For he also is liable for carelessness.

(14) Such as e.g. a door which would withstand only an ordinary wind. V. infra 55b

(15) So as to withstand a wind of even unusual force.

who maintained[1] that Hirer is subject to the same law as Unpaid Bailee, why is it not taught above 'with the exception of Unpaid Bailee and Hirer'? If [on the other hand the view followed] was that of R. Judah who maintained[1] that Hirer should be subject to the same law as Paid Bailee, why was it not taught 'with the exception of Unpaid Bailee, whereas in the case of Mu'ad they all would be exempt from kofer'?[2] — R. Huna b. Hinena thereupon said: This teaching is in accordance with R. Eliezer, who said,[3] that the only precaution for it [Mu'ad] is the slaughter knife, and who regarding Hirer might agree with the view of R. Judah that Hirer should be subject to the same law as Paid Bailee. Abaye, however, said: It could still follow the view of R. Meir, but as transposed by Rabbah b. Abbahu who learnt thus: How is the payment [for the loss of the article] regulated in the case of Hirer? R. Meir says: As in the case of Paid Bailee. R. Judah, however, says: As in the case of Unpaid Bailee.[4]

R. Eleazar said: Where an ox had been handed over to an Unpaid Bailee and damage was done by it, the bailee would be liable, but where damage was done to it, the bailee would be exempt. I would here ask what were the circumstances? If where the bailee had undertaken to guard the ox against damage, why even in the case where it was injured should there be no liability? If, on the other hand, where the bailee had not undertaken to guard against damage why even in the case where damage was done by the ox should there not be exemption? — Raba thereupon said: We suppose in fact that the bailee had undertaken to guard the ox against damage, but the case here is one where he had known the ox to be a gorer, and it is natural that what he did undertake was to prevent the ox from going and doing damage to others, but he did not think of the possibility of others coming and injuring it.

MISHNAH. IF THE OWNER FASTENED HIS OX [TO THE WALL INSIDE THE STABLE] WITH A CORD, OR SHUT THE DOOR IN FRONT OF IT IN THE ORDINARY WAY[5] BUT THE OX GOT OUT AND DID DAMAGE, WHETHER IT HAD BEEN TAM OR ALREADY MU'AD, HE WOULD BE LIABLE; THIS IS THE RULING OF R. MEIR. R. JUDAH, HOWEVER, SAYS: IN THE CASE OF TAM HE WOULD BE LIABLE, BUT IN THE CASE OF MU'AD HE WOULD BE EXEMPT, SINCE IT IS WRITTEN, AND HIS OWNER HATH NOT KEPT HIM IN,[6] [THUS EXCLUDING THIS CASE WHERE] IT WAS KEPT IN. R. ELIEZER SAYS: NO PRECAUTION IS SUFFICIENT [FOR MU'AD] SAVE THE [SLAUGHTER] KNIFE.

GEMARA. What was the reason of R. Meir? — He Maintained that normally oxen are not kept under control,[7] and the Divine Law enacted that Tam should involve liability to show that at least moderate precautions were required. Then the Divine Law stated further in the case of Mu'ad, And his owner hath not kept him in,[6] to show that [for this] really adequate precautions are required;[8] and the goring mentioned in the case of Tam is now placed on a par with the goring mentioned in the case of Mu'ad.[9] R. Judah, however, maintained that oxen normally are kept under control, and the Divine Law stated that in the case of Tam there should be payment to show that really adequate precaution is required. The Divine Law, however, goes on to say, And his owner hath not kept him in,[6] in the case of Mu'ad. [This would imply] that there should be there precaution of a superior degree. [These words, however, constitute] an amplification following an amplification, and as the rule is that an amplification following an amplification intimates nothing but a limitation,[10] Scripture has thus reduced the superior degree of the required precaution. And should you object to this that goring is mentioned in the case of Tam and goring is mentioned in the case of Mu'ad[9] [for mutual inference,[11] the answer is that in this case] the Divine Law has explicitly restricted [this ruling by stating] And his owner hath not kept him in,[6] [the word 'him' confining the application] to this one[12] but not to another.[13] But surely these words are needed for the stated purpose?[14] — [If that were so, the Divine Law should write surely, 'Hath not kept in'. Why does it say, hath not kept him in? To show that the rule applies to this one[15] but not to another.[16]

It has been taught: R. Eliezer b. Jacob says: Whether in the case of Tam or in that of Mu'ad, as

soon as even inferior precautions have been taken [to control the ox], there is exemption. What is his reason? — He concurs with R. Judah, in holding that in the case of Mu'ad precaution even of an inferior degree is sufficient, and he [extended this ruling to Tam as he] on the strength of [the mutual inference[17] conveyed by] the mention of goring in the case both of Tam and of Mu'ad.[17]

R. Adda b. Ahabah said: The exemption laid down by R. Judah applies only to the part of the payment due on account of the ox having been declared Mu'ad,[18] but the portion due on account of Tam remains unaffected.[19] Rab said: Where the ox was declared Mu'ad to gore with the right horn, it would thereby not become Mu'ad for goring with the left horn.[20] I would here ask: In accordance with whose view [was this statement made]? If in accordance with R. Meir, did he not say that whether in the case of Tam or in that of Mu'ad, precaution of a superior degree was needed?[21] If [on the other hand] in accordance with R. Judah,[22] why specify only the left horn? Even in the case of the right horn itself, does not one part of the payment come under the rule of Tam[23] and another under that of Mu'ad? I may say that in fact it is in accordance with R. Judah , and that Rab does not concur in the view. expressed by R. Addah b. Ahabah, and what Rab thus intended to say was that it was only in such an instance[24] that there would be in one ox part Tam and part Mu'ad

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(1) Cf. infra 57b.

(2) For R. Judah maintains that even an inferior precaution in the case of Mu'ad suffices to confer exemption for any damage that has nevertheless resulted.

(3) Infra p. 259.

(4) V. p. 257, n. 7. [And since R. Meir also holds that Mu'ad requires adequate precaution, he rightly makes the Hirer liable to pay kofer as well as reimburse the owner.]

(5) So that it would be perfectly safe in the case of an ordinary wind; cf. infra 55b.

(6) Ex. XXI,36.

(7) Cf. supra p. 64.

(8) So that it would be safe even in the case of a wind of unusual force.

(9) To show that both require really adequate precaution.

(10) V. Shebu. (Sonc. ed.) p. 12, n. 3.

(11) Cf. supra p. 250. [So that for Tam too an inferior precaution should suffice.]

(12) To Mua'd.

(13) To Tam.

(14) Lit., ‘for the negative’, that is, that he is liable because be failed to take the necessary precautions.]

(15) V. p. 259, n.7.

(16) Ibid. n. 8.

(17) Ibid. n. 6.

(18) I.e. the half added on account of the ox having been declared Mu'ad.

(19) And thus constantly subject to the law of Tam.

(20) Damage done by the right horn would thus be subject to the degree of precaution required in the case of Mu'ad while damage done by the left horn would still remain subject to the degree of precaution needed in Tam.

(21) Thus so far as precaution is concerned there would in this case be no difference between the right horn and the left horn.

(22) Who demands a greater degree of precaution in case of a Tam than in that of a Mu'ad, and accordingly there would be no liability if the ox gored with the right horn after inferior precautions had been taken, whereas there would be liability with the left horn.

(23) Requiring on that account adequate precautions, in the absence of which there should be liability.

(24) Where the ox gored three times with the right horn and was declared Mu'ad accordingly, remaining thus Tam in respect of the left horn.

. But in the case of an ox which was altogether Mu'ad no element of Tam could be found in it at all.

R. ELIEZER SAYS: NO PRECAUTION IS SUFFICIENT [FOR MU 'AD] SAVE [THE SLAUGHTER] KNIFE. Rabbah said: What was the reason of R. Eliezer? Because Scripture says: And his owner hath not kept him in,[1] [meaning] that precaution would no more be of any avail for such a one. Said Abaye to him: If that is so, why not similarly say on the strength of the words, And not cover it[2] that a cover would no more be of any avail for such a [pit]? And if you say that this is indeed the case, have we not learnt, 'Where it had been covered properly and an ox or an ass has [nevertheless] fallen into it there is exemption'?[3] — Abaye therefore said: The reason of R. Eliezer was as taught [elsewhere]:[4] R. Nathan says: Whence do we learn that a man should not bring up a vicious dog in his house, or keep a shaky ladder in his house? Because it is said: Thou bring not blood upon thy house.[5]

CHAPTER V

MISHNAH. IF AN OX HAS GORED A COW AND ITS [NEWLY-BORN] CALF IS FOUND [DEAD] NEAR BY, AND IT IS UNKNOWN WHETHER THE BIRTH OF THE CALF PRECEDED THE GORING[6] OR FOLLOWED THE GORING,[7] HALF DAMAGES[8] WILL BE PAID FOR [THE INJURIES INFLICTED UPON] THE COW[9] BUT [ONLY] QUARTER DAMAGES WILL BE PAID FOR [THE LOSS OF] THE CALF.[10] SO ALSO WHERE A COW GORED AN OX AND A [LIVE] CALF WAS FOUND NEAR BY, SO THAT IT WAS UNKNOWN WHETHER THE BIRTH OF THE CALF PRECEDED THE GORING[11] OR FOLLOWED THE GORING,[12] HALF DAMAGES CAN BE RECOVERED OUT OF THE COW, AND QUARTER DAMAGES OUT OF THE CALF.[13]

GEMARA. Rab Judah on behalf of Samuel said: This ruling is the view of Symmachus who held that money, the ownership of which cannot be decided has to be shared [by the parties].[14] The Sages, however, say that it is a fundamental principle in law that the onus probandi falls on the claimant. Why was it necessary to state 'this is a fundamental principle in law'? — It was necessary to imply that even where the plaintiff is positive and the defendant dubious[14] it is still the plaintiff on whom falls onus probandi. Or [we may say] it is also necessary in view of a case of this kind: For it has been stated:[15] If a man sells an ox to another and it is found to be a gorer, Rab maintained that the sale would be voidable,[16] whereas Samuel said that the vendor could plead 'I sold it to be slaughtered'.[17] How so? Why not see whether the vendee was a person buying for field work or whether he was a person buying to slaughter?[18] — Samuel's view can hold good where he was a person buying both for the one and the other. But why not see if the money paid corresponded to the value of an ox for field work, then it must have been purchased for field work; if, on the other hand it corresponded to that of an ox to be slaughtered, then it must have been purchased for slaughter?[19] — Samuel's view could still hold good where there was a rise in the price of meat so that the ox was worth the price paid for one for field work.

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(1) Ex. XXI, 29.

(2) Ibid. 33

(3) Infra 52a.

(4) Supra p. 67.

(5) Deut. XXII, 8. The same prohibition applies to a goring ox.

(6) In which case the death of the calf could not he imputed to the goring of the ox.

(7) So that the miscarriage of the calf was a result of the goring.

(8) In the case of Tam.

(9) As these have certainly resulted from the goring of the ox.

(10) On account of the doubt.

(11) In which case the calf did not participate in the goring.

(12) So that the calf while it was still an embryo took part in the act of the cow.

(13) V. Gemara, infra p. 264.
(14) Cf. also supra p. 196.
(15) B.B. 92a.
(16) At the instance of the vendee.
(17) As Samuel follows his own view that this grand principle in law accepted by the Sages has to he applied in all cases and in all circumstances, as the Gemara proceeds to explain.
(18) Would this consideration not be a piece of good circumstantial evidence?
(19) As indeed maintained by R. Judah in a similar case dealt with in B. B. 77b; as to the other view, cf. Tosaf. a.l.

Talmud - Mas. Baba Kama 46b

I may here ask: If the vendor had not the wherewithal for making payment, why not take the ox in lieu of money?[1] Do not people say, 'From the owner of your loan[2] take payment even in bran'? — No, this is to be applied where he had the wherewithal for making payment.[3] Rab who said that it was a voidable purchase maintained that we decide according to the majority of cases, and the majority of people buy for field work. Samuel, however, said that the vendor might plead against him, 'It was for slaughter that I sold it to thee,' and that we do not follow the majority,[4] for we follow the majority only in ritual matters, but in pecuniary cases we do not follow the majority, but whoever has a [pecuniary] claim against his neighbour the onus probandi falls upon him.

It has been taught to the same effect: 'Where an ox gored a cow and its [newly-born] calf was found [dead] nearby, so that it was unknown whether the birth of the calf preceded the goring, or followed the goring, half damages will be paid for [injuries inflicted upon] the cow but only quarter damages will be paid for [the loss of] the calf; this is the view of Symmachus. The Sages, however, say: If one claims anything from his neighbour, the onus probandi falls upon him.

R. Samuel b. Nahmani stated: Whence can we learn that the onus probandy falls on the claimant? It is said: If any man have any matters to do, let him come unto them,[5] [implying] 'let him bring evidence before them'. But R. Ashi demurred, saying: Do we need Scripture to tell us this?[6] Is it not common sense that if a man has a pain he visits the healer? No: the purpose of the verse is to corroborate the statement made by R. Nahman on behalf of Rabbah b. Abbuha: Whence can we learn that judges should give prior consideration to the first plaintiff?[7] It is said: If any man have any matters to do, let him come unto them[5] [implying]: let him cause his matters to be brought [first] before them. The Nehardeans however, said; It may sometimes be necessary to give prior consideration to the defendant, as for instance in a case where his property would otherwise depreciate in value.[8]

SO ALSO WHERE A COW GORED AN OX etc. [We have here] half damages plus quarter damages! Is it not [only] half of the damage that need be paid for? What then have full damages less a quarter to do here? — Abaye said: Half of the damage means one quarter of the damage,[9] and a quarter of the damage means one eighth of the damage.[10] It is true that where the cow and the calf belong to one owner, the plaintiff would be entitled to plead against the owner of the cow, 'In any case, have you not to pay me half damages?'[11] The ruling, however, applies to the case where the cow belonged to one and the calf to another.[12] Again, where the plaintiff claimed from the owner of the cow first it would still also make no difference, as he would be entitled to argue against the owner of the cow, 'It was your cow that did me the damage, [and it is for you to] produce evidence that there is a joint defendant with you.'[13] But where the rule applies is to a case where he claimed from the owner of the calf first, in which case the owner of the cow may say to him, 'You have made clear your opinion that there is a joint defendant with me.'[14] Some, however, say that even where the plaintiff claimed from the owner of the cow first, the latter might put him off by saying, 'It is definitely known to me[15] that there is a joint defendant with me.'[14] Raba said: Is then 'a fourth of the damage' and 'an eighth of the damage' mentioned in the text? Is not 'half damages' and 'quarter

damages' stated in the text?[16] — Raba therefore said: We suppose that in fact the cow and the calf belonged to one owner,[17] and the meaning is this: Where the cow is available,[18] the payment of half damages will be made out of the cow.[19]

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(1) Since the meat of the ox is worth the purchase money.

(2) I.e. from your debtor who is now the owner of the money lent to him; cf. the Roman 'Mutuum'.

(3) In which case the creditor is entitled to ready cash; cf. Tosaf. a.l. and supra 9a; 27a; B.B. 92b.

(4) Which is otherwise an accepted principle in Rabbinic Law; cf. Hul. 11b.

(5) Ex. XXIV, 14.

(6) Keth. 22a and Nid. 25a.

(7) I.e., where A instituted an action against B, and B on appearance introduced a counter-claim against A; cf. Rashi and Tosaf. a.l., and Sanh. 35a.

(8) Where, e.g., he has an opportunity of disposing of the estate concerned at a high price — an opportunity he might miss through any delay in a settlement of his counter-claim.

(9) I.e., a half of the half, as half constitutes the whole payment in the case of Tam.

(10) I.e., a quarter of the half.

(11) Since both the cow and the calf belong to you.

(12) As e.g., where the cow was sold with the exception of its offspring; Rashi.

(13) That is, that the calf took part in the goring, otherwise you must be held solely responsible.

(14) So that I cannot accordingly be held liable for all the damages.

(15) Unless you prove to the contrary.

(16) How then could Abaye interpret half-damages to mean quarter damages, and quarter damages to mean an eighth of the damage?

(17) In the case stated in the Mishnah.

(18) To be distrained upon for the damages in accordance with the law applicable to Tam.

(19) As she definitely did the damage.

Talmud - Mas. Baba Kama 47a

But where the cow is not available, quarter damages will be paid out of the body of the calf.[1] Now this is so only where it is not known whether the calf was still part of the cow at the time she gored or whether it was not so, but were we certain that the calf was still part of the cow at the time of the goring[2] the whole payment of the half damages would be made from the body of the calf. Raba here adopts the same line of reasoning [as in another place], as Raba has indeed stated: Where a cow has done damage, payment can be collected out of the body of its calf, the reason being that the latter is a part of the body of the former, whereas in the case of a chicken doing damage, no payment will be made out of its eggs, the reason being that they are a separate [body].[3]

Raba further said: [Where an ox has gored a cow and caused miscarriage] the valuation will not be made for the cow separately and for the calf separately, but the valuation will be made for the calf as at the time when it formed a part of the cow; for if you do not adopt this rule,[4] you will be found to be making the defendant suffer unduly. The same method is followed in the case of the cutting off the hand of a neighbour's slave;[5] and the same method is followed in the case of damage done to a neighbour's field.[6] Said R. Aha the son of Raba to R. Ashi: If justice demands, why should not the defendant suffer? — Because he is entitled to say to him: 'Since it was a pregnant cow that I deprived you of, it is a pregnant cow which should be taken into valuation.'

There is no question that where the cow belonged to one owner and the calf to another owner, the value of the fat condition of the cow will go to the owner of the cow.[7] But what of the value of its bulky appearance? — R. Papa said: It will go to the owner of the cow. R. Aha the son of R. Ika said: It will be shared [by the two owners].[8] The law is that it will be shared [by the two owners].

MISHNAH.IF A POTTER BRINGS HIS WARES INTO THE COURTYARD OF ANOTHER PERSON WITHOUT PERMISSION, AND THE CATTLE OF THE OWNER OF THE COURTYARD BREAKS THEM, THERE IS NO LIABILITY.[9] MOREOVER, SHOULD THE ANIMAL BE INJURED BY THEM, THE OWNER OF THE POTTERY IS LIABLE [TO PAY DAMAGES]. IF, HOWEVER, HE BROUGHT [THEM] IN WITH PERMISSION,[10] THE OWNER OF THE COURTYARD IS LIABLE. SIMILARLY IF [A MAN] BRINGS HIS PRODUCE INTO THE COURTYARD OF ANOTHER PERSON WITHOUT PERMISSION AND THE ANIMAL OF THE OWNER OF THE PREMISES CONSUMES IT, THERE IS NO LIABILITY.[11] IF IT WAS HARMED BY IT THE OWNER WOULD BE LIABLE. IF, HOWEVER, HE BROUGHT THEM IN WITH PERMISSION,[10] THE OWNER OF THE PREMISES WOULD BE LIABLE. SO ALSO IF [A MAN] BRINGS HIS OX INTO THE COURTYARD OF ANOTHER WITHOUT

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(1) On account of the doubt involved in the case dealt with in the Mishnah.

(2) In which case it participated in the goring.

(3) [So Rashi. Curr. edd. read 'mere excrement'.]

(4) But that the cow should be valued separately and the calf separately.

(5) [You do not value the hand separately, viz., what price a master would in the first instance be willing to take for depriving his slave of the use of his hand; but the difference in the value of a slave who had his hand cut off — a much smaller price.]

(6) [The valuation is not made on the basis of the single plot which has been damaged, but on the basis of its value in relation to the whole field.]

(7) As the embryo did not increase the fatness of the cow.

(8) As both the cow and embryo participate in the bulky appearance of the animal.

(9) As the plaintiff was a trespasser.

(10) In which case he was no trespasser

(11) V.p. 266, n. 7.

Talmud - Mas. Baba Kama 47b

PERMISSION AND THE OX OF THE OWNER OF THE PREMISES GORES IT OR THE DOG OF THE OWNER OF THE PREMISES BITES IT, THERE IS NO LIABILITY. MOREOVER SHOULD IT GORE THE OX OF THE OWNER OF THE PREMISES ITS OWNER WOULD BE LIABLE. AGAIN, IF IT FALLS [THERE] INTO A PIT OF THE OWNER OF THE PREMISES AND MAKES THE WATER IN IT FOUL, THERE WOULD BE LIABILITY. SO ALSO IF [IT KILLS] THE OWNER'S FATHER OR SON [WHO] WAS INSIDE THE PIT, THERE WOULD BE LIABILITY TO PAY KOFER.[1] IF, HOWEVER, HE BROUGHT IT IN WITH PERMISSION, THE OWNER OF THE YARD WOULD BE LIABLE. RABBI, HOWEVER, SAYS: IN ALL THESE CASES THE OWNER OF THE PREMISES WOULD NOT BE LIABLE UNLESS HE HAS TAKEN IT UPON HIMSELF TO WATCH [THE ARTICLES BROUGHT INTO HIS PREMISES].

GEMARA. The reason why [the potter would be liable for damage occasioned by his pottery to the cattle of the owner of the premises] is because the entry was without permission, which shows that were it with permission the owner of the pots would not be liable for the damage done to the cattle of the owner of the premises and we do not say that the owner of the pots has by implication undertaken to watch the cattle of the owner of the premises. Who is the authority for this view? — Rabbi, who has laid down that without express stipulation no duty to watch is undertaken.[2] Now look at the second clause: IF HE BROUGHT THEM IN WITH PERMISSION, THE OWNER OF THE PREMISES WOULD BE LIABLE. This brings us round to the view of the Rabbis,[3] who said that even without express stipulation he makes himself responsible for watching. Moreover, [it was further stated]: RABBI SAYS: IN ALL THESE CASES THE OWNER OF THE PREMISES WOULD NOT BE LIABLE UNLESS HE HAS TAKEN UPON HIMSELF TO WATCH. [Are we to say that] the opening clause and the concluding clause are in accordance with Rabbi while the middle clause is in accordance with the Rabbis? — R. Zera thereupon said: The contradiction [is obvious]; he who taught one clause cannot have taught the other clause. Raba, however, said; The whole [of the anonymous part of the Mishnah] is in accordance with the Rabbis, for [where the entry was] with permission the owner of the premises undertook the safeguarding of the pots even against breakage by the wind.[4]

IF [A MAN] BRINGS HIS PRODUCE INTO THE COURTYARD OF ANOTHER OWNER etc. Rab said: This rule[5] applies only where the animal [was injured] by slipping on them, but if the animal ate them [and was thereby harmed], there would be exemption on the ground that it should not have eaten them.[6] Said R. Shesheth: I feel inclined to say that it was only when he was drowsy or asleep that Rab could have made such a statement.[7] For it was taught: If one places deadly poison before the animal of another he is exempt from the judgment of Man, but liable to the judgment of Heaven.[8] Now, that is so only in the case of deadly poison which is not usually consumed by an animal, but in the case of products that are usually consumed by an animal, there appears to be liability even to the judgment of Man. But why should this be so? [Why not argue:] It should not have eaten them? — I may reply that strictly speaking even in the case of produce there should be exemption from the judgment of Man, and there was a special purpose in enunciating this ruling with reference to deadly poison, namely that even where the article was one not usually consumed by an animal, there will still be liability to the judgment of Heaven. Or if you wish you may say that by the deadly poison mentioned was meant hypericum,[9] which like a fruit [is eaten by animals].

An objection could be raised [from the following]: If a woman enters the premises of another person to grind wheat without permission, and the animal of the owner consumes it, there is no liability; if the animal is harmed, the woman would be liable. Now, why not argue: It should not have over-eaten? — I can answer: [In what respect] does this case go beyond that of the Mishnah, which was interpreted [to refer to damage occasioned by] the animal having slipped over them? What then was in the mind of the one who made the objection? — He might have said to you; Your

explanation is satisfactory regarding the Mishnah where it says, IF IT WAS HARMED BY IT [which admits of being interpreted] that the animal slipped over them. But here [in the Baraitha] it says, 'if the animal is harmed', without the words 'by them', so that surely the consumption [of the wheat] is what is referred to. And the other?[10] — He can contend [that the omission of these words] makes no difference.

Come and hear: If a man brought his ox into the courtyard of another person without permission, and it ate there wheat and got diarrhoea from which it died, there would be no liability. But if he brought it in with permission, the owner of the courtyard would be liable. Now why not argue: It should not have eaten?[11] — Raba thereupon said: How can you raise an objection from a case where permission was given[12] against a case where permission was not given?[13] Where permission was given, the owner of the premises assumed liability for safeguarding the ox even against its strangling itself.

The question was raised: Where the owner of the premises has assumed responsibility to safeguard [the articles brought in to his premises], what is the legal position? Has the obligation to safeguard been assumed by him [only] against damage from his own [beasts], or has he perhaps also undertaken to safeguard from damage in general? Come and hear: Rab Judah b. Simon learnt in the [Tractate] Nezikin of the School of Karna;[14] If a man brings his produce into the courtyard of another without permission, and an ox from elsewhere comes and consumes it, there is no liability. But if he brought it in with permission there would be liability. Now, who would be exempt[15] and who would be liable?[16] Does it not mean that the owner of the premises would be exempt[15] and[16] the owner of the premises would be liable?[17] — I may say that this is not so, it is the owner of the ox who would be exempt[15] and the owner of the ox who would be liable.[16] But if it refers to the owner of the ox,

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(1) Ex. XXI, 29-30.

(2) [For the present it is assumed that the duty applies alike to the owner of the pottery in regard to the belongings of the owner of the premises as to the latter in regard to the pottery.]

(3) The representatives of the anonymous view cited on the Mishnah.

(4) Whereas the owner of the pottery could never be considered to have by implication accepted upon himself the responsibility for safeguarding the belongings of the owner of the premises.

(5) Imposing liability where the animal was injured by the produce.

(6) Cf. infra 57b.

(7) V. infra p. 376.

(8) V. infra 56a.

(9) [St. John's Wort.]

(10) Rab.

(11) So that the owner of the courtyard should not be liable for the harm occasioned by the wheat to the ox brought in with his permission.

(12) And the harm was done to the ox thus brought in with permission.

(13) I.e. where produce brought in without permission was eaten by the owner's animal which thereby suffered harm, in which case the owner though being a trespasser has still no liability to safeguard to that extent the belongings of the owner of the premises.

(14) [Karna, one of the Judges of the Exile, had a collection of Babylonian traditions, הלכתא דבבלאי (Gen. Rab. XXXIII), of pre-Amoraic days, v. Funk, S., Die Juden in Babylonian, I, n. 1.]

(15) In the absence of permission.

(16) Where permission was granted.

(17) [This shows that the responsibility assumed by the owner of the premises extends in regard to damages in general.]

what has permission or absence of permission to do with the case?[1] — I will answer; [Where the produce was brought in] with permission, the case would be one of Tooth [doing damage] in the plaintiff's premises,[2] and Tooth doing damage in the plaintiff's premises entails liability,[3] whereas in the absence of permission it would be a case of Tooth doing damage on public ground,[4] and Tooth doing damage on public ground entails no liability.[5]

Come and hear: If a man brings his ox into the premises of another person without permission, and an ox from elsewhere comes and gores it, there is no liability. But if he brought it in with permission there would be liability. Now, who would be exempt[6] and who would be liable?[7] Does it not mean that it is the owner of the premises who would be exempt[6] and the owner of the premises who would be liable?[7] — No, it is the owner of the ox [from elsewhere] who would be exempt[6] and similarly it is the owner of the ox [from elsewhere] who would be liable.[7] But if so, what has permission or the absence of permission to do with the case?[8] — I would answer that this teaching is in accordance with R. Tarfon, who held[9] that the unusual damage occasioned by Horn in the plaintiff's premises has to be compensated in full: [Where the ox was brought in] with permission the case would therefore be one of Horn doing damage in the plaintiff's premises[10] and the payment would have to be for full damages, whereas in the absence of permission it would amount to Horn doing damage on public ground,[4] and the payment would accordingly be only for half damages.

A certain woman once entered the house of another person for the purpose of baking bread there, and a goat of the owner of the house came and ate up the dough, from which it became sick and died. [In giving judgment] Raba ordered the woman to pay damages for the value of the goat. Are we to say now that Raba differed from Rab, since Rab said:[11] It should not have eaten?[12] — I may reply, are both cases parallel? There,[11] there was no permission and the owner of the produce did not assume any obligation of safeguarding [the property of the owner of the premises], whereas in this case, permission had been given and the woman had accepted responsibility for safeguarding[13] [the property of the owner of the premises]. But why should the rule in this case be different from [what has been laid down, that] if a woman enters the premises of another person to grind wheat without permission, and the animal of the owner of the premises eats it up, the owner is not liable, and if the animal suffers harm the woman is liable, the reason being that there was no permission, which shows that where permission was granted she would be exempt?[14] — I can answer: In the case of grinding wheat, since there is no need of privacy at all, and the owner of the premises is not required to absent himself, the obligation to take care [of his property] still devolves upon him, whereas in the case of baking where, since privacy is required,[15] the owner of the premises absents himself [from the premises], the obligation to safeguard his property must fall upon the woman.

IF A MAN BRINGS HIS OX INTO THE PREMISES OF ANOTHER PERSON [etc.]. Raba said: If he brings his ox on another person's ground and it digs there pits, ditches, and caves, the owner of the ox would be liable for the damage done to the ground, and the owner of the ground would be liable for any damage resulting from the pit. For though the Master stated:[16] [It says,] If a man shall dig a pit,[17] and not ‘if an ox [shall dig] a pit’, still here [in this case] since it was the duty of the owner of the ground to fill in the pit and he did not fill it in, he is reckoned [in the eyes of the law] as having himself dug it.[18]

Raba further said: If he brings his ox into the premises of another person without permission, and the ox injures the owner of the premises, or the owner of the premises suffers injury through the ox,[19] he is liable, but if it lies down,[20] he has no liability. But why should the fact of its lying down confer exemption?[21] — R. Papa thereupon said: What is meant by ‘it lies down’ is that the ox lays down its excrements [upon the ground], and thereby soils the utensils of the owner of the premises. [The exemption is because] the excrements[22] are a case of Pit, and we have never found Pit involving liability for damage done to inanimate objects.[23] This explanation is satisfactory if we adopt the view of Samuel who held[24] that all kinds of nuisances come under the head of Pit. But on

the view of Rab who said[24] [that they do not come under the head of Pit] unless they have been abandoned,[25] what are we to say? — It may safely be said that excrements as a rule are abandoned.[26]

Raba said further: If one enters the premises of another person without permission, and injures the owner of the premises,[27] or the owner of the premises suffers injury through him[28] there would be liability;[29] and if the owner of the premises injured him, there would be no liability. R. Papa thereupon said: This ruling applies only where the owner had not noticed him. For if he had noticed him, the owner of the premises by injuring him would render himself liable, as the trespasser would be entitled to say to him: 'Though you have the right to eject me, you have no right to injure me.'[30] These authorities[31] followed the line of reasoning [adopted by them elsewhere], for Raba or, as others read, R. Papa stated:

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(1) Since the defendant was not the owner of the premises.

(2) As the plaintiff obtained a legal right to keep there the object which was subsequently damaged by a stray ox.

(3) Ex. XXII, 4.

(4) I.e. on premises where the plaintiff has no more right than the owner of the ox, the defendant.

(5) Cf. supra p. 17.

(6) V. p. 270, n. 4.

(7) V. p. 270, n. 5.

(8) V. p. 270, n. 7.

(9) Supra p. 125.

(10) V. p. 270, n. 8.

(11) Supra p. 268.

(12) And the woman would therefore not have to pay for the damage sustained by the animal of the owner of the premises.

(13) V. the discussion that follows.

(14) Why then should the woman, the owner of the dough, have to pay?

(15) Lit., 'she requires privacy.' As the woman would usually have to uncover her arms.

(16) Infra p. 93 and cf. also supra 51a.

(17) Ex. XXI, 33.

(18) The owner of the ground is therefore liable for any damage resulting from the pit.

(19) By stumbling over it

(20) And, as it is assumed at present, it did damage thereby.

(21) If damage was done by it.

(22) As any other nuisance.

(23) For Scripture said: Ox and ass'; cf. supra p. 18.

(24) Supra p. 150.

(25) But where they were not abandoned they would be subject to the law applicable to Cattle, where there is no exemption for damage done to inanimate objects.

(26) Cf. B.M. 27a.

(27) [Whether with or without intention.]

(28) I.e. the trespasser, by stumbling over him.

(29) Upon the trespasser.

(30) Cf. supra p. 124.

(31) I.e. Raba and R. Papa.

Talmud - Mas. Baba Kama 48b

Where both of them [plaintiff and defendant] had a right [to be where they were][1] or where both of them [on the other hand] had no right [to be where they were],[2] if either of them injured the other, he would be liable, but if either suffered injury through the other, there would be no liability. This is so only where both of them had a right to be where they were[1] or where both of them [on the other

hand] had no right to be where they were,[2] but where one of them had a right and the other had no right, the one who had a right would be exempt,[3] whereas the one who had no right would be liable.[3]

IF IT FALLS [THERE] INTO A PIT OF THE OWNER AND MAKES THE WATER IN IT FOUL, THERE WOULD BE LIABILITY. Raba said: This ruling applies only where the ox makes the water foul at the moment of its falling into the pit.[4] For where the water became foul [only] after it fell in, there would be exemption on the ground that [the damage done by] the ox[5] should then be [subject to the law applicable in the case of] Pit, and water is an inanimate object, and we never find Pit entailing liability for damage done to inanimate objects.[6] Now this is correct if we accept the view of Samuel who said[7] that all kinds of nuisances are subject to the law of Pit. But on the view of Rab who held[7] [that this is not so] unless they have been abandoned,[8] what are we to say? — We must therefore suppose that if the statement was made at all, it was made in this form: Raba said: The ruling [of the Mishnah] applies only where the ox made the water foul by [the dirt of] its body.[4] But where it made the water foul by the smell of its carcass there would be no liability, the reason being that the ox [in this case] was only a [secondary] cause [of the damage], and for a mere [secondary] cause there is no liability.

WHERE [IT KILLS] THE OWNER'S FATHER OR HIS SON [WHO] WAS INSIDE THE PIT, THERE WOULD BE LIABILITY TO PAY KOFER. But why? Was the ox not Tam?[9] — Rab thereupon said: We are dealing with a case where the ox was Mu'ad to fall upon people in pits. But if so, should it not have already been killed [on the first occasion]?[10] — R. Joseph thereupon said: The ox was looking at some grass [growing near the opening of the pit] and thus fell [into it].[11] Samuel, however, said: This ruling is in accordance with R. Jose the Galilean, who held[12] that [killing by] Tam entails the payment of half kofer. ‘Ulla, however, said: It accords with the ruling laid down by R. Jose the Galilean in accordance with R. Tarfon, who said[13] that Horn doing damage in the plaintiff's premises entails the payment of full damages.[14] So here the liability is for the payment of full kofer.[15] ‘Ulla's answer satisfactorily explains why the text [of the Mishnah] says, IF HIS FATHER OR HIS SON WAS INSIDE THE PIT.[16] But if we take the answer of Samuel, why [is the ruling stated] only with reference to his father and his son?[16] Why not with reference to any other person? — The Mishnah took the most usual case.[17]

IF HE BROUGHT THEM IN WITH PERMISSION, THE OWNER OF THE PREMISES WOULD BE LIABLE etc. It was stated: Rab said: ‘The law[18] is in accordance with the first Tanna,’ whereas Samuel said, ‘The law[18] is in accordance with the view of Rabbi.’[19]

Our Rabbis taught: [If the owner of the premises says:] ‘Bring in your ox and watch it,’ should the ox then damage, there would be liability,[20] but should the ox suffer injury there would be no liability.[21] If, however, [the owner says], ‘Bring in your ox and I will watch it,’ should the ox suffer injury there would be liability,[21] but should it do damage[22] there would be no liability.[20] Does not this statement contain a contradiction? You say that [where the owner of the premises said:] ‘Bring in your ox and watch it,’ should the ox do damage there would be liability,[20] but should the ox suffer injury there would be no liability.[21] Now the reason for this is that he expressly said to the owner of the ox ‘watch it’ — [the reason, I mean,] that the owner of the ox will be liable and the owner of the premises exempt; from which I infer that if no explicit mention was made [as to the watching] the owner of the premises would be liable, and the owner of the ox exempt, indicating that without express stipulation to the contrary the former takes it upon himself to safeguard [the ox].[23] Now read the concluding clause: But [if he said]: ‘Bring in your ox and I will watch it’, should the ox suffer injury there would be liability,[24] but should it do damage there would be no liability, [the reason being that] he expressly said to him ‘and I will watch it’ — [the reason,] I mean, that the owner of the premises would be liable and the owner of the ox exempt; from which I infer that if there is no express stipulation, the owner of the ox would be liable and the owner of the premises exempt, as in such a case the owner of the premises does not take it upon himself to safeguard [the ox]. This brings

us round to the view of Rabbi, who laid down [there would be no liability upon him][24] unless where the owner of the premises had taken upon himself to safeguard. Is then the opening clause in accordance with the Rabbis, and the concluding clause in accordance with Rabbi? — R. Eleazar thereupon said: The contradiction [is obvious]; he who taught one clause cannot have taught the other clause.[25] Raba, however, said: The whole [of the Baraitha] can be explained as being in accordance with the Rabbis; since the opening clause required the insertion of the words, 'watch it',[26] there were correspondingly inserted in the concluding clause the words 'And I will take care of it'. R. Papa, however, said: The whole [of the Baraitha] is in accordance with Rabbi;[27] for he concurred in the view of R. Tarfon who stated[28] that Horn doing damage in the plaintiff's premises would entail the payment of full damages. It therefore follows that where he expressly said to him, 'Watch it', he certainly did not transfer a legal right to him to any place in the premises, so that the case[29] becomes one of Horn doing damage in the plaintiff's premises, and [as already explained][30] where Horn does damage in the plaintiff's premises the payment must be for full damages. Where, however, he did not expressly say, 'Watch it', he surely granted him a legal right to place in the premises, so that the case is one of [damage done on] premises of joint owners and [as we know] where Horn does damage on premises of owners in common, there is no liability to pay anything but half damages.[31]

MISHNAH. IF AN OX WHILE CHARGING ANOTHER OX [INCIDENTALLY] INJURES A WOMAN WHO [AS A RESULT] MISCARRIES, NO COMPENSATION NEED BE MADE FOR THE LOSS OF THE EMBRYOS. BUT IF A MAN WHILE MEANING TO STRIKE ANOTHER MAN [INCIDENTALLY] STRUCK A WOMAN WHO THUS MISCARRIED HE WOULD HAVE TO PAY COMPENSATION FOR THE LOSS OF THE EMBRYOS.[32] HOW IS THE COMPENSATION FOR [THE LOSS OF] EMBRYOS FIXED? THE ESTIMATED VALUE OF THE WOMAN BEFORE HER MISCARRIAGE IS COMPARED WITH HER VALUE AFTER MISCARRIAGE.

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(1) Such as e.g. on public ground or on their joint premises.

(2) E.g. where they were running on public ground, for which cf. supra p. 172.

(3) For incidental damage suffered through him.

(4) In which case the damage was direct.

(5) By becoming a stationary nuisance.

(6) Supra p. 18.

(7) V. p. 273, n. 3.

(8) V. p. 273, n. 4.

(9) In which case no kofer has to be paid.

(10) For in a case where the ox threw itself upon a human being in a pit to kill him it could hardly escape being sentenced to death and stoned accordingly. The explanations given supra pp. 232-3 on a similar problem could therefore hardly apply here.

(11) Without any intention to kill the human being in the pit. The ox is therefore exempt from being stoned, but the owner is nevertheless liable to pay kofer as this kind of damage comes under the category of Tooth, since the ox did it for its own gratification; cf. supra p. 6.

(12) Supra p. 66.

(13) V. p. 271, n. 6.

(14) Cf. also supra p. 134.

(15) Since the ox killed the human being on his own premises.

(16) So that he was killed on his own premises.

(17) For it is not quite usual that a person not of the household of the owner of the yard should be in the pit which was the private property of the owner.

(18) [V.l., 'The halachah is.']

(19) Cf. Bez. 40a.

(20) Upon the owner of the ox.

(21) Upon the owner of the premises.
(22) To the belongings of the owner of the premises.
(23) [MS. M. adds: This will be in accordance with the Rabbis who hold that in the absence of any express stipulation there is still the duty to watch.]
(24) Upon the owner of the premises.
(25) Cf. supra p. 268.
(26) As otherwise the owner of the premises would by implication, according to the Rabbis, have accepted liability to safeguard.
(27) For while the inference from the concluding clause holds good, this is not the case with that of the commencing clause, as even where no mention was made about watching the ox brought in, the owner of the premises would still not be liable for any damage done to it. There may, however, be a difference where it gored an ox of the owner of the premises if Rabbi followed the view of R. Tarfon as will be explained in the text.
(28) V. supra p. 125.
(29) Where the ox brought in gored an ox of the owner of the premises.
(30) V. p. 276, n. 6.
(31) Supra. p. 58.
(32) Ex. XXI, 22

Talmud - Mas. Baba Kama 49a

R. SIMEON B. GAMALIEL SAID: IF THIS IS SO, A WOMAN AFTER HAVING GIVEN BIRTH INCREASES IN VALUE.[1] IT IS THEREFORE THE VALUE OF THE EMBRYOS WHICH HAS TO BE ESTIMATED, AND THIS AMOUNT WILL BE GIVEN TO THE HUSBAND. IF, HOWEVER, THE HUSBAND IS NO LONGER ALIVE, IT WOULD BE GIVEN TO HIS HEIRS. IF THE WOMAN WAS A MANUMITTED SLAVE OR A PROSELYTESS [AND THE HUSBAND, ALSO A PROSELYTE, IS NO LONGER ALIVE], THERE WOULD BE COMPLETE EXEMPTION.[2] GEMARA. The reason why there is exemption is because the ox was charging another ox, from which we infer that if it was charging the woman, there would be liability to pay. Will this not be in contradiction to the view of R. Adda b. Ahabah? For did not R. Adda b. Ahabah state[3] that [even] where Cattle were charging the woman, there would [still] be exemption from paying compensation for [the loss] of the embryos? — R. Adda b. Ahabah might reply: The same ruling [of the Mishnah] would apply even in the case of Cattle making for the woman, where there would similarly be exemption from paying compensation for [the loss of] the embryos. And as for the Mishnah saying IF AN OX WHILE CHARGING OTHER CATTLE, the reason is that, since it was necessary to state in the concluding clause BUT IF A MAN WHILE MEANING TO STRIKE ANOTHER MAN, this being the case stated in Scripture,[4] it was also found expedient to have a similar text in the commencing clause IF AN OX WHILE CHARGING ANOTHER OX.

R. Papa said: If an ox gores a woman-slave, causing her to miscarry, there would be liability to pay for the loss of the embryos, the reason being that [in the eyes of the law] it was merely a case of a pregnant she-ass being injured, for Scripture says, Abide ye here with the ass,[5] thus comparing this folk to an ass.[6]

HOW IS THE COMPENSATION FOR THE LOSS OF EMBRYOS FIXED etc.? 'COMPENSATION FOR THE EMBRYOS'? Should it not [also] have been 'Compensation for the increase in [the woman's] value caused by the embryos'?[7] — This indeed was what was meant: How is the compensation for the embryos and for the increase [in the woman's value] due to embryos fixed? Her estimated value before miscarriage is compared with her value after miscarriage.[8]

BUT R. SIMEON B. GAMALIEL SAID; IF THIS IS SO, A WOMAN AFTER HAVING GIVEN BIRTH INCREASES IN VALUE. What did he mean by this statement?[9] — Rabbah said; He meant to say this; Does a woman increase in value before giving birth more than after? Does not a woman

increase in value after giving birth[10] more than before giving birth? It is therefore the value of the embryos which has to be estimated, and this amount will be given to the husband. It was taught to the same effect; Does the value of a woman increase more before giving birth than after giving birth? Does not the value of a woman increase after having given birth[10] more than before giving birth? It is therefore the value of the embryos which has to be estimated, and this amount will be given to the husband. Raba, however, said: What is meant is this.[11] 'Is a woman's increase in value wholly for [the benefit of the husband for] whom she bears, and has she no share at all in the increase [in the value][12] due to the embryo? It is therefore the value of the embryos which has to be estimated and this amount will be given to the husband, whereas the amount of the increase [in the value][12] caused by the embryos will be shared equally [between husband and wife].' It was similarly taught: R. Simeon b. Gamaliel said: Is the increase in a woman's value wholly for [the benefit of the husband for] whom she bears, and has she herself no share at all in the increase [in her value] due to the embryos? No; there is a separate estimation for Depreciation[13] and also for Pain,[13] and the value of the embryos is estimated and given to the husband, whereas the amount of the increase in her value caused by the embryos will be shared equally [between husband and wife]. But is not R. Simeon b. Gamaliel contradicting himself [in this]?[14] — There is no contradiction, for one case[15] is that of a woman pregnant for the first time,[16] and the other of a woman who had already given birth to children.[17]

What was the reason of the Rabbis who stated that the amount of the increase [in the woman's value] due to the embryos also belongs to the husband? — As it was taught: From the words, so that her fruit depart from her,[18] cannot I understand that the woman was pregnant? Why then [the words] with child?[18] To teach you that the increase in her value due to pregnancy belongs to the husband. How then does R. Simeon b. Gamaliel expound the phrase 'with child'? — He required it for the lesson taught in the following: R. Eliezer b. Jacob says: Liability is never incurred save when the blow is given over against the place of the womb. R. Papa said: You are not to understand from this just over against the place of the womb, for wherever the bruise could be communicated to the embryo [will suffice];[19] what is excluded is a blow on the hand or foot, where there would be liability.

IF THE WOMAN WAS A MANUMITTED SLAVE,OR PROSELYTESS [AND THE HUSBAND, ALSO A PROSELYTE, IS NO LONGER ALIVE], THERE WOULD BE EXEMPTION ALTOGETHER.[20] Rabbah said: This rule applies only where the blow was given during the lifetime of the proselyte [husband] and it was only after this that he died, for since the blow was given during the lifetime of the proselyte, he acquired title to the impending payment, so that when he subsequently died[21] the defendant became quit of it as it was an asset of the proselyte.[21] But where the blow was given after the death of the proselyte it was the mother who acquired title to the embryos, so that the defendant would have to make payment to her. Said R. Hisda: O, master of this [teaching]! Are embryos packets of money to which a title can be acquired? It is only when the husband is there[22] that the Divine Law grants payment to him, but not when he is no more.

An objection was raised:[23] 'Where a woman is struck and a miscarriage results, compensation for Depreciation and Pain is to be paid to the woman, but for the loss of the embryos to the husband; where the husband is no more alive it[24] is given to his heirs; so also where the woman is no more alive, it[25] is given to her heirs. Should she be a slave who has been manumitted, or a proselytess [whose husband, also a proselyte, is no longer alive], the defendant becomes entitled to it'?[26] — I would reply: Is there anything more in this case than in that of the Mishnah, which has been interpreted to refer to where the blow was given during the lifetime of the proselyte and [where it was only after this that] the proselyte died?[27] [Why therefore not interpret the text] here also as referring to a case were the blow was given during the lifetime of the proselyte and [where it was only after this that] the proselyte died![27] More-over, if you wish you may [alternatively] say that it might have referred even to a case where the blow was given after the death of the proselyte,

(1) V. the explanation in the Gemara.
(2) The reason being that in this case there is no legitimate plaintiff.
(3) Supra p. 239.
(4) Ex. XXI, 22.
(5) Gen. XXII, 5.
(6) I.e. a mere chattel of the Master.
(7) Before the miscarriage took place. For besides the loss of the value of the embryos there was a loss of the value of the woman herself that was increased by the embryos making her look bigger and stouter. [Rashi reads: 'Is this (referring to the valuation laid down in the Mishnah) compensation for the embryos? Is it not also compensation for the increase etc.?']
(8) [This valuation, that is to say, serves as compensation both for the embryos and for the increase etc.]
(9) For surely the anonymous Tanna expressed himself to the contrary.
(10) Through having emerged safely from the dangers of childbirth.
(11) By R. Simeon b. Gamaliel.
(12) Of her own body.
(13) Cf. supra p. 243 and Keth. VI, 1.
(14) For according to his other statement a woman increases in value after giving birth more than before.
(15) Where he stated that the value of a woman after having given birth is greater than that prior to having given birth.
(16) Where the circumstances are more complicated.
(17) In which case her value later is less than that prior to giving birth
(18) Ex. XXI, 22.
(19) To create liability.
(20) V. p. 277, n. 6.
(21) Without issue, leaving thus no heirs.
(22) I.e. alive.
(23) Cf. supra p. 234.
(24) I.e. the payment for the loss of the embryos.
(25) I.e. the payment for Depreciation and Pain.
(26) Even, it would seem, when the blow was given after the death of the proselyte, which contradicts the view of Rabbah.
(27) V. p. 280, n. 5.

Talmud - Mas. Baba Kama 49b

but read in the text 'she would become entitled to it'.[1]

May we say that there is on this point[2] a difference between Tannaitic authorities? [For it was taught:] If a daughter of an Israelite was married to a proselyte and became pregnant by him, and a blow was given her during the lifetime of the proselyte,[3] the compensation for the loss of the embryos will be given to the proselyte. But if after the death of the proselyte![4] — One Baraitha teaches that there would be liability, whereas another Baraitha teaches that there would be no liability. Now, does this not show that Tannaim differ on this [point]?[5] According to Rabbah there is certainly a difference between Tannaim on this matter.[6] But what of R. Hisda?[7] Must he also hold that Tannaim were divided on it? — [No; he may argue that] there is no difficulty,[8] as one [Baraitha] accepts the view of the Rabbis[9] whereas the other follows that of R. Simeon b. Gamaliel.[10] But if [the Baraitha which says that there is liability follows the view of] R. Simeon b. Gamaliel, why speak only of compensation after the death [of the proselyte]? Would she even during [his] lifetime not have [a half of the payment]? — During [his] lifetime she would have only a half, whereas after death she would have the whole.[11] Or if you wish you may say that both this [Baraitha][12] and the other follow the view of R. Simeon b. Gamaliel,[10] but while one[12] deals with the increase in the value [of the woman caused] by the embryos, the other[13] refers to the compensation for the loss of

the value of the embryos [themselves].[14] I would here ask, why not derive from the rule[12] regarding the increased value due to the embryos the other rule regarding the value of the embryos themselves?[15] And again, why not derive from the ruling[12] of R. Simeon b. Gamaliel also the ruling of the Rabbis?[16] — It may, however, be said that this could not be done. For as regards the increased value [of the woman due] to the embryos, seeing that she has some hold upon it,[17] she can acquire a title to the whole of it,[18] whereas in regard to the compensation for the embryos themselves, on which she has no hold,[19] she can acquire no title to them at all.

R. Yeba the Elder enquired of R. Nahman: If a man has taken possession of the deeds of a proselyte,[20] what is the legal position? [Shall we say that] a man who takes possession of a deed does so with intent to acquire the land [specified in the document], but has thereby not taken possession of the land, nor does he even acquire title to the deed, since his intent was not to obtain the deed?[21] Or [shall we] perhaps [say] that his intent was to obtain the deed also?[21] — He[22] said to him: Tell me, Sir, could he need it to cover the mouth of his flask? — He[23] replied: Yes indeed, [he could need it] to cover[the flask].

Rabbah stated: If the pledge of an Israelite is in the hands of a proselyte [creditor], and the proselyte dies [without any legal issue] and another Israelite comes along and takes possession of it,[20] it would be taken away from him, the reason being that as the proselyte has died, the lien he had upon the pledge has disappeared. But if a pledge of a proselyte [debtor] is in the hands of an Israelite, and the proselyte dies and another Israelite comes along and takes possession of it, the creditor would become owner of the pledge to the extent of the amount due to him, while the one who took possession of it would own the balance. Why should the premises [of the creditor where the pledge was kept] not render him the owner [of the whole pledge]? Did not R. Jose b. Hanina say that a man's premises effect a legal transfer [of ownerless property placed there] even without his knowledge? — It may be said that we are dealing here with a case where the creditor was not there.[24] For it is only where he himself[25] is there,[24] in which case should he so desire he would be able to take possession of it,[26] that his premises could [act on his behalf and] effect the transfer, whereas where he himself[25] was absent, in which case were he to desire to acquire title to it[26] he would have been unable to take possession of it, his premises could similarly not effect a transfer. But the law is that it is only where it [the pledge] was not [kept] in the [creditor's] premises that he would acquire no title to it.[27]

MISHNAH. IF A MAN DIGS A PIT IN PRIVATE GROUND AND OPENS IT ON TO A PUBLIC PLACE, OR IF HE DIGS IT IN PUBLIC GROUND AND OPENS IT ON TO PRIVATE PROPERTY, OR AGAIN, IF HE DIGS IT IN PRIVATE GROUND AND OPENS IT ON TO THE PRIVATE PROPERTY OF ANOTHER, HE BECOMES LIABLE[28] [FOR ANY DAMAGE THAT MAY RESULT].

GEMARA. Our Rabbis taught: If a man digs a pit on private ground and opens it on to a public place, he becomes liable, and this is the Pit of which the Torah[29] speaks. So R. Ishmael. R. Akiba, however, says: When a man abandons his premises without, however, abandoning his pit, this is the Pit of which the Torah[29] speaks. Rabbah thereupon said: In the case of a pit on public ground there is no difference of opinion that there should be liability. What is the reason? — Scripture says, If a man open or if a man dig.[29] Now, if for mere opening there is liability, should there not be so all the more in the case of digging? [Why then mention digging at all?] Scripture must therefore mean to imply that it is on account of the act of opening and on account of the act of digging that the liability is at all brought upon him.[30] A difference arises

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(1) In accordance with the view of Rabbah.

(2) In which Rabbah and R. Hisda differ.

(3) And a miscarriage resulted.

(4) I.e. if the blow was given after the death of the proselyte.
(5) I.e., whether the mother acquires a title to the embryos on the death of her husband, the proselyte, or not.
(6) He therefore followed the view of the former Baraitha laying down liability.
(7) Stating exemption.
(8) I.e., no contradiction between the two Baraithas, which do not deal with the payment for the loss of the embryos but with the payment for the loss of the increment in the value of the woman herself due to the embryos.
(9) Maintaining that the payment for the loss of the increment in the value of the woman herself also belongs to the husband, so that where he was a proselyte dying without issue there would be no liability at all upon the defendant.
(10) According to whom the payment for the loss of the increment in the value of the woman herself has to be shared by the mother and father, so that where he was a proselyte dying without issue she will surely not forfeit her due, but as to the embryos, all agree that the woman acquires in no circumstance title to them.
(11) For since the mother is a joint plaintiff with her husband regarding this payment, where he was a proselyte dying without issue she will remain the sole plaintiff and thus be entitled to the full payment.
(12) Stating liability.
(13) Stating exemption.
(14) To which the mother was never a plaintiff.
(15) That payment should be made to the mother, in contradiction to the view of R. Hisda.
(16) [That she should have the whole where the proselyte husband is no longer alive.]
(17) Even during the lifetime of her husband.
(18) At the demise of the proselyte without any legal issue.
(19) V. p. 282, n. 10.
(20) V. p. 282, n. 11.
(21) I.e., the mere value of the paper of the deed.
(22) R. Nahman.
(23) R. Yeba.
(24) [I.e., 'in town' (Rashi), or (according to Tosaf.) 'beside the premises,' v. B.M. 11a: 'non-guarded premises confer title only when the owner is standing beside them.']
(25) I.e., the owner of the premises.
(26) I.e., the pledge or any other ownerless article.
(27) For where the pledge was kept in the creditor's premises at the time of the demise of the proselyte without issue, the creditor would acquire title to the whole of it, though the creditor were out of town (Rashi). [Tosaf. renders, 'where the creditor was not beside the premises.']
(28) V. Gemara.
(29) Ex. XXI, 33-34
(30) I.e. where the ground of the pit that did the actual damage was not his at all.

Talmud - Mas. Baba Kama 50a

only in regard to a pit on his own premises. R. Akiba maintains that a pit in his own premises should also involve liability, since it says, The owner of the pit,[1] which shows that the Divine Law is speaking of a pit which has an owner; R. Ishmael on the other hand maintaining that this simply refers to the perpetrator of the nuisance.[2] But what then did R. Akiba mean by saying, '[When a man abandons his premises without, however, abandoning his pit] — this is the Pit stated in the Torah'?[3] — [He meant that] this is the Pit with reference to which Scripture first began to lay down[4] the rules for compensation [in the case of Pit]. R. Joseph said: in the case of a pit on private ground there is no difference of opinion that there should be liability. What is the reason? Divine Law says, the owner of the pit, to show that it is a pit having an owner with which we are dealing.[5] They differ only in the case of a pit in public ground. R. Ishmael maintains that a pit on public ground should also involve liability, since it says, 'If a open . . . and if a man dig . . .' Now, if for mere opening there is liability, should there not all the more be so in the case of digging? Scripture therefore must mean to imply that it is on account of the act of opening and on account of the act of digging that the liability is at all brought upon him.[6] And R. Akiba? [He might reply that] both terms[7] required to be explicitly

mentioned. For if the Divine Law had said only 'If a man open' it might perhaps have been said that it was only in the case of opening that covering up would suffice [as a precaution], whereas in the case of digging covering up would not suffice, unless the pit was also filled up. If [on the other hand] the Divine Law had said only If a man dig it might have been said that it was only where he dug it that he ought to cover it, as he actually made the pit, whereas where he merely opened it, in which case he did not actually make the pit, it might have been thought that he was not bound even to cover it. Hence it was necessary to tell us [that this was not the case but that the two actions are on a par in all respects]. But what then did R. Ishmael mean by saying, [If a man digs a pit in private ground and opens it on to a public place, he comes liable] and this is the Pit of which the Torah[8] speaks?[9] — This is the Pit with reference to which Scripture opens[10] the rules concerning damage [caused by Pit].

An objection was raised [from the following]: If a man digs a pit in public ground and opens it to private property there is no liability, in spite of the fact that he has no right to do so as hollows must not be made underneath a public thoroughfare. But if he digs pits, ditches or caves in private premises and opens them on to a public place, there would be liability. If, again, a man digs pits in private ground abutting on a public thoroughfare, such as e.g., workmen digging foundations, there would be no liability. R. Jose b. Judah, however, says there is liability unless he makes a partition of ten handbreaths in height or unless he keeps the pit away from the place where men pass as well as from the place where animals pass at a distance of at least four handbreadths.[11] Now this is so only in the case of foundations,[12] but were the digging made not for foundations there would apparently be liability. In accordance with whose view[13] is this? All would be well if we follow Rabbah, since the opening clause[14] would be in accordance with R. Ishmael and the later clause[15] in accordance with R. Akiba. But if we follow R. Joseph, it is true there would be no difficulty about the concluding clause[15] which would represent a unanimous view, but what about the prior clause[14] which would be in accordance neither with R. Ishmael nor with R. Akiba?[16] — R. Joseph, however, might reply: The whole text represents a unanimous view, for the prior clause deals with a case where the man abandoned neither his premises nor his pit.[17] R. Ashi thereupon said: Since according to R. Joseph you have explained the text to represent a unanimous view, so also according to Rabbah you need not interpret it as representing two opposing views of Tannaim. For as the prior clause[14] was in accordance with R. Ishmael, the later clause would also be in accordance with R. Ishmael; and the statement that this ruling holds good only in the case of foundations whereas if the digging is not for foundations there would be liability, refers to an instance where e.g., the digging was widened out into actual public ground.[18]

An objection was [again] raised: 'If a man digs a pit in private ground and opens it on to a public place he becomes liable, but if he digs it in private ground abutting on a public thoroughfare he would not be liable.' No difficulty arises if we follow Rabbah, since the whole text[19] is in accordance with R. Ishmael. But if we follow R. Joseph, no difficulty, it is true, arises in the prior clause[20] which would be in accordance with R. Ishmael, but what about the concluding clause[19] which would be in accordance neither with R. Ishmael nor with R. Akiba?[21] — He might reply that it deals with digging for foundations,[22] in regard to which the ruling is unanimous.

Our Rabbis taught:[23] If a man dug [a well] and left it open, but transferred it to the public,[24] he would be exempt,[25] whereas if he dug it and left it open without dedicating it to the public he would be liable. Such also was the custom of Nehonia the digger of wells, ditches and caves; he used to dig wells[26] and leave them open and dedicate them to the public.[24] When this matter became known to the Sages they observed, 'This man[27] has fulfilled this Halachah'. Only this Halachah and no more? — Read therefore 'this Halachah also'.

Our Rabbis taught: It happened that the daughter of Nehonia the digger of wells once fell into a deep pit. When people came and informed R. Hanina b. Dosa[28] [about it], during the first hour he

said to them ‘She is well’, during the second he said to them, ‘She is still well’, but in the third hour he said to them, ‘She has by now come out [of the pit].’ They then asked her, ‘ Who brought you up?’ — Her answer was: ‘A ram[29] [providentially] came to my help[30] with an old man[31] leading it.’ They then asked R. Hanina b. Dosa, ‘Are you a prophet?’ He said to them, ‘I am neither a prophet nor the son of a prophet. I only exclaimed: Shall the thing to which that pious man has devoted his labour become a stumbling-block to his seed?’[32] R. Aha, however, said; Nevertheless, his[33] son died of thirst, [thus bearing out what the Scripture] says, And it shall be very tempestuous round about him,[34] which teaches that the Holy One, blessed be He, is particular with those round about Him[35] even for matters as light as a single hair.[36] R. Nehonia[37] derived the same lesson from the verse,[38] God is greatly to be feared in the assembly of the saints and to be had in reverence of all them that are about Him. R. Hanina said: If a man says that the Holy One, blessed be He, is lax in the execution of justice, his life shall be outlawed, for it is stated, He is the Rock, His work is perfect; for all His ways are judment.[39] But R. Hana, or as others read R. Samuel b. Nahmani, said: Why is it written[40]

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(1) Ex. XXI, 34

(2) But did not mean the legal owner of it.

(3) Since even according to R. Akiba the Torah deals with Pit on public ground.

(4) In verse 34.

(5) [As against R. Ishmael who requires the pit itself to be abandoned.]

(6) V. p. 284, n. 4.

(7) Of opening and of digging.

(8) V. p. 284, n. 3.

(9) Since even according to R. Ishmael the Torah deals with Pit on private ground.

(10) I.e., in verse 33.

(11) Rashal reads ‘cubits’.

(12) Which is a general practice.

(13) Either with that of R. Ishmael or with that of R. Akiba.

(14) Stating exemption in the case of Pit open to private ground.

(15) Implying liability in the case of Pit on private ground.

(16) For they both according to R. Joseph maintain liability for Pit on private ground.

(17) In which case the defendant is entitled to put in a defence of trespass on his ground against the plaintiff.

(18) But if the digging was not widened out into actual public ground there would be no difference as to the purpose of the digging for there would be exemption in all cases.

(19) V. p. 286, n. 5.

(20) Stating liability in the case of Pit on public ground.

(21) V. p. 286, n. 7.

(22) V. p. 286, n. 3.

(23) Tosef. B.K. VI.

(24) For the general use of the water.

(25) As it became communal property.

(26) Thus to provide water for the pilgrims who travelled to Jerusalem on the three festivals in accordance with Ex. XXXIV, 23.

(27) I.e. Nehonia.

(28) [On R. Hanina b. Dosa as a ‘man of deeds’ whose acts were viewed as acts of human love and sympathy rather than miracles, v. BŸchler, Types, p. 100ff.]

(29) The ram of Isaac, cf. Gen. XXII,13 and R.H. 16a.

(30) Lit., ‘was appointed for me.’

(31) Abraham.

(32) V. J. Shek. V. 1.

(33) Nehonia's.

(34) Ps. L, 3.

(35) I.e. the pious devoted to Him.
(36) The Hebrew term for 'tempestuous' is homonymous with that for 'hair'.
(37) 'Hanina' occurs in Yeb. 121b.
(38) Ps. LXXXIX, 8.
(39) Deut. XXXII, 4.
(40) Ex. XXXIV, 6.

Talmud - Mas. Baba Kama 50b

'Long of sufferings'[1] and not 'Long of suffering'?[2] [It must mean,] 'Long of sufferings' to both the righteous[3] and the wicked.[4]

Our Rabbis taught: A man should not remove stones from his ground on to public ground. A certain man[5] was removing stones from his ground on to public ground when a pious man found him doing so and said to him, 'Fool,[6] why do you remove stones from ground which is not yours to ground which is yours?' The man laughed at him. Some days later he had to sell his field, and when he was walking on that public ground he stumbled over those stones. He then said, 'How well did that pious man say to me, "Why do you remove stones from ground which is not yours to ground which is yours?"'

MISHNAH. IF A MAN DIGS A PIT ON PUBLIC GROUND AND AN OX OR AN ASS FALLS INTO IT, HE BECOMES LIABLE. WHETHER HE DUG A PIT, OR A DITCH, OR A CAVE, TRENCHES, OR WEDGE-LIKE DITCHES, HE WOULD BE LIABLE. IF SO WHY IS PIT MENTIONED [IN SCRIPTURE]?[7] [TO TEACH THAT] JUST AS PIT CAN CAUSE DEATH BECAUSE IT IS USUALLY TEN HANDBREADTHS [DEEP], SO ALSO ALL [OTHER SIMILAR NUISANCES] MUST BE SUCH AS CAN CAUSE DEATH, [I.E.] TEN HANDBREADTHS [DEEP]. WHERE, HOWEVER, THEY WERE LESS THAN TEN HANDBREADTHS [DEEP], AND AN OX AR AN ASS FELL INTO THEM AND DIED, THERE WOULD BE EXEMPTION.[8] IF THEY WERE ONLY INJURED BY THEM, THERE WOULD BE LIABILITY.

GEMARA. Rab stated: The liability imposed by the Torah in the case of Pit[9] is for the unhealthy air created by excavation, but not for the blow given by it. It could hence he inferred that he held that so far as the blow was concerned it was the ground of the public that caused the damage.[10] Samuel, however, said: For the unhealthy air, and, ˆ plus forte raison, for the blow. And should you say that it was for the blow only that the Torah imposed liability but not for the unhealthy air, (you have to bear in mind that] for the Torah[11] a pit is a pit, even where it is full of pads of wool. What is the practical difference between them? — There is a practical difference between them. Where a man made a mound on public ground: according to Rab there would in the case of a mound be no liability,[12] whereas according to Samuel there would in the case of a mound also be liability. What was the reason of Rab?[13] Because Scripture says, And it fall,[14] [implying that there would be no liability] unless where it fell in the usual way of falling.[15] Samuel [on the other hand maintained that the words] And it fall imply anything [which is like falling].[16]

We have learnt: IF SO WHY WAS PIT MENTIONED [IN SCRIPTURE]?[17] [TO TEACH THAT] JUST AS PIT CAN CAUSE DEATH BECAUSE IT IS USUALLY TEN HANDBREADTHS [DEEP], SO ALSO ALL [OTHER SIMILAR NUISANCES] MUST BE SUCH AS CAN CAUSE DEATH, [I.E.] TEN HANDBREADTHS [DEEP]. Now this creates no difficulty if we follow Samuel, since the phrase SO ALSO ALL would imply mounds also. But according to Rab, what does the phrase SO ALSO ALL imply?[17] — It was meant to imply trenches and wedge-like ditches. But are trenches and wedge-like ditches not explicitly stated in the text? — They were [first] mentioned and then the reason for them explained.

What need was there to mention all the things specified in the text? — They all required [to be explicitly stated]. For if only a pit had been explicitly mentioned, I might have said that it was only a pit where in ten handbreadths [of depth] there could be [sufficient] unhealthy air [to cause death] on account of its being small and circular, whereas in the case of a ditch which is long I might have thought that [even] in ten handbreadths of depth there would still not be [sufficient] unhealthy air [to cause death]. If [again] only a ditch had been mentioned explicitly, I might have said that it was only a ditch where in ten handbreadths [of depth] there could be [sufficient] unhealthy air [to cause death] on account of its being small, whereas in a cave which is square I might have thought that [even] in ten handbreadths of depth there would still not be [sufficient] unhealthy air [to cause death]. Again, if only a cave had been mentioned explicitly, I might have said that it was only a cave where in ten handbreadths [of depth] there could be [sufficient] unhealthy air [to kill] on account of its being covered, whereas in the case of trenches which are uncovered I might have thought that [even] in ten handbreadths [of depth] there would still not be [sufficient] unhealthy air [to cause death]. Further, if only trenches had been stated explicitly, I might have said that it was only trenches where in ten handbreadths [of depth] there could be [sufficient] unhealthy air [to cause death] on account of their not being wider at the top than at the bottom, whereas in wedgelike ditches which are wider at the top than at the bottom I might have said that [even] in ten handbreadths [of depth] there would still not be [sufficient] unhealthy air [to cause death]. It was therefore necessary to let us know [that all of them are on a par in this respect].[18]

We have learnt: WHERE, HOWEVER, THEY WERE LESS THAN TEN HANDBREADTHS [DEEP] AND AN OX OR AN ASS FELL INTO THEM AND DIED, THERE WOULD BE EXEMPTION.[19] IF THEY WERE ONLY INJURED BY THEM THERE WOULD BE LIABILITY. Now what could be the reason that where an ox or an ass fell into them and died there would be exemption? Is it not because the blow was insufficient [to cause death]?[20] — No, it is because there was no unhealthy air there. But if so, why where the animal was merely injured in such a pit should there be liability, seeing that there was no unhealthy air there? — I might reply that there was not unhealthy air there sufficient to kill, but there was unhealthy air there sufficient to injure.

A certain ox fell into a pond which supplied water to the neighbouring fields. The owner hastened to slaughter it, but R. Nahman declared it trefa.[21] Said R. Nahman: ‘Had the owner of this ox taken a kab[22] of flour and come to the house of study, where he would have learnt that "If the ox lasted at least twenty-four hours [before being slaughtered] it would be kasher",[23] I would not have caused him to lose the ox which was worth several kabs.’ This seems to show that R. Nahman held that a deadly blow can be inflicted even by an excavation less than ten handbreadths deep.[24]

Raba raised an objection to R. Nahman: WHERE, HOWEVER, THEY WERE LESS THAN TEN HANDBREADTHS [DEEP] AND AN OX OR AND ASS FELL INTO THEM AND DIED, THERE SHOULD BE EXEMPTION. Now, is not the reason of this [exemption] because there was no deadly blow there?[25]

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(1) **אפים**, the plural.

(2) **אף**, the singular.

(3) By not rewarding them in this world for their good deeds.

(4) By not punishing them in this world for their wicked deeds.

(5) B.K. Tosef. II.

(6) Raca.

(7) Ex. XXI, 33.

(8) As the death of the animal should in this case not be wholly imputed to the pit.

(9) On public ground.

(10) For which the defendant has not to be liable.

(11) Lit., ‘the Torah testified that etc.’, since ‘pit’ is left undefined.
(12) As no unhealthy air was created and the blow was given by the public ground.
(13) Is not a mound a nuisance?
(14) Ex. XXI, 33.
(15) Excepting thus a mound.
(16) I.e. including mounds.
(17) Since according to him there would be no liability for mounds.
(18) That the depth of ten handbreadths is sufficient to create enough unhealthy air to cause death in any one of these excavations.
(19) V. p. 289, n. 2.
(20) Though the air was not less unhealthy there will be no liability, thus contradicting the views of both Rab and Samuel.
(21) I.e. forbidden to be eaten in accordance with dietary laws; for the term cf. Ex. XII, 30 and Glossary.
(22) [(V. Glos.), i.e., provision for his journey.]
(23) Cf. Hul. 51b.
(24) For the pond in which the ox fell was only six handbreadths deep.
(25) Thus disproving the view of R. Nahman.

No; it is because there was no unhealthy air there. But if so, why where it was injured in such a pit would there be liability since there was no unhealthy air there? — He replied: There was not unhealthy air there sufficient to kill, but there was unhealthy air there enough to injure.

A further objection was raised: The scaffold [for stoning] was of the height of two men's statures.[1] And it has been taught regarding this: When you add the stature of the convict there will be there the height of three statures. Now, if you assume that a fall can be fatal even from a height of less than ten handbreadths, why was such a great height as that necessary? — But even according to your argument, why not make the height ten handbreadths only? This must therefore be explained in accordance with R. Nahman, for R. Nahman stated that Rabbah b. Abbuha had said: Scripture says, And thou shalt love thy neighbour as thyself,[2] [which implies], ‘thou shalt choose for a convict the easiest possible execution.’[3] But if so, why not raise it still higher? — He would then become disfigured altogether.

A further objection was raised: If any man fall from thence;[4] ‘from thence’ but not into it. How is that so? Where the public road was ten handbreadths higher than the roof, and a man might fall from the former on to the latter, there is no liability [in respect of a parapet], but if the public road was ten handbreadths lower than the roof, and a man might fall from the latter on to the former, that there will be liability [in respect of a parapet]. Now, if you assume that a fall could be fatal even from a height of less than ten handbreadths, why should it be necessary to have the public road lower by [full] ten handbreadths?[5] — It was said in answer:[6] There is a difference in the case of a house, since if it is less than ten handbreadths [in height] it could not be designated ‘house’.[7] But if so, even now when from the outside it is ten handbreadths high, were you to deduct from that the ceiling and the plaster, from the inside it would surely not have the height of ten handbreadths?[8] — To this it was said in reply: [We are dealing here with a case] where, e.g., the owner of the house sank the floor from within.[9] But if so, even where the height from the outside was not ten handbreadths, it could still be possible that from the inside it was ten handbreadths, as for instance where he sank the floor still more? — The reason of R. Nahman must therefore have been this: he considered that from the abdomen of the ox to the level of the ground must be [at least] four handbreadths, and the pond feeding the fields must be six handbreadths;[10] this makes ten handbreadths, with the result that when the ox received the blow it was from the height of ten handbreadths that the blow was given.[11] But why then does the Mishnah say: JUST AS PIT CAN CAUSE DEATH BECAUSE IT IS USUALLY

TEN HANDBREADTHS [DEEP], SO ALSO ALL [OTHER SIMILAR NUISANCES] MUST BE SUCH AS CAN CAUSE DEATH, [I.E.] TEN HANDBREADTHS [DEEP]? Should not six handbreadths be enough?[12] — We could reply that the Mishnah deals with a case where the ox rolled itself over into the pit.[13] MISHNAH. WHERE THERE IS A PIT [IN CHARGE OF] TWO PARTNERS, IF THE FIRST ONE PASSES BY AND DOES NOT COVER IT, AND THE SECOND ONE ALSO [PASSES BY AND DOES] NOT COVER IT,[14] THE SECOND WOULD BE LIABLE.

GEMARA. I would here ask, how can we picture a pit in charge of two partners? True, we can understand this if we take the view of R. Akiba, who said that a pit in private ground would involve liability,[15] in which case such a pit could be found where they jointly own the ground and also a pit in it, and while they abandoned the ground [round about],[16] they did not abandon the pit itself. But if we take the view that a pit on private ground would involve exemption,[15] in which case liability could be found only where it was on public ground, how then is it possible for a pit in public ground to be in charge of two partners?[17] [For if you say that] both of them appointed an agent and said to him: 'Go forth and dig for us', and he went and dug for them, [we reply that] there can be no agency for a sinful act.[18] If again you say that the one[19] dug five handbreadths and the other one[19] dug another five handbreadths, [then we would point out that] the act of the former has become eliminated?[20] It is true that according to Rabbi,[21] we can imagine a pit [in charge of two partners] in respect of mere injury.[22] But in respect of death even according to Rabbi, or in respect whether of death or of mere injury[22] according to the Rabbis,[21] where could we find such a pit? — R. Johanan thereupon said: [We find such a pit] where e.g., both of them removed a layer of ground at the same time and thereby made the pit ten handbreadths deep.[23]

What opinion of Rabbi and what opinion of the Rabbis [was referred to above]? — It was taught:[24] Where one had dug a pit of nine handbreadths [deep] and another one came along and completed it to a depth of ten handbreadths, the latter would be liable.[25] Rabbi says: The last one is responsible in[26] cases of death,[27] but both of them in cases of injury.[28] What was the reason of the Rabbis? — Scripture says; If a man shall open . . . or if a man shall dig . . .[29] Now if for mere opening there is liability, should there not be all the more so in the case of digging? [Why then mention digging at all?] It must be in order to lay down the rule [also] for [the case of] one person digging [in a pit] after another,[30] [namely,] that [in such a case] the act of the one who dug first[31] is regarded as eliminated.[32] And Rabbi?[33] — He might rejoin that it was necessary to mention both terms,[34] as explained elsewhere.[35] And do not the Rabbis also hold that it was necessary?[35] — The reason of the Rabbis must therefore have been that Scripture says, If a man shall dig [indicating that] one person but not two persons [should be liable for one pit]. Rabbi, on the other hand, maintained that [the expression 'a man'] was needed to teach that if a man shall dig a pit [there would be liability] but not where an ox [dug] a 'pit'.[36] And the Rabbis?[37] [They might point out] 'a man . . . a pit' is inserted twice [in the same context].[29] And Rabbi? — He [could rejoin that] having inserted these words in the first text, Scripture retained them in the second also.

Now [according to the Rabbis who hold that Scripture intended to make only one person liable], whence could it be proved that it is the last person [that dug] who should be liable? Why not make the first person [who dug] liable? — Let not this enter your mind, since Scripture has stated, And the dead shall be his[38] [implying that the liability rests upon him] who made the pit capable of killing. But was not this [verse] 'And the dead shall be his' required for the lesson drawn by Raba? For did Raba not say:[39] If a sacred ox which has become disqualified [for the altar][40] falls into a pit, there would be exemption, as Scripture says 'And the dead beast shall be his' [implying that it is only] in the case of an ox whose carcass could be his[41] [that there would be liability]?[42] — To this I might rejoin: Can you not [at the same time] automatically derive from it that it is the man who made the pit capable of killing with whom we are dealing?

Our Rabbis taught: If one person has dug a pit to a depth of ten handbreadths and another person comes along and completes it to a depth of twenty, after which a third person comes along and completes it to a depth of thirty, they all would be liable. A contradiction was here pointed out:[43] If one person dug a pit ten handbreadths deep, and another came along and lined it with plaster and cemented it,[44] the second would be liable.

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(1) Sanh. 45a.

(2) Lev. XIX, 18.

(3) V. Sanh. ibid.

(4) Deut. XXII, 8.

(5) Why should there be no liability to construct a parapet even where the public road was lower by less than ten handbreadths.

(6) Lit., 'He said to him'.

(7) Cf. B.B. 7a.

(8) In which case it would still not be termed house. Why then a parapet?

(9) So that the vertical height inside was not less than ten handbreadths.

(10) V. p. 292, n. 2.

(11) And as a fall from the height of ten handbreadths can be fatal R. Nahman had to declare the ox trefa.

(12) For from the abdomen of the ox to the level of the ground there are surely four handbreadths.

(13) But where the ox fell while walking, even where the pit was only six handbreadths deep the blow would be fatal.

(14) And damage occurred later.

(15) Supra 50a.

(16) In which case they cannot plead trespass on the part of the plaintiff as defence.

(17) For it is the one who dug it that should be responsible.

(18) It will accordingly be the agent and not the principal who will have to be subject to the penalty; cf. B.M. 10b.

(19) Partner.

(20) For it was the latter's act that made the pit complete and capable of causing all kinds of damage.

(21) V. p. 295.

(22) V. the discussion later.

(23) In which case they both made it complete and capable of causing all kinds of damage.

(24) V. supra 10a.

(25) V. p. 294, n. 7.

(26) Lit., 'after the last for'.

(27) For without the latter the pit would have been unable to cause death.

(28) For even without the latter the pit would have been able to cause injury.

(29) Ex. XXI, 33.

(30) The verse would thus imply a case where after one man opened the pit of nine handbreadths deep another man dug an additional handbreadth and thus made it a pit of ten handbreadths deep.

(31) The nine handbreadths.

(32) So that he should become released from any responsibility.

(33) How does he interpret the verse?

(34) Of opening and of digging.

(35) Supra p. 285.

(36) V. supra p. 272.

(37) Whence do they derive this latter deduction?

(38) Ex. XXI, 34.

(39) Infra p. 310.

(40) As it became blemished.

(41) I.e., could be used by him as food for dogs and like purposes.

(42) Excepting thus a scared ox falling into a pit and dying there, as no use could lawfully be made of its carcass.

(43) From the following Baraitha.

(44) Who thus made its width smaller and the air closer and more harmful.

Are we to say that the former statement[1] follows the view of Rabbi[2] whereas the latter[3] follows that of the Rabbis?[3] — R. Zebid thereupon said that the one statement as well as the other could be regarded as following the view of the Rabbis.[3] For even there [in their own case] the Rabbis would not say that the last digger should be liable, save in a case where the first digger did not make the pit of the minimum depth capable of killing, whereas [in this case] where the first digger made the pit of the minimum depth capable of killing even the Rabbis would agree that all the diggers should be liable.[4] But, [what of] the case of [the second] lining it with plaster and cementing it,[5] where the first digger made the pit of the minimum depth capable of killing, and yet it was said that the second would be liable? — It may be answered that the case there was where the unhealthy air was not sufficient to kill,[6] and it was the other person who, by diminishing the size of the pit increased the dangerous effect of the air so as to make it capable of killing. Some report that R. Zebid said that the one statement as well as the other could he regarded as following the view of Rabbi.[7] About the statement that they would all be liable there is [on this supposition] no difficulty. And as for the other statement that the second digger would be liable, this refers to a case where e.g., the unhealthy air was sufficient neither to kill nor to injure, and it was the other person who by diminishing the size of the pit increased the dangerous effect of the air so as to make it capable of both killing and injuring.[8]

Raba said: The case of a man putting a stone round the mouth of a pit and thereby completing it to a depth of ten handbreadths is one which brings us face to face with the difference of opinion between Rabbi and the Rabbis.[9] Is this not obvious? — You might perhaps think that [the difference of opinion] was only where the increase in depth was made at the bottom, in which case it was the unhealthy air added by the second digger that caused death, whereas where the increase was made from the top,[10] in which case it was not the unhealthy air added by him that caused the death, it might have been said that there was no difference of opinion.[11] We are therefore told[12] [that this is not the case].

Raba raised the question: Where [the second comer] filled in the one handbreadth [which he had previously dug] with earth, or where he removed the stones [which he had previously put round the mouth of the pit], what would be the legal position? Are we to say that he has undone what he had previously done,[13] or rather perhaps that the act of the first digger had already been merged [in the act of the second] and the whole pit had since then been in the charge of the second? — Let this remain undecided.

Rabbab b. Bar Hanah said that Samuel b. Martha stated: Where a pit is eight handbreadths deep, but two handbreadths out of these are [full] of water, there would be liability,[14] the reason being that each handbreadth [full] of water is equivalent [in its capacity to cause death] to two handbreadths without water. The question was thereupon raised: Where a pit is of nine handbreadths but one of these is full of water, what should be the law? Should we say that since there is not so much water there, there is not [so much] unhealthy air,[15] or rather that since the pit is deeper there is there [a quantity of] unhealthy air?[16] [Again], where the pit is of seven handbreadths and out of these three handbreadths are full of water, what would be the legal position? Should we say that since there is much water there, the unhealthy air is there [in proportion],[16] or rather that since it is not deep, there is no [great quantity of] unhealthy air there?[15] — Let these queries remain undecided.

R. Shezbi inquired of Rabbah: If the second digger makes it wider, what would be the law? — He replied: Does he not thereby diminish the unhealthy air?[17] Said the other to him: On the contrary, does he not increase the risk of injury?[18] — R. Ashi thereupon said: We have to consider whether [the animal] died through bad air, in which case [the second digger could not be responsible as] he

diminished the unhealthy air, or whether it died through the fall, in which case [the second digger should be responsible as] he increased the risk of injury. Some report that R. Ashi said: We have to see whether [the animal] fell from this side [which was extended], in which [case the second digger would be responsible as] he increased the risk of injury, or whether it fell from the other side, in which case [the second digger would not be to blame, as] he diminished the unhealthy air in the pit.

It was stated: In regard to a pit as deep as it is wide [there is a difference of opinion between] Rabbah and R. Joseph, both of whom made their respective statements in the name of Rabbah b. Bar Hanah who said it in the name of R. Mani. One said that there is always unhealthy air in a pit unless where its width is greater than its depth,[19] the other said that there could never be unhealthy air in a pit unless where its depth was greater than its width.[20]

IF THE FIRST ONE[21] PASSED BY AND DID NOT COVER IT . . . From what point of time will the first one[21] be exempt from responsibility? — [There was a difference of opinion here between] Rabbah and R. Joseph, both of whom made their respective statements in the name of Rabbah b. Bar Hanah who said it in the name of R. Mani. One said, from the moment when the first partner leaves the second in the act of using the well; the other, from the moment when he hands over the cover of the well to him. [The same difference[22] is found] between the following Tannaim: If one [partner] was drawing water from a well and the other came along and said to him, 'Leave it to me as I will also draw water', as soon as the first left the second in the act of using it he would become exempt [from any responsibility]. R. Eliezer b. Jacob said: [The exemption commences] from the time that the first hands over the cover to the second. In regard to what principle do they differ? — R. Eliezer b. Jacob held that there is bererah[23] [so that] the one [partner] was drawing water from his own[24] and so also the other [partner] was drawing the water from his own,[25] whereas the Rabbis maintained that there is no bererah.[26] Rabina thereupon said: They[27] have followed here the same line of reasoning as elsewhere, as we have learnt, Where partners have vowed not to derive benefit from one another they would not be allowed to enter premises jointly owned by them. R. Eliezer b. Jacob, however, says: The one partner enters his own and the other partner enters his own.[28] [Now, it was asked there,] in regard to what principle did they differ? — R. Eliezer b. Jacob held that there is bererah so that the one partner would thus be entering his own and the other partner would similarly be entering his own, whereas the Rabbis maintained that there is no bererah.

R. Eleazar said: If a man sells a pit to another, as soon as he hands over the cover of the pit to him, the conveyance is complete. What are the circumstances? If money was paid, why was the conveyance not completed by the money?[29] If possession was taken [of the pit], why was the conveyance not completed by possession?[29] — In fact, we suppose possession to have been taken [of the pit], and it was still requisite for the seller to say to the buyer, 'Go forth, take possession and become the owner',[30] but as soon as he handed over the cover to him, this was equivalent [in the eyes of the law] to his saying to him, 'Go forth, take possession and complete the conveyance.'

R. Joshua b. Levi said: If a person sells a house to another

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(1) Making them all liable.

(2) Who in the case of mere injury makes them all liable.

(3) Making the second liable in all cases.

(4) Hence the liability upon all of them in the former Baraitha.

(5) V. p. 296, n. 7.

(6) As where its width was more than its depth.

(7) V. p. 296, n. 9.

(8) In which case it stands to reason that the second person only should be liable.

(9) As to whether the second person or both of them would be liable in cases of injury.

(10) As in the case stated by Raba.

(11) And that according to both Rabbi and the Rabbis the second person should not be liable.
(12) By Raba.
(13) And thus released himself from further responsibility.
(14) If an animal fell in and was killed.
(15) And should therefore be subject to the law applicable to a pit of less than ten handbreadths deep.
(16) And should thus be equal to that of a pit ten handbreadths deep.
(17) What liability had he thus incurred?
(18) On account of which he should surely bear responsibility.
(19) Implying that where the width is just equal to the depth there would still be unhealthy air there.
(20) But where the depth just equalled the width there would be no unhealthy air there.
(21) Of the partners.
(22) Between Rabbah and R. Joseph.
(23) I.e., retrospective designation, so that a subsequent selection or definition determines retrospectively a previous state of affairs that was undefined in its nature.
(24) Though this water which he subsequently drew was by no means defined at the time when the partnership was formed.
(25) So that one partner does not use the water of the other to become thereby a borrower of it and thus enter into responsibility regarding it.
(26) So that the water drawn by each of them consists of two parts: one from his own and the other from that of his fellow-partner, with reference to which he in the position of borrower, assuming thus full responsibility also for the part of the partner who is the lender.
(27) The Rabbis and R. Eliezer b. Jacob.
(28) And are consequently not deriving any benefit from one another. (Ned. 45b).
(29) In accordance with Kid. I, 5.
(30) B.B. 53a.

Talmud - Mas. Baba Kama 52a

as soon as he hands over the key to him, the conveyance is complete. What are the circumstances? If money was previously paid, why was the conveyance not completed by the money? If possession was taken, why was the conveyance not completed by possession? — We suppose that in fact possession was taken [of the house], and it was still requisite for the seller to say to the buyer, 'Go forth, take possession and become the owner', but as soon as he handed over the key to him, this was equivalent [in the eye of the law] to his saying to him, 'Go forth, take possession and complete the conveyance.'

Resh Lakish said in the name of R. Jannai: If a man sells a herd to his neighbour, as soon as he has handed over the mashkokith[1] to him, the conveyance is complete. What are the circumstances? If possession by pulling [has already taken place], why was the conveyance not completed by the act of pulling? If delivery [of the flock has already taken place], why was the conveyance not completed by the act of delivery?[2] — We suppose in fact that possession by pulling [has already taken place], and it was still necessary for the seller to say to the buyer, 'Go forth, take possession by pulling and become the owner,'[3] but as soon as he handed over the mashkokith to him, this was equivalent [in the eye of the law] to his saying, 'Go forth, take possession by pulling and complete the conveyance.' What is mashkokith? — Here[4] they explained it: 'The bell'. R. Jacob, however, said: 'The goat that leads the herd.' So too a certain Galilean[5] in one of his discourses before R. Hisda [said] that when the shepherd becomes angry with his flock he appoints for a leader one which is blind.

MISHNAH. IF THE FIRST ONE[6] COVERED IT AND THE SECOND ONE CAME ALONG AND FOUND IT OPEN AND [NEVERTHELESS] DID NOT COVER IT, THE SECOND WOULD BE LIABLE. IF [AN OWNER OF A PIT] HAD COVERED IT PROPERLY, AND AN

OX OR AN ASS [NEVERTHELESS] FELL INTO IT AND WAS KILLED, HE WOULD BE EXEMPT.[7] BUT IF HE DID NOT COVER IT PROPERLY, AND AN OX OR ASS FELL INTO IT AND WAS KILLED, HE WOULD BE LIABLE. IF IT FELL FORWARD, [BEING FRIGHTENED] ON ACCOUNT OF THE NOISE OF DIGGING, THERE WOULD BE LIABILITY, BUT IF IT FELL BACKWARD ON ACCOUNT OF THE NOISE OF DIGGING, THERE WOULD BE EXEMPTION.[8] IF AN OX FELL INTO IT TOGETHER WITH ITS IMPLEMENTS WHICH THEREBY BROKE, [OR] AN ASS TOGETHER WITH ITS BAGGAGE WHICH WAS THEREBY TORN, THERE WOULD BE LIABILITY FOR THE BEAST BUT EXEMPTION AS REGARDS THE INANIMATE OBJECTS.[9] IF THERE FELL INTO IT AN OX, DEAF, ABNORMAL OR SMALL,[8] THERE WOULD BE LIABILITY. BUT IN THE CASE OF A SON OR A DAUGHTER,[10] A MANSERVANT OR A MAIDSERVANT, THERE WOULD BE EXEMPTION.[9]

GEMARA. Up to when would the first partner be exempt [altogether]? — Rab said: Until he had time to learn [that the cover had been removed]. Samuel said: Until there was time for people to tell him. R. Johanan said: Until there was time for people to tell him and for him to hire labourers and cut cedars to cover it [again].

IF [AN OWNER OF A PIT] HAD COVERED IT PROPERLY AND AN OX OR AN ASS [NEVERTHELESS] FELL INTO IT AND WAS KILLED, HE WOULD BE EXEMPT. But seeing that he covered it properly, how indeed could the animal have fallen [into it]? — R. Isaac b. Bar Hanah said: We suppose [the boards of the cover] to have decayed from within.[11] It was asked: Suppose he had covered it with a cover which was strong enough for oxen but not strong enough for camels, and some camels happened to come first and weaken the cover and then oxen came and fell into the pit,[12] what would be the legal position? — But I would ask what were the circumstances? If camels frequently passed there, should he not be considered careless?[13] If camels did not frequently pass there, should he not be considered innocent?[14] — The question applies to the case where camels used to pass occasionally, [and we ask]: Are we to say that since from time to time camels passed there he was careless,[13] since he ought to have kept this in mind; or do we rather say that since at the time the camels had not actually been there, he was innocent? — Come and hear: IF HE HAD COVERED IT PROPERLY, AND AN OX OR AN ASS [NEVERTHELESS] FELL INTO IT AND WAS KILLED, HE WOULD BE EXEMPT.[15] Now, what were the circumstances? If it was covered properly, both as regards oxen and as regards camels, how then did any one fall in there? Does it therefore not mean ‘properly as regards oxen,

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(1) V. the discussion later.

(2) In accordance with Kid. I, 4; v. also supra 11b.

(3) V. p. 300, n. 5.

(4) In Babylon.

(5) Who delivered popular discourses at R. Hisda's; cf. Shab 88a.

(6) Of the partners.

(7) As he is surely not to blame.

(8) V. the discussion in Gemara.

(9) As supra 25b.

(10) Though a minor.

(11) But not noticeable from the outside.

(12) For if the camels had fallen in he would have certainly been liable.

(13) Even regarding oxen, for he should have thought of the possibility that camels might come first and weaken the cover and oxen would then fall in.

(14) As he is surely not to blame.

(15) V. p. 301, n. 7.

but not properly as regards camels'?[1] Again, if camels frequently passed, why should he be exempt where he had been so careless? If [on the other hand] camels did not frequently pass, is it not obvious [that he is exempt since] he was innocent? Did it therefore not refer to a case where camels used to pass occasionally, and it so happened that when camels passed they weakened the cover so that the oxen coming [later on] fell? And [in such cases] the text says, 'he would be exempt.' Does not this prove that since at that time camels had not actually been there he would be considered innocent? — I would say, no. For it might still [be argued that the pit had been covered] properly both as regards oxen and as regards camels; and as for the difficulty raised by you 'how did any one fall in there?', [this has already been removed by] the statement of R. Isaac b. Bar Hanah that [the boards of the cover] decayed from within.[2]

Come and hear: BUT IF HE DID NOT COVER IT PROPERLY AND AN OX OR AN ASS FELL INTO IT AND WAS KILLED, HE WOULD BE LIABLE. Now what were the circumstances? If you say that it means not properly covered as regards oxen', [which would of course imply] also 'not properly covered as regards camels', is it not obvious? Why then was it necessary to state liability? Does it not therefore mean 'that it was properly covered as regards oxen but not properly covered as regards camels'?[1] [Again, I ask,] what were the circumstances? If camels frequently passed [is it not obvious that] he was careless? If [on the other hand] no camels were to be found there, was he not innocent? Does it not [therefore speak of a case] where camels used to arrive occasionally and it so happened that camels in passing had weakened the cover so that the oxen coming [later] fell in? And [in reference to such a case] the text states liability. Does this not prove that since from time to time camels did pass he should be considered careless as he ought to have borne this fact in mind? — In point of fact [I might reply, the text may still speak of a pit covered] 'properly' as regards oxen though 'not properly' as regards camels, and [of one where] camels frequently passed, and as for your question. '[Is it not obvious that] he was careless?' [the answer would be that] since the prior clause contains the words, 'If he covered it properly', the later clause has the wording, 'If he did not cover it properly'.[3]

Some report that certainly no question was ever raised about this, for since the camels used to pass from time to time he was certainly careless, as he ought to have borne this fact in mind. If a question was raised, it was on the following point: Suppose he covered it with a cover that was strong enough for oxen but not strong enough for camels and in a place where camels frequently passed, and it decayed from the inside, what should be the legal position? Should we say miggo,[4] [i.e.,] since he had been careless with respect to camels he ought to be considered careless also with respect to the [accidental] decay; or should we not say miggo? — Come and hear; IF HE COVERED IT PROPERLY AND AN OX OR AN ASS FELL INTO IT AND WAS KILLED, HE WOULD BE EXEMPT. And it was stated in connection with this ruling that R. Isaac b. Bar Hanah explained that the boards of the cover had decayed from the inside. Now, what were the circumstances? If we say that it means 'properly covered as regards oxen' and also properly covered as regards camels', and that it had decayed from the inside, is it not obvious that there should be exemption? For indeed what more could he have done? Does it not mean, therefore, properly covered as regards oxen though not properly covered as regards camels', and in a place where camels frequently passed, and it so happened that the cover decayed from the inside? And [in such a case] the text states exemption. Does this not prove that we should not say miggo, [i.e.] since he was careless with respect to camels he ought to be considered careless with reference to the decay? — No, it might still [be argued that the pit was covered] properly as regards camels as well as oxen, and it so happened that it became decayed from the inside. And as for your question 'if it becomes decayed [from inside] what indeed should he have done?' [the answer would be that] you might have thought that he ought to have come frequently to the cover and knocked it [to test its soundness], and we are therefore told [that he was not bound to do this].

Come and hear; BUT IF HE DID NOT COVER IT PROPERLY, AND AN OX OR AN ASS FELL INTO IT AND WAS KILLED, HE WOULD BE LIABLE. Now, what were the circumstances? Should you say that it means 'not properly covered as regards oxen, [which would of course imply also] 'not properly covered as regards camels', why then was it necessary to state liability? Does it not therefore mean [that it was covered] properly as regards oxen but not properly as regards camels? But again if camels frequently passed there, [is it not obvious that] he was careless? If [on the other hand] no camels were to be found there, was he not innocent? Does it therefore not deal with a case where camels did frequently pass, but [it so happened] that the cover decayed from the inside? And [in such a case] the text states liability. Does this not prove that we have to say miggo, [i.e.,] since he had been careless with respect to camels, he should be considered careless also with reference to decay?[5] — I would say, No. For it might still [be argued that the pit had been covered] properly as regards oxen but not properly as regards camels, and in a place where camels were to be found frequently, and [it happened that] camels had come along and weakened the cover so that when oxen subsequently came they fell into the pit. And as for your question, 'Is it not obvious that he was careless?' [the answer would be that] since the prior clause contained the words 'If he covered it properly', the later clause similarly uses the wording. 'If he did not cover it [properly]'.

Come and hear; 'If there fell into it an ox that was deaf, abnormal, small, blind or while it walked at night time, there would be liability.[6] But in the case of a normal ox walking during the day there would be exemption.'[7] Why so? Why not say that since the owner of the pit was careless with respect to a deaf animal he should be considered careless also with reference to a normal animal? Does not this show that we should not say miggo.' — This does indeed prove [that we do not say miggo].

IF IT FELL FORWARD etc. Rab said: 'FORWARD' means quite literally 'on its face',[8] and 'BACKWARD' means also literally, 'on its back',[9]

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(1) And it so happened that camels weakened the cover, and when an ox or ass came later on it fell in.

(2) V. p. 302, n. 4.

(3) Though this ruling is obvious.

(4) Cf. Glos.

(5) no note.

(6) Infra 54b.

(7) As the owner of the pit could hardly have thought it likely that a normal ox walking during the day would fall into a pit.

(8) In which case it died from suffocation and there would be liability.

(9) Where the death could not have been caused by suffocation and there is therefore exemption.

Talmud - Mas. Baba Kama 53a

the fall in each case being into the pit. Rab thus adhered to his own view as [elsewhere][1] stated by Rab, that the liability in the case of Pit imposed by the Torah[2] is for injury caused by the unhealthy air [of the pit] but not for the blow [given by it]. Samuel, however, said that where the ox fell into the pit, whether on its face or on its back, there would always be liability, since Samuel adhered to the view stated by him [elsewhere][1] that [the liability is] for the unhealthy air, and a plus forte raison for the blow. How then are we to understand [the words 'Where it fell] BACKWARD ON ACCOUNT OF THE NOISE OF DIGGING', in which case [we are told] there should be exemption? — As, for instance, where it stumbled over the pit and fell to the back of the pit, [i.e.,] outside the pit.[3]

An objection was raised [from the following: If it fell] inside the pit whether on its face or on its

back there would be liability. Is not this a contradiction of the statement of Rab? — R. Hisda replied: Rab would admit that in the case of a pit in private ground[4] there would be liability, as the plaintiff could argue against the defendant: 'Whichever way you take it, if the animal died through the unhealthy air, was not the unhealthy air yours? If [on the other hand] it died through the blow, was not the blow given by your ground?[5] Rabbah, however, said: We are dealing here[6] with a case where the animal turned itself over; it started to fall upon its face but [before reaching the bottom of the pit it] turned itself over and finally fell upon its back, so that the unhealthy air which affected it [at the outset] really did the mischief. R. Joseph. however, said that we are dealing here[6] with a case where damage was done to the pit by the ox, i.e., where the ox made foul the water in the pit,[7] in which case no difference could be made whether it fell on its face or on its back, as there would always be liability.

R. Hananiah learnt [in a Baraitha] in support of the statement of Rab: [Scripture says] And it fall,[8] [implying that there would be no liability] unless where it fell in the usual way of falling.[9] Hence the Sages said: If it fell forward on account of the noise of digging there would be liability, but if it fell backward on account of the noise of digging there would be exemption, though in both cases [it fell] into the pit.

The Master stated: Where it fell forward on account of the noise of digging there would be liability. But why not say that it was the digger who caused it?[10] — R. Shimi b. Ashi thereupon said: This ruling is in accordance with R. Nathan, who stated that it was the owner of the pit who did the actual damage, and whenever no payment can be enforced from one [co-defendant] it is made up from the other[11] as indeed it has been taught: 'If an ox pushes another ox into a pit, the owner of the ox is liable, while the owner of the pit is exempt. R. Nathan, however, said that the owner of the ox would have to pay a half [of the damages] and the owner of the pit would have to pay the other half.' But was it not taught: R. Nathan says: The owner of the pit has to pay three-quarters, and the owner of the ox one quarter? — There is no contradiction, as the latter statement refers to Tam[12] and the former to Mu'ad.[13] On what principle did he base his ruling in the case of Tam? If he held that this [co-defendant] should be considered [in the eye of the law] as having done the whole of the damage, and so also the other co-defendant as having done the whole of the damage, why should not the one pay half and the other also pay half? If [on the other hand] he held that the one did half the damage and the other one also did half the damage, then let the owner of the pit pay half [of the damages] and the owner of the ox a quarter,[14] while the remaining quarter will be lost to the plaintiff? Raba thereupon said: R. Nathan was a judge, and went down to the depth of the law:[15] He did in fact hold that the one was considered as having done the whole of the damage and so also the other was considered as having done the whole of the damage; and as for your question 'Why should the one not pay half and the other half?' [he could answer] because the owner of the ox[16] could say to the owner of the pit, 'What will this your joining me [in the defence] benefit me?'[17] Or if you wish you may [alternatively] say that R. Nathan did in fact hold that the one did half of the damage and the other did half of the damage, and as for your question, 'Why not let the owner of the pit pay half and the owner of the ox a quarter while the remaining quarter will be lost to the plaintiff?' he might answer, because the owner of the killed ox would be entitled to say to the owner of the pit, 'As I have found my ox in your pit, you have killed it. Whatever is paid to me by the other defendant I do not mind being paid [by him], but whatever is not paid to me by him, I will require to be paid by you.'[18]

Raba said: If a man puts a stone near the mouth of a pit [which had been dug by another person] and an ox coming along stumbles over the stone and falls into the pit, we are here brought face to face[19] with the difference of opinion between R. Nathan and the Rabbis.[20] But is this not obvious? — You might perhaps have said that [the difference of opinion was confined to that case] where the owner of the pit could say to the owner of the ox, 'Had not my pit been there at all, your ox would in any case have killed the other ox,' whereas in this case the person who put the stone [near the pit]

could certainly say to the owner of the pit, 'If not for your pit what harm would my stone have done? Were the ox even to have stumbled over it, it might have fallen but would have got up again.' We are therefore told [by this] that the other party can retort, 'If not for your stone, the ox would not have fallen into the pit at all.'

It was stated:

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(1) Supra p. 289.

(2) Ex. XXI, 33-34.

(3) In which case the pit acted only as a secondary cause.

(4) Where the ground round about the pit has been abandoned, while the pit itself and the ground of it still remain with the owner.

(5) Since the pit and its ground remained yours.

(6) Where liability was stated.

(7) Cf. Mishnah 47b.

(8) Ex. XXI, 33.

(9) Cf. supra p. 290.

(10) Why then should the owner of the pit be liable? The digger too should also be exempt as he was but a remote cause to the damage that resulted.

(11) Cf. supra 13a.

(12) In which case the owner of the ox will pay quarter and the owner of the pit three quarters.

(13) Where both of them will pay equally.

(14) Which is half of the payment in the case of Tam.

(15) B.M. 117b; cf. also Hor. 13b.

(16) In the case of Tam.

(17) If I will have to pay half damages which is the maximum payment in my case.

(18) V. p. 307, n. 7. [And similarly in the case of our Mishnah since he cannot claim any damages from the digger, who was but a secondary cause, he is compensated by the owner of the pit.]

(19) As to whether the digger of the pit or the one who put the stone should be liable.

(20) According to whom the one who put the stone would alone have to pay.

Talmud - Mas. Baba Kama 53b

Where an ox [of a private owner] together with an ox that was sacred[1] but became disqualified[2] [for the altar], gored [an animal]. Abaye said that the private owner would have to pay half damages,[3] whereas Rabina said that he would have to pay quarter damages.[3] Both the one and the other are speaking of Tam, but while Rabina followed the view of the Rabbis,[4] Abaye followed that of R. Nathan.[5] Or if you wish you may say that both the one and the other followed the view of the Rabbis,[4] but while Rabina was speaking of Tam[6] Abaye was speaking of Mu'ad. Some report that Abaye stated half damages and Rabina full damages. The one ruling like the other would refer to the case of Mu'ad, but while one[7] followed the Rabbis[8] the other[9] followed the view of R. Nathan.[10] If you wish you may say that the one ruling like the other followed the view of R. Nathan, but while ones was speaking of Mu'ad, the other[7] was speaking of Tam.[11]

Raba said: If an ox along with a man pushes [certain things] into a pit, on account of Depreciation[12] they would all [three][13] be liable, but on account of the four [additional] items[12] or with respect to compensation for the value of [lost] embryos.[14] Man would be liable[15] but Cattle and Pit exempt;[14] in respect of kofer[16] or the thirty shekels[17] for [the killing of] a slave, Cattle would be liable[18] but Man and Pit exempt;[19] in respect of damage done to inanimate objects or to a sacred ox which had become disqualified [for the altar], Man and Cattle would be liable but Pit exempt, the reason being that Scripture says, And the dead beast shall be his,[20] [implying that it was only] in the case of an ox whose carcass could be his[21] [that there would be liability], excluding thus the case of

this [ox] whose carcass could not be his.[22] Does this mean that this last point was quite certain to Raba? Did not Raba put it as a query? For Raba asked; If a sacred ox which had become disqualified[23] [for the altar] fell into a pit, what would be the legal position? Shall we say that this [verse], And the beast shall be his, [confines liability to the case of] an ox whose carcass could be his, thus excluding the case of this ox whose carcass could never be his,[22] or shall we say that the words And the dead beast shall be his are intended only to lay down that the owners [plaintiffs] have to retain the carcass as part payment?[24] [The fact is that] after raising the question he himself solved it. But whence [then] would he derive the law that the owners [plaintiffs] have to retain the carcass as part payment ? — He would derive it from the clause and the dead shall be his own[25] [inserted in the case] of Cattle. What reason have you for rising [the clause] And the dead shall be his own [in the context dealing] with Cattle to derive from it the law that the owners [plaintiffs] have to retain the carcass as part payment, while you rise [the clause] And the dead beast shall be his[26] [in the context dealing] with Pit [to confine liability] to an animal whose carcass could be his?[27] Why should I not reverse [the implications of the clauses]? — It stands to reason that the exemption should be connected with Pit, since there is in Pit exemption also in the case of inanimate objects.[28] On the contrary, should not the exemption be connected with Cattle, since in Cattle there is exemption from half damages [in the case of Tam]? — In any case, exemption from the whole payment is not found [in the case of cattle].

WHERE THERE FELL INTO IT AN OX TOGETHER WITH ITS IMPLEMENTS WHICH THEREBY BROKE etc. This Mishnaic ruling is not in accordance with R. Judah. For it was taught: R. Judah imposes liability for damage to inanimate objects done by Pit. But what was the reason of the Rabbis?[29] — Because Scripture says, And an ox or an ass fall therein,[30] [implying] 'ox' but not 'man',[31] 'ass' but not 'inanimate objects'. R. Judah, [however, maintained that the word] 'or' [was intended] to describe inanimate objects while the [other] Rabbis

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(1) Which is not subject to the law of damage; cf. supra pp. 50ff.

(2) Through a blemish. [As long as such an ox had not been redeemed, it is regarded as an ox of the sanctuary, v. supra 36b. Cur. edd. add in brackets, 'e.g., a first-born ox which cannot be redeemed.' It is however questionable whether such an ox is not to be considered a common animal, having regard to the fact that being blemished it is entirely the priests, no share thereof being offered up on the altar. MS. M. omits these words.]

(3) And the remaining part will be lost to the plaintiff.

(4) Maintaining that each defendant is only liable for himself.

(5) Who stated that if no payment can be enforced from a defendant, his co-defendant has to make it up.

(6) Where quarter damages is half of the maximum payment.

(7) Abaye.

(8) V. p. 309, n. 6.

(9) Rabina.

(10) V. p. 309, n. 7.

(11) Where half damages is the maximum payment.

(12) Cf. supra 26a.

(13) I.e. the man, the owner of the pit and the owner of the ox.

(14) V. supra 49a.

(15) Ex. XXI, 22.

(16) Ibid. 29-30.

(17) Ibid. 32.

(18) Ibid. 28-32.

(19) Supra 28b and 35a

(20) Ex. XXI, 34.

(21) I.e., could be used by him as food for dogs and like purposes.

(22) As no use could lawfully be made of a carcass of a sacred animal that died.

(23) Through a blemish.

(24) Supra 10b.
(25) Ex. XXI, 36.
(26) V. p. 310. n. 14.
(27) V. p. 310. n. 15.
(28) V. supra p. 302, n. 2.
(29) For maintaining exemption.
(30) Ex. XXI, 33.
(31) Dying through falling into a pit.

Talmud - Mas. Baba Kama 54a

[argued that the word] 'or' was necessary as a disjunctive.[1] And R. Judah? — [He maintained that] the disjunction could be derived from [the use of the singular] And it fall.[2] And the Rabbis? — [They could reply that even the singular] And it fall could also imply many [things].[3]

May I say [that the expression] And it fall is intended as a generalisation,[4] while an ox or an ass [follows as] a specification, and where a generalisation is followed by a specification, the generalisation does not apply to anything save what is enumerated in the specification,[5] so that only in the case of an ox or an ass should there be liability, but not for any other object whatsoever? — No; for it could be said that [the clause] The owner of the pit shall make it good[6] generalises again. Now where there is a generalisation preceding a specification which is in its turn followed by another generalisation, you include only such cases as are similar to the specification.[5] [Thus here] as the specification refers to objects possessing life, so too all objects to be included [must be such] as possess life.[7] But [why not argue] since the specification refers to [animate] objects whose carcass would cause defilement whether by touching or by carrying,[8] should we not include [only animate] objects whose carcass would similarly cause defilement whether by touching or by carrying,[9] so that poultry would thus not be included?[10] — If so, the Divine Law would have mentioned only one object in the specification. But which [of the two][11] should the Divine Law have mentioned? Had it inserted [only] 'ox', I might have said that an animal which was eligible to be sacrificed upon the altar[12] should be included, but that which was not eligible to be sacrificed upon the altar[13] should not be included.[14] If [on the other hand] the Divine Law had [only] 'ass', I might have thought that an animal which was subject to the sanctity of firstborn[15] should be included, but that one which was not subject to the sanctity of firstborn[16] should not be included.[17] [But still why indeed not exclude poultry?] Scripture says: 'And the dead shall be his' [implying] all things that are subject to death. [If so,] whether according to the Rabbis who exclude inanimate objects, or according to R. Judah who includes inanimate objects, [the question maybe raised] are inanimate objects subject to death? It may be said that their breaking is their death. But again according to Rab who stated[18] that the liability imposed by the Torah in the case of Pit was for the unhealthy air [of the pit] but not for the blow [it gave], would either the Rabbis or R. Judah maintain that inanimate objects could be damaged by unhealthy air? — It may be said that [this could happen] with new utensils that burst in bad air. But was not this [clause] And the dead shall be his[19] required for the ruling of Raba?[20] For did Raba not say,[21] 'Where a sacred ox which had become disqualified [for the altar] fell into a pit, there would be exemption', as it is said: And the dead shall be his [implying that it was only] in the case of an ox whose carcass could be his [that there would be liability] and thus excluding the case of this ox whose carcass could never be his? — But Scripture says: He should give money unto the owner of it[19] [implying] that everything is included which has an owner. If so, why not also include even inanimate objects and human beings?[22] — Because Scripture says specifically 'an ox', [implying] and not 'a man', 'an ass' [implying] and not inanimate objects. Now according to R. Judah who included inanimate objects we understand the term 'ox' because it was intended to exclude 'man', but what was intended to be excluded by the term an ass? — Raba therefore said:[23] The term 'ass' in the case of Pit, on the view of R. Judah, as well as the term 'sheep' [occurring in the section dealing] with lost property[24] on the view unanimously accepted, remains difficult to

explain.

IF THERE FELL INTO IT AN OX, DEAF, ABNORMAL OR SMALL THERE WOULD BE LIABILITY. What is the meaning of 'AN OX, DEAF, ABNORMAL OR SMALL'? It could hardly be suggested that the meaning is 'an ox of a deaf owner, an ox of an abnormal owner, an ox of a minor', for would not this imply exemption in the case of an ox belonging to a normal owner?[25] — R. Johanan said: [It means] 'an ox which was deaf, an ox which was abnormal, an ox which was small.'

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(1) So that it should not be thought that there should be no liability unless both ox and ass fell in together.

(2) [So that 'or' carries the disjunction further to include utensils attached to the animal, v. Malbim, a.l.]

(3) As in Ex. XXXVI, 1; Deut. XIII, 3; I Sam. XVII, 34 etc.

(4) To include everything.

(5) [This is one of the principles of hermeneutics (Kelal u-ferat) according to R. Ishmael, v. Sanh. (Sonc. ed.) p. 12, n. 9.]

(6) Ex. XXI, 34.

(7) Thus excluding inanimate objects.

(8) Lev. XI, 39-40.

(9) Lev. ibid. 26-28.

(10) As these do not cause defilement either by touching or by carrying.

(11) Ox and ass.

(12) As was the case with ox.

(13) Such as an ass, horse, camel and the like.

(14) Hence ass was inserted to include also animals not eligible to be sacrificed upon the altar.

(15) As was the case with ass; cf. Ex. XIII, 13.

(16) Such as e.g., a horse, camel and the like.

(17) Hence 'ox' was inserted, for though the species of ox is subject to the sanctity of firstborn and would in no case have been excluded, its insertion being thus superfluous was surely intended to include even those animals which are not subject to the sanctity of firstborn.

(18) Supra p. 289.

(19) Ex. XXI, 34.

(20) [How then deduce from it liability in case of poultry?]

(21) Supra p. 296.

(22) E.g., slaves.

(23) Cf. B.M. 27a.

(24) Deut. XXII, 1-3.

(25) Which is of course not the case at all

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Still, would not this imply exemption in the case of an ox which was normal?[1] — R. Jeremiah thereupon said: A particularly strong case is taken:[2] There could be no question that in the case of a normal ox there should be liability, but in the case of an ox which is deaf or abnormal or small it might have been thought that it was its deafness that caused [the damage to it] or that it was its smallness that caused it [to fall] so that the owner of the pit should be exempt.[3] We are therefore told [that even here he is liable]. Said R. Aha to Rabina: But it has been taught: If a creature possessing sense fell into it there would be exemption. Does this not mean an ox possession sense? — He replied: No, it means a man. [If that is so,] would not this imply that only in the case of a man who possesses sense that there would be exemption, whereas if he did not possess sense there would be liability, [and how can this be, seeing that] it is written 'ox' [which implies] 'and not man'? — The meaning of 'one possessing sense' must therefore be 'one of the species of rational being'. But he again said to him: Was it not taught: If there fell into it an ox possessing sense there would be

exemption? — Raba therefore said: [The Mishnaic text indeed means] precisely an ox which was deaf, an ox which was abnormal, an ox which was small, for in the case of an ox which was normal there would be exemption, the reason being that such an ox should have looked more carefully while walking. So indeed was it taught likewise:[4] Where there fell into it an ox which was deaf, or abnormal or small, or blind or while walking at night time, there would be liability whereas if it was normal and walking during the day there would be exemption.

MISHNAH. BOTH AN OX AND ANY OTHER ANIMAL ARE ALIKE [BEFORE THE LAW WITH REFERENCE] TO FALLING INTO A PIT,[5] TO EXCLUSION FROM MOUNT SINAI,[6] TO PAYING DOUBLE [IN CASES OF THEFT],[7] TO RESTORING LOST PROPERTY,[8] TO UNLOADING [BURDENS TOO HEAVY FOR AN ANIMAL TO BEAR],[9] TO ABSTAINING FROM MUZZLING,[10] TO HETEROGENEOUS ANIMALS [BEING COUPLED[11] OR WORKING TOGETHER],[12] TO SABBATH REST.[13] SO ALSO BEASTS AND BIRDS ARE LIKE THEM. IF SO WHY DO WE READ, AN OX OR AN ASS? ONLY BECAUSE SCRIPTURE SPOKE OF THE MORE USUAL [ANIMALS IN DOMESTIC LIFE].

GEMARA. [WITH REFERENCE] TO FALLING INTO A PIT, since it is written, He should give money unto the owner of it,[14] [to include] everything that an owner has, as indeed already stated.[15] TO EXCLUSION FROM MOUNT SINAI [as it is written] Whether it be animal or man, it shall not live.[6] Beast[16] is included in 'animal' and [the word] 'whether' includes 'birds'. TO PAYING DOUBLE, as we said elsewhere:[17] [The expression] for all manner of trespass[18] is comprehensive. TO RESTORING LOST PROPERTY; [this is derived from the words] with all lost things of thy brother.[19] TO UNLOADING [BURDENS TOO HEAVY FOR AN ANIMAL TO BEAR]; we derive this [by] comparing [the term] 'ass'[9] with [the term] 'ass'[13] [occurring in connection] with the Sabbath.[20] TO [ABSTAINING FROM] MUZZLING; this we learn [similarly by] comparing [the term] 'ox'[10] with [the term] 'ox'[13] [used in connection] with Sabbath.[20] TO HETEROGENEOUS ANIMALS; the rule as regards ploughing we learn [by comparing the term] 'ox'[12] with the term 'ox'[13] used [in connection] with Sabbath;[20] and the rule as regards coupling we learn [by comparing the term] 'thy cattle'[11] with the term 'thy cattle'[13] [used in connection] with Sabbath. But whence are [all these rules known] to us in the case of Sabbath [itself]? — As it was taught: R. Jose says in the name of R. Ishmael: In the first Decalogue[21] it is said thy manservant and thy maidservant and thy cattle[22] whereas in the second Decalogue[23] it is said thy ox and thy ass and any of thy cattle.[24] Now, are not 'ox' and 'ass' included in 'any of thy cattle'? Why then were they singled out? To tell us that just as in the case of the 'ox and ass' mentioned here,[24] beasts and birds are on the same footing with them.[25] So also [in any other case where 'ox and ass' are mentioned] all beasts and birds are on the same footing with them. But may we not say that 'thy cattle' in the first Decalogue[21] is a generalisation, and 'thy ox and thy ass' in the second Decalogue is a specification, and [we know that] where a generalisation is followed by a specification, the generalisation does not include anything save what is mentioned in the specification,[26] [whence it would follow that only] 'ox and ass' are [prohibited][27] but not any other thing? — I may reply that the words 'and any of thy cattle' in the second Decalogue constitute a further generalisation, so that we have a generalisation preceding a specification which in its turn is followed by another generalisation; and in such a case you include also[28] that which is similar to the specification,[26] so that as the specification [here] mentions objects possessing life, there should thus also be included all objects possessing life. But, I may say, the specification mentions [living] things whose carcass would cause defilement whether by touching or by carrying.[29] [Why not say that] there should also be included all [living] things whose carcass would similarly cause defilement whether by touching or by carrying,[30] so that birds would thus not be included?[31] — I may reply: If that were the case, the Divine Law would have inserted only one [object in the] specification. But which [of the two][32] should the Divine Law have inserted? For were the Divine Law to have inserted [only] 'ox', I might have thought than an animal which was eligible to be sacrificed upon the altar[33] should be included, but one which was not eligible to be sacrificed upon the altar[34] should not be included, so that the Divine Law was thus

compelled to insert also 'ass'.[35] If [on the other hand] the Divine Law had inserted [only] 'ass', I might have thought that [an animal which was subject to the] sanctity of first birth[36] should be included, but that which was not subject to the sanctity of first birth[37] should not be included; the Divine Law therefore inserted also 'ox'.[38] It must therefore [be said that] and all thy cattle is [not merely a generalisation but] an amplification.[39] [Does this mean to say that] wherever the Divine Law inserts [the word] 'all', it is an amplification? What about tithes where [the word] 'all' occurs and we nevertheless expound it as an instance of generalisation and specification? For it was taught:[40] And thou shalt bestow that money for all that thy soul lusteth after[41] is a generalisation; for oxen, or for sheep, or for wine, or for strong drink[41] is a specification; or for all that thy soul desireth is again a generalisation. Now, where a generalisation precedes a specification which is in its turn followed by another generalisation you cannot include anything save what is similar to the specification. As therefore the specification [here][41] mentions products obtained from products[42] and which spring from the soil[43] there may also be included all kinds of products obtained from products[44] and which spring from the soil.[45] [Does this not prove that the expression 'all' was taken as a generalisation, and not as an amplification?][46] — I might say that [the expression] 'for all'[47] is but a generalisation, whereas 'all' would be an amplification. Or if you wish I may say that [the term] 'all' is also a generalisation, but in this case[48] 'all' is an amplification. For why was it not written And thy cattle just as in the first Decalogue? Why did Scripture insert here 'and all thy cattle' unless it was meant to be an amplification? — Now that you decide that 'all' is an amplification[49] why was it necessary to have 'thy cattle' in the first Decalogue and 'ox and ass' in the second Decalogue? — I may reply that 'ox' was inserted [to provide a basis] for comparison of 'ox' with [the term] 'ox' [used in connection] with muzzling; so also 'ass' [to provide a basis] for comparison of 'ass' with the term 'ass' [used in connection] with unloading; so again 'thy cattle' [to provide a basis] for comparison of 'thy cattle' with [the expression] 'thy cattle' [occurring in connection] with heterogeneity. If that is the case [that heterogeneity is compared with Sabbath breaking] why should even human beings not be forbidden[50] [to plough together with an animal]? Why have we learnt; A human being is allowed to plough [the field] and to pull [a waggon] with any of the beasts?[51] — R. Papa thereupon said: The reason of this matter was known to the Papunean,[52] that is R. Aha b. Jacob [who said that as] Scripture says that thy manservant and thy maidservant may rest as well as thou[48] [it is only] in respect of the law of rest that I should compare them [to cattle] but not of any other matter.

R. Hanina b. 'Agil asked R. Hiyya b. Abba: Why in the first Decalogue is there no mention of wellbeing,[53] whereas in the second Decalogue

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(1) And why should this be so?

(2) Lit., 'He states (a case) where there can be no question'.

(3) Putting in contributory negligence on the part of the plaintiff as a defence.

(4) Supra p. 305.

(5) V. Ex. XXI, 33.

(6) V. ibid., XIX, 13.

(7) V. ibid. XXII, 3.

(8) V. Deut. XXII, 1-3.

(9) V. Ex. XXIII, 5 and Deut. XXII, 4.

(10) V. Deut. XXV, 4.

(11) V. Lev. XIX, 19.

(12) V. Deut. XXII, 10.

(13) V. Ex. XX, 10 and Deut. V, 14.

(14) Ex. XXI, 34.

(15) Supra p. 313.

(16) [I.e., non-domesticated animals.]

(17) Infra p. 364.

(18) Ex. XXII, 8.
(19) Deut. XXII, 3.
(20) As explained anon.
(21) Ex. XX, 2-17
(22) Ibid. 10.
(23) Deut. V, 6-18.
(24) Ibid. 14.
(25) As will be shown anon.
(26) V. supra p. 312, n. 1.
(27) To work on the Sabbath.
(28) Lit., 'only'.
(29) Lev. XI, 39-40.
(30) Ibid. 26-28.
(31) As these do not cause defilement either by touching or by carrying.
(32) Ox and ass.
(33) As was the case with ox.
(34) Such as an ass, horse, camel and the like.
(35) Which would include also animals not eligible to be sacrificed upon the altar.
(36) As was the case with ass; cf. Ex. XIII, 13.
(37) Such as horses and camels and the like.
(38) To include those animals which otherwise would have been excluded; for since the species of ox is subject to the sanctity of first-born and would in no case have been excluded, its insertion being thus superfluous was surely intended to include even those animals which are not subject to the sanctity of first-born. On the other hand, birds should still be excluded since, unlike ox and ass, their carcasses do not defile, either by touching or by carrying.
(39) I.e., the term 'all' does more than generalize, for it includes everything. [On the difference between amplification ribbuy and generalisation kelal, v. Shebu. (Sonc. ed.) p. 12, n. 9.]
(40) V. infra 63a.
(41) Deut. XIV, 26.
(42) Such as wine from grapes.
(43) Which characterises also cattle.
(44) Excluding water, salt and mushrooms.
(45) Thus excluding fishes.
(46) Which would have included all kinds of food and drink.
(47) [בכל , the particle ב ('for') is taken as partitive.]
(48) In Deut. V, 14.
(49) At least in the case of the Sabbath, including thus all kinds of living creatures.
(50) For in the case of Sabbath, servants are included.
(51) Kil. VIII, 6.
(52) [Papunia was a place between Bagdad and Pumbeditha, v. B.B. (Sonc. ed.) p. 79, n. 8.]
(53) For honouring father and mother; v. Ex. XX, 12.

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there is a mention of wellbeing?[1] — He replied: While you are asking me why wellbeing is mentioned there, ask me whether wellbeing is in fact mentioned or not, as I do not know whether wellbeing is mentioned there or not.[2] Go therefore to R. Tanhum b. Hanilai who was intimate with R. Joshua b. Levi, who was an expert in Aggadah. When he came to him he was told by him thus: 'From R. Joshua b. Levi I have not heard anything on the matter. But R. Samuel b. Nahum the brother of the mother of R. Aha son of R. Hanina, or as others say the father of the mother of R. Aha son of R. Hanina, said to me this: Because the [first tablets containing the] Commandments were destined to be broken.'[3] But even if they were destined to be broken, how should this affect [the mention of wellbeing]? — R. Ashi thereupon said: God forbid! Wellbeing would then have ceased in

Israel.[4]

R. Joshua[5] said: He who sees [the letter] teth[6] in a dream [may regard it as] a good omen for himself. Why so? If because it is the initial letter of [the word] 'Tob' ['good'] written in Scripture,[7] why not say [on the contrary that it is also the initial letter of the verb 'ta'atea'[8] commencing the Scriptural verse] And I will sweep it with the besom of destruction?[9] — We are speaking [here of where he saw in a dream only] one teth [whereas ta'atea contains two such letters]. But still why not say [that it might have referred to the word 'tum'ah'[10] as in the verse] Her filthiness is in her skirts?[11] — We are speaking of [where he saw in a dream the letters] 'teth' and 'beth'.[12] But again why not say [that it might have referred to the verb tabe'u[13] as in the verse], Her gates were sunk in to the ground?[14] — The real reason is that Scripture used this letter on the very first occasion to express something good, for from the beginning of Genesis up to [the verse] And God saw the light[15] no teth occurs.[16] R. Joshua b. Levi similarly said: He who sees [the word] hesped[17] in a dream [may take it as a sign that] mercy has been exercised towards him in Heaven, and that he will be released [from trouble].[18] provided, however, [he saw it] in script.

SO ALSO BEASTS AND BIRDS ARE LIKE THEM etc. Resh Lakish said: Rabbi taught here[19] that a cock, a peacock and a pheasant are heterogeneous with one another.[20] Is this not obvious?[21] — R. Habiba said: Since they can breed from one another it might have been thought that they constitute a homogeneous species; we are therefore told [by this that this is not the case]. Samuel said:[22] The [domestic] goose and the wild goose are heterogeneous with each other. Raba son of R. Hanan demurred [saying:] What is the reason? Shall we say because one has a long neck and the other has a short neck? If so, why should a Persian camel and an Arabian camel similarly not be considered heterogeneous with each other, since one has a thick neck and the other a slender neck? — Abaye therefore said: [It is because] one[23] has its genitals discernible from without while the other one[24] has its genitals within. R. Papa said: [It is because] one[23] becomes pregnant with only one egg at fecundation, whereas the other one[21] becomes pregnant with several eggs at one fecundation. R. Jeremiah reported that Resh Lakish said: He who couples two species of sea creatures becomes liable to be lashed.[25] On what ground?[26] R. Adda b. Ahabah said in the name of 'Ulla: This rule comes from the expression 'after its kind'[27] [in the section dealing with fishes] by comparison with 'after its kind'[28] [in reference to creatures] of the dry land. Rehabah inquired: If a man drove [a waggon] by means of a goat and a mullet together, what would be the legal position? Should we say that since a goat could not go down into the sea and a mullet could not go up on to the dry land, no transgression has been committed, or do we say that after all they are now pulling together?[29] Rabina demurred to this: If this is so, supposing one took wheat and barley together in his hand and sowed the wheat on the soil of Eretz Yisrael[30] and the barley on the soil outside Eretz Yisrael,[31] would he be liable [as having transgressed the law]?[32] — I might answer: Where is the comparison? There [in your case][33] Eretz Yisrael is the place subject to this obligation whereas any country outside Eretz Yisrael is not subject to this obligation; but here,[34] both one place[35] and the other[36] are subject to the obligation.[37] [

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(1) Cf. Deut. V, 16, where the following occurs, That thy days may be prolonged, and that it may go well with the . . . .

(2) As no Halachic point was involved, R. Hiyya b. Abba did not observe the difference; see also Tosaf. B.B. 113a.

(3) Ex. XXXII, 19.

(4) I.e. if it would have been inserted in the first Decalogue it would have ceased altogether when the two tablets were broken.

(5) Some add 'b. Levi'.

(6) The ninth letter of the Hebrew alphabet.

(7) On so many occasions.

(8) I.e. to sweep with a besom.

(9) Isa. XIV, 23.

(10) Meaning defilement and filthiness.

(11) Lam. I, 9.
(12) The second letter of the Alphabet.
(13) I.e., they sunk.
(14) Lam. II, 9.
(15) Gen. I, 4.
(16) And since the first teth in Scriptures commences the word denoting 'good' it is a good omen to see it in a dream.
(17) Which denotes an elegy and a lamentation.
(18) As the word hesped could be divided thus: has pad [ah]. i.e. mercy has been exercised and release granted.
(19) By stating that the law of heterogeneity applies also to birds.
(20) I.e., we are justified in maintaining so.
(21) Since they are birds of different kinds.
(22) Bek. 8a.
(23) The wild goose.
(24) The domestic goose.
(25) As be transgressed the negative commandment of Lev. XIX, 19.
(26) Is not 'cattle' specified in Lev. XIX, 19?
(27) Gen. I. 21.
(28) Ibid. 25.
(29) And a sin has been committed.
(30) Which is subject to the law of not being sown with mingled seed.
(31) Which is not subject to this law.
(32) And since he would not be liable, what doubt could be entertained in the case of a goat and mullet?
(33) Of sowing a field with mingled seed.
(34) In the case of a goat and a mullet.
(35) The dry land.
(36) The sea.
(37) As derived above from the similarity of expressions 'after its kind'.]

Talmud - Mas. Baba Kama 55b

C H A P T E R V I

MISHNAH. IF A MAN BRINGS SHEEP INTO A SHED AND LOCKS THE DOOR IN FRONT OF THEM PROPERLY, BUT THE SHEEP [NEVERTHELESS] GET OUT AND DO DAMAGE, HE IS NOT LIABLE.[1] IF, HOWEVER, HE DOES NOT LOCK THE DOOR IN FRONT OF THEM PROPERLY, HE IS LIABLE.[2] IF [THE WALL] BROKE DOWN AT NIGHT, OR IF ROBBERS BROKE IN, AND THEY[3] GOT OUT AND DID DAMAGE, HE WOULD NOT BE LIABLE. IF [HOWEVER] ROBBERS TOOK THEM OUT [FROM THE SHED AND LEFT THEM AT LARGE AND THEY DID DAMAGE] THE ROBBERS WOULD BE LIABLE [FOR THE DAMAGE].[4] BUT IF THE OWNER HAD LEFT THEM IN A SUNNY PLACE, OR HE HAD HANDED A MINOR, AND THEY GOT AWAY AND DID DAMAGE, HE HANDED THEM OVER TO THE CARE OF A DEAF-MUTE, AN IDIOT, HE WOULD BE LIABLE.[4] IF HE HAD HANDED THEM OVER TO THE CARE OF A SHEPHERD, THE SHEPHERD WOULD HAVE ENTERED [INTO ALL RESPONSIBILITIES] INSTEAD OF HIM. IF A SHEEP [ACCIDENTALLY] FELL INTO A GARDEN AND DERIVED BENEFIT [FROM THE FRUIT THERE], PAYMENT WOULD HAVE TO BE MADE TO THE EXTENT OF THE BENEFIT,[5] WHEREAS IF IT HAD GONE DOWN THERE IN THE USUAL WAY AND DONE DAMAGE, THE PAYMENT WOULD HAVE TO BE FOR THE AMOUNT OF THE DAMAGE DONE BY IT.[6] HOW IS PAYMENT MADE FOR THE AMOUNT OF DAMAGE DONE BY IT?[6] BY COMPARING THE VALUE OF AN AREA IN THAT FIELD REQUIRING ONE SE'AH[7] [OF SEED] AS IT WAS [PREVIOUSLY] WITH WHAT ITS WORTH IS [NOW]. R. SIMEON, HOWEVER, SAYS: IF IT CONSUMED RIPE FRUITS THE PAYMENT SHOULD BE FOR RIPE FRUITS; IF ONE SE'AH[8] [IT WOULD BE FOR] ONE

SE'AH, IF TWO SE'AHS [FOR] TWO SE'AHS.

GEMARA. Our Rabbis taught: What is denominated 'properly' and what is not 'properly'? — If the door was able to stand against a normal wind,[9] it would be 'properly', but if the door could not stand against a normal wind, that would be 'not properly'. R. Manni b. Pattish thereupon said: Who can be the Tanna [who holds] that in the case of Mu'ad,[10] even inadequate precaution[11] suffices [to confer exemption]? It is R. Judah. For we have learnt: If the owner fastened his ox [to the wall inside the stable] with a cord or shut the door in front of it properly[12] and the ox got out and did damage, whether it was Tam or already Mu'ad, he would be liable; so R. Meir. R. Judah, however, says: In the case of Tam he would be liable, but in the case of Mu'ad exempt, for it is written, And his owner hath not kept him in[13] [thus excluding this case where] it was kept in. R. Eliezer, however, says: No precaution is adequate [for Mu'ad] save the [slaughter] knife.[14] [But does not an anonymous Mishnah usually follow the view of R. Meir?][15] — We may even say that it is in accordance with R. Meir, for Tooth and Foot are different[16] [in this respect], since the Torah required a lesser degree of precaution in their case as stated by R. Eleazar, or, according to others, as stated in a Baraitha: There are four cases [of damage] where the Torah requires a lesser degree of precaution. They are these: Pit and Fire, Tooth and Foot. Pit as it is written, And if a man shall open a pit, or if a man shall dig a pit and not cover it,[17] implying that if he covered it[18] he would he exempt. Fire, as it is written, He that kindled the fire shall surely make restitution,[19] [that is to say] only where he acted [culpably], as by actually kindling the fire.[20] Tooth, as it is written, And he shall send forth,[21] [that is to say] only where he acted [wrongly] as by actually sending it forth.[20] It was [further] taught:[22] 'And he shall send forth'[23] denotes Foot, as in the similar expression, That send forth the foot of the ox and the ass;[24] And it shall consume denotes 'Tooth',[23] as in the similar expression, As the tooth consumeth to entirety.[25] This is so only for the reason that he acted [culpably] as by actually sending it forth or feeding it there,[26] whereas where he did not act [in such a manner] this would not be so. Rabbah said: The text of the Mishnah also corroborates [this view][27] by taking here the case of sheep. For have we not been dealing all along [so far] with an 'ox'?[28] Why then not say [here also] 'ox'?[29] What special reason was there for taking here SHEEP?[30] Is it not because the Torah required a lesser degree of precaution in their case[31] on account of the fact that it is not Horn that is dealt with here,[32] but Tooth and Foot that are dealt with here? It is thus indicated to us that [this kind of precaution[33] is] only in the case of Tooth and Foot which are Mu'ad [ab initio]; and this may be regarded as proved.

It was taught: R. Joshua said: There are four acts for which the offender is exempt from the judgments of Man but liable to the judgments of Heaven. They are these: To break down a fence in front of a neighbour's animal [so that it gets out and does damage];[34] to bend over a neighbour's standing corn in front of a fire;[34] to hire false witnesses to give evidence; and to know of evidence in favour of another and not to testify on his behalf.[35]

The Master stated: 'To break down a fence in front of a neighbour's animal.' Under what circumstances? If we assume that the wall was sound, why should the offender not be liable even according to the judgments of Man [at least for the damage done to the wall]? — It must therefore be

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(1) As he is not to blame.

(2) As he did not discharge his duty of guarding his cattle.

(3) I.e., the sheep.

(4) Done by the sheep, since they have come into the possession of the robbers, who have thus become liable to control them.

(5) But not to the extent of the actual damage: cf. supra 19b.

(6) In accordance with the law of Tooth.

(7) V. Glos.

(8) V. Glos.

(9) Though unable to withstand an extraordinary wind.
(10) As in the case with Tooth and Foot.
(11) I.e., a door able to withstand a normal wind.
(12) Withstanding a normal wind.
(13) Ex. XXI, 36.
(14) Supra 45b.
(15) According to whom precaution of a lesser degree would not suffice.
(16) From Horn.
(17) Ex. XXI, 33.
(18) Though he did not fill it with sand.
(19) Ex. XXII, 5.
(20) But not where any precaution has been taken.
(21) Ex. XXII, 4.
(22) Cf. supra 2b.
(23) Ex. XXII, 4.
(24) Isa. XXXII, 20.
(25) I Kings XIV,10.
(26) V. supra n. 1.
(27) I.e. the distinction between Tooth and Horn.
(28) And not with sheep.
(29) Which as a rule stands for Horn.
(30) Which damages by Tooth and Foot.
(31) I.e. in Tooth and Foot.
(32) [MS. M. reads 'sheep'. Render accordingly: Because as to sheep there is no mention (in the Torah) in connection with Horn; only Tooth and Foot are mentioned in connection therewith.]
(33) Which would withstand only a normal wind.
(34) V. the discussion later.
(35) Tosef., Shebu. III.

Talmud - Mas. Baba Kama 56a

where the wall was shaky.[1]

The Master stated: 'To bend over a neighbour's corn standing in front of a fire.' Under what circumstances? If we assume that the fire can now reach it in a normal wind, why is he not liable also according to the judgments of Man? — It must therefore be where it would reach them only in an unusual wind. R. Ashi said: What is referred[2] to is 'covering' the offender having caused the stalks to become hidden in the ease of Fire.[3]

The Master stated: 'To hire false witnesses.' Under what circumstances? If we assume for his own benefit,[4] should he not pay the money[5] and should he thus not also be liable even in accordance with the judgments of Man? — It therefore must mean for the benefit of his neighbour.[6]

'To know of evidence in favour of another and not to testify on his behalf.' With what case are we dealing here? If with a case where there are two [witnesses], is it not obvious that it is a Scriptural offence,[7] [as it is written], If he do not utter it then he shall bear his iniquity?[8] — It must therefore be where there is one [witness].[9]

(Mnemonic: He who does, Deadly poison, Entrusts, His fellow, Broken.)

But are there no more cases [of the same category]? Is there not the case of a man who does work with the Water of Purification[10] or with the [Red] Heifer of Purification,[10] where he is similarly

exempt according to the judgments of Man but liable according to the judgments of Heaven?[11] Again, is there not the case of one who placed deadly poison before the animal of a neighbour, where he is exempt from the judgments of Man but liable according to the judgments of Heaven?[12] So also is there not the case of one who entrusts fire to a deaf-mute, an idiot or a minor [and damage results], where he is exempt from the judgments of Man but liable according to the judgments of Heaven?[13] Again, is there not the case of the man who gives his fellow a fright, where he is similarly exempt from the judgments of Man but liable according to the judgments of Heaven?[14] And finally is there not the case of the man who, when his pitcher has broken on public ground, does not remove the potsherds, who, when his camel falls does not raise it, where R. Meir indeed makes him liable for any damage resulting therefrom, but the Sages hold that he is exempt from the judgments of Man though liable according to the judgments of Heaven?[15] — Yes, there are surely many more cases [to come under the same category], but these four cases were particularly necessary to be stated by him,[16] as otherwise you might have thought that even according to the judgments of Heaven there should not be any liability. It was therefore indicated to us [that this is not so]. In the case of breaking down a fence in front of a neighbour's animal you might have said that since the wall was in any case bound to come down, what offence was committed, and that even according to the judgments of Heaven there should be no liability. It was therefore indicated to us [that this is not so]. In the case of bending over a neighbour's standing corn in front of a fire you might also have said that the defendant could argue, 'How could I know that an unusual wind would come?' and that consequently even according to the judgments of Heaven he should not be liable; it was therefore indicated to us [that this is not the case]. So also according to R. Ashi who said that the reference is to 'covering', you might have said that [the defendant could contend], 'I surely intended to cover and thus protect your property,[17] and that even according to the judgments of Heaven he should not be liable. It was therefore indicated to us [that this is not so]. In the case of hiring false witnesses you might also have said that the offender should be entitled to plead, 'Where the words of the Master[18] are contradicted by words of a disciple,[19] whose words should be followed?'[20] and that even according to the judgments of Heaven he should not be liable. It was therefore indicated to us [that this is not so]. In the case where one knows evidence in favour of another and does not testify on his behalf, you might also have said that [the offender could argue], 'Who can say for certain that even had I gone and testified on his behalf, the other party would have admitted [the claim], and would not perhaps have sworn falsely [against my evidence]?'[21] and that even according to the judgments of Heaven he should not be liable. It was therefore indicated to us [that this is not the case].

IF THE WALL BROKE DOWN AT NIGHT OR IF ROBBERS BROKE IN etc., Rabbah said: This[22] is so only where the animal undermined the wall. What then of the case where it did not undermine the wall?[23] Would there then be liability? Under what circumstances? If it be assumed that the wall was sound, why then even where it did not undermine it[23] should there be liability? What else could the defendant have done? But if, on the other hand, the wall was shaky, why even in the case where the animal undermined it should there be exemption? Is not this a case where there is negligence[24] at the beginning but [damage results from] accident[25] at the end? Your view is correct enough on the assumption[26] that where there is negligence at the beginning [and damage results through] accident at the end there is exemption, but if we take the view[26] that where there is negligence at the beginning though [damage results from] accident at the end there is liability, what can be said? — This ruling of the Mishnah therefore refers to a sound wall and even to a case where it did not undermine the wall.[27] For the statement of Rabbah was made with reference to [the ruling in] the concluding clause, IF THE OWNER HAD LEFT THEM IN A SUNNY PLACE OR HANDED THEM OVER TO THE CARE OF A DEAF-MUTE, AN IDIOT OR A MINOR AND THEY GOT AWAY AND DID DAMAGE, HE WOULD BE LIABLE. Rabbah thereupon said: This would be so even where it undermined the wall. For there would be no doubt that [this would be so] where it did not undermine the wall[28] as there was negligence throughout, but even where it did undermine the wall,[29] the ruling[30] would also hold good. You might have said [in that case, that where it undermined the wall][29] it should be regarded as a case of negligence at the beginning but

accident at the end.[31] It was therefore indicated to us[32] that [it is regarded as a case of] negligence throughout, the reason being that the plaintiff might say, 'You should surely have realised that since you left it in a sunny place, it will use every possible device for the purpose of getting out.

IF THE ROBBERS TOOK THEM OUT, THE ROBBERS WOULD BE LIABLE [FOR THE DAMAGE].[33]

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(1) And should in any case have been pulled down.
(2) By the expression 'bending over'.
(3) For which there is no liability according to the view of the Rabbis (v. infra p. 357), and by his act he caused the owner of the corn the loss of all claim to compensation.
(4) I.e., to obtain money really not due to him.
(5) Which he obtained by false pretenses and by the evidence of the false witnesses whom he hired.
(6) I.e. to pay him money not due to him, and it so happened that the neighbour to whom the money was paid could not be made to give back the money he obtained by the false evidence.
(7) Why then state it here?
(8) Lev. V, 1.
(9) Whose evidence would merely entail the imposition of an oath upon the defendant, v. Shebu 40a.
(10) Thus disqualifying it from being used for the purpose of purification, Par. IV, 4.
(11) Git. 53a, and infra 98a.
(12) Supra 47b.
(13) Infra 59b.
(14) Infra 91a.
(15) Supra 28b.
(16) R. Joshua.
(17) But not to cause you the loss of compensation.
(18) Expressed in the Divine Law.
(19) I.e. mortal man.
(20) Surely the word of the former. The witnesses should therefore be exclusively responsible, as they should not have followed the advice of a man in contradiction to the words of the Law. The law of agency could on this account not apply in matters of transgression; cf. Kid. 42b and supra p. 294.
(21) Since one witness could not make the defendant liable for money payment but only for an oath.
(22) Exemption.
(23) Which fell down of itself.
(24) To leave an animal behind a shaky wall which could not withstand a normal wind.
(25) Viz., that the animal broke through it.
(26) Supra 21b.
(27) V. p. 327, n. 6.
(28) But managed to escape through the door.
(29) Which was very sound.
(30) Of liability.
(31) V. p. 327, n. 8.
(32) By Rabbah.
(33) V. p. 324, n. 4.

Talmud - Mas. Baba Kama 56b

Is this not obvious, seeing that as soon as they took it out it was placed under their charge in all respects?[1] The ruling was necessary to meet the case where they merely stood in front of it[2] [thus blocking any other way for it while leaving open that leading to the corn]. This is on the lines of the statement made by Rabbah on behalf of R. Mattena who said it on behalf of Rab: If a man placed the animal of one person near the standing corn of another, he is liable.[3] 'Placed', [you say]? Is this not

obvious? — The ruling was necessary to meet the case where he merely stood in front of it [blocking thus any other way for it while leaving open that leading to the corn]. Said Abaye to R. Joseph: Did you not explain to us that [the ruling of Rab referred to a case where] the animal was [not actually placed but only] beaten [with a stick and thus driven to the corn]? In the case of robbers also, [the ruling in the Mishnah similarly refers to a case where] they had only beaten it. IF HE HANDED THEM OVER TO THE CARE OF A SHEPHERD, THE SHEPHERD WOULD ENTER INTO ALL THE RESPONSIBILITIES INSTEAD OF HIM. I would here ask: 'Instead of whom?' If you say, instead of the owner of the animal, have we not already learnt elsewhere: 'If an owner hands over his cattle to an unpaid bailee or to a borrower, to a paid bailee or to a hirer, each of them would enter into the responsibilities of the owner'?[4] It must therefore mean, instead of a bailee,[5] and the first bailee would be exempt altogether. Would this not be a refutation of Raba? For did Raba not say: One bailee handing over his charge to another bailee becomes liable for all consequences?[6] — Raba might reply that 'he handed it over to a shepherd' means [the shepherd handed it over] to his apprentice, as it is indeed the custom of the shepherd to hand over his sheep to [the care of] his apprentice. Some say that since the text says, HE HANDED THEM OVER TO THE CARE OF A SHEPHERD and does not say 'he handed them over to another person,'it could from this be proved that the meaning of 'HE HANDED THEM OVER TO THE CARE OF A SHEPHERD' is that the shepherd handed [them] over to his apprentice, as it is indeed the custom of the shepherd to hand over [various things] to [the care of] his apprentice, whereas if [he handed it over] to another person this would not be so. May we say that this supports the view of Raba? For did Raba not say: One bailee handing over his charge to another bailee becomes liable for all consequences?[6] — It may however be said that this is no support. For the text perhaps merely mentioned the usual case, though the same ruling would apply [to a case where it was handed over] to another person altogether.

It was stated: A person taking charge of a lost article [which he has found],[7] is according to Rabbah in the position of an unpaid bailee,[8] but according to R. Joseph in the position of a paid bailee.[9] Rabbah said: He is in the position of an unpaid bailee, since what benefit is forthcoming to him? R. Joseph said: He is in the position of a paid bailee on account of the benefit he derives from not being required to give bread to the poor [while occupied in minding the lost article found by him];[10] hence he should be considered a paid bailee. Some, however, explain it thus: R. Joseph said that he would be like a paid bailee as the Divine Law put this obligation[11] upon him even against his will; he must therefore be considered as a paid bailee.[12] R. Joseph brought an objection to the view of Rabbah [from the following]:

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(1) V. p. 325, n. 7.

(2) In which case the sheep did not come into the possession of the robbers.

(3) Though the animal which did the damage is not his.

(4) Supra 44b.

(5) I.e. where the sheep has already been in the hands of a bailee who later transferred it to a shepherd. By declaring the shepherd to be liable it is implied that the bailee will become released from his previous obligations.

(6) Even for accidents, as he had no right to hand over his charge to another person without the consent of the owner, v. supra 11b.

(7) And which he will have to return to the owner.

(8) To whom the law of Ex. XXII, 6-8 applies, and who is thus exempt where the article was stolen or lost.

(9) Who is subject to Ex. XXII, 9-12 and who is therefore liable to pay where the article was stolen or lost.

(10) As while a person is occupied with the performance of one commandment he is not under an obligation to perform at the same time another commandment; cf. Suk. 25a.

(11) Of looking after the lost article which he found.

(12) Who after receiving the consideration is similarly under an obligation to guard.

If a person returns [the lost article which he had found] to a place where the owner is likely to see it, he is not required any longer to concern himself with it. If it is stolen or lost[1] he is responsible for it.[2] Now, what is meant by 'If it is stolen or lost'? Does it not mean, 'If it is stolen while in his house or if it is lost while in his house'?[3] — No; it means from the place to which it had been returned.[4] But was it not stated, 'He is not required any longer to concern himself with it'?[5] — He answered him: We are dealing here with a case where he returned it in the afternoon,[6] Two separate cases are, in fact, stated in the text, which should read thus: If he returned it in the morning to a place where the owner might see it [at a time] when it was usual with him to go in and out so that he would most likely see it, he would no more be required to concern himself with it, but if he returned it in the afternoon to a place where the owner might see it[7] [since it was at the time] when it was not usual with him to go in and out [of the house] and he could thus not be expected to see it, if it was stolen or lost there, he would still be responsible for it. He then brought another objection [from the following]: He is always responsible [for its safety] until he has returned it to the keeping of its owner.[8] Now, what is the meaning of [the term] 'always'? Does it not mean 'even while in the keeper's house'[9] thus proving that he was like a paid bailee?[10] — Rabbah said to him: I agree with you in the case of living things, for since they are in the habit of running out into the fields they need special watching.[11]

Rabbah [on the other hand] brought an objection to the view of R. Joseph [from the following: The text says] 'Return';[12] this tells me only [that it can be returned] to the house of the owner. Whence [could it be derived that it may also be returned] to his garden and to his deserted premises? It says therefore further: Thou shalt return them[12] [that is to say] 'everywhere'.[13] Now, to what kind of garden and deserted premises [may it be returned]? If you say to a garden which is closed in and to deserted premises which are closed in, are these not equivalent to his house? It must surely therefore refer to a garden that is not closed in and to deserted premises that are not closed in. Does not this show that a person taking care of a lost article [which he has found] is like an unpaid bailee?[14] — He replied: In point of fact it refers to a garden which is closed in and to deserted premises which are closed in, and as for your questions, 'Are these not equivalent to his house?' [the answer would be that] it is thereby indicated to us that it is not necessary to notify the owner, as indeed [stated by] R. Eleazar,[13] for R. Eleazar said: In all cases notification must be given to the owner, with the exception, however, of returning a lost article, as the Torah uses in this connection many expressions of returning.[15]

Said Abaye to R. Joseph: Do you really not accept the view that a person minding a lost article [which he has found] is like an unpaid bailee? Did R. Hiyya b. Abba not say that R. Johanan stated that if a man puts forward a plea of theft [to account for the absence of] an article [which had been found by him] he might have to make double payment?[16] Now, if you assume that [the person minding the lost article] is like a paid bailee, why should he have to refund double [seeing that] he has to return the principal?[17] — He replied:[18] We are dealing here with a case where, for instance, he pleads [that it was taken] by all armed malefactor.[19] But, he rejoined:[20] All armed malefactor is surely considered a robber?[21] — He replied:[18] I hold that an armed malefactor, having regard to the fact that he hides himself from the public, is considered a thief.[22]

He[23] brought a [further] objection [from the following]:

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(1) V. the discussion later.

(2) Tosef. B.M. II.

(3) But if he would have to pay where the article was stolen or lost this would prove that he is subject to the law of Paid Bailee.

(4) The liability would therefore be for carelessness.

(5) Why then should he be liable to pay when it was stolen or lost there?

(6) When the owner is usually in the fields and not at home.

(7) Had he been at home.
(8) V. p. 330, n. 8.
(9) Where it was stolen or lost.
(10) V. p. 330, n. 9.
(11) In which case any loss amounts to carelessness.
(12) Literal rendering of Deut. XXII, 1.
(13) B.M. 31a.
(14) And need not take as much care as a paid bailee would have to do.
(15) By doubling the verb 'in return', השב תשיבם
(16) If his false defence of theft has already been corroborated by all oath, v. infra 63a; 106b.
(17) For in his case the plea of an alleged theft would not be a defence but an admission of liability, and no oath would usually be taken to corroborate it. Moreover, the paid bailee could in such circumstances not be required to pay double even after it was found out that he himself had misappropriated the article in his charge.
(18) I.e. R. Joseph to Abaye.
(19) **, 'a rover'. This case is a mere accident as the bailee is not to blame and would not have to pay the principal; this plea would therefore be not an admission of liability but a defence, and if substantiated by a false oath he would have to pay double.
(20) I.e. Abaye to R. Joseph.
(21) And if traced would have to pay the principal and not make double payment (v. infra). The bailee making use of such a defence should therefore never have to pay double, as his plea was not an alleged theft but an alleged robbery.
(22) And would therefore have to pay double when traced. The bailee by submitting such a defence and substantiating it by a false oath should similarly be liable to double payment as his defence was a plea of theft, although had it been true, he would not have to pay even the principal, because the case of an armed malefactor is one of accident, v. note 5.
(23) I.E., Abaye.

Talmud - Mas. Baba Kama 57b

No.[1] Because you say that [a certain liability falls on] the unpaid bailee who is subject to pay double payment,[2] it does not follow that you can say the same in the case of the paid bailee who does not pay double payment.[3] Now if you assume that an armed malefactor is considered a thief,[4] it would be possible that even a paid bailee would [in some cases] have to make double payment, as where he pleaded that [the articles in his charge were taken] by an armed malefactor![5] — He replied:[6] What was meant is this: No. Because you say that a certain liability falls on the unpaid bailee, who has to make double payment,[2] whatever pleas he puts forward,[7] it does not follow that you can say the same in the case of the paid bailee who could not have to make a double payment except where he puts forward the plea that an armed malefactor[5] [took away the article in his charge]. He[8] again brought an objection [from the following]: [From the text] And it be hurt or die[9] I learn only the case of breakage or death. Whence [could there also be derived cases of] theft and loss?[10] An a fortiori argument may be applied here: If in the case of Paid Bailee who is exempt for breakage and death[11] he is nevertheless liable for theft[12] and loss,in the case of Borrower who is liable for breakage and death[9] would it not be all the more certain that he should be liable [also] for theft and loss? This a fortiori has indeed no refutation.[13] Now, if you assume that an armed malefactor is considered a thief why could there be no refutation [of this a fortiori]? It could surely be refuted [thus]: Why [is liability attached] to Paid Bailee if not because he might have to pay double payment where he puts forward the plea [that] an armed malefactor[5] [took the articles in his charge]?[14] — He said to him:[15] This Tanna held that the liability to pay the principal in the absence of any oath[16] is of more consequence than the liability for double payment which is conditioned by taking the oath.[17]

May we say that hɛ[18] derives support [from the following]: If a man hired a cow from his neighbour and it was stolen, and the hirer said, 'I would prefer to pay and not to swear'[19] and [it so happened that] the thief was [subsequently] traced, he should make the double payment to the hirer.[20] Now it was presumed that this statement followed the view of R. Judah[21] who said that

Hirer[22] is equal [in law] to Paid Bailee.[23] Since then it says 'the hirer said "I would prefer to pay and not to swear"',[19] this shows that had he wished he could have freed himself by resorting to the oath. Under what circumstances [could this be so]? Where, for instance, he advances the plea that an armed malefactor [took it].[24] Now seeing that it says, '. . . and it so happened that the thief was [subsequently] traced, he should pay the double payment to the hirer',[25] can it not be concluded from this that an armed malefactor is considered as a thief?[26] — I might answer: Do you presume that this statement follows the view of R. Judah who said that Hirer[22] is equal [in law] to Paid Bailee?[23] Perhaps it follows the view of R. Meir who said that Hirer is equal [in law] to Unpaid Bailee.[27] If you wish[28] I may say: [We should read the relevant views] as they were transposed by Rabbah b. Abbuha, who [taught thus]: How is the payment [for the loss of articles] regulated in the case of Hirer? R. Meir says: As in the case of Paid Bailee. R. Judah, however, says: As in the case of Unpaid Bailee.[29] R. Zera said:[30] We are dealing here with a case where the hirer advances the plea [that it was taken by] an armed malefactor, and it was afterwards discovered that [it was taken by] a malefactor without arms.[31]

IF A SHEEP [ACCIDENTALLY] FELL INTO A GARDEN AND DERIVED BENEFIT [FROM THE FRUITS THERE], PAYMENT WOULD HAVE TO BE MADE TO THE EXTENT OF THE BENEFIT. Rab said: [This applies to benefit derived by the animal] from [the lessening of] the impact.[32] But what when it consumed them? Would there be no need to pay even to the extent of the benefit? Shall we say that Rab is here following the principle laid down by him [elsewhere]? For did Rab not say, 'It should not have eaten'?[33] — But what a comparison! Rab said 'It should not have eaten' only there where it was injured [by over-eating itself], so that the owner of the fruits could say [to the plaintiff], 'I will not pay as it should not have eaten [my fruits]'. But did Rab ever say this in the case where the animal did damage to others that there should be exemption?

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(1) This is a continuation of a Baraitha (now partly lost), which sought at the outset to derive a certain liability (undefined) in the case of a paid bailee by an a fortiori from the case of an unpaid bailee.

(2) V. p. 332, n. 2.

(3) V. p. 332, n. 3.

(4) V. p. 332, n. 9.

(5) V. p. 332, n. 5.

(6) I.e., R. Joseph to Abaye.

(7) I.e., by a thief whether armed or unarmed.

(8) I.e. Abaye.

(9) Ex. XXII, 13 dealing with a borrower.

(10) To involve liability.

(11) In accordance with Ex. ibid. 9-10.

(12) Ibid. 11.

(13) B.M. 95a.

(14) Whereas in the case of Borrower there could never be an occasion for double payment, as any plea of theft whether by an armed malefactor or by an ordinary thief would involve the payment of the principal and would thus be an admission of liability and not a defence at all.

(15) I.e., R. Joseph to Abaye.

(16) Such as is the case with the Borrower.

(17) Such as in the case of a Paid Bailee. Cf. also B.M. 41b and 94b.

(18) I.e. R. Joseph who maintains that a malefactor in arms is subject to the law applicable to an ordinary thief.

(19) In corroboration of my defence.

(20) For by offering to pay the value of the cow he acquired title to all possible payments with reference to it, B.M. 34a.

(21) As this view was followed in B.M. VII, 8; 36a; 97a; Jeb. 66b; Sheb. VIII, 1 and elsewhere; cf. also 'Er. 46b.

(22) Dealt with in Ex. XXII, 14.

(23) V. p. 330, n. 3.

(24) V. p. 332, n. 5.

(25) For by offering to pay the value of the cow he acquired title to all possible payments with reference to it.
(26) V. p. 332, n. 9.
(27) Who is exempt also where the article was stolen by an ordinary thief, in which case the thief referred to in the Baraitha did not necessarily mean a malefactor in arms but an ordinary thief.
(28) To bring the ruling into accord with R. Judah though the reason stated in n.10 may not apply.
(29) V. p. 334, n. 8.
(30) That a hirer might be subject to the law of Paid Bailee, and still the Baraitha affords no support to R. Joseph.
(31) I.e. an ordinary thief who has to pay double, whereas if he would have been with arms he might perhaps have been subject to the law applicable to a robber, and there would have been no place for double payment.
(32) As the fruits protected the animal from being hurt too much.
(33) V. supra 47b. And so here the owner of the animal might plead, 'it should not have eaten'.

Talmud - Mas. Baba Kama 58a

Rab took a particularly strong instance.[1] There can be no doubt that where the benefit was derived from the animal having consumed the fruits payment would have to be made to the extent of the benefit. Regarding, however, [the benefit derived by the animal from the lessening of] the impact, it might have been thought that the fruits served only the purpose of 'preventing a lion from [damaging] a neighbour's property',[2] so that no payment should be made even to the extent of the benefit. It is therefore indicated to us [here that even this benefit has to be paid for]. But why not say that this is so?[3] — [No payment it is true could be claimed] in the case of preventing a lion from [damaging] a neighbour's property as [the act of driving the lion away] is voluntary, but in this case the act was not voluntary.[4] Or again, in the case of preventing the lion from [damaging] a neighbour's property, no expenses were incurred [by the act of driving away the lion], but in this case here there was [pecuniary] loss attached to it.

[How did the animal fall]?[5] — R. Kahana said: It slipped in its own water. Raba, however, said: [The rule would hold good even] where another animal pushed it down. The one who explains the ruling to apply where another animal pushed it down, would certainly apply it where it slipped in its own water.[6] But the one who explains the ruling to apply where it slipped in its own water [might maintain that] where another animal pushed it down there was negligence, and the payment should be for the amount of damage done by it, as the plaintiff would be entitled to say, 'You should have made them go past one by one.'

R. Kahana said: The Mishnaic ruling applies only to the bed [into which it fell].[7] If, however, it went from one bed to another bed, the payment[8] would be for the amount of damage done by it. R. Johanan, however, said that even where it went from one bed to another bed and did so even all day long, [the payment would be made only to the extent of the benefit], unless it left the garden and returned there again with the knowledge [of the owner]. R. Papa thereupon said: Do not imagine this to mean 'unless it left the garden to the knowledge of the owner and returned there again with the knowledge of the owner', for as soon as it left the garden to the knowledge of the owner, even though it returned again without his knowledge [there would already be liability],[9] the reason being that the plaintiff might [rightly] say: Since it had once become known [to it where it can find fruit, you should have realised that] whenever it broke loose it would run to that place.

IF IT WENT DOWN THERE IN THE USUAL WAY AND DID DAMAGE, THE PAYMENT WOULD HAVE TO BE FOR THE AMOUNT OF DAMAGE DONE BY IT. R. Jeremiah raised the question: Where it had gone down there in the usual way but did damage by water resulting from giving birth,[10] what would be the legal position? If we accept the view that where there is negligence at the beginning but [damage actually results] in the end from sheer accident there is liability,[11] no question arises.[12] Where we have to ask is if we accept the view[11] that where there is negligence at the beginning, but [damage actually results] in the end from sheer accident there is exemption. What

[in that case is the law]? Should we say that this is a case where there was negligence at first but the final result was due to accident, and therefore there should be exemption, or should we say [on the contrary that] this case is one of negligence throughout, for since the owner could see that the animal was approaching the time to give birth, he should have watched

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(1) Lit., 'he says there can be no question'.

(2) For which no payment could be demanded, this being merely an act of goodwill and kindness, v. B.B. 52a.

(3) That he is 'preventing a lion' etc.

(4) The owner of the fruit should thus be entitled to compensation.

(5) That it should be considered a mere accident and the payment should only be to the extent of the benefit.

(6) As this is certainly a matter of accident.

(7) Regarding which the whole act is considered an accident.

(8) For the beds except the first one.

(9) To the full extent of the damage.

(10) Which was apparently an accident.

(11) V. Supra 21b.

(12) That there will be liability in this case too.

it and indeed taken more care of it? — Let this remain undecided.

HOW IS PAYMENT MADE FOR THE AMOUNT OF DAMAGE DONE BY IT? BY COMPARING THE VALUE OF AN AREA IN THE FIELD REQUIRING ONE SE'AH OF SEED AS IT WAS [PREVIOUSLY] WITH WHAT ITS WORTH IS [NOW] etc. Whence is this derived? — R. Mattena said: Scripture says, And shall feed in another man's field[1] to teach that the valuation should be made in conjunction with another field. But was this [verse] and shall feed in another man's field not required to exclude public ground [from being subject to this law]? — If so,[2] Scripture would have said 'and shall feed in a neighbour's field' or ['and shall consume] another man's field.' Why then is it said in another [man's] field [unless to teach that] the valuation should be made in conjunction with another field? Let us say then that the whole import [of this verse] was to convey only this ruling, there being thus no authority to exclude public ground? — If so,[3] Scripture would have inserted this clause in the section dealing with payment, e.g., 'of the best of his own field and of the best of his own vineyard shall he make restitution [as valued] in conjunction with another field.' Why then did Scripture put it in juxtaposition with and shall feed unless to indicate that the two [rulings] are to be derived from it.[4]

How is the valuation[5] arrived at? — R. Jose b. Hanina said: [The value of] an area requiring one se'ah of seed [is determined] in proportion to the value of an area requiring sixty se'ahs of seed. R. Jannai said: [The value of] an area requiring one tarkab[6] of seed [is determined] in proportion to the value of an area requiring sixty tarkabs of seed. Hezekiah said: [The value of] each stalk [consumed is determined] in proportion to the value of sixty such stalks.[7] An objection was raised [from the following:] If it consumed one kab in two kabs [of grain], it would not be right to ask payment for their full value,[8] but the amount consumed would have to be considered as if forming a little bed which would thus be estimated. Now, does this not mean that the bed will be valued by itself?[9] — No; in [the proportion of one to] sixty.[10]

Our Rabbis taught: The valuation is made neither of a kab by itself, as this would be an advantage to him,[11] nor of an area required for a kor[12] of seed, as this would be a disadvantage to him.[11] What does this mean? — R. Papa said: What is meant is this: Neither is a kab [of grain consumed] valued in conjunction with sixty kabs, as the defendant would thereby have too great an advantage,[13] nor is a kor valued in conjunction with sixty kors, as this would mean too great a disadvantage for the

defendant.[14] R. Huna b. Manoah demurred to this, saying: Why then does it say, 'nor of an area required for a kor of seed'? [According to your interpretation] should it not have been 'nor a kor'?[15] — R. Huna b. Manoah therefore said in the name of R. Aha the son of R. Ika: What is meant is this: The valuation is made neither of a kab by itself, as this would be too great an advantage to the plaintiff, nor of a kab in conjunction with an area required for a kor of seed, as this would be too great a disadvantage for the plaintiff. It must therefore be made only in conjunction with sixty [times as much].

A certain person cut down a date-tree belonging to a neighbour. When he appeared before the Exilarch, the latter said to him: 'I myself saw the place; three date-trees stood close together[16] and they were worth one hundred zuz. Go therefore and pay the other party thirty-three and a third [zuz].' Said the defendant: 'What have I to do with an Exilarch who judges in accordance with Persian Law?' He therefore appeared before R. Nahman, who said to him [that the valuation should be made] in conjunction with sixty [times as much]. Said Raba to him:[17] If the Sages ordained this valuation in the case of chattels doing damage, would they do the same in the case of damage done by Man with his body? — Abaye, however, said to Raba: In regard to damage done by Man with his body, what is your opinion [if not] that which was taught: 'If a man prunes [the berries from] a neighbour's vineyard while still in the budding stage, it has to be ascertained how much it was worth previously and how much it is worth afterwards', but nothing is said of valuation in conjunction with sixty [times as much]? But has it not been taught similarly with respect to [damage done by] Cattle? For it was taught: If [a beast] breaks off a plant, R. Jose says that the Legislators of [public enactments[18] in Jerusalem stated that if the plant was of the first year, two silver pieces[19] [should be paid] but if it was in its second year, four silver pieces [should be paid]. If it consumed young blades of grain, R. Jose the Galilean says that it has to be considered in the light of the future value of that which was left in the field. The Sages, however, say that it has to be ascertained how much it [the field] was worth [previously] and how much it is worth [now].

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(1) Ex. XXII, 4.

(2) I.e., were it intended only for that.

(3) V. p. 337, n. 7.

(4) I.e. that public ground be excluded and that the valuation be made in conjunction with another field.

(5) Of an area requiring one se'ah of seed.

(6) I.e. half a se'ah, amounting thus to three kabs, though originally it meant two kabs.

(7) The principle underlying this difference of opinion is made clear in the Baraitha that follows.

(8) Cf. supra p. 123.

(9) And not in proportion to the value of a bigger area. This refutes the views of all the cited authorities.

(10) [I.e., either 'se'ahs', 'tarkabs' or 'stalks' as the case may be.]

(11) V. the discussion infra.

(12) I.e., thirty se'ahs; cf. Glos.

(13) As the payment would be very small owing to the fact that the deficiency of one kab in an area required for sixty kabs of seed would hardly be noticed, and so would reduce the general price very little.

(14) For the deficiency of one kor, in an area required for sixty times as much, is conspicuous, and reduces the general price too much. The valutation of a se'ah will therefore be made in proportion to sixty se'ahs.

(15) Should be valued in this way.

(16) Lit., 'in one nest', or 'place'.

(17) R. Nahman.

(18) גוזרי גזירות Admon and Hanan b. Abishalom, identical with the 'Judges of Civil Law' דייני גזירות mentioned in Keth. XIII, 1 (Rashi). Little is known of their functions and power to enable us to explain their designation (Buchler, Das Synedrion, p. 113); cf. also Geiger, Urschrift, p. 119.]

(19) I.e two ma'ahs which were a third of a denar; cf. Glos.

If it consumed grapes while still in the budding stage, R. Joshua says that they should be estimated as if they were grapes ready to be plucked off. But the Sages [here too] say that it will have to be ascertained how much it was worth [previously] and how much it is worth [now]. R. Simeon b. Judah says in the name of R. Simeon:[1] These rulings apply where it consumed sprouts of vines or shoots of fig-trees, but where it consumed [actual] figs or half-ripe grapes they would be estimated as if they were grapes ready to be plucked off.[2] Now, it is definitely taught here, 'The Sages say that it will have to be ascertained how much it was worth [previously] and how much it is worth [now]' and it is not said [explicitly that the valuation will be made] in conjunction with sixty [times as much]. Nevertheless you must say that it is implied that [the valuation is to be made] in conjunction with sixty [times as much]. So also then here, [in the case of Man it is implied that the valuation is to be] in conjunction with Sixty [times as much].

Abaye said: R. Jose the Galilean and R. Ishmael expressed the same view [in this matter]. R. Jose the Galilean as stated by us [above],[3] and R. Ishmael as taught [elsewhere]:[4] 'Of the best of his own field and of the best of his own vineyard shall he make restitution;[5] this means the best of the field of the plaintiff and the best of the vineyard of the plaintiff. This is the view of R. Ishmael. R. Akiba, however, says: Scripture only intended to lay down that damages should be collected out of the best and this applies even more to sacred property. Nor can you say that he [R. Ishmael] meant this in the sense of R. Idi b. Abin, who said [that it deals with a case where] e.g., the cattle consumed one bed out of several beds and we could not ascertain whether its produce was meagre or fertile, so that R. Ishmael would [thus be made to] order the defendant to go and pay for a fertile bed in accordance with the value of the best bed at the time of the damage. This could not be maintained by us, for the reason that the onus probandi falls upon the claimant. R. Ishmael[6] must therefore have meant the best of anticipation, i.e., as it would have matured [at the harvest time].

The Master stated: 'R. Simeon b. Judah says in the name of R. Simeon: These rulings apply only where it consumed sprouts of vines or shoots of fig-trees,' [thus implying that] where it consumed grapes in the budding stage they would be estimated as if they were grapes ready to be plucked off. Read [now] the concluding clause: 'Where it consumed [actual] figs or half-ripe grapes they would be estimated as if they were grapes ready to be plucked off', [implying to the contrary that] where it consumed grapes in the budding stage it would have to be ascertained how much it was worth [previously] and how much it is worth [now]. [Is this not a contradiction?] — Rabina said: Embody [the new case in the text] and teach thus: 'These rulings apply only where it consumed sprouts of vines or shoots of fig-trees, for where it consumed grapes in the budding stage, or [actual] figs or half-ripe grapes they would be estimated as if they were grapes ready to be plucked off.' But if so would R. Simeon b. Judah's view not be exactly the same as that already stated by R. Joshua? — There is a practical difference between them as to [the deduction to be made for] the depreciation of the vines [themselves, through exhaustion, if the grapes had remained there until fully ripe],[7] though the views cannot be identified.[8] Abaye, however, said: They most assuredly could be identified. For who could be the Tanna who takes into consideration the depreciation of the vine, if not R. Simeon b. Judah? For it was taught: R. Simeon b. Judah says in the name of R. Simeon b. Menasya:[9] [Even] in the case of Rape no compensation is made for Pain, as the female would [in any case] have subsequently to undergo the same pain through her husband.[10] The Rabbis however said to him: A woman having intercourse by her free will is not to be compared to one having intercourse by constraint.

Abaye further said: The following Tannaim and R. Simeon b. Judah expressed on this point the same view?[11] R. Simeon b. Judah's view as stated by us [above]. Who are the other Tannaim [referred to]? — As taught: R. Jose says: Deduct the fees of the midwife,[12] but Ben 'Azzai says: Deduct food.[13] The one who says, 'deduct the fees for the midwife' would certainly deduct food,[14] but the one who says, 'deduct food', would not deduct the fees for the midwife, as the plaintiff might

say, ‘My wife is a lively person and does not need a midwife.’[15] R. Papa and R. Huna the son of R. Joshua in an actual case[16] followed the view of R. Nahman and valued in conjunction with sixty times [as much]. According to another report, however, R. Papa and R. Huna the son of R. Joshua valued a palmtree in conjunction with the small piece of ground.[16] The law is in accordance with R. Papa and R. Huna the son of R. Joshua[17] in the case of an Aramean palm,[18] but it is in accordance with the Exilarch[19] in the case of a Persian palm.[20]

Eliezer[21] Ze'era

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(1) B. Yohai.

(2) Keth. 105a.

(3) That it will have to be considered in the light of the future value of that which was left in the field.

(4) V. supra 6b.

(5) Ex. XXII, 4.

(6) [In the case where the quality of the bed consumed by the cattle was not in doubt.]

(7) [I.e., one view would maintain that this deduction has to be made, while the other would not maintain this.]

(8) [It cannot be stated precisely which authority is of the one and which of the other view.]

(9) Keth, 39a.

(10) Proving that a deduction from the amount of the damages is made on a similar accord.

(11) That a deduction should be made on this accord.

(12) From the payment for injuring a pregnant woman resulting in a miscarriage; cf. Ex. XXI, 22 and supra 49a.

(13) I.e. the special diet which would have been necessary during the confinement period.

(14) As the special diet would have been an inevitable expense.

(15) He would therefore have spared this expense.

(16) Where a human being did damage with his body.

(17) To value in conjunction with sixty times as much where a human being did damage with his body.

(18) Which is by itself of no great value.

(19) To value the tree by itself.

(20) Which is even by itself of considerable value.

(21) [V.l. Eleazar].

Talmud - Mas. Baba Kama 59b

once put on a pair of black shoes and stood in the market place of Nehardea. When the attendants of the house of the Exilarch met him there, they said to him: ‘What ground have you for wearing black shoes?’[1] — He said to them: ‘I am mourning for Jerusalem.’ They said to him: ‘Are you such a distinguished person as to mourn over Jerusalem?’[2] Considering this to be a piece of arrogance on his part they brought him and put him in prison. He said to them, ‘I am a great man!’ They asked him: ‘How can we tell?’ He replied, ‘Either you ask me a legal point or let me ask you one.’ They said to him: ‘[We would prefer] you to ask.’ He then said to them: ‘If a man cuts a date-flower, what payment should he have to make?’ — They answered him: ‘The payment will be for the value of the date-flower.’ ‘But would it not have grown into dates?’[3] — They then replied: ‘The payment should be for the value of the dates.’ ‘But’, he rejoined, ‘surely it was not dates which he took from him!’[4] They then said to him: ‘You tell us.’ He replied: ‘The valuation would have to be made in conjunction with sixty times as much.’[5] They said to him: ‘What authority can you find to support you?’ — He thereupon said to them: ‘Samuel is alive and his court of law flourishes [in the town].’ They sent this problem to be considered before Samuel who answered them: ‘The statement he[6] made to you, that the valuation should be in conjunction with sixty times [as much as the damaged date-flower][5] is correct.’ They then released him.

R. SIMEON SAYS: IF IT CONSUMED RIPE FRUITS etc. On what ground?[7] — The statement of the Divine Law, And shall feed in another man's field,[8] teaching that valuation is to be made in

conjunction with the field applies to produce which was still in need of a field, whereas these fruits [in the case before us],[9] since they were no more in need of a field, must be compensated at their actual value.

R. Huna b. Hiyya said that R. Jeremiah stated that Rab gave judgment [in contradistinction to the usual rule][10] in accordance with R. Meir and [on another legal point] decided the law to be in accordance with R. Simeon. He gave judgment in accordance with R. Meir on the matter taught: If the husband drew up a deed for a would-be purchaser [of a field which had been set aside for the payment of the marriage settlement of his wife] and she did not endorse it, and [when a deed on the same field was drawn up] for another purchaser she did endorse it, she has thereby lost her claim to the marriage settlement; this is the view of R. Meir.[11] R. Judah, however, says: She might still argue, 'I made the endorsement merely to gratify my husband; why therefore should you go against me?'[12] [The legal point where] he decided the law to be in accordance with R. Simeon was that which we learnt: R. SIMEON SAYS: IF IT CONSUMED RIPE FRUITS, THE PAYMENT SHOULD BE FOR RIPE FRUITS, IF ONE SE'AH [IT WOULD BE FOR] ONE SE'AH, IF TWO SE'AHS, [FOR] TWO SE'AHS.

MISHNAH. IF A MAN PUTS HIS STACKS OF CORN IN THE FIELD OF ANOTHER WITHOUT PERMISSION, AND THE ANIMAL OF THE OWNER OF THE FIELD EATS THEM, THERE IS NO LIABILITY. MOREOVER, IF IT SUFFERED HARM FROM THEM, THE OWNER (OF THE STACKS WOULD BE LIABLE. IF, HOWEVER, HE PUT THE STACKS THERE WITH PERMISSION, THE OWNER OF THE FIELD WOULD BE LIABLE. GEMARA. May we say that this Mishnah is not in accordance with Rabbi? For if in accordance with Rabbi, did he not say[13] that unless the owner of the premises explicitly took upon himself to safeguard he would not be liable?[14] — R. Papa said: [Here we were dealing with] the watchman of the barns.[15] For since he said, 'Enter and place your stacks', it surely amounted to, 'Enter and I will guard for you'.[16]

MISHNAH. IF A MAN SENT OUT SOMETHING BURNING THROUGH A DEAF MUTE, AN IDIOT, OR A MINOR [AND DAMAGE RESULTED] HE WOULD BE EXEMPT FROM THE JUDGMENTS OF MAN, BUT LIABLE IN ACCORDANCE WITH THE JUDGMENTS OF HEAVEN. BUT IF HE SENT [IT] THROUGH A NORMAL PERSON, THE NORMAL PERSON WOULD BE LIABLE. IF ONE PERSON [FIRST] SUPPLIES THE FIRE AND ANOTHER THE WOOD, HE WHO SUPPLIES THE WOOD WOULD BE LIABLE.[17] WHERE, [ON THE OTHER HAND], THE FIRST SUPPLIES THE WOOD AND THE SECOND THE FIRE, HE WHO SUPPLIES THE FIRE WOULD BE LIABLE.[17] BUT WHERE ANOTHER PERSON CAME ALONG AND FANNED THE FLAME, THE ONE WHO FANNED IT WOULD BE LIABLE.[17] IF IT WAS THE WIND THAT FANNED IT, ALL WOULD BE EXEMPT.

GEMARA. Resh Lakish said in the name of Hezekiah: The Mishnaic ruling[18] holds good only where he handed over a [flickering] coal to [the deaf mute] who fanned it into flame, but if he handed over to him something already in flame he would be liable, the reason being that it was his acts that were the [immediate] cause. R. Johanan, however, said: Even where he handed something already in flame to him, he would still be exempt, the reason being that it was the handling of the deaf mute that caused the damage; he could therefore not be liable unless where he handed over to him tinder,

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(1) Cf. Ta'an. 22a. [Tosaf. regards the black lacing as the distinguishing mark of mourning, v. also Krauss, Talm. Arch. I, 628.]

(2) In such a manner.

(3) Why then not pay for actual dates of which the owner was deprived?

(4) Why then pay for ripe dates?

(5) Including the ground occupied by them.

(6) I.e. Eliezer Ze'era.
(7) Should the valuation not be made in conjunction with the field where ripe fruits were consumed.
(8) Ex. XXII, 4.
(9) In the statement of R. Simeon.
(10) That the law does not prevail in accordance with R. Meir against R. Judah: cf. 'Er. 46b
(11) For by endorsing the deed drawn up for the second purchaser and not that drawn up for the first one, she made it evident that on the one hand she was not out to please her husband by confirming his sale, and on the other that she was finally prepared to forego her claim.
(12) Keth. 95a.
(13) Supra 47b.
(14) Why then should the owner of the field be liable where the corn was stacked with his permission?
(15) As it was the custom to pile all the stacks of the villagers in one place and appoint a guardian to look after them.
(16) In accordance with the custom of the place.
(17) For he being last is mostly to blame.
(18) Of exemption from the judgments of Man.

Talmud - Mas. Baba Kama 60a

shavings and a light, in which case it was certainly his act that was the immediate cause.[1]

BUT IF HE SENT [IT] THROUGH A NORMAL PERSON, THE NORMAL PERSON WOULD BE LIABLE etc. IF ANOTHER PERSON CAME ALONG AND [LIBBAH] FANNED IT etc. R. Nahman b. Isaac said: He who reads in the [original] text libbah[2] is not mistaken; so also he who reads in the text nibbah[3] is similarly not mistaken.[4] He who has in the text libbah[2] is not mistaken, since we find [in Scripture] be-labbath esh[5] [in a flame of fire], and so also he who has in the text nibbah[3] is not mistaken, as we find, I create nib [the movement of] the lips.[6]

IF IT WAS THE WIND THAT FANNED IT, ALL WOULD BE EXEMPT. Our Rabbis taught: Where he fanned it [along with] the wind which also fanned it, if there was enough force in his blowing to set the fire ablaze he would be liable, but if not he would be exempt. But why should he not be liable, as in the case of one winnowing [on Sabbath, who is liable] though the wind was helping him?[7] — Abaye thereupon said: We are dealing here with a case where e.g., he blew it up in one direction and the wind blew it up in a different direction.[8] Raba said: [The case is one] where e.g., he started to blow it up when the wind was only normal, [and would have been unable to set it ablaze], but there [suddenly] came on an unusual wind which made it blaze up. R. Zera said: [The case is one] where e.g., he merely increased the heat by breathing heavily on it.[9] R. Ashi said: When we say that there is liability for winnowing where the wind is helping, this applies to Sabbath where the Torah prohibited any work with a definite object,[10] whereas here [regarding damage] such an act could be considered merely as a secondary cause, and a mere secondary cause in the case of damage carries no liability.

MISHNAH. IF HE ALLOWED FIRE TO ESCAPE AND IT BURNT WOOD, STONES OR [EVEN] EARTH, HE WOULD BE LIABLE, AS IT SAYS: IF FIRE BREAK OUT AND CATCH IN THORNS SO THAT THE STACKS OF CORN, OR THE STANDING CORN, OR THE FIELD BE CONSUMED THEREWITH: HE THAT KINDLED THE FIRE SHALL SURELY MAKE RESTITUTION.[11]

GEMARA. Raba said: Why was it necessary for the Divine Law to mention [both] 'thorns', 'stacks', 'standing corn' and 'field'? They are all necessary. For if the Divine Law had mentioned [only] 'thorns', I might have said that it was only in the case of thorns that the Divine Law imposed liability because fire is found often among them and carelessness in regard to them is frequent,[12] whereas in the case of 'stacks',[13] which are not often on fire and in respect of which negligence is

not usual, I might have held that there is no liability. If [again] the Divine Law had mentioned [only] 'stacks', I might have said that it was only in the case of 'stacks' that the Divine Law imposed liability as the loss involved there was considerable, whereas in the case of 'thorns' where the loss involved was slight I might have thought there was no liability. But why was standing corn' necessary [to be mentioned]? [To teach that] just as 'standing corn' is in an open place, so is everything [which is] in an open space [subject to the same law].[14] But according to R. Judah who imposes[15] liability also for concealed articles damaged by fire, why had 'standing corn' [to be mentioned]? — To include anything possessing stature.[15] Whence then did the [other] Rabbis include anything possessing stature?[16] — They derived this from [the word] 'or' [placed before] 'the standing corn'.[17] And R. Judah? — He needed [the word] 'or' as a disjunctive.[17] Whence then did the [other] Rabbis derive the disjunction? — They derived it from [the word] 'or' [placed before] 'the field'. And R. Judah? — He held that because the Divine Law inserted 'or' [before] 'the standing corn' 'it also inserted 'or' [before] 'the field'. But why was 'field' needed [to be inserted]? — To include [the case of] Fire lapping his neighbour's ploughed field, and grazing his stones.[18] But why did the Divine Law not say only 'field',[19] in which case the others would not have been necessary? They were still necessary. For if the Divine Law had said 'field' only, I might have said that anything in the field would come under the same law, but not any other thing.[20] It was therefore indicated to us [that this is not so].

R. Samuel b. Nahmani stated[21] that R. Johanan said: Calamity comes upon the world only when there are wicked persons in the world, and it always begins with the righteous, as it says: If fire break out and catch in thorns.[22] When does fire break out? Only when thorns are found nearby. It always begins, however, with the righteous, as it says: so that the stack of corn was consumed:[23] It does not say 'and it would consume the stack of corn', but 'that the stack of corn was consumed' which means that the 'stack of corn' had already been consumed.

R. Joseph learnt: What is the meaning of the verse, And none of you shall go out at the door of his house until the morning?[24] Once permission has been granted to the Destroyer, he does not distinguish between righteous and wicked. Moreover, he even begins with the righteous at the very outset, as it says:[25] And I will cut off from thee the righteous and the wicked.[26] R. Joseph wept at this, saying: So much are they[27] compared to nothing![28] But Abaye [consoling him,] said: This is for their advantage, as it is written, That the righteous is taken away from the evil to come.[29]

Rab Judah stated that Rab said:

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(1) Supra 9b.

(2) לִיבָּה (connected with להב, 'flame'), to denote blazing up.

(3) [ניבה from נבא, 'to blow up' to blow a blaze'.]

(4) For similar textual remarks by the same sage, cf. A.Z. 2a.

(5) Ex. III, 2.

(6) Isa. LVII, 19. [The blaze is provided by 'the movement of the lips', i.e., by blowing with the mouth.]

(7) Cf. Shab. VII, 2; v. also B.B. 26a.

(8) So that the wind did not help him at all.

(9) But did not actually blaze it up.

(10) Whether man did it wholly by his own body or not.

(11) Ex. XXII, 5.

(12) As thorns are usually worthless and nobody minds them.

(13) Which are of great value and are usually looked after.

(14) Excluding thus hidden articles.

(15) Supra 5b.

(16) E.g., living objects and plants [Though the latter, unlike 'stacks' are still attached to the ground. Tosaf.]

(17) Cf. supra p. 311, and also Tosaf. Hul. 86b.

(18) V. p. 347. n. 5.
(19) Which includes everything.
(20) Such as the field itself.
(21) [Having stated 'standing corn', the Torah must have added 'field' to indicate the field itself.]
(22) Ex. XXII, 5.
(23) Used metaphorically to express the righteous.
(24) Ex. XII, 22.
(25) Ezek. XXI, 8.
(26) Thus mentioning first the 'righteous' and then the 'wicked'.
(27) I.e., the righteous.
(28) That they are punished even for the wicked.
(29) Isa. LVII, 1.

Talmud - Mas. Baba Kama 60b

A man should always enter [a town] by daytime and leave by daytime, as it say's, And none of you shall go out at the door of his house until the morning.[1]

Our Rabbis taught: When there is an epidemic in the town keep your feet inside [the house], as it says, And none of you shall go out at the door of his house until the morning,[1] and it further says, Come, my people, enter thou into thy chambers and shut thy doors about thee;[2] and it is again said: The sword without, the terror within shall destroy.[3] Why these further citations? — Lest you might think that the advice given above[4] refers only to the night, but not to the day. Therefore, come and hear: Come, my people, enter thou into thy chamber, and shut thy doors about thee.[5] And should you say that these apprehensions apply only where there is no terror inside,[6] whereas where there is terror inside[6] it is much better to go out and sit among people in one company, again come and hear: The sword without, the terror within shall destroy,[3] implying that [even where] the terror is 'within'[6] the 'sword'[7] will destroy [more] without. In the time of an epidemic Raba used to keep the windows shut, as it is written, For death is come up into our windows.[8]

Our Rabbis taught: When there is a famine in town, withdraw your feet,[9] as stated, And there was a famine in the land; and Abram went down into Egypt to sojourn there;[10] and it is further said: If we say: We will enter into the city, then the famine is in the city and we shall die there.[11] Why the additional citation? — Since you might think that this advice[12] applies only where there is no danger to life [in the new settlement], whereas where there is a danger to life [in the new place] this should not be undertaken, come and hear: Now therefore come, and let us fall unto the host of the Arameans; if they save us alive, we shall live.[13]

Our Rabbis taught: When there is an epidemic in a town, one should not walk in the middle of the road, as the Angel of Death walks then in the middle of the road, for since permission has been granted him, he stalks along openly. But when there is peace in the town, one should not walk at the sides of the road, for since [the Angel of Death] has no permission he slinks along in hiding.

Our Rabbis taught: When there is an epidemic in a town nobody should enter the House of Worship[14] alone, as the Angel of Death keeps there his implements. This, however, is the case only where no pupils are being taught there[15] or where ten [males] do not pray there [together].

Our Rabbis taught: When dogs howl, [this is a sign that] the Angel of Death has come to a town. But when dogs frolic, [this is a sign that] Elijah the prophet has come to a town. This is so, however, only if there is no female among them.

When R. Ammi and R. Assi were sitting before R. Isaac the Smith, one of them said to him: 'Will

the Master please tell us some legal points?' while the other said: 'Will the Master please give us some homiletical instruction?' When he commenced a homiletical discourse he was prevented by the one, and when he commenced a legal discourse he was prevented by the other. He therefore said to them: I will tell you a parable: To what is this like? To a man who has had two wives, one young and one old. The young one used to pluck out his white hair, whereas the old one used to pluck out his black hair. He thus finally remained bald on both sides. He further said to them: I will accordingly tell you something which will be equally interesting to both of you:[16] If fire break out and catch in thorns; 'break out' implies 'of itself'. He that kindled the fire shall surely make restitution. The Holy One, blessed be He, said: It is incumbent upon me to make restitution for the fire which I kindled. It was I who kindled a fire in Zion as it says, And He hath kindled a fire in Zion which hath devoured the foundations thereof,[17] and it is I who will one day build it anew by fire, as it says, For I, [saith the Lord] will be unto her a wall of fire round about, and I will be the glory in the midst of her.[18] On the legal side, the verse commences with damage done by chattel,[19] and concludes with damage done by the person,[20] [in order] to show that Fire implies also human agency.[21]

Scripture says:[22] And David longed, and said, Oh that one would give me water to drink of the well of Bethlehem, which is by the gate. And the three mighty men broke through the host of the Philistines and drew water out of the well of Bethlehem that was by the gate etc. What was his difficulty?[23] — Raba stated that R. Nahman had said: His difficulty was regarding concealed articles damaged by fire[24] — whether the right ruling was that of R. Judah[25] or of the Rabbis;[26] and they gave him the solution, whatever it was. R. Huna, however, said: [The problem was this:] There were there[27] stacks of barley which belonged to Israelites but in which Philistines had hidden themselves, and what he asked was whether it was permissible to rescue oneself through the destruction of another's property.[28] The answer they despatched to him was: [Generally speaking] it is forbidden to rescue oneself through the destruction of another's property[29] you however are King and a king may break [through fields belonging to private persons] to make a way [for his army], and nobody is entitled to prevent him [from doing so].[30] But [some] Rabbis, or, as [also] read, Rabbah b. Mari, said: There were there[31] [both] stacks of barley belonging to Israelites and stacks of lentils belonging to the Philistines.[32] The problem on which instruction was needed was whether it would be permissible to take the stacks of barley that belonged to the Israelites and put them before the beasts [in the battle field], on condition of [subsequently] paying for them with the stacks of lentils that belonged to the Philistines. [The reply] they despatched to him [was]: If the wicked restore the pledge, give again the robbery,[33] [implying that] even where the robber [subsequently] pays for the 'robbery', he still remains 'wicked'. You, however, are King and a king may break through [fields of private owners] making thus a way [for his army], and nobody is entitled to prevent him [from doing so]. If we accept the view that he wanted to exchange,[34] we can quite understand how in one verse it is written, Where was a plot of ground full of lentils,[35] and in another verse it is written, Where was a plot of ground full of barley.[36] If we, however, take the view that he wanted to burn them[37] down, what need was there to have these two verses?[38] — He, however, might say to you that there were also there stacks of lentils which belonged to Israelites and in which Philistines were hidden.[39] Now on the view that he wanted to burn them[37] down, we can quite understand why it is written, But he stood in the midst of the ground, and defended it.[40] But according to the view that he wanted to exchange, what would be the meaning of and he defended it?[41] — That he did not allow them to exchange. According to [these] two views, we can quite understand why there are two verses.

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(1) V. p. 348, n. 9.

(2) Isa. XXVI, 20.

(3) Deut. XXXII, 25.

(4) To keep indoors.

(5) Isa. XXVI, 20.

(6) The house.

(7) Of the Angel of Death.

(8) Jer. IX, 20.
(9) I.e., migrate to another place; see also B.M. 75b.
(10) Gen. XII, 10.
(11) II Kings VII, 4.
(12) Implied in Gen. XII, 10.
(13) II Kings VII, 4.
(14) [בית הכנסת Lit., 'House of meeting', the Synagogue. The origin of the term as applied to a synagogue is uncertain. It probably has its source in the assemblies called together for the purpose of considering problems of an economic and social character. These were probably attended with some sort of prayer and out of these evolved the regular meetings for prayers, v. Zeitlin, The Origin of the Synagogue in the Proceedings of the American Academy for Jewish Research, 1930-31, p. 75 ff.]
(15) In the House of Worship.
(16) Ex. XXII, 5.
(17) Lam. IV, 11.
(18) Zech. II, 9.
(19) As the expression 'if a fire break out' means 'break out itself without any direct act on the part of man'; cf. supra p. 115.
(20) By saying, 'He that kindled a fire', implying that there was some direct act on the part of man to kindle the fire.
(21) V. supra p. 115.
(22) II Sam. XXIII, 15-16.
(23) For as 'water' is homiletically used as a metaphor expressing learning, it was aggadically assumed here that instead of actual water David was in need of some legal instruction, especially since mention was made in the verse of 'the gate' which was then the seat of judgment.
(24) As some of his men burned down a stack in which articles were hidden, v. p. 353. n. 6.
(25) Who imposes liability.
(26) Who maintain exemption.
(27) Near the battle-field.
(28) As the warriors of David burned the stacks down for strategical purposes and the problem was whether compensation was to be made or not.
(29) I.e. compensation should be made.
(30) V. Sanh. 20a.
(31) V. p. 351, n. 11.
(32) The enemy.
(33) Ezek. XXXIII, 15.
(34) Stacks of barley belonging to Israelites for stacks of lentils that belong to the enemy.
(35) II Sam. XXIII, 11.
(36) I Chron. XI, 13.
(37) I.e., the stacks of barley belonging to the Israelites without repaying them with the lentils of the enemy.
(38) In fact the two verses contradict each other.
(39) And which had thus also to be burned down.
(40) Ibid. 12. This would show that he did not let his warriors burn the stacks as this was not permissible by strict law.
(41) Since there was no question there of burning down.

Talmud - Mas. Baba Kama 61a

But according to the view that his inquiry concerned concealed goods in the case of Fire, what need was there for the verses?[1] — He might say to you that besides [the problem of] hidden goods [in the case of Fire], one of the other problems [referred to above][2] was asked by him. Now according to the [other] two views we quite understand why it is written, But he would not drink thereof,[3] for he said, 'Since there is a [general] prohibition[4] I do not want it.'[5] But according to the view that his inquiry concerned hidden goods[6] in the case of Fire, was it not a traditional teaching which was despatched to him, [and that being so,][7] what would be the meaning of 'But he would not drink thereof'?[8] —

[The meaning would be] that he did not want to quote this teaching in their names,[9] for he said: 'This has been transmitted to me from the Court of Law presided over by Samuel of Ramah, that no halachic matter may be quoted in the name of one who surrenders himself to meet death for words of the Torah.'

But he poured it out unto the Lord.[3] We quite understand this according to the [other] two views, as he acted thus for the sake of Heaven.[10] But according to the view that [his inquiry concerned] hidden goods in the case of Fire, what would be the meaning [of this verse], 'but he poured it out unto the Lord'? — That he repeated this [halachic statement] in the name of general traditional learning.[11]

MISHNAH. IF IT CROSSED A FENCE FOUR CUBITS HIGH OR A PUBLIC ROAD[12] OR A CANAL, THERE WOULD BE NO LIABILITY.[13]

GEMARA. But was it not taught: 'If it crossed a fence four cubits high there would [still] be liability'? — R. Papa thereupon said: The Tanna of our ruling [here] was reckoning downwards; [at the height of] six cubits there would be exemption; at five cubits, there would be exemption; down to [the height of] four cubits[14] there would [still] be exemption. The Tanna of the Baraitha [was on the other hand] reckoning upwards; at [the height of] two cubits, there would be liability; of three cubits,[15] there would be liability; up to [the height of] four cubits, there would [still] be liability.

Raba said: [The height of] four cubits stated [in the Mishnah] as not involving liability would also suffice even where the fire passed over to a field of thorns. R. Papa, however, said: [The height of] four cubits should be calculated from the top of the thorns.

Rab said: The Mishnaic ruling applies only where the fire was rising in a column, but where it was creeping along there would be liability, even if it crossed a public road of about [the width of] a hundred cubits. Samuel [on the other hand] said that the Mishnah deals with a creeping fire; for in the case of a fire rising in a column there would be exemption if it crossed a public road of any width whatsoever. It was, however, taught in accordance with Rab: This ruling[16] applies only where it was rising in a column; if it was creeping along, and wood happened to be in its path, there would be liability were it even to pass over a public ground of about the width of a hundred mil.[17] If, however, it crossed a river or pool eight cubits wide, there would be exemption. A PUBLIC ROAD. Who was the Tanna [who laid this down]? — Raba said: He was R. Eliezer, as we have indeed learnt: 'R. Eliezer says: [If it was] sixteen cubits [wide] like the road in a public thoroughfare, [there would be exemption].[18]

OR A CANAL. Rab said: It means an actual river. Samuel, however, said: It means a pond for watering fields. The one who says it is an actual river [would maintain the same ruling[19]] even where there was no water there.[19] But the one who says it means a pond for watering fields [would hold that] so long as there was water there the ruling would apply, but not where no water was there.

Elsewhere we have learnt: 'Divisions [of fields] with respect to Pe'ah[20] are effected by the following: a brook, a shelulith, a private road and a public road.[21] What is shelulith? — Rab Judah stated that Samuel had said: A [low lying] place where rainwater collects.[22] R. Bibi, however, said on behalf of R. Johanan: A pond of water which [as it were] distributes spoil[23] to the banks. The one who says that it means a [low-lying] place where rain water collects would certainly apply the ruling to a pond of water,[24] but the one who says that it means a pond of water would on the other hand maintain that [low-lying] places where rain-water collects would not cause a division, as these

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(1) I.e. the whole description of the barley and lentils.

(2) I.e., either to burn the stacks down or to exchange those of Israelites for those of the enemy.

(3) II Sam. XXIII, 16.
(4) In the case of an ordinary man.
(5) I.e., 'to avail myself of the royal prerogative in this respect.'
(6) [And the question was whether those of his men who had burnt the stack were to be made to pay for the hidden goods, cf. Tosaf. and Maharsha, מהדורא בתרא].
(7) [That the matter did not directly affect him.]
(8) Why then did he not accept it?
(9) [The names of those who volunteered to break through the enemy's lines (v. II Sam. XXIII, 16) in order to bring him a decision.]
(10) And did not take advantage of his privileged position as king.
(11) [And not in 'their names'.]
(12) Sixteen cubits wide.
(13) As this could not have been expected; it is thus considered a mere accident.
(14) Including a fence of the height of four cubits.
(15) But not including a fence of the height of four cubits. It thus follows that there is no contradiction between the two statements as where the fence was of the height of four cubits there will be exemption according to all views.
(16) Of exemption in the case of a fire crossing a public road.
(17) I.e., two thousand cubits; v. Glos.
(18) V. next Mishnah.
(19) On account of its great width.
(20) I.e., to leaving the corners of each separate field for the poor; see supra p. 148 and Glos.
(21) Pe'ah II, 1; cf. also B.B. 55a.
(22) As the term 'shalal' also denotes 'to gather'; cf. Bez. 7a.
(23) As shalal means 'spoil'; cf. Num. XXXI, 11.
(24) As this is of a more permanent nature.

Talmud - Mas. Baba Kama 61b

should more properly be called the receptacles of the land.[1]

MISHNAH. IF A MAN KINDLES A FIRE ON HIS OWN [PREMISES], UP TO WHAT DISTANCE CAN THE FIRE PASS ON [BEFORE HE BECOMES FREE OF LIABILITY]? R. ELEAZAR B. AZARIAH SAYS: IT HAS TO BE REGARDED AS BEING IN THE CENTRE OF AN AREA REQUIRING A KOR[2] OF SEED.[3] R. ELIEZER[4] SAYS: [A DISTANCE OF] SIXTEEN CUBITS [SUFFICES], EQUAL TO [THE WIDTH OF] A ROAD IN A PUBLIC THOROUGHFARE.[5] R. AKIBA SAYS FIFTY CUBITS. R. SIMEON SAYS: [SCRIPTURE SAYS] HE WHO KINDLED THE FIRE SHOULD MAKE RESTITUTION,[6] [WHICH SHOWS THAT] ALL DEPENDS UPON THE FIRE.

GEMARA. Did R. Simeon not hold that there is some fixed limit in the case of Fire?[7] Have we not learnt: 'No man shall fix[8] an oven on a ground floor unless there is a space of four cubits from the top of it [to the ceiling]. If he fixes it on an upper floor [he may not do so][8] unless there will be under it three handbreadths of cement; in the case, however, of a portable stove, one handbreadth will suffice. If [after all these precautions] damage has nevertheless resulted, payment must be made for the damage. R. Simeon says that these limits were only to intimate that if damage resulted [after they were observed] there should be exemption.[9] [Does this not prove that R. Simeon maintained a minimum limit of precaution?] — R. Nahman therefore stated that Rabbah b. Abbahu said: [The meaning of R. Simeon's phrase 'all thus depends upon the fire' is that] all should depend upon the height of the fire, [and that no general limits could be fixed].[10] R. Joseph, [however,] stated that Rab Judah said on behalf of Samuel: The halachah is in accordance with R. Simeon.[11] So also said R. Nahman, that Samuel said that the halachah was in accordance with R. Simeon.[11]

MISHNAH. IF A MAN SETS FIRE TO A STACK OF CORN IN WHICH THERE HAPPEN TO BE ARTICLES AND THESE ARE BURNT, R. JUDAH SAYS THAT PAYMENT SHOULD BE MADE FOR ALL THAT WAS THEREIN, WHEREAS THE SAGES SAY THAT NO PAYMENT SHOULD BE MADE EXCEPT FOR A STACK OF WHEAT OR FOR A STACK OF BARLEY. [WHERE FIRE WAS SET TO A BARN TO WHICH] A GOAT HAD BEEN FASTENED AND NEAR WHICH WAS A SLAVE [LOOSE] AND ALL WERE BURNT WITH THE BARN, THERE WOULD BE LIABILITY.[12] IF, HOWEVER, THE SLAVE HAD BEEN CHAINED TO IT, AND THE GOAT WAS LOOSE NEAR BY IT, AND ALL WERE BURNT WITH IT, THERE WOULD BE EXEMPTION.[13] THE SAGES, HOWEVER, AGREE WITH R. JUDAH[14] IN THE CASE OF ONE WHO SET FIRE TO A CASTLE THAT THE PAYMENT SHOULD BE FOR ALL THAT WAS KEPT THEREIN, AS IT IS SURELY THE CUSTOM OF MEN TO KEEP [VALUABLES] IN [THEIR] HOMES.[15]

GEMARA. R. Kahana said: The difference [of opinion][16] was only where the man kindled the fire on his own [premises], from which it passed on and consumed [the stack standing] in his neighbour's premises, R. Judah imposing liability for damage done to Tamun[17] in the case of Fire whereas, the Rabbis[18] grant exemption. But if he kindled the fire on the premises of his neighbour, both agreed that he would have to pay for all that was there.[19] Said Raba to him: 'If so, why does it say in the concluding clause, THE SAGES, HOWEVER, AGREE WITH R. JUDAH IN THE CASE OF ONE WHO SET FIRE TO A CASTLE THAT THE PAYMENT SHOULD BE FOR ALL THAT WAS KEPT THEREIN'? Now why not draw the distinction in the same case by making the text run thus: These statements apply only in the case where be kindled the fire on his own [premises], whence it travelled and consumed [the stacks standing] in his neighbour's premises; but where he kindled the fire in the premises of his neighbour, all would agree that he should pay for all that was kept there? — Raba therefore said: They differed in both cases. They differed where he kindled the fire in his own [premises] whence it travelled and consumed [stacks standing] in his neighbour's premises, R. Judah imposing liability to pay for Tamun in the case of Fire, whereas the [other] Rabbis hold that he is not liable [to pay for Tamun in the case of Fire].[20] They also differed in the case where he kindled a fire in the premises of his neighbour, R. Judah holding that he should pay for everything that was there, including even purses [of money], whereas the Rabbis held that it was only for utensils which were usually put away in the stacks, stich as e.g. threshing sledges and cattle harnesses that payment would have to be made, but for articles not usually kept in stacks no payment would have to be made.

Our Rabbis taught: If a man sets fire to a stack of corn in which there were utensils and they were burnt, R. Judah says that payment should be made for all that was stored there, whereas the Sages say that no payment should be made except for a stack of wheat or for a stack of barley, and that the space occupied by the utensils has to be considered as if it was full of corn.[21]

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(1) And should therefore not cause the fields to be considered separated from one another.

(2) V. Glos.

(3) As fire when rising in columns could not be expected to pass on to further distances.

(4) B. Hyrcanus.

(5) V. p. 355, n. 10.

(6) Ex. XXII, 5.

(7) [Assuming that what R. Simeon means is that it all depends on the damage caused by the fire irrespective of the distance.]

(8) I.e., the neighbours have the right to prevent him from doing so.

(9) B.B. II, 2.

(10) But each case should be considered in accordance with its own circumstances.

(11) [Only of this our Mishnah, but not of B.B. (Rashal).]

(12) For the goat and for the barn, but no liability whatever for the slave, for, since he was loose, he should have

escaped.

(13) For the goat and even for the barn, for since the slave was chained a capital charge is involved, and all civil liabilities merge in capital charges; v. supra p. 113 and p. 192.

(14) Who ordains payment even for concealed articles.

(15) The law about hidden goods could therefore not be applicable in this case.

(16) Between the Sages and R. Judah

(17) I.e., something hidden; v. Glos.

(18) The Sages.

(19) For the act of trespass.

(20) Even for utensils which are customarily kept in stacks.

(21) For which payment will be made.

These statements apply only to the case where he kindled the fire on his own [premises] whence it travelled and consumed [the stack standing] in the premises of his neighbour; but where he kindled the fire in the premises of his neighbour, all agree[1] that he would have to pay for all that was kept there.[2] R. Judah, however, agreed with the Sages that in the case where a man granted his neighbour the loan of a particular place [in his field] for the purpose of piling up a stack, if [the borrower of the place] piled up stacks and hid [some valuable articles there][3] no payment would have to be made except for the value of the stack alone.[4] [So also where permission was granted] for the purpose of piling up stacks of wheat, and he piled up stacks of barley, or [permission was given for] barley and he piled up wheat, or even where he piled up wheat [for which the permission was granted], but covered it with barley, or again where he piled up barley but covered it with wheat; [in these cases] no payment would be made except for the value of the barley alone.[5]

Raba said: If a man gives a gold denar to a woman and says to her, 'Be careful with it, as it is a silver coin', if she damaged it she would have to pay for a gold denar because he could [rightly] plead against her: 'What business had you to damage it?' But if she was [merely] careless with it,[6] she would have to pay only for a silver denar, as she could [rightly] plead against him: 'It was only silver that I undertook to take care of, but I never undertook to take care of gold.' Said R. Mordecai to R. Ashi: 'Do you state this in the name of Raba? We derive it quite definitely from the Baraitha [which states]: [If a man piled up] wheat [for which the permission was granted], but covered it with barley, or again [if he piled up] barley but covered it up with wheat, no payment would be made except for the value of the barley alone. Now, does this not prove that he is entitled to plead against the plaintiff: 'It was only barley that I undertook to take care of?' Here too she is surely entitled to plead against the depositor, 'I never undertook to take care of gold.'

Rab said: I have heard a new point with reference to the view of R. Judah [in the Mishnah here], but do not know what it is. Said Samuel to him: Does Abba[7] really not know what he heard with reference to R. Judah who imposes liability for damage done to Tamun in the case of Fire? It is that the judges must make the ordinance enacted for the benefit of a robbed person[8] extend also to the case of Fire.

Amemar raised the question: Would they similarly make the ordinance enacted for the benefit of a robbed person extend also to the case of an informer or not? According to the view[9] that we should not give judgment [against the defendant] in cases where the damage was [not actually done but] merely caused [by him],[10] there could be no question that also against informers we should not give judgment. But the question could still be raised according to the view that we should give judgment [against the defendant even] in cases where the damage was [not actually done but effectively and directly] caused by him.[10] Would the judges make the ordinance enacted for the benefit of a robbed person extend also to the case of an informer so that the plaintiff would by taking an oath [as to the exact amount of his loss] be paid accordingly, or should this perhaps not be so? — Let this remain undecided.

A certain man kicked another's money-box into the river. The owner came [into Court] and said: 'So much and so much did I have in it.' R. Ashi was sitting and pondering on it: What should be the law in such a case? — Rabina said to R. Aha the son of Raba, or, as others report, R. Aha the son of Raba said to R. Ashi: Is this not exactly what was stated in the Mishnah? For we learnt: 'THE SAGES AGREE WITH R. JUDAH IN THE CASE OF ONE WHO SET FIRE TO A CASTLE, THAT PAYMENT SHOULD BE FOR ALL THAT WAS KEPT THEREIN, AS IT IS SURELY THE CUSTOM OF MEN TO KEEP [VALUABLES] IN [THEIR] HOMES. [Is this not equivalent to the case in hand?][11] — He, however, said to him: If he would have pleaded that he had money there, it would indeed have been the same.[11] But we are dealing with a case where he pleads that he

had jewels there. What should then be the legal position? Do people keep jewels in a money-box or not? — Let this remain undecided.

R. Yemar said to R. Ashi: If he pleads that he had silver cups in the castle [which was burnt], what would be the law? — He answered him: We consider whether he was a wealthy man who was [likely] to have silver cups, or whether he was a trustworthy man with whom people would deposit such things. [If he is,] he would be allowed to swear and be reimbursed accordingly, but if not, he would not be believed [in his allegations without corroborative evidence].

R. Adda the son of R. Iwya said to R. Ashi: What is the [practical] difference between gazlan[12] and hamsan?[13] — He replied: A hamsan [one who expropriates forcibly] offers payment [for what he takes], whereas a gazlan does not make payment. The other rejoined: If he is prepared to make payment, how can you call him hamsan? Did R. Huna not say[14] that [even] where the vendor was [threatened to be] hanged [unless he would agree] to sell, the sale would be a valid sale?[15] — This, however, is no contradiction, as in that case, the vendor did [finally][16] say 'I agree', whereas here [in the case of hamsan] he never said 'I agree'.[17]

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(1) [Tosaf. omits 'all agree that', and take this passage as a continuation of the words of the Sages.]

(2) According to Raba this refers only to utensils which are usually kept in stacks.

(3) And it so happened that they were all burned down by a fire kindled by the owner of the field.

(4) As the owner of the field knew only of the stacks.

(5) As where permission was granted for barley the owner of the field could not have expected that wheat would be piled up. Even where permission was given for wheat, if the stacks were covered with barley, the owner of the field can plead that he only noticed barley.

(6) And the liability upon her is only because of her undertaking to keep it as an unpaid bailee.

(7) Which was the personal name of Rab.

(8) That where the amount of the loss cannot be established by proper evidence the plaintiff is entitled to take an oath as to the loss he sustained; v. Shebu. VII, 1.

(9) Infra 117b.

(10) Such as, e.g., in the case of informers.

(11) For just as it is the custom of men to keep valuables in their homes, it is surely the custom of men to keep money in money boxes.

(12) I.e. robber.

(13) I.e., violent person.

(14) B.B. 47b.

(15) For since he took the money the sale could not be called forced.

(16) After the pressure brought to bear upon him.

(17) The sale could therefore not become valid.

Talmud - Mas. Baba Kama 62b

MISHNAH. IF A SPARK ESCAPES FROM UNDERNEATH A HAMMER AND DOES DAMAGE, THERE WOULD BE LIABILITY. IF WHILE A CAMEL LADEN WITH FLAX WAS PASSING THROUGH A PUBLIC THOROUGHFARE THE FLAX GOT INTO A SHOP AND CAUGHT FIRE BY COMING IN CONTACT WITH THE SHOPKEEPER'S CANDLE, AND SET ALIGHT THE WHOLE BUILDING, THE OWNER OF THE CAMEL WOULD BE LIABLE.[1] IF, HOWEVER, THE SHOPKEEPER LEFT HIS CANDLE OUTSIDE [HIS SHOP], HE WOULD BE LIABLE.[2] R. JUDAH SAYS: IF IT WAS A CHANUKAH[3] CANDLE THE SHOPKEEPER WOULD NOT BE LIABLE.[4]

GEMARA. Rabina said in the name of Raba: From the statement of R. Judah we can learn that it is ordained to place the Chanukah candle within ten handbreadths [from the ground]. For if you

assume [that it can be placed even] above ten handbreadths, why did R. Judah say that in the case of a Chanukah candle there would be exemption? Why should the plaintiff not plead against him: 'You should have placed it above the reach of the camel and its rider?' Does this therefore not prove that it is ordained to place it within the [first] ten handbreadths? — It can, however, be argued that this is not so. For it could still be said that it might be placed even above the height of ten handbreadths, and as for your argument 'You ought to have placed it above the reach of the camel and its rider', [it might be answered that] since he was occupied with the performance of a religious act, the Rabbis could not [rightly] make it so troublesome to him.[5] R. Kahana said that R. Nathan b. Minyomi expounded in the name of R. Tanhum:[6] 'If the Chanukah candle is placed above [the height of] twenty cubits it is disqualified [for the purpose of the religious performance],[7] like a sukkah[8] and an alley-entry.[9]

C H A P T E R V I I

MISHNAH. THERE IS MORE FREQUENTLY OCCASION FOR THE MEASURE OF DOUBLE PAYMENT[10] [TO BE APPLIED] THAN THE MEASURE OF FOUR-FOLD OR FIVE-FOLD PAYMENTS,[11] SINCE THE MEASURE OF DOUBLE PAYMENT APPLIES BOTH TO A THING POSSESSING THE BREATH OF LIFE AND A THING WHICH DOES NOT POSSESS THE BREATH OF LIFE, WHEREAS THE MEASURE OF FOUR-FOLD AND FIVE-FOLD PAYMENTS[11] HAS NO APPLICATION EXCEPT FOR AN OX AND A SHEEP [RESPECTIVELY] ALONE, AS IT SAYS 'IF A MAN STEAL AN OX OR A SHEEP AND KILL IT OR SELL IT, HE SHALL PAY FIVE OXEN FOR AN OX AND FOUR SHEEP FOR A SHEEP.'[12] ONE WHO STEALS [ARTICLES ALREADY STOLEN] IN THE HANDS OF A THIEF NEED NOT MAKE DOUBLE PAYMENT,[13] AS ALSO HE WHO SLAUGHTERS OR SELLS [THE ANIMAL] WHILE IN THE POSSESSION OF [ANOTHER] THIEF HAS NOT TO MAKE FOURFOLD OR FIVE-FOLD PAYMENT.

GEMARA. That the measure of double payment applies both in the case of a thief and in the case of [an unpaid bailee falsely] alleging a theft,[14] whereas the measure of four-fold or five-fold payments has no application except in the case of a thief alone — [this, be it noted], is not taught here. This [omission] supports the view of R. Hiyya b. Abba, for R. Hiyya b. Abba stated that R. Johanan said: He who falsely alleges a theft [to account for the absence] of a deposit [entrusted to him], may have to make double payment;[14] so also if he slaughtered or sold it he may have to make four-fold or five-fold payment.[15] Some read as follows: Shall we say that this [omission] supports the view of R. Hiyya b. Abba who said in the name of R. Johanan: He who falsely alleges a theft [to account for the absence] of a deposit [entrusted to him] may have to make double payment; so also if he slaughtered or sold it, he may have to make four-fold or five-fold payment'? — But does your text say, 'There is no difference between [this[16] and that[17] except . . .]'? What it says is, THERE IS MORE FREQUENT OCCASION. — While some points were stated in the text others were omitted.[18]

AS THE MEASURE OF DOUBLE PAYMENT APPLIES BOTH TO A THING POSSESSING THE BREATH OF LIFE AND TO A THING WHICH DOES NOT POSSESS THE BREATH OF LIFE etc. Whence is this derived? As our Rabbis taught: For every matter of trespass[19] is a generalisation; whether it be for ox, for ass, for sheep, for raiment, is a specification; or for any manner of lost thing generalises again. We have thus here a generalisation preceding a specification which is in its turn followed by another generalisation,[20] and in such cases we include only that which is similar to the specification. Just as the specification here mentions an object which is movable and which has an intrinsic value, there should therefore be included any object which is movable and which has an intrinsic value. Real estate is thus excluded,[21] not being movable; slaves are similarly excluded as they are on the same footing [in the eye of the law] with real estate;[22] bills are similarly excluded, as though they are movable, they have no intrinsic value; sacred property is

also excluded as the text speaks of 'his neighbour'. But since the specification mentions a living thing whose carcass would cause defilement whether by touching or by carrying,[23] [why not say] there should be included any living thing whose carcass similarly causes defilement whether by touching or by carrying[24] so that birds would not be included?[25] — How can you seriously say this? Is not raiment[26] mentioned here? It may, however, be said that it is only regarding objects possessing life that we have argued.[27] Why then not say in the case of objects possessing life that it is only a thing whose carcass causes defilement by touching and carrying that is included, whereas a thing whose carcass does not cause defilement by touching and carrying should not be included,

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(1) V. supra 22a.

(2) As he is to blame for placing his candle outside his shop.

(3) Feast of Dedication.

(4) As he was entitled to place the Chanukah candle outside.

(5) As to make him place his Chanukah candle on a higher level.

(6) V. Shab. 21a.

(7) As when placed at such a high level it will not be noticed by passersby and publicity will not be given to the miracle.

(8) V. Glos. Cf. Suk. I, 1.

(9) V. 'Er, I, 1. An alley where a post or a stake would be required to be placed at the entrance for the purpose of enabling the inmates of that area to carry their domestic objects on the Sabbath day.

(10) For theft, in accordance with Ex. XXII, 3.

(11) For the slaughtering (or selling) of a sheep or ox respectively; cf. ibid. XXI, 37.

(12) Ibid.

(13) Since the article had in any case already passed out of the possession of the true owner.

(14) In accordance with Ex. XXII, 8.

(15) Infra p. 369.

(16) The measure of double payment.

(17) The measure of four-fold or five-fold payment.

(18) The omission of a particular point should therefore not be taken as a proof.

(19) Ex. XXII, 8.

(20) V. supra 54a.

(21) From the law of double payment.

(22) For which cf. Lev. XXV, 46.

(23) Lev. XI 39-40.

(24) Ibid. 26-28.

(25) As these do not cause defilement either by touching or by carrying.

(26) Which is not a living object at all.

(27) That they should be such that their carcasses would cause defilement whether by touching or by carrying.

Talmud - Mas. Baba Kama 63a

as each item in a generalisation and specification[1] is expounded by itself,[2] so that birds would not be included? — If so, the Divine Law should have inserted only one item in the specification.[3] But which item should the Divine Law have inserted? For were the Divine Law to have inserted only 'ox' I might have suggested that an animal which was eligible to be sacrificed upon the altar[4] should be included, but one which was not eligible to be sacrificed upon the altar[5] should not be included. If on the other hand the Divine Law had inserted only 'ass'[6] I might have thought that an animal which is subject to the sanctity of first birth[7] should be included but that one which is not subject to the sanctity of first birth[8] should not be included. [Why then still not exclude birds whose carcasses would, unlike those of the ox and the ass, defile neither by touching nor by carrying?] — It may still be said that if so, the Divine Law would have inserted 'ox' and 'ass'. Why then was 'sheep' inserted, unless to indicate the inclusion of birds [which would otherwise have been excluded]? But still why not say that you can [only] include birds which are [ritually] clean[9] for food, as these in some way

resemble sheep in that they defile the garments worn by him who swallows them[10] [after they have become nebelah],[11] whereas birds [ritually] unclean for food[12] which carry no defilement and do not cause the defilement of garments worn by him who swallows them[13] should not be included? — [The term] 'all' is an amplification.[14] [Does this mean to say that] whenever the Divine Law uses [the word] 'all' it is an amplification? What about tithes, where 'all' occurs and we nevertheless expounded it as a case of generalisation and specification? For it was taught: And thou shalt bestow that money for all that thy soul lusteth after[15] is a generalisation; for oxen, or for sheep, or for wine, or for strong drink is a specification; or for all that thy soul desireth is again a generalisation. Now, where a generalisation precedes a specification which is in its turn followed by another generalisation, you include only that which is similar to the specification. As then the specification [here] mentions produce obtained from produce[16] which springs from the soil[17] there may also be included all kinds of produce obtained from produce[18] which springs from the soil.[19] [Does this not prove that the expression 'all' was taken as a generalisation, and not as an amplification?][20] — It may, however, be said that [the expression] 'for all'[15] is only a generalisation, whereas 'all' would be an amplification.[21] Or if you wish I may say that [the term] 'all' is also a generalisation, but in this case 'all' is an amplification. For at the very outset we find here a generalisation preceding a specification followed in its turn by another generalisation, as it is written: If a man deliver unto his neighbour,[22] which is a generalisation, money or stuff which is a specification, to keep which generalises again. Should you assume that this verse for any matter of trespass etc. was similarly inserted in order to give us a generalisation preceding a specification followed in its turn by another generalisation, why did the Divine Law not insert these items of the specification [of the latter verse] along with the items of the former generalisation, specification and generalisation?[23] Why was the verse for any matter of trespass inserted at all, unless to prove that [this 'all'] was meant as an amplification?[24] But now that you have decided that the term 'all' is an amplification,[25] why do I need all these terms of the specification?[26] — One to exclude real estate, a second to exclude slaves and the third to exclude bills; 'raiment' to exclude articles which have no specification;[27] 'or for any manner of lost thing' was meant as a basis for the view of R. Hiyya b. Abbah, as R. Hiyya b. Abba reported[28] that R. Johanan said:

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(1) [MS.M. omits 'in a . . . . specification'.]

(2) V. infra 64b.

(3) Regarding objects possessing life.

(4) As was the case with ox.

(5) Such as an ass, horse, camel and the like.

(6) Which would include also animals not eligible to be sacrificed upon the altar.

(7) As is the case with ass; cf. Ex. XIII, 13.

(8) Such as horses and camels and the like.

(9) Deut. XIV, 11.

(10) Cf. Hul. 100b.

(11) I.e., a living creature which lost its life not through the prescribed method of ritual slaughter; cf. Glos.

(12) Enumerated in Lev. XI, 13-20 and Deut. XIV, 12-19.

(13) Cf. Hul. loc. cit.

(14) I.e., the term 'all' does more than generalise, for it includes everything, v. supra p. 317. n. 7.

(15) Deut. XIV, 26.

(16) Such as wine from grapes.

(17) Which characterises also cattle.

(18) Excluding water, salt and mushrooms.

(19) Thus excluding fishes. V. supra p. 317.

(20) Which would have included all kinds of food and drink.

(21) V. p. 318, n. 2.

(22) Ex. XXII, 6.

(23) In Ex. XXII, 6.

(24) [That is, with reference to the double payment, whereas the generalisation in the preceding verse refers to the oath (v. Shebu. 43a)].
(25) V. p. 366, n. 3.
(26) Ox, ass, sheep or raiment.
(27) According to Rashi it means that which has no distinguishing mark, but according to Tosaf, that which is not defined by measure, weight or number; see also Shebu. 42b and B.M. 47a.
(28) Supra 57a.

Talmud - Mas. Baba Kama 63b

He who falsely alleges the theft [to account for the non-production] of a find,[1] may have to make double payment,[2] as it says, 'for any manner of lost thing whereof one saith . . .'[3]

We have learnt elsewhere:[4] [If a man says to another] 'Where is my deposit?', and the bailee says 'It was lost', whereupon [the depositor says], 'I call upon you to swear' and the bailee says, 'So be it',[5] if witnesses testify against him that he himself had consumed it, he has to pay [only] the principal,[6] but if he admits [this] of himself, he has to pay the principal together with a fifth and a trespass offering.[7] [If the depositor says] 'Where is my deposit?', and the bailee answers 'It was stolen!', [whereupon the depositor says] 'I call on you to swear', and the bailee says, 'So be it',[5] if witnesses testify against him that he himself had stolen it, he has to make double payment,[8] but if he admits [this] on his own accord, he has to pay the principal together with a fifth and a trespass offering.[7] It is thus stated here that it is only where the bailee falsely alleges theft that he has to make double payment, whereas if he falsely alleges loss, he has not to make double payment. Again, even where he falsely alleges theft it is only where [he confirms the allegation] by an oath that he has to make double payment, whereas where no oath [follows] he has not to make double payment. What is the Scriptural authority for all this? — As the Rabbis taught: If the thief be found;[9] this verse deals with a bailee[10] who falsely alleges theft.[11] Or perhaps not so, but with the thief himself?[12] — As, however, it is further stated, If the thief be not found,[13] we must conclude that the [whole] verse[14] deals with a bailee falsely advancing a plea of theft.[15]

Another [Baraitha] teaches: If the thief be found: this verse deals with the thief himself.[16] You say that it deals with the thief himself. Why, however, not say that it is not so, but that it deals with a bailee falsely alleging theft? — When it further states, If the thief be not found this gives us the case of a bailee falsely alleging theft, How then can I explain [the verse] If the thief be found unless on the supposition that this deals with the thief himself![16] We see at any rate that all agree that [the verse] If the thief be not found deals with a bailee falsely alleging theft. But how is this implied [in the wording of the text]? — Raba said: [We understand the verse to say that] if it will not be found as he[17] stated[18] but that he himself had stolen it, he has to pay double. But whence can we conclude that this is so only in the case of an oath [having been falsely taken by the bailee]? — As it was taught: The master of the house shall come near unto the judges[13] to take an oath. You say to take an oath. Why not say, however, that this is not so, but to stand his trial?[19] — The words 'put his hand unto his neighbour's goods' occur in a subsequent section[20] and the words 'put his hand unto his neighbour's goods' occur in this section[13] which precedes the other one; just as there[20] it is associated with an oath,[21] so here also it should be associated with an oath. Now on the supposition[22] that one verse deals[23] with a thief and the other[24] with [a bailee falsely] alleging theft we quite understand why there are two verses; but on the supposition[25] that both of them deal with a bailee falsely alleging theft, why do I want two verses?[26] — It may be replied that one is to exclude the case of a false allegation of loss [from entailing double payment]. Now on the supposition[22] that one verse deals with a thief and the other with [a bailee falsely] alleging theft, in which case there will be no superfluous verse [in the text] whence can we derive the exclusion of a false allegation of loss [from entailing double payment]? — From [the definite article; as instead of] 'thief' [it is written] 'the thief'.[27] On the supposition[25] that both of the verses deal with [a bailee falsely] alleging theft, in

which case Scripture excludes a bailee falsely alleging loss, how could [the fact that instead of] 'thief' [it is written] 'the thief' be expounded? — He might say to you that it furnishes a basis for the view of R. Hiyya b. Abba reported in the name of R. Johanan, as R. Hiyya b. Abba stated[28] that R. Johanan said that he who falsely alleges theft in the case of a deposit would have to make double payment, and so also if he slaughtered or sold it he would have to make fourfold or five-fold payment. But on the supposition[22] that one verse deals with a thief and the other with [a bailee falsely] alleging theft, and that [the fact that instead of] 'thief', 'the thief' [is written] has been used to exclude a false allegation of loss [from entailing double payment], whence could be derived the view of R. Hiyya b. Abba?[28] — He might say to you: A thief and a bailee falsely alleging theft are made analogous to one another in Scripture,[29] and no objections can be entertained against an analogy.[30] This is all very well on the supposition that one verse deals with a thief and the other with [a bailee falsely] alleging theft. But on the supposition that both of them deal with [a bailee falsely] alleging theft, whence can the law of double payment[31] be derived in the case of a thief himself? And should you say that it can be derived by means of an a fortiori argument from the law of [a bailee falsely] alleging theft, [we may ask], is it not sufficient for the object to which the inference is made to be placed on the same footing as the object from which it is made,[32] so that just as there[33] [the penalty is entailed only where there] is false swearing, so here also[34] [it should be entailed only] where there is false swearing? — It could be derived by the reasoning taught at the School of Hezekiah. For it was taught at the School of Hezekiah: Should not Scripture have mentioned only 'ox' and 'theft'[35] as everything would thus have been included? — If so, I might say that just as the specification[36] mentions an object which is eligible to be sacrificed upon the altar any [living] object which is eligible to be sacrificed upon the altar should be included. What can you include through this? A sheep[37] [as subject to double payment].

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(1) I.e., an article found by him and which he has to return to its owner.

(2) If he took an oath to substantiate his false plea.

(3) Ex. XXII, 8.

(4) Shebu. VIII, 3.

(5) Which amounts to an oath; cf. Shebu. 29b.

(6) But not double payment, as he did not allege theft.

(7) In accordance with Lev. V, 21-25.

(8) As by advancing the false plea of theft and substantiating it by an oath he became subject to the law applicable to theft.

(9) Ex. XXII, 6.

(10) I.e., unpaid.

(11) The clause therefore means this: if he (the bailee) be found to have been the thief, he should pay double.

(12) Whereas the bailee would never have to pay double.

(13) Ex. XXII, 7.

(14) Which should be construed thus: If it be not found as the bailee pleaded that it was stolen by a thief but that he himself was the thief etc.

(15) V. the discussion later.

(16) Who was found to have stolen the deposit, in which case the unpaid bailee is quit and the thief pays double.

(17) The bailee.

(18) That he became dispossessed of it by the thief.

(19) And be ordered to pay.

(20) Ibid. 10.

(21) For the text runs: The oath of the Lord be between them both to see whether he hath not put his hands unto his neighbour's goods.

(22) I.e., the second Baraitha.

(23) Ex. XXII, 6.

(24) Ex. XXII, 7.

(25) I.e., the first Baraitha.

(26) Presenting the same law.

(27) Thus pointing out that the liability for double payment is only where it was the plea of theft that was proved to have been false.

(28) Supra p. 364.

(29) To be subject to the law of double payment which may lead on to a liability of four-fold or five-fold payment.

(30) היקש infra 106b.

(31) For misappropriating either an animate or inanimate object.

(32) I.e., the principle of Dayyo, v. supra p. 126.

(33) In the case of the bailee falsely pleading theft.

(34) In the case of the thief himself.

(35) In Ex. XXII, 3.

(36) I.e., ox.

(37) Which is similarly eligible to be sacrificed upon the altar.

Talmud - Mas. Baba Kama 64a

But when the text continues ‘sheep’, we have sheep explicitly stated. How then am I to explain ‘theft’? To include any object. [If that is so] should Scripture not have mentioned only ‘ox’, ‘sheep’ and ‘theft’ since everything would have thus been included? — If so, I might still say that just as the specification[1] mentions an object which is subject to the sanctity of first birth,[2] so also any object which is subject to the sanctity of first birth [should be included].[3] Now what can you include through this? An ass [as subject to double payment]. But when the text goes on to mention ‘ass’, we have ‘ass’ explicitly stated. What then do I make of ‘theft’? To include any object. [If that is so], should Scripture not have mentioned only ‘ox’ ‘ass’, ‘sheep’ and ‘theft’ since everything would have accordingly been included? — If so, I might still say that just as the specification[4] mentions objects possessing life, so also any other objects possessing life [should be included]. What can you include through this? All other objects possessing life. But when the text continues ‘alive’, we have objects possessing life explicitly stated. How then am I to explain ‘theft’? [It must be] to include any other object whatsoever.[5]

The Master stated: ‘Should not Scripture have mentioned [only] "ox" and "theft"?’ — But does it say ‘ox’ and [then] ‘theft’? Is it not [first] ‘theft’ and [then] ‘ox’ which is written in the text?[6] And if you rejoin that the author of this argument took a hypothetical case, viz.: ‘If it were written [first] "ox" and [then] "theft", how in that case would you be able to say, ‘Just as the specification mentions etc.,’ since ‘ox’ would be the specification and ‘theft’ the generalisation, and in the case of a specification followed by a generalisation the generalisation is considered to add to the specification, so that all objects would be included? If, on the other hand, he based his argument on the actual order of the text, viz.: ‘theft’ and [then] ‘ox’, how again would you be able to say that ‘everything would have been included’, or ‘just as the specification mentions etc.’, since ‘theft’ would be the generalisation and ‘ox’ the specification, and in the case of a generalisation followed by a specification there is nothing included in the generalisation except what is explicit in the specification, [so that here] only ox [would be included] but no other object whatsoever? Raba thereupon said: This Tanna[7] based his argument upon the term ‘alive’ [that follows the specification], so that he argued on the strength of a generalisation[8] [followed by] a specification[9] [which was in its turn followed by] another generalisation.[10] But is the last generalisation[10] analagous in implication to the first generalisation?[11] There is, however, the Tanna of the School of R. Ishmael who did expound texts of this kind on the lines of generalisations and specifications.[12] The problem was therefore this: Why do I require the words in the text, ‘If to be found it be found?’[13] Should not Scripture have mentioned only ‘theft’ and ‘ox’ and ‘alive’, and everything would have then been included?[14] — If so, I might say that just as the specification mentions an object which is eligible to be sacrificed upon the altar, so also any object eligible to be sacrificed upon the altar is [included]. What does this enable you to include? Sheep.[15] But when the text

continues ‘sheep’, we have sheep explicitly stated. What then am I to make of ‘theft’? It must be to include any object. [If that is so] should Scripture not have mentioned only ‘theft’, ‘ox’, ‘sheep’ and ‘alive’ since everything would have then been included?[14] — If so, I might still say that just as the specification mentions an object which is subject to the sanctity of first birth, so also any object which is subject to the sanctity of first birth [should be included]. What does this enable you to include? Ass. But when the text continues ‘ass’, we have ass explicitly stated. What then am I to make of ‘theft’? It must be to include any object. [But in that case] should Scripture not have mentioned only ‘theft’, ‘ox’, ‘sheep’, ‘ass’ and ‘alive’, since everything would have then been included?[14] — If so I might still say that just as the specification mentions objects possessing life, so also any other object possessing life [should be included]. What does this enable you to include? All other objects possessing life. But when the text continues ‘alive’, objects possessing life are explicitly stated. What then am I to make of ‘theft’? [It must be] to include any other object whatsoever. And if so, why do I require the words ‘if to be found it be found[16] ?

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(1) I.e., ox and sheep.

(2) In accordance with Ex. XIII, 12.

(3) Ass would thus also be included; cf. Ex. XXII, 13.

(4) Ox, sheep and ass.

(5) [Hence the derivation of double payment in the case of the thief himself.]

(6) [Being thus a generalisation followed by a specification, in which case the former includes only what is contained in the latter, v. P.B. p. 13.]

(7) Of the School of Hezekiah.

(8) I.e., ‘theft’.

(9) I.e., ‘ox, ass, sheep’.

(10) I.e., ‘alive’. — The argument will be explained anon.

(11) I.e., ‘theft’, being more comprehensive than ‘alive’.

(12) Cf. Zeb. 4b; 8b; and Hul. 66a.

(13) Literal rendering of Ex. XXII, 3. (E.V.: If the theft be certainly found in his hand.)

(14) Why indeed this emphasis on the verb ‘found’?

(15) V. supra p. 370, n. 7.

(16) V. note 2. This concludes the argument of the School of Hezekiah.

Talmud - Mas. Baba Kama 64b

But if this is so, is not this a real difficulty?[1] — There is, however, a refutation of it.[2] For whence would you include any ‘other object’?[3] From [the implication of] the last generalisation.[4] Now, since this very generalisation consists in the term ‘alive’, of what service then is the argument based upon the generalisation followed by a specification which is in its turn followed by another generalisation? It can hardly be to add any [inanimate] object, since the word ‘alive’ is used there, implying only objects possessing life, but not any other object whatsoever. It was therefore because of this that it was necessary to state ‘if to be found it be found.’[5] It may however still be argued, does not this text contain two generalisations which are placed near each other?[6] — Rabina thereupon said: [We dispose of this difficulty] as stated in the West,[7] that wherever you find two generalisations near each other, place a specification between them and explain them as a case of a generalisation followed by a specification.[8] [Here then] place ‘ox’ between [the infinitive and the finite verb],[6] ‘if to be found it be found.’ Now, what additional objects would this introduce? If objects possessing life, are these not to be derived from the term ‘alive’? It must therefore be an object which does not possess life, and we expound thus: Just as the specification mentions an object which is movable and which has an intrinsic value, so also any object which is movable and which has an intrinsic value [should be included to be subject to the double payment]. Now, when you again place ‘ass’ between [the infinitive and the finite verb], ‘if to be found it be found’, what additional objects could this introduce? If an object not possessing life, was not this derived from [placing] ‘ox’ [between the two

generalisations]?[6] It must therefore serve to introduce an object having specification.[9] But if so why do I require the word 'sheep'? — It must therefore be taken as a case of an amplification preceding a diminution followed in its turn by another amplification,[10] as indeed taught at the School of R. Ishmael. For it was taught at the School of R. Ishmael:[11] [The words 'in the waters',[12] 'In the waters', occurring twice in the text should not be treated as a generalisation followed by a specification, but as an amplification followed by a diminution followed in its turn by another amplification, to add everything. What, then, does it add in this case?[13] It adds all objects, But if so, why do I require all these specifications?[14] — One to exclude real estate; the second to exclude slaves, and the third to exclude bills; while 'theft' and 'alive' furnish a basis for the view of Rab who said[15] that the value of the principal is to be resuscitated as it was at the time of theft.[16]

But according to the view that one verse[17] deals with a thief himself and the other[18] with a bailee [falsely] alleging theft, so that the liability of a thief himself to pay double payment is thus derived from the text 'if the thief be found', how is the text 'If to be found it be found' etc. to be expounded? — He may employ it for teaching the view expressed by Raba b. Ahilai; for Raba b. Ahilai said:[19] What was the reason of Rab who maintained that a defendant admitting an offence for which the penalty is a fine would [even] where witnesses subsequently appeared still be exempt? As it is written: 'If to be found it be found' implying that if at the very outset it is found by witnesses then it will 'be' [considered] 'found' in the consideration of the Judges, excepting thus a case where it was the defendant who incriminated himself. Now again, according to the view that both verses deal with a bailee [falsely] advancing a plea of theft, in which case the text 'If to be found it be found' is employed to teach that there is double payment in the case of a thief himself, whence [in Scripture] do we derive the rule regarding a defendant incriminating himself? — From the text, 'Whom the judges shall condemn'[20] [which implies], 'but not him who condemns himself.' But according to the view that one verse deals with a thief and the other with a bailee [falsely] advancing a plea of theft and that the text of 'if to be found it be found' is to introduce the law where the defendant incriminates himself, how could the text, 'whom the judges shall condemn', be expounded? — He might say to you: That text was in the first instance employed to imply that a defendant admitting [an offence entailing] a fine [without witnesses subsequently appearing] would be exempt;[21] whereas the other view, that both of the verses deal with a bailee [falsely] advancing a plea of theft holds that a defendant admitting [an offence entailing] a fine for which witnesses subsequently appear is liable.[22] According to the view that one verse[23] deals with a thief and the other with a bailee [falsely] advancing a plea of theft, so that the case of a thief is derived from the verse there,[24] we have no difficulty with the text 'if to be found it be found', which is employed as a basis for the statement of Raba b. Ahilai, but why do I require all these specifications?[25] — For the reason taught at the school of R. Ishmael,[26] that any section written in Scripture and then repeated is repeated only for the sake of a new point that is added to it.[27] But why not say that even the thief himself should be subject to double payment only after having taken an oath falsely?[28] — Let not this enter your mind, for it was taught: 'R. Jacob says, He shall pay double[29] [even] where he took no oath. Why not rather say only where he took a false oath?[28] You can safely say that this could not be so.' Why could this not be so? — Said Abaye: For the Divine Law should then not have written 'he shall pay double' in the case of a thief, as this would have been derived by an a fortiori from the law applicable to a bailee falsely advancing a plea of theft: If a bailee falsely advancing a plea of theft, into whose hands the article had come lawfully, is ordered by Scripture to pay twice, should this not apply all the more strongly in the case of the thief himself, into whose hands the article came unlawfully? Why then did Scripture say 'He shall pay double' in the case of a thief himself, unless to imply liability even in the absence of an oath!

But how could this [text] 'If to be found it be found' be employed to teach this?[30] Is it not required for what was taught: 'his hand':[31]

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(1) And how are we to meet the question of that Tanna?

(2) So that the emphasis on the verb becomes essential.
(3) To be subject to the law of theft.
(4) [It is a general principle that, in a proposition consisting of a generalisation followed by a specification which in its turn is followed by another generalisation, the inclusion of all things that are similar to the specification is in virtue of the last generalisation, since without it the proposition would include only what is included in the specification, v. p. 371, n. 3.]
(5) [To apply here the principle of generalisation, specification and generalisation.]
(6) I.e., the doubling of the verb expressing 'found'.
(7) In the Land of Israel.
(8) Cf. Shebu. 5a.
(9) To the exclusion of such as have no marks of identification. Cf. p. 367, n. 4.
(10) Cf. supra p. 366.
(11) V. p. 373, n. 6.
(12) Lev. XI, 9.
(13) Which would otherwise not have been subject to the law.
(14) [Strictly speaking, 'diminutions'.]
(15) Infra p. 376.
(16) I.e., that the payment of principal for a stolen article will be in accordance with its value at the time of the theft.
(17) Ex. XXII, 6.
(18) Ibid. 7.
(19) Infra 75a.
(20) Ex. XXI, 8.
(21) [While the other verse is to extend the exemption to the case where witnesses do subsequently appear. Had there been one verse only available, the exemption would have been limited to the former only.]
(22) As indeed maintained by Samuel, infra 75a.
(23) V. p. 374, n. 8.
(24) 'If the thief be found'.
(25) [Since the exclusion of 'real estate, slaves and bills' is already provided for in the verse, For all manner of trespass, etc,; v. supra p. 364.]
(26) Sot. 3a; Shebu. 19a.
(27) I.e., the exclusion of self-admission in case of a fine, as supra.]
(28) Since the law in this case is derived from the section dealing with the unpaid bailee who is not subject to pay double unless where he first took a false oath on the plea of alleged theft.
(29) Ex. XXII, 3.
(30) I.e., any of the above implications.
(31) Ex. XXII, 3.

Talmud - Mas. Baba Kama 65a

this gives me the rule only as applying to his hand. Whence do I learn that it applies to his roof, his courtyard and his enclosure? It distinctly lays down: If to be found it be found [i.e.] in all places'?[1] — But if so[2] the text should have said either 'if to be found, to be found', or 'if it be found, it be found'?[3] The variation in the text[4] enables us to prove two points from it.

The above text states: 'Rab said: "The principal is reckoned as at the time of the theft,"[5] whereas double payment or four-fold and five-fold payments are reckoned on the basis of the value when the case was brought into Court.' What was the reason of Rab? — Scripture says 'theft' and 'alive'. Why does Scripture say 'alive' in the case of theft? [To imply] that I should resuscitate the principal in accordance with its value at the time of theft.[6] Said R. Shesheth: I am inclined to say that it was only when he was half asleep on his bed[7] that Rab could have enunciated such a ruling.[8] For it was taught: [If a thief misappropriated] a lean animal and fattened it, he has to pay the double payment or four-fold and five-fold payments according to the value at the time of theft. [Is this not a

contradiction to the view of Rab?][9] — It might, however, be said [that the thief has to pay thus] because he can say, 'Am I to fatten it and you take it?'[10]

Come and hear: [If a thief misappropriated] a fat animal and caused it to become lean, he has to pay double payment or fourfold and five-fold payments according to the value at the time of theft. [Does this not contradict the ruling enunciated by Rab?][11] — There also [the thief has to pay thus] because we argue against him 'What is the difference whether you killed it altogether or only half-killed it.'[12] But the ruling enunciated by Rab[11] had reference to fluctuations in price. How are we to understand this? If we assume that it was originally worth one zuz and subsequently worth four zuz, would the statement 'the principal will be reckoned as at the time of theft not lead us to suppose that Rab differs from Rabbah? For Rabbah said:[13] If a man misappropriated from his fellow a barrel of wine which was then [worth] one zuz but which became subsequently worth four zuz, if he broke it or drank it he has to pay four,[14] but if it broke of itself he has to pay one zuz.[15] [Would Rab really differ from this view?][16] — It may however, be said that Rab's rule applied to a case where, e.g., it was at the beginning worth four [zuz] but subsequently worth one [zuz], in which case the principal will be reckoned as at the time of theft, whereas double payment or four-fold and five-fold payments will be reckoned on the basis of the value when the case came into Court. R. Hanina learnt in support of the view of Rab: If a bailee advanced a plea of theft regarding a deposit and confirmed it by oath but subsequently admitted his perjury and witnesses appeared and testified [to the same effect], if he confessed before the appearance of the witnesses, he has to pay the principal together with a fifth and a trespass offering;[17] but if he confessed after the appearance of the witnesses, he has to pay double payment[18] together with a trespass offering;[19] the fifth, however, is replaced by the doubling of the payment.[20] So R. Jacob.

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(1) B.M. 10b and 56b.

(2) That it was meant to imply only one point.

(3) I.e., the verb would have been doubled in the same tense.

(4) In the tense of the verb, the infinite followed by the finite.

(5) V. supra p. 374.

(6) V. p. 374, n. 7.

(7) Lit., 'when lying down'.

(8) For a similar expression cf. supra p. 268.

(9) According to whom four-fold and five-fold payments are reckoned on the basis of the value when the case comes into court.

(10) Whereas where there was an increase in price or where the animal became fatter by itself, the ruling of Rab may hold good.

(11) V. p. 376, n. 11.

(12) The liability thus began at the time when the thief caused the animal to become lean.

(13) B.M. 43a.

(14) As was its value at the time when he damaged it.

(15) As was its value at the time of the theft.

(16) And maintain to the contrary that even where the thief broke it or drank it he would still pay only one zuz, which was its value at the time of the theft.

(17) In accordance with Lev. V, 24-25. [But not the doubling, since it is a fine which is not payable on self-admission.]

(18) V. p. 634, n. 7.

(19) V. p. 634, n. 6.

(20) Provided, however, that the doubling and the fifth are equal in amount.

Talmud - Mas. Baba Kama 65b

The Sages, however, say: [Scripture says] In its principal and the fifth part thereof,[1] [implying that it is only] where money is paid as principal that a fifth has to be added, but where the money is not

paid as principal[2] no fifth will be added.[3] R. Simeon b. Yohai says: No fifth or trespass offering is paid in a case where there is double payment.[4] Now it is said here that 'the fifth is replaced by the doubling of the payment;' this being the view of R. Jacob. How are we to understand this? If we say it was at the beginning worth four and subsequently similarly worth four, how could the fifth be replaced by the doubling of the payment when the doubling of the payment amounts to four and the fifth to one?[5] Does it therefore not refer to a case where at the beginning the value was four but subsequently fell to one zuz, so that the doubling of the payment is one zuz[6] and the fifth of the payment is also one zuz,[5] proving thereby that the principal will be reckoned as at the time of theft, whereas double payment or four-fold and five-fold payments will be reckoned on the basis of the value when the case comes into court? — Raba thereupon said: It could still be maintained that at the beginning it was worth four and now it is similarly worth four, for as to the difficulty with respect to the doubling of the payment being four and the fifth of the payment one zuz,[5] it might be said that [we are dealing here with a case] where e.g., he took an oath and repeated it four times, after which he confessed, and as the Torah says 'and its fifths',[7] the Torah has thus assigned many fifths to one principal.[8]

The Master stated: 'The Sages however say: [Scripture says] In its principal and the fifth part thereof [implying that it is only] where money is paid as principal that a fifth has to be added, but where the money is not paid as principal, no fifth will be added.' The trespass offering will nevertheless have to be brought. Why this difference? If he has not to pay the fifth because it is written, In its principal and the fifth part thereof, why should he similarly not have to pay the trespass offering seeing it is written, In its principal and the fifth part thereof . . . and his trespass offering?[9] — The Rabbis might say to you that by the particle 'eth' [occurring before the term denoting his trespass offering][10] Scripture separates them.[11] And R. Simeon b. Yohai?[12] — He maintains that by the 'waw' [conjunctive placed before the particle] 'eth' Scripture combines them.[13] And the Rabbis? — They may say that if this is so, the Divine Law should have inserted neither the 'waw' nor the 'eth'. And R. Simeon b. Yohai? — He might rejoin that as it was impossible for Scripture not to insert 'eth' so as to make a distinction between a chattel due to Heaven[14] and money due to ordinary men,[15] it was therefore necessary to add the 'waw' so as to combine the verses.

R. Elai said: If a thief misappropriates a lamb and it grows into a ram,[16] or a calf and it grows into an ox,[16] as the article has undergone a change[17] while in his hands he would acquire title to it,[18] so that if he slaughters or sells it, it is his which he slaughters it is his which he sells.[19] R. Hanina objected to R. Elai's statement [from the following teaching]: If he misappropriates a lamb and it grows into a ram,[16] or a calf and it grows into an ox,[16] he will have to make double payment or four-fold and five-fold payments reckoned on the basis of the value at the time of theft. Now, if you assume that he acquires title to it by the change, why should he pay?[20] Is it not his which he slaughtered, is it not his which he sold? — He replied:[21] What then [is your opinion]? That a change does not transfer ownership? Why then pay on the basis of the value at the time of theft[22] and not of the present value?[23] — The other replied:[24] He does not pay in accordance with the present value for the reason that he can say to him,[25] 'Did I steal an ox from you, did I steal a ram from you?' Said the other:[21] 'May the All-Merciful save me from accepting this view!' The other one retorted,[24] 'May the All-Merciful save me from accepting your view.'[26] R. Zera demurred saying: Why should he not indeed acquire title to it through the change in name?[27] Raba, however, said to him: An ox one day old is already called 'ox', and a ram one day old is already called 'ram'. 'An ox one day old is called "ox",' as written: When an ox or a sheep or a goat is born.[28] 'A ram one day old is called "ram",' as written: And the rams of thy flocks have I not eaten.[29] Does he mean that it was only the rams that he did not eat, and that he did eat the sheep? [Surely not!] — This shows that a ram one day old is already called 'ram'. But all the same does the objection raised against R. Elai[30] still not hold good? — R. Shesheth thereupon said: The teaching [of the Baraitha] is in accordance with the view of Beth Shammai, that a change leaves the article in the previous position and will accordingly not transfer ownership, as taught:[31] If he gave her [the harlot] as her hire wheat of which she made flour, or

olives of which she made oil, or grapes of which she made wine, it was taught on one occasion that 'the produce is forbidden [to be sacrificed upon the altar],'[32] whereas on another occasion it was taught 'it is permitted',[33] and R. Joseph said: Gorion of Aspurak[34] learnt: 'Beth Shammai prohibit [the produce to be used as sacrifices],[35] whereas Beth Hillel permit it.' Now, what was the reason of Beth Shammai? — Because it is written 'Gam',[36] to include their transformations.[37] But Beth Hillel maintain that [the suffix them][38] implies 'them',[39] and not their transformations. And Beth Shammai? — They maintain that the suffix

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(1) Lev. V, 24.

(2) As here, where double payment has to be made.

(3) Under any circumstances, even where the doubling of the payment and the fifth are not equal in amount, though the trespass offering will have to be brought.

(4) Infra 106a; Shebu. 37b.

(5) The fifth is 25% of the general sum which will have to be paid as principal plus a fifth thereof amounting thus to a fourth of the principal.

(6) As was the value at the time of the coming into court.

(7) E.V.: 'and the fifth part thereof'.

(8) I.e., a fifth will be paid for each false swearing.

(9) Lev. ib., 24-25.

(10) E.V.: 'And . . . his trespass offering, v. 25.

(11) So that the law regarding the trespass offering is not governed by the condition made in verse 24.

(12) [Who holds that he neither brings a trespass offering. How will he meet the argument from the particle 'eth'?]

(13) Making them subject to the same law.

(14) I.e., the trespass offering.

(15) I.e., the fifth.

(16) While still in his possession.

(17) The technical term is Shinnuy.

(18) Having, however, to repay the principal together with the double payment for the act of theft.

(19) The fine for the slaughter or sale will thus not be imposed upon him.

(20) The fine for the slaughter or sale.

(21) R. Elai to R. Hanina.

(22) When it was merely a lamb or a calf.

(23) When it already became a ram, or an ox, if the ownership has not changed.

(24) R. Hanina to R. Elai.

(25) I.e., the thief against the plaintiff.

(26) Cf. Shab. 84b and Keth. 45b.

(27) [Though 'growth' confers no title.]

(28) Lev. XXII, 27.

(29) Gen. XXXI, 38.

(30) By R. Hanina from the teaching imposing the fine of four-fold and five-fold payments.

(31) Infra p. 544 and Tem. 30b.

(32) In accordance with Deut. XXIII, 19.

(33) As it was not the same article which was given as hire.

(34) [Not identified, but probably in Asia; v. Neubauer, p. 386.]

(35) V. p. 380, n. 15.

(36) E.V.: 'even', and which is generally taken as an amplification.

(37) I.e., to prohibit even the articles into which the hire was transformed.

(38) שניהם , 'both of them' (E.V.: 'both these').

(39) I.e., the original articles themselves.

indicates 'them' and not their offsprings.[1] And Beth Hillel? — They reply that you can understand the two points from it: 'Them' — and not their transformations; 'them' — and not their offsprings. But as to Beth Hillel surely it is written Gam? — Gam presents a difficulty according to the view of Beth Hillel.[2]

Their[3] difference extends only so far that one Master[4] maintains that a change transfers and the other Master[5] maintains that a change does not transfer ownership, but regarding payment they both agree that the payment is made on the basis of the original value, even as it is stated:[6] 'He has to make double payment or fourfold and five-fold payments on the basis of the value at the time of the theft.' Are we to say that this [Baraitha] confutes the view of Rab in the statement made by Rab that the principal will be reckoned as at the time of theft, whereas double payment or four-fold and five-fold payments will be reckoned on the basis of the value when the case comes into Court? — Said Raba: [Where he pays with] sheep, [he pays] in accordance with the original value,[7] but [where he pays with] money [he pays] in accordance with the present value.

Rabbah said: That a change[8] transfers ownership is indicated in Scripture and learnt in Mishnah. It is indicated in Scripture in the words, He shall restore the misappropriated object which he violently took away.[9] What is the point of the words 'which he violently took away'? — It is to imply that if it is still as [it was when] he violently took it[10] he shall restore it, but if not, it is only the value of it that he will have to pay.[11] It is learnt [in the Mishnah]: If one misappropriates timber and makes utensils out of it, or wool and makes it into garments, he has to pay in accordance with the value at the time of robbery.[12] Or as also [learnt elsewhere]: If the owner did not manage to give the first of the fleece to the priest[13] until it had already been dyed, he is exempt,[14] thus proving that a change transfers ownership. So has Renunciation[15] been declared by the Rabbis to transfer ownership. We, however, do not know whether this rule is derived from the Scripture, or is purely Rabbinical. Is it Scriptural, it being on a par with the case of one who finds a lost article?[16] For is not the law in the case of a finder of lost property that, if the owner renounced his interest in the article before it came into the hands of the finder the ownership of it is transferred to the finder? So in this case, the thief similarly acquires title to the article as soon as the owner renounces his claim. It thus seems that the transfer is of Scriptural origin! Or are we to say that this case is not comparable to that of a lost article?[16] For it is only in the case of a lost article that the law applies, since when it comes into the hands of the finder,[17] it does so lawfully, whereas in the case of the thief into whose hands it entered unlawfully, the rule therefore might be merely of Rabbinic authority, as the Rabbis might have said that ownership should be transferred by Renunciation in order to make matters easier for repentant robbers. But R. Joseph said: Renunciation does not transfer ownership even by Rabbinic ordinance.

R. Joseph objected to Rabbah's view [from the following:] If a man misappropriated leavened food [before Passover],[18] when Passover has passed[19]

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(1) Such as where, e.g., a cow was given as hire and it gave birth to a calf.

(2) V. supra 54a, and B.M. 27a.

(3) I.e., R. Elai's and R. Hanina's.

(4) R. Elai.

(5) R. Hanina.

(6) In the Baraitha cited supra p. 379.

(7) Rashi explains this to mean that as it was a sheep which he misappropriated it is a sheep which he has to return, but according to Tosaf. it does not refer to the object by which the payment is made but to the object of the theft, and means that if the change in price resulted from a change in the substance of the stolen object all kinds of payment will be in accordance with the value at the time of the theft, whereas where the change in the value was due to fluctuation in price the view of Rab would still hold good.

(8) In the substance of a misappropriated article.

(9) Lev. V. 23.

(10) I.e., without any change in the substance of the object.

(11) But not the misappropriated object itself.

(12) Infra p. 541.

(13) In accordance with Deut. XVIII, 4.

(14) On account of the change which took place in the colour of the wool. (Hul. 135a).

(15) Ye'ush, of the misappropriated article by its owner.

(16) Where Renunciation by the owner would release a subsequent finder from having to restore the article found by him, as derived in B.M. 22b from a Scriptural inference.

(17) After Renunciation.

(18) When it was permitted.

(19) So that the leavened food became forbidden for any use in accordance with Pes. 28a-30a.

Talmud - Mas. Baba Kama 66b

he can say to the plaintiff, 'Here is your stuff before you.'[1] Now, as this plaintiff surely renounced his ownership when the time for prohibiting leavened food arrived,[2] if you assume that Renunciation transfers ownership, why should the thief be entitled to say, 'Here is your stuff before you', when he has a duty upon him to pay the proper value?[3] — He replied:[4] I stated the ruling[5] only where the owner renounces ownership at the time when the thief is desirous of acquiring it, whereas in this case, though the owner renounced ownership, the thief had no desire to acquire it.[6]

Abaye objected to Rabbah's statement [from the following]: [The verse says,] 'His offering,[7] [implying] but not one which was misappropriated.'[8] Now, what were the circumstances? If we assume before Renunciation, why do I require a text, since this is quite obvious?[9] Should we therefore not assume after Renunciation, which would show that Renunciation does not transfer ownership?[10] Said Raba[11] to him: According to your reasoning [how are we to explain] that which was taught: [The verse says,] 'His bed[12] [implying] but not one which was misappropriated'? Under what circumstances? That, for instance, wool was misappropriated and made into a bed? But is there any [accepted] view[13] that a change [in substance] resulting from an act does not transfer ownership?[14] What you have to say is that it refers to a case where the robber misappropriated a neighbour's bed. So also here[15] it refers to a case where he misappropriated a neighbour's offering.[16] Abaye objected to R. Joseph's view [from the following]: In the case of skins belonging to a private owner, mere mental determination renders them capable of becoming [ritually] unclean[17] whereas in the case of those belonging to a tanner no mental determination[18] would render them capable of becoming unclean.[19] Regarding those in the possession of a 'thief', mental determination[20] will make them capable of becoming unclean,[21] whereas those in the possession of a 'robber' no mental determination[22] will render capable of becoming unclean.[23] R. Simeon says that the rulings are to be reversed: Regarding those in the possession of a 'robber', mental determination[22] will render them capable of becoming unclean,[24] whereas regarding those in the possession of a 'thief', no mental determination[20] will render them capable of becoming unclean, as in the last case the owners do not usually abandon hope of discovering who was the thief.[25] Does not this prove that Renunciation transfers ownership?[26] — He replied:[27] We are dealing here with a case where for example he had already trimmed the stolen skins [so that some change in substance was effected].[28] Rabbah son of R. Hanan demurred to this, saying: This was learnt here in connection with a [dining] cover,[29] and [skins intended to be used as] a cover do not require trimming as we have learnt:[30] Wherever there is no need for [finishing] work to be done, mental resolve[31] will render the article capable of becoming unclean, whereas where there is still need for [finishing] work to be done no mental resolve[31] will render it capable of becoming unclean, with the exception however, of a [dining] cover![32] — Raba therefore said: This difficulty was pointed out by Rabbah to R. Joseph for twenty-two years[33] without his obtaining any answer. It was only when R. Joseph occupied the seat as Head[34] that he explained it [by suggesting that] a change in name is equivalent [in the eye of the law] to a change in substance; for just as a change in substance has an effect because, for instance, what was previously

timber is now utensils, so also a change in name should have an effect as what was previously called skin is now called [dining] cover.[35] But what about a beam where there is similarly a change in name as previously it was called a post and now ceiling, and we have nevertheless learnt that 'where a misappropriated beam has been built into a house, the owner will recover only its value, so as to make matters easier for repentant robbers'.[36] The reason is, to make matters easier for repentant robbers,

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(1) As no change took place in the substance of the misappropriated article. (Infra p. 561.)
(2) I.e., on the eve of Passover.
(3) Since the misappropriated article became his.
(4) Rabbah to R. Joseph.
(5) That Renunciation transfers the ownership.
(6) As it was not in his interest to do so.
(7) Lev. I, 3.
(8) Infra p. 388.
(9) That a stolen object could not be brought to the altar.
(10) In contradiction to the view expressed by Rabbah.
(11) Var. lec., 'Rabbah'.
(12) Lev. XV, 5.
(13) With the exception of that of Beth Shammai (cf. supra p. 380). whose view is disregarded when in conflict with Beth Hillel (Tosaf.).
(14) Would the bed in this case not become the legal property of the robber?
(15) In the case of the sacrifice.
(16) [In which case the sacrifice is not acceptable even if offered after renunciation on the part of the original owner.]
(17) As his mental determination is final, and the skins could thus be considered as fully finished articles and thus subject to the law of defilement. (V. Kel. XXVI, 7.)
(18) To use them as they are.
(19) As a tanner usually prepares his skins for the public, and it is for the buyer to decide what article he is going to make out of them.
(20) On the part of the thief to use them as they are.
(21) For the skins became the property of the thief, as Renunciation usually follows theft on account of the fact that the owner does not know against whom to bring an action.
(22) On the part of the robber to use them as they are.
(23) For the skins did not become the property of the robber as robbery does not usually cause Renunciation, since the owner knows against whom to bring an action.
(24) For the skins became the property of the robber as the owner has surely renounced every hope of recovering them for fear of the robber who acted openly.
(25) Kel. XXVI, 8; infra p. 672.
(26) In contradiction to the view maintained by R. Joseph.
(27) R. Joseph to Abaye.
(28) On account of which the ownership was transferred.
(29) Since the case of the skins follows in the Mishnah that of the (dining) cover. [The dining cover (Heb. 'izba), was spread over the ground in the absence of a proper table from which to eat; cf. Rashi and Krauss, Talm. Arch., I, 376.]
(30) Kel. XXVI, 7.
(31) V. p. 384, n. 5.
(32) Since even without trimming the skins could be used as a cover.
(33) I.e., all the days when Rabbah was the head of the college at Pumbeditha; cf. Ber. 64a; Hor. 14a and Rashi Keth. 42b.
(34) In succession to Rabbah.
(35) Whereas mere Renunciation in the case of theft or robbery would not transfer ownership.
(36) 'Ed. VII, 9.

but if not for this, it would have to be restored intact?[1] — R. Joseph replied: A beam retains its name [even subsequently], as taught: 'The sides of the house';[2] these are the casings: 'and the thick planks'; these are the beams.[3] R. Zera said: A change which can revert to its original state is, in the case of a change in name, not considered a change.[4] But is a change in name that cannot revert to its original state[5] considered a change? What then about a trough, the material of which was originally called a plank but now trough, and we have nevertheless been taught[6] that a trough[7] which was first hollowed out and subsequently fixed [into a mikweh][8] will disqualify the mikweh,[9] but where it was first fixed [in to the mikweh] and subsequently hollowed out, it will not disqualify the mikweh![10] But if you maintain that a change in name has a legal effect, why then, even where he fixed it first and subsequently hollowed it out, should it not disqualify the mikweh![11] — The law regarding disqualification through drawn water[12] is different altogether, as it is only of Rabbinic sanction.[13] But if so, why even in the prior clause[14] should it not also be the same? — There, however, the law of a receptacle applied to it while it was still detached, whereas here it was never subject to the law of a receptacle while it was detached.

An objection was raised [from the following]: If a thief, a robber or an annas[15] consecrates a misappropriated article, it will be consecrated; if he sets aside a portion for the priest's gift,[16] it will be terumah;[17] or again if he sets aside a portion for the Levite's gift[18] the tithe will be valid.[19] [Now, does this not prove that Renunciation transfers ownership?][20] — It may be said that in that case there was also a change in name, as previously it was called tebel[21] while now it is called terumah.[17] So also in the case of consecration: previously it was called hullin,[22] but now it is called consecrated.

R. Hisda stated that R. Jonathan said: How do we learn [from Scripture] that a change transfers ownership? — Because it is said: He shall restore the misappropriated object.[23] What [then] is the point of the words, 'which he took violently away'?[23] [It must be to imply that] if it still is as when he took it violently[24] he shall restore it, but if not, it is only the value of it that he will have to pay.[25] But is this [text] 'which he took violently away'[23] not needed to exclude the case of robbery committed by a father, in which the son need not add a fifth [to the payment] for robbery committed by his father?[26] — But if so, the Divine Law should have written only 'he shall restore the misappropriated object.' Why should it further be written. 'which he took violently away'? Thus we can draw from it the two inferences. Some report: R. Hisda stated that R. Jonathan said: How do we learn [from Scripture] that a change does not transfer ownership? — Because it is said: He shall restore the misappropriated object, i.e., in all cases. But is it not written 'which he took violently away'? — That text is needed to indicate that it is only for robbery committed by himself that he has to add a fifth, but has not to add a fifth for robbery committed by his father.

'Ulla said: How do we learn [from Scripture] that Renunciation does not transfer ownership? Because it is said: And ye brought that which was misappropriated, and the lame and the sick.[27] 'That which was misappropriated' is thus compared to 'the lame': just as 'the lame' has no remedy at all

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(1) In spite of the fact that a change in name took place.

(2) Ezek. XLI, 26.

(3) Hence after it became part of the ceiling it is still called beam.

(4) A beam by becoming part of a ceiling did not therefore really undergo a change in name, as the beam could be taken out and thus revert to its original state.

(5) Such as in the case of the skins made into covers.

(6) B.B. 65b.

(7) Through which rain or well water was conducted to a mikweh which should be a gathering of well or rain water that has not passed through a receptacle.

(8) Lit., ‘a gathering of water’ for ritual immersion; cf. Glos.
(9) As the trough in this case was considered a receptacle before it was fixed to the ground.
(10) As when the trough was fixed it was not a receptacle in the eye of the law and could not become such after it became part of the ground to which it was fixed.
(11) As by hollowing out the material which was originally called plank the name was changed into trough, and it should thus become a receptacle in the eye of the law. [Although this change was effected after it had been fixed to the soil, the fact that it goes by the name of a trough should in itself be sufficient to disqualify it for the use of the Mikweh; v. Asheri and Shittah Mekubezeth, a.l.]
(12) In receptacles poured into a mikweh.
(13) Cf. B.B. (Sonc. ed.) pp. 263 ff.
(14) Where he first hollowed it out and subsequently fixed it.
(15) The same as the hamsan, who, as explained supra p. 361 is prepared to pay for the objects which he misappropriates.
(16) In accordance with Num. XVIII, 11-12.
(17) V. Glos.
(18) Cf. Num. XVIII, 21.
(19) V. infra p. 674.
(20) For otherwise what right have they to consecrate or set aside the portions for the priest and Levite?
(21) I.e., produce from which the priest's and Levite's portion has not been set aside.
(22) I.e., unconsecrated property.
(23) Lev. V. 23.
(24) V. p. 382, n. 3.
(25) V. p. 382, n. 4.
(26) I.e., that the son should in this case not be subject to Lev. V, 24-25.
(27) Mal. I, 13.

Talmud - Mas. Baba Kama 67b

[to render it qualified for the altar],[1] so also ‘that which was misappropriated’ has no remedy at all, no matter before Renunciation or after Renunciation. Raba said: [We derive it] from the following: ‘His offering,[2] but not one which was misappropriated.’[3] When is this? If we say before Renunciation, is this not obvious?[4] What then is the point of the verse? It must therefore apply to the time after Renunciation, and it may thus be proved from this that Renunciation does not transfer ownership. But did not Raba himself say[5] that the text referred to a robber misappropriating an offering of his fellow — If you wish I may say that he changed his mind on this matter.[6] Or if you wish I may say that one of these statements was made by R. Papa.[7]

THE MEASURE OF FOUR-FOLD AND FIVE-FOLD PAYMENTS DOES NOT APPLY EXCEPT IN THE CASE OF AN OX OR A SHEEP ALONE. But why not compare [the term] ‘ox’ to ‘ox’ in the case of Sabbath,[8] so that just as there beasts and birds are on the same footing with them [i.e. ox and ass],[9] so also here beasts and birds should be on the same footing with them [i.e. ox and sheep]? — Raba said: Scripture says ‘an ox and a sheep’, ‘an ox and a sheep’[10] twice, [to indicate that] only ox and sheep are subject to this law but not any other object whatsoever. I may ask: Which of these[11] would otherwise be superfluous? Shall we say that ‘ox and sheep’ of the concluding clause would be superfluous, and the Divine Law should have written ‘if a man shall steal an ox or a sheep and slaughter it or sell it, he should restore five oxen instead of it and four sheep instead of it’? Were the Divine Law to have thus written, would I not have thought that he should pay nine for each of them? And should you rejoin that it is written ‘instead of it’, ‘instead of it’ [twice in the text, so that] one ‘instead of it’ would then have been superfluous,[12] [I might retort that] this is required for a further exposition, as taught: It might be maintained that one who stole an ox worth a mina[13] would be able to restore for it five frail oxen. The text says, however, ‘instead of it’, ‘instead of it’ twice.[14] [‘Ox and sheep’ of the concluding clause is thus indispensable]. It thus

appears that it is 'ox and sheep' of the prior clause which would have been superfluous, as the Divine Law should have written: 'If a man shall steal and slaughter it or sell it, he shall restore five oxen for the ox and four sheep for the sheep.' But had the Divine Law to have thus written, I might have thought that it was only where he stole the two animals and slaughtered them [that liability would be attached]! — But surely it is written 'and slaughtered it', implying one animal! It might still be thought that it was only where he stole the two animals and sold them [that liability would be attached]! — But surely it is written, 'and he sold it' implying one animal! It could still be argued that I might have thought that it was only where he stole the two animals and slaughtered one and sold the other [that liability would be attached]! — But surely it is written, 'or he sold it' [indicating that slaughtering and selling were alternative]! I might nevertheless still argue that it was only where he stole the two of them and slaughtered one and left the other, or sold one and left the other![15] — We must say therefore that it is 'ox' of the concluding clause and 'sheep' of the first clause which would have been superfluous, as the Divine Law should have written: 'If a man shall steal an ox and slaughter it or sell it, he shall restore five oxen instead of it and four sheep instead of the sheep.' Why then do I require 'ox' of the concluding clause and 'sheep' of the first clause? To prove from it that only ox and sheep are subject to this law,[16] but not any other object whatsoever.

ONE WHO STEALS FROM A THIEF [WHAT HE HAS ALREADY STOLEN] NEED NOT MAKE DOUBLE PAYMENT etc. Rab said: This Mishnaic ruling applies only where the theft took place before Renunciation; for if after Renunciation, the first thief would have acquired title to the article and the second thief would have had to make double payment to the first thief.[17] Said R. Shesheth: I am inclined to say that it was only when he was half asleep and in bed that Rab could have enunciated this ruling. For it was taught: R. Akiba said: Why has the Torah laid down that where the thief slaughtered or sold [the sheep or ox] he would have to make fourfold and five-fold payments [respectively]? Because he became thereby rooted in sin.[18] Now, when could this be said of him? If before Renunciation,

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(1) Cf. Lev. XXII, 19-25.

(2) V. p. 353, n. 9.

(3) Supra p.383.

(4) V. p. 383, n. 11.

(5) Supra p. 384.

(6) As was the case with the same sage in Shab. 27a; Bez. 18a; Keth. 11b; B.B. 24a; Bek. 54b and Ker. 7a.

(7) Who was a disciple of Raba, and the views of the disciples were regarded as those of the Master. [This supports the reading (on p. 383), 'Raba', instead of 'Rabbah', given in our edition; v. Tosaf.]

(8) Deut. V, 14.

(9) As supra 54b.

(10) Ex. XXI, 37.

(11) 'An ox and sheep', whether on the first or second occasion.

(12) [I.e., if we were to assume that there is a payment of nine in each case.]

(13) V. Glos.

(14) That the payment should be in accordance with the animal slaughtered or sold, but this would still afford no proof against the assumption that there is a payment of nine in each case.

(15) ['Ox and sheep' of the earlier clause are therefore similarly indispensable.]

(16) Of five-fold and four-fold payments respectively.

(17) Who through Renunciation on the part of the owner became the legal possessor of the article.

(18) [His sin struck root in that he has deprived beyond retrieve the owner of his belongings.]

could he then be called 'rooted in sin' [since the sale is of no validity]? It must therefore be after Renunciation.[1] But if you assume that Renunciation transfers ownership, why should he make

four-fold and five-fold payments,[2] when it is his that he slaughters and his that he sells? — It may, however, be said as Raba stated elsewhere,[3] that it means 'because he doubled[4] his sin,' so likewise here it means, 'because he doubled his sin.'[5]

Come and hear: 'He slaughtered it and sold it;[6] just as the slaughter cannot be undone so the sale cannot be undone.' Now, when could this be so? If before Renunciation, why can it not be undone?[7] It must surely therefore be after Renunciation.[1] But if you assume that Renunciation transfers ownership, why should he pay fourfold and five-fold[8] when it is his that he slaughters and his that he sells? — As R. Nahman stated elsewhere, that it means to except a case where he transferred the animal for thirty days,[9] so also here it means to except a case where he transferred the beast for thirty days.[10]

An objection was raised [against this]: If a man steals an article and another comes and steals it from him, the first thief has to make double payment, whereas the second will not pay [anything] but the principal alone.[11] If, however, one stole [a sheep or an ox] and sold it, after which another one came and stole it, the first thief has to make four-fold and five-fold payments [respectively], while the second has to make double payment.[12] If one stole [a sheep or an ox] and slaughtered it, and another one came and stole it, the first thief will make four-fold and five-fold payments [respectively], whereas the second has not to make double payment but to repay the principal only.[11] Now, it has been taught in the middle clause: 'If however, one stole [a sheep or an ox] and sold it, after which another came and stole it, the first thief has to make four-fold and five-fold payments [respectively], while the second has to make double payment.'[12] But when could this be? If before Renunciation, why should the second make[12] double payment?[13] Is there any authority who maintains that a change in possession without Renunciation transfers ownership? It must therefore be after Renunciation. But if you assume that Renunciation transfers ownership, why then has he to make four-fold and five-fold payments,[14] seeing that it is his which he sold? And further, it was taught in the opening clause: 'If a man steals an article and another comes and steals it from him, the first thief has to make double payment, but the second will not pay [anything] but the principal.'[11] Now, since it is the time after Renunciation with which we are dealing, if you assume that Renunciation transfers ownership, why should the second 'not pay anything but the principal'?[15] Does not this show that Renunciation does not transfer ownership, in contradiction to the view of Rab? — Raba said: Do you really think that the text of this teaching is correct? For was it not taught in the concluding clause: 'If one stole [a sheep or an ox] and slaughtered it and another came and stole it, the first thief will make fourfold and five-fold payments [respectively], whereas the second has to pay nothing but the principal'? Now, is there any authority who maintains that a change in substance does not transfer ownership?[16] It must therefore surely still be said that the whole teaching refers to the time before Renunciation, but we have to transpose the ruling of the concluding clause to the case in the middle clause, and the ruling of the middle clause to the case in the concluding clause and read thus: If one stole [a sheep or an ox] and sold it, and another came and stole it, the first thief has to make four-fold and five-fold payments [respectively], but the second has not to pay anything but the principal, as a change in possession without Renunciation transfers no ownership. If, however, one stole [a sheep or an ox] and slaughtered it and another came and stole it, the first thief makes four-fold and five-fold payments [respectively], and the second makes double payment,[17] as ownership was transferred [to the first thief] by the change in substance.' R. Papa, however, said: All the same[18] you need not transpose [the rulings], since [we may say that] the concluding clause is in accordance with Beth Shammai, who maintain[19] that a change leaves the article in its previous status. But if so [that it was after Renunciation], will not the opening clause and middle clause be in contradiction to the view of Rab? — R. Zebid therefore said: The whole text could still refer to the time before Renunciation, as we are dealing here with a case where the owner abandoned hope [of regaining the stolen object] when it was already in the possession of the buyer, but had not abandoned it while it was still in the possession of the thief, so that [so far as the buyer was concerned] there was Renunciation [as well as a change in possession].[20] You should, however,

not think [that this is so] because we need both Renunciation and a change in possession for the purpose of transferring ownership, as even Renunciation alone would also transfer ownership[21] to the thief.[22] It is, however, impossible to find a case in which both the first thief and the second thief should simultaneously pay except in this way.[23]

It was stated: If the thief sells before Renunciation, R. Nahman said that he is liable, while R. Shesheth said that he is exempt. R. Nahman who said that he would be liable held that since the Divine Law says 'and he sold it' and as the thief [in this case] did sell it, it makes no difference whether it was before Renunciation or after Renunciation, while R. Shesheth, who said that he would be exempt, held that the liability was only where he sold it after Renunciation,[24] where the act has a legal validity, whereas before Renunciation, when the act has no legal validity,[25] there could be no liability, as selling is compared to slaughter where it is necessary that the act should be of practical avail. R. Shesheth said: Whence have I inferred the view expressed by me? It was taught: 'R. Akiba said: Why does the Torah say that where the thief slaughtered and sold the stolen [sheep or ox] he should make four-fold and five-fold payments respectively? Because he became thereby rooted in sin.' Now, when could this be said of him? If before Renunciation, could he then be called 'rooted in sin' [since the sale is of no legal validity]?[25] Must it therefore not be after Renunciation?[24] — Raba said: It only means, because he doubled his sin.[26]

Come and hear: 'And he slaughtered it or sold it,'[27] just as slaughter cannot be undone, so the sale [must be one] which cannot be undone.' Now, when could this be so? If before Renunciation, why can it not be undone?[28] Must it therefore not be after Renunciation,[29] thus proving that the liability is only if it is sold after Renunciation?[29] — But R. Nahman interpreted it merely to except a case where he transferred the animal for thirty days.[30] Also R. Eleazar maintained that the liability would be only after Renunciation, as R. Eleazar stated:

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(1) In which case the article will have to remain with the purchaser, as a transfer of possession taking place after Renunciation certainly transfers ownership.

(2) For slaughtering or selling after Renunciation when the thief has already become the legal owner of the animal.

(3) Infra p. 393.

(4) Lit., 'repeated'.

(5) By selling the animal even though the sale is of no validity.

(6) V. p. 388, n. 11.

(7) For a transfer of possession before Renunciation will certainly transfer no ownership to the buyer.

(8) P. 390, n. 5.

(9) V. p. 394, n. 4.

(10) Not to be subject to the law of selling or slaughtering.

(11) To the first thief.

(12) To the purchaser.

(13) For a transfer of possession before Renunciation will certainly transfer no ownership to the buyer.

(14) For selling after Renunciation when the thief has already become the legal owner of the animal.

(15) Why not pay double to the first thief who had already become the legal owner of the object through Renunciation?

(16) [Why not pay double to the first thief who had already become the legal owner through effecting a change in the substance of the article stolen?]

(17) V. p. 391, n. 4.

(18) Even though the teaching refers to the time after Renunciation.

(19) Supra p. 380.

(20) And for this reason the second in the middle clause has to make double payment to the buyer.

(21) In accordance with the view of Rab.

(22) [Mss. omit rightly 'to the thief'; v. D.S. a.l.]

(23) For if Renunciation took place while the article was still in the hands of the first thief, he would not have to make four-fold and five-fold payments for a subsequent sale or slaughter.

(24) In which case the article will have to remain with the purchaser, as a transfer of possession taking place after Renunciation certainly transfers ownership.
(25) V. p. 391, n. 6.
(26) By selling the animal even though the sale is of no validity.
(27) Ex. XXI, 37.
(28) V. p. 391, n. 6.
(29) I.e., where the sale is of legal avail.
(30) But not any other case.

Talmud - Mas. Baba Kama 68b

'You can take it for granted that in the ordinary run of thefts there is Renunciation on the part of the owner; since the Torah has laid down that where the thief slaughtered or sold [the stolen sheep or ox] he should pay fourfold or five-fold payments [respectively]. For is there not a possibility that the owner had not abandoned hope? We must therefore say that in the ordinary run of thefts there is Renunciation on the part of the owner.'[1] But why should the liability not hold good even where hope was not abandoned?[2] — I would say, let not this enter your mind. For selling is placed on a par with slaughter: just as in the case of slaughter his act is of practical avail, so also in the case of selling his act should be of practical validity; and if it takes place before Renunciation, what would be the legal validity?[1] But again can it not be [that the liability is confined to cases] where we actually heard the owner abandoning hope? — I would reply, let not this enter your mind. For selling is put on a par with slaughter, and just as slaughter involves liability [if carried out] immediately [after the theft], so would selling similarly involve liability soon after the theft.[3]

R. Johanan said to him:[4] The law in the case of stealing a man[5] could prove that even where there is no Renunciation on the part of the owner[6] there will be liability. This statement seems to show that R. Johanan held that selling before Renunciation involves liability.[7] What then about selling after Renunciation?[8] — R. Johanan said that the thief is liable, but Resh Lakish said he is exempt. R. Johanan who said that he would be liable held that the liability was both before Renunciation and after Renunciation. But Resh Lakish, who said that he would be exempt,[9] maintained that the liability was only before Renunciation, whereas after Renunciation he would have already acquired title to the animal, and it was his that he slaughtered and his that he sold.

R. Johanan objected to Resh Lakish's view [from the following:] If he stole [a sheep or an ox] and after consecrating it slaughtered it, he should make double payment[10] but would not make four-fold and five-fold payments.[11] Now, when could this be? If before Renunciation, how does the animal become consecrated? Does not the Divine Law say 'And when a man shall sanctify his house to be holy',[12] [implying that] just as his house is his,[13] so also anything he consecrates must be his?[14] It must therefore apply to the time after Renunciation.[15] Now the reason is that he consecrated it: he has not to make four-fold and five-fold payments because when he slaughtered the animal it was a consecrated animal that he slaughtered; had he not, however, consecrated it he would have had to make four-fold and five-fold payments if he would have slaughtered it. Now, if you assume that Renunciation transfers ownership why should he[16] pay since it was his that he slaughtered and his that he sold? — He replied:[17] We are dealing here with a case where, for instance, the owner[18] consecrated the animal while it was in the possession of the thief.[19] But will it in that case become consecrated? Did not R. Johanan say[20] that where a robber misappropriated an article and the owner has not abandoned hope of recovering it, neither of them is able to consecrate it: the one[21] because it is not his, the other[22] because it is not in his possession? — We might reply that he[23] had in mind the practice of the virtuous, as we have learnt: The virtuous[24] used to set aside money and to declare that whatever has been gleaned [by passers-by] from this [vineyard][25] shall be redeemed by this money.[26] But [if the owner consecrated the animal], has not the principal thus been restored to the owner? [Why then should a thief pay double on it? — We assume a case where the consecration took place]

after the case came into court [and evidence had already been given against the thief]. What were the circumstances? If the judges had already ordered him to go and pay the owner, why should exemption be only where he consecrated the animal? Why even where the owner did not consecrate it should the thief be liable? For did Raba not say that if [after the judges said], 'Go forth and pay him,' the thief slaughtered or sold the animal, he would be exempt, the reason being that since the judges had given their final sentence on the matter, when he sold or slaughtered the animal, he became [in the eye of the law] a 'robber', and a 'robber' has not to pay four-fold and five-fold payments,[27]

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(1) [Since he conditions the liability of the fourfold and five-fold by the fact that the owner had despaired of the stolen article, it is evident that he agrees with R. Shesheth.]

(2) [Even where the sale is of no legal avail.]

(3) R. Eleazar thus inferred from this that in ordinary thefts there is immediate Renunciation on the part of the owner.

(4) I.e., R. Eleazar.

(5) Ex. XXI, 16.

(6) For surely no human being will abandon himself.

(7) As also maintained by R. Nahman.

(8) Does he agree in this with Rab, supra p. 390?

(9) V. p. 390, n. 5.

(10) For the theft.

(11) For the slaughter as it was a consecrated animal that he slaughtered, and there is no liability for stealing and selling and slaughtering consecrated animals (infra p. 427; Git. 55b).

(12) Lev. XXVII, 14.

(13) For immovables even when misappropriated always remain in the possession of the owner

(14) Excluding thus a thief consecrating misappropriated property.

(15) In which case the article could become consecrated, as a transfer of possession following Renunciation transfers ownership.

(16) V. p. 390, n. 2.

(17) I.e., Resh Lakish to R. Johanan.

(18) Not the thief.

(19) [Before Renunciation.]

(20) Infra p. 397; B.M. 7a.

(21) The robber.

(22) The owner.

(23) I.e., Resh Lakish.

(24) [צניע (plur. צנועים) 'denotes a positive quality, probably nothing else but discretion or modesty', Buchler, Types (contra Kohler, who identifies the Zenu'im with Essenes) pp. 59 ff.]

(25) In its fourth year, the fruit of which is prohibited unless redeemed, cf. Lev. XIX, 24.

(26) Which seems to show that fruits already misappropriated could also be redeemed by the owner and thus also consecrated. (M.Sh. V, 1).

(27) For the distinction between robber and thief in this respect cf. infra p. 452.

Talmud - Mas. Baba Kama 69a

but if they merely said to him, 'You are liable to pay him,' and after that he slaughtered or sold the animal, he would be liable to pay four-fold or five-fold payment, the reason being that since they have not pronounced final sentence upon the matter he is still a thief?[1] — No, its application is necessary where they have as yet merely said to him, 'You are liable to pay him'.

The above text states:[2] 'R. Johanan said: If a robber misappropriated an article and the owner has not abandoned hope of recovering it neither of them is able to consecrate it: the one[3] because it is not his, the other[4] because it is not in his possession.' Could R. Johanan really have said this? Did not R.

Johanan say[5] that the halachah is in accordance with an anonymous Mishnah; and we have learnt:[6] 'In the case of a vineyard in its fourth year, the owners used to mark it with clods of earth', the sign implying an analogy to earth: just as in the case of earth a benefit may ensue from it,[7] so also the fruit of this vineyard[8] will after being redeemed be permitted to be enjoyed. 'That of 'orlah[9] used to be marked with potsherds', the sign indicating a similarity with potsherds: just as in the case of potsherds no benefit ensues from them,[10] so also the fruit of 'orlah[9] could not be enjoyed for any use whatever. 'A field of graves used to be marked with lime', the sign having the colour of white, like corpses. 'The lime was dissolved in water and then poured out' so as to make its colour more white. 'R. Simeon b. Gamaliel said: These practices were recommended only for the Sabbatical year,' when the fruits on the trees were ownerless;[11] 'for in the case of the other years of the Septennate,[12] you may let the wicked stuff themselves with it till they die.[13] The virtuous however used to set aside money and to declare that whatever has been gleaned from this [vineyard] shall be redeemed by this money.'[14] Does not this contradict R. Johanan? Nor can you urge in reply that the Tanna who recorded the practice of the virtuous was R. Simeon b. Gamaliel,[15] [and R. Johanan might therefore not have concurred with this anonymous view stated by a single Tanna] for did not Rabbah b. Bar Hanah say[16] that R. Johanan stated that whenever R. Simeon expressed a view in a Mishnah the halachah is in accordance with him, with the exception of his view regarding 'Suretyship'.[17] 'Sidon'[18] and the 'last [case dealing with] evidence'?[19] — I may reply that you should not read,[20] 'whatever has been gleaned'[21] but read 'whatever will be gleaned'[22] from this [vineyard]. But could R. Johanan have said this: Did not R. Johanan say that the virtuous and R. Dosa said the same thing, and, as we know, R. Dosa definitely stated 'whatever has been gleaned'?[21] For was it not taught:[23] R. Judah says: In the morning the owner of the field should get up and say 'whatever the poor shall glean during the day should be considered ownerless[24] [from the present moment]'.[25] whereas R. Dosa says: It is at eveningtide that he should say, 'Whatever the poor have gleaned shall be ownerless'![26] — I must transpose the view of R. Judah to R. Dosa[27] and the view of R. Dosa to R. Judah. But why transpose this teaching, and not transpose instead[28] the statement of R. Johanan, assigning to 'the virtuous and to R. Judah the same thing'? — It may, however, be said that it was impossible not to transpose this teaching,[29] since in this teaching[29] it is stated that R. Judah upholds bererah[30] and we find R. Judah holding in other places that there is not bererah as we have learnt[31]

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(1) Subject to the law of paying four-fold and five-fold payments.

(2) Supra p. 396.

(3) The robber.

(4) The owner.

(5) Shab. 46a.

(6) M.Sh. V, I.

(7) In time, as after tilling, sowing and reaping.

(8) Cf. Lev, XIX, 24.

(9) I.e., during the first three years when the fruits are totally forbidden in accordance with Lev. XIX, 23.

(10) As nothing could grow in them properly.

(11) Cf. Lev. XXV, 6-7.

(12) When the fruits were not ownerless.

(13) As it was wrong for passers-by to misappropriate the fruits, they need not be warned by all these signs to abstain from using them in the forbidden manner. [This last passage occurs only in the Jerusalem version of the Mishnah, not in the Babylonian.]

(14) V. p. 396, n. 8.

(15) Who made the immediately preceding statement.

(16) B.M. 38b.

(17) In B.B. 174a.

(18) In Git. 77a.

(19) In Sanh. 31a.

(20) In the words of the 'virtuous'.

(21) In the past.
(22) In the future, so that the redemption will take effect retrospectively from the moment this statement was made, when the gleanings were still in the possession of the owner.
(23) Tosef. Pe'ah II, 4.
(24) As each two ears falling together may be gleaned by the poor who need not tithe them, but not so is the case regarding three ears falling together. Not all the poor, however, know this distinction. It is therefore meritorious on the part of the owner to abandon those which are gleaned by the poor unlawfully.
(25) I.e., retrospectively.
(26) [From this it follows that the declaration of the virtuous was likewise related to the past.]
(27) So that it was R. Dosa who said 'whatever the poor shall glean.'
(28) Of 'the virtuous and R. Dosa.'
(29) Where R. Judah and R. Dosa differ.
(30) I.e., Retrospective designation of that which was abandoned at a time when it was not defined; cf. also supra 51b.
(31) Tosef. Dem. VIII, 5.

Talmud - Mas. Baba Kama 69b

: 'If a man buys wine from among the Cutheans[1] [and it was late on Friday towards sunset and he has no other wine for the Sabbath][2] may say 'two logs [out of a hundred[3]] which I intend to set aside are terumah,[4] ten are the first tithe[5] and nine the second tithe,' and these he may redeem [upon money anywhere in his possession],[6] and he may commence drinking at once. So R. Meir.[7] But R. Judah, R. Jose and R. Simon prohibit this.[8] To this I may rejoin: When all is said and done, why have you transposed [the views mentioned in the Baraitha]? Because R. Judah would otherwise contradict R. Judah! But would not now R. Johanan contradict R. Johanan? For you stated according to R. Johanan that we should not read 'whatever has been gleaned'[9] but read 'whatever will be gleaned',[10] thus proving that he upholds bererah[11] whereas in fact R. Johanan does not uphold bererah. For did not R. Assi say[12] that R. Johanan stated that brothers dividing an inheritance are like purchasers[13] [in the eye of the law], so that they will have to restore the portions to one another on the advent of the jubilee year?[14] — We must therefore still read[15] 'whatever has been gleaned',[9] and [say that] R. Johanan[16] found another anonymous Mishnah, as we have indeed learnt: ONE WHO STEALS [ARTICLES ALREADY STOLEN] IN THE HANDS OF A THIEF NEED NOT MAKE DOUBLE PAYMENT.[17] Why should this be? We grant you that he need not pay the first thief, [since Scripture says:] And it be stolen out of the man's house,[18] [implying] 'but not out of the house of the thief'. But why not pay the owner? We must say that this shows that the one[19] is not entitled to payment because the stolen article is not his, and the other one[20] is not entitled to payment as the article is not in his possession.[21] — But what induced him[22] to follow that anonymous Mishnah?[17] Why should he not act in accordance with the anonymous Mishnah dealing with the virtuous?[23] — Because he was supported by the verse: And when the man shall sanctify his house to be holy unto the Lord,[24] just as his house is in his possession,[25] so anything also which is in his possession can be sanctified.[26]

Abaye said: If R. Johanan had not stated that the virtuous[27] and R. Dosa[28] said the same thing,[29] I might have said that while the virtuous accepted the view of R. Dosa, R. Dosa did not uphold the practice of the virtuous. The virtuous accepted the view of R. Dosa; for if the Rabbis made things easier for a thief,[30] need we say they did so for the poor?[31] But R. Dosa did not uphold the practice of the virtuous: for it was only for the poor[31] that the Rabbis made things easier, whereas for the thief they did not make things easier.[30] Raba said: Had R. Johanan not stated that the virtuous and R. Dosa said the same thing, I should have said that the Tanna followed by the virtuous was R. Meir. For did not R. Meir say[32] that the [second] tithe[33] is Divine property,[34] and even so the Divine Law placed it in the owner's possession in respect of redemption, as written: And if a man will redeem aught of his tithe, he shall add unto it the fifth part thereof,[35] the Divine Law thus designating it 'his tithe' and ordering him to add a fifth.[36] The same applies to the vineyard in the fourth year, as can be derived from the occurrence of the term 'holy' there[37] and in the case of the tithe.[38] For it is written

here 'shall be holy to praise',[37] and it is written in the case of tithe, 'And all tithe of the land whether of seed of the land or of the fruit of the tree it is holy':[38] just as the 'holy' mentioned in connection with tithe although it is divine property, has nevertheless been placed by the Divine Law in the possession of the owner for the purpose of redemption, so also the 'holy' mentioned in connection with a vineyard of the fourth year, although the property is not his own, has been placed by the Divine Law in his possession for the purpose of redemption; now seeing that even when it is in his possession it is not his and yet he may redeem it; hence he may be able to redeem it [also when out of his possession]. But in the case of the gleaning [of ears of corn] which is his own property,[39] it is only when it is [still] in his [own] possession that he is able to declare it ownerless, whereas when not in his possession he should not be entitled to declare it ownerless.[40]

Rabina said: Had R. Johanan not stated that the virtuous and R. Dosa said the same thing, I should have said that the Tanna stating the case of the virtuous was R. Dosa, so that this anonymous Mishnah would not refute the view of R. Johanan, for R. Johanan

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(1) And has thus to set aside both the priestly portion, called terumah, and the first tithe for the Levite and the second tithe to be redeemed or partaken of in Jerusalem.

(2) And without having the time to separate the portions to be set aside.

(3) Logs (v. Glos.) which he bought.

(4) For the priests, (v. Glos.).

(5) For the Levites, v. Num. XVIII, 21.

(6) Cf. Deut. XIV, 22-25.

(7) Maintaining retrospective designation, so that the wine set aside after Sabbath for the respective portions will be considered the very wine which was destined at the outset to be set aside.

(8) As they maintain no retrospective designation which would make the wine drunk the unconsecrated and that which remained the part originally consecrated. [This shows that R. Judah does not uphold Bererah, thus necessitating the transposition of the Baraitha in Pe'ah.]

(9) V. p. 398, n. 7.

(10) V. p. 398, n. 8.

(11) V. p. 398, n. 16.

(12) Bez. 37b; Git. 25a and 48a.

(13) For the portion chosen by each brother for himself could not be considered as having thus retrospectively become the very inheritance designated for him.

(14) In accordance with Lev. XXV, 13.

(15) In the words of the 'virtuous'.

(16) [In maintaining that a consecration made by the owner even before renunciation is not valid, in opposition to the principle underlying the declaration of the 'virtuous'.]

(17) Supra p. 363.

(18) Ex. XXII, 6.

(19) The first thief.

(20) The owner.

(21) This proves that the lack of possession is a defect in the very ownership, and if an article out of possession is not subject to double payment it could neither be subject to the law of consecration and alienation which are incidents of ownership.

(22) V. I.e., R. Johanan.

(23) V. p. 396, n. 8.

(24) V. Lev. XXII, 14.

(25) V. p. 395, n. 8.

(26) Excluding thus an owner consecrating movables out of his possession; and because of this Scriptural authority R. Johanan deviated from the view of the 'virtuous'.

(27) Dealing with the vineyard in the fourth year misappropriated by passers by.

(28) Dealing with the gleaning of the poor.

(29) V. supra p. 398.
(30) To safeguard him from partaking of forbidden fruits.
(31) Who are not out to commit theft and should consequently the more so be safeguarded from partaking of produce that has not been tithed.
(32) Kid. 24a.
(33) To be partaken of in Jerusalem, cf. Deut. XIV, 22-26.
(34) So that the original owner is but an invitee without possessing any legal ownership.
(35) Lev. XXVII, 31.
(36) Whereas one redeeming the second tithe of another person does not add a fifth.
(37) Lev. XIX, 24.
(38) Ibid. XXVII, 30.
(39) In the case of each three ears falling together.
(40) [Thus, had not R. Johanan said that the virtuous and R. Dosa said the same thing, it could rightly be argued that the virtuous would not apply their principle to the gleaning.]

Talmud - Mas. Baba Kama 70a

would have been right in not concurring with an anonymous statement of a single Tanna. The Nehardeans said: We do not execute an assignment on movables[1] [which are outside the possession of the parties].[2] Said R. Ashi to Amemar: On what ground? He replied: Because of the view of R. Johanan. For R. Johanan said: If a robber has misappropriated an article and the owner has not abandoned hope of recovering it, neither of them is able to consecrate it; the one because it is not his, the other because it is not in his possession. Some read that the Nehardeans said: We do not execute an assignment on movables [the claim upon which] was denied [by a bailee]. The reason is that the claim was denied, as the deed of assignment would then appear a lie,[3] whereas where it is not denied, we would be able to execute. The Nehardeans further said: An assignment which does not contain the words, 'Go forth and take legal action so that you may acquire title to it and secure the claim for yourself' is of no validity, the reason being that the defendant might say to him:[4] 'You have no claim against me'. But Abaye said: If it is written, 'You will be entitled to a half or a third or a fourth of the claim', it would be valid, for since he is entitled to litigate regarding the half, he is also entitled to litigate regarding the whole.[5] Amemar said: [In any case] where the assignee became possessed of articles belonging to the defendant, we would not take them away from him.[6] But R. Ashi said: Since it was written for him,[7] 'Whatever will be imposed by the Court of Law I accept upon myself', he was surely appointed but an agent.[8] Some, however, say that he is made a partner. What is the practical difference?[9] Whether he may remain possessed of a half. The law is that he is appointed only an agent.[10] MISHNAH. IF A THIEF IS CONVICTED OF THE THEFT [OF A SHEEP OR AN OX] ON THE EVIDENCE OF TWO WITNESSES,[11] AND OF THE SLAUGHTER OR SALE [OF IT] BY THE SAME TWO, OR ON THE EVIDENCE OF ANOTHER TWO WITNESSES, HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT.[12] IF HE STEALS AND SELLS ON THE SABBATH DAY,[13] OR IF HE STEALS AND SELLS FOR IDOLATROUS PURPOSES, OR IF HE STEALS AND SLAUGHTERS ON THE DAY OF ATONEMENT,[14] OR IF HE STEALS FROM HIS OWN FATHER, AND AFTER HE HAD SLAUGHTERED OR SOLD, HIS FATHER DIED,[15] OR AGAIN, WHERE HE STEALS AND SLAUGHTERS AND THEN CONSECRATES IT, HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT.[16] IF HE STEALS AND SLAUGHTERS TO USE THE MEAT FOR CURATIVE PURPOSES OR TO GIVE TO DOGS, OR IF HE SLAUGHTERS AND FINDS THE ANIMAL TREFA,[17] OR IF HE SLAUGHTERS IT AS UNCONSECRATED IN THE 'AZARAH,[18] HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT.[19] R. SIMEON, HOWEVER, RULES THAT THERE IS EXEMPTION IN THESE [LAST] TWO CASES.[20]

GEMARA. Are we to say that the Mishnah is not in accordance with R. Akiba? For how could it be in accordance with R. Akiba who said that [the Scriptural term] 'Matter'[21] implies 'not half a

matter'? As indeed taught:[22] R. Jose said: 'When [my] father Halafta went to R. Johanan b. Nuri to learn Torah, or as others, when R. Johanan b. Nuri went to [my] father

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(1) Shebu. 33b and Bek. 49a.

(2) But if they are in the possession of a bailee they could be assigned as they are considered in the possession of the depositor (Tosaf.).

(3) Since the bailee denies them.

(4) The assignee.

(5) V. B.M. 8a.

(6) For the benefit of the defendant even where the prescribed clause 'to go forth and secure for himself' etc. was not inserted in the instrument of assignment. According, however, to Gaonic interpretation it means that the assignee may retain the articles against the assignor (v. Rashi).

(7) By the assignor.

(8) And could therefore not retain the articles either against the defendant in the circumstances dealt with in the first interpretation, or against the assignor in accordance with the Gaonic interpretation.

(9) Whether he was made a partner or an agent.

(10) [Asheri and Alfasi omit, 'The law is, etc.']

(11) Cf. Deut. XIX, 15.

(12) Respectively.

(13) For though it is prohibited to do any business transactions on the Sabbath day, no capital charge is thereby involved, and civil liability could thus be established; cf. Gemara.

(14) As for desecrating the Day of Atonement in contradistinction to the Sabbath no capital charge is involved, the sole punishment at the hand of man being thirty-nine lashes.

(15) And the thief became an heir to the estate.

(16) For the slaughter which preceded the consecration.

(17) I.e., ritually unfit to be eaten owing to an organic defect in the animal; v. Glos.

(18) I.e., the precincts of the Temple where only sacrificial animals might be slaughtered.

(19) As the ritual unfitness of the animal in the last two cases is not due to a defect in the act of slaughter but arises through other circumstances.

(20) For he is of the opinion that if the slaughter does for any reason whatsoever not effect the ritual fitness of the animal to be eaten, it is not considered in the eye of the law as a slaughter.

(21) A matter shall be established by two witnesses, Deut. XIX, 15.

(22) V. B.B. 56a.

Talmud - Mas. Baba Kama 70b

Halafta, he said to him: Suppose a man had the use of a piece of land for one year as testified by two witnesses, for a second year as testified by two other witnesses, and for a third year as testified by still two other witnesses, what is the position? — He replied: 'This is a proper usucaption'.[1] Whereupon the other rejoined: 'I also say the same, but R. Akiba joins issue on the matter for R. Akiba used to say: [Scripture states] A matter [implying] "but not half a matter"'![2] — Abaye, however, said: You may even say that this is in accordance with R. Akiba. For would R. Akiba not agree in a case where two witnesses state that a certain person had betrothed a woman[3] and two other witnesses testify that another person had subsequently had intercourse with her,[4] that though the evidence regarding the intercourse presupposes the evidence regarding the betrothal [in order to become relevant], nevertheless, since the evidence of betrothal does not presuppose the evidence of intercourse, each testimony should be considered a matter [complete in itself]? So also here, though the evidence regarding the slaughter presupposes the evidence regarding the theft [if it is to be relevant] nevertheless since the evidence regarding the theft does not presuppose the evidence regarding the slaughter, each testimony should be considered a matter [complete in itself].[5] But according to the Rabbis[6] what will this term 'matter' [implying] 'but not half a matter' exclude? — It will exclude a case where one witness testified that there was one hair on her back[7] and the other

states that there was one hair in front. But [since each hair is testified to by one witness],[8] would this not be both half a matter and half a testimony?[9] — [We must say] therefore that it excludes a case where two witnesses testify that there was one hair on her back and two other witnesses state that there was one hair in front, as in this case the one set testify that she was still a minor[10] and the others similarly testify that she was still a minor.

IF HE STEALS AND SELLS ON THE SABBATH DAY . . . [HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT]. But has it not been taught [elsewhere] that he would be exempt? — Said Rami b. Hama: If it was taught there that he would be exempt, it was only where the purchaser said to him:[11] 'pluck figs off my fig-tree[12] and transfer to me [in consideration of them] the objects you have stolen.'[13] It may however, be argued that seeing that if the purchaser claimed from him before us in the court[14] we would be unable to order him to go and to pay since [at the time of the alleged liability,] he became subject to a capital charge, why should not even the sale itself be declared no sale at all?[15] — R. Papa therefore said: There would be exemption [where the purchaser said to him], 'Throw your stolen objects [from a public thoroughfare] into my private courtyard,[16] and transfer to me [thereby][17] the objects you have stolen.'[18] Whom does this follow? R. Akiba,[19] who said that an object intercepted in the air is on the same footing [regarding the law of Sabbath] as if it had already come to rest.[20] For if we were to follow the other Rabbis,[21] while the possession of the stolen objects would be transferred as soon as they reached the air of the court-yard of the purchaser's house,[22] in regard to Sabbath the capital liability would not be incurred until they have reached the actual ground![19] — Raba thereupon said: It may still be in accordance with Rami b. Hama.[23] For the hire [of a harlot] was prohibited by the Torah[24] [from being used for the Temple] even [when given by a son] for having incestuous intercourse with his mother, irrespective of the fact that were she to have claimed it from him before us in the court, we should not have been able to order him to go and give her the hire.[25] We see then that although were she to have claimed it from him by law, we should have been unable to order him to go and pay her,[25] nevertheless when he of his own accord pays her [the hire] it will be subject to the law of the hire [of a harlot].[24] So also here regarding payment [for the figs plucked by the thief on the Sabbath], if the purchaser had claimed it by law in our presence, we should have been unable to order the thief to go and pay;[25]

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(1) [In accordance with B.B. III, 1, that three years of undisturbed possession are required to establish a presumptive title on the part of a possessor.]

(2) [And here no two witnesses testify to more than one year of occupation, which is only a third of the matter in hand. And in our Mishnah the second set of witnesses testify to no more than half a matter, i.e. the slaughter, and according to R. Akiba, should not be able to convict the thief.]

(3) By a valid act of Kiddushin (v. Glos.), thus making her his wife.

(4) Lev. XX, 10.

(5) In which case even R. Akiba will allow such evidence to be given independently by separate sets.

(6) Who even in the case of undisturbed possession admit evidence given independently by three sets of witnesses testifying to each of the three years respectively.

(7) The reference is to the two hairs which are the sign of puberty in a girl. V. Nid. 52a.

(8) Whose evidence in such a case is of no effect whatsoever; cf. Deut. XIX, 15.

(9) And it is quite obvious that evidence of this kind is of no avail.

(10) As the appearance of one hair is no sign of puberty; but where different witnesses testify to different years, each year is considered a 'whole matter'.

(11) To the thief who sold him the animal.

(12) Which is a capital offence if done on the Sabbath; v. Shab. VII, 2.

(13) It thus follows that at the very moment when the sale was completed the thief was desecrating the Sabbath by an act which renders him liable to a capital charge in which all possible civil liabilities to take effect at that time have to merge.

(14) To give some consideration for the fig.

(15) For since the thief would have by law to pay nothing for the consideration given him on the part of the purchaser, there should in the eye of the law be lacking any consideration at all rendering the purchase null and void.

(16) And it is a capital offence to throw anything on Sabbath from a public thoroughfare to private premises; cf. Shab. XI, 1.
(17) I.e., by the animal entering into the premises of the prospective purchaser in accordance with B.M. 11a and supra p. 283.
(18) V. p. 405, n. 7.
(19) Shab. 4b; 97a and Git. 79a.
(20) So that the capital offence was committed at the very moment the transaction of sale became complete by the animal entering the air of the purchaser's court-yard; cf. B.M. 12a and Git. 79a.
(21) Who maintain that the capital offence of desecrating the Sabbath by throwing anything from a public thoroughfare into private premises will be committed only at the moment when the object thrown falls upon the ground.
(22) B.M. 12a and Git. 79a.
(23) That the purchaser said to the thief, 'Pluck off a fig of my fig-tree' etc., despite your objection as to the lack of consideration.
(24) Deut. XXIII, 19.
(25) As the very act that should cause pecuniary liability is a capital offence in which all possible civil liabilities have to merge.

Talmud - Mas. Baba Kama 71a

nevertheless, since the thief was prepared to transfer the possession [of the stolen objects] to him by this procedure it should be considered a sale.

IF HE STEALS AND SLAUGHTERS ON THE DAY OF ATONEMENT etc. I would ask, why [should this be so]? It is true that no capital punishment is attached here,[1] but there will at least be the punishment of lashes, and is it not an established ruling[2] that no man who is lashed can be ordered to pay?[3] — It may, however, be said that the Mishnah is in accordance with R. Meir who said[4] that a person who is lashed may also be ordered to pay.[3] But if in accordance with R. Meir, why should there be no liability even for slaughtering on the Sabbath?[5] And should you affirm that while he holds that one may be lashed and be ordered to pay, he[6] does not hold that one may be condemned to death and also ordered to pay. [I would ask,] does he really not [maintain this second ruling]? Was it not taught:[7] 'If he steals and slaughters on the Sabbath or if he steals and slaughters to serve idols,[8] or if he steals an ox condemned to be stoned[9] and slaughters it, he has to make four-fold or five-fold payment according to R. Meir,[10] but the Rabbis rule that there is exemption'? — I might reply that this ruling applies to all cases save this, for it was stated with reference to it that R. Jacob stated that R. Johanan said, or as others say, that R. Jeremiah stated on behalf of R. Simeon b. Lakish that R. Ile'a and the whole company[11] said in the name of R. Johanan that the slaughter [in that case] was carried out by another person [acting on behalf of the thief].[12] But how could the one[13] commit an offence[14] and the other[15] be liable to a fine?[16] — Raba replied: This offence here is different, as Scripture says: And slaughter it or sell it:[17] just as selling [becomes complete] through the medium of another person,[18] so also slaughter may be effected by another person. The School of R. Ishmael taught: [The term] 'or'[19] [inserted between 'slaughter' and 'selling' was meant] to include the case of an agent.[20] The School of Hezekiah taught: The term 'instead'[19] [was intended] to include the case of an agent.

Mar Zutra demurred to this. Is there [he said] any action for which a man is not liable if done by himself but for which he is liable if done by his agent? — R. Ashi said to him: In that case[21] it was not because he should not be subject to liability, but because he ought to be subject to a penalty[21] severer than that. But if the slaughter was carried out by another one, what is the reason of the Rabbis who ruled that there was exemption? — We might say that the Sages [referred to] were R. Simeon who stated that a slaughter through which the animal would not ritually become fit for food could not be called slaughter [in the eyes of the law].[22] But I would say, I grant you this in regard to serving idols and an ox condemned to be stoned, as [through the slaughter] the animal will in these

cases not become fit for food,[23] but in the case of the Sabbath, does not the slaughter render the animal fit for food? For did we not learn that if a man slaughters on the Sabbath or on the Day of Atonement, though he is liable for a capital offence,[24] his slaughter is ritually valid?[25] — It may, however, be said that he[26] concurred with R. Johanan ha-Sandalar, as we have learned, If a man cooks [a dish] on the Sabbath, if inadvertently, [even] he himself[27] may partake of it,[28] but if deliberately, he should not partake of it[29] [on that day]. So R. Meir. R. Judah says: If inadvertently, he may eat it only after the expiration of the Sabbath,[30] whereas if deliberately he should never partake of it.[31] R. Johanan ha-Sandalar says: If inadvertently, the dish may be partaken of after the expiration of the Sabbath, only by other people, but not by himself, whereas if deliberately, it should never be partaken of either by him or by others.[32] What was the reason of R. Johanan ha-Sandalar? — R. Hiyya expounded at the entrance of the house of the prince:[33] Scripture says: Ye shall keep the Sabbath therefore, for it is holy unto you.[34] Just as holy food is forbidden to be eaten,[35] so also what is unlawfully prepared on the Sabbath is forbidden to be partaken of. But, [you might argue,] just as holy food is forbidden for any use,[35] so should whatever is [unlawfully] prepared on the Sabbath also be forbidden for any use.[36] It is therefore stated further: 'Unto you',[34] implying that it still remains yours for general use.[37] It might [moreover] be thought that the prohibition extends even where prepared inadvertently, it is therefore stated: Everyone that profaneth it shall surely be put to death,[34] [as much as to say], I speak only of the case when it is done deliberately, but not when done inadvertently.

R. Aha and R. Rabina differ in this matter. One said that whatever is [unlawfully] prepared on the Sabbath is forbidden on Scriptural authority whereas the other [Rabbi] said that whatever is [unlawfully] prepared on the Sabbath is forbidden on Rabbinic authority. He who said that it was on Scriptural authority bases his view on the exposition just stated, whereas he who said that it was on Rabbinic authority holds that when Scripture says, 'It is holy', it means that it itself[38] is holy, but that which is [unlawfully] prepared on it is not holy. Now I grant you that according to the view that the prohibition is based on Scriptural authority, the Rabbis because

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(1) V. p. 403, n. 4.

(2) Keth. 32a and B.M. 91a.

(3) For a civil liability arising out of an act done at the time when the transgression for which he is to be lashed was committed.

(4) Keth. 33b.

(5) Why then is it stated infra p. 427, that in this case there would be exemption?

(6) R. Meir.

(7) Keth. loc. cit.

(8) Which is a capital offence; cf. Ex. XXII, 19.

(9) Which is thus forbidden for any use; v. supra p. 234.

(10) Which shows that in R. Meir's opinion liability to pay may he added to capital punishment.

(11) [חבורתא , a term employed in designation of the corporate body of members of the Palestinian schools, primarily of the School of Tiberias. V. Bacher, MGWJ, 1899, p. 345.]

(12) In which case it is not the thief but the other person who is liable to the capital punishment.

(13) I.e., the agent.

(14) Of slaughtering a stolen animal.

(15) I.e., the thief.

(16) Of four-fold or five-fold payment.

(17) Ex. XXI, 37.

(18) For two parties are needed to a sale: one to sell and the other to buy.

(19) Ibid.

(20) To make the principal liable to the fine.

(21) I.e., capital punishment for desecrating the Sabbath or serving idols.

(22) V. p. 403, n. 10.

(23) For serving idols see A.Z. 54a; and Hul. 40a.
(24) In the case of Sabbath the offender would be subject to be stoned as in Ex. XXXV, 2 and Num. XV, 32-36, but in the case of the Day of Atonement he would only be subject to a heavenly punishment of being cut off from among his people, in accordance with Lev. XXIII, 30 and Ker. I, 1.
(25) Hul. 14a.
(26) I.e., R. Simeon.
(27) I.e., he who cooked it.
(28) Even on the same day.
(29) Nor anybody else.
(30) But on the same day neither he nor anybody else may partake of it.
(31) Though others may partake of it after the expiration of the Sabbath.
(32) V. Ter. II, 3. It thus follows that according to R. Johanan an animal deliberately slaughtered on the Sabbath will be forbidden as food; and since such a slaughter renders the animal unfit for food, it involves no liability of the fourfold or fivefold payment.
(33) [The reference is to R. Hiyya b. Abba II and R. Judah the Prince III whose home was at Sepphoris. V. zuri, Mishpat hazibburi, I, 281 ff.]
(34) Ex. XXXI, 14.
(35) Cf. Lev. V, 15-16.
(36) Not only for food to Israelites but also for any use whatever.
(37) For surely if it becomes forbidden for any use there would be no practical purpose in retaining ownership.
(38) I.e., the Sabbath itself.

Talmud - Mas. Baba Kama 71b

of this have rightly ruled that there is exemption,[1] but according to the view that it is based on Rabbinic authority, why did the Rabbis rule that there is exemption?[2] — [Their exemption applies] to the other cases; to serving idols, and an ox condemned to be stoned.

But why does R. Meir impose liability in the case of slaughtering for the service of idols? For as soon as he starts the act of slaughtering in the slightest degree he renders the animal forbidden,[3] so that the continuation of the slaughter is done on an animal already forbidden for any use whatever, and as such, was he therefore not slaughtering that which no longer belonged to the owner?[4] — Raba replied: The rule applies to one who declares that it is only at the very completion of the act of slaughter that he intends to serve idols therewith. But what about an ox condemned to be stoned? Is it not forbidden for any use whatever, so that he slaughters that which does not belong to the owner?[4] — Raba thereupon said: We are dealing here with a case where the owner had handed over the ox to a bailee, and as it did damage [by killing a person] in the house of the bailee it was declared Mu'ad in the house of the bailee and its final verdict was issued while it was in the house of the bailee; R. Meir thus on one point concurred with R. Jacob and on another point he concurred with R. Simeon: On one point he concurred with R. Jacob who said that if even after its final verdict was issued the bailee restored it to the owner, it would be a legal restoration;[5] and on another point he concurred with R. Simeon who stated[6] that an object the absence of which entails money loss is regarded as possessing an intrinsic value,[7] as we have learned: R. Simeon says: In the case of consecrated animals[8] for the loss of which the owner is liable to replace them by others, the thief has to pay,[9] thus proving that an object whose absence entails money loss is regarded as possessing an intrinsic value.[10] R. Kahana said: When I reported this discussion in the presence of R. Zebid of Nehardea, I asked: How could you explain our Mishnah[11] to be [only] in accordance with R. Meir[12] but not in accordance with R. Simeon, since it is stated in the concluding clause, R. SIMEON HOWEVER RULES THAT THERE IS EXEMPTION IN THE LAST TWO CASES,[13] thus implying that in the other cases of the whole Mishnah he agrees? — He[14] however said to me; No, it merely implies that he agrees in the case of slaughtering or selling to use the meat for curative purposes or to give to dogs.[15]

IF HE STEALS FROM HIS OWN FATHER AND AFTER HE HAD SLAUGHTERED OR SOLD, HIS FATHER DIED, etc. Raba inquired of R. Nahman: If he steals an ox of two partners and after slaughtering it he confesses to one of them,[16] what would be the law?[17] — Shall we say that the Divine law says: 'Five oxen',[18] [implying] 'but not five halves of oxen', or do the 'five oxen' mentioned by the Divine Law include also five halves of oxen? — He replied:[19] The Divine Law says 'five oxen' [implying] 'but not five halves of oxen'.[20]

He, however, raised an objection against him [from the following]: IF HE STEALS FROM HIS FATHER AND AFTER HE HAD SLAUGHTERED OR SOLD, HIS FATHER DIED, HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT. Seeing that the father died,[21] is not this case here on a par with a case where he went[22] and confessed to one of the partners, and it is yet stated that he has to make four-fold or five-fold payment? — He replied: Here we are dealing with a case where, for instance, his father has already appeared in the court before he died.[23] Had he not appeared in court, the son would not have had to make four-fold or five-fold payment. If so, instead of having the subsequent clause 'Where he steals of his father [who subsequently died] and afterwards he slaughters or sells, he has not to pay four-fold and five-fold payments,'[24] why should not [the Mishnah] make the distinction in the same case itself by stating, 'This ruling[25] applies only where the father appeared in court, whereas if he did not manage to appear in court, the thief would not have to make four-fold and five-fold payments'?[26] — He replied:[27] This is indeed so, but since the opening clause runs 'IF HE STEALS FROM HIS FATHER AND AFTER HE HAD SLAUGHTERED OR SOLD, HIS FATHER DIED', the later clause also has the wording, 'where he steals from his father and after his father died he slaughters or sells'. In the morning, however, he said to him:[27] When the Divine Law said 'five oxen' it also meant even five halves of oxen, and the reason why I did not say this to you on the previous evening

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(1) As the slaughter of the animal on the Sabbath day would on Scriptural authority render the animal unfit for food and could according to R. Simeon not be considered a slaughter at all.

(2) Since according to substantive law the animal would be fit for use.

(3) Cf. Hul. 40a.

(4) V. p. 409, n. 8.

(5) Supra p. 255.

(6) Infra 437.

(7) So that since if the ox would not have been slaughtered the bailee would have been able to restore it intact without paying anything for its value, whereas now that the ox was stolen and slaughtered he would have to pay for the full value of the ox, the ox is considered of an intrinsic value though it was condemned to be stoned, and the thief has to pay the fine accordingly.

(8) Which as such are not subject to the law of the fine of double and four-fold and five-fold payment, as infra p. 427.

(9) The owner the full fine, v. Mishnah p. 427.

(10) To the one who would be liable to make the outlay of money, and for this reason R. Meir makes the thief liable for the payment of the four-fold or five-fold.

(11) Regarding the case of slaughtering on the Day of Atonement.

(12) Who holds one could be both lashed and ordered to pay.

(13) Supra p. 403.

(14) I.e., R. Zebid.

(15) Which forms a part of the last paragraph which is complete in itself.

(16) So that he will not have to pay any fine to this partner, as a confession in a matter of a fine carried exemption; v. supra p. 62 and infra p. 427.

(17) Regarding the other partner when witnesses will appear.

(18) Ex. XXI, 37.

(19) I.e., R. Nahman to Raba.

(20) There will therefore be here total exemption.

(21) And the thief becomes a partner together with the other brothers in the whole estate.

(22) Lit., 'forestalled' (witnesses).

(23) And the liability was already then fully established.

(24) Infra p. 427. For at the time of the slaughter or sale the thief was a joint owner of the animal.

(25) Of liability.

(26) Even where he slaughtered the animal or sold it before the death of his father.

(27) R. Nahman to Raba.

Talmud - Mas. Baba Kama 72a

was because I had not yet partaken of [a dish of] beef [and felt too feeble to arrive at a carefully thought out conclusion]. But why then this difference between the earlier clause[1] and the later clause?[2] — He replied: In the earlier clause[1] we can rightly apply to the offence [the words] 'and he slaughters it', [in the sense that] the whole act is unlawful,[3] whereas in the concluding clause we cannot apply to the offence [the words] 'and he slaughters it' [in the sense that] the whole act is unlawful.[4]

IF HE SLAUGHTERS AND FINDS THE ANIMAL TREFA [OR WHERE HE SLAUGHTERS IT AS UNCONSECRATED IN THE 'AZARAH HE HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT]. R. Habibi of Huzna'ah said to R. Ashi: This shows that [from the legal point of view] the term 'slaughter' applies to the act only at its completion for if it applied to the whole process from the beginning to the end, would he not as soon as he started the act of slaughtering in the slightest degree[5] render the animal ritually forbidden for any use,[6] so that what follows the beginning would amount to slaughtering an animal no more belonging to the owner?[7] — R. Huna, the son of Raba,[8] said to him: The liability might have been just for that commencement in the slightest degree.[9] R. Ashi, however, said to him: This is no refutation,[10] [since it says] 'and he slaughters it, we require the whole act of the slaughter, which is absent here. But what about the original difficulty?[11] — He thereupon said to him: R. Gamda stated thus in the name of Raba: We are dealing here with a case where, for instance, he cut a part of the organs of the animal outside of the 'Azarah, but completed the slaughter inside of the 'Azarah.[12]

Some attach this argument to the following statement: R. Simeon[13] said in the name of R. Levi the Elder: The term 'slaughter' applies to the act only at its very completion. R. Johanan, however, said it applies to the whole process from the beginning to the end. R. Habibi of Huzna'ah thereupon said to R. Ashi: Are we to say that R. Johanan held that [the prohibition of slaughtering] unconsecrated animals in the 'Azarah is not based on Scripture?[14]

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(1) Where liability is stated.

(2) Stating exemption, since 'five oxen' imply also 'five halves' of oxen why then should he not pay the part due to his coheirs?

(3) As the slaughter took place while the father was still alive.

(4) For at the time of the slaughter the thief was already a joint owner of the animal.

(5) In the precincts of the Temple.

(6) Cf. Pes. 22a.

(7) For surely after it becomes forbidden for any use, there would be no practical use in retaining ownership.

(8) [Read with MS.M., 'R. Aba b. Raba' as on p. 414, v. D.S. a.l.]

(9) Before the animal became forbidden for any use.

(10) Of the proof suggested by R. Habibi.

(11) That, since the animal became forbidden for any use at the commencement of the slaughter, there should be no liability to pay the fine.

(12) So that the animal became forbidden for any use only at the completion of the slaughter, for which the thief has to pay the fine.

(13) [Read ‘Simeon b. Lakish’, v. D.S. a.l.]
(14) V. p. 413, n. 4.

Talmud - Mas. Baba Kama 72b

For if you assume that it has Scriptural authority, then as soon as he starts the act of slaughtering in the slightest degree would he not render the animal ritually forbidden for any use, so that what follows the beginning would amount to slaughtering an animal no more belonging to the owner? — R. Aha, the son of Raba, said to him: The liability might be just for that commencement in the slightest degree. R. Ashi, however, said to him: This is no refutation;[1] [since it says] ‘and he slaughters it’ we require the whole act of the slaughter, which is absent here. But what about the original difficulty?[2] — He, thereupon, said to him that R. Gamda stated thus in the name of Raba: When does he become liable? When for instance he cuts a part of the organs of the animal outside of the ‘Azarah but completes the slaughter inside of the ‘Azarah.[3]

MISHNAH. IF A THIEF [IS CONVICTED OF THE THEFT OF AN OX] ON THE EVIDENCE OF TWO WITNESSES, AND OF THE SLAUGHTER OR SALE OF IT ON THE EVIDENCE OF THE SAME TWO, AND THESE WITNESSES ARE SUBSEQUENTLY PROVED ZOMEMIM,[4] THEY MUST PAY [THE ACCUSED] IN FULL.[5] IF, HOWEVER, THE THEFT [HAS BEEN ESTABLISHED] BY THE EVIDENCE OF ONE PAIR OF WITNESSES, AND THE SLAUGHTER OR SALE BY THAT OF ANOTHER PAIR,[6] AND BOTH PAIRS ARE PROVED ZOMEMIM, THE FIRST PAIR MAKES [THE ACCUSED] DOUBLE PAYMENT[7] AND THE SECOND PAIR THREEFOLD PAYMENT.[8] WHERE [ONLY] THE SECOND PAIR WERE PROVED ZOMEMIM, THE THIEF MAKES DOUBLE PAYMENT,[9] WHEREAS THEY PAY [HIM] THREEFOLD.[8] SHOULD ONE OF THE SECOND PAIR OF WITNESSES BE PROVED ZOMEM, THE TESTIMONY OF THE SECOND PAIR BECOMES NULL AND VOID.[10] SHOULD ONE OF THE FIRST PAIR OF WITNESSES BE PROVED ZOMEM, THE WHOLE TESTIMONY [OF BOTH PAIRS] BECOMES NULL AND VOID, FOR IF THERE WAS NO THEFT THERE COULD BE NO [ILLEGAL] SLAUGHTER OR SALE.[11]

GEMARA. It has been stated:[12] If a witness has been proved a zomem, Abaye says that he becomes disqualified retrospectively [from the time when he gave his evidence in court],[13] whereas Raba says that he is disqualified only for the future [from the time when he is proved zomem]. Abaye makes the disqualification retrospective on the ground that the witness has been shown to have been wicked at the time when he gave evidence, and the Torah says: Do not accept the wicked as a witness.[14] Raba, on the other hand, holds that the disqualification begins only from the moment when his deceit is proved, because the whole procedure of proving witnesses zomemim is anomalous. For this is a case of two witnesses against two; why then accept the evidence of the one pair rather than that of the other? At least let it take effect only from the time when the anomalous procedure is employed.

Some say that Raba really agrees with Abaye that the disqualification is retrospective, but rejects here this principle on practical grounds, because its adoption

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(1) V. p. 413, n. 8.
(2) V. p. 413, n. 9.
(3) V. p. 413, n. 10.
(4) Lit., ‘plotters’, ‘schemers’ (plural of Zomem), i.e., witnesses proved by the subsequent evidence of two witnesses to have been absent at the time of the alleged offence; their punishment is by the law of retaliation. V. Deut. XIX, 18-19 and Mak. I, 2-4.
(5) I.e., five times the value of the alleged theft. V. Ex. XXI, 37.
(6) For which cf. supra pp. 403-5.

(7) Which he would have to pay through them for the alleged theft.
(8) I.e., the difference between the 'double' and the 'fivefold' payment intended by them to have been inflicted on the accused.
(9) As the evidence regarding the theft still holds good.
(10) Cf. Mak. I, 7.
(11) For the fine of fivefold includes the double payment for the theft so that when the latter could not be established as in the case here no fine could be imposed for the slaughter or sale.
(12) Cf. Sanh. 27a.
(13) Any evidence he gave in the intervening period becomes invalidated.
(14) An interpretation of Ex. XXIII, 1.

Talmud - Mas. Baba Kama 73a

might adversely affect purchasers.[1] What practical difference is there between the two versions?[2] — Where two witnesses have proved one of a pair zomem, and other two witnesses have proved the other one of the pair zomem;[3] or again, where the disqualification of the witnesses is based upon an accusation of larceny brought by a subsequent pair.[4] According to the version which makes Raba base his view[5] on the fact of the procedure being anomalous, he would not apply it here, whereas according to the version which makes his reason the fear of adversely affecting purchasers, it would hold good even here.[6]

R. Jeremiah of Difti said: R. Papa decided in an actual case in accordance with the view of Raba. R. Ashi, however, stated that the law agrees with Abaye. And the law agrees with Abaye [against Raba] on [the matters known as] Y'AL KGM.[7]

We have learnt: IF A THIEF [IS CONVICTED OF THE THEFT OF AN OX] ON THE EVIDENCE OF TWO WITNESSES, AND OF THE SLAUGHTER OR SALE OF IT ON THE EVIDENCE OF THE SAME TWO, AND THESE WITNESSES ARE SUBSEQUENTLY PROVED ZOMEMIM, THEY MUST PAY [THE ACCUSED] IN FULL. Does this not mean that they first gave evidence regarding the theft and then[8] gave evidence again regarding the slaughter, and that they were proved zomemim regarding their evidence about the theft and then were proved zomemim regarding their evidence about the slaughter? Now, if you assume that a witness proved zomem becomes disqualified retrospectively, [it would surely follow that] as soon as these witnesses were declared zomemim regarding the theft, it became clear retrospectively that when they gave evidence regarding the slaughter[9] they were already disqualified.[10] Why then should they pay [the retaliation penalty regarding their evidence] about the slaughter?[11] — It may be said that we are dealing here with a case where they were first declared zomemim regarding their evidence about the slaughter. But it may still be argued that after all since when they were subsequently declared zomemim regarding the theft, it became clear retrospectively that when they gave evidence regarding the slaughter, they had already been disqualified. Why then should they pay the retaliation penalty for the slaughter?[12] — This law would apply only when they testified at one and the same time to both theft and slaughter,[13] and were afterwards declared zomemim.[14]

May we say that this matter[15] formed the point at issue between the following Tannaim: If two witnesses gave evidence against a person that he had stolen an ox and the same witnesses also testified against him that he had slaughtered it, and were declared zomemim regarding the theft, as their evidence became annulled in part[16] it became annulled altogether. But if they were declared zomemim regarding the slaughter, the thief would still have to make double payment and they would have to pay [him] three-fold. R. Jose, however, said: These rulings[17] apply only in the case of two testimonies,[18] for in the case of one testimony the law is that a testimony becoming annulled in part becomes annulled altogether. Now, what is meant by 'two testimonies' and what is meant by 'one testimony'? Are we to say that 'two testimonies' means two absolutely independent testimonies, as

in the case of two separate sets, and 'one testimony' means one set giving the two testimonies after each other, in which case R. Jose would hold that in the case of one testimony, i.e. where one set gave testimonies after each other, as, for instance where they had first given evidence about the theft and then gave evidence again about the slaughter, if they were subsequently declared zomemim with reference to their evidence about the slaughter, the law would be that a testimony becoming annulled regarding a part of it becomes annulled regarding the whole of it, and the witnesses would thus be considered zomemim also regarding the theft? On what could such a view be based? [Why indeed should the testimony given first about the theft be annulled through the annulment of a testimony given later?][19] Must we not therefore say that 'two testimonies' means one evidence resembling two testimonies, that is to say, where one set gives two testimonies one after the other[20] but not where there is one testimony in which all the statements are made at the same time? Now it was assumed that there was agreement on all hands that statements following one another within the minimum of time [sufficient for the utterance of a greeting] are equivalent in law to a single undivided statement. The point at issue therefore between them[21] would be as follows: The Rabbis[22] would maintain that a witness proved zomem is disqualified only for the future, and since it is from that time onwards that the effect of zomem will apply it is only with reference to the slaughter regarding which they were declared zomemim that the effect of zomem will apply, whereas with reference to the theft regarding which they were not declared zomemim the effect of zomem will not apply.[23] R. Jose would on the other hand maintain that a witness proved zomem would become disqualified retrospectively, so that from the very moment they had given the evidence, regarding which they were proved zomemim, they would be considered disqualified; from which it would follow that when they were declared zomemim regarding the evidence about the slaughter the effect of zomem should also be extended to the evidence regarding the theft, for statements following one another within the minimum of time [sufficient for the utterance of a greeting] are equivalent in law to a single undivided statement. [Would the view of Abaye thus be against that of the Rabbis?] — To this I might reply: Were statements following one another within the minimum of time [sufficient for the utterance of a greeting] equivalent in law to a single undivided statement, it would have been unanimously held [by these Tannaim] that the pair proved zomemim should become disqualified retrospectively. But here it is this very principle whether statements following one another within the minimum of time [sufficient for the utterance of a greeting] should or should not be equivalent in law to a single undivided statement that was the point at issue between them: The Rabbis maintained that statements following one another within the minimum of time [sufficient for the utterance of a greeting]

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(1) Who innocently invited the same witnesses to attest the deeds of purchase.

(2) Regarding the view of Raba.

(3) Thus not being a case of two against two but two against one, and the procedure could not be termed anomalous.

(4) In which case the accused two or more cease to act in the strict capacity of witnesses, but become a party interested and partial in the accusation brought against them personally, and the procedure could no more be considered anomalous.

(5) Regarding witnesses proved zomemim.

(6) For so long as the witnesses were not officially disqualified it would be a great hardship to disqualify deeds signed by them at the invitation of innocent purchasers.

(7) A mnemonic composed of Y for 'Yeush, Abandonment, B.M. 21b-22b; E for 'Ed, Witness proved zomem, here under consideration; L for Lehi, pole forming a mark of an enclosure, 'Er. 15a; K for Kiddushin, a case of betrothal, Kid. 51a-52a; G for Gilluy, intimation affecting agency in the case of a bill of divorce, Git. 34a; and M for Mumar, a Defiant Transgressor whether or not he be eligible as witness, Sanh. 27a.

(8) On a subsequent occasion.

(9) I.e., on a subsequent occasion.

(10) From the moment they had given evidence regarding the theft.

(11) Since their evidence regarding slaughter fell to the ground even before they were proved zomemim with reference to it.

(12) Since their evidence regarding slaughter should have fallen to the ground even without their having to be proved zomemim with reference to it.
(13) In which case the retrospective disqualification through their becoming zomemim with reference to both slaughter and theft begins at the same time.
(14) [But first with reference to their evidence about the slaughter. MSS. rightly omit, 'and were . . . zomemim'.]
(15) In which Abaye and Raba differ.
(16) I.e., the theft.
(17) That the accused will still have to pay double payment.
(18) V. the discussion that follows.
(19) For surely a wrong committed at a later date could not affect the presumed integrity of a man on an earlier occasion.
(20) I.e., on different occasions.
(21) I.e., R. Jose and the other Rabbis.
(22) Representing the anonymous opinion cited first.
(23) And the accused will still have to pay double payment.

Talmud - Mas. Baba Kama 73b

are not equivalent in law to a single undivided statement,[1] whereas R. Jose maintained that statements following one another within the minimum of time [sufficient for the utterance of a greeting] are equivalent in law to a single undivided statement.[2] But did R. Jose really maintain that statements following one another within the minimum of time [sufficient for the utterance of a greeting] are equivalent in law to a single undivided statement? For we have learnt: If a man declares: Let this animal be a substitute[3] for a burnt-offering, a substitute for a peace-offering, it will be a substitute for the burnt-offering,[4] according to the view of R. Meir, whereas R. Jose says: If from the outset he intended this,[5] his words would have to be acted upon,[6] as it was impossible for him to utter two terms at the same time, but if he first declared; 'Substitute for a burnt-offering', and then changed his mind and said, 'Substitute for a peace-offering', it will be a substitute for a burnt-offering only.[7] Now this statement we found strange; for is not the case of a change of mind obvious?[8] And R. Papa therefore said: We assume that the change of mind took place within the minimum of time [required for the utterance of a greeting]![9] [Does this not prove that R. Jose maintained that statements following one another within the minimum of time sufficient for the utterance of a greeting would not be equivalent in law to a single undivided statement?][10] — It may be said that there are two different minimums of time [within which two different kinds of greetings could be uttered], one sufficient for the greeting given by a disciple to his master, and the other sufficient for the greeting of the master to the disciple. Where[11] R. Jose does not hold [the two statements to be one] is where the interval is sufficient for the greeting of a disciple to the master, viz. 'peace [upon] thee, master [and] teacher,' as this is too long,[12] but where it is only sufficient for the greeting of the master to the disciple, 'peace [upon] thee,[13] he holds that they do [form one].

Raba stated: Witnesses [testifying to a capital charge] who have been proved wrong[14] [by a pair of other witnesses][15] and subsequently also proved zomemim, would be put to death, as the confutation was a first step in the subsequent proof of an alibi,[16] though the proof of this was not yet complete at that time. Raba said: [The authority] on which I base this is that which has been taught: [If a set of witnesses declare], We testify that so-and-so has put out the eye of his slave[17] and[18] knocked out his tooth[19] (and so indeed the master himself says), and these witnesses are [by subsequent witnesses] proved zomemim, they would have to pay[20] the value of the eye to the slave.[21] How are we to understand this? If we assume, according to the apparent meaning of the text, that there was here no other pair of witnesses,[22] why should they pay the value of the eye to the slave? After they have done their best to get him [undeservedly] freed, are they also to pay him the value of his eye? Moreover, should they in such a case not have to pay the owner for the full value of the slave [as they falsely demanded his freedom]? Furthermore, 'and so indeed the master himself says,' — how could the master be satisfied [with such a false allegation to his detriment]? Does it therefore not

mean a case, e.g., in which a pair of witnesses had already appeared [previously] and stated that the master knocked out the slave's tooth and then put out his eye so that the master would have to pay him the value of his eye,[23] and a middle pair of witnesses appeared later and stated that the first put out the slave's eye and then his tooth, so that he would not have to give him anything but the value of his tooth,[24] so that the first set of witnesses confuted the middle set, and it is to this that the words refer 'and so indeed the master himself says', for he was well satisfied with the statement alleged by the middle set? The text then goes on: 'And these are [by subsequent witnesses] proved zomemim' — that is, the middle set — 'they would have to pay the value of the eye to the slave'.[25] Does not this show that the confutation is the first step in a subsequent proof of an alibi?[26] — Abaye said: No; [what we can assume is] that the statement of these witnesses was transposed by a [second] set of witnesses, who also proved them zomemim.[27] That this was so is evident,

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(1) So that the evidence as to the theft and the evidence as to the slaughter could in no manner be considered as one, but are completely independent testimonies, and if the accusation of zomem was proved regarding the latter the former could not be affected.

(2) So that the evidence as to the theft and the evidence as to the slaughter form one testimony to all intents and purposes.

(3) See Lev. XXVII, 10.

(4) The earlier expression being the decisive one.

(5) I.e., that it should be a substitute for both offerings.

(6) And the animal will have to be kept until it becomes blemished when it will be sold and half of the money realised will be utilised for a burnt-offering, and the other half for a peace-offering.

(7) Tem. V, 4.

(8) V. p. 419, n. 4.

(9) Where it might have been suggested that the two utterances constituted a single indivisible statement.

(10) For if otherwise why should the first utterance be more decisive than the second?

(11) In the case of Tem. V, 4.

(12) Consisting as it does of four words. [MS.M. and Asheri omit '(and) teacher,' making it thus consist of three words.]

(13) Consisting only of two words.

(14) On the subject matter of their evidence, after sentence had been passed.

(15) For which, however, no retaliatory punishment could be imposed upon them, as Deut. XIX, 19, does not refer to witnesses who were contradicted on the subject matter of their evidence but against whom the accusation (in a sense) of an alibi was proved, i.e. where they were declared zomemim.

(16) [The term 'alibi' is used here for convenience sake, as it deals here with the presence or absence of the witnesses of the alleged crime at the time when it was committed, rather than with the presence or absence of the accused, as the term is generally understood.]

(17) For which he has to let him go free, cf. Ex. XXI, 26-27.

(18) Subsequently.

(19) For which he has to pay the five items in accordance with infra p. 473.

(20) In retaliation.

(21) Tosef. Mak. 1.

(22) Giving evidence for the slave.

(23) Which is of course more than that of his tooth.

(24) Which is less than that of his eye and thus giving evidence for the benefit of the master and against the slave.

(25) I.e., the difference between the value of the eye and the value of the tooth of which they conspired to deprive the slave.

(26) And that after the accusation of an alibi was proved, the law of retaliation will apply despite the fact that their evidence had already been previously impaired.

(27) [There were, that is to say, only two sets of witnesses, the former set testifying that the injury was done to the eye first and then to the tooth, while the second set giving evidence to the contrary and at the same time proving the first set zomemim, in which case the first would have to pay the slave the value of his eye.]

since, the later clause deals with witnesses whose statements were transposed by the same set of witnesses that proved them zomemim, so also the earlier clause deals with a case where the statements of the witnesses were transposed by the same subsequent set of witnesses who proved their alibi. For it says in the later clause: If a set of witnesses declare: We testify against so-and-so that he had first knocked out his slave's tooth and then put out his eye — as indeed the servant says — and they were by subsequent witnesses proved zomemim, they would have to pay the value of the eye to the master. Now how are we to understand this? If we assume that the witnesses of the second set did not agree [with those of the first set] regarding any injury at all, why then should the first witnesses not have to pay the master the whole value of the slave?[1] Does it therefore not mean that all the witnesses agreed that an injury was inflicted, but that the witnesses of the second set reversed the order stated by the first set of witnesses[2] while they also proved them zomemim? But still, what were the circumstances? If the witnesses of the second set post-dated the injury, why should the witnesses of the first set still not have to pay the master the whole value of the slave, since they falsely alleged liability to have rested upon a man at the time when that man was in fact not yet subject to any liability? — We must therefore say that the witnesses of the second set antedated the injury. But again, if [at the time when the witnesses of the first set gave evidence] the master had not yet appeared before the Court [on the matter], why should they still not have to pay him the whole value of the slave as at that time he was still a man subject to no liability?[3] — It must therefore deal with a case where he had already made his appearance before the Court.[4]

R. Aha the son of R. Ika said to R. Ashi: Whence could Raba prove this point?[5] It could hardly be from the earlier clause, for were the witnesses of the middle set[6] those who were confuted?[7] For indeed were they not proved zomemim; their statements would have remained the decisive evidence[8] as the case would have been decided according to their allegations, on the principle that in the total of two hundred[9] the sum of a hundred[10] is included. Does it not then clearly follow that it was the first set of witnesses[11] who were thus confuted[7] whereas the middle set of witnesses were not confuted at all?[12] — He replied: Raba maintained that as the earlier clause dealt with three sets [of witnesses giving evidence] the later clause similarly presented the law in a case where three sets [gave evidence], and tried thus to prove his point from the later clause. [For this clause would thus have dealt with a case] where e.g., a set of two witnesses had appeared and alleged that the master first knocked out his [slave's] tooth and then put out his eye, and after the verdict was given in accordance with their testimony a set of other witnesses arrived and stated that the first put out his [slave's] eye and then his tooth, thus contradicting the witnesses of the first set, and as these [latter] were also proved zomemim they would have to pay the value of the slave's eye[13] to the master. Now if you assume that a confutation is not considered a first step in a subsequent proof of an alibi, why should they have to pay anything[14] after they had already been confuted? Does this therefore not prove that a confutation does constitute a first step in a subsequent proof of an alibi? And Abaye? — He might have rejoined: I grant you that the earlier clause cannot be explained save on the assumption that there were three sets, for it was stated there ‘as indeed the master also says’,[15] but so far as the later clause is concerned, what need have I for three sets, since the statement ‘as indeed the slave also says’[16] is perfectly natural as the slave would surely say anything, being satisfied at the prospect of going free?[17]

R. Zera demurred [to the general implication]:[18] Why not say that when the master puts out his [slave's] eye

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(1) Whom they wanted without proper ground to set free.

(2) I.e., while the former stated that the master first knocked out his slave's tooth and then put out his eye the second set testified that he first put out the slave's eye and then knocked out his tooth.

(3) And it was they who conspired to allege liability against him; cf. Rashi and Tosaf. a.l. and Mak. 5a.

(4) And he was ordered to let the slave go free on the strength of some testimony by earlier witnesses, without any direction as to any payment to be made to the slave who now seeks to recover from the master compensation for the eye or tooth.
(5) Even according to his interpretation that three sets of witnesses took part in the controversy.
(6) Stating that the master first put out the eye of his slave and then knocked out his tooth.
(7) I.e., the effect of their evidence invalidated.
(8) Against the earlier set testifying that the master first knocked out his slave's tooth and then put out his eye.
(9) I.e., e.g. the value of the eye, testified by the first.
(10) I.e., the value of the tooth, testified by the middle set.
(11) Stating that the master first knocked out his slave's tooth and then put out his eye.
(12) [And this clause can thus afford no proof to Raba's ruling.]
(13) I.e., the difference between the value of the eye and that of the tooth.
(14) Even when proved zomemim.
(15) Corroborating the witnesses stating that he put out the slave's eye and knocked out his tooth, for if these witnesses were the first to give evidence on the matter it would surely not be in the interest of the master to corroborate them. [R. Ashi does not accept as authentic the explanation given above in the name of Abaye, which was based on the assumption that Raba proved his ruling from the earlier clause, v. Tosaf. supra 73b. s.v. אמר .]
(16) In corroboration of the witnesses stating that the master knocked out his tooth and put out his eye.
(17) How much the more so in this case where the evidence of the witnesses is completely for the benefit of the slave.
(18) That a master knocking out the tooth of his slave and putting out his eye should do both — let him go free for the tooth and pay compensation for the eye.

Talmud - Mas. Baba Kama 74b

the slave goes out free in lieu of his eye;[1] when he knocks out his slave's tooth the slave goes out in lieu of his tooth;[2] and so also when he puts out his eye and knocks out his tooth the slave should go out in lieu of both his eye and his tooth [and no payment for either of these should have to be made]? — Abaye said to him: It is to rule out this idea of yours that Scripture says: 'For his eye's sake',[3] implying 'not for the sake of both his eye and tooth'; 'for his tooth's sake'[4] but not for the sake of both his tooth and his eye.

R. Idi b. Abin said: We have also learnt to the same effect:[5] IF A THIEF [IS CONVICTED OF THE THEFT OF AN OX] ON THE EVIDENCE OF TWO WITNESSES, AND OF THE SLAUGHTER OR SALE OF IT ON THE EVIDENCE OF THE SAME TWO, AND THESE WITNESSES ARE SUBSEQUENTLY PROVED ZOMEMIM, THEY MUST PAY [THE ACCUSED] IN FULL. Does this not mean that the witnesses have first given evidence regarding the theft and then [some time later] testified to the slaughter, and that they were first proved zomemim regarding the theft and then [some time later] proved zomemim [also] regarding the slaughter? Now, the fact that they were proved zomemim regarding the theft is in itself a confutation of their evidence regarding the slaughter,[6] and it is nevertheless stated that 'THEY MUST PAY THE ACCUSED IN FULL'. But if you assume that a confutation is not the first step in a subsequent proof of an alibi, why should they pay the retaliation penalty for the slaughter? Does not this then show confutation is a first step in a subsequent proof of an alibi? — It may, however, be said that we are dealing here with a case where for example they were first proved zomemim regarding the slaughter.[7]

In this argument [between Raba and Abaye, earlier Sages already differed]: In the case where witnesses [testifying to a capital charge] were first contradicted by another set of witnesses and subsequently also proved zomemim [by a third set of witnesses] R. Johanan and R. Eleazar differed: one said they would be subject to the death penalty,[8] whereas the other said they would not be subject to the death penalty. There is proof that R. Eleazar was the one who said they would not be subject to the death penalty; for R. Eleazar said: 'If witnesses were confuted [but not proved zomemim] as to their evidence regarding a charge of murder, they would be lashed.[9] Now, if you

assume that R. Eleazar was the one who said that [were they subsequently to be proved zomemim] they would be subject to the death penalty, why should they be lashed [when confuted]? Should we not regard the prohibition here laid down[10] as a preliminary warning that the death penalty will be exacted by a court of law,[11] and every prohibition which can serve as a preliminary warning of a death penalty to be exacted by a court of law does not entail liability for lashes?[12] Does not this show that R. Eleazar was the one who said that[13] they would be subject to the death penalty?[14] — This may indeed be regarded as proved.

[It has been stated that where witnesses were confuted but not proved zomemim as to their evidence regarding a capital charge] 'they would be lashed'.[9] But as this is a case where two witnesses contradict other two witnesses, how then could it appear right to you to rely upon those of the second set? Why not rely upon the others? — Abaye replied: This could be so only where the alleged victim came to us on his own feet [thus disproving the evidence of the first set].[15]

MISHNAH. IF THE THEFT [OF AN OX OR A SHEEP] WAS TESTIFIED TO BY TWO WITNESSES,[16] WHEREAS THE SLAUGHTER OR SALE OF IT WAS TESTIFIED TO BY ONLY ONE WITNESS OR BY THE THIEF HIMSELF, HE WOULD HAVE TO MAKE DOUBLE PAYMENT[17] BUT WOULD NOT HAVE TO MAKE FOUR-FOLD AND FIVE-FOLD PAYMENTS.[18] IF HE STOLE IT AND Slaughtered IT ON THE SABBATH DAY,[19] OR IF HE STOLE IT AND SLAUGHTERED IT FOR THE SERVICE OF IDOLS,[19] OR IF HE STOLE IT FROM HIS OWN FATHER WHO SUBSEQUENTLY DIED AND THE THIEF THEN SLAUGHTERED IT OR SOLD IT,[20] OR IF HE STOLE IT AND CONSECRATED IT [TO THE TEMPLE],[21] AND AFTERWARDS HE SLAUGHTERED IT OR SOLD IT, HE WOULD HAVE TO MAKE DOUBLE PAYMENT BUT WOULD NOT HAVE TO MAKE FOUR-FOLD AND FIVE-FOLD PAYMENTS. R. SIMEON, HOWEVER, SAYS: IN THE CASE OF CONSECRATED CATTLE, THE LOSS OF WHICH THE OWNER HAS TO MAKE GOOD, THE THIEF HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT,[22] BUT IN THE CASE OF THOSE THE LOSS OF WHICH THE OWNER HAS NOT TO MAKE GOOD, THE THIEF IS EXEMPT.

GEMARA. Is it not obvious that a testimony from the mouth of one witness [should impose no liability to pay]? — It may, however, be said that what we are told here is that confession by the thief himself is analogous to evidence borne by one witness: just as in the case of evidence given by one witness, if another witness should come along and join him, the thief would be made liable;[23] so also in the case of confession by the thief himself, if witnesses should come along [and corroborate it], he would become liable. This deviates from the view of R. Huna stated on behalf of Rab. For R. Huna stated that Rab said: If a man confessed to a liability for a fine, even though witnesses subsequently appeared [and gave evidence to the same effect], he would be exempt.[24]

The above text states: R. Huna stated that Rab said: If a man confessed to a liability for a fine, even though witnesses subsequently appeared [and gave evidence to the same effect], he would be exempt. R. Hisda objected to [this view of] R. Huna [from the following]: It happened that R. Gamaliel [by accident] put out the eye of Tabi[25] his slave.[26] He rejoiced over it very much, [as he was eager to have this meritorious slave set free],[27] and when he met R. Joshua he said to him: 'Do you know that Tabi my slave has obtained his freedom?' 'How was that'? said the other. 'Because', he replied, 'I have [accidentally] put out his eye.' Said R. Joshua to him.' 'Your words have no force in law, since there were no witnesses for the slave.'[28] This of course implies that had witnesses at that time been available for the slave, R. Gamaliel would have been under obligation [to set him free]. Does not this show us that if a man confesses to a liability for a fine, if subsequently witnesses appear and testify to the same effect, he would be liable?[29] — R. Huna, however, said to him[30] that this case of R. Gamaliel was different altogether, as he made his confession not in the presence of the court of Law.[31] But was R. Joshua not the president of the Court of law?[32]

(1) Ex. XXI, 26.
(2) Ibid. 27.
(3) V. p. 427. n. 7.
(4) V. p. 427, n. 8.
(5) In the case made out by Raba where a contradiction of the subject matter of evidence was followed by proof of an alibi.
(6) For if the evidence regarding the theft fell to the ground it carried with it the evidence regarding the slaughter of the stolen animal.
(7) Which of course did not affect their evidence regarding the theft which was given on an earlier occasion.
(8) Agreeing thus with view of Raba.
(9) Because they transgressed the negative commandment, 'Thou shalt not bear false witness against thy neighbour'. Ex. XX, 13. and the punishment of thirty-nine lashes is administered for breaking such and similar negative commandments.
(10) Ex. XX. 13.
(11) Should the same witnesses afterwards become zomemim.
(12) Cf. Sanh. 86b; Mak. 13b and Shebu. 4a.
(13) Were they even subsequently proved zomemim.
(14) In which case the prohibition of this offence could thus never be able to serve as a warning of a pending execution at a court of law and lashes could therefore be administered.
(15) In which case their falsity has been proved beyond any doubt.
(16) Cf. Deut. XIX, 15.
(17) For the act of stealing testified to by two witnesses.
(18) As the act of slaughter or sale was testified to by one witness who, in matters of fine, could be of no effect at all even for the purpose of imposing an oath. [V. J. Shebu. VI, and S. Strashun's Glosses, a.1.] so also is the admission of the thief himself of no avail in these matters.
(19) Being a capital offence in which all possible civil liabilities have to merge.
(20) So that at the time of the slaughter or sale the thief was a joint owner of the animal.
(21) Temple property is not subject to the law of the fine.
(22) V. the discussion in Gemara.
(23) Cf. B.B. 32a and Sanh. 30a.
(24) From the fine; cf. supra p. 62.
(25) V. Suk. II,1 and Ber. II, 7.
(26) Who would thereby receive his freedom in accordance with Ex. XXI. 26.
(27) He was, however, unable to manumit him as it was considered a sin to manumit heathen slaves. V. Ber. 47b and Git. 38a.
(28) And the obligation imposed on a man to let his slave go free for his eye's sake and for his tooth's sake is only a matter of fine.
(29) In contradiction to the view of Rab stated by R. Huna.
(30) I.e., R. Hisda.
(31) And is therefore not considered in the eye of the law a legal confession to bar subsequent evidence.
(32) [Shortly after the death of R. Johanan b. Zakkai, v. Halevy, Doroth, I.e., p. 154, contra Weiss, Dor, 130.]

Talmud - Mas. Baba Kama 75a

— He was, however, at that time not sitting in the court of law. But has it not been taught that he said to him: 'Your words have no force in law, as you have already confessed'?[1] Must we not then say that Tannaim were divided on this matter, so that the Tanna who reported 'as there are no witnesses for the slave',[2] would maintain that if one confessed to liability for a fine and subsequently witnesses appeared and testified [to the same effect], he should be liable, whereas the Tanna who reported 'as you have already confessed', would maintain that if one confessed to liability for a fine, though witnesses subsequently appeared [and corroborated the confession], he would be exempt? — No, they might both have agreed that if one confessed to the liability of a fine, though witnesses subsequently appeared [and testified to the same effect], he would be exempt, and the point on which

they differed might have been this: the Tanna, who reported 'as there are no witnesses for the slave', was of opinion that the confession took place outside the court of law,[3] whereas the Tanna, who reported 'as you already confessed', was of opinion that the confession was made at the court of law.

It was stated: If a man confesses to liability for a fine, and subsequently witnesses appear [and corroborate the confession], Rab held that he would be quit, whereas Samuel held that he would be liable. Raba b. Ahilai said: The reason of Rab was this. [We expound]: If it [was to] be found[4] by witnesses, it be [considered] found[4] in the consideration of the judges, excepting thus a case where a defendant incriminates himself.[5] Now why do I require this reasoning, seeing that this ruling can be derived from the text 'whom the judges shall condemn',[6] which implies 'not him who condemns himself'? It must be to show that if a man confesses to liability for a fine, even though witnesses subsequently appear [and testify to the same effect], there would be exemption. Samuel, however, might say to you that the doubling of the verb in the verse 'If to be found it be found' was required to make the thief himself subject to double payment, as taught at the School of Hezekiah.[7] Rab objected to [this view of] Samuel [from the following Baraitha:][8] If a thief notices that witnesses are preparing themselves to appear[9] and he confesses 'I have committed the theft [of an ox] but I neither slaughtered it nor sold it', he would not have to pay anything but the principal?[10] — He [Samuel] replied: We are dealing here with a case where, for instance, the witnesses drew back from giving any evidence in the matter. But since it is stated In the concluding clause: 'R. Eleazar son of R. Simeon says that the witnesses should still come forward and testify,' must we not conclude that the first Tanna maintained otherwise?[11] — Samuel thereupon said to him: Is there at least not R. Eleazar son of R. Simeon who concurs with me? I follow R. Eleazar son of R. Simeon. Now according to Samuel, Tannaim certainly differed in this matter. Are we to say that also according to Rab Tannaim differed in this?[12] — Rab might rejoin: My statement can hold good even according to R. Eleazar son of R. Simeon. For R. Eleazar son of R. Simeon would not have expressed the view he did there save for the fact that the thief made his confession because of his fear of the witnesses, whereas here he confessed out of his own free will, even R. Eleazar son of R. Simeon might have agreed [that the confession would bar any pending liability].[13]

R. Hamnuna stated: It stands to reason that the ruling of Rab was confined to the case of a thief saying, 'I have committed a theft' and witnesses then coming [and testifying] that he had indeed committed the theft, in which case he is quit, as he had [by the confession] made himself liable at least for the principal.[14] But if he first said, 'I did not commit the theft,' but when witnesses appeared and declared that he did commit the theft, he turned round and said, 'I even slaughtered [the stolen sheep or ox] or sold it,' and witnesses subsequently came [and testified] that he had indeed slaughtered it or sold it, he would be liable to pay [four-fold or five-fold payment], as [by this confession][15] he was trying to exempt himself from any liability whatever. [But] Raba said: I got the better[16] of the elders of the School of Rab,[17] for R. Gamaliel [by confessing the putting out of his slave's eye] was but exempting himself from any liability, and yet when R. Hisda stated this case [as a proof] against R. Huna[18] he was not answered thus.

It was similarly stated.[19] R. Hiyya b. Abba said in the name of R. Johanan, [that if a thief confessed] 'I have committed a theft', and witnesses then came along [and testified] that he had indeed committed the theft, he would be exempt, as in this case he had [by the confession] made himself liable at least for the principal; for where he had first said 'I did not commit the theft', but when witnesses appeared and declared that he did commit the theft he again came and said, 'I even slaughtered [the stolen sheep or ox] or sold it, and witnesses again came and testified that he had indeed slaughtered it or sold it, he would be liable to pay [four-fold or five-fold payment], as by his confession he was but exempting himself from any liability whatever. R. Ashi said: [Texts from] our Mishnah and the [above] Baraitha tend likewise to prove this distinction. From our Mishnah [the proof is] as we have learnt: IF THE THEFT [OF AN OX OR SHEEP] WAS TESTIFIED TO BY TWO WITNESSES, WHEREAS THE SLAUGHTER OR SALE OF IT WAS TESTIFIED TO BY

ONLY ONE WITNESS OR BY THE THIEF HIMSELF, HE WOULD HAVE TO MAKE DOUBLE PAYMENT BUT WOULD NOT HAVE TO MAKE FOUR-FOLD AND FIVE-FOLD PAYMENTS. Now, what is the need for the words. IF THE THEFT WAS TESTIFIED TO BY TWO WITNESSES? Why not simply state: 'If the theft and slaughter or [theft and] sale were testified to by one witness or by the thief himself, he would not have to pay anything but the principal alone'?

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(1) Which implies that even if witnesses would subsequently appear and testify to the same effect, it would still be of no avail, thus agreeing with the view of Rab.

(2) As the text runs in the former teaching and which implies that if witnesses should come and testify for the slave he would obtain his freedom, in apparent contradiction to the view of Rab.

(3) [Where a confession is not regarded in the eye of the law as legal so as to bar subsequent evidence.]

(4) Ex. XXII. 3.

(5) V. supra 64b.

(6) Ex. XXII, 8.

(7) Supra p. 370.

(8) Cf. Shebu. VIII, 4, and Tosaf. infra 75b, s.v. בריתא .

(9) Before the court to give evidence against him.

(10) As confession to the liability for a fine carries exemption from the fine.

(11) I.e., that the evidence of the witnesses would be of no avail.

(12) And that R. Eleazar was against him.

(13) And no witnesses should be permitted to give evidence in the matter.

(14) Which proves that the confession was genuine.

(15) Which was thus not a genuine confession.

(16) In this matter.

(17) As R. Hamnuna was of the elders of the School of Rab; v. Sanh. 17b. [Var. lec.:. Raba said to him (to R. Hamnuna). You have got the better of the elders of the school of Rab (viz. R. Huna), v. Tosaf.]

(18) [I.e., against the ruling R. Huna reported in the name of Rab.]

(19) In support of the distinction made by R. Hamnuna.

Talmud - Mas. Baba Kama 75b

Is not the purpose to indicate to us that it was only where the theft was testified to by two witnesses and the slaughter by one or by the thief himself, in which case it was not the confession[1] which made him liable for the principal, that we argue that confession by the thief himself is meant to be analogous to the testimony borne by one witness? So that just as in the case of testimony by one witness, as soon as another witness appears and joins him liability would be established, so also in the case of confession by the thief himself, if witnesses subsequently appear and testify to the same effect he would become liable. If, however, the very theft and slaughter [or theft and] sale were testified to by one witness or by the thief himself, in which case the confession made him liable at least for the principal, we would not argue that confession by the thief himself should be analogous to the testimony borne by one witness.[2] [The proof] from the Baraitha [is] as it was taught: If a thief notices that witnesses are preparing themselves to appear and he confesses, 'I have committed a theft [of an ox] but I neither slaughtered it nor sold it' he would not have to pay anything but the principal.[3] Now, what need is there for the words, 'and he confessed, I have committed the theft [of an ox] but I neither slaughtered it, nor sold it'? Why not simply state 'I have committed the theft [of an ox], or I slaughtered it or I sold it'? Is not the purpose to indicate that it was only where the thief confessed, 'I have committed the theft [of an ox]'. where it was he who by confession made himself liable for the principal, that he would be exempt from the fine, whereas if he had stated 'I have not committed any theft',and when witnesses arrived and testified that he did commit a theft, he turned round and confessed 'I have even slaughtered it or sold it', and witnesses subsequently appeared [and testified] that he had indeed slaughtered it or sold it, in which case it was not he who made

himself liable for the principal, he would have to be liable for the fine, thus proving that a confession merely regarding the act of slaughter should not be considered a confession [to bar the pending liability of a fine]![4] — It may, however, be said that this is not so,as the purpose [of the apparently superfluous words] might have been to indicate to us the very ruling that since he confessed 'I have committed the theft [of an ox or a sheep]' even though he still said 'I have neither slaughtered it nor sold it' and witnesses appeared [and testified] that he did slaughter it or sell it, he would nevertheless be exempt from any fine, the reason being that the Divine Law says: 'Five-fold or four-fold payment[5] respectively, but not 'four-fold or three-fold payment'[6] respectively.

Shall we say that the following Tannaim differed on this point? [For it has been taught:] Where two witnesses testified to a theft [of an ox] and other two witnesses subsequently gave evidence that the thief had slaughtered it or sold it, and the witnesses regarding the theft were proved zomemim,[7] since the testimony became annulled regarding a part of it,[8] it would become annulled regarding the whole of it.[9] But if [only] the witnesses to the slaughter were proved zomemim, he would have to make double payment,[10] whereas they[11] would [have to pay him three-fold payment as restitution].[12] In the name of Symmachus it was, however, stated that they would have to make double payment,[13] whereas he would have to make three-fold payment for an ox and double payment for a ram.[13] Now, to what did Symmachus refer? It could hardly be to that of the opening clause,[14] for would Symmachus not agree that a testimony becoming annulled regarding a part of it should become annulled regarding the whole of it? If again he referred to the concluding clause,[15] did the Rabbis not state correctly that the thief should make double payment while the false witnesses would have to make three-fold payment? It must therefore be that there was another point at issue between them,[16] viz., where a pair of witnesses came and said to him: 'You have committed the theft [of an ox]'. and he said to them: 'It is true that I have committed the theft [of an ox] and even slaughtered it or sold it, but it was not in your presence that I committed the theft', and he in fact brought witnesses who proved an alibi[17] against the first witnesses that it was not in their presence that he committed the theft, while the plaintiff brought further witnesses who gave evidence against the thief that he had committed the theft [of an ox] and slaughtered it or sold it. They would thus differ as to the confession regarding the slaughter, the Rabbis holding that though in regard to the theft it was certainly because of the witnesses[18] that he confessed, the confession regarding the slaughter[19] should have the usual effect of confession and exempt him from the fine, whereas Symmachus held that since regarding the theft it was because of witnesses that he confessed, the confession of the slaughter should not have the [full] effect of a confession [as it did not tend to establish any civil liability], so that the first witnesses who were found zomemim[20] would have to pay him[21] double, whereas he[21] would have to pay three-fold for an ox and double for a ram![22] — R. Aha the son of R. Ika said: No, all might agree that the confession regarding the slaughter would not have the [exempting] effect of a confession, and where they differ here is regarding evidence given by witnesses whom you would be unable to make subject to the law applicable to zomemim, as e.g., where two witnesses came and said to him: 'You have committed the theft [of the ox]', and he said to them: 'I did commit the theft [of the ox] and even slaughtered it or sold it; it was, however, not in your presence that I committed the theft, but in the presence of so-and-so and so-and-so,' and he in fact brought witnesses who proved an alibi against the first witnesses, that it was not in their presence that he committed the theft, but so-and-so and so-and-so [mentioned by the thief] came and testified against him that he did commit the theft [of the ox] and slaughtered it or sold it. The point at issue in this case would be as follows: The Rabbis maintain that this last evidence was given by witnesses whom you would [of course] be unable to make subject to the law applicable to zomemim [as they were pointed out by the thief himself],[23] and any evidence given by witnesses whom you would be unable to make subject to the law applicable to zomemim could not be considered valid evidence,[24] whereas Symmachus maintained that evidence given by witnesses whom you would be unable to make subject to the law applicable to zomemim would be valid evidence.[25] But is it not an established tradition with us[26] that any evidence given by witnesses whom you would be unable to make subject to the law applicable to zomemim could not be considered valid evidence? — This is

the case only where the witnesses do not know the exact day or the exact hour of the occurrence alleged by them,[27] in which case there is in fact no evidence at all, whereas here [your inability to make them subject to the law applicable to zomemim was only because] the thief himself was in every way corroborating their statements.

The Master stated: 'They[28] would have to make double payment. But since in this case the thief admitted that he did commit the theft, so that he would surely be required to pay the principal, [why should the witnesses proved zomemim have to make double payment?][29] — Said R. Eleazar in the name of Rab: Read:

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(1) But the testimony of two witnesses.
(2) But a confession of this nature bars subsequent evidence in accordance with the view of Rab.
(3) Shebu. 49a.
(4) Supporting thus the distinction made by R. Hamnuna.
(5) Ex. XXI, 37.
(6) I.e., since he confessed regarding the theft, in which case he will only have to pay the principal, since the doubling of it is a fine, he will not be subject to the fine of slaughter or sale even when denied by him and testified to by two witnesses, on account of the fact that the payment in this case would have to be not five-fold but four-fold for an ox and not four-fold but three-fold for a sheep.
(7) V. Glos.
(8) I.e., regarding the theft.
(9) I.e., regarding also the slaughter or sale, for surely if there was no theft there, no slaughter and sale of a stolen animal could have been there.
(10) For the theft which was testified to by the other set of witnesses.
(11) The second set proved zomemim.
(12) In accordance with Deut. XIX, 19.
(13) V.. the discussion later on.
(14) Where the witnesses to the theft were proved zomemim.
(15) Where the witnesses to the slaughter or sale were proved zomemim.
(16) I.e., Symmachus and the Rabbis.
(17) V. p. 421, n. 1.
(18) I.e., the first set of witnesses.
(19) Which was not made through any fear.
(20) Regarding the theft.
(21) The thief.
(22) I.e., the prescribed fine for the slaughter or sale. This therefore proves that the Rabbis maintained that a confession which does not involve the liability of the principal should still have the effect of a confession, in contradiction to R. Hamnuna, whereas Symmachus would maintain that it should be devoid of the absolute exempting effect of a confession to liability for a fine.
(23) Against whom they gave evidence.
(24) [The thief would accordingly be exempt from the fine for the slaughter and sale of which he stands convicted, as it were on his own evidence.]
(25) [Hence the thief, on his part. would have to pay the exclusive fine for the slaughter or sale.]
(26) Cf. Sanh. 41a and 78a.
(27) Cf. Sanh. 40a.
(28) I.e., the witnesses who gave evidence regarding the theft and were proved zomemim.
(29) They should have to pay no more than the amount of a single payment.

the payment of doubling.[1]

IF HE STOLE IT AND CONSECRATED IT [TO THE TEMPLE] AND AFTERWARDS SLAUGHTERED IT OR SOLD IT, HE WOULD HAVE TO MAKE DOUBLE PAYMENT BUT WOULD NOT HAVE TO MAKE FOUR-FOLD AND FIVE-FOLD PAYMENTS. I would here Say: I grant you that he should not be liable for the slaughter, as when he slaughtered it, it was a consecrated animal which he slaughtered and he did not slaughter that which belonged to the owner. But why should he not be made liable for the very act of consecration?[2] For indeed what difference does it make to me whether he disposed of it to a private owner or whether he disposed of it to the ownership of Heaven? — This represents the view of R. Simeon who said[3] that consecrated objects, the loss of which the consecrator would have to make good, should be considered as if still remaining in the possession of the consecrator.[4] But since the concluding clause gives the view of R. Simeon,[3] the view stated in the previous clause is surely not that of R. Simeon. [Why then no liability for the act of consecration?] — We must therefore be dealing here with a case of minor sacrifices[5] and in accordance with R. Jose the Galilean, who declared[6] that minor sacrifices are private property and thus still remain in the possession of the consecrator. But what would be the law [where the thief consecrated the stolen sheep or ox] for most holy sacrifices?[7] Would he then have to make four-fold or five-fold payment for the act of consecration? If so, why read in the opening clause: 'If he steals and slaughters and consecrates it, he has to make four-fold or five-fold payment'?[8] Why not make the distinction in stating the very case itself: 'This ruling applies only in the case of minor sacrifices, but where he sanctified it for the most holy sacrifices he would have to make four-fold or five-fold payment [for the very act of consecration]'? — We must therefore still say that there is no difference whether [the animal was consecrated for the] most holy sacrifices or merely for minor sacrifices, and to the difficulty raised by you. 'What difference does it make to me whether he disposed of it to a private owner or whether he disposed of it to the ownership of Heaven', [it might be said in answer that] where he disposed of it to a private owner it was previously the ox of Reuben and has now become the ox of Simeon,[9] whereas where he disposed of it to the ownership of Heaven it was previously the ox of Reuben and still remains the ox of Reuben.[10]

R. SIMEON HOWEVER SAYS: IN THE CASE OF CONSECRATED CATTLE THE LOSS OF WHICH THE OWNER HAS TO MAKE GOOD, THE THIEF HAS TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT, BUT IN THE CASE OF THOSE THE LOSS OF WHICH THE OWNER HAS NOT TO MAKE GOOD, THE THIEF IS EXEMPT. I would here say: Granted that in the opinion of R. Simeon it makes no difference whether he disposed of it to a private owner or whether he disposed of it to Heaven,[11] has not the text to be transposed [so as to read as follows]: '[For consecrating the stolen animals as] sacrifices the loss of which he would have to make good the thief should be exempt, as they have not yet been removed altogether from his possession, whereas [for consecrating them as] sacrifices the loss of which he would not have to make good he should be liable, as in this case they have already been removed from his possession'?

It may be said that R. Simeon referred to a different case altogether, and the text [of the Mishnah] is to be read thus: If a man misappropriates an article [already stolen] in the hands of a thief he has not to make four-fold and five-fold payments. So also he who misappropriates a consecrated object from the house of the owner is exempt, the reason being that [the words] 'and it be stolen out of the man's house'[12] imply 'but not from the possession of the sanctuary'. R. Simeon, however, says: In the case of consecrated objects, the loss of which the owner has to make good, the thief is liable to pay, the reason being that to this case [the words of the text] 'and it be stolen out of the man's house'[12] [apply].[13] But in the case of those the loss of which the owner has not to make good, the thief is exempt, as we cannot apply the words 'and it be stolen out of the man's house'. Let us see. We have heard R. Simeon say[14] that a slaughter through which the animal would not ritually become fit for food could not be called slaughter [in the eye of the law]. Is the slaughter [outside the Temple precincts] of sacrifices not similarly a slaughter which would not render the animal fit for food?[15] [Why then should there be liability for slaughtering them thus?] — When R. Dimi arrived[16] he stated

on behalf of R. Johanan [that the liability would arise] if the thief slaughtered the sacrifices while unblemished within the precincts of the Temple in the name of the owner. But has not the principal thus been restored to the owner [since the sacrifice produced atonement for him]?[17] — Said R. Isaac b. Abin: We presume that the blood was poured out [and thus not sprinkled upon the altar, so that no atonement was effected for the owner].[18] When Rabin arrived[16] he said on behalf of R. Johanan that the liability would only be where he slaughtered the sacrifices while unblemished within the precincts of the Temple but not in the name of the owner,[19]

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(1) I.e., a single payment.

(2) As if he would have sold it.

(3) Mishnah supra p. 427.

(4) As they are still under his charge and the transfer was thus incomplete.

(5) Such as peace. offerings and thank-offerings and the like.

(6) Supra p. 50.

(7) Such as burnt-offerings, sin-offerings and the like.

(8) Supra p. 403.

(9) I.e., the transfer from the thief to the purchaser was complete in every respect.

(10) I.e., the transfer from the thief to the Temple was not so complete. as the sacrifice is still credited to him.

(11) So that for the very act of sanctification the thief will become liable for the fine as if he had sold the animal.

(12) Ex. XXII, 6.

(13) For since the loss of these consecrated objects would involve an outlay of money on the part of the original owner, they are in this respect in his ownership as they are under his charge; cf. supra p. 410.

(14) Supra p. 408.

(15) Cf. Lev. XVII. 3-9; Hul. 78a-80b.

(16) From Palestine to Babylon.

(17) Why then should liability for the fine be attached?

(18) Cf. Zeb. 25a.

(19) In which case the owner derives no benefit, as the sacrifice is not credited to him though otherwise it is perfectly valid; cf. Zeb. I,1.

Talmud - Mas. Baba Kama 76b

whereas Resh Lakish said that there will be liability also if the thief slaughtered blemished sacrifices[1] outside the precincts of the Temple.[2] R. Eleazar was astonished at the statement of R. Johanan: Is it the slaughter that renders the sacrificed animal permissible for food?[3] Is it not the sprinkling of the blood that renders it permissible to be partaken of?[4] So also he was astonished at the statement of Resh Lakish: Is it the slaughter that renders the sacrificed animal permissible for food?[5] Is it not its redemption[6] that renders it permissible for food?[5] — It, however, escaped his memory that R. Simeon has laid down that whatever is ready to be sprinkled is considered as if it has already been sprinkled, and whatever is designated for being redeemed is considered as if it had already been redeemed[7] . 'Whatever is ready to be sprinkled is considered as if it had already been sprinkled' — as taught: R. Simeon says: There is nothar[8] which may be subject to defilement in accordance with the law applicable to the defilement of food,[9] but there is also nothar which is not subject to defilement in accordance with the law applicable to the defilement of food. How is this so? If it remains over night before the sprinkling of the blood,[10] it would not be subject to become defiled in accordance with the law applicable to the defilement of food,[11] but if after the sprinkling of blood,[12] it would be subject to become defiled in accordance with the law applicable to the defilement of food.[13] Now, it is an accepted tradition that the meaning of 'before sprinkling' is 'without it first having become fit to be sprinkled' and of 'after sprinkling', 'after it became fit for sprinkling'. Hence, 'where it remained overnight without having first become fit for sprinkling' could only be where there was no time during the day to sprinkle it, such as where the sacrifice was slaughtered close upon sunset, in which case it would not be subject to become defiled in accordance

with the law applicable to the defilement of food; and 'where it remained over night after it had already become fit for sprinkling,' [could only be] where there was time during the [previous] day to sprinkle it, in which case it would be subject to become defiled in accordance with the law applicable to the defilement of food.[14] This proves that whatever is ready to be sprinkled is considered as if it had already been sprinkled.[15] 'Whatever is designated for being redeemed is considered as if it had already been redeemed,' — as taught: 'R. Simeon says:

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(1) [I.e., an animal which became afflicted with a lasting blemish before it was dedicated (Rashi).]

(2) As these may be slaughtered outside the precincts of the Temple, even without being first redeemed.

(3) In the case of unblemished sacrifices slaughtered in the precincts of the Temple.

(4) It accordingly follows that the slaughter as such did not at that time render the animal ritually fit for food.

(5) In the case of blemished sacrifices slaughtered outside the precincts of the Temple.

(6) Subsequent to the slaughter thereof. Cf. Hul. 84a.

(7) So that the slaughter is considered fit; cf. Pes. 13b; Men. 79b and 102b.

(8) Lit., 'That which remaineth'; cf. Ex. XII, 10 and Lev. XIX, 6. denoting portions of sacrifices that had not been eaten or sacrificed upon the altar within the prescribed time and could then no more be sacrificed upon the altar or partaken of or put to any use but had to be burnt in a special place.

(9) Cf. Lev. XI, 34.

(10) In which case the portions have never been allowed to be partaken of.

(11) As according to Bek. 9b, food cannot become defiled unless it was permitted to be made use of as food.

(12) It was left over, in which case there was a time when the portions were ritually fit as food.

(13) Tosef. 'Uk. III, 7' in accordance with Lev. XI, 34.

(14) V. p. 439. n. 9.

(15) And made the sacrifice as if ritually fit to be partaken of.

Talmud - Mas. Baba Kama 77a

The red heifer is subject to become defiled in accordance with the law applicable to the defilement of food,[1] since at one time it had ritual fitness to be used for food',[2]

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(1) Cf. Lev. XI, 34.

(2) Tosef. Par. VI, 9; Shebu. 11b.

Talmud - Mas. Baba Kama 77b

and Resh Lakish observed that R. Simeon used to say that the red heifer could be redeemed even after [it was slaughtered and] placed upon the wood for burning[1] thus proving that whatever has the possibility of being redeemed[2] is considered as if it had already been redeemed.

We can understand why R. Johanan did not give the same answer [to the difficulty[3] propounded] as Resh Lakish,[4] as he was anxious to explain the ruling [of our Mishnah] even in the case of unblemished sacrifices. But why did Resh Lakish not give the same answer as R. Johanan?[5] — He could say: [Scripture says.] 'And he slaughtered it or sold it'[6] implying that it was only an animal [subject to this law] in the case of a sale that could be [subject to it] in the case of slaughter, whereas an animal which would not be [subject to this law] in the case of sale could similarly not be [subject to it] in the case of slaughter either. Now, in the case of these unblemished sacrifices, since if the thief had sold the sacrifices it would not have been a sale [to all intents and purposes],[7] they could not be [subject to this law even] when they were slaughtered. R. Johanan and Resh Lakish indeed followed their own lines of reasoning [elsewhere]. For it was stated: If a thief sells a stolen ox which is trefa,[8] according to R. Simeon,[9] R. Johanan said that he would be liable, whereas Resh Lakish said that he would be exempt. R. Johanan. who said that he would be liable, held that though this ox could not be subject to the law of slaughter it could yet be subject to the law of sale, whereas Resh Lakish who said that he would be exempt maintained that since this ox could not be subject to the law of slaughter, it could similarly not be subject to the law of sale either.

R. Johanan objected to [the view of] Resh Lakish [from the following]: If he stole a hybrid animal and slaughtered it, or a trefa animal and sold it, he would have to make double payment. Now, does not this ruling follow the view of R. Simeon,[10] thus proving that though this ox would not be subject to the law of slaughter it could nevertheless be subject to the law of sale? — He replied: No; this is the view of the Rabbis .[11] But if this is the view of the Rabbis, why should a trefa ox be subject only to the law of sale and not to the law of slaughter? — You say then that it is the view of R. Simeon.[9] Why then should a hybrid animal be subject only to the law of slaughter and not to that of sale? We must say therefore that though slaughter is mentioned[12] the same law was meant to apply also to sale; so also according to the Rabbis, though sale is stated in the text,[13] the same law was meant to apply to slaughter.[14] R. Johanan, however, might say that this does not follow. It is true that if you say that the ruling follows R. Simeon, there is no difficulty: since it was necessary to state liability regarding trefa in the one case [of sale] only, it states liability regarding a hybrid animal also in the one case [of slaughter] only. But if you say that this ruling follows the Rabbis, why not join them together, and state thus: 'If the thief misappropriated a hybrid animal and a trefa [sheep or ox] and slaughtered them or sold them, he would have to make four-fold or five-fold payment'! This indeed is a difficulty.

[But why should there be liability for four-fold or five-fold payment in the case of] a hybrid animal since Scripture says 'sheep'.[15] and Raba [elsewhere] said that this[16] is a locus classicus for the rule that wherever it says 'sheep', the purpose is to exclude a hybrid animal? — This case here is different, as Scripture says 'or',[17] implying the inclusion of a hybrid animal. [Does this mean to say that] the term 'or' everywhere implies an amplification? Was it not taught:[18] 'When a bullock or a

sheep:[19] this excepts a hybrid; or a goat:[19] this excepts an animal looking like a hybrid'? — Said Raba: The term 'or' in the one case is expounded in accordance with the subject matter of the verse, and the term 'or' in the other case is similarly expounded in accordance with the subject matter of that verse. Here in connection with theft where it is written 'an ox or a sheep', since it is impossible to produce a hybrid from the union of these two,[20] the term 'or' should be expounded to include[21] a hybrid [of a different kind], whereas in connection with sacrifices where it is written 'a sheep or a goat',[19] where it is possible for you to produce a hybrid from their union,[22] the term 'or' should rightly be taken to exclude[23] [the hybrid].

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(1) And this is the ritual fitness as food.

(2) Though it was in fact never redeemed.

(3) As to how could the slaughter in the case of a sacrifice render the stolen animal ritually fit for food and thus make the thief liable for the fine.

(4) Who stated that the animal was blemished and slaughtered outside the precincts of the Temple.

(5) That an unblemished animal was slaughtered in the precincts of the Temple but not in the name of the owner.

(6) Ex. XXI, 37.

(7) Cf. Pes. 89b.

(8) V. Glos.

(9) Who in the case of slaughtering such an animal maintains exemption; v. supra p. 403.

(10) For if otherwise, why not state slaughter also in the case of trefa.

(11) According to whom even for slaughter in the case of trefa there is liability for the fine (supra p. 403).

(12) In the case of a hybrid animal.

(13) Dealing with trefa.

(14) [But according to R. Simeon a trefa is not subject even to the law of sale.

(15) In Ex. XXI, 37.

(16) The word 'sheep' in Lev. XXII, 28; v. Hul. 78b.

(17) Ex. XXI, 37.

(18) Hul. 38b.

(19) Lev. XXII, 27.

(20) As an ox could not possibly be the father of the offspring of a sheep.

(21) For if to exclude there was no need for this 'or'.

(22) As a sheep could be the father of the young of a goat.

(23) For if to include there was no need for this 'or' to be inserted.

Talmud - Mas. Baba Kama 78a

But in connection with sacrifices it is also written 'a bullock or a sheep', in which case it is impossible for you to exclude a hybrid born from these two, why then should we not employ the term 'or' to include [a hybrid of a different kind]? — Since the term 'or' in the later phrase[1] is to 'be employed to exclude, the term 'or' in the earlier phrase[2] should similarly be employed to exclude. But why not say on the contrary that, as the term 'or' in the earlier phrase has to be employed to amplify, so also should the term 'or' in the later phrase? — Would this be logical? I grant you that if you say that the term 'or' meant to exclude, then it would be necessary to have two [terms 'or'] to exclude, for even when a hybrid has been excluded, it would still be necessary to exclude an animal looking like a hybrid. But if you say it is meant to amplify, why two amplifications [in the two terms 'or']? For once a hybrid is included, what question could there be of an animal looking like a hybrid. To what halachah then would the statement made by Raba refer, that this is a locus classicus for the rule that wherever it says 'sheep'. the purpose is to exclude a hybrid? If to sacrifices, is it not explicitly said: 'A bullock or a sheep which excepts a hybrid' ? If to the tithes [of animals] , is not the term 'under'[3] compared to 'under' used in connection with sacrifices [making it subject to the same law]? If to a firstling, is the verb expressing 'passing'[4] not compared to 'passing'[3] used in connection with tithe? Or again we may say, since where the animal only looks like a hybrid you say

that it is not [subject to the law of firstling], since it is written: 'But the firstling of an ox'[5] [which implies that the rule holds good] only where the parents were of the species of 'ox' and the firstling was of the species of 'ox', what question can there be regarding a hybrid itself? — The statement made by Raba must therefore have referred to the firstling of an ass,[6] as we have learnt:[7] It can not be redeemed either by a calf or by a wild animal or by a slaughtered sheep or by a trefa sheep or by a hybrid or by a koy.[8] But if we accept the view of R. Eleazar, who allows redemption with a hybrid sheep, as we have learnt: R. Eleazar allows the redemption to be made with a hybrid, for it is a sheep,[7] to what halachah [can we refer the statement of Raba] ? — R. Eleazar might reply that the statement made by Raba is to teach [the prohibition of] an unclean animal[9] born from a clean animal[10] which became pregnant from an unclean animal [being forbidden as food].[11] this opinion not being in accordance with R. Joshua. for R. Joshua derived[12] this prohibition from the verse 'the sheep of sheep and the sheep of goats'.[13] which implies that unless the father was a 'sheep' and the mother a 'sheep' [the offspring is forbidden for food]. But could a clean animal become pregnant from an unclean animal? — Yes, since it is known to us

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(1) Dealing with 'sheep' and 'goat'.

(2) Where 'bullock' and 'sheep' are mentioned.

(3) Lev. XXVII, 32.

(4) Ex. XIII, 12.

(5) E.V. 'a cow'. Num. XVIII. 17.

(6) Which has to be redeemed by a sheep (Ex. XIII. 13). so that a hybrid would therefore not be eligible.

(7) Bek. 1,5.

(8) I.e., a kind of an antelope about which there was a doubt whether it belongs to the species of cattle or to that of beasts of the forest. [V. Lewysohn. Zoologie, p. 115 ff. who identifies it with the Gr. **, 'goat-stag' mentioned by Plinius.]

(9) E.g.. a swine; v. Lev. XI, 7.

(10) Such as a sheep.

(11) Such as where a cow became pregnant from a horse and gave birth to a foal or where a sheep became pregnant from a swine and gave birth to a swine.

(12) Cf. Bek. 7a.

(13) Deut. XIV, 4.

Talmud - Mas. Baba Kama 78b

that it could become pregnant from an animal with uncloven hoofs, [which though born from parents belonging to the species of ox, is considered unclean] in accordance with the view of R. Simeon.[1]

Raba asked: [If one vowed.] 'I take upon myself to sacrifice a burnt — offering.'[2] and he set aside an ox and somebody came and stole it , should the thief be entitled to free himself[3] by paying for a sheep, if we follow the Rabbis, or even for a burnt-offering of a bird, if we follow R. Eleazar b. Azariah, as we have learnt:[4] [If one vowed.] 'I take it upon myself to bring a burnt-offering.' he may bring a sheep;[5] R. Eleazar b. Azariah says that he may even bring a turtle — dove or a young pigeon?[6] What should be the legal position? Shall we say that since he undertook to bring something called a burnt-offering [the thief may be entitled to restore the minimum burnt-offering], or perhaps the donor might be entitled to say to him: 'I am anxious to do my duty in the best manner possible'? After he put the question, on second thoughts he decided that the thief might free himself by paying a sheep, according to the view of the Rabbis, or even a burnt-offering of a bird, according to the view of R. Eleazar b. Azariah. R. Aha the son of R. Ika taught this as a definite ruling, [as follows]: Raba said: [If one vowed.] 'I take it upon myself to sacrifice a burnt-offering.' and he set aside an ox and somebody came and stole it, the thief may free himself by paying for a sheep, if we follow the Rabbis, or even for a burnt-offering of a bird, if we follow R. Eleazar b. Azariah.

MISHNAH. IF HE SOLD [THE STOLEN SHEEP OR OX] WITH THE EXCEPTION OF ONE

HUNDREDTH PART OF IT,[7] OR IF HE HAD SOME PARTNERSHIP IN IT[8] [BEFORE HE STOLE IT] OR IF HE SLAUGHTERED IT AND IT BECAME NEBELAH[9] UNDER HIS HAND, OR IF HE STABBED IT OR TORE LOOSE [THE WIND PIPE AND GULLET BEFORE CUTTING],[10] HE WOULD HAVE TO MAKE DOUBLE PAYMENT[11] BUT WOULD NOT HAVE TO MAKE FOUR-FOLD AND FIVE-FOLD PAYMENTS.

GEMARA. What is meant by 'with the exception of one hundredth part of it'? — Rab said: With the exception of any part that would be rendered permissible [for food] together with the bulk of the animal through the process of slaughter.[12] Levi, however, said: With the exception even of its wool. It was indeed so taught in a Baraitha: 'With the exception of its wool.'

An objection was raised [from the following]: 'If he sold it with the exception of its fore-paw, or with the exception of its foot, or with the exception of its horn, or with the exception of its wool, he would not have to make four-fold and five-fold payments. Rabbi, however, says: [If he reserved for himself] anything the absence of which would prevent a [ritual] slaughter, he would not have to pay four-fold and five-fold payments, but [if he reserves] anything which is not indispensable for the purposes of [ritual] slaughter[13] he would have to make four-fold or five-fold payment. But R. Simeon b. Eleazar says: If he reserved its horn he would not have to make four-fold or five-fold payment; but if he reserved its wool he would have to make four-fold or five-fold payment'. This presents no difficulty to Levi, as he would concur with the first Tanna, but with whom does Rab concur?[14] — It may he said that Rab concurs with the following Tanna, as taught: R. Simeon b. Eleazar said:[15] 'If he sold it with the exception of its fore-paw or with the exception of its foot he would not have to make four-fold or five-fold payment. But if with the exception of its horn or with the exception of its wool he would have to make four-fold and five-fold payments'. What is the point at issue between all these Tannaim? — The first Tanna held that [to fulfil the words] 'and he slaughter it'[16] we require the whole of it, as also [to fulfil the words] 'and he sell it' we require the whole of it.[17] Rabbi, however, held that 'and he slaughter it' refers only to those parts the absence of which would render the slaughter ineffective, excluding thus anything which has no bearing upon the slaughter, while 'and he sell it' is of course analogous to 'and he slaughter it'. R. Simeon b. Eleazar, on the other hand, maintained that the horn not being a part which is usually cut off could be reckoned as a reservation, so that he would not have to make four-fold and five-fold payments, whereas the wool of the animal being a part which is usually shorn off could not be reckoned as an reservation, and he would thus have to make four-fold or five-fold payment. But the other Tanna of the School of R. Simeon b. Eleazar maintained that its fore-paws or feet which require slaughter [to render them permissible] form a reservation, and he would not have to pay four-fold and five-fold payments, whereas its horns or its wool, as they do not require slaughter [to render them permissible] would not constitute a reservation. But does R. Simeon b. Eleazar not contradict himself? — Two Tannaim report differently the view of R. Simeon b. Eleazar.

Our Rabbis taught: He who steals a crippled, or a lame, or a blind [sheep or ox], and so also he who steals an animal belonging to partners [and slaughters it or sells it] is liable [for four-fold and five-fold payments]. But if partners committed a theft they would be exempt.[18] But was it not taught: 'If partners committed a theft, they would be liable'?[19] — Said R. Nahman: This offers no difficulty, as the former statement deals with a partner stealing from [the animals belonging to him and] his fellow — partner, whereas the latter states the law where a partner stole from outsiders.[20] Raba objected to [this explanation of] R. Nahman [from the following]: 'Lest you might think that if a partner steals from [the animals belonging to himself and to] his fellow — partner, or if partners commit the theft, they should be liable, it is definitely stated, 'And slaughter it',[21] showing that we require the whole of it, which is absent here' — [Does this not prove that partners stealing from outsiders are similarly exempt?] — R. Nahman therefore said: The contradiction [referred to above] offers no difficulty, as the statement [of liability] referred to a partner slaughtering[22] with the authorisation of his fellow — partner,[23] whereas the other ruling referred to a partner slaughtering

without the authorization of his fellow-partner.[24]

R. Jeremiah inquired: If the thief sold a stolen animal with the exception of the first thirty days,[25] or with the exception of its work[26] or with the exception of its embryo,what would be the law?[27] If we accept the view that an embryo is [an integral part like] the thigh of its mother,[28] there could be no question that this would be a sure reservation. The question would arise only if we accept the view that an embryo is not like the thigh of its mother. What indeed should be the law? Shall we say that since it is joined to it, it should count as a reservation, or perhaps since it is destined to be separated from it, it should not be considered a reservation? Some state the question thus: [Shall we say that] since it is not like the thigh of its mother, it should not count as a reservation, or perhaps since at that time it requires [the union with] its mother to become permissible for food through the process of slaughter[29] it should be equal to a reservation made in the actual body of the mother? — Let this stand undecided.

R. papa inquired: If the thief after stealing mutilated it and then sold it, what would be the law?[30] Shall we say that [since] all that he stole he did not sell [he should be exempt], or perhaps [since] in what he sold he reserved nothing [for himself he should be liable]? — Let this [also] stand undecided.

Our Rabbis taught: If he stole [a sheep or an ox] and gave it to another person who slaughtered it, or if he stole it and gave it to another person who sold it,

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(1) Cf. Bek. 6b.

(2) In which case he would be responsible for the loss of the sacrifice which he set aside, having to replace it with another sacrifice, and the thief would therefore according to R. Simeon be liable to the donor.

(3) So far as the owner is concerned.

(4) Men. 107a.

(5) Which could also be brought as a burnt offering; cf. Lev. 1,10.

(6) Cf. ibid. 14.

(7) The exemption here is because the sale did not extend to the whole animal.

(8) In which case not the whole act of the sale was unlawful.

(9) V. Glos.

(10) Thus rendering the animal nebelah.

(11) For the act of theft.

(12) This law would thus not extend to a case where the wool or the horns were excepted from the sale.

(13) E.g., the fore-paw.

(14) For he could not follow the views of Rabbi according to whom even where the fore-paw (which is rendered permissible through the process if slaughter) was excepted, the thief would still have to make four-fold or five-fold payment.

(15) According to the tradition if another School, v. discussion which follows.

(16) Ex. XXI, 37.

(17) Without any exception whatever. (5) Where he excepted it from the sale.

(18) Tosef. B.K. VII, 4.

(19) B.M. 8a.

(20) Where there is liability.

(21) Ex. XXI, 37.

(22) An animal stolen by both of them and for which they both have to share the fine for the theft.

(23) And since in this case the law of agency applies even for the commission of a sin (v. supra 71a), they would both have to share the fine for the slaughter too.

(24) In which case the fellow-partner could certainly not be made liable to pay anything for the slaughter nor again the one who slaughtered the animal, since we could not make him liable for the whole of the slaughter, as though he slaughtered the whole of the animal he was a thief but of half of it.

(25) During which period the thief should still retain it.

(26) The vendee may slaughter it forthwith, but any work done by it should be credited to the vendor.

(27) Regarding the payment of the fine.

(28) Cf. Tem. 30b and also supra p. 265.

(29) In accordance with Hul. 74a.

(30) Regarding the payment of the fine.

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or if he stole it and consecrated it, or if he stole it and sold it on credit, or if he stole it and bartered it, or if he stole it and gave it as a gift, or if he stole it and paid a debt with it, or if he stole it and paid it for goods he had obtained on credit, or if he stole it and sent it as a betrothal gift to the house of his father-in-law, he would have to make four-fold and five-fold payments.[1] What is this meant to tell us? [Is not all this obvious?] — The new point lies in the opening clause: 'If he stole [a sheep or an ox] and gave it to another person who slaughtered it', [which implies] that in this case the law of agency has application even for a matter involving transgression.[2] Though in the whole of the Torah [there is] no [case of an] agent entrusted with a matter involving transgression [rendering the principal liable], sin this case an agent entrusted with a matter involving transgression would render his principal liable, the reason being [that Scripture says]: 'And he slaughter it or sell it', implying that just as a sale cannot be effected without the intervention of some other person,[3] so also where the slaughter was effected [by some other person authorised by the thief to do so the thief would be liable]. There is also a new point in the concluding clause: 'Where he stole it and consecrated it', which tells us that it makes no difference whether he disposed of it to a private person or whether he disposed of it to the ownership of Heaven.[4]

MISHNAH. IF HE STOLE [A SHEEP OR AN OX] IN THE PREMISES OF THE OWNERS AND SLAUGHTERED IT OR SOLD IT OUTSIDE THEIR PREMISES, OR IF HE STOLE IT OUTSIDE THEIR PREMISES AND SLAUGHTERED IT OR SOLD IT ON THEIR PREMISES, OR IF HE STOLE IT AND SLAUGHTERED IT OR SOLD IT OUTSIDE THEIR PREMISES, HE WOULD HAVE TO MAKE FOUR-FOLD OR FIVE-FOLD PAYMENT.[5] BUT IF HE STOLE IT AND SLAUGHTERED IT OR SOLD IT IN THEIR PREMISES, HE WOULD BE EXEMPT.[6] IF AS HE WAS PULLING IT OUT IT DIED WHILE STILL IN THE PREMISES OF THE OWNERS, HE WOULD BE EXEMPT,[6] BUT IF IT DIED AFTER HE HAS LIFTED IT UP[7] OR AFTER HE HAD ALREADY TAKEN IT OUT OF THE PREMISES OF THE OWNERS,[8] HE WOULD BE LIABLE.[9] SO ALSO IF HE GAVE IT TO A PRIEST FOR THE REDEMPTION OF HIS FIRST-BORN SON[10] OR TO A CREDITOR, TO AN UNPAID BAILEE, TO A BORROWER, TO A PAID BAILEE OR TO A HIRER, AND AS HE WAS PULLING IT OUT[11] IT DIED WHILE STILL IN THE PREMISES OF THE OWNERS, HE WOUld BE EXEMPT; BUT IF IT DIED AFTER HE HAD LIFTED IT UP OR ALREADY TAKEN IT OUT OF THE PREMISES OF THE OWNERS, HE[12] WOULD BE LIABLE.

GEMARA. Amemar asked: Was the formality of pulling instituted[13] also in the case of bailees[14] or not? — R. Yemar replied: Come and hear: IF HE GAVE IT TO A PRIEST FOR THE REDEMPTION OF HIS FIRST-BORN SON, TO A CREDITOR, TO AN UNPAID BAILEE, TO A BORROWER, TO A PAID BAILEE OR TO A HIRER AND AS HE WAS PULLING IT OUT IT DIED WHILE IN THE PREMISES OF THE OWNERS HE WOULD BE EXEMPT. Now, this means, does it not, that the bailee was pulling it out, thus proving that the requirement of pulling was instituted also in the case of bailees?[15] — No, he rejoined; the thief was pulling it out.[16] But was not this already stated in the previous clause?[17] — There it was stated in regard to a thief stealing from the house of the owners, whereas here it is stated in regard to a thief stealing from the house of a bailee. Said R. Ashi to him [Amemar]: Do not bring such arguments; what difference does it make whether the thief stole from the house of the bailee or from the house of the owners?[18] No; it must

mean that the bailee was pulling it out, thus proving that pulling was instituted also in the case of bailees.[15] This can indeed he regarded as proved.

It was also stated that R. Eleazar said: Just as the Sages instituted pulling in the case of purchasers, so also have they instituted pulling in the case of bailees.[19] It has in fact been taught likewise: Just as the Sages instituted pulling in the case of purchasers, so have they instituted pulling in the case of bailees, and just as immovable property is transferred by the medium of money payment, a deed or possession,[20] so also is the case with hiring which is similarly acquired by the medium of money, a deed or possession. The hire of what? If you say

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(1) Tosef. B.K. VII.

(2) For which cf. supra 71a, so that the principal will be liable to the fine for the act of slaughter committed by his agent.

(5) Cf. Kid. 42b and supra 51a.

(3) I.e. the purchaser.

(4) Provided, however, that he did not consecrate it to be sacrificed as an offering upon the altar, in which case the transfer would not he complete as supra 76a, but where the animal was blemished and he consecrated it to become a permanent asset of the Temple treasury (Tosaf.).

(5) For as soon as he removed it from the premises of the owners the act of theft became complete.

(6) As in this case the theft has never become complete.

(7) As by lifting up possession is transferred even while in the premises of the owner; cf. Kid. 25b.

(8) By the act of pulling possession is not transferred unless the animal has already left the premises of the owners.

(9) For as soon as the animal came into the possession of the thief the theft became complete.

(10) I.e., for the five shekels; v. Num. XVIII. 16.

(11) V. the discussion in Gemara.

(12) The thief.

(13) As it was instituted in the case of purchasers for which cf. B.M. IV. 1 and 47b.

(14) So that the act of pulling would be essential for making the contract of bailment complete.

(15) So that by the act of pulling carried out by the bailee the contract of bailment became complete and the animal could thus be considered as having been transferred from the possession of the owner to that of the thief represented by the bailee who acted on his behalf.

(16) After the owner handed over the animal to any one of those enumerated in the Mishnah.

(17) That the act of pulling is one of the requirements essential to make the theft complete.

(18) Why then deal with them separately.

(19) B.M. 99a.

(20) Cf. Kid. 27a.

the hire of movables, are movables transferred by a deed?[1] — Said R. Hisda: The hire of immovable property.

R. Eleazar stated: If a thief was seen hiding himself in forests [where flocks pasture] and slaughtering or selling [there sheep or oxen], he would have to make four-fold or five-fold payment. But why so, since he did not pull the animal?[2] — Said R. Hisda: We suppose that he struck it with a stick [and thus drew it towards himself]. But I would still ask, since he was seen doing this [publicly], should he on this account not be [subject to the law applicable to] a robber [who has not to pay any fines]?[3] — Since [at the same time] he was hiding himself from the public he is [subject to the law applicable to] a thief.[4]

How then would you define a robber? — Said R. Abbahu: One, for instance, like Benaiah the son of Jehoiadah, of whom we read:[5] And he plucked the spear out of the Egyptian's hand and slew him with his own spear. R. Johanan said: Like the men of Shechem of whom we read:[6] And the men of

Shechem set liers in wait for him on the tops of the mountains, and they robbed all that came along that way by them: and it was told Abimelech. Why did R. Abbahu not give his instance from this last source? He could say that since these were hiding themselves they could not be called robbers. And R. Johanan? — He could argue that the reason they were hiding themselves was so that people should not notice them and run away from them.[7] The disciples of R. Johanan b. Zakkai asked him why the Torah was more severe on a thief[8] than on a robber.[9] He replied: The latter[10] puts the honour of the slave[11] on the same level as the honour of his owner,[12] whereas the former[13] does not put the honour of the slave on the same level as the honour of the master [but higher], for, as it were, he acts as if the eye of Below[14] would not be seeing and the ear of Below would not be hearing, as it says: Woe unto them that seek deep to hide their counsel from the Lord, and their works are in the dark, and they say, Who seeth us? and who knoweth us?[15] Or as it is written: And they say, The Lord will not see, neither will the God of Jacob give heed;[16] or, as again it is written, For they say, the Lord hath forsaken the earth and the Lord seeth not.[17] It was taught:[18] R. Meir said: The following parable is reported in the name of R. Gamaliel. What do the thief and the robber resemble? Two people who dwelt in one town and made banquets. One invited the townspeople and did not invite the royal family, the other invited neither the townspeople nor the royal family.[19] Which deserves the heavier punishment? Surely the one who invited the townspeople but did not invite the royal family.

R. Meir further said: Observe how great is the importance attached to labour, for in the case of an ox [stolen and slaughtered] where the thief interfered with its labour[20] he has to pay five-fold, while in the case of a sheep where he did not disturb it from its labour[21] he has to pay only four-fold. R. Johanan b. Zakkai said: Observe how great is the importance attached to the dignity of Man, for in the case of an ox which walks away on its own feet[22] the payment is five-fold, while in the case of a sheep which was usually carried on the thief's shoulder only four-fold has to be paid.[23]

MISHNAH. IT IS NOT RIGHT TO BREED SMALL CATTLE[24] IN ERETZ YISRAEL.[25] THEY MAY HOWEVER BE BRED IN SYRIA OR IN THE DESERTS OF ERETZ YISRAEL. IT IS NOT RIGHT TO BREED HENS[26] IN JERUSALEM ON ACCOUNT OF THE SACRIFICES,[27] NOR MAY PRIESTS DO SO THROUGHOUT THE WHOLE OF ERETZ YISRAEL, ON ACCOUNT OF THEIR FOOD[28] WHICH HAS TO BE RITUALLY CLEAN.[29] IT IS NOT RIGHT TO BREED PIGS IN ANY PLACE WHATEVER.[30] NO MAN SHOULD BREED A DOG[31] UNLESS IT IS ON A CHAIN. IT IS NOT RIGHT TO PLACE NETS FOR DOVES UNLESS AT A DISTANCE OF THIRTY RIS[32] FROM INHABITED SETTLEMENTS.[33]

GEMARA. Our Rabbis taught: It is not right to breed small cattle in Eretz Yisrael but they may be bred in the woods[34] of Eretz Yisrael or in Syria even in inhabited settlements, and needless to say also outside Eretz Yisrael. Another [Baraitha] taught: 'It is not right to breed small cattle in Eretz Yisrael. They may, however, be bred in the deserts of Judah and in the desert at the border of Acco.[35] Still though the Sages said: 'It is not right to breed small cattle' it is nevertheless quite proper to breed large cattle, for we should not impose a restriction upon the community unless the majority of the community will be able to stand it. Small cattle could be imported from outside Eretz Yisrael, whereas large cattle could not be imported from outside Eretz Yisrael.[36] Again, though they said: 'It is not right to breed small cattle', one may nevertheless keep them before a festival for thirty days and similarly before the wedding festivity of his son for thirty days. He should, however, not retain the animal last bought for thirty days [if these expire after the festival]. So[37] that if the festival had already gone, though since from the time he bought the animal until that time thirty days had not yet elapsed we do not say that a period of thirty days is permitted for keeping the animal, but [we are to say that] as soon as the festival has gone he should not retain it any longer.

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(1) Are they not acquired solely by the medium of pulling as stated in Kid. ibid.?

(2) The theft never became complete.

(3) For a robber has to restore only the article taken by him or its value.

(4) Who is liable to fine.
(5) II Sam. XXIII, 21.
(6) Jud. IX, 25.
(7) But not out of any fear.
(8) That he has to pay double payment for the theft and four-fold and five-fold payments for the subsequent slaughter or sale of the stolen sheep and ox respectively in accordance with Ex. XXI, 37.
(9) Who has to pay only the thing misappropriated by him or its value, in accordance with Lev. V, 23.
(10) I.e., the robber by committing the crime publicly.
(11) I.e., human society.
(12) I.e., the Creator.
(13) I.e., the thief by committing his crime by stealth.
(14) Euphemism for 'Heaven'; cf. Ab. II. 1.
(15) Isa. XXIX. 15.
(16) Ps. XCIV. 7.
(17) Ezek. IX, 9.
(18) [Rashal deletes 'It was taught', as this is the continuation of the preceding passage in Tosef. B.K. VII.]
(19) So also in the case of the thief and the robber the former equals the former and the latter the latter; cf. however B.B. 88b.
(20) For an ox usually labours in the field; cf. Deut. V, 14; Isa. XXX, 24 and Prov. XIV, 4.
(21) As it is in any case not fit for work.
(22) While the thief misappropriates it.
(23) Mek. on Ex. XXII, 6.
(24) As these usually spoil the crops of the field. Cf. supra p. 118.
(25) Where the produce of the fields was of public concern.
(26) As these usually peck in dunghills and expose impurities.
(27) Which are eaten there and might easily be defiled by some impurity brought by the chickens.
(28) Consisting mainly of terumah (v. Glos.).
(29) In accordance with Lev. XXII. 6-7.
(30) Cf. Gemara.
(31) As by barking it might frighten pregnant women and cause miscarriages.
(32) I.e., four miles, cf. Glos.
(33) So that doves belonging to private owners in the settlement should not be enticed into the nets.
(34) Which were considered common property.
(35) [MS.M.: Kefar Amiko, N. of Acco, v. Klein, NB.p.9.]
(36) And cattle could not be dispensed with in an agricultural country where they are vital for field work.
(37) [Following MS.M., which omits 'For you might think' occurring in cur. edd., the whole passage appears to be a copyist's gloss on the cited Baraitha; v. D.S. a.l.]

Talmud - Mas. Baba Kama 80a

'A cattle dealer may, however, buy and slaughter, or buy and [even] keep for the market. He may, however, not retain the animal he bought last for thirty days.'

R. Gamaliel was asked by his disciples whether it is permissible to breed [small cattle]. He said to them: 'It is permissible.' But did we not learn: 'IT IS NOT RIGHT TO BREED'? — What they asked him was really this: 'What about retaining [it]?'[1] He said to them: 'It is permissible, provided it does not go out and pasture with the herd, but is fastened to the legs of the bed.'

Our Rabbis taught:[2] There was once a certain pious person[3] who suffered with his heart, and the doctors on being consulted said that there was no remedy for him unless he sucked warm milk every morning. A goat was therefore brought to him and fastened to the legs of the bed, and he sucked from it every morning. After some days his colleagues came to visit him, but as soon as they noticed

the goat fastened to the legs of the bed they turned back and said: 'An armed robber[4] is in the house of this man, how can we come in to [see] him?' They thereupon sat down and inquired into his conduct, but they did not find any fault in him except this sin about the goat. He also at the time of his death proclaimed: 'I know that no sin can be imputed to me save that of the goat, when I transgressed against the words of my colleagues.'

R. Ishmael[5] said: My father's family belonged to the property owners in Upper Galilee. Why then were they ruined? Because they used to pasture their flocks in forests, and to try money cases without a colleague.[6] The forests were very near to their estates, but there was also a little field near by [belonging to others], and the cattle were led by way of this.

Our Rabbis taught: If a shepherd[7] desires to repent,[8] it would not be right to order him to sell immediately [the small cattle with him], but he may sell by degrees. So also in the case of a proselyte to whom dogs and pigs fall as an inheritance,[9] it would not be right to order him to sell immediately, but he may sell by degrees. So also if one vows to buy a house, or to marry a woman in Eretz Yisrael,[10] it would not be right to order him to enter into a contract immediately, until he finds a house or a woman to suit him. Once a woman being annoyed by her son jumped up [in anger] and swore: 'Whoever will come forward and offer to marry me, I will not refuse him', and as unsuitable persons offered themselves to her, the matter was brought to the Sages, who thereupon said: Surely this woman did not intend her vow to apply save to a suitable person. Just as the Sages said that it is not right to breed small cattle, so also have they said that it is not right to breed small beasts. R. Ishmael said: It is however allowed to breed village dogs,[11] cats, apes, huldoth sena'im [porcupines], as these help to keep the house clean.[12] What are 'huldoth sena'im'? — Rab Judah replied: A certain creeping animal of the harza [species]. Some say, of the harza [species][13] with thin legs which pastures among rose-bushes, and the reason why it is called 'creeping' is because its legs are [short and] underneath it.

Rab Judah said in the name of Rab: We put ourselves in Babylon with reference to the law of breeding small cattle on the same footing as if we were in Eretz Yisrael. R. Adda b. Ahabah said to R. Huna:[14] What about your small cattle? He answered him: Ours are guarded by Hoba.[15] He, however, said to him: Is Hoba prepared to neglect her son so much as to bury him?[16] In point of fact, during the lifetime of R. Adda b. Ahabah, no children born of Hoba survived to R . Huna. Some report : R. Huna said: From the time Rab arrived in Babylon,[17] We put ourselves in Babylon with reference to breeding small cattle on the same footing as if we were in Eretz Yisrael.

Rab and Samuel and R. Assi once met at a circumcision of a boy,[18] or as some say, at the party for the redemption of a son.[19] Rab would not enter before Samuel,[20]

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(1) For a festival; cf. Tosaf. a.l.

(2) Tem. 15b.

(3) [R. Jehudah b. Baba, Tosef. B.K. VIII, 4; cf. however, Tem. 15b and Buchler, Gal. 'Am-ha'ar. p. 191.]

(4) As a goat is prone to pasture anywhere and thus spoil the crops of the public.

(5) [Var. lec., 'R. Simeon Shezuri'.]

(6) Cf. Aboth. IV. 10 and Sanh. I, 1.

(7) Possessing cattle of his own; cf. B.M. 5b.

(8) By taking upon himself not to breed small cattle.

(9) From his heathen relatives; cf. Kid. 17b.

(10) [Tosef. B.K. VIII omits ' Eretz Yisrael'.]

(11) Which are small and harmless.

(12) Tosef. B.K. VIII.

(13) [Harza probably denotes 'digger', and harza 'stinging', v. Lewysohn, Zoologie. p. 94.]

(14) Cf. Naz. 57b.

(15) Who was the wife of R. Huna.

(16) Surely since she has to mind her children she cannot conscientiously guard the cattle. (Tosaf.)

(17) [In 219 C.E. V. Funk, Die Juden in Babylonian, I, note III.]

(18) Lit 'the week of the son', as the circumcision is performed on the eighth day; cf. Lev. XII, 3. [On the term, 'week of the son' v. B.B. (Sonc. ed.) p. 246. n. 8.]

(19) I.e., in the case of a first-born who has to be redeemed on the 31st day; cf. Num. XVIII, 16.

(20) For the reason to be stated.

Talmud - Mas. Baba Kama 80b

nor Samuel before R. Assi,[1] nor R. Assi before Rab.[2] They therefore argued who should go in last, [and it was decided that] Samuel should go in last, and that Rab and R. Assi should go in [together]. But why should not either Rab or R. Assi have been last? — Rab [at first] was merely paying a compliment to Samuel,[3] to make up for the [regrettable] occasion when a curse against him[4] , escaped his lips;[5] for that reason Rab offered him precedence.[6] Meanwhile a cat had come along and bitten off the hand of the child. Rab thereupon went out and declared in his discourse: 'It is permissible to kill a cat, and it is in fact a sin to keep it,[7] and the law of robbery[8] does not apply to it, nor that of returning a lost object to its owner.'[9] Since you have stated that it is permissible to kill it, why again state that it is a sin to keep it? — You might perhaps think that though it is permissible to kill it, there is still no sin committed in keeping it; we are therefore told [that this is not so]. I could still ask: Since you have said that the law of robbery[8] does not apply to it, why again state that the law of returning a lost object to its owner does not apply to it?[10] — Said Rabina: This refers to the skin[10] of the cat [where it was found dead]. An objection was raised [from the following]: R. Simeon b. Eleazar says: It is permissible to breed village dogs, cats, apes and porcupines, as these help to keep the house clean. [Does this not prove that it is permissible to breed cats?] — There is, however, no contradiction, as the latter teaching refers to black cats, whereas the former deals with white ones.[11] But was not the mischief in the case of Rab done by a black cat? — In that case it was indeed a black cat, but it was the offspring of a white one. But is not this the very case about which Rabina raised a question? For Rabina asked: What should be the law in the case of a black cat which is the offspring of a white one? — The problem raised by Rabina was where the black was the offspring of a white one which was in its turn a descendant of a black cat, whereas the accident in the case of Rab occurred through a black cat which was the offspring of a white one that was similarly the offspring of a white cat.

(Mnemonic: Habad Bih Bahan).[12]

R. Aha b. Papa said in the name of R. Abba b. Papa who said it in the name of R. Adda b. Papa, or, as others read, R. Abba b. Papa said in the name of R. Hiyya b. Papa who said it in the name of R. Aha b. Papa, or as others read it still differently, R. Abba b. Papa said in the name of R. Aha b. papa who said it in the name of R. Hanina b. Papa: 'It is permissible to raise an alarm [at public services][13] even on the Sabbath day for the purpose of relieving the epidemic of itching; if the door to prosperity has been shut to an individual it will not speedily be opened; and when one buys a house in Eretz Yisrael, the deed may be written even on the Sabbath day. An objection was raised [from the following:] 'Regarding any other misfortune[14] that might burst forth upon the community, as e.g. itching. locusts, flies, hornets, mosquitoes, a plague of serpents and scorpions, no alarm was raised by [public service, on the Sabbath] but a cry was raised [by privately reciting prayers]?[15] [Does this not prove that no public prayers are to be held on this score on Sabbath?] — There is no contradiction, as the latter case refers to [the period when the plague is in] the moist stage whereas the former deals with dry itching,[16] as R. Joshua b. Levi said:[17] 'The boils brought upon the Egyptians by the Holy One, blessed be He,[18] were moist within but dry without, as it says 'And it became a boil breaking forth with blains upon man and upon beast.'[18]

What is the meaning of the words, 'if the door to prosperity has been shut to an individual it will not speedily be opened'? — Mar Zutra said: It refers to ordination.[19] R. Ashi said: One who is in disfavour is not readily taken into favour.[20] R. Aha of Difti said: He will never be taken into favour. This, however, is not so; for R. Aha of Difti stated this as a matter of personal experience.[21] 'In the case of him who buys a house in Eretz Yisrael the deed may be written even on the Sabbath day.'[22] You mean to say, on the Sabbath?[23] — It must therefore mean as stated by Raba in the case mentioned there,[24] that a Gentile is asked to do it; so also here a Gentile is asked to do it. For though to ask a Gentile to do some work on the Sabbath is Shebuth,[25] the Rabbis did not maintain this prohibition in this case on account of the welfare of Eretz Yisrael.[26] R. Samuel b. Nahmani said in the name of R. Jonathan: He who purchases a town in Eretz Yisrael can be compelled to purchase with it also the roads leading to it from all four sides[27] on account of the welfare of Eretz Yisrael.

Our Rabbis taught:[28] Joshua [on his entry into Eretz Yisrael] laid down ten stipulations:

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(1) On account of seniority.
(2) Whose disciple he was.
(3) Who was the youngest of them.
(4) I.e., Samuel.
(5) For which cf. Shab. 108b.
(6) [But not because he considered Samuel his superior, with the result that, were they to go in together, they would be faced with the dilemma as to which of the two was to enter first; v. Shittah Mekubezeth a.l.]
(7) Cf. Sanh. 15b and supra p. 67.
(8) Lev. XIX. 13.
(9) As required in Deut. XXII,1-3.
(10) That it need not be returned.
(11) Which constitute a danger.
(12) An aid to recollect order of names of the sons of R. Papa that follow in pairs.
(13) On the lines described in Ta'an. 1, 6 and III, 1 etc.
(14) I.e., other than those enumerated in Ta'an. III, 1-8.
(15) Ta'an. 14a.
(16) Which is more dangerous.
(17) Bk. 41a.
(18) Ex. IX, 10.
(19) [Once a man fails in his attempt to secure ordination he cannot obtain it so easily any more.]
(20) Cf. B.B. 12b.
(21) And it should therefore not necessarily be made a general rule.
(22) Cf. Git. 8b.
(23) When it would be a capital offence; cf. Shab. VII. 2.
(24) Shab. 129a and Bez. 22a.
(25) Lit., 'abstention', but which came to denote a matter of mere Rabbinic prohibition on Sabbath and festivals; v. Bez. V, 2.
(26) As they similarly dispensed with Shebuth in the case of Temple service; cf. Pes. 65a.
(27) As transport affects vitally the progress and prosperity of a country.
(28) Cf. 'Er. 17a.

Talmud - Mas. Baba Kama 81a

That cattle be permitted to pasture in woods;[1] that wood may be gathered [by all] in private fields;[1] that grasses may similarly be gathered [by all] in all places, with the exception, however, of a field where fenugrec is growing;[1] that shoots be permitted to be cut off [by all] in all places. with the exception, however, of stumps of olive trees;[1] that a spring emerging [even] for the first time may be used by the townspeople; that it be permitted to fish with an angle in the Sea of Tiberias, provided no

sail is spread as this would detain boats [and thus interfere with navigation]; that it be permitted to ease one's self at the back of a fence even in a field full of saffron; that it be permitted [to the public] to use the paths in private fields until the time when the second rain is expected;[2] that it be permitted to turn aside to [private] sidewalks in order to avoid the road-pegs; that one who has lost himself in the vineyards be permitted to cut his way through when going up and cut his way through when coming down;[3] and that a dead body, which anyone finds has to bury should acquire [the right to be buried on] the spot [where found].

'That cattle be permitted to pasture in woods.' R. Papa said: This applies only to small cattle pasturing in big woods[4] for in the case of small cattle pasturing in small woods or big cattle in big forests it would not be permitted,[5] still less big cattle pasturing in small woods.[5]

'That wood may be gathered [by all] in private fields: 'This applies only to [prickly shrubs such as] Spina regia and hollow.[6] For in the case of other kinds of wood it would not be so. Moreover, even regarding Spina Regia and hollow, permission was not given except where they were still attached to the ground, but after they had been already broken off [by the owner] it would not be so.[7] Again, even in the case of shrubs still attached to the soil, permission was not given except while they were still in a wet state, but once they had become dry it would not be so.[7] But in any case it is not permitted to uproot [them].

'That grasses may similarly be gathered [by all] in all places, with the exception, however, of a field where fenugrec is growing.' Does this mean to say that fenugrec derives some benefit from grasses?[8] If so, a contradiction could be pointed out [from the following:] 'If fenugrec is mixed up with other kinds of grasses, the owner need not be compelled to tear it out[9] [for he will do it in any case on account of the fact that the grasses spoil the fenugrec'.[10] Now, does this not prove that grasses are disadvantageous to fenugrec?] — Said R. Jeremiah: There is no contradiction, for while the latter statement refers to the seeds,[11] the former deals with the pods.[12] It is only to the seeds that grasses are disadvantageous as they make them lean, whereas to the pods[13] they are advantageous, for when placed between grasses they get softer. Or if you like I can say that while one statement refers to fenugrec sown for the use of man, the other refers to fenugrec sown for animals, for since it was sown for animals grasses are also required for it. How can we tell [for what it was sown]?[13] — R. Papa said: If made in beds it is sown for man, but if not in beds it is for animals.

'That shoots be permitted to be cut off [by all] in all places, with the exception, however, of stumps of olive trees.' R. Tanhum and R. Barias explained in the name of a certain old man that in the case of an olive tree the size of the length of an egg has to be left over at the bottom; in the case of reeds and vines [it is only] from the knot and upwards[14] [that it is permitted to cut off shoots]; in the case of all other trees [it is permitted only] from the thick parts of the tree but not from the central part of the tree, and only from a new bough that has not yet yielded fruit but not from an old bough which is yielding fruit; again, only from such spots [on the tree] as do not face the sun

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(1) The reason is given below.

(2) I.e., the seventeenth of Marcheshvan; cf. Ta'an. 6b and Ned VIII,5.

(3) Though damage be done thereby to the vineyard.

(4) Where the trees would thereby not be damaged.

(5) On account of the damage which could be done to the trees.

(6) Or other kinds of thorns and thistles.

(7) As they would then be the exclusive property of the owner.

(8) Which have thus to be preserved.

(9) So as not to transgress Lev. XI. 19: 'thou shalt not sow thy field with mingled seed'; cf. also Shek. I, 1-2.

(10) Kil. II,5.

(11) Which will be used for sowing purposes.

(12) Which are used as food.
(13) So that the stipulation of Joshua should have practical application where it was sown for the use of man.
(14) Cf. B.B. 80b.

Talmud - Mas. Baba Kama 81b

but not from a spot which does face the sun,[1] for so it says 'And for the precious things of the fruits of the sun'.[2]

'That a spring emerging [even] for the first time may be used by the townspeople.' Rabbah son of R. Huna said that the owner[3] is [still] entitled to be paid for its value. The law, however, is not in accordance with this view.

'That it be permitted to fish with an angle in the Sea of Tiberias provided that no sail is spread, as this would detain boats.' It is, however, permitted to fish by means of nets and traps. Our Rabbis taught: 'The tribes stipulated with one another at the very outset that nobody should spread a sail and thus detain boats. It is, however, permitted to fish by means of nets and traps.'[4]

Our Rabbis taught: The Sea of Tiberias was included in the portion of Naphtali. In addition, he received a rope's length of dry land on the southern side to keep nets on, in fulfilment of the verse, Possess thou the sea and the South.[5]

It was taught: R. Simeon b. Eleazar said: Anything found on the mountains detached from the soil was considered as belonging to all the tribes,[6] but if still attached [to the ground] as belonging to the particular tribe [in whose territory it was found]. There was, however, no tribe in Israel which had not land[7] both on the hills and in the vale, in the South and in the valley. as stated: Turn you and take your journey and go to the hill — country of the Amorites, and unto all the places nigh thereunto, in the plain, in the hills and in the vale, and in the South, and by the sea side[8] etc., for you can similarly find the same regarding the Canaanites, perizites and Ammonites who were before them, as stated: 'and unto all nigh thereunto',[8] proving that the same applied to those who were nigh thereunto.

'That it be permitted to ease one's self at the back of a fence even though in a field full of saffron.' R. Aha b. Jacob said: This permission was required only for the taking of a pebble from the fence.[9] R. Hisda said: This may be done even on the Sabbath.[10] Mar Zutra the Pious used to take a pebble from a fence and put it back there and tell his servant[11] to go and make it good again.

'That it be permitted to use the paths in private fields until the time when the second rain is expected.' R. papa said that regarding our land [here in Babylon], even after the fall of [mere] dew this would be harmful.

'That it be permitted to turn aside to [private] sidewalks in order to avoid road pegs.' As Samuel and Rab Judah were once walking on the road, Samuel turned aside to the private sidewalk. Rab Judah thereupon said to him: Do the stipulations laid down by Joshua hold good even in Babylon? — He answered him: I say that it applies even outside Eretz Yisrael. As Rabbi and R. Hiyya were once walking on the road they turned aside to the private sidewalks, while R. Judah b. Kenosa went striding[12] along the main road in front of them. Rabbi thereupon said to R. Hiyya. 'Who is that man who wants to show off[13] in front of us?' R. Hiyya answered him: 'He might perhaps be R. Judah b. Kenosa who is my disciple and who does all his deeds out of pure piety.'[14] When they drew near to him they saw him and R. Hiyya said to him: 'Had you not been Judah b. Kenosa, I would have sawed your joints with an iron saw.'[15]

'That one who lost himself in the vineyards should be permitted to cut his way through when

going up and cut his way through when coming down.' Our Rabbis taught: He who sees his fellow wandering in the vineyards is permitted to cut his way through when going up and to cut his way through when coming down until he brings him into the town or on to the road; so also one who is lost in the vineyards may cut his way through when going up and cut his way through when coming down until he reaches the town or the road.[16] What is the meaning of 'so also'? [Is the latter case not obvious?][17] — You might think that it is only in the case of a fellow-man wandering, in which case he[18] knows where he is going to, that he may cut his way through, whereas in the case of being lost himself, when he does not know where he is going to, he should not be permitted to cut his way through but should have to walk round about the boundaries. We are therefore told that this is not so — Cannot this permission be derived from the Pentateuch? For it was taught: 'Whence can it be derived that it is obligatory to restore the body of a fellow-man?[19] Because it is said: And thou shalt restore it to him[20] [implying him himself, i.e., his person.'[21] Why then was it necessary for Joshua to stipulate this?][22] — As far as the Pentateuch goes, he[23] would have to remain standing between the boundaries [and walk round about]; it was therefore necessary for Joshua to come and ordain that he be permitted to cut his way through when going up and cut his way through when coming down.

'That a dead body, which anyone finding has to bury, should acquire the [right to be buried on the] spot [where found].' A contradiction could be pointed out [from the following:] If one finds a dead person lying on the road, he may remove him to the right side of the road or to the left side of the road. If on the one side of the road there is an uncultivated field and on the other a fallow field, he should remove him to the uncultivated field;[24] so also where on the one side there is a fallow field but on the other a field with seeds he should remove him to the fallow field.[25] But if both of them are uncultivated, or both of them fallow, or both of them sown he may remove him to any place he likes.[26] [Does this not contradict your statement that a dead person acquires the right to be buried on the spot where he was found?] — Said R. Bibi: The dead person [in the latter case] was lying broadways across the boundary so that since permission had to be given to remove him from that spot[27] he may be removed to any place he prefers.

I would here ask: Are these stipulations[28] only ten [in number?] Are they not eleven? — [The permission] to use the paths in private fields is [implied in] a statement made by Solomon, as taught: If a man's produce has already been removed entirely from the field, and nevertheless he does not allow persons to enter his field, what would people say of him if not, 'What [real] benefit has that owner from his field, for in what way would people do him any harm?' It was regarding such a person that the verse says: While you can be good do not call yourself bad.[29] But is it [anywhere] written:[30] 'While you can be good do not call yourself bad'? — Yes, it is written to a similar effect: Withhold not good from him to whom it is due, when it is in the power of thy hand to do it.[31]

But were there no more stipulations?[32] Was there not the one mentioned by R. Judah? For it was taught: 'When it is the season of removing dung, everybody is entitled to remove his dung into the public ground and heap it up there for the whole period of thirty days so that it may be trodden upon by the feet of men and by the feet of animals; for upon this condition did Joshua transfer the land to Israel as an inheritance.[33] Again, was there not also the one referred to by R. Ishmael the son of R. Johanan b. Beroka? For it was taught: R. Ishmael the son of R. Johanan b. Beroka said: It is a stipulation of the Court of Law that the owner of the bees[34] be entitled to go down into his fellow's field and cut off his fellow's bough [upon which his bees have settled] in order to rescue the swarm of his bees while paying only the value of his fellow's bough; it is [similarly] a stipulation of the Court of Law that the owner of wine should pour out his wine [from the flask] so as to save in it the honey of his fellow[35] and recover the value of his wine out of the honey of his fellow; it is [again] a stipulation of the Court of Law that [the owner of a bundle of wood] should remove the wood [from his ass] and load [on his ass] the flax of his fellow [from the back of the ass that fell dead][36] and recover the value of his wood out of the flax of his fellow; for it was upon this stipulation that Joshua transferred the land to Israel for an inheritance.'[37] [Why then were these stipulations not included?]

— Views of individual authorities were not stated [among the stipulations that have unanimous recognition].

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(1) Such as from the sides of the tree.
(2) Deut. XXXIII, 14.
(3) Of the ground where the spring emerged.
(4) Tosef. B.K. VIII.
(5) Deut. XXXIII. 23.
(6) who had an equal right to the spoil.
(7) Cf. B.B. 122a.
(8) In Deut. 1, 7.
(9) Though it would thereby become impaired.
(10) Cf. Shab. 81.
(11) On a weekday.
(12) Upon the road pegs.
(13) By not taking advantage of the stipulation of Joshua and thus showing himself more scrupulous than required by strict law.
(14) Lit., 'in the name of Heaven', and not to show off.
(15) A metaphor for excommunication.
(16) Tosef. B.M. II.
(17) As it is surely covered by the ruling in the former case.
(18) I.e., the guide.
(19) When in danger, just as it is obligatory to restore him his lost chattels.
(20) Deut. XXII. 2.
(21) Cf. Sanh. 73a.
(22) Seeing that it can be derived from the Pentateuch.
(23) The one who lost his way.
(24) So as to interfere as little as possible with agriculture.
(25) V. p. 463,n.9.
(26) 'Er. 17b.
(27) So as not to cause defilement to all those who pass that way.
(28) Enumerated in the cited Baraitha supra p. 459.
(29) Cf. Ber. 30a.
(30) In Scripture.
(31) Prov. III, 27.
(32) Made by Joshua.
(33) Tosef. B.M. XI; supra 30a.
(34) Which settled upon a neighbour's tree.
(35) Carried by him in a jug which suddenly gave way, and the contents which were much more valuable than wine thus became in danger if being wasted.
(36) And which is thus in danger of being wasted if not rescued in time.
(37) Infra 114b.

Talmud - Mas. Baba Kama 82a

But did not R. Abin upon arriving [from Palestine] state on behalf of R. Johanan that the owner of a tree which overhangs a neighbour's field as well as the owner of a tree close to the boundary has to bring the first-fruits [to Jerusalem][1] and read the prescribed text[2] as it was upon this stipulation [that trees might he planted near the boundary of fields and even overhang a neighbour's field] that Joshua transferred the land to Israel[3] for an inheritance.[4] [How then could R. Johanan describe this as a stipulation of Joshua when it was not included in the authoritative text of the Baraitha cited enumerating all the stipulations of Joshua?] — It must therefore be that the Tanna[5] of [the text

enumerating] the ten stipulations laid down by Joshua was R. Joshua b. Levi.[6] R. Gebiha of Be Kathil[7] explicitly taught this in the text: 'R. Tanhum and R. Barias stated in the name of a certain sage, who was R. Joshua b. Levi, that ten stipulations were laid down by Joshua.'

The [following] ten enactments were ordained by Ezra: That the law be read [publicly] in the Minhah[8] service on Sabbath; that the law be read [publicly] on Mondays and Thursdays; that Courts be held on Mondays and Thursdays; that clothes be washed on Thursdays; that garlic be eaten on Fridays; that the housewife rise early to bake bread; that a woman must wear a sinnar;[9] that a woman must comb her hair before performing immersion;[10] that pedlars [selling spicery] be allowed to travel about in the towns,[11] He[12] also decreed[13] immersion to be required[10] by those to whom pollution has happened.[14]

'That the law be read [publicly] in the Minhah service on Sabbath:' on account of shopkeepers [who during the weekdays have no time to hear the reading of the Law].

'That the law be read [publicly] on Mondays and Thursdays.' But was this ordained by Ezra? Was this not ordained even before him? For it was taught: 'And they went three days in the wilderness and found no water,[15] upon which those who expound verses metaphorically[16] said: water means nothing but Torah,[17] as it says: Ho, everyone that thirsteth come ye for water.[18] It thus means that as they went three days without Torah they immediately became exhausted. The prophets among them thereupon rose and enacted that they should publicly read the law on Sabbath, make a break on Sunday, read again on Monday, make a break again on Tuesday and Wednesday, read again on Thursday and then make a break on Friday so that they should not be kept for three days without Torah.'[19] — Originally it was ordained that one man should read three verses or that three men should together read three verses, corresponding to priests, Levites and Israelites.[20] Then Ezra came and ordained that three men should be called up to read, and that ten verses should be read, corresponding to ten batlanim.[21]

'That Courts be held on Mondays and Thursdays' — when people are about, as they come to read the Scroll of the Law. 'That clothes be washed on Thursdays' — that the Sabbath[22] may be duly honoured.

'That garlic be eaten on Fridays' — because of the 'Onah.'[23] as it is written: 'That bringeth forth its fruit in its season'[24] and Rab Judah, or as others say R. Nahman, or as still others say R. Kahana, or again as others say R. Johanan, stated that this refers to him who performs his marital duty every Friday night.[25]

Our Rabbis taught: Five things were said of garlic: It satiates, it keeps the body warm, it brightens up the face, it increases semen, and it kills parasites in the bowels. Some say that it fosters love and removes jealousy.

'That a housewife rise early to bake bread'[26] — so that there should be bread for the poor.[27]

'That a woman must wear a sinnar — out of modesty.

'That a woman comb her hair before performing the immersion.' But this is derived from the pentateuch! For it was taught:[28] 'And he shall bathe [eth besaro] his flesh in water[29] [implying] that there should be nothing intervening between the body and the water; "[eth besaro] his flesh", "eth" [including] whatever is attached to his flesh,[30] i.e. the hair.' [Why then had this to be ordained by Ezra?] — It may, however, be said that as far as the Pentateuch goes it would only have to be necessary to see that the hair should not he knotted or that nothing dirty should be there which might intervene,

(1) Cf. Ex. XXIII. 19.
(2) I.e. Deut. XXVI, 5-10, which could he recited only by one who was the sole legitimate owner of both the fruits and the tree and the ground.
(3) And no misappropriation could thus he traced in the produce of such trees.
(4) How then could R. Johanan, who was an Amora, differ from Tannaitie views?
(5) [MSS omit rightly, 'the Tanna.']
(6) [Who was himself an Amoraic sage from whom R. Johanan might have differed in this case as he did on many other occasions, cf. e.g., Ber. 3b and Meg. 27a.]
(7) [Kathil on the Tigris, N. of Bagdad, Obermeycr, op. cit. p 143.]
(8) I.e., afternoon; cf. Ber. IV, 1.
(9) A sort of garment, breeches (Rashi), or belt. The word is of doubtful origin.
(10) In a ritual plunge bath called Mikweh.
(11) Even against the wishes of the townspeople; cf. B.B. 22a.
(12) I.e., Ezra.
(13) Cf. Ber. 22b.
(14) Cf. Lev. XV, 16; Deut. XXIII, 11-12. [For a discussion of the ten enactments of Ezra, v. Hoffmann, Magazin, 1883 , 48ff.]
(15) Ex. XV. 22.
(16) Doreshe Reshumoth; v. Sanh. (Sonc. ed.) p. 712. n. 12.
(17) Cf. supra p. 76.
(18) Isa. LV, 1.
(19) [Why then was it necessary for Ezra to enact this?]
(20) In which groups the people were classed.
(21) The ten persons released from all obligations and thus having leisure to attend to public duties, and to form the necessary quorum for synagogue services; cf. Meg. 1, 3; v. also Meg. 21b.
(22) Cf. Isa. LVIII. 13 and Shab. 119a.
(23) I.e., the duty of marriage; cf. Ex. XXI, 10 and Keth. V, 6.
(24) Ps. I, 3.
(25) Cf. Keth. 62b.
(26) [J. Meg. IV adds 'on Fridays'.]
(27) Cf. Keth. 67b.
(28) 'Er. 4b.
(29) Lev. XIV, 9.
(30) For a similarity v. supra p. 235.

Talmud - Mas. Baba Kama 82b

whereas Ezra came and ordained actual combing.[1]

'That pedlars selling spicery be allowed to travel about in the towns' — for the purpose of providing toilet articles for the women so that they should not be repulsive in the eyes of their husbands.

'He also decreed that immersion was required for those to whom pollution had happened.' Is not this in the pentateuch, as it is written: And if the flow of seed go out front him, then he shall bathe all his flesh in water?[2] — The pentateuchal requirement referred to terumah and sacrifices and he came and decreed that even for [the study of] the words of the Torah [immersion is needed].

Ten special regulations were applied to Jerusalem:[3] That a house sold there should not be liable to become irredeemable;[4] that it should never bring a heifer whose neck is broken;[5] that it could never be made a condemned city;[6] that its houses would not become defiled through leprosy;[7] that neither

beams nor balconies should be allowed to project there; that no dunghills should be made there; that no kilns should be kept there; that neither gardens nor orchards should be cultivated there, with the exception, however, of the garden of roses[8] which existed from the days of the former prophets;[9] that no fowls should be reared there, and that no dead person should be kept there over night.[10]

'That a house sold there should not be liable to become irredeemable' — for it is written: Then the house that is in the walled city shall be made sure in perpetuity to him that bought it throughout his generations[11] and as it is maintained[12] that Jerusalem was not divided among the tribes.[13]

'That it should never bring a heifer whose neck is broken' — as it is written: If one be found slain in the land which the Lord thy God giveth thee to possess it,[14] and Jerusalem [could not be included as it] was not divided among the tribes.[13]

'That it could never be made a condemned city' — for it is written, [One of] thy cities,[15] and Jerusalem was not divided among the tribes. 'That its houses could not become defiled through leprosy' — for it is written, And I put the plague of leprosy in the house of the land of your possession,[16] and Jerusalem was not divided among the tribes.[13]

'That neither beams nor balconies should be allowed to project' — in order not to form a tent spreading defilement,[17] and not to cause harm to the pilgrims for the festivals.[18]

'That no dunghills be made there' — on account of reptiles.[19]

'That no kilns be kept there' — on account of the smoke.[20]

'That neither gardens nor orchards be cultivated there' — on account of the bad odour [of withered grasses].

'That no fowls be bred there' on account of the sacrifices.

'That no dead person be kept there overnight' — this is known by tradition.

IT IS NOT RIGHT TO BREED PIGS IN ANY PLACE WHATEVER. Our Rabbis taught: When the members of the Hasmonean house were contending with one another, Hyrcanus was within and Aristobulus without [the city wall].[21] [Those who were within] used to let down to the other party every day a basket of denarii, and [in return] cattle were sent up for the regular sacrifices.[22] There was, however, an old man[23] [among the besiegers] who had some knowledge in Grecian Wisdom[24] and who said to them: 'So long as the other party [are allowed to] continue to perform the service of the sacrifices they will not be delivered into your hands.' On the next day when the basket of denarii was let down, a swine was sent up. When the swine reached the centre of the wall it stuck its claws into the wall, and Eretz Yisrael quaked over a distance of four hundred parasangs[25] by four hundred parasangs. It was proclaimed on that occasion: Cursed be the man who would breed swine and cursed be the man who would teach his son Grecian Wisdom. It was concerning this time that we have learnt[26] that the 'Omer[27] was once brought from the gardens of Zarifin and the two loaves[28] from the Valley of En Soker.[29]

But was Grecian Wisdom proscribed? Was it not taught that Rabbi stated: 'Why use the Syriac language in Eretz Yisrael

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(1) For the sake of absolute certainty.

(2) V. Lev. XV. 16.

(3) V. Yoma 23a; 'Ar. 32b and Tosef. Neg. VI, 2. [According to Krauss, REJ. LIII, 29 ff., some of these regulations

relate only to the Temple Mount.]
(4) As should be the case with dwelling houses of a walled city (cf. Lev. XXV, 29-30); but is on the other hand considered as a house of a village which has no wall round about it; (ibid. 31.).
(5) As required in Deut. XXI, 3-4 in the case of a person found slain and it be not known who hath slain him.
(6) Which would he subject to Deut. XIII, 13-18.
(7) Cf. Lev. XIV, 34-53.
(8) Where the Jordan resin grew; cf. Ker. 6a.
(9) [Cf. II Kings XXV, 4; Jer. XXXI, 4; Neh. III, 15. V. Krauss, loc. cit. p. 33.]
(10) Cf. Hag. 26a; v. infra, p. 469.
(11) Lev. XXV. 29-30.
(12) Cf. Yoma 12a.
(13) But was kept in trust for all Israel and could therefore not be subject to a law where absolute private ownership is referred to.
(14) Deut. XXI, 1.
(15) Ibid. XIII, 13.
(16) Lev. XIV, 34.
(17) Cf. Num. XIX, 14.
(18) By the spread of defilement.
(19) Which thrive in dunghills, and as soon as they die they become a source of defilement.
(20) Which would blacken the buildings of the town; cf. B.B. 23a.
(21) [In the parallel passage the roles are reversed, Aristobulus being besieged and Hyrcanus laying the siege; v. Graetz, Geschichte III, p. 710 ff. Cf. Josephus, Ant. XIV, 2,2.]
(22) Cf. Num. XXVIII, 2-4.
(23) [Identified with Antipater, an ally of Hyrcanus, v. Graetz, op. cit. 711.]
(24) [‘Sophistry’. v. Graetz, loc. cit.]
(25) V. Glos.
(26) Men. 64b. [The places are identified respectively with Sarafand near Lydda and Assakar near Nablus.]
(27) Lit., ‘a sheaf’, denoting the public sacrifice of the first-fruits of the harvest described in Lev. XXIII, 10-14.
(28) Cf. ibid. 17.
(29) Sot. 49b and Men. 64b.

Talmud - Mas. Baba Kama 83a

[where] either the Holy Tongue or the Greek language [could be employed]?’ And R. Jose said: ‘Why use the Aramaic language in Babylon [where] the Holy Tongue or the Persian language [could be used]?’ — It may, however, be said that the Greek language is one thing and Grecian Wisdom is another. But was Grecian Wisdom proscribed? Did not Rab Judah say that Samuel stated in the name of R. Simeon b. Gamaliel: ‘[The words] Mine eye affected my soul because of all the daughters of my city[1] [could very well be applied to the] thousand youths who were in my father's house; five hundred of them learned Torah and the other five hundred learned Grecian Wisdom, and out of all of them there remain only I here and the son of my father's brother in Asia’?[2] — It may, however, be said that the family of R. Gamaliel was an exception, as they had associations with the Government, as indeed taught: ‘He who trims the front of his hair[3] in Roman fashion is acting in the ways of the Amorites.’[4] Abtolmus b. Reuben however was permitted to cut his hair in the Gentile fashion as he was in close contact with the Government. So also the members of the family of Rabban Gamaliel were permitted to discuss Grecian Wisdom on account of their having had associations with the Government.

NO MAN SHOULD BREED A DOG UNLESS IT IS ON A CHAIN etc. Our Rabbis taught: No man should breed a dog unless it is kept on a chain. He may, however, breed it in a town adjoining the frontier where he should keep it chained during the daytime and loose it only at night. It was taught: R. Eliezer the Great says that he who breeds dogs is like him who breeds swine. What is the

practical bearing of this comparison? — That he[5] be declared cursed.[6] R. Joseph b. Manyumi said in the name of R. Nahman that Babylon was on a par with a town adjoining the frontier.[7] This, however, was interpreted to refer to Nehardea. R. Dostai of Bira[8] expounded: And when it rested, he said, Return O Lord unto the tens of thousands [and] the thousands of Israel.[9] This, [he said,] teaches that the Shechinah[10] does not rest upon Israel if they are less than two thousand plus two tens of thousands.[11] Were therefore the Israelites [to be twenty-two thousand] less one, and there was there among them a pregnant woman thus capable of completing the number, but a dog barked at her and she miscarried, the [dog] would in this case cause the Shechinah to depart from Israel. A certain woman[12] entered a neighbour's house to bake [there bread], and a dog suddenly barked at her, but the owner of the house said to her: Do not be afraid of the dog as its teeth are gone. She, however, said to him: Take thy kindness and throw it on the thorns, for the embryo has already been moved [from its place].

IT IS NOT RIGHT TO PLACE NETS FOR DOVES UNLESS AT A DISTANCE OF THIRTY RIS FROM INHABITED SETTLEMENTS. But do they proceed so far? Did we not learn that a dove-cote must be kept at a distance from the town of fifty cubits?[13] — Abaye said: They certainly fly much further than that, but they eat their fill within fifty cubits.[14] But do they fly only thirty ris and no more? Was it not taught: 'Where there is an inhabited settlement no net must be spread even for a distance of a hundred mil'? — R. Joseph said: The latter statement refers to a settlement of vineyards;[15] Rabbah said that it refers to a settlement of dove-cotes.[15] But why not lay down the prohibition to spread nets on account of the dovecotes themselves?[16] — If you like I can say that they belong to Cutheans,[17] or if you like I can say that they are ownerless, or if you again like I can say that they are his own. [

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(1) Lam. III, 51.

(2) Sot. 49b and Git. 58a. [This proves that even Grecian Wisdom was not proscribed.]

(3) [Like a fringe on the forehead and lets the curls hang down on the temples (Jast.).]

(4) Which should not be imitated.

(5) Who breeds a dog.

(6) As if he would breed swine.

(7) Cf. 'Er. 45a.

(8) [In Galilee, v. Klein, op. cit., p. 39.]

(9) Num. x, 36; E.V.: unto the many thousands of Israel.

(10) The Divine Presence.

(11) I.e. , twenty-two thousand, comprising the minimum of the plural tens of thousands which is twenty thousand and the minimum of the thousands which is two thousand, cf. also Yeb. 64a.

(12) Cf. Shab. 63a; and supra p. 271.

(13) So that the doves should not consume the produce of the town. (B.B. 11,5.]

(14) On account of which a dove-cote need not be kept away from the town for more than fifty cubits.

(15) Where the doves could thus take rest and fly on to great distances.

(16) Why then base the prohibition upon the proximity of a settlement?

(17) Who did not recognise the necessity of being scrupulous to such an extent and should therefore not be treated better than they treated others: cf. supra p. 211, n. 6. [For a full discussion of the regulations laid down in our Mishnah and developed in the Gemara, as well as their application in the practical life of the Jewish communities in Talmudic times, v. Krauss, REJ, LIII, 14-55.]

Talmud - Mas. Baba Kama 83b

CHAPTER VIII

MISHNAH. ONE WHO INJURES A FELLOW MAN BECOMES LIABLE TO HIM FOR FIVE ITEMS: FOR DEPRECIATION, FOR PAIN, FOR HEALING, FOR LOSS OF TIME AND FOR

DEGRADATION. HOW IS IT WITH 'DEPRECIATION'? IF HE PUT OUT HIS EYE, CUT OFF HIS ARM OR BROKE HIS LEG, THE INJURED PERSON IS CONSIDERED AS IF HE WERE A SLAVE BEING SOLD IN THE MARKET PLACE, AND A VALUATION IS MADE AS TO HOW MUCH HE WAS WORTH [PREVIOUSLY]. AND HOW MUCH HE IS WORTH [NOW]. 'PAIN' — IF HE BURNT HIM EITHER WITH A SPIT OR WITH A NAIL, EVEN THOUGH ON HIS [FINGER] NAIL WHICH IS A PLACE WHERE NO BRUISE COULD BE MADE, IT HAS TO BE CALCULATED HOW MUCH A MAN OF EQUAL STANDING WOULD REQUIRE TO BE PAID TO UNDERGO SUCH PAIN. 'HEALING' — IF HE HAS STRUCK HIM, HE IS UNDER OBLIGATION TO PAY MEDICAL EXPENSES. SHOULD ULCERS [MEANWHILE] ARISE ON HIS BODY, IF AS A RESULT OF THE WOUND, THE OFFENDER WOULD BE LIABLE, BUT IF NOT AS A RESULT OF THE WOUND, HE WOULD BE EXEMPT. WHERE THE WOUND WAS HEALED BUT REOPENED, HEALED AGAIN BUT REOPENED, HE WOULD STILL BE UNDER OBLIGATION TO HEAL HIM. IF, HOWEVER, IT HAD COMPLETELY HEALED [BUT HAD SUBSEQUENTLY REOPENED] HE WOULD NO MORE BE UNDER OBLIGATION TO HEAL HIM. 'LOSS OF TIME' — THE INJURED PERSON IS CONSIDERED AS IF HE WERE A WATCHMAN OF CUCUMBER BEDS[1] [SO THAT THE LOSS OF SUCH WAGES[2] SUSTAINED BY HIM DURING THE PERIOD OF ILLNESS MAY BE REIMBURSED TO HIM]. FOR THERE HAS ALREADY BEEN PAID TO HIM THE VALUE OF HIS HAND OR THE VALUE OF HIS LEG [THROUGH WHICH DEPRIVATION HE WOULD NO MORE BE ABLE TO CARRY ON HIS PREVIOUS EMPLOYMENT]. 'DEGRADATION' — ALL TO BE ESTIMATED IN ACCORDANCE WITH THE STATUS OF THE OFFENDER AND THE OFFENDED.

GEMARA. Why [pay compensation]? Does the Divine Law not say 'Eye for eye'?[3] Why not take this literally to mean [putting out] the eye [of the offender]? — Let not this enter your mind, since it has been taught: You might think that where he put out his eye, the offender's eye should be put out, or where he cut off his arm, the offender's arm should be cut off, or again where he broke his leg, the offender's leg should be broken. [Not so; for] it is laid down, 'He that smiteth any man. . .' 'And he that smiteth a beast . . .'[4] just as in the case of smiting a beast compensation is to be paid, so also in the case of smiting a man compensation is to be paid.[5] And should this [reason] not satisfy you,[6] note that it is stated, 'Moreover ye shall take no ransom for the life of a murderer, that is guilty of death',[7] implying that it is only for the life of a murderer that you may not take 'satisfaction',[8] whereas you may take 'satisfaction' [even] for the principal limbs, though these cannot be restored.' To what case of 'smiting' does it refer? If to [the Verse] 'And he that killeth a beast, shall make it good: and he that killeth a man, shall be put to death',[9] does not this verse refer to murder?[10] — The quotation was therefore made from this text: And he that smiteth a beast mortally shall make it good: life for life,[11] which comes next to and if a man maim his neighbour: as he hath done so shall it be done to him.[12] But is [the term] 'smiting' mentioned in the latter text?[12] — We speak of the effect of smiting implied in this text and of the effect of smiting implied in the other text: just as smiting mentioned in the case of beast refers to the payment of compensation, so also does smiting in the case of man refer to the payment of compensation. But is it not written: And he that smiteth[13] any man mortally shall surely be put to death[14] [which, on account of the fact that the law of murder is not being dealt with here,[15] surely refers to cases of mere injury and means Retaliation]?[16] — [Even this refers to the payment of] pecuniary compensation. How [do you know that it refers] to pecuniary compensation? Why not say that it really means capital punishment?[17] — Let not this enter your mind; first, because it is compared to the case dealt with in the text, 'He that smiteth[13] a beast mortally shall make it good', and furthermore, because it is written soon after, 'as he hath done so shall it be done to him',[18] thus proving that it means pecuniary compensation. But what is meant by the statement, 'if this reason does not satisfy you'? [Why should it not satisfy you?] — The difficulty which further occurred to the Tanna was as follows: What is your reason for deriving the law of man injuring man from the law of smiting a beast and not from the law governing the case of killing a man [where Retaliation is the rule]? I would answer: It is proper to derive [the law of] injury[18] from

[the law governing another case of] injury,[19] and not to derive [the law of] injury[18] from [the law governing the case of] murder. It could, however, be argued to the contrary; [that it is proper] to derive [the law of injury inflicted upon] man from [another case of] man but not to derive [the law of injury inflicted upon] man from [the case of] beast. This was the point of the statement 'If, however, this reason does not satisfy you.' [The answer is as follows:] 'It is stated: Moreover ye shall take no ransom for the life of a murderer that is guilty of death; but he shall surely be put to death, implying that it was only 'for the life of a murderer' that you may not take ransom whereas you may take ransom [even] for principal limbs though these cannot be restored.' But was the purpose of this [verse], Moreover ye shall take no ransom for the life of a murderer, to exclude the case of principal limbs? Was it not requisite that the Divine Law should state that you should not make him[20] subject to two punishments, i.e. that you should not take from him pecuniary compensation as well as kill him? — This, however, could be derived from the verse, According to his crime,[21] [which implies that] you can make him liable for one crime but cannot make him liable for two crimes.[22] But still was it not requisite that the Divine Law should state that you should not take pecuniary compensation from him and release him from the capital punishment? — If so the Divine Law would have written, 'Moreover ye shall take no satisfaction for him who is guilty [and deserving] of death'; why then write 'for the life of a murderer' unless to prove from it that it is only 'for the life of a murderer' that you may not take ransom, whereas you may take ransom [even] for principal limbs though these could not be restored? But since it was written, Moreover ye shall take no ransom [implying the law of pecuniary compensation in the case of mere injury], why do I require [the analogy made between] 'smiting' [in the case of injuring man and] 'smiting' [in the case of injuring beast]? — It may be answered that if [the law would have had to be derived only] from the former text, I might have said that the offender has the option, so that if he wishes he may pay with the loss of his eye or if he desires otherwise he may pay the value of the eye; we are therefore told [that the inference is] from smiting a beast: just as in the case of smiting a beast the offender is liable for pecuniary compensation so also in the case of injuring a man he is liable for pecuniary compensation.

It was taught: R. Dosthai b. Judah says: Eye for eye means pecuniary compensation. You say pecuniary compensation, but perhaps it is not so, but actual retaliation [by putting out an eye] is meant? What then will you say where the eye of one was big and the eye of the other little, for how can I in this case apply the principle of eye for eye? If, however, you say that in such a case pecuniary compensation will have to be taken, did not the Torah state, Ye shall have one manner of law,[23] implying that the manner of law should be the same in all cases? I might rejoin: What is the difficulty even in that case? Why not perhaps say that for eyesight taken away the Divine Law ordered eyesight to be taken away from the offender?[24] For if you will not say this,

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(1) As even a lame or one-armed person could be employed in this capacity.

(2) But not of the previous employment on account of the reason which follows.

(3) Ex. XXI, 24.

(4) Lev. XXIV; for the exact verse see the discussion that follows.

(5) But no resort to Retaliation.

(6) Lit., 'If it is your desire to say (otherwise).'

(7) Num. XXXV, 31.

(8) I.e., ransom, and thus release him from capital punishment.

(9) Lev. XXIV, 21.

(10) Where retaliation actually applies.

(11) Ibid. 18.

(12) Ibid. 19.

(13) E.V.: 'killeth'.

(14) Ibid. 17.

(15) As follows in the text, ' Breach for breach, eye for eye' etc.

(16) The phrase, 'be put to death', would thus refer exclusively to the limb which has to be sacrificed in retaliation.
(17) As indeed appears from the literal meaning of the text.
(18) Lev. XXIV, 19.
(19) I.e., where Man injured beast.
(20) The murderer.
(21) Deut. XXV, 2.
(22) Cf. Mak. 4b and 13b.
(23) Lev. XXIV, 22.
(24) Without taking into consideration the sizes of the respective eyes.

Talmud - Mas. Baba Kama 84a

how could capital punishment be applied in the case of a dwarf killing a giant or a giant killing a dwarf,[1] seeing that the Torah says, Ye shall have one manner of law, implying that the manner of law should be the same in all cases, unless you say that for a life taken away the Divine Law ordered the life of the murderer to be taken away?[2] Why then not similarly say here too that for eyesight taken away the Divine Law ordered eyesight to be taken away from the offender?

Another [Baraitha] taught: R. Simon b. Yohai says: 'Eye for eye' means pecuniary compensation. You say pecuniary compensation, but perhaps it is not so, but actual retaliation [by putting out an eye] is meant? What then will you say where a blind man put out the eye of another man, or where a cripple cut off the hand of another, or where a lame person broke the leg of another? How can I carry out in this case [the principle of retaliation of] 'eye for eye', seeing that the Torah says, Ye shall have one manner of law, implying that the manner of law should be the same in all cases? I might rejoin: What is the difficulty even in this case? Why not perhaps say that it is only where it is possible [to carry out the principle of retaliation that] it is to be carried out, whereas where it is impossible, it is impossible, and the offender will have to be released altogether? For if you will not say this, what could be done in the case of a person afflicted with a fatal organic disease killing a healthy person?[3] You must therefore admit that it is only where it is possible [to resort to the law of retaliation] that it is resorted to, whereas where it is impossible, it is impossible, and the offender will have to be released.

The School of R. Ishmael taught: Scripture says: So shall it be given to him again.[4] The word 'giving' can apply only to pecuniary compensation. But if so, would the words, As he hath [given a blow that] caused a blemish,[4] similarly refer to money?[5] — It may be replied that at the School of R. Ishmael this text was expounded as a superfluous verse; since it has already been written, And if a man maim his neighbour,' as he hath done so shall it be done to him.[6] Why after this do we require the words, so shall it be given to him again? It must, therefore refer to pecuniary compensation. [But still,] why the words, as he hath [given a blow that] caused a blemish in a man? Since it was necessary to write, so shall it be given to him again,[7] the text also writes, as he hath [given a blow that] caused a blemish in a man.

The School of R. Hiyya taught: Scripture says, Hand in hand,[8] meaning an article which is given from hand to hand, which is of course money. But could you also say the same regarding the [next] words, foot in foot? — It may be replied that at the School of R. Hiyya this text was expounded as a superfluous verse, for it has already been written: Then shall ye do unto him as he had purposed to do unto his brother.[9] If then you assume actual retaliation [for injury], why do I require the words, hand in hand? This shows that it means pecuniary compensation. But still, why the words, foot in foot? — Having written 'hand in hand', the text also wrote 'foot in foot'.[8]

Abbaye said: [The principle of pecuniary compensation] could be derived from the teaching of the School of Hezekiah. For the School of Hesekiah taught: Eye for eye, life for life,[10] but not 'life and

eye for eye'. Now if you assume that actual retaliation is meant, it could sometimes happen that eye and life would be taken for eye, as while the offender is being blinded, his soul might depart from him. But what difficulty is this? perhaps what it means is that we have to form an estimate,[11] and only if the offender will be able to stand it will retaliation be adopted, but if he will not be able to stand it, retaliation will not be adopted? And if after we estimate that he would be able to stand it and execute retaliation it so happens that his spirit departs from him, [there is nobody to blame,] as if he dies, let him die. For have we not learnt regarding lashes: 'Where according to estimation he[12] should be able to stand them, but it happened that he died under the hand of the officer of the court, there is exemption [from any blame of manslaughter]'.[13]

R. Zebid said in the name of Raba: Scripture says, Wound for would:[14] This means that compensation is to be made for pain even where Depreciation [is separately compensated].[15] Now, if you assume that actual Retaliation is meant, would it not be that just as the plaintiff suffered pain [through the wound], the offender too would suffer pain through the mere act of retaliation?[16] But what difficulty is this? Why, perhaps, not say that a person who is delicate suffers more pain whereas a person who is not delicate does not suffer [so much] pain, so that the practical result [of the Scriptural inference] would be to pay for the difference [in the pain sustained]!

R. Papa in the name of Raba said: Scripture says, To heal, shall he heal;[17] this means that compensation is to be made for Healing even where Depreciation [is compensated separately]. Now, if you assume that Retaliation is meant, would it not be that just as the plaintiff needed medical attention, the defendant also would surely need medical attention [through the act of retaliation]? But what difficulty is this? Why perhaps not say that there are people whose flesh heals speedily while there are others whose flesh does not heal speedily, so that the practical result [of the Scriptural inference] would be to require payment for the difference in the medical expenses!

R. Ashi said: [The principle of pecuniary compensation] could be derived from [the analogy of the term] 'for' [occurring in connection with Man] with the term 'for' occurring in connection with Cattle. It is written here, 'Eye for eye,' and it is also written there, he shall surely pay ox for ox.[18] [This indicates that] just as in the latter case it is pecuniary compensation that is meant, so also in the former case it means pecuniary compensation. But what ground have you for comparing the term 'for' with 'for' [mentioned in connection] with cattle, rather than with the 'for' [mentioned in connection] with [the killing of] man, as it is written, thou shalt give life for life,[19] so that, just as in the case of murder it is actual Retaliation, so also here it means actual Retaliation? — It may be answered that it is more logical to infer [the law governing] injury from [the law governing another case of] injury[18] than to derive [the law of] injury from [the law applicable in the case of] murder.[19] But why not say on the contrary, that it is more logical to derive [the law applying to] Man from [a law which similarly applies to] Man[19] than to derive [the law applying to] Man from [that applying to] Cattle? — R. Ashi therefore said: It is from the words for he hath humbled her,[20] that [the legal implication of 'eye for eye'] could be derived by analogy, as [the law in the case of] Man is thus derived from [a law which is similarly applicable to] Man, and the case of injury from [a similar case of] injury.

It was taught: R. Eliezer said: Eye for eye literally refers to the eye [of the offender]. Literally, you say? Could R. Eliezer be against all those Tannaim [enumerated above]?[21] — Raba thereupon said: it only means to say that the injured person would not be valued as if he were a slave.[22] Said Abaye to him: How else could he be valued? As a freeman? Could the bodily value of a freeman be ascertained by itself? — R. Ashi therefore said: It means to say that the valuation will be made not of [the eye of] the injured person but of [that of] the offender.[23]

An ass once bit off the hand of a child. When the case was brought before R. Papa b. Samuel he said [to the sheriffs of the court], 'Go forth and ascertain the value of the Four items.'[24] Said Raba to

him: Have we not learnt Five [items]? — He replied: I did not include Depreciation. Said Abaye to him: Was not the damage in this case done by an ass, and in the case of an ass [injuring even man] there is no payment except for Depreciation?[25] — He therefore ordered [the sheriffs], 'Go forth and make valuation of the Depreciation.' But has not the injured person to be valued as if he were a slave? — He therefore said to them, 'Go forth and value the child as if it were a slave.' But the father of the child thereupon said, 'I do not want [this method of valuation], as this procedure is degrading.' They, however, said to him, 'What right have you to deprive the child of the payment which would belong to it?'[26] He replied, 'When it comes of age I will reimburse it out of my own.

An ox once chewed the hand of a child. When the case was brought before Raba, he said [to the sheriffs of the court], 'Go forth and value the child as if it were a slave.' They, however, said to him, 'Did not the Master [himself] say that payment for which the injured party would have to be valued as if he were a slave,[27] cannot be collected in Babylon?'[28] — He replied, 'My order would surely have no application except in case of the plaintiff becoming possessed of property belonging to the defendant.'[29] Raba thus follows his own principle, for Raba said: Payment for damage done to chattel by Cattle[30] or for damage done to chattel by Man can be collected even in Babylon,[31] whereas payment for injuries done to man by Man or for injuries done to man by Cattle cannot be collected in Babylon. Now, what special reason is there why payment for injuries done to man by Cattle cannot [be collected in Babylon] if not because it is requisite [in these cases that the judges be termed] Elohim,[32] [a designation] which is lacking [in Babylon]? Why then should the same not be also regarding payment for [damage done] to chattel by Cattle or to chattel by Man, where there is similarly

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(1) Where the bodies of the murderer and the murdered are not alike.

(2) Without considering the weights and sizes of the respective bodies.

(3) In which case the murderer could not be convicted by the testimony of witnesses; v. Sanh. 78a.

(4) Lev. XXIV. 20.

(5) Which could of course not be maintained.

(6) Ibid. 19.

(7) To indicate that pecuniary compensation is to be paid.

(8) Deut. XIX, 21. (E.V.: Hand for hand, foot for foot.)

(9) Ibid. 19.

(10) Ex. XXI, 24.

(11) Whether the offender would stand the operation or not.

(12) Who is subject to the thirty-nine lashes for having transgressed a negative commandment.

(13) Mak. III. 14.

(14) Ex. XXI, 25.

(15) V. supra 26b.

(16) How then could there he extra compensation for pain?

(17) Ex. XXI, 19. (E.V.: shall cause him to be thoroughly healed.)

(18) Ibid. 36.

(19) Ibid. 23.

(20) Deut.XXII, 29.

(21) Proving against Retaliation.

(22) In the manner described supra p. 473.

(23) As the pecuniary compensation in this case is a substitution for Retaliation.

(24) Enumerated supra p. 473.

(25) V. supra 26a.

(26) Cf, infra 87b.

(27) I.e., where the damages could otherwise not be ascertained.

(28) Because the judges there have not been ordained as Mumhe (v. Glos.) who alone were referred to by the Scriptural term Elohim standing for 'judges' as in Ex. XXI, 6 and XXII, 7-8, and who alone were qualified to administer penal

justice; cf. Sanh. 2b, 5a, and 14a and supra p. 144.

(29) Cf. supra p. 67.

(30) Lit., 'ox'.

(31) As these matters are of a purely civil nature and of frequent occurrence, as brought out by the discussion which follows.

(32) As in Ex. XXI, 6 and XXII, 7-8.

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required the designation of Elohim which is lacking [in Babylon]? But if on the other hand the difference in the case of chattel [damaged] by Cattle or chattel [damaged] by Man is because we [in Babylon] are acting merely as the agents [of the mumhin[1] judges in Eretz Yisrael] as is the practice with matters of admittances and loans,[2] why then in the case of man [injured] by Man or man [injured] by Cattle should we similarly not act as their agents as is indeed the practice with matters of admittances and loans?[2] — It may, however, be said that we act as their agents only in regard to a matter of payment which we can fix definitely, whereas in a matter of payment which we are not able to fix definitely [but which requires valuation] we do not act as their agents. But I might object that [payment for damage done] to chattel by Cattle or to chattel by Man we are similarly not able to fix definitely, but we have to say, 'Go out and see at what price an ox is sold on the market place.' Why then in the case of man [injured] by Man, or man [injured] by Cattle should you not similarly say, 'Go out and see at what price slaves are sold on the market place'? Moreover, why in the case of double payment[3] and four-fold or five-fold payment[4] which can be fixed precisely should we not act as their agents?[5] — It may, however, be said that we may act as their agents only in matters of civil liability, whereas in matters of a penal nature[6] we cannot act as their agents. But why then regarding payment [for an injury done] to man by Man which is of a civil nature should we not act as their agents? — We can act as their agents only in a matter of frequent occurrence, whereas in the case of man injured by Man which is not of frequent occurrence we cannot act as their agents. But why regarding Degradation,[7] which is of frequent occurrence, should we not act as their agents? — It may indeed be said that this is really the case, for R. Papa ordered four hundred zuz to be paid for Degradation. But this order of R. Papa is no precedents for when R. Hisda sent to consult R. Nahman [in a certain case] did not the latter send back word, 'Hisda, Hisda, are you really prepared to order payment of fines in Babylon?'[8] — It must therefore be said that we can act as their agents only in a matter which is of frequent occurrence and where actual monetary loss is involved,[9] whereas in a matter of frequent occurrence but where no actual monetary loss is involved, or again in a matter not of frequent occurrence though where monetary loss is involved we cannot act as their agents. It thus follows that in the case of man [injured] by Man, though there is there actual monetary loss, yet since it is not of frequent occurrence we cannot act as their agents, and similarly in respect of Degradation, though it is of frequent occurrence, since it involves no actual monetary loss, we cannot act as their agents.

Is payment for damage done to chattel by Cattle really recoverable in Babylon? Has not Raba said: 'If Cattle does damage, no payment will be collected in Babylon'?[10] Now, to whom was damage done [in this case stated by Raba]? If we say to man, why then only in the case of Cattle injuring man?[11] Is it not the fact that even in the case of Man injuring man[12] payment will not be collected in Babylon? It must therefore surely refer to a case where damage was done to chattel and it was nevertheless laid down that no payment would be collected in Babylon![13] — It may, however, be said that that statement referred to Tam,[14] whereas this statement deals with Mu'ad.[15] But did Raba not say that there could be no case of Mu'ad[16] in Babylon? — It may, however, be said that where an ox was declared Mu'ad there [in Eretz Yisrael][17] and brought over here [in Babylon, there could be a case of Mu'ad even in Babylon] — But surely this[18] is a matter of no frequent occurrence, and have you not stated that in a matter not of frequent occurrence we cannot act as their agents? — [A case of Mu'ad could arise even in Babylon] where the Rabbis of Eretz Yisrael came to Babylon

and declared the ox Mu'ad here. But still, this also is surely a matter of no frequent occurrence,[19] and have you not stated that in a matter not of frequent occurrence we cannot act as their agents? — Raba must therefore have made his statement [that payment will be collected even in Babylon where chattel was damaged by Cattle] with reference to Tooth and Foot which are Mu'ad ab initio.

PAIN: — IF HE BURNT HIM EITHER WITH A SPIT OR WITH A NAIL, EVEN THOUGH ON HIS [FINGER] NAIL WHICH IS A PLACE WHERE NO BRUISE COULD BE MADE etc. Would Pain be compensated even in a case where no depreciation was thereby caused? Who was the Tanna [that maintains such a view]?Raba replied: He was Ben ‘Azzai, as taught: Rabbi said that ‘burning’[20] without bruising is mentioned at the outset, whereas Ben ‘Azzai said that [it is with] bruising [that it] is mentioned at the outset. What is the point at issue between them? Rabbi holds that as ‘burning’ implies even without a bruise, the Divine Law had to insert ‘bruise’,[21] to indicate that it is only where the burning caused a bruise that there would be liability,[22] but if otherwise this would not be so,[23] whereas Ben ‘Azzai maintained that as ‘burning’ [by itself] implied a bruise, the Divine Law had to insert ‘bruise’ to indicate that ‘burning’ meant even without a bruise.[24] R. Papa demurred: On the contrary, it is surely the reverse that stands to reason:[25] Rabbi who said that ‘burning’, [without bruising] is mentioned at the outset holds that as ‘burning,’ implies also a bruise, the Divine Law inserted ‘bruise’ to indicate that ‘burning,’ meant even without a bruise,[26] whereas Ben ‘Azzai who said that [it was] with bruising [that it] was mentioned at the outset maintains that as ‘burning’ implies even without a bruise, the Divine Law purposely inserted ‘bruise’ to indicate that it was only where the ‘burning’ has caused a bruise that there will be liability, but if otherwise this would not be so; for in this way they[27] would have referred in their statements to the law as it stands now in its final form. Or, alternatively, it may be said that both held that ‘burning’ implies both with a bruise and without a bruise, and here

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(1) V. Glos. s.v. Mumhe.

(2) For which cf. Sanh. (Sonc. ed.) p. 4, n. 3.

(3) For theft.

(4) For having slaughtered or sold the stolen sheep and ox respectively.

(5) Why then should these not be adjudicated and collected in Babylon?

(6) As is the case with double payment and four-fold or five-fold payment.

(7) [Omitting with MS.M. ‘blemish’ paid in case of rape, and occurring in cur. edd.]

(8) Cf. supra 27b.

(9) Excluding thus a loss of mere prospective profits.

(10) V. supra p. 481, n. 5.

(11) Which is of no frequent occurrence at all.

(12) Which is of slightly more frequent occurrence.

(13) This contradicts the statement made by the same Raba (supra p. 481) that payment for damage done to chattel by Cattle will be collected even in Babylon.

(14) In which case the payment is of a penal nature (as decided supra p. 67), which cannot be collected in Babylon.

(15) Where the payment is of a strictly civil nature, and accordingly collected even in Babylon.

(16) Regarding damage done by Horn, for since for the first three times of goring no penalty could be imposed in Babylon, the ox could never be declared Mu'ad.

(17) Where the judges are Mumhin and thus qualified to administer also penal justice.

(18) I.e., to bring over an ox already declared Mu'ad in Eretz Yisrael to Babylon.

(19) Cf. Keth. 110b.

(20) Ex. XXI, 25.

(21) Ibid.

(22) For the payment of Pain.

(23) I.e., Pain would not be compensated since no depreciation was thereby caused.

(24) Pain would therefore even in this case be compensated in accordance with Ben ‘Azzai who could thus be considered to have been the Tanna of the Mishnaic ruling.

(25) That the Tanna of the Mishnaic ruling was most probably Rabbi and not his opponent, and moreover the statements made by Rabbi and Ben ‘Azzai should be taken to give the final implication of the law and not as it would have been on first thoughts.
(26) So that Pain will be paid even in this case according to Rabbi who was the Tanna of the Mishnaic ruling.
(27) I.e., Rabbi and Ben ‘Azzai.

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they were differing on the question of a generalisation and a specification placed at a distance from each other,[1] Rabbi maintaining that in such a case the principle of a generalisation followed by a specification does not apply,[2] whereas Ben ‘Azzai maintained that the principle of a generalisation followed by a specification does apply.[3] And should you ask why, according to Rabbi, was it necessary to insert ‘bruise’,[4] [the answer would be that it was necessary to impose the payment of] additional money.[5] IT HAS TO BE CALCULATED HOW MUCH A MAN OF EQUAL STANDING WOULD REQUIRE TO BE PAID TO UNDERGO SUCH PAIN. But how is pain calculated in a case where Depreciation [also has to be paid]?[6] — The father of Samuel[7] replied: We have to estimate how much a man would require to be paid to have his arm cut off. To have his arm cut off? Would this involve only Pain and not also all the Five Items?[8] Moreover, are we dealing with fools [who would consent for any amount to have their arm cut off]? — It must therefore refer to the cutting off of a mutilated arm.[9] But even [if the calculation be made on the basis of] a mutilated arm, would it amount only to Pain and not also to Pain plus Degradation, as it is surely a humiliation that a part of the body should be taken away and thrown to dogs? — It must therefore mean that we estimate how much a man whose arm had by a written decree of the Government to be taken off by means of a drug would require that it should be cut off by means of a sword. But I might say that even in such a case no man would take anything [at all] to hurt himself [so much]? — It must therefore mean that we have to estimate how much a man whose arm had by a written decree of the Government to be cut off by means of a sword would be prepared to pay that it might be taken off by means of a drug. But if so, instead of TO BE PAID should it not be written ‘to pay’? — Said R. Huna the son of R. Joshua: It means that payment to the plaintiff will have to be made by the offender to the extent of the amount which the person sentenced would have been prepared to pay.

‘HEALING’: — IF HE HAS STRUCK HIM HE IS UNDER OBLIGATION TO PAY MEDICAL EXPENSES etc. Our Rabbis taught: Should ulcers grow on his body as a result of the wound and[10] the wound break open again, he has still to heal him and is liable to pay him for Loss of Time, but if it was not caused through the wound he has not to heal him and need not pay him for Loss of Time. R. Judah, however, said that even if it was caused through the wound, though he has to heal him, he has not to pay him for Loss of Time. The Sages said: The Loss of Time and Healing [are mentioned together in Scripture:][11] Wherever there is liability for Loss of Time there is liability for Healing but wherever there is no liability for Loss of Time there is no liability for Healing. In regard to what principle do they[12] differ? — Rabbah said: ‘I found the Rabbis at the School of Rab sitting and saying[13] that the question whether [or not] a wound may be bandaged[14] [by the injured person] was the point at issue. The Rabbis[15] maintained that a wound may be bandaged, whereas R. Judah maintained that a wound may not be bandaged, so that [it was only] for Healing of which there is a double mention in Scripture[16] that there is liability,[17] but for Loss of Time of which there is no double mention in Scripture there is no liability. I, however, said to them that if a wound may not be bandaged there would be no liability even for Healing.[18] We must therefore say that all are agreed that a wound may be bandaged, but not too much; R. Judah held that since it may not be bandaged too much [it is only] for Healing of which there is a double mention in Scripture that there will be liability, but for Loss of Time of which there is no double mention in Scripture there will be no liability, whereas the Rabbis maintained that since Scripture made a double mention of healing there will be liability also for Loss of Time which is compared to Healing. R. Judah, however, maintained that there will be no liability for Loss of Time as Scripture excepted this by [the term] ‘only’;[11] to

which the Rabbis[19] might rejoin that 'only' [was intended to exclude the case] where the ulcers that grew were not caused by the wound. But according to the Rabbis mentioned last[20] who stated that whenever there is liability for Loss of Time there is liability for Healing, whereas where there is no liability for loss of Time there could be no liability for Healing — why do I require the double mention of Healing? — This was necessary for the lesson enunciated by the School of R. Ishmael, as taught: 'The School of R. Ishmael taught: [The words] "And to heal he shall heal''[21] [are the source] whence it can be derived that authorisation was granted [by God] to the medical man to heal.'[22]

Our Rabbis taught: Whence can we learn that where ulcers have grown on account of the wound and[23] the wound breaks open again, the offender would still be liable to heal it and also pay him for [the additional] Loss of Time? Because it says: Only he shall pay for the loss of his time and to heal he shall heal.[24] [That being so, I might say] that this is so even where the ulcers were not caused by the wound. It therefore says further 'only'. R. Jose b. Judah, however, said that even where they were caused by the wound he would be exempt, since it says 'only'. Some say that [the view of R. Jose that] 'even where they were caused by the wound he would be exempt' means altogether from any [liability whatsoever],[25] which is also the view of the Rabbis mentioned last. But others say that even where they were caused by the wound he would be exempt means only from paying for additional Loss of Time, though he would be liable for Healing. With whom [would R. Jose b. Judah then be concurring in his statement]? With his own father.[26]

The Master stated: '[In that case I might say] that this is so even where the ulcers were not caused by the wound. It therefore says further "only".' But is a text necessary to teach [that there is exemption] in the case where they were caused not by the wound?[27] — It may be replied that what is meant by 'caused not by the wound' is as taught: 'If the injured person disobeyed his medical advice and ate honey or any other sort of sweet things, though honey and any other sort of sweetness are harmful to a wound, and the wound in consequence became gargutani [scabby], it might have been said that the offender should still be liable to [continue to] heal him. To rule out this idea it says "only".'[28] What is the meaning of gargutani? — Abaye said: A rough seam.[29] How can it be cured? — By aloes, wax and resin.

If the offender says to the injured person: 'I can personally act as your healer',[30] the other party can retort 'You are in my eyes like a lurking lion.'[31] So also if the offender says to him 'I will bring you a physician who will heal you for nothing', he might object, saying 'A physician who heals for nothing is worth nothing.' Again, if he says to him 'I will bring you a physician from a distance', he might say to him, 'If the physician is a long way off, the eye will be blind [before he arrives].'[32] If, on the other hand, the injured person says to the offender, 'Give the money to me personally as I will cure myself', he might retort 'You might neglect yourself and thus get from me too much.' Even if the injured person says to him, 'Make it a fixed and definite sum', he might object and say, 'There is all the more danger that you might neglect yourself [and thus remain a cripple], and I will consequently be called "A harmful ox."'

A Tanna taught: 'All [the Four Items][33] will be paid [even] in the case where Depreciation [is paid independently].' Whence can this ruling be deduced? — Said R. Zebid in the name of Raba: Scripture says: Wound for wound,[34] to indicate the payment of pain even in the case where Depreciation [is paid independently].[35] But is not this verse required

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(1) Such as here the term 'hurts' which is a generalisation as it implies all kinds of burning whether with a bruise or without a bruise, and the term 'bruise' which specifies an injury with a bruise, are separated from each other by the intervening clause 'wound for wound'.

(2) To render the generalisation altogether ineffective; cf supra p. 371.

(3) Even in such a case.

(4) Since the term 'burning' is a generalisation and by itself implies both with a bruise and without a bruise.

(5) I.e., for Depreciation as explained by Rashi, or for the Pain where the burning left a mark and thus aggravated the ill feeling (Tosaf).
(6) Such as where an arm was cut off and Depreciation had already been paid.
(7) Abba b. Abba.
(8) Whereas the problem raised deals with a case where the other items have already been paid for.
(9) Which is still attached to the body but unable to perform any work.
(10) [Maim. Yad, Hobel, II, 19 reads 'or'.]
(11) Ex. XXI, 19.
(12) I.e., R. Judah and the other Rabbis.
(13) In the name of Rab; cf. Suk. 17a.
(14) To prevent the cold from penetrating the wound though the bandage may cause swelling through excessive heat.
(15) In opposing R. Judah.
(16) Ex. XXI, 19 lit., 'to heal he shall heal'.
(17) Though the plaintiff had no right to bandage the wound which caused the ulcers to grow.
(18) Since the plaintiff would be to blame for the ulcer that grew through the bandage if he had no right to put it on.
(19) I.e., the first Tanna.
(20) Under the name of Sages.
(21) Cf. p. 487, n. 6.
(22) And it is not regarded as 'flying in the face of Heaven'; v. Ber. 60a.
(23) V. p. 486, n. 5.
(24) Ex. XXI, 19.
(25) Even from Healing.
(26) I.e., R. Judah who orders payment for Healing but not for Loss of Time.
(27) Why indeed would liability have been suggested?
(28) Implying that the liability is qualified and thus excepted in such and similar cases.
(29) Rashi: 'wild flesh'.
(30) And need thus not employ a medical man.
(31) I.e., 'I am not prepared to trust you'; cf. B.M. 101; B.B. 168a.
(32) [So S. Strashun; Rashi: 'If the physician is from far he might blind the eye'; others: 'A physician from afar has a blind eye'. i.e., he is little concerned about the fate of his patient.]
(33) I.e., Pain, Healing, Loss of Time, and Degradation.
(34) Ex. XXI, 25.
(35) Supra 26b.

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to extend liability [for Depreciation] to the case of inadvertence equally with that of willfulness, and to the case of compulsion equally with that of willingness? — If so [that it was required only for such a rule] Scripture would have said 'Wound in the case of wound'; why [say] '. . . for wound', unless to indicate that both inferences are to be made from it?[1] R. Papa said in the name of Raba: Scripture says And to heal shall he heal,[2] [thus enjoining] payment for Healing even in the case where Depreciation is paid independently. But is not that verse required for the lesson taught at the School of R. Ishmael for it was indeed taught at the School of R. Ishmael that [the text] 'And to heal he shall heal' [is the source] whence it is derived that authorisation was granted [by God] to the medical man to heal?[3] — If so [that it was to be utilised solely for that implication] Scripture would have said, 'Let the physician cause him to be healed' — This shows that payment for Healing should be made even in the case where Depreciation [is paid independently]. But still, is not the text required as said above to provide a double mention in respect of Healing? — If so, Scripture should have said either 'to cause to heal [and] to cause to heal'[4] or 'he shall cause to heal [and] he shall cause to heal.[5] Why say 'and to heal he shall heal'[6] unless to prove that payment should be made for Healing even in the case where Deprecation [is paid independently].

From this discussion it would appear that a case could arise where the Four Items would be paid even where no Depreciation was caused. But how could such a case be found where no Depreciation was caused? — Regarding Pain it was stated: 'PAIN': — IF HE BURNT HIM EITHER WITH A SPIT OR WITH A NAIL, EVEN ON HIS [FINGER] NAIL WHICH IS A PLACE WHERE NO BRUISE COULD BE MADE, Healing could apply in a case where one had been suffering from some wound which was being healed up, but the offender put on the wound a very strong ointment which made the skin look white [like that of a leper] so that other ointments have to be put on to enable him to regain the natural colour of the skin — Loss of Time [without Depreciation could occur] where the offender [wrongfully] locked him up in a room and thus kept him idle. Degradation [could apply] where he spat on his face.

'LOSS OF TIME': — THE INJURED PERSON IS CONSIDERED AS IF HE WERE A WATCHMAN OF CUCUMBER BEDS. Our Rabbis taught: '[In the case of assessing] Loss of Time, the injured person is considered as if he would have been a watchman of cucumbers. You might say that the requirements of justice suffer thereby, since when he was well[7] he would surely not necessarily have worked for the wages of a watchman of cucumber beds but might have carried buckets of water and been paid accordingly, or have acted as a messenger and been paid accordingly.[8] But in truth the requirements of justice do not suffer, for he has already been paid for the value of his hand or for the value of his leg.[9]

Raba said: If he cut off [another's] arm he must pay him for the value of the arm, and as to Loss of Time,[10] the injured person is to be considered as if he were a watchman of cucumber beds; so also if he broke [the other's] leg, he must pay him for the value of the leg, and as to Loss of Time the injured person is to be considered as if he were a door-keeper; if he put out [another's] eye he must pay him for the value of his eye, and as to Loss of Time the injured person is to be considered as if he were grinding in the mill; but if he made [the other] deaf, he must pay for the value of the whole of him.[11]

Raba asked: If he had cut off [another man's] arm and before any appraisement had been made he also broke his leg, and again before any appraisement had been made he put out his eye, and again before any appraisement had been made he made him at last deaf, what would be the law? Shall we say that since no valuation has yet been made one valuation would be enough, so that he would have to pay him altogether for the value of the whole of him, or shall perhaps each occurrence be appraised by itself and paid for accordingly? The practical difference would be whether he would have to pay for Pain and Degradation of each occurrence separately. It is true that he would not have to pay for Depreciation, Healing and Loss of Time regarding each occurrence separately, the reason being that since he has to pay him for the whole of him the injured person is considered as if killed altogether, and there could surely be made no more payment than for the value of the whole of him; but in respect of Pain and Degradation the payment should be made for each occurrence separately, as he surely suffered pain and degradation on each occasion separately. If, however, you find it [more correct] to say that since no appraisement had been yet made he can pay him for the value of the whole of him altogether, what would be the law where separate appraisements were made? Shall we say that since separate valuations were made the payment should be for each occurrence by itself, or since the payment had not yet been made he has perhaps to pay him for the value of the whole of him? This must remain undecided.

Rabbah asked: What would be the law regarding Loss of Time that renders the injured person of less value [for the time being]. How could we give an example? For instance, where he struck him on his arm and the arm was broken but will ultimately recover fully.[12] What would be the legal position?[13] [Shall we say that] since it will ultimately recover fully he need not pay him [for the value of the arm], or perhaps [not so], since for the time being he diminished his value? — Come and hear:[14] If one strikes his father and his mother without making on them a bruise,[15] or injures

another man on the Day of Atonement,[16]

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(1) Ibid.

(2) Ex. XXI, 19. [The emphasis indicates that this payment had to be made in all circumstances.]

(3) V. supra p. 488.

(4) I.e., a repetition of the infinitive.

(5) I.e., a repetition of the verb in the finite mood.

(6) I.e., on one occasion the verb is in the infinitive and on the other in the finite mood.

(7) Cf. Rashi; but also Tosaf. a.l.

(8) Why then not pay him for Loss of Time in accordance with the proper wage?

(9) In the way of Depreciation, and could in fact no more work in his previous employment but in a different capacity such as a watchman of cucumbers or a doorkeeper.

(10) During the days of illness when he is totally unable to do any work.

(11) As by having been made deaf he is unfit to do anything.

(12) In which case the depreciation is but temporary.

(13) Regarding the payment for Depreciation.

(14) Infra p. 87a.

(15) In which case the capital offence of Ex. XXI, 25 has not been committed; v. Sanh. 84b.

(16) The violation of which entails no capital punishment at the hands of a court of law; cf. Lev. XXIII, 30 and Ker. I,1. Again, though lashes could be involved in this case in accordance with Mak. III, 2, the civil liability holds good as supra p. 407.

he is liable for all of the Five Items. Now, how are we to picture no bruise being made [in such a case]? Does this not mean, e.g., where he struck him on his arm which will ultimately recover[1] and it is nevertheless stated that he 'is liable for all of the Five Items'?[2] — It may, however, be said that we are dealing here with a case where e.g.,he made him deaf[3] without making a bruise on him. But did Rabbah not say[4] that he who makes his father deaf is subject to be executed,[5] for it is impossible to cause deafness without first making a bruise through which a drop of blood falls into the ear?[6] — It must therefore be said that we are dealing here with a case where e.g. he shaved him [against his will] — But will not the hair grow again in the case of shaving? And that is the very question propounded.[7] — It may, however, be said that we are dealing here with a case where e.g. he smeared nasha[8] over it so that no hair will ever grow there again. Pain [in such a case should similarly be paid] where he had scratches on his head and thus suffered on account of the sores. Healing [should similarly be paid] as it requires curing. Loss of Time would be where he was a dancer in wine houses and has to make gestures by moving his head and cannot do so [now] on account of these scratches.[9] Degradation [should certainly be paid], for there could hardly be a case of greater degradation.

But this matter which was doubtful to Rabbah was quite certain to Abaye taking one view, and to Raba taking the opposite view. For it was stated: If he struck him on his arm and the arm was broken but so that it would ultimately recover completely, Abaye said that he must pay for General Loss of Time[10] plus Particular Loss of time, whereas Raba said that he will not have to pay him anything but for the amount of the Loss of Time[11] for each day [until he recovers].

It was stated: If a man cuts off the arm of a Hebrew servant of another, Abaye said that he will have to pay the servant for General Loss of Time, and the master for Particular Loss of Time, whereas Raba said that the whole payment should be given to the servant[12] who would have to [invest it and] purchase real property whose produce would be enjoyed by the master. There is no question that where the servant became [through the injury] depreciated in his personal value while no loss was caused so far as the master was concerned, as for instance, where the offender split the top of the servant's ear or the top of his nostrils,[13] the whole payment would go to the servant

himself. It was only where the depreciation affected the master [also][14] that Abaye and Raba differ. 'DEGRADATION': — ALL TO BE ESTIMATED IN ACCORDANCE WITH THE STATUS OF THE OFFENDER AND THE OFFENDED. May we say that our Mishnah is in agreement neither with R. Meir nor with R. Judah but with R. Simeon? For it was taught: 'All [sorts of injured persons] should be considered as if they were freemen who have become impoverished since they are all the children of Abraham, Isaac and Jacob;[15] this is the view of R. Meir. R. Judah says that [Degradation in the case of] the eminent man [will be estimated] in accordance with his eminence, [whereas in the case of] the insignificant man [it will be estimated] in accordance with his insignificance. R. Simeon says that wealthy persons will be considered merely as if they were freemen who have become impoverished, whereas the poor will all be put on the level of the least among them.[16] Now, in accordance with whom is our Mishnah? It could not be in accordance with R. Meir, for the Mishnah states that all are to be estimated in accordance with the status of the offender and the offended, whereas according to R. Meir all [sorts of persons] are treated alike. It could similarly not be in accordance with R. Judah, for the Mishnah [subsequently] states[17] that he who insults even a blind person is liable, whereas R. Judah[18] says that a blind person is not subject to the law of Degradation. Must the Mishnah therefore not be in accordance with R. Simeon?[19] — You may say that they are [even] in accordance with R. Judah. For the statement made by R. Judah that a blind person is not subject to the law of Degradation means that no payment will be exacted from him [where he insulted others], whereas when it comes to paying him [for Degradation where he was insulted by others], We would surely order that he be paid. But since it was stated in the concluding clause 'If he insulted a person who was sleeping he would be liable [to pay for Degradation], whereas if a person who was asleep insulted others he would be exempt', and no statement was made to the effect that a blind person insulting others should be exempt, it surely implied that in the case of a blind person[20] there was no difference whether he was insulted by others or whether he insulted others, [as in all cases the law of Degradation would apply]![21] — It must therefore be considered as proved that the Mishnaic statements were in accordance with R. Simeon.

Who was the Tanna for what our Rabbis taught: If he intended to insult a katon[22] but insulted [by accident] a gadol[23] he would have to pay the gadol the amount due for the degradation of the katon, and so also where he intended to insult a slave but [by accident] insulted a freeman he would have to pay the freeman the amount due for the degradation of the slave? According to whom [is this teaching]? It is in agreement neither with R. Meir nor with R. Judah nor even with R. Simeon, it being assumed that katon meant 'small in possessions' and gadol [similarly meant] 'great in possessions'. It could thus hardly be in accordance with R. Meir, for he said that all classes of people are treated alike. It could similarly not be in accordance with R. Judah, for he stated that in the case of slaves no Degradation need be paid. Again, it could not be in accordance with R. Simeon, since he holds that where the offender intended to insult one person and by an accident insulted another person he would be exempt, the reason being that this might be likened to murder, and just as in the case of murder there is no liability unless where the intention was for the particular person killed,[24] as it is written: 'And lie in wait for him and rise up against him'[25] [implying, according to R. Simeon, that there would be no liability] unless where he aimed at him particularly, so should it also be in the case of Degradation, that no liability should be imposed on the offender unless where he aimed at the person insulted, as it is written: 'And she putteth forth her hand and taketh him by the secrets'[26] [which might similarly imply that there should be no liability] unless where the offence was directed at the person insulted. [Who then was the Tanna of the teaching referred to above]? — It might still be said that he was R. Judah, for the statement made by R. Judah that in the case of slaves there would be no liability for Degradation means only that no payment will be made to them, though in the matter of appraisement we can still base the assessment on them. Or if you like I may say that you may even regard the teaching as being in accordance with R. Meir, for why should you think that gadol means 'great in possessions' and katon means 'small in possessions', and not rather that gadol means an actual gadol [i.e. one who is of age] and katon means an actual katon [i.e. a minor]? But is a minor subject to suffer Degradation? — Yes, as elsewhere stated by R. Papa, that if

where he is reminded of some insult he feels abashed[27] [he is subject to Degradation] so also here

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(1) For since no bruise was made it will surely recover.
(2) In which Depreciation is included.
(3) In which case he will never recover,
(4) Infra 98a.
(5) For having committed a capital offence in accordance with Ex. XXI, 25.
(6) And since a capital offence would thus have been committed no civil liabilities could be entailed; cf. infra p. 502.
(7) Which problem could thus be solved.
(8) I.e., the sap of a plant used as a depilatory; cf. also Mak. 20b.
(9) [MSS. omit 'on account of these scratches', apparently as it is the nasha which was smeared over his head which prevents his appearing in his dancing role.]
(10) Another term for Depreciation.
(11) But not for the temporary depreciation in value.
(12) [Tosaf. reads: 'to the master' as it is the master who is the primary loser in consequence of the servant's enforced idleness.]
(13) Through which injury the servant is not hindered from performing his usual work.
(14) Cf. Rashi and Tosaf. a. l.
(15) V. infra 90b.
(16) I.e., among the poor.
(17) Infra p. 496.
(18) Infra pp. 495-499.
(19) [Who also does not treat all persons alike.]
(20) Whom the Mishnaic statement makes subject to the law of Degradation.
(21) This would contradict R. Judah, who maintained that a blind person would not have to pay Degradation.
(22) Denotes either 'small', or a minor,
(23) Denotes either 'great' or 'one who is of age'.
(24) As indeed maintained by R. Simeon; cf. Sanh. 79a and supra p. 252.
(25) Deut. XIX, 11.
(26) Ibid. XXV, 11.
(27) Infra 86b.

he was a minor who, if the insult were mentioned to him, would feel abashed.

MISHNAH. ONE WHO INSULTS A NAKED PERSON, OR ONE WHO INSULTS A BLIND PERSON, OR ONE WHO INSULTS A PERSON ASLEEP IS LIABLE [FOR DEGRADATION], THOUGH IF A PERSON ASLEEP INSULTED [OTHERS] HE WOULD BE EXEMPT. IF ONE IN FALLING FROM A ROOF DID DAMAGE AND ALSO CAUSED [SOMEBODY] TO BE DEGRADED, HE WOULD BE LIABLE FOR DEPRECIATION BUT EXEMPT FROM [PAYING FOR] DEGRADATION UNLESS HE INTENDED [TO INFLICT IT].[1]

GEMARA. Our Rabbis taught: If he insulted a person who was naked he would be liable[2] though there could be no comparison between one who insulted a person who was naked[3] and one who insulted a person who was dressed. If he insulted him in the public bath he would be liable though one who insulted a person in a public bath[3] could not be compared to one who insulted a person in the market place.

The Master stated: 'If he insulted a person who was naked he would be liable.' But is a person who walks about naked capable of being insulted?[4] — Said R. Papa: The meaning of 'naked' is that a wind [suddenly] came and lifted up his clothes, and then some one came along and raised them still

higher, thus putting him to shame.

'If he insulted him in the public bath he would be liable.' But is a public bath a place where people are apt to feel offended?[5] — Said R. Papa: It meant that he insulted him[6] near the river.[7]

R. Abba b. Memel asked: What would be the law where he humiliated a person who was asleep but who died [before waking]?[8] — What is the principle involved in this query?[9] — Said R. Zebid: The principle involved is this: [Is Degradation paid] because of the insult, and as in this case he died before waking and was never insulted [no payment should thus be made], or is it perhaps on account of the [public] disgrace, and as there was here disgrace [payment should be made to the heirs]? — Come and hear: R. Meir says: A deaf-mute and a minor are subject to [be paid for] Degradation, but an idiot is not subject to be paid for Degradation. Now no difficulty arises if you say that degradation is paid on account of the disgrace; it is then quite intelligible that a minor [should be paid for Degradation]. But if you say that Degradation is paid on account of the insult, [we have to ask,] is a minor subject to feel insulted? — What then? [You say that] Degradation is paid because of the disgrace? Why then should the same not apply even in the case of an idiot? — It may, however, be said that the idiot by himself constitutes a disgrace which is second to none. But in any case, why not conclude from this statement that Degradation is paid on account of the disgrace, for if on account of the insult, is a minor subject to feel insulted? — As elsewhere stated by R. Papa, that if where the insult is recalled to him he feels abashed [he is subject to Degradation]; so also here he was a minor who when the insult was recalled to him would feel abashed.

R. Papa, however, said that the principle involved in the query [of R. Abba] was this: [Is Degradation paid] because of personal insult, and as in this case [where] he died [before waking he did not suffer any personal insult, no payment should be made], or is [Degradation paid] perhaps on account of the insult suffered by the family? — Come and hear: A deaf-mute and a minor are subject to [be paid for] Degradation but an idiot is not subject to [be paid for] Degradation. Now no difficulty arises if you say that Degradation is paid on account of the insult suffered by the family; it is then quite intelligible that a minor [should be paid for Degradation]. But if you say that Degradation is paid on account of personal insult [we have to ask], is a minor subject to personal insult? — What then? [Do you say] that Degradation is paid because of the insult sustained by the members of the family? Why then should the same not apply in the case of an idiot? — It may, however, be said that the idiot by himself constitutes a Degradation [to them] which is second to none. But in any case, why not conclude from this statement that Degradation is paid on account of the insult suffered by the family, for if on account of personal insult[10] , is a minor subject to personal insult? — Said R. Papa: Yes, if when the insult is mentioned to him he feels insulted, as indeed taught: 'Rabbi says: A deaf-mute is subject to [be paid for] Degradation, but an idiot is not subject to [be paid for] Degradation, whereas a minor is sometimes subject to be paid and sometimes not subject to be paid [for Degradation].' The former [must be] in a case where, if the insult is mentioned to him, he would feel abashed, and the latter in a case where if the insult is recalled to him he would not feel abashed.

ONE WHO INSULTS A BLIND PERSON . . . IS LIABLE [FOR DEGRADATION]. This Mishnah is not in accordance with R. Judah. For it was taught: R. Judah says: 'A blind person is not subject to [the law of] Degradation. So also did R. Judah exempt him from the liability of being exiled[11] and from the liability of lashes[12] and from the liability of being put to death by a court of law.'[13] What is the reason of R. Judah? — He derives [the law in the case of Degradation by comparing the term] 'thine eyes' [inserted in the case of Degradation[14] from the term] 'thine eyes'[15] occurring in the case of witnesses who were proved zomemim:[16] just as there[17] blind persons are not included[18] so also here[19] blind persons should not be included. The exemption from the liability to be exiled is derived as taught: Seeing him not[20] excepts a blind person;[21] so R. Judah. R. Meir on the other hand says that it includes a blind person.[22] What is the reason of R. Judah? — He might say to

you [as Scripture says]: 'As when a man goeth into the wood with his neighbour to hew wood',[23] which might include even a blind person. The Divine Law therefore says 'Seeing him not' to exclude [him]. But R. Meir might contend that as the Divine Law inserted 'Seeing him not' [which implies] an exception, and the Divine Law further inserted unawares'[24] [which similarly implies] an exception, we have thus a limitation followed by another limitation, and the established rule is that a limitation followed by another limitation is intended to amplify.[25] And R. Judah? — He could argue that the word 'unawares' came to be inserted to except a case of intention. [Exemption from] liability to be put to death by a court of law is derived [from comparing the term] 'murderer' [used in the section dealing with capital punishment[26] with the term] 'murderer' [used in the section setting out] the liability to be exiled.[27] [Exemption from] liability of lashes is learnt [by comparing the term] 'wicked' [occurring in the Section dealing with lashes[28] with the term] 'wicked'[26] occurring in the case of those who are liable to be put to death by a court of law.

Another [Baraitha] taught: R. Judah says: A blind person is not subject to [the law of] Degradation.

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(1) Supra p. 140.
(2) Even where the insult was caused by further uncovering him; cf. Tosaf. a.l,
(3) In which case the payment will be much less.
(4) By means of being further uncovered; again, how could a naked person be further uncovered?
(5) By means of being uncovered, since everybody is uncovered there.
(6) By uncovering him.
(7) Where people merely bathe their legs and are therefore fully dressed.
(8) So that he personally never felt the humiliation.
(9) Why indeed should there by any payment in such a case.
(10) no note.
(11) For inadvertently killing a person.
(12) When transgressing a negative commandment.
(13) For committing a capital offence.
(14) Deut. XXV, 12.
(15) Ib., XIX, 21.
(16) I.e., against whom the accusation of an alibi was proved; v. Glos.
(17) In the case of witnesses.
(18) For since a blind person could not see he is disqualified from giving evidence, on the strength of Lev. v, 1; cf. Tosaf, B.B. 129a, s.v. אי , and Asheri B.B. VIII, 24; but v. also Shebu. 33b.
(19) In the case of Degradation.
(20) Num. XXXV, 23.
(21) From being subject to the law of exile.
(22) Mak. 9b.
(23) Deut. XIX, 5.
(24) Ibid. 4.
(25) Cf. supra p. 259.
(26) Num. XXXV, 31.
(27) Deut. XIX, 3.
(28) Deut. XXV, 2.

Talmud - Mas. Baba Kama 87a

So also did R. Judah exempt him from all the judgments of the Torah. What is the reason of R. Judah? — Scripture says: Then the congregation shall judge between the smiter and the avenger of blood according to these ordinances,[1] whoever is subject to the law of the 'smiter' and 'the avenger of blood' is subject to judgments, but he[2] who is not subject to the law of the 'smiter' and the

'avenger of blood' is not subject to judgments.

Another [Baraitha] taught: R. Judah.says: 'A blind person is not subject to [the law of] Degradation. So also did R. Judah exempt him from all commandments stated in the Torah.' R. Shisha the son of R. Idi said: The reason of R. Judah was because Scripture says: Now this is the commandment, the statutes and the ordinances;[3] he who is subject to the 'ordinances' is subject to 'commandments' and 'statutes',but he who is not subject to 'ordinances' is not subject to 'commandments' and 'statutes'. R. Joseph stated:[4] Formerly I used to Say: If someone would tell me that the halachah is in accordance with R. Judah who declared that a blind person is exempt from the commandments, I would make a festive occasion for our Rabbis, because though I am not enjoined[5] I still perform commandments, but now that I have heard the statement of R. Hanina, as R. Hanina indeed said[6] that greater is the reward of those who being enjoined do [good deeds] than of those who without being enjoined [but merely of their own free will] do [good deeds], if someone would tell me that the halachah is not in accordance with R. Judah I would make a festive occasion for our Rabbis, because if I am enjoined to perform commandments the reward will be greater for me.

MISHNAH. ON THIS [POINT] THE LAW FOR MAN IS MORE SEVERE THAN THE LAW FOR CATTLE, VIZ., THAT MAN HAS TO PAY FOR DEPRECIATION, PAIN, HEALING, LOSS OF TIME AND DEGRADATION;[7] AND HE PAYS ALSO FOR THE VALUE OF EMBRYOS,[8] WHEREAS IN THE CASE OF CATTLE THERE IS NO PAYMENT FOR ANYTHING BUT DEPRECIATION,[9] AND THERE IS EXEMPTION FROM [PAYING] THE VALUE OF EMBRYOS.[8] ONE WHO STRIKES HIS FATHER AND HIS MOTHER WITHOUT, HOWEVER, MAKING A BRUISE ON THEM,[10] OR ONE WHO INJURED HIS FELLOW ON THE DAY OF ATONEMENT[11] IS LIABLE FOR ALL [THE FIVE ITEMS]. ONE WHO INJURES A HEBREW SLAVE[12] IS SIMILARLY LIABLE FOR ALL OF THEM, WITH THE EXCEPTION, HOWEVER, OF LOSS OF TIME IF HE IS HIS OWN SLAVE. ONE WHO INJURES A CANAANITE SLAVE[13] BELONGING TO ANOTHER PERSON IS [SIMILARLY] LIABLE FOR ALL [THE FIVE ITEMS]. R. JUDAH, HOWEVER, SAYS THAT NO DEGRADATION IS PAID IN THE CASE OF [CANAANITE] SLAVES. A DEAF-MUTE, AN IDIOT AND A MINOR ARE AWKWARD TO DEAL WITH, AS HE WHO INJURES THEM IS LIABLE [TO PAY], WHEREAS IF THEY INJURE OTHERS THEY ARE EXEMPT. [SO ALSO] A SLAVE AND A [MARRIED] WOMAN ARE AWKWARD TO DEAL WITH, AS HE WHO INJURES THEM IS LIABLE [TO PAY], WHEREAS IF THEY INJURE OTHERS THEY ARE EXEMPT,[14] THOUGH THEY MAY HAVE TO PAY AT A LATER DATE; FOR IF THE WOMAN WAS DIVORCED[15] OR THE SLAVE MANUMITTED,[16] THEY WOULD BE LIABLE TO PAY. HE WHO SMITES HIS FATHER OR HIS MOTHER MAKING ALSO A BRUISE ON THEM[17] OR HE WHO INJURES ANOTHER ON THE SABBATH[18] IS EXEMPT FROM ALL [THE FIVE ITEMS], FOR HE IS CHARGED WITH A CAPITAL OFFENCE.[19] [SO ALSO] HE WHO INJURES A CANAANITE SLAVE OF HIS OWN IS EXEMPT FROM ALL [THE ITEMS].[20]

GEMARA. R. Eleazar inquired of Rab: If one injures a minor daughter of another person, to whom should [the payment for] the injury go?[21] Shall we say that since the Divine Law bestowed upon the father [the right to] the income of [his daughter during the days of her] youth,[22] the payment for an injury should also be his, the reason being that her value was surely decreased [by the injury], or [shall we say that it was] perhaps only the income of youth[23] that the Divine Law granted him, since if he wishes to hand her over [in marriage e.g.,] to one afflicted with leprosy he could hand her over,[24] whereas the payment for injury might not have been granted to him by the Divine Law, since if he wishes to injure her he would not have had the right to injure her?[25]

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(1) Num. XXXV, 24.

(2) Such as a blind person.

(3) Deut. VI, 2.

(4) Kid. 31a.
(5) As R. Joseph became blind through an illness; cf. Shab. 109a.
(6) V. supra p. 215.
(7) As supra p. 473.
(8) Cf. Ex, XXI, 22 and supra p. 277.
(9) V, supra 26a.
(10) In which case the capital offence of Ex. XXI,15 has not been committed; v. Sanh. 84b.
(11) The violation of which entails no capital punishment at the hands of a court of law; cf. Lev. XXIII, 30 and Ker. I, 1. Again, though lashes could be involved in this case in accordance with Mak. III, 2, the civil liability holds good as supra p. 407.
(12) Cf. Ex. XXI, 2-6.
(13) V. Lev. XXV, 44-46.
(14) Irrespective of the equality of all before the law, as supra p. 63, no payment could be made here as the possessions of slaves form a part of the estates of their masters as in Kid. 23b, and the property of a married woman is usually in the usufruct of the husband, cf, Keth, IV, 4,
(15) When her estate will return to her.
(16) And property was subsequently acquired by him.
(17) Which is a capital offence, v. Ex. XXI. 15; supra p. 492.
(18) Thus involving capital punishment, v. Shab. 106a; supra p. 192.
(19) In the punishment for which all civil liabilities merge; v. supra p. 192.
(20) For so far as the master is concerned the slave is but his chattel. He will, however, be liable to heal him; Tosaf, a.l.; Git. 12b.
(21) I.e., whether to her or to her father.
(22) Cf. Keth. 46b.
(23) Such as the consideration given by a prospective husband for marrying him, or the hire of her labour and the like.
(24) As could be inferred from Deut. XXII, 16,
(25) Moreover he would thereby commit the sin implied in Deut. XXV, 3.

Talmud - Mas. Baba Kama 87b

— He replied: 'The Torah did not bestow upon the father [any right] save to the income of youth alone.'

An objection was raised[1] [from the following]: ONE WHO INJURES A HEBREW SLAVE IS SIMILARLY LIABLE FOR ALL OF THEM, WITH THE EXCEPTION HOWEVER OF LOSS OF TIME IF HE IS HIS OWN SLAVE![2] — Abaye replied: Rab surely agrees regarding the item of Loss of Time, as the work of her hands during the period preceding the age of womanhood[3] belongs to her father. A [further] objection was raised [from the following]: 'If one injures his son who has already come of age[4] he has to compensate him straight away, but if his son was still a minor[5] he must make for him a safe investment [out of the compensation money], while he who injures his minor daughter is exempt, and what is more, if others injure her they are liable to pay the compensation to her father'?[6] — The rulings here similarly refer to Loss of Time.[7]

Is it really a fact that in the case of a son who has already come of age the father has to compensate him straight away? [If so,] a contradiction could be pointed out [from the following:] 'If one injures the sons and daughters of others, if they have already come of age, he has to pay them straight away, but if they are still minors he should make for them a safe investment [out of the compensation money], whereas where the sons and daughters were his own, he would be exempt [altogether]'![8] — It may, however, be said that there is no difficulty, as the ruling here [stating exemption] refers to a case where the children still reclined at the father's table,[9] whereas the ruling there[10] deals with a case where they did not recline at his table. But how could you explain the former teaching to refer to a case where they did not recline at his table? For if so, read the

concluding clause: 'Whereas he who injures his minor daughter is exempt, and what is more, even others who injure her are liable to pay the compensation to her father.' Why not pay her, since she has to maintain herself? For even according to the view[11] that a master may say to his slave, 'Work with me though I am not prepared to maintain you,' surely this applies only to a Canaanite slave to whom the master can say, 'Do your work during the day and in the evenings you can go out and look about for food,'[12] whereas in the case of a Hebrew slave in connection with whom it is written, Because he fareth well with thee,[13] implying 'with thee in food and with thee in drink',[14] this could certainly not be maintained; how much the more so then in the case of his own daughter?[15] — As stated[16] [in another connection] by Raba the son of R. 'Ulla, that the ruling applies only to the surplus [of the amount of her earnings over the cost of maintenance], so also here in this case this ruling applies only to the surplus [of the amount of compensation over the cost of maintenance]. You have then explained the latter statement [that there is exemption in the case of his own children] as dealing with a case where the children reclined at his table. Why then [in the case of children of other persons] is it stated that 'if they had already come of age he has to pay them straight away, but if they were still minors he should make for them a safe investment [out of the compensation money]? Why should the compensation not be made to their father?[17] — It may, however, be said that the father would be particular only in a matter which would cause him a loss,[18] whereas in regard to a profit coming from outside[19] he would not mind [it going to the children]. But what about a find which is similarly a profit coming from outside, and the father still is particular about it?[20] — It may be said that he is particular even about a profit which comes from outside provided no actual pain was caused to the children through it,[21] whereas in the matter of compensation for injury where the children suffered actual pain and where the profit comes from outside he does not mind. But what of the other case[22] where the daughter suffered actual pain and where there was a profit coming from outside and the father nevertheless was particular about it as stated 'What is more, even others who injure her are liable to pay the compensation to her father'? — It may still be said that it was only in that case[22] where the father was an eccentric person who would not have his children at his table that he could be expected to care for the matter of profit coming even from outside, whereas in the case here[23] where he was not an eccentric person, as his children joined him at his table it is only regarding a matter which would cause him a loss that he would be particular, but he would not mind about a matter of profit coming from outside.

What is meant by 'a safe investment'?[24] — R. Hisda said: [To buy] a scroll of the Law.[25] Rabbah[26] son of R. Huna said: [To buy] a palm tree, from which he gets a profit in the shape of dates.

Resh Lakish similarly said that the Torah did not bestow upon the father any right save to the income of youth alone. R. Johanan however said: 'Even regarding wounding.' How can you think about wounding?[27] Even R. Eleazar did not raise a question[28] except regarding an injury

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(1) [Lit., 'he objected to him.' The objector was evidently not R. Eleazar, as Abaye is the one who replies to the objection.]

(2) Why then should the payment for Loss of Time in the case of a minor girl not go to her father to whom the hire for her labour would belong?

(3) Which begins six months after puberty was reached at approximately the age of twelve; cf. Nid. 45b; 65a and Keth. 39a.

(4) I.e., usually over the age of thirteen; cf. Glos. s.v. Gadol.

(5) I.e., before the age of thirteen; v. Glos. s.v. Katon.

(6) [Is this not against the view of Rab who stated that damages paid for injuring a minor girl would not go to her father?]

(7) For which all agree that payment must be made to the father.

(8) [Does the latter ruling not apply even where the sons and daughters had already come of age, in contradiction to the ruling stated in the former teaching?]

(9) I.e., were maintained and provided by him with all their needs; cf. B.M. 12b.
(10) Stating liability.
(11) Git. 12a.
(12) [Eg. where the work he performs is not worth the cost of his maintenance, v. Git. 12a.]
(13) Deut. XV, 16.
(14) He must share the same pleasures and comforts as the Master. Cf. Kid. 20a.
(15) [Why therefore should the compensation be paid to the father and not to her in a case where she has to maintain herself?]
(16) Keth. 43a.
(17) Since they are maintained by him.
(18) Such as if he would have to pay compensation where he himself injured them.
(19) As where others injured them and would have to pay compensation.
(20) Cf. B.M. 12b.
(21) Such as e.g., in the case of a find.
(22) I.e., in the former teaching.
(23) I.e., in the latter teaching.
(24) B.B. 52a.
(25) Cf. Er. 64a.
(26) B.B. 52: 'Raba'.
(27) Which would usually not decrease her pecuniary value.
(28) Supra p.502.

Talmud - Mas. Baba Kama 88a

through which her pecuniary value is decreased,[1] whereas regarding mere wounding, through which her pecuniary value would not [usually] decrease there was never any question [that the compensation would not go to the father. How then could R. Johanan speak of mere wounding?] — R. Jose b. Hanina replied: We suppose the wound to have been made in her face, thus causing her pecuniary value to be decreased. ONE WHO INJURES A CANAANITE SLAVE BELONGING TO ANOTHER PERSON IS [SIMILARLY] LIABLE FOR ALL [FIVE ITEMS]. R. JUDAH, HOWEVER, SAYS THAT NO DEGRADATION IS PAID IN THE CASE OF [CANAANITE] SLAVES. What is the reason of R. Judah? — As Scripture says:[2] 'When men strive together one with another' the law applies to one who can claim brotherhood and thus excludes a slave who cannot claim brotherhood.[3] And the Rabbis?[4] — They would say that even a slave is a brother in so far as he is subject to commandments. If this is so, would you say that according to R. Judah witnesses proved zomemim[5] in a capital accusation against a slave would not be subject to be put to death in virtue of the words:[6] 'Then shall ye do unto him as he had purposed to do unto his brother'?[7] — Raba said that R. Shesheth stated: The verse concludes:[6] 'So shalt thou put away the evil from among you', implying 'on all accounts' — Would you say that according to the Rabbis[8] a slave would be eligible to be chosen as king?[9] — I would reply: According to your reasoning would the same difficulty not arise regarding a proselyte, whichever view we accept[10] unless we suppose that when Scripture says 'One from among thy brethren',[11] it implies 'one of the choicest of thy brethren'?[12] — But again would you now also say that according to the Rabbis, a slave would be eligible to give evidence,[13] since it says, And behold, if the witness be a false witness and hath testified falsely against his brother?[14] — 'Ulla replied: Regarding evidence you can surely not argue thus. For that he[15] is disqualified from giving evidence can be learnt by means of an a fortiori from the law in the case of Woman: for if Woman who is eligible to enter [by marriage] into the congregation [of Israel] is yet ineligible to give evidence,[16] how much more must a slave who is not eligible to enter [by marriage] into the congregation [of Israel] be ineligible to give evidence? But why is Woman disqualified if not perhaps because she is not subject to the law of circumcision? How then can you assert the same In the case of a slave who is subject to circumcision?[17] — The case of a [male] minor will meet this objection, for in spite of his being subject to circumcision he is

disqualified from giving evidence.[18] But why is a minor disqualified if not perhaps because he is not subject to commandments?[19] How then can you assert the same in the case of a slave who is subject to commandments?[20] — The case of Woman will meet this objection, for though she is subject to commandments she is disqualified from giving evidence. The argument is thus endlessly reversible. There are features in the one instance which are not found in the other, and vice versa. The features common to both[21] are that they are not subject to all the commandments[22] and that they are disqualified from giving evidence. I will therefore include with them a slave who also is not subject to all the commandments and should therefore also be disqualified from giving evidence. But why [I may ask] is the feature common to them[21] that they are disqualified from giving evidence if not perhaps because neither of them is a man?[23] How then can you assert the same in the case of a slave who is a man? — You must therefore deduce the disqualification of a slave from the law applicable in the case of a robber.[24] But why is there this disqualification in the case of a robber if not because his own deeds caused it? How then can you assert the same in the case of a slave whose own deeds could surely not cause it?[25] — You must therefore deduce the disqualification of a slave from both the law applicable to a robber and the law applicable to either of these [referred to above].[26] Mar, the son of Rabina, however, said: Scripture says: 'The fathers shall not be put to death through[27] the children';[28] from this it could be inferred that no sentence of capital punishment should be passed on [the evidence of] the mouth of [persons who if they were to be] fathers would have no legal paternity over their children.[29] For if you assume that the verse is to be taken literally, 'fathers shall not be put to death through children', meaning, 'through the evidence of children', the Divine Law should have written 'Fathers shall not be put to death through their children'. Why then is it written 'children', unless to indicate that no sentence of capital punishment should be passed on [the evidence of] the mouth of [persons who if they were to be] fathers would have no legal paternity over their children? If that is so, would you also say that the concluding clause 'neither shall the children be put to death through the fathers' similarly implies that no sentence of capital punishment should be passed on [the evidence of] the mouth of [witnesses who as] children would have no legal filiation with respect to their fathers, and therefore argue that a proselyte[30] should similarly be disqualified from giving evidence?[31] — It may be said that there is no comparison: It is true that a proselyte has no legal relationship to his ancestors, still he has legal relationship with his descendants, [but we may therefore] exclude a slave who has relationships neither with ancestors nor with descendants. For if you should assume that a proselyte is disqualified from giving evidence, the Divine Law should surely have written: 'Fathers shall not be put to death through their children', which would mean what we stated, that they would not be put to death through the evidence of children, and after this the Divine Law should have written: 'Neither shall children be put to death through fathers,' as from such a text you would have derived the two rules: one that children should not be put to death through the evidence of fathers and the other that no sentence of capital punishment should be passed on [the evidence of] the mouth of [witnesses who as] children have no legal filiation with respect to their fathers.[32] The disqualification in the case of a slave would surely have been derived by means of an a fortiori from the law applicable to a proselyte: for if a proselyte, who has no legal relationship to his ancestors but has legal relationship to his descendants, is disqualified from giving evidence, how much more must a slave who has legal relationship neither to ancestors nor to descendants be disqualified from giving evidence? But since the Divine Law has written: 'Fathers shall not be put to death through children', which implies that no sentence of capital punishment should be passed on [the evidence of] the mouth of [witnesses who as] fathers would have no legal paternity over their children, we can derive from this that it is only a [Canaanite] slave who has relationship neither to ancestors nor to descendants that will be disqualified from giving evidence, whereas a proselyte will be eligible to give evidence on account of the fact that he has legal paternity over his children. If you object, why did the Divine Law not write: 'Neither shall children be put to death through their fathers', and why did the Divine Law write 'And neither shall children be put to death through fathers', which appears to imply that no sentence of capital punishment should be passed [on the evidence of] the mouth of [witnesses who as] children would have no legal filiation with respect to fathers,[33] [my answer is that] since it was written, 'Fathers shall not be put to death

through children', it was further written, 'neither shall children be put to death through fathers.'[34]

A DEAF, MUTE AN IDIOT AND A MINOR ARE AWKWARD TO DEAL WITH. The mother of R. Samuel b. Abba of Hagronia[35] was married to R. Abba,[36] and bequeathed her possessions to R. Samuel b. Abba, her son. After her death

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(1) And a loss thus caused to the father.
(2) Deut. XXV, 11.
(3) Cf. supra p. 63.
(4) The representatives of the anonymous opinion cited first in the Mishnah.
(5) I.e., where an alibi was proved against them; cf. Glos.
(6) Deut. XIX, 19.
(7) Since a slave according to R. Judah could not he considered a brother.
(8) Who consider a slave a brother.
(9) Where the text in Deut. XVII, is states, One from among thy brethren shalt thou set king over thee.
(10) For a proselyte is unanimously considered a brother.
(11) Deut. XVII, 15.
(12) Cf. Yeb. 45b; [and for this reason a slave is not eligible for kingship, not because he is not considered a brother.]
(13) Which would not be in conformity with R. H. I., 8.
(14) Deut. XIX, 18.
(15) I.e., a slave.
(16) V. Shebu. 30a.
(17) Cf. Gen. XVII, 12 and Yeb. 48b.
(18) Cf. B.B. 155b.
(19) Cf. supra p. 250.
(20) In the same way as a woman; cf. Hag. 4a.
(21) I.e., in Woman and male Minor.
(22) Cf. Kid. 29a.
(23) As a minor has not yet reached manhood.
(24) Who is disqualified from giving evidence though being a 'man' and eligible to enter by marriage into the Congregation; cf. Ex. XXIII, 1.
(25) Having done nothing criminal.
(26) I.e., a woman or male minor, the common feature being that they do not observe all commandments — the robber on account of his criminality, the woman or male minor because neither is subject to all the commandments.
(27) E.V. 'for'.
(28) Deut. XXV, 16.
(29) Such as slaves; cf. supra p. 63.
(30) Who has no legal filiation with respect to his ancestors; cf. Yeb. 62a.
(31) Which would not be in conformity with Nid. 49b.
(32) Which would have excluded also a proselyte.
(33) [Excluding thus a proselyte.]
(34) And while the phraseology of the concluding clause follows that of the commencing clause it is not usual in Scripture that the commencing clause should alter its phraseology because of the style of the concluding clause.
(35) V. supra p. 27, n. 1.
(36) He was not the father of R. Samuel as her former husband's name was also Abba.

Talmud - Mas. Baba Kama 88b

R. Samuel b. Abba went to consult R. Jeremiah b. Abba who confirmed him in possession of her property. R. Abba thereupon went and related the case to R. Hoshaia. R. Hoshaia then went and spoke on the matter with Rab Judah who said to him that Samuel had ruled as follows: If a woman disposes of her melog[1] possessions during the lifetime of her husband and then dies, the husband is

entitled to recover them from the hands of the purchasers.[2] When this statement was repeated to R. Jeremiah b. Abba, he said: I [only] know the Mishnaic ruling which we have learnt: 'If a man assigns his possessions to his son, to take effect after his death,[3] neither can the son alienate them [during the lifetime of the father] as they are then still in the possession of the father, nor can the father dispose of them since they are assigned to the son. Still, if the father sells them, the sale is valid until his death; if the son disposes of them the purchaser has no hold on them until the father dies.'[4] This implies, does it not, that when the father dies the purchaser will have the possessions [bought by him from the son during the lifetime of the father], and this even though the son died during the lifetime of the father, in which case they had never yet entered into the possession of the son? For so it was laid down by R. Simeon b. Lakish, who said[5] that there should be no difference whether the son died in the lifetime of the father, in which case the estate never came into the possession of the son, or whether the father died in the lifetime of the son, in which case the estate had entered into the possession of the son; the purchaser would [in either case] acquire title to the estate. (For it was stated:[6] Where the son sold the estate[7] in the lifetime of the father and it so happened that the son died during the lifetime of the father, R. Johanan said that the purchaser would not acquire title [to the estate], whereas Resh Lakish said that the purchaser would acquire title [to the estate]. R. Johanan, who held that the purchaser would not acquire title to the estate, would say to you that the Mishnaic statement, 'If the son disposed of them the purchaser would have no hold on them until the father dies, 'implying that at any rate after the death of the father the purchaser would own them, refers to the case where the son did not die during the lifetime of the father, so that the estate had actually entered into the possession of the son, whereas where the son died during the lifetime of the father, in which case the estate had never entered into the possession of the son, the purchaser would have no title to the estate even after the death of the father. This shows that in the opinion of R. Johanan a right to usufruct amounts in law to a right to the very substance [of the estate],[8] from which it follows that when the son sold the estate [during the lifetime of his father] he was disposing of a thing not belonging to him.[9] Resh Lakish on the other hand said that the purchaser would [in all cases] acquire title [to the estate after the death of the vendor's father], for the Mishnaic statement, 'If the son disposed of them the purchaser would have no hold on them until the father died,'implying that at least after the death of the father the purchaser would own them, applies equally whether the son did not die in the lifetime of the father, in which case the estate had entered into the possession of the son, or whether the son did die during the lifetime of the father, in which case the estate never did come into the possession of the son, [as in all cases] the purchaser would acquire title [to the estate as soon as the vendor's father died]. This shows that in the opinion of Resh Lakish a right to [mere] usufruct does not yet amount to a right in the very substance [of the estate], from which it follows that when the son sold the estate [during his father's lifetime] he was disposing of a thing that legally belonged to him.[10]) Now both[11] R. Jeremiah b. Abba and Rab Judah, concur with Resh Lakish,[12] and R. Jeremiah b. Abba accordingly argues thus: If you assume that a right to usufruct amounts [in law] to a right in the very substance, why then on the death of the father, if the son has previously died during the lifetime of his father, should the purchaser have any title to the estate, since when the son sold it he was disposing of a thing not belonging to him? Does not this show that a right to [mere] usufruct does not amount to a right to the very substance?[13] When, however, the argument was later repeated in the presence of Rab Judah, he said that Samuel had definitely stated: 'This case[14] cannot be compared to that stated in the Mishnah.' On what ground? — R. Joseph replied: We should have no difficulty if the case in the Mishnah were stated in a reversed order, i.e., 'If a son assigns his possessions to his father [to take effect after the son's death, and the father sold them during the lifetime of the son and died before the son,' and if the law would also in this case have been that the purchaser acquired title to the possessions] it would indeed have been possible to prove from it that a right to usufruct does not amount to a right to the very substance. But seeing that what it actually says is, 'If a father assigns his possessions to his son,' [the reason why the sale by the son is valid is] that [since] he was eligible to inherit him, [the father by drawing up the deed must necessarily have intended that the transfer to the son should have legal effect forthwith].[15] Said Abaye to him: Does only a son inherit a father, and does a father never inherit a son?[16] It is therefore

to be assumed that such a deed was drawn up only for the purpose of keeping the possessions out of the hands of the children,[17] and similarly also here[18] the deed might have been drawn up for the sole purpose of keeping the possessions out of the hands of his brothers![19] — The reason of [Samuel's remark that] 'This case cannot be compared to that stated in the Mishnah' is because of the [Rabbinic] enactment at Usha. For R. Jose b. Hanina said: It was enacted at Usha that if a woman disposes of her melog possessions during the lifetime of her husband and subsequently dies, the husband will be entitled to recover them from the hands of the purchasers.[20] R. Idi b. Abin said that we have been taught to the same effect: [Where witnesses state,] 'We can testify against a particular person that he has divorced his wife and paid her for her kethubah',[21]

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(1) Lit., 'plucking', but which denotes a wife's estate in which her husband has the right of usufruct and for which he hears no responsibility regarding any loss or deterioration, v. B.B. (Sonc. ed.) p. 206, n. 7.

(2) According to which statement R. Abba and not R. Samuel would be entitled to the possessions in direct contradiction to the judgment given by R. Jeremiah.

(3) [The father retaining for himself the right for life to the usufruct.]

(4) B.B. 136b.

(5) Ibid.

(6) B.B. 136a.

(7) [Assigned to him to be his after his father's death.]

(8) As indeed followed by him in Git. 47b and elsewhere.

(9) For since the father still had for life the right to usufruct he was for the time being the legal owner of the very substance of the estate, though the son had the reversionary right.

(10) Since he had the reversionary right while the father possessed merely for time being the right to usufruct. [The bracketed passage is an interpolation and not part of R. Jeremiah's argument.]

(11) [So MS.M. cur. edd. read, 'We now assume.']

(12) [That the sale is valid even where the son died in the lifetime of the father.] Cf. Yeb. 36b.

(13) Hence the gift of the mother to R. Samuel her son should become valid at her death in spite of the right to usufruct vested in R. Abba her second husband during her lifetime.

(14) I.e., the gift of the mother to R. Samuel her son.

(15) For if otherwise why was the deed necessary at all? [Whereas in the case of Samuel b. Abba, the deed was necessary for in the absence of one the estate would be inherited by the husband. V. B.B. 111b]

(16) Cf. B.B. VIII, 1. The same argument if at all sound could thus accordingly be raised even in the case made out by you where a son bequeathed his possessions to his father.

(17) Of the son who made the bequest in favour of his father, as otherwise the sons children would have been first to inherit him in accordance with Num. XXVII, 8.

(18) Where the father bequeathed his possessions to a son.

(19) I.e., from the brothers of the particular son in whose favour the bequest was made, as otherwise they would also have had a part in the inheritance on account of their being sons of the same father, and it was not intended that the transfer to the son should have legal effect forthwith. This being so, the case of Samuel b. Abba is on all fours with the Mishnah!

(20) For the right of the husband to the possessions of his wife took effect at the time of the wedding and thus preceded the act of the sale. V. B.B. (Sonc. ed.) p. 208.

(21) V. Glos.

Talmud - Mas. Baba Kama 89a

while the woman in question was still with him[1] and in fact looking after him, and the witnesses were subsequently proved zomemim, it would not be right to say that they should pay [the woman][2] the whole amount of her kethubah, [as she did not lose anything] but the satisfaction of the benefit of [being provided with] her kethubah.[3] How could [the value of] the satisfaction of the benefit of her kethubah be arrived at?[3] An estimate will have to be made of how much a man would be prepared to pay as purchase money for the kethubah of this [particular woman] which can mature only after she

is left a widow or divorced, since, were she [previously] to die her husband would inherit her.[4] Now, if you assume that this enactment of Usha is of no avail, why is it certain that her husband would inherit her? Why should she be unable to sell her kethubah outright?[5] Abaye said: If all this could be said[6] regarding melog possessions,[7] can it also be said[8] regarding the possessions [placed in the husband's hands[9] and secured[10] as if they were] 'iron flocks'?[11]

Abaye further said: Since the subject of the [mere] satisfaction of a benefit has been raised, let us say something on it. The [purchase money of this] satisfaction of the benefit would belong solely to the woman. For if you assume that it should be subject to [the rights of] the husband, why could the witnesses not argue against her: 'What loss did we cause you, for should you even have sold the satisfaction of the benefit, the husband would have taken away [the purchase money] from you'? — R. Shalman, however, said: Because [even then] there would have been ample domestic provision.[12]

Raba stated: 'The law is that the purchase money for the satisfaction of the benefit belongs solely to the woman, and the husband will have no right to enjoy any profit [that may result from it], the reason being that it was only profits that the Rabbis assigned to him,[13] whereas profits out of profits[14] were not assigned to him by the Rabbis.

When R. Papa and R. Huna the son of R. Joshua came from the College they said: We have learnt to the same effect as the enactment of Usha [in the following Mishnah]: A SLAVE AND A WOMAN ARE AWKWARD TO DEAL WITH, AS HE WHO INJURES THEM IS LIABLE [TO PAY], WHEREAS IF THEY HAVE INJURED OTHERS THEY ARE EXEMPT.[15] Now, if you assume that the enactment of Usha is not effective why should she not sell her melog[16] property and with the purchase money pay the compensation? — But even according to your reasoning, granted that the enactment of Usha is effective, in which case she would be powerless to alienate altogether her melog possessions, yet let her sell the melog estate for what the satisfaction of the benefit would fetch[17] and with his purchase money pay the compensation? It must therefore Surely be said that the ruling applies where she had no melog property; so also [according to the other view] the ruling would apply only where she possessed no melog property. But why should she not sell her kethubah for as much as the satisfaction of the benefit will fetch[17] and thus pay compensation? — The ruling is based on the view of R. Meir, who said that it is prohibited for any man to keep his wife without a kethubah even for one hour.[18] But what is the reason of this? So that it should not be an easy matter in his eyes to divorce her. In this case too he will surely not divorce her, for if he were to divorce her those who purchased the kethubah would certainly come and collect the amount of the kethubah from him. [Why then should she not be compelled by law to sell her kethubah and pay her creditors?] — We must therefore say that the satisfaction of such a benefit is a value of an abstract nature[19] and abstract values are not considered mortgaged [for the payment of liabilities]. But why not? Could these abstract values not be sold for actual denarii? — We must therefore [say that it would not be practical to compel her to sell her kethubah] on account of the statement of Samuel. For Samuel said:[20] Where a creditor assigns a liability on a bill to another and subsequently releases the debtor from payment, the debt is considered cancelled. Moreover, the creditor's heir may cancel the liability.[21] I would, however, ask: Why should she not be compelled to sell it and pay with the proceeds the compensation, though if she should subsequently release her husband from the obligation the release would be legally valid? — It may be replied that since it is quite certain that where there is an obligation on the husband the wife will release him,it would not be right to make a sale which will straight away be nullified. Should you say, why should she not assign her kethubah to the person whom she injured, thus letting him have the satisfaction of the benefit,

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(1) I.e., that particular person who was her husband, as he had never divorced her.

(2) In retaliation, as required in Deut. XIX, 19.

(3) Since it was but a conditional liability, i.e., becoming mature either through her being divorced or through her remaining a widow.

(4) And there would then be no occasion for the payment of the kethubah (cf. Mak. 3a).
(5) If the husband would have no right to recover the possessions thus alienated. Why then should the witnesses not pay the woman the full amount of the kethubah?
(6) By R. Jeremiah against Rab Judah, thus ignoring the enactment of Usha.
(7) In which the husband had only the right of usufruct while the substance belonged to the wife; v. Glos.
(8) [That the woman should be able to sell outright.]
(9) As absolutely his own property.
(10) By him on his general estate to pay her for them her Kethubah in case she would become a widow or divorced.
(11) Zon barzel. I.e., 'flocks' sold on credit and the payment made secure as 'iron', v. B.B. (Sonc. ed.) p. 206, n. 3.
(12) As it is also for her benefit that the income of her husband increases.
(13) Out of the substance belonging to her. Cf. Keth. 47b and 79b.
(14) Such as here in the case of the purchase money.
(15) V. supra p. 502, n. 1.
(16) V. Glos.
(17) I.e., that the purchaser should stand in her place and become entitled to it in case she should become a widow or divorced.
(18) Keth. 57a.
(19) Lit., 'words', 'an order for payment'.
(20) B.M. 20a; B.B. 147b.
(21) It would therefore not be practical to compel her to sell her kethubah, for she might subsequently release the husband from the liability of the kethubah.

Talmud - Mas. Baba Kama 89b

for even if she should subsequently release her husband from the obligation, the purchaser[1] would lose nothing as now too she pays him nothing on account of the compensation, [my answer is that] as it is in any case quite certain that where there is an obligation on the husband the wife will release him, it would not be proper to trouble the Court of Law so much for nothing. But seeing that it was taught: 'So also if she injures her husband she does not forfeit her kethubah'.[2] why should she in this case not assign her kethubah to the husband and thus let him have the satisfaction of the benefit as compensation for the injury, for even if she releases her husband from the obligation no loss will result therefrom? — This teaching is surely based on the view of R. Meir who said[3] that it is prohibited for any man to keep his wife without a kethubah even for one hour, the reason being that it should not be an easy matter in the eyes of the husband to divorce a wife. So also here if the kethubah be assigned to him he might easily divorce her and have her kethubah for himself as compensation for the injury. But if so [even now that the kethubah remains with her] would he just the same not find it easy to divorce her, as he would retain the amount of her kethubah as compensation for the injury? [This however would not be so where] e.g., the amount of her kethubah was much more than that of the compensation as on account of the small amount of the compensation he would surely not risk losing more.[4] But again if the amount of her kethubah exceeded that of an ordinary kethubah as fixed by the Law,[5] why should we not reduce the amount to that of the ordinary kethubah fixed by the Law,[6] and she should assign the difference to the husband as compensation for the injury? [This could not be done where,] e.g. the amount of her kethubah did not exceed that of the ordinary kethubah fixed by the Law and the compensation for the injury was assessed to be four zuz, as it is pretty certain that for four zuz he will not risk losing twenty-five [sela'].[7] But what of that which was taught: 'Just as she cannot [be compelled to] assign her kethubah[8] so long as she is with her husband, so also she cannot [be compelled to] remit [anything of] her kethubah so long as she is with her husband'?[9] Are there not times when she would be forced to remit, as, for example where the amount of her kethubah exceeded the amount of an ordinary kethubah fixed by the Law? — Said Raba: This concluding paragraph refers to the clause inserted in the kethubah regarding the male children,[10] and what was meant was this: Just as in the case of a wife assigning her kethubah to others she does thereby not impair the clause in the kethubah

regarding the male children, the reason being that she might have been compelled to do it on account of a pressing need for money, so should also be the case where a wife assigns her kethubah to her own husband, that she would thereby not impair the clause in the Kethubah dealing with male children on the ground that she might have been compelled to do this for lack of funds.

May we say that the enactment of Usha was a point at issue between the following Tannaim? For one [Baraitha] teaches that melog slaves are to go out free for the sake of a tooth or an eye[11] if assaulted by the wife,[12] but not if assaulted by the husband,[13] whereas another [Baraitha] teaches that [they are not to go out free] when assaulted either by the husband or by the wife. Now it was thought that all authorities agree that a right to usufruct does not constitute in law a right to the very substance. Are we not to suppose then that the point at issue between them was that the one who held that they are to go out free if assaulted by the wife did not accept the enactment of Usha, while the one who held that they are not to go out free when assaulted either by the husband or by the wife accepted the enactment of Usha?[14] — No; it is quite certain that the enactment of Usha was unanimously accepted, but the former Baraitha was formulated before the passing of the enactment while the other one was formulated after. Or if you like I may say that both the one Baraitha and the other dealt with conditions prevailing after the enactment, and also that both accepted the enactment of Usha, but the authority who held that the slaves are to go out free if assaulted by the wife and not by the husband did so on account of a reason underlying a statement of Raba, for Raba said:

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(1) I.e., the injured person.

(2) Tosaf. B.K. IX, 8.

(3) V. supra, p. 515, n. 6.

(4) [I.e., the difference between the large amount of the kethubah and the amount due to him as compensation.]

(5) The Bible, i.e., two hundred zuz where she was a virgin at the time of the marriage. Cf. Ex. XXII, 16; Keth. I, 2.

(6) [To provide against the prohibition in the view of R. Meir.]

(7) == 100 zuz, which is the minimum amount of a kethubah even in the case of a non-virgin; v. Keth. I, 2.

(8) [For any damage done to others (Tosaf.).]

(9) [For any damage done by her to her husband (Tosaf.) V. Tosaf. B.K. IX.]

(10) Which runs as follows: 'The male children which you will have with me shall inherit the amount of your kethubah over and above their appropriate portions due to them together with their brothers (if any of another mother).' V.B.B. (Sonc. ed.) p. 546, n.16.

(11) Cf. Ex. XXI, 26-27.

(12) Who possesses the ownership of their substance.

(13) Who has in them but the right of usufruct.

(14) According to which the wife would not be able to impair the right of the husband, [nor would the husband on the other hand be able to impair the right of the wife to the slaves whose substance is actually hers.]

Talmud - Mas. Baba Kama 90a

'The Consecration [of cattle[1] to the altar, the prohibition of] leaven[2] [from any use] and the manumission of a slave[3] release any of these articles [if mortgaged] from the burden of the mortgage.[4] Are we then to say that this statement of Raba constituted a point at issue between these Tannaim? — No; it is possible that all concurred in the ruling of Raba [in general cases], but in this particular case here the Rabbis[5] [might perhaps] have specially protected the mortgage of the husband.[6] Or again if you like I may say that these Tannaim were unanimous in not accepting the enactment of Usha, but in the case here they might have differed as to whether the right to usufruct amounts in law to a right to the very substance, exactly as this was the dividing point between the following Tannaim. For it was taught:[7] 'If an owner sells his slave to a man with whom he stipulates that the slave shall still remain to serve him for the next thirty days, R. Meir says that the vendor[8] would be subject to the law of "a day or two"[9] because the slave was still "under" him,' his view being that the right to a usufruct in the slave amounts in law to a right to the very substance of him.

‘R. Judah on the other hand says that it is the purchaser who would be subject to the law of "a day or two"[10] because the slave was "his money",’ his view being that a right to a usufruct in the slave does not amount in law to a right to the very substance of him. ‘But R. Jose says that both of them[11] would be subject to the right of "a day or two": the vendor because the slave was still "under" him and the purchaser because the slave was already "his money",’for he was in doubt whether a right to a usufruct should amount to a right to the very substance or should not amount to a right to the very substance, and, as is well known, a doubt in capital charges should always be for the benefit of the accused.[12] ‘R. Eliezer on the other hand says that neither of them would be subject to the law of "a day or two": the purchaser because the slave is not "under" him, and the vendor because he is not "his money".’ Raba said: The reason of R. Eliezer was because Scripture says, For he is his money,[13] implying that he has to be ‘his money’ owned by him exclusively.[14] Whose view is followed in the statement made by Amemar that if a husband and wife sold the melog property [even simultaneously], their act is of no effect? Of course the view of R. Eliezer.[15] So too, who was the Tanna who stated that which our Rabbis taught: ‘One who is half a slave and half a freeman,[16] as well as a slave belonging to two partners does not go out free for the mutilation of the principal limbs,[17] even those which cannot be restored to him’? Said R. Mordecai to R. Ashi: Thus was it stated in the name of Raba, that this ruling gives the view of R. Eliezer. For did R. Eliezer not say that ‘his money’ implied that which was owned by him exclusively? So also here ‘his slave’[18] implies one who is owned by him exclusively.

MISHNAH. IF A MAN BOXES ANOTHER MAN'S EAR, HE HAS TO PAY HIM[19] A SELA’.[20] R. JUDAH IN THE NAME OF R. JOSE THE GALILEAN SAYS THAT [HE HAS TO PAY HIM] A MANEH.[20] IF HE SMACKED HIM [ON THE FACE] HE HAS TO PAY HIM TWO HUNDRED ZUZ;[20] [IF HE DID IT] WITH THE BACK OF HIS HAND HE HAS TO PAY HIM FOUR HUNDRED ZUZ. IF HE PULLED HIS EAR, PLUCKED HIS HAIR, SPAT SO THAT THE SPITTLE REACHED HIM, REMOVED HIS GARMENT FROM UPON HIM, UNCOVERED THE HEAD OF A WOMAN IN THE MARKET PLACE, HE MUST PAY FOUR HUNDRED ZUZ.

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(1) That had previously been mortgaged for a liability.

(2) [In Jewish possession during the Passover which had previously been mortgaged for a liability to a non-Jew]

(3) V. p. 498, n. 5.

(4) So also here though the right of the husband in the melog (v. Glos.) slave is impregnable in the case of a sale or gift, it must give way in the case of manumission.

(5) According to the second Baraitha.

(6) To be inviolable even in the case of a manumission.

(7) B.B. 50a.

(8) During the thirty days.

(9) Stated in Ex. XXI, 21 and according to which if an owner smites his servant, who after having continued to live for a day or two, dies, he would not be punished, though in the case of a stranger the slayer would be liable to death in all circumstances.

(10) Even during the thirty days that the slave had to be with the vendor.

(11) I.e., the vendor and the purchaser.

(12) B.B. 50b; Sanh. 79a also supra p. 253.

(13) Ex. XXI, 21.

(14) [Raba stresses the word ‘his’.]

(15) Who considers neither the vendor nor the purchaser as the true owner, and so should be the case regarding husband and wife in the melog estate.

(16) As where the slave belonged to two partners and one of them manumitted him; cf. Git. 41a.

(17) Which are twenty-four in number; cf. Kid. 25a.

(18) Ex. XXI, 26.

(19) On account of Degradation.

(20) V. Glos.

Talmud - Mas. Baba Kama 90b

THIS IS THE GENERAL PRACTICE, THOUGH ALL DEPENDS UPON THE DIGNITY [OF THE INSULTED PERSON]. R. AKIBA SAID THAT EVEN THE POOR IN ISRAEL HAVE TO BE CONSIDERED AS IF THEY ARE FREEMEN REDUCED IN CIRCUMSTANCES, FOR IN FACT THEY ALL ARE THE DESCENDANTS OF ABRAHAM, ISAAC AND JACOB.[1] IT ONCE HAPPENED THAT A CERTAIN PERSON UNCOVERED THE HEAD OF A WOMAN IN THE MARKET PLACE AND WHEN SHE CAME BEFORE R. AKIBA, HE ORDERED THE OFFENDER TO PAY HER FOUR HUNDRED ZUZ. THE LATTER SAID TO HIM, 'RABBI, ALLOW ME TIME [IN WHICH TO CARRY OUT THE JUDGMENT];' R. AKIBA ASSENTED AND FIXED A TIME FOR HIM. HE WATCHED HER UNTIL HE SAW HER STANDING OUTSIDE THE DOOR OF HER COURTYARD, HE THEN BROKE IN HER PRESENCE A PITCHER WHERE THERE WAS OIL OF THE VALUE OF AN ISAR,[2] AND SHE UNCOVERED HER HEAD AND COLLECTED THE OIL WITH HER PALMS AND PUT HER HANDS UPON HER HEAD [TO ANOINT IT]. HE THEN SET UP 'WITNESSES AGAINST HER AND CAME TO R. AKIBA AND SAID TO HIM: HAVE I TO GIVE SUCH A WOMAN[3] FOUR HUNDRED ZUZ?' BUT R. AKIBA SAID TO HIM: 'YOUR ARGUMENT IS OF NO LEGAL EFFECT, FOR WHERE ONE INJURES ONESELF THOUGH FORBIDDEN, HE IS EXEMPT,[4] YET, WERE OTHERS TO INJURE HIM, THEY WOULD BE LIABLE: SO ALSO HE WHO CUTS DOWN HIS OWN PLANTS, THOUGH NOT ACTING LAWFULLY,[5] IS EXEMPT,[4] YET WERE OTHERS TO [DO IT], THEY WOULD BE LIABLE.

GEMARA. It was asked: Is it a Tyrian maneh[6] of which the Mishnaic text speaks or is it only a local maneh[7] which is referred to? — Come and hear: A certain person boxed another's ear and the case was brought before R. Judah Nesi'ah.[8] He said to him: 'Here I am and here is also R. Jose the Galilean, so that you have to pay the plaintiff a Tyrian maneh.' Does this not show that it is a Tyrian maneh which is spoken of in the text? — It does.

What is the meaning of, 'Here I am, and here is also R. Jose the Galilean'? If you say he meant, 'Here I am who witnessed you [doing this] and here is also R. Jose the Galilean who holds that the payment should be a Tyrian maneh; go therefore and thus pay him a Tyrian maneh', would this not imply that a witness is eligible to act [also] as judge? But [how can this be, since] it was taught: If the members of the Sanhedrin saw a man killing another, some of them should act as witnesses and the others should act as judges: this is the opinion of R. Tarfon. R. Akiba [on the other hand] said that all of them are considered witnesses and [they thus cannot act as judges, for] a witness may not act as a judge.[9] Now, even R. Tarfon surely did not mean more than that a part of them should act as witnesses and the others act as judges, but did he ever say that a witness [giving evidence] should be able to act as judge? — The ruling there[10] [that witnesses actually giving evidence would not be eligible to act at the same time as judges] referred only to a case such as where e.g., they saw the murder taking place at night time when they were unable to act in a judicial capacity.[11] Or if you like I may say that what R. Judah Nesi'ah said to the offender was, 'Since I am here who concur with R. Jose the Galilean who stated that a Tyrian maneh should be paid, and since there are here witnesses testifying against you, go and pay the plaintiff a Tyrian maneh.'

Does R. Akiba really maintain that a witness cannot [at the same time] act as judge? But it has been taught: [As Scripture says] And one smite another with a stone or with his fist,[12] Simeon the Temanite remarked that just as a fist is a concrete object that can be submitted for examination to the assembly of the judges and the witnesses, so also it is necessary that all other instruments should be able to be submitted [for consideration] to the assembly of the judges and the witnesses, which excludes the case where the instrument of killing disappeared from under the hands of the

witnesses.[13] Said R. Akiba to him: [Even if the instrument was placed before the judges], yet did the actual killing take place before the judges of the Court of Law that they should be expected to know how many times the murderer struck the victim, or again the part of the body upon which he struck him, whether it was upon his thigh or upon the tip of the heart? Again, supposing the murderer threw a man down from the top of a roof or from the top of a mansion house so that the victim died, would the court of law have to go to the mansion or would the mansion have to go to the court of law? Again, if the mansion meanwhile collapsed, would it be necessary to erect it anew [as it was before for the inspection of the court of law]?[14] We must therefore say that just as a fist is a definite object that was placed before the sight of witnesses [when the murder was committed] so also it is necessary that all other instruments should have been placed before the sight of the witnesses, which excludes the case where the instrument of killing disappeared from under the hand of the murderer who is thus free.' We see then that R. Akiba said to him, 'did the actual killing take place before the judges of the Court of Law that they should be expected to know how many times the murderer struck the victim . . . ?' which would imply that if he had killed him in their presence, [they who were the] witnesses would have been able to act as judges! — He was arguing from the point of view of R. Simeon the Temanite but this was not his own opinion.

Our Rabbis taught: 'If an ox while still Tam[15] killed [a person] and subsequently also did damage, the judges will adjudicate on the loss of life[16] but will not adjudicate on the pecuniary damage.[17] In the case however of Mu'ad[18] killing a person and subsequently doing damage the judges will first deal with the pecuniary matter[19] and then adjudicate on the loss of life.[20] But if [for some reason or other], they have already adjudicated on the capital matter it would no more be possible to start dealing with the pecuniary matter.' But even if they first adjudicated on the capital matter, what has happened that it should no more be possible for them to start dealing with the pecuniary matter? Raba said: 'I found the Rabbis at the School of Rab[21] sitting and stating that this teaching follows the view of R. Simeon the Temanite who said that just as a fist is a definite object which can be submitted to the consideration of the assembly of the judges and the witnesses,

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(1) Cf. B.M. VIII, 1.

(2) A small coin; v. Glos.

(3) Who had herself for the mere value of an isar, publicly uncovered her own head.

(4) From any pecuniary punishment.

(5) Cf. Deut. XX, 19.

(6) Consisting of twenty-five sela's, v. supra p. 204. n. 4.

(7) Which was only an eighth part of a Tyrian maneh; cf. supra p. 204.

(8) I.e., R. Judah II, the Prince.

(9) Sanh. 34b; B.B. 114a.

(10) In the case of Sanhedrin witnessing a murder.

(11) As judgments could be passed only at day time; cf. Sanh. IV, 1. [But where witnessed during the daytime, they can immediately act in the dual capacity of judges and witnesses.]

(12) Ex. XXI, 18.

(13) [Though the witnesses had an opportunity of examining the killing instrument, where the Judges had no such opportunity, no death penalty can be passed.]

(14) [In which case the court relies on the examination made by the witnesses; v. Tosef. Sanh. XII.]

(15) V. Glos.

(16) Cf. Ex. XXI, 28.

(17) Cf. ibid. 35.

(18) V. Glos.

(19) Cf. ibid. 36.

(20) Cf. ibid. 29-30.

(21) Cf. supra p. 487.

[so also all other instruments should be able to be submitted to the consideration of the assembly of the judges and the witnesses], which shows that the inspection[1] [of the instrument] by the Court of Law is essential [before any liability can be imposed]; and in this case where the sentence has already been passed on the ox to be stoned[2] it would not be possible to keep the ox for inspection[1] by the Court of Law, as we could not delay[3] the execution of the judgment. I said to them: 'You may even say that the teaching follows the view of R. Akiba, for we may have been dealing here with a case where the defendant ran away.'[4] But if the defendant ran away even in the case where the capital matter has not yet been adjudicated, how would it be possible to deal with the pecuniary matter in the absence of the defendant? — It was only after the evidence of the witnesses had already been accepted that he ran away.[5] Be that as it may, whence could the payment come[6] [since the defendant ran away]?[7] — Out of the hire obtained from ploughing [done by the ox]. But if so, why also in the case of Tam, should the pecuniary matter not be adjudicated first and the payment made out of the hire obtained from ploughing, and then adjudicate the capital matter? — Said R. Mari the son of R. Kahana: This indeed proves that the hire obtained from ploughing forms a part of the general estate of the owner.[8]

The question was raised: Is an inspection [of the instrument] essential also in the case of mere damage, or is no inspection necessary in the case of mere damage? Shall we say that it is only regarding murder[9] that we have to inspect the instrument, as by means of one instrument life could be taken, while by means of another life could not be taken, whereas regarding mere damage any instrument would be sufficient, or is there perhaps no difference? — Come and hear: 'Just as Pit can cause death because it is usually ten handbreadths [deep], so also [other similar nuisances] should be such as can cause death, [i.e.,] ten handbreadths [deep]. If, however, they were less than ten handbreadths [deep] and an ox or an ass fell into them and died there would be exemption, but if only injured by them there would be liability.'[10] Is not the Tanna here reckoning upwards — so that what he says is that a pit of a depth of from one handbreadth to ten handbreadths could not cause death though it could cause damage, implying that a pit of any depth would involve liability in the case of mere damage and thus indicating that no inspection is necessary regarding mere damage? — No, he reckoned downwards, and thus meant to say that only a pit of ten handbreadths could cause death whereas a Pit a little less than ten handbreadths could cause[11] only damage and not death, so that it may therefore still be argued that inspection might be essential even regarding mere damage and that in each case it may be necessary that the instrument be such as would be fit to cause the particular damage done.

Come and hear: If [the master] struck his slave on the eye and blinded him, or on his ear and deafened him, the slave would on account of that go out free,[12] but if he struck on an object which was opposite the slave's eye through which he lost his sight or on an object which was opposite his ear through which he lost his hearing, the slave would [on account of this] not go out free.[13] Is not the reason of this that consideration of the instrument is required [before any liability can be imposed],[14] which proves that the inspection of the instrument is essential also in the case of mere damage? — No; the reason is because we say that it was the slave who frightened himself, as taught: If a man frightens another he is exempt according to the judgments of Man but liable according to the judgments of Heaven; thus if he blew into his ear and deafened him he would be exempt, but if he actually took hold of his ear and blew into it and thus deafened him he would be liable.[15]

Come and hear: Regarding the Five Items,[16] an estimation will be made and the payment made straight away, though Healing and Loss of Time will have to be estimated for the whole period until he completely recovers. If after the estimation was made his health continued to deteriorate, the payment will not be more than in accordance with the previous estimation. So also if after the estimation was made he recovered rapidly, payment will be made of the whole sum estimated. Does

this not show that estimation is essential also in the case of mere damage? — That an estimate has to be made of the length of the illness likely to result from the wound[17] has never been questioned by us, for it is certain that we would have to make such an estimation; the point which was doubtful to us was whether we estimate if the instrument was one likely to do that damage or not. What is indeed the law? — Come and hear: Simeon the Temanite said[18] that just as a fist is a definite object that can be submitted to the consideration of the assembly of the judges and the witnesses, so also all other instruments should be able to be submitted to the consideration of the assembly of the judges and the witnesses. Does this not show that the inspection of the instrument is essential even in the case of mere damage? — It does indeed.

The Master stated: 'So also if after the estimation was made he recovered rapidly payment will be made of the whole sum estimated.' This appears to support the view of Raba. For Raba said: An injured person whose illness was estimated to last the whole day but who, as it happened recovered in the middle of the day and performed his usual work, would still be paid for the whole day, as the unexpected recovery was an act of mercy especially bestowed upon him from Heaven.

IF HE SPAT SO THAT THE SPITTLE REACHED HIM . . . HE HAS TO PAY FOUR HUNDRED ZUZ. R. Papa said: This Mishnaic ruling applies only where it reached him [his person], but if it reached only his garment this would not be so. But why should this not be equivalent to an insult in words? — It was stated in the West[19] in the name of R. Jose b. Abin that this could indeed prove that where the insult was merely in words, there would be exemption from any liability whatsoever.

ALL DEPENDS UPON THE DIGNITY. . . The question was raised: Did the first Tanna mean by this to mitigate or to aggravate the penalty? Did he mean to mitigate the penalty, so that a poor man would not have to be paid so much, or did he perhaps mean to aggravate the penalty, so that a rich man would have to be paid more? — Come and hear: Since R. Akiba[20] stated THAT EVEN THE POOR IN ISRAEL HAVE TO BE CONSIDERED AS IF THEY ARE FREEMEN WHO HAVE BEEN REDUCED IN CIRCUMSTANCES, FOR IN FACT THEY ALL ARE THE DESCENDANTS OF ABRAHAM, ISAAC AND JACOB, does this not show that the first Tanna meant to mitigate the penalty?[21] — It does indeed.

IT ONCE HAPPENED THAT A CERTAIN PERSON UNCOVERED THE HEAD OF A WOMAN [IN THE MARKET PLACE . . . FIXED A TIME FOR HIM]. But is time allowed[22] [in such a case]? Did R. Hanina not say that no time is granted in cases of injury? — No time is granted in the case of injury where there is an actual loss of money,[23] but in the case of Degradation, where there is no actual loss of money, time[22] to pay may be granted.

HE WATCHED UNTIL HE SAW HER STANDING OUTSIDE THE DOOR OF HER COURTYARD [. . . FOR IF ONE INJURES ONESELF, THOUGH IT IS FORBIDDEN TO DO SO . . .] But was it not taught: R. Akiba said to him, 'You have dived into the depths and have brought up a potsherd in your hand,[24] for a man may injure himself'? — Raba said: There is no difficulty, as the Mishnaic statement deals with actual injury, whereas the other text referred to Degradation. But surely the Mishnah deals with Degradation,

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(1) Lit., 'estimation'.

(2) Lit., 'to be killed'.

(3) V. Sanh. (Sonc. ed.) p. 222, and notes.

(4) So that in his absence we cannot adjudicate the matter.

(5) In which case though judgment could be passed regarding the pecuniary liability it is of no use to do so as the defendant when running away took all available funds with him.

(6) Even in the case where the capital matter has not yet been adjudicated.

(7) With all his available funds.
(8) And could thus not become subject to be paid for damages in the case of Tam, where payment could only be made out of its own body; cf. supra p. 73. [The plaintiff, however, could not take the ox itself in payment as it is to be stoned. V. Tosaf.]
(9) Cf. Num. XXXV, 17, 18 and 23.
(10) V. supra 50b.
(11) I.e., is fit to cause.
(12) Cf. Ex. XXI, 26-27.
(13) Kid. 24b; infra 88a.
(14) And the act of the master in the second case is not considered a cause adequate to effect such a result.
(15) Kid. ibid, and cf. supra 56a.
(16) Enumerated Mishnah supra p. 473,
(17) Lit. 'how long he is likely to suffer . . . and how long he will not.'
(18) Supra pp. 522-3
(19) [This usually represents R. Jeremiah.] Cf. Sanh. 17b.
(20) [And yet R. Akiba does not impose more than four hundred zuz, the same amount as mentioned by the first Tanna.]
(21) [The figure 400 mentioned by him being a maximum whereas R. Akiba would award this amount to all alike.]
(22) For the execution of a judgment.
(23) Sustained by the plaintiff.
(24) I.e., you have gone to a great amount of trouble which could however be of no practical avail.

Talmud - Mas. Baba Kama 91b

and it nevertheless says: If one injures oneself, though it is forbidden to do so, he is exempt? — It was this which he[1] said to him: 'There could be no question regarding Degradation, as a man may put himself to shame, but even in the case of injury where a man may not injure himself, if others injured him they would be liable.' But may a man not injure himself? Was it not taught: You might perhaps think that if a man takes an oath to do harm to himself and did not do so he should be exempt. It is therefore stated: 'To do evil or to do good,'[2] [implying that] just as to do good is permitted, so also to do evil [to oneself] is permitted; I have accordingly to apply [the same law in] the case where a man had sworn to do harm to himself and did not do harm?[3] — Samuel said: The oath referred to was to keep a fast.[4] It would accordingly follow that regarding doing harm to others[5] it would similarly mean to make them keep a fast. But how can one make others keep a fast? — By keeping them locked up in a room. But was it not taught: What is meant by doing harm to others? [If one says], I will smite a certain person and will split his skull?[3] — It must therefore be said that Tannaim differed on this point, for there is one view maintaining that a man may not injure himself and there is another maintaining that a man may injure himself. But who is the Tanna maintaining that a man may not injure himself? It could hardly be said that he was the Tanna of the teaching, And surely your blood of your lives will I require,[6] [upon which] R. Eleazar remarked [that] it meant I will require your blood if shed by the hands of yourselves,[7] for murder is perhaps different. He might therefore be the Tanna of the following teaching: 'Garments may be rent for a dead person[8] as this is not necessarily done to imitate the ways of the Amorites. But R. Eleazar said: I heard that he who rends [his garments] too much for a dead person transgresses the command,[9] 'Thou shalt not destroy',[10] and it seems that this should be the more so in the case of injuring his own body. But garments might perhaps be different, as the loss is irretrievable, for R. Johanan used to call garments 'my honourers',[11] and R. Hisda whenever he had to walk between thorns and thistles used to lift up his garments Saying that whereas for the body [if injured] nature will produce a healing, for garments [if torn] nature could bring up no cure.[12] He must therefore be the Tanna of the following teaching: R. Eleazar Hakkapar Berabbi[13] said: What is the point of the words: 'And make an atonement for him, for that he sinned regarding the soul.'[14] Regarding what soul did this [Nazarite] sin unless by having deprived himself of wine? Now can we not base on this an argument a fortiori: If a Nazarite who deprived himself only of wine is already called a sinner, how much the more so

one who deprives oneself of all matters?'[15]

HE WHO CUTS DOWN HIS OWN PLANTS . . . Rabbah b. Bar Hanah recited in the presence of Rab: [Where a plaintiff pleads] 'You killed my ox, you cut my plants, [pay compensation', and the defendant responds:] 'You told me to kill it, you told me to cut it down', he would be exempt. He [Rab] said to him. If so you almost make it impossible for anyone to live, for how can you trust him? — He therefore said to him: Has this teaching to be deleted? — He replied: No; your teaching could hold good in the case where the ox was marked for slaughter[16] and so also the tree had to be cut down.[17] If so what plea has he against him? — He says to him: I wanted to perform the precept myself in the way taught: 'He shall pour out . . . and cover it',[18] implying that he who poured out[19] has to cover it; but it once happened that a certain person performed the slaughter and another anticipated him and covered [the blood], and R. Gamaliel condemned the latter to pay ten gold coins.[20]

Rab said: A palm tree producing even one kab of fruit may not be cut down. An objection was raised [from the following]: What quantity should be on an olive tree so that it should not be permitted to cut it down? A quarter of a kab.[21] — Olives are different as they are more important. R. Hanina said: Shibhath[22] my son did not pass away except for having cut down a fig tree before its time. Rabina, however, said: If its value [for other purposes] exceeds that for fruit, it is permitted [to cut it down]. It was also taught to the same effect: 'Only the trees of which thou knowest'[23] implies even fruit-bearing trees;[24] That they be not trees for meat, means a wild tree. But since we ultimately include all things, why then was it stated, That they are not trees for food? To give priority[25] to a wild tree over one bearing edible fruits.

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(1) I.e., R. Akiba.

(2) Lev. V, 4.

(3) Shebu. 27a.

(4) But in other ways a man may not injure himself.

(5) Dealt with in Shebu 27a.

(6) Gen. IX, 5.

(7) I.e., for committing suicide.

(8) Cf. II Sam. I, 11, and II Kings II, 12. Cf. also Sanh. 52b.

(9) According to the text, 'Will be lashed on account of transgressing' which could however hardly be substantiated; Cf. Tosaf. a.l.

(10) Deut. XX, 19.

(11) Sanh. 94a.

(12) Cf. Taan. 23a.

(13) A title of some scholars who belonged to the school of R. Judah the prince.

(14) Num. VI, 11; E.V.: for that he sinned by the dead.

(15) R. Eleazar Hakkapar is thus the Tanna forbidding self-injury.

(16) Such as where it killed a human being; cf. Ex. XXI, 28.

(17) Such as where it constituted a danger to the public or where it was planted for idolatrous purposes; cf. Deut. XII, 3.

(18) Lev. XVII, 13.

(19) I.e., he who acted as slaughterer.

(20) Hul. 87a.

(21) Sheb. IV, 10. [Why then should the palm tree require a bigger quantity?]

(22) B.B. 26a. There he is called 'Shikhath'.

(23) Deut. XX, 20.

(24) [That is where it is known that they no longer produce any fruits, v. Malbim, a.l.]

(25) To be cut down.

As you might say that this is so even where the value [for other purposes] exceeds that for fruits, it says 'only'.[1] Samuel's field labourer brought him some dates. As he partook of them he tasted wine in them. When he asked the labourer how that came about, he told him that the date trees were placed between vines. He said to him: Since they are weakening the vines so much, bring me their roots tomorrow.[2] When R. Hisda saw certain palms among the vines he said to his field labourers: 'Remove them with their roots. Vines can easily buy palms but palms cannot buy vines.'[2]

MISHNAH. EVEN THOUGH THE OFFENDER PAYS HIM [COMPENSATION], THE OFFENCE IS NOT FORGIVEN UNTIL HE ASKS HIM FOR PARDON, AS IT SAYS: NOW THEREFORE RESTORE THE MAN'S WIFE ETC.[3] WHENCE CAN WE LEARN THAT SHOULD THE INJURED PERSON NOT FORGIVE HIM HE WOULD BE [STIGMATISED AS] CRUEL? FROM THE WORDS: SO ABRAHAM PRAYED UNTO GOD AND GOD HEALED ABIMELECH ETC.[4] IF THE PLAINTIFF SAID: 'PUT OUT MY EYE, CUT OFF MY ARM AND BREAK MY LEG,' THE OFFENDER WOULD NEVERTHELESS BE LIABLE; [AND SO ALSO EVEN IF HE TOLD HIM TO DO IT] ON THE UNDERSTANDING THAT HE WOULD BE EXEMPT HE WOULD STILL BE LIABLE. IF THE PLAINTIFF SAID: 'TEAR MY GARMENT AND BREAK MY PITCHER,' THE DEFENDANT WOULD STILL BE LIABLE, BUT IF HE SAID TO HIM: '[DO THIS] ON THE UNDERSTANDING THAT YOU WILL BE EXEMPT,' HE WOULD BE EXEMPT.[5] BUT IF ONE SAID TO THE DEFENDANT: 'DO THIS TO A THIRD PERSON[6] ON THE UNDERSTANDING THAT YOU WILL BE EXEMPT,' THE DEFENDANT WOULD BE LIABLE, WHETHER WHERE THE INJURY WAS DONE TO THE PERSON OR TO HIS CHATTELS.

GEMARA. Our Rabbis taught: All these fixed sums stated above[7] specify only the payment [civilly due] for Degradation. For regarding the hurt done to the feelings of the plaintiff, even if the offender should bring all the 'rams of Nebaioth'[8] in the world,[9] the offence would not be forgiven until he asks him for pardon, as it is written: Now therefore restore the man's wife for he is a prophet and he will pray for thee.[10] But is it only the wife of a prophet who has to be restored, whereas the wife of another man need not be restored? R. Samuel b. Nahmani said in the name of R. Johanan: 'Restore the man's wife' [surely implies] in all cases; for as to your allegation, Wilt thou slay even a righteous nation? Said he not unto me, She is my sister and she even she herself said: He is my brother,[11] [you should know that] he is a prophet who has already [by act and deed][12] taught the world that where a stranger comes to a city whether he is to be questioned regarding food and drink — or regarding his wife, whether she is his wife or sister. From this we can learn that a descendant of Noah[13] may become liable to death if he had the opportunity to acquire instruction[14] and did not do so [and so committed a crime through the ignorance of the law].

For to close the Lord had closed up [all the wombs of the house of Abimelech].[15] R. Eleazar said: Why is 'closing up' mentioned twice?[16] There was one 'closing up' in the case of males, viz. semen [virile], and two in the case of females, viz. semen and the giving of birth. In a Baraitha it was taught that there were two in the case of males, viz. semen [virile] and urinating, and three in the case of females, i.e. semen, urinating and the giving of birth. Rabina said: Three in the case of males, viz. semen [virile], urinating and anus, and four in the case of females, viz. semen and the giving of birth, urinating and anus. 'All the wombs of the house of Abimelech.' It was stated at the College of R. Jannai that even a hen of the house of Abimelech did not lay an egg [at that time].

Raba said to Rabbah b. Mari: Whence can be derived the lesson taught by our Rabbis that one who solicits mercy for his fellow while he himself is in need of the same thing, [will be answered first]? — He replied: As it is written: And the Lord changed the fortune of Job when he prayed for his friends.[17] He said to him: You say it is from that text, but I say it is from this text: 'And Abraham

prayed unto God and God healed Abimelech and his wife and his maidservants,'[18] and immediately after it Says: And the Lord remembered Sarah as he had said, etc.,[19] [i.e.] as Abraham had [prayed and] said regarding Abimelech.

Raba [again] said to Rabbah b. Mari: Whence can be derived the proverbial saying that together with the thorn the cabbage is smitten?[20] — He replied: As it is written, Wherefore will ye contend with Me, ye all have transgressed against Me, says the Lord.[21] He said to him: You derive it from that text, but I derive it from this, How long refuse ye[22] to keep My commandments and My laws.[23] Raba [again] said to Rabbah b. Mari: It is written: 'And from among his brethren, he took five men.[24] Who were these five? — He replied: Thus said R. Johanan that 'they were those whose names were repeated [in the Farewell of Moses].'[25] But was not the name Judah repeated too?[26] He replied: The repetition in the case of Judah was for a different purpose, as stated by R. Samuel b. Nahmani that R. Johanan said: What is the meaning of the words, Let Reuben live and not die, in that his men become few, and this is for Judah?[27] All the forty years that the Israelites were in the wilderness the bones of Judah were scattered[28] in the coffin[29] until Moses came and solicited for mercy by saying thus to God: Master of the universe, who brought Reuben to confess[30] if not Judah?[31] Hear [therefore] Lord the voice of Judah! Thereupon each limb fitted itself into its original place.[32] He was, however, not permitted to ascend to the heavenly gathering[33] until Moses said: And bring him in unto his people.[34] As, however, he did not know what the Rabbis were saying and was thus unable to argue with the Rabbis on matters of the law, Moses said: His hands shall contend for him![34] As again he was unable to bring his statement into accord with the Halachah, Moses said, Thou shalt be a help against his adversaries![34]

Raba [again] said to Rabbah b. Mari: Whence[35] can be derived the popular saying that poverty follows the poor?[36] — He replied: We have learnt:[37] 'The rich used to bring the first fruits[38] in baskets of gold and silver, but the poor brought it in wicker baskets made out of the bark of willow, and thus gave the baskets as well as the first-fruits to the priest.'[39] He said to him: You derive it from there, but I derive it from this:

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(1) Which qualifies and thus exempts such a case from giving priority to wild trees over those bearing edible fruits.

(2) As the value of the produce of vines surpasses that of palms.

(3) Gen. XX, 7.

(4) Ibid. 17.

(5) For the distinction between injury to the person and damage to chattels see the Gemara.

(6) Lit., 'to such and such person'; cf. Ruth IV, 1.

(7) Supra pp. 520-1.

(8) Isa. LX, 7.

(9) For the purpose of propitiation.

(10) Gen. XX, 7.

(11) Ibid. 4-5. [Ms.M. 'He learned it from thee'; i.e. thy conduct in questioning a stranger, of which he as 'a prophet' became cognisant, put him on his guard. Cf. Mak. 9a.]

(12) Ibid. XVIII, 2-8.

(13) Who is subject to the seven commandments of civilized humanity enumerated in Sanh. 56a; cf. also supra.

(14) Regarding the elementary laws of humanity.

(15) Gen. XX, 18; E.V.: For the Lord had fast closed up. . .

(16) I.e., in the infinitive and finite mood.

(17) Job XLII, 10.

(18) Gen. XX, 17.

(19) Gen. XXI, I.

(20) I.e., that the good are punished with the bad.

(21) Jer. II, 29.

(22) [Including, as it were, Moses and Aaron.]

(23) Ex. XVI, 28.
(24) Gen. XLVII, 2.
(25) Deut. XXXIII, 2-29; (besides Judah) the five were as follows: Dan, Zebulun, Gad, Asher and Naphtali. These names had to be repeated in the blessing as they were the weakest among the tribes.
(26) As in Deut. XXXIII, 7 (though his tribe was by no means among the weak ones).
(27) Deut. XXXIII, 6.7.
(28) I.e., they were not kept together.
(29) As the bones of all the heads of the tribes just as those of Joseph were, according to homiletic interpretation, carried away from Egypt to the Promised Land. Cf. Mid. Rab. on Gen. L, 25.
(30) Cf. Gen. XXXV, 22 and XLIX, 4.
(31) Who made public confession in Gen. XXXVIII, 26.
(32) I.e., they were again made into one whole.
(33) Where matters of law are considered; cf. B.M. 86a.
(34) Deut. XXXIII, 7.
(35) V. Mak. 11b.
(36) B.B. 174b.
(37) Bik. III, 8.
(38) Cf. Ex. XXXIV, 26.
(39) So that the rich took back their gold or silver baskets, whereas the poor did not receive back their baskets made of the bark of the willow.

Talmud - Mas. Baba Kama 92b

And shall cry unclean, unclean.[1]

Rabbah [again] said to Rabbah b. Mari: Whence can be derived the advice given by our Rabbis:[2] Have early breakfast in the summer because of the heat, and in the winter because of the cold, and people even say that sixty[3] men may pursue him who has early meals in the mornings and will not overtake him? — He replied: As it is written, They shall not hunger nor thirst, neither shall the heat nor sun smite them.[4] He said to him: You derive it from that text but I derive it from this one, And ye shall serve the Lord your God:[5] this [as has been explained] refers to the reading of Shema'[6] and the Tefillah,'[7] 'And he will bless thy bread and thy water:'[5] this refers to the bread dipped in salt and to the pitcher of water;[8] and after this, I will take [Mahalah, i.e.] sickness away from the midst of thee.[5] It was [also] taught: Mahalah[9] means gall;[10] and why is it called mahalah! Because eighty-three different kinds of illnesses may result from it [as the numerical value of mahalah amounts exactly to this];[11] but they all are counteracted by partaking in the morning of bread dipped in salt followed by a pitcher of water.

Raba [again] said to Rabbah b. Mari: Whence can be derived the saying of the Rabbis: 'If thy neighbour calls thee an ass put a saddle on thy back?'[12] — He replied: As it is written: And he said: Hagar, Sarai's handmaid; Whence camest thou and whither goest thou? And she said: I flee from the face of my mistress Sarai.[13]

Raba [again] said to Rabbah b. Mari: Whence can be derived the popular saying: 'If there is any matter of reproach in thee be the first to tell it?' — He replied: As it was written: And he said, I am Abraham's servant.[14]

Raba again said to Rabbah b. Mari: Whence can be derived the popular saying: 'Though a duck keeps its head down while walking its eyes look afar'? — He replied: As it is written: And when the Lord shall have dealt well with my lord then remember thy handmaid.[15] Raba [again] said to Rabbah b. Mari: Whence can be derived the popular saying, 'Sixty[16] pains reach the teeth of him who hears the noise made by another man eating[17] while he himself does not eat'? — He replied: As it is

written, But me, even me thy servant and Zadok the priest, and Benaiah the son of Jehoiada, and thy servant Solomon, hath he not called.[18] He said to him: You derive it from that verse, but I derive it from this verse, And Isaac brought her unto his mother Sarah's tent, and took Rebekah and she became his wife; and he loved her. And Isaac was comforted for his mother;[19] and soon after it is written, And again Abraham took another wife and her name was Keturah.[20]

Raba [further] said to Rabbah b. Mari: Whence can be derived the popular saying, 'Though the wine belongs to the owner, the thanks are given to the butler'? — He replied: As it is written, And thou shalt put of thy honour upon him, that all the congregation of the children of Israel may hearken,[21] and it is also written, 'And Joshua the son of Nun was full of the spirit of wisdom, for Moses had laid his hands upon him; and the children of Israel hearkened unto him. etc.[22]

Raba [again] said to Rabbah b. Mari: Whence can be derived the popular saying, 'A dog when hungry is ready to swallow even his [own] excrements'?[23] — He replied: As it is written, The full soul loatheth an honeycomb, but to the hungry soul every bitter thing is sweet.[24]

Raba [again] said to Rabbah b. Mari: Whence can be derived the popular saying, 'A bad palm will usually make its way to a grove of barren trees'? — He replied: This matter was written in the Pentateuch, repeated in the Prophets, mentioned a third time in the Hagiographa, and also learnt in a Mishnah and taught in a Baraitha: It is stated in the Pentateuch as written, So Esau went unto Ishmael;[25] repeated in the prophets, as written, And there gathered themselves to Jephthah idle men and they went out with him;[26] mentioned a third time in the Hagiographa, as written: Every fowl dwells near its kind and man near his equal;[27] it was learnt in the Mishnah: 'All that which is attached to an article that is subject to the law of defilement,[28] will similarly become defiled, but all that which is attached to anything which would always remain [levitically] clean would similarly remain clean;[29] and it was also taught in a Baraitha: R. Eliezer said: 'Not for nothing did the starling follow the raven, but because it is of its kind.'[30] Raba [again] said to Rabbah b. Mari: Whence can be derived the popular saying: 'If you draw the attention of your fellow to warn him [and he does not respond], you may push a big wall and throw it at him'?[31] — He replied: As it is written: Because I have purged thee and thou wast not purged, thou shalt not be purged from thy filthiness any more.[32]

Raba again said to Rabbah b. Mari: Whence can be derived the popular saying: 'Into the well from which you have once drank water do not throw clods?' He replied: As it is written: Thou shalt not abhor an Edomite, for he is thy brother; thou shalt not abhor an Egyptian because thou wast a stranger in his land.[33]

Raba again said to Rabbah b. Mari: Whence can be derived the popular Saying, 'If thou wilt join me in lifting the burden I will carry it, and if not I will not carry it?' — He replied: As it is written: And Barak said unto her, If thou wilt go with me, then I will go; but if thou wilt not go with me, I will not go.[34]

Raba again said to Rabbah b. Mari: Whence can be derived the popular Saying: 'When we were young we were treated as men, whereas now that we have grown old we are looked upon as babies'? — He replied: It is first written: And the Lord went before them by day in a pillar of a cloud, to lead them the way; and by night in a pillar of fire to give them light,[35]

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(1) Lev. XIII, 45. I.e., in addition to the affliction of the leprosy, he is compelled by Jaw to make it public.

(2) Cf. B.M. 107b.

(3) A common hyperbolical term.

(4) Isa. XLIX, 10. Which might imply as follows: If they will neither hunger nor thirst, but eat in time and drink in time, then neither the heat nor the sun shall smite them.

(5) Ex. XXIII, 25.

(6) [Lit., 'Hear (O Israel!)' introducing the three passages from Scriptures (Deut. VI, 4-9; XI, 13-21; Num. XV, 37-41) recited twice daily — in the morning and the evening.]
(7) [Lit., 'Prayer', the 'Eighteen Benedictions', the main constituents of the regular prayers recited three times daily.]
(8) Constituting the meal of breakfast after the morning prayer; cf. however Shab. 10a and Pes. 12b.
(9) E.V., disease.
(10) [Evidently connecting mahalah with Gr. ** (Preuss, Medezin, p. 215.]
(11) מחלה == forty, eight, thirty and five.
(12) I.e., do not quarrel with him for the purpose of convincing him otherwise.
(13) Gen. XVI, 8.
(14) Ibid. XXIV, 34.
(15) 1 Sam. XXV, 31. Spoken by Abigail to David and hinting thus that she would wish to become his wife in future days.
(16) V. supra p. 534, n.13.
(17) Cf. Keth. 61.
(18) I Kings, 1, 26.
(19) Gen. XXIV, 67.
(20) Ibid. XXV, 1.
(21) Num. XXVII, 18-20.
(22) Deut. XXXIV, 9. Though the spirit of wisdom belongs to God it is nevertheless ascribed to Moses.
(23) [Others: 'stones'.]
(24) Prov. XXVII, 7.
(25) Gen. XXVIII, 9.
(26) Judges XI, 3.
(27) Ecclesiasticus. XIII, 15.
(28) Such as where a metal hook was fixed into a wooden receptacle, which is subject to the law of defilement.
(29) Such as where the hook was stuck into a piece of wood which did not form a receptacle; v. Kel. XII. 2.
(30) Hul. 65a. [The reference is to the small Egyptian raven incident, v. Gen. Rab. LXV, and R. Eliezer had probably a similar incident in mind.]
(31) I.e., you can no more be responsible for any misfortune that his inattention may bring upon him.
(32) Ezek. XXIV, 13.
(33) Deut. XXIII, 8.
(34) Judges IV, 8.
(35) Ex. XIII, 21.

Talmud - Mas. Baba Kama 93a

but subsequently it is written: Behold I send an angel before thee to keep thee by the way.[1]

Raba [again] said to Rabbah b. Mari: Whence can be derived the popular saying: 'Behind an owner of wealth chips are dragged along'? — He replied: As it is written: And Lot also who went with Abram had flocks and herds and tents.[2]

R. Hanan said: He who invokes the judgment of Heaven against his fellow is himself punished first, as it says, And Sarai said unto Abram, My wrong be upon thee[3] etc., and it is subsequently written, And Abraham came to mourn for Sarah, and to weep for her.[4] This, however, is the case only where justice could be obtained in a temporal Court of Law. R. Isaac said: Woe to him who cries [for divine intervention] even more than to him against whom it is invoked! It was taught likewise: Both the one who cries for divine intervention and the one against whom it is invoked come under the Scriptural threat,[5] but punishment is meted out first to the one who cries, [and is] more severe than for the one against whom justice is invoked.[6] R. Isaac again said: The curse of an ordinary man should never be considered a trifling matter in your eyes,[7] for when Abimelech called a curse upon Sarah it was fulfilled in her seed, as it says, Behold it is for thee a covering of the eyes,[8]

[which implies that] he said to her, ‘Since thou hast covered the truth from me and not disclosed that he was thy husband, and hast thus caused me all this trouble, let it be the will [of Heaven] that there shall be to thee a covering of the eyes,’[9] and this was actually fulfilled in her seed, as it is written: And it came to pass that when Isaac was old and his eyes were dim so that he could not see.[10] R. Abbahu said: A man should always strive to be rather of the persecuted than of the persecutors as there is none among the birds more persecuted than doves and pigeons, and yet Scripture made them [alone][11] eligible for the altar.[12]

IF THE PLAINTIFF SAID: PUT OUT MY EYE . . . ON THE UNDERSTANDING THAT HE WOULD BE EXEMPT, HE WOULD STILL BE LIABLE. IF THE PLAINTIFF SAID: TEAR MY GARMENT ON THE UNDERSTANDING THAT YOU WILL BE EXEMPT HE WOULD BE EXEMPT. R. Assi b. Hama[13] said to Rabbah:[14] Why is the rule differing in the former case and in the latter case? — He replied: [There is liability in] the former case because no man truly pardons the wounding of his principal limbs. The others rejoined: Does a man then pardon the inflicting of pain, seeing that it was taught: ‘If the plaintiff had said, "Smite me and wound me on the understanding that you will be exempt," the defendant would be exempt.’ He had no answer and said: Have you heard anything on this matter? — He[15] thereupon said to him: This is what R. Shesheth has said: The liability is because [the plaintiff had no right to pardon] the discredit to the family. It was similarly stated: R. Oshaia said: Because of the discredit to the family, whereas Raba said: Because no man could truly pardon the injury done to his principal limbs. R. Johanan, however, said: Sometimes the term ‘Yes’ means ‘No’[16] and the term ‘No’ means ‘Yes’ [as when spoken ironically].[17] It was also taught likewise: If the plaintiff said, ‘Smite me and wound me,’ and when the defendant interposed, ‘On the understanding of being exempt, the plaintiff replied, ‘Yes,’ there may be a ‘Yes’ which implies ‘No’ [i.e., when spoken ironically]. If the plaintiff said, ‘Tear my garment,’ and when the defendant interposed, ‘On the Understanding of being exempt, he said to him, ‘No’, there may be a ‘No’ which means ‘Yes’ [such as when spoken ironically].[17]

IF THE DEFENDANT SAID: BREAK MY PITCHER AND TEAR MY GARMENT, THE DEFENDANT WOULD STILL BE LIABLE. A contradiction was pouched out: "’To keep"[18] but not to destroy; "to keep", but not to tear; "to keep" but not to distribute to the poor,’ [in which case the liability of bailees would not apply. Why then liability in the Mishnah]?[19] — Said R. Huna: There is no difficulty, as here[20] the article came into his hands,[21] whereas there[22] the article did not come into his hands.[23] Said Rabbah to him: Does the expression ‘To keep’[24] not imply that the article has come into his hands? — Rabbah therefore said: This case as well as the other is one in which the article has come into his hands, and still there is no difficulty, as in the case here[25] the article originally came into his hands[21] for the purpose of being guarded, whereas there[22] it came to his hands for the purpose of being torn.

A purse of money for charity having been brought to Pumbeditha, R. Joseph deposited it with a certain person who, however, was so negligent that thieves came and stole it. R. Joseph declared liability [to pay], but Abaye said to him: Was it not taught: ‘To keep’[24] but not to distribute to the poor? — R. Joseph rejoined: The poor of Pumbeditha have a fixed allowance,[26] and the charity money could thus be considered as having been deposited ‘to keep’ [and not to distribute it to the poor].[27] [

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(1) Ibid. XXIII, 20.

(2) Gen. XIII, 5.

(3) Ibid. XVI, 5.

(4) Ibid. XXIII, 2.

(5) Cf. Ex. XXII, 23.

(6) As in the case of Sarah; Gen. XVI, 5 and ibid. XXIII, 2.

(7) Cf. Ex. XXII, 23.

(8) Gen. XX, 16.
(9) I.e., blindness.
(10) Gen. XXVII, 1.
(11) Among birds.
(12) Cf. Lev.I, 14.
(13) [MS.M.: 'R. Joseph b. Hama' the father of Raba.]
(14) Raba in the text and 'Rab' in the text of Asheri, v. Marginal Glosses in cur. edd.
(15) I.e., R. Assi.
(16) Cf. supra pp. 178-9.
(17) According to Rashi there is strictly speaking no difference between the case dealt with in the commencing and that of the concluding clause; as all depends upon the implied intention, the illustration being in each case taken from what is usual, for while a man will pardon damage done to his chattel, he will not do so in regard to personal pain. But that this was not so was maintained by Tosaf.
(18) Ex. XXII, 6.
(19) Where he gave him the pitcher to break it and the garment to tear it.
(20) In the case of the Mishnah.
(21) I.e., to the hand of the one who did the damage.
(22) In Ex.
(23) But was destroyed before it actually reached the hand of the bailee.
(24) Ibid.
(25) In the case of the Mishnah.
(26) So much per week.
(27) As there were in that case definite plaintiffs.

Talmud - Mas. Baba Kama 93b

CHAPTER IX

MISHNAH. IF ONE MISAPPROPRIATES PIECES OF WOOD AND MAKES UTENSILS OUT OF THEM, OR PIECES OF WOOL AND MAKES GARMENTS OUT OF THEM, HE HAS TO PAY FOR THEM IN ACCORDANCE WITH [THEIR VALUE AT] THE TIME OF THE ROBBERY.[1] IF ONE MISAPPROPRIATED A PREGNANT COW WHICH MEANWHILE GAVE BIRTH [TO A CALF], OR A SHEEP BEARING WOOL WHICH HE SHEARED, HE WOULD PAY THE VALUE OF A COW WHICH WAS ABOUT TO GIVE BIRTH [TO A CALF], AND THE VALUE OF A SHEEP WHICH WAS READY TO BE SHORN [RESPECTIVELY]. BUT IF HE MISAPPROPRIATED A COW WHICH BECAME PREGNANT WHILE WITH HIM AND THEN GAVE BIRTH, OR A SHEEP WHICH WHILE WITH HIM GREW WOOL WHICH HE SHEARED, HE WOULD PAY IN ACCORDANCE WITH [THE VALUE AT] THE TIME OF THE ROBBERY. THIS IS THE GENERAL PRINCIPLE: ALL ROBBERS HAVE TO PAY IN ACCORDANCE WITH [THE VALUE OF THE MISAPPROPRIATED ARTICLES AT] THE TIME OF THE ROBBERY.

GEMARA. Shall we say that it is only where he actually made utensils out of the pieces of wood [that the Mishnaic ruling will apply], whereas if he merely planed them this would not be so?[2] Again, it is only where he made garments out of the wool that this will be so, whereas where he merely bleached it this would not be so! But could not a contradiction be raised from the following: 'One who misappropriated pieces of wood and planed them, stones and chiselled them, wool and bleached it or flax and cleansed it, would have to pay in accordance with [the value] at the time of the robbery'?[3] — Said Abaye: The Tanna of our Mishnah stated the ruling where the change [in the article misappropriated] is only such as is recognised by the Rabbis, that is, where it can still revert [to its former condition] and of course it applies all the more where the change is such[4] as is recognised by the pentateuch:[5] [for the expression ONE WHO MISAPPROPRIATES] PIECES OF

WOOD AND MAKES OUT OF THEM UTENSILS refers to pieces of wood already planed, such as ready-made boards, in which a reversion to the previous condition is still possible, since if he likes he can easily pull the boards out [and thus have them as they were previously]; PIECES OF WOOL AND MADE GARMENTS OUT OF THEE also refers to wool which was already spun, in which [similarly] a reversion to the previous condition is possible, since if he likes he can pull out the threads and restore them to the previous condition; the same law would apply all the more in the case of a change [where the article could no more revert to the previous condition and] which would thus be recognised by the pentateuch.[5] But the Tanna of the Baraitha deals only with a change [where the article could no more revert to its previous condition and] which would thus be recognised by the pentateuch, but does not deal with a change [in which the article could revert to its previous condition and which would be] recognised only by the Rabbis. R. Ashi, however, said: The Tanna of our [Mishnah also] deals with a change which would be recognised by the pentateuch, for by PIECES OF WOOD AND MAKES UTENSILS OUT OF THEM he means clubs, which were changed by planing them; by PIECES OF WOOL AND MAKES GARMENTS OUT OF THEM he similarly means felt cloths, which involves a change that can no more revert to its previous condition.

But should bleaching be considered a change?[6] Could no contradiction be raised [from the following]: 'If the owner did not manage to give the first of the fleece to the priest until it had already been dyed, he would be exempt,[7] but if he only bleached it without having dyed it, he would still be liable'?[8] — Said Abaye: This is no difficulty, as the former statement is in accordance with R. Simeon and the latter in accordance with the Rabbis; for it was taught: 'If after the owner had shorn his sheep he span the wool or wove it, this portion would not be taken into account[9] [with the other wool which was still left in a raw state];[10] but if he only purified it, R. Simeon says: It would [still] not be taken into account, whereas the Sages say that it would be taken into account. But Raba said that both statements might be in accordance with R. Simeon, and there would still be no difficulty, as in one case[11] [the process of bleaching was] by beating the wool [where no actual change took place], whereas in the other case[12] the wool was corded with a comb. R. Hiyya b. Abin said that in one case[11] the wool was merely washed [so that no actual change took place]. whereas in the other[12] it was whitened with sulphur. But since even dyeing is according to R. Simeon not considered a change, how could bleaching be considered a change, for was it not taught: 'Where the owner had shorn one sheep after another and in the interval dyed the [respective] fleeces, [or shorn] one after another and in the interval spun the wool, [or shorn] one after another and in the interval wove the wool, this portion would not be taken into account,[9] but R. Simeon b. Judah said in the name of R. Simeon[13] that if he [only] dyed the wool it would be taken into account'?[14] — Said Abaye: There is no difficulty, as the former statement was made by the Rabbis according to R. Simeon whereas the latter[15] was made by R. Simeon b. Judah according to R. Simeon. But Raba said: You may still say that the Rabbis did not differ from R. Simeon b. Judah on this point,[16] for dyeing might be different, the reason being that since the colour could be removed by soap, [it is not considered a change], and as to the statement made there, 'If the owner did not manage to give the first of his fleece to the priest until it had already been dyed he would be exempt' which has been stated to be accepted unanimously, this deals with a case where it was dyed with indigo [which could not be removed by soap].

Abaye said: R. Simeon b. Judah, Beth Shammai, R. Eliezer b. Jacob. R. Simeon b. Eleazar and R. Ishmael all maintain that a change leaves the article in its previous status: R. Simeon b. Judah here in the text quoted by us; but what about Beth Shammai? — As it was taught:[17] 'Where he gave her as her hire wheat of which she made flour, or olives of which she made oil, or grapes of which she made wine,' one [Baraitha] taught that 'the produce is forbidden to be sacrificed upon the altar,' whereas another [Baraitha] taught 'it is permitted'. and R. Joseph said: Gorion

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(1) I.e., of the pieces of wood and wool but not of the utensils and garments respectively, as by the change which took

place he acquired title to them; cf. supra p. 384.
(2) I.e., the ownership would thereby not be transferred to the robber.
(3) The reason being that through the change which took place the ownership was transferred.
(4) I.e., where the article can no longer revert to its former condition; v. supra p. 386.
(5) To transfer ownership.
(6) In regard to which it was stated in the Baraitha that the robber will thereby acquire title to the wool.
(7) As by this change the original obligation was annulled and the owner acquired unqualified and absolute right to the wool.
(8) Hul. XI, 2; v. supra p. 382. Does not this prove that mere bleaching unlike dyeing does not constitute a change?
(9) In regard to the first fleece offering the minimum of which is according to R. Dosa b. Harkinas the weight of seven maneh and a half collected equally from not less than five sheep, but according to the Rabbis one maneh and a half collected equally from the same number of sheep would suffice; cf. Hul. XI, 2. A maneh amounts to twenty-five sela's; for Samuel's view according to the Rabbis cf ibid. 137b.
(10) On account of the change which had been made.
(11) Not considering it a change.
(12) Considering it a change.
(13) I.e., R. Simeon b. Yohai; cf. Sheb. 2b.
(14) This shows that R. Simeon b. Yohai does not consider dyeing a change, much less bleaching.
(15) v. p. 443. n. 5.
(16) As to the view of R. Simeon b. Yohai on this matter.
(17) For notes on passage following v. supra p. 380.

Talmud - Mas. Baba Kama 94a

of Aspurak taught: ‘Beth Shammai prohibit the produce to be used as sacrifices, whereas Beth Hillel permit it.’ Now, what was the reason of Beth Shammai? — Because it is written gam, to include their transformation. But Beth Hillel maintains that hem implies only them and not their transformations. Beth Shammai, however, maintains that though hem is written, what it implies is ‘them and not their offsprings’. Beth Hillel still argue that you can understand both points from it: ‘them and not their transformations, them and not their offsprings.’ But how could Beth Hillel explain the insertion of gam? Gam offers a difficulty according to the view of Beth Hillel.

What about R. Eliezer b. Jacob? — As it was taught:[1] R. Eliezer b. Jacob says: If one misappropriated a se'ah[2] of wheat and kneaded it and baked it and set aside a portion of it as hallah,[3] how would he be able to pronounce the benediction?[4] He would surely not be pronouncing a blessing but pronouncing a blasphemy, as to such a one could be applied the words: The robber pronounceth a benediction [but in fact] contemneth the Lord.[5]

What about R. Simeon b. Eleazar? — As it was taught: This principle was stated by R. Simeon b. Eleazar: In respect of any improvement carried out by the robber, he would have the upper hand; if he wishes he can take the improvement, or if he wishes he may say to the plaintiff: ‘Here take your own.’ What is meant by this [last] statement?[6] — Said R. Shesheth: This is meant: Where the article has been improved, the robber may take the increased value, but where it has deteriorated he may say to him: ‘Here, take your own,’ as a change leaves the article in its previous status. But if so why should it not be the same even in the case where the article was improved? We may reply, in order to make matters easier for repentant robbers.[7]

What about R. Ishmael? — It was taught:[8] [Strictly speaking,] the precept of Pe'ah[9] requires that it should be set aside from standing crops. If, however, the owner did not set it aside from standing crops he should set it aside from the sheaves; so also if he did not set it aside from the sheaves he should set it aside from the heap [in his store] so long as he has not evened the pile. But if he had already evened the pile[10] he would have first to tithe it and then set aside the Pe'ah for the poor.

Moreover, In the name of R. Ishmael it was stated that the owner would even have to set it aside from the dough and give it to the poor.[11] Said R. papa to Abaye: Why was it necessary to repeat and bring together all these Tannaitic statements for the sole purpose of making us know that they concurred with Beth Shammai?[12] — He replied: It was for the purpose of telling us that Beth Hillel and the Beth Shammai did probably not differ at all on this matter. But Raba said: What ground have we for saying that all these Tannaim follow one view? Why not perhaps say that R. Simeon b. Judah meant his statement there[13] to apply only to the case of dyeing on account of the fact that the colour could be removed by soap, and so also did Beth Shammai mean their view there to apply only to a religious offering because it looks repulsive, or again that R. Eliezer b. Jacob meant his statement there to apply only to a benediction on the ground that it was a precept performed by the means of a transgression,[14] and so also did R. Simeon b. Eleazar mean his view there to apply only to a deterioration which can be replaced, or again R. Ishmael meant his view there to apply only to the law of Pe'ah, on account of the repeated expression. 'Thou shalt leave'?[15] If however you argue that we should derive the law[16] from the latter case,[17] [it might surely be said that] gifts to the poor are altogether different,[18] as is shown by the question of R. Jonathan. For R. Jonathan asked concerning the reason of R. Ishmael: 'Was it because he held that a change does not transfer ownership, or does he as a rule hold that a change would transfer ownership, but here it is different on account of the repeated expression, Thou shalt leave'![19]

But if you find ground for assuming that the reason of R. Ishmael was because a change does not transfer ownership, why then did the Divine Law repeat the expression 'Thou shalt leave'?[15] Again, according to the Rabbis, why did the Divine Law repeat the expression 'Thou shalt leave'? — This [additional] insertion was necessary for that which was taught:[20] If a man after renouncing the ownership of his vineyard gets up early on the following morning and cuts off the grapes, he will be subject to the laws of Peret, 'Oleloth, Forgetting and Pe'ah,[21] but will be exempt from tithes.

Rab Judah said that Samuel stated that the halachah is in accordance with R. Simeon b. Eleazar.[22] But did Samuel really say so? Did not Samuel state that assessment of the carcass is made neither in cases of theft nor of robbery, but only of damage?[23] I grant you that according to Raba who said that the statement made there by R. Simeon b. Eleazar related only to a deterioration where a recovery would still be possible, there would be no difficulty since Samuel in his statement that the halachah is in accordance with R. Simeon b. Eleazar [who holds] that a change leaves the article in its previous status, referred to the case of deterioration where a recovery would still be possible, whereas the statement made there[23] by Samuel that assessment of the carcass is made neither in the case of theft nor of robbery but only of damage would apply to deterioration where no recovery seems possible. But according to Abaye who said that the statement made by R. Simeon b. Eleazar [also] referred to deterioration where a recovery is no more possible, how can we get over the contradiction? — But Abaye might read thus: Rab Judah said that Samuel stated:

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(1) Cf. Sanh. 6b.

(2) V. Glos.

(3) I.e., the priestly portion set aside from dough. cf. Num. XV, 19-21.

(4) According to Asheri on Ber. 45a it refers to the grace over the meal.

(5) Ps. X. 3; [E.V.: And the covetous renounceth, yea, contemneth the Lord. In spite of the many changes the wheat had undergone it is still not his and not fit to have a blessing uttered over it.]

(6) For in the case of improvement it is surely not in the interests of the robber to plead, 'Here is thine before thee.'

(7) Cf. supra p. 383 and infra 547.

(8) Sanh. 68a; Mak. 16b.

(9) 'The corners of the field', cf. Lev. XIX. 9.

(10) When the grain becomes subject to the law of tithing; cf. Ber. 40b and Ma'as. I, 6.

(11) In spite of the many changes which had been made.

(12) Whose views have generally not been accepted; cf. 'Er. 13b.

(13) Regarding the dyeing of the wool which was subject to the law of the first of the fleece to be set aside for the priest.
(14) v. Ber. 47b.
(15) Lev. XIX. 10 and XXIII, 22 — implying in all circumstances.
(16) That change does not transfer ownership.
(17) I.e., from the law of Pe'ah.
(18) [Adreth. S., Hiddushim, improves the text by omitting: 'If however . . . different.']
(19) [This concludes Raba's argument. V. Adreth, loc. cit.]
(20) For notes v. supra pp. 148-9.
(21) On account of the repeated 'Thou shalt leave'.
(22) That in cases of deterioration the robber will be entitled to say. 'Here there is thine before thee.'
(23) Explained supra p. 44.

Talmud - Mas. Baba Kama 94b

They said that the halachah is in accordance with R. Simeon b. Eleazar though Samuel himself did not agree with this.

R. Hiyya b. Abba said that R. Johanan stated that according to the law of the Torah a misappropriated article should even after being changed be returned to the owner in its present condition, as it is said: He shall restore that which he took by robbery[1] — in all cases. And should you cite against me the Mishnaic ruling,[2] my answer is that this was merely an enactment for the purpose of making matters easier for repentant robbers.[3] But did R. Johanan really say this? Did R. Johanan not say[4] that the halachah should be in accordance with an anonymous Mishnah, and we have learnt: 'If the owner did not manage to give the first of the fleece to the priest until it had already been dyed, he is exempt'?[5] — But a certain scholar of our Rabbis whose name was R. Jacob said to them: 'This matter was explained to me by R. Johanan personally, [that his statement referred only to a case] where, e.g., there were misappropriated planed pieces of wood out of which utensils were made, as after such a change the material could still revert to its previous condition.[6]

Our Rabbis taught: 'If robbers or usurers [repent and of their own free will] are prepared to restore [the misappropriated articles], it is not right to accept [them] from them, and he who does accept [them] from them does not obtain the approval of the Sages.'[7] R. Johanan said: It was in the days of Rabbi that this teaching was enunciated, as taught: 'It once happened with a certain man who was desirous of making restitution that his wife said to him, Raca, if you are going to make restitution, even the girdle [you are wearing] would not remain yours, and he thus refrained altogether from making repentance. It was at that time that it was declared that if robbers or usurers are prepared to make restitution it is not right to accept [the misappropriated articles] from them, and he who accepts from them does not obtain the approval of the Sages.'

An objection was raised [from the following:] 'If a father left [to his children] money accumulated by usury, even if the heirs know that the money was [paid as] interest, they are not liable to restore the money [to the respective borrowers].[8] Now, does this not imply that it is only the children who have not to restore, whereas the father would be liable to restore?[9] The law might be that even the father himself would not have had to restore, and the reason why the ruling was stated with reference to the children[10] was that since it was necessary to state in the following clause 'Where the father left them a cow or a garment or anything which could [easily] be identified, they are liable to restore [it], in order to uphold the honour of the father,' the earlier clause similarly spoke of them. But why should they be liable to restore[11] in order to uphold the honour of the father? Why not apply to them [the verse] 'nor curse the role, of thy people',[12] [which is explained to mean.] 'so long as he is acting in the spirit of 'thy people'?[13] — As however, R. Phinehas [elsewhere][14] stated, that the thief might have made repentance, so also here we suppose that the father had made repentance. But if the father made repentance, why was the misappropriated article still left with him? Should he not have

restored it?[15] — But it might be that he had no time to restore it before he [suddenly] died.

Come and hear: Robbers and usurers even after they have collected the money must return it.[16] But what collection could there have been in the case of robbers. for surely if they misappropriated anything they committed robbery, and if they had not misappropriated anything they were not robbers at all? It must therefore read as follows: 'Robbers, that is to say usurers, even after they have already collected the money, must return it.'[17] — It may, however, be said that though they have to make restitution of the money it would not be accepted from them. If so why have they to make restitution? — [To make it quite evident that out of their own free will] they are prepared to fulfil their duty before Heaven.[18]

Come and hear: 'For shepherds, tax collectors and revenue farmers it is difficult to make repentance, yet they must make restitution [of the articles in question] to all those whom they know [they have robbed].[19] — It may, however, [also here] be said that though they have to make restitution, it would not be accepted from them. If so why have they to make restitution? — [To make it quite evident that out of their free will] they are prepared to fulfil their duty before Heaven. But if so why should it be difficult for them to make repentance?[20] Again, why was it said in the concluding clause that out of articles of which they do not know the owners they should make public utilities,[21] and R. Hisda said that these should be wells, ditches and caves?[22] — There is, however, no difficulty, as this teaching[23] was enunciated before the days of the enactment,[24] whereas the other statements were made after the enactment. Moreover, as R. Nahman has now stated that the enactment referred only to a case where the misappropriated article was no more intact, it may even be said that both teachings were enunciated after the days of the enactment, and yet there is no difficulty,

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(1) Lev. V. 23.

(2) That payment is made in accordance with the value at the time of robbery.

(3) v. p. 545. n. 6.

(4) Shab. 46a and supra p. 158.

(5) For notes v. supra p. 382. [This shows that change transfers ownership even where the consideration of penitents does not apply.]

(6) [In which case but for the consideration of penitent robbers, change transfers no ownership. Where the change. however, cannot be reverted, it confers unqualified ownership.]

(7) Rashi renders 'no spirit of wisdom and piety resides in him', but see also Tosaf. Yom Tob. Aboth III, 10.

(8) Tosef. B.M. V, 8.

(9) [Whereas above it is stated that the monies thus returned are not accepted.]

(10) And not to the father himself

(11) In the case dealt with in the concluding clause.

(12) Ex. XXII, 27.

(13) Excluding him who wilfully violates the laws of Israel.

(14) Hag. 26a.

(15) [I.e. not to retain it with him, despite the refusal of the owners to accept it (v. Tosaf.).]

(16) B.M. 62a.

(17) Does this not prove that the misappropriated money if restored would be accepted from them?

(18) As it is only in such a case that the restored money will not be accepted.

(19) Tosef B.M. VIII. Does this not prove that misappropriated articles if restored would be accepted?

(20) Since no actual restitution will have to be made.

(21) Cf. Az. 29a.

(22) And thus provide water to the general public among whom the aggrieved persons are to be found.

(23) Where actual restitution is implied.

(24) Which was ordained in the days of Rabbi.

as the latter deals with a case where the misappropriated article is still intact whereas the other teaching refers to a case where the misappropriated article is no more intact. But what about the girdle [referred to above],[1] in which case the misappropriated article was still intact? — What was meant by 'girdle' was the value of the girdle. But is it really the fact that so long as the misappropriated article was intact our Rabbis did not make this enactment?[2] What then about the beam in which case the misappropriated article was still intact and we have nevertheless learnt: [R. Johanan b. Gudgada testified] that if a misappropriated beam has been built into a house, the owner will recover only its value?[3] — That matter is different altogether, for since the house would otherwise be damaged. the Rabbis regarded the beam as being no longer intact.[4]

IF ONE MISAPPROPRIATED A PREGNANT COW WHICH MEANWHILE GAVE BIRTH [TO A CALF] etc. Our Rabbis taught: 'He who misappropriates a sheep and shears it, or a cow which has meanwhile given birth [to a calf], has to pay for the animal and the wool and the calf;[5] this is the view of R. Meir. R. Judah says that the misappropriated animal will be restored intact.[6] R. Simeon says that the animal will be considered as if it had been insured with the robber for its value [at the time of the robbery].' The question was raised: What was the reason of R. Meir? Was it because he held that a change leaves the article in its existing status?[7] Or [did he hold] in general that a change would transfer ownership, but here he imposes a fine [upon the robber], the practical difference being where the animal became leaner?[8] — Come and hear: If one misappropriated an animal and it became old, or slaves and they became old, he would still have to pay according to [their value at][9] the time of the robbery, but R. Meir said that in the case of slaves[10] [the robber] would be entitled to say to the plaintiff: 'Here, take your own.'[11] It thus appears that in the case of an animal [even R. Meir held that] the payment would have to be in accordance with [the value at] the time of the robbery.[9] Now, if you assume that R. Meir was of the opinion that a change leaves the article in its previous status,[12] why even in the case of an animal [can the robber not say. 'Here, take your own']? Does this therefore not prove that even R. Meir held that a change would transfer ownership, and that [in the case of the wool and the calf] it was only a fine which R. Meir imposed on the robber? — It may, however, be said that R. Meir was arguing from the premises of the Rabbis, thus: According to my view a change does not transfer ownership, so that also in the case of an animal [the robber would be entitled to say. 'Here, take your own'], but even according to your view, that a change does transfer ownership, you must at least agree with me in the case of slaves, who are compared to real property, and, as we know, real property is not subject to the law of robbery.[13] The Rabbis, however, answered him: 'No, for slaves are on a par with movables [in this respect].'[14]

Come and hear: [If wool was handed over to a dyer] to dye it red but he dyed it black, or to dye it black but he dyed it red, R. Meir says that he would have to pay [the owner of the wool] for the value of the wool.[15] [It thus appears that] he had to pay only for the original value of the wool but not for the combined value of the wool and the improvement [on account of the colour]. Now, if you suppose that R. Meir held that a change would not transfer ownership, why should he not have to pay for the combined value of the wool and the improvement? Does this therefore not prove that R. Meir held that a change would transfer ownership and that here [in the case of the calf] it was only a fine that R. Meir imposed [upon the robber]? — This could indeed be proved from it. Some even say that this question was never so much as raised; for since Rab transposed [the names in the Mishnah] and read thus: If one misappropriated a cow which became old, or slaves who became old, he would have to pay in accordance with [the value at] the time of the robbery;[16] this is the view of R. Meir, whereas the Sages say that in the case of slaves the robber would be entitled to say, Here, take your own',[16] it is quite certain that according to R. Meir a change would transfer ownership, and that here [in the case of a calf] it was only a fine that R. Meir imposed [upon the robber]. But if a question was raised, it was this: Was the fine imposed only in the case of wilful misappropriation whereas in the

case of inadvertent misappropriation[17] the fine was not imposed, or perhaps even for inadvertent misappropriation the fine was also imposed? — Come and hear: Five [kinds of creditors] are allowed to distrain only on the free assets [of the debtor];[18] they are as follows: [creditors for] produce,[19] for Amelioration showing profits,[20] for an undertaking to maintain the wife's son or the wife's daughter,[21] for a bond of liability without a warranty of indemnity[22] and for the kethubah of a wife where no property is made security.[22] Now, what authority have you heard lay down that the omission to make the property security[22] is not a mere scribal error[23] if not R. Meir?[24] And it is yet stated: 'Creditors for produce and Amelioration showing profits [may distrain on free assets in the hands of the debtor].' Now, who [are creditors for Amelioration showing] profits?[25] They come in, do they not, where the vendor has misappropriated a field from his fellow and sold it to another who ameliorated it and from whose hands it was subsequently taken away. [The law then is that] when the purchaser comes to distrain

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(1) Supra p. 548.

(2) And the actual article would have to be restored.

(3) Cit. V, 5; 'Ed. VII, 9' and supra p. 385.

(4) And the actual beam would not have to be restored. Its value will, however, be paid on account of the fact that the beam was actually in the house.

(5) [The payment, that is to say, will have to be made for the combined value of the calf and wool and the improvement.] Cf. B.M. 43b.

(6) [I.e., in the state it is at the time of payment. The robber will, however, have to make up in money for the difference in the value of the cow as it stood at the time of the robbery. The difference between R. Simeon and R. Judah will be explained anon.]

(7) And no ownership could thereby be transferred.

(8) Where according to the former consideration the robber would escape further liability by restoring the animal, but according to the latter he would have to pay for the difference.

(9) As the change transferred the ownership to the robber.

(10) Who are subject to the law applicable to immovables.

(11) Mishnah, infra p. 561.

(12) And no ownership could thereby be transferred.

(13) Cf. Suk. 30b and 32a.

(14) Cf. supra 12a.

(15) For by acting against the instructions of the owner he rendered himself liable to the law of robbery; Mishnah infra 100b.

(16) V. infra p. 561.

(17) As in the case of the dyer, supra p. 552.

(18) But not if the landed property is already in the hands of a third party such as a purchaser and the like.

(19) Such as where a field full of produce was taken away in the hands of a purchaser through the fault of the vendor: the amount due to the purchaser for his loss of the actual field could be recovered even from property already in the hands of (subsequent) purchasers, whereas the amount due to him for the value of the produce he lost could be recovered only from property still in the hands of the vendor; cf. Git. V, I and B.M. 14b.

(20) Such as where the purchaser spent money on improving the ground which was taken away from him through the fault of the vendor.

(21) Cf. also Keth. XII, 1.

(22) I.e., where the particular clause making the property security was omitted in the document. V. Keth. 51b.

(23) But has legal consequences.

(24) V. B.M. I, 6 and ibid. 14a.

(25) Lit., 'how is this possible?'

he will do so for the principal even on [real] property that has been sold, but for the Amelioration

only on assets which are free [in the hands of the vendor]. [But this is certain,] that the owner of the field is entitled to come and take away the field together with the increment. Now, do we not deal here with a purchaser who was ignorant of the law and did not know whether real property is subject to the law of robbery or is not subject to the law of robbery?[1] And even in such a case the owner of the field will be entitled to come and take away the land together with the increment. Does not this show that even in the case of inadvertent misappropriation,[2] [R. Meir] would impose the fine? — It may however be said that this is not so, [as we are dealing here] with a purchaser who is a scholar and knows very well[3] [that real property is not subject to the law of robbery].[1]

Come and hear: [If wool was handed over to a dyer] to dye it red but he dyed it black, or to dye it black and he dyed it red, R. Meir says that he would have to pay [the owner of the wool] for the value of the wool.[4] [It thus appears that he has to pay] only for the original value of the wool but not for the combined value of the wool and the improvement [on account of the colour]. Now, if you assume that R. Meir would impose the fine even in the case of inadvertent misappropriation why should he not have to pay for the combined value of the wool and the improvement? Does this not prove that it is only in the case of wilful misappropriation that the fine is imposed but in the case of inadvertent misappropriation the fine would not be imposed? — This could indeed be proved from it.

'R. Judah says that the misappropriated [animal] will be restored intact. R. Simeon says that the animal be considered as if it had been insured with the robber for its value [at the time of the robbery].' What is the practical difference between them?[5] — Said R. Zebid: They differ regarding the increased value [still] attaching to the misappropriated article. R. Judah maintained that this would belong to the plaintiff[6] whereas R. Simeon was of the opinion that this would belong to the robber.[7] R. papa, however, said that both might agree that an increased value [still] attaching to the misappropriated article should not solely belong to the plaintiff,[8] but where they differed was as to whether the robber should be entitled to retain a half or a third or a fourth[9] for [his attending to the welfare of the article]. R. Judah maintaining that an increased value [still] attaching to the misappropriated article would belong solely to the robber,[10] whereas R. Simeon maintained that the robber would be paid only to the extent of a half, a third or a fourth.

We have learnt: 'BUT IF HE MISAPPROPRIATED A COW WHICH BECAME PREGNANT WHILE WITH HIM AND THEN GAVE BIRTH, OR A SHEEP WHICH WHILE WITH HIM GREW WOOL WHICH HE SHEARED, HE WOULD PAY IN ACCORDANCE WITH [THE VALUE AT] THE TIME OF THE ROBBERY.' That is so only if the cow has already given birth, but if the cow has not given birth yet it would be returned as it is. This accords well with the view of R. Zebid who said that an increased value still attaching to the misappropriated article would according to R. Judah belong to the plaintiff; I [the Mishnah] would then be in accordance with R. Judah. But on the view of R. papa who said that it would belong to the robber,[10] it would be in accordance neither with R. Judah nor with R. Simeon? — R. Papa might say to you that the ruling [stated in the text] would apply even where the cow has not yet given birth, as even then he would have to pay in accordance with [the value at] the time of the robbery. For as for the mention of 'giving birth', the reason is that since the earlier clause contains the words 'giving birth', the later clause similarly mentions 'giving birth'. It was taught in accordance with R. papa: 'R. Simeon says that [the animal] is to be considered as if its pecuniary value had been insured with the robber, [who will however be paid] to the extent of a half, a third or a fourth [of the increase In value].'[11]

R. Ashi said: When we were at the School of R. Kahana, a question was raised with regard to the statement of R. Simeon that the robber will be paid to the extent of a half, a third or a fourth [of the increase in value] whether at the time of his parting with the misappropriated article he can be paid in specie, or is he perhaps entitled to receive his portion out of the body of the misappropriated animal. The answer was found in the statement made by R. Nahman in the name of Samuel: 'There are three cases where increased value will be appraised and paid in money. They are as follow's: [In

the settlement of accounts] between a firstborn and a plain son,[12] between a creditor and a purchaser.[13] and between a creditor[13] and heirs.'[14] Said Rabina to R. Ashi: Did Samuel really say that a creditor will have to pay the purchaser for increased value? Did Samuel not state[15] that a creditor distrains even on the increment?[16] — He replied: There is no difficulty, as the former ruling applies to an increment which could reach the shoulders to be carried away.[17] whereas the latter ruling deals with an increment which could not reach the shoulders to be carried away.[18] He rejoined:[19] Do not cases happen every day where Samuel distrains even on an increment which could reach the shoulders to be carried away? — He replied: There is still no difficulty,

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(1) V. p. 552. n. 1.

(2) Such as was the case here with the purchaser.

(3) Also that the field has been misappropriated by the vendor (cf. Shittah Mekubezeth a.l.) and as such is guilty of wilful misappropriation.

(4) V. Mishnah infra 100b.

(5) I.e., R. Judah and R. Simeon.

(6) Since the article has to be restored intact.

(7) [Since the payment is made according to the value at the time of the robbery.]

(8) Lit., 'should belong to the robber', but which means that it will not solely belong to the plaintiff, as will soon become evident in the text.

(9) I.e., in accordance with the definite percentage in the profits fixed in a given province to be shared by a contractor for his care and attendance to the welfare of the article in question; cf. B.M. V, 4-5.

(10) As the expression 'intact' means intact as it was at the time of the robbery.

(11) V. p. 555. n. 4.

(12) As the firstborn son has two portions in the estate as it was left at the time of the death of the father, but only one portion in the increased value due to amelioration after the father's death, so that by taking two portions in the estate the firstborn would have to pay back the other sons their appropriate portions in the increased value of the additional portion taken by him; cf. B.B. 124a.

(13) I.e., a creditor distraining on a field that originally belonged to his debtor but which was subsequently disposed of or inherited by heirs and the purchaser or heirs increased its value by amelioration.

(14) V. B.M. 110b.

(15) B.M. ibid. and 14b; Bk. 42a.

(16) Without paying for it, v. B.M. ibid.

(17) As where the produce is quite ripe and could be separated from the ground in which case it is the property of the purchaser. V. B.B. (Sonc. ed.) p. 183. n. 3.

(18) I.e., which is inseparable from the ground and which is distrained on together with the field by the creditor.

(19) I.e., Rabina to R. Ashi.

as this is so only where the amount of the debt owing to the creditor covers both the land and the increment,whereas the former ruling[1] applies where [the debt due to him] is only to the extent of the land. He rejoined: I grant you that on the view[2] that [even] if the purchaser possesses money he has no right to bar the creditor from land by paying in specie, your argument would be sound, but according to the view that a purchaser possessing money can bar the creditor from the field by paying him in specie, why should he not say to the creditor, 'If I had had money, I would surely have been able to bar you from the whole field [by paying you in specie]; now also therefore I am entitled to be left with a griva[3] of land corresponding to the value of my amelioration'?[4] — He replied: We are dealing here with a case where the debtor expressly made that field a security, as where he said to him: 'You shall not be paid from anything but from the field.'[5]

Raba stated: [There is no question] that where the robber improved [the misappropriated article] and then sold it, or where the robber improved [the misappropriated article] and then left it to his

heirs, he has genuinely sold or left to his heirs the increment he has created.[6] Raba [however] asked: What would be the law where [after having bought the misappropriated article from the robber] the purchaser improved it? After asking the question he himself gave the answer: That what the former sold the latter, was surely all rights[7] which might subsequently accrue to him.[6]

Raba [again] asked: What would be the law where a heathen[8] [misappropriated an article and] improved it? — Said R. Aha of Difti to Rabina: Shall we trouble ourselves to make an enactment[9] for [the benefit of] a heathen? — He said to him: No; the query might refer to the case where. e.g., he sold it to an Israelite. [But he retorted:] Be that as it may, he who comes to claim through a heathen [predecessor], could surely not expect better treatment than the heathen himself. — No: the query could still refer to the case where, e.g., an Israelite had misappropriated an article and sold it to a heathen who improved it and who subsequently sold it to another Israelite. What then should be the law? Shall we say that since an Israelite was in possession at the beginning and an Israelite was in possession at the end, our Rabbis would also here make [use of] the enactment, or perhaps since a heathen intervened our Rabbis would not make [use of] the enactment? — Let it remain undecided.

R. papa stated: If one misappropriated a palm tree from his fellow and cut it down, he would not acquire title to it even though he threw it from [the other's] field into his own land, the reason being that it was previously called palm tree and is now also called palm tree.[10] [So also] where out of the palm tree he made logs he would not acquire title to them, as even now they would still be called logs of a palm tree.[10] It is only where out of the logs he made beams that he would acquire title to them.[11] But if out of big beams he made small beams he would not acquire title to them,[12] though were he to have made them into boards he would acquire title to them.[11]

Raba said: If one misappropriated a Lulab[13] and converted it into leaves he would acquire title to them, as originally it was called Lulab whereas now they are mere leaves.[11] So also where out of the leaves he made a broom he would acquire title to it, as originally they were leaves whereas now they form a broom,[14] but where out of the broom he made a rope he would not acquire title to it since if he were to undo it, it would again become a broom.

R. papa asked: What would be the law where the central leaf[15] of the Lulab became split? — Come and hear: R. Mathon said that R. Joshua b. Levi stated that if the central leaf of the Lulab was removed the Lulab would be disqualified [for ritual purposes].

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(1) Ordering payment for the amelioration.

(2) B.M. 15b and 110b.

(3) The size of a field needed for a se'ah of seed.

(4) Why then should the creditor distrain on the whole field together with the amelioration?

(5) In which case the purchaser can in no circumstance bar the creditor from the field.

(6) So that the purchaser (or heir) will be entitled to the half or third or quarter in profits to which the robber would have been entitled, according to the view of R. Simeon.

(7) Cf. supra p.32.

(8) Who neither respects nor feels bound by Rabbinic enactments.

(9) That according to R. Simeon payment is to be made for amelioration to the extent of a half or third or quarter.

(10) [The change involved does not confer ownership enabling him to make restitution by payment in money.]

(11) V. p. 552. n. 6.

(12) V. p. 552. n. 5.

(13) I.e., a palm branch used for the festive wreath on the Feast of Tabernacles in accordance with Lev. XXIII, 40.

(14) V. p. 543, n. 6.

(15) Cf. Suk. 32a and Rashi.

Now, would not the same law apply where it was merely split?[1] — No; the case where it was removed is different, as the leaf is then missing altogether. Some [on the other hand] read thus. Come and hear what R. Mathon said, that R. Joshua b. Levi stated that if the central leaf was split it would be considered as if it was altogether removed and the Lulab would be disqualified;[1] which would solve [R. papa's question].

R. papa [further] said: If one misappropriated sand from another and made a brick out of it, he would not acquire title to it, the reason being that it could again be made into sand, but if he converted a brick into sand he would acquire title to it. For should you object that he could perhaps make the sand again into a brick, [it may be said that] that brick would be [not the original but] another brick, as it would be a new entity which would be produced.

R. Papa [further] said: If one misappropriated bullion of silver from another and converted it into coins, he would not acquire title to them, the reason being that he could again convert them into bullion, but if out of coins he made bullion he would acquire title to it. For should you object that he can again convert it into coins, [my answer is that] it would be a new entity which would be produced. If [the coins were] blackened and he made them look new he would thereby not acquire title to them,[2] but if they were new and he made them black he would acquire title to them, for should you object that he could make them look again new, [it may be said that] their blackness will surely always be noticeable.

THIS IS THE GENERAL PRINCIPLE: ALL ROBBERS HAVE TO PAY IN ACCORDANCE WITH [THE VALUE OF THE MISAPPROPRIATED ARTICLES AT] THE TIME OF THE ROBBERY. What additional fact is the expression. THIS IS THE GENERAL PRINCIPLE intended to introduce? — It is meant to introduce that which R. Elai said: If a thief misappropriated a lamb which became a ram, or a calf which became an ox, as the animal underwent a change while in his hands he would acquire title to it, so that if he subsequently slaughtered or sold it, it was his which he slaughtered and it was his which he sold.[3]

A certain man who misappropriated a yoke of oxen from his fellow went and did some ploughing with them and also sowed with them some seeds and at last returned them to their owner. When the case came before R. Nahman he said [to the sheriffs of the court]: 'Go forth and appraise the increment [added to the field].' But Raba said to him: Were only the oxen instrumental in the increment, and did the land contribute nothing to the increment?[4] — He replied: Did I ever order payment of the full appraisement of the increment? I surely meant only half of it. He, however, rejoined:[5] Be that as it may, since the oxen were misappropriated they merely have to be returned intact, as we have indeed learnt: ALL ROBBERS HAVE TO PAY IN ACCORDANCE WITH [THE VALUE] AT THE TIME OF THE ROBBERY. [Why then pay for any work done with them?] — He replied: Did I not say to you that when I am sitting in judgment you should not make any suggestions to me, for Huna our colleague said with reference to me that I and 'King' Shapur[6] are [like] brothers in respect of civil law? That person [who misappropriated the pair of oxen] is a notorious robber, and I want to penalise him.

MISHNAH. IF ONE MISAPPROPRIATED AN ANIMAL AND IT BECAME OLD, OR SLAVES AND THEY BECAME OLD, HE WOULD HAVE TO PAY ACCORDING TO [THE VALUE AT] THE TIME OF THE ROBBERY.[7] R. MEIR, HOWEVER, SAYS THAT IN THE CASE OF SLAVES[8] HE MIGHT SAY TO THE OWNER: HERE, TAKE YOUR OWN. IF HE MISAPPROPRIATED A COIN AND IT BECAME CRACKED, FRUITS AND THEY BECAME STALE OR WINE AND IT BECAME SOUR, HE WOULD HAVE TO PAY ACCORDING TO [THE VALUE AT] THE TIME OF THE ROBBERY.[7] BUT IF THE COIN WENT OUT OF USE, THE TERUMAH[9] BECAME DEFILED,[10] THE LEAVEN FORBIDDEN [FOR ANY USE

BECAUSE] PASSOVER HAD INTERVENED,[11] OR IF THE ANIMAL [HE MISAPPROPRIATED] BECAME THE INSTRUMENT FOR THE COMMISSION OF A SIN[12] OR IT BECAME OTHERWISE DISQUALIFIED FROM BEING SACRIFICED UPON THE ALTAR,[13] OR IF IT WAS TAKEN OUT TO BE STONED,[14] HE CAN SAY TO HIM: 'HERE, TAKE YOUR OWN.'

GEMARA. R. Papa said: The expression IT BECAME OLD does not necessarily mean that it actually became old, for [the same law would apply] even where it had otherwise deteriorated. But do we not expressly learn. IT BECAME OLD?[15] — This indicates that the deterioration has to be equivalent to its becoming old, i.e., where it will no more recover health. Mar Kashisha, the son of R. Hisda, said to R. Ashi: It has been expressly stated in the name of R. Johanan that even where a thief misappropriated a lamb which became a ram, or a calf which became an ox,[16] since the animal underwent a change while in his hands he would acquire title to it, so that if he subsequently slaughtered or sold it, it was his which he slaughtered and it was his which he sold.[17] He said to him: Did I not say to you that you should not transpose the names of scholars?[18] That statement was made in the name of R. Elai.[19]

R. MEIR, HOWEVER. SAYS THAT IN THE CASE OF SLAVES HE MIGHT SAY TO THE OWNER, 'HERE TAKE YOUR OWN.' R. Hanina b. Abdimi said that Rab stated that the halachah is in accordance with R. Meir. But how could Rab abandon the view of the Rabbis[20] and act in accordance with R. Meir? — It may, however, be said that he did so because in the text of the [relevant] Baraitha the names were transposed. But again how could Rab abandon the text of the Mishnah and act in accordance with the Baraitha?[21] — Rab, even in the text of our Mishnah, had transposed the names. But still what was the reason of Rab for transposing the names in the text of the Mishnah because of that of the Baraitha? Why not, on the contrary, transpose the names in the text of the Baraitha because of that of our Mishnah? — It may be answered that Rab, in the text of our Mishnah too, was taught by his masters to have the names transposed. Or if you like I may say that [the text of a Mishnah] is not changed [in order to be harmonised with that of a Baraitha] only in the case where there is one against one, but where there is one against two,[22] it must be changed [as is indeed the case here]; for it was taught:[23] If one bartered a cow for an ass and [the cow] gave birth to a calf [approximately at the very time of the barter], so also if one sold his handmaid and she gave birth to a child [approximately at the time of the sale], and one says that the birth took place while [the cow or handmaid was] in his possession and the other one is silent [on the matter], the former will obtain [the calf or child as the case may be], but if one said 'I don't know', and the other said 'I don't know', they would have to share it. If, however, one says [that the birth took place] when he was owner and the other says [that it took place] when he was owner, the vendor would have to swear that the birth took place when he was owner [and thus retain it], for all those who have to take an oath according to the law of the Torah, by taking the oath release themselves from payment;[24] this is the view of R. Meir. But the Sages say that an oath can be imposed neither in the case of slaves nor of real property.[25] Now [since the text of our Mishnah should have been reversed,[26] why did Rab[27] state that] the halachah is in accordance with R. Meir? Should he not have said that the halachah is in accordance with the Rabbis?[27] — What he said was this: According to the text you taught with the names transposed, the halachah is in accordance with R. Meir.[27]

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(1) [Should it be disqualified, it would, if occurring whilst in the possession of the robber, be considered a change and confer ownership.]

(2) V. p. 543. n. 5.

(3) Supra 379.

(4) Why then should the whole amount of the increase due to the amelioration be paid to the plaintiff?

(5) Raba to R. Nahman.

(6) Meaning Samuel, who was a friend of the Persian King Shapur I, and who is sometimes referred to in this way; cf. B.B. 115b. [To have conferred the right of bearing the name of the ruling monarch, together with the title 'tham',

'mighty'. was deemed the highest honour among the Persians, and 'Malka', 'King'. is apparently the Aramaic counterpart of the Persian title 'Malka' (v. Funk, Die Juden in Babylonien. I, 73). On Samuel's supreme authority in Babylon in matters of civil law, v. Bek. 49b.]

(7) As the change transferred the ownership to him.

(8) Who are subject to the law applicable to immovables, where the law of robbery does not apply.

(9) V. Glos.

(10) And thus unfit as food; cf. Shab. 25a.

(11) Cf. Pes. II. 2.

(12) Such as in Lev. XVIII, 23; cf. also supra p. 229.

(13) Such as through a blemish, hardly noticeable, as where no limb was missing; cf. Zeb. 35b and 85b; v. also Git. 56a.

(14) As in the case of Ex. XXI. 28.

(15) In which a temporary deterioration could hardly be included.

(16) [Although there is an inevitable and natural change.]

(17) [And he would be exempt from the threefold and fourfold restitution.]

(18) Lit., 'people'.

(19) And not in that of R. Johanan: supra p. 379.

(20) The representatives of the anonymous view of the majority cited first in the Mishnah.

(21) In accordance with the anonymous view of the majority cited in the Baraitha.

(22) I.e., where two Baraithas are against the text of one Mishnah.

(23) B.M. 100a, q.v. for notes.

(24) Shebu. VII, 1.

(25) Cf. Shebu. VI, 5. It is thus evident that it was the majority of the Rabbis and not R. Meir who considered slaves to be subject to the law of real property.

(26) In which case it was the Rabbis who maintained that slaves are subject to the law of real property.

(27) Meaning that slaves are on the same footing as real property.

Talmud - Mas. Baba Kama 97a

But did Rab really say that slaves are on the same footing as real property? Did R. Daniel b. Kattina not say that Rab stated that if a man forcibly seizes another's slave and makes him perform some work, he would be exempt from any payment?[1] Now, if you really suppose that slaves are on the same footing as real property. why should he be exempt? Should the slave not be considered as still being in the possession of the owner?[2] — We are dealing there[3] with a case [where he took hold of the slave at a time] when [the owner] usually required no work from him, exactly as R. Abba sent to Mari b. Mar, saying. 'Ask R. Huna whether a person who stays in the premises[4] of another without his knowledge must pay him rent or not, and he sent him back reply that 'he is not liable to pay him rent'.[5] But what comparison is there? There is no difficulty [in that case][6] as if we follow the view that premises which are inhabited by tenants keep in a better condition,[5] [we must say that] the owner is well pleased that his house be inhabited. or again if we follow the view[5] that the gate is smitten unto roll,[7] [we can again say that] the owner benefited by it. But here [in this case][8] what owner could be said to be pleased that his slave became reduced [by overwork]? — It may, however, be said that here[9] also it may be beneficial to the owner that his slave should not become prone to idleness.

Some at the house of R. Joseph b. Hama used to seize slaves of people who owed them money, and make them perform some work. Raba his son said to him: Why do you, Sir, allow this to be done? — He thereupon said to him: Because R. Nahman stated that the [work of the] slave is not worth the bread he eats. He rejoined:[10] Do we not say that R. Nahman meant his statement only to apply to one like Daru his own servant who was a notorious dancer in the wine houses, whereas with all other servants who do some work [the case is not so]? — He however said to him: I hold with R. Daniel b. Kattina, for R. Daniel b. Kattina said that Rab stated that one who forcibly seizes another's slave and makes him perform some work would be exempt from any payment, thus proving that this

is beneficial to the owner, by preventing his slave from becoming idle. He replied:[10] These rulings [could apply] only where he has no money claim against the owner, but [in your case], Sir, since you have a money claim against the owner, it looks like usury, exactly as R. Joseph b. Manyumi said [namely] that R. Nahman stated that though the Rabbis decided that one who occupies another's premises without his consent is not liable to pay him rent, if he lent money to another and then occupied his premises he would have to pay him rent.[11] He thereupon said to him: [If so,] I withdraw.

It was stated: If one forcibly seizes another's ship and performs some work with it, Rab said that if the owner wishes he may demand payment for its hire, or if he wishes he may demand payment for its wear and tear. But Samuel said: He may demand only for its wear and tear. Said R. Papa: They do not differ as Rab referred to the case where the ship was made for hire and Samuel to the case where it was not made for hire. Or if you like, I can say that both statements deal with a case where it was made for hire, but whereas [Rab deals with a case] where possession was taken of it with the intention of paying the hire,[12] '[Samuel refers to one] where possession was taken of it with the intention of robbery.[13]

IF HE MISAPPROPRIATED A COIN AND IT BECAME CRACKED etc. R. Huna said: IT BECAME CRACKED means that it actually cracked, [and] IT WENT OUT OF USE means that the Government declared it obsolete. But Rab Judah said that where the Government declared the coin obsolete it would be tantamount to its being disfigured,[14] and what was meant by IT WENT OUT OF USE is that the inhabitants of a particular province rejected it while it was still in circulation in another province. R. Hisda said to R. Huna: According to your statement that IT WENT OUT OF USE meant that the Government declared it obsolete, why [in our Mishnah] in the case of fruits that became stale, or wine that became sour, which appears to be equivalent to a coin that was declared obsolete by the Government, is it stated that HE WOULD HAVE TO PAY IN ACCORDANCE WITH [THE VALUE AT] THE TIME OF THE ROBBERY?[15] — He replied: There [in the case of the fruits and the wine] the taste and the smell changed, whereas here [in the case of the coin] there was no change [in the substance]. Rabbah on the other hand said to Rab Judah: According to your statement that where the Government declared the coin obsolete it would be tantamount to its having been cracked, why in [our Mishnah in] the case of terumah that became defiled, which appears to resemble a coin that was declared obsolete by the Government[16] is it stated that he can say to him, 'HERE, TAKE YOUR OWN'? — He replied: There [in the case of the terumah] the defect[17] is not noticeable, whereas here [in the case of the coin] the defect is noticeable.[18]

It was stated: If a man lends his fellow [something] on [condition that it should be repaid in] a certain coin, and that coin became obsolete, Rab said

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(1) B.M. 64b.

(2) So that payment for work done by him would have to be enforced.

(3) Lit., 'here'.

(4) [Which the owner is not accustomed to let — a case similar to the one where the owner requires no work from the slave.]

(5) V. supra 21a for notes.

(6) Of the house.

(7) Isa. XXIV, 12.

(8) Of the slave.

(9) [Amounting as it does to the taking of interest.]

(10) I.e., Raba to his father, R. Joseph.

(11) So that it should not look like usury.

(12) In which case the hire may be claimed.

(13) In which case no more than compensation for the wear and tear could be enforced.

(14) Since it would nowhere have currency.

(15) As the change transferred the ownership.

(16) For just as the latter case was proscribed by the political realm, the former was proscribed by the spiritual realm.

(17) By becoming defiled.

(18) As the coins which are in circulation have a different appearance.

Talmud - Mas. Baba Kama 97b

that the debtor would have to pay the creditor with the coin that had currency at that time,[1] whereas Samuel said that the debtor could say to the creditor, 'Go forth and spend it in Meshan.'[2] R. Nahman said that the ruling of Samuel might reasonably be applied where the creditor had occasion to go to Meshan, but if he had no occasion [to go there] it would surely not be so. But Raba raised an objection to this view of R. Nahman [from the following]: 'Redemption [of the second tithe] cannot be made by means of money which has no currency, as for instance if one possessed koziba-coins,[3] of Jerusalem,[4] or of the earlier kings;[5] no redemption could be made [by these].'[6] Now, does this not imply that if the coins were of the later kings, even though analogous [in one respect] to coins of the earlier kings,[7] it would be possible to effect the redemption by means of them?[8] — He, however, said to him that we were dealing here with a case where the Governments of the different provinces were not antagonistic to one another. But since this implies that the statement of Samuel [as explained by R. Nahman] referred to the case where the Governments of the different provinces were antagonistic to one another, how would it be possible to bring the coins [to the province where they still have currency]?[9] — They could be brought there with some difficulty, as where no thorough search was made at the frontier though if the coins were to be discovered there would be trouble.

Come and hear: Redemption [of the second tithe] cannot be effected by means of coins which have currency here[10] but which are actually [with the owner] in Babylon;[11] so also if they have currency in Babylon but are kept here.[10] [But] where the coins have their currency in Babylon and are in Babylon redemption can be effected by means of them. Now, it is at all events stated here [is it not] that no redemption could be effected by means of coins which though having currency here[10] are actually [with the owner] in Babylon irrespective of the fact that the owner will have to go up here?[12] — We are dealing here with a case where the Governments [of the respective countries] were antagonistic to each other.[13] But if so how would coins which have currency in Babylon and are kept in Babylon be utilised as redemption money?[14] — They may be utilised for the purchase of an animal [in Babylon]. which can then be brought up to Jerusalem. But was it not taught[15] that there was an enactment that all kinds of money should be current in Jerusalem?[16] — Said R. Zera: This is no difficulty, as the latter statement refers to the time when Israel had sway [in Eretz Yisrael] over the heathen whereas the former referred to a time when the heathen governed themselves.[17]

Our Rabbis taught: What was the coin of Jerusalem?[18] [The names] David and Solomon [were inscribed] on one side and [the name of] Jerusalem on the other. What was the coin of Abraham our Patriarch? — An old man and an old woman[19] on the one side, and a young man and a young woman[20] on the other.

Raba asked R. Hisda: What would be the law where a man lent his fellow something on [condition of being repaid with] a certain coin,[21] and that coin meanwhile was made heavier?[22] — He replied: The payment will have to be with the coins that have currency at that time. Said the other: Even if the new coin be of the size of a sieve? — He replied: Yes, Said the other: Even if it be of the size of a 'tirtia'![23] — He again replied. Yes. But in such circumstances would not the products have become cheaper?[24] — R. Ashi therefore said: We have to look into the matter. If it was through the [increased weight of the] coin that prices [of products] dropped we would have to deduct [from the payment accordingly],

(1) I.e., at the time of the payment.
(2) [Mesene, a district S.E. of Babylon. It lay on the path of the trade route to the Persian Gulf. V. Obermeyer. op. cit., 89 ff.]
(3) Coins struck by Bar Cochba, the leader of the uprising in Eretz Yisrael against Hadrian. [The name Koziba has been explained either as derivation from the city Kozeba, his home, or as 'Son of Lies', a contumelious designation when his failure belied all the hopes reposed in him, v. Graetz, Geschichte, p. 136.]
(4) [Probably the old shekels. According to Rashi render: namely, Jerusalem coins.]
(5) [Either the Seleucidean Kings or former Roman Emperors.]
(6) Tosef. M. Sh. 1, 6.
(7) Such as where they were declared obsolete in a particular province.
(8) Even where one had not occasion to go there, which refutes R. Nahman's view.
(9) Even though one had occasion to go there.
(10) In Jerusalem.
(11) Where they have no currency.
(12) [Lit. 'there'. The text does not read smoothly, and is suspect. MS.M. in fact omits 'Now . . . here.']
(13) To a greater degree, so that thorough searches are made and the transport of coins would constitute a real danger.
(14) Which would have to be spent for certain commodities to be partaken of in Jerusalem.
(15) Cf. I.M. Sh. I. 2.
(16) How then were Babylonian coins not current there?
(17) A euphemism for Israel.
(18) Cf. p. 556. n. 7.
(19) I.e., Abraham and Sarah.
(20) I.e., Isaac and Rebeccah.
(21) V. p. 566, n. 4.
(22) [The question is according to the view of Rab, ibid., that payment has to be made with the coin that had currency at the time.]
(23) A quoit of certain size.
(24) A larger supply being obtained by the heavier coin, and the increase would appear as usury.

Talmud - Mas. Baba Kama 98a

but if it was through the market supplies[1] that prices dropped, we would not have to deduct anything. Still,[2] would the creditor not derive a benefit from the additional metal? — [We must] therefore [act] like R. Papa and R. Huna the son of R. Joshua who gave judgment in an action about coins, according to [the information[3] of] an Arabian agoran,[4] that the debtor should pay for ten old coins [only] eight new ones.[5]

Rabbah stated: He who throws a coin of another [even] into the ocean[6] is exempt, the reason being that he can say to him, 'Here it lies before you, if you are anxious to have it take it.' This applies, however, only where [the water was] clear so that it could be seen, but if it was so muddy that the coin could not be seen this would not be so. Again, this holds good only where the throwing was merely indirectly caused by him,[7] but if he took it in his hand he would surely have already become subject to the law of robbery[8] and as such would have been liable to make [proper] restitution.[8]

Raba raised an objection [from the following:] 'Redemption [of the second tithe] cannot be made by means of money not in one's actual possession, such as if he had money in Castra or in the King's Mountain[9] or if his purse fell into the ocean; no redemption could then be effected'.[10] — Said Rabbah: The case [of redemption] of tithe is different, as it is required there that the money should be [to all intents and purposes] actually in your hand, for the Divine Law says, And bind up the money in thy hand,[11] which is lacking in this case.[12]

Rabbah further said: One who disfigures a coin belonging to another is exempt, the reason being

that he did not do anything [to reduce the substance of the coin]. This of course applies only where he knocked on it with a hammer and so made it flat, but where he rubbed the stamp off with a file he certainly diminished its substance [and would thus be liable]. Raba raised an objection [from the following:] 'Where [the master] struck [the slave] upon the eye and blinded him or upon the ear and deafened him the slave would on account of that go out free,[13] but [where he struck on an object which was] opposite the slave's eye and he lost his sight or [on an object which was] opposite his ear through which he lost his hearing the slave would [on account of this] not go out free'![14] — Rabbah, however, follows his own reasoning, for Rabbah stated: He who makes his father deaf is subject to be executed,[15] for it is impossible to cause deafness without first making a bruise through which a drop of blood falls into the ear.[16]

And Rabbah [further] stated: He who splits the ear of another's cow[17] is exempt, the reason being that [so far as the value of] the cow [is concerned it] remains as it was before, for he did not do anything [to reduce it], since not all oxen are meant to be sacrificed upon the altar.[18] Raba raised an objection [from the following]: If he did work with the water of Purification or with the Heifer of Purification he would be exempt according to the judgments of Man but liable according to the judgments of Heaven.[19] Now surely this is so only where mere work was done with it,[20] in which case the damage [done to it] is not noticeable, whereas in the case of splitting where the damage is noticeable there would also be liability according to the judgments of Man?[21] — It may, however, be said that the same law would apply in the case of splitting, where he would similarly be exempt [according to the judgments of Man], and that what we are told here is that even in the case of mere work where the damage is not noticeable there would still be liability according to the judgments of Heaven.

Rabbah further stated: If one destroyed by fire the bond of a creditor he would be exempt, because he can say to him, 'It was only a mere piece of paper of yours that I have burnt.'[22] Rami b. Hania demurred: What are the circumstances?

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(1) I.e., through the supply surpassing the demand.

(2) [Even if the drop in the prices was due to the latter cause.]

(3) [That ten old coins had the weight of eight new ones.]

(4) Market commissioner.

(5) If, however, the increase in weight was less than 25%, the new coins paid would have to be equal in number to the old ones; so Rashi; Tosaf. explains differently.

(6) Lit., 'the great sea', the Mediterranean.

(7) [On the principle that damage caused by indirect action is not actionable.]

(8) Cf. Lev. V, 23.

(9) [Har-ha-Melek, also known as Tur Malka. There is still a good deal of uncertainty in regard to the identification of these two localities. Buchler JQR. 1904. 181 ff. maintains that the reference in both cases is to Roman fortifications, access to which was barred to the Jews, the former being simply the Roman Castra, the latter, a fortification situated somewhere in Upper Idumea. For other views, v. Schlatter, Tage Trojans, p. 28, and Neubauer, Geographie, p. 196.]

(10) M.Sh. I, 2. Now, if coins thrown into the ocean are not considered as lost to the owner, as indeed suggested by Rabbah. why should no redemption be effected?

(11) Deut. XIV, 25.

(12) On account of which no redemption could be effected.

(13) In accordance with Ex. XXI, 26-27.

(14) Supra 91a. Does this not prove that even where the substance was not reduced, such as in the case of deafening, still so long as the damage was done there is liability?

(15) As having committed the capital offence of Ex. XXI. 25, v. supra 86a.

(16) [And for the same reason the slave would be set free.]

(17) Rendering her thus disqualified as blemished for the altar; cf. Lev. XXII, 20-25.

(18) Cf. Kid. 66a.

(19) I.e., the ‘red heifer’ rendering it thus disqualified in accordance with Num. XIX. 2 and 9.
(20) V. supra 56a.
(21) Thus contradicting the view of Rabbah.
(22) V. supra 33b.

Talmud - Mas. Baba Kama 98b

If there are witnesses who know what were the contents of the bond why not draw up another bond which would be valid? If on the other hand such witnesses are not available, how could we know [what were the contents]?[1] — Raba said: [The case could arise] where the defendant takes the plaintiff's word [as to the contents of the bond]. R. Dimi b. Hanina said that [regarding this ruling] of Rabbah there was a difference of opinion between R. Simeon and our [other] Rabbis. According to R. Simeon who held[2] that an object whose absence would cause an outlay of money is reckoned in law as money there would be liability,[3] but according to the Rabbis who said that an object whose absence would cause an outlay of money is not reckoned in law as money there would be no liability. R. Huna the son of R. Joshua demurred: I would suggest that you have to understand R. Simeon's statement, that an object whose absence would cause an outlay of money is reckoned in law as money, to apply only to an object whose substance is its intrinsic value, exactly as [in another case made Out by] Rabbah, for Rabbah said that where leaven was misappropriated before [the arrival of] Passover and a third person came along and burnt it, if this took place during the festival he would be exempt as at that time all are enjoined to destroy it,[4] but if after Passover[5] there would be a difference of opinion between R. Simeon and our Rabbis, as according to R. Simeon who held that an object whose absence would cause an outlay of money is reckoned in law as money, he would be liable,[6] while according to our Rabbis who said that an object whose absence would cause an outlay of money is not reckoned in law as money, he would be exempt. [But whence could it be proved that even] regarding an object whose substance is not its intrinsic value R. Simeon similarly maintained the same view?

Amemar said that the authority who is prepared to adjudicate liability in an action for damage done indirectly[7] would similarly here adjudge damages to the amount recoverable on a valid bill. but the one who does not adjudicate liability in an action for damage done indirectly would here adjudge damages only to the extent of the value of the mere paper. It once happened that in such an action Rafram compelled R. Ashi[8] and damages were collected [from him] like a beam fit for decorative mouldings.[9]

BUT IF . . . THE LEAVEN [HE MISAPPROPRIATED BECAME FORBIDDEN FOR ANY USE BECAUSE] PASSOVER HAD INTERVENED . . . HE CAN SAY TO HIM: HERE, TAKE YOUR OWN. Who is the Tanna who, in regard to things forbidden for any use, allows [the offender] to say, ‘Here, take your own’? — R. Hisda said: He is R. Jacob, as indeed taught: If an ox killed [a person], and before its judgment was concluded its owner disposed of it, the sale would hold good; if he pronounced it sacred, it would be sacred; if it was slaughtered its flesh would be permitted [for food]; if a bailee returned it to [the house of] its owner, it would be a legal restoration. But if after its sentence had already been pronounced, the owner disposed of it, the sale would not be valid; if he consecrated it, it would not be sacred; if it was slaughtered its flesh would be forbidden [for any use]; if a bailee returned it to [the house of] its owner, it would not be a legal restoration. R. Jacob, however, says: Even if after the sentence had already been pronounced the bailee returned it to its owner, it would be a legal restoration.[10] Now, is not the point at issue between them[11] that R. Jacob, in the case of things forbidden for any use, allows the offender to say. ‘Here, take your own’, whereas the Rabbis disallow this in the case of things forbidden for any use?[12] Rabbah said to him:[13] No; all may agree that even regarding things forbidden for any use the offender is allowed [in certain circumstances] to say, ‘Here, take your own’, for if otherwise. why did they[11] not differ in the case of leaven during Passover?[14] Rabbah therefore said: Here [in the case before us] the point at issue

must be whether [or not] sentence may be pronounced over an ox in its absence. The Rabbis hold that sentence cannot be pronounced over an ox in its absence so that the owner may plead against the bailee thus: 'if you had returned it to me [before the passing of the sentence], I would have driven it away to the pastures,[15] whereas now you have surrendered my ox into the hands of those against whom I am unable to bring any action.'[16] R. Jacob, however, holds that sentence can be pronounced over the ox even in its absence, so that the bailee may retort to the owner thus: In any case the sentence would have been passed on the ox, even in its absence.

R. Hisda came across Rabbah b. Samuel and said to him: Have you been taught anything regarding things forbidden for any use?[17] — He replied: Yes, I was taught [the following]: 'He shall restore the misappropriated object.[18] What is the point of the additional words, which he violently took away? [It is that] so long as it was intact he may restore it.[19] Hence did the Rabbis declare that if one misappropriated a coin and it went out of use, fruits and they became stale, wine and it became sour,[20] terumah[21] and it became defiled,[22] leaven and [it became forbidden for any use because] Passover intervened,[23] an animal and it became the instrument for the commission of a sin,[24] or an ox and [it subsequently became subject to be stoned,[25] but] its judgment was not yet concluded, he can say to the owner, 'Here, take your own.' Now, which authority can you suppose to apply this ruling only where the judgment was not yet concluded, but not where the judgment was already concluded, if not the Rabbis, and it is at [the same time] stated that [if he misappropriated] leaven and [it became forbidden for any use because] Passover intervened[26] he can say to him, 'Here, take your own'?[27] — He replied:[28] If you happen to meet them[29] [please] do not tell them anything [of this teaching].[30]

['If one misappropriated] fruits and they became stale . . . he can say to him: "Here, take your own."' But did we not learn:[31] [IF HE MISAPPROPRIATED] FRUITS AND THEY BECAME STALE . . . HE WOULD [CERTAINLY] HAVE TO PAY ACCORDING TO [THE VALUE AT] THE TIME OF THE ROBBERY? — Said R. Papa: The latter ruling[32] refers to where the whole of them became stale,[33] the former to where only parts of them became stale.

MISHNAH. IF AN OWNER GAVE CRAFTSMEN [SOME ARTICLES] TO SET IN ORDER AND THEY SPOILT THEM, THEY WOULD BE LIABLE TO PAY. WHERE HE GAVE A JOINER A CHEST, A BOX OR A CUPBOARD[34] SET IN ORDER AND HE SPOILT IT, HE WOULD BE LIABLE TO PAY. IF A BUILDER UNDERTOOK TO PULL DOWN A WALL AND BROKE THE STONES OR DAMAGED THEM, HE WOULD BE LIABLE TO PAY, BUT IF WHILE HE WAS PULLING DOWN THE WALL ON ONE SIDE ANOTHER PART FELL ON ANOTHER SIDE, HE WOULD BE EXEMPT, THOUGH, IF IT WAS CAUSED THROUGH THE KNOCKING, HE WOULD BE LIABLE.

GEMARA. R. Assi said: The Mishnaic ruling could not be regarded as applying except where he gave a joiner a box, a chest, or a cupboard to knock a nail in and while he was knocking in the nail he broke them. But if he gave the joiner timber to make a chest, a box or a cupboard and after he had made the box, the chest or the cupboard they were broken by him, he would be exempt,[35] the reason being that a craftsman acquires title to the increase in [value caused by the construction of] the article.[36] But we have learnt: IF AN OWNER GAVE CRAFTSMEN SOME ARTICLES TO SET IN ORDER AND THEY SPOILT THEM THEY WOULD BE LIABLE TO PAY. Does this not mean that he gave them timber to make utensils?[37] — No, [he gave them] a chest, a box or a cupboard.[38] But since the concluding clause in the text mentions 'chest, box or cupboard' is it not implied that the opening clause refers to timber? — It may, however, be said that [the later clause] only means to expand the earlier [as follows]: 'In the case where an owner gave craftsmen some articles to set in order and they spoiled them, how would they be liable to pay? As, e.g., where he gave a joiner a chest, a box, or a cupboard.' There is also good reason for supposing that the text [of the latter clause] was merely giving an example. For should you assume that the opening clause refers to

timber, after we have been [first] told that [even] in the case of timber they would be liable to pay and that we should not say that the craftsman acquires title to the increase in [value caused by the construction of] the article, what necessity would there be to mention afterwards chest, box and portable turret?[39] — If only on account of this, your point could hardly be regarded as proved, for the later clause might have been inserted to reveal the true meaning of the earlier clause, so that you should not think that the earlier clause refers to [the case where he gave the joiner a] chest, box and cupboard, whereas [where he gave him] timber the law would not be so; hence the concluding clause specifically mentions chest, box and cupboard[38] to indicate that the opening clause refers to timber, and that even in that case the craftsman would be liable to pay.[37] May we say that he[40] can be supported [from the following]: If wool was given to a dyer

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(1) [To know what liability to impose on him.]

(2) Supra 71b.

(3) Since the creditor has through the destruction of his bond suffered an actual loss of money.

(4) Cf. Pes. II. 2.

(5) When though forbidden to be used for any purpose it is still not under an injunction to be destroyed; cf. Pes. II. 2.

(6) To the robber, since the robber would have been able to restore the leaven to the owner and say. 'Here there is thine before thee', whereas after the leaven was destroyed he would have to pay the full original value if the leaven.

(7) I.e., R. Meir; cf. infra 100a.

(8) [Who in his childhood had destroyed a bond of a creditor.]

(9) A metaphorical expression for 'straight and exact and out of the best of the estate', as supra p. 16; v. Rashi and Sh.M. a.l.

(10) v. supra 45a for notes.

(11) R. Jacob and the Rabbis.

(12) Our Mishnah thus represents the view of R. Jacob.

(13) I.e., to R. Hisda.

(14) Whether a robber would be entitled to restore it and plead 'Here there is thine before thee'.

(15) And no sentence would have been passed on it.

(16) [I.e., the court. This plea would, however, not apply to leaven where the incidence of the prohibition is not due to an act of the robber but to the intervention of the Passover (Rashi).]

(17) [Whether the plea 'Here, take your own' is admissible in their case.]

(18) Lev. V, 23.

(19) Though it meanwhile became valueless.

(20) [MS.M. rightly omits 'wine and it became sour' as in this case payment is according to value at time of robbery; Var. lec. and he poured from it a libation (to an idol).]

(21) V. Glos.

(22) V. p. 561, n. 4.

(23) V. ibid., n. 5.

(24) V. ibid., n. 6.

(25) V. ibid., n. 8.

(26) V. p. 561, n. 5.

(27) Thus confirming the view of Rabbah as against that of R. Hisda.

(28) I.e., R. Hisda to Rabbah b. Samuel.

(29) My colleagues.

(30) For a similar attitude cf. 'Er. 11b where R. Shesheth said so to the same Rabbah b. Samuel, and ibid. 39b where the same R. Shesheth said so to Raba(== Rabbah) b. Samuel.

(31) In our Mishnah.

(32) Where payment must be made.

(33) And the change was definite.

(34) Lit., 'a turret', a cupboard in the form of a turret.

(35) So far as the increase in value caused by the construction of the article is concerned, [for when he parts with it he effects a sale of the improvement of the article and the stipulated sum paid to him is but the purchase money for the

same.]

(36) Cf. B.M. 112a.

(37) And their liability would thus extend to the whole value of the utensils made by them.

(38) For some repair, in the performance of which they were broken.

(39) In which case the law is quite evident.

(40) I.e., R. Assi.

Talmud - Mas. Baba Kama 99a

and it was burnt by the dye, he would have to pay the owner the value of his wool.[1] Now, it is only the value of the wool that he has to pay, but not the combined value of the wool and the increase in price.[2] Does this not apply even where it was burnt after the dye was put in,[3] in which case there has already been an increase in value, which would thus show[4] that the craftsman acquires title to the improvement carried out by him on any article? — Said Samuel: We are dealing here with a case where, e.g., it was burnt at the time when the dye was put in,[5] so that there has not yet been any increase in value. But what would it be if it were burnt after it was put in?[6] Would he really have to pay the combined value of the wool and the increase? Must we not therefore say that Samuel did not hold the view of R. Assi?[7] — Samuel might say to you that we are dealing here with a case where e.g., both the wool and the dye belonged to the owner, so that the dyer had to be paid only for the labour of his hands.[8] But if so, should it not have been stated that the dyer would have to pay the owner for the value of both his wool and his dye? — Samuel was only trying to point out that a refutation[9] would be possible.[10] Come and hear:[11] If he gave his garment to a craftsman and the latter finished it and informed him of the fact, even if from that time ten days elapsed [without his paying him] he would through that not be transgressing the injunction thou shalt not keep all night.[12] But if [the craftsman] delivered the garment to him in the middle of the day, as soon as the sun set [without payment having been made] the owner would through that transgress the injunction. Thou shalt not keep all night.[13] Now, if you assume that a craftsman acquires title to the improvement [carried out by him] on any article,[14] why should the owner be transgressing[15] the injunction. Thou shalt not keep all night? — Said R. Mari the son of R. Kahana: [The work required in this case was] to remove the woolly surface of a thick cloth where there was no accretion.[16] But be it as it may, since he gave it to him for the purpose of making it softer, as soon as he made it softer was there not already an improvement? — No; the ruling is necessary [for meeting the case] where he hired him to stamp upon it [and undertook to pay him] for every act of stamping one ma'ah,[17] which is but the hire [for labour].

But according to what we assumed previously that he was not hired for stamping,[18] [this ruling] would have been a support to [the view of] R. Shesheth, for when it was asked of R. Shesheth[19] whether in a case of contracting the owner would transgress[20] the injunction, Thou shalt not keep all night, or would not transgress, he answered that he would transgress! But are we [at the same time] to say that R. Shesheth differed from R. Assi?[21] — Samuel b. Aha said: [R. Shesheth was speaking] of a messenger sent to deliver a letter.[22]

Shall we say [that the same difference is found between] the following Tannaim? [For it was taught: If a woman says,] 'Make for me bracelets, earrings and rings,[23] and I will become betrothed unto thee,'[24] as soon as he makes them she becomes betrothed [unto him];[25] this is the view of R. Meir. But the Sages say that she would not become betrothed until something of actual value has come into her possession.[26] Now, what is meant by actual value? We can hardly say that it refers to this particular value,[27] for this would imply that according to R. Meir [it was] not [necessary for her to come into possession] even of that value. If so, what would be the instrument to effect the betrothal?[25] It therefore appears evident that what was meant by 'actual value' was some other value.[28] Now again, it was presumed [by the students] that according to all authorities there is continuous [growth of liability for] hire from the very commencement of the work until the end of

it,[29] and also that according to all authorities if one betroths [a woman] through [foregoing] a debt [owing to him from her], she would not be betrothed.[30] Would it therefore not appear that they[31] differed on the question whether a craftsman acquires title to the improvement carried out by him upon an article, R. Meir maintaining that a craftsman acquires title to the improvement carried out by him upon an article,[32] while the Rabbis maintained that the craftsman does not acquire title to the improvement carried out by him upon an article?[33] — No; all may agree that the craftsman does not acquire title to the improvement carried out by him upon an article, and here they differ as to whether there is progressive [liability for] hire from the very commencement of the work until the very end, R. Meir maintaining that there is no liability for hire except at the very end,[34] whereas the Rabbis maintained that there is progressive [liability for] hire[35] from the commencement until the very end.[36] Or if you wish I may say that in the opinion of all there is progressive [liability for] hire[35] from the very commencement to the end,[36] but here they[37] differ [in regard to the law] regarding one who betroths [a woman] by [forgoing] a debt [due from her], R. Meir maintaining that one who betroths [a woman] by [forgoing] a debt [due from her] would thereby effect a legal betrothal, whereas the [other] Rabbis maintained that he who betroths [a woman] by [forgoing] a debt [due from her] would thereby not effect a valid betrothal.[38]

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(1) Infra 100b.

(2) Caused by the process of dyeing.

(3) Lit., 'after falling in'. i.e. after the dye had already exercised its effect on the wool which thereby increased in value.

(4) Since he has to pay only for the wool and nor for its increase in value.

(5) Lit., 'at the time of falling in', i.e., before the dye has yet exercised any effect on the wool.

(6) V. supra n. 3.

(7) According to whom even then only the original value of the wool would have to be paid for. [Which means that R. Assi's view cannot stand since in civil law we follow the ruling of Samuel?]

(8) In which case the craftsman acquires no title to the increase in value, since the dye which imparts to the wool the increased value is not his.

(9) Of the proof advanced in support of R. Assi.

(10) Without, however, intending to oppose R. Assi.

(11) Cf. B.M. 112a.

(12) Lev. XIX, 13.

(13) V. p. 576, n. 11.

(14) So that when he parts with it he effects a sale of the improvement of the article and the stipulated sum paid to him is but the purchase money for the same.

(15) For surely by not paying purchase money in time a purchaser would not render himself liable to this transgression.

(16) To which the worker should acquire title.

(17) v. Glos.

(18) But for the completion of a certain undertaking, [in which case he would be a contractor and in a sense a vendor and yet the injunction of not delaying the payment of the hire applies.]

(19) V. B.M. 112a.

(20) By not paying the stipulated sum in time.

(21) Who maintained that a craftsman (i.e., a contractor) becomes the owner of the improvement carried out by him upon the article and when parting with it is but a vendor to whom purchase money has to be paid, and to whom the injunction does not apply.

(22) Where there is no tangible accretion to which a title of ownership could be acquired, and to which consequently there applies the injunction.

(23) The woman giving the man the material.

(24) This was spoken by an unmarried woman to her prospective husband.

(25) In accordance with Kid. I,1.

(26) Kid. 48a.

(27) I.e., the bracelets.

(28) I.e., irrespective of the bracelets, earrings and rings made by him. Whereas according to R. Meir these alone suffice.

(29) I.e., that strictly speaking each perutah of the hire becomes due as soon as work for a perutah is completed; a perutah is the minimum value of liability; v. Glos.
(30) As this is not reckoned in law sufficient consideration; cf. Kid. 6b and 47a.
(31) I.e., R. Meir and the Rabbis.
(32) So that when he makes her bracelets, earrings and rings out of her material, the improvement becomes his and could therefore constitute a valid consideration.
(33) But since the improvement was never his he only had an outstanding debt for the hire upon the other party who was in this case his prospective wife, and as the forfeiture of a debt is not sufficient consideration some 'actual value' must be added to make the consideration valid.
(34) I.e., when he restores her the manufactured bracelets etc., in which case the hire had previously never become a debt.
(35) Which thus becomes a debt rising from perutah to perutah (and as such could not constitute valid consideration).
(36) V. p. 578, n. 7.
(37) R. Meir and the Rabbis.
(38) V. p. 578, n. 8.

Talmud - Mas. Baba Kama 99b

Raba, however, said that all might have been agreed that there is progressive [liability for] hire from the very commencement until the end, and also that one who betroths [a woman] by [forgoing] a debt [due from her] would not thereby effect a valid betrothal, and it was again unanimously held that a craftsman does not acquire title to the improvement carried out by him upon an article,[1] and here we are dealing with a case where, e.g., he added a particle out of his own [funds[2] to the raw material supplied by her], R. Meir holding that where the [instrument of betrothal] is both [the foregoing of] a debt and [the giving of] a perutah,[3] the woman thinks more[4] of the perutah,[2] whereas the Rabbis held that where the [instrument of betrothal] is both [the foregoing of] a debt and [the giving of] a perutah, she thinks more of the debt [which she is excused].

This was also the difference between the following Tannaim, as taught: [If a man says,] 'In consideration of the hire for the work I have already done for you[5] [be betrothed to me],'[6] she would not become betrothed,[7] but [if he says], 'In consideration of the hire for work which I will do for you [be betrothed to me]', she would become betrothed. R. Nathan said that if he said, 'In consideration of the hire for work I will do for you,' she would thereby not become betrothed; and all the more so in this case where he said, 'In consideration of the hire for work I have already done for you.' R. Judah the Prince, however, says: It was truly stated that whether he said, 'In consideration of the hire for the work I have already done for you,'[6] or, 'In consideration of the hire for work I will do for you,' she would not thereby become betrothed, but if he added a particle out of his own funds[8] [to the raw material supplied by her], she would thereby become betrothed.[9] Now, the difference between the first Tanna and R. Nathan is on the question of the liability for hire [whether or not it is progressive from the very commencement],[10] while the difference between R. Nathan and R. Judah the Prince is on the question [what is her attitude when the betrothal is made both by the foregoing of] a debt [and the giving of] a perutah.[11]

Samuel said: An expert slaughterer who did not carry out the slaughter properly[12] would be liable to pay, as he was a damage-doer, [and] he was careless, and this would be considered as if the owner asked him to slaughter for him from one side[13] and he slaughtered for him from the other. But why was it necessary for him to say both 'he was a damage-doer [and] he was careless'? — If he had said only he was a damage-doer,I might have said that this ruling should apply only where he was working for a hire,[14] whereas where he was working gratuitously this would not be so; we are therefore told, [that there is no distinction as] he was careless. R. Hama b. Guria raised an objection to this view of Samuel [from the following]: If an animal was given to a slaughterer and he caused it to become nebelah,[15] if he was an expert he would be exempt, but if an amateur[16] he would be liable.

If, however, he was engaged for hire, whether he was an amateur or expert he would be liable. [Is this not in contradiction to the view of Samuel?] — He replied:[17] Is your brain disordered? Then another one of our Rabbis came along and raised the same objection to his view. He said to him:[18] 'You surely deserve to be given the same as your fellow.[19] I was stating to you the view of R. Meir and you tell me the view of the Rabbis! Why did you not examine my words carefully wherein I said: "For he was a damage-doer [and] he was careless, and this should be considered as if the owner asked him to slaughter for him from one side[20] and he slaughtered for him from the other." For surely who reasons in this way if not R. Meir, who said that a human being has to take greater heed to himself?' But what [statement of] R. Meir [is referred to]? We can hardly say the one of R. Meir which we learned: (Mnemonic: KLN)[21] 'If the owner fastened his ox [to the wall inside the stable] with a cord or shut the door in front of it properly but the ox [nevertheless] got out and did damage, whether it had been Tam or already Mu'ad he would be liable; this is the opinion of R. Meir,'[22] for surely, in that case, there they differed as to the interpretation of Scriptural Verses![23] — It therefore seems to be the one of R. Meir which we learned: [If wool was handed over to a dyer] to dye it red but he dyed it black, or to dye it black and he dyed it red, R. Meir says that he would have to pay [the owner] for the value of the wool.[24] But did he not there spoil it[25] with his own hands?[26] — The reference therefore must be to the one of R. Meir which was taught: 'If a pitcher is broken and [the potsherds] are not removed, or a camel falls down and is not raised, R. Meir orders payment for any damage resulting therefrom, whereas the [other] Sages say that no action can be instituted in civil courts though there is liability according to divine justice,'[27] and we came to the conclusion[28] that they differed as to whether or not stumbling implies negligence.

Rabbah b. Bar Hanah said that R. Johanan stated that an expert slaughterer who did not carry out the slaughter properly[29] would be liable to pay, even if he was as skilled as the slaughterer of Sepphoris. But did R. Johanan really say so? Did Rabbah b. Bar Hanah not say that such a case came before R. Johanan in the synagogue of Maon[30] and he said to the slaughterer. 'Go and bring evidence that you are skilled to slaughter hens, and I will declare you exempt'? — There is, however, no difficulty, as the latter ruling was [in a case where the slaughterer was working] gratuitously whereas the former ruling applies [where the slaughterer works] for hire,[31] exactly as R. Zera said: If one wants the slaughterer to become liable to him,[32] he shall give him a dinarius beforehand.[31]

An objection was raised: If wheat was brought to be ground and the miller omitted to moisten it and he made it into branflour or coarse bran, or if flour [was given] to a baker and he made out of it bread which crumbled, or an animal to a slaughterer and he rendered it nebelah,[33] he would be liable, as he is on the same footing as a worker who receives hire.[34] [Does this not imply that he was working gratuitously? — No.] read: 'Because he is a worker receiving hire.'[31]

A case of magrumeta[35] was brought before Rab, who declared it trefa and nevertheless released the slaughterer from any payment. When R. Kahana and R. Assi met that man[36] they said to him: 'Rab did two things with you.' What was meant by these two things? If you say it meant two things to his[36] disadvantage, one that Rab should have declared it kasher in accordance with R. Jose b. Judah,[37] whereas he declared it trefa in accordance with the Rabbis,[37] and again that since he acted in accordance with the Rabbis,[37] he should at any rate have declared the slaughterer liable, is it permitted to say a thing like that? Was it not taught:[38] When [a judge] leaves [the court] he should not say, 'I wanted to declare you innocent, but as my colleagues insisted on declaring you liable I was unable to do anything since my colleagues formed a majority against me,' for to such behaviour is applied the verse, A tale-bearer revealeth secrets?[39] — It must therefore be said that the two things were to his[36] advantage, first that he did not let you eat a thing which was possibly forbidden, secondly that he restrained you from receiving payment which might possibly have been a misappropriation.

It was stated: If a denar was shown to a money changer [and he recommended it as good] but it

was subsequently found to be bad, in one Baraitha it was taught that if he was an expert he would be exempt but if an amateur he would be liable, whereas in another Baraitha it was taught that whether he was an expert or an amateur he would be liable. R. Papa stated: The ruling that in the case of an expert he would be exempt refers to such, e.g., as Dankcho and Issur[40] who needed no [further] instruction whatever, but who made[41] a mistake regarding a new stamp at the time when the coin had just [for the first time] come from the mint.

There was a certain woman who showed a denar to R. Hiyya and he told her that it was good. Later she again came to him and said to him, 'I afterwards showed it [to others] and they said to me that it was bad, and in fact I could not pass it.' He therefore said to Rab: Go forth and change it for a good one and write down in my register that this was a bad business. But why [should he be different from] Dankcho and Issur[42] who would be exempt because they needed no instruction? Surely R. Hiyya also needed no instruction? — R. Hiyya acted within the 'margin of the judgment,'[43] on the principle learnt by R. Joseph: 'And shalt show them[44] means

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(1) V. p. 578, n. 11.

(2) Which could constitute valid consideration.

(3) I.e., a coin which constitutes the minimum of value in legal matters.

(4) V. Sanh. 19b.

(5) The article having been already returned to her.

(6) This was spoken to a prospective wife.

(7) V. p. 578. n. 8.

(8) V. p. 579, n. 7.

(9) Kid. 48b.

(10) [R. Nathan holding that it is, whereas the first Tanna holds that there is no liability except at the very end.]

(11) [R. Nathan maintains that the woman thinks primarily of the debt, while, according to R. Judah the Prince she thinks more of the perutah.]

(12) As required by the ritual, and has thus rendered the animal unfit for consumption according to the dietary laws.

(13) Of the throat.

(14) Where he could be made liable even in the absence of carelessness.

(15) I.e., unfit for consumption through a flaw in the slaughter; v. Glos.

(16) As he had no right to slaughter.

(17) I.e., Samuel to R. Hama.

(18) I.e., Samuel to the other Rabbi.

(19) R. Hama.

(20) V. p. 580, n. 9.

(21) Keyword consisting of the Hebrew initial words of the three teachings that follow.

(22) Supra 45b.

(23) [V. loc. cit. This case cannot accordingly be appealed to as precedent.]

(24) Infra 100b.

(25) Lit., 'burn it'.

(26) Since he intended to dye it in that colour in which he actually dyed it, whereas in the case of the slaughterer, the damage looks more like an accident.

(27) Supra 28b-29a.

(28) [R. Meir holding that a human being must take greater heed to himself.]

(29) V. p. 580, n. 8.

(30) [In Judah, I Sam. XXIII, 24.]

(31) V. p. 580, n. 10.

(32) Were the slaughter not carried out effectively.

(33) V. p. 581, n. 1.

(34) Tosef. B.K. X, 4 and B.B. 93b.

(35) I.e., where the slaughter was started in the appropriate part of the throat but was finished higher up, in which matter

there is a difference of opinion between R. Jose b. Judah and the Rabbis in Hul. 1, 3.

(36) I.e., the owner of the animal.

(37) Hul. ibid.

(38) Sanh. 29a.

(39) Prov. XI, 13.

(40) Two renowned money changers in those days.

(41) Lit., 'But where was their mistake; they made, etc.

(42) V. p. 583. n. 8.

(43) For the sake of equity and mere ethical considerations. [On this principle termed lifenim mi-shurath ha-din according to which man is exhorted not to insist on his legal rights. v. Herford, Talmud and Apocrypha, pp. 140, 280. That there was nothing Essenic in that attitude, but that it is a recognised principle in Rabbinic ethics has already been shown by Buchler, Types, p. 37.]

(44) Ex. XVIII, 20; the verse continues, the way wherein they must walk and the work.

Talmud - Mas. Baba Kama 100a

the source of their livelihood;[1] the way means deeds of lovingkindness; they must walk means the visitation of the sick; wherein means burial, and the work means the law; which they must do means within the margin of the judgment.'[2] Resh Lakish showed a denar to R. Eleazar who told him that it was good. He said to him: You see that I rely upon you. He replied: Suppose you do rely on me, what of it? Do you think that if it is found bad I would have to exchange it [for a good one]? Did not you yourself state that it was [only] R. Meir who adjudicates liability in an action for damage done indirectly,[3] which apparently means that it was only R. Meir who maintained so whereas we did not hold in accordance with his view? — But he said to him: No; R. Meir maintained so and we hold with him. But to what [statement of] R. Meir [was the reference]? It could hardly be the one of R. Meir which we learned: If a judge in giving judgment [in a certain case] has declared innocent the person who was really liable or made liable a person who was really innocent, declared defiled a thing which was levitically clean, or declared clean a thing which was really defiled,[4] his decision would stand, but he would have to make reparation out of his own estate,[5] for was it not taught in connection with this that R. Elai said that Rab stated[6] that [this would be so] only where he personally executed the judgment by his own hand?[7] The reference therefore appears to be the one of R. Meir which we learned: [If wool was handed over to a dyer] to dye it red but he dyed it black, or to dye it black and he dyed it red, R. Meir says that he would have to pay [the owner] for the value of his wool.[8] But did he not in that case also spoil it with his own hands?[9] The reference must therefore be to the one of R. Meir which we learned: He who with [the branches of] his vine covers the crops of his fellow renders them proscribed[10] and will be liable for damages.[11] But there also did he not do the mischief with his own hands? The reference must therefore be to the one of R. Meir which was taught: 'If the fence of a vineyard [near a field of crops] is broken through,

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(1) Either the means of an honest livelihood, as explained by Rashi on B.M. 30b or the study of the living law, as interpreted by Rashi a.l.

(2) B.M. 30b.

(3) Supra 98b.

(4) And it so happened that that thing was consequently mixed with clean things and this spoiled them all; v. Sanh. (Sonc. ed.) p. 210, nn. 6-8.

(5) Bk. IV, 4.

(6) Bek. 28b.

(7) I.e., where he acted both as judge and executive officer, in which case the damage was directly committed by him personally.

(8) V. next Mishnah.

(9) By dyeing it the wrong colour.

(10) In accordance with Deut. XXII, 9.

(11) Kil. VII, 4.

Talmud - Mas. Baba Kama 100b

[the owner of the crops] may request [the owner of the vineyard] to repair it;[1] so also if it is broken through again he may similarly request him to repair it. But if the owner of the vineyard abandons it altogether and does not repair it he would render the produce proscribed and would incur full responsibility.[2]

MISHNAH. IF WOOL WAS GIVEN TO A DYER AND THE DYE[3] BURNT IT, HE WOULD HAVE TO PAY THE OWNER THE VALUE OF HIS WOOL. BUT IF HE DYED IT KA'UR,[4] THEN IF THE INCREASE IN VALUE[5] IS GREATER THAN HIS OUTLAY THE OWNER WOULD GIVE HIM ONLY THE OUTLAY, WHEREAS IF THE OUTLAY[6] WAS GREATER THAN THE INCREASE IN VALUE HE WOULD HAVE TO PAY HIM THE AMOUNT OF THE INCREASE, [WHERE WOOL WAS HANDED TO A DYER] TO DYE RED AND HE DYED IT BLACK, OR TO DYE BLACK AND HE DYED IT RED, R. MEIR SAYS THAT HE WOULD HAVE TO PAY [THE OWNER] FOR THE VALUE OF HIS WOOL. R. JUDAH, HOWEVER, SAYS: IF THE INCREASE IN VALUE[7] IS GREATER THAN THE OUTLAY, THE OWNER WOULD PAY THE DYER HIS OUTLAY, WHEREAS IF THE OUTLAY EXCEEDED THE INCREASE IN VALUE HE WOULD HAVE TO PAY HIM NO MORE THAN THE INCREASE.[8]

GEMARA. What does KA'UR mean? — R. Nahman said that Rabbah b. Bar Hanah stated: It means that the 'copper'[9] dyed it. What is meant by saying that the 'copper' dyed it? — Said Rabbah b. Samuel:

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(1) For otherwise he would have to remove his vines four cubits from the border; cf. B.B. 26a.

(2) V. B.B. (Sonc. ed.) p. 2 and notes.

(3) Lit., 'The cauldron', 'the dyer's kettle'.

(4) Explained in the Gemara.

(5) Resulting from the work done by him.

(6) Incurred by the dyer.

(7) V. p. 585, n. 11.

(8) V. supra 95a-b.

(9) **

Talmud - Mas. Baba Kama 101a

He dyed it with the sediments of the kettles.

Our Rabbis taught: If pieces of wood were given to a joiner to make a chair and he made a bench out of them, or to make a bench and he made a chair out of them R. Meir says that he will have to refund to the owner the value of his wood, whereas R. Judah says that if the increase in value exceeds his outlay the owner would pay the joiner his outlay, whereas if the outlay exceeds the increase in value he would have to pay him no more than the increase. R. Meir, however, agrees that where pieces of wood were given to a joiner to make a handsome chair out of and he made an ugly chair out of them, or to make a handsome bench and he made an ugly one if the increased value would exceed the outlay the owner would pay the joiner the amount of his outlay, whereas if the outlay exceeded the increase in value he would have to pay him no more than the amount of the increase.

It was asked: Is the improvement effected by colours a [separate] item independent of the wool, or is the improvement effected by colours not a [separate] item independent of the wool? How can such

a question arise in practice? The case can hardly be one where a man misappropriated pigments and after having crushed and dissolved them he dyed wool with them,for would he not have acquired title to them through the change which they underwent?[1] — No; the query could have application only where he misappropriated pigments already dissolved and used them for dyeing, so that if the improvement effected by colours is a [separate] item independent of the wool the plaintiff might plead: 'Give me back the dyes which you have taken from me',[2] but if on the other hand the improvement effected by colours is not a [separate] item independent of the wool the defendant might say to him: 'I have nothing of yours with me.' But I would here say: [Even] if the improvement effected by colours is not a [separate] item independent of the wool, why should the defendant be able to say to him: 'I have nothing of yours with me', seeing that the plaintiff can say to him: 'Give me back the pigments of which you have deprived me'?[3] — We must therefore take the other alternative: Are we to say that the improvement effected by colours is not a [separate] item independent of the wool and the defendant would have to pay him,[4] or is the improvement effected by colours a [separate] item independent of the wool and the defendant can say to him: 'Here are your dyes before you and you can take them away.'[5] But how can he take them away? By means of soap? But soap would surely remove them without making any restitution![6] — We must therefore be dealing here [in the query] with a case were e.g., a robber misappropriated dyes and wool of one and the same owner, and dyed that wool with those dyes and was returning to him that wool. Now, if the improvement effected by colours is a [separate] item independent of the wool, the robber would thus be returning both the dyes and the wool, but if the improvement effected by colours is not a [separate] item independent of the wool, it was only the wool which he was returning, whereas the dyes he was not returning.[7] But I would still say: Why should it not be sufficient [for the robber to do this] seeing that he caused the wool to increase in value?[8] — No: the query might have application where coloured wool had meanwhile depreciated in price.[9] Or if you wish I may say that it refers to where e.g., he painted with them an ape[10] [in which case there was thereby no increase in value]. Rabina said: We were dealing here [in the query] with a case where e.g., the wool belonged to one person and the dyes to another,[11] and as an ape[12] came along and dyed that wool of the one with those dyes of the other; now, is the improvement effected by the colours a [separate] item independent of the wool so that the owner of the dyes is entitled to say to the owner of the wool: 'Give me my dyes which are with you',[13] or is the improvement effected by colours not a [separate] item apart from the wool, so that he might retort to him: 'I have nothing belonging to you'? — Come and hear: A garment which was dyed with the shells of the fruits of 'Orlah[14] has to be destroyed by fire.[15] This proves that appearance is a distinct item [in valuation]![16] — Said Raba: [It is different in this case where] any benefit visible to the eye[17] was forbidden by the Torah as taught Uncircumcised: it shall not be eaten of;[18] this gives me only its prohibition as food. Whence do I learn that no other benefit should be derived from it, that it should not be used for dyeing with, that a candle should not be lit with it? It was therefore stated further, Ye shall count the fruit thereof as uncircumcised: . . . . uncircumcised, it shall not be eaten of, for the purpose of including all of these.[19]

Come and hear: A garment which was dyed with the shells [of the fruits] of the sabbatical year has to be destroyed by fire![20] — It is different there, as Scripture stated: 'It shall be'[21] implying that it must always be as it was.[22]

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(1) And the whole liability upon him would be to pay the original value of the dyes as supra p. 541.

(2) Since his dyes form now an integral part of the defendant's wool.

(3) And with reference to which you have accordingly become subject to the law of robbery.

(4) For the dyes.

(5) I.e., remove them from the wool.

(6) To which a robber is subject; cf. Lev. V, 23.

(7) And would therefore still have to pay for the dyes.

(8) By having dyed it with the dyes misappropriated from the same plaintiff.

(9) And the increase through the process of dyeing is below the price of the dyes, [in which case the plaintiff can say that he would have sold the pigments before the depreciation].
(10) Or as interpreted by others 'a basket of willows' which he misappropriated from the same plaintiff.
(11) And it was not a case of misappropriation at all.
(12) Belonging to no particular owner who could be made liable.
(13) V. p. 587. n. 2.
(14) I.e., the fruit in the first three years of the plantation of the tree; cf. Glos.
(15) 'Orl. III, 1. 'Orlah is proscribed from any use; cf. Lev. XIX, 23.
(16) To render the garment itself proscribed.
(17) Cf. Me'il. 20a.
(18) Lev. XIX, 23.
(19) Pes. 22b. Kid. 56b. 'Orlah thus affords no precedent.
(20) Now, could it not be proved from this that mere colour is a distinct item!
(21) Lev. XXV, 7.
(22) Even after it has been changed and altered by various processes.

Talmud - Mas. Baba Kama 101b

Raba pointed out a contradiction. We have learnt: 'A garment which was dyed with the shells [of the fruits] of 'Orlah has to be destroyed by fire,' thus proving that colour is a distinct item; but a contradiction could be pointed out: 'If a quarter [of a log][1] of [the] blood [of a dead person] has been absorbed in the floor of a house, [all in] the house[2] would become defiled,[3] or as others say, '[all in] the house would not be defiled'; these two statements, however, do not differ, as the former refers to utensils which were there at the beginning,[4] whereas the latter refers to the utensils which were brought there subsequently [after the blood was already absorbed 'in the ground].[5] 'If the blood was absorbed in a garment, we have to see: if on the garment being washed a quarter [of a log] of blood would come out of it,[6] it would cause defilement,[7] but if not, it would not cause defilement'![8] — Said R. Kahana: The ruling stated in this Mishnah is one of concessions made in respect of quarters [of a log], applicable in the case of blood of one weltering in his blood who defiles by [mere] Rabbinic enactment.[9]

Raba again pointed out a contradiction: We have learnt: '[Among] the species of dyes, the aftergrowths of woad and madder are subject to the law of the sabbatical year,[10] and so also is any value received for them subject to the law of the sabbatical year; they are subject to the law of removal[11] and any value received for them is similarly subject to the law of removal,'[12] thus proving that wood is subject to the sanctity of the sabbatical year; but a contradiction could be pointed out: 'leaves of reeds and leaves of vines which have been heaped up for the purpose of making them into a hiding place upon a field, if they were gathered to be eaten would be subject to the sanctity of the sabbatical year but if they were gathered for firewood they would not be subject to the sanctity of the sabbatical year'![13] — But he himself answered: Scripture stated: 'for food',[14] implying that the law applies only to produce from which a benefit is derived at the time of its consumption,[15] so that the wood for fuel is excluded as the benefit derived from it[16] is after its consumption. But is there not the wood of the pine tree [used for torches] from which a benefit is derived at the time of its consumption? — Raba said:

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(1) A liquid measure; cf. Glos.
(2) Subject to defilement.
(3) As a quarter of a log of blood of a dead person is equal in law to the corpse itself and is subject to Num. XIX, 14.
(4) I.e., before the blood was absorbed in the ground when it caused defilement.
(5) And could no more cause defilement.
(6) As to the way of calculation, v. Rashi and Tosaf. a.l.
(7) As the blood is in stich a case still considered present and existing in the garment.

(8) Because the blood could no more be considered present in the garment. Oh. III, 2. This proves that a mere colour is not a distinct item.
(9) Since it was doubtful whether the quarter of the log of blood oozed out while the person was still alive and clean or afterwards and unclean; cf. Nid. 71a.
(10) Lev. XXV. 2-7.
(11) From the house into the field as soon as similar crops are no more to be found in the field; cf. Sheb. IX. 2-3.
(12) Sheb. VII, 1.
(13) Suk. 40a. Now, does this not prove that wood is not subject to the law of the sabbatical year?
(14) Lev. XXV, 6.
(15) Such as is the case with fruits as food.
(16) For heating purposes.

Talmud - Mas. Baba Kama 102a

Wood as a rule is meant for heating.[1]

R. Kahana said: Whether [or not] we say in regard to the Sabbatical Year that wood is meant as a rule for heating was a matter of difference between the following Tannaim, as taught: The produce of the Sabbatical Year should be handed over neither for the purpose of steeping nor for the purpose of washing with them. R. Jose, however, says that the products of the Sabbatical Year may be put into steep and into the wash.[2] Now, what was the reason of the Rabbis?[3] Because Scripture said, 'for food' implying not for the purpose of steeping, 'for food' and not for the purpose of washing. But R. Jose said that Scripture stated 'for you',[4] implying, for all your needs. But also according to the Rabbis was it not stated: 'for you'? — 'for you'[5] should be analogous to 'for food', referring thus to any uses by which a benefit is derived from the products at the very time of their consumption, excluding thus the purposes of steeping and washing where the benefit is derived from the products after their consumption.[6] But what does R. Jose make of 'for food'?[7] — He might say to you that that was solely necessary for the ruling [of the Baraitha], as taught: 'for food', but not for a plaster. You say 'for food', but not for a plaster; why perhaps not otherwise, 'for food' but not for the purpose of washing? When it says 'for you'[8] the purpose of washing is indicated; what then do I make of 'for food' [if not] 'for food', but not for a plaster. But what reason had you for including the purpose of washing and excluding the purpose of a plaster? — I include the purpose of washing as this is a requirement shared alike by all people,[9] but exclude the purpose of plaster which is a requirement not shared alike by all people.[10] Now, whose view would be followed in that statement which was taught: "'for food" but not for a plaster. "for food" but not for perfume, "for food" but not to make it into an emetic'? — It must be in accordance with R. Jose, for if in accordance with the Rabbis, the purpose of washing and steeping [should also be excluded].

R. JUDAH, HOWEVER, SAYS: IF THE INCREASE IN VALUE etc. (Mnemonic: Saban)[11] R. Joseph was once sitting behind R. Abba in the presence of R. Huna, who was sitting and stating that the halachah was in accordance with R. Joshua b. Karhah and again that the halachah was in accordance with R. Judah. R. Joseph thereupon turned his face towards him[12] and said: I understand his mentioning R. Joshua b. Karhah, as it was necessary to state that the halachah is in accordance with him, since you might have been inclined to think that the principle that where an individual differs from the majority the halachah is in accordance with the majority[13] [applies also] here; it was therefore made known to us that [in this] case the halachah is in accordance with the individual. (What statement of R. Joshua b. Karhah is referred to? — That which was taught: 'R. Joshua b. Karhah says that a debt [recorded] in an instrument should not be collected from them,[14] whereas debts [contracted by mere word] of mouth may be collected from them because this is no more than rescuing one's money from the hands of the debtors.')[15] But why was it necessary to state that the halachah was in accordance with R. Judah? For his view was in the first instance stated as a point at issue [between the authorities] and subsequently as an anonymous ruling; and it is an established rule

that if a view is first dealt with as a point at issue and then stated anonymously, the halachah is in accordance with the anonymous statement![16] The point at issue in this case was in Baba Kamma [IF WOOL WAS HANDED OVER TO A DYER] TO DYE IT RED BUT HE DYED IT BLACK, OR TO DYE IT BLACK BUT HE DYED IT RED, R. MEIR SAYS THAT HE WOULD HAVE TO PAY [THE OWNER] FOR THE VALUE OF HIS WOOL. BUT R. JUDAH SAYS: IF THE INCREASE IN VALUE EXCEEDS THE OUTLAY, THE OWNER WOULD REPAY TO THE DYER HIS OUTLAY, WHILE IF THE OUTLAY EXCEEDED THE INCREASE IN VALUE HE WOULD HAVE TO PAY HIM NO MORE THAN THE AMOUNT OF THE INCREASE, whereas the anonymous statement was made in Baba Mezi'a where we have learnt: 'Whichever party departs from the terms of the agreement is at a disadvantage, so also whichever party retracts from the agreement has the inferior claim'![17] — R. Huna considered that it was necessary for him to state so, since otherwise you might have thought that there was no precise order for [the teaching of] the Mishnah[18] so that this [ruling of R. Judah] might perhaps have been in the first instance anonymous but subsequently a point at issue.[19] [What does] R. Joseph [say to this]? — [He says] that if so, wherever a ruling is first a point at issue and then stated anonymously,[20] it might be questioned that as no precise order may have been kept in [the teaching of] the Mishnah it might have been anonymous in the first instance and a point at issue later on![19] To this R. Huna would answer that we never say that there was no precise order in [the teaching of] the Mishnah in one and the same tractate, whereas in the case of two tractates we might indeed say so. R. Joseph however considered the whole of Nezikin[21] to form only one tractate. If you like, again, I may say that it is because this ruling was stated among fixed laws: 'Whichever party departs from the terms of the agreement is at a disadvantage, and so also whichever party retracts from the argument has an inferior claim.'[22]

Our Rabbis taught: 'Where money was given to an agent

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(1) In which case the benefit is derived after the wood has already been burnt.

(2) Suk. 40a.

(3) The first Tanna.

(4) Lev. XXV. 6: And the sabbath-produce of the land shall be for food for you.

(5) Implying, for all your needs.

(6) As when flax or a garment is put into wine the latter is spoilt before the former becomes thereby improved. According to the interpretation of Rashi a.l., R. Jose would maintain that we do not say that wood as a rule is destined for the purpose of heating, even as we do not say that fruits are meant only for eating and not for steeping or washing, whereas the Rabbis maintained otherwise; cf. however Tosaf. a.l., Rashi and Tosaf. on Suk. 40a.

(7) Thus most probably excluding washing and steeping.

(8) V. p. 590. n. 10.

(9) Cf. Keth. 7a.

(10) As it is used only by people afflicted with wounds.

(11) Standing for the names of the three Rabbis that follow: Joseph, ABba, Huna.

(12) Suk. 11a.

(13) Ber. 9a.

(14) I.e., from idolaters during the three days immediately before their religious festivals, as this might be a cause of special rejoicing to them and for offering additional thanksgiving to their idols, v. A.Z. 6b.

(15) Since no documentary proof against them is available.

(16) Yeb. 42b.

(17) B.M. VI, 2. Why then was it necessary for R. Huna to state explicitly that the halachah is in accordance with the view of R. Judah?

(18) Though its compilation was according to a definite plan and system; cf. Tosaf. a.l.

(19) In which case the anonymous statement does not constitute the accepted halachah.

(20) Where the anonymous statement is considered to be the accepted halachah.

(21) According to R. Sherira Gaon, Maim. and others this refers only to B.K., B.M. and B.B. which constitute three gates of one tractate but not to Sanhedrin and the other tractates of this Order. A different view is taken by Ritba and

others; cf. Yad Malachi 338, and Tosaf. Yom Tob in his introduction to Nezikin.
(22) B.M. VI. 2. So that there was no need for R. Huna to state that the halachah rested with R. Judah.

Talmud - Mas. Baba Kama 102b

to buy wheats and he bought with it barley, or barley and he bought with it wheat,[1] it was taught in one Baraitha that 'if there was a loss, the loss would be sustained by him,[2] and so also if there was a profit, the profit would be enjoyed by him,'[2] but in another Baraitha it was taught that 'if there was a loss, he would sustain the loss, but if there was a profit, the profit would be divided between them.'[3] [Why this difference of opinion?] — Said R. Johanan: There is no difficulty, as one[4] was in accordance with R. Meir and the other with R. Judah; the former was in accordance with R. Meir who said[5] that a change transfers ownership,[6] whereas the latter was in accordance with R. Judah who said[5] that a change does not transfer ownership.[7] R. Eleazar demurred: Whence [can you know this]? May it not be perhaps that R. Meir meant his view to apply only to a matter which was intended to be used by the owner personally,[8] but in regard to matters of merchandise[9] he would not say so?[10] — R. Eleazar therefore said that one as well as the other [Baraitha] might be in accordance with R. Meir, and there would still be no difficulty as the former dealt with a case where the grain was bought for domestic food,[11] whereas in the latter[12] it was bought for merchandise.[13] Moreover, in the West they were even amused[14] at the statement of R. Johanan regarding the view of R. Judah.[7] for [they said] who was it that informed the vendor of the wheat so that he might transfer the ownership of the wheat to the owner of the money?[15] R. Samuel b. Sasarti demurred: If so, why not also say the same even in the case where wheat [was wanted by the principal] and wheat [was bought by the agent]?[16] — R. Abbahu however said: The case where wheat [was wanted] and wheat [was bought] is different, as in this case the agent was acting for the principal upon the terms of his mandate and it is the same [in law] as if the principal himself had done it.[17] This could even be proved from what we have learnt: Neither in the case of one who has declared his possessions consecrated nor in the case of one who has dedicated the valuation of himself[18] can the Temple treasurer claim either the garments of the wife or the garments of the children[19] or the articles which were dyed for them or the new foot-wear bought for them.[20] Now, why not ask here also: Who informed the dyer that he was transferring the ownership of his dye to the wife?[21] But must we not then answer that since the husband was acting on behalf of his wife it is considered as if this was done by the actual hand of the wife? [If so,] also there as the agent was acting upon a mandate[22] it is considered as if the purchase of the wheat had been done by the actual hand of the principal. R. Abba, however, said: No; it was because when a man declares his possessions sacred, he has no intention to include the garments of his wife and children.[19] R. Zera demurred: Could it be said that in such circumstances a man would include in his mind even his Tefillin,[23] and we have nevertheless learnt that 'in the case of one who declares his possessions sacred, even his Tefillin would have to be included in the estimate'?[24] — Abaye, however, said to him: Yes, it is quite possible that a man may in his mind include even his Tefillin, as he who declares his possessions consecrated surely thinks that he is performing a commandment,[25] but no man would in his mind include the garments of his wife and children as this would create ill feeling.[26] R. Oshaia demurred: Was this not stated here as applying also to liabilities for vows of value, regarding which case we have learnt that those who have incurred liabilities for vows of value can be forced to give a pledge,[27] though it could hardly be said that it was in the mind of a man that the giving of a pledge should be enforced upon himself? — R. Abba therefore said: One who declares his possessions consecrated is regarded as having from the very beginning transferred the ownership of the garments of his wife and children to them.

Our Rabbis taught: If one man buys a field in the name of another, he cannot compel the latter to sell it to him; but if he explicitly made this stipulation with the vendor he could force him to sell. What does this mean? Said R. Shesheth: What is meant is this: If one man buys a field from another in the name of the Exilarch,[28] he cannot subsequently force the Exilarch to sell it to him[29] , but if [when buying it] he explicitly made this stipulation[30] he could compel the Exilarch to sell it.[29]

The Master stated: 'If one buys a field in the name of the Exilarch, he cannot subsequently force the Exilarch to sell it', thus implying that he[31] would surely acquire title to it.[32] Shall we say that this differs from the view of the scholars of the West[33] who stated: Who indeed informed the vendor of the wheat so that he may transfer the ownership of the wheat to the owner of the money? — As far as that goes there would be no difficulty, as this could hold good where e.g.,the vendee made this known to the owner of the field and also informed the witnesses [who signed the deed] about it. Read, however, the concluding clause: '[But if when buying it he explicitly made] this stipulation[30] he cold compel the Exilarch to sell it.'[29] But why should it be so? Why should the Exilarch not be entitled to say: 'I want neither your compliments[34] nor your insults.'[35] Abaye therefore said: what was meant was this: If one buys a field in the name of another

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(1) With the understanding that the Profit if any will be shared equally by principal and agent.

(2) I.e., the agent.

(3) I.e., between principal and agent in accordance with the original arrangement.

(4) I.e., the former Baraitha.

(5) In the case of wool given to a dyer to dye red and he dyed it black, as supra p. 586.

(6) From which it would follow that on account of the change in the object purchased the ownership of it passed over to the agent who would thus enjoy the whole of any profit derived.

(7) So that the principal is thus entitled to share any profit that may result from the transaction, though in the case of a loss he can back out and put it completely on the agent as he acted not in accordance with his mandate.

(8) Such as wool to be used for his own garment, and a chair for his own use, as supra p. 586.

(9) As was the case here with the wheat or barley.

(10) For in such a case where the principal was merely out for profit he surely did not intend to distinguish between the objects of the purchase.

(11) Which is on a par with the case of wool and where a change transfers ownership; v. n. 2.

(12) Stating that the profit would be divided between principal and agent.

(13) V. supra n. 6.

(14) V. Sanh. 17b.

(15) Why then should the wheat not altogether be the property of the agent since he acted ultra vires and thus set aside the mandate.

(16) . Since the vendor had no knowledge of the existence of the contract of agency between the purchaser and the principal.

(17) Whereas in the case before us where the agent acted against the instructions, the mandate has thereby been set aside and the purchase could no more be ascribed to the principal.

(18) Lev. XXVII, 1 ff.

(19) Cf. supra p. 46.

(20) 'Ar. VI, 5.

(21) But if the ownership of the dye was transferred to the husband and not to his wife, why then should the Temple treasurer have no claim on it.

(22) And not ultra vires.

(23) I.e., Phylacteries; cf. Deut. VI. 8.

(24) 'Ar. 23b. V. B.B. (Sonc. ed.) p. 652, n. 11.

(25) Which in his view outweighs that of Deut. VI, 8.

(26) And thus counteract the very purpose and function of sanctity and Sanctuary; Isa. LXI, 8 and Mal. I, 13; Mak. 11a.

(27) 'Ar. 21a, supra 40a.

(28) He asked him to draw up the deed in the name of the Exilarch for the purpose of frightening away possible disputants.

(29) I.e., to draw up a new deed in the name of the actual purchaser.

(30) To the vendor.

(31) I.e., the actual purchaser.

(32) Though the deed was drawn up in the name of the Exilarch.

(33) V. supra p. 594.
(34) In drawing up the deed in my name.
(35) In making me appear as a dealer in land.

Talmud - Mas. Baba Kama 103a

[such as] the Exilarch[1] he cannot compel the vendor to sell it to him again. But if when buying it he explicitly made this stipulation he could compel the vendor to sell it to him again.[2] The Master stated: 'If one man buys a field in the name of another [such as] the Exilarch, he cannot compel the vendor to sell it to him again'. But is this not quite obvious? — You might, however, have said that the vendee could argue: 'You very well knew that I was taking the field for myself, and that [in buying it in the name of the other person] I merely wanted protection, and as I was surely not prepared to throw away money for nothing I undoubtedly made the purchase on the understanding that a new deed should be drawn up for me [by you].' It is therefore made known to us that the vendor can retort to him: 'It is for you to make arrangements with the person in whose name you bought the field that he should draw up for you a new title deed.'

'But if when buying it he explicitly made this stipulation he could compel the vendor to sell it to him again.' But is this not obvious? — No, it is required to meet the case where the vendee said to the witnesses in the presence of the vendor: 'You see that I want another deed.' You might in this case think that the vendor could say to him: 'I thought that you referred to a deed to be drawn up by the one in whose name you bought the field'; it is therefore made known to us that the vendee can reply to him: 'It was for that purpose that I took the trouble and stated to the witnesses in your own presence, [to show] that it was from you that I wanted the other deed.'

R. Kahana transmitted some money for the purchase of flax. But as flax subsequently went up in price, the owners of the flax sold it [on his behalf]. He thereupon came before Rab and said to him: What shall I do? May I go and accept the purchase money?[3] — He replied to him: If when they sold it they stated that it was Kahana's flax, you may go and receive the money,[4] but if not you may not accept it.[5] But was this ruling made in accordance with the view of the Western scholars who asked: 'Who was it that informed the vendor of the wheat so that he might transfer the ownership of his wheat to the owner of the money?[6] [But what comparison is there?] Had R. Kahana given four to receive eight [so that it were usury]? Was it not his flax[7] which had by itself gone up in price and which was definitely misappropriated [by the vendors],[8] and regarding this we have learnt that 'All kinds of robbers have to pay in accordance with the value at the time of the robbery'?[9] — It may, however, be said that there it was a case of advance payment.[10] and R. Kahana had never pulled the flax [to acquire title to it],[11] and Rab was following his own reasoning, for Rab [elsewhere] stated: Advance payment[10] [at present prices] may be made for [the future delivery of] products,[12] but no advance payment [at present prices] may be made [if the value of the products will subsequently be paid] in actual money[13] [in lieu of them].

MISHNAH. IF ONE MAN ROBBED ANOTHER TO THE EXTENT OF A PERUTAH[14] AND TOOK [NEVERTHELESS] AN OATH[15] [THAT HE DID NOT DO SO], HE WOULD HAVE TO CONVEY IT PERSONALLY TO HIM[16] [EVEN AS FAR AS] TO MEDIA.[17] HE MAY GIVE IT NEITHER TO HIS SON NOR TO HIS AGENT, THOUGH HE MAY GIVE IT TO THE SHERIFF OF THE COURT OF LAW. IF THE PLAINTIFF DIED, THE ROBBER WOULD HAVE TO RESTORE IT TO THE HEIRS. IF HE REFUNDED TO HIM THE PRINCIPAL BUT DID NOT PAY HIM THE [ADDITIONAL] FIFTH,[18] OR IF THE OTHER EXCUSED HIM THE PRINCIPAL THOUGH NOT THE FIFTH, OR EXCUSED HIM BOTH ONE AND THE OTHER, WITH THE EXCEPTION, HOWEVER, OF LESS THAN THE VALUE OF A PERUTAH ON ACCOUNT OF THE PRINCIPAL, HE WOULD NOT HAVE TO GO AFTER HIM.[19] IF, HOWEVER, HE PAID HIM THE FIFTH BUT DID NOT REFUND THE PRINCIPAL, OR

WHERE THE OTHER EXCUSED HIM THE FIFTH BUT NOT THE PRINCIPAL, OR EVEN WHERE HE REMITTED HIM BOTH ONE AND THE OTHER, WITH THE EXCEPTION, HOWEVER, OF THE VALUE OF A PERUTAH ON ACCOUNT OF THE PRINCIPAL, HE WOULD HAVE TO CONVEY IT PERSONALLY TO HIM.[20] IF HE REFUNDED TO HIM THE PRINCIPAL AND TOOK AN OATH[21] REGARDING THE FIFTH,[18]

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(1) [MS.M. omits 'the Exilarch'; in curr. edd. it is bracketed.]

(2) V. p. 596, n. 2.

(3) For which the flax was sold to the subsequent purchasers; would the acceptance of this increase not be a violation of the laws of usury; v. Lev. XXV, 36-37. Cf. also B.M. V, 1.

(4) For in this case they acted on your behalf and the purchase money received was given to become yours.

(5) For it would appear that for a smaller amount of money received from you, you were subsequently given a bigger sum, and this is against the spirit of the law of usury.

(6) V. supra p 594. So that in this case too the purchase money received from the subsequent vendees was not automatically transferred to R. Kahana when his name was not mentioned at the time of the sale.

(7) After it had legally been transferred to him.

(8) Who sold it in his absence.

(9) Supra 93b. And the value of the flax at the time of robbery in this case was exactly the amount of the purchase money received for it at the second sale.

(10) I.e., when the vendors received the money from R. Kahana they were not yet in possession of flax at all, but acted in accordance with B.M. 72b.

(11) In accordance with Kid. I, 5 and B.M. IV, 2.

(12) I.e., where the very products stipulated for are to be delivered.

(13) As this case would amount to the handing over of a smaller sum of money to be paid by a bigger amount and would thus appear to act against the spirit of the prohibition of usury.

(14) A small coin (v. Glos.); this being the minimum amount of pecuniary value in the eyes of the law.

(15) Falsely.

(16) In accordance with Lev. V. 24.

(17) Even where silver and gold are not of great importance; cf. Isa. XIII, 17. also Kid. 12a.

(18) Lev. V, 24.

(19) As the payment of the Fifth is not an essential condition in the process of atonement.

(20) V. p. 598, n. 12.

(21) v. p. 598. n. 11.

Talmud - Mas. Baba Kama 103b

HE WOULD HAVE TO PAY HIM A FIFTH ON TOP OF THE FIFTH AND SO ON UNTIL THE PRINCIPAL BECOMES REDUCED TO LESS THAN THE VALUE OF A PERUTAH. SO ALSO IS THE CASE REGARDING A DEPOSIT, AS IT IS STATED: IN THAT WHICH WAS DELIVERED HIM TO KEEP, OR IN FELLOWSHIP, OR IN A THING TAKEN AWAY BY VIOLENCE, OR HATH DECEIVED HIS NEIGHBOUR, OR HATH FOUND THAT WHICH WAS LOST AND LIETH CONCERNING IT AND SWEARETH FALSELY,[1] HE HAS TO PAY THE PRINCIPAL AND THE FIFTH AND BRING A TRESPASS OFFERING.[2]

GEMARA. This is so [apparently] only where the robber had taken an oath against him, but if he had not yet taken an oath this would not be so. But would this be not in agreement either with R. Tarfon or with R. Akiba? For we have learnt: If a man robbed one out of five persons without knowing which one he robbed, and each one claims that he was robbed, he may set down the misappropriated article between them and depart. This is the view of R. Tarfon. R. Akiba, however, said that this is not the way to liberate him from sin; for this purpose he must restore the misappropriated article to each of them.[3] Now, in accordance with whose view is the ruling of our Mishnah? If in accordance with R. Tarfon, did he not say that even after he had sworn he may set

down the misappropriated article among them and depart?[4] If again in accordance with R. Akiba, did he not say that even where no oath was taken he would have to restore the [value of the] misappropriated article to each of them? — It might still be in accordance with R. Akiba; for the statement of R. Akiba that he would have to pay for the misappropriated article to each of them was made only where an oath was taken, the reason being that Scripture stated: And give it unto him to whom it appertaineth in the day of his being guilty.[5] R. Tarfon, however, held that though an oath was taken, our Rabbis have still made an enactment to facilitate repentance, as indeed taught: R. Eleazar b. Zadok says: A general[6] enactment was laid down to the effect that where the expense of personally conveying the misappropriated article would be more than actual principal, he should be able to pay the principal and the Fifth to the Court of Law and thereupon bring his guilt offering and so obtain atonement. And R. Akiba?[7] — He argues that the Rabbis made the enactment only where he knew whom he robbed, in which case the amount misappropriated would ultimately be restored to the owner,[8] whereas where he robbed one of five persons and does not know whom he robbed, in which case the amount misappropriated could not be restored to its true owner, our Rabbis did surely not make the enactment.

R. Huna b. Judah raised an objection [from the following]: R. Simeon b. Eleazar said that R. Tarfon and R. Akiba did not differ in regard to one who bought [an article] from one out of five without knowing from whom he bought it, both holding that he may put down the purchase money among them and depart.[9] Where they differed was regarding one who robbed one out of five persons without knowing whom he robbed, R. Tarfon maintaining that he may leave the value of the misappropriated article among them and depart, whereas R. Akiba says that there could be no remedy for him unless he pays for the misappropriated article to each of them.[10] Now, if you assume that an oath was taken here, what difference is there between purchasing and misappropriating?[11]

Raba further objected [from the following]: It once happened that a certain pious man bought an article from two persons without knowing from whom he had bought it, and when he consulted R. Tarfon, the latter said to him: 'Leave the purchase money among them and depart', but when he came to R. Akiba he said to him: 'There is no remedy for you unless you pay each of them.' Now, if you assume that a [false] oath was taken here, would a pious man swear falsely?[12] Nor can you say that he first took an oath and subsequently became a pious man, since wherever we say that 'it once happened with a certain pious man,' he was either R. Judah b. Baba or R. Judah b. Il'ai,[13] and, as is well known, R. Judah b. Baba and R. Judah b. Il'ai were pious men from the very beginning![14] — [The ruling of the Mishnah] must therefore be in accordance with R. Tarfon, for R. Tarfon would agree where a false oath was taken,[15] the reason being that Scripture stated, And give it unto him to whom it appertaineth in the day of his trespass offering.[16] but R. Akiba maintained that even where no oath was taken, a fine has to be imposed.

Now, according to R. Tarfon, let us see. Where he took an oath he would surely not be subject [to the law][17] unless he admitted his guilt.[18] Why then only in the case where HE TOOK AN OATH? Would not the same hold good even where no oath was taken, as indeed taught: 'R. Tarfon agrees that if a man says to two persons, I have robbed one of you and do not know whom, he would have to pay each of them a maneh[19]

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(1) Lev. V, 21-22.

(2) Ibid. 25.

(3) B.M. 37a. Yeb. 118b.

(4) Why then is the robber enjoined by the ruling in our Mishnah here to convey it to the plaintiff personally even so far as to Media?

(5) V. Lev. V, 24.

(6) Lit., 'great'.

(7) What of the enactment?

(8) Through the Court of Law.
(9) As in this case no crime was committed by him.
(10) Yeb. 118b.
(11) Since in both cases the crime of perjury was committed.
(12) I.e. could a person who committed perjury be called pious?
(13) Tem. 15b; v. supra p. 454, n. 5.
(14) It is therefore pretty certain that in the case of the pious man no false oath was taken and that R. Akiba maintained his view even in such circumstances, and if so how could our Mishnah here have confined its ruling to cases of perjury?
(15) That proper restoration has to be made.
(16) Lev. V. 24.
(17) Laid down in our Mishnah.
(18) On the analogy of Num. V, 7.
(19) I.e., a hundred zuz; v. Glos.

Talmud - Mas. Baba Kama 104a

since he made a voluntary admission'?[1] — Raba therefore said: The case of our Mishnah is different altogether, for since he knows whom he robbed and in fact has admitted it, so that it is possible to restore the misappropriated value to the owner, it is considered as if the plaintiff had said to him: Let it [for time being] be in your possession. It is therefore only in the case where an oath was taken that though [it is considered as if] he said to him: Let it [for time being] be in your possession, yet since the robber is in need of atonement,[2] this is not sufficient until it actually comes into the plaintiff's hands, whereas where no oath was taken, the misappropriated article is considered as a deposit with him until the owner comes and takes it.[3]

HE MAY GIVE IT NEITHER TO HIS SON NOR TO HIS AGENT. It was taught: Where an agent was appointed in the presence of witnesses [to receive some payment of money] R. Hisda said that he would be a [properly accredited] agent,[4] but Rabbah said that he is still not an agent [to release the payer of responsibility]. R. Hisda said that he would be a [properly accredited] agent, for it was for this purpose that he took the trouble to appoint him in the presence of witnesses, so that he should stand in his place.[4] But Rabbah said that he is still not an agent [to release the payer of responsibility], for he meant merely to state that this man is honest and if you are prepared to rely upon him you may rely, and if you are prepared to send the payment through him you may send it through him.[5]

We have learnt: If one [agreed to] borrow a cow and the lender sent it by the hand of his son or by the hand of his slave or by the hand of his agent, or even by the hand of the son or by the hand of the slave or by the hand of the agent of the borrower, and it so happened that it died on the way, he would be exempt.[6] Now, how are we to picture this agent?[7] If he was not appointed[8] in the presence of witnesses, whence could we know that he was an agent at all? Must it therefore not be that he appointed him in the presence of witnesses and it is nevertheless stated that the [would-be] borrower is exempt, in contradiction to the view of R. Hisda? — It is as R. Hisda [elsewhere][9] said, that he was a hireling or a lodger of his;[10] so also here he was a hireling or a lodger of his.[10]

We have learnt: HE MAY GIVE IT NEITHER TO HIS SON NOR TO HIS AGENT.[11] How are we to picture this agent? If he did not appoint him in the presence of witnesses, whence could we know that he was appointed an agent at all? Does it therefore not mean that he appointed him in the presence of witnesses?[12] — R. Hisda however interpreted it as referring to a hireling or a lodger.[10] But what would be the law where the agent was appointed in the presence of witnesses? Would he indeed have to be considered a [properly accredited] agent?[13] Why then state in the concluding clause, HE MAY GIVE IT TO THE SHERIFF OF THE COURT OF LAW, and not make the distinction in the same case by saying that these statements refer only to an agent who was not

appointed in the presence of witnesses, whereas if the agent was appointed in the presence of witnesses he would indeed be considered a [properly accredited] agent?[14] — It may, however, be said that on this point [the Tanna] could not state it absolutely. Regarding the sheriff of the Court, no matter whether the plaintiff authorised him or whether the robber authorised him, he could state it absolutely that he is considered a [properly accredited] agent, whereas regarding an agent appointed in the presence of witnesses who if he were appointed by the plaintiff would be considered an agent, but if appointed by the robber would certainly not be a valid agent, he could not State it so absolutely.[15] This would indeed be contrary to the view of the following Tanna, as taught: R. Simeon b. Eleazar says: If the sheriff of the Court of Law was authorised by the plaintiff [to receive payment] though not appointed by the robber [to act on his behalf], or if he was appointed by the robber [to act on his behalf] and the plaintiff sent and received the payment out of his hands, there would be no liability in the case of accident.[16]

R. Johanan and R. Eleazar both said that an agent appointed in the presence of witnesses would be a [properly accredited] agent;[14] for if you raise an objection from the ruling in our Mishnah,[17] [it might be answered] that the agent there was [not appointed but] placed at his[18] disposal, as where he said to him,[19] 'There is some money owing to me from a certain person who does not forward it to me. It may therefore be advisable for you to be seen by him, since perhaps he has found no one with whom to forward it,'[20] or as explained by R. Hisda, that he was a hireling or a lodger of his.[21]

Rab Judah said that Samuel stated that

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(1) Tosaf. Yeb. XIV, 3; B.M. 37b.

(2) Cf. Lev. V, 24-25.

(3) The Mishnah may thus be in agreement with either R. Akiba or R. Tarfon.

(4) And if some accident should happen with the money whilst still in his hands the payer would not be responsible

(5) But the money will still be in the charge of the payer.

(6) B.M. VIII, 3.

(7) Of the would-be borrower.

(8) By the would-be borrower.

(9) V. the discussion which follows.

(10) But not a duly accredited agent by law; cf. Shebu. 46b.

(11) Supra 103a.

(12) [And yet the robber is not released, by handing it over to him, from responsibility, which contradicts R. Hisda.]

(13) Even to the extent of having handed over to him by the robber the misappropriated article.

(14) V. previous note.

(15) Lit., 'it was not decided with him.'

(16) Cf. Tosef. X, 5. Proving that where it was the robber who appointed the sheriff, so long as the payment did not reach the plaintiff, the robber is not yet released from responsibility, as against the interpretation of the Mishnah releasing the robber in such a case.

(17) V. p. 603. n. 7.

(18) I.e., the robber's.

(19) I.e., to the agent.

(20) Such a request is by no means sufficient to render him an agent.

(21) Supra ibid.

Talmud - Mas. Baba Kama 104b

it is not right to forward [trust] money through a person whose power of attorney is authenticated by a mere figure,[1] even if witnesses are signed on it [to identify the authentication]. R. Johanan, however, said: If witnesses are signed on it [to identify the authentication] it may be forwarded. But I would fain say: In accordance with the view of Samuel what remedy is available?[2] — The same as in

the case of R. Abba,[3] to whom money was owing from R. Joseph b. Hama,[4] and who therefore said to R. Safra:[5] 'When you go there, bring it to me,' and it so happened that when the latter came there, Raba the son [of the debtor] said to him, 'Did the creditor give you a written statement that by your accepting the money he will be deemed to have received it,?'[6] and as he said to him, 'No,' he rejoined, 'If so, go back first and let him give you a written statement that by your acceptance he will be deemed to have received the money.'[6] But ultimately he said to him, 'Even if he were to write that by your acceptance he will be deemed to have received the money,[6] it would be of no avail, for before you come back R. Abba might perhaps [in the meantime] have died,[7] and as the money would then already have been transferred to the heirs the receipt executed by R. Abba would be of no avail.'[8] 'What then,' he asked, 'can be the remedy?' — 'Go back and let him transfer to you the ownership of the money by dint of land,[9] and when you come back you will give us a written acknowledgment that you have received the money.'[10] as in the case of R. Papa[11] to whom twelve thousand zuz were owing from men of Be-Huzae[12] and who transferred the ownership of them to Samuel b. Abba[13] by dint of the threshold of his house,[9] and when the latter came back the former [was so pleased that he] went out to meet him as far as Tauak.[14]

IF HE REFUNDED HIM THE PRINCIPAL BUT DID NOT PAY HIM THE FIFTH . . . HE WOULD NOT HAVE TO GO AFTER HIM [FOR THAT]. This surely proves that the Fifth is a civil liability,[15] so that were the robber to die[16] the heirs would have to pay it. We have also learnt: IF HE REFUNDED TO HIM FOR THE PRINCIPAL AND TOOK AN OATH REGARDING THE FIFTH, HE WOULD HAVE TO PAY HIM A FIFTH ON TOP OF THE FIFTH, similarly proving that the Fifth is a civil liability. It was moreover taught to the same effect: If one man robbed another but took an oath [that he did not do so] and [after admitting his guilt he] died, the heirs would have to pay the principal and the Fifth, though they would be exempt from the trespass offering. Now, since heirs are subject to pay the Fifth which their father would have had to pay, [it surely proves that the Fifth is a civil liability which has to be met by heirs]. But a contradiction could be raised [from the following]: 'I would still say that the case where an heir has not to pay the Fifth for a robbery committed by his father is only where neither he nor his father took an oath.[17] Whence could it be proved that [the same holds good] where he though not his father, took an oath or his father but not he took an oath or even where both he and his father took oaths? From the significant words, That which he took by robbery or the thing which he hath gotten by oppression[18] whereas in this case he[19] has neither taken violently away nor deceived anybody.'[20] — Said R. Nahman: There is no contradiction, as in one case the father admitted his guilt [before he died],[21] whereas in the other he[22] never admitted it. But if no admission was made, why should the heirs have to pay even the principal? If, however, you argue that this will indeed be so [that they will not have to pay it].[23] since the whole discussion revolves here[23] around the Fifth, does it not show that the principal will have to be paid? It was moreover taught explicitly: 'I would still say that the case where an heir has to pay the principal for a robbery committed by his father was only where both he and his father took oaths or where his father though not he, or he though not his father took an oath, but whence could it be proved that [the same holds good] where neither he nor his father took an oath? From the significant words: The misappropriated article and the deceitfully gotten article, the lost article and the deposit[24] as [Yesh Talmud==] this is certainly a definite teaching.'[25] And when R. Huna was sitting and repeating this teaching, his son Rabbah[26] said to him: Did the Master mean to say Yesh Talmud [i.e. there is a definite teaching on this subject] or did the Master mean to say Yishtallemu [i.e., it stands to reason that the heirs should have to pay]? He replied to him: I said Yesh Talmud [i.e. there is a definite teaching on the subject] as I maintain that this could be amplified from the [added] Scriptural expressions.[27] — It must therefore be said that what was meant by the statement 'he made no admission' was that the father made no admission though the son did. But why should the son not become liable to pay even a Fifth for his own oath?[28] — It may, however, be said that the misappropriated article was no longer extant in this case.[29] But if the misappropriated article was no longer extant, why should he pay even the principal?[30] — No; it might have application where real possessions were left.[31] (But were even real possessions to be left, of what avail would it be since the

liability is but an oral liability, and, as known,[32] a liability by mere word of mouth can be enforced neither on heirs nor on purchasers?[33] — It may however be said

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(1) Except at the sender's risk. If the figure was of people of great renown it would suffice; (Tosaf. a.l.)

(2) In the case of power of attorney that the payer be released from further responsibility.

(3) Who settled in the Land of Israel, for which cf. Ber. 24b.

(4) Who lived in Mehoza in Babylon. cf. Git. 14a.

(5) Who travelled extensively, cf. infra 116a.

(6) And thus released my father from further responsibility.

(7) On account of old age.

(8) For the contract of agency as any other executory contract would by the death of the principal become null and void, just as he then instantly becomes deprived of the ownership of all his possessions.

(9) In accordance with Kid. 26a, and supra p 49.

(10) As in that case your receipt will suffice, you being the legal owner of the sum claimed.

(11) Who was engaged in commerce in a large way; v. Ber. 44b.

(12) [Modern Khuzistan, S.W. Persia; Obermeyer. p. 204 ff.]

(13) Cf. B.B. 77b and 150b, where 'b. Aha' is in the text as is also in MS.M. and who is mentioned together with R. Papa in Naz. 51b and Men. 34a.

(14) [S. of Naresh, the home of R. Papa.]

(15) As it differs from the Principal only regarding the ruling stated in the Mishnah.

(16) Before having paid the Fifth.

(17) Falsely.

(18) Lev. V, 23.

(19) I.e., the heir.

(20) This ruling contradicts the conclusion arrived at above that the Fifth is a civil liability and that heirs would have to pay it! V. Supra on Lev. V, 23.

(21) In which case he has already become liable for the Fifth and the heirs would have to pay it.

(22) I.e., neither the father nor the son, but cf. the discussion that follows.

(23) In the latter case.

(24) Cf. Lev. V, 23.

(25) Sifra on Lev. V, 23.

(26) Who did not catch the correct pronunciation of the last phrase in the original and was therefore doubtful as to whether it constituted two words or one word.

(27) From the objects of payment enumerated in detail in Lev. V, 23. But if no admission whatever was made why should even the principal be paid?

(28) When he took it falsely.

(29) And as according to the Mishnaic ruling infra 111b the son could in such a case not be made responsible for the misappropriated article, by committing perjury he rendered himself subject to Lev. V, 4, but not to the Fifth etc. ibid. 24-25.

(30) Since the Mishnaic ruling, infra loc. cit. is to apply.

(31) In which case the heirs are liable, v. loc. cit.

(32) V. B.B. 42a, 157a and 175a.

(33) As a liability which is not supported by a legally valid document or judicial decision is only personal with the debtor.

Talmud - Mas. Baba Kama 105a

that [before the father died] he had already appeared in court[1] [and liability was established against him].[2] But if he had already appeared in court[1] [and liability had been established on the denial of which the son took a false oath])[3] why then should the son not pay even the Fifth?[4] — Said R. Huna the son of R. Joshua: Because a Fifth is not paid for the denial of a liability which is secured upon real estate.[5] But Raba said [that the misappropriated article was still extant in this case as the reason

that the son need not pay a Fifth for his own false oath is because] we were dealing here with a case where [the misappropriated article was kept in] his father's bag[6] that was deposited with others.[7] The principal therefore must be paid since it was subsequently discovered to be in existence, whereas the Fifth has not to be paid since when the son took the oath he meant to swear truly, as at that time he did not know [that there was a misappropriated article in the estate].

WITH THE EXCEPTION, HOWEVER, OF LESS THAN THE VALUE OF A PERUTAH [DUE] ON ACCOUNT OF THE PRINCIPAL HE WOULD NOT HAVE TO GO AFTER HIM. R. Papa said: This Mishnaic ruling can apply only where the misappropriated article was no more in existence, for where the misappropriated article was still in existence the robber would still have to go after him, as there is a possibility that it may have risen in value.[8] Others, however, said that R. Papa stated that there was no difference whether the misappropriated article was in existence or not in existence, as in all cases he would not have to go after him, since we disregard the possibility that it may rise in price.[8]

Raba said: If one misappropriated three bundles [of goods altogether] worth three perutahs, but which subsequently fell in price and become worth only two, and it so happened that he restored two bundles, he would still have to restore the third: this could also be proved from the [following] teaching of the Tanna:[9] If one misappropriated leaven and Passover meanwhile came and went,[10] he may say to the plaintiff, Here there is thine before thee.[11] The reason evidently is that the misappropriated article is intact, whereas if it were not intact, even though it has at present no pecuniary value, he would have to pay on account of the fact that it originally[12] had some pecuniary value. So also in this case,[13] though the bundle is now not of the value of a perutah, since originally it was of the value of a perutah he must pay for it.

Raba raised the question: What would be the law where he misappropriated two bundles amounting in value to a perutah and returned the plaintiff one? Do we lay stress on the fact that there is not now with him a misappropriated object of the value of a perutah,[14] or do we say that since he did not restore the robbery[15] which was with him he did not discharge his duty?[16] Raba himself on second thoughts solved it thus: There is neither a robbery here[17] nor is there the performance of restoration here.[18] But if there is no robbery here,[17] is it not surely because there was restoration here? — What he meant was this: Though there remained no robbery here,[19] the performance of the injunction of restoration[20] was similarly not performed here.[21]

Raba said: It has been definitely stated[22] that a Nazirite who performed the duty of shaving[23] but left two hairs unshaved performed nothing at all [of the injunction]. Raba asked: What would be the law where he [subsequently] shaved one of the two and the other fell out of its own accord? — Said R. Aha of Difti[24] to Rabina: How could it have been doubtful to Raba whether a Nazirite would have performed his duty by shaving one hair after another?[25] — He replied:[26] No; the query has application where, e.g., one of the two hairs fell out of itself[27] and the other was shaved by him: Shall we say that [since] now there is no minimum of hair left unshaved [the duty of shaving has been performed], or was there perhaps no performance of shaving since originally he had left two hairs [unshaved] and when he [made up his mind to] shave them now, there were not two hairs to be shaved? On second thoughts Raba himself solved it thus: There is neither any hair here, nor is there the performance of shaving here. But if there is no hair [left] here, was not the duty of shaving surely performed here? — What he meant was this: Though there remained no hair, yet the performance of the injunction of shaving was not performed here.[28]

Raba also said: It has been stated that if an earthenware barrel[29] had a hole which was filled up with lees, they would render it safe [and secure[30] while in a tent where a corpse of a human being was kept, as the barrel would be considered to have a covering tightly fastened upon it].[31] Raba thereupon asked: What would be the law where only half of the hole was blocked up?[32] Said R.

Yemar to R. Ashi: Is this not covered by our Mishnah? For we have learnt: 'If an earthenware barrel[33] had a hole which was filled up with lees, they would render it safe [and secure[34] while in a tent where a corpse of a human being was kept]. If it was corked up with vine shoots[35] it would not do unless it was smeared with mortar.[36] If there were two vine shoots corking it up they would have to be smeared on all sides as well as between one shoot and another.'[37] Now the reason why this is so is because it was smeared, so that if it would not have been smeared this would not have been so. But why should this not be like a case where half of the hole was blocked up?[38] — It might, however, be said that there is no comparison at all: for in that case if he did not smear it the blocking would not hold at all,[39] whereas here[40] half of the hole was blocked up with such a material as would hold.

Raba further said: It was stated: If one misappropriated leaven and Passover came and went, he may say to him. Here there is thine before thee.[41] Raba thereupon asked:

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(1) Where he was summoned on the instigation of witnesses after he had already denied the claim with a false oath; in which case there is no liability of a Fifth, v. Mishnah l08b. Tosaf. a.l.

(2) On the strength of impartial evidence.

(3) The text contained in parenthesis, i.e. 'But . . . oath' is stated by Rashi a.l. to have been an unwarranted insertion on the part of unauthorised scribes, since according to the Mishnah infra 121a, the children are liable to make restitution where real possessions were left to them by their father; v. however Tosaf. a.I.

(4) For the oath he himself took falsely.

(5) As for the denial of such a liability no oath could be imposed; v. Shebu. VI, 5 and 37b.

(6) Cf. **, bisaccium.

(7) So that while the son took the oath that the article was not with him, he meant to swear truly and could therefore not be made liable for perjury; cf. Shebu. 36b.

(8) Cf. Kid. 12a.

(9) Since at the time of the robbery its value was not less than a perutah.

(10) And thus rendered the leaven unfit for any use.

(11) Since no tangible change took place in the misappropriated article, v. supra 96b.

(12) I.e., at the time of the robbery.

(13) Regarding the bundles.

(14) And should accordingly not have to pay for it.

(15) I.e., the whole of it.

(16) In accordance with Lev. V, 23.

(17) In the hands of the defendant.

(18) Since the whole restoration was of an article worth less than a perutah.

(19) V. p. 609, n. 10.

(20) V. p. 609,n. 9.

(21) V. p. 609. n. 11.

(22) V. Naz. 42a.

(23) In accordance with Num. VI, 9 and 18.

(24) V. supra 73a.

(25) Is this not generally so in all cases of shaving? The injunction has surely been performed, since at the beginning of shaving the minimum number of hairs was not lacking.

(26) I.e., Rabina to R. Aha.

(27) Before he started to shave the two hairs.

(28) [I.e., he has not fulfilled the relevant precept (Tosaf.).]

(29) That was covered on all sides.

(30) From becoming defiled.

(31) And thus not be subject to Num. XIX, 15.

(32) [Reducing it to less than the prescribed minimum to act as outlet (v. Kel. IX, 8).]

(33) V. p.610, n. 11.

(34) V.p. 610, n. 12.
(35) But not with lees.
(36) For the purpose of blocking up the hole well.
(37) Kel. X, 6.
(38) Hence the query of Raba should be answered in the negative.
(39) Hence the smearing is essential.
(40) I.e., in the query of Raba.
(41) Supra 96b.

Talmud - Mas. Baba Kama 105b

What would be the law where [instead of availing himself of this plea] the robber took a [false] oath[1] [that he never misappropriated the leaven]? Shall we say that since if the leaven were to be stolen from him he would have to pay for it, there was therefore here a denial of money,[2] or perhaps since the leaven was still intact and was [in the eyes of the law] but mere ashes, there was no denial here of an intrinsic pecuniary value?[3] [It appears that] this matter on which Raba was doubtful was pretty certain to Rabbah, for Rabbah stated: [If one man says to another] 'You have stolen my ox'. and the other says. 'I did not steal it at all,' and when the first asks, 'What then is the reason of its being with you?' the other replies, 'I am a gratuitous bailee regarding it,' [and after affirming this defence by an oath he admitted his guilt], he would be liable,[4] for by this [false] defence he would have been able to release himself from liability in the case of theft or loss;[5] so also where the [false] defence was 'I am a paid bailee regarding it,' he would similarly be liable,[4] as he would thereby have released himself from liability in the case where the animal became maimed or died;[5] again, even where the false defence was that 'I am a borrower regarding it,' he would be liable,[4] for he would thereby have released himself from any liability were the animal to have died merely because of the usual work performed with it.[6] Now, this surely proves that though the animal now stands intact, since if it were to be stolen[7] the statement would amount to a denial of money, it is even now considered to be a denial of money.[4] So also here in this case though the leaven at present is considered [in the eyes of the law] to be equivalent to mere ashes, yet since if it were to be stolen he would have to pay him with proper value, even now there is a denial there of actual money.[4]

Rabbah[8] was once sitting and repeating this teaching when R. Amram pointed out to Rabbah a difficulty [from the following]: And lieth concerning it[9] [has the effect of] excepting a case where there is admission of the substance of the claim, as [where in answer to the plea] 'You have stolen my ox,' the accused says. 'I did not steal it,' but when the plaintiff retorts, 'What then is the reason of its being with you?' the defendant states, 'You sold it to me, you gave it to me as a gift, your father sold it to me, your father gave it to me as a gift, or the ox was running after my cow, or it came of its own accord to me, or I found it straying on the road, or I am a gratuitous bailee regarding it, or I am a paid bailee regarding it, or I am a borrower regarding it,' and after confirming [such a false defence] by an oath he admitted his guilt. But as you might say that he would be liable here, it is therefore stated further: And lieth concerning it,[9] to except a case like this where there is an admission of the substance of the claim'![10] — He replied:[11] This argument is confused, for the teaching there dealt with a case where the defendant tendered him immediate delivery[12] whereas the statement I made refers to a case where the animal was at that time kept on the meadow.[13] But what admission in the substance of the claim could there be in the defence 'You have sold it to me?' — It might have application where the defendant said to him, 'As I have not yet paid you its value, take your ox back and go.' But still what admission in the substance of the claim is there in the defence, 'You gave it to me as a gift or your father gave it to me as a gift'? — It might be [admission] where the defendant said to him, '[As the gift was made] on the condition that I should do you some favour and since I did not do anything for you, you are entitled to take your ox back and go.' But again, where the defence was, 'I found it straying on the road,' why should the plaintiff not plead, 'You surely have had to return it to me'? — But the father of Samuel[14] said: The defendant was alleging,

and confirming it by an oath: 'I found it as a lost article and was not aware that it was yours to return it to you.'

It was taught: Ben 'Azzai said: [The following] three [false] oaths [taken by a single witness[15] are subject to one law]:[16] Where he had cognizance of the lost animal but not of the person who found it, of the person who found it but not of the lost animal, neither of the lost animal nor its finder.[17] But if he had cognizance neither of the lost animal nor of its finder, was he not swearing truly?[18] — Say therefore: '[He had cognizance] both of the lost animal and of its finder.[19] To what decision does this statement[20] point? — R. Ammi said on behalf of R. Hanina: To exemption; but Samuel said: To liability. They are divided on the point at issue between the [following] Tannaim, as taught: 'Where a single witness was adjured[21] [and the oath was subsequently admitted by him to have been false], he would be exempt, but R. Eleazar son of R. Simeon makes him liable.'[22] In what fundamental principle do they differ? — The [latter] Master[23] maintained that a matter which might merely cause some pecuniary liability[24] is regarded in law as directly touching upon money.[25] whereas the [other] Master maintained that it is not regarded as directly touching upon money.[26]

R. Shesheth said: He who [falsely] denies a deposit is [instantly] considered as if he had misappropriated it, and will therefore become liable for all accidents;[27] this is also supported by the [following] Tannaitic teaching:[28] [From the verse] And he lieth concerning it[29] we could derive the penalty,[30] but whence could the warning be derived? From the significant words: Neither shall ye deal falsely.[31] Now, does this not refer to the 'penalty' for merely having denied the money?[32] — No, it refers to the 'penalty' for the [false] oath.[33] But since the concluding clause refers to a case where an oath was taken, it surely follows that the commencing clause deals with a case where no oath was taken, for it was stated in the concluding clause:[28] [From the text] 'And sweareth falsely'[29] we can derive the penalty;[34] but whence can the warning be derived? From the injunction, 'Nor lie.'[35] Now, since the concluding clause deals with a case where an oath was taken, must not the commencing clause deal with a case where no oath was taken?[36] — It may, however, be said that the one clause as well as the other deals with a case where an oath was taken. But while in the case of the concluding clause the defendant admitted [his perjury], in that of the commencing clause witnesses appeared and proved it. Where witnesses appeared and proved the perjury,[37] the defendant would become liable for all accidents [from the very moment he took the false oath], whereas where he himself admitted his perjury he would be liable for the Principal and the Fifth and the trespass offering.[38] Rami b. Hama raised an objection [from the following]:[39] 'Where the other party was suspected regarding the oath.[40] How so? [Where he took falsely] either an oath regarding evidence[41] or an oath regarding a deposit[42] or an oath in vain.'[43] But if there is legal force in your statement,[44] would not that party have become disqualified from the very moment of the denial?[45] — It might, however, be said that we are dealing here with a case where the deposited animal was at that time placed on the meadow, so that the denial could not be considered a genuine one, since he might have thought to himself, 'I will get rid of the plaintiff for the time being [so that he should no more press me for it] and later I will go and deliver up to him the deposited animal.'[46] This view could even be proved [from the following statement]:[47] R. Idi b. Abin said that he who [falsely] denies a loan[48] is not yet disqualified from giving evidence,[49]

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(1) After Passover.

(2) For which he should be subject to Lev. V, 21-25.

(3) And if this is the case the perjurer should be subject only to Lev. V, 4-10.

(4) In accordance with Lev. V, 21-25.

(5) For which a thief is liable but not a bailee.

(6) Which is a valid defence in the case of a borrower but not in that of a thief.

(7) In the case he swore he was an unpaid bailee.

(8) So in MS.M. [This is to be given preference to the reading 'Raba' of cur. edd. as Raba was doubtful on the matter under discussion.]

(9) Lev. V, 22.
(10) Why then has Rabbah made a statement to the contrary effect?
(11) I.e., Rabbah to R. Amram.
(12) Lit., 'said to him, here is thine.' In which case there is no denial of money.
(13) And there is therefore a potential denial of money.
(14) I.e., Abba b. Abba.
(15) So interpreted by Rashi, but v. Malbim on Lev. V, 22, n. 374.
(16) Referring to Lev. V, 1. On the question whether it refers to the law of liability or exemption v. the discussion that follows.
(17) Cf. Sifra on Lev. V, 22.
(18) And no perjury at all was committed.
(19) And took nevertheless an oath to the contrary.
(20) I.e., whether to that of liability or to that of exemption.
(21) To deliver evidence on a pecuniary matter and he falsely denied any knowledge of it.
(22) Shebu. 32a.
(23) I.e. R. Eleazar b. Simeon who follows the view of his father, cf. supra 71b.
(24) I.e., such as where the evidence in question would not directly have any bearing upon a pecuniary matter but might indirectly at a subsequent stage bring about a pecuniary liability; this is so in the case of one witness whose evidence is not sufficient to establish pecuniary liabilities as stated in Deut. XIX, 15, but whose testimony is accepted for the purpose of imposing an oath upon a defendant who, if unprepared to swear, would have to make full payment; v. Shebu. 40a and 41a.
(25) And the law of Lev. V, 1 has to apply.
(26) The law of Lev. V, 1 could therefore not apply in the case of one witness.
(27) In accordance with the law applicable to robbers.
(28) Sifra on Lev. XIX, 11.
(29) Lev. V, 22.
(30) The restitution he is obliged to make, ibid. 23.
(31) Ibid. XIX, 11.
(32) I.e., even before having committed perjury; the fine thus being his becoming liable for all accidents.
(33) In accordance with Lev. V, 21-24.
(34) The Fifth and Guilt offering.
(35) Lev. XIX, 11.
(36) The penalty thus being his becoming liable for all accidents.
(37) In which case Lev. V, 21-24 does not apply as gathered from Num. V, 7; v. infra 108b.
(38) V. p. 614, n. 13.
(39) Shebu. VII, 4.
(40) The plaintiff will take the oath.
(41) Dealt with in Lev. V, 2 and Shebu. IV.
(42) Cf. Lev. V, 21-23.
(43) Cf. ibid. V, 4.
(44) That by mere denial of a deposit the depositor becomes subject to the law of robbery.
(45) Even before having taken the false oath.
(46) For the ruling of R. Shesheth applies only to a case where it was definitely proved that at the time of the denial the deposit was actually in the hands of the depositor.
(47) B.M. 4a, 5b and Shebu. 40b.
(48) Without, however, having taken an oath.
(49) For since the denial was not confirmed by an oath it might have been made merely for the time being. i.e., to get rid of the plaintiff who pressed for immediate payment.

Talmud - Mas. Baba Kama 106a

whereas [if this was done] in the case of a deposit he would thereby become disqualified from giving

evidence.[1] But did Ilfa not say that an oath transfers possession,[2] which appears to prove that it is only the oath which would transfer responsibility, whereas mere denial would not transfer responsibility?[3] But here also we are dealing with a case where the deposited article was at that time situated on the meadow.[4] Or if you wish I may say that what was meant to be conveyed by the statement that an oath transfers possession was as in the case of R. Huna, for R. Huna said that Rab stated: [Where one said to another,] 'You have a maneh[5] of mine' and the other retorted, 'I have nothing of yours'[6] and confirmed it by an oath[7] and then witnesses came forward [and proved the defendant to have perjured himself] he would be exempt[8] as it is stated: And the owner thereof shall accept it and he shall not make restitution,[9] implying that wherever the plaintiff accepted an oath, the defendant could no more be made liable to pay money.

To return to a previous theme: 'R. Huna said that Rab stated [that where one said to another]. "You have a maneh of mine" and the other rejoined. "I have nothing of yours" and confirmed it by an oath and subsequently witnesses came forward [and proved the defendant to have perjured himself] he would be exempt as it is stated: And the owner thereof shall accept it and he shall not make restitution, implying that wherever the plaintiff accepted an oath, the defendant could no more be made liable to pay money.' Raba thereupon said: We should naturally suppose that the statement of Rab is meant to apply to the case of a loan where the money was given to be spent,[10] but not to a deposit which always remains in the possession of the owner.[11] But [I affirm] by God that Rab made his statement even with reference to a deposit, as it was regarding a deposit that the text [of the verse quoted][12] was written. R. Nahman was sitting and repeating this teaching.[13] when R. Aha b. Manyumi pointed out to R. Nahman a contradiction [from the following: If a man says to another] 'Where is my deposit?' and the other replies. 'It is lost,' and the depositor then says. 'Will you take an oath,' and the bailee replies. 'Amen!'[14] then if witnesses testify against him that he himself had consumed it, he has to pay only the Principal,[15] whereas if he admits [this] on his own accord, he has to pay the Principal together with a Fifth and bring a trespass offering?[16] — R. Nahman said to him: We are dealing here with a case where the oath was taken outside the Court of Law.[17] He rejoined:[18] If so read the concluding clause: [But if on being asked] 'Where is my deposit?', the bailee replied: 'It was stolen!', [and when the depositor retorted] 'Will you take an oath?', the bailee said, 'Amen!' if witnesses testify against him that he himself had stolen it, he has to repay double, whereas if he admits this on his own accord, he has to pay the Principal together with a Fifth and a trespass offering. Now, if you assume that the oath was taken outside the Court of Law, how could there be liability for double payment?[19] — He replied: I might indeed answer you that [though in the case of] the commencing clause [the oath was taken] outside the Court of Law, [in that of] the concluding clause [it was taken] in the Court of Law. But as I am not going to give you a forced answer I will therefore say that though in the one case as well as in the other the oath was taken in the Court of Law,[20] there is still no difficulty, as in the first case we suppose that the claimant anticipated the Court[21] [in administering the oath] and in the other case[22] he did not do so.[23] But Rami b. Hama said to R. Nahman: Since you do not personally accept this view of Rab, why are you pledging yourself to defend this statement of Rab? — He replied: I did it [merely] to interpret the view of Rab, presuming that Rab might have thus explained this Mishnaic text. But did not Rab quote a verse[24] to support his view?[25] — It might be said that the verse intends only to indicate that those who have to be adjured by [the law of] the Torah are only they who by taking the oath release themselves from payment,[26] [as it is stated: 'And the owner thereof shall accept it and he shall not make restitution,'[24] [implying that it is] the one who [otherwise] would be under obligation to make it good that has to take the oath.

R. Hamnuna raised an objection [from the following]: 'Where an oath was imposed upon a defendant five times [regarding the same defence], whether in the presence of the Court of Law or not in the presence of the Court of Law, and he denied the claim [on every occasion], he would have to be liable[27] for each occasion. And R. Simeon said: The reason is that [on each occasion] it was open to him to retract and admit the claim.'[28] Now in this case you can hardly say that the action of

the Court was anticipated, for it is stated: 'Where an oath was imposed upon a defendant' [which naturally would mean, by the sanction of the Court]; you can similarly not say that it was done outside the Court of Law, for it is stated 'in the presence of the Court of Law.'[29] As he[30] raised this difficulty so he also solved it, by pointing out that the text should be interpreted disjunctively: 'Where an oath was imposed upon him [by the Court, but taken] outside the Court of law ,[31] or where it was administered in the presence of the Court of Law' but in anticipation of its action.[31] Raba raised an objection [from the following:] If a bailee[32] advanced a plea of theft regarding a deposit and confirmed it by an oath but subsequently admitted [his perjury], and witnesses came forward [and testified to the same effect], if he confessed before the appearance of the witnesses, he has to pay the Principal together with a Fifth and a trespass offering; but if he confessed after the appearance of the witnesses he has to repay double and bring a trespass offering.[33] Now, here it could not be said that it was outside the Court of Law, or that it was done in anticipation [of the action of the Court], since the liability of double payment[34] is mentioned here![35] — Raba therefore said: To all cases of confession,[36] no matter whether he pleaded in defence loss or theft, Rab did not mean his statement to apply, for it is definitely written: Then they shall confess,[37] implying [that in all cases] the perjurer would have to pay the Principal and the Fifth, [and so also in the case] where he pleaded theft[38] and witnesses came forward [and proved otherwise], Rab similarly did not mean his statement to apply, for [it is in this case that] the liability for double payment [is laid down in Scripture];[39] the statement made by Rab applies only to the case where, e.g., he pleaded in defence loss[40] and after confirming it by an oath he did not admit his perjury but witnesses appeared [and proved it].[41] R. Gamda went and repeated this explanation[42] in the presence of R. Ashi who said to him: Seeing that R. Hamnuna was a disciple of Rab[43] and surely knew very well that Rab meant his statement to apply also to the case of confession,[44] since otherwise he would not have raised an objection from a case of confession, how then can you say that Rab did not mean his statement to apply to a case of confession?[44] — Said R. Aha the Elder to R. Ashi: R. Hamnuna's difficulty may have been this:

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(1) V. p. 614, n. 7.

(2) As a deposit (falsely) denied by a bailee committing perjury will no less than in the case of conversion no longer remain in the possession of the depositor but is transferred to the responsibility of the bailee who has become subject to the law of robbery.

(3) And not render the bailee a robber, contrary to the view expressed by R. Shesheth.

(4) V. p. 615, n. 16.

(5) V. Glos.

(6) In which case there is strictly speaking neither a biblical nor a Mishnaic oath, but the 'Heseth' oath which is of later Rabbinic origin, for which v. Shebu. 40b.

(7) Even though in the days of Rab an oath in such circumstances was by no means obligatory; v. also Tur. H.M. 87,8.

(8) From having to pay the maneh, for the oath he took with the consent of the plaintiff had the effect of preventing any possible revival of the claim; the meaning that an oath transfers possession would therefore be that it conclusively bars any further action in the matter.

(9) Ex. XXII. 10.

(10) And no special act to transfer ownership and possession is necessary.

(11) Even while in the hands of the bailee, in which case an act of conveyance is necessary, which could hardly he done by an oath.

(12) Ex. XXII, 10.

(13) Which R. Huna stated in the name of Rab.

(14) 'So be it.' Which in these circumstances amounts to an oath to all intents and purposes; v. Shebu. 29b.

(15) But not double payment as his defence was not theft, and no Fifth as he 'did not confess perjury.

(16) In accordance with Lev. V, 22-25. Sheb. 49a. Supra 63b and infra 108b. Now, the commencing clause is in glaring contradiction to the view of Rab. The case of confession, however, dealt with in the concluding clause would present no difficulty as Rab's ruling could never apply in that case, as it would have been against Lev. V, 22-23 interpreted on the analogy to Num. V, 7; so Rashi but v. also Tosaf. a.l.

(17) Being thus a mere private matter it could not bar the judicial reopening of the case, whereas the ruling of Rab applies to an oath taken at the sitting of the Court of Law.
(18) I.e., R. Aha to R. Nahman.
(19) Which could be imposed upon the bailee only if his defence of theft was confirmed by him by an oath administered to him by the Court of Law.
(20) I.e., in one and the same place.
(21) Lit., 'jumped in'.
(22) The latter clause as well as Rab's statement.
(23) There would therefore still be a difference between the oath in the commencing clause and the oath in the concluding clause, but only in the manner of adjuration and not in the place where it was administered.
(24) Ex. XXII, 10.
(25) How then could anyone depart from it?
(26) I.e., the defendants; v. Shebu. 45a.
(27) In accordance with Lev. V, 21-24.
(28) Shebu. 36b.
(29) This Mishnaic text, from which it could be gathered that, though an oath has already been imposed and taken, the case could still be reopened, will thus be in contradiction to the view of Rab!
(30) I.e., R. Hamnuna.
(31) [In which case it still remains a private matter and does not bar the judicial re-opening of the case.]
(32) Lit., 'the owner of a house'; v. Ex. XXII, 7.
(33) Shebu. 37b; supra 65a.
(34) V. p. 618, n. 1.
(35) Is this not in contradiction to the view of Rab?
(36) Of perjury regarding a claim of pecuniary value.
(37) Num. V, 7.
(38) Confirming it by a false oath.
(39) Ex. XXII, 6-8 as interpreted supra p. 368.
(40) In which case the bailee could never become liable for double payment.
(41) It was in such a case that Rab laid down the ruling that once the oath had been administered the claim could no more be put forward again.
(42) Of Raba.
(43) Cf. Sanh. 17b; v. also supra 74a, n. 10.
(44) Of perjury.

Talmud - Mas. Baba Kama 106b

I could quite understand that if you were to say that if witnesses appeared after he took the oath [thus proving him to be a perjurer] he would have to pay, as it would be on account of this that we should make him liable to bring sacrificial atonement[1] for the oath on the last occasion, since it was always open to him to retract and admit the claim. But if you maintain that should witnesses appear after he took the oath he would be exempt, is it possible that whereas if witnesses were to have come and testified against him he would have been exempt,[2] we should rise and declare him liable to sacrificial atonement[1] for an oath on the mere ground that he could have been able to retract and confess [his perjury]? For the time being at any rate he has not made such a confession!

R. Hiyya b. Abba said that R. Johanan stated: 'He who [falsely] advances a plea of theft with reference to a deposit in his possession may have to repay double;[3] so also if he slaughtered or sold it, he may have to repay fourfold or fivefold.[4] For since a thief repays double[5] and a bailee pleading the defence of theft has to repay double, just as a thief who has to repay double, is liable to repay fourfold or fivefold in the case of slaughter or sale, so also a bailee who, when pleading the defence of theft regarding a deposit has similarly to repay double, should likewise have to repay fourfold or fivefold in the case of slaughter or sale.'[6] But how can you argue from a thief who has to repay

double even in the absence of perjury to a bailee pleading the defence of theft where no double payment has to be made unless where a false oath was taken? — It might, however, be said that a thief and a bailee alleging theft are made analagous [in Scripture],[7] and no refutation could be made against an analogy [in Scripture].[8] This may be granted if we accept the view[9] that one verse deals with a thief and the other with a bailee [falsely] advancing the plea of theft, but if we adopt the view that both [the verses] 'If the thief be found . . . 'and 'If the thief be not found' deal with a bailee falsely advancing a plea of theft, what could be said?[10] — It may still be argued [that they were made analagous by means of the definite article[11] as instead of] 'thief' [it was written] 'the thief'. R. Hiyya b. Abba pointed out to R. Johanan an objection [from the following]: [If a depositor says.] 'Where is my ox?' [and the bailee pleads:] 'It was stolen,' [and upon the plaintiff's saying,] 'I want you to take an oath,' the defendant says 'Amen,'[12] and then witnesses testify against him that he consumed it, he would have to repay double.[13] Now, in this case, where it was impossible [for him] to consume meat even of the size of an olive[14] unless the animal was first slaughtered [effectively].[15] It was stated that he would repay double [thus implying that it is] only double payment which will be made but not fourfold and fivefold pay ments![16] We might have been dealing here with a case where it was consumed nebelah.[17] Why did he[18] not answer that it was consumed terefah?[19] — [He adopted] the View of R. Meir who stated[20] that a slaughter which does not [render the animal ritually] fit for consumption is still designated [in law] slaughter.[21] But again, why not answer that the ox was an animal taken alive out of a slaughtered mother's womb [and as such it may be eaten[22] without any ritual slaughter]?[23] — [But on this point too he[18] followed] the view of R. Meir who said that an animal taken alive out of a slaughtered mother's womb is subject to the law of slaughter.[22] But still, why not answer that the ruling applied where, e.g., the bailee had already appeared in the Court, and was told[24] to 'go forth and pay the plaintiff'? For Raba stated:[25] [Where a thief was ordered to] go and pay the owner [and after that] he slaughtered or sold the animal, he would be exempt,[26] the reason being that since the judges had already adjudicated on the matter, when he sold or slaughtered the animal he became [in the eye of the law] a robber, and a robber has not to make fourfold and fivefold payments;[27] [but where they merely said to him] 'You are liable to pay him' and after that, he slaughtered or sold the animal he would be liable [to repay fourfold or fivefold], the reason being that since they have not delivered the final sentence upon the matter, he is still a thief![28] — To this I might say: Granting all this,[29] why not answer that the bailee was a partner in the theft and slaughtered the ox without the knowledge of his fellow partner [in which case he could not be made liable for fourfold or fivefold payment]?[30] It must therefore be that one out of two or three [possible] answers has been adopted.

R. Hiyya b. Abba said that R. Johanan stated: He who advanced in his own defence a plea of theft regarding a lost article[31] [which had been found by him] would have to repay double, the reason being that it is written: For any manner of lost thing whereof one saith.[32] R. Abba b. Memel pointed out to R. Hiyya b. Abba an objection [from the following:] If a man shall deliver[33] implies that the delivery by a minor[34] is of no effect [in law].[35] So far I only know this to be the case where he was a minor at the time of the delivery and was still a minor at the time of the demand, but whence could it be proved that this is so also in the case where at the time of the delivery he had been a minor though at the time of the demand he had already come of age? Because it says further: The cause of both parties shall come before the judges.[36] [thus showing that the law of bailment does not apply] unless the delivery and the demand were made under the same circumstances.[37] Now, if your view is sound,[38] why should this case [with the minor] not be like that of the lost article?[39] — He replied:[40] We are dealing here with a case where the deposit was consumed by the bailee while the depositor was still a minor.[41] But what would be the law where he consumed it after the depositor had already come of age? Would he have to pay?[42] If so, why state 'unless the delivery and the demand were made under the same circumstances,' and not 'unless the consumption[43] and the demand took place under the same circumstances'? — He said to him:[44] You should indeed read 'unless the consumption[45] and the demand took place under the same circumstances'. R. Ashi moreover said: The two cases[46] could not be compared, as the lost article came into the hands of the finder from the

possession of a person of responsibility,[47] whereas [in the case of a minor] the deposit did not come to the bialee from the possession of a person of responsibility.

R. Hiyya b. Abba further said that R. Johanan stated: He[48] who puts forward a defence of theft in the case of a deposit could not be made liable[49] unless he denies a part and admits a part [of the claim], the reason being that Scripture states: This is it[50] [implying 'this' only].[50] This view is contrary to that of R. Hiyya b. Joseph. for R. Hiyya b. Joseph said:

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(1) In accordance with Lev. V, 21-26.
(2) V. p. 616, n. 8.
(3) If he confirmed the plea by an oath.
(4) Cf. Ex. XXI, 37.
(5) Ibid. XXII, 6.
(6) V. supra 62b, 63b.
(7) Lit. 'It is an analogy, hekkesh. In Ex. XXII, 6-8 as interpreted supra pp. 368 ff.
(8) This being an axiomatic hermeneutic rule; v. supra 63b and Men. 82b.
(9) For notes, v. supra 63b.
(10) I.e., where then were the two made analogous in Scripture?
(11) Which has the effect of denoting the thing par excellence as in Pes. 58b; v. also Kid. 15a.
(12) V. p. 617. n. 5.
(13) Infra 108b, v. also Shebu. 49a.
(14) Which is the minimum quantity constituting the act of eating; cf. 'Er. 4b.
(15) In accordance with the law referred to in Deut. XII, 21 and laid down in detail in Hul. III.
(16) Does this not contradict the view expressed by R. Johanan that even fourfold or fivefold payment would have to be made?
(17) I.e. where the animal was not slaughtered in accordance with the ritual, v. Glos., in which case the law of fourfold and fivefold payments does not apply, as laid down supra p. 445,
(18) I.e., R. Johanan.
(19) I.e., where an organic disease was discovered in the animal, v. Glos.; according to the view of R. Simeon stated supra p. 403 the law of fourfold and fivefold payments does similarly not apply.
(20) Hul. VI, 2.
(21) So that the law of fourfold and fivefold payments will apply which is also the anonymous view stated supra p. 403.
(22) V. Hul. IV, 5.
(23) On account of the ritual slaughter carried out effectively on the mother.
(24) Before he slaughtered the animal, in which case he would not have to make fourfold and fivefold payments for a subsequent slaughter.
(25) Supra 68b.
(26) From fourfold and fivefold payments.
(27) In fact no pecuniary fine at all; cf. supra p. 452.
(28) Who is subject to the law of Ex. XXI, 37. Why then not give this answer?
(29) That there was also some other answer to be given.
(30) V. supra 78b.
(31) Supra 57a and 63a.
(32) V. Ex. XXII, 8.
(33) Ex. XXII, 6.
(34) Since he has not yet attained manhood; cf. Sanh. 69a.
(35) Regarding the possible liability upon the bailee for double payment.
(36) V. Ex. XXII, 8.
(37) Cf. J. Shebu. VI, 5.
(38) That there would be double payment in the case of perjury committed regarding a lost article.
(39) Where there would be liability in the absence of any depositor at all.
(40) I.e., R. Hiyya to R. Abba.

(41) In which case the bailee had regarding that deposit never had any responsibility to a person of age.
(42) Double payment for perjury.
(43) Though not the delivery.
(44) V. p. 623. n. 11.
(45) V. p. 623, n. 14.
(46) I.e. a lost article and a deposit of a minor.
(47) Lit., ‘understanding’, i.e. the person who lost it.
(48) I.e., an unpaid bailee.
(49) To take the oath of the bailees and in case of perjury to have consequently to restore double payment.
(50) And no more, which thus constitutes an admittance of a certain part and the denial of the balance.

Talmud - Mas. Baba Kama 107a

There is here an 'interweaving of sections',[1] as the words, this is it written here[2] have reference to loans.[3] But why a loan [in particular]? In accordance with Rabbah, for Rabbah stated:[4] 'On what ground did the Torah lay down[5] that he who admits a part of a claim has to take an oath?[6] Because of the assumption that no man is so brazen-faced as to deny [outright] in the presence of his creditor[7] [the claim put forward against him].[8] It could therefore be assumed that he[9] was desirous of repudiating the claim altogether, and the reason that he did not deny it outright is[10] because no man is brazen-faced [enough to do so].[11] It may consequently be argued that he was on this account inclined[12] to admit the whole claim; the reason that he denied a part was because he considered: Were I to admit [now] the whole liability, he will soon demand the whole claim from me; I should therefore [better] at least for time being get rid of him,[13] and as soon as I have the money will pay him.[14] It was on account of this that the Divine Law[15] imposed an oath upon him so that he should have to admit the whole of the claim.[16] Now, it is only in the case of a loan that such reasoning could apply.[17] whereas regarding a deposit the bailee would surely brazen it out [against the depositor].[18]

Rami b. Mama learnt: The four bailees

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(1) I.e., an interpolation of another passage; Ex. XXII, 8, v. n. 7.

(2) Confining the imposition of the oath to cases of part-admission.

(3) According to Rashi a.l. the phrase in Ex. XXII, 8 confining the oath to part. admission referred not to v. 6 but to 24; v. also Sanh. (Sonc. ed.) P. 5, n. 3; regarding deposits there would thus he an oath even in cases of total denial. For the interpretation of R. Tam, cf. Tosaf. a.l. and Shebu. 45b. The accepted view is expounded by Riba and Rashb., a.l. that the condition of part admission is attached to all cases of pecuniary litigation including deposits, providing the defences were such as would avail also in cases of loans, such as e.g.. the denial of the contract or a plea of payment and restoration; v. also Maim. Yad., Sekiroth, 11, 11-12; Tur. H.M. 296, 2. The meaning in the Talmudic text here would therefore be 'ascribed as dealing with the defences of loans.' For regarding the specific defences in the case of a deposit, i.e. theft or loss or accident, a biblical oath is imposed even without an admission of part liability. But as Ex. XXII,6 deals with two kinds of deposits, i.e. 'money or stuff' there is indeed an interweaving of sections in this paragraph, for a deposit of money might in accordance with B.M. III, 11, amount to an implied mutuum involving all the liabilities of a loan. In other systems of law it is indeed called depositum irregulare for which see Dig. 19.2.31; Moyle, Imp. Just. Inst. 396 and Goodeve on 'Personal Property', 6th Ed., 25. The phrase in Ex. XXII, 8 confining the oath to part admission is thus said to be ascribed as dealing exclusively with this depositum irregulare, i.e. with the bailment of money when it became a loan to all intents and purposes; v. also J. Shebu. VI, I.

(4) B.M. 3a; Shebu. 42b.

(5) In Ex. XXII. 7-8.

(6) Whereas for total denial there is no biblical oath.

(7) Who was his benefactor.

(8) A total denial in the case of a loan is thus somehow supported by this general assumption; cf. also Shebu. 40b.

(9) Who admitted a part of the claim.

(10) Not perhaps on account of honesty.

(11) The fact that he admitted a part of the claim is to a certain extent a proof that he found it almost impossible to deny the claim outright.

(12) Lit., 'willing'.

(13) At least so far as a part of the claim is concerned.

(14) For the whole of the claim.

(15) Ex. XXII,7-8.

(16) As he would surely be loth to commit perjury.

(17) As the creditor was a previous benefactor of his.

(18) As in this case the bailee was generally the benefactor and not necessarily the depositor, so that the whole psychological argumentation of Rabbah fails; [and an oath is thus to be imposed even where there is a total denial, which is contrary to the view reported by R. Hiyya b. Abba in the name of R. Johanan.]

have to deny a part and admit a part [of the claim before the oath can be imposed upon them]. They are as follows: The unpaid bailee and the borrower, the paid bailee and the hirer.[1] Raba said: The reason of Rami b. Hama is [as follows]: In the case of an unpaid bailee it is explicitly written: This is it;[2] the law for the paid bailee could be derived [by comparing the phrase expressing] 'giving'[3] [to the similar term expressing] 'giving' in the section of unpaid bailee;[4] the law for borrower begins with 'and if a man borrow'[5] so that the waw copula ['and'] thus conjoins it with the former subject;[6] the hirer is similarly subject to the same condition, for according to the view that he is equivalent [in law] to a paid bailee[7] he should be treated as a paid bailee, or again, according to the view that he is equivalent [in law] to an unpaid bailee,[7] he should be subject to the same conditions as the unpaid bailee.

R. Hiyya b. Joseph further said: He who [falsely] advances the defence of theft in the case of a deposit would not be liable[8] unless he had [first] committed conversion,[9] the reason being that Scripture says: The master of the house shall come near unto the judges to see whether he have not put his hand unto his neighbour's goods,[10] implying that if he put his hand he would be liable,[8] and thus indicating that we are dealing here with a case where he had already committed conversion.[9] But R. Hiyya b. Abba said to them:[11] R. Johanan [on the contrary] said thus: The ruling[12] was meant to apply where the animal was still standing at the crib.[13] R. Ze'ira then said to R. Hiyya b. Abba: Did he mean to say that this is so[12] only where it was still standing at the crib,[13] whereas if the bailee had already committed conversion,[9] the deposit would thereby [already] have been transferred to his possession,[14] so that the subsequent oath would have been of no legal avail,[15] or did he perhaps mean to say that this is so even where it was still standing at the crib?[16] — He replied: This I have not heard, but something similar to this I have heard. For R. Assi said that R. Johanan stated: One[17] who had in his defence pleaded loss and had sworn thus, but came afterwards and pleaded theft,[18] also confirming it by an oath, though witnesses appeared [proving otherwise], would be exempt.[19] Now, is the reason of this ruling not because the deposit had already been transferred to his possession through the first[20] oath? — He replied to him:[21] No; the reason is because he had already discharged his duty to the owner by having taken the first oath.[22]

It was indeed similarly stated: R. Abin said that R. Elai stated in the name of R. Johanan: If one advanced in his defence a plea of loss regarding a deposit and had sworn thus, but came afterwards and advanced a plea of theft also confirming it by an oath, and witnesses appeared [proving otherwise], he would be exempt.[19] because he had already discharged his duty to the owner by having taken the first oath.[22]

R. Shesheth said: One[20] who [falsely] pleads theft in the case of a deposit, if he had already committed conversion,[23] would be exempt,[19] the reason being that Scripture says, 'The master of the house shall come near unto the judges to see whether he have not put his hand' etc.[24] implying that were he to have already committed conversion he would be exempt. But R. Nahman said to him: Since three oaths are imposed upon him,[25] an oath that he was not careless, an oath that he did not commit conversion and an oath that the deposit was no more in his possession, does this not mean that the oath 'that he did not commit conversion' should be compared to the oath 'that the deposit was no more in his possession so that just as where he swears 'that the deposit was no more In his possession,' as soon as it becomes known that the deposit was really at that time in his possession he would be liable for double payment, so also where he swore 'that he did not commit conversion, when the matter becomes known that he did commit conversion he would be liable?[26] — He replied: No; the oath 'that he did not commit conversion' was meant to be compared to the oath 'that he was not careless'; just as where he swears 'that he was not careless' even if it should become known that he was careless,[27] he would be exempt from double payment.[28] so also where he swears 'that he did

not commit conversion,' even if it becomes known that he did commit conversion,[29] he would still be exempt from double payment.

Rami b. Hama asked: [Since where there is liability for double payment there is no liability for a Fifth,[30] is it to be understood that] a pecuniary value for which there is liability to make double payment exempts from the Fifth, or is it perhaps the oath which involves the liability of double payment that exempts from the Fifth? In what circumstances [could this problem have practical application]? — E.g., where the bailee had pleaded in his defence theft confirming it by an oath and then came again and pleaded loss and similarly confirmed it by an oath,

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(1) B.M. 5a and 98a.
(2) Ex. XXII, 8.
(3) Opening the section of the paid bailee in Ex. XXII, 9.
(4) V. Ex. XXII, 6, the opening section of the unpaid bailee.
(5) Ibid. XXII, 13.
(6) And makes him analogous in this respect to the bailees dealt with previously; v. B.M. 95a.
(7) Cf. supra 57b.
(8) To double payment in the case of perjury.
(9) Lit., 'put his hand unto it'; v. Ex. XXII, 7.
(10) Ibid.
(11) I.e., to the sages, but correctly omitted in MS.M.
(12) Regarding the liability for double payment.
(13) And no conversion was committed; v. also J. Shebu. VIII, 3.
(14) V. p. 616, n. 2.
(15) Since the bailee had become already subject to the law of robbery.
(16) And no conversion was committed.
(17) An unpaid bailee.
(18) Regarding the same deposit.
(19) From double payment.
(20) V. p. 616, n. 2.
(21) I.e., R. Ze'ira to R. Hiyya b. Abba.
(22) So that the second oath is no more judicial and could therefore not involve double payment.
(23) V. p. 626, n. 9.
(24) Ex. XXII, 7.
(25) An unpaid bailee. Cf. B.M. 6a.
(26) To double payment in case of perjury.
(27) I.e., that the deposit was stolen from him through his carelessness.
(28) Since he did not misappropriate the deposit for himself.
(29) And then misappropriated it for himself.
(30) For which v. supra 65b and 106a.

Talmud - Mas. Baba Kama 108a

and it so happened that witnesses appeared and proved the first oath [to have been perjury][1] while he himself confessed that the last oath was perjury.[2] Now, what is the law? Is it the pecuniary value for which there is liability to make double payment that exempts from the Fifth, so that [as] in this case too there is liability to make double payment [for the deposit, there would be no Fifth for it], or perhaps it is the oath which involves a liability for double payment that exempts from a Fifth, so that since the last oath does not entail liability for double payment[3] it should entail the liability for the Fifth? — Said Raba: Come and hear: If a man said to another in the market: 'Where is my ox which you have stolen,' and the other rejoined, 'I did not steal it at all,' whereupon the first said, 'Swear to me, and the defendant replied, 'Amen,' and witnesses then gave evidence against him that he did

steal it, he would have to repay double, but if he confessed on his own accord, he would have to pay the Principal and a Fifth and bring a trespass offering.[4] Now here it is the witnesses[5] who make him liable for double paymentl, and yet it was only where he confessed of his own accord that he would be subject to the law of a Fifth,[6] whereas where he made a confession after [the evidence was given by] the witnesses, it would not be so. But if you assume that it is the oath involving liability of double payment that exempts from the Fifth, why then [in this case] even where he made confession after the evidence had already been given by the witnesses should the liability for the Fifth not be involved? Since the oath here was not instrumental in imposing the liability for double payment why should it not involve the liability for the Fifth? This would seem conclusively to prove that a pecuniary value for which there is liability to make double payment exempts from the Fifth, would it not? — This could indeed be proved from it.

Rabina asked: What would be the law as to a Fifth and double payment to be borne by two persons respectively? — What were the circumstances? — E.g., where an ox was handed over to two persons and both pleaded in defence theft, but while one of them confirmed it by an oath and subsequently confessed [it to have been perjury] the other one confirmed it by an oath and witnesses appeared [and proved it perjury]. Now, what is the law? Shall we say that it was only in the case of one man that the Divine Law was particular that he should not pay both the Fifth and double payment,[7] so that in this case [where two persons are involved]. one should make double payment and the other should pay a Fifth, or shall it perhaps be said that it was regarding one and the same pecuniary value that the Divine Law was particular that there should not be made any payment of both a Fifth and double payment;[8] and in this case also it was one and the same pecuniary value? — This must stand undecided.

R. Papa asked: What would be the law regarding two Fifths and two double payments in the case of one man? What are the circumstances? E.g., where the bailee first pleaded in his defence loss and after confirming it by an oath confessed [it to have been perjury],[9] but afterwards came back and pleaded [again a subsequent] loss, confirming it by an oath, and then again confessed [it to have been perjury];[9] or, e.g., where he pleaded in defence theft confirming it by an oath and witnesses appeared [and proved it to have been perjury],[10] but he afterwards came back and advanced [again] the defence of [a subsequent] theft, confirming it by an oath, and witnesses appeared against him. Now, what would be the law? Shall we say that it was only two different kinds of pecuniary liability[11] that the Divine Law forbade to be paid regarding one and the same pecuniary value,[8] whereas here the liabilities are of one kind[12] [and should therefore be paid], or perhaps it was two pecuniary liabilities[13] that the Divine Law forbade to be paid regarding one and the same pecuniary value and here also the pecuniary liabilities are two?[12] — Come and hear what Raba stated: And shall add the fifth:[14] the Torah has thus attached many fifths to one principal.[15] It could surely be derived from this.

If the owner had claimed [his deposit] from the bailee who, [though] he [denied the claim] on oath [nevertheless] paid it, and [it so happened that] the actual thief was identified,[16] to whom should the double payment go?[17] — Abaye said: To the owner of the deposit, but Raba said: To [the bailee with] whom the deposit was in charge. Abaye said that it should go to the depositor, for since he was troubled[18] to the extent of having to impose an oath, he could not be expected to have transferred the double payment.[19] But Raba said that it would go to [the bailee with] whom the deposit was in charge, for since [after all] he paid him, the double payment was surely transferred to him. They are divided on the implication of a Mishnah, for we learned: Where one person deposited with another an animal or utensils which were subsequently stolen or lost, if the bailee paid, rather than deny on oath, although it has been stated[20] that an unpaid bailee can by means of an oath discharge his liability and [it so happened that] the actual thief was found and had thus to make double payment, or, if he had already slaughtered the animal or sold it, fourfold or fivefold payment, to whom should he pay? To him with whom the deposit was in charge. But if the bailee took an oath [to defend

himself] rather than pay and [it so happened that] the actual thief was found and has to make double payment, or, where he already slaughtered the animal or sold it, fourfold or fivefold payment, to whom shall he pay? To the owner of the deposit.[21] Now, Abaye infers his view from the commencing clause, whereas Raba deduces his ruling from the concluding clause. Abaye infers his view from the commencing clause where it was stated: 'If the bailee paid, rather than deny on oath . . .' this is so only where he was not willing to swear,

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(1) And thus subject to Ex. XXII, 8.

(2) Rendering himself thus liable under Lev. V, 21-25.

(3) Since he did not confirm a defence of theft.

(4) The Mishnah of Shebu. 49a, where, however, the adjuration is missing, but v. also Jer. ibid. 3.

(5) And not at all the oath.

(6) I.e., Lev. V, 24.

(7) V. p. 628, n. 5.

(8) V. p. 628, n. 5.

(9) V. p. 628, n. 7.

(10) V. p. 628, n. 6.

(11) Such as double payment and a Fifth.

(12) I.e., either two Fifths or two amounts of double payment.

(13) No difference whether of one kind or of two different kinds.

(14) Lev. V, 24.

(15) Supra 65b, v. also Sifra on Lev. V, 24, and Malbim, a.l.

(16) And has to pay double.

(17) Either to the bailee in accordance with B.M. 33b, to be quoted presently, or to the depositor.

(18) By the bailee.

(19) To the bailee; v. B.M. 34a and also 35a.

(20) Ibid VII, 8.

(21) V. B.M. 33b.

but where he did take an oath, even though he subsequently paid, the thief would surely have to pay the owner of the deposit; but Raba deduces his ruling from the concluding clause where it was stated: 'But if the bailee took an oath [to defend himself] rather than pay . . .', this is so only where he was not willing to pay, but where he did pay even though he first denied the claim on oath, the thief would of course have to pay him with whom the deposit was in charge. Does not the implication of the concluding clause contradict the view of Abaye? — Abaye would say to you: What it means to say is this: 'If the bailee swore rather than pay before having taken the oath, though he did so after he took the oath, to whom will the thief pay? To the owner of the deposit.' But does not the implication of the commencing clause contradict the view of Raba? — Raba could say to you that the meaning is this: 'If the bailee paid, as he was not willing to take his stand upon his oath and consequently paid, to whom should the thief pay? To him with whom the deposit was in charge.

Suppose the owner had claimed [his deposit] from the bailee, and the latter denied upon oath, and the actual thief was then identified and the bailee demanded payment from him and he confessed the theft, but when the owner [of the deposit] demanded payment from him he denied it and witnesses were brought, did the thief become exempt[1] through his confession to the bailee,[2] or did the thief not become exempt[1] through his confession to the bailee?[3] — Said Raba: If the oath [taken by the bailee] was true, the thief would become exempt through his confession to the bailee,[4] but if he perjured himself in the oath[5] the thief would not become exempt through his confession to the bailee.[6] But Raba asked: What would be the law where the bailee was prepared to swear falsely but [it so happened that for some reason or other] he was not allowed to do so?[7] — This must remain

undecided. But while R. Kahana was stating the text thus, R. Tabyomi was reading it as follows: 'Rab asked: What would be the law where the bailee has sworn falsely [to defend himself]?'[8] — This must stand undecided.

Suppose the owner claimed [his deposit] from the bailee who thereupon paid him, and the thief was then identified and when the owner demanded payment from him he confessed, whereas when the bailee demanded payment from him he denied it, and witnesses appeared [against him], should the thief become exempt[9] through his confession to the owner or not? Shall we maintain that the bailee is entitled to say to the owner: 'Since you have received the value [of your deposit] your interest has completely lapsed[10] in this matter', or can the owner say to him: 'Just as you did us a favour,[11] we also are willing to do you the same and are therefore hunting after the thief. Let us take back what belonged to us and you receive back what belonged to you'? — This must stand undecided.

It was taught:[12] Where the deposit was stolen through violence[13] and the thief was identified, Abaye said that if the bailee was unpaid he has the option of going to law with him,[14] or of [clearing himself by] an oath [so that the owner will himself have to deal with the thief], whereas if it was a paid bailee he would have to go to law with the thief and he cannot take an oath to discharge his liability.[15] But Raba said: Whichever he is[16] he would have to go to law with the thief and not take an oath. May we say that Raba differs from the view of R. Huna b. Abin, for R. Huna b. Abin sent word that where the deposit was stolen by violence and the thief was identified, if the bailee was unpaid he had the option of going to law with him or of [clearing himself by] an oath, whereas if he was a paid bailee he would have to go to law with the thief and could not clear himself by an oath?[17] — Raba could say to you that [in this last ruling] we are dealing with a case where the paid bailee took the oath before [the thief was identified].[18] But did R. Huna not say: 'He had the option of going to law or of clearing himself by an oath'?[19] — What he meant was this: 'The unpaid bailee had the choice of taking his stand on his oath[20] or of going to law with him.' Rabbah Zuti asked thus: Where the deposited animal was stolen by violence and the thief restored it to the house of the bailee where it then died through carelessness [on the part of the bailee], what should be the law? Shall we say that since it was stolen by violence, the duty of bailment came to an end,[21] or perhaps since it was restored to him it once more came into his charge [which thus revived]?[22] — This must stand undecided.

MISHNAH. [IF A MAN SAYS TO ANOTHER] 'WHERE IS MY DEPOSIT?' AND HE[23] REPLIES: 'IT IS LOST' [AND THE DEPOSITOR THEN SAYS]. 'I PUT IT TO YOU ON OATH.' AND THE OTHER REPLIES. 'AMEN', IF WITNESSES TESTIFY AGAINST HIM THAT HE HIMSELF HAD CONSUMED IT, HE HAS TO PAY ONLY THE PRINCIPAL, WHEREAS IF HE CONFESSES ON HIS OWN ACCORD HE HAS TO REPAY THE PRINCIPAL TOGETHER WITH A FIFTH AND BRING A TRESPASS OFFERING.[24] [BUT IF THE DEPOSITOR SAYS] 'WHERE IS MY DEPOSIT?' AND THE BAILEE REPLIES: 'IT WAS STOLEN' [AND THE DEPOSITOR THEN SAYS] I PUT IT TO YOU ON OATH, AND THE BAILEE REPLIES, AMEN, IF WITNESSES TESTIFY AGAINST HIM THAT HE HIMSELF HAD STOLEN IT HE HAS TO REPAY DOUBLE,[25] WHEREAS IF HE CONFESSES ON HIS OWN ACCORD HE HAS TO REPAY THE PRINCIPAL TOGETHER WITH A FIFTH AND BRING A TRESPASS OFFERING.[24] IF A MAN ROBBED HIS FATHER AND, [WHEN CHARGED BY HIM,] DENIED IT ON OATH, AND [THE FATHER AFTERWARDS] DIED,[26] HE WOULD HAVE TO REPAY THE PRINCIPAL AND A FIFTH [AND A TRESPASS OFFERING][27] TO HIS [FATHER'S] CHILDREN[28] OR TO HIS [FATHER'S] BROTHERS;[29] BUT IF HE IS UNWILLING TO DO SO,[30] OR HE HAS NOTHING WITH HIM,[31] HE SHOULD BORROW [THE AMOUNT FROM OTHERS AND PERFORM THE DUTY OF RESTORATION TO ANY OF THE SPECIFIED RELATIVES] AND THE CREDITORS CAN SUBSEQUENTLY COME AND [DEMAND TO] BE PAID[32] [THE PORTION WHICH WOULD BY LAW HAVE BELONGED TO THE ROBBER AS

HEIR]. IF A MAN SAID TO HIS SON: 'KONAM BE[33] WHATEVER BENEFIT YOU HAVE OF MINE,'[34] AND SUBSEQUENTLY DIED, THE SON WILL INHERIT HIM.[35]

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(1) From paying the fine.
(2) In accordance with supra p. 427.
(3) The problem is whether the bailee had an implied mandate to approach the thief or not, as a confession made not to the plaintiff or his authorised agent but to a third party uninterested in the matter is of no avail to exempt from the fine; cf. however the case of R. Gamaliel and his slave Tabi, supra p. 428.
(4) As in this case the trust in the bailee has not been impaired and the implied mandate not cancelled.
(5) I.e., he advanced another defence, e.g., accidental death.
(6) Who could no longer be trusted and thus had no right to represent the depositor any more.
(7) Has the trust in him thereby been impaired or not?
(8) Shall it be said that though he had already sworn inaccurately he would sooner or later have been compelled by his conscience to make restoration, as he in fact exerted himself to look for the thief and should therefore still retain the trust reposed in him, especially since the article had really been stolen though he advanced for some reason another plea; R. Tabyomi had thus not read the concluding clause in the definite statement made above by Raba.
(9) V. p. 632. n. 1.
(10) Lit., 'removed'.
(11) By paying us for the deposit and not resisting our claim.
(12) Cf. B.M. 93b.
(13) By an armed robber; v. supra, 57a.
(14) I.e. the thief.
(15) For since he was paid, though he is exempt in the case of theft by violence, it is nevertheless his duty to take the trouble to litigate with the thief, since the thief is identified.
(16) I.e., unpaid as well as paid.
(17) B.M. 93b.
(18) In which case the depositor will himself have to deal with the case.
(19) Which makes it clear that the oath has not yet been taken.
(20) 'Already taken by him.
(21) So that the bailee should no more be subject to the law of bailment.
(22) To make the law of bailment still applicable.
(23) Being an unpaid bailee.
(24) In accordance with Lev. V, 21-25.
(25) In accordance with Ex. XXII, 8.
(26) When the son confessed the theft.
(27) The phrase in parenthesis occurs in the Mishnaic text but not in Rashi. [And rightly so, for what have the children etc. to do with the trespass offering.]
(28) I.e., to his own brothers, for if he would retain anything for himself he would not obtain atonement, since he did not make full restoration (Rashi). [Tosaf.: to his own children, or to his own brothers in the absence of any children to him, v. B.B. 159a.]
(29) I.e., his uncles, in the absence of any other children to his father.
(30) I.e., to forfeit his own share in the payment which he has to make.
(31) To be in a position to do so.
(32) From the amount restored.
(33) I.e., Let it be forbidden as sacrifice; v. Ned. I, 2.
(34) [J.: 'that you do not benefit out of anything belonging to me.']
(35) For through the death of the father his possessions passed out of his ownership and the son is no more benefiting out of anything belonging to him; cf. Ned. V, 3.

Talmud - Mas. Baba Kama 109a

[BUT IF HE SAID 'KONAM. . . '] BOTH DURING HIS LIFE AND AFTER HIS DEATH,[1] AND

[THE FATHER] DIED, THE SON WILL NOT INHERIT HIM,[2] [BUT THE PORTION] WILL BE TRANSFERRED TO HIS FATHER'S [OTHER] CHILDREN OR TO HIS [FATHER'S] BROTHERS; IF THE SON HAS NOTHING [FOR A LIVELIHOOD], HE MAY BORROW [FROM OTHERS AN AMOUNT EQUAL TO HIS PORTION IN THE INHERITANCE] AND THE CREDITORS CAN COME AND DEMAND PAYMENT [OUT OF THE ESTATE].

GEMARA. R. Joseph said: [He must pay[3] the amount due for the robbery] even to the charity[4] box.[5] R. Papa added: He must however say, This is due for having robbed my father. But why should he not remit the liability to himself?[6] Have we not learnt: Where the plaintiff released him from payment of the principal though he did not release him from payment of the Fifth [etc.],[7] thus proving that this liability is subject to be remitted? — Said R. Johanan: This is no difficulty as that was the view of R. Jose the Galilean, whereas the ruling [here][6] presents the view of R. Akiba, as indeed taught: But if the man have no kinsman to restore the trespass unto,[8] how could there be a man in Israel who had no kinsmen?[9] Scripture must therefore be speaking of restitution to a proselyte.[10] Suppose a man robbed a proselyte and when charged denied it on oath and as he then heard that the proselyte had died he accordingly took the amount of money [due] and the trespass offering to Jerusalem, but there [as it happened] came across that proselyte who then converted the sum [due to him] into a loan, if the proselyte were subsequently to die the robber would acquire title to the amount in his possession; these are the words of R. Jose the Galilean. R. Akiba, however, said: There is no remedy for him [to obtain atonement] unless he should divest himself of the amount stolen.[11] Thus according to R. Jose the Galilean, whether to himself or to others, the plaintiff may[12] remit the liability,[13] whereas according to R. Akiba no matter whether to others or to himself, he cannot remit it. Again, according to R. Jose the Galilean, the same law[14] would apply even where the proselyte did not convert the amount due into a loan, and the reason why it says, 'who then converted the sum [due to him] into a loan' is to let you know how far R. Akiba is prepared to go, since he maintains that even if the proselyte converted the sum due into a loan there is no remedy for the robber [to obtain atonement] unless he divests himself of the proceeds of the robbery. R. Shesheth demurred to this: If so [he said] why did not R. Jose the Galilean tell us his view in a case where the claimant [remits it] to himself, the rule then applying a fortiori to where he remits it to others? And again why did not R. Akiba tell his view that it is impossible to remit, to others, then arguing a fortiori that he cannot remit it to himself? R. Shesheth therefore said that the one ruling as well as the other is in accordance with R. Jose the Galilean, for the statement made by R. Jose the Galilean that it is possible to remit such a liability applies only where others get the benefit,[15] whereas where he himself would benefit it would not be possible to remit it. Raba, however, said: The one ruling as well as the other [here,] is in accordance with R. Akiba, for when R. Akiba says that it is impossible to remit the liability, he means to himself, whereas to others[15] it is possible for him to remit it.

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(1) [J.: 'both during my life and after my death.']

(2) As in this case it was the estate as such, and not as belonging to his father, which was declared forbidden; Ned. V, 3.

(3) Where no other heir could be traced to his father except himself.

(4) Lit., 'Arnaki', **; v. K. Krauss, Lehnworter, II, 133.

(5) Cf. supra p. 204 and p. 540.

(6) V. p. 635, n. 1.

(7) Supra Mishnah 103a.

(8) Num. V, 8.

(9) Cf.Kid. 21a and Sanh. 68b; for if he has no issue the inheritance will revert to ancestors and their descendants; v. B.B. VIII, 2.

(10) Who has no kinsman in law except the children born to him after he became a proselyte; cf. Sheb. X, 9 and Kid. 17b.

(11) Tosef. B.K. X.

(12) In all cases.

(13) The Mishnah on 103a will accordingly agree with R. Jose.
(14) Stated by him in the case of the proselyte.
(15) V. p. 636. n. 2.

Talmud - Mas. Baba Kama 109b

This would imply that R. Jose the Galilean maintained that even to himself[1] he could remit it. Now, if that is so, how could a case ever arise that restitution for robbery committed upon a proselyte[2] should be made to the priests[3] as ordained in the Divine Law? — Said Raba: We are dealing here with a case where one robbed a proselyte and [falsely] denied to him on oath [that he had done so], and the proselyte having died the robber confessed subsequently, on the proselyte's death,[4] so that at the time he made confession God[5] acquired title to it[6] and granted it to the priests.[7]

Rabina asked: What would be the law where a proselytess was robbed? Shall we say that when the Divine Law says 'man'[7] it does not include 'woman' or perhaps this is only the Scriptural manner of speaking? — Said R. Aaron to Rabina: Come and hear: It was taught: '[The] man';[7] this tells me only that the law applies to a man; whence do I know that it applies also to a woman? When it is further stated 'That the trespass be restored'[7] we have two cases mentioned.[8] But if so, why was 'man' specifically mentioned? To show that only in the case of [a person who has reached] manhood[9] is it necessary to investigate whether he had kinsmen[10] or not, but in the case of a minor it is not necessary, since it is pretty certain that he could have no 'redeemers'.[11]

Our Rabbis taught: Unto the Lord even to the priest[12] means that the Lord acquired title to it[13] and granted it to the priest[14] of that [particular] division. You say 'to the priest of that [particular] division', but perhaps it is not so, but to any priest whom the robber prefers? — Since it is further stated, Beside the ram of atonement whereby he shall make an atonement for him,[12] it proves that Scripture referred to the priest of that [particular] division.

Our Rabbis taught: In the case where the robber was a priest, how do we know that he is not entitled to say: Since the payment would [in any case] have to go to the priests, now that it is in my possession it should surely remain mine? Cannot he argue that if he has a title to payment which is in the possession of others,[15] all the more should he have a title to payment which he has in his own possession? R. Nathan put the argument in a different form: Seeing that a thing in which he had no share until it actually entered his possession cannot be taken from him once it has entered his possession,[16] does it not stand to reason that a thing[17] in which he had a share[18] even before it came into his possession cannot be taken from him once it has come into his possession?[19] This, however, is not so: for while this may be true[20] of a thing in which he had no share, since in that case just as he had no share in it, so has nobody else any share in it, it is not necessarily true[20] of the proceeds of robbery where just as he has a share in it, so also have others a share in it.[21] The [payment for] robbery must therefore be taken away from his possession and shared out to all his bretheren the priests. But is it not written: And every man's hallowed things shall be his?[22] — We are dealing here with a priest who was [levitically] defiled.[23] But if the priest was defiled, could there be anything in which he should have a share?[24] — [The fact is that] the ruling[25] is derived by the analogy of the term, 'To the priest'[26] to a similar term 'To the priest' occurring in the case of a field of [Permanent] possession,[27] as taught:[28] What is the point of the words the [permanent] possession thereof?[27] [The point is this:] How can we know that if a field which would [in due course] have to fall to the priests in the jubilee[27] but was redeemed by one of the priests, he should not have the right to say, 'Since the field is destined to fall to the priests in the jubilee and as it is already in my possession it should remain mine, as is indeed only reasonable to argue, for since I have a title to a field in the possession of others, should this not be the more so when the field is in my own possession?' The text therefore significantly says. As a field devoted, the [permanent] possession thereof shall be the priest's, to indicate that a field of [permanent] possession[29] remains with him, whereas this [field][30] will not

remain with him.[31] What then is to be done with it? It is taken from him and shared out to all his brethren the priests.

Our Rabbis taught: Whence can we learn that a priest is entitled to come and sacrifice his offerings at any time and on any occasion he prefers? It is significantly stated, And come with all the desire of his mind . . . and shall minister.[32] But whence can we learn that the fee for the sacrificial operation[33] and the skin of the animal will belong to him? It is stated: And every man's hallowed thing shall be his,[34] so that if he was blemished,[35] he has to give the offering to a priest of that particular division, while the fee for the operation and the skin will belong to him,

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(1) V. p. 635. n. I.

(2) Who subsequently died without legal issue.

(3) For since the proselyte died without leaving legal issue, why should the robber not acquire title to the payment due for the robbery which is in his possession.

(4) For if the confession was made prior to his death the amount to be paid would have become a liability as a debt upon the robber and would thus become remitted through the subsequent death of the proselyte; cf. supra p. 283.

(5) Lit., 'the Name'.

(6) V. Men. 45b.

(7) V. p. 636, n. 3.

(8) Either because the term expressing 'recompense' or because the term expressing 'trespass' occurs there twice in the text (Rashi). — This solves the question propounded by R. Aaron.

(9) I.e., a proselyte who died after having already come of age.

(10) I.e., descendants, for his ancestors and collateral relatives are not entitled to inherit him; v. Kid. 17b.

(11) V. also Sanh. 68a-69b.

(12) V. p. 636, n. 3.

(13) V. p. 637, n. 7.

(14) On duty at the time of restoration. The priests were divided into twenty-four panels; v. I. Chron. XXIV, 1-18.

(15) [For as soon as the robbery of a proselyte is placed in the charge of a particular division, all priests of that division share a title to it.]

(16) [A priest may come and offer his own sacrifice at any time and retain the flesh and skin for himself without sharing it with the priests of the division on duty. Once he however gave it to another priest who hitherto had no title to it, he cannot reclaim it of him.]

(17) Such as payment for a robbery committed upon a proselyte.

(18) As soon as it was restored to anyone of the division.

(19) As in the case where the priest himself was the robber.

(20) That a priest may retain for himself the priestly portions in his possession.

(21) V. p. 638, n. 8.

(22) Num. V, 10. So that the right to sacrifice the trespass offering would be his. The flesh therefore consequently belongs to him, in which case the payment for the robbery should similarly remain with him.

(23) And as he is thus unable himself to sacrifice the trespass offering he cannot retain the payment.

(24) V. Zeb. XII, 1; how then comes it to be stated in the text that he would be entitled to a share as soon as it was restored to any one of the division?

(25) That a priest may not retain for himself the payment for a robbery he committed upon a proselyte, though he himself had a right to the sacrifice and the whole of the flesh.

(26) V. p. 636, n. 3.

(27) Cf. Lev. XXVII, 21.

(28) 'Ar. 25b.

(29) Which belonged as such to his father and was inherited by him; cf. Rashi' Ar. 25b.

(30) Which he redeemed from the Temple treasury.

(31) After the arrival of the jubilee.

(32) Deut. XVIII, 6-7.

(33) Lit., 'the reward of the service thereof'. I.e., the priestly portions thereof.

(34) Num. V. 10.
(35) And thus himself unable to sacrifice but able to partake of the portions in accordance with Lev. XXI, 17-22.

Talmud - Mas. Baba Kama 110a

but if he was old or infirm[1] he may give it to any priest[2] he prefers, and the fee for the operation and the skin will belong to the members of the division.[3] How are we to understand this 'old or infirm priest'? If he was still able to perform the service,[4] why should the fee for the sacrifice and the skin similarly not be his? If on the other hand he was no longer able to perform the service, how can he appoint an agent?[5] — Said R. Papa: He was able to perform it only with effort, so that in regard to the service which even though carried out only with effort is still a valid service he may appoint an agent, whereas in regard to the eating which if carried through only with effort would constitute an abnormal eating,[6] which is not counted as anything[7] [in the eyes of the law], the fee for the sacrifice and the skin must belong to the members of the division.

R. Shesheth said: If a priest [in the division] is unclean, he has the right to hand over a public sacrifice to whomever[2] he prefers.[8] but the fee and the skin will belong to the members of the division. What are the circumstances? If there were in the division priests who were not defiled, how then could defiled priests perform the service?[9] If on the other hand there were no priests there who were not defiled, how then could the fee for the sacrifice and the skin belong to the members of the division who were defiled and unable to partake of holy food?[10] — Said Raba: Read thus: '[The fee for it and the skin of it will belong] to blemished undefiled priests[11] in that particular division.' R. Ashi said: Where the high priest was an Onan[12] he may hand over his sacrifice to any priest[13] he prefers,[14] whereas the fee for it and the skin of it will belong to the members of the division. What does this tell us [which we do not already know?] Was it not taught: 'The high priest may sacrifice even while an Onan, but he may neither partake of the sacrifice, nor [even] acquire any share in it for the purpose of partaking of it in the evening'?[15] — You might have supposed that the concession made by the Divine Law to the high priest[12] was only that he himself should perform the sacrifice, but not that he should be entitled to appoint an agent; we are therefore told that this is not the case.

MISHNAH. IF ONE ROBBED A PROSELYTE AND [AFTER HE] HAD SWORN TO HIM [THAT HE DID NOT DO SO], THE PROSELYTE DIED, HE WOULD HAVE TO PAY THE PRINCIPAL AND A FIFTH TO THE PRIESTS, AND BRING A TRESPASS OFFERING TO THE ALTAR, AS IT IS SAID: BUT IF THE MAN HAVE NO KINSMAN TO RESTORE THE TRESPASS UNTO, LET THE TRESPASS BE RESTORED UNTO THE LORD, EVEN TO THE PRIEST; BESIDE THE RAM OF ATONEMENT WHEREBY AN ATONEMENT SHALL BE MADE FOR HIM.[16] IF WHILE HE WAS BRINGING THE MONEY AND THE TRESPASS OFFERING UP TO JERUSALEM HE DIED [ON THE WAY], THE MONEY WILL BE GIVEN TO HIS HEIRS,[17] AND THE TRESPASS OFFERING WILL BE KEPT ON THE PASTURE UNTIL IT BECOMES BLEMISHED,[18] WHEN IT WILL BE SOLD AND THE VALUE RECEIVED WILL GO TO THE FUND OR FREEWILL OFFERINGS.[19] BUT IF HE HAD ALREADY GIVEN THE MONEY TO THE MEMBERS OF THE DIVISION AND THEN DIED, THE HEIRS HAVE NO POWER TO MAKE THEM GIVE IT UP, AS IT IS WRITTEN, WHATSOEVER ANY MAN GIVE TO THE PRIEST IT SHALL BE HIS.[20] IF HE GAVE THE MONEY TO JEHOIARIB[21] AND THE TRESPASS OFFERING TO JEDAIAH,[22] HE HAS FULFILLED HIS DUTY.[23] IF, HOWEVER, THE TRESPASS OFFERING WAS FIRST GIVEN TO JEHOIARIB AND THEN THE MONEY TO JEDAIAH, IF THE TRESPASS OFFERING IS STILL IN EXISTENCE THE MEMBERS OF THE JEDAIAH DIVISION WILL HAVE TO SACRIFICE IT,[24] BUT IF IT IS NO MORE IN EXISTENCE HE WOULD HAVE TO BRING ANOTHER TRESPASS OFFERING; FOR HE WHO BRINGS [THE RESTITUTION FOR] ROBBERY BEFORE HAVING BROUGHT THE TRESPASS OFFERING FULFILS HIS OBLIGATION, WHEREAS HE WHO BRINGS THE TRESPASS OFFERING BEFORE HAVING

BROUGHT [THE RESTITUTION FOR] THE ROBBERY HAS NOT FULFILLED HIS OBLIGATION. IF HE HAS REPAID THE PRINCIPAL BUT NOT THE FIFTH, THE [NON-PAYMENT OF THE] FIFTH IS NO BAR [TO HIS BRINGING THE OFFERING].

GEMARA. Our Rabbis taught: The trespass:[25] this indicates the Principal; be restored: this indicates the Fifth. Or perhaps this is not so, but 'the trespass' indicates the ram, and the practical difference as to which view we take would involve the rejection of the view of Raba, for Raba said: '[Restitution for] robbery committed upon a proselyte, if made at night time does not fulfil the obligation, nor does restitution by halves, the reason being that the Divine Law termed it trespass?[26] — Since it says later 'beside the ram of atonement', you must surely say that 'the trespass' is the Principal.

Another [Baraitha]: 'The trespass' is the Principal, 'be restored' is the Fifth. Or perhaps this is not so, but 'the trespass' means the Fifth and the practical difference as to which view we take, would involve the rejection of the ruling of our Mishnah, viz. IF HE HAS REPAID THE PRINCIPAL BUT NOT THE FIFTH, THE [NONPAYMENT OF THE] FIFTH IS NO BAR', for in this case on the contrary the [non-payment of the] Fifth would be a bar?[27] — Since it has already been stated: And he shall recompense his trespass with the Principal thereof and add unto it a Fifth thereof,[28] you must needs say that the trespass is the Principal.

Another [Baraitha] taught: 'The trespass'[29] is the Principal, 'be restored' is the Fifth, as the verse here deals with robbery committed upon a proselyte. Or perhaps this is not so, but 'be restored' indicates the doubling of the payment, the reference being to theft[30] committed upon a proselyte? — Since it has already been stated: And he shall restore his trespass with the Principal thereof and add unto it a Fifth part thereof,[28] it is obvious that Scripture deals here with money which is paid as Principal.[31]

[To revert to] the above text. 'Raba said: [Restitution for] robbery committed upon a proselyte, if made at night time would not be a fulfilment of the obligation, nor would it if made in halves, the reason being that the Divine Law termed it trespass;' Raba further said: If [in the restitution for] robbery committed upon a proselyte there was not the value of a perutah[32] for each priest [of the division] the obligation would not be fulfilled, because it is written: 'The trespass be recompensed' which indicates that unless there be recompense to each priest [there is no atonement]. Raba thereupon asked: What would be the law if it were insufficient with respect to the division of Jehoiarib,[33] but sufficient

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(1) Competent to sacrifice but unable to partake of the portions.

(2) Even of another division.

(3) Men. 74a. For a transposed text cf. J. Yeb. XI, 10.

(4) For priests unlike levites do not become disqualified by age; v. Hul. 1, 6.

(5) Cf. Kid. 23b.

(6) Cf. however Shab. 76a and supra 19b.

(7) Cf. Yoma 80b; and Pes. 107b.

(8) For since he himself can perform the service he can hand it over to whomever he likes.

(9) And since he could not perform the service he should surely be unable to transfer it to whomever he wishes.

(10) V. Zeb. XII, 1.

(11) V. p. 640, n. 6.

(12) I.e., a mourner on the day of the death of a kinsman; V. Lev, XXI, 10-12.

(13) V. p. 640, n. 8.

(14) V. p. 640, n. 14.

(15) Tosef. Zeb. XI, 2; cf. Yoma 13b.

(16) Num. V, 8.

(17) I.e., of the robber.
(18) And thus unfit to be sacrificed, cf. Lev. XXII, 20.
(19) Cf. Shek. VI, 5.
(20) Num. V, 10.
(21) I.e., to a member of the Jehoiarib division, which was the first of the twenty-four divisions of the priests; cf. I Chron. XXIV, 7.
(22) I.e., to a member of the Jedaiah division, which was the second of the priestly divisions, v. ibid.
(23) For the payment of the money has to precede the trespass offering.
(24) For Jehoiarib had no right to accept the trespass offering before the money was paid.
(25) Num. V. 8.
(26) And an offering could not be sacrificed at night time. [Consequently should it be assumed that 'the trespass' denotes the ram and not the Principal Raba's ruling would be rejected.]
(27) Being the trespass.
(28) Num. V, 7.
(29) Num. V, 8.
(30) Which is subject to Ex. XXII, 3.
(31) And not with double payment.
(32) V. Glos.
(33) Consisting of many priests.

Talmud - Mas. Baba Kama 110b

for the division of Jedaiah?[1] What are the circumstances? If we suppose that he paid it to Jedaiah during the time [of service] of the division of Jedaiah,[1] surely in such a case the amount is sufficient?[2] — No, we must suppose that he paid it to Jedaiah[1] during the time of the division of Jehoiarib. Now, what would be the law? Shall we say that since it was not in the time of his division, the restoration is of no avail, or perhaps since it would not do for Jehoiarib it was destined from the very outset to go to Jedaiah? — Let this stand undecided.

Raba again asked: May the priests set [one payment for] a robbery committed upon a proselyte against another [payment for a] robbery committed upon a proselyte? Shall we say that since the Divine Law designated it trespass,[3] therefore, just as in the case of a trespass offering, one trespass offering can not be set against another trespass offering,[4] so also in the case of [payment for] a robbery committed upon a proselyte, one [payment for] robbery committed upon a proselyte cannot be set against another [payment for] robbery committed upon a proselyte[5] or perhaps [since payment for] robbery committed upon a proselyte is a matter of money, [it should not be subject to this restriction]? He however subsequently decided that [as] the Divine Law termed it trespass, [it should follow the same rule]. R. Aha the son of Raba stated this explicitly. Raba said: The priests have no right to set one [payment for a] robbery committed upon a proselyte against another [payment for] robbery committed upon a proselyte, the reason being that the Divine Law termed it trespass.

Raba asked: Are the priests in relation to [the payment for] robbery committed upon a proselyte in the capacity of heirs[6] or in the capacity of recipients of endowments? A practical difference arises where e.g., the robber misappropriated leaven and Passover meanwhile passed by.[7] If now you maintain that they are in the capacity of heirs, it will follow that what they inherited they will have,[8] whereas if you maintain that they are recipients of endowments, the Divine Law surely ordered the giving of an endowment, and in this case nothing would be given them since the leaven is considered [in the eye of the law] as being mere ashes.[9] R. Ze'ira put the question thus: Even if you maintain that they are recipients of endowments, then still no question arises, since it is this endowment [originally due to the proselyte] which the Divine Law has enjoined to be bestowed upon them.[10] What, however, is doubtful to us is where e.g., ten animals fell to the portion of a priest as [payment for] robbery committed upon a proselyte. Is he then under an obligation to set aside a tithe[11] or not?

Are they [the priests] heirs, in which case the dictum of the master applies that [where] heirs have bought animals out of the funds of the general estate they would be liable [to tithe], or are they perhaps endowment recipients in which case we have learnt 'He who buys animals or receives them as a gift is exempt from the law of tithing animals'?[12] Now, what should be the law?[13] — Come and hear: Twenty-four priestly endowments were bestowed upon Aaron and his sons. All these were granted to him by means of a generalisation followed by a specification which was in its turn followed again by a generalisation[14] and a covenant of salt[15] so that to fulfil them is like fulfilling [the whole law which is expounded by] generalisation, specification and generalisation and [like offering all the sacrifices forming] the covenant of salt,[16] whereas to transgress them is like transgressing [the whole Torah which is expounded by] generalisation, specification and generalisation, and [all the sacrifices forming] the covenant of salt. They are these: Ten to be partaken in the precincts of the Temple, four in Jerusalem and ten within the borders [of the Land of Israel]. The ten in the precincts of the Temple are: A sin offering of an animal,[17] a sin offering of a fowl,[18] a trespass offering for a known sin,[19] a trespass offering for a doubtful sin,[20] the peace offering of the congregation,[21] the log of oil in the case of a leper,[22] the remnant of the Omer,[23] the two loaves,[24] the shew bread[25] and the remnant of meal offerings.[26] The four in Jerusalem are: the firstling.[27] the first of the first fruits,[28] the portions separated in the case of the thank offering[29] and in the case of the ram of the Nazirite[30] and the skins of [the most] holy sacrifices.[31] The ten to be partaken in the borders [of the Land of Israel] are: terumah,[32] the terumah of the tithe,[33] hallah,[34] the first of the fleece,[35] the portions[36] [of unconsecrated animals], the redemption of the son,[37] the redemption of the firstling of an ass,[38] a field of possession,[39] a field devoted,[40] and [payment for a] robbery committed upon a proselyte.[41] Now, since it is here designated an 'endowment', this surely proves that the priests are endowment recipients in this respect.[42] This proves it.

BUT IF HE HAD ALREADY GIVEN THE MONEY TO THE MEMBERS OF THE DIVISION etc. Abaye said: We may infer from this that the giving of the money effects half of the atonement: for if it has no [independent] share in the atonement, I should surely say that it ought to be returned to the heirs, on the ground that he would never have parted with the money upon such an understanding.[43] But if this could be argued, why should a sin offering whose owner died not revert to the state of unconsecration,[44] for the owner would surely not have set it aside upon such an understanding?[45] — It may however be said that regarding a sin offering whose owner died there is a halachah handed down by tradition that it should be left to die.[46] But again, according to your argument, why should a trespass offering whose owner died not revert to the state of unconsecration,[47] as the owner would surely not have set it aside upon such an understanding? — With regard to a trespass offering there is similarly a halachah handed down by tradition that whenever [an animal, if set aside as] a sin offering would be left to die, [if set aside as] a trespass offering it would be subject to the law of pasturing.[46] But still, according to your argument why should a deceased brother's wife on becoming bound to one affected with leprosy not be released [even] without the act of halizah,[48] for surely she would not have consented to betroth herself[49] upon this understanding?[50] — In that case we all can bear witness[51]

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(1) Which consisted of not so many priests.

(2) For the priests of the division; why at all consider the number of the priests of a different division?

(3) V. p. 643, n. 8.

(4) But each offering is distributed among all the priests of the division; v. Kid, 531 and Men. 73a.

(5) But each payment would have to be shared by all the priests of the division.

(6) Of the proselyte so far as this liability is concerned,

(7) Rendering the leaven forbidden for any use; v. supra p. 561 and Pes. II. 2.

(8) I.e., whether they would be able to make use of it or not.

(9) Cf. Tem. VII, 5.

(10) The priests could thus never be in a better position then the proselyte himself.

(11) In accordance with Lev. XXVII, 32.

(12) Cf, Bek. IX, 3.
(13) Here where a priest received animals in payment for a robbery committed upon a proselyte.
(14) V. supra, p. 364. [Generalisation: Num. XVIII, 8, where the priestly portions are referred to in general terms; specification: verses 9-18, where they are enumerated; second generalisation: verse 19, where they are again mentioned generally.]
(15) Cf. Num. XVIII, 8-19.
(16) Lev. II, 13.
(17) Ibid. VI, 17-23.
(18) Ibid. V, 8.
(19) For which cf. ibid. V, 14-16; 20-26; ibid. XIX, 20-22 a.e.
(20) Ibid. V, 17-19.
(21) Ibid. XXIII, 19-20.
(22) Ibid. XIV, 12.
(23) Lit., 'Sheaf' referred to in Lev. XXIII, 10-12; the remainder of this meal offering after the handful of flour has been taken and sacrificed, is subject to Lev. VI, 9-11.
(24) Referred to in Lev. XXIII, 17.
(25) Dealt with in Ex. XXV, 30 and Lev. XXIV, 5-9.
(26) Lev. II, 3
(27) Num. XVIII, 17-18.
(28) Cf. Ex. XXIII, 19 and Num. XVIII, 13; v, also Deut. XII, 17 and XXVI, 2-10.
(29) Lev. VII, 11-14.
(30) Num. VI, 14-20.
(31) Such as of the burnt and of the sin and of the trespass offerings; for the skins of the minor sacrifices belong to the donors; v, Zeb. 103b.
(32) Cf. Num. XVIII, 12; v. Glos.
(33) Cf. ibid. 25-29.
(34) I.e., the first of the dough; v. Num. XV, 18-21.
(35) Deut. XVIII, 4.
(36) Lit., 'the gifts'; v. Deut. ibid. 3.
(37) Num. XVIII, 15-16.
(38) Ex. XIII, 13.
(39) Cf. Lev. XXVII, 16-21.
(40) Num. XVIII, 14.
(41) Hul. 133b. Tosef. Hal. II.
(42) I.e., the payment for robbery committed upon a proselyte.
(43) I.e., to obtain no atonement and yet lose the money.
(44) Why then should it be destined by law to die as stated in Tem. II, 2.
(45) That it should be unable to serve any purpose and yet remain consecrated.
(46) No stipulation to the contrary could therefore be of any avail; cf. e.g. Pe'ah VI, 11 and B.M. VII, 11.
(47) Why then should it be kept on the pastures until it will become blemished, as also stated supra p. 642.
(48) I.e., the loosening of his shoe, as required in Deut. XXV, 9; cf. Glos,
(49) And as the retrospective annulment of the betrothal would be not on account of the death of the husband but on account of his brother being a leper, this case, unlike that of the sin offering or trespass offering referred to above, could not be subject to Pe'ah VI, 11 and B.M. VII, 11.
(50) I.e., to become bound to (the husband's brother who was) a leper; cf. Keth. VII, 10.
(51) The brother who died but who had no deformity.

Talmud - Mas. Baba Kama 111a

that she was quite prepared to accept any conditions,[1] as we learn from Resh Lakish; for Resh Lakish said:[2] it is better [for a woman] to dwell as two[3] than to dwell in widowhood.[4]

WHERE HE GAVE THE MONEY TO JEHOIARIB AND THE TRESPASS OFFERING TO JEDAIAH etc. Our Rabbis taught: Where he gave the trespass offering to Jehoiarib and the money to Jedaiah the money will have to be brought to [whom] the trespass offering [is due].[5] This is the view of R. Judah, but the Sages say that the trespass offering will have to be brought[6] to [whom] the money [is due].[7] What are the circumstances? Do we suppose that the trespass offering was given to Jehoiarib during the [time of the] division of Jehoiarib and so also the money was given to Jedaiah during the [time of the] division of Jedaiah? If so, why should the one not acquire title to his and the other to his?[8] — Said Raba: We are dealing here with a case where the trespass offering was given to Jehoiarib during the [time of the] division of Jehoiarib and [so also] the money was given to Jedaiah during [the time of] the division of Jehoiarib. In such a case R. Judah maintained that since it was not [the time of] the division of Jedaiah,[9] it is Jedaiah whom we ought to penalise, and the money has therefore to be brought to the [place of the] trespass offering,[5] whereas the Rabbis maintained that as it was the members of the Jehoiarib division that acted unlawfully[7] in having accepted the trespass offering before the money,[10] it is they who have to be penalised and the trespass offering accordingly should be brought[6] to the [place where] the money [is due].[7]

It was taught: Rabbi said: According to the view of R. Judah, if the members of the Jehoiarib division had already sacrificed the trespass offering,[11] the robber would have to come again and bring another trespass offering which will now be sacrificed by the members of the Jedaiah division,[12] though the others[13] would acquire title to that which remained in their possession.[14] But I would fain ask: For what could the disqualified trespass offering have any value? — Said Raba: For its skin.[15]

It was taught: Rabbi said: According to R. Judah, if the trespass offering was still in existence, the trespass offering will have to be brought[16] to [whom] the money [is due]. But is R. Judah not of the opinion that the money should be brought to [whom] the trespass offering [is due]?[17] We are dealing here with a case where e.g. the division of Jehoiarib has already left without, however, having made any demand,[18] and what we are told therefore is that this should be considered as a waiving of their right in favour of the members of the division of Jedaiah.

Another [Baraitha] taught again: Rabbi said: According to R. Judah, if the trespass offering was still in existence, the money would have to be brought to [whom] the trespass offering [is due].[19] But is this not obvious, since this was actually his view? — We are dealing here with a case where e.g., the divisions of both Jehoiarib and Jedaiah have already left without having made any demand [on each other].[20] In this case you might have thought that they mutually waived their claim on each other.[21] We are therefore told that since there was no demand from either of them[22] we say that the original position must be restored.[23]

FOR HE WHO BRINGS [THE PAYMENT FOR] ROBBERY BEFORE HAVING BROUGHT THE TRESPASS OFFERING [FULFILLS HIS DUTY, WHEREAS HE WHO BRINGS THE TRESPASS OFFERING BEFORE HAVING BROUGHT THE PAYMENT FOR ROBBERY DID NOT FULFILL HIS DUTY]. Whence can these rulings be derived? — Said Raba: Scripture states: Let the trespass be restored unto the Lord, even to the priest, beside the ram of the atonement whereby an atonement shall be made for him,[24] thus implying[25] that the money must be paid first. One of the Rabbis, however, said to Raba: But according to this reasoning will it not follow that in the verse: Ye shall offer these beside the burnt offering in the morning[26] it is similarly implied[27] that the additional offering will have to be sacrificed first? But was it not taught:[28] Whence do we know that no offering should be sacrificed prior to the continual offering of the morning?[29] Because it is stated, And lay the burnt offering in order upon it[30] and Raba stated: 'The burnt offering'[30] means the first burnt offering?[31] — He, however, said to him: I derive it[32] from the clause:[29] 'Whereby an atonement shall be made for him' which indicates[33] that the atonement has not yet been made.

WHERE HE PAID THE PRINCIPAL BUT DID NOT PAY THE FIFTH, THE [NON-PAYMENT OF THE] FIFTH IS NO BAR.

Our Rabbis taught: Whence could it be derived that if he brought the Principal due for sacrilege,[34] but had not yet brought the trespass offering,[35] or if he brought the trespass offering but had not yet brought the Principal due for sacrilege, he did not thereby fulfil his duty? Because it says: With the ram of the trespass offering and it shall be forgiven him[36] . Again, whence could it be derived that if be brought his trespass offering before he brought the Principal due for the sacrilege he did not thereby fulfil his duty? Because it says, 'With the ram of the trespass,' implying that the trespass [itself][37] has already been made good. It might be thought that just as the ram and the trespass are indispensable, so should the Fifth be indispensable? It is therefore stated: 'With the ram of the trespass offering and it shall he forgiven him,' implying that it was only the ram and the trespass which are indispensable in [the atonement for the sacrilege of] consecrated things, whereas the Fifth is not indispensable. Now, the law regarding consecrated things[38] could be derived from that regarding private belongings[39] and that of private belongings could be derived from the law regarding consecrated things. The law regarding consecrated things could be derived from that regarding private belongings: just as 'trespass' there[39] denotes the Principal[40] so does 'trespass' here[38] denote the Principal. The law regarding private belongings could be derived from that regarding consecrated things; just as in the case of consecrated things the Fifth is not indispensable, so in the case of private things the Fifth is similarly not indispensable.

CHAPTER X

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(1) Regarding the state of the husband's brother,

(2) Keth. 75a.

(3) טן דו two bodies, (Rashi); last. 'with a load of grief'.

(4) So that irrespective of any undesirable consequences whatsoever it was an advantage to her to become betrothed to 'the person she hath chosen to dwell together'; cf. Rashi a.l.

(5) I.e. to Jehoiarib.

(6) To Jedaiah.

(7) V. p. 642, n. 7.

(8) At least so far as the division of Jedaiah accepting the money is concerned; why then did R. Judah order the payment to be taken away from Jedaiah and handed over to Jehoiarib?

(9) That Jedaiah accepted the money.

(10) V. p. 642, n. 8.

(11) Before the money was paid, in which case the trespass offering becomes disqualified.

(12) To whom the money was paid and not by Jehoiarib who accepted the previous trespass offering.

(13) I.e., of the Jehoiarib division.

(14) I.e., to the disqualified trespass offering.

(15) V. p. 646, n. 16.

(16) V. p. 648, n. 6.

(17) V. p. 648, n. 5.

(18) For the money accepted by Jedaiah.

(19) To Jehoiarib.

(20) Regarding the money and the trespass offering.

(21) And the money should thus remain with Jedaiah.

(22) Even from Jedaiah (during his time of service) for the trespass offering accepted by Jehoiarib.

(23) I.e., the money will be handed over to Jehoiarib who will sacrifice the trespass offering when their time of service will come round again.

(24) Num. V, 8.

(25) Probably in the term 'beside'.

(26) Num. XXVIII, 23.

(27) In the term ‘beside’.
(28) Pes. 58b.
(29) Cf. Num. XXVIII, 2-4.
(30) Lev. VI, 5.
(31) Cf. Hor, 12a.
(32) Not from the term ‘beside’.
(33) By having the verb in the future tense.
(34) Cf. Lev. V, 16.
(35) In accordance with ibid. 15.
(36) Ibid. 16,
(37) I.e., the payment of the Principal as supra p.642.
(38) Lev. V, 15-16.
(39) Num. V, 6-8.
(40) V. p. 650, n. 14.

Talmud - Mas. Baba Kama 111b

MISHNAH. IF ONE MISAPPROPRIATED [FOODSTUFF] AND FED HIS CHILDREN OR LEFT [IT] TO THEM [AS AN INHERITANCE], THEY WOULD NOT BE LIABLE TO MAKE RESTITUTION, BUT IF THERE WAS ANYTHING [LEFT] WHICH COULD SERVE AS SECURITY THEY WOULD BE LIABLE TO PAY.

GEMARA. R. Hisda said: If one misappropriated [an article] and before the owner gave up hope of recovering it, another person came and consumed it, the owner has the option of collecting payment from either the one[1] or the other,[2] the reason being that so long as the owner did not give up hope of recovery, the misappropriated article is still in the ownership of the original possessor.[3] But we have learnt: IF ONE MISAPPROPRIATED [FOODSTUFF] AND FED HIS CHILDREN[1] [WITH IT], OR LEFT [IT] TO THEM [AS AN INHERITANCE], THEY WOULD NOT BE LIABLE TO MAKE RESTITUTION. Now, is this not a contradiction to the view of R. Hisda? — R. Hisda might say to you that this holds good only after the owner has given up hope.[4]

[IF HE] LEFT [IT] TO THEM [AS AN INHERITANCE], THEY WOULD NOT BE LIABLE TO MAKE RESTITUTION. Rami b. Hama said: This [ruling] proves that the possession of an heir is on the same footing in law as the possession of a purchaser;[5] Raba, however, said the possession of an heir is not on a par with the possession of a purchaser,[6] for here we are dealing with a case where the food was consumed [after the father's death].[7] But since it is stated in the concluding clause, BUT IF THERE WAS ANYTHING [LEFT] WHICH COULD SERVE AS SECURITY[8] THEY WOULD BE LIABLE TO PAY[9] does it not imply that even in the earlier clause[10] we are dealing with a case where the misappropriated article was still in existence?[11] Raba could however say to you that what is meant is this: If their father left them property constituting [legal] security[12] they would be liable to pay.[13] But did Rabbi not teach[14] his son R. Simeon that ‘ANYTHING WHICH COULD SERVE AS SECURITY should not [be taken literally to] mean actual security, for even if he left a cow to plough with or an ass to be driven,[15] they would be liable to restore it, to save their father's good name? — Raba therefore said: When I pass away R. Oshaia will come out to meet me,[16] since I am explaining the Mishnaic text in accordance with his teaching, for R. Oshaia taught: Where he misappropriated [foodstuff] and fed his children, they would not have to make restitution. If he left it to them [as an inheritance] so long as the misappropriated article is in existence they will be liable, but as soon as the misappropriated article is no more intact they will be exempt. But if their father left them property constituting [legal] security they would be liable to pay.

The Master stated: ‘As soon as the misappropriated article is no more intact they would be exempt.’ Should we not say that this is a contradiction to the view of R. Hisda?[17] — R. Hisda could

say to you that the ruling [here] applies subsequent to Renunciation.[18]

The Master said: 'So long as the misappropriated article is in existence they will be liable to pay.' Should we not say that this is a contradiction to the view of Rami b. Hama?[19] — But Rami b. Hama could say to you that this teaching

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(1) I.e., the one who robbed him.

(2) I.e., the one who later on consumed the article.

(3) V. J. Ter. VII, 3.

(4) I.e., the foodstuff was consumed after the proprietor had resigned himself to the loss of it completely.

(5) Maintaining that if after renunciation the robber died, the misappropriated article could rightly remain with the heirs, just as with purchasers under similar circumstances; cf. supra p. 393, n. 5; v. also B.B. 44a.

(6) The article could therefore not rightly remain with the heirs though it would have remained with a purchaser.

(7) But if still intact it would go back to the proprietor.

(8) Now assumed to denote garments and similar conspicuous articles, as would be the case with real property.

(9) For the sake of honouring their father.

(10) Which states the law in the case of inconspicuous articles such as food and the like.

(11) And the heirs seem nevertheless to have the right to retain it.

(12) I.e., realty.

(13) For the father's realty became legally mortgaged for the liability arising out of the robbery he committed.

(14) Infra 113a.

(15) But in the case of inconspicuous things such as food and the like, the heirs would be entitled to retain them.

(16) V. B.M. 62b.

(17) According to whom the person who consumed the misappropriated article could also be called upon to pay.

(18) I.e., the foodstuff was consumed after the proprietor had resigned himself to the loss of it completely.

(19) Maintaining that if after Renunciation the robber died, the misappropriated article could rightly remain with the heirs, just as with purchasers under similar circumstances; cf. supra p. 652; v. also B.B. 44a.

applies prior to Renunciation.[1]

R. Adda b. Ahabah read the statement of Rami b. Hama with reference to the following [teaching]:[2] 'If their father left them money acquired from usury they would not have to restore it even though they [definitely] know that it came from usury. [And it was in connection with this that] Rami b. Hama said that this proves that the possession of an heir is on the same footing as the possession of a purchaser,[3] whereas Raba said: I can still maintain that the possession of an heir is not on the same footing as the possession of a purchaser, for here there is a special reason, as Scripture states: Take thou no usury of him or increase but fear thy God that thy brother may live with thee[4] [as much as to say.] 'Restore it to him so that he may live with thee.' Now, it is the man himself who is thus commanded[5] by the Divine Law, whereas his son is not commanded[5] by the Divine Law. Those who attach the argument[6] to the Baraitha[7] would certainly connect it also with the ruling of our Mishnah,[8] but those who attach to our Mishnah might maintain that as regards the Baraitha[9] Rami b. Hama expounds it in the same way as Raba.[10]

Our Rabbis taught: If one misappropriated [foodstuff] and fed his children, they would not be liable to repay. If, however, he left it [intact] to them, then if they are adults they would be liable to pay, but if minors they would be exempt. But if the adults pleaded: 'We have no knowledge of the accounts which our father kept with you.' they also would be exempt. But how could they become exempt merely because they plead.'We have no knowledge of the accounts which our father kept with you'?[11] Said Raba: What is meant is this, 'If the adults pleaded: "We know quite well the accounts which our father kept with you and are certain that there was no balance in your favour"

they also would be exempt.'Another [Baraitha] taught: If one misappropriated [foodstuff] and fed his children, they would not be liable to repay. If, however, he left it [intact] to them and they consumed it, whether they were adults or minors, they would be liable. But why should minors be liable? They are surely in no worse a case than if they had wilfully done damage?[12] — Said R. Papa: What is meant is this: If, however he left it [intact] before them and they had not yet consumed it, whether they were adults or minors, they would be liable.[13]

Raba said:[14] If their father left them a cow which was borrowed by him, they may use it until the expiration of the period for which it was borrowed, though if it [meanwhile] died they would not be liable for the accident.[15] If they were under the impression that it was the property of their father, and so slaughtered it and consumed it, they would have to pay for the value of meat at the cheapest price.[16] If their father left them property that forms a [legal] security, they would be liable to pay. Some connect this [last ruling] with the commencing clause,[17] but others connect it with the concluding clause.[18] Those who connect it with the commencing clause[17] would certainly apply it to the concluding clause[19] and thus differ from R. Papa.[20] whereas those who connect it with the concluding clause[21] would not apply it in the case of the commencing clause,[22] and so would fall in with the view of R. Papa.[20] for R. Papa stated:[23] If one had a cow that he had stolen and slaughtered it on the Sabbath,[24] he would be liable,[25] for he had already become liable for the theft[26] prior to his having committed the sin of violating the Sabbath[27] but if he had a cow that was borrowed and slaughtered it on the Sabbath, he would be exempt,[28] for in this case the crime of [violating the] Sabbath and the crime of theft were committed simultaneously.[29]

Our Rabbis taught: He shall restore the misappropriated article which he took violently away.[30] What is the point of the words 'which he took violently away'?[31] Restoration should be made so long as it is intact as it was at the time when he took it violently away. Hence it was laid down: If one misappropriated [foodstuff] and fed his children they would not be liable to repay.[32] If, however, he left it to them [intact], whether they were adults or minors, they would be liable; Symmachus, however, was quoted as having ruled that [only] adults would be liable but minors would be exempt. The son[33] of R. Jeremiah's father-in-law [once] bolted the door in the face of R. Jeremiah.[34] The latter thereupon came to complain about this to R. Abin,[35] who however said to him: 'Was he[36] not merely asserting his right to his own?[37] , But R. Jeremiah said to him: 'I can bring witnesses to testify that I took possession of the premises during the lifetime of the father.'[38] To which the other[39] replied: 'Can the evidence of witnesses be accepted

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(1) For the mere transfer of possession, if the owner has not yet given up hope, is surely of no avail.

(2) Tosef. B.M. V, 8; ibid. 62a and supra 94b.

(3) And since there was here a change of possession the heirs are under no liability.

(4) Lev. XXV, 36.

(5) To make restoration.

(6) Between Rami b. Hamah and Raba.

(7) Dealing with usury.

(8) Dealing with robbery where there is no apparent reason for the exemption except the view of Rami b. Hama.

(9) Dealing with usury.

(10) I.e., on the strength of the inference from Lev. XXV, 36.

(11) For since they know of the robbery and the liability is definite, how could they be released by a plea of uncertainty as to the payment; cf. Rashi a.l. but also B.K. X, 7.

(12) In which case they are exempt; cf. supra 87a.

(13) [Since it is in intact it is considered to be then in the possession of the owner.]

(14) Cf. Keth. 34b.

(15) As the liabilities of the contract do not pass to them at least so long as they have not started using it; v. however H.M. 341 where no distinction is made.

(16) Which is generally estimated to be two-thirds of the ordinary price; cf. B.B. 146b; v. also supra p. 98.

(17) Dealing with the case where the cow died of itself.
(18) Stating the law where it was slaughtered and consumed by them.
(19) As there is certainly more liability where they slaughtered the cow than where it died of itself.
(20) Whose ruling is going to be stated soon.
(21) V. p. 655, n. 8.
(22) V. p. 655. n. 7.
(23) Cf. Keth. 34b.
(24) In violation of the Sabbath and thus became subject to capital punishment; in accordance with Ex. XXXI, 14-15; v. also supra p. 408
(25) For fivefold payment, as prescribed in Ex. XXI, 37.
(26) So far as double payment is concerned, in accordance with ibid, XXII, 3.
(27) And since he had already become liable for double payment at the time of the theft, the additional threefold payment which is purely of the nature of a fine is according to this view not affected by the fact that at the time of the slaughter he was committing a capital offence, as also explained in Keth. 34b.
(28) From civil liability.
(29) I.e., at the time of the slaughter when he had to become liable also for the Principal which is a purely civil obligation and which must therefore be merged in the criminal charge; v. also supra p. 407.
(30) Lev. V, 23.
(31) Is this not redundant?
(32) For the foodstuff was no longer intact.
(33) Who was a minor.
(34) Who was desirous of taking possession of premises that belonged to his father-in-law.
(35) MS. M. 'R. Abba'.
(36) I.e., the son of the father-in-law.
(37) In accordance with Num. XXVII, 8.
(38) Who disposed of them to me; cf. B.B. III, 3.
(39) I.e., R. Abin or R. Abba.

Talmud - Mas. Baba Kama 112b

where the other party is not present?'[1] And why not? Was it not stated: 'Whether adults or minors they would be liable'?[2] — The other rejoined: 'Is not the divergent view of Symmachus[3] under your nose?'[4] He[5] retorted: 'Has the whole world made up its mind[6] to adopt the view of Symmachus just in order to deprive me of my property? Meanwhile the matter was referred from one to another till it came to the notice of R. Abbahu[7] who said to them: Have you not heard of what R. Joseph b. Hama reported in the name of Oshaia? For R. Joseph b. Mama said that R. Oshaia stated: If a minor collected his slaves and took possession of another person's field claiming that it was his, we do not say, Let us wait till he come of age, but we wrest it from him forthwith and when he comes of age he can bring forward witnesses [to support his allegation] and then we will consider the matter? — But what comparison is there? In that case we are entitled to take it away from him because he had no presumptive title to it from his father, but in a case where he has such a presumptive title from his father, this should surely not be so.

R. Ashi[8] said that R. Shabbathai stated: [Evidence of] witnesses may be accepted even though the other party to the case is not present. Thereupon R. Johanan remarked in surprise:[9] Is it possible to accept evidence of witnesses if the other party is not present? R. Jose b. Hanina accepted from him the ruling [to apply] in the case where e.g., [either] he[10] was [dangerously] ill, or the witnesses were [dangerously] ill, or where the witnesses were intending to go abroad, and[11] the party in question was sent for but did not appear.

Rab Judah said that Samuel stated that [evidence of] witnesses may be accepted even if the other party is not present. Mar Ukba, however, said: It was explained to me in so many words from

Samuel that this is so only where e.g., the case has already been opened [in the Court] and the party in question was sent for but did not appear, whereas if the case has not yet been opened [in the Court] he might plead: 'I prefer to go to the High Court of Law'.[12] But if so even after the case had already been opened why should he similarly not plead: 'l prefer to go to the High Court of Law'? — Said Rabina: [This plea could not be put forward where] e.g., the local Court is holding a writ [of mandamus] issued by the High Court of Law.

Rab said: A document can be authenticated[13] even not in the presence of the other party [to the suit], whereas R. Johanan said that a document cannot be authenticated in the absence of the other party to the suit. R. Shesheth said to R. Joseph b. Abbahu: I will explain to you the reason of R. Johanan. Scripture says: And it hath been testified to its owner and he hath not kept him in;[14] the Torah thus lays down that the owner of the ox has to appear and stand by his ox [when testimony has to be borne against it]. But Raba said: The law is that a document may be authenticated even not in the presence of the other party; and even if he protests aloud before us [that the document is a forgery]. If, however, he says, 'Give me time till I can bring witnesses, and I will invalidate the document', we have to give him time.[15] If he appears [with witnesses] well and good, but if he does not appear we wait again over the following Monday and Thursday and Monday.[16] If he still does not appear we write a Pethiha[17] out against him to take effect after ninety days. For the first thirty days we do not take possession of his property as we say that he is busy trying to borrow money; during the next thirty we similarly do not take possession of his property as we say perhaps he was unable to raise a loan and is trying to sell his property; during the last thirty days we similarly cannot take possession of his property as we still say that the purchaser[18] himself is busy trying to raise the money. It is only if after all this he still does not appear that we write an adrakta[19] on his property. All this, however, is only if he has pleaded: 'I will come [and defend]', whereas if he said: 'I will not appear at all' we have to write the adrakta forthwith; again these rulings apply only in the case of a loan, whereas in the case of a deposit we have to write the adrakta forthwith.[20] An adrakta can be attached only to immovables but not to movables, lest the creditor should meanwhile carry off the movables and consume them so that should the debtor subsequently appear and bring evidence which invalidates the document, he would find nothing from which to recover payment. But if the creditor is in possession of immovables we may write an adrakta even upon movables.[21] This, however, is not correct; we do not write an adrakta upon movables even though the creditor possesses immovables, since there is a possibility that his property may meanwhile become depreciated in value.[22] Whenever we write an adrakta we notify this to the debtor, provided he resides nearby,[23] but if he resides at a distance this is not done. Again, even where he resides far away if he has relatives nearby or if there are caravans which take that route, we should have to wait another twelve months until the caravan is able to go there and come back, as Rabina waited in the case of Mar Aha twelve months until a caravan was able to go to Be-Huzae[24] and come back. This, however, is no proof for in that case[25] the creditor was a violent man, so that should the adrakta have come into his hand it would never have been possible to get anything back from him, whereas in ordinary cases[26] we need only wait for the usher [of the Court] to go on the third day[27] of the week and come back on the fourth day of the week so that on the fifth day of the week he himself can appear in the Court of Law. Rabina said: The usher of the Court of Law[28] is as credible[29] as two witnesses; this however applies only to the imposition of Shamta,[30] but in the case of Pethiha,[31] seeing that he[32] may be involved in expense through having to pay for the scribe,[33] this would not be so.[34]

Rabina again said: We may convey a legal summons[35] through the mouth of a woman or through the mouth of neighbours; this rule, however, holds good only where the party was at that time not in town,

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(1) And a minor is considered in law as absent to all intents and purposes. For a different description of the case cf. J. Sanh. III, 9.

(2) To restore misappropriated articles inherited by them to the legitimate proprietor.
(3) Who releases the minor heirs.
(4) Lit., 'at your side'.
(5) I.e., R. Jeremiah.
(6) Lit., 'doubled itself'.
(7) Who was the special master of R. Jeremiah, cf. B.B. 140a and Shebu. 37b; v. also B.M. 16b where R. Abbahu called him 'Jeremiah, my son.'
(8) According to R. Isaiah Berlin, this must have been an earlier R. Ashi since R. Johanan refers to this statement, but, as becomes evident from J. Sanh., III. 9, the authority here mentioned was either R. Jose or more correctly R. Assi. A similar confusion is found in Ta'an. 14a. Bek. 25a a.e.
(9) Cf. supra 76b.
(10) I.e., the plaintiff; cf. H.M. 28. 16.
(11) Whether 'and' or 'or' should be read here, cf. Tosaf. a.l. and on B.K. 39a; the text in J. Sanh. III. 9, however, confirms the former reading.
(12) In the Land of Israel; cf. supra p. 67 and Sanh. 31b.
(13) Either by taking oral evidence or by collating the signatures; cf. Keth. II. 3-4.
(14) Ex. XXI, 29.
(15) As a rule for thirty days; cf. B.M. 118a.
(16) I.e., three sittings of the Court; cf. supra p. 466.
(17) I.e., a warrant, containing also a writ of anathema. It was, besides, the opening of preliminary legal proceedings.
(18) Who might perhaps have bought some of his property.
(19) Lit. 'tracing and authorisation', i.e., a legal order to trace the debtor's property for the purpose of having it seized and assessed to the creditor for his debt; v. B.M. (Sonc. ed.) p. 95. n. 8.
(20) For the bailee has no right to detain the deposit for any period of time whatsoever.
(21) For the immovable possessions of the creditor safeguard the repayment to the debtor, should occasion arise.
(22) And would not suffice to meet the repayment.
(23) Within ten parasangs i.e. forty mil, the walking distance of one day, as in M.K. 21b; see Tur, H.M. 98, 9; cf. however Maim. Yad, Malweh we-Loweh, XXII, 4.
(24) [The modern Khuzistan, S.W. persia. Obermeyer, op. cit. p. 200 points out that the distance between Matha Mehasia (Sura) the seat of Rabina's court, and Khuzistan could be easily covered by a caravan within a three weeks' journey, and that the twelve months allowed by Rabina was probably due to some serious obstruction that impeded progress along the caravan route.]
(25) Dealt with by Rabina.
(26) Lit., 'here'.
(27) So Tur. loc. cit , but Maim. loc. cit. reads 'the second day'.
(28) Lit., 'of our Rabbis'.
(29) When stating that the party refuses to appear before the Court.
(30) I.e., oral ban.
(31) V. supra p. 659, n. 2.
(32) [The recalcitrant litigant, when he wishes to have the ban lifted.]
(33) [For drafting the writ of anathema.]
(34) For the usher would then have to corroborate his statements by some further evidence.
(35) Lit., 'give a fixed date'.

Talmud - Mas. Baba Kama 113a

but if he was then in town this would not be so, as there is a possibility that they[1] might not transmit the summons to him, thinking that the usher of the Court of Law will himself surely find him and deliver it to him. Again, we do not apply this rule except where the party would not have to pass by the door of the Court of Law, but if he would have to pass by the door of the Court of Law this would not be so, as they[2] might say that at the Court of Law they will surely find him first and deliver him the summons. Again, we do not rule thus except where the party was to come home on

the same day, but if he had not to come home on the same day this would not be so, for we might say they would surely forget it altogether.

Raba stated: Where a Pethiha was written upon a defaulter for not having appeared before the court,it will not be destroyed so long as he does not [actually] appear before the court.[3] [So also] if it was for not having obeyed the law, it will not be destroyed until he [actually] obeys the law;[3] this however is not correct: as soon as he declares his intention to obey, we have to destroy the Pethiha.

R. Hisda said: [In a legal summons] we cite the man to appear on Monday, [then] on Thursday and [then] on the next Monday, [i.e.] we fix one date and then another date after one more date, and on the morrow [of the last day] we write the Pethiha.

R. Ass[4] happened to be at R. Kahana's where he noticed that a certain woman had been summoned to appear before the court on the previous evening, [and as she failed to appear] a Pethiha was already written against her on the following morning. He thereupon said to R. Kahana: Does the Master not accept the view expressed by R. Hisda that [in a legal summons] we cite the defendant to appear on Monday, [then] on Thursday and [then] on the next Monday? He replied: This applies only to a man who might be unavoidably prevented, through being out of town, but a woman, being [always] in town and still failing to appear is considered contumacious [after the first act of disobedience].

Rab Judah said: We never cite a defendant to appear either during Nisan,[5] or during Tishri,[5] or on the eve of a holy day or on the eve of a Sabbath. We can, however, during Nisan cite him to appear after Nisan, and so also during Tishri we may cite him to appear after Tishri, but on the eve of the Sabbath we do not cite him to appear after Sabbath, the reason being that he might be busy[6] with preparations for Sabbath.[7] R. Nahman said: We never cite the participants of the Kallah[8] during the period of the Kallah or the participants of the Festival sessions[9] during the Festive Season.[10] When plaintiffs came before R. Nahman [and demanded summonses to be made out during this season] he used to say to them: Have I assembled them for your sake? But now that there are impostors,[11] there is a risk [that they purposely came to the assemblies to escape justice].[12]

BUT IF THERE WAS ANYTHING [LEFT] WHICH COULD SERVE AS SECURITY, THEY WOULD BE LIABLE TO PAY. Rabbi taught R. Simeon his son: The words ‘ANYTHING WHICH COULD SERVE AS SECURITY’ should not [be taken literally to] mean actual security, for even if he left a cow to plough with or an ass to drive after, they would be liable to restore it to save the good name of their father. R. Kahana thereupon asked Rab: What would be the law in the case of a bed upon which they sit, or a table at which they eat?[13] — He replied[14] [with the verse], Give instructions to a wise man and he will yet be wiser.[15]

MISHNAH. NO MONEY MAY BE TAKEN IN CHANGE EITHER FROM THE BOX OF THE CUSTOMS-COLLECTORS[16] OR FROM THE PURSE OF THE TAX-COLLECTORS,[16] NOR MAY CHARITY BE TAKEN FROM THEM, THOUGH IT MAY BE TAKEN FROM THEIR [OWN COINS WHICH THEY HAVE AT] HOME OR IN THE MARKET PLACE. GEMARA. A Tanna taught: When he gives him[17] a denar he may receive back the balance [due to him].[18]

In the case of customs-collectors, why should the dictum of Samuel not apply that the law of the State is law?[19] — R. Hanina b. Kahana said that Samuel stated that a customs-collector who is bound by no limit [is surely not acting lawfully]. At the School of R. Jannai it was stated that we are dealing here with a customs-collector who acts on his own authority.[20] Some read these statements with reference to [the following]: No man may wear a garment in which wool and linen are mixed[21] even over ten other garments and even for the purpose of escaping the customs.[22] [And it was thereupon asked], Does not this Mishnaic ruling conflict with the view of R. Akiba, as taught: It is an

[unqualified] transgression to elude the customs;[23] R. Simeon however, said in the name of R. Akiba that customs may [sometimes] be eluded[24] [by putting on garments of linen and wool]. Now, regarding garments of linen and wool I can very well explain their difference[25] to consists in this, that while one master[26] maintained that an act done unintentionally could not be prohibited,[27] the other master maintained that an act done unintentionally should also be prohibited;[28] but is it not a definite transgression to elude the customs? Did Samuel not state that the law of the State is law? — R. Hanina b. Kahana said that Samuel stated that a customs-collector who is bound by no limit [is surely not acting lawfully]. At the School of R. Jannai it was stated that we were dealing here with a customs-collector who acted on his own authority.[29]

Still others read these statements with reference to the following: To [escape] murderers or robbers or customs-collectors one may confirm by a vow a statement that [e.g.] the grain is terumah[30] or belongs to the Royal Court, though it was not terumah and though it did not belong to the Royal Court.[31] But [why should] to customs-collectors [not] apply the statement made by Samuel that the law of the State has the force of law? R. Hanina b. Kahana said that a customs-collector who is bound by no limit [is surely not acting lawfully]. At the school of R. Jannai it was stated that we were dealing here with a customs-collector who acted on his own authority.[32] But R. Ashi said: We suppose the customs-collector[33] here to be a heathen publican[34] as it was taught: 'Where a suit arises between an Israelite and a heathen, if you can justify the former according to the laws of Israel, justify him and say: 'This is our law'; so also if you can justify him by the laws of the heathens justify him and say [to the other party:] 'This is your law'; but if this can not be done, we use subterfuges to circumvent him.[34] This is the view of R. Ishmael, but R. Akiba said that we should not attempt to circumvent him on account of the sanctification of the Name. Now according to R. Akiba the whole reason [appears to be,] because of the sanctification of the Name, but were there no infringement of the sanctification of the Name, we could circumvent him! Is then the robbery of a heathen permissible?[35] Has it not been taught[36] that R. Simeon stated that the following matter was expounded by R. Akiba when he arrived from Zifirin:[37] 'Whence can we learn that the robbery of a heathen is forbidden? From the significant words: After that he is sold[38] he may be redeemed again,[39]

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(1) I.e., the women or the neighbours.

(2) V. p. 660, n. 13.

(3) A mere promise to appear does not suffice.

(4) More correctly 'R. Ashi'.

(5) On account of urgent agricultural work; cf. Ber. 35b.

(6) And take no notice of the summons.

(7) Cf. Shab. 119a.

(8) I.e., the Assembly of Babylonian scholars in the months of Elul and Adar; v. B.M. (Sonc. ed.) p. 560, n. 6 and B.B. (Sonc. ed.) p. 60, n. 7.

(9) For otherwise they may abstain from coming to the Assemblies.

(10) Which commences thirty days before the festival; v. Pes. 6a.

(11) Abusing this privilege.

(12) And we therefore issue a summons.

(13) Which is not kept so much in the eye of the public as is the case with the cow or the ass.

(14) The law is exactly the same.

(15) Prov. IX, 9.

(16) As these are considered to act ultra vires and thus unlawfully.

(17) I.e., a customs-collector or a tax-collector.

(18) For otherwise he would lose it altogether.

(19) V. B.B. (Sonc. ed.) p. 222, n. 6. Why then are customs collectors considered as acting unlawfully.

(20) Without the authority of the ruling power.

(21) Cf. Lev. XIX, 19.

(22) Kil. IX, 2.
(23) Cf. Sem. 11, 9 and Tosef, B.K. X, 8.
(24) Where the collectors are acting unlawfully, as will soon be explained.
(25) I.e., the anonymous Tanna and R. Simeon in the name of R. Akiba.
(26) R. Simeon in the name of R. Akiba; cf. Tos. Zeb. 91b.
(27) As also maintained by R. Simeon in the case of other transgressions; v. Shab. 41b, Keth. 5b a.e.
(28) As indeed maintained by R. Judah in Shab. 41b a.e.
(29) Without the authority of the ruling power.
(30) V. Glos.
(31) Ned. III, 4.
(32) V. p. 663, n. 13.
(33) In all these cases referred to above.
(34) V. supra, p. 212, n. 6.
(35) [I.e., in withholding anything to which he is entitled; v. Sanh. (Sonc. ed.) p. 388, n. 6. Graetz MGWJ, 1881, p. 495. shows clearly that the whole controversy whether robbery of a heathen was permissible was directed against the iniquitous Fiscus Judaicus imposed by Vespasian and exacted with much rigor by Domitian.]
(36) Cf. Sifra on Lev. XXV, 48.
(37) Prob. the headland of Cyprus; Zephyrium (Jast.). [Greatz, Geschichte, IV, p. 135. connects R. Akiba's visit to Zifirin with his extensive travels for the purpose of rousing the Jews against the Roman tyranny.]
(38) I.e., an Israelite to a Canaanite.
(39) Lev. XXV, 48.

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which implies that he could not withdraw and leave him [without paying the redemption money]. You might then say that he[1] may demand an exorbitant sum for him? No, since it says: And he shall reckon with him that bought him[2] to emphasise that he must be very precise in making the valuation with him who had bought him.'[3] — Said R. Joseph: There is no difficulty, here [where the exception is made it refers] only to a heathen, whereas there [is indeed no exception] in the case of a Ger Toshab.[4] But Abaye said to him: Are the two of them[5] not mentioned next to one another [so that neither forms an exception in the law],[6] as it says: 'Thy brother . . . sell himself'[7] [implying,] not to you but to a stranger, as it says: 'Unto the stranger'; again, not to a Ger zedek[8] but to a mere Ger Toshab,[4] as it says 'unto a stranger-settler',[9] 'the family of a stranger': this denotes one who worships idols, and when it says or to an 'Eker'[10] it means that the person in question sold himself for idolatrous practices![11] — Raba therefore said: There is no difficulty, as regarding robbery there is indeed no exception, whereas regarding the cancellation of debts [a heathen might not have been included]. Abaye rejoined to him: Is not the purchase of a Hebrew slave[12] merely the cancellation of a debt, [and yet no distinction whatsoever is made as to the person of the master]? — Raba adheres to his own view as [elsewhere] stated by Raba, that a Hebrew slave is actually owned in his body by the master.[13]

R. Bibi b. Giddal said that R. Simeon the pious stated: The robbery of a heathen is prohibited,[14] though an article lost by him is permissible. His robbery is prohibited, for R. Huna said: Whence do we learn that the robbery of a heathen is prohibited? Because it says: 'And thou shalt consume all the peoples that the Lord thy God shall deliver unto thee';[15] only in the time [of war] when they were delivered in thy hand [as enemies] this is permitted, whereas this is not so in the time [of peace] when they are not delivered in thy hand [as enemies]. His lost article is permissible,[16] for R. Hama b. Guria said that Rab stated: Whence can we learn that the lost article of a heathen is permissible?[17] Because it says: And with all lost thing of thy brother's:[18] it is to your brother that you make restoration, but you need not make restoration to a heathen. But why not say that this applies only where the lost article has not yet come into the possession of the finder, in which case he is under no obligation to look round for it, whereas if it had already entered his possession, why not say that he

should return it. — Said Rabina:[19] And thou hast found it[18] surely implies that the lost article has already come into his[20] possession.

It was taught: R. phinehas b. Yair said that where there was a danger of causing a profanation of the Name,[21] even the retaining of a lost article of a heathen is a crime. Samuel said: It is permissible, however, to benefit by his mistake as in the case when Samuel once bought of a heathen a golden bowl under the assumption of it being of copper[22] for four zuz, and also left him minus one zuz. R. Kahana once bought of a heathen a hundred and twenty barrels which were supposed to be a hundred while he similarly left him minus one zuz[23] and said to him: 'See that I am relying upon you.'[24] Rabina together with a heathen bought a palm-tree to chop up [and divide]. He thereupon said to his attendant: Quick, bring to me the parts near to the roots, for the heathen is interested only in the number [but not in the quality].[25] R. Ashi was once walking on the road when he noticed branches of vines outside[26] a vineyard upon which ripe clusters of grapes were hanging. He said to his attendant: 'Go and see, if they belong to a heathen bring them to me,[27] but if to an Israelite do not bring them to me.' The heathen happened to be then sitting in the vineyard and thus overheard this conversation, so he said to him: 'If of a heathen would they be permitted?' — He replied: 'A heathen is usually prepared to [dispose of his grapes and] accept payment, whereas an Israelite is generally not prepared to [do so and] accept payment.

The above text [stated], 'Samuel said: The law of the State is law.' Said Raba: You can prove this from the fact that the authorities fell palm-trees [without the consent of the owners] and construct bridges [with them] and we nevertheless make use of them by passing over them.[28] But Abaye said to him: This is so perhaps because the proprietors have meanwhile abandoned their right in them.[29] He, however, said to him: If the rulings of the State had not the force of law, why should[30] the proprietors abandon their right? Still, as the officers do not fully carry out the instructions of the ruler,[31] since the ruler orders them to go and fell the trees from each valley [in equal proportion], and they come and fell them from one particular valley, [why then do we make use of the bridges which are thus constructed from misappropriated timber?] — The agent of the ruler is like the ruler himself[32] and can not be troubled [to arrange the felling in equal proportion], and it is the proprietors who bring this loss on themselves, since it was for them to have obtained contributions from the owners of all the valleys and handed over [the] money [to defray the public expenditure].

Raba said: He who is found in the barn must pay the king's share [for all the grain in the field].[33] This statement applies only to a partner, whereas an aris[34] has to pay no more than for the portion of his tenancy.[35]

Raba further said: One citizen may be pledged for another citizen [of the same town], provided however the arrears are due for follerar[36] and karga[37] of the current year, whereas if they are due for the year that has already passed [it would not be so], for since the king has already been pacified, the matter will be allowed to slide. Raba further said: In the case of those [heathens] who manure fields [for pay] and reside within the Sabbath limits[38] [round the town], it is prohibited to purchase any animal from them, the reason being that an animal from the town might have been mixed up with theirs:[39] but if they reside outside the Sabbath limits it is permitted to buy animals from them.[40] Rabina however said: If proprietors were pursuing them [for the restoration of misappropriated animals] it would be prohibited [to purchase an animal from them] even [were they to reside] outside the Sabbath limits.

Raba proclaimed or as others say, R. Huna: [Let it be known to those] who go up to the Land of Israel and who come down from Babylonia that if a son of Israel knows some evidence for the benefit of a heathen, and without being called upon [by him] goes into a heathen court of law and bears testimony against a fellow Israelite he deserves to have a Shamta[41] pronounced against him, the reason being that heathens adjudicate the payment of money

(1) The heathen master.
(2) Ibid, 50.
(3) Now does this not conclusively prove that the robbery of whomsoever, without any exception, is a crime?
(4) גר תושב , Lit., 'a stranger-settler,' a resident alien of a different race and of a different religion, since he respects the covenant of the law made by God with all the children of Noah, i.e., the Seven Commandments forming the elementary principles of civilised humanity, he is a citizen enjoying all the rights and privileges of civil law.
(5) I.e., a Ger Toshab and a Canaanite.
(6) Requiring a very accurate reckoning to repay the purchaser whether he was a Ger Toshab or a Canaanite.
(7) Lev. XXV, 47.
(8) Lit., 'a stranger (who embraced the faith) of righteousness, 1.e., a proselyte for the sake of true religion.
(9) E.V. 'Unto the stranger or sojourner.'
(10) E.V. 'or to the stock of', but taken here literally to denote work of destruction and uprooting; cf. Gen. XLIX, 6; Josh. XI, 6 and 9 and Eccl. III, 2.
(11) V. B.M. (Sonc. ed.) p. 71a and notes. Now, does this not prove that nobody whatsoever, whether a resident alien or a heathen, is excepted from being protected by the law of robbery?
(12) Having to pay redemption money, as in Lev. XXV, 50.
(13) Kid. 16a. [To withdraw therefore the slave without payment of redemption money amounts to actual robbery.]
(14) Cf. B.M. 87b and Bk. 13b; v. also Tosef. B.K. X, 8 where it is stated that it is more criminal to rob a Canaanite than to rob an Israelite; cf. P.M. II, 5.
(15) Deut. VII, 16.
(16) I.e., it is not subject to the law of lost property; Deut. XXII, 1-3. V.B.M. (Sonc. ed.) p. 149, n. 6.
(17) Deut. XXII, 1-3.
(18) Ibid. XXII, 3.
(19) B.M. 2a.
(20) I.e., the finder's.
(21) Of Israel and his God; V. The Chief Rabbi's commentary on Lev. XXII, 32.
(22) Cf. however n. 9.
(23) This clause is altogether missing in Alfasi and Asheri.
(24) As to the number of the barrels.
(25) Of the pieces.
(26) According to the reading of MS. M.
(27) Especially since the branches were outside the vineyard and thus probably overhanging a public road; cf. B.B. II, 14.
(28) For if the rulings of the State were not binding by religious law, it would have been a sin to make use of the bridges constructed in such a way.
(29) Cf. supra p. 382.
(30) In accordance with the interpretation of Tosaf. a.l.; v. also supra 148; but according to Rashi read 'What effect could there be even if . . . 'so long as no change in possession followed.
(31) Lit., 'King'.
(32) Cf. Shebu. 47b.
(33) So that the payment exacted is not robbery but in accordance with law; the payer will again be entitled to compel the owners of the other grain to share proportionately the payment he had to make for all of them.
(34) I.e., a farmer-tenant; a field labourer who tills the owner's ground for a certain share in the produce.
(35) But not for the portion of the owner.
(36) ברלא == burla, i.e., a certain Roman land tax adopted by the Persians (fast.).
(37) I.e., capitation tax; the reading of Alfasi is Silo, i.e., fleece.
(38) I.e., two thousand cubits.
(39) And it is unlawful to possess or purchase a misappropriated article even if mixed with many others; cf. Bz. 38b.
(40) For since they are so far away from the town it is not likely that an animal from the town has been mixed up with theirs.
(41) Oral anathema; cf. Glos.

[even] on the evidence of one witness.[1] This holds good if only one witness was concerned but not where there were two. And even to one witness it applies only if he appeared before judges of Magista,[2] but not before the Dawar[3] where the judges similarly impose an oath upon the evidence of a single witness. R. Ashi said: When we were at R. Huna's[4] we raised the question of a prominent man who would be trusted by them as two. [Shall we say that since] money would be adjudicated on his [sole] evidence, he therefore should not bear testimony in their courts, or perhaps since he is a prominent man he can hardly escape their notice and should consequently deliver his evidence? — This question remained undecided.

R. Ashi further said: A son of Israel who sells to a heathen a field bordering on one of a fellow Israelite deserves to have a Shamta pronounced against him. For what reason? If because of the right of [pre-emption enjoyed by] the nearest neighbour to the boundary,[5] did the Master not state[6] that where he buys from a heathen or sells to a heathen the right of [pre-emption enjoyed by] the nearest neighbour to the boundary does not apply?[7] — It must therefore be because the neighbour might say to the vendor: 'You have placed a lion at my border.'[8] He therefore deserves to have a Shamta pronounced against him unless he accepts upon himself the responsibility for any consequent mishap that might result [from the sale]. MISHNAH. IF CUSTOMS-COLLECTORS TOOK AWAY A MAN'S ASS AND GAVE HIM INSTEAD ANOTHER ASS, OR IF BRIGANDS TOOK AWAY HIS GARMENT AND GAVE HIM INSTEAD ANOTHER GARMENT, IT WOULD BELONG TO HIM, FOR THE OWNERS HAVE SURELY GIVEN UP HOPE OF RECOVERING IT.[9] IF ONE RESCUED [ARTICLES] FROM A RIVER OR FROM A MARAUDING BAND OR FROM HIGHWAYMEN, IF THE OWNERS HAVE GIVEN UP HOPE OF THEM, THEY WILL BELONG TO HIM.[10] SO ALSO REGARDING SWARMS OF BEES, IF THE OWNERS HAVE GIVEN UP HOPE OF RECOVERING THEM, THEY WOULD BELONG TO HIM. R. JOHANAN B. BEROKA SAID: EVEN A WOMAN OR A MINOR[11] IS TRUSTED WHEN STATING THAT THIS SWARM STARTED FROM HERE;[12] THE OWNER [OF BEES] IS ALLOWED TO WALK INTO THE FIELD OF HIS NEIGHBOUR FOR THE PURPOSE OF RESCUING HIS SWARM, THOUGH IF HE CAUSES DAMAGE HE WOULD HAVE TO PAY FOR THE AMOUNT OF DAMAGE HE DOES. HE MAY, HOWEVER, NOT CUT OFF HIS NEIGHBOUR'S BOUGH [UPON WHICH HIS BEES HAVE SETTLED] EDEN THOUGH WITH THE INTENTION OF PAYING HIM ITS VALUE: R. ISHMAEL THE SON OF R. JOHANAN B. BEROKA, HOWEVER, SAID THAT HE MAY EVEN CUT OFF HIS NEIGHBOUR'S BOUGH IF HE MEANS TO REPAY HIM THE VALUE.

GEMARA. A Tanna taught: If he was given [anything by customs-collectors] he would have to restore it to the original proprietors. This view thus maintains that Renunciation by itself does not transfer ownership[13] and consequently the misappropriated article has at the very outset come into his possession unlawfully;[14] Some, however, read: 'If he cares to give up [the article given him by the customs-collector], he should restore it to the original proprietors',[15] the reason being that Renunciation by itself transfers ownership,[16] so that it is only when [he[17] made up his mind] saying: 'I do not like to benefit from money which is not [really] mine';[18] he must restore it to the original proprietors.

IT WOULD BELONG TO HIM FOR THE OWNERS HAVE SURELY ABANDONED IT.[19] Said R. Ashi:[20] This Mishnaic ruling applies only where the robber was a heathen,[21] but in the case of a robber who was an Israelite this would not be so, as the proprietor surely thinks: [If not to-day to-morrow] I will take him to law.[22] R. Joseph demurred to this, saying: On the contrary, the reverse is more likely. In the case of heathens who usually administer law forcibly[23] the owner need not give up hope,[24] whereas in the case of an Israelite where the judges merely issue an order to make

restoration [without however employing corporal punishment][25] the owner has surely abandoned any hope of recovery. If therefore a [contrary] statement was ever made it was made only regarding the concluding clause [as follows:] IF ONE RESCUED [ARTICLES] FROM [A RIVER OR FROM] HEATHENS[26] OR FROM ROBBERS, IF THE OWNERS HAVE ABANDONED THEM THEY WILL BELONG TO HIM, Implying that as a rule this would not be so. This implication could, however, not be maintained in the case of heathens who usually administer the law forcibly,[27] whereas in the case of a robber who was an Israelite, since the judges will merely issue an order to make restoration [without however employing corporal punishment] the owner has surely abandoned any hope of recovery.

We learnt elsewhere: In the case of skins belonging to a lay owner, mere mental determination[28] [on the part of the owner] will render them capable of becoming defiled,[29] whereas in the case of those belonging to a tanner no mental determination[28] would render them capable of becoming defiled.[30] Regarding those in possession of a thief mental determination[31] will render them capable of becoming defiled,[32] whereas those in the possession of a robber no mental determination[33] will render them capable of becoming defiled.[34] R. Simeon however, says that the rulings are to be reversed: Regarding those in the possession of a robber mental determination[33] will render them capable of becoming defiled,[35] whereas those in the possession of a thief no mental determinations will render them capable of becoming defiled, as in the last case the owners do not usually abandon hope of finding the thief.[36] Said ‘Ulla: This difference of opinion[37] exists only in average cases, but where Renunciation is definitely known to have taken place opinion is unanimous that Renunciation transfers ownership. Rabbah,[38] however, said: Even where the Renunciation is definitely known to have taken place there is also a difference of opinion. Abaye said to Rabbah:[38] You should not contest the statement of ‘Ulla, for in our Mishnah[39] we learnt in accordance with him: . . . . as the owners do not usually abandon hope of finding the thief. The reason is that usually the owners do not abandon hope of tracing the thief, but where they definitely abandoned hope of doing so, the skins would have become his. He rejoined:[40] We interpret the text in our Mishnah,[to mean][41] ‘For there is no Renunciation of them on the part of the owners.’[42]

We have learnt: IF CUSTOMS-COLLECTORS TOOK AWAY A MAN'S ASS AND GAVE HIM INSTEAD ANOTHER ASS OR IF BRIGANDS TOOK AWAY HIS GARMENT AND GAVE HIM INSTEAD ANOTHER GARMENT, IT WOULD BELONG TO HIM, FOR THE OWNERS HAVE SURELY ABANDONED HOPE OF RECOVERING IT. Now whose view is represented here? If we say, that of the Rabbis[43] , the ruling in the case of robbers[44] raises a difficulty.[45] Again, if that of R. Simeon, the ruling in the case of thieves[46] raises a difficulty![47] The problem, it is true, is easily solved if we accept the view of ‘Ulla who stated that where Renunciation was definitely known to have taken place ownership is transferred; the Mishnaic ruling here would then similarly apply to the case where Renunciation was definitely known to have taken place and would thus be unanimous. But on the view of Rabbah who stated that even where the Renunciation is definitely known to have taken place there is still a difference of opinion,[48] with whose view would the Mishnaic ruling accord? It could neither be with that of the Rabbis nor with that of R. Simeon! — We speak here of an armed highwayman,[49] and the ruling will be in accordance with R. Simeon. But if so, is this case not identical with [that of a customs-collector acting openly like a] ‘robber’?[50] — Yes, but two kinds of robbers[51] are spoken of.

Come and hear: If a thief,[52] a robber, or an annas[53] consecrates a misappropriated article, it is duly consecrated; if he sets aside the portion for the priest's gift,[54] it is genuine terumah; or again if he sets aside the portion for the Levite's gift,[55] the tithe is valid.[56] Now, whose view does this teaching follow? If [we say] that of the Rabbis, the case of robbers creates a difficulty,[57] if that of R. Simeon, the case of the thief creates a difficulty?[58] The problem, it is true, is easily solved if we accept the view of ‘Ulla who stated that where Renunciation was definitely known to have taken place ownership is transferred; the Mishnaic ruling here would then similarly apply to the case where

Renunciation was definitely known to have taken place, and would thus be unanimous. But if we adopt the view of Rabbah who stated that even where the Renunciation is definitely known to have taken place there is still a difference of opinion,[59] with whose view would the Mishnaic ruling accord? It could be neither in accordance with the Rabbis nor in accordance with R. Simeon? — Here too an armed highwayman is meant, and the ruling will be in accordance with R. Simeon. But if so, is this case not identical with that of 'robber'? — Yes, two kinds of robbers are spoken of. Or if you wish I may alternatively say that this teaching is in accordance with Rabbi, as taught: 'Rabbi says: A thief is in this respect [subject to the same law] as a robber', [

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(1) Whereas according to Scripture no less than two witnesses are required; cf. Deut. XIX, 15.

(2) 'Magistratus': v. Targ. II, Esth. IX, 3; also S. Krauss, Lehnworter, II, 322; 'untrained magistrates', Jast. 'a village court', Rashi a.l.

(3) 'The Persian Circuit Court' (Jast.).

(4) R. Kahana's according to MS.M., followed here also by Asheri a.l.

(5) V. B.M. 108a.

(6) Ibid. 108b.

(7) For he who is outside the covenant of the law could not be compelled to abide by its principles.

(8) [It was no uncommon practice for the unscrupulous heathen to interfere with the irrigation on which the life of the neighbouring fields depended and then force the owners to move out and seek their existence elsewhere, v. Funk, Die Juden in Babylonien I, p. 16.]

(9) And as after the Renunciation on the part of the owner there followed a change of possession, ownership was transferred to the possessor.

(10) Cf. B.M. 27a.

(11) Whose evidence is generally not accepted; v. Shebu. IV, 1 and supra p. 507.

(12) And thus establish the ownership of the swarm; for the reason see the discussion infra in the Gemara.

(13) As indeed maintained by R. Joseph supra p. 383, or even by Rabbah according to Tosaf. on B.K. 67b.

(14) According to Tosaf. ibid, the true owner abandoned the article only after it changed hands from the customs-collector to the new possessor; the Mishnaic ruling, however, deals with another case as explained supra p. 670, n. 1.

(15) [MSM.: 'to the customs-collector' (since he acquired it by Renunciation)].

(16) V. supra p. 382 and Tosaf. on 67b.

(17) Being scrupulous.

(18) Though strict law could not enforce it in this case.

(19) And as after the Renunciation on the part of the owner there followed a change of possession, ownership was transferred to the possessor.

(20) 'R. Assi' according to Asheri; cf. D.S. and supra p. 657, n. 11.

(21) In which case the person robbed might be afraid to force him to pay.

(22) And thus never gives up hope of recovering the misappropriated article.

(23) Lit., 'haughtily' (Rashi). Krauss, Lehnworter: lit., 'Gothism', referring to the Goths in the Roman army.

(24) For the robber will be forced by the heathen judges to make restoration even upon the strength of circumstantial evidence, however slender.

(25) But on the other hand take all circumstantial evidence as baseless suggestions and thus require sound testimony to be borne by truthful witnesses.

(26) Who are designated in the Mishnah a troop of invaders. [MS.M. however reads here too MARAUDING BAND.]

(27) V. p. 671, n. 10.

(28) To use them as they are.

(29) As his mental determination is final, and the skins could thus be considered as fully finished articles and thus subject to the law of defilement.

(30) As a tanner usually prepares his skins for the public, and it is for the buyer to decide what article he is going to make out of them.

(31) On the part of the thief to use them as they are.

(32) For the skins became the property of the thief, as Renunciation usually follows theft on account of the fact that the

owner does not know against whom to bring an action.
(33) On the part of the robber to use them as they are.
(34) For the skins did not become the property of the robber as robbery does not usually cause Renunciation, since the owner knows against whom to bring an action.
(35) For the skins became the property of the robber as the owner has surely renounced every hope of recovering them for fear of the robber who acted openly.
(36) V. Kel. XXVI, 8 and supra p. 384.
(37) Between R. Simeon and the other Rabbis.
(38) Var. lec. 'Raba'.
(39) Kel. XXVI, 8 and supra p. 384.
(40) I.e., Rabbah to Abaye.
(41) Cf. Tosaf. s.v. לפי
(42) Since the skins were taken away stealthily the owner will never in reality give up hope of tracing the thief and recovering them, even though they may express their despair of their return.
(43) Who oppose R. Simeon.
(44) I.e., the customs-collector who acts openly.
(45) For according to them there is no Renunciation in the case of a robber.
(46) I.e., the brigand.
(47) For according to him there is no Renunciation in the case of a thief.
(48) Between R. Simeon and the other Rabbis.
(49) Acting openly and not stealthily; cf. supra 57a.
(50) Why then repeat the ruling in two identical cases?
(51) I.e., customs-collectors and brigands.
(52) V. supra p. 386.
(53) Lit., 'a violent man'; the same as the hamsan, who as explained supra p. 361, is prepared to pay for the objects which he misappropriates.
(54) Cf. Num. XVIII, 11-12.
(55) Cf. Num. ibid. 21.
(56) For it is assumed that the proprietors are already resigned to the loss of the misappropriated articles, so that ownership has changed hands, v. supra 67a.
(57) For according to them there is no Renunciation in the case of a robber.
(58) For according to him there is no Renunciation in the case of a thief.
(59) Between R. Simeon and the other Rabbis.

Talmud - Mas. Baba Kama 114b

and it is a known fact that it was to the law applicable to a robber according to R. Simeon[1] [to which a thief was made subject in this statement of Rabbi].[2]

The above text [states]: 'Rabbi says: I maintain that a thief is [in this respect subject to the same law] as a robber.' The question was asked: Did he mean to [make him subject to the law applicable to a] robber as laid down by the Rabbis,[3] in which case ownership is not transferred, or did he perhaps mean to [make him subject to the law applicable to a] robber as defined by R. Simeon,[1] in which case the ownership is transferred? Come and hear: IF CUSTOMS-COLLECTORS TOOK AWAY A MAN'S ASS AND GAVE HIM INSTEAD ANOTHER ASS, OR IF BRIGANDS TOOK AWAY HIS GARMENT, IT WOULD BELONG TO HIM, FOR THE OWNERS HAVE SURELY ABANDONED IT. Now, with whose view does this ruling accord? If with that of the Rabbis, the case of the robber[4] raises a difficulty;[5] if with that of R. Simeon, the case of the thief[6] raises a difficulty.[7] The difficulty is easily solved if you say that Rabbi meant [to make the thief subject to the law] applicable to a robber as defined by R. Simeon,[1] in which case ownership is transferred; the ruling in the Mishnah would then be in accordance with Rabbi, as on this account ownership would be transferred. But if you say that he meant [to make him subject] to the law of robber as defined by

the Rabbis,[3] in which case ownership will not be transferred, whom will the Mishnaic ruling[8] follow? It will be In accordance neither with Rabbi nor with R. Simeon nor with the Rabbis? — The robber spoken of here is an armed brigand[9] and the ruling will be in accordance with R. Simeon.[1] But if so, is this case not identical with [that of a customs-collector acting openly like a] 'robber'?[10] — Yes, two kinds of robbers[11] are spoken of.

Come and hear: If a thief, a robber or an annus consecrates a misappropriated article, it is duly consecrated; if he sets aside the portion for the priests' gift, it is genuine terumah; or again, if he sets aside a portion for the Levite's gift, the tithe is valid.[12] Now, with whose view does this teaching accord? If [we say] it is in accordance with the Rabbis, the case of the robber creates a difficulty?[13] If again [we say] it is in accordance with R. Simeon, the case of the thief[14] creates a difficulty.[15] The difficulty, it is true, is easily solved if you say that Rabbi meant [to make the thief subject to the same law] as robber as defined by R. Simeon in which case ownership is transferred; the ruling in this teaching would then be in accordance with Rabbi, as on this account ownership would be transferred. But if you say that he meant [to make him] subject to the law of robber as defined by the [other] Rabbis, in which case ownership will not be transferred, in accordance with whom will be this ruling?[16] — The thief here spoken of is an armed robber[17] and the ruling will thus be in accordance with R. Simeon.[18] But if so, is this case not identical with that of 'robber'?[10] Yes, but two kinds of robbers are spoken of. R. Ashi said to Rabbah: Come and hear that which Rabbi taught to R. Simeon his son: The words 'anything which could serve as security' should not [be taken literally to] mean actual security, for even if he left a cow to plough with or an ass to drive, they would be liable to restore it because of the honour of their father.[19] Now, the reason is to save the name of their father, but if not for the honour of their father it would not be so,[20] thus proving[21] that Rabbi referred in his statement to the law of a robber[22] as defined by R. Simeon. This proves it.

SO ALSO REGARDING SWARMS OF BEES. What is the point [here] of SO ALSO?[23] — It means this: Even regarding swarms of bees where the proprietorship is only of Rabbinic sanction, and therefore[24] you might have thought that since the title to them has only Rabbinic authority behind it,[25] we presume the owner generally to have resigned his right [unless we know definitely to the contrary], we are told that it was only where the proprietors have [explicitly] renounced them that this will be so,[26] but if not, this will not be so.

R. JOHANAN B. BEROKA SAID [THAT] EVEN A WOMAN OR A MINOR IS TRUSTED WHEN STATING THAT THIS SWARM STARTED FROM HERE. Are a woman and a minor competent to give evidence?[27] — Rab Judah said in the name of Samuel: We are dealing here with a case where, e.g., the proprietors were chasing the bees[28] and a woman or a minor speaking in all innocence[29] said that this swarm started from here.

R. Ashi said: Remarks made by a person in the course of speaking in all innocence cannot be taken as evidence, with the exception only of evidence [of the death of a husband] for the release of his wife.[30] Said Rabina to R. Ashi: Is there no other case in which it would be taken as evidence? Surely in the case of a swarm of bees we deal with a remark made in all innocence?[31] The case of a swarm of bees is different, as the ownership of it has only Rabbinic sanction. But does not the same apply to ordinances based on the Written Law?[32] Did not Rab Judah say that Samuel stated[33] that a certain man speaking in all innocence declared, 'I remember that when I was a child I was once hoisted on the shoulders of my father, and taken out of school and stripped of my shirt and immersed in water[34] in order that I might partake of terumah in the evening,'[35] and R. Hanina completed the statement thus: 'And my comrades were kept separate from me[36] and called me, Johanan who partakes of hallah,'[37] and Rabbi raised him to the status of priesthood upon the strength of [this statement of] his own mouth?[38] — This was only for the purpose of eating terumah of mere Rabbinic authority.[39] Still, would this not apply[40] also to [prohibitions based on] the Written Law? Surely when R. Dimi arrived[41] he stated that R. Hana of Kartigna,[42] or, as others said, R. Aha of Kartigna

related a certain case brought before R. Joshua b. Levi, or, as others say, before Rabbi, regarding a certain child speaking in all innocence who said, 'I and my mother were taken captive among heathens; whenever I went out to draw water I was thinking only of my mother, and when I went out to gather wood I was thinking only of my mother.' And Rabbi permitted her to be married to a priest on the strength of [the statement[43] made by] the child![44] — In the case of a woman taken captive the Rabbis were always lenient.[45]

HE MAY HOWEVER NOT CUT OFF HIS NEIGHBOUR'S BOUGH [etc.]. It was taught:[46] R. Ishmael the son of R. Johanan b. Beroka said: It is a stipulation of the Court of Law that the owner of the bees be entitled to come down into his neighbour's field and cut off his bough [upon which his bees have settled], in order to rescue his swarm of bees, while the owner of the bough will be paid the value of his bough out of the other's swarm; It is [similarly] a stipulation of the Court of Law that the owner of the wine pour out the wine [from the flask] in order to save in it the other man's honey,[47] and that he can recover the value of his wine out of the other's honey.[47] It is [again] a stipulation of the Court of Law that [the owner of the wood] should remove his wood [from his ass] and load on it the other man's flax [from the ass that fell dead], and that he can recover the value of his wood out of the other's flax; for it was upon this condition that Joshua divided the Land among the Israelites.[46]

MISHNAH. IF A MAN IDENTIFIES HIS ARTICLES OR BOOKS IN THE POSSESSION OF ANOTHER PERSON, AND A RUMOUR OF BURGLARY IN HIS PLACE HAD ALREADY BEEN CURRENT IN TOWN, THE PURCHASER [WHILE PLEADING PURCHASE IN MARKET OVERT] WOULD HAVE TO SWEAR HOW MUCH HE PAID [FOR THEM][48] AND WOULD BE PAID ACCORDINGLY [AS HE RESTORES THE ARTICLES OR BOOKS TO THE PLAINTIFF]. BUT IF THIS WAS NOT SO, HE COULD NOT BE BELIEVED, FOR I MAY SAY THAT HE SOLD THEM TO ANOTHER PERSON FROM WHOM THE DEFENDANT PURCHASED THEM [IN A LAWFUL MANNER].

GEMARA. But even if a rumour of burglary in his place had already been current in town, why should the law be so?[49] Why not still suspect that it was he[50] who sold them [in the market] and it was he[50] himself who circulated the rumour? — Rab Judah said in the name of Rab: [We suppose that] e.g., people had entered his house and he rose in the middle of the night and called for help, crying out that he was being robbed. But is this not all the more reason for suspecting that he[50] was merely looking for a pretext? — R. Kahana therefore completed the statement made in the name of Rab as follows: [We suppose] e.g., that a breach was found to have been made in his house and persons who lodged in his house were going out with bundles of articles upon their shoulders so that everyone was saying that so-and-so had had a burglary.[51] But still, there might have been there only articles, but not any books! — R. Hiyya b. Abba said in the name of R. Johanan: [We suppose] that they were all saying that books also were there. But why not apprehend that they might have been little books while he is claiming big ones? — Said R. Jose b. Hanina: [We suppose] they say, Such and such a book. But still they might perhaps have been old books while he is claiming new ones? — Rab[52] said: [We suppose] they were all saying that these were the articles of so-and-so and these were the books of so-and-so. But did Rab really say so?[53] Did Rab not say[54] that if a thief entered a house by breaking in and misappropriated articles and departed with them he would be free,[55] the reason being that he acquired title to them through the risk of life [to which he exposed himself]?[56] — This last ruling that ownership is transferred applies only where the thief entered by breaking in, in which case he from the very outset exposed himself to the risk of being killed, but to those who lodged in his house, since they did not expose themselves to the risk of being killed, this ruling cannot apply. Raba said: All these qualifications apply only to a proprietor[57] who keeps his goods for sale, but in the case of a proprietor who does not keep his goods for sale,

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(1) Who holds that there is Renunciation in the case of a robber.

(2) Maintaining that there is Renunciation both in the case of robbery and in the case of theft.
(3) Who hold that there is no Renunciation in the case of a robber.
(4) I.e., the customs-collector who acts openly.
(5) For according to them there is no Renunciation in the case of a robber.
(6) I.e., the brigand.
(7) For according to him there is no Renunciation in the case of a thief.
(8) Maintaining that there is Renunciation both in the case of robbery and in the case of theft.
(9) Acting openly and not stealthily; cf. supra 57a.
(10) Why then repeat the ruling in two identical cases?
(11) I.e., customs-collectors and brigands.
(12) For notes v. supra p. 674.
(13) For according to them there is no Renunciation in the case of a robber.
(14) I.e., the brigand.
(15) For according to him there is no Renunciation in the case of a thief.
(16) Maintaining that there is Renunciation both in the case of robbery and in the case of theft.
(17) Acting openly and not stealthily.
(18) Who maintains Renunciation in the case of a robber.
(19) V. supra p. 653, n. 9.
(20) They would thus surely be entitled to retain the misappropriated article on account of Renunciation on the part of the owner.
(21) According to established halachah that the possession of heirs is not on the same footing in law as the possession of a purchaser, and does not therefore constitute a legal change of possession.
(22) Maintaining that there is Renunciation both in the case of robbery and in the case of theft.
(23) For why should a swarm of bees be taken to be different from any other kind of property?
(24) For since they cannot be properly controlled, property in them is not so absolute as in other articles. V. Hul. 141b.
(25) Generally conveying no right in rem and thus no legal ownership in substance.
(26) I.e., that their right will come to an end.
(27) As they are exempt from having to appear as witnesses, the testimony borne by them in a Court of Law is not possessed of that absolute impartiality which is the most essential feature in all evidence; cf. supra p. 507.
(28) Even before the minor or woman made a statement to their benefit, so that the testimony is corroborated by circumstantial evidence.
(29) Without any intention of giving evidence.
(30) Cf. Yeb. XVI, 5-7.
(31) As stated in our Mishnah here.
(32) I.e., would ordinary conversation not be trusted?
(33) Keth. 26a.
(34) In a mikweh to become levitically clean; cf. Kid. 80a.
(35) As in Ber. I,1.
(36) Not to cause defilement.
(37) Which is the first of the dough and is on a par with terumah; v. Num. XV, 19-21.
(38) Though a prohibition of the Written Law was involved and the man was talking in all innocence.
(39) For Rabbi lived after the destruction of the Temple when (according to some authorities) all terumah was of mere Rabbinic sanction; cf. Pes. 44a.
(40) I.e., would ordinary conversation not be trusted?
(41) From Palestine to Babylon; v. Rashi M.K. 3b.
(42) I.e., Carthage rebuilt under the Roman Empire on the northern coast of Africa.
(43) From which it appeared that no immoral act was committed upon the mother.
(44) Keth. 27b. Though the prohibition involved was Biblical, for according to Lev. XXI, 7, a priest may not marry a woman who had immoral intercourse.
(45) On account of the immoral act being a matter of mere apprehension; cf. Keth. 23a.
(46) Supra 81b.
(47) Cf. Mishnah infra 115a.

(48) Cf. the oath in Litem administered by the Romans though in different circumstances; v. Dig. 12, 3. Cod. 5,33; 8, 4, 9; cf. also supra p. 359 and Shebu. VII, 1-3.
(49) I.e., to force the possessor to make restoration.
(50) The plaintiff.
(51) There is thus some circumstantial evidence to corroborate the plaintiff's allegations.
(52) More correctly Abbahu as in MS.M.
(53) V. p. 679. n. 4.
(54) Sanh. 72a.
(55) From pecuniary liability.
(56) According to Ex. XXII, 1, and since at the time of breaking in the offence was capital, all civil liabilities merge in it; v. supra p. 192, n. 8. [Consequently the purchaser could not be forced to make restoration seeing that the thief himself is exempt.]
(57) Lit., 'house-owner'.

Talmud - Mas. Baba Kama 115a

it would not be necessary to be so particular.[1] But he might perhaps have been in need of money and thus compelled to sell [some of his articles]? — Said R. Ashi: There is the fact that a rumour of burglary in his place had been current in town.[2]

It was stated: Where articles were stolen and sold by the thief who was subsequently identified, Rab in the name of R. Hiyya said that the owner would have to sue the first,[3] whereas R. Johanan in the name of R. Jannai said that he would have to sue the second.[4] R. Joseph thereupon said: There is no conflict of opinion:[5] in the one case where the purchase took place before Renunciation[6] he could sue the second,[7] whereas in the other, where it took place after Renunciation[8] he would have to sue the first;[3] and both of them[9] adopt the view expressed by R. Hisda.[10] Abaye said to him: Do they[9] indeed not differ? Is the case of endowments to priests[11] not on a par with [a purchase taking place] before Renunciation[12] and there is nevertheless here a difference of opinion? For we learnt: If one asked another to sell him the inside of a cow in which there were included priestly portions he would have to give it to the priest without deducting anything from the [purchase] money; but if he bought it from him by weight he would have to give the portions to the priests and deduct their value from the [purchase] money.[13] And Rab thereupon said that the [last] ruling could not be explained except where it was the purchaser who weighed it for himself, for if the butcher[14] weighed it for him, the priest would have to sue the butcher![15] — Read: 'He can sue also the butcher,'[16] for you might have thought that priestly portions are not subject to the law of robbery;[17] we are therefore told [here that this is not so]. But according to Abaye who stated that there was a difference of opinion between them,[18] what is that difference? — Whether or not to accept the statement of R. Hisda.[19] R. Zebid said: [They differed in regard to a case] where, e.g., the proprietor abandoned hope of recovering the articles when they were in the hands of the purchaser, but did not give up hope so long as they were in the hands of the thief, and the point at issue between them was that while one master[20] maintained that it was only Renunciation followed by a change of possession that transfers ownership,[21] whereas if the change of ownership has preceded Renunciation[22] no ownership is thereby transferred,[23] the other master[24] maintained that there is no distinction.[25] R. Papa said: Regarding the garment itself[26] there could be no difference of opinion at all, as all agree that it will have to be restored to the proprietor.[27] Where they[28] differ here is as to whether the benefit of market overt[29] is to be applied to him. Rab in the name of R. Hiyya said that he[30] has to sue the first; i.e., the claim of the purchaser for recovery of his money is against the thief, as the benefit of market overt does not apply here,[31] whereas R. Johanan stated in the name of R. Jannai that he[30] may sue the second, i.e., the claim of the purchaser for repayment should be against the proprietors since the benefit of market overt does apply also here.[31] But does Rab really maintain that the benefit of market overt should not apply here?[31] Was R. Huna not a disciple of Rab[32] and yet when Hanan the Wicked[33] misappropriated a garment and sold it and was brought before R. Huna, he said to the plaintiff, 'Go forth and redeem

your pledge [in the purchaser's hand]'?[34] — The case of Hanan the Wicked was different, for since it was impossible to get any payment from him, it was the same as where the thief was not identified at all. Raba said: 'Where the thief is notorious, the benefit of [a purchase in] market overt would not apply.[35] But was Hanan the Wicked not notorious, and yet the benefit of [a purchase in] market overt still applied? — He was only notorious for wickedness, but for theft he was not notorious at all.

It was stated: If a man misappropriated [articles] and paid a debt [with them], or if he misappropriated [them] and paid for goods he received on credit, the benefit of [a purchase in] market overt will not apply, for we are entitled to say,[36] 'Whatever credit you gave him was not in return for these stolen articles.' If he pledged them for a hundred, their value being two hundred, the benefit of [a purchase in] market overt would apply. But if their value equalled the amount of money lent on them, Amemar said that the benefit of market overt would not apply[37] whereas Mar Zutra said that the benefit of [a purchase in] market overt should apply. (The established law is that the benefit of a purchase in market overt should apply.)[38] In the case of a sale, where the money paid was the exact amount of the value of the goods, the benefit of [a purchase in] market overt would certainly apply. But where goods of the value of a hundred were bought for two hundred R. Shesheth said that the benefit of [a purchase in] market overt should not apply,[39] whereas Raba said that the benefit of [a purchase in] market overt should apply. The established law in all these cases, however, is that the benefit of [a purchase in] market overt should apply, with the exception of the cases where one misappropriated [articles] and paid a debt with them, and where one misappropriated them and paid for goods received on credit.[40]

Abimi[41] b. Nazi, the father-in-law of Rabina had owing to him four zuz[42] from a certain person. The latter stole a garment and brought it to him [as a pledge] and borrowed on it four further zuz. As the thief was subsequently identified, the case came before Rabina[43] who said: Regarding the former [four zuz] it is a case of a thief misappropriating articles and paying a debt [with them] in which case the plaintiff has to pay nothing whatsoever,[44] whereas regarding the latter four zuz you can demand your money and [then] return the garment. R. Cohen demurred: Why not say that the garment was delivered in consideration of the first four zuz [exclusively], so that it would thus be a case of misappropriating articles and paying [with them] a debt, or misappropriating articles and paying [with them] for goods [received] on credit, whereas the further advance of the last four zuz was a matter of mere trust,[45] just as he trusted him at the very outset? After being referred from one authority to another, the matter reached the notice of R. Abbahu who said that the law was in accordance with R. Cohen.

A Narashean[46] misappropriated a book and sold it to a Papunian[47] for eighty zuz, and this papunian went and sold it to a Mahozean[48] for a hundred and twenty zuz. As the thief was subsequently identified Abaye said that the proprietor of the book could come and pay the Mahozean eighty zuz[49] and get his book back, and the Mahozean would be entitled to go and recover the other forty zuz[50] from the papunian.[51] Raba demurred saying: If in the case of a purchase from the thief himself the benefit of market overt applies should this not be the more so in the case of a purchase from a purchaser?[52] — Raba therefore said: The proprietor of the book can go and pay the Mahozean a hundred and twenty zuz[53] and get back his book, and the proprietor of the book is [then] entitled to go and recover forty zuz from the papunian[51] and eighty zuz from the Narashean.[54]

MISHNAH. IF ONE MAN WAS COMING ALONG WITH A BARREL OF WINE AND ANOTHER WITH A JUG OF HONEY, AND THE BARREL[55] OF HONEY HAPPENED TO CRACK, AND THE OTHER ONE POURED OUT HIS WINE AND RESCUED THE HONEY INTO HIS [EMPTY] BARREL,

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(1) According to Rashi, as to require evidence regarding the identity of the books; but according to Maim. all the other circumscriptions are similarly dispensed with (Wilna Gaon).

(2) So that there is some circumstantial evidence to corroborate the plaintiff's allegations.
(3) I.e., the thief.
(4) I.e., the purchaser.
(5) I.e., between Rab and R. Johanan.
(6) In which case the sale is of no validity at all.
(7) I.e., the purchaser who would have to restore the articles without any payment at all.
(8) Where the purchase is valid since Renunciation was followed by change of possession.
(9) I.e., Rab and R. Johanan.
(10) Supra p. 652, that where a robber misappropriated an article and before Renunciation on the part of the owner it was consumed by another one, the plaintiff has the option of making either of them responsible.
(11) Dealt with in Deut. XVIII, 3.
(12) For the priests have surely never abandoned their right.
(13) Hul. X, 3.
(14) I.e., the vendor.
(15) Now, we are dealing here with a case where there was no Renunciation (v. p. 681, n. 12); why then does Rab maintain that the priest would have to sue the butcher and not the Purchaser?
(16) Having the option to sue either the butcher (who is the vendor) or the purchaser, for the reason stated supra p. 681, n. 10.
(17) For since they are endowments by Divine Law they always remain priestly property wherever they are, so that even where the vendor has personally delivered them to the purchaser it should be the latter alone who would be responsible to the priest.
(18) Rab and R. Johanan.
(19) V. supra p. 681, n. 10.
(20) I.e., R. Johanan.
(21) To the last possessor, I.e. the purchaser.
(22) As was the case here where the Renunciation took place when the articles were already in the hands of the purchaser.
(23) To the purchaser who would thus have to restore the articles without any payment at all.
(24) I.e., Rab.
(25) As in both these cases the ownership is transferred to the purchaser who may thus retain the articles, while the original owner could have a claim only against the thief.
(26) Which has been misappropriated.
(27) As the purchaser acquired no title to it if he bought it before Renunciation.
(28) I.e., Rab and R. Johanan.
(29) תקנת השוק , Lit., 'the ordinance of the market' which provides, in the case of sales made bona fide in open market, for the return of the purchased article to the owner who would have to pay the purchaser the price he had paid as stated in our Mishnah. The ordinance was enacted in the interest of trade, for unless so protected people would be afraid to buy goods for fear lest they are stolen. V. Jung, M. The Jewish Law of Theft, pp. 91 ff. Cf. also pp. 15ff.]
(30) The purchaser.
(31) Where the theft has definitely been established.
(32) Cf. Sanh. 6b.
(33) Also mentioned supra p. 205.
(34) Proving thus that the plaintiff would have to pay the purchase money even where the theft was definitely established.
(35) For the purchaser should not have bought the articles from him.
(36) To the purchaser.
(37) For as it is unusual that the value of the pledge should not exceed the amount of the loan, it is probable that the loan was not based on the security of the pledge.
(38) [The bracketed passage is deleted by Rashal and rightly so, since the very contrary fixed ruling is given infra.]
(39) For since he paid twice the value the transaction resembles rather a gift than a purchase.
(40) Cf. n. 2.
(41) According to Alfasi 'Abaye'.

(42) V. Glos.
(43) 'Rabbanai' according to Hyman, Toledoth, 88; for similar deviations, cf. supra 113b with B.M. 2a.
(44) As decided supra, this page.
(45) And if so, the plaintiff should be entitled to recover the garment without any payment whatsoever.
(46) I.e., a person of Naresh near Sura in Babylonia.
(47) I.e., a person of Papunia, [between Bagdad and Pumbeditha, Obermeyer, op. cit., p 242].
(48) I.e., a person of Mahoza, a trading town on the Tigris.
(49) I.e., the original sum for which the thief sold it.
(50) He paid to the first purchaser who was his vendor.
(51) I.e., the first purchaser who sold it to the second and made a profit of forty zuz.
(52) Who bought it from a thief as was the case here.
(53) I.e., the purchase money he paid.
(54) I.e., the thief who sold the book for this amount.
(55) As to the substitution of 'barrel' for 'jug' v. supra p. 142.

Talmud - Mas. Baba Kama 115b

HE WOULD BE ABLE TO CLAIM NO MORE THAN THE VALUE OF HIS SERVICES;[1] BUT IF HE SAID [AT THE OUTSET], 'I AM GOING TO RESCUE YOUR HONEY AND I EXPECT TO BE PAID THE VALUE OF MY WINE,' THE OTHER HAS TO PAY HIM [ACCORDINGLY]. SO ALSO IF A RIVER SWEPT AWAY HIS ASS AND ANOTHER MAN'S ASS, HIS ASS BEING ONLY WORTH A MANEH[2] AND HIS FELLOW'S ASS TWO HUNDRED ZUZ,[2] AND HE LEFT HIS OWN ASS [TO ITS FATE], AND RESCUED THE OTHER MAN'S ASS, HE WOULD BE ABLE TO CLAIM NO MORE THAN THE VALUE OF HIS SERVICES; BUT IF HE SAID TO HIM [AT THE OUTSET], 'I AM GOING TO RESCUE YOUR ASS AND I EXPECT TO BE PAID AT LEAST THE VALUE OF MY ASS,' THE OTHER WOULD HAVE TO PAY HIM [ACCORDINGLY].

GEMARA. But why [should the rescuer] not be entitled to say, 'I have acquired title to the rescued object[3] as it became ownerless'?[4] Was it not taught [in a Baraitha]: 'If a man carrying pitchers of wine and pitchers of oil noticed that they were about to be broken, he may not say, "I declare this terumah[5] or tithe with respect to other produce which I have at home," and if he says so, his statement is of no legal validity'?[6] — As R. Jeremiah said in another connection, 'Where the bale[7] of the press-house was twined around it [it would not become ownerless]';[8] so also here in the case of the barrel [we suppose] the bale of the press-house was twined around it.[9] [Still, how does the Baraitha state:][10] 'And if he says so, his statement is of no legal validity'? Surely it was taught: If a man was walking on the road with money in his possession, and a robber confronted him, he may not say, 'The produce which I have in my house[11] shall become redeemed[12] by virtue of these coins,'[13] yet if he says so, his statement has legal validity?[14] — Here [in the latter case] we suppose that he was still able to rescue the money.[15] But if he was still able to rescue the money why then should he not be allowed to say so[16] even directly? — We suppose he would be able to rescue it with [some] exertion. But still even where there is likely to be a loss,[17] why should he not be allowed to say so[16] even directly?[18] Surely it was taught: If a man has ten barrels[19] of unclean tebel[20] and notices one of them on the point of becoming broken or uncovered,[21] he may say, 'Let this be the terumah [portion] of the tithe[22] with respect to the other nine barrels,' though in the case of oil he should not do so as he would thereby cause a great loss to the priest?[23] — Said R. Jeremiah: [In this case we suppose that] the bale of the presshouse was still twined around it.[24] This is a sufficient reason in the case where the barrel broke, as [the wine remaining] is still fit to be used, but in the case where the barrel became uncovered, for what use is the wine fit any more? For should you argue that[25] it is still fit for sprinkling purposes, was it not taught: Water which became uncovered should not even be poured out on public ground, and should neither be used for stamping clay, nor for sprinkling the house,[26] nor for feeding either one's own animal or the animal of a neighbour?[27] —

He may make it good by using a strainer, in accordance with the view of R. Nehemiah as taught: A strainer[28] is subject to the law of uncovering;[29] R. Nehemiah, however, says that this is so only where the receptacle underneath was uncovered, but if the receptacle underneath was covered, though the strainer on top was uncovered the liquid [strained into the receptacle beneath] would not be subject to the law of uncovering as the venom of a serpent resembles a fungus and thus remains floating in its previous position.[30] But was it not taught[31] in reference to this that R. Simeon said in the name of R. Joshua b. Levi that this ruling applies only if it has not been stirred, but if it had been stirred it would be forbidden?[32] — Even there it is possible [to rectify matters by] putting some [cloth] on the mouth of the barrel and straining the liquid gently through. But if we follow R. Nehemiah, is it permitted to make unclean produce terumah even with respect to other unclean produce? Surely it has been taught: It is permitted to make unclean produce terumah with respect to other unclean produce, or clean produce with respect to other clean produce, but not unclean produce with respect to clean produce,[33] whereas R. Nehemiah said that unclean produce is not allowed to be made terumah[34] even with respect to unclean produce except in the case of demai![35] — Here also[36] we are dealing with a case of demai.

The Master stated: 'Though in the case of oil he should not do so as he would thereby cause a great loss to the priest'. But why is oil different? Surely because[37] it can be used for lighting; cannot wine[37] similarly be used for sprinkling purposes?[38] And should you argue that sprinkling is not a thing of any consequence, did Samuel not say[38] in the name of R. Hiyya that for drinking purposes one should pay a sela' per log [of wine], whereas, for sprinkling purposes, two sela's[39] per log? We are dealing here with fresh wine.[40] But could it not be kept until it becomes old? — He may happen to use it for a wrong purpose.[41] But why not also in the case of oil apprehend that he may happen to use it[42] for a wrong purpose? — We suppose he keeps it in a filthy receptacle.[43] But why not keep the wine also in a filthy receptacle?[43] — Since it is needed for sprinkling purposes,[44] how could it be placed in a filthy receptacle?

The apprehension of illicit use[41] is in itself a point at issue between Tannaim, as taught: If a barrel of terumah wine became unclean, Beth Shammai maintain

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(1) But not for the value of the wine. For a different view cf. supra p. 679 and Tosef, B .K. X, 13.

(2) V. Glos.

(3) I.e., the honey by receiving it in my receptacle.

(4) For when the jug cracked and the loss of the honey became imminent there is implied Renunciation on the part of the owner; v. also supra p. 670 and B.M. 22a.

(5) V. Glos.

(6) For when the loss of the wine and oil becomes imminent the ownership comes to an end; Tosef. M.Sh. I, 6.

(7) V. Sanh. (Sonc. ed.) p. 151, n. 6.

(8) For the liquid would then merely leak out drop by drop, but not be lost instantly.

(9) And since the honey would not flow out straight away there is no immediate lapse of ownership.

(10) Where the bale of the press-house was not twined around it.

(11) And which was set aside as a second tithe, cf. Lev. XXVII, 30.

(12) In accordance with ibid. 31 and Deut. XIV, 25.

(13) Which were about to be misappropriated by the robber.

(14) And the produce in his house would become redeemed. This contradicts the former Braitha.

(15) From being taken away by the robber.

(16) That the produce should be redeemed by the coins.

(17) [I.e., where he is able to rescue with some exertion.]

(18) Some authorities, however, read thus: 'But still even where there is a definite loss why should his statement be of no legal validity?' V. Tosaf. a.l. but also Rashi and Bah.

(19) Of wine.

(20) I.e., produce prior to the separation of the priestly and levitical portions as required by law.

(21) And will thus become forbidden for use, for fear that a venomous snake partook of the liquid and injected there poison, v. Ter. VIII, 4-7.
(22) I.e., the tithe of the tithe mentioned in Num. XVIII, 26.
(23) The difference between oil and wine is that, since the produce was already defiled, in the case of wine the priest would in any case be unable to make any use of it, whereas in the case of oil he can use it for the purposes of heating and lighting; v. Ter. XI, 10. [Now assuming that the loss involved in the case of the wine, being small (v. infra), is to be compared with a loss that is not definite, does this not prove that where there is only likely to be a loss, the relevant declaration may be made directly?]
(24) In which case the loss is insignificant.
(25) Though it is no more good as a drink.
(26) For the venom which it might contain might injure persons walking there barefooted.
(27) Tosef Ter. XVII, and A.Z. 30b.
(28) I.e., liquid poured therein to be strained.
(29) For the venom, if any, will pass through the strainer.
(30) In the strainer without passing on to the receptacle underneath (Tosef. Ter. ibid. 14.)
(31) Cf. J. Ter. VIII, 5.
(32) [Here likewise, since he cannot avoid stirring the wine while pouring it from the barrel into the strainer, the venom will pass into the receptacle.]
(33) Cf. Ter. II, 2, and Yeb. 89a.
(34) For the setting aside of terumah must be in such a way as to enable it to be given to a priest whilst clean.
(35) I.e., produce bought from a person who could not be trusted to have set aside the necessary tithes. V. Glos. (cf. Ter. II, 2, and Yeb. 89a).
(36) Regarding the ten barrels of unclean tebel.
(37) When unclean and thus unfit for consumption by the priest.
(38) Cf. Pes. 20b.
(39) As wine for sprinkling is more useful than for drinking.
(40) Which is not fit for sprinkling.
(41) For through keeping it for some time he might inadvertently partake of it; it should therefore be forbidden to keep it at all.
(42) As he keeps it for heating and lighting.
(43) As a safeguard against partaking of it.
(44) And thus dependent upon its odour.

Talmud - Mas. Baba Kama 116a

that the whole of it must immediately be poured out, whereas Beth Hillel maintain that it could be used for sprinkling purposes. R. Ishmael b. Jose[1] said: I will suggest a compromise: [If it was already] in the house it might be used for sprinkling purposes, but [if it was still] in the field it would have to be poured out entirely,[2] or as some say: If it was old it might be used for sprinkling purposes, but if it was fresh it should be poured out entirely. They rejoined to him:[3] A compromise based on an independent[4] reasoning cannot be accepted.[5]

BUT IF HE SAID [AT THE OUTSET], I AM GOING TO RESCUE YOUR HONEY AND I EXPECT TO BE PAID THE VALUE OF MY WINE, THE OTHER HAS TO PAY HIM [ACCORDINGLY]. But why should the other party not say to him [subsequently], 'I am merely jesting with you'?[6] Surely it was taught: If a man running away from prison came to a ferry and said to the boatman, 'Take a denar to ferry me across,' he would still have to pay him not more than the value of his services.[7] This shows that he is entitled to say, 'I was merely jesting with you'? Why then also here should he not be entitled to say to him, 'I was merely jesting with you'? — The comparison is rather with the case dealt with in the concluding clause: But if he said to him, 'Take this denar as your fee for ferrying me across,' he would have to pay him the sum stipulated in full. But why this difference between the case in the first clause and that in the second clause? — Said

Rami b. Hama: [In the second clause] the other party was a fisher catching fishes from the sea in which case he can surely say to him, 'You caused me to lose fish amounting in value to a zuz.'[8]

SO ALSO IF A RIVER SWEPT AWAY HIS ASS AND ANOTHER MAN'S ASS, HIS ASS BEING WORTH A MANE HAND THE OTHER'S ASS TWO HUNDRED ZUZ, etc. [Both cases] had to be [stated]. For had we only the former case,[9] we might think that it was only there where a stipulation was made that the payment should be for the whole value [of the wine], since its owner sustained the loss by direct act of his own hands,[10] whereas here[11] where the loss came of itself[12] it might have been said that [in all circumstances] he would have no more than the value of his services. So also if we had had only the second case, we might have thought that it was only here,[11] where no stipulation was made, that he would have no more than the value of his services, since the loss came of itself,[12] whereas in the other case,[13] where the loss was sustained through his own act,[10] I might have said that even where no stipulation was made the payment would have to be for the whole value [of the honey]. It was therefore necessary [to state both cases].

R. Kahana asked Rab: What would be the law if the owner [of the inferior ass] went down to rescue the other's ass [with the stipulation of being paid the value of his own ass], and it so happened that his own ass got out by itself? — He replied: This was surely an act of mercy towards him on the part of Heaven.[14] A similar case happened with R. Safra when he was going along with a caravan. A lion followed them[15] and they had every evening to abandon to it [in turn] an ass of each of them which it ate. When the turn[16] of R. Safra came and he gave it his ass, the lion did not eat it. R. Safra immediately hastened to take possession of it. Said R. Aha of Difti to Rabina: Why was it necessary for him to take possession of it again? For though he had [implicitly] abandoned it, he surely had abandoned it only with respect to the lion, whereas with respect to anybody else in the world he certainly had not abandoned it at all.[17] He replied: R. Safra did it as an extra precaution.[18]

Rab asked Rabbi: What would be the law where he went down to rescue [the more valuable ass] but did not succeed in rescuing it? — He replied: Is this a question? He would surely have no more than the value of his services. An objection was raised: 'If a labourer was hired

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(1) Who lived in a much later period than Shammai and Hillel; Rashi, Pes. 20b.

(2) For while bringing it home it might inadvertently be partaken of.

(3) I.e., his contemporaries; Rashi, Pes. ibid.

(4) Lit., 'third'.

(5) Having no basis in either of the conflicting views, but constituting an opinion by itself, and thus being in principle opposed to both of them. V. Pes. 21a.

(6) To urge you to help.

(7) Yeb. 106a.

(8) I.e., the denar you offered me; in the case in the Mishnah the same argument holds good, hence the same ruling.

(9) Regarding the wine and honey.

(10) As he directly spilt his wine.

(11) In the case of the two asses.

(12) I.e., his ass was drowned by accident.

(13) Regarding the wine and honey.

(14) Which should therefore not affect in any way the stipulation made that the full amount be paid.

(15) To guard them against robbers and beasts.

(16) Lit., time.

(17) Why then was it necessary for him to take possession of it again? The ass would in any case have remained his.

(18) So that there should be no argument in the matter.

to bring cabbage or damascene[1] plums for a sick person, and by the time he arrived he found him already dead or fully recovered, his hire[2] would have to be paid in full'?[3] — He replied: What comparison is there? In that case the messenger performed his errand,[4] whereas here the messenger did not perform his errand.[5]

Our Rabbis taught: If a caravan was travelling through the wilderness and a band of robbers threatened to plunder it, the contribution to be paid by each [for buying them off] will be apportioned in accordance with his possessions [in the caravan,] but not in accordance with the number of persons there.[6] But if they hire a guide to go in front of them, the calculation will have to be made also[7] according to the number of souls in the caravan,[8] though they have no right to deviate from the general custom of the ass-drivers.[9] The ass-drivers are entitled to stipulate that one who loses his ass should be provided with another ass.[10] [If, however, this was caused] by negligence, they would not have to provide him with another ass; where this was done without any negligence [on his part], he is provided with another ass. If he said: Give me the money for the ass and I will [buy it myself and][11] in any case guard the asses,[12] we do not listen to him.[13] Is this not obvious? — No; this is a case where he possesses another ass, and where therefore I might have said that since he has in any case to guard it[14] [his request should be complied with]: we are therefore told that there is a difference between guarding one and guarding two.[15]

Our Rabbis taught: If a boat was sailing on the sea and a gale arose threatening to sink it so that it became necessary to lighten the cargo, the apportionment [of the loss of each passenger] will have to be made according to the weight of the cargo[16] and not according to the value of the cargo, though they should not deviate from the general custom of mariners.[9] The mariners are entitled to stipulate that one who loses his boat should be provided with another boat. If this was caused by his fault, they would not have to provide him with another boat, but if without negligence he is provided with another boat. So also if he sailed to a place where boats should not go [and thus lost his boat] they would not have to provide him with another one.[17] But is this not obvious? — No; [there may be a place where] during Nisan[18] they generally sail one rope's length away from the shore, whereas during Tishri[18] they sail two ropes' length away from the shore,[19] and it so happened here that during Nisan[20] he sailed in the place fit for sailing during Tishri.[21] In this case it might be argued that [as] he took his wanted course in sailing,[22] [he should still be provided with another boat]; we are therefore told [that this is not the case].

Our Rabbis taught: If a caravan was travelling in the desert and a band of robbers threatened to plunder it, and one member of the caravan rose and rescued [some of their belongings], whatever he rescued will go to the respective owners,[23] whereas if he said at the beginning, 'I am going to rescue for myself', whatever he rescued would belong to himself.[24] What are the circumstances? If [the other owners were] able to rescue their belongings,[25] why even in the second case should the rescued belongings not go to the respective owners?[26] If on the other hand no [other owner was] able to rescue [anything],[27] why even in the first case should they not belong to the man himself?[28] — Said Rami b. Hama: We are dealing here with partners, and [in an emergency] like this,[29] a partner may dissolve partnership even without the knowledge of his fellow: so that where he made a stipulation [as in the concluding clause], the partnership has been dissolved,[30] whereas if no stipulation was made [as in the first clause] the partnership has not yet been dissolved.[31] Raba, however, said that we are dealing here with labourers,[32] and the ruling follows the view of Rab, for Rab said that a labourer[33] is entitled to withdraw even in the middle of the day.[34] Hence so long as he did not withdraw, [whatever he rescues is regarded] as being in the possession of the employer, whereas after he had already withdrawn it is a different matter altogether,[35] as it is written: For unto me the Children of Israel are servants; they are my servants,[36] but not servants to servants.[37] R. Ashi said: [We are dealing here with a case] where [any other owner would be] able to rescue [the property] only with great difficulty, so that where he [the one who did the work of rescue] declared his intention,[38] the belongings rescued will go to him, whereas where he did not declare his intention

they will go to their respective owners.[39]

MISHNAH. IF A MAN ROBBED ANOTHER OF A FIELD AND BANDITTI [MASSIKIN][40] CONFISCATED IT, IF THIS BLOW BEFELL THE WHOLE PROVINCE[41] HE MAY SAY TO HIM, 'HERE IS THINE BEFORE THEE'; BUT IF IT WAS CAUSED THROUGH THE ROBBER HIMSELF HE WOULD HAVE TO PROVIDE HIM WITH ANOTHER FIELD. GEMARA. R. Nahman b. Isaac said: One who reads here MASSIKIN[42] is not in error, while one who reads 'Mezikin' is similarly not in error: One who reads 'Mezikin' is not in error as it was written:[43] In the siege and mazok [straitness];[44] so also he who reads MASSIKIN is not in error as it is written: The locust [shall] consume,[45] which is translated,[46] 'The sakkah [sack-carrier][47] shall inherit[48] it.'

BUT IF IT WAS CAUSED THROUGH THE ROBBER HIMSELF, HE WOULD HAVE TO PROVIDE HIM WITH ANOTHER FIELD. How are we to understand this? If only this field was confiscated, while all the other fields were not confiscated, could this not be derived from the earlier clause which says: IF THIS BLOW BEFELL THE WHOLE PROVINCE [HE MAY SAY TO HIM 'HERE IS THINE BEFORE THEE'], which implies that if this was not so, the ruling would be otherwise? — No; it is necessary to state the law where he [did not actually misappropriate the field but merely] pointed it out[49] [to the banditti to confiscate it]. According to another explanation we are dealing here with a case where e.g. heathens demanded of him[50] with threats to show them his fields and he showed them also this field among his own. A certain person showed [to robbers] a heap of wheat that belonged to the house of the Exilarch. He was brought before R. Nahman and ordered by R. Nahman to pay. R. Joseph happened to be sitting at the back of R. Huna b. Hiyya, who was sitting in front of R. Nahman. R. Huna b. Hiyya said to R. Nahman: Is this a judgment or a fine? — He replied: This is the ruling in our Mishnah, as we have learnt: IF IT WAS CAUSED THROUGH THE ROBBER HIMSELF HE WOULD HAVE TO PROVIDE HIM WITH ANOTHER FIELD, which we interpreted to refer to a case where he showed [the field to bandits]. After R. Nahman had gone, R. Joseph said to R. Huna b. Hiyya: 'What difference does it make

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(1) **; Lat. 'Damascina'.

(2) Which owing to the need of the occasion was above the ordinary; cf. Tosaf. a.l.

(3) Tosef. B.M. VII 2. Does this not prove that even where the efforts proved unsuccessful the payment must still be in full?

(4) As he indeed fetched the required objects.

(5) For he did not rescue the ass.

(6) For the robbers came originally for the possessions and not necessarily for souls.

(7) 'Also' is missing in J. B.M. VI, 4.

(8) For a guide is vital also to safeguard life; as to possessions cf. the difference in reading between the text here and J. B.M. VI, 4.

(9) Tosef. B.M. VII; cf. B.B. 7b, 8b.

(10) I.e., a kind of insurance.

(11) [So MS.M.]

(12) In accordance with the custom that each ass-driver had in turn to look after all the asses together with his own.

(13) For he might not buy another ass and thus have no longer any interest in looking after the other asses. Tosef. B.M. XI.

(14) Together with the asses of the other drivers.

(15) As when he has two asses of his own among those of the other drivers he will put more heart into his work.

(16) Though one might be asked to throw away gold and another a similar weight of copper.

(17) Tosef. B.M. XI, 12.

(18) V. p. 25, nn, 6-7.

(19) On account of the shallowness of the water soon after the hot summer period.

(20) When there is an abundance of water in the river.

(21) I.e., far away from the shore; for a transposed text v. Shittah Mekubezeth.

(22) He should not be considered careless.
(23) Lit., 'to the common fund' which will indeed be so according to the interpretation of Rami b. Hama which follows on.
(24) Tosef. B.M., VIII.
(25) In which case they certainly did not give them up.
(26) For how did he acquire title to them.
(27) In which case they surely gave up any hope of retaining their belongings and thus abandoned them, as supra p. 686.
(28) As he became possessed of ownerless property.
(29) Where a loss of property is imminent.
(30) He may thus retain the property he rescued to the extent of his part.
(31) And whatever he rescued will go to the common fund.
(32) Who were hired by the caravan and who rescued the threatened property.
(33) I.e., a day labourer.
(34) B.M. 10a.
(35) For then he works for himself and since the owners were unable to rescue their property it became abandoned so that when rescued by the labourer he acquired title to it.
(36) Lev. XXV, 55.
(37) Unlike in the case of the Hebrew servant of Ex. XXI, 2 the employer has no right in rem with reference to his labourers; cf. Kid. 16a and also 22b.
(38) I.e., that he does it for himself; and as the owner who was present there neither contradicted him nor made any exertion to rescue it, the property became ownerless.
(39) For under such circumstances there could not be traced there any implied Renunciation on their part.
(40) מסיקין V. B.M. (Sonc. ed.) p. 576, n. 5.
(41) I.e., they confiscated other's fields too.
(42) Cf. supra p. 694, n. 12.
(43) Deut. XXVIII, 57.
(44) I.e., oppression.
(45) Ibid. 42.
(46) In Targum Onkelos a.l.; cf. however Rashi there.
(47) So Jast. The name of a locust or a beetle; v. Ta'an. 6a; according however to R. Tam it refers to the enemy.
(48) V. Isa. XXXIV, 11.
(49) Lit., 'showed it'.
(50) I.e., of an actual robber.

Talmud - Mas. Baba Kama 117a

whether it is a judgment or a fine?' — He replied: If it is a judgment we may derive other cases from it,[1] whereas if it is a fine[2] we would be unable to derive other cases from it. But what is your ground for saying that from a matter of [mere] fine we cannot derive any other case? — As it was taught: 'Originally it was said that [liability will attach] for defiling [terumah][3] or for vitiating [wine],[4] but it was subsequently laid down that [it will also attach] for mixing[4] [common grain with terumah grain].'[5] Now, this is so only because it was so laid down subsequently, whereas had it not been so laid down subsequently this would not have been so. Is the reason for this not because liability here is a [matter of mere] fine, [thus proving that] we cannot derive anything from a fine?[6] — No, originally it was thought[7] that it is only where a great loss[8] is involved that we have to be on our guard,[9] whereas where only a small loss[10] is involved, we need not be particular, whereas subsequently it was decided that even in the case of a small loss[10] we should be particular. But this is not so![11] For the father of R. Abin[12] learnt: Originally it was said that [liability will attach] for defiling [terumah] or for mixing[13] [it with unconsecrated grain], but it was subsequently laid down that it will also attach for vitiating [wine]. Now, this is so [only] because it was so laid down subsequently, whereas had it not been so stated subsequently this would not have been so. Is the reason for this not because we are unable to derive anything from a matter of mere fine? — No:

originally the view of R. Abin was taken,[7] but subsequently the view of R. Jeremiah was adopted. 'Originally the view of R. Abin was taken,' — for R. Abin said: If one shot an arrow[14] from the beginning to the end of a space of four cubits[15] and it cut through some silk in its passage, he would be exempt,[16] for the outset [of the motion] was subservient to its termination, for which he is liable to capital punishment;[17] but subsequently it was decided in accordance with R. Jeremiah, for R. Jeremiah said: From the moment the defendant lifted up the wine[18] it entered into his possession,[19] and he thus became liable to make pecuniary compensation[19] whereas he does not become liable to capital punishment until the very moment of the [idolatrous] libation.[20]

Happening to be at Be-Ebyone[21] R. Huna b. Judah visited Raba who said to him: Has any case [about which you are in doubt] recently been decided by you? — He replied: I had to decide the case of an Israelite whom heathens forced to show them another man's possessions and I ordered him to pay. He, however, said to him: Reverse the judgment in favour of the defendant, as taught: An Israelite who was forced by heathens to show them another man's possessions is exempt, though if he personally took it and gave it [to the heathens] with [his own] hand, he would be liable. Rabbah[22] said: If he showed it on his own accord it is the same [in law] as if he personally took it and gave it to the robber with [his own] hand.

A certain man was forced by heathens to show them the wine of Mari the son of R. Phine has[23] the son of R. Hisda. The heathens then said to him, 'Carry the wine and bring it along with us,' so he carried it and brought it along with them. When he was brought before R. Ashi he exempted him. The Rabbis said to R. Ashi: Was it not taught: 'If he personally took it and gave it to the heathens with [his own] hand, he would be liable'? — He said to them: This ruling applies only where the heathens were not standing near it,[24] whereas where they stood near it is the same [in the eye of the law] as if it had already been burnt.[25] R. Abbahu[26] raised an objection to [the explanation of] R. Ashi [from the following]: 'If a ruffian said[27] to him, "Hand me this bunch of sheaves or this cluster of grapes," and he handed it to him, he would be liable'?[28] [No,] we are dealing here with a case where they were standing on two banks of a river.[29] That this was the case could also be proved from the use of the word 'hand' instead of 'give'.[30] This indeed proves it.

Two persons were quarrelling about a certain net. One said, 'It is mine', and the other said, 'It is mine.' One of them eventually went and surrendered it to the Parangaria[31] of the King [for confiscation]. Abaye thereupon said that he should be entitled to plead: 'When I surrendered the article it was my own property that I surrendered.' Said Raba to him: 'Why [should he be] believed [if he says so]?' Raba therefore said: We would have to impose a Shamta[32] upon him until be brings back [the net][33] and appears before the Court.

A certain man who was desirous of showing another man's straw [to be confiscated] appeared before Rab, who said to him: 'Don't show it! Don't show it!' He retorted: 'I will show it! I will show it!' R. Kahana was then sitting before Rab, and he tore [that man's] windpipe out of him. Rab thereupon quoted: Thy sons have fainted, they lie at the heads of all the streets as a wild bull in a net;[34] just as when a 'wild bull' falls into a 'net' no one has mercy upon it, so with the property of an Israelite, as soon as it falls into the hands of heathen oppressors no mercy is exercised towards it.[35] Rab therefore said to him: 'Kahana, until now the Greeks[36] who did not take much notice of bloodshed were [here and had sway, but] now the persians[37] who are particular regarding bloodshed are here, and they will certainly say, "Murder, murder!";[38] arise therefore and go up to the Land of Israel but take it upon yourself that you will not point out any difficulty to R. Johanan[39] for the next seven years. When he arrived there he found Resh Lakish sitting and going over[40] the lecture of the day for [the younger of] the Rabbis.[41] He thereupon said to them: 'Where is Resh Lakish?'[42] They said to him: 'Why do you ask?' He replied: 'This point [in the lecture] is difficult and that point is difficult, but this could be given as an answer and that could be given as an answer.' When they mentioned this to Resh Lakish, Resh Lakish went and said to R. Johanan: 'A lion[43] has come up

from Babylon; let the Master therefore look very carefully into tomorrow's lecture.' On the morrow R. Kahana was seated on the first row of disciples before R. Johanan, but as the latter made one statement and the former did not raise any difficulty, another statement, and the former raised no difficulty, R. Kahana was put back through the seven rows until he remained seated upon the very last row. R. Johanan thereupon said to R. Simeon b. Lakish: 'The lion you mentioned turns out to be a [mere] fox.'[44] R. Kahana thereupon[45] whispered [in prayer]: 'May it be the will [of Heaven] that these seven rows be in the place of the seven years mentioned by Rab.' He thereupon immediately stood on his feet[46] and said to R. Johanan: 'Will the Master please start the lecture again from the beginning.' As soon as the latter made a statement [on a matter of law], R. Kahana pointed out a difficulty, and so also when R. Johanan subsequently made further statements, for which he was placed again on the first row. R. Johanan was sitting upon seven cushions. Whenever he made a statement against which a difficulty was pointed out, one cushion was pulled out from under him, [and so it went on until] all the cushions were pulled out from under him and he remained seated upon the ground. As R. Johanan was then a very old man and his eyelashes were overhanging he said to them, 'Lift up my eyes for me as I want to see him.' So they lifted up his eyelids with silver pincers. He saw that R. Kahana's lips were parted[47] and thought that he was laughing at him. He felt aggrieved and in consequence the soul of R. Kahana went to rest.[48] On the next day R. Johanan said to our Rabbis, 'Have you noticed how the Babylonian was making [a laughing-stock of us]?' But they said to him, 'This was his natural appearance.' He thereupon went to the cave [of R. Kahana's grave] and saw

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(1) By means of analogy.

(2) Imposed for that particular occasion on account of some aggravation of the offence; cf., e.g., supra p. 561.

(3) V. Glos.

(4) Cf. supra p. 14.

(5) Git. 53a.

(6) For if not so, why was it necessary to state explicit liability to the new case.

(7) Lit., 'maintained'.

(8) Such as defiling terumah, vitiating wine and the like.

(9) And impose a penalty for preventive purposes.

(10) Such as in the case of mixing, [where the loss is small, as the mixture can still be sold to priests though at a somewhat reduced price].

(11) That the law in another case could be derived from a ruling merely imposing a fine.

(12) V. Sanh. 51b.

(13) Cf. Git. 53a.

(14) In a public thoroughfare on the Sabbath day, thus committing a capital offence; v. Shab. XI, 1-3.

(15) I.e., passing through a distance of not less than four cubits which is the minimum required to make him liable for the violation of Sabbath; v. supra p. 138.

(16) From civil liability for the silk.

(17) Into which all civil offences committed at that time merge (Keth. 31a); v. supra 192; no civil liability was therefore maintained in the case of vitiating wine by idolatrous libation which is a capital offence; cf. Sanh. VII, 4-6.

(18) I.e., before he ever started to commit the idolatrous libation.

(19) In the capacity of robbery.

(20) Git. 52b. And since the civil liability is neither for the same act nor for the same moment which occasions the liability for capital punishment, each liability holds good.

(21) Lit., 'poor-house', but according to Rashi 'a proper name of a place.' [Funk, Monumenta Talmudica, I, 290, identifies it with a locality Abjum, N. of Mosul on the Tigris; Goldschmidt renders: in an Ebionite town.]

(22) 'Raba' according to MS.M.

(23) But according to MS. M. 'R. Mari and R. Phineas, the sons of . . .' The fact, however, that R. Ashi was a contemporary is rather in favour of the reading in the text; but cf. also Alfasi and Asheri.

(24) I.e., where they have not yet become possessed of it; cf. Rashi and the Codes.

(25) The defendant could thus be made liable neither for the act of showing, for at that time be did not handle the wine,

nor for the act of carrying which was after the wine had virtually entered the possession of the heathens.
(26) More probably 'R. Abba' [since R. Abbahu lived much earlier than R. Ashi; v. D.S.]. Asheri: 'Rabina', Alfasi: 'R. Kahana'.
(27) [אנם another term for 'massik' of the Mishnah. Klein, NB. p. 14, n. 11.]
(28) Is this not a case where the ruffian had already been standing nearby the misappropriated article?
(29) Which separates the robber from the articles he intended to misappropriate.
(30) Cf. 'A.Z. 6b.
(31) I.e., the office of public service; cf. B.M. 83b.
(32) A ban.
(33) Cf. MS.M. and also Alfasi and Asheri a.l.
(34) Isa. LI, 20.
(35) More correctly perhaps, 'towards him', referring thus to the Israelite; v. Ab. II, 2, also Asheri B.K. X, 27; the act of R. Kahana was in this way vindicated.
(36) So MS.M.; cur. edd.: Persians. [The reference is to the Parthians whose sway over Babylon came to an end in 266, when they were defeated by the Sassanians.]
(37) So MS.M.; curr. edd.: Greeks. [Ardeshir, the first of the Sassanian kings, deprived the Jews of the right they had hitherto exercised under the Parthians of inflicting capital punishment, v. Funk, Die fuden in Babylonien, I, 68.]
(38) [Or 'Rebellion '; v. B.M. (Sonc. ed.) p. 235, n. 7.]
(39) V. Hul. 95b.
(40) [So Rashi. Kaplan, J. The Redaction of the Babylonion Talmud, p. 206, explains the phrase וקא מסיים as referring to a particular kind of lecture, devoted to the defining of the terse conclusions reached during the day in the academy.]
(41) Cf. B.M. 84a; also Sanh. 24a.
(42) MS.M. adds, 'and R. Kahana did not know that it was Resh Lakish (who was repeating the other lecture).'
(43) Cf. Ab. IV, 15, and B.M. 84b.
(44) V. p. 699, n. 9.
(45) MS.M.: 'he went out of the college.'
(46) This is missing in MS.M. according to which it was on another day when R. Johanan made new statements that R. Kahana said so.
(47) A physical defect owing to an accidental wound.
(48) V. B.M. 84a regarding R. Johanan and Resh Lakish.

Talmud - Mas. Baba Kama 117b

a snake coiled round it. He said: 'Snake, snake, open thy mouth[1] and let the Master go in to the disciple.' But the snake did not open its mouth. He then said: 'Let the colleague go in to [his] associate!' But it still did not open [its mouth, until he said,] 'Let the disciple enter to his Master,' when the snake did open its mouth.[2] He then prayed for mercy and raised him.[3] He said to him, 'Had I known that the natural appearance of the Master was like that,I should never have taken offence; now, therefore let the Master go with us.' He replied, 'If you are able to pray for mercy that I should never die again [through causing you any annoyance],[4] I will go with you, but if not I am not prepared to go with you. For later on you might change again.' R. Johanan thereupon completely awakened and restored him and he used to consult him on doubtful points, R. Kahana solving them for him. This is implied in the statement made by R. Johanan: 'What[5] I had believed to be yours[6] was In fact theirs.'[7]

There was a certain man who showed a silk[8] ornament of R. Abba [to heathen ruffians]. R. Abbahu and R. Hanina b. Papi and R. Isaac the Smith were sitting in judgment with R. Elai sitting near them. They were inclined to declare the defendant liable, as we have learnt: Where a judge in deciding [on a certain case], declared innocent the person who was really liable, or made liable the person who was really innocent, declared defiled a thing which was [levitically] clean, or declared clean a thing which was really defiled, his decision would stand, but he would have to make

restitution out of his own estate.[9] Thereupon Elai said to them: Thus stated Rab: provided the defendant[10] actually took and gave it away with his own hand.[11] They therefore said to the plaintiff: Go and take your case to R. Simeon b. Eliakim and R. Eleazar b. Pedath who adjudicate liability for damage done by Garmi.[12] When he went to them they declared the defendant liable on the strength of our Mishnah: IF THIS WAS CAUSED THROUGH THE ROBBER HE WOULD HAVE TO PROVIDE HIM WITH ANOTHER FIELD, which we intrepreted[13] to refer to a case where he showed [the field to oppressors].

A certain man had a silver cup which had been deposited with him, and being attacked by thieves he took it and handed it over to them. He was summoned before Rabbah[14] who declared him exempt. Said Abaye to Rabbah: Was this man not rescuing himself by means of another man's money?[15] R. Ashi said: We have to consider the circumstances. If he was a wealthy man,[16] the thieves came [upon him] probably with the intention of stealing his own possessions, but if not, they came for the silver cup.

A certain man had a purse[17] of money for the redemption of captives deposited with him. Being attacked by thieves he took it and handed it over to them. He was thereupon summoned before Raba[18] who nevertheless declared him exempt. Said Abaye to him: Was not that man rescuing himself by means of another man's money? — He replied: There could hardly be a case of redeeming captives more pressing than this.[19]

A certain man managed to get his ass on to a ferry boat before the people in the boat had got out on to shore.[20] The boat was in danger of sinking, so a certain person came along and pushed that man's ass over in to the river, where it drowned. When the case was brought before Rabbah[21] he declared him exempt. Said Abaye to him: Was that person not rescuing himself by means of another man's money? — He, however, said to him: The owner of the ass was from the very beginning in the position of a pursuer.[22] Rabbah follows his own line of reasoning, for Rabbah [elsewhere] said: If a man was pursuing another with the intention of killing him, and in his course broke utensils, whether they belonged to the pursued or to any other person, he would be exempt, for he was at that time[22] incurring capital liability.[23] If, however, he who was pursued broke utensils, he would be exempt only if they belonged to the pursuer, whose possessions could surely not be entitled to greater protection than his body,[24] whereas if they belonged to any other person he would be liable, as it is forbidden to rescue oneself by means of another man's possessions. But if a man ran after a pursuer with the intention of rescuing [some one from him] and [in his course accidentally] broke utensils, whether they belonged to the pursued or to any other person he would be exempt; this,[25] however, is not a matter of [strict] law, but is based upon the consideration that if you were not to rule thus,[26] no man would ever put himself out to rescue a fellow-man from the hands of a pursuer.[27]

MISHNAH. IF A RIVER FLOODED [A MISAPPROPRIATED FIELD, THE ROBBER] IS ENTITLED TO SAY TO THE OTHER PARTY, ‘HERE IS YOURS BEFORE YOU’.[28]

GEMARA. Our Rabbis taught: If a man robbed another of a field and a river flooded it, he would have to present him with another field. This is the opinion of R. Eleazar[29] but the Sages maintain that he would be entitled to say to him: ‘Here is yours before you.’[30] What is the ground of their difference? — R. Eleazar expounds [Scripture] on the principle of amplifications and limitations.[31] [The expression,] And lie unto his neighbour,[32] is an amplification;[33] In that which was delivered him to keep . . .[32] constitutes a limitation;[34] Or all that about which he hath sworn falsely[35] forms again an amplification;[33] and where an amplification is followed by a limitation which precedes another amplification,[35] everything is included. What is thus included? All articles. And what is excluded?[34] Bills.[36] But the Rabbis expound [Scripture] on the principle of generalisation and specification,[31] [thus: The expression,] and lie[37] is a generalisation;[38] In that which was delivered him to keep . . .[37] is a specification;[39] Or all that [about which he has sworn falsely][40] is again a

generalisation;[40] and where a generalisation is followed by a specification that precedes another generalisation[40] you surely cannot include anything save what is similar to the specification.[41] So here, just as the specification is an article which is movable and of which the intrinsic value lies in its substance, you include any other matter which is movable and of which the intrinsic value lies in its very substance. Land is thus excluded[42] as it is not movable; so also are slaves excluded[42] as they are compared [in law] to lands,[43] and bills are similarly excluded,[42] for though they are movables, their substance does not constitute their intrinsic value. But was it not taught: If one misappropriated a cow and a river swept it away, he would have to present him with another cow,[44] according to the opinion of R. Eleazar, whereas the Sages maintain that he would be entitled to say to him: 'Here is yours before you'?[44] Now in what principle did they differ there [in the case of the cow]?[45] — Said R. papa: We are dealing there with a case where, e.g., he robbed a man of a field on which

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(1) [The snake holds its tail in its mouth. MS.M. reads 'open the door'.]

(2) Cf. B.M. 84b; Hill. 7b.

(3) Cf. Ber. 5b.

(4) So Rashi a.l.

(5) I.e., the knowledge of the law.

(6) I.e., the Palestinian scholars'.

(7) I.e., the Babylonians'; v. Suk. 44a.

(8) **.

(9) Bek. IV, 4; v. supra p. 584. Thus proving that for a mere utterance that caused a loss there is liability to pay.

(10) I.e., the judge.

(11) Cf. supra p. 585, Bek. 28b and Sanh. 33a.

(12) I.e., a direct cause; for the difference between Gerama and Garmi, viz. between an indirect and direct cause, v. Asheri, B.B. II, 17.

(13) Supra p. 695.

(14) MS.M.: Raba.

(15) V. supra p. 351 and Sanh. 74a.

(16) Cf. supra p. 360.

(17) ** (Krauss, Lehnworter, II, 133.)

(18) 'Rabbah' according to Asheri.

(19) For even if the depositee was not poor, since at that time he had nothing else with which to rescue himself from the thieves, he was allowed to do so; v. Tosaf. a.l.

(20) So MS.M.; curr. edd.: 'had embarked on the ferry boat'.

(21) MS.M.: 'Raba'.

(22) I.e., of threatening to endanger human life, which involves even a capital liability during the continuance of the threat; v. Ex. XXII, I, and Sanh. VIII, 7

(23) V. supra p. 680, n. 7.

(24) Cf. infra p. 713.

(25) I.e., the latter ruling.

(26) But make him liable.

(27) Sanh. 74a.

(28) Cf. supra p. 694.

(29) I.e., b. Shamua'; MS.M.: Eliezer [b. Horkenos]; as also in Shebu. 37b; v. D.S. n. 2.

(30) Shebu. 37b.

(31) Cf. Shebu. (Sonc. ed.) p. 12, n. 3; and supra 54b.

(32) Lev. V, 21.

(33) Including all matters.

(34) By the fact that it specifies certain transactions.

(35) Ibid. 24.

(36) As their intrinsic value does not lie in their substance; v. also supra p. 364.

(37) V. p. 703, n. 9.

(38) V. p. 703, n. 10.
(39) V. p. 703, n. 11.
(40) V. p. 703, n. 12.
(41) V. supra p. 364.
(42) From the general law of robbery.
(43) Cf. Lev. XXV, 46 and supra p. 364.
(44) V. p. 569, n. 2.
(45) Which is certainly subject to the law of robbery.

Talmud - Mas. Baba Kama 118a

a cow was lying,[1] and a river [subsequently] flooded it, R. Eleazar following his line of reasoning,[2] while the Rabbis followed their own view.[3]

MISHNAH. IF A MAN HAS ROBBED ANOTHER, OR BORROWED MONEY FROM HIM, OR RECEIVED A DEPOSIT FROM HIM[4] IN AN INHABITED PLACE, HE MAY NOT RESTORE IT TO HIM[5] IN THE WILDERNESS;[6] [BUT IF THE TRANSACTION WAS ORIGINALLY MADE] UPON THE STIPULATION THAT HE WAS GOING INTO THE WILDERNESS, HE MAY MAKE RESTORATION EVEN WHILE IN THE WILDERNESS.

GEMARA. A contradiction could be raised [from the following:] 'A loan can be paid in all places, whereas a lost article [which was found], or a deposit cannot be restored save in a place suitable for this'?[7] — Said Abaye: What is meant[8] is this: 'A loan can be demanded in any place, whereas a lost article [which was found] or a deposit cannot be demanded save in the proper place.'

[BUT IF THE TRANSACTION WAS ORIGINALLY MADE] UPON THE STIPULATION OF HIS GOING INTO THE WILDERNESS, etc. Is this ruling not obvious? — No, for we have to consider the case where he said to him, 'Take this article in deposit with you as I intend departing to the wilderness,' and the other said to him, 'I similarly intend departing to the wilderness, so that if you want me to return it to you there,[9] I will be able to do so.

MISHNAH. IF ONE MAN SAYS TO ANOTHER, 'I HAVE ROBBED YOU, I HAVE BORROWED MONEY FROM YOU, I RECEIVED A DEPOSIT FROM YOU BUT I DO NOT KNOW WHETHER I HAVE [ALREADY] RESTORED IT TO YOU OR NOT,' HE HAS TO MAKE RESTITUTION. BUT IF HE SAYS, 'I DO NOT KNOW WHETHER I HAVE ROBBED YOU, WHETHER I HAVE BORROWED MONEY FROM YOU, WHETHER I RECEIVED A DEPOSIT FROM YOU,' HE IS NOT LIABLE TO MAKE RESTITUTION.

GEMARA. It was stated:[10] [If one man alleges:] 'You have a maneh[11] of mine,'[12] and the other says, 'I am not certain about it,'[13] R. Huna and Rab Judah hold that he is liable,[14] but R. Nahman and R. Johanan say that he is exempt.[15] R. Huna and Rab Judah maintain that he is liable, because where a positive plea is met by an uncertain one, the positive plea prevails, but R. Nahman and R. Johanan say that he is exempt, since money [claimed] must remain in the possession of the holder.[16] We have learnt: BUT IF HE SAYS, 'I DO NOT KNOW WHETHER I HAVE BORROWED MONEY FROM YOU,' HE IS NOT LIABLE TO MAKE RESTITUTION. Now, how are we to understand this? If we say that there was no demand on the part of the plaintiff, then the first clause must surely refer to a case where he did not demand it, [and if so] why is there liability? It must therefore refer to a case where a demand was presented and it nevertheless says in the concluding clause,[17] 'HE IS NOT LIABLE to PAY'![18] — No, we may still say that no demand was presented [on the part of the plaintiff], and the first clause is concerned with one who comes to fulfil his duty towards Heaven.[19] It was indeed so stated: R. Hiyya b. Abbah said that R. Johanan stated: If a man says to another, 'You have a maneh of mine,' and the other says, 'I am not certain about it,' he

would be liable to pay[20] if he desires to fulfil his duty towards Heaven.[21]

MISHNAH. IF A MAN STOLE A SHEEP FROM THE HERD AND PUT IT BACK [THERE], AND IT SUBSEQUENTLY DIED OR WAS STOLEN, HE WOULD STILL BE RESPONSIBLE FOR IT. IF THE PROPRIETOR KNEW NEITHER OF THE THEFT NOR OF THE RESTORATION, BUT COUNTED THE SHEEP AND FOUND [THE HERD] COMPLETE, [THE THIEF WOULD BE] EXEMPT [IN REGARD TO ANY SUBSEQUENT MISHAP].

GEMARA Rab said: If the proprietor knew [of the theft], he has similarly to know [of the restoration]; where he had no knowledge [of the theft] his counting exempts [the thief]; and the words [HE] COUNTED THE SHEEP AND FOUND [THE HERD] COMPLETE, refer [only] to the concluding clause.[22] Samuel, however, said: Whether the proprietor knew, or had no knowledge [of it], his counting would exempt [the thief], and the words: [IF HE] COUNTED THE SHEEP AND FOUND [THE HERD] COMPLETE [THE THIEF WOULD BE] EXEMPT, refer to all cases.[23]

R. Johanan moreover said: If the proprietor had knowledge [of the theft], his counting will exempt [the thief], whereas if he had no knowledge [of it], it would not even be necessary to count,[24] and the words, [HE] COUNTED THE SHEEP AND FOUND [THE HERD] COMPLETE, refer [exclusively] to the first clause.[25] R. Hisda, however, said: Where the proprietor had knowledge [of the theft], counting will exempt [the thief], whereas where he had no knowledge [of the theft], he would have to be notified [of the restoration], and the words, [HE] COUNTED THE SHEEP AND FOUND [THE HERD] COMPLETE, refer [only] to the first clause.[25]

Raba said:

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(1) But the robber did not actually take possession of the cow in any other way, e.g., by 'pulling it'.

(2) That the field entered into the possession of the robber, as would be the case with any other misappropriated object, so that by virtue of his becoming possessed of the field, the cow is supposed to have similarly entered into his possession in accordance with Kid. I, 5 and supra p. 49

(3) That land is not subject to the law of robbery and does not enter into the possession of a robber, and as no independent act was done to take possession of the cow he could not be held responsible in any way regarding it.

(4) Lit., 'He (i.e. the latter) deposited with him.'

(5) Against his will.

(6) On account of the insecurity there.

(7) Is this not against the teaching of the Mishnah?

(8) By the passage quoted.

(9) Which prima facie means 'if you will be in need of money there;' it was therefore made known in the Mishnah that he may compel the creditor to accept payment there.

(10) Keth. 12b; B.M. 97b and 116b.

(11) A hundred zuz; v. Glos.

(12) I.e., 'You have to restore me a maneh which you borrowed from me' or 'which was deposited with you'.

(13) I.e., 'whether you lent me' or 'deposited with me anything at all'.

(14) To pay the maneh.

(15) He would only have to swear to confirm his plea that he is not certain about it (Rashi).

(16) I.e., the defendant.

(17) Where the doubt was not as to payment but as to the initial liability.

(18) Is this not in conflict with the view of R. Huna and Rab Judah?

(19) And since he is certain about the initial liability and only in doubt as to whether it was cancelled by payment, he is liable to make restoration for Heaven's sake even though there was no demand on the part of the plaintiff, whereas in the second clause where the doubt was regarding the initial liability it would not be so; cf. B.M. 37a and supra p. 600.

(20) Provided there was a demand, for otherwise it would not be so since the initial liability is in doubt.

(21) Though he cannot be forced by civil law to do so according to the view of R. Johanan himself.

(22) Where the proprietor had no knowledge of the theft.

(23) Whether the proprietor had knowledge of the theft or not.

(24) Cf. however supra 57a.

(25) Dealing with a case where the proprietor most probably knew of the theft.

Talmud - Mas. Baba Kama 118b

The reason of R. Hisda is because [living things] have the habit of running out[1] into the fields.[2] But did Raba really maintain this? Has not Raba said: If a man saw another lifting up a lamb of his herd and picked up a clod to throw at him and did not notice whether he put back the lamb or did not put it back, and [it so happened that] it died or was stolen [by somebody else], the thief[3] would be responsible for it. Now, does this ruling not hold good even where the herd had subsequently been counted?[4] No, only where the proprietor had not yet counted it.

But did Rab really make this statement?[5] Did not Rab Say: If the thief restored [the stolen sheep] to a herd which the proprietor had in the wilderness, he would thereby have fulfilled his duty![6] — Said R. Hanan b. Abba: Rab would accept the latter ruling in the case of an easily recognisable lamb.[7]

May we say that they[8] differed in the same way as the following Tannaim: If a man steals a lamb from the herd, or a sela'[9] from a purse, he must restore it to the same place from which he stole it. So R. Ishmael, but R. Akiba said that he would have to notify the proprietor.[10] Now, it was presumed that both parties concurred with the statement of R. Isaac who said[11] that a man usually examines his purse at short intervals. Could it therefore not be concluded that they[12] referred to the case of a sela' the theft of which is known to the proprietor[13] so that they[12] differed in the same way as Rab[14] and Samuel?[15] — No, they referred to the case of the lamb the theft of which is probably unknown to the owner[16] and they[12] thus differed in the same way as R. Hisda[17] and R. Johanan.[18]

R. Zebid said in the name of Raba: Where the article[19] was stolen from the actual possession of the proprietor, there is no difference of opinion between them[20] as in such a case they would adopt the view of R. Hisda;[21] but here they[20] differ on a case where a bailee misappropriated [a deposit] in his own possession and subsequently restored it to the place from which he misappropriated it, R. Akiba holding that [when he misappropriated the deposit] the bailment came to an end,[22] whereas R. Ishmael held that the bailment did not [thereby] come to an end.[23]

May we still say that [whether or not] counting exempts is a question at issue between Tannaim; for it was taught: If a man robbed another but made [up for the amount by] inserting it in his settlement of accounts, it was taught on one occasion that he thereby fulfilled his duty, whereas it was taught elsewhere that he did not fulfil his duty.[24] Now, as it is generally presumed that all parties concur with the dictum of R. Isaac who said that a man usually examines his purse from time to time, does it not follow [then] that the two views differ on this point, viz., that the view that he fulfilled his duty implies that counting secures exemption, whereas the view that he did not fulfil his duty implies that counting does not secure exemption? — It may however be said that if they were to accept the saying of R. Isaac they would none of them have questioned that counting should secure exemption; but they did in fact differ regarding the statement of R. Isaac, the one master[25] agreeing with the statement of R. Isaac and the other master[26] disagreeing. Or if you wish I may alternatively say that all are in agreement with the statement of R. Isaac, and still there is no difficulty, as in the former statement[25] we suppose the thief to have counted the money and thrown it into the purse of the other party,[27] whereas in the latter statement[28] we suppose him to have counted it and thrown it into the hand of the other party.[29] Or if you wish,I may alternatively still say that in the one case[28] as well as in the other[30] the robber counted the money and threw it into the purse of the other party,[27] but while on the latter case[28] we suppose some money[31] to have been in the purse,[32] the former[30] deals with a

case where no other money was in the purse.

MISHNAH. IT IS NOT RIGHT TO BUY EITHER WOOL OR MILK OR KIDS FROM THE SHEPHERDS,[33] NOR WOOD NOR FRUITS FROM THOSE WHO ARE IN CHARGE OF FRUITS.[33] IT IS HOWEVER PERMITTED TO BUY FROM HOUSE-WIVES WOOLLEN GOODS IN JUDEA,[34] FLAXEN GOODS IN GALILEE OR CALVES IN SHARON,[35] BUT IN ALL THESE CASES, IF IT WAS STIPULATED BY THEM THAT THE GOODS ARE TO BE HIDDEN, IT IS FORBIDDEN [TO BUY THEM]. EGGS AND HENS MAY, HOWEVER, BE BOUGHT IN ALL PLACES.

GEMARA. Our Rabbis taught: It is not right to buy from shepherds either goats or kids or fleeces or torn pieces of wool, though it is allowed to buy from them made-up garments, as these are certainly theirs.[36] It is Similarly allowed to buy from them milk and cheese in the wilderness[34] though not in inhabited places.[37] It is [also] allowed to buy from them four or five sheep,[38] four or five fleeces, but neither two sheep nor two fleeces. R. Judah Says: Domesticated animals may be bought[39] from them but pasture animals may not be bought from them. The general principle is that anything the absence of which, if it is sold by the shepherd, would be noticed by the proprietor, may be bought from the former, but if the proprietor would not notice it, it may not be bought from him.[40]

The Master stated: 'It is [also] allowed to buy from them four or five sheep, four or five fleeces.' Seeing that it has been said that four may be bought, is it necessary to mention five? — Said R. Hisda: Four may be bought out of five.[41] Some however say that R. Hisda stated that four may be bought out of a small herd and five out of a big herd. But the text itself seems to contain a contradiction. You say: 'Four or five sheep, four or five fleeces', implying that only four or five could be bought but not three, whereas when you read in the concluding clause: 'But not two sheep', is it not implied that three sheep may be bought? — There is no contradiction, as the latter statement refers to fat animals[42] and the former to lean ones.[43]

'R. Judah Says: Domesticated animals may be bought from them but pasture animals may not be bought from them.' It was asked: Did R. Judah refer to the opening clause[44] in which case his ruling would be the stricter,[45] or perhaps to the concluding clause,[46] in which case it would be the more lenient?[45] Did he refer to the opening clause[44] and mean to be more stringent, so that when it says, 'it is allowed to buy from them four or five sheep,' the ruling is to be confined to domesticated animals, whereas in the case of pasture animals even four or five should not be bought? Or did he perhaps refer to the concluding clause[46] and mean to be more lenient, so that when it says 'but neither two sheep nor two fleeces', this ruling would apply only to pasture animals, whereas in the case of domesticated animals even two may be bought? — Come and hear: R. Judah Says: Domesticated animals may be bought from them whereas pasture animals may not be bought from them, but in all places four or five sheep may be bought from them.[47]

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(1) So that where the proprietor did not know of the theft he should be notified about the restoration so as to take more care of his sheep.

(2) Cf. supra 57a.

(3) Who first lifted up the lamb.

(4) Thus proving that counting is not sufficient to exempt the thief where the owner had knowledge of the theft.

(5) That where the proprietor knew of the theft he has similarly to know of the restoration, and where he had no knowledge of the theft counting at least would be required.

(6) Is this ruling not in conflict with the statement made above by Rab?

(7) Lit., spotted'. I.e., the presence of which is conspicuous, so that the shepherd who was looking after the flock in the wilderness would surely notice its restoration.

(8) I.e., Rab and Samuel.

(9) A coin; v. Glos.

(10) B.M. 40b.
(11) Ibid. 21b.
(12) I.e., R. Ishmael and R. Akiba.
(13) For he had most probably meanwhile examined his purse and found a sela' short; the same was the case regarding the lamb of the theft of which the proprietor had knowledge.
(14) Who was thus preceded by R. Akiba.
(15) Who was on the other hand preceded by R. Ishmael.
(16) And so was the case regarding the sela'.
(17) V. supra p. 707.
(18) R. Johanan following R. Ishmael, and R. Hisda following R. Akiba.
(19) According to cur. edd. the reading is 'the bailee was stealing'; v. however Rashi whose amendment is followed.
(20) V. p. 708, n. 10.
(21) That he must (in all cases) notify the proprietor for the reason that living things have the habit of running out into the fields.
(22) So that the restoration must be made to the proprietor himself; cf. also supra 108b.
(23) And the restoration is therefore legally valid.
(24) B.M. 64a.
(25) Taking the restoration to be good.
(26) Maintaining that the duty of restoration has not been fulfilled.
(27) Who surely counted it before long.
(28) V. p. 709, n. 8.
(29) Who might not have counted it at all.
(30) V. p. 709, n. 7.
(31) Of uncertain amount.
(32) In which case the proprietor even after counting the money could hardly have realised the restoration.
(33) As we apprehend that these articles were not their own but were misappropriated by them.
(34) As they were authorised there to do so.
(35) The name of the plain extending along the Mediterranean coast from Jaffa to Carmel; cf. Men. 87a. [The sheep there were plentiful and cheap owing to the rich pasturage.]
(36) For even if the wool was not theirs ownership was transferred by the change in substance.
(37) Where they are supposed to bring the dairy produce to the proprietors.
(38) As the absence of so many is too conspicuous and the shepherd would hardly rely upon the allegation of accidental loss occasioned by beasts.
(39) As the proprietor knows the exact number of such animals.
(40) Tosef. B.K., XI.
(41) I.e., the proportion should be as four to five; MS.M. adds: five may be bought even out of a large herd.
(42) In which case the absence of even three will be noticed by the proprietor.
(43) Where the absence of three might not be noticed.
(44) I.e., that four or five sheep may be bought.
(45) The explanation follows presently.
(46) That two may not be bought.
(47) V. p. 710, n. 13.

Talmud - Mas. Baba Kama 119a

Now since he says 'in all places' we may conclude that he referred to the concluding clause[1] and took the lenient view. This proves it.

NOR WOOD NOR FRUITS FROM THOSE IN CHARGE OF FRUITS. Rab[2] bought bundles of twigs from an aris.[3] Abaye thereupon said to him: Did we not learn, NOR WOOD NOR FRUITS FROM THOSE IN CHARGE OF FRUITS? — He replied: This ruling applies only to a keeper in charge who has no ownership whatsoever in the substance of the land, whereas in the case of an aris

who has a part in it,[4] I can say that he is selling his own goods.

Our Rabbis taught: It is allowed to buy from those in charge of fruits while they are seated and offering their wares, having the baskets before them and the scales[5] in front of them, though in all cases if they tell the purchaser to hide [the goods purchased], it is forbidden. So also it is allowed to buy from them at the entrance of the garden though not at the back of the garden.

It was stated: In the case of a robber, when would it be allowed to buy[6] [goods] from him? — Rab said: Only when the majority [of his possessions] is his, but Samuel said: Even when only the minority [of them] is his. Rab Judah instructed Adda the attendant[7] [of the Rabbis] to act in accordance with the view that even where [only] a smaller part [of his possessions] is his [it is already permitted to deal with him].

Regarding the property of an informer, R. Huna and Rab Judah are divided: One said that it is permitted to destroy it directly[8] whereas the other one said that it is forbidden to destroy it directly. The one who stated that it is permitted to destroy it directly [maintains that an offence against] the property of an informer could surely not be worse than [one against] his body,[9] whereas the one who held that it is forbidden to destroy it maintains that the informer might perhaps have good children, as written, He, the wicked, may prepare it but the just shall put it on.[10]

R. Hisda had [among his employees] a certain aris[11] who weighed and gave,[12] weighed and took[13] [the produce of the field]. He thereupon dismissed him and quoted regarding himself: And the wealth of the sinner is laid tip for the just.[14]

For what is the hope of the hypocrite though he hath gained when God taketh away his soul.[15] R. Huna and R. Hisda differed as to the interpretation of this verse; One said that it referred to the soul of the robbed person, the other one said that it referred to the soul of the robber: The one said that it referred to the soul of the robbed person, for it is written: So are the ways of every one that is greedy of gain; which taketh away the life of the owners thereof,[16] whereas the other said that it referred to the soul of the robber because it is written: Rob not the poor, because he is poor; neither oppress the afflicted in the gate. For the Lord will plead their cause and spoil the soul of those that spoiled then.[17] But what then does the other make of the words: Which taketh away the life of the owners thereof? — By 'the owners thereof' is meant the present possessors thereof.[18] But what then does the other make of the words: And [he will] spoil the soul of those that spoiled them? — The reason [of the punishment] is here given: The reason that He will spoil those that spoiled them is because they had spoiled life.[19]

R. Johanan said: To rob a fellow-man even of the value of a perutah[20] is like taking away his life[21] from him, as it says: So cite the ways of every one that is greedy of gain; which taketh away the life of the owners thereof, and it is also written: And he shall eat up thine harvest and thy bread [which] thy sons and thy daughters [should eat],[22] and it is again said: For hamas [the violence] against the children of Judah because they have shed innocent blood in their land,[23] and it is said further: It is for Saul and for his bloody house because he slew the Gibeonites.[24] But why cite the further statements? Because you might say that this applies only to his own soul but not to the soul of his sons and daughters. Therefore come and hear: The flesh of his sons and his daughters. So also if you say that these statements apply only where no money was given[25] whereas where money was given, this would not be so,[26] come and hear: 'For hamas[27] [the violence] against the children of Judah because they have shed innocent blood in their land.' Again, should you say that these statements refer only to a case where a robbery was directly committed by hand whereas where it was merely caused indirectly this would not be so, come and hear: 'It is for Saul and for his bloody house because he slew the Gibeonites'; for indeed where do we find that Saul slew the Gibeonites? It must therefore be because he slew Nob,[28] the city of the priests, who used to supply them with water and

food,'[29] Scripture considers it as though he had slain them.

IT IS HOWEVER PERMITTED TO BUY FROM HOUSEWIVES. Our Rabbis taught:[30] It is permitted to buy from housewives woollen goods in Judea and flaxen goods in Galilee, but neither wine nor oil nor flour; nor from slaves nor from children. Abba Saul says that a housewife may sell the worth of four or five[31] denarii for the purpose of making a hat for her head. But in all these cases if it was stipulated that the goods should be hidden it is forbidden [to buy them]. Charity collectors may accept from them small donations but not big amounts. In the case of oil pressers it is permitted to buy from them [their housewives][32] olives by measure and oil by measure,[33] but neither olives in a small quantity nor oil in a small quantity. R. Simeon b. Gamaliel however says: In Upper Galilee[34] it is permitted to buy from housewives olives [even] in small quantities,[35] for sometimes a man is ashamed to sell them at the door of his house and so gives them to his wife to sell.

Rabina came once to the city of Mahuza,[36] and the housewives of Mahuza came and threw before him chains and bracelets, which he accepted from them.[37] Said Rabbah[38] Tosfa'ah to Rabina: Was it not taught: Charity collectors may accept from them small donations but not big amounts? He, however, said to him: These things are considered with the people of Mahuza[39] as small amounts.

MISHNAH. SHREDS [OF WOOL] WHICH ARE TAKEN OUT BY THE WASHER BELONG TO HIM[40] BUT THOSE WHICH THE CARDER REMOVES BELONG TO THE PROPRIETOR.[41] THE WASHER MAY REMOVE THE THREE THREADS AT THE EDGE] AND THEY WILL BELONG TO HIM, BUT ALL OVER AND ABOVE THAT WILL BELONG TO THE PROPRIETOR, THOUGH IF THEY WERE BLACK UPON A WHITE SURFACE, HE MAY REMOVE THEM ALL[42] AND THEY WILL BELONG TO HIM. IF A TAILOR LEFT A THREAD SUFFICIENT TO SEW WITH, OR A PATCH OF THE WIDTH OF THREE [FINGERS] BY THREE [FINGERS], IT WILL BELONG TO THE PROPRIETOR.[41] WHATEVER A CARPENTER REMOVES WITH THE ADZE BELONGS TO HIM,[43] BUT THAT WHICH HE REMOVES BY THE AXE BELONGS TO THE PROPRIETOR.[44] IF, HOWEVER, HE WAS WORKING ON THE PROPRIETOR'S PREMISES,[45] EVEN THE SAWDUST BELONGS TO THE PROPRIETOR.

GEMARA. Our Rabbis taught:[46] It is allowed to buy shreds [of wool] from the washer, as they are his.[43] The washer may remove the two upper threads and they will belong to him.

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(1) V. p. 711, n. 8.

(2) 'Raba' according to MS.M.; Alfasi: 'Rabbah'.

(3) I.e., a tenant who tills the owner's ground for a certain share in the produce.

(4) I.e., in the produce.

(5) ** 'trutina'.

(6) Var. lec. 'to collect a debt' or 'to derive a benefit'.

(7) Lit., 'one who pours water over another person's hands' (Jast.).

(8) Lit., 'with the hand'.

(9) Which may be incapacitated to any extent for the sake of public safety; v. A.Z. 26b, also Sanh. 74a and supra p. 703.

(10) Job XXVII, 17. [The words 'the wicked' do not occur in the Massoretic texts. It is more than probable that it is an explanatory gloss inserted by the Talmud; v. marginal glosses and cf. Sanh. (Sonc. ed.) p. 698, n. 8.]

(11) V. Glos.

(12) To R. Hisda half of the produce instead of two-thirds.

(13) For himself half of the produce instead of a third; or he was over-careful in weighing.

(14) Prov. XIII, 22. [He felt glad that he got rid of him.]

(15) Job XXVII, 8.

(16) Prov. 1, 19.

(17) Ibid. XXII, 22-23.

(18) I.e., the robber.
(19) I.e., the life of those who were robbed by them.
(20) Which is the minimum of legal value; v. Glos.
(21) Lit., ‘Soul’.
(22) Jer. V, 17.
(23) Joel IV, 19.
(24) II Sam. XXI, 1.
(25) By the robber for the misappropriated article.
(26) Though the whole transaction was by threats and violence.
(27) Implying a purchase by threats and violence as supra p. 361.
(28) I.e., its inhabitants; v. I Sam. XXII, 11-19.
(29) For the Gibeonites were employed there by the priests as hewers of wood and drawers of water; v. Josh. IX, 27.
(30) Cf. Tosef. B.K. XI.
(31) ‘Foot or’ missing in Tosef.
(32) [So Rashi, supported by reading in MSS.: others; one may buy from oilpressers.]
(33) For since it is done publicly and in a big way they were surely authorised to do so.
(34) Where oil was expensive (Rashi).
(35) ‘In small quantities’ is missing in Tosef. ibid.
(36) A large trading town on the Tigris.
(37) For charity purposes.
(38) MS.M.; ‘Raba’.
(39) Who were of substantial means; cf. Ta'an. 26a.
(40) As the proprietor does surely not care about them.
(41) As they are of some importance to him.
(42) As they spoil the appearance of the garment.
(43) V. p. 715, n. 9.
(44) V. p. 715, n. 10.
(45) As a daily employee.
(46) Cf. Tosef. XI.

Talmud - Mas. Baba Kama 119b

[The carder] must not use [of the cloth for stretching and hackling] more than three widths of a seam. He should similarly not comb the garment towards the warp but towards its woof.[1] He may straighten it out lengthways but not breadthways. If he wants, however, to straighten it out up to a handbreadth he may do so.

The Master stated: ‘Two threads.’ But did we not learn, THREE’? — There is no difficulty, as the former statement applies to thick threads and the latter to thin ones.

‘He should similarly not comb the garment towards the warp but towards its woof.’[1] But was it not taught to the contrary? — There is no difficulty, as the latter statement refers to an everyday garment whereas the former deals with a best cloak [used very seldom].

‘[He must] not use [of the cloth for stretching or hackling] more than three widths of a seam.’ R. Jeremiah asked: Does [the preliminary drawing of the] needle to and fro count as one stitch, or does it perhaps count as two stitches? — Let it stand undecided. ‘He may straighten it out lengthways but not breadthways.’ But was it not taught to the contrary? — There is no difficulty, as the former statement refers to a garment and the latter refers to a girdle.[2]

Our Rabbis taught: It is not allowed to buy hackled wool from the carder as it is not his, but in places where it is customary for it to belong to him, it is allowed to buy it. In all places, however, it

is allowed to buy from them a mattress full of stuffing and a cushion full of stuffing,[3] the reason being that these articles had [in any case] been transferred to them through the change [which the stuffing underwent].

Our Rabbis taught:[3] It is not right to buy from a weaver either remnants of woof or of warp or threads of the bobbin or remnants of coils. It is however allowed to buy from him [even] a chequered web,[4] [and] woof and warp if they are spun and woven. I would here ask: [Since it is] now stated that 'if spun' it may be accepted from them, what necessity was there to say 'woven'?[5] — What is meant by 'woven' is merely 'twisted' [without first having been spun].

Our Rabbis taught:[3] 'It is not right to buy from a dyer either test pieces,[6] or samples[7] or torn pieces of wool. But it is allowed to buy from him a coloured garment,[8] yarn, and ready-made garments'.[9] But [since it has] now been stated that yarn may be accepted from him, what doubt could there be regarding ready-made garments?[10] — What is meant by 'ready-made garments' is felt spreadings .[11]

Our Rabbis taught: 'If skins have been given to a tanner the [part] trimmed off and the [pieces of hair] torn off will belong to the proprietor, whereas what comes up by the rinsing in water would belong to him.[12]

IF THEY WERE BLACK UPON A WHITE SURFACE HE MAY REMOVE THEM ALL AND THEY WILL BELONG TO HIM. Rab Judah said: A washer is named Kazra,[13] and he takes the Kazre.[14] Rab Judah again said: All the [three] threads can be reckoned for the purpose of tekeleth[15] though Isaac my son is particular about them.[16]

IF A TAILOR LEFT A THREAD SUFFICIENT TO SEW WITH. How much is SUFFICIENT TO SEW WITH? — Said R. Assi: The length of a needle and beyond the needle. The question was raised: [Does this mean] 'the length of a needle and as much again as the length of the needle,' or perhaps 'the length of the needle and anything beyond the needle'? Come and hear: If a tailor left a thread which is less than sufficient to sew with or a patch less than the width of three [fingers] by three [fingers], if the proprietor is particular about them they would belong to the proprietor, but if the proprietor is not particular about them they would belong to the tailor.[17] Now, there is no difficulty if you say that 'the length of a needle and beyond the needle' means as much again as a needle, for a thread less than that can still make a clip;[18] but if you say that 'the length of a needle and anything beyond the needle' for what purpose could a thread which is less than this be fit? — We may therefore conclude from this that it means 'the length of a needle and beyond the needle as much again as the length of the needle.' This proves it.

WHATEVER A CARPENTER REMOVES WITH THE ADZE BELONGS TO HIM, BUT THAT WHICH HE REMOVES BY THE AXE BELONGS TO THE PROPRIETOR. A contradiction could be raised from the following: Whatever a carpenter removes with the adze or cuts with his saw belongs to the proprietor, for it is only that which comes out from under the borer or from under the chisel or is sawed with the saw that belongs to [the carpenter] himself![15] — Said Raba: In the place where our Tanna [of the Mishnah lived] two kinds of implements were used, the larger called 'axe' and the smaller called 'adze', whereas in the place of the Tanna of the Baraitha there was only one implement [i.e., the larger] and they still called it 'adze'.[19]

IF HOWEVER HE WAS WORKING ON THE PROPRIETOR'S PREMISES EVEN THE SAWDUST BELONGS TO THE PROPRIETOR. Our Rabbis taught: Workmen chiselling stones do not become liable for robbery [by retaining the chips in their possession]. Workmen who thin trees or thin vines or trim shrubs or weed plants or thin vegetables, if the proprietor is particular [about the waste materials] become liable for robbery, but if the proprietor is not particular about them they will

belong to the employees.[20] Rab Judah said: Also cuscuta[21] and lichen[22] are [under such circumstances] not subject to the law of robbery, though in places where proprietors are particular they would be subject to the law of robbery. Rabina thereupon said: Matha Mehasia[23] is a place[24] where the proprietors are particular about them.[25]

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(1) [Where greater importance is attached to appearances, which may be improved by combing towards the woof, than to durability.]

(2) [Of which only the ends hanging down are visible and these alone require straightening out.]

(3) V. p. 716, n. 4.

(4) Lit., 'garment'. [Although it apparently consists of remnants of different materials which he might have acquired unlawfully, for even so the ownership of them was transferred to him by the change in substance.]

(5) For if it is woven it had surely been previously spun; cf. Bek. 29b.

(6) I.e., pieces cut off to test the colour.

(7) Specimens of colour.

(8) Tosef. B.K. XI: 'wool' instead of 'garment'.

(9) Tosef. ibid. 'warp and woof' instead of 'ready-made garments'; so also MS.M.

(10) For these were surely first spun; v. Bek. 29b.

(11) Which were never spun.

(12) [Being negligible, v. Tosaf. ibid.]

(13) Lit., 'shortener'.

(14) Lit., 'the shortening'; i.e., that which resulted from the garment having become shorter.

(15) Lit., 'blue' riband to be put among the zizith (the 'fringes') on the borders of garments in accordance with Num. XV, 38; if the three threads were not taken away by the washer, they need not be removed for the sake of Zizith as they will be included in the measure of the first joint of the thumb required to be between the hold and the edge of the garment, for which v. Men. 42a.

(16) To cut them off.

(17) Tosef. B.K. XI.

(18) Lit., 'is fit as a pin' (fast.) as in the case of a seam. (5) Tosef. B.K. XI. This ruling, that whatever he removes with the adze belongs to the proprietor, thus contradicts the Mishnah which roles that it belongs to the carpenter.

(19) But was in fact the 'axe' of which it is mentioned in the Mishnah that whatever be removed by it belongs to the proprietor.

(20) Tosef. ibid.

(21) I.e., cucumbers or melons in an early stage when they are pubiscent' (Jast.).

(22) Young green cereal.

(23) I.e., the city of Mehasia or Mahesia; a suburb of Sora. V. B.B. (Sonc. ed.) p. 10, n. 1.

(24) Abundant in cattle; Rashi a.I. and Rashbam, B.B. 36a; and thus in great need of fodder.

(25) V. Hor. 12a.

Talmud - Mas. Baba Metzia 2a

C H A P T E R I

MISHNAH. TWO [PERSONS APPEARING BEFORE A COURT] HOLD A GARMENT.[1] ONE OF THEM SAYS, 'I FOUND IT', AND THE OTHER SAYS, 'I FOUND IT'; ONE OF THEM SAYS, 'IT IS ALL MINE', AND THE OTHER SAYS, 'IT IS ALL MINE', THEN THE ONE SHALL SWEAR THAT HIS SHARE IN IT IS NOT LESS THAN HALF, AND THE OTHER SHALL SWEAR THAT HIS SHARE IN IT IS NOT LESS THAN HALF, AND [THE VALUE OF THE GARMENT] SHALL THEN BE DIVIDED BETWEEN THEM. IF ONE SAYS, 'IT IS ALL MINE', AND THE OTHER SAYS, 'HALF OF IT IS MINE', HE WHO SAYS, 'IT IS ALL MINE' SHALL SWEAR THAT HIS SHARE IN IT IS NOT LESS THAN THREE QUARTERS, AND HE WHO SAYS, 'HALF OF IT IS MINE' SHALL SWEAR THAT HIS SHARE IN IT IS NOT LESS THAN A QUARTER. THE FORMER THEN RECEIVES THREE QUARTERS [OF THE VALUE OF THE GARMENT] AND THE LATTER RECEIVES ONE QUARTER. IF TWO RIDE ON AN ANIMAL, OR ONE RIDES AND THE OTHER LEADS IT, AND ONE OF THEM SAYS, 'IT IS ALL MINE', AND THE OTHER SAYS, 'IT IS ALL MINE', THEN THE ONE SHALL SWEAR THAT HIS SHARE IN IT IS NOT LESS THAN HALF, AND THE OTHER SHALL SWEAR THAT HIS SHARE IN IT IS NOT LESS THAN HALF, AND [THE VALUE OF THE ANIMAL] SHALL THEN BE DIVIDED BETWEEN THEM. IF BOTH ADMIT [EACH OTHER'S CLAIMS] OR IF THEY HAVE WITNESSES [TO ESTABLISH THEIR CLAIMS] THEY RECEIVE THEIR SHARES WITHOUT AN OATH.

GEMARA. What need is there [for the Mishnah] to [give two pleas of the litigants and] state: ONE OF THEM SAYS, 'I FOUND IT', AND THE OTHER SAYS, 'I FOUND IT', ONE OF THEM SAYS, 'IT IS ALL MINE', AND THE OTHER SAYS, 'IT IS ALL MINE'? Surely one plea would have been sufficient! — It is only one plea: One says 'I found it and [therefore] it is all mine', and the other says 'I found it, and [therefore] it is all mine'! But why not just state 'I found it', and it will be understood that the intention is to claim the whole garment? — The term 'I FOUND IT' might have been explained as denoting 'I saw it', the mere seeing [of the garment] entitling him to claim it as his possession.[2] Therefore the plea 'IT IS ALL MINE' is added, so as to make clear that seeing alone does not constitute a claim. But how could it be thought that one who has only seen [the garment] could plead 'I found it'? Does not Rabbannai[3] say that the phrase and thou hast found it[4] means 'thou hast taken hold of it'? — It is admitted that the Scriptural use of the term 'found' implies having taken hold, but the Tanna uses popular language, in which, on seeing something, one might use the term 'found it', [the belief being prevalent] that one acquires [a lost article] by sight alone. For this reason it was necessary to add the plea 'IT IS ALL MINE' and thus to indicate that the mere seeing [of an ownerless object] constitutes no claim to possession. But even so, would it not have been sufficient to state 'IT IS ALL MINE' without the plea of 'I FOUND IT'? — Had [the Mishnah] stated only the plea 'IT IS ALL MINE' I might have said that elsewhere [in the Talmud] the term 'found' is used to mean ['seen', and the conclusion would have been drawn] that mere sight constitutes a claim to possession. For this reason the Mishnah states first 'I FOUND IT' and then 'IT IS ALL MINE' so that we may gather from the additional clause that mere sight does not constitute a claim to possession.

But how could you say that the two pleas are really one? Is not each plea introduced by the words: ONE OF THEM SAYS and THE OTHER SAYS[5] , [viz.] ONE OF THEM SAYS 'I FOUND IT', AND THE OTHER SAYS 'I FOUND IT', ONE OF THEM SAYS 'IT IS ALL MINE', etc.? [To this] R. Papa. or R. Shimi b. Ashi, or, as some say, Kadi,[6] replied: The first plea applies to a case of finding, but the second plea applies to a case of buying and selling.[7] And it is necessary [to have the two cases].

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(1) So that they are both in actual possession — otherwise the one in actual possession would have the stronger claim.
(2) Though the other man has taken hold of it first.
(3) B.K. 113b; [MS. M.: Rabina. V. D.S. a. l.].
(4) Deut. XXII, 3.
(5) Which would show that they form alternative pleas.
(6) This word may also mean 'an unknown authority'.
(7) But not to a case where each one maintains that he has made the garment, for then one of them is bound to be lying.

Talmud - Mas. Baba Metzia 2b

For if the Tanna had dealt solely with the case of finding I might have said that only in such a case would the Rabbis impose an oath, because each disputant might permit himself [to claim the garment] by saying to himself, 'My neighbour loses nothing through my action [as it cost him nothing to acquire the garment]; I shall go and take hold of it and share it with him.'[1] But in the case of a bought article, where this argument does not apply,[2] it might be assumed that no oath was to be imposed. On the other hand, had the Tanna dealt solely with a case of buying and selling, it might be assumed that only in such a case would the Rabbis impose an oath, because each disputant might permit himself [to claim the garment] by saying to himself, 'My neighbour has paid the price and I am prepared to pay the price; seeing that I need it I shall take it, and let my neighbour take the trouble to go and buy another garment.' But in the case of a found article, where this argument does not apply, it might be assumed that no oath was to be imposed; therefore both cases are necessary.

But how could such a situation arise in the case of a bought article? One could surely ascertain from the seller as to which of the two paid him the money? — The case is one in which the seller took money from the two purchasers, willingly from one, and unwillingly, from the other, and we do not know from whom he took it willingly and from whom unwillingly.[3]

Shall it be said that our Mishnah is not in agreement with the view of Ben Nannus? For does not Ben Nannus[4] express surprise at the decision of the Sages to impose oaths on disputants one of whom is bound to swear falsely? — The Mishnah may well be in agreement with Ben Nannus. For in the case [where Ben Nannus objects to the oath] it is certain that if both parties take the oath one of them will commit perjury. But in our Mishnah it may well be assumed that no perjury will be committed [even if both parties swear], for it is possible that both of them picked up the garment simultaneously.[5]

Again, shall it be said that our Mishnah is not in agreement with the view of Symmachus? For does not Symmachus, [in another case,][6] maintain that disputed money of doubtful ownership should be divided among the disputants without an oath? But would not the same difficulty arise [if we compared the decision of our Mishnah] with that of the Rabbis[7] [who are opposed to Symmachus]? For have these Rabbis not declared that 'the claimant must bring evidence to substantiate his claim' [while in our Mishnah the disputed article is divided on oath]? — What a comparison! In the case in which the Rabbis apply the principle that 'the claimant must bring evidence' the contending parties had not taken hold of the disputed object, but here [in our Mishnah] since both disputants hold the garment[8] it is rightly divided, after both have taken the oath. But in regard to Symmachus the argument is the other way. For if he decided in the case referred to [where no party is in possession of the disputed property] that the amount should be divided among the litigants without an oath, how much more readily would he give this decision in a case like ours, where both disputants are equally in possession of the article in question; [and thus the query remains, 'Shall it be said that our Mishnah is not in agreement with Symmachus?'] It can still be maintained that the Mishnah is in agreement with Symmachus. For Symmachus expressed his view [that the property in dispute should be divided without an oath] only in a case where both litigants are uncertain as to the true facts [and it would therefore be wrong to make either of them swear] but where both parties assert their claims

with certainty [as in our Mishnah] he would take a different view.

But does not Rabbah the son of R. Huna maintain that Symmachus's decision applies also to a case where both parties are certain and definite in their claims?[9] — It can still be maintained that our Mishnah is in agreement with Symmachus. For Symmachus expressed the view [as quoted] only in a case where a verdict in favour of one would involve a loss to the other, but where no actual monetary loss is involved [as in our Mishnah] he would take a different view. But then again, can we not infer by means of a Kal wa-homer[10] [that Symmachus would disagree with our Mishnah]? For if even in the case where the party entitled to the verdict loses money by being awarded only half of the disputed amount,

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(1) The oath would then act as a deterrent, as even if he did not hesitate to put forward a wrong claim he would not be ready to commit perjury.

(2) Apart from the loss of the money paid, there is the loss of the garment which the man who went to the trouble of buying it evidently needed for his own use.

(3) The evidence of the seller, even if available, would not be trusted in such a case, as he is not likely to remember, after the two have left, from whom he took the money willingly (Rashi). [Tosaf. reads, he did not know, i.e., the seller does not recollect the matter; v. Kid. 73a.]

(4) V. Shebu. 43a. It is the case of a householder having instructed a shopkeeper to supply his employees with goods for the amount that he (the householder) owed them in wages. The shopkeeper asserts that he has supplied the goods, while the employees deny having received any. The decision of the Sages is that both the shopkeeper and the employees take an oath in confirmation of their statements, and the householder pays both parties, whereas Ben Nannus holds that both receive payment without taking an oath.

(5) In this case each finder would be entitled to swear that half of the garment belongs to him, in the belief that he was first in picking up the whole of it. The same applies to a bought article if the seller consented to sell it to both at the same time.

(6) v. B.K. 46a.

(7) V. ibid.

(8) And although each one claims the whole garment, and thus seeks to acquire the part that the other is holding, yet they are both in the same position, so that the above principle does not apply.

(9) Which makes the above distinction (between ‘certain’ and ‘uncertain’) invalid?

(10) An inference from a minor to a major premise; v. Glos.

and where it could be maintained that the whole amount is due solely to that party Symmachus abides by the principle that ‘Disputed money of doubtful ownership should be divided without an oath’, how much more readily would he abide by that principle in a case where [as in our Mishnah] it can be said that the disputed object belongs to both [and that therefore it should be divided between them without an oath]? It can still be maintained that our Mishnah is in agreement with Symmachus. For the oath imposed upon disputants in our Mishnah is only rabbinical [not Biblical].[1] This is expressly maintained by R. Johanan. For R. Johanan says: This oath is an institution of the Sages, intended to prevent anyone from going out and seizing a neighbour's garment, declaring it to be his own.

Shall it be assumed that our Mishnah is not in agreement with R. Jose? For does not R. Jose say:[2] If so, what loss does the fraudulent claimant incur? Therefore let the whole amount be retained [by the Court] until ‘the coming of Elijah’?[3] But [as a counter-question] would not the same difficulty arise in regard to the Rabbis [who are opposed to R. Jose]? For seeing that these Rabbis maintain that the balance[4] should be retained [by the Court] until ‘the coming of Elijah’. would they not accordingly give the same decision concerning the disputed garment [in our case], which is like the disputed balance [in the other case]? — What a comparison! In the other case, where it is certain that

the disputed balance belongs to one of the claimants only, those Rabbis rightly decided that the amount in question should be retained till 'the coming of Elijah'; whereas here [in our Mishnah], where it can be assumed that the garment belongs to both ,[5] the [same] Rabbis would agree that it should be divided among the two claimants when they have taken the oath. But in regard to R. Jose the argument is the other way. If R. Jose decided in his case, where each claimant is undoubtedly entitled to one hundred [zuz][6] , that the money should be retained till 'the coming of Elijah', how much more readily would he decide so in our case [where it can be assumed that only one of the disputants is entitled to have the garment]? — The Mishnah can still be in agreement with R. Jose. For in his case one of the disputants is bound to be a fraud,[7] whilst in our case no one can say for sure that one of the disputants is a fraud,[8] as it is possible that both picked up the garment simultaneously. If you wish it, I could argue thus: In his case, R. Jose penalised the fraudulent claimant [in making him forfeit his hundred] so that he may confess the truth, but in our case [where the dispute is about a found article] what real loss would the fraudulent incur [on the garment being forfeited] that could induce him to confess the truth?[9] [But the question arises:] Assuming this argument is right with regard to a found article, how can it apply to a bought article?[10] The first answer is hence the best.[11]

[Now the question arises:] According to the views of either the Sages or R. Jose [who agree that the fraudulent person should not be allowed to benefit by his fraud] how is it that in the case of the shopkeeper and his credit-book[12] the decision is that both take the oath and receive payment [from the householder] and we do not say that the money should be taken from the householder and retained [by the Court] until 'the coming of Elijah', since it is certain that one of the parties[13] is guilty of fraud? — In this case there is a special reason for the decision given. The shopkeeper can say to the householder: 'I carried out your instructions — what have I to do with your employee? Even if the employee swears — I do not believe his oath. You trusted him, in that you did not tell me to give him the goods in the presence of witnesses.' The employee, on the other hand, can say [to the householder]: 'I have done the work for you — what have I to do with the shopkeeper? Even if he swears — I do not believe him.'[14] Therefore they both swear and receive payment from the householder.

R. Hiyya taught: [If one says to another,] 'You have in your possession[15] a hundred zuz belonging to me', and the other replies, 'I have nothing belonging to you', while witnesses testify that the defendant has fifty zuz belonging to the plaintiff; the defendant pays the plaintiff fifty zuz, and takes an oath regarding the remainder,[16] for the admission of a defendant ought not to be more effective than the evidence of witnesses[17] , a rule which could be proved by a Kal wa-homer.[18] And our Tanna teaches this: WHEN TWO HOLD A GARMENT AND ONE OF THEM SAYS 'I FOUND IT' ETC. . . . [BOTH HAVE TO SWEAR]. Now this is just the same [as the case where there are witnesses], for when we see a person holding a garment we presume that it is his, and we are in the position of witnesses who can testify that each claimant is entitled to the half he is holding. And yet each claimant has to swear.

Now why is it necessary to prove by means of a Kal wa-homer that the admission of a defendant ought not to be more effective [in imposing an oath on the defendant] than the testimony of witnesses? — [It is necessary for this reason:] In the case of a [partial] admission [of a claim] you might say that the Divine Law[19] has imposed an oath upon him for the reason indicated by Rabbah.[20] For Rabbah said: The reason the Torah has declared that he who admits part of his opponent's claim must take an oath[21] is the presumption that nobody would take up such an impertinent attitude towards his creditor [as to give a complete denial to his claim]. The defendant [in this case] would have liked to give a complete denial, but he has not done so because he has not been able to take up such an impertinent attitude

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(1) Cf. Shebu. 41a.

(2) In the case where two persons have deposited money with a third person, one a hundred and the other two hundred zuz, and each depositor claims to have deposited the larger amount, v. 37a.
(3) Elijah the prophet, the herald of the Messianic era who is to make the truth known. The phrase is a technical term meaning 'indefinitely'.
(4) The disputed hundred.
(5) As they may have picked it up simultaneously.
(6) V. n. 1 supra.
(7) As they both claim to have deposited the 200 zuz, and it is only right to make the fraudulent person suffer.
(8) Therefore R. Jose would agree that the garment should be divided in accordance with the decision of the Mishnah.
(9) And since the forfeiture of the garment would serve no purpose, R. Jose would agree with our Mishnah.
(10) Where even the person that has no right to the garment would incur a real loss by its forfeiture (because, as explained above, he too had paid for it) and the fear of the loss would induce him to admit the truth (that the seller had taken the money from him unwillingly).
(11) Viz., that in the other case one claimant is certainly fraudulent, while in our case both may be honest.
(12) V. p. 4, n. 1.
(13) Either the shopkeeper or the employees.
(14) It would thus be wrong to make either party forfeit the amount claimed. As the shopkeeper and the employees have had no direct dealings with each other, and have entered into no mutual obligations, they may regard each other as entirely untrustworthy and refuse to believe each other even on oath.
(15) I.e., on loan.
(16) He swears that he does not owe the other fifty zuz. The evidence of the witness places the defendant in the same position as his own admission of part of the claim would have done. Shebu. 39b.
(17) If therefore the defendant's partial admission necessitates his taking an oath on the rest, the evidence of the witnesses regarding the partial debt should at least have a similar effect.
(18) v. Glos.
(19) Lit., 'The All- Merciful One', i.e. God, whose word Scripture reveals.
(20) B.K. 107a.
(21) While in the case of one who restores a lost article to its owner he is believed without an oath, even if the owner maintains that only part of the loss has been returned to him by the finder.

Talmud - Mas. Baba Metzia 3b

. On the other hand, it may be assumed that the defendant would have been ready to admit the whole claim,[1] and that he has not done so because of a desire to put the claimant off for a time, thinking: 'When I shall have money, I shall pay him.' Therefore the Divine Law imposes an oath upon him, so that he may admit the whole claim. But as regards the testimony of witnesses, where this argument does not apply,[2] I should have thought that no oath ought to be imposed. Therefore it is necessary to prove by a Kal wa-homer that in this case also an oath is to be imposed. And what is the Kal wa-homer? — [It is as follows:] If [the words of] his own mouth,[3] which do not oblige him to pay money, make it necessary for him to take an oath, how much more ought the evidence of witnesses, which obliges him to pay money, make it necessary for him to take an oath? But is it right to say that [the words of] his own mouth do not oblige him to pay money — in view of [the established principle] that the admission of a defendant is equal to the testimony of a hundred witnesses? — What is meant by the payment of money is the payment of a fine.[4] [And the Kal wa-homer is as follows:] If [the words of] his own mouth, which do not oblige him to pay a fine, make it necessary for him to take an oath, how much more ought the evidence of witnesses, which obliges him to pay a fine, make it necessary for him to take an oath? [But then it could be argued:] Does not a person's own mouth carry more weight [than the evidence of witnesses] in that it can oblige him to bring an offering,[5] while the evidence of witnesses does not oblige him to bring an offering?[6] — This objection is not valid: R. Hiyya is of the same opinion as R. Meir, who says that witnesses do make it necessary for the offender to bring an offering, [and he infers it] by means of a Kal wa-homer. For we learnt:[7] When two persons say to a third person: 'You have eaten forbidden fat [unawares]', but

he says: 'I have not eaten any'. R. Meir maintains that he is obliged to bring an offering, but the Sages[8] declare him free. R. Meir argues: If two [witnesses] can bring upon an offender such a severe penalty as death, should they not be able to bring upon him the light penalty of an offering? To this the Sages oppose the argument: Had he desired [to prevaricate] he could have said, 'I did it deliberately', and he would have been free [from bringing an offering].[9]

But [the argument continues]: Does not a person's own mouth carry more weight [than witnesses] in that it can oblige him [in a case of confession after denial on oath] to bring a guilt-offering?[10] But [it is immediately objected]: A guilt-offering is also an offering [and this argument has already been dealt with]! — Then [put it this way]: Does not a person's own mouth [in a case of confession after a denial on oath] carry more weight than witnesses, in that it can oblige him to pay a 'fifth'?[11] — This objection is not valid: R. Hiyya is of the same opinion as R. Meir, who says that just as witnesses oblige the offender to bring an offering — because of the Kal wa-homer inference — they also oblige him on the same ground to bring a 'fifth'. But [it can still be objected]: Does not a person's own mouth [in the case of the admission of a debt] carry more weight [than the evidence of witnesses] in that it cannot be refuted by a denial or an alibi proof[12] on the part of witnesses, while the evidence of witnesses can be refuted by a denial or an alibi proof on the part of other witnesses? — [The Kal wa-homer must] therefore be derived from 'one witness': If one witness, whose evidence does not oblige a defendant to pay money, obliges him to take an oath,[13] how much more should several witnesses, whose evidence does oblige a defendant to pay money, oblige him to take an oath. But [it can be objected]: The oath that is imposed by the evidence of one witness refers only to the part of the debt to which the witness testifies [and which the defendant denies],

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(1) His honesty, therefore, need not be doubted, and one need not suspect that he would swear falsely if given an oath.

(2) As the defendant denies the whole claim, and if he is dishonest he may also be ready to commit perjury.

(3) I.e., his own confession.

(4) The admission of an offence for which a fine is imposed renders the offender free from such a penalty by virtue of his confession. V. B. K. 75a.

(5) V. Lev. V, 9.

(6) If he contradicts the evidence. For it appears from Lev. IV, 28, that it is only his own admission of the wrong he has committed unawares that necessitates the bringing of an offering by him, but not the information given by witnesses. If this is so, then how does it follow that witnesses make it necessary for him to take an oath?

(7) Ker. 11b. Cf. Jeb. 87b.

(8) Anonymous opinion representing the majority of Rabbis.

(9) As an offering is brought only if the offence has been committed unawares, and had the offender no regard for the truth, he could have escaped the penalty of an offering by declaring that he had offended deliberately. It must therefore be assumed that in denying the witnesses' statement completely he told the truth. [In the case of a deliberate offence, the penalty is Kareth, extermination by the hand of God. Cf. Lev. VII, 25, and v. Glos.]

(10) Lev. V, 20-26.

(11) The guilt-offering accompanies the return of the misappropriated goods and the payment of a 'fifth', i.e., a fifth part of the value of the goods.

(12) V. Mak. ch. I, and v. Glos. Zomem.

(13) In confirmation of his denial of the witness's statement. V. Shebu. 40a.

while the oath that you would impose by the evidence of several witnesses refers to the remainder of the debt [not included in the evidence], which is denied by the defendant.[1] [In consequence of this refutation] R. Papa says: The inference is really drawn from an 'attached oath'[2] [caused by the evidence of] one witness. But [to this also it could be objected]: Is not the 'attached oath' of one witness more weighty, in that [in this case] one oath carries with it another oath,[3] while several witnesses only oblige the defendant to pay money?[4] — The case of 'his own mouth' will prove it.[5]

But [it is again objected]: is not 'his own mouth' more weighty in that it cannot be refuted by a denial [on the part of witnesses]? — The case of 'one witness' will prove it, in that he can be refuted [by other witnesses] and yet he obliges the defendant to take an oath. But [it is objected once more]: [The oath imposed by] one witness refers only to the part of the debt to which the witness testifies [and which the defendant denies], while [the oath that is imposed by] several witnesses refers to the remainder of the debt — [not included in the evidence and] denied by the defendant? — Again the case of 'his own mouth' will prove it.[6] But [it is again objected]: Is not 'his own mouth' [in a case of admission] more effective in that it cannot be refuted by a denial [on the part of witnesses]? — The case of one witness will prove it, in that he can be refuted by the denial [of other witnesses] and yet he obliges the defendant to take an oath. But [it is objected once more]: [The oath that is imposed by] several witnesses refers to the remainder of the debt denied by the defendant [and not included in the evidence]? — Again, the case of 'his own mouth' will prove it.[7] And the [former] argument resumes its force. [It is true that] the aspect of one case is not like the aspect of the other case; but both cases have the common characteristic that they arise through claim and denial, and therefore the defendant has to swear. So I adduce that also in the case of 'witnesses,' arising as it does through claim and denial, the defendant has to swear. But [it is again argued]: Have not the other analogous cases the common characteristic that the defendant is not presumed to be a liar, while in the case of 'witnesses' he is presumed to be a liar?[8] [The objection, however, is at once raised:] Is the defendant really presumed to be a liar when contradicted by witnesses? Has not R. Idi b. Abin said that R. Hisda said: He who denies a loan[9] can still be accepted as a witness, but he who denies a deposit cannot be accepted as a witness?[10] Therefore argue this way: Have not the other cases the common characteristic that they are not subject to the law of retaliation in case of an alibi,[11] while [several] witnesses are subject to the law of retaliation in case of an alibi? — This presents no difficulty: R. Hiyya attaches no importance to the argument from the law of retaliation in case of an alibi.[12]

There is, however, another difficulty: How could it be said that our Tanna teaches the same [as R. Hiyya] — are the two cases at all alike? There [viz., in the case of R. Hiyya] the creditor has witnesses [for half the amount claimed], but the debtor has no witnesses [regarding the other half] that he does not owe him it. For if the debtor had witnesses that he did not owe him anything [of the other half claimed], R. Hiyya would not require the debtor to swear [regarding the other half]. But here [in our Mishnah] we are witnesses for the one party as much as for the other [in regard to the right of either to one half of the garment], and yet both have to swear.[13]

It must therefore be assumed that the statement 'And our Tanna teaches the same' refers to another decision of R. Hiyya. For R. Hiyya says: [If one says to another,] 'You have in your possession a hundred zuz belonging to me,' and the other says, 'I have only got fifty' and [here they are],[14] he has to swear [concerning the disputed amount].[15] For what reason? Because [the offer implied in the words] 'Here they are' is like a 'partial admission' [which necessitates an oath]. And our Tanna teaches the same: TWO HOLD A GARMENT, etc., and although here each one holds [the garment], and we are witnesses that the part that each one holds is like the part of the debt which the defendant [in the other case] is ready to deliver, yet it says that he must swear! R. Shesheth, however, says that [the offer implied in the words] 'Here they are' relieves the debtor of the oath — For what reason? Because the declaration 'Here they are' made by the debtor enables us to regard those [fifty] zuz, which he has admitted to be owing, as if they were already in the hands of the creditor, while the remaining fifty [zuz] the debtor does not admit to be owing, and therefore there is no 'partial admission' [that necessitates an oath].

But according to R. Shesheth there is a difficulty about our Mishnah?[16] — R. Shesheth may reply: [The oath in] our Mishnah is an institution of the Rabbis.[17] And his opponent? [He will say:] Yes, it is an institution of the Rabbis: but if you maintain that according to Biblical Law the offer of 'Here they are' carries with it an oath, then it is right that the Rabbis imposed an oath upon the litigants [in our Mishnah], for they follow herein the principle underlying the Biblical Law. But if you say that

the offer of ‘Here they are’ exempts, according to Biblical Law, [the debtor who made it] from taking an oath, then how can the Rabbis [of our Mishnah] impose an oath which is unlike any Biblical oath?

An objection is now raised:

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(1) Therefore the inference from one witness to several witnesses does not hold good. As long as it can be shown that there is one aspect from which the case that it treated as the ‘minor’ for the purpose of the Kal wa-homer can be regarded as a ‘major’ the inference may be objected to as illogical.
(2) V. Kid. 27b. As the evidence of one witness causes an oath to be imposed upon the defendant, a second oath is also imposed upon this defendant if another claim not included in the evidence is raised against him in regard to which, if it stood alone, no oath would have been imposed.
(3) The oath imposed by one witness refers to the amount to which the witness testifies and which the defendant denies. It is thus the direct result of the evidence of that witness, and it is weighty enough to cause the ‘attached oath’ regarding another claim.
(4) The sum regarding which the witnesses give evidence has to be paid by the defendant, and thus there is no oath to carry with it another oath.
(5) The case of partial admission where the oath is taken though there is no oath to carry it.
(6) As above, the Kal wa-homer will be inferred from the case of admission, viz., if the words of his own mouth, which do not oblige him to pay money (a fine), make it necessary for him to take an oath, how much more ought the evidence of witnesses, which obliges him to pay money, make it necessary for him to take an oath.
(7) I.e. the case of a partial admission, where the oath is likewise taken regarding the remainder of the amount claimed.
(8) One witness cannot stamp the defendant as a liar, as it is just the word of one against that of another. But two or more witnesses are necessarily believed, and the defendant is presumed to have lied. Even if the witnesses refute only part of his statement he is not trusted any more, and should not be allowed to swear regarding the rest.
(9) And is refuted by witnesses before swearing. whether he denies the whole loan or only part of it.
(10) The reason for the distinction between a loan and a deposit is explained infra 5b.
(11) One witness may cause a fine to be imposed upon a defendant, but if the witness is refuted by other witnesses proving an alibi he is not liable to pay the fine.
(12) For even though one witness, on being refuted by an alibi, is not liable to suffer the penalty that he intended to impose upon the defendant, he is disbelieved as a result of the refutation, and his evidence is nullified, just as in the case of two witnesses who are refuted by an alibi.
(13) Which would show that the oath is not imposed because of a ‘partial admission’, but is merely an institution of the Rabbis, as indicated above, and is therefore quite different from the oath imposed by R. Hiyya.
(14) Hela4, הילך i.e., ‘I have not spent them, and they are yours, wherever they may be’ (Rashi).
(15) And we do not say that the virtual delivery of the amount admitted is tantamount to actual payment, so that the denial of the remainder would mean a denial of a whole separate claim, in which case no oath could be imposed.
(16) Which imposes an oath, although, as stated above, the position of the litigants is similar.
(17) Not a Biblical oath resulting from ‘partial admission’.

Talmud - Mas. Baba Metzia 4b

[When a plaintiff produces a promissory note for] sela's[1] or denarii[2] [without any figures], the creditor says, it is for five [sela's or denarii], and the debtor says, it is for three, R. Simeon b. Eleazar says: Seeing that [the debtor] has admitted part of the claim, he must take an oath [for the rest]. R. Akiba says: He is only like a restorer of lost [property],[3] and he is free [from taking an oath]. In any case we are told that R. Simeon b. Eleazar says, ‘Seeing that he has admitted part of the claim, he must take an oath’. Now the reason is presumably that [the debtor] said ‘three’, but [if he had said] ‘two’ he would have been free [from the oath], and seeing that the admission of ‘two’, for which the note is sufficient evidence, is like [the offer] ‘Here they are’,[4] it follows that ‘Here they are’ does not involve an oath? — No; I could quite well maintain that when he says ‘two’ he also has to take an oath, and the reason why ‘three’ is stated is to express disagreement with R. Akiba, who maintains

that the debtor [who says 'three'] is like a restorer of lost [property] and free [from taking an oath]. We are thus informed that he is like one who admits part of the claim, and that he has to take an oath.[5] But if this is so, [and 'two' also involves an oath,] should not R. Simeon b. Eleazar, who says, 'Seeing that he has admitted part of the claim he must take an oath,' have said instead: He also must swear?[6] — Therefore it must be assumed that 'two' is free, and 'Here they are' involves an oath, but our present case is different, because the written document supports him,[7] or because the written document has the effect of pledging the debtor's landed property [to the creditor,] and no oath is taken in a dispute connected with mortgaged land.[8]

Some construe the objection from the latter clause: 'R. Akiba says, he is only like the restorer of lost [property], and he is free [from taking an oath].' Now the reason is presumably that he said 'three', but [if he had said] 'two'[9] he would have had to swear; and seeing that the admission [of 'two'], for which the note is sufficient evidence, is like [the offer] 'Here they are', it follows that 'Here they are necessitates an oath? — No; I could quite well maintain that when he says 'two' he is also free [from taking an oath], and the reason why 'three' is stated is to express disagreement with R. Simeon b. Eleazar, who says that [the debtor] is like one who admits part of the claim, and he has to take an oath: We are thus informed that he is like the restorer of lost [property], and he is free [from taking an oath].

And, indeed, this stands to reason, for if we were to assume that 'two' necessitates an oath, how could R. Akiba dispense with the oath in the case of 'three': this [debtor] could surely employ a ruse, In that he might think: If I say 'two' I shall have to swear; I will say 'three', so that I shall be like a restorer of a loss, and I shall be free. Therefore we must conclude that [if he says] 'two' he is also free. But does not a difficulty arise as regards R. Hiyya?[10] — There[11] it is different, for the written document supports him,[12] or because the written document has the effect of pledging the debtor's landed property, and no oath is taken in a dispute connected with mortgaged land.

Mar Zutra, the son of R. Nahman, then asked: [We learnt:] If one claims vessels and land, and the claim in regard to the vessels is admitted, but the claim in regard to the land is disputed, or the claim in regard to the land is admitted, but the claim in regard to the vessels is disputed, the debtor is free [from taking an oath in regard to the disputed claim]. If he admits part of the claim in regard to the land, he is free [from taking an oath]; if he admits part of the claim in regard to the vessels he is obliged [to take an oath].[13] Now the reason why [he is free when the claim concerns both land and vessels] is [presumably] that an oath does not apply to land, but where the claim concerns two sets of vessels, in the same way as the claim regarding the land and the vessels,[14] he is obliged to [take an oath]: how is this to be understood? Is it not that the debtor said to the creditor, 'Here they are'? So it follows that 'Here they are' necessitates an oath![15] — No; I can quite well maintain that [when] two sets of vessels [are claimed] he is also free [from taking an oath], but the reason why 'vessels and land' are mentioned is to let us know that when [the debtor] admits part of the claim in regard to the vessels he is obliged [to take an oath] even as regards the land. What new information does he proffer us? The law of extension of obligation? We have learnt this already:[16] Chattels which do not offer security[17] are attached to chattels which offer security,[18] in regard to the imposition of an oath [upon the debtor]![19] — [The Mishnah quoted] here[20] is the principal place [for this law]; there[21] it is only mentioned incidentally.[22]

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(1) A sela' equalled in value our crown.

(2) A denar =one fourth of a sela'.

(3) For sela's would really mean two (the minimum number to which the plural could be applied) and if the debtor says 'three' he admits more than there is evidence for. The third sela' is therefore like a restored loss, in connection with which no oath can be imposed (cf. Git., 48b).

(4) [Since the note has the effect of a mortgage on the debtor's landed property, the admission places virtually that land at the disposal of the creditor.]

(5) For in the case of the debtor saying ‘two’, R. Akiba would not have differed, and there would have been no occasion for this comparison with the restoration of a lost object.
(6) If ‘two’ involves an oath, then it was wrong to give ‘partial admission’ as a reason for the oath, since in such a case there would be no admission apart from what is proved by the written document. On the other hand, it should have been emphasised that ‘three’ also involved an oath, in spite of the fact that the admission of the third sela’ is like the restoration of a lost object to its owner.
(7) The witnesses who signed the document support the statement of the debtor, as the document says only ‘sela's, which must be taken to mean two.
(8) Seeing that ‘two’ is corroborated by the written document, no oath can be imposed, either in a case of denial or in one of admission, because the document puts the debtor's landed property under a bond, and, as explained in Shebu. 42b, no oath is administered in connection with mortgaged property. But when the debtor says ‘three’, the dispute about the remainder as well as the admission of the third sela’ concern something that is not mentioned in the document, and which does not therefore affect the debtor's landed property.
(9) When the debtor could not be said to have restored a loss, as his admission did not go beyond the sum proved by the document.
(10) Who teaches that the offer ‘Here they are’ is like a ‘partial admission’ and therefore requires an oath. Then why should ‘two’ not require an oath?
(11) In the case of sela's etc.
(12) This is why he is free, not because of the similarity to ‘Here they are’.
(13) In regard to both vessels and land. V. Shebu. 38a.
(14) Viz., that the vessels which the debtor admitted to be rightly claimed are placed before the creditor with the offer ‘Here they are’.
(15) This would contradict the view of R. Shesheth, who says that ‘Here they are’ does not necessitate an oath.
(16) Kid. 26a.
(17) Movable belongings, which cannot be mortgaged.
(18) Immovable property, which can be mortgaged.
(19) When claims arise simultaneously in regard to both kinds of chattels, and an oath is due regarding the movable ones, it is extended also to the immovable ones. V. Kid. 26a.
(20) From Shebu. 38b.
(21) In Kid. 26a.
(22) As the law is stated there regarding the acquisition of movable chattels in conjunction with immovable ones by means of money, document, or actual possession, reference is also made to the extension of the oath from movable chattels to immovable ones.

Talmud - Mas. Baba Metzia 5a

Now according to him who says that ‘Here they are’ does not require an oath, why is it necessary to derive from a Scriptural verse the exemption of land from the law of oath,[1] , since all land [available to the creditor is as if the debtor said,] ‘Here they are’?[2] — He can answer you: The derivation from the Scriptural verse is necessary where [the debtor] has dug pits, ditches and caves [thereby destroying the value of the land], or where one claims vessels and land, and the claim in regard to the vessels is admitted, while the claim in regard to the land is disputed.[3]

Come and hear: Rami b. Hama teaches: Four kinds of bailees require to put forward a partial denial and a partial admission [in order to be liable to an oath]: the gratuitous bailee, the borrower, the paid bailee, and the hirer.[4] How is it to be understood? Is it not that the bailee says to the claimant, ‘Here it is’?[5] — No. [It refers to a case where] the owner says to the bailee, ‘I handed you over three cows, and they have all died through your negligence’, while the bailee says to the owner, ‘One I never received; one died through an accident, and one has died through my negligence, for which I am willing to pay you’, so that it is not like [an offer to return the animal by saying.] ‘Here it is.’

Come and hear what the father of R. Apotoriki taught, as a refutation of the first [law of] R. Hiyya: [If one says to another,] 'You have a hundred [zuz] in your possession belonging to me', and the other says, 'I have nothing belonging to you,' and witnesses testify that the defendant owes the plaintiff fifty [zuz] — I might think that the defendant ought to swear regarding the rest; therefore the Scriptural text tells us, for any manner of lost thing, whereof he saith that it is this,[6] [indicating thereby that] you impose [an oath] on him[7] in consequence of his own admission, but you do not impose [an oath] on him in consequence of the evidence of witnesses![8] — Do you wish to refute R. Hiyya by citing a Baraitha [that contradicts his view]? R. Hiyya is a Tanna, and he may disagree with it. But [the Baraitha] quotes a Scriptural text? — That [text] refers to one who admits part of the claim. And the father of R. Apotoriki?[9] — He will answer you: [The text] says, it, and it also says, this[10] — one term is [meant to apply] to him who admits part of the claim, and the other [is meant to indicate] that in the case of witnesses giving evidence [regarding part of the disputed claim] the defendant is free from taking an oath]. And the other?[11] — He applies one term to him who admits part of the claim, and the other [he utilises for the purpose of proving] that the admission [of part of the claim involves an oath only if the admission] refers to the same kind of object as is claimed [by the plaintiff]. And the other?[12] — He does not share the view that the admission has to refer to the same kind of object, for he is of the opinion of Rabban Gamaliel, as we have learned:[13] If the plaintiff claims wheat, and the defendant admits barley, the defendant is free [from taking an oath], but Rabban Gamaliel obliges [the defendant to take an oath].[14]

There was a shepherd to whom people entrusted cattle every day in the presence of witnesses. One day they handed it over to him without witnesses. Subsequently he gave a complete denial [of the receipt of the cattle]. But witnesses came and testified that he had eaten two of the cattle. Said R. Zera: If the first [law of] R. Hiyya is valid, [the shepherd] ought to swear regarding the remainder.[15] Abaye, however, answered him: If [the law were] valid, would [the shepherd be allowed to] swear? Is he not a robber?[16] — [R. Zera] replied: I mean, his opponent should swear.[17] But even if R. Hiyya's law is rejected, should we not impose an oath [upon the claimant] because of the view of R. Nahman, as we have learned:[18] [If one says to another,] 'You have in your possession a hundred [zuz] belonging to me,' and the other says, 'I have nothing belonging to you,' he is free [from taking an oath]; but R. Nahman adds: We make him take 'an oath of inducement'?[19] — R. Nahman's rule is [only a Rabbinical] provision, [made irrespective of the law],

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(1) V. Shebu. 42b; infra 57b.

(2) As land cannot be removed it is always at the disposal of the creditor.

(3) The admission as regards the vessels is not the equivalent of 'Here they are', and the conclusion drawn from the Scriptural verse is necessary to let us know that such a 'partial admission' cannot impose an oath on the disputed landed property, though forming part of the one claim.

(4) V. B.K 107a; infra 98a.

(5) The 'partial admission' can only refer to the animal which the bailee admits to have in his possession, and which he is ready to return to the owner. This is like saying, 'Here it is,' and yet the bailee has to swear.!

(6) Ex. XXII, 8. The term 'It is this' is construed as implying a partial admission. V. Shebu. 39b; B. K. 107a.

(7) V. infra 41b.

(8) This is a direct contradiction to the ruling of R. Hiyya, according to which the evidence of witnesses regarding part of a disputed claim causes an oath to be imposed on the defendant, as inferred by means of a Kal wa-homer from 'partial admission'. V. supra 3a-4a.

(9) How can he apply the text to exclude the case where witnesses give evidence?

(10) הוא זה one particle of which is superfluous.

(11) R. Hiyya.

(12) The father of R. Apotoriki.

(13) V. infra 100b; B. K. 35b; Shebu. 38b and 40a; cf. Keth. 108b.

(14) If the claim is for wheat, and the admission is for barley, it is not considered a 'partial admission' and does not involve an oath.

(15) For when the denial is partly contradicted by witnesses R. Hiyya imposes an oath.
(16) Who is likely to commit perjury, hence cannot be given an oath. R. Hiyya's law refers to a debt, or pledge, which the defendant denies, not because he has misappropriated it, or used it for himself, but because he does not find it convenient to repay or replace it just then, and intends to do so later. He therefore cannot be regarded as a robber.
(17) And receive payment. v. Shebu. 44b.
(18) Shebu. 38b.
(19) Although no oath is to be imposed on the defendant who denies the whole claim, a Rabbinical oath is put on him in order to induce him to admit the truth, as it is assumed that no one will sue a person without cause.

Talmud - Mas. Baba Metzia 5b

and we do not add one provision to another provision.[1] But why not consider the fact simply that he is a shepherd, and Rab Judah says that a shepherd [generally speaking] is unfit [to take an oath]?[2] — This presents no difficulty: That case [referred to by Rab Judah,] is one of [a shepherd who feeds] his own flock [and is therefore tempted to let them trespass], but this case [regarding which Abaye asks his question,] is one of [a hired shepherd who keeps] other people's flocks [and has no occasion to trespass]. For if this were not so, how could we entrust cattle to any shepherd? Is it not written, Thou shalt not put a stumbling block before the blind?[3] But the presumption is that a man will not commit a sin unless he stands to profit by it himself.[4]

HE SHALL THEN SWEAR THAT HIS SHARE IN IT IS NOT LESS THAN HALF, etc. Does he swear regarding the part which is his, or regarding the part which is not his?[5] — R. Huna answers: He has to say, 'I swear that I have a share in it, and that it is not less than half.'[6] But let him say, 'I swear that it is all mine!'[7] — Do we give him all of it?[8] Then let him say, 'I swear that half of it is mine!'-He would impair his own words.[9] But does he not now also impair his own words?[10] — [No!] He says, 'It is all mine,' [and he adheres to his claim]. But [he adds]. 'According to you, [who do not accept my contention,] I swear that I have a share in it, and that it is not less than half.' But [it is again asked]: Since each one stands [before the Court] holding [the garment], what need is there for this oath? R. Johanan answered: This oath is an institution of the Sages, intended to prevent people from going out and seizing their fellow's garment, declaring it to be their own.[11] But should we not say that, since he is suspected of fraud in money matters, he ought also to be suspected of swearing falsely?[12] — We do not say that one who is suspected of fraud in money matters must also be suspected of swearing falsely.[13] For if you do not concede this, how could the Divine Law lay it down that one who admits part of a claim shall swear [regarding the rest]? We ought to say that, since he is suspected of fraud in money matters, he must also be suspected of swearing falsely? — There he just tries to put the claimant off for a time, according to the view of Rabbah.[14] You may infer this[15] from what R. Idi b. Abin says in the name of R. Hisda:[16] He who denies a loan[17] can still be accepted as a witness,[18] but he who denies a deposit cannot be accepted as a witness.[19] But there is [the law] which Rami b. Hama taught: Four kinds of bailees require to put forward a partial denial and a partial admission [in order to be liable to an oath]: the gratuitous bailee, the borrower, the paid bailee, and the hirer.[20] Why do we not say that, since he[21] is suspected of fraud in money matters,[22] he must also be suspected of swearing falsely?[23] — There also he merely tries to put off the claimant,[24] for he thinks: 'I shall find the thief and have him arrested,' or, 'I shall find [the animal] in the field and bring it to him.' But if this is so, why is one who denies a deposit unfit to be a witness? Let us say that he is only putting off the claimant, thinking to himself, 'I shall put him off until I may look for it and find it'? — We say that he who denies a deposit is unfit to be a witness only [if it is a case] where witnesses come and testify against him, saying that at that time the deposit was in the house, and that he knew it, or [if it is a case] where he is holding it in his hand.

But in the case in which R. Huna says, 'We make him swear that [the article] is not in his possession,'[25] why do we not say that since he is suspected of fraud in money matters he must also be suspected of swearing falsely? — There also he may permit himself [to keep the article] by saying

[to himself], ‘I am willing to pay him for it.’ Then R. Aha of Difti said to Rabina: Would he not even so transgress the commandment, Thou shalt not covet?[26] — ‘Thou shalt not covet’ is understood by people to apply only to that for which one is not prepared to pay.

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(1) The Rabbinical provision that when the defendant is likely to commit perjury the plaintiff swears and receives payment, cannot be added to the provision which imposes a Rabbinical ‘oath of inducement’ (where no Biblical oath is due). The ‘oath of inducement’ can only be given in cases where in ordinary circumstances a Biblical oath would be imposed.

(2) Because usually a shepherd allows his flock to graze on other people's fields, and thus commits robbery, and why need Abaye seek to disqualify him on the ground that he is actually proved to be a robber?

(3) Lev. XIX. 14. This, taken figuratively, implies that it is wrong to put temptation in the way of one who is likely to succumb to it.

(4) Therefore a hired shepherd, who does not profit by trespassing, will not commit the sin, and he need not generally be regarded as a robber.

(5) The implication is that the terms of the oath are ambiguous. By swearing that his share in it is lot ‘less than half’, the claimant might mean that it is not even a third or a fourth (which is ‘less than half’), and the negative way of putting it would justify such an interpretation. He could therefore take this oath even if he knew that he had no share in the garment at all, while he would be swearing falsely if he really had a share in the garment that is less than half, however small that share might be.

(6) The statement is not negative, but positive, and the claimant swears that his share is at least half.

(7) And thus corroborate his claim; and, although one of the claimants would then be bound to swear falsely, the oath could still be given, according to the majority of the Rabbis, who differ from Ben Nannus (Tosaf.; cf. supra 2b).

(8) It would appear inconsistent on the part of the Court, and to its discredit, to let a claimant swear that he owns the whole garment when he can be awarded only half of it.

(9) His plea that the whole garment is his would be contradicted by his oath that only half of it belonged to him.

(10) For the oath in the Mishnah also refers to half the garment.

(11) V. supra 3a.

(12) What purpose, then, is the oath instituted by the Rabbis to serve? If he is ready to rob his neighbour, he will also be ready to commit perjury.

(13) Perjury is regarded as a greater crime than robbery.

(14) V. supra 3a.

(15) Viz. that he is not suspected of attempted robbery, but of a desire to postpone payment.

(16) Cf. B.K. 105b; Shebu. 40b; supra 4a.

(17) And is refuted by witnesses (before swearing), so that he is proved a liar (but has not committed perjury).

(18) It is obviously assumed that he lied because he wished to postpone payment, and not because he wanted to rob the claimant of what was due to him.

(19) For it could not be said that he only intended to put the claimant off, as a deposit must not be spent, and must be produced intact when claimed, while borrowed money can be spent, and returned when due. If the deposit has been lost, he has only to put this forward as a plea and he is free. His denial therefore renders him unfit as a witness (in accordance with the implication of Ex. XXIII. 1).

(20) Cf. supra 5a.

(21) I.e. the bailee.

(22) In regard to the animal which he denies having received, and which must be regarded in the same light as a deposit — so that it cannot be said that he merely wishes to delay the return.

(23) How could he be given an oath in regard to that animal, if it should have been his intention to rob the owner by the denial?

(24) Whose animal he has lost.

(25) This refers to a bailee who offers to pay compensation for a lost bailment, rather than swear that it has been lost. As it is possible that he wishes to appropriate the article by paying for it, R. Huna says that he must swear that he has not got it. (V. infra 34b).

(26) Ex. XX, 14.

But then, in the case in which R. Nahman said, We make him take 'an oath of inducement',[1] — why do we not say that since he is suspected of fraud in money matters he must also be suspected of swearing falsely? Moreover, there is the case where R. Hiyya taught: Both of them swear, and receive payment from the employer,[2] — why do we not say that since he is suspected of fraud in money matters he must also be suspected of swearing falsely? And furthermore, there is the case where R. Shesheth said: We make him[3] take three oaths: 'I swear that I did not cause the loss wilfully; I swear that I did not use [the animal] for myself; I swear that it is not in my possession', — why do we not say that since he is suspected of fraud in money matters[4] he must also be suspected of swearing falsely? Therefore [we must conclude] that we do not say, 'Since he is suspected of fraud in money matters he must also be suspected of swearing falsely.'

Abaye says: We apprehend that he may be claiming the repayment of an old loan.[5] But if so, let him take it without an oath?[6] — Therefore say that we apprehend that he may be claiming the payment of a doubtful claim of an old loan. But do we not say that if he appropriates money on the strength of a doubtful claim he will also swear falsely in regard to a doubtful claim? — R. Shesheth, the son of R. Idi, said [in reply]: People will desist from taking an oath in regard to a doubtful claim, while they will not desist from appropriating money their right to which is doubtful. For what reason? — Money can be given back [later]; an oath cannot be taken back.

R. Zera asked: If one of the litigants seized [the garment] in our presence,[7] what is the law? But [it is immediately objected]: How could such a situation arise? If [the other litigant] remained silent, he really admitted [his opponent's claim]; and if he protested, what more could he do? — [R. Zera has in mind] a case where [the aggrieved litigant] was silent at first but protested later, and the question is: Do we say that since he was silent at first he really admitted [his opponent's claim], or [do we] perhaps [say] that, as he protests now, it has become apparent that the reason why he was silent at first is that he thought [it unnecessary to protest, because] the Rabbis [of the Court] saw [what happened]? — R. Nahman answered: Come and hear [a Baraitha]: The ruling [of our Mishnah] refers only to a case where both [litigants] hold [the garment], but if the garment is produced [in Court] by one of them only, then [we apply the principle that], 'the claimant must bring evidence to substantiate his claim.'[8] Now, [let us consider:] how could the case [of one litigant producing the garment] arise? If we say that it was just as stated,[9] then it is self-evident.[10] It must therefore be that one of them seized [the garment] in our presence?[11] — No. Here we deal with a case where both of them came before us holding [the garment], and we said to them, 'Go and divide it.' They went out, and when they came back one of them was holding it. One said, 'He really admitted [my claim],'[12] and the other said, 'I let him have it on condition that he pays me for it.'[13] Now we say to him: 'Hitherto you implied that he was a robber,[14] and now you dispose of the garment to him without witnesses!' If you prefer, I could also say that [the Baraitha deals with a case where], as stated, one of them was holding it, and the other was just hanging on to it. In such a case [it is necessary to inform us that] even Symmachus, who maintains[15] that disputed money of doubtful ownership should be divided among the disputants without an oath,[16] would agree,[17] for mere hanging on [to a disputed article] counts for nothing.[18]

If you deem it right to say that in the case of one [litigant] seizing it[19] in our presence, we take it away from him,[20] [it is clear that] if he dedicates it [to the Temple][21] the dedication does not take effect.[22] But if you will say that in the case of one [litigant] seizing it in our presence we do not take it away from him, what would be the law if he dedicated it without seizing it? Seeing that a Master says [elsewhere],[23] 'Dedication to the Most High by word of mouth is like delivery in a secular transaction', [do we say that the dedication of the garment] is like seizing it, or [do we say], 'After all, he has not seized it,' and it is written: And if a man shall sanctify his house to be holy, etc.,[24] [from which we might conclude that] just as his house is in his possession so must everything [that

he may wish to dedicate] be in his possession — which would exclude this case [of the garment which he has not seized and] is not in his possession? — Come and hear [the following]: There was

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(1) When he denies the whole claim; v. supra 5a.

(2) In the case of the shopkeeper and his creditbook. V. supra 2a, Shebu. 47b.

(3) The gratuitous bailee, who pleads that the animal has been lost.

(4) Since it is assumed that he may appropriate the plaintiff's article by putting forward a wrong plea, which amounts to fraud.

(5) According to Abaye the reason for the oath imposed by the Rabbis is not that given by R. Johanan (v. supra 3a), but that a litigant may deem himself entitled to an article found by his opponent, on the ground that the latter had borrowed money from him a long time ago and had forgotten about it. Such a litigant would not hesitate to plead that he had found the garment, or that it was all his, in the hope that at least half the value of the garment would be awarded to him. Hence the need for an oath.

(6) If it is assumed that he is claiming the garment in payment of an old debt due to him, why should he have to swear?

(7) I.e., in the presence of the Court.

(8) Tosef. B.M. 1; v. supra 2b.

(9) That one of the litigants was in possession of the garment when both appeared in Court.

(10) That the other litigant must bring evidence to substantiate his claim.

(11) In Court, in the circumstances as described, which furnishes a solution to the problem propounded.

(12) 'And this is why he let me have the garment.'

(13) 'And now he refuses to pay.'

(14) 'As you pleaded that the garment was yours, and that he was trying to rob you of it.'

(15) V. supra 2b; B.K. 46a.

(16) And would thus let each litigant who holds the garment have a half without an oath.

(17) That the claimant is entitled to nothing, even if he is ready to swear.

(18) It constitutes no claim, and therefore the garment is not 'disputed money'.

(19) I.e., the garment.

(20) If R. Zera's question is to be answered in the sense that the litigant who has seized the garment must give up half the garment to the other claimant.

(21) Without seizing it.

(22) For the act of dedication cannot be more effective than the act of seizing it.

(23) V. A.Z. 63a; cf. B.B. 133b.

(24) Lev. XXVII, 14.

a bath-house, about which two people had a dispute. One said, 'It is mine', and the other said 'It is mine'; then one of them rose up and dedicated it [to the Temple],[1] [in consequence of which] R. Hananiah and R. Oshaia and the rest of the Rabbis kept away from it. R. Oshaia then said to Rabbah: When you go to Kafri[2] to see R. Hisda ask him [for his opinion on this matter]. When [Rabbah] came to Sura [on his way to Kafri][3] R. Hamnuna said to him: This is [made clear in] a Mishnah:[4] [As regards] doubtful first-born,[5] whether a human first-born or an animal first-born, [and, as regards the latter,] whether of clean or unclean[6] animals, [the principle holds good that] the claimant must bring evidence [to substantiate his claim].[7] And in regard to this a Baraitha teaches: [Such animals] must not be shorn nor worked.[8] Now, it is obviously assumed here that if a priest seizes the firstling we do not take it away from him, for it is laid down that [we must apply the principle that] the claimant must bring evidence [to substantiate his claim];[9] and [thus] if the priest has not seized it, [the Baraitha teaches] that it must not be shorn or worked.[10] But Rabbah answered him: You speak of the sanctity of a firstling — [this proves nothing]. I could well maintain that even if the priest has seized it we take it away from him, and still it would be forbidden to shear or to work [this animal], because the sanctity that comes of itself is different.[11]

R. Hananiah said to Rabbah: There is [a Baraitha][12] taught supporting your view:[13] The [sheep with which the] doubtful [firstlings of asses have been redeemed] enter the stall to be tithed.[14] Now, if the view were held that when the priest has seized [a doubtful firstling] we do not take it away from him, why [does the Baraitha teach that sheep with which doubtful firstlings of asses have been redeemed] enter the stall [to be tithed]? Would not the result be that this [Israelite, who owns the stall] would relieve himself of his liability [involved in the tithe] with the property of the priest, [who has a claim on it]?[15] — Abaye answered him: There is really nothing in that [Baraitha] to support the Master [Rabbah], For it deals with a case where [the Israelite] has only nine sheep, and this [makes the tenth], so that in any case [the Israelite is justified]: if he is obliged [to tithe the sheep] he has tithed them rightly,[16] but if he is not obliged [to tithe them because the tenth sheep is not really his], then [he has had no advantage, as he only owned nine sheep, and] nine are not subject to tithe.[17]

Later Abaye said: My objection is really groundless.[18] For in [a case where the liability of an animal to be tithed is in] doubt, tithing does not take place,[19] as we have learnt: If one of the sheep which were being counted [for the purpose of tithing] jumped back into the stall, the whole flock is free [from tithing].[20] Now, if the view were held that doubtful cases are subject to tithe,[21] [the owner] ought to tithe [the remaining sheep] in any case: if he is obliged [to tithe them][22] he will have tithed them rightly,[23] but if he is not obliged to tithe them, those already counted will be free because they were properly numbered,[24] for Raba said: Proper numbering frees [the sheep from being tithed].

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(1) On dedication to Temple after the Destruction, v. A.Z. 13a.

(2) [S. of Sura, v. n. 3.]

(3) [Rabbah, whose seat was at Pumbeditha in the North, had to pass Sura on his journey to the South.]

(4) Toh. IV, 12.

(5) I.e., first-born whose primogeniture is in doubt because, in the case of an animal, it is not known whether its mother has borne before, or, in the case of a human mother who had previously miscarried, it is doubtful whether it was a real miscarriage or not. According to Biblical law the first-born belong to the priest. (Num. XVIII, 15-16.)

(6) E.g., an ass, the first-born of which has to be redeemed with a lamb. (Ex. XIII, 13.)

(7) If the Israelite is still in possession of the first-born, the priest is regarded as the claimant, who has to bring evidence to clear up the doubt. But if the priest has acquired possession, and the Israelite, though silent at first, protests later, denying the primogeniture, then it is for the Israelite, as the claimant, to prove his claim.

(8) Because of the prevailing doubt as to whether the young animal is 'holy' or not (cf. Deut. XV, 19).

(9) Which is obviously meant to apply to either claimant, either the Israelite or the priest.

(10) The animal is thus regarded as 'holy' even when the Israelite is in possession, which would show that the sanctification by the litigant without seizing it takes effect, if we say that the seizing of the disputed articles entitles him to keep it.

(11) The sanctity of the firstling is independent of any action on the part of the priest, as it is sacred from birth, in accordance with the Biblical Law. It cannot therefore be compared with the sanctity of an object that has been consecrated by a human being.

(12) The principal place where this law is taught is a Mishnah, Bek. 9a; cf. also ibid. 11a.

(13) Viz., that if a priest has seized a doubtful firstling he has to return it.

(14) The sheep that is used to redeem the doubtful firstling of an ass may be kept by the Israelite. He is under no obligation to give it to the priest, for the latter is in the position of a claimant who has to prove his claim, i.e. if the priest claims the sheep from the Israelite, he has to prove that the doubtful firstling is a real firstling. Such sheep, however, are liable to be tithed, if there are ten of them. (V. infra p. 28.) It follows that, in the same way, if in the Israelite's possession, they go into the stall with other sheep to be tithed, and if one of them comes out tenth it is offered as the tithe.

(15) If the priest has any kind of claim on the sheep, the Israelite should not be entitled to utilise this animal as the tithe.

(16) If the redeemed ass is not a real firstling, then the lamb belongs entirely to the Israelite, and if there are nine other sheep belonging to him he is obliged to tithe them, and there is nothing wrong in his action.

(17) Therefore he has not relieved himself in any way, and in either case, not with anything belonging to the priest.

(18) I.e., the Baraitha quoted by R. Hananiah does support the view of Rabbah that the priest has no right to a doubtful

firstling or its substitute.

(19) I.e., the argument used by Abaye, that in any case the tithing could be proceeded with, is invalid, for doubtful cases are exempt from tithing, even when it could be said that in any case the owner could do no wrong, as the following Mishnah proves.

(20) Bek. 58b. If during the process of tithing, while the sheep were being led one by one out of the stall, so that the tenth one might be marked and offered to the priest, one of the counted sheep jumped back into the stall and disappeared among the uncounted sheep, and it cannot be recognised, the whole flock is exempt from tithing. The sheep that left the stall on being counted are exempt because they have already been numbered, and there are sufficient sheep left in the stall to make up the required number of ten. The sheep that remained behind in the stall are also exempt because each one of them may be the one that jumped back after being counted. V. Bek. 59b.

(21) I.e. that the sheep are liable to be tithed on the assumption that the owner will either have acted according to the law or have done nothing wrong.

(22) I.e. if the tenth sheep that is taken when those left behind in the stall are numbered is not the one that jumped back after being counted.

(23) As that sheep will be subject to tithe.

(24) As long as there are sufficient sheep left in the stall to make up the ten, when added to those already counted, the counted sheep are free from tithing. V. Bek., loc. cit.

Talmud - Mas. Baba Metzia 7a

You must therefore conclude that [the decision of the Mishnah is prompted by another consideration, viz..] that the Divine Law states 'the tenth', [which means] the certain [tenth] but not the doubtful tenth,[1] the same consideration applies here;[2] the Divine Law states the certain tenth, but not the doubtful tenth.[3]

R. Aha of Difti said to Rabina: What kind of doubtful cases [does the above Baraitha refer to]? If it refers to doubtful firstlings, the Divine Law says, [The tenth] shall be holy,[4] excluding the animal which is already holy.[5] — It must therefore refer to [the lamb which has been used for] the redemption of the doubtful firstling of an ass, and in accordance with [the view of] R. Nahman, for R. Nahman said in the name of Rabbah b. Abbuha: If an Israelite has ten doubtful firstlings of asses in his house, he sets apart ten lambs as substitutes for them,[6] and he tithes these [lambs], and they belong to him.[7]

What was [the ultimate decision concerning] the bath-house? — Come and hear what R. Hiyya b. Abin said: A similar case came before R. Hisda, and R. Hisda brought it before R. Huna, and he gave his decision on the ground of what R. Nahman said: Property that cannot be reclaimed by legal proceedings [cannot be dedicated to the Temple.[8] and] if it has been dedicated, the dedication is invalid.[9] But [it is asked], would the dedication be valid if the property could be reclaimed by legal proceedings, even though [the rightful owner] has not obtained possession of it? Does not R. Johanan say [that] property which has been acquired by robbery, and which the rightful owners have not given up as lost, cannot be dedicated either by the robbers or by the owners: the former [cannot do it] because it is not theirs, and the latter because it is not in their possession?[10] — You evidently think that the case under discussion is of a bath that is movable. [No.] The discussion concerns a bath-house which is immovable property, and therefore, where it can be reclaimed by legal proceedings, it is [regarded as being] in the possession of [the claimant].[11]

R. Tahlifa, the Palestinian, recited in the presence of R. Abbahu: Two [people] cling to a garment; [the decision is that] one takes as much of it as his grasp reaches, and the other takes as much of it as his grasp reaches, and the rest is divided equally between them. R. Abbahu pointed [heavenward and said:] But with an oath! But, [if so] our Mishnah, which teaches that [the value of the garment] shall be divided between [the two litigants], and which does not teach that each takes as much of it as his grasp reaches — to what particular case does it refer? — R. Papa said: [It refers to a case] where

[both litigants] hold the fringes [of either end of the garment]. Said R. Mesharsheya: Hence we deduce: [If a seller] grasps the kerchief[12] by a piece measuring three by three fingers, [he has rendered the sale valid, as] we apply to it [the Scriptural term]: 'And he gave it to his neighbour'. [The part that he holds] is considered as if cut off, and by this means [the buyer] acquires [the article sold to him].[13] And why is [this case] different from that of R. Hisda? For R. Hisda says: When the bill of divorcement is in her hand,[14] and the cord [to which it is tied] is in his hand,[15] then if he is able to snatch [the bill of divorcement out of her hand by means of the cord] and to pull it to himself, she is not divorced,[16] but if not she is divorced! — There separation is necessary, and there is none,[17] but here it is the act of giving that is necessary, and this has taken place.[18]

Rabbah said: If the garment was embroidered with gold, it is divided [between the two litigants].[19] But is not this self-understood? — It is necessary [to state this] when the gold is in the centre [of the cloth]. But is not this also self-understood? — It is necessary [to state this] when [the gold] is nearer to one side. You might assume that one could say to the other. 'Divide it this way;'[20] therefore we are informed that the other may say to him, 'What makes you think of dividing it this way? Divide it the other way.'[21]

Our Rabbis taught:[22] Two [people] cling to a bill, the lender saying, 'It is mine; I dropped it and found it again,' and the borrower saying, '[True.] it was yours, but I paid you;'[23] [the validity of] the bill has to be established by its signatories [verifying their signatures][24] — this is the view of Rabbi. Rabban Simeon b. Gamaliel says: They shall divide [the amount], If it [the bill] fell into the hand of a judge, it must never be produced again. R. Jose says: It retains its validity.[25]

The Master said above: '[The validity of] the bill has to be established by its signatories'. Does he mean that the creditor may demand payment of the whole amount, and does he disapprove of the Mishnah, TWO HOLD A GARMENT etc.? — Raba replied in the name of R. Nahman: If the document has been endorsed [in Court].[26] all are agreed that [the litigants] divide [the amount between them].[27] The difference of opinion only arises in the case of an unendorsed [document]. Rabbi is of the opinion that even when one [i.e., a debtor] acknowledges the writing of a bill, it still requires endorsement [at Court], and if it is endorsed, [the amount] is divided, but if it is not endorsed [the amount] is not divided. For what reason? It is merely a potsherd.[28] Who renders the document valid? [Only] the borrower.[29] But he says, 'It is paid!'[30] Rabban Simeon b. Gamaliel, however, is of the opinion that when one acknowledges the writing of a bill, it does not require endorsement [at Court] , and therefore even if it is not endorsed , [the litigants] divide the amount.[31]

'If it [the bill] fell into the hands of a judge, it must never be produced again.'

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(1) Seeing that the animal that jumped back after being counted cannot be numbered again, and it cannot be identified, there is a doubt regarding each tenth whether it is really the tenth, as, if the disqualified animal is among the previous nine, the tenth is really the ninth.

(2) In the Baraitha which R. Hananiah quoted in support of Rabbah.

(3) Accordingly, had the priest a right to a doubtful firstling it could not be admitted to the stall for tithing.

(4) Lev. XXVII, 32.

(5) A firstling is in itself 'holy', even if it is a doubtful firstling. It cannot therefore be used as tithe.

(6) For the purpose of redeeming the asses, so that he may use them for work.

(7) They are not 'holy', and as the priest has no absolute right to them (on account of the doubt as to the primogeniture of the asses) the Israelite may retain possession of them.

(8) If the claimant cannot prove his title to the property by legal evidence, he has no right to dedicate it.

(9) For the same reason the dedication of the bath-house would be invalid. This conclusion is based on the assumption that neither of the claimants of the bath-house could produce evidence in support of his claim.

(10) Which would prove that in order to be able to dedicate property one has not only to own it legally but also to be in actual possession of it.

(11) The question of being in possession does not arise in the case of a bath-house, which is immovable property, and as regards legal ownership — it is vested in the claimant who dedicated it, if he can produce evidence to substantiate his claim.
(12) [This was a recognised or legal manner of confirming a transaction, known as Kinyan Sudar, קנין סודר , (cp. lat. sudarium) and derived from Ruth IV, 7: . . . to confirm all things a man plucked off his shoe and gave it to his neighbour. Any article can be used in the same way as the shoe if it measures three by three fingers.]
(13) [The seller establishes his claim to the part of the kerchief which he holds, and thus proclaims himself the owner of the entire kerchief. By this symbolic action the seller confirms the sale of any article which is to become the property of the buyer. See, however, infra 47a.]
(14) In the hand of the wife who is to be divorced.
(15) In the hand of the husband who is divorcing her.
(16) According to this view the bill of divorcement is not regarded as having been given to the wife as long as the husband holds one end of the cord attached to the bill. In the same way we ought to say that when the seller holds one end of the kerchief he does not transfer the purchase to the buyer.
(17) In the case of a husband divorcing his wife the ceremony is to indicate the separation of the couple, the severance of the marriage tie. The cord in the hand of the husband, if it is strong enough to pull the bill of divorcement out of the hand of the wife, contradicts this idea.
(18) In the case of a seller grasping the kerchief with his hand, the significance of the act lies in the giving of the kerchief by the one to the other.
(19) I.e., even if the garment is embroidered with gold it has to be divided equally.
(20) Lengthwise.
(21) Widthwise, so that each may get half of the gold.
(22) V. B.B. 170a.
(23) 'And on being paid you returned the bill to me and I lost it.' This is the version given by Rashi in accordance with the wording of our text. Other texts have, 'It is mine' as the plea of the borrower (i.e. שלי instead of שלך) which is much simpler.
(24) And when the validity of the document has been thus endorsed, the creditor is entitled to demand payment.
(25) And the creditor could demand the return of the document and enforce payment.
(26) I.e., if the document has been produced in Court and the witnesses have verified their signatures, the judges certifying the endorsement.
(27) If the document is properly endorsed, and therefore quite valid, the litigants are in the same position as those who found the garment and were holding on to it. They therefore divide the amount of the debt recorded in the bill.
(28) I.e., the document is without any value.
(29) By admitting its genuineness.
(30) Since the unendorsed document becomes valid only as a result of the admission of its genuineness by the borrower, he is to be believed when he says that he has paid the debt.
(31) Even if the bill is not endorsed, the borrower cannot, when the document is produced by the lender, plead that he has paid the debt. The validity of the document does not, to that extent, depend on the plea of the borrower. Hence it is right that they should divide the amount.

Talmud - Mas. Baba Metzia 7b

Why is it different [if the bill fell] into the hands of a judge?[1] — Raba says: The meaning [of the clause] is this: If a third person finds a bill which has already been in the hands of a judge, that is, when it bears a legal endorsement,[2] it must never be produced again.[3] And [thus we learn that a found bill] must not be returned [to the claimant] not only when it bears no legal endorsement, so that it can be assumed that it was written for the purpose of securing a loan but the loan did not take place, but even when it bears a legal endorsement, as when it has been verified [in Court], because we apprehend that payment may have been made.[4] But R. Jose says: It retains its validity — and we do not apprehend that payment may have been made.

But does not R. Jose really apprehend that payment may have been made? Has it not been taught

[in a Baraitha]: In the case of a marriage-contract[5] found in the street, if the husband admits [that he has not paid her the amount specified in the contract] it shall be returned to the wife, but if the husband does not admit it, it must not be returned either to him or to her; R. Jose says that if the wife is still with the husband it shall be returned to her,[6] but if she has become a widow or has been divorced, it must not be returned either to him or to her?[7] — Reverse [the Baraitha and read it this way]: If [a bill] fell into the hands of a judge, it must never be produced again; this is the view of R. Jose. And the Sages say that it retains its validity.[8] But if so, the two opinions of the Rabbis contradict each other![9] — [The Baraitha which deals with] the [lost] marriage-contract [conveys] in its entirety [the view of] R. Jose, but a clause is omitted, and [the Baraitha] should read thus: If the husband does not admit [that he has not paid the wife the amount specified in the contract] it must not be returned either to him or to her. This, however, only applies to [the case of] a widow or a divorced woman, but [in the case of a wife] who is still with her husband it shall be returned to the wife; this is the view of R. Jose; for R. Jose says: If the wife is still with the husband, it shall be returned to her; but if she has become a widow or has been divorced, it must not be returned either to him or to her. R. Papa says: There is really no need to reverse [the Baraitha];[10] R. Jose only states the case in accordance with the views of the Rabbis [and he says to them:] According to me we do not apprehend that payment may have been made even in the case of a widow or a divorced woman, but according to you — admit at least that when the wife is still with the husband [the marriage-contract] should be returned to her, as she is not entitled to receive payment [as long as she is his wife]. But the Rabbis answered him: Say, he handed her over bundles [of valuables] as security [and she has retained them]![11] Rabina says: By all means reverse the first [Baraitha],[12] and the reason why the Rabbis decide here [that if the husband does not admit liability, the marriage-contract must not be returned either to him or to her] is that we apprehend [lest the wife had] two marriage-contracts.[13] And as to R. Jose — he does not apprehend [lest the wife had] two marriage-contracts.

R. Eleazar says: The division[14] [takes place] when both [claimants] cling either to the form[15] [of the bill] or to the operative part[16] [thereof], but if one [claimant] clings to the form, and the other clings to the operative part, one takes the form and the other takes the operative part. And R. Johanan says: They always divide equally. [What!] Even if one clings to the form and the other to the operative part? Was it not taught: Each one takes as much as his hand grasps?[17] — [Yes.] But it is necessary [to have R. Johanan's decision] in a case where the operative part is contained in the middle [of the document].[18] But if so, what need is there to state it?[19] — It is necessary [to state it that it may be applied to a case] where [the operative part] is nearer to one [of the claimants].[20] You might assume that one could say to the other, 'Divide it this way', therefore we are informed that the other may say to him: 'What makes you think of dividing it this way? Divide it the other way.' R. Aha of Difti said to Rabina: According to R. Eleazar, who says. 'One takes the form [of the bill] and the other takes the operative part.' — of what use are [the parts] to either of them? Does one need them to use as a stopper for one's bottle?[21] — He [Rabina] answered him: [It is] the estimated value thereof [that has to be considered]. We estimate how much a dated document is worth as compared with one undated: with a dated document a debt may be collected from mortgaged property, but with the other [document] no debt can be collected from mortgaged property[22] — and one gives the other the difference [in the value of the two documents].

Also [the decision previously given in the words], 'They shall divide,' as quoted,[23] refers to the value [of the bill]. For if you do not assume this, [how explain:] 'TWO HOLD A GARMENT' [etc.]? Would you say that here also they divide [the garment] in halves? They would surely render it useless! — This presents no difficulty,

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(1) Why should the law be different when the bill falls into the hands of a judge than when it falls into the hands of any other person?

(2) The endorsement of the Court before which the witnesses verified their signatures, and which established the validity

of the document.
(3) It must not be given either to the creditor or to the debtor, unless the ownership of the document is cleared up by evidence.
(4) I.e. if the debtor pleads that the debt has been paid, we take this plea into consideration.
(5) 'Kethubah', v. Keth. 10b and Glos.
(6) For a man does not ordinarily pay his wife her Kethubah while she is still with him.
(7) This shows that according to R. Jose we do apprehend that payment may have been made.
(8) And it must be returned to the claimant who can prove his claim.
(9) The view of the majority of the Rabbis in the case of the lost Kethubah, which the husband claims to have paid, and which the Rabbis say must not be returned either to the husband or to the wife, contradicts their view with reference to the lost bill which has been legally endorsed, as according to the new ('reversed') rendering of the Baraitha the Rabbis (i.e., the Sages) say that 'it retains its validity' and must be returned to the claimant.
(10) The original version being correct.
(11) In order to save his wife the trouble of litigation after his death the husband gave her money or valuables while he was still with her to be appropriated by her when the Kethubah becomes due.
(12) The revised version is really the correct one, and there is no contradiction between the views of the majority of the sages. For their decision in the case of the lost Kethubah, the validity of which the husband contests, and which the Rabbis say must not be returned, is due to the apprehension that the husband may have given the wife a duplicate after the loss of the original document. The meaning of the words 'when the husband does not admit' would thus be that the husband pleads that the lost document should not be returned to her because he had given her another document, and she could, when she becomes a widow, produce both documents in succession to claim payment from his heirs. But so far as actual payment by the husband is concerned, the Rabbis would ignore such a plea, because when a bill is paid it is usually taken back and torn up.
(13) The original one and a duplicate, as explained in the previous note.
(14) I.e. the decision of R. Simeon b. Gamaliel that the two litigants who cling to a bill shall divide it between them.
(15) The טופס , **, 'form', the general part, which may be written out in advance and does not contain the names of the contracting parties or the particulars of date, place, sum involved, etc.
(16) The תורף (probably = **), the characteristic or essential part of a document, giving the names of the contracting parties, date, place, sum involved, etc.
(17) So here also each claimant should receive the part which he holds, irrespective of its value or importance.
(18) There is really no difference between the views of R. Johanan and R. Eleazar, as the words of R. Johanan are only intended to make clear that if the operative part happens to be in the middle of the document the litigants receive half each.
(19) As it is in full accord with the view of R. Eleazar, and it would be self-understood.
(20) R. Johanan deems it necessary to emphasise that 'they always divide equally' so as to include a case where the operative part is nearer to the grasp of one of the claimants, though not actually held by him.
(21) A familiar expression used in connection with a document which has no value and can only be used as paper.
(22) The absence of a date makes it impossible for a Court to say whether the debt recorded in the document was contracted before or after the mortgage was taken on the property. As the date is given in the operative part only, it enhances the value of that part.
(23) The decision of R. Simeon b. Gamaliel; v. supra p. 32.

Talmud - Mas. Baba Metzia 8a

as it would [still] be suitable for children. But what of the case of Raba, who said that [even] if the garment was embroidered with gold it should be divided?[1] Could they here also divide [the garment] in halves? They would surely render it useless! — This presents no difficulty [either], as it would still be suitable for royal children.[2] But [there is] the clause in our Mishnah: IF TWO RIDE ON AN ANIMAL [etc.]. Would you say that here also they divide [the animal] in halves? They would surely render it useless! Although it may be granted that in the case of a clean animal [its carcase] may be [cut up and] used for food — what if it is an unclean animal? They would surely render it useless [by slaying it and cutting it up]? It must therefore be said that it is the value [of the animal] that is

divided. So here also: it is the value [of the bill that is divided].

Rami b. Hama said: This [decision of our Mishnah] enables [us] to conclude that when one picks up a found object for his neighbour, the neighbour acquires it.[3] For if you were to say that the neighbour does not acquire it, this [garment] ought to be regarded as if one half of it were [still] lying on the ground, and [also] as if the other [half] were [still] lying on the ground, so that neither the one [claimant] nor the other should acquire it.[4] It must therefore follow that when one picks up a found object for his neighbour, the neighbour acquires it.[5] Said Raba: I could still maintain that when one picks up a found object for his neighbour, the neighbour does not acquire it.[6] But here [in our Mishnah] the reason [why he does acquire it] is that we say, 'Since he takes possession for himself he may also take possession for his neighbour.'[7] You may learn it from [the law] that if one said to a messenger, Go and steal something for me', and he [went and] stole it, he is free,[8] but if partners stole [for each other][9] they are guilty. For what reason? Is it not because we say, 'Since he takes possession for himself, he may also take possession for his neighbour'? This proves it!

Said Raba: Now that it has been proved that we base our decisions on the Since argument.[10] [it must be assumed that] when a deaf-mute[11] and a normal person have picked up a found object, the normal person acquires it by reason of the fact that the deaf-mute has acquired it. [But it is at once objected:] We may grant that the deaf-mute acquires it because a rational person has lifted it up for him,[12] but how does the normal person acquire it? — I must therefore say: The deaf-mute acquires it; the normal person does not acquire it.[13] And how does the Since [argument] come in here?[14] — Since two other deaf-mute persons would acquire [a found object by lifting it up], this [deaf-mute] also acquires it.[15] But how is this? Even if you say that when one lifts up a found object for his neighbour the neighbour acquires it, this is [true] only when one lifts it up on behalf of his neighbour. But [in this case] that [normal person] lifted it up on his own behalf; now, if he himself does not acquire it,[16] how can he enable others to acquire it? — But say: Seeing that the normal person does not acquire it, the deaf-mute does not acquire it [either]. And if you will argue: In what way does this case differ from that of the two other deaf-mute persons [previously referred to, I will answer you:] There our Rabbis made this provision[17] in order that [the deaf-mutes] may not have to quarrel [with persons who may be ready to snatch the object from them], but here [the deaf-mute] will say [to himself]: 'The normal person does not acquire it, how should I acquire it?'[18]

R. Aha, the son of R. Adda, said to R. Ashi: Whence does Rami b. Hama derive his conclusion?[19] If we say [that he derives it] from the first clause [of our Mishnah]. TWO HOLD A GARMENT etc., [the objection would arise that] there one pleads [to the effect]. 'It is all mine, and I lifted up the whole of it,' and the other pleads [to the same effect], 'It is all mine and I lifted up the whole of it!'[20] — Therefore [we must say that he derives it] from the clause which reads: ONE OF THEM SAYS IT IS ALL MINE,' AND THE OTHER SAYS, 'IT IS ALL MINE': what need is there again for this? It must therefore be that we are to learn from the additional clause that if one lifts up a found object for his neighbour, the neighbour acquires It —[21] But did we not come to the conclusion that the first clause deals with a case of finding, and that the subsequent clause deals with a case of buying and selling? — We must therefore say that [he derives it] from the second part [of the Mishnah]: IF ONE SAYS, 'IT IS ALL MINE', AND THE OTHER SAYS 'HALF OF IT IS MINE': what need is there again for this? It must therefore be that we are to learn from the additional clause that if one lifts up a found object for his neighbour, the neighbour acquires it. And how do you know that this clause deals with a case of finding? Maybe it deals with a case of buying and selling? And if you will say: If it deals with a case of buying and selling what need is there [for the case] to be stated? [I will answer:] There is a need. For I might have formed the opinion that the one who says, HALF OF IT IS MINE should be considered as the restorer of a lost object,[22] and should be free [from taking an oath]. We are thus informed that [he has to swear, as] he may be employing a ruse, in that he might think: If I say 'It is all mine,' I shall have to swear; I will say thus,[23] so that I shall be like a restorer of a lost object, and I shall be free [from taking an oath]. Therefore [we must say

that he derives it] from this clause: IF TWO RIDE ON AN ANIMAL etc.: what need is there again for this? It must therefore be that we are to learn from the additional clause that if one lifts up a found object for his neighbour, the neighbour acquires it. But perhaps [this clause] is to let us know that a rider also acquires [found property]?[24] Therefore [we must say that he derives it] from the last clause: IF BOTH ADMIT [EACH OTHER'S CLAIMS], OR IF THEY HAVE WITNESSES [TO ESTABLISH THEIR CLAIMS], THEY RECEIVE THEIR SHARES WITHOUT AN OATH. To which case does it refer? If it refers to [a case of] buying and selling — is it necessary to state it?[25] It must therefore refer to [a case of] finding.[26] and this proves that if one lifts up a found object for his neighbour, the neighbour acquires it. And Raba?[27] — He will explain [the decision in the last clause of our Mishnah] by the principle [adopted by him]: Since he takes possession of it for himself, he may take possession of it also for his neighbour.[28]

IF TWO RIDE [etc.]. R. Joseph said: Rab Judah told me,

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(1) Supra 7a.

(2) Although a gold-embroidered garment when reduced in size by division could not be worn by ordinary children, it would still retain its value, as it could be worn by children of the aristocracy, to whom the wearing of a gold-embroidered garment would be nothing unusual.

(3) The decision that if two people have picked up an ownerless object they are entitled to keep it, each one taking half of its value and enabling his partner to claim the other half, must rest on the assumption that one may acquire an object for someone else by lifting up, i.e., by the same means as one acquires it for himself.

(4) From the point of view of each claimant the other person's half would have to be regarded as if it were still lying on the ground. But such an acquisition does not constitute legal possession because the law demands that we must acquire possession of the whole article in order to obtain title thereto. Consequently if a third person came and snatched the garment, neither of the two could dispute his right to claim at least half. V. infra p. 39 for further elucidation of the argument.

(5) And it is assumed that in our Mishnah each person, when picking up the garment, intended that the other person should have half of it, and in this way the two acquired the garment.

(6) V. infra 10a.

(7) Although one cannot acquire a found object entirely for his neighbour, one can acquire part of it for a neighbour if one acquires part of it for himself.

(8) From the penalty of making double restitution, as the responsibility for the wrong done rests upon the one that does it, not upon the instigator.

(9) V. B. K. 78b.

(10) Heb. Miggo, מגו ; v. Glos. 'Since he acquires it for himself he may also acquire if for his neighbour' is the argument used in the previous paragraph.

(11) A deaf-mute is not a responsible person, and, like a minor and an imbecile, he cannot acquire property, but 'for practical reasons' the Rabbis laid it down that to deprive them of anything they possess is robbery (cf. Git. 59b). Applying the Miggo argument to the deaf-mute, Raba holds that 'Since he acquires it (according to rabbinic ruling) for himself, he also acquires it for his neighbour'.

(12) The end which the normal person has picked up for himself and for the deaf-mute has been rightly acquired, so far as the deaf-mute is concerned, for the latter benefits by the right of the rational person to acquire the garment and by his own right, conceded to him by the Rabbis, to claim his own possessions 'for practical reasons'. But the normal person suffers from the disability of the deaf-mute, in so far as the right conceded to the deaf-mute to own property extends only to his own person, and does not include the right to acquire property for someone else. Therefore the end which the deaf-mute has picked up, when considered in relation to the normal person, must be regarded as if it had not been picked up at all. Thus the question arises: How does the normal person acquire the garment?

(13) The Miggo argument employed by Raba would therefore apply to the deaf-mute himself.

(14) It would be impossible to argue that since the normal person acquires it for himself he also acquires it for the deaf-mute, as the normal person does not acquire it at all.

(15) The Miggo argument would thus be derived from another case, not hitherto considered.

(16) For the reason explained in note 2.

(17) The claim of the two deaf-mutes is granted only because of a provision of the Rabbis 'for practical reasons' but is not based on law.
(18) It would not be proper to make a concession to the deaf-mute which could exceed the right of a normal person.
(19) From which clause of our Mishnah does Rami b. Hama derive the conclusion that if one lifts up a found object for his neighbour, the neighbour acquires it.
(20) [A paraphrase of 'I FOUND IT'.] Each of the two claimants maintains that he lifted up the whole garment for himself and thus acquired it all, so that none of them can be said to have lifted up part of the garment for his neighbour and acquired it for him. The two claimants share the garment between them, not because one acquired it for the other, but because they both hold the garment and no third person can claim any part of it.
(21) The additional plea, which seems to be a mere repetition of what is conveyed by the first plea of 'I FOUND IT', is really intended to indicate that in a case where both claimants lifted up the garment with the intention of acquiring it for each other, they do acquire it, and this is why the garment is divided between them. The two clauses therefore differ from each other in that, in the second clause, it is assumed that both claimants really picked up the garment, and thus one acquired it for the other, while in the final clause the garment is divided between the two claimants because we do not know who tells the truth, and the oath is given for the reason stated in a previous discussion (2b-3a).
(22) As he could have pleaded 'It is all mine' and he would have been entitled to half the garment.
(23) I.e. 'Half of it is mine'.
(24) That one may take possession of an animal by riding on it.
(25) If the two claimants admit having bought the garment simultaneously, it stands to reason that they should be awarded equal shares without having to swear.
(26) And it is necessary to state the law, in order to let us know that both have acquired the garment, and no one has a right to snatch it away from them, on the principle that 'if one lifts up a found object for his neighbour, the neighbour acquires it.'
(27) Since he does not admit the above-mentioned principle, how does he explain the last clause of our Mishnah?
(28) Although Raba denies that one may acquire an ownerless object for a neighbour by lifting it up for him, he admits that when one lifts up an object for himself and his neighbour, the neighbour also acquires it, as explained above, and the last clause of our Mishnah is needed in order to establish this law.

Talmud - Mas. Baba Metzia 8b

'I heard two [laws] from Mar Samuel: If one rides [on an animal] and another leads [it], one of them acquires [the animal], and the other does not acquire it,[1] but I do not know [to] which of the two [either decision was meant to apply].' But how is this to be understood?[2] If it refers to [two cases, in one of which there was] a man riding [on an animal] by himself and [in the other] there was a man leading [an animal] by himself[3] — is there anyone who would say that he who leads an animal by himself does not acquire it?[4] If, therefore, it is to be said that one does not acquire [the animal], it can only be said of the one that rides on it![5] — Thus [it must be assumed that] the doubt [expressed] by Rab Judah concerns a case where one rides on an animal, and simultaneously someone else leads it.[6] The question then is: Is the rider to be given prefer — ence because he holds it,[7] or is perhaps the leader to be given preference because it moves through his action?[8] R. Joseph [then] said: Rab Judah said to me, Let us look [into the matter] ourselves.[9] For we learnt: He who leads [a team composed of an ox an and ass][10] receives forty lashes,[11] and [likewise] he who sits in the waggon [drawn by such a team] receives forty lashes. R. Meir declares him who sits in the waggon free.[12] And since Samuel reverses [the Mishnah] and reads: 'And the Sages declare him who sits in the waggon free'[13] it follows that [according to Samuel] he who rides [on an animal] by himself does not acquire it, and this would apply with even greater force to one who rides on an animal while someone else leads it!

Said Abaye to R. Joseph: Have you not told us many times [the argument headed by the words]: 'Let us look [into the matter],' and yet you never told us it in the name of Rab Judah?[14] [R. Joseph] answered him: Truly, [it is Rab Judah's argument]: I even remember saying to him, 'How can you, Sir, derive the decision regarding [the case of] One who rides [on an animal] from [the case of] one who sits [in the waggon], seeing that he who sits [in the waggon] does not hold the reins, while he

who rides [on the animal] does hold the reins?' And he answered me: 'Both Rab and Samuel agree that one does not acquire [an animal] by holding the reins.'[15]

Some give another version:[16] Abaye said to R. Joseph: How do you, Sir, derive the law regarding one who rides [on an animal] from that concerning one who sits [in a waggon pulled by an animal], [seeing that] he who sits [in the waggon] does not hold the reins, [while] he who rides does hold the reins? — [R.Joseph] answered him: Thus Idi learned: One does not acquire [an animal] by holding its reins. It has also been reported: R. Helbo said in the name of R. Huna: One [who buys an animal] may acquire it by taking over the reins from the neighbour [who sells it], but one who finds [an animal] and [one who seizes an animal which was] the property of a proselyte [who died without heirs][17] does not acquire it [in this way]. What is the derivation of the term 'Mosirah' [used for reins]? — Raba said: Idi explained it to me: [It is derived from 'masar', to hand over, and it indicates] the handing over of the reins by one person to another. [Such action] rightly [enables a person who buys an animal] from his neighbour to acquire it, as the neighbour transfers to him in this way [the possession of the animal]. But in the case of a found [animal] and [in that of an animal that was] the property of a proselyte [who died without heirs] — who transferred it to him that he should have a right to acquire it?

An objection was raised: IF TWO RIDE ON AN ANIMAL etc. — whose opinion is that? If I should say that it is R. Meir's,[18] [the question presents itself:] If the 'sitter' acquires it, need I be told that the 'rider' acquires it? It must therefore be [said that it is the opinion of the majority of] the Rabbis[19] — which would prove that the 'rider' acquires it?[20] — Here we deal with one who drives [the animal] with his feet.[21] But if so, then it is the same as 'leading'.[22] There are two ways of 'leading':[23] you might say that the 'rider' has a preference, because he drives it and holds it [at the same time], therefore we are informed [that leading is the same as riding].

Come and hear: If two persons were pulling a camel or leading an ass, or if one was pulling and one was leading,

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(1) Rab Judah remembered that Mar Samuel had stated the two cases, and had given his decision regarding each case, but he did not remember what Samuel's decision was in each case.

(2) The question is at once asked how such a doubt could have arisen in R. Joseph's mind.

(3) If Samuel gave his decisions regarding two separate cases, in one of which a man claimed to have acquired an animal by riding on it, and in the other a man claimed to have acquired an animal by leading (or pulling) it, and in each case another person came along and pulled the animal away in order to acquire it for himself, the expression of doubt by Rab Judah as to which of the two cases either decision was meant to apply to, would accordingly have implied that he was not certain whether leading (or pulling) an animal is a legitimate way of acquiring it.

(4) Rab Judah could not have been in doubt on this point, as all are agreed that leading (or pulling) an animal is the legitimate way of acquiring it. Cf. Kid. 22b.

(5) Riding on an animal may just mean sitting on it without making it move, in which case it may not be a legitimate way of taking possession of it. Cf. Kid. ibid.

(6) And both claim the animal.

(7) And although pulling is the recognised way of taking possession of an animal, this may only be so when there is no one riding on it.

(8) And causing the animal to move is the correct method of acquiring it.

(9) Rab Judah thought that it would be possible to reconstruct Samuel's decision from the view expressed by Samuel in the following passage.

(10) And thus transgresses the Biblical prohibition of Deut. XXII, 9-11.

(11) Really 39 lashes — the penalty inflicted upon one who deliberately transgresses a Biblical prohibition. Cf. Deut. XXV, 3, and Mak. 13 and 22.

(12) As he is not guilty of any action in regard to the driving of the animals, v. Kil. VIII, 3.

(13) As the decision of the majority of the Sages must be accepted, Samuel ascribes the decision which he favours, viz.,

that sitting in the waggon is of no consequence, to the anonymous Sages, not to R. Meir. Riding an animal (without moving it) would be the same as sitting in the waggon attached to the animal (without driving it).

(14) R. Joseph spoke as if he himself had advanced the argument that removed the doubt regarding Samuel's decision.

(15) I.e., in the case of a found animal. It is only by pulling the animal and causing it to move (even if it only moves one fore-leg and one hind-leg) that the finder can take possession of the animal. It is different with a bought animal. Cf. Kid., 22b and 25b.

(16) Of the argument advanced by R. Joseph, of Abaye's reply, and of R. Joseph's rejoinder. According to this version R. Joseph did not speak in the name of Rab Judah when he said, 'Let us look into the matter,' etc., but gave his own view, which Abaye challenged.

(17) The property of a proselyte who dies without jewish issue is regarded in Jewish law as ownerless, which anyone may acquire.

(18) Who is of the opinion that even a person that sits in a waggon drawn by an ox and an ass has committed an offence, and who would thus regard 'sitting' as a legitimate way of acquiring an animal. The Mishnah would thus express the view of our Tanna only, and, as a minority decision, it would not be accepted.

(19) Who attach no importance to 'sitting' but who nevertheless attach importance to 'riding', and they let us know in the Mishnah that 'riding' is a legitimate way of acquiring an animal.

(20) Then how could Rab Judah derive a decision regarding the validity of 'riding' from the decision regarding 'sitting'?

(21) He spurs it on with his feet and makes it move, so that apart from 'riding' there is the recognised method of acquiring an animal by making it move.

(22) Then why does the Mishnah say: 'or one rides, and the other leads it'? As this distinction would have no significance, why not say 'or if both lead it'?

(23) Although 'riding' is a form of 'leading' it was necessary to say 'or one rides, and the other leads it' and thus to indicate that the two actions are equally good, as otherwise one might regard 'riding' as more important and award the animal to him who claims to have acquired it by riding on it.

Talmud - Mas. Baba Metzia 9a

they acquired it by this method. R. Judah says: One never acquires a camel except by pulling it, and [one never acquires] an ass [except by] leading it.[1] In any case it is taught [here]: 'or if one was pulling, and the other was leading,' [from which we may infer that] pulling and leading are [legitimate methods of acquiring an animal], but not riding? — The same law applies also to riding, but the reason why 'pulling' and 'leading' is given here is [that it was desired] to exclude the view of R. Judah, who says, 'one never acquires a camel except by pulling it, and [one never acquires] an ass [except by] leading it.' We are thus informed that even if [the methods are] reversed they [the animals] are also legitimately acquired.[2] But if so,[3] let [the Tanna] combine them and teach: 'If two persons were pulling and leading either a camel or an ass'? — There is one side which [prevents the combination, as one of the two actions mentioned] is invalid [in the case of one of the animals]:[4] some say, it is [the act of] pulling [in the case of] an ass, and others say, it is [the act of] leading [in the case of] a camel.[5] There are some who construe the objection [to the validity of riding as a means of acquiring an animal] from the conclusion [of the quoted passage]: 'They acquire it by this method.'[6] What are [the words] 'by this method' intended to exclude? [Are they] not [intended] to exclude riding? — No. [They are intended] to exclude the reversed [methods].[7] But if so, this view is identical with that of R. Judah? — There is a difference between them [in so far as according to the first Tanna] there is only one side which is invalid:[8] some say, it is [the act of] pulling [in the case of] an ass, and others say, it is [the act of] leading [in the case of] a camel.

Come and hear: If one rides on an ass, and another holds the reins,[9] one acquires the ass, and the other acquires the reins. This proves that one acquires [an animal] by means of riding? — Here also [it is understood that the rider] drives it with his feet. But if so let the rider also acquire the reins?[10] — Say: one acquires the ass and half of the reins, and the other acquires half of the reins. But [it is argued] the rider rightly acquires [his part] seeing that a rational person lifted up for him [the other end of the reins from the ground], but he who holds the reins — how does he acquire [his part]?[11] —

Say: One acquires the ass and [nearly] all of the reins, and the other acquires what he holds in his hand.[12] But how is this? Even if you say that if a man lifts up a found object for his neighbour the neighbour acquires it,it could only apply to [a case] where he lifted it up on behalf of his neighbour, but this one lifted up [one end of the reins] on his own behalf: if he himself does not acquire it [by this action], how is he to enable others to acquire it? — Said R. Ashi: The one acquires the ass with the halter, and the other acquires what he holds in his hand, but the rest [of the reins] neither of them acquires.[13] R. Abbahu said: In reality we may leave it as taught [at first].[14] [and] the reason is that he [who holds the reins] can pull them violently and bring [the other end also] to himself.[15] But R. Abbahu's view is a mistake: for if you do not say so, [how would you decide in a case where] one half of the garment lies on the ground and the other half [rests] upon a pillar, and one person comes and lifts up the half from the ground, while another person comes and lifts up the half from the pillar — will you maintain here also that the first one acquires it but the last one does not acquire it, for the reason that [the first one] can pull it violently and bring [the other half also] to himself?[16] [We must] therefore [say that] the view of R. Abbahu is a mistake.[17]

Come and hear: R. Eliezer says: One who rides [on a found animal] in the country, or one who leads [a found animal] in the city, acquires it![18] — Here also the rider drives [the animal] with his feet.[19] But if so, it is the same as 'leading'? — There are two ways of 'leading'.[20] But if so, why does not he who rides [on an animal] in the city acquire it? — R. Kahana said: It is because people are not in the habit of riding in a city.[21] R. Ashi then said to R. Kahana: According to this, he who picks Up a purse on a Sabbath should not acquire it either, seeing that people are not in the habit of picking up a purse on a Sabbath?[22] But in fact he does acquire [the purse] because [we say:] What he has done is done;[23] so here also [we ought to say]: What he has done is done, and he acquires [the animal by riding on it in the city]! — It must therefore be that we deal here with [a case of] buying and selling, where he says to him:[24] 'Acquire it in the way people usually acquire [a bought article]',[25]

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(1) [Camels are usually tugged at the halter; asses are driven from behind.]

(2) I.e., that leading is valid even in the case of a camel, and that pulling is valid also in the case of an ass.

(3) If there is no distinction between the mode of acquiring a camel and that of acquiring an ass, there is no need to state the two cases separately.

(4) Therefore the Tanna could not adopt the phrasing first suggested, and he had to say: 'If two persons were pulling a camel or leading an ass, or if one was pulling and one was leading,' viz., the animal which can be acquired by either method, — but this would not apply to the other animal, which could only be acquired by one of the methods.

(5) Some of the Rabbis thought that an ass could not be acquired by pulling (while a camel could be acquired either by pulling or by leading), and others thought that a camel could not be acquired by leading (while an ass could be acquired either by leading or by pulling).

(6) This was at first understood to mean that both the camel and the ass could be acquired by either method.

(7) I.e., pulling in the case of an ass, and leading, in the case of a camel.

(8) According to R. Judah pulling is applicable to a camel only, and leading is applicable to an ass only, while according to the first Tanna one of the animals can be acquired by either method.

(9) But does not lead or drive the animal.

(10) If the rider has acquired the ass legitimately, the reins should also go to him, as they are attached to the ass and are intended to serve as an ornament for the animal.

(11) Seeing that the other end is attached to the ass and has not been lifted up by the person to whom the reins are awarded, and seeing also that an ownerless object can be acquired only by one who removes the whole of it, how can the person that holds the reins attached to the ass be said to have acquired them?

(12) For the part that he holds in his hand has been entirely lifted by him.

(13) And if a third person were to come and appropriate it, it would be his.

(14) Viz., one acquires the ass, and the other the reins, including the halter.

(15) The person that holds the other end of the reins could, by violent pulling, remove also the end that is attached to the head of the ass, as owing to the elevated position of the ass's head it would be easy to pull off the halter with the reins by

one sharp tug.

(16) If a distinction were to be made between cases on the ground that the position of the other end, or the other half, of the found object might facilitate its removal by the person that holds the first end or first half, then if a garment is found one half of which rests on a pillar, or on some other elevation that would facilitate the removal of the whole garment by one strong pull on the part of the person that has seized the low-lying end, the law of our Mishnah which divides the garment between the two claimants should not apply, and the first claimant (who seized the low-lying end of the garment) should receive the whole garment. But the law recognises no such distinction. Hence R. Abbahu is mistaken in the view he advances

(17) The word used in describing R. Abbahu's error occurs in several places in the Talmud. It is regarded as a courteous substitute for other terms which might be used in refuting wrong decisions, but which would appear derogatory to the dignity of the Rabbis who committed the error. The term is associated with the word ברותא , meaning something external, which does not fit in, and which is therefore rejected. In other places, however, (such as Pes. 11a; B.B. 145a) the rendering is בדותא , an invention, an unfounded assertion.

(18) This would at least prove that riding is a legitimate method of acquiring an animal, even though riding in a city is excluded (for the reason given below).

(19) V. supra p. 44, n. 3.

(20) V. ibid. n. 5.

(21) It is regarded as unbecoming to ride in the streets of a town.

(22) As it is improper to pick it up and carry it away on a Sabbath.

(23) Even if the action is improper, it has legal validity.

(24) I.e., the seller to the buyer.

(25) And as long as the buyer takes possession of the animal in a manner which is not unusual, he acquires it legally.

Talmud - Mas. Baba Metzia 9b

so that if [the buyer rides on the animal in] the open street[1] he acquires it, or if he is an important personage he acquires it,[2] or if [the buyer] is a woman she acquires it,[3] or if [the buyer] is a mean person[4] he acquires it.

R. Eleazar inquired: If one says to another, 'Pull this animal along so that you may acquire the vessels that are [placed] upon it,'[5] what is the law? [But, it is at once objected, by saying], 'so that you may acquire;' does he really tell him, 'Acquire'?[6] [The question must] therefore [be put this way]: [If one says to another,] 'Pull this animal along and acquire the vessels that are [placed] upon it,' what is [the law]? Does the pulling of the animal enable him to acquire the vessels or not? — Said Raba: [Even] if he says to him, 'Acquire the animal and the vessels [at the same time],' does he then acquire the vessels?[7] Is not the animal like a moving courtyard? And a moving courtyard does not enable [its owner] to acquire [the objects placed in it]![8] And if you should say [that he acquires them] when it stands still,[9] [then it would be objected:] Is it not [the law] that whatever does not acquire while in motion, does not acquire even while standing still or at rest? [It must be admitted, however, that] the [above] law obtains when [the animal] is tied.[10]

R. Papa and R. Huna said to Raba: According to this,[11] if one sails on a boat, and fish jump and fall into the boat, [do we] then also [say] that [the boat] is [like] a 'moving courtyard' and it does not enable [its owner] to acquire [the objects placed in it]? — He [Raba] answered them: The boat is really at rest, only the water moves it along.

Rabina said to R. Ashi: According to this, if a married woman walks in a public street, and the husband throws a bill of divorcement into her lap or into her basket,[12] [do we] then also [say] that she is not divorced?[13] — He answered him: The basket is really at rest, and she walks underneath.[14]

MISHNAH. IF A MAN, RIDING ON AN ANIMAL, SEES A LOST ARTICLE AND SAYS TO HIS NEIGHBOUR: 'GIVE IT TO ME'; THE LATTER] TAKES IT UP AND SAYS: 'I

ACQUIRED IT [FOR MYSELF].' — [THEN] IT IS HIS. [BUT] IF AFTER GIVING IT TO HIM, THAT PERSON SAYS: 'I ACQUIRED IT FIRST', THERE IS NOTHING IN WHAT HE SAYS.[15]

GEMARA. We have learned elsewhere:[16] If one gleaned the corner of a field[17] and said, 'This is for that poor person.' R. Eliezer says: he conferred possession [of the gleaning] on that person.[18] But the Sages say: He must give it to the first poor person that comes along. 'Ulla said in the name of R. Joshua b. Levi: The difference of opinion [between R. Eliezer and the Sages] concerns [a case where] a rich person [gleaned] for a poor person. R. Eliezer is of the opinion [that] [i] since, if he had wished, he could have declared his possessions public property, so that he would have become a poor man [himself] and would have been entitled [to the gleanings of the corner], he is entitled [to them] even now, and [ii] since he might thus take possession [of them] for himself,[19] he could also confer possession [of them] upon his neighbour. But [the Sages] are of the opinion [that] we can use the Since argument once but not twice.[20] But [in a case where] a poor person [gleaned] for [another] poor person all are of the opinion that he could confer possession [of the gleanings] upon that person, for since he could take possession [of them] for himself he could also confer possession [of them] upon his neighbour.[21]

R. Nahman said to 'Ulla: And why not say, Master, that the difference of opinion [between R. Eliezer and the Rabbis] concerns [even a case where] a poor person [gleaned] for a poor person. — seeing that in regard to a found object all are [in the same legal position as the] poor are in regard [to the corner of the field]?[22] And we learned: IF ONE, RIDING ON AN ANIMAL, SEES A LOST ARTICLE AND SAYS TO HIS NEIGHBOUR: 'GIVE IT TO ME'; THE LATTER TAKES IT UP AND SAYS: 'I ACQUIRED IT [FOR MYSELF].' — [THEN] IT IS HIS. Now, it is all correct if you say that the difference of opinion [between R. Eliezer and the Rabbis] concerns [even a case where] a poor person [gleaned] for a poor person.[23] [for]

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(1) Where it is usual to ride on a bought animal, instead of leading it, in view of the possibility of passers-by intervening between the animal and the person that leads it.

(2) For it is usual for an important person to ride on an animal even in a side-street where there are no people about, as leading an animal by the reins is undignified.

(3) A woman is, as a rule, not strong enough to prevent the animal from breaking loose. She does not, therefore, usually lead it.

(4) A person that has no dignity will ride on an animal in any circumstances, whether it is regarded as proper for him to do so or not, but the ordinary person, whose standing is neither too high nor too low, will not, as a rule, ride on an animal in town in a quiet street. In such circumstances, riding would not be a legitimate way of acquiring the animal if the buyer has been told to acquire it 'in the usual manner'.

(5) The speaker has sold the vessels to the other, but he has not sold him the animal.

(6) I.e., the words 'so that you may acquire', spoken by the seller, do not convey the direct authorisation which the buyer must receive before he can really acquire the vessels.

(7) Raba assumes that R. Eleazar asks his question regarding the vessels placed on the animal because he has in mind a case where the animal itself has not been sold, and he concludes from this that, where the animal has been sold with the vessels, R. Eleazar would be sure that the buyer would acquire the vessels simultaneously with the animal, as he pulls it along, because the animal would then be regarded in the same light as his courtyard, which enables the owner to acquire whatever is placed in it. Raba then objects that the moving animal, like anything else on the move, does not convey to the owner possession of the articles placed upon it.

(8) The original law regarding the utilisation of a person's premises for the purpose of acquiring the objects placed within them only applies to fixed premises; cf. Git. 77a.

(9) I.e., after it has been pulled along by the buyer, and has thus been acquired by him, the animal comes to a standstill, and it may then be regarded as a 'fixed courtyard'.

(10) As the animal is then unable to move, it is rightly regarded as a 'fixed courtyard'.

(11) I.e., according to your view that a 'moving courtyard' does not enable its owner to acquire the objects placed therin,

(12) The basket which women used to carry on their heads, and which served the purpose of a work-basket.

(13) The Mishnah in Git, 77a makes it clear that in such circumstances the wife is divorced.
(14) The basket is therefore like a 'fixed courtyard'.
(15) For as soon as he handed over the found object to that person it became the latter's property, no matter whether the former first acquired it for himself or not, and his subsequent declaration is of no avail.
(16) Pe'ah. IV, 9; Cf. Git. 113.
(17) V. Lev. XIX, 9.
(18) The gleaner of the corner of the field, who according to R. Eliezer may confer possession of the gleanings upon a poor individual, would have to be a stranger, not the owner of the field. For the owner, even if he is poor himself, has no right to the gleanings of the corners of his field (cf. Hul., 131a), and he could not therefore acquire it for others. As the argument 'Since (Miggo) he can take possession of it for himself he may also confer possession of it upon someone else' could not in this case be used, R. Eliezer would also say that the other poor person is not entitled to the gleanings to the exclusion of anyone else.
(19) I.e., if he had, in the stated circumstances, desired to acquire the gleanings, he could have legally made them his own.
(20) Only one miggo can be applied to a case, but not two miggos. In this case we would first have to say: miggo (since) a poor man can acquire the gleanings for himself he can also acquire them for a poor neighbour; and then we would have to say: miggo (since) if he wished to renounce his property he could acquire the status of a poor man, he may be given such status even if he is rich.
(21) The one miggo would be accepted by all.
(22) Just as every poor person has a right to glean the corners of a field, so every person who finds an object has a right to pick it up and acquire it.
(23) And the Rabbis who differ from R. Eliezer would hold the view that although we may say, in the case of two persons picking up together a found object that each one acquires it for the other at the same time as he acquires it for himself (v. supra p. 37), yet in this case they would say that one poor man cannot acquire the gleanings for the other poor man. For in the case of the found object the argument is: 'Since (Miggo) he takes possession of it for himself, he may also take possession of it for his neighbour.' But in the case of the gleanings the argument would have to be: 'Since (Miggo), if he had wished, he could have taken possession of it for himself, he may also take possession of it for his neighbour' — and such an argument the Rabbis would not adopt. It would only be a potential miggo, which the Rabbis would not regard as valid.

Talmud - Mas. Baba Metzia 10a

our Mishnah would then be in accord with the Rabbis.[1] But if you say that the difference of opinion concerns [a case where] a rich person [gleaned] for a poor person, but that all agree [in the case] of a poor person [gleaning] for a poor person that one transfers possession upon the other, with whose view is our Mishnah in accord? It agrees neither [with the view of the Rabbis nor with [that of] R. Eliezer![2] — He ['Ulla] answered him: Our Mishnah speaks of [a case] where [the person who picked up the article] said: [I took possession of it] first.[3] This also stands to reason! Since the second clause teaches: IF AFTER GIVING IT TO HIM, THAT PERSON SAYS: 'I ACQUIRED IT FIRST,' THERE IS NOTHING IN WHAT HE SAYS, what need is there to state FIRST in this second clause? Surely even if he did not say FIRST [it would be assumed that] he meant 'FIRST'?[4] It must therefore be concluded that it was intended to let us know that in the first clause also he stated 'first'.[5] And the other?[6] The wording of the second clause is intended to throw light on the first: In the second case he said 'FIRST' but in the first case he did not say 'first'.[7]

Both R. Nahman and R. Hisda Say: If a man lifts up a found object for his neighbour, the neighbour does not acquire it.[8] For what reason? Because it is like one who seizes [a debtor's property] on behalf of a creditor, thereby causing loss to [the debtor's] other [creditors],[9] and one who seizes [a debtor's property] in behalf of a creditor, causing loss thereby to [the debtor's] other [creditors], does not acquire [the property].[10] Raba asked R. Nahman: [A Baraitha teaches:][11] A labourer's find belongs to himself. This decision only applies to a case where the employer said to the labourer: 'Weed for me to-day', [or] 'Hoe for me to-day.'[12] But if he said to him: 'Do work for

me to-day.' the labourer's find belongs to the employer![13] — He [R. Nahman] answered him: A labourer is different, as his hand is like the hand of his employer.[14] But does not Rab say: 'The labourer may retract even in the middle of the day? — He [R. Nahman] answered him [again]: Yes, but as long as he does not retract [and he continues in the employment] he is like the hand of the employer. When he does retract [he can withdraw from the employment] for another reason,[15] for it is written: For unto me the children of Israel are servants; they are My servants[16] — but not servants to servants.[17]

R. Hiyya b. Abba said in the name of R. Johanan: If one lifts up a found object for his neighbour, the neighbour acquires it. And if you will say: Our Mishnah [differs]![18] — [it is because our Mishnah deals with a case] in which he said, 'Give me it,' and did not say, 'Acquire it for me.'[19]

MISHNAH. IF ONE SEES AN OWNERLESS OBJECT AND FALLS UPON IT, AND ANOTHER PERSON COMES AND SEIZES IT, HE WHO HAS SEIZED IT IS ENTITLED TO ITS POSSESSION.

GEMARA. Resh Lakish said in the name of Abba Kohen Bardala: A man's four cubits acquire [property] for him everywhere. For what reason? — The Rabbis instituted [this law] in order that people might not be led to quarrelling.

Abaye said: R. Hiyya b. Joseph raised an objection from [the tractate of] Pe'ah. Raba said: R. Jacob b. Idi raised an objection from the [tractate of] Nezikin.[20] Abaye said: R. Hiyya b. Joseph raised an objection from [the tractate of] Pe'ah:[21] If he [a poor man] takes part [of the gleanings] of the corner [of a field] and throws it over the rest [of the gleanings],[22] he cannot claim anything. If he falls Upon it, [or if] he spreads his garment upon it, he may be removed from it. And the same [law applies] to a forgotten sheaf.[23] Now if you say that a man's four cubits acquire [property] for him everywhere, let the four cubits [of the poor man] acquire for him [the gleanings on which he fell]! — Here we deal with a case where the man did not say. 'I wish to acquire it.' But if the Rabbis instituted [this law], what does it matter if he did not say, ['I wish to acquire it']? — Since he fell [upon it], he made it clear that he wished to acquire it by falling [upon it][24] but did not wish to acquire it by means of [his four cubits].

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(1) [Who disregard the potential miggo and do not admit the argument. 'Since the person who picked up the article for the rider could, if he had wished, have picked it up for himself, he may also confer possession of it upon his neighbour.' The latter therefore can rightly retain the article if he wishes to do so. At this stage the Gemara presumes that he had originally picked up the article for the rider, but that he subsequently refused to hand it over to him.]

(2) For it would appear from our Mishnah that one cannot ordinarily acquire an object for someone else, and the only way in which one can confer upon the other the right of possession is by handing the object over to him.

(3) The reason why the rider cannot claim the found object unless it has been handed over to him is that the other person claims to have picked it up straight away for himself. But if the other person had picked it up for the rider it would have belonged to the latter straight away, for we say that since, if he had wished, he could have taken possession of it for himself, he may also take possession of it for his neighbour.

(4) When he claims the article after handing it over, he must surely mean that he acquired it first for himself. There would be no sense in his claim that he acquired it for himself after he disposed of it to the rider,

(5) I.e., that the person who picked it up maintained that he took possession of it for himself right at the beginning. And the last clause teaches us that even if he claims to have picked it up for himself straightaway, his plea is not accepted, for by handing over the article to the rider he made it clear that he originally meant to acquire it for that person.

(6) R. Nahman — what is his view regarding the use of the word FIRST in the second clause?

(7) The use of the word FIRST in the second clause makes it clear that it was intentionally excluded from the first clause. [For there, even if he did not say 'first', but picked it up for the rider, the rider would still have no claim to it until it had been delivered to him.]

(8) Cf. Bezah, 39b.

(9) The person who lifts up a found object for someone else does not benefit himself, and he deprives other people of the chance of finding and acquiring the object. He is therefore like a person who comes and seizes a debtor's property for the benefit of a creditor, thus depriving other creditors of the chance of recovering their debt.
(10) As the creditor in whose behalf he seized the property had not authorised this man to act on his (the creditor's) behalf his intervention is illegal and constitutes an infringement of the rights of the other creditors (Rashi). [According to Tosaf, the same law would apply even where he had been authorized by the creditor. V. Keth. 84b; Git., 113.]
(11) V. infra 12b; 118a,
(12) As the work which the labourer is to do for the employer is specified it cannot include anything else, not even finding and acquiring an ownerless object. If the labourer has spent any time in finding and acquiring the object, the employer may deduct payment for the time lost, but he cannot claim the object.
(13) Since the work is not specified it includes anything that the labourer may do during the time of his employment, so that the object that he finds and acquires during that time belongs to the employer. This would show that when one lifts up a found object for his neighbour the neighbour acquires it — in contradiction to R. Nahman and R. Hisda.
(14) The employer's right to the object found by his employee has nothing to do with the question whether one may acquire an object for a neighbour, as in the case of the employer the reason why he is entitled to the object found by his employee is that during the time of the employment the employee belongs to the employer, and anything that the former acquires during that time belongs to the latter.
(15) The fact that the labourer may terminate the employment any time he likes does not imply that he does not belong to the employer while the engagement lasts and that he can acquire a found object for himself during that time. There is another reason for the right conceded to the employee to terminate his engagement whenever he likes.
(16) Lev, XXV, 55.
(17) The freedom of the individual ought not to be jeopardised by an engagement which is to bind the employee to work for the employer against his own inclination, as if he were the employer's chattel, Cf. B.K. 116b.
(18) In that it says that the person who picked up the object and said, ‘I took possession of it,’ acquired it for himself, even though he acted for the rider who told him to give it to him.
(19) Had the rider said: ‘Acquire it for me by picking it up on my behalf’ the object would have belonged to the rider. By saying: ‘Give it to me,’ the rider made it clear that the found object was to become his only when it was handed over to him. The other person is therefore entitled to keep the object.
(20) The three ‘Babas’ (‘Gates’: Baba Kamma, Baba Mezia, and Baba Bathra), formed originally one tractate, which was called ‘Nezikin’.
(21) Ch. IV, Mishnah 3.
(22) In order to acquire it by this act.
(23) V. Deut. XXIV, 19.
(24) He preferred to acquire the gleanings by the act of falling upon them, believing that this would be legally more effective than the claims of the four cubits sanctioned by the Rabbis, And as he did not intend to exercise the right afforded him as regards the four cubits, the right lapsed, and there was nothing in his action of throwing himself upon the gleanings to entitle him to claim their possession.

Talmud - Mas. Baba Metzia 10b

R. Papa said: The Rabbis instituted [the law of the] four cubits only in a public place.[1] but the Rabbis did not institute [such a law] in a private person's field.[2] And although the Divine Law gave [the poor person] a right therein, it gave him the right to walk in it and glean its corners, but the Divine Law did not give him the right to regard it as his ground.[3] Raba said: R. Jacob b. Idi raised an objection from [the tractate of] Nezikin: IF ONE SEES AN OWNERLESS OBJECT AND FALLS UPON IT, AND ANOTHER PERSON COMES AND SEIZES IT, HE WHO SEIZED IT IS ENTITLED TO ITS POSSESSION — now if you will say [that] the four cubits of a person acquire for him [an ownerless object] everywhere, let his four cubits acquire it for him [in this case also]? — Here we deal [with a case] where he did not say, ‘I wish to acquire it.’ But if the Rabbis instituted [the right of the four cubits], what does it matter if he did not say it? — As he fell [upon the object] he made it clear that he wished to acquire it by falling [on it] but did not wish to acquire it by means of the four cubits. R. Shesheth said: The Rabbis instituted [the law of the four cubits] in regard to a

side-street, which is not crowded, [but] in regard to a high road, which may be crowded, the Rabbis did not institute [this law]. But does it not say 'everywhere'? — [The term] 'everywhere' is to include the [ground on both] sides of the high road.[4]

Resh Lakish said further in the name of Abba Kohen Bardala: A girl who is [still] a minor[5] has neither the right [to acquire, an object by means] of her 'ground'[6] nor the right [to acquire an object by means] of her 'four cubits'.[7] But R. Johanan said in the name of R. Jannai: She has the right, both in regard to her ground and in regard to her four cubits. Wherein do they differ? — One[8] is of the opinion that [the scriptural term] 'ground'[9] is included in her 'hand'; just as her 'hand' acts for her, so her 'ground' also acts for her. But the other[10] is of the opinion that 'ground' [acts] In the capacity of 'agent';[11] and as she has not the power [while she is a minor] to appoint an agent to act for her[12] neither can her 'ground' act for her. But is there anyone who says that 'ground' is regarded as 'agent'? Was it not taught: [If the theft be found at all] in his hand [alive];[13] — [from this] I would gather [that the law applies] only [when it is found in] 'his hand': how do we know that the same law applies [when the theft is found on] his roof, in his court-yard and in his enclosure?[14] Because we are told: [If the theft] 'be found at all',[15] [which means]: 'wherever [it may be found].'[16] Now if your view is that 'ground' [acts] because it is regarded as agent, then we must conclude [that there] is an agent for a sinful act,[17] whereas it is held by us[18] that there is no agent for a sinful act?[19] — Rabina answered: We say 'there is no agent for a sinful act' only when the agent is subject to the law prohibiting the act, but in regard to [a thief's] 'ground', which cannot be said to be subject to the law prohibiting the act [of stealing] the responsibility [does not lie with the agent, but it] lies with the originator [of the deed]. But if so — what if one says to a woman or a slave: 'Go and steal for me,' seeing that they are not subject to the law prohibiting the act [of stealing].[20] does the responsibility in this case also lie with the originator [of the deed]? — I will tell you: A woman and a slave are subject to the law prohibiting [theft], only they are temporarily unable to pay,[21] as we learnt: When the woman has been divorced and the slave set free, they are obliged to pay.[22] R. Sama said: When do we say, 'there is no agent for a sinful act'? — [Only in a case] where [the agent is at liberty to choose: to] do it if he wishes, and not do it if he does not wish. But in regard to a 'ground' [where. e.g., a stolen animal is found], seeing that it has no will but must receive [what is deposited therein, the responsibility lies with the originator [e.g., of the theft]. Wherein do they differ?[23] — They differ [in the case where] a priest says to an Israelite: 'Go and betroth for me a divorced woman'[24] or [where] a man says to a woman:[25] 'Cut around the corners of the hair of a minor:'[26] according to the version which says that whenever [the agent has the choice to] do it if he wishes, and not to do it if he does not wish, the responsibility does not lie with the originator; here also he has the choice to do if he wishes and not to do it if he does not wish, [and therefore] the responsibility does not lie with the originator. But according to the version which says that whenever the agent is not subject to the law prohibiting the act, the responsibility lies with the originator, in these [cases] also, seeing that [the agents] are not subject to the laws prohibiting the acts, the responsibility lies with the originators. But is there anyone who says that 'ground' is not included in [the term] 'hand'? Has it not been taught: [And he shall give it] in her hand[27] — from this I would learn only that 'her hand' acts for her. How do we know [that] her roof, her courtyard and her enclosed space [also act for her]? Because the Scriptural verse emphasises, 'And he shall give', [which implies that he may give it to her] anywhere.?[28] With regard to a divorce there is no difference of opinion [and all agree] that 'ground' is included in her 'hand'. The difference of opinion exists only as regards a found object: One[29] is of the opinion that

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(1) Such as a high road, a public thoroughfare, or a lane, a side-street and an alley adjoining an open space — places that are open to everybody.

(2) Where, having regard to the limited space, it is impossible to assign to each person four cubits.

(3) For the purpose of acquiring an object situate on that ground.

(4) But not side-streets and alleys.

(5) Cf. Keth. 39a.

(6) Lit. 'Court'.
(7) Therefore, if she is married, the husband cannot divorce her by throwing the bill of divorcement into her court or into the space constituting her four cubits in a public place, although in the case of a wife who has attained her majority (cf. Keth. 39a) this would be a valid way of effecting her divorce (cf. Git. 78a).
(8) R. Johanan.
(9) Used in Deut, XXIV, 1: that he writeth her a bill of divorcement, and giveth it in her hand. cf. Git. 77b. That the term 'hand' means also 'possession' may be gathered from Num, XXI, 26.
(10) Resh Lakish.
(11) Not because it is like her 'hand' and thus 'acts' automatically, but because the ground stands to her in the relation of a messenger to the sender, or of an agent to the originator of a deed, for which a free will or a sense of legal responsibility is required. A minor cannot therefore be represented by such an agent. The right of an adult person, whether man or woman, to act through a messenger, or agent, as regards marriage and divorce, is derived from Deut, XXIV, 1. v. Kid. 41a.
(12) Only a 'man' and a 'woman' can appoint agents to act for them, but not a minor. Cf. Kid. 42a.
(13) Ex, XXII, 3.
(14) I.e., that one is guilty of theft if an animal walks into an enclosed space belonging to him, and he locks it in.
(15) The emphatic term המצא תמצא is taken to indicate: 'wherever it may be found'.
(16) Cf. infra 56b; B.K. 65a; Git, 77a.
(17) That the responsibility for the act rest upon the principal originator, who instructed the agent, and not upon the agent who carried out the instruction. The sinful act in this case is the act of stealing the animal.
(18) V. Kid. 42b.
(19) I.e., if one commits an illegal act on the instruction of someone else the guilt rests upon the performer of the act, and not upon the one who gave the instruction, as each person is bound to obey the law given by the Supreme Master, and one has no right to carry out the instruction of another person if it is contrary to the divine Law.
(20) At least so far as the penalties involved are concerned, as they are unable to pay. Cf. B.K. 87a.
(21) The married woman cannot pay because she cannot dispose of her property without her husband's consent, and the slave because everything he has belongs to his master,
(22) For an injury they caused in their previous state, while they were unable to pay (B.K. 87a).
(23) What practical difference is there in the views expressed by Rabina and R. Sama?
(24) A priest may not take to wife a divorced woman. (Lev. XXI, 7.) Betrothal marks the two parties concerned husband and wife.
(25) A woman is not subject to the prohibition of rounding the corners of the head (Lev. XIX, 27) as she is not subject to the prohibition contained in the second half of the same Biblical verse, neither shalt thou mar the corners of thy beard. Cf. Kid. 35b; Naz. 57b.
(26) A minor is mentioned for the reason that an adult will not allow anyone to round the corners of his head, as the Biblical prohibition applies to 'rounding' as well as to 'being rounded'.
(27) Deut. XXIV, 3.
(28) The term ונתן , 'and he shall give' is taken as having no exclusive reference to the following word בידה ('in her hand'). Had the emphasis been restricted to 'in her hand' the term used would have been ובידה יתנהו (Rashi). The inference therefore is that any place belonging to her, i.e. her 'ground', is as good as her 'hand', and not because the place is her 'agent', for the fact that the woman can appoint an agent in connection with either marriage or divorce is already indicated in this verse by the word ושלחה 'he shall send her' (cf. Kid., 41a), and need not be indicated again by ונתן . Git. 77a.
(29) R. Johanan.

Talmud - Mas. Baba Metzia 11a

we derive [the law regarding] a found object from [the law regarding] divorce,[1] and the other[2] is of the opinion that we do not derive [the law regarding] a found object from [the law regarding] divorce.[3] And if you wish I will say: As regards a female minor there is no difference of opinion [and all agree] that we derive [the law regarding] a found object from [the law regarding] divorce, but here they differ regarding a male minor: One[4] says: We derive [the law regarding] a male minor[5]

from [the law regarding] a female minor, and the other[6] says: We do not derive [the law regarding] a male minor from [the law regarding a female minor]. And if you wish I will say: One deals with one case[7] and the other deals with another case, and they do not really differ [as regards the law].

MISHNAH. IF A MAN SEES PEOPLE RUNNING AFTER A LOST ARTICLE [E.G.,] AFTER AN INJURED STAG [OR] AFTER UNFLEDGED PIGEONS,[8] AND SAYS: 'MY FIELD ACQUIRES POSSESSION FOR ME',[9] IT DOES ACQUIRE POSSESSION FOR HIM.[10] BUT IF THE STAG RUNS NORMALLY, OR THE PIGEONS FLY [NATURALLY], AND HE SAYS: 'MY FIELD ACQUIRES POSSESSION FOR ME,' THERE IS NOTHING IN WHAT HE SAYS.[11]

GEMARA. Rab Judah said in the name of Samuel: This[12] is, provided he is present by the side of his field. But ought not his field to acquire it for him [in any case], seeing that R. Jose, son of R. Hanina, said:[13] A man's 'ground' acquires [property] for him [even] without his knowledge? — These words apply only to a [piece of] 'ground' that is guarded,[14] but when [the piece] of 'ground' is not guarded, [then the law is that] if [the owner] is present by the side of his field he does [acquire the property], [but] if [he is] not [present] he does not [acquire it]. And whence do you derive that when [the piece of] 'ground' is not guarded [the owner] does [acquire the property] if he is present by the side of the field, [but that he] does not [acquire it] if [he is] not [present]? — From what was taught: If one stands in town and says, 'I know that the sheaf which I have in the field has been forgotten by the labourers,[15] [and it is my wish that the sheaf] shall not be regarded as forgotten',[16] I might think that it shall not [in any circumstances][17] be regarded as forgotten: the scriptural verse therefore tells us: And thou hast forgot a sheaf in the field [etc.][18] implying 'only if thou hast forgotten it [while thou wast] in the field [does the law of the forgotten sheaf apply] and not [if thou hast forgotten it when thou hast returned] to town.' Now, this seems self-contradictory. First you say: 'I might think that it shall not be regarded as forgotten' — from which it would appear that [in fact] it is regarded as forgotten; and then the Gemara[19] concludes: 'Only if thou hast forgotten it [while thou wast] in the field [does the law of the forgotten sheaf apply] but not [if thou hast forgotten it when thou hast returned] to town' — from which it would appear that [in the case discussed] it is not regarded as a forgotten [sheaf]. It must therefore be assumed that what is meant is this: In the field, [i.e.,] if it was forgotten at the outset, [while the owner was still in the field,] it must be regarded as [a] forgotten [sheaf], [but] if it was remembered [by the owner in the field] and was subsequently forgotten [by the labourers] it is not regarded as [a] forgotten [sheaf]. For what reason? Since he was standing near it [in the field, the field] acquires it for him. But [when the owner is again] in town, even if [the sheaf] was at first remembered [by him] and was forgotten later [by the labourers in the field], it must be regarded as [a] forgotten [sheaf].[20] For what reason? Because he is not there beside it, so that [the field] does not require possession [of the sheaf] for him. But how does it follow?[21] Perhaps it is a Biblical decree that [only that which is forgotten by the owner while he is] in the field shall be subject to the law of the forgotten sheaf, but that [when the owner is] in town [again] the sheaf is no more subject to that law?[22] The Scriptural verse says [further]: Thou shalt not go back to fetch it — this is to include the sheaf which has been forgotten [by the owner on his return] to town. But is not this needed to indicate that disregard of the law involves the transgression of a negative command?[23] — If that were so, the Scriptural verse would only have to say 'Thou shalt not fetch it'. Why does it say: 'Thou shalt not go back'? [Obviously] in order to include the sheaf which has been forgotten [by the owner on his return] to town. But is not this [additional phrase] still required for [the rule] which we have learned: That which is in front of him [who is engaged in reaping] is not [subject to the law of the] forgotten [sheaf]; that which is behind him is [subject to the law of the] forgotten [sheaf], as it is included in the prohibition: 'Thou shalt not go back [to fetch it]'.[24] This is the general rule: All that can be included in the prohibition 'Thou shalt not go back [to fetch it]' is [subject to the law of the] forgotten [sheaf]; all that cannot be included in the prohibition 'Thou shalt not go back [to fetch it]' is not [subject to the law of the] forgotten [sheaf]?[25] — R. Ashi said: The Scriptural verse says: It shall be [for the stranger][26] etc., so as to include that which has been forgotten [by the owner when he is back] in town.

'Ulla also said:[27] 'This is, provided that he is present by the side of his field'. And Rabbah b. Bar Hanah said likewise: 'This is, provided that he is present by the side of his field'. R. Abba placed before 'Ulla the following objection: It happened once that Rabban Gamaliel and some elders were going in a ship.[28] Rabban Gamaliel then said: The tithe which I shall measure off [when I come home] is given [by me] to Joshua.[29]

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(1) That just as her 'ground' acts for her as regards a bill of divorcement it also acts for her as regards a found object.

(2) Resh Lakish.

(3) Divorce is a matter that has to do with the ritual part of the Law, while the claim to a found object is only a matter of money. In regard to the latter the deduction from Ex. XXII, 3, dealing with theft, to include 'ground' may be explained as an extension of the law of agency, i.e., the thief's 'ground' is treated as his, agent and it may be applied to other 'money matters'. The Scriptural indication is however necessary in the case of theft, as otherwise we might have thought that a thief's premises do not act for him, because of the principle that 'there is no agent for a sinful act'.

(4) R. Johanan.

(5) Which is not indicated anywhere in the Bible.

(6) Resh Lakish.

(7) Resh Lakish states the law regarding a found object — that it is not acquired by means of one's 'ground' — and R. Johanan states the law regarding a bill of divorcement — that it is acquired by means of one's ground. Or alternatively it could be said that one deals with the case of a male minor, and the other deals with the case of a female minor, and this accounts for the difference in their decision. It may thus be assumed that R. Johanan and Resh Lakish do not differ at all as regards the law as it applies to each case, and that they would both uphold each other's decision.

(8) The injured stag and the unfledged pigeon cannot move out of the field in which they are found, and will therefore remain there, unless someone takes them away. The field, in these circumstances, acts for the owner and acquires the animal or the birds for him, if the owner expresses his wish in this respect before the others have taken hold of these finds. (V. however, Tosaf a.l.)

(9) V. supra. 10b.

(10) They become his property, and the others have no right to take them away.

(11) As the animals or birds are not staying in the field his 'ground' cannot acquire them for him.

(12) The Mishnaic law that the field acquires for its owner the injured stag and the unfledged birds that are found there.

(13) B.K.. 493; infra 102a, 118a; Hul. 141b.

(14) As when it is surrounded by a fence.

(15) I placed the sheaf there so that the labourers might see it and bring it home.

(16) It shall not he subject to the law regarding a sheaf which has been forgotten in the field — the law given in Deut. XXIV, 19: When thou reapest thy harvest in thy field, and hast forgot a sheaf in the field, thou shalt not go back to fetch it etc.

(17) I.e., even if the owner himself forgot it subsequently.

(18) Deut. XXIV, 19.

(19) [MS.M. 'Talmud', v. infra p. 206, n. 6.]

(20) The argument of the Gemara would then be as follows: 'I might think that it shall not be regarded as a forgotten sheaf, The Scriptural verse therefore tells us: And thou hast forgot a sheaf in the field etc., meaning thereby: Only when thou art in the field it is necessary that thou thyself shalt forget the sheaf in order to make it available for the stranger etc., but when thou hast returned to town it is not necessary that thou thyself shalt forget the sheaf: the forgetfulness of the labourers in the field has the same effect as thine own.

(21) That the meaning of the verse is as stated, and that the conclusion of the Baraitha is correct (Tosaf.).

(22) The emphasis in the verse would then be that the law of the forgotten sheaf only applies to בשדה ('in the field') but never to בעיר ('in the town').

(23) Carrying with it the penalty of thirty-nine lashes.

(24) This phrase is superfluous and thus serves as a basis for this deduction.

(25) Pe'ah VI, 4.

(26) Deut. ibid.

(27) 'Ulla expressed the same view as Rab Judah expressed in the name of Samuel (v. p. 59. n. 9).

(28) Cf. Hor. (Sonc. ed) pp. 70f.

(29) Joshua b. Hananiah, who was a Levite and was entitled to receive the first tithe. (Cf. 'Ar. 11b.) Rabban Gamaliel was afraid that if he waited till he returned home he would be too late to perform the duty of tithing for that year. [Or that the members of his household might make use of the produce on the assumption that he had set the tithe aside before his departure, incurring thereby the guilt of eating untithed produce]. According to the view of Rabbenu Tam (Tosaf. a.l. and Kid. 26b) this happened on the eve of the Passover festival of the fourth year, when all the tithe offerings had to be 'put away' (cf. Deut. XXVI, 12ff.)

Talmud - Mas. Baba Metzia 11b

and the place [where it lies] is leased to him [by me].[1] And the other tithe[2] which I shall measure off is given [by me] to Akiba b. Joseph[3] that he may acquire possession of it for the poor, and the place [where it lies] is leased to him [by me].[4] Now, were R. Joshua and R. Akiba standing by the side of the field of Rabban Gamaliel [when the latter made that declaration]?[5] — He ['Ulla] then said to him [R. Abba]: This student seems to imagine that people do not study the law.[6] When he [R. Abba] came to Sura[7] he related to those [at the College]: This is what 'Ulla said, and this is the objection that I placed before him. One of the Rabbis then answered him: Rabban Gamaliel made them acquire the movable property through the immovable property.[8] R. Zera accepted it. R. Abba did not accept it . Said Raba: He [R. Abba] did right in not accepting it: for had they not a 'cloth' by which to acquire from him [the tithes] as 'exchange'?[9] [It must] therefore [be said that] the enjoyment of the right [to give the tithes to whom one likes][10] is not [regarded as something that has a] money [value] by which one could acquire [goods] as 'exchange'. In the same way [it must be said that] the enjoyment of this right is not [regarded as something that has a] money [value] for the purpose of being acquired through immovable property.[11] But this is not so: In regard to the priestly perquisites[12] [the term] 'giving' is used in Scripture:[13] 'Exchange' is a commercial transaction; [whereas the acquisition of] movable property through immovable property is [a transaction to which] 'giving' [may be] legitimately [applied].[14] R. Papa says:[15] [In a case where there is] a person bestowing [upon the recipient] the right [to the property] it is different.[16] And whence do you derive this? From what we have learned [in our Mishnah]: 'IF A MAN SEES PEOPLE RUNNING AFTER A LOST OBJECT' etc. And [in regard to this] R. Jeremiah said in the name of R. Johanan: 'This is, provided that [if] he runs after them and can overtake them.'[17] R. Jeremiah then asked: What is the law regarding a gift?[18] R. Abba b. Kahana approved [of the distinction implied in] this question, [and he answered: If the objects are given to the owner of the field, they become his] even if he runs after them, and cannot overtake them. For what reason? Is it not because [where there is] a person bestowing [upon the recipient] the right [to the property] it is different!

Said R. Shimi to R. Papa: Behold there is [the case of] a bill of divorcement [thrown by the husband into the wife's house or court-yard],[19] where there is a person bestowing upon the recipient the right to its possession[20] — and yet 'Ulla said: 'That is, provided that she is present in the vicinity of her house or her court-yard'! — [The case of] a bill of divorcement is different, as it may be given even against her will. But can it not be concluded [the other way] by means of a Kal wa-homer: If [in the case of] a bill of divorcement, which may be given against [the wife's] will, it is valid if she is standing by the side of her house or her court-yard, but not otherwise, how much more should this be so in the case of a gift, for which [the recipient's] consent [is necessary]? — Therefore R. Ashi said:[21]

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(1) This enabled Joshua to acquire the tithe without actually taking possession of it, as movable property may be acquired either by pulling it or having it placed within one's premises (v. supra 9b). According to Ma'as. Sh. V, 9 the leasing of the premises was confirmed by the immediate payment of a nominal rental by Joshua to R. Gamaliel.

(2) The tithe which had to be given to the poor in the third and sixth year after the Sabbatical year.

(3) Who held the office of almoner.

(4) Ma'as. Sh. V, 9.

(5) It is obvious that in this case the condition laid down by ‘Ulla and the other Rabbis could not have been fulfilled. The conclusion must therefore be drawn that a person's premises may acquire for him the objects placed therein even if he is not standing by the side of the premises.
(6) B.B. 84b.
(7) Cf. supra 6b.
(8) The leasing of the ground on which the tithes were lying enabled Joshua and Akiba to acquire the tithes, not because the ground acted for them as their ‘hand’ or ‘agent’, but because of the principle that ‘movable property, which cannot be pledged as security to a lender, may be acquired together with immovable property, which can be pledged as security to a lender,’ by means of the payment of the purchase price of the immovable property (v. Kid 26a). Rabban Gamaliel could therefore have leased to Joshua and Akiba any other piece of ground, with the same effect so far as the acquisition of the tithes is concerned. Even movable property which is received as a gift can be acquired in the same way. (Cf. loc. cit.)
(9) Heb. חליפין halipin; cf. Ruth. IV, 7. What need was there then for Joshua and Akiba to pay R. Gamaliel for the lease of the ground? Cf. supra p. 30. n. 3.
(10) The tithe offered by R. Gamaliel to Joshua and Akiba was not really the former's property as it belonged by law to the Levite poor. R. Gamaliel's right was limited to the choice of the person to whom the tithe was to be handed over. This right has no money value in the sense indicated to enable the recipient of the tithe to acquire it in association with a transaction of ‘exchange’.
(11) In the same way, and for the same reason, the tithe could not be acquired by means of the payment of the purchase price for immovable property. But it could be acquired in the way in which an ownerless object is acquired by one in whose premises it is placed, and for this reason the method employed by R. Gamaliel, as originally interpreted (by leasing his ground on which the tithe was lying), was correct.
(12) Including the portions due to the Levites and to the poor.
(13) Deut. XXVI, 12.
(14) ‘Giving’ precludes selling, and ‘exchange’ is a method of sale. But the acquisition of movable property, even when it is received as a gift in association with immovable property is legally valid, and it is not regarded as a sale. This method may therefore be employed in reference to tithes.
(15) R. Papa upholds the original version regarding R. Gamaliel's method of distributing the tithes by means of his ‘ground’.
(16) Literally: ‘Where another mind causes one to acquire them,’ i.e., where the recipient does not acquire (ownerless) goods by his own action, but has them conferred upon him by the owner, as in the case of R. Gamaliel. In such a case there is no need for the recipient to ‘be standing by the side of the field,’ as laid down by ‘Ulla and others in regard to the case in our Mishnah.
(17) The injured animal and immature birds are assumed to be able to move along slowly through the field, where they can be overtaken by the owner.
(18) If someone's animals or birds have landed in a strange field and their owner gives them to the owner of the field as a present, Must the owner be able to overtake them in order to be able to acquire them, or not?
(19) V. Git. 77b; and supra 10b.
(20) It is the husband's intention that the wife should take possession of the document, so that she may be divorced by it.
(21) R. Ashi acknowledges the validity of the arguments advanced by R. Shimi and R. Shesheth, and he gives a new reason for the distinction between a bill of divorcement and a gift. In both cases the ground on which the object is placed acts as the recipient's agent, whether the recipient is present or not. Where the recipient has no knowledge of the action, the agency is valid only if the action yields an advantage or benefit to the recipient. Where the action results in a disadvantage (loss or injury) to the recipient, it has no validity. Therefore, in the case of a gift, the recipient's ground acquires it for him, whether he is aware of it or not. But in the case of the bill of divorcement thrown into the wife's house or court-yard (against her will) the agency of the premises is not effective because the result would be a disadvantage to her, and in such a case the premises could only act for her if she is present and aware of what is happening, for then the premises would be regarded as ‘her hand’ (cf. supra 10b) and not merely as her agent. Therefore the divorce is not valid unless the woman was beside her premises when the bill was thrown.

Talmud - Mas. Baba Metzia 12a

[A person's] ‘ground’ [acts for him because] it is included in [the term] ‘hand’, and is no less effective than a [human] agency: In the case of a bill of divorcement, where the agency would work to her disadvantage, [we say that] one may not do anything to a person's disadvantage except when the person is present. But in the case of a gift, where the agency would work to the advantage [of the recipient, we say that] one may do something to a person's advantage when the person is absent.[1]

[To revert to] the above text: ‘IF A MAN SEES PEOPLE RUNNING AFTER A LOST ARTICLE etc. R. Jeremiah said in the name of R. Johanan: This is provided that if he runs after them he can reach them. R. Jeremiah asked: What [is the law] in [the case of] a gift? R. Abba b. Kahana approved of the [distinction implied in the] question [and answered]: ‘Even though if he runs after them and cannot reach them.’ Now, Raba asked:[2] If one throws [away] a purse through one door and it falls through another door,[3] what is the law? [Do we say that even] when a thing does not come to rest in the air it is regarded as being come to rest there,[4] or not? — R. Papa said to Raba, (and according to some R. Adda b. Mattena said to Raba, while according to others Rabina said to Raba): Is not this the same as [the case in] our Mishnah: IF A MAN SEES PEOPLE RUNNING AFTER A LOST ARTICLE [etc.]. and R. Jeremiah said in the name of R. Johanan: ‘This is, provided that if he runs after them he can reach them’, and R. Jeremiah asked: ‘What is the law in the case of a gift?’ and R. Abba b. Kahana approved of the [distinction implied in the] question [and answered]: ‘Even though if he runs after them and cannot reach them’?[5] [Raba] answered him: You speak of [a case where the objects were] moving [on the ground]: moving [on the ground] is different, as it is like resting.[6] MISHNAH. AN OBJECT FOUND BY A MAN'S SON OR DAUGHTER WHO ARE MINORS,[7] OR BY HIS CANAANITE BONDMAN OR BONDWOMAN,[8] OR BY HIS WIFE,[9] BELONGS TO HIMSELF. AN OBJECT FOUND BY HIS SON OR DAUGHTER WHO ARE MAJORS, OR BY HIS HEBREW MANSERVANT OR MAIDSERVANT, OR BY HIS WIFE WHOM HE HAS DIVORCED, ALTHOUGH HE HAS NOT PAID [HER THE AMOUNT DUE TO HER ACCORDING TO] HER MARRIAGE-CONTRACT, BELONGS TO THE FINDER.

GEMARA. Samuel said: For what reason has it been laid down that an object found by a minor belongs to his father? Because when he finds it he brings it hurriedly to his father[10] and does not retain it in his possession. Shall we then say that Samuel is of the opinion that a minor has no right to acquire anything for himself [and that this is] in accordance with Biblical law? Surely it was taught: If one hires a labourer [to work in his field] the son [of the labourer] may gather the gleaning behind [his father]?[11] [But if the labourer receives] a half or a third or a fourth [of the crops as wages] his son may not gather the gleaning behind him.[12] R. Jose says: In either case his son and his wife may gather the gleaning behind him.[13] And Samuel said: The halachah is like R. Jose. Now it is all well if you say that a minor has a right to acquire things for himself in accordance with Biblical Law. For then his son gathers the gleanings for himself, and the father acquires it from him. But if you say that a minor has no right to acquire anything for himself, then the son must gather the gleaning for his father; but his father is rich,[14] — why then may his wife and son gather the gleaning behind him? — Samuel merely gave the reason of the Tanna of our Mishnah, but he himself does not hold that view.[15] And does R. Jose hold the view that a minor has a right to acquire things for himself in accordance with Biblical law? Have we not learnt: An object found by a deaf-mute, an imbecile, and a minor [may not be taken away from them as the law of] robbery is applied to them out of consideration for the public good.[16] R. Jose says: It is actual robbery.[17] And R. Hisda says: It is actual robbery because of an enactment by the Rabbis; the difference is as regards reclaiming the object by law?[18] — Therefore Abaye said: [The field] is treated as if the last gleaners had passed through it,[19] so that the poor themselves dismiss it from their minds, thinking that the son of that [labourer] would gather the gleaning.[20] R. Adda b. Mattena then said to Abaye: Is it permissible for a man to cause a lion to lie down in his field in order that the poor may see it and run away?[21] — Therefore Raba said:

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(1) Cf. Kid. 23a and 32b; A person's ‘ground’ acquires for him the object given to him, if even he is not present and is

not aware of the gift, because it is assumed that he agrees that the 'ground' should act for him and receive on his behalf the gift from the donor, who wishes to bestow upon the recipient the right to the possession of the object. It is different, however, in the case of a found object, as there is no one to bestow upon the claimant the right to the property, and unless he is present, or the ground where the object is found is guarded (fenced in), the 'agency' cannot take effect nor can the principle of his 'hand' be applied when he is not present (Rashi).

(2) Cf. infra 102a.

(3) Through the door of a house belonging to another person.

(4) So that the owner of the first house could claim the purse on the ground that his premises had acquired it for him before it reached the other house. Cf. Git. 77a.

(5) In which case the animal or the birds are bound to get beyond his field and land on someone else's ground. And yet the law is that he acquires the animal or birds. The owner of the first house, through which the purse passed after being thrown (away), should therefore also acquire the purse.

(6) There is no comparison between the case of the purse thrown through the door of a house, and the animal or birds moving through a field, as moving on the ground is like resting on the ground, and the owner acquires the objects before they leave his field.

(7) Cf. Keth. 46b.

(8) Cf. Lev. XXV, 46.

(9) Cf. Keth. loc. cit.

(10) It is therefore assumed that when he picked up the object he did it in behalf of his father.

(11) Cf. Lev. XIX, 9.

(12) As he receives part of the crops he is no more poor, and he is in the same position as the owner of the field. His son is therefore not allowed to gather the gleaning for him.

(13) For although the labourer is no more poor, his son and wife may still be regarded as poor, and they may gather part of the crops.

(14) As he receives part of the crops.

(15) He himself does not hold that an object found by a minor belongs to his father.

(16) Lit. 'ways of peace'.

(17) Git. 59b.

(18) According to the view of R. Jose the robbed object can be reclaimed by legal proceedings. But even according to him it is not a Biblical law that a minor has a right to acquire things for himself. Consequently by gleaning after his father, and on behalf of his father (who is now rich) he robs the poor.

(19) Cf. Pe'ah VIII,1. Abaye admits that a minor has no right of possession, but he advances another reason why a minor may glean after his father: When the poor learn that the labourer in the field has a wife and children they give up hope of finding any gleanings there. The field is thus regarded as one through which the old people (נמושות) have passed (old people who come last and walk slowly and haltingly, so that they cannot miss anything still left on the ground) and in which everybody is allowed to take away the gleanings — even the rich — because of the assumption that the poor are satisfied that after these last gleaners have searched the field nothing worth taking is left.

(20) This is why the son may gather the gleanings for his father.

(21) If the only reason why the son is permitted to gather the gleaning is that his presence serves to keep the poor away, although he is not legally entitled to glean in the field, it is like placing a wild beast in the field in order to frighten the poor people away, which is, of course, wrong.

Talmud - Mas. Baba Metzia 12b

[In this case] the right to take possession has been conceded to one who really has no such right.[1] For what reason? — [Because] the poor themselves are pleased [with this concession], so that when they are hired [as labourers] their children may also be allowed to glean after them. Now this [Samuel's view][2] differs from that of R. Hiyya b. Abba. For R. Hiyya b. Abba said in the name of R. Johanan: [By] MAJOR [we do] not [mean one who is] legally a major, nor [do we mean by] MINOR [one who is] legally a minor, but a major who is maintained by his father is regarded as a minor, and a minor who is not maintained by his father is regarded as a major.[3]

AN OBJECT FOUND BY HIS HEBREW MANSERVANT OR MAIDSERVANT BELONGS TO THE FINDER. Why? Ought not [the servant] to be regarded as a [hired] labourer? And it has been taught: ‘An object found by a [hired] labourer belongs to himself. This is the law only when [the employer] said to him: "Weed for me today; hoe for me today," but if [the employer] said to him: "Do work for me today." the object found by him belongs to the employer’?[4] — R. Hiyya b. Abba said in the name of R. Johanan: The servant referred to here [in our Mishnah] is one [who does highly skilled work, such as] perforating pearls, so that his master does not wish to change him over to any other kind of work.[5] Raba says: We deal here with [a servant] who picked up a found object while doing his work.[6] R. papa says: [The object found by the hired labourer belongs to the employer] when [the employer] hired him to collect ownerless objects, as, for instance, when a meadow was flooded with fish.[7]

What kind of a MAIDSERVANT is it [that our Mishnah speaks of]? If it is one who has grown two hairs,[8] what business has she with him [who claims to be her master]?[9] And if she has not grown two hairs, then if she has a father the found object belongs to her father,[10] and if she has no father she should have been released on the death of the father.[11] For Resh Lakish said: The Hebrew maidservant gains her liberty from the master through the death of her father, which law may be derived by means of a Kal wa-homer![12] — But was not Resh Lakish refuted?[13] [Yes.] But does not this [law of our Mishnah] provide an additional refutation? — No. You may assume that [our Mishnah refers to a case where] the father is alive, but the words, IT BELONGS TO THE FINDER, mean [in her case] that the master is excluded.[14]

AN OBJECT FOUND BY HIS WIFE [WHOM HE HAS DIVORCED], etc. If he has divorced her it is self-evident [that the object found by her belongs to her]! — Here we deal with the case of a woman who has been divorced and yet is not divorced.[15] For R. Zera said in the name of Samuel: Wherever the Sages have said [that a woman is] ‘divorced and yet not divorced’ her husband is obliged to maintain her.[16] Now the reason why the Rabbis said that an object found by a wife belongs to her husband is that he may entertain no ill-feeling towards her. Here [it is obvious that the husband] entertains intense ill-feeling towards her.[17] MISHNAH. IF ONE FINDS NOTES OF INDEBTEDNESS CONTAINING A MORTGAGE CLAUSE PLEDGING [THE DEBTOR'S] PROPERTY, ONE SHALL NOT RETURN THEM,[18] BECAUSE THE COURT WILL ENFORCE PAYMENT ON THE STRENGTH OF THEM.[19] IF THEY CONTAIN NO SUCH MORTGAGE CLAUSE, ONE SHALL RETURN THEM, BECAUSE THE COURT WILL NOT ENFORCE PAYMENT[20] ON THE STRENGTH OF THEM. THIS IS THE VIEW OF R. MEIR. BUT THE SAGES SAY: ONE SHALL NOT RETURN THEM IN EITHER CASE, AS THE COURT WILL ENFORCE PAYMENT [IN BOTH CASES].

GEMARA. With what kind of circumstances do we deal here? If the debtor admits [that the debt is due], then, even if there is a mortgage clause [in the documents], why shall [the finder] not return them, seeing that the debtor admits [that he has not paid the debt]?[21] And if the debtor does not admit, why should [the finder] return [the documents where they do not contain a mortgage clause]? Granted that [the creditor] may not exact payment from encumbered property,[22] but he may certainly exact payment from unencumbered property![23] — Yes. [It is] indeed [a case] where the debtor admits his debt, but the reason [why the documents are not to be returned is this]: We apprehend that they might have been written to secure a loan [say] in Nisan[24] whereas the loan was not granted until Tishri,[25] so that [the lender] would come to seize unlawfully the property bought [by others from the borrower during that space of time]. But if so, we ought to entertain the same fear as regards all documents that come before us? — Ordinary documents are not suspect, but these are suspect.[26] Then [the question arises] regarding the law that we learnt [in a Mishnah]: A note of indebtedness may be written for the borrower even when the lender is not present.[27] How do we write it deliberately [seeing that] we ought to apprehend that the note might have been written with the intention of borrowing in Nisan, whereas the loan was not granted until Tishri, so that the lender

would seize unlawfully the property [which others will have] bought [from the borrower during that space of time]![28] — Said R. Assi:

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(1) The Rabbis have conceded the son the right to glean after his father, although legally he has no such right.
(2) That the reason why our Mishnah decides that the object found by a minor belongs to his father is that a minor has no right of possession.
(3) Therefore an object found by a son who is maintained by his father, even if he be an adult, belongs to his father (to avoid ill-feeling), and an object found by one who is not maintained by his father, even if he be a minor, belongs to himself. (Rashi.)
(4) Supra 10a; infra 118a. Thus we see that an object found by a hired labourer engaged to do general work belongs to the employer. The Hebrew servant ought to be treated in the same way, as his time is his master's, and anything he does is done for the master.
(5) The master would therefore not wish him to interrupt his work in order to lift up a found object, the value of which would seldom exceed the value of his work, so that if it does happen that the servant lifts up a valuable object the master can only claim compensation for the time in which he interrupted his work in order to acquire the object.
(6) The finding of the object involved no interruption in the servant's work. The object therefore belongs to the servant, and there is no compensation due to the master.
(7) When a meadow has been flooded, and the fish remained after the waters have receded.
(8) The sign of puberty.
(9) [A Hebrew maid-servant secures her freedom on attaining puberty. Cf. Kid. 14b.]
(10) As she is still a minor, v. supra 12a.
(11) The death of her father necessitates her release.
(12) Cf. Kid. 16a, and Keth. 43a.
(13) V. Kid. loc. cit.
(14) The words הרי אלו שלהן used in the Mishnah are meant to indicate that the found objects do not belong to the master but become the property of the children's father (who acquires them from the children).
(15) It is doubtful whether the divorce is valid, as when the husband has thrown to her a bill of divorcement in an open street, and it is not certain whether the document was nearer to him or to her when it fell to the ground.
(16) Keth. 97b; Git. 74a; B.B. 47b.
(17) Seeing that he tried to divorce her; consequently the husband forfeits all claim to whatever she finds.
(18) I.e., to either of the parties named therein.
(19) The Court will exact payment from the mortgaged property even if the debtor has sold it to others after incurring the debt. This may lead to injustice, as explained below in the Gemara.
(20) The court will not exact payment from the purchasers of the debtor's real property, and the possibility of injustice will not arise.
(21) And the creditor is legally entitled to exact payment from the mortgaged property even if the debtor has sold it, so there is no injustice.
(22) Which the debtor disposed of after incurring the debt.
(23) So that an injustice may still be done to the debtor, who may have paid the debt already, as he claims to have done.
(24) The first month of the year, corresponding mostly to April.
(25) The seventh month of the year, corresponding mostly to October.
(26) The fact that they were not properly taken care of, and were thus lost, would show that no importance was attached to them. There is thus a prima facie case against their validity.
(27) Cf. B.B. 167b.
(28) V. p. 71, n. 2.

Talmud - Mas. Baba Metzia 13a

[The Mishnah deals] with deeds of transfer,[1] in which case he pledged himself [that his property would be at the disposal of the lender from the date given in the note].

But if this is so, [how do we understand] our Mishnah, which teaches that, IF THERE IS A

CLAUSE IN THEM MORTGAGING THE DEBTOR'S PROPERTY, THEY SHALL NOT BE RETURNED, and which has been explained as dealing with a case where the debtor admits the debt, and for the reason that [the documents] might have been written to secure a loan in Nisan, while the loan was not granted until Tishri, and [the lender] would seize unlawfully the property bought [by others from the borrower during that space of time]? Why should not [the documents] be returned? We ought to see: If it is a case of a deed of transfer, then he has pledged himself [to let the lender have the property from the date of the deed]; if it is not a deed of transfer, there is nothing to apprehend,[2] for you have said that if the lender is not present with him[3] we do not write [the note of indebtedness]? — R. Assi answered: Although ordinarily we do not write notes which are not deeds of transfer, when the lender is not present, in our Mishnah, which [deals with a document that] has been dropped and has consequently become suspect, we do apprehend that by some chance it might have been written [in the absence of the lender]. Abaye says: The witnesses acquire for him[4] [the right to the property] by [affixing] their signatures [to the document], even if it is not a deed of transfer, [Abaye's reason for this explanation being] that he objected [to R. Assi's version]: If you say that notes which are not deeds of transfer are not written when the lender is not present, then there is no ground for the apprehension that by some chance they may have been written [in the absence of the lender]. But [it may be asked]: What of [the other Mishnah] which we learnt: If one has found bills of divorcement given to wives, deeds of liberation given to slaves, wills of dying persons, deeds of gifts and receipts, one need not return them, as they may have been written and then cancelled, without being handed over [to the persons mentioned in the deeds].[5] Now, even if they have been cancelled, what does it matter, in view of your statement that ‘the witnesses acquire for him [the right to the property] by [affixing] their signatures [to the document]’? — This statement only applies to a case where [the documents] came to his [the creditor's] hand,[6] but in a case where they did not come to his hand it does not apply.[7]

[The question arises,] however: [As regards] our Mishnah, which teaches: IF ONE HAS FOUND NOTES OF INDEBTEDNESS, IF THEY CONTAIN A CLAUSE MORTGAGING [THE DEBTOR'S] PROPERTY, ONE SHALL NOT RETURN THEM, and we explained that [it refers to a case] where the debtor admits [the debt], and the reason why [the notes are not returned] is that they may have been written with a view to granting a loan in Nisan, while the loan may not actually have been granted until Tishri — it is right according to R. Assi, who says that [the first cited Mishnah] refers to deeds of transfer, as [this latter Mishnah can then be explained as] referring to [documents which are] not deeds of transfer,[8] as previously stated. But according to Abaye,. who says: The witnesses, by their signatures, acquire for him [the lender the right to the property]. how can it be explained?[9] — Abaye will answer you: The reason for the teaching of our Mishnah is the fear that the debt may have been already paid and that a fraudulent agreement[10] [may have been reached between the lender and the borrower].[11] But how could it be explained according to Samuel, who says[12] that we are not afraid that the debt may have been already paid and that a fraudulent agreement [may have been reached between the lender and the borrower]?[13] It would be right if he [Samuel] shared the view of R. Assi, who says that [the first cited Mishnah] is to be understood as referring to deeds of transfer, [as he could then explain our Mishnah as referring] to [documents which are] not deeds of transfer.[14] But if he [Samuel] shared the view of Abaye, who says: The witnesses, by their signatures, acquire for him [the right to the property],[15] — how can it be explained?[16] — Samuel explains the Mishnah as referring to a case where the debtor does not admit [the genuineness of the document].[17] But if so, why should [the document] be returned when it does not contain a clause mortgaging [the borrower's] property? Granted that he [the lender] may not exact payment from encumbered property, he may surely exact payment from unencumbered property! — Samuel has his own reason. For Samuel stated: R. Meir used to say: A note of indebtedness which has no clause mortgaging property does not [entitle the creditor to] exact payment from either encumbered or unencumbered property. But since it does not [entitle one] to exact payment, why should it be returned? — R. Nathan b. Oshaiah said: That the lender may use it as a stopper for his bottle. Then let us give it back to the borrower that he may use it as a stopper for

his bottle?[18] — It is the borrower

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(1) By which the borrower transfers to the lender his property from the date of the document, so that the lender is entitled to seize property sold by the borrower after that date, whether the loan has actually been granted or not; v. B. B. (Sone. ed.) p. 753, n. 1.
(2) We need not fear that he would have the document written before the actual date of the loan, as the Court would not allow such a document to be written.
(3) I.e., with the borrower, to hand him over the money.
(4) The lender. As soon as the witnesses have signed the document the borrower's property becomes legally liable to be seized by the lender, even if the money has not really been lent yet. There is therefore no fear of the lender seizing the borrower's sold property unlawfully, even if the document is an ordinary note of indebtedness.
(5) V. infra 18a; Git. 27a.
(6) Even if the creditor received the document at a later date, his right to the property is conceded from the date of the document. But if the document was cancelled and was never handed over to the creditor, the latter has no right to the debtor's property.
(7) Lit., 'We do not say (thus)'.
(8) Which are not to be returned because they may have been written illegally in the absence of the lender (before the date of the actual loan), and the fact that they were dropped by the owner would show that they were not deemed to be valid documents.
(9) Why should not the documents be returned, seeing that their validity from the date of the witnesses' signatures could not be questioned?
(10) Gr. **.
(11) The borrower may have dropped the document because he had already paid the debt, but he may subsequently have conspired with the lender to exact payment from the purchasers of the borrower's land (as if the debt had not been paid) with a view to sharing in the spoil.
(12) V. infra 16b.
(13) Samuel assumes that the borrower would tear up the note of indebtedness as soon as the debt is paid, and the conspiracy could not therefore arise. Cf. infra ibid.
(14) In which case the return of the lost documents might involve an injustice to the purchasers of the borrower's property, to which the lender would have no legal claim.
(15) V. p. 73, n. 1.
(16) Why should the document not be returned to the lender, seeing that it is valid from the date of writing?
(17) I.e., the borrower maintains that the document was forged, and his plea is accepted because the loss of the document tends to show that it was not properly taken care of, the reason for the negligence being, one had a right to assume, that the document was deemed to be invalid.
(18) Cf. supra 7b.

Talmud - Mas. Baba Metzia 13b

who denies the whole transaction.[1]

R. Eleazar says: The difference of opinion [in our Mishnah] concerns a case where the debtor does not admit [his indebtedness]. R. Meir being of the opinion that a document which contains no clause mortgaging [the debtor's] property does not entitle [the creditor] to exact payment either from encumbered property or from unencumbered property,[2] while the Rabbis[3] are of the opinion that it does not entitle [the creditor] to exact payment from encumbered property, but that it does entitle him to exact payment from unencumbered property.[4] But in a case where the debtor admits [the debt] all agree that [the document] should be returned, and that we are not afraid that the debt may have been already paid and a fraudulent agreement reached [between the lender and the borrower to exact payment from the purchasers of the borrower's property]. But R. Johanan says: The difference of opinion [in our Mishnah] concerns a case where the debtor admits [his indebtedness], R. Meir being of the opinion that a document which contains no clause mortgaging [the debtor's] property

does not entitle [the creditor] to exact payment from encumbered property, but it does entitle him to exact payment from unencumbered property. But in a case where the debtor does not admit [his indebtedness][5] all agree that [the document] should not be returned, because we are afraid that it may have been already paid.

It has been taught in support of R. Johanan, and in refutation of R. Eleazar in one point, and of Samuel in two points: If one has found notes of indebtedness in which there is a clause mortgaging [the debtor's] property, even if both [the debtor and creditor] admit [the genuineness of the documents], one should not return them either to the one or to the other. But if they contain no clause mortgaging [the debtor's] property, then as long as the borrower admits [the debt] they should be returned to the lender, but if the borrower does not admit the debt, they should not be returned either to the one or to the other. This is the view of R. Meir, for R. Meir maintained that notes of indebtedness which contain a clause mortgaging [the debtor's] property [entitle the lender to] exact payment from encumbered property,[6] and that those that contain no clause mortgaging [the debtor's] property [entitle the lender] to exact payment from unencumbered property [only]. But the Sages say: In either case does [the document entitle the lender to] exact payment from encumbered property. This is a refutation of R. Eleazar in one point, as he maintained that according to R. Meir a document that contains no clause mortgaging [the debtor's] property does not [entitle the lender to] exact payment either from encumbered or unencumbered property, and he [further] said that both R. Meir and the Rabbis agree that we are not afraid of a fraudulent agreement [between the lender and the borrower to exact payment from the purchasers of the borrower's property], while the Baraitha teaches that a document which contains no clause mortgaging [the debtor's] property [does not entitle the creditor to] exact payment from encumbered property but does [entitle him to exact] payment from unencumbered property, and it [further] proceeds to indicate that both R. Meir and the Rabbis agree that we are afraid of a 'fraudulent agreement', for it teaches that even if both parties admit [the debt] one must not return [the documents] either to the one or to the other, which shows that we are afraid of a fraudulent agreement [between the parties to rob the purchasers of the borrower's property]. But are not these two points?[7]

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(1) Lit., 'There was no such thing'. The borrower cannot claim the document as he maintains that it is forged.

(2) According to R. Meir every note of indebtedness must, in order to be valid, contain a clause mortgaging the borrower's property, otherwise the loan is treated as a verbal loan without witnesses, and the lender can only claim his money if the borrower admits the debt.

(3) The Sages in the Mishnah.

(4) The Rabbis recognise the validity of the document to the extent that they treat it as a verbal loan to which witnesses testify. The lender can therefore exact payment in ordinary cases from unencumbered property, even when the borrower denies the debt. But in the case of a lost document the borrower's denial is accepted (for the reason indicated above) and the document is therefore deemed to be forged and is not returned.

(5) Even if he admits that the document is genuine, but contends that the debt has been paid.

(6) Therefore they must not be returned, even if their genuineness is admitted, as we are afraid of a 'fraudulent agreement'.

(7) It was maintained before that the Baraitha refutes the view of R. Eleazar in one point only.

Talmud - Mas. Baba Metzia 14a

— They are really one, for there is one reason [for both views]. As it is because R. Eleazar says that the difference of opinion [in our Mishnah] concerns a case where the debtor does not admit [his indebtedness] that he interprets it thus.[1] The view of Samuel is refuted in two points. The one point [is the same] as [that which applies to] R. Eleazar, for he [also] interprets our Mishnah as referring to a case where the debtor does not admit [his indebtedness]. And the other point is that Samuel says:[2] If one finds a deed of transfer[3] in the street one should return it to the owners, and we are not afraid that [the debt] may have been already paid.[4] The refutation is that here [in the Baraitha] we are

taught that even if both parties admit [the genuineness of the documents] one should not return them either to the one or to the other, which shows that we are afraid that [the debt] may have been paid, and it follows with even greater certainty that in a case where[5] the borrower does not admit [the genuineness of the document] we are afraid that [the debt] may have been paid.[6]

Samuel said: What is the reason of the Rabbis [who maintain that a document which contains no clause mortgaging the debtor's property entitles the creditor to exact payment even from encumbered property]? They are of opinion that [the omission of the clause] mortgaging [the debtor's property] is due to an error of the scribe.[7]

Said Raba b. Ithi to R. Idi b. Abin: And has Samuel really said thus? Has not Samuel said: '[As regards] improvement [of the field], [the claim to] the best property, and mortgaging [the debtor's property] it is necessary for the scribe to consult [the seller of the field]'?[8] Shall we say that he who stated the one view [of Samuel] did not state the other?[9] — There is no contradiction [between the two views]. The first view [was stated] in connection with a note of indebtedness, [in which case it is assumed] that no man will advance money without adequate security.[10] The second view [was stated] in connection with buying and selling, [in which case it is assumed] that a man may buy land for a day,[11] as, for instance, Abbuha b. Ihi did, who bought a garret from his sister [and] a creditor came and took it away from him. He appeared before Mar Samuel [who] said to him: 'Did she write you a guarantee?' He answered, 'No.' [Whereupon Samuel] said to him: 'If so, go in peace.'[12] So he said to him: 'Is it not you, Sir, who said that [the omission of a clause] mortgaging [the debtor's property] is due to an error of the scribe?'[13] He [Samuel] answered him: 'This applies only to notes of indebtedness, but it does not apply to documents [drawn up in connection with] buying and selling, for a man may buy land for a day.'

Abaye said:[14] If Reuben sold a field to Simeon with a guarantee,[15] and Reuben's creditor came and took it away from him, the law is that Reuben may go and sue him [the creditor],[16] and he [the creditor] cannot say to him [Reuben]: 'I have nothing to do with you,'[17] for he [Reuben] may say to him [the creditor]: 'What you take away from him [Simeon] comes back on me.'[18] Some say that even [if the field has been sold] without a guarantee the law is the same, for he [Reuben] may say to him [the creditor]: 'I do not wish Simeon to have a grudge against me.'[19]

Abaye also said: If Reuben sold a field to Simeon without a guarantee, and claimants appeared [contesting Reuben's title to sell the land], he [Simeon]

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(1) The reason why R. Eleazar finds himself in disagreement with the Baraitha in the two points mentioned is that he interprets the Mishnah as referring to a case where the debtor does not admit the debt, and it therefore follows that the document, on the view of R. Meir, does not entitle the lender to exact payment even from unencumbered property, and when in consequence thereof R. Eleazar has to add, 'But when the debtor admits (the debt) all agree that (the document) should be returned,' he explains that 'we are not afraid that the debt may have been already paid and a fraudulent agreement reached,' etc. The two conclusions therefore result from the same premise.

(2) Cf. infra 16b.

(3) Which renders the debtor's property liable to legal seizure by the creditor irrespective of the date of the actual loan.

(4) Even when the debtor does not admit the debt, for it is assumed that if the debt had been paid the document would have been torn up.

(5) [V. D.S. a.l., printed editions read 'here'.]

(6) But according to R. Eleazar even a deed of transfer would not have to be returned if the debtor does not admit the debt, and the reason why R. Meir says that a document containing no mortgage clause should be returned is that it is of no use to the creditor, as he cannot enforce payment with such a document, and he may just have the paper for what it is worth.

(7) All notes of indebtedness must be assumed to contain the mortgage clause, as no one will lend money without adequate security, and if a note is produced which contains no mortgage clause it can only be due to an error on the part

of the scribe who, in writing the note, failed to carry out the instructions given to him by the creditor. Cf. infra 15b; Keth. 104b; B.B. 169b.

(8) The scribe must ask whether, in drawing up a deed of sale of land, he is to insert clauses dealing with the guarantees given to the buyer in case the land is seized by the seller's creditors, and making clear the buyer's claims to compensation for improvements made by him in the land; to the best portions of the seller's land (as indemnity to the buyer); and to the seller's property generally as security against loss through seizure by the seller's creditors. For all this the seller's consent is required, which would show that the omission of the mortgage clause in a document is not merely 'a scribe's error'.

(9) I.e., that there is a conflict of opinions between Amoraim as to what Samuel's view really was.

(10) In the case of a loan, where the lender derives no benefit from the transaction, one must assume that the lender will take no risks and will insist on adequate security. In such a case the omission of the mortgage clause could only be due to a mistake on the part of the scribe.

(11) The buyer will take risks, for even if the land is ultimately seized by the seller's creditors, he (the buyer) will in the meantime have profited by the produce of the land.

(12) I.e., you have no case, as you have not secured yourself by asking for a guarantee to be inserted in the deed of sale.

(13) I.e., that even if the guarantee is not inserted in the deed, the Court assumes that the omission is only a scribe's error, and that the guarantee must have been given.

(14) Cf. B.K. 8b; Keth. 92b; and Tosaf. a.l.

(15) Against seizure by the seller's creditors.

(16) Reuben may put up a counter-claim against the creditor, and thus prevent him from taking away the land bought by Simeon.

(17) The creditor cannot plead that Reuben's counter-claim does not affect his right to seize the land bought by Simeon, and that Simeon's claim should be dealt with by the Court as a separate action.

(18) I.e., I shall have to refund him the purchase money. I am thus directly concerned in your action against Simeon, and I have a right to stop you from seizing his land in virtue of my counter-claim.

(19) Although legally Simeon has no redress, as I did not offer him any guarantee against loss through the actions of my creditors, I do not wish him to feel that I have let him down by selling him property which was liable to be seized by my creditors.

Talmud - Mas. Baba Metzia 14b

may retract as long as he has not taken possession of it,[1] but if he has taken possession of it he cannot retract,[2] for he [Reuben] may say to him [Simeon]: 'You bought a bag sealed with knots, and you got it.'[3] When is he deemed to have 'taken possession'? When he has set his foot upon the landmarks.[4] But some say that even [when the field is sold] with a guarantee [the buyer may not retract][5] for he [the seller] may say to him [the buyer]: 'Show me your document [legalising the seizure of the field and entitling you to demand your money back] and I shall pay you.'[6]

It was stated: If one sells a field to his neighbour and it turns out not to be his own,[7] — Rab says: He [the buyer] is entitled to [the return of the money [which he paid for the field] and to [compensation from the seller for the] improvement [which he made in the field].[8] But Samuel says: He is entitled to the money [he paid] but not to [compensation for the] improvement.

R. Huna was asked: If he [the seller] expressly stated [that he would compensate the buyer for the] improvement [if the field were taken away], what is the law then? Is Samuel's reason [for withholding compensation] that [the seller] did not expressly state [that he would compensate the buyer for the] improvement? [Then it would not apply to this case, for] here [the seller] did state expressly [that he would compensate the buyer]. Or is Samuel's reason that, in view of the fact that he [the seller] really had no land [to sell, the money received by the buyer as compensation for the improvement] would appear like usury?[9] R. Huna answered: Yes and No, for he was hesitant.[10]

It was taught: R. Nahman said in the name of Samuel: He [the buyer] is entitled to [have returned to him] the money [paid for the field], but not to [compensation for] improvement, even if he [the

seller] stated expressly that [he would compensate the buyer for the] improvement, the reason being that, in view of the fact that he [the seller] really had no land to sell, he [the buyer] would be taking profit for his money.[9] Raba then asked R. Nahman [from the following Mishnah]: We may not collect from encumbered property for the purposes of usufruct, the improvement of land, the alimentation of wife and daughters, out of consideration for the public good.[11] [This would show that] it is only from encumbered property that we do not collect, but we do collect from unencumbered property, and it is stated [that this law applies] to the improvement of land. Now may it not be assumed that it refers to [land] bought from one who acquired it wrongfully?[12] — No, [it refers to land seized by] a creditor.[13] But note the first part: 'We may not collect [etc.] for the purpose of usufruct.' Now if it refers [to land seized by] a creditor, is the creditor entitled to the produce [of the land]? Has not Samuel said: 'A creditor collects [his debt from] an improved field,'[14] and does it not mean that [he] only [collects it from] an improved field but not from the produce [of the field]? It is therefore obvious that it refers to one who acquired [a field] wrongfully and to the one who has been deprived of it,[15] and seeing that the first part deals with one who acquired a field wrongfully and one who has been deprived of it, the second part [surely] also deals with such a case![16] — How does it follow? This [first part] deals with one case,[17] and this [second part] deals with another case.[18] But are we not taught differently [in a Baraitha relating to the above Mishnah]: How [does it happen that payment is exacted for] improvement of the land? If one has taken away a field by violence from a neighbour, and he has had to give it up again [in consequence of legal action], then the one that is entitled to compensation may collect the original value [of the field] from encumbered property, and the value of the improvement [may be collected] from unencumbered property.[19] Now, how is this to be understood? If we say that [it is to be understood] as stated,[20] what right has the person who acquired the field wrongfully to claim compensation from anybody? It must therefore be [understood as referring to a case] where a person wrongfully took away a field from a neighbour and sold it to another person, and [this other person] has improved it![21] — [R. Nahman] answered him: Had you not to remove the difficulty [in the Baraitha] by explaining [that it refers to an unlawfully acquired field]? You may as well remove the difficulty [by saying that it refers to a field seized] by a creditor [after it has been improved by the buyer].

Come and hear: How [does it happen that payment is exacted as compensation for] the use of the produce [of the field]? If one has wrongfully taken away a field from a neighbour, and he has had to give it up again [in consequence of legal action], then the one that is entitled to compensation may collect the capital [value of the field itself] from encumbered property, and the value of the produce [may be collected] from unencumbered property. Now, how is this to be understood? If we say that it is to be understood as stated,[22] what right has the person who has acquired [the field] wrongfully to claim compensation from anybody? It must therefore be [understood as referring to a case] where one wrongfully took away a field from a neighbour and sold it to another person, and [this other person] has enhanced its value [by producing fruit]![23] — Raba answered: We deal here with a case where one wrongfully took away from a neighbour a field full of fruit and ate the fruit, and then dug in it pits, ditches and hollows. When the robbed [neighbour] comes to demand the capital [value of the field itself] he may exact payment from encumbered property, but when he comes to demand [the value of] the fruit he may exact payment from unencumbered property [only]. Rabbah son of R. Huna said: [It refers to a case] where

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(1) And has not paid the purchase price. (Rashi.)

(2) Even if he has not paid yet, for the buyer acquires the land legally when he takes possession of it, and the purchase price, if not paid, becomes a debt due to the seller (Rashi).

(3) You agreed to buy the field without examining my title, and you have to stand the consequences.

(4) [To level them round (Rashi).]

(5) Although in the end the seller must make good the buyer's loss, the buyer has no right to withdraw from the transaction on the plea that in the end his money will have to be refunded.

(6) I need not refund your money until the Court has given its decision regarding the legality of the seizure and your title

to have the money refunded.

(7) The seller had acquired the field wrongfully and had no title to the property. The rightful owner then comes and seizes the field from the buyer.

(8) If during his tenure of the field the buyer improved it by manure or by erecting a fence round it, he may claim compensation from the seller. The obvious question why the original (rightful) owner, who regains possession of his field, is not made to pay for the improvement, may be answered by referring to a case where the seller allowed the field to deteriorate after taking it away from the rightful owner, and the buyer only restored it to its original condition so that the original owner derives no actual benefit from the change (Rashi).

(9) As the seller had no right to the field the transaction was entirely invalid, and there was no sale. The money handed over to the seller could therefore only be regarded as a loan, and when the seller returns to the buyer a larger sum than the purchase-price paid him, it appears like interest on the money.

(10) Lit., 'it was lax in his hand.' Similar expressions occur in Shab. 113; 115a; Kid. 65a.

(11) Cf. Git. 48b. The reason why one may not hold encumbered property liable for such purposes is that it would prevent people from buying land, as such obligations are so common that they would arise in nearly every case. [This is apart from the fact that the amount involved is not fixed; v. n. 1.]

(12) And has improved it before the original owner seized it again. The buyer may then collect the purchase price from the seller's encumbered property even if this property has been sold after the purchase of that field, for as long as the deed of sale contains a guarantee clause the claim involved has priority. The compensation for the improvement, however, can only be collected from unencumbered property — 'out of consideration for the public good' — as at the time when the deed of sale was written, and the guarantee clause inserted, no one knew what the compensation for improvements would amount to, and it is not in the interests of the public to allow such claims. In any case, this shows that the buyer is entitled to compensation from the seller, who had no title to the land, for the amount he spent on improvements.

(13) The seller was entitled to sell, but the seller's creditors were entitled to seize the property, in which case the buyer is certainly entitled to the return of the money he spent on improvements, and if he receives a larger amount than the price he paid for the field it does not appear like interest on a loan, as the original sale was valid, and the return of the field is a new transaction.

(14) Cf. B.K. 95b.

(15) The produce of the field or the improvement therein may be claimed by the original owner who was robbed of his property, no matter whether the produce was there when the field was first taken away, or not. The owner can always claim the land with all its improvements, except that the buyer may demand back his outlay which brought about the improved condition of the field, provided that the sum demanded by the buyer does not exceed the amount by which the value of the field was increased as a result of the improvements.

(16) Cf. p. 82, n. 4.

(17) Lit., 'as it is'.

(18) I.e.,.the first part deals with a person who has been robbed of his field, and the second part deals with a creditor who has seized the field from the buyer.

(19) V infra 72b; B.B. 157b.

(20) Viz., that the person who acquired the field unlawfully has not sold it, and it is he who is made to give it up, not a buyer.

(21) The Court compels the buyer to return the field to the rightful owner, who is also entitled to demand from the seller the value of the improvement. From this we would infer that the buyer collects the value of the improvement from the seller who had no title to the field — a contradiction to the view of R. Nahman.

(22) Viz., that the person who robbed the field did not sell it, and it is this person who is compelled by the Court to return it to the owner.

(23) The original (rightful) owner is not expected to pay for the produce of the field, with the exception of the buyer's outlay in looking after the field, as he is entitled to the produce of his own land. The buyer is therefore entitled to compensation from the person who sold him the field unlawfully, and from him the buyer can claim the value of the field as well as the value of the produce, which he may collect from unencumbered property — again a contradiction to the view of R. Nahman.

Talmud - Mas. Baba Metzia 15a

bandits took away [the field from the person who acquired it unlawfully].[1] When the [original owner who was] robbed [of his field] comes to demand the capital [value of the field] he may exact payment from encumbered property. But if he comes to demand the value of the fruit he may exact payment from unencumbered property [only]. Raba does not give the same explanation as Rabbah son of R. Huna because it says, 'He has had to give it up again,' which obviously means through the [intervention of the] Court.[2] And Rabbah son of R. Huna does not give the same explanation as Raba, because it says, 'He has had to give it up again,' which obviously means in its original condition [and not full of holes].[3] R. Ashi said: It refers partly to one and partly to the other,[4] viz., if one violently took away from a neighbour a field full of fruit, and ate the fruit and sold the field,[5] when the buyer comes to demand the capital [value of the field itself] he may exact payment from encumbered property; when the robbed [neighbour] comes to demand [the value of] the fruit he may exact payment from unencumbered property [only]. [The question now arises:] Both according to Raba and according to Rabbah son of R. Huna this is [like] a debt contracted verbally,[6] and a verbally contracted debt does not entitle [the creditor] to exact payment from encumbered property? — Here we deal with a case where [the robber first] stood his trial and then sold [the field].[7] But if so, the produce [of the field should] also [be recoverable from encumbered property]? — [The case is one where the robber] has stood his trial as regards the capital [value of the field itself] but has not stood his trial as regards the produce. But how can this be determined?[8] — It is the usual practice: When a person sues, he sues first for the principal.[9]

But does Samuel [really] hold the view that he who bought [a field] from a robber is not entitled to [compensation for the] improvement [he made in the field]? Did not Samuel say to R. Hinena b. Shilath [the scribe]:[10] Consult [the seller, when drawing up a deed of sale], and write, 'best property, improvement, and produce'?[11] Now, to what [kind of transaction does this apply]? If [it applies] to a creditor [claiming the field for his debt], is he entitled to the produce of the field? Has not Samuel said: The creditor exacts payment from the improvement, [which means] from the improvement only, but not from the produce? It must therefore [be said that it applies] to one who bought [a field] from a robber![12] — R. Joseph said: Here we deal with a case where [the robber] owns land.[13] Said Abaye to him: Is it permitted to borrow a measure [of corn and to repay the loan] with [the same] measure,[14] when [the borrower] has land? — He [R. Joseph] answered him: There [it is] a loan; here [it is] a sale.[15]

Some say: R. Joseph said: Here we deal with a case where there was a formal act of acquisition [whereby the seller pledged himself to be immediately responsible to the buyer for the improvement].[16] [But] Abaye said to him: Is it permitted to borrow a measure [of corn and to repay the loan] with [the same] measure, when there was a formal act of acquisition [whereby the borrower pledged himself to be immediately responsible to the lender for an increase in price]? — He [R. Joseph] answered him: There [it is] a loan; here [it is] a sale.

[To revert to] the above text: Samuel said: 'A creditor exacts payment from the improvement.' Said Raba: You may know [that this view is correct], for the seller writes [in the deed of sale] the following [guarantee] to the buyer: 'I shall confirm, satisfy, clear, and perfect these purchases[17] — them, the gains resulting from them, and the improvements to be made in them — and I shall stand [as surety] for you, and this purchaser agrees [to it] and accepts it.'[18] R. Hiyya b. Abin then said to Raba: If this is so, [would you say that] in the case of a gift, regarding which [the donor] writes no such [guarantee], [a creditor who has a previous claim to the property] may indeed not appropriate the improvement?[19] — He [Raba] answered him: Yes. But [R. Hiyya then asked]: Does a gift confer a greater right [on the recipient] than a sale [does on the buyer]?[20] — [The former] answered: Yes, it undoubtedly does.[21]

R. Nahman said: The following Baraitha corroborates the view of Mar Samuel, but our colleague

Huna explains it as referring to a different matter. For it was taught: If one has sold a field to a neighbour and then [the buyer] has to surrender it [to another claimant], he [the buyer] may, when seeking redress, exact repayment of the capital [value of the field itself] from encumbered property, and the [refund of the cost of the] improvement he collects from unencumbered property. But our colleague Huna explains it as referring to a different matter, [viz.], to that of one who has bought [a field] from a person who acquired it wrongfully.[22] Another [Baraitha] taught: If one has sold a field to his neighbour, and he [the buyer] has improved it, and then a creditor [of the seller] comes and seizes it, he [the buyer], when seeking redress,is entitled, in a case where [the value of] the improvement is greater than the cost [thereof], to collect [the value of] the improvement from the owner of the land and the cost thereof from the creditor.[23] But in a case where the cost [of the improvement] is greater than the [value of that] improvement, he [the buyer] is only entitled to collect from the [seller's] creditor the amount of the cost which corresponds to the [value of the] improvement.[24] Now, how does Samuel explain this [Baraitha]? If [he explains it as referring] to one who bought [the field] from a person who acquired it wrongfully, then the first part [of the Baraitha][25] contradicts him, for Samuel said [above]: 'He who buys [a field] from a person who acquired it wrongfully is not entitled to [compensation for] the improvement [he made in the field].' [And] if [he explains it as referring] to [the seller's] creditor [seizing the field], then both the first part and the second part [of the Baraitha] contradict him,[26] for Samuel said [above]: 'A creditor exacts payment from the improvement [made in the field by the buyer]'?If you like, I shall say [that Samuel will explain the Baraitha as referring] to one who bought [the field] from a person who acquired it wrongfully, and where the latter owns land,[27] or where there was a formal act of acquisition [whereby he pledged himself at the sale that he would pay for the improvement].[28] [And] if you like, I shall say [that Samuel will explain the Baraitha as referring] to [the seller's] creditor [seizing the field]. [Nevertheless] there is no contradiction [to Samuel's views]. [For] here [the reference is] to an improvement

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(1) The robber was robbed (by heathen men of violence, against whom there is no redress). In such a case the first (Jewish) robber is responsible to the rightful owner, and he is made to pay the owner for his loss. Cf. B.K. 116b.

(2) The term, 'He has had to give it up' (lit., 'It is made to go out from under his hand'), applied to the person who first robbed the field, indicates that this first robber is in possession of the field, and is made to give it up as a result of the intervention of the Court. It cannot therefore be assumed that bandits took it away.

(3) Rabbah son of R. Huna cannot accept the version that the robber dug pits etc. in the field, as the term 'It is made to go out etc.' implies that the field was intact when the court intervened to compel its return to the rightful owner.

(4) I.e., one part refers to the buyer of the field, and the other to the original owner. The former demands the cost of the field itself, and is entitled to exact payment from encumbered property, while the latter demands compensation for the produce of his field, and is entitled to exact payment from unencumbered property only.

(5) The Court then intervened and compelled the person who had bought the field to return it to the rightful owner, and it was given back in its original condition.

(6) As the claim of the robbed person is not based on any document, the payment which the robber has to make in compensation for the property he had seized is like the repayment of a loan granted without a note of indebtedness.

(7) The reason why encumbered property is liable to be seized by the seller's creditor who has written evidence as to his claim is that the writing of the document ensures publicity, which should prevent people from advancing money on such property. A trial in Court has the same effect as regards publicity and the consequent warning to would-be mortgagees.

(8) How could it be said with certainty that cases would arise where a person who acquired a field wrongfully would be tried for seizing the field itself but not for appropriating its produce?

(9) He first wants to make sure that he will recover the main loss, and subsequently he tries to regain the smaller losses.

(10) A highly respected friend of Samuel. Cf. Sanh. 72b; Shab. 58a.

(11) V. supra 14a. The guarantee given to the buyer in the deed of sale is to include a clause entitling the buyer to recover his loss, in the event of the property being claimed by creditors, by exacting payment from the seller's best property, as compensation for the original value of the field as well as for the improvements he made and for the produce of the field.

(12) [In which case the formula provides for compensation in respect of the improvement made by the buyer in the

field.] How then could Samuel have said that the person who has bought a field from a robber and has to return it to the rightful owner cannot claim compensation for the improvement he made in it?
(13) The robber repays with land, not with money, and therefore the additional amount paid for the improvement does not appear as usury given for borrowed money; cf. supra 24b.
(14) This is not permitted, as any advance in the price of corn would increase the value of the returned measure, and the increase would be usury.
(15) There is no usury in a sale.
(16) [The payment for the increase included in the guarantee becomes thus due from the moment of the sale and is no longer regarded as usury.]
(17) I.e., the seller undertakes to satisfy all claims against the property and to be responsible for any loss the buyer may sustain because of previous claims against the property or for any other reason. The guarantee refers to 'produce and improvement' as well as to the original value of the property sold.
(18) As the seller is thus responsible to the buyer, the creditor enforces his claim against the property acquired by the buyer and the produce it has yielded, and the latter then seeks redress from the seller.
(19) As there is no guarantee given by a donor as regards previous claims against the property given away, the recipient is not entitled to compensation from the donor, and if the former loses the improvements he has made in the property he has no redress. For this reason the creditor of the donor ought not to be entitled to the improvement made by the recipient, as the loss would be the latter's, not the debtor's.
(20) I.e., why should a person who receives a free gift be more protected against loss than a person who pays for what he gets?
(21) Lit., 'It is better and better.' The creditor has no right to inflict a loss upon the recipient of the gift by taking away the improvement made by the recipient. As the recipient cannot reclaim the loss from the donor, whose debt is the cause of the creditor's action against the recipient of the gift, there is no reason why the latter should lose more than the value of the gift itself, which was originally accepted by the creditor as security for his loan.
(22) According to R. Huna the rightful owner of the field has a right to claim the improvement, as the field, which was taken away from him wrongfully and sold illegally, never became the property of the buyer. But a creditor who seizes a field for a debt due to him from the seller has no right to claim the improvement made in it by the buyer, for the latter acquired the field legally, and, until the creditor seized it, it was his property.
(23) The buyer is entitled to compensation from the seller to the amount by which the value of the improvement exceeds the expense incurred in making the improvement, as the improvement helped to pay the seller's debt. But the cost of the improvement the creditor has to refund to the buyer, who spent his money on improving the field before the creditor seized it.
(24) The buyer cannot claim from the creditor the excess of his expenditure over the actual value of the improvement, and he loses this amount.
(25) According to which the rightful owner of the field, designated 'creditor', has to pay for the improvement.
(26) As it is laid down in both parts of the Baraitha that the creditor has to refund the cost of the improvement, while Samuel teaches that the creditor may collect his debt from the improvement, without repaying the cost incurred by the buyer.
(27) V. p. 86, n. 4.
(28) V. ibid. n. 7.

Talmud - Mas. Baba Metzia 15b

which [has matured and] is ready to be carried away,[1] [but] there [the reference is] to an improvement which [has not yet matured and] is not ready to be carried away. But do not cases occur daily[2] where Samuel allows [creditors] to collect [their debts] even from improvements which [have matured and] are ready to be carried away?[3] — There is no contradiction: These [are cases] where [the creditor] claims from him [the seller] an amount equal to [the combined value of] the land and the improvement;[4] the other is [a case] where [the creditor] claims from him [the seller] an amount equal to the value of the land alone, in which case the creditor compensates him [the buyer] for [the value of] his improvement and dismisses him. [But, it is asked:] This is right and proper according to the view of him who says[5] that when the buyer has money [to pay the seller's debt] he

cannot dismiss the creditor [by paying him the money].[6] But according to the view of him who says that when the buyer has money [to pay the seller's debt] he can dismiss the creditor [by paying him the money], let him[7] say unto him [the creditor]: 'If I had money I would have kept you away from the whole field [by paying the amount due to you] — now that I have no money give me a piece[8] of ground in the field corresponding to the value of my improvement'! — Here [in the Baraitha] we deal with a case where he [the seller] had made it [the field] an hypothec,[9] in that he said [to the creditor], 'You shall receive payment only from this.'

If [the buyer] knew that [the field] did not belong to him [who sold it], and [yet] he bought it, Rab says: He is entitled to the purchase-price[10] but not to the [value of the] improvement.[11] But Samuel says: He is not entitled even to the purchase-price. Wherein do they differ? Rab is of the opinion that a person, knowing that [the seller] has no land, will make up his mind and give him [the money] as a deposit.[12] But then he should say to him that it is to be regarded as a deposit? He is afraid that he [the seller] will not accept it [as such].[13] But Samuel is of the opinion that a person, knowing that [the seller] has no land, will make up his mind and give him [the money] as a present. But then he should say to him that it is to be regarded as a present? He [the recipient] might be bashful.[14] But has not this difference of opinion [between Rab and Samuel] been expressed once already? Has it not been stated:[15] 'If a man betrothed his sister to himself [by giving her money],[16] Rab says: The money has to be given back. But Samuel says: The money is to be regarded as a present. Rab says that the money has to be given back, [because he is of the opinion that] a person, knowing that one's betrothal to one's sister is not valid, will make up his mind and give [her the money] as a deposit. But then he should say to her that it is to be regarded as a deposit? He is afraid that she will not accept it [as such]. But Samuel says that the money is to be regarded as a present, [because he is of the opinion that] a person, knowing that one's betrothal to one's sister is not valid, will make up his mind and give [her the money] as a present. But then he should say to her that it is to be regarded as a present? She might feel bashful? — It is necessary [to have the difference of opinion recorded in both cases]. For if it were taught [only] in that case[17] [we might think that only] in such a case does Rab say [that the money is to be returned],[18] because people do not usually give presents to strangers, but as regards a sister [we might think that] he agrees with Samuel. And if it were taught [only] in this case,[19] [we might think that only] in such a case does Samuel say [that the money is not to be returned],[20] but as regards the other case[21] [we might think] that he agrees with Rab.[22] [Therefore] it is necessary [to state both cases].

[Now, behold,] both according to Rab, who says [that the money is to be regarded as] a deposit, and according to Samuel, who says [that the money is to be regarded as] a present — how does [the person who has given the money] go down [to the field] and how does he eat the fruit [thereof]?[23] He thinks, 'I shall go down to the field and work [in it] and shall eat [the fruit] thereof,[24] just as he [who acquired it wrongfully] would have done, and when the [rightful] owner of the field will come [and claim it] my money will be [treated] as a deposit, according to Rab, who says [that it is to be regarded as] a deposit, and as a gift, according to Samuel, who says [that it is to be regarded as] a gift.'

Said Raba: The law [in regard to the above controversy] is that he [the buyer] is entitled to the purchase-price as well as to the [value of the] improvement, even if the improvement was not mentioned [in the indemnity clause in the deed of sale].[25] If [the buyer] knew that [the field] did not belong to him [who sold it], he [the buyer] is entitled to the purchase-price but not to [the value of] the improvement, [and the omission of] the guarantee clause is [to be regarded as] an error of the scribe,[26] both in [the cases of] notes of indebtedness and in [the cases of] deeds of sale. Samuel asked Rab [the following question]: If [the robber who sold the field unlawfully] bought it subsequently from the original owners, what is the law [then]?[27] — [Rab] said to him [in reply]: What was it that the first person[28] sold to the second person?[29] [Surely the former sold to the latter in advance] every right that he [the former] might subsequently acquire![30] [And] for what reason?[31] —

Mar Zutra said: [Because] he wished that he [the buyer] should not call him a robber. R. Ashi said: [Because] he wished to vindicate his honesty. What is the difference between them?[32] — The difference would be seen [in a case] where the buyer died. According to the view [of Mar Zutra, viz.], 'he wished that he should not call him a robber,'

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(1) V. B.B. (Sonc. ed.) p. 569, n. 8. Our Baraitha deals with a case where the improved produce of the field is nearly ready to be harvested, so that, although it is still attached to the field and still needs the soil, it may be regarded as 'ripe fruit' whose cost of production the creditor has to refund.

(2) Cf. infra 110b; B.K. 95b.

(3) Samuel was known to have repeatedly allowed creditors to seize property sold by the debtors and to appropriate the improvement made in it by the buyers, without compensation for the expense incurred, even though the improved produce was near harvesting.

(4) In such cases Samuel does not award the buyer the expense of his improvement, as the creditor is entitled to the full repayment of the debt due to him from the seller.

(5) Cf. infra 110b; B.K. 96a.

(6) The creditor cannot be prevented from seizing the land, if he prefers it to the money offered him by the buyer in settlement of his debt, as the creditor has a prior claim to the land.

(7) Let the buyer, in the case dealt with in our Baraitha, say to the creditor, who claims the field with the improvement: 'As I am entitled to keep the land if I am able to repay your debt, I am surely entitled to retain part of the field as compensation for the amount which I have spent on the improvement, and which I am entitled to recover from you.'

(8) גרבא , in other places spelt גריוא , a measure of grain, or a piece of ground in which such an amount of grain can be sown.

(9) In which case all would agree that the buyer cannot put off the creditor by paying the seller's debt, and that the creditor is entitled to seize the field.

(10) The buyer is entitled to demand the return of the money he paid the seller for the field which the rightful owner has reclaimed. The fact that the buyer knew that the sale was illegal does not deprive him of the right to reclaim his money from the seller.

(11) As the sale of the field was illegal, the buyer never really acquired the field, and as he knew this to be the case he has only himself to blame for the loss he incurred in improving a field which was not his own.

(12) For safe keeping — to be demanded back in due course.

(13) He will not undertake to look after somebody else's money.

(14) It will make the recipient feel bashful of accepting the gift.

(15) Git. 45a; 'Ar. 30a; cf. Kid. 46b.

(16) Cf. Kid. 2a.

(17) Where the buyer knew that the field did not belong to the seller.

(18) In view of the fact that the money is regarded as a deposit, according to Rab.

(19) I.e., the case of a brother giving money to his sister for the purpose of betrothing her to him.

(20) In view of the fact that the money is regarded as a present, according to Samuel, and one is apt to give a present to a sister.

(21) Where a person pays money to a stranger for a field which he knows to have been wrongfully acquired.

(22) That the money is not to be regarded as a gift, and must be returned.

(23) How can it be said that the reason why Rab says that the money is to be returned is that it has to be regarded as a deposit, and that the reason why Samuel says that the money is not to be returned is that it has to be regarded as a gift, seeing that in either case the person who handed over the money would not have deemed himself entitled to take possession of the field and to use its produce. If he did so, it would show that he meant to buy the field with the money, and that, not being familiar with the law, he deemed the sale valid. Rab and Samuel must therefore have given their decisions for reasons other than those stated above.

(24) I.e., he knows that it is not a sale, and the money was not handed over as purchase-money. He only intended to take possession of the field and use its produce until the rightful owner reclaimed it, and the money was to be treated as a deposit (in the view of Rab) or as a gift (in the view of Samuel).

(25) Samuel's view that the scribe must consult the seller regarding the inclusion of 'improvement' in the indemnity clause, and that non-inclusion is not regarded as an accidental omission by the scribe, is thus rejected.

(26) So that in every case the buyer whose field is seized by the seller's creditors can claim indemnity from the seller's property, contrary to the view of Samuel.
(27) Is the robber entitled to take the field away from the person to whom he sold it unlawfully, just as any other person would have been who bought the field from the rightful owner?
(28) The robber.
(29) The person who bought the field from the robber.
(30) When the robber sold the field he made over to the buyer any right that he (the robber) might subsequently acquire in regard to the field, and therefore the robber has no right to claim the field from the person who bought it from him. It is assumed, indeed, that the robber only bought the field in order to legalise its sale to the first buyer.
(31) What was the motive that could have prompted the robber to secure the property for the buyer?
(32) What would be the effect of their difference in actual cases that may arise?

Talmud - Mas. Baba Metzia 16a

[it could not be applied to this case], as he [the buyer] is dead.[1] But according to the view [of R. Ashi, viz.,] 'he wished to vindicate his honesty,' [it could be applied even to this case], as he [the robber] would wish to vindicate his honesty before [the buyer's] children also. [But, it is argued,] would not the buyer's children call him [who sold the field to their father] a robber?[2] — Therefore [we must say that] the difference between them would appear [in a case] where the robber died.[3] According to the view [of Mar Zutra, viz.], 'he wished that he should not call him a robber,' [it could not be applied to this case,] as he [the robber] is dead.[4] But according to the view [of R. Ashi, viz.,] 'he wished to vindicate his honesty,' [it could be applied even to this case,] as he [the robber] would wish that his honesty should be vindicated even when he is dead. [But, it is argued,] would not his children after all be called the children of a robber?[5] — Therefore [we must say that] the difference between them would appear [in a case] where he [the robber] gave [the field] as a present: According to the view [of R. Ashi, viz.], 'he wished to vindicate his honesty,' [it could be applied even to] a present, [in regard to which] he would also wish to vindicate his honesty. But according to the view [of Mar Zutra, viz.], 'he wished that he should not call him 'a robber,' [it could not be applied to this case, for he could say [to the recipient of the gift], 'What have I taken away from you [that I should be called a robber]?'

It is obvious that if he [who robbed a field and sold it], subsequently sold it [to another person], or bequeathed it to his heirs, or gave it away as a present, [and then bought it from the original owner, we must assume that] he did not, [in buying the field,] intend to secure it thereby for the [first] buyer.[6] If it came to him as an inheritance[7] [we must assume this, too, for] an inheritance comes of itself, and he did not trouble himself to get it.[8] If he took it in payment of a debt [due to him from the original owner of the field],[9] then our attitude is [as follows]: if [the original owner] had other land, and [the robber] said, 'I want this,' [we assume that the robber, in acquiring the field,] intended to secure it thereby for the [first] buyer,[10] but if not,[11] [we assume] that he merely wanted to be paid [his] money.[12]

[In a case where the original owner] gave him [the robbed field] as a present, R. Abba and Rabina differ: One says, Gifted property is like inherited property, in that it [also] comes of itself.[13] But the other says, Gifted property is like bought property, for if the recipient had not exerted himself to win the favour [of the donor, the latter] would not have given him the present, and the reason why he [the recipient] exerted himself to win the favour [of the original owner of the field] was that he [the recipient who first robbed the field] might vindicate his honesty. And till when does he wish to vindicate his honesty?[14] — R. Huna says: Until [the buyer of the robbed field is] summoned to appear in court.[15] Hiyya b. Rab says: Until he [the buyer] receives the decree of the Court [entitling him to seize the robber's property].[16] R. papa says: Until the days of the announcement [of the public sale of the robber's property] begin.[17] To this Rami b. Hama demurred:[18] Seeing that this buyer acquired this land [from the robber] only by the deed of sale, [is not the sale invalid because] the

deed is a mere potsherd?[19] — Raba answered him: It is a case where [the buyer] believes him [the robber]: Because of the pleasure [it gives the robber] that he [the buyer] said nothing to him, but trusted him implicitly, he [the robber] exerts himself to acquire the field for him [the buyer], and determines to confer upon him the rightful ownership [of the field].[20] R. Shesheth then asked: [It has been taught:[21] If one says to another,] 'What I am to inherit from my father is sold to you,' [or,] 'What my net is to bring up[22] is sold to you,' [it is as if] he [had] said nothing.[23] [But if he says,] 'What I am to inherit from my father to-day is sold to you,' [or,] 'What my net is to bring up to-day is sold to you, his words are valid?[24] — Rami b. Hama said [to that]: 'There is a man and there is a question!'[25] Raba retorted: 'I see the man but I do not see [the force of] the question.'[26] Here[27] he [the buyer] relied on him [the seller]; there he did not rely on him: Here he relied on him that he would exert himself and acquire [the robbed field] for him [the buyer] so that he might not call him a robber; there he did not rely on him.[28] [The question of R. Shesheth] was then submitted to R. Abba b. Zabda, [and] he said: This [question] does not need [to be brought] inside [the College].[29] Raba said: It does need [to be brought] inside, and even to the innermost [part]:[30] Here he [the buyer] relied on him [the seller]; there he did not rely on him. A case occurred in Pumbeditha, and the question [of R. Shesheth] was asked. R. Joseph then said to them [who asked the question]: This does not need to be brought inside [the College]. But Abaye said to him [R. Joseph]: It does need to be brought inside, and even to the innermost part: Here[27] he [the buyer] relied on him [the seller]; there he did not rely on him. And wherein does the first part [of the teaching quoted by R. Shesheth] differ from the last part? R. Johanan said: The last part, [viz.] 'What I am to inherit from my father to-day' — because of his father's honour;[31] 'What my net is to bring up to-day'

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(1) And he cannot call the seller a robber any more.

(2) Even when the buyer is dead, the desire on the part of the seller to vindicate his honesty may still have been the motive for his action in buying the field from the rightful owner, as the children of the dead buyer would call him a robber when they discover that the field was sold to their father unlawfully, and that they could not retain possession of it.

(3) After he bought it from the original owner, and the question arises whether the robber's children inherit the field and are entitled to take it away from the person to whom their father sold it unlawfully.

(4) Even if the robber did buy the field from the original owner in order to vindicate his honesty he would only have been concerned about his reputation during his life-time.

(5) There is therefore a good reason why the robber should have wished that his honesty should be vindicated even after his death.

(6) If the robber sold the field a second time (to another person), or disposed of it in some other way after selling it to the first person, it is obvious that his subsequent action in buying the field from the original owner was not due to a desire to secure the field for the first buyer, and must have been prompted by a different motive. The first buyer would not then be entitled to keep the field, which would legally belong to the person to whom it was subsequently sold, given or bequeathed.

(7) If the person, from whom the field was taken away unlawfully, died, and the robber proved to be his heir, so that the latter became the rightful owner of the field.

(8) As the robber acquired the field merely as a result of the death of the owner, and not because of any steps or trouble he took to acquire it, it cannot be assumed that the robber, in acquiring the property, manifested a desire to secure its possession for the person to whom he sold it unlawfully.

(9) If, after appropriating the field illegally and selling it, the robber claimed it as payment of a debt due to him from the original owner.

(10) The fact that the robber insisted on getting this field as payment, while there were other fields owned by the debtor which he could have taken, would show that he was prompted by the motive of securing that field for the person to whom he sold it unlawfully.

(11) If the debtor had no other field to offer.

(12) He only took the field because he wanted payment, not because he wished to secure it for the buyer.

(13) I.e., without any effort on the part of the recipient.

(14) Up till what stage in the proceedings do we assume that the robber, in buying the field from the original owner,

intended to secure its possession for the person to whom he sold it unlawfully?

(15) Until legal steps are taken by the original owner to retrieve his property from the person who bought it from the robber. As the latter's reputation is thus lost it cannot be said that he bought the field from the original owner in order to 'vindicate his honesty'.

(16) אדרכתא (from דרך 'to pursue'), a document authorising a creditor to search for property belonging to the debtor and to seize it wherever it may be.

(17) I.e., when property belonging to the robber has been discovered and the Court has begun to advertise its public sale for the purpose of compensating the person to whom the robber sold the field unlawfully. The period of such advertising usually extended over thirty days. Cf. 'Ar. 21b.

(18) He raised an objection to Rab's decision that the robber, in buying the field from the original owner, intended to secure its possession for the person to whom he sold it unlawfully, and that therefore the latter's purchase became legal.

(19) The document is invalid because the robber did not own the field, and therefore had no right to sell it. 'A potsherd' is a common term for an invalid document, like the modern term 'a scrap of paper'.

(20) We assume that the robber bought the field from the original owner because he appreciated the confidence placed in him by the person to whom he sold it unlawfully and who did not question the robber's right to sell it. It was for this reason — we assume — that he wanted to legalise the sale.

(21) Tosef. Nedarim, Ch. VI end.

(22) I.e., any animals or birds or fishes that may be caught in the net (or snare).

(23) His words are of no consequence.

(24) The sale is legal. In the first instance the sale is not legal because at the time of selling the goods were not yet the property of the seller, and the sale does not become legalised by what took place after the sale. This contradicts the view of Rab who, in he case of the robber who bought the field after selling it unlawfully, says that he intended to sell his future rights, and thus this legalises the sale.

(25) It is a great question worthy of the great man who asked it.

(26) He admits that R. Shesheth is a great man, but he does not admit that the question is great.

(27) In Rab's case.

(28) In the case referred to by R. Shesheth, the person to whom the goods to be acquired were sold had no occasion to rely on the seller; it did not depend upon the seller whether he would ultimately acquire the goods or not.

(29) As no-one inside the College will be able to answer it (Rashi). In the תשובת הגאונים (cited by Rashi) this phrase is explained as meaning that the question is not good enough to be discussed in the College.

(30) Literally: 'into the inside of the inside,' the meaning being obviously that the question was so important that it ought to be discussed by the best men in the College.

(31) By saying, 'What I am to inherit from my father to-day is sold to you' the seller indicates that his father is dying, and that he requires the money for the purpose of giving his father a decent burial.

Talmud - Mas. Baba Metzia 16b

— because of the need to support himself.[1] R. Huna said in the name of Rab: If one says to his neighbour: 'The field which I am about to buy shall, when I have bought it, be sold to you from now,' [the neighbour] acquires it.[2] Raba said: It stands to reason that Rab's decision is right [when applied to a case where the seller refers] to a field in general, but in [a case where the seller points out the land sold by saying] 'this field' [it would] not [be right, for] who can say whether [the owner of that field] will sell it to him?[3] But — by God! Rab himself did maintain that even when [the seller says] 'this field' [the sale is valid], seeing that Rab stated his law in accordance with [the view of] R. Meir, who said that a man may convey [to another person] a thing which has not yet come into existence, as it has been taught: If one says to a woman: Be betrothed to me after I shall become a proselyte, [or,] after thou shalt become a proselyte, [or,] after I shall be set free, [or,] after thou shalt be set free, [or,] after thy husband will have died, [or,] after thy brother-in-law will have given thee halizah,[4] [or] after thy sister will have died, [the woman] is not betrothed.[5] R. Meir says: She is betrothed.[6] Now, the woman [in this case] is like 'this field,'[7] and [yet] R. Meir says that she is betrothed.[8]

Samuel said: If one finds a deed of transfer[9] in the street one shall return it to the owners.[10] For even if [this were objected to] on the ground that [the deed] may have been written for the purpose of a loan and the loan may [in fact] not have been granted [the objection would not be valid] because [the borrower] pledged himself.[11] And if [this were objected to] on the ground that [the loan] may [in the meantime] have been repaid [the objection would not be valid either] because we are not afraid of repayment [having taken place], as [we assume that] if [the borrower] had repaid [the loan] he would have torn up [the deed]. R. Nahman said: My father was among the scribes of Mar Samuel's court when I was about six or seven years old, and I remember that they used to proclaim: 'Deeds of transfer which are found in the street should be returned to their owners.' R. Amram said: We have also learned so [in a Mishnah]: All documents executed by a court of law shall be returned [when found],[12] which shows that we are not afraid of repayment. [But] R. Zera said to him: Our Mishnah treats of documents containing decrees of the Court which confirm the creditor's right to belongings appropriated from the debtor,[13] and of documents authorising a creditor to search for the debtor's belongings and to seize them wherever they may be found,[14] which [documents] are not concerned with repayment. Raba [then] said: And are not such [documents] concerned with repayment? Have not the Nehardeans[15] . said: [Property assigned in] valuation[16] returns [to the debtor] until [the end of] twelve months,[17] and Amemar said: I am from Nehardea and I am of the opinion that the [property assigned in] valuation always returns?[18] Therefore Raba said: There[19] the reason[20] is this: we say: He has himself to blame for the loss, for at the time when he paid [the debt] he should have torn up the document, or he should have [asked for] another document to be written [entitling him to claim the property], as according to law [the creditor] need not return the property], and it is only because [of the command], And thou shalt do that which is right and good in the sight of the Lord[21] that the Rabbis declared that it should be returned: therefore he [the debtor] is [in the position of one who is] buying [the property] anew, and he ought to ask for a deed of sale to be written [and given to him].[22] [But] in regard to a note of indebtedness,[23] what may be argued [in favour of the return thereof is] that if it had been paid he should have torn up the note?[24] [To this] I say: He [the creditor] may have given an excuse by telling him [the debtor], 'I shall give it to you to-morrow, as I have not got it with me just now,' or he [the creditor] may have kept it back until he is refunded the scribe's fee.[25]

R. Abbahu said in the name of R. Johanan: If one finds a note of indebtedness in the street, even if it contains the endorsement of the Court,[26] it shall not be returned to the owners: It is undoubtedly so when it does not contain the endorsement of the Court, as it may then be said that it was written for the purpose of a loan, and that [in fact] the loan was not granted. But even if it does contain the endorsement of the Court, which means that it is officially confirmed,[27] it shall not be returned, because we are afraid that [the loan] may [in the meantime] have been repaid. R. Jeremiah objected [to the ruling of] R. Abbahu [from the following Mishnah]: 'All documents executed by a Court of Law shall be returned [when found]'? [R. Abbahu] answered him: Jeremiah my son, not all documents executed by a court of law are alike! Indeed, [the Mishnah refers to a case where the debtor] has been found to be a liar.[28] Raba [then] said: And because he has been found to be lying once [must it be assumed] that he would not pay [his debts] any more?[28] — Therefore Raba said: Our Mishnah treats of a document containing a decree of the Court which confirms the creditor's right to belongings appropriated from the debtor, and of a document authorising a creditor to search for the debtor's belongings and to seize them wherever they may be found — and in accordance with [the interpretation of] R. Zera [given above].[29] As we have just dealt with the case of [one who was found to be] a liar, we shall say something [more] about it. For R. Joseph b. Manyumi said in the name of R. Nahman: If they [the members of the Court] said to him [the debtor], 'Go [and] give him [what you owe him];'

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(1) In the same way the word 'to-day' in the second case indicates that the seller depends for his livelihood on that day's catch. This is why the Rabbis decided in both these cases that the sale should be regarded as valid. But in the first part these reasons do not apply.

(2) The moment the seller has bought the field from the original owner it becomes the property of the buyer, and the seller ends the transaction.
(3) When a person sells or gives away a piece of land in general terms (without specifying it) the buyer, or the recipient, makes up his mind to acquire the land, as he knows that some land will be available for sale, and he believes that the person who offered the land to him will buy it and convey it to him. But when a person specifies the field he offers, the buyer or recipient will not take the offer seriously, as that field may not be in the market, and the person may not be able to realise his intention of buying that field and conveying it to his friend.
(4) V. Glos.
(5) The transaction is not valid, as the fulfilment of the conditions stipulated by the man is beyond the power or control of the woman.
(6) Yeb. 93b.
(7) Just as in the case of 'this field' the seller, or donor, is unable to compel the original owner to dispose of the field (to enable the former to convey it to his friend), in the case of the woman also the fulfilment of the condition necessary to render the transaction valid is beyond her power or control.
(8) Which shows that according to the view of R. Meir on which Rab based his ruling, no distinction is made between 'the field' and 'a field'.
(9) V. p. 72, n. 4.
(10) As there is every reason to believe that the deed is still valid.
(11) To let the lender have the property in any case. Cf. pp. 77-78.
(12) Infra 200. This would include a note of indebtedness endorsed by the court and excluding the possibility of the loan not having been granted (cf. B.K. 112b) which would show that as long as we are sure that the loan was granted we do not suspect its validity on the ground that the loan may have been repaid.
(13) שטר חלטאה (from חלט , to establish', make sure') = a document issued by the court authorising a creditor to keep certain properties allotted to him in payment of his debt.
(14) V. p. 95, n. 8.
(15) A famous town in Babylonia, near the junction of the Euphrates and 'Nahr Malka,' and the seat of the Academy rendered famous by Samuel and other great Rabbis. Among the natives of Nehardea was R. Nahman (v. Hul. 95b).
(16) I.e., to the creditor.
(17) If the debtor pays during that time.
(18) There is no time limit, and whenever the debtor pays he is entitled to reclaim his property. [This being the case, the question of repayment arises also in these deeds of assignment, there being a possibility that the debtor had had his property restored on paying his debt, and in returning the documents to the creditor we empower the latter to seize anew the debtor's property.]
(19) In the case of deeds of assignment dealt with in the Mishnah.
(20) Why the document is to be returned.
(21) Deut. VI, 18.
(22) As a deed of transfer entitles the creditor to keep the seized property even when the debtor offers to repay the loan, and as the Rabbis decided that the property should be returned merely on the grounds of equity, the debtor, on failing to get the deed of transfer back, ought to have asked for a new deed — a deed of sale — as if the property had then been sold to him by the creditor.
(23) Dealt with by Samuel.
(24) And they apply to a note of indebtedness the same reason that is given for the law that a lost 'deed of transfer' has to be returned, viz., that since it has not been torn up the debt must still be due and the document still valid.
(25) By the debtor in case the creditor laid it out for him, the scrivener's fee being charged to the debtor. The debt may thus have been paid even though for some reason or other the creditor did not return the note to the debtor, and this should preclude the return of the note to the creditor.]
(26) הנפק . V. p. 33, n. 1.
(27) Cf. supra, ibid.
(28) On another occasion it was established that he told a lie. Therefore he would not be believed if he pleaded in this case that he had paid the debt. This is why the documents must be returned.
(29) That these documents are not concerned with the payment of money, and therefore are to be returned.

and he [the debtor] said [later], 'I have paid [as ordered]', he is believed.[1] [If then] the lender comes [to the Court and asks for a decree] to be written,[2] [the decree] may not be written and given to him. [But if the Court said to the debtor,] 'You are obliged to give him [what you owe him],' and he [the debtor] said [later], 'I have paid,' he is not believed. [If[3] then] the lender comes [to the Court and asks for a decree] to be written, [the decree] may be written and given to him. R. Zebid said in the name of R. Nahman: Whether [the Court said], 'Go [and] give him' or [it said] 'You are obliged to give him,' if [the debtor subsequently comes and] says, 'I have paid,' he is believed. [If then] the lender comes [to the Court and asks for a decree] to be written, [the decree] may not be written and given to him. If, therefore, [the wording of the Court's decision] is to make a difference [at all], the difference can only apply to the following cases: If they [the members of the Court] said to him [the debtor], 'Go [and] give him [what you owe him],' and he [the debtor] said [later], 'I have paid [as ordered],' and witnesses testify that he did not pay him,[4] while he repeats his assertion that he did pay,[5] [then we say:] 'He has been found to be a liar in regard to this money.'[6] [But if the Court said to the debtor,] 'You are obliged to give him [what you owe him], and he [the debtor] said later, 'I have paid,' and witnesses testify that he did not pay,[7] while he repeats his assertion that he did pay,[6] [then we say:] 'He has not been found to be a liar in regard to this money.'[8] For what reason? — [We say that the debtor] was just trying to put him off, thinking to gain time until the Rabbis would consider their decision more carefully.[9]

Rabba b. Bar Hanah said in the name of R. Johanan: [If one says to another], 'You have in your possession[10] a hundred zuz belonging to me,' and the other replies, 'I have nothing belonging to you,' while witnesses testify that he [the defendant] has [the money], and he [the defendant] again pleads, 'I paid it,' [then we say], 'He has been found to be a liar in regard to this money.' Such was the case of Sabbathai, the son of R. Merinus: He assigned to his daughter-in-law in her Kethubah[11] a cloak of fine wool, and he pledged himself to it. Her Kethubah got lost, [whereupon] he [Sabbathai] said to her,[12] 'I deny altogether [having assigned to you the cloak].' [But] witnesses came and said, 'Yes, he did assign it to her.' In the end he said, 'I gave it to her.' He then appeared before R. Hiyya,[13] [and R. Hiyya] said to him: You have been found to be a liar in regard to this cloak.'[14]

R. Abin said in the name of R. Elai, who said in the name of R. Johanan: If one was due [to take] an oath [in regard] to [a claim of] his neighbour, and he said, 'I took the oath,' but witnesses testify that he did not take the oath, while he repeats the assertion, 'I did take the oath,' [we say:] 'He has been found to be a liar in regard to this oath.'[15] This [decision] was conveyed to R. Abbahu, [whereupon] he said: R. Abin's decision seems right [in a case where] the oath was imposed upon [the defendant] by a Court of Law,[16] but [in a case where the defendant] imposed an oath upon himself,[17] [he is believed,][18] for it happens that a person talks like this.[19] [When this observation] was conveyed back to R. Abin, he said: I also spoke of a court case. And it was also stated so [in another place]: R. Abin said in the name of R. Elai, who said in the name of R. Johanan: If one was due [to take] an oath in a Court of Law [in regard] to [a claim of] his neighbour, and he said, 'I took the oath,' but witnesses testify that he did not take the oath, while he repeats the assertion, 'I did take the oath', [we say:] He has been found a liar in regard to this oath.

R. Assi said in the name of R. Johanan: If one finds in the street a note of indebtedness which contains the endorsement of the Court[20] and the date of that very day,[21] it shall be returned to the owners. [For] if [the objection is raised that] it may have been written for the purpose of a loan, and the loan may [in fact] not have been granted, [the objection is not valid,] as [the note] contains the endorsement of the Court,[22] [and] if [the objection is raised] that [the loan] may have been repaid, [the objection is not valid,] as we are not afraid of a loan having been repaid on the day [on which it was granted]. R. Zera then said to R. Assi: Did R. Johanan really teach this? Did you not yourself teach in the name of R. Johanan [as follows]: A note which was given for a loan that was

[subsequently] repaid cannot be used for the purpose of another loan, because the obligation [incurred by the first loan] was cancelled [on it being repaid]?[23] Now, when [was the note to be used again]? If on the following day or on any date later [than that given in the note], why state as a reason the fact that the obligation [incurred by the first loan] was cancelled? [The invalidity of the note] follows from the fact that it is antedated,[24] for we have learned in a Mishnah: Antedated notes of indebtedness are invalid.[25] It must therefore be assumed that [the note was to be used a second time] on the same day [as that given in the note]: so we see that people do pay on the same day [as they borrow]? — R. Assi answered him: Did I say that one never pays [a debt on the day it is incurred]? I said: people do not usually pay on the same day.[26]

R. Kahana said: [The lost document is to be returned[27] to the owner] when the debtor admits [that he has not paid]. But if so, [it is asked,] why need we be told this? — [Because] you might say: This [debtor] has really paid, and the reason why he says he has not paid is that he wishes to have [the note] returned [to the creditor] so that he may borrow on it again and thus save the scribe's fees.[28] Therefore we are told [that we do not say this, the reason being] that in such circumstances the lender himself would not permit it, thinking the Rabbis may hear of it and make me lose [my money].[29] But why is this case different from the one we have learned.[30] IF ONE HAS FOUND NOTES OF INDEBTEDNESS WHICH CONTAIN A CLAUSE PLEDGING [THE DEBTOR'S] PROPERTY, ONE SHALL NOT RETURN THEM — and it is explained as referring to a case where the debtor admits [the debt], and [the note has not to be returned] for the reason that it may have been written for the purpose of a loan to be granted in Nisan, while in reality the loan may not have been granted till Tishri, with the result that the creditor may come unlawfully to seize property bought by people [from the debtor] between Nisan and Tishri. Now, why do we not say [there also] that in such circumstances the lender himself would not permit [the note to be used in Tishri] but would say to him [the borrower]: Write another note in Tishri, as otherwise the Rabbis may hear of it and make me lose [my money]? — It was said [in reply]: There [in the Mishnah], seeing that he [the lender] would profit by seizing property sold [by the debtor] between Nisan and Tishri, he [the lender] would be content and would say nothing. But here, seeing that he [the lender] would have no profit, as after all the note has only just been written,[31] what advantage is there in that note as regards seizing sold property?[32] [Therefore we may assume that the lender] will not permit [the renewed use of] a note, the obligation of which expired [when the first loan was paid].[33]

R. Hiyya b. Abba said in the name of R. Johanan: Whoever pleads after an act of the Court

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(1) After taking an ‘oath of inducement’. V. p. 20, n. 4.

(2) If the lender asks the Court to write a document authorising him to seize the debtor's property. Cf. supra P. 95, n. 8.

(3) Even if he is ready to take the ‘oath of inducement’ he is not allowed to do so, but the plaintiff may take the oath and receive payment (Rashi). The reason for this is that the defendant is not likely to have paid on the strength of the Court's verdict, which is merely a statement regarding his obligation to pay and is not an order to pay. Seeing that the defendant waited to be sued for payment it is not assumed that he would actually have paid without a definite order from the Court.

(4) Witnesses give evidence to the effect that following the order issued by the Court the plaintiff demanded payment from the defendant in their presence and was refused. As a consequence it is assumed that having defied the order of the Court in the presence of witnesses the defendant is not likely to have paid later in their absence, and he is not believed if he pleads subsequently ‘I have paid’.

(5) On a later date in the absence of witnesses.

(6) And his statement is not accepted.

(7) When called upon to pay in their presence.

(8) He is not believed except if there are witnesses to corroborate his statement.

(9) And may yet decide in his favour.

(10) I.e., on loan.

(11) Marriage contract, v. Glos.

(12) Var. lec. ‘to them’ (the judges).

(13) R. Isaac Alfasi and Asheri have a different version of this passage. According to that version the translation would be as follows: He appeared before R. Hiyya. Witnesses then came and said, 'Yes, he did assign it to her.' R. Hiyya then said: 'Go (and) give it to her.' In the end he (Sabbathai) said to her: 'I gave you (the cloak).' (Then R. Hiyya) said to him: 'You have been found to be a liar in regard to this cloak.'
(14) Sabbathai's plea was rejected, and he had to pay.
(15) And he is obliged to take the oath in Court.
(16) If he refused to take the oath imposed on him by the Court, although he was called upon by the plaintiff to do so in the presence of witnesses, he cannot be believed if he asserts that he took the oath later in the absence of witnesses.
(17) I.e., he offered to swear of his own accord but refused to take the oath when called upon by the plaintiff to do so in the presence of witnesses. Subsequently, however, he asserted that he did take the oath (privately), in spite of his previous refusal before witnesses.
(18) His plea that he has taken the oath is accepted by the Court.
(19) It is a common thing for a person to refuse when pressed to do something he had volunteered to do, although he may do it later of his own accord. This attitude is not so insolent or obstinate as that involved in the refusal to take a compulsory oath.
(20) V. supra p. 33, n. 1.
(21) I.e., the day on which it was found, which shows that the document was written on the same day.
(22) Which shows that the transaction recorded in the document must have taken place.
(23) As the loan to which the note referred, and which formed a lien on the borrower's property, was repaid, the borrower's indebtedness in regard to this loan ceased. If then a new loan is granted, without a new note of indebtedness, it must be regarded as a mere verbal transaction, which does not form a lien on the borrower's property and does not entitle the lender to seize goods sold by the borrower. If, however, the note used for the repaid loan is retained by the lender for the purpose of the second loan, the lender may, on the strength of it, seize property sold by the borrower — which would be illegal, as in reality the second loan was a mere verbal transaction.
(24) If the second loan was granted on a day after the date given in the note, or on any subsequent date, the note, if applied to the second loan, must be regarded as antedated, and therefore it is invalid.
(25) Sheb. X. V. infra 72a; Sanh. 32a; B.B. 157b and 171b.
(26) And as it is not usual for a loan to be repaid on the same day, we do not apprehend that this may have happened in the case of the lost document, which must consequently be returned to the creditor, but if it did happen that a loan was repaid on the same day, R. Johanan teaches that the note must not be used for a second loan — not even on the same day — for the reason given by him.
(27) According to R. Johanan.
(28) For writing another note, which is charged to the debtor, v. supra p. 200, n. 7.
(29) The lender would be afraid that the Rabbis, on learning that the note was antedated and therefore invalid, so far as the second loan was concerned, would prevent him from seizing the debtor's sold property.
(30) V. supra 12b.
(31) As it bears that day's date.
(32) As both loans were granted on the same day, the note for the second loan, even if written afresh, would have borne the same date and would have served the same purpose so far as the lender's right to seize the borrower's sold property is concerned.
(33) As legally the lender would not be entitled to seize sold property at all on the strength of such a note.

Talmud - Mas. Baba Metzia 17b

says nothing.[1] What is the reason? Every act of the Court is regarded as [if it constituted] a document placed in the hand [of the claimant].[2] R. Hiyya b. Abba then said to R. Johanan [himself]: And is not this [implied in] our Mishnah [which says]: If she produces a bill of divorcement unaccompanied by the Kethubah, she may exact payment of [the money due to her in accordance with] her Kethubah.[3] [R. Johanan then] answered him: If I had not lifted the sherd for you, you would not have found the pearl underneath.[4] Abaye asked: What pearl [has R. Hiyya b. Abba found]?[5] Maybe we deal [in the Mishnah] with a place where a marriage-contract is not [usually] written,[6] so that her bill of divorcement serves the purpose of a Kethubah, but in a place where a Kethubah is [usually] written

[the law would be that] if she produces her Kethubah she may exact payment, but that if [she does] not [produce it she may] not [exact payment]?[7] Later Abaye corrected himself: What I said[8] is really no argument; for if you were to assume that the reference [in the Mishnah] is to a place where a Kethubah is not [usually] written, but that in a place where a Kethubah is [usually] written [the law would be that] if she produces her Kethubah she may exact payment, but not if she does not — how would a woman who became a widow after erusin[9] exact payment?[10] If by [the evidence of] witnesses [testifying] to the death of the husband [the latter's heirs] could plead and say: 'She has been paid [already].' And if you will say, 'It is really so,'[11] then what have the Sages achieved by their provision?[12]

Mar Kashisha, the son of R. Hisda, then said to R. Ashi: And how do we know that a [woman who became a] widow after erusin is entitled to [payment of] the Kethubah?[13] If I should say [that we derive it] from the passage which we learnt: 'A woman who became a widow or was divorced, either after erusin or nesu'in, exacts payment of all [that is due her from her deceased husband]'[14] — perhaps [this refers to a case] where [the betrothed man or the husband] had written her [a Kethubah]. And if you will argue: 'What need is there to tell us this?' [I will answer]: In order [to let us know] that we must reject the view of R. Eleazar b. Azariah, who says that he did write her the Kethubah except on condition that he would wed her.[15] It is necessary [to let us know that this is not so].[16] It can also be proved [that the Mishnah really deals with a case where there is a written Kethubah], for it says, '[She] exacts payment of all [that is due to her]' — if you agree that [the case is one where the husband] wrote a Kethubah, there is an explanation why [the Mishnah] uses the term, '[She] exacts payment of all [that is due to her].'[17] But if you say that he did not write her [a Kethubah],

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(1) I.e., any legal provision which is based on a general enactment (מעשה בית דין) 'act of the Court'. Such as e.g., is made for a wife in her marriage-contract, or for the maintenance of wife and children (grown-up-daughters), is as binding as a properly attested obligation entered into in writing by contracting parties. The plea of a defendant in such an action that he has discharged his obligation cannot be accepted unless it is corroborated by witnesses or by other legal evidence.

(2) The onus of proving that he has discharged his obligations therefore rests on the defendant.

(3) V. Keth. 88b.

(4) I.e., 'If I had not stated the law regarding the validity of an act of Court you would not have discovered the reason for the law of the Mishnah cited by you.'

(5) I.e., is the law of the Mishnah cited by R. Hiyya b. Abba really based on the principle laid down by R. Johanan?

(6) And it is usual to depend on the provision of the Court, so that a husband who has divorced his wife is under an obligation to pay her Kethubah, even if it has not been put in writing, and the husband cannot plead, 'I have paid,' unless he produces a receipt or other legal evidence.

(7) The husband may plead that he has paid, or he may demand the production of the Kethubah on the ground that if she does not give up the document she may demand payment a second time by producing the document later.

(8) I.e., the distinction that Abaye made between places where the marriage-contract is usually written and the places where it is not written.

(9) אירוסין 'Betrothal', v. Glos. I.e., a woman whose betrothed died before the marriage proper (נישואין nesu'in) took place.

(10) Viz., of the Kethubah due to her, seeing that no Kethubah is written at erusin, even in the places where it is written at (nesu'in), although the man becomes liable to pay the Kethubah from the time of the erusin.

(11) I.e., that the heirs can put forward such a plea.

(12) What benefit have the Rabbis bestowed upon the woman by the provision that she is entitled to the Kethubah as soon as she becomes betrothed, seeing that the man's heirs would always he able to claim that she has been paid, without having to produce a receipt?

(13) Where is the law stated that erusin entitles a woman to claim the Kethubah just as marriage does?

(14) V. Keth. 54b.

(15) Since he however died before marriage she is not entitled to the Kethubah.

(16) I.e., that if a man writes a Kethubah at the time of erusin he does not make it dependent on the actual marriage taking place.
(17) I.e., both the legal amount for which the Kethubah is written, viz., one hundred zuz for a widow, and two hundred for a virgin, and the additional amount which a husband may settle on his wife, and which she could claim only if it is expressly written in the Kethubah, but not as a provision of the Rabbis.

Talmud - Mas. Baba Metzia 18a

what is the meaning of the term, '[She] exacts payment of all [that is due to her],' seeing that she is only entitled to a hundred or two hundred zuz[1] [and no more]? Again, if [you will say that we derive the law] from that which R. Hiyya b. Ammi learnt: 'If the betrothed wife [of a priest dies] he [the priest] is not deemed a mourner[2] nor is he allowed to defile himself.[3] In similar circumstances the woman is not deemed a mourner and is not obliged to defile herself[4] [if he dies]. [Also] if she dies he does not inherit her [property];[5] if he dies she exacts the payment of her Kethubah'[6] — [it could be objected]: perhaps [this refers to a case where the betrothed man] had written her [a Kethubah]. And if you will argue: If he wrote her a Kethubah what need is there to tell us [that she may exact payment]? [I will answer]: It is necessary [to let us know that] if she dies he does not inherit her [property]![7] — [It must therefore be said that Abaye corrected himself because of what the Mishnah[8] itself Says, [and he argued thus]: If you held the view that we deal here with a place where no Kethubah is [usually] written, the [production of the] bill of divorcement having [there] the same effect as [the production of] her Kethubah,[9] [it could be refuted by the question]: Does a bill of divorcement contain [the figures] 'one hundred zuz' or 'two hundred zuz'?[10] And if you will Say: seeing that the Rabbis have provided [that the production of the bill of divorcement entitles the woman] to exact payment it is just as if [the figures] were written in it, the objection could still be raised: Let him [the husband] plead and say, 'I have [already] paid up.' And if you will argue that we could say to him, 'If you paid you should have torn up [the bill of divorcement],' [the answer would be:] They could reply, 'She did not let me [tear it up], as she said: I wish to keep it [as evidence that I am free] to marry again.' And if you will argue [further]: 'We could say to him, You should have torn it[11] and have written on it: This bill of divorcement has been torn by us, not because it is an invalid bill, but to prevent it being used for the purpose of exacting payment a second time,' [the answer would be:] Do all who exact payment [of a debt] exact such payment in a Court of Law?[12]

MISHNAH. IF ONE FINDS BILLS OF DIVORCEMENT OF WIVES, [DEEDS OF] LIBERATION OF SLAVES, WILLS, DEEDS OF GIFT, AND RECEIPTS, ONE SHALL NOT RETURN THEM, FOR I SAY, THEY WERE WRITTEN, BUT HE [WHO ORDERED THEM TO BE WRITTEN] CHANGED HIS MIND [AND DECIDED] NOT TO HAND THEM OVER. GEMARA. [If] the reason why [bills of divorcement are not returned] is that [we say], HE CHANGED HIS MIND [AND DECIDED] NOT TO HAND THEM OVER, then [we must assume] that if he [who lost the document] says [to those who found it], 'Give it [to the wife]', it is given [to her][13] even after a long time, but the following contradicts it: If one has brought a bill of divorcement [in order to deliver it on behalf of the husband] and has lost it, [the law is that] if it is found immediately[14] it is valid, if not,[15] it is invalid![16] — Rabbah said :It is no contradiction: There [the reference is] to a place where caravans pass frequently;[17] here [in our Mishnah the reference is] to a place where caravans do not pass frequently. And[18] even in a place where caravans pass frequently this [law[19] only applies to a case] where two [persons called] 'Joseph ben Simeon'[20] are known to be in the same town.[21] For if you did not maintain this, there would be a contradiction in Rabbah's own words, [as the following incident shows:] A bill of divorcement was once found in R. Huna's court-house, and in it was written, 'At Shawire,[22] a place [situate] by the canal Rakis.' R. Huna said:

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(1) One hundred in the case of a widow, and two hundred in the case of a virgin, which become due when the husband divorces her or dies.

(2) אונן , the designation of a mourner between the time of the death of a relative and the burial (after which he becomes an אבל). During that period of mourning a priest is not allowed to partake of sacrificial meat or other holy food. But mere erusin does not constitute relationship to the extent that the death of the betrothed woman should render the laws of mourning applicable to the bereaved priest.
(3) Cf. Lev. XXI, 1-4. A wife is regarded as שארו ('his flesh', cf. Gen. II, 24) for whom a priest may defile himself, but not a betrothed woman.
(4) The laws of defilement do not apply to a woman, whether she be the wife or the daughter of a priest (as the text speaks of 'the sons of Aaron', not the daughters or wives). On the other hand it is the duty of both men and women, whether of priestly descent or not, to attend to the burial of their dead relations, but betrothal does not constitute relationship in this respect, and there is no obligation on the part of a woman (or a man) to attend to the burial of her (or his) betrothed.
(5) While a husband inherits his deceased wife's property (cf. B.B. 111b) he does not inherit the property of his betrothed.
(6) Yeb. 29b; Sanh. 28b.
(7) As this law had to be stated, the matter of the Kethubah is also mentioned.
(8) Of Keth. 88b cited above.
(9) So that it may be argued that the Kethubah is due to be paid, not because of the provision of the Rabbis, but because the bill of divorcement constitutes a written document, on the strength of which the money can be claimed.
(10) It cannot be maintained that the bill of divorcement constitutes a document by means of which the payment of the Kethubah can be exacted, as such a document, if used for the purpose of collecting a debt, would have to state the amount due to be collected, and a bill of divorcement contains no such statement.
(11) I.e., made a tear in it, without destroying it. This is usually done to a bill of divorcement after it has been handed to the woman.
(12) It is only when payment is made in a Court of Law that one can expect the document to be endorsed in the way suggested, but people do not always pay their debts in Court. So that even if it be admitted that the mere production of the bill of divorcement entitles the woman to demand payment of the amount of the Kethubah just as if the amount were stated in the bill, one could not maintain that the husband would not be believed if he pleaded 'I have paid already,' seeing that he has good reason for not having had destroyed the bill of divorcement on payment. It must therefore be assumed that the reason why payment of the Kethubah can be enforced against the plea of the husband is that it is based on an enactment of the Courts, and in accordance with the dictum of R. Johanan given above.
(13) And we do not apprehend that this is a different bill which another person has lost, and that the names in the document refer to other persons who happen to have had the same names as those given in the document which was lost and found.
(14) So that there is no interval during which someone else may have lost a similar document in the same place.
(15) If it is not found immediately, but after an interval, during which a caravan may have passed through the place and halted there for a meal.
(16) As a member of the caravan may have lost it, and by some coincidence the names in the two documents may have been identical (Mishnah Git. 27a).
(17) The reference in Git. is to a place where caravans often pass through, and there is a likelihood of the bill having been dropped by a member of one of these travelling companies, but our Mishnah here deals with a case where there is no such likelihood.
(18) [What follows is a Talmudic comment on Rabbah's statement.]
(19) Viz., that a bill of divorcement is invalid if found after a long time.
(20) A common name often given in the Talmud as one likely to be borne by two persons in the same town.
(21) I.e., in the town where the document was issued.
(22) [Near Sura, v. Obermeyer, Die Landschaft Babylonian, p. 299.]

Talmud - Mas. Baba Metzia 18b

We apprehend that there may be two places called Shawire.[1] R. Hisda then said to Rabbah: Go and consider it carefully, for in the evening R. Huna will ask you about it. So he went and examined it thoroughly, and he found that we had learnt [in a Mishnah]: Every document endorsed by the Court

shall be returned.[2] Now, R. Huna's court-house is surely like a place where caravans pass frequently,[3] and yet Rabbah decided that [the document] should be returned. We must therefore say that '[only] if two persons called 'Joseph ben Simeon' are known to be there it is so,[4] [but] if not, [it is] not [so]'.[5] Rabbah decided an actual case where a bill of divorcement was found among the flax in pumbeditha in accordance with his teaching.[6] Some say where flax was sold,[7] and it was [a case where two bearing the same name] were not known to be [in the place], although caravans were frequent there; others say [it was the place] where flax was steeped, and even though [two persons bearing the same name] were known to be [in the place, the bill had to be returned] because caravans were not frequent there.[8]

R. Zera pointed out a contradiction between our Mishnah and a Baraitha, and then explained it: We learnt [in the Mishnah]: If one has brought a bill of divorcement [in order to deliver it on behalf of the husband] and has lost it, [the law is that] if it is found immediately, it is valid, if not, it is invalid. This contradicts [the following Baraitha]: If one finds in the street a bill of divorcement it shall be returned to the woman when the [former] husband admits [its genuineness], but if the husband does not admit [its genuineness] it shall not be returned to either of them.[9] At all events it says, 'When the husband admits [its genuineness] it shall be returned to the woman' — [obviously] even after a long time! — And [R. Zera] explained it [by saying]: There[10] [the reference is] to a place where caravans pass frequently, but here[11] [the reference is] to a place where caravans do not pass frequently. Some say that it is only when [two persons bearing the same name] are known to be [in the place][12] that we do not return [the bill],[13] and this is [in accordance with] the view of Rabbah. Others say that even if [two persons bearing the same name] are not known to be in the place we do not return [the bill] — contrary to the view of Rabbah. Now, we can well understand why Rabbah did not argue like R. Zera,[14] as he [Rabbah] deemed it more important to point out the [apparent] contradiction between our Mishnah [and the other Mishnah],[15] but why did not R. Zera argue like Rabbah?[16] — He will answer you: Does our Mishnah teach [expressly], 'But if he says, Give it [to the wife], it is given to her, even after a long time'? It may be that the meaning is: If he says, 'Give it [to the wife]' it is given to her, but only immediately,[17] as we have assumed all along.[18] According to the version of him who says that the view of R. Zera is that in a place where caravans are frequent [the document shall not be returned] even if there are no [two persons] known to be [in the place where the document was issued], and that [R. Zera thus] differs with Rabbah — wherein do they differ? — Rabbah holds that when the Mishnah states that 'Every document endorsed by the Court shall be returned',[19] it deals with [a document] which was found in Court, and since a Court of law is like a place where caravans are frequent,[20] [we must conclude that] only if [two persons of the same name] are known to be [in the place where the document was issued the law is that] the document shall not be returned, but that if [two persons of the same name] are not known to be there [the law is that] it shall be returned. And R. Zera?[21] — He will answer you: Does [the Mishnah] state: 'Every document endorsed by the Court, which has been found in Court, shall be returned'? It only states: Every document endorsed by the court shall be returned, — but, in reality, it has been found outside [the Court].[22]

R. Jeremiah says: [The Baraitha deals with a case] where the witnesses say, 'We never signed more than one bill of divorcement [with the name] of Joseph ben Simeon.'[23] But if so — what need is there to tell us [that in such a case the document has to be returned]? — You might say that we ought to apprehend that by a peculiar coincidence the names [of the husband and wife] as well [as the names of] the witnesses were identical [in two bills of divorcement]; therefore we are told [that we do not apprehend such a coincidence]. R. Ashi says: [The Baraitha deals with a case] where [the husband][24] says, 'There is a hole near a certain letter,'[25] and provided [he states] definitely near which letter [the hole is to be found],[26] but if [he just says, 'There is] a hole [in the document,' without indicating the exact place, the document is] not [returned to the wife]: R. Ashi was in doubt whether [the validity of a claim to lost property put forward by one who describes the lost article's] distinguishing marks is [derived from] Biblical law or rabbinical law.[27]

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(1) Even when the messenger who lost the bill of divorcement appears before us and testifies that the husband who lives in Shawire sent him to deliver it, and there is no other man with the same name as the husband (and no other woman of the same name as the wife) known to be living in that place, we apprehend that there may be another place called Shawire where a man of the same name (and a woman of the same name) exists, and therefore we do not return the document. [This might better be rendered as a question: Do we apprehend that there may be two places called Shawire? v. Strashun, a.l.]

(2) Mishnah infra 20a. The endorsement of the Court shows that the transaction referred to in the document has been completed, so that the apprehension that the person who authorised the document to be written may have changed his mind and refused to complete the transaction, does not arise. As the bill of divorcement referred to by R. Huna was found in the Rabbi's court-house it must be assumed that it was lost after it was dealt with by the Court, and that therefore it must be treated like ‘a document endorsed by the Court’.

(3) As many people come to the Court with such documents.

(4) Only if two persons bearing the same name are known to live in the place where the document was issued is the document not returned.

(5) I.e., the document has to be returned.

(6) [In a case where a lost bill of divorcement was found in a place where only one of the two conditions was fulfilled, and Rabbah, following the principle he laid down, ruled that the bill should be returned for the benefit of the wife.]

(7) A market where many people come to buy flax. Although this is like the case where caravans are frequent, the document was returned because there were no two persons of the same name known to exist in the place of issue.

(8) [It was not the market where people came to buy flax and consequently could not be treated as a place where ‘caravans pass frequently,’ but it was a case where two persons bearing the same name were known to exist and yet Rabbah decided in accordance with his teaching above that the document should be returned. On the cultivation of flax in Pumbeditha, v. Obermeyer, op. cit., p. 239.]

(9) Either to the wife or to the husband (Git. 27a). The case cannot be decided until legal evidence is adduced in support of the plea of the one or the other.

(10) In the Mishnah, which says that if found after a long interval the bill of divorcement is invalid.

(11) In the Baraitha, which says that even if found after a long interval the bill should be returned when admitted by the husband to be genuine.

(12) Where the bill was issued.

(13) Where caravans pass frequently.

(14) I.e., why Rabbah did not point out the apparent contradiction between the Mishnah and the Baraitha, as R. Zera did.

(15) It is more important to reconcile two Mishnahs than a Mishnah and a Baraitha.

(16) And point out the apparent contradiction between the two Mishnahs (which have the same editor).

(17) But not if there has been an interval, in which case the bill is not returned. The Mishnah, however, may not have such a case in view at all, as it only says, IT SHALL NOT BE RETURNED, and in this respect an interval would make no difference. Had the Mishnah referred to a case where the bill had to be returned it would probably have made the distinction between ‘immediately’ and ‘after an interval’. It was only the Gemara that derived from the Mishnah, by implication, the law that if the husband wishes to maintain the validity of the bill by saying, ‘Give it to the wife,’ he may do so even ‘after a long time’.

(18) There is nothing in the Mishnah to contradict our view of the law as implied in the wording of the Baraitha, which says that the bill shall be returned, and makes no distinction between ‘immediately’ and ‘after a long time’.

(19) Infra 20b.

(20) [Read with MS.F. ‘and yet it states “it shall be returned,” hence we must conclude that even where caravans are frequent it is only if (two persons) are known to be, etc.’]

(21) How does he explain the reference in the Mishnah to a ‘Court of law’?

(22) Where ‘caravans are not frequent.’ [For where it was found in Court it would be returned having regard to the frequency of caravans there.]

(23) Only in such does the Baraitha say that the bill shall be returned.

(24) Who admits that the bill is genuine.

(25) The letter is named by the husband.

(26) This constitutes a 'precise, distinguishing mark', upon which one may rely even as regards a Biblical law. V. infra 27a.

(27) [If the validity of ordinary distinguishing marks is only of Rabbinic origin, such marks would not be relied upon in the case of a bill of divorcement in view of the grave implications involved.]

Talmud - Mas. Baba Metzia 19a

lost a bill of divorcement in the Beth Hamidrash.[1] [When it was found] he said [to the finders]: If you [attach importance to] a distinguishing mark, I have one on it; if, [however, you attach importance to] recognition by sight,[2] I am able to recognise it. [Whereupon the bill] was returned to him. He then said: l do not know whether it was returned to me because of the distinguishing mark[3] [I indicated], and the view was held that [the indication of] distinguishing marks [entitles the loser to recover his property] in accordance with Biblical law, or whether it was returned to me because of my ability to recognise it by sight, and [such recognition would be accepted from] a Rabbinic scholar only[4] but not from an ordinary person.

The above text [states]: 'If one finds in the street a bill of divorcement, [the law is that] when the [former] husband admits [its validity] it shall be returned to the woman, but if the husband does not admit [its validity] it shall not be returned to either of them.' At all events [we are taught that] when the husband admits, [the bill of divorcement] is to be returned to the woman — ought we not to apprehend that [the husband] may have written it with the intention of giving it [to the wife] in Nisan but [in reality] did not give it to her till Tishri[5] and the husband may have gone and sold the fruit [of his wife's property][6] between Nisan and Tishri, and she may then come, produce the bill of divorcement that was written in Nisan, and take away [the fruit] from the buyers unlawfully?[7] This would be right according to him who says that as soon as the husband has made up his mind to divorce her he is no more entitled to the fruit [of her property],[8] [and] it would be in order [for her to reclaim the sold fruit],[9] but according to him who says that the husband is entitled to the fruit [of her property] until the date on which he hands her [the bill of divorcement] — how is it to be explained? — When she comes to take away [the sold fruit] from the buyers we say to her: Bring proof when the bill of divorcement came to your hand. But why is [a bill of divorcement] different from notes of indebtedness, regarding which we have learnt: 'If one finds notes of indebtedness [the law is that] if they contain a clause pledging [the debtor's] property one shall not return them',[10] and this is interpreted [as applying to a case] where the debtor admits [the debt], and the reason [why the notes are not returned] is that they may have been written in Nisan and the loan may not have been granted till Tishri, so that [the creditor] may take away [the debtor's sold property][11] from the buyers unlawfully — [why do we not say] there also [that the documents] should be returned, and that when [the creditor] will come to take away [the debtor's sold property] from the buyers we shall tell him: Bring proof when the note of indebtedness came to your hand?[12] — The answer is: In the case of a bill of divorcement the person who bought [from the husband the fruit of the wife's property] will come and demand of her [the proof],[13] saying: The reason why the Rabbis gave her back the bill of divorcement is that she may not be condemned to permanent widowhood,[14] but now that she has come [with the bill] to take away [the fruit of her property which I bought from her husband] let her go and bring proof when the bill of divorcement came to her hand! But in the case of a note of indebtedness the buyer will not come to demand [proof]. He will say [to himself]: As the Rabbis gave him back the note of indebtedness it is obvious that the purpose for which they gave it to him was [to enable him] to take away [the debtor's sold property from the buyer, and] this shows that the Rabbis made sure of the matter,[15] and that the note of indebtedness came to the hand [of the creditor] before my [purchase].[16]

[DEEDS OF] LIBERATION OF SLAVES, etc. Our Rabbis taught: If one finds a deed of liberation in the street, [the law is that] when the master admits [its validity] one shall return it to the

slave, [but when] the master does not admit [its validity] one shall not return it to either of them. Thus [we are taught that] when the master admits, [the deed of liberation] is to be returned to the slave — why [is this so]? Ought we not to apprehend that [the master] may have written it with the intention of giving it [to the slave] in Nisan but [in reality] did not give it to him till Tishri, and the slave may have gone and bought property between Nisan and Tishri,[17] and the master may have gone and sold it, and [the slave] may then produce the [deed of] liberation which was written in Nisan, and take away [the property] from the buyers unlawfully? This would be right according to him who says[18] that it is an advantage to a slave to be liberated from his master,[19] regard being had to Abaye who says, 'the witnesses acquire it for him by affixing their signatures';[20] [and] it would be in order [for him to buy property as soon as the deed of liberation is signed]; but according to him who says that it is a disadvantage to a slave to be liberated from his master[21] — how is it to be explained?[22] — When [the slave] comes to take away [the property sold by the master] we say to him: 'Bring proof when the [deed of] liberation came to your hand.'

WILLS, DEEDS OF GIFT, etc. Our Rabbis taught: What is meant by WILLS?[23] — [Documents which contain the words:] 'This shall be established and executed,'[24] so that when [the author of the document] dies, his property becomes the possession of the person named [in the document!.[25] [What are] DEEDS OF GIFT?[26] — All [documents conferring a gift] which contain [the words]: 'From to-day — but after my death.'[27] But does this mean that only if it is written [in the document] 'From to-day — but after my death,' the person acquires [the gift], but if not, he does not acquire it!?[28] — Abaye answered: The meaning is this: 'Which gift of a healthy person is like the gift of a dying person in that [the person named] does not acquire it until after the death [of the donor]'? Every [gift regarding which] it is written [in the document conferring it]: 'From to-day — but after my death.'[29]

The reason why [the documents named in the Mishnah are not returned] is that [— as indicated in the Mishnah — the persons who lost them] did not say, 'Give them [to the persons named in the documents],' but if they said, 'Give them,' they would have to be given. Does not this contradict [the following Baraitha]: 'If one finds wills, mortgage deeds,[30] and deeds of gift, even if both [parties concerned] admit [their validity], one shall not return [the documents] to either of them'?[31] — R. Abba b. Memel answered: It is no contradiction:

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(1) The College, where the Rabbis and their disciples assemble for study.

(2) I.e., not by particular marks but by its general appearance when produced.

(3) [Though it was not a Precise mark.]

(4) Whose word can be trusted and may be regarded as clear and definite.

(5) The divorce would then have taken effect in Tishri, and up till then the husband would have been entitled to use, or to sell, the fruit of his wife's estate (נכסי מלוג).

(6) The wife's inherited estate (referred to in the previous note) of which the husband may use the income, without incurring any responsibility for loss or damage or deterioration affecting the estate itself. Cf. B.K. 89a.

(7) As the husband is entitled to the income of his wife's estate up to the day on which he hands her the bill of divorcement she would have no right to the income disposed of by the husband between Nisan and Tishri.

(8) Cf. Git. 17b.

(9) I.e., the fruit sold by the husband between Nisan and Tishri.

(10) V. supra 12b.

(11) I.e., the property sold by the debtor between Nisan and Tishri.

(12) I.e., when the debtor actually borrowed the money and handed over to the creditor the note of indebtedness.

(13) As to the actual date on which her divorce took effect.

(14) I.e., that she may not be prevented from marrying again by the lack of evidence as to her divorce from her previous husband.

(15) I.e., the Rabbis made sure that the creditor was legally entitled to seize the debtor's sold property.

(16) I.e., before the debtor sold his property he had already incurred his debt to the creditor and given him the note of

indebtedness.

(17) In which case the property would belong to the master, as everything acquired by a slave becomes the possession of his master.

(18) Git. 12b.

(19) As he becomes a member of the community of Israel. Anything that confers a benefit upon a person may be done for him in his absence, or without his knowledge, and for this reason a deed liberating a slave would take effect as soon as it is signed by the witnesses, even before it is handed to the slave.

(20) Cf. supra 13a; infra 35b.

(21) As it deprives him of certain privileges which a slave enjoys, and puts upon him new obligations.

(22) As the liberation, according to this view, is a disadvantage to the slave, and as nothing disadvantageous may be done to anyone in his absence, or without his knowledge, the deed of liberation cannot become effective until it is handed to the slave, and the signature of the witnesses cannot be said to acquire it for him before the date on which the document is received by him.

(23) דייתיקי = last will and testament (cf. Gr. **).

(24) דא תהא למיקם ולהיות This is no etymological derivation but a mere play on words.

(25) Without any further formality, as the words of a dying person have the legal validity of a document written and delivered.

(26) Of a healthy person.

(27) Indicating that the gift is to become from that date the property of the person named in the document but cannot be used by him until the death of the donor.

(28) The question is: Why should it be necessary for the donor to write in the deed of gift the words 'But after my death' in order to enable the person named in the deed to acquire the gift? In the case of a dying person it is natural that the gift should not become valid till after the donor's death, as this was obviously the donor's intention. But in the case of a healthy person there is no reason why such a condition should be included in the document. The donor ought to be able to make the gift absolute at once.

(29) I.e., in ordinary cases the gift of a healthy person does become absolute at once. But in the case quoted, the Rabbis wished to indicate that the gift of a healthy person may be conferred on the same condition as that of a dying person — by including in the deed the words, 'But after my death.'

(30) Referring to a second mortgage taken out on the same property.

(31) For the reason given below.

Talmud - Mas. Baba Metzia 19b

One law refers to [a gift made by] a healthy person, and the other law refers to [that of] a dying person:[1] Our Mishnah, which teaches [by implication] that if [the person who lost the document says,] 'Give it,' it is given, refers to [a gift made by] a dying person, who is in a position to retract.[2] For we say: What is there to apprehend? That he may originally have written the deed for this person[3] and then changed his mind and not given it to him, and that he may then have written a deed again for another person and given it to him, but now he has made up his mind not to let him have it![4] If he gave it to the latter as the gift of a healthy person the latter suffers no loss [as a result of the donor's present change of mind], for when the two [documents] are produced the later [document] confers possession, as he retracted from the former. If, however, he gave it also to the latter as the gift of a dying person, the latter suffers no loss either, as [in such a case] the last person acquires [the gift],[5] because [the donor] withdrew it from the former. But the Baraitha, which teaches that even if both parties admit [the validity of the found document] it shall not be returned to either party, deals with a healthy person, who cannot withdraw,[6] [and the reason why the document is not returned is] that we say: Maybe [the donor] wrote it originally for this person,[3] and then he changed his mind and did not give it to him; he then wrote another [document] for another person and gave it to him, but now he has made up his mind not to let him have it, and he argues [thus]: I cannot [legally] withdraw [the gift from him]. I will [therefore] tell them [the judges] that I gave it to this [person], so that they will return the document to him, and when he produces this earlier document he will be entitled [to the gift]. We therefore say to him [the donor]: We cannot give this document to this [person],[3] as it

may be that you did write it for him but did not give it to him, and that you gave it to a different person instead, and now you have changed your mind again. Now, if you have not really given it to a different person, and you now wish to give it to this person, write him now another document and give it to him — for if you [formerly] did give [a document] to another person he will suffer no loss [because of the document you will write now], as [the person who holds the document with] the earlier date will be entitled to the gift.[7] But, asked R. Zebid, do not both [the Mishnah and the Baraitha] deal with last wills?[8] — Therefore R. Zebid said: Both teachings deal with [a gift made by] a dying person, and there is no contradiction: One deals with [the donor] himself,[9] and the other deals with his son:[10] Our Mishnah, which implies that if [the person who lost the document] says, 'Give it [to the person named in the document],' it is given to him, refers to [the donor] himself, who is entitled to withdraw, [and the reason why the document is thus given is] that we say: Even if [the donor] had given it to another person,[11] that person would suffer no loss [as a result of the donor's change of mind], for if the first [document] and the last [are produced] the last is valid, as the first was withdrawn.[12] But the Baraitha, which teaches that even if both parties admit [the validity of the document] it shall not be returned to either party, refers to the son, [and the reason why the document is not returned is] that we say: Maybe the father wrote it for this person[13] and he changed his mind and did not give it to him, and that after the father's [death] he [the son] wrote another deed for another man and gave it to him, but now he has made up his mind not to let him have it, [and] he argues [thus]: 'I cannot legally withdraw [the gift from him]. I will [therefore] tell them [the judges] that my father gave it to this person,[13] so that they will give the document to him, and we shall go and take [the gift] away from this other person,[14] as he [this person][15] will be legally entitled to it,[16] and we shall both share [in the gain].'[17] We therefore say to him [the son]: We cannot give this document to this person,[15] as it may be that your father did write it [for him] but did not give it to him, and that you gave it to a different person instead, and have now changed your mind. Now, if you speak the truth [in saying] that your father gave it to him, go now and write him another deed, for then, even if your father did not give it to him, and you wrote it for a different person, that other person will suffer no loss, for if the first document and the last are produced, the first is valid.[18]

Our Rabbis taught: If one finds a receipt[19] [the law is that] when the wife admits [its genuineness] one shall return it to the husband, [and that] when the wife does not admit [its genuineness] one shall not return it to either party. It is thus taught that when the wife admits, [the document] shall be returned to the husband: Ought we not to apprehend that she may have written it with the intention of giving it [to the husband] in Nisan, and that [in reality] she did not give it [to him] until Tishri,[20] and that in the interval between Nisan and Tishri she went and sold [the value of] her Kethubah for a consideration,[21] while the husband may produce the receipt, [showing] that it was written in Nisan,[22] and he will thus be able to deprive unlawfully those who bought [the value of the Kethubah of what is due to them]? — Raba answered:

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(1) The deeds of gift are written differently in the two cases, the dying person's deed containing the formula: 'As he was ill and confined to his bed.'

(2) I.e., he may yet change his mind and write a second deed, conferring the gift upon another person, and then the latter acquires it.

(3) To whom he says the document should be returned.

(4) Lit., 'he retracts from the one to whom he gave it.'

(5) As it is always the last word of a dying person that has legal validity. [So that in any case the person to whom the deed was actually given stands to lose nothing by the return of the earlier dated deed to the one in whose name the found deed is made out.]

(6) He cannot change his mind after he has made a gift to a person and handed him the document conferring the gift.

(7) As a healthy person cannot invalidate a document by a later document.

(8) How then could it be said that the Baraitha deals with the gift made by a healthy person?

(9) I.e., the dying person, who is still alive when the document is found, and who orders the document to be given to the person named therein.

(10) After the death of the father, and the son claims the document.
(11) And then decided not to let him have it.
(12) And a dying person is entitled to change his mind, and he who produces the document with the later date is legally entitled to the gift.
(13) I.e., the person named in the found document to whom the son says the deed should be returned.
(14) To whom the son gave it.
(15) V. p. 121, n. 7.
(16) Because of the son's statement that his father had given it to that person.
(17) This indicates the motive which would prompt the son to make the false statement — a conspiracy between him and that person to obtain possession of the gift and to divide it.
(18) As when the two documents have been written by the son, who is a healthy person, the owner of the first document will be entitled to the gift, and the writing of the second document will make no difference.
(19) In which a wife acknowledged having received payment of her Kethubah while she was still living with her husband.
(20) When she received payment.
(21) Lit., 'for the benefit of a pleasure'; for a trifle, as in view of the possibility of the wife's death preceding that of her husband the buyer of the Kethubah stands to lose the price he pays, and this reduces the value of the Kethubah if sold before it becomes due.
(22) So that the date of the receipt produced by the husband will be taken as proof that it preceded the sale of the Kethubah by the wife, and the buyer will lose his claim.

Talmud - Mas. Baba Metzia 20a

From this[1] we may infer that Samuel's [law] holds good, for Samuel said: If one sells a note of indebtedness to one's neighbour and then renounces [the debt], it is renounced,[2] and even the heir [of the lender] may renounce it. Abaye maintained: You may even say that Samuel's [law] does not hold good, [for] here we deal with a case where the deed of the Kethubah marriage is produced by her.[3] Raba, however, says that the production of the deed of the Kethubah makes no difference, for we apprehend that she may have had two copies of the Kethubah.[4] Abaye again says [in reply]: Firstly, we do not apprehend that she may have had two copies of the Kethubah, and secondly, a receipt has validity from its date.[5] This is consistent with Abaye's view, for he says: 'The witnesses acquire it for him by their signatures.'[6]

MISHNAH. IF ONE FINDS DEEDS OF VALUATION,[7] DEEDS OF MAINTENANCE,[8] DOCUMENTS OF HALIZAH[9] OR REFUSAL,[10] DOCUMENTS OF BERURIN,[11] OR ANY OTHER DOCUMENT ISSUED BY A COURT OF LAW, ONE SHALL RETURN THEM.[12] IF ONE FINDS [DOCUMENTS] IN A SMALL BAG OR IN A CASE,[13] [OR IF ONE FINDS] A ROLL OR A BUNDLE[14] OF DOCUMENTS, ONE SHALL RETURN THEM.[15] AND HOW MANY DOCUMENTS CONSTITUTE 'A BUNDLE'? THREE FASTENED TOGETHER. RABBAN SIMEON B. GAMALIEL SAYS: [IF THEY BELONG TO] ONE PERSON WHO BORROWED FROM THREE [LENDERS] ONE SHALL RETURN THEM TO THE BORROWER;[16] [IF THEY BELONG TO] THREE PERSONS WHO BORROWED FROM ONE [LENDER] ONE SHALL RETURN THEM TO THE LENDER.[17] IF ONE FINDS A DOCUMENT AMONG ONE'S PAPERS AND DOES NOT KNOW HOW IT CAME THERE[18] IT SHALL REMAIN WITH HIM UNTIL ELIJAH COMES.[19] IF THERE ARE NOTES OF CANCELLATION AMONG THEM[20] ONE MUST ABIDE BY THE CONTENTS OF THE NOTES.[21] GEMARA. What are DOCUMENTS OF BERURIN? — Here [in Babylonia] it has been interpreted [as meaning] 'documents containing records of pleadings.'[22] R. Jeremiah said: [Documents stating:] 'This party chose one [judge], and that party chose another [judge].'[23]

OR ANY [OTHER] DEED ISSUED BY A COURT OF LAW, ONE SHALL RETURN. In the court of R. Huna there was once found a bill of divorcement[24] in which was written: 'In Shawire, the

town which is situate by the canal Rakis.' Said R. Huna:

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(1) I.e., from the fact that we do not apprehend the contingency referred to, and that consequently it must be assumed that the buyer would have no claim against the husband, even if the wife's receipt had in fact been written in Nisan.
(2) The borrower's debt is cancelled, and the person who bought the note of indebtedness from the lender loses his money: (Cf. B.K. 89a; B.B. 147b.) In the same way the person who bought the Kethubah from the wife while it was still unpaid loses his claim when the wife cancels the Kethubah on being paid by the husband in Tishri.
(3) Which shows that the wife has not sold it, as otherwise the buyer would have taken possession of it.
(4) [One of which she disposed of by selling, and were it not for the fact that Samuel's ruling is accepted there would be good reason for not returning the receipt to the husband.]
(5) I.e., from the date of writing, irrespective of the date of delivery, so that even if the debt had been sold in the interval the buyer has no claim, so that the Baraitha affords no support to Samuel's ruling.
(6) V. supra 13a; 19a. Cf. infra 35b.
(7) I.e., deeds in which the valuation of a debtor's property by a Court of Law, for the purpose of assigning it to the creditor, is recorded.
(8) I.e., deeds in which the Court records a man's undertaking to provide maintenance for his step-daughter.
(9) Documents testifying that the ceremony of 'pulling off the shoe' has been performed in the case, of a childless widow whose brother-in-law refuses to perform the levirate marriage. V. Deut. XXV, 5-10, and thus enabling the widow to re-marry.
(10) מיאון , the refusal of a fatherless girl, whose mother or brother gave her in marriage while still a minor, to accept the husband when she attains her majority. Her declaration before the Court that she does not desire the man as her husband sets her free, and the Court writes a document recording the refusal, which entitles her to marry another man.
(11) Relating to the selection of arbiters by contending parties, as explained in the Gemara below.
(12) in such cases there is no reason to apprehend that the writers of the documents may have changed their minds before handing them over, as the Court of Law would not have executed them unless the transactions were completed. Nor is there any ground to question the validity of the documents in case they have been 'paid'.
(13) Which form distinguishing marks. V. Gemara below.
(14) V. Gemara below.
(15) When they are identified by the loser. V. Gemara below.
(16) As it is obvious that the borrower had them in his possession and fastened them together before losing them. It may therefore be assumed that they were paid bills.
(17) As this makes it clear that it was the lender who had them in his possession and fastened them together before losing them. The assumption is therefore that they have not been paid.
(18) The reference is to a note of indebtedness found among other documents, the owner not being able to remember whether it was deposited with him by the borrower or the lender, or whether it was partly paid or not.
(19) For all time, or until the truth is ascertained. Cf. supra p. 6, n. 2.
(20) If there are any notes found attached to the documents showing that the debts referred to in the documents have been paid or cancelled.
(21) I.e., the debts referred to in the documents are assumed to have been paid, and although the notes of cancellation, or receipts, should have been held by the borrower, it is assumed that the lender had them merely as a result of neglect or forgetfulness.
(22) Of litigants in a court of law, from ברר 'to make clear'.
(23) I.e., documents recording the choice of judges by contending parties to decide their case, from ברר 'to select', 'to chose'. V. Sanh. 23a.
(24) Endorsed by the court. Cf. supra, 18a and b.

Talmud - Mas. Baba Metzia 20b

We apprehend that there may be two [towns called] Shawire. R. Hisda then said to Rabbah: Go and consider it carefully, for in the evening R. Huna will ask you about it. So he went and examined it, and he found that we learnt, ANY DEED ISSUED BY A COURT OF LAW ONE SHALL

RETURN.[1] R. Amram then said to Rabbah: How does the Master derive a law relating to a religious prohibition from a civil law?[2] — [Rabbah] answered him: Idle talker![3] The Mishnah taught [this law also] in regard to documents of 'halizah' and 'refusal'![4] Whereupon the cedar column of the College split in two.[5] One[6] said: 'It split because of my lot,'[7] and the other[8] said: 'It split because of my lot.'[9]

IF ONE FINDS [DOCUMENTS] IN A SMALL BAG OR IN A CASE. What is 'hafisah'?[10] Rabbah b. Bar Hanah said: A small bag. What is 'deluskama'?[11] Rabbah bar Samuel said: A case used by old people.

A ROLL OF DOCUMENTS OR A BUNDLE OF DOCUMENTS, etc. Our Rabbis taught: How many documents constitute A ROLL? Three rolled together.[12] And how many constitute A BUNDLE? Three tied together. Will you deduce from this that a knot is a distinguishing mark?[13] — [No] for behold R. Hiyya taught: Three rolled together.[14] But if so, this is the same as A ROLL?[15] — A ROLL is [made up of documents] placed end to end [and then rolled together]. A BUNDLE is [made up of documents] placed on the top of each other and then rolled together. What does [the finder] announce?[16] — The number [of documents found].[17] Then why [does the Mishnah] mention 'THREE', would not [the same law apply] also to two?[18] — But as Rabina says:[19] He announces [that he found] coins:[20] Here also — he announces [that he found] documents.[21]

RABBAN SIMEON B. GAMALIEL SAYS: [IF THEY BELONG TO] ONE PERSON WHO BORROWED FROM THREE, ONE SHALL RETURN [THEM] TO THE BORROWER, etc. For if you were to assume that they belonged to the lenders — how did they [the documents] come to be together? But may not [the lenders] have gone [with them to the Clerk of the Court] to have them endorsed?[22] — They were [already] endorsed. But may they not have been dropped by the Clerk [who endorsed them]? — people do not leave their endorsed documents with a clerk.

[IF THEY BELONG TO] THREE PERSONS WHO BORROWED FROM ONE [LENDER] ONE SHALL RETURN THEM TO THE LENDER, etc. For if you were to assume that they belonged to the borrowers[23] — how did they [the documents] come to be together? — But may not [the persons mentioned in the documents as borrowers] have gone [to the same Clerk] to have them written?[24] They were written in three different handwritings. But may not [the borrowers] have gone [with them to the Clerk of the Court] to have them endorsed? — The lender gets his document endorsed, but not the borrower.

IF THERE ARE NOTES OF CANCELLATION AMONG THEM ONE MUST ABIDE BY THE CONTENTS OF THE NOTES. R. Jeremiah b. Abba said in the name of Rab: A note of cancellation[25] that is produced by the lender[26] even if it is written in his own hand, is to be regarded merely as a prank, and is invalid. [This is so] not only when it is written by a scribe, in which case it may be said that the scribe happened to meet him [the lender] and wrote [the note],[27] but even if it is in his own handwriting[28] it is invalid, [for we assume that he wrote it] thinking, 'The borrower may come at dusk and pay me, and if I do not give him [the note of cancellation] he will not give me the money. I shall write [the note now], so that when he brings me the money I shall give it to him.' [But] we have learned [in the Mishnah]: IF NOTES OF CANCELLATION ARE FOUND AMONG THEM ONE SHALL ABIDE BY THE CONTENTS OF THE NOTES?[29] — As R. Safra said[30] it was found among torn documents, so here also it was found among torn documents.[31]

Come and hear: If one found among his documents [a note stating] that the note of indebtedness of Joseph b. Simeon was paid, [and there were two debtors bearing that name] the notes of both [debtors] are [deemed to have been paid]?[32] — As R. Safra said it was found among torn documents, so here also it was found among torn documents.

Come and hear: We swear that our father has not instructed us or said anything to us, and that we

have not found [any note] among his documents, to the effect that this note [of indebtedness] has been paid?[33] R. Safra answered: If it is found among his torn documents.[34]

Come and hear: A note of cancellation which bears the signatures of witnesses must be corroborated by the signatories?[35] Say: It must be corroborated through [the evidence of] the signatories:

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(1) V. supra loc cit. for notes.

(2) In the sentence quoted from the Mishnah the reference is obviously to documents regarding commercial transactions and similar matters falling within the scope of civil law, while the question of the validity of a divorce is one ultimately affecting a moral or religious issue, and one may not derive one from the other. Cf. Ber. 19b.

(3) תרדא , a person who talks foolishly. Cf. B.K. 105b.

(4) Which are matters of religious law, like marriage and divorce.

(5) This was regarded as a protest against the incident just described.

(6) R. Amram.

(7) I.e., because of the insulting remark addressed to him by Rabbah.

(8) Rabbah.

(9) Because of the way in which R. Amram tried to refute him in public.

(10) The word used in the Mishnah and translated here as ‘small bag’.

(11) דלוסקמא The word used in the Mishnah and translated here as ‘a case’. The word is also frequently spelt גלוסקמא probably from the Gr. ** = receptacle.

(12) This is regarded as a ‘distinguishing mark’ by which the loser may identify the documents when they are advertised by the finder. The finder would just announce that he had found certain documents, and the person who came forward to claim them would have to state their number and the manner in which they were rolled up.

(13) I.e., does the definition of a bundle as ‘three fastened together’ imply that the fastening, or knot, is regarded as a distinguishing mark.

(14) This definition implies the answer to the previous question. As R. Hiyya defined a bundle as ‘three rolled together,’ without being tied, it follows that the fastening or knot is not essential, and that being rolled together is in itself ‘a distinguishing mark’.

(15) Mentioned separately in the Mishnah.

(16) When he advertises the find.

(17) He mentions the number of documents contained in the roll, and then he can claim the documents by merely stating the way in which they were rolled up.

(18) If the loser has not to state the number for the purpose of identification, there is no point in the Mishnah's reference to ‘THREE’ documents.

(19) Infra 25a.

(20) Without stating the number, which the loser has to state for the purpose of identification when he comes to claim the coins.

(21) Without stating the number, and the loser has to state how many documents there were. The Mishnah therefore says ‘THREE’ — for if there were only two documents, and the finder used the plural (‘documents’) in announcing them, which means at least two, the number might be guessed, and could not therefore be regarded as ‘a distinguishing mark’.

(22) And the Clerk may have rolled them together and then lost them.

(23) Who received the documents back after paying their debts.

(24) And the clerk lost them after writing them, so that they were not used at all, and no money was lent.

(25) [סמפון , from Gr. **, an agreement, then the provision made for the cancellation of a contract under certain conditions.]

(26) Instead of being produced by the borrower.

(27) So that the lender might have it ready when the borrower would call to pay and would ask for a receipt.

(28) Showing that the lender was himself able to write, and there was no reason why he should have it written before the borrower paid the debt.

(29) And it is obvious that here it is the lender who produces the notes of cancellation, for it is he who found them among the notes of indebtedness in his possession.

(30) Below in our Gemara.
(31) [The bill to which the cancellation relates was found intact among torn documents, which shows that the cancellation is genuine, as otherwise the bill would not have been placed among the torn notes of indebtedness.] According to Rashi's second explanation the note of cancellation was found torn among the other torn documents held by the lender, and the fact that it was found among useless documents shows that the borrower just left it with the lender after paying him, and the latter discarded it and put it among his other useless papers. Had the lender written it for the purpose of having it ready when required he would not have put it among his useless papers.
(32) As each of them can claim to be the person named in the receipt. Cf. B.B. 172a. This proves that a note of cancellation in the possession of the lender is valid.
(33) V. Shebu. 45a. This oath has to be taken by orphans who wish to collect debts due to their father. From the text of this oath it appears that if a note of cancellation is found among the lender's documents it is valid, which contradicts the previous teaching that a note of cancellation produced by the lender is invalid.
(34) It is valid if it is found among the lender's torn documents. This is why the orphans have to swear that no such note has been found.
(35) V. Sanh. 31b. This refers to a note of cancellation in possession of the lender, who denies having been paid, as is proved by the fact that he did not surrender it to the lender. The lender is not believed if the witnesses who signed the note testify that they signed it though they are unable to testify whether the debt was paid. Otherwise the lender is believed. This proves in any case that a note of cancellation in the possession of the lender is considered valid.

Talmud - Mas. Baba Metzia 21a

We ask the witnesses whether [the debt] is paid or not.[1]

Come and hear: A note of cancellation which bears the signatures of witnesses is valid?[2] — The witnesses referred to are witnesses to the endorsement [of the note by the Court].[3] This is also conclusive, for the final clause teaches: ‘But if it does not bear the signatures of witnesses it is invalid.’ Now, what is the meaning of [the words], ‘It does not bear the signatures of witnesses’? If I should say that [it means that] there are no signatures of witnesses on it at all — is it necessary to say that is invalid? Therefore we must assume that they are witnesses to the endorsement [of the note by the Court].

The main text [states]: ‘A note of cancellation which bears the signatures of witnesses must be corroborated by the signatories.’[4] But if it does not bear the signatures of witnesses[5] and is produced by a third person,[6] or if it is found below the signatures of the notes [of indebtedness],[7] it is valid.’ If it is produced by a third person [it is valid] because the lender trusted the third person;[8] if it is found below the signatures of the notes [of indebtedness it is] also [valid], because if [the debt] had not been paid he [the lender] would not have invalidated the note.

C H A P T E R I I

MISHNAH. SOME FINDS BELONG TO THE FINDER; OTHERS MUST BE ANNOUNCED.[9] THE FOLLOWING ARTICLES BELONG TO THE FINDER: IF ONE FINDS SCATTERED FRUIT, SCATTERED MONEY,[10] SMALL SHEAVES IN A PUBLIC THOROUGHFARE,[11] ROUND CAKES OF PRESSED FIGS, A BAKER'S LOAVES,[12] STRINGS OF FISHES, PIECES OF MEAT, FLEECES OF WOOL WHICH HAVE BEEN BROUGHT FROM THE COUNTRY,[13] BUNDLES OF FLAX AND STRIPES OF PURPLE,[14] COLOURED WOOL; ALL THESE BELONG TO THE FINDER.[15] THIS IS THE VIEW OF R. MEIR.[16] R. JUDAH SAYS: WHATSOEVER HAS IN IT SOMETHING UNUSUAL MUST BE ANNOUNCED,[17] AS, FOR INSTANCE, IF ONE FINDS A ROUND [OF FIGS] CONTAINING A POTSHERD, OR A LOAF CONTAINING MONEY. R. SIMEON B. ELEAZAR SAYS: NEW MERCHANDISE[18] NEED NOT BE ANNOUNCED.

GEMARA. IF ONE FINDS SCATTERED FRUIT, etc. What quantity [of fruit in a given space] is meant? R. Isaac said: A kab[19] within four cubits. But what kind of a case is meant? If [the fruit appears to have been] dropped accidentally, then even if there is more than a kab [it should] also [belong to the finder].[20] And if it appears to have been [deliberately] put down, then even if there is a smaller quantity it should not [belong to the finder]?[21] — R. 'Ukba b. Hama answered: We deal here with [the remains of] what has been gathered on the threshing floor:[22] [To collect] a kab [scattered over a space] of four cubits is troublesome, and, as people do not trouble to come back and collect it, [the owner also] abandons it, but if it is [spread over] a smaller space [the owner] does come back and collect it, and he does not abandon it. R. Jeremiah enquired: How is it [if one finds] half a kab [scattered over the space] of two cubits? Is the reason why a kab within four cubits [belongs to the finder] that it is troublesome [to collect], and therefore half a kab within two cubits, which is not troublesome to collect, is not abandoned [and should not belong to the finder], or is the reason [in the case of a kab within four cubits] that it is not worth the trouble of collecting [when spread over such a space], and therefore half a kab within two cubits, which is still less worth the trouble of collecting, is abandoned [and should belong to the finder]? [Again,] how is it [if one finds] two kabs [scattered over the space] of eight cubits? Is the reason why a kab within four cubits [belongs to the finder] that it is troublesome to collect, and therefore two kabs within eight cubits, which are still more troublesome to collect, are even more readily abandoned [and should certainly belong to the finder], or is the reason [in the case of a kab within four cubits] that it is not worth the trouble [of collecting], and therefore two kabs within eight cubits, which are worth the trouble [of collecting] are not abandoned [and should not belong to the finder]? [Again,] how is it [if one finds] a kab of poppy-seed [scattered over a space] of four cubits? Is the reason why a kab [of fruit] within four cubits [belongs to the finder] that it is not worth the trouble [of collecting], and therefore poppy-seed, which is worth the trouble [of collecting] is not abandoned [and should not belong to the finder], or is the reason [in the case of a kab within four cubits] that it is troublesome [to collect], and therefore poppy-seed, which is even more troublesome [to collect], is abandoned [and should belong to the finder]? [Again], how is it [if one finds] a kab of dates within four cubits, or a kab of pomegranates within four cubits? Is the reason why a kab [of ordinary fruit] within four cubits [belongs to the finder] that it is not worth the trouble of collecting, and therefore a kab of dates within four cubits, or a kab of pomegranates within four cubits, which also is not worth the trouble [of collecting] is abandoned [and should belong to the finder], or is the reason [in the case of a kab within four cubits] that it is troublesome to collect, and therefore a kab of dates within four cubits or a kab of pomegranates within four cubits, which are not troublesome [to collect], are not abandoned [and should not belong to the finder]? — The questions remain unanswered.

It has been stated:

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(1) Thus there is no contradiction to the previous teaching. It is only if the witnesses testify that they saw the debt being paid that the lender is not believed, and the note is valid. Otherwise we believe the lender, and the note is invalid.

(2) Even if it is in the possession of the lender.

(3) They are not witnesses who signed the receipt, but witnesses who testify that it was endorsed by the Court, and as the Court would not endorse the receipt unless the debt has been paid, the receipt is valid even if produced by the lender.

(4) And it is valid, even if produced by the lender, as the witnesses testify that it has been endorsed by the Court.

(5) I.e., witnesses to the endorsement.

(6) Neither the lender nor the borrower produces it, but a third person, with whom the notes were deposited, and his statement is accepted.

(7) The cancellation is written on the note of indebtedness below the signatures.

(8) As the lender writes the notes of cancellation he must have handed the note to the third person and placed his trust in him. The third person is therefore believed.

(9) So that the owner may claim them.

(10) Which cannot be identified by the loser and are thus given up by him as beyond recovery. The fact of the loser resigning himself to his loss (יאוש) renders the article public property and gives the finder the right to acquire it.

(11) Where the traffic soon destroys any distinguishing mark by which the sheaves might be identified.
(12) Which are uniform in appearance and cannot be identified.
(13) In a raw state, and bear no mark by which they could be identified.
(14) Long strips of wool dyed purple, a common article in the days of the Mishnah.
(15) The person who finds these articles need not announce them because they bear no marks by which the loser could identify them, and he has a right to keep them because the owner has given up the hope of recovering them.
(16) [Var. lec. omit, 'This is . . . R. Meir;' v. also infra p. 143. n. 1.]
(17) v. infra 23a.
(18) V. infra 23b.
(19) A measure. V. Glos.
(20) As the loser would have no means of identifying them.
(21) As the owner evidently intended to come back for them and has not really lost them.
(22) After the harvest.

Talmud - Mas. Baba Metzia 21b

Anticipated abandonment [of the hope of recovering a lost article][1] is, Abaye maintains,no abandonment,[2] but Raba maintains, it is an abandonment.[3] [If the lost article is] a thing which has an identification mark, all agree that [the anticipation of its abandonment by the owner] is no abandonment, and even if in the end[4] we hear him [express regret at his loss in a way that makes it clear] that he has abandoned it, it is not [deemed to be an] abandonment, for when [the finder] took possession[5] of it he had no right to it[6] because [it is assumed that] when [the loser] becomes aware that he lost it he will not give up the hope [of recovering it] but says [to himself], 'I can recognise it by an identification mark; I shall indicate the identification mark and shall take it back.' [If the lost article is found] in the intertidal space of the seashore or on ground that is flooded by a river, then, even if it has an identification mark, the Divine Law permits [the finder to acquire it], as we shall explain further on.[7] They differ only where the article has no identification mark. Abaye says: It is no abandonment because [the loser] did not know that he lost it;[8] Raba says: It is an abandonment, because when he becomes aware that he lost it he gives up the hope [of recovering it] as he says [to himself], 'I cannot recognise it by an identification mark,' it is therefore as if he had given up hope from the moment [he lost it].[9]

(Mnemonic: PMGSH MMKGTY KKS'Z.)[10] Come and hear: SCATTERED FRUIT[11] — [is not this a case where the loser] did not know that he lost it? — R. 'Ukba b. Hama has already explained that we deal here with [the remains of] what has been gathered on the threshing floor, so that [the owner] is aware of his loss.

Come and hear: SCATTERED MONEY, [etc.] BELONG TO THE FINDER. Why? [Is it not a case where the loser] did not know that he lost it? — There also it is even as R. Isaac said: A man usually feels for his purse at frequent intervals.[12] So here, too, [we say,] 'A man usually feels for his purse at frequent intervals' [and soon discovers his loss].

Come and hear: ROUND CAKES OF PRESSED FIGS, A BAKER'S LOAVES, [etc.] BELONG TO THE FINDER. Why? [Is it not a case where the loser] did not know that he lost it? — There also he becomes aware of his loss, because [the lost articles] are heavy.

Come and hear: STRIPES OF PURPLE [etc.] — THEY BELONG TO THE FINDER. Why? [Is it not a case where the loser] did not know that he lost them? — There also [he becomes aware of his loss] because the articles are valuable, and he frequently feels for them, even as R. Isaac said.

Come and hear: If one finds money in a Synagogue or in a house of study, or in any other place where many people congregate, it belongs to him, because the owner has given up the hope of

recovering it. [Is not this a case where the loser] did not know that he lost it? — R. Isaac answered: people usually feel for their purse at frequent intervals.

Come and hear: From what time are people allowed to appropriate the gleanings [of a reaped field]?[13] After the 'gropers' have gone through it.[14] Whereupon we asked: What is meant by the 'gropers'? and R. Johanan answered: Old people who walk leaning on a stick,[15] while Resh Lakish answered: The last in the succession of gleaners.[16] Now why should this be so? Granted that the local poor give up hope [of finding any gleanings].[17] there are poor people in other places who do not give up hope?[18] — I will say: Seeing that there are local poor, those [in other places] give up hope straight away, as they say. 'The poor of that place have already gleaned it.'[19]

Come and hear: Cut figs [found] on the road, even if [found] beside a field [covered with] cut figs.[20] and also figs found under a fig-tree that overhangs the road, may be appropriated [by the finder] without him being guilty of robbery, and they are free from tithing,[21] but olives and carob-beans are forbidden.[22] Now, the first part [of the Mishnah] implies no contradiction to Abaye[23] because [cut figs], being valuable, are under constant observation;[24] [whole] figs also are known to drop.[25] But the last part [of the Mishnah]. which teaches that olives and carob-beans are forbidden, implies a contradiction to Raba![26] — R. Abbahu answered: Olives are different [from other fruit] because one can recognise them by their appearance, and although olives drop [to the ground] the place of each one is known.[27] But if so, the same should apply to [whole figs in] the first part [of the Mishnah]?[28] — R. papa answered: Figs become filthy when they [drop to the ground].[29]

Come and hear: If a thief takes from one and gives to another, or if a robber takes from one and gives to another,

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(1) Lit., 'unconscious abandonment.' I.e., if an article is found before the loser has become aware of his loss, and the circumstances are such that the loser would have abandoned the hope of recovering the article had he known that he lost it.

(2) And the finder has no right to keep the article.

(3) And the article belongs to the finder.

(4) After the article came into the hands of the finder.

(5) Before the owner has been heard to despair of it.

(6) As the article can be identified the finder cannot legally acquire it.

(7) Infra 22b.

(8) He could not therefore consciously have given up the hope of recovering it.

(9) The 'abandonment' is deemed to have a retrospective effect, and this entitles the finder to acquire the article.

(10) Mnemonic consisting of Hebrew initials of the teachings that follow.

(11) Quotation from our Mishnah.

(12) B.K. 118b. So that he is bound to miss the money very shortly after he has lost it.

(13) Which belong to the poor. V. Lev. XIX, 9.

(14) Pe'ah VIII, 1.

(15) Who walk slowly and examine the ground carefully while looking for the gleanings, and are not likely to miss a single ear of corn.

(16) So that no other poor can hope to find any more gleanings.

(17) As the local poor see the aged and feeble, or the successive groups, glean in the field, they come to the conclusion that there would be nothing more left to glean, and they 'give up hope'.

(18) The poor who live at a distance cannot be said to give up hope consciously as they do not see the local gleaners. It must therefore be assumed that the reason why people who are not poor are allowed to appropriate the gleanings which have escaped the attention of the local poor is that the distant poor will give up hope when they will have learned how thoroughly the field has been gleaned by the local poor. This would prove that 'anticipated abandonment' is valid — in contradiction to the view of Abaye.

(19) Thus the 'abandonment' is not 'anticipated' but real at the time when the people come and appropriate what is left

of the gleanings, and there is contradiction to the view of Abaye.

(20) I.e., beside a field on which cut figs have been spread out to dry, and it is obvious that the figs on the adjoining road belong to the same owner.

(21) They are treated as ownerless goods which need not be tithed, for although the owner may not have known of the loss, he will abandon hope when he gets to know.

(22) Ma'as. III, 4.

(23) Who says that 'anticipated abandonment' is not valid.

(24) And the owner discovers his loss as soon as it occurs and abandons it.

(25) [And the owners in the absence of an identification mark give up the hope of recovering them (Tosaf.).]

(26) The owners are not deemed to have given up the hope of recovering them, as olives and carob-beans do not usually drop, and the owner is not aware of his loss. And although the owner is bound to discover his loss later, and will then 'give up hope,' it is only 'anticipated abandonment' at the time when the lost goods are found and appropriated. Thus 'anticipated abandonment' is not valid — in contradiction to the view of Raba.

(27) I.e., it is known to whom they belong. The owner therefore feels sure that he will recover them, and there is not even 'anticipated abandonment'. There is thus no contradiction to Raba.

(28) As olives can also be identified by their colour and shape.

(29) This is why the owner abandons them at once and they become public property. According to another version the translation would be, 'Figs change colour when they drop, (and cannot therefore be identified).'

Talmud - Mas. Baba Metzia 22a

or if the Jordan[1] takes from one and gives to another, then what has been taken is taken, and what has been given is given.[2] Now, this is obviously right as regards [things taken] by a robber or by the Jordan, because [the owner] sees them [when they are taken][3] and he gives up hope, but as regards a thief — does the owner see him [steal] so that [we could say that] he has given up hope?[4] — Rab papa explained it as referring to armed bandits.[5] But then it is the same as 'robbers'?[6] — There are two kinds of robbers.

Come and hear: If a river has carried off someone's beams, timber, or stones, and has deposited them in a neighbour's field, they belong to the neighbour because the owner has given up hope.[7] So the reason [why they belong to the neighbour] is that the owner has given up hope, but ordinarily they would not [belong to the neighbour]?[8] Here we deal with a case where [the owner] is able to retrieve them.[9] But if so, I must refer you to the last part [of the quoted teaching]: 'If the owner was running after them, [the neighbour] must return them': Now if it is a case where [the owner] is able to retrieve them, why state that he is running after them? [They should belong to him] even if he does not run after them! — We deal here with a case where the owner is able to retrieve [the property] with difficulty: If he runs after it [we conclude] that he has not given up the hope [of recovery]; if he does not run after it [we conclude] that he has given up the hope [of recovery].

Come and hear: In what circumstances has it been said that if one sets apart the heave-offering[10] without the knowledge [of the owner] the offering is valid? If one goes down into a neighbour's field, collects [the produce] and sets apart the heave-offering, without permission, if [the owner objects to the action and] considers it robbery, the offering is not valid, but if not, it is valid. And how can one tell whether [the owner] considers it as robbery or not? If the owner, on arriving and finding the person [in the field], says to him: You should have gone and taken the better kind [of the produce for the heave-offering], the offering is valid if there is a better kind to be found [in the field], but if not, it is not valid. If the owner collected [more of the produce] and added it [to the offering] it is valid in any case.[11] Thus [we see that] if there is a better kind [in the field] the offering is valid. But [is this so?] surely at the time when the offering was set apart [the owner] did not know it?[12] — Raba explained it according to Abaye: [The owner] made him [who set apart the offering] his agent.[13] This is conclusive indeed. For if you were to assume that he did not make him his agent, how could the offering be valid? Did not the Divine Law[14] [instead of] 'Ye', say, 'ye also',[14] to

include ‘your agent’, [as much as to say:] As you [set apart your offerings] with your own knowledge so must your agent [set apart your offerings] with your knowledge?[15] Therefore we must deal here with a case where [the owner] made him his agent and said to him, ‘Go and set apart the heave-offering,’ but did not say to him, ‘Set it apart from this kind,’ and usually an owner sets apart the heave-offering from the medium kind, but that other person went and set it apart from a better kind, whereupon the owner arrived and, finding him [in the field], said to him, ‘You should have gone and taken it from a [still] better kind.’[In such a case the law is that] if a better kind can be found [in the field] the offering is valid, but if not, it is not valid.

Amemar, Mar zutra. and R. Ashi once entered the orchard of Mari b. Isak [whereupon] his factor brought dates and pomegranates and offered them [to the visitors]: Amemar and R. Ashi ate them, but Mar Zutra did not eat them. Meanwhile Mari b. Isak arrived and he found them. He then said to his factor: Why did you not bring for the Rabbis some of those better kinds [of fruit]? Whereupon Amemar and R. Ashi said to Mar Zutra: Why does the Master not eat now? Has it not been taught: ‘If better ones can be found, the offering is valid’?[16] [Mar Zutra] answered them: Thus said Raba: ‘You should have gone and taken better ones’ has been declared to be a valid observation[17] only in regard to a heave-offering, because it is [the fulfilment of] a divine command, and he really wishes [to offer better ones], but here he may have said it out of courtesy.[18]

Come and hear: ‘If the dew is still upon them,[19] and the owner is pleased,[20] then [the Scriptural term, If water] be put [upon the seed][21] applies to it.[22] If it turned dry,[23] then, even if [the owner] is pleased [that the dew came upon it at first,

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(1) Or any other river which carries away goods and lands them somewhere else.

(2) The recipient has a right to keep the goods. Cf. B.K., 114a.

(3) He sees them being carried off and he at once abandons them.

(4) As the owner does not become aware of his loss when it occurs he cannot be said to have consciously abandoned hope.

(5) Who commit open larceny, so that the owner becomes aware of his loss at once and abandons it.

(6) Cf. B.K. 57a.

(7) An event like the flooding of one's property soon becomes known, and the owner becomes aware of his loss and gives up hope. In the Tosef. Keth. VIII, the version is: ‘They belong to the neighbour if the owner has given up hope,’ so also R. Han. and Tosaf. a.l. (q.v.).

(8) In regard to an ordinary loss, of which the owner is not likely to have become aware at once, it would not be said that it belongs to the finder. This would contradict the view of Raba.

(9) So that ordinarily the owner never gives up hope and there is not even ‘anticipated abandonment’. Thus there is no contradiction to Raba.

(10) Cf. Num. XVIII, 8.

(11) V. Kid. 52b.

(12) It must therefore be concluded that ‘anticipated knowledge’ is as good as real knowledge. In the same way ‘anticipated abandonment’ should be deemed as valid as real abandonment, in contradiction to Abaye.

(13) So that he can act for his owner at any time, and his action is always valid.

(14) Num. XVIII, 28.

(15) The agent must have the owner's mandate to act for him. Cf. infra 71b; Kid. 41b.

(16) As the owner's suggestion to offer up better ones is taken as an expression of his consent to the agent's action in the case of the heave-offering, so here also Mari b. Isak's suggestion to his factor should be taken as an expression of his approval of the factor's action in offering the fruit to the Rabbis.

(17) Implying an expression of consent on the part of the owner.

(18) Lit., ‘bashfulness’; and may not really be an expression of consent.

(19) I.e., upon produce exposed to be dried, which by receiving moisture from water or other specified liquids (v. Mak. VI, 4) is rendered capable of becoming ritually unclean.

(20) It is only when the owner of the produce is pleased with the process of wetting which the produce undergoes that

the produce is by this process rendered capable of becoming ritually unclean.

(21) Lev. XI, 38.

(22) And it becomes capable of being rendered ritually unclean.

(23) I.e., if at the time when the owner heard that the dew had come upon the produce it was dry again.

Talmud - Mas. Baba Metzia 22b

the term If water] be put [upon the seed] does not apply to it.'[1] Is not the reason [for this ruling] that we do not say, 'because it appears that he is pleased now it is as if he had been pleased originally'?[2] — There it is different: It is written, 'If one puts',[3] [which means] only when he puts [the water on].[4] But if so, this should apply also to the first case?[5] That [can be explained] according to R. Papa. For R. papa pointed out a contradiction: It is written, 'If one puts'. and we read, 'If it be put'[6] — how is it to be explained? 'Being put must be like 'putting': As 'putting' can only be done with the knowledge [of him who puts] so 'being put' must happen with the' knowledge [of the person concerned].[7]

Come and hear: R. Johanan said in the name of R. Ishmael[8] b. Jehozadak: Whence [do we learn] that an article lost through the flooding of a river may be retained [by the finder]? It is written, And so shalt thou do with his ass; and so shalt thou do with his garment; and so shalt thou do with every lost thing of thy brother's, which he hath lost, and thou hast found.[9] [which means to say that only] if the object has been lost to him and may be found by any person [has it to be returned to him, and it follows that] a case like this[10] is exempt [from the Biblical law],[11] since it is lost to him and cannot be found by any person. Moreover, the object which is forbidden [to be kept by the finder] is like the object which is permitted [to be kept by the finder]: Just as the permitted object[12] may be kept irrespective of whether it has an identification mark or not, so the forbidden object[13] may not be kept irrespective of whether it has an identification mark or not.[14] [This is] a complete refutation of Raba. And the law is in accordance with Abaye in [the cases indicated by the initials] Y'AL KGM.[15]

R. Aha, the son of Raba, said to R. Ashi: Seeing that Raba has been refuted,[16] how is it that we eat dates that have been shaken down [from the tree] by the wind?[17] — [R. Ashi] answered him: [The owner] gives them up straight away because there are vermin and creeping creatures that eat them.[18] [But what if they belong to] orphans who [are minors and] cannot legally renounce [their possessions]? — [R. Ashi] answered him: We do not assume that every piece of ground is the property of orphans.[19] But what if it is known [to be the property of orphans]? Or if the tree is surrounded by a fence?[20] — [R. Ashi] answered him: Then they are forbidden.[21]

SMALL SHEAVES IN A PUBLIC THOROUGHFARE BELONG TO THE FINDER. Rabbah said: Even when they have an identification mark. Consequently [it must be assumed that] Rabbah is of the opinion that an identification mark which is liable to be trodden on[22] is not [deemed to be] an identification mark.[23] Raba said [on the other hand]: [The Mishnah] refers only to things which have no identification mark, but things which have an identification mark have to be announced.[24] Consequently [it must be assumed that] Raba is of the opinion that an identification mark that is liable to be trodden on is [deemed to be] an identification mark. Some teach this as an independent controversy.[25] In regard to an identification mark which is liable to be trodden on, Rabbah says that it is not [deemed to be] an identification mark, but Raba says that it is [deemed to be] an identification mark.

We have learnt: Small sheaves [which are found] in a public thoroughfare belong to the finder, [but if found] on private grounds[26] they have to be taken up and announced.[27] How is this to be understood? If [the sheaves] have no identification mark — what is there to be announced [if they are found] on private grounds? It must therefore be that they have an identification mark, and still it is stated that [if found] in a public thoroughfare they belong to the finder. Consequently [it must be

assumed that] an identification mark which is liable to be trodden on is not [deemed to be] an identification mark, which is a refutation of Raba! — Raba may answer you: In reality they have no identification mark; and as to your question, 'What is there to be announced [if they were found] on private grounds?', [the answer is:] The place [where they were found] is announced.[28] But Rabbah says that the place is no identification mark. For it has been stated: [In regard to] the place — Rabbah says, it is not considered an identification mark, but Raba says, it is an identification mark.

Come and hear: Small sheaves [which are found] in a public thoroughfare belong to the finder, but [if found] on private grounds they have to be taken up and announced. Big sheaves, however, whether [they are found] in a public thoroughfare or [are found] on private grounds, have to be taken up and announced. How does Rabbah explain it,[29] and how does Raba explain it?[30] — Rabbah explains it according to his view: By the identification mark.[31] Raba explains it according to his view: By the place.[32] Rabbah explains it according to his view — by the identification mark — [and the reason why] small sheaves [found] in a public thoroughfare belong to the finder [is] that

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(1) And the produce is not deemed capable of being rendered ritually unclean (Tosef. Mak. III).

(2) The feeling of pleasure is not deemed to have a retrospective effect. In the same way we ought to say that 'anticipated abandonment' has no retrospective effect, which would contradict the view of Raba.

(3) Lev. ibid.

(4) The spelling is יתן without a ו after the י, which may be read יִתֵּן 'he puts'. It is only the vowels that turn it into the passive יִתַּן 'it is put'.

(5) Where the owner becomes aware of the dew having come upon the produce while moisture is still there.

(6) V. p. 138. n. 12.

(7) And if the knowledge that dew descended upon the produce comes after the event, the produce is rendered capable of becoming ritually unclean if the owner is pleased with the event, provided the produce is still moist.

(8) Other versions have Simeon instead of Ishmael. Cf. infra 27a, where the version is 'Simeon b. Yohai'.

(9) Deut. XXII, 3.

(10) When the flooded river has carried off a person's goods.

(11) Regarding the restoration of lost property.

(12) Such as an article which has been carried off by a stream and cannot be retrieved by everybody.

(13) I.e., the object which has been lost in the ordinary way and may be found by anybody.

(14) If there is reason to believe that the owner was not aware of his loss at the time when it was lost, though on becoming aware he would abandon hope of its return.

(15) Cf. Sanh. (Sonc. ed.) p. 159, n. 3.

(16) And 'anticipated abandonment' is not deemed effective.

(17) Seeing that at the time when the dates are shaken down the owner is unaware of his loss and does not consciously give it up.

(18) The owner knows that some of the dates fall off the tree, and he gives them up in advance because vermin usually get at them and eat them.

(19) As the majority of the fields or gardens do not belong to orphans we do not reckon with the possibility of orphan ownership.

(20) Guarding it against ravage by vermin and creeping creatures.

(21) In such cases the finder is not allowed to keep the fruit.

(22) When the lost article is small and lies in a place where there is traffic, it is likely to be trodden on, so that the identification mark may disappear.

(23) The owner does not depend on the mark in such a case, and he gives up the article as soon as it is lost.

(24) And if the owner identifies them by the mark, he receives them back.

(25) I.e., not in connection with our Mishnah.

(26) As in a sown field which few people frequent.

(27) [Read with MS.M.: 'they have to be announced', this passage being, as the term תנן indicates, a composite of our Mishnah and the next Mishnah, 25a.]

(28) The owner then identifies the lost goods by indicating the place where he lost them.

(29) In what respect do big sheaves differ from small sheaves as regards being trodden on?

(30) In what respect do small sheaves differ from big sheaves as regards the absence of an identification mark?

(31) Which is retained in big sheaves but is lost in small sheaves.

(32) Big sheaves remain in the same place, but not small sheaves.

Talmud - Mas. Baba Metzia 23a

they are trodden on,[1] while on private grounds [the finder] has to take them up and announce them because there they are not trodden on. Big sheaves, however, whether [they are found] in a public thoroughfare or on private grounds, [the finder] has to take up and announce because, being raised, one does not tread on them. Raba, again, explains it according to his view — by the place — [and the reason why] small sheaves [found] in a public thoroughfare belong to the finder [is] that they are pushed along,[2] while on private grounds [the finder] has to announce them because they are not pushed along.[3] Big sheaves, however, whether [they are found] in a public thoroughfare or on private grounds, [the finder] has to take up and announce because being many they are not pushed along.

Come and hear: A BAKER'S LOAVES, [etc.] BELONG TO THE FINDER — but 'home-made loaves have to be announced,'[4] now what is the reason in the case of home-made loaves, obviously that they have an identification mark and one can tell that the bread belongs to this person or that person, and, no matter whether [they are found] in a public thoroughfare or on private grounds, [the finder] has to take them up and announce them. It therefore follows that an identification mark which is likely to be trodden on is a valid mark, — which is a refutation of Rabbah! — Rabbah will answer you: There[5] the reason is that one may not pass by eatables.[6] — But there are heathens?[7] Heathens [do not pass by eatables because they] are afraid of witchcraft.[8] But are there not cattle and dogs? — [The Mishnah speaks] of places where cattle and dogs are not frequent.

Are we to maintain that this [difference of opinion between Rabbah and Raba is the same] as [the following difference between] the Tannaim [of our Mishnah]: R. JUDAH SAYS: WHATSOEVER HAS IN IT SOMETHING UNUSUAL MUST BE ANNOUNCED, AS, FOR INSTANCE, IF ONE FINDS A ROUND [OF FIGS] CONTAINING A POTSHERD, OR A LOAF CONTAINING MONEY. This implies that the first Tanna [of the Mishnah] holds that these articles belong to the finder [in spite of their unusual feature].[9] Now the prevalent opinion was then that all would agree that an identification mark which might have come of itself[10] was a valid mark,[11] and that one might pass by eatables.[12] It must therefore be assumed that [the Tannaim] differ regarding an identification mark which is likely to be trodden on: One holds that it is not a valid mark, and the other holds that it is a valid mark![13] — R. Zebid replied in the name of Raba: If you assume that the first Tanna [of the Mishnah] is of the opinion that an identification mark which is likely to be trodden on is not a valid mark, and that one may pass by eatables, why should one have to announce [the finding of] home-made loaves? Therefore R. Zebid said in the name of Raba that all are of the opinion that an identification mark which is likely to be trodden on is a valid mark,[14] and that one may pass by eatables. but here [in our Mishnah the Tannaim] differ regarding an identification mark which may have, come of itself,[15] the first Tanna being of the opinion that a distinguishing mark which may have come of itself is not a valid mark, and R. Judah being of the opinion that it is a valid mark. Rabbah [on the other hand] will tell you that all agree that an identification mark which is likely to be trodden on is not a valid mark, and that one may not pass by eatables,[16] but that [the Tannaim] differ here regarding a mark which may have come of itself,[17] the first Tanna being of the opinion that it is not a valid mark, and R. Judah being of the opinion that it is a valid mark.

Some have another version.[18] The prevalent opinion was then that all would agree that an identification mark which might have come of itself was a valid mark, while an identification mark which was likely to be trodden on was not a valid mark. It must therefore be assumed that [the

Tannaim] differ as to whether one may walk on eatables or not, one holding that it is permitted, and the other holding it is not permitted?[19] — R. Zebid then replied in the name of Raba: If you assume that the first Tanna holds that an identification mark which is likely to be trodden on is not a valid mark, and that one may pass by eatables, why should one have to announce [the finding of] home-made loaves? Therefore R. Zebid said in the name of Raba that all are of the opinion that an identification mark which is likely to be trodden on is a valid mark, and that one may pass by eatables, but here [in our Mishnah the Tannaim] differ regarding an identification mark which may have come of itself, the first Tanna being of the opinion that an identification mark which may have come of itself is not a valid mark, and R. Judah being of the opinion that it is a valid mark. Rabbah [on the other hand] will tell you that all agree that an identification mark which is likely to be trodden on is not a valid mark, and that one may not pass by eatables, but that [the Tannaim] differ here regarding a mark which may have come of itself, the first Tanna being of the opinion that an identification mark which may have come of itself is not a valid mark, and R. Judah being of the opinion that it is a valid mark.

R. Zebid said in the name of Raba: The general principle in regard to a loss is: If [the loser] has said, 'Woe! I have sustained a monetary loss,' he has given it up.[20]

R. Zebid also said in the name of Raba: The law is: Small sheaves, [if found] in a public thoroughfare, belong to the finder; [if found] on private grounds they belong to the finder when [discovered in the position of things] dropped [accidentally], but [if found in the position of things] laid down [deliberately, the finder] has to take them up and announce them. Both [rulings] apply only to a [case where the lost] article has no identification mark, but in a [case where the lost] article has an identification mark it has to be announced irrespective of whether [it has been found in the position of things] dropped [accidentally] or whether [it has been found in the position of things] laid down [deliberately].

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(1) So that the identification mark disappears.

(2) They are moved about by the traffic and do not remain in the place where they were dropped.

(3) As there is very little traffic in private premises they remain in the same place.

(4) V. Mishnah, infra 25a.

(5) In the case of the loaves referred to in the Mishnah.

(6) Therefore loaves of bread will not be trodden on but will be picked up as soon as they are noticed. Cf. 'Er. 64b.

(7) Who are not likely to observe the rule laid down by the Rabbis.

(8) They are afraid to tread on eatables in case the eatables are bewitched.

(9) The first Tanna (R. Meir in our version of the Mishnah) says distinctly that rounds of figs belong to the finder, and he makes no distinction between those that contain something unusual and those that do not.

(10) As a potsherd in a round of figs — which may have got into the round accidentally or may have been put in deliberately.

(11) As it is assumed that it was done deliberately, for the purpose of identification.

(12) Therefore the first Tanna maintains that the mark is of no consequence, as if trodden on it will disappear.

(13) The first Tanna will say that as it is liable to be trodden on and to disappear it is not a valid mark, and R. Judah will say that as long as the mark is there it is valid.

(14) This accounts for the need of announcing home-made loaves.

(15) Such as money found in home-made loaves.

(16) Which explains the ruling of R. Judah in our Mishnah.

(17) V. p. 143. n. 7.

(18) According to which the difference of opinion between the Rabbis refers to the question whether one may pass by eatables or not.

(19) R. Meir would hold that it is permitted and therefore the mark is not valid, while R. Judah would hold the contrary view.

(20) And the finder is entitled to keep it.

Talmud - Mas. Baba Metzia 23b

AND STRINGS OF FISHES. Why [do they belong to the finder]? Should not the knot serve as an identification mark?[1] — [The Mishnah speaks] of a fisherman's knot which is tied so universally.[2] But should not the number of [fishes on the string] serve as a distinguishing mark? — [The Mishnah speaks] of a fixed number [of fishes].[3] R. Shesheth was asked: Is the number[4] a distinguishing mark or not? — R. Shesheth answered: You have learned it: If one finds a vessel of silver or copper or tin[5] of lead or any other kind of metal,[6] one shall not return it unless [the loser] indicates a mark, or unless he states accurately its weight. And seeing that weight is an identification mark measurement and number are also [to be deemed] identification marks.

AND PIECES OF MEAT, etc. Why [do they belong to the finder]? Should not the weight serve as a distinguishing mark? — [The Mishnah speaks] of a fixed weight.[7] But should not the piece itself, whether it be of the neck[8] or of the loin, serve as an identification mark? Has it not been taught: 'If one finds pieces of fish, or a fish which has been bitten into,[9] one has to announce [the find]; barrels of wine, oil, corn, dried figs, or olives belong to the finder'? — Here we deal with a case where there is an identification mark in the cut.[10] Thus Rabbah son of R. Huna used to cut [pieces of meat] in the shape of a triangle.[11] There is also a proof for this:[12] For he mentions [cut pieces as if they were] like the fish which has been bitten into.[13] This is conclusive.

The Master said [as quoted above]: 'Barrels of wine, oil, corn, dried figs, or olives belong to the finder.' But have we not learnt: Jars of wine and jars of oil have to be announced?[14] — R. Zera answered in the name of Rab: Our Mishnah deals with sealed [barrels].[15] 'It must thus be assumed that the Baraitha deals with open [barrels] — but open barrels constitute a deliberate loss![16] — R. Hosaia answered: [It deals with] barrels which have been stopped up.[17] Abaye says: You may even say that both [the Mishnah and the Baraitha] deal with sealed [barrels], yet there is no contradiction: Here[18] [the law refers to the time] before the opening of the cellars;[19] there [it refers to the time] after the opening of the cellars.[20] Thus R. Jacob b. Abba found a barrel of wine after the opening of the cellars, and when he appeared before Abaye the latter said to him: Go and take it for yourself.[21]

R. Bibi asked of R. Nahman: Is the place [where an article is found] an identification mark or not? — [R. Nahman] answered him: You have learned it: If one finds barrels of wine, or of oil, or of corn, or of dried figs, or of olives, they belong to him. Now if you were to assume that the place [where an article is found] is an identification mark [the finder] ought to announce the place![22] — R. Zebid answered: Here we deal with [barrels found] on the river-bank.[23] R. Mari said: For what reason did the Rabbis maintain that the river-bank does not constitute an identification mark? Because we say to him:[24] As it happened to you, so it may have happened to your neighbour.[25] Some have another version: R. Mari said: For what reason did the Rabbis maintain[26] that the place constitutes no identification mark? Because we say to him: As it happened to you in this place, so it may have happened to your neighbour in this [same] place.

Once a man found some pitch in a winepress. So he appeared before Rab, and the latter said to him: Go and take if for yourself. When [Rab] saw that he hesitated [to do so] he said to him: Go and share it with my son Hiyya. Shall we then say that Rab is of the opinion that the place [where an article is found] does not constitute an identification mark? — R. Abba answered: It was appropriated because it[27] was deemed to have been abandoned by the owners, as it was seen that weeds had grown upon it.[28]

R. SIMEON B. ELEAZAR SAYS, etc. What is meant by 'anfuria'?[29] Rab Judah said in the name of Samuel: New vessels which one's eye has not yet sufficiently noted.[30] — In what circumstances? If there is on them an identification mark — what does it matter if the eye has not yet sufficiently

noted them? If there is no identification mark on them-what does it matter if the eye has sufficiently noted them?[31] — Admittedly there is no identification mark on them. But the point [as explained by Rab Judah] is important in regard to the question whether the [lost vessels] should be returned to [a claimant who is] a learned man[32] [and who recognises the vessels] by sight:[33] If [it is a case where] the eye has sufficiently noted [the lost vessels] he is sure to know them, and we give them back to him. But [in a case] where the eye has not sufficiently noted them he cannot be sure to know them, and we do not give them back to him. For Rab Judah said in the name of Samuel: In the following three matters learned men do conceal the truth: In matters of a tractate,[34] bed,[35]

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(1) Cf. supra 20b; infra 25b.

(2) The kind of knot which fishermen use everywhere and which therefore cannot be regarded as an identification mark.

(3) The number of fishes which fishermen usually hang on the same string, so that there is nothing distinctive about it.

(4) Var. loc., weight instead of number. [This apparently is the correct reading, as is shown by what follows, unless we omit 'measurement' in the last sentence of this paragraph. There is however also a reading: 'Is the measurement, number and weight etc.?' v. D.S.]

(5) **

(6) [So MS.M., cur. edd.: 'vessels'.]

(7) The usual weight of pieces of meat cut by butchers for sale. Cf. p. 145. nn. 3-4.

(8) [Or, 'rib'.]

(9) This forms an identification mark.

(10) The pieces of fish referred to in the quoted Baraitha are distinguishable by reason of the peculiar shape into which they are cut.

(11) Which made them distinguishable so that they remained Kasher even when they were lost sight of.

(12) The context bears out the correctness of the assumption that the shape of the pieces was peculiar and served as an identification mark.

(13) Which is obviously recognisable because of the identification mark.

(14) Infra 25a.

(15) Barrels which had been opened for the purpose of taking a sample of the wine, and were sealed again by the vendor with his own (distinctive) seal before delivery.

(16) Barrels of wine which have been left open become unfit for use (cf. Ter. VIII, 4), and the person who leaves it open knows that he is incurring a loss.

(17) But not sealed — so that there is no identification mark, while the wine is fit to be used.

(18) In the Mishnah.

(19) Before the time when the sale and delivery of the barrels of wine begins, and when the barrels are still generally unsealed. If one vendor then sealed a barrel and sold it the seal constitutes an identification mark.

(20) When the sealing of the barrels has become general, and the seal no more constitutes an identification mark.

(21) He had a right to keep the found barrel as it was not deemed to have an identification mark.

(22) So that the loser could claim the articles by indicating the place where he lost them.

(23) The quay where barrels are unloaded from the boats. Such a place cannot be regarded as an identification mark, and the indication of the place would not entitle one to reclaim the lost barrel.

(24) To the loser.

(25) Other people may have left barrels of wine there by mistake.

(26) [Read preferably with some texts, 'What is the reason of the one who maintains, etc.?']

(27) Lit., 'they considered the fact that it, etc.'

(28) Which showed that the pitch had been there for a long time and had been given up by the owner.

(29) אנפוריא merchandise. [It is connected in dictionaries with the Gr. **]

(30) As they have not been sufficiently long in use, and they cannot be properly recognised when seen again.

(31) If there is nothing particular about them to distinguish them from other vessels the fact that they have been long in use, and that their shape etc. has been fully noted, should make no difference.

(32) Who is not likely to claim goods to which he is not entitled.

(33) Cf. supra 19a.

(34) If he asked whether he is familiar with a certain tractate of the Talmud he will modestly say 'no' — even though in

fact he is familiar with it.

(35) This is explained in various ways. According to Rashi it refers to a question which may be put to a scholar regarding the performance of his conjugal duties, and to which he may decline to give a correct answer because of a sense of delicacy.

Talmud - Mas. Baba Metzia 24a

hospitality.[1] What is the point [in this observation]? — Mar Zutra said: [It is important in regard to the question] of returning a lost article, [recognised] by sight: If we know that [the claimant] conceals the truth in those three matters only we give it back to him, but if he does not speak the truth also in other matters we do not give it back to him. Mar Zutra the pious once had a silver vessel stolen from him[2] in a hospice. When he saw a disciple wash his hands and dry them on someone else's garment he said, 'This is the person [who stole the vessel], as he has no consideration for the property of his neighbour.' [The disciple] was then bound, and he confessed.

It has been taught: 'R. Simeon b. Eleazar admits that new vessels which the eye has sufficiently noted have to be announced. And the following new vessels which the eye has not sufficiently noted have not to be announced: such as — poles of needles,[3] knitting needles, and bundles of axes. All these objects mentioned above are permitted[4] only if they are found singly, but if found in twos one must announce them.' What are badde ['poles']? Rods. And why are they called badde ['poles']? Because an object on which things hang is called 'bad'[5] — as is stated there:[6] One leaf on one branch ['bad']. 'R. Simeon b. Eleazar also said: If one rescues anything from a lion, a bear, a leopard, a panther, or from the tide of the sea, or from the flood of a river, or if one finds anything on the high road, or in a broad square, or in any place where crowds are frequent, it belongs to the finder — because the owner has given it up.[7]

The question was asked: Did R. Simeon b. Eleazar say this [with regard to things found in places] where the majority of the people are heathens,[8] but not where the majority are Israelites, or [did he say this] also [with regard to things found in places] where the majority are Israelites? And if you come to the conclusion that [he said this] also where the majority are Israelites do the Rabbis differ from him or not? And if you come to the conclusion that they differ from him — they would certainly differ where the majority are Israelites — do they differ where the majority are heathens, or not?[9] And if you come to the conclusion that they differ even where the majority are heathens, is the law in accordance with his view or not? And if you come to the conclusion that the law is in accordance with his view, does this apply only to the case where the majority are heathens, or also to the case where the majority are Israelites? — Come and hear: If one finds money in a Synagogue or a house of study, or in any other place where crowds are frequent, it belongs to the finder, because the owner has given it up.[10] Now, who is the authority that lays it down that we go according to the majority[11] if not R. Simeon b. Eleazar? You must therefore conclude that [he applies this principle] also to a case where the majority are Israelites![12] — Here we deal with [a case where the money found was] scattered.[13] But if [the money was] scattered, why refer to places where crowds are frequent? It would apply also to places where crowds are not frequent![14] — Admittedly, therefore, [the reference is to money found] in bundles,[15] but we deal here with Synagogues[16] of heathens. But how can this be applied to 'houses of study'?[17] — [The reference is to] our houses of study in which heathens stay.[18] Now that you have arrived at this conclusion [the reference to] 'Synagogues' [can] also [be explained as meaning] our Synagogues in which heathens stay.

Come and hear: If one finds therein[19] a lost object, then if the majority are Israelites it has to be announced, but if the majority are heathens it has not to be announced.[20] Now who is the authority that lays it down that we go according to the majority if not R. Simeon b. Eleazar? You must therefore conclude that R. Simeon b. Eleazar says this only where the majority are heathens, but not where the majority are Israelites! — [No.] This is the view of the Rabbis. But then you could

conclude therefrom that the Rabbis accept R. Simeon b. Eleazar's view in the case where the majority are heathens! — Admittedly, therefore, this[21] represents the view of R. Simeon b. Eleazar, and his ruling applies also to a case where the majority are Israelites, but here[21] we deal [with a case where the money was] concealed.[22] But if it was concealed, what has [the finder] to do with it? Have we not learnt: 'if one finds a vessel in a dungheap, if covered up he may not touch it; but if uncovered he must take it and announce it'?[23] — As R. papa explained:[24] [The reference is] to a dungheap which is not regularly cleared away, and which [the owner] unexpectedly decided to clear away — so here also [the reference is] to a dungheap which is not regularly cleared away, and which [the owner] unexpectedly decided to clear away.[25]

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(1) Regarding which a scholar may refuse to give correct information in order not to embarrass his host by inducing others to come and seek the latter's hospitality.

(2) [MS.M. omits 'from him'. The cup belonged accordingly to the hospice. (V. Rashi.) This version is supported by the fact that Mar Zutra acted in the case in a judicial capacity, and it is unlikely that he would act thus in a case affecting his own interests. V. Chajes. Z.H. Notes a.l.]

(3) Poles into which needles are stuck (Rashi). Some authorities leave out the word 'poles' and read 'needles' alone. Others regard the word 'poles' as separate from the word 'needles' (not as a construct but as an absolute plural form) and translate 'poles, needles,' etc.

(4) To be kept by the finder.

(5) בד the singular of בדי (poles).

(6) [So according to many texts; cur. edd., 'as we learnt' is evidently a copyist's error, as the passage cited (Suk. 44b) is not Mishnaic but Amoraic.]

(7) A.Z. 43a.

(8) [Heathens do not return lost articles (v. infra p. 152, n. 3), and consequently do not come within the provision of the law relating to the announcement of finds. Moreover, according to Tosaf., even if it were certain that the article belonged to an Israelite, there would be no need to return it because the owner, presuming that a heathen found it, would despair of recovering it. v. B.K. (Sonc. ed.) p. 666.]

(9) [In view of the principle that we do not follow the majority in money matters.]

(10) Cf. supra 21b.

(11) I.e., that in the question whether a found article is to be returned depends on considerations relating to the majority of the people that frequent the place where the article is found.

(12) As the majority of those congregating in a Synagogue are Israelites.

(13) In such a case the Rabbis also hold that the money belongs to the finder, as stated in the Mishnah, supra 21a.

(14) Scattered money has no identification mark and is given up by the owner as soon as it is lost, even if crowds do not frequent the place where it has been dropped.

(15) Which present an identification mark and are only given up when lost in a place which is frequented by crowds.

(16) כנסיות, lit., 'houses of assembly', or 'meeting places,' not Jewish houses of prayer. It is in this sense that the term is used here.

(17) Even if the term 'Synagogues' could be interpreted as meaning secular meeting places used by Gentiles, how could the term בית המדרש applied only to Colleges where Jewish law is studied and expounded, mean anything but Jewish Colleges frequented by Jews?

(18) Jewish Colleges situated outside the Jewish quarters and guarded by Gentile watchmen placed there for the purpose.

(19) In a city inhabited by Jews and heathens.

(20) Mak. II, 8.

(21) This cited Mishnah.

(22) In which case it was not lost at all, and if the majority were Israelites the finder would have to announce it.

(23) As the article may have been thrown on the dungheap accidentally (Mishnah, infra 25b).

(24) Ibid.

(25) In which case the finder must take the article away and announce it. (Cf. infra 25b.) Had the owner of the dungheap been in the habit of clearing it away regularly the person who placed the article there could not have claimed it, as the 'loss' would have been a deliberate one.

And if you wish I will say: Admittedly this is the view of the Rabbis,[1] but is it stated. 'They belong to the finder'? — It [merely] says 'He has not to announce them' [meaning that] he lets it lie,[2] and when an Israelite comes and indicates an identification mark in it he receives it.

Come and hear: R. Assi said: If one finds a barrel of wine in a town where the majority are heathens he is permitted [to keep it] as a find but he is forbidden to derive any benefit from it.[3] If an Israelite comes and indicates an identification mark in it the finder is permitted to drink it.[4] Now this is obviously in accordance with the view of R. Simeon b. Eleazar.[5] It therefore follows that R. Simeon b. Eleazar only Says this where the majority are heathens, but not where the majority are Israelites! — [No.] In reality, I will tell you. R. Simeon b. Eleazar says this also where the majority are Israelites, but R. Assi agrees with him in the one case[6] but differs from him in the other case.[7] But if [the finder] is forbidden to derive any benefit [from the barrel of wine], what purpose does the law serve [by permitting him to keep it]? — R. Ashi answered: In regard to the vessel.[8]

A certain man once found four zuz which had been tied up in a cloth and thrown into the river Biran. When he appeared before Rab Judah the latter said to him, 'Go and announce it.' But is not this [like retrieving an object from] the tide of the sea? — The river Biran is different. As it contains obstacles[9] the owner does not give up hope.[10] But does not the majority[11] consist of heathens? Hence it must be concluded that the halachah is not in accordance with R. Simeon b. Eleazar even where the majority are heathens! — [The position in regard to] the river Biran is different. For Israelites dam it up[12] and Israelites dredge it: As Israelites dam it up it may be assumed that an Israelite dropped [the coins], and as Israelites dredge it, [the loser] did not give them up.[13]

Rab Judah once followed Mar Samuel into a street of wholemeal vendors,[14] and he asked him: What if one found here a purse?[15] — [Mar Samuel] answered: It would belong to the finder. What if an Israelite came and indicated an identification mark? — [Mar Samuel] answered: He would have to return it. Both?[16] — [Mar Samuel] answered: [He should go] beyond the requirements of the law.[17] Thus the father of Samuel found some asses in a desert, and he returned them to their owner after a year of twelve months: [he went] beyond the requirements of the law.

Raba once followed R. Nahman into a street of skinners[18] — some say into a street of scholars — and he asked him: What if one found here a purse? — [R. Nahman] answered: It would belong to the finder. What if an Israelite came and indicated its identification mark? — [R. Nahman] answered: It would [still] belong to the finder. But that one keeps protesting! — It is as if one protested against his house collapsing or against his ship sinking in the sea.

Once a vulture seized a piece of meat in the market and dropped it among the palm-trees belonging to Bar Marion. When the latter appeared before Abaye he[19] said to him: Go and take it for yourself. Now, the majority [in that case] consisted of Israelites. Hence it must be concluded that the halachah is in accordance with R. Simeon b. Eleazar even where the majority are Israelites! — [The position in regard to] a vulture is different — for it is like the tide of the sea.[20] But did not Rab say that meat which has disappeared from sight is forbidden?[21] — He[22] stood by and watched it.[23]

R. Hanina once found a slaughtered kid between Tiberias and Sepphoris, and he was permitted [to appropriate] it. R. Ammi said: He was permitted [to appropriate] it as a find, according to R. Simeon b. Eleazar, and as regards the method of slaughter[24] — [it was deemed proper.] according to R. Hanania, the son of R. Jose the Galilean. For it has been taught[25] 'If one lost his kids or chickens and subsequently found them slaughtered — R. Judah forbids them, and R. Hanania the son of R. Jose the Galilean, permits them [to be eaten]. Rabbi said: The words of R. Judah seem right in a case where [the lost kids or chickens] were found on a dungheap while the words of R. Hanania, the son

of R. Jose the Galilean seem right when they were found in a house.[26] Now, seeing that they were permitted in regard to the method of slaughter, the majority must have consisted of Israelites.[27] Hence it must be concluded that the halachah is according to R. Simeon b. Eleazar even where the majority are Israelites! — Raba replied: [That was a case where] the majority [of the inhabitants were] heathens, and the majority of the slaughterers [were] Israelites.[28]

R. Ammi once found some slaughtered pigeons between Tiberias and Sepphoris. When he appeared before R. Assi — some say, before R. Johanan; others again say, in the house of study — he was told: 'Go and take them for yourself.'

R. Isaac the blacksmith once found some balls of string which were used for making nets. When he appeared before R. Johanan — some say. in the house of study — he was told: 'Go and take them for yourself.'

*MISHNAH. THE FOLLOWING OBJECTS HAVE TO BE PROCLAIMED: IF ONE FINDS FRUIT IN A VESSEL,[29] OR A VESSEL BY ITSELF, MONEY IN A PURSE,[30] OR A PURSE BY ITSELF; HEAPS OF FRUIT,[31] HEAPS OF COINS,

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(1) And it is not a case where the money was concealed. It is wrong, however, to conclude from this that the Rabbis agree with R. Simeon b. Eleazar where the majority are heathens, as their decision does not mean that the article belongs to the finder.

(2) [I.e., he retains it in his possession till an Israelite comes. V. Strashun a.l.] The fact that the majority are heathens does not, according to the Rabbis, entitle the finder to appropriate the article, v. supra. p. 151, n. 9.

(3) As the wine may have been used in connection with idol-worship and thus become יין נסך i.e., forbidden not only to be drunk by Jews but also to be utilised in any way that might yield profit or pleasure.

(4) As the owner proves to be a Jew the prohibition relating to wine used in connection with idol-worship does not arise, and as the majority of the inhabitants of the place are heathens who do not return lost articles, the owner must be assumed to have abandoned the hope of recovering the lost goods.

(5) Who maintains that in such a case the majority must be considered in deciding whether the finder is entitled to appropriate the article or not.

(6) Where the majority are heathens.

(7) Where the majority are Israelites.

(8) He may use the vessel in which the wine is contained, although he is forbidden to use the wine.

(9) Various kinds of network intended to catch the fish.

(10) As the network is likely to hold up the article floating in the river the owner hopes that the article will ultimately be recovered.

(11) Of the inhabitants of the territory through which the river Biran flows.

(12) By placing the network therein for the purpose of catching fish.

(13) He depended on the Israelites recovering the article during dredging operations and returning it to him.

(14) Where crowds congregate.

(15) Would he be entitled to keep it?

(16) Do not the two views contradict each other?

(17) I.e., in saying 'he would have to return it' R. Simeon b. Eleazar did not give a legal decision but indicated what he would regard as the proper action to take on the ground of morality. The term used (לפנים משורת הדין) means literally 'within the line of justice,' i.e. performing a good action even if one is not compelled to do so legally. Cf. B.K. (Sonc. ed.) p. 584, n. 2.

(18) Persons who deal in skins, leather and leather goods.

(19) Abaye.

(20) The owner is sure to have given up the hope of recovering the loss.

(21) As it may have been exchanged for, or replaced by, meat taken from an unclean animal or be otherwise unfit to be eaten by Jews.

(22) Bar Marion.

(23) From the time the vulture seized it until it dropped it.

(24) I.e., as regards the assumption that the kid had been slaughtered in accordance with the Jewish ritual and was therefore 'Kasher', or fit to be eaten by Jews.

(25) V. Hul. 12a.

(26) Which would show that they were unfit to be eaten.

(27) As otherwise it could not be assumed that the Jewish method of slaughter had been used.

(28) It could therefore be assumed that the Jewish method of slaughter was used, although the majority of the inhabitants were heathens. * The translation from here to the end of the tractate is by Rabbi Dr. H. Freedman.

(29) Which usually has some identification mark by which the owner may recognise it.

(30) Which also has an identification mark.

(31) Heaps of fruit or money also have identification marks, as explained in the Gemara below.

Talmud - Mas. Baba Metzia 25a

THREE COINS ON THE TOP OF EACH OTHER,[1] BUNDLES OF SHEAVES IN PRIVATE PREMISES, HOME-MADE LOAVES, FLEECES OF WOOL FROM THE CRAFTSMAN'S WORKSHOP, JARS OF WINE OR JARS OF OIL, THEY HAVE TO BE PROCLAIMED.

GEMARA. Obviously it is only when fruit is found in a vessel, or money in a purse. [that they have to be proclaimed]; but if the fruit is in front of the vessel, or the money in front of the purse, they belong to the finder. Our Mishnah thus teaches the same as our Rabbis taught [in another place]: If one finds fruit [lying] in front of a vessel, or money in front of a purse, they belong to the finder. If [the fruit is] partly in the vessel and partly on the ground, or if [the money is] partly in the purse and partly on the ground, they have to be proclaimed.

But the following contradicts it: If a man found an object lacking an identification mark at the side of an object possessing it, he is bound to proclaim [them];[2] if the identifier of the mark came and took his own,[3] the other [sc. the finder] is entitled to the object without a mark! — Said R. Zebid: There is no difficulty. The former [Baraitha] refers to a cask and flax; the latter, to a basket and fruit.[4] R. papa said: Both refer to a basket and fruit, yet there is no difficulty. The latter [Baraitha] holds good if something was still left therein; the former, if nothing was left therein.[5] Alternately, both [Baraithas] mean that nothing is left therein, yet there is no difficulty. In the latter, its [sc. the basket's] mouth is turned towards the fruit; in the former, it is not. Another alternative: in both its mouth faces the fruit, yet there is no difficulty. The former [Baraitha] treats of baskets with rims; the latter, of the baskets without.[6]

HEAPS OF FRUIT; HEAPS OF COINS. This proves that number is an identification mark![7] — [No.] Read: A heap of fruit.[8] Then it proves that place is a means of identification! [No.] Read: HEAPS OF FRUIT.[9]

THREE COINS ON TOP OF EACH OTHER. R. Isaac said: provided that they lie pyramid-wise.[10] It has been taught likewise: If a man finds scattered coins, they belong to him. If they are arranged pyramid-wise he is bound to proclaim them. Now is not this self-contradictory? [First] you state, 'If a man finds scattered coins they belong to him,' thus implying, but if they overlap,[11] he must proclaim them.[12] Then consider the latter clause: 'If they are arranged pyramid-wise, He is bound to proclaim them,' implying, however, that if they merely overlap, they are his? — All [coins] not arranged conically the Tanna designates scattered.

R. Hanina said: This was taught only of [coins of] three kings;[13] but if of one king, he need not proclaim them. How so? If they lie pyramid-wise, then even [if they are] of one king [the proclamation should be made]; if they do not lie pyramid-wise, even if they are of three kings there should be no need [to proclaim them]? — But if stated, it[14] was thus stated: 'This was taught only of

[coins of] one king, yet similar to those of three.'[15] How so? When they lie pyramidically, the broadest at the bottom, the medium-sized upon it, and the smallest on top of the middle one; in which case we assume that they were placed thus. If, however, they are of one king, all being of equal size, then even if they are lying upon each other they belong to him [the finder]: we assume that they fell thus together by mere chance. R. Johanan [however] maintained: Even if of the same king,[16] he must proclaim them.[17]

Now, what does he proclaim — the number?[18] Then why particularly three — even if two it should be the same? — Said Rabina: He announces 'coins'.[19]

R. Jeremiah propounded: What if they were disposed in a circle,[20] in a row, triangularly.[21] or ladderwise?[22] — Solve at least one [problem]. For R. Nahman said in Rabbah b. Abbuha's name: Wherever a chip can be inserted[23] whereby they [the coins] may be lifted simultaneously, a proclamation must be made.[24]

R. Ashi propounded:

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(1) V. Gemara below.

(2) E.g.. a purse and money; if the purse is identified, the money too belongs to its owner. This contradicts the Baraitha just quoted.

(3) But disclaimed ownership of the other object.

(4) The cask is identifiable, but not the flax; similarly the basket and the fruit. Now, had the flax fallen out of the cask, some would have remained therein; hence it is assumed that they were lying together by chance, and so the flax belongs to the finder. Fruit, however, can easily roll out of its basket entirely, and therefore both are assumed to belong to the same person.

(5) R. Papa would appear to reject R. Zebid's distinction. Rashi, however, observes that fruit baskets generally had an inside rim, which would prevent ail the fruit from rolling out. In that case, R. Papa and R. Zebid may agree, R. Papa referring to baskets with rims, R. Zebid to rimless ones. In point of fact, whereas Maimonides accepts R. Papa's explanation but rejects R. Zebid's, shewing that he holds them contradictory. Asheri and the Tur accept both.

(6) V. n. 3.

(7) Since fruit and.coins cannot be identified, the only possible distinguishing feature is the number of heaps.

(8) I.e., though the Mishnah employs the plural, that is only in a general way; yet the same holds good even of a single heap. In that case, of course, there is no number, the place where it was found being the mark of identification.

(9) I.e., though it has just been stated that the plural may be generic, on the other hand it may be particularly used, in which case number is the distinguishing feature. Hence the Mishnah merely proves that either number or place is an identification mark, but not both, and it cannot be shewn which.

(10) Conically, a large coin at the bottom, a smaller one above it, and so on. These must have been placed so, and the owner will be able to identify them by the manner of their disposal. — The reason of such disposal might have been that the owner found himself bearing the money on the Sabbath, or on Friday just before the commencement of the Sabbath; v. Shab. 153b.

(11) Lying partly on each other and partly on the ground. — Rashi. Jast: but if they lie irregularly, some of them piled, others scattered.

(12) Because they would not have fallen, but must have been placed thus.

(13) Each coin being of a different reign.

(14) The statement of R. Hanina.

(15) I.e., of different sizes.

(16) I.e., of equal size.

(17) Since they are arranged exactly on top of each other.

(18) That three coins were found, and the owner identifies them by their arrangement.

(19) Without stating a number; two being the smallest possible number of 'coins', it cannot be accepted as a mark of identification; hence the find is not proclaimed for less than three. The translation and explanation follows Asheri, who regards the question as bearing directly on the Mishnah and not on the views of R. Hanina and R. Johanan, as Rashi

appears to regard it.

(20) Lit., ‘like a bracelet’.

(21) Lit., ‘as a tripod.’

(22) The greater part of the middle coin lying on the bottom one, and the greater part of the top coin lying on the middle one.

(23) [Adopting reading of some texts; cur. edd.: ‘between them’.]

(24) For they must have been placed so. Hence a proclamation is necessary if they lay ladderwise.

Talmud - Mas. Baba Metzia 25b

What if they are arranged as the stones of a Merculis way-mark?[1] — Come and hear: For it has been taught: If one finds scattered coins, they belong to him; [but if they lay] as the stones of a Merculis way-mark, he must proclaim them. And thus are the stones of a Mercules way-mark arranged: one at each side, and a third on top of both.[2]

Our Rabbis taught: If one finds a sela’ in a market place, and then his neighbour accosts him and says. ‘It is mine; it is new, a Nero coin or of such and such an emperor’ — he is ignored.[3] Moreover, even if his name is written upon it, his claim is still rejected,[4] because an identification mark is of no avail in respect to a coin, for one can say, He may have expended it and someone else lost it.[5]

MISHNAH. IF A MAN FINDS FLEDGLINGS TIED TOGETHER BEHIND A FENCE OR WALL, OR IN THE PATHWAYS THROUGH FIELDS, HE MUST NOT TOUCH THEM.[6] IF A MAN FINDS A VESSEL IN A DUNGHEAP: IF COVERED UP, HE MUST NOT TOUCH IT;[7] IF UNCOVERED. HE MUST TAKE AND PROCLAIM IT.

GEMARA. What is the reason?[8] — Because we say, A person hid them here, and if he [the finder] takes them, their owner has no means of identifying them. Therefore he must leave them until their owner comes and takes them. But why? let the knot be a means of identification![9] — Said R. Abba b. Zabda in Rab's name: They were tied by their wings, everyone tying them thus. Then let the place [where they were found] be an identification mark. — Said R. ‘Ukba b. Hama: It refers to such that can hop. But if they hop, they may have come from elsewhere, and should be permitted![10] — One may surmise that they came from elsewhere, but one can also surmise that a person hid them there: hence it is a case of doubtful placing, and R. Abba b. Zabda said in Rab's name: Whenever it is doubtful if an article was left [in a certain spot], one must not take it in the first instance; but if he took, he need not return it.

IF A MAN FINDS A VESSEL ON A DUNG HEAP: IF COVERED UP, HE MUST NOT TOUCH IT; IF EXPOSED, HE MUST TAKE AND PROCLAIM IT. But the following contradicts it: If one finds an article hidden in a dungheap, he must take and proclaim it, because it is the nature of a dungheap to be cleared away![11] — Said R. Zebid: There is no difficulty. The one refers to casks and cups; the other to knives and forks: in the case of casks and cups, he must not touch them;[12] in the case of knives and forks, he must take and proclaim them.[13] R. papa said: Both refer to casks and cups, yet there is no difficulty. The one refers to a dungheap that is regularly cleared away; the other, to one that is not cleared away regularly.[14] ‘A dungheap which is regularly cleared away’! — But then it is a voluntary loss?[15] — But it refers to a dungheap which was not regularly cleared away, but he [its owner] decided to clear it out.[16] Now, as for R. papa, it is well; on that account[17] it is stated, ‘because it is the nature of a dunghill to be cleared away.’[18] But according to R. Zebid, what is meant by, ‘because it is the nature of a dunghill to be cleared away’? — [This:] Because it is the nature of a dunghill that small articles should be cleared therein.[19]

MISHNAH. IF HE FINDS [AN ARTICLE] AMIDST DEBRIS OR IN AN OLD WALL,[20] THEY BELONG TO HIM. IF HE FINDS AUGHT IN A NEW WALL: IF IN THE OUTER HALF

[THEREOF], IT IS HIS; IN THE INNER HALF, IT BELONGS TO THE OWNER OF THE HOUSE.[21] BUT IF IT [THE HOUSE] USED TO BE RENTED TO OTHERS, EVEN IF HE FINDS [ARTICLES] IN THE HOUSE ITSELF, THEY BELONG TO HIM.

GEMARA. A Tanna taught: Because he [the finder] can say to him;[22] They belonged to Amorites.[23] Do then only Amorites hide objects. and not Israelites?[24] — This holds good only

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(1) I.e., a way-mark dedicated to Merculis or Mercurius, a Roman divinity identified with the Greek Hermes. The Gemara states below how these were disposed. Our text actually reads 'Kulis', and Tosaf. conjectures that this was the true name of the deity, but the Hamburg MS. reads 'Merculis'.

(2) [The Baraitha has in mind the trilithon or dolmen erected in front of the image.]

(3) Lit., 'he has said nothing'.

(4) V. last note.

(5) Lit., 'it fell from another person.'

(6) These places are semi-guarded, and therefore the birds may have been placed there, as explained in the Gemara.

(7) Because the covering shews that it was placed there.

(8) For the first ruling in the case of the fledglings.

(9) The owner can say where they were tied together.

(10) Since the owner has no means of identifying them.

(11) And if he does not take it, a heathen or an unscrupulous Jew may do so when the heap is cleared and keep it for himself. — Now, 'hidden' means that it is covered up, yet it is stated that he must take and proclaim it.

(12) These are too large to have been thrown there inadvertently.

(13) Because they may have been thrown there by accident.

(14) In the former case the finder must take and proclaim them; in the latter, he must not touch them.

(15) Why then proclaim them?

(16) V. supra p. 151.

(17) Sc. the distinction he draws.

(18) I.e., at any time.

(19) Hence a knife or fork (v. p. 159 n. 8) must be taken and proclaimed.

(20) These had cavities in which the objects could be placed.

(21) The reference is to a wall fronting a public thorough. fare. If the find is in the 'outer half,' i.e., the part facing the street, it must have been placed there by a passer-by, who has forgotten it; therefore it belongs to the finder. If in the 'inner half,' i.e., the part facing the house it encloses, the owner of the house must have placed it there.

(22) The owner of the ruins or the old wall.

(23) I.e., to one of the races that formerly inhabited Palestine.

(24) Surely if the article is in the inner half of the cavity, nearer the house, it should belong to the owner of the house.

Talmud - Mas. Baba Metzia 26a

if it [the find] is exceedingly rusty.[1]

IN A NEW WALL: IF IN THE OUTER HALF [THEREOF], IT IS HIS; IN THE INNER HALF, IT BELONGS TO THE OWNER OF THE HOUSE. R. Ashi said: A knife follows its handle, and a purse its straps.[2] Then when our Mishnah states, IF IN THE OUTER HALF [THEREOF], IT IS HIS; IN THE INNER HALF, IT BELONGS TO THE OWNER OF THE HOUSE: let us see whether the handle or the straps point outwards or inwards? — The Mishnah refers to tow-cotton and bar metal.[3]

A Tanna taught: If the wall [cavity] was filled therewith, they divide.[4] But is that not obvious? — It is necessary [to state this] only when it [the cavity or the wall] slopes to one side: I might have thought that it [the article found there] had slid down.[5] Therefore we are taught [otherwise].

BUT IF IT [THE HOUSE] USED TO BE RENTED TO OTHERS, EVEN IF ONE FINDS

[ARTICLES] IN THE HOUSE ITSELF, THEY BELONG TO HIM. Why so: let it be assigned to the last [tenant]?[6] Did we not learn: Money found in front of cattle dealers at all times is [accounted as] tithe; on the Temple Mount, it is hullin; in [the rest of] Jerusalem, at any other part of the year, it is hullin; at the Festival season, it is tithe.[7] And R. Shemaia b. Ze'ira observed thereon: What is the reason? Because the streets of Jerusalem[8] were swept daily. This proves that we assume: the earlier [losses] have gone, and these [coins] are different ones. So here too, the earlier [deposits] have gone, and these belong to the last [tenant]?[9] — Said Resh Lakish on the authority of Bar Kappara: It means e.g., that he [the owner of the house] had let it as a temporary lodging to three people [simultaneously].[10] Then you may infer that the halachah agrees with R. Simeon b. Eleazar even in respect to a multitude of Israelites![11] — But, said R. Manassia b. Jacob, it means e.g., that he had let it as a temporary lodging to three gentiles. R. Nahman said in Rabbah b. Abbahu's name: It may even refer to three Jews.[12] What then is the reason? It is because the man who lost it despairs thereof, arguing thus: 'Let us see, no other person but these was with me. Now, I have many times mentioned it in their presence so that they should return it to me, but they did not do so. Will they now return it![13] Had they intended to return it, they would have returned it to me,[14] hence the reason of their not returning it to me is that they intend stealing it.'[15] Now, R. Nahman follows his general reasoning. For R. Nahman said: If a person sees a sela'

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(1) Shewing that it was left there long ago. [An anticipation of modern archaeological research, v. Krauss, S., Hasoker, I, p. 131.]

(2) If a knife is found in a wall cavity, if the handle points inwards, it belongs to the owner of the house; outwards, it is assumed to have been placed there by a passer-by; similarly with a purse and its straps or laces.

(3) I.e., to articles where this criterion is inapplicable.

(4) Half belongs to the house owner and half to the finder.

(5) But was originally at the upper portion of the cavity, and the ownership should be determined accordingly.

(6) I.e., let the last tenant be assumed the owner (Tosaf.).

(7) Shek. VII, 2. If money is found in Jerusalem, the question arises, what is its status — is it ordinary secular coins (hullin) or tithe money? This was because the second-tithe (v. infra p. 517. n. 5) had to be eaten in Jerusalem or its monetary equivalent expended there, which money likewise was governed by the law of second tithe. Now, most of the flesh eaten in Jerusalem was bought with second tithe money, and generally took the form of peace offerings; when one could not stay long enough in Jerusalem to expend all the tithe money there, he would distribute it amongst the poor, or give it to his friends in Jerusalem. Consequently. if money is found in front of cattle dealers, whatever the time of the year, it is assumed to be of the second tithe. On the other hand, if found on the Temple Mount, we assume it to be hullin, even at Festival time, when most of the money handled is tithe, because the greater part of the year is not Festival, and then ordinary hullin is in circulation, and this money might have been lost before the Festival. But if found in the other streets of Jerusalem, a distinction is drawn, as stated in the text.

(8) But not the Temple Mount.

(9) Because before a tenant leaves his house he makes a thorough search to see that he leaves nothing behind.

(10) In addition to the tenant (so it appears to be understood by Tosaf. a.l. s.v. לשלשה and אפילו). Therefore whichever tenant lost it would have abandoned it in despair of its being returned, in accordance with the view stated by R. Simeon b. Eleazar supra 24a: three constitute a multitude.

(11) V. supra 24a.

(12) And still it does not follow that the halachah rests with R. Simeon b. Eleazar.

(13) After a lapse of some time. Surely not!

(14) And not assumed that it was lost by a former tenant.

(15) Thus in these special circumstances the loser may despair of the return thereof. But normally we do not follow the ruling of R. Simeon in the case of the majority of Israelites.

Talmud - Mas. Baba Metzia 26b

fall from one of two people [who are together], he must return it. What is the reason? He who dropped it does not despair thereof, for he argues: 'Let us see, no other person but this one was with

me; then I will seize him and say to him, You did take it.' But in the case of three[1] he need not return it. What is the reason? — Because he who dropped it certainly abandons it, arguing to himself, 'Let us see: there were two with me; if I accuse the one he will deny it, and if I accuse the other, he will deny it.'

Raba said: As for your ruling that in the case of three he need not return it, that holds good only if it [the coin lost] lacks the value of a perutah[2] for each [of the three]; but if it contains the equivalent of a perutah for each person, he is bound to return it. What is the reason? They may be partners, and therefore do not abandon it.[3] Others state. Raba said: Even if it is worth only two perutahs, he must return it. What is the reason? They may have been partners, and one renounced his portion in the owner's favour.[4]

Raba also said: If a man sees a sela' fall, if he takes it before abandonment, intending to appropriate it,[5] he transgresses all [the following injunctions]: Thou shalt not rob;[6] thou shalt restore them;[7] and, thou mayest not hide thyself.[8] And even if he returns it after abandonment, he merely makes him [the loser] a gift, whilst the offence he has committed stands.[9] If he picks it up before abandonment, intending to return it, but after abandonment decides to appropriate it, he violates [the injunction,] thou shalt restore them.[10] If he waits until the owner despairs thereof and then takes it, he transgresses only, thou mayest not hide thyself.[11]

Raba also said: If a man sees his neighbour drop a zuz in sand, and then finds and takes it, he is not bound to return it. Why? He from whom it fell abandons it, and even if he is seen to bring a sieve and sift [the sand], he may merely be reasoning. 'Just as I dropped something, so may another have lost an article, and I will find it.'[12]

MISHNAH. IF A MAN FINDS [AN ARTICLE] IN A SHOP, IT BELONGS TO HIM.[13] BETWEEN THE COUNTER AND THE SHOPKEEPER ['S SEAT], TO THE SHOPKEEPER.[14] [IF HE FINDS IT] IN FRONT OF A MONEY-CHANGER, IT BELONGS TO HIM [THE FINDER]; BETWEEN THE STOOL[15] AND THE MONEY-CHANGER, TO THE MONEY-CHANGER. IF ONE BUYS PRODUCE FROM HIS NEIGHBOUR, OR IF HIS NEighbour SENDS HIM PRODUCE, AND HE FINDS MONEY THEREIN, IT IS HIS. BUT IF THEY [THE COINS] ARE TIED UP, HE MUST TAKE AND PROCLAIM THEM.[16]

GEMARA. R. Eleazar said: Even if they [the articles found] are lying on the [money-changer's] table [they belong to the finder]. We learnt: [IF HE FINDS IT] IN FRONT OF A MONEY-CHANGER, IT BELONGS TO HIM. [This implies,] but if it was on the table, it belongs to the money-changer.[17] Then consider the second clause: BETWEEN THE STOOL AND THE MONEY-CHANGER, TO THE MONEY-CHANGER; [implying,] but if on the table, it is his [the finder's], But [in truth] no inference can be drawn from this.[18] And whence does R. Eleazar know this? — Said Raba: Our Mishnah presented to him a difficulty. Why teach particularly, BETWEEN THE STOOL AND THE MONEY-CHANGER. IT BELONGS TO THE MONEY-CHANGER? Let it state. 'on the table,' or, 'If one finds [an article] in a money-changer's shop.' just as the first clause teaches, IF ONE FINDS [AN ARTICLE] IN A SHOP, IT BELONGS TO HIM. Hence it must follow that even if it lay on the table, it is his.[19]

IF ONE BUYS PRODUCE FROM HIs NEIGHBOUR etc. Resh Lakish said on R. Jannai's authority: This refers only

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(1) If it was dropped by one of three persons.

(2) Cf. Mishnah, infra 55a.

(3) When one discovers the coin gone, he thinks that his partner may have taken it as a practical joke. The stranger therefore picks it up before abandonment, and so must return it.

(4) Hence the two perutahs belong to two, i.e., a perutah for each, so that the article comes within the ambit of theft, if taken before abandonment.
(5) For it is regarded as theft if he picks it up then with the intention of keeping it.
(6) Lev. XIX, 13.
(7) Deut. XXII, 1.
(8) Ibid. 3-sc. from taking up and returning a lost article.
(9) Lit., 'he has committed it.'
(10) Because 'thou shalt not rob' is applicable only when the action itself is committed with that intention. [Nor is the injunction. 'thou mayest not hide thyself' applicable where the desire to appropriate it came to him after abandonment; v. Rashi and Tosaf.]
(11) Since he takes it after abandonment, he is not guilty of robbery, nor must he return it. But by waiting until then, he 'hid himself,' i.e., refrained from taking the find at the proper time.
(12) But he has no hopes of finding his own, which he has already abandoned. Therefore the finder need not return it.
(13) This refers to an article which cannot be identified. Since any customer might have dropped it, the shopkeeper has no particular claim to it; whilst the loser must have abandoned it, since it bears no mark of identification. Asheri, however, maintains that it refers even to an article which can be identified, because the loser argues to himself, 'In all probability the shopkeeper would have been the first to find it, and since I have complained of my loss in his presence and he has not responded, he evidently intends to keep it.' Therefore the loser abandons it, and so the finder may keep it. (V. supra 26a for a similar argument.)
(14) Customers having no access to that spot, the shopkeeper must have dropped it there.
(15) [The chest attached to the table in front of the money-changer, wherein the money was placed; v. Krauss, TA, II. 411.]
(16) The manner of tying, or the number of coins, can prove ownership.
(17) 'IN FRONT' denotes on the ground.
(18) It neither refutes nor supports R. Eleazar.
(19) I.e., these difficulties force him to translate 'IN FRONT OF A MONEY-CHANGER as meaning even on his table, though generally the phrase connotes on the ground.

Talmud - Mas. Baba Metzia 27a

to one who purchases from a merchant;[1] but if one buys from a private individual, he is bound to return [the coins].[2] And a tanna recited likewise before R. Nahman: This refers only to one who purchases from a merchant: but if from a private individual, he is bound to return [the coins]. Thereupon R. Nahman observed to him: 'Did then the private individual thresh [the grain] himself?'[3] 'Shall I then delete it?' he enquired. — 'No,' he replied; 'interpret the teaching of one who threshed [the grain] by his heathen slaves and bondswomen.[4]

MISHNAH. NOW, THE GARMENT TOO WAS INCLUDED IN ALL THESE: WHY THEN WAS IT SINGLED OUT?[5] THAT AN ANALOGY MIGHT BE DRAWN THEREWITH, TEACHING: JUST AS A GARMENT IS DISTINGUISHED IN THAT IT BEARS IDENTIFICATION MARKS AND IS CLAIMED, SO MUST EVERYTHING BE ANNOUNCED, IF IT BEARS IDENTIFICATION MARKS AND IS CLAIMED.[6]

GEMARA. What is meant by IN ALL THESE? — Said Raba: In the general phrase, [and in like manner shalt thou do] with every lost article of thy brother.[7]

Raba said: Why should the Divine Law have enumerated ox, ass, sheep and garment?[8] They are all necessary. For had the Divine Law mentioned 'garment' alone, I would have thought: That is only if the object itself can be attested, or the object itself bears marks of identification. But in the case of an ass, if its saddle is attested or its saddle bears marks of identification,[9] I might think that it is not returned to him. Therefore the Divine Law wrote 'ass,' to shew that even the ass [too is returned] in virtue of the identification of its saddle. For what purpose did the Divine Law mention

'ox' and 'sheep'?' — 'Ox', that even the shearing of its tail, and 'sheep', that even its shearings [must be returned].[10] Then the Divine Law should have mentioned 'ox', to shew that even the shearing of its tail [must be returned], from which the shearings of a sheep would follow a fortiori? — But, said Raba, 'ass,' mentioned in connection with a pit,[11] on R. Judah's view, and 'sheep' in connection with a lost article, on all views, are [unanswerable] difficulties.[12] But why not assume that it comes [to teach] that the dung [too must be returned]? — [The ownership of] dung is renounced.[13] But perhaps its purpose is to teach the law of identification marks? For it is a problem to us whether identification marks are Biblically valid [as a means of proving ownership] or only by Rabbinical law; therefore Scripture wrote 'sheep' to shew that it must be returned even on the strength of identification marks, thus proving that these are Biblically valid. — I will tell you: since the Tanna refers to identification marks in connection with 'garment', for he teaches, JUST AS A GARMENT IS DISTINGUISHED IN THAT IT BEARS IDENTIFICATION MARKS AND IS CLAIMED, SO MUST EVERYTHING BE ANNOUNCED, IF IT BEARS IDENTIFICATION MARKS AND IS CLAIMED, it follows that the purpose of 'sheep' is not to teach the validity of identification marks.[14]

Our Rabbis taught: [And so shalt thou do with all lost things of thy brother's] which shall be lost to him:[15] — this excludes a lost article worth less than a perutah. R. Judah said: And thou hast found it[16] — this excludes a lost article worth less than a perutah.[17] Wherein do they differ? — Said Abaye: They differ as to the texts from which the law is derived: one Master deduces it from, 'which shall be lost to him;' the other, from, 'and thou hast found it.'[18] Now, he who derives it from, 'which shall be lost to him,' how does he employ, 'and thou hast found it?' — He requires it for Rabbanai's dictum. For Rabbanai said: And thou hast found it implies even if it has come into his possession.[19] Now, he who deduces it from, 'and thou hast found it,' how does he utilize, 'which shall be lost to him?' — He needs it for R. Johanan's dictum. For R. Johanan said on the authority of R. Simeon b. Yohai:[20] Whence do we know that a lost article swept away by a river is permitted [to the finder]? From the verse, 'And so shalt thou do with all the lost things of thy brother which shall be lost to him and thou hast found it': [this implies.] that which is lost to him but is available[21] to others in general, thus excluding that which is lost to him and is not available to others. And the other, whence does he infer Rabbanai's dictum? — He derives it from, and thou hast found it.[22] And the other, whence does he know R. Johanan's dictum? — From, [which shall be lost] to him.[23] And the other?[24] — In his opinion, to him has no particular significance.

Raba said: They differ in respect of [a loss worth] a perutah, which [subsequently] depreciated.[25] On the view that it is derived from, 'which shall be lost to him,' there is [the loss of a perutah]; but according to him who deduces it from, 'and thou hast found it,' there is not [a find of a perutah]. Now, he who emphasizes, 'which shall be lost' — surely, 'and thou hast found it,' must also be applicable, which is not [the case here]! — But they differ in respect of [an article now worth] a perutah, having appreciated.[26] On the view that it is deduced from, 'and thou hast found it,' there is [the find of a perutah]; whereas according to him who deduces it from, 'which shall be lost,' there is not [the loss of a perutah]. Now, he who emphasizes, 'and thou host found it' — surely, 'which shall be lost,' must also be applicable, which is not [the case here]! — But they differ in respect of [an article worth] a perutah, which fell and then rose in value again.[27] On the view that it is derived from, 'which shall be lost.' there is [the loss of a perutah]; but according to the opinion that it is inferred from, 'and thou host found it,' it must have had the standard of a 'find' from the time of being lost until found.

The scholars propounded: Are identification marks [legally valid] by Biblical or merely by Rabbinical law? What is the practical difference? —

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(1) Who himself buys from many people, so that the original ownership cannot be traced.

(2) 'Private individual' means one who grows his own produce.

(3) The money might have been lost by one of his workmen.
(4) These have no rights of ownership, and even if they lost the money, it still belongs to their master.
(5) Lit., 'did it go forth.'
(6) Lit., 'it has claimants'. The last phrase excludes articles which the owner has abandoned. — The whole Mishnah is explained in the Gemara.
(7) Deut. XXII, 3. — The 'singling out' of a garment is in the same verse: and in like manner shalt thou do with his garment.
(8) Thou shalt not see thy brother's ox or his sheep go astray, and hide thyself from them: thou shalt in any case return them unto thy brother . . . . In like manner shalt thou do with his ass, and so shalt thou do with his garment. — Ibid. 1, 3.
(9) But not the ass itself.
(10) If the finder had occasion to shear these animals while in his Possession.
(11) Ex. XXI, 33: And if a man shall open a pit . . . and on ox or an ass fall therein.
(12) V. B.K. 54a. The Rabbis maintain that the maker of the pit is not responsible if a man or utensils fall therein, interpreting, 'ox,' but not man, 'ass,' but not utensils. R. Judah, however, maintains that he is responsible for utensils: hence the difficulty, why mention 'ass?'
(13) Hence it need not be returned.
(14) Though it is stated below that the Tanna may have mentioned identification marks in connection with 'garment' casually, yet that is sufficient to prove that in his opinion the purpose of 'sheep' is certainly not to prove their validity.
(15) Literal rendering of Deut. XXII, 3. (E.V.: which he hath lost.)
(16) Ibid.
(17) That which is not worth a perutah is neither a loss nor a find.
(18) But there is no difference in actual law.
(19) Lit., 'hand.' V: supra. p. 2.
(20) [Var. lec., 'b. Jehozadak,' v. supra p. 139. n. 4.]
(21) Lit., 'found.'
(22) [ומצאתה in the perfect following the imperfect אשר תאבד is taken to denote the pluperfect.]
(23) Whereas his own deduction that the law applies only to a loss worth a perutah, is from 'lost.'
(24) What does he derive from, 'to (from) him'?
(25) I.e., when lost it was worth a perutah, but not when found.
(26) When lost, it was not worth a perutah, but its value had increased to a perutah by the time it was found.
(27) When lost, it was worth a perutah; then its value fell, but when found it was again worth a perutah.

Talmud - Mas. Baba Metzia 27b

In respect of returning a woman's divorce on the strength of identification marks:[1] should you say that they are Biblically [valid], we return it; but if only by Rabbinical law the Rabbis enacted this measure for civil matters only, not for ritual prohibitions?[2] — Come and hear: NOW, THE GARMENT TOO WAS INCLUDED IN ALL THESE. WHY THEN WAS IT SINGLED OUT? THAT AN ANALOGY MIGHT BE DRAWN THEREWITH, TEACHING: JUST AS A GARMENT IS DISTINGUISHED IN THAT IT BEARS IDENTIFICATION MARKS AND IS CLAIMED, SO MUST EVERYTHING BE ANNOUNCED. IF IT BEARS IDENTIFICATION MARKS AND IS CLAIMED![3] — The Tanna really desires [to teach] that there must be a claimant; identification marks are mentioned only incidentally.[4]

Come and hear: [Therefore Scripture wrote 'ass,' to shew that even] the ass [too is returned] in virtue of the identification marks of its saddle![5] — Read: in virtue of the witnesses [attesting to the ownership] of its saddle.[6]

Come and hear: And it [sc. the article found] shall be with thee until thy brother seek after it [and thou shalt return it to him]:[7] now, would it then have occurred to thee that he should return it to him before he sought after it![8] But [it means this:] examine him [the claimant], whether he be a fraud or not.[9] Surely that is by means of identification marks![10] — No: by means of witnesses. Come and

hear: Testimony[11] may be given[12] only on proof [afforded by] the face with the nose, even if the body and the garment bear identification marks.[13] This proves that identification marks are not Biblically valid! — I will tell you: In respect to the body, [the proposed identification marks were] that it was short or long;[14] whilst those of his garments [are rejected] because we fear borrowing.[15] But if we fear borrowing, why is an ass returned because of the identification of the saddle? — I will tell you: people do not borrow a saddle, because it chafes the ass ['s back].[16] Alternatively, the garments [were identified] through being white or red.[17] Then what of that which was taught: If he found it tied up in a purse, money bag, or to a ring, or if he found it amongst his [household] utensils, even a long time afterwards, it is valid.[18] Now should you think, we fear borrowing: if he found it tied up in his purse [etc.], why is it valid? Let us fear borrowing! — I will tell you: A purse, wallet, and signet ring are not lent: a purse and a money bag, because people are superstitious about it;[19] a signet ring, because one can commit forgery therewith.[20]

Shall we say that this is disputed by Tannaim? [For it was taught:] Testimony may not be given[12] on the strength of a mole; but Eleazar b. Mahabai said: Testimony may be so given.[21] Surely then they differ in this: The first Tanna holds that identification marks are [only] Rabbinically valid,[22] whilst Eleazar b. Mahabai holds that they are Biblically valid? — Said Raba: All may agree that they are Biblically valid: they differ here as to whether a mole is to be found on one's affinity.[23] One Master maintains that a mole is [generally] found on a person's affinity;[24] whilst the other holds that it is not. Alternatively, all agree that it is not; they differ here as to whether identification marks[25] are liable to change after death. One Master maintains: Identification marks are liable to change after death;[26] the other, that they are not. Alternatively, all agree that a mole is not liable to change after death, and identification marks are valid only by Rabbinical law; they differ here as to whether a mole is a perfect mark of identification. One Master maintains that a mole is a perfect mark of identification,[27] whilst the other holds that it is not.[28]

Raba said: If you should resolve that identification marks are not Biblically valid, why do we return a lost article in reliance on these marks?[29] Because one who finds a lost article is pleased that it should be returned on the strength of identification marks, so that should he lose anything, it will likewise be returned to him through marks of identification. Said R. Safra to Raba: Can then one confer a benefit upon himself with money that does not belong to him! But [the reason is this:] the loser himself is pleased to offer identification marks and take it back.[30] He knows full well that he has no witnesses; therefore he argues to himself, 'Everyone does not know its perfect identification marks,[31] but I can state its perfect identification marks and take it back.' But what of that which we learnt: R. Simeon b. Gamaliel said: If it was one man who had borrowed from three, he [the finder] must return [them] to the debtor; if three had borrowed from one, he must return them to the creditor.[32] Is then the debtor pleased that it [the promissory note] is returned to the creditor? — In that instance, he replied to him, it is a matter of logic. If it was one man who had borrowed from three, he must return [them] to the debtor, because they are to be found [together] in the debtor's possession, but not in the creditor's:[33] hence the debtor must have dropped it. If three had borrowed from one, it must be returned to the creditor, because they are to be found in the creditor's possession, but not in the debtor's.

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(1) If a messenger was sent with a divorce but lost it before delivery. Subsequently a divorce was found, and the messenger identified it by means of certain marks therein.

(2) It is a general principle that the Rabbis could freely enact measures affecting civil matters, since they had the power to abrogate individual rights of property under certain conditions. But they could not nullify ritual prohibitions. Hence, if identification marks are Scripturally valid, the divorce is returned to the messenger, who proceeds to divorce the woman therewith. But if they have no Scriptural force, the Rabbis could not institute a measure to free her from her marriage bonds which was not sanctioned by the Bible.

(3) Thus it is explicitly stated that the validity of identification marks is deduced from Scripture, hence Biblical.

(4) I.e., it may be that 'garment' teaches only that ownership must be claimed. Since, however, it is a fact that it can be

claimed on the strength of identification marks, the Tanna mentions these too, even if their validity is only Rabbinical.
(5) Cf. p. 170, n. 6.
(6) Even if only the ownership of the saddle is attested, the ass too is returned: that is deduced from the verse.
(7) Ibid. 2.
(8) Surely not! Then why state it?
(9) Translating: until thy brother's examination — i.e., until thou hast examined thy brother — in respect thereof. — Darash, besides meaning 'to seek', also connotes 'to make judicial investigation'; cf. Deut. XIII, 15: Then shalt thou (judicially) enquire (we-darashta).
(10) Thus proving that they are Biblically valid.
(11) To free a widow for marriage.
(12) As to the identity of a corpse.
(13) Yeb. 120a.
(14) These are naturally rejected, since many people are short or long. But it may well be that others are accepted.
(15) Granted that the ownership of the garments is established, that does not prove the identity of the corpse, as they might have been borrowed.
(16) A saddle must fit its particular ass.
(17) Cf. n. 4, [MS.M. omits this passage, and rightly so, seeing that it assumes that we do not fear borrowing, which would make the question that follows closely on irrelevant; v. n. 10.]
(18) Git. 27b. If a messenger loses a bill of divorce, and then finds one in the places mentioned, it is valid, and we do not fear that it might be a different document written for another husband and wife with identical names. A bill of divorce had to be written specifically for the woman it was intended to free.
(19) Believing it unlucky to lend them(Jast.).
(20) [MS.M. adds here the passage it omits above, v. n. 7.]
(21) Yeb. 120a.
(22) Therefore they cannot establish identity to break the marriage bond. Cf. p. 169, n. 1.
(23) I.e., a person born at the same hour and under the same planetary influence.
(24) And therefore it cannot establish identity.
(25) In Yeb, 120a, where this discussion is repeated, the text reads 'mole'.
(26) Therefore they cannot establish identity.
(27) Which leaves no doubt whatsoever. Even if identification marks in general are only Rabbinically valid, that is when they are not absolutely perfect; but if they are, they certainly have Biblical force.
(28) Thus so far the problem remains unsolved.
(29) I.e., why did the Rabbis give them validity for this purpose?
(30) [The text is difficult and hardly intelligible as it stands. Read with some versions: 'The loser himself is pleased that it should be returned (to any claimant) on the strength of identification marks.']
(31) Even if others have seen and can generally describe it, they cannot give a minute and detailed description. [R. Safra employs the term 'perfect identification marks' (סימנין מובהקים) in a loose sense, as any identification mark in general is valid for the recovery of a lost article; cf. also infra p. 177. n. 4. V. R. Nissim, Hiddushim, a.l.]
(32) V. supra 20a, Mishnah.
(33) Since there are three separate creditors.

Talmud - Mas. Baba Metzia 28a

But what of that which we learnt: If one finds a roll of notes or a bundle of notes he must surrender [them]:[1] here too, [is then the reason] because the debtor is pleased that they should be returned to the creditor! — But, said Raba, identification marks are Biblically valid, because it is written, And it shall be with thee until thy brother seek after it. Now, would it then have occurred to you that he should return it to him before he sought it! But [it means this:] examine him [the claimant], whether he be a fraud or not.[2] Surely that is by means of identification marks! That proves it.

Raba said: Should you resolve that identification marks are Biblically valid . . . ('Should you

resolve!' — but he has proved that they are Biblically valid! — That is because it can be explained as was answered [above].)[3] If two sets of identification marks [are offered by two conflicting claimants], it [the lost article] must be left [in custody].[4] [If one states] identification marks and [another produces] witnesses, it [the lost article] must be surrendered to him who has witnesses.[5] [If one states] identification marks, and [another also states] identification marks and [produces] one witness — one witness is as non-existent, and so it must be left. [If one produces] witnesses of weaving,[6] and [another] witnesses of dropping,[7] it must be given to the latter, because we argue, He [the first] may have sold, and another lost it. [If one states] its length, and [another] its breadth,[8] it must be given to [him who states its] length; because it is possible to conjecture the breadth when its owner is standing and wearing it, whereas the length cannot be [well] conjectured.[9] [If one states] its length and breadth, and another its gums,[10] it must be surrendered to the former. If the length, breadth, and weight [are stated by different claimants], it must be given to [him who states] its weight.

If he [the husband] states the identification marks of a bill of divorce, and she does likewise,[11] it must be given to her.[12] Wherewith [is it identified]? Shall we say, by its length and breadth? perhaps she saw it whilst he was holding it![13] — But it had a perforation at the side of a certain letter. If he identifies the ribbon [with which the divorce was tied], and she does likewise, it must be given to her. Wherewith [is it identified]? Shall we say, by [its colour], white or red? perhaps she saw it whilst he was holding it! — Hence, by its length. If he states, [it was found] in a valise, and she states likewise, it must be surrendered to him. Why? She knows full well that he places whatever he has [of his documents] in a valise.[14] MISHNAH. NOW, UNTIL WHEN IS HE [THE FINDER] OBLIGED TO PROCLAIM IT? UNTIL HIS NEIGHBOURS MAY KNOW THEREOF: THIS IS R. MEIR'S VIEW. R. JUDAH MAINTAINED: [UNTIL] THREE FESTIVALS [HAVE PASSED], AND AN ADDITIONAL SEVEN DAYS AFTER THE LAST FESTIVAL, GIVING THREE DAYS FOR GOING HOME, THREE DAYS FOR RETURNING, AND ONE DAY FOR ANNOUNCING.[15]

GEMARA. A Tanna taught: The neighbours of the loss [are referred to in the Mishnah]. What is the meaning of 'the neighbours of the loss?' Shall we say, the neighbours of the loser? But if they know him [who lost it], let them go and return it to him! — But [it means] the neighbours of the vicinity wherein the lost article was found.[16]

R. JUDAH MAINTAINED etc. But the following contradicts this: On the third day of Marcheshvan[17] we [commence to] pray for rain.[18] R. Gamaliel said: On the seventh, which is fifteen days after the Festival,[19] so that the last [of the pilgrims] in Eretz Yisrael[20] can reach the river Euphrates![21] — Said R. Joseph: There is no difficulty. The latter refers to the days of the First Temple, the former [sc. our Mishnah] to the Second. During the First Temple, when the Israelites were extremely numerous, as it is written of them, Judah and Israel were many, as the sand which is by the sea in multitude,[22] such a long period was required.[23] But during the Second Temple, when the Israelites were not very numerous, as it is written of them, The whole congregation together was forty and two thousand three hundred and threescore,[24] such a long time was unnecessary. Thereupon Abaye protested to him: But is it not written, So the priests and the Levites, and the porters, and the singers, and some of the people and the Nethinims, and all Israel, dwelt in their cities?[25] and that being so, the logic is the reverse. During the first Temple, when the Israelites were very numerous, the people united [for travelling purposes], and caravan companies were to be found travelling day and night, so long a period was unnecessary, and three days were sufficient. But during the second Temple, when the Israelites were not very numerous, the people did not join together [for travelling], and caravan companies were not available for proceeding day and night, this long period was necessary! — Raba said: There is no difference between the first Temple and the Second: the Rabbis did not put one to unreasonable trouble in respect of a lost article.

Rabina said: This [sc. our Mishnah] proves that when the proclamation was made, [the loss of] a garment was announced.[26] For should you think, a lost article was proclaimed [unspecified], another day should have been added to enable one to examine his belongings! Hence it follows that [the loss of] a garment was proclaimed. This proves it. Raba said: You may even say that a mere loss was proclaimed: the Rabbis did not put one to unreasonable trouble in respect of a lost article.

Our Rabbis taught: At the first Festival [of proclamation] it was announced: 'This is the first Festival;' at the second Festival it was announced: 'This is the second Festival;' but at the third a simple announcement was made.[27] Why so; let him announce: 'It is the third Festival'? — So that it should not be mistaken for the second.[28] But the second, too,

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(1) To the creditor, if he states identification marks; v. supra 20a.

(2) V. supra p. 169 for notes.

(3) Supra p. 169.

(4) It cannot be returned to either. Cf. supra 20a: 'It must lie until Elijah comes.'

(5) Even if identification marks are Biblically valid, yet witnesses stand higher.

(6) That he wove it.

(7) That he dropped it.

(8) This refers to a garment, these measurements being offered as marks of identification.

(9) [The breadth of the cloth out of which a toga was made was worn lengthwise, and the length breadthwise.]

(10) [גמא , the sum total of its length and breadth. The term Gam has been identified with the Greek Gnomon, the carpenter's square, and is derived from the Hebrew gimel, which has the shape of an axe, or carpenter's square. V. B.B. (Sonc. ed.) p. 251, n. 4.]

(11) Each claims ownership, the husband maintaining that he lost it before delivering it to his wife, so that she is still married to him, and now he has changed his mind and no longer wishes to divorce her, whilst the wife insists that she lost it after receiving it, so that she is divorced.

(12) Because the husband's knowledge is no proof of ownership, since he certainly saw it before delivering it to her; but if she had not received it, she would not know its identification marks.

(13) And before delivering it he changed his mind.

(14) Though this does not prove his ownership either, it must nevertheless be surrendered to him, since she cannot be declared free after a valid doubt has arisen.

(15) The three Festivals referred to are Passover, Weeks, and Tabernacles, when Jerusalem was visited by all Israel. This was the practice whilst the Temple stood and some time after; but v. Gemara on this.

(16) And R. Meir's reason is that it is probably theirs.

(17) The eighth month of the year, generally corresponding to mid-October-mid-November.

(18) V. P.B. p. 47.

(19) 'The Festival' without any further designation, always means Tabernacles, which lasted from the 15th to the 22nd of Tishri inclusive, Tishri being the seventh month of the year.

(20) [MS.M.: 'The last of the Israelites (who had come from Babylon)].

(21) Before the rains commence, This shews that a far longer period than three days is necessary to enable every Jew to reach his house.

(22) I Kings IV, 20.

(23) [Owing to the communities being widely scattered.]

(24) Ezra II, 64.

(25) Neh. VII. 73. [So that they thus lived scattered 'in their (former) cities' despite their paucity in numbers.]

(26) I.e., the actual article lost, the claimant having to submit identification marks.

(27) Without stating that it was the third time of proclamation. But the first and second had to be specified, so that the loser should know that he still had a third, and not be compelled to hurry back home.

(28) Through faulty hearing.

one might mistake for the first! — In any case, the third is still to come.[1]

Our Rabbis taught: In former times, whoever found a lost article used to proclaim it during the three Festivals and an additional seven days after the last Festival, three days for going home, another three for returning, and one for announcing.[2] After the destruction of the Temple — may it be speedily rebuilt in our own days![3] — it was enacted that the proclamation should be made in the synagogues and schoolhouses. But when the oppressors increased, it was enacted that one's neighbours and acquaintances should be informed, and that sufficed. What is meant by 'when the oppressors increased'? — They insisted that lost property belonged to the king.[4]

R. Ammi found a purse of denarii. Now, a certain man saw him displaying fear, whereupon he reassured him, 'Go, take it for thyself: we are not persians who rule that lost property belongs to the king.'

Our Rabbis taught: There was a Stone of Claims[5] in Jerusalem: whoever lost an article repaired thither, and whoever found an article did likewise. The latter stood and proclaimed, and the former submitted his identification marks and received it back. And in reference to this we learnt: Go forth and see whether the Stone of Claims is covered.[6]

MISHNAH. IF HE [THE CLAIMANT] STATES THE ARTICLE LOST, BUT NOT ITS IDENTIFICATION MARKS, IT MUST NOT BE SURRENDERED TO HIM. BUT IF HE IS A CHEAT,[7] EVEN IF HE STATES ITS MARKS OF IDENTIFICATION, IT MUST NOT BE GIVEN UP TO HIM, BECAUSE IT IS WRITTEN [AND IT SHALL BE WITH THEE] UNTIL THE SEEKING OF THY BROTHER AFTER IT,[8] MEANING, UNTIL THOU HAST EXAMINED THY BROTHER WHETHER HE BE A CHEAT OR NOT.[9]

GEMARA. It has been stated: Rab Judah said: He proclaims. '[I have found] a lost article.' R. Nahman said: He proclaims, '[I have found] a garment'. 'Rab Judah said: He proclaims a lost article,' for should you say that he proclaims a garment, we are afraid of cheats. 'R. Nahman said: He proclaims. a garment'; for 'we do not fear cheats, as otherwise the matter is endless'.[10]

We learnt: IF HE STATES THE ARTICLE LOST, BUT NOT ITS IDENTIFICATION MARKS, IT MUST NOT BE SURRENDERED TO HIM. Now, if you say that he proclaims a loss, it is well; we are thus informed that though he states that it was a garment, yet since he does not submit its identification marks, it is not returned to him. But if you say that he proclaims a garment, then if one [the finder] states that it was a garment, and the other [the claimant] states likewise, a garment, is it necessary to teach that it is not returned to him unless he declares its marks of identification? — Said R. Safra: After all, he proclaims a garment. [The Mishnah means that] he [the finder] stated [that he had found] a garment, whilst the other [the claimant] submitted identification marks. What then is meant by 'HE DID NOT STATE ITS IDENTIFICATION MARKS'? — He did not state its perfect identification marks.[11]

BUT IF HE IS A CHEAT, IF HE STATES ITS IDENTIFICATION MARKS, IT MUST NOT BE GIVEN UP TO HIM. Our Rabbis taught: At first, whoever lost an article used to state its marks of identification and take it. When deceivers increased in number, it was enacted that he should be told, 'Go forth and bring witnesses that thou art not a deceiver; then take it'. Even as it once happened that R. papa's father lost an ass, which others found. When he came before Rabbah son of R. Huna, he directed him, 'Go and bring witnesses that you are not a fraud, and take it.' So he went and brought witnesses. Said he to them, 'Do you know him to be a deceiver?' — 'Yes', they replied. 'I, a deceiver!' he exclaimed to them. 'We meant that you are not a fraud,' they answered him. 'It stands to reason that one does not bring [witnesses] to his disadvantage.' said Rabbah son of R. Huna.[12]

MISHNAH. EVERYTHING [SC. AN ANIMAL] WHICH WORKS FOR ITS KEEP[13] MUST [BE KEPT BY THE FINDER AND] EARN ITS KEEP. BUT AN ANIMAL WHICH DOES NOT WORK FOR ITS KEEP MUST BE SOLD, FOR IT IS SAID, AND THOU SHALT RETURN IT UNTO HIM,[14] [WHICH MEANS], CONSIDER HOW TO RETURN IT UNTO HIM.[15] WHAT HAPPENS WITH THE MONEY? R. TARFON SAID: HE MAY USE IT; THEREFORE IF IT IS LOST, HE BEARS RESPONSIBILITY FOR IT.[16] R. AKIBA MAINTAINED: HE MUST NOT USE IT; THEREFORE IF IT IS LOST, HE BEARS NO RESPONSIBILITY.

GEMARA. For ever:[17] — Said R. Nahman in Samuel's name: Until twelve months [have elapsed]. It has been taught likewise: As for all animals which earn their keep. e.g., a cow or an ass, he [the finder] must take care of them for twelve months; after that he turns them into money, which he lays by. He must take care of calves and foals three months, sell them and lay the money by. He must look after geese and cocks for thirty days, sell them and put the money by. R. Nahman b. Isaac observed: A fowl ranks as large cattle.[18] It has been taught likewise: As for a fowl and large cattle.[19] he must take care of them twelve months, then sell them and put the money by. For calves and foals the period is[20] thirty days, after which he sells them and lays the money by. Geese and cocks, and all which demand more attention than their profit is worth, he must take care of for three days, after which he sells them and lays the money by. Now this ruling on calves and foals contradicts the former one, and likewise the rulings on geese and cocks are contradictory? — The rulings on calves and foals are not contradictory: the former refers to grazing animals; the latter to those that require feeding stuffs.[21] The rulings on geese and cocks are likewise not contradictory: the former refers to large ones, the latter to small.[22]

BUT AN ANIMAL WHICH DOES NOT WORK FOR ITS KEEP. Our Rabbis taught: And thou shalt return it unto him: deliberate how to return it unto him, so that a calf may not be given as food to other calves, a foal to other foals, a goose to other geese, or a cock to other cocks.[23]

WHAT HAPPENS WITH THE MONEY? R. TARFON SAID: HE MAY USE IT etc. Now. this dispute is

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(1) Even if a mistake is made, no harm is done.

(2) V. Mishnah.

(3) This phrase has become liturgical.

(4) That was Persian law, which the Jews felt justified in secretly resisting.

(5) [Var. lec., ‘Stone of the erring (losses).’ On the attempt to localize the stone, v. J. N. Sepp. ZDPV, II, 49.]

(6) So Rashi. Lit., ‘is dissolving.’ The story is related in Ta'an. 19a of a certain Honi who prayed for rain so successfully that he was asked to reverse his prayer, more than enough having fallen. To which he answered, ‘Go forth and see whether the Claimants’ Stone is already covered with water, in which case I will pray for the rain to cease.’

(7) I.e., where the claimant is known to be one in general, but v. Gemara on this.

(8) Deut. XXII, 2.

(9) V. p. 169, n. 6.

(10) Even if no particular article is announced, a fraud may claim a certain article at a venture.

(11) I.e., he gave general marks which would cover many garments. [The term ‘perfect’ is used by R. Safra in a loose sense, cf. supra p. 171. n. 9.]

(12) Therefore the witnesses can withdraw their testimony, though normally this is forbidden. But in this case it is evident that they thought that he had asked, ‘Do ye know that he is not a deceiver?’ which was the usual form of the question.

(13) Lit., ‘does and eats.’

(14) Ibid.

(15) But if the finder keeps it and then charges the loser with its keep, it may exceed its actual worth, and so the return will be a loss.

(16) The advantage that he enjoys in that he may use it makes him a paid bailee.

(17) Surely the finder need not keep the animal indefinitely, even if it does earn its keep!

(18) And must be kept a twelvemonth.

(19) I.e., cows and oxen.

(20) Lit., 'he must take care of them.'

(21) In spring and summer, when the animals graze on natural pasture, they are to be kept three months; but in winter, when feeding stuffs must be bought for them, thirty days are sufficient.

(22) Small ones need more attention, and therefore they are kept only three days. — The translation follows Maim. and R. Han., and is also adopted by the Codes; v. H.M. 267, 24. Rashi reverses it.

(23) I.e., if a number of these is found, it should not be necessary to sell one to provide food for the others, but as soon as they cease to earn their keep they must all be sold.

Talmud - Mas. Baba Metzia 29a

[apparently] only if he [the finder] did use it. But if not, [all would agree] that if it is lost he is free [from responsibility]. Shall we say that this refutes R. Joseph? For it has been stated. A bailee of lost property: Rabbah ruled, he ranks as an unpaid bailee; R. Joseph maintained. as a paid bailee![1] — R. Joseph can answer you. As for theft and loss, all agree that he is responsible. They differ only in respect to [unavoidable] accidents, for which a borrower [alone is responsible]. R. Tarfon holds: The Rabbis permitted him [the finder] to use it, therefore he is a borrower in respect thereto. Whilst R. Akiba holds that the Rabbis did not permit him to use it, therefore he is not a borrower in respect thereto. If so, why does R. Akiba say 'THEREFORE'? For if you agree that they differ concerning theft and loss, it is well; hence it is taught. R. AKIBA MAINTAINED, HE MUST NOT USE IT; THEREFORE IF IT IS LOST HE BEARS NO RESPONSIBILITY. For I might think he is a paid bailee, in accordance with R. Joseph's view, and responsible for theft and loss; hence we are informed, 'THEREFORE' [etc.] i.e., since you say that he may not use it, he is not a paid bailee, nor is he responsible for theft and loss. But if you say that all agree that he is responsible for theft and loss, whilst they differ only in respect of [unpreventable] accidents, for which a borrower [alone is responsible], what is the meaning of R. Akiba's 'THEREFORE'? Surely he [the Tanna] should have stated thus: R. AKIBA MAINTAINED, HE MUST NOT USE IT [and no more]; then I would have known myself that since he may not use it, he is not a borrower, hence not responsible. What then is the need of R. Akiba's 'THEREFORE'?[2] — On account of R. Tarfon's 'THEREFORE'.[3] And what is the purpose of R. Tarfon's 'THEREFORE'? — He means this: Since the Rabbis permitted him to use it, it is as though he had done so,[4] and he is [therefore] held responsible for it. But it is taught, [IF] IT IS LOST![5]

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(1) And since a paid bailee is liable for loss, our Mishnah appears to refute R. Joseph.

(2) The question is a straightforward one, though put with a good deal of unnecessary circumlocution. [Rabbinovicz, D.S. a.l. suggests this to be an interpolation of Jehudai Gaon.]

(3) I.e., for the sake of balancing the Mishnah.

(4) Even if he does not use it.

(5) How then can it refer to unpreventable accidents?

Talmud - Mas. Baba Metzia 29b

— It is in accordance with Rabbah; for Rabbah said [elsewhere]: They were stolen by armed robbers: whilst 'lost' means that his ship foundered at sea.[1]

Rab. Judah said in Samuel's name: The halachah is as R. Tarfon. Rehabah had in his charge an orphan's money. He went before R. Joseph and enquired. 'May I use it?' He replied, 'Thus did Rab Judah say in Samuel's name, The halachah is as R. Tarfon. Thereupon Abaye protested, But was it not stated thereon: R. Helbo said in R. Huna's name: This refers only to the purchase price of a lost article, since he took trouble therein,[2] but not to money which was itself lost property:[3] and these[4]

are likewise as lost money? — Go then,' said he to him;[5] 'they do not permit me to give you a favourable ruling.'

MISHNAH. IF ONE FINDS SCROLLS, HE MUST READ THEM EVERY THIRTY DAYS;[6] IF HE CANNOT READ, HE MUST ROLL THEM.[7] BUT HE MUST NOT STUDY [A SUBJECT] THEREIN FOR THE FIRST TIME.[8] NOR MAY ANOTHER PERSON READ WITH HIM.[9] IF ONE FINDS A CLOTH, HE MUST GIVE IT A SHAKING EVERY THIRTY DAYS, AND SPREAD IT OUT FOR ITS OWN BENEFIT [TO BE AIRED], BUT NOT FOR HIS HONOUR.[10] SILVER AND COPPER VESSELS MAY BE USED FOR THEIR OWN BENEFIT, BUT NOT [SO MUCH AS] TO WEAR THEM OUT. GOLD AND GLASSWARE MAY NOT BE TOUCHED UNTIL ELIJAH COMES.[11] IF ONE FINDS A SACK OR A BASKET, OR ANY OBJECT WHICH IT IS UNDIGNIFIED FOR HIM TO TAKE,[12] HE NEED NOT TAKE IT.

GEMARA. Samuel said: If one finds phylacteries in a sack, he must immediately turn them into money [i.e., sell them] and lay the money by. Rabina objected: IF ONE FIND SCROLLS, HE MUST READ THEM EVERY THIRTY DAYS; IF HE CANNOT READ, HE MUST ROLL THEM. Thus, he may only roll, but not sell them and lay the money by! — Said Abaye: phylacteries are obtainable at Bar Habu;[13] whereas scrolls are rare.[14]

Our Rabbis taught: If one borrows a Scroll of the Torah from his neighbour, he may not lend it to another. He may open and read it, providing, however, that he does not study [a subject] therein for the first time; nor may another person read it together with him. Likewise, if one deposits a Scroll of the Torah with his neighbour, he [the latter] must roll it once every twelve months, and may open and read it; but if he opens it in his own interest, it is forbidden. Symmachus said: In the case of a new one, every thirty days; in the case of an old one, every twelve months. R. Eliezer b. Jacob said: In both cases, every twelve months.

The Master said: 'If one borrows a Scroll of the Torah from his neighbour, he may not lend it to another.' Why particularly a Scroll of the Torah: surely the same applies to any article? For R. Simeon b. Lakish said: Here Rabbi has taught that a borrower may not lend [the article he borrowed], nor may a hirer re-hire [to another person]![15] — It is necessary to state it in reference to a Scroll of the Torah. I might have said, One is pleased that a precept be fulfilled by means of his property: therefore we are informed [otherwise].[16]

'He may open and read it.' But that is obvious! Why else then did he borrow it from him? — He desires to state the second clause: providing, however, that he does not study [a subject] therein for the first time.'

'Likewise, if one deposits a Scroll of the Torah with his neighbour, he [the latter] must roll it once every twelve months, and may open and read it.' What business has he with it?[17] Moreover, 'if he opens it in his own interests, It is forbidden; 'but have you not said, 'He may open and read it'! — It means this: If when rolling it he opens and reads it, that is permitted; but if he opens it in his own interests, it is forbidden.

'Symmachus said: In the case of a new one, every thirty days; in the case of an old one, every twelve months. R. Eliezer b. Jacob said: In both cases, every twelve months.' But R. Eliezer b. Jacob is identical with the first Tanna! — But say thus: R. Eliezer b. Jacob said: In both cases, every thirty days.

BUT HE MUST NOT STUDY [A SUBJECT] THEREIN FOR THE FIRST TIME, NOR MAY ANOTHER PERSON READ WITH HIM. But the following contradicts it. He may not read a section therein and revise it, nor read a section therein and translate it.[18] He may also not have more

than three columns open [simultaneously], nor may three read out of the same volume. Hence two may read! — Said Abaye: There is no difficulty: here the reference is to one subject; there, to two.[19]

IF ONE FINDS A CLOTH, HE MUST GIVE IT A SHAKING EVERY THIRTY DAYS: Are we to say that a shaking benefits it? But R. Johanan said, He who has a skilled weaver in his house[20] has to shake his garment every day![21] — I will tell you: [shaking] every day is injurious, once in thirty days is beneficial thereto. Alternatively, there is no difficulty: this [our Mishnah] refers to [shaking] by one person; the other [R. Johanan's dictum], by two persons.[22] Another alternative: this [the Mishnah] refers to [a shaking, i.e., beating] by hand; the other, with a stick.[23] Or again, one refers to wool, the other to flax.[24]

R. Johanan said: A cupful of witchcraft, but not a cupful of tepid water.[25] Yet that applies only to a metal utensil, but there is no objection to an earthenware one. And even of a metal utensil, this holds good only if it [the water] is unboiled; but if it is boiled, it does not matter. Moreover, that is only if he throws no spice wood therein; but if he does, there is no objection.

R. Johanan said: If one is left a fortune[26] by his parents, and wishes to lose it, let him wear linen garments, use glassware, and engage workers and not be with them. 'Let him wear linen garments' — this refers to Roman linen;[27] 'use glassware' — Viz., white glass;[28] 'and engage workers and not be with them' — refer this

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(1) These are unpreventable. v. infra 43a.

(2) Before selling it he had to look after it for a certain time; therefore he is now privileged to use the money.

(3) If one finds money, so disposed that he is bound to announce it (v. supra 24b) he may not use it whilst waiting for the owner to claim it, since it needs neither care nor attention.

(4) Sc. the orphan's coins.

(5) R. Joseph to the disciple.

(6) If left unused longer, they become mouldy and moth eaten.

(7) To give them an airing.

(8) The long poring over the scroll and its consequent handling injured it.

(9) Since each unconsciously pulls the scroll to himself, the scroll is injured.

(10) To use as a tablecloth or bedspread.

(11) I.e., the finder must not use them at all, since they do not deteriorate.

(12) Lit., 'which it is not his way to take.'

(13) Pr. n. a writer of phylacteries and mezuzoth, also mentioned in Ber. 53b. and Meg. 18b. — I.e., they are easily bought, and so their owner loses nothing when the finder sells them.

(14) Lit., 'not found.'

(15) 'Here' refers to a Mishnah in Git. (29a) from which Resh Lakish deduced this.

(16) But the same certainly applies even with greater force to other articles.

(17) It was assumed that he may open and read it for his own purpose, since it was already taught once that he rolls it every twelve months for its own benefit; but how may one use a bailment in his own interests?

(18) Into the vernacular, which, in the case of Palestinian Jewry, was probably Aramaic; v. J.E. VI, 308.

(19) Rashi: two people may not read the same subject, because each pulls the Scroll to himself; but they may read two different subjects (in different columns), as each concentrates on his own; Maim. reverses it.

(20) Regularly engaged in weaving.

(21) Because of the fluff caused by the weaver. This shews that one shakes his garment only when he must.

(22) In which case each pulls it and strains the material.

(23) That is harmful.

(24) Rashi: a beating harms woollen garments, as it stretches them, but not linen garments. — But the order of the Gemara would seem to reverse it, 'the one . . . the other' referring to the Mishnah and R. Johanan respectively, and Maim. and others do in fact reverse it. Possibly linen garments or cloths were more delicately made in those days, or were otherwise weaker than woolens.

(25) One had better drink the former than the latter.

(26) Lit., 'much money.'

(27) [I.e., manufactured, not grown, in Rome; v. Krauss, op. cit. I, 537.]

(28) Which was rare and costly. [On the difficulty of the process for producing colourless glass among the ancients, v. Krauss, op. cit. II, 286.]

Talmud - Mas. Baba Metzia 30a

to [workers with] oxen, who can cause much loss.[1]

AND SPREAD IT OUT FOR ITS OWN BENEFIT, BUT NOT FOR HIS HONOUR. The scholars propounded: What if it is for their mutual benefit?[2] — Come and hear: HE MAY SPREAD IT FOR ITS OWN BENEFIT; this proves, only for its own benefit, but not for their mutual benefit! — Then consider the second clause: BUT NOT FOR HIS HONOUR; thus, it is forbidden only for his own honour, but permitted for their mutual benefit! Hence no inference can be drawn from this.

Come and hear: He may not spread it [a lost article] upon a couch or a frame for his needs, but may do so in its own interests. If he was visited by guests, he may not spread it over a bed or a frame, whether in his interests or in its own![3] — There it is different, because he may thereby destroy it,[4] either through an [evil] eye or through thieves.

Come and hear: If he took it [the heifer] into the team[5] and it [accidentally] did some threshing, it is fit;[6] [but if it was] in order that it should suck and thresh, it is unfit.[7] But here it is for their mutual benefit, and yet it is taught that it is unfit! — There it is different, because Scripture wrote, which hath not beets wrought with — under any condition. If so, the same should apply to the first clause too?[8] This [then] can only be compared to what we learnt: If a bird rested upon it [the red heifer] — it remains fit;[9] but if it copulated with a male, it becomes unfit.[10] Why so? — In accordance with R. Papa's dictum. For R. papa said: Had Scripture written 'ubad,[11] and we read it 'ubad, I would have said [that the law holds good] even if it were of itself;[12] whilst if it were written 'abad,[13] and we read it 'abad, I would have said, [it becomes unfit] only if he himself wrought with it. Since, however, it is written 'abad [active], whilst read 'ubad [passive],[14] we require that 'it was wrought with' shall be similar to 'he wrought with it';[15] just as 'he wrought [with it]' must mean that he approved of it, so also 'it was wrought with' refers only to what he approved.[16]

SILVER AND COPPER VESSELS MAY BE USED, etc. Our Rabbis taught: If one finds wooden utensils he may use them — to prevent them from rotting; copper vessels — he may use them with hot [matter], but not over the fire, because that wears them out; silver vessels, with cold [matter], but not with hot, because that tarnishes them; trowels and spades, on soft [matter], but not on hard, for that injures them; gold and glassware, [however], he may not touch until Elijah comes. Just as they [the Sages] ruled in respect of lost property, so also with reference to a bailment. What business has one with a bailment?[17] — Said R. Adda b. Hama in R. Shesheth's name: This treats of a bailment the owner of which has gone overseas.

IF ONE FINDS A SACK OR A BASKET, OR ANY OBJECT WHICH IT IS NOT DIGNIFIED FOR HIM TO TAKE, HE NEED NOT TAKE IT. How do we know this? — For our Rabbis taught: And thou shalt hide thyself:[18] sometimes thou mayest hide thyself, and sometimes not. E.g., if one was a priest, whilst it [the lost animal] was in a cemetery; or an old man, and it was inconsistent with his dignity [to lead the animal home]; or if his own [work] was more valuable than his neighbour's[19] — therefore it is said, and thou shalt hide thyself.[20] In respect of which [of these instances] is the verse required? Shall we say, in respect of a priest when it [the lost animal] is in a cemetery? — but that is obvious: one is a positive, whereas the other is a negative and a positive injunction, and a positive injunction cannot set aside a negative together with a positive injunction?[21] Moreover, a

ritual prohibition cannot be abrogated on account of money![22] If, again, [it is required] where 'his own [work] was more valuable than his neighbour's' — that may be inferred from Rab Judah's dictum in Rab's name, for Rab Judah said in the name of Rab: Save that

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(1) Either by failing to plough up the land properly, so that the subsequent crop is a poor one (Tosaf.), or through carelessly driving the ox carts over the crops when engaged in reaping or vintaging, and so causing damage both to oxen and plants (Rashi).

(2) Lit., 'for its purpose and for his purpose?'

(3) Pes. 26b. Thus proving that he may not use it for their mutual benefit.

(4) Lit., 'burn it.'

(5) Of three or four cows used for threshing; his purpose was that it should suck.

(6) To be used to make atonement for a murder by an unknown person. V. Deut. XXI, 1-9. The heifer had to be one 'which hath not been wrought with, and which hath not drawn in the yoke' (v. 3). Though this heifer had done some threshing, it remains fit, because it had been taken into the team to feed, not to thresh.

(7) Pes. 26b.

(8) Though not intending that it should thresh, it nevertheless ought to become disqualified.

(9) And is not disqualified on the score that it has been put to some use.

(10) Parah II, 4.

(11) עובד passive. 'was wrought with.'

(12) I.e., even if it 'was wrought with' entirely without its owners volition.

(13) עבד active, 'with which he (the owner) had not wrought.'

(14) [==M.T. עבד The form is thus taken as passive Kal not Pu'al, v. Ges. K. ¤ 52e.]

(15) I.e., though it may have been put to work without the knowledge of its master, it shall nevertheless be only such work as its master would have approved.

(16) Now, if a bird rests on it, the master does not approve, since he derives no benefit; but he does derive benefit from its copulation. Similarly, if he takes it into the team and it accidentally does some threshing, he does not benefit thereby, as the team itself would have sufficed. Therefore it is not invalidated, unless that was his express purpose.

(17) How can there be a question of using a bailment? Let its owner come and use it to prevent it from rotting or otherwise being injured through disuse!

(18) Deut. XXII, 2. The beginning of the verse reads, Thou shalt not see thy brother's ox or his sheep go astray. In the exegesis that follows, it is assumed that the 'not' may or may not refer to 'and thou shalt hide thyself' according to circumstances.

(19) I.e., the value of the time he would lose in returning it exceeded that of the lost animal.

(20) Sanh. 18b.

(21) It is a positive command to return lost property, viz., thou shalt restore them unto thy brother; whereas a priest is forbidden to defile himself through the dead both by a positive command — They shall be holy unto their God (Lev. XXI, 6) — and a negative one — Speak unto the priests the sons of Aaron and say unto them, There shall none be defiled for the dead among his people (ibid. 1).

(22) The returning of lost property is after all only a monetary matter.

Talmud - Mas. Baba Metzia 30b

there shall be no poor among you:[1] [this teaches,] thine takes precedence over all others![2] — Hence [it is needed] in respect of an old man for whom it is undignified [to return the lost article].

Rabbah said: If he [the old man] smote it [the lost animal], he is [henceforth] under an obligation in respect thereof.[3] Abaye was sitting before Rabbah when he saw some [lost] goats standing. whereupon he took a clod and threw it at them. Said he [Rabbah] to him, 'You have thereby become bound in respect of them. Arise and return them.'

The scholars propounded: What if it is dignified for one to return [a lost animal] in the field, but not in town? Do we say, a complete return is required, and since it is undignified for him to return it

in town, he has no obligation at all; or perhaps, in the field at least he is bound to return it, and since he incurs the obligation in the field, he is likewise obligated in town?[4] The question stands.

Raba said: Where one would lead back his own, he must lead back his neighbour's too. And where one would unload and load his own, he must do so for his neighbour's.[5]

R. Ishmael son of R. Jose was walking on a road when he met a man carrying a load of faggots. The latter put them down, rested, and then said to him, 'Help me to take them up.' 'What is it worth?' he enquired. 'Half a zuz,' was the answer. So he gave him the half zuz and declared it hefker.[6] Thereupon he [the carrier] re-acquired it.[7] He gave him another half zuz and again declared it hefker. Seeing that he was again about to re-acquire it, he said to him, 'I have declared it hefker for all but you.' But is it then hefker in that case? Have we not learnt: Beth Shammai maintain, hefker for the poor [only] is valid hefker; whilst Beth Hillel rule, It is valid only if declared hefker for the poor and the rich, as the year of release.[8] — But R. Ishmael son of R. Jose did in fact render it hefker for all; and he stopped the other [from taking possession again] by mere words. Yet was not R. Ishmael son of R. Jose an elder for whom it was undignified [to help one to take up a load]?[9] — He acted beyond the requirements of the law. For R. Joseph learnt: And thou shalt shew them[10] — this refers to their house of life;[11] the way — that means the practice of loving deeds;[12] they must walk — to sick visiting; therein — to burial;[13] and the work — to strict law; that they shall do — to [acts] beyond the requirements of the law.[14]

The Master said: 'they must walk — this refers to sick visiting.' But that is the practice of loving deeds! — That is necessary only in respect of one's affinity.[15] For a Master said: A man's affinity takes away a sixtieth of his illness: yet even so, he must visit him 'Therein to burial.' But that [too] is identical with the practice of loving deeds? — That is necessary only in respect of an old man for whom it is undignified.[16] 'That they shall do — this means [acts] beyond the requirements of the law.' For R. Johanan said: Jerusalem was destroyed only because they gave judgments therein in accordance with Biblical law. Were they then to have judged in accordance with untrained arbitrators?[17] — But say thus: because they based their judgments [strictly] upon Biblical law, and did not go beyond the requirements of the law.

MISHNAH. WHAT IS LOST PROPERTY? IF ONE FINDS AN ASS OR A COW FEEDING BY THE WAY, THAT IS NOT CONSIDERED A LOST PROPERTY; [BUT IF HE FINDS] AN ASS WITH ITS TRAPPINGS OVERTURNED, OR A COW RUNNING AMONG THE VINEYARDS, THEY ARE CONSIDERED LOST. IF HE RETURNED IT AND IT RAN AWAY, RETURNED IT AND IT RAN AWAY, EVEN FOUR OR FIVE TIMES, HE IS STILL BOUND TO RESTORE IT, FOR IT IS WRITTEN, THOU SHALT SURELY RESTORE THEM.[18] IF HIS LOST TIME IS WORTH S SELA', HE MUST NOT DEMAND, GIVE ME A SELA',' BUT IS PAID AS A LABOURER. IF A BETH DIN IS PRESENT, HE MAY STIPULATE IN THEIR PRESENCE;[19] BUT IF THERE IS NO BETH DIN BEFORE WHOM TO STIPULATE, HIS OWN TAKES PRECEDENCE.[20]

GEMARA. And all these that were mentioned already — are they then not lost property?[21] — Said Rab Judah: It means this: What is the general principle of lost property for which one is responsible?[22] IF ONE FINDS AN ASS OR A COW FEEDING BY THE WAY, THAT IS NOT CONSIDERED LOST PROPERTY, and he bears no responsibility toward it: [BUT IF HE FINDS] AN ASS WITH ITS TRAPPINGS OVERTURNED, OR A COW RUNNING AMONG THE VINEYARDS, THEY ARE CONSIDERED LOST, and he is bound [to return it]. And for ever?[23] — Said Rab Judah in Rab's name: Up to three days.[24] How so? If [he sees it] at night, even a single hour [shews that it is lost]; if by day, even if it is there longer, it is still [not proof it is lost]! — This arises only if it was seen either before daybreak or at twilight; now, for three days we assume that it is mere chance that it went forth [at these unusual hours]; but if more, it is certainly lost.

It has been taught likewise: If one finds a garment or a spade

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(1) Deut, XV, 4.
(2) Regarding the verse as an exhortation against bringing oneself to poverty.
(3) To return it. By smiting it to make it go in a certain direction he commences the work of returning it, and therefore must complete it.
(4) On the principle of the preceding dictum.
(5) V. Deut. XXII, 4, which is interpreted as meaning that one must help his neighbour to load or unload his animals. Here too he is exempt if it is inconsistent with his dignity, and Raba observes that the test is whether he would do this for his own.
(6) 'Ownerless.'
(7) And again asked R. Ishmael to help him.
(8) Pe'ah VI, 1; 'Ed. IV. 3. Produce acquired from hefker was exempt from tithes. If, however, it was only partially declared hefker i.e., for the poor alone, Beth Shammai and Beth Hillel dispute whether that is valid. Since in all cases of dispute between these two academies the halachah was according to Beth Hillel, we see that partial hefker is invalid; hence R. Ishmael's declaration was illegal. — The seventh year was called the year of release (shemittah), and its crops were free to all; v. Lev. XXV, 1-7.
(9) Why then pay him off?
(10) Ex. XVIII, 20.
(11) Rashi: i.e., industry and trade, the means of a livelihood. In B.K. 100a Rashi refers it to study, the life of the Jew.
(12) This is the literal translation of the phrase, gemiluth hasadim. It is sometimes translated, 'the practice of charity,' but that is inexact. Every act of kindness is regarded as done out of one's love for his fellow beings. [V. Abrahams, I., C.P.B. p. XIII. The inner meaning of the phrase is, 'making good.' 'requiting' — a making good to man for goodness of God, and it is connected with tenderness and mercy to all men and all classes; cf. J. Pe'ah IV.]
(13) To give burial to the poor who cannot pay for it. Directly arising out of this teaching, the Burial Societies (chevra kaddisha — 'holy society') have always formed an important part of Jewish communal organization.
(14) Lit., 'within the line of judgment;' v. B.K. (Sonc. ed.) p. 584, n. 2.
(15) V. p. 171. n. 1.
(16) Yet even he must take part in burial.
(17) [מגיזתא from גוז , 'to cut,' 'to decide;' so Jast. Cf. however B.K. (Sonc. ed.) p. 671, n. 10.]
(18) Deut. XXII, 1. השב תשיבם; the doubling of the verb — the usual idiom for emphasis — intimates that one is bound to return the same article many times, if necessary.
(19) Any three people constitute a Beth din, and the finder may stipulate before them that if he returns the article he shall be paid for lost time according to what he himself could earn; then he can claim his loss in full.
(20) And he is not bound to return the article at all and involve himself in loss.
(21) The article mentioned in the previous Mishnahs were all examples of lost property; why then state here 'WHAT IS LOST PROPERTY? as though the previous ones were not?
(22) I.e., how may one recognise whether a particular article is lost or intentionally placed there by its owner?
(23) Can one say that no matter how long an animal is seen grazing by the way it was intentionally placed there?
(24) But if there longer, it must be assumed lost.

Talmud - Mas. Baba Metzia 31a

on a road, or a cow running among the vineyards it is lost property. [But if he finds] a garment at the side of a wall, or a spade at the side of a wall, or a cow grazing among the vineyards, it is not considered lost; yet [if he sees it] three consecutive days, it is lost. If one sees water overflowing [its banks] and proceeding [onwards], he must put up a wall[1] before it.[2]

Raba[3] said: [And so shalt thou do] with all lost things of thy brother's:[4] this is to include the loss of real estate. R. Hananiah observed to Raba:[5] It has been taught in support of you: If one sees water overflowing [its banks] and proceeding [onwards], he must put up a wall before it.[6] As for that, he

replied, it does not support [me]: What are the circumstances here? When there are sheaves [on the field].[7] But if it contains sheaves, why state it?[8] — It is necessary [to state it only] when it contains sheaves which [still] need the soil. I might think, since they need the soil, they are as the soil itself:[9] therefore we are informed [otherwise].

IF ONE FINDS AN ASS OR A COW, etc. This is self-contradictory. You say. IF ONE FINDS AN ASS OR A COW FEEDING BY THE WAY, IT IS NOT CONSIDERED LOST PROPERTY: hence, only when feeding by the way are they not [regarded as] lost; but if running on a road, or feeding among the vineyards, they are considered lost! Then consider the second clause: [BUT IF HE FINDS] AN ASS WITH ITS TRAPPINGS OVERTURNED, OR A COW RUNNING AMONG THE VINEYARDS, THEY ARE CONSIDERED LOST; hence, only if running among the vineyards are they lost; but if running on the road, or feeding among the vineyards. they are not lost! — Said Abaye: His companion telleth it concerning him:[10] he [the Tanna] mentions feeding by the way, that it is not a lost animal, and the same applies to [a cow] feeding among the vineyards. He states that if running among the vineyards, it is lost, and the same holds good if it was running on the road. Raba said to him, if 'his companion telleth it of him,' let the lighter aspects be taught, from which the graver ones would follow a fortiori. [Thus:] Let him [the Tanna] teach that if it was running on the road it is considered lost; how much more so if running among the vineyards! And let him teach that when feeding among the vineyards it is not considered lost; how much more so when feeding by the way! — But. said Raba, the two statements on 'running'[11] are not contradictory: in the one case its face is towards the field; in the other, towards the town.[12] The two statements on 'feeding' are likewise not contradictory: the one treats of the loss of itself;[13] the other of the loss of the soil. [Thus:] when he [the Tanna] teaches that if it is FEEDING BY THE WAY. THAT IS NOT CONSIDERED LOST PROPERTY, implying that if it is feeding among the vineyards there is a loss, the reference is to the loss of the soil.[14] And when he teaches that if it is running among the vineyards there is a case of loss, implying that if it is feeding among the vineyard there is none, the reference is to the loss of itself;[13] for when running among the vineyard it becomes lacerated, but not when feeding among the vineyards.[15] Now, if it is feeding among the vineyards, granted that it does not become lacerated, yet it should be necessary [to expel it] on account of the loss of the soil! — This refers to a heathen's[16] [vineyard]. Yet should it be necessary [to drive it out] on account of its own loss, lest they [the heathens] kill it? — This refers to a place where a warning is first given,[17] and only then is it slain. But perhaps a warning has already been given on its account? — If they gave warning, and care was not taken thereof [to prevent it from trespassing], it certainly ranks as a self-inflicted loss.[18]

IF HE RETURNED IT AND IT RAN AWAY, RETURNED IT AND IT RAN AWAY, etc. One of the Rabbis said to Raba, Perhaps 'hasheb'[19] indicates once; 'teshibem'[20] denotes twice? — He replied. 'hasheb' implies even a hundred times. As for 'teshibem', I know only [that he must return them] to his [the owner's] house; how do I know [that he can return them to] his garden or his ruins? Therefore Scripture writes, 'teshibem', implying, in all circumstances. How so? If they [the garden or ruins] are guarded, is it not obvious? Whilst if not, why [can one return them thither]? — In truth, it means that they are guarded, but we are informed this, viz., that the owner's knowledge is not required.[21] In accordance with R. Eleazar, who said: All require the owner's knowledge,[22] excepting in the case of the return of lost property, since Scripture extended the law to many forms of return.[23]

[If a bird's nest chance to be before thee in the way in any tree, on the ground, whether they be young ones, or eggs, and the dam sitting upon the young, or upon the eggs, thou shalt not take the dam with the young:] But shaleah teshalah [thou shalt surely let go] the dam etc.:[24] let us say that shaleah means once, teshalah twice?[25] — He replied, shaleah implies even a hundred times. As for teshalah: I know [this law] only [when the bird is required] for a permissive purpose;[26] how do I know it when it is required for the fulfilment of a precept?[27] Therefore Scripture writes,'teshalah', implying under all circumstances.

One of the Rabbis said to Raba: [Thou shalt not hate thy brother in thine heart:] hokeah tokiah [thou shalt surely rebuke] thy neighbour.[28] Perhaps hokeah means once, tokiah twice? — He replied, hokeah implies even a hundred times. As for tokiah: I know only that the master [must rebuke] the disciple: whence do we know that the disciple [must rebuke] his master? From the phrase. 'hokeah tokiah', implying under all circumstances.

[If thou see the ass of him that hateth thee lying under its burden and wouldst forbear to help him,] thou shalt surely[29] help with him.[30] [From this] I know it only if the owner is with it; whence do I know [the law] if its owner is not with it? From the verse, 'thou shalt surely help with him' — in all circumstances.

[Thou shalt not see thy brother's ass or his ox fall down by the way, and hide thyself from them:] thou shalt surely help him to lift them up again:[31] [From this] I know it only if the owner is with it; whence do I know [this law] if the owner is not with it? From the verse, 'thou shalt surely help him to lift them up again'.

Now, why must both unloading and loading be stated? — Both are necessary. For had Scripture mentioned unloading [only], I would have thought, that is because it entails suffering of dumb animals and financial loss;[32] but as for loading, where neither suffering of dumb animals nor financial loss is involved,[33] I might have thought that one need not [help], Whilst had we been informed in respect of loading, [I would have thought, that is] because it is remunerated;[34] but unloading, which is unremunerated,[35] I would have thought one need not [help]. Thus both are required. But on R. Simeon's view that loading too is without remuneration, what can you say? — In R. Simeon's view the verses are not explicit.[36]

Why need these two be written and also [the return of] the lost [animal]? — They are all needed. For had Scripture written these two [only]. [I would think it was] because they entail the suffering of both the owner and itself [sc. the animal]; but as for a lost [animal], which causes grief to the owner but not to itself, [the law] would not apply.[37] And if we were informed this of a lost animal, [I would think it was] because the owner is not with it;[38]

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(1) I.e., any obstacle to hinder its progress.

(2) That too falls within the category of restoring lost property — i.e., one must take the necessary steps to prevent loss.

(3) [MS.M. 'Rabbah.']

(4) Ibid, 3,

(5) [MS.M.: 'Rabbah,' cf. supra 6b.]

(6) He assumed that its purpose was that the soil should not become waterlogged.

(7) Hence they must be saved, but it is possible, as far as the Baraitha is concerned, that one is not bound to save land.

(8) For it is then obvious.

(9) And therefore, on the hypothesis stated in n. 9, do not need saving.

(10) Job XXXVI, 33; (E.V.: the noise thereof sheweth concerning it), i.e., each clause illumines the other.

(11) I.e., the explicit ruling in the second clause, and the implicit ruling in the first.

(12) If running on the road townwards, it must have been set in that direction, and is therefore not lost. If running forestwards, it is lost.

(13) I.e., of the animal.

(14) I.e., an animal feeding in vineyards causes damage. and therefore must be expelled. — Abedah (אבידה) means both a lost article and a loss.

(15) Thus on Raba's interpretation the Mishnah does not give a definition of what animal is to be regarded as lost, but treats of losses which the onlooker must prevent.

(16) V. supra p. 149. n. 6.

(17) To the owners, that the animal is trespassing.

(18) The owner is himself responsible for his loss.
(19) Inf. of the verb, meaning ‘to restore.’
(20) ‘Thou shalt restore then.’
(21) When lost property is returned, it is unnecessary to inform the owner.
(22) A thief, robber, or bailee, when returning the article stolen or left in his charge, must inform the owner; otherwise he remains responsible in the case of mishap.
(23) I.e., providing it is returned, it does not matter how.
(24) Deut. XXII, 6, 7: the Heb. lit., ‘to let go thou shalt let go’; v. p. 192. n. 5.
(25) But if the dam returns after being sent away twice, one may take both it and the young.
(26) I.e., for food.
(27) E.g., as a leper's sacrifice (v. Lev. XIV. 4): how do I know that even then the dam must not be taken?
(28) Lev. XIX. 17; cf. n. 1.
(29) This is expressed in Hebrew by the inf.
(30) Ex. XXIII, 5; this is an exhortation to help to unload the animal.
(31) Deut. XXII. 4. Cf. n. 1.
(32) As a result of the depreciation of the animal if it is not unloaded.
(33) V. infra p. 20.
(34) Though the passer-by is bound to help in the loading, he must be paid for his services.
(35) V. infra 32a.
(36) It is not clear which refers to unloading and which to loading. Therefore, had there been only one verse, I would have taken it to refer to one or the other, but not to both.
(37) I.e., there is no need to trouble to return it.
(38) Hence, since it is quite helpless, the passer-by is called upon to render assistance by restoring it.

Talmud - Mas. Baba Metzia 31b

but as for these two, seeing that their master is with them, [the law would] not [apply]: thus both are necessary.

He that smote him shall surely be put to death:[1] I know only [that he is to be executed] by the mode of death prescribed in his case: whence do I know that if you cannot execute him with the death prescribed for him, you may slay him with any death you are able? From the verse, ‘He shall surely be put to death’, meaning under all circumstances.

Thou shalt surely smite [the inhabitants of that city with the edge of the sword]:[2] I know only [that you may execute them] with the death[3] that is prescribed in their case. Whence do I know that if you cannot slay them with the death that is prescribed in their case, you may smite them in any manner you are able? From the verse, ‘Thou shalt surely smite’, implying under all circumstances.

Thou shalt surely return [the pledge unto him when the sun goeth down]:[4] from this I know it [sc. that the pledge must be returned] only if he [the creditor] distrained with the sanction of the court;[5] whence do we know if of one who distrained without the sanction of the court? From the verse, Thou shalt surely return it — implying in all cases.

If thou at all[6] take to pledge [thy neighbour's raiment, thou shall deliver it to him by that the sun goeth down]:[7] from that I know it [sc. that the pledge must be returned] only if he [the creditor] distrained with sanction [of the court]; whence do we know it of one who distrained without sanction [of the court]? Because it is stated, If thou at all take to pledge, implying in all cases. And for what purpose are both of these verses necessary?[8] — One refers to day raiment, the other to night clothes.[9]

Thou shalt surely open [thy hand unto thy brother, to thy poor, etc.].[10] I know this only of the poor

of thine own city:[11] whence do I know it of the poor of another city? — From the expression, 'Thou shalt surely open', implying, in all cases.

Thou shalt surely give [him]:[12] I know only that a large sum must be given;[13] whence do I know that a small sum too must be given?[14] From the expression, Thou shalt surely give — in all circumstances.

Thou shalt furnish him liberally.[15] I know only that if the house [of the master] was blessed for his [the slave's] sake,[16] a present must be made. Whence do we know it even if the house was not blessed for his sake? Scripture teaches, 'Thou shalt furnish him liberally'[17] under all circumstances. But according to R. Eleazar b. 'Azariah, who maintained: If the house was blessed for his sake, a present is made to him, but not otherwise; what is the purpose of 'ta'anik'?[18] — The Torah employs[19] human phraseology.[20]

And thou shalt surely lend him [sufficient for his need].[21] I know this only of one [a poor man] who has nought and does not wish to maintain himself [at your expense];[22] then Scripture saith. Give him by way of a loan. Whence do I know it if he possesses his own but does not desire to maintain himself [at his own cost]? From the verse, 'Thou shalt surely lend him'.[23] But according to R. Simeon, who maintained: If he has his own but refuses to maintain himself [therewith], we are under no obligation toward him, why state 'surely?'[24] — The Torah employs human phraseology.

IF HIS LOST TIME IS WORTH A SELA', HE MUST NOT DEMAND, GIVE ME A SELA',' BUT IS PAID AS A LABOURER. A Tanna taught: He must pay him as an unemployed labourer. What is meant by 'an unemployed labourer?' — As a labourer unemployed in his particular occupation.[25]

'IF A BETH DIN IS PRESENT, HE MAY STIPULATE IN THEIR PRESENCE. Issur and R. Safra entered into a business partnership. Then R. Safra went and divided it [the stock] without Issur's knowledge in the presence of two people. When he came before Rabbah son of R. Huna,[26] he said to him, 'Go and produce the three people in whose presence you made the division; or else

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(1) Num. XXXV, 21.

(2) With reference to an idolatrous city. Deut. XIII, 16.

(3) Lit., 'smiting'.

(4) Ibid. XXIV, 13.

(5) V. infra 113a.

(6) This also is expressed in the Hebrew by the inf.

(7) Ex. XXII. 25.

(8) Since they both state the same law.

(9) Deut. XXIV, 13 to the former; Ex. XXII, 25 to the latter. Cf. infra 114b.

(10) Deut. XV, 11.

(11) As implied by thy poor.

(12) Ibid. 10. The reference is to money lent before the year of release.

(13) Maharsha: because 'give' connotes something of value

(14) If one cannot lend much.

(15) Ibid. 24; this refers to the parting gifts made to a slave on his attaining his freedom.

(16) Because the verse ends: as the Lord thy God hath blessed thee thou shalt give unto him.

(17) V. supra note 2.

(18) 'Thou shalt furnish', i.e., the repetition of the verb.

(19) Lit., 'speaks with'.

(20) And that repetition is normal.

(21) Ibid. 8: i.e., one must lend a poor man for his requirements.

(22) I.e., he does not want charity; hence Scripture orders that a loan shall be made to him.
(23) Even then one must lend, and claim the return of his money after the borrower's death. This is the explanation in Keth. 67b.
(24) v. p. 195. n. 2.
(25) Lit., ‘as a labourer unemployed in that work from which he was disturbed’ (by having to return the lost article) and willing to take less for the lighter task of restoring lost property than for his usual more arduous occupation; cf. p. 398. n. 2.
(26) For confirmation of his division, which was in order to dissolve their partnership.

two out of the three,[1] or else two witnesses that you did divide in the presence of three [others].'[2] 'How do you know this?' he asked him.[3] — He replied. 'Because we learnt. IF A BETH DIN IS PRESENT, HE MAY STIPULATE IN THEIR PRESENCE; BUT IF THERE IS NO BETH DIN BEFORE WHOM TO STIPULATE, HIS OWN TAKES PRECEDENCE.'[4] 'What comparison is there?' he retorted. 'In that case, Seeing that money is being taken from one and given to another, a Beth din is needed;[5] but here I took my own, and mere proof [is required that I shared fairly]; hence two are sufficient. In proof thereof we learnt: A widow may sell [of her deceased husband's estate] without the presence of Beth din!'[6] — Said Abaye to him, 'But was it not stated thereon: R. Joseph b. Manyumi said in R. Nahman's name: A widow does not need a Beth din of ordained scholars, but a Beth din of laymen is necessary?'

MISHNAH. IF HE FINDS IT [AN ANIMAL] IN A STABLE, HE HAS NO RESPONSIBILITY TOWARD IT [TO RETURN IT];[7] IN THE STREET, HE IS OBLIGED [TO RETURN IT]. BUT IF IT IS IN A CEMETERY, HE MUST NOT DEFILE HIMSELF FOR IT.[8] IF HIS FATHER ORDERS HIM TO DEFILE HIMSELF, OR SAYS TO HIM, 'DO NOT RETURN [IT].' HE MUST NOT OBEY HIM. IF ONE UNLOADS AND LOADS, UNLOADS AND LOADS, EVEN FOUR OR FIVE TIMES, HE IS [STILL] BOUND [TO DO IT AGAIN], BECAUSE IT IS WRITTEN, THOU SHALT SURELY HELP [WITH HIM].[9] IF HE [THE OWNER OF THE ANIMAL] WENT, SAT DOWN AND SAID [TO THE PASSER-BY], 'SINCE THE OBLIGATION RESTS UPON YOU, IF YOU DESIRE TO UNLOAD, UNLOAD:' HE [THE PASSER-BY] IS EXEMPT, BECAUSE IT IS SAID, 'WITH HIM'; YET IF HE [THE OWNER] WAS OLD OR INFIRM HE IS BOUND [TO DO IT HIMSELF]. THERE IS A BIBLICAL PRECEPT TO UNLOAD, BUT NOT TO LOAD. R. SIMEON SAID: TO LOAD UP TOO. R. JOSE THE GALILEAN SAID: IF IT [THE ANIMAL] BORE MORE THAN HIS PROPER BURDEN, HE [THE PASSER-BY] HAS NO OBLIGATION TOWARDS HIM [ITS OWNER], BECAUSE IT IS WRITTEN, [IF THOU SEE THE ASS OF HIM THAT HATETH THEE LYING] UNDER ITS BURDEN, WHICH MEANS, A BURDEN UNDER WHICH IT CAN STAND.

GEMARA. Raba said: The STABLE referred to is one which neither causes [the animal] to stray nor is it guarded.[10] It does not cause it to stray: since it is taught: HE HAS NO RESPONSIBILITY TOWARDS IT [TO RETURN IT]; nor is it guarded, since it is necessary to teach HE HAS NO RESPONSIBILITY TOWARD IT. For should you think that it is guarded: Seeing that if he finds it outside he takes it inside;[11] if he finds it inside, is it necessary to state [that he is not bound to return it]? But it must follow that it is unguarded. This proves it.

IF HE FINDS IT IN A STABLE, HE HAS NO RESPONSIBILITY TOWARD IT. R. Isaac said: Provided that it is standing within the tehum.[12] Hence it follows that [if he finds it] in the street, even within the tehum, he is still bound [to return it]. Others refer this to the second clause, IN THE STREET, HE IS OBLIGED [TO RETURN IT]. R. Isaac observed: Providing that it is standing within the tehum: hence it follows that [if he finds it] in a stable, even without the tehum, he is still under no obligation.

IF IT IS IN A CEMETERY, HE MUST NOT DEFILE HIMSELF FOR IT. Our Rabbis taught: Whence do we know that if his father said to him, 'Defile yourself', or 'Do not return it', he must disobey him? Because it is written, Ye shall fear every man his mother, and his father, and keep my Sabbaths: I am the Lord your God[13] — ye are all bound to honour Me.[14]

Thus, the reason is that Scripture wrote, ye shall keep my Sabbaths;[15] otherwise, however, I would have said that he has to obey him.[16] But why so? One is a positive command, and the other is both a positive and a negative command,[17] and a positive command cannot supersede [combined] positive

and negative commands! — It is necessary. I might think, Since the honour due to parents is equated to that due to the Omnipresent, for it is said, Honour thy father and thy mother;[18] whilst elsewhere it is said: Honour the Lord with thy substance;[19] therefore he must obey him. Hence we are informed that he must not obey him.

THERE IS A BIBLICAL PRECEPT TO UNLOAD, BUT NOT TO LOAD. What is meant by — 'BUT NOT TO LOAD'? Shall we say, not to load at all: wherein does unloading differ, because it is written, Thou shalt surely help him?[20] Yet in respect to loading, too, it is said, thou shalt surely help him to lift them up again![21] But [it means this:] It is a Biblical obligation to unload without remuneration, but not to load without payment, save only for remuneration. R. Simeon said: To load too without payment.

We have [thus] learnt here what our Rabbis taught: Unloading [must be done] without pay; unloading, for pay. R. Simeon said: Both without payment. What is the reason of the Rabbis? — For should you think it is as R. Simeon: let Scripture state loading, and unloading becomes unnecessary; for I would reason: If one is bound to load, though no suffering of dumb animals nor financial loss is involved;[22] how much more so unloading, seeing that both suffering of dumb animals and financial loss are involved![23] Then for what purpose is it written? To teach you that unloading must be performed without payment, but loading only for payment. And what is R. Simeon's reason? — Because the verses are not explicit.[24] And the Rabbis?[25] — Why [say,] The verses are not explicit? Here it is written, [If thou see the ass . . .] lying under his burden;[26] whilst there it is said, [Thou shalt not see thy brother's ass or his ox] fall down by the way, which implies, both they and their burdens are cast on the road.[27] And R. Simeon?[28] — 'Fall down by the way' implies they themselves [the animals], their load being still upon them.

Raba said:

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(1) Who shall testify that the division was made in the presence of three, including themselves.

(2) In each case the three would constitute a Beth din to ensure that the stock was rightly assessed and a fair division made.

(3) That three are necessary.

(4) And a Beth din implies three.

(5) It is so regarded because the Mishnah states that actually he is only entitled to the pay of an unemployed worker, hence, when he stipulates that he is to receive more, and the stipulation is allowed, it is the equivalent of taking money from one and giving it another. — The power of a Beth din to do this is based on the principle, hefker by Beth din is hefker, i.e., Beth din is empowered to abrogate a person's rights in his own property, and declare it ownerless; therefore the court can also take from one and give to another,

(6) For her alimony, and only two witnesses are required to see that she does not sell unreasonably below value.

(7) This is discussed in the Gemara.

(8) If he is a priest.

(9) Ex. XXIII, 5.

(10) I.e., it is in such a position that there is nothing to cause the animal to run away; on the other hand, it is unlocked, and there is nothing to prevent it from going.

(11) I.e., into a stable, and that is sufficient, as stated supra 31a, that he can simply take it into the owner's garden or ruins.

(12) A sabbath day's journey. i.e., 2000 cubits without the town boundary.

(13) Lev, XIX, 3.

(14) I.e., though every man must fear — i.e., reverence and obey his parents — his duty to God overrides his duty to them. The verse is therefore rendered thus: Ye shall fear every man his mother and his father; nevertheless (should they order you to desecrate the Sabbath), ye shall keep my Sabbaths, because I am the Lord your God.

(15) V. preceding note.

(16) His father, when he tells him not to return lost property.

(17) To obey one's parents is a positive command, as has just been quoted. To return lost property is a positive command — thou shalt surely restore it — and a negative injunction — thou mayest not hide thyself (Deut. XXII, 1, 3).
(18) Ex. XX, 12.
(19) Prov. III. 9: the fact that the same language is used of both shews that they are likened to each other.
(20) Ex. XXIII, 5.
(21) Deut. XXII, 4.
(22) V. supra p. 193.
(23) When the animal falls under its burden and help is needed to unload it.
(24) V. p. 194, n. 3.
(25) How do they rebut this argument?
(26) Ex. XXIII. 5: this certainly implies that the burden is still upon it, and help is required for unloading.
(27) And help is required to reload them.
(28) How can he maintain that the verses are not explicit?

Talmud - Mas. Baba Metzia 32b

From the arguments of both we may infer that [relieving] the suffering of an animal is a Biblical law. For even R. Simeon said [this][1] only because the verses are not clearly defined. But if they were, we would infer a minori.[2] On what grounds: Surely we infer it on the grounds of the suffering of dumb animals?[3] — [No.] Perhaps it is because financial loss is involved, and the argument runs thus: If one is obliged to load, though no financial loss is involved; how much more so to unload, seeing that financial loss is involved. But is there no financial loss involved when loading [is required]: may not the circumstances be that in the meanwhile he loses the market, or that thieves can come and rob him of all he has![4] Now, the proof[5] that [relieving] the suffering of an animal is Biblically enjoined is that the second clause states: R. JOSE THE GALILEAN SAID: IF IT [THE ANIMAL] BORE MORE THAN ITS PROPER BURDEN, HE [THE PASSER-BY] HAS NO OBLIGATION TOWARDS HIM [THE OWNER], BECAUSE IT IS WRITTEN, [IF THOU SEE THE ASS OF HIM THAT HATETH THEE LYING] UNDER ITS BURDEN, WHICH MEANS, A BURDEN UNDER WHICH IT CAN STAND: hence it follows that in the view of the first Tanna[6] he is obligated towards him [to help him]. Why so? Surely because relieving the suffering of an animal is Biblically enjoined![7] — [No] Perhaps they differ as to [the connotation of] 'under its burden,' R. Jose maintaining that we interpret 'under its burden,' a burden under which it can stand; whilst the Rabbis hold that we do not interpret 'under its burden' [thus.] [Moreover,] it may be proved that relieving the suffering of an animal is no Biblical [injunction], because the first clause states, IF HE [THE OWNER OF THE ANIMAL] WENT, SAT DOWN, AND SAID [TO THE PASSERBY], SINCE THE OBLIGATION RESTS UPON YOU TO UNLOAD, UNLOAD: HE [THE PASSER-BY] IS EXEMPT, BECAUSE IT IS SAID, 'WITH HIM'. Now, should you think that [relieving] the suffering of an animal is a Biblical injunction, what difference does it make[8] whether the owner joins him [in relieving the animal] or not? — In truth, [relieving] the suffering of an animal is Biblically enjoined; for do you think that 'EXEMPT' means entirely exempt? Perhaps he is exempt [from doing it] without payment, yet he is bound [to unload] for payment, Scripture ordering thus: When the owner joins him, he must serve him for nought; when the owner abstains, he must serve him for payment;[9] yet after all [relieving] the suffering of an animal is Biblically enjoined.

(Mnemonic: Animal, animal, Friend, enemy, habitually lying down.) Shall we say that the following supports him?[10] 'One must busy himself with an animal belonging to a heathen just as with one belonging to an Israelite'.[11] Now, if you say that [relieving] the suffering of an animal is a Biblical injunction, it is well; for that reason he must busy himself therewith as with one belonging to an Israelite. But if you say that [relieving] the suffering of an animal is not Biblically enjoined, why must he busy himself therewith as with an Israelite's animal? — There it is on account of enmity.[12] Logic too supports this. For it states: If it is laden with forbidden wine, he has no obligation towards it. Now if you say that [relieving the suffering of an animal is not Biblically

enjoined, it is well: therefore he has no obligation toward it. But if you say it is Biblically enjoined, why has he no obligation toward it? — It means this: but he has no obligation to load it with forbidden wine.

Come and hear: In the case of an animal belonging to a heathen bearing a burden belonging to an Israelite, thou mayest forbear.[13] But if you say that [relieving] the suffering of an animal is Biblically enjoined, why mayest thou forbear: surely 'thou shalt surely help with him' is applicable! — After all, [relieving] the suffering of an animal is Biblically [enjoined]: the reference there is to loading. If so, consider the second clause: In the case of an animal belonging to an Israelite and a load belonging to a heathen, 'thou shalt surely help.' But if this treats of loading, why [apply] 'thou shalt surely help him'? — On account of the inconvenience of the Israelite.[14] If so, the same applies in the first clause? — The first clause treats of a heathen driver, the second of an Israelite driver. How can you make a general assumption?[15] — As a rule, one goes after his ass.[16] But both 'and thou mayest forbear' and 'thou shalt surely help' refer to unloading! — Well [answer thus:] Who is the authority of this? R. Jose the Galilean, who maintained that [relieving the suffering of an animal is not Biblically [enjoined].[17]

Come and hear: If a friend requires unloading, and an enemy loading.[18] one's [first] obligation is towards his enemy, in order to subdue his evil inclinations.[19] Now if you should think that [relieving the suffering of an animal is Biblically [enjoined], [surely] the other is preferable! — Even so, [the motive] 'in order to subdue his evil inclination' is more compelling.[20]

Come and hear: The enemy spoken of is an Israelite enemy, but not a heathen enemy.[21] But if you say that [relieving] the suffering of an animal is Biblically [enjoined], what is the difference whether [the animal belongs to] an Israelite or a heathen enemy? — Do you think that this refers to 'enemy' mentioned in Scripture? It refers to 'enemy' spoken of in the Baraitha.[22]

Come and hear:

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(1) That unloading needs be explicitly commanded, besides loading.

(2) That one is bound to unload, as above, and the verse would be unnecessary.

(3) If one is bound to load, though no suffering is entailed, etc., as on 32a.

(4) Hence the argument must be based on the suffering of the animal, which proves that such suffering must be averted by Biblical law.

(5) Lit., 'thou mayest know.'

(6) R. Simeon included.

(7) It is now assumed that the first Tanna admits the feasibility of R. Jose's interpretation of 'its burden,' consequently the only possible reason of the first Tanna is that relieving the suffering of an animal is a Biblical law,

(8) Lit., 'what is it to me?'

(9) I.e., he must relieve the animal, but is entitled to demand payment.

(10) Raba.

(11) To relieve it from its burden.

(12) I.e., in order not to arouse the enmity of the heathen.

(13) This refers to Ex. XXIII, 5: If thou seest the ass of him that hateth thee lying under his burden, and wouldst forbear to help him, thou shalt surely help with him, The Talmud disjoins the two phrases 'and wouldst forbear' (one word in Heb. we-hadalta) and 'thou shalt surely help him,' teaching that sometimes the first applies, i.e., one is permitted to withhold his aid, and sometimes the second, viz., 'thou shalt surely help him.'

(14) Who is forced to stay with the animal until it is laden and able to proceed.

(15) On what grounds can one assume that the first clause treats of a heathen driver etc.?

(16) Therefore, seeing that the first clause refers to an ass belonging to a heathen, the driver too is a heathen — probably the owner; and the same holds good of the second clause.

(17) As may be seen from his view in the Mishnah; but Raba's dictum is based on the view of the Rabbis.

(18) I.e., one meets two asses: one, belonging to a friend, is tottering under its burden, and help is needed to unload it; the other, belonging to an enemy, has fallen, and assistance is wanted to reload it.
(19) Tosef. B.M. II.
(20) Lit., 'better'.
(21) Tosef. ibid. It is now assumed that this refers to Ex. XXIII, 5 ('him that hateth thee' == thine enemy).
(22) Quoted above: If a friend requires unloading, and an enemy loading etc.

Talmud - Mas. Baba Metzia 33a

[If thou seest the ass of him that hateth thee lying under its burden etc.:] 'lying' [just now], but not an animal that habitually lies down [under his burden]; 'lying,' but not standing;[1] 'under its burden', but not if it is unloaded;[2] 'under its burden' — a burden under which it can stand. Now, if you say that [relieving the suffering of an animal] is Biblically [enjoined], what does it matter whether it was lying [this once only], habitually lay down, or was standing? — The authority of this is R. Jose the Galilean, who maintained that [relieving] the suffering of an animal is [enjoined merely] by Rabbinical law. Reason supports this too. For it is taught: 'under its burden' — a burden under which it can stand. Now, whom do you know to hold this view? R. Jose the Galilean:[3] this proves it. But can you assign it to R. Jose the Galilean? Does not the second clause teach: 'under its burden' but not if it is unloaded. What is meant by 'not if it is unloaded?' Shall we say, if it is unloaded, there is no obligation at all?[4] But it is written, Thou shalt surely help to lift them up again![5] Hence it is obvious [that it means]. If unloaded, there is no obligation [to help to load it] without payment, but for remuneration. Now, whom do you know to hold this view? The Rabbis![6] — In truth, it is R. Jose the Galilean, yet in the matter of loading he agrees with the Rabbis.[7]

Our Rabbis taught: If thou see [the ass of him etc.]:[8] I might think; even in the distance;[9] therefore it is taught. If thou meet [thine enemy's ox or his ass going astray, thou shalt surely bring it back to him again].[10] If, 'when thou meet', I might think that meet is literally meant; therefore it is written. 'If thou seest', Now, what 'seeing' is the equivalent of 'meeting?' The Sages estimated this as two fifteenths[11] of a mil,[12] which is a ris.[13] A Tanna taught: And he must accompany it as far as a parsang.[14] Rabbah b. Bar Hana observed: Yet he receives payment [for this].

MISHNAH. IF [A MAN'S] OWN LOST ARTICLE AND HIS FATHER'S LOST ARTICLE [NEED ATTENTION], HIS OWN TAKES PRECEDENCE. HIS OWN AND HIS TEACHER'S — HIS OWN TAKES PRECEDENCE; HIS FATHER' S AND HIS TEACHER'S — HIS TEACHER'S TAKES PRECEDENCE, BECAUSE HIS FATHER BROUGHT HIM INTO THIS WORLD, WHEREAS HIS TEACHER. 'WHO INSTRUCTED HIM IN WISDOM, BRINGS HIM TO THE FUTURE WORLD. BUT IF HIS FATHER IS A SAGE,[15] HIS FATHER'S TAKES PRECEDENCE. IF HIS FATHER AND HIS TEACHER WERE [EACH] CARRYING A BURDEN, HE MUST [FIRST] ASSIST HIS TEACHER TO LAY IT DOWN,[16] AND THEN ASSIST HIS FATHER. IF HIS FATHER AND HIS TEACHER ARE IN CAPTIVITY, HE MUST [FIRST] REDEEM HIS TEACHER AND THEN HIS FATHER. BUT IF HIS FATHER IS A SAGE, HE MUST [FIRST] REDEEM HIS FATHER AND THEN HIS TEACHER.

GEMARA. Whence do we know this? — Rab Judah said in Rab's name: Scripture saith, Save that there shall be no poor among you[17] yours takes precedence over all others.[18] But Rab Judah also said in Rab's name: He who [strictly] observes this, will eventually be brought to it.[19]

IF HIS FATHER AND HIS TEACHER WERE [EACH] CARRYING A BURDEN etc. Our Rabbis taught: The teacher referred to is he who instructed him in wisdom, not he who taught him Bible and Mishnah:[20] this is R. Meir's view. R. Judah said: He from whom one has derived the greater part of his knowledge.[21] R. Jose said: Even if he enlightened his eyes in a single Mishnah only, he is his teacher. Said Raba: E.g., R. Sehora, who told me the meaning of zohama listron.[22]

Samuel rent his garment for one of the Rabbis who taught him the meaning of 'One was thrust into the duct as far as the arm pit.[23] and another [key] opened [the door] directly.'[24]

'Ulla said: The scholars in Babylon arise before and rend their garment for each other [in mourning]; but with respect to a [colleague's] lost article, when one has his father's [also to attend to,] he returns [a scholar's first] only in the case of his teacher put excellence.[25] R. Hisda asked R. Huna: 'What of a disciple whom his teacher needs?'[26] 'Hisda, Hisda,' he exclaimed; 'I do not need you, but you need me.' Forty years[27] they bore resentment against and did not visit each other. R. Hisda kept forty fasts because R. Huna had felt himself humiliated, whilst R. Huna kept forty fasts for having [unjustly] suspected R. Hisda.

It has been stated: R. Isaac b. Joseph said in R. Johanan's name: The halachah is as R. Judah. R. Aha son of R. Huna said in R. Shesheth's name: The halachah is as R. Jose.[28] Now, did R. Johanan really say this? But R. Johanan said, The halachah rests with an anonymous Mishnah, and we have learnt, HIS TEACHER, WHO INSTRUCTED HIM IN WISDOM![29] — What is meant by WISDOM? The greater part of one's knowledge.

Our Rabbis taught: They who occupy themselves with the Bible [alone] are but of indifferent merit;[30] with Mishnah, are indeed meritorious, and are rewarded for it; with Gemara[31] — there can be nothing more meritorious; yet run always to the Mishnah more than to the Gemara. Now, this is self-contradictory. You say, 'with Gemara — there can be nothing more meritorious;' and then you say, 'Yet run always to the Mishnah more than to the Gemara!' — Said R. Johanan:

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(1) I.e., one is obliged to help to unload an animal that has fallen under its load, but not one that still stands under it.

(2) One is not obliged to help in loading it up again. The Gemara objects further in that this is explicitly ordered in Deut. XXII, 4.

(3) In the Mishnah supra 32a.

(4) Lit., 'it is not unloaded at all'.

(5) Deut. XXII. 4: this is interpreted as referring to reloading.

(6) Mishnah supra 32a. as interpreted in the Gemara.

(7) That it must be remunerated.

(8) Ex. XXIII, 5.

(9) And one is bound to go there to help.

(10) Ibid. 4.

(11) Lit., 'one in seven and a half.'

(12) A mil == 1000 cubits.

(13) A Persian measure.

(14) The passer-by, having helped to raise up the animal and replace its burden, must accompany it for a parasang, in case it falls again.

(15) [MS.M. adds: 'equal (in wisdom) to his teacher.']

(16) Lit., 'put down his teacher's.'

(17) Deut. XV. 4.

(18) V. p. 187. n. 1.

(19) He who always takes the greatest care to safeguard his own first, so as not to become impoverished, will eventually be brought to poverty.

(20) 'Wisdom' means the intelligent understanding of the Mishnah, the grounds of its statements, which are frequently made without giving the reasons, and ability to reconcile opposing Mishnahs (Rashi).

(21) Whether Bible, Mishnah or Gemara.

(22) **. This is a utensil mentioned in Kel. XIII. 2, in reference to laws of ritual defilement, a soup-ladle with a spoon for removing the scum of soup on one side and a fork on the other.

(23) Jast.: 'the duct of the arm-pit.' a sewer in the Temple, so called from its shape.

(24) This is a Mishnah in Tam. 30b, treating of the clearing away of the ashes from the altar.
(25) Though they give each other the respect due to a teacher, e.g., rising and rending the garments, nevertheless, in a question of lost property, only he who has really taught them is regarded as such.
(26) Because he has traditions from other scholars of which his teacher is ignorant. — R. Hisda was R. Huna's disciple, and the latter regarded the question as having a personal sting.
(27) [R. Han. renders: You need me till the age of forty; cf. A.Z. 5a: 'A man cannot probe the mind of his master up to the age of forty.']
(28) V. Baraitha quoted above.
(29) This appears to agree with R. Meir, not R. Judah.
(30) Lit., 'it is meritorious and it is not meritorious.'
(31) V. p. 60, n. 7. [Read with all MSS. and older prints: 'Talmud' (the discussions based on the older traditions of the Mishnah), the term 'Gemara', occurring throughout this passage in cur. edd., and denoting the complete mastery of a subject (Bacher, HUCA., 1904, 26-36), or, a summary embodying conclusions arrived at in schools (Kaplan, Redaction of the Talmud, p. 195 ff), having been substituted by the censor.]

Talmud - Mas. Baba Metzia 33b

This teaching[1] was taught in the days of Rabbi; thereupon everyone forsook the Mishnah and went to the Gemara; hence he subsequently taught them, 'Yet run always to the Mishnah more than to the Gemara.'[2] How was that inferred?[3] — Even as R. Judah son of R. Ila'i expounded: What is the meaning of, Shew my people their transgression, and the house of Jacob their sins?[4] 'Shew my people their transgression' refers to scholars, whose unwitting errors[5] are accounted as intentional faults;[6] 'and the house of Israel their sins' — to the ignorant, whose intentional sins are accounted to them as unwitting errors. And that is the meaning of what we learnt: R. Judah said: Be heedful of the [Talmud],[7] for an error in Talmud is accounted as intentional.

R. Judah son of R. Ila'i taught: What is meant by the verse, Hear the word of the Lord, ye that tremble at his word?[8] — This refers to scholars; Your brethren said, to students of Scripture; that hate you — to students of the Mishnah;[9] that cast you out — to the ignorant.[10] [Yet] lest you say, their hope [of future joy] is destroyed, and their prospects frustrated, Scripture states , And we shall see your joy.[11] Lest you think, Israel shall be ashamed, — therefore it is stated, and they shall be ashamed: the idolaters shall be ashamed, whilst Israel shall rejoice.

C H A P T E R I I I

MISHNAH. IF A MAN ENTRUSTS AN ANIMAL OR UTENSILS TO HIS NEIGHBOUR, AND THEY ARE STOLEN OR LOST, AND HE [THE BAILEE] PAYS [FOR THEM], DECLINING TO SWEAR (SINCE IT WAS RULED THAT A GRATUITOUS BAILEE MAY SWEAR AND BE QUIT); THE THIEF, IF HE IS FOUND, MUST RENDER DOUBLE, AND IF HE HAS SLAUGHTERED OR SOLD [THE ANIMAL], HE MUST REPAY FOURFOLD OR FIVEFOLD.[12] TO WHOM MUST HE PAY IT? TO HIM WITH WHOM THE BAILMENT WAS DEPOSITED.[13] IF HE SWEARS, NOT WISHING TO PAY, THE THIEF, IF FOUND, MUST REPAY DOUBLE, AND IF HE HAS SLAUGHTERED OR SOLD [THE ANIMAL], MUST REPAY FOURFOLD OR FIVEFOLD. TO WHOM MUST HE PAY IT? TO THE BAILOR.

GEMARA. Why must he state both ANIMAL and UTENSILS? — They are necessary. For if ANIMAL [alone] were stated, I might have said that only in the case of an animal does he [the bailor] make over the double repayment to him,[14] because it requires considerable attention, to be led in and out [of its stable]. But as for utensils, which do not require much attention, I might think that he does not make over the twofold repayment to him.[15] And if UTENSILS [alone] were stated, I might have argued that only in the case of utensils does he [the bailor] make over the twofold repayment to him, because their multiplication is not great.[16] But in the case of an animal, for which,

if slaughtered or sold, he [the thief] must repay fourfold or fivefold, I might think that he [the bailor] does not make over the multiplied principal to him. Hence both are necessary.

Rami b. Hama objected: But one cannot transfer that which is non-existent![17] And even according to R. Meir, who maintained, One can transfer that which is non-existent, — that is only in the case of, e.g.. the fruit of a palm tree, which will naturally come [into existence].[18] But here,

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(1) That Gemara is higher than Mishnah.

(2) The two are not really in opposition. The Mishnah itself needs full discussion (Gemara) before it can be intelligently understood; on the other hand, discussion cannot be profitable unless it takes the Mishnah as its basis. It would appear that when Gemara was praised, number of disciples eagerly applied themselves thereto, forgetting however that the Mishnah is the foundation; and therefore the new statement was made, which is not so much a new statement as a fuller explanation of the old. — It is noteworthy that Gemara, i.e., discussion on the Mishnah, was already rife in the days of Rabbi (i.e.. R. Judah the Prince c. first half of third century C.E.); cf. Weiss, Dor II, p. 209.

(3) [That the study of Talmud is the more meritorious.]

(4) Isa. LVIII, I.

(5) [Through inadequate application to the study of the Talmud.]

(6) Sins through ignorance, in the case of scholars, are accounted as intentional, since had they studied more thoroughly they would not have erred. — 'Transgression' (פשע) really means rebellion, and refers to intentional sin, whilst 'sin' (חטא) often refers to sinning through ignorance, the root idea of חטא being 'to be defective, to miss'.

(7) V. p. 206, n. 6.

(8) Ibid. LXVI, 5.

(9) There was a rivalry (perhaps amounting to enmity) between those who confined themselves exclusively to the Mishnah and those who developed a Gemara — i.e., discussion — upon it; cf. Sot. 22a.

(10) Maharsha: who 'cast you out' in that they have no desire to become partners with scholars in learning.

(11) 'We', plural. i.e., all classes of Israel.

(12) In accordance with Ex. XXI, 37.

(13) I.e., the bailee: since he paid for the bailment, all rights thereof vest in him; hence the thief must make restitution to him.

(14) When he receives payment for his bailment.

(15) It should be observed that the double payment is not regarded as becoming the bailee's automatically on account of the compensation he makes. That is because the liability is incurred on account of the theft, and the animal then belonged to the bailor.

(16) The thief can never be required to pay more than twofold.

(17) Lit., 'which has not come into the world.' — How then can the bailor make over the twofold repayment to the bailee?

(18) Hence we can sell his future crop.

who can say that it [the bailment] will be stolen? And should you assume that it will be stolen, who can say that the thief will be found? And even if the thief be found, who can say that he will repay [double]: perhaps he will confess [before his guilt is attested]. and thus be exempt?[1] — Said Raba: It becomes as though he [the bailor] had said to him, 'If it be stolen, and you are willing to pay me [for it], then my cow be yours from this moment [of delivery]'[2] If so, even its shearings and offsprings too [should belong to the bailee].[3] Why has it been taught: Excepting its shearings and offsprings? — But. said R. Zera, it is as though he had said to him, 'Except its shearings and offsprings.' And why make this an absolute assumption? It may be taken for granted that one gives over those improvements which come from elsewhere, but not those which come from the stock itself.

Others state, Raba said: It becomes as though he said to him, 'If it is stolen, and you are willing to reimburse me, then it is yours from just before the theft.' Wherein do they [sc. the two versions of

Raba's reply] differ? — They differ in respect of the difficulty posited by R. Zera;[4] or if it was standing in the meadow.[5]

AND HE [THE BAILEE] PAYS [FOR THEM], DECLINING TO SWEAR etc. R. Hiyya b. Abba said in R. Johanan's name: HE PAYS is not literally meant, but once he said, 'I will pay,' even if he has not done so, [the law of the Mishnah holds good].[6]

We learnt: AND HE PAYS, DECLINING TO SWEAR; [this implies,] only if he actually pays, but not otherwise? But consider the second clause: IF HE SWEARS, NOT WISHING TO PAY; [which implies] only if he did not consent, but if he consented, even if he had not actually paid [the double repayment is his]! Hence no inference can be drawn from this.[7]

It has been taught in accordance with R. Johanan: If one hires a cow from his neighbour and it is stolen, and he declares, 'I will pay and not swear,'[8] and then the thief is discovered, he must pay double to the hirer.[9]

R. Papa said: If a gratuitous bailee merely says, 'I was negligent,' he [the bailor] assigns the twofold repayment to him, since he could have freed himself by [the plea of] theft. If a paid bailee merely says, 'It was stolen', the twofold repayment is made over to him, since he could, if he wished, have freed himself by pleading that it was hurt or had died. But if a borrower says, 'I will pay,' he [the bailor] does not assign him the twofold repayment; for how could he have freed himself? By [the plea], it died on account of its work? That is a rare occurrence.[10]

Others state, R. Papa said: A borrower too, once he says 'I will pay,' the double repayment becomes his, since he could, if he wished, free himself by [the plea], 'It died on account of its work.' Thereupon R. Zebid observed to him, Thus did Abaye say: As for a borrower, [the twofold repayment is not his] unless he has actually paid. Why? — Since all the benefit [of the loan] is his, he [the lender] does not make over the double repayment to him on the strength of mere words.

It has been taught in accordance with R. Zebid. If one borrows a cow from his neighbour and it is stolen, and the borrower hastens and pays for it, and then the thief is found, he must repay double to the borrower. Now, on the first version of R. Papa's dictum,[11] this is certainly not a refutation;[12] but must we say that it is a refutation of the second version?[13] — R. Papa can answer you: Is this stronger than our Mishnah, which states, HE PAYS, yet we interpreted it as meaning, he declares [that he will pay]; so here too, it means that he says [that he will pay]. How compare? There [in our Mishnah] it is not stated that 'he hastens', whilst here it says, 'he hastens'! — What is the meaning of 'he hastens'? He hastens to promise. But since [the teaching] in respect of a hirer is stated, 'and he says' [that he will pay], whilst [that] in respect of a borrower is stated, 'and he hastens'; this proves that it is stated advisedly [so]! — Were they then taught together?[14] The tannaim of the schools of R. Hiyya and R. Oshaia[15] were asked, and they affirmed that they were taught together.

Now it is obvious that if he [the bailee] declared, 'I will not pay,' and then said, 'I will pay' — then he has said, 'I will pay'.[16] But what if he [first] declared, 'I will pay.'

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(1) One who confesses before his guilt is attested is exempt from the money fine attaching to his crime; v. B.K. 75a.

(2) For it may be taken as axiomatic that one is willing to forego a possible twofold repayment in return for the safety of the principal.

(3) Since the ownership of the bailee is assumed to be retrospective, the shearings and offsprings from the time of its delivery as a bailment should be his.

(4) It arises on the first version, but not the second.

(5) just before the theft. Since this does not belong to the bailee, he cannot acquire it just then (for in order to acquire it, either he must perform meshikah (v. Glos.) or it must be standing within his domain); consequently the additional

repayment made by the thief over and above the principal will belong to the bailor.

(6) This refutes the ruling reported in the name of R. Johanan.

(7) Only one clause is stated exactly, so that no particular inference can be drawn.

(8) Though a hirer is liable for theft, he could swear that an unpreventable accident had occurred, in which case he is free from responsibility.

(9) The Baraitha does not state that he actually paid, but merely declared his willingness to pay, yet the twofold repayment thereby becomes his.

(10) Hence a palpable lie, which one does not care to state.

(11) According to which the borrower does not acquire the double payment by his mere promise to pay.

(12) Since the Baraitha expressly states that the borrower actually paid.

(13) Which states that the borrower is entitled to the double payment on his mere promise to pay.

(14) They are separate Baraithas, and therefore the phraseology of one does not illumine the other.

(15) These were the principal authorities for the Baraitha.

(16) Hence the double repayment of the thief belongs to him.

Talmud - Mas. Baba Metzia 34b

and then declared, 'I will not pay': do we say, he has retracted; or perhaps, he intended keeping his word, and was merely repulsing him [the bailor]?[1] [Again,] if he declared, 'I will pay,' and died, whilst his sons declared, 'We will not pay,' what then? Do we say, they have retracted: or perhaps, they are keeping to their father's word, but merely repulsed him? [Again,] what if the sons did pay? Can he [the bailor] say to them, 'I made over the [right of receiving] double repayment to your father only, because he did me a favour,[2] but not to you': or perhaps, there is no difference? What if he [the bailee] paid to the sons?[3] Can they say to him, 'Our father made over the double repayment to you because you did him a favour; but as for ourselves, you have done nothing for us'; or perhaps, there is no difference? What if the heirs [of the bailee] paid to the heirs [of the bailor]? What if he paid a half?[4] What if he borrowed two cows and paid for one of them?[5] What if he borrowed from partners and paid one of them?[6] What if partners borrowed and one of them paid?[7] What if one borrowed from a woman and paid her husband?[8] What if a woman borrowed and her husband paid? The questions stand.

R. Huna said: He [the bailee] is made to swear that it is not in his possession.[9] Why? We fear that he may have cast his eyes upon it.[10]

An objection is raised: If one lends his neighbour on a pledge and the pledge is lost, and he [the lender] says to him [the debtor], 'I lent you a sela' on it, and it was [only] worth a shekel';[11] whilst the other maintains, 'Not so; you did lend me a sela' upon it and it was worth a sela':' he is free [from an oath].[12] 'I lent you a sela' on it and it was worth a shekel, whilst the other maintains, 'Not so; you did lend me a sela' on it, and it was worth three denarii;'[13] he is liable [to an oath].[14] [If the debtor pleads,] 'You did lend me a sela' on it, whilst it was worth two;' and the other replies, 'Not so: I lent you a sela' on it and it was worth a sela';' he is free [from an oath].[15] 'You did lend me a sela' on it and it was worth two,' whilst the other replies, 'Not so: I lent you a sela' on it and it was worth five denarii,' he is liable [to an oath]. Now, who must swear? He who has the bailment [i.e., the creditor], lest the other swear and then this one produce the bailment.[16] To what does this[17] refer? Shall we say, to the second clause; but that [the oath rests upon the creditor] follows from the fact that it is he who makes partial admission![18] — But, said Samuel, it refers to the first clause. How can it refer to the first clause?[19] — He means the second subsection of the first clause, [viz.,] 'I lent you a sela' on it and it was worth a shekel,' whilst the other maintains, 'Not so: you did lend me a sela' on it, and it was worth three denarii:' he is liable [to an oath]. Now, the onus of the oath lies upon the debtor,[20] yet the Rabbis ordered that the creditor should swear, lest this one [sc. the debtor] swear and then the other produce the pledge. But if

(1) Perhaps he was importuning him for the money, which he could not pay just then. Nevertheless, he might have intended to pay, and therefore the twofold repayment should belong to him.
(2) By taking care of the bailment.
(3) The bailor having died.
(4) I.e., he consented to pay half: does he acquire half of the double repayment?
(5) If it be assumed that when one consents to pay half only he does not acquire half of the double repayment, what if he consents to pay for one cow out of two: can this be regarded as a separate transaction altogether?
(6) His share: is he entitled to his half of the twofold repayment? Do we regard it as though he had paid the whole of one particular person's bailment, or must he have paid for the whole bailment itself?
(7) Has he a right to his half of the double repayment, since he paid for the whole of his share; or must the whole bailment be paid for?
(8) The reference is to 'property of plucking', q.v. p. 234. n. 10. Do we say, since the principal does not belong to the husband, restitution to him does not entitle the bailee to the double repayment; or perhaps, since the husband enjoys the usufruct, it does?
(9) This refers to the Mishnah. Though he offers to pay, he must nevertheless swear.
(10) I.e., coveted it, and so trumped up a story that it was stolen.
(11) Half a sela'.
(12) Since he maintains that he owes him nothing at all, there is no partial admission of the claims.
(13) One sela' = 4 denarii.
(14) Since there is partial admission of indebtedness. The Gemara discusses below the meaning of 'he.'
(15) V. n. 2 which applies here too, though the debtor is now the claimant.
(16) Because it is derogatory to the institution of the oath to swear when a matter may be practically proved (Tosaf.); Mishnah, Shebu. 43a.
(17) The last passage in the cited Mishnah.
(18) Why then state a different reason?
(19) Seeing that there no oath is taken.
(20) Since he is the defendant who makes partial admission.

Talmud - Mas. Baba Metzia 35a

R. Huna's dictum be correct, since the creditor must swear that it is not in his possession, how can he produce it? — Said Raba:[1] There are witnesses that it was burnt.[2] If so, whence can he produce it? — But, said, R. Joseph, there are witnesses that it was stolen. Yet after all, whence can he produce it? He may exert himself and bring it. If so, when the creditor swears, the debtor may take pains and bring it! — [No.] As for the creditor['s producing it], it is well: he knows who enters and leaves his house, and so he can go, exert himself, and produce it. But does the debtor know who enters and leaves the creditor's house?

Abaye said: We fear lest he plead, saying to him, 'I found it after the oath.' R. Ashi said: Both must swear: one [sc. the creditor] that it is not in his possession; and the other, how much it was worth — And this is its meaning: Who swears first? The creditor must swear first [that the pledge is not in his possession], lest the other swear and then he produce the bailment.

R. Huna b. Tahlifa said in Raba's name: The first paragraph of the second clause refutes R. Huna. '"You did lend me a sela' on it, whilst it was worth two," and the other replies, "Not so: I lent you a sela' on it and it was [only] worth a sela'," he is free [from an oath.]' But if R. Huna's dictum is correct, since the creditor must swear that it is not in his possession, let him also swear, in virtue of a superimposed oath, how much it was worth![3] — Said R. Ashi: I repeated this discussion before R. Kahana, whereupon he observed to me: Let this apply where he believes him.[4] Then let the debtor believe the creditor in this too [viz.,] how much it was worth! — [The debtor reasons,] he [the creditor] did not fully ascertain it [sc. the value]. Then let the creditor believe the debtor, since he does fully know it? — [Nevertheless,] he does not believe him. Wherein lies the difference, that the

debtor believes the creditor, but not vice versa? — The debtor applies to the creditor, The integrity of the upright shall guide them:[5] whereas the creditor applies to the debtor, but the perverseness of transgressors shall destroy them.[6]

A man once deposited jewels with his neighbour. When he demanded, 'Give me my jewels,' he replied, 'I do not know where I put them.' So he came before R. Nahman, Who said to him: Every [plea of] 'I do not know' is negligence; go and pay. Yet he did not pay, so R. Nahman went and had his house seized. Subsequently the jewels were found, [by which time] they had appreciated. Said R. Nahman: Let the jewels be returned to their [first] owner, and the house to its owner. Raba observed: I was sitting [then] before R. Nahman and it [the subject of our study] was the chapter, 'IF ONE ENTRUSTS [etc.];[7] so I quoted to him, IF HE [THE BAILEE] PAYS, DECLINING TO SWEAR [etc.],[8] but he did not answer me.[9] And he did well not to answer me. Why? — There he did not trouble him to go to court,[10] whereas here he troubled him.

Shall we say that in R. Nahman's opinion a valuation is returnable?[11] — [No.] There it is different, because it was a valuation made in error, since the jewels were in existence from the first.[12] The Nehardeans said: A valuation is returnable until twelve months. Amemar said: Though I am of Nehardea, I hold that a valuation is always returnable. None the less, the law is that a valuation is always returnable, because it is said, And thou shalt do that which is right and good.[13]

Now it is obvious,if a valuation was made on behalf of a creditor,[14] and he went and valued it for his own creditor: we say to him [the second creditor], You are no better than the man in whose power you come.[15] If he sold, bequeathed or gifted it, these [the recipients] certainly entered it [the distrained estate] originally with the intention of [possessing] the land, not the money.[16] If it was appraised in favour of a woman [creditor], and she married:[17] or if a valuation was made of a woman's [estate] and she married, and then died: the husband ranks as a purchaser in respect to a wife's property: he neither returns [the estate to the debtor], nor is it returned to him.[18] For R. Jose b. Hanina said: In Usha it was enacted:[19] If a woman sells of her 'property of plucking' in her husband's lifetime and then dies, her husband [as heir] can claim it from the purchasers.[20]

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(1) [MS.: R. Joseph.]

(2) Consequently no oath is imposed.

(3) For superimposed oaths, v. supra 3a

(4) This clause means that the debtor believes the creditor that the pledge is lost and does not demand that he swear thereto. Hence there is no superimposed oath either.

(5) Prov. XI, 3; i.e., he assumes that the creditor's prosperity proves his trustworthiness.

(6) Ibid. This is a natural reasoning when the belief in material reward and punishment is strong.

(7) I.e., we were then studying the present chapter.

(8) The Mishnah proceeds to state that the double repayment belongs to the bailee, thus proving that once he pays he is entitled to all rights therein. So here too, since he had paid, albeit against his will, the increased value of the jewels should be his.

(9) Disdaining to reply.

(10) Hence he willingly gives over his rights to the bailee, in consideration of having received payment.

(11) V. supra, p. 99.

(12) But if an article is distrained because a debtor cannot repay, it may be that it is not returnable even if he subsequently acquires money.

(13) Deut. VI, 18.

(14) I.e., the debtor's goods were assessed, distrained, and given to the creditor.

(15) Just as he would have had to return the goods if the debtor could repay the loan, so must you too.

(16) Therefore it is not returnable to the debtor. The creditor himself would have had to return it on account of the verse quoted, for it is applicable to him, since in the first place he demanded money, not land. But it is inapplicable to these recipients, seeing that their thought was land, not money.

(17) And this seized estate became either the husband's, as ‘property of iron flock,’ or remained the wife's, the husband enjoying its usufruct, as ‘property of plucking.’

(18) If he wishes to settle his wife's debts.

(19) V. p. 558, n. 2.

(20) For he ranks as a previous purchaser.

Talmud - Mas. Baba Metzia 35b

Where, however, he [the debtor] himself gave it to him [the creditor] for his debt,[1] R. Aha and Rabina differ thereon: one maintains, It is returnable: the other, It is not. He who rules that it is not returnable holds that it is a true sale, since he voluntarily gave it in payment . But he who rules that it is returnable holds that it is not a true sale, and as for his giving it to him voluntarily and not going to court, — he gave it to him [merely] through shame.

And from what time can he [the creditor] enjoy the usufruct?[2] Rabbah said: As soon as he receives the adrakta.[3] Abaye said: The witnesses [to the adrakta], by their signatures, acquire the right for him.[4] Raba said: When the days of public announcement are ended.[5]

MISHNAH. IF A MAN HIRES A COW FROM HIS NEIGHBOUR, LENDS IT TO ANOTHER, AND IT DIES A NATURAL DEATH, THE HIRER MUST SWEAR THAT IT DIED NATURALLY, AND THE BORROWER MUST PAY THE HIRER.[6] SAID R. JOSE: HOW SHALL ONE DO BUSINESS WITH HIS NEIGHBOUR'S COW?[7] HENCE THE [VALUE OF THE] COW MUST BE RETURNED TO ITS OWNER.

GEMARA. R. Idi b. Abin said to Abaye: Let us see: how does the hirer acquire the cow?[8] By his oath![9] Then let the owner say to the hirer, ‘Take yourself off with your oath, whilst I bring an action[10] against the borrower!’ — Do you think, he replied to him, that the hirer acquires it through his oath! He acquires it from the time of its death, the oath being only to placate the owner.[11]

R. Zera said: It may sometimes happen [on the basis of this Mishnah] that the owner must render many cows to the hirer. How so? — If A hired it [an animal] from him [B] for one hundred days, and then B re-borrowed it from him for ninety days;[12] then A rehired it from B for eighty days [out of the ninety], and B. re-borrowed it from A for seventy days, and it died within the period of borrowing. Now on account of each separate borrowing he becomes liable for one cow.[13] R. Aha of Difti said to Rabina: Let us see, only one animal is involved, which was brought into [a certain state] and taken out [thence]: it was taken out of hiring and brought into borrowing, taken out of borrowing and brought into hiring! — Is the cow then still in existence, he replied, that we should say thus to him?[14] Mar son of R. Ashi said: He has a claim only in respect of two cows, one in respect of borrowing and one in respect of hiring, [for] there is one designation of borrowing and one designation of hiring.[15] That in respect of borrowing belongs entirely to him [the hirer],[16] whilst as for that of hiring, he must work therewith for the period of hiring and return it to its owner.[17]

R. Jeremiah said: Sometimes both [the hirer and the borrower] are liable to a sin-offering,

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(1) I.e., without waiting for a court order of distraint, to which all the previous rulings apply.

(2) When the court makes an order for distraint.

(3) V. Glos.

(4) Even before he receives the document.

(5) The estate to be distrained was announced for public sale, to go to the highest bidder; after the period of announcing is passed (the period is discussed in ‘Ar. 21b seq.) without its being sold, the creditor has a right to the usufruct.

(6) A hirer is free from liability in the case of natural death, but not a borrower.

(7) Surely it is inequitable that the hirer shall be paid for an animal that never belonged to him!

(8) I.e.,the freedom from responsibility for it, and the right to be paid by the borrower.
(9) By swearing that it died a natural death.
(10) Lit., 'will talk in an action.'
(11) That it had actually died a natural death.
(12) Out of the hundred, so that at their expiration A would have another ten days.
(13) For the Mishnah states that the hirer owes nothing to the owner, but the borrower is liable to the hirer. This is a general rule, and holds good even if the borrower is actually the owner, for the principle is the same. Furthermore, each borrowing is a separate transaction, notwithstanding that the borrowings run concurrently, and each imposes a separate liability. Hence the owner may have to pay several animals to the hirer.
(14) Since the cow is dead, that argument cannot be used, and each borrowing and hiring is a separate transaction.
(15) He agrees with R. Aha of Difti. Notwithstanding that there were two borrowings, they are regarded as one in the final analysis.
(16) Therefore the borrower, here the actual owner, must pay for it.
(17) I.e., the owner must supply him with an animal for the remaining period of hiring — in this case, ten days.

Talmud - Mas. Baba Metzia 36a

Sometimes both are liable to a guilt-offering, sometimes the hirer is liable to a sin-offering and the borrower to a guilt-offering, and sometimes the hirer is liable to a guilt-offering and the borrower to a sin-offering.[1] How so? For denying monetary liability [on oath] a guilt-offering is incurred; for a false statement,[2] a sin-offering.[3] 'Sometimes both are liable to a sin-offering.' E.g., if it died a natural death, and they maintained that an accident had befallen it. Thus, the hirer, who is free [from responsibility] in both cases,[4] is liable to a sin-offering, and the borrower, who is responsible in both cases, is [likewise] liable to a sin-offering. 'Sometimes both are liable to a guilt-offering.' E.g., if it was stolen, and they maintained that it had died of its work. Thus both deny monetary liability, since in fact they are responsible [for theft], whilst they free themselves. 'The hirer is liable to a sin-offering and the borrower to a guilt-offering.' E.g., if it died a natural death, and they maintained that it had died of its work. The hirer, who is free [from responsibility] in both cases, is liable to a sin-offering; the borrower, who is liable if it dies a natural death but frees himself with [the plea that] it died of its work, to a guilt-offering. 'The hirer is liable to a guilt-offering, and the borrower to a sin-offering.' E.g., if it was Stolen, and they maintained that it had died naturally. The hirer, who is liable for theft and loss but frees himself with [the plea,] it died naturally, incurs a guilt-offering; the borrower, who is responsible in both cases, a sin-offering.

Now, what does he [R. Jeremiah] thereby inform us?[5] — [His purpose is] to oppose R. Ammi's dictum, viz., For every oath which the judges impose no liability is incurred on account of an 'oath of utterance' because it is said, Or if a soul swear, uttering with his lips [etc.],[6] which implies a voluntary oath.[7] Therefore he informs us that it is not as R. Ammi.

It has been stated: If one bailee entrusted [his bailment] to another bailee — Rab said: He is not liable;[8] R. Johanan maintained: He is liable.[9] Abaye said: According to Rab's ruling, not only if a gratuitous bailee entrusted [the bailment] to a paid bailee, thereby enhancing its care; but even if a paid bailee entrusted [it] to an unpaid one, thus weakening its care, he is still not responsible. Why? Because he entrusted it to an understanding being.[10] Whilst according to R. Johanan's view: not only if a paid bailee entrusted [it] to an unpaid one, thus weakening its care; but even if an unpaid bailee entrusted it to a paid one, thereby enhancing its care, he is still responsible. Why? Because he [the bailor] can say to him, 'It is not my desire that my bailment should be in charge of another person.'

R. Hisda said: This ruling of Rab was not stated explicitly, but by implication. For there were certain gardeners who used to deposit their spades every day with a particular old woman. But one day they deposited them with one of themselves. Hearing the sounds of a wedding, he went out and entrusted them to that old woman. Between his going and returning, their spades were stolen, and

when he came before Rab, he declared him not liable. Now, those who saw this thought that it was because if a bailee entrusts [the bailment] to another bailee he is free [from liability]; but that is not so: there it was different, Seeing that every day they themselves used to deposit [their spades] with that old woman.

Now, R. Ammi was sitting and recounting this discussion, whereupon R. Abba b. Memel raised an objection before him: IF A MAN HIRES A COW FROM HIS NEIGHBOUR, LENDS IT TO ANOTHER, AND IT DIES A NATURAL DEATH, THE HIRER MUST SWEAR THAT IT DIED NATURALLY, AND THE BORROWER MUST PAY THE HIRER. But if this [sc. R. Johanan's ruling] be correct, let him [the owner] say to him, 'It is not my desire that my bailment should be in the hands of another person'! — He replied: The circumstances here are that the owner authorised him to lend it. If so, he ought to pay the owner![11] — It means that he said to him, 'At your discretion'.[12]

Rami b. Hama objected [from the following Mishnah]: If one deposited money with his neighbour, who bound it up and slung it over his shoulder[13] [or] entrusted it to his minor son or daughter and locked [the door] before them, but not properly,[14] he is responsible, because he did not guard [it] in the manner of bailees.[15] Hence, it is only because they were minors; but if they were adults, he would be free [from liability]. Yet why so? Let him say to him, 'It is not my desire that my bailment should be in the hands of another person'! — Said Raba: He who makes a deposit

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(1) The reference is to the Mishnah, where the hirer of an animal then lends it to another.

(2) Lit., 'utterance of lips.' V. Shebu. 32b.

(3) If one swears falsely, profiting thereby, he is liable to a guilt-offering; if he does not profit thereby, thus taking an 'oath of utterance', to a sin-offering] This is deduced from Lev. V, 4 f, 21, 25.

(4) Whether it dies a natural death or is the victim of a mishap.

(5) All these follow from well established principles in the last Mishnah, in Shebu. 49b, and R. Jeremiah adds nothing new.

(6) Lev. V, 4.

(7) I.e., in his opinion an 'oath of utterance' is only one taken quite voluntarily; but if imposed by a court, even if nothing is gained thereby, it is not an 'oath of utterance'.

(8) For whatever he would not have been liable had he kept it himself.

(9) Even for unpreventable accidents, for which he would not have been liable had he kept it himself.

(10) I.e., who is capable of giving due care.

(11) The assumption is that he permitted him to lend it to that particular person; but in that case, it is as though he himself had lent it, and therefore he ought to receive the compensation.

(12) I.e., he gave him a general authorisation; hence the hirer is regarded as the lender and payment is made to him.

(13) Lit., 'behind him.'

(14) I.e., he shut them in the house, so that they could not go out with the money, but did not close the door properly.

(15) V. infra 42a.

does so with the understanding that his [the bailee's] wife and children [may be put in charge thereof]. The Nehardeans said: This may be deduced too [from the Mishnah quoted] , for it states, 'or entrusted it to his minor son or daughter . . . he is responsible'; hence, [if] to his adult son or daughter, he is not responsible, whence it follows that if [he entrusts it] to strangers, whether adults or minors, he is liable. For if otherwise, he [the Tanna] should have simply taught 'minors' : this proves it.

Raba said: The law is, If one bailee entrusts [the bailment] to another, he is responsible. Not only if a paid bailee entrusts [it] to an unpaid one, so weakening its care; but even if an unpaid bailee

entrusts to a paid one, he is [still] responsible. Why? Because he [the bailor] can say to him, 'You I believe on oath: the other I do not.'[1]

It has been stated: If he [the bailee] was negligent thereof,[2] and it went out into a meadow[3] and died naturally:[4] Abaye in Rabbah's name ruled that he is liable; Raba in Rabbah's name ruled that he is not liable. 'Abaye in Rabbah's name ruled that he is liable.' Any judge who does not give such a verdict is not a judge: not only is he liable on the view that , if the beginning is through negligence, and the end through an accident, one is liable;[5] but even on the view that one is not liable, in this case he is. Why? Because we say, The air[6] of the meadow land killed it.[7] 'Raba in Rabbah's name ruled that he is not liable.' Any judge who does not give such a verdict is not a judge: not only is he not liable on the view that, if the beginning is through negligence, and the end through an accident , one is not liable; but even on the view that he is liable, in this case he is not. Why? Because we Say, What difference does one place or another[8] make to the Angel of Death?[9] Now, Abaye admits that if it returned to its owner [sc. the bailee] and then died, he is free. Why? Because it had returned, and it could not be said that the air of the meadow killed it. Whilst Raba admits that if it was stolen from the meadow and died naturally in the thief's house, he [the bailee] is responsible. Why? Had the Angel of Death left it alone, it still would have been in the thief's house.[10]

Abaye said to Raba: According to you, who maintain, what difference does this place or that make to the Angel of Death: when R. Abba b. Memel raised an objection before R. Ammi, and he answered him, It means that the owner authorised the hirer to lend it,[11] — he should rather have answered him, What difference does this place or another make to the Angel of Death?[12] — He replied, According to you, who teach [the reason of R. Johanan's ruling[13] as being that the bailor can say,] 'I do not wish my bailment to be in the hands of another', that objection [of R. Abba b. Memel] can be raised.[14] But according to myself, who [maintain that it is because he can say,] 'You I believe on oath, whilst the other I do not believe on oath,' the objection cannot be raised at all.[15]

Rami b. Hama objected: If he [the bailee] took it up to the top of steep rocks and it fell and died, it is no accident.[16] Hence, if it died naturally, it is accounted an accident and he is not liable. Yet why so? Let him [the bailor] say to him, The [cold] mountain air killed it, or the exhaustion of [climbing] the mountain killed it! — The meaning there is that he took it up to a fertile and goodly pasture ground.[17] If so, it is the same even if it fell?[18] — He should have supported it [to prevent it from falling], but did not. If so, consider the first clause: If it ascended to the top of steep rocks and then fell down, it is an accident. Yet there too he should have supported it! — That holds good only if he supported it in its ascent, and supported it when it fell.[19]

SAID R. JOSE: HOW SHALL ONE DO BUSINESS WITH HIS NEIGHBOUR'S COW etc. Rab Judah said in Samuel's name: The halachah is as R. Jose. R. Samuel b. Judah asked Rab Judah: You have told us in Samuel's name that R. Jose disputed

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(1) And it is not within the bailee's power to put the bailor in such a position that he shall be forced to believe the other person on oath; hence he is responsible.

(2) Sc. the animal entrusted to his care, placing it in a stable improperly closed.

(3) Where it might have been stolen or killed by wild beasts.

(4) Thus the bailee was negligent, but the actual death per se was one for which a bailee is not responsible.

(5) V. infra 42a.

(6) Lit., 'heat'.

(7) Hence his death is directly the result of his negligence.

(8) Lit., 'here or there.'

(9) Therefore the initial negligence had absolutely nothing to do with the animal's death. But in the case discussed supra 42a (q.v.) it did have some slight bearing upon it.

(10) And lost, as far as the owner was concerned. Since this is directly the result of the bailee's negligence, he is

responsible

(11) V. supra 36a.

(12) This answer is preferable, for then the Mishnah on 35a is not limited to a particular instance.

(13) Supra 36a.

(14) And having raised it, R. Ammi replied as he thought fit.

(15) Since in the Mishnah the hirer himself swears.

(16) Infra 93b.

(17) Which is a natural thing for shepherds: hence he is not liable on the score of cold air or exhaustion.

(18) Since, on the present hypothesis, he merely did his duty in taking it up.

(19) The animal's weight, however, being too much for him.

Talmud - Mas. Baba Metzia 37a

in the first [Mishnah][1] too: now, is the halachah as his view [there too] or not? — He replied: R. Jose did indeed dispute in the first too, and the halachah agrees with him in the first too. It has been stated likewise: R. Eleazar said: R. Jose differed in the first too, and the halachah agrees with him there also. But R. Johanan maintained: R. Jose agreed in the first [Mishnah], seeing that he [the bailee] had already paid for it.[2] [What!] only if he actually paid, but not otherwise? Yet did not R. Hiyya b. Abba say in R. Johanan's name: 'HE PAID' is not literally meant , but once he says, 'I will pay' , even if he has not done so [the ruling of the Mishnah holds good]? — Say thus: R. Jose agreed in the first [Mishnah], seeing that he had already declared, 'I will pay for it'.

MISHNAH. IF A MAN SAYS TO TWO [OTHERS] I ROBBED ONE OF YOU OF A MANEH, BUT DO NOT KNOW WHICH OF YOU, OR THE FATHER OF ONE OF YOU DEPOSITED A MANEH WITH ME, AND I DO NOT KNOW WHOSE: HE MUST GIVE EACH A MANEH, SINCE HE HIMSELF CONFESSED.[3] IF TWO MADE A DEPOSIT WITH ONE PERSON, ONE A MANEH[4] AND THE OTHER TWO HUNDRED [ZUZ]: — THIS ONE SAID, THE TWO HUNDRED IS MINE, AND THE OTHER SAID LIKEWISE, THE TWO HUNDRED IS MINE: HE MUST GIVE A MANEH TO EACH, WHILST THE REST LIES UNTIL ELIJAH COMES.[5] SAID R. JOSE: IF SO, WHAT WILL THE DECEIVER LOSE?[6] BUT THE WHOLE MUST LIE UNTIL ELIJAH COMES. LIKEWISE, IF TWO UTENSILS [ARE DEPOSITED], ONE WORTH A MANEH AND THE OTHER ONE THOUSAND [ZUZ]: THIS ONE CLAIMS, THE BETTER ONE IS MINE, THE OTHER CLAIMS, THE BETTER ONE IS MINE: THE INFERIOR ONE MUST BE GIVEN TO ONE OF THEM, AND OUT OF THE SUPERIOR THE VALUE OF THE INFERIOR IS GIVEN TO THE SECOND, THE REST REMAINING UNTIL ELIJAH COMES. SAID R. JOSE: IF SO, WHAT WILL THE DECEIVER LOSE? BUT THE WHOLE MUST LIE UNTIL ELIJAH COMES.

GEMARA. This proves that money is collected as a result of doubt, and we do not say, Let the money stand in the presumptive ownership of its possessor. But this is contradicted by the following: IF TWO MADE A DEPOSIT WITH ONE PERSON, ONE A MANEH AND THE OTHER TWO HUNDRED [ZUZ], THIS ONE SAID, THE TWO HUNDRED IS MINE, AND THE OTHER SAID LIKEWISE, THE TWO HUNDRED IS MINE: HE MUST GIVE A MANEH TO EACH, WHILST THE REST LIES UNTIL ELIJAH COMES! — Said he to him:[7] Would you oppose a bailment to robbery! In the case of robbery, since he committed a transgression, the Rabbis penalised him;[8] whereas in the case of a bailment, where no wrong was committed by him, the Rabbis did not penalise him. But bailment may be opposed to bailment, and robbery to robbery. 'Bailment may be opposed to bailment'. For the first clause teaches, OR, THE FATHER OF ONE OF YOU DEPOSITED A MANEH WITH ME, AND I DO NOT KNOW WHOSE; HE MUST GIVE EACH A MANEH. Now this is contradicted by [the Baraitha just quoted,] 'If two made a deposit, etc.' — Said Raba: In the first clause[9] it is regarded as though they had entrusted [their money] to him in two separate packages, so that he should have paid particular attention;[10] but in the second clause it is

regarded as though they had made their deposits with him in a single package, so that he was not bound to take particular attention.[11] [How so?] Both made their deposits with him simultaneously,[12] so that he [the bailee] can say to them, You yourselves were not particular with each other:[13] should I then have been particular?

'And robbery may be opposed to robbery'. Here we learn IF A MAN SAYS TO TWO OTHERS, I ROBBED ONE OF YOU OF A MANEH, BUT I DO NOT KNOW WHICH OF YOU, OR, THE FATHER OF ONE OF YOU DEPOSITED A MANEH WITH ME, AND I DO NOT KNOW WHOSE: HE MUST GIVE EACH A MANEH. But the following is opposed thereto: If a man robbed one out of five, and does not know which one he robbed, and each claims, 'It was me he robbed': he may place the stolen article among them and depart: this is R. Tarfon's view.[14] This proves that money is not collected as a result of doubt, but we say, Let the money stand in the presumptive ownership of its possessor![15] And whence [does it follow] that our Mishnah here agrees with R. Tarfon?[16] Because It was taught thereon:[17] R. Tarfon admits that if one says to two people, 'I robbed one of you of a maneh, but do not know which of you,' he must give each a maneh![18] — There they were claiming from him; here it means that he came to fulfil his duty in the sight of Heaven.[19] This may be proved too, for it is stated SINCE HE HIMSELF CONFESSED.[20] This proves It.

The Master said: 'There they were claiming from him.' And what does he plead? — Rab Judah said in Rab's name: He is silent. R. Mattena said in Rab's name: He

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(1) Supra 34b, R. Jose maintaining: How can the bailee pocket the double repayment due on account of the theft of the bailor's property?

(2) And thereby acquired all rights in it.

(3) This is discussed in the Gemara.

(4) = 100 Zuz.

(5) V. p. 6, n. 2.

(6) There is nothing to induce him to confess.

(7) The answerer to the questioner, though their names are unmentioned. [This is, however, omitted in several MSS, v. D.S. a.l.]

(8) Therefore the first clause of the Mishnah rules that he must pay both.

(9) Where only one person deposited money with him.

(10) Who gave him the money; just as had two people made deposits at different times, hence in different packages, it would have been the bailee's duty to see which package belonged to each. Since he did not pay close attention, he must satisfy both claimants.

(11) What part of the package belonged to each other.

(12) Each in the other's presence.

(13) To prevent the other from seeing how much he deposited, lest he claim it as his own.

(14) B.K. 103b.

(15) And the robber is not bound to repay each, as in our Mishnah.

(16) Perhaps it reflects R. Akiba's views, who differs from R. Tarfon, v. B.K. ibid.

(17) If a man robbed one out of five etc.

(18) In agreement with our Mishnah.

(19) Legally he is not bound to pay all claimants, and the second Mishnah quoted treats of this aspect. But morally he can atone for his sin only by repaying all, so that none shall have suffered through his theft.

(20) Which shews that he was not being dunned, but wished to clear himself.

protests.[1] On the view that he protests — but silence is as admission.[2] But on the view that he is silent — this silence here[3] is not an admission, because he can say, 'The reason that I was silent

before each is that I thought, Perhaps it was this one.'

The Master said: 'He may place the stolen article among them and depart.' And can all of them take it and go! Did not R. Abba b. Zabda say in Rab's name: Whenever he is doubtful if an article was left [in a certain spot], he must not take it in the first instance; but if he took, must not return it?[4] — Said R. Safra: It is laid by.[5]

Abaye said to Raba: Did then R. Akiba Say,[6] 'That is not the way to clear him of his crime, but he must restore the theft to each one;' thus proving that money is collected as a result of doubt, and we do not say, Let the money stand in the presumptive ownership of its possessor? But the following is opposed thereto: If a house collapsed on a person and his mother:[7] the son's heirs maintain, 'The mother died first;'[8] whilst the mother's heirs maintain, 'The son died first:'[9] both[10] agree that they must divide. And R. Akiba said thereon: I agree in this case that the property remains in its presumptive ownership![11] — There, he replied to him, both [heirs] plead 'perhaps';[12] but in the case of a person robbing one man of five, there is certainty against doubt.[13] But our Mishnah here, IF A MAN SAYS TO TWO [OTHERS], 'I ROBBED ONE OF YOU OF A MANEH,' which is a case of 'perhaps' on both sides, nevertheless states HE MUST GIVE EACH A MANEH! (Whence do you know that it agrees with R. Akiba? — Because it is taught thereon:[14] R. Tarfon admits that if one says to two people, 'I robbed one of you of a maneh, but do not know which,' [he must give each a maneh]. Now, to whom does he admit? [Surely] to R. Akiba, his opponent? And whence do you know that both sides plead 'perhaps?' Firstly, because it is not stated, They demand of him; and secondly, R. Hiyya taught: Each replies, 'I do not know!')[15] — But we have already interpreted it of one who wishes to fulfil his duty in the sight of heaven!

Rabina said to R. Ashi: Did then Raba say that whenever [deposits are made] in two separate packages, he [the bailee] should have paid particular attention?[16] But Raba — others state, R. Papa — said: All admit in the case of two people who entrusted [their lambs] to a shepherd, that the shepherd places [them] between them and is quit![17] — He replied: The circumstances there are that they deposited [the lambs] in the shepherd's fold without his knowledge.

LIKEWISE, IF TWO UTENSILS [ARE DEPOSITED], ONE WORTH A MANEH AND THE OTHER ONE THOUSAND [ZUZ] etc. And both [instances] are necessary. For if the first alone were stated, I might argue, Only there [sc. in the case of money] do the Rabbis rule [thus], because no loss is caused; but in the latter case, where great loss is involved [in the breaking of the larger utensil], they agree with R. Jose. And if the latter case [alone] were stated, I might argue, Only here does R. Jose rule [thus], but in the former, he agrees with the Rabbis.[18] Thus both are necessary.

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(1) To each claimant, 'I do not know you', thus denying the claim.

(2) Therefore he would have to pay each.

(3) [Despite the generally accepted principle that silence is treated as admission (Yeb. 87b).]

(4) This refers to an object bearing no mark of identification, found in a place where it is somewhat guarded, so that it is doubtful whether it was lost or intentionally put there. (V. Supra 25b.) Now, 'he must not return it' means that it must not be given to a claimant who cannot prove his ownership, for the true owner may come later and prove, by means of witnesses, that he deposited it there. Hence here too, if the money is left among the five, and all take it, the true victim suffers a permanent loss.

(5) The phrase means, he places the stolen article before them at court, and departs, i.e., he is now clear in the eyes of the law. Nevertheless, the money is kept until ownership is proved.

(6) In reference to R. Tarfon's ruling where one of five persons was robbed.

(7) And it is not known who predeceased whom, whilst the mother possessed property in her own rights.

(8) Hence her son inherited her property; and on his death, we inherit it.

(9) Hence we are the mother's direct heirs in his absence.

(10) Beth Shammai and Beth Hillel, who dispute in other cases.

(11) B.B. 155b. It is disputed by Amoraim a.l. whose presumptive ownership is meant. But whosoever Is meant, we see that R. Akiba admits that money cannot be collected when doubt arises.

(12) Neither can really pretend to know with certainty which died first.

(13) Whereas the thief himself is doubtful, each of the five declares positively that he was the victim.

(14) Sc. the other Mishnah.

(15) And R. Hiyya's Baraithas were authoritative expositions of the Mishnah. Hence the difficulty remains: the two rulings of R. Akiba are contradictory.

(16) V. supra 37a.

(17) This too refers to a controversy between R. Akiba and R. Tarfon. A and B: one deposited one lamb with a shepherd, and the other two, each subsequently maintaining that the two were his; then the shepherd merely puts the three lambs before them. Now, lambs are certainly as deposits in separate packages, yet the shepherd is not required to return two lambs to each. This contradicts Raba's former statement.

(18) Inverting the reasoning.

Talmud - Mas. Baba Metzia 38a

But R. Jose's reason is that the deceiver may suffer loss![1] — Hence both are necessary on the view of the Rabbis, and he [the Tanna] teaches a case of 'not only this, but this too.'[2]

MISHNAH. IF A MAN DEPOSITS PRODUCE WITH HIS NEIGHBOUR, EVEN IF IT IS SUFFERING LOSS,[3] HE MUST NOT TOUCH IT. R. SIMEON B. GAMALIEL SAID: HE MUST SELL IT BY ORDER OF THE COURT, BECAUSE IT IS LIKE RETURNING LOST PROPERTY TO ITS OWNER.

GEMARA. What is the reason?[4] — Said R. Kahana: A man prefers a kab of his own to nine of his neighbour's.[5] But R. Nahman b. Isaac said: We fear lest the bailor had declared it terumah and tithe for other produce.[6]

An objection is raised: If one deposits produce with his neighbour, he must not touch it . Therefore its owner may declare it terumah and tithe for other produce. Now, on R. Kahana's explanation, it is well: hence he states, 'therefore'. But on the view of R. Nahman b. Isaac, how state 'therefore'?[7] — It means this: now that the Rabbis have ruled that it may not be sold because we fear [that the owner may have declared, etc.], therefore the owner may declare it terumah and tithe for other produce.

Rabbah b. Bar Hanah said in R. Johanan's name: The dispute is only when there is the normal rate of decrease; but when [the loss] exceeds the normal rate of decrease, all agree that it must be sold by a court order. Now, he certainly disagrees with R. Nahman b. Isaac;[8] but must we say that he differs from R. Kahana [too]? — [No.] R. Kahana referred only to the normal decrease. But did he not Say, A man prefers a kab of his own to nine of his neighbour's![9] — That was a mere exaggeration.

An objection is raised: 'therefore its owner may declare it terumah and tithe for other produce;' but let him fear lest [the loss] exceeded the normal decrease, so that it was sold , hence he [the bailor] eats tebel![10] — [A loss] above the normal decrease is rare.[11] But what if it does happen — we sell it? But let us fear lest the owner might have declared it terumah and tithe for other produce![12] — It is, in fact , sold to priests [only] at the price of terumah.[13] Then according to R. Nahman b. Isaac too, let it be sold to priests at the price of terumah! — They differ in this: viz., Rabbah b. Bar Hanah holds that [loss] above the normal decrease is altogether rare, and when it does happen, it exceeds the usual rate only after a considerable time.[14] Hence, if the owner declared it terumah and tithe for other produce, he would have done so before its loss exceeded the normal;[15] therefore, when it does exceed it we can sell it to priests at the price of terumah. R. Nahman b. Isaac, however, maintains that a greater decrease than normal is quite frequent, and when it happens, it may happen immediately.[16] Therefore, should you say that it is sold, it may happen that it is sold early, and when

the owner declares it terumah and tithe for other produce he is unaware that it is [already] sold , and so eats tebel.

An objection is raised: If one deposits fruit with his neighbour, and it rots; wine, and it sours; oil, and it putrefies, or honey, and it turns rancid, he [the bailee] may not touch it: this is R. Meir's ruling. But the Sages maintain: He effects a remedy for them by selling them on the instructions of the court; and when he sells, he must sell to strangers, not to himself. Similarly, when the charity overseers have no poor to whom to distribute [their funds], they must change [the copper coins] with others, not themselves.[17] The overseers of the soup kitchen,[18] when they have no poor to whom to make a distribution, must sell to others, not themselves. Now, incidentally he [the Tanna] states, 'fruit . . . and it rots': surely that means, even more than the normal decrease?[19] — No: [it means] within the normal deterioration. But 'wine, and it sours, oil and it putrefies, or honey, and it turns rancid' are more than normal deterioration! — These are different: having arrived at that stage, they remain so.[20] Now, when oil putrefies, or honey becomes rancid,

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(1) And that obviously applies to both cases equally: how then could it be argued that if the second clause alone were taught, I might think that he agrees with the Rabbis in the first?

(2) I.e., having first taught the instance of money, he proceeds to state, Not only do the Rabbis rule thus where it involves no loss, but even in a dispute about utensils, where definite loss is caused.

(3) Through mildew or rodents.

(4) Of the first view.

(5) He would rather have a smaller quantity grown by himself than a larger quantity produced by another.

(6) Lit., 'for another place.' Produce may be declared Terumah (v. Glos.) or tithe for other produce lying elsewhere. If the bailor had done this, it obviously may not be sold.

(7) Seeing that the reason that he may not touch it is precisely because the bailor may have declared it terumah or tithe for other produce.

(8) If we fear that it was declared terumah or tithe, it certainly may not be sold under any circumstances.

(9) Which is certainly more than normal.

(10) V. Glos.; the plural is used here. — The produce might have been sold before it was declared tithe, in which case the bailor now eats untithed produce.

(11) Lit., 'is not found.'

(12) In which case the buyer, though possibly a zar, (q.v. Glos.) eats terumah, which is forbidden.

(13) Which is less than that of ordinary produce: firstly, because only priests may eat it; and secondly, because it may not be eaten at all if it becomes defiled.

(14) Lit., 'at a time ahead.'

(15) So that the produce is properly tithed.

(16) Before the lapse of a considerable time.

(17) Copper coins were unsuitable for keeping a long time, being liable to tarnish and mould. Therefore they would be exchanged for silver ones.

(18) תמחוי ; actual food was collected for this purpose, not money, and it was distributed to those in immediate need of a meal. V. B.B. 8b.

(19) Yet R. Meir rules that it must not be touched, which contradicts R. Johanan.

(20) And do not deteriorate any further; therefore nothing is gained by selling them. But produce goes on rotting more and more.

Talmud - Mas. Baba Metzia 38b

for what is it fit?[1] — Oil is of use to leather merchants;[2] honey, for the soreness of camels.[3]

'But the Sages maintain, he must effect a remedy for them by selling them on the instructions of the court.' But what remedy does he effect?[4] — Said R. Ashi: In respect of the gourds.[5] Wherein do they differ?[6] — One master holds, We care about a great loss, but not about a small one;[7] whilst the

other master [sc. the Rabbis] holds that we care even for a small loss.[8]

R. SIMEON B. GAMALIEL SAID: HE MUST SELL IT BY ORDER OF THE COURT, BECAUSE IT IS LIKE RETURNING LOST PROPERTY TO ITS OWNER. It has been stated: R. Abba son of R. Jacob said in R. Johanan's name: The halachah agrees with the Sages. But R. Johanan has already said that once. For Rabbah b. Bar Hana said in R. Johanan's name: Wherever R. Gamaliel taught in our Mishnah, the halachah agrees with him, excepting in respect to 'Surety', 'Zidon', 'And the second [ruling] on Proof'![9] — There is a dispute of Amoraim on R. Johanan's views.[10]

Now from R. Simeon b. Gamaliel we may deduce that a relative is authorised to enter upon a captive's estate; whilst from the Rabbis we may infer that a relative is not permitted to enter upon a captive's estate.[11] How so? Perhaps R. Simeon b. Gamaliel ruled thus only in this case, since the stock itself is consumed, but there he too may hold that we do not authorise possession.[12] Whilst [on the other hand] the Rabbis rule thus only here, in accordance with either R. Kahana['s reason] or R. Nahman b. Isaac['s]; but there, it may indeed be that entry is permitted. Are we to say that these are two opinions [independent of each other]? But Rab Judah said in Samuel's name: The halachah agrees with R. Simeon b. Gamaliel; whilst Samuel ruled; A relative is permitted to enter upon a captive's estate. Surely that is because it is one ruling?[13] — No. They are two rulings.[14] Reason too supports this. For Raba said in R. Nahman's name: The halachah agrees with the Sages; nevertheless R. Nahman ruled: A relative is authorised to enter a captive's estate. Hence this proves that they are two different rulings. This proves it.

It has been stated: If a man is taken captive, Rab said: His next of kin is not authorised to enter upon his estate; Samuel said: His next of kin is authorised to enter into his estate. Now, if it was heard that he was dead, all agree that he is authorised to enter.[15] They differ where it was not heard that he had died: Rab said: We do not authorise him to enter, lest he cause them [the estates] to deteriorate;[16] but Samuel said: We authorise him to take possession, for since a Master said, 'We value it for them as for an aris',[17] he will not permit deterioration.

An objection is raised: R. Eliezer said: From the implication of the verse, And my wrath shall wax hot, and I will kill you with the sword,[18] I know that their wives shall be widows and their children fatherless; why then is it stated, and your wives shall be [widows, and your children fatherless]?[19] This teaches that their wives will seek to remarry and not be permitted, and their children desire to enter upon their father's estate and not be allowed![20] — Said Raba: What we learnt[21] is [that they are not permitted] to take possession and sell.[22] Now, this happened in Nehardea, and R. Shesheth decided the matter by reference to this Baraitha.[23] Said R. Amram to him: But perhaps what we learnt[24] was, to enter and sell? — Perhaps you are from Pumbeditha, he retorted, where they draw an elephant through the eye of a needle.[25] For these are[26] taught side by side with [the widowhood of] the wives: just as these are not permitted to [remarry] at all, so here too, they [sc. the heirs] are not [allowed to take possession] at all.

Now, whether the next of kin is permitted to enter upon a captive's estate is disputed by Tannaim. For it has been taught: If one enters upon a captive's estate, he is not ejected thence.[27] Moreover, even if he [the heir] heard that they [the owners] were making ready to come [to reclaim the land], and he anticipated it by reaping and consuming [the produce], he is a zealous man who profits thereby.[28] Now, the following are [included in the term], a 'captive's estates': If one's father, brother, or one of his legators went overseas, and it was reported that he had died.[29] If a man enters into abandoned estate, he is ejected therefrom. And the following are abandoned[30] estates: If one's father, brother, or one of his legators went overseas, and it was not reported that he had died. R. Simeon b. Gamaliel observed: I have heard that abandoned are as captive['s estates].[31] If a man enters into forsaken property[32] he is ejected thence. And the following are forsaken estates: If one's father,

brother, or one of his legators is here [sc. in the country], but it is not known whither he has gone. Now, wherein do the former differ [from the latter], that the former are designated ‘abandoned,’ and the latter ‘forsaken’?

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(1) That R. Meir rules that it is sold.

(2) To make the leather supple.

(3) To rub the sore spots on the camel's back, caused by the chafing of the saddle.

(4) Since deterioration, in the case of oil and honey, does not go further, whilst its value has already dropped, how is the matter remedied by the sale?

(5) In which they are contained. These at least are saved, whereas if the honey or oil is kept therein they too are affected.

(6) Sc. R. Meir and the Rabbis, since on the present hypothesis R. Meir agrees that produce must be sold if the deterioration exceeds normal.

(7) Therefore when produce suffers its normal decrease, or oil and honey become rancid, and only their containers can be saved — in both cases a small loss — they must not be sold.

(8) To prevent it if possible.

(9) ‘Surety’, v. B.B. 173b; ‘Zidon’, v. Git. 74a; ‘Second (ruling) on Proof’, Sanh. 31a. Thus R. Johanan had already stated that in all cases, excepting these three, the halachah is as R. Simeon b. Gamaliel: why then state it again specifically in respect of our Mishnah?

(10) Rabbah b. Bar Hana held that he had stated a general rule, whilst R. Abba son of R. Jacob disputed it.

(11) If a man is taken captive, leaving his estate untended, it is disputed below whether a relative, sc. his next of kin, may take temporary possession of it, so as to save it from loss. Now, since R. Simeon b. Gamaliel holds that produce may be sold by the bailee to save it from loss, by the same reasoning the next of kin is permitted to enter a captive's estate, the Rabbis holding the reverse.

(12) The produce may entirely rot away, but real estate, even if it suffers loss through neglect, can never be destroyed entirely.

(13) I.e., the two cases are interdependent.

(14) Samuel's two views being coincidental.

(15) Tosaf.: ‘heard’ means that there was a rumour substantiated by one witness only. — Now, if the rumour is proved false, the owner returning before the usufruct of the estate has been enjoyed by the next of kin, the latter receives pay as a farmer-tenant, aris (v. Glos.); whilst if the rumour is true, he is the heir. Hence he may enter, and there is nothing to fear.

(16) Thinking that the owner may return, he will only be anxious to get as much out of the land as possible, neglecting to fertilise it and so exhausting the soil.

(17) Should the owner return, the relative is given a share in the produce as though he were an aris.

(18) Ex. XXII, 23.

(19) Ibid.

(20) Thus they will remain permanently widows and fatherless (in the sense that they cannot set up their own estate). This condition can come about when the fathers are taken captive and their death is not proved, R. Eliezer's dictum shows that in such a case the children are not permitted to enter their father's estate.

(21) [Render with MS.M.: ‘(What is meant is that . . .) to take, etc.,’ deleting ‘What we learnt,’ as this citation is not a Mishnah.]

(22) But they are permitted to take possession.

(23) That the heir should not enter the captive's estate.

(24) [Or, ‘What was meant was . . . . cf. p. 232, n. 9.]

(25) The scholars of the Pumbeditha academy were extremely subtle.

(26) The children who are not permitted to enter upon their father's estate.

(27) Lit., ‘we do not withdraw it from his hand.’

(28) I.e., his action is not blameworthy.

(29) V. p. 232. n. 3.

(30) נטושים .

(31) Viz., that the heirs are not ejected.

(32) רטושים ; the Gemara states below that this implies voluntary abandonment.

'Abandoned' implies against their will, as is is written, But the seventh year thou shalt let it rest and abandon it,[1] [i.e.,] by royal dispensation;[2] whereas 'forsaken' implies voluntarily, as it is written, The mother shall be forsaken[3] of her children.[4]

A Tanna taught: And for all these a valuation is made as for an aris.[5] To what does this refer? Shall we say, To captives: if he is considered 'a zealous man who profits thereby,'[6] can there be a question concerning his own improvements![7] But if to forsaken property — surely it is taught that they are ejected therefrom! — Hence It must refer to abandoned [property]. [Then] according to whom? Shall we say, according to the Rabbis: but they rule that he is ejected therefrom. If R. Simeon b. Gamaliel, surely he observed, 'I have heard that abandoned are as captives' [estates]! — 'They are as those of captives', but not altogether so:[8] 'as those of captives,'in that they are not ejected therefrom; 'but not altogether so,' for there [sc. in the case of captives' estate] he is considered a zealous man who profits thereby, whereas here a valuation is made for him as for an aris.[9]

Now, wherein does it differ from what we learnt: If a man incurs expenditure on his wife's property, [whether] he expended much and enjoyed little [usufruct] or the reverse, what he expended he expended, and what he enjoyed he enjoyed![10] This is analogous only to what we learnt:[11] If a man incurs expenditure for the property of his wife, a minor, he is regarded as though he had incurred it for that of a stranger.[12] This shows that since he [her husband] could not place full reliance,[13] the Rabbis enacted a measure on his behalf,[14] in order that he might not cause them [the wife's estates] to deteriorate;[15] so here too, the Rabbis enacted a measure on his behalf, so that he might not cause them [the abandoned estates] to deteriorate.

'And for all of these a valuation is made as for an aris.' What does 'all of these' include? — It includes R. Nahman's dictum in Samuel's name: If a man is taken captive, his next of kin is authorised to enter into his estates. If he leaves voluntarily, his next of kin is not permitted to enter upon his estates.[16] Now R. Nahman, giving his own opinion, said: A fugitive is as a captive. Why does he flee? Shall we say, on account of poll-tax? But that is voluntary![17] — But [he means] one who flees on account of political offences.[18]

Rab Judah said in Samuel's name: If a man is taken captive, and leaves standing corn to be reaped, grapes to be vintaged, dates to be harvested, or olives to be gathered, Beth din enter his estate and appoint a steward who reaps, vintages, harvests and gathers; after that the next of kin is permitted to take possession.[19] Then let a permanent steward be appointed![20] — A steward is not appointed for bearded men.[21]

R. Huna said: A minor is not permitted to enter upon a captive's estates, nor the next of kin upon a minor's estates, nor a next of kin of a next of kin upon a minor's estates.[22] 'A minor is not permitted to enter upon a captive's estates,' lest he injure them. 'Nor a next of kin of a next of kin upon a minor's estates' — this refers to a brother on the mother's side.[23] 'Nor a next of kin upon a minor s estates:' since he [the minor] cannot protest, he may take presumptive possession thereof.[24] Said Raba: It follows from R. Huna's dictum that one cannot claim presumptive ownership of a minor s estate,[25]

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(1) ונטשת Ex. XXIII, 11; the reference is to the seventh year, in which land and its produce must be 'abandoned' — i.e., left free for all.

(2) By Scriptural command; hence against the owner's desire.

(3) רטשה .

(4) Hos. X, 14; Rashi explains that the reference is to voluntary flight, for fear of the ensuing war.
(5) V. Glos.
(6) And takes the whole of the produce (Rashi).
(7) Surely they belong entirely to him, not merely a third or quarter, as in the case of an aris.
(8) Lit., 'as captives and not as captives.'
(9) For since it was not reported that the owner had died, the heir is assumed to have entered into his estates on the tacit understanding that he should be paid as an aris.
(10) Keth. 79b. The reference is to 'property of plucking,' the usufruct of which belongs to the husband, whilst the principal remains the wife's, reverting to her on the husband's death or if he divorces her. — In this case then the husband or his heirs cannot strike a balance between expenditure and revenue, and the question is raised, Why not give the same ruling in the case of abandoned property, instead of regarding the next of kin as an aris.
(11) In Keth. 80a the reading is: to what R. Jacob said in R. Hisda's name.
(12) The wife referred to is a fatherless child, who had not attained her majority. By Biblical law, only a father could contract a marriage on behalf of his daughter, a minor, but the Rabbis extended the privilege to her mother or brothers, in the absence of a father. (She herself cannot contract a marriage, her actions, as a minor, having no legal validity.) This marriage having only Rabbinical force, she could annul it, on attaining her majority, by declaring that she did not want her husband (mi'un), whereon she became free without the formality of a divorce.
(13) That the estate would remain in his possession, as she might annul the marriage.
(14) Sc. that he should be paid as an aris if his wife annulled the marriage.
(15) Through his neglect.
(16) [Had he approved of his next of kin, he himself would have appointed him over his estate before he left.]
(17) Surely he himself could have managed to appoint some one before he left, as there was no reason for the hasty flight.
(18) Others: 'murder'. The penalty being a very heavy one, his flight is not voluntary. This case of R. Nahman is included in the term, 'all of these.'
(19) And is paid as an aris. But he cannot take that which is completely grown without his toil.
(20) Rashi: who will receive nothing for his stewardship.
(21) No one is prepared to work for nothing on behalf of grown men. Stewards are indeed appointed on behalf of minors left fatherless, because stewardship then is regarded as a good deed.
(22) E.g., A is the brother of B, a minor, by the same father, whilst C is A's half brother by his mother, hence no blood-relation of B at all.
(23) As explained in n. 1.
(24) If one enjoys three consecutive years' possession of an estate, without its owner formally protesting that it is not his, he is assumed to have bought or otherwise acquired it. Now, a minor cannot protest, and so the relative may claim it as his after three years, on the ground that he, and not the minor, had inherited them; the same applies to the relative's relative (as explained in n. 1), who may claim it as heir of the first next of kin.
(25) A cannot claim that he bought the estate from B, the minor's father, on the strength of three years' undisturbed possession. This follows from the fact that R. Huna merely forbade a relative to enter upon a minor's estates, but not a stranger, which shows that a stranger's claim of presumptive ownership is ignored.

Talmud - Mas. Baba Metzia 39b

even if he attained his majority.[1] Now, this applies only to a brother by his father,[2] but there is no objection to a brother by his mother. And even of a brother by his father, this applies only to land; but there is no objection in respect of houses.[3] And even in respect of land, this holds good only if no deed of partition was drawn up.[4] But if a deed of partition had been drawn up, it is generally known.[5] This, however, is not so. It makes no difference whether a brother by his father or a brother by his mother,[6] whether land or houses, whether a deed of partition had been drawn up or not — we do not authorize them to take possession.

A certain old woman had three daughters; she and one daughter were taken captive, and of the other two daughters, one died, leaving a child behind. Said Abaye: What shall we do? Shall we

[temporarily] assign the estates to the [third] Sister: but perhaps the old woman is dead, and a relative is not permitted to enter upon a minor's estates?[7] Shall we assign the estates to the child, but perhaps the woman is not dead, and a minor is not permitted to enter a captive's estate? — Said Abaye: Therefore half is given to the [last] sister, and a steward is appointed in respect of the other half on behalf of the child. Raba said: Since a steward is appointed for one half, a steward is appointed for the other half too. Subsequently it was heard that the old woman was dead.[8] Thereupon Abaye ruled: A third is given to the sister, a third to the child, and as for the remaining third,[9] a sixth is given to the sister, and a steward is appointed for the other sixth on behalf of the child. Raba said: Since a steward is appointed for one sixth, a steward is appointed for the other sixth.

There came a brother to Mari b. Isak from Be Hozai,[10] saying to him, 'Divide [my father's estates] with me.' 'I do not know you,' he replied. So they went before R. Hisda. Said he to him, 'He [Mari] speaks truly to you, for it is written, And Joseph knew his brethren, but they knew him not,[11] which teaches that he had gone forth without the stamp of a beard and came [before them] with one.[12] Go then,' he continued, 'and produce witnesses that you are his brother.' 'I have witnesses,' he replied, 'but they are afraid of him, because he is a powerful man.' Thereupon he said to the other [Mari], 'Go you, and bring witnesses that he is not your brother.' 'Is that justice!' he exclaimed, 'the onus of proof lies on the claimant!' 'Thus do I judge in your case,' he retorted, 'and for all who are powerful men of your like'. 'But after all,' he argued, 'witnesses will come and not testify [the truth]'.[13] 'They will not commit two [wrongs],' he rejoined.[14] Subsequently witnesses came [who testified] that he was his brother. 'Let him share with me the vineyards and gardens which he planted,' demanded he. 'He speaks rightly to you,' said he [R. Hisda], 'For we learnt: If one leaves sons, adults and minors, and the adults improve the property, they improve it for both equally;[15]

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(1) After which the stranger had it in his possession three years. But this does not establish a claim, since he took possession whilst the orphan was a minor, who on attaining his majority may not have known that the estates were his father's, and hence did not protest.

(2) Who may claim that he inherited the estates.

(3) Since the neighbours can testify to their rightful ownership.

(4) Distinctly setting forth the portion of each.

(5) Lit. 'it has a voice'. Hence there is no fear of a false claim.

(6) [As he can still claim it to be property belonging to his mother in her own right, to which he is entitled as heir.]

(7) For if she had died, part of her estates belonged to the grandchild.

(8) But nothing was known of the daughter.

(9) The share of the captive daughters.

(10) V. p. 508, n. 2.

(11) Gen. XLII, 8.

(12) So Mari may not recognise you too, even if you are his brother.

(13) If they are afraid of me, they will certainly testify in my favour whether it be the truth or not.

(14) Witnesses who can testify to your disadvantage may repress their evidence through fear of you, which is one wrong. But they will certainly not commit another by testifying falsely in your favour.

(15) Lit., 'in the middle'. (V. B.B. 143b.) I.e., the minors take an equal share of the improvements.

Talmud - Mas. Baba Metzia 40a

and thus did Rabbah rule likewise, They improve it for both equally.'[1] Said Abaye to him:[2] How compare? There the adults are aware of the [existence of the] minors, and forego [their labour on their behalf]; but here, was he [Mari] aware [of him], that he should forego! Now, the matter travelled about[3] until it reached R. Ammi. Said he to them [his disciples]: Even a greater thing has been said, [viz.,] A valuation is made for them as for an aris:[4] shall he then not be paid [likewise] in his own![5] This [observation] was brought back to R. Hisda. Said he to them: How compare? There [in the case of a captive's estates] he entered with authority [of the court]; here he entered without

authority.[6] Moreover, he [the claimant] was a minor [when Mari first took possession], and a relative is not permitted to enter into a minor's estates. When this [reply] was taken back to R. Ammi, he said to them: They did not complete it [sc. the narrative of this lawsuit] before me [by informing me] that he was a minor.

MISHNAH. IF A MAN ENTRUSTS PRODUCE TO HIS NEIGHBOUR, HE [THE BAILEE] MAY [WHEN RETURNING IT] MAKE A DEDUCTION FOR DECREASES [AS FOLLOWS]: FOR WHEAT AND RICE, NINE HALF KABS PER KOR;[7] FOR BARLEY AND MILLET, NINE KABS PER KOR; FOR SPELT AND LINSEED, THREE SE'AHS PER KOR: ALL DEPENDS ON THE QUANTITY AND THE TIME.[8] SAID R. JOHANAN B. NURI: WHAT DO THE MICE CARE; THEY EAT [THE SAME] WHETHER THE QUANTITY BE LARGE OR SMALL! HENCE HE MAY MAKE DEDUCTIONS ONLY FOR ONE KOR. R. JUDAH SAID: IF IT IS A LARGE QUANTITY HE CANNOT DEDUCT DECREASES AT ALL, BECAUSE IT INCREASES.[9]

GEMARA. But rice decreases by much more! — Said Rabbah b. Bar Hanah in R. Johanan's name: This refers to peeled rice.

FOR SPELT AND LINSEED, THREE SE'AHS PER KOR etc. R. Johanan said in R. Hiyya's name: This refers to linseed in its calyxes.[10] It has been taught likewise: For spelt and linseed in its calyxes and unpeeled rice, three se'ahs per kor.

ALL DEPENDS ON THE QUANTITY etc. A Tanna taught: It is thus per kor per annum.

SAID R. JOHANAN B. NURI etc. It has been taught: They [the Sages] said to R. Johanan, Much of it deteriorates and much is scattered.[11]

A Tanna taught: This holds good only if he [the bailee] mixed it with his own produce. But if he assigned him a special corner he can say to him, 'Behold, here is yours before you.'[12] But what if he did mix it with his crops: let him see how much his own was![13] — It refers to one who drew his supplies therefrom. Then let us see how much he drew? — He does not know.

R. JUDAH SAID: IF IT IS etc. What constitutes a LARGE QUANTITY? — Said Rabbah b. Bar Hanah in R. Johanan's name: Ten kors. It has been taught likewise: What constitutes a large quantity? Ten kors.

A tanna recited before R. Nahman: When was this said? If he measured [the corn] for him out of the granary and returned [it] to him out of the granary. But if he measured [it] for him out of the granary and returned it to him out of the house, he may make no deduction for decreases, because it [the quantity] increases.[14] Are we dealing with imbeciles, he retorted, who give with a large measure and take back with a small! Perhaps you mean the season of the granary.[15] [Thus:] When is this said? If he measures it out to him at the harvest season and returns it to him in the harvest season. But if he measures it out to him at the harvest season and returns it to him in the rainy season [winter], he may make no deduction for decreases, because it increases.[16] Said R. Papa to Abaye: If so, the barrel [containing produce] ought to burst! — It did once happen that the barrel [did in fact] burst. Alternatively, it [the reason that the barrel does not generally burst] is on account of the tightness [of the crops].[17] MISHNAH. HE MAY DEDUCT A SIXTH IN THE CASE OF WINE. R. JUDAH SAID: A FIFTH. HE MAY DEDUCT THREE LOGS OF OIL PER HUNDRED, WHICH IS A LOG AND A HALF FOR LEES, AND ONE AND A HALF FOR ABSORPTION.[18] BUT IF IT WAS REFINED OIL, HE MAY MAKE NO DEDUCTION FOR LEES. IF THEY [THE CONTAINERS] WERE OLD BARRELS, HE MAY MAKE NO DEDUCTION FOR ABSORPTION.[19] R. JUDAH SAID: EVEN IF HE SELLS REFINED OIL TO HIS NEIGHBOUR DURING THE WHOLE

YEAR, THE LATTER MUST ACCEPT A LOG AND A HALF OF LEES PER CENT.[20]

GEMARA. But there is no dispute; each master rules in accordance with his region. In the locality of the first master they covered [the inside of the wine barrels] with wax, so there was not much absorption;[21] whilst in that of the other [sc. R. Judah] they covered [them] with pitch; hence they absorbed more.[22] Alternatively, it is on account of the clay [used in making the barrels]; the one quality absorbed more, the other less.

In Rab Judah's locality forty-eight jugfuls went to the [standard] barrel, a barrel being sold at six zuz, and Rab Judah retailed six [jugfuls] per zuz.

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(1) Rashi, regarding this last phrase, 'and thus etc.', as a continuation of R. Hisda's statement, substitutes Rab for Rabbah; firstly, because Rabbah was R. Hisda's pupil, and he would not quote his pupil's views in support of his own; and secondly, because an Amora is never adduced in support of a Mishnah. But Rab was his teacher, and he is cited not in support of the Mishnah, but in explanation thereof; as there is a view that this Mishnah refers only to a natural improvement, he quoted Rab as holding that it refers even to improvements directly effected by the brothers. Tosaf. retains our reading, explaining that this is not a continuation of R. Hisda's speech, but an observation by the Talmudic redactor that Rab once gave a similar ruling.

(2) [To Rabbah (according to Tosaf.).]

(3) Lit., 'the matter rolled on'.

(4) V. supra 39a, in reference to a next of kin who enters into a captive's estates; on the latter's return, the former is paid for his improvements as an aris, receiving a half, third or a quarter, in accordance with local usage, though, of course, the land was not his at all.

(5) Even if the claimant is entitled to half of the improvement, surely Mari is entitled to a fraction of that half, as though he were an aris! R. Hisda, however, had not allowed for this.

(6) On his father's death he took possession without a court order.

(7) 1 Kor = 30 se'ahs = 180 kabs.

(8) I.e., these pro rata decreases hold good whatever the quantity; also, they are dependent on the time the produce is stored — the Gemara states that these are per annum.

(9) This is discussed below.

(10) Since they dry up and are blown away by the wind, the decrease is so large. But pure linseed does not suffer so great a loss.

(11) Besides the depredations of mice; therefore it does depend on quantity.

(12) Whatever the decrease.

(13) And knowing the combined quantity and by how much the whole has decreased, make a proportionate deduction.

(14) The measures used in the granary were larger than house measures, hence the same quantity shows a larger figure when measured by the latter; this increase counterbalances the normal decrease.

(15) I.e., summer, when the corn is harvested into the granary.

(16) In winter the crops swell up, the resultant increase counterbalancing the normal loss.

(17) Tightly pressed together in the barrel, they have no room to expand and cause it to burst.

(18) The barrels absorb that quantity.

(19) Old barrels have already absorbed as much as they can contain.

(20) I.e., if the vendor sells a quantity of oil but keeps it in his own barrels, supplying it in smaller quantities to the vendee as and when desired. Having received 98 1/2 logs of pure oil without sediment, the vendee must now accept 1 1/2 of lees.

(21) Not more than a sixth.

(22) Sc. a fifth.

Talmud - Mas. Baba Metzia 40b

Now, deduct thirty-six [from the forty-eight] for six [zuz],leaves twelve; deduct eight, which is the sixth [allowed for absorption], leaves four.[1] But Samuel said: He who profits must not profit more

than a sixth?[2] — There are the barrels and the lees.[3] If so, it exceeds one sixth. — There is his trouble, and the cost of the crier.[4]

IF IT WAS REFINED OIL, HE MAY MAKE NO DEDUCTION FOR LEES etc. But it is impossible that it [the barrel] shall not absorb![5] — Said R. Nahman: This refers to [barrels] lined with pitch.[6] Abaye said: You may even say that they are not pitch lined: being laden, they are laden.[7]

R. JUDAH SAID: EVEN IF HE SELLS REFINED OIL TO HIS NEIGHBOUR DURING THE WHOLE YEAR, THE LATTER MUST ACCEPT A LOG AND A HALF OF LEES PER CENT. Abaye said: When you examine the matter, [you will conclude that] in R. Judah's opinion lees may be mixed [with the oil]; whilst on the Rabbis' view lees may not be mixed. 'In R. Judah's opinion lees may be mixed,' and that is the reason that he [the vendee] must accept [the lees],[8] because he [the vendor] can say to him, 'Had I desired to mix it up for you, could I not have done so? therefore now too, accept it.'[9] But let him answer, 'Had you mixed it up for me, it could have been sold [together with the rest]: but what am I to do with it now? I cannot sell it separately!' — This refers to a private individual, who prefers clear [oil].[10] But let him say to him, 'Since you did not mix it up for me, you have renounced it in my favour?'[11] — R. Judah follows his general reasoning, not accepting [the theory of] renunciation. For we learnt: If one sells the yoke, he has not sold the oxen; if he sells the oxen, he has not sold the yoke. R. Judah said: The price decides [the matter]. E.g., if one says to another, Sell me your yoke for two hundred zuz, it is well known that a yoke is not priced at two hundred zuz.[12] But the Sages say: The price is no proof.[13]

'Whilst on the Rabbis' view lees may not be mixed,' and that is the reason that he [the vendee] need not accept [the lees], because he can say to him [the vendor], 'Had you desired to mix it up,[14] would it then have been permitted to you? Now too, [therefore,] I will not accept it.'

R. Papa objected to Abaye: On the contrary, the logic is the reverse. On the view of the Sages lees may be mixed up, and that is the reason that he need not accept it, because he can say, 'Since you did not mix it up for me, you have renounced it in my favour. Whilst in the opinion of R. Judah lees may not be mixed up, and this is the reason that he must accept it, because he can say to him, 'Had I desired to mix it up, it would not have been permitted to me, whilst you also refuse to accept it [separately]: if one buys and sells [at the same price] — do you call him a merchant!'[15]

A Tanna taught: The vendee and the depositor are both alike in respect of the scum.[16] What is meant by 'in respect of the scum?' Shall we say, Just as the vendee does not accept the scum, so does the depositor likewise not accept it?[17] But let him [the bailee] say to him, 'What am I to do with your scum?' But [on the contrary], just as the depositor must accept the scum, so must the purchaser likewise. Yet must the vendee accept the scum: but it has been taught: R. Judah said: [The loss due to] the muddy oil was assigned to the vendor alone, since the vendee accepts a log and a half of sediment without the scum![18] — There is no difficulty: The former treats of one who pays his money in Tishri and received [the wine or oil] in Nisan at Tishri prices;[19] the latter treats of one who pays his money in Nisan and receives [the oil] in Nisan at Nisan prices.[20] MISHNAH. IF A MAN DEPOSITS A BARREL WITH HIS NEIGHBOUR, ITS OWNER NOT DESIGNATING A PLACE FOR IT, AND HE [THE BAILEE] MOVES IT AND IT IS BROKEN, IF IT IS BROKEN WHILST IN HIS HAND,[21] — [IF HE MOVED IT] FOR HIS PURPOSES, HE IS RESPONSIBLE; FOR ITS OWN NEED, HE IS NOT RESPONSIBLE. IF IT IS BROKEN AFTER HE PUTS IT DOWN, WHETHER [HE MOVED IT] FOR HIS NEED OR FOR ITS OWN, HE IS NOT LIABLE. IF THE OWNER DESIGNATES A PLACE FOR IT, AND HE MOVES IT AND IT IS BROKEN, WHETHER WHILST IN HIS HAND OR AFTER HE PUTS IT DOWN, — [IF HE MOVED IT] FOR HIS PURPOSES, HE IS RESPONSIBLE; IF FOR ITS OWN NEED, HE IS NOT LIABLE.

GEMARA. Who is the authority of the Mishnah? — It is R. Ishmael, who ruled: The owner's

knowledge is unnecessary.[22] For it has been taught: If one steals a lamb from a fold or a sela' from a purse, he must return it whence he stole it:[23] this is R. Ishmael's view. R. Akiba said:

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(1) This then was his profit — 4 in 48 = 1/12 th.

(2) Yet 1/6 th is permissible: why then did Rab Judah content himself with 1/12 th?

(3) Which augment his profits.

(4) Who announced the wares. Others: the cost of piercing the bung.

(5) Even if old.

(6) These, if old, do not absorb.

(7) And cannot absorb more.

(8) As stated in the Mishnah.

(9) I.e., having received the refined oil in small quantities without lees, you must now accept one and a half logs of sediment separately.

(10) He bought it for his own use, not to resell, and therefore is glad that pure oil was delivered him; consequently he must accept the sediment separately.

(11) I.e., your right to mingle the lees with the oil.

(12) Hence he must have meant the yoke and the oxen.

(13) B.B. 77b. The vendee may have chosen this method of renouncing his money, i.e., gifting it, to the vendor. Since R. Judah rules that the price does prove the meaning of the terms used, he evidently rejects this plea of renunciation.

(14) After it had settled at the bottom.

(15) I.e., unless I am permitted to make a deduction from the quantity on account of the lees, I cannot make a living.

(16) Of the wine or oil. So translated by Rashi. In H.M. 228, 20 it is translated: 'the muddy oil which ascends to the top' (באר הגולה a.l.). Jast. translates: 'the foam or froth of the wine or oil'; this, however, seems unsuited to the context.

(17) The measure bought by the vendee is calculated without the scum; and when the wine or oil is returned to the depositor, he too may insist that the measure due to him shall be calculated without it.

(18) Since 1 1/2 per cent is sediment (v. supra 40a) he is entitled that the rest shall be quite clear, without scum.

(19) In Tishri the oil is generally turbid with a scum on top, the price being correspondingly low. Hence in this case he must accept it.

(20) Which are higher, because by then the oil is clear and free from scum; hence he can refuse it.

(21) Lit., 'out of his hand'.

(22) The first clause states that if he moves it for his own purpose, puts it down, and then it is broken, he is not responsible. Now, when he moves it for his own purpose, he is regarded as having stolen it, since a bailee must not make any use of a bailment, and there is a view, expressed immediately in the Gemara, that when a person steals an object he is responsible for it until he returns it and informs its owner that he has returned it. R. Ishmael holds that the owner's knowledge is unnecessary. Now, when the bailee puts the barrel down, he returns it to its owner, of course, without the owner's knowledge, and since the Mishnah rules that he is not responsible then, it must agree with R. Ishmael.

(23) After which he ceases to bear responsibility for it.

Talmud - Mas. Baba Metzia 41a

The owner's knowledge is required.[1] If R. Ishmael, why particularly if he designated [a place]: even if he did not, it is still the same! — This is a case of 'it goes without saying.' [Thus:] It goes without saying that if he designated [a place for it, the owner's knowledge of its return is not required,] since it is its place:[2] but even if no designation was made, so that it is not its place,[3] yet the owner's knowledge is not required. Then consider the second clause: IF THE OWNER DESIGNATES A PLACE FOR IT, AND HE MOVES IT AND IT IS BROKEN, WHETHER IN HIS HAND OR AFTER HE PUTS IT DOWN, — [IF HE MOVED IT] FOR HIS PURPOSE, HE IS RESPONSIBLE; IF FOR ITS OWN NEED, HE IS NOT LIABLE. That agrees with R. Akiba, who ruled, The owner's knowledge is required. If R. Akiba, why particularly if designation is made: even if not,it is likewise so?[4] — This is a case of 'it goes without saying.' [Thus:] It goes without saying that if he did not designate [a place for it, the owner's knowledge of its return is required,] since it is

not its place;[5] but even if designation was made, so that it is its place,[6] the owner's knowledge is still required. Then the first clause agrees with R. Ishmael, and the second with R. Akiba? — Even so, for R. Johanan said: He who will explain me [the Mishnah of] BARREL so as to agree with one Tanna, I will carry his attire after him to the baths.[7] R. Jacob b. Abba interpreted it before Rab as meaning that he took it with the intention of stealing it; R. Nathan b. Abba interpreted it before Rab as meaning that he took it with the intention of using it.[8] Wherein do they [sc. R. Jacob b. Abba and R. Nathan b. Abba] differ? — In whether [unlawful] use must be accompanied by damage.[9] He who says, [He must have taken it] in order to steal it, holds that [unlawful] use must result in damage;[10] whilst he who maintains that it was in order to use it, is of the opinion that [unlawful] use need not result in damage.[11] R. Shesheth raised an objection: Does he [the Tanna] State 'he took it?' he actually Says, HE MOVES IT![12] But, said R. Shesheth, this treats of one who took it in order to reach down birds [whilst standing] upon it,[13] and he [the Tanna of the Mishnah] holds that a borrower without permission is regarded as a robber. Thus the whole of it [sc. the Mishnah] agrees with R. Ishmael, the second clause meaning that he did not return it to its place.[14] And R. Johanan?[15] — 'HE PUTS IT DOWN' implies in its own place.[16]

It has been stated: Rab and Levi: One maintained, [Unlawful] use [by the bailee] must involve damage; and the other maintained, It need not.[17] It may be proved that it was Rab who ruled that [unlawful] use need not involve damage. For it has been taught: If a shepherd who was guarding his flock left it and entered the town: then a wolf came and destroyed a sheep, or a lion, and tore it to pieces, he is free from liability. If he put his staff or wallet upon it, he is liable.[18] Now we pondered thereon: because he put his staff or wallet upon it, he is liable: but he [also] took them away![19] Whereupon R. Nahman said in the name of Rabbah b. Abbuha in Rab's name: It means that it is still upon it. Yet even if it was still upon it, what of that? but he had not taken possession of it![20] R. Samuel son of R. Isaac answered in Rab's name: It means that he smote it with his staff and it ran before him.[21] But he had inflicted no damage upon it! Hence this Surely proves that he [Rab] holds that [unlawful] use need not involve damage! — [No.] Say thus: He had weakened it with his staff.[22] This follows too from the fact that he states, He smote it with his staff.[23] This proves it. Now, since Rab holds that [unlawful] use must involve damage, it follows that Levi maintains that it does not: what is Levi's reason?[24] — Said R. Johanan on the authority of R. Jose b. Nehorai: [Unlawful] use stated in connection with a paid bailee differs from that stated in connection with a gratuitous bailee;[25]

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(1) V. n. 2.

(2) To which he returns it.

(3) Sc. that to which he returns it, since it has no fixed place which can be called its own.

(4) Tosaf.: the assumption that R. Ishmael and R. Akiba maintain their views in both cases, whether a particular place was assigned for the misappropriated article or not, is based on the fact that the two instances given are a lamb and a coin: a lamb has no particular place, going from pasture to pasture, whilst a coin has one, viz., the purse, and the purse too generally has a particular place.

(5) To which he returns it, so that it is not a perfect restoration.

(6) V. n. 1.

(7) I will act as his servant.

(8) Lit., 'to put forth his hand' — the language is Biblical; v. Ex. XXII, 7. These two Amoraim explain the Mishnah so that the whole may agree with one Tanna. R. Jacob b. Abba: The first clause means that he returned it to its place, since no particular place having been assigned to it, wherever he puts it is its place. Therefore, if it is broken, he is free from responsibility, the author of the Mishnah being R. Ishmael, who maintains that the owner's knowledge of the article's return is unnecessary. But in the second clause the meaning is that it is not returned to its place: therefore he is liable. For though R. Ishmael holds that the owner's knowledge is unnecessary, yet it must be put back into its place before the purloiner is freed of his responsibility. This, however, holds good only if he takes the barrel in the first place intending to steal it; if he merely desires to borrow it, we are not so strict, and wherever he put it back, even not in the place assigned to it, suffices to free him. R. Nathan b. Abba: He explains it likewise, but holds that even if the depositary takes it with

the mere intention of using some of its contents, he forthwith becomes responsible (though he does not carry out his intention) for the whole of it (v. infra 44a), and remains so until he returns it to its own place. The assumption that the second clause means that he does not return it to its own place is implicit on both explanations, but these are interrupted whilst certain objections are raised.

(9) V. Ex. XXII, 9f: If a man deliver unto his neighbour . . . any beast to keep, and it die, or be hurt (i.e., suffer through an unpreventable accident) . . . Then shall an oath of the Lord be between them both, that he hath not put his hand unto his neighbour's goods — i.e., made use of them, which, being a bailee, he had no right to do. Thus Scripture teaches that if the depositary misappropriates the bailment to his own use, he is responsible for subsequent accidents. These two Amoraim differ as to whether that holds good always, or only if his use thereof resulted in damage.

(10) But otherwise it throws no responsibility upon the bailee. Hence, if he takes it merely to use it and did not use it, he is not liable, seeing that no damage was done.

(11) Hence the mere taking to use it is sufficient.

(12) Which certainly indicates that he took it for use, not to steal.

(13) I.e., he borrowed it without intending to steal it. (V. infra p. 257.)

(14) As explained on p. 245, n. 5; the last passage 'the second clause meaning etc.' applies to the three answers.

(15) Why does he find it so difficult to make the Mishnah reflect the view of one Tanna only?

(16) Therefore he could not accept that explanation.

(17) V. n. 1.

(18) V. infra 93b.

(19) Before the animal was attacked.

(20) Lit., 'pulled'. And a bailee does not become responsible on account of (unlawful) use unless he takes possession of the bailment by means of 'pulling' meshikah, (v. Glos.) as appears from the Mishnah infra 43b, q.v.

(21) Which is the equivalent of meshikah. Thus there had been (unlawful) use (by putting his staff or wallet upon it) and meshikah.

(22) He had smitten it so hard as to weaken it; this is damage.

(23) Which would inflict a heavy blow. Otherwise he should simply have stated, He smote it and it ran before him (Rashi), or perhaps 'smote' too is unnecessary, since he could have said, He made it go by shouting at it. (R. Han. and Tosaf.).

(24) Rab's reason is not asked, for it stands to reason that no liability should be imposed unless his (unlawful) use causes loss, as otherwise it can hardly be called so.

(25) For the former v. p. 246, n. 1, to whom the verses quoted refer. An unpaid bailee: Ibid. 6f: If a man shall deliver unto his neighbour money or stuff to keep, and it be stolen out of the man's house; if the thief be found, let him pay double. If the thief be not found, then the master of the house shall he brought unto the judges, to see whether he have put his hand unto his neighbour's goods (i.e., made use thereof).

Talmud - Mas. Baba Metzia 41b

but I say,[1] It is not different. Wherein [and why] is it different? — For [unlawful] use should not have been stated in connection with a paid bailee, and it would have been inferred from a gratuitous bailee: if an unpaid bailee, who is not responsible for theft or loss, is nevertheless liable if he puts it [the bailment] to use; then a paid bailee, who is responsible for theft or loss, is surely [liable if he puts it to use]. Why then did Scripture state them [both]? To teach you that [unlawful] use need not involve damage.[2] 'But I Say, It is not different,' in accordance with R. Eleazar, who maintained: Both have the same purpose. How Say, 'both have the same purpose'?[3] — Because one can refute [that argument]. As for a gratuitous bailee, [he may be liable if he used it] because he must repay double on a [false] plea of theft.[4] And he who does not refute [it thus] is of the opinion that [liability to] the principal without [the option of] an oath[5] is a greater responsibility than [having to pay] double after a [false] oath.[6]

Raba said: [Unlawful] use need not have been mentioned in connection with either an unpaid or a paid bailee, and it could have been inferred from a borrower.[7] If a borrower, who in using it acts with its owner's permission, is [nevertheless] responsible [for unpreventable accidents]; surely the same

applies to unpaid and paid bailees! Then why is it stated [in connection with these two]? Once, to teach you that [unlawful] use need not involve damage.[8] And the other: that you should not say: It is sufficient that that which is deduced a minori shall be as that from which it is deduced: just as a borrower is exempt if the owner [is in his service],[9] so also are unpaid and paid bailees exempt, if the owner [is in their service.][10]

Now, on the view that [unlawful] use must involve damage, what is the purpose of these two [statements] on [unlawful] use?[11] — One, that you should not say, It is sufficient that that which is deduced a minori shall be as that from which it is deduced. And the other, for what was taught: [If a man shall deliver unto his neighbour money or stuff to keep, and it be stolen . . . If the thief be not found,] then the master of the house shall be brought unto the judges[12] — for an oath.[13] You say, 'for an oath'. But perhaps it is not so, the meaning being for judgment?[14] [Unlawful] use is stated below;[15] and [unlawful] use is stated above:[16] just as there, [the reference is] to an oath, so here too, for an oath [is meant].

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(1) R. Johanan stating his own opinion.

(2) That is the meaning of 'it differs' — i.e., not that its actual definition differs, but that its purpose in being stated is different. Thus: its mention in the section on a gratuitous bailee is to shew the actual law, whilst it is stated in the section on a paid bailee for the purpose of definition.

(3) In view of the above argument.

(4) In this respect his responsibility exceeds that of a paid bailee (v. B.K. 63b); therefore it might also have been regarded as greater in respect of misappropriation. Consequently it must be mentioned in connection with a paid bailee too, for its own purpose, and not for mere definition; hence it must involve damage.

(5) As in the case of a paid bailee.

(6) As in the case of a gratuitous bailee.

(7) A borrower is responsible for accidents, and when a bailee makes use of his bailment, he automatically becomes in a sense a borrower, but without permission.

(8) [The bailee consequently becomes liable for the whole bailment as soon as he takes it with the intention of putting to use a mere part thereof. This distinguishes him from a borrower authorised or unauthorised, whose liability is limited to the part actually borrowed. V. R. Nissim, Hiddushim, a.l.]

(9) Ibid. 13f: And if a man borrow aught of his neighbour, and it be hurt or die, the owner thereof being not with it, he shall surely make it good. But if the owner thereof be with it, he shall not make it good. The Rabbis interpret this as meaning that if the owner is in the borrower's service when the article is borrowed and/or when the accident occurs (v. 94a and 95b) he is not liable.

(10) Therefore (unlawful) use is mentioned in their case to show that even then they are responsible.

(11) As Raba observed.

(12) Ibid. 6, with reference to a gratuitous bailee.

(13) I.e., to swear that it was stolen. The verse is accordingly translated thus: If it be not found (that he spoke the truth, but) he himself is the thief, and the mister of the house has already been brought unto the judges, i.e., has already sworn that it was stolen, then, whom (sc. the bailee) the judges shall condemn, he shall pay double unto his neighbour. Hence a bailee must pay double only if he actually swore that it was stolen, but not on his mere plea.

(14) To plead that it was stolen, and the plea itself is sufficient to impose the penalty of twofold repayment.

(15) In connection with a paid bailee: Then shall an oath of the Lord be between them both, that he hath not put his hand unto his neighbour's goods; ibid. 10.

(16) In connection with an unpaid bailee: Then the mister of the house should be brought unto the judges, to see whether he have put his hands unto his neighbour's goods. (Ibid. 7.)

Talmud - Mas. Baba Metzia 42a

MISHNAH. IF A MAN DEPOSITED MONEY WITH HIS NEIGHBOUR, WHO BOUND IT UP AND SLUNG IT OVER HIS SHOULDER[1] [OR] ENTRUSTED IT TO HIS MINOR SON OR DAUGHTER AND LOCKED [THE DOOR] BEFORE THEM, BUT NOT PROPERLY, HE IS

LIABLE, BECAUSE HE DID NOT GUARD [IT] IN THE MANNER OF BAILEES. BUT IF HE GUARDED IT IN THE MANNER OF BAILEES, HE IS EXEMPT.

GEMARA. As for all, it is well, since indeed he did not guard it in the manner of bailees: but if HE BOUND IT UP AND SLUNG IT OVER HIS SHOULDER — what else should he have done? — Said Raba in R. Isaac's name: Scripture saith, and thou shalt bind up the money in thine hand[2] — even if bound up, it should be in thy hand.[3]

R. Isaac also said: One's money should always be ready to hand,[4] for it is written, and thou shalt bind up the money in thy hand.

R. Isaac also said: One should always divide his wealth into three parts: [investing] a third in land, a third in merchandise, and [keeping] a third ready to hand.

R. Isaac also said: A blessing is found only in what is hidden from the eye,[5] for it is written, The Lord shall command the blessing upon thee in thy hidden things.[6] The School of R. Ishmael taught: A blessing comes only to[7] that over which the eye has no power,[8] for it is said, The Lord shall command the blessing upon thee in thy hidden things.

Our Rabbis taught: When one goes to measure [the corn in] his granary, he should pray, 'May it be Thy will, O Lord our God, to send a blessing upon the work of our hands.' Having started to measure, he prays, 'Blessed is He who sendeth a blessing on this pile.' But if he measured and then prayed,[9] it is a vain prayer, because a blessing is not found in that which is [already] weighed, measured, or counted, but only in that which is hidden from the eye, for it is said, The Lord shall command the blessing upon thee in thy hidden things.

Samuel said: Money can only be guarded [by placing it] in the earth.[10] Said Raba: Yet Samuel admits that on Sabbath eve at twilight the Rabbis did not put one to that trouble.[11] Yet if he tarried after the conclusion of the Sabbath long enough to bury it [the money] but omitted to do so, he is responsible [if it is stolen]. But if he [the depositor] was a scholar, he [the bailee] might have thought, He may require the money for habdalah.[12] But nowadays[13] that there are money-diviners,[14] it can be properly guarded only [by placing it] under the roof beams. But nowadays that there are house breakers,[15] it can be guarded only [within the void spaces] between bricks. Raba said: Yet Samuel admits [that it may be] hidden] in the wall. But nowadays that there are rappers,[16] It can be guarded only in the handbreadth nearest to the earth or to the uppermost beams.[17]

R. Aha, son of R. Joseph, said to R. Ashi: We learnt elsewhere: If ruins collapsed on leaven, it is regarded as removed.[18] R. Simeon b. Gamaliel said: Provided that[19] a dog cannot search it out.[20] And it was taught [thereon]: How far is the searching of a dog? Three handbreadths.[21] How is it here?[22] Do we require [that it shall be covered by] three handbreadths or not? — There, he replied, we require three handbreadths on account of the smell [of the leaven];[23] but here [it is put into the earth] in order to cover it from the eye; therefore three handbreadths are not required. And how much [is necessary]? — Said Rafram of Sikkara:[24] one handbreadth.

A certain man deposited money with his neighbour, who placed it in a cot of bulrushes.[25] Then it was stolen. Said R. Joseph: Though it was proper care in respect to thieves,[26] yet it was negligence in respect to fire: hence the beginning [of the trusteeship] was with negligence though its end was through an accident, [and therefore] he is liable. Others Say: Though it was negligence in respect to fire, it was due care in respect to thieves, and when its beginning is with negligence and its end through an accident, he [the bailee] is not liable.[27] And the law is that when the beginning thereof is with negligence and the end through an accident, he is responsible.

A certain man deposited money with his neighbour. On his demanding, ‘Give me my money,’ he replied, ‘I do not know where I put it.’ So he went before Raba, [who] said to him: Every [plea of] ‘I do not know’ constitutes negligence: go and pay him.

A certain man deposited money with his neighbour, who entrusted it to his mother; she put it in her work basket and it was stolen. Said Raba: What ruling shall judges give in this case? Shall we say to him, ‘Go and repay’?[28] Then he can reply,

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(1) Lit., ‘behind him’.

(2) Deut. XIV, 25.

(3) Not over the shoulder, so that it can be properly guarded.

(4) And not in another man's keeping, so that advantage can immediately be taken of a trading bargain that is available.

(5) I.e., the exact quantity of which the owner does not know.

(6) Ibid. XXVIII, 8. (E.V. ‘storehouses’.)

(7) Lit., ‘is found only in’.

(8) I.e., hidden, and so not subject to the evil eye.

(9) Lit., ‘uttered a benediction’.

(10) Otherwise the bailee is guilty of negligence — In ancient days there was probably no other place as safe. [Cf. Josephus, Wars, V. 7, 2, ‘. . . which the owners had treasured up under ground against the uncertain fortunes of war.’]

(11) If one receives a bailment then, he cannot be expected to place it in the earth, and his not doing so does not constitute negligence. [Some texts rightly omit ‘at twilight’, all manner of work being then in any case prohibited.]

(12) Lit., ‘separation’, a short blessing recited as a rule over wine, thanking God for the distinction between the Sabbath and week-days. — In that case, the bailee was justified in not burying the money, as the scholar might require same for wine. The practice of reciting habdalah at home was not widespread; v. Ber. 331.

(13) [In the third century, when Babylonia entered upon its bitter struggles with the Romans for the possession of the rich lands of the Euphrates; v. Krauss, op. cit., p. 415.]

(14) Lit., ‘sounders’, who can sound the earth to discover cavities where money may be hidden.

(15) Who break through the beams.

(16) Who by rapping at the wall can discover its cavities and treasures.

(17) Asheri a.l. observes that all this held good only in the days of Samuel and his successors, when rappers, diviners, etc. were to be feared. Nowadays, however, we do not fear all this, and it is sufficient if a bailee puts the money entrusted to his charge in the place where he keeps his own.

(18) All leaven had to be removed from the house before Passover (Ex. XII, 15); if ruins fell on leaven, the leaven is regarded as removed, since it is inaccessible.

(19) Lit., ‘whatever’.

(20) Pes. 31b.

(21) I.e., the leaven must be covered by not less than three handbreadths of debris; otherwise a dog can search it out, and it would therefore be necessary to remove the debris and destroy the leaven.

(22) In respect to placing money in the earth.

(23) If the leaven is covered by less, a dog can smell it.

(24) A town S. of Mahuza.

(25) So Jast. Rashi: in a fowler's trap.

(26) Who would normally not think of looking there for it.

(27) V. supra 36b.

(28) Because if a bailee entrusts the deposit to another he is responsible.

Talmud - Mas. Baba Metzia 42b

‘All who deposit do so with the understanding that the wife and children [of the depositary may be entrusted with the bailment].’ Shall we say to his mother, ‘Go and pay:’ she can plead, ‘He did not tell me that it [the money] was not his own, that I should bury it.’ Shall we say to him, ‘Why did you not tell her?’[1] he can argue, ‘If I told her it was mine, she was the more likely to guard it well.’ But,

said Raba, he must swear that he had entrusted that money to his mother, and his mother must swear that she had placed that money in her work basket, and it was stolen. Then he [the bailee] is free.

A certain steward for orphans[2] bought an ox on their behalf and entrusted it to a herdsman. Having no molars or [front] teeth to eat with, it died.[3] Said Rami b. Hama: What verdict shall judges give in this case? Shall we say to the steward, 'Go and pay:' he can reply, 'I entrusted it to the herdsman.'[4] Shall we say to the herdsman, 'Go and pay:' he can plead, I put it together with the other oxen and placed food before it: I could not know that it was not eating! [But, why not] consider [the fact that] the herdsman was a paid keeper of the orphans, and as such should have made careful observation? — Had the orphans suffered loss, it would be even so. But we treat here of a case where the orphans suffered no loss, because the [first] owner of the ox was found and they received their money back from him.[5] Then who is the plaintiff? — The owner of the ox, who pleads that he [the steward] should have informed him. But what was he to inform him? He knew full well that it was a sale under false pretences! — He [the owner of the ox] was a middleman, who buys here and sells there.[6] Therefore [rules Rami] he [the middleman] must swear that he did not know [of the animal's toothless condition], and the herdsman must pay at the cheap price of meat.[7]

A certain man deposited hops with his neighbour, who himself also had a pile thereof. Now, he instructed his brewer, 'Take[8] from this pile;' but he went and took from the other. Said R. Amram: What verdict shall the judges give in this case? Shall they say to him, 'Go and pay:' he can plead. 'I said to him, "Take from this [pile]."' Shall we say to the brewer, 'Go and pay'? He can argue, 'He did not say to me, "Take from this [pile] but not from that."' But if he [the brewer] tarried sufficient time to bring him [his own hops], yet did not do so,[9] then he [the bailee] revealed his mind that he was pleased therewith![10] — There was no tarrying. Yet after all, what loss is there: did he [the depositary] not benefit thereby?[11] — Said R. Samma, son of Raba: The beer turned into vinegar.[12] R. Ashi said: The reference is to thorns,[13]

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(1) And therefore you are responsible.

(2) Appointed by the court to administer their estate until they attained their majority.

(3) This loss could have been avoided had it been slaughtered and rendered fit for food.

(4) And thus fulfilled my obligations.

(5) On the grounds that it was bargain under false pretences.

(6) I.e., who does not keep the animal in his possession for any length of time, and need not have been aware of the animal's condition.

(7) Which is two thirds of the usual price. Rashi explains that this was a compromise, since the cowherd had a semi-valid plea, viz., 'I put it together with other oxen, etc.' Tosaf., however, holds that the verdict was strictly in accordance with the law, for since the animal could not live long, it would have had to be slaughtered before market day, when flesh does not fetch its proper price.

(8) Lit., 'cast (into the beer)'.

(9) The deposited hops being further away.

(10) For he must have known that the brewer was taking the deposited hops, and yet did not stop him.

(11) When the hops were put in his beer. Then he must pay in any case.

(12) And so the bailee did not benefit thereby.

(13) I.e., not hops were deposited, but the thorns on which the hops hang, and this yielded an inferior brew (so Jast.). Rashi translates: inferior hops, mixed with thorns.

Talmud - Mas. Baba Metzia 43a

and he must pay him the value of the thorns.[1]

MISHNAH. IF A MAN DEPOSITS MONEY WITH A MONEY-CHANGER, IF BOUND UP, HE MUST NOT USE IT: THEREFORE IF IT IS LOST, HE DOES NOT BEAR THE RISKS

THEREOF;[2] IF LOOSE, HE MAY USE IT; THEREFORE IF IT IS LOST, HE BEARS THE RISKS.[3] [BUT IF HE DEPOSITS IT] WITH A PRIVATE INDIVIDUAL, WHETHER IT IS BOUND UP OR LOOSE, HE MAY NOT USE IT; THEREFORE IF IT IS LOST, HE DOES NOT BEAR THE RISKS THEREOF. A SHOPKEEPER IS AS A PRIVATE INDIVIDUAL: THIS IS R. MEIR'S VIEW. R. JUDAH SAID: A SHOPKEEPER IS AS A MONEY-CHANGER.

GEMARA. Because it is bound up he may not use it![4] — Said R. Assi in Rab Judah's name: This was taught of [money] bound up and sealed.[5] R. Mari said: [It means that it was tied] with an unusual knot.[6] Others say, R. Mari propounded: What if [it was tied with] an unusual knot? — The question stands.

IF LOOSE, HE MAY USE IT, etc. R. Huna said: Even if an [unpreventable] accident happened thereto [he is responsible]. But he [the Tanna] states, [IF] LOST![7] — It is as Rabbah [said]. For Rabbah said [elsewhere]: 'Stolen' means by armed robbers; 'lost,' that his ship foundered at sea.[8] R. Nahman [however] said: If an [unpreventable] accident happened thereto, [he is] not [responsible].[9] Raba objected to R. Nahman: According to you, who maintain that [he is] not [responsible] if an unpreventable accident happened to it, thus showing that he is not [accounted] a borrower in respect of it: but if not a borrower, he is not a paid bailee either![10] — He replied to him: In this I agree with you, but since he may benefit therefrom, he must confer benefit;[11] in return for the benefit [he enjoys] that should he come across a purchase shewing profit he can buy it therewith, he becomes a paid bailee in respect thereto,[12]

R. Nahman raised an objection to R. Huna's ruling: If he [the treasurer of the Sanctuary] deposits money[13] with a money-changer, if bound up, he may not use it; therefore if he expends it, the treasurer is not liable to a trespass offering.[14] If loose, he may use it; therefore if he expends it, the treasurer is liable to a trespass offering.[15] But if you Say, even if an [unpreventable] accident befalls it [the money changer is responsible], why particularly if he expends it? Even if he does not expend it, he should likewise be [liable]![16] — He replied: The same law holds good even if he does not expend it; but since the first clause states [if he expends it],[17] the second clause teaches likewise, [if] he expends it.

MISHNAH. IF A MAN MAKES [UNLAWFUL] USE OF A BAILMENT: BETH SHAMMAI MAINTAIN: HE IS PUNISHED IN RESPECT OF DECREASE AND INCREASE.[18] BETH HILLEL RULE: [HE MUST PAY ITS VALUE] AS WHEN IT IS WITHDRAWN.[19] R. AKIBA SAID: AS WHEN THE CLAIM IS MADE.

GEMARA. Rabbah[20] said: If one steals a barrel of wine from his neighbour, originally [i.e., at the time of theft] worth a zuz, but now [when he disposes thereof] worth four [zuz], if he breaks or drinks it, he must pay four; if it is broken of itself, he must pay a zuz. Why? Since if it were in existence, it would be returnable to its owner as it is, it is precisely when he drinks or breaks it that he robs him thereof, and we learnt: All robbers pay according to the time of robbery.[21] 'If it is broken of itself, he must pay a zuz.' Why? He does nothing at all to it then: for what do you declare him liable? For the time of the robbery![22] But then it was worth [only] a zuz.

We learnt: BETH HILLEL RULE: [HE MUST PAY ITS VALUE] AS WHEN IT IS WITHDRAWN. What is the meaning of AS WHEN IT IS WITHDRAWN? Shall we Say, as when it is withdrawn from the world:[23] and in what [case do Beth Hillel differ]? If in the case of depreciation,[24] — but is there any such opinion? Did we not learn, All robbers pay as at the time of robbery? And if in the case of appreciation, then it is identical with Beth Shammai['s ruling]!

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(1) Whereby these had benefited the beer.

(2) A gratuitous bailee not being responsible for loss.

(3) The fact that he may use it makes him a paid trustee.
(4) Surely the depositor may have bound it up for safety, not to shew that the money-changer was not to use it!
(5) Which was not necessary for mere safety, but to intimate that it was not to be used.
(6) Which he must have made to prevent the money-changer from opening the package.
(7) Which implies that he is not responsible for (unpreventable) accidents.
(8) Which are unpreventable accidents. 'Lost' in our Mishnah has the same meaning.
(9) Regarding him as a paid bailee, who is not responsible for unpreventable accidents, whereas R. Huna accounts him a borrower.
(10) For his only payment is his right to use it, but that makes him a borrower, who uses his bailment, and if that right is disregarded, he receives nothing to turn him into a paid bailee.
(11) By accepting the risks of a paid bailee.
(12) I.e., when he actually uses it, he does indeed become a borrower. But until then his benefit is only potential, and it is sufficient that this potential benefit shall render him a paid bailee, and not a borrower.
(13) Of the Sanctuary, in error thinking it his own.
(14) In accordance with Lev. V, 15, for putting money dedicated to the Sanctuary to secular use. Since it was bound up, the treasurer had not authorised him to use it, and therefore the money-changer is liable.
(15) Tosef. Me'il. II.
(16) For since the money-changer is responsible for unpreventable accidents, he is evidently regarded as a borrower from the moment it reaches his hand, even before he actually uses it. But in that case the treasurer has already withdrawn it from the possession of the Sanctuary, and that alone involves a trespass offering.
(17) And there it is necessary to show that even then the treasurer is not liable.
(18) If the bailment itself cannot be returned for any reason, being destroyed or otherwise disposed of. The meaning of this is discussed in the Gemara.
(19) V. Gemara.
(20) Alfasi reads: Raba.
(21) B.K. 93b, i.e., what its value was then.
(22) I.e., for the act of taking it.
(23) I.e., when destroyed or otherwise disposed of.
(24) After he had taken it; Beth Hillel maintaining that he must pay its depreciated value.

Talmud - Mas. Baba Metzia 43b

Hence it is obvious [that it means] as when it is withdrawn from its owner's possession.[1] Shall we [then] say that Rabbah rules in accordance with Beth Shammai?[2] — Rabbah can answer you: In the case of appreciation, none dispute.[3] When do they dispute? In the case of depreciation:[4] Beth Shammai maintain, [unlawful] use need involve no loss,[5] and when it depreciates it is in his possession that it does so;[6] whereas Beth Hillel maintain that [unlawful] use must involve loss,[7] and when it depreciates, it does so in the possession of its owner.[8] If so, when Raba said, [Unlawful] use need not involve damage,[9] , are we to say that Raba ruled as Beth Shammai? — But we treat here of, e.g., one who moves it in order to fetch down birds [whilst standing] upon it, and they differ in respect to an unauthorised borrower. Beth Shammai maintain: An unauthorised borrower is a robber, and therefore, when it depreciates, it does so in his possession. Whereas Beth Hillel hold that an unauthorised borrower is not a robber, and when it depreciates, it does so in the owner's possession. If so, when Raba said, An unauthorised borrower, in the view of the Rabbis, is accounted a robber,[10] are we to say that Raba ruled as Beth Shammai? — But there they differ in respect of the increments of a stolen article.[11] Beth Shammai maintain: The increments in the stolen article belong to the robbed person;[12] whereas Beth Hillel hold that they belong to the robber.[13] And [they differ] in the [same] controversy as the following Tannaim. For it has been taught: If one steals a ewe and shears it, or it bears young, he must pay for that itself, its shearings, and its young: this is R. Meir's view. R. Judah said: The stolen article returns in its original state.[14] This [interpretation] may also be inferred, because it is stated, BETH SHAMMAI MAINTAIN, HE IS PUNISHED IN RESPECT OF DECREASE AND INCREASE. BETH HILLEL RULE: [HE MUST PAY] AS WHEN IT IS

WITHDRAWN.[15] This proves it.

R. AKIBA SAID: AS WHEN THE CLAIM IS MADE. Rab Judah said in Samuel's name: The halachah agrees with R. Akiba. Yet R. Akiba admits in a case where there are witnesses.[16] Why? Because Scripture saith, He shall give it unto him to whom it appertaineth, in the day of his trespass offering,[17] and since there are witnesses, he incurs a trespass offering at that very moment. R. Oshaia said to Rab Judah: Rabbi, you say so. But R. Jose said in R. Johanan's name thus: R. Akiba differed even in a case where there are witnesses. Why? Because Scripture saith, He shall give it unto him to whom it appertaineth, in the day of his trespass offering,[18] and it is the court that declares him liable to a trespass offering.[19] R. Zera said to R. Abba b. Papa: When you go there [sc. to Palestine], take a circuitous route by the promontory of Tyre and make your way up to R. Jacob b. Idi and ask him if he had heard from R. Johanan whether the halachah is as R. Akiba or not. He answered him: Thus did R. Johanan say, The halachah is as R. Akiba in every case.[20] What is meant by 'in every case?' — Said R. Ashi: That you should not say, That is only if there are no witnesses, but not if there are. Alternatively, it may also refer to the case where he [the thief] returned it to its place and it was injured, [and 'in every case' was said] in opposition to R. Ishmael, who maintained: The owner's knowledge is unnecessary;[21] therefore we are informed that the owner's knowledge is required.[22] But Raba said: The halachah is as Beth Hillel.

MISHNAH. IF A MAN INTENDS TO MAKE USE OF A BAILMENT:[23] BETH SHAMMAI MAINTAIN, HE IS [FORTHWITH] RESPONSIBLE [FOR ALL ACCIDENTS]; BUT BETH HILLEL RULE, HE IS NOT RESPONSIBLE UNTIL HE [ACTUALLY] MAKES USE THEREOF, FOR IT IS SAID, [THEN THE MASTER OF THE HOUSE SHALL BE BROUGHT UNTO THE JUDGES, TO SEE] WHETHER HE HAD PUT HIS HAND UNTO HIS NEIGHBOUR'S GOODS.[24] IF HE [THE BAILEE] INCLINES THE BARREL [GIVEN INTO HIS KEEPING] AND TAKES A REBI'ITH[25] [OF WINE] THEREFROM, AND [LATER ON] IT IS BROKEN, HE MUST PAY ONLY FOR THE REBI'ITH. BUT IF HE LIFTS IT AND TAKES A REBI'ITH FROM IT AND IT IS BROKEN [AFTER A TIME], HE MUST PAY ITS ENTIRE VALUE.[26] [

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(1) Lit., 'house'. And they dispute the case if it subsequently appreciated. Beth Shammai maintain that he must pay its value as when he disposes thereof, whilst Beth Hillel hold that he must pay its value at the time of the theft.

(2) Whereas it is a fixed principle that the halachah always agrees with Beth Hillel.

(3) That it must be paid for as at the time of disposal, 'AS WHEN IT IS WITHDRAWN,' meaning when it is withdrawn from the world.

(4) And as for the general rule, all robbers pay as at the time of robbery — that is only in the case of real robbery; here, however, it did not come into his hands at the outset through robbery but as a bailment.

(5) Therefore the bailee is accounted a robber from the time he takes it, when it immediately passes into his ownership, in the sense that he is henceforth responsible for it.

(6) Therefore he must pay its worth at the time of taking.

(7) But mere taking it for use does not make the trustee a thief.

(8) And he therefore pays according to the value at the time he disposes of it.

(9) Supra 41b.

(10) B.B. 88a.

(11) When the Mishnah speaks of increase and decrease, it does not refer to a rise or fall in the market price of the article, but to profit and loss attached thereto. E.g., a sheep is stolen, bearing a certain quantity of wool, and after it has grown more, the thief shears it; shorn, it shews a decrease on its state when stolen. Likewise, if the sheep conceives whilst in the thief's possession and lambs, thus shewing an increase.

(12) Therefore when repayment is made, the shearings and lamb must also be paid for.

(13) Hence he must pay the animal's worth at the time of the theft.

(14) I.e., he is only responsible for its value at the time of the robbery.

(15) But it does not state, He is punished in respect of depreciation and appreciation, which would connote a fall or rise in market price.

(16) Of the theft. Then he must pay its value at the time of the theft.
(17) Lev. V, 24. This is interpreted: he shall give it (i.e., pay for it) . . . as on the day he incurs a trespass offering.
(18) Interpreting as before.
(19) Hence he must pay its value at the time of the trial.
(20) Lit., 'always'.
(21) Having returned it whole, though not informing the owner, he ceases to be responsible for it.
(22) Hence he remains responsible for its injury, since he did not inform the owner of its return, in accordance with the view of R. Akiba, supra 40b-41a.
(23) I.e., expresses his intention in the presence of witnesses.
(24) Ex. XXII, 7, 10; the first verse refers to a gratuitous bailee; the second to a paid trustee: Then shall an oath of the Lord be between them both, that he hath not put his hand unto his neighbour's goods.
(25) A quarter log.
(26) A depositary is not responsible for accidents after putting a bailment to use unless he takes possession of it by drawing it to himself or lifting it up. Hence, if he merely inclines the barrel, it does not pass into his possession to render him responsible, and he must pay only for the actual amount he took. But if he lifts it up, it becomes his, and he is responsible for the whole of it.

Talmud - Mas. Baba Metzia 44a

GEMARA. How do we know it? — For our Rabbis taught: [Then the master of the house shall be brought unto the judges . . .] For all manner of trespass:[1] Beth Shammai maintain: This teaches that he is liable on account of [unlawful] intention just as for an [unlawful] act. But Beth Hillel say: He is not liable until he actually puts it to use, for it is said, [to see] whether he have put his hand unto his neighbour's goods. Said Beth Shammai to Beth Hillel: But it is already stated, For any word[2] of trespass! Whereupon Beth Hillel retorted to Beth Shammai: But it is already stated, [to see] whether he have put his hand unto his neighbour's goods! If so, what is the teaching of, for any word of trespass? For I might have thought: I know it only of himself;[3] whence do I know [that he is liable if] he instructed his servant or his agent [to use it]? From the teaching, For any word of trespass.[4]

IF HE INCLINES THE BARREL, etc. Rabbah said: This was taught only if it is broken: if, however, it soured, he must pay for the whole of it. Why? It was his arrows that affected it.[5]

BUT IF HE LIFTS IT, AND TAKES [A REBI'ITH] FROM IT, etc. Samuel said: 'TAKES' is not meant literally, but once he lifts it up in order to take [he is henceforth responsible] even if he does not take it. Shall we say that in Samuel's opinion [unlawful] use need not involve loss?[6] — I will tell you: That is not so, but here it is different, because he desires that the whole barrel shall be subservient to this rebi'ith.[7]

R. Ashi propounded: What then if he lifts up a purse in order to take a denar therefrom? Is it wine alone that can be guarded only by means of other wine,[8] whereas a zuz can be guarded [by itself]; or perhaps, the care given to a purse is not the same as that of a [single] denar?[9] The question stands.

C H A P T E R I V

MISHNAH. GOLD ACQUIRES SILVER, BUT SILVER DOES NOT ACQUIRE GOLD; COPPER ACQUIRES SILVER, BUT SILVER DOES NOT ACQUIRE COPPER; CANCELLED COINS ACQUIRE CURRENT ONES, BUT CURRENT COINS DO NOT ACQUIRE CANCELLED COINS; UNCOINED METAL ACQUIRES COINED, BUT COINED METAL DOES NOT ACQUIRE UNCOINED METAL; MOVABLES ACQUIRE COINS, BUT COINS DO NOT ACQUIRE MOVABLES. THIS IS THE GENERAL PRINCIPLE:[10] ALL MOVABLES ACQUIRE EACH OTHER. E.G., IF [A] DREW INTO HIS POSSESSION [B'S] PRODUCE WITHOUT PAYING HIM THE MONEY, HE CANNOT RETRACT. IF HE PAID HIM THE

MONEY BUT DID NOT DRAW INTO HIS POSSESSION HIS PRODUCE, HE CAN WITHDRAW. BUT THEY [SC. THE SAGES] SAID: HE WHO PUNISHED THE GENERATION OF THE FLOOD AND THE GENERATION OF THE DISPERSION,[11] HE WILL TAKE VENGEANCE OF HIM WHO DOES NOT STAND BY HIS WORD. R. SIMEON SAID: HE WHO HAS THE MONEY IN HIS HAND HAS THE ADVANTAGE.[12] GEMARA — Rabbi[13] taught his son R. Simeon: Gold acquires silver. Said he to him: Master, in your youth you did teach us, Silver acquires gold; now, advanced in age, you reverse it and teach, Gold acquires silver. Now, how did he reason in his youth, and how did he reason in his old age? — In his youth he reasoned: Since gold is more valuable, it ranks as money; whilst silver, which is of lesser value, is regarded as produce: hence [the delivery of] produce effects a title to the money. But at a later age he reasoned: Since silver [coin]

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(1) Ibid. 8.

(2) E.V., 'all manner'.

(3) I.e., if the trustee himself puts the deposit to use.

(4) [He is liable for a mere verbal order (R. Han.).]

(5) By taking a small quantity he helped it to sour, because a full barrel does not sour as quickly as one that is not full (R. Han.).

(6) For there is no loss if he merely lifts it up.

(7) When he lifts the barrel up to take a quantity, he is regarded as having already taken it and put it back, because being in a full barrel it is less likely to sour; thus he makes the whole of the rest subservient to the quantity he desired, and is using the rest in that capacity. This renders him responsible for the whole.

(8) As explained on p. 260, n. 7.

(9) He knows that he will give greater care to a whole purse than to one coin, and therefore here too he may be regarded as having actually taken the coin and replaced it, so that it should be better kept, in which case the whole purse is made subservient to the denar.

(10) This is rightly omitted in Alfasi and Asheri, since the passage that follows does not summarize the principle upon which the foregoing is based.

(11) V. Gen. XI, 1-10.

(12) Lit., 'his hand is uppermost'. The general principle of this Mishnah is this: When one makes a purchase, the delivery of the money does not complete the transaction, and either party can withdraw from the bargain; on the other hand, once the goods are taken, the transaction is absolute and irrevocable, and neither party can withdraw, the purchase price being regarded henceforth as an ordinary debt caused by a loan. Now, in ancient days. when the value of coins depended on their weight and general condition, coins of one metal or denomination might themselves be purchased with other coins. Consequently, in such a transaction, it becomes necessary to determine which is to be regarded as the money and which as the goods. The Mishnah proceeds on the principle that those coins which have greater currency than others rank as money vis a vis the others, which are then regarded merely as movables. Now, silver coin had greater currency than gold coin — probably because the latter represented an unusually large sum of money in an agricultural community where money is generally scarce. Consequently, if one purchase gold denarii for silver denarii, as soon as he takes possession of the gold, the bargain is irrevocable and he is bound to render the silver coins to the vendor, i.e., the gold of the vendor gives him a legal title to the silver. On the other hand, if he first takes possession of the silver, the bargain is not concluded; hence revocable. On the same lines, copper coin rank as money vis a vis silver, so that when the former is taken, the transaction is legally closed; but not the reverse. The same principle operates in the other clauses of the Mishnah dealing with the purchase of money. In the case of barter, however, as soon as one party takes possession of the article that is bartered, the transaction is consummated, and neither party may withdraw.

(13) I.e., R. Judah the Prince, who compiled the Mishnah.

is current, it ranks as money; whilst gold, which is not current, is accounted as produce, and so the produce effects a title to the money.

R. Ashi said: Reason supports the opinion held in his youth, since it [the Mishnah] teaches: COPPER ACQUIRES SILVER. Now, should you agree that silver ranks as produce vis a vis gold, it is well: hence it states, COPPER ACQUIRES SILVER, to show that though it is accounted as produce in relation to gold, it ranks as money in respect of copper; but should you maintain that silver ranks as money in respect of gold, then [the question arises:] If in relation to gold, which is more valuable, you say that it ranks as money, is it necessary [to state so] in relation to copper, seeing that it is both more valuable and also current?[1] — It is necessary:[2] I might have thought that the [copper] coins,[3] where they do circulate, have greater currency than silver:[4] therefore we are taught that since there is a place where they have no circulation,[5] they rank as produce.

Now, R. Hiyya too regards gold [coin] as money. For Rab once borrowed [gold] denarii from R. Hiyya's daughter. Subsequently, denarii having appreciated, he went before R. Hiyya.[6] 'Go and repay her current and full-weight coin,' he ordered. Now, if you agree that gold ranks as money, it is well.[7] But should you maintain that it is produce, it is the equivalent of [borrowing] a se'ah for a se'ah [to be repaid later], which is forbidden?[8] -[That does not prove it, for] Rab himself possessed [gold] denarii [when he incurred the debt], and that being so, it is just as though he had said to her, 'Lend me until my son comes', or 'until I find the key.'[9]

Raba said: The following Tanna is of the opinion that gold is money. For it has been taught: The perutah which they [the Sages] spoke of is an eighth of an Italian issar.[10] What is the practical bearing thereof? In respect of a woman's kiddushin.[11] The issar is a twenty-fourth of a silver denar. What is the practical bearing thereof? In respect to buying and selling.[12] A silver denar is a twenty-fifth of a gold denar. What is the practical bearing thereof? In respect to the redemption of the firstborn.[13] Now, if you agree that it [gold] is accounted as money, it is well: the Tanna thus assesses [the coins] on something of fixed value.[14] But should you say that it ranks as produce; can the Tanna give an assessment on the basis of that which rises and falls in value? Sometimes the priest may have to give him change.[15] whilst at others he [the father] will have to give an additional sum to the priest![16] Hence it is proved that it ranks as money. This proof is conclusive.

We learnt elsewhere: Beth Shammai say: One must not turn [silver] sela's into gold denarii; but Beth Hillel permit it.[17] Now, R. Johanan and Resh Lakish [differ thereon]: One maintains that the dispute concerns exchanging sela's for denarii. Beth Shammai holds that silver [coin] ranks as money, whereas gold counts as produce, and money may not be redeemed by produce.[18] Whilst In the opinion of Beth Hillel, silver [coin] ranks as produce and gold as money, and produce may be redeemed by money. But all agree that [actual] produce may be redeemed by [gold] denarii. Why so? By analogy with silver [coin] on the view of Beth Hillel. [Thus: consider] silver according to Beth Hillel, though ranking as produce vis a vis gold, it nevertheless counts as money in respect to [real] produce. So is gold too according to Beth Shammai; though accounted as produce vis a vis silver, it ranks as money in respect to [real] produce. But the other maintains: The dispute concerns the exchanging of [real] produce for [gold] denarii too,[19]

Now, on the view that the dispute concerns the exchanging of [real] produce for [gold] denarii too, [then] instead of stating their dispute in reference to the exchange of sela's for denarii, let them state it with reference to [actual] produce for denarii!-If the dispute were thus taught, I might have thought that it applies only to the exchange of produce for denarii; but as for exchanging sela'im for denarii, Beth Hillel concede to Beth Shammai that gold vis a vis silver ranks as produce and that [silver] may consequently not be redeemed [by gold]: therefore we are informed [that it is not so].

It may be proved that it is R. Johanan who holds that it may not be redeemed thus.[20] For R. Johanan said:

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(1) R. Ashi thus attempts to prove that the second clause of the Mishnah is more in consonance with the first clause on

Rabbi's early view, since on his subsequent opinion the whole of the second clause would be superfluous. Rashi observes that the second clause will be in the form taught to Rabbi by R. Meir his teacher, it being a Talmudic principle that an anonymous Mishnah agrees with R. Meir. Cf. however, Weiss, Dor II, ch. 22.

(2) I.e., even if silver coin be accounted as money in respect to gold, the second clause of the Mishnah must be stated.

(3) פריטי , the plural of the more familiar פרוטה .

(4) Cf. p. 262, n. 3, on currency of coins of small value.

(5) The actual place is not given.

(6) To consult him what to do, so as not to infringe the prohibition of interest.

(7) Notwithstanding its appreciation, he would be returning money of the same nominal value as that which he borrowed.

(8) Lest it appreciates in the meantime; v. infra 75a.

(9) V. infra 75a.

(10) The Roman assarius.

(11) V. Glos. This kiddushin must not be less than a perutah or its equivalent (Kid. 2a); hence it must be defined.

(12) Rashi: If one sold a denar for more than twenty-four issars, the vendee was cheated, and if the overcharge amounted to a sixth (v. infra 49b), it is returnable. Tosaf. rejects this, because in Kid. 12a it is stated that the issar was variable sometimes rising in value and sometimes falling, and therefore explains: If one sold an article for 24 issars, when these were worth a denar, and subsequently, before payment was made, the issar depreciated to 32 to the denar, the buyer must pay the full denar or 32 issars.

(13) Which, according to the Bible, is five shekels=30 silver denarii. So that if the father gave the priest a gold denar, he must return him five silver denarii.

(14) I.e., the gold denar is always theoretically reckoned at 25 silver denarii, and the redemption is assessed accordingly. So that even if the gold denar was actually worth 20 denarii, we do not regard the gold as having depreciated, but the silver as having appreciated; therefore, if the father gave a gold denar, he is still entitled to a proportionate return, which is now four denarii, notwithstanding that the gold denar is now nominally valued at 20 silver denarii, the exact sum required for redemption.

(15) Of a gold denar, sc. when it stands at more than twenty silver denarii.

(16) How then can the Tanna state that in respect of redemption the gold denar is always valued at 25 silver denarii?

(17) M. Sh. II, 7. A sela'= 4 denarii. The reference is to the second tithe, which had to be consumed in Jerusalem; if however, it was too burdensome to carry thither, it might be redeemed by money, which was to be expended there (Deut. XIV, 22-26). Now, if the produce had been thus exchanged for silver sela's, Beth Shammai rule that these silver coins may not be re-exchanged for gold denarii to lighten the burden still further. Beth Hillel, however, permit this, and the Talmud proceeds to discuss this difference of opinion.

(18) Since the Bible only authorises the reverse (ibid. 25).

(19) I.e., Beth Shammai regard gold as produce absolutely, even without reference to any other commodity, and therefore one may not redeem other produce therewith.

(20) I.e., that in the opinion of Beth Shammai not even real produce may be redeemed by gold denarii.

Talmud - Mas. Baba Metzia 45a

A denar may not be lent for a denar [to be returned].[1] Now, which denar is meant? Shall we say, a silver denar for a silver denar [to be repaid]: but is there any view that it does not rank as money even in relation to itself?[2] Hence it must obviously mean a gold denar for a gold denar. Now, with whom [does this ruling agree]? If with Beth Hillel — but they maintain that it ranks as coin! Therefore it must surely be in accordance with Beth Shammai, thus proving that it was R. Johanan who held that such redemption is not permissible! — No. In truth, I may assert that R. Johanan ruled that such redemption may be made, but a loan is different. For since the Rabbis treated it as produce in reference to buying and selling,[3] as we say that it is that [sc. gold] which appreciates or depreciates,[4] it ranks as produce in reference to loans too. This is reasonable too. For when Rabin came,[5] he said in R. Johanan s name: Though it was ruled that a denar may not be lent for a denar [to be repaid], yet the second tithe may be redeemed therewith. This proves it.[6]

Come and hear: If one changes[7] a sela''s worth of second tithe [copper] coins, Beth Shammai rule: the full sela''s worth of coins must be changed.[8] But Beth Hillel rule: [He may change] only a shekel's worth into silver, and retain a shekel's worth of coins.[9] Now, if in Beth Shammai's opinion redemption may be made with [copper] perutahs,[10] can there be a doubt that it may be redeemed with gold? — Copper coins are different, for where they circulate, they have greater currency.[11]

Another version puts is thus: R. Johanan and Resh Lakish [differ thereon]: One maintains that the dispute concerns changing sela's for [gold] denarii. Beth Shammai hold that 'the money' implies the first money, but not the second;[12] whereas Beth Hillel argue, 'the money . . . money' implies extension,[13] thus including even a second [redemption of] money. But all agree that [actual] produce may be redeemed by [gold] denarii, since it [sc. the gold denarii] is, after all still the first money. Whilst the other maintains: The dispute concerns the exchanging of [real] produce for [gold] denarii too.[14] Now, on the view that the dispute refers only to the exchange of sela's for denarii, instead of stating the dispute in reference to the exchange of sela's for denarii, let it be stated in reference to the exchange of sela's for sela's![15] — If the dispute were stated thus, I might have thought that it applies only thereto, but as for exchanging sela's for [gold] denarii, Beth Hillel concede to Beth Shammai that gold ranks as produce in respect to silver, and therefore such redemption is not permissible. Hence we are taught otherwise.

Come and hear: If one exchanges a sela' of second tithe in Jerusalem,[16] Beth Shammai say: He must exchange the whole sela' for [copper] coins.[17] But Beth Hillel rule: He must change it into a silver shekel, and [retain] a shekel's worth of [copper] coins.[18] Now, if silver may be redeemed with [copper] Perutahs, and we do not say. [It may be exchanged into] money once, but not twice: are we to say it in respect of gold, which is more valuable?[19] — Said Raba: Do you raise an objection from Jerusalem! Jerusalem is different, since it is written thereof, And thou shalt bestow that money [sc. in Jerusalem] for whatsoever thy soul lusteth after, for oxen, for sheep, [etc.].[20]

Come and hear: 'If one changes a sela''s worth of second tithe [copper] coins, Beth Shammai rule: the full sela''s worth of coins must be changed.[21] But Beth Hillel rule: He must change only a shekel's worth into silver, and retain a shekel's worth of coins'?[22] — Hence [we must assume that] all agree, that 'the silver . . . silver' is an extension, including even a second redemption of money.[23] But if a dispute between R. Johanan and Resh Lakish was stated, It was stated thus: One maintains: Their dispute concerns the changing of sela's into [gold] denarii only. Beth Shammai hold: We forbid this as a precautionary measure,

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(1) Lest it appreciates in the interval, and so the injunction of usury be violated.

(2) Since the aforementioned injunction applies only to produce, not coin.

(3) v. Mishnah: GOLD ACQUIRES SILVER.

(4) I.e., when the rate of exchange between silver and gold varies, we regard the change as having taken place in the value of the gold, the value of the silver remaining unaltered. That follows from the Mishnaic ruling. GOLD ACQUIRES SILVER, and it is axiomatic that variation is to be attributed to the produce, not the money.

(5) From Palestine to Babylon.

(6) The distinction between redemption and loan.

(7) Heb. פרט denotes to break up, hence primarily to change coins into others of smaller denomination. By extension, however, it came to mean any changing of coin, even for those of a larger denomination, and is thus used here.

(8) I.e., if one has that amount of coins for changing, he must change it all for a single sela'. Beth Shammai insist that the whole of the exchange must be done at once, not in two or three times, because the banker takes his commission on every single transaction, and so there is less left for spending in Jerusalem (Tosaf.); v. next note. But from Rashi it would appear that Beth Shammai's ruling is merely permissive, and is in contradistinction to the view of Beth Hillel. In that case, the passage should be translated: the full sel'a's worth of coins may be changed.

(9) For as soon as he enters Jerusalem, he needs small change-perutahs-to buy food. This will cause a general rush on the

banker, the rate of exchange will advance, and the purchasing power of the money will be diminished, with the consequent reduction in the quantity of comestibles to be purchased and consumed as second tithe; v. 'Ed. I, 9.

(10) Since Beth Shammai discuss the changing of copper coins of the second tithe into silver, they must admit that in the first place the produce was redeemed by these copper coins.

(11) So that though it may be redeemed for copper, it is nevertheless possible that it may not be redeemed with gold, in accordance with one of the views stated above.

(12) The reference is to Deut. XIV. 25: Then thou shalt turn it into money and bind up the money in thine hand, and shalt go unto the place which the Lord thy God shall choose. 'The Money', in the opinion of Beth Shammai, implies that the first money for which the second tithe was redeemed must be carried to Jerusalem, but not the second: i.e., once it was redeemed, the redemption money may not be exchanged for other coins.

(13) 'Money' is stated several times in the passage: Thou shalt turn it into money and bind up the money . . . And thou shalt bestow that money. . .; this repetition implies an extension of changing. I.e., that the money may be changed or redeemed more than once.

(14) Beth Shammai regard gold as produce, for which the agricultural products cannot be redeemed.

(15) Since here too it is a second redemption of money, which, according to Beth Shammai, is forbidden.

(16) Having brought sela's to Jerusalem, he now proceeds to change them into smaller coins for current use.

(17) v. p. 267. n. 4, which applies here too.

(18) For he may not stay long enough in Jerusalem to expend it all, in which case he must leave the rest there until his next visit. But copper coins are liable to corrosion, and therefore unsuitable for preserving; whilst should he wish to change them back into silver at the end of his stay, he must pay commission again ('Ed. 1,10); v. p. 267, n. 4.

(19) And consequently has a greater claim to be regarded as produce (v. p. 262, n. 3). Tosaf. observes: It is obvious even to the questioner that a distinction must be drawn between Jerusalem and elsewhere. Outside Jerusalem, the main form of exchange is that of produce for perutahs or sela's, to lighten the burden of carrying, whereas in Jerusalem it is the reverse: the sela's being exchanged either for foodstuffs direct or into perutahs, for day-to-day purchases. Consequently, this cannot be urged as an objection against the first version of the difference between Resh Lakish and R. Johanan, or against the view expressed in the second version that Beth Shammai and Beth Hillel differ even in respect of the exchange of produce for gold denarii, the dispute centering on the question whether gold ranks as produce or coin. But it is raised as an objection against the view that Beth Shammai permit only one exchange into money, but not a further exchange; this difficulty is urged on the hypothesis that in that respect there is no difference between Jerusalem and elsewhere, to which Raba replies (v. text) that here too a distinction is drawn.

(20) Deut. XIV, 26: i.e., every form of exchange is permitted, even into coins of smaller denominations, for greater convenience.

(21) v. p. 267. n. 4.

(22) Though this does not refer to Jerusalem, both Beth Shammai and Beth Hillel agree that a second money change is permissible.

(23) v. p. 268, n. 2.

Talmud - Mas. Baba Metzia 45b

lest one postpone his pilgrimages [to Jerusalem], for he may not have the full number of silver coins[1] required for a [gold] denar, and so will not take them up [thither];[2] whilst Beth Hillel are of the opinion that we do not fear that he may postpone his pilgrimages, for even if they are insufficient to change into a denar, he will still take them up.[3] But all agree that produce may be redeemed with [gold] denarii, for since it rots [if kept long], he will certainly not keep it back. But the other maintains: The dispute refers even to the exchange of produce for denarii.[4]

Now, according to the version that by Biblical law it [the exchange] is indeed permitted, but that the Rabbis forbade it, it is well: hence he [the Tanna] teaches 'he may turn' ... 'he may not turn.'[5] But according to the version that they differ in Scriptural law, he should have stated, 'One can redeem' ... 'one cannot redeem!'[6] This difficulty remains.

It has been stated: Rab and Levi-one maintains: Coins can effect a barter; the other rules that they

cannot —[7] Said R. Papa: What is his reason who maintains that a coin cannot effect a barter? Because his [the recipient's] mind is set on the legend thereof,[8] and the legend is liable to cancellation.[9]

We learnt: GOLD ACQUIRES SILVER. Does that not mean, even in virtue of barter, thus proving that a coin may effect a barter? — No; only in virtue of payment.[10] If so, instead of stating, GOLD ACQUIRES SILVER, he should have said, 'Gold sets up a liability for silver'![11] -Learn: 'Gold sets up a liability for [etc.]'[12] . Reason supports this too;[13] since the second clause states. SILVER DOES NOT ACQUIRE GOLD. Now, should you agree that it means, 'in virtue of payment.' it is well: thus we say, gold ranks as produce, silver as money, and money cannot effect a title in respect of produce. But should you maintain that the reference is to barter — let each acquire the other![14] Moreover, it has been taught: Silver does not acquire gold: E.g.. If one sells twenty-five silver denarii for a gold denar, even if the other party takes possession of the silver, he does not acquire it until he [the first] takes possession of the gold. Now, should you agree that the reference is to payment, it is well: therefore he gains no title thereto. But if you maintain that this treats of barter, let him acquire it! — What then: as payment? If so, consider the first clause: Gold acquires silver: e.g. If one sold a gold denar for twenty-five silver denarii, immediately the other party takes possession of the gold, the ownership of the silver vests [in the first] wherever it be. Now, should you agree that the reference is to barter, it is well: hence it is taught, the ownership of the silver vests [in the first] wherever it be.[15] But should you maintain that it treats of payment, instead of saying thus, he [the Tanna] should have taught: The man [the recipient of the gold] becomes liable [for the silver]![16] — Said R. Ashi: After all, it refers to payment, and what is meant by 'wherever it be', is 'just as it is,' viz., as he stipulated. [Thus:] If he had stated. 'I will give you [coins] out of a new purse',[17] he cannot give him [coins] out of an old purse,[18] even If they are superior.[19] Why? Because he can say, 'I need them to store away.'[20]

R. Papa said: Even on the view that a coin cannot effect a barter, — though indeed it cannot effect a barter, it can nevertheless be acquired through barter.[21] For this may be compared to produce, according to R. Nahman's view. Thus, though in R. Nahman's view produce cannot effect a barter,[22] yet it can surely be acquired through barter; so coin too is not [in any way] different.

An objection is raised: If one is standing in a granary and has no money with him, he may say to his friend, 'Behold, this produce is given to you as a gift;'

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(1) Lit., 'zuzim'.

(2) A gold denar was a large sum of money, and might exceed the whole value of the second tithe. Hence, if one were permitted to change the silver sela's into gold, he might postpone the pilgrimage altogether until another harvest.

(3) The weight of these silver coins will certainly not prevent anyone from going to Jerusalem.

(4) Even there the fear of postponement is entertained.

(5) Supra 44b.

(6) One may turn, etc., (lit., 'do') implies that such redemption is possible, and the only question is whether it is permitted (by the Rabbis) or not. But if it is a question of Biblical law, then the dispute is whether such a redemption is effective or not, for if e.g.. sela's cannot be redeemed by denarii, they still retain their sanctity even if so redeemed.

(7) Halifin = barter, exchange. It is a technical term, connoting delivery of a small object representing a larger one which is being bartered. Upon this delivery, the recipient becomes liable for the object he is to give in exchange, though he has not yet received the real object of barter, the transaction having been consummated by this delivery. Now, as was stated in the Mishnah, in a purchase the delivery of the money does not effect the transaction. That, however, may be only if it is delivered in payment. But what if the transaction is made as barter instead of purchase, i.e.. money is bartered for goods: can a coin received by one party in exchange for goods, or as a mere token of delivery, consummate the transaction? This is disputed by Rab and Levi.

(8) I.e., the figure which is stamped on the coin, and which gives it its value. Now, when an ordinary object is used as halifin, the recipient accepts its own intrinsic value as symbolical of the whole. But when a man receives a coin, he does

not think of the intrinsic value of the metal, but merely of its worth on account of the legend it bears.
(9) The State may cancel that particular coin. In that case, nothing of value has been given at all, since, as stated in the previous note, the value of the metal is disregarded. Symbolical delivery, however, can be effected only by an article that has some intrinsic value.
(10) I.e., when it is delivered as actual payment for the silver coin, but not as a mere symbolical delivery of barter.
(11) GOLD ACQUIRES SILVER implies that immediately after the gold coin is delivered, the recipient's silver coin vests in the other party, wherever it be; and that indeed is the effect of a transaction consummated as barter. If, however, the gold coin is legally regarded as payment for the article, its effect is merely to create an obligation upon the recipient of an agreed amount of silver, which then ranks as an ordinary debt. In that case, the Mishnah should have stated, GOLD SETS UP A LIABILITY FOR SILVER.
(12) Though this type of answer frequently means that the text of the Mishnah actually needs emending (v. Weiss, Dor. 111,6 n. 14) that is probably not so here. The answer simply states that the Mishnaic phrase GOLD ACQUIRES SILVER means, 'Gold sets up a liability for silver.'
(13) Sc. that the Mishnah refers to the delivery of gold coin as payment, not as barter.
(14) Since they are not regarded as coins at all, what is the difference between gold and silver?
(15) V. p. 271, n. 2.
(16) V. n. 2.
(17) I.e., new coins.
(18) I.e., old coins.
(19) E.g. better cast or weightier.
(20) Hence I require new coins, as old ones may become mouldy. According to this interpretation, the Baraitha does in fact refer to the recipient's liability.
(21) I.e., once the owner of the coin takes possession of an object either delivered to him symbolically or in exchange against it, the ownership of the money vests in the other party.
(22) I.e., one cannot make a symbolical delivery of fruit and thereby acquire the object that is being bartered. — For this view of R. Nahman, and the opposing view of R. Shesheth v. infra 47a.

Talmud - Mas. Baba Metzia 46a

then he may say. 'Let it [sc. the produce] be redeemed for the money I have at home.'[1] Hence it is because he has no money with him;[2] but if he had money in his hand he should rather give possession thereof to his friend through meshikah,[3] who would then redeem [the tithe], which is a preferable [procedure], since he would then be a [real] stranger.[4] But if you say that coin may be acquired through barter, let him [the tithe-owner] give possession of the money [he has at home] to his friend by means of a scarf, and then let the latter redeem it![5] — The latter has no scarf. Then let him give possession thereof through soil![6] — He has no soil. But it is stated, 'If one is standing in a granary!' — It means in a granary not belonging to him.[7] And does the Tanna take the trouble of teaching us about a naked man, who possesses nought![8] Hence it must surely be that coin cannot be acquired by barter.[9] This proves it.

And R. Papa himself — retracted, as we find that R. Papa had thirteen thousand denarii at Be-Huzae,[10] which he transferred to R. Samuel b. Aha along with the threshold of his house.[11] When he [R. Samuel b. Aha] came [with the money], he [R. Papa] went forth to meet him up to Tauak.[12]

[To revert to the original discussion:] And 'Ulla said likewise: Coin cannot effect a barter; and R. Assi said likewise: Coin cannot effect a barter; and Rabbah b. Bar Hanah said likewise in R. Johanan's name: Coin cannot effect a barter. R. Abba raised an objection against 'Ulla: If his carters or labourers demanded [their wages] from a man in the market place, and he said to a money-changer, 'Give me copper coins for a denar, and I will pay them,[13] whilst I will return you a denar's worth[14] and a tressis[15] Out of the coins which I have at home:' then if he has money at home, it is permitted; otherwise, it is forbidden.[16] Now, should you think that coin cannot effect a barter, it is a loan, and hence forbidden![17] Thereupon he was silent. Said he to him: Perhaps both[18] refer to

uncoined metal which bear no imprint.[19] so that they rank as produce, and therefore may be acquired by barter? — Even so, he replied. This too follows from the fact that he [the Tanna] states, a denar's worth and a tressis, but does not state. a current denar[20] and a tressis. This proves it. R. Ashi said: After all, [the return may be] in the character of repayment, though the reference indeed is to uncoined metal: since he has them [at home], it is as though he said, 'Lend me until my son comes, or until I find the key.'[21]

Come and hear: Whatever can be used as payment for another object, as soon as one party takes possession thereof, the other assumes liability, for what is given in exchange.[22] 'Whatever can be used as payment for another object' — what is that? Coins: which proves that coins can effect a barter![23] -Said Rab Judah: It means this:

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(1) M. Sh. IV. 5. The reference is to second tithe produce, which, as stated above, might be redeemed instead of being taken to Jerusalem. Now, when a man redeemed his own second tithe produce, he had to add a fifth of its value, but not if he redeemed produce belonging to another. Cf. Lev. XXVII, 31: And if a man will at all redeem ought of his tithes, he shall add thereto a fifth part thereof. But, in order to evade this addition, a legal fiction might be resorted to: one gave his Produce to another and then redeemed it, thus redeeming the produce of another-then received it back. The Mishnah quoted gives an instance of such an evasion, which, as may be seen from the phraseology, was recognised and sanctioned by law.

(2) That is why the Tanna recommends that particular procedure, explicitly stating that it is to be followed when the tithe owner has no money with him.

(3) V. Glos.

(4) I.e, if he gave the money to his neighbour, whilst retaining the produce himself, his friend would actually be redeeming a tithe that is not his own! That is not such a glaring evasion as when a person gives the produce to his neighbour and then redeems it himself, and therefore is preferable; and the Tanna obviously permits the other procedure only because the latter is impossible, since the tithe owner has not the money with him.

(5) Instead of his gifting the produce to him, let his friend give him a scarf or handkerchief as halifin (v. supra p. 30. n. 3), for the money, and then redeem the tithe with this money (which need not actually be in his hand for the purpose of redemption), since the Tanna prefers this procedure. Hence it follows that money cannot be acquired through barter.

(6) I.e., the tithe owner should have given him a piece of soil, in virtue of which his friend could acquire the money too, it being a general principle that movables may be acquired by dint of real estate (Kid. 26a). — This is not an objection against the view that money can be acquired through barter, but is a difficulty that arises in this Mishnah itself. Rashi recognises it as such, and though Tosaf. attempts to shew that it is indeed an objection against the opinion just mentioned, the reasoning is not very plausible. It is quite possible that this passage bearing on the acquisition of money by dint of real estate is a later editorial interpolation. V. Kaplan. Redaction of the Talmud. Ch. XIII.

(7) But merely rented.

(8) This reverts to the objection that his friend should have acquired the money through barter, to which the answer was given that he had no scarf wherewith to effect the barter. This of course must mean that he had nothing at all, since any object can be used for the purpose, and so the Talmud objects further: surely the Tanna did not take the pains of stating such an exceptional case!

(9) Therefore the tithe owner has no other alternative but that stated in the Mishnah.

(10) V. p. 508. n. 2. — R. Papa was a very wealthy man, Cf. infra 65a.

(11) V. p. 273. n. 5. Since he had recourse to this mode, and did not employ the simple means of barter, he must have withdrawn from the view that coin can be acquired by means of barter. His purpose in transferring the money was that R Samuel b. Aba should bring it to him from Be-Huzae; without such transference, the bailee might have refused to let it out of his possession, as he would then have to bear the risks of the road.

(12) V.B.B. (Sonc. ed.) p. 310 and nn.

(13) Lit., 'supply them'.

(14) The Heb. expression is very peculiar, יפה דינר At this stage, this was thought to be the equivalent of דינר יפה a good, I.e., current denar.

(15) A coin worth three issars. The text has טריסית , an incorrect form of טריסין (Jast.).

(16) It was assumed that the reason is this: If he has money at home, immediately he takes possession of the coins the

money-changer acquires the ownership of the money at home by the process of barter; hence there is no usury, since theoretically the banker does not wait for his money. But this cannot operate if he has no money, in which case it is a pure loan upon which the tressis is interest.

(17) V. preceding note; the reasoning there is possible only on the assumption that coin can effect a barter.

(18) Sc. that which is given by the banker, and that which is returned.

(19) Uncoined pieces of metal were used as small change.

(20) V. p. 274. n. 6.

(21) V. infra 75a. The preceding discussion has assumed that the only basis upon which the transaction is permissible is barter. R. Ashi, however, points out that since it has been explained that the reference is to uncoined metal, the transaction may be viewed and carried out as a loan, the return being actually in the nature of repayment thereof; nevertheless it is permitted for the reason stated.

(22) l.e., for the halifin, or barter thereof. When A takes possession of the first, B automatically accepts the risks of the barter; e.g., if an ox is being given in exchange, the full risks of anything happening to it are now borne by B, though it has not actually reached his hand.

(23) For if the coins are given in the character of payment, they do not consummate the sale to render the purchaser responsible for all risks. Hence they are used as barter, as the passage stated.

Talmud - Mas. Baba Metzia 46b

Whatever is assessed as the value of another object,[1] as soon as one party takes possession thereof, the other assumes liability for what is given in exchange. Reason too supports this — For the second clause teaches: How so? If one bartered an ox for a cow, or an ass for an ox. This proves it. Now, on the original hypothesis that coin [is referred to], what is meant by 'How so?'[2] — 'It means this: And produce[3] too can effect a barter. How so? If one bartered an ox for a cow, or an ass for an ox. Now, that is well on the view of R. Shesheth, who maintained that produce can be employed for barter. But according to R. Nahman, who said: Only a utensil, but not produce, can effect a barter, what is meant by 'How so'?-It means this: Money sometimes ranks as [an object of] barter. How so? If one bartered the money of an ox for a cow, or the money of an ass for an ox.[4] What is R. Nahman's reason?[5] He agrees with R. Johanan, who said: Biblically Speaking, [the delivery of] money effects a title. Why then was it said that only meshikah gives possession? As a precautionary measure, lest he say to him, 'Your wheat was burnt in the loft.'[6] Now, the Rabbis enacted a preventive measure only for a usual occurrence, but not for an unusual occurrence.[7] Now, according to Resh Lakish, who maintains that meshikah is explicitly required by Biblical law: it is well if he agrees with R. Shesheth: then he can explain[8] it as R. Shesheth. But if he holds with R. Nahman, that produce cannot effect a barter, whilst money does not effect a title [at all], how can he explain it?[9] -You are forced to assume that he explains it as R. Shesheth.

We learnt: ALL MOVABLES ACQUIRE EACH OTHER, whereon Resh Lakish said: Even a purse full of money [when bartered] for a purse full of money.[10] -R. Aha interpreted it as referring to the Bithynian and Ancyrean[11] denarii, one of which was cancelled by the State, and one by local authorities.[12] And both are necessary. For if we were taught this of State cancellation,[13] that is because such coins have no [official] currency at all; but in the case of local repeal, since these coins circulate in another province, I might regard them as money, which cannot be acquired through barter. Whilst if it were stated in connection with local repeal, that is because they have neither a secret nor an open circulation [within that province]; but when cancelled by the State, since they circulate clandestinely, I might still regard them as coin, which cannot be acquired through barter. Thus both are necessary.[14]

Rabbah said in R. Huna's name: [If A said to B,] 'Sell [it] me for these [coins],' he acquires title thereto,[15]

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(1) I.e., anything but money. which needs no assessment.

(2) I.e., why is an instance given which does not illustrate the use of money as barter?
(3) Heb. פירי whilst this term is generally applicable only to objects of the vegetable kingdom, it may also be used, as here, to denote the animal kingdom too, in contradistinction to כלים, articles or utensils of use.
(4) E.g. A sold an ox to B for a certain sum of money, and B took possession, thereby becoming indebted to A for the purchase price. Then B said, 'I have a cow which I can give you for the purchase price of the ox,' to which A agreed. Now, notwithstanding that this is theoretically a fresh transaction, viz., B sells a cow to A, the money owing by B for the ox being regarded as though delivered to him by A for the cow, and it is a principle that the delivery of money alone does not consummate a purchase, it does so in this case, and neither can retract; i.e., it is barter, not payment.
(5) Why in fact should it be regarded as barter here, though normally money does not effect a title?
(6) V. infra 47b.
(7) I.e., such a transaction as the one under discussion is unusual; consequently, the Biblical law operates. Hence the delivery of the money effects a title, and neither can withdraw.
(8) The Mishnah under discussion.
(9) For, as we have seen, it involves either that produce can effect a barter, or that money should effect a title.
(10) This proves that money can effect a barter.
(11) Bithynia, a district in Asia Minor; Ancyra, a city of Galatia in Asia Minor (Jast.). [Zuckermann, Munzen, p. 33, on basis of variant נייקי for אנקא renders: victory (Gr. **) and Nigerian denarii, the former referring to coins of conquered countries recalled by the victorious state; the latter to the coins struck by Pescennius Niger, the rival of Septimius Severus, the currency of which was strictly limited to the province over which he ruled.]
(12) The exchange consisted of these coins which, being cancelled, are just the same as any other produce. — Coins repealed by the State might still have a clandestine circulation within a particular province: on the other hand, those cancelled by a local authority would have no currency at all within that province, but a full currency without.
(13) That these coins rank as produce.
(14) It may be observed that this type of reasoning is generally applied to two Tannaitic statements, as found in a Mishnah or a Baraitha. Here, however, it is applied to an Amoraic (R. Aha's) interpretation of what is itself an Amoraic (Resh Lakish's) comment on a Mishnah.
(15) If A was holding an undetermined number of coins in his hand, and suggested that B should sell him an article for them, without stating their value, and B agreed, immediately B takes possession of the coins the transaction is consummated, and neither can retract, though normally the delivery of money does not effect a title. The Talmud proceeds to discuss the reason for this.

but [the vendor] nevertheless has a claim of fraud against him.[1] 'He acquires a title thereto,' — even though he did not take possession thereof [sc. of the article]: since he [the other party] was not particular [as to the exact amount of money], he [the former] acquires it, for it partakes of the nature of barter. 'Nevertheless, he has a claim of fraud against him,' — because he had said to him, 'Sell it me for these coins.'[2] R. Abba said in R. Hunas name: [If A said to B.] 'Sell [it] me for these coins,' he acquires a title thereto, and he [the vendor] has no claim of fraud against him.[3]

Now, it is certain [if money or an article is delivered as] payment, but he [the recipient] is not particular [that the value shall correspond] — then we have just said that he [the giver] acquires title, for it partakes of the nature of barter. But what if it[4] is delivered as barter, and he [the recipient] is particular?[5] -Said R. Adda b. Ahaba: Come and hear: If one was standing with his cow [in a market], and his neighbour came and asked him, 'Why [have you brought] your cow [hither]?' — 'I need an ass,'[he replied]. 'I have an ass which I can give you [in return for your cow].' 'What is the value of your cow?' 'So much.' 'What is the value of your ass?' 'So much.'[6] If the ass-owner drew the cow into his possession, but before the cow-owner had time to draw the ass into his possession it [the ass] died, he [the ass-owner] acquires no title thereto [the cow]. This proves that in the case of barter, where each is particular, no title is gained [unless both take possession]. Said Raba: Does then [the general law of] barter apply only to imbeciles, who are not particular? But indeed in all cases of barter they are certainly particular; nevertheless, title is acquired [when only one party takes possession].[7] Here however it means that one said, '[I give you] my ass in return for a cow and a lamb,' and he drew the cow into his possession but not the lamb,[8] in which case the meshikah was not completed.[9]

The Master said: '"Sell it me for these [coins]." he acquires title thereto, yet he [the vendor] has a claim of fraud against him.' Shall we say that in R. Huna's opinion coin may effect a barter?-No. R. Huna agrees with R. Johanan, who ruled: Biblically speaking, [the payment of] money effects a title. Why then was it said that only meshikah gives possession? As a precautionary measure, lest he say to him, 'Your wheat was burnt in the loft.' Now, the Rabbis enacted a preventive measure only for a usual occurrence, but not for an unusual occurrence.[10]

Mar Huna, the son of R. Nahman, said to R. Ashi: You have had it reported so.[11] But we had it reported thus: And R. Huna said likewise, Coin cannot effect a barter.[12]

Wherewith is a title effected?[13] -Rab said: With the utensil of the receiver; for the receiver wishes the bestower to take possession,[14] so that he [the latter] in his turn may determine to give him possession. Whilst Levi said: With the utensil of the bestower, as will be explained anon. R. Huna of Diskarta[15] said to Raba: Now, according to Levi, who maintained that it is with the utensil of the bestower, one will be able to acquire land in virtue of a garment, which is tantamount to secured property being acquired along with unsecured, whereas we learnt the reverse: Unsecured chattels may be acquired along with secured chattels![16] -Said he to him: Were Levi here, he would have smitten you[17] with fiery lashes! Do you really think that the garment gives him possession? [Surely not! but] in consideration of the pleasure he [the bestower] experiences in that the receiver accepts it from him, he wholeheartedly transfers it to him.[18]

This[19] is disputed by Tannaim: Now this was the manner in former times in Israel concerning redeeming and concerning changing, For to confirm all things; a man drew off his shoe, and gave it to his neighbour;[20] 'redeeming' means selling, and thus it is written, It shall not be redeemed;[21] 'changing' refers to barter, and thus it is written, He shall not alter it, nor change it;[22] for to confirm all things; a man drew off his shoe, and gave it to his neighbour. Who gave whom? Boaz gave to the kinsman. R. Judah said: The kinsman gave to Boaz.[23]

It has been taught: Acquisition may be made by means of a utensil, even if it is worth less than a perutah. Said R. Nahman: This applies only to a utensil, but not to produce.[24] R. Shesheth said: [It may be done] even with produce. What is R. Nahman's reason? — Scripture saith, 'his shoe': implying, only 'his shoe' [i.e., a utensil], but nothing else. What is R. Shesheth's reason? Scripture saith, for to confirm all things.[25] But according to R. Nahman too, is it not written, to confirm all things?-That means, to confirm all things the title to which is to be effected by means of a shoe.[26] And R. Shesheth too: is it not written, 'his shoe'?- R. Shesheth can answer you: [That is to teach,] just as his shoe is a clearly defined object, so must everything [used in this connection] be a clearly defined object, thus invalidating half a pomegranate or half a nut, which may not be [employed].[27]

R. Shesheth, the son of R. Iddi, said: In accordance with whom do we write nowadays, 'with a utensil that is fit for acquiring possession therewith'?[28] 'With a utensil' — that rejects the view of R. Shesheth, who maintains: A title may be effected by means of produce. 'That is valid' — this excludes Samuel's dictum, viz.: Possession can be obtained

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(1) If the money is less than the value of the article by a sixth, the vendor can claim the cancellation of the transaction (v. infra 49b).

(2) 'Sell' would imply to the vendor that the coins approximated to the value of the object.

(3) R. Abba holds that no particular significance attaches to the word 'sell' in such circumstances.

(4) Any other object except money.

(5) That the object given in symbolical delivery shall have a certain value. Is it still regarded as barter, and therefore the transaction is consummated by this symbolical delivery: or perhaps, since he insists that it shall have a certain value, it is the equivalent of money, and therefore does not effect a title?

(6) And the values tallied.

(7) Although it may be regarded as the equivalent of money.

(8) When the ass died.

(9) Lit., 'proper'.

(10) V. p. 276. n. 4. the transaction under discussion is likewise most unusual.

(11) As above. I.e., you are in doubt whether R. Huna holds that coin may effect a barter, but merely answered that his dictum does not compel us to assume that in his opinion it is so.

(12) As a definite statement.

(13) When A wishes to gain possession of an article belonging to B by means of a symbolical delivery of an object, Does A have to provide the article for effecting the title, the article he delivers being a symbolical exchange for that which he is to acquire; or B, the object he delivers being symbolical of that which he really intends giving?

(14) The object of symbolical recovery.

(15) [Deskarah, sixteen parasangs N.E. of Bagdad, Obermeyer, op. cit. p. 246.]

(16) Unsecured chattels==movables; secured chattels==real estate. The point of R. Huna's observation is this. Since Levi maintains that Possession is effected by means of the bestower's utensil, it follows that if the object transferred is land, the receiver gains Possession thereof in virtue of having taken the bestower's utensil, i.e., the former becomes an appendix to the latter, as it were. But the Mishnah has taught the reverse, viz., when one acquires real estate, he may likewise effect a title to movables that go with it, but not vice versa.

(17) Lit., 'he would have brought before you fiery lashes.' He would have threatened you with the ban for having imputed to him a wrong opinion (Rashi).

(18) So that when the bestower gives his garment, it is regarded as though he were actually receiving something.

(19) The controversy between Rab and Levi.

(20) Ruth IV, 7.

(21) Lev. XXVII, 33. The reference is to the redemption of a consecrated animal. Evidently, such redemption, if permitted, would be by means of money, i.e., buying the animal back (since substitution is separately dealt with, as the Talmud proceeds to shew); thus here too, by 'redeeming' selling for money is meant.

(22) Ibid. 10.

(23) Thus we see the same dispute here as between Rab and Levi.

(24) I.e., produce cannot be employed as a symbol of acquisition.

(25) Which he translates, for to confirm with all things — i.e., any article can confirm a transaction.

(26) I.e., both purchase and barter are consummated by the symbolical delivery of a shoe.

(27) Half a pomegranate has no distinctive individuality, which is the idea connoted here by 'clearly defined'.

(28) In a document recording a transaction by means of halifin. This phrase is also used in a woman's marriage settlement (kethubah).

Talmud - Mas. Baba Metzia 47b

by means of maroka.[1] 'For gaining possession' — this rejects Levi's view, that the utensils of the bestower [are required]:[2] therefore it teaches us: to obtain possession, but not to confer possession.[3] 'Therewith' — R. Papa said: It is to exclude coins. R. Zebid — others state, R. Ashi — said: It is to exclude objects the benefit of which is forbidden.

Others state: 'Therewith' excludes coins.[4] 'That is fit'; R. Zebid — others state, R. Ashi — said: That excludes objects whose use is forbidden.[5] But as for maroka, It Is unnecessary [to exclude that].[6]

UNCOINED METAL [ASIMON][7] ACQUIRES COINED. What IS ASIMON? — Said Rab: Coins that are presented as tokens[8] at the baths.[9] An objection is raised: The second tithe may not be redeemed by asimon, nor by coins that are presented as tokens at the baths; proving that ASIMON is not coins that are presented as tokens at the baths.[10] And should you answer that it is a definition,[11] surely the Tanna does not teach thus; [for we learnt:] The second tithe may be redeemed by 'asimon', this is R. Dosa's view. The Sages maintain: It may not. Yet both agree that it may not be redeemed with coins that are presented as tokens at the baths.[12] But, said R. Johanan. What is 'asimon'? A disk.[13] Now, R. Johanan follows his views [expressed elsewhere]. For R. Johanan said: R. Dosa and R. Ishmael both taught the same thing. R. Dosa: the statement just quoted. And what is R. Ishmael's dictum? — That which has been taught: And thou shalt bind up the money in thine hand;[14] this is to include everything that can be bound up in one's hand — that is R. Ishmael's view. R. Akiba said: It is to include everything which bears a figure.[15]

E. G., IF [A] DREW INTO HIS POSSESSION [B' s] PRODUCE, WITHOUT PAYING HIM THE MONEY, HE CANNOT RETRACT, etc. R. Johanan said: By Biblical law, [the delivery of] money effects possession. Why then was it said meshikah effects possession? Lest he [the vendor] say to him [the vendee]. 'Your wheat was burnt In the loft.'[16] But after all, whoever causes[17] the fire must make compensation! — But [for fear] lest a fire accidentally break out. Now, if the ownership is [still] vested in him [the vendor],[18] he will wholeheartedly take pains[19] to save it; if not, he will not do so. Resh Lakish said: Meshikah is explicitly provided for by Biblical law. What is Resh Lakish's reason? — Scripture saith, And if thou sell aught unto thy neighbour, or acquire aught of thy neighbour's hand[20] — i.e., a thing 'acquired' [by passing it] from hand to hand.[21] But R. Johanan maintains.'of [thy neighbour's] hand' is to exclude real estate from the law of fraud.[22] And Resh Lakish?[23] — If so,[24] Scripture should have written, 'And if thou sell aught unto thy neighbour's hand, ye shall not defraud:' why state, 'or acquire aught'? This proves that its purpose is to teach the need of meshikah. And R. Johanan: how does he utilise 'or buy'? — He employs it. even as was taught: 'And if thou sell aught . . . ye shall not defraud:' from this I know the law[25] only if the purchaser was defrauded. Whence do I know it if the vendor was cheated? From the phrase. 'or acquire aught... ye shall not defraud.' And Resh Lakish?[26] — He learns both therefrom.[27]

We learnt, R. SIMEON SAID: HE WHO HAS THE MONEY IN HIS HAND HAS THE ADVANTAGE. [This means,] only the vendor can retract, but not the purchaser.[28] Now, should you say that [by Biblical law the delivery of] money effects possession, it is well; therefore the vendor can retract, but not the vendee.[29] But if you say that [the delivery of] money does not effect a title

[even by Biblical law], then the purchaser too should be able to retract![30] — Resh Lakish can answer you: I [certainly] did not state [my view] on the basis of R. Simeon's opinion, but according to the Rabbis.

Now, as for Resh Lakish, it is well: for precisely therein do R. Simeon and the Rabbis differ.[31] But according to R. Johanan, wherein do R. Simeon and the Rabbis differ? — In respect to R. Hisda's dictum, viz.: Just as they [sc. the Rabbis] enacted the law of meshikah in respect of the vendor, so did they institute it in respect to the vendee.[32] Thus, R. Simeon rejects this dictum of R. Hisda, whilst the Rabbis agree therewith.

We learnt: BUT THEY [SC. THE SAGES] SAID: HE WHO PUNISHED THE GENERATION OF THE FLOOD AND THE GENERATION OF THE DISPERSION, HE WILL TAKE VENGEANCE OF HIM WHO DOES NOT STAND BY HIS WORD. Now, if you say that the delivery of money effects a title, it is well: hence he is subject to the 'BUT etc.'. If, however, you maintain that money does not effect a title, why is he subject to 'BUT'?[33] — On account of his words.[34] But is one subject to 'BUT' on account of [mere] words? Has it not been taught:

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(1) This word is variously translated. Rashi and Asheri: a vessel made of baked ordure; Tosaf. and R. Han.: date-stones used for smoothing parchment, 'fit' implying a wider practicability than the strictly limited use of maroka.

(2) In which case they would confer possession.

(3) [למקניא the Pe'al, and not לקנויי the Af'el, causative.]

(4) 'Therewith' implies limitation.

(5) 'Fit', Heb. כשר , generally connotes fit for use, and is a term frequently employed in connection with dietary laws.

(6) Because It is too unsubstantial even to be thought fit for this purpose.

(7) GR. **.

(8) Heb. סימן Siman: perhaps this interpretation suggested itself to Rab on account of the similarity of the words.

(9) Rashi: The bath attendant received checks or tokens from intending patrons, so as to know how many would frequent them and what preparations to make. [According to Krauss, T.A., I, 225, these were received by visitors who in turn presented them to the bath-attendant, the olearius, as token payment.] For this purpose cancelled or defaced coins were used.

(10) M. Sh. I,2.

(11) I.e., 'coins that are presented etc.' is not a separate clause, but a definition of 'asimon'. Tosaf. observes that on this hypothesis 'or' (coins etc.) would have to be deleted.

(12) 'Ed. III, 2.

(13) פולמא Jast: circular plate or ring used as weight and as uncoined money.

(14) Deut. XIV, 25.

(15) I.e., a stamped image; וצרת is connected with צור , 'to form a figure'. By contrast then, R. Ishmael must refer to metal not bearing this figure: and R. Johanan equates that with R. Dosa's dictum. This then agrees with his interpretation of 'asimon' as an (uncoined) disk.

(16) If the delivery of coin should transfer ownership to the vendee even whilst the purchase is in the vendor's possession, the latter will be remiss in attempting to save it, should a fire break out on his premises; therefore actual meshikah was instituted. On the other hand, if it were ruled that both meshikah and payment were necessary, if the purchaser took it into his possession without paying and a fire broke out on his premises, he would be remiss in saving it. Therefore the Rabbis enacted that the entire transfer of ownership depends on meshikah alone (Tosaf.). On meshikah, v. Glos.

(17) Lit., 'throws'.

(18) Lit., 'if you place it in his ownership.'

(19) Lit., 'he will trouble himself.'

(20) Lit. rend. of Lev. XXV, 14.

(21) I.e., Scripture shows that the mode of acquisition is by taking the purchase from the vendor's hand, which is meshikah.

(22) The verse ends, ye shall not defraud one another. As stated infra 49b, a certain percentage of fraud or overcharging annuls the sale; but the word 'hand' implies that the reference is to something that can pass from hand to hand, sc. movables, but not land.
(23) Does he not admit this: and if he does, where is the reference to meshikah?
(24) That the only purpose of the verse is that stated by R. Johanan.
(25) That fraud annuls the purchase.
(26) Seeing that the verse is required for this purpose, how can it teach meshikah?
(27) 'Or acquirest' shows that the law of overreaching holds good when the vendor is the victim, and since 'hand' is written in conjunction with 'acquirest' rather than with 'sell', we learn that the acquisition is made by passing the purchase from hand to hand.
(28) I.e., when the purchaser has paid the money, the vendor, who holds it, has the advantage of being able to retract, but not the vendee.
(29) For, when the vendee delivers the money, ownership rests in him according to Biblical law, and it is only to safeguard his interests in case of accidental fire that the vendor is made to bear the risks until the delivery of the goods. Consequently, since the vendor is put at a disadvantage by the Rabbinical measure, in that he must bear the risks of fire or damage, it is equitable that he shall be compensated by being given the power to retract too. The vendee, on the other hand, is the gainer by the Rabbinical enactment of meshikah; therefore there is no need to increase his advantage still farther by permitting him to retract even if no accident befalls the goods. — This explanation follows R. Hananel; Rashi and R. Tam differ somewhat.
(30) Since the sale has been consummated neither by Biblical nor by Rabbinic law.
(31) R. Simeon maintaining that the delivery of money consummates the sale by Biblical law, and therefore the vendee cannot retract, whilst in the view of the Rabbis meshikah is a Scriptural requisite, and therefore both the vendor and the vendee can retract.
(32) Probably on the score of equitableness. For, notwithstanding the reasoning stated on p. 283. n. II (q.v.), there would be a distinct feeling of unfairness if only one could retract and not the other, e.g. if the price rose or fell.
(33) How is this action in retracting in any way reprehensible, seeing that the sale is not complete at all?
(34) I.e., it is morally wrong to withdraw from an agreement even if it lacks legal force.

Talmud - Mas. Baba Metzia 48a

R. Simeon said: Though they [sc. the Sages] ruled, [The delivery of] a garment acquires the gold denar,[1] but not vice versa: that however, is only the halachah[2] but they [also] said, He who punished the generations of the Flood, and of the Dispersion, the inhabitants of Sodom and Gomorrah, and the Egyptians at the [Red] Sea, He will exact vengeance of him who does not stand by his word; and he who enters into a verbal transaction effects no title, yet he who retracts therefrom, the spirit of the Sages is displeased with him. Whereon Raba observed: We have no other [condemnation] than that the spirit of the Sages is displeased with him![3] For words accompanied by [the passage of] money one is subject to 'BUT'; for words unaccompanied thereby one is not subject to 'BUT'.

Raba said: Both Scripture and a Baraitha[4] support Resh Lakish, 'Scripture', — for it is written, [If a soul sin . . .] and lie unto his neighbor in that which vas delivered him to keep or in the putting forth of the hand[5] or in a thing taken away by violence, or hath oppressed his neighbour:[6] 'the putting forth of the hand' — said R. Hisda: E.g., if he [the debtor] assigned a utensil to him for [the payment of] his debt[7] 'Or hath oppressed' — said R. Hisda: E.g., if he assigned him a utensil for that in respect of which he oppressed him.[8] Yet when Scripture repeated it,[9] it is written, Then it shall be, because he hath sinned, and is guilty, that he shall restore that which he took away, or the thing that he withheld by oppression, or that which was delivered him to keep; but 'the putting forth of the hand'[10] is not repeated. Why so? surely because it lacked meshikah![11] Said R. Papa to Raba: But perhaps that follows from 'oppression', which Scripture did repeat?[12] — The circumstances here[13] are, e.g. that he [the employee] took it [the utensil] from him and then entrusted it to his keeping.[14] [But] this is identical with 'bailment'! — There are two kinds of bailments —[15] If so, 'the putting forth of the hand' [i.e.. loan] should also be repeated, and it could [likewise] be applied to the case

where, e.g.,he [the creditor] had taken it [the utensil assigned for repayment] from him [the debtor], and then re-deposited it with him?[16] — Had Scripture repeated it, it would have been neither a refutation nor a support:[17] since, however, Scripture did not repeat it, it supports him [Resh Lakish].[18]

Yet did not Scripture repeat, 'the putting forth of the hand'? But it was taught: R. Simeon said: Whence do we know that what was stated above[19] is to be applied to what is stated below?[20] Because it is written, Or all that about which he hath sworn falsely.[21] And R. Nahman said in the name of Rabbah b. Abbuha in Rab's name: That is to extend the law of restoration to 'the putting forth of the hand'! — Even so, Scripture did not explicitly repeat it —[22]

Where have we a Baraitha?[23] — For it has been taught:[24] If he gave it to a bath-attendant, he is liable to a trespass offering.[25] And Raba said thereon: This holds good only of a bath-attendant, since no meshikah is lacking.[26] But [if he gave it for] any other object, which requires meshikah,[27] he is not liable to a trespass offering until he does draw it into his possession.[28] But has it not been taught: If he gave it to a hairdresser, he is liable to a trespass offering. Now in the case of the hairdresser, must he [the treasurer] not draw the shears into his possession?[29] — The reference here is to a heathen barber, to whom the law of meshikah does not apply.[30] It has been taught likewise: If he [the treasurer] gave it [the perutah of hekdesh] to a hairdresser, a ship's captain,[31] or to any artisan, he is not liable to a trespass offering until he takes Possession.[32] Now these are self-contradictory![33] But this must surely prove that one refers to a heathen and the other to an Israelite hairdresser. This proves it.

R. Nahman ruled likewise: By Biblical law, [the delivery of] money effects a title, and Levi sought [the source of this ruling] in his Baraitha [collection] and found it; [Viz.,] If he [the treasurer] gave it to a wholesale provision merchant,[34] he is liable to a trespass offering.[35]

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(1) When one is bought for the other.

(2) The strict application of the law.

(3) I.e., the Baraitha does not mean that he is subjected to the curse, 'He who punished etc.,' but quite literally, that he who would retract is told that his action displeases the Rabbis, but nothing more. This proves that no curse is pronounced on account of mere words, and so contradicts the previous statement.

(4) [Or, 'a Mishnah' v. p. 287. n. 6.]

(5) E.V.: 'in fellowship'.

(6) Lev. V, 21.

(7) The putting forth of the hand was understood to refer to a monetary loan. Now, if a debtor swears falsely in denying his debt, he is not liable to a sacrifice. Since, however, that passage states that he is liable to one (vv. 24-25: Or all that about which he hath sworn falsely . . . then he shall bring his trespass offering unto the Lord), R. Hisda explains that this refers to a false denial of a debt for the payment of which a utensil had been assigned by the debtor, for then the loan is equivalent to a bailment ('in that which was delivered to him to keep' — i.e., a bailment).

(8) Sc. his wages, the reference being to one who withholds his employee's wages (cf. Deut. XXIV, 14-15: Thou shalt not oppress an hired servant . . . At his day thou shalt give him his hire). Here too, a sacrifice for false denial of liability is incurred only if the employer had assigned an article for payment.

(9) In the passage dealing with restoration to be made by the repentant sinner.

(10) I.e., when he repents, he is not bound to restore the particular utensil assigned by him for the repayment of the loan.

(11) And therefore never really belonged to the creditor. This proves that by Biblical law meshikah is necessary for effecting ownership.

(12) For in the case of 'oppression' too, as interpreted in the text, there was a meshikah, and yet Scripture orders that the utensil shall be returned. So the same holds good of a loan. In fact, since 'oppression' is mentioned, viz., that the utensil assigned for the employee's wages must be returned in spite of the lack of meshikah, it follows that on the contrary meahikah is unnecessary, and thus the verse refutes Resh Lakish. This difficulty, though not explicitly raised by R. Papa, is implied, and the Talmud proceeds to answer it.

(13) Where the Torah provides for the return of the utensil assigned to the employee.
(14) Therefore it must be returned, since the employee had originally acquired the ownership thereof through meshikah.
(15) One, where the bailment belonged entirely to the bailor; and two, where it originally belonged to the bailee, as in the case under discussion.
(16) So that meshikah is not lacking.
(17) Of R. Johanan or Resh Lakish. For the former would explain it as meaning even if no meshikah had taken place, i.e., a utensil was assigned for the debt, but the creditor had never performed meshikah thereon; and still the debtor is liable to a sacrifice, because meshikah is unnecessary by Biblical law; whilst Resh Lakish would maintain that meshikah must have taken place for the law to operate.
(18) [For the only reason that can be given for the repetition by the Torah of 'oppression' and not of 'the putting forth of the hand', is that in the former it provides only for the case where meshikah had been performed, whilst in the case where it was absent, such as is indicated by the omission of the latter, there is no liability to a sacrifice.]
(19) Sc. Lev. V, 21.
(20) Ibid. 23: I.e., every detail enumerated in v. 21 must be understood in v. 23 et seq. too, even if Scripture does not repeat it.
(21) Ibid. 24: 'all' is a general term embracing every antecedent.
(22) Therefore the inference drawn on p. 286, n.1 holds good, whilst the extension of the law will apply to a loan which is exactly similar to 'oppression'. viz., where meshikah was performed.
(23) Resuming Raba's statement that both Scripture and a Baraitha support Resh Lakish.
(24) Me'il. 20a. There, however, it is a Mishnah. [Several MSS texts in fact read דתנן 'we have learnt'. This will involve the further emendation of 'a Baraitha' into 'a Mishnah'. V. Strashun, a.l.]
(25) V. 99b. So here too (this is a continuation of the passage quoted there), if the Temple treasurer unwittingly gave a perutah of hekdesh to a bath-attendant for admission, he (the treasurer) is liable to a trespass offering.
(26) I.e., immediately the treasurer pays the perutah, he receives his return, the baths being open for him to enter, so that he need not perform meshikah with any object to receive his quid pro quo. Consequently, the bath-attendant in his turn becomes the legal owner of the perutah immediately it is given him, and for that the treasurer is liable to a sacrifice.
(27) I.e., with which the treasurer must perform meshikah in order to acquire it.
(28) For only then does the recipient of the perutah obtain a legal title thereto. This proves that meshikah is required by Biblical law. For if it were only a Rabbinic measure, whilst by Scriptural law the recipient of the perutah immediately acquires a title thereto, the treasurer would always be liable to a trespass offering, no matter for what he gave the perutah, since a Rabbinical enactment cannot free a person from an obligation that lies upon him pursuant to Scriptural law.
(29) It would appear that when one paid a hairdresser in advance, he signified his liability to trim the customer's hair by handing him the shears. But in any case, some form of meshikah is necessary, and yet the treasurer incurs a liability immediately he gives the money, which shews that meshikah is only a Rabbinical requirement.
(30) In a transaction with a heathen the delivery of money is certainly sufficient.
(31) For freight charges.
(32) Symbolically performing meshikah with an object connected with his payment.
(33) Sc. the two views on his liability in connection with a hairdresser, the first Baraitha stating that he is liable immediately he gives the money, whilst the Baraitha teaches that meshikah must first be performed.
(34) As a deposit for an order of provisions.
(35) Though he did not take possession of the goods, thus proving that meshikah is unnecessary by Biblical law.

Talmud - Mas. Baba Metzia 48b

But this refutes Resh Lakish!-Resh Lakish can answer you: That is on the basis of R. Simeon's ruling.[1]

BUT THEY [SC. THE SAGES] SAID, HE WHO PUNISHED, etc. It has been stated: Abaye said: He is [merely] told this.[2] Raba said: He is anathematised.[3] 'Abaye said: He is [merely] told this,' because it is written, And thou shalt not curse the ruler of thy people.[4] 'Raba said: He is anathematised.' because it is written, of thy people, implying [only] when he acts as is fitting for 'thy

people'.[5]

Raba said: Whence do I know[6] it? For [it once happened that] money was given to R. Hiyya b. Joseph [in advance payment] For salt. Subsequently[7] salt rose in price. On his appearing before R. Johanan,[8] he ordered him, 'Go and deliver [it] to him[9] [the purchaser], and if not, you must submit to [the curse]: He who punished.' Now if you say that one is merely informed — did R. Hiyya b. Joseph require to be told?[10] — What then: he is anathematised? Did R. Hiyya b. Joseph come to submit to a curse of the Rabbis?[11] But [what happened was that] only a deposit had been paid to R. Hiyya b. Joseph. He thought that he [the purchaser] was [morally] entitled only to the value thereof, whereupon R. Johanan told him that he was entitled to the whole [of the purchase].

It has been stated: A deposit — Rab said: It effects a title [only] to the extent of the value thereof.[12] R. Johanan ruled: It effects a title to the whole purchase. An objection is raised: If one gives a pledge[13] to his neighbour and says to him, 'If I retract; my pledge be forfeit to you;' and the other stipulates, 'If I retract, I will double your pledge';[14] the conditions are binding:[15] this is R. Jose's view, R. Jose following in this his general ruling that asmakta[16] acquires title. R. Judah [however] maintained: It is sufficient that it effects a title to the value thereof.[17] Said R. Simeon b. Gamaliel: When is that? If he [the depositor] said to him, 'Let my pledge effect the purchase'.[18] But if one sold a house or field for a thousand zuz, of which he [the vendee] paid him five hundred, he acquires title [to the whole], and must repay the balance even after many years.[19] Now surely. the same ruling applies to movables, viz., [if a deposit is given] without specifying [its purpose],[20] possession is gained of the whole![21] — No. As for movables, an unspecified deposit does not effect possession [of the whole]. And wherein do they differ?[22] — Real estate, which is actually acquired by [the delivery of] money,[23] is entirely acquired;[24] movables, which are acquired [by the delivery of money] only in respect of submission to [the curse] 'He who punished,' are not acquired entirely.[25]

Shall we say that this is disputed by Tannaim? [For it has been taught:] If one makes a loan to his neighbour against a pledge. and the year of release arrived, even if it [the pledge] is worth only half [the loan], it [the year of release] does not cancel [the loan]: this is the ruling of R. Simeon b. Gamaliel. R. Judah ha-Nasi said: If the pledge corresponds to [the value of] the loan, it does not cancel it; otherwise, it does.[26] What is meant by R. Gamaliel's statement, 'It does not cancel [the loan]'? Shall we say, To the value thereof? Hence it follows that in the opinion of R. Judah ha-Nasi even that half too is cancelled![27]

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(1) V. supra 47b and p. 284, n. 2.

(2) I.e., he is warned that God punishes those who do not keep their word.

(3) A formal curse is pronounced against him.

(4) Ex. XXII, 27. In Sanh. 85a it is shewn that this applies to all, not particularly a ruler.

(5) I.e., only then does the injunction hold good. But it is not fitting for an Israelite to break his word; cf. Zeph. III.13.

(6) Lit., 'say'.

(7) When the sale was to be delivered.

(8) To ask whether he could withdraw from the transaction.

(9) The original is in the plural. but the context shews that the singular is required, the plural to be understood indefinitely.

(10) That retraction would involve him in a curse.

(11) Surely he knew that he could not retract!

(12) In the case of movables only in respect of provoking the curse.

(13) ערבון Though this is the same word as used to indicate 'deposit', it means here a pledge, to be forfeited in certain conditions.

(14) I.e., 'I will return double Its value.'

(15) Lit., 'are fulfilled'.

(16) V. Glos.

(17) In case of retraction, the one does not forfeit his pledge, nor is the other bound to double it. But the transaction is absolute in respect of goods to the value of the deposit, and to that extent neither can withdraw.
(18) Of the whole, i.e., it was not merely given as a deposit payment, but with the intention of consummating the whole purchase. That, however, is impossible, and therefore R. Judah ruled that the transaction is completed only to the extent of the value of the pledge.
(19) The balance ranks as a loan, and the vendor cannot cancel the sale on its account. V. infra 77b.
(20) That it should act as a pledge or forfeit, but given without any purpose being stated.
(21) In respect of the curse. This refutes Rab's ruling.
(22) What is the essential difference between real estate and movables, to permit this distinction to be drawn?
(23) Though the delivery of money alone does not effect a title to movables, it does in respect to land.
(24) By the deposit.
(25) By the deposit, but only to the extent of the value of that deposit, and even that, only in respect of submitting to the curse.
(26) V. Deut. XV. 1-2: At the end of every seven years thou shalt make a release. And this is the manner of the release: Every creditor that lendeth aught unto his neighbour shall release it; he shall not exact it of his neighbour, or of his brother; because it is called the Lord's release. The Rabbis deduced from the phrase 'he shall not exact it' that the law of release does not apply to a loan for which the creditor holds a pledge, for he is then regarded as having already exacted it beforehand (Shebu. 44b).
(27) But surely that is impossible, since it is generally agreed that the law of release does not apply to what the creditor already has in hand!

Talmud - Mas. Baba Metzia 49a

For what purpose then does he hold the pledge? Surely then this proves that by 'it does not cancel it' R. Simeon b. Gamaliel means that it does not cancel it at all, whilst by 'It does cancel it' R. Judah refers to the half against which he holds no pledge. and they differ in this: R. Simeon b. Gamaliel holds that it [the pledge] effects a title to the whole [of the loan].[1] whilst R. Judah ha-Nasi holds that it effects a title only to the value thereof![2] — No. By 'It does not cancel [the loan]' R. Simeon b. Gamaliel means that half against which he holds a pledge. Then it follows that in R. Judah's opinion even the half against which he holds a pledge is also cancelled! But [if so,] what is the purpose of the pledge? — As a mere record of fact.[3]

R. Kahana was given money [in advance payment] for flax. subsequently flax appreciated, so he came before Rab. 'Deliver [the goods] to the value of the money you received,' said he to him; 'but as for the rest, it is a mere verbal transaction, and a verbal transaction does not involve a breach of faith.'[4] For it has been stated: A verbal transaction: Rab said: It involves no breach of faith; R. Johanan ruled: It does involve a breach of faith.

An objection is raised: R. Jose son of R. Judah said: What is taught by the verse, A just hin [shall ye have]:[5] surely 'hin' is included in 'ephah'?[6] But it is to teach you that your 'yes' [hen] should be just and your 'no' should be just![7] — Abaye said: That means that one must not speak one thing with the mouth and another with the heart.[8]

An objection is raised: R. Simeon said: Though they [sc. the Sages] ruled: [The delivery of] a garment acquires the gold denar, but not vice versa: that, however is only the halachah, but they [also] said: He who punished the generations of the Flood and of Dispersion, the inhabitants of Sodom and Gomorrah,and the Egyptians at the [Red] Sea, He will exact vengeance of him who does not stand by his word; [and he who makes a verbal transaction effects no title, yet he who retracts therefrom, the spirit of the Sages is displeased with him]![9] — It is a dispute of the Tannaim, for we learnt: It once happened that R. Johanan b. Mathia said to his son, 'Go out and engage labourers.' He went, and agreed to supply them with food. But on his returning to his father, the latter said, 'My son, should you even prepare for them a banquet like Solomon's when in his glory. you cannot fulfil

your Undertaking, for they are children of Abraham, Isaac and Jacob. But, before they commence work, go out and tell them, "[I engage you] on condition that you have no claim upon me other than bread and beans."'[10] Now, if you should think that words involve a breach of faith, how could he say to him, 'Go and withdraw'? — There it is different, for the labourers themselves did not rely [upon him]. Why? Because they knew full well that he himself was dependent upon his father.[11] If so, even if they had [already] commenced work, it is also thus![12] -Once they have commenced work, they certainly rely [upon him], for they reason: He must have reported to his father, who agreed thereto.

Now, did R. Johanan say thus?[13] But Rabbah b. Bar Hanah said in R. Johanan's name: If one says to his neighbour. 'I will make you a gift'. he can retract therefrom. 'He can [retract]' — but that is obvious![14] Hence [he must have meant], He is permitted to withdraw![15] — R. Papa replied: R. Johanan admits[16] in the case of a small gift,[17] because he [the recipient] relies thereon.[18] That is logical too. For R. Abbahu said in R. Johanan's name: If an Israelite says to a Levite, 'You have a kor of tithe in my Possession',[19] he [the Levite] may declare[20] it the terumah of the tithe for other produce.[21] Now, if you agree that he [the Israelite] cannot [morally] withdraw, it is well: therefore he [the Levite] is permitted [to declare this as the terumah of the tithe]. But if you say that he [the Israelite] can retract, why is he [the Levite] permitted [to declare etc.], seeing that it may thereby transpire that he eats tebel?[22] — The reference here is to a case where, e.g., he [the Levite] had already received it and then re-entrusted it to him [the Israelite] —[23] If so, consider the second clause: If he gave it to another Levite, he [the Levite] has nothing but resentment against him.[24] But if you should think that it means, e.g., that he took it from him and then re-entrusted it to him: why has he nothing but resentment against him? Since he took possession thereof, he has a monetary claim upon him! Hence it must certainly mean that he did not [first] take it from him. Which proves it.[25]

A certain man gave money for poppy seed. Subsequently poppy seed advanced in price, so he [the vendor] retracted and said, 'I have no poppy seed: take back your money.' But he would not take his money, and it was stolen. When they came before Raba, he said he him: Since he said to you, 'Take back your money,' and you would not, not only is he not accounted a paid bailee.[26] but he is not even a gratuitous bailee. Thereupon the Rabbis protested before Raba: But he [the vendor] would have had to submit to [the curse] 'He who punished'![27] — He replied: That is even so.[28]

R. Papi said: Rabina told me, 'One of the Rabbis, named R. Tabuth — others state, R. Samuel b. Zutra — who, if he were given all the underground treasures of the world[29] would not break his word, told me: That incident happened with me.[30] That day was Sabbath eve, and I was sitting when a certain man came, stood at the threshold, and asked me, "Have you poppy seed for sale?"

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(1) I.e., when the creditor receives a pledge for a portion of the loan, it is as though he were already actually in possession of goods to the value of the whole loan. Therefore it is unaffected by the law of release.

(2) And in the same way, when a deposit is given on goods in a sale, it effects possession of the whole or of its own value, according to these two Tannaim respectively.

(3) I.e., to prove the fact of the debt — presumably this refers to a verbal loan.

(4) Though the Mishnah states that he who does not stand by his word will be punished, that is only when his word is substantiated by the payment of money, which, though not legally, is morally binding. But where no money has been paid, a transaction can be cancelled without any scruples.

(5) Lev. XIX. 36.

(6) The preceding phrase is, a just ephah... (shall ye have).

(7) This is a play on words, 'hin', a measure being connected with hen, Aramaic for 'yes'. This shews that even a mere verbal transaction must not be violated, and so contradicts Rab.

(8) I.e., it is a general exhortation against deceitful speech, but does not refer to an actual transaction. Rashi: Whilst arranging a transaction, one must not there and then have the intention of withdrawing. But if a verbal bargain is made in good faith, there is nothing wrong in withdrawing from it subsequently if the market price changes.

(9) The refutation is contained in the bracketed passage, though it is not cited in the text. Thus we see that the breaking even of a mere verbal transaction is reprehensible.
(10) Infra 83a.
(11) I.e., that the terms he offered were subject to his father's ratification.
(12) He could still withdraw: why then was he particular that this stipulation should be made before they began?
(13) That a verbal transaction involves a breach of faith.
(14) Since there had been no meshikah, Why state it then?
(15) I.e., even morally, which contradicts R. Johanan's previous ruling.
(16) This is Rashi's reading. Our text reads: And R. Johanan admits.
(17) That the mere promise involves a breach of faith.
(18) That he will certainly fulfil his promise; hence he cannot retract without a breach of faith. But if one promises a large gift, the beneficiary himself does not have full confidence in the promise, and therefore withdrawal is permitted. In the case of a business transaction, each party naturally looks to the other to fulfil his undertaking, and therefore a breach of faith is involved (R. Han.).
(19) I have separated a kor of my produce as tithe, and will give it to you.
(20) Lit., 'make'.
(21) Lit., 'for another place'. The Levite himself had to give a tithe of the tithe he received to the priests; this was known as the terumah (separation) of the tithe תרומת מעשר . Now, R. Johanan states that when an Israelite promises a kor of tithe to a Levite, who himself possesses tithes for which he is bound to separate terumah, he may declare this kor to be the terumah thereof, even before it reaches his hand.
(22) Untithed produce. v. Glos. Immediately the Levite makes his declaration, he proceeds to eat of the tithes he possesses; but should the Israelite withdraw, the Levite's declaration is retrospectively invalid, and thus he has eaten tebel. This proves that the Israelite cannot retract without breach of faith, and therefore the Levite may make his declaration on the assumption that he will certainly not do so. — Though a kor is a large quantity, it is considered a small gift from the point of view of the Israelite, who must give it away in any case (Rashi).
(23) Hence it certainly belongs to the Levite, who acquired it by meshikah.
(24) But no legal claim.
(25) That in the case of a small gift one cannot retract.
(26) Who is responsible for theft.
(27) And possibly he would not have submitted, in which case it was his money that was lost.
(28) He must either submit thereto, in which case he is free from further responsibility, or deliver the goods.
(29) חללא cavern.
(30) This is told by R. Tabuth. He was the vendor referred to in the story of the poppy seed.

Talmud - Mas. Baba Metzia 49b

"No," I answered. "Then let me entrust this money to you", he replied, "as it is growing dark,"[1] "The house lies before you." I replied; so he deposited it in the house, and it was stolen. When he came before Raba, he ruled: In every case of "The house lies before you," not only is one not a paid bailee,[2] he is not even a gratuitous trustee.' Thereupon I observed to him ,[3] 'But the Rabbis protested to Raba: He would have to submit to [the curse] "He who punished";[4] and he answered,"That is a pure fiction".'[5]

R. SIMEON SAID: HE WHO HAS THE MONEY IN HIS HAND HAS THE ADVANTAGE. It has been taught: R. Simeon said: When is that?[6] If the vendor has both the money and the produce. But if the money is in the vendor's hand, and the goods in the vendee's, he [the vendee] cannot retract, since the money is in his hand. [You say,] 'in his hand'![7] but it is in the vendor's! — Say then, because his money's worth is in his hand.[8] .But that is obvious![9] — Said Raba: The circumstances here are, e.g., where the vendee's loft was rented to the vendor.[10] Now, why did the Rabbis institute meshikah? For fear lest he say to him, 'Your wheat was burnt in the loft'.[11] But here it is [already] in the vendee's ownership; should fire accidentally break out, he will take the trouble to save it —[12]

A certain man gave money [in advance payment] for wine. Subsequently he learnt that one of the men of the Field-marshal[13] Parzak intended to seize it — Thereupon he said to him, 'Return me my money:I do not want the wine' — So he went before R. Hisda, who said to him, Just as meshikah was instituted in favour of the vendor,[14] so was it instituted in favour of the vendee too.

MISHNAH. FRAUD IS CONSTITUTED BY [AN OVERCHARGE OF] FOUR SILVER [MA'AHs] IN TWENTY FOUR. WHICH IS A SELA', [HENCE] A SIXTH OF THE PURCHASE.[15] UNTIL WHAT TIME IS ONE PERMITTED TO REVOKE [THE SALE]?[16] UNTIL HE CAN SHEW [THE ARTICLE] TO A MERCHANT OR A RELATIVE.[17] R. TARFON RULED IN LYDDA THAT FRAUD IS CONSTITUTED BY EIGHT SILVER [MA'AHS] IN TWENTY-FOUR, WHICH IS A SELA', [HENCE] A THIRD OF THE PURCHASE, WHEREAT THE LYDDAN MERCHANTS REJOICED. BUT, SAID HE TO THEM, ONE MAY RETRACT THE WHOLE DAY. THEN LET R. TARFON LEAVE US IN STATUS QUO, THEY REQUESTED; AND SO THEY REVERTED TO THE RULING OF THE SAGES.

GEMARA. It has been stated: Rab said: We learnt, A sixth of the [true] purchase price. Samuel said: A sixth of the money [actually] paid was also taught. Now, if that which is worth six [ma'ahs] was sold for five or seven, all agree that we follow the purchase price.[18] Wherein do they differ? If something worth five or seven [ma'ahs] was sold for six. According to Samuel, who maintained that we follow the money paid [too], both cases constitute fraud. But according to Rab, viz., that we follow only the purchase price, if something worth five is sold for six, the sale is null;[19] but if what is worth seven is sold for six, it is renunciation.[20] But Samuel maintained: When do we say that there is renunciation or annulment of the sale? Only if there is not a sixth on either side;[21] but if there is a sixth on one side, it is fraud.[22]

We learnt: FRAUD IS CONSTITUTED BY [AN OVERCHARGE OF] FOUR SILVER [MA'AHS] IN TWENTY FOUR, WHICH IS A SELA', [HENCE] A SIXTH OF THE PURCHASE. Surely that means that one sold something worth twenty [ma'ahs] for twenty-four. which proves that a sixth of the money paid was also taught? No; It means that twenty-four [ma'ahs] worth was sold for twenty. Then who was overreached? The vendor! But consider the second clause: UNTIL WHAT TIME IS ONE PERMITTED TO REVOKE [THE SALE]? UNTIL HE CAN SHEW [THE ARTICLE] TO A MERCHANT OR A RELATIVE. Now, R. Nahman observed [thereon]: This was taught only of the purchaser; the vendor, however, can always withdraw![23] — But it means that one sold something worth twenty-four [ma'ahs] for twenty-eight.

We learnt: R. TARFON RULED IN LYDDA THAT FRAUD IS CONSTITUTED BY EIGHT SILVER [MA'AHS] IN TWENTY-FOUR, WHICH IS A SELA', [HENCE] A THIRD OF THE PURCHASE. Surely that means that one sold something worth sixteen [ma'ahs] for twenty four, which proves that a third of the money paid was also taught?[24] — No: it means that what was worth twenty-four was sold for sixteen. Then who was overreached? the vendor! But consider the next clause; BUT, SAID HE TO THEM, ONE MAY RETRACT THE WHOLE DAY, whereon R. Nahman observed: This was taught only of the purchaser; the vendor, however, can always withdraw! But it means that one sold the value of twenty-four [ma'ahs] for thirty-two.[25]

It has been taught in accordance with Samuel: He who was deceived has the upper hand. E.g., if one sold an article worth five [ma'ahs] for six — who was defrauded? The vendee . Therefore the vendee has the upper hand, [and] he can demand of him [the vendor] either, 'Return me my money', or, 'Return me the overcharge'.[26] If he sold him

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(1) The Sabbath was about to commence.

(2) To be responsible for theft.

(3) Rabina to the Rabbi who related this story.
(4) Which shows that a sale was in question.
(5) Lit., 'the thing never happened'.
(6) That one can withdraw.
(7) Which grammatically refers to the vendee.
(8) I.e., he has already received the goods.
(9) That the sale cannot be revoked once the purchaser has taken possession, and even the Rabbis admit it.
(10) And the goods were stored therein.
(11) V. p. 282, n. 7. This assumes that by Biblical law the delivery of money alone consummates the sale.
(12) This is the reading of Alfasi. Our text: he will take the trouble to remove it. — The Rabbis who oppose R. Simeon presumably hold that even in these circumstances, seeing that the purchaser performed no meshikah, the sale is revocable.
(13) [Rufulus, a Persian high official; v. A.Z. (Sonc. ed.) pp. 163 n. 7 and 301, n. 3.]
(14) That he can withdraw before meshikah is performed.
(15) If the vendor overcharged by one sixth, he is considered to have defrauded the vendee, and the overcharge is recoverable; or the sale may be revoked.
(16) In the case of overcharge. Since he was imposed upon, the vendee is not only legally, but also morally entitled to cancel the bargain; hence the Mishnah states 'permitted'. Opposing views are expressed in the Talmud (infra 50b) whether the vendee can retract from the bargain even if the vendor is prepared to make a refund.
(17) But after that the sale is absolute, notwithstanding the overcharge.
(18) Hence there was overreaching by one-sixth, and the law of the Mishnah operates.
(19) For the overreaching is more than one-sixth; in this case, the bargain is altogether null, and even if the vendor is prepared to make amends, the vendee is morally entitled to retract: even the defrauding party too can declare the sale null in these circumstances (infra 50b).
(20) Since it is only a seventh of the true purchase price, the vendor is regarded as having foregone part of his due.
(21) I.e., whether we regard the true purchase price or the money paid.
(22) Which is returnable, whilst the sale is valid.
(23) Since the article is no longer in his hand, he can retract whenever he finds that he was defrauded. This proves that the Mishnah treats of the vendee's being overreached.
(24) And therefore the same applies to the definition of 'one-sixth', and thus refutes Rab.
(25) I.e., a sixth in the purchase price.
(26) Lit., 'what you deceived me.'

Talmud - Mas. Baba Metzia 50a

six [ma'ahs] worth for five — who was overreached? The vendor. Therefore the vendor has the upper hand!He can either say, 'Return me the purchase', Or, 'Return me the sum underpaid'.[1]

The scholars propounded; On the view of the Rabbis, does [an overcharge of] less than a sixth immediately constitute renunciation, or only when he has had time to shew [the purchase] to a merchant or relative?[2] And should you object, [If it is] only when he has had time to shew [the purchase] to a merchant or a relative, wherein do a sixth and less than a sixth differ? [Yet] there is a difference, for in the case of a sixth, he has the upper hand, and can either withdraw or retain the ownership but have the overcharge returned; whereas in the case of less than a sixth, he must retain ownership and have the overcharge refunded. What then is our ruling? — Come and hear: [AND SO] THEY REVERTED TO THE RULING OF THE SAGES. Now, it was thought that less than a third on R. Tarfon's view is identical [in law] with less than a sixth on the view of the Rabbis. Now, should you say that [an overcharge of] less than a sixth, in the view of the Rabbis, [constitutes renunciation only] when he has had time to shew [the purchase] to a merchant or a relative, whereas according to R. Tarfon, the whole day [must pass before he loses the rights of redress], it is well: on that account they [the merchants] reverted [to the ruling of the Sages]. But if you say that less than a sixth, in the view of the Rabbis, immediately constitutes renunciation,

(1) The figures given agree with Samuel.

(2) E.g., if eleven ma'ahs was paid for an article worth ten, is the vendee regarded as having there and then renounced the eleventh ma'ah, and so, even if he immediately demands its return, he has no redress; or perhaps it is accounted renunciation only if sufficient time elapsed to shew it to a merchant, but before that he can claim a refund?

Talmud - Mas. Baba Metzia 50b

whilst in R. Tarfon's view too [less than a third] immediately constitutes renunciation, why did they revert [etc.]? R. Tarfon's ruling was [surely] more advantageous to them, for what the Rabbis declared overreaching, R. Tarfon regarded as renunciation! — Do you really think that less than a third, according to R. Tarfon, is identical with less than a sixth on the view of the Rabbis? That is not so: from a sixth to a third, according to R. Tarfon, is as a sixth itself on the view of the Rabbis.[1] If so, whereat did they rejoice [in the first place]? Hence you may deduce that in the view of the Rabbis, in a case of annulment of the sale, one can always withdraw; they thus rejoiced when R. Tarfon told them that it [an overcharge up to a third] constitutes overreaching.[2] whilst they reverted [to the ruling of the Rabbis] when he told them [that the time for withdrawing is] all day. For if you should think that in the view of the Rabbis the annulment of the sale[3] is only within the time that he can shew it to a merchant or to a relative, whereat did they rejoice?[4] — They rejoiced in respect of a sixth itself.[5]

The scholars propounded: In the case of annulment of Sale, on the view of the Rabbis,[6] can one always retract, or perhaps only within the time necessary to shew [the purchase] to a dealer or a relative? And should you answer, [if only] within the time necessary to shew it to a dealer or a relative, wherein do a sixth and more than a sixth differ? There is a difference: for in the case of a sixth, [only] the defrauded party can retract, whereas in the case of more than a sixth both can retract.[7] What is the ruling? — Come and hear: THEY REVERTED TO THE RULING OF THE SAGES. Now, if you say that annulment of the sale, on the view of the Rabbis, is only within the time necessary to shew [the purchase] to a dealer or a relative, whereas on R. Tarfon's view it is all day, it is well: on that account they reverted [etc.][8] But if you say that in the case of annulment of sale, on the view of the Rabbis, one can always retract, why did they revert [etc.]? Surely R. Tarfon's ruling was more advantageous to them, since he declared overreaching [returnable] the whole day, but no more! — Annulment of sale is rare.[9]

Raba said: The law is: In the case of less than a sixth, the sale is valid;[10] more than a sixth, it is null; [exactly] a sixth, it is valid, but the overcharge is returnable;[11] and in both cases it is within the time necessary to shew [the purchase] to a merchant or a relative.

It has been taught in support of Raba: In the case of overreaching of less than a sixth, the sale is valid; more than a sixth, the sale is null; [exactly] a sixth, he [the defrauded party] retains ownership whilst the overcharge must be refunded: this is R. Nathan's view. R. Judah ha-Nasi said: The vendor has the upper hand;[12] if he wishes he can say, ‘Return me the Purchase,’ or, ‘Pay up the sum wherein you defrauded me.’ And in both cases, it is within the time necessary to shew [the purchase] to a merchant or a relative.[13]

UNTIL WHAT TIME IS ONE PERMITTED TO REVOKE [THE SALE] etc. R. Nahman said: This was taught only of the purchaser; but the vendor can always retract.[14] Shall we say that he is supported [by the Mishnah]? THEY REVERTED TO THE RULING OF THE SAGES. Now, if you agree that the vendor can always retract, it is well:

(1) And in both cases the overcharge is returnable. But whereas the Rabbis maintain that an overcharge of more than a sixth entirely annuls the sale, R. Tarfon held that up to a third the defrauded party has the upper hand, and the sale may stand.

(2) Whereas on the ruling of the Rabbis, if it is more than one-sixth, the transaction is altogether cancelled.
(3) For an overcharge of more than a sixth.
(4) The problem of the time within which the sale may be annulled is raised immediately after this passage. Here the Talmud anticipates it by pointing out that since the dealers originally rejoiced at R. Tarfon's ruling, which, ex hypathesi, means that from a sixth up to a third constitutes overreaching, it must be assumed that annulment in the view of the Rabbis is not limited by time. For otherwise, there was no reason to rejoice in the first place. The argument is this: There is very little practical difference between a whole day and always, because a day is quite ample for finding out that one was overreached; but there is a great difference between a day and the short time necessary for shewing one's purchase to a merchant, which may easily pass before the defrauded party discovers his loss. Furthermore, it is rare to overreach by more than a sixth (presumably buyers were very keen in those days!). Consequently, when R. Tarfon told them that a returnable overcharge is up to a third, which, as they thought, meant within the shorter period only, after which there was no redress, whilst in the view of the Rabbis the purchase could be annulled at any time if the overcharge was more than a sixth, R. Tarfon's ruling was naturally to their advantage. But if the annulment of the sale according to the Rabbis is only within the shorter period, why did they rejoice? On the contrary. R. Tarfon's ruling that up to a third constitutes overreaching as against the Rabbis' view that over a sixth annuls the sale was manifestly to their disadvantage: since according to the Rabbis both parties could withdraw, whilst on the view of R. Tarfon only the defrauded party had that right.
(5) For when we say that according to R. Tarfon from a sixth up to a third constitutes overreaching, a sixth itself is excluded, and not recoverable. Hence they might well rejoice, quite irrespective of the time within which the sale is revocable in the opinion of the Rabbis.
(6) Viz., for an overcharge of more than one-sixth.
(7) That is only if the defrauded party demands a refund. Otherwise, it is altogether illogical to give the defrauder a greater power of withdrawal than he would have enjoyed had the fraud amounted only to a sixth. (Tosaf. a.l. and B.B. 84a s.v. אי לאו)
(8) For their disadvantage in that the defrauded party had a longer time within which to retract outweighed their advantage that fraud of exactly one-sixth was not recoverable, as stated above.
(9) Therefore they did not regard the shorter period of R. Tarfon as particularly advantageous to them, the more so since a whole day is ample time for the defrauded party to discover that he was overreached. On the other hand, in respect of overreaching as distinct from annulment the longer period given by R. Tarfon (a whole day, as against the Rabbis', 'within the time necessary to shew the purchase to a merchant') was definitely to their disadvantage, and therefore they reverted to the ruling of the Rabbis.
(10) Immediately, and the defrauded party has no redress.
(11) Thus Raba disagrees with the view formerly stated that in the case of a sixth the defrauded party can either demand a refund or cancel the sale.
(12) If he was defrauded; of course, if the vendee was defrauded, he has the upper hand.
(13) Notwithstanding that the vendor no longer has the article. This is discussed below.
(14) If he was defrauded, since he is no longer in possession of the article to be able to shew it to an expert, and he discovers the fraud only when he sees a similar article sold at a higher price; hence no limit can be set in his case, v. infra.

Talmud - Mas. Baba Metzia 51a

therefore they reverted. But if you say that the vendor is as the vendee, what difference did it make to them?[1] Just as the Rabbis[2] ameliorated [the position of] the vendee, so did they likewise that of the vendor! — The merchants of Lydda very seldom erred.[3]

Rami b. Hama's host[4] sold some wine,[5] and erred. Finding him depressed, he [Rami] asked him, 'Why are you sad?' 'I sold wine,' he replied, 'and erred — , 'Then go and retract ,'he counselled — 'But I have tarried more time than is necessary to shew it to a dealer or a relative,' said he. Thereupon he sent him to R. Nahman, who said to him: This was taught only of the vendee; but the vendor can always retract. Why? The vendee has the purchase in his hand; wherever he goes he shews it and is told whether he erred or not. But the vendor, who has not the purchase in his hand,

[must wait] until he comes across an article like his, and only then can he know whether he erred or not.

A man had silk skeins[6] for sale. He demanded[7] Six [zuz], whilst they were worth five, yet if five and a half were offered, he would have accepted. Then a man came and said [to himself]. 'If I pay him five and a half, it is [immediate] renunciation;[8] therefore I will pay him six and then sue him at law.' When he went before Raba, he said to him: This was taught only of one who buys from a merchant; but when one buys from a private person,[9] he has no claim of fraud upon him.[10]

A man had jewellery for sale. He demanded sixty [zuz], whilst it was worth fifty; yet had he been offered fifty-five, he would have accepted. Then a man came and argued. 'If I give him fifty-five, it will constitute renunciation: therefore I will give him sixty and then sue him at law.' When he came before R. Hisda, he said to him: This was taught only of one who buys from a merchant; but when one buys from a Private individual, he has no claim of fraud against him. Said R. Dimi to him: 'Well spoken!'[11] and R. Eleazar said likewise, 'Well spoken!' But did we not learn, Just as the law of overreaching holds good in the case of a layman, so it holds good in the case of a merchant. Now, who is meant by 'a layman?' Surely a Private individual! — Said R. Hisda:[12] That applies to rough cloth garments..[13] But garments of personal use, which are dear to him, he would not sell but at an enhanced price.

MISHNAH. BOTH THE VENDEE AND THE VENDOR CAN CLAIM FOR OVERREACHING. JUST AS THE LAW OF OVERREACHING HOLDS GOOD IN THE CASE OF A LAYMAN, SO IT HOLDS GOOD IN THE CASE OF A MERCHANT. R. JUDAH SAID: THERE IS NO OVERREACHING FOR A MERCHANT.[14] HE WHO WAS DECEIVED HAS THE UPPER HAND; IF HE WISHES, HE CAN EITHER SAY, GIVE ME BACK MY MONEY,' OR, 'RETURN WHAT YOU OVERCHARGED ME.

GEMARA. Whence do we know this? — For our Rabbis taught: And if thou sell aught unto thy neighbour . . . ye shall not deceive.[15] From this I know it[16] only if the purchaser was defrauded; how do I know it if the vendor was overreached? Because Scripture states,' ... acquirest... ye shall not deceive' — Now, both vendee and vendor must be written, for had the Divine Law stated [the law only of] the vendor — that is because he knows his purchase;[17] but as for the purchaser, who is not experienced in the purchase,[18] I might think that the Divine Law did not apply the injunction of 'ye shall not defraud' to him. And had Scripture mentioned the vendee [only], that might be because he acquires [an article], for it is proverbial, 'When you buy, you gain'. But as for the vendor, who indeed loses thereby, as it is said, 'He who sells, loses,'[19] I might think that the Divine Law did not exhort him, 'ye shall not defraud;' hence both are necessary.

R. JUDAH SAID, THERE IS NO OVERREACHING FOR A MERCHANT. Because he is a merchant, has he no claim for overreaching? — Said R. Nahman in Rab's name: This was taught of a speculator.[20] Why? Because he well knows the value of what he sells, but foregoes [part thereof] to him [the vendee], the reason that he sells thus [cheaply] being that he has chanced upon another purchase;[21] nevertheless now he wishes to retract.[22] R. Ashi said: What is meant by 'THERE IS NO OVERREACHING FOR A MERCHANT? He is not subject to the law of overreaching. i.e., he can withdraw even for less than the [recoverable] standard of overreaching.[23]

It has been taught in accordance with R. Nahman: R. Judah said: There is no overreaching for a merchant, because he is an expert.[24]

HE WHO WAS DECEIVED HAS THE UPPER HAND. Who is the authority of our Mishnah, [seeing that] it is neither R. Nathan nor R. Judah ha-Nasi? For if R. Nathan — our Mishnah teaches, IF HE WISHES,[25] whereas the Baraitha[26] does not state, If he wishes;[27] whilst if it is R. Judah —

our Mishnah refers to the Vendee [only],[28] whereas the Baraitha refers to the Vendor.[29] (Mnemonic: Zab Rash.)[30] Said R. Eleazar: I do not know who taught this [Mishnah of] overreaching. Rabbah said: In truth, its authority is R. Nathan, but read in the Baraitha too, [If] he wishes [etc.]. Raba said: In truth, it is R. Judah ha-Nasi, but what the Mishnah omits is explained in the Baraitha.[31] Said R. Ashi: This too follows from the fact that it states. BOTH THE VENDEE AND THE VENDOR, yet proceeds to explain [the law of] the vendee [only]; this proves that the case of the vendor is merely left over. This proves it.

It has been stated: If one says to his neighbour, 'I agree to this sale on condition that you have no claim of overreaching against me — Rab said: He [nevertheless] has a claim of overreaching against him. Whereas Samuel said: He has no claim of overreaching against him. Shall we say that Rab ruled in accordance with R. Meir, and Samuel in accordance with R. Judah? For it has been taught: If one says to a woman, 'Behold thou art betrothed[32] unto me on condition that thou hast no claims upon me of sustenance, raiment and conjugal rights' — she is betrothed, but the condition is null: this is R. Meir's view. But R. Judah said: In respect of civil matters, his condition is binding! — Rab can answer you: My ruling agrees even with R. Judah. R. Judah states his view there only in that case, because she knew [of her rights], and renounced them;

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(1) The longer period given by R. Tarfon.

(2) Here referring to R. Tarfon's ruling.

(3) Therefore the longer period within which they might recover the fraud was of little benefit to them, whilst on the other hand the longer period given to the vendee was definitely to their disadvantage.

(4) The word means 'innkeeper'.

(5) חמרא , the word may also mean 'ass'.

(6) Others: 'beads', 'frontlets'. [Krauss T.A. I, 174. 'girdles'.]

(7) Lit., 'called'.

(8) The overcharge being less than a sixth.

(9) Lit., 'householder'.

(10) A private person may attach a sentimental value to an object, which is naturally greater than the market price, and the vendee must be aware of this.

(11) Lit., (with כחך , 'thy strength', understood) 'thy strength be firm'.

(12) Other versions: R. Papa.

(13) Which a private individual does not mind selling.

(14) This is explained below.

(15) Lev. XXV, 14.

(16) That an overcharge is returnable.

(17) Hence, if he overreaches, he does it wantonly. and therefore the overcharge is returnable.

(18) And if he underpays, it is unwittingly.

(19) Money goes, and he who sells loses the article and probably the money too later on; but he who buys has a permanent gain — sentiments natural to a private individual as well as to a noncommercial, agricultural community.

(20) So Jast. Rashi: a merchant who is a middleman, buying and selling from hand to hand.

(21) For which he needs immediate ready money.

(22) Possibly because his intended bargain did not mature.

(23) If he was deceived even by less than a sixth he can withdraw from the bargain, since that is his livelihood.

(24) This proves that he has no redress, not, as R. Ashi said, that he is put in an advantageous position.

(25) I.e., he has the choice of confirming the sale and recovering the fraud or cancelling the sale entirely.

(26) Supra 50b.

(27) But only enables him to recover the Fraud but not cancel the transaction.

(28) As being able to cancel the sale, since it states, GIVE ME BACK MY MONEY.

(29) V. supra 50b.

(30) V. p. 398, n. 5. Z for Eleazar; B for Rabbah; R for Raba; R for ASHi.

(31) V. p. 492. n. 2, and cf. p. 227. n 2.

(32) Lit., ‘sanctified’.

Talmud - Mas. Baba Metzia 51b

but here, did he know [that he was defrauded], that he should make renunciation! Whilst Samuel can say: My ruling agrees even with R. Meir. Only there does R. Meir state that view, in so far as he certainly rejects[1] [a Biblical law];[2] but here, who can say that he disregards[3] anything at all?[4]

R. ‘Anan said: I was told on Samuel's authority: If one says to his neighbour. ‘[I agree to this sale] on condition that you have no claim of overreaching against me,’ then he can prefer no claim of overreaching against him. [But if he stipulates,] ‘on condition that there is no overreaching therein’ , then [in case of deceit] a charge of imposition can be preferred.[5]

An objection is raised: If one trades on trust,[6] or if one says to his neighbour. ‘[This sale is] on condition that you have no claim of overreaching against me,’ then he has no claim of overreaching against him.[7] Now, according to Rab, who maintained, ‘My ruling agrees even with R. Judah.’[8] who is the authority for this? — Said Abaye: It is clear [therefore] that Rab's ruling agrees with R. Meir [only], and Samuel's with R. Judah.[9] Raba said: There is no difficulty; one refers to a general [condition]; the other to a particular [stipulation]. As it has been taught: When is this said?[10] Of a general [condition].[11] But if one explicitly states [that he is overcharging], [e.g.,] if the vendor said to the vendee, ‘I know that this article, which I sell you for two hundred zuz, is only worth one hundred, but I sell it to you on condition that you have no claim of overreaching against me,’ then he has no claim of overreaching. And likewise, if the Purchaser said to the seller, ‘I know that this article which I buy from you for one hundred [zuz] is worth two hundred, [yet I do so] on condition that you have no claim of overreaching against me,’ then he has no claim of overreaching against him.

Our Rabbis taught: If one buys and sells on trust, he must not compute the inferior goods on trust and the superior at par, but either both on trust or both at par.[12] And he must pay him the cost of porterage, transport,[13] and storing;[14] but he does not receive payment for his own trouble, since he has already been paid in full. Whence was his payment in full given him? — Said R. Papa: This refers to cloth manufacturers, who give [a discount of] four per cent.[15]

MISHNAH. BY HOW MUCH MAY THE SELA’ BE DEFICIENT AND YET INVOLVE NO OVERREACHING?[16] R. MEIR SAID: FOUR ISSARS, WHICH IS AN ISSAR PER DENAR[17] R. JUDAH SAID: FOUR PUNDIONS, WHICH IS A PUNDION PER DENAR.[18] R. SIMEON SAID:

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(1) Lit., ‘eradicates’.

(2) I.e., if his condition is kept, he is certainly flouting the provisions of Scripture, therefore the condition is null.

(3) V. n. 1.

(4) Notwithstanding his stipulation, he may not actually overreach; therefore it is valid.

(5) Lit., ‘there is overreaching therein.’ I.e., the condition was not fulfilled, and therefore the sale is invalid.

(6) אמנה Rashi: A gives goods to B to sell at whatever price he can, to render him the money at a fixed date, whilst he pays him for his labour, i.e., he appoints him his salaried agent. [Tosaf.: The buyer (B) trusts the seller (A) as to the price he paid for the goods, and is willing to allow him a certain percentage for profit. This interpretation of the term אמנה is followed in the rendering of the next paragraph.]

(7) The first clause means, A cannot say to B, ‘You sold below the market value and must therefore make it up. ‘ [According to Tosaf. (v. n. 6), B cannot prefer a charge of overreaching against A since he agreed to accept the goods at the price A originally paid for them (plus a percentage) irrespective of the market value.]

(8) V. supra 51a.

(9) Even as the first hypothesis.

(10) That notwithstanding a condition, each can prefer a claim of fraud against the other.

(11) I.e., if it was simply stipulated that there should be no claim for overreaching, without an explicit statement that a known overcharge was to be permitted in a certain transaction. In that case, Rab maintains that a claim can be preferred.
(12) Tosaf.: E.g.. A buys 10 articles for 10 zuz, 5 of which are worth 1 1/2 zuz each, whilst the other 5 are only worth 1/2 zuz each, and then sells them to B, who states that he is prepared to trust A as to what he paid for them and is willing to give him a certain percentage of profit: then A must not reckon the inferior goods at the average price of one zuz apiece, whilst quoting the better at 1 1/2 each, but must either strike an average for all, if he sells all together, or estimate each at its own value, if he sells them separately.
(13) Lit., 'the hire of a camel.'
(14) I.e., the seller is entitled to add his expenses to the cost.
(15) The cost price (10 zuz, as stated in the example in n. 3) is subject to a further manufacturer's discount; but the seller, in estimating his profits, bases it on the cost price before the discount is subtracted. That discount is regarded as full payment for his personal trouble (v. S. Strashun a.l.).
(16) Coins being valued by weight they depreciate in value after being in use for some time. The Mishnah discusses how far they may thus be underweight or defaced and yet, if tendered at their nominal value, involve no overreaching.
(17) A sela' == 4 denorii == 12 pundions; 1 pundion= 2 issars (assarius); i.e., 1/24 of Its value.
(18) I.e., 1/12.

Talmud - Mas. Baba Metzia 52a

EIGHT PUNDIONS, WHICH IS TWO PUNDIONS PER DENAR.[1] UNTIL WHAT TIME IS HE [THE DEFRAUDED PARTY] PERMITTED[2] TO RETRACT? IN TOWNS, UNTIL HE CAN SHEW [THE COINS] TO A MONEY-CHANGER; IN VILLAGES,[3] UNTIL [THE FOLLOWING] SABBATH EVE.[4] IF HE RECOGNISED IT, HE MUST ACCEPT IT BACK FROM HIM EVEN AFTER A TWELVE MONTH; AND HE HAS NOTHING BUT RESENTMENT AGAINST HIM.[5] AND ONE MAY REDEEM[6] THE SECOND TITHE THEREWITH AND HAVE NO FEAR,[7] BECAUSE IT IS MERE CHURLISHNESS.[8]

GEMARA. Now, the following is opposed [to the Mishnah]: To what extent is the sela' to be deficient to involve overreaching?[9] — Said R. Papa. There is no difficulty: Our Tanna reckons in an ascending fashion,[10] whilst the Tanna of the Baraitha reckons in a descending fashion.[11] Wherein do a sela' and a garment differ, that there is a dispute on the former but not the latter?[12] — Said Raba: Which Tanna is the authority for [one-sixth in the case of] a garment? R. Simeon.[13] Abaye said: In the case of a garment, one forgives [overreaching] up to a sixth, because people say, 'overpay for your back, but [give] only the exact worth for your stomach.'[14] But as for a sela', since it does not [readily] circulate,[15] one does not forgive [a deficiency].

[To turn] to the main text: To what extent is the sela' to be deficient to involve overreaching? R. Meir said, Four issars, which is one issur per denar; R. Judah said: Four pundions, which is one pundion per denar; R. Simeon said: Eight pundions, which is two pundions per denar. Above that, it may be sold at its [intrinsic] worth — By how much may it depreciate that it shall still be permissible to keep it? In the case of a sela', [it can depreciate] as far as a shekel;[16] in the case of a denar, as far as a quarter.[17] If it is an issar less, it is forbidden.[18] One may not sell it to a merchant, highwayman, or murderer,[19] because they cheat others with it, but should pierce and suspend it around the neck of his son or daughter.[20] The Master said: 'In the case of a sela', as far as a shekel; in the case of a denar, as far as a quarter.' Wherein does a sela' differ from a denar, that [the permitted deficiency of] a sela' is [only] as far as a shekel [i.e., half its value], whereas [that of] a denar is 'as far as a quarter? — Said Abaye: What is meant by 'a quarter?' A quarter shekel.[21] Said Raba: This may be proved too, since he [the Tanna] teaches. 'as far as a quarter',[22] and not a fourth part;[23] this proves it. But why should the denar be correlated to the shekel?[24] — He [the Tanna] thereby incidentally informs us that there is a kind of denar which is derived from a shekel.[25] This supports R. Ammi. For R. Ammi said: A denar which is derived from a shekel may be kept; from a sela', it may not be kept.[26]

'If it is an issar less, it is forbidden.' What does this mean? — Abaye said, It means this: if the sela' depreciated by an issar more than the standard for overreaching,[27] it may not be [expended].[28] Raba demurred: If so, even [if the depreciation exceeds it but] slightly, it is likewise so![29] But, said Raba, if the sela' depreciated an issar to the denar, it is forbidden [to offer it as a sela'], this anonymous ruling agreeing with R. Meir.

We learnt elsewhere: If a sela' became unfit,[30] and it was prepared[31] for use as a weight, it is [liable to become] unclean.[32] How much may it depreciate that it shall still be permissible to keep it? In the case of a sela', up to two denarii.[33] [When it is worth] less than this, it must be cut up.[34] What if [it is worth] more than this? R. Huna said: if worth less, it must be cut up, and if worth more than this, it must [also] be cut up.[35] R. Ammi said: If worth less, it must be cut up; but if worth more than this, it may be kept [as it is].

An objection is raised:

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(1) I.e., 1/6; thus R. Simeon assimilates this to overreaching in general.

(2) V. P. 295 , n. 11.

(3) Which contain no money-changers.

(4) When he goes shopping for the Sabbath, and so learns their value.

(5) This is discussed in the Gemara.

(6) Lit., 'give it for'.

(7) Of invalid redemption.

(8) To refuse a coin as unfit on account of a slight depreciation.

(9) And the Baraitha then gives the same figures as in the Mishnah, which shews that these cases do constitute overreaching.

(10) Thus the Mishnah states, How far can it go on increasing its deficiency without involving overreaching? Until four issars etc., but when that point is reached, overreaching is involved. Whilst the Baraitha means, How far can the deficiency of a sela' go on decreasing and still involve overreaching? Until four issars etc. Hence, in the Mishnah 'until' is exclusive, whereas in the Baraitha it is inclusive.

(11) Lit., 'from bottom to top.'

(12) In the case of goods, here expressed by 'a garment', all agree (with the exception of R. Tarfon) that one-sixth constitutes overreaching, whereas the percentage for money is disputed.

(13) Who gives one-sixth for money too. Though the Mishnah on 49b states one-sixth as a general opinion, it is actually only R. Simeon's view.

(14) If one needs a garment, he should even overpay for it, clothing being virtually necessary to uphold one's dignity. For food, however, one should not pay more than its worth.

(15) When it becomes very deficient — the exact percentage of deficiency needed to impede circulation is disputed in the Mishnah.

(16) A shekel is half a sela'. Now, as the sela' depreciates, there is no fear that it may be passed off as a full sela', because its decreased thickness is obvious. But when it is reduced to less than a shekel, there is the danger that it may be passed off as a shekel, the extent of the depreciation not being so noticeable in view of the larger size in width which it would still retain as a depreciated sela', and which would appear to compensate for its reduction in thickness. (The size of the sela' was larger than that of the shekel, both in width and thickness.) Therefore it may not be kept at all. The Baraitha states further on what is to be done with it.

(17) A quarter denar was a separate coin, and the depreciated denar might likewise be passed off as a quarter.

(18) This is discussed infra.

(19) A robber who is prepared to commit murder.

(20) Tosef. B. M. III.

(21) Which is half a denar.

(22) רובע , the specific name of a coin, value a quarter shekel.

(23) רביע

(24) In speaking of a denar, why not say half a denar instead of a quarter of a shekel?

(25) I.e., if the shekel becomes deficient to half its value, it is legal tender for a denar.

(26) Because owing to its large size it may be passed off as a shekel.

(27) According to the respective opinions stated in the Mishnah.

(28) As a sela'.

(29) Since the limit of overreaching is passed, no matter by how little, it may surely not be offered as a full weight sela'.

(30) To be used as such, owing to its depreciation.

(31) By mutilation, so that it could not pass as an ordinary coin.

(32) As a coin, it is not subject to uncleanliness; but when employed as a weight, it is regarded as any other article of use, which is liable to become unclean.

(33) ==a shekel, as stated above.

(34) As it might be passed off as a shekel, Kel. XII, 7.

(35) I.e. , once it depreciates so much that overreaching is involved, even if its value exceeds a shekel, it must be mutilated, so that it shall not be offered as a sela'.

Talmud - Mas. Baba Metzia 52b

Above that,it may be sold at its [intrinsic] worth.[1] Surely that means that it depreciated by more than the limit for overreaching?[2] — No; 'above that' [means it is worth more] not yet having depreciated to an extent involving overreaching: then it may be sold at its intrinsic value.

An objection is raised: By how much may it depreciate that it shall still be permissible to keep it? In the case of a sela', [it can depreciate] as far as a shekel. Surely that means that it depreciated little by little?[3] — No; it means that it fell into a fire and so lost in value all at once.

The Master said: 'He should pierce and suspend it around the neck of his son or daughter.' But the following contradicts it: One must not employ it[4] as a weight,[5] cast it amongst his scrap-metal nor pierce and suspend it around the neck of his son or daughter; but must either pound it [to dust], melt it down, mutilate or cast it into the salt sea! — Said R. Eleazar — others state, R. Huna in R. Eleazar's name: There is no difficulty; the former refers to the middle [of the coins], the latter to its edge.[6]

UNTIL WHAT TIME IS HE [THE DEFRAUDED PARTY] PERMITTED TO RETRACT? IN TOWNS, UNTIL HE CAN SHEW [THE COINS] TO A MONEY-CHANGER; IN VILLAGES, UNTIL [THE FOLLOWING] SABBATH EVE. Why is a distinction [between towns and villages] made in respect to a sela' but not to a garment? — Abaye answered: Our Mishnah too, when it treats of a garment, refers to towns — Raba said: As for a garment, everyone has expert knowledge therein;[7] whereas in regard to a sela', since not every man can value it save a money-changer alone, it follows that in towns, where a money-changer is available, [he can retract] only until he shews it to a money-changer; whereas in villages, where none is available, [the period is] until Sabbath eve, when they [the villagers] go up to market.[8]

IF HE RECOGNISED IT, HE MUST ACCEPT IT BACK FROM HIM EVEN AFTER A TWELVEMONTH etc. Where [is this]? If in towns? But you have said, UNTIL HE CAN SHEW [THE COINS] TO A MONEY-CHANGER! Again, if in villages? But you have said, UNTIL [THE FOLLOWING] SABBATH EVE! — Said R. Hisda: Here a measure of piety was taught.[9] If so, consider the second clause: AND HE HAS NOTHING BUT RESENTMENT AGAINST HIM. To whom does this refer? If to the pious man,[10] let him neither accept it nor bear resentment against him![11] But if to the one from whom he accepted it, then after having had it accepted from him, should he bear resentment? — It means thus: but as for another person,[12] even if he does not re-accept it from him, he [to whom it was given as a full coin] HAS NOTHING BUT RESENTMENT AGAINST HIM. AND ONE MAY REDEEM THE SECOND TITHE THEREWITH AND HAVE NO FEAR, BECAUSE IT IS MERE CHURLISHNESS. R. Papa said:

This proves that he who is exacting in respect to coins[13] is dubbed a churl;[14] providing, however, that they [still] circulate. This [the Mishnah] supports Hezekiah, for Hezekiah said: When he comes to exchange it, he must exchange it as its intrinsic value; if he comes to redeem therewith, he estimates it at a proper [coin].[15] What does he mean?[16] -He means this: Though when he comes to exchange it, he exchanges it at its present value,[17] yet when he redeems [second tithe] therewith, he may estimate it as a good [coin].[18] Shall we say that Hezekiah holds that the second tithe may be treated disparagingly?[19] But did not Hezekiah say: With respect to second tithe [produce] worth less than a perutah, one may declare, 'It, together with its fifth,[20] is redeemed with the first money [of redemption];'[21] because it is impossible for a person to calculate his money exactly![22] — What is meant by 'a proper [coin]'? On the basis of the proper value [of the coin], because it [the second tithe] may not be lightly treated in two respects.[23]

The [above] text stated: 'Hezekiah said: With respect to second tithe [produce] worth less than a perutah, one may declare, "It, together with its fifth, is redeemed by the first money [of redemption];" because it is impossible for a person to calculate his money exactly.' An objection is raised: For terumah and the first fruits[24] one is liable to death and [the addition of] a fifth;[25]

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(1) Quoted from the Baraitha cited supra.

(2) Which proves that it may be kept.

(3) In which case it passes the standard of overreaching long before it drops to a shekel, thus refuting R. Huna.

(4) Sc. the worn coin which may no longer be kept owing to its deficient value.

(5) Lit., 'must not make it a weight amongst his (other) weights.'

(6) When the coin is pierced in the middle, it cannot be circulated; hence this is permissible. But if it is pierced at the edge, one may file it round until the hole is gone and then use it as a coin: hence it is forbidden.

(7) Therefore even in a village one can readily find a person to value it.

(8) In the town.

(9) I.e., though he is not legally bound to take it back, yet as a measure of piety he should do so.

(10) I.e., who does not insist upon the letter of the law, but is guided by piety.

(11) v.p. 437, n. 1.

(12) One who insists upon his legal right not to take it back.

(13) Refusing to accept them even if slightly worn.

(14) Lit., 'a malevolent soul.'

(15) If one exchanges a worn sela' for perutahs, he must estimate it at its metallic, intrinsic value. If, however, he redeems second tithe produce with such coins, he gives the coins their nominal value, as though unworn.

(16) 'When he comes... intrinsic value:' but surely that is already stated in the Mishnah, that, when a coin depreciates to the extent that overreaching is involved, it may not be passed off at full value!

(17) When coming to change a sela', which has depreciated, though not to the extent involving overreaching with which the second tithe was redeemed, into perutahs in Jerusalem, he naturally receives from money-changers perutahs only for its depreciated value (cf. Tosaf.).

(18) Thus Hezekiah informs us that when the Mishnah states that the second tithe may be redeemed therewith, it means that the coin is reckoned at its full nominal value, because to be exacting in regard to coins that are slightly worn is a mark of churlishness.

(19) As above, estimating the deficient sela' at its full value, thus minimising that of the second tithe.

(20) V. p. 272, n. 9.

(21) I.e., money which has already been used in redeeming other second tithe produce.

(22) When one redeems the second tithe, he does not calculate its exact value, lest he underestimate it, and so redeems it at slightly more than its true worth. This slight excess may now be regarded as the redemption money of second tithe produce worth less than a Perutah, the smallest possible coin. This proves that in the first place it is liberally calculated, which contradicts his former statement that even deficient coins may be reckoned at their full value for this purpose.

(23) The defective coin is computed only at the proper value it possesses now, i.e., not only is full allowance made for its deficiency, but its valuation is slightly lowered even beyond that, so as to make quite certain that it does possess the value attributed to it. On this interpretation, Hezekiah asserts that we are stricter in respect to the redemption of the

second tithe than in ordinary secular transactions. And the reason is, 'because it may not be lightly treated in two respects' — for the mere fact that it may be redeemed with a defective coin, which some might refuse as a coin at all, is considered a light treatment of the second tithe; we may certainly not subject it to the further indignity, as it were, of computing the value of this coin in a liberal spirit (Rashi). The statement in the Mishnah that the second tithe can be redeemed with it means, accordingly, 'at its present intrinsic value,' for to refuse to accept it thus is a mark of churlishness.

(24) V. Num. XXVIII. 26; Deut. XXVI, 1-4.

(25) If a zar (q.v. Glos.) or an unclean priest wantonly eats them, he is liable to 'death at the hands of Heaven'; whilst If a zar eats them in ignorance of their true character, he must make restoration, adding a fifth to their value (Lev. XXII, 14). These laws were stated primarily with respect to terumah, but by Biblical exegesis they were extended to the first fruits too.

Talmud - Mas. Baba Metzia 53a

they are forbidden to zarim,[1] accounted as the priest's [personal] property,[2] are neutralised by one hundred and one [times their quantity].[3] and require washing of the hands[4] and the setting of the sun.[5] These provisions hold good of terumah and first fruits, which is not so in the case of [second] tithes.[6] Now, what is meant by 'which is not so in the case of [second] tithes?' Surely one may deduce that a tithe is neutralised by a greater quantity [than itself]:[7] but if Hezekiah's ruling is correct, it [the tithe] is an article which can become [otherwise] permitted, and whatever can become [otherwise] permitted is not neutralised even in a thousand [times its quantity]![8] — But how do you know that 'which is not so in the case of the [second] tithe' means that it is neutralised by a greater quantity [than itself]; perhaps it means that it cannot be neutralised at all?[9] — You cannot say thus, because in respect of terumah only the stringencies of terumah are taught, not its leniencies.[10] But he teaches '[they] are accounted the priest's property![11] — You cannot think so,[12] because it was distinctly taught: The second tithe is neutralized by a greater quantity [than itself]. And of which second tithe was this said? Of a tithe which is not worth a perutah[13] or which has once entered Jerusalem and gone forth again.[14] But if Hezekiah's ruling is correct, let Hezekiah's [remedy] be employed by redeeming it with the earlier money![15] — It means that he has not [yet] redeemed [any other].[16] Then let him bring the other tithe [produce] which he has and combine them?[17] — That [which is tithe] by Biblical law and that which is [so] only by Rabbinic law cannot be combined.[18] Then let him bring demai![19] — [We fear] lest he thereby bring certain [tithe].[20] Then let him bring two Perutahs, redeeming the tithe [that he brings] with a perutah and a half, and this [the intermixed tithe] with the rest?[21] — Do you think that one and a half perutah's worth of tithe consecrates[22] two perutahs? That is not so; one perutah['s worth] consecrates one Perutah, whilst the half perutah['s worth] does not consecrate [anything]; so again there is [tithe by] Biblical law[23] and [tithe by] Rabbinic law,[24] , and these two cannot be combined. Then let an issar be brought?[25] — [That is forbidden,] lest he bring perutahs [for that purpose].

'Or which has once entered Jerusalem and gone forth again.' But why so?[26] Let it be taken back again! — It refers to defiled [tithe]. Then let it be redeemed.[27] For R. Eleazar said: Whence do we know if second tithe [produce] became defiled, that it is to be redeemed

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(1) Zar (q.v.) pl. zarim. — This would appear obvious after the previous statement. Rashi observes that it is in fact unnecessary per se, but that its purpose is to mark the contrast with tithes, which, as the Mishnah proceeds to teach, is permitted to zarim. Tosaf., following J. Bik. II, explains: even half the minimum quantity, which involves no penalty of death or the addition of a fifth, is forbidden to zarim.

(2) In that he can employ them as kiddushin (q.v. Glos.) for betrothing a woman; v. infra n. 8.

(3) If a quantity of terumah or first fruits fell into hundred times as much hullin (common food) and cannot be distinguished therefrom, it is neutralised or annulled, and the whole is permitted to a zar.

(4) That is in respect of fruit. One's hands are normally said to be unclean with what is known as the second degree of uncleanliness — a low degree. This is insufficient to render the fruit of hullin or tithes unclean, and therefore these may

be eaten with unwashed hands. But a stricter purity was demanded of terumah and first fruits; consequently it was enacted that the touch of ritually unclean hands imposes upon them third degree uncleanliness; therefore the hands must be washed before partaking of them. — This impurity is only Rabbinical, and therefore the washing of the hands alone was sufficient: for Biblical uncleanliness the immersion of the whole body in a ritual bath (mikweh) was necessary.

(5) If a priest became Biblically unclean, he required Immersion (v. n. 6) and then had to wait until sunset before he might eat of terumah or the first fruits (Lev. XXII, 7).

(6) (i) The (second) tithe may be eaten by a zar — consequently, of course, no penalty is involved therein; (ii) it is not the priest's property, as explained in n. 4., but sacred property given to the priests; hence it cannot be employed as kiddushin. — This is R. Meir's view (Kid. 52b); (iii) it does not require a hundred times its own quantity for neutralisation; (iv) the fruit may be eaten with unwashed hands; (v) when one becomes Biblically unclean, he may eat thereof immediately after immersion, without waiting for sunset (v. Hal. I, 9).

(7) If a quantity of the second tithe fell into a greater quantity of hullin it is neutralised and the whole ranks as hullin, 100 times the amount being unnecessary.

(8) This is a Talmudic principle with respect to the neutralisation of an object when intermixed with permitted commodities. Though normally a certain proportion of the latter is sufficient to neutralise the former, that does not operate if the former is destined to become permitted without recourse to neutralisation. E.g., if an egg is laid on a Festival, it is forbidden on that day, but not after. Now, if this egg was mixed up with no matter how many others on the day that it was laid, it is not neutralised, and all are forbidden on that day. For since it will be permitted on the morrow in any case, the principle of neutralisation is abandoned. Now, with respect to the second tithe, which is under discussion, since, as deduced, it can be annulled by a lesser quantity than is necessary for terumah, or indeed, since it can be annulled at all, it must refer to produce that cannot be otherwise made fit. Now, the remedy for ordinary second tithe that is mixed up with hullin is either to take the whole to Jerusalem, which can be easily done, as one has to eat the rest of the second tithe there in any case, and consume it there, or redeem the quantity that was intermixed. The only case in which these remedies cannot be employed is when the second tithe was unclean, so that the whole mixture may not be eaten, and is worth less than a perutah, and so not subject to redemption. But if Hezekiah's ruling that second tithe worth less than a Perutah can be redeemed by retrospectively including it in other redeemed produce is correct, the law of neutralisation cannot operate!

(9) In contradistinction to terumah, which is neutralised by 100 times its quantity.

(10) v. p. 313, n. 8. An examination of the various points shews that the object of the Tanna is to teach wherein terumah is more stringent than the tithe, not wherein it is lighter.

(11) Which is a leniency compared with the second tithe,

(12) That the second tithe cannot be neutralised at all,

(13) V, n. 2.

(14) This is explained below.

(15) This is a repetition, with a little more explanatory detail, of the difficulty already raised.

(16) So that he has no money with which it may be retrospectively redeemed.

(17) I.e., the tithe which is intermixed and that which he brings, and then redeem both.

(18) By Biblical law the tithe is certainly neutralised by a greater quantity than itself. Consequently, when it is thus intermixed, it is tithe only by Rabbinic law, whereas what is brought now is tithe according to Biblical law, and the two cannot be combined for the purpose of joint redemption, with the result that the tithe which he brings will remain unredeemed. But the retrospective combination permitted by Hezekiah is with produce that is already redeemed: hence it does not matter that the first was tithe by Biblical law and the second, sc. the mixed produce, only by Rabbinic law.

(19) V. Glos. This too is tithe only by Rabbinic law, and could be combined with the mixed produce.

(20) If he is permitted the remedy of demai, he may think that it is just the same if he brings certain tithe.

(21) I,e., let him first bring the other produce which he has to the value of a perutah and a half and redeem it all with the two perutahs; then declare that the half perutah's worth mixed up with hullin is redeemed by the two perutahs already used, in accordance with Hezekiah's teaching. — In the whole of this discussion, every suggestion that the mixed tithe should be capable of redemption on the basis of Hezekiah's ruling is a refutation of his views.

(22) Lit., ‘seizes hold of.’

(23) Sc. this half.

(24) The mixed produce.

(25) And tithe produce to a lesser value be redeemed therewith, the excess being used for the redemption of the mixed

tithe. For though one and a half perutahs' worth cannot consecrate two perutahs, that is because they are two separate coins, hence divisible, and so one can become consecrated whilst the other remains hullin. If a single larger coin, however, is employed, the whole becomes consecrated, whilst the excess can retrospectively redeem the mixed tithe.

(26) Why may the intermixed tithe be neutralised?

(27) It being assumed that this refers even to produce worth a perutah.

Talmud - Mas. Baba Metzia 53b

even in Jerusalem?[1] From the verse, When thou art not able se'etho ['to bear it'].[2] Now, 'se'eth'[3] can only refer to eating, as it is written, And he took and sent mase'oth ['messes'] unto them from before him![4] — But this refers to [commodities] purchased with the [redemption]money of the second tithe.[5] But let that also, which is bought with the [redemption] money of the second tithe, be redeemed, for we learnt: If what was redeemed with the [redemption-]money of the second tithe became defiled, it is [itself] to be redeemed![6] — This agrees with R. Judah, who ruled: It must be buried. If so, why particularly if it has gone forth [again]: the same applies even if it has not gone forth? — But after all, this refers to undefiled [tithe]: and what is meant by 'gone forth'? That the walls [of Jerusalem] had fallen.[7] But did not Raba say: The law of the walls [of Jerusalem], in that it [the second tithe] must be eaten within them, is Biblical; but that they have retaining power[8] is merely Rabbinical: and [consequently] when would the Rabbis enact thus: only as long as the walls were standing, but not when they no longer existed [having fallen]![9] — The Rabbis drew no distinction whether the barriers were standing or not.[10]

R. Huna b. Judah said in R. Shesheth's name: A single clause is taught, [viz.,] Second tithe [produce] worth less than a perutah which has entered Jerusalem and gone forth [again].[11] But why so? Let it be taken back and eaten! — It means that the walls had fallen. Then let it be redeemed, for Raba said: The law of the walls [of Jerusalem], in that it [the second tithe] must be eaten within them, is Biblical; but that they have retaining power is merely Rabbinical; and [consequently, ought we not to say] when would the Rabbis enact thus: only as long as the walls were standing, but not when they no longer existed [having fallen]! — The Rabbis drew no distinction. If so,[12] why particularly if worth less than a perutah; even if worth a perutah, it is the same? — He [the Tanna] [implicitly] proceeds to a climax.[13] [Thus:] If it contains [a perutah's worth], it is unnecessary to state that the walls retain it.[14] But where it does not contain [a Perutah's worth], I might think that the walls do not retain it:[15] therefore we are taught [otherwise].

Our Rabbis taught: And if a man will at all redeem aught of his tithes [he shall add thereto the fifth part thereof]:[16] 'of his tithes,' but not all his tithes,[17] thus excluding second tithe [produce] worth less than a perutah.[18]

It has been stated: R. Ammi said, [This means] that [the tithe] itself is not [worth a perutah]; R. Assi maintained, Its fifth [is less than a perutah];[19] R. Johanan said, That [the tithe] itself is not [etc.]; R. Simeon b. Lakish said, Its fifth is less [etc.]. An objection is raised. For second tithe worth less than a perutah it is sufficient to declare, 'That itself and its fifth are redeemed with the first money.'[20] Now, on the view that [it does not require redemption even if] its fifth is worth less [than a perutah], it is correct; hence he [the Tanna] states 'it is sufficient,' viz., though that itself contains [the value of a perutah], yet since its fifth does not, it is well. But on the view that [the tithe] itself is worth less, what is [the appropriateness of] 'it is sufficient?'[21] This is indeed a difficulty.

The scholars propounded: Is the fifth calculated on the inner sum [sc. the principal] or on the outer [sc. the principal plus the addition]?[22] — Said Rabina: Come and hear: If the owners value it at twenty [sela's], the owners have priority, since they add a fifth. If a stranger declared, 'I accept it for twenty-one,'

(1) Where undefiled tithe cannot be redeemed.
(2) Deut. XIV, 24; The next verse says: Then thou shalt turn it into money..
(3) שאת , 'to bear'.
(4) Gen. XLIII, 34. Thus he translates the first verse: If thou art not able to eat it — being defiled — then thou shalt turn it into money — i.e., redeem it.
(5) The original second tithe having been redeemed, the money was expended in Jerusalem upon commodities, which in turn became defiled. At this stage it is assumed that only the original tithe can be redeemed if defiled, but not that purchased with the redemption money.
(6) M. Sh. III. 10.
(7) After the second tithe was taken into Jerusalem. Now, the second tithe cannot be eaten there when the walls have fallen; on the other hand, having been brought there whilst the walls were standing, it is 'retained', i.e.,it cannot be redeemed.
(8) V. previous note.
(9) Hence the barriers having fallen, let the tithe be redeemed.
(10) But enacted a general measure that the walls have retaining power.
(11) This answers the objection against Hezekiah from the cited Baraitha (q.v. supra), the reason no resort can be had to Hezekiah's device being that the tithe has been 'retained' by the barriers, when redemption is no longer possible. — The Talmud proceeds to raise the same objections against this answer as against the previous explanation.
(12) That the reason of non-redemption is the 'retaining' power of the walls of Jerusalem.
(13) Lit., 'he teaches a case of it is unnecessary to state it.'
(14) And it cannot be redeemed. For since it is of sufficient value to require redemption, the barriers sanctify it.
(15) Since it is not subject to the law of redemption.
(16) Lev. XXVII, 31.
(17) I.e., of is a limitation, implying that in certain cases there can be no redemption.
(18) Such a small quantity cannot be redeemed, and if one does declare it redeemed with a perutah, that perutah does not receive the sanctity of the second tithe to have to be expended in Jerusalem.
(19) Even if the produce is worth more than a perutah, no redemption is possible if the fifth to be added is less than a perutah.
(20) In accordance with Hezekiah's ruling, q.v. supra 52b and notes. It need not be taken to Jerusalem, nor is it necessary to combine it with other produce and redeem the whole.
(21) Since I could not think that redemption is necessary in such a case. But 'it is sufficient' implies that a concession is made when the law might have been stricter.
(22) E.g., if the principal is worth 20 zuz, must one add 4 zuz, a fifth of the principal, or 5, a fifth of the total?

Talmud - Mas. Baba Metzia 54a

the owners must give twenty-six; 'for twenty-two,' the owners must give twenty-seven; 'for twenty-three,' the owners must pay twenty-eight; 'for twenty-four,' the owners must pay twenty-nine; 'for twenty-five,' the owners must pay thirty; because a fifth is not added on this man's higher valuation.[1] This proves that the fifth is calculated on the outer sum.[2] This proves it. This is disputed by Tannaim: Then he shall add a fifth part of it thereto[3] — i.e., it [sc. the principal] plus its fifth shall amount to five:[4] this is the view of R. Josia. R. Jonathan said: 'A fifth part of it' means a fifth of the principal. The scholars propounded: Does the fifth restrain or not?[5] [Thus:] do four [zuz] redeem four [zuz's worth of second tithes], whilst a fifth is independently added,[6] so that the fifth is no bar [to the validity of the redemption]: or perhaps, four [zuz's worth] must be redeemed by five,[7] the fifth being [thus] a bar? — Said Rabina: Come and hear: demai[8] is not subject to the law of a 'fifth' or to the law of removal.[9] [This implies,] but the law of the principal does apply to it.[10] Why so?[11] [Surely because] the principal, which is indispensable for [tithe by] Biblical law, is required in the case of [tithe by] Rabbinic law; whereas the fifth, which is not a bar in [tithe by] Biblical law, is not required in the case of Rabbinic [tithe]![12] Shall we say that this is disputed by Tannaim? [It has been taught:] If one gave the principal but not the fifth: R. Eliezer ruled: It [the redeemed tithe] may be eaten [outside Jerusalem]; R. Joshua said: It may not be eaten. Said Rabbi: I approve of R.

Eliezer's view for the Sabbath, and R. Joshua's view for week-days.[13] Now, since he said 'I approve of R. Eliezer's view for the Sabbath,' it follows that their dispute applies even to week-days; and since he said, 'I approve of R. Joshua's view for week-days,' it follows that their dispute applies even to the Sabbath. Surely then, they differ in this reasoning, viz., R. Eliezer holds that the fifth is no bar, whilst R. Joshua holds that it is! — Said R. papa: That is not so. All agree that the fifth is no bar, but here they differ as to whether we fear culpable omission. One Master holds that we fear culpable omission;[14] whilst the other Master maintains that we do not fear this.

R. Johanan said: All agree in the case of hekdesh[15] that it is redeemed,[16] since the treasurers demand it in the market place.[17] Now, do they really not differ in respect to hekdesh? Surely it has been taught: If one gave the principal but did not give him [sc. the treasurer] the fifth: R. Eliezer said: He has redeemed it; whilst the Sages say: He has not redeemed it. Said Rabbi: I approve of R. Eliezer's view in respect to hekdesh,[18] and that of the Sages in respect to tithes. Now, since he said 'I approve of R. Eliezer's view In respect to hekdesh,' it follows that he himself [R. Eliezer] differs even in reference to the tithe; and since he said, 'I approve of the view of the Sages in respect to tithes,' it follows that they differ even on hekdesh! — But if it [R. Johanan's dictum] was stated, it was stated thus: R. Johanan said: All agree in respect to the Sabbath and hekdesh, that it is redeemed. Firstly, because it is written, And thou shalt call the Sabbath a delight;[19] and furthermore, since the treasurers demand it in the market place.

Rami b. Hama said: Now, it has been said that hekdesh cannot be redeemed by land, for the Divine Law ordered, Then he shall give the money, and it shall be assured to him;[20] but can its fifth be 'redeemed by' [i,e., rendered in] land? [Again,] terumah can be repaid only by hullin,[21] for the Divine Law saith, Then he shall give unto the priest the holy thing,[22] implying, that which is eligible to be holy:[23] can its fifth[24] be rendered out of what is not hullin? [Further, the second] tithe cannot be redeemed by asimon,[25] because the Divine Law said, And thou shalt bind up the money in thy hand,[26] thus including everything which has a figure:[27] can its [additional] fifth be exchanged for uncoined metal? Now, it eventually transpired[28] that it [these questions] reached Raba. Thereupon he said to them: Scripture saith, [Then he shall add the fifth part of the money of thine estimation] unto it,[29] [which is] to include its fifth as equal to itself [sc. the principal].[30]

Rabina said: We have learnt likewise: If one stole terumah but did not eat it, he must repay double the value of the terumah.[31] If he ate it,[32] he must repay two principals and a fifth, one principal and a fifth out of hullin,[33] and the other principal as the value of terumah.[34]

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(1) If a man consecrated an inherited field when the Jubilee laws were in force, the redemption was according to a fixed scale, as stated in Lev. XXVII, 16-19. If, however, he consecrated it when the Jubilee laws had fallen into desuetude, he had to value it for the purpose of redemption, whilst at the same time others too might redeem it and keep the field for themselves. Now, the owner had to add a fifth to his valuation, but not strangers. Consequently, if both he and strangers valued it equally, it was for him to redeem it, since he would add thereto. But if strangers made a higher offer, the owner had to redeem it at their assessment, adding a fifth on the basis of his own, as stated in the Mishnah quoted. In order that the price might not be unduly forced up, the Mishnah concludes that if the owner valued it at 20, whilst another valued it at 26, i.e., more than the owner's offer plus a fifth, the latter offer was accepted. Thus both the Temple treasury and the owner were safeguarded.

(2) Five on twenty.

(3) Lev. XXVII, 27.

(4) If the principal is four the total shall be five, the addition thus being a fifth of the total — an 'outer' fifth.

(5) If one redeems the second tithe without adding a fifth, does this omission restrain him from eating that produce outside Jerusalem, it being regarded as unredeemed, or not?

(6) But not as part of the actual redemption.

(7) It being a scriptural decree that the addition forms an integral part of the redemption.

(8) V. Glos.

(9) If one redeems second tithe of demai, he need not add a fifth. Again, ordinary (Biblical) tithes had (in accordance with Deut. XIV, 28ff.) to be removed from the house in the third year after the year of Release, but not demai (Dem. I, 2).
(10) I.e., unless redeemed at par it may not be eaten outside Jerusalem.
(11) Why this distinction?
(12) This proves therefore that the omission of the fifth does not invalidate redemption.
(13) On the Sabbath the redeemed tithe may be eaten, for otherwise the cheerfulness of the Sabbath might be destroyed, as one might not have anything else to eat. But on week-days it may not be eaten unless the necessary fifth has been added.
(14) If we permit eating the tithe even before the fifth has been added, one may intentionally omit his addition.
(15) V. Glos.
(16) Even before the necessary fifth is added, and it may then be eaten.
(17) There is no fear that the additional fifth will be intentionally omitted, since the treasurers enforce payment. [The treasurers are apparently not allowed to enter the premises of the donor to take a pledge; cf. Deut. XXIV, 11 (v. Strashun a. l.).]
(18) For the reason stated, cf. n. 5.
(19) Isa. LVIII, 13; v. n. 1.
(20) Actually there is no such verse. Rashi and Tosaf. here and in Pes. 35b s.v. שחילל , without pointing to the non-existence of this verse, quotes, Then he shall add the fifth part of the money of thy estimation unto it, and it shall be assured to him (Lev. XXVII, 19) as the source of this law, implying money, but not land. But in that case the obvious difficulty arises, to which Tosaf. draws attention in Pes. loc. cit., since the verse primarily refers to the fifth, how can one question whether the implication of 'money' as excluding land refers to the fifth too, besides the principal? In Bek. 51a s.v. אימא , however, Tosaf. states on the authority of the Sifra that the deduction is really based upon, and all thy estimations shall be according to the shekel of the sanctuary (v. 25), 'shekel' excluding land.
(21) If a zar (v. Glos.) eats it unwittingly, he must make restoration to the priest, and the repayment must be with money of hullin.
(22) Lev. XXII, 14.
(23) I.e., it becomes holy only when he gives it to the priest; hence he cannot repay him with what is already holy.
(24) Which had to be added to the principal: then he shall put the fifth part thereof unto it, ibid.
(25) Uncoined metal; v. supra 47b.
(26) Deut. XIV, 25.
(27) V. p. 282, n. 6. I.e., only a stamped coin can redeem, but not bullion or uncoined metal.
(28) Lit., 'The thing was rolled on.'
(29) Lev. XXVII, 19, also in every place where the addition of a fifth is mentioned; v. XXII, 14; XXVII. 31 (E.V. 'thereto').
(30) I.e., the fifth must be redeemed in the same way as the principal; hence the answer to all the questions is in the negative.
(31) The usual punishment of a thief. V. Ex. XXII, 3. As terumah, its value is less than hullin, since it can be sold only to priests, and may not be eaten if defiled.
(32) Not knowing that it was terumah.
(33) I.e., in actual produce, notwithstanding that the value of terumah is less, for since he ate it, he derived the same benefit from it as though it were hullin.
(34) I.e., money to that value. For the second principal is a fine for theft; therefore it is rendered in money, and based on the actual market value of the article stolen (Ter. VI, 4).

Talmud - Mas. Baba Metzia 54b

This proves that the fifth is as the principal.[1]

Raba said: With respect to robbery it is written, [he shall even restore it in the principal,] and shall add the fifth part more thereto;[2] and we learnt: If he restored the principal and then swore [falsely] concerning the fifth,[3] he must then add[4] a fifth upon the fifth,[5] [and so on,] until the principal is less

than a perutah's worth .[6] With respect to terumah, it is written, And if a man eat of the holy thing unwittingly, then he shall add the fifth part thereof unto it.[7] And we learnt: If one eats terumah unwittingly, he must restore the principal and a fifth; whether he eats, drinks or anoints [therewith]; whether it was undefiled or defiled terumah, he must pay a fifth and a fifth of the fifth.[8] With respect to [the second] tithe it is neither written[9] nor taught,[10] nor do we regard it at all as a problem.[11] With respect to hekdesh it is written, And if he that sanctified it will redeem his house, then he shall add the fifth part of the money of thy estimation unto it.[12] And we learnt: He who redeems his hekdesh adds a fifth.[13] Now, only a fifth was thus taught, but not a fifth of the fifth.[14] What then [is the law]? [The problem arises for this reason:] With respect to terumah it is written, and he shall add [we-yasaf];[15] then with respect to hekdesh too it is likewise written, and he shall add [weyasaf]:[16] or perhaps, with respect to terumah it is written he shall add [we-yasaf], and if you remove the waw from we-yasaf and add it to hamishito [the fifth part thereof] it becomes hamishithaw [the fifth parts thereof];[17] whereas in respect to hekdesh is written, and he shall add the fifth part [we-yasaf hamishith], and even if you remove the waw from we-yasaf and add it to hamishith, after all it only becomes hamishitho.[18] But cannot this [sc. the answer to the problem] be deduced from the fact that it [the fifth] is a second hekdesh, and R. Joshua b. Levi said: A fifth is added to first [i.e., original] hekdesh [in redemption], but not to second hekdesh.[19] — Said R. papa to Rabina: Thus did Raba say: The fifth ranks as original hekdesh.[20]

What is our decision in the matter? — R. Tabyomi said in Abaye's name: Scripture saith, Then he shall add the fifth part of the money of thy estimation [unto it]: thus its fifth is assimilated to its assessed value:[21] just as a fifth is added to the assessed value, so is a fifth added to the fifth of its value.[22]

The [above] text states: 'R. Joshua b. Levi said: A fifth is added to first [i.e., original] hekdesh [in redemption], but not to second hekdesh' Said Raba: What is R. Joshua b. Levi's reason? — Scripture says, And if he that sanctified it will redeem his house, [then he shall add the fifth part]: implying, only he who sanctified, but not he who transferred [its sanctity].[23]

A tanna recited before R. Eleazar: And if it be of the unclean beast,[24] then he shall redeem it according to thine estimation [, and shall add a fifth part of it thereto]:[25] just as an unclean beast is distinguished in that it is the original dedication,[26] belongs entirely to Heaven,[27] and it involves trespass;[28] so everything which is original hekdesh and belongs entirely to Heaven involves one in trespass. Thereupon R. Eleazar observed to the tanna: As for [the stipulation] that it must belong entirely to Heaven, it is well: that excludes sacrifices of secondary sanctity;[29] since its owners enjoy part thereof,[30] they involve no trespass offering. But what is 'original dedication' intended to exclude? [Do you mean that] only original hekdesh involves a trespass offering, but not final hekdesh![31] perhaps you said it in reference to the fifth, and in agreement with R. Joshua b. Levi?[32] — Even so, he replied, that is what I meant.

R. Ashi said to Rabina: Is an unclean animal capable only of original hekdesh,

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(1) Lit., 'as itself.' — It follows from the fact that the fifth has to be paid in produce, just as the principal.

(2) Lev. V, 24. This fifth is payable if the culprit first denied the robbery and swore falsely, and then repented. The Heb. for 'the fifth part' is וחמישיתיו , which is plural in form, lit., 'and its fifth parts'. This justifies the ruling that the fifth itself becomes the principal and a fifth is payable upon that — i.e., there may be many fifth parts.

(3) Regretting his repentance before giving the fifth, he falsely swore that he had already paid it.

(4) If he repents again.

(5) I.e., the fifth is regarded as a new principal, and he is liable to a fifth of that on account of his false oath.

(6) 'The principal' refers to the fifth in respect of which he took a false oath (v. B.K. 103a).

(7) Ibid. XXII, 14. Here the Heb. reads חמישתו , sing.; nevertheless it is shewn further on that there is a Biblical allusion that there may be many fifths, as in the case of robbery.

(8) This fifth becomes the same as the original terumah, and if he ate it, he must restore that fifth and a fifth thereof, just as in the case of robbery (Ter. VI, 4).

(9) There is no allusion to the payment of many fifths.

(10) To that effect, e.g., if one redeems the second tithe, duly adding a fifth, and then wishes to redeem that fifth with other coins, it was not taught that he must add a fifth thereof.

(11) I.e., another fifth need certainly not be added, since there is not the slightest indication in the Bible to that effect.

(12) Lev. XXVII, 15.

(13) Infra 55b.

(14) I.e., it is not stated that if he wishes to redeem that fifth, which is now consecrated, that he must add a fifth thereof unto it.

(15) The and (we-) is interpreted as an extending particle, and therefore teaches that this fifth may be added more than once, i.e., on repeated redemption a fifth of the added fifth is required.

(16) Hence hekdesh too may require many fifths.

(17) On the plural form v. 322, nn. 5' 10. It is one of the principles of exegesis that a letter may be taken from one word and added to another, and interpreted in the transposed form. Such removal and addition is permissible only at the beginning or end of a word, hut not in the middle; so here יסף חמישיתיו (חמישיתיו)ין ויסף חמישיתו

(18) I.e., sing., יסף חמישיתו ין ויסף חמישית thus giving no hint that a second fifth may be required. Though the insertion of the waw in the middle of the word would turn it into plural viz., חמישיות 'fifths', such insertion is not permissible, as stated on previous note.

(19) This fifth is not the object originally dedicated, but a substitute for it through redemption, the second hekdesh. According to R. Joshua b. Levi's dictum, which is deduced from Scripture further on, hence authentic, no addition is necessary when redeeming the substitute; so that even if he redeemed the principal with which the original hekdesh had been redeemed, no fifth thereof would be necessary: surely then no fifth of the fifth is required!

(20) And not as a substitute at all. Thus: the original is redeemed at par, and that principal ranks as a substitute. The added fifth, however, is not a substitute, but in the nature of money now consecrated for the first time in obedience to the Scriptural law that when one redeems hekdesh he must consecrate something (viz., a fifth) in addition. Hence, though no fifth is added when the principal is redeemed, it may be necessary for the fifth.

(21) Lit., 'the money of his estimation'.

(22) In point of fact the analogy appears defective, since a fifth is not added when the assessed value is itself redeemed, as has just been stated. But the argument is somewhat like this: the fifth is regarded in exactly the same light as the principal assessment: just as when the principal assessment is made, a fifth is to be added, so is a fifth of the fifth to be added likewise, and that is possible only in another redemption (Strashun, a. l.)

(23) Lit., 'who caused to seize,' i.e., who by means of redemption transferred sanctity from one object to another. The deduction is that a fifth is to be added only in the case of that which was sanctified itself, but not for that which received its sanctity through redemption.

(24) I.e., if an unclean animal was consecrated. The E.V. is 'and if it be of an unclean beast,' the def. art. being understood generically. But as the Talmud bases a particular conclusion upon it (55a), the literal translation has been given here.

(25) Ibid. 27.

(26) Its sanctity was not received through transference from another animal. The Talmud objects further on that it is possible for an unclean beast to possess transferred sanctity.

(27) I.e., its value goes entirely to the Temple, and nothing to the owner. But a clean animal is sacrificed, and the owner enjoys a portion thereof.

(28) It is now assumed that this means that if one makes use of it he must bring a trespass offering, just as for benefiting from any other form of hekdesh.

(29) קדשים קלים Sacrifices are divided into two grades of sanctity, the higher, which includes the burnt offering and sin offering, and the secondary or lower, e.g., the peace offering and thanks offering.

(30) The fat of these lower grade sacrifices was burnt on the altar, the breast and shoulder were the priests portions, and the rest was consumed by the owner.

(31) For the term 'final hekdesh' v.n.5. Surely 'final hekdesh' too involves trespass!

(32) By 'trespass', not the trespass offering for making use of hekdesh is meant, but the fifth which must be added on redemption, the fifth being called 'trespass' because there too (sc. when hekdesh is secularly used) a fifth must be added,

as stated above, Lev. XXII, 14; thus he asked the Tanna whether he meant that no fifth was to be added in redeeming substitute hekdesh.

Talmud - Mas. Baba Metzia 55a

but not of intermediary hekdesh![1] — He replied, Because it is incapable of final hekdesh.[2] But R. Aha of Difti objected to Rabina: Yet it is capable of 'intermediary hekdesh:' then let a fifth be added too![3] — He replied: It is as final hekdesh: just as a fifth is not added for final hekdesh,[4] so for intermediary hekdesh no fifth is added. R. Zutra, son of R. Mari, said to Rabina: On what grounds[5] do you liken it to final hekdesh? Liken it [rather] to original hekdesh! — He replied: It is logical to liken it to final hekdesh, since thereby transferred [sanctity is deduced] from transferred [sanctity]. On the contrary, it should rather be compared with original hekdesh, [deducing] that which may be followed by sanctity from that which may be followed by sanctity![6] — It is as Raba said, [viz.,] [And the fire upon the altar shall be burning in it; it shall not be put out: and the priest shall burn wood on it every morning, and lay] the burnt offering [in order upon it; and he shall burn thereon the fat of the peace offering][7] implies 'the first burnt offering;[8] so here too, [and if it be of] the unclean [beast] denotes the first uncleanliness [to which it may be subject].[9]

It has been taught in accordance with R. Joshua b. Levi: [If one declared,] 'This cow is a substitute for this cow of hekdesh';[10] 'this garment be instead of this other garment of hekdesh', his consecrated object is redeemed, whilst hekdesh has the upper hand.[11] [Even if he declares,] 'This cow, which is worth five sela's be a substitute for this other cow of hekdesh', or 'this garment, worth five sela's, be instead of this other garment of hekdesh', his consecrated object is redeemed.[12] For the first hekdesh he must add a fifth, but not for the second.[13]

MISHNAH. OVERREACHING IS CONSTITUTED BY FOUR SILVER [MA'AHS].[14] THE [MINIMUM] CLAIM IS TWO SILVER [MA'AHS],[15] AND ADMISSION IS [AT LEAST] THE VALUE OF A PERUTAH.'[16] A PERUTAH WAS SPECIFIED IN FIVE INSTANCES: [i] ADMISSION MUST BE [AT LEAST] THE EQUIVALENT OF A PERUTAH; [ii] A WOMAN IS BETROTHED BY THE VALUE OF A PERUTAH;[17] [iii] HE WHO BENEFITS FROM HEKDESH TO THE VALUE OF A PERUTAH IS LIABLE TO A TRESPASS OFFERING; [iv] HE WHO FINDS [AN ARTICLE] WORTH A PERUTAH IS BOUND TO PROCLAIM IT, AND [v] HE WHO ROBS HIS NEIGHBOUR OF THE VALUE OF A PERUTAH AND SWEARS [FALSELY] TO HIM [CONCERNING IT],[18] MUST FOLLOW HIM TO RETURN IT[19] EVEN AS FAR AS MEDIA.[20]

GEMARA. But we have already learnt it once: fraud is constituted by [an overcharge of] four silver [ma'ahs] in twenty four, which is a sela', [hence] a sixth of the purchase![21] — He [the Tanna] desires [to state], THE [MINIMUM] CLAIM IS TWO SILVER [MA'AHs], AND ADMISSION IS [AT LEAST] THE VALUE OF A PERUTAH.[22] But that too we have [already] learnt: The judicial oath is [imposed] for a claim of two silver [ma'ahs] and an admission of a perutah! — The last clause is necessary, viz., A PERUTAH IS SPECIFIED IN FIVE INSTANCES.

A PERUTAH IS SPECIFIED IN FIVE INSTANCES etc. But let him [the Tanna] teach also, [The minimum] overreaching is a perutah![23] — Said R. Kahana: This proves that the law of overreaching does not apply to perutahs.[24] But Levi maintained: The law of overreaching does apply to perutahs. And thus did Levi read in his Baraitha [collection]:[25] A perutah was specified in five instances: [i] [Minimum] overreaching is a perutah; [ii] Admission is a perutah; [iii] The kiddushin of a woman is with a perutah; [iv] Robbery [imposes its obligations] on account of a perutah; and [v] The court session is on account of a perutah.[26] Now, why does our Tanna not include the court session? — He includes it under robbery.[27] Yet does he not teach both robbery and loss?[28] — Those are [both] necessary. 'Robbery', [to teach that] HE WHO ROBS HIS NEIGHBOUR OF THE VALUE OF A

PERUTAH AND SWEARS [FALSELY] TO HIM [CONCERNING IT], MUST FOLLOW HIM TO RETURN IT EVEN AS FAR AS MEDIA 'A loss:' [thus] HE WHO FINDS [AN ARTICLE] WORTH A PERUTAH IS BOUND TO PROCLAIM IT, even if it depreciated [after being found].[29] Now, why does Levi not teach that a loss [in the sense of the Mishnah] is [at least] a perutah? — He teaches robbery. But does he not teach both robbery and the court session?[30] — He needs [to teach that] in order to reject the view of R. Kattina, who said, The court sits[31] even for less than a perutah's worth. Now, why does Levi omit hekdesh? — He deals with hullin, not sacred objects. Then since our Tanna does treat of sacred objects, let him teach, The [minimum of second] tithe [to be eligible for redemption] is a perutah.[32] — [The omission is] in accordance with the view that if its fifth is less than a perutah [it cannot be redeemed]. Then let him state, The [added] fifth of the [second] tithe must be [not less than] a perutah. — He treats of principals, not fifths.[33]

The [above text] states: 'R. Kattina said: The court sits even for less than a perutah's worth.' Raba objected: And he shall make amends for the harm that he hath done in the holy thing:[34]

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(1) Three categories are distinguished: (i) original hekdesh, i.e., that which is itself consecrated in the first place, though it cannot be directly employed in the temple; (ii) intermediary hekdesh, viz., that which is consecrated instead of another, which required redemption — referred to above as 'transferred hekdesh;' (iii) 'final hekdesh,' that which is itself finally used as hekdesh, e.g., a clean beast, which is sacrificed, or a wood beam, which, if dedicated to Temple use, may be directly built into the Temple or similarly employed. — Now, R. Ashi observes that an unclean animal is capable of this intermediary or transferred sanctity, viz., if it is substituted for another. Another two expressions are used in this discussion, viz., 'first hekdesh' and 'second hekdesh.' 'First hekdesh' would appear to be synonymous with 'original hekdesh;' 'second hekdesh,' like 'intermediary hekdesh,' refers to transferred sanctity, but whereas the latter term is used in contrast to 'final hekdesh' to denote that which cannot itself be finally employed as hekdesh, 'second hekdesh' refers to that which can be finally used so.

(2) It cannot be used itself as hekdesh, not being eligible for the altar, nor can it be built into the Temple.

(3) If this unclean animal is redeemed as intermediary hekdesh.

(4) Since there is no fifth for final hekdesh, in accordance with the teaching reported by the tanna, apart from the fact that there can be no room for the addition of a fifth, since it is finally disposed of as hekdesh and not redeemed.

(5) Lit., 'what do you see?'

(6) 'Original' and 'intermediary' hekdesh, (v. p, 325, n. 5), can be redeemed and thus 'followed' by the sanctity of the article wherewith it is redeemed. But this of course cannot apply to 'final' hekdesh.

(7) Lev. VI, 5.

(8) The definite article points to some particular sacrifice, and Raba observes that it denotes that the first, i.e., the burnt offering, must be the first thing to ascend the altar every day, and nothing else may take precedence over it. Tosaf. offers some other explanations.

(9) I.e., that it applies to original hekdesh only.

(10) [E.g., where the originally consecrated cow was dedicated for temple repairs, no redemption being possible in the case of a clean animal dedicated as an offering; cf. Lev. XXVI, 10; v. Tosaf.]

(11) If hekdesh is redeemed by an object of far less value than itself, the redemption is valid and the consecrated article loses its sanctity; nevertheless, the treasurers collect its full value. On the other hand, if the object substituted is worth more, there is no refund. So here too, if the second cow or garment is worth less than the original, the deficiency must be made good, whilst if it exceeds it, hekdesh gains. This is the meaning of 'hekdesh has the upper hand.' — In this clause, no actual value is ascribed to the substitute.

(12) Though he ascribes a certain value to the substitute, which it lacks. I might have thought that his declaration is therefore invalid, since it contains a misstatement. We are therefore taught otherwise.

(13) Should he desire to redeem the substitute, which is now sanctified in its turn, no addition is required. This agrees with R. Joshua b. Levi.

(14) In a purchase worth a sela', i.e., a sixth, v. p. 295, n. 10.

(15) This is the smallest claim which can involve the imposition of an oath.

(16) As stated supra 3a, no oath is required by Biblical law unless part of one's claim is admitted. This admission must be for at least a perutah or its equivalent.

(17) The smallest sum of money or its equivalent whereby a woman can be betrothed is a perutah.
(18) Denying the theft.
(19) Lit., 'must carry it after him.'
(20) If he repents, he does not obtain forgiveness unless he returns it to him personally, and he must go even so far.
(21) Supra 49b.
(22) V. p. 327, n. 5.
(23) That if the overreaching is less there is neither compensation nor cancellation of the sale.
(24) Which are copper coins. I.e., the minimum sum to which it applies is an issar, which is a silver coin.
(25) [Levi had a compilation of Baraithas similar to that of R. Hiyya and R. Hoshaia, v. B.B. (Sonc. ed.) p. 216, n. 5.]
(26) If liability is admitted or proved by witnesses, yet payment is refused, a court session orders measures of compulsion against the recalcitrant debtor. The smallest sum to be involved for this step to be taken is a perutah.
(27) For the same principle operates in both.
(28) HE WHO FINDS AN ARTICLE WORTH A PERUTAH IS BOUND TO PROCLAIM IT. The principles here too are identical, viz., that perutah is 'money', to the return of which the owner has a right, even if it involves considerable trouble. (9)Thus apart from the fact that the minimum which constitutes robbery is perutah, we are further informed that even such a small sum must be returned to the robbed man personally, though the expenses of such return far exceed the actual sum involved.
(29) So that by the time it is announced it is not worth a perutah; yet the announcement must be made.
(30) And in both these cases too the same principle is at stake.
(31) Lit., 'meets'.
(32) But a lesser quantity must be consumed in Jerusalem.
(33) In all cases stated in the Mishnah the principal itself must be not less than a perutah.
(34) Lev. V, 16.

Talmud - Mas. Baba Metzia 55b

this ['and'] extends the law of restoration even to less than a perutah's worth. Thus, it applies to hekdesh, but not to hullin![1] — But if stated, it was stated thus: R. Kattina said, if the court met for [a claim of] the equivalent of a perutah, they conclude [the hearing] even for less,[2] [because] at the beginning of a trial a perutah must be involved, but at the end a [claim of a] perutah is unnecessary.

MISHNAH. [THE ADDITION OF] A FIFTH [TO THE PRINCIPAL] IS PRESCRIBED IN FIVE CASES: [i] ONE WHO EATS TERUMAH, THE TERUMAH OF THE TITHE,[3] THE TERUMAH OF THE TITHE OF DEMAI, HALLAH,[4] AND THE FIRST FRUITS,[5] MUST ADD A FIFTH;[6] [ii] HE WHO REDEEMS THE FOURTH YEAR PLANTING[7] AND HIS OWN SECOND TITHE[8] ADDS A FIFTH; [iii] HE WHO REDEEMS HIS SACRED OBJECTS[9] ADDS A FIFTH; [iv] HE WHO BENEFITS FROM HEKDESH TO THE VALUE OF A PERUTAH ADDS A FIFTH;[10] AND [V] HE WHO ROBS HIS NEIGHBOUR OF A PERUTAH'S WORTH AND SWEARS [FALSELY] TO HIM [CONCERNING IT] MUST ADD A FIFTH.

GEMARA. Raba said: The terumah of the tithe of demai presented a difficulty to R. Eleazar: Did then the Sages set up protective measures for their enactments as for those of the Torah?[11] — Said R. Nahman in Samuel's name: The author of this [Mishnah] is R. Meir, who maintained: The Sages did set up protective measures for their enactments as for those of the Torah. For it has been taught: If one brought a divorce from countries overseas and delivered it to her [the wife] without declaring, 'It was written in my presence and signed in my presence,' he [her next husband] must divorce her [too], and their offspring is a bastard: this is R. Meir's view. But the Sages Say: Their offspring is not a bastard. What then shall he [the messenger] do? He must take it [the divorce] back from her, give it to her again in the presence of two witnesses and declare, 'It was written in my presence and signed in presence.'[12] But according to R. Meir, [merely] because he did not declare to her, 'It was written in my presence and signed in my presence,' he must divorce her, and the child is a bastard! — Even so: R. Meir is consistent with his view. For R. Hamnuna said on 'Ulla's authority: R. Meir used to

say, Whenever one departs from the fixed procedure ordained by the Sages[13] in case of divorce, he [her next husband] must give a divorce, whilst the offspring is a bastard.

R. Shesheth objected: It [sc. the second tithe demai] is redeemed [by exchanging] silver for silver, copper for copper, silver for copper and copper for produce;[14] then he may redeem the produce: this is R. Meir's opinion. But the Sages say: He must carry the produce to Jerusalem and eat it there.[15] Now, is it permissible to redeem silver with copper?[16] Surely we learnt: If a sela' of the second tithe was intermixed with one of hullin,[17] he brings a sela''s worth of copper coins and declares: 'Wherever the sela' of the second tithe may be, it is redeemed with these coins.' Then he selects the best of them[18] and redeems them [the copper coins] therewith;[19]

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(1) I.e., no legal compulsion can be exerted to effect the restoration of something worth less than a perutah in the case of hullin; this follows from the fact that the Baraitha deduces the necessity of such restoration only in the case of sacred objects.

(2) If the claim of the plaintiff was reduced in the course of the trial.

(3) V. p. 293, n. 8.

(4) V. Glos.

(5) Which was to be given to the priest.

(6) If he eats any of these in ignorance of their true nature. These count as one, 'terumah' being a generic designation for all.

(7) When trees were planted, their fruit was forbidden during the first three years. The produce of the fourth was permitted, but on the same terms as the second tithe, viz., it either had to be taken to Jerusalem for consumption or redeemed without Jerusalem and the money expended there; v. Lev. XIX, 24ff.

(8) On 'his own' v. supra, p. 272 n. 9.

(9) Here too 'his' is emphatic.

(10) Lev. V, 16.

(11) By ruling that one who eats the terumah of the tithe of demai must make restitution and add a fifth, though the law of demai is altogether only Rabbinical.

(12) It was a Rabbinic law that when a divorce was brought from overseas the messenger had to make this declaration, though by Biblical law this is unnecessary. We see from the above that in R. Meir's opinion the Sages enacted their laws with such stringency that if this formality was omitted the divorcee's subsequent marriage is null, even to the extent that the offspring is a bastard, as the child of a married woman who conceived in adultery.

(13) Lit., 'from the coin struck by the Sages.'

(14) In each case the former of the pair is redeemed by the latter. Hence the last clause means that in the case of demai copper coins may be redeemed outside Jerusalem by substituting produce (not of the second tithe) for them, which produce in turn becomes sanctified.

(15) Dem. II, 6. The translation follows Tosaf. R. Meir permits the produce to be redeemed, though that itself was formerly employed for redeeming the money; whilst the Sages maintain that in these circumstances the produce itself must be taken to Jerusalem. Hence R. Meir is more lenient here in respect to demai than the Sages, which contradicts Samuel's assertion above that in this R. Meir is particularly stringent (more so than the Rabbis).

(16) According to Tosaf., this is adduced to shew further that R. Meir is more lenient than the Sages. In Rashi's view, however, this is part of the reasoning leading up to R. Shesheth's objection.

(17) And the owner wishes to spend the hullin money outside of Jerusalem.

(18) I.e., the best sela' of the two; these are now both hullin.

(19) With the finer sela' which now becomes second tithe.

Talmud - Mas. Baba Metzia 56a

because It was said, It [sc. the second tithe] may be redeemed [by substituting] copper for silver in case of emergency; not, however, that it should remain so, but that it should itself be redeemed in turn with silver.[1] Thus it is nevertheless stated that it [silver] may be exchanged in case of emergency, proving that only in an emergency is it done, but not otherwise![2] — R. Joseph replied:

Though R. Meir is more lenient in regard to its redemption, he is stricter in regard to the eating thereof.[3] For it has been taught: Only the wholesaler was permitted to sell demai,[4] but a private individual must tithe it in all cases:[5] this is R. Meir's view. But the Sages say: Both a wholesaler and a private individual may sell or send [produce] to his neighbour or give it to him as a gift without fear.[6] Rabina raised an objection: If one buys [loaves] from a baker,[7] he may tithe from the freshly baked for the stale, and vice versa, and even if they are of many moulds:[8] this is R. Meir's view.[9] Now, as for [giving tithe] from the stale [loaves] for the freshly baked, that is well, being in accordance with R. Elai. For R. Elai said: Whence do we know that if one separates [terumah] from inferior for better [produce] the terumah is terumah?[10] — Because it is written. And ye shall bear no sin by reason of it, when ye have heaved from it the best of it.[11] Now, if it is not sanctified,[12] why should one bear sin? Hence it follows that if one separates [terumah] from inferior [produce] for better, the terumah is terumah. But [when you say,] even if they are of many moulds, let us fear lest he come to separate from what is liable for what is [now] exempt,[13] and vice versa![14] — Said Abaye: R. Eleazar was right in his objection,[15] but Samuel did not answer it correctly. For R. Eleazar's difficulty referred to [a law involving] death at the hands of Heaven; whilst Samuel answered him [from a case involving] death by the Court: the latter may be different, since it is severer.[16] Again, R. Shesheth's refutation was not well grounded, for he [Samuel] referred to a law involving death, whilst R. Shesheth raised an objection from what is merely a negative injunction, for it is written, Thou mayest not eat within thy gates [the tithe of thy corn etc.].[17] Yet the objection R. Shesheth does raise is well answered by R. Joseph. But as for Rabina, instead of raising an objection from a baker, let him support him from the case of a wholesale bread merchant. For we learnt: If one buys [bread] from a breadseller,[18] he must give tithes on [the loaves of] each mould separately: this is R. Meir's view.[19] What then must you answer?[20] A breadseller buys from two or three. Hence in the case of a baker too, [you must say that] he buys from one man [only].[21] Raba said: Samuel answered well: The designation of death exists.[22] MISHNAH. THE FOLLOWING ARE NOT SUBJECT TO [THE LAW OF] OVERREACHING: [THE PURCHASE OF] SLAVES, BILLS,[23] REAL ESTATE AND SACRED OBJECTS.[24] THERE IS NEITHER DOUBLE REPAYMENT NOR FOURFOLD AND FIVEFOLD REPAYMENT IN THEIR CASE.[25] A GRATUITOUS BAILEE DOES NOT SWEAR [ON THEIR ACCOUNT], NOR DOES A PAID BAILEE[26] MAKE IT GOOD.[27] R. SIMEON SAID:

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(1) M.Sh. II, 6. This states the reason of this cumbersome procedure. For one might have thought a much simpler procedure possible, viz., one of the sela's could be taken and the following declaration made: 'If this is the second tithe sela', it is well; but if not, let this redeem the other.' — Therefore the Mishnah states that even the substitution of copper coin for silver was permitted only in an emergency, but silver can in no circumstance be used for redeeming other silver, since it cannot be regarded as substitution when both are of the same metal. Nevertheless, it was not desirable that the second tithe should remain in the form of copper, because it was liable to corrosion, and moreover, silver was a more dignified and worthier form of exchange than copper. Therefore the copper coins had to be redeemed in turn with the best of the two sela's.

(2) Whereas in the case of demai it was stated on R. Meir's authority that even silver may be freely employed in redeeming silver and copper may redeem silver even without any emergency, thus proving that demai is treated more leniently than certain tithe. This contradicts R. Meir's previous statement that demai was enacted with the same stringency as certain tithe. Though, of course, a Mishnah cannot be employed to prove R. Meir wrong, since R. Meir, as a Tanna, could disagree, the point here is that this Mishnah is anonymous, and it is a Talmudic principle (Sanh. 86a) that an anonymous Mishnah agrees with R. Meir. — Rashi. For Tosaf.'s interpretation, which differs considerably from this, v. p. 331, nn. 2, 3.

(3) Either he is stricter than the Rabbis (Tosaf.); or he is as strict in regard to demai as in respect of certain tithe. — Our Mishnah treats of the eating thereof.

(4) Without first tithing it, for since it is known that a wholesaler buys from many people, including those who are lax in tithing, no person who is particular will eat of what the wholesaler sells without first tithing it. But a retailer must tithe demai before he sells it.

(5) If a private individual buys produce from an ignorant person, who is suspected of neglecting to tithe, and then resells, he must first tithe it, whether he sells large quantities, like a wholesaler, or small, like a retailer, because it will be

assumed that he has in fact tithed it.
(6) I.e., in large measure, because it is a general presumption that whenever corn is sold or given in large quantities it has not been tithed; therefore we have no fear that the recipient will omit to tithe it. This dispute shews that in respect to the actual tithing, i.e., the eating of demai, R. Meir is more stringent than the Rabbis.
(7) The baker referred to is an ‘am-ha-aretz (q.v. Glos.) suspected of omitting the necessary tithes.
(8) It is a principle that one may separate tithe from one lot of commodities for another, but only when both are liable. Now, as the bread is of different moulds, it might be suggested that the baker bought the wheat from which he made his bread from different merchants, some of whom may have tithed their wheat whilst others had not, and it is forbidden to separate tithe from bread (or corn) already tithed for untithed produce. Nevertheless, since the tithe of demai is Rabbinical only, we assume that the baker had purchased all his wheat from the same merchant, and therefore they had been either all tithed or all untithed.
(9) Dem. v, 3.
(10) I.e., that the separation is valid.
(11) Num. XVIII, 32. This implies that one bears sin if he does not heave — i.e., separate — terumah from the best.
(12) When one separates terumah from inferior grain.
(13) Having been tithed already.
(14) V. note 2. Since this fear is not entertained, it follows that even R. Meir did not hold that the law of demai was enacted with the same stringency as Biblical tithes.
(15) v. supra 53b, the beginning of the Gemara immediately after the Mishnah.
(16) R. Eleazar objected to the law of the Mishnah that a fifth must be added in making restoration for the terumah of the tithe of demai, just as though it were Biblical. Now, even Biblical terumah is forbidden to a zar only on pain of death at the hand of Heaven, yet Samuel in his answer draws an analogy with divorce; but adultery, which ensues if an invalid divorce is pronounced valid, is punishable by death imposed by court; hence it is natural that every Rabbinical enactment in reference to divorce should have been given the same strictness as a Biblical requirement. But the same does not necessarily follow in the case of terumah.
(17) Deut. XII, 17. This is interpreted as referring to improperly redeemed tithes, such as with coins that may not be employed for the purpose, as appears in the discussion above. Now, whereas Samuel's assertion that the Rabbis enacted protective measures for their own enactments referred to a zar's eating the terumah of the tithe of demai, which, as already stated, involves death at the hands of Heaven, R. Shesheth objected to it on the grounds that in the case of redemption this is not so. But improper redemption is forbidden only by a negative injunction; therefore it is natural that a Rabbinical enactment in reference thereto should not be as strict as one In reference to the former law.
(18) Dem. v, 4. An am-ha-aretz (v. p. 333, n. 1), who buys bread from various bakers, which he in turn retails.
(19) Thus proving that R. Meir does fear lest one tithe from what is exempt for what is liable, though the law of demai is only Rabbinical, in agreement with Samuel's answer that Rabbinical measures, in R. Meir's opinion, were enacted with the same strictness as Biblical.
(20) Why does R. Meir draw a distinction between a baker and a breadseller?
(21) The use of ‘too’ is thus meant; just as one is bound to find a reason for his ruling on a breadseller, so can one also reconcile his ruling on a baker.
(22) Lit., ‘is in the world.’ I.e., in both cases there is a death penalty, and the fact that one is at the hand of Heaven only whilst the other is imposed by court does not vitiate the argument.
(23) Bills of debt which are purchased at a reduced price, the purchaser then collecting the debts for himself.
(24) Which the Temple treasurer sells on behalf of the Treasury; or when a private individual sells an animal dedicated as a sacrifice but rendered unfit by a blemish.
(25) The penalties in case of theft, cf. Ex. XXII, 3; XXI, 37. These penalties did not apply if the stolen property was hekdesh.
(26) Lit., ‘one who receives payment.
(27) In ordinary cases, if a bailment is stolen, the bailee, if gratuitous, swears that it was stolen through no negligence of his own, and is free from further responsibility; whilst a paid bailee is liable for theft. This however, is not so in the case of hekdesh.

Talmud - Mas. Baba Metzia 56b

SACRIFICES[1] FOR WHICH ONE [THE OWNER] BEARS RESPONSIBILITY ARE SUBJECT TO [THE LAW OF] OVERREACHING; THOSE FOR WHICH ONE BEARS NO RESPONSIBILITY ARE NOT SUBJECT THERETO.[2] R. JUDAH SAID: ALSO WHEN ONE SELLS A SCROLL OF THE TORAH, AN ANIMAL, OR A PEARL, THERE IS NO LAW OF OVERREACHING. THEREUPON THEY [SC. THE SAGES] SAID TO HIM: IT [THE LAW OF OVERREACHING] WAS ENACTED ONLY IN REFERENCE TO THESE.[3]

GEMARA. How do we know this? — For our Rabbis taught: And if thou sell a sale unto thy neighbour, or acquirest aught of thy neighbor's hand[4] — this applies to that which is 'acquired' [by being passed] from hand to hand, thus excluding land, which is not movable;[5] slaves, which are assimilated to landed estates;[6] and bills, for it is written, 'And if thou sell a sale,' implying, that which is intrinsically sold and intrinsically bought, excluding bills which are not intrinsically sold or bought, and exist only as evidence.[7] Hence it was said: If one sells his bills to a perfume dealer[8] they are subject to the law of overreaching. But surely that is obvious! — It is to reject R. Kahana's view, that overreaching does not apply to [a purchase involving only] perutahs; therefore we are taught that overreaching does apply to perutahs.[9]

SACRED OBJECTS-Scripture saith, One man shall not defraud his brother:[10] his brother, but not hekdesh.

Rabbah b. Mammel objected: Wherever 'his hand' is written, is it then literal! If so, when it is stated, And he took all his land out of his hand,[11] does that too mean that he held all his land in his hand! But it must mean, out of his possession, so here too, it means out of his possession! — Then wherever 'his hand' is written, is it not literal? But it has been taught: If the theft be certainly found in his hand [. . . he shall restore double].[12] From this I know [the law] only [if it is found] in his hand: whence do I know it of his roof, courtyard, or enclosure? From the phrase, If it certainly be found, implying in all circumstances. Hence this is only because the Divine Law wrote, 'If it certainly be found;' but otherwise I would have said that wherever 'his hand' is written, 'hand' is meant literally. Again, it has been taught: [Then let him write her a bill of divorcement] and he shall give it in her hand.[13] Thus I know only [that he can place it in] her hand; whence do I know it of her roof, court, or enclosure? Because it is written, and he shall give it, implying, in any manner.[14] Hence this is only because Scripture wrote 'and he shall give it'; but otherwise I would have said that wherever Scripture writes 'hand' it is meant literally! — But [in truth] 'his hand' is always meant literally; there, however,[15] it is different, because it cannot possibly be translated thus, but [must mean] 'his possession.'[16]

R. Zera propounded: Does the law of overreaching apply to hiring or not? The Divine Law said, '[and if thou sell] a sale', implying but not hire; or perhaps there is no difference? — Said Abaye: is it then written, a permanent sale? An undefined 'sale' is stated, and this too[17] for its day is a sale.[18]

Raba propounded: [What of] wheat which was sown in the soil:[19] does the law of overreaching apply thereto or not? Is it just as though he had placed it in a pitcher, hence subject to the law of overreaching: or perhaps he has assimilated it[20] to the soil?[21] [But] what are the circumstances? Shall we say that he declared, 'I cast six [measures] therein'; and then witnesses came and testified that he sowed five only? But Raba[22] said: [On account of] any fraud[23] in measure, weight or number, even if less than the standard of overreaching, one can withdraw![24] -But [the question arises] where he declared, 'I cast as much into it as was necessary; whilst it was subsequently revealed that he had not sown with it as much as was required: is it subject to the law of overreaching or not? Is it as though he had placed it in a pitcher, and hence subject to overreaching; or perhaps he assimilated it to the soil? Further, is an oath taken concerning it or not?[25] Is it as though he had placed it [the seed] in a pitcher, and therefore an oath must be taken; or perhaps, he assimilated it to the soil, and so no oath is taken?[26] [Again,] does the 'omer[27] permit it [for food] or not?[28] But how is this meant? If it

took root, then we have learnt it; and if not, we have also learnt it. For we learnt: If they [the seeds] took root before the [bringing of the] ‘omer, the ‘omer permits them;[29] if not, they are forbidden until the bringing of the next ‘omer![30] — This arises only if he reaped and resowed it before the ‘omer,[31] then the ‘omer came and went,[32] whilst it did not take root before the [bringing of the] ‘omer.

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(1) Lit., ‘sacred objects.’

(2) If one declares, ‘Behold, I vow to offer a sacrifice’, and then dedicates an animal in fulfilment of his vow, he is responsible for it, and should it receive a blemish or be stolen he must replace it by another, since his vow did not specify that particular animal. R. Simeon therefore regards it as his, i.e., secular property, hence subject to the law of overreaching. But if he declares, ‘I vow to sacrifice this animal,’ and it is subsequently lost or stolen, he has no further responsibility in the matter. Consequently it is already sacred property, and as such not subject to the law of overreaching.

(3) This is explained in the Gemara.

(4) Lev. XXV, 14.

(5) And therefore incapable of being passed from hand to hand.

(6) V. p. 342, n. 4.

(7) Of a loan.

(8) For use as wrappers, stoppers, etc., I.e., for the value of the paper.

(9) For normally the value of the paper of a person's bills could only be a matter of perutahs, and would not amount to an issar.

(10) Ibid. 14: this is the literal translation.

(11) Num. XXI, 26.

(12) Ex. XXII, 3.

(13) Deut. XXIV, 1.

(14) V. supra p. 56 and notes.

(15) Sc. the verse quoted by Rabbah b. Mammel.

(16) I.e., ‘hand’ is always to be interpreted literally, save where the context forbids it.

(17) Sc. hiring.

(18) I.e., hiring an article is the equivalent of a temporary sale, and therefore subject to the law of fraud.

(19) A man was engaged to sow a field with wheat, the wheat being his (the employee's).

(20) Lit., ‘made it as nought.’

(21) And as the law of fraud does not apply to the soil, it neither applies to the wheat.

(22) In Kid. 42b the reading is ‘Rabbah.’

(23) Lit., ‘thing’.

(24) If the goods are not as specified, being short in measure, weight, or number, one can withdraw. It is unnecessary that the fraud shall he a sixth, for a sixth is required only when the goods are as specified. Otherwise it is altogether an erroneous bargain, and hence revocable. This being so, it will obviously apply to real estate too, so that even if the wheat be accounted part of the soil, the vendee can insist upon compensation or revoke the sale.

(25) E.g., if A maintained that B had undertaken to sow his soil with six measures of grain, with which he had supplied him, but had only used five, whilst B pleaded that he had used five and a half.

(26) No oath is imposed for a claim of land.

(27) V. Glos.

(28) The produce of each year was not permitted for food until the ‘omer (sheaf of corn) was brought to the Temple and waved before the Lord. (Lev. XXIII, 10-14); until then it was called hadash, ‘new.’

(29) The resultant crop, though maturing after the ‘omer, is nevertheless permitted for use.

(30) Men. 70a .

(31) I.e., he resowed that years grain, the ‘new’ crop, before the ‘omer. Had he not resown it, the ‘omer of course would have permitted it.

(32) The ‘omer was brought, and its time — the sixteenth of Nissan passed by.

Now, may one remove and eat it? Is it as though lying in a pitcher, and therefore made permissible by the ‘omer; or perhaps, he assimilated it to the soil?[1] The question stands.

Raba said in R. Hasa's name: R. Ammi propounded: Now these[2] are not subject to the law of overreaching. But are they subject to cancellation of sale or not?[3] — Said R. Nahman: R. Hasa subsequently said that R. Ammi solved it [thus:] They are not subject to the law overreaching, but are subject to cancellation of sale.

Now, R. Jonah said [the following] in respect to sacred objects, whilst R. Jeremiah said [it] in respect to real estate, both in R. Johanan's name, viz.: The law of overreaching does not apply thereto, but cancellation of sale does. He who said this in reference to sacred objects, would certainly [say it] in reference to real estate [too].[4] But he who referred this to land, would not [admit] sacred objects too, in accordance with Samuel. For Samuel said: If hekdesh worth a maneh was redeemed with the equivalent of a perutah, it is redeemed.[5]

We learnt elsewhere: If the consecrated [animal] was blemished, it becomes hullin, but its value must be assessed.[6] R. Johanan said: It becomes hullin by Biblical law, but its value must be assessed by Rabbinic law. But Resh Lakish maintained: That its value, must be assessed is also Biblical. What are the circumstances? Shall we say, that it is within the limit of overreaching?[7] In such a case, could Resh Lakish maintain that its value is assessed by Biblical law? Did we not learn, THE FOLLOWING ARE NOT SUBJECT TO [THE LAW OF] OVERREACHING: [THE PURCHASE OF] SLAVES, BILLS, REAL ESTATE AND SACRED OBJECTS? But if it refers to [a difference involving] cancellation of sale — could R. Johanan in that case say that its value must be made up by Rabbinical law [only]? Did not R. Jonah say in respect to sacred objects, and R. Jeremiah say in reference to real estate, yet both in R. Johanan's name: The law of overreaching does not apply thereto, but cancellation of sale does![8] — In truth, it refers to [a difference involving] cancellation of sale, but reverse it, [ascribing] R. Johanan's views to Resh Lakish and Resh Lakish's to R. Johanan.

Wherein do they[9] differ? — In respect to Samuel's dictum, viz., If hekdesh worth a maneh was redeemed with the equivalent of a perutah, it is redeemed. One Master[10] accepts Samuel's ruling, the other rejects it. Alternatively, all agree with Samuel; but here they differ in this: one Master maintains, [Only] if it was redeemed, but not in the first place;[11] whilst the other holds that it is permissible even at the very outset.[12] An alternative answer is this: In truth it refers to [a difference] within the limit of overreaching, and you must not reverse it. But they differ on R. Hisda's dictum, who said: What is meant by, they ARE NOT SUBJECT TO [THE LAW OF] OVERREACHING, is that they are not subject to the provisions of overreaching,

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(1) And therefore it is forbidden until the next ‘omer.

(2) That are enumerated in the Mishnah.

(3) If the fraud was more than a sixth. Though the law of overreaching in the case of a sixth, viz., that refund must be made, does not operate, yet the law of complete cancellation for more than a sixth may do.

(4) For since cancellation of sale applies to sacred objects, it proves that this does not come within the category of overreaching but of erroneous bargains. Now, if this applies to sacred objects which belong to Heaven, though technically speaking Heaven cannot err (cf. the principle of the British Constitution: The King can do no wrong), it surely holds good in respect to real estate. For since it is agreed that cancellation of sale is not the same as overreaching, we have no verse to exclude land therefrom.

(5) Thus in his opinion there can be no question of cancellation in respect of hekdesh: but v. infra.

(6) The first clause states that if a substitute is offered for an unblemished animal the latter retains its sanctity, because an unblemished animal cannot be redeemed. But if it was blemished, it becomes hullin, i.e., loses its sanctity, which the substitute assumes. Nevertheless, if the latter is not worth as much as the original it must be made up in money, which becomes hekdesh too. Tem. 27b.

(7) The substitute is worth less than the original only by an amount that constitutes overreaching, not cancellation.

(8) And this implies by Biblical law. Hence according to R. Jonah, R. Johanan is self-contradictory.

(9) R. Johanan and Resh Lakish.

(10) The one who holds that hekdesh is not subject even to cancellation of sale.

(11) And this is Biblical law, for when Scripture writes, then he shall redeem it according to thine estimation (Lev. XXVII, 27), it implies at its full value. Therefore, if redeemed with less, the deficiency must be made good.

(12) 'According to thine estimation' in his opinion means any value arbitrarily set upon it. Nevertheless, in order to safeguard the Temple treasury from loss, the Rabbis ordered the deficiency to be made good.

Talmud - Mas. Baba Metzia 57b

viz., that even less than the standard of overreaching [a sixth] is returnable.[1]

An objection is raised: [The prohibitions of] usury and overreaching apply to a layman, but not to hekdesh? — Is this then stronger than our Mishnah, which we interpreted as referring to the provisions of overreaching! So here too, [the prohibition of] usury and the provisions of overreaching apply to a layman, but not hekdesh.[2] If so, how can the second clause state, In this respect the case of a layman is more stringent than that of hekdesh?[3] — That refers to usury. Then it should also teach: In this respect the case of hekdesh is more stringent than that of a layman, viz., overreaching? — How compare? As for saying, 'In this respect the case of a layman is more stringent than that of hekdesh,' it is well, for there are no other [instances].[4] But [with respect to] hekdesh: is this [the only] stringency, and are there not others?[5]

How is usury by hekdesh possible? Shall we say that the treasurer [of hekdesh] lent one hundred zuz for one hundred and twenty? But he thereby committed a trespass,[6] and that being so, the money passes out into hullin and is a layman's![7] — Said R. Hoshaia: What is meant here is, e.g., if one [a layman] contracted to supply flour[8] at four se'ahs per sela', whilst it subsequently stood at three se'ahs per sela']. As we learnt: If one contracts to supply flour at four [se'ahs per sela'], and it [subsequently] stood at three, he must supply it at four; at three, and it [subsequently] stood at four, he must supply it at four, because hekdesh [always] has the upper hand.[9] R. papa said: This refers to bricks for building entrusted to the treasurer, in accordance with Samuel's dictum. For Samuel said: We build with unconsecrated material, and then consecrate it.[10]

NEITHER THERE IS DOUBLE REPAYMENT etc. Whence do we know this? — For our Rabbis taught: For all manners of trespass[11] — this is a general proposition: for ox, for ass, for sheep, for raiment[12] — this is a specialization; for every manner of lost thing which another challengeth [etc.][13] — this is another general proposition. Now, in a general proposition followed by a specialization followed again by a general proposition, you must be guided by the specialization alone: just as the specialization is clearly defined as a movable article which is intrinsically valuable, so everything movable which is intrinsically valuable [is included]; thus real estate is excluded, not being movable; slaves are excluded, being assimilated to real estate;[14] bills [too] are excluded, for though movables, they are not Intrinsically valuable. As for sacred objects, Scripture saith, [he shall pay double to] his neighbour: his neighbour, but not [to] hekdesh.

NOR FOURFOLD OR FIVEFOLD REPAYMENT etc. Why so? — The Divine Law decreed fourfold and fivefold, not threefold and fourfold repayment.[15]

[FURTHERMORE] A GRATUITOUS BAILEE DOES NOT SWEAR etc. How do we know this? — For our Rabbis taught: If a man shall deliver unto his neighbour — this is a general proposition;[16] money or stuff — that is a specialization; and it be stolen out of the man's house[17] is again a general statement: now in a general proposition followed by a specialization and again by a general proposition you must be guided by the peculiarities of the specialization. Just as the specialization is

clearly defined as something movable and of value in itself, so everything movable and intrinsically valuable [is included]. Thus real estate is excluded, not being movable; slaves are excluded, being assimilated to real estate; bills [too] are excluded, for though movables, they are not intrinsically valuable. As for sacred objects, Scripture writes, [and if a man shall deliver unto] his neighbour,[18] but not hekdesh.[19]

NOR DOES A PAID BAILEE MAKE IT GOOD [etc.]. How do we know this? — For our Rabbis taught: If a man deliver unto his neighbour[20] — that is a general proposition; an ass, or an ox, or a sheep — that is a specialization; or any beast to keep — that is again a general proposition. Now, in a general proposition followed by a specialization followed again by a general proposition you must be guided solely by the specialization. Just as the specialization is clearly defined as a movable article which is intrinsically valuable, so everything movable which is intrinsically valuable [is included]. Thus real estate is excluded, not being movable; slaves are excluded, being assimilated to real estate; bills [too] are excluded, for though movables, they are not intrinsically valuable. As for sacred objects, Scripture saith, [If a man deliver unto] his neighbour; 'his neighbour', but not hekdesh.

[FURTHERMORE,] A GRATUITOUS BAILEE DOES NOT SWEAR etc. But the following contradicts this: If townspeople sent their shekels[21] and they were stolen or lost,[22] — if [this happened] after the separation of the funds,[23]

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(1) Thus R. Johanan disagrees with this, and therefore maintains that it must he made good only by Rabbinical law; whereas Resh Lakish accepts this view.

(2) As previously explained by R. Hisda.

(3) On the contrary, hekdesh is more stringent, since even less than a sixth constitutes overreaching.

(4) [Tosaf. and MS.M. omit 'for there are no other,' since the Mishnah in fact mentions several other instances where greater stringency applies to ordinary property than to that of hekdesh; the reading and argument run accordingly as follows: 'As for saying, "In this respect the case of a layman is more stringent than that of hekdesh", it is well! But (with respect to) hekdesh, (what means) this is a stringency?' Whilst, that is to say, there is a point in informing us of any additional instance where ordinary property is treated with greater stringency than hekdesh, there is none in teaching the reverse, as it is obvious that there is greater stringency in regard to hekdesh than to ordinary property.]

(5) Hence the proposed clause is inadmissible.

(6) By giving money of hekdesh and receiving nothing in immediate return, which is forbidden. The treasurer, of course, acted in ignorance, thinking it permissible on account of the benefit to be reaped by hekdesh.

(7) V. p. 566, n. 5, hence the prohibition of usury applies to it after all.

(8) For the Temple use in meal offerings.

(9) Shek. IV, 9. The contractor received payment in advance, and fixed the price before the market price was out. Now, if the purchaser were a laymen, this would be forbidden as usury, (infra 62b); as, however, the bargain is with hekdesh, it is permitted. According to this, the passage does not refer to a loan at all.

(10) When building was necessary in the Temple, the materials were not bought with sacred funds, for this would immediately consecrate them, and the workmen by sitting on them would be trespassing. Therefore the materials were bought on credit, and paid for out of the Temple funds only when built up, whereby they became sanctified. Similarly, if one donated these building materials, he did not formally consecrate them until built in. Now, in reference to our discussion, the meaning is that the treasurer lent some of these unconsecrated materials for a higher return. No trespass is involved, since they were unconsecrated; on the other hand, since they were lent on behalf of hekdesh, the prohibition of usury does not apply.

(11) Ex. XXII, 8.

(12) Ibid.

(13) Ibid. The verse continues . . . to be his, the cause of both parties shall come before the judges; and whom the judges shall condemn, he shall pay double unto his neighbour.

(14) As it is written, And ye shall take them (sc. non-Jewish slaves) as an inheritance for your children after you, to inherit them for a possession. (Lev. XXV, 46) 'Inheritance' and 'inherit' are terms applicable to landed estate, and by

employing them for slaves Scripture assimilates slaves to real estate.

(15) For the larger includes the double repayment on account of theft. But since that double repayment does not operate here, as shewn above, one is left with a threefold and fourfold repayment, for which there is no Scriptural warrant.

(16) Implying, whatever he delivers.

(17) In Shebu. 43a 'to keep' is quoted instead of this phrase.

(18) Ex. XXII, 6.

(19) V. infra 94b, where it is stated that this passage, viz., Ex. XXII, 6-8, refers to a gratuitous bailee.

(20) Ibid. 9. V. infra 94b, where this is said to refer to a paid bailee.

(21) A capitation tax of one shekel was levied for the expenses of the communal sacrifices. Shek. 2a.

(22) From the hands of the messengers.

(23) The shekels were arranged in three baskets at different periods of the year. The translation follows Tosaf. Rashi: If the court proceedings took place after etc.

Talmud - Mas. Baba Metzia 58a

they [the messengers] swear to the treasurers.[1] But if not,[2] they must swear to the townspeople, who substitute other shekels in their stead. If they [the shekels] were [subsequently] found or returned by the thieves, both[3] are [sacred] shekels,[4] yet they are not credited to them for the following year![5] — Said Samuel: This refers to paid bailees; and they swear in order to receive their fees.[6] If so, 'they swear to the treasurers'? Surely they should swear to the townspeople![7] — Said Rabbah: [It means this:] They swear to the townspeople in the presence of the treasurers, so that they should not be suspected[8] or stigmatised as culpable negligents. But it is taught, 'and they were stolen or lost,' whereas a paid bailee is responsible for loss or theft! And here too, granted that they do not make it good,[9] yet they must surely lose their wages![10] — Rabbah replied: 'Stolen' means by armed robbers; 'lost', that their ship foundered at sea.[11]

R. Johanan said:[12] Who is the author of this? R. Simeon, who maintained: Sacred objects for which one [the owner] bears responsibility are subject to overreaching, and oaths are taken on their account.[13] Now, that is well before the dividing of the funds; but after that they [the lost shekels] are sacred objects for which no responsibility is borne [by their owners]. For it has been taught: The division is made in respect of what is lost, collected, and yet to be collected![14] — But, said R. Eleazar, this oath was [in pursuance of] a rabbinical enactment, that people might not treat sacred objects lightly.[15]

NOR DOES A PAID BAILEE MAKE IT GOOD. R. Joseph b. Hama pointed out a contradiction to Rabbah. We learnt, NOR DOES A PAID BAILEE MAKE IT GOOD. But the following contradicts it: If one [sc: the Temple treasurer] engages a [day] worker to look after the heifer,[16] or a child,[17] or to watch over the crops,[18] he is not paid for the Sabbath;[19] therefore he is not responsible for the Sabbath.[20] But if he was engaged by the week, year, or septennate, he is paid for the Sabbath;[21] consequently, he bears the risks of the Sabbath.[22] Surely that means in respect to payment?[23] No; [it means] that he loses his wage.[24] If so, when the first clause states, 'he is not responsible for the Sabbath,' does that too refer to loss of wages? Is he then paid for the Sabbath? But it is stated, 'he is not paid for the Sabbath!' Thereupon he was silent. Said he to him, 'Have you heard aught in this matter?' — He replied: 'Thus did R. Shesheth say: [We deal with the case] where he [the treasurer] acquired it from his hand.[25] And thus did R. Johanan say too: It means that he acquired it from his hand.'

R. SIMEON SAID: SACRIFICES FOR WHICH ONE [THE OWNER] BEARS RESPONSIBILITY ARE SUBJECT TO OVERREACHING, THOSE FOR WHICH HE BEARS NO RESPONSIBILITY ARE NOT SUBJECT THERETO. A tanna recited before R. Isaac b. Abba: For sacrifices for which he [the owner] bears responsibility he [a bailee] is liable,[26] because I can apply to them the verse, [If a soul sin, and commit a trespass] against the Lord and lie;[27] but for

those [sacrifices] for which no responsibility is borne, he [a bailee] is not liable, because I read in respect to them, [If a soul sin.. .] against his neighbour, and lie.[28] — Said he to him, 'Whither do you turn?[29]

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(1) That the loss was not due to their own culpable negligence. Once the funds were divided, the Temple treasury bore the risks of the monies not yet received, the dividing being held to cover money lost in transit. Therefore the oath had to be taken before the treasurers.

(2) I.e., that the theft or loss occurred before the dividing, in which case the senders are responsible and have to replace the monies.

(3) Sc. the first and the second shekels.

(4) Having been consecrated, they remain so.

(5) It is assumed that the messengers were unpaid, i.e., gratuitous bailees. Though the money was sacred, they had to swear, which contradicts our Mishnah.

(6) The oath was not imposed in order to free them from further responsibility, there being no responsibility in the case of hekdesh on the part of a paid bailee for theft. They had to swear that the money was not in their possession, and so receive their wages.

(7) The treasurers were not liable for their wages — why swear to them?

(8) The treasurers should not entertain suspicions that the whole matter had been arranged between the messengers and the townspeople acting in collusion to defraud the Temple funds.

(9) In accordance with our Mishnah that paid bailees are not responsible for hekdesh.

(10) Seeing that they had failed in their trust. Then what is the purpose of swearing?

(11) These are unpreventable accidents for which even paid bailees are not responsible, and hence they are entitled to their wages.

(12) In reconciling the two Mishnahs.

(13) Shebu. 42b.

(14) I.e., for him who sent his shekel but it was lost en route, or had entrusted it to a messenger who was still on the road, or was unavoidably prevented from remitting his shekel at the proper time — Adar; v. supra p. 343, n. 7. If one's shekel was not received until after the third division, it was assigned to the fund for repairing the Temple walls, etc. Thus we see that after the division the owners bear no further responsibility. Hence the objection to R. Johanan's answer: why an oath even then?

(15) Which would be the case if the mere statement that the shekels had been lost or stolen sufficed. But our Mishnah which teaches that there is no oath refers to the Biblical law.

(16) The red heifer (Num. XIX). The guardian was to take care that no yoke came upon it (ibid. 2).

(17) To prevent him from ritually defiling himself. The water for mixing with the ashes of the red heifer was drawn by a child, who had to be ritually clean.

(18) This refers to the barley specially sown seventy days before Passover (Men. 85a) for the ceremony of 'sheaf waving' (Lev. XXIII, 11) and to the wheat of which the two 'wave loaves' were made on Pentecost (ibid. 17). These crops were specially guarded.

(19) Since he is a day worker, each day is separately paid for, and payment for the Sabbath per se is forbidden.

(20) If harm came to his charges on that day.

(21) Because it is included in the rest, and not explicitly given for that day.

(22) Tosef. Shab. XVIII.

(23) Thus proving that a paid bailee of hekdesh must make good any loss.

(24) For having failed in their trust.

(25) I.e., the worker accepted responsibility, though by Biblical law he is exempt, and performed one of the acts whereby possession is effected.

(26) If one entrusts a consecrated animal to another, who denies having received it, and then repents and confesses, he is liable to a guilt offering, as prescribed in Lev. V, 21-25.

(27) Ibid. 21. By punctuating it thus, it appears that a sacrifice is due when one lies in respect of what is the Lord's, and it was now assumed that the Tanna meant that he is liable because this sacrifice, in respect of which he lied, is regarded as the Lord's property.

(28) Transposing the order of the text. I.e., those for which the owner bears no responsibility are secular property ('his

neighbour's'), whereas it has been shewn that this sacrifice is incurred only on account of God's.
(29) I.e., your ruling is not in the right direction. Jast.: towards the tail (connecting לייא with אליה) i.e., reverse it!

Talmud - Mas. Baba Metzia 58b

The logic is the reverse.'[1] 'Then shall I delete it?' he asked? 'No,' he replied, 'It means this: For sacrifices for which he [the owner] bears responsibility he [a bailee] is liable, for these are included in [If a soul sin . . .] against the Lord, and lie:[2] but for those for which he [the owner] bears no responsibility he [a bailee] is not liable, because they are excluded by . . . against his neighbour and lie.'[3]

R. JUDAH SAID: ALSO WHEN ONE SELLS A SCROLL OF THE TORAH, AN ANIMAL, OR A PEARL, THERE IS NO LAW OF OVERREACHING. It has been taught: R. Judah said, The sale of a scroll of the law too is not subject to overreaching, because its value is unassessable;[4] an animal or a pearl is not subject to overreaching, because one desires to match them.[5] Said they [the sages] to him, But one wishes to match up everything![6] And R. Judah?[7] — These are particularly important to him [the purchaser]; others are not. And to what extent?[8] — Said Amemar: Up to their value.[9]

It has been taught, R. Judah b. Bathyra said: The sale of a horse, sword, and buckler on [the field of] battle are not subject to overreaching, because one's very life is dependent upon them.[10]

MISHNAH. JUST AS THERE IS OVERREACHING IN BUYING AND SELLING, SO IS THERE WRONG DONE BY WORDS. [THUS:] ONE MUST NOT ASK ANOTHER, 'WHAT IS THE PRICE OF THIS ARTICLE?' IF HE HAS NO INTENTION OF BUYING. IF A MAN WAS A REPENTANT [SINNER], ONE MUST NOT SAY TO HIM, 'REMEMBER YOUR FORMER DEEDS.' IF HE WAS A SON OF PROSELYTES ONE MUST NOT TAUNT HIM, 'REMEMBER THE DEEDS OF YOUR ANCESTORS,' BECAUSE IT IS WRITTEN, THOU SHALT NEITHER WRONG A STRANGER, NOR OPPRESS HIM.[11]

GEMARA. Our Rabbis taught: Ye shall not therefore wrong one another;[12] Scripture refers to verbal wrongs. You say, 'verbal wrongs'; but perhaps that is not so, monetary wrongs being meant? When it is said, And if thou sell aught unto thy neighbour, or acquirest aught of thy neighbour [ye shall not wrong one another],[13] monetary wrongs are already dealt with. Then to what can I refer, ye shall not therefore wrong each other? To verbal wrongs. E.g., If a man is a penitent, one must not say to him, 'Remember your former deeds.' If he is the son of proselytes he must not be taunted with, 'Remember the deeds of your ancestors. If he is a proselyte and comes to study the Torah, one must not say to him, 'Shall the mouth that ate unclean and forbidden food,[14] abominable and creeping things, come to study the Torah which was uttered by the mouth of Omnipotence!' If he is visited by suffering, afflicted with disease, or has buried his children, one must not speak to him as his companions spoke to Job, is not thy fear [of God] thy confidence, And thy hope the integrity of thy ways? Remember, I pray thee, who ever perished, being innocent?[15] If assdrivers sought grain from a person, he must not say to them, 'Go to so and so who sells grain,' whilst knowing that he has never sold any. R. Judah said: One may also not feign interest in[16] a purchase when he has no money, since this is known to the heart only[17] , and of everything known only to the heart it is written, and thou shalt fear thy God.[18]

R. Johanan said on the authority of R. Simeon b. Yohai: Verbal wrong is more heinous than monetary wrong, because of the first it is written, 'and thou shalt fear thy God,' but not of the second. R. Eleazar said: The one affects his [the victim's] person, the other [only] his money. R. Samuel b. Nahmani said: For the former restoration is possible, but not for the latter.

A tanna recited before R. Nahman b. Isaac: He who publicly shames[19] his neighbour is as though he shed blood. Whereupon he remarked to him, 'You say well, because I have seen it [sc. such shaming], the ruddiness departing and paleness supervening.'[20]

Abaye asked R. Dimi: What do people [most] carefully avoid in the West [sc. palestine]? — He replied: putting others to shame.[21] For R. Hanina said: All descend into Gehenna, excepting three. 'All' — can you really think so! But say thus: All who descend into Gehenna [subsequently] reascend, excepting three, who descend but do not reascend, viz., He who commits adultery with a married woman, publicly shames his neighbour, or fastens an evil epithet [nickname] upon his neighbour. 'Fastens an epithet' — but that is putting to shame! — [It means], Even when he is accustomed to the name.[22]

Rabbah b. Bar Hanah said in R. Johanan's name:

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(1) Sacrifices for which one bears responsibility are the property of their owner, whilst those for which no responsibility is borne are rather to be regarded as that of God (v. p. 335, n. 7).

(2) The real reason of liability is the fact that these are secular property. But to meet the objection that after all, having been sanctified, they are sacred property, the phrase 'against the Lord and lie' is adduced, to shew that even when there is an element of sacredness a guilt offering is still due.

(3) But since the owner is not responsible for them, they are entirely God's, not 'his neighbour's.'

(4) Lit., 'unlimited.'

(5) When a man possesses one ox, he may be very anxious to procure another of equal strength, because it is inconvenient to plough with two animals of dissimilar capacities. Therefore he may knowingly overpay, hence the law of overreaching does not apply. So with a pearl, if it exactly matches others in his possession.

(6) Whatever one buys may be needed to match something else, or is particularly suitable for the buyer's purpose, in which case the same argument holds good.

(7) Why does he draw a distinction between these articles and others?

(8) Can one overcharge without committing fraud? — it being assumed that R. Judah could not mean that there was no redress under any circumstances.

(9) I.e., if double is charged there is no redress; above that, however, involves overreaching.

(10) Hence the soldier needing them will knowingly overpay.

(11) Ex. XXII, 20.

(12) Lev. XXV, 17.

(13) Ibid. 14.

(14) Heb. nebeloth, terefoth, q.v. GIos.

(15) Job IV, 6f.

(16) Lit., 'look up to.

(17) מסור ללב Lit., 'entrusted to the heart.'

(18) Lev. XXV, 17. Man cannot know whether one's intentions are legitimate or not, since they are concealed, but God knows (Rashi). [This beautiful phrase מסור ללב which, were certain critics of Pharisaism right, ought never to have been on Pharisaic lips (Abrahams, I. Studies on Pharisaism, Second Series, p. 116), may also denote matters left to ethical research and conviction, which cannot be mastered, weighed or determined by will, but by a delicate perception, fine tact and a sensitiveness of nature. V. Lazarus, The Ethics of Judaism, I, 122 and 292.]

(19) Lit., 'makes pale'.

(20) Thus the blood is drained from the victim's face, which is the equivalent of shedding his blood. [V. Wiesner, J. Mag. f. Jud. Gesch. u. Lit. 1875, p. 11.]

(21) Lit., 'making faces white.'

(22) So that he experiences no humiliation, nevertheless it is very reprehensible when the intention is evil. — It is noteworthy that apart from these three — which are obviously stated in a heightened form for the sake of emphasis (V. Tosaf.) the idea of endless Gehenna is rejected. Cf. M. Joseph, Judaism as Creed and Lie, pp. 145 seq. 'Nor do we believe in hell or in everlasting punishment . . . If suffering there is to be, it is terminable. The idea of eternal punishment is repugnant to the genius of Judaism.'

Talmud - Mas. Baba Metzia 59a

Better it is for man to cohabit with a doubtful married woman[1] rather than that he should publicly shame his neighbour. Whence do we know this? — From what Raba expounded, viz., What is meant by the verse, But in mine adversity they rejoiced and gathered themselves together... they did tear me, and ceased not?[2] David exclaimed before the Holy One, blessed be He, 'Sovereign of the Universe! Thou knowest full well that had they torn my flesh, my blood would not have poured forth to the earth.[3] Moreover, when they are engaged in studying "Leprosies" and "Tents"[4] they jeer at me, saying, "David! what is the death penalty of him who seduces a married woman?" I reply to them, "He is executed by strangulation, yet has he a portion in the world to come. But he who publicly puts his neighbour to shame has no portion in the world to come."'[5]

Mar Zutra b. Tobiah said in Rab's name — others state, R. Hana[6] b. Bizna said in the name of R. Simeon the pious — others again state, R. Johanan said on the authority of R. Simeon b. Yohai: Better had a man throw himself into a fiery furnace than publicly put his neighbour to shame. Whence do we know it? — From Tamar.[7] For it is written, when she was brought forth, she sent to her father-in-law [etc].[8]

R. Hanina, son of R. Idi, said: What is meant by the verse, Ye shall not wrong one another ['amitho]? — Wrong not a people that is with you in learning and good deeds .[9]

Rab said: One should always be heedful of wronging his wife, for since her tears are frequent she is quickly hurt.[10]

R. Eleazar said:[11] Since the destruction of the Temple, the gates of prayer are locked, for it is written, Also when I cry out, he shutteth out my prayer.[12] Yet though the gates of prayer are locked, the gates of tears are not, for it is written, Hear my prayer, O Lord, and give ear unto my cry; hold not thy peace at my tears.[13]

Rab also said: He who follows his wife's counsel will descend[14] into Gehenna, for it is written, But there was none like unto Ahab [which did sell himself to work wickedness in the sight of the Lord, whom Jezebel his wife stirred up].[15] R. papa objected to Abaye: But people say, If your wife is short, bend down and hear her whisper! — There is no difficulty: the one refers to general matters; the other to household affairs.[16] Another version: the one refers to religious matters, the other to secular questions.

R. Hisda said: All gates are locked, excepting the gates [through which pass the cries of] wrong [ona'ah], for it is written, Behold the Lord stood by a wall of wrongs, and in his hand were the wrongs.[17] R.Eleazar said: All [evil] is punished through an agent, excepting wrong, for it is written, And in his hand were the wrongs.[18] R. Abbahu said: There are three [evils] before which the Curtain[19] is not closed: overreaching, robbery and idolatry. Overreaching, for it is written, and in his hand was the overreaching. Robbery, because it is written, Robbery and spoil are heard in her; they are before me continually.[20] Idolatry, for it is written, A people that provoketh me to anger continually before my face; [that sacrificeth — sc. to idols — in gardens, and burneth incense upon altars of brick].[21]

Rab Judah said: One should always take heed that there be corn in his house; for strife is prevalent in a house only on account of corn [food], for it is written, He maketh peace in thy borders: he filleth thee with the finest of the wheat.[22] Said R. papa, Hence the proverb: When the barley is quite gone from the pitcher, strife comes knocking at the door[23] , R. Hinena b. papa said: One should always take heed that there be corn in his house, because Israel were called poor only on account of [the

lack of] corn, for it is said, And so it was when Israel had sown etc., and it is further written, And they [sc. the Midianites and the Amalekites] encamped against them, [and destroyed the increase of the earth], whilst this is followed by, And Israel was greatly impoverished because of the Midianites.[24]

R. Helbo said: One must always observe the honour due to his wife, because blessings rest on a man's home only on account of his wife, for it is written, And he treated Abram well for her sake.[25] And thus did Raba say to the townspeople of Mahuza,[26] Honour your wives, that ye may be enriched.[27]

We learnt elsewhere: If he cut it into separate tiles, placing sand between each tile: R. Eliezer declared it clean, and the Sages declared it unclean;

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(1) E.g., one who was freed with a divorce, as to the validity of which doubts arose.

(2) Ps. XXXV, 15.

(3) Because of the many insults I am made to bear, which as stated above, drain the flesh of its blood.

(4) Two tractates in the sixth order of the Talmud, called 'Purity.' These are tractates of extreme difficulty and complexity, and have no bearing upon adultery or the death penalty. Thus David complained that even when engaged on totally different matters which required all their thought, they yet diverted their attention in order to humiliate him (Tosaf.). In Sanh. 107a, the reading is: 'when they are engaged in the study of the four modes of death imposed by the Court, etc.

(5) Now Bath Sheba was a doubtful married woman, because every soldier of David's army gave his wife a conditional divorce before he left for the front, to take retrospective effect from the time of delivery in case he was lost in battle. So that when David took Bath Sheba it was doubtful whether she would prove a married woman at the time or not; and David maintained that his offence was not so grave as that of his companions.

(6) Var. lec.: Huna.

(7) Judah's daughter-in-law, with whom he unwittingly cohabited. Subsequently, on her breach of chastity being discovered, he ordered her to be burnt, and only rescinded the order when she privately sent proof to him of his own complicity; v. Gen. XXXVIII.

(8) Ibid. 25. She left it to him to confess but did not openly accuse him, choosing death rather than publicly putting him to shame.

(9) This is a play of words on עמיתו ('his fellowman') reading it as two words, עם אתו , the 'people that is with him.'

(10) Lit., 'her wronging is near;' — a woman is very sensitive, and therefore quick to feel and resent a hurt.

(11) [MS.M. 'For R. Eleazar said,' the statement of R. Eleazar being thus added in elucidation of Rab's dictum.]

(12) Lam. III, 8.

(13) Ps. XXXIX, 13; the idea is that the destruction of the Temple may have made it more difficult to commune with God, yet earnest prayer from the depths of the heart is always accepted.

(14) Lit., 'fall'.

(15) I Kings, XXI, 25; thus Ahab's downfall is ascribed to his action in allowing himself to be led astray by Jezebel.

(16) A man should certainly consult his wife on the latter, but not on the former, — not a disparagement of woman; her activities lying mainly in the home.

(17) אנך Amos VII, 7(E.V. 'plumbline') is here connected with אונאה , 'overreaching', 'wronging', i.e., God is always ready to plead the cause of one who has been wronged.

(18) I.e., God in person punishes these.

(19) The Curtain of Heaven. [Hiding. so to speak, human failings from the Divine gaze.]

(20) Jer. VI, 7.

(21) Isa. LXV, 3.

(22) Ps. CXLVII, 14: the two halves of the verse are parallel to each other.

(23) Lit., 'house'.

(24) Jud. VI, 3, 4, 6.

(25) Gen. XII, 16.

(26) A large Jewish commercial town, situate on the Tigris. Raba had his academy there.
(27) The foregoing passages are Instructive on the Talmudic attitude to women. Though recognising the evil influence a bad woman can wield upon her husband, as evidenced by Ahab and Jezebel, these sayings breathe a spirit of tenderness and honour. As she is highly sensitive, the greatest care must be taken not to wound her feelings, and a husband must adapt himself to his wife; whilst it is emphatically asserted that prosperity in the home, as well as the blessings of home life, are to a great extent dependent upon her.

Talmud - Mas. Baba Metzia 59b

and this was the oven of 'Aknai.[1] Why [the oven of] 'Aknai? — Said Rab Judah in Samuel's name: [It means] that they encompassed it with arguments[2] as a snake, and proved it unclean. It has been taught: On that day R. Eliezer brought forward every imaginable argument ,[3] but they did not accept them. Said he to them: 'If the halachah agrees with me, let this carob-tree prove it!' Thereupon the carob-tree was torn a hundred cubits out of its place — others affirm, four hundred cubits. 'No proof can be brought from a carob-tree,' they retorted. Again he said to them: 'If the halachah agrees with me, let the stream of water prove it!' Whereupon the stream of water flowed backwards — 'No proof can be brought from a stream of water,' they rejoined. Again he urged: 'If the halachah agrees with me, let the walls of the schoolhouse prove it,' whereupon the walls inclined to fall. But R. Joshua rebuked them, saying: 'When scholars are engaged in a halachic dispute, what have ye to interfere?' Hence they did not fall, in honour of R. Joshua, nor did they resume the upright, in honour of R. Eliezer; and they are still standing thus inclined. Again he said to them: 'If the halachah agrees with me, let it be proved from Heaven!' Whereupon a Heavenly Voice cried out: 'Why do ye dispute with R. Eliezer, seeing that in all matters the halachah agrees with him!' But R. Joshua arose and exclaimed: 'It is not in heaven.'[4] What did he mean by this? — Said R. Jeremiah: That the Torah had already been given at Mount Sinai; we pay no attention to a Heavenly Voice, because Thou hast long since written in the Torah at Mount Sinai, After the majority must one incline.[5]

R. Nathan met Elijah[6] and asked him: What did the Holy One, Blessed be He, do in that hour? — He laughed [with joy], he replied, saying, 'My sons have defeated Me, My sons have defeated Me.' It was said: On that day all objects which R. Eliezer had declared clean were brought and burnt in fire.[7] Then they took a vote and excommunicated him.[8] Said they, 'Who shall go and inform him?' 'I will go,' answered R. Akiba, 'lest an unsuitable person go and inform him, and thus destroy the whole world.'[9] What did R. Akiba do? He donned black garments and wrapped himself in black,[10] and sat at a distance of four cubits from him. 'Akiba,' said R. Eliezer to him, 'what has particularly happened to-day?'[11] 'Master,' he replied, 'it appears to me that thy companions hold aloof from thee.' Thereupon he too rent his garments, put off his shoes, removed [his seat] and sat on the earth, whilst tears streamed from his eyes.[12] The world was then smitten: a third of the olive crop, a third of the wheat, and a third of the barley crop. Some say, the dough in women's hands swelled up.

A Tanna taught: Great was the calamity that befell that day, for everything at which R. Eliezer cast his eyes was burned up. R. Gamaliel[13] too was travelling in a ship, when a huge wave arose to drown him. 'It appears to me,' he reflected, 'that this is on account of none other but R. Eliezer b. Hyrcanus.' Thereupon he arose and exclaimed, 'Sovereign of the Universe! Thou knowest full well that I have not acted for my honour, nor for the honour of my paternal house, but for Thine, so that strife may not multiply in Israel! 'At that the raging sea subsided.

Ima Shalom was R. Eliezer's wife, and sister to R. Gamaliel. From the time of this incident onwards she did not permit him to fall upon his face.[14] Now a certain day happened to be New Moon, but she mistook a full month for a defective one.[15] Others say, a poor man came and stood at the door, and she took out some bread to him.[16] [On her return] she found him fallen on his face. 'Arise,' she cried out to him, 'thou hast slain my brother.' In the meanwhile an announcement was made from the house of Rabban Gamaliel that he had died. 'Whence dost thou know it?' he

questioned her. ‘I have this tradition from my father's house: All gates are locked, excepting the gates of wounded feelings.’[17]

Our Rabbis taught: He who wounds the feelings of a proselyte transgresses three negative injunctions, and he who oppresses him infringes two. Wherein does wronging differ? Because three negative injunctions are stated: Viz., Thou shalt not wrong a stranger [i.e., a proselyte],[18] And if a stranger sojourn with thee in your land, ye shall not wrong him,[19] and ye shall not therefore wrong each his fellowman,[20] a proselyte being included in ‘fellowman.’ But for ‘oppression’ also three are written, viz., and thou shalt not oppress him,[21] Also thou shalt not oppress a stranger,[22] and [If thou lend money to any of my people that is poor by thee,] thou shalt not be to him as a usurer[23] which includes a proselyte! — But [say] both [are forbidden] by three [injunctions].

It has been taught: R. Eliezer the Great said: Why did the Torah warn against [the wronging of] a proselyte in thirty-six, or as others say, in forty-six, places? Because he has a strong inclination to evil.[24] What is the meaning of the verse, Thou shalt neither wrong a stranger, nor oppress him; for ye were strangers in the land of Egypt? It has been taught: R. Nathan said: Do not taunt your neighbour with the blemish you yourself have.[25] And thus the proverb runs:[26] If there is a case of hanging in a man's family record, say not to him,[27] ‘Hang this fish up for me.’

MISHNAH. PRODUCE MAY NOT BE MIXED WITH OTHER PRODUCE, EVEN NEW WITH NEW,

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(1) This refers to an oven, which, instead of being made in one piece, was made in a series of separate portions with a layer of sand between each. R. Eliezer maintains that since each portion in itself is not a utensil, the sand between prevents the whole structure from being regarded as a single utensil, and therefore it is not liable to uncleanness. The Sages however hold that the outer coating of mortar or cement unifies the whole, and it is therefore liable to uncleanness. (This is the explanation given by Maimonides on the Mishnah, Kel. V, 10. Rashi a.l. adopts a different reasoning). ‘Aknai is a proper noun, probably the name of a master, but it also means ‘snake’. (Gr. **) which meaning the Talmud proceeds to discuss.

(2) Lit., ‘words’.

(3) Lit., ‘all the arguments in the world’.

(4) Deut. XXX,12.

(5) Ex. XXIII,2; though the story is told in a legendary form, this is a remarkable assertion of the independence of human reasoning.

(6) It was believed that Elijah, who had never died, often appeared to the Rabbis.

(7) As unclean.

(8) Lit., ‘blessed him,’ a euphemism for excommunication.

(9) I.e., commit a great wrong by informing him tactlessly and brutally.

(10) As a sign of mourning, which a person under the ban had to observe.

(11) Lit., ‘what is this day (different) from yesterday (or to-morrow)?’

(12) Rending the garments etc. were all mourning observances. (In ancient times mourners sat actually upon the earth, not, as nowadays, upon low stools.) — The character of R. Eliezer is hotly contested by Weiss and Halevi. The former, mainly on the basis of this story (though adducing some other proof too), severely castigates him as a man of extreme stubbornness and conceit, who would brook no disagreement, a bitter controversialist from his youth until death, and ever seeking quarrels (Dor. II, 82). Halevy (Doroth 1, 5, pp. 374 et seqq.) energetically defends him, pointing out that this is the only instance recorded in the whole Talmud of R. Eliezer's maintaining his view against the majority. He further contends that the meekness with which he accepted his sentence, though he was sufficiently great to have disputed and fought it, is a powerful testimony to his humility and peace-loving nature.

(13) The Nasi and the prime mover in the ban against R. Eliezer.

(14) After the Eighteen Benedictions there follows a short interval for private prayer, during which each person offered up his own individual supplications to God. These were called supplications (תחנון), and the suppliant prostrated himself upon his face; they were omitted on New Moons and Festivals. — Elbogen, Der judische Gottesdienst, pp. 73 et

seqq. Ima Shalom feared that her husband might pour out his grief and feeling of injury in these prayers, and that God, listening to them, would punish R. Gamaliel, her brother.

(15) Jewish months consist of either 30 days (full) or 29 (defective). Thinking that the previous month had consisted of 29 days, and that the 30th would be New Moon, she believed that R. Eliezer could not engage in these private prayers in any case, and relaxed her watch over him. But actually it was a full month, so that the 30th was an ordinary day, when these prayers are permitted.

(16) I.e., she did not mistake the day, but was momentarily forced to leave her husband in order to give bread to a beggar.

(17) Lit., 'wrong', v. p. 354, n. 4. She felt sure that R. Eliezer had seized the opportunity of her absence or error to cry out to God about the ban.

(18) Ex. XXII, 20.

(19) Lev. XIX, 33.

(20) Lev. XXV, 17.

(21) Ex. XXII, 20.

(22) Ex. XXIII, 9.

(23) Ex. XXII, 24

(24) So Rashi in Hor. 13a. Jast.: because his original character is bad — into which evil treatment might cause him to relapse.

(25) Thus be translates the verse: Do not wrong a proselyte by taunting him with being a stranger to the jewish people seeing that ye yourselves were strangers in Egypt.

(26) Lit., 'people say.'

(27) [So MS.M.; cur. edd. read, 'to his fellow'.]

Talmud - Mas. Baba Metzia 60a

HOW MUCH MORE SO NEW WITH OLD![1] YET IN TRUTH IT WAS SAID THAT STRONG WINE MAY BE MIXED WITH MILD, BECAUSE IT IMPROVES IT.[2] A MAN MUST NOT MIX THE LEES OF WINE WITH WINE, BUT HE [THE VENDOR] MAY GIVE HIM [THE VENDEE] ITS LEES.[3] IF HIS WINE WAS DILUTED WITH WATER HE MUST NOT SELL IT IN HIS SHOP [IN SMALL QUANTITIES] UNLESS HE INFORMS HIM [THE CUSTOMER], NOR TO A MERCHANT, EVEN IF HE INFORMS HIM, BECAUSE [THE LATTER BUYS IT] ONLY IN ORDER TO CHEAT THEREWITH. WHERE IT IS THE PRACTICE TO ADULTERATE WINE WITH WATER, IT IS PERMISSIBLE.[4] A MERCHANT MAY PURCHASE [GRAIN] FROM FIVE GRANARIES AND PUT IT INTO ONE STORE-ROOM,[5] OR [WINE] FROM FIVE PRESSES AND PUT IT INTO THE SAME CASK, PROVIDING THAT IT IS NOT HIS INTENTION TO MIX THEM.[6]

GEMARA. Our Rabbis taught: it goes without saying, when new [produce] stands at four [se'ahs per sela'], whilst old is priced at three, that they may not be intermixed; but even when new is at three and old at four, they may still not be mixed, because [the higher price of the new corn is due to the fact that] one wishes to store them until old.[7]

YET IN TRUTH IT WAS SAID THAT STRONG WINE MAY BE MIXED WITH MILD, BECAUSE IT IMPROVES IT. R. Eleazar said: From this it may be concluded that wherever it is stated 'in truth it was said', that is the halachah.[8] Said R. Nahman: This was taught only when they [the wines] are in the Presses.[9] But nowadays [wines] are mixed [even] after they have left the presses.[10] — Said R. Papa: It is known and forgiven. R. Aha son of R. Ika said: That is in accordance with R. Aha. For it has been taught: R. Aha permits [mixing] in a commodity that is [first] tasted.[11]

A MAN MUST NOT MIX THE LEES OF WINE WITH WINE, BUT HE [THE VENDOR] MAY GIVE HIM [THE VENDEE] ITS LEES. But you have ruled in the first clause that they may not be mixed at all? And should you reply that what is meant by, BUT HE MAY GIVE HIM ITS

LEES, is that he informs him thereof; since the subsequent clause states, HE MUST NOT SELL IT IN HIS SHOP UNLESS HE INFORMS HIM [THE CUSTOMER], NOR TO A MERCHANT, EVEN IF HE INFORMS HIM, it follows that this clause means even if he does not inform him! — Said Rab Judah: It means this: A MAN MUST NOT MIX THE LEES OF yesterday's WINE with that of to-day's, nor vice versa, BUT HE [THE VENDOR] MAY GIVE HIM [THE VENDEE] ITS OWN LEES. It has been taught likewise: R. Judah said: When a man pours out[12] wine for his neighbour [selling it to him], he must not mix [the lees] of yesterday's wine with that of to-day's, nor vice versa, but may mix yesterday's with yesterday's and to-day's with to-day's.[13]

IF HIS WINE WAS DILUTED WITH WATER HE MUST NOT SELL IT IN HIS SHOP [IN SMALL QUANTITIES] UNLESS HE INFORMS HIM, etc. Raba once brought wine from a shop. After diluting it he tasted it, and on finding that it was not good he returned it to the shop.[14] Thereupon Abaye protested: But we learnt, NOR TO A MERCHANT, EVEN IF HE INFORMS Him![15] — He replied: My mixing is well known.[16] And should you object, He may add [wine thereto], thus strengthening it, and then sell it [as pure wine] — if so, the matter is endless![17]

WHERE IT IS THE PRACTICE TO ADULTERATE WINE WITH WATER, IT IS PERMISSIBLE, etc. A Tanna taught: In proportions of a half, a third or a quarter.[18] Said Rab: And this [sc. the Mishnah] was stated in the time of the presses.[19]

MISHNAH. R. JUDAH SAID: A SHOPKEEPER MUST NOT DISTRIBUTE PARCHED CORN OR NUTS TO CHILDREN, BECAUSE HE THEREBY ACCUSTOMS THEM TO COME TO HIM;[20] THE SAGES PERMIT IT. NOR MAY HE REDUCE THE PRICE; BUT THE SAGES SAY, HE IS TO BE REMEMBERED FOR GOOD. ONE MUST NOT SIFT POUNDED BEANS:[21] THIS IS THE VIEW OF ABBA SAUL. BUT THE SAGES PERMIT IT. YET THEY ADMIT THAT HE MUST NOT PICK OUT [THE REFUSE] FROM THE TOP OF THE BIN,[22] BECAUSE ITS ONLY PURPOSE IS TO DECEIVE THE EYE. MEN, CATTLE, AND UTENSILS MAY NOT BE PAINTED.[23]

GEMARA. What is the Rabbis' reason? — Because he [this shopkeeper] can say to him [another shopkeeper], 'I distribute nuts; you distribute plums.

NOR MAY HE REDUCE THE PRICE; BUT THE SAGES SAY, HE IS TO BE REMEMBERED FOR GOOD, etc. What is the Rabbis' reason? —

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(1) If one undertakes to supply the produce of a particular field, he may not intermix it with the produce of another, even of the same year. If he undertakes to supply last year's grain, he may certainly not intermix the current year's the former being more suitable for milling.

(2) But not vice versa; having agreed to supply full-bodied wine, one must not mix it with light wine.

(3) This is discussed in the Gemara.

(4) Because there is no cheating then, the practice being known and taken into account.

(5) For selling from the whole indiscriminately.

(6) I.e., he must not represent that he bought all from the same source, which is known for providing superior merchandise.

(7) The higher price of the new corn is not due to its superiority, but to the fact that there is no sale that year and merchants are buying ahead for the following, whereas if they store last year's grain, it may be too old when they need it. Hence when one stipulates that he wants old corn, it is evident that he requires it for immediate use, and therefore it may not be mixed with new, though this is dearer.

(8) Since the reason given is that it improves it, leaving no room for doubt on the matter, and this is introduced by the phrase, 'in truth etc.,' it follows that this phrase indicates the absolute certainty of the law. [Adopting this principle, the Tanna of our Mishnah will permit the mixing of old produce with new, contrary to the view of the Tanna in Tosef. B.M. III, v. Rosenthal, F., Hoffmann's Festschrift, p. 34ff.]

(9) The mixing is then advantageous. But after each has acquired its own taste and bouquet, mixing of different wines has a deleterious effect.
(10) Lit., 'not among the presses.'
(11) Since the customer tastes the wine before buying it, there is no fraud.
(12) The Heb. השופה denotes 'to pour out slowly,' so as to leave the sediment behind.
(13) The lees of a different day's wine have an injurious effect, but not those of the same day's. Rashi, however observes that this is not meant literally, but that wine when sold may contain its own sediment, but not that of a different wine. 'To-day's' and 'yesterday's' are merely employed a convenient expressions of different wines.
(14) For sale there.
(15) And this shopkeeper too will sell it as unadulterated wine.
(16) It was generally known that Raba diluted the wine with very much water. So that a prospective customer, in tasting it beforehand, would know what proportion of wine it contained, and pay accordingly.
(17) It would be forbidden to sell even water to a wine-merchant, lest he mix it with wine and sell the whole as pure. But that is obviously absurd. Therefore the Mishnah forbids only a sale of those commodities which lend themselves to immediate deceit.
(18) I.e., whatever proportions are permitted by custom, but not more.
(19) The wine may be diluted whilst it is yet in the press, but not after.
(20) When sent by mothers to make a purchase; this is unfair competition.
(21) To remove the refuse. Owing to the better appearance of the beans he advances the price by more than the value of the refuse removed, and therefore this Tanna forbids it as fraud.
(22) Leaving the refuse underneath.
(23) To give them a younger or newer appearance, and thus make them realise a higher price. 'Men' refers to slaves.

Talmud - Mas. Baba Metzia 60b

Because he eases the market.[1]

ONE MUST NOT SIFT POUNDED BEANS: THIS IS THE VIEW OF ABBA SAUL. BUT THE SAGES PERMIT IT, etc. Who are the Sages? — R. Aha. For it has been taught: R. Aha permitted it in a commodity that may be seen.[2]

MEN, CATTLE, AND UTENSILS MAY NOT BE PAINTED. Our Rabbis taught: An animal may not be given an appearance of stiffness, entrails may not be inflated,[3] nor may meat be soaked in water.[4] What is meant by 'one may not give an appearance of stiffness'? — Here [in Babylon] it is explained as referring to branbroth.[5] Ze'iri said in R. Kahana's name: Brushing up [an animal's hair].[6] Samuel permitted fringes to be put on a cloak.[7] Rab Judah permitted a gloss to be put on fine cloths.[8] Rabbah permitted hemp-cloths to be beaten.[9] Raba permitted arrows to be painted. R. Pappa b. Samuel allowed baskets to be painted. But did we not learn, MEN, CATTLE, AND UTENSILS MAY NOT BE PAINTED? — There is no difficulty; one refers to new, the other to old.[10]

What is the purpose of painting men? — As in the case of a certain aged slave who went and had his head and beard dyed ,[11] and came before Raba, saying to him, 'Buy me.' 'Let the poor be the children of thy house,'[12] he replied. So he went to R. Papa b. Samuel, who bought him. One day he said to him, 'Give me some water to drink.' Thereupon he went, washed his head and beard white again, and said to him, 'See, I am older than your father.'[13] At that he applied to himself the verse, 'The righteous is delivered out of trouble, and another cometh in his stead.[14]

C H A P T E R V

MISHNAH. WHAT IS NESHEK AND WHAT IS TARBITH?[15] WHAT IS NESHEK? ONE WHO LENDS A SELA' [FOUR DENARII] FOR FIVE DENARII, OR TWO SE'AHS[16] OF WHEAT FOR THREE; THAT IS FORBIDDEN,[17] BECAUSE HE [THEREBY] 'BITES' [THE

DEBTOR]. AND WHAT IS TARBITH? THE TAKING OF INTEREST ON PRODUCE, E. G., IF A MAN PURCHASED WHEAT AT A GOLD DENAR [TWENTY-FIVE SILVER DENARII] PER KOR,[18] WHICH WAS THE CURRENT PRICE,[19] AND [SUBSEQUENTLY] WHEAT APPRECIATED TO THIRTY DENARII PER KOR. THEN [THE PURCHASER] SAID TO HIM, 'GIVE ME MY WHEAT, AS I WISH TO SELL IT AND BUY WINE WITH THE PROCEEDS;' TO WHICH [THE VENDOR] REPLIED, 'LET THE WHEAT BE CHARGED TO ME AS A DEBT OF THIRTY DENARII [PER KOR]. AND YOU HAVE A CLAIM OF WINE UPON ME FOR ITS VALUE;'[20] BUT HE ACTUALLY HAS NO WINE [AT THE TIME].

GEMARA. Now, since he [the Tanna] disregards[21] the Biblical [meaning of] interest[22] and defines its Rabbinical [connotation][23] . it follows that Biblically speaking neshek and tarbith are Synonymous: whereas [in fact] there are Scriptural expressions, neshek of money, and ribbith of food![24] — Do you think then that there can be neshek [loss to the debtor] without tarbith [profits to the creditor], or tarbith without neshek? How might there be neshek without tarbith? If he lent him a hundred [perutahs] for one hundred and twenty [perutahs], at first [when the loan is made] a danka[25] being valued at a hundred [perutahs], and subsequently [when the loan was repaid] at a hundred and twenty,[26] there is neshek, for he 'bites' him [the debtor] by taking from him something which he [the creditor] did not give; yet there is no tarbith [to the creditor], for there is no profit, since he lent him a danka and received back a danka! But, after all, if the original rate is the determining factor,[27] there is both neshek and tarbith; if the subsequent rate, there is neither neshek nor tarbith? Furthermore, how is tarbith [profit to the creditor] conceivable without neshek [loss to the debtor]? If he lent him a hundred [perutahs] for a hundred, the hundred being worth a danka at first, and now a fifth:[28] if you regard the first rate, there is neither neshek nor tarbith; if the final rate, there is both neshek and tarbith! — But, said Raba, you can find neither neshek without tarbith nor tarbith without neshek, and the only purpose of Scripture in stating them separately[29] is [to teach] that one transgresses two prohibitions [by taking interest].[30]

Our Rabbis taught: [Thou shalt not give him thy money upon neshek [usury], nor lend him thy victuals for marbith [interest];[31] [from this] I only know that the prohibition of neshek applies to money, and that of ribbith to provisions:[32] whence do we know that [the prohibition] neshek applies to provisions [too]? From the verse, [Thou shalt not lend upon usury to thy brother neshek of money], neshek of victuals.[33] Whence do we know that the prohibition of ribbith applies to money? From the verse, neshek of money:

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(1) Competition is healthy, and prevents a 'hold up.'

(2) The purchaser sees what he buys, and therefore there is no fraud.

(3) In a shop, where they are displayed for sale, to make them look larger.

(4) To make it look fat.

(5) Which bloats the animal fed on it.

(6) For the same purpose.

(7) To make it look more valuable.

(8) By rubbing it with a certain substance.

(9) To make it appear thinner and of finer texture.

(10) Old utensils may not be painted, as the purpose is to deceive and make them look new. But new ones may be painted to improve their appearance.

(11) Black, making him look a young man.

(12) This is a Mishnah in Aboth I, 5. Raba, by emphasizing the 'thy', gave it the meaning — 'I had rather give my hospitality to the poor of my own people.'

(13) And it is not meet that you should impose menial tasks upon me. — It is noteworthy that the slave knew that he could rely upon the decency of the Jew to respect his age, though a slave, and one, moreover, who had practised deceit. This is in marked contrast to the treatment meted out to slaves amongst other people, both in ancient and in comparatively recent times.

(14) Prov. XI, 8; the verse actually reads, 'and the wicked etc.' 'Another' was probably substituted by R. Papa intentionally: 'Raba — the righteous — was delivered from trouble, but I had the misfortune to buy you.
(15) Neshek, from נשך 'to bite', denotes usury, 'bitten out', as it were, from the debtor, something received for nothing given. Tarbith, marbith, and ribbith from רבי , 'to increase', denotes increase, profits. The question of the Mishnah is posited on Lev. XXV, 36: Take thou no neshek from him, nor tarbith.
(16) Se'ah == six kabs, or 13,184.44 cu. cm. J.E. XII, 488.
(17) [Rightly omitted in most texts.]
(18) Kor is a measure of capacity, equal to thirty se'ahs. B.B. 86b, 105a.
(19) One may purchase 'futures' in wheat at the current price, paying for it at the time of purchase and receiving it later, even if the price advances, without infringing the prohibition of usury.
(20) Pricing the wine too at current rates.
(21) In his explanation of marbith.
(22) Which is usury on a loan transaction.
(23) [The illustration of marbith by way of purchase in the Mishnah being a Rabbinical extension of the law.]
(24) Thou shalt not give him any money upon neshek, nor lend him thy victuals for marbith. Lev. XXV, 37.
(25) Pers. dankh; **, a small Persian coin, the sixth of a denar, in general, one-sixth.
(26) So Rashi. Tosaf., however, points out that the current value of a sixth of a denar was 32 perutahs, and it is inconceivable that the perutah should depreciate to such an extent. Tosaf, therefore renders: a hundred ma'ahs (ma'ah==a sixth of the denar==a danka) for a sixth of a maneh (maneh == 100 common shekels or zuz); or 100 issars (issar == 8 perutahs) for a sixth of a gold denar.
(27) Lit., 'if you go according to the beginning'.
(28) Of a denar, or, as stated above in n. 3.
(29) V. Lev. XXV, 37, quoted in n. 1.
(30) Each involving the penalty of lashes.
(31) Lev. XXV, 37.
(32) I.e., that in lending money on interest, the prohibition of neshek, and in lending provisions on interest, the prohibitions of ribbith, are violated.
(33) Deut. XXIII, 20.

Talmud - Mas. Baba Metzia 61a

now, since this is redundant in respect of money neshek, as it is already written, Thou shalt not lend upon usury to thy brother,[1] utilise the subject [to teach that the prohibition of] ribbith [applies to] money.[2] [From this] I know it only of the borrower:[3] whence do we know it of the lender? Neshek is stated in reference to the borrower; also in reference to the lender:[4] just as with respect of the neshek written in reference to the borrower, no distinction is drawn between money and provisions, neshek and ribbith,[5] so also, in respect to neshek written in reference to the lender, you must draw no distinction between money and provisions, neshek and ribbith. Whence do we know to extend [the law] to everything?[6] From the verse, neshek of anything that is lent upon usury.

Rabina said: There is no need of any verse [to teach] either that the prohibition neshek in respect of victuals, or of ribbith in respect of money, [applies to the lender]. For were it written, 'Thy money thou shalt not give him upon neshek, and thy food upon marbith,' [it would be] even as you say.[7] Since, however, it is written, Thy money thou shalt not give him upon neshek and upon marbith thou shalt not lend thy victuals,[8] read it thus: 'Thy money thou shalt not give him upon neshek and upon marbith, and upon neshek and upon marbith thou shalt not give thy victuals.'[9] But does not the Tanna state, 'it is said...it is said'?[10] — He means this: if the verse were not written [in such a way], I should have adduced a gezerah shawah: now, however, that the verse is couched [thus], the gezerah shawah is unnecessary. Then for what purpose do I need the gezerah shawah? — In respect of neshek of anything for which usury may be given, which is not written in connection with the lender.[11]

Raba said: Why did the Divine Law write an injunction against ribbith, an injunction against robbery, and an injunction against overreaching?[12] — They are necessary. For had the Divine Law stated an injunction against ribbith [only], [no other prohibition could be deduced therefrom] because it is anomalous,[13] the prohibition lying even upon the debtor.[14] Again, had the Divine Law written an interdict against robbery [I might argue that] that is because it is against his [the victim's] wish,[15] but as for overreaching, I might maintain [that it is] not [forbidden].[16] And were there a prohibition in the Divine Law against overreaching only, [I might reason,] that is because he [the defrauded] does not know [of his loss], to be able to pardon.[17]

Now one could not be deduced from another: but cannot one be derived from the other two? — Which could be [thus] deduced? Should the Divine Law omit the prohibition of usury, that it might follow from these [robbery and fraud]? [But I would argue,] The reason why these are [forbidden] is because they lack [the victim's] consent:[18] will you say [the same] of usury, which is [taken] with his [the debtor's] consent? And if the Divine Law omitted the injunction against overreaching, that it might be deduced from the others, [I would argue:] The reason why the others are [forbidden] is because commerce[19] is not carried on thus![20] — But the Divine Law should not have stated the prohibition of robbery, and it would have followed from the others. For what objections will you raise: as for interest, that it is an anomaly? Then let overreaching prove it.[21] [Should you argue,] As for fraud, [the reason of the prohibition] is that he [the victim] is in ignorance thereof, and cannot pardon: then let interest prove it.[22] And thus the argument revolves: the distinguishing feature of one is not the distinguishing feature of the other, and vice versa. The characteristic common to both is that he robs him. So also may I adduce [actual] robbery [as prohibited]! — I will tell you: That indeed is so. Then what is the need of an injunction against robbery? In respect of withholding the payment of a hired worker. But [the prohibition against the] withholding of such payment is explicitly stated: Thou shalt not oppress an hired servant that is poor and needy! . . . at his day thou shalt give him his hire![23] — To teach that he [who withholds payment] transgresses two negative precepts.[24] Then let it[25] be referred to interest or fraud, that [in their case] two negative commands are transgressed?[26] — It is a matter deduced from its context,

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(1) The object of the loan being unspecified, it must include money, particularly as the verse ends, neshek of anything for which there can be neshek.

(2) It is one of the methods of the Talmudic exegesis that if a verse is redundant in respect of its own subject, it is applied to some other.

(3) This verse is assumed to refer to the debtor, and thus translated: Thou shalt not cause thy brother to take neshek, neshek of money etc. This follows because תשיך is hif'il, causative; were the lender referred to, Scripture should have written תשוך, kal. Hence it teaches that if a borrower repays more than he receives, whether money or provisions, he transgresses two injunctions.

(4) Lev. XXV,37.

(5) I.e., the prohibitions under neshek and ribbith apply to both money and food.

(6) To things which are neither money nor food.

(7) For then the two clauses would be distinctly separated, neshek being related to money, and marbith to provisions.

(8) Literal translation with disregard of the accents.

(9) I.e., since neshek and marbith are coupled in the middle of the verse, they are both read with the first half of the verse, which treats of money, and with the second half, dealing with provisions.

(10) V. supra. Since the Tanna deduces its applicability to the lender by a gezerah shawah, how can Rabina, an Amora, maintain that it is inherent in the verse itself, it being axiomatic that an Amora cannot disagree with a Tanna?

(11) V. p. 364. n. 4. Therefore the gezerah shawah teaches that the lender violates these injunctions, whatever he lends upon usury.

(12) Since the essence of all three is the taking of money (or goods) to which one is not entitled, had one been prohibited, the others would have followed as a matter of course.

(13) Lit., ‘novel’.

(14) It is a principle of exegesis that an anomaly cannot provide a basis of analogy for other laws.

(15) The thing stolen is taken against the desire of its owner.
(16) Since the money of which the victim is defrauded is given of his own free will.
(17) So the injury remains permanently. But in robbery and usury the victim's forgiveness may wipe it out.
(18) Even in fraud, though the money is given of one's free will, still he does not consent to be defrauded.
(19) Lit., 'buying and selling'.
(20) I.e., by robbery or usury. But overcharging is sometimes a normal incident in trade, i.e., when one is particularly in need of an article, he may knowingly overpay.
(21) That robbery is prohibited, the prohibition against overreaching not being anomalous.
(22) The interest charge is known to the debtor and yet is forbidden.
(23) Deut. XXIV, 14f.
(24) The one quoted and the one against robbery making the offender liable to a twofold penalty of lashes. [The same answer could not apply to robbery itself, as robbery does not carry with it the penalty of flogging. V. Mak. 17a (Tosaf).]
(25) The superfluous injunction against robbery.
(26) I.e., instead of saying that it intimates an additional injunction against withholding the wage of a hired worker.

Talmud - Mas. Baba Metzia 61b

and it [the injunction against robbery] is written in connection with a hired worker.[1]

What is the need of the injunction, Ye shall not steal,[2] which the Divine Law wrote? — For that which was taught: 'Ye shall not steal,'[3] [even] in order to grieve;[4] 'ye shall not steal,' [even] in order to repay double.[5]

R. Yemar said to R. Ashi: For what purpose did the Divine Law state [separately] the prohibition against [false] weights?[6] — He replied: [To forbid] the steeping of weights in salt.[7] But that is pure robbery! — [To teach] that one transgresses at the very moment that this is done.[8]

Our Rabbis taught: Ye shall do no unrighteousness in judgment, in meteyard, and in weight, or in measure:[9] 'meteyard' means land measurement, [and] it forbids measuring for one in summer and for another in winter.[10] 'In weight', prohibits the steeping of weights in salt; and 'in measure' [teaches] that one must not cause [the liquid] to foam.[11] Now surely, you can reason a minori: if the Torah objected to a [false] mesurah, which is but a thirty-sixth of a log, how much more so a hin, half a hin, a third of a hin, and a quarter of a hin; a log, half a log or quarter log.[12]

Raba said: Why did the Divine Law mention the exodus from Egypt in connection with interest, fringes and weights?[13] The Holy One, blessed be He, declared, 'It is I who distinguished in Egypt between the first-born and one who was not a first-born;[14] even so, it is I who will exact vengeance from him who ascribes his money to a Gentile and lends it to an Israelite on interest,[15] or who steeps his weights in salt, or who [attaches to his garment threads dyed with] vegetable blue[16] and maintains that it is [real] blue.'[17]

Rabina happened to be in Sura on the Euphrates.[18] Said R. Hanina of Sura on the Euphrates: Why did Scripture mention the exodus from Egypt in connection with [forbidden] reptiles?[19] — He replied: The Holy One, blessed be He, said, I who distinguished between the first-born and one who was not a first-born, [even] I will mete out punishment to him who mingles the entrails of unclean fish with those of clean fish and sells them to an Israelite.[20] Said he: My difficulty is 'that bringeth you up'! Why did the Divine Law write 'that bringeth you up' here?[21] — [To intimate] the teaching of the School of R. Ishmael, he replied. Viz., The Holy One, blessed be He, declared, 'Had I brought up Israel from Egypt for no other purpose but this, that they should not defile themselves with reptiles, it would be sufficient for me.'[22] But, he objected, is their reward [for abstaining from them] greater than [the reward for obeying the precepts on] interest, fringes and weights?[23] — Though their reward is no greater, he rejoined, it is more loathsome to eat them [than to engage in the other

malpractices].[24]

AND WHAT IS TARBITH? THE TAKING OF INTEREST ON PRODUCE. E.G., IF ONE PURCHASES WHEAT AT A GOLD DENAR, etc. Is then the preceding example[25] not interest? — R. Abbahu said: Hitherto it [i.e., the first instance] is interest in the Biblical sense, but from here onward by Rabbinical law.[26] And Raba said likewise: Hitherto it is interest in the Biblical sense, but from here onward in the Rabbinical sense. So far,[27] He [sc. the wicked] shall prepare it, and the just shall put it on.[28] 'So far' and no further?[29] — But, [say] even thus far, 'He shall prepare it, and the just put it on.' Thus far it is direct[30] interest, from here onward it is indirect interest.[31]

R. Eleazar said: Direct interest can be reclaimed in court,[32] but not indirect interest. R. Johanan ruled: Even direct interest cannot be reclaimed in court. R. Isaac said: What is R. Johanan's reason?[33] The Writ saith, He hath given forth upon usury, and hath taken increase: shall he then live? he shall not live: he hath done all these abominations:[34] For it [this transgression] death is prescribed, but not return [of the money]. R. Adda b. Ahaba said: Scripture saith, Take thou no usury of him, or increase: but fear thy God:[35] fear is prescribed, but not return. Raba said: It follows from the essential meaning of the verse, He shall surely die: his blood shall be upon him;[36] thus those who lend upon usury are compared to shedders of blood:[37] just as those who shed blood can make no restitution, so those who lend upon interest can make no restitution.

R. Nahman b. Isaac said: What is R. Eleazar's reason?[38] Scripture saith,

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(1) Lev. XIX, 13: Thou shalt not oppress thy neighbour, neither rob him: the wages of him that is hired shall not abide with thee all night until the morning — and is by preference to be applied to the latter.

(2) Ibid. II.

(3) Adopting the reading as amended by Asheri and others. [The verse 'Thou shalt not steal', Ex. XX, 13, given in cur. edd. is explained as an injunction against abduction; v. Sanh. 86a.]

(4) I.e., even if the intention is merely to cause the owner temporary grief at his loss, and then return it.

(5) One may not stage a theft in order to repay double and thus make a gift to his fellow.

(6) Seeing that it is tantamount to robbery.

(7) Which naturally makes them heavier, and then using them when buying.

(8) I.e., merely steeping is forbidden, even without subsequent use.

(9) Lev. XIX, 35, מדה 'meteyard', is lineal measure; משורה 'measure', means liquid measure of capacity.

(10) Rashi: when brothers divide a landed legacy, one's portion must not be measured off in summer and another's in winter, because the measuring cord gives in winter and shrinks in summer.

(11) The foam subsiding, the measure is found to be short.

(12) I hin == 12 logs == 6.072 lit.; 1 log == 0.506 lit. J.E. XII, 484.

(13) Interest: Take thou no usury from him, nor increase . . . I am the Lord your God, which brought you forth out of the land of Egypt (Lev. XXV, 36,38); fringes: Speak unto the children of Israel, and bid them that they make fringes in the borders of their garments . . . I am the Lord your God, which brought you out of the land of Egypt (Num. XV, 38, 41); weights: Just balances, just weights, a just ephah, and a just hin, shall ye have: I am the Lord your God which brought you out of the land of Egypt (Lev. XIX, 36).

(14) Though this, particularly where the child is a first-born on the father's and not on the mother's side, is not always known to man but only to God.

(15) Gentiles being permitted to take interest, Jews pretended that their money belonged to them, and then lent it upon interest.

(16) [Probably indigo blue, an imitation of the genuine blue; תכלת , obtained from the blood of a mollusc, is enjoined in Scripture; Num. XV, 38.]

(17) These fraudulent actions may escape the notice of man, but not of God, who can distinguish what to man is indistinguishable.

(18) [Not the Sura of academy fame, but a town on the right bank of the Euphrates, 45 parasangs N. of Circesium; v. Obermeyer, op. cit. p. 38.]

(19) Lev. XI, 44, 45: Neither shall ye defile yourselves with any manner of creeping thing that creepeth upon the earth. For I am the Lord that bringeth you up out of the land of Egypt.
(20) In a wider sense, שרצים (reptiles) is used of all forbidden creatures, as here.
(21) Whereas in connection with interest etc. the expression is 'who brought you out of'; v. p. 366, n. 13.
(22) I.e., I elevated them above such baseness, 'who brought you up' being understood in a spiritual sense.
(23) This being implied by his answer.
(24) So that 'brought you up', i.e., elevated you above such repulsiveness, is more appropriate to this than to the other laws.
(25) [Lit., 'is that stated' according to MS.M.; cur. edd. 'Are all these stated'.] Viz., lending a sela' that five denarii should be returned.
(26) Lit., 'according to these words'. Lending a sum of money for a larger return is Biblically forbidden; but buying ahead, as illustrated in the Mishnah, was prohibited by the Rabbis.
(27) I.e., usury as defined in the first clause.
(28) Job XXVII, 17: i.e., if a man received interest, his heirs ('the just') are under no obligation to return it, but may put it to their own use.
(29) Surely not! If interest that is Biblically forbidden is not returnable by the heirs, surely that which is only forbidden by the Rabbis need not be returned!
(30) Lit., 'fixed'.
(31) Lit., 'dust of interest' אבק רבית. Lending a sela' for five denarii is direct interest: speculating on 'futures' is only indirect interest, for it is not certain that the wine will appreciate in value.
(32) Lit., 'through the Judges'.
(33) For it is logical that that which is taken illegally should be returnable.
(34) Ezek. XVIII, 13.
(35) Lev. XXV, 36.
(36) Ezek. ibid.
(37) Translating the last phrase: 'his blood', i.e., the blood shed by taking usury, shall be upon him.
(38) That direct interest can be recovered in court.

[Take thou no usury of him, or increase: but fear thy God;] that thy brother may live with thee; [implying] return it to him, that he may be able to live with thee.

Now how does R. Johanan interpret, 'that thy brother may live with thee?' — He utilises it for that which was taught: If two are travelling on a journey [far from civilisation], and one has a pitcher of water, if both drink, they will [both] die, but if one only drinks, he can reach civilisation, — The Son of Patura taught: It is better that both should drink and die, rather than that one should behold his companion's death. Until R. Akiba came and taught: 'that thy brother may live with thee:' thy life takes precedence over his life.[1]

An objection was raised: If their father left them usury money, though they know it to be usury, they are not bound to return it. [This implies,] But their father is bound to return it![2] — In truth, their father too is not bound to return it: but because the second clause desires to state, 'If their father left them a cow, or a garment, or any distinguishable object [received as interest], they must return it for the sake of their father's honour,' the first clause too is taught with reference to them.[3] But are they then bound to make restitution for the sake of their father's honour? [Why not] apply here, Thou shalt not curse a ruler of thy people,[4] [which means], only if he acts as is fitting for 'thy people'?[5] — It is as R. Phinehas [in another connection] said in Raba's name: If he repented; so here too, [we deal with a case] where he repented. But if he repented, how came it [the money] to be still in his possession?[6] — He died before he had time to return it.

An objection was raised: Robbers, and those who lend on usury, even when they have exacted it, must make restitution. Now, how can 'even when they have exacted it' apply to robbers? If it is robbed, it is robbed; and if not, can you call them robbers? But say thus: Robbers; and those meant thereby are those who lend upon usury, even when they have exacted it, must make restitution! — It is a dispute of Tannaim. For it was taught: R. Nehemiah and R. Eliezer b. Jacob exempt the lender and the surety [from punishment],[7] because they have a positive duty.[8] Now, what is meant by a 'positive duty'? Surely that we bid them, 'Arise and return [the usury];' from which it follows that the first Tanna[9] maintains that they are not bound to make a return.[10] No! By 'positive duty' is meant [that they are bid] to tear up the bond [of indebtedness].[11] But what is his[12] opinion? If he maintains: A bond, which is destined to be exacted, is as though it were already exacted,[13] they have [already] committed their transgression![14] Whilst if it is not as already collected, they have committed no wrong![15] — In truth, in his view a bond, destined to be exacted, is not as though already exacted, and what he teaches us is that the [mere] 'putting on' [of usury] is a transgression.[16] This also stands to reason. For we learnt: The following transgress the negative injunction: the lender, the borrower, the surety and the witnesses.[17] Now, with respect to all, it is well, [since] they commit an action. But what have the witnesses done? Hence it surely must be that the [mere] 'putting on' [of usury] is a substantial act [and in this case, a transgression]. This proves it.

R. Safra said: Wherever by their law [i.e., non-Jewish law] exaction is made from the debtor for the creditor, restoration is made by our law from the creditor to the debtor; wherever by their law there is no exaction from the debtor to the creditor, there is no restoration by our law from the creditor to the debtor. Said Abaye to R. Joseph: Now, is this a general rule? Behold, there is the case of a se'ah [lent] for a se'ah which, by their law, the debtor is forced to repay the creditor, yet by ours it is not returnable from the creditor to the debtor![18] He replied, They [regard it] as having come into his possession merely as a trust.[19] Rabina said to R. Ashi: But mortgages without deduction,[20] which by their law is exacted from the debtor for the creditor,[21]

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(1) With thee implies that thy life takes first place, but that he too has a right to life after thine is assured. [For an excellent exposition of R. Akiba's dictum, v. Simon, Leon, Essays on Zionism and Judaism by Achad Ha-am (1922), pp.

236ff.]

(2) Thus contradicting R. Johanan's ruling.

(3) But the father himself cannot be compelled to make restitution.

(4) Ex. XXII, 27: this is interpreted as a general injunction to safeguard another Jew's honour.

(5) I.e., righteously. But if a man took usury, his children are under no obligation to safeguard his honour.

(6) For true repentance necessitates the restoration of that which was wrongfully taken.

(7) The penalty of lashes attached to the injunction against interest.

(8) Lit., 'because there is "arise and do" in their case.' The transgression of a negative command is punished by flagellation, but not if it can be remedied by a subsequent positive action.

(9) The existence of another Tanna who disputes this is assumed, since this is stated in the name of particular teachers, instead of anonymously.

(10) [And consequently the wrong they had committed cannot be remedied.]

(11) I.e., having lent money upon interest, and drawn up a bond, it is the lender's duty to tear it up, thus rendering it invalid. [Where, however, payment was exacted, restitution effects no remedy of the offence.]

(12) I.e., R. Nehemiah's and R. Eliezer b. Jacob's.

(13) So that tearing up the bond is the equivalent of returning the interest.

(14) [And if the tearing up of the bond is considered a remedial action, why should the return of the interest, where actually exacted, not be considered so?]

(15) Who then can dispute that they are exempt from punishment?

(16) Cf. Ex. XXII, 24. For which, in the view of the first Tanna, punishment is incurred, whilst R. Eliezer b. Jacob and R. Nehemiah exempt them therefrom, because it may be followed by a positive action remedying it.

(17) Infra 75b.

(18) Jewish law prohibits the lending of a measure of wheat for the return of a similar measure, as the wheat may at the time of repayment stand at a higher price (v. infra 75a); by Gentile law, this transaction is permissible, and the debtor must repay it to the creditor. Yet though Jewish law forbids it, the debtor cannot demand its return after repayment, since it is only indirect interest.

(19) I.e., in their view, it is not interest at all. A entrusts a se'ah to B, and then B returns it. But R. Safra referred to what the Gentiles recognised as interest, which by their code is permissible.

(20) I.e., the debtor mortgages a field of which the creditor takes possession and enjoys the usufruct without deducting its value from the principal. This is prohibited; v. 67b.

(21) I.e., if the debtor retained the produce for himself the creditor can claim it from him at law.

Talmud - Mas. Baba Metzia 62b

yet by our law is not restored from the creditor to the debtor?[1] — He replied: They [regard it] as having come into his hand by the law of purchase.[2] Then, when R. Safra said, 'Wherever by their law, etc.', what did he mean to tell us?[3] — [This]: 'Wherever by their law exaction is made from the debtor for the creditor, restoration is made by our law from the creditor to the debtor;' this refers to[4] direct interest, and in accordance with R. Eleazar.[5] 'Wherever by their law there is no exaction from the debtor to the creditor, there is by our law no restoration from the creditor to the debtor;' this refers to prepaid and postpaid interest.[6]

E. G., IF ONE PURCHASED WHEAT AT A GOLD DENAR PER KOR, WHICH WAS THE CURRENT PRICE etc. But what does it matter if he has no wine? Did we not learn:[7] One must not fix a price [for produce] until the market price is known;[8] once the market price is established, a fixed price may be agreed upon, for even if this [vendor] has no stock, another has?[9] — Rabbah replied: Our Mishnah refers to the creating of a debt for the value thereof.[10] And as it has been taught: If one was his neighbour's creditor for a maneh, and he went and stood at his [the debtor's] granary and demanded, 'Give me my money, as I wish to purchase wheat therewith;' to which he answered, 'I have wheat with which to supply you; go and calculate [the amount] at the current price, and I will furnish you with it, [spreading it over] the whole year,' — that is forbidden, because it is not as though the issar[11] had come to his hand.[12] Abaye said to him: If the reason [in the

Mishnah is that] it is not 'as though the issar had come to his hand,' why particularly [state the case] where he has no wine? Even if he has, it is also [forbidden]![13] But, said Abaye, our Mishnah is as R. Safra learnt in the collection of Baraithas on interest of the college of R. Hiyya. For R. Safra learnt in the collection of Baraithas on interest of the college of R. Hiyya: Some things are [essentially] permitted, yet forbidden as [constituting] an evasion of usury. How so? If A requested B, 'Lend me a maneh;' to which he replied, 'I have no maneh, but wheat to the value thereof, which I will give you;' and thereupon he gave him a maneh's worth of wheat, [calculated on the current price] and repurchased it for twenty-four sela's;[14] now, this is [essentially] permitted, yet may not be done on account of evasion of usury. So here [in the Mishnah] too: e.g., A said to B, 'Lend me thirty denarii,' to which he replied, 'I have not thirty denarii, but wheat for the same, which I can give you.' He then gave him thirty denarii's worth of wheat [calculated at the current price] and repurchased it for a gold denar.[15] Now,[16] if the debtor has wine, which he gives him against the thirty denarii, he [the creditor] merely receives provisions from him, and there is no objection; but, if not, since he has no wine, to receive money certainly smacks of usury.[17] Raba said to him: If so [instead of], GIVE ME MY WHEAT, the Tanna should state, 'Give me the money for my wheat'![18] — Read: 'the money for my wheat.' [Instead of,] AS I WISH TO SELL IT, he should state, 'Which I sold you.' Read: 'which I sold you.' THE WHEAT SHALL BE ACCOUNTED AS A DEBT TO ME OF THIRTY DENARII — but from the very beginning, had it not been fixed thus against him?[19] — He said thus to him, 'For the value of your wheat which you have accounted against me at thirty denarii, you have a claim of wine upon me', whereas he [the debtor] has no wine. But it is stated, [IF A MAN PURCHASED WHEAT] AT A GOLD DENAR PER KOR, WHICH WAS THE MARKET PRICE![20] But, said Raba,[21] when I die, R. Oshaia will come to meet me,[22]

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(1) Because it is not accounted as direct interest, since the crop may fail.

(2) I.e., theoretically a mortgaged field is sold to the creditor, which the debtor redeems by repaying the loan. Hence, if the debtor seizes its produce, he seizes something that belongs to the creditor by right of purchase, not as interest.

(3) To what case does this actually apply?

(4) Lit., 'and what is it?'

(5) Supra 61b.

(6) V. infra 75b. Such interest is not actionable in Gentile law, and therefore, if paid, is not returnable by Jewish law.

(7) Infra 72a.

(8) I.e., A must not buy ahead from B at a fixed price, paying him now.

(9) I.e., B may undertake to supply A at the current price, even if he has no produce and may have to buy it himself later for delivery at a higher price; yet since B could immediately purchase it from some other merchant, it is not interest. Why then is this forbidden in the Mishnah?

(10) The vendor did not return to the purchaser the money he had received from him for the wheat, but indebted himself for it on the basis of the present advanced price, and undertook to supply him with wine to its value.

(11) I.e., the payment for the wheat.

(12) Now, had he actually received money, it would not be forbidden as interest despite the possible rise in the price, as on p. 372, n. 8, but as he receives no money, should he have to pay more later, the excess is usury; and it is likewise so in the Mishnah.

(13) For in the Baraitha quoted, he actually has wheat, yet it is forbidden.

(14) A maneh contains 100 zuz, and a sela'== 4 zuz; hence 24 sela' == 96 zuz. The debtor, being in urgent need of the money, had to sell it for less than its real worth.

(15) I.e., 25 denarii, so that the debtor has to make, in addition to the gold denar which he received in cash, a return for their remaining five denarii, — a total of 30 denarii.

(16) [When the creditor asks for the thirty denarii for the purpose of buying wine and the debtor offers to supply it.]

(17) For the debtor actually received only 25 denarii, which the creditor paid him in cash for the wheat, whilst he repaid him 30 denarii. On this explanation, IF A MAN PURCHASED WHEAT AT A GOLD DENAR PER KOR, refers to the creditor as purchaser and the debtor as vendor. The rest of the Mishnah does not agree with this interpretation, and Raba proceeds to raise this objection.

(18) Since the creditor had previously given the wheat to the debtor, and was now demanding payment.

(19) I.e., this involves no new arrangement, as is implied in the Mishnah.

(20) Whereas on this interpretation it is obvious that the creditor repurchased it at 25 when the current price was 30.

(21) The reading of R. Han. and Alfasi is: This refers to a case where he wishes to create a debt for its value, and as R. Oshaia taught; v. p. 372, n. 9.

(22) I.e., pay honour to me in the Great Beyond.

Talmud - Mas. Baba Metzia 63a

for I interpret the Mishnayoth in accordance with his views. For R. Oshaia taught: If a man was his neighbour's creditor for a maneh, and he went and stood at his granary and said, 'Repay me my money, as I wish to purchase wheat therewith,' and he [the debtor] replied, 'I have wheat which I will supply you; go and charge me therewith against my debt at the current price.' The time came for selling,[1] and he said to him, 'Give me the wheat,[2] which I wish to sell and purchase wine with the proceeds;' to which he replied, 'I have wine; go and assess it for me at the current price.' Then the time came for selling wine, and he said to him, 'Give me my wine, for I wish to sell it and purchase oil for it;' to which he replied, 'I have oil to supply you; go and assess it for me at the current price:' in all these cases, if he possesses [these commodities] it is permitted; if not, it is forbidden.[3] [So in the Mishnah.] And what is meant by 'IF A MAN PURCHASED'? He purchased against his debt.[4] Raba said: Three deductions follow from R. Oshaia: [i] the debt may be offset against provisions, and we do not say, it is not as if the issar had come to his hand;[5] [ii] but only if he [the debtor] possesses [these commodities]; and [iii] R. Jannai's view is correct, viz., what is the difference between them themselves [sc. the provisions] and the value thereof?[6] For it was stated: Rab said: One may buy on trust against [future delivery of] crops, but not against [repayment of] money at [future prices].[7] But R. Jannai said: What is the difference between them themselves [sc. the crops] and the value thereof?[8]

An objection was raised: In all these cases, if he possesses [these commodities], it is permitted.[9] — R. Huna answered in Rab's name: This means that he drew [the produce into his possession].[10] If he drew it into his possession, need it be taught?[11] — But, e.g., he assigned a corner [of the granary] to him.[12] Samuel said: This is taught in accordance with R. Judah, who ruled: One-sided usury is permitted.[13] For it has been taught: If a man was his neighbour's creditor for a maneh, for which he [conditionally] sold him his field;[14] if the vendor enjoys the usufruct, it is permitted; if the purchaser, it is forbidden.[15] R. Judah ruled: Even if the purchaser has the usufruct, it is permitted.[16] R. Judah said to them: It once happened that Boethus b. Zunin [conditionally] sold his field, with the approval of R. Eleazar b. Azariah, and the purchaser took the usufruct. Said they to him: [Would you adduce] proof from thence? The vendor enjoyed its usufruct, not the purchaser. Wherein do they[17] differ? — Abaye said: They differ with respect to one-sided interest.[18] Raba said: They differ with respect to interest [received] on condition that it shall be returned.[19]

Raba said: Now that R. Jannai ruled:

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(1) There was a time when wheat was generally sold, when it generally appreciated in value.

(2) He had not given it to him before.

(3) If the debtor actually possesses these commodities, as soon as he agrees to furnish him with a certain quantity thereof, that quantity belongs to the creditor, even if he does not actually take it; and if it appreciates, his own appreciates, and there is no suggestion of usury, even if the transaction is made several times, each time at an enhanced value. But if the debtor lacks them, and when the bargain is struck, actually receives no money, it has the appearance of a ruse to increase his indebtedness (v. p. 373, nn. 4, 6), and is thus like usury, and consequently forbidden.

(4) Thus: A owing a gold denar to B, credited him with a kor of wheat for it, which was the current price; then the kor appreciated to 30 denarii, and A credited B with wine to the value of 30 denarii. Actually Raba's explanation coincides with Rabbah's (supra 62b); this is particularly evident from the reading of R. Han. and Alfasi, given p. 374, n. 4, in which Raba uses the same words as Rabbah; Raba merely quotes R. Oshaia's dictum to dispose of the difficulties urged

against Rabbah's explanation, as is seen in the deductions he makes: v. n. 2.
(5) This disposes of the criticism levelled on 62b against Rabbah's explanation on the strength of the Baraitha quoted there . . . R. Oshaia's dictum differs from that Baraitha, and Rabbah's interpretation, with which Raba's is identical (v. preceding note), agrees with R. Oshaia.
(6) The Talmud proceeds to explain this.
(7) I.e., a man may buy crops at present prices, paying immediately, for delivery at some future date, even though they may have appreciated in the meanwhile. But he may not arrange to receive the future value of the crops, for since he may thus receive in actual money more than he gave, it has the appearance of usury.
(8) Since he may receive the crops, though they represent more than was paid, he may also receive money in lieu thereof. R. Oshaia's ruling, that the creditor may be credited with wine calculated on the low price and according to the appreciated value of the wheat, supports this view, that the crops owing to him may be deemed as actual money.
(9) Quoted from the Baraitha of R. Oshaia cited above; as this supports R. Jannai (v. preceding note), it refutes Rab.
(10) Hence it is actually his own, and not merely a debt, and therefore the subsequent transactions are permitted; v. p. 374, n. 8.
(11) It is then obvious!
(12) Declaring, 'The wheat in this corner be yours for my debt.' R. Oshaia thus teaches that mere assignation has legal validity to render it his, and no longer a debt.
(13) I.e., that which might result in an appearance of usury, as in the case under discussion. For he may give him the crops, in which case there is no suspicion of usury: only when he gives money in lieu thereof, does it appear as such.
(14) 'If I do not repay by a certain date, the field is sold to you from now;' v. infra 65b.
(15) For should the money be repaid, he will have received usury thereon.
(16) For it is not certain that the field will be redeemed, in which case there is no usury. Hence it is regarded as 'one-sided' usury', which R. Judah permits.
(17) R. Judah and the Rabbis who oppose him.
(18) As explained above.
(19) I.e., even R. Judah admits that if the purchaser retains the crops after repayment, it is forbidden. But they differ where it is stipulated that if the loan is repaid, the creditor must return the value of the crops he has taken. R. Judah permits this arrangement, since thereby an infringement of usury is precluded, whilst the Rabbis maintain that even this is forbidden, for when he enjoys the usufruct it is actually interest on money lent (Rashi). Tosaf. explains that there is a real possibility of interest. Thus: should he fail to repay the entire loan, the creditor retains the whole value of the crops, even if it exceeds the deficit.

Talmud - Mas. Baba Metzia 63b

We reason, 'What is the difference between them themselves [sc. the crops] and their value?' we argue [conversely] too, 'What is the difference between their value and them themselves?' and [consequently] one may contract to supply [provisions] at the current market price even if he has none.[1] R. papa and R. Huna the son of R. Joshua objected to Raba's [statement]: In all these cases, if he possesses [these commodities], it is permitted; if not, it is forbidden![2] — He answered them: There [the reference is to] a loan, here to a sale.

Rabbah and R. Joseph both said: Why did the Rabbis rule, A man may contract to supply [provisions] at the current market price, even if he has none? Because he [the purchaser] can say to him [the vendor], 'Take your favours and throw them in the bush! How do you benefit me? Had I money, I could have bought cheaply in Hini and Shili.'[3] Abaye said to R. Joseph: If so, should it not be permitted to lend a se'ah for a se'ah, since he [the borrower] could say, Take your favours and throw them in the bush! For,' he could argue, 'would my wheat have gone to ruin in my granary?' — He replied: There it is a loan, here a purchase. R. Adda b. Abba said to Raba: But he would have to pay money to a broker![4] — He replied: He [the purchaser] must give that too to him. R. Ashi said: people's money is their broker.[5]

Rabbah and R. Joseph both said: He who advances money at the early market price[6] must

[personally] appear at the granary. For what purpose? If to acquire it — but he does not thereby acquire it![7] If that he [the vendor] may have to submit to [the curse], 'He who punished, etc.,'[8] — even without his appearing there, he must submit thereto! — In truth, it is that he may submit to the curse; but he who advances money on an early market generally gives it to two or three people:[9] hence, if he appears before him, [he shews] that he relies upon him [for supplies]; but if not, he [the vendor] can plead, 'I thought that you found better produce than mine, and bought it [intending that I should return your money].' R. Ashi said: Now that you say it is because of his relying upon him, then even if he met him in the market and said to him, ['I rely upon you',] he relies upon him.[10]

R. Nahman said: The general principle of usury is: All payment for waiting [for one's money] is forbidden. R. Nahman also said: If one gives money to a wax merchant, when it is priced at four [standard measures per zuz], and he [the vendor] proposes,'I will supply you five [per zuz];'[11] if he possesses it, it is permitted; if not, it is forbidden. But this is obvious![12] — It is necessary [to teach this] only when he has [wax] credits in town:[13] I might think that in such a case it is as though [he had said, 'Lend me] until my son comes, or until I find the key:'[14] therefore he teaches, since it must yet be collected, it is as non-existent.

R. Nahman also said: If one borrows money from his neighbour and found a surplus therein, if it is an amount about which there could be an error, he must return it; otherwise, it is simply a gift. When is it 'an amount about which there could be an error'? — R. Abba, the son of R. Joseph said:

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(1) For, just as it is certainly permissible if he has the stock, so also when he has the money furnished by the purchaser to buy it, for there is no essential difference between stock and money. — In such passages the reference is to contracting ahead, when the crops are probably dearer.

(2) Quoted from R. Oshaia's Baraitha. Whereas Raba permits it even if he has none.

(3) [On Hini and Shili, v. B.B. (Sonc. ed.) p. 753, n. 6. There was the central corn market, which supplied corn throughout Northern Babylon, and where wheat was procurable at lower prices (v. Obermeyer, op. cit. p. 32). I.e., 'I could buy it there before the rise in prices,' and thus the purchaser derives no benefit by advancing the money to the seller. The question of usury consequently does not arise.]

(4) By paying for the wheat beforehand the buyer saves the broker's fee, which he would have had to pay each time he wanted to make a purchase. This saving constitutes interest on his money.

(5) I.e., if he can pay cash, he needs no intermediary.

(6) Soon after the harvest, before trade commences in earnest and a general price is fixed, there is some desultory selling at a low price. Buying ahead at this price is also permitted if the vendor has supplies.

(7) Merely by appearing there, but must draw it into his possession — perform meshika.

(8) V. supra 44a. So here too: the vendor should be morally bound, though the purchaser has not formally acquired it.

(9) Presumably because the vendor would not accept a large order.

(10) And thereby submits himself to the curse.

(11) If you accept it later, though paying the money now.

(12) As various Baraithas have already stated.

(13) I.e., he has already paid for stocks, which are now due to him.

(14) v. infra 75a; here too, I might regard it as being already in his possession, though temporarily inaccessible.

Talmud - Mas. Baba Metzia 64a

In [denominations of] tens or fives.[1] R. Aha the son of Raba asked R. Ashi: But what if he [the lender] is a hard man, who never gives presents? — He replied: He may have robbed him [on a previous occasion], and now included it in the total sum. For it has been taught: If one robbed his neighbour, and then included it in the account, he is quit [of his obligation]. But what if he [the lender] had come from elsewhere, and had never had business dealings with him? — He replied: He [the borrower] might have been robbed by some other person, and might say to him [the lender], 'When so and so borrows money from you, include this in the sum.'

R. Kahana said: I was sitting at the end of Rab's sessions,[2] and heard him repeatedly mention 'gourds',[3] but did not know what he meant. After Rab arose [and departed], I asked them [sc. the students], To what did Rab refer in his repeated mention of gourds'? — They answered me, Thus did Rab say: If a man gives money to a gardener for gourds, ten gourds of a span's length being priced [at a zuz], and says to him, 'I will give you [gourds] a cubit in length [for the money];' if he actually has them, it is permitted; but if not,[4] it is forbidden.[5] Is this not obvious? — I might think, since they naturally grow large [without requiring labour], it is in order. He therefore taught [otherwise]. With whom does this agree? — With the following Tanna. For it has been taught: If one is going to milk his goats, shear his sheep, or remove the honey from the combs, and meeting his neighbour, says to him, 'The milk which my goats will yield is sold to you; the wool sheared from my sheep is sold to you; the honey to be removed from my combs is sold to you;' it is permitted.[6] But if he said to him, 'So much of my goats' milk yield is sold to you; so much of my sheep's shearings is sold to you; or so much of the honey which will be removed from the honeycombs is sold to you,'[7] it is forbidden.[8] Now, though such yield comes naturally,[9] yet since it is non-existent just then [when the transaction is made], it is forbidden.[10] Others Say, Raba ruled [in reference to the gourds]: Since they grow naturally, it is permitted. But it has been taught that 'so much and so much'[11] is forbidden! — There, the increase is not in [the product] itself, for the present yield is taken and other comes in its stead;[12] here, however, that itself [the produce he has in his garden] increases [in size], for if that is taken away, others do not grow in its place.[13]

Abaye said: A man may say to his neighbour, 'Here are four zuz for a barrel of wine; if it turns sour, it is in your ownership;[14] but if it appreciates or depreciates [in value], it is in mine.' Said R. Sherabia to Abaye:

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(1) They used to count in fives and tens (Tosaf.). Now, if the amount should have been e.g., fifty, and it was fifty-five or sixty, the lender may have mistakenly counted eleven fives instead of ten, or six tens instead of five; but if it were fifty-two or-three etc., it is impossible that it should have been an error.

(2) שלהי פרקי ; the phrase seems to be a technical term denoting a special session at the end of a series of lectures devoted to the reviewing of the conclusions reached during the course. Kaplan J. op. cit. p. 257.]

(3) [As a kind of mnemonic, loc. cit.]

(4) His gourds being small, and the purchaser must wait until they grow.

(5) For he gives him larger gourds in return for waiting, which looks like usury.

(6) For it is a speculation: though the buyer may receive more than his money's worth (the price being fixed and paid in advance), the yield might also be poor, in which case he would lose.

(7) And in each case giving him a particular low quotation in return for advance payment.

(8) Since a definite quantity must be supplied, the lower quotation is usury.

(9) Should there not be an immediate sufficiency, the goats etc. will yield again.

(10) Thus Rab's dictum is in accordance with this Baraitha.

(11) Viz., the dealings stated above.

(12) Hence it is forbidden.

(13) Without replanting, since he supplies the gourds actually in his garden, it is not usury to keep them in the soil until they grow larger and then supply them.

(14) So that another must be supplied.

Talmud - Mas. Baba Metzia 64b

But that is near to profit [if it appreciates] and remote from loss.[1] — He replied: Since he accepts the risk of depreciation, it is near to both [profit and loss].

MISHNAH. IF A MAN LENDS [MONEY] TO HIS NEIGHBOUR, HE MUST NOT LIVE RENT-FREE IN HIS COURT, NOR AT A LOW RENT, BECAUSE THAT CONSTITUTES

USURY.

GEMARA. R. Joseph b. Minyomi said in R. Nahman's name: Though it has been ruled, if one dwells in his neighbour's court without his knowledge, he need not pay him rent, yet if he lent him [money] and then dwelt in his court, he must pay him rent. What does he teach us? We have [already] learnt: IF A MAN LENDS [MONEY] TO HIS NEIGHBOUR, HE MUST NOT LIVE RENT-FREE IN HIS COURT, NOR AT A LOW RENT, BECAUSE THAT CONSTITUTES USURY? — If from the Mishnah, I might have thought that that holds good only of a court which exists for letting, and a man [sc. the creditor] who generally rents. But if it is a court which is not for letting, and a person who does not generally rent,[2] I would say, It is not so:[3] therefore he teaches us [otherwise].

Others say: R. Joseph b. Minyomi said in R. Nahman's name: Though it has been ruled, If a man dwells in his neighbour's court without his knowledge, he is not bound to pay him rent, [yet if he proposes to him,] 'Lend me money, and live in my court,' he [the creditor] must pay rent. Now, he who rules, [Even] if he had [already] lent him, [he must pay rent], will certainly hold the same if he proposed, 'Lend me [etc.].' But he who rules, [if he says,] 'Lend me,' [he must pay him rent], will, in the case where he has already lent him, hold that it is unnecessary. Why so? Since he did not originally lend the money for this purpose, there is no objection to it.[4]

R. Joseph b. Hama seized the slaves of people who owed him money and put them to service. Said his son Raba to him: Why does the Master do thus? — He replied: I agree with R. Nahman. For R. Nahman said: A slave['s labour] is not worth the bread he eats.[5] Said he to him: perhaps R. Nahman said this only of such as his servant Daru, who went about dancing in taverns; but did he say this of other servants! — He replied: I am of the same opinion as R. Daniel son of R. Kattina, who said in Rab's name: If one seizes his neighbour's slave and puts him to service, he is free [from payment],

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(1) Since he is safeguarded if it turns sour. Such an arrangement is forbidden infra 70a.

(2) Because he has his own property (Rashi).

(3) He is not bound to pay the rent.

(4) I.e., having lived there, he is not bound to pay the rent. The Mishnah then which says that he must not live rent free means that no condition to that effect is permissible.

(5) Hence, having to provide them with food, I gain nothing by their labour, and receive no interest.

because he [the owner] is pleased that his slave does not become demoralized [through idleness]. But, he urged, that is only if one has no monetary claim upon him; since you, Sir, have a monetary claim upon them, it looks like usury. For R. Joseph b. Minyomi said in R. Nahman's name: Though it has been ruled, if one dwells in his neighbour's court without his knowledge, he is not bound to pay him rent; yet if he lent him [money] and then dwelt in his court, he must. He replied: Then I repent thereof.

Abaye said: If a man had a claim of usury upon his neighbour, and the market price of wheat was four grivas[1] a zuz, whilst he [the debtor] gave him five; when we reclaim it from him,[2] we only reclaim four, but as for the other, he merely favoured him with a cheap rate.[3] Raba said: We reclaim five, because from the very outset he acquired it all as interest.

Abaye also said: If a man had a claim of four zuz in interest upon his neighbour, and he gave him a garment for it, when we compel repayment, we make him repay four zuz, but not the garment.[4] Raba said: We compel him to return the garment. Why so? That people may not say, 'The garment he wears is a garment of usury.' Raba said: He who has a usury claim of twelve zuz upon his

neighbour, and he [the debtor] rented him his court-yard, such as is generally let at ten zuz, for twelve; when we make him disgorge, we force him to repay twelve. R. Aha of Difti said to Rabina: But cannot he protest, 'When I rented it thus [at such a high rent], it was because I profited thereby;[5] now, however, that I do not profit, just at [the same rate] as all rent it, so will I'?[6] — Because he [the debtor] can say to him, 'You understood [its value] and accepted it [at twelve zuz].'

MISHNAH. RENT MAY BE INCREASED, BUT NOT THE PURCHASE PRICE. E.G., IF A MAN RENTS HIS COURT, AND SAYS TO HIM [THE TENANT], 'IF YOU PAY ME NOW [FOR THE YEAR], YOU CAN HAVE IT FOR TEN SELA'S PER ANNUM; IF MONTHLY, AT A SELA' PER MONTH — THAT IS PERMITTED. IF HE SELLS HIS FIELD, AND SAYS TO HIM [THE PURCHASER], 'IF YOU PAY ME NOW, IT IS YOURS FOR A THOUSAND ZUZ; BUT IF AT HARVEST TIME, FOR TWELVE MANEHS'[7] — THAT IS FORBIDDEN.

GEMARA. What is the difference between the first clause and the second? — Rabbah and R. Joseph both said: Rent is payable at the end [of the year]; hence, since it is not yet time to claim, it is not payment for waiting,[8] but this [a sela' per month] is its actual value; and as for his proposition, IF YOU PAY ME NOW [FOR THE YEAR], YOU CAN HAVE IT FOR TEN SELA' PER ANNUM, he is favouring him with a cheaper rent [than normal]. But in the second clause, the reference is to purchase, where the money is immediately due; therefore [the higher price] is payment for waiting, which is forbidden. Raba said: The Rabbis scrutinised this ruling, and based it on Scripture: As the hiring of a year in a year,[9] [which intimates,] the hire of one year is not payable until the next.[10]

BUT IF AT HARVEST TIME, FOR TWELVE MANEHS — THAT IS FORBIDDEN. R. Nahman said: An increased credit price[11] is permitted. Rami b. Hama, others Say, R. 'Ukba b. Hama, refuted R. Nahman: BUT IF AT HARVEST TIME, FOR TWELVE MANEHS — THAT IS FORBIDDEN? — He replied: There [the increase] was stipulated; here no stipulation is made. R. papa said: The increased credit price which I take is permitted.[12] Why? Because my beer will not deteriorate [if I keep it until Nisan], [and] I am in no need of money;[13] hence, I merely confer a benefit upon the purchaser [by letting him have it earlier]. But R. Shesheth the son of R. Idi said to R. papa: Why should you merely consider yourself? Consider them [the purchasers]: had they money, they would purchase at present prices; lacking it, they must buy it at the higher future prices.[14] R. Hama said: My increased credit price is certainly permitted.[15] Why? They are pleased that it shall remain in my ownership, so that wherever they go they are released from taxation and the market is held up for them.[16]

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(1) A dry measure. Jast. and J.E. XII, 488, identify it with a se'ah, on the strength of a passage in 'Er. 14b.

(2) Direct interest can be reclaimed, infra 656.

(3) Hence, it is not part of the interest.

(4) The garment is regarded as a sale, and hence not returnable.

(5) Receiving it as interest due.

(6) I.e., only ten zuz should be reckoned for it.

(7) == 1200 zuz.

(8) I.e., the higher price for the monthly arrangement cannot be regarded as such, since the money is not yet due.

(9) Lev. XXV, 53.

(10) I.e., at the end of the year. This is a mere support, not the actual source of the law.

(11) Tarsha, lit., 'deaf or silent usury' (Jast.); i.e., selling goods on credit at more than cash price but without stipulating that the addition is on account of credit.

(12) R. Papa was a manufacturer of beer. He sold it in Tishri, when prices are low, to be paid for in Nisan at Nisan prices, which are higher.

(13) To have to sell it earlier — he was a wealthy man.

(14) So that it is usury from their point of view.

(15) R. Hama sold goods where they were cheap at the higher cost of some other place. The purchaser then conveyed the goods there at R. Hama's risk. Since R. Hama bore the risk, the goods were his until brought there, therefore they really sold his wares, and so he was entitled to the prices of that place.
(16) No one being permitted to sell until they had sold out, which was the scholar's privilege.

Talmud - Mas. Baba Metzia 65b

Now, the law is as R. Hama;[1] and the law is as R. Eleazar;[2] and the law is as R. Jannai, who said: What is the difference between them themselves [sc. the provisions] and the value thereof?[3]

MISHNAH. IF A MAN SOLD A FIELD, AND HE [THE BUYER] HAVING PAID PART OF THE PURCHASE PRICE, THE VENDOR PROPOSED, 'WHENEVER YOU DESIRE, BRING ME THE BALANCE AND TAKE YOUR OWN' [SC. THE FIELD], THAT IS FORBIDDEN.[4] IF HE LENT MONEY ON A FIELD AND SAID TO HIM [THE DEBTOR], 'IF YOU DO NOT REPAY ME WITHIN THREE YEARS, IT [THE FIELD] IS MINE' — IT BECOMES HIS; AND THUS DID BOETHUS B. ZUNIN DO, [ACTING] WITH THE APPROVAL OF THE SAGES.

GEMARA. Who enjoys the usufruct? — R. Huna said: The vendor; R. 'Anan said: It is entrusted to a third party.[5] But there is no dispute: the former is the case if he stipulated, 'When you bring it [the balance], [then] acquire it;'[6] the latter if he stipulated, 'When you bring it, acquire it from now.'[7]

R. Safra learnt in the [collection of Baraithas on] usury of the School of R. Hiyya: Sometimes both [the vendor and the purchaser] are permitted [to enjoy the usufruct]; sometimes both are forbidden; sometimes the vendor is permitted and the purchaser forbidden; and sometimes the purchaser is permitted and the vendor forbidden.[8] Thereupon Raba explained: 'Sometimes both are permitted,' viz., if he stipulates, 'Acquire [forthwith] in proportion to your deposit;'[9] 'sometimes both are forbidden,' if he stipulates, 'When you bring it [the balance], let it be yours from now;[10] 'sometimes the vendor is permitted but the purchaser forbidden,' if he stipulates, 'When you bring it, [then] acquire it;' 'and sometimes the purchaser is permitted and the vendor forbidden,' if he states, 'Let it be yours from now, and the balance be a loan [from me to you].'

Which Tanna holds that both are forbidden? — R. Huna the son of R. Joshua said: It does not agree with R. Judah; for were it in accordance with R. Judah — surely, he maintained that one-sided interest is permitted.[11]

If a man mortgages a house or a field, and he [the creditor] says to him, 'Should you wish to sell it, you must let me have it at this price [less than its value],' — that is forbidden: 'at its real value,' — that is permitted. Which Tanna maintains that [if he stipulates] 'at this price,' it is forbidden — R. Huna the son of R. Joshua said: It does not agree with R. Judah; for were it in accordance with him — surely he holds that one-sided interest is permitted.[12]

If he sells a house or a field, and says to the purchaser, 'When I have money, resell it to me,' — that is forbidden. [If the buyer says], 'When you have money, I will resell it to you,' — that is permitted.[13] With which Tanna does this agree? — R. Huna the son of R. Joshua said: Not with R. Judah; for if it agreed with him — surely he ruled that one-sided interest is permitted.[14] What is the difference between the first clause and the second? — Raba answered: In the second clause, he [the buyer] stipulated that it [the re-sale] should be voluntary.[15]

A man once sold an estate to his neighbour without surety.[16] Seeing that he [the purchaser] was disquieted, he said to him, 'Why are you disquieted? Should it be seized from you [for a debt of mine], I will repay you out of the best of my estate, [even] for your improvements and the crops.' Said Amemar:

(1) With reference to this form of interest.

(2) Supra 61b, that direct interest is legally reclaimable.

(3) Supra 63a.

(4) Rashi: When the balance is paid, the field shall have belonged to the buyer from the time of purchase. Now, should the vendor take the usufruct, when the balance is paid, he has enjoyed that which really belonged to the purchaser, and it looks like interest on the balance, for which he waited. On the other hand, should the purchaser take its profits from the time of the deposit and never complete the transaction, the deposit being returned, he has thus received interest on it.

(5) Who retains them for one or the other, as the case may be.

(6) Hence in the meanwhile the profit is the vendor's.

(7) Therefore neither the vendor nor the purchaser can take the profit, and hence it is entrusted to a third party.

(8) Without stating the conditions of each.

(9) Then they share the profit on a pro rata basis.

(10) As explained on p. 384, n. 5.

(11) V. p. 384, n. 7. Here too, should the vendor take the usufruct and the sale remain uncompleted, there is no interest, and therefore on R. Judah's view, it is permitted.

(12) V. supra 63a. Here too, there is no certainty that the mortgagee will sell his field at all.

(13) The first is forbidden, as it looks like evasion of usury: the purchaser gives a sum of money to the vendor, in return for which he uses the field until the former repays him.

(14) V. supra 63a. Here too, it may be that the field will not be repurchased, in which case there is no interest.

(15) At the option of the buyer; therefore it is purely a business deal. But when the vendor stipulates that the buyer must re-sell, it is a disguised loan.

(16) V. supra 14a.

Talmud - Mas. Baba Metzia 66a

They are merely words of good cheer[1] R. Ashi said to him: Why so? [Is it] because the buyer should have stipulated, whilst here the vendor did so, and therefore you maintain that they were merely words of good cheer? But [what of] the Baraitha wherein it is taught: [If the purchaser says,] 'When you have money, I will resell it to you,' that is permitted? Now, surely [there too] though the vendor should have made this stipulation,[2] the vendor did not stipulate but the buyer; and yet when we asked,[3] What is the difference between the first clause and the second, Raba answered: In the second clause he [the purchaser] stipulates that it [the resale] should be voluntary, thus implying that if he does not stipulate that it should be voluntary [the transaction would be forbidden], and we do not assume that [his offer] was merely words of good cheer![4] — He replied: What was said was that it is accounted as though he had stipulated that it [the re-sale] should be voluntary.[5]

A certain sick man[6] wrote a get[7] for his wife.[8] He then groaned and sighed, whereupon she [his wife] said to him, 'Why do you sigh? should you recover, I am yours.' Said R. Zebid: These were mere words of consolation. R. Aha of Difti asked Rabina: And what if they were not mere words of consolation? Does it lie within her power to insert a condition in the get? Surely it rests only with him to give the get on a condition! — I might think, he himself meant to give the get in accordance with her desires.[9] Hence he teaches otherwise.[10]

IF HE LENT MONEY ON A FIELD. R. Huna said: [If he stipulated thus] when lending the money, it becomes completely his;[11] if after, he acquires [of the field] only in proportion to the money owing. R. Nahman said: [Even if the stipulation was made] after lending the money, it becomes completely his. Now, R. Nahman gave a practical decision at the Resh Galutha's [court][12] in accordance with his ruling. Rab Judah [however] tore up the document [embodying his decision]. Said the Resh Galutha to him: Rab Judah has torn up your document. He replied: Did then a child tear it up? It was a great man who tore it up. He must have seen some reason therein [to invalidate it], and hence tore it up. Others say: He [R. Nahman] replied: A child has torn it up, for in civil law

everyone is a child compared to me.

Subsequently R. Nahman ruled: Even [if the stipulation was made] when the money was being handed over, he [the creditor] acquires no rights therein at all. Raba objected to R. Nahman: IF YOU DO NOT REPAY ME WITHIN THREE YEARS, IT [THE FIELD] IS MINE,' — IT BECOMES HIS! — He replied: I used to rule that an asmakta[13] is binding, but Minyomi ruled that it is not.[14] But [then] according to Minyomi, is not our Mishnah difficult? — If you wish, I can answer that the Mishnah agrees with R. Jose, who ruled that an asmakta is legally valid;

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(1) I.e., to tranquillise the buyer, but not seriously meant, and therefore of no legal consequence.

(2) The attachment to one's soil is very strong, and when a man sells his estate through financial exigencies, it may be assumed that he would like the option of repurchasing.

(3) Supra.

(4) But binding, though it is to the purchaser's disadvantage.

(5) Since it is a stipulation which would come most naturally from the vendor, whereas it was actually made by the purchaser, its voluntary character is inherent. On this interpretation Raba's dictum supports Amemar.

(6) שכיב מרע , a man expecting to die.

(7) v. Glos.

(8) He was childless, and the divorce was to free her from the tie of his brother (v. Deut. XXV 5ff), but he did not stipulate that it should be valid only if he died.

(9) Therefore the stipulation should be regarded as his, and so valid.

(10) That her words were not meant to be binding at all.

(11) If the loan is not repaid.

(12) Resh Galutha, exilarch, was the official title of the head of Babylonian Jewry, whose son-in-law R. Nahman was.

(13) V. Glos.

(14) And he persuaded me to his ruling.

alternatively, it means that he said to him: 'Let it be yours from now.'[1]

Mar Yanuka and Mar Kashisha, the sons of R. Hisda,[2] said to R. Ashi: Thus did the Nehardeans say in R. Nahman's name: An asmakta, in its time, is binding; out of its time, it is not binding.[3] Said he to them: Every agreement [not merely an asmakta] is binding only when it matures, but not otherwise! perhaps you mean thus: If he [the debtor] meets him [the creditor] within the period [of repayment] and says to him, 'Take possession,'[4] he acquires it; if after the time [fixed for repayment] and he says to him, 'Take possession,' he does not acquire it. Why? He spoke thus [merely] through shame.[5] Yet that is incorrect:[6] even if within the period, he obtains no legal right, and as for his saying, 'Take possession,' he intends [thereby] that when the time comes he shall not trouble him.[7]

R. papa said: An asmakta is sometimes legally binding and sometimes not. If he [the creditor] found him [the debtor] drinking beer [at the expiration of the period], it is binding; if he was endeavouring to procure money, it is not binding.[8] R. Aha of Difti said to Rabina: perhaps he was drinking to drown his anxiety, or else someone had assured him of the money? But, said Rabina, if he insists on its full value, it [his offer to the creditor to take the field] is certainly valid.[9] Said R. Aha of Difti to Rabina: perhaps that is due to fear lest his land lose its worth?[10] But, said R. Papa, if he is particular about his land, it [his offer to the creditor] is certainly binding.[11]

R. Papa also said: Although the Rabbis ruled that an asmakta gives no legal title, yet it creates a mortgage from which payment may be exacted.[12] Said R. Huna the son of Nathan to R. Papa: Did he then say to him, 'Let it be yours for the exaction of your debt'? Mar Zutra, the son of R. Mari, objected before Rabina: But even if he had said, 'Let it be yours for the exaction of your debt' — has

he a legal title? After all, it is an asmakta, and an asmakta is not binding. But when did R. Papa rule that it creates a mortgage? — If he stipulated, 'You shall receive payment only out of this.'[13]

A man once sold land to his neighbour with security. Said he [the purchaser] to him, 'Should this be seized from me, will you repay me out of your "very best"?' — He replied, 'I will not repay you out of the "very best", as I want them for myself, but out of other "best" which I possess.'[14] Subsequently it was seized from him. Then there came an inundation and swamped the very best [land]. R. Papa thought to rule: He promised him of 'the best', which is intact. Said R. Aha of Difti to him: But he [the vendor] can plead, 'When I promised to repay you from the "best", the very best" was existent; but now the "best" has replaced the "very best".'[15]

Rab b. Shaba owed money to R. Kahana. 'If I do not repay you by a certain date', said he to him, 'you may exact your debt out of this wine.'[16] Now, R. papa thought to argue, Where do we rule that an asmakta is not binding, only in respect of land, which is not for sale;[17] but as for wine, since its purpose is to be sold, it is just the same as money. But R. Huna, the son of R. Joshua, said to R. Papa: Thus is it stated in Rabbah's name: No 'if' is binding.[18]

R. Nahman said: Now that the Rabbis have ruled, An asmakta gives no claim, both the land and its produce are returnable.[19] Shall we say that R. Nahman holds that renunciation in error is invalid?[20] Surely it has been stated: If one sells his neighbour the fruit of a palm tree — R. Huna said: As long as it is non-existent [the fruit not having grown yet], he can retract;[21] but when it is [already] come into existence, he cannot. R. Nahman said: Even when it has come into existence, he can retract. Yet R. Nahman said: I admit that if he [the purchaser] snatched and consumed it, he [the vendor] has no claim upon him![22] — There it is a sale; here it is a loan.[23]

Raba said:

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(1) In which case it is not an asmakta at all. For the money is given as the purchase price, not as a loan, save that the vendor has the option of repurchase.

(2) Yanuka is derived from a root meaning youth, Kashisha, age. Accordingly, Rashi in Keth. 89b says that Mar Yanuka was the younger, and Mar Kashisha the older. Tosaf. in B.B. 7b, s.v. מר ינוקא , reverses it: Mar Yanuka means a son born in R. Hisda's youth, Mar Kashisha, in his old age.

(3) R. Ashi assumed this to mean: when the obligation matures, it is binding, and the creditor can foreclose; but not before.

(4) I.e., I have no intention of redeeming it when the time comes.

(5) At not having repaid the loan, yet was not in earnest; therefore it is an asmakta and non-binding.

(6) Granted that this is your meaning, the ruling is incorrect.

(7) By demanding repayment.

(8) If repayment was due, and the debtor told him to take the field, at the same time engaging in frivolous pursuits, it is evident that he does not care about it and is in earnest. But if he was attempting to find the money, he was obviously anxious to retain his estate, and therefore his offer was not really meant and is not binding.

(9) Rashi: if when selling some of his articles he insists on obtaining their full value, he is not anxious for the field, as otherwise he would sell for less and repay. Tosaf:. If, when he borrowed, he was mindful of borrowing to the full value of the field, he must have borne in mind the possibility of nonredemption, and therefore means the creditor to have it now.

(10) If he were seen selling articles (on Rashi's interpretation) or mortgaging a field (Tosaf.) at less than their value, his financial straits would be known, with the result that his property would drop in price. Yet he really may wish to retain the field

(11) Rashi: if he is particular not to sell any land, even for its full value, he is obviously not anxious to retain the mortgaged estate, as otherwise he would have sold off some other field. (Presumably this assumption is made because he could not have obtained on a mortgage the same money as by a sale in the open market) Tosaf.: If, when borrowing, he was insistent that the mortgage should be on that particular field, he evidently anticipated the possibility of

non-redemption, and was reconciled to it.

(12) I.e., though the creditor cannot seize the whole field, which is probably worth more than the debt, he can claim payment from that particular field, and refuse to be fobbed off with another.

(13) Since he assigned the field for repayment in all circumstances, it is no longer asmakta as far as the amount of the debt is concerned.

(14) 'Very best', עידי עידית , and 'best', עידית , denote two grades of soil.

(15) So that he must be indemnified out of medium quality soil.

(16) And a valuation was made, but it subsequently appreciated.

(17) V. p. 386, n. 6; therefore the offer to give land is not genuine.

(18) A stipulation, '"if" I do not repay, take so and so,' is not binding.

(19) The reference is to the case stated in the Mishnah on 65b. If the creditor after three years returns the field and enjoys the usufruct, he must return both. [Maim. Yad., Laweh. VI, 4, and Alfasi, include in the return also the usufruct enjoyed by the creditor during the three years.]

(20) The debtor, in permitting the creditor to possess its usufruct, has obviously renounced his own rights; but erroneously, not knowing that the creditor's title is invalid, and R. Nahman rules that the produce is returnable.

(21) Because one cannot give possession of that which is non-existent.

(22) Though the vendor permitted him only because he was unaware that he could retract, hence in error; thus proving that an erroneous renunciation is valid.

(23) And in a loan it looks like interest.

Talmud - Mas. Baba Metzia 67a

I was sitting before R. Nahman,[1] and wished to refute him from the law of 'overreaching';[2] but observing [my intentions] he drew my attention to the case of a barren woman.[3] [Raba proceeds to explain.] Now 'overreaching', being as it is [the result] of renunciation in error,[4] [we find that it] is not a [legal] renunciation! 'But observing [my intention], he drew my attention to a barren woman,' for a barren woman [makes] renunciation in error, and yet it is valid. For we learnt:[5] An objecting woman,[6] a consanguineous relation in the second degree,[7] and a constitutionally barren woman can claim no kethubah,[8] usufruct,[9] alimony,[10] or worn out raiment.[11] But it is not so: neither [the law of] 'overreaching' refutes him, nor [that of] a 'barren woman' supports him. [Thus: the law of] overreaching does not refute him, for he [the victim did not know that he was defrauded at all, that he should forego it.[12] Nor does [the law of] a 'barren woman' support him, because she is satisfied to be designated a married woman.[13]

A woman once instructed a man, 'Go and buy me land from my relatives,' and he went and did so. Said he [the vendor] to him [her agent], 'If I have money, will she return it to me?' 'You and Nawla,'[14] he replied, 'are relatives.'[15] Rabbah son of R. Huna said: Whenever one says, 'You and Nawla are relatives,' he [the vendor] relies upon it, and does not completely transfer it [the object of sale].[16] Now, the land is [certainly] returnable; but what of the crops?[17] Is it as direct usury, which can be legally reclaimed;[18] or perhaps it is only indirect[19] usury, and cannot be reclaimed? — Rabbah b. Rab said: It stands to reason that it is considered indirect usury and cannot be reclaimed in court. And thus did Raba say, It is considered indirect usury and cannot be reclaimed in court.

Abaye inquired of Rabbah: What of a mortgage?[20] Is the reason there [in the previous case] that he made no stipulation? Then here too there was no stipulation![21] Or, perhaps, there it is a sale, but here a loan? — He replied: The reason there is that no stipulation was made; so here too there was no stipulation. R. papi said: Rabina gave a practical decision, calculated [the value of] the crops, and ordered it to be returned, thus disagreeing with Rabbah son of R. Huna.

Mar,[22] the son of R. Joseph, said in Raba's name: With reference to a mortgage: Where it is customary to make [the creditor] quit [whenever the loan is repaid],[23] if he took the usufruct to the amount of the loan, he must quit it;[24] but if in excess thereof, [the surplus] is not returnable;[25] nor is

one loan[26] balanced against another.[27] But when it [the mortgaged estate] belongs to orphans, if he [the creditor] enjoyed its usufruct to the amount of the loan, he must quit it; if it [the usufruct] exceeded it, [the surplus] is returnable, and one loan is balanced against another. R. Ashi said: Now that you rule, If the usufruct exceeded the loan, [the balance] is not returnable; then even if it [merely] equalled it, he must not be dismissed without payment. Why? Because to dismiss him without payment is tantamount to making him return [what he has already had]; whereas it is only indirect interest, which is not reclaimable at law. R. Ashi gave a practical decision in reference to orphans [minors],

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(1) When be said, 'I admit that if he removed, etc.'

(2) Supra 51a: though given voluntarily, and hence an erroneous abandonment, it is nevertheless returnable.

(3) איילונית , a woman constitutionally incapable of child-birth.

(4) Since the money fraudently taken is given under the mistaken impression that it is due.

(5) Keth. 100b.

(6) ממאנת , lit., 'a woman who refuses'. If a girl, a minor, was married by her mother or elder brothers, who by Rabbinical law were empowered to marry her, on attaining her majority she could annul the marriage merely by objecting to it.

(7) Lit., 'a second'. E.g., the Bible interdicts marriage with one's mother; the Rabbis add, one's grandmother; this is called forbidden relationship in the second degree.

(8) V. Glos.

(9) The Rabbis enacted that the usufruct of the wife's melog property (v. Glos.) belongs to the husband, in return for which he must ransom her, should she ever be taken captive. These are not entitled to this consideration, and yet if divorced cannot demand repayment of the usufruct seized by the husband.

(10) The conditions depriving maintenance rights, in respect of an objector, are stated in Keth. 107b thus: If she borrows money in the husband's absence for her maintenance, and then, on his return, she objects, her creditor cannot obtain repayment from him. Tosaf. here states that similar conditions apply to the constitutionally barren woman, her borrowings having been made before she was certified as such. With respect to a 'secondary relation', Tosaf. maintains that the reference is to her widowhood; after her husband's death, she cannot demand maintenance from his estate.

(11) If raiment formed part of the dowry she brought her husband, and it became worn out, so that it is no longer in existence, she cannot claim payment for it (Tosaf.). Rashi: She cannot demand even her worn out raiment which is still fit for some use. Now, with respect to a barren woman, though her renunciation of ownership rights in her dowry in favour of her husband was in error, for when marrying him, she did not foresee that she would prove incapable of childbirth, that renunciation is valid, and she cannot demand their return.

(12) So that there is no renunciation at all, even in error, and therefore it must be returned.

(13) And in return for that she knowingly, not in error, brings in a dowry to her husband, even if she should have to forfeit it eventually.

(14) [A proper noun; others: 'and so-and-so,' 'and she'.]

(15) She will certainly permit you to repurchase the land when you are able.

(16) Hence the sale is conditional, and the field can always be redeemed.

(17) Raised after the sale.

(18) Since such a sale is really a loan (v. Mishnah on 65b), the crops which the purchaser enjoys are in the nature of direct interest.

(19) V. supra, 61b.

(20) If a field was mortgaged and no stipulation made about its crops, and the creditor took them.

(21) Hence it is not returnable.

(22) Var. lec.: Raba.

(23) And until then, he is in possession and enjoys its usufruct.

(24) I.e., if the debtor makes the claim, the usufruct is counted as repayment, and the creditor has no further title.

(25) Because it is not direct interest.

(26) Lit., 'bond.'

(27) I.e., if the debtor owes him more money on another bond, the excess cannot be deducted from it.

just as though they were adults.[1]

Raba, the son of R. Joseph, said in Raba's name: With reference to a mortgage, where it is the usage to make [the creditor] quit [whenever] the loan is repaid],[2] one must not enjoy the usufruct without making a [fixed annual] deduction.[3] But a scholar must not enjoy the usufruct even at a [fixed] allowance. How else shall he take them? — By a stipulated time limit.[4] Now, this is well on the view that a stipulated time limit is permitted; but on the view that it is forbidden, what can you say? For it has been stated: As for a stipulated time limit, R. Aha and Rabina differ therein: one maintained that it is permitted — the other that it is forbidden. What is meant by a 'stipulated time limit'? — If he [the creditor said], 'For the first five years, the usufruct is mine without deduction; thereafter, I will make you a full allowance for the crops.' Others maintain: Any arrangement involving no deduction is forbidden. What then is meant by a 'stipulated time limit'? — If he [the creditor] said to him, 'For the first five years the usufruct is mine at a [fixed] deduction;[5] thereafter, I will make you a full allowance for the crops.' Now, he who forbids the first arrangement will permit the second; but he who forbids [even] the second, on what condition may he [a scholar] have the usufruct? — When it is as the mortgage bonds arranged in Sura, in which it was written, 'On the expiry of a certain number of years this estate reverts [to the debtor] without any payment.[6]

R. Papa and R. Huna, the sons of R. Joshua, said: As for a mortgage, where it is the practice to make [the creditor] quit [whenever the loan is repaid], the [creditor's] creditor cannot exact his debt from it,[7] the first-born receives no double portion therein,[8] and the seventh year cancels it [the privilege of usufruct].[9] But where the creditor is not obliged to give up possession [whenever the loan is repaid], his creditor can exact his debt from it, the first-born receives a double portion, and the seventh year does not cancel it.[10]

Mar Zutra also said in R. Papa's name: With reference to mortgaged property, where it is the usage to make [the creditor] quit, he must give up possession [absolutely], even of the dates on the mattings;[11] but if he has already picked them up [and placed them] in baskets, they are his.[12] But on the view that the purchaser's utensils effect ownership for him even in the domain of the vendor,[13] even if they have not been gathered into baskets, they are his.[14]

Now, it is obvious, where the usage is that the creditor must quit, but he stipulated [when making the loan], 'I will not quit it [before a certain time]' — then surely he has so stipulated [and it is binding]. But what if he promised to quit [immediately on repayment] where the usage does not compel him to go: is it necessary to submit him to a binding act[15] or not?[16] — R. Papa said: It is unnecessary; R. Shesheth the son of R. Idi ruled: It is necessary. And the law is that he must perform a binding act.

Now, if he [the debtor] states, 'I am about to bring you the money,'[17] he [the creditor] may not take the usufruct [in the meanwhile].[18] [Where he however states] 'I will go, make earnest effort [to obtain it], and bring the money' — Rabina ruled: He may take the usufruct; Mar Zutra, the son of R. Mari, said: He may not. And the law is that he may not take the usufruct.

R. Kahana, R. Papa and R. Ashi did not take usufruct with deduction; Rabina did. Mar Zutra said: What is the reason of him who takes it with deduction? — Because it is analogous to 'a field of possession';[19] with respect to this, did not the Divine Law order, even though there may be greater usufruct therefrom,

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(1) And did not allow the dismissal of the creditors without payment in spite of the discrimination above in their favour.

(2) V. supra n. 2.

(3) For every year of possession the creditor must allow a fixed deduction from the debt, even if the usufruct in a particular year amounts to less. This removes it from the category of loans and turns it into a temporary sale, so that even when the usufruct exceeds the allowance it is not interest.
(4) This is explained below.
(5) Less than the average value of the crops.
(6) Converting it into a sale.
(7) If the creditor dies, and the usufruct of the estate passes on to his children, his creditor cannot demand repayment out of the usufruct of the field. For since it must be returned whenever the loan is repaid, the heirs have no possible title to the land itself, but to its usufruct, which, regarded as movable property, cannot be distrained upon from the heirs for debt.
(8) On the view that a first-born receives no double portion of debts (v. B.B. 124b), and since the creditor may have to quit the land at any moment, this is merely a debt.
(9) Like any other loan on a written bond. Though a loan against a pledge consisting of movable property is not cancelled by the seventh year, this is not regarded as such.
(10) For in these circumstances he is regarded as having bought the land for the period arranged.
(11) Spread on the ground to receive the dates falling 'at gleaning'. He must quit immediately on receiving his money, and may take nothing whatsoever.
(12) For the 'lifting up' from the mats effects possession.
(13) V. B.B. 85a and b.
(14) Because the mats spread by the creditor are his utensils, and the dates falling upon them, become his.
(15) I.e., that he shall perform a symbolical act(kinyan q.v. Glos.) to bind him to his undertaking.
(16) Since usage is otherwise, his mere word may not be binding.
(17) Where usage forced the creditor to quit immediately.
(18) Since the debtor has the money ready, it is accounted as though he had already repaid him.
(19) שדה אחוזה , Lev. XXVII, 16-18: if one sanctified 'a field of his inheritance' from the year of jubilee, it was to be redeemed at a fixed price, as stated; and if he sanctified it some years after the jubilee, the redemption price was proportionate to the number of years left until the next jubilee.

Talmud - Mas. Baba Metzia 68a

that it should be redeemed at four zuz?[1] So here too, it is in no way different.[2] But he who holds it forbidden argues thus: 'a field of possession' is a matter of sanctification, which the Divine Law based upon [a fixed] redemption;[3] here, however, it is a loan, and so it looks like interest.

R. Ashi said: The elders of the town Mehasia told me that an unconditional mortgage[4] is for a year. What is the practical outcome [of this fact]? That, if he [the creditor] has enjoyed the usufruct for a year he can be forced to quit, but not otherwise.

R. Ashi also said: The elders of the town of Mehasia told me, What is the meaning of mashkanta [a pledge]? That it abides with him [the mortagee].[5] In respect to what has this a practical bearing? — In respect to [the right of] pre-emption.[6]

Raba said: The law permits neither the credit interests of R. papa, nor the bonds of the Mahuzeans, nor the Narshean tenancies. The credit interests of R. Papa means the credit sales arranged by R. Papa.[7] 'The bonds of the Mahuzeans' they add the [estimated] profit to the principal and record it [the whole] in a bond;[8] for who knows that there will be profit?[9] Mar, the son of Amemar, said to R. Ashi: My father does so, but when they [his agents] come before him [and declare that they have earned no profit], he believes them. He replied: That is well whilst he is alive: but what if he dies and the notes are transferred to his heirs?[10] (This [supposition] was 'an unwitting order which proceedeth from the ruler',[11] and Amemar died.)

'Narshean tenancies': — for they wrote thus: A mortgaged his field to B, and then he [the debtor]

rented it from him.[12] But when did he [the creditor] acquire it, to transfer it to the debtor?[13] Nowadays, however, that the note is drawn up thus: He [the creditor] hath acquired it from him, hath been in possession such and such a time,[14] and then re-rented it to him, so as not to shut the door in the borrowers' faces;[15] it is well. But, still this is no justification.[16]

MISHNAH. A MAN MAY NOT COMMISSION A TRADESMAN ON A HALF PROFIT BASIS,[17] NOR ADVANCE MONEY FOR PROVISIONS [TO BE SOLD] ON HALF PROFITS, UNLESS HE PAYS HIM A WAGE AS A WORKER. FOWLS MAY NOT BE SET TO BROOD ON HALF PROFITS,[18] NOR MAY CALVES OR FOALS BE ASSESSED THUS,[19] UNLESS HE PAYS HIM FOR HIS LABOUR AND FOODSTUFFS. BUT CALVES AND FOALS MAY BE ACCEPTED [WITHOUT ASSESSING THEIR VALUE AT ALL] ON HALF PROFITS;[20] AND THEY ARE BRED UNTIL A THIRD GROWN; WHILST AN ASS IS BRED UNTIL IT CAN BEAR BURDENS.[21] GEMARA. It has been taught: [Unless he is paid] as an unemployed worker.[22] What is meant by, 'as an unemployed worker'? —

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(1) That is the redemption price per annum of a field that requires a homer of barley seed. Shekel (Biblical)==sela'==4 zuz.

(2) I. e., the fixed deduction may be less than the average value of the crops.

(3) I.e., to sanctify an inherited field is equivalent to dedicating a certain sum fixed by Scripture.

(4) I.e., where no conditions were stipulated as to its length.

(5) משכנתא is derived from שכן , 'to abide.'

(6) When a person sells a field, the adjoining neighbour (of this field) has the first option to buy it.

(7) V. supra 65a.

(8) I.e., they supplied goods to their agents for sale on a profit-sharing basis, calculated their share, and then drew up a note against the agent for the entire amount.

(9) Hence they appear to be taking interest.

(10) They would simply see the debt, and might not believe the agents.

(11) Eccl. X, 5: such an order is nevertheless obeyed.

(12) At a fixed rental, paid in produce.

(13) Hence it is direct interest thinly disguised.

(14) Taking the usufruct at a fixed allowance on the debt.

(15) A proverbial expression. Unless the creditor received certain privileges, no man could ever borrow.

(16) Hence even this practice is forbidden.

(17) I.e., give him goods to sell in his shop and take half a share of the profits. Under this arrangement the retailer generally accepted complete responsibility for half the stock, and even if it depreciated, rendered payment in full. Consequently, the half is a loan, since its owner takes no risk whatsoever therein, and the labour of selling the second half for the owner's benefit is interest on the first, and hence forbidden. V. infra 104b.

(18) I.e., one may not give eggs to a fowl keeper for hatching, the latter to receive half the profits, but on the other hand, take full responsibility for half the eggs.

(19) As before, one may not commission a farmer to breed them, to receive half the profits, whilst bearing full responsibility for the present value of half the stock.

(20) No value was attached to them at all, but when grown, the breeder received half their worth for his labour. On the other hand, when they perished, he bore no responsibility: consequently it did not come within the category of a loan.

(21) It was customary to breed them to that stage before the profits were shared.

(22) Referring to the Mishnah.

Talmud - Mas. Baba Metzia 68b

Abaye said: As a labourer unemployed in his craft.[1] Now they [the first two clauses of the Mishnah] are [both] necessary. For if the case of a tradesman were taught, I would think that only a storekeeper is it sufficient to pay as an unemployed worker, seeing that his efforts are not great;[2] but [when one is advanced] money for buying provisions, his toil being great,[3] I would think it

insufficient to pay him [merely] as an unemployed artisan. Whilst if [the case of advancing] money to buy provisions were taught, I would think that only there must he be paid as an unemployed worker, since much work is involved; but for a shopkeeper, who makes very little effort, I would think a mere trifle sufficient, e.g., even if he just dipped [his bread] into his vinegar, or ate a dried fig of his, it is enough. Therefore both are necessary.

(Mnemonic:[4] How much are goats and fowls assessed?) Our Rabbis taught: How much must he be paid?[5] Whether much or little [it matters not]: this is R. Meir's view. R. Judah said: Even if he merely dipped [his bread] into his vinegar, or joined him in a dried fig, that is his pay. R. Simeon b. Yohai said: He must remunerate him in full.

Our Rabbis taught: Neither goats, sheep, nor anything which does not toil for its food[6] may be assessed on halfprofits.[7] R. Jose, son of R. Judah, said: Goats may be assessed, because they yield milk; and sheep, because they yield wool by being shorn, by passing through water[8] and by being plucked;[9] and fowls, because they lay [eggs] for their food. But [what of] the first Tanna: are the shearings and milk insufficient to pay for his labour and food?[10] — As for the shearings and milk, all agree [that they are adequate]. The conflict refers to whey and wool refuse:[11] the first Tanna is of R. Simeon b. Yohai's opinion, who maintained that he must remunerate him in full;[12] whilst R. Jose son of R. Judah agrees with his father, who ruled that even if he merely dipped [his bread] into his vinegar, or joined him in a dried fig, that is adequate payment.

Our Rabbis taught: A woman may hire a fowl to her neighbour in return for two fledglings.[13] If a woman proposes to her neighbour, 'I have a fowl, and you have eggs: let us equally share the fledglings,'[14] — R. Judah permits, whilst R. Simeon forbids it. But [what of] R. Judah: does he not require payment to be made for labour and food? — There are the addled eggs.[15]

Our Rabbis taught: Where it is the usage to make a payment for shouldering beasts,[16] such payment may be made, and general custom must not be abrogated. R. Simeon b. Gamaliel said: A calf may be assessed with its mother, and a foal with its mother, and even where it is customary to make a monetary payment for shouldering.[17] But R. Simeon b. Gamaliel! Does he not require payment for his labour and food?[18] — There is the dung.[19] But the other?[20] — The ownership of dung is renounced.[21]

R. Nahman said: The halachah is as R. Judah; the halachah is as R. Jose son of R. Judah; and the halachah is as R. Simeon b. Gamaliel.

A bond was issued against the children of R. 'Ilish, stipulating half profits and half loss.[22] Said Raba: R. 'Ilish was a great man, and he would not have fed [another person] with forbidden food.[23] It must be taken to mean:[24] either half profit and two thirds loss;

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(1) E.g., if he was originally a carpenter, who works very hard, and accepted a commission to sell provisions instead on half profits, he must be paid in addition as much as the average man would demand for changing over from strenuous labour to work of a lighter nature.

(2) The goods being given him.

(3) As in addition to selling he has the work of buying too.

(4) A few words or letters, each being the catchword of a subject, strung together and generally forming a simple phrase, as an aid to the memory.

(5) Referring to the Mishnah.

(6) Lit, 'and eats'.

(7) I.e., on an arrangement such as is forbidden in the Mishnah; v. p. 397, n. 6. But if it toils for its food, e.g., an ox that ploughs or an ass that bears burdens, the breeder has the profit of its work in return for its food and his own labour, and therefore it does not fall under the ban of usury.

(8) Subjected to a vigorous washing, which removed their wool; v. Hul. 137a.
(9) In passing through bushes, etc. (Jast.)
(10) Surely not!
(11) [Where the breeder is allowed only these.]
(12) Hence whey and wool refuse are insufficient.
(13) I.e., she may receive the eggs from her neighbour, set her own fowl to brood upon them, and receive two fledglings for her trouble.
(14) [In this case, the owner of the fowl, while assuming full responsibility for half the eggs, receives no extra compensation for her trouble.]
(15) These cannot be hatched, and the egg-owner receives them in return for her labour. This, of course, is very little, but R. Judah has already stated above that even the smallest payment is sufficient. — Addled eggs may be eaten, and hence are of some slight value.
(16) I.e., where calves and foals are given to breed at half profits, but the breeder is paid for having to carry them on his shoulder whilst they are very small.
(17) If both the mother and the young are given to breed on a profit sharing basis, the profit which the breeder receives from the work of the mother is adequate compensation for both, and no further payment is necessary.
(18) The objection is raised on the hypothesis that unless the breeder receives some separate payment for the young, the arrangement amounts to usury; v. p. Mishnah 68a.
(19) Which has a monetary value.
(20) The first Tanna, who insists upon payment.
(21) The owner does not want it in any case, and so it constitutes no payment.
(22) I.e., a bond whereby R. 'Ilish had undertaken to trade on these terms: this arrangement is forbidden as usury; v. infra 104b.
(23) He would not have made an arrangement whereby another should enjoy the illegitimate profits of usury.
(24) Lit., 'whatever be your opinion.'

Talmud - Mas. Baba Metzia 69a

or half loss and two thirds profit.[1] R. Kahana said: I repeated this ruling before R. Zebid of Nehardea, whereupon he suggested to me: But perhaps R. 'Ilish had dipped his bread into his vinegar, and R. Nahman has ruled, The halachah is as R. Judah?[2] — He replied: It was not stated that such is the halachah, but that [all three proceed on the same] principle. That is logical too; for should you not agree thereto, why enumerate the halachah [of every case]? He should have stated, The halachah is as R. Judah, who is the most lenient of all.[3]

Rab said: [If one stipulates, 'Receive] the excess above a third as your remuneration,' it is permitted.[4] But Samuel said: And if there was no excess above a third, shall he go home empty handed?[5] Hence, said Samuel, he must stipulate a denar [for his labour]. Now, is it Rab's opinion that a denar need not be fixed? But Rab said: The calf's head is the breeder's.[6] Surely that means that he said to him, 'Receive the excess above a third as your payment'?[7] — No. It means that he said to him,[8] 'Either the excess above a third, or the calf's head for the breeder.'[9] Alternatively, when did Rab rule that [a stipulation], 'Receive the excess above a third as your payment,' is permitted, when he [the breeder] has a cow of his own, for people say, 'It is the same whether one mixes fodder for an ox or for oxen.[10]

R. Eleazar of Hagrunia[11] bought a cow and gave it to his aris.[12] The latter fattened it, and received the head in payment and also half the profit.[13] Said his [the aris's] wife to him, 'Had you been in partnership with him, he would have given you the tail too [as your share].' So he went and bought [a cow] in partnership with him, but he [R. Eleazar] divided the tail, and then said: 'Come, let us divide the head too.' 'What! Shall I not receive even as much as before?' exclaimed he. 'Until now', he [R. Eleazar] replied, 'the money was [altogether] mine; had I not given you a little more [than half], It would have looked like usury. Now, however, we are partners: what will you plead? I have

worked rather more? But people say 'The average aris binds himself to the landowner to find him pasture.'[14]

Our Rabbis taught: If one entrusts his neighbour with cattle on a valuation,[15] how long is he bound to attend thereto? Symmachus said: In the case of asses, eighteen months; small cattle,[16] twenty-four months. Should he wish to divide [the profits] within this period, his partner can prevent it, but the attention of the first year cannot be compared with that of the second.[17] Why say 'but'?[18] — Therefore [say thus]: Because the attention necessary in the first year cannot be compared with that of the second.[19]

Another [Baraitha] taught: If one entrusts his neighbour with cattle on valuation, how long is he bound to attend to the young?[20] In the case of small cattle, thirty days; large cattle, fifty days. R. Jose said: In the case of small cattle, three months, because they need much attention. How [do they need] much attention? Because their teeth are very small.[21] Thereafter, he [the breeder] receives his own half [of the young] and a half of his neighbour's half.[22] R. Menashia b. Gada took his own half and half of his partner's half. Then he came before Abaye. Said he to him: Who divided for you?[23] Moreover, the local usage here is to breed [until fully grown], and we learnt: Where it is the usage to breed, they [the young] must be fully bred.[24]

Two Cutheans[25] entered on a share partnership.[26] Then one went and divided the money without his partner's knowledge. So they came before R. Papa.[27] Said he to him [the plaintiff]: What difference does it make? Thus did R. Nahman rule: Monies are held to be already divided. The following year they bought wine in partnership. Thereupon the other arose and divided it without his partner's knowledge. Again they came before R. Papa. Said he to him: Who divided it for you? — I see, he replied, that you are biassed in my partner's favour.[28] Said R. Papa:

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(1) I.e., the man on whose behalf R. 'Ilish had traded must be content with this arrangement, either to receive half the profits but to bear two-thirds of the loss, or if R. 'Ilish were to stand half the loss, he must receive two-thirds of the profit. That interpretation had to be put upon the bond.

(2) That this is sufficient to remove a 50% profit and loss arrangement from the category of usury.

(3) Then the rest would have followed automatically. Hence, in fact, such small remuneration is inadequate, and therefore Raba was justified in his assumption.

(4) If one gives calves or foals to a breeder on a half profit half loss basis, which, as stated above, is forbidden, but adds that should it appreciate by more than a third of its present value, the excess belongs to the breeder, that constitutes payment, though such appreciation is uncertain.

(5) I.e., such a speculation does not obliterate the character of usury.

(6) If one accepts a calf for fattening on a fifty-fifty basis, he must receive its head in return for his labour, and the rest is shared.

(7) But as there was no excess, he must receive the calf's head instead, proving that Rab admits that the breeder must receive a definite payment that is independent of speculative appreciation.

(8) [MS.M. rightly omits 'that he said to him.']

(9) [MS.M. rightly omits 'for the breeder.']

(10) No additional labour is entailed, and therefore a speculative arrangement is permitted.

(11) [A suburb of Nehardea, Obermeyer, op. cit., p. 265ff.]

(12) V. Glos.

(13) The arrangement having been on a fifty-fifty basis of profit or loss.

(14) I.e., the slight additional work done by the aris is really an unexpressed part of his contract.

(15) For breeding. V. Mishnah 68a, and notes a.l.

(16) E.g., sheep, goats.

(17) Which involves greater expenditure in food.

(18) On the contrary, this states the reason.

(19) Therefore the owner can insist on his keeping it for two years.

(20) The young too are shared as part of the profit. Now, the breeder would naturally wish to divide immediately on birth, since he has no profit in the owner's half.

(21) And it is a tacit understanding that the breeder should attend to it until it needs only normal attention.

(22) The original arrangement to share in the profits extends to the increased value of the young which he must continue to look after as stated above, and he takes his own half complete, plus half the increased value of the owner's half.

(23) Who checked your assessment of the value of half a share?

(24) Hence he is only entitled to his own half, and no more.

(25) Samaritans.

(26) As in the case of breeding, one investing the money, and the other trading with it.

(27) This shews that though by this time Jews regarded them as Gentiles, they nevertheless submitted to Jewish jurisdiction.

(28) For last year you upheld his dividing without my knowledge, but now disallow mine without his.

Talmud - Mas. Baba Metzia 69b

In such a case[1] it is certainly necessary to inform him [of the grounds of my verdicts]: As for coins, would he take good coins and leave short-weight ones [for you]? But in the case of wine, everybody knows that some wine is sweet and some is not.[2]

The above text states: 'R. Nahman said: Monies are held to be already divided.' But that is only if they are all good or of full weight, but not if some are good, and others of full weight.[3]

R. Hama used to hire out a zuz for a peshita per day.[4] [As a result] his money evaporated.[5] Now he argued, [Wherein does it differ] from a spade?[6] But the analogy is false: the self-same spade is returned, and its depreciation is assessable; whereas the self-same coins are not returned, nor can their depreciation be estimated.[7]

Raba said: One may say to his neighbour, 'Take these four zuz and lend money to so-and-so,'[8] [because] the Torah forbade only usury which comes from the borrower to the lender. Raba also said: One may say to his neighbour, 'Here are four zuz, and persuade so-and-so to lend me money.' Why so? He merely receives a fee for his talking; just as Abba Mar, the son of R. Papa, used to take balls of wax from wax dealers, and then persuade his father to lend them money. But the Rabbis protested to R. papa: Your son enjoys usury. He replied: Such interest we may enjoy: the Torah forbade only interest that comes from the borrower [direct] to the lender; but here he receives a fee for his talking, which is permitted.

MISHNAH. ONE MAY ASSESS COWS, ASSES, AND ALL ANIMALS WHICH TOIL FOR THEIR FOOD ON HALF [PROFIT AND LOSS].[9] WHERE IT IS THE USAGE TO DIVIDE THE YOUNG IMMEDIATELY [ON BIRTH], THEY MUST DIVIDE; WHERE IT IS CUSTOMARY TO BREED THEM, THEY MUST BE BRED. R. SIMEON B. GAMALIEL SAID: A CALF MAY BE ASSESSED WITH ITS MOTHER, AND A FOAL WITH ITS MOTHER.[10] AND ONE MAY OFFER AN INCREASED LAND RENTAL WITHOUT FEAR OF USURY.[11]

GEMARA. Our Rabbis taught: One may offer an increased land rental without fear of usury. E.g., If one rents a field from his neighbour for ten kor annually, and proposes, 'Give me two hundred zuz to expend thereon [sc. in improving the land], and I will pay you twelve kor annually,' it is permitted. But an increased rental may not be offered for a shop or a ship.[12] R. Nahman said in the name of Rabbah b. Abbuhah: Sometimes an increased rental may be offered for a shop, [e.g., in consideration of a loan] for decorations; or for a ship, to build a sail-yard therein. For a shop, in return for decorations, that it may be attractive for customers and thus earn more profit; and for a ship, to build a sail-yard therein; for the more beautiful its sail-yard, the greater is the hire.[13]

As for a ship, Rab said: Both hire and loss [is permitted].[14] Said R. Kahana and R. Assi to Rab: If hire, no loss; if loss, no hire.[15] Thereupon Rab was silent [being unable to answer]. R. Shesheth observed: Why was Rab silent? Had he never heard what was taught: 'Though it was ruled that one must not accept from an Israelite "iron flock" [investment with absolute immunity for the investor],[16] yet such may be accepted from heathens![17] It was, nevertheless, ruled that if one assesses a cow for his neighbour, and says to him, "Your cow is charged to me at thirty denarii,[18] and I will pay you a sela' per month," — it is permitted, because he did not assess it as money.' But did he not? — R. Shesheth said: He did not assess it as money whilst alive, but only in case of death.[19] R. papa said: The law is: For a ship, both hire and loss [is allowed],

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(1) That the litigant doubts my impartiality.

(2) Hence there can be no question of unfair division of money, as there may be in respect of wine.

(3) Some coins of particular mint were preferred to any others for current use; they were considered 'good'; on the other hand, money-changers, who assessed them by weight, preferred those of full weight. Now, if all are 'good' or of full weight, one partner himself may make the division; but if some are 'good' and the others of full weight, they are not accounted as already divided, since some prefer the first and others the second.

(4) I.e., instead of calling it lending, he hired out money, as one hires any other commodity. [Such an arrangement was not without advantage to the borrower, as it exempted him, in the same way as any other hirer, from responsibility in case of an unpreventable accident befalling the money, v. infra 93b (cf. Tosaf.)].

(5) V. infra 71a; the penalty for usury is that one's wealth disappears.

(6) One may charge for hiring a spade; why not for hiring out money?

(7) Even if by chance the same coins should be returned.

(8) Though the lender thus receives interest.

(9) V. supra p. 398, n. 7.

(10) V. p. 399, n. 10.

(11) This is discussed in the Gemara.

(12) In consideration of a loan for stock. In the first case, the money is expended on the field itself and therefore it is the equivalent of renting a better field, and hence worth more, notwithstanding that the 200 zuz must be separately repaid. But here the capital value of the shop and ship is not increased; therefore the money advanced for stock is an ordinary loan, and the higher rental constitutes interest.

(13) In each case the money is expended in the shop or ship itself and therefore permitted.

(14) I.e., one may hire a ship at the lessee's risk in case it is damaged or sunk.

(15) I.e., the two together should be forbidden. For if the ship be assessed and the lessee accepts all responsibility, it is as though he had borrowed money to its value, and the rent is usury.

(16) צאן ברזל (V. B.B. Sonc. ed. p. 206, n. 3) I.e., one may not accept a business on a profit sharing basis, whilst guaranteeing the investor absolute safety of his money, like 'iron sheep', which cannot come to harm. For if the investor's money is secured, it is a loan, on which he receives half profit as interest.

(17) Because one may receive from or give interest to a heathen.

(18) Should it perish or come to harm.

(19) I.e., only if it perishes is he responsible for it; but should there be a price-drop whilst it is alive, the hirer is not responsible, and this saves it from being considered a loan. Hence in the case of the ship too, since the lessee is responsible only for shipwreck, but not for a drop in its market value, it is not an ordinary loan, and therefore a hiring fee is permissible.

Talmud - Mas. Baba Metzia 70a

and the practice of shipowners[1] is [to receive] the hire at the time of meshikah[2] and the [payment for] loss when it is shipwrecked. But does such a thing depend upon custom?[3] — The usage arose as the result of the Baraitha which was taught.[4]

R. 'Anan said in Samuel's name: Orphan's money may be lent out at interest.[5] R. Nahman objected: Because they are orphans we are to feed them with forbidden food! Orphans who eat what

is not rightfully theirs may follow their testator! Now tell me, said he, what actually transpired?[6] — He replied: A cauldron, belonging to the children of Mar 'Ukba [who were orphans], was in Samuel's care, and he weighed it before hiring it out and weighed it when receiving it back, charging for its hire and for its loss of weight: but if a fee for hiring, there should be no charge for depreciation, and if a charge for depreciation, there should be no fee for hiring.[7] He replied: Such a transaction is permitted even to bearded men, since he [the owner] stands the loss of wear and tear, for the more the copper is burnt, the greater is its depreciation.[8]

Rabbah b. Shilah said in R. Hisdah's name — others state, Rabbah b. Joseph b. Hama said in R. Shesheth's name: Money belonging to orphans may be lent on terms that are near to profit and far from loss.[9]

Our Rabbis taught: [One who invests money on terms] near to profit but far from loss is a wicked man; near to loss but far from profit is a pious man; near to both or far from both — that is the arrangement of the man in the street.[10] Rabbah asked R. Joseph: What is done with orphan's money? — He replied: It is entrusted to Court, and paid out to them in instalments.[11] But surely the principal will disappear! he urged. What then would you do? he asked. — He replied: We seek out a man who possesses broken pieces of gold,[12] take the gold from him,[13] and entrust to him the orphan's money on terms that are near to profit and far from loss. But an object which bears an identification mark[14] cannot [be taken as a security][15] , lest it was [merely] entrusted to him, and its owner may come, state the mark [which proves his ownership] and take it away. R. Ashi demurred: That is well if you find a man who possesses broken gold; but if you do not, is the orphan's money to be frittered away? — But, said R. Ashi, we seek out a man whose property is secure,[16] who is trustworthy, obedient to the law of the Bible,[17] and will not suffer a ban of the Rabbis,[18] and the money is given to him in the presence of a Beth din.[19]

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(1) Lit., 'the pitchers', those who pitch their boats.

(2) V. Glos.

(3) It depends upon whether it is permissible or not, for were the latter the case, such usage would have to be abrogated.

(4) Supra 69b end.

(5) I.e., if they are minors.

(6) R. Nahman assumed that R. 'Anan had not actually heard such a law from Samuel, but must have deduced it from some incident.

(7) V. p. 405, n. 2; the same reasoning applies here, and therefore he concluded that interest may be taken on orphan's money.

(8) Though the hirer pays for actual loss of weight, yet even the rest loses in value the more often it is placed upon the fire, and therefore the hiring fee is not interest.

(9) I.e., the orphans taking a share of the profit, but none of the loss. Though this is forbidden to adults as indirect interest, the Rabbis permitted it in the case of orphans who, being unable to earn money themselves, might soon be reduced to penury if not permitted to put out their money on advantageous terms.

(10) 'Near to both' — taking more than half the profit, and standing more than half the loss; 'far from both' — less than half the profit or loss.

(11) Lit., 'coin by coin.'

(12) Then they are certainly his, for when money is given into the safe-keeping of others, only proper coins are given — i.e., a wealthy person is sought.

(13) [Omitted in some texts, v. Rashal and D.S.]

(14) I.e., any object which a person may claim as his own on the strength of identification marks.

(15) [Or, as proof of wealth.]

(16) I.e., whose ownership thereof is universally acknowledged.

(17) [MS.M. rightly omits 'of the Bible', there being no distinction between Rabbinic and Biblical law in regard to the obedience expected of a man to be entrusted with orphan's money.]

(18) Who will obey them rather than come under their ban.

(19) That he may be duly impressed with the solemnity of his obligations (Asheri).

Talmud - Mas. Baba Metzia 70b

MISHNAH. ONE MAY NOT ACCEPT FROM AN ISRAELITE AN 'IRON FLOCK' [INVESTMENT WITH COMPLETE IMMUNITY FOR THE INVESTOR], BECAUSE THAT IS USURY. BUT SUCH MAY BE ACCEPTED FROM HEATHENS.[1] AND ONE MAY BORROW FROM AND LEND TO THEM ON INTEREST. THE SAME APPLIES TO A RESIDENT ALIEN.[2] AN ISRAELITE MAY LEND A GENTILES MONEY [ON INTEREST] WITH THE KNOWLEDGE OF THE GENTILE, BUT NOT OF THE ISRAELITE.[3]

GEMARA. Shall we say that it stands under the ownership of the contractor?[4] But the following is opposed thereto: If one undertakes [to breed sheep] on 'iron flock' terms for a heathen,[5] the young are exempt from [the law of] firstlings![6] — Abaye answered: There is no difficulty; in the one case, he [the owner] accepted [the risk of] unpreventable accident and depreciation; in the other, he did not.[7] Said Raba to him: If the owner accepts the risk of depreciation and [unpreventable] accidents, do you designate it 'iron flock'? Moreover, instead of the second clause teaching, BUT SUCH MAY BE ACCEPTED FROM GENTILES, let a distinction be drawn and taught in that [sc. the first clause] itself, [thus:] When does this hold good [that 'iron flock' may not be accepted from a Jew], only if he [the investor] does not bear the risk of unpreventable accidents or depreciation; but if the investor accepts these risks, it is permissible? — But, said Raba, in both cases [viz., as taught in our Mishnah and with reference to firstlings] he [the investor] does not accept the risk of accidental damage or depreciation; but with respect to the firstlings, this is the reason that the young are exempt thereof: since if he [the breeder] did not render the money,[8] the heathen would come and seize the cow [entrusted to the breeder in the first place], and should he not find the cow, seize the young, it is a case of 'the hand of a heathen coming in the middle',[9] and wherever that is so, there is exemption from the law of firstlings:

He that by usury and unjust gain increaseth his substance, he shall gather it for him that pitieth the poor.[10] Who is meant by, for him that pitieth the poor? — Rab said: e.g., King Shapur.[11] R. Nahman observed: Huna told me that [this verse] is needed to show that usury [taken] even from a heathen [leads to loss of one's wealth]. Raba objected to R. Nahman: Unto a stranger tashshik:[12] now, what is meant by 'tashshik': surely that 'thou mayest receive usury'? — No: 'thou mayest give usury.'[13] [What!] Cannot one do without?[14] — It is to exclude 'thy brother,' [to whom thou mayest] not [give usury].[15] As for thy brother, is it not explicitly stated, but unto thy brother thou shalt not give usury?[16] — [To intimate] that both a positive and negative injunction are violated.[17] He [further] raised an objection: ONE MAY BORROW FROM AND LEND MONEY TO THEM ON INTEREST, AND THE SAME APPLIES TO A RESIDENT ALIEN![18] — R. Hiyya, the son of R. Huna, said: This [permission] is granted only [up to]

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(1) V. p. 405, n. 3.

(2) Heb. גר תושב , one who, for the sake of acquiring citizenship in Palestine, renounced idolatry and undertook to observe the Seven Noachian laws, the laws binding upon all mankind. [For a full discussion of the term v. Moore, G. F., Judaism I. 338ff.]

(3) The meaning of this is discussed in the Gemara.

(4) Since it is regarded as interest.

(5) I.e., to divide the profit, whilst guaranteeing the heathen full security against loss.

(6) As stated above (Mishnah, 69b), the young are equally divided between the investor and breeder. Now, if the young themselves calved, though half of them belong to the Jew, the obligation of firstlings does not apply to them. This proves that they are regarded as the property of the investor, not the contractor.

(7) If the investor accepts these risks (אונסא וזולא), the property stands under his ownership, and hence the law of firstlings does not apply. If the contractor accepts full risks, there is usury, which in the case of a Jewish investor is

forbidden. [Gulak, Tarbiz. III, p. 140, suggests that the phrase אונסא וזולא means accident due to fall in the market price. Abaye accordingly was referring to the original type of 'iron flock' investment in which the responsibility assumed by the contractor was limited to injuries to the 'body of the investment itself.']

(8) Due pursuant to the agreement.

(9) I.e., the heathen retains certain rights therein.

(10) Prov. XXVIII, 8.

(11) Shapur I, King of Persia, and a contemporary of Samuel (third century), with whom he was on terms of intimacy. He took money from the Jews and made grants thereof to poor heathens. (Rashi: To heathens, who are poor in that they have no fulfilment of precepts and good deeds to their credit.)

(12) Deut. XXIII, 21.

(13) V. p. 363, n. 4.

(14) This objection is based on the hypothesis that the verse cannot be merely permissive, 'thou mayest give usury to heathens', since there was never any reason for supposing otherwise. Hence it can only mean (on R. Nahman's interpretation), 'thou must give usury to a Gentile', which is absurd.

(15) I.e., the law is only permissive, but stated in order to exclude a Jew, by implication.

(16) So rendered on R. Nahman's views.

(17) By giving usury to a Jew. For the negative implication of 'unto the Gentile thou mayest give usury' is technically a positive command, since cast in that form.

(18) Thus distinctly stating that it is permitted.

Talmud - Mas. Baba Metzia 71a

the [minimum] requirements of a livelihood.[1] Rabina said: Here [in the Mishnah] the reference is to scholars. For why did the Rabbis enact this precautionary measure?[2] Lest he learn of his ways.[3] But being a scholar, he will [certainly] not learn of his ways.

Others referred this statement of R. Huna to [the teaching] which R. Joseph learnt: If thou lend money to any of my people that is poor by thee:[4] [this teaches, if the choice lies between] my people and a heathen, 'my people' has preference; the poor or the rich — the 'poor' takes precedence; thy poor [sc. thy relatives] and the [general] poor of thy town — thy poor come first; the poor of thy city and the poor of another town — the poor of thine own town have prior rights. The Master said: '[If the choice lies between] my people and a heathen — "my people" has preference.' But is it not obvious? — R. Nahman answered: Huna told me it means that even if [money is lent] to the heathen on interest, and to the Israelite without [the latter should take precedence].

It has been taught: R. Jose said: Come and see the blindness of usurers. If a man calls his neighbour wicked, he cherishes a deep-seated animosity against him;[5] whilst they bring witnesses, a notary, pen and ink, and record and attest, 'So-and-so has denied the God of Israel.'[6]

It has been taught: R. Simeon b. Eleazar said: He who has money and lends it without interest, of him Scripture writes. He that putteth not out his money to usury, nor taketh reward against the innocent. He that doeth these things shall never be moved;[7] thus you learn that he who does lend on interest, his wealth[8] dissolves.[9] But do we not see [people] who do not lend on interest, yet their wealth dissolves? — R. Eleazar said: The latter sink [into poverty] but re-ascend, whereas the former sink but do not re-ascend.[10]

Wherefore lookest thou upon them that deal treacherously, and holdest thy tongue when the wicked devoureth the man that is more righteous than he?[11] R. Huna said: 'the man that is [merely] more righteous than he,' he devoureth: but the man that is completely righteous, he cannot devour.

It has been taught: Rabbi said: The righteous proselyte[12] who is mentioned in connection with the sale [of oneself for a slave], and the resident alien who is mentioned with reference to usury — I

know not their purpose. 'The righteous proselyte who is mentioned in connection with a sale' — as it is written, And if thy brother that dwelleth with thee be waxen poor, and be sold unto thee;[13] and not only 'unto thee' [a Hebrew], but even to a proselyte, as it is written, [and sell himself] unto a proselyte;[14] and not alone to a righteous proselyte, but even to a resident alien, as it is written, to a proselyte [and] a settler;[15] or to a family of the proselyte — i.e., to a heathen; hence, when it is said, or to the stock etc. it must refer to one who sells himself to the service of the idol itself.[16]

Now,[17] the Master said: 'And not only unto thee, but even unto a proselyte,' as it is written, [and sell himself] unto a proselyte.' Are we to say that a proselyte may acquire a Hebrew slave? But the following contradicts it: A proselyte cannot be acquired as a Hebrew slave, nor may a woman or a proselyte acquire a Hebrew slave. 'A proselyte cannot be acquired as a Hebrew slave', for the verse, and he shall return unto his own family, must be applicable. which it is not [in the case of a proselyte];[18] 'nor may a woman or a proselyte acquire a Hebrew slave' — a woman, because it is not seemly;[19] a proselyte, because it is a tradition that he who can be acquired can himself acquire, but he who cannot be acquired, cannot himself acquire! — R. Nahman b. Isaac said: He cannot acquire [him] under the provisions of an Israelite [owner], but may acquire [him] as a non-Israelite [master]. For it has been taught: He [sc. a Hebrew slave] whose ear is bored,[20] and he who is sold to a heathen, serve neither the son nor the daughter.[21]

The Master said: 'Nor may a woman or a proselyte acquire a Hebrew slave.' Must we assume that this disagrees with R. Simeon b. Gamaliel? For it has been taught: A woman may acquire female but not male slaves. R. Simeon b. Gamaliel ruled: She may acquire even male slaves! — It may agree even with R. Simeon b. Gamaliel, yet there is no difficulty: the former applies to a Hebrew slave, the latter to a Canaanite slave. A Hebrew slave she deems to be self-respecting;[22] whereas a Canaanite slave she deems unreservedly dissolute.[23] But what of that which R. Joseph learned: A widow may not breed dogs,[24] nor permit a scholar to live with her as a boarder? Now, [the prohibition] of a scholar is intelligible, since she deems him self-respecting; but as for a dog since it will follow her [if she commits bestiality], she will surely be afraid![25] — I will tell you: since it follows her even if she merely throws it a piece of meat, that will be assumed the cause of its attachment.[26]

'The resident alien who is mentioned with reference to usury:' — What is it? — For it is written, And if thy brother be waxen poor, and fallen in decay with thee; then thou shalt relieve him; yea, though he be a proselyte or a settler, that he may live with thee. Take thou no usury of him nor increase: but fear thy God; that thy brother may live with thee.[27] But the following opposes it: ONE MAY BORROW FROM AND LEND TO THEM ON INTEREST; THE SAME APPLIES TO A RESIDENT ALIEN! — R. Nahman b. Isaac replied: Is it then written, 'Take thou no usury of them'?[28] 'of him' is written, [meaning] of an Israelite.[29]

Our Rabbis taught: Take thou no usury of him, or increase, but thou mayest become a surety for him.[30]

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(1) But one may not take usury from a Gentile in order to accumulate wealth.

(2) Of forbidding usury from a heathen, on R. Nahman's view. Though R. Nahman based his opinion on a verse of Proverbs, it is obvious that it is only a Rabbinical, not a Biblical interdict.

(3) Rashi: Through business intercourse with him.

(4) Ex. XXII, 24.

(5) Lit., 'descends (in his rage) against his life'.

(6) To exact usury in defiance of the Biblical precept is tantamount to rejection of God — the highest degree of wickedness.

(7) Ps. XV, 5.

(8) Lit., 'his possessions.'

(9) I.e., he is 'moved'.

(10) Translating, he that doeth these things shall not for ever be moved, i.e., shall not sink into penury for good.
(11) Hab. I, 13.
(12) [גר צדק 'Righteous' in the sense of 'upright', 'genuine', 'real'. V. Moore, op. cit. I, 338.]
(13) Lev. XXV, 39.
(14) Ibid. 47.
(15) Ibid. This deduction is arrived at by treating גר , (proselyte) and תושב (settler, citizen) as two separate substantives, thus: and sell himself unto a proselyte and unto a resident alien. i. e., even as they are treated at the beginning of the verse: and if a proselyte (גר) or a settler (ושב) wax rich etc. (Rashal).
(16) To hew wood and draw water in its service. This Baraitha is quoted more fully in 'Ar. 20b; the successive depths of degradation are the fate of him who trades in the commodities of the seventh year, this being deduced from the fact that these laws of sale follow those of the seventh year prohibitions.
(17) He now proceeds to explain Rabbi's difficulty.
(18) V. Lev. XXV, 10. Because a proselyte loses all relationship with his former kin, hence has no family.
(19) Lest she be suspected of immoral designs.
(20) V. Ex. XXI, 5f.
(21) As heirs. Thus, a proselyte can acquire a Hebrew slave under the laws applicable to a heathen owner, so that if he dies his children do not inherit him (the slave), but not as an Israelite, who is able to transmit him as a legacy.
(22) I.e., he has a feeling of shame and regard for appearances. Therefore she may be emboldened to an illicit relationship, in the certainty that he will not disclose the fact: hence she may not purchase him.
(23) Feeling no shame therein; therefore she fears intimacy with him, lest he boast thereof, and so may buy him.
(24) For fear of malicious slander, but not because she is actually suspected of bestiality (Tosaf.).
(25) Why is she then forbidden to breed dogs?
(26) Hence she does not fear to commit bestiality, and though, as stated in n. 3, she is not suspected thereof, yet the mere fact that she can indulge without fear of discovery gives tongue to slander.
(27) Lev. XXV, 35f; this implies that usury may not be taken from a citizen proselyte.
(28) Which would apply to all the antecedents.
(29) ['Proselyte' being mentioned only with reference to assisting him in his need.]
(30) I.e., for one who is borrowing money on interest.

Talmud - Mas. Baba Metzia 71b

A surety to whom? Shall we say to an Israelite?[1] But we learnt: The following violate the negative precept: The lender, the borrower, the surety, and the witnesses![2] Again if it means to a heathen:[3] since, however, it is the law of the heathen[4] to claim direct from the surety, it is he [the surety] who borrows from him![5] — R. Shesheth answered: It means that he engaged himself to bring his actions in accordance with Jewish law.[6] But if he engaged to abide by Jewish law, he should not take usury either! — R. Shesheth replied: He pledged himself for the one but not for the other.

AN ISRAELITE MAY LEND A HEATHEN'S MONEY [ON INTEREST] WITH THE KNOWLEDGE OF THE HEATHEN, BUT NOT OF THE ISRAELITE. Our Rabbis taught: An Israelite may lend a heathen's money [on interest] with the knowledge of the heathen, but not of the Israelite. E.g., if an Israelite borrowed money from a heathen on interest, and was about to repay it, when another Israelite met him and proposed. 'Give it to me and I will pay you as you pay him' — that is forbidden; but if he presented him to the heathen,[7] it is permitted.[8] Similarly, if a heathen borrowed money from an Israelite on interest, and was about to repay it, when another Israelite met him and proposed. 'Give it to me, and I will pay you as you pay him,' it is permitted; but if he presented him to the Israelite, it is forbidden.[9] Now, the second clause is well, for there the ruling is in the direction of greater stringency; but as for the first clause, since the law of agency does not apply to a heathen, it is he [the Israelite] who takes interest from him [his fellow-Israelite]![10] — R. Huna b. Manoah said in the name of R. Aha, the son of R. Ika: Here it is meant that he [the heathen] said to him [the Israelite], 'put it [the money] on the ground and you may go.'[11] If so, why state it? — But, said R. Papa, it means, e.g., that he [the heathen] took it [from the first creditor] and

personally gave it [to the second]. Yet even so, why state it? — I might think that the heathen himself, in acting so, transfers the money pursuant to the wish of the Israelite,[12] therefore it is taught otherwise. R. Ashi said: When do we maintain that agency cannot be vested in a heathen, only in reference to terumah;[13] but in all other Biblical matters the principle of agency holds good in the case of a heathen. This [distinction], however, of R. Ashi must be rejected.[14] For why does terumah differ, that [agency] is not [allowed to a heathen]? Because it is written, [Thus] ye, ye also [shall offer an heave offering etc.],[15] [teaching], just as ye are members of the Covenant, so also must your deputies be members of the Covenant! But [is not] the principle of agency, as applied to all Biblical matters, derived from terumah![16] Hence R. Ashi's distinction is to be rejected.

Others state: R. Ashi said: In what sense do we maintain that agency cannot be vested in a heathen, only that they cannot be agents for us; but we can be agents for them.[17] But this [distinction] of R. Ashi is to be rejected. For why the difference, that they cannot be agents for us? Because it is written, 'Ye, ye also', which teaches the inclusion of your agents; just as 'ye' are members of the Covenant, so must your agents be members of the Covenant? But with reference to ourselves being agents to them, does not the same [exegesis] apply: by 'just as "ye" [who appoint agents],' members of Covenant are meant.[18] Hence R. Ashi's distinction is non-acceptable.

Rabina said: Though a heathen has no power of agency, yet, by Rabbinical law, one can obtain possession on his behalf. For this is similar to a minor: surely, a minor, though excluded from the principle of agency,

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(1) I.e., on behalf of a Jew borrowing from a Jew.

(2) Infra 75b.

(3) I.e., a surety on behalf of a Jewish borrower to a Gentile lender.

(4) [I.e., according to Persian law, v. B.B. 173b.]

(5) From the point of view of Jewish law there are two transactions in this loan: the surety borrows money from the Gentile and pays interest thereon, and lends money to the Jew, upon which he receives interest. Hence it should be forbidden.

(6) Should the debtor fail to repay, he would bring an action against him first.

(7) I.e., obtained the Gentile's authority for the transaction.

(8) For then the Jew is merely the agent of the Gentile, and it is the latter who makes the loan, not the former.

(9) For then the Gentile is merely the agent of the Jew.

(10) There is a well-defined principle in Jewish law that a man's agent is legally as himself. But this does not hold good between a Jew and a heathen. Now, in the second clause, where the heathen presents the Jewish borrower to the Jewish lender, yet actually gives his own money, the transaction should be permitted, because he cannot be legally regarded as the Jew's agent. Nevertheless, since the transaction does appear as between two Jews, the heathen acting merely as a vehicle of delivery, the Rabbis recognised the principle of agency, and forbade it. But in the first clause, where the Jew actually gives the money to his fellow-Jew, why should he be regarded as an agent of the heathen, and the transaction rendered legal?

(11) So that the second Jew does not receive it from the first.

(12) I.e., that he is merely the means of the actual loan from one Jew to another.

(13) V. Glos. A Jew cannot appoint a heathen to separate his terumah for him.

(14) בדותא V. Supra, p 47, n. 1 .

(15) Num. XVIII, 28. It would have been sufficient to state, 'Thus ye shall offer etc.'; it is a general principle of exegesis that 'also' (גם) denotes extension; hence 'ye also' implies that someone besides yourselves may separate your terumah. At the same time, since the extension is directly applied to 'ye', those whom it includes must be similar to 'ye'.

(16) In Kid. 41b; hence just as a heathen cannot be deputed to separate terumah, so he is invalid in all other matters.

(17) Hence in the first clause under discussion the loan is permissible, if the second Jew was presented to the heathen, even if the money passed directly from one Jew to another.

(18) I.e., the same exegesis which shows that the agents must be Jews, also shews that the principals must be Jews.

is nevertheless, by Rabbinical law, eligible to [vicarious] possession;[1] so here too, there is no difference.[2] But the analogy is false; an Israelite [minor] comes [eventually] within the principle of agency, but a heathen never does.[3]

Our Rabbis taught: If an Israelite borrowed money on interest from a heathen and then recorded them [Viz., the principal and the interest] against him as a loan,[4] and he [the creditor] became a proselyte: if this settlement preceded his conversion, he may exact both the principal and the interest; if it followed his conversion, he may collect the principal, but not the interest.[5] Similarly, if a heathen borrowed money on interest from an Israelite, and then recorded them [the principal and the interest] against him as a loan, and became a proselyte: if the settlement preceded his conversion, he [the Israelite] may exact both the principal and the interest; if it followed his conversion, he may exact the principal but not the interest. R. Jose ruled: If a heathen borrowed money from an Israelite on interest, then in both cases [whether conversion preceded the settlement or the reverse] he may collect both the principal and the interest. Raba said in the name of R. Hisda in the name of R. Huna: The halachah is as R. Jose. Raba said: What is the reason of R. Jose? That it should not be said that he turned a proselyte for the sake of money.[6]

Our Rabbis taught: If a bond contains interest written therein, he [the note-holder] is penalised and can collect neither the principal nor the interest; this is R. Meir's view. The Sages maintain: He may exact the principal, but not the interest. Wherein do they differ? — R. Meir is of the opinion that we inflict the forfeiture of what is permissible on account of what is forbidden; whilst the Sages hold that we do not inflict the forfeiture of the permissible on account of the forbidden.

We learnt elsewhere: Ante-dated bonds are invalid; post-dated bonds are valid.[7] But why invalid? Though a seizure cannot be made by means of them as from the earlier [incorrect] date, why not seize [estate for repayment] as from the later [correct] date?[8] — R. Simeon b. Lakish said: This was taught as a matter of dispute, and agrees with R. Meir.[9] R. Johanan said: It may agree even with the Rabbis; but it is a precautionary measure, lest he exact [his debt from sold property] as from the earlier date.[10]

A man once pledged an orchard to his neighbour for ten years.[11] After he [the creditor] had taken its usufruct for three years, he proposed to him [the debtor], 'If you sell it to me, it is well; if not, I will hide the mortgage deed and claim that I have bought it.'[12] Thereupon he [the debtor] went, arose, transferred it to his young son [a minor], and then sold it to him. Now, the sale is certainly no sale;[13] but is the [purchase-]money accounted as a written debt, and collectable from [sold] mortgaged property, or perhaps it is [only] as a verbal debt, which cannot be collected from mortgaged property?[14] Said Abaye: Is this not covered by R. Assi's dictum? Viz.,

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(1) I.e., an adult may take possession on behalf of a minor.

(2) Hence in the first clause, where the second borrower is presented to the heathen, the first Jew takes possession of the money which he was about to repay on behalf of the heathen, and therefore it is the latter's money that is lent on interest, and hence permissible.

(3) For to take possession on another man's behalf is akin to becoming his agent. Thus the Rabbis conferred upon a minor the privilege of being so benefited, because he is potentially an agent or a principal, but a heathen is not even potentially so. [Levinthal, I.H., JQR, (N.S.) XIII, p. 150, suggests the principal reason swaying the Rabbis in their decision barring the heathen from acting as agent to have been the fact that the agent in Jewish law is frequently compelled to take an oath, and the oath being considered a most sacred role in the life of the people there was no desire to force a heathen to comply with the strictness of that act.]

(4) I.e., drew up a bond in which the combined principal and interest figured as the principal.

(5) Since the bond was drawn up when he was forbidden usury.

(6) To evade the payment of interest.
(7) Sheb. X, 5; v. supra 17a.
(8) Though it is only right that the creditor should not seize land sold after the date of the bond but prior to the actual loan, why should he not seize land sold after the loan was made?
(9) Who maintains that we inflict the forfeiture of what is permissible on account of what is forbidden. So here too.
(10) To prevent this, such a bond was declared entirely invalid.
(11) [So according to some texts; v. D.S.]
(12) Three years' possession of an estate establishes a presumptive title thereto, even without a deed of sale, the onus of disproof lying upon the first owner.
(13) Because it no longer belonged to the debtor (Rashi).
(14) When one sold land, he indemnified the purchaser against its possible seizure for the vendor's debt by mortgaging his other property to him, which he could in turn seize even if subsequently sold. Similarly, in a written loan the debtor's estates were held to be pledged, even if subsequently sold; but if the loan was merely verbal, the debt could be exacted only from the free estate. Now the question arises whether the purchase money in this case, which of course, the vendor must return, ranks as a written debt, or only as a verbal one.

Talmud - Mas. Baba Metzia 72b

If he [the debtor] admits the genuineness of a bond, he [the creditor] need not confirm it'[1] and can collect [his debt] from mortgaged property [sold after the debt was contracted]![2] Thereupon Raba said to him: How compare? There it is permissible to write it, but here it is not permissible to write it at all![3] Now, Meremar sat and recited this discussion, whereupon Rabina said to Meremar: If so, when R. Johanan said;[4] It is a precautionary measure, lest he exact his debt as from the earlier date, — let us say that it was not permissible to write it at all! — Said he: Is there the least analogy? There, granted that it was not permissible to write it from the earlier date, it was permissible to write it from the later date; but here it was not permissible to write it at all. But surely with respect to that which has been taught: As to claims for land improvement,[5] e.g., if one took away unlawfully a field from his neighbour and sold it to another, who effected improvements therein, and then it was seized from him [by the first owner], when he [the buyer] exacts [his due from the robber], he may collect the principal [even] from mortgaged property [that has since been sold], but the improvements only from the free [i.e., unsold] property[6] — let us say that it [the deed of sale] was not permissible to be written at all![7] — How now? There, whether on the view that he [the vendor] is anxious not to be called a robber, or on the view that he is desirous of retaining his [the purchaser's] trust,[8] he seeks to pacify the first owner, so as to validate the deed.[9] Here, however, it was his purpose to save it from his clutches, shall he then validate the deed?[10]

MISHNAH. A MAN MUST NOT FIX A PRICE FOR PRODUCE UNTIL THE MARKET PRICE IS KNOWN; ONCE THE MARKET IS ESTABLISHED, A FIXED PRICE MAY BE AGREED UPON, FOR EVEN IF ONE HAS NO STOCK, ANOTHER HAS. IF HE WAS OF THE FIRST HARVESTERS, HE [THE BUYER] MAY ENTER INTO A CONTRACT FOR [THE CROPS IN] THE STACK,[11] THE BASKET OF GRAPES,[12] THE VAT OF OLIVES,[13] POTTERS' LUMPS OF CLAY,[14] AND FOR LIME WHEN IT HAS ALREADY BEEN PLACED IN THE KILN.[15] ONE MAY ALSO MAKE A FIXED CONTRACT FOR MANURE FOR THE WHOLE YEAR. R. JOSE MAINTAINED: NO CONTRACT FOR MANURE MAY BE ENTERED INTO UNLESS HE [THE VENDOR] HAS THE MANURE IN DUNG PITS; BUT THE SAGES PERMIT IT. AND ONE MAY ALSO BARGAIN FOR THE LOWEST PRICE.[16] R. JUDAH SAID: EVEN IF HE DID NOT STIPULATE FOR THE LOWEST PRICE, HE MAY DEMAND, 'SUPPLY ME AT THIS PRICE, OR RETURN MY MONEY.'[17]

GEMARA. R. Assi said in R. Johanan's name: One may not fix a contract at market prices.[18] R. Zera questioned R. Assi: Did R. Johanan rule thus even of a great fair?[19] He replied: R. Johanan referred only to town markets, where values fluctuate.[20] Now, on the original hypothesis that R.

Johanan referred even to a great fair, how is our Mishnah conceivable, which teaches, A MAN MUST NOT FIX A PRICE FOR PRODUCE UNTIL THE MARKET PRICE IS KNOWN; ONCE THE MARKET PRICE IS ESTABLISHED, A FIXED PRICE MAY BE AGREED UPON? — Our Mishnah relates to wheat in granaries and ships, whose fixed price extends over a long period.[21]

Our Rabbis taught: One may not contract for commodities until the market price is out; once the market price is established, a contract may be entered into, for even if one [the vendor] has no stock, another has. If the new supplies were at four [se'ahs per sela'] and the old at three, a contract may not be made until the price has been equalised for the new and old.[22] If the gleaned grains[23] were [priced] at four [se'ahs and upward per sela'], whilst ordinary stock[24] at three, a contract must not be entered into [at a fixed maximum price] until the same market price has been established for the gleaner[25] and the merchant.

R. Nahman said: One may contract for gleanings at the price of gleanings.[26] Said Raba to R. Nahman: Why does the gleaner differ?[27] Because if he lacks stock, he will borrow from his fellow gleaner? Then even a merchant[28] can borrow from a gleaner![29] — He replied: A merchant deems it undignified to borrow from a gleaner. Alternatively, he who pays money to a merchant expects to receive best quality produce.[30]

R. Shesheth said in R. Huna's name: One may not borrow upon the market price.[31] Thereupon R. Joseph b. Hama said to R. Shesheth — others say, R. Jose b. Abba said to R. Shesheth: Did R. Huna actually rule thus? But a problem was propounded of R. Huna: The students who borrow in Tishri and repay in Tebeth — is it permitted or forbidden?[32] He replied: Wheat may be procured in Hini and Shili:[33] if they wish, they can buy [in Tishri] and repay![34] — At first R. Huna held that one must not borrow, but on hearing that R. Samuel b. Hiyya said in R. Eleazar's name that one may, he too ruled likewise.

Our Rabbis taught: If a man was transporting a load from place to place,[35] when his neighbour met him and proposed: 'Let me have it, and I will pay you for it the price you would obtain there,'

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(1) For if the debtor asserts that it is forged, the signatories thereto must attest their signatures.

(2) [V. supra 7a. Similarly here, since he admits having written the deed, the money liability involved ought to rank as a written debt!]

(3) [Since the sale was invalid.]

(4) With reference to an ante-dated bond of indebtedness.

(5) V. supra 14b.

(6) He is empowered to collect the principal even from sold property in virtue of the deed of sale, which guarantees to indemnify the purchaser in the event of its being seized and mortgages the vendor's estates for that purpose.

(7) Hence should be invalid.

(8) V. supra 15b.

(9) I.e., when selling the field, it is his intention to compensate the first owner, so that the deed drawn up for the second may be valid. Consequently, it is genuine, and the purchaser can act thereon.

(10) Surely not! Hence its writing was unwarranted, and therefore it may be regarded as invalid.

(11) I.e., for the grain already in stacks, though no market price has been established.

(12) A basket used for carrying grapes during the vintage; the meaning is that one may fix a price for the wine to be manufactured from grapes already vintaged in baskets.

(13) As in the preceding note.

(14) I.e., for the earthenware to be manufactured thereof.

(15) In all these cases the vendor is held to be in possession of the articles he is selling, though they are not completely manufactured. Consequently, a price may be agreed upon and paid, and though delivery will not be effected until later, by which time the market price may have advanced (for in all these cases the reference is to a sale before a market price has been established at all), it is nevertheless permissible, the lower pre-payment not ranking as interest.

(16) Lit., 'the high price', i.e., the price at the height of the market when the commodity is cheap. After fixing a price, the vendor may contract to supply stock throughout the year at the lowest price prevailing at the time of each delivery. Thus, the first price fixed is only to be regarded as a maximum, not to be exceeded if the market price advances.
(17) In the whole Mishnah the reference is to advance payment at a fixed rate. R. Judah maintains that even without a definite stipulation it is always implied, therefore the purchaser can insist upon the advantage of a price-drop or rescind the sale, without being deemed dishonourable and subject to the curse. (V. supra 44a.)
(18) I.e., to supply for a certain period at the market price prevailing at the time of the contract. This prohibition naturally refers only to the case where the vendor himself lacks supplies when making the contract.
(19) That one may not contract at the market price ruling in great fairs, though such are generally stable, and a fair indication of value. — Durmos, the word in the text, is a disguise of '**, or Mercurius, the divinity of commerce to whom a great annual fair, probably of Tyre, was dedicated (Jast.). [Krauss, Lehnworter, connects it with the Gr. **, race-course, which was also the market-place.]
(20) Lit., 'are not fixed.'
(21) When the wheat has been stored, or sufficient has been imported, its price is stabilised and there is no fear of appreciation, which may result in an appearance of interest.
(22) New supplies were cheaper, because they were not yet fully dried. Now the purchaser, though paying early, does not receive the wheat until that too becomes old, and if he contracts for the whole at the price of new, he receives interest. Therefore he must wait until the same market price is fixed for both.
(23) I.e., grains gleaned in small quantities from many fields, and consequently of inferior quality and cheaper.
(24) Lit., 'of all men'.
(25) I.e., the petty trader in gleanings.
(26) Though a contract may not be made until the prices are equalised, that is only if the vendor may supply gleanings or ordinary stock; but if the vendor is a gleaner, supplying only gleanings, the transaction is permitted.
(27) That you permit it.
(28) Lit., 'a householder', 'landlord'.
(29) Hence the transaction should be universally permitted, for even an ordinary factor may obtain supplies of gleanings when his own stock is exhausted.
(30) Hence, if he pays the lower price of gleanings, he receives interest for advancing the money.
(31) Rashi: One may not borrow money with the stipulation that if it is not repaid by a certain date, provisions will be supplied in its stead at the market price prevailing at the time of the loan, which is lower than that which will prevail later. Others: One may not borrow a se'ah of corn to repay a se'ah later, when its value will have advanced, in reliance upon the fact that the corn has a fixed market price, and it is possible for the borrower to obtain a se'ah now or at any time that the price remains unaltered, either by cash or on credit, and keep it until repayment is due.
(32) Tishri is the seventh month of the Jewish year, Tebeth the tenth. If they borrow money in Tishri and repay in kind in Tebeth at the prices of Tishri; or (taking the second interpretation, p. 420, n. 11) if they borrow provisions in Tishri and return the same quantity in Tebeth, is the transaction permitted?
(33) V. p 377, n. 3.
(34) Hence the transaction is not usurious. This contradicts R. Huna's former ruling.
(35) To sell, its value there being greater.

Talmud - Mas. Baba Metzia 73a

if the vendor retains the title thereto, it is permitted; if the vendee, it is forbidden.[1] If he was transporting provisions from place to place, when his neighbour met him and proposed, 'Let me have them, and I will supply you [later] with provisions that I have there,' if he actually possesses provisions there, it is permitted;[2] if not, it is forbidden. But carriers[3] supply in the dearer place at the prices of the cheaper,[4] without fear [of incurring the guilt of usury]. Why? — R. Papa said: They are satisfied by being informed of the market price.[5] R. Aha the son of R. Ika said: They are satisfied with the extra discount they receive.[6] Wherein do they differ? — In respect of a new trader.[7]

In Sura four [se'ahs] went [to the zuz]; in Kafri,[8] six. So Rab gave money to the carrier,[9] accepted himself the risks of carriage, and received five [se'ahs per zuz]. But why not take six?[10] — For a man

of great repute it is different.[11]

R. Assi propounded of R. Johanan: May this be done with small ware?[12] — He replied: R. Ishmael son of R. Jose wished to do so with linen garments, but was not allowed by Rabbi. Others say, Rabbi wished to do so with small ware, but R. Ishmael son of R. Jose did not allow him.

An orchard:[13] Rab forbade it; Samuel permitted it. Rab forbade it: Since it is worth more later on, it looks like payment for waiting.[14] Samuel permitted it: Since there may be cause for regret,[15] it does not look like payment for waiting.[16] R. Shimi b. Hiyya said: But Rab agrees [where the ploughing is done] with [the aid of] oxen, since great loss is caused.[17]

Samuel said to those who advance seed grain to be returned in new grain:[18] Busy yourselves[19] in the field, that ye may have a title to the soil itself;[20] for if not, it will be accounted as a loan to you, and forbidden.

Raba advised those who keep watch over the cornfields: Go out and find some occupation[21] in the barn, that your wages may not be payable until then;[22] since wages are not payable until the end [of one's task], and it is only then that they make you the gift.[23]

The Rabbis protested to Raba: You enjoy usury. For everyone [who leases a farm] accepts four [kor as annual rent] and dismisses the tenant in Nisan;[24] whilst you wait until Iyar[25] and receive six.[26] He retorted: It is you who act contrary to the law; the land is in bond to the tenant;[27] if you make him quit in Nisan [before the crops are ripened], you cause him much loss. Whereas I wait until Iyar, thus greatly enhancing his profits.[28]

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(1) I.e., if the vendor bears the risk of carriage thither, it is not a loan, the vendee really selling it there on his behalf, and hence permitted. But if the vendee assumes responsibility, it immediately passes into his possession, and he is indebted for its value as a loan. Hence, since he repays more than it is worth where he receives it, it is usury.

(2) For it is as though they were immediately transferred to the lender, and if they appreciate, it is the lender's which appreciates.

(3) Lit., ‘ass drivers.’

(4) They receive money in the dearer place to supply provisions at a later date at the lower price of elsewhere.

(5) For through the ready money they thus have in hand they are recognised as traders and receive credit, and this is ample repayment for their labour of bringing the provisions at their risk from one place to another (Rashi). Tosaf. in name of R. Han.: They are satisfied by being kept informed, by those who advance them money, of any rise in the market price in the dearer place during their absence, and thus aided in their sales.

(6) [In consideration of the fact that they supply the produce in the dearer place at cheap rates.]

(7) I.e., if the carrier has only just begun to trade thus. On the first view, that it is permitted because they are satisfied to be known as merchants and receive credit, it is permitted here too, since the same reason operates; (according to Tosaf., being new traders and inexperienced in price fluctuations, they are sufficiently compensated by being informed thereon). But on the second view, being new, they lack the farmer's confidence, who may not believe that they are supplying the produce in the dear place at cheap rates, and hence receive no additional discount. Therefore the transaction is forbidden, for his labour of carriage is merely on account of the money advanced, and thus partakes of the nature of usury.

(8) [South of Sura, Obermeyer, op. cit., p. 316.]

(9) To bring the produce from Kafri.

(10) As above; the more so in that since he accepted the risks of the road, it was an ordinary purchase.

(11) He must be more considerate.

(12) Does the above law of carriers hold good for all merchandise, or only for wheat? For it may be argued that the two reasons stated apply only to wheat, in which there are frequent price fluctuations and a constant demand. But in other merchandise the prices are more stable, which disposes of the first reason as explained by Tosaf., and the demand is less constant, and hence he is not likely to receive a greater discount, for the demand having been satisfied, it will not recur for a considerable time; nor is he, for the same reason, likely to receive recognition as a trader.

(13) Rashi: 'vineyard'. I.e., to advance money at a fixed price for the fruits of the orchard before they are ripe, to be delivered when ripe. The fixed price is naturally less than that of ripe fruit.
(14) V. supra 63b.
(15) If the orchard is smitten with hail, or the plants with disease, the risks of which are borne by the purchaser. [Others: 'a mishap may befall it.]
(16) But as a speculation. He may (and probably will) receive more than his money's worth, but on the other hand he may lose it.
(17) V. supra 30a top. Hence there is a greater element of risk which converts it into a speculation. [Tosaf.: Cattle breeders (who buy the offspring before it is born) since the risks are great.]
(18) Rashi and Jast. Tosaf.: who advance money for loads of faggots, to be delivered at vintage time. Lit., 'who cut grapes or branches.'
(19) Lit., 'turn over.'
(20) On which the grain grows; hence the grain, or, as Tosaf. interprets, the growing faggots are already yours. To do some work in a field was a method of obtaining a title thereto.
(21) Lit., 'turn over.'
(22) I.e., until you have finished those self-imposed tasks.
(23) Lit., 'remit in your favour' (what they pay you over and above the stipulated wage). These watchers were not paid until the corn was winnowed, though wages were due to them immediately after harvesting; but in consideration thereof they were given something above their due. Now this has the appearance of interest, therefore Raba advised them to find some small tasks in the barn, so that their wages should not be legally payable until they actually received them, in which case the 'tip' would be a gift, not interest. [So according to some texts; cur. edd.: 'They reduce the price in your favour. According to this reading the watchers received payment in kind at a cheaper rate in compensation for waiting for their wages; hence Raba's advice.]
(24) The first month of the Jewish Year. They insist that he shall reap then and quit the field. [This haste in harvesting the corn before it was quite ripe was due to the unsettled state of the country during the Persian — Roman wars. Funk, S., Die Juden in Babylonian, II, p. 85.]
(25) The second month.
(26) The protest was based on the assumption that the additional two was payment for waiting the extra month.
(27) I.e., he has a title thereto until the crops are fully ripe.
(28) Hence I am entitled to a greater rental in return for the greater value they receive [Raba's prominence assured his property of government protections and he could safely 'allow his crops to remain in the field until they ripened fully. Funk, loc. cit.]

Talmud - Mas. Baba Metzia 73b

A certain heathen gave a house in pledge[1] to R. Mari b. Rachel,[2] and then sold it to Raba. Thereupon he [R. Mari] waited a full year, took the rent, and offered it to Raba.[3] Said he to him: 'The reason that I have not offered you rent before this is that an unspecified pledge is a year. Had the heathen wished to make me quit [within the year], he would have been unable;[4] but now you must take rent for the house'. He replied: 'Had I known that it was pledged to you, I should not have bought it. Now I will treat you according to their laws; for until they redeem the pledge[5] they receive no rent; so I will take no rent from you until you are paid out'.[6]

Raba of Barnesh[7] said to R. Ashi: See, Sir, the Rabbis enjoy[8] usury. For they advance money for wine in Tishri, and receive choice quality in Tebeth![9] He replied: They too pay their money for wine, not vinegar, and from the very beginning, wine is wine, and vinegar, vinegar;[10] it is then [when they pay] that they select choice wine.[11]

Rabina gave money [for wine] to the residents of Akra dishanwatha,[12] and they supplied[13] a liberal addition.[14] So he went to R. Ashi and asked him: Is it permitted?[15] Yes, he replied; they but forego [their rights] in your favour.[16] But, said he, the land is not theirs![17] — The land is pledged for the land tax, he replied, and the king has decreed: He who pays the land tax is entitled to the

usufruct.

R. Papa said to Raba: See, there are some scholars who advance money for people's poll tax and then put them to much service! — He replied: I might have died, without telling you this thing. Thus said R. Shesheth: The surety[18] of these people lies in the king's archives, and the king has decreed that he who does not pay his poll tax is made the servant of him who pays it [on his behalf].

R. Se'oram, Raba's brother, used to seize people of disrepute and make them draw Raba's litter. Said Raba 'to him: You have done well. For it has been taught:[19] If you see a man who does not behave in a seemly fashion, whence do we know that you may make him your servant? From the verse, They [sc. Canaanite slaves] shall be your bondmen for ever and your brethren the children of Israel [likewise].[20] I might think that this is so even of one who behaves in a seemly fashion; therefore it is taught, but over your brethren, the children of Israel, ye shall not rule one over another with rigour.[21]

R. Hama said: If a man gives his neighbour money to buy wine for him, and he negligently fails to do so, he must compensate him as it is sold in the market of Belshafat.[22] Amemar said: I repeated this ruling before R. Zebid of Nehardea, whereupon he observed: R. Hama's dictum applies only to unspecified wine, but not to a particular wine, [for] who knows that he could have obtained it for him?[23] R. Ashi said: Even for unspecified wine it is also not [correct]. Why? Because it is an asmakta, and an asmakta establishes no legal claim.[24] But in R. Ashi's view, how does this differ from what we learnt: [If the tenant-farmer declares], 'If I let it lie waste without cultivating it, I will pay with the best [of produce,'[25] he is bound to do so]? — There it is in his power [to cultivate it];[26]

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(1) V. supra 67b.

(2) He was the son of a Jewess and a proselyte, conceived before conversion and born after, and was therefore called by his mother's name.

(3) For the coming year, but not for the past.

(4) Therefore I was entitled to live rent-free in the house. V. supra 67b.

(5) Lit., 'make (the creditor) quit.

(6) Lit., 'until I cause you to quit by (payment of) money,' i.e., until I compel the heathen to repay you. This was not forbidden as usury, since not Raba but the heathen owed him money (Rashi).

(7) [Near Matha Mahasia, a suburb of Sura, Obermeyer, op. cit. p. 297.]

(8) Lit., 'devour'.

(9) Whereas had they taken it in Tishri, it might have turned sour by Tebeth. Thus in return for their advancing the money before the receipt of the goods the vendor takes the risk of deterioration, which is usury. Now, though it was stated, supra 72b, that one may buy wheat ahead if the buyer has stock when the money is paid, Raba of Barnesh thought that wine is different, because it is liable to turn sour. (Rashi).

(10) I.e., good wine remains good; if it turns now, it was poor from the very beginning, already containing the germs of deterioration, as it were, but its faultiness was not then discernible.

(11) And they insist on receiving it, because only if it is sound now was it sound then.

(12) [Fort of Shanutha, 4 parasangs west of Bagdad, and identical with Be-Kufai; v. B.B. (Sonc. ed.) p. 120, n. 8, the former being the Arabic, the latter the Aramaic name of the Fort, Obermeyer, op. cit., p. 268.]

(13) Lit., 'they poured'.

(14) [So Jast. Others: an additional jug, measure.]

(15) Or is it usury for having paid the money in advance?

(16) The right of giving you exactly the stipulated quantity.

(17) By paying the land tax on behalf of the original owners, who, being unable to pay it, had fled, they had become possessed thereof, and it is questionable whether they have the right to dispose of the wine.

(18) So Jast. Rashi: the service-warrant.

(19) [So according to some texts; cur. edd.: 'we learnt'. The quotation however is not from a Mishnah.]

(20) Lev. XXV, 46.

(21) Ibid. The verse, of course, is not actually thus interpreted, but merely cited in support of his practice, with the caveat that men of good standing must not be molested.
(22) Walshafat, v. B.B. (Sonc. ed.) p. 409, n. 6. Having neglected to buy a vintage, when wine is cheap, so that it must now be bought at ordinary market prices, he must duly compensate him. [Obermeyer, op. cit. p. 185, renders: he pays him (the agent) only in accordance with the (low) price current in the wine market of Balash-Abad.]
(23) Even had he not been negligent, he might have failed to obtain the particular wine ordered.
(24) V. Glos. Even if the agent undertook to forfeit the loss, should he not buy the wine, his pledge is invalid, not having been meant seriously.
(25) V. infra 104a.
(26) Therefore his undertaking is not an asmakta, but seriously meant.

Talmud - Mas. Baba Metzia 74a

here it does not rest with him.[1]

Raba said: If three men gave money to one person to purchase something for them, and he purchased on behalf of one only, he has purchased [it] for all three.[2] This is so only if he [the agent] did not make up a separate sealed package of each man's money; but if he did, then for whom he has bought, he has bought, and for whom he has not bought, he has not bought.

R. papi said in Raba's name: The mark [on the wine-barrels][3] gives possession. In respect of what [does it effect a title]? — R. Habiba said: In respect of actual possession.[4] The Rabbis said: For the acceptance of the curse.[5] And the law is that [it gives possession only] in respect of submission to the curse. But where it is the usage that this gives actual possession, it does so [with full legal recognition].[6]

IF HE WAS OF THE FIRST HARVESTERS. Rab said: If [only] two [processes] are wanting [before the crops are ready for delivery] a contract may be made; if three, no contract may be made. Samuel said: [If they are to be done] by man, even if a hundred [are lacking] an agreement may be effected; if by Heaven,[7] even when one [is lacking] no contract may be made. We learnt: HE MAY ENTER INTO A CONTRACT FOR [THE CROPS IN] THE STACK. But it still wants spreading out in the sun to dry, threshing, and winnowing?[8] — It means that it had already been spread out [and dried] in the sun. But on Samuel's view, that if dependent on Heaven, even when one [process is lacking] no contract may be made, does it not need winnowing, which is in the power of Heaven?[9] — It can be done with a fan.

AND FOR THE BASKET OF GRAPES. But they yet need heating,[10] placing in the press, treading, and being drawn [into the pit]![11] As R. Hiyya learnt: [A contract may be made] in respect of the heated mass of olives; so here too, it is for the heated mass of grapes. But three processes are still wanting! — [It refers] to a place where the buyer draws [the wine into the pit].[12]

AND FOR THE VAT OF OLIVES. But it must yet be heated, placed between the boards [of the olive press], pressed, and conducted [into the oil pit]! — As R. Hiyya taught: [The contract may be made] in respect of the heated mass of olives. [So here too.] But three processes are still wanting! — [It refers] to a place where the buyer draws [the oil into the pit].

AND FOR POTTERS' LUMPS OF CLAY. But why? Surely it requires moulding, drying, placing in the oven, burning, and taking out! — [It means,] when they have been moulded and dried. But there are still three [processes wanting]! — [It refers] to a place where the buyer removes [the earthenware from the oven.]

AND FOR LIME, WHEN IT HAS ALREADY BEEN PLACED IN THE KILN. But it requires to

be burnt, removed [from the kiln], and crushed![13] — [It refers] to a place where the purchaser crushes it. But on the view of Samuel, who maintained that if they are to be done by man, even when a hundred [processes are wanting] a contract may be made, why must it have 'BEEN PLACED IN THE KILN? — Say thus: when it is ready for placing in the kiln.[14]

AND FOR POTTERS' LUMPS OF CLAY. Our Rabbis taught: Contracts may not be entered into for potters' lumps of clay until they are kneaded [into lumps]: this is R. Meir's view. R. Jose said: This refers only to white earth;[15] but for black earth, such as that of Kfar Hanania and its environs, Kfar Sihin[16] and its environs, an agreement may be concluded, for even if one [merchant] has none, another has.

Amemar paid money [for earthenware] when he [the manufacturer] had stocked himself with the earth. In accordance with whom [did he do this]? If in accordance with R. Meir? Surely R. Meir ruled [that no contract may be made] until they are kneaded [into clay]![17] If with R. Jose, surely he said, Even if one has none, another has?[18] — In truth, it was In accordance with R. Jose, but in Amemar's locality earth [for this purpose] was rare; hence, if he is stocked therewith, each places full reliance;[19] if not, they place no reliance.[20]

ONE MAY ALSO MAKE A FIXED CONTRACT FOR MANURE FOR THE WHOLE YEAR. But are not the Sages identical with the first Tanna?[21] — Raba said:

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(1) For he might have failed to procure the wine at the stipulated price in any case. Hence his undertaking was an asmakta.

(2) All three must share it.

(3) סיטומתא . When merchants bought wine, they left it in the cellars of the growers, taking out barrel by barrel according to need, and affixed a mark on each that they had bought. [Asheri in name of R. Han. explains it as 'handshake', a recognised method among traders of closing a deal.]

(4) That by affixing a mark it passes completely into the possession of the merchant, as though meshikah (v. Glos.) had taken place, and henceforth he must bear all risks.

(5) Lit., 'He who punished etc.'; v. supra 44a. It still belongs to the wine-grower (the payment of money not effecting a change of ownership), but should he desire to rescind the sale, as he may legally do, he must submit to the curse.

(6) I.e., a method of acquisition based on local usage receives full legal recognition.

(7) I.e., processes not dependent on man.

(8) This refutes both Rab and Samuel, for three processes are wanting, one of which, at least, sc. drying by the sun, is not in man's power.

(9) This was done by throwing the corn to the wind, which separated the grain from the chaff.

(10) prior to manufacture the grapes were heated and caused to shrink by exposure to the sun.

(11) This too refutes Rab and Samuel.

(12) Hence only two processes are wanting.

(13) Before it is fit for use.

(14) I.e., when he has the materials for making the lime, the fuel, etc., with which the kiln was fired.

(15) Which is rare and difficult to obtain.

(16) Both in Galilee.

(17) But not while it is still earth.

(18) So that Amemar could have given money even sooner.

(19) Upon the transaction, which cannot be rescinded without submission to a curse.

(20) And each may retract.

(21) V. Mishnah, 72b.

Talmud - Mas. Baba Metzia 74b

They differ with respect to winter.[1]

AND ONE MAY ALSO BARGAIN FOR THE LOWEST PRICE. A man once paid money [in advance] for his father-in-law's dowry,[2] [i.e., the trousseau comprised therein.] Subsequently the dowry fell in price.[3] So they came before R. Papa. Said he to him [the purchaser]: If you have contracted for the lowest price, you can take at present prices; if not, you must accept at the original price. But the Rabbis protested to R. Papa: Yet if he did not stipulate [thus], must he accept at previous prices? Surely it is only money [that has passed between them], and money gives no title! — He replied: I too spoke only with reference to submission to the curse. If he stipulated for the lowest price, and the vendor wishes to retract, the vendor must submit to the curse; if no stipulation has been made, and the purchaser wishes to retract, the purchaser must submit to the curse. Rabina said to R. Papa: Whence do you know that it [our Mishnah under discussion] accords even with the Rabbis who disagree with R. Simeon and maintain that money does not effect possession;[4] and yet even so, [only] if he stipulated for the lowest price does he receive at the present value, but if not, he must accept it at the previous price?[5] Perhaps it accords [only] with R. Simeon, who maintained that money effects possession,[6] so that, if he stipulated for the lowest price, he receives it at current values, but if not, he must accept it at previous prices, because his money has effected possession for him; whereas in the opinion of the Rabbis, whether he stipulated or not, he can take it at present prices, for a man's intention is for the lowest price?[7] — He replied: You must assume that R. Simeon ruled [that the purchaser is morally in possession after paying money] only if the price remained uniform; but did he rule thus when there were two prices?[8] For should you not admit this, does R. Simeon maintain that the provision of the curse never applies to the purchaser?[9] And should you rejoin, That indeed is so — surely it has been taught: At all events, such is [merely] the halachah; but the Sages said, He who punished etc.[10] What is meant by ‘at all events’? Surely that it matters not whether the vendor or the purchaser [retracts], he must submit to the curse? Hence R. Simeon gave his ruling [that the vendee cannot legally cancel the sale] only if the price remained uniform, but if not there were two prices.

R. Aha, the son of Raba, said to Raba: But does it not follow [that there is no curse in the case under discussion], since in the first place he [the father-in-law] had only appointed him [the son-in-law] as his agent?[11] — He replied: This refers to a merchant who buys and sells.[12] MISHNAH. A MAN MAY LEND HIS TENANTS[13] GRAIN FOR [AN EQUAL QUANTITY OF] GRAIN [TO BE RETURNED] FOR SOWING PURPOSES, BUT NOT FOR FOOD. FOR RABBAN GAMALIEL USED TO LEND HIS FARMER-TENANTS GRAIN FOR GRAIN FOR SOWING; AND IF IT WAS DEAR AND BECAME CHEAP, OR CHEAP AND BECAME DEAR, HE WOULD ACCEPT [A RETURN] ONLY AT THE LOWER PRICE;[14] NOT BECAUSE THE HALACHAH IS SO, BUT BECAUSE RABBAN GAMALIEL DESIRED TO SUBMIT HIMSELF TO GREATER STRINGENCY.[15]

GEMARA. Our Rabbis taught: A MAN MAY LEND HIS TENANTS GRAIN FOR GRAIN FOR SOWING. That is only if he [the tenant] has not entered therein;[16] but if he has entered therein, it is forbidden. Why does our Tanna draw no distinction whether he has entered therein or not, whereas the Tanna of the Baraitha does?Raba replied: R. Idi explained the matter to me: In the locality of our Tanna the aris provided the seed, and whether he has yet entered therein or not, as long as he has not provided the seed he [the landlord] can make him quit;[17] hence, when he enters therein [and the owner provided the seed] it is [straightway] for a lower return.[18] But in the locality of the Tanna of the Baraitha the landowner provided the seed;[19] hence, if he [the aris] has not yet entered therein, so that he [the landlord] can make him quit, when he does enter, it is for a lower return; but if he has already[20] entered, so that he cannot force him to quit, it is forbidden.[21]

Our Rabbis taught: A man may propose to his neighbour,

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(1) When very little dried manure for fertilising is available. The first Tanna permits a contract even for winter (‘FOR

THE WHOLE YEAR'); but the Sages, who permit the transaction because even if one has none another may have it, refer only to summer, when it is plentiful, but not to winter, when there may be a shortage amongst all merchants.
(2) Which the father in-law was to provide, the father-in-law having made him his agent.
(3) Before delivery.
(4) In respect of both the vendor and purchaser; v. supra 44a.
(5) Or rescind the sale only on submission to a curse.
(6) In respect of the purchaser, viz., that he cannot rescind the bargain at all, even on pain of submission to the curse.
(7) Since the Rabbis maintain that the vendee may rescind the sale even without a drop in price, but that he is subject to the curse, it may be that if the price falls, he is even morally entitled to retract, for a 'most favoured-sale' is implicit in every such transaction.
(8) I.e., if the price fell.
(9) For if the sale is always legally binding upon the purchaser there is no possibility of his ever having to submit to the curse.
(10) V. supra 48a; this was said by R. Simeon.
(11) Since the father-in-law provides the dowry, the son-in-law merely acted on his behalf in placing the order. The latter is not subject to the curse, since he does not retract, whilst the former may repudiate his agent for not having fulfilled his task in a proper manner by making the necessary stipulation.
(12) The son-in-law did not act as an agent, but bought on his own account, to sell to his father-in-law.
(13) Aris, a tenant who pays a percentage of the crops as rent.
(14) I.e., if he lent them grain when it was cheap, and then it advanced, he would only accept current value, hence a smaller quantity.
(15) Therefore the Tanna finds it necessary to state the true halachah.
(16) I.e., has not commenced any work in the field.
(17) Even if he has ploughed the field, he can be forced to quit.
(18) Since he could have been forced to leave the field altogether, the seed which the owner provides is not regarded as a loan but as an addition, as it were, to the land he leases him; and in consideration thereof the aris is to pay him the same quantity over and above what he would otherwise have to pay him. Therefore, even if the seed advances in price, there is no interest on a loan.
(19) I.e., normally; but in this case, owing to the superior quality of the soil, the owner had stipulated that the aris was to provide it.
(20) And then agreed to provide the seed himself, contrary to local usage, and then the owner advanced it, the same quantity to be repaid later.
(21) For in that case, the land already having been leased, it cannot be maintained that the seed advanced is an addition to the field.

Talmud - Mas. Baba Metzia 75a

'Lend me a kor of wheat,' and stipulate a monetary return:[1] if it depreciates, he returns wheat; if it advances, he repays its value [as at the time of borrowing]. But did he not stipulate?[2] — R. Shesheth answered: It is thus meant: if no stipulation is made, and it depreciates, he takes wheat; if it advances, he repays its [original] value.

MISHNAH. A MAN MAY NOT SAY TO HIS NEIGHBOUR, 'LEND ME A KOR OF WHEAT AND I WILL REPAY YOU AT HARVEST TIME;'[3] BUT HE MAY SAY, 'LEND ME UNTIL MY SON COMES, OR UNTIL I FIND THE KEY.'[4] HILLEL, HOWEVER, FORBADE [EVEN THIS.] AND THUS HILLEL USED TO SAY: A WOMAN MUST NOT LEND A LOAF TO HER NEIGHBOUR WITHOUT FIRST VALUING IT, LEST WHEAT ADVANCES AND THUS THEY [THE LENDER AND BORROWER] COME TO [TRANSGRESS THE PROHIBITION OF] USURY.

GEMARA. R. Huna said: If he possesses a se'ah, he may borrow a se'ah; two se'ahs, he may borrow two se'ahs.[5] R. Isaac said: Even if he has only a se'ah, he may borrow many kors against it.[6]

R. Hiyya taught the following, which is in support of R. Isaac: [One may not borrow wine or oil for the same quantity to be returned, because] he has not a drop of wine or oil.[7] Surely then, if he has, he may borrow a large quantity against it.[8]

HILLEL, HOWEVER, FORBADE [EVEN THIS]. R. Nahman said in Samuel's name: The halachah agrees with Hillel's ruling. The law is nevertheless not in accordance with him.[9]

AND THUS HILLEL USED TO SAY, A WOMAN MUST NOT LEND, etc. Rab Judah said in Samuel's name: This is Hillel's view, but the Sages maintain, One may borrow and repay unconditionally.

Rab Judah also said in Samuel's name: The members of a company who are particular with each other[10] transgress [the prohibition of] measure, weight, number, borrowing and repaying on the Festival,[11] and, according to Hillel, usury too.[12]

Rab Judah also said in Samuel's name: Scholars may borrow from each other on interest. Why? Fully knowing that usury is forbidden, they merely present gifts to each other.[13] Samuel said to Abbuha b. Ihi: Lend me a hundred peppercorns for a hundred and twenty. And this is well.[14]

Ran Judah said in Rab's name: One may lend to his sons and household on interest, in order to give them experience thereof.[15] This, nevertheless, is incorrect, because he will come to cling thereto.[16]

MISHNAH. A MAN MAY SAY TO HIS NEIGHBOUR, 'HELP ME TO WEED, AND I WILL HELP YOU; ASSIST ME TO HOE, AND I WILL ASSIST YOU.'[17] BUT HE MAY NOT SUGGEST, 'DO YOU WEED WITH ME, AND I WILL HOE WITH YOU; DO YOU HOE WITH ME, AND I WILL WEED WITH YOU.'[18]

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(1) Viz., its value when borrowing.

(2) To return money; why then repay wheat if its value falls?

(3) Lest it become dearer.

(4) I.e., he has it, but it is temporarily inaccessible. Since the prohibition of lending a se'ah for a se'ah is only Rabbinical, it was not enacted when the borrower actually possesses the grain.

(5) The reference is to 'LEND ME UNTIL MY SON COMES etc.'

(6) For in point of fact, the se'ah that he has does not pass into the lender's possession, and he could, if he wished, dispose of it and then purchase a se'ah for repayment, even at a higher price. Thus, having borrowed one se'ah, he is at liberty to dispose of the first and remain in debt for what he borrowed: this se'ah (the borrowed one) then serves as a standby for another, and the second for a third, and so on.

(7) Hence, if the price of wine or oil advances, there is usury.

(8) Lit., 'many drops'.

(9) Sc., R. Nahman in Samuel's name.

(10) I.e., members of a company at one table, each of whom has his own provisions, and when one borrows from another, are particular to weigh, measure, or count, that the exact quantity may be returned.

(11) On a Festival one may borrow from his neighbour, but not by weight, measure or number. Likewise, he may not use the terms 'lend' and 'repay', for these belong to monetary transactions. Now Rab Judah observes, when members of a company are particular with each other, they are likely to be led into the transgression of these prohibitions.

(12) When members of a company are not particular with each other, and one borrows and returns the same amount after it has advanced, there is no usury, since neither cares whether the exact amount is returned or not. But if they are particular, every change in value is scrupulously noted, and therefore, if it advances, there is usury. This does not refer particularly to Festivals. Since Rab Judah maintains that Hillel's ruling applies only to members who are particular with each other, it follows that neighbours, in respect of whom Hillel stated his view, are always so regarded. (Tosaf.)

(13) This refers only to a trifling matter, such as might be given in any case. (Tosaf.) [They are not as petty and niggardly in their relations to one another as those whose only common bond of interest is the dining table; v. Rappaport, J.H., Das Darlehen, p. 135.]

(14) I.e., it is not usury.

(15) Lit., 'to let them know the taste of usury'; i.e., that they should know the bitterness and cankering cares of having to return more than is borrowed.

(16) In teaching his children the dark side of interest, he himself will be impressed with its happy side-for the lender-and engage in it.

(17) Though by the time he comes to reciprocate labour costs may have advanced.

(18) One may be more difficult than the other, and so there may be an appearance of usury.

Talmud - Mas. Baba Metzia 75b

ALL THE DAYS OF THE DRY SEASON ARE EQUAL,[1] AND LIKEWISE OF THE RAINY SEASON.[2] [BUT] ONE MAY NOT SAY, 'PLOUGH WITH ME IN THE DRY SEASON, AND I WILL PLOUGH WITH YOU IN THE RAINY SEASON'.[3] RABBAN GAMALIEL SAID: THERE IS [A FORM OF] PREPAID INTEREST AND ONE OF POSTPAID INTEREST. E. G., IF ONE MADE UP HIS MIND TO BORROW FROM HIS NEIGHBOUR AND SENT HIM [A GIFT], SAYING, 'IT IS IN ORDER THAT YOU SHOULD LEND ME' — THAT IS INTEREST IN ADVANCE. IF HE BORROWED FROM HIM, REPAID HIS MONEY, AND THEN SENT HIM [A GIFT], SAYING, 'IT IS ON ACCOUNT OF YOUR MONEY WHICH, [AS FAR AS YOU WERE CONCERNED], LAY IDLE WITH ME' — THAT IS POSTPAID INTEREST. R. SIMEON SAID: THERE IS A FORM OF VERBAL INTEREST. [THUS:] HE [THE BORROWER] MAY NOT SAY TO HIM [THE LENDER], 'KNOW THAT SO-AND-SO HAS COME FROM SUCH AND SUCH A PLACE.'[4]

THE FOLLOWING TRANSGRESS NEGATIVE INJUNCTIONS: THE LENDER, THE BORROWER, THE SURETY, AND THE WITNESSES; THE SAGES ADD, THE NOTARY TOO. THEY VIOLATE: THOU SHALT NOT GIVE [HIM THY MONEY UPON USURY],[5] TAKE THOU [NO USURY] OF HIM,[6] THOU SHALT NOT BE TO HIM AS AN USURER,[7] NEITHER SHALL YE LAY UPON HIM USURY,[8] AND THOU SHALT NOT PUT A STUMBLING BLOCK BEFORE THE BLIND, BUT SHALT FEAR THY GOD: I AM THE LORD.[9]

GEMARA. It has been taught: R. Simeon b. Yohai said: Whence do we know that if a man is his neighbour's creditor for a maneh, the latter must not extend a greeting to him, if that is not his usual practice? From the verse, Usury of any word which may be usury, [teaching] that even speech is forbidden.

THE FOLLOWING TRANSGRESS. Abaye said: The lender infringes all;[10] the borrower: Thou shalt not cause thy brother to take usury,[11] but unto thy brother thou shalt offer no usury,[12] and thou shalt not put a stumbling block before the blind. The Surety and the witness: only, neither shall ye lay upon him usury.[13]

It has been taught: R. Simeon said: Those who lend on interest lose more than they gain.[14] Moreover, they impute wisdom[15] to Moses, our Teacher, and to his Torah, and say, 'Had Moses our Teacher known that there is profit in this thing [sc. usury], he would not have prohibited it.'[16]

When R. Dimi came,[17] he said: Whence do we know that if one is his neighbour's creditor for a maneh and knows that he has nought [for repayment], he may not even pass in front of him? From the verse, Thou shalt not be to him as an usurer.[18] R. Ammi and R. Assi say: It is as though he subjected him to a twofold trial,[19] for it is written, Thou hast caused man to ride over our heads,' we went through fire and through water.[20]

Rab Judah said in Rab's name: He who has money and lends it without witnesses infringes, and thou shalt not put a stumbling block before the blind.[21] Resh Lakish said: He brings a curse upon himself, as it is written, Let the lying lips be put to silence; which speak grievous things proudly and contemptuously against the righteous.[22]

The Rabbis observed to R. Ashi: Rabina fulfils all the Rabbinical requirements. He [R. Ashi] sent word to him [Rabina] on the eve of the Sabbath: 'Please, let me have [a loan of] ten zuz, as I just have the opportunity of buying a small parcel of land.' He replied, 'Bring witnesses and we will draw up a bond.' 'Even for me too!' he sent back. 'You in particular,' he retorted, 'being immersed in your studies, you may forget, and so bring a curse upon me.

Our Rabbis taught: Three cry out[23] and are not answered. Viz., he who has money and lends it without witnesses; he who acquires a master for himself; and a henpecked husband. 'He who acquires a master for himself;' what does this mean? — Some say: He who attributes his wealth to a Gentile;[24] others: He who transfers his property to his children in his lifetime; others: He who is badly-off in one town and does not go [to seek his fortune] elsewhere.

C H A P T E R V I

MISHNAH. IF A MAN ENGAGES ARTISANS AND THEY DECEIVE EACH OTHER, THEY CAN ONLY CHERISH RESENTMENT AGAINST EACH OTHER.[25] IF HE HIRES AN ASS-DRIVER OR A WAGGONER[26] TO BRING LITTER-CARRIERS AND PIPERS FOR A BRIDE OR FOR THE DEAD,[27] OR LABOURERS TO REMOVE HIS FLAX FROM THE WATER OF STEEPING, OR ANYTHING WHICH WOULD BE IRRETRIEVABLY LOST,[28] AND THEY [THE WORKERS] BREAK THEIR ENGAGEMENT;[29] IF IT IS A PLACE WHERE NO OTHERS ARE AVAILABLE AT THE SAME WAGE, HE MAY HIRE [WORKERS] AGAINST THEM[30] OR DECEIVE THEM.[31] IF HE ENGAGES ARTISANS AND THEY RETRACT [AFTER DOING SOME WORK]. THEY ARE AT A DISADVANTAGE;

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(1) Lit., 'one.'

(2) I.e., there is no fear that one day may be longer than another or more difficult for working, so that the value of labour on one is greater than on the other.

(3) In different seasons the work is of unequal difficulty.

(4) The mere giving of information which he would otherwise not have given, is interest. But the text in J. a.l. is, 'Know that if so-and-so has come, etc.' On this reading, it is the lender who speaks thus to the borrower, and to make the sense complete, Maim. Yad, Loweh, 13, adds, 'and when he comes, shew him hospitality.' Now, though the borrower would probably have done this in any case, his doing it at the lender's behest becomes interest, and is forbidden. The passage then must be translated: R. Simeon said, There is a form of interest arising through (the creditor's) words (orders). (V.J.D. CLX, 12 ט ז a.l. ¤ 5 and ביאור הגר א a.l. ¤ 21.)

(5) Lev. XXV, 37.

(6) Ibid. 36.

(7) Ex. XXII, 24.

(8) Ibid.

(9) Lev. XIX, 14. The borrower, by offering interest and appealing to the creditor's avarice, places a stumbling block before him.

(10) The injunctions enumerated in the Mishnah.

(11) Deut. XXIII, 20. For this translation v. p. 363, n. 4.

(12) Ibid. 21. Alfasi and the Asheri Omit this, and Maim.'s text likewise appears to have omitted it.

(13) I.e., take no part in a transaction which imposes usury.

(14) V. supra 71a: He who lends on interest, his wealth dissolves . . . and he sinks into poverty, never to rise again.

(15) A euphemism for folly.

(16) Lit., ‘written it’.
(17) From Palestine to Babylon.
(18) I.e., do not emphasize that he is in your debt: and so put him to shame.
(19) Lit., ‘judged him with two verdicts.’
(20) Ps. LXVI, 12; v. Ber. 6b.
(21) Lev. XIX, 14.
(22) Ps. XXXI, 19; when the creditor demands repayment, and the debtor denies the loan, he is reviled for preferring unjust claims.
(23) I.e., vent their grievances at law.
(24) V. p. 367, n. 2; the Gentile may learn of this, and demand its return.
(25) But have no legal redress. In the view of the Rabbis, even for resentment there must be some justifiable cause; otherwise it is morally wrong.
(26) The Karlsruhe MS. and Tosaf. read קרר , (קרר to roll, drag; cf. גרר a waggoner). Our editions read קדר , which, according to Jast., is a dialect form of קרר . Tosaf. suggests that קדר , (a potter) may be used in the Mishnah, because potters generally have waggons (for conveying their wares).
(27) It was a custom to have professional mourners and pipers, who played sad music at funerals. The numbers varied according to wealth and social position, but even the poorest had at least one professional mourner and two pipers.
(28) If postponed. The bringing of pipers for a funeral or marriage is included in this category, because they are required for a particular time, and without them the ceremony suffers (Tosaf.).
(29) Lit., ‘withdrew’ in the middle of their work.
(30) I.e., at a higher wage. and claim the difference from the first.
(31) This is discussed in the Gemara.

Talmud - Mas. Baba Metzia 76a

IF THE EMPLOYER RETRACTS, HE IS AT A DISADVANTAGE.[1] HE WHO ALTERS [THE CONTRACT] IS AT A DISADVANTAGE,[2] AND HE WHO RETRACTS IS AT A DISADVANTAGE.

GEMARA. It is not stated, One or the other retracts. but THEY DECEIVE EACH OTHER, implying the artisans deceive each other:[3] viz., the employer instructed him [sc. his employee]. ‘Go and hire me workers;’ whereupon he went and deceived them. How so? If the employer's instructions were at four [zuz per day], and he went and engaged them for three, what cause have they for resentment? They understood and agreed! Whilst if the employer's instructions were for three, and he went and engaged them at four, what then were the conditions? If he [who engaged them] said to them, ‘I am responsible for your wages.’ he must pay them out of his [pocket]. For it has been taught: If one engages an artisan to labour on his [work], but directs him to his neighbour's, he must pay him in full, and receive from the owner [of the work actually done] the value whereby he benefitted him![4] — It is necessary to teach this only if he said to them, ‘The employer is responsible for your pay.’ But let us see at what rate workers are engaged?[5] — It is necessary [to teach this] only when some [workmen] engage themselves for four [zuz] and others for three. Hence they can say to him, ‘Had you not told us that it is for four zuz, we would have taken the trouble to find employment at four.’[6] Alternatively, this may refer to a householder.[7] Hence he can say to him, ‘Had you not promised me four, it would have been beneath my dignity to accept employment.’ Or again, it may refer, after all, to [normal] employees. Yet they can say to him [the foreman], ‘Since you told us it was for four, we took the trouble of doing the work particularly well.’ But then let us examine the work?[8] — This refers to a dyke.[9] But even [in] a dyke, it [superior workmanship] may be distinguished! — It means that it is filled with water, and so not noticeable. Another possibility is this: In truth, it means that the employer gave instructions for four, and he went and engaged them for three; but as to your objection, ‘They understood and accepted!’ — they can remonstrate with him. ‘Do you not believe in, Withhold not good from them to whom it is due?’[10]

It is obvious, if the employer instructed him [to engage labourers] for three [zuz per day], and he went and promised them four, but they stipulated, 'According to the employer's instructions', that their reliance was upon him [who engaged them],[11] But what if the employer instructed him [to engage them] at four, and he went and promised them three, and they said, 'Be it as the employer instructed'? Did they rely on his [the agent's] words, saying to him, 'We believe you that the employer has instructed you thus'; or perhaps they relied upon the words of the employer?[12] — Come and hear: [If a woman said to a man.] 'Bring me my divorce,' and [he went and stated to her husband,] 'Your wife authorised me to accept the divorce on her behalf;' [to which] he replied. 'Take it, in accordance with her instructions,' — R. Nahman said in the name of Rabbah b. Abbuhah in Rab's name: Even when the divorce reaches her hand, she is not divorced. This proves that he [the husband] relies upon his [the agent's] statement. For should you maintain that he relies upon hers, then at least when the divorce reaches her hand, let her be divorced![13] Said R. Ashi:

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(1) Thus, in the first instance, if labour costs increased after they retracted, the employer may deduct the increase that he will have to pay from the wages due for the work already done. If, on the other hand, they decrease, the profit is the employer's, and the workers cannot demand the whole sum originally agreed upon less the (diminished) cost of completing the work. In the second instance, the employer must pay his workmen for what they have already done pro rata even if labour costs advance, and he must pay more for the rest. Should they decrease, however, he is bound to pay the whole sum originally agreed upon less only the diminished cost of the rest.

(2) E.g., if a dyer was ordered to dye wool red, and dyed it black, he can only demand either his own expenses for dyeing or the increased value of the wool, whichever is less.

(3) Because to denote that the employer and employees deceived each other, the Mishnaic idiom requires the first phrase.

(4) And when an employer instructs a foreman to engage labourers at three sins, and he engages them at four, it is as though he had engaged them for himself but directed them to his employer's work.

(5) For if four zuz is the usual wage. the foreman has a right to claim that sum from the employer, as stated in the Baraitha just cited, he receives the value whereby he benefitted him. If, on the other hand, three is the usual wage, the workers must accept this without any resentment, since he explicitly stipulated that the responsibility for their wages rested on the employer.

(6) Hence they have righteous cause for resentment. Yet, since he stipulated that the employer was responsible for their wages, they have no legal redress.

(7) I.e., who works for himself, but if offered a high wage, is willing to work for another.

(8) To see if it is really worth the higher wage, in which case the employer must pay four, notwithstanding his instructions. This, however, is only when some receive four zuz for superior work, but if none do, they have no legal claim. (H.M. CXXXII, 1 and באר היטב , a.l.)

(9) They were engaged to dig a dyke.

(10) Prov. III, 27. Though they undertook to work for three they are justified in resenting that the employer's agent offered them less than he might have done.

(11) I.e., they certainly did not stipulate for less.

(12) I.e., by saying, 'Be it as the employer instructed', they meant to stipulate that if he had stated more than three, they were to receive the higher wage.

(13) A woman is not divorced until the divorce actually reaches her hand or the hand of an agent appointed by her for the express purpose of accepting it on her behalf: further, an agent's powers are strictly limited to the terms of his appointment, and he may not exceed them in the least. Now, in this case, the wife merely authorised the agent to bring it to her, whereas the agent stated to the husband that he was delegated to accept it on her behalf; whilst the husband, in handing him the divorce, asserted that he was giving it in accordance with her instructions. Now, no man can take a divorce to a woman on her husband's behalf, unless her husband appoints him for that purpose; and a husband cannot authorise a man to accept a divorce on his wife's behalf, i.e., that by his acceptance she shall be divorced, for such appointment is the wife's prerogative. Hence, when the husband said, 'Take it in accordance with her instructions', he must have meant, 'I believe that she appointed you to accept it on her behalf, that by your acceptance she should become divorced'; consequently he did not appoint him as agent to take it to his wife. (For though the wife had appointed him as her agent to bring it to her, the husband too must appoint him as his agent to take it to her; otherwise the divorce is invalid. But in this case, the husband, believing that he was agent for acceptance, would naturally not instruct him to take

it to her.) Therefore, she is not divorced at all, neither by his acceptance, since she did not authorise him to accept it for her, nor even by her own, since he had not been authorised by the husband to take it to her. Now, this holds good on the hypothesis that the husband relied on the agent's statement only. But, if it be assumed that he meant, 'I give it to you exactly in accordance with her instructions, and not merely in accordance with your word,' that is tantamount to saying, 'As she has instructed you to be her agent to bring it to her, so do I instruct you to be my agent to carry it to her'; and therefore, when it reaches her hand, she should certainly be divorced. This proves that the husband relied on the agent's statement only, and by analogy, the workers rely upon the employer's delegate.

Talmud - Mas. Baba Metzia 76b

How now! That were well, had the reverse been taught, thus: [If a woman said to a man,] 'Accept the divorce on my behalf;' and he [went and stated to her husband.] 'Your wife instructed me, Bring me my divorce,' [to which] he replied. 'Take it, in accordance with her instructions: and had R. Nahman ruled [thereon] in the name of Rabbah b. Abbuha in Rab's name that immediately the divorce comes into his [the agent's] hands, she is divorced; that would have proved that he [the husband] relied upon her word.[1] Again had he ruled that [only] when the divorce reaches her hand, is she divorced; that would shew that he relied upon the agent's statement.[2] But there [where R. Nahman did state his ruling], it is because the agent himself entirely cancelled[3] his appointment, by declaring, 'I am willing to be an agent for acceptance, but not for delivery.'[4]

[Reverting to the Mishnah:] If you prefer I can say, this Tanna designates retracting too, 'deceiving'.[5] For it has been taught: If one hires labourers and they deceive the employer, or the employer deceives them, they have nothing but resentment against each other [but no legal redress]. Now, this holds good only if they have not gone [to the scene of their labour]; but if ass-drivers [are engaged to convey a load of grain from a certain place and] go [there] and find no grain, or labourers [hired to plough a field] go and find the field a swamp [unfit for ploughing], he must pay them in full; yet travelling with a load is not the same as travelling empty-handed, nor is working the same as sitting idle.[6] [Moreover,] this holds good only if they have not commenced work; but if they have commenced work, the portion done is assessed for them.[7] E.g., if they contract to harvest [a field of] standing corn for two sela's and they harvest half, and leave half; or to weave a garment for two sela's, and they weave half and leave half, the portion done is assessed: if it is worth six denarii, he must pay them a sela' [Four denarii], or they can complete the work and receive two sela's;[8] if it is worth a sela', he must pay them a sela'.[9] R. Dosa said: That which still remains to be done is assessed. [Thus:] if it is worth six denarii, he pays them a shekel [two denarii], or they can complete their work and receive two sela's[10] if a sela', he must pay them a sela'. Now, this holds good only if there is no irretrievable loss [if the work is postponed until fresh labourers are found]; but if there is, he can engage [workers] at their cost, or deceive them. How does he deceive them? He says to them, 'I have promised you a sela'; come and receive two.' To what extent may he engage [workers] against them? Even to forty or fifty zuz.[11] But when is this said, [only] if no artisans are available for hiring;[12] but if there are, and he [the first worker] says to him, 'Go out and engage one of these,' he has nothing but resentment against him.[13]

A tanna recited before Rab:[14] He must pay them in full. Whereupon he [Rab] observed: My uncle [R. Hiyya] said, 'Were it I, I would have paid them only as unemployed labourers:'[15] yet you say. 'he must pay them in full'! But surely, it is taught thereon: But travelling with a load is not the same as travelling empty-handed, nor is working the same as idling! — Now it [the Baraitha] had not been completed before him [Rab].[16] Others say, it had been completed before him,[17] and he [Rab] observed thus: My uncle said, 'Were it I, I would not have paid him at all';[18] yet you say [he must pay him] as an unemployed labourer! But this [Baraitha] opposes it! — There is no difficulty: the latter ruling is if he viewed the field the previous evening; the former, if he did not.[19] Just as Raba said: If one engaged labourers to cut dykes, and rain fell and rendered it [the land] waterlogged [making work impossible], if he inspected it the previous evening,

(1) Since the divorce takes effect immediately the agent accepts it.
(2) And thus himself appointing him an agent to take the divorce to his wife.
(3) Lit., 'uprooted'.
(4) By claiming that he was an agent for acceptance when in fact he was merely authorized to bring her the divorce, he shewed unwillingness to take all that trouble, and so ipso facto cancelled his own authority. Therefore, even if the husband's assertion meant that he relied upon his wife, and the agent, moreover, subsequently changed his mind and did deliver it, the delivery is invalid, since he himself had destroyed his authority. But in the hypothetical reverse case posited by R. Ashi, the agent's statement that he was empowered only to bring it to the wife, when in fact he was authorised to accept it, did not annul his powers; if he was willing to go so far as to deliver it, he was certainly prepared for the lesser service of accepting it on the wife's behalf.
(5) I.e., the Mishnah means that the deceit was between the employer and the labourers, one side having retracted from the agreement, and this too is called 'deceiving'.
(6) I.e., though the labourers can claim for the loss of the day's work, and the ass-drivers likewise, a man is always prepared to accept somewhat less than a full day's wages if he is permitted to be idle that day, and it is only to that lesser sum that they are entitled.
(7) In the first clause the reference is to time workers: here, to workers who contracted for the whole task, e.g., to plough a field for a fixed remuneration.
(8) I.e., if the half done is now worth six denarii, labour costs having advanced, so that the employer must pay six denarii for the other half, he must nevertheless give them the sela' (four denarii) for their half, although he thereby loses on the whole: for this Tanna rejects the view of our Mishnah that he who breaks the agreement is at a disadvantage, as explained on p. 437. n. 8.
(9) v. infra 77a.
(10) R. Dosa agreeing with the Tanna of our Mishnah.
(11) I.e., he may even pay fresh workers for the remainder much more then the first were to receive for the whole, and recoup himself from the first batch.
(12) Hence he must pay far above the normal.
(13) In any case the term 'deceiving' is employed in this Baraitha to denote 'retracting' and so likewise in our Mishnah.
(14) In connection with the above: 'if the ass-drivers went and found no grain etc.'
(15) As explained on p. 441, n. 6; cf. also p. 398, n. 2.
(16) I.e., when the tanna recited the Baraitha and said 'he must pay in full', he went no further, whereupon Rab observed that his uncle's view differed.
(17) I.e., the Tanna had added, 'but travelling with a load etc.', and yet Rab observed that his uncle differed.
(18) It was their misfortune that the field proved to be a marsh.
(19) Rashi: if the labourer inspected the field the previous evening, he has no claim now, since when he undertook to plough it, he saw the condition of the field. Maim: If the land owner inspected it the previous evening, found it fit, and engaged workers, but overnight heavy rains turned it into a swamp, the labourers have no redress, since it was not the employer's fault.

the loss is the workers; if not, the loss is the employer's, and he must pay them as unemployed workers.[1]

Raba also said: If one engaged labourers for irrigation, and there fell rain [rendering it unnecessary], the loss is theirs.[2] But if the river overflowed[3] , the loss is the employer's,[4] and he must pay them as unemployed labourers.

Rab also said: If one engaged labourers for irrigation, and the river [whence the water was drawn] failed at midday; if such failure is unusual, the loss is theirs;[5] if usual: if [the labourers] are of that town [and so would know about it] the loss is theirs; if not, the loss is the employer's.[6]

Raba also said: If one engaged labourers for a piece of work, and they completed it in the middle of the day;[7] if he has some [other] work easier than the first, he can give it to them, or even if of equal difficulty, he can charge them [with it]; but if it is more difficult, he cannot order them to do it, and must pay them in full. But why? Let him pay them as unemployed workers! — Raba referred to the workers[8] of Mahuza, who, if they do not work, feel faint.[9]

The Master said: 'The portion done is assessed for them. E.g., if it is worth six denarii, he must pay them a sela'.[10] The Rabbis hold that the workers [always] have the advantage.

'Or they can complete the work and receive two sela's.' Is this not obvious? — This is necessary only when labour costs advanced, and the workers retracted. Thereupon the employer went and persuaded them [to return]. I might think that they can say to him, 'When we allowed ourselves to be persuaded, it was on the understanding that you would increase our remuneration.' Therefore we are informed that he [the employer] can answer them, 'It was on the understanding that I should take particular pains over your food and drink.'[11]

'If it is worth a sela', he must pay them a sela'.' Is this not obvious? — This is necessary only if labour was cheap originally [when he hired them], whilst he engaged them for a zuz above [the usual cost], but subsequently[12] labour appreciated and stood at more than a zuz; I might think that they can plead. 'You promised us a zuz above [the usual price]; give us a zuz more [than was stipulated, since that is now the usual wage].' We are therefore told that he [the employer] may answer them,' When did I promise you an extra zuz, only when you did not agree;[13] but now you have agreed.'[14]

'R. Dosa said: That which still remains to be done is assessed [thus]: if it be worth six denarii, he pays them a shekel.' In his opinion, the labourer is at a disadvantage.[15]

'Or they can complete their work and receive two sela's.' Is this not obvious? — This is necessary only when labour costs diminished, and the employer retracted; whereupon the labourers went and persuaded him. I might think, he can say to them, '[I re-engaged you] on the understanding that you allow a rebate on your wages': therefore we are taught that they can answer him, 'It was on the understanding that we perform our work particularly well.'

'If a sela', he must pay them a sela'.' Is this not obvious? — R. Huna. the son of R. Nathan, said: It is necessary only in a case where they [the labourers] contracted for a zuz below [the usual wage] in the first place, and subsequently labour costs fell. I might think that [the employer can plead.] 'You agreed with me for a zuz less [than usual], hence I will give you a zuz less;'[16] so we are taught that they can reply. 'We agreed upon a zuz less only when you would not agree [to pay the full price]; but now you have agreed.'

Rab said: The halachah is as R. Dosa. But did Rab really rule thus? Did not Rab say: A worker can retract even in the middle of the day? And should you answer, R. Dosa draws a distinction between time work and piece work,[17] [I can rejoin,] Did he really admit a distinction? Has it not been taught: If one engages a labourer, and in the middle of the day he [the labourer] learns that he has suffered a bereavement,[18] or is smitten with fever: then if he is a time worker,

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(1) If the labourer had not inspected the land beforehand, he can plead. 'You know the nature of your soil and that work is impossible upon it after a heavy rain, and so should have informed me in time to find other work'; therefore the employer must bear the loss. If the labourer had seen it he should have known himself, therefore the loss is his. (So one interpretation of Asheri.) It may also refer to the employer's inspection, as in the previous note. (The weight of authority is in favour of referring the inspection to the employer himself. V. H.M. CCCXXX, 1 and באר הגולה , a.l.)

(2) Since rain is bound to obviate the need of irrigation, it is an implied condition that the employer may dispense with their services on account thereof.

(3) Lit., 'came'.

(4) Because the worker cannot know that the field is so situated, by means of canals leading thereto, that the river's overflow irrigates it.

(5) The employer not being responsible for an unforeseen event.

(6) It is a general principle that if something happens which might be foreseen by both employer and employee, the latter bears the loss of time. H.M. CCCXXXIV, 1

(7) Having been engaged for the whole day.

(8) Jast.: public labourers: Maim.: field diggers: Rashi: navvies accustomed to continual portering. [Mahoza. where Raba had his school, was an important loading centre on the Tigris near Ktesiffon. V. Obermeyer. op. cit. p. 173.]

(9) Idleness is a trial to them; therefore they are entitled to full pay.

(10) v. p. 442, n. 2.

(11) But not pay you more.

(12) I.e., by the time they had done half the work.

(13) To work for less than a sela'.

(14) To receive it. I cannot pay more, as that is my maximum.

(15) v. p. 437. n. 8.

(16) Than the present price, hence, a zuz below the agreed figure.

(17) If a labourer engages himself by the day or week, he can retract and lose nothing; but if he contracts to do a particular piece, he is thereby at a disadvantage; for the reason of the first (stated supra 10a, q.v.) does not apply to a contractor, since not being tied he is his own master.

(18) Lit., 'one had died unto him', viz., one of the relatives for whom a week of mourning must be observed, during which all labour is forbidden.

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he must pay him his wages;[1] if a contract worker, he must pay him his contract price. Now, with whom does this agree? If with the Rabbis, why particularly if he learns that he has suffered a bereavement or is smitten with fever and so unfortunately compelled [to break the agreement]? Even if he is not compelled, surely the Rabbis maintain that the labourer has the advantage! Hence it must agree with R. Dosa, thus proving that he allows no distinction between time work and contract work! — Said R. Nahman b. Isaac: Here the reference is to a thing of irretrievable loss, and therefore it agrees with all.[2]

We learnt: HE WHO ALTERS [HIS CONTRACT] IS AT A DISADVANTAGE, AND HE WHO RETRACTS IS AT A DISADVANTAGE. Now, it is well [to state]. HE WHO ALTERS [HIS CONTRACT] IS AT A DISADVANTAGE, as thereby R. Judah's opinion is given as a general view;[3] but what is added by, HE WHO RETRACTS IS AT A DISADVANTAGE?[4] Surely [its purpose is] to extend the law to a [time] worker, and in accordance with R. Dosa?[5] — But R. Dosa refers to both cases [alike], whereas Rab agrees with him in one and disagrees in the other.

Alternatively, HE WHO RETRACTS IS AT A DISADVANTAGE [is stated] for this purpose. Viz., It has been taught: He who retracts — how is that? If A sold a field to B for a thousand zuz, and B paid a deposit of two hundred zuz, if the vendor retracts, the purchaser has the advantage; if he desires, he can demand, 'Either return me my money or give me land to the value thereof.' And from what part [of the estate] must he satisfy his claim? From the best. But if the purchaser retracts, the vendor has the advantage; if he desires, he can say to him, 'Here is your money.' Alternatively, he can say. 'Here is land for your money.' And what [part of the field] may he offer him? The worst.[6] R. Simeon b. Gamaliel said: They are instructed [so to act as] to make it impossible [for either] to withdraw. How so? He [the vendor] must draw up a deed, stating. 'I [so-and-so] have sold such and such a field to so-and-so for a thousand zuz, upon which he has paid me two hundred zuz, and now I am his creditor for eight hundred zuz.' Thus he [the vendee] acquires the title thereto, and must repay him the rest, even after many years.[7]

The Master said: 'And from what part [of the estate] must he satisfy his claim? From the best.' Now, this was assumed to mean, 'from the best part of his estate.'[8] But let him [the buyer] be even as an ordinary creditor! And we learnt: A creditor is entitled to medium quality![9] Moreover, here is the land for which he paid money! — R. Nahman b. Isaac said: [It means,] From the best therein [sc. the field bought] and[10] the worst therein. R. Aha, the son of R. Ika. said: It may even mean the best part of his estate; yet the average person, when buying a field for a thousand zuz, must sell off his other property cheaply.[11] and hence he is as one who has sustained damage.[12] And we learnt: For damages[13] we assess [and collect] the best [of the offender's estate].

'R. Simeon b. Gamaliel said: They are instructed [so to act as] to make it impossible [for either] to withdraw. How so? He [the vendor] must draw up a deed, stating. "I [so-and-so have sold such and such a field to so-and-so for a thousand zuz, etc."' Hence, it is only because he writes thus;[14] but if not, he [the purchaser] does not acquire it. But has it not been taught: If a man gives a deposit to his neighbour and stipulates. 'If I retract, this deposit be forfeited to you.' and the other stipulates. 'If I retract, I will double you your deposit.' the conditions are effective: this is R. Jose's view, R. Jose [ruling here] in accordance with his general opinion that an asmakta is valid. R. Judah said: It is sufficient that he [the purchaser] shall gain possession [of the object sold] in proportion to his deposit. Said R. Simeon b. Gamaliel: This holds good only if he stipulates, 'Let my deposit effect possession'; but if he sells him a field for a thousand zuz, of which he pays him five hundred, he acquires [it all], and must repay him the balance even after many years?[15] — There is no difficulty: The former refers to a case where he [the vendor] repeatedly dunned[16] [the buyer] for his money;[17] the latter, where he did not repeatedly demand his money. For Raba said: If one sold an article to his neighbour, and repeatedly demanded payment, it does not become his [the purchaser's];[18] but if not, he [the buyer] acquires it.[19]

Raba also said: If one lent a hundred zuz to his neighbour, who repaid him a zuz at a time, it is [valid] repayment, but he may bear resentment against him, for he can complain, 'You have destroyed it for me.'[20]

A man once sold an ass[21] to his neighbour, and one zuz [of the purchase price] being left [unpaid], he [the vendor] made repeated calls for it. Now, R. Ashi sat and cogitated thereon: What [is the law] in such a case? Does he [the purchaser] acquire it or not?[22] Said R. Mordecai to R. Ashi: Thus did Abimi of Hagronia say in Rab's name: One zuz is as [many] zuz, and he does not acquire it. R. Aha, the son of R. Joseph, protested to R. Ashi: But we have stated in Raba's name that he does acquire it! — He replied: You must interpret your teaching [as referring] to one who sells his field

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(1) I.e., pro rata, according to the time worked, but without making any further deduction on account of his breaking the agreement. For since he is unable to continue, he is not penalised and put at a disadvantage, as are others.

(2) All agree that the labourer is in this case at a disadvantage, unless he is unavoidably prevented from adhering to his bargain.
(3) Lit., 'The Tanna of the Mishnah states anonymously the view of R. Judah,' indicating that he agrees with it, teaching it as the general opinion. For the reference v. infra 78b.
(4) Since that is implied in the whole Mishnah. It is axiomatic that if a Mishnah states a general principle after the detailed case in which it is embodied, its purpose is extension.
(5) For the first clause of the Mishnah would appear to refer to a contract worker; therefore the general principle is added to shew that the same holds good of a time worker too. And that can agree with none but R. Dosa, since the Rabbis maintain that the advantage is on the side of the labourers. Thus it is proved that R. Dosa draws no distinction between a time worker and a contractor.
(6) The reasons are discussed below.
(7) The point is that the other 800 zuz are described on this bond not as the balance due but as an ordinary debt, and therefore does not affect the ownership of the field, which passes to the buyer on payment of money.
(8) I.e., not particularly of the field sold, but the best of any land that the vendor might own.
(9) If the debtor does not repay, the creditor can exact payment only from his medium quality fields, not from the best. And even that is a special privilege.
(10) Referring to the second case where the buyer retracts.
(11) Very few people possessed such large sums in actual cash; hence the purchaser would have to sell off much of his own estate to raise it, and, as is natural under the circumstances, below its value.
(12) If the vendor subsequently retracts, the purchaser has sold his own estate cheaply for no purpose.
(13) Lit., 'those who suffer damage.'
(14) I.e., describing the balance as an ordinary debt.
(15) V. supra 48b. This shews that the transaction is binding though the balance was not arranged as an ordinary debt.
(16) Lit., 'was going in and out.'
(17) Lit., 'comes in and out for money'. This proves that he sold his field through financial pressure, and therefore, unless he explicitly arranged for the balance to be treated as an ordinary loan, he can cancel the sale if full payment is delayed.
(18) [Even if there was meshikah (v. Glos.); so according to the majority of authorities. Cf. Tosaf. and H.M., CXC. 11.]
(19) And the purchase money is regarded as an ordinary debt.
(20) A hundred zuz in a lump sum can be put to business use; one zuz at a time is spent as received, with no visible or tangible advantage.
(21) The text is חמרא , which may mean 'ass' or 'wine', and Rashi translates 'ass'. The reason is that in Rashi's opinion, this assumption, viz. that the vendor's repeated demand for money proves that he sold the article only because he was hard pressed, applies only to land or such articles which are not normally sold, such as an ass which is kept for work on the land; but in the case of wine, which is a normal article of sale, it proves nothing, and hence the consequences drawn from it do not hold good (Maharam). [Alternatively: In the case of wine there would be no reason for cancelling the whole sale for the sake of the single zuz, the buyer surely being entitled to retain wine for the amount he had paid up; Maharsha, מהדורא בתרא .]
(22) Since the balance is so small.

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because of its poor quality.[1]

Now if a man wished to sell [a small field] for a hundred zuz, but finding [no purchaser for so small a field in spite of much seeking] he sold [a larger one] for two hundred [zuz] and made repeated calls for his money, it is obvious that he [the purchaser] does not acquire it.[2] But what if he wished to sell for a hundred, did not find [a purchaser], though had he taken pains he could have found one; but he took no trouble and sold a field for two hundred, and now he makes repeated calls for his money? Is he as one who sells a field because of its poor quality, or not?[3] — This problem remains unsolved.

IF HE HIRES AN ASS-DRIVER OR A WAGGONER . . . HE MAY HIRE [LABOURERS] AGAINST THEM, OR DECEIVE THEM. How far may he hire [labourers] against them? — R. Nahman said: Up to their wages.[4] Raba raised an objection to R. Nahman: Even to forty or fifty zuz.[5] — He replied: That was taught only if the bundle [of the workers, tools, etc.] had come into his possession.[6]

MISHNAH. IF ONE HIRES AN ASS TO DRIVE IT ON THE MOUNTAIN [TOP]. BUT DRIVES IT ON THE PLAIN, OR TO DRIVE IT ON THE PLAIN BUT DRIVES IT ON THE MOUNTAIN. EVEN IF BOTH ARE TEN MILS,[7] AND IT PERISHES, HE IS LIABLE [FOR DAMAGES]. IF HE HIRES AN ASS TO DRIVE IT ON THE MOUNTAIN [TOP], BUT DRIVES IT ON THE PLAIN, IF IT SLIPS [AND SUSTAINS INJURIES], HE IS EXEMPT;[8] BUT IF IT IS [INJURIOUSLY] AFFECTED BY THE HEAT, HE IS LIABLE.[9] [IF HE HIRES IT] TO DRIVE ON THE PLAIN, BUT DRIVES IT ON THE MOUNTAIN, IF IT SLIPS, HE IS LIABLE; IF AFFECTED BY THE HEAT, HE IS NOT; YET IF IT IS ON ACCOUNT OF THE ASCENT,[10] HE IS LIABLE. IF ONE HIRES AN ASS, AND IT IS STRUCK BY LIGHTNING,[11] OR SEIZED AS A [ROYAL] LEVY:[12] HE [THE OWNER] CAN SAY TO HIM, 'BEHOLD, HERE IS YOUR [HIRED] PROPERTY BEFORE YOU.'[13] BUT IF IT PERISHES OR IS INJURED, HE [THE OWNER] MUST SUPPLY HIM WITH A SUBSTITUTE.

GEMARA. Why is no distinction drawn in the first clause [between the causes of death], whilst it is in the second? — The School of R. Jannai said: In the first clause it means that it died on account of the air, and so we say, The mountain air killed it, [or] the air of the plain killed it.[14] R. Jose b. Hanina said: It means, e.g., that it died through fatigue.[15] Rabbah said: It means that it was bitten by a serpent.[16] R. Hiyya b. Abba said in R. Johanan's name: This [the first clause] agrees with R. Meir, who ruled: Whoever disregards the owner's stipulation

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(1) Then we may assume that he willingly sold it, and his repeated demands for payment are due not to financial need, but to fear that the purchaser might retract.

(2) For it is certain that he sold only under pressure, though a hundred would have sufficed him, and now he presses for money to buy a smaller field with the surplus.

(3) Since he took but little trouble to find a purchaser for a small field, it may well be that he was not altogether displeased with selling the larger one.

(4) If the first labourers had done part of the work, but received no wages yet, he may offer the whole sum agreed upon to fresh workers, and pay the first nothing.

(5) V. p. 442. n. 5.

(6) Only if actually in possession of property belonging to the workers may he engage fresh ones at their expense up to the value thereof, even if it exceeds the original amount; but not otherwise.

(7) A mil==2000 cubits.

(8) Because there is less likelihood of slipping on the plain than on the mountain top, therefore he has minimised the risk.

(9) Because it is warmer on the plain than on the mountain top.

(10) The ascent to the top of the mountain heating and affecting it.

(11) This is the literal meaning of והבריקה ; but it is discussed in the Gemara (78b), and other meanings are suggested.

(12) אנגריא , **, forced labour, to which man or beast were liable.

(13) I.e., he is not bound to supply another in its stead.

(14) I.e., the climate of either of these places did not suit it.

(15) Thus, if it was driven on the mountain instead of on the plain, the owner can plead that the ascent had overtaxed its strength. Contrariwise, if driven through the plain instead of on the mountain, it can be urged that the bracing air of the mountain, which is lacking on the plain, would have revived it.

(16) And the owner can plead, 'Had you kept to the place agreed upon, that fate would not have met it.'

is treated as a robber.[1] Which [ruling of] R. Meir [shews this opinion]? Shall we say, R. Meir's [view] in respect to a dyer? For we learnt: If one gives wool to a dyer to be dyed red, but he dyed it black, or to dye it black and he dyed it red, R. Meir said: He must pay him for his wool. R. Judah said: If its increased value exceeds the cost [of dyeing], he [the wool owner] must pay him the cost: if the cost [of dyeing] exceeds the increase in value, he must pay him for the increase.[2] But how do you deduce this? perhaps there it is different, for he gained possession thereof by the change [wrought by his] act![3] But it is R. Meir's ruling on Purim[4] collections. For it has been taught: The Purim collections must be distributed for purim;[5] local collections belong to the town,[6] and no scrutiny is made in the matter,[7] but calves are bought therewith [in abundance], slaughtered, and eaten, and the surplus goes to the charity fund.[8] R. Eliezer said: The purim collections must be utilised for purim [only],[9] and the poor may not buy [even] shoestraps therewith, unless it was stipulated in the presence of the members of the community [that such shall be permitted]: this is the ruling of R. Jacob, stated on R. Meir's authority; but R. Simeon b. Gamaliel is lenient [in the matter].[10] But perhaps there too, the reason is that he [the donor] gave it only [that it be used] for purim and not for any other purpose?[11] But it is this dictum of R. Meir. For it has been taught: R. Simeon b. Eleazar said on R. Meir's authority: If one gives a denar to a poor man to buy a shirt, he may not buy a cloak therewith; to buy a cloak, he must not buy a shirt, because he disregards the donor's desire.[12] But perhaps there it is different, because he may fall under suspicion. For people may say. 'So-andso promised to buy a shirt for that poor man, and has not bought it;' or, 'so-and-so promised to buy a cloak for that poor man, and has not bought it!' — If so, it should state, 'because he may be suspected': why state 'because he disregards the donor's desire?' This proves that it is [essentially] because he makes a change, and he who disregards the owner's desire is called a robber.

IF ONE HIRES AN ASS, AND IT IS STRUCK BY LIGHTNING [WE-HIBRIKAH]. What is meant by we-hibrikah? — Here [in Babylon] it is translated, nehorita.[13] Raba said: paralysis of the feet.[14] A man once said, '[I saw] vermin in the royal garments.' Said they to him, 'In which: in linen[15] or in wool[16] garments?' Some say: He replied. 'In linen garments;' whereupon he was executed.[17] Others maintain: He replied. 'In wool garments;' so he was set free.

OR SEIZED AS A [ROYAL] LEVY, HE CAN SAY TO HIM, 'BEHOLD, HERE IS YOUR PROPERTY BEFORE YOU.' Rab said: This was taught only in respect of a levy that is returned;[18] but if it is a nonreturnable levy, he [the owner] must provide him with [another] ass [in its stead].[19] Samuel said: Whether it is a returnable levy or not, if it is taken on the route of its journey, he [the owner] can say to him, 'Behold, here is yours before you;' but if it is not taken on its route, he is bound to supply him [with another] ass in its stead.[20]

An objection is raised: If one hires an ass, and it is struck by lightning or turns rabid, he [the owner] can say to him, 'There is yours before you.'[21] If it perished or was seized as a levy, he must supply him with [another] ass.[22] Now, on Rab's view, it is well, and there is no difficulty: there [in the Mishnah] the reference is to a levy that is returned; here [in the Baraitha], to one that is not. But on Samuel's view, is there not a difficulty? And should you answer, On Samuel's view too there is no difficulty: there [in the Mishnah] it means that it was seized on the route of its journey, whilst here [in the Baraitha] that it was not; yet surely, since the second clause states, R. Simeon b. Eleazar said: If it was taken on the route of its journey, he [the owner] can say to him, 'Behold here is yours before you.' but if not, he must supply him with [another] ass-does it not follow that according to the first Tanna there is no difference? — Samuel can answer you: Is there not R. Simeon b. Eleazar who agrees with me? Then my ruling is based on his. Alternatively, the whole [Baraitha] is based on R. Simeon b. Eleazar, but its text is defective, and was thus taught: If one hires an ass, and it is struck by lightning, or becomes rabid, he [the owner] can say unto him, 'Behold, here is yours before you.' If it perished, or was seized as a levy, he must supply him with [another] ass. This holds good [only]

if it was not seized on the route of its journey; but if it was, he can say to him, ‘Behold, here is yours before you.’

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(1) Who is responsible for whatever happens; hence no distinction is drawn: whereas the second clause agrees with the Rabbis.

(2) B.K. 100b. And it is assumed that R. Meir's ruling is because he regards the dyer as a robber, since he disobeyed the owner's instructions, and therefore he must pay for the wool.

(3) V. B.K. loc. cit.; an opinion is there stated that if one steals an article and makes some change in it, it becomes his, in that he must pay for it but cannot be compelled to return the article itself. So here too, having changed the wool from white to black or red, it becomes the dyer's, who must therefore pay for the wool. But in the Mishnah no change is wrought in the ass itself before death; how do we know that here too R. Meir regards the mere change of locality as a theft, to render him responsible for whatever happens?

(4) The minor festival on the fourteenth of Adar, instituted in memory of Haman's downfall and the rescinding of the decree of destruction against the Jews. Est. IX, 21, 26.

(5) It was customary to make collections for distribution to the poor for Purim. These must be entirely devoted to this purpose, and even if the collection is very large none of it may be diverted to any other charity.

(6) As before: collections for local relief may not be diverted, even if they exceed the need.

(7) Whether the poor really need it all.

(8) I.e., calves must be bought with the entire sum, and that which cannot be eaten by the poor on Purim is resold, the money going to the general charity fund.

(9) [Some texts omit ‘but calves . . . (only)’. Cf. text, infra 106b.]

(10) It is assumed that the reason of R. Meir's stringency is that the poor, by disregarding the donor's wish, become robbers, and therefore all such diversions are forbidden.

(11) Consequently, when the poor man wishes to divert it to some other use, it is not a case of robbery, but simply that it is not his for that purpose, and is deemed never to have come into his possession.

(12) The reasoning is as above. But the same refutation cannot be given as there, for in that case, why should R. Meir state two laws which are both based on exactly the same principle? Maharsha מהדורא בתרא

(13) Affection of the eye-sight occasioned by lightning (ברק). prob. Gutta Serena (Jast.).

(14) Caused by vermin.

(15) Lit., ‘silver covering’. i.e., white.

(16) Lit., gold covering’, i.e., woollen garments dyed golden.

(17) Because these worms do not attack linen garments; therefore it was said merely to disgrace the king.

(18) Hence the owner can say. ‘It is your misfortune that it was seized, and you must wait until it is returned.’

(19) For it is just as though it had perished.

(20) When an animal was seized as a levy, it was driven along until another was overtaken, when the first was returned (even in the case of nonreturnable seizure, which means nonreturnable unless replaced by another). Hence, if driven in the direction for which it was hired, the owner can say, ‘Go along with it, until another replaces it.’ But otherwise he must replace it himself, as he cannot expect the hirer to go out of his way until it is returned (Rashi). Tosaf.: If the levy is made haphazardly, whatever is met with on the road being taken (i.e., if it is taken as it goes along), the owner can say, ‘Your misfortune is responsible, for had I kept it at home, it would not have been seized.’ But if there is systematic searching in people's houses and fields, so that it cannot be regarded as the ill-luck of the hirer, the owner must replace it.

(21) Because it is still fit to bear loads.

(22) This ruling contradicts the Mishnah.

Talmud - Mas. Baba Metzia 79a

This is the view of R. Simeon b. Eleazar; for he used to maintain: If it was taken on the route of its journey, he can say to him, ‘Here is yours before you;’ if not, he is bound to replace it. But can you possibly assign it [all] to R. Simeon b. Eleazar? Surely, the first clause states, ‘If one hires an ass, and it is struck by lightning or turns rabid, he [the owner] can say to him, "Here is yours before you:"’ whereas R. Simeon b. Eleazar ruled: If one hires an ass to ride upon it, and it is struck by lightning or turns rabid, he [the owner] must furnish him with another! — Said Rabbah son of R.

Huna: If for riding, the case is different.[1] R. papa said: [And to carry] glassware is the same as for riding.[2]

Rabbah son of R. Huna said in Rab's name: If one hires an ass for riding and it perishes midway, he must pay him his hire for half the journey, and can only bear resentment against him.[3] How so? If another can be obtained for hire, what cause is there for resentment? If not, is he then bound to render him his hire?[4] — In truth, it means that another is not obtainable [here] for hiring, [yet he is bound to pay for half the journey,] because he [the owner] can say to him, 'Had you desired to go as far as this [where it died], would you not have had to pay its hire?' Now, what are the circumstances? If he simply promised him an ass, without specifying which, then surely he is bound to replace it;[5] whilst if he promised him this ass: if its value [sc. of the carcase] is sufficient to buy another, let him buy one.[6] — This [ruling] holds good only when its value is insufficient to purchase [another]. Yet if its value is sufficient for hiring, let him hire another![7] — Rab follows his view [expressed elsewhere], for Rab said: The principal must not be destroyed.[8] For it has been stated: If a man hires an ass and it perishes midway — Rab said: If its value [sc. of the carcase] is sufficient to buy [another], he must buy one; [if only] to hire, he [who engaged it] may not hire. But Samuel said: Even if only to hire, he may do so. Wherein do they differ? — Rab maintained: The principal may not be destroyed; Samuel maintained: The principal may be destroyed.

An objection is raised: If the tree withered or was broken down, both are forbidden to use it. What then shall be done? Land must be bought therewith, and he takes the usufruct.[9] Now here, immediately on the advent of the Jubilee year, the land reverts to its [first] owner,[10] and thus the principal is destroyed![11] — Here the reference is to a sixty years' purchase. For R. Hisda said in R. Kattina's name: Whence do we learn that if one sells his field for sixty years, it does not return [to the first owner] in the year of Jubilee? From the verse, The land shall not be sold in perpetuity.[12] [shewing that it refers to a sale] which, in the absence of the law of Jubilee,[13] would be for ever; hence, when the law of Jubilee supervenes, it is not in perpetuity; thus excluding this [sale. viz., for sixty years], which, even in the absence of the law of Jubilee, is not for ever.[14] But after all, on the expiration of the sixty years the land returns to its [first] owner, and thus [the debtor's] principal is destroyed! — But here the reference is to the time when the law of Jubilee is not in force. Reason too supports this. For should you assume that it refers to the time when the law of Jubilee is in force, and that we destroy the principal, let him [the creditor] cut up the wood and take it![15] — As for that, it is no difficulty: the period of mortgage might expire before the Jubilee, or he [the debtor] might obtain money and redeem it four or five years before the Jubilee.[16]

Our Rabbis taught: If one hires a ship, and it sinks in mid-journey; R. Nathan said: If he has paid [the hire], he cannot take [it back]; but if not, he need not pay it [now]. How so? Shall we say [that the agreement was for] this particular ship and an unspecified [cargo of] wine [as freight],[17] then [even] if he has already paid, why cannot he claim it back? Let him say, 'Provide me with that ship, and I will bring the wine.'[18] But if it refers to an unspecified ship and a particular cargo of wine, even if he has not yet paid, why must he not pay now?

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(1) A blind or rabid animal is fit to carry burdens, but not to be ridden upon.

(2) Owing to is fragile nature it must be carried smoothly; but an ass so affected will jolt it violently and break it.

(3) For having given him a feeble ass; but he has no legal redress.

(4) Surely not, seeing that he probably suffers loss through not reaching his destination.

(5) As stated above.

(6) Since he hired him this particular ass, it is pledged for the journey, and therefore, if with the value of the carcase one can buy another, even such a poor one that it is fit only to complete the journey, the purchase should be made.

(7) Since, as stated above, in the case of the animal's death another must be provided; and when a particular animal was hired, whatever can be procured for its carcase is part of the original.

(8) I.e., when an animal is hired for a certain task, e.g., to take a man on a journey, one cannot demand that the whole

capital value of the animal shall be lost in order to fulfil the engagement. Hence, when the Mishnah states that if it died another must be provided in its place, it means that more money must be added to that realised by the carcase and another bought, so that the value of the carcase ultimately remains with the owner. But he is not bound to hire an animal for the money realised by the carcase for the completion of the task, the whole principal thus being lost to the owner.

(9) The reference is to a mortgage. If a tree was mortgaged, it being agreed that the creditor should enjoy its usufruct for a number of years, after which it would revert to the debtor without any further payment, and then it withered, ceasing to yield, or was overthrown by a storm, neither the creditor nor the debtor may use up the wood thereof, because each thereby wholly destroys the other's interest therein. Therefore the wood must be sold and land bought with the proceeds, of which the creditor takes the usufruct in accordance with the original agreement.

(10) Lev. XXV, 13, 23.

(11) Nothing whatever being left of the tree by the time it has to revert to the debtor, in case Jubilee precedes it.

(12) Ibid. 23.

(13) I.e., if it is for no specified period.

(14) Hence Jubilee does not affect it, and when the mortgage expires, it reverts to the debtor, and his principal is not destroyed.

(15) For the years of usufruct still due to him. Why then trouble to buy a field?

(16) So that, even if Jubilee is in force and the principal may be destroyed, it is still preferable to buy a field.

(17) I.e., the shipowner engaged to provide this particular ship to carry any cargo of wine a certain distance.

(18) Since you undertook to carry any cargo of wine in this particular ship, I can bring another, the first having sunk, but you must furnish the same ship for the entire journey: as you cannot, you must return the hire.

Talmud - Mas. Baba Metzia 79b

Let him [the shipowner] say, 'Bring me that wine, and I will provide a ship!' — Said R. Papa: It is possible only in the case of 'This ship' and 'This wine'.[1] But in the case of an unspecified ship and unspecified wine, they must divide.[2]

Our Rabbis taught: If one hires a ship and unloads it in mid-route, he must pay him for half the journey, and he [the owner] has nothing but resentment against him. What are the circumstances? Shall we say, that he can find someone to whom to hire it? Why bear resentment?[3] Whilst if he can find no one to whom to hire it, he must surely pay him the whole hiring-fee! — In truth, it means that he can find someone to whom to hire it; and the reason that he has cause for resentment is because of the trampling of the ship.[4] If so, it is a just complaint, and he is entitled to financial compensation! — But what is meant by 'he unloaded it' is that he unloaded [more of] his cargo within it.[5] Then what ground has he for complaint? — Because his intentions were thwarted;[6] or on account of the additional cordage necessary.[7]

Our Rabbis taught: If one hires an ass for riding, the hirer may put upon it his clothing,[8] water bottle, and provisions for that journey; beyond that, the ass-driver[9] can prevent him.[10] The ass-owner can place upon it the fodder, straw and provisions for one day; but beyond that, the hirer can prevent him.[11] How is it meant? If [food] can be purchased, let the ass-driver too prevent him;[12] whilst [if provisions] are not obtainable [on the road], the hirer too should not be able to prevent him! — R. Papa answered: This arises when it is indeed possible to procure it, after some trouble, from stage to stage. Now, for the ass-driver it is a normal matter to take trouble and purchase [his stores at various places],[13] but not for the hirer.

Our Rabbis taught: If one hires an ass for a man to ride upon it, It may not be ridden by a woman; if for a woman, it may be ridden by a man; and a woman [includes] both large and small, and even if pregnant or one giving suck.[14] Seeing that you permit a woman giving suck,[15] is it necessary to state a pregnant woman? — R. Papa said: It means, even a pregnant woman who is at the same time feeding [another infant]. Abaye said: This proves that the weight of a fish depends on the size of its belly.[16] What does this matter? — In respect of buying and selling.[17]

(1) So that neither can fulfil his contract; therefore the plaintiff is at a disadvantage.
(2) Only half the fee is payable, whether it has been delivered or not, since each is theoretically in a position to fulfil his part of the agreement.
(3) Since he loses nothing.
(4) I.e., the damage done by trampling upon it in loading and unloading.
(5) Rashi: he loaded it with a great cargo, i.e., though he is bound to pay the shipowner extra, the agreement being based on the freightage, yet the latter has cause for resentment, in that the journey occupies a longer time than he expected. Tosaf. rejects the interpretation and substitutes: he unloaded it from himself, and reloaded it (upon another) within the ship. i.e., in the middle of the journey he sold the cargo to another; the shipowner has cause for complaint, because he may find the second awkward to deal with. This interpretation is accepted by Asheri a.l. and in H.M. CCCXI, 6.
(6) V. preceding note. Either his intentions to return quickly (Rashi). or to have this man particularly as the hirer.
(7) For the extra load (which the second may wish to add, according to Tosaf., or quite simply, on Rashi's interpretation). The shipowner having failed to provide himself with additional cordage, may have to pay a higher price for the cordage on his voyage than in the ship's home port, and therefore he has cause for resentment.
(8) Var. lec.: his pillow for sleeping.
(9) The owner.
(10) He can object to a greater burden being placed upon the ass, seeing that it was hired only for riding, but these being neccesities are included therein.
(11) It appears that the ass-driver had to provide the ass's food for the journey. The ass-driver can therefore place upon it the food for one day only. But the latter cannot insist on loading it at the outset with all the necessary provisions, for such a heavy load might retard the rate of progress.
(12) Sc. the hirer, from loading it with the whole of the provisions required for the journey.
(13) That being part of his work.
(14) I.e., if an ass is hired for a woman, any woman may ride upon it.
(15) Which means with the child she is feeding (Rashi).
(16) Since it is mentioned that a pregnant woman is heavier than another.
(17) If one buys a fish by weight, he should first have the belly removed.

Talmud - Mas. Baba Metzia 80a

MISHNAH. IF A MAN HIRES A COW FOR PLOUGHING ON THE MOUNTAIN AND PLOUGHS [THEREWITH] ON THE PLAIN, IF THE COULTER BROKE, HE IS NOT LIABLE; FOR PLOUGHING ON THE PLAIN, BUT PLOUGHS ON THE MOUNTAIN, IF THE COULTER BROKE, HE IS LIABLE.[1] [IF HE HIRES IT] TO THRESH PULSE, BUT THRESHES GRAIN, HE IS NOT LIABLE;[2] BUT IF TO THRESH PULSE AND HE THRESHES GRAIN, HE IS LIABLE, BECAUSE PULSE IS SLIPPERY.

GEMARA. But if he did not change [the conditions of the contract], who must pay?[3] — R. Papa said: He who handles the share; R. Shisha the son of R. Idi said: He who handles the coulter; and the law is that he who handles the coulter must pay.[4] But if the place was known to abound in stony clods, both are responsible.[5]

R. Johanan said: If one sold a cow to his neighbour and informed him, 'This cow is a butter, a biter, a habitual kicker, and prone to break down [under a load],' and it possessed one of these defects, which he inserted amongst the other blemishes [of which it was free], it is a sale in error.[6] [But if the vendor said.] 'It has this defect,' [which it actually had] 'and another too,' [not specifying which,] it is not a sale in error.[7]

It has been taught likewise: If one sold a maidservant to his neighbour. and informed him, 'This maidservant is an idiot, an epileptic, and a dullard;' and she possessed one of these defects, which he inserted amongst the others [which she did not have]; it is a sale in error. [But if the vendor said,

'She has] this defect' [which she actually possessed], 'and another too' [not specifying which], it is not a sale in error. Said R. Aha the son of Raba to R. Ashi: What if she had all these defects? — R. Mordecai observed to R. Ashi: Thus do we say in Raba's name: If she had all these defects, it is not a sale in error.[8]

MISHNAH. IF A MAN HIRES AN ASS FOR BRINGING [A CERTAIN QUANTITY OF] WHEAT, AND HE BRINGS WITH IT [AN EQUAL WEIGHT OF] BARLEY INSTEAD, HE IS RESPONSIBLE.[9] [FOR CARRYING] CORN, AND HE BRINGS WITH IT STRAW, HE IS LIABLE [FOR DAMAGE]. BECAUSE BULK IS [AS GREAT] A STRAIN AS WEIGHT;[10] TO BRING A LETHECH[11] OF WHEAT, AND HE BRINGS WITH IT A LETHECH OF BARLEY, HE IS EXEMPT.[12] BUT IF HE INCREASES THE WEIGHT, HE IS LIABLE. BY HOW MUCH MUST HE INCREASE IT IN ORDER TO BE LIABLE? SYMMACHUS SAID ON R. MEIR'S AUTHORITY: BY A SEAH IN THE CASE OF A CAMEL, AND THREE KABS IN THE CASE OF AN ASS. GEMARA. It has been stated: Abaye said: We learnt, IS [AS GREAT] A STRAIN AS WEIGHT; Raba said: We learnt, IS A STRAIN [WHEN ADDED TO] WEIGHT. [Thus:] 'Abaye said: We learnt, IS [AS GREAT] A STRAIN AS WEIGHT:' bulk is equal to weight; therefore if he added three kabs [the bulk being equal], he is liable. 'Raba said: We learnt, IS A STRAIN [WHEN ADDED TO] WEIGHT: i.e., the weight being equal, the [greater] bulk is an additional strain.[13] We learnt: TO BRING A LETHECH OF WHEAT, AND HE BRINGS A LETHECH OF BARLEY, HE IS EXEMPT. BUT IF HE INCREASES THE WEIGHT, HE IS LIABLE. Surely that means, by three kabs?[14] — No. It means by a se'ah.[15] But thereon it is stated, BY HOW MUCH MUST HE INCREASE IT, IN ORDER TO BE LIABLE? — SYMMACHUS SAID ON R. MEIR'S AUTHORITY: A SE'AH IN THE CASE OF A CAMEL, AND THREE KABS IN THE CASE OF AN ASS! — It is thus meant: But if he did not alter [the terms of hiring]. I.e., [he engaged to] bring wheat, and brought wheat; barley, and brought barley: BY HOW MUCH MUST HE INCREASE IT [SC. THE WHEAT], IN ORDER TO BE LIABLE? — SYMMACHUS SAID ON R. MEIR'S AUTHORITY: BY A SE'AH IN THE CASE OF A CAMEL, AND THREE KABS IN THE CASE OF AN ASS.

Come and hear: [It has been taught: If he hired an ass] to bring a lethech of wheat, and he brought

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(1) Because mountain soil is rockier and harder. — The implements were supplied by the owner of the cow.

(2) If the animal slipped and was injured.

(3) Two labourers were needed for the ploughing; one who used the goad to direct the animal, and one who forced the coulter into the earth. These workers were furnished by the owner. Now, the Talmud asks, if the agreement was not broken, so that the hirer is free from liability, which of these two workers is liable?

(4) For even if the other had directed the plough badly, yet had not the coulter been forced too deeply into the soil, it would not have broken.

(5) For then the slightest deviation from the right course endangers the plough.

(6) Which the purchaser can cancel. For the vendor, in enumerating a string of defects, which the buyer himself sees are absent, wishes him to assume that the one it actually has is also absent.

(7) For since he actually mentioned the defect by name, and no other specifically, the buyer should have examined the animal.

(8) For the buyer cannot plead that he thought that the vendor was enumerating many fictitious defects in order to deceive him about a real one.

(9) If the ass breaks down or is injured by the load. Barley is lighter than wheat, therefore an equal weight of barley is bulkier, and that imposes a greater strain on the ass.

(10) Therefore a greater bulk imposes a greater strain.

(11) Half a kor.

(12) The bulk being the same, and the weight less.

(13) [Where however the bulk is equal, an additional weight of three kabs of barley involves no liability.]

(14) Though even there, the total weight is less. This refutes Raba.

(15) Whereby the weights are equalised.

Talmud - Mas. Baba Metzia 80b

sixteen [se'ahs] of barley,[1] he is liable. This implies, [if he merely added] three kabs, he is exempt![2] — Abaye interpreted it [as referring] to levelled measures [of corn].[3]

Our Rabbis taught: A kab [is a culpable overload] for a porter:[4] an artaba[5] for a canoe;[6] a kor for a ship; and three kors for a large liburna.[7]

The Master said: 'A kab [is a culpable overload] for a porter.' But if it is too heavy for him, is he not an intelligent being? Let him throw it down! — Said Abaye: It means that it [the weight] struck him down immediately.[8] Raba said: You may even say that it did not strike him down immediately, but this is taught only with regard to extra pay.[9] R. Ashi said: He might have thought that he had been seized with weakness.[10]

'A kor for a ship, and three kors for a large liburna'. R. Papa said: From this it follows that the average ship takes a load of thirty kors.[11] What practical difference does it make? — In respect of buying and selling.[12]

MISHNAH. ALL ARTISANS ARE REGARDED AS PAID BAILEES;[13] BUT IF THEY DECLARE,[14] 'TAKE YOUR PROPERTY AND THEN BRING US MONEY, THEY RANK AS UNPAID BAILEES.[15] [IF A MAN SAID TO ANOTHER] 'KEEP THIS ARTICLE [FOR ME], AND I WILL KEEP [ANOTHER] FOR YOU,' HE RANKS AS A PAID BAILEE. [IF HE REQUESTED,] 'KEEP [THIS] FOR ME,' AND HE REPLIED, 'PUT IT DOWN BEFORE ME,' HE IS AN UNPAID BAILEE. IF A MAN LENDS ANOTHER ON A PLEDGE,[16] HE RANKS AS A PAID TRUSTEE. R. JUDAH SAID: IF HE LENDS HIM MONEY [ON A PLEDGE], HE IS AN UNPAID TRUSTEE; IF PROVISIONS, HE IS A PAID BAILEE. ABBA SAUL SAID: ONE MAY HIRE OUT A PLEDGE TAKEN FROM A POOR MAN, FIXING A HIRING FEE AND PROGRESSIVELY DIMINISHING THE DEBT, BECAUSE IT IS LIKE RETURNING A LOST ARTICLE.[17]

GEMARA. Must we say that our Mishnah does not accord with R. Meir? For it has been taught: One who hires [e.g., an animal], how does he pay [if it comes to harm]? R. Meir said: As an unpaid trustee; R. Judah said: As a paid trustee.[18] — You may assume [it to agree] even with R. Meir: in return for that benefit, that he [the employer] forsakes everyone else and engages him, he becomes a paid bailee in respect thereof. If so, the same applies to a hirer: in return for that benefit, in that he forsakes everyone else and hires [it] to him, he becomes a paid trustee in respect thereof! But [say thus:] You may assume [it to agree] even with R. Meir: in return for that benefit, that he pays him somewhat more [than his due], he becomes a paid bailee in respect thereof.[19] If so, the same applies to a hirer; may one not be referring to a case where he gives him slightly better value?[20] But [say thus]: You may assume [it to agree] even with R. Meir: in return for that benefit, that he holds it against his remuneration and is not forced to go seeking for money, he ranks as a paid bailee in respect thereof. Alternatively, it is as Rabbah b. Abbuha reversed [the Baraitha] and learnt: How does a hirer pay? R. Meir said: As a paid bailee; R. Judah said: As an unpaid bailee.[21]

BUT IF THEY DECLARE, 'TAKE YOUR PROPERTY AND THEN BRING US MONEY.' THEY RANK AS UNPAID BAILEES. We learnt elsewhere: If the borrower instructed him [sc. the lender] to send [the animal], and he sent it, and it died [on the road, before reaching him], he is liable for it. The same holds good when he returns it.[22] Rafram b. Papa said in R. Hisda's name: This was stated only if he returned it within the period for which he borrowed it; but if after, he is not liable.[23]

R. Nahman b. Papa raised an objection: BUT IF THEY DECLARE, 'TAKE YOUR PROPERTY AND THEN BRING US MONEY,' THEY RANK AS UNPAID BAILEES:

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(1) I.e., an additional se'ah.

(2) This contradicts Abaye.

(3) [Instead of a load of 15 se'ahs of wheat liberally measured, he brought one consisting of barley counted by levelled measures, in which case there is no liability unless the addition was a se'ah (Rashi); others: reduced in weight by being worm-eaten.]

(4) Lit., 'the shoulder', I.e., if a man is engaged to carry a certain burden, which is increased by a kab, and he breaks down, his employer is liable.

(5) Persian measure. [Rashi: a lethech.]

(6) A small boat.

(7) **; a light, fast-sailing vessel (Jast.).

(8) As soon as he took it up, and before realising that it was too heavy for him, fell under it.

(9) If the load exceeds the weight agreed upon by a kab, he is entitled to additional remuneration.

(10) I.e., actually it means that he broke down under the additional weight, yet, though an intelligent being, he did not throw it away, thinking that the fault was in his own weakness, and being unaware that the weight was greater than stipulated.

(11) Because the overload is assessed at a thirtieth of the legitimate freight.

(12) If one sells a ship, without specifying its capacity, it must be at least thirty kors, and otherwise the sale is invalid.

(13) I.e., contractors who accept material for manufacture, e.g., a carpenter who receives wood for making up into a table, rank as a paid trustee thereof, in that, if it is stolen, they are held responsible.

(14) After the work is completed.

(15) Who are responsible only for negligence, but not for theft.

(16) Which the lender takes into his own keeping.

(17) The grounds for the various rulings of this Mishnah are discussed in the Gemara.

(18) R. Meir maintains: since he pays for the benefit he receives, he is taking care of it gratuitously; whilst in R. Judah's view, since it comes into his hands for his benefit, he is a paid trustee, notwithstanding that he pays for that benefit. Superficially, the same reasoning applies to an artisan: the object comes into his keeping for his own benefit, viz., that he may earn money thereby; but at the same time, he gives his labour for that benefit.

(19) Rashi: it is impossible to assess exactly in the case of a contractor the value of the actual labour involved, and therefore he is assumed to be slightly overpaid. Tosaf., observes that this answer might have been refuted by a reference to those who do not overpay, but that it is refuted in another way.

(20) I.e., the dispute between R. Meir and R. Judah does not differentiate between normal and better value, e.g., if the owner accepts less than the usual hire; but there too R. Meir should say: In return for the benefit received by the remission of part of the hiring fee he becomes a paid bailee.

(21) The insistent attempts to prove that the Mishnah does agree with R. Meir, even though, as in the last reply, it is only at the cost of assuming that it does not agree with R. Judah, are due to the fact that our Mishnah was taught anonymously, and it is a general rule that an anonymous Mishnah must agree with R. Meir.

(22) Infra 98b. A gratuitous borrower is liable for every mishap. Now, if he explicitly instructs the lender to send it to him, he is responsible for it immediately the lender entrusts it to a person for delivery, and therefore if it perishes on the road, he must make it good. Likewise, if the borrower entrusts it to his agent for return, without receiving explicit instructions to that effect from the lender, he remains responsible for it until it is actually returned.

(23) For when that period has expired, he ceases to bear the responsibilities of a borrower.

surely this implies, [if they inform him.] 'I have completed it,' they rank as paid bailees.[1] — No. [Deduce thus:] But if they say. 'Bring money and then take your property,' they are paid bailees.[2] But what if they declare, 'I have completed it.'[3] [do] they rank as unpaid bailees? If so, instead of teaching. BUT IF THEY DECLARE, 'TAKE YOUR PROPERTY AND THEN BRING US MONEY,' THEY RANK AS UNPAID BAILEES; let it teach the case of 'I have completed it',[4]

from which 'take your property follows a fortiori![5] — It is particularly necessary to state the case of 'Take your property,' for I might think that he is not even an unpaid bailee;[6] hence we are told [that he is].

Others say, R. Nahman b. Papa said: We too have learnt likewise: BUT IF THEY DECLARE, 'TAKE YOUR PROPERTY AND THEN BRING US MONEY'. THEY RANK AS UNPAID BAILEES. Surely the same holds good if he says. 'I have completed it'![7] — No. The case of 'Take your property' is different.

Huna Mar, the son of Meremar, [sitting] before Rabina, opposed two Mishnahs to each other and reconciled them. We learnt, BUT IF THEY DECLARE, 'TAKE YOUR PROPERTY AND THEN BRING US MONEY,' THEY RANK AS UNPAID BAILEES, and [presumably], the same holds good if he informs him, 'I have finished it.' But the following contradicts it: If the borrower instructs him [Sc. the lender] to send [the animal], and he does so, and it dies [on the road before reaching him], he is responsible for it. The same holds good when he returns it! — And he reconciled them by the dictum of Rafram b. Papa in R. Hisda's name: This was stated only if he returned it within the period of the loan; but if after, he is not liable.

The scholars propounded: [Does it mean,] He is not liable as a borrower, yet liable as a paid bailee; or perhaps, he is not even a paid bailee? — Said Amemar: Logically it means that he is exempt from the liabilities of a borrower, but is responsible as a paid bailee; for since he has benefited, he must give benefit in return.[8]

It has been taught in accordance with Amemar: If one takes goods from a tradesman [on approval] to send them [as a gift] to his father-in-law, and stipulates. 'If they are accepted, I will pay you their value, but if not, I will pay you its goodwill benefit;'[9] if they are accidentally damaged on the outward journey, he is liable;[10] but exempt if on the return journey, because he is regarded as a paid bailee.[11]

A man once sold an ass to his neighbour. Said the latter, 'I will take it to that place, if it is sold, it is well; if not, I will return it to you.' He went, but it was not sold, and on his way back it was accidentally injured. On his going before R. Nahman, he held him liable. Thereupon Raba raised an objection to R. Nahman: If they are damaged on the outward journey, he is liable; but exempt if on the return journey, because he is regarded as a paid bailee! — He answered: The return journey of this person is an outward journey. Why so? — It is common-sense. For if he found a purchaser on his return, would he not sell it?

'KEEP [THIS ARTICLE] FOR ME, AND I WILL KEEP [ANOTHER] FOR YOU.' HE RANKS AS A PAID BAILEE. But why so? Is it not a trusteeship wherein the owner [is pledged to the service of the bailee]?[12] — R. Papa said: It means that he proposed to him, 'KEEP [THIS ARTICLE] FOR ME to-day, AND I WILL KEEP [ANOTHER] FOR YOU to-morrow.'[13]

Our Rabbis taught: [If A proposes to B,] 'Keep [this article] for me and I will keep [an article] for you'; 'lend me, and I will lend you'; 'keep [this article] for me, and I will lend you [another]'; 'lend me, and I will keep [an article] for you' — in all these cases they rank as paid trustees. But why so? Is it not a trusteeship wherein the owner [is pledged to the service of the bailee]? — Said R. Papa: it means that he proposed to him, 'Keep [this article] for me to-day, and I will keep [an article] for you to-morrow.'

There was a company of perfume sellers[14] of whom each day a [different] one baked for all. One day they said to one of them, 'Go and bake for us.' 'Then guard my robe,' he rejoined. Before his return it was stolen through their negligence; so they went before R. Papa, who held them

responsible. Said the Rabbis to R. Papa: But why? Is it not a trusteeship wherein the owner [is pledged to the service of the bailee]? Thereupon he was ashamed. Subsequently it was discovered that just then he [the owner] had been drinking beer.[15] Now, on the view that he [sc. the bailee] is not liable for negligence when the owner [is pledged to the service of the bailee], it is well: on that account he was ashamed. But on the view that he is,[16] why was he ashamed? — But [it happened thus:] That day was not his [for baking], yet they requested him 'Go bake for us,' to which he rejoined, 'In return for my baking for you guard my robe.'[17]

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(1) Though the owner knows that it is ready for removal, the artisan remains as responsible as before. Then by analogy, in the case of a borrower, even when the period of the loan expires he remains just as responsible as within the period.

(2) Because they benefit by holding the article until the money is paid.

(3) Without stating that they hold it against payment.

(4) Viz., that even then he ranks as an unpaid bailee.

(5) If he ranks as an unpaid bailee even when he merely informs him that he has completed it. without stating that he relinquishes his hold upon it, surely the same holds good when he explicitly informs the owner that he can take it1.

(6) For 'Take your property' may imply that he refuses all further responsibility — an unpaid bailee is liable for negligence.

(7) V. supra p. 464 and notes.

(8) And hold himself responsible until it reaches the owner.

(9) I.e., for the benefit I derive from my father-in-law's knowledge that I desired to make him a present.

(10) Having undertaken to pay for them in case they are accepted, they are accounted in the meantime his property.

(11) [Since he has no longer any intention of buying them, the goods cannot be accounted any more his property, and his liability can arise only in consequence of the goodwill he enjoyed, which makes him rank as a paid bailee, even though the tradesman had actually received payment for this benefit. How much more should this be the case with a gratuitous borrower.]

(12) V. infra 94a; so here too: whilst the bailee has the article in his care, the owner is, under the conditions of trusteeship agreed upon, in the service of the bailee.

(13) So that the trusteeship and the owner's reciprocal service are not contemporaneous.

(14) Lit., 'dealers in aloe'.

(15) I.e., he had not yet commenced baking, so was not in their service. Thus R. Papa's verdict was just, after all.

(16) V. infra 95a.

(17) Hence they became paid trustees.

Talmud - Mas. Baba Metzia 81b

Before he returned, it was stolen,[1] and they went before R. Papa, who held them responsible.[2] The Rabbis protested to R. Papa: Why so? Is it not a trusteeship wherein the owners [are pledged to the service of the bailee]? So he was ashamed. But subsequently it was discovered that just then he had been drinking beer. Two men were travelling together on a road, one [of whom] was tall, and the other short. The tall one was riding an ass, and had a [linen] sheet, whilst the short one was wearing a [woollen] cloak, and walked on foot. On coming to a river, he took his cloak, placed it upon the ass, and took the other man's linen and covered himself therewith.[3] Then the water swept the sheet away: so they came before Raba, who ruled him [the short man] liable. But the Rabbis protested to Raba: Why so? Is it not a case of borrowing wherein the owner [is pledged to service]?[4] So he was ashamed, subsequently it was learnt that he had taken it [the linen sheet] and put [his own on the ass] without his knowledge.[5]

A man hired an ass to his neighbour and said to him, 'See that you do not go by way of Nehar Pekod,[6] where there is water,[7] but by the way of Naresh,[8] where there is none.' But he did go by way of Nehar Pekod, and the ass died. When he returned, he pleaded. 'True, I took the route of the Nehar Pekod, but there was no water.'[9] Said Rabbah to him [the owner]: Why should he have lied? Had he wished, he could have said, 'I went by way of Naresh.' But Abaye observed: We do not reason,

'What is the purpose of lying,' if there are witnesses [to the contrary].[10]

[IF HE REQUESTS,] 'KEEP [THIS] FOR ME,' AND HE REPLIES, 'PUT IT DOWN BEFORE ME.' HE IS AN UNPAID BAILEE. R. Huna said: If he replies. 'Put it down before you,' he is neither an unpaid nor a paid bailee.[11]

The scholars propounded: What if he simply said, 'Put it down'? — Come and hear: [IF HE REQUESTS,] 'KEEP [THIS] FOR ME' AND HE REPLIES, 'PUT IT DOWN BEFORE ME,' HE IS AN UNPAID BAILEE. From which it follows that if he does not particularise at all there is no obligation at all. On the contrary, since R. Huna said: If he replied. 'Put it down before you' — it is [only] then that he is neither an unpaid nor a paid bailee; it follows that if he does not particularise he is a paid bailee. But no conclusions are to be drawn from this.

Shall we say that this is disputed by Tannaim? [For we learnt:] If he brought them in with [the owner's] permission, the courtyard owner is liable. Rabbi said: In all these cases he is not liable unless he explicitly undertook to guard.[12] But how does this follow? Perhaps the Rabbis rule [that he becomes a bailee] only there, in the case of a courtyard, which is a guarded place. so that when he [the owner] said to him, 'Bring it in', he meant, 'Bring it in, and I will take care of it for you'; but here, in a market place, which is unguarded, he may have meant, 'Put it down, take a seat, and guard it. Contrariwise, perhaps Rabbi rules [that he does not become a bailee] only there, in the case of a [private] courtyard, to enter wherein permission is necessary, so that when he gave him permission to enter, he meant, '[Come in,] sit down, and guard it.' But here, he must have meant, 'Put it down and I will guard it;' for should you think, he meant, 'Put it down, take a seat, and guard it' — does he require his permission to put it down?

IF A MAN LENDS ANOTHER ON A PLEDGE, HE RANKS AS A PAID TRUSTEE. Shall we say that our Mishnah does not agree with R. Eliezer? For it has been taught: If one lends his neighbour [money] against a pledge and the pledge is lost, he must swear [that it was not due to his negligence], and then be repaid:[13] this is R. Eliezer's opinion. R. Akiba ruled: He [the debtor] can say to him: 'Did you lend me against aught but the pledge? the pledge being lost, your money [too] is lost.' But if he lends him a thousand zuz against a note and a pledge is deposited for it, all agree that if the pledge is lost, the money is lost![14] — You may say that it agrees even with R. Eliezer, yet there is no difficulty: in the latter case he took the pledge when the loan was made;[15] in the former, he did not take the pledge at the time of the loan.[16] But in both cases,

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(1) Not through their negligence.

(2) Because a paid trustee is responsible for theft even if not due to negligence.

(3) Because wool is more absorbent than linen, therefore much heavier when saturated.

(4) For whilst the short man had the sheet, the tall man was pledged to guard his cloak.

(5) In which case he is certainly liable.

(6) [West of Mahuza, identical with Nehar Malka, situated on the canal of the same name on the west bank of the Tigris. Obermeyer. op cit., pp. 273. 275.]

(7) [The canal might overflow its banks, with dangerous consequences for the ass; Obermeyer. p. 275.]

(8) Identical with Nahras or Nahr-sar, on the canal of the same name, on the East bank of the Euphrates. Obermeyer. p. 307.

(9) It was summer, and the river bed was dried up.

(10) For it is well known that that road is never free of water.

(11) Because that is simply a refusal to take care of it.

(12) V. B.K. 47b. If a potter brought his pots into a stranger's courtyard, and the latter's ox trampled upon and broke them, or if a man brought his ox or provisions into another's court, and an ox belonging to the latter killed it or consumed them, — the Rabbis rule, if the courtyard owner had given him permission to enter, it is regarded as though he had undertaken to guard them, and therefore he is responsible. Rabbi, however, maintained that he must explicitly undertake

to guard it; otherwise he bears no liability. Hence, by analogy, in the case under discussion, in the view of the Rabbis, when he says 'Put it down', he becomes an unpaid bailee, but not in the view of Rabbi.

(13) Lit., 'take his money'.

(14) Shebu. 43b. A paid bailee is responsible for loss, but not an unpaid bailee, who is liable only for negligence. Now, R. Eliezer maintains that when money is lent on a pledge without a written bond, it is not meant as a security for the money in case the debtor defaults, but merely as a proof of loan; but should the debtor fail, some other property might be seized by the creditor. Consequently the creditor is merely a bailee, and since R. Eliezer does not hold him responsible for loss, he obviously regards him as an unpaid bailee, and thus disagrees with the Mishnah. R. Akiba, on the other hand, holds that the pledge is a security for the money; hence, if that is lost, the money is lost too. If, however, a bond is indited, it cannot be asserted that the pledge was intended merely as proof, therefore all agree that if lost, the money is lost too.

(15) Then R. Eliezer regards it as merely a proof of loan.

(16) But afterwards, payment falling due and the debtor being unable to repay, the creditor obtained a court order to take a pledge. That pledge is certainly a security for the money, and the benefit of being thereby certain of repayment renders the creditor a paid bailee.

Talmud - Mas. Baba Metzia 82a

IF A MAN LENDS ANOTHER ON A PLEDGE is taught![1] — But [say thus:] There is no difficulty: in the latter case, he lent him money; in the former [sc. our Mishnah], provisions.[2] But since the following clause states, R. JUDAH SAID: IF HE LENDS HIM MONEY ON A PLEDGE, HE IS AN UNPAID TRUSTEE; IF PROVISIONS, HE IS A PAID BAILEE; that proves that the first Tanna admits no distinction! — The whole [Mishnah] is according to R. Judah, but it is defective, and should read thus: IF A MAN LENDS ANOTHER ON A PLEDGE, HE RANKS AS A PAID TRUSTEE; this holds good only if he lends him provisions; but if money, he is an unpaid trustee. For R. JUDAH SAID: IF HE LENDS HIM MONEY ON A PLEDGE, HE IS AN UNPAID TRUSTEE; IF PROVISIONS, HE IS A PAID BAILEE. But if so, does not the Mishnah disagree with R. Akiba?[3] Hence it is perfectly clear that our Mishnah does not agree with R. Eliezer.[4]

Shall we say [that the dispute arises] when the pledge is not worth the money lent, and that they differ in regard to Samuel's dictum? For Samuel said: If a man lends his neighbour a thousand zuz, and the latter deposits the handle of a saw against it, If the saw handle is lost, the thousand zuz is lost.[5] — [No!] When the pledge is worth less than the loan, all reject Samuel's ruling.[6] But here [the dispute arises] only if it is worth the loan, and they differ with respect to R. Isaac's dictum. For R. Isaac said: Whence do we know that the creditor acquires a title to the pledge?[7] From the verse, [In any case thou shalt deliver him the pledge again when the sun goeth down. . .] and it shall be righteousness unto thee:[8] if he has no title thereto, whence is his 'righteousness'?[9] Hence it follows that the creditor acquires a title to the pledge.[10] But is this reasonable? Verily, R. Isaac's dictum refers to a pledge, not taken when the loan was made;[11] but did he say it with reference to a pledge taken at the time of the loan? — Hence where the pledge was not taken when the loan was made, all agree with R. Isaac. But here the reference is to a pledge taken at the time of the loan, and they differ as to the guardian of lost property. For it has been stated: He who is in charge of lost property — Rabbah said: He ranks as an unpaid bailee; R. Joseph maintained: As a paid bailee.[12] Shall we say that R. Joseph's view is disputed by Tannaim? — No. With respect to one who guards lost property, all agree with R. Joseph. But here

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(1) Which implies that it was given at the time of the loan.

(2) Since provisions deteriorate, the creditor derives a benefit from lending them, as he will have fresh provisions returned, and consequently he ranks as a paid bailee.

(3) Since R. Akiba maintains that if the pledge is lost the money too is lost, he treats him as a paid bailee even in the case of money. Whereas it is a general principle that an anonymous Mishnah is R. Meir's, and taught on the basis of R. Akiba's view; V. Sanh. 86a.

(4) I.e., the distinction between money and provisions cannot be maintained, the text of the Mishnah being correct, and therefore it definitely does not agree with R. Eliezer.
(5) Shebu. 43b. Thus, R. Akiba agrees with it; whilst R. Eliezer maintains, since the pledge is not worth the loan, it must have been meant merely as evidence of the loan. But if the pledge is worth the loan, all agree that it is a security, and therefore, if lost, the loan too is lost.
(6) According to R. Eliezer he bears no responsibility at all, according to R. Akiba his responsibility is limited to the value of the pledge.
(7) That whilst it is in his possession it is his, and hence he is responsible for all accidents.
(8) Deut. XXIV, 13.
(9) There is no particular righteousness in returning what does not belong to one.
(10) R. Eliezer disagrees. R. Akiba agrees with this.
(11) V. infra 113a, where the verse is interpreted as relating to such a case; the pledge then is obviously a surety for the money.
(12) V. supra 29a. R. Akiba, reasoning on the same lines as R. Joseph, regards the creditor as a paid bailee, since it is a positive duty to assist a fellow-man with a loan (cf. Lev. XXV, 35), whilst R. Eliezer regards him as an unpaid bailee.

Talmud - Mas. Baba Metzia 82b

they differ where the creditor needs the pledge;[1] one Master [sc. R. Akiba] maintaining that he fulfils a religious precept in making the loan, and therefore ranks as a paid bailee; whereas the other Master [sc. R. Eliezer] holds that he fulfils no religious precept thereby, since he desires his own benefit; therefore he is an unpaid bailee.[2]

ABBA SAUL SAID: ONE MAY HIRE OUT THE PLEDGE OF A POOR MAN, FIXING A PRICE AND PROGRESSIVELY DIMINISHING THE DEBT. R. Hanan b. Ammi said in Samuel's name: The halachah is as Abba Saul. But even Abba Saul ruled thus only in respect of a hoe, mattock, and axe, since their hiring fee is large whilst their depreciation is small.

MISHNAH. IF A MAN [A BAILEE] MOVED A BARREL FROM ONE PLACE TO ANOTHER AND BROKE IT, WHETHER HE IS A PAID OR AN UNPAID BAILEE, HE MUST SWEAR.[3] R. ELIEZER SAID: [I TOO HAVE LEARNT THAT] BOTH MUST SWEAR, YET I AM ASTONISHED THAT BOTH CAN SWEAR.[4]

GEMARA. Our Rabbis taught: If a man moved a barrel for his neighbour[5] from one place to another and [in doing so] broke it, whether a paid or an unpaid bailee, he must swear; this is R. Meir's view. R. Judah ruled: An unpaid bailee must swear; whereas a paid trustee is responsible.[6]

R. ELIEZER SAID: [I TOO HAVE LEARNT THAT] BOTH MUST SWEAR, YET I AM ASTONISHED THAT BOTH CAN SWEAR. Shall we say that in R. Meir's opinion one who stumbles [and thereby does damage] is not regarded as [culpably] negligent?[7] But it has been taught: If his pitcher was broken, and he did not remove it; or if his camel fell down, and he did not raise it up — R. Meir holds him liable for any damage they may cause; whilst the Sages rule: He is exempt by laws of man, but liable by the laws of Heaven;[8] and it is an established fact that they differ on the question whether stumbling amounts to negligence![9] — Said R. Eleazar: Separate them! The two [Baraithas] are not both by the same teacher.[10] And R. Judah comes to teach that an unpaid bailee must swear, whilst a paid bailee must make it [sc. the damage] good, each in accordance with his own peculiar law.[11] Whereupon R. Eliezer observes: Verily, I have a tradition in accordance with R. Meir; nevertheless I am astonished that both should swear. As for an unpaid bailee, it is well; he swears that he was guilty of no negligence. But why should a paid bailee swear? Even if not negligent, he is still bound to pay![12] And even with respect to an unpaid bailee it [the ruling] is correct [only] if [the accident happened] on sloping ground; but if not on sloping ground, can he possibly swear that he was not negligent![13]

(1) For use of which he remits a portion of the debt.

(2) Nor does his use of it make him a paid bailee, since he makes an allowance on the debt in return.

(3) That it was due to negligence.

(4) To be freed from responsibility. The grounds for his astonishment are discussed below,

(5) [MS.M. omits 'for his neighbour'.]

(6) Even if it was not caused by his negligence.

(7) For if the barrel was broken in the course of being moved, at the very least it is as though it were damaged through his stumbling; and since R. Meir rules that he must swear that he had not been negligent, it follows that stumbling is not negligence.

(8) V. B.K. 29a.

(9) R. Meir maintains that it does; consequently, if his pitcher broke — due to his stumbling or any other similar cause — he is culpably negligent. and therefore liable for damages. Thus this contradicts his ruling in the Mishnah!

(10) Lit., 'he who taught this one did not teach the other.' They are irreconcilable and reflect two opposing views on R. Meir's opinion.

(11) On the assumption of the first Baraitha that R. Meir does not regard stumbling as negligence. R. Judah agrees with R. Meir. Consequently the unpaid bailee must swear that there was no negligence; but the paid bailee is responsible for damage caused by stumbling even though it is not accounted as negligence; hence he does not agree with R. Meir that both bailees must swear.

(12) As explained in n. 2.

(13) For stumbling on level ground is certainly negligence.

Talmud - Mas. Baba Metzia 83a

And even on sloping ground, it is reasonable [that the bailee swears] where no evidence is possible;[1] but where evidence is possible, let him adduce evidence and [only] then be free from liability! For it has been taught: Issi b. Judah said: [If a man deliver unto his neighbour an ass . . . to keep; and it die, or be hurt, or driven away,] no man seeing it: Then shall an oath of the Lord be between them both;[2] hence it follows, if there be a spectator, he must bring evidence and then be free.[3]

But R. Hiyya b. Abba said in R. Johanan's name: This oath is a Rabbinical institution. For should you not rule thus, no man would move a barrel for his neighbour[4] from one place to another.[5] What does he swear?[6] — Raba said: 'I swear that I broke it unintentionally.' And R. Judah comes to teach that an unpaid bailee must swear, whilst a paid bailee must make it good, each in accordance with his own peculiar law.[7] Whereupon R. Eliezer observes: Verily, I have a tradition in accordance With R. Meir; nevertheless, I am astonished that both should swear. As for an unpaid bailee, it is well: he swears that he was guilty of no negligence. But why should a paid bailee swear? Even if not negligent, he is still bound to pay! And even with respect to an unpaid bailee, it [sc. the ruling] is correct [if the accident happened] on sloping ground; but if not on sloping ground, can he possibly swear that he was not negligent! And even on sloping ground, it is reasonable [that the bailee swears] where no evidence is possible; but where it is, let him adduce evidence and [only] then be freed from liability! For it has been taught: Issi b. Judah said: [If a man deliver unto his neighbour an ass . . . to keep: and it die, or be hurt, or driven away,] no man seeing it: Then shall an oath of the Lord be between them both;[8] hence it follows, if there be a spectator, he must bring evidence and then be free.

A man was once moving a barrel of wine in the manor of Mahuza,[9] and broke it on a projection[10] of Mahuza: so he came before Raba. Said he to him: The manor of Mahuza is a frequented place: go and bring evidence;[11] then you are free from liability. Thereupon R. Joseph, his son, said to him: In accordance with whom [is your verdict]? With Issi?[12] — Yes, said he, in accordance with Issi; and we agree with him.

A man instructed his neighbour. 'Go and buy me four hundred barrels of wine.' So he went and bought [them] for him; subsequently, however, he came before him and said, 'I bought you the four hundred barrels of wine, but they turned sour.' So he came before Raba. 'When four hundred barrels of wine turn sour,' said he to him, 'the facts should be widely known.[13] Go and bring proof that originally, when bought, the wine was sound, then will you be free from liability.' R. Joseph. his son, observed to him: In accordance with whom [is your verdict]? With Issi? — Yes, said he, in accordance with Issi; and we agree with him.

R. Hiyya b. Joseph instituted a measure in Sikara.[14] Viz., those who carry burdens on a yoke, and they break, must pay half. Why? Because it [the burden] is too much for one, yet too little for two:[15] therefore it lies midway between accident and negligence.[16] Those who carry on a pole must pay all.[17]

Some porters [negligently] broke a barrel of wine belonging to Rabbah son of R. Huna.[18] Thereupon he seized their garments; so they went and complained to Rab.[19] 'Return them their garments,' he ordered. 'Is that the law?' he enquired. 'Even so,' he rejoined: 'That thou mayest walk in the way of good men.'[20] Their garments having been returned, they observed. 'We are poor men, have worked all day, and are in need: are we to get nothing?' 'Go and pay them,' he ordered. 'Is that the law?' he asked. 'Even so,' was his reply: 'and keep the path of the righteous.'[21]

C H A P T E R V I I

MISHNAH. ONE WHO ENGAGES LABOURERS AND DEMANDS THAT THEY COMMENCE EARLY OR WORK LATE — WHERE LOCAL USAGE IS NOT TO COMMENCE EARLY OR WORK LATE HE MAY NOT COMPEL THEM. WHERE IT IS THE PRACTICE TO SUPPLY FOOD [TO ONE'S LABOURERS], HE MUST SUPPLY THEM THEREWITH; TO PROVIDE A RELISH, HE MUST PROVIDE IT. EVERYTHING DEPENDS ON LOCAL CUSTOM. IT ONCE HAPPENED THAT R. JOHANAN B. MATHIA SAID TO HIS SON, 'GO OUT AND ENGAGE LABOURERS.' HE WENT AND AGREED TO SUPPLY THEM WITH FOOD. BUT ON HIS RETURNING TO HIS FATHER, THE LATTER SAID, MY SON, SHOULD YOU EVEN PREPARE FOR THEM A BANQUET LIKE SOLOMON'S WHEN IN HIS GLORY,[22] YOU CANNOT FULFIL YOUR UNDERTAKING, FOR THEY ARE CHILDREN OF ABRAHAM, ISAAC AND JACOB. BUT, BEFORE THEY START WORK, GO OUT AND TELL THEM, ''[I ENGAGE YOU] ON CONDITION THAT YOU HAVE NO CLAIM UPON ME OTHER THAN BREAD AND PULSE.'' R. SIMEON B. GAMALIEL SAID: IT WAS UNNECESSARY [TO STIPULATE THUS]; EVERYTHING DEPENDS ON LOCAL CUSTOM.

GEMARA. Is it not obvious? — It is necessary [to teach it] only when he [the employer] pays them a higher wage [than usual]: I might think that he can plead, 'I pay you a higher wage in order that you may start earlier and work for me until nightfall;' we are therefore taught that they can reply, 'The higher remuneration is [only] for better work [but not longer hours].'

Resh Lakish said:

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(1) I.e., if it was an unfrequented place.

(2) Ex. XXII, 9f.

(3) But an oath is insufficient.

(4) [MS.M. omits 'for his neighbour'.]

(5) R. Hiyya does not answer the foregoing difficulties, but reverts to the alleged contradiction in R. Meir's views, and harmonises them. Thus: Both Baraithas have the same author, and, as appears from the second, stumbling is certainly accounted as negligence. Nevertheless, R. Meir holds that in this case the Rabbis freed him from liability, as a measure necessary for the common good. Hence he need only take an oath.

(6) He cannot swear that he was guiltless of negligence, since on the present hypothesis stumbling itself is negligence.
(7) This passage and the following have already been given above. There it was all R. Eliezer's explanation of the Baraitha and the Mishnah; here it is R. Hiyya's. But on R. Hiyya's version, the sentence just given does not bear quite the same interpretation as before (q.v.) Thus: R. Judah disagrees with R. Meir, and holds that stumbling is not negligence but midway between negligence and an accident, and thus analogous to theft and loss, for which an unpaid bailee is not responsible, whereas a paid bailee is. Therefore the paid bailee must make good the damage, whilst the unpaid bailee swears that he was not otherwise negligent and is thereby freed from liability. Hence, there is no particular Rabbinical measure in this case, but each is dealt with in accordance with his own law.
(8) Ibid.
(9) V. B.B. (Sonc. ed.) p. 60, n. 4.
(10) E.g., a moulding, or perhaps a balcony or a bay window projecting from the wall (Jast. s.v. זיז and זיזא).
(11) Some texts add 'That there was no culpable negligence'.
(12) That in a frequented locality an oath is not accepted.
(13) I.e., where you bought them, where you stored them, when they turned sour etc.
(14) Near Mahoza.
(15) Consequently, one person would carry it.
(16) Lit., 'it is near to accident and near to negligence.'
(17) Rashi explains that it was a pole made for a two-man burden. Therefore, when one carries it alone, it is culpable negligence, for which he bears full responsibility.
(18) [So according to Alfasi; cur. edd.: 'b. Bar Hanan,' MS.M.: 'b. Bar Hanah.' v. next note.]
(19) [Other texts: 'Raba', according to which preference is to be given to reading: Rabbah. b. R. Hanan, v. D.S.]
(20) Prov. II, 20.
(21) Ibid. Actually they were responsible, but Rab told him that in such a case one should not insist on the letter of the law.
(22) Lit., 'in his time'.

Talmud - Mas. Baba Metzia 83b

A labourer's entry [to town] is in his own time, and his going forth [to the fields] is in his employer's;[1] as it is written, The sun ariseth, they [sc. the animals] gather themselves together, and lay them down in their dens. Man goeth forth unto his work and to his labour until the evening.[2] But let us see what is the usage? — This refers to a new town. Then let us see whence they come? — It refers to a conglomeration.[3] Alternatively. it means that he said to them, 'You are engaged to me as labourers [whose conditions of work are set forth] in the Bible.'[4]

R. Zera lectured — others say. R. Joseph learnt: What is meant by, Thou makest darkness, and it is night: wherein all the beasts of the forest do creep forth?[5] Thou makest darkness, and it is night — this refers to this world, which is comparable to night; wherein all the beasts of the forest do creep forth — to the wicked therein, who are like the beasts of the forest. The sun ariseth — for the righteous;[6] the wicked are gathered in — for Gehenna; and lay them down in their habitations — not a single righteous man lacks a habitation as befits his honour. Man goeth forth unto his work — i.e., the righteous go forth to receive their reward;[7] and to his labour until the evening — as one who has worked fully until the very evening.[8]

R. Eleazar, son of R. Simeon, once met an officer of the [Roman] Government who had been sent to arrest thieves,[9] 'How can you detect them?' he said. 'Are they not compared to wild beasts, of whom it is written, Therein [in the darkness] all the beasts of the forest creep forth?'[10] (Others say, he referred him to the verse, He lieth in wait secretly as a lion in his den.)[11] 'Maybe,' [he continued,] 'you take the innocent and allow the guilty to escape?' The officer answered, 'What shall I do? It is the King's command.' Said the Rabbi, 'Let me tell you what to do. Go into a tavern at the fourth hour of the day.[12] If you see a man dozing with a cup of wine in his hand, ask what he is. If he is a learned man, [you may assume that] he has risen early to pursue his studies; if he is a day labourer he must

have been up early to do his work; if his work is of the kind that is done at night, he might have been rolling thin metal.[13] If he is none of these, he is a thief; arrest him.' The report [of this conversation] was brought to the Court, and the order was given: 'Let the reader of the letter become the messenger.'[14] R. Eleazar, son of R. Simeon, was accordingly sent for, and he proceeded to arrest the thieves. Thereupon R. Joshua, son of Karhah, sent word to him, 'Vinegar, son of wine![15] How long will you deliver up the people of our God for slaughter!' Back came the reply: 'I weed out thorns from the vineyard.' Whereupon R. Joshua retorted: 'Let the owner of the vineyard himself [God] come and weed out the thorns.'

One day a fuller met him, and dubbed him: 'Vinegar, son of wine.' Said the Rabbi to himself, 'Since he is so insolent, he is certainly a culprit.' So he gave the order to his attendant: 'Arrest him! Arrest him!' When his anger cooled, he went after him in order to secure his release, but did not succeed. Thereupon he applied to him, [the fuller] the verse: Whoso keepeth his mouth and his tongue, keepeth his soul from troubles.[16] Then they hanged him, and he [R. Eleazar son of R. Simeon] stood under the gallows and wept. Said they [his disciples] to him: 'Master, do not grieve; for he and his son seduced a betrothed maiden on the Day of Atonement.' [On hearing this,] he laid his hand upon his heart[17] and exclaimed: 'Rejoice, my heart! If matters on which thou [sc. the heart] art doubtful are thus,[18] how much more so those on which thou art certain! I am well assured that neither worms nor decay will have power over thee.' Yet in spite of this, his conscience disquieted him. Thereupon he was given a sleeping draught, taken into a marble chamber,[19] and had his abdomen opened, and basketsful of fat removed from him and placed in the sun during Tammuz and Ab,[20] and yet it did not putrefy.[21] But no fat putrefies![22] — [True,] no fat putrefies; nevertheless, if it contains red streaks,[23] it does. But here, though it contained red streaks, it did not. Thereupon he applied to himself the verse, My flesh too shall dwell in safety.[24]

A similar thing[25] befell R. Ishmael son of R. Jose.

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(1) The working day on the field extended from sunrise until the stars appear. The labourer returns home in his own time, i.e., after the stars appear, but goes to work in the time of the employer, starting from home at sunrise. [Tosaf. reverses the explanation.]

(2) Ps. CIV, 22f. This is interpreted: Man goeth forth when the sun ariseth — hence in his employer's time — and is bound to his labour until the evening — returning home in his own time.

(3) I.e., a town made up of inhabitants from various other places, and so lacking uniformity in this matter.

(4) In that case local custom is overridden.

(5) Ibid. 20.

(6) In the Hereafter.

(7) פעל , the word used in the text, often means not 'work', but its reward: Cf. Lev. XIX, 13: The wages (פעולת) of him that is hired etc.

(8) I.e., until his death.

(9) [(a) Freebooters (latrones) who overran Judea during the war between the Emperor Severus and his rival Pescennius Niger (193-4 C.E.) (Graetz, Geschichte der Juden, IV, p. 207); or (b) ordinary robbers (Krauss. MGWJ, 1894. p. 151).]

(10) Ps. CIV, 20.

(11) Ps. X, 9.

(12) 10 a.m., the usual breakfast hour.

(13) Without using a hammer, so that he did not attract attention.

(14) Let him who gave the advice carry it out.

(15) Degenerate son of a righteous father.

(16) Prov. XXI, 23.

(17) Lit., 'his inwards'.

(18) Seen to be just. He was doubtful whether the man had really merited hanging. But now he saw that he was, for the seduction of a betrothed maiden is punished by stoning, and all who are stoned are hung.

(19) An operating theatre(?)

(20) The summer months, corresponding to about June and July.
(21) This was taken as a sign that he had acted rightly and would be proof against decay.
(22) Rashi: unless flesh adheres to it.
(23) Which are a fleshy substance.
(24) Ps. XVI, 9.
(25) Viz., that he became an informer to the State.

Talmud - Mas. Baba Metzia 84a

[One day] Elijah met him and remonstrated with him: 'How long will you deliver the people of our God to execution!' — 'What can I do', he replied, 'it is the royal decree.' 'Your father fled to Asia,'[1] he retorted, 'do you flee to Laodicea!'

When R. Ishmael son of R. Jose and R. Eleazar son of R. Simeon met, one could pass through with a yoke of oxen under them and not touch them.[2] Said a certain [Roman] matron to them, 'Your children are not yours!' They replied, 'Theirs [sc. our wives'] is greater than ours.' '[But this proves my allegation] all the more!' [She observed]. Some say, they answered thus: 'For as a man is, so is his strength.'[3] Others say, they answered her thus: 'Love suppresses the flesh.' But why should they have answered her at all; is it not written, Answer not a fool according to his folly?[4] — To permit no stigma upon their children.

R. Johanan said: The waist of R. Ishmael son of R. Jose was as a bottle of nine kabs capacity. R. papa said: R. Johanan's waist was as a bottle containing five kabs; others say, three kabs. That of R. papa himself was as [large as] the wicker-work baskets of Harpania.[5]

R. Johanan said: I am the only one remaining of Jerusalem's men of outstanding beauty. He who desires to see R. Johanan's beauty, let him take a silver goblet as it emerges from the crucible,[6] fill it with the seeds of red pomegranate, encircle its brim with a chaplet of red roses, and set it between the sun and the shade: its lustrous glow is akin to R. Johanan's beauty.

But that is not so; for did not a Master say: R. Kahana's beauty is a reflection of R. Abbahu's; R. Abbahu's is a reflection of our Father Jacob's; our Father Jacob's was a reflection of Adam's; whereas R. Johanan is omitted! — R. Johanan is different, because he lacked a beard.[7]

R. Johanan used to go and sit at the gates of the mikweh.[8] 'When the daughters of Israel ascend from the bath',said he, 'let them look upon[9] me, that they may bear sons as beautiful and as learned as I.' Said the Rabbis to him: 'Do you not fear an evil eye?' — 'I am of the seed of Joseph', he replied, 'against whom an evil eye is powerless.' For it is written, Joseph is a fruitful bough, even a fruitful bough by a well:[10] whereon R. Abbahu observed: Render not [by a well] but, 'above the power of the eye.'[11] R. Jose son of R. Hanina deduced it from the following: and let them multiply abundantly like fish in the midst of the earth:[12] just as fish in the seas are covered by water and the eye has no power over them, so also are the seed of Joseph — the eye has no power over them.

One day R. Johanan was bathing in the Jordan, when Resh Lakish saw him and leapt into the Jordan after him. Said he [R. Johanan] to him, 'Your strength should be for the Torah.'[13] — 'Your beauty,' he replied, 'should be for women.' 'If you will repent,' said he, 'I will give you my sister [in marriage], who is more beautiful than I.' He undertook [to repent]; then he wished to return and collect his weapons, but could not.[14] Subsequently, [R. Johanan] taught him Bible and Mishnah, and made him into a great man. Now, one day there was a dispute in the schoolhouse [with respect to the following. Viz.,] a sword, knife, dagger, spear, hand-saw and a scythe — at what stage [of their manufacture] can they become unclean? When their manufacture is finished.[15] And when is their manufacture finished? — R. Johanan ruled: When they are tempered in a furnace. Resh Lakish

maintained: When they have been furbished in water. Said he to him: 'A robber understands his trade.'[16] Said he to him, 'And wherewith have you benefited me: there [as a robber] I was called Master, and here I am called Master.'[17] 'By bringing you under the wings of the Shechinah,' he retorted. R. Johanan therefore felt himself deeply hurt,[18] [as a result of which] Resh Lakish fell ill. His sister [sc. R. Johanan's, the wife of Resh Lakish] came and wept before him: 'Forgive him[19] for the sake of my son,' she pleaded. He replied: 'Leave thy fatherless children. I will preserve them alive.'[20] 'For the sake of my widowhood then!' 'And let thy widows trust in me,'[21] he assured her. Resh Lakish died, and R. Johanan was plunged into deep grief. Said the Rabbis, 'Who shall go to ease his mind? Let R. Eleazar b. Pedath go, whose disquisitions are very subtle.' So he went and sat before him; and on every dictum uttered by R. Johanan he observed: 'There is a Baraitha which Supports you.' 'Are you as the son of Lakisha?'[22] he complained: 'when I stated a law, the son of Lakisha used to raise twenty-four objections, to which I gave twenty-four answers, which consequently led to a fuller comprehension of the law; whilst you say, "A Baraitha has been taught which supports you:" do I not know myself that my dicta are right?' Thus he went on rending his garments and weeping, 'Where are you, O son of Lakisha, where are you, O son of Lakisha;' and he cried thus until his mind was turned. Thereupon the Rabbis prayed for him, and he died.

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(1) Jose b. Halafta fled to Asia Minor in consequence of his having been ordained by Judah b. Baba (Sanh. 14a) in defiance of the Hadrianic edict.

(2) Their waists were so large that as they stood waist to waist there was room for a yoke of oxen to pass beneath them!

(3) Judges VIII, 21.

(4) Prov. XXVI, 4.

(5) [A rich agricultural town in the Mesene district S. of Babylon, famous for its manufacture of baskets made of fibres of palm leaves. V. Obermeyer, op. cit. p. 200. This humourous and exaggerated description of the figures of these Rabbis has been stated to prevent any stigma being attached to the offspring of people of large contour, Tosaf.]

(6) I.e., immediately it leaves the silversmith's hands, whilst it is still glowing with heat.

(7) Lit., 'facial glory'.

(8) V. Glos.

(9) Lit., 'meet'.

(10) Gen. XLIX, 22.

(11) עולי עין , a play on עולי עין .

(12) Ibid. XLVIII, 16.

(13) I.e., devoted to study.

(14) His mere decision to turn to the study of the Torah had so weakened him that he lacked the strength to don his heavy equipment.

(15) Before that they are not complete articles or utensils, and only such can become unclean.

(16) This was quoted only proverbially, though in later times it was taken literally, and Resh Lakish was held to have been a robber. Actually, he had been a circus attendant, to which his necessitous circumstances had reduced him, and these weapons were used in the course of that calling. (Graetz, Geschichte, IV, 238, n. 6). Weiss, Dor, III, p. 83, n. 2, understands the phrase literally, but translates לסתאה as 'thief-catcher.' If that be correct, Resh Lakish at one time helped the Roman government, just as R. Eleazar b. R. Simeon and R. Ishmael b. R. Jose had done

(17) Heb. רבי is equally applicable to a captain of a gang and a Rabbi (Rashi).

(18) By the remark of Resh Lakish that he had not benefited him.

(19) Lit., 'do'.

(20) Jer. XLIX, 11.

(21) Ibid.

(22) The full name of Resh Lakish was R. Simeon b. Lakish. Weiss, Dor, II, 71 deduces from the use of Lakisha here that Lakish was not a patronym but the name of a town, בן or בר meaning 'a citizen of,' i.e., R. Simeon, a townsman of Lakish. But Bacher, Ag. der Pal. Am. I, 340, 1 defends Lakish as a patronym.

[Reverting to the story of R. Eleazar son of R. Simeon] yet even so,[1] R. Eleazar son of R. Simeon's fears were not allayed,[2] and so he undertook a penance. Every evening they spread sixty sheets for him, and every morning sixty basins of blood and discharge were removed from under him. In the mornings his wife prepared him sixty kinds of pap,[3] which he ate, and then recovered. Yet his wife did not permit him to go to the schoolhouse, lest the Rabbis discomfort him. Every evening he would exhort them,[4] 'Come, my brethren and familiars!' whilst every morning he exclaimed, 'Depart, because ye disturb my studies!' One day his wife, hearing him, cried out, 'You yourself bring them upon you; you have [already] squandered the money of my father's house!'[5] So she left him[6] and returned to her paternal home.[7] Then there came sixty seamen who presented him with sixty slaves, bearing sixty purses.[8] They too prepared sixty kinds of pap for him, which he ate. One day she [his wife] said to her daughter, 'Go and see how your father is faring now.' She went, [and on her arrival] her father said to her, 'Go, tell your mother that our [wealth] is greater than theirs' [sc. of his father-in-law's house]. He then applied to himself the verse, She is like the merchant's ships; she bringeth her food from afar.[9] He ate, drank, and recovered, and went to the schoolhouse. Sixty specimens of blood were brought before him, and he declared them all clean. But the Rabbis criticised him, saying, 'Is it possible that there was not [at least] one about which there was some doubt!' He retorted, 'If it be as I [said], let them all be males; if not, let there be one female amongst them.'[10] They were all males, and were named 'Eleazar', after him.

It has been taught: Rabbi said: How much procreation did this wicked [state] prevent in Israel.[11]

On his death-bed he said to his wife, 'I know that the Rabbis are angry with me, and will not properly attend to me. Let me lie in an upper chamber,[12] and do you not be afraid of me.' R. Samuel b. Nahmani said: R. Jonathan's mother told me that she was informed by the wife of R. Eleazar son of R. Simeon: 'I kept him lying in that upper chamber not less than eighteen nor more than twenty-two years. Whenever I ascended there, I examined his hair, and [even] if a single hair had fallen out, the blood would well forth. One day, I saw a worm issue from his ear, whereat I was much grieved, but he appeared to me in my dream and told me that it was nothing. ["This has happened," said he,] "because I once heard a scholar insulted and did not protest, as I should have done." Whenever two people came before him [in a lawsuit], they stood near the door, each stated his case, and then a voice issued from that upper chamber, proclaiming, "So-and-so, you are liable; soand-so, you are free."' Now, one day his wife was quarrelling with a neighbour, when the latter reviled [her, saying,] 'Let her be like her husband, who was not worthy of burial!' Said the Rabbis: 'When things have gone thus far,[13] it is certainly not meet.'[14] Others say: R. Simeon b. Yohai appeared to them in a dream, and complained: 'I have a pigeon amongst you which you refuse to bring to me.' Then the Rabbis went to attend to him [for burial], but the townspeople of Akabaria[15] did not let them; because during all the years R. Eleazar son of R. Simeon slept in his upper chamber no evil beast came to their town. But one day — it was the eve of the Day of Atonement, when they were busily occupied, the Rabbis sent [word] to the townspeople of Biri,[16] and they brought up his bier, and carried it to his father's vault, which they found encircled by a serpent. Said they to it, 'O snake, O snake, open thy mouth, and let the son enter to his father.' Thereupon it opened [its mouth] for them. Then Rabbi sent [messengers] to propose [marriage] to his wife. She sent back: 'Shall a utensil, in which holy food has been used, be used for profane purposes!' There [sc. in Palestine] the proverb runs: Where the master hung up his weapons, there the shepherd hung up his wallet. He sent back word, 'Granted that he outstripped me in learning, was he [also] my superior in good deeds?' She returned, 'Yet at least he outstripped you in learning, though I did not know it. But I do know [that he exceeded you] in [virtuous] practice, since he submitted himself to mortification.'

'In learning'. To what is the reference? — When Rabban Simeon b. Gamaliel and R. Joshua b. Karhah sat on benches, R. Eleazar son of R. Simeon and Rabbi sat in front of them on the ground,[17] raising objections and answering them. Said they, 'We drink their water [i.e., benefit from their learning], yet they sit upon the ground; let seats be placed for them!' Thus were they promoted. But

R. Simeon b. Gamaliel protested: 'I have a pigeon amongst you, and ye wish to destroy it!'[18] So Rabbi was put down. Thereupon R. Joshua b. Karhah said: 'Shall he, who has a father, live, whilst he who has no father[19] die!' So R. Eleazar son of R. Simeon too was put down, whereat he felt hurt saying, 'Ye have made him equal to me!'[20] Now, until that day, whenever Rabbi made a statement, R. Eleazar son of R. Simeon supported him. But from then onward, when Rabbi said, 'I have an objection,' R. Eleazar son of R. Simeon retorted, 'If you have such and such an objection, this is your answer; now have you encompassed us with loads of answers in which there is no substance.'[21] Rabbi, being thus humiliated, went and complained to his father. 'Let it not grieve you,' he answered, 'for he is a lion, and the son of a lion, whereas you are a lion, the son of a fox.'[22] To this Rabbi alluded when he said, Three were humble; viz., my father,

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(1) Notwithstanding that his fat did not putrefy; v. supra 83b.

(2) Lit., 'his mind was not at rest', that he had not ensnared innocent men too.

(3) Made of figs (Rashi).

(4) His pains and sores personified.

(5) By illness.

(6) Lit., 'rebelled'.

(7) The Heb. expression means her father's house after his death.

(8) These seamen had encountered a violent storm at sea, and had prayed to be delivered for the sake of R. Eleazar son of R. Simeon. This gift then was a thanksgiving offering to him (Tosaf.).

(9) Prov. XXXI, 14. 'she' is referred to the Torah; for the sake of his learning, in the merit of which the seamen had been delivered, his 'food' — i.e. wealth — had been brought to him from afar.

(10) I.e., the children of those women whose blood he had declared clean.

(11) R. Eleazar son of R. Simeon having been appointed by the state to track down malefactors, could not come to the school, where, by his wide knowledge of what is clean or unclean he would have permitted many women to their husbands.

(12) Instead of being buried.

(13) I.e., that people know that he is dead yet unburied.

(14) It dishonours him.

(15) Josephus (Wars, II, XX, 6) mentions that he fortified a place of that name in Upper Galilee; it was probably identical with Akhbura, a town to the south of Safed. Neubauer p. 226f.

(16) A neighbouring town. [Either Bira, S.E., or Kfar Bir'im, N.W. of Gush Halab; Klein, Neue Beitrage, p. 39.]

(17) This was the usual way of study, the master sitting on a seat, the disciples on the ground.

(18) He feared that his son's promotion — he was Rabbi's father — would excite the evil eye and react to his injury.

(19) R. Simeon b. Yohai, the father of R. Eleazar son of R. Simeon, was dead.

(20) Whilst he thought himself higher. — This proves the point that he was a greater scholar than Rabbi; v. also further.

(21) I.e., R. Eleazar anticipated all his objections and answered them by shewing that there was no reality in the proposed difficulties and consequently in the answer given, and thus he accused Rabbi of being the cause of many answers which are quite unimportant.

(22) He has a greater scholastic ancestry than you, R. Simeon b. Yohai, his father, having been more learned than I.

Talmud - Mas. Baba Metzia 85a

the Bene Bathyra, and Jonathan, the son of Saul. 'R. Simeon b. Gamaliel,'[1] as has been said, 'The Bene Bathyra,' as a Master said: They placed him at the head and appointed him Nasi[2] over them.[3] 'Jonathan, the son of Saul,' for he said to David, And thou shalt be king over Israel, and I shall be next unto thee.[4] But how does this prove it: perhaps Jonathan the son of Saul [spoke thus] because he saw that the people were flocking to David? The Bene Bathyra too, because they saw that Hillel was their superior [in learning]? But R. Simeon b. Gamaliel was certainly very modest.[5]

Rabbi observed: Suffering is precious.[6] Thereupon he undertook [to suffer likewise] for thirteen years, six through stones in the kidneys[7] and seven through scurvy: others reverse it. Rabbi's

house-steward was wealthier than King Shapur.[8] When he placed fodder for the beasts, their cries could be heard for three miles, and he aimed at casting it [before them] just then when Rabbi entered his privy closet, yet even so, his voice [lifted in pain] was louder than theirs, and was heard [even] by sea-farers. Nevertheless, the sufferings of R. Eleazar son of R. Simeon were superior [in virtue] to those of Rabbi. For whereas those of R. Eleazar son of R. Simeon came to him through love, and departed in love,[9] those of Rabbi came to him through a certain incident, and departed likewise.

'They came to him through a certain incident.' What is it? — A calf was being taken to the slaughter, when it broke away, hid his head under Rabbi's skirts, and lowed [in terror]. 'Go', said he, 'for this wast thou created.' Thereupon they said [in Heaven], 'Since he has no pity, let us bring suffering upon him.'

'And departed likewise.' How so? — One day Rabbi's maidservant was sweeping the house; [seeing] some young weasels lying there, she made to sweep them away. 'Let them be,' said he to her; 'It is written, and his tender mercies are over all his works.'[10] Said they [in Heaven], 'Since he is compassionate, let us be compassionate to him.'

During all the years that R. Eleazar suffered, no man died prematurely. During all those of Rabbi the world needed no rain;[11] for Rabbah son of R. Shilah said: The day of rain is as hard [to bear][12] as the day of judgment. And Amemar said: But that it is necessary to the world, the Rabbis would have prayed that it might cease to be. Nevertheless,[13] when a radish was pulled out of its bed, there remained a cavity full of water.

Rabbi chanced to visit the town of R. Eleazar son of R. Simeon.[14] 'Did that righteous man leave a son?' he inquired. 'Yes,' they replied; 'and every harlot whose hire is two [zuz], hires him for eight.'[15] So he had him brought [before him], ordained him a Rabbi,[16] and entrusted him to R. Simeon b. Issi b. Lakonia, his mother's brother [to be educated]. Every day he would say, 'I am going to my town; to which he [his instructor] replied, 'They have made you a Sage, spread over you a gold trimmed cloak [at the ceremony of ordination] and designated you "Rabbi", and yet you say, I am going back to my town!' Said he, 'I swear that this [my desire] has been abandoned.' When he became a great [scholar], he went and sat in Rabbi's academy. On hearing his voice, he [Rabbi] observed: 'This voice is similar to that of R. Eleazar son of R. Simeon.' 'He is his son,' they [his disciples] told him. Thereupon he applied to him the verse, The fruit of the righteous is a tree of life; and he that winneth souls is wise.[17] [Thus:] 'The fruit of the righteous is a tree of life' — this refers to R. Jose, the son of R. Eleazar, the son of R. Simeon;[18] 'And he that winneth souls is wise' — to R. Simeon b. Issi b. Lakonia. When he died, he was carried to his father's burial vault, which was encompassed by a snake. 'O snake, O snake,' they adjured it, 'open thy mouth and let the son enter to his father;' but it would not uncoil for them. Now, the people thought that one was greater than the other,[19] but there issued a Heavenly Voice, proclaiming: 'It is not because one is greater than the other, but because one underwent the suffering of the cave, and the other did not.'[20]

Rabbi chanced to visit the town of R. Tarfon. Said he to them: 'Has that righteous man, who used to swear by the life of his children,[21] left a son?' They replied: 'He has left no son, but a daughter's son remains, and every harlot who is hired for two [zuz] hires him for eight.' So he had him brought before him and said to him: 'Should you repent, I will give you my daughter.' He repented. Some say, he married her [Rabbi's daughter] and divorced her; others, that he did not marry her at all, lest it be said that his repentance was on her account. And why did he [Rabbi] take such [extreme] measures? — Because, [as] Rab Judah said in Rab's name — others Say, R. Hiyya b. Abba said in R. Johanan's name — others say, R. Samuel b. Nahmani said in R. Jonathan's name: He who teaches Torah to his neighbour's son will be privileged to sit in the Heavenly Academy, for it is written, If thou [sc. Jeremiah] wilt cause [Israel] to repent, then will I bring thee again, and thou shalt stand before me.[22] And he who teaches Torah to the son of an 'am ha-arez,[23] even if the Holy One, blessed

be He, makes a decree, He annuls it for his sake, as it is written, and if thou shalt take forth the precious from the vile, thou shalt be as my mouth.[24]

R. Parnak said in R. Johanan's name: He who is himself a scholar, and his son is a scholar, and his son's son too, the Torah will nevermore cease from his seed, as it is written, As for me, this is my covenant with them, saith the Lord; My spirit is upon thee, and my words which I have put in thy mouth, shall not depart out of thy mouth, nor out of the mouth of thy seed, nor out of the mouth of thy seed's seed, saith the Lord, from henceforth and for ever.[25] What is meant by 'saith the Lord'? — The Holy one, blessed be He, said, I am surety for thee in this matter. What is the meaning of 'from henceforth and for ever'? — R. Jeremiah said: From henceforth [i.e., after three generations] the Torah seeks its home.[26]

R. Joseph fasted forty fasts,[27] when he was made to read [in his dream], 'They shall not depart out of thy mouth.' He fasted another forty, and was made to read, 'They shall not depart out of thy mouth, nor out of the mouth of thy seed.' He fasted another forty, and was made to read, 'They shall not depart out of thy mouth, nor out of the mouth of thy seed, nor out of the mouth of thy seed's seed.' Henceforth, said he, I have no need [to fast]; the Torah seeks its home.

When R. Zera emigrated to Palestine, he fasted a hundred fasts to forget the Babylonian Gemara, that it should not trouble him.[28] He also fasted a hundred times that R. Eleazar might not die in his lifetime, so that the communal cares[29] should not fall upon him. And yet another hundred, that the fire of Gehenna might be powerless against him. Every thirty days he used to examine himself [to see if he were fireproof]. He would heat the oven, ascend, and sit therein, but the fire had no power against him. One day, however, the Rabbis cast an [envious] eye upon him, and his legs were singed, whereafter he was called, 'Short and leg-singed.'[30]

Rab Judah said in Rab's name: What is meant by, Who is the wise man, that may understand this? and who is he to whom the mouth of the Lord hath spoken, that he may declare it, why the land perisheth?[31] This question[32]

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(1) The father of Rabbi.

(2) The Patriarch, head of Palestinian Jewry.

(3) The story is given in full in Pes. 66a. On one occasion the eve of Passover fell on the Sabbath, and none knew whether the Paschal sacrifice might be offered or not. Thereupon Hillel proved by argument and tradition that it was permissible, upon which the Bene Bathyra, the then heads of Palestinian Jewry, voluntarily resigned their leadership in his favour.

(4) I Sam. XXIII, 17.

(5) I.e., though the action of the other two might be explained away as not due to humility, that of R. Simeon b. Gamaliel could not.

(6) Because he saw that as a reward for the suffering to which R. Eleazar son of R. Simeon had submitted his body remained intact, defying decomposition and decay for many years.

(7) Or, in the bladder, Jast.

(8) V. p. 408, n. 5.

(9) V. supra 84a bottom: he summoned his sufferings, loving them as a means of ennoblement and likewise dismissed them, that he might be free to study.

(10) Ps. CXLV, 9.

(11) Everything growing without rain.

(12) Owing to the inconvenience and discomfort to which people are put.

(13) Though no rain fell.

(14) After his death.

(15) On account of his beauty.

(16) That the honour and the title might turn him to the Torah.

(17) Prov. XI, 30.
(18) I.e., a line of righteous men.
(19) I.e., the father was greater than the son, who was therefore unworthy to he buried with him.
(20) R. Simeon b. Yohai and his son Eleazar were hidden in a cave from the Roman authorities for thirteen years, Shab. 33b.
(21) [He frequently used the oath 'May I bury my children' — e.g. Oh. XVI, 1]
(22) Jer. XV, 19.
(23) V. Glos.
(24) Ibid.
(25) Isa. LIX, 21: thus, once the Torah has been in thy own mouth, thy seed's, and thy seed's seed — i.e., three generations — it shall not depart for ever.
(26) I.e., it becomes hereditary in that family.
(27) That the Torah should always remain with him.
(28) The Palestinian method of study was far simpler than the Babylonian, and R. Zera was anxious that his keen dialectic method acquired in Babylon should not interfere with the clearer course adopted in Palestine. Cf. Sanh. (Sonc. ed.) p. 138, n. 11. [On the term 'Gemara' v. supra p. 206, n. 6. Kaplan, op. cit., pp. 258ff., on the basis of his definition, explains that Gemara texts as recorded by different schools frequently presented variations in substance, style and phraseology to the confusion of the student, and it was for freedom from this handicap that R. Zera prayed when he decided to join the school in Palestine.]
(29) [Of Tiberias, where R. Zera was a communal leader and finally became the head of the School.]
(30) He was of short stature.
(31) Jer. IX, 11.
(32) Lit., 'thing'.

Talmud - Mas. Baba Metzia 85b

was put by the Sages, but they could not answer it; by the prophets, but they [too] could not answer it, until the Holy One, blessed be He, Himself resolved as it is written, And the Lord said, Because they have forsaken my law which I set before them.[1] Rab Judah said in Rab's name: [That means] that they did not first utter a benediction over the Torah [before studying it].[2]

R. Hama said: What is meant by, Wisdom resteth in the heart of him that hath understanding; but that which is in the midst of fools is made known?[3] 'Wisdom resteth in the heart of him that hath understanding' — this refers to a scholar, the son of a scholar; 'but that which is in the midst of fools is made known' — to a scholar, the son of an 'am ha-arez.[4] Said 'Ulla: Thus it is proverbial, One stone in a pitcher cries out 'rattle, rattle.'[5]

R. Jeremiah questioned R. Zera: What is meant by, The small and great are there [sc. the next world]; and the servant is free from his master?[6] Do we then not know that 'the small and great are there'? — But [it means that] he who humbles himself for the sake of the Torah in this world is magnified in the next; and he who makes himself a servant to the [study of the] Torah in this world becomes free in the next.

Resh Lakish was marking the burial vaults of the Rabbis.[7] But when he came to the grave of R. Hiyya, it was hidden from him,[8] whereat he experienced a sense of humiliation. 'Sovereign of the Universe!' he exclaimed, 'did I not debate on the Torah as he did?' Thereupon a Heavenly Voice cried out in reply: 'You did indeed debate on the Torah as he did, but did not spread the Torah as he did.' Whenever R. Hanina and R. Hiyya were in a dispute, R. Hanina said to R. Hiyya: 'Would you dispute with me? If, Heaven forfend! the Torah were forgotten in Israel, I would restore it by my argumentative powers.' To which R. Hiyya rejoined: 'Would you dispute with me, who achieved that the Torah should not be forgotten in Israel? What did I do? I went and sowed flax, made nets [from the flax cords], trapped deers, whose flesh I gave to orphans, and prepared scrolls [from their

skins], upon which I wrote the five books [of Moses]. Then I went to a town [which contained no teachers] and taught the five books to five children, and the six orders [of the Talmud] to six children[9] And I bade them: "Until I return, teach each other the Pentateuch and the Mishnah;" and thus I preserved the Torah from being forgotten in Israel.'[10] This is what Rabbi [meant when he] said, 'How great are the works of Hiyya!' Said R. Ishmael son of R. Jose to him, '[Are they] even [greater] than yours?' 'Yes,' he replied, 'And even than my father's.' 'Heaven forfend!' he rejoined, 'Let not such a thing be [heard] in Israel!'

R. Zera said: Last night R. Jose son of R. Hanina appeared to me [in a dream], and I asked him, 'Near whom art thou seated [in the Heavenly Academy]?' — 'Near R. Johanan.' 'And R. Johanan near whom?' — 'R. Jannai.' 'And R. Jannai?' — 'Near R. Hanina.' 'And R. Hanina?' — 'Near R. Hiyya.' Said I to him, 'And is not R. Johanan [worthy of a seat] near R. Hiyya?' — He replied, 'In the region of fiery sparks and flaming tongues, who will let the smith's son enter?[11]

R. Habiba said: R. Habiba b. Surmakia told me: I saw one of the Rabbis whom Elijah used to frequent, whose eyes were clear in the morning, but in the evening they looked as though burnt in fire. I questioned him, 'What is the meaning of this?' And he answered me [thus]: 'I requested Elijah to shew me the [departed] Rabbis as they ascend to the Heavenly Academy. He replied: "Thou canst look upon all, excepting the carriage of R. Hiyya: upon it thou shalt not look." "What is their sign?"[12] "All are accompanied by angels when they ascend and descend, excepting R. Hiyya's carriage, who ascends and descends of his own accord."[13] But unable to control my desire, I gazed upon it, whereat two fiery streams issued forth, smote and blinded me in one eye. The following day I went and prostrated myself upon his grave, crying out, "It is thy Baraitha that I study!"[14] and I was healed.'[15]

Elijah used to frequent Rabbi's academy. One day — it was New Moon — he was waiting for him, but he failed to come. Said he to him [the next day]: 'Why didst thou delay?' — He replied: '[I had to wait] until I awoke Abraham, washed his hands, and he prayed and I put him to rest again; likewise to Isaac and Jacob.' 'But why not awake them together?' — 'I feared that they would wax strong in prayer[16] and bring the Messiah before his time.' 'And is their like to be found in this world?' he asked. — 'There is R. Hiyya and his sons', he replied. Thereupon Rabbi proclaimed a fast, and R. Hiyya and his sons were bidden to descend [to the reading desk].[17] As he [R. Hiyya] exclaimed, 'He causeth the wind to blow', a wind blew; he proceeded, 'he causeth the rain to descend', whereat the rain descended. When he was about to say, 'He quickeneth the dead'[18] , the universe trembled, [and] in Heaven it was asked, 'Who hath revealed our secret to the world?'[19] 'Elijah', they replied. Elijah was therefore brought and smitten with sixty flaming lashes; so he went, disguised himself as a fiery bear, entered amongst and scattered them.

Samuel Yarhina'ai.[20] was Rabbi's physician. Now, Rabbi having contracted an eye disease, Samuel offered to bathe it with a lotion, but he said, 'I cannot bear it.' 'Then I will apply an ointment to it,' he said. 'This too I cannot bear,' he objected. So he placed a phial of chemicals under his pillow, and he was healed.[21] Rabbi was most anxious[22] to ordain him, but the opportunity was lacking.[23] Let it not grieve thee, he said; I have seen the Book of Adam,[24] in which is written, 'Samuel Yarhina'ah

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(1) Ibid. 12.

(2) The Ran in Ned. 81a explains that it is assumed that the Torah was studied; for otherwise, the question would easily have been answered by the Sages and Prophets. Yet it was studied not for its own sake but only for the preferment it might give. This is expressed by saying that they recited no benediction before studying it, i.e., it was not in itself dear to them. The selfish motive could be known to none but God.

(3) Prov. XIV, 33.

(4) V. Glos. His scholarship then stands out, and 'is made known'.

(5) But when the Pitcher is filled with stones they have no room for rattling. So also, one scholar in a family of fools achieves fame, whilst a whole family of scholars are taken for granted.
(6) Job III, 19.
(7) That priests should not go there and become defiled, thus transgressing the law through the instrumentality of righteous men.
(8) He could not find its exact spot.
(9) The Talmud is divided into six 'orders', viz.: Seeds, Festivals, Women, Damages, Sacred Objects and Purity.
(10) Scholars dispute whether Rabbi wrote down the Mishnah after compiling it. It is perhaps noteworthy in this connection that, whereas in this story it is stated that R. Hiyya wrote the five books of Moses, nothing is said about his writing the Mishnah for his pupils. [Though possibly these activities of R. Hiyya cover a period before the final compilation of the Mishnah by Rabbi.]
(11) R. Johanan's cognomen was Bar Nappaha, lit., 'the smith's son'.
(12) By which I may distinguish between the carriages of the other Rabbis and R. Hiyya's.
(13) His merit being so great, he is not in need of the angel's assistance.
(14) There were several sets of Baraithas — laws not included by Rabbi in his compilation of the Mishnah — the most important and authentic of which were those by R. Hiyya and R. Oshaia.
(15) Yet the redness of the burning was still perceptible.
(16) If they prayed simultaneously.
(17) In the synagogue of Talmudic times the reading-desk was on a lower level than the rest of the building. On fast days, according to the Midrash Tanhuma on בשלח , three men led the congregation in prayer, instead of one, as usual.
(18) V. P. B. p. 44.
(19) That R. Hiyya's prayers are so efficacious.
(20) ירחינאה , the Lunar Expert or Astronomer. The word is an epithet of Samuel, the Babylonian amora, on account of his great astronomical skill, v. R.H. 20b.
(21) The vapour being sufficiently powerful to penetrate to the eye, though not applied directly.
(22) Lit., 'grieved'.
(23) Possibly he could not assemble the Ordination Board.
(24) [Cf. Gen. V, 1. This is not to be confused with the Apocryphal Book of Adam known in many versions (v. J. E. I, 179f), but a book which God showed to Adam containing the genealogy of the whole human race, and which is the Jewish form of the view prevalent among Babylonians (v. Ginszberg, Legends, VI, p. 82), though this does not mean to imply that there was no Jewish version of the Book of Adam current in the days of Rabbi. Funk, Monumenta, I, p. 324, however, on the basis of Babylonian parallels, where the stars are described as the 'writing of Heaven', renders the statement of Rabbi simply to mean, 'I have seen it written in the stars'.]

Talmud - Mas. Baba Metzia 86a

shall be called "Sage'', but not "Rabbi'', and Rabbi's healing shall come through him. Rabbi and R. Nathan conclude the Mishnah, R. Ashi and Rabina[1] conclude [authentic] teaching,[2] and a sign thereof is the verse, Until I went to the sanctuary of God; then understood I their end.'[3]

R. Kahana said: R. Hama, the son of the daughter of Hassa,[4] related to me [that] Rabbah b. Nahmani died through persecution,[5] information having been laid against him to the State. Said they [the informers]: There is an Israelite who keeps back twelve thousand Israelites from the payment of the royal poll-tax one month in summer and one in winter.[6] Thereupon a royal officer was sent for him, but did not find him. He [Rabbah] then fled from Pumbeditha to Akra, from Akra to Agama,[7] from Agama to Sahin, from Sahin to Zarifa, from Zarifa to 'Ena Damim,[8] and thence back to Pumbeditha. In Pumbeditha he found him; for the royal officer chanced to visit the same inn where Rabbah [was hiding]. Now, they placed a tray before him [the royal officer], gave him two glasses of liquor, and then removed the tray;[9] whereupon his face was turned backward [by demons]. 'What shall we do with him?' said they [the inn attendants] to him [Rabbah]; 'he is a royal officer.' 'Offer him the tray again,' he replied, 'and let him drink another goblet; then remove the tray, and he will

recover.' They did so, and he recovered. 'I know,' said he, 'that the man whom I require is here;' he searched for and found him. He then said, 'I will depart from here; if I am slain, I will not disclose [his whereabouts]; but if tortured, I will.' He was then brought before him, and he led him into a chamber and locked the door upon him [to keep him there as a prisoner]. But he [Rabbah] prayed, whereupon the wall fell down, and he fled to Agama; there he sat upon the trunk of a [fallen] palm and studied. Now, they were disputing in the Heavenly Academy thus: If the bright spot preceded the white hair, he is unclean; if the reverse, he is clean.[10] If [the order is] in doubt — the Holy One, blessed be He, ruled, He is clean; whilst the entire Heavenly Academy maintained, He is unclean.[11] Who shall decide[12] it? said they. — Rabbah b. Nahmani; for he said, I am pre-eminent[13] in the laws of leprosy and tents.[14] A messenger was sent for him, but the Angel of Death could not approach him, because he[15] did not interrupt his studies [even for a moment]. In the meantime, a wind blew and caused a rustling in the bushes, when he imagined it to be a troop of soldiers. 'Let me die,' he exclaimed, 'rather than be delivered into the hands of the State. As he was dying, he exclaimed, 'Clean, clean!'[16] when a Heavenly Voice cried out, 'Happy art thou, O Rabbah b. Nahmani, whose body is pure and whose soul had departed in purity!' A missive fell from Heaven in Pumbeditha, [upon which was written,] 'Rabbah b. Nahmani has been summoned[17] by the Heavenly Academy. So Abaye and Raba and all the scholars went forth to attend on him [at his burial], but they did not know his whereabouts. They went to Agama and saw birds stationed there and overshadowing it [to give protection]. 'This', said they, 'proves that he is there. They bewailed him for three days and three nights; but there fell a missive from Heaven, 'He who [will now] hold aloof [from the lamentations] shall be under a ban.' So they bewailed him for seven days, and then there fell a missive from Heaven, 'Return in peace to your homes.' On the day that he died a hurricane lifted an Arab who was riding a camel, and transported him from one bank of the River Papa[18] to the other. 'What does this portend?' he exclaimed. — 'Rabbah b. Nahmani has died,' he was told. 'Sovereign of the Universe!' he cried out. 'The whole world is Thine, and Rabbah b. Nahmani too is Thine. Thou art [the Friend] of Rabbah, and Rabbah is Thine; why dost Thou destroy the world on his account!' Thereupon the storm subsided.

R. Simeon b. Halafta was a fat man.[19] One day, feeling hot, he climbed up, sat on a mountain boulder, and said to his daughter, 'Daughter, fan me with a fan, and I will give you bundles of spikenard.' Just then, however, a breeze arose, whereat he observed, 'How many bundles of spikenard [do I owe] to the Master of the [breeze]?'

EVERYTHING DEPENDS ON LOCAL CUSTOM. What does EVERYTHING add?[20] — The case where it is customary to break bread[21] and drink a small measure [of liquor];[22] if he [the employer] demanded of them, 'Come early, that I may bring it to you,'[23] they can answer, 'You have no power [to demand this].'

IT ONCE HAPPENED THAT R. JOHANAN B. MATHIA SAID TO HIS SON, 'GO OUT AND ENGAGE' etc. A story [is quoted] contradicting [the stated law]![24] — The text is defective, and should read thus: But if he stipulates to provide them with food,

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(1) [According to Sherira Gaon, Letter, p. 95, (ed. Lewin) the reference is to Rabina II, son of R. Huna.]

(2) Rashi: Before Rabbi, the Mishnah was in no systematic order, each Tanna teaching in which order he desired. Rabbi compiled and arranged these teachings in a systematized order, admitting those which he considered authentic and rejecting others. This compilation formed the basic code of Jewish law (though Weiss, Dor. II, p. 183, maintains that he never intended it to be authoritative); subsequently scholars might define and explain it, and deduce new laws from it, but not dispute with it. In the course of time the discussions on the Mishnah grew to very large dimensions, and it was the work of Rabina and R. Ashi to compile the huge mass of accumulated material and give it an orderly arrangement. This is expressed by saying that they were at the end of authentic teaching (hora'ah), i.e., they edited the Talmud. [The signification of the term hora'ah is obscure and has been variously explained: (a) transmission of the oral Law; (b) the insertion by scholars of halachic matter in the Talmud; (c) the right to change the Talmud whether in substance or form;

(d) legislative activity, v. Kaplan, op. cit., pp. 34 and 289ff.]
(3) Ps. LXXIII, 17; מקדשי ('sanctuary') bears a slight resemblance to אשי (Ashi), and אבינה ('understood') to רבינא (Rabina): thus R. Ashi and Rabina are 'their end', sc. of the Talmud.
(4) Var. lec.: Hama.
(5) [Sherira, letter, P. 87: 'persecution of the Law'.]
(6) They used to flock to the academy in Nisan and Tishri, the months of popular lectures, and in consequence the tax-collectors could not obtain their taxes for these months. So Rashi. [The Karasa (poll-tax) appears to have been payable monthly, and the absence of so many tax-payers during these two months in the year (according to Sherira, Adar and Elul, litter, p. 87) was responsible for a drop in the monthly royal revenue. There was, however, no question of evading the tax, as the arrears could in any case be collected with subsequent payments. Obermeyer, op. cit., p. 237. For another explanation connecting it with the exemption of scholars from taxes, (cf. B.B. 8a) v. J. Kaplan. Horeb (New York 1934), I. ;1, pp. 42ff. 1.]
(7) There is only an אקרא דאגמא (Akra di Agama) mentioned elsewhere in the Talmud (v. B.B. (Sonc. ed.) p. 529, n. 11), and Neubauer p. 368, n. 2, suggests that the same should be read here too.
(8) [All these places appear to be in the neighbourhood of Pumbeditha. 'Ena Damim is probably to be identified with the village Dimima on the canal Nahr 'Isa on the Euphrates; Sahin and Zarifa cannot be exactly located. Obermeyer, loc. cit. n. 3.]
(9) To drink an even number of glasses would excite the ill-will of certain demons; he had thus been unintentionally placed in danger.
(10) V. Lev. XIII, 1-3. As stated here, the bright spot must appear first, and then the white hair.
(11) It is a daring fancy to picture the Almighty disputing with the Heavenly Academy on one of His own laws, but is in keeping with the spirit of Talmudic inquiry that the Law once having been given, it is for man to interpret it. Cf. supra 59b.
(12) Lit., 'prove it'.
(13) Lit., 'unique'.
(14) I.e., uncleanliness caused by the dead.
(15) Lit., 'his mouth'.
(16) As though the subject of the Heavenly controversy had already been communicated to him.
(17) Lit., 'sought for'.
(18) [The canal passing through Pumbeditha. Obermeyer, op. cit., p. 237.]
(19) Because the beginning of this narrative portion (aggadah) deals with R. Eleazar b. Simeon, who was very fat, a story is related about another fat man (Rashi).
(20) When a particular law is followed by a general proposition in this form, it is axiomatic that its purpose is to extend the law to a case that does not obviously follow from the first.
(21) [Lit., 'to wrap the bread', to break a piece of bread and place some relish in between. For a discussion of the phrase, v. Krauss, T.A. III, 51.]
(22) אנפק = 1 log.
(23) That the workmen should eat and drink before their day starts.
(24) After stating that everything depends on local custom, the Tanna narrates a story which contradicts this, for custom certainly fixed the limits of the meals.

Talmud - Mas. Baba Metzia 86b

he thereby increases [his obligations] to them.[1] And IT ONCE HAPPENED LIKEWISE THAT R. JOHANAN B. MATHIA SAID TO HIS SON, 'GO OUT AND ENGAGE LABOURERS.' HE WENT, AND AGREED TO SUPPLY THEM WITH FOOD. BUT WHEN HE RETURNED TO HIS FATHER, HE SAID TO HIM, 'MY SON, SHOULD YOU EVEN PREPARE A BANQUET FOR THEM LIKE SOLOMON'S, WHEN IN HIS GLORY, YOU CANNOT FULFIL YOUR DUTY, FOR THEY ARE THE CHILDREN OF ABRAHAM, ISAAC AND JACOB.'

Shall we say that the meals of Abraham, the Patriarch, were superior to those of Solomon; but is it not written, And Solomon's provisions for one day were thirty measures of fine flour and three score

measures of meal. Ten fat oxen, and twenty oxen out of the pastures, and an hundred sheep, besides harts, and roebucks, and fallowdeer, and fatted fowl:[2] whereon Gorion b. Astion said in Rab's name: These were for the cook's dough;[3] and R. Isaac said: These [animals] were but for the [mincemeat] puddings. Moreover, said R. Isaac, Solomon had a thousand wives, and each prepared this quantity in her own house. Why? Each reasoned, 'He may dine in my house to-day.' Whereas of Abraham it is said, And Abraham ran unto the herd, and fetched a calf tender and good:[4] whereon Rab observed: 'A calf,' means one; 'tender' — two; and 'good' — three![5] — There the three calves were for three men, whereas here [the provisions enumerated] were for all Israel and Judah, as it is written, Judah and Israel were many, as the sand which is by the sea in multitude.[6]

What is meant by 'fatted fowl'? — Rab said: [Fowls] fed against their will. Samuel said: [Fowls] naturally fat. R. Johanan said: Oxen which had never toiled[7] were brought from the pastures, and likewise fowls [that had never toiled][8] from their dungheaps.[9]

R. Johanan said: The best of cattle is the ox; the best of birds is the fowl. Amemar said: A fattened black hen[10] which moves about the vats, and which cannot step over a stick.[11]

And Abraham ran unto the herd and fetched a calf, tender and good. Rab said: 'A calf', means one; 'tender' — two; and 'good' — three. But perhaps it [all means] one, as people say, a tender and good [calf]? — If so, Scripture should have written, [a calf] tender, good; why 'and' good? This proves that it is for exegesis.[12] Then perhaps it means two?[13] — Since 'good' is for exegesis, 'tender' [too] is for the same purpose. Rabbah b. 'Ulla — others say, R. Hoshaia — and others again Say, R. Nathan son of R. Hoshaia objected: And he gave unto a young man; and he hasted to dress it?[14] — He gave each to one young man. [But is it not written] And he took butter and milk, and the calf which he had dressed, and set it before them?[15] — [This means,] each, as soon as it was ready, was brought before them. But why three? Would not one have sufficed? — R. Hanan b. Raba said: In order to offer them three tongues with mustard.[16]

R. Tanhum b. Hanilai said: One should never break away from custom. For behold, Moses ascended on High and ate no bread, whereas the Ministering Angels descended below and ate bread.[17] 'And ate' — can you really think so! — But say, appeared to eat and drink.

Rab Judah said in Rab's name: Everything which Abraham personally did for the Ministering Angels, the Holy One, blessed be He, did in person for his sons; and whatever Abraham did through a messenger,[18] the Holy One, blessed be He, did for his sons through a messenger. [Thus:] And Abraham ran unto the herd — And there went forth a wind from the Lord;[19] and he took butter, and milk[15] — Behold, I will rain bread from heaven for you;[20] and he stood by them under the tree — Behold, I will stand before thee there upon the rock, etc.;[21] And Abraham went with them to bring them on the way[22] — And the Lord went before them by day;[23] Let a little water, I pray you, be fetched[24] — and thou shalt smite the rock, and there shall come water out of it, that the people may drink.[25] But he is thus in conflict with R. Hama son of R. Hanina. For R. Hama son of R. Hanina said, and the School of Ishmael taught likewise: As a reward for three things [done by Abraham] they [his descendants] obtained three things. Thus: As a reward for, [and he took] butter and milk, they received the manna; as a reward for, And he stood by them, they received the pillar of cloud;[26] as a reward for, Let a little water, I pray you, be fetched, they were granted Miriam's well.[27]

Let a little water, I pray you, be fetched, and wash your feet:[28] R. Jannai son of R. Ishmael said: They [the travellers] protested to him [Abraham], 'Dost thou suspect us of being Arabs, who worship the dust on their feet? Ishmael has already issued from thee.'[29]

And the Lord appeared unto him in the plains of Mamre: and he sat in the tent door in the heat of the day.[30] What is meant by 'in the heat of the day'? — R. Hama son of R. Hanina said: It was the

third day from Abraham's circumcision,[31] and the Holy One, blessed be He, came to enquire after Abraham's health; [moreover,] he drew the sun out of its sheath,[32] so that the righteous man [sc. Abraham] should not be troubled with wayfarers. He sent Eliezer out [to seek travellers], but he found none. Said he, 'I do not believe thee'. (Hence they say there — sc. in Palestine — slaves are not to be believed.) So he himself went out, and saw the Holy One, blessed be He, standing at the door; thus it is written, Pass not away, I pray thee, from thy servant.[33] But on seeing him tying and untying [the bandages of his circumcision], He said, 'It is not well that I stand here'; hence it is written, And he lifted up his eyes and looked, and lo, three men stood by him, and when he saw them, he ran to meet them:[34] at first they came and stood over him, but when they saw him in pain, they said, 'It is not seemly to stand here.'[35]

Who were the three men? — Michael, Gabriel, and Raphael. Michael came to bring the tidings to Sarah [of Isaac's birth]; Raphael, to heal Abraham;[36] and Gabriel, to overturn Sodom.[37] But is it not written, And there came the two angels to Sodom at even?[38] — Michael accompanied him to rescue Lot. [The Writ] supports this too, for it is written, And he overthrew those cities,[39] not, and they overthrew: this proves it.

Why is it written in the case of Abraham, [And they said,] So do, as thou hast said;[40] whereas of Lot it is written,

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(1) I.e., where local usage is to give food, no stipulation need be made. Hence, if it was, it can only mean that he was to give them more than usual.

(2) I Kings V, 2f.

(3) Cooks used to place dough above the pot, to absorb the steam and vapour.

(4) Gen. XVIII, 7.

(5) I.e., each adjective denotes another. Hence the two passages prove that Solomon's meals were infinitely larger than Abraham's.

(6) I Kings IV, 20.

(7) The idleness made them extra fat.

(8) I.e., had no brood.

(9) R. Johanan treats the adj. 'fatted' as referring to all the animals enumerated.

(10) Be Botni; so Rashi. Jast. conjectures this to be a geographical term.

(11) Through fatness. This is Amemar's explanation of 'fatted fowl'.

(12) I.e., implying another.

(13) Since the first adjective has no copulative.

(14) Gen. XVIII, 7; thus the singular is used.

(15) Ibid. 8; thus there was only one young man.

(16) This was esteemed as a great delicacy.

(17) Thus conforming to, 'When in Rome, do as Rome does'.

(18) Lit., 'a servant'.

(19) Num. XI, 31.

(20) Ex. XVI, 4.

(21) Ibid. XVII, 6.

(22) Gen. XVIII, 16.

(23) Ex. XIII, 21.

(24) Gen. XVIII, 4; this implies an order to a servant.

(25) Ex. XVII, 6.

(26) עמוד הענן , lit., 'the standing (column) of cloud.'

(27) Miriam's well corresponds to the verse quoted above: and thou shalt smite the rock, etc. The dispute is in respect of 'and he stood by them': according to Rab, his reward was the promise contained in 'behold, I will stand before thee there by the rock'; whereas in R. Hama b. R. Hanina's opinion, it was the 'pillar of cloud'. [This is an illustration of the principle 'measure for measure', which is God's guiding rule for reward and punishment.]

(28) Gen. XVIII, 4;
(29) I.e., thine own son does so.
(30) Gen. XVIII, 1.
(31) When one is particularly weak. Cf. Gen. XXXIV, 25.
(32) I.e., He made it pour forth all its heat.
(33) Gen. XVIII, 3. He called himself 'thy servant', because he was speaking to God.
(34) Ibid. 2.
(35) So they removed to a distance; hence it is first said that they 'stood by him', and then that 'he ran to meet them'.
(36) Heb. רפאל means 'healer of God'.
(37) Gabriel means 'strength of God'.
(38) Gen. XIX, 1.
(39) Ibid. 25.
(40) Ibid. XVIII, 5: they immediately accepted the invitation.

Talmud - Mas. Baba Metzia 87a

And he pressed upon them greatly?[1] — R. Eleazar said: This teaches that one may shew unwillingness to an inferior person,[2] but not to a great man.

It is written, And I will fetch a morsel of bread;[3] but it is also written, And Abraham ran unto the herd:[4] Said R. Eleazar: This teaches that righteous men promise little and perform much; whereas the wicked promise much and do not perform even little. Whence do we know [the latter half]? — From Ephron. At first it is written, The land is worth four hundred shekels of silver;[5] but subsequently, And Abraham hearkened unto Ephron; and Abraham weighed to Ephron the silver, which he had named in the audience of the sons of Heth, four hundred shekels of silver, current money with the merchant;[6] indicating that he refused to accept anything but centenaria,[7] for there is a place where shekels are called centenaria.[8]

Scripture writes, [ordinary] meal, and [it is then written], fine meal![9] — Said R. Isaac: This shews that a woman looks with a more grudging eye upon guests than a man.[10]

It is written, Knead it, and make cakes upon the hearth;[11] but it is also written, And he took butter and milk, and the calf;[12] yet he brought no bread before them! — Ephraim Maksha'ah,[13] a disciple of R. Meir, said in his teacher's name: Our Patriarch Abraham ate hullin[14] only when undefiled,[15] and that day our mother Sarah had her menstrual period.[16]

And they said unto him, Where is Sarah thy wife? And he said, Behold, She is in the tent:[17] this is to inform us that she was modest.[18] Rab Judah said in Rab's name: The Ministering Angels knew that our mother Sarah was in the tent, but why [bring out the fact that she was] in her tent? In order to make her beloved to her husband.[19] R. Jose son of R. Hanina said: In order to send her the wine-cup of Benediction.[20]

It has been taught on the authority of R. Jose: Why are the letters ejw in elajw dotted?[21] The Torah thereby taught etiquette, that a man must enquire of his hostess [about his host].[22] But did not Samuel say: One must not inquire at all after a woman's well-being?[23] — [When enquiry is made] through her husband, it is different [and permitted].

After I have waxed old, I have had youth.[24] R. Hisda said: After the flesh is worn and the wrinkles have multiplied, the flesh was rejuvenated, the wrinkles were smoothed out, and beauty returned to its place.

It is written, And my lord is old;[25] but it is also written, [And the Lord said unto Abraham,

Wherefore did Sarah laugh, saying, Shall I of a surety bear a child,] seeing that I am old?[26] the Holy One, blessed be He, not putting the question in her words! — The School of Ishmael taught: Peace is a precious thing, for even the Holy One, blessed be He, made a variation for its sake, as it is written, Therefore Sarah laughed within herself, saying, After I am waxed old, shall I have pleasure, my Lord being old also; whereas it is further written, And the Lord said unto Abraham etc. . . seeing that I am old.[27]

And she said, Who would have said unto Abraham, that Sarah should have given children suck?[28] How many children then did Sarah suckle?[29] — R. Levi said: On the day that Abraham weaned his son Isaac, he made a great banquet, and all the peoples of the world derided him, saying, 'Have you seen that old man and woman, who brought a foundling from the street, and now claim him as their son! And what is more, they make a great banquet to establish their claim!' What did our father Abraham do? — He went and invited all the great men of the age, and our mother Sarah invited their wives. Each one brought her child with her, but not the wetnurse, and a miracle happened unto our mother Sarah, her breasts opened like two fountains, and she suckled them all. Yet they still scoffed, saying, 'Granted that Sarah could give birth at the age of ninety, could Abraham beget [child] at the age of a hundred?' Immediately the lineaments of Isaac's visage changed and became like Abraham's, whereupon they all cried out, Abraham begat Isaac.[30]

Until Abraham there was no old age;[31] whoever wished to speak to Abraham would speak to Isaac, and the reverse.[32] Thereupon he prayed, and old age came into existence, as it is written, And Abraham was old and well-stricken in age.[33] Until Jacob there was no illness:[34] then Jacob came and prayed, and illness came into being, as it is written, And one told Joseph, Behold, thy father is sick.[35] Until Elisha no sick man ever recovered, but Elijah came and prayed, and he recovered, for it is written, Now Elisha was fallen sick of his sickness whereof he died,'[36] thus proving that he had been sick on previous occasions too[37] , [but had recovered].

Our Rabbis taught: On three occasions did Elisha fall sick: once when he repulsed Gehazi with both hands;[38] a second time when he incited bears against children;[39] and a third with the sickness whereof he died, as it is written, Now Elisha was fallen sick of his sickness whereof he died.[36]

BUT, BEFORE THEY BEGIN WORK, GO OUT AND TELL THEM, '[I ENGAGE YOU] ON CONDITION THAT YOU HAVE NO OTHER CLAIM UPON ME BUT BREAD AND PULSE' etc.

R. Aha, the son of R. Joseph, said to R. Hisda: Did we learn, 'Bread [made] of pulse,' or 'bread and pulse'? — He replied: In very truth, a waw ['and'] is necessary[40] as large as a rudder on the Libruth.[41]

R. SIMEON B. GAMALIEL SAID: IT WAS UNNECESSARY [TO STIPULATE THUS]: EVERYTHING DEPENDS ON LOCAL CUSTOM. What does EVERYTHING add?[42] — It adds that which has been taught: If one engages a labourer, and stipulates, '[I will pay you] as one or two townspeople [are paid],' he must remunerate him with the lowest wage [paid]: this is R. Joshua's view. But the Sages say: An average must be struck.[43] MISHNAH. NOW, THE FOLLOWING [LABOURERS] MAY EAT [OF THAT UPON WHICH THEY ARE EMPLOYED] ACCORDING TO SCRIPTURAL LAW: HE WHO IS ENGAGED UPON THAT WHICH IS ATTACHED TO THE SOIL WHEN ITS LABOUR IS FINISHED,[44] AND UPON THAT WHICH IS DETACHED FROM THE SOIL BEFORE ITS LABOUR IS COMPLETED,[45] PROVIDING THAT IT IS SOMETHING THAT GROWS FROM THE EARTH. BUT THE FOLLOWING MAY NOT EAT: HE WHO IS ENGAGED UPON THAT WHICH IS ATTACHED TO THE SOIL

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(1) Ibid. XIX, 3.

(2) In declining his invitation.
(3) Ibid. XVIII, 5.
(4) Ibid. 7 — very much more than he offered.
(5) Ibid. XXIII, 15.
(6) Ibid. 16.
(7) Centenarius = 100 manehs; a maneh = 100 zuz = 25 shekels.
(8) Hence he gave him 400 centenaria, instead of ordinary shekels as he demanded at first: this is deduced from the phrase 'current money with the merchant', implying that it was recognised everywhere as a shekel.
(9) Ibid. XVIII, 6: And Abraham hastened into the tent unto Sarah, and said, Make ready quickly three measures of קמח סלת ; the two words being apparently mutually exclusive.
(10) [Thus Abraham had to give her clear and specific instructions to provide fine meal; v. Meklenburg, J.Z. הכתב והקבלה a.l.]
(11) Ibid.
(12) Ibid. 8.
(13) Probably the disputant. [Or perhaps name of a place; v. Klein, MGWJ, 1920, P. 192.]
(14) V. Glos.
(15) I.e., he treated hullin as consecrated food, which may not he eaten when defiled.
(16) And so defiled the bread she had baked. As she was already old, the phenomenon was an earnest of the rejuvenation which was to make the birth of Isaac possible.
(17) Ibid. 9.
(18) And therefore kept herself secluded.
(19) By impressing him with her modesty.
(20) [The wine-cup over which the Grace after meals is recited and which is partaken by all the guests. V. Ber. 51a.]
(21) And they said unto him, אליו , is written איו ; איו means, 'where is he?'
(22) Thus they asked Sarah, Where is he (sc. Abraham)' just as they asked him about her (Tosaf.). [Rashi interprets: that a man should enquire (of the host) about the hostess. On dotted letters, v. Sanh. (Sonc. ed.) p. 285, n. 3.]
(23) According to Tosaf.'s interpretation of the preceding dictum, this question cannot refer to it, but to the literal meaning of the verse, that they enquired after Sarah.
(24) Ibid. 12.
(25) Ibid. 12.
(26) Ibid. 13.
(27) [I.e., God did not report that part of her statement which referred to Abraham's old age, דעת זקנים , a.l.]
(28) Ibid. XXI, 7.
(29) Seeing that she had only one.
(30) Ibid. XXV, 19.
(31) I.e., old age did not mark a Person.
(32) Because they looked exactly alike.
(33) Gen. XXIV, 1. He is the first mentioned to have been ill.
(34) One lived his allotted years in full health and then died suddenly.
(35) Ibid. XLVIII, 1; v. preceding note.
(36) II Kings XIII, 14.
(37) Lit., 'with a different sickness'.
(38) V. Sanh. 107b.
(39) V. II Kings II, 23f.
(40) I.e., bread and beans.
(41) Libruth, a river or canal, unidentified. [For various attempts to explain the phrase. v. Perles, J. Beitrage z. rab. Sprach u. Alter., 1893, p. 6.]
(42) V. p. 496, n. 3.
(43) And R. Simeon b. Gamaliel's principle teaches the view of the Sages.
(44) I.e., when it is removed from the soil.
(45) I.e., before it reaches the stage of being liable to tithes or the 'separation of dough'.

Talmud - Mas. Baba Metzia 87b

BEFORE ITS LABOUR IS COMPLETED, UPON THAT WHICH IS DETACHED FROM THE SOIL AFTER ITS LABOUR IS COMPLETED,[1] AND UPON THAT WHICH DOES NOT GROW FROM THE SOIL.[2]

GEMARA. Whence do we know these things? — It is written, When thou comest into thy neighbour's vineyard, then thou mayest eat.[3] We have found [this law to be true of] a vineyard: whence do we know it of all [other] things? We infer [them] from the vineyard: just as the vineyard is peculiar in that it [sc. its products] grow from the earth, and at the completion of its labour[4] the labourer may eat thereof; so everything which grows from the soil, the labourer may eat thereof at the completion of its work. [But, might it not be argued:] As for a vineyard, [the worker's privilege may be due to the fact] that it is liable to [the law of] gleanings, [which other cereals are not]? — We, deduce it[5] from the standing corn. But how do we know it of standing corn itself? — Because it is written, When thou comest into the kamath [standing corn] of thy neighbour, then thou mayest pluck the ears with thine hand.[6] But [may you not argue:] as for standing corn, that is because it is liable to hallah?[7] (And how do you know that this kamah means [only] such standing crops as are liable to hallah: perhaps Scripture means all standing crops?[8] — That is derived from the use of kamah in two places. Here it is written, When thou comest into the kamath [standing corn of] thy neighbour; whilst elsewhere it is written, from such time as thou beginnest to put the sickle to the kamah [corn]:[9] just as there, a kamah which is liable to hallah is meant, so here too.) [Hence, repeating the difficulty] one may refute [the analogy drawn from standing corn]: as for standing corn, that is because it is liable to hallah! — Then let the vineyard prove it. As for a vineyards that is because it is liable to [the law of] gleanings! — Let the standing corn prove it. And thus the argument revolves: the peculiarity of one is not that of the other, and vice versa. The feature common to both is, they grow from the soil, and the worker may [thus] eat of them when their labour is being finished; so also, everything which grows from the soil, when at the completion of its labour, the worker may eat of it. [No, this does not follow, as it might be argued that] their common feature is that both are used in connection with the altar;[10] and so olives will be inferred too, since they also are thus used?[11] (But are olives inferred through [partaking of] a common feature? They themselves are designated kerem,[12] as it is written, And he burnt up both the shocks and the standing corn, and also the olive kerem.[13] — R. Papa said: It is designated olive kerem, but not simply kerem.) But still, the difficulty remains![14] — Samuel answered: Scripture saith, and a sickle [thou shalt not move unto thy neighbour's standing corn], which [i.e., the 'and'] extends the law to everything which requires a sickle. But this word 'sickle' is needed [to intimate that] when the sickle [is used] you may eat, but not otherwise![15] — That follows from, but thou shalt not put any in thy vessel.[16] Now, this [deduction] is satisfactory in respect of that which requires the sickle, but what of that which does not?[17] — But, said R. Isaac, the Writ says, kamah,[18] to extend the law to everything which stands upright [from the soil].[19] But have you not employed the analogy of kamah, written twice, to shew that it means [only] such standing crops as are liable to hallah?[20] — That was only before the word 'sickle' was adduced: now, however, that 'sickle' has been quoted, everything which needs a sickle is embraced, even if not liable to hallah; hence, what is the purpose of kamah? To include everything which stands upright.

But now that we infer [these laws] from 'sickle' and kamah, what is the need of, 'When thou comest into thy neighbour's vineyard'?[21] — To teach its [detailed] laws, replied Raba. As it has been taught: When thou comest — 'coming' is mentioned here; and elsewhere too it is said, [Thou shalt not oppress a hired servant . . . . At this day thou shalt give him his hire,] neither shall the sun come down upon it:[22] just as there Scripture refers to an employee, so here too. 'Into thy neighbour's vineyard', but not into a heathen's vineyard.[23] Now, on the view that the robbery of a heathen is forbidden, it is well: but if it be held permitted — does an employee need [a verse to grant him permission]![24] — He interprets 'into thy neighbour's vineyard', as excluding a vineyard of

hekdesh.[25]

'Then thou mayest eat', but not suck out [the juice]; 'grapes', but not grapes and something else;[26] 'as thine own person', as the person of the employers, so the person of the employee: just as thou thyself[27] mayest eat [thereof] and art exempt [from tithes], so the employee too may eat and is exempt.[28] 'To thy satisfaction': but not gluttonously; 'but thou shalt not put any in thy vessel': [only] when thou canst put it into thine employer's baskets, thou mayest eat, but not otherwise.[29]

R. Jannai said: Tebel[30] is not liable to tithes

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(1) In the sense stated in n. 2.

(2) E.g., one who milks cows or makes cheeses may not partake of the milk or cheese.

(3) Deut. XXIII, 25. Further on it is explained that the verse refers to a labourer.

(4) I.e., when the grapes are vintaged.

(5) That the law applies to other products too.

(6) Ibid. 26.

(7) V. Glos.

(8) E.g., crops of beans, which are not liable to hallah.

(9) Ibid. XVI, 9. The reference is to the 'omer of barley brought on the second day of Passover. cf. Lev. XXIII, 10: barley is liable to hallah.

(10) Wine for libations and meal for meal offerings.

(11) Most of the meal offerings were mingled with oil.

(12) The word translated 'vineyard' in Deut. XXIII, 25.

(13) Judg. XV, 5.

(14) That the common feature is that they are employed in connection with the altar.

(15) I.e., when the cereals are ready to be cut off with the sickle.

(16) Deut. XXIII, 25. This shews that the reference is to those which can be put in a vessel. sc. removed from the soil.

(17) E.g., the harvesting of dates. How do we know that the labourer may eat of them?

(18) Lit., 'standing', E.V.: standing corn.

(19) I.e., all crops.

(20) V. supra.

(21) For the vineyard too may be deduced thus.

(22) Ibid. XXIV, 14, 15.

(23) The text has כותי , Cuthean, but under the influence of the censorship this word was frequently substituted for Gentile. The deduction is, only in an Israelite's vineyard is the labourer enjoined, but thou shalt not put any in thy vessel, but not in a Gentile's.

(24) The robbery of a heathen, even if permitted, is only so in theory, but in fact it is forbidden as constituting a 'hillul hashem', profanation of the Divine Name. But the consensus of opinion is that it is Biblically forbidden too, i.e., even in theory; v. H.M. 348, 2, and commentaries a.l.; Yad, Genebah, 1, 2; 6, 8; v. however, n. 9.

(25) V. Glos. The labourer is not permitted to pluck and eat grapes from a vineyard belonging to the sanctuary. [The interpretation of the passage follows Rashi, who was driven to adopt it, having regard to the text he had before him. The difficulty of this interpretation is, however, evident. It not only involves a difference in the explanation of the same deduction as applying to a heathen (v. n. 7) and as applying to hekdesh, but it runs counter to the passage in Sanh. (v. Sonc. ed. pp. 388f), which makes it clear that robbery of a heathen was never condoned, hut always regarded as an offence, though it was non-actionable. Moreover, the condemnation of taking usury from a heathen (supra 70b) should be sufficient to dispel all doubt as to the Rabbinic attitude on the matter. A solution to the Problem is supplied by the variant (v. D.S. a.l.): 'Now on the view that the robbery of a heathen is forbidden, it is well; but if it is held to be permitted, what can be said?' The argument would accordingly run as follows: 'If it is held that the robbery of a heathen is forbidden (to be kept) and is then on all fours with that of an Israelite, it is understood that the Law has permitted the employee to pluck and eat the grapes only in an Israelite's vineyard, but not if the vineyard belonged to a heathen; but if the robbery of a heathen is permitted, i.e., to be kept, is it possible that the Law, whilst allowing a delinquent to enjoy the property stolen from a heathen, should forbid the employee to pluck the grapes from the employer's vineyard?']

(26) I.e., the labourer must not make a meal of bread and grapes.

(27) To whom the grapes belong.

(28) Until the grapes have been turned into wine and conducted into the pit, whither the expressed juice runs, their owner may eat of them without tithing. Should he, however, sell them before that, they are immediately subject to tithes, which must be rendered by the purchaser before eating. Now, I might think that since the employee eats them in part remuneration for his labour, they are as bought with his labour, and therefore may not be eaten without tithing. Therefore this word כנפשך (lit., 'as thy own soul,' 'person') intimates that he is on the same footing in this respect as the owner.

(29) V. supra p. 505, n. 9.

(30) V. Glos.

Talmud - Mas. Baba Metzia 88a

until it sees the front of the house,[1] for it is written, I have brought away the hallowed things out of mine house.[2] R. Johanan said: Even a courtyard establishes liability to tithes, for it is written, that they may eat at thy gates and be filled.[3] But according to R. Johanan, is it not written, out of mine house? — He can answer you: [It teaches that] the court yard must be similar to the house [in order to impose liability]: just as a house is guarded, so also must the courtyard be guarded.[4] But R. Jannai! Is it not written, 'in thy gates'? — That is required [to shew] that it must be brought into [the house] through the gates, but not over the roof or through [back] enclosures, when no liability is established.

R. Hanina of Be-Hozae[5] raised an objection: As thine own person: as the person of the employer, so the person of the employee; just as thou thyself mayest eat [thereof] and art exempt [from tithes], so also the employee may eat, and is exempt. This thus implies that a purchaser is liable:[6] and does it not mean even in the field?[7] — R. Papa said: This refers to a fig tree growing in a garden, but with its branches inclining to the court-yard,[8] or, to the house, on the view that [it must see the front of] the house. If so, even the [first] owner should be liable![9] — The owner's eyes are upon the [whole] fig-tree, whereas the buyer has eyes only for his purchase.[10] But is a purchaser at all liable by Biblical law? Has it not been taught: Why were the bazaars of Beth Hini[11] destroyed? Because they based their actions upon Scripture.[12] They used to say,

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(1) I.e., unless it is taken into the house through the front door, not through the roof or backyard.

(2) Ibid. XXVI, 13: the deduction presumably is thus: as it is openly brought out of the house through the front, so it must have been taken in, in order to become 'hallowed', i.e., tithed.

(3) Ibid. 22: 'they' refers to the Levite etc., who eat the tithes 'at thy gates', which implies that the crops had not entered the house but remained at 'thy gate', i.e., in the courtyard.

(4) But if free and open to all, it establishes no liability.

(5) [The Modern Khuzistan, province S. W. Persia, Obermeyer, op. cit. pp. 204ff.]

(6) V. P. 507, n. 3.

(7) For just as the employee eats it on the field, by implication, if a purchaser desires to eat thereof on the field, he is liable, though it has not yet seen the front of the house or the courtyard.

(8) So that immediately the fruit is plucked it sees the front thereof.

(9) For immediately it is plucked it fulfils the conditions of liability by seeing the front of the house or court.

(10) I.e., the owner does not regard a single branch; therefore, since the whole tree does not face the house, he is exempt. But the purchaser is interested only in his purchase; hence, if the branch from which his figs are gathered faces the house or courtyard, he is liable.

(11) Bethania, a place near Jerusalem; Jast. [The parallel passage in J. Pe'ah I, has the bazaars of Beth Hanan, v. Sanh. (Sonc. ed.) p. 267, n. 4. These were stores set up on the Mount of Olives for the supply of pigeons and other commodities required for sacrifices, and owned by the powerful priestly family, to whom they proved a source of wealth. They were destroyed three years before the fall of Jerusalem; v. Derenbourg, Essai, p. 468, and Buchler, Priester und Cultus, p. 189.]

(12) Disregarding Rabbinical law.

Talmud - Mas. Baba Metzia 88b

Thou shalt truly tithe . . . And thou shalt eat, [implies] but not if thou sellest it; the increase of thy seed, but not if it is purchased![1] — But [the liability of a purchaser] is only by Rabbinic law, and the verse[2] is a mere support. Then what is the purpose of, 'as thine own person?[3] — As has been taught: 'As thine own person': just as if thou muzzlest thine own [mouth], thou art guiltless, so also, if thou muzzlest [the mouth of] thy labourer, thou art free [from transgression].[4]

Mar Zutra raised an objection: What is their harvesting time for [liability to] tithes? In the case of cucumbers and gourds, when they are blossomed.[5] And R. Assi interpreted this: As soon as their blossoms are shed. Now, does that not mean, as soon as their blossoms are shed even in the field?[6] — No, only in the house. If so, instead of saying, 'as soon as', etc., he [the Tanna] should state [they are not liable] 'until their blossoms are shed'.[7] Had he stated 'until etc.', I would think that it means until the shedding of their blossom is complete; therefore we are taught, by stating 'as soon as' etc., that it means as soon as the shedding commences.

Mar Zutra, the son of R. Nahman, raised an objection: Its harvesting time in respect of tithes, in that the prohibition of tebel is transgressed,[8] is when its work is finished. And what is the finishing of its work? When it is brought in. Now, surely, 'when it is brought in' means, even in the field?[9] — No; when it is brought into the house, that is the completion of its work. Alternatively, R. Jannai's dictum[10] refers only to olives and grapes, which are not gathered into a threshing floor;[11] but in the case of wheat and barley, the threshing floor is distinctly stated.[12]

We now know that man [may eat when employed upon] what is attached to the soil, and an ox of what is detached;[13] whence do we know that man may eat of what is detached?[14] — It follows a minori, from an ox: if an ox, which does not eat of what is attached,[15] may nevertheless eat of what is detached; then a man, who may eat of what is attached,[16] may surely eat of what is detached! As for an ox, [it may be argued] that [sc. the privilege mentioned] is because you are forbidden to muzzle him; can you assume the same of man, whom you are not forbidden to muzzle?[17] (But then let the muzzling of man be interdicted, a fortiori, from an ox: if you must not muzzle an ox, whose life you are not bidden to preserve, then man, whose life you are bidden to preserve,[18] you must surely not muzzle him! — Scripture teacheth, 'As thine own person', so is the person of the labourer: just as 'thine own person', if you muzzle [yourself], you are free [from penalty], so also, if you muzzle the labourer, you are free.) Then [the question remains], whence do we know that man [may eat when engaged upon] what is attached? — Scripture saith, '[When thou comest into] the standing corn . . . [but thou shalt not move a sickle unto thy neighbour's] standing corn,' — twice: since its purpose is not to teach that man may eat of what is attached,[19] apply it to man, in respect of what is detached. R. Ammi said: That man may eat of what is detached, no [redundant] verse is necessary. For it is written, 'When thou contest into thy neighbour's vineyard': does this not hold good even if he was hired for porterage?[20] And yet the Torah states that he may eat [of the grapes].

Whence do we know than an ox [may eat] of what is attached? — It follows, a minori, from man: if man, who does not eat of what is detached,[21] may eat of what is attached; then an ox, which may eat of what is detached, may surely eat of what is attached! — As for man, [may it not be argued,] that [sc., the privilege mentioned] is because you are bidden to preserve his life; will you say the same of an ox, whose life you are not bidden to preserve? (But then infer a duty to preserve the life of an ox,[22] a minori: if man, though you are not forbidden to muzzle him, you are commanded to preserve his life; then an ox, which you may not muzzle, you are surely commanded to keep it alive!? — Scripture saith, That thy brother may live with thee, — thy brother, but not an ox.) Then [the question remains,] whence do we know that an ox may eat of what is attached? — Scripture

saith, '[When thou contest into] thy neighbour's [vineyard] . . . [When thou comest into the standing corn of] thy neighbour' — twice: since it[23] is unnecessary for man in respect of what is attached, apply it to an ox in respect of what is attached.

Rabina said: Neither for a man, in respect of what is detached, nor for an ox, in respect of what is attached, are the [above] verses necessary; because it is written, Thou shalt not muzzle the ox, when he treadeth out the corn.[24]

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(1) V. Deut. XIV, 22f. Hence, only when the farmer consumes his crops himself must he tithe it, but not if he sells it; likewise, only the increase of one's own seed is liable, but not bought grain. And this is designated Biblical law.

(2) Sc. כנפשך , exempting the labourer.

(3) V. p. 507, n, 3 end. Since, however, a purchaser is exempt by Biblical law, it follows, even without a verse, that a labourer is exempt.

(4) I.e., although the labourer is entitled to eat, yet if the employer stipulates that he shall not, or forcibly prevents him — metaphorically referred to as muzzling, cf. Deut. XXV, 4: Thou shalt not muzzle the ox when he treadeth out the corn — he is not punished for transgressing the injunction just quoted.

(5) Ma'as. I, 5.

(6) Though they have not yet faced the courtyard or the house.

(7) 'As soon as etc.,' implies that wherever they are the shedding renders them liable. The suggested emendation, however, would imply, even when brought into the house, they are still not liable until, etc.

(8) Sc. if one eats anything thereof without tithing it. Before it becomes liable to tithes it is permissible to make a light meal of it, without transgressing the prohibition of tebel.

(9) 'Brought in' being understood in the sense of 'collected into a stack'.

(10) Supra 87b, bottom.

(11) Hence the liability to tithes is established only when they 'see the face of the house.'

(12) Num. XVIII, 30: Then it shall be counted unto the Levites as the increase of the threshing floor. This shews that in the case of cereals the threshing floor establishes the Levite's right to the tithe.

(13) Deut. XXV, 4. Threshing follows reaping, when the crops are no longer in the earth.

(14) As stated in the Mishnah.

(15) I.e., which Scripture does not explicitly permit to do so, though it is inferred below.

(16) I.e., permission is explicitly granted: Deut. XXIII, 25f.

(17) V. supra p. 509, n. 5.

(18) V. Lev. XXV, 36.

(19) It being unnecessary to state 'standing corn' twice for that purpose.

(20) I.e., for carrying the cut-off grapes to the press or elsewhere; for Scripture does not specify the nature of the work.

(21) V. p. 510, n. 7.

(22) I.e., until it is actually needed for food, one should be bidden to keep it in good health and save it from an unnecessary death.

(23) The repetition of 'thy neighbor'.

(24) Deut. XXV, 4.

Talmud - Mas. Baba Metzia 89a

Now consider: everything is included in this prohibition of muzzling, because we employ the analogy of 'ox' written here and in the case of the Sabbath:[1] then Scripture should have written, 'Thou shalt not thresh with muzzled [animals]:' why write, 'ox'? To assimilate the muzzler [sc. man] to the muzzled [sc. ox and animals in general], and vice versa. Just as the muzzler [man] may eat of what is attached, so the muzzled may eat of what is attached; and just as the muzzled may eat of what is detached, so the muzzler may eat of what is detached.

Our Rabbis taught: 'Threshing':[2] just as threshing is peculiar in that it applies to what is grown in the earth, and the labourer may eat whilst employed thereon; so also, of everything which is grown

in the earth, the labourer may eat. Hence milking, pressing thick milk,[3] and cheese-making are excluded: since they are not earth-grown, the labourer may not partake thereof. But why is this needed? Does it not follow from, 'When thou comest into thy neighbour's vineyard'? — It is necessary: I might think, since 'kamah' is written to include everything that stands upright,[4] it also embraces what is not earth-grown; therefore we are taught otherwise.

Another [Baraitha] teaches: 'Threshing': just as threshing is peculiar in that it is an employment at the completion of its labour,[5] and the worker may eat whilst engaged thereon; so during every thing which is done at the completion of its labour, the worker may eat. Hence weeding amongst garlic and onions is excluded: as it is not the completion of the work,[6] the labourer may not eat. But why is this necessary?[7] Does it not follow from, but thou shalt not put any in thy vessel?[8] — It is necessary, [to intimate that he may not eat] even when removing small onions from amongst large ones.[9]

Another [Baraitha] taught: 'Threshing': just as threshing is peculiar as being a process which does not complete its work [to render it liable] to tithes, and the labourer may eat thereof; so also during everything which does not complete the work [to subject it] to tithes, the labourer may eat. Hence separating dates and dried figs [sticking together] is excluded: since its work is finished in respect of tithes, the worker may not eat. But has it not been taught: When separating dates and dried figs, the worker may partake thereof? — R. Papa replied: That refers to half-ripe dates.[10]

Another [Baraitha] taught: 'Threshing': just as threshing is peculiar in that it is a process which does not finish its work for hallah,[11] and the labourer may eat whilst engaged thereon; so during every process which does not finish its work in respect of hallah, the labourer may eat. Thus kneading, shaping [the dough] and baking are excluded; since its work is completed in respect of hallah, the worker may not eat whilst engaged thereon. But its work is complete in respect of tithes![12] — There is no difficulty: the reference is to the Diaspora,[13] where there are no tithes. If so, hallah too is not practised![14] — But after all, this refers to Palestine, yet there is no difficulty. For the reference is to the seven years of conquest and seven years of division.[15] For a Master said: In the seven years of conquest and the seven of division there was a liability to hallah, but not to tithes. But is it the tithing that is responsible? It is the finishing of the work that is responsible![16] — But, said Rabina, combine [the two Baraithas] and read [thus]: 'Threshing': just as threshing is peculiar in that its work is not complete in respect of tithes and hallah, and the worker may eat whilst engaged thereon, so during everything, the work of which is not complete in respect of tithes and hallah, the labourer may eat.[17]

The scholars propounded: Is the labourer permitted to parch [the ears of corn] at a fire and eat them? Is it the equivalent of [eating] grapes together with something else,[18] or not?[19] — Come and hear: An employer may give his employees wine to drink, that they should not eat many grapes; [on the other hand,] the labourers may dip their bread in brine, that they should eat many grapes![20]

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(1) V. B.K. 54b. Just as 'ox' is singled out in connection with the Sabbath, yet at the same time Scripture adds that all animals must rest (Deut. V. 14), so by 'ox' here all animals are meant.

(2) I.e., the law forbidding the muzzling of an ox during 'threshing', 'treading out the corn', from which it was deduced that both man and beast may eat of that upon which they labour.

(3) In the process of making a certain kind of cheese,

(4) V. supra.

(5) Sc. of harvesting.

(6) Of producing these vegetables.

(7) Sc. the analogy from threshing.

(8) Deut. XXIII, 25. V. p. 505, n. 9.

(9) I.e., onions which never grow to a large size. These were removed to give the others room for more vigorous growth. Now, although these are 'Put into the employer's basket,' the labourer may not eat, not being engaged upon the

completion of the work.

(10) I.e., a kind of date and fig which does not fully ripen on the tree but only in the house. The 'separating' spoken of here means before they have ripened in the house, and so are not finished in respect of tithes.

(11) V. Glos.

(12) And, as stated above, that alone forbids the worker to eat; why then base the ruling upon hallah?

(13) Lit., 'outside the land,' sc. Palestine.

(14) Though a small Portion of dough is separated and burnt even in the Diaspora, that is only symbolical; but the real law of hallah requires that a definite portion be given to the priests, and that is not practised outside Palestine.

(15) I.e., the Baraitha treats of the fourteen years during which Palestine was conquered and allotted to the tribes by Joshua.

(16) As deduced by analogy from 'threshing'. And therefore, whether the law of tithes is in force or not, once the stage of threshing or its equivalent is reached, when there would be a liability to tithes if the law were in force, the labourer may not eat. And so the difficulty remains: why exclude kneading on the grounds of liability to hallah, seeing that threshing preceded it?

(17) Hence, if it is a process which completes the work for tithes, and there is no further stage to subject it to hallah, e.g., the separating of dates, the labourer may not eat. If, however, its final stage is liability to hallah, e.g., wheat, the last stage of which is the kneading, when it is subject to hallah, if the worker is engaged upon an earlier stage, though it is already liable to tithes, he may eat. Rashi and Tosaf.

(18) Which is forbidden. Supra.

(19) For it may be argued that since grapes may not be eaten with bread, because thereby an unreasonably large quantity is consumed, the same holds good of parched corn, which is more palatable than unparched.

(20) The moistened bread creating an appetite. So, by analogy, a labourer may parch the corn.

Talmud - Mas. Baba Metzia 89b

— As for making the man fit [to eat more], of that there is no question: our problem is only whether the food may be rendered more appetising?[1] What is the ruling? — Come and hear: Labourers may eat the top most grapes of the [vine-] rows,[2] but must not parch them at the fire! — There it [the prohibition] is on account of loss of time:[3] but our problem arises when he has his wife or children with him; what then?[4] — Come and hear: He [the labourer] may not parch [the crops] at the fire and eat, nor warm them in the earth,[5] nor crush them on a rock; but he may crush them between his hands and eat them! — There [too] it is on account of loss of time. That too is logical: for should you think it[6] is because he [thereby] makes the fruit tasteful, what tastefulness is there [acquired by crushing them] on a rock? — [No; the reasoning is incorrect,] because it is impossible for it not to become slightly [more] tasteful.

Come and hear: Workers engaged in picking figs, harvesting dates, vintaging grape, or gathering olives, may eat, and are exempt [from tithes],[7] because the Torah privileged them. But they must not eat these with their bread, unless they obtain permission from the owner, nor dip them in salt and eat![8] — Salt is certainly the same as grapes and something else.[9]

[It has just been stated:] 'Nor dip them in salt and eat.' But the following contradicts it: if one engages a labourer to hoe and to cover up the roots of olive trees, he may not eat.[10] But if he engages him to vintage [grapes], pluck [olives], or gather [fruit], he may eat, and is exempt [from tithes], because the Torah privileged him. If he [the labourer] stipulates [that he is to eat], he may eat then, singly, but not two at a time.[11] And be may dip them in salt and eat. Now, to what [does this refer]? Shall we say, to the last clause? But having stipulated, he can [obviously] eat just as he wishes! Surely then it must refer to the first clause![12] — Abaye answered: There is no difficulty: here it [the second Baraitha] refers to Palestine; there [the first] to the Diaspora. In Palestine, dipping [in salt] establishes [a liability to tithes]; in the Diaspora, it does not.[13] Raba demurred: Is there aught for which dipping establishes [a liability] in Palestine, but not in the Diaspora, so that it is permitted from the very outset?[14] But, said Raba, both in palestine and without, for one [fig] salting does not

establish [liability],[15] but for two it does. But if he [sc. the labourer] stipulates [that he is to eat], whether he salts or not, he may eat [them] one by one, but not in twos. [Hence:] If he neither stipulates nor salts them, he may eat them two by two; if he salts them, he may eat them one by one, but not two by two, even if he obtained the employer's permission,[16] because they become tebel in respect of tithes, the salting establishing [that liability].[17] And whence do we know that salting establishes [liability only for] two? — Said R. Mattena: Scripture saith, For he hath gathered them as the sheaves to the threshing floor.[18]

Our Rabbis taught: When cows stamp [hullin] grain[19]

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(1) Lit., 'fit'.

(2) They may conserve their appetite till they reach these, which being more exposed to the sun than the lower ones, are sweeter (Rashi).

(3) Lit., 'cessation of work'.

(4) There is no loss of time, as they can singe it.

(5) By placing them in warm soil.

(6) I.e., the Prohibition referred to.

(7) V. p. 507, n.3.

(8) Now, it was assumed that dipping in salt is forbidden because it renders it more appetising, and therefore parching too will be forbidden.

(9) I.e., no deduction may be drawn from this, for salt is an addition. Yet it may be permissible to parch corn, since nothing is added.

(10) Of the olives, because it is not the finish of the work.

(11) Two together count as a store, therefore are subject to tithes. Since the labourer stipulates that he is to eat, it is part of his payments and hence ranks as bought, and therefore he may not eat them; v. supra 88a.

(12) Where no stipulation was made: hence it contradicts the first Baraitha.

(13) When one dips an olive in salt he shews that he attaches value to it, which renders it completely ready for eating, and precludes further storing. Hence, in Palestine, where tithing is Biblical, the dipping imposes a liability. But in the Diaspora, where it is only Rabbinical and consequently less stringent, it does not.

(14) Sc. to partake thereof without having rendered the tithes. Though tithes in the Diaspora are only Rabbinical, the Rabbis formulated the law on the same conditions as in Palestine, and therefore, whatever establishes a liability there establishes it in the Diaspora too.

(15) Being of insufficient value.

(16) For otherwise, not having stipulated, he may not salt them at all, as stated above.

(17) V. p. 515, n. 7. Only when the stage of liability is reached it is called tebel. — Thus the first Baraitha refers to eating two at a time; no stipulation having been made, they may not be dipped in salt, But the second refers to a case where a stipulation was made; since the mere stipulation establishes a liability for two, it follows that he must eat the fruit singly, and that being so, the Tanna can state in general terms that he may salt them.

(18) Mic. IV, 12. Thus there can be no threshing floor, i.e., storage, the final stage of which imposes liability, without gathering, and there cannot be gathering of less than two (actually, the Heb. has עמיר sing., but the plural must be understood).

(19) V. Glos. Barley grain was soaked in water, dried in an oven, and threshed by the treading of cows, which removed the husks.

Talmud - Mas. Baba Metzia 90a

or thresh terumah and tithes,[1] there is no prohibition of, Thou shalt not muzzle [the ox when he treadeth out — i.e., threshes — his corn];[2] but for the sake of appearances[3] he must bring a handful of that species and hang it on the nosebag at its mouth. R. Simeon b. Yohai said: He must bring vetches and hang them up for it, because these are better for it than anything else. Now the following contradicts it: When cows are stamping on grain, there is no prohibition of, Thou shalt not muzzle; but when they thresh terumah or tithes, there is. When a heathen threshes with an Israelite's cow, that

prohibition is not transgressed;[4] but if an Israelite threshes with a heathen's beast, he does. Thus the rulings on terumah are contradictory, and likewise those on tithes. Now, as for the rulings on terumah, it is well, and there is no difficulty: the one refers to terumah [itself]; the other to the produce of terumah;[5] but as for the rulings on tithes, these are certainly difficult. And should you answer, there is no contradiction in the rulings on tithes either, one referring to tithes and the other to the produce of tithes[6] — as for the produce of terumah, the answer is fitting, since it is terumah;[7] but the produce of tithes is hullin. For we learnt: The produce of tebel and the produce of the second tithe[8] are hullin![9] — But there is no difficulty: the one refers to the first tithe; the other to the second.[10] Alternatively, both refer to the second tithe, yet there is no difficulty: the one [sc. the first Baraitha] agrees with R. Meir; the other with R. Judah. [Thus:] The one agrees with R. Meir, who maintained that the second tithe is sacred property;[11] the other with R. Judah, who held it secular property.[12] [And] how is it conceivable?[13] — E.g., if he [the owner] anticipated [the tithing] whilst it was yet in ear. But [even] on R. Judah's view, does it not require the wall [of Jerusalem]?[14] — He threshed it within the walls of Beth Pagi.[15] Another alternative is this: there is no difficulty: one refers to a certain tithe, the other to a doubtful tithe.[16] Now that you have arrived at this [solution], there is no contradiction between the two rulings on terumah too: the one refers to certain terumah, the other to doubtful terumah. Now, that is well with respect to a doubtful tithe, which exists. But is there a doubtful terumah? Has it not been taught: He[17] also abolished the widuy[18] and enacted the law of demai. Because he sent [messengers] throughout the territory of Israel, and saw that only the great terumah was rendered![19] — But there is no difficulty: the one refers to terumah of the certain tithe; the other to terumah of the doubtful tithe.

The scholars put a problem to R. Shesheth: What if it ate and excreted?[20] Is it [sc. the prohibition of muzzling] because it [the crops] benefits her, whereas here it does not; or because it sees and is distressed [through inability to eat], and here too it is distressed [if muzzled]? — R. Shesheth replied: We have learnt it: R. Simeon b. Yohai said: He must bring vetches and hang them up for her, because these are better for her than anything else. This proves that the reason is that it benefits her. This proves it.

The scholars propounded: May one say to a heathen, 'Muzzle my cow and thresh therewith'? Do we say, the principle that an instruction to a heathen is a shebuth[21] applies only to the Sabbath, [work] being forbidden on pain of stoning;[22] but not to muzzling, which is prohibited merely by a negative precept: or perhaps there is no difference? — Come and hear: If a heathen threshes with the cow of an Israelite, he [the Israelite] does not infringe the precept, Thou shalt not muzzle! [This implies,] He merely does not infringe it,[23] yet it is forbidden![24] — Actually, it is not even forbidden; but because the second clause states that if an Israelite threshes with a heathen's cow, he does infringe;[25] the first clause too teaches that he does not infringe.

Come and hear: For they [the scholars] sent to Samuel's father: What of those oxen

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(1) Though stated above that at the stage of threshing there is no liability of tithes, yet the owner can separate the terumah and the tithes, if he wishes, whilst the grain is in the ear; in that case the cows thresh ears of corn that are actually terumah or tithes.

(2) Deut. XXV, 4; stamping, because that is a later stage. With respect to terumah, (v. Glos.) etc., two reasons are given: (i) Since threshing of terumah is not usual, the injunction could not have applied to it (Rashi); (ii) . . . when he treadeth out his corn, excludes terumah, which is entirely prohibited to an Israelite (i.e., not a priest), and tithes, which are considered as sacred property, though not forbidden, and therefore not 'his' (Tosaf.).

(3) That one who sees it should not think he is transgressing.

(4) I.e., the Jew does not transgress by permitting the Gentile to muzzle his cow.

(5) With respect to the former there is no prohibitions as explained on p. 516, n. 7. But if it were sown and produced a further crop, Biblically speaking it is not terumah at all, but ordinary hullin, though by a Rabbinical enactment it ranks as such. Since the Rabbis cannot nullify a Scriptural prohibition, the injunction, Thou shalt not muzzle, remains in force.

The reason for this Rabbinical measure was that otherwise the Israelite might evade his obligations by separating terumah and then resowing it. Also, should a priest possess defiled terumah, which may not be eaten, he might keep it for resowing, when likewise it reverts to hullin by Scriptural law; but whilst keeping it he might forget its defiled nature and eat it.

(6) As in the case of terumah.

(7) I.e., by Rabbinical law, and therefore it is necessary to teach that in this respect the Scriptural law applies.

(8) Two tithes were separated; the first, given to the Levite, and the second, which was retained by the Israelite and eaten in Jerusalem, v. Deut. XIV, 22ff.

(9) As stated above, p. 516, n. 3, the crops are called tebel only when the stage of liability to this has been reached. Before that it is permissible to make a light meal thereof even without tithing, but not after. Now, if the stage of liability was reached, so that it became tebel, and it was resown, the produce is not tebel but hullin, and one may enjoy a light meal thereof before tithing. As for the second tithe, the Rabbis did not enact that its produce shall be second tithe too, as in the case of terumah, because there was no fear that the Israelite would keep and resow it, in order to evade his obligations, since the second tithe might be redeemed and eaten outside palestine, v. Ter. IX. 4.

(10) The first tithe is regarded as his corn, since an Israelite may eat it too, and without restriction of place, hence the prohibition of muzzling applies. But the second tithe, since it must be eaten in Jerusalem, is regarded as sacred property, and so not included in the prohibition (Tosaf.).

(11) Lit., 'property of the (Most) High.'

(12) Kid. 24a.

(13) That it should be a tithe before threshing: — The bracketed 'and' (וְ) is absent from our text and Rashi's, but given in Tosaf.

(14) I.e., since he tithed the crops in ear, nothing thereof is to be consumed — not even by beasts — outside the walls of Jerusalem. How then may the animal thresh it unmuzzled?

(15) The outer wall of Jerusalem, added to the original limits of the town; v. Sanh. (Sonc. ed.) p. 67, n. 9.

(16) Heb. דמאי . Corn purchased from the ignorant peasants, who were very lax in their rendering of tithes, had to be tithed by the purchaser, for fear that the vendor had not done so. This was called a doubtful tithe, and required only by Rabbinical law; therefore the prohibition of muzzling applies; v. p. 517, n. 2.

(17) Sc. John Hyrcanus.

(18) Lit., 'confession'; v. Deut. XXVI, 1-15. The declaration referred to is called widuy. But John Hyrcanus abolished it, because of the verse, I have brought away the hallowed things out of mine house, and also have given them unto the Levite, 'Them' refers to the first tithe, but according to the Talmud, after the return from Babylon Ezra enacted that it should be given to the priests, as a punishment to the Levites for their reluctance to return to the Holy Land. Since one could not truthfully say, I have given them unto the Levite, the recital was abolished.

(19) Because of the dread of the penalty involved — death at the hands of Heaven. The separation of terumah made by the Israelites and given to the priests was called 'the great terumah', to distinguish it from 'the terumah of the tithe', i.e., a tenth part given by the Levite, of the tithe he received, to the priest, and which had the higher sanctity of terumah. Since, then, even the irreligious rendered the great terumah, the law of demai would not have been enacted in respect thereto.

(20) Through suffering with diarrhoea.

(21) Lit., 'rest, abstention from work', and is mainly applied to types of work which, though not falling within the definition of labour forbidden on the Sabbath, are nevertheless prohibited as being out of keeping with its sacredness. To instruct a Gentile to work on the Sabbath is a shebuth, i.e., not actual labour, yet interdicted as not harmonising with the Sabbath. This is an instance where one may not instruct a Gentile to do what is forbidden to oneself, and the problem here is whether this prohibition applies to all forbidden acts.

(22) Hence it is unseemly to bid a Gentile do it.

(23) In the sense that he incurs punishment.

(24) For an Israelite to bid him to do this.

(25) And is punished.

Talmud - Mas. Baba Metzia 90b

which Arameans[1] steal [at the instance of the owners] and castrate?[2] He replied: Since an evasion

was committed with them, turn the evasion upon them [their owners], and let them be sold![3] — R. Papa replied: The Palestinian scholars[4] hold with R. Hidka, viz., that the Noachides are themselves forbidden to practise castration, and hence he [the Israelite, in instructing the heathen to do it,] violates, Ye shall not put a stumbling block before the blind.[5] Now, Raba thought to interpret: They must be sold for slaughter.[6] Thereupon Abaye said to him: It is sufficient that you have penalised them to sell.[7]

Now, it is obvious that an adult son is as a stranger;[8] but what of a minor son? — R. Ahi forbade it;[9] whilst R. Ashi permitted it. Meremar and Mar Zutra — others state, certain two hasidim —[10] interchanged with each other.[11]

Rami b. Hama propounded: What if one put a thorn in its [sc. the animal's] mouth?[12] [You ask, What] if one put [a thorn in its mouth]? Surely that is real muzzling![13] — But [the problem is], what if a thorn stuck in its mouth?[14] [Similarly,] What if one caused a lion to lie down outside [the field in which the ox was threshing]?[15] 'What if one caused a lion to lie down?' Surely that is actual muzzling! — But [the problem is], What if a lion lay down outside [of its own accord]?[16] What if one placed its [sc. the animal's] young outside the field?[17] What if it thirsted for water [and so could not eat]? What if he spread a leather cover over the grain to be threshed?[18] — Solve one of these problems from the following [Baraitha]. For it has been taught: The owner of the cow[19] may let it go hungry, that it should eat much of the grain it threshes; whilst on the other hand, the landowner may untie a bundle of [trodden] sheaves before the cow, that it should not eat much of the threshing![20] — There it is different, because it does eat nevertheless. Alternatively [it means], the field owner may untie a bundle of [trodden] sheaves in front of the cow before the commencement [of the threshing], so that it should not eat much of the corn that is threshed.[21]

R. Jonathan asked R. Simai: What if he muzzled it outside?[22] Does Scripture mean, [Thou shalt not muzzle] an ox when [i.e., at the time that] it thresheth,[23] whilst this is not [done] when it thresheth? Or perhaps Scripture meant, Thou shalt not thresh with a muzzled ox? — He replied: You may learn from your father's house.[24] Do not drink wine or strong drink, thou, nor thy sons with thee, when ye enter [into the tabernacle etc.].[25] Now, is it forbidden only when ye enter, yet one may drink before and then enter? But Scripture saith, And that ye may put difference between holy and unholy![26] Hence, just as there, when the priest has entered there must be no drunkenness, so here too: when threshing, the ox must not be in a muzzled state.

Our Rabbis taught: He who muzzles an ox or harnesses together [two] heterogeneous animals[27] is exempt [from punishment], and only he who threshes or drives them is flagellated.[28]

It has been stated: If one frightened it off[29] with his voice, or drove them [sc. the yoke of heterogeneous animals] with his voice: R. Johanan held him liable to punishment, the movement of the lips being an action; Resh Lakish ruled that he is not, because [the use of] the voice is not an action.[30] R. Johanan raised an objection to Resh Lakish:

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(1) [From the third century onward the Babylonian heathens, the Mandeans or Sabeans, were designated Arameans, v. Obermeyer, op. cit. p. 75.]

(2) [This was a device resorted to by Jewish owners in order to evade the relevant prohibition; Lev. XXII, 24.]

(3) This proves that one may not even instruct a heathen to perform that which is forbidden merely by a negative precept, as castration.

(4) Lit., 'children of the West'.

(5) Lev. XIX, 14. But muzzling is not forbidden to heathens.

(6) Which brings less than when sold for work.

(7) Without insisting that they lose part of their value.

(8) To whom it may be sold.

(9) To sell them to him.
(10) Lit., 'pious men', a designation of men known for their extreme piety.
(11) I.e., their oxen having been castrated without their knowledge (Tosaf.).
(12) To prevent it from eating; is it the equivalent of muzzling or not?
(13) Surely there can be no doubt that it is forbidden.
(14) Is the owner bound to remove it or not?
(15) Thereby frightening off the animal from eating.
(16) Is the owner bound to chase it away or not?
(17) And the mother in her yearning toward it could not eat. Here the Talmud does not object that this is actual muzzling, because yearning is not as strong a preventive as terror. But other texts read: what if its young stationed itself, etc.? (Tosaf.)
(18) So that it might not see the grain.
(19) Who hires it out.
(20) Thus, one may do something to prevent the cow from eating, and it is assumed that this is analogous to spreading a leather over the grain.
(21) Whereas the problem is whether a leather may be spread when it is threshing.
(22) I.e., before it entered the field.
(23) I.e., the muzzling must be done then.
(24) I.e., from the law appertaining to priests, R. Jonathan being one. [The reference is to R. Jonathan b. Joseph, the Tanna, a disciple of R. Ishmael, and not to R. Jonathan. the disciple of R. Hiyya, who certainly was no priest; v. Sanh. 71a. The question he put to R. Simai who, as a younger contemporary of Rabbi was considerably his junior, would then be merely to test him. It is, however, preferable to read with MS. Venice, 'R. Simeon (b. Yohai)' instead of 'R. Simai'; v. Hyman Toledoth, II. p. 698.]
(25) Lev. X, 9.
(26) Ibid. 20; and for that it does not signify whether one drinks before entering or after.
(27) But leaves them for another to plough with.
(28) Tosef. Kel. V.
(29) Lit., 'muzzled it'.
(30) Punishment is incurred for the violation of a negative precept only when it entails a positive action, and R. Johanan and Resh Lakish dispute whether speech is such.

Talmud - Mas. Baba Metzia 91a

Not that one is permitted to make an exchange, but that if he did the exchange is valid, and he receives forty [lashes]![1] He replied: That accords with R. Judah, who maintained that one is flagellated for [violating] a negative precept which involves no action.[2] But can you make this agree with R. Judah? Does not the first clause state: All have power to exchange, both men and women. Now, we pondered thereon, what is 'all' intended to add?[3] [And we answered,] An heir.[4] And this does not agree with R. Judah: for if it did, surely he maintained that an heir can neither exchange nor lay hands?[5] — This Tanna agrees with R. Judah in one ruling,[6] and disagrees in another.[7]

Our Rabbis taught: If one muzzles a beast and threshes therewith, he is flagellated, and pays [to the owner of the cow] four kabs in the case of a cow, and three kabs for an ass.[8] But [is it not a principle], one is not flagellated and executed; nor is one flagellated and made to pay? — Abaye replied: This is in accordance with R. Meir, who maintained, One is flagellated and also made to pay.[9] Raba said:[10] The Torah forbade the hire [of a harlot], even if one had relations with his mother.[11] R. Papa said: He becomes liable for its food from the moment of meshikah,[12] whereas flagellation is not incurred until muzzling.[13]

R. Papa said: The following problems were propounded to me by the disciples of R. Papa b. Abba, and I gave stringent rulings,[14] one in accordance with the law, the other not in accordance with the law.[15] They asked of me: May dough be kneaded with milk? And I ruled that it was forbidden, this

being in accordance with the law. For it has been taught: Dough may not be kneaded with milk, and if it is, the whole loaf is forbidden, because it may lead to transgression.[16] Likewise, an oven may not be greased with tail fat,[17] and if it is, the whole loaf [baked therein] is forbidden, until the oven is heated through.[18] The other problem they propounded of me was: May two heterogeneous animals [of opposite sexes] be led into a stable?[19] And I answered them that it is forbidden, this not being in accordance with the law. For Samuel said: In the case of adulterers, they [sc. the witnesses] must have seen them in the posture of adulterers;[20] but in respect to diverse species, they must have seen him assisting [the copulation] even as [one places the] painting stick in the tube.[21]

R. Ahadboi b. Ammi raised an objection: Had Scripture stated, Thou shalt not cause thy cattle to gender,[22] I might have thought [it to mean], One must not hold a beast when the male [even of its own kind] copulates with it; therefore it is said, with a diverse kind. Surely then this proves that in the case of different species one may not even hold [the female]!? — By 'holding', 'assisting' is meant, and why is it designated 'holding'? As a more delicate term.

Rab Judah said: In animals of the same species, one may 'assist' [at copulation] even as [one places the painting] stick in the tube, and it is not even forbidden on account of obscenity. Why? Because he is engaged in his work.[23] R. Ahadboi b. Ammi raised an objection:

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(1) Tem. 2a. This refers to Lev. XXVII, 33; neither shall he change it (sc. the consecrated animal): and if he change it at all, then both it and the change thereof shall be holy. The first clause of the passage states that all have power to exchange, and then it goes on to say that that does not mean that one may exchange, but merely that his action is valid, the substitute too becoming holy, and that his action is punished by flagellation. Now, this offence consists only of speech, and hence this Mishnah refutes Resh Lakish's view that speech is an unsubstantial action.

(2) But those who require an action do not consider speech sufficient.

(3) V. p. 496, n.3.

(4) I.e., if the heir exchanged the animal consecrated by his deceased father, the substitute is valid.

(5) Upon certain sacrifices the owner laid his hands prior to its slaughter. If the owner died, R. Judah maintained that the heir could not perform this ceremony.

(6) Viz., that a person is flagellated for a negative precept involving no action.

(7) Maintaining against R. Judah that the heir can exchange.

(8) That is the estimated quantity they eat per day. V. H.M. 338. 4. Isserles.

(9) V. B.K 71a.

(10) [MS. Rome inserts: 'It may even be in accordance with the Rabbis, but this is stated if he wishes to appear justified before Heaven (lit., 'at the hands of Heaven'), even as is the case with the hire, for the Torah forbade, etc.' This renders clearer the argument that follows, v. Tosaf.]

(11) V. Deut. XXIII, 19: Thou shalt not bring the hire of a whore . . . into the house of the Lord thy God for any vow. Now, 'hire' and 'whore' are quite unspecified, even if the latter is his own mother, in which case he is liable to death for incest. This proves that notwithstanding his liability to death, in which the money payment is merged, he strictly speaking (should he wish 'to appear justified before Heaven') must pay her the fee. For if she has no claim upon him at all, then even if he does pay her, it is not the hire of a harlot, but an ordinary gift to her which is not forbidden as a vow. Again, since it is recognised as a debt, if the harlot forcibly seized it from him, he cannot demand its return. So here too: though he is flagellated for threshing with a muzzled ox, he is morally indebted to its owner, and that is the meaning of the Baraitha, 'and pays.' etc. Or, if the owner seized it from him, he need not return it.

(12) V. Glos.

(13) Though two penalties cannot be imposed, that is only when incurred simultaneously. But these two are not, the one preceding the other.

(14) Lit., 'I answered them in the direction of prohibition.'

(15) But merely with an extra degree of stringency.

(16) The bread may not be eaten with meat, consequently it is altogether forbidden, even with non-meat foods.

(17) Which is forbidden fat.

(18) To glow heat to remove all traces of the fat.

(19) The question is whether this is a transgression of Lev. XIX, 19: Thou shalt not cause thy cattle to gender with a diverse kind. Does 'cause' mean to give the opportunity only, as here, or actually to make the two copulate?
(20) I.e., when witnesses testify to adultery, it is not necessary for them to witness fornication in order to impose punishment.
(21) Only then is Lev. XIX, 19, quoted in n. 4 infringed; hence, R. Papa's ruling that they may not even be led into one stable was merely a matter of additional stringency, not the Biblical law.
(22) Without adding 'with a diverse kind'.
(23) Therefore it will not lead to impure thoughts. But one may not look upon the animals copulating, because the spectacle may excite evil passions.

Talmud - Mas. Baba Metzia 91b

Had Scripture stated, Thou shalt not cause thy cattle to gender, I should have thought [it to mean], One must not hold a beast for the male to copulate with it; therefore it is said, with a diverse kind. Hence, only in regard to different species is it forbidden; but in the same species,it is permitted. Yet even there, only holding is permitted — but not 'assisting'. — What is meant by 'holding'? 'Assisting'. And why is it called 'holding'? As a delicate term.

R. Ashi said: This question was put to me by the scholars of Rabbana[1] Nehemiah, the Resh Galutha:[2] May an animal be led into a stable together with one of its own species and another heterogeneous to it? [Do we argue,] Having its own kind, it will be attracted thereto; or perhaps, even so, it is not [permitted]? And I answered them that it is forbidden; not because the law is so, but on account of the licentiousness of slaves.[3]

MISHNAH. IF HE [THE LABOURER] WORKS WITH HIS HANDS BUT NOT WITH HIS FEET, OR WITH HIS FEET BUT NOT WITH HIS HANDS; [AND] EVEN IF HE WORKS WITH HIS SHOULDERS [ONLY], HE MAY EAT. R. JOSE SON OF R. JUDAH SAID: [HE MAY NOT EAT] UNLESS HE WORKS WITH HIS HANDS AND FEET.

GEMARA. What is the reason [of the first Tanna]? — When thou comest into they neighbour's vineyard[4] implies, for whatever work he may do.

R. JOSE SON OF R. JUDAH SAID: [HE MAY NOT EAT] UNLESS HE WORKS WITH HIS HANDS AND FEET. What is the reason of R. Jose son of R. Judah? — He [the labourer] is likened to the ox:[5] just as the ox [does not eat unless] it works with its hands and feet,[6] so the labourer too must work with his hands and feet.

Rabbah son of R. Huna propounded: According to R. Jose son of R. Judah, what if one threshes with geese and fowls?[7] Is it necessary that [the work shall be done] with all its [sc. the creature that threshes] strength, which provision is complied with? Or perhaps, it must work with its fore-feet and hind-feet, which is here absent? — The problem remains unsolved.

R. Nahman said in Rabbah b. Abbuha's name: Labourers, before they walk both lengthwise and crosswise in the winepress, may eat grapes but drink no wine. Having walked lengthwise and crosswise in the winepress, they may eat grapes and drink wine.[8]

MISHNAH. WHEN HE [THE LABOURER] IS WORKING AMONG FIGS, HE MUST NOT EAT OF GRAPES; AMONG GRAPES, HE MUST NOT EAT OF FIGS. YET HE MAY RESTRAIN HIMSELF UNTIL HE COMES TO THE CHOICE QUALITY [FRUIT] AND THEN EAT.[9] NOW, WITH RESPECT TO ALL OF THEM [SC. THE LABOURERS], PERMISSION WAS GIVEN ONLY WHEN THEY ARE ACTUALLY AT WORK;[10] BUT IN ORDER TO SAVE THE EMPLOYER'S TIME,[11] THEY[12] RULED, LABOURERS MAY EAT AS THEY WALK

FROM ROW TO ROW,[13] AND WHEN RETURNING FROM THE WINEPRESS. AND AS FOR AN ASS, [IT MAY EAT] WHILST BEING UNLADEN.[14]

GEMARA. The scholars propounded: Whilst working on one vine, may he [the labourer] eat of another?[15] Is it merely necessary [that thou shalt eat only] of the kind which thou puttest into the employer's baskets,[16] which [requirement] is fulfilled; or is it stipulated that [thou shalt eat only] that [i.e., the tree from] which thou puttest into the employer's baskets, which is here lacking? [But] should you say, when working on one vine he may not eat of another, how can an ox eat of what is attached to the soil?[17] — R. Shisha the son of R. Idi replied: It is possible in the case of a straggling branch.[18] Come and hear: IF HE [THE LABOURER] IS WORKING AMONG FIGS, HE MUST NOT EAT OF GRAPES. This implies that he may eat of figs [when working] on figs, on the same conditions that [he may not eat of] figs [when working] on grapes:[19] but should you say, If he works on one vine he may not eat of another, how is this possible? — R. Shisha, the son of R. Idi said: It is possible in the case of an overhanging branch.[20]

Come and hear: BUT HE MAY RESTRAIN HIMSELF UNTIL HE COMES TO THE CHOICE QUALITY [FRUIT], AND THEN EAT. But should you say: Whilst employed on one vine he may eat of another, let him go, bring [the choice fruit] and eat it [and why restrain himself]? — There it is [forbidden] because of loss of time; [in that case,] there is no question.[21] Our problem arises only if he has his wife and children with him:[22] what then? — Come and hear: NOW, WITH RESPECT TO ALL OF THEM [SC. THE LABOURERS], PERMISSION WAS GIVEN ONLY WHEN THEY ARE ACTUALLY AT WORK, BUT IN ORDER TO SAVE THE EMPLOYER'S TIME, THEY RULED, LABOURERS MAY EAT AS THEY WALK FROM ROW TO ROW, AND WHEN RETURNING FROM THE WINE-PRESS. Now, it was assumed that walking [from vine to vine] is regarded as actual work [it being necessary thereto], yet he may eat only in order to save the employer's time, but not by Scriptural law; thus proving that whilst engaged on one vine he may not eat of another! — No. In truth I may assert that whilst engaged on one vine he may eat of another; but walking is not regarded as actual work. Others say, it was assumed that walking is not regarded as actual work, and only on that account may he not eat by Scriptural law, because he is not doing work; but if he were doing actual work, he might eat even by Biblical law, thus proving that whilst engaged on one vine he may eat of another! — No; in truth I may assert that whilst engaged on one vine he may not eat of another;

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(1) So the text as emended by Rashal: Rabbana was a Babylonian title.

(2) V. p. 387, n. 8.

(3) Which might receive an impetus by such an act.

(4) Deut. XXIII, 25.

(5) V. top of 89a.

(6) I.e., with its fore and hind-feet, both of course, being employed in threshing.

(7) May their beaks be muzzled or not?

(8) Labourers trod out the wine from the grapes by walking upon them lengthwise and crosswise. Now, when they have walked only in one direction, the wine is not yet visible, therefore they must confine themselves to the grapes, since the labourer may eat only of that upon which he is engaged. But when they have walked in both directions, the expressed wine is visible, and therefore they may drink thereof.

(9) I.e., he is not bound to eat as soon as he feels hungry, but may wait until he reaches the best.

(10) But not to finish their work and then eat.

(11) Lit., ‘to restore lost property to the owners.’

(12) The Rabbis.

(13) Though they are not actually working then.

(14) This is discussed in the Gemara.

(15) I.e., cut a cluster of grapes from one vine of choicer quality and then come and work upon another.

(16) The phraseology is based upon Deut. XXIII, 25: but thou shalt not put any in thy vessel, which implies that the

labourer may eat only of that which he does put into the employer's vessel.

(17) For, as stated supra 89a, the same conditions govern both man and beast. Now, as the ox stands in front of the cart into which the grapes are laden the labourers naturally gather the grapes not from the vine in front of the ox, but behind it, which is level with the cart. Hence, the ox cannot possibly eat of the vine upon which it is employed (Rashi). Tosaf.: When the ox is threshing grain attached to the soil, its mouth cannot reach the ears upon which it actually treads. Now, in the case of detached corn, that does not matter, because the whole is regarded as one bundle; but in the case of growing corn, each little tuft is regarded as separate.

(18) A vine which stretches from behind the ox to in front of it, so Rashi. Tosaf.: A luxuriant growth, i.e., long ears of corn which reach from the feet of the ox to its mouth. Hence, the Talmudic objection being answered, the problem remains.

(19) I.e., on a different tree.

(20) I.e., when one vine overhangs another, and when a vine overhangs a fig-tree. Actually, he has to work upon both, since one must be disentangled from the other. In that case he may eat of the overhanging vine whilst working on the other, but not of the overhanging fig-tree.

(21) It is certainly forbidden.

(22) There is no loss of time, as they can bring it.

and walking is regarded as actual work.[1]

AND AS FOR AN ASS, [IT MAY EAT] WHILST BEING UNLADEN. But when it is unladen, whence can it eat?[2] Say until it is unladen.[3] We have [thus] learnt [here] what our Rabbis taught: An ass and a camel can eat of the load on their backs, providing that he [the driver] does not personally take thereof and feed them.

MISHNAH. A LABOURER MAY EAT CUCUMBERS, EVEN TO THE VALUE OF A DENAR, OR DATES, EVEN TO THE VALUE OF A DENAR. R. ELEAZAR HISMA SAID: A LABOURER MUST NOT EAT MORE THAN HIS WAGE. BUT THE SAGES PERMIT IT; YET ONE IS ADVISED NOT TO BE GREEDY, AND THUS SHUT THE DOOR IN HIS FACE.[4]

GEMARA. Are not the Sages identical with the first Tanna? — They differ as to whether [the labourer] is advised [not to be greedy]. The first Tanna holds that he is not advised; whilst the Rabbis[5] maintain that he is. Alternatively, they differ in respect of R. Assi's dictum. For R. Assi said: Even if engaged merely to gather a single cluster, he may eat it.[6] R. Assi also said: Even if he [as yet] vintaged only one cluster, [having been engaged for the day,] he may eat it. Now, both [dicta] are necessary. For if the first [only] were stated,I would think that that is so, since there is nothing [else] to put into the employer's vessels;[7] but when there is something to put into the employer's vessels, I would think that he must first put [some there] and then eat. Whilst if the second statement [only] were made, I would think that the reason is that it can be eventually fulfilled;[8] but where it cannot be eventually fulfilled,[9] I might think that he may not eat. Hence both are necessary.

[Reverting to the Mishnah:] Alternatively, I can say, they differ in respect of Rab's dictum. For Rab said: I found a secret scroll of the School of R. Hiyya[10] wherein it was written, Issi b. Judah said: When thou comest into thy neighbour's vineyard[11] Scripture refers to the coming in of any man.[12] Whereon Rab commented: Issi makes life impossible for any one.[13]

R. Ashi said: I repeated the [above] teaching before R. Kahana. [Thereupon] he observed:[14] Perhaps [Issi b. Judah referred] to those who labour for their food, working and eating.[15] And Rab?[16] — Even then, a man prefers to engage labourers to vintage his vineyard, rather than that any one should enter.

The scholars propounded: Does the labourer eat his own [sc. when partaking of the fruit upon which he is engaged], or does he eat of Heaven's [gift]?[17] What practical difference does this make? If he said, ‘Give it [the fruit that I might have eaten] to my wife and children.’ Now, should you say that he eats his own, we must give it to them. But if he eats of Heaven's [gift], then upon him Scripture conferred this privilege, but not upon his wife and children. What is our ruling? — Come and hear: A LABOURER MAY EAT CUCUMBERS, EVEN TO THE VALUE OF A DENAR, OR DATES, EVEN TO THE VALUE OF A DENAR. Now, should you say that he eats of his own, when he is engaged for a danka,[18] shall he eat for a denar?[19] — What then: he eats of Heaven's [gift]? Yet after all, being engaged for a danka, shall he eat for a denar![20] Hence, what must you reply? That the All-Merciful privileged him;[21] so here too,[22] the All-Merciful conferred that privilege upon him.[23]

Come and hear: R. ELEAZAR HISMA SAID: A LABOURER MUST NOT EAT MORE THAN HIS WAGE. BUT THE SAGES PERMIT IT. Now, surely they differ in respect of this: one [sc. R. Eleazar Hisma] maintains that he eats his own,[24] whilst the other holds that he eats the [gift] of Heaven! — No. All agree that he eats his own, but here they differ with respect to the interpretation of [then thou mayest eat grapes thy fill] according to thy soul. One Master[25] maintains, ‘according to

thy soul' means that for which thou riskest thy life;[26] whilst the other Master [R. Eleazar] interprets, 'As thyself': just as if thou muzzlest thyself thou art exempt [from punishment], so the labourer, if thou muzzlest him,[27] thou art exempt.[28]

Come and hear: If a nazir[29] said, 'Give [the grapes I might have eaten] to my wife and children,' he is not heeded. Now should you say, he eats his own, why is he disregarded? — There it is because, 'Go, go, thou nazirite,' say we, 'take the most devious route, but approach not the vineyard.'[30]

Come and hear: If a labourer said, 'Give [the grapes] to my wife and children,' we do not heed him. Now should you say, he eats his own, why not? — What is meant by 'a labourer'? A nazir. But the case of a nazir has been taught, and also that of a labourer! — Were they then taught together?[31]

Come and hear: Whence do we know that if a labourer said, 'Give [the fruit] to my wife and children,' he is not heeded? From the verse, But thou shalt not put any in thy vessel.[32] And should you reply, This too refers to a nazir; if so, is it on account of 'but thou shalt not put any in thy vessel': surely it is because, 'Go, go, thou nazirite', we say, etc.! — That is indeed so, but since he is referred to as a labourer, the verse relating to a labourer is cited.[33]

Come and hear: If one engages a labourer to dry figs,[34]

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(1) And yet were it not for the consideration of the employer's time, he would not be permitted to eat.

(2) Its whole burden is removed at once, and then it is led away.

(3) I.e., as long as it is laden, it may eat of its burden.

(4) I.e., he will be unable to obtain employment, if he eats too greedily.

(5) The Sages.

(6) The first Tanna accepts this, and means thus: A labourer may eat cucumbers even if he was engaged only to work on these which he actually eats, whilst the Sages permit him to eat more than his wage (for which reason the Rabbis make mention of his wage, whilst the first Tanna omits all reference thereto), but not all that for which he was engaged.

(7) And Scripture having permitted the labourer to eat, he cannot be bidden to refrain.

(8) Viz., the putting into the employer's utensils.

(9) I.e., if he was engaged only for that cluster, and he eats it.

(10) מגילת סתרים : Oral law being unwritten, when one particularly desired to remember a halachah, he recorded it but kept it secret (Rashi). [Kaplan, J. op. cit., p. 277, argues with great plausibility that the concealment of the scroll had nothing to do with the interdict of writing halachah records, but was due to its contents which, as will be seen, were not well adapted to unrestricted publicity. The same scroll contained another teaching by the same Tanna, which likewise was liable to abuse. Shab. 6b; 96b.]

(11) Deut. XXIII,25.

(12) Not only a labourer.

(13) Social life is impossible if any person may enter and eat of one's crops. — Now, the first Tanna agrees with Rab, and hence says, only A LABOURER MAY EAT etc.; but the Sages maintain that any person may enter; hence they say that the labourer may eat more than his wage, since even if no wage is due at all — i.e., if he is not an employee he may still eat.

(14) [Following reading of Alfasi and Asheri. Cur. edd. omit 'he observed'. Render accordingly: 'R. Ashi said, I put the (following) question (lit., 'discussion') to R. Kahana. Perhaps etc.' Cf. B.B. 114a; v. Strashun, S.]

(15) I.e., any man, even when not engaged by the owner, may enter a vineyard, assist in the vintaging, and eat. But it is unreasonable to suppose that Issi b. Judah permitted all and sundry to enter any man's vineyard, eat his fill, and make no return.

(16) If that be the correct interpretation, why does Rab object?

(17) I.e., is it actually part of his salary, and in the nature of a bonus, or a special Divine favour bestowed upon the labourer?

(18) V. Glos.

(19) Surely it is unreasonable that the additional bonus shall far exceed the wage actually stipulated.
(20) For it is likewise unreasonable that the privilege conferred by Scripture shall exceed his actual due.
(21) Notwithstanding that it exceeds his wage.
(22) I.e., even if he is assumed to eat his own.
(23) To eat even more than his wages, and still it is an addition thereto.
(24) And therefore the bonus cannot exceed the principal.
(25) I,e., the Sages.
(26) Lit., 'soul'. I.e., in return for ascending the tree to gather the fruit, thereby endangering his life, the labourer may eat, That being so, there is no limit to the quantity.
(27) V. p. 509, n. 5.
(28) There thus being no warrant for the labourer to eat more than his wage.
(29) V. Glos. The reference is to a labourer, a nazirite, engaged on vintaging. A nazirite is forbidden to eat grapes.
(30) This was proverbial: a man must not venture into temptation. Hence while it may be that the labourer eats of his own, here he is penalised for having accepted employment in a vineyard at all.
(31) Both refer to the same, but were not taught together. V. supra 34a.
(32) I.e., only he may eat, but none on his behalf.
(33) But merely as a support, the law itself being Rabbinical, as stated in n. 7.
(34) Figs were dried in the field and then pressed into cakes, the labourer being engaged for this purpose.

Talmud - Mas. Baba Metzia 92b

he [the labourer] may eat and is exempt from tithes.[1] [But if he stipulates, 'I accept the work] on condition that I and my son eat, or, 'that my son eat for my wage:'[2] he may eat, and is exempt; and his son may eat, but is liable.[3] Now should you say, he eats his own, why is his son liable?[4] — Said Rabina: Because it looks like purchase.[5]

Come and hear: If one engages labourers to work upon his fourth year plantings,[6] they may not eat;[7] but if he [the employer] did not inform them [that they were of the fourth year], he must redeem [the fruit][8] and let them eat it.[9] Now should you Say, he eats of Heaven's [gift], why must he redeem [the fruit] and let them eat it? Surely the All-Merciful conferred no privilege upon them in respect of that which is forbidden! — There it is because it looks like an erroneous bargain. [If so,] consider the second clause: If his figs cakes were broken,[10] or if his barrels of wine burst open,[11] they may not eat.[12] But if he did not inform them,[13] he must tithe [the fruit and wine] and let them partake [thereof].[14] Now should you say, He eats of Heaven's [gift], why must he tithe and let them eat: surely the All-Merciful conferred no privilege upon him in respect of what is forbidden! And should you reply, Here too it is because [otherwise] it looks like an erroneous bargain, [I can rejoin,] now as for the breaking of his fig-cakes, it is well, since it does look like an erroneous bargain; but if his barrels burst, where is the erroneous bargain? Surely he [the labourer] knew that they were tebel in respect of tithes! — R. Shesheth replied: It means that his barrels burst open into the tank.[15] But has it not been taught: Wine [is subject to tithes] when it descends into the tank?[16] — This agrees with R. Akiba, who ruled [it is not liable] until the scum is removed; so that they [the labourers] can say to him, 'We did not know [thereof].' But can he not retort, 'The possibility of its having been skimmed should have occurred to you'? — It refers to a locality where the same person who draws [the wine from the tank into barrels first] skims it. And now that R. zebid learned out of the Baraitha of R. Oshaia:[17] Wine [is subject to tithes] when it is run into the tank and skimmed. R. Akiba said: When it is skimmed in barrels:[18] you may even say that the barrels did not burst open into the tank; yet they can say, 'We did not know that it had been skimmed.' But can he not say to them, 'The possibility of its having been skimmed should have occurred to you'? — It refers to a place where the same person who closes it[19] also skims it.

Come and hear: A man may stipulate [to receive payment instead of eating] for himself, his son or daughter that are of age, his manservant and maidservant that are of age, and his wife; because they

have understanding.[20] But he may not stipulate [thus] for his son or daughter that are minors, his manservant or maidservant that are minors, nor in respect of his beasts; because they have no understanding.[21] Now it is being assumed that he[22] provides them with food, should you then say that he [the labourer] eats of Heaven's [gift], it is well: consequently, one may not stipulate [to deprive them of their rights]. But if you maintain that he eats of his own, let him stipulate [thus] even for minors![23] — In this case it means that he does not provide them with food.[24] If so, [for] adults too [he cannot stipulate thus]! — Adults know [their rights] and forego them. But R. Hoshaia taught: A man may stipulate [as above] for himself and his wife, but not in respect of his beast;[25] for his son and daughter, if adults, but not if minors; for his Canaanite manservant and maidservant, whether adults or minors. Now presumably, both[26] mean that he provides them with food, and they differ in the following: one Master [sc. that of the Baraitha] maintains that he [the labourer] eats of his own;[27] whereas the other holds that he eats of Heaven's! — No; all hold that he eats his own, yet there is no difficulty: here [in the Mishnah] he does not provide them with food,[28] whereas in the Baraitha he does. How do you explain it: that he provides them with food? If so, let him stipulate for [his son and daughter if] minors too? — The All-Merciful did not privilege him to cause distress to his son and daughter.[29] Now, how do you explain the Mishnah? That he does not provide them with food!

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(1) Having yet to be dried, their work is not finished, v. supra 87a.

(2) Rashi: for the wage stipulated, so that he would draw no pay. Tosaf: instead of me.

(3) For it is as though he bought them (Ma'as. II, 7). V. supra 88a-b; cf. p. 507, n. 3.

(4) For then it is part of his wage, still the Bible exempted him, though eating fruit as part of one's wage is akin to purchase. Then surely the same should hold good of his son!

(5) More so than when he himself eats, regard being had to the stipulation he made.

(6) The fruit of a tree in the fourth year of its planting was to be eaten in Jerusalem, like the second tithe; v. Lev. XIX, 24.

(7) Whilst working, since it must be taken to Jerusalem.

(8) These fruits, just as those of the second tithe, could be redeemed, the redemption money to be expended in Jerusalem, whilst the fruit could then be eaten anywhere as ordinary hullin (v. Glos.).

(9) V. infra 93a.

(10) I.e., after having been pressed into cakes, the cakes were accidentally broken up, and labourers were engaged to re-press them.

(11) And he hired labourers to re-fill them.

(12) Since, as stated supra 89a, when fruit is already liable to tithes, the labourers may not eat.

(13) That they had been pressed once, and so were liable to tithes.

(14) V. infra 93a.

(15) In which wine is stored, so that the labourer might have thought that it had not been barrelled yet.

(16) And the labourers could have then known that they were liable to tithing.

(17) [Var. lec.: R. Zebid son of R. Hoshaia. V. A. Z, (Sonc. ed.) p. 27, n. 4.]

(18) Rashi: When it has been skimmed in the barrels; after being filled in the barrels it ferments again and more scum settles on top, which must be removed.

(19) By pasting in the bung.

(20) They know that they are entitled to eat, but forego their rights.

(21) V. infra 93a. The understanding of a minor is not legally recognised.

(22) The father or owner who hires them out.

(23) Since all their rights belong to him, and just as he receives their wages, so he can receive the food due to them as part wages.

(24) So that he has no right even to their wages. This is on the assumption that when the master provides no food, he is not entitled to their work. This is a subject of dispute; v. infra 93a top.

(25) Because of the prohibition of muzzling.

(26) The Mishnah first quoted, which states that this stipulation may not be made for one's servants, if minors; and the Baraitha, which permits it.

(27) Therefore his master may stipulate this, v, n. 1.

(28) Hence he cannot stipulate.
(29) Though entitled to their work, and providing them with food, he causes them to suffer by not eating of that upon which they are actually engaged.

Talmud - Mas. Baba Metzia 93a

That agrees with the view that the master cannot say to his slave, 'Work for me, yet I will not feed you.' But on the view that he can say so, what can you answer?[1] — Both [teachings] therefore deal with a case where he does not provide them with food, but they differ on this very matter: one Master[2] maintains that he can [demand their work and refuse their food]; and the other[3] holds that he cannot. Then what of R. Johanan, who ruled that the master can say this: does he forsake the Mishnah and follow the Baraitha?[4] — But all agree that he eats of Heaven's [gift), and he [certainly) cannot stipulate.[5] In what sense then did R. Hoshaia teach that he can stipulate? — [In regard to] food.[6] Then by analogy, in respect of an animal [a similar arrangement is that the hirer should feed it with) straw;[7] then let him stipulate! Hence they must differ therein: one Master [sc. of the Baraitha] maintains that he eats his own; whereas the other holds that he eats of Heaven's [gift].

MISHNAH. A MAN MAY STIPULATE [TO RECEIVE PAYMENT INSTEAD OF EATING] FOR HIMSELF, HIS SON OR DAUGHTER THAT ARE OF AGE, HIS MANSERVANT AND MAIDSERVANT THAT ARE OF AGE, AND HIS WIFE; BECAUSE THEY HAVE UNDERSTANDING. BUT HE MAY NOT STIPULATE [THUS] FOR HIS SON OR DAUGHTER THAT ARE MINORS, HIS MANSERVANT OR MAIDSERVANT THAT ARE MINORS, NOR IN RESPECT OF HIS BEASTS; BECAUSE THEY HAVE NO UNDERSTANDING.[8] IF ONE ENGAGES LABOURERS TO WORK UPON HIS FOURTH YEAR PLANTINGS, THEY MAY NOT EAT; BUT IF HE DID NOT INFORM THEM [THAT THEY WERE OF THE FOURTH YEAR], HE MUST REDEEM [THE FRUIT] AND LET THEM EAT IT. IF HIS FIG-CAKES WERE BROKEN, OR HIS BARRELS OF WINE BURST OPEN, THEY MAY NOT EAT. BUT IF HE DID NOT INFORM THEM, HE MUST TITHE [THE FRUIT OR WINE] AND LET THEM PARTAKE [THEREOF].[9] THOSE WHO GUARD FRUITS MAY EAT THEREOF, IN ACCORDANCE WITH GENERAL CUSTOM,[10] BUT NOT BY SCRIPTURAL LAW. GEMARA. THOSE WHO GUARD FRUITS [etc.] Rab said: This was stated only of those who look after gardens and orchards;[11] but those who guard wine-vats and [grain] stocks may eat [even] by Biblical law.[12] In his [Rab's] opinion guarding is counted as labour. But Samuel said: This was stated only of those who guard wine-vats and [grain] stocks; but those who look after gardens and orchards may eat neither by Biblical law nor by general custom. In his view, guarding is not considered labour.[13]

R. Aha son of R. Huna raised an objection. He who guards the [red] heifer defiles his garments.[14] Now should you maintain, Guarding is not considered labour, why does he defile his garments?[15] — Rabbah b. 'Ulla said: As a precautionary measure, lest he move a limb thereof.[16]

R. Kahana raised an objection: He who guards four or five cucumber beds[17] must not eat his fill of one of them, but proportionately of each. Now if guarding is not considered labour, why eat at all?[18] — R. Shimi b. Ashi replied: This refers to those which are removed [from the plant].[19] But then this work is finished for tithes![20] — Their blossom had not yet been cut off.[21]

R. Ashi said: Reason supports Samuel. For we learnt: Now, the following [labourers] may eat by Scriptural law: he who is engaged upon what is attached to the soil, when the labour thereof is completed; and upon what is detached,[22] etc. This implies that some eat not by Scriptural law but in accordance with general custom. Then consider the second clause: But the following do not eat. What is meant by 'do not eat'? Shall we say, they do not eat by Scriptural law, yet eat in accordance with general custom — then is it not identical with the first clause? Hence it must surely mean that they eat neither by Scriptural nor by unwritten law. And who are they? 'He who is engaged upon that

which is attached to the soil before its labour is completed.'[23] How much more so then they who look after gardens and orchards!

MISHNAH. THERE ARE FOUR BAILEES: A GRATUITOUS BAILEE, A BORROWER, A PAID BAILEE AND A HIRER. A GRATUITOUS BAILEE MUST SWEAR FOR EVERYTHING.[24] A BORROWER MUST PAY FOR EVERYTHING.[25] A PAID BAILEE OR A HIRER MUST SWEAR CONCERNING AN ANIMAL THAT WAS INJURED,[26] CAPTURED [IN A RAID] OR THAT PERISHED;[27] BUT MUST PAY FOR LOSS OR THEFT.

GEMARA. Which Tanna [maintains that there are] four bailees? — R. Nahman said in Rabbah b. Abbuha's name: It is R. Meir. Said Raba to R. Nahman: Does any Tanna dispute that there are four bailees?[28] — He replied: I mean this: Which Tanna holds that a hirer ranks as a paid bailee? R. Meir. But we know R. Meir to hold the reverse? For it has been taught: How does a hirer pay? R. Meir said, As an unpaid bailee. R. Judah ruled, As a paid one! Rabbah b. Abbuha learnt it reversed.[29] If so, are there four? Surely there are only three! — R. Nahman b. Isaac replied: There are indeed four bailees, but they fall into three classes.[30]

A shepherd was once pasturing his beasts by the banks of the River Papa,[31] when one slipped and fell into the water [and was drowned]. He then came before Rabbah, who exempted him [from liability], with the remark, 'What could he have done?

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(1) On the hypothesis that he eats his own. According to the latter view the slave is supported by charity.

(2) The Baraitha.

(3) The Mishnah.

(4) Surely not, since the former is more authentic than the latter.

(5) That the slaves shall not eat.

(6) I.e., he may arrange for the owner of the vineyard to feed the slave before he starts work, so that he has no appetite for the grapes.

(7) Before it starts threshing the more valuable grain.

(8) V. supra p. 533, n.7.

(9) V. supra p. 532.

(10) Lit., 'the laws of the land'.

(11) Their fruits being attached to the soil, and they do not remove them; hence they may not eat by Scriptural law.

(12) Since these are detached.

(13) Hence, when it is exercised upon detached fruits, the guardian may eat by general custom; but if they are attached, he may not eat at all.

(14) V. Num. XIX. All who take part in the preparation of the red heifer, from the slaughter onwards, defile their garments.

(15) Since it is not an occupation in the legal sense.

(16) Which would really render him unclean through contact. Thus the defilement of the guardian is only by Rabbinical law, in contradistinction to those who perform a positive action, whose defilement is Scriptural.

(17) Belonging to as many persons.

(18) Since on this view he may not eat of what is attached, even by general custom.

(19) I.e., they are detached.

(20) V. supra p. 89a.

(21) V. supra 88b.

(22) Supra 504.

(23) V. p. 504.

(24) I.e., if the bailment is lost or destroyed through any cause, excepting negligence, the unpaid trustee must swear to the occurrence, and is free from liability.

(25) Whatever the mishap, he is liable to pay.

(26) Lit., 'broken'.

(27) A paid bailee is exempt from liability in these cases; therefore he must swear that it really was so.
(28) Surely not! The four bailees enumerated in the Mishnah must exist.
(29) I,e., according to his reading of the Baraitha, R. Meir ruled that he ranked as a paid trustee, and R. Judah as an unpaid one. (8) Since the hirer ranks as a paid bailee. This difficulty arises in any case, and the phrase 'if so' does not imply here that if the hirer ranked as an unpaid bailee there is no difficulty, but is merely introductory (Tosaf.). But in the parallel passage of Shebu. 49a the phrase is absent from Rashi's version.
(30) Lit., 'their laws are three', a hirer and a paid bailee being in the same category.
(31) V. supra, p. 496, n. 1.

Talmud - Mas. Baba Metzia 93b

He guarded [them] as people guard.'[1] Abaye protested, 'If so, had he entered the town when people generally enter it [leaving his charges alone], would he still be exempt?' — 'Yes', he replied. 'Then had he slept a little when other people sleep, would he also be exempt?' — 'Even so,' was his answer. Thereupon he raised an objection: The following are the accidents for which a paid bailee is not responsible: E.g., And the Sabeans fell upon them [sc. the oxen and asses], and took them away; yea, they have slain the servants with the edge of the sword![2] — He replied, 'There the reference is to city watchmen.'[3]

He further raised an objection: To what extent is a paid bailee bound to guard? Even as far as, Thus I was; in the day the drought consumed me, and the frost by night?[4] — There too, he answered, the reference is to the city watchman. Was then our father Jacob a city watchman? he asked. — [No.] He merely said to Laban, 'I guarded for you with super-vigilance, as though I were a city watchman.'

He raised another objection: If a shepherd, who was guarding his flock, left it and entered the town, and a wolf came and destroyed [a sheep]; or a lion, and tore it to pieces, we do not say, 'Had he been there, he could have saved them;' but estimate his strength: if he could have saved them, he is responsible; if not, he is exempt.[5] Surely it means that he entered [the town] when other people generally do? — No. He entered when people do not generally enter. If so, why is he not responsible? Where there is negligence in the beginning, though subsequently an accident supervenes, he is liable![6] — It means that he heard the voice of a lion, and so entered. If so, why judge his strength? What could he then have done? — He should have met it with [the assistance of other] shepherds and staves. If so, why particularly a paid bailee? The same applies even to an unpaid one. For you yourself, Master, did say: If an unpaid bailee could have met [the destroyer, e.g., a lion] with other shepherds and staves, but did not, he is responsible! — An unpaid bailee [must obtain their help only when he can procure them] gratuitously; whereas a paid bailee must even [engage them] for payment. And to what extent?[7] — Up to their value.[8] But where do we find that a paid trustee is responsible for accidents?[9] — Subsequently he collects the money from the owner. Said R. Papa to Abaye: If so, how does he benefit him? — It makes a difference on account of the attachment of the animals[10] or the additional trouble.[11]

R. Hisda and Rabbah son of R. Huna disagree with Rabbah's dictum, for they maintain: [The owner can say], 'I paid you wages precisely in order that you should guard with greater care.'

Bar Adda, the carrier, was leading beasts across the bridge of Naresh,[12] when one beast pushed another and threw it into the water. On his appearing before R. Papa, the latter held him responsible. 'But what was I to do?' he protested. — 'You should have led them across one by one,' he replied. 'Do you know of your sister's son[13] that he could have led them across one by one?' he asked.[14] — 'Your predecessors before you have already complained, but none pay heed to them,' he replied.

Aibu entrusted flax to Ronia. Then Shabu[15] came and stole it from him;[16] but subsequently the

thief's identity became known. Then he [the trustee] came before R. Nahman, who ruled him liable.[17] Shall we say that he disagrees with R. Huna b. Abin. For R. Huna b. Abin sent word:[18] If it [the bailment] was stolen through an accident, and then the thief's identity became known, if he was a gratuitous bailee, he can either swear [that he had not been negligent] or settle with him;[19] if a paid trustee, he must settle with him, and cannot swear! — Said Raba: There,[20] officers were about, and had he [Ronia] cried out, they would have come and protected him.[21]

MISHNAH. [IF] ONE WOLF [ATTACKS], IT IS NOT AN UNAVOIDABLE ACCIDENT;[22] IF TWO [ATTACK], IT IS AN UNAVOIDABLE ACCIDENT. R. JUDAH SAID: WHEN THERE IS A GENERAL VISITATION OF WOLVES, EVEN [THE ATTACK OF] ONE IS AN UNAVOIDABLE ACCIDENT.[23] [THE ATTACK OF] TWO DOGS IS NOT AN UNAVOIDABLE ACCIDENT. JADDUA THE BABYLONIAN SAID ON R. MEIR'S AUTHORITY: IF THEY ATTACK FROM THE SAME SIDE, IT IS NOT AN UNAVOIDABLE ACCIDENT; FROM TWO DIFFERENT DIRECTIONS, IT IS. A ROBBER'S [ATTACK] IS AN UNAVOIDABLE ACCIDENT. [DAMAGE DONE BY] A LION, BEAR, LEOPARD, PANTHER AND SNAKE RANKS AS AN UNAVOIDABLE ACCIDENT. WHEN IS THIS? IF THEY CAME [AND ATTACKED] OF THEIR OWN ACCORD: BUT IF HE [THE SHEPHERD] LED THEM TO A PLACE INFESTED BY WILD BEASTS AND ROBBERS, IT IS NO UNAVOIDABLE ACCIDENT. IF IT DIED A NATURAL DEATH, IT IS AN UNAVOIDABLE ACCIDENT: [BUT] IF HE MALTREATED IT[24] AND IT DIED, IT IS NO UNAVOIDABLE ACCIDENT. IF IT ASCENDED TO THE TOP OF STEEP ROCKS AND THEN FELL DOWN, IT IS AN UNAVOIDABLE ACCIDENT; BUT IF HE TOOK IT UP TO THE TOP OF STEEP ROCKS AND IT FELL AND DIED, IT IS NO UNAVOIDABLE ACCIDENT.

GEMARA. But has it not been taught: [The attack of] one wolf is an accident? — R. Nahman b. Isaac replied: That is when there is a visitation of wolves, and is R. Judah's view.

[THE ATTACK OF] A ROBBER IS AN UNAVOIDABLE ACCIDENT. But why so: let man stand against man — Said Rab: This refers to an armed robber.

The scholars propounded: What of an armed robber and an armed shepherd? Do we say, man must stand against man; or perhaps, the former is prepared to risk his life, but this cannot be expected of the latter? — Reason teaches that the one risks his life, but not the other.[25] Abaye asked Raba: What if the shepherd met him [sc. the robber] and said to him, 'Thou vile thief! We are stationed in such and such a place;

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(1) Therefore it is not like any ordinary loss, for which a paid trustee is responsible, but like an accident, for which he is exempt.

(2) Job I, 15: this proves that they are free from liability only for exceptional and unpreventable mishaps.

(3) Appointed to watch at night, and upon whose vigilance the safety of the town depends; greater care is demanded from them.

(4) Gen. XXXI, 40.

(5) V. supra 41a.

(6) V. supra, 42a. Thus here too, he might have averted some slight mishap, had he been at his post; and therefore by deserting it he displayed negligence and should be liable, notwithstanding that subsequently the damage was unpreventable.

(7) Is he bound to hire helpers?

(8) Sc. of his charges.

(9) Unless he engages helpers at his own cost; it being assumed that this is the meaning of obtaining assistance for payment.

(10) Their owner prefers these to be saved, because he knows them, even if the cost of saving is as much as buying different ones.

(11) Of procuring other animals.
(12) [Supra p. 468, n. 3. It was situated on the canal Nars, a tributary of the Euphrates, Obermeyer, op. cit. p. 307.]
(13) I.e., your co-religionist.
(14) How can you assume that this would have been possible or convenient?
(15) A certain armed robber (Rashi).
(16) The theft being carried out in such a way that it could be regarded as an unpreventable accident from the point of view of the trustee.
(17) Though it was an accident; yet since the thief was known, it was for the trustee — an unpaid one — to sue him. This was the assumed reason for his liability.
(18) From Palestine to Babylon.
(19) I.e., pay him. But he is given the option of freeing himself by an oath, and in this he disagrees with R. Nahman.
(20) in the case of Ronia.
(21) Therefore the theft was due to negligence, and his liability was due to that, and not to the fact that the thief's identity was eventually discovered.
(22) The shepherd could have warded him off, and therefore, being a paid bailee, he is responsible.
(23) For then they are particularly fierce.
(24) E.g., by starvation or exposure.
(25) Hence it is an unavoidable accident.

Talmud - Mas. Baba Metzia 94a

we have this number of men, this number of dogs, so many sharp-shooters are assigned to us;' and he came and robbed him of them? — He replied: Then he has led them to the place of wild beasts and robbers.[1]

MISHNAH. A GRATUITOUS BAILEE MAY STIPULATE TO BE FREE FROM AN OATH;[2] A BORROWER, FROM PAYMENT; A PAID BAILEE AND A HIRER, FROM AN OATH[3] OR PAYMENT.[4] A STIPULATION CONTRARY TO A SCRIPTURAL ENACTMENT IS NULL; ALSO, EVERY STIPULATION WHICH IS PRECEDED BY THE ACTION[5] IS NULL; AND WHATEVER CAN BE FULFILLED EVENTUALLY, AND IT IS STIPULATED AT THE OUTSET, THE STIPULATION IS VALID.

GEMARA. But why so? Is it not a stipulation contrary to Scriptural law, which is null?[6] This agrees with R. Judah, who maintained: In civil matters[7] the stipulation is valid. For it has been taught: If one says to a woman, 'Behold, thou art betrothed unto me on condition that thou hast upon me no claims of sustenance, raiment and conjugal rights', she is betrothed, but the condition is null; this is R. Meir's view. R. Judah said: In respect of money matters, his condition is valid.[8]

But can you assign it to R. Judah? Then consider the second clause: A STIPULATION CONTRARY TO A SCRIPTURAL ENACTMENT is NULL: does not this agree with R. Meir? — That is no difficulty; in truth, it is R. Judah's view, but this second clause does not refer to civil matters. Then consider the latter clause: EVERY STIPULATION WHICH IS PRECEDED BY AN ACTION IS NULL. Now, whom do you know to hold this view? R. Meir. For it has been taught: Abba Halafta, of Kefar Hananiah,[9] said on R. Meir's authority: If the condition [is stated] before the act, it is valid; if the reverse, it is not! — But it is all in accordance with R. Meir: yet here it is different, because at the very outset he accepted no liability.[10]

It has been taught: And a paid bailee may stipulate to be [liable] as a borrower: How: with [mere] words?[11] — Said Samuel: If he acquires it from his hand.[12] R. Johanan said: You may even say that he does not acquire it from his hand; yet in return for the benefit he receives in that he achieves thereby a reputation for being trustworthy, he renders himself fully responsible.

AND WHATEVER CAN BE FULFILLED EVENTUALLY etc. R. Tabla said in Rab's name: This is the view of R. Judah b. Tema. But the Sages say: Even if it is impossible to fulfil it eventually, and one stipulates it at the beginning, the stipulation is valid. For it has been taught: [If one says,] Here is thy divorce, on condition that thou ascendest to Heaven or descendest to the deep, on condition that thou swallowest a hundred cubit cane or crossest the great sea on foot; if the condition is fulfilled, the divorce is valid, but not otherwise.[13] R. Judah b. Tema said: In such a case it is a [valid] divorce. R. Judah b. Tema stated a general rule: That which can never be fulfilled, and he [the husband] stipulates it at the beginning, it is only to repel her,[14] and is valid.

R. Nahman said in Rab's name: The halachah is as R. Judah b. Tema. R. Nahman b. Isaac said: Our Mishnah too proves it,[15] for it states: WHATEVER CAN BE FULFILLED EVENTUALLY, AND IT IS STIPULATED AT THE OUTSET, THE STIPULATION IS VALID. Hence, if it is impossible of fulfilment, the stipulation is null. This proves it.[16]

C H A P T E R V I I I

MISHNAH. IF A MAN BORROWS A COW AND BORROWS OR HIRES ITS OWNER WITH IT,[17] OR IF HE FIRST HIRES THE OWNER AND THEN BORROWS THE COW, AND IT DIES, HE IS NOT RESPONSIBLE, FOR IT IS WRITTEN, BUT IF THE OWNER THEREOF BE WITH IT, HE SHALL NOT MAKE IT GOOD.[18]

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(1) To provoke robbers and challenge them to attack is the equivalent of going into danger.

(2) In case he pleads that it was stolen or lost.

(3) If they plead an unavoidable accident.

(4) For loss or theft.

(5) E.g., if A arranges that B shall perform a certain action on a certain condition, but states the action before the condition, the stipulation is invalid. The law of stipulation is based on that made by Moses in respect to the request of the Gaddites and Reubenites, q.v.; And Moses said unto them, If ye will do this thing, if ye will go armed before the Lord (Num. XXXII, 20-22). Just as the condition was mentioned there first, so must it be in all cases (Rashi). [Maim. Yad, Ishshuth VI, 2, explains simply, 'If the condition was made after the action had already taken place.']

(6) The degrees of liability of the different bailees are stated explicitly, and also partly deduced from Scripture.

(7) Lit., 'in a monetary matter'.

(8) Hence she has no claims of sustenance and raiment, but is entitled to conjugal rights.

(9) [A village in Galilee, v. Klein, S., NB, p. 28.]

(10) Before the bailment came into his hand, he explicitly stated the extent of liability he was prepared to accept; hence, when he receives his charge, his responsibility is already limited. But one cannot be only partly married; therefore, notwithstanding his stipulation, he must hear the full liability involved in marriage.

(11) Surely one cannot assume additional responsibilities, over and above the normal, by mere words!

(12) I.e., performed one of the acts whereby possession is effected. These acts were also valid to legalise a liability which one wished to assume.

(13) I.e., it is assumed that he meant the act to be invalid.

(14) I.e., to distress and make her think that he is not divorcing her.

(15) That the halachah is so.

(16) Since it is taught anonymously.

(17) I.e., the owner lending his personal service.

(18) Ex. XXII, 14.

Talmud - Mas. Baba Metzia 94b

BUT IF HE FIRST BORROWS THE COW, AND ONLY SUBSEQUENTLY BORROWS OR HIRES ITS OWNER, AND IT DIES, HE IS LIABLE, AS IT IS WRITTEN, THE OWNER THEREOF NOT BEING WITH IT,[1] HE SHALL SURELY MAKE IT GOOD.[2]

GEMARA. Since the second clause states, AND THEN BORROWS THE COW, it follows that when the first clause reads, WITH IT, it is literally meant.[3] But is it possible that it shall be literally WITH IT; the cow is acquired only by meshikah, whereas its owner is acquired by his promise?[4] — I can answer either that the cow was standing in the borrower's courtyard, so that meshikah is not wanting;[5] or alternatively, that he [the borrower] said to him, 'You yourself are not lent [to me] until I perform meshikah on your cow.'

We have learnt elsewhere: There are four bailees: a gratuitous bailee, a borrower, a paid bailee, and a hirer. A gratuitous bailee swears for everything. A borrower pays for everything. A paid bailee or a hirer swears concerning an animal that was injured, captured, or that perished; but pays for loss or theft.[6] Whence do we know these things? — For our Rabbis taught: The first section refers to a gratuitous bailee, the second to a paid one, and the third to a borrower.[7] Now, as for the third referring to a borrower, it is well, for it is explicit: And if a man borrow aught of his neighbour, and it be hurt, or die, the owner thereof being not with it, he shall surely make it good.[8] But as for the first treating of an unpaid bailee and the second of a paid one, perhaps it is the reverse? — It is reasonable [to assume] that the second refers to a paid bailee, since he is responsible for theft and loss. On the contrary, [is it not more logical that] the first refers to a paid bailee, since he is liable to restitution of twice the principal in a [false] plea of theft?[9] — Even so [to pay] the principal without the option of an oath is a heavier liability than to pay double after a [false] oath, the proof being that the borrower, though all the benefit is his, yet pays only the principal.[10] But is it so, that in the case of a borrower all the benefit is his? But does it [sc. the animal borrowed] not require food? — [It is all his,] when it [the animal] is standing on a common.[11] But it needs [special] guarding![12] — Where there is a town watch. Alternatively, do not say, all the benefit is his, but, most of the benefit is his.[13] Or again, [refer it] to the borrowing of utensils.[14]

'A paid bailee or a hirer swears concerning an animal that was injured, captured, or perished; but pays for loss or theft.' Now, as for theft, it is well, for it is written, And if it indeed be stolen from him, he shall make restitution unto the owner thereof;[15] but whence do we know it of loss? — For it has been taught: 'And if it indeed be stolen';[16] from this I know only theft: whence do I know loss? From the expression, 'And if it indeed be stolen', implying no matter how [it disappears].[17] Now, that agrees with the view that we do not say that the Torah employs human phraseology; but on the view that we do say that the Torah employs human phraseology, what can you say?[18] — In the West[19] they said, It follows a fortiori: if he must pay for theft, which is near to accident, then surely he is liable for loss, which is more akin to negligence. And the other?[20] — That which is derived by an a fortiori argument, Scripture [often] takes the trouble to write.

'And a borrower pays for everything.' Now, as for the animal that is injured, or perishes, it is well, for it is written, 'And if a man borrow aught of his neighbour, and it be hurt or die'; but whence do we know that a borrower is responsible for capture? And should you say, Let us derive it from the case of injury and death: [it may be rejoined,] as for these, [he is responsible] because they are accidents which may be foreseen; but can you say that capture [is the same], Seeing that it is an unforseeable accident? — But [deduce it thus:] Injury and death are stated [as cause of liability] in the case of a borrower, and they are likewise enumerated in the case of a paid bailee: just as there, capture falls within the same category,[21] so here too, capture is included. But this may be refuted: as for a paid bailee, [it is mentioned] as a cause of exemption; but can you say the same of a borrower, [for whom you would include it] as a cause of liability? — But [it may be derived] in accordance with R. Nathan's teaching. For it has been taught: R. Nathan said: ['And if a man borrow aught of his neighbour, and it be hurt,] or [die]': 'or' extends the law to capture.[22] But is not this 'or' needed as a disjunctive? For I might think that he is responsible only if it is injured and also dies; therefore Scripture states otherwise. Now, on R. Jonathan's view, it is well; but on R. Joshia's, what can you say? For it has been taught: For any man that curseth his father and his mother [shall surely be put to

death]:[23] from this I know only [that he is punished for cursing] his father and his mother; whence do I know [the same] if he cursed his father without his mother, or his mother without his father? From the passage, his father and his mother he hath cursed; his blood shall be upon him: implying a man that cursed his father; a man that cursed his mother:[24] this is R. Joshia's opinion. R. Jonathan said: The [beginning of the] verse implies either the two together or each separately,

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(1) Or 'with him' (the bailee).

(2) Ibid. 13.

(3) I.e., they are both borrowed simultaneously.

(4) When the owner says. 'I lend you my personal services and my cow', he himself is immediately at the service of the borrower, whereas the cow does not pass into his possession, to bear responsibility for it, until he actually performs meshikah (v. Glos.).

(5) Since it is already in his possession, whilst meshikah is only an expedient for bringing it into his possession.

(6) V. supra Mishnah 93a for notes.

(7) The reference is to Ex. XXII, 6-8; 9-12; and 13f. The first states that the bailee is exempt from responsibility in the case of theft: the second, only in the case of the animal dying etc., but not for theft. The third explicitly deals with borrowing.

(8) Ibid. 13.

(9) V. Ibid. 7, 8. This is interpreted in B.K. 63b as referring to the payment due by the bailee for a false plea of theft.

(10) Though undoubtedly his liabilities are the greatest of all bailees.

(11) The borrower living on a common, and since Scripture does not specify the locality of the borrower, even such is meant.

(12) Which involves extra cost.

(13) And still the argument holds good.

(14) Requiring neither food nor a special watch.

(15) Ibid. 11.

(16) The emphasis of 'indeed' is expressed, as usual, by the double form of the verb, גנב יגנב , the infinitive followed by the imperfect.

(17) This is deduced from the emphatic form.

(18) For this emphasis is a normal idiom, and on the latter view, its purpose is not to extend the law.

(19) Palestine.

(20) He who maintains that we do not say that the Torah employs human phraseology, and interprets emphatic forms to include loss; but surely this follows from an a fortiori reasoning!

(21) Since it is explicitly mentioned in v. 9.

(22) V. B.K. 43b.

(23) Lev. XX, 9.

(24) At the beginning of the sentence that curseth is in immediate proximity to his father: at the end, cursing is mentioned nearest to his mother, shewing that each is separate.

Talmud - Mas. Baba Metzia 95a

unless the verse had explicitly stated 'together'![1] — You may say so even according to R. Joshia: it [sc. 'or'] is unnecessary here for the purpose of separation. Why? It is a matter of logic: what is the difference whether it is wholly killed or only partly?[2]

Whence do we know that a borrower is responsible for theft and loss? And should you say, It follows from injury and death: [I would rejoin,] as for these, [he is responsible] because it is impossible to take the trouble of finding it again;[3] will you then say [the same] in the case of theft and loss, seeing that with trouble it may be found?[4] — But [it may be derived] even as it has been taught: [And if a man borrow aught of his neighbour,] and it be hurt, or die — from this I know [the law] only for injury and death: whence do I know it for theft and loss? — You can reason a minori: if a paid bailee, who is not responsible for injury and death, is nevertheless liable for theft and loss;

then a borrower, who is liable for the former, is surely liable for the latter too! And this is an a minori argument which cannot be refuted. Why state that it 'cannot be refuted'?[5] — For should you object, It may be refuted, thus: as for a paid bailee, [he is responsible for theft and loss] because he must make restitution of twice the principal [if discovered] in a [false] plea of [loss through] an armed robber,[6] [I would reply,] yet notwithstanding, the fact that the borrower is responsible for the principal[7] is a greater severity. Alternatively, he maintains that an armed robber is a gazlan.[8]

We have thus learned[9] responsibility;[10] whence do we know freedom from liability?[11] And should you say, It is deduced from injury and death: [it might be argued,] as for these, [he is free] because they are unavoidable accidents? — But it follows from a paid bailee. And whence do we know it of a paid bailee himself? — The liability of a paid bailee is equated to that of a borrower: just as there, when the owner is lent for personal service, he [sc. the borrower] is free thereof, so here too [in the case of a paid bailee], when the owner is lent for personal service, he is free thereof. How is this deduced? If by analogy,[12] that may be refuted, as [in fact] we have refuted it, since they [sc. injury etc.] are accidents![13] — But Scripture saith, 'And if a man borrow': the waw [copulative 'and'] indicates conjunction with[14] the preceding subject, and the upper section is determined by the lower.[15] But even so, [the law of] a borrower cannot be deduced from [that of] a paid bailee, since it [the similarity] may be refuted. As for a paid bailee, that [sc. his non-liability for theft when the owner is in his service] is because he is exempt in the case of injury and death: will you say the same of a borrower, who is liable for these? — But [reason this]: Whence do we know that a borrower is liable for theft and loss [at all]? [Is it not] because we deduce it from a paid bailee?[16] Then it is sufficient that the conclusion of an a minori proposition shall be as its premise: just as theft and loss in the case of a paid bailee, when the owner is in his service, impose no liability; so also with respect to theft and loss in the case of a borrower, when the owner is in his service there is no responsibility. Now, that is well on the view that we accept this limitation;[17] but on the view that rejects it, what can you say? — But [answer thus]: Scripture saith, 'And if a man borrow': the 'waw' indicates conjunction with the preceding subject, and so the lower section illumines the upper and is itself illumined thereby.[18]

It has been stated: When there is culpable negligence [on the part of an unpaid bailee], and the owner is in [his service] — R. Aha and Rabina dispute therein: One maintains that he is liable; the other that he is exempt. He who rules that he is liable maintains that a Scriptural verse may be interpreted [as applying] to the immediately preceding subject, but not to the one anterior thereto: consequently, But if the owner thereof be with it, etc.,[19] does not refer to a gratuitous bailee;[20] on the other hand, negligence [as a cause of liability] is not stated in connection with a paid bailee and a borrower. Therefore, liability [for negligence] in the case of the paid bailee and borrower too follows a minori from a gratuitous bailee. But that there should be no liability for it, when the owner is in their service, that cannot be maintained even in respect of a paid bailee and a borrower.[21] Why so? Because when Scripture states in respect of a borrower and a paid bailee,[22] But if the owner thereof be with it, he shall not make it good, it refers only to those cases of liability which are explicitly stated.[23] Whilst he who maintains that he is not responsible, is of the opinion that the verse may be interpreted as bearing upon the preceding subject and the one anterior thereto; hence, when it is stated, But if the owner thereof [etc.], it refers to a gratuitous bailee too.

We learnt: IF A MAN BORROWS A COW AND BORROWS ITS OWNER WITH IT, OR BORROWS A COW[24] AND HIRES THE OWNER WITH IT, OR IF HE FIRST BORROWS OR HIRES THE OWNER AND THEN BORROWS THE COW, AND IT DIES, HE IS NOT RESPONSIBLE. But a gratuitous bailee is not mentioned![25] — But even on your reasoning, is then a paid bailee mentioned?[26] Hence [it must be said,] the Tanna states [only] what

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(1) I.e., the waw implies both conjunction and separation, and in the absence of an explicit statement to the contrary it is assumed to connote separation. v. Sanh. 85b. Hence, in his view the 'or' is unnecessary, and may teach the inclusion of

capture; but in R. Joshia's view it is necessary, and so the question remains.
(2) For an injury is the equivalent of partial death, with respect to the value of the animal.
(3) I.e., the loss is absolute.
(4) Hence it may be argued that the owner must seek them, and the borrower is free from liability.
(5) The emphatic assertion suggests that the Tanna has a particular refutation in mind, but maintains that it is false.
(6) V. supra. The same holds good here.
(7) When he really is attacked by an armed robber.
(8) Lit., 'robber', who robs by open violence and is not subject to the twofold payment (v. B.K. 79b), as distinct from gannab, a thief who steals in secret. Consequently, the punishment of twofold payment does not apply to a paid bailee who falsely pleads an attack by an armed robber.
(9) Lit., 'found'.
(10) I.e., that a borrower is responsible for theft and loss.
(11) In the case of theft or loss, when the owner of the bailment has lent his personal service too.
(12) מה מצינו Lit., 'what (do) we find?' i.e., as we find a paid bailee and a borrower responsible for certain mishaps, and we also find that the former ceases to be responsible when the owner of the bailment is personally in his service, so the same is assumed of the latter.
(13) Whereas theft is not so unpreventable.
(14) Lit., 'adds to'.
(15) וכי . I.e., the waw indicates that the provisions of each section, in part at least, apply to the other. Hence, since the lower states that a borrower is exempt when the owner lends his personal service, the same holds good in the upper section dealing with a paid trustee.
(16) As stated supra.
(17) Lit., 'that agrees (that we say), Dayyo, it is sufficient.' v. B.K. 25a.
(18) Hence, just as a borrower is free from responsibility when the owner is in his service, where he would otherwise be liable, sc. for injury and death, so the paid bailee is free in similar circumstances where he would otherwise be liable, viz., for theft and loss. And just as a paid bailee is not responsible in these cases, so likewise a borrower. Now, since the whole is thus deduced by analogy, it is not subject to refutation. But above, only the first half was deduced by analogy (hekkesh, v. Glos.), the second half being derived a minori; and an a minori reasoning (Kal wa-homer, v. Glos.) is subject to refutation.
(19) Mentioned in the case of borrower.
(20) Which is two sections remote from the borrower.
(21) Notwithstanding that in cases of mishaps this fact does free them from liability.
(22) The first explicitly, and the second by exegesis.
(23) But not for negligence, the liability for which is derived a minori.
(24) [This phrase does not occur in our Mishnah but is introduced by the Talmud in the text to exclude the possible assumption that the reference here is to the hiring of the cow. V. Strashun, a.l.]
(25) Which proves that the service of the owner does not free him where he would otherwise be responsible, viz., in the case of culpable negligence, thus refuting the contrary view.
(26) Though all agree that he is exempt from his liabilities if the owner is in his service.

Talmud - Mas. Baba Metzia 95b

is explicitly written, and not what is exegetically derived.

Come and hear: If he borrows it [sc. the animal], and borrows its owner along with it; if he hires it and hires the owner with it; if he borrows it, and hires the owner along with it; or if he hires it and borrow its owner with it; even if the owner is working elsewhere,[1] and it dies, he is not liable. Now, it was assumed that this Tanna agrees with R. Judah that a hirer ranks as a paid bailee: thus we see that this Tanna includes what is derived exegetically, yet omits an unpaid trustee! — This agrees with R. Meir, who maintains that a hirer ranks as a gratuitous trustee; and so he states [the law] of an unpaid bailee, and the same applies to a paid bailee. If you wish,[2] I can say it is as Rabbah b. Abbuha reversed [the dispute] and taught: How does a hirer pay? R. Meir said, As a paid bailee; R. Judah

said, As an unpaid bailee.[3]

R. Hamnuna said: He is always responsible unless it [the bailment] be a cow, and he [its owner] ploughs therewith [in the bailee's service], or an ass, and he drives it along, and unless the owner is in the bailee's service from the time the loan is made until it is injured or dies. Thus we see that in his view, 'But if the owner thereof be with it,' refers to the whole transaction.[4]

Raba raised an objection: If he borrows it [sc. the animal], and borrows its owner along with it; if he hires it and hires the owner with it; if he hires it and borrows its owner with it; or if he borrows it and hires the owner along with it; even if the owner is working elsewhere, and it dies, he is not liable. Surely, that means on different work![5] — No; it means on the same work [as the animal was doing]. Then how can it be elsewhere? — [It means] that he went along breaking up [the ground] ahead of it. But since the second clause refers to [working] near it, it follows that the first clause means [actually] a different work! For the second clause states: If he [first] borrows it [sc. the animal] and then borrows its owner; if he hires it and then hires its owner with it, even if the owner is ploughing at its side, and it perishes, he [the borrower or hirer] is responsible! — I will tell you: Both the first clause and the last refer to the same work; and the first clause teaches something of noteworthy interest, and the second likewise. The first clause teaches something of noteworthy interest: though he [the owner] is actually by its side, but yet engaged on the same work, since the owner was in his service from the time the loan was made, he [the bailee] is not responsible. And the second likewise teaches us something of noteworthy interest: though he [the owner] is by its side, yet since the owner was not in his service from the time of the loan, he is responsible. How so? Now, if you concede that the first clause refers to different work and the second to the same, it is well: that very fact is remarkable.[6] But if you suggest that both the first clause and the second refer to the same work, what is there remarkable? Both[7] are on the same work![8] And moreover it has been taught:[9] From the verse, But if the owner thereof be with it, he shall not make it good, do I not know, by implication, that if the owner thereof is not with it, that he must make it good? Why then is it [explicitly] stated, And the owner thereof not being with it, [he shall surely make it good]? To teach you: if he is in his service when the loan is made, he need not be so at the time of injury or death; but though in his service at the time of injury or death, he must also have been so with him at the time of loan.[10] And another [Baraitha] further taught:[8] From the verse, The owner thereof being not with it, he shall surely make it good, do I not know by implication, that if the owner thereof is in his service, that he is free from liability? Why then is it stated, But if the owner thereof be with it [etc.]? To teach you: Once it [the animal] has left the lender's possession, its owner being [simultaneously] in his service, even for a single hour, and it dies, he [the borrower] is free from liability.[11] The [complete] refutation of R. Hamnuna is indeed unanswerable.[12]

Abaye, holding with R. Joshia, explains the verses in accordance with him; Raba, agreeing with R. Jonathan, interprets them on the basis of his views.[13] [Thus:] 'Abaye, holding with R. Joshia, explains the verses in accordance with him,' 'The owner thereof being not with it, he shall surely make it good': hence, it is only because he was not with him on both occasions;[14] but if he were with him on one occasion but not on the other, he would be free from responsibility.[15] But [on the Other hand], it is written, 'But if the owner thereof be with it he shall not make it good': hence, it is only because he was with him on both occasions, but if he was with him on one occasion but not on the other, he is responsible. [This contradiction is] to teach you: If he was with him at the time of the loan, he need not have been with him at the time of the injury or death; but though he were with him at the time of the injury or death he must also have been with him when the loan was made.[16]

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(1) I.e., not in the same place as the animal, yet in the service of the borrower or hirer.

(2) [Should you for some reason prefer to ascribe this anonymous Baraitha to R. Judah (Rashi).]

(3) According to this, the Baraitha is taught on the basis of R. Judah's views.

(4) I.e., the owner must be in the borrower's service all the time, and employed on the labour done with the borrowed ox

or ass.

(5) This refutes R. Hamnuna.

(6) That though he is free from responsibility when the owner is in his service even for different work, he is nevertheless liable if he is not in service from the very beginning, even if engaged on the same work at the time of death.

(7) Whether he breaks up the ground before it, or guards it from behind.

(8) And thus there stands Raba's cited objection to R. Hamnuna.

(9) In refutation of R. Hamnuna's ruling.

(10) This proves that 'and the owner thereof not being with it' refers directly to the time of the loan, and not as R. Hamnuna holds, to the whole time of the transaction.

(11) This Baraitha is identical with the preceding and differs only in form.

(12) The first part of his statement from the first teaching, and the latter from the last two Baraithas cited.

(13) For the dispute of R. Joshia and R. Jonathan, v. supra 94b. The Talmud now explains how the Tannaim deduce that the owner must be pledged to the borrower's service at the time of the loan, but not when the injury or death occurs.

(14) Of the loan and the injury or death.

(15) Since the beginning of the verse mentions both the loan and the mishap, the second half, the owner thereof etc., must refer to both likewise, i.e., the owner was not with him when he borrowed, nor when it died. That is the natural interpretation according to R. Joshia's view that the waw is definitely conjunctive, so that (and it die) links the whole verse.

(16) It is explained below why this is assumed, and not the reverse.

Talmud - Mas. Baba Metzia 96a

'Raba, agreeing with R. Jonathan, interprets them on the basis of his views': 'The owner thereof being not with it, he shall surely make it good': this may imply that he is in his service either on both occasions or on one; in both cases he is free from responsibility. On the other hand, it is also written, 'But if the owner thereof be with it, he shall not make it good'; this too implies whether he is not with him on both occasions or only on one, he is liable. [Hence this contradiction is] to teach you: If he was with him at the time of the loan, he need not have been with him at the time of the injury or death; but though he were with him at the time of the injury or death he must also have been with him when the loan was made.

But may I not reverse it? — It is logical that the time of the loan is stronger [in remitting liability], in that it brings it [the animal] into his possession. On the contrary, are not injury and death more likely [to cancel responsibility], since he then becomes [actually] liable for accidents? — Were there no loan, what would injury and death effect?[1] But if not for injury and death, what liability is imposed by borrowing?[2] — Even so, [the responsibility imposed by] borrowing is greater, since he thereby becomes responsible for his food.[3]

R. Ashi said: Scripture saith, 'And if a man borrow aught of his neighbour,' [implying, aught of his neighbour,] but not his neighbour with it [sc. the animal], then, 'he shall surely make it good:' hence, if his neighbour is with him [when he borrows], he is free from liability.[4] If so, what is the need of, 'the owner thereof being not with . . . But if the owner thereof be with it'?[5] — But for these, I should have thought that this [sc. aught of his neighbour] is the ordinary Scriptural idiom.[6]

Rami b. Hama propounded: What [is the law] if he borrows it in order to commit bestiality therewith? Must the loan be as people generally borrow, whereas people do not borrow for such a purpose?[7] Or perhaps the reason is because of the pleasure [he derives from the loan]: in which case here too he has pleasure?[8] What [again, is the law] if he borrows it for appearance's sake?[9] Is it necessary that something of monetary value shall be lent,[10] which [condition is fulfilled] here? Or perhaps, something of monetary value, by which he [the borrower] directly benefits, is required — which is not [the case here]? What if he borrows it for work worth less than a perutah: must there be monetary value, and there is some? Or perhaps less than a perutah is of no account? What if he

borrows two cows for a perutah's value of work? Do we say, consider[11] the borrower and lender, and there is [monetary value]? Or perhaps, the criterion is [the work of] the cows, and in [that of] each there is none?[12] What if he borrows from partners, one of whom lends himself to him? Must all its owners [be in the bailee's service], which condition is absent here? Or perhaps, he after all bears no liability for his half?[13] What if partners borrow, and he [the animal's owner] lends himself to one of them? Must there be [a pledge of service] to all the borrowers, which, however, is absent here? Or perhaps, for that half [of the partnership] to which he is pledged there is no responsibility? What if he borrows from a woman, and her husband pledges his service? Or what if a woman borrows, and he [the owner] lends himself to her husband?[14] Is a title to usufruct as a title in the principal itself,[15] or is it not?

Rabina asked R. Ashi: What if one says to his agent, 'Go and loan yourself [for service] on my account, together with my cow;' must there actually be its [sc. the bailment's] owner, which is absent here? Or perhaps, 'a man's agent is as himself;' hence the condition is fulfilled? — Said R. Aha, the son of R. Awia, to R. Ashi: As for the husband,[16] that is disputed by R. Johanan and Resh Lakish; with reference to an agent, that is disputed by R. Jonathan and R. Joshia.

'As for the husband, that is disputed by R. Johanan and Resh Lakish.' For it has been stated: If one sells his field to his neighbour for its usufruct, R. Johanan said: He must bring [the first fruits] and recite [the confession];[17] Resh Lakish maintained: He brings [the first fruits], but does not recite [the confession]. 'R. Johanan said: He must bring [the first fruits] and recite [the confession]' because he holds that a title to usufruct is equal to a title to the principal itself. 'Resh Lakish maintained: He brings [the first fruits] but does not recite,' — a title to usufruct is not as a title to the principal itself.[18]

'With reference to an agent, that is disputed by R. Jonathan and R. Joshia.' For it has been taught: If one says to his epitropos,[19] 'All vows which my wife may vow from now until I return from such a place, annul for her,' and he does so, I might think that they are annulled, therefore Scripture writes, Her husband may establish it, or her husband may make it void:[20] this is R. Joshia's view. R. Jonathan said: We find in the whole Torah that a man's agent is [legally] as himself.[21]

R. 'Ilish asked Raba: What [is the law] if one says to his slave, 'Go and loan yourself together with my cow'? The problem arises whether it be maintained that a man's agent is as himself or not. [Thus:] The problem arises on the view that a man's agent is as himself, for that may apply only to an agent who is subject to [Scriptural] commands, but not to a slave, who is not subject thereto.[22] Or, on the other hand, even on the view that a man's agent is not as himself, that may hold good of an [independent] agent, but as for a slave, 'the hand of a slave is as the hand of his master'?[23] — He replied: It is logical that 'the hand of a slave is as the hand of his master.'[24]

Rami b. Hama propounded: Does the husband rank as a borrower in his wife's property,

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(1) I.e., though the actual payment must be made on account of these, it is the fact of loan which conditions it.

(2) Surely, none at all!

(3) The point of the discussion is this. It is evident that Scripture remits liability when the owner is in the bailee's service. Hence the question is, what actually imposes that liability which is to be remitted? And the Talmud answers that it is the act borrowing, rather than injury or death, which imposes it, since borrowing certainly imposes another liability, viz., that of food.

(4) Thus, the verse itself intimates that the owner must not be with him, i.e., in his service, at the time of borrowing.

(5) Since, according to R. Ashi, it is intimated in the words he quotes.

(6) So that no deduction could be made from the 'of' with respect to of non-liability when owner is in the service of the bailee. Now, however, that such is explicitly stated, and, moreover, the apparent contradiction intimates that the owner must be in his service at a particular time, the beginning of the verse, cited by R. Ashi, shews that the time of borrowing

is meant.

(7) Hence he is not liable for accidents.

(8) That the borrower is usually responsible for accidents.

(9) I.e., that he should be thought wealthy, and so obtain credit.

(10) In order to impose liability.

(11) Lit., 'go' according to'.

(12) This problem, of course, arises only on the supposition that a cow must do a perutah's worth of work.

(13) Sc. of the partner who pledged his service.

(14) The reference is to the class of property designated נכסי מלוג 'goods of plucking' — of which the husband enjoys the usufruct, whilst the principal belongs to the wife.

(15) In which case the husband and wife are partners, and so this will depend on the previous problem.

(16) I.e., the problem concerning him.

(17) V. supra, p. 518, n. 9. Though the usufruct only belongs to him, he can nevertheless say, And now, behold, I have brought the first fruits of the land, which thou, O Lord, hast given me (Deut. XXVI, 10).

(18) V. B.B. 136b.

(19) His general steward, appointed in loco domini.

(20) Num. XXX, 14.

(21) Hence the vows are annulled. The same reasoning applies to the problem under discussion.

(22) V. supra, 71b and 72a.

(23) I.e., having no independent existence, his actions are certainly like those of his master.

(24) Hence it is accounted as though the owner is in the borrowers service.

Talmud - Mas. Baba Metzia 96b

or as a hirer?[1] — Said Raba: His very subtlety has led him into error; what will you? If he ranks as a borrower, it is a loan when the owner is in his service; if a hirer, it is a hiring in similar circumstances?[2] — But when does Rami b. Hama's problem arise? If he hired a cow from her and then married her[3] — what [is the law] then? Does he rank as a borrower or as a hirer? Does he rank as a borrower, and so the [present] loan, when the owner is in his service,[4] abrogates hiring effected when the owner was not in his service? Or, perhaps, he ranks as a hirer, and the status of a hirer remains unchanged? But wherefore this differentiation? [If it is maintained that] should he rank as borrower, the borrowing effected when the owner is in his service cancels the hiring effected without the owner being engaged in his service, why not apply the same principle even if he is considered a hirer, and say that the [new] hiring effected with the owner in his service abrogates the [old] hiring effected without the owner's being in his service? — But when does Rami b. Hama's problem arise? E.g., if she hired a cow from a stranger[5] and then was married [not to the owner]. Now, on the view of the Rabbis, who maintain that the borrower must pay the hirer, there is no problem, for it is certainly a case of a loan plus the owner's service. Where the problem arises is on the view of R. Jose, who ruled, the cow must be returned to its first owner. [Hence the question,] what [is the law] then? Does he rank as a borrower or as a hirer?[6] — Said Raba: The husband ranks neither as a borrower nor as a hirer, but as a purchaser.[7] This follows from the dictum of R. Jose son of R. Hanina. For R. Jose son of R. Hanina said: In Usha it was enacted:[8] If a woman sells of her 'property of plucking' in her husband's lifetime, and then dies, her husband [as her heir] can claim it from the purchaser.[9]

Rami b. Hama propounded: When the husband [obtains the privilege of usufruct] in his wife's property [which belonged to hekdesh], who is liable to a trespass offering?[10] Raba [thereupon] observed: Who then should be liable to a trespass offering? The husband? He is willing to acquire a right in what is permitted, but not in what is forbidden! The wife?[11] But she [herself] does not [particularly] wish him [the husband] to acquire even what is permitted![12] The Beth din?[13] When did the Rabbis enact that the husband ranks as a purchaser, only in respect of what is permitted, not in respect of what is forbidden! — But, said Raba, the husband is liable to a trespass offering when he

actually expends it, just as in general, when one withdraws money of hekdesh [and converts it] into hullin.

The scholars propounded: What if it [the borrowed animal] became emaciated through its work?[14] Said one of the Rabbis, R. Helkiah the son of R. Awia by name:[15] Then it follows that if it died through the work, he is certainly responsible. But let him say to him [the lender], 'I did not borrow for exhibition in a show case!'[16] — But, said Raba, not only is it unnecessary to state that if it became emaciated through work he is not responsible, but even if it died through work, he is still not liable, because he can say, 'I did not borrow it that it should stand in a showcase.'

A man once borrowed an axe from his neighbour, and it broke. When he came before Raba, he said to him, 'Go and bring witnesses that you did not put it to foreign use, and you are free from liability.' But what if there are no witnesses? — Come and hear: For a man once borrowed an axe from his neighbour, and it broke. When he came before Rab, he said to him, 'Go and return him a good axe.' Said R. Kahana and R. Assi to Rab:

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(1) It is assumed that the question is whether he is responsible for accidents when working with his wife's, 'property of plucking,' (q.v., p. 555, n. 4) or not, as a borrower or as a hirer respectively.

(2) Since the wife is pledged to her husband's service from the time of marriage.

(3) Or if he borrowed, etc., hiring being mentioned as the more usual (Tosaf.).

(4) As explained in n. 2.

(5) Lit., 'from the world.'

(6) For this dispute of the Rabbis and R. Jose v. supra 35b Now, since the Rabbis maintain that the borrower is concerned only with the lender, not with the first owner, then in this case we consider only the husband's relationship to his wife, and therefore he is not responsible for accidents. But on R. Jose's view that the borrower is referred direct to the first owner, who, of course, is not in his service, the question is whether he ranks as a borrower, and is responsible for accidents, or as a hirer, who is not. In return for the usufruct the husband is bound to ransom his wife if captured, and that liability may give him the rank of a hirer in relation to his wife.

(7) Hence he is not liable

(8) Usha was a city of Galilee, near Shefar'am, Tiberias and Sepphoris, where an important Rabbinical synod was held on the cessation of the Hadrianic religious persecution, about the middle of the second century; v. B.B. (Sonc. ed.) p. 207, n. 3.

(9) Which proves that the husband is accounted a previous purchaser.

(10) E.g., if she inherited property after marriage, which included, unknown to her husband, money belonging to hekdesh (v. Glos.). By a Rabbinical enactment, the husband becomes a beneficiary in respect of the usufruct of anything inherited by his wife after marriage. Now, it was assumed that the very fact that the husband is empowered to spend this money for its usufruct is as though it were already removed from the possession of hekdesh, even if it has not been actually expended. Since such removal, if done unintentionally, imposes a liability to a trespass offering, Rami b. Hama asked upon whom it falls.

(11) For conferring the right upon her husband.

(12) The privilege was conferred upon him by a Rabbinical enactment, not by her desire.

(13) For conferring that privilege.

(14) Is the borrower liable for the loss in value or not?

(15) [This is the only instance where his name occurs.]

(16) Lit., to 'be placed under a bridal canopy.'

is that the law?[1] Thereupon Rab was silent. And [indeed] the law agrees with R. Kahana and R. Assi, that he returns him the broken axe and makes up its full value.

A man borrowed a bucket from his neighbour, and it broke. When he came before R. Papa, he said

to him, ‘Go and bring witnesses that you did not put it to foreign use, and you will be free from liability.’

A man borrowed a cat from his neighbour; the mice then formed a united party and killed it. Now, R. Ashi sat and pondered thereon: How is it in such a case? Is it as though it had died through its work, or not? Thereupon R. Mordecai said to R. Ashi: Thus did Abimi of Hagronia say in Raba's name: A man whom woman killed — [for him] there is no judgment nor judge![2] Others say: It ate many mice, whereby it sickened and died. Now, R. Ashi sat and cogitated thereon: How is it in this case? — Said R. Mordechai to R. Ashi: Thus did Abimi of Hagronia say: A man whom women killed[3] — for him there is no judgment nor judge.

Raba said: If a man wishes to borrow something from his neighbour and yet be free from responsibility, he should say to him, ‘Give me a drink of water,’ so that it constitutes a loan together with the owner's service. But if he [the lender] is wise, he should answer him, ‘[First] borrow it by threshing with it, and then I will give you a drink.’

Raba said: A teacher of children, a gardener,[4] a butcher, a cupper and a town barber[5] — all [if they lend something] whilst at work, are treated in regard to the loan as being in the service [of the borrower].

The scholars said to Raba: ‘You, Master, are loaned to us.’[6] This enraged him: ‘You wish to deprive me of my possessions!’[7] he exclaimed. ‘On the contrary, you are loaned to me! For I can change you over from one tractate to another, whilst you cannot!’[8] But neither was entirely correct. He was lent to them during the Kallah days,[9] whilst they were loaned to him for the rest of the year.

Meremar b. Hanina hired a mule to inhabitants of Be Hozae[10] and went forth to assist them in loading it, but through a negligent act on their part it died. When they came before Raba, he held them liable. His disciples objected: But it is negligence with the owner [in service]! So he was ashamed. Subsequently it was ascertained that he had gone forth to supervise the loading.[11] Now, on the view that for negligence with the owner in service there is no responsibility, it is well; for that reason he was ashamed. But on the view that one is liable, why was he ashamed? — They were not negligent with respect thereto, but it was stolen, and it died a natural death in the thief's possession; and they came before Raba, who ruled them responsible. Thereupon the Rabbis protested to Raba: But it was theft whilst the owner was in their service! But subsequently it was ascertained that he had gone out to supervise its loading.

MISHNAH. IF ONE BORROWS A COW, BORROWING IT FOR HALF A DAY AND HIRING IT FOR HALF A DAY; OR IF HE BORROWS IT FOR ONE DAY AND HIRES IT FOR THE NEXT; OR IF HE HIRES ONE AND BORROWS ANOTHER, AND ONE COW DIES, THE LENDER ASSERTING THAT THE BORROWED ONE DIED, OR IT DIED ON THE DAY WHEN IT WAS BORROWED,

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(1) Is not the law rather that the broken axe is returned and the loss made up? v. B.K. 10b.

(2) I.e., no redress. He is not worthy of being called a man! The same applies to a cat that is eaten by mice.

(3) Through excessive gratification.

(4) Who plants gardens for others on a percentage.

(5) [ספר others: a notary ספר cf. B.B. (Sonc. ed.) p. 106, n. 7.]

(6) I.e., ‘you are pledged to our service, to teach us.’

(7) I.e., ‘to borrow from me and be exempt from liability.’

(8) I.e., ‘I can select for subject of study any tractate I fancy, and you have not the right to protest.’

(9) Kallah, general assembly, refers to the months of Adar and Ellul, before Passover and the High Festivals respectively, when popular lectures were given on the coming Festivals. During this time the teacher was restricted to

those particular subjects, and therefore stood in the service of his disciples. On Kallah v. B.B. (Sonc. ed.) p. 60, n. 7.
(10) V. p. 508, n. 2.
(11) To see that it was not overloaded. Hence he was not in their service at all, and so Raba's verdict was just.

Talmud - Mas. Baba Metzia 97b

OR DURING THE HOUR FOR WHICH IT WAS BORROWED; AND THE OTHER REPLIES, 'I DO NOT KNOW', HE MUST PAY. IF THE HIRER ASSERTS: THE HIRED ONE DIED, [OR], IT DIED ON THE DAY WHEN IT WAS HIRED, OR IT DIED DURING THE HOUR FOR WHICH IT WAS HIRED, AND THE OTHER REPLIES, 'I DO NOT KNOW,' HE IS NOT LIABLE. BUT IF ONE ASSERTS THAT IT WAS THE BORROWED ONE AND THE OTHER THAT IT WAS THE HIRED ONE, THE HIRER MUST SWEAR THAT THE HIRED ONE DIED [WHICH FREES HIM FROM LIABILITY]. IF THE ONE SAYS, 'I DO NOT KNOW,' AND THE OTHER SAYS, 'I DO NOT KNOW,' THEY MUST DIVIDE.[1]

GEMARA. Hence it follows, [that if A says to B,] 'You owe me a maneh,' and B pleads, 'I do not know,' he is bound to pay. Shall we say that this refutes R. Nahman? For it has been taught: [If A says to B,] 'You owe me a maneh,' and B pleads, 'I do not know,' R. Huna and Rab Judah rule that he must pay; R. Nahman and R. Johanan say: He is not liable! — It is as R. Nahman answered [elsewhere], e.g., there is a dispute between them involving an oath; so here too, it means that there is a dispute between them involving an oath.[2] What is meant by a dispute involving an oath? — As Raba's [dictum].

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(1) I.e., share the loss.
(2) I.e., his plea was such that he should have taken an oath, and being unable, since he said, 'I do not know', he must pay instead, but when A claims a maneh, and B simply answers, 'I do not know', he is not thereby liable to an oath, and hence is free altogether.

Talmud - Mas. Baba Metzia 98a

For Raba said: [If A says to B,] 'You owe me a maneh,' to which he replies, 'I [certainly] owe you fifty [zuz], and as for the rest, I do not know,' since he cannot swear,[1] he must pay [all]. [On these lines,] the first clause [of our Mishnah] is conceivable when two, and the second, when three [cows are involved]. [Thus:] 'The first clause, when two [are involved].' A said to B, 'I gave you two cows, loaned for half a day and hired for half (or, [he says: they were] loaned for one day, and hired for another) and both died during the time they were borrowed.' To which B replied, 'One indeed did die then, but as for the other, I do not know whether it was during the time it was borrowed or the period of hire,' — since he cannot swear, he must pay.

'And the second clause, where three [cows are involved].' [Thus:] A said to B, 'I gave you three cows, two loaned and one hired, and the two loaned ones died.' To which the borrower replied, 'Tis true that one borrowed animal died; but as for the other, I do not know whether the borrowed one died and the one alive is the hired one, or the hired one died and the one alive is the borrowed;' since he cannot swear, he must pay.

And according to Rami b. Hama, who maintained that the four bailees must partially deny and partially admit [liability],[2] the first clause is possible only when three, and the second when four [animals are involved]. 'The first clause when three [are involved]': A said to B, 'I gave you three cows, half a day on loan and half on hire, (or, [he says, I gave you them] one day, on loan and one on hire,) and the three died, all in the period when they were borrowed.' To which the borrower replied, 'As for one, the claim is entirely unfounded [I never received it]; the second did die in the period when it was borrowed; of the third, I do not know whether it died during the time it was borrowed or

the period when it was hired.' Since he cannot swear, he must pay.

'And the second clause, where four [animals are involved].' A said to B, 'I gave you four cows, three loaned and one hired, and the three loaned ones died.' To which the borrower replied,

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(1) As one who partly admits and partly denies liability; supra 3a.

(2) V. supra 5a; in his view, 'I do not know' does not constitute denial; only a plea such as 'I have returned that particular animal,' or 'I never received it.'

'As for one, the claim is entirely unfounded; with respect to the second, it is true that a borrowed one died; and as to the others, I do not know whether it was the hired one that died and the one alive is the borrowed one, or whether it was the borrowed one that died and the one alive is the hired one;' and since he cannot swear he must pay.

BUT IF ONE ASSERTS THAT IT WAS THE LOANED ONE, AND THE OTHER THAT IT WAS THE HIRED ONE, THE HIRER MUST SWEAR THAT THE HIRED ONE DIED. But why so? What he claims from him he does not admit; and what he admits he does not claim?[1] — Said 'Ulla: [He swears] through the superimposition [of an oath]. For he [the lender] can demand, 'You must at least swear that it died of natural causes; and since you must swear thus, swear also that the hired one died.'[2]

IF BOTH SAY, 'I DO NOT KNOW,' THEY MUST DIVIDE. Who is the author of this? — Symmachus, who ruled: When money lies in doubt, it is divided.[3]

R. Abba b. Mammel propounded: What [is the ruling] if the borrowing was made together with the owner's [service], but subsequently it [the bailment] was hired without the owner?[4] Do we say, the borrowing stands alone, and the hiring stands alone? Or perhaps the hiring is a continuation of the loan, since he is responsible for theft and loss?[5] And should you rule that hiring is a continuation of the loan, what if he hired it together with the owner's [service], and then borrowed it without the owner? Shall we say that borrowing is certainly not included in hiring?[6] Or perhaps, being partly related thereto, it is wholly related thereto. And should you rule that we do maintain that partial relationship is regarded as complete relationship, what if one borrowed it with the owners [service], hired it without the owner's, and borrowed it again [without the owner]? Does the borrowing revert to its former status? Or perhaps, the hiring breaks the connection? [Likewise,] if it was hired with the owner's [service], then borrowed, and then hired again [the last two without] — do we Say, the hiring reverts to its former status? Or perhaps, the intermediate borrowing breaks the connection? These problems remain unsolved.

MISHNAH. IF A MAN BORROWS A COW, AND HE [THE LENDER] SENDS IT TO HIM BY HIS SON, SERVANT OR AGENT; OR BY THE SON, SERVANT OR AGENT OF THE BORROWER, AND IT DIES [ON THE ROAD], HE IS NOT LIABLE. BUT IF THE BORROWER SAID TO HIM, 'SEND IT TO ME BY MY SON, SERVANT, OR AGENT,' OR 'BY YOUR SON, SERVANT OR AGENT, OR IF THE LENDER SAID TO HIM, 'I AM SENDING IT TO YOU BY MY SON, SERVANT OR AGENT,' OR 'BY YOUR SON, SERVANT OR AGENT, AND THE BORROWER REPLIED, 'SEND IT,' AND HE SENT IT, AND IT DIED [ON THE ROAD], HE IS RESPONSIBLE. AND THE SAME HOLDS GOOD WHEN HE RETURNS IT.[7]

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(1) Though the Mishnah was made to refer to a number of animals, that was only according to R. Nahman; whereas on the view of R. Huna and Rab Judah the Mishnah is literally understood. But in that case, there is no partial admission and partial rejection of the claim, the admission being in respect of something not claimed at all.

(2) גלגול שבועה , lit., 'rolling oath,' v. supra 3a. Thus, here, the lender can plead, 'Even on your own plea, you must still swear that it died naturally, not through your negligence.' (This answer rejects Rami b. Hama's ruling that no oath is imposed at all upon bailees, even when they plead loss, theft, death, etc., unless there is also partial rejection of the claim, as above.) Since the bailee is thus bound to swear, another oath, viz., that the hired one and not the borrowed one died, is administered. The superimposed oath is Biblical, v. Sot. 18a.
(3) v. supra 2b.
(4) I.e., whilst the animal was yet in the borrower's possession, he hired it for a further period; at the time of hiring, its owner was not in his service, though he was when the loan was made.
(5) I.e., by becoming a hirer, he adds nothing to the liabilities of a borrower, and since he bears this responsibility on account of the first meshikah as a borrower, his present responsibility is but a continuation of the first.
(6) Since there is greater responsibility in the former than in the latter.
(7) If the lender instructs him to send it back, the borrower is free from the risks of the road, but not otherwise.

Talmud - Mas. Baba Metzia 99a

GEMARA. If he sends it by his [sc. the lender's] servant, [why does the Mishnah state that] he is liable?[1] Is not the hand of the servant as the hand of his master?[2] — Said Samuel: This refers to a Hebrew servant, whose body does not belong to him [his master]. Rab said: It may refer even to a heathen servant, yet it is considered as though he [the borrower] said to him, 'Strike it with a stick and it will come [to me].'[3]

An objection is raised: If one borrows a cow, and sends it to him [the borrower] by his son or agent, he is liable [for accidents on the road]; by his servant, he is not. Now, on Samuel's view it is well: our Mishnah refers to a Hebrew servant; the Baraitha to a heathen servant. But according to Rab, is there not a difficulty? — Rab can answer you: Do not answer [above], it is considered as though he said to him etc.; it means that he had [actually] said to him, 'Strike it with a stick, and it will come.'[4] For it has been stated: [If A said to B,] 'Lend me your cow;' and he asked him, 'By whose hand shall [I send it]?' to which he replied, 'Strike it with a stick, and it will come,' said R. Nahman, in the name of Rabbah b. Abbuha in Rab's name: Once it leaves the lender's possession and it dies, he [the borrower] is responsible.

Shall we say that the following [Baraitha] supports him:[5] [If A said to B,] 'Lend me your cow, and he asked him, 'By whose hand [shall I send it]?' to which he replied, 'Hit it with a stick, and it will come:' once it leaves the lender's possessions and it dies, he [the borrower] is responsible? — R. Ashi said: [No. For] we deal here with a case where the borrower's court was within the lender's, so that when he sends it, it will certainly go there.[6] If so, why state it? — It is necessary to state it only when there are narrow passages [in various directions in the courtyard]. I might think that he [the borrower] does not place full reliance [on its coming to him, for] perhaps it may stand there [sc. in a by-path] and not come to him: therefore we are taught that he places full reliance [that it will come].

R. Huna said: If a man borrows an axe from his neighbour and he cleaves [wood] therewith, he acquires it; if he does not cleave [wood] therewith, he does not acquire it. In what respect? Shall we say, in respect of [unavoidable] accidents?[7] But wherein does it differ from a cow, [for which he is responsible] from the time of the loan?[8] — Hence in respect of returning it. Once he cleaves [wood] therewith, the lender cannot retract;[9] if not, the lender can retract.

Now, he [R. Huna] is in conflict with R. Ammi. For R. Ammi said: If a man lends an axe belonging to the Sanctuary, he is liable for trespass in respect of its goodwill value, and his neighbour may use it[10] forthwith.[11] Now, if he [the borrower] does not acquire it [until he actually uses it], why is he [the lender] liable for trespass, and why may his neighbour use it forthwith? Let him return it, gain no title thereto, and so not be liable for trespass![12]

He [R. Huna] is also in conflict with R. Eleazar. For R. Eleazar said: Just as they [the Rabbis] instituted meshikah for purchasers,[13] so did they institute meshikah for bailees. It has been taught likewise: Just as they instituted meshikah for purchasers, so did they institute meshikah for bailees. And just as

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(1) If the borrower instructed him to send it.

(2) So that it is as though it had never left the lender's possession.

(3) And as soon as it leaves the domain of the owner, the responsibility rests on the borrower.

(4) I.e., in the Mishnah the borrower did instruct the lender to let it come of istelf, whereby he immediately assumed the risks of the road; and he is not freed of the liability merely because the lender sent his servant to accompany it.

(5) Rab.

(6) The borrower's courtyard led into the lender's; in that case he assumes responsibility. But if part of the highway is to be traversed, he would not assume responsibility. The Baraitha accordingly affords no support to Rab.

(7) I.e., he gains title thereto to be liable for unavoidable accidents.

(8) Even before use.

(9) But it belongs to the borrower for the whole period of the loan.

(10) Lit., 'cleave therewith.'

(11) For unwittingly removing an article from the possession of the Sanctuary one had to pay thereto the principal plus a fifth of the value of the benefit of such removal. In this case, his benefit is only the goodwill of the borrower to whom he lent it, upon which a monetary value is placed. Further, having thus removed it from the possession of hekdesh, it becomes hullin (v. Glos.), and therefore the borrower may freely use it, at the very outset, as soon as it comes into his hand.

(12) Hence it follows that in R. Ammi's opinion it becomes the borrower's by the act of meshikah (v. Glos.), even before he uses it.

(13) As the means of gaining legal possession.

Talmud - Mas. Baba Metzia 99b

real estate is acquired by means of money, a deed, or hazakah,[1] so is hiring effected by the same means. But what has hiring to do [with these]?[2] — R. Hisda said: It refers to the renting[3] of real estate.

Samuel said: If a man robbed his neighbour of a cake of pressed dates containing fifty dates, which, sold together, bring fifty [perutahs] less one; whilst, sold separately, realise fifty perutahs, — in the case of secular property,[4] he must repay forty nine [perutahs]; in the case of hekdesh[5] he must pay fifty, plus the fifth thereof. This, however, is not so in the case of one who injures [property belonging to] hekdesh, for such a one does not add a fifth. For a Master stated: And if a man eat of the holy thing [unwittingly, then he shall put the fifth part thereof unto it etc.]:[6] this excludes one who injures [the holy thing]. To this R. Bibi b. Abaye demurred: In the case of secular property, why must he pay [only] fifty less one? Can he not say, 'I would have sold them singly'? — R. Huna the son of R. Joshua replied: We learnt, The area of a se'ah[7] in that field is assessed.[8]

Shall we say that in Samuel's opinion the law appertaining to secular property is not the same as that of the [Most] High?[9] But we learnt: If he [the steward in charge of the sanctuary] took a stone or beam of hekdesh,[10] he is not guilty of trespass. If he gave it to his neighbour, he [the steward] is guilty of trespass, but not the latter.[11] If he built it into his house, he is not liable for trespass unless he dwells in [and enjoys the use of] it to the value of a perutah.[12] Now, R. Abbahu sat before R. Johanan and said in Samuel's name: This proves that if a man dwells in his neighbour's courtyard without his permission, he must pay him rent![13] — Did not R. Johanan observe to him,[14] Samuel retracted from that [inference]? But how do you know that he retracted from the latter; perhaps he retracted from the former?[15] — No: [he must have retracted from the latter,] in accordance with Raba's[16] dictum; for Raba said: Hekdesh without [its owner's] knowledge is as secular property with

[its owner's] knowledge.[17]

Raba said: If carriers broke a shopkeeper's barrel of wine, which on a market day is sold for five [zuz], but on other days for four, if they make a return on the market day, they return a barrel of wine; but if on other days,[18] they must return five [zuz].[19] That, however, holds good only if he had no [other] wine for sale; but if he had [some left after the market], then he should have sold that. And they deduct the payment for his trouble and the value of the tapping.[20]

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(1) V. Glos.

(2) It was assumed that it refers to the hiring of movable property, in respect of which money, etc., does not effect possession.

(3) Lit., 'hiring.'

(4) Lit., 'to an ordinary man.'

(5) V. Glos. I.e., if he stole them from the sanctuary.

(6) Lev. XXII, 14.

(7) V. Glos.

(8) v. B.K. 55b. If an animal enters a field and eats part of the crops, the value of the crops themselves are not assessed for the purpose of damages, but the decrease in the sale value of the se'ah area in which the damage was done, — an assessment which is obviously less than the former. This shews that in respect to repayment a lenient attitude is taken, and the same applies here.

(9) I.e., hekdesh.

(10) Intending to put it to secular use.

(11) The steward is guilty of having removed it from the possession of hekdesh; for which very reason his neighbour is not guilty, since it is no longer hekdesh. Cf. p. 566, n. 5.

(12) Me'ii. 19b; v. B.K. 20b.

(13) Just as one is guilty of trespass in living under that beam, though the beam is so built in as to leave it unaltered, which shews that there is a debt due to hekdesh for this. Now, this inference of Samuel proves that he regards hekdesh and secular property on a par.

(14) [This is the reading of Bah; cur. edd.: 'R. Johanan said to him,' which Rashi omits; cf. B.K. 20b.]

(15) I.e., the law of stealing dates.

(16) Var. lec.: Rabbah's.

(17) I.e., if one makes use of hekdesh, even if the steward is ignorant thereof, he is just as liable as when one makes use of secular property and its owner knows and demands repayment. The reason is that the real owner of hekdesh is God, Who always knows. This proves that the two are not equal, and therefore Samuel is more likely to have retracted from the latter.

(18) After the market day.

(19) But he can refuse a barrel of wine, since he could have obtained a higher price on market day.

(20) The cost of making a bung hole for the wine to be drawn. According to another reading, the crier's fee, who announced that he had wine for sale, v. supra 40b.

Talmud - Mas. Baba Metzia 100a

MISHNAH. IF A MAN EXCHANGED A COW FOR AN ASS, AND IT CALVED; AND LIKEWISE IF HE SOLD HIS MAIDSERVANT, AND SHE BORE A CHILD, THE ONE MAINTAINING, 'IT WAS BEFORE I SOLD HER,' WHILST THE OTHER SAID, 'IT WAS AFTER I BOUGHT HER' — THEY MUST DIVIDE.[1] IF HE [THE VENDOR] HAD TWO SERVANTS, ONE AN ADULT AND THE OTHER A CHILD; OR LIKEWISE TWO FIELDS, ONE LARGE AND ONE SMALL, THE PURCHASER MAINTAINING, 'I BOUGHT THE LARGE ONE,' WHILST THE OTHER SAYS, 'I DO NOT KNOW,' HE ACQUIRES THE LARGE ONE. IF THE VENDOR SAYS, 'I SOLD THE SMALL ONE,' AND THE OTHER SAYS, 'I DO NOT KNOW,' HE RECEIVES ONLY THE SMALL ONE. IF ONE [THE VENDEE] CLAIMS THAT IT WAS THE LARGE ONE, AND THE OTHER THAT IT WAS THE SMALL ONE, THE

VENDOR MUST SWEAR THAT HE HAD SOLD THE SMALL ONE. IF THIS ONE SAYS, 'I DO NOT KNOW,' AND THE OTHER SAYS, 'I DO NOT KNOW,' THEY MUST DIVIDE.

GEMARA. Why should they divide? Let us see in whose possession it [sc. the calf or child] is, and then apply to the other the principle, He who claims from his neighbour has the onus of bringing proof? — R. Hiyya b. Abin said in Samuel's name: It means that it [the calf] was standing in a meadow; the maidservant, too, was in the market-stand.[2] Then let us presume the ownership of the first master, and apply to the other the principle, He who claims from his neighbour bears the onus of proof?[3] — This agrees with Symmachus, who ruled: When the ownership of property is in doubt, it is divided [among the claimants] without an oath. Now, when did Symmachus rule thus? Where [each] claimant pleads, 'Perhaps [it is mine];' but did he maintain it likewise when each states, '[I am] certain'?[4] — Said Rabbah son of R. Huna: Even so: Symmachus ruled thus even when each states '[I am] certain.' Raba said: In truth, Symmachus ruled thus only when each pleads, 'perhaps,' but not when each states, '[I am] certain:' but read [in the Mishnah]: The vendor maintains, 'Perhaps it was before I sold [her],' and the vendee, 'Perhaps it was after I bought [her].'

We learnt: IF THIS ONE SAYS, 'I DO NOT KNOW, AND THE OTHER SAYS, 'I DO NOT KNOW,' THEY MUST DIVIDE. Now, on Raba's view, it is well; since the last clause refers to when both state 'perhaps', the first may likewise refer to a case where both plead 'perhaps'. But according to Rabbah son of R. Huna, who maintained: Indeed, Symmachus ruled thus even when both plead 'certain' — if they divide even on certain claims,[5] is it necessary to teach it when their claims are uncertain? — As for that, it is no argument. The last clause is stated in order to throw light on the first: [viz.,] that you should not say that the first clause refers [only] to a doubtful plea on both sides, but where both contend with certainty, it is not so;[6] therefore the last clause teaches the case of 'perhaps', on the part of both, from which it follows that the first refers to a plea of certainty by both;[7] and even then, they must divide.

We learnt: IF ONE [THE VENDEE] CLAIMS THAT IT WAS THE LARGE ONE, AND THE OTHER [THE VENDOR] THAT IT WAS THE SMALL ONE, THE VENDOR MUST SWEAR THAT HE HAD SOLD THE SMALL ONE. Now, on Raba's view, that Symmachus gave his ruling only where each [claimant] is uncertain, but not when they are both positive, it is well: hence he must swear.[8] But according to Rabbah son of R. Huna, who maintained that the ruling of Symmachus does indeed hold good even when both are positive, why should the vendor swear? Let them divide! — Symmachus admits [that one must swear] where an oath is necessary by Biblical law, as we interpret this below.

IF HE HAD TWO SERVANTS, ONE AN ADULT AND THE OTHER A CHILD, etc. Why should he swear? What he claims he does not admit, and what he admits he does not claim?[9] Moreover, it is a case of 'Here it is'?[10] Moreover, an oath is not taken with respect to slaves?[11] — Rab said: It means that he demands money: [the vendee claims] the price of an adult slave, whilst [the vendor offers] the value of a child slave; similarly, the value of a large field and that of a small one [are involved].[12] Samuel said: It means that he [the purchaser] claims raiment for an adult slave, and the vendor offers raiment for a child slave;[13] or [the dispute concerns] the sheaves of a large field and those of a small one.

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(1) When a man buys an animal, it does not become his even after payment, until he performs meshikah. Hence there is no possibility of conflict, since it must be known whether it had calved before or after meshikah. But when an exchange is made, as soon as meshikah is performed on one animal the complete exchange is effected on both. Hence the dispute could arise with respect to the cow only in the case of an exchange. But in respect of the maidservant the dispute is possible even in the case of a sale, because possession of her is effected by paying the purchase price.

(2) A narrow path adjoining the open road where slaves, cattle, etc., are sold. Thus they were in neither's possession. The Talmud could have answered that they were standing in the street, but, it is unusual to be in the street for a lengthy time

(Tosaf.).

(3) For when the ownership of an object is in dispute, one may presume that it has not changed hands, unless there is proof to the contrary.

(4) As in the Mishnah, v. supra 3b, and B.K. 38b.

(5) Since, on his view, the first part of the Mishnah refers to such.

(6) I.e., they do not divide.

(7) As it is superfluous to state two identical clauses.

(8) Since they were both positive.

(9) V. supra pp. 19 and 563, n. 1.

(10) Helak, v. supra p. 13. n. 5. When the vendor admits the sale of the child, he offers it immediately to the claimant, and there is a view that in such case there is no oath.

(11) V. Shebu. 42b.

(12) Hence all three difficulties are removed: with respect to the second, the vendor admits that he owes the value of a child slave, etc., but does not immediately offer it.

(13) Where the purchase of raiment for a slave is in dispute.

Talmud - Mas. Baba Metzia 100b

. [You say] 'Raiment', but [surely] what he claims he does not admit, and what he admits he does not claim! — Even as R. papa said [below], when it is on the roll; so here too, when it is on the roll.[1] Now, this presented a difficulty to R. Hoshaia:[2] does then the Mishnah state 'raiment'? It states 'a slave'! — But, said R. Hoshaia, it means, e.g., that he claimed a slave together with his raiment, or a field with its sheaves. But still the difficulty remains: With respect to raiment, what he claims he does not admit; and what he admits he does not claim! — Said R. papa: It refers to cloth on the roll.[3] This presented a difficulty to R. Shesheth: Does he [the Tanna] wish to teach us that [movable property] binds [immovable]? But we have already learnt it: Unsecured chattels bind secured property in respect of an oath![4] — But, said R. Shesheth, [the Tanna of the Mishnah] is R. Meir, who maintained that a slave ranks as movable chattels. But the difficulty still remains: what he claims he does not admit; what he admits he does not claim. — He [the Tanna] is of R. Gamaliel's opinion. For we learnt: If he [the plaintiff] claims wheat, whilst the other [the defendant] admits [owing] barley, he is free [from an oath]. R. Gamaliel held him liable. Yet even so, it is still a case of 'Here it is!' — Said Raba: In the case of the slave [which he admitted], he [the seller] had cut off his hand; and in the case of the field, he had dug in its pits, ditches, and cavities.[5]

But are we not informed that R. Meir holds the reverse? For we learnt: If a man took by violence a cow, and it aged, or slaves, and they aged, he must pay their value at the time of the robbery.[6] R. Meir said: In the case of slaves he can say to him [the owner], 'Behold, here is yours before you!'[7] — That is no difficulty. It is as Rabbah b. Abbuha[8] reversed [the Mishnah] and read: R. Meir said: He must pay their value at the time of the robbery; but the Sages ruled: In the case of slaves he can say to him [the owner], 'Behold, here is yours before you.' But [there is this difficulty]: How do we know that R. Meir holds that real estate is equated to slaves: just as an oath is taken for slaves, so also is an oath taken for real estate? Perhaps [in his opinion] there is an oath only in respect of slaves, but not for immovable property?[9] — You cannot think so. For it has been taught : If a cow is exchanged for an ass, and it calved; likewise, if one sells his maidservant, and she bore a child, one says, 'It happened in my possession,' and the other is silent, the former acquires it. If each says, 'I do not know,' they divide; if each pleads, 'It happened in my ownership,' the vendor must swear that she bore whilst in his possession, because all who take an oath in accordance with Scriptural law, swear to be freed from liability:[10] this is R. Meir's view. But the Sages rule: No oath is taken in respect of slaves or lands.[11] Surely then it follows that in R. Meir's opinion an oath is taken [even on lands]. But how is this to be inferred? perhaps they argue by analogy:[12] Just as you admit to us in the matter of lands [that there is no oath], so should you admit in respect to slaves? The proof[13] is this: We learnt, R. Meir said: Some things are similar to real estate, yet do not rank as such; but the Sages

dispute it. E.g., [If A claims from B,] ‘I delivered you ten laden vines,’ and B replies, ‘There were only five,’ — R. Meir makes him liable; but the Sages say: That which is attached to the soil is as the soil.[14] Whereon R. Jose son of R. Hanina said: They differ with respect to grapes which are ready for vintaging: one Master [sc. R. Meir] regards them as already vintaged;[15] whilst the other maintains that they are not as already vintaged! But after all, it must be explained as R. Hoshaia:[16] and as to your difficulty, ‘[does the Tanna wish to teach that movable property] binds [immovable]?’ It is necessary. For I might think that a slave's garment is as the slave himself; likewise the sheaves of a field are as the field itself:[17] therefore we are taught [otherwise].

‘If each says, "I do not know," they must divide.[18] With whom does this agree? With Symmachus, who ruled: When the ownership of property is in doubt, it is divided. Then consider the latter clause: ‘If each pleads, "It happened in my ownership," the vendor must swear that she bore whilst in his possession.’ Now according to Rabbah son of R. Huna, who maintained: Indeed, Symmachus gave his ruling even where both make positive statements; why should he swear? Surely they ought to divide! — Symmachus admits [that one must swear] when an oath is required by Biblical law; [the circumstances being] that he [the owner] had cut off her [sc. the slave's] hand, and in accordance with Raba's explanation.[19]

MISHNAH. IF ONE SELLS HIS OLIVE TREES FOR THEIR WOOD,[20] AND THEY YIELD LESS THAN A QUARTER LOG [OF] OIL] PER SE'AH [OF OLIVES],[21] IT IS THE PURCHASER'S.[22] BUT IF THEY PRODUCED [OLIVES YIELDING] A QUARTER LOG [OF OIL] PER SE'AH, ONE [THE PURCHASER] CLAIMING, ‘MY OLIVE TREES PRODUCED THEM;’ AND THE OTHER [THE VENDOR] MAINTAINING, ‘IT WAS MY LAND WHICH CAUSED THE YIELD,’ THEY MUST DIVIDE. IF THE RIVER SWEPT AWAY A MAN'S OLIVE TREES AND DEPOSITED THEM IN HIS NEIGHBOUR'S FIELD [AND THERE THEY PRODUCED OLIVES] [AND] ONE MAINTAINS, ‘MY OLIVE TREES PRODUCED THEM,’ WHEREAS THE OTHER CLAIMS, ‘MY LAND CAUSED THE YIELD,’ THEY DIVIDE.

GEMARA. How is it meant? If he stipulated, ‘Cut [them] down immediately,’ then even [if the oil yield is] less than a quarter log [per se'ah], it should belong to the landowner; whilst if he stipulated, ‘Cut [them] down whenever you desire,’ even when it is a quarter log, it ought to be the purchaser's? — It is necessary to state this only when he made no stipulation: [in which case] when there is less than a quarter log, one is not particular;[23] when [however] there is a quarter log, people are particular. R. Simeon b. Pazzi[24] said: The quarter log that was stated

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(1) I.e., not the actual garment is in dispute, but the amount of cloth; one says it was for an adult slave; the other, that it was for a child slave.

(2) [Read with MSS.: Rab Hoshaia; Cur. edd.: R(abbi) Hoshaia.]

(3) Though no oath is administered on real estate and slaves, yet where an oath is due on account of movable property, one is administered for the former too (v. p. 11, n. 3).

(4) ‘Unsecured’ and ‘secured’ refer to movable and immovable property respectively. V. preceding note.

(5) Subsequent to the transaction, so that he does not offer immediately all he has admitted, as he would have to make the damage good.

(6) B.K. 95a. Because when he committed the theft, they passed into his possession, and there and then the liability for repayment fell upon him.

(7) Because slaves, like real estate, cannot be stolen, i.e., they never quit the original ownership through theft, and are considered to be, and grow old, in the legal possession of their rightful owner. This contradicts what has been stated, namely, that R. Meir treats slaves as movables.

(8) [Read with MSS.: Rab; v. B.k,. 96b.]

(9) Whilst our Mishnah states that an oath is administered when it is disputed which field was sold, so that our Mishnah cannot after all represent the view of R. Meir.

(10) I.e., the plaintiff is not permitted to swear to sustain his claim, but only the defendant, in order to refute it.

(11) B.K. 96b.
(12) Lit., ‘perhaps they say to him, "just as".’
(13) That R. Meir agrees that there is no oath for lands.
(14) Shebu. 44b.
(15) Hence he says, they are similar to land, in that they are attached thereto, yet do not rank as such, being regarded as already vintaged hence detached, and subject to the laws of oaths. — This shews that for land itself there is no oath, in R. Meir's opinion.
(16) [V. supra p. 571, n. 6. The reading,’Rab Hoshaia’ is confirmed here by MSS.M.]
(17) Hence there should be no oath.
(18) The quotation is from the Baraitha, not the Mishnah, as is seen from the second clause quoted, which is absent in the Mishnah.
(19) Supra p. 572.
(20) I.e., that the purchaser should cut them down for wood.
(21) I,e., they were left in the soil for some time, and produced very inferior olives, in a se'ah of which there was less than a quarter log of oil.
(22) Lit., ‘they belong to the owner of the olive trees.’
(23) About the benefit derived by the purchaser from his soil.
(24) Var. lec.: b. Lakish.

Talmud - Mas. Baba Metzia 101a

is exclusive of expenses.[1]

IF THE RIVER SWEPT AWAY A MAN'S OLIVE-TREES. ‘Ulla said in the name of Resh Lakish: This was stated only if they were uprooted together with their clods of earth, and after three years [of having been swept away]; but within the three years, it all belongs to the owner of the olive trees, for he can say to him [the landowner]: ‘Had you planted them, could you have eaten of them within three years?’[2] But cannot he answer: ‘Had I planted them, I would have enjoyed the whole of their usufruct after three years; whereas now you share it with me?’[3] But, when Rabin came,[4] he said in the name of Resh Lakish: This holds good only if they were uprooted together with their clods, and within three years; but after three years, it all belongs to the field-owner. For he can say to him, ‘Had I planted them myself, would I not have enjoyed their entire usufruct after three years?’[5] But let him answer: ‘Had you planted them, you could not have enjoyed anything at all within three years, whereas as it is, you share half with me!’ — Because he can retort, ‘Had I planted, they would have been small, and I could have sown beets and vegetables under them.’[6]

A Tanna taught: If he said, ‘I wish to take my olive trees,’ he is not heeded. Why? — R. Johanan said: That Palestine may be well cultivated. Said R. Jeremiah: For such an answer a master is necessary.[7]

We learnt elsewhere: R. Judah said: If one leases a field of his father's from a heathen,[8] he must tithe [all the crops] and then give him [the heathen] his share.[9] Now, the scholars understood it thus: What is meant by ‘a field of his fathers’ is Palestine. And the reason it is called the ‘field of his fathers’ is because it is a field of Abraham, Isaac and Jacob. And he [R. Judah] holds: A heathen cannot acquire a title in Palestine to free [the crops] from tithes; also, one who leases [on a percentage] is as a renter [at a fixed rent]: just as a renter must tithe crops and pay him, whether the field produces or not,[10] because it is as repaying a debt: so also, he who leases a field is as though he were settling a debt: and therefore must first tithe the crops and then pay him. R. Kahana said to R. Papi — others state, to R. Zebid: But what of [the Baraitha] that was taught: R. Judah said: If one leases a field of his fathers from a heathen oppressor,[11] he must tithe [the crops] and pay him [his percentage] — why particularly from an oppressor? Does not the same hold good even if he is not an oppressor? — But in truth, a heathen can acquire a title in Palestine to free [crops] from tithes, whilst

a lessee is not as a renter, and 'a field of his fathers' is meant quite literally.[12] But him [the son] the Rabbis penalised,[13] because since it is more precious to him [than to others], he will go and lease it [on such disadvantageous terms]; whereas others would not [accept it on such terms].[14] But why did the Rabbis penalise him? — R. Johanan said: In order that it might come absolutely into his possession.[15] Said R. Jeremiah: For such an answer a master is needed. It has been stated: If one enters his neighbour's field and plants it without permission, Rab said: An assessment is made, and he is at a disadvantage.[16] Samuel said: We estimate what one would pay to have such a field planted. Said R. Papa: There is no conflict. The latter [Samuel] refers to a field suitable for planting;[17] the former [Rab] to a field unsuitable for planting.

Now, this ruling of Rab was not explicitly stated, but inferred from a general ruling. For a man came before Rab.[18] 'Go and assess it for him,' said he.[19] He demurred, 'But I do not desire it.'[20] Said he to him, 'Go and assess it for him, and he shall be at a disadvantage.' 'But I do not desire it,' he reiterated. Subsequently he saw that he had fenced and was guarding it, whereupon he said to him, 'You have revealed your mind that you desire it. Go and assess it for him, and he [the planter] shall be at an advantage.'

It has been stated: If one enters his neighbour's ruins and rebuilds them without permission, and then says to him, 'I want my timber and stones back' — R. Nahman said: His request is granted. R. Shesheth said: His request is not granted.

An objection is raised: R. Simeon b. Gamaliel said: Beth Shammai maintain, His request is granted; Beth Hillel hold, It is not granted. Shall we then say that R. Nahman ruled in accordance with Beth Shammai![21] — He agrees with the following Tanna. For it has been taught: His request is acceded to: this is the opinion of R. Simeon b. Eleazar. R. Simeon b. Gamaliel said: Beth Shammai maintain, His request is granted; Beth Hillel, It is not.[22]

What is our decision on the matter? — R. Jacob said in R. Johanan's name:

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(1) I,e., after deducting the cost of gathering and pressing, there remains the value of a quarter log of oil per se'ah of olives.

(2) The fruit of a tree may not be eaten within the first three years of planting (v. Lev. XIX, 23). Further, if an old tree is swept away together with the clods of earth in which it grew, and deposited elsewhere and takes root; if these clods were sufficient for its subsequent growth, it still ranks as an old tree, and the three-year prohibition does not apply (v. 'Orl. I, 3); otherwise it does, the trees being regarded as newly planted. Hence Resh Lakish observes on the Mishnah: Only when the trees are swept away with their clods, and three years have passed, is the field-owner entitled to half; because had he planted them, when first swept away, with their clods, the three year prohibition would already have ended, and he can consequently claim that the tree-owner benefits from his soil. But within three years he has no claim at all, since it is only in virtue of their own clods that the fruit is permissible, and so no benefit at all is derived from the new soil.

(3) And in virtue of this, he is entitled to half within three years too.

(4) From Palestine to Babylon.

(5) Whilst the cost of buying young olive trees for planting is trifling, and insufficient to justify half of the present usufruct going to the owner of the olive trees (Tosaf.). — The same applies above.

(6) 'But with your olive trees being large, with spreading roots, I lost the entire use of the soil.'

(7) Without R. Johanan one would not have conjectured it.

(8) On a fixed percentage.

(9) Dem. VI, 2.

(10) The rent being paid in crops.

(11) [מציק , As a result of the Roman War Vespasian had declared fields in Judea his private property and distributed them among his soldiers from whom the original owners had finally to lease them. V. Buchler, Der gal. 'Amh. p. 35, and Klein, S. NB p. 12ff.]

(12) And it means that the Gentile had stolen it from his ancestral field.

(13) That he must tithe the whole field, and then give the Gentile his percentage of the whole harvest, as before tithing.
(14) Therefore, others were not required to tithe the whole.
(15) Finding the terms so onerous, he will be induced to buy it back.
(16) He is paid for the cost of planting or for the improvements, whichever is less.
(17) Trees, rather than for sowing.
(18) In a case similar to the foregoing.
(19) I.e., go and assess the value of the trees he planted.
(20) 'I wish to grow cereals, not plant trees.'
(21) It is a general principle that in every dispute between Beth Shammai and Beth Hillel, the halachah is as the latter.
(22) But according to R. Simeon b. Eleazar there is no dispute, and R. Nahman agrees with him.

Talmud - Mas. Baba Metzia 101b

In the case of a house, his demands are ignored; in the case of a field,[1] they are granted. Why so in the case of a field? — For the sake of the cultivation of Palestine. Others say: Because of the impoverishment of the soil.[2] Wherein do they differ?[3] — In respect to the Diaspora.[4]

MISHNAH. IF ONE RENTS A HOUSE TO HIS NEIGHBOUR IN WINTER, HE CANNOT EVICT HIM FROM THE FESTIVAL[5] UNTIL PASSOVER. IN SUMMER, [HE CANNOT EVICT HIM FOR] THIRTY DAYS. IN LARGE CITIES, WHETHER IN SUMMER OR IN WINTER, [THE PERIOD IS] TWELVE MONTHS. BUT WITH RESPECT TO SHOPS, WHETHER IN TOWNS OR IN LARGE CITIES, [HE NEED NOT QUIT FOR] TWELVE MONTHS.[6] R. SIMEON B. GAMALIEL SAID: A BAKER'S SHOP AND A DYER'S SHOP ARE FOR THREE YEARS.

GEMARA. Why is it different in winter? Because when one rents a house in winter it is for the whole of the winter![7] Then does not the same apply to summer, for when one rents a house it is for the whole summer? — But as for winter, this is the reason, because houses are not available for renting.[8] Then consider the second clause: BUT IN LARGE CITIES, WHETHER IN SUMMER OR IN WINTER, [THE PERIOD IS] TWELVE MONTHS. Hence, if this period expires in winter, he can evict him — but why, seeing that no house is available for renting? — Said Rab Judah: This refers to the notice that must be given. And this is what it [the Mishnah] teaches: If one rents his house to his neighbour for an unspecified period, he cannot evict him in winter [if the year expires then] between the Festival and Passover, unless he gave him notice [in the summer] thirty days before. It has been taught likewise: When they [the Sages] said thirty days or twelve months, it was only in respect of notice. And just as the landlord must inform him [that he will not renew the lease], so must the tenant give notice [that he will not re-rent it]. For otherwise he can say to him, 'Had you notified me, I would have taken the trouble to find a good tenant for it.'[9]

R. Assi said: If it [the lease] entered one day into winter, he cannot evict him from the Festival until Passover.[10] But we learnt: THIRTY DAYS! — He means thus: If one of these thirty days fell in winter, he cannot evict him from the Festival until Passover.[11] R. Huna said: Yet if he wishes to increase the rent, he can do so.[12] R. Nahman demurred: This is like holding him by the secrets to force him to give up his cloak![13] But this [that he can raise the rent] holds good only if house rents advanced [in general].

Now, it is obvious that if his own [sc. the landlord's] house fell in, [and no notice to quit had been given,] he can say to him, 'You are no better than I.'[14] If he sold, rented, or gifted it [to another], he [the tenant] can say to him [the new owner], 'You are no better than the man whence you derive your rights.'[15] If he appointed it a home for his son after marriage,[16] we consider [the matter], if it were possible for him [the landlord] to have informed him [that it would be needed for his son], then he should have informed him.[17] But if not, he can say to him, 'You are no better than I.'[18]

A man once bought a boat-load of wine. Having nowhere to store it, he asked a certain woman, 'Have you a place for renting?' She replied, 'No.' So he went and married her, whereupon she gave him a place for storage. He then went home, wrote a divorce, and sent it to her. So she went, hired carriers against that itself,[19] and had it put out in the road. Said R. Huna, son of R. Joshua: As he did, so shall be done unto him, his requital shall recoil upon his head. Not only if it is not a courtyard that stands to be rented; but even if it is a courtyard that is for renting, she can say to him, 'To anybody else I am willing to rent it, but not to you, because you appear to me like a lion in ambush.'

R. SIMON B. GAMALIEL SAID: A BAKER'S SHOP AND A DYER'S SHOP ARE FOR THREE YEARS. It has been taught: Because they give very much credit.

MISHNAH. IF ONE RENTS A HOUSE TO HIS NEIGHBOUR, THE LANDLORD MUST PROVIDE THE DOOR, DOOR-BOLT, LOCK, AND EVERYTHING WHICH REQUIRES A SKILLED WORKER. BUT WHAT DOES NOT REQUIRE A SKILLED WORKER MUST BE DONE BY THE TENANT. THE DUNG BELONGS TO THE LANDLORD, AND THE TENANT IS ENTITLED ONLY TO THAT WHICH ISSUES FROM THE OVEN OR THE POT RANGE.[20]

GEMARA. Our Rabbis taught: If a man rents a house to his neighbour, the landlord must erect doors, make the windows, strengthen the ceiling, and support the joists.[21] The tenant must provide the ladder [for ascending to the loft] parapet,[22] fix a gutterspout,[23] and plaster his roof.

R. Shesheth was asked: Who must provide the mezuzah?[24] Is then the mezuzah a problem? Did not R. Mesharsheya Say: The obligation of the mezuzah lies upon the inhabitant? But [the question is,] who must provide the place for the mezuzah?[25] — Said R. Shesheth to them: We have learnt it: BUT WHAT DOES NOT REQUIRE A SKILLED WORKER, MUST BE DONE BY THE TENANT; and this too requires no skill, [for] it can be [placed]

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(1) I.e., if one plants his neighbour's field without permission, and then desires to remove the plants.

(2) The plants, in drawing their sustenance from the soil, have impoverished it, and the owner of the field is entitled to some compensation.

(3) These two answers.

(4) The first reason does not hold good there, and so his request is acceded to; the second does, hence it is ignored.

(5) 'The Festival', without a qualifying epithet, always means the Festival of Tabernacles.

(6) Because the shopkeeper gives credit, and he may lose it if he moves frequently.

(7) It being assumed at this stage that 'in winter' means 'for winter.'

(8) I.e., 'in winter' and 'in summer' are meant literally, as the time of renting, the period being unspecified.

(9) Therefore he must pay him damages.

(10) This was assumed to mean, if the year expired even one day in winter, he cannot be evicted the whole winter, irrespective of any notice given.

(11) I.e., the whole of the thirty days' notice must fall in summer.

(12) Though he cannot evict him without due notice, he can nevertheless raise the rent at the expiration of the year without it.

(13) To permit him to raise the rent is the same as permitting him to evict.

(14) The tenant must quit the house at the end of the year, because the fact that no houses are available operates now just as strongly in the landlord's favour, for he too could not have known that his house would fall in.

(15) Lit., 'come'. I.e., just as he could not have evicted me, so you cannot either.

(16) So Rashi; Jast.: he gave it to his son as a bridal room,

(17) Otherwise, he cannot evict him.

(18) So he must quit.

(19) To pay them out of that very wine,

(20) I.e., the ashes, which, like the dung, were valuable as manure. This is discussed in the Gemara.

(21) If these became damaged.
(22) Round the roof of the house; v. Deut. XXII, 8.
(23) Rashi: a board that was placed near the eaves to carry off the water. Jast.: a detachable tube for that purpose. It was a simple affair, for the fixing of which no skill was required.
(24) V. Glos.
(25) It was fixed on the doorpost, in which, if of stone, a cavity was made to contain it. Now, who must make this cavity?

Talmud - Mas. Baba Metzia 102a

in a woodentube.[1]

Our Rabbis taught: If one rents a house to his neighbor, the tenant must provide a mezuzah. But when he quits it, he must not take it with him, excepting if it be leased from a Gentile, in which case he must remove it when he quits. And it once happened that a man took it away with him, and he lost[2] his wife and two children. A story is quoted in contradiction![3] — Said R. Shesheth: It refers to the first clause.[4]

THE DUNG BELONGS TO THE LANDLORD, AND THE TENANT IS ENTITLED ONLY TO THAT WHICH ISSUES FROM THE OVEN OR THE POT RANGE. To what does this refer? Shall we say, to a courtyard which was rented to the tenant, and to oxen belonging to the tenant, then why is it [the dung] the landlord's? But if a courtyard which was not leased to the tenant,[5] and the landlord's oxen are meant, is it not obvious? — It is necessary to teach this only in respect of a courtyard belonging to the landlord and oxen that had strayed thither from elsewhere.[6] Now, this supports R. Jose son of R. Hanina, who said: A man's courtyard effects a title on his behalf even without his knowledge.[7]

An objection is raised: If a man declared, 'Any lost property that may enter therein to-day, let my courtyard effect possession thereof on my behalf,' his declaration is valueless. Now if R. Jose son of R. Hanina's ruling, that a man's courtyard effects a title on his behalf even without his knowledge, is correct, why is his declaration valueless? — The reference here is to an unguarded courtyard.[8] If so, consider the second clause: If a rumour was spread in town that he had found something,[9] his declaration holds good. Now if it is an unguarded courtyard, what if such a rumour did spread? — Since a rumour was spread, people keep aloof from it [in recognition of his ownership], and so it becomes as a guarded courtyard.

An objection is raised: The manure [i.e., the ashes] which comes forth from the oven and the pot-range, and that which is caught from the air,[10] belong to him [the tenant]; but that of the stable and the courtyard, to the landlord.[11] Now if R. Jose son of R. Hanina's dictum is correct, [viz.,] that a man's courtyard effects a title for him even without his knowledge, then when he [the tenant] catches it up from the air, why does it belong to him? Is it not the air of his [the landlord's] courtyard?[12] — Abaye answered: It means that he fastened a utensil to the body of the cow.[13] Raba answered: [An object in] the air, in which it is not destined to come to rest, is not regarded as at rest.[14] But does Raba regard this as certain? Did he not propound: What if one threw a purse by one door and it issued from another — is [an object in] the air, in which it is not destined to come to rest, regarded as at rest, or not?[15] — In that case, there is nothing whatsoever to stop it;[16] but here a utensil is interposed.

'But that of the stable and the courtyard [belongs] to the landlord.' Need both be taught?[17] — Abaye said: It means thus: But that of the stable in the courtyard belongs to the landlord.[18] Said R. Ashi: From this it follows that he who rents his courtyard in general terms does not rent the stable therein.

An objection is raised: [Wild] doves of the dovecote, and doves of the loft,[19] are subject to the laws of sending away,[20] and are forbidden as robbery, [but only] for the sake of peace.[21] Now if R. Jose son of R. Hanina's dictum, that a man's courtyard effects a title on his behalf without his knowledge, is correct, then apply here the verse, If a bird's nest chance to be before thee,[22] excluding that which is [always] at thy disposal![23] — Raba explained: As for the egg, when the greater part of it has issued [from the body of the fowl], it is subject to the law of sending away,[24] whilst he [the owner of the court] does not acquire it until it falls into the courtyard; and when it is stated, 'They are subject to the law of sending away,' [it means] before it falls into the court. If so, why are they forbidden as robbery?[25] [That refers] to the dam. Alternatively it may refer to the eggs, after all: but when the greater part thereof has issued, his intention is set thereon.[26] But now that Rab Judah said in Rab's name: The eggs must not be taken as long as the dam is sitting upon them, for it is written, But thou shalt in any wise let the dam go [first, and only then] take the young to thee,[27] you may say that it holds good even if it [the egg] fell into his courtyard: [nevertheless it is subject to the law of sending away, because] wherever he himself might acquire it, his courtyard acquires it for him; but where he himself might not acquire it,[28] his courtyard cannot acquire it for him either. If so, are they forbidden as robbery [only] for the sake of peace? If he [the stranger] sends the dam away, it is real robbery;[29] whilst if not, she is to be sent away![30] — This refers to a minor, who is not obliged to send her away.[31] But is a minor subject to provisions enacted for the sake of peace?[32] — It means thus: The father of the minor must return them for the sake of peace.

MISHNAH. IF ONE RENTS A HOUSE TO HIS FELLOW FOR A YEAR, AND THE YEAR WAS INTERCALATED,[33] THE INTERCALATION IS IN THE TENANT'S FAVOUR.[34] IF HE LET IT TO HIM BY THE MONTH, AND THE YEAR WAS INTERCALATED, THE INTERCALATION IS IN THE OWNER'S FAVOUR.[35] IT HAPPENED IN SEPPHORIS THAT ONE RENTED A BATHHOUSE FROM HIS NEIGHBOUR FOR TWELVE GOLD DENARII PER ANNUM, AT A GOLD DENAR PER MONTH;

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(1) Lit., 'the tube of a reed.' And attached to the doorpost; i.e., it is not essential to have a cavity at all.

(2) Lit., 'buried'.

(3) Assuming that it referred to a Gentile landlord.

(4) Where he had rented it from an Israelite.

(5) I.e., he had rented the house only.

(6) And it may be assumed that the owner of the oxen renounces his rights to the dung, and so the courtyard gives the landlord a title thereto.

(7) V. supra 11a. Just as here, though the landlord is ignorant that dung is being deposited in his courtyard, it immediately becomes his.

(8) Which cannot effect possession; v. supra loc. cit.

(9) E.g., that a hind with a broken leg had entered his field and could go no further, or that the river's overflow had deposited fish in his land.

(10) I.e., if the tenant placed a utensil to catch the manure as it falls, before it reaches the ground.

(11) This was understood to refer to a courtyard not rented to the tenant.

(12) I.e., before it even falls into the tenant's utensil, it must have entered the air of the landlord, and is therefore his.

(13) So that the dung is immediately received by it, without going through the air at all.

(14) The air above one's ground is accounted as the ground itself, in respect of an object that may enter it, only if it will eventually come to rest on that ground. Here, however, though the dung passes through the air of the landlord's courtyard, it will not come to rest there on account of the tenant's utensils, and therefore the air does not effect possession for him.

(15) V. supra 12a.

(16) From coming to rest — excepting, of course, its own momentum.

(17) Surely one is sufficient, since the same principle operates in both cases.

(18) Even if the courtyard is rented to the tenant.

(19) In both cases they seek their food abroad, but come to nest in the dovecote or the loft.
(20) I.e., when they are sitting on eggs, one must not take both them and the eggs, but must send the dam away, Deut. XXII, 6f.
(21) I.e., strictly speaking, they are ownerless, being semi-wild; nevertheless, for the sake of peace, the Rabbis recognised the title of the owner of the dovecote, and so another must not take them.
(22) Deut. XXII, 6.
(23) I.e., the law applies only to wild doves, under no ownership, but not when they are thine and in thy courtyard.
(24) In the case of a wild bird, if one wished to take the egg at that moment, he would have to send the dam away.
(25) Since the courtyard has not yet effected possession for him.
(26) Therefore, though in strict law they are not yet his, for the sake of peace a stranger may not take them.
(27) Ibid. 'The young' is understood to mean the eggs too.
(28) Since the dam is sitting upon it.
(29) Since, on the dam being sent away, the eggs immediately become the property of the courtyard owner.
(30) Before the eggs can be taken, so that they are forbidden in any case.
(31) Not being of an age when precepts are incumbent upon him.
(32) Surely not!
(33) The Jewish year is partly lunar, partly solar. I.e., it consists of twelve months, which give 355 or 356 days. But at the same time, the Festivals must fall in the proper seasons, Passover in the vernal equinox and Tabernacles in the autumnal equinox. Since this depends on the solar year, which consists of 365 days, the deficiency was made good by the addition periodically of an extra month to the year; v. Sanh. 11a.
(34) He cannot be charged rent for the extra month.
(35) Though a lease for an unspecified period is for a year, the lessee must pay rent for the extra month.

Talmud - Mas. Baba Metzia 102b

AND THE MATTER CAME BEFORE RABBAN SIMEON B. GAMALIEL AND R. JOSE, WHO ORDERED THEM TO DIVIDE THE INTERCALATED MONTH.

GEMARA. A story is quoted in contradiction [of the ruling given]! — The text is defective, and is thus meant: But if he said to him, '[I let it to you] for twelve golden denarii per annum, at a golden denar per month,' they must share. And IT HAPPENED IN SEPPHORIS THAT ONE RENTED A BATHHOUSE FROM HIS NEIGHBOUR FOR TWELVE GOLD DENARII PER ANNUM, AT A GOLD DENAR PER MONTH, AND THE MATTER CAME BEFORE RABBAN SIMEON B. GAMALIEL AND R. JOSE, WHO ORDERED THEM TO DIVIDE THE INTERCALATED MONTH.

Rab said: Were I there, I would have awarded the whole of it to the owner. Now, what does this teach us — that the last expression alone is regarded?[1] But Rab has already said it once. For R. Huna said in the name of the college of Rab:[2] [If the agreed price is] an istera, a hundred ma'ahs, then a hundred ma'ahs [are due];[3] if a hundred ma'ahs, an istera [are arranged], an istera [is meant]?[4] — If from there, I might have thought that [the second term] defines the first;[5] therefore we are informed otherwise.[6]

Samuel said: We refer to a case where he [the landlord] comes [to claim rent] in the middle of the month. But if he comes at the beginning, it is all the landlord's; at the end, it is all the tenant's.[7] Now, did Samuel reject the principle that the last term only is regarded? But Rab and Samuel both said: [If A says to B,] 'I sell you a kor for thirty [sela'im],' he can retract even at the last se'ah.[8] [But if he says,] 'I sell you a kor for thirty, a sela' per se'ah,' then as he [the vendee] takes each, he acquires it![9] — The reason there is that he has taken possession;[10] so here too, has he not taken possession?[11]

But R. Nahman ruled: Land remains in the presumptive possession of its owner.[12] Now, what does this teach us — that the last term is decisive? But that is Rab's teaching![13] [He informs us that it is

thus] even if the terms were reversed.[14]

R. Jannai was asked: If the tenant maintains, 'I have paid [rent],' and the landlord pleads, 'I have not received [it],' upon whom rests the onus of proof? But when [does the dispute take place]? If within the term, we have learnt it; if after, we have [likewise] learnt it! For we learnt: If the father died within the thirty days, the presumption is that he [the firstborn] has not been redeemed, unless proof is adduced to the contrary; after thirty days, he is presumed to have been redeemed, unless told that he was not![15] The question is only [when the dispute arises] on the day that completes the term: does one pay on the day which completes the term, or not? — R. Jannai replied: We have learnt it:

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(1) I.e., if an agreement is made, of which the two terms are contradictory, as here, the latter alone counts.

(2) Though the expression be Rab may simply mean 'the schoolmen', without any particular reference to Rab (cf. Weiss, Dor. III. 141, and Bacher, Ag. der Bab. Am. 2), it is here understood as the college of Rab, the dictum being assigned actually to him.

(3) An istera is half a zuz = 96 Perutahs or ma'ahs.

(4) Which shews that in all cases the second expression is decisive.

(5) I.e., an istera, for which I will accept 100 light-weight ma'ahs, so that they are only worth an istera. In that case, the second term is binding because it defines the first.

(6) That the two terms are indeed contradictory, both there and here, and that the second is decisive.

(7) Reverting to the Mishnah, which states that R. Simeon b. Gamaliel and R. Jose ruled that the intercalated month is divided, he applies to it the principle that possession establishes a title. Hence, if the landlord comes to demand the rent for the extra month in the middle of the month, the tenant retains the half month which he has already enjoyed, but must pay for the second half, since the house undoubtedly belongs to the landlord, whilst the ownership of it for the next half month is disputed. The rest of Samuel's dictum is based on the same principle.

(8) If the vendee begins to carry it away, the possession is not effected until meshikah is performed upon the whole, which ranks as a single purchase, and even when only a se'ah remains, both parties can cancel the bargain.

(9) Each se'ah counting as a separate transaction, which is completed when meshikah is performed thereon, v. B.B. 105a. This shews that the second expression, 'a sela' per se'ah,' is the decisive one, not the first, and so contradicts Samuel's previous dictim.

(10) Actually, it is doubtful whether the first or the last term is binding, and on that account the vendee acquires each se'ah as he takes it, since he is then in possession.

(11) Therefore the tenant does not pay for what he has already enjoyed.

(12) Hence the intercalated month belongs to the landowner, and he may demand rent even at the end of the month.

(13) Why then should R. Nahman state it?

(14) Because it does not depend on order, but on presumption.

(15) Bek. 49a. This refers to the redemption of the firstborn. Cf. Num. XVIII, 16: And those that are to be redeemed from a month old shalt thou redeem. Hence, if the father died within the month, it is assumed that he had not redeemed the child before the obligation matured; on the other hand, if he died after, it is assumed that he had redeemed him at the proper time. Now, rent is payable at the end of the year, and the same principle holds good.

Talmud - Mas. Baba Metzia 103a

A hired labourer [engaged for a period], on the expiration of his term swears and is paid.[1] Thus,it is only the employee whom the Rabbis subjected to an oath, because the employer is occupied with his labourers. But here, the tenant is believed on oath.[2]

Raba said in R. Nahman's name: If one leased a house to his neighbour for ten years, and wrote a deed to that effect [but without dating it,] and then alleged, 'You have held it for five years,' he is believed.[3] Said R. Aha of Difti to Rabina: If so, if A lent B one hundred zuz against a bond, and then B said, 'I have repaid you half,' is he also believed?[4] — He replied: What comparison is there? In that case, the purpose of the bond is to ensure repayment. Had he really repaid him, he should have written the fact on it, or obtained a receipt. But here he can say, 'The reason I wrote you a deed was

that you should not claim ownership through unbroken possession.'[5]

R. Nahman said: One can borrow [an article] 'in its good state' for ever.[6] Said R. Mari the son of Samuel's daughter:[7] Providing, however, that he formally acquired it from him.[8] R. Mari son of R. Ashi observed: He must return him the handle.[9]

Raba said: If one asks his neighbour, 'Lend me a hoe for hoeing this garden,' he may hoe [only] that garden; 'for hoeing a garden,' he may hoe any garden; 'for hoeing gardens', he may hoe all his gardens[10] and return him the handle.

R. Papa said: If one says to his neighbour, 'Lend me this well [for irrigation],' and it falls in, he cannot rebuild it.[11] '[Lend me] a well,' and it falls in, he can rebuild it,[12] [But if he Says: 'Lend me] the place for a well,' he can go on sinking shafts in his land until he chances upon [a water supply]. It is also necessary that he shall have formally acquired it from him.[13]

MISHNAH. IF ONE RENTS A HOUSE TO HIS NEIGHBOUR, AND IT FALLS IN [WITHIN THE PERIOD OF LEASE], HE MUST PROVIDE[14] HIM WITH ANOTHER. IF IT WAS A SMALL ONE, HE CANNOT FURNISH HIM WITH A LARGE ONE, OR VICE VERSA. NOR CAN HE OFFER HIM TWO INSTEAD OF ONE, OR ONE INSTEAD OF TWO. HE MAY NEITHER DIMINISH NOR INCREASE THE NUMBER OF WINDOWS, EXCEPTING BY COMMON AGREEMENT.

GEMARA. What are the circumstances? If he stipulated, 'This house', then if it falls, he is quit [of any further obligation]. Whilst if he said, 'A house,' without specifying which, why cannot he provide two instead of one, or a large house instead of a small? — Said Resh Lakish: It means that he had said to him, 'The house which I let to you is of this length.' If so, why teach it?[15] — But when Rabin came,[16] he said in the name of Resh Lakish: It means that he said, 'I let you a house like this one.' But still [the difficulty remains,] Why state it? — It is necessary to teach it only if it [the house shewn as a model] stood on the river bank. I might think, what is meant by 'like this'? One situated on the river bank.[17] Therefore we are taught [otherwise]. [

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(1) Shebu. 45b; infra 111a. If there is a dispute between him and the employer on the last day, the latter alleging that he has already paid him, the former swears that he was not paid, and receives his wages. Though it is a general rule that the defendant swears to be free from payment (v. p. 572, n. 6), the Rabbis made an exception in this case, because an employer, busy with his workers, may very easily imagine that he has paid one instead of another.

(2) As is usually the case, though it is the day on which the term expires.

(3) On the same principle as R. Nahman's dictum on 102b, q.v.

(4) Surely not: yet the cases are analogous.

(5) V, B.B. III, 1. But not to shew how long the tenancy had lasted. [According to this interpretation, which follows Rashi, it is assumed that the deed, although in the possession of the tenant, served to give the matter publicity and thus preclude the possibility of the tenant claiming ownership on the strength of undisturbed occupation over a number of years. Tosaf., however, in the name of R. Han., preserves a preferable reading to the effect that the deed was drafted by the tenant in favour of the owner and recorded that he had hired the house for ten years from a certain date at so much per year. After five years the tenant says to the landowner, 'You hold already rent for five years,' whereas the landowner maintains, 'I hold rent for three years only;' in that case the tenant is believed on oath, because the tenant can say to the landowner, 'The reason I wrote you a deed was that I should not claim ownership through unbroken possession.']

(6) I.e., if the lender states, 'I lend it to you in its good state,' it means as long as it is fit for its purpose, and so, even if he returns it, he can take it again whenever he needs it.

(7) He was begotten by a Gentile, who turned proselyte by the time of his birth; and is therefore called by his maternal grandfather, not by his own father.

(8) I.e., had performed an act effecting possession, or, as in this case, a right to the use of an article.

(9) If the article is broken or damaged and unfit for its purpose, he must return the remains, since it was not a gift but

only a loan (Rashi). [Wilna Gaon: He may not repair it and retain it for further use.]

(10) And we do not say that he may have only two.

(11) The borrower cannot rebuild and claim that it is lent to him as long as he needs it, since he specified, 'This well,' and it is no longer the same when rebuilt.

(12) And retain it until he has irrigated all his fields.

(13) V. note 3.

(14) Lit., 'set up'.

(15) It is obvious.

(16) From Palestine to Babylon.

(17) I.e., the locality.

Talmud - Mas. Baba Metzia 103b

C H A P T E R I X

MISHNAH. IF ONE LEASES A FIELD FROM HIS NEIGHBOUR,[1] WHERE IT IS THE USAGE TO CUT [THE CROPS], HE MUST CUT; TO UPROOT [THEM], HE MUST UPROOT [THEM]; TO PLOUGH AFTER IT,[2] HE MUST PLOUGH AFTER IT. IT IS ALL DETERMINED BY LOCAL CUSTOM. AND JUST AS THEY DIVIDE THE GRAIN.[3] SO THEY ALSO SHARE IN THE STRAW AND STUBBLE. AND JUST AS THEY DIVIDE THE WINE, SO DO THEY SHARE

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(1) Paying either an agreed percentage of the crops or a fixed measure of the grain in rent.

(2) After reaping and weeding, to turn its soil, so that weeds should not grow again.

(3) When the rent is a percentage of the produce.

Talmud - Mas. Baba Metzia 103b

IN THE BRANCHES [CUT FROM THE VINE] AND THE CANES [USED FOR SUPPORTING THE VINES]. AND BOTH SUPPLY THE CANES.[1]

GEMARA. It has been taught: Where it is the usage to cut [off the crops], he must not uproot; to uproot, he must not cut. And each can restrain the other [from varying the usual procedure]. 'To cut, he must not uproot:' the one [the lessor] can say. 'I want my field manured with stubble;'[2] and the other may say, 'It is too much labour[3] [to uproot thus]' .[4] 'To uproot, he must not cut.' The one [the lessor] can say, 'I wish my field to be cleared [of stubble];' and the other, 'I need the stubble.'[5] 'And each can restrain the other [from varying the usual procedure].' Why state this?[6] — This gives the reason. [Thus:] Why may he not uproot when the usage is to cut, and vice versa? Because each can restrain the other.

TO PLOUGH AFTER IT, HE MUST PLOUGH AFTER IT. Is this not obvious? — It is necessary only for a place where weeding is not done [whilst the corn is standing]; and he [the lessee] went and weeded it. I might think that he can plead, 'I weeded it in order to be exempt from [subsequent] ploughing.' Therefore we are taught that he should have distinctly stated this [beforehand].

IT IS ALL DETERMINED BY LOCAL CUSTOM. What does ALL include?[7] — It includes that which our Rabbis taught: Where it is customary to lease the trees together with the field, they are leased;[8] where it is not customary to do so, they are not leased. 'Where it is customary to lease the trees together with the field, they are leased.' But is this not obvious? — It must be taught only where [fields] are generally leased for a third [share to be the owner's]; and he went and leased it for a quarter share. I might think that he can plead. 'I gave it to you at a lower rental on the understanding that you would receive no share of the trees.' Therefore we are informed that he

should have distinctly stated this [beforehand].

'Where it is not customary to do so, they are not leased.' But is it not obvious? — It must be taught only where it is generally rented for a quarter share, and he [the lessee] went and rented it for a third [to be received by the lessor]. I might think that he can plead. 'I offered you a higher rental on the understanding that I would receive a share of the trees.' We are therefore informed that he should have distinctly stated this.

JUST AS THEY DIVIDE THE GRAIN, SO THEY ALSO SHARE IN THE STRAW AND STUBBLE. R. Joseph said: In Babylon it is the practice not to give [a share of the] straw to the aris.[9] What is the practical bearing of this? — That if there is a person who does give, it is his generosity, and he creates no precedent.[10]

R. Joseph said: The lowest, the middle and the uppermost layers[11] and the thorn stakes[12] must be furnished by the landowner; the shrubs themselves, by the tenant. This is the general principle: whatever is essential for guarding the boundary line [of the field] must be provided by the landlord; that which is required for additional protection, by the aris.

R. Joseph said: The mattock, shovel, [irrigation] bucket and hose must be furnished by the lessor; whilst the tenant must cut the dykes.[13]

AND JUST AS THEY DIVIDE THE WINE, SO DO THEY SHARE IN THE BRANCHES AND CANES. What is the purpose of canes? The School of R. Jannai said: [The reference is to] smooth canes, used for propping up the vines.

AND BOTH SUPPLY THE CANES. Why state this?[14] — This gives a reason. Why do they both share the canes? Because they BOTH SUPPLY THE CANES.

MISHNAH. IF ONE LEASES A FIELD FROM HIS NEIGHBOUR,[15] WHICH IS DEPENDENT ON IRRIGATION, OR IS STOCKED WITH TREES, AND THE SPRING [WHICH IRRIGATED THE FIELD] DRIES UP, OR THE TREES ARE FELLED, HE CANNOT REDUCE THE RENTAL. BUT IF HE SAYS, 'LEASE ME THIS FIELD WHICH REQUIRES IRRIGATION,' OR 'THIS FIELD, WHICH CONTAINS TREES,' AND THE SPRING DRIES UP OR THE TREES ARE FELLED, HE MAY MAKE A DEDUCTION FROM THE RENTAL.

GEMARA. How is it meant? Shall we say. the main river[16] dried up; then why cannot he reduce the rent? Let him say. 'It is a universal blow!'[17] — Said R. Papa: It means that the tributary dried up, [by which the water was brought to the field,] so that he [the lessor] can say to him,

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(1) Necessary each year for the vines.

(2) Therefore! want the grain cut, which leaves the stalks in the earth.

(3) Lit., 'I am not able.'

(4) If the lessor wishes it to be plucked. Therefore neither can demand a variation of the local usage.

(5) For my cattle, and so I do not wish it to remain in the soil.

(6) It is included in the first clause.

(7) V. p. 496, n. 3.

(8) I.e., if a field is leased for sowing grain, and it contains some trees too, though the lessee has no work in connection with the latter, he receives his share thereof, if such is the local usage.

(9) v. Glos.

(10) Lit.,'It is a benevolent eye and we learn nothing from him.'

(11) An earthen rampart was erected round the field. One layer of earth was placed first (בוכרא < בכור cf. ביכורים , the first fruits); this being trodden in, another was added (טפתא < טפי more, additional), and

then these were surmounted (ארכבתא < רכב riding upon) by a third.

(12) A fence was made round the field by placing stakes and drawing thorny shrubs across them.

(13) Through which the water is conducted from the river to the field.

(14) It is obvious, since it is taught that they share in them.

(15) At a fixed rental in crops.

(16) Which supplied the spring.

(17) In which all must share the loss; v. infra 105b.

Talmud - Mas. Baba Metzia 104a

'You should have brought up the water in buckets.'

R. Papa said: These first two Mishnahs [of this chapter] hold good in the cases of both a fixed rental lease and a percentage lease;[1] but in the subsequent [Mishnahs] those which apply to a percentage lease do not apply to a fixed rental, and those that apply to a fixed rental do not apply to a percentage lease.[2]

BUT IF HE SAID, 'LEASE ME THIS FIELD WHICH REQUIRES IRRIGATION,' etc. But why so? Let him [the lessor] say to him, 'I merely defined it for you by name.'[3] Has it not been taught: If one says to his neighbour, 'I sell you a beth kor[4] of land'; even if it contains only a lethech,[5] it [the bargain] is fulfilled, because he sold him only a place by name; providing, however, that it is called beth kor. 'I sell you a vineyard,' even if it contains no vines, it is a valid sale, because he sold him only a name; providing, however, that it is called vineyard. 'I sell you an orchard,' even if it contains no pomegranates it becomes his, because he sold him only a name; providing that it was called orchard.[6] Thus we see that he can plead, 'I merely defined it by name:' so here too, let him plead, 'I merely defined it for you by name'! — Samuel replied: There is no difficulty. In the latter case the lessor stated this to the lessee; In the former, [i.e., the Mishnah] the lessee spoke thus to the lessor. If the lessor stated it to the lessee, it is mere name; if the lessee says it to the lessor, it particularizes.[7] Rabina said: In both cases it means that the lessor stated this to the lessee. [Nevertheless,] since he states, 'THIS FIELD,' it follows that we are dealing with a case where he is standing therein; then why tell him that it is dependent on irrigation?[8] Hence he must have meant, 'A field dependent on irrigation as now situated.'[9]

MISHNAH. IF ONE LEASES A FIELD [AT A PERCENTAGE] FROM HIS NEIGHBOUR AND NEGLECTS IT, WE ASSESS IT HOW MUCH IT OUGHT TO PRODUCE, AND HE MUST PAY HIM [THE AGREED PERCENTAGE]. FOR THUS HE WRITES HIM, 'SHOULD I NEGLECT AND NOT TILL IT, I WILL PAY OF THE BEST.'[10]

GEMARA.R. Meir used to interpret common terms [of speech or writing]. For it has been taught: R. Meir said: 'If I neglect and do not till it, I will pay of the best.[11] R. Judah used to interpret common terms. For it has been taught: R. Judah said: A husband must bring a sacrifice of the rich for his wife, and likewise for every obligatory sacrifice of hers; because he writes thus for her [in the kethubah: 'I undertake] your liabilities incurred by you hitherto.'[12]

Hillel the Elder[13] used to interpret common speech. For it has been taught: The men of Alexandria used to betroth[14] their wives, and when they were about to take them for the huppah[15] ceremony, strangers would come and tear them away. Thereupon the Sages wished to declare their children bastards.[16] Said Hillel the Elder to them, 'Bring me your mother's kethubahs.' When they brought them, he found written therein, 'When thou art taken for the huppah, be thou my wife.' And on the strength of this they did not declare their children bastards.[17]

R. Joshua b. Karhah interpreted common speech. For it has been taught: R. Joshua b. Karhah said:

If a man makes a loan to his neighbour, he must not seize from him a pledge that is worth more than the debt;[18] because he writes thus unto him:[19] 'The repayment which is due to you from me shall be to the full value of this [pledge]'.[20] Now, the reason [that he may claim the value of the pledge] is [only] because he wrote thus; hence, had he not written thus, he would have no title thereto. But did not R Johanan say: If he [the creditor] took a pledge from him, returned it to him, and then he [the debtor] died, the former may distrain it from his children?[21]

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(1) I.e., the statements that where it is customary to cut the grain, it may not be uprooted (IX, I), and that no allowance is made for the failing of a spring (IX, 2), are independent of whether the leaseholder pays a fixed rent or a percentage of the crops.

(2) This is explained on each Mishnah.

(3) But did not guarantee the source of irrigation.

(4) Lit., 'an area requiring a kor of seed,' fifty cubits square taking a se'ah of seed (1 kor ==30 se'ahs).

(5) Half a kor.

(6) B.B. 7a.

(7) I.e., it must be a field that contains these amenities of irrigation.

(8) Surely the lessee sees that for himself!

(9) I.e., the water flowing direct to the field without the labour of transport.

(10) This can obviously refer only to a lease on a percentage rental. If the rent is fixed, there is no room for computation.

(11) I.e., though it is not a Rabbinical enactment that this clause be stated in the conveyance, yet since it was a common practice to insert it, R. Meir paid heed to it, and gave his rulings accordingly.

(12) Certain sacrifices were variable, depending on their owner's financial position (v. Lev. V, 1 — 13; XII, 1-8). Now, in a strictly legal sense, every married woman is poor, since she has no proprietary rights. Nevertheless, if he is wealthy, he must bring the sacrifice of a rich person. This rendering is according to the text in our editions, and means: The husband undertakes to settle her liabilities, in respect of sacrifices (Tosaf.) incurred before marriage, e.g., for leprosy. And presumably he is certainly liable for sacrifices which she incurs after marriage, e.g., for childbirth. Rashi, quoting the Sifra, gives this reading. R. Judah said: Therefore, if he divorces her, he is free from this liability; for thus she writes (in the receipt for the settlement of her kethubah), '(I free you) from all the liabilities hitherto borne by you in respect of myself.'

(13) I.e., the famous Hillel, head of the great school, Beth Hillel. So called to distinguish him from R. Hillel, an amora of the fourth century.

(14) מקדשין the first stage of marriage, v. Glos. s.v. Kiddushin.

(15) V. Glos.

(16) Being born in adultery.

(17) Though normally the kiddushin effected marriage, in that the woman became forbidden to strangers as a married person. yet since the kethubahs distinctly stated that it was to be valid only when the huppah was performed, Hillel recognised the children of those unions as legitimate. V. Halevy. Doroth, I, 3, p. 103. This is an interesting foreshadowing of the modern practice which combines the kiddushin and the huppah. [It is suggested that the clause inserted by the Alexandrian Jews was mainly designed to free the husband from all obligations until actual marriage. v. Epstein. M. Jewish Marriage Contract, p. 295.]

(18) This refers to a pledge taken after the loan, when repayment is due.

(19) I.e., if the creditor returns the pledge for an appreciable length of time, it is first assessed and this statement written.

(20) Hence, if it exceeded the debt, he would be receiving interest.

(21) And it is not regarded as movable property of orphans on which the creditor cannot distrain. This proves that he has a title to it even without that proviso.

Talmud - Mas. Baba Metzia 104b

— The writing [of that clause] serves to countervail depreciation.[1] R. Jose interpreted common terms. For it has been taught: R. Jose said: Where it is the practice to treat the kethubah as an ordinary debt,[2] he [the husband] can collect it [from her father] likewise as a debt.[3] [When it is the local usage] to double [the dowry],[4] he [the husband] can collect [from her father] only half [the

Written sum]. The Neharbeleans[5] used to collect a third.[6] Meremar used to empower [the husband] to collect even the addition. Said Rabina to Meremar: But has it not been taught: [Where it is the usage] to double, he can collect only half? — There is no difficulty: In the one case, possession was formally effected;[7] in the other, it was not.

Rabina was writing a large amount for [the dowry of] his daughter [more than he was actually giving]. Said they [the other side] to him, 'Let us effect a formal possession from you.' To which he replied, 'If a formal possession, then no doubling; if doubling, no formal possession.

A certain man once said, 'Give my daughter four hundred zuz as her kethubah.' R. Aba, son of R. Awia, sent an enquiry to R. Ashi: Does it mean, four hundred zuz [as the actual dowry], hence eight hundred [to be written]; or four hundred zuz [as the sum to be recorded], the equivalent of two hundred zuz [the real dowry].[8] R. Ashi replied: We see: if he said, 'Give her four hundred zuz,' eight hundred [are to be recorded]; but if he said, 'Write her four hundred zuz', he meant two hundred actual. Others state: R. Ashi replied, We see: if he said, 'For her kethubah,' it is four hundred actual, and eight hundred [written]; if he said, 'In her kethubah,' it means four hundred [written], which is two hundred actual. Yet that is incorrect: whether he said, 'For her kethubah,' or, 'In her kethubah,' it means four hundred [written], which is two hundred [actual]. Unless he says, 'Give her', without further qualifications.

A certain man once leased a field from his neighbour and stated: 'If I do not cultivate it, I will give you a thousand zuz.'[9] Now, he left a third uncultivated. Said the Nehardeans: It is but just that he should pay him three hundred thirty-three one-third zuz. But Raba said: It is an asmakta,[10] and an asmakta effects no title. But in Raba's view, wherein does it differ from what we learnt: 'SHOULD I NEGLECT AND NOT TILL IT, I WILL PAY OF THE BEST?'[11] — In that case, there was no exaggeration; but here, since he stated such a large sum, it was a mere exaggeration [not to be taken seriously].

A certain man once leased a field[12] for sesame. He sowed wheat instead, but the wheat appreciated to the value of sesame.[13] Now, R. Kahana thought to rule: He [the tenant] can make a deduction [from the percentage due] on account of the [diminished] impoverishment of the soil. But R. Ashi said to R. Kahana: People say, 'Let the soil become impoverished rather than its owner.'[14]

A certain man once leased a field for sesame. He sowed wheat, however, but the wheat subsequently exceeded the sesame in value. Now, Rabina thought to rule that he [the lessor] must give him [the tenant] the increased value.[15] Said R. Aha of Difti to Rabina: Was he [the tenant] the only cause of the higher value, and the earth not at all?[16] The Nehardenas said: An 'iska[17] is a semi loan and a semi trust, the Rabbis having made an enactment which is satisfactory to both the debtor and the creditor.[18] Now that we say that it is a semi loan and a semi trust, if he [the trader] wishes to drink beer therewith [i.e., for the loan part] he can do so.[19] Raba said: [No.] It is therefore called 'iska [business] because he can say to him, 'I gave it to you for trading, not for drinking beer.' R. Idi b. Abin said: And if he [the trader] dies,it ranks as movable property in the hands of his children.[20] Raba said: It is therefore called 'iska, that if he dies, it shall not rank as movable property in the hands of his heirs.[21]

Raba said: If there is one 'iska and two bonds, it is to the investor's disadvantage.[22]

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(1) If the pledge depreciated in value, the creditor would lose, but for that clause, which assures him that he will receive its full value as at the time he returns it, and in virtue of which he is empowered to seize other objects of the debtor's.

(2) I.e., if a woman is widowed, she is empowered to sue for her marriage settlement, part of which had formed in the first place the dowry given to her husband by her father or family, just as for an ordinary debt.

(3) Since it will he subsequently reclaimed from him, he can legally claim it from the father at the time of marriage, or

subsequently.
(4) l.e., to state double the amount for the actual dowry in the kethubah to make it appear greater, whilst actually only half the stated amount is payable on widowhood or divorce. [This was inserted as a mark of honour to the bridal couple. v. Epstein. M. ap. cit., p. 104.]
(5) Nehar Bil, E. of Bagdad. v. Sanh. (Sonc. ed.) p. 89, n. 1].
(6) They used to state in the kethubah treble the actual amount.
(7) By means of a kinyan (v. Glos.). The husband then acquires a title to the whole.
(8) It was in a place where the amount was doubled.
(9) A percentage lease is referred to.
(10) V. Glos.
(11) And, as seen from the Mishnah, the statement is binding.
(12) V. n. I.
(13) A sesame crop is more valuable than a wheat crop; on the other hand, it exhausts the soil more. But in this case, owing to an advance in the price of wheat, the crop lost nothing through the change, and there was the further profit that the soil was less exhausted than it would otherwise have been.
(14) I.e., he should have carried out his contract and not jeopardised the owner's receipts. He therefore cannot make a deduction now.
(15) I.e., that the lessor receives his percentage only on the potential sesame crop.
(16) Both contributed, hence both share.
(17) V. Glos.
(18) I.e., half the capital value of the stock is a pure loan for which the trader bears full responsibility; the other half is a bailment, so that the investor bears all risks of depreciation. To avoid the charge of usury, however, the trader generally received two — thirds of the profit. V. supra 68b.
(19) I.e., he need not use it for business at all.
(20) The half which is a loan is counted as movable chattels, which are not subject to seizure for debt from the heirs. Hence the investor loses it.
(21) I.e., it is permanent trading stock, and therefore always available for the satisfaction of the investor's claims.
(22) As stated supra 68b, the investor generally received a third of the profits, but stood half the losses. Now, if he invests two bales of goods and draws up one bond: if there is a loss upon one and a profit upon the other, it is all counted as one investment, and he receives a third of the net profit upon both. But if he draws up a separate instrument for each, he bears half of the loss incurred on one, and receives only a third of the profit earned on the other, and so is at a disadvantage.

Talmud - Mas. Baba Metzia 105a

If two 'iskas were arranged but only one bond drawn up, it is to the debtor's disadvantage.[1]

Raba also said: If a man accepted an 'iska from his fellow, and lost thereon; but then made it good by an effort, yet had not informed him [the investor of the loss], he cannot [then] say to him, 'Deduct the previous loss incurred;'[2] because he can retort, 'You took the trouble of making it good to avoid the odium of inefficiency.'[3]

Raba also said: If two men accept[4] an 'iska and make a profit, and one says to the other, 'Come, let us divide now' [before the time for winding up]: then if the other objects [saying], 'Let us earn more profits,' he can legally restrain him [from closing the transaction]. [For] if he claims, 'Give me half the profits,' he can reply, 'The profit is mortgaged for the principal.'[5] Whilst if he proposes, 'Give me half the profits and half of the principal,'[6] he can answer, '[The parts of the] 'iska are interdependent.'[7] Whilst if he proposes, 'Let us divide the profit and the principal, and should you incur a loss I will bear it with you:' he can answer, 'No. The fortune of two is better than that of one.'

MISHNAH. IF A MAN LEASES A FIELD FROM HIS NEIGHBOUR AND REFUSES TO

WEED IT, SAYING, WHAT DOES IT MATTER TO YOU, SEEING THAT I PAY YOU YOUR RENTAL?' HIS PLEA IS NOT HEEDED, BECAUSE HE [THE LESSOR] CAN REPLY, 'TOMORROW YOU MAY LEASE IT, AND IT WILL BE OVERGROWN WITH WEEDS.'[8]

GEMARA. And should he [the tenant] say, 'I will plough it afterwards,'[9] he can reply, 'I want good wheat.'[10] And should he say, 'I will buy for you wheat from the market,' he can answer, 'I want wheat from my own soil.' Should he reply, 'Then I will weed for you the area necessary for your portion,' he can retort, 'You will bring my land unto disrepute.'[11] But we learnt, because IT WILL BE OVERGROWN WITH WEEDS![12] — But [he is not heeded] because he can answer him, 'Once a bung falls out, it is fallen.'[13]

MISHNAH. IF A MAN LEASES A FIELD TO HIS NEIGHBOUR, AND IT DOES NOT YIELD [A SATISFACTORY CROP]: IF THERE IS ENOUGH TO MAKE A STACK, HE [THE TENANT] IS BOUND TO GO ON WORKING THEREIN.[14] SAID R. JUDAH: WHAT STANDARD IS A STACK?[15] BUT [THE STANDARD IS] IF THERE IS ENOUGH FOR RESOWING.[16]

GEMARA. Our Rabbis taught: If a man leases a field from his neighbour, and it does not yield [a satisfactory crop], and there is enough to make a stack, he [the tenant] is bound to go on working therein, because he writes him thus:[17] 'I will stand, plough, sow, cut, bind, thresh, winnow, and set up a stack before you, and you will come and receive half; whilst I will receive half in return for my labour and expenses.' And how much is meant by, 'enough to make a stack'? — R. Jose son of R. Hanina said: Sufficient for the winnowing fan to stand therein .[18] The scholars propounded: What if the winnowing fan protrudes from both sides?[19] — Come and hear: R. Abbahu said: I received an explanation thereof from R. Jose son of R. Hanina: Providing that the receiver does not see the sun.[20]

It has been stated: Levi said: Three se'ahs; the School of R. Jannai said: Two; Resh Lakish said: The two se'ahs mentioned are exclusive of expenses.[21]

We learnt elsewhere: Wild olives and grapes — Beth Shammai declare them unclean; Beth Hillel, Clean.[22] What is meant by 'wild [perize] olives?' — Said R. Huna: Wicked olives [i.e., which yield very little oil]. R. Joseph said: And what verse [warrants this interpretation]? — Also the robbers [perize] of thy people shall exalt themselves to establish the vision; but they shall fail.[23] R. Nahman b. Isaac said: It is from this verse: If he beget a son that is a robber [pariz] a shedder of blood.[24] And what is the standard of wild olives?[25] — R. Eleazar said: Four kabs per loading.[26] The School of R. Janna said: Two se'ahs. But there is no dispute: the former treats of a place when one kor is put into the press at a time; the latter, where three kors are put into the press.[27]

Our Rabbis taught:

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(1) If two 'iskas were arranged on different dates, but recorded in one note, the result is the converse of the preceding, and hence to the trader's disadvantage.

(2) I.e., bear half of that loss, whilst receiving only a third of the profits earned subsequently.

(3) Lit., 'Not to be called, one who causes losses in investments.'

(4) From an investor, a period being fixed for its winding up.

(5) In case there are subsequent losses.

(6) For the return of which the trader is personally responsible to the investor.

(7) 'You might profit on your half, and I lose on mine; but both halves are security for each other.'

(8) This can apply only to a fixed rental lease, for in the case of a percentage lease the tenant obviously cannot argue thus.

(9) The Gemara continues the argument of the Mishnah. should the tenant say, 'I will plough the field after the harvest.' (V. supra).

(10) The rental being a fixed measure of the wheat grown by the tenant. But if the field is not weeded, the crop is of poor

quality.
(11) If it is seen overgrown with weeds.
(12) Which shews that that is an all-sufficing reply.
(13) And the wine that gushes out cannot be replaced. So here too, even if the tenant offers to plough the field after the harvest, he can reply, 'Once weeds have taken root, they cannot be entirely eradicated.'
(14) Though he wishes to cease work, the yield being in, sufficient reward for his labour.
(15) Surely the same limit cannot apply to all fields, irrespective of size!
(16) I.e., if the yield is at least sufficient to resow the field the following year.
(17) In the tenancy agreement.
(18) If put into the pile, it will stand upright.
(19) Whilst the stack is sufficient to maintain it upright, the whole breadth of the fan is not covered in, but protrudes from both sides of the pile. Does the law of the Mishnah and Baraitha apply in this case or not?
(20) The receiver is the lower part of the shovel which receives the grain; this must be entirely covered in by the pile, i.e., 'not see the sun,' and the sides of the shovel are part of the receiver.
(21) This quantity must be left clear, in order for the tenant to be bound to go on cultivating the field.
(22) Beth Shammai regard them as fit to be eaten, hence they are subject to the uncleanness of food; Beth Hillel maintain that they are not fit, and therefore exempt from that law.
(23) Dan. XI, 14.
(24) Ezek. XVIII, 10.
(25) How little oil must they produce to be put in this category?
(26) קורה , the beam of the olive press. If when that is fully laden with olives there is not more than four kabs yield, they are designated 'wild olives.'
(27) The presses varied in size, which explains the varying definitions. One se'ah ==6 kabs, hence 2 se'ahs ==3 times 4 kabs.

Talmud - Mas. Baba Metzia 105b

If they ascended a tree of feeble strength, or a feeble branch, he is unclean.[1] How is 'a tree of feeble strength' defined? — The School of R. Jannai said: If its roots lack sufficient breadth for a quarter [kab] to be hollowed out of it.[2] What is the definition of a feeble branch? — Resh Lakish said: That which is hidden in the grip of the hand.[3]

We learnt elsewhere: If a man travels through grave area[4] over [loose] stones that can be moved, if he travels upon a man or beast of feeble strength, he is unclean.[5] What is meant by 'a man of feeble strength'? — Resh Lakish said: One whose knees knock together because of the rider upon him. What is meant by 'a beast of feeble strength'? — The School of R. Jannai 'said: If the rider causes it to excrete [through the strain].

The School of R. Jannai said: In respect of prayer and phylacteries [the limit of a burden is] four kabs. What is the reference in respect of prayer? — As it has been taught: If a man bears a burden on his shoulder, and the time for prayer arrives, if it is less than four kabs,he slings it over his back, and prays; if four kabs, he must place it on the ground, and then pray. What is the reference in respect of phylacteries? — As it has been taught: If a man is carrying a load on his head, and phylacteries are on his head [at the same time],[6] if the phylacteries are crushed under it, it is forbidden; otherwise, it is permitted. Of what burden was this said? — A burden of four kabs.

R. Hiyya taught: If a man carries out manure on his head, and has phylacteries on his head [at the same time], he must not remove them to the side, nor fasten them to his loins, because such is a contemptuous treatment; but must bind then, on his arm in the place of phylacteries.[7] On the authority of the school of R. Shila it was said: Even their wrapper[8] may not be placed on the head [as a burden] whilst the phylacteries are being worn. And how much?[9] — Said Abaye: Even a sixteenth of a Pumbedithean weight.[10]

SAID R. JUDAH: WHAT STANDARD IS A STACK? BUT [THE STANDARD IS] IF THERE IS ENOUGH FOR RESOWING. And how much is needed for resowing? — R. Ammi said in R. Johanan's name: Four se'ahs per kor.[11] — R. Ammi, giving his own opinion, said: Eight se'ahs per kor. An old man said to R. Mama, son of Rabbah b. Abbuha: I will explain it to you. During R. Johanan's lifetime the land was fertile;[12] during that of R. Ammi it was poor.

We learnt elsewhere: If the wind scattered the sheaves,[13] we compute how much gleanings it [that field] was likely to provide, and so much must be given to the poor. R. Simeon b. Gamaliel said: The poor must be given the measure for resowing.[14] And how much is that? — When R. Dimi came,[15] he said in the name of R. Eleazar — others state, in the name of R. Johanan: Four kabs per kor.

R. Jeremiah propounded: Does that mean, for a kor that is sown, or for a kor that is harvested?[16] [Further, if it means for a kor that is sown,] is it for hand sowing or by oxen?[17] — Come and hear: For when Rabin came, he said in the name of R. Abbahu in the name of R. Eleazar — others say, in the name of R. Johanan: Four kabs for a kor of seed. But the question still remains: for hand sowing or by oxen? The problem remains unsolved.

MISHNAH. IF A MAN LEASES A FIELD FROM HIS NEIGHBOUR, AND IT [THE CROP] IS EATEN BY GRASSHOPPERS, OR BLASTED [BY TEMPEST], IF IT WAS A WIDESPREAD EPIDEMIC,[18] HE CAN DEDUCT FROM THE RENTAL; IF IT WAS NOT A WIDESPREAD EPIDEMIC, HE MAY NOT DEDUCT FROM THE RENTAL. R. JUDAH SAID: IF HE LEASED IT ON A MONEY RENTAL,[19] THEN IN BOTH CASES HE MAY MAKE NO DEDUCTIONS FROM THE RENTAL.[20]

GEMARA. How far must it extend to be called a widespread epidemic? — Rab Judah said: E.g., if the greater part of the plain [in which this field lay] was blasted.[21] 'Ulla said: If four fields, on the four sides thereof, were blasted. 'Ulla said: They propounded in the West [sc. the academies of Palestine]: What if one furrow over the entire length was blasted? What if one furrow was left [unblasted] over their entire length?[22] What if pits lay between?[23] What if they were separated by a field of fodder?[24]

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(1) Zab. III, 1. This refers to a person who suffers from issue and a clean person. Now, if the two sit on an object in such a manner that one causes the other to move, e.g., on the two ends of a see-saw, on a rickety branch, whether the unclean person supports the weight of the clean person or vice versa, even if they do not come into actual contact, the clean person is defiled. Now, when they both ascend a feeble tree, which bends under their weight, or a feeble branch, even if the tree itself is strong. the same result ensues, one bending over — technically called 'leaning' — through the other, hence the clean person is defiled.

(2) The measures were in standard shapes, so that a certain minimum breadth would be required for this.

(3) I.e.,it is so thin that the hand entirely encircles it (Rashi). Jast.: when it is hidden under (fully covered with) moss.

(4) בית הפרס Lit., 'a field of a Peras square.' Peras=half (the length of a furrow of 100 cubits), and it is a term applied to a field declared unclean on account of a grave that was ploughed therein. Maim. and Asheri on Oh. XVII, 1 translate פרס as derived from פרס to extend, i.e., the area over which the bones may extend. Others derive it from פרס to break, i.e., an area of splintered bones; v. Jast.

(5) The person who actually walks on this field becomes unclean, even if it contains no loose stones. But if one rides upon a man or beast, without himself coming into contact with the field, he becomes unclean only if he causes loose stones to be moved. Hence two conditions are necessary for his defilement: (i) that the field shall contain loose stones; (ii) that the man or beast ridden upon shall be weak and bowed down by the weight of the rider, so that he disturbs the stones more than he would otherwise have done. But if the bearers are so strong that the rider makes no difference to their gait, the latter is clean.

(6) In Talmudic times the phylacteries were worn during the day even whilst one was engaged in his ordinary Pursuits.

(7) I..e, the upper half, above the elbow.

(8) I.e., in which the phylacteries are put away when not in use, as at night.
(9) Must he the weight of a burden, to be forbidden on the head when the phylacteries are being worn.
(10) I.e., even the smallest weight is forbidden.
(11) I.e., in an area where a kor ought to grow only four se'ahs grew, which is the quantity needed for sowing such an area.
(12) Hence the lesser quantity sufficed.
(13) Over the field, and so they became mingled with the gleanings that must be left for the poor, and it is not known which is which.
(14) Pe'ah V, 1.
(15) From Palestine to Babylon.
(16) I.e., is it for an area that requires a kor of seed that four kabs are estimated as gleanings, or for an area that produces a kor?
(17) Sowing was done either by hand, a man walking along and scattering the seed, or by oxen drawing a cart with a perforated bottom, in which the seed was placed. The latter method was more wasteful, and required a greater quantity of seed for a given area than the former.
(18) Lit., 'a regional mishap'.
(19) Generally the rental was paid in crops.
(20) [This Mishnah applies only to a fixed rental, for with a percentage rental there can be no deduction, both sharing whatever the yield may be.]
(21) [Maim. and Asheri (on basis of slightly different reading): 'most of the fields in that city', v. Wilna Gaon's Glosses.]
(22) Must the whole of the four fields have suffered, or is it sufficient that a furrow over the whole length of each shall have been affected? And if that is insufficient, what if the entire fields were affected with the exception of a furrow in each?
(23) There were no fields immediately contiguous, but the field was surrounded by pits, on the outer edges of which lay other fields, which were affected. Does this come within the scope of the definition or not?
(24) Which was unaffected, whilst the fields beyond were.

Talmud - Mas. Baba Metzia 106a

What if they were separated by a different cereal?[1] Further, is wheat as different seed in relation to barley, or not?[2] What if others were smitten by blasting, and his by mildew, or others were smitten by mildew and his by blasting? The problems remain unsolved.

What if he [the lessor] said to him [the lessee], 'Sow it with wheat,' and he went and sowed it with barley, and then the greater part of the plain was blasted, and his barley too was blasted: do we say that he can argue, 'Had I sown wheat, it also would have been blasted'; or perhaps he can answer him, 'Had you sown it with wheat, [the Scriptural promise,] Thou shalt also decree a thing, and it shall be established for thee,[3] would have been fulfilled unto me?'[4] — It is reasonable that he can in fact answer him, 'Had you sown it with wheat, [the promise,] 'Thou shalt also decree a thing, and it shall be established for thee: and the light shall shine upon thy ways' would have been fulfilled unto me.

What if all the lessor's fields were blasted, and this one was blasted, yet the greater part of the plain was unaffected? Do we say, Since the greater part of the plain was unaffected, he can make him no deduction? Or perhaps, since all his lands were blasted, he can say to him, 'This transpired on account of your evil fate,[5] the proof being that all your fields have been blasted'? — It is reasonable that he can answer him, 'Had it been on account of my bad luck, a little would have remained [unaffected], as it is written, For we are left but few of many.'[6]

What if all the lessee's fields were blasted, and the greater part of the plain too, and this field also was blasted along with them? Do we say, Since the greater part of the plain was affected, he can deduct his? Or perhaps, since all his fields were blasted, he [the lessor] can say to him, 'It is due to

your misfortune, the proof being that all your fields have been smitten'? — It is logical that he can indeed say to him, 'It is due to your misfortune.' Why so? Here too let him answer, 'Had it been on account of my ill-luck, a little would have remained to me, in fulfilment of the verse, For we are left few of many'? — Because he can retort, 'Were you worthy that aught should remain to you, something of your own would have escaped.'[7]

An objection is raised: If it was a year of blasting or mildew, or the seventh year, or years like those of Elijah,[8] they are not included in the count.[9] Now blasting and mildew are stated as analogous to years like those of Elijah: just as during the years of Elijah there was no produce at all, so in the former too. But if there were some harvests [elsewhere], it is accounted to him,[10] and we do not term it an epidemic![11] — Said R. Nahman b. Isaac: There it is different, because Scripture says, According to the number of years of the harvests, he shall sell into thee,[12] [meaning], years in which the world enjoys harvests.[13] R. Ashi objected before R. Kahana: If so, the seventh should be included in the count, since there are harvests outside Palestine! — The seventh year, replied he, is excluded by royal decree.[14] Mar Zutra, the son of R. Mari, said to Rabina: If so, the seventh year should not rank for rebate; why then did we learn, He must pay a sela' and a pundion per annum?[15] — He replied, There it is different, because it [the seventh year] is fit for fruits to be spread out therein.[16]

Samuel said: This [sc. that a deduction may be made when there is a widespread epidemic] was taught only if he [the lessee] sowed it [the field], it [the crop] grew and was eaten by grasshoppers;[17] but not if he failed to sow it altogether, because he can say to him, 'Had you sown it, the promise, They shall not be ashamed in the evil time,' anid in the days of famine they shall be satisfied,[18] would have been fulfilled for me.'[19] R. Shesheth raised an objection: If a shepherd, who was guarding his flock,left it and entered the town; and then a wolf came and killed [a sheep], or a lion [came], and tore it to pieces, we do not say, 'Had he been there, he could have saved them,' but judge his strength: if he could have saved them, he is responsible; if not, he is exempt.[20] But why so? Let him say to him, 'Had you been there, the verse, Thy servant slew both the lion and the bear,[21] would have been fulfilled for me!' — Because he can answer, 'Had you been worthy that a miracle should happen on your behalf, it would have happened, as in the case of R. Hanina b. Dosa, whose goats brought in bears by their horns.'[22] But cannot he reply, 'Granted that I am not worthy of a great miracle,[23] yet am I worthy of a minor one!'[24]

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(1) If it be resolved that fodder is not a separation, what if it was surrounded by fields of different cereals, but still for human beings; these being unaffected, whilst those beyond, which were the same, being affected?

(2) If it be answered that fields of different seed break the continuity and are disregarded, what if a wheat field was surrounded by fields of barley?

(3) Job XXII, 28.

(4) I.e.,the promise that my hopes and prayers would be fulfilled; but these were for wheat, not barley.

(5) [לתא , lit., 'cause'; Ginsberg, L. MGWJ, LXXVIII, p. 19.]

(6) Jer. XLII, 2. When misfortune is decreed upon a person, it is not absolute. That itself proves that in this case it was not due to the lessor's bad fortune, but was a natural phenomenon.

(7) Where all the lessor's fields have been affected, he can argue, 'Something has in fact been left to me, viz., the rent I receive, even though reduced. This proves that it is my fate that something should be left to me, and therefore if this blasting were due to my evil fortune, some of my fields would have escaped, in accordance with the verse. But nothing at all has been left to you, which shews that you are excluded from that promise; so that after all it may be your peculiar fate that is responsible' (Tosaf.).

(8) I.e., of drought.

(9) 'Ar. 29b. This refers to a sale of land when the law of Jubilee was in force. The vendor always retained the option of repurchase, but not before the estate had been in the vendee's possession for at least two years. But if one of these was a year of blasting, etc., it was not counted.

(10) The vendee is regarded as having enjoyed a year's harvest, to be taken into account in assessing the redemption

price, which was calculated on a pro-rata basis, according to the number of years to the Jubilee and the length of time the vendee had been in possession.

(11) To be charged to the first owner. This contradicts the Mishnah.

(12) Lev. XXV. 15.

(13) And this is the verse from which pro rata redemption after two years is deduced (‘Ar. 29b). Hence, even if there is a widespread blight in which the whole plain is smitten, yet since some harvests are reaped elsewhere, the year is taken into account.

(14) I.e., since Scripture forbade sowing in the seventh year, it was specifically excluded from the years of produce; hence is regarded as non-existent.

(15) ‘Ar. 25a. The reference is to Lev. XXVII, 16-19: And if a Man shall sanctify unto the Lord a field of his possession, then thy estimation shall be according to the seed thereof an homer of barley seed shall be valued at fifty shekels of silver. If he sanctify his field from the year of jubilee, accordingly to thy estimation it shall stand. But if he sanctify the field after the jubilee, then the priest shall reckon unto him the money according to the years that remain, even unto the year of jubilee, and it shall be abated from thy estimation. Now, the Mishnah states that according to this reckoning, for every year that remains a sela’ and a pundion, which is 1/48th of a sela’, is due. This shews that the fifty shekels are divided into 49, the number of years in a jubilee (excluding the jubilee itself). But if the Sabbatical years, not being years of seed, are excluded, there are only 42 years of seed into which the fifty must he divided, which gives almost a sela’ and a denar per annum.

(16) I.e., some use can be made of the seventh year, and the Bible did not specify ‘years of harvests’ in this connection.

(17) I.e., blighted.

(18) Ps. XXXVII, 19.

(19) Therefore no deduction can he made, notwithstanding the widespread epidemic.

(20) Supra 41a.

(21) I Sam. XVII, 36.

(22) Complaints being made that his goats were damaging the crops, he exclaimed, ‘If it be so, let bears devour them; if not, let them capture bears and bring them in by their horns.’ In the evening his goats came in, drawing the bears by their horns! V. Ta'an. 25a.

(23) That my flock should be saved even in your absence.

(24) That it should be saved through your presence.

— This indeed is a difficulty.

One [Baraitha] teaches: He [the tenant] must sow it [the field] the first and second time, but not the third.[1] But another [Baraitha] teaches: He must resow it a third time, but not a fourth! — There is no difficulty: the former is according to Rabbi; the latter, R. Simeon b. Gamaliel. The former is according to Rabbi, who maintained that a presumption is established by an occurrence happening twice. The latter, R. Simeon b. Gamaliel, who held that a presumption is established only when it occurs three times.[2]

Resh Lakish said: This was taught only if he sowed it, it grew, and was devoured by locusts. But if he sowed it, and it did not grow at all, the lessor can say to him, 'Go on repeatedly sowing [the field] during the extra period of sowing.' And until when is that? — Said R. Papa: Until the aris[3] comes from the field and kimah is situated overhead.[4]

An objection is raised: R. Simeon b. Gamaliel said on the authority of R. Meir, and R. Simeon b. Menasya said likewise: [The second] half of Tishri, Marcheshvan, and the first half of Kislev is seed-time; [the second] half of Kislev, Tebeth, and half Shebat are the winter months; [the second] half of Shebat, Adar, and [the first] half of Nisan, cold months; [the second] half of Nisan, Iyar, and [the first] half of Sivan is the period of harvests; [the second] half of Sivan, Tammuz, and the first half of Ab are summer; the second half of Ab, Ellul and the first half of Tishri, hot months. R. Judah counted [these periods] from [the beginning of] Tishri; R. Simeon, from Marcheshvan.[5] Now, who gives the most lenient interpretation?[6] R. Simeon [who counts from Marcheshvan]; and yet he does not extend the [sowing] season so far! — There is no difficulty. The latter refers to a field leased for early sowing;[7] the former, to one leased for late sowing.[8]

R. JUDAH SAID: IF HE LEASES IT ON A MONEY RENTAL. A certain man leased a field by the bank of the River Malka Saba[9] on a money rental, for sowing garlic. But the River Malka Saba became dammed up.[10] When he came before Raba, he said to him, 'It is unusual for the River Malka Saba to become dammed; this is a widespread blow; [therefore] go and deduct.' But the Rabbis protested to Raba, did we not learn, R. JUDAH SAID: IF HE LEASED IT ON A MONEY RENTAL, THEN IN BOTH CASES HE MAY MAKE NO DEDUCTION? — He replied: None pay heed to this ruling of R. Judah.

MISHNAH. IF A MAN LEASED A FIELD AT AN ANNUAL RENTAL OF TEN KORS WHEAT, AND IT [THE FIELD] WAS SMITTEN,[11] HE CAN PAY HIM THEREOF.[12] IF, [ON THE OTHER HAND,] THE WHEAT GROWN WAS OF CHOICE QUALITY, HE [THE TENANT] CANNOT SAY, 'I WILL PURCHASE WHEAT IN THE MARKET [FOR YOUR RENTAL],' BUT MUST PAY HIM THEREOF.[13] GEMARA. A man leased a field to grow fodder for [several] kors of barley. [The field] having produced a crop of fodder,[14] he ploughed and resowed it with barley, which was, however, blighted. So R. Habiba, of Sura on the Euphrates,[15] sent to Rabina: How is it in such a case? Is it analogous to the law, IF IT WAS SMITTEN, HE CAN PAY HIM THEREOF, or not? — He replied: How compare? In that case the soil had not performed the owner's behest; but here it had.[16] A certain man leased a vineyard from his fellow for ten barrels of wine: but that wine[17] turned sour. Now, R. Nahman thought to rule, This is the same as our Mishnah: IF IT WAS SMITTEN, HE CAN PAY HIM THEREOF. But R. Ashi said to him: What analogy is there? There the soil had not performed its duty, whilst here it had.[18] Yet R. Ashi admits in the case of grapes that had become wormy, or a field whose sheaves were smitten.[19]

MISHNAH. IF ONE LEASES A FIELD FROM HIS NEIGHBOUR TO SOW BARLEY, HE MUST NOT SOW WHEAT;[20] [TO SOW] WHEAT, HE MAY SOW BARLEY. BUT R. SIMEON

B. GAMALIEL FORBIDS IT. [IF RENTED FOR] CEREALS, HE MAY NOT SOW PULSE; BUT IF [FOR] PULSE HE MAY SOW CEREALS.[21] R. SIMEON B. GAMALIEL FORBIDS IT. GEMARA. R. Hisda said: What is R. Simeon b. Gamaliel's reason? — Because it is written, The remnant of Israel shall not do iniquity nor speak lies; neither shall a deceitful tongue be found in their mouth.[22]

An objection is raised: The Purim collections must be utilized for Purim only, and no scrutiny is made in the matter. The poor may not even buy shoestraps therewith, unless this was stipulated in the presence of members of the community: this is the ruling of R. Jacob, who stated it in the name of R. Meir; but R. Simeon b. Gamaliel

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(1) Having sown the field once, and it was blighted, he must resow it; otherwise he can make no deduction even if the epidemic was widespread. But if it was smitten again, he need not sow it a third time.

(2) V. Sanh. 81b. Hence, the crops having been twice blighted, there is a presumption that they will be smitten a third time too, according to Rabbi; and therefore without sowing a third time, he may deduct. But in the view of R. Simeon b. Gamaliel, they must be blighted three times before he may presume thus.

(3) V. Glos.

(4) Kimah is the name of a constellation, conjectured by Jast. to be Daco, not the Pleiades. In the month of Adar, corresponding to mid-February to March, the kimah appears to be overhead at the time the peasant finishes his work, viz., about four in the afternoon. Thus R. Papa states that the seed time is up to Adar.

(5) The passage is an explanation of the terms mentioned in Gen. VIII, 22: While the earth remaineth, seed-time (זרע) and harvest (קציר), and cold (וקר) and heat (וחם), summer (וקיץ) and winter (וחרף), and day and night shall not cease.

(6) Who starts the seasons latest, and so gives the latest period for seed-time.

(7) E.g., Wheat and rye.

(8) Barley and pulse, which are sown in Adar.

(9) [The large canal in the district of Mahuza; v. Obermeyer, op. cit. p. 170.]

(10) At a higher point than the field, so that it was insufficiently watered for garlic to grow.

(11) The crops being blasted or mildewed.

(12) Of the crops grown in that field, notwithstanding their poor quality.

(13) [This Mishnah, too, obviously deals with a fixed rental.]

(14) This requires only thirty days.

(15) [Whilst the town of Sura lay on the Sura canal, its west side was situated on the Euphrates, Obermeyer, op. cit. 293.]

(16) I.e., in the Mishnah it had been leased for barley, and the barley had been smitten. Therefore the lessor must accept his rent out of the crop. Here, however, the fodder, for which it had been rented, had not been affected, and it had never been leased for barley; consequently, he must supply him with sound barley, as the original understanding had been.

(17) Viz., which was manufactured from the grapes of that vineyard.

(18) The grapes were sound; therefore he must buy him good wine.

(19) Then the lessor must accept payment out of the crop. Though the sheaves were already detached from the soil, yet since they had to be spread out on the field for drying, they still needed the soil, and therefore it is as though they were smitten whilst growing.

(20) Because wheat exhausts the soil more than barley. This can refer only to a fixed rental; for in the case of a percentage rental, since a wheat crop is of greater value than a barley crop, he may sow wheat, as stated supra 104a: Let the field be impoverished, rather than its owner.

(21) The reasoning is the same as in the case of barley and wheat. [MS.M. reverses the position of cereals and pulse, a reading adopted by Maim. and Alfasi, cf. n. 5 below.]

(22) Zeph. III, 13.

is lenient in the matter.[1] — Said Abaye: R. Simeon b. Gamaliel's reason is in accordance With you,

Master.[2] For the Master said: If one wishes his land to become sterile, let him sow it one year with wheat and the following with barley, one year lengthwise and the following crosswise.[3] Yet that is only if he does not plough it [after the harvest] and repeat [before sowing]; but if he does, no harm is done.

[IF RENTED FOR] CEREALS, HE MAY NOT SOW PULSE, etc. Rab Judah taught Rabin: [If rented for] cereals, he may sow pulse. Said he to him: But did we not learn, [IF RENTED FOR] CEREALS, HE MAY NOT SOW PULSEE? — He replied: There is no difficulty; this [sc. my ruling] refers to ourselves; the other, to them [the Palestinians].[4]

Rab Judah said to Rabin son of R. Nahman: My brother Rabin! The cress that grows among flax is not forbidden [to strangers] as robbery;[5] but that which grows on the borders [of the field] is so forbidden. Yet if it has become hardened for sowing,[6] even that which grows among the flax is forbidden as robbery. Why? — Because the damage is already done.[7]

Rab Judah said to Rabin son of R. Nahman: [Some of] these [fruits] of mine are really yours; and some of yours are really mine.[8] And the practice of abutting neighbours is to regard a tree as belonging to the field whither its roots tend. For it has been stated: If a tree stands by the boundary line [between two fields]: Rab said: Whither each is inclined, there it belongs; Samuel said: They share [therein].[9]

An objection is raised: If a tree stands by the boundary, they [the owners of the adjacent fields] share therein. This refutes Rab's ruling! — Samuel interpreted this on Rab's views as meaning that it takes up the whole [breadth of] the boundary.[10] If so, why state it? — It is necessary [to teach it] only when its weight overhangs in one direction.[11] But even so, why state it? — I might think that he [one field owner] can say, 'Divide thus.'[12] Therefore we are informed that he can reply, 'What reason is there for dividing in this manner? Divide it otherwise!'[13]

Rab Judah said to Rabin son of R. Nahman: My brother Rabin, do not buy a field that is near a town; for R. Abbahu said in the name of R. Huna in Rab's name: One may not stand over his neighbour's field when its crop is full grown.[14] But that is not so! For when R. Abba met Rab's disciples, and asked them: what comments did Rab make upon these verses: Blessed shalt thou be in the city, and blessed shalt thou be in the field. Blessed shalt thou be when thou comest in, and blessed shalt thou be when thou goest out?[15] They answered him: Thus did Rab say: 'Blessed shalt thou be in the city' — that thy house shall be near a synagogue; 'and blessed shalt thou be in the field' — that thy property shall be near the city; 'Blessed shalt thou be when thou comest in' — that thou shalt not find thy wife in doubt of niddah[16] on returning home from thy travels; 'and blessed shalt thou be when thou goest out' — that thine offsprings shall be as thee.[17] Whereupon he observed: R. Johanan did not interpret thus, but: 'Blessed shalt thou be in the city' — that the privy closet shall be near to thy table,[18] but not the synagogue.[19] R. Johanan's interpretation is in accordance with his opinion, viz., One is rewarded for walking [to a synagogue]. 'And blessed shalt thou be in the field' — that thy estate shall be divided in three [equal] portions of cereals, Olives, and vines. 'Blessed shalt thou be when thou comest in, and blessed shalt thou be when thou goest out' — that thine exit from the world shall be as thine entry therein: just as thou enterest it without sin, so mayest thou leave it without![20]

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(1) V. supra 78b. This proves that R. Simeon b. Gamaliel does not forbid a change of this description, where the original owner suffers no loss.

(2) Viz., Rabbah b. Nahmani; Abaye having been brought up in his house, he addressed him 'Mar', 'Master', 'Sir'.

(3) I.e., sowing in such succession injures the fertility of the soil. Therefore, if he leased it for wheat, he may not sow it with barley, in the opinion of R. Simeon b. Gamaliel, lest wheat had been sown there the previous year.

(4) Palestine is not so well watered, and the impoverishment of the soil is a real danger; hence, if rented for cereals, pulse

must not be sown, as they are a greater drain upon the soil. But Babylonian soil being more marshy and humid, there is no such danger. [According to Maim. Yad, Sekiroth, VIII, 7, the position of cereals and pulse is reversed throughout the passages, cf. p. 610, n. 8.]

(5) Because the injury it does to the flax is greater than its value, and the owner is pleased when people tear it out.

(6) I.e., fully grown.

(7) And it causes no further damage now.

(8) Their fields were contiguous, and each had trees planted near the intervening border. Rab Judah observed that some of his trees, though planted in his own soil, extended their roots into that of his neighbour and drew nourishment thence. Therefore those fruits really belonged to Rabin, and vice versa.

(9) Rashi translates: The tree stands near the boundary, whereon Rab rules that its ownership is fixed by the direction of its roots. Tosaf.: The tree stands actually on the boundary line, the roots spreading equally into both fields, and Rab rules that the ownership is fixed by its branches: it belongs to the field over which they preponderate.

(10) Rashi: The roots tending equally in both directions. Tosaf.: The branches overspread the whole boundary.

(11) Rashi: The weight of its branches and fruit are toward one side. Tosaf:. Though the branches are confined to the boundary, the fruit facing one field exceeds that which fronts the other.

(12) I.e., you take the fruit facing your field, and I will take that facing mine.

(13) E.g., instead of dividing the tree parallel to the length of the boundary, which gives one more than the other, divide it along its breadth.

(14) Lit., 'when it is with its standing crop'. The reason is that he might injure it through the evil eye.

(15) Deut. XXVIII, 3,6.

(16) V. Glos.

(17) Translating the Heb. בצאתך 'in respect of that which goeth forth from thee.'

(18) Metaphorically: there shall be adequate and readily accessible sanitation.

(19) I.e., in his opinion it is not desirable that the synagogue shall be near at hand, because, as stated in the Gemara, one is rewarded for walking to the synagogue.

(20) Reverting to the interpretation given in the name of Rab, the second passage contradicts Rab Judah's remark.

Talmud - Mas. Baba Metzia 107b

— There is no difficulty: the latter dictum is meant when it [the field] is surrounded by a wall and a hedge;[1] the former, when it is not so surrounded.

And the Lord shall take away from thee all sickness.[2] Said Rab: By this, the [evil] eye is meant.[3] This is in accordance with his opinion [expressed elsewhere]. For Rab went up to a cemetery, performed certain charms,[4] and then said: Ninety-nine [have died] through an evil eye, and one through natural causes. Samuel said: This refers to the wind. Samuel follows his views, for he said: All [illness] is caused by the wind. But according to Samuel, what of those executed by the State? — Those, too, but for the wind [which enters and plays upon the wound], an ointment could be compounded for them [which would cause the severed parts to grow together], and they would recover. R. Hanina said: This refers to the cold.[5] For R. Hanina said: Everything is from Heaven, excepting cold draughts, as it is written, Cold draughts are in the way of the froward: he that doth keep his soul shall be far from them.[6] R. Jose b. Hanina said: This refers to the excretions, for a Master said: The nasal and aural excretions are injurious when in great quantities, but beneficial in small. R. Eleazar said: This refers to [diseases of the] gall. It has been taught likewise: By mahala ['sickness',[7] illness caused by the] gall is meant; and why is it called 'mahala'? Because it sickens the whole human frame. Alternatively, because eighty-three illnesses are dependent upon the gall,[8] and all of them may be rendered nugatory by eating one's morning bread with salt and drinking a jugful of water.

Our Rabbis taught: Thirteen things were said of the morning bread: It is an antidote against heat and cold, winds and demons; instils wisdom into the simple, causes one to triumph in a lawsuit,[9] enables one to study and teach the Torah, to have his words heeded, and retain scholarship;[10] he

[who partakes thereof] does not perspire, lives with his wife and does not lust after other women; and it kills the worms in one's intestines. Some say, it also expels jealousy and induces love.[11] Rabbah asked Raba b. Mari: Whence comes the proverbial expression, 'Sixty runners speed along, but cannot overtake him who breaks bread in the morning;' also the Rabbinical dictum, 'Arise early and eat — in summer, on account of the heat, in winter, on account of the cold'? — He replied: Because it is written, They shall not hunger nor thirst; neither shall the cold nor sun smite them.[12] Thus, 'the cold or sun shall not smite them', because 'they shall not hunger nor thirst.' Said he to him: You deduce it from that verse; but I, from this: And ye shall serve the Lord your God, and he shall bless thy bread, and thy water:[13] 'And ye shall serve the Lord your God' — this refers to the reading of the shema'[14] and prayer; 'and he shall bless thy bread, and thy water' — to bread and salt and a jug of water. Thenceforth: And I will take sickness away front the midst of thee.[15]

Rab Judah said to R. Adda the surveyor: Do not treat surveying lightly. because every bit [of ground] is fit for garden saffron.[16] Rab Judah [also] said to R. Adda the surveyor: The four cubits on the canal banks you may treat lightly, but those on the river banks do not measure at all.[17] Rab Judah is in harmony with his views, for Rab' Judah said: Four cubits on the banks of a canal belong to the estate owners it serves; but those on the banks of a river are common property.[18]

R. Ammi announced: Cut down [all vegetation] in the shoulderbreadth of bargees on both sides of the river.[19] R. Nathan b. Hoshia had sixteen cubits thus cut down. Thereupon the people of Mashrunia[20] came and smote him. He thought that it is as a public thoroughfare.[21] But that is incorrect; only there [for a public road] is so much necessary, but here it [the clear space] is required for hauling the ropes; therefore the full shoulderwidth of the bargees is enough.

Rabbah son of R. Huna possessed a forest by the river bank. Being requested to make a clearing [by the water's edge], he replied, 'Let the owners above and below me first clear [their portion], and then I will cut down mine.' But how might he act so? Is it not written, Gather yourselves together, yea, gather:[22] which Resh Lakish translated, First adorn yourself, and then adorn others?[23] — In that Instance the [neighbouring] forests belonged to Parzak, the Field-marshal.[24] Therefore he [Rabbah] said: 'If they cut down [their forests], I will do so likewise; but if not, why should I? For if they can still haul their ropes,[25] they have room for walking;

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(1) Which shut it out from sight; then it is advantageous to have it near the town, for convenience of transport, whilst at the same time it is not subject to the evil eye.

(2) Ibid. VII, 15.

(3) Rab translates: will take away from thee the cause of all sickness, which in his view is the evil eye.

(4) Lit., 'did what he did,' and so translated by Rashi. By means of whispering certain charms over the graves he learnt what had caused the death of their occupants.

(5) Deriving פחים from נפח to blow; others: cold and heat, connecting פחים with פחם , a glowing coal. V. A.Z. (Sonc. ed.) p.11, n. 2.

(6) Prov. XXII, 5; i.e., sickness brought about through these causes are avoidable, but through all others are not.

(7) With reference to Ex. XXIII, 25.

(8) The numerical value of מחלה is 83. V. B.K. (Sonc. ed.) p. 535, nn. 6-7

(9) The contentedness and tranquility which result from it enables the litigant to make the best of his plea.

(10) All these as in preceding note.

(11) Rashi: when man's mind is confused, be is easily angered — hence. 'feed the brute.'

(12) Isa. XLIX. 10.

(13) Ex. XXIII. 25.

(14) V. Glos.

(15) Ibid.

(16) A particularly choice quality of saffron. As a surveyor, he measured out land in business transactions, divided inheritances, etc.

(17) No sowing was permitted within four cubits of the border of a canal so as not to damage its banks. These four cubits were marked off, and Rab Judah told R. Adda that he was not to be particular to measure them exactly. The four cubits on river banks were similarly treated, and Rab Judah observed that these need not be measured at all, but simply guessed.
(18) Therefore they must be given very liberally, hence he told him merely to guess the measurement.
(19) The bargees pulled the laden boats whilst they walked on the river bank. They naturally walked in a slanting fashion, bearing away from the river, and the full breadth that they might need had to be kept clear.
(20) To whom the forest belonged.
(21) For which sixteen cubits are given; B.B. 99b.
(22) Zeph. II, I.
(23) By connecting קשש , the root of התקששו , with קשט , 'to adorn.' Be just yourself, before demanding it of others.
(24) V. supra p. 295, n. 8.
(25) Notwithstanding that the noble's forests are not cleared.

Talmud - Mas. Baba Metzia 108a

if not, they cannot walk there [in any case]'.[1]

Rabbah son of R. Nahman was travelling in a boat, when he saw a forest on the river bank. Said he: 'To whom does this belong?' — 'To Rabbah son of R. Huna', he was informed. He thereupon quoted, 'Yea, the hand of the princes and rulers hath been chief in this trespass.[2] Cut it down, cut it down', he ordered. Then Rabbah son of R. Huna came and found it cut down. 'Whoever cut it down',he exclaimed, 'may his branches be cut down!'[3] It was related that during the whole lifetime of Rabbah son of R. Huna none of Rabbah son of R. Nahman's children remained alive.

Rab Judah said: All must contribute to the repair of the breaches in the wall,[4] even orphans; but not the Rabbis. Why? — The Rabbis need no protection.[5] But for the digging of wells [for drinking purposes] even the Rabbis are liable. But that is only if they [the townspeople] do not go out in bands;[6] if however, they do, [the Rabbis] are not [liable], because it is not In keeping with their dignity.[7]

Rab Judah said: When the river needs dredging,[8] those dwelling on the lower reaches must aid the upper inhabitants, but not vice versa.[9] But it is the reverse in respect to rain water.[10]

It has been taught likewise: If five gardens draw their water from the same well, and the well is damaged, all must assist the upper field; hence the lowest must aid all the rest, yet must repair by himself.[11] Likewise, if five courts run off their [surplus] water into one dyke, and the dyke is damaged, all must assist the lowest in the repairs;[12] hence the highest must assist all in repairing, yet must repair by himself [receiving no aid from the others.]

Samuel said: He who takes possession of the wharfage of a river is an impudent person, but cannot be [legally] removed.[13] But nowadays that the Persian authorities write [in the warrant of ownership], 'Possess it [sc. the field on the river bank] as far as the depth of water reaching up to the horse's neck', he is removed.[14]

Rab Judah said in Rab's name: If one takes possession[15] [of an estate lying] between [the fields belonging to] brothers or partners, he is an impudent man, yet cannot be removed. R. Nahman said: He can even be removed too; but if it is only on account of the right of pre-emption, he cannot be evicted.[16] The Nehardeans said: He is removed even on the score of the right of pre-emption, for it is written, And thou shalt do that which is right and good in the sight of the Lord.[17]

What if one came to take counsel of him [sc. the neighbour who enjoys the right of pre-emption] and asked, 'Shall I go and buy it?' and he replied, 'Go and buy it': is formal acquisition from him necessary,[18] or not? — Rabina[19] ruled: No formal acquisition is necessary; the Nehardeans maintained: It is. And the law is that a formal acquisition is needed.[20] Now that you say that a formal acquisition is necessary, — if he did not acquire it of him [and bought the field], it advances or falls in his [the abutting neighbour's] ownership.[21] Now, if he bought it for a hundred [zuz], whereas it is worth two hundred, we see: if he [the original vendor] would have sold it to any one at a reduced figure, he [the abutting neighbour] pays him [the vendee] a hundred [zuz] and takes it. But if not [and it was a special favour to the vendee], he must pay him two hundred and only then take it. But if he bought it for two hundred, its value being only one hundred, — it was [at first] thought that he [the abutting neighbour] can say to him, 'I sent you for my benefit, not for my hurt.'[22] But Mar Kashisha, the son of R. Hisda,[23] said to R. Ashi: Thus did the Nehardeans say in R. Nahman's name: There is no law of fraudulent purchase in respect to real estate.[24]

If one sold a griwa[25] of land in the middle of his estate, we see: if it is of the choicest or of the most inferior quality, the sale is valid;

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(1) Since the noble could not be compelled to clear his forest, Rabbah's clearing would serve no purpose.

(2) Ezra IX, 2.

(3) I.e., may his children die!

(4) As a measure of defence.

(5) The merit of their learning protects them.

(6) To dig it personally, but merely furnish the money for it.

(7) On the whole passage v. B.B. (Sonc. ed.) p. 33.

(8) Of mud and refuse which impede the free flow of the water.

(9) If there are obstacles on the upper parts of the river, the water flow is adversely affected for the lower too. But on the other hand, there is no profit for the upper inhabitants to clear the lower portions, for the greater the ease with which the water runs downwards, the less water is left for them.

(10) Where the rainfall has to be drained away because it injures the roads etc., those on the upper reaches must aid the lower, because if the lower water is not carried off the upper cannot be either. But those living below have no profit in the drainage of the town situated by the upper reaches of the river.

(11) As before, it is in the interest of each that the water from above shall flow freely to his own field, but not that it shall continue after it has passed his estate. Therefore the lowest of all must assist in the repairing if the course is blocked above, but none need help him if it is blocked at his own estate.

(12) If it was damaged at his court.

(13) As stated above, p. 425, under Persian law, he who paid the land tax on a plot of land was entitled to it. A large clear space on the river bank was left for the purpose of unloading. It would appear that originally no one had a particular claim to it, and the revenue suffered accordingly. Hence, if one paid the land tax and seized it, he could not be legally removed; nevertheless, since this would cause considerable public inconvenience, he was stigmatised as an impudent man, lacking in civic responsibility.

(14) Though the owners fence off their fields at some distance from the water's edge, the land actually belongs to them, and therefore none can legally seize it.

(15) By paying the land tax thereon.

(16) I.e., if the two fields on either side do not belong to brothers or partners, yet the owners allege that they had a prior right to pay the tax and take the land, and had intended doing so, in accordance with the right of pre-emption (v. p. 396, n. 6), their plea is unavailing.

(17) Deut. VI, 18. This is regarded as an exhortation to the purchaser: 'Why buy a field just here, where it is more useful to its neighbour than another field not adjacent to his, when you can as easily buy a similar field elsewhere, seeing that it makes no difference to you?'

(18) [The performance of a kinyan confirming the surrender of the abutting neighbour's right of pre-emption.]

(19) Alfasi reads: R. Nahman.

(20) Otherwise the neighbouring estate owner can say, 'I merely stood aside whilst you established its price, as I knew

that I would be charged more, being particularly anxious to obtain it.'

(21) I.e., the purchase is legally invalid, the abutting neighbour retaining his option on it. Therefore if it appreciates after the purchase, he can insist on taking it over from the vendee at its value at the time of purchase, and the profit of the advance is his. Contrariwise, if it loses in value, he must pay the vendee its full original value.

(22) For the vendee has in fact involuntarily become the neighbour's agent for purchase. Hence the latter can repudiate his act and insist on receiving it at its market value.

(23) V. p. 388, n. 4.

(24) Hence the neighbour must render the price paid by the vendee.

(25) V. Glos.

Talmud - Mas. Baba Metzia 108b

otherwise it is mere evasion.[1]

A gift is not subject to the law of pre-emption. Said Amemar: But if he [the donor] promised[2] security of tenure,[3] it is subject thereto.[4] When one sells all his property to one person, the law of pre-emption does not apply.[5] [Likewise, if it is sold] to its original owner, it is not subject to the law of pre-emption. If one purchases from or sells to a heathen, there is no law of pre-emption. 'If one purchases from a heathen' — because he [the purchaser] can say to him [the abutting neighbour], 'I have driven away a lion from your boundaries.' 'If he sells to a heathen' — because a heathen is certainly not subject to [the exhortation], 'And thou shalt do that which is right and good in the sight of the Lord.' Nevertheless, he [the vendor] is placed under a ban, until he accepts responsibility for any injury that might ensue through him [the heathen]. A mortgage is not subject to the law of pre-emption. For R. Ashi said: The elders of Matha Mehasia told me, What is the meaning of mashkanta [a pledge, mortgage]? That it abides with him [the mortgagee].[6] What is its practical bearing? In respect to pre-emption. When one sells [an estate] that is far [from the vendor's domicile] in order to buy one that is near, or an inferior property to repurchase a better, the law of pre-emption does not apply.[7] [When an estate is sold] for polltax, alimony [of a widow and her daughters] and funeral expenses, the law of pre-emption does not apply, for the Nehardeans said: For poll-tax, alimony, and funeral expenses an estate is sold without public announcement.[8] [A sale] to a woman, orphans, or a partner is not subject to the law of pre-emption.[9]

Of urban neighbours and rural neighbours, the former have priority;[10] of a neighbour [but not of the field to be sold] and a scholar, the latter takes precedence; of a relative and a scholar, the latter has priority. The scholars propounded: What of a neighbour and a relative? — Come and hear: Better is a neighbour that is near that a brother that is far off.[11]

If one offers well-formed coins, and the other full — weight coins,[12] the law of pre-emption does not apply. If these [the coins of the abutting neighbour] are bound up, and those [of the purchaser] unsealed, there is no pre-emption.[13] If he [the neighbour] says, 'I will go, take trouble, and bring money;' we do not wait for him. But if he says, 'I will go and bring money;' we consider: if he is a man of substance, who can go and bring the money [without delay], we wait for him; if not, we do not wait for him.

If the land belongs to one and the buildings [upon it] to another, the former can restrain the latter,[14] but the latter cannot restrain the former.[15] If the land belongs to one and the palm-trees [upon it] to another, the former can restrain the latter, but the latter cannot restrain the former. [If a stranger wishes to purchase] the land for building houses, and [the abutting neighbour wants] the land for sowing, habitation is more important; and there is no law of pre-emption. If a rocky ridge or a plantation of young palm trees lay between [the fields], we consider: If he [the abutting neighbour] can enter therein even with a single furrow,[16] it is subject to the law of pre-emption, but not otherwise.[17] If one of four neighbours [on the four sides of a field] forestalled the others, the sale is

valid; but if they all come together, it [the field] is divided diagonally.[18]

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(1) If A buys a small piece of land in the middle of B's estate, he immediately becomes a neighbour to the surrounding estate, just as C, the original neighbour on the outer side. Now, if the land bought by A is distinctly inferior or superior to the rest, it is natural that it should be sold separately, and the sale is genuine. But if it is just the same, it is obviously a mere fiction to make A the neighbour of B, and therefore C retains his rights of pre-emption.

(2) Lit., 'wrote'.

(3) I.e., in case it is seized for the donor's debt, another will be supplied.

(4) Because it must have been a disguised sale, no person promising security for a gift.

(5) Because the purchaser might refuse to buy the rest if he must give up any portion thereof.

(6) [משכנתא from שכן 'to rest', 'abide'. The mortgagee is considered the nearest abutting neighbour,. v. B.M. (Sonc. ed.) p. 396, n. 6.]

(7) Since the vendor may suffer through the delay, and no privilege is given to one which entails a disadvantage to another.

(8) In other cases of forced sale by order of the court, it was publicly announced so as to attract bidders. But these were regarded as matters of urgency, and therefore the announcement was dispensed with. For the same reason, one cannot wait for the neighbouring estate-owner to avail himself of his privilege.

(9) It was not held seemly that a woman should go about in search of land to buy; therefore the first purchase she makes is valid, even though it infringes upon the rights of pre-emption. The same privilege is accorded to orphans, on account of their generally defenceless state. With respect to partners, there are different interpretations. Rashi: If A and B are partners in a field, and C is their neighbour, A can sell his portion to B, and C cannot plead, 'Since I am a neighbour, I am entitled to buy half that portion, as in the case of two neighbours.' Tosaf. and R. Hai (quoted in Asheri a.l.): If A and B are partners in general, in land, or in business, A can sell a field to B (in which they are not partners) notwithstanding that C is a neighbour. In actual law, both interpretations are accepted; v. H.M. 175, 12 and 49.

(10) If A is selling a field, and B is his neighbour in town, having a house next to his, whilst C is a neighbour of a field belonging to A, but not of that which is for sale, so that neither is a neighbour of the field to be sold, priority must be given to B, the urban neighbour. Thus, this does not refer to pre-emption at all. So Rashi, who bases his interpretation on the following arguments: (i) Whereas the whole of the preceding passage uses the phrase 'the law of neighbourly pre-emption' (דינא דבר מצרא), this passage speaks of priority, in quite a different phrase (קודמין); (ii) Had the reference been to pre-emption, the previous passage should have included it, reading, (A sale) to a woman, orphans, a partner, and urban neighbour, and a scholar (as this passage continues) is not subject to pre-emption; (iii) Surely a scholar cannot infringe upon the pre-emption rights of an ignoramus! Tosaf. holds that the passage does refer to pre-emption, but treats of two neighbours. The weight of authority supports Rashi's view; v. H.M. 175, 50.

(11) Prov. XXVII, 10.

(12) V. p. 403, n. 4. If the neighbour offers the former and the purchaser the latter, or vice versa, the vendor can insist upon a particular preference.

(13) If a neighbour and a stranger send money for the field, the former's coins being bound up and sealed in a package, whilst the latter's are open to view, and the vendor maintains that he is afraid to open the package, lest the sender claim that it contained more, he can sell to the stranger.

(14) From selling them to a stranger, if he wishes to buy himself.

(15) The landowner is regarded as permanent on the land, hence he can restrain the house-owner; not so the latter, who is held to have no permanent stake in the land.

(16) I.e., the separation is not continuous.

(17) Because the main reason of the right of pre-emption is that it is cheaper to cultivate two adjoining fields than two separate ones, as a long continuous furrow can be ploughed and sown in a single operation.

(18) v. figure.

Talmud - Mas. Baba Metzia 109a

MISHNAH. IF A MAN LEASES A FIELD FOR BUT A FEW YEARS,[1] HE MUST NOT SOW IT WITH FLAX,[2] NOR HAS HE A RIGHT TO THE SYCAMORE BEAMS.[3] BUT IF HE LEASED IT FOR SEVEN YEARS, HE MAY IN THE FIRST YEAR SOW IT WITH FLAX, AND HAS A

RIGHT TO THE SYCAMORE BEAMS.

GEMARA. Abaye said: He has no rights to the sycamore beams, but is entitled to the improvement in the sycamores themselves,[4] Raba said: He is not even entitled to the improvement.

An objection is raised: If one leases a field, when his lease expires[5] an assessment is made for him. Surely that means that the improvement in the sycamores are assessed for him! — No. The vegetables and beets are assessed for him. The vegetables and beets! Let him uproot and take them away! — It was before market day.[6]

Come and hear: If one leases a field, and the seventh year [i.e., the year of release] intervenes, an assessment is made for him. Does then the seventh year withdraw the land [from the lessee]?[7] — But read thus: If one leases a field, and the Jubilee arrives, an assessment is made for him. Yet even so, does then the Jubilee cancel a leasehold: Scripture [merely] forbade a sale in perpetuity![8] — But read thus: If one buys a field from his neighbour, and the Jubilee arrives, an assessment is made for him! And should you answer: Here too, the vegetables and beets are assessed for him, [I would reply] these are free to all in the Jubilee! Hence It must surely refer to the improvement of the sycamores![9] — Abaye explained the cited Baraitha on the basis of Raba's views: There it is different, because the Writ saith, Then the house that was sold shall go out [in the year of Jubilee]:[8] [only] that which was sold is returnable [to the first owner], but not the improvements. Then let us learn from it![10] — There it is a true sale, and Jubilee is a royal revocation.[11]

R. Papa leased a field for growing fodder. Now, some young trees sprouted up therein. When he [R. Papa] was about to quit, he said to them [the original owners]: Give me the improvement,[12] Said R. Shisha the son of R. Idi to R. Papa: If so, [had you leased] palm-trees, and these grew thicker [during the period of lease], would you then, Master, also demand the improvement? — He replied: There, I should not have taken possession for that purpose; but here I leased it[13] for that.[14] With whom does this agree? With Abaye, who maintained that he is entitled to the improvement In the sycamores? — It may agree even with Raba. There he [the lessee] suffers no loss [through the improvement of the sycamores]; here there is a loss. But he [the lessor] said to him, 'Wherein did I cause you to suffer loss? Through the [diminished] area for fodder. Then take the value of the fodder [that would have grown] in their place, and go.' He replied, 'I would have sown it with garden saffron,'[15] Said he to hini, 'You have [thus] shown that your intention was to remove [what you did sow] and depart:[16] then take your saffron and go. You are entitled only to the value of the wood.'[17]

R. Bibi b. Abaye leased a field and surrounded it with a ridge, from which there sprung forth sorb bushes. When he left the field [on the expiration of the lease], he said to them, 'Give me the improvements I effected.'[18] Said R. Papi: 'Because you come from Mamla, you speak words of no substance.[19] Even R. Papa claimed [improvements] only because he suffered loss; but here, what loss have you sustained?'

R. Joseph had a gardener.[20] Now, he died and left five sons-in-law. Said R. Joseph: Hitherto there was one, and now there are five; hitherto they did not rely on each other [to do the work] and so caused me no loss, whilst now they will, and cause me loss. [Therefore] he said to them: If you accept the improvements due to you and quit, it is well; if not,I will evict you without [giving you] the improvements. For Rab Judah — others state, R. Huna — others state, R. Nahman — said: If a gardener dies, his heirs may be evicted without [receiving] the improvements . — But [nevertheless] that is incorrect.

A certain gardener said to his employers, 'Should I cause loss, I will quit.' He did [then] cause loss, Said Rab Judah: He must quit without [receiving] the improvements. R. Kahana said: He must quit, but receives the improvements [he effected]. Yet R. Kahana admits that if he said, 'I will quit

without the improvements,' he is evicted without [receiving] improvements. Raba said: [Even then,] It is an asmakta,[21] which is not binding. But according to Raba, wherein does it differ from what we learnt: 'Should I neglect and not till it, I will pay with the best [crops]?'[22] — There he merely pays for the loss he caused;[23] here [it is sufficient that] we make a deduction on account of what he spoiled — whilst the rest must be given him.[24]

Ronia was Rabina's gardener. Having spoiled it, he was dismissed. Thereupon he went before Raba, complaining — 'See, Sir, how he has treated me.' 'He has acted within his rights,' he informed him. 'But he gave me no warning,' protested he. 'No warning was necessary,' he retorted. This is in accordance with Raba's views. For Raba said: Elementary teachers, a gardeners butcher, a cupper[25]

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(1) Less than seven years.

(2) Because it greatly impoverishes the soil, which does not regain its fertility until after seven years. This can apply only to a lease on a fixed rental, for if on a percentage basis, the lessor himself profits thereby (Rashi); v. p. 597.

(3) The branches of sycamore trees were lopped off and fashioned into beams for building purposes. But as they required seven years to grow again, a lessee for a short term has no right to them.

(4) If the sycamores improved during his lease, the improvement is assessed, and the lessee is entitled thereto.

(5) Lit., 'his time came to quit.'

(6) And if they are stored, their value depreciates. Hence they are assessed, but left in the field.

(7) This is an interjection.

(8) Cf. Lev. XXV, 33.

(9) This contradicts Raba.

(10) In reference to a lease: Just as there, the vendee is entitled to improvements, so here too.

(11) Of the sale. Hence, only what Scripture distinctly states is to return, sc. the purchase, is returnable, but not the improvements. But in the case of a lease the return is pursuant to a human agreement; hence, in Raba's view, it goes back just as it is, including the improvements.

(12) The value of the trees.

(13) Lit., 'descended therein.'

(14) When leasing palm-trees, the lessee thinks only of the fruit, but when leasing a field for fodder, his mind is set upon anything that may grow there.

(15) Which is much more valuable.

(16) By answering, 'I would have sown it with saffron,' you have shewn that you would have planted something which could be entirely removed when grown, and not that which, whilst the stock remained, would show you a profit on its improvement, e.g., young palm-trees.

(17) I.e., you must regard these trees as though they were saffron and you had to remove them entirely, and thus you have no other claim but for the value of the timber.

(18) The value of these bushes.

(19) The Aruch holds Mamla to be a place name, whose inhabitants were short-lived. Because you come from such a place, you speak words that are short-lived i.e., use untenable arguments. Rashi: Because you are descendants of Eli (who were likewise short-lived, v I Sam. II, 31ff.) you speak etc. [For another interpretation v. B.B. (Sonc. ed.) p. 582, n. 6.]

(20) Who worked for half profit.

(21) V. Glos.

(22) Supra 104a. It is there stated that their condition is binding.

(23) Since he neglects the whole field, he involves its owner in considerable loss, and there are no profits to offset it,

(24) But he must not be deprived of all his share in the improvements, which exceeds the loss.

(25) So translated by Rashi supra 97a. Here he translates: a circumciser.

Talmud - Mas. Baba Metzia 109b

and the town scribe,[1] are all regarded as being permanently warned.[2] The general principle is this:

for every loss that is irrecoverable, [the workers] are regarded as being permanently warned.

A certain gardener said, 'Give me my improvements, as I wish to emigrate to Palestine.' When he came before R. Papa b. Samuel he ordered: 'Give him the improvements'.But Raba protested: 'Has only he effected the increased value, and not the soil?'[3] He replied, 'I meant half thereof.' 'But,' he protested, 'hitherto the owner took half and the gardener half; whereas now he must give a share to an aris!'[4] He replied , 'I meant a quarter of the improvement .' Now R. Ashi thought this to mean a quarter [of the residue],[5] which is a sixth [of the whole]. For R. Minyomi, the son of R. Nehumi, said: Where it is the practice for a gardener to receive half profits and an aris one third,[6] and a gardener wishes to quit, he is given [his share of the] profits and dismissed, [a share being computed in such a way] that the employer sustains no loss [through having to engage an arts]. Now, should you assume that he meant a quarter [of the residue after paying the aris his share], which is a sixth of the whole, it is well; but if you say that it means a literal quarter, the employer loses a twelfth![7] R. Aha, the son of R. Joseph, said to R. Ashi: But cannot he [the gardener] say to him, 'Do entrust your own portion to the aris; whilst as for me, I can do what I wish with my own share'?[8] — He replied: When you arrive at 'The slaughter of consecrated animals,' come and place your difficulties before me.[9]

The [above] text states: 'R. Minyomi, son of R. Nehumi said: Where it is the practice for a gardener to receive half profits and an arts one third, and a gardener wishes to quit, he is given [his share of] the profits and then dismissed, [a share being computed in such a way] that the employer sustains no loss.' R. Minyomi, son of R. Nehumi [also] said: Of an old [vine] trunk [the gardener receives] half;[10] but if the river inundated it,[11] he receives a quarter.[12]

A certain man pledged a vineyard with his fellow for ten years,[13] but it aged after five.[14] Abaye said: They [the aged trunks] rank as produce;[15] Raba ruled: As principal; therefore land must be bought therewith, of which he [the mortagee] enjoys the usufruct.

An objection is raised: If the tree withered or was cut down, both are forbidden to use it. What then shall be done? It must be sold for timber, land bought with the proceeds, and he [the mortgagee] takes the usufruct.[16] Surely 'withered' is similar to 'cut down': just as the latter means, in its due time, so the former too; and yet it is taught, 'It must be sold for timber, land bought with the proceeds, and he [the mortagee] takes the usufruct': thus proving that it ranks as principal? — No; 'cut down' is similar to 'withered:'just as the latter [implies] before its time,[17] so the former too.

Come and hear: If aged vines and olive trees fell to her [as an inheritance],[18]

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(1) [Or 'barber', v. B.B. (Sonc. ed.) p. 106, n. 7.]

(2) Of dismissal, should their work be unsatisfactory.

(3) Surely the owner of the soil is entitled to at least half.

(4) The gardener having left the work unfinished, an aris (v. Glos.) must be engaged, who will also demand his share, and so the owner loses thereby. .

(5) After allowing for the share of the aris, v. n. 9.

(6) A gardener plants the vineyard, whereas an aris comes to a vineyard already in existence, hence he receives a smaller portion.

(7) E.g., if the profits are six denarii, the gardener and the employer would each have received three. But now an aris must be engaged, who receives a third of the net profits, i.e., two denarii. Hence, if the gardener receives a quarter of the whole, i.e., 1 1/2 denarii, the employer is left with 2 1/2, a twelfth of the whole less than his due; but if he is allotted only a quarter of the residue, i.e. , of 7 denarii, the employer is still left with his full share.

(8) [Even if the gardener should receive a quarter, not a sixth, the employer stands to lose nothing, for the gardener can tell him to entrust the remaining three quarters to an aris, who will receive a third of it for his labour, and a half of the whole will still be left for the owner. Thus: 1/3 x 3/4 x 6 = 1 1/2 (share of the aris); 3/4 x 6 — 1 1/2 = 3, half of the

whole (share of the employer).]

(9) 'The slaughter of consecrated animals' is in the name of a tractate of the Talmud, now called 'Sacrifices' (זבחים), of great subtlety. I.e., 'I see from the question that you have a keen subtle mind — it will be particularly interesting to hear your comments on that Tractate.' Rashi gives two views on this remark. One, that he accepted its reasoning, and complimented him thereon; another, that he merely evaded it by a sarcastic reference to its oversubtlety.

(10) When it no longer bears fruit and is cut down for its wood.

(11) Either uprooting it entirely, or waterlogging the soil and making the vine unfit for fruit, at least for a long time,

(12) As a gardener who wishes to quit in the middle. In the first instance, the ageing of a vine is natural, and therefore it is tacitly understood that when no longer fruit-bearing it shall be treated as the rest. But an inundation is unnatural; hence it is considered as though the gardener had suddenly quitted it,

(13) On a time mortgage. V. supra p. 394.

(14) And was unable to produce. This was when it was expected to age.

(15) Therefore they belong to the mortgagee.

(16) V. supra 79a.

(17) Because the ordinary withering due to age is expressed by 'aged', though that too may imply untimely withering, but 'withered' can only mean prematurely, Tosaf.

(18) The reference is to a married woman, of whose inheritance the husband enjoys the usufruct, v. Keth. 79b.

Talmud - Mas. Baba Metzia 110a

they are sold for timber and land bought with the proceeds, whereof he [the husband] enjoys the usufruct![1] — Read: 'and they aged.'[2] Alternatively: have we not explained it that, e.g., they fell to her in another field [not belonging to her]? so that the [entire] principal is destroyed.[3]

A certain note[4] stated an unspecified number of years. Now, the creditor maintained that it meant three; whilst the debtor insisted upon two. Thereupon the creditor anticipated [the findings of the court] and enjoyed the usufruct. Now, whom do we believe? — Rab Judah said: The land stands in the presumptive possession of its owner.[5] R. Kahana said: The usufruct is in the presumptive possession of him who enjoyed it.[6] And [indeed], the law is in accordance with R. Kahana, who maintained that the usufruct is in the presumptive possession of those who enjoyed it. But have we not an established principle that the law is in accordance with R. Nahman [in civil law], and he [himself][7] ruled that the land is in the presumptive possession of its owner?[8] — There it is in a matter that is not destined to be cleared up; here, however, it is a matter [the truth of which] may be finally revealed,[9] and a Court is not to be troubled twice.[10]

If the creditor maintains that it [the mortgage] was for five years, whilst the debtor says that it was for three: and when he challenges him, 'Bring forth your note,' he pleads, 'The note is lost,' — Rab Judah ruled: We believe the creditor, since he could have pleaded, 'I have bought it [outright].'[11] Said R. Papa to R. Ashi: R. Zebid and R. 'Awira disagree with Rab Judah's ruling. Why? — Since this document is for the purpose of collection,[12] he [the creditor] must have taken great care of it, and [now] he is actually Suppressing the document, thinking, 'I will enjoy its usufruct for an additional two years.' Rabina said to R. Assi: If so, a mortgage after the fashion of Sura, which was drawn up thus: 'On the completion of this number of years, this estate shall go out [of the mortgagee's possession] without further payment:' if he suppresses the mortgage deed and pleads, 'I have bought it' — is he then believed: would then the Rabbis have enacted a measure which may lead to loss? — He replied: There the Rabbis enacted that the mortgager should pay the land-tax and repair ditches.[13] But what of an estate that has no ditches and is not subject to land-tax? Then he should have made a formal protest,[14] he answered. But what if he did not protest? — Then he brought the loss upon himself.

If the aris claims, 'I entered [the field] on half profits'; whilst the landlord maintains, 'I engaged him on a third profits'; who is believed? — Rab Judah said: The owner is believed; R, Nahman

ruled: It all depends on local usage. Now, it was assumed that there is no dispute, the latter ruling[15] refers to a place where an aris receives half; the former, where he receives a third. But R. Mari, son of Samuel's daughter,[16] said to them [the scholars]: Thus did Abaye say: Even in places where the aris receives a half, there is still a dispute; Rab Judah ruling that the landlord is believed, since he could have pleaded, 'He is my hired labourer' or 'my gleaner.'[17]

If orphans maintain, 'We have created the improvements;' whilst the creditor contends, 'Your father created them:'[18] upon whom lies the onus of proof?

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(1) This proves that they rank as principal; for if as fruit, the husband might enjoy them direct.

(2) Prematurely. Even Abaye admits that in such a case it does not count as produce, since it was unexpected.

(3) If the husband uses it direct, whereas the principal of the legacy must remain the wife's. But if she inherited them in her own field or vineyard, the husband could sell them for timber and utilise the proceeds direct, since the soil is still left for the wife. The dispute of Abaye and Raba refers to a similar case, viz,, where land and its trees were pledged. But if only trees, the field not belonging to the debtor, presumably Raba agrees that they rank as principal, not produce.

(4) Concerning a mortgage in the fashion of Sura, (v. p. 394) which was that the land reverted to the debtor after an agreed period without further payment.

(5) V. supra 102b, Thus, since there is a dispute about the third year, we presume that it belongs to the debtor, since he is its known owner, unless there is proof to the contrary; and therefore the creditor is forced to repay.

(6) It being a general rule that the onus of proof lies on the plaintiff, who in this case is the debtor, since the creditor has already taken it.

(7) So the text according to Rashi and Rashal.

(8) V. supra 102b.

(9) By the signatories to the note, who can attest the intended period.

(10) If the return of the usufruct is ordered, witnesses may attest that the intended period was three years, and the matter will have to come before Court a second time.

(11) For three years establish a presumption of ownership, in the absence of a deed of a sale; v, B.B. III. 1.

(12) I.e., of the debt, in the form of usufruct; without it, the debtor could have evicted the creditor at the very outset.

(13) Round about the field, for irrigation. Hence the true ownership is known.

(14) I,e., a declaration that the land was not purchased by the creditor. This of course had to be done before three years.

(15) That it depends on local usage, and since this was said in contradistinction to Rab Judah's dictum, it must mean that the aris is believed

(16) V. p. 588, n. 2.

(17) I.e., 'I have only hired him for a few days, and thus could have dismissed him with a small wage'; לקיט , here translated 'gleaner', was a sort of client or retainer (Jast.).

(18) A creditor of the deceased has no claim upon the increased value of an estate effected by the heirs; but v. p. 630, n. 5.

Talmud - Mas. Baba Metzia 110b

Now, R. Hanina thought to rule: The land stands in the presumptive ownership of the orphans; therefore the creditor must adduce proof. But a certain old man observed to him, Thus did R. Johanan rule: It is for the orphans to adduce proof. Why? — Since land stands to be seized [for debt] it is as though it were already seized;[1] hence the onus of proof lies upon the orphans.

Abaye said: We have learnt likewise: If it is doubtful which came first, he must cut it down without compensation.[2] This proves, since it stands to be cut down,[3] we say to him, 'Bring proof [that the tree was here first] and then receive [compensation];' so here too, since the note[4] is for the purpose of collection,[5] it is as though already collected, and therefore the orphans must prove [their contention]. [Subsequently] the orphans brought proof that they had effected the improvements. Now, R. Hanina thought to rule that when their claims are being satisfied,[6] it is done with land.[7] But that is incorrect: their claims are satisfied with money. This follows from R. Nahman's dictum. For

R. Nahman said in Samuel's name: In three cases the improvements are assessed and payment made in money, viz., [In the settlement of the debt of] the first born to the ordinary son; of the creditor or of the widow[8] who collected her kethubah to orphans; and of the creditors to the vendees.[9] Rabina objected before R. Ashi: Shall we say that in Samuel's opinion the creditor must return the improvement to the vendees?[10] Has then the vendee any title to the improvement: Surely Samuel said: A creditor collects the improvements! And should you reply, There is no difficulty, the one refers to an improvement touching the carriers; the other to an improvement not touching the carriers.[11] Surely cases arose daily where Samuel ordered distraint even of the improvement touching the carriers! — There is no difficulty: in one case, the value of the land and its improvement is claimed; in the other, the value of the land and its improvement is not claimed. But where the value of the land and its improvement is not claimed, [you say that] he must pay the vendee money [for his improvements] and can dismiss him. Now, that agrees well with the view that [even] if the vendee has money, he cannot pay off the creditor. But on the view that he can,[12] let him say to him, 'Had I money, I would have paid you off from the whole estate; now that I have no money, give me a griwa of land in any field, to the value of my improvements'? — The circumstances here are that he [the original debtor] had created it [the field] an hypothec,[13] declaring to him, 'Your payment shall come Only out of this.'[14] MISHNAH. IF ONE LEASES A FIELD FOR A SEPTENNATE FOR SEVEN HUNDRED ZUZ, THE SABBATICAL YEAR IS INCLUDED. BUT IF HE LEASES IT FOR SEVEN YEARS FOR SEVEN HUNDRED ZUZ, IT IS NOT INCLUDED. A WORKER ENGAGED BY THE DAY CAN COLLECT [HIS WAGES] THE WHOLE OF THE [FOLLOWING] NIGHT; IF ENGAGED BY THE NIGHT, HE CAN COLLECT IT THE WHOLE OF THE [FOLLOWING] DAY.[15] IF ENGAGED BY THE HOUR, HE CAN COLLECT IT THE WHOLE DAY AND NIGHT.[16] IF ENGAGED BY THE WEEK, MONTH, YEAR, OR SEPTENNATE, IF HIS TIME EXPIRES BY DAY, HE CAN COLLECT [HIS WAGES] THE WHOLE OF THAT DAY; IF BY NIGHT, HE CAN COLLECT IT ALL NIGHT AND THE [FOLLOWING] DAY.

GEMARA. Our Rabbis taught: Whence do we know that a worker hired by day collects [his wages] all night? From the verse, the wages of him that is hired shall not abide with thee all night until the morning.[17] And whence do we know that a worker hired by the night collects it the whole of the [following] day? Because it is written, At his day shalt thou give him his hire.[18] But let us say the reverse?[19] — Wages are payable only at the end [of the engagement].[20]

Our Rabbis taught: From the implication of, The wages of him that is hired shall not abide with thee all night, do I not know that it means, until the morning? Why then is it written, until the morning? To teach that he [the employer] violates [the injunction] only until the first morning. But thereafter? — Said Rab: He transgresses, Thou shalt not delay [payment]. R, Joseph said: What verse [shews this]?[21] — Say not unto thy neighbour, Go, and come again, and to-morrow I will give; when thou hast it by thee.[22]

Our Rabbis taught: If one instructs his neighbour, 'Go out and engage for me workers,' neither transgresses the injunction, Thou shalt not keep [the wages] all night. The former, because he did not engage them;

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(1) And is in the theoretical possession of the creditor.

(2) V. B.B. 24b. A space of fifty cubits around a city had to be left entirely free for the beauty of the town, If one had a tree within fifty cubits, which he had planted after the town-boundaries had been fixed there, he must remove it without compensation. If it had originally been planted outside fifty cubits, but then, owing to the town's extension, it came within the prohibited area, he receives compensation, but is still bound to cut it down. If, however, it is unknown which was there first, there is no compensation.

(3) In any case.

(4) [Read with some texts 'the land.']

(5) The creditor can seize the land for his debt, including the improvements, save that, if effected by the heirs, he must pay for them.
(6) For the return of the increased value. The literal rendering of the text is, 'Where we dismiss them' — by satisfying their claims.
(7) They are given a portion of the land equal to the increase in value of the whole.
(8) Lit., 'wife.'
(9) (i) A firstborn receives a double share of the estate left by the deceased (Deut. XXI, 17), but not of the improvements effected after death. Now, if the division was not made immediately but some time after death, and both the firstborn and the ordinary son had effected improvements upon the whole estate in the interval: when the firstborn subsequently takes his double share, it contains part of the joint improvements to which he is not entitled. An assessment is therefore made, and he must pay the ordinary sum for it, not by allotting him an additional piece of ground, but in money. Similarly (ii) when a widow or a creditor seizes the estate in satisfaction of their claim, which was improved by the heirs after the deceased's death, to which improvements they are not entitled. (iii) If a debtor sells land after contracting a written debt, the creditor can seize the land from the vendee, if the unsold estate is insufficient; but he must compensate the vendee for his improvements. This too is done with money, not land, but v. text on iii.
(10) [So according to MS.M.; text incur. edd. is somewhat defective.]
(11) Jast.: an improvement touching the carriers, i.e., an increase in the value of the crop, opp. to an increase in the value of the land; v. supra p. 89, n. 4.
(12) Just as the original debtor.
(13) V. supra p. 90 n. 5.
(14) In that case all agree that the vendee cannot retain a portion of the land against his improvements.
(15) In the sense that if he is paid any time during that day or night, his employer does not violate the injunctions against delaying payment. Lev. XIX, 13 and Deut. XXIV, 15.
(16) V. infra Gemara.
(17) Lev. XIX, 13; hence, if paid before morning, it is well.
(18) Deut. ibid.
(19) That the night worker must be paid during the night for which he is engaged, the first verse quoted being so interpreted: similarly the day worker.
(20) Deduced from a verse supra 65a, q.v.
(21) Actually there is no such injunction.
(22) prov. III, 28.

Talmud - Mas. Baba Metzia 111a

the latter, because the wages [i.e., the labour for which wages are due] are not with him. How so? If he [the agent] assured them, 'I am responsible for your wages,' then he is responsible.[1] For it has been taught: If one engages a workman to labour on his [work], but directs him to that of his neighbour, he must pay him in full, and receive in turn from the owner [of the work actually done] the value whereby he benefited him! — It holds good only if he said to them, 'The employer is responsible for your wages.[2]

Judah b. Meremar used to instruct his attendant, 'Go and engage labourers for me, and say to them, Your employer is responsible for your wages.' Meremar and Mar Zutra used to engage [labourers] on each other's behalf.

Rabbah son of R. Huna said: The market traders of Sura do not transgress [the injunction], The wages of him that is hired shall not abide all night [etc,], because It is well known that they rely upon the market day.[3]

IF ENGAGED BY THE HOUR, HE CAN COLLECT IT ALL DAY AND NIGHT. Rab said: A man engaged by the hour for day work can collect [his wages] all day;[4] for night work, can collect [it] all night. Samuel maintained: A man engaged by the hour for day work can collect it all day; for

night work, all night and the following day.

We learnt: IF ENGAGED BY THE HOUR, HE CAN COLLECT IT ALL DAY AND NIGHT, this refutes Rab![5] — Rab can answer you: It is meant disjunctively. [Thus:] If engaged by the hour for day work, he can collect his wages all day; for night work, he can collect it all night.

We learnt: IF ENGAGED BY THE WEEK, MONTH, YEAR OR SEPTENNATE, IF THE TIME EXPIRES BY DAY, HE CAN COLLECT HIS WAGE THE WHOLE OF THAT DAY; IF BY NIGHT, HE CAN COLLECT [IT] ALL NIGHT AND THE FOLLOWING DAy![6] — Rab can answer you: It is a dispute of Tannaim. For it has been taught: A man engaged by the hour for day work collects his wage all day; for night work, all night: this is R. Judah's opinion. R. Simeon said: A man engaged by the hour for day work collects all day; for night work, all night and the [following] day. Hence it was said: Whoever witholds[7] the wages of a hired labourer transgresses these five prohibitions of five denominations and one affirmative precept as follows:[8] Thou shalt not oppress thy neighbour;[9] neither rob him;[10] Thou shalt not oppress an hired servant that is poor;[11] The wages of him that is hired shall not abide all night with thee;[12] At his day shalt thou give him his hire;[13] and, neither shall the sun go down upon it.[14] But Surely those that apply at day[15] do not apply at night, and those that apply at night do not apply at day! — Said R. Hisda: It refers to hiring in general.[16]

What is meant by ‘oppression’ and ‘robbery’? — R. Hisda said: ‘Go, and come again,[17] go and come again’ — that is ‘oppression’;[18] ‘You have indeed a charge upon me, but I will not pay it’ — that is ‘robbery’. To this R. Shesheth demurred:[19] For what form of ‘oppression’ did Scripture impose a sacrifice?[20] For that which is analogous to a bailment,[21] where one [falsely] repudiates a debt of money [or its equivalent]! — But, said R. Shesheth, ‘I have paid you’ — that is ‘oppression’; ‘You have indeed a charge upon me but I will not pay you’ — that is ‘robbery’. To this Abaye demurred:[22] What is ‘robbery’ for which Scripture imposed a sacrifice? — That which is analogous to a bailment, where one falsely repudiates a [debt of] money [or its equivalent]![23] — But, said Abaye, ‘I never engaged you’ — that is ‘oppression’ ; ‘I paid you’ — that is ‘robbery’. Now, as for R. Shesheth, how does ‘oppression’ differ from ‘robbery’, that he objected to the former, but not the latter?[24] — He can answer you: ‘Robbery’ implies that he first robs him and then repudiates [liability].[25] If so, may not ‘oppression’ too refer to subsequent repudiation?[26] — What comparison is there? As for the other [sc. ‘robbery’], it is well, for it is written [And lie unto his neighbour] . . . Or in a thing taken away by violence,[27] which implies that he originally made admission to him. But with respect to ‘oppression’ , is it then written, Or in a thing of oppression?[28] — or hath oppressed his neighbour is stated, implying that he had already oppressed him.[29] Raba said: ‘Oppression’ and ‘robbery’ are identical. Why then did Scripture divide them? — [To teach] that two negative precepts are infringed. MISHNAH. WHETHER IT BE THE HIRE OF MAN, BEAST, OR UTENSILS, IT IS SUBJECT TO [THE LAW], AT HIS DAY THOU SHALT GIVE HIM HIS HIRE,[30] AND, THE WAGES OF HIM THAT IS HIRED SHALL NOT ABIDE WITH THEE UNTIL THE MORNING.[31] WHEN IS THAT? ONLY IF HE DEMANDED [IT] OF HIM; BUT OTHERWISE, THERE IS NO INFRINGEMENT. IF HE GAVE HIM AN ORDER TO A SHOPKEEPER OR A MONEY-CHANGER,[32] HE IS NOT GUILTY OF INFRINGEMENT. A HIRED LABOURER, WITHIN THE SET TIME,[33] SWEARS AND IS PAID.[34] BUT IF HIS SET TIME PASSED,[35] HE CANNOT SWEAR AND RECEIVE PAYMENT; YET IF HE HAS WITNESSES THAT HE DEMANDED PAYMENT (WITHIN THE SET TIME),[36] HE CAN [STILL] SWEAR AND RECEIVE IT. ONE IS SUBJECT TO [THE LAW], AT HIS DAY THOU SHALT GIVE HIM HIS HIRE, IN RESPECT OF A RESIDENT ALIEN,[37] BUT NOT TO THAT OF, THE WAGES OF HIM THAT IS HIRED SHALL NOT ABIDE WITH THEE UNTIL THE MORNING.

GEMARA. Who is the authority for our Mishnah? [For] it is neither the first Tanna who

interpreted ‘of thy brethren’, or R. Jose son of R. Judah. To what is the reference? — It has been taught:

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(1) And therefore subject to the injunction.
(2) Nevertheless, the employer is not subject to the prohibition, because he did not hire the workers himself.
(3) Therefore it is implicitly understood and stipulated, as it were, that the worker is not to be paid before.
(4) E.g., if he was engaged until midday, he must be paid during the rest of the day; otherwise the employer transgresses the injunctions quoted above; similarly the rest of the passage.
(5) For Samuel can say that it applies to a night worker, but on Rab's view it can apply to
(6) And finishing during the day or the night is the same as the case of an hour worker, and thus refutes Rab,
(7) Lit., ‘suppresses’.
(8) שמות lit., ‘names’, i.e., designations of negative precepts, the designation being by the characteristic word of the injunction.
(9) Lev. XIX, 13.
(10) Ibid.
(11) Deut.XXIV, 14.
(12) Lev. ibid.
(13) Deut. XXIV, 15 — these are affirmative precepts.
(14) Ibid.
(15) I.e., to a worker hired by the day.
(16) I.e., these injunctions were written in connection with hiring workers, though it is indeed true that in no single instance are they all infringed together.
(17) Prov. III, 28.
(18) I.e., continually deferring payment, though intending to pay eventually.
(19) [It is clear from Rashi that what follows is not a citation from a Baraitha, but a piece of R. Shesheth's own Biblical exegesis.]
(20) V. Lev. V, 20, 25: If a soul sin, and commit a trespass against the Lord, and lie unto his neighbour in that which was delivered to him to keep (פקדון), or in fellowship, or in a thing taken away by violence (עשק) or hath oppressed his neighbour (עשק) . . . he shall bring his trespass offering unto the Lord.
(21) ‘In that which was delivered to him to keep.’
(22) [Cf. p.634,n. 14].
(23) But admitting liability whilst refusing to pay is not repudiation.
(24) For the same Baraitha [or ‘exegesis’, v. p. 634, n. 14] which refutes R. Hisda's definition of ‘oppression,’ refutes his own of ‘robbery’ too.
(25) privately he admitted liability, but refused to pay, thereby robbing him; but when sued at court, he repudiated lability altogether. Thus his definition is not opposed to the other, which is based on Biblical exegesis.
(26) I.e., R. Hisda's definition of oppression may be correct. Privately, he put him off repeatedly, but when sued, denied liability.
(27) Ibid. This implies, the thing having already been taken away by violence, i.e., he refused to settle an admitted liability, he now lies concerning it and denies liability altogether, in accordance with R. Shesheth's amended definition.
(28) Which would likewise imply having first oppressed him, he now denies liability.
(29) Denying liability as soon as the worker asked for pay.
(30) Deut.XXIV 15.
(31) Lev.XIX 13.
(32) To supply him to the extent of his wages.
(33) When payment is due, as defined in preceding Mishnah.
(34) V. p. 587, n. I.
(35) I.e. if the set time has lapsed.
(36) [Some texts rightly omit bracketed words, v. infra P. 113a.]
(37) v, p. 407, n. 8.

[Thou shalt not oppress an hired servant that is poor and needy. whether he be] of thy brethren — this excludes idolaters;[1] or of thy strangers — this means a righteous proselyte;[2] that are in thy gates — i.e., an alien who eats unclean food.[3] From this I know [the law only in respect off man's hire; whence do I know to extend it to animals and utensils? From, that are in thy land,[4] implying, all that are in thy land. And in respect of all[5] these injunctions,[6] all are transgressed. Hence it was said: The hire of man, animal, and utensils are identical in that they are subject to [the laws], At his day shalt thou give him his hire, and, the wages of him that is hired shall not abide with thee all night until the morning. R. Jose son of R. Judah said: In respect to a resident alien one is subject to [the law], At his day thou shalt give him his hire; but not to that of, Thou shalt not keep all night [the wages of him that is hired, etc.]. In respect of [the hire of] animals and utensils, only the injunction, Thou shalt not oppress [etc.],[7] is applicable. Now, who is [the authority for our Mishnah]? If the first Tanna, who interpreted 'of thy brethren,' the resident alien presents a difficulty.[8] If R. Jose. [the hire of] animals and utensils presents a difficulty![9] — Said Raba: This Tanna [of our Mishnah] is a Tanna of the School of R. Ishmael, who taught: Whether it be the hire of man, beast, or utensil, it is subject [to the laws], At his day thou shalt give him his hire, and, The wages of him that is hired shall not abide with thee. In respect of a resident alien one is subject to [the law]. At his day thou shalt give him his hire, but not to, Thou shalt not keep. [etc.].

What is the reason of the first Tanna who interprets [the verse] 'of thy brethren'? — He deduces [identity of law] from the word 'hire' written twice.[10] R. Jose son of R. Judah, however, does not accept this deduction. But granted that he does not, yet one should be liable to [the law]. At his day thou shalt give him his hire, in respect of animals and utensils too![11] — R. Hanania learnt: Scripture saith, Neither shall the sun go down upon it, for he is poor;[12] [hence it applies only to] those who are subject to poverty or wealth, and so excludes animals and utensils, which are not subject to poverty and wealth. And the first Tanna, how does he interpret this [verse], 'for he is poor'? — It is necessary to shew that the poor receive precedence over the wealthy.[13] And R. Jose son of R. Judah?[14] — That follows from, Thou shalt not oppress an hired servant that is poor and needy. And the first Tanna?[15] — One teaches the priority of the poor man over the rich; the other, the priority of the poor, over the needy.[16] And both are necessary. For if we were [merely] informed [of the poor man's priority over] the needy, [I would think that it is] because he [the needy] is not ashamed to demand it [his wage] from him. But as for the wealthy, who is ashamed to demand it from him, I might say that it is not so [viz., that the poor takes no precedence over him]. Whilst if we learnt this in respect to the wealthy, I would think that it is because he is not in need thereof; but as for the needy, who needs it [more], I might argue that it is not so.[17] Hence both are necessary.

Now as to our Tanna, in either case, [it is difficult]: if he accepts the deduction of 'hired' written twice, then even a resident alien should also be included;[18] if he rejects it, whence does he know [the inclusion of] animals and utensils? — In truth, he does not accept this deduction. Yet there[19] it is different, because Scripture writes, The wages of him that is hired shall not abide with thee all night until the morning: implying, whosoever's hire is with thee.[20] If so, then even a resident alien too [is meant]! — The Writ saith, [Thou shalt not oppress] thy neighbour: 'thy neighbour' [is specified], but not a resident alien. If so, then even animals and utensils too should be excluded! — But Surely 'with thee' is written![21] What reason have you to include animals and utensils and exclude a resident alien?[22] — It is logical that animals and utensils are to be included , since they come within the category of the property of 'thy neighbour', whereas [the hire of] a resident alien is not within this category.

Now the first Tanna, who interpreted 'of thy brethren,' what is his exegesis on 'thy neighbour'?[23] — He needs this, even as it has been taught: [Thou shalt not oppress] thy neighbour, but not an Amalekite.[24] An Amalekite? But that follows from 'of thy brethren! — One gives permission in regard to his 'oppression' ;[25] the other, in regard to [the retention] of his 'robbery'[26] And both are

necessary. For if we were informed that [the retention] of his 'robbery' is permitted, that may be because he [the Amalekite] has not worked for him. But as for oppressing him [by withholding his wages] — I would think that that is not [permitted]. Whilst if we were taught thus about oppressing him, that may be because it [his wage] has not yet reached his [the Amalekite's] hand .[27] But as to his 'robbery' — I would think [the retention thereof] is not [allowed]. Hence both are necessary.

And R. Jose son of R. Judah, how does he interpret this verse, The wages of him that is hired shall not abide with thee all night until the morning?[28] — He needs it to teach the law stated by R. Assi, viz., even if he [the employer] engaged him only to vintage a single cluster of grapes, he is subject to, [It] shall not abide, . . . all night, etc.[29] And the other?[30] — That follows from the verse, And setteth his soul [i.e.,life] upon it, implying, anything for which he risks his life.[31]

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(1) Lit., 'others', the several injunctions insisting on prompt payment do not apply in regard to them.

(2) V. supra p. 410, n. 8.

(3) Lit., 'carcases' i.e.,a resident alien.

(4) Deut. XXIV, 14.

(5) Viz., the hire of an Israelite, proselyte, animal, utensil.

(6) Viz., those of Deut. and Lev.

(7) Deut. XXIV, 14.

(8) According to the first Tanna all injunctions apply to a resident alien, in opposition to our Mishnah.

(9) For R. Jose does not apply to them the injunction enumerated in our Mishnah.

(10) Deut. XXIV, 14: Thou shalt not oppress an hired servant (שכיר) that is poor and needy, whether he be of thy brethren, or of thy strangers that are in thy land within thy gates. — The latter part of the verse has been interpreted above as extending the injunction to the hire of a resident alien, animal, and utensils. Lev. XIX. 13 : The wages of him that is hired (שכיר) shall not abide with thee until the morning. Just as the first verse refers to an Israelite, resident alien, animals and utensils, so the latter too.

(11) Since, by exegesis. Deut. XXIV, 14, the preceding verse, extends the law to these; v. n. 4.

(12) Ibid. 15.

(13) If he owes both their hire, or the hire of their animals, or utensils — and has sufficient for one only, the poor must be paid first.

(14) Whence does he learn this?

(15) Surely he agrees that this last verse teaches the priority of the poor man!

(16) Heb. אביון (needy) < אבי , denotes a desirous person who, in his utter destitution, which is greater than that of a עני (a 'poor man'), longs for everything. In his longing he is not ashamed to ask, which a poor man is too proud to do.

(17) That the poor has no priority over him.

(18) In Deut, and Lev.

(19) I.e., in respect to Deut. XXIV, 15: at his day etc. Lev. XIX. 13 : The wages of him etc.

(20) I.e., even of animals and utensils. And since the subject matter of this injunction is identical with that of Deut. XXIV, 15, that too is included.

(21) Interpreted as above.

(22) Perhaps it is the reverse.

(23) Since the inclusion of animals, etc., is deduced from the use of 'hired' twice.

(24) A substitution by the censor for original 'heathen'.

(25) I.e., the withholding of his wages beyond the set time.

(26) V. p. 506, n. 8.

(27) Hence he takes nothing away from him that is actually in his possession.

(28) Since he does not agree that 'with thee' extends the law to the hiring of animals and utensils,

(29) I.e., not even the smallest sum due to a labourer may be withheld all that time.

(30) The first Tanna, who interprets 'with thee' differently, — whence does he learn R. Assi's dictum?

(31) V. p. 531, n. 3; hence, even the vintaging of a single cluster is included.

And the other? — That is needed, even as it has been taught: And he setteth[1] his soul [i.e., life] upon it: why did this man [the labourer] ascend the ladder, suspend himself from the tree, and risk death itself; was it not that you should pay him his wages?[2] Another interpretation: And he setteth his soul upon it [teaches]: he who withholds an employee's wages is as though he deprived him of his life. R. Huna and R. Hisda [differ on this]: one says. The life of the robber [is meant];[3] the other, The life of the robbed. The view that the life of the robber is meant is based on the verse, Rob not the poor, because he is poor: neither oppress the afflicted in the gate:[4] which is followed by, For the Lord will plead their cause, and spoil the soul of those that spoiled them.[5] Whilst the opinion that it means the life of the robbed follows from, So are the ways of every one that is greedy of gain; he taketh away the life of its [rightful] owner.[6] And the other too: is it not written, he taketh away the life of its [rightful] owner? — It means, of its present owner.[7] And the other too: is it not written, and spoil the soul of those that spoiled them? — That states a reason. Thus: Why shall he spoil those that spoiled them? — Because they took their lives.[8]

WHEN IS THAT? ONLY IF HE DEMANDED IT OF HIM; BUT OTHERWISE, THERE IS NO INFRINGEMENT. Our Rabbis taught: The wages of him that is hired shall not abide all night. I might think this holds good even if he did not demand it . Therefore Scripture writes, ‘with thee,’ meaning., by thy desire.[9] I might think that even if he lacks it , he is still guilty: but Scripture states , ‘with thee,’ meaning, only when it [the hire] is with thee. I might think that it [the prohibition] is in force even if he gave him an order to a trader or a money-changer in his favour; but Scripture teaches, ‘with thee’,[10] but not if he gave him an order to a trader or a money-changer on his behalf.

IF HE GAVE HIM AN ORDER TO A SHOPKEEPER OR A MONEYCHANGER ON HIS BEHALF, HE IS NOT GUILTY OF INFRINGEMENT. The scholars propounded: Can he [the employee] return [to the employer] or not?[11] — R. Shesheth ruled: He cannot return [to him]; Rabbah held: He can return. Rabbah said: Whence do I infer this? — Since it is taught: HE IS NOT GUILTY OF INFRINGEMENT, it is implied, there is only no infringement, yet he can return to him [for payment].[12] But R. Shesheth explained: What is meant by, HE IS NOT GUILTY OF INFRINGEMENT? He is no longer within the ambit of infringement.[13]

R. Shesheth was asked: Does the injunction. ‘The wages of him that is hired shall not abide all night’ hold good in respect of a contract or not?[14] Does the artisan obtain a title in return for the improvement [he effected] in the article, so that it [his wages] rank as a loan, or does he not, and hence it is considered wages?[15] — R. Shesheth replied: One does transgress [the law]. But has it not been taught: There is no transgression [in this case]? — There it means that he gave him an order to a shopkeeper or a money-changer.

Shall we say that the following supports him: If one gave his garment to an artisan [i.e., cloth, to make a garment, which he completed and then informed him [that it was ready], even after ten days he does not transgress [the law], ‘Thou shalt not keep all night’. But if he delivered it to him [even] at midday, as soon as the sun sets upon it he is guilty of the transgression. Now, should you say that the artisan obtains a title in return for the improvement [he effects upon] the article, why is he guilty [of that transgression]? — R. Mari son of R. Kahana said: This refers to the removal of the woolly surface of a thick coat.[16] But why did he give it to him [to do this]? [Surely] to soften it! Then that is its improvement?[17] — But this holds good only if he engaged him for stamping,[18] every stamping manipulation for a ma'ah.[19]

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(1) Lit., ‘lifteth up.’

(2) So that for withholding it one is punished as for taking life.

(3) I.e., he brings death upon himself,

(4) prov, XXII, 22.
(5) Ibid. 23.
(6) Ibid, I, 19.
(7) Translating as the E.V.: which taketh away the life of the owners thereof.
(8) Translating: and spoil those that spoiled (i.e., deprived them of) their lives.
(9) But not by his, i.e., he claimed his wages immediately.
(10) I.e., when the charge remains upon thee.
(11) If the shopkeeper did not supply him. Do the employer's obligations in respect of him still continue, or is the employee considered to have transferred them to another? [Tosaf. rightly points out that the problem under consideration is only in reference to the injunctions relating to the payment within the set time, should the workman return to the employer and ask for his wages; for it is evident that the employer cannot relieve himself of his obligations by merely giving the workman a draft on a shopkeeper.]
(12) For the passage implies that there is still a debt upon the employer, though that particular injunction is no longer applicable. [Tosaf.: The passage implies that there is no infringement as long as the workman relies on the trader for payment.]
(13) Because there is no longer any charge upon him. [Or, because he is no longer under any obligation to pay within the set time. Tosaf.]
(14) I.e., if the employee was not engaged by the day, but contracted to do a piece of work.
(15) This question is discussed in B.K. 98b, et seq. One view is that when, e.g., wood is given to an artisan and he makes a box, it becomes legally his, on account of his improvements; and when he returns it to his employer it is in the nature of a sale. Hence, with respect to our subject, if the employer does not pay him, he owes him an ordinary debt, as a loan, and so the injunction is inapplicable. If, however, this view be rejected, it remains subject to the law of wages, and the prohibition holds good.
(16) Which is not considered an improvement.
(17) And so the difficulty remains.
(18) A process of flattening cloth.
(19) I.e., he did not contract for the whole piece of work at all, but was paid according to the amount done.

Talmud - Mas. Baba Metzia 112b

A HIRED LABOURER, WITHIN THE SET TIME, SWEARS AND IS PAID. Why did the Rabbis enact that a hired labourer should swear and receive [payment]?[1] — Rab Judah said in Samuel's name: Great laws were taught here.[2] Are these then [traditional] 'laws'?[3] They are surely merely [Rabbinical] measures! — But said Rab Judah in Samuel's name: Important enactments were taught here. 'Important'? Does that imply the existence of unimportant ones?[4] — But, said R. Nahman in Samuel's name: Fixed[5] measures were taught here. Thus: The oath is the employer's privilege, but the Rabbis took it away from the employer and imposed it upon the employee, for the sake of his livelihood. And on account of the employee's livelihood, are we to cause loss to the employer?[6] — The employer himself is pleased that the employee should swear and be paid, so that workers should engage themselves to him. [On the contrary], the employee himself is pleased that the employer should take an oath and be exempt, so that he should engage him! — The employer is bound to engage [labourers] . But the employee too is forced to seek employment! — But [the reason is that] the employer is busily occupied with his labourers.[7] If so, let us award it [the wages] to him without an oath! — [The oath is] in order to appease the employer. Then let him pay him in the presence of witnesses.[8] — It is too much trouble. Then let him pay him in advance![9] — Both prefer credit.[10] If so,[11] even if the dispute concerns a stipulated amount,[12] it should be likewise so. Why then has it been taught: If the labourer maintains, 'You arranged with me for two [zuz].' and the other [sc. the employer] pleads, 'I arranged only for one,' the plaintiff must furnish proof?[13] — The stipulated wage is certainly well remembered. [Again] if so, even if the set time passed, he should also be believed. Why did we learn: BUT IF HIS SET TIME PASSED, HE CANNOT SWEAR AND RECEIVE PAYMENT? — It is a presumption that the employer will not transgress [the law]. The wages of him that is hired etc. But have you not said that he is busy with his employees? —

That is only before his obligation matures;

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(1) The general principle being the reverse; v. p. 572. n. 6. ,

(2) I.e., of great importance, as the Talmud proceeds to explain.

(3) Heb. הלכות , i.e., Scriptural, or traditionally ascribed to Moses.

(4) I.e., worthy to be perpetuated.

(5) Surely not!

(6) Since legally it is his privilege to swear to be free from payment.

(7) V. p. 587. n. 1.

(8) The Rabbis should have enacted that workers must be paid in the presence of witnesses, with the result that if the employer pleads that he paid him without witnesses, the employee could then receive payment without swearing.

(9) Let this be a Rabbinical measure, with the result that if the worker subsequently claims that he has not been paid, he will be disbelieved.

(10) The employer, because he may not yet have the money; the employee, because he may lose it whilst working in the field.

(11) Reverting to the final reason. If we assume that the employer, being busily engaged, might have forgotten the exact facts.

(12) Lit., 'even if he stipulated.'

(13) Shebu. 46a.

Talmud - Mas. Baba Metzia 113a

but when it matures, he charges himself therewith and remembers it . But is the employee then likely to transgress [the law, Thou shalt not rob?[1] — There [in the case of the employer] we have two presumptions [in his favour]; whilst here there is only one. Thus: In respect to the employer there are two presumptions. Firstly, that he will not transgress [the law] . [It] shall not abide all night, etc.; and secondly, that the employee will not permit delay of his payment. But in favour of the employee there is only the one presumption [stated above]. YET IF HE HAS WITNESSES THAT HE DEMANDED PAYMENT, HE CAN STILL SWEAR AND RECEIVE IT, But he [still] demands it now! Said R. Assi: It means that he demanded payment within the set time. But perhaps he paid him subsequently! — Abaye answered: He demanded it all the set time.[2] And [does this hold good] for ever![3] — Said R. Hama b. 'Ukba: [He is thus privileged only] for the period following[4] the day of his claim.[5]

MISHNAH. IF A MAN LENDS [MONEY] TO HIS FELLOW, HE MAY TAKE A PLEDGE OF HIM [WHEN THE DEBT MATURES] ONLY THROUGH THE COURT, AND HE MAY NOT ENTER HIS HOUSE TO TAKE THE PLEDGE, FOR IT IS WRITTEN, THOU SHALT STAND WITHOUT.[6] IF HE POSSESSED TWO ARTICLES, HE MUST TAKE ONE AND LEAVE ONE, RETURNING THE PILLOW AT NIGHT AND THE PLOUGH BY DAY. BUT IF HE [THE DEBTOR] DIES, HE NEED NOT RETURN [THE PLEDGE] TO HIS HEIRS. R. SIMEON B. GAMALIEL SAID: EVEN TO HIM HIMSELF [THE DEBTOR] HE MUST RETURN IT ONLY UP TO THIRTY DAYS; AFTER THAT, HE MAY SELL IT ON THE INSTRUCTIONS OF THE COURT.

GEMARA. Samuel said: Even the court officer[7] may only forcibly seize [it], but not [enter to] take a pledge.[8] But did we not learn: IF A MAN LENDS MONEY TO HIS FELLOW, HE MAY TAKE A PLEDGE OF HIM ONLY THROUGH THE COURT, which proves that a pledge may be taken by the court? — Samuel can answer you: Say, He may forcibly seize [outside the house] only through the court. That interpretation too is logical. For the second clause States: AND HE MAY NOT ENTER HIS HOUSE TO TAKE THE PLEDGE. To whom does this refer? Shall we say, to the creditor?[9] But that is known from the first clause! Hence it must surely refer to the court officer.[10] As for that, it is not proof. For[11] this is its meaning: IF A MAN LENDS MONEY TO HIS

FELLOW, HE MAY TAKE A PLEDGE OF HIM ONLY THROUGH THE COURT, from which it follows that a pledge may be taken through the court. But the creditor himself may not even seize forcibly [outside], so that HE MIGHT NOT ENTER HIS HOUSE TO TAKE THE PLEDGE.[12]

R. Joseph raised an objection: No man shall take the nether or the upper millstone to pledge;[13] hence, other things may be taken to pledge. Thou shalt not take a widow's raiment to pledge:[14] implying, if it belongs to others, it may be taken in pledge.[15] By whom? Shall we Say, the creditor? But it is written, Thou shalt not go into the house to fetch his pledge.[16] Hence it must surely mean the court officer![17] — R. Papa, the son of R. Nahman, explained it before R. Joseph — others state, R. Papa, the son of R. Joseph, before R. Joseph: In truth, the creditor is meant , and it is to intimate that he violates two prohibitions.[18]

Come and hear: From the implication of the verse, Thou shalt stand without,[19] do I not know that the man of whom you claim shall bring it out? Then what is taught by, And the man? The inclusion of the court officer. Surely that means that he is like the debtor![20]

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(1) Surely not! Just as it is assumed that the employer must have paid him, because he would not transgress a Biblical injunction, so the same should be assumed of the employee, and therefore he should be believed,

(2) Until the set time lapsed, the employer thus transgressing the Biblical prohibition.

(3) Can we really say that whenever the labourer demands payment, even years after, he is believed on oath, since he has witnesses that he once demanded it of him during all the set time? Surely that is most inequitable!

(4) Lit., 'against.'

(5) E.g., if he was a day worker, engaged for Monday, he must be paid between Monday evening and Tuesday morning. If he has witnesses that he claimed his money during the whole of that period, he is believed on oath from Tuesday morning until evening, but not later. (So explained in H.M. 89, 3.)

(6) Deut. XXIV. 11.

(7) Lit., 'agent'.

(8) נתח denotes to take by force; משכן , to enter the house and take a pledge. Thus, he may only seize an article from him in the street, but not enter the house and distrain.

(9) That he may not enter without the Permission of the Court.

(10) Which supports Samuel's ruling.

(11) [MS.M. and Tosaf. insert: There is a lacuna (in the text of the Mishnah).]

(12) But as for the court officer, he may enter the house.

(13) Ibid, 6.

(14) Ibid. 17.

(15) [The term חבל , 'take to pledge', occurring here, as with the millstone, is taken to denote entering the house for the purpose.]

(16) Ibid. 10.

(17) Which proves that he may enter, and so refutes Samuel.

(18) I.e., no man shall take the nether, etc., and, Thou shalt not take a widow's, etc., refers to the creditor himself; but these injunctions do not teach that other articles may be distrained, or that one may distrain upon any but a widow, for these two are forbidden in the verse, Thou shalt not go into his house, etc. Their purpose is to intimate that in respect of these, two injunctions are transgressed, viz., the general one last cited, and the specific one.

(19) Ibid. 11.

(20) That he and the debtor enter the house to take the pledge, translating, and the man — sc. the court officer — and he of whom thou dost claim, etc. This refutes Samuel.

Talmud - Mas. Baba Metzia 113b

— No. It means that the court officer is like the creditor.[1]

Come and hear: If thou at all take thy neighbour's raiment to pledge:[2] this refers to the court

officer. You say it refers to the court officer, but perhaps it is not so, the reference being to the creditor? When Scripture writes, Thou shalt not go into his house to fetch his pledge. it obviously speaks of the creditor.[3] Hence, to whom can I refer, if thou at all take thy neighbour's raiment to pledge? Surely to none but the court officer?[4] — It is a controversy of Tannaim. For it has been taught: When the court officer comes to take a pledge of him, he must not enter the house, but stand without, whilst he [the debtor] takes the pledge out to him; for it is written, Thou shalt stand without, and also the man.[5] Whereas another [Baraitha] taught: When the creditor comes to take a pledge of him, he must not enter the house, but stand without, whilst he [the debtor] enters, and brings him out his pledge. But when the court officer comes to take a pledge of him, he may enter the house and take it.[6] And he must not take in pledge articles used in the preparation of food. Further,a couch, a couch and a mattress must be left in the case of a wealthy man, and a couch,a couch and a matting for a poor man. Only for himself [the debtor] must these be left, but not for his wife, sons, and daughters. Just as an assessment is made in favour of a debtor,[7] so also is it made in the case of 'valuations'.[8] On the contrary! The main law of assessment is written in reference to 'valuations'. — But say: just as an assessment is made in the case of 'valuations', so also in favour of a debtor.

The Master said: 'Further, a couch, a couch and a mattress must be left to a wealthy man, and a couch, a couch and a matting for a poor man.' For whom [is the second couch]? Shall we say, For his wife, sons, and daughters? But you say, 'but not for his wife, sons and daughters'! Hence both are for himself. Then why two? — One at which he eats and the other on which he sleeps. Even as Samuel said, viz.: For all things I know the cure, except the following three: [i] eating bitter dates on an empty stomach; [ii] girding one's loins with a damp flaxen cord; and [iii] eating bread and not walking four cubits after it.[9]

A tanna recited before R. Nahman: Just as assessment is made in the case of 'valuations', so is it also made for debtors. Said he to him: If we even sell [his property], shall we make an assessment for him![10] But do we really sell [his property]? Did we not learn: AND HE MUST RETURN THE PILLOW AT NIGHT, AND THE PLOUGH BY DAY? — The tanna recited the view of R. Simeon b. Gamaliel before him, whereupon he observed: Seeing that according to R. Simeon b. Gamaliel we even sell [his property], shall we make an assessment for him! For we learnt: R. SIMEON B. GAMALIEL SAID: EVEN TO HIM HIMSELF [THE DEBTOR] HE MUST RETURN IT ONLY UP TO THIRTY DAYS; AFTER THAT, HE MAY SELL IT ON THE INSTRUCTIONS OF THE COURT. But how do you know that R. Simeon b. Gamaliel means an outright sale: perhaps he means this: until thirty days he must return it as it is; after that, only what is fitting for him [the debtor] is returned, whilst what is not fitting for him is sold![11] — Should you think that R. Simeon b. Gamaliel accepts this view, there is nothing that is unfitting for him. For Abaye said: R. Simeon b. Gamaliel, R. Simeon,[12] R. Ishmael and R. Akiba, all maintain that all Israelites are princes. R. Simeon b. Gamaliel — for we learnt: Neither lof[13] nor the mustard plant [may be moved on the Sabbath].[14] R. Simeon b. Gamaliel gave permission in the case of lof, because it is food for ravens.[15] R. Simeon: For we learnt: Princes may anoint their wounds with rose oil on the Sabbath, since it is their practice to anoint themselves on week-days.[16] R. Simeon said: All Israel are princes.[17] R. Ishmael and R. Akiba: For we learnt: If one was a debtor for a thousand zuz, and wore a robe a hundred manehs in value, he is stripped thereof and robed with a garment that is fitting for him. But therein a Tanna taught on the authority of R. Ishmael and R. Akiba: All Israel are worthy of that robe.[18]

Now, on the original assumption that he [the debtor] was allowed what was fitting for him, whilst that which was unfitting for him was sold, [it may be asked:] as for a pillow and bolster, articles of inferior quality may suffice for him;[19] but in respect of a plough, what is there available?[20] — Raba b. Rabbah replied: [The Mishnah refers to] a silver strigil.[21] To this R. Haga demurred: But let him [the creditor] say to him: you are not thrown upon me![22] — Abaye answered him:

(1) Translating: thou — sc. the creditor — shalt stand without together with the man, i.e., the court officer; whilst he of whom thou dost claim etc.
(2) Ex. XXII. 25.
(3) Who is forbidden to enter.
(4) Thus the two are placed in opposition, shewing that the court officer may enter the house. This definitely refutes Samuel.
(5) Sc. the court messenger; v, n. 2.
(6) Thus the two Baraithas differ on Samuel's dictum.
(7) He must be left sufficient to be able to earn a livelihood.
(8) Vows whereby one's own value is promised to the Temple. Scripture set a fixed value, depending on the age and sex of the vower (Lev. XXVII. 1-8). But if he was poor, his means were assessed and the valuation reduced. Cf. ibid, 8: But if he be poorer than thy estimation, then he shall present himself before the priest, and the priest shall value him: according to the means of him that vowed shall the priest value him.
(9) Before retiring. Rashi: hence one must have a couch for dining placed four cubits distant from the sleeping couch, so that he will be bound to take the necessary exercise!
(10) To leave him sufficient money to buy these articles! — (Tosaf.).
(11) E.g., if silk nightwear was seized, it is sold, and out of the proceeds cheaper nightwear is bought for the debtor, and the residue goes to the creditor. Thus even R. Simeon b, Gamaliel may agree that some exemption is made.
(12) I.e., R. Simeon b. Yohai.
(13) A plant similar to colocasia, with edible leaves and root, and bearing beans. It is classified with onions and garlic (Jast.). The beans are edible when boiled, but not raw.
(14) It is a general principle that only those foodstuffs which are fit for consumption on the Sabbath may be moved on that day. Since, however, the lof beans may not be boiled, nor may the mustard grains be ground. on the Sabbath, they are not fit for food, and therefore must not be handled.
(15) And since it was a royal practice to keep ravens — for sport or adornment — it is fitting that Jews too should keep them; (v. Shab. 126b) hence the lof has its uses on the Sabbath, and therefore may be moved from one place to another.
(16) Even when they have no bruises, but merely for suppleness. Therefore it does not appear as a healing ointment, and so is permitted on the Sabbath (v. Shab. 111a). (Healing in general is forbidden on the Sabbath, excepting in cases of urgency.)
(17) Hence it is permitted for all.
(18) Because they are of princely descent.
(19) Lit., 'the difference (between these lower priced articles) is available for him (the creditor).'
(20) Nothing inferior can be substituted, yet in respect of that too R. Simeon b. Gamaliel ruled that it was to be sold after thirty days.
(21) A flesh scraper or brush, used for exciting the action of the skin, This too is called מהרישה , and R. Simeon b. Gamaliel rules that after thirty days it must be sold, an inferior one bought, and the creditor pockets the difference.
(22) 'I have no particular responsibility toward you.'

Talmud - Mas. Baba Metzia 114a

Precisely so: He is indeed thrown upon him, because it is written, and thine shall be the righteousness.[1]

The scholars propounded: Is an assessment made for a debtor? Do we adduce [the law of] 'poverty' [written here] from that of 'valuations'[2] or not? — Come and hear: For Rabin sent word in his letter:[3] I asked this thing of all my teachers, and they gave me no answer thereon. But in truth, the following problem was raised:[4] If one Says. 'I vow a maneh for Temple purposes.'[5] is he assessed?[6] R. Jacob, on the authority of Bar Pada, and R. Jeremiah, on the authority of Ilfa, said: [It follows] a minori from an ordinary debtor: if no assessment is made even for a debtor, to whom [the p]edge] is returned;[7] then in regard to hekdesh,[8] where it [the pledge] is not returned, Surely, there is no assessment! But R. Johanan ruled: It is written, [When a person shall make] a vow by thy valuation [shall the persons be for the Lord]:[9] just as a means test is applied for 'valuations', so also

for a vow to hekdesh. And the other?[10] — That is to teach the judgment [of a limb] according to its importance: just as in 'valuations' [a limb] is judged according to its importance, so in a vow to hekdesh too.[11]

But let there be an assessment for a debtor, a minori from 'valuations': If an assessment is made in the case of 'valuations', where [the pledge] is not returned: then surely there should be an assessment for a debtor, where [the pledge] is returned: — Scripture writes, But if he be poorer than thy estimation: 'he', but not a debtor. And the other?[12] — This teaches that he must remain in his poverty from beginning to end.[13]

Now, in the case of [a vow to] hekdesh, let it [the pledge] be returned,[14] a minori from a debtor: If it [the pledge] is returned to a debtor, for whom there is no means test, surely it is returned in the case of [a vow to] hekdesh, seeing that an assessment is made there! — The Writ saith, That he may sleep in his own raiment, and bless thee.[15] thus excluding hekdesh, which needs no blessing. Does it not? But it is written, When thou hast eaten and art full, then thou shalt bless the Lord thy God![16] But Scripture saith, And it shall be accounted as righteousness [i.e.,a charitable act] unto thee:[17] hence it [the law of returning] holds good only for him [the creditor] for whom the act of righteousness is necessary.[18] thus excluding hekdesh [as a creditor], which does not require [the merit of] righteousness.

Rabbah b. Abbuha met Elijah[19] standing in a non-Jewish cemetery. Said he to him: Is a means test to be applied in favour of a debtor? — He replied: We deduce [the law of] poverty [written here] from that of 'valuations'. In respect of 'valuations' it is written, But if he be poorer than thy valuation [. . . according to the means of him that vowed shall the priest value him]. Whilst of a debtor it is written, And if thy brother be waxen poor [' . . then thou shalt relieve him].

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(1) Deut. XXIV, 13; i.e., the creditor bears a peculiar responsibility towards the debtor, more so than other persons.

(2) Debt: And if thy brother be waxen poor (ימוך) . . . then thou shalt relieve him; Lev. XXV, 35. Valuations: But if he be poorer (מך) than thy estimation . . . according to the means of him that vowed shall the priest value him; Ibid, XXVII, 8. Hence, just as the means test is applied in the latter case, exempting the vower from his full obligations, so in the former too,

(3) From Palestine.

(4) At a session, and its answer is also an answer to the one under discussion.

(5) Lit., 'Temple repair.' It is the technical term for anything needed in the Temple, except sacrifices.

(6) If he could not pay it, and the Temple officers came to distrain for it, must his means be assessed, to exempt from sale such things as he needs?

(7) A day article by day, and a night article by night, until the pledge is sold.

(8) I.e., when we distrain for the payment of a vow to hekdesh (v. Glos.).

(9) Ibid. 2. Now, 'vow' (נדר) applies to any vow, whilst 'valuation' (ערכך) to the dedication of one's own value (to sacred purposes). Since the two are written in conjunction, it follows that the same law applies to both.

(10) R. Jacob, etc., who holds that there is no assessment for hekdesh. How do they interpret the juxtaposition of these two words?

(11) If one said, 'I vow the valuation of my ''head," heart, liver or any vital organ, he must give his entire value, since his whole life depends upon it. Hence, similarly. if one said, 'I vow the price of my heart etc., to hekdesh' (not using the word ערך), he must give his entire value. — In a vow of 'valuations' ערכין , the amount is fixed according to age and sex, irrespective of the man's actual worth; whereas in an ordinary vow he is assessed at his value if sold as a slave. — In any case, from this discussion it clearly emerges that no assessment is made for a debtor.

(12) The first Tanna of our Mishnah, who states: BUT IF HE (THE DEBTOR) DIED, HE NEED NOT RETURN THE PLEDGE TO HIS HEIRS, which implies that it is always returned to the debtor himself, shewing that certain objects are assessed as vital and exempted from seizure.

(13) If he vowed his 'valuation' whilst a poor man, but became wealthy before being assessed, he must pay in full. That is deduced from the emphatic 'he', i.e., at assessment too he must be too poor for the fixed valuation.

(14) Day attire by day, and night attire by night. (Cf. p. 320. n. 5.)
(15) Deut. XXIV, 13.
(16) Ibid. VIII, 10, Thus, even God demands of man a blessing!
(17) Ibid. XXIV, 13.
(18) To be worthy of being deemed righteous before God.
(19) It was believed that Elijah often appeared to saintly men.

Talmud - Mas. Baba Metzia 114b

[He asked him further:] Whence do we know that a naked man must not separate [terumah]? — From the verse, That He see no unclean thing in thee.[1] Said he [Rabbah] to him: Art thou not a priest:[2] why then dost thou stand in a cemetery?[3] — He replied: Has the Master not studied the laws of purity?[4] For it has been taught: R. Simeon b. Yohai said: The graves of Gentiles do not defile, for it is written, And ye my flock, the flock of my pastures, are men;[5] only ye are designated 'men'.[6] — He replied: I cannot even adequately study the four [orders]; can I then study six?[7] And why? he inquired. — I am too hard — pressed[8] , he answered. He then led him into Paradise and said to him: Remove thy robe and collect and take away some of these leaves. So he gathered them and carried them off. As he was coming out, he heard a remark, 'Who would so consume his [portion in] the world [to come] as Rabbah b. Abbuha has done?' Thereupon he scattered and threw them away. Yet even so, since he had carried them in his robe, it had absorbed their fragrance, and so he sold it for twelve thousand denarii, which he distributed among his sons-in-law.

Our Rabbis taught: And if the man be poor, thou shalt not sleep in his pledge:[9] hence, if he is wealthy, thou mayest sleep thus. What does this mean?[10] — Said R. Shesheth: This is the meaning: And if the man be poor, thou shalt not sleep whilst his pledge is in thy possession; but if he is wealthy, thou mayest do so.[11]

Our Rabbis taught: If a man lends [money] to his fellow, he may not take a pledge of him, nor is he bound to return it to him, and he transgresses all these injunctions.[12] What does this mean? — R. Shesheth said: This: If a man lends [money] to his fellow, he may not [himself] take a pledge of him; and if he did take a pledge of him [by means of a court officer], he is bound to return it;[13] whilst 'he transgresses all these injunctions' refers to the last clause.[14] Raba said: It is thus meant: If a man lends money to his neighbour, he may not take a pledge of him [himself], and if he took a pledge of him [through the court], he must return it.[15] Now, when is this? If the pledge was not taken at the time of the loan.[16] But if it was taken at the time of the loan,[17] he is not bound to return it to him.[18] Whilst 'and he transgresses all these injunctions' refers to the first clause.[19]

R. Shizebi recited before Raba: Thou shalt return it unto him until the sun goeth down[20] — this refers to night attire; in any case thou shalt deliver him the pledge again when the sun goeth down — to an object of day attire. Said he to him: Of what use is an article of day attire by night,[21] and a night attire by day? Shall I then delete it? he asked. — No, was his reply. It reads thus: Thou shalt return it unto him until the sun goeth down — this refers to an article of day attire, which may be taken in pledge by night; in any case thou shalt deliver him the pledge again when the sun goeth down — to a night attire, which may be taken in pledge by day. R. Johanan said: If he took a pledge of him, [returned it,] and then he [the debtor] died, he may distrain it from his children. An objection is raised: R. Meir said: Now, since a pledge is taken, why is it returned?[22] 'Why is it returned?' [you ask.][23] — Surely Scripture ordered, Return it! But [say thus]: Since it is returned,

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(1) Ibid. XXIII, 15; man must not appear before God in an unclean state, which includes a state of nudity. When one separated terumah, he had to utter a benediction, and this is regarded as appearing before God.
(2) According to legend, Elijah and Phinehas (Aaron's grandson) were identical.
(3) A priest must not defile himself through the dead. Standing in or near a grave effects such defilement.

(4) טהרות ; this is also the name of the sixth order of the Talmud, treating of these laws. From Rabbah's answer, that he has had no time to study the six orders, it appears that he was referring to the actual order, though he proceeds to quote a Baraitha and not a Mishnah from that order.
(5) Ezek. XXXIV, 31.
(6) Cf. Num. XIX, 14: This is the law, when a man dieth in a tent; all that come into the tent, and all that is in the tent, shall be unclean seven days.
(7) The four orders referred to are 'Festivals,' 'Women,' 'Damages,' and 'Consecrated Objects.' These were considered of permanent and practical importance. , even the last named, though sacrifices were not practised outside Palestine, because the study thereof was held to be the equivalent of actually offering them; Men. 110a. But the other two, viz., 'Seeds' and 'Purity,' were of no practical importance outside Palestine, and therefore not studied intensively (Rashi). Tosaf. a.l. however, observes that it is evident from the Talmud that they were well — versed in these two, and therefore conjectures that the reference is to the Tosefta (i.e., the additional Baraithas, excluded by Rabbi from his Mishnah compilation). In point of fact, the dictum quoted by Elijah here is not found in any Mishnah. It does not form part of our Tosefta either, but our Tosefta is not identical with that mentioned in the Talmud. V. also Weiss, Dor, lii, p. 186-7.
(8) He was poor and had to eke out a living.
(9) Deut. XXIV, 12. E.V.; 'with his pledge'.
(10) Surely the pledge, even of a wealthy man, may not be used by the creditor, since that constitutes interest!
(11) Only in the case of a poor debtor must a night article be returned for the night, and a day one by day, but not in the case of a wealthy debtor.
(12) Viz., Thou shalt not sleep in his pledge: In any case, thou shalt deliver him the pledge when the sun goeth down (Ibid. 12f); Thou shalt deliver it unto him by that the sun goeth down (Ex. XXII, 25). On ppv, lit., 'names', v. p. 634. n, 3.
(13) V. p. 650, n. 4,
(14) If he does not return them, R. Shesheth thus assumes the text to be corrupt, and emends it considerably.
(15) As before.
(16) And is therefore in the nature of distraint.
(17) As a security.
(18) Every morning or evening, as the case may be, even if the debtor is in need of it.
(19) Sc. distraint. Thus Raba does not emend any part of the existing text, but adds to it.
(20) E.V.: 'Thou shalt deliver it unto him by that the sun goeth down,' Deut, XXIV, 13.
(21) [Raba explains the phrases 'night attire' and 'day attire' as denoting attires taken in pledge respectively by night and day.]
(22) How can the creditor's claims be satisfied?
(23) This is an interjection.

Talmud - Mas. Baba Metzia 115a

why is it again taken in pledge?[1] — So that the Sabbatical year should not cancel it [the debt].[2] and that it [the pledge] should not be accounted as movable property in the hands of his children.[3] Now, the reason is only that he took the pledge again;[4] but had he not taken the pledge again, it would not be so![5] — R. Adda b. Mattena replied: Are you not bound in any case to emend it? Then emend it thus: Since it is returned, why is it taken in pledge in the first place? That the Sabbatical year should not cancel it, and that it should not rank as movable property in the hands of his children.[6]

Our Rabbis taught: Thou shalt not go into his house to fetch his pledge: his [the debtor's] house thou mayest not enter, but thou mayest enter the house of the surety [to distrain]; and thus it is written, Take his garment that is surety for a stranger;[7] also, My son, if thou be surety for thy friend, If thou hast stricken thy hand with a stranger, thou art snared with the words of thy mouth. Do this now, my son, and deliver thyself when thou art come into the hand of thy friend; go, humble thyself and make sure thy friend:[8] thus, if thou owest him money, untie thy hand to him [i.e., pay him]; if not[9] bring many [of thy] friends round him.[10] Another interpretation:[11] His house thou mayest not enter, but thou mayest enter [to distrain] for porterage fees, payment for hiring asses, the hotel[12] bill,

or artists' fees.[13] I might think that this holds good even if it[14] was converted into a loan: therefore Scripture writes, When thou dost lend thy brother anything.[15]

MISHNAH. A MAN MAY NOT TAKE A PLEDGE FROM A WIDOW, WHETHER SHE BE RICH OR POOR, FOR IT IS WRITTEN, THOU SHALT NOT TAKE A WIDOW'S RAIMENT TO PLEDGE.[16] GEMARA. Our Rabbis taught: Whether a widow be rich or poor, no pledge may be taken from her: this is R. Judah's opinion. R. Simeon said: A wealthy widow is subject to distraint, but not a poor one, for you are bound to return [the pledge] to her, and you bring her into disrepute among her neighbours. Now, shall we say that R. Judah does not interpret the reason of the Writ, whilst R. Simeon does?[17] But we know their opinions to be the reverse. For we learnt: Neither shall he multiply wives to himself, [that his heart turn not away];[18] R. Judah said: He may multiply [wives], providing that they do not turn his heart away. R. Simeon said: He may not take to wife even a single one who is likely to turn his heart away; what then is taught by the verse, Neither shall he multiply wives to himself? Even such as Abigail![19] — In truth, R. Judah does not Interpret the reason of Scripture; but here it is different, because Scripture itself states the reason: Neither shall he multiply wives to himself, and his heart shall not turn away. Thus, why 'shall he not multiply wives to himself'? So 'that his heart turn not away.' And R. Simeon [argues thus]: Let us consider. As a general rule, we interpret the Scriptural reason:[20] then Scripture should have written, 'Neither shall he multiply [etc.].' whilst 'and his heart shall not turn away' is superfluous, for I would know myself that the reason why he must not multiply is that his heart may not turn away. Why then is 'shall not turn away' [explicitly] stated? To teach that he must not marry even a single one who may turn his heart.

MISHNAH. HE WHO TAKES A MILL IN PLEDGE TRANSGRESSES A NEGATIVE COMMANDMENT AND IS GUILTY ON ACCOUNT OF TWO [FORBIDDEN] ARTICLES, FOR IT IS WRITTEN, NO MAN SHALL TAKE THE NETHER OR THE UPPER MILLSTONE TO PLEDGE.[21] AND NOT THE NETHER AND THE UPPER MILLSTONES ONLY WERE DECLARED FORBIDDEN, BUT EVERYTHING EMPLOYED IN THE PREPARATION OF FOOD FOR HUMAN CONSUMPTION,[22] FOR IT IS WRITTEN, FOR HE TAKETH A MAN'S LIFE TO PLEDGE.[23]

GEMARA. R. Huna said: If a man takes to pledge the nether millstone, he is twice flagellated, [once] on account of the [injunction against] the nether millstone, and [once] on account of, 'for he taketh a man's life to pledge,' for the nether and the upper millstones, he is thrice flagellated: (twice) on account of the nether and the upper millstones, and (once) on account of, 'for he taketh a man's life to pledge.' But Rab Judah maintained: For taking to pledge the nether millstone, he is flagellated once; for the upper millstone he is likewise flagellated once; for the nether and upper millstones he is flagellated twice; and as for, 'for he taketh a man's life to pledge'

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(1) Since it must be returned again the following day, what is the creditor's advantage?

(2) When the creditor holds a pledge against his debt, it is not cancelled by the Sabbatical year. v. Shebu. 48b .

(3) After death, v. p. 598.

(4) And it was in the creditor's hands when the debtor died.

(5) But would rank as any other legacy of movable property. which cannot be seized for the testator's debts, which refutes R. Johanan.

(6) [Once the creditor takes it in pledge, it becomes his property. and when he returns it for the debtor's use, it is considered as a bailment.]

(7) Prov. XX, 16.

(8) Ibid. VI. 1-3.

(9) But hast wronged him in some other way, slander, or an affront to his pride.

(10) To apologise in their presence. This is a play on words and a comment on the last phrase: התרפם (E.V. 'humble thyself') is read, התר פם 'unloose the wrist (of thy hand)', רהב רעיך , is translated, 'make thy

neighbour proud' — by a public apology.
(11) Lit., 'in a second direction.'
(12) Lit., 'inn'.
(13) I.e., for any debt incurred on account of service.
(14) The payment due for service.
(15) Deut. XXIV, 10.
(16) Ibid. 17.
(17) I.e., R. Judah applies the law to all, whilst R. Simeon seeks the reason of any Scriptural law, and having found it, exempts from the scope of the law those to whom it is inapplicable.
(18) Ibid. XVII, 17.
(19) The most righteous. This shews that R. Judah interpreted the Scriptural reason, whilst R. Simeon did not; v, Sanh. 21a.
(20) On his view, i.e., where it is not stated.
(21) Deut. XXIV, 6; hence, in taking the mill, which consists of both, he seizes two forbidden articles.
(22) Lit., 'food of the soul.'
(23) Ibid.

Talmud - Mas. Baba Metzia 115b

— this refers to other articles.

Shall we say that Abaye and Raba differ in the same controversy as R. Huna and Rab Judah? For Raba said: If one ate it [the Paschal sacrifice] half roasted, he is flagellated twice: once on account of [the injunction against] half-roast [flesh]. and again because of the verse, [Eat not. . .] but roast with fire. [If he ate it] boiled, he is flagellated twice: once because of the prohibition against boiled [flesh], and again because of the Verse, [Eat not. . .] but roast with fire. For both half-roast and boiled, he is flagellated thrice, on account of [the injunction against] half-roast, boiled, and the injunction, Eat not . . . but roast with fire.[1] Abaye said: One is not flagellated on account of an implied prohibition.[2] Shall we assume that Abaye agrees with Rab Judah, Raba with R. Huna?[3] — Raba can answer you: My ruling agrees even with Rab Judah's. It is only there that Rab Judah maintains [his view], because, 'for he taketh a man's life,' does not [necessarily] imply the nether and the upper millstones; hence it must refer to other things: But here, what is the purpose of 'save roast with the fire'?[4] Hence it must be for [the addition of] a negative precept. Abaye can argue likewise: My ruling agrees even with R. Huna's. It is only there that R. Huna maintains [his view], because 'for he taketh a man's life'

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(1) This refers to: Eat not of it raw, nor sodden (i.e., boiled) at all with water, but roast with fire, Ex. XII, 9.
(2) Thou shalt not eat it save roast with the fire: this is not a direct prohibition of a particular method of preparation, but includes everything that is not 'roast with the fire.'
(3) On the hypothesis that the phrase, for he taketh a man's life to pledge, which specifies no article, is likewise a general or implied prohibition, and R. Huna rules that it involves flagellation, whereas Rab Judah holds that it does not.
(4) For semi-roasting and boiling includes every manner of preparation except roasting, and these are explicitly forbidden.

Talmud - Mas. Baba Metzia 116a

is [an] additional [injunction],[1] and that being so, relate it to the nether and upper millstones [too].[2] But here, 'save roast with fire' is not [an] additional [prohibition], for it is needed for what has been taught: When one is subject to [the command], Arise and eat 'roast', one is [also] subject to, 'Eat not of it raw;' when he is not subject to the former, he is not subject to the latter.[3]

It has been taught in accordance with Rab Judah: If one takes in pledge a pair of barber's shears or

a yoke of oxen, he incurs a double penalty.[4] But if he takes in pledge each part separately, he incurs only one penalty. And another [Baraitha] taught [likewise:] If one took a pair of barber's shears or a yoke of oxen in pledge. I might think that he incurs only one penalty, therefore Scripture teaches, No man shall take the nether or the user millstone to pledge; just as the nether and the upper millstones are distinguished in that they are two objects which [together] perform one operation, and a penalty is incurred for each separately, so all things which are two objects used [together] for one operation, a penalty is incurred for each separately.[5]

A certain man took a butcher's knife in pledge. On his coming before Abaye, he ordered him: Go and return it, because it is a utensil used in the preparation of food, and then come to stand at judgment for it [the debt].[6] Raba said: He need not stand at judgment for it, but can claim [the debt] up to its [sc. the pledge's] value.[7] Now, does not Abaye accept that logic? Wherein does it differ from the case of the goats which ate some husked barley, whereupon their owner came, seized them, and preferred a large claim [for damages]; and Samuel's father ruled that he can claim up to their value?[8] — In that case, It was not an object that is generally lent or hired, whereas in this case it is.[9] For R. Huna b. Abin sent word:[10] With respect to objects that are generally lent or hired, if a man claims, 'I have purchased them,' he is not believed.[11] Now, does then Raba disagree with this reasoning? But Raba himself ordered orphans to surrender scissors for woollen cloth and a book of aggada,[12] which are objects that are generally loaned or hired![13] — [No.] These too, since they depreciate in value, people are particular not to loan. [

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(1) I.e., this is certainly required as an additional injunction against seizing any article employed in the preparation of food.

(2) For once it is recognised as a separate injunction, there is no reason for excluding the millstones from its scope, notwithstanding that they are already mentioned; hence in respect of the millstones we have an additional prohibition.

(3) I.e., the prohibition of half-roast meat holds good only on the evening of the fifteenth, when one is bidden to eat the roast of the passover sacrifice, but not on the day of the fourteenth, before the obligation commences.

(4) Barber's shears were so made that each half could be used separately. 'The yoke of oxen' is translated by Rashi: (i) a pair of oxen for ploughing together with their yoke; (ii) the yoke alone, which he conjectures to have been jointed. Tosaf. on 113a s.v. ואת , on the grounds that only objects directly used in the preparation of food are forbidden, translates (with a slightly different reading): a pair of vegetable scissors for trimming vegetables, and a pair of oxen that stamped out the corn. According to both interpretations, the scissors and the oxen (or their yoke) were divisible, and therefore rank as two distinct objects, thus involving a double penalty for the infringement of, 'for he taketh a man's life to pledge.'

(5) It is not altogether clear how these Baraithas support Rab Judah, nor whether they support him singly or only in conjunction with each other. Rashi maintains that the proof is adduced from the combination of the two. The mere fact that he is flagellated twice only, not three times, does not support him, since there is no verse to imply three in this case even on R. Huna's view, which is limited to the nether and upper millstones. The proof, however, lies in the fact that the verse, 'no man shall take, etc.' is extended to all articles and quoted to shew double flagellation, whilst no reference is made to threefold punishment. Tosaf. maintains that the proof does follow from the first Baraitha alone (so that the second teaching is introduced by 'Another Baraitha, etc.' not, 'And another Baraitha etc.').

(6) Bring proof that he is in your debt.

(7) Even without witnesses or an I.O.U.; since he could have pleaded in the first place that he had bought the pledge, he is now believed, up to the value of the pledge.

(8) Since he could have pleaded that he had bought them from their first owner.

(9) Hence the Possession of the butcher's knife did not prove ownership; therefore Abaye held that the debt itself had to be proved.

(10) From Palestine to Babylon.

(11) V. B.B. 36a.

(12) V. B.B. (Sonc. ed.) p. 215. n. 1,

(13) Their first owners, who were known, pleaded that they had lent these objects to the deceased, and Raba accepted their plea. But if a counter.plea of 'I bought them' is valid in such cases, it should have been advanced on their behalf, it

being a general rule that the court itself assumes what the deceased might legally have pleaded, when the orphans themselves are ignorant of the true facts.

Talmud - Mas. Baba Metzia 116b

C H A P T E R X

MISHNAH. IF A HOUSE [I.E.. THE GROUND FLOOR] AND AN UPPER STOREY, BELONGING TO TWO,[1] COLLAPSED, BOTH MUST SHARE [PROPORTIONATELY] IN THE TIMBER, STONES, AND EARTH.[2] WE ALSO SEE WHICH STONES [I.E., BRICKS] ARE MORE LIKELY TO HAVE BEEN BROKEN.[3] IF ONE [OF THEM] RECOGNISED SOME OF HIS STONES, HE CAN TAKE THEM, BUT THEY ARE COUNTED IN [HIS SHARE].

GEMARA. Since it is stated, WE SEE [etc.], it follows that it is possible to gauge whether it fell through pressure or a shock. If so, in the first clause, why do they divide? Let us see: if it fell through a shock, then [the timber etc. of] the upper storey was broken; if through pressure, the lower portion was damaged![4] — It is meant that it collapsed at night. Then let us examine it in the morning![5] — It [the debris] had been cleared away. Then let us see who had cleared it away, and ask them! — Public [workers] had cleared it away, and departed. Then let us see in whose possession they are [now] situated, so that the other becomes the claimant, upon whom the onus of proof will lie! — They [the materials] are now in a courtyard belonging to both, or in the street. Alternatively, partners in such matters are not particular with each other.[6]

IF ONE RECOGNISED etc. Now, what does the other plead. If he agrees, then it is obvious. If not, why should this one take them? Hence it must mean that he replied. ‘I do not know.’ Shall we say that this refutes R. Nahman? For it has been stated: [If A says to B.] ‘You owe me a maneh,’ and B pleads. ‘I do not know’: R. Huna and Rab Judah rule that he must pay; R. Nahman and R. Johanan say: He is not liable! — It is as R. Nahman answered [elsewhere]: E.g., there is a dispute between them involving an oath; so here too, there is a dispute between them involving an oath. What is meant by a dispute involving an oath? — As Raba's dictum. For Raba said: [If A says to B,] ‘You owe me a maneh,’ to which he replies. ‘I [certainly] owe you fifty zuz, but as for the rest, I do not know,’ since he cannot swear, he must pay [all].[7]

BUT THEY ARE COUNTED IN HIS SHARE. Raba thought this meant in his share of broken materials,[8] thus proving that since he says. ‘I do not know,’ his position is considerably worsened. Said Abaye to him: On the contrary, the position of the other should be much worse; for since he knows only of these, but of no more, he should be entitled to no more, and the other should receive all the rest! — But, said Abaye, it means in his share of whole materials. if so, what does it [his knowledge] profit him? — In respect of extra wide bricks, or well — kneaded clay.[9]

MISHNAH. [IN THE CASE OF] A HOUSE AND AN UPPER STOREY, IF THE UPPER STOREY WAS BROKEN THROUGH, AND THE LANDLORD REFUSES TO MEND IT, THE INHABITANT OF THE UPPER STOREY CAN DESCEND AND DWELL BELOW, UNTIL HE REPAIRS THE TOP. R. JOSE SAID: THE LOWER ONE MUST PROVIDE THE TIKRAH[10] AND THE UPPER ONE THE PLASTERING.[11]

GEMARA. ‘BROKEN THROUGH:’ over what area?[12] — Rab said: The greater part; Samuel said: Four [handbreadths]. ‘Rab said: The greater part.’ but not only four [handbreadths],[13] because one can dwell partly below and partly above.[14] ‘Samuel said: Four [handbreadths]:’ one cannot dwell partly below and partly above. How is it meant? If he [the landlord] had said to him, ‘[I rent you] this storey, it is gone.[15] But if he simply stated, ‘A storey,’ then let him rent him another! — Raba said: It arises only if he stated, ‘This garret, which I rent you, as long as it stands, go up thither; and when it

comes down [through the weather],descend you too [to the ground floor].' If so, why state it? — But, said R. Ashi, it means that he said to him, 'This storey which is upon this house, I rent to you;' thus he pledged the house for the storey. And this is in accordance with what Rabin son of R. Adda related in R. Isaac's name: It once happened that a man said to his neighbour. 'I sell you a hanging vine which is over this peach tree,' and the peach tree was later uprooted.[16] When the matter came before R. Hiyya, he said to him: You are bound to put up a peach tree for him, as long as the vine is in existence.

R. Abba b. Memel propounded:

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(1) E.g., legatees who had thus divided their legacy.

(2) I.e., proportionally to the respective heights of each, they must divide the whole beams, bricks, etc., and likewise the broken ones.

(3) E.g., if the lower part of the house received a shock like that of a battering ram, it may be assumed that the broken stones are of that portion. If, on the other hand, the shock was evenly distributed, as that of a hurricane, it is most probable that the broken stones are of the upper storey, since they had a greater distance to fall.

(4) V. n. 5.

(5) For if it fell through pressure, it will be on its site, whereas if a shock overthrew it, the materials will be strewn at a distance.

(6) Since the house belongs to both, even if they have separate courtyards, neither objects to the other making use of his. Possession in such a case does not prove ownership.

(7) V. supra 97b and 98a for notes. So here too, A claims that he recognises a certain quantity of materials, and B admits part of it and pleads ignorance with respect to the rest.

(8) I.e., A taking a certain quantity of unbroken materials, B receives an equal (or proportionate) quantity of broken ones, and they share in the rest.

(9) I.e., the whole materials which he recognises as his own may be superior to the other whole ones.

(10) Explained in the Gemara.

(11) The cement or plaster above the ceiling.

(12) Lit., 'how much?'

(13) In that case he cannot take possession of the ground floor.

(14) I.e., when only four handbreadths are broken through, he lacks the space required for one utensil, and so he can only claim that in the lower dwelling; this is referred to as living partly below and partly above.

(15) It is the tenant's misfortune, and he has no claim.

(16) The vine thus losing its support.

Talmud - Mas. Baba Metzia 117a

When he [the tenant] dwells there [downstairs], does he dwell there alone, as formerly, or do both dwell there, because he [the landlord] can say to him, 'I did not rent it to you that you should evict me.' Now, should you say, both dwell therein, does he, when he makes use thereof, use it by way of the [lower] doors, or through the roof?[1] Do we say, It must be as originally: just as it was then by way of the roof, so now likewise. Or perhaps, he can say to him, 'I undertook to ascend, but not to ascend and descend.' Now, should you rule that he can say to him, 'I did not undertake to ascend and descend,' what of two storeys, one on top of the other? Now, if the upper one was broken through, he can certainly descend and dwell in the lower one; but if the lower one was broken through, can he ascend and dwell[2] in the upper?[3] Do we say, that he [the landlord] can say to him, 'You undertook whatever is designated ascending [whether a greater or a lesser height]'? Or perhaps, he undertook one ascent, but not two? — These problems remain unsolved.

R. JOSE SAID: THE LOWER ONE MUST PROVIDE THE TIKRAH AND THE UPPER ONE THE PLASTERING. What is the TIKRAH? — R. Jose b. Hanina said: The reeds, thorns[4] and clay.[5] R. Simeon b. Lakish said: Boards. But there is no dispute; each [speaks] in accordance with local

usage.

Two dwelt [in a house], one above and one below. Now, the plaster [on the ceiling between the two] became broke, so that when the one above washed with water, it dripped down, causing damage to the one below.[6] Now, who must repair? — R. Hiyya b. Abba said: The upper dweller; R. Elai said on the authority of R. Hiyya son of R. Jose: The lower one. Now, the sign thereof is, And Joseph was brought down to Egypt.[7] Shall we say that R. Hiyya b. Abba and R. Elai dispute on the same lines as R. Jose and the Rabbis [in the Mishnah]?[8] [Thus:] The ruling that the upper one must repair it is based on the view that he who inflicts the damage must remove himself from him who sustains it; whilst the opinion that the lower one must repair it agrees with the view that the injured party must remove himself from him who inflicts the injury![9] — Is it then reasonable [to maintain] that R. Jose and the Rabbis dispute with reference to damages? Surely we know them to hold the reverse! For we learnt: A tree must be removed [at least] twenty-five cubits from a pit.[10] and in the case of the carob and the sycamore trees, fifty cubits;[11] whether it be above[12] or level therewith. If the pit was there first, he must cut down [the tree], but [the pit owner] must compensate him. If the tree was there first, he need not cut it down. If it is doubtful which came first, he need not cut it down. R. Jose said: Even if the pit was there prior to the tree, he need not cut it down, for the one digs in his own, and the other plants in his own.[13] This proves that in R. Jose's opinion the injured party must remove himself; whilst the Rabbis hold that he who inflicts the injury must remove! — But if it can be said that they [R. Hiyya b. Abba and R. Elai] dispute on the same lines as R. Jose and the Rabbis, it is on their opinions as displayed there. Then wherein do R. Jose and the Rabbis, of the present Mishnah, differ? — In the strengthening of the ceiling. The Rabbis maintain: the plaster strengthens the ceiling, and that is the duty of the lower dweller. Whilst R. Jose maintains that the plaster is for the purpose of levelling the depressions,[14] and that must be done by the upper tenant. But that is not so. For R. Ashi said: When I was at R. Kahana's college, we said, R. Jose agrees in the case of his arrows![15] — It means that the water was interrupted, and only subsequently fell down.[16]

MISHNAH. IF A HOUSE AND AN UPPER STOREY, BELONGING TO TWO,[17] COLLAPSED, AND THE OWNER OF THE UPPER STOREY PROPOSED TO THE HOUSE OWNER TO REBUILD, WHILST THE LATTER DECLINED, THE FORMER MAY BUILD THE HOUSE [i.e., THE LOWER STOREY] AND DWELL THEREIN, UNTIL HE [THE LATTER] REIMBURSES HIM FOR HIS EXPENDITURE. R. JUDAH SAID: THEN THIS MAN INDEED SHALL HAVE DWELT IN HIS NEIGHBOUR'S HOUSE, AND SO MUST PAY HIM RENT.[18] BUT THE OWNER OF THE UPPER STOREY MUST BUILD UP THE HOUSE AND THE UPPER STOREY AND ROOF IT OVER, AND THEN DWELL IN THE HOUSE UNTIL HE IS REIMBURSED.[19] [

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(1) I.e., reaching as hitherto the upper storey by means of the specially provided ladder and thence descending into the house.

(2) [Cf. Tosaf. Cur. edd. read instead ‘entirely’, which is rightly omitted in most texts.]

(3) Where one of the two had been rented.

(4) The thorns were presumably for binding the other materials by becoming entangled in them.

(5) [So Aruch, reading וסטיני . According to Rashi, who preserves וטינא of cur. edd., the word is a name of a Sage and is to be connected with what follows: ‘Justinian in the name of Resh Lakish said.’]

(6) The ceiling itself, i.e., the planks, was unaffected, and the water dripped down through the cracks in the plaster. This was not a case of renting, but of two owners.

(7) Gen. XXXIX. 1. This is a sign given to aid to memory: thus: Joseph (Jose) was brought down — rules that the lower one must repair.

(8) For it was assumed that when R. Jose ruled that the tenant above must provide the plastering, it is in order that his water should inflict no damage upon the tenant below, it being the duty of the person who inflicts damage to remove himself from him who sustains it; on the other hand, the tenant below must furnish (i.e., repair) the ceiling itself, which is the floor of the upper storey, since that is an essential part of the storey which he rented to him. Whilst the first Tanna

holds that the injured party must remove himself: therefore he, i.e, the lower dweller, must repair the whole ceiling, including the plastering.

(9) As the Rabbis.

(10) Because its roots undermine the earth, and if nearer, ultimately cause it to collapse.

(11) Their roots are longer.

(12) I.e., whether the pit is on higher ground than the tree, so that the roots go below it.

(13) V. B.B. 25b and supra p. 630.

(14) I.e., the ceiling of wood beams forms an unequal surface for the man above to walk upon, and therefore it is overlaid by a dressing of concrete chippings, which forms a smooth and level pavement.

(15) Though R. Jose holds that the injured person has to remove, that is only where the injury does not come immediately and directly, as in the case of the pit and the tree. When the tree is planted, no damage at all is done; only later, when it is grown and its roots have spread, is injury caused. But when one washes his hands and the water falls through the crevices in the flooring upon the dweller below, the injury proceeds directly from above, as when a man shoots arrows, in which case R. Jose admits that the man who causes the injury must remove himself. How then can R. Hiyya b. Jose rule that the dweller below must repair the ceiling?

(16) The place for washing was not directly over the broken portion but in some other part of the room, whence it trickled to the cracks, and only then dropped down. That is not direct and immediate injury.

(17) v. p. 660, n. 1.

(18) When the house-owner reimburses him, the house becomes retrospectively his. Now, in R. Judah's opinion, if A benefits from an article belonging to B, though B does not lose thereby, he must pay him. So here too, the owner of the upper storey has dwelt in the other's house, and though the latter lost nothing thereby, since had not the former built it he would have had no house in any case, the owner of the upper storey must nevertheless pay rent.

(19) In this case, the house-owner sustains no loss, as explained in the previous note, but the owner of the upper storey does not benefit either, since he could live in his own garret; here R. Judah admits that no rent is payable. So Rashi. Tosaf., however, points out that he benefits by not having to climb stairs. Therefore, on a slightly different reading, Tosaf. translates: and then dwell in his upper storey, not permitting the other to enter the house until he is reimbursed.

Talmud - Mas. Baba Metzia 117b

GEMARA. R. Johanan said: In three places has R. Judah taught us that one may not benefit from his neighbour's property. One, what we learnt [in the Mishnah]. What is the second? — We learnt: If one gives a dyer wool to be dyed red, but he dyed it black, or to dye it black and he dyed it red; R. Meir said: He [the dyer] must pay him for the wool.[1] R. Judah said: If the increased value exceeds the cost [of dyeing], he [the wool owner] must pay him the cost; if the cost exceeds the increased value, he must pay him for the latter.[2] And what is the third? — That which we learnt: If a man repaid a portion of his debt, and then placed the bond in the hands of a third party, declaring. 'If I do not repay the balance within thirty days, return the note to the creditor:'[3] and the time arrived, and he did not repay. R. Jose maintained: The third party must surrender [the bond to the creditor]. R. Judah ruled: He must not return it .[4] But whence [does it follow]? Maybe R. Judah states his ruling here,[5] only because there is blackening [of the walls].[6] Or, [in the second case] 'to be dyed red, but he dyed it black,' the reason is that he did otherwise [than he was instructed], and we learnt: He who alters [the contract] is at a disadvantage. Again, in the case of one who repaid a portion of his debt, it [the order to the third party] is an asmakta,[7] and we thus learn that R. Judah holds that an asmakta gives no title.[8] R. Aha b. Adda said on 'Ulla's authority: If the owner of the lower storey wishes to alter [the building materials from hewn] to unhewn stones, he is permitted; [from unhewn stones] to hewn stones, he is forbidden;[9] [from whole bricks] to half-bricks,[10] he is permitted; [from half-bricks] to whole bricks, he is forbidden; to ceil it with cedars,[11] he is permitted; with sycamores.[12] he is forbidden; to diminish the number of windows, he is permitted; to increase them, he is forbidden; to elevate [the storey], he is forbidden; to decrease its height, he is permitted.[13] Whereas if the owner of the upper storey wishes to alter to hewn stones, he is permitted; to unhewn stones, he is not permitted; to half-bricks, he is not permitted; to whole bricks, he is permitted; to ceil it with cedars, he is not permitted; with sycamores, he is permitted; to increase the number of windows, he is

permitted; to diminish them, he is not permitted; to elevate the [upper storey], he is not permitted; to decrease its height, he is permitted.[14]]

What if neither possesses [the wherewithal for rebuilding]?[15] (It has been taught: When neither possesses [money for rebuilding]. the garret owner has no claim at all upon the land.)[16] It has been taught: R. Nathan said: The owner of the lower portion receives two-thirds [of the land], and the owner of the upper, one-third. Others say, The owner of the lower portion receives three-quarters, and that of the upper, one-quarter. Rabbah said: Hold fast to R. Nathan's ruling, because he is a judge, and has penetrated to the depths of civil law. By how much does the loft impair the value of the house [i.e., the lower storey]? — By a third.[17] Therefore he is entitled to a third.

MISHNAH. SIMILARLY, IF AN OLIVE PRESS[18] WAS BUILT IN A ROCK AND ABOVE IT WAS A GARDEN, AND THE ROOF OF THE PRESS WAS BROKEN THROUGH,[19] THE OWNER OF THE GARDEN CAN DESCEND AND SOW BELOW [ON THE FLOOR OF THE PRESS], UNTIL THE PRESS-OWNER REPAIRS THE VAULTING [TO PROVIDE A SUPPORT FOR THE GARDEN ABOVE]. IF A WALL OR A TREE FELL INTO A PUBLIC THOROUGHFARE AND CAUSED DAMAGE, HE [ITS OWNER] IS FREE FROM LIABILITY. BUT IF HE WAS GIVEN A [FIXED] TIME TO CUT DOWN THE TREE OR PULL DOWN THE WALL, AND THEY FELL: IF WITHIN THE PERIOD, HE IS NOT LIABLE; AFTER THAT PERIOD HE IS LIABLE. IF A MAN'S WALL WAS NEAR HIS NEIGHBOUR'S GARDEN AND IT COLLAPSED [INTO THE GARDEN], AND WHEN HE DEMANDED, ‘REMOVE YOUR STONES’, HE REPLIED,

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(1) I.e., the wool becomes the dyer's, and he must pay the original owner for it.

(2) For if the dyer should retain the wool, as R. Meir rules, he profits in that the wool-owner has brought him wool, thus saving him the labour of procuring it himself; V.B.K. 100b.

(3) Who will thus be enabled to demand the full amount.

(4) And it is assumed that the reason is because the creditor thereby derives benefit from the debtor's money, which is forbidden (v. B.B. 168a).

(5) That the upper tenant would have to pay rent.

(6) I.e., it loses its newness through his dwelling therein, hence the house-owner actually sustains a loss, and therefore the other must pay him rent.

(7) v. Glos.

(8) But all three do not prove that normally one may derive no benefit from his neighbour's property where the latter suffers no loss thereby.

(9) [Unhewn stones are wider by one handbreadth then hewn stones, v. B.B. Mishnah 2a.]

(10) Between which there was a filling of rubble. This made the wall stronger than if built with whole bricks, which allowed for no filling. v. ibid.

(11) In the place of the former sycamores.

(12) In the place of the former cedars.

(13) שומעין לו and אין שומעין לו , here translated ‘he is permitted’ and ‘he is forbidden’ respectively, are literally, ‘we hearken to him,’ ‘we do not hearken to him.’ The general principle is: if he wishes to make an alteration which strengthens the lower storey and adds to its weight, so that it can the better bear the burden of the upper portion, he is permitted. But he may not weaken it.

(14) He may weaken the upper portion, thereby giving the lower a lesser burden, but not strengthen it through increasing the burden.

(15) So that the owner of the lower portion wishes to turn it to agricultural purposes, whilst the owner of the upper storey demands a share in it (Tosaf.).

(16) Rashal deletes the whole of the bracketed passage. on the authority of Asheri. Alfasi retains it.

(17) The duration of the lower portion is lessened by one-third on account of the weight of the upper. Thus it may be held that the owner of the upper storey has a right to a third of the ground.

(18) The Heb. בית הבד , denotes the building in which the olive press, the tank, and all other objects required for

pressing olives are housed.
(19) Thus undermining the soil above and rendering it unfit for sowing.

Talmud - Mas. Baba Metzia 118a

THEY ARE BECOME YOURS,[1] HE IS NOT HEEDED. [ON THE OTHER HAND,] IF AFTER THE LATTER AGREED [TO THE PROPOSAL [AND REMOVED THEM] HE SAID, 'HERE ARE YOUR [REMOVAL] EXPENSES, AND I WILL TAKE BACK MINE [THE STONES].' HE IS [LIKEWISE] NOT HEEDED. IF A MAN ENGAGES A LABOURER TO WORK FOR HIM ON STRAW OR STRUBBLE,[2] AND WHEN HE DEMANDS HIS WAGES, SAYS TO HIM, 'TAKE THE RESULTS OF YOUR LABOUR FOR YOUR WAGE, HE IS NOT HEEDED. IF AFTER HE AGREED [TO THE PROPOSAL] HE SAID TO HIM, 'HERE IS YOUR PAYMENT, AND I WILL TAKE MY PROPERTY,' HE IS [LIKEWISE] NOT HEEDED.

GEMARA. BROKEN THROUGH: Rab said, The greater part thereof; Samuel ruled, Four [handbreadths]. 'Rab said, The greater part thereof;' but if only four [handbreadths,] one can sow partly above and partly below.[3] 'Samuel said, Four [handbreadths]:' one cannot [be expected to] sow partly above and partly below. Now, both [disputes] are necessary.[4] For if we taught [it] in connection with a dwelling, [it might be said that] only there does Samuel state his ruling, because it is unusual for a man to dwell partly in one place and partly in another; but with respect to sowing, where it is quite usual for a man to sow here a little and there a little, I might say that he agrees with Rab. Whilst if only the present dispute were stated, [I might argue that] only here does Rab hold this view; but in the other case, he agrees with Samuel. Hence both are necessary.

IF HE WAS GIVEN A [FIXED] TIME. And what time is given by the Court? — Said R. Johanan: Thirty days.

IF A MAN'S WALL etc. But since the last clause teaches, 'HERE ARE YOUR [REMOVAL] EXPENSES,' it follows that he [the garden owner] has removed them. Thus, it is only because he removed them;[5] but why so? Let his field effect possession for him! For R. Jose son of R. Hanina said: A man's courtyard effects possession for him even without his knowledge! — That is only where he [the original owner] desires to grant him possession; but here he merely seeks to evade him.[6]

IF A MAN ENGAGES A LABOURER TO WORK WITH HIM ON STRAW etc. Now, both are necessary. For if only the first were stated, that when he proposes, 'LET THEM BE YOURS', HE IS NOT HEEDED, [it might be said that] that is because he [the garden owner] has no wage claim upon him; here, however, that he [the labourer] has a wage claim, I might argue that he [the employer] is listened to, because it is proverbial, 'From your debtor accept [even] bran in payment.' Whilst if this clause [alone] were taught, [it might be that] only in this case, once he [the worker] accepts the proposal, is he [the employer] not heeded,[7] because he has a wage claim upon him;[8] but in the former case, where he has no wage claim upon him, I might think that he is heeded:[9] hence both are necessary.

HE IS NOT HEEDED.[10] But has it not been taught. He is heeded? — Said R. Nahman: There is no difficulty: here [in the Mishnah] the reference is to his own work, there [in the Baraitha], to his neighbour's.[11] Raba said to R. Nahman: [When he is employed] on his own, what is the reason [that he is not heeded]? Because he [the labourer] can say to him, 'You are responsible for my wages'? [But when employed] by his neighbour he can also say to him, 'You are responsible for my hire'! For it has been taught: If one engaged an artisan to labour on his [work], but directed him to his neighbour's, he must pay him in full, and receive from the owner [of the work actually done] the value of the labour whereby he benefited! — But, said R. Nahman, there is no difficulty: here it

refers to his own; there, to that of hefker.[12] Raba raised an objection against R. Nahman: That which is found by a labourer [whilst working for another] belongs to himself. When is that? If the employer had instructed him, 'Weed or dig for me to — day.' But if he said to him. 'Work for me to-day' [without specifying the nature of the work], his findings belong to the employer![13] — But, said R. Nahman, there is no difficulty: here [in the Mishnah] the reference is to lifting up; there, to watching.[14]

Rabbah said: [Whether] 'watching' [effects possession] in the case of hefker is disputed by Tannaim. For we learnt: Those who keep guard over the aftergrowth of the Sabbatical year are paid out of Temple funds.[15] R. Jose said: He who wishes can donate [his work] and be an unpaid watcher. Said they [the Sages] to him: You say so, [but then] they are not provided by the public.[16] Now, surely, the dispute is on this question: the first Tanna holds that 'watching' hefker effects possession;[17] hence, if he is paid, it is well,[18] but not otherwise. Whilst R. Jose maintains that 'watching' does not effect possession of hefker; hence, only when the community go and fetch it is possession effected. And what is meant by. 'You say [etc.]'?[19] They said thus to him: From your statement[20] [and] on the basis of our ruling,[21] [it transpires that] the omer[22] and the two loaves[23] are not provided by the public![24] — Said Raba: That is not so. All agree that 'watching' effects possession of hefker; but they differ here as to whether we fear that he will not deliver it whole-heartedly. Thus, the Rabbis hold that he must be paid, for otherwise there is the fear lest he does not deliver it wholeheartedly,[25] whilst R. Jose holds that this fear is not entertained. And what is meant by 'You say'? — They say thus to him: From your statement, [and] on the basis of our ruling that we fear that it will not be surrendered whole-heartedly, the 'omer and the two loaves are not provided by the public.

Others say, Raba said: All agree that 'watching' does not effect possession in the case of hefker; but they dispute here whether we entertain a fear of violent men. The first Tanna holds that the Rabbis enacted that he shall be paid four zuz, so that violent men may hear thereof[26] and hold aloof;[27] whilst R. Jose holds that they did not enact [thus].[28]

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(1) 'Remove them yourself, and keep them for your trouble.'

(2) E.g., to collect or tie it into bundles.

(3) I.e., the garden-owner can only demand an equivalent space in the press, but not transplant his whole garden thither.

(4) V. supra 116b, where Rab and Samuel dispute likewise with reference to a house.

(5) That they belong to the garden owner.

(6) He does not really wish the garden owner to have the bricks, but seeks to evade his responsibilities by telling him to clear them away and keep them for himself, thinking, however, to claim them subsequently. Therefore, unless the latter actually takes advantage of the offer, the bricks remain his.

(7) When he desires to go back upon it.

(8) And therefore has a strong title to the materials, since they were offered in lieu of wages.

(9) When desiring to cancel his accepted proposal.

(10) When he offers the workman the material in lieu of wages.

(11) If the labourer was employed to work for a third party, he can be forced to accept the materials in lieu of wages.

(12) V. Glos. R. Nahman maintains (supra 10a) that if a person lifts up an object of hefker on his neighbour's behalf, it belongs to himself. Hence, when a worker collects sheaves of hefker for an employer, they belong to himself, and therefore the offer must be accepted.

(13) V. supra 10a.

(14) Lit., 'looking'. In both instances the reference is to hefker. But if the labourer was engaged to tie sheaves, thus having to lift them up, his employer acquires title to them, and therefore must pay him. But if his work was to keep guard, the mere watching does not effect possession, and therefore his employer can force him to accept them as his wages.

(15) Lit., 'the terumah of the Chamber', i.e., the funds contributed by shekel payers.

(16) A sheaf of the earliest barley crop was brought as a heave offering in the Temple; likewise two loaves made of the

first wheat to ripen (Lev. XXIII. 10f. 17). These had to be public property, and not that of any individual, and men were engaged and paid out of public funds to watch over a field of corn to see which sheaves ripened the earliest. As there was no sowing in the seventh year, there could only be a crop spontaneously grown from seed that had fallen the previous year. This crop was hefker, as all seventh year crops were, and the Tannaim dispute whether the watchman had to accept payment or not.

(17) The aftergrowth thus belong to the watchman.

(18) For then possession is effected on behalf of the public.

(19) Seeing that according to R. Jose the sheaves are not the property of the watcher.

(20) That he may forego payment.

(21) That watching gives a title to hefker.

(22) Sheaf of barley. Lev. XXIII. 9ff.

(23) Made of the new wheat, ibid. 16ff.

(24) We thus see that the question whether 'watching' effects possession in hefker is a point of issue between Tannaim.

(25) And if it is not surrendered whole-heartedly, it belongs to the watchman, and is thus not provided by the public.

(26) That it is being watched on behalf of hekdesh.

(27) Otherwise, they may think that he is watching it on his own behalf and seize it themselves; for though they respect the rights of hekdesh, they will not respect those of a private individual.

(28) The fear being groundless.

Talmud - Mas. Baba Metzia 118b

And what is meant by 'You say'? They say thus to him: From your statement,[and] on the basis of our opinion, [it follows that] they are not provided by the public.[1] And when Rabin came,[2] he likewise said in R. Johanan's name: They differ as to whether we fear [the action of] men of violence.

MISHNAH. IF A MAN TAKES OUT MANURE INTO A PUBLIC THOROUGHFARE, IT MUST BE APPLIED [TO THE SOIL] IMMEDIATELY AFTER BEING TAKEN OUT.[3] MORTAR MUST NOT BE STEEPED IN THE STREET, NOR MAY BRICKS BE FORMED THERE.[4] CLAY MAY BE KNEADED IN THE STREET.[5] BUT BRICKS MAY NOT BE [MOULDED]. WHEN ONE IS BUILDING IN A PUBLIC ROAD,[6] THE BRICKS MUST BE LAID IMMEDIATELY THEY ARE BROUGHT.[7] IF HE CAUSES DAMAGE, HE MUST MAKE IT GOOD. RABBAN SIMEON B. GAMALIEL SAID: ONE MAY PREPARE HIS MATERIALS EVEN THIRTY DAYS BEFOREHAND.[8]

GEMARA. Shall we say that our Mishnah does not agree with R. Judah? For it has been taught: R. Judah said: When it is the time for manure to be taken out, a man may put his manure out into the street and leave it heaped up for full thirty days, that it should be trodden down by the foot of man and beast for on this condition did Joshua allot the Land to Israel![9] — It may even agree with R. Judah, for he admits that if he thereby causes damage, he must make it good.[10] But have we not learned: R. Judah said: In the case of a Chanukah[11] lamp he is not liable, because this was done under authority.[12] Surely that means, under authority of the Court?[13] — No. It means the authority of a precept.[14] But it has been taught: All those whom the Rabbis permitted to commit a nuisance on the public thoroughfare,[15] if they cause damage, they are bound to pay; whilst R. Judah exempts them! Hence it is clear that our Mishnah does not agree with R. Judah.

Abaye said: R. Judah, Rabban Simeon b. Gamaliel, and R. Simeon[16] all maintain that wherever the Sages gave permission [to do a certain thing] and damage was thereby caused, there is no liability. 'R. Judah', as stated. 'Rabban Simeon b. Gamaliel', — for we learnt: ONE MAY PREPARE HIS MATERIALS EVEN THIRTY DAYS BEFOREHAND.[17] 'R. Simeon', — for we learnt: If he placed it [a stove] in an upper storey, there must be a flooring[18] of three handbreadths deep under it;[19] but for a small stove,[20] one handbreadth.[21] Nevertheless, if he causes damage, he

must make it good. R. Simeon said: All these measurements were stated only so that if he causes damage he is free from liability.[22]

Our Rabbis taught: Once the quarryman has delivered [the stones for building] to the chiseller [for polishing and smoothing], the latter is responsible [for any damage caused by them]; the chiseller having delivered them to the haulier, the latter is responsible; the haulier having delivered them to the porter,[23] the latter is responsible; the porter having delivered them to the bricklayer, the latter is responsible; the bricklayer having handed them over to the foreman,[24] the foreman is liable. But if after he had [exactly][25] laid the stone upon the row, it caused damage, all are responsible. But has it not been taught: Only the last is responsible, whilst all the others are exempt? — There is no difficulty: the latter refers to time-work;[26] the former, to contracting.[27] MISHNAH. IF TWO GARDENS ARE SITUATED ONE ABOVE THE OTHER, AND VEGETABLES GROW BETWEEN THEM,[28] R. MEIR SAID: THEY BELONG TO THE UPPER GARDEN; R. JUDAH MAINTAINED, TO THE LOWER GARDEN. SAID R. MEIR: SHOULD THE OWNER OF THE UPPER GARDEN WISH TO REMOVE HIS GARDEN [I.E., TAKE AWAY THE EARTH], THERE WOULD BE NO VEGETABLES. SAID R. JUDAH: SHOULD THE LOWER ONE WISH TO FILL UP HIS GARDEN [WITH SOIL],[29] THERE WOULD BE NO VEGETABLES. THEN, SAID R. MEIR, SINCE BOTH CAN PREVENT EACH OTHER [FROM HAVING VEGETABLES AT ALL], WE CONSIDER WHENCE THE VEGETABLES DRAW THEIR SUSTENANCE.[30] R. SIMEON SAID: AS FAR AS [THE OWNER OF] THE UPPER GARDEN CAN STRETCH OUT HIS HAND AND TAKE BELONGS TO HIM, WHILST THE REST BELONGS TO [THE OWNER OF] THE LOWER GARDEN.

GEMARA. Raba said: As for the roots, all agree that they belong to the upper owner. They disagree only with respect to the leaves:[31] R. Meir maintains: The leaves are counted with[32] the roots; whilst R. Judah holds that they are not. Now, they follow their views [expressed elsewhere]. For it has been taught: That which issues from the trunk and the roots belongs to the landowner: this is R. Meir's opinion. R. Judah said: [That which grows] out of the trunk belongs to the tree-owner; out of the roots, to the land-owner.[33]

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(1) On this version this phrase has not the same meaning as above. The ‘omer and the two loaves certainly come from the public, since it is now assumed that watching over hefker does not effect a title. But the Rabbis objected that since it was enacted that the watcher must receive four zuz, if he foregoes it and it goes into the public funds, these now include four zuz of private money, and when later on animals are bought therewith for communal sacrifices, such as the daily burnt offerings and the Sabbath and Festival Additional offerings, instead of being paid for by public funds, as they should be, they are partly paid for by private money (Rashi.)

(2) From Palestine to Babylon.

(3) Lit., ‘the carrier carries it out, and he who applies it must apply it’ — i.e., it may not be left in the street for any length of time, but must be taken straight to the fields.

(4) Rashi: the clay was run into moulds and allowed to dry and harden into bricks. This may not be done in a public thoroughfare.

(5) For immediate use.

(6) I.e.; a building coming up to the street, so that the materials etc. must be in the street.

(7) Lit., ‘the brick hauler brings them and the builder builds them (into the wall)’ — i.e., they must not lie in the street longer than is absolutely necessary.

(8) I.e., deposit them on the site, in readiness for building; and during this time he is not responsible for any damage that may ensue.

(9) V. B.K. 30a and 81b.

(10) Notwithstanding that he was entitled to have it there.

(11) V. Glos.

(12) If one placed a light outside his house and a camel passed by laden with flax, which caught fire from the light, he is liable for the damage. But if it was a Chanukah lamp, he is exempt; V. B.K. 30a, and 62b.

(13) Thus shewing that one is not responsible for damage caused by his property in a public thoroughfare, if it is there by permission of the Court.
(14) Which stands higher, but not that of the court or general authorities, which is insufficient to exempt him from his liabilities.
(15) E.g., to put out the manure, as here, or discharge foul water in winter.
(16) b. Yohai.
(17) V. p. 673. n. 5.
(18) מעזיבה , v. p. 662, n. 2.
(19) Otherwise it can cause damage to the lower storey.
(20) just large enough for two pots.
(21) Because it does not give out so much heat.
(22) B.B. 20b.
(23) Who handed them to the bricklayer.
(24) For exact setting. After the stones were placed in a row, there was a foreman or supervisor who saw that they were correctly placed, and remedied faulty placing (Rashi).
(25) [The text is uncertain (v. D.S.). but this seems to be the correct interpretation according to the reading in cur. edd.; on variants in the parallel passages. V. Krauss, TA. I, 302.]
(26) Lit., 'hiring'. i.e., men engaged by the week, day or hour. In that case, each is quit of responsibility as soon as it leaves his hand, and so the final responsibility is left with the last.
(27) If they jointly contracted for the building. In that case, each is severally responsible whilst the stone is in his hand; but when it is laid, the joint responsibility is reassumed.
(28) I.e., they are contiguous, but one is on a higher level than the other, and vegetables grow on the connecting bank.
(29) To make it level with the higher one.
(30) And this determines their ownership.
(31) Which are suspended in the air-space above the lower garden.
(32) Lit., 'thrown after'.
(33) The reference is to the offshoots of a tree which does not belong to the same owner as the field in which it is situated, v. B.B. 81a.

Talmud - Mas. Baba Metzia 119a

And we learnt[1] similarly in the case of 'orlah:[2] A tree which issues from the trunk or from the roots is subject to 'orlah: this is the opinion of R. Meir.[3] R. Judah said: That which grows out of the trunk is not subject thereto;[4] but out of the roots, is subject. And both are necessary. For if the first were taught, [I would argue,] only there does R. Judah rule so, because it is [a question of] civil law.[5] But with respect to 'orlah, which is a ritual prohibition[6] I might think that he agrees with R. Meir. And if the latter were taught, I might argue, only here does R. Meir rule so, but in the former case he agrees with R. Judah. Hence both are necessary. R. SIMEON SAID: AS FAR AS THE OWNER OF THE UPPER GARDEN CAN STRETCH OUT HIS HAND, etc. The disciples of R. Jannai said: providing, however, that he does not strain himself. R. 'Anan — or according to others, R. Jeremiah — propounded: What if he can reach its leaves but not the roots, or he can reach the roots but not the leaves?[7] The problem remains unsolved.

Ephraim the Scribe, a disciple of Resh Lakish, said on the authority of the latter: The halachah agrees with R. Simeon. When this was told to King Shapur.[8] he observed, 'Let a palanquin be put up for R. Simeon.'[9]

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(1) [Var. lec.: 'It has been taught.' the citation that follows not being from a Mishnah but from Tosef. 'Orl.]
(2) V. Glos.
(3) In both cases he regards it as a new growth from the earth.
(4) It being regarded as part of the old tree.
(5) Lit., 'money'.

(6) And where such is in doubt, the more stringent ruling is adopted.
(7) [Omitted in some texts, there being no question that in this case it is considered to be within his reach; v. Wilna Gaon, Glosses.]
(8) King Shapur I,a contemporary of Samuel and a close friend of his. Rashi argues that he is actually meant, as he was well versed in Jewish civil law, and dismisses the theory of other commentators that this is an allusion to Samuel, who was frequently so designated. [On the interest of King Shapur I in Jewish customs and practices, prompted probably by his desire to win Jewish support in his struggle with the Romans, cf. Suk. 53a and A.Z. 76b; v. Funk, op. cit., p. 72.]
(9) He deserves a triumphal procession for his acuteness in civil law.

Talmud - Mas. Baba Bathra 2a

CHAPTER I

MISHNAH. IF JOINT OWNERS AGREE TO MAKE A MEHIZAH[1] IN A COURTYARD,[2] THEY SHOULD[3] BUILD THE WALL IN THE MIDDLE. IN DISTRICTS WHERE IT IS USUAL TO BUILD OF GEBIL, GAZITH, KEFISIN OR LEBENIM,[4] THEY MUST USE SUCH MATERIALS, ALL ACCORDING TO THE CUSTOM OF THE DISTRICT. IF GEBIL IS USED, EACH GIVES THREE HANDBREADTHS.[5] IF GAZITH IS USED, EACH GIVES TWO HANDBREADTHS AND A HALF.[6] IF KEFISin ARE USED, EACH GIVES TWO HANDBREADTHS.[7] IF LEBENIM ARE USED, EACH GIVES A HANDBREADTH AND A HALF.[8] THEREFORE IF THE WALL FALLS,[9] [IT IS ASSUMED THAT] THE PLACE [IT OCCUPIED] AND THE STONES BELONG TO BOTH. SIMILARLY WITH AN ORCHARD,[10] IN A PLACE WHERE IT IS CUSTOMARY TO FENCE OFF, EITHER CAN BE COMPELLED TO DO SO. BUT IN A STRETCH OF CORNFIELDS, IN A PLACE WHERE IT IS USUAL NOT TO FENCE OFF [THE FIELDS]. NEITHER CAN BE COMPELLED. IF, HOWEVER, ONE DESIRES TO MAKE A FENCE, HE MUST WITHDRAW A LITTLE AND BUILD ON HIS OWN GROUND, MAKING A FACING ON THE OUTER SIDE.[11] CONSEQUENTLY,[12] IF THE WALL FALLS, THE PLACE AND THE STONES [ARE ASSUMED TO] BELONG TO HIM. IF, HOWEVER, THEY BOTH CONCUR, THEY BUILD THE WALL IN THE MIDDLE AND MAKE A FACING ON BOTH SIDES. CONSEQUENTLY IF THE WALL FALLS, [IT IS ASSUMED THAT] THE PLACE AND THE STONES BELONG TO BOTH.

GEMARA. It was presumed [in the Beth Hamidrash] that MEHIZAH means a wall, as it has been taught: If the mehiza of a vineyard has been broken down, the owner [of an adjoining cornfield] can require the owner of the vineyard to restore it.[13] If it is broken down again. he can again require him to restore it.

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(1) This word may mean either ‘partition’ or ‘division’. The Gemara discusses which sense is intended here.

(2) A yard on to which two or more houses open.

(3) I.e., unless they agree otherwise.

(4) These are names of various kinds of bricks, and their precise sense is explained in the Gemara infra.

(5) Because a wall of gebil usually was six handbreadths thick.

(6) The usual breadth of such a wall being five handbreadths.

(7) The usual breadth being four handbreadths.

(8) The usual breadth being three handbreadths.

(9) At some subsequent time, when the circumstances under which it was put up have been forgotten.

(10) Or ‘a vegetable garden’.

(11) The point of this remark is discussed in the Gemara.

(12) In consequence of the rule just given.

(13) If there is a fence between a cornfield and a vineyard, the owner of the cornfield may sow right up to the fence, but if there is no fence he must not bring his seeds nearer than four cubits to the vineyard. V. infra 26a.

Talmud - Mas. Baba Bathra 2b

If [the owner of the vineyard] neglects the matter and does not restore it, he causes his neighbour's produce to become forfeit[1] and is responsible for his loss. [This being so,] the reason [why either can be compelled to join in putting up the wall] is because they both agreed;[2] but if either did not agree. he cannot be compelled. From this we infer that ‘overlooking’ is not regarded as a substantial damage.[3]

But may I not say that MEHIZAH means ‘division’, as in the verse, And the congregation's half[4]

[mehezath. lit., 'division']. That being so, since they agreed to make a division, either can compel the other to build a wall,[5] from which we infer that overlooking is recognised as a substantial damage! — If that is the case,[6] why does the Mishnah say. WHO AGREED TO MAKE A DIVISION [MEHIZAH]? It should say, 'who agreed lahazoth [to divide]'? — You[7] say then that MEHIZAH means a wall. Why then does the Mishnah say. THEY MUST BUILD THE WALL? It should say simply. 'They must build it'? — If the Mishnah had said 'it', I should have understood that a mere fence of sticks is sufficient. It tells us [therefore that the partition must be a wall].

THEY MUST BUILD THE WALL IN THE MIDDLE. Surely this is self-evident? — It had to be stated in view of the case where one of the partners had to persuade the other to agree. You might think that in that case the second can say to the first: When I consented to your request. I was willing to lose part of my air space.[8] but not part of my ground space.[9] Now we know [that he cannot say so].

But is then overlooking no substantial damage? Come and hear: SIMILARLY WITH AN ORCHARD?[10] — There is a special reason in the case of an orchard, as we find in a saying of R. Abba; for R. Abba said in the name of R. Huna, who said it in the name of Rab: It is forbidden to a man to stand about in his neighbour's field when the corn In It is In the ear.[11] But the Mishnah says AND SIMILARLY?[12] — This refers to the gebil and the gazith.[13]

Come and hear:[14] 'If the wall of a courtyard falls in, he [the joint owner] can be compelled to help in rebuilding to a height of four cubits'?[15] — If it falls, the case is different.[16] But what then was the point of the objection?[17] — Because it could be said that this statement was required only as an introduction to the next, which runs, 'Above four cubits he is not compelled to help in rebuilding.'[18] Come and hear: [Every resident in a courtyard] can be compelled to assist in building a gateway and a door to the courtyard.[19] This shows, does it not, that overlooking is a substantial damage? Injury inflicted by the public is in a different category. Is then overlooking by a private individual not an injury? Come and hear [this]: 'A courtyard need not be divided [on the demand of one party] unless it is large enough to allow four cubits to each',[20] which shows that if enough space will be left to each, a division can be demanded. Must not that division be made by a wall? — No; a mere fence of sticks is sufficient.[21]

Come and hear: '[A wall built facing] windows, whether above, below, or opposite. [must be kept] four cubits away';[22] and in explanation of this it was taught that [if higher] it must be four cubits higher so that one should not be able to peep over and look in, and [if lower] four cubits lower so that one should not be able to stand on it and look in,[23] and four cubits away so as not to darken the windows? — Damage [caused by looking into] a house is different.[24]

Come and hear: 'R. Nahman said in the name of Samuel: If a man's roof adjoins his neighbour's courtyard, he must make a parapet four cubits high'?[25] — There is a special reason there, because the owner of the courtyard can say to the owner of the roof, I have fixed times for using my courtyard, but you have no fixed times for using your roof, and I do not know when you may be going up there

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(1) Because that part which is sown near the vineyard is regarded as being sown in the vineyard itself, and therefore when the produce reaches a certain height it becomes forfeit, according to the law in Deut. XXII, 9. Thou shalt not sow thy vineyard with mingled seeds.

(2) To divide the courtyard by means of a wall and not merely by a fence of sticks.

(3) Lit., 'the damage of overlooking is not called damage'. The 'overlooking' is the power of either owner to see what the other is doing in his half of the courtyard.

(4) Num. XXXI, 43.

(5) And not merely a fence of sticks.

(6) That mehizah means ‘division’.
(7) I.e., you who object to mehizah being taken to mean ‘division’.
(8) By allowing, say. a thin partition of boards which would prevent my looking over into your part.
(9) Lit., ‘service’: the space in his own half which would be taken up by a thick wall.
(10) What reason can there be here save to prevent overlooking?
(11) So as not to injure it by casting on it the ‘evil eye’; hence this is no proof that overlooking is an injury.
(12) Which implies that the reason is the same in the case of an orchard as in the case of a courtyard.
(13) That is to say. that the wall in an orchard, if there is to be one, must also be made of these materials.
(14) A further objection to the thesis that overlooking is no injury.
(15) Infra 5a. This would show that overlooking is an injury.
(16) Because the joint owners had already agreed to have a wall.
(17) Lit., ‘He who asks this, how can he ask it.’ the answer being so obvious.
(18) And if this is so,then the case of the wall falling is not different from the case of there being no wall, and overlooking is an injury. Consequently the objection from the statement ‘If the wall falls in, etc,’ is a sensible one.
(19) So as to prevent the passers.by looking in, Infra 7a.
(20) Infra 11a.
(21) And overlooking is not a substantial damage.
(22) Infra 22a. The reference is to a wall built by the joint owner of a courtyard opposite his neighbour's windows.
(23) Which shows that overlooking even by a private individual is a substantial damage.
(24) Because greater privacy is required in a house,
(25) So that he should not be able to look over into the courtyard when using the roof. Infra 6b.

so that I may keep out of your sight.[1] Another version [of the above discussion is as follows]. It was presumed [in the Beth Hamidrash] that mehizah means ‘division’, as in the verse, and the congregation's mehezath was etc. Since then the partners agree to make a division, they are compelled [according to the Mishnah] to build a wall. This would show that overlooking is a substantial damage. May I not say, however, that mehizah means a wall, as we have learnt: ‘If the mehizah of a vineyard has been broken down, the owner [of an adjoining cornfield] can require the owner of the vineyard to restore it. If it is broken down again, he can again require him to restore it. If [the owner of the vineyard] neglects the matter and does not restore it, he causes his neighbour's produce to become forfeit, and is responsible for his loss.’ [This being so],[2] the reason why either can be compelled [to assist in putting up the wall] is because they both agreed; but if either did not agree, he cannot be compelled. From which we infer that overlooking is not a substantial damage. If that is so,[3] instead of THEY SHOULD BUILD THE WALL, the Mishnah should say, they should build it’? — You say then that mehizah means ‘division’. If so, instead of ‘who agreed to make a division’, the Mishnah should say, ‘who agreed to divide’? — It is usual for men to say, ‘Come, let us make a division.’[4]

But if overlooking is a substantial damage, why does it speak of the partners agreeing? Even if they do not agree, [either should be able to demand a division]? — To this R. Assi answered in the name of R. Johanan: Our Mishnah is speaking of a courtyard where there is no right of division,[5] and where therefore [a division is made only] if both agree.

The Mishnah then tells us [according to this] that where there is no right of division, they may still divide, if they so agree. We have learnt this already, [in the following passage]: ‘When does this rule apply?[6] When both of them do not consent to divide; but if both consent, even when it is smaller than this they divide’?[7] — If I had only that to go by, I should say that where it is smaller than this they may divide with a mere fence of sticks. Therefore it tells us here that it must be a wall.[8]

But could not the Mishnah then state this case and omit the other?[9] — The other case was stated to

introduce the succeeding clause: Scrolls of the Scriptures must not be divided even if both [joint owners] agree.

How then have you explained the Mishnah? As applying to a courtyard in which there is no right of division. If it is speaking of one in which there is no right of division, even if both owners consent, what does it matter? Either of them can retract? — R. Assi answered in the name of R. Johanan: We assume that each made a formal contract with the other, by means of a kinyan.[10] But even if they made such a contract what does it matter, seeing that it relates only to a verbal agreement?[11] — [We assume that] they contracted by a kinyan to take different sides.[12] R. Ashi said: [And this becomes effective if[13]] for instance one traverses his own part and takes formal possession[14] and the other does likewise.

IN DISTRICTS WHERE IT IS USUAL TO BUILD etc. GEBIL denotes untrimmed stones; GAZITH, squared stones, as it is written, All these were of costly stones according to the measure of hewn stones [gazith].[15] KEFISIN are half bricks and LEBENIM whole bricks.[16]

Rabbah the son of Raba said to R. Ashi: How do we know that gebil means untrimmed stones, and that the extra handbreadth[17] is to allow for the projection of the rough edges? May it not be that gebil is half the thickness of gazith, and this extra handbreadth is to allow for the mortar between the rows,in the same way as we defined kefisin to be half-bricks and lebenim whole bricks, the extra handbreadth being for the mortar between the rows? — He replied: Granting your analogy [between gebil and kefisin], how do we know that kefisin means half-bricks? From tradition. Similarly we know from tradition [that gebil means untrimmed stones]. According to another version, R. Aha the son of R. Awia said to R. Ashi: How do we know that kefisin means half bricks and the extra handbreadth is for the mortar between the rows? May it not be that kefisin means untrimmed stones and the extra handbreadth is for the projection of the rough edges, in the same way as we define gebil to be untrimmed stones and gazith to be polished stone, the extra handbreadth being for the mortar between the rows? — He replied: Granting your analogy [between kefisin and gebil], how do we know that gebil means untrimmed stones? From tradition. So we know this also from tradition.

Abaye said: We learn from this[18] that the space between the layers [in a wall] should be a handbreadth.[19] This, however, is the case only if it is filled with mortar,[20] but if with rubble,[21] more space is required. Some say: This is the case only if it is filled with rubble, but if mortar is used, not so much is required.

[The Mishnah seems] to assume that where squared stones are used, if for every four cubits of height there is a breadth of five handbreadths, the wall will stand, but otherwise not. What then of the Ammah Traksin[22] which was thirty cubits high but only six handbreadths broad, and yet it stood? — The one extra handbreadth enabled it to stand.[23] Why was there no Ammah Traksin in the Second Temple?[24] — A thickness of six handbreadths will sustain a wall of thirty cubits but not more.[25] How do we know that the Second Temple Was higher [than the first]?-Because it is written, Greater shall be the glory of the latter' house than the former.[26] [The word 'greater' was interpreted differently by] Rab and Samuel [or, according to another report, by R. Johanan and R. Eleazar], one referring it to the size and the other

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(1) Joint owners of a courtyard, however, if they do not divide it, do not use it for private purposes.

(2) That mehizah means wall.

(3) That mehizah means wall.

(4) And the Mishnah reproduces this expression.

(5) That is to say, one not large enough to allow of four cubits being assigned to each.

(6) That a courtyard is not to be divided if each part will not be large enough to be still called a courtyard.

(7) Infra 22a.

(8) Because overlooking is a substantial damage.
(9) The later Mishnah just quoted, seeing that we can learn this rule from the Mishnah here.
(10) Lit., 'acquisition': the handing of a small article, usually a piece of cloth, by one of the contracting parties to the other, as a symbol that the object transferred has passed from the ownership of the one to that of the other. v. B.M. 47a.
(11) That is to say, that of which ownership is acquired by the kinyan is only a verbal promise (viz. to divide), not any concrete article.
(12) E.g., one the north side and one the south, so that something concrete was involved in the transaction.
(13) V. Tosaf. s.v. רב
(14) By digging a little or so forth.
(15) I Kings VII, 9.
(16) A whole brick was three handbreadths thick, but if two half-bricks were used, an extra half-handbreadth would be required for each for the mortar.
(17) Required for a wall of gebil as against a wall of gazith.
(18) From the fact that kefisin require a handbreadth more than lebenim.
(19) Unless otherwise specified in a contract for a wall.
(20) Made only of clay or mud.
(21) In which small stones are mixed with the clay.
(22) Lit., 'the cubit of the partition' (perhaps =Gr. **): a wall separating the Holy from the Holy of Holies in the Temple of Solomon.
(23) I.e., although five handbreadths are required for a height of four cubits, six handbreadths will sustain a wall much higher.
(24) Where only a curtain separated the Holy from the Holy of Holies.
(25) The Second Temple was 100 cubits high. v. Mid. IV, 6.
(26) Hag. II, 9.

Talmud - Mas. Baba Bathra 3b

to the duration; and both are correct.[1]

Why did they not [in the Second Temple] build a wall thirty cubits high and use a curtain for the remaining [seventy cubits]? — Even the thirty cubit wall [of the First Temple] was only sustained by the ceiling and plaster [of the room above it], but without such a ceiling and plaster it could not stand [with a breadth of only six handbreadths]. But why did they not build a wall as high as possible [with a breadth of six handbreadths] and use a curtain for the rest? — Abaye replied: It was known to them by tradition that the partition should be wholly a wall or wholly a curtain, either wholly a wall as in the First Temple, or wholly a curtain as in the Tabernacle.

The question was raised: [Do the measurements given in the Mishnah] apply to the material with the [outside] plaster, or to the materials without the plaster?[2] — R. Nahman b. Isaac replied: It is reasonable to assume that the plaster is included, since if the plaster is not included, its measurement should [also] have been specified. We may conclude therefore that the plaster is included. No! l may still say that the measurements given refer to the material without the plaster, and the reason why that of the plaster is not specified is because it is less than a handbreadth. But in the case of bricks, does it not say that one gives a handbreadth and a half and the other likewise?[3] — There [half-handbreadths are mentioned] because the two halves can be combined [to form a whole one].

Come and hear [an objection to this]: 'The beams of which they speak should be wide enough to hold an ariah, which is the half of a lebenah of three handbreadths'.[4] — There it is speaking of large bricks. This is indicated also by the expression 'half a brick of three handbreadths' which implies that there is a smaller variety. Hence it is proven.[5]

R. Hisda said: A synagogue should not be demolished before another has been built to take its

place. Some say the reason is lest the matter should be neglected,[6] others to prevent any interruption of religious worship.[7] What practical difference does it make which reason we adopt? — There is a difference if there is another synagogue.[8] Meremar and Mar Zutra pulled down and rebuilt a summer synagogue in winter and a winter synagogue in summer.[9]

Rabina asked R. Ashi: Suppose money for a synagogue has been collected and is ready for use, is there still a risk?[10] — He replied: They may be called upon to redeem captives and use it for that purpose.[11] [Rabina asked further]: Suppose the bricks are already piled up and the lathes trimmed[12] and the beams ready, what are we to say? — He replied: It can happen that money is suddenly required for the redemption of captives, and they may sell the material for that purpose. If they could do that, [he said], they could do the same even if they had already built the synagogue?[13] — He answered: People do not sell their dwelling-places.[14]

This rule [about pulling down a synagogue] only applies if no cracks have appeared in it, but if cracks have appeared, they may pull down first and build afterwards. A case in point is that of R. Ashi, who, observing cracks in the synagogue of Matha Mehasia,[15] had it pulled down. He then took his bed there and did not remove it until the very gutters [of the new building] had been completed.

But how could Baba b. Buta have advised Herod to pull down the Temple,[16] seeing that R. Hisda has laid down that a synagogue should not be demolished until a new one has been built to take its place? — If you like l can say that cracks had appeared in it, or if you like I can say that the rule does not apply to Royalty, since a king does not go back on his word. For so said Samuel: If Royalty says, I will uproot mountains, it will uproot them and not go back on its word.

Herod was the slave of the Hasmonean house, and had set his eyes on a certain maiden [of that house].[17] One day he heard a Bath Kol[18] say, ‘Every slave that rebels now will succeed.’ So he rose and killed all the members of his master's[19] household, but spared that maiden. When she saw that he wanted to marry her, she went up on to a roof and cried out, ‘Whoever comes and says, I am from the Hasmonean house, is a slave, since I[20] alone am left of it, and I am throwing myself down from this roof.’ He preserved her body in honey for seven years. Some say that he had intercourse with her, others that he did not. According to those who say that he had intercourse with her, his reason for embalming her was to gratify his desires. According to those who say that he did not have intercourse with her, his reason was that people might say that he had married a king's daughter.

Who are they, he said, who teach, From the midst of thy brethren thou shalt set up a king over thee,[21] [stressing the word ‘brethren’]? The Rabbis! He therefore arose and killed all the Rabbis, sparing, however, Baba b. Buta, that he might take counsel of him.

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(1) The First Temple is supposed to have stood 410 years, the Second 420.

(2) For which an extra allowance has to be made.

(3) Which shows that measurements less than a handbreadth are specified by the Mishnah. (5) The beam placed across the entrance to an alley-way to enable articles to be carried in it on Sabbath.

(4) ‘Er. 13 b. This shows that a lebenah is three handbreadths without the plaster.

(5) That the three handbreadths of the Mishnah includes the plaster.

(6) So that the congregation will be left without a synagogue. Lit., ‘on account of transgression’.

(7) During the time when the second synagogue is being built. Lit., ‘on account of prayer’.

(8) In which case the second reason does not apply.

(9) In the summer a more airy building was used to escape the heat.

(10) That the building of the new one may be neglected.

(11) The redemption of captives was regarded as a mizwah of very great importance, and would take precedence of the building of a synagogue. Hence even in this case the old should not be demolished till the new is ready.

(12) For the roof.

(13) And therefore they should never pull down the old one.
(14) And much less a synagogue.
(15) [A suburb of Sura which attained fame as a centre of learning in the days of R. Ashi. v. Obermeyer, Die Landschaft Babyloniens, 289.]
(16) V. infra.
(17) Mariamne, the daughter of Alexander, a son of Aristobulus II. According to Josephus, she was put to death by Herod after being married to him several years.
(18) A voice from heaven. V. Gloss.
(19) [V. D.S. a.l.]
(20) Lit., 'this maiden'.
(21) Deut. XVII, 15.

Talmud - Mas. Baba Bathra 4a

He placed on his head a garland of hedgehog bristles and put out his eyes. One day he came and sat before him and said: See, Sir, what this wicked slave [Herod] does. What do you want me to do to him, replied Baba b. Buta. He said: I want you to curse him. He replied with the verse, Even in thy thoughts thou shouldst not curse a king.[1] Said Herod to him: But this is no king. He replied: Even though he be only a rich man, it is written, And in thy bedchamber do not curse the rich;[2] and be he no more than a prince, it is written, A prince among thy people thou shalt not curse.[3] Said Herod to him: This applies only to one who acts as one of 'thy people', but this man does not act as one of thy people. He said: I am afraid of him. But, said Herod, there is no-one who can go and tell him, since we two are quite alone.[4] He replied: For a bird of the heaven shall carry the voice and that which hath wings shall tell the matter.[5] Herod then said: I am Herod. Had I known that the Rabbis were so circumspect, l should not have killed them. Now tell me what amends I can make. He replied: As you have extinguished the light of the world, [for so the Rabbis are called] as it is written, For the commandment is a light and the Torah a lamp,[6] go now and attend to the light of the world [which is the Temple, of which] it is written, And all the nations become enlightened by it.[7] Some report that Baba b. Buta answered him thus: As you have blinded the eye of the world, [for so the Rabbis are called] as it is written, if it be done unwittingly by the eyes of the congregation,[8] go now and attend to the eye of the world, [which is the Temple] as it is written, I will profane my sanctuary, the pride of your power, the delight of your eyes.[9] Herod replied: I am afraid of the Government [of Rome]. He said: Send an envoy, and let him take a year on the way and stay in Rome a year and take a year coming back, and in the meantime you can pull down the Temple and rebuild it. He did so, and received the following message [from Rome]: If you have not yet pulled it down, do not do so; if you have pulled it down, do not rebuild it; if you have pulled it down and already rebuilt it, you are one of those bad servants who do first and ask permission afterwards. Though you strut with your sword, your genealogy[10] is here; [we know] you are neither a reka[11] nor the son of a reka, but Herod the slave who has made himself a freedman. What is the meaning of reka? — It means royalty, as it is written, I am this day rak[12] and anointed king.[13] Or if you like, I can derive the meaning from this verse, And they cried before him, Abrek.[14]

It used to be said: He who has not seen the Temple of Herod has never seen a beautiful building. Of what did he build it? Rabbah said: Of yellow and white marble. Some say, of blue, yellow and white marble. Alternate rows [of the stones] projected,[15] so as to leave a place for cement. He originally intended to cover it with gold, but the Rabbis advised him not to, since it was more beautiful as it was, looking like the waves of the sea.

How came Baba b. Buta to do this [to give advice to Herod], seeing that Rab Judah has said in the name of Rab (or it may be R. Joshuah b. Levi) that Daniel was punished only because he gave advice to Nebuchadnezzar, as it is written, Wherefore, O king, let my counsel be acceptable unto thee, and atone thy sins by righteousness and thine iniquities by showing mercy to the poor, if there may be a

lengthening of thy tranquility etc.,[16] and again, All this came upon the king Nebuchadnezzar,[17] and again, At the end of twelve months etc.?[18] — If you like I can say that this does not apply to a slave [of an Israelite, such as Herod was.] who is under obligation to keep the commandments [of the Torah], or if you like I can say that an exception had to be made in the case of the Temple which could not have been built without the assistance of Royalty.

From whence do we learn that Daniel was punished? Shall I say from the verse, And Esther called to Hatach,[19] who, as Rab has told us, was the same as Daniel? This is a sufficient answer if we accept the view of those who say that he was called Hatach because he was cut down [hatach] from his greatness.[20] But on the view of those who say that he was called Hatach because all matters of state were decided[21] [hatach] according to his counsel, what answer can we give? — That he was thrown Into the den of lions.

ALL ACCORDING TO THE CUSTOM OF THE DISTRICT. What further implication is conveyed by the word 'ALL'?[22] — That we include places where fences are made of palm branches and branches of bay trees.

THEREFORE IF THE WALL FALLS, THE PLACE AND THE STONES BELONG TO BOTH. Surely this is self-evident? — It required to be stated in view of the case where the wall has fallen entirely into the property of one of them, or where one of them has cleared all the stones Into his own part. You might think that in that case the onus probandi falls on the other as claimant. Now we know [that this is not so].

SIMILARLY IN AN ORCHARD, IN A PLACE WHERE IT IS CUSTOMARY TO FENCE OFF. The text itself seems here to contain a contradiction. You first say, SIMILARLY IN AN ORCHARD, IN A PLACE WHERE IT IS CUSTOMARY TO FENCE OFF, EITHER CAN BE COMPELLED, from which I infer that in an ordinary[23] [orchard] he cannot be compelled to fence off. Now see the next clause: BUT IN A STRETCH OF FIELDS, IN A PLACE WHERE IT IS USUAL NOT TO FENCE OFF, NEITHER CAN BE COMPELLED, from which I infer that in an ordinary[23] [stretch] he can be compelled. Now if you say that he cannot be compelled in an ordinary orchard, do we require to be told that he cannot be compelled in an ordinary stretch of fields?[24] — Abaye replied: We must read the Mishnah thus: 'Similarly with an ordinary orchard:[23] and also where it is customary to put fences in a stretch of fields, he can be compelled.'[25] Said Raba to him: If that is the meaning, what are we to make of the word BUT?[26] No, said Raba; we must read the Mishnah thus: 'Similarly with an ordinary orchard, which is regarded as a place where it is customary to make a fence, and he can be compelled: but an ordinary stretch of cornfields is regarded as a place where it is not customary to make a fence, and he is not compelled.'

IF, HOWEVER, ONE DESIRES TO MAKE A FENCE, HE MUST WITHDRAW A LITTLE AND BUILD ON HIS OWN GROUND, MAKING A FACING. How does he make a facing? — R. Huna says: He bends the edge over towards the outer side. Why should he not make it on the inner side?[27] — Because then his neighbour may make another one on the outer side[28] and say that the wall belongs to both of them.[29] If he can do that, then even if the ledge is on the outer side he can cut it off and say that the wall belongs to both? — Breaking off would be noticeable.

According to another version, R. Huna said: He bends the edge over on the inner side. Why should he not bend it over on the outer side? — His neighbour may break it off and say that the wall belongs to both of them.[29] If he can do that, he can join one on and claim that the wall belongs to both? — Such a joining on would be noticeable. But the Mishnah says, ON THE OUTER SIDE?[30] — This is certainly a difficulty.

R. Johanan said:

(1) Eccl. X, 20.
(2) Ibid.
(3) Ex. XXII, 27.
(4) Lit., ‘Since you and I sit (here).’
(5) Eccl. X, 20.
(6) Prov. VI, 23.
(7) Isa. II, 2. The Hebrew word is ונהרו (lit. ‘and shall flow’), which here is connected with the Aramaic נהורה ‘light’.
(8) Literal rendering of Num. XV, 24.
(9) Ezek. XXIV, 21.
(10) Lit., ‘book’.
(11) [רכה , prob. a transliteration of the Latin rex]
(12) In the E.V. ‘tender’
(13) II Sam. III, 39
(14) אברך prob. an Egyptian word meaning ‘ruler’, interpreted by the Rabbis to mean ‘father of the king’. Gen. XLI, 43.
(15) Lit., ‘it sent forth an edge and drew in an edge’.
(16) Dan. IV, 24.
(17) Ibid. 25.
(18) Ibid. 26. The twelve months’ reprieve is regarded as a result of Daniel's advice.
(19) Esther, IV, 5.
(20) חתך to cut, this being his punishment.
(21) חתך denotes ‘to determine’, ‘to decide’, as well as ‘to cut’.
(22) Which appears to be superfluous.
(23) I.e., where no definite custom exists.
(24) Where there is no damage from ‘overlooking’, as in an orchard.
(25) Thus Abaye takes the words IN A PLACE WHERE IT IS CUSTOMARY TO FENCE with IN A STRETCH OF FIELDS.
(26) On Abaye's theory, this should come after IN A STRETCH OF FIELDS, not before it,
(27) Which would equally be a sign that the wall is his.
(28) I.e., on his side.
(29) Lit., ‘say it is mine and his’, as having jointly made it originally.
(30) How then could R. Huna say that he should make the facing on the inner side?

Talmud - Mas. Baba Bathra 4b

[The man who makes the wall] should smear it [with lime] on the outer side to the extent of a cubit. Why not on the inner side? — His neighbour will do the same on the outer side and claim that the wall is joint property. If he can do that, he can also scrape off the mark [on the outer side] and claim a share in the wall?[1] — Scraping is noticeable.

[Suppose the partition is made of] palm branches, [how is he to make a mark]? — R. Nahman said: He should direct the points of the branches[2] outwards. Why not inwards? — Because then his neighbour may also turn points outwards and say that the fence is joint property.[3] If he can do that,he can also cut off the points [if they are outside] and throw them away? — [The other should therefore] smear clay over them. But even so the neighbour can come and scrape it away? — Scraping would be noticed. Abaye said [that for a partition made of] palm branches there is no security save by a written deed.[4]

IF, HOWEVER, THEY BOTH CONCUR. Raba of Parazika[5] said to R. Ashi: Let neither of them make a mark? — The rule is required for the case where one made a mark first, so that if the other

does not do likewise, the first may claim [the whole wall] as his own. Is the Tanna then teaching us how to guard against rogues? — And is not the previous regulation also[6] a precaution against rogues? Raba replied: This is right and proper in the former clause:[7] the Tanna first states the law and then teaches how it should be safeguarded. But in the latter clause what law has he laid down that he should teach us how to safeguard it?[8] Rabina said: We are here dealing with a partition made of palm branches, and the object of the Mishnah is to exclude the view of Abaye, that for a fence made of palm branches there is no security save through a written deed. It therefore tells us that the making of a facing is sufficient.

MISHNAH. IF A MAN HAS FIELDS SURROUNDING THOSE OF ANOTHER ON THREE SIDES AND FENCES THE FIRST, SECOND, AND THIRD, THE OTHER IS NOT BOUND [TO SHARE IN THE COST].[9] R. JOSE SAID: IF HE[10] TAKES IT UPON HIMSELF TO FENCE[11] THE FOURTH, THE WHOLE[12] COST DEVOLVES UPON HIM.

GEMARA. Rab Judah said in the name of Samuel: The halachah follows R. Jose who said: IF HE TAKES IT UPON HIMSELF TO FENCE THE FOURTH, THE WHOLE COST DEVOLVES UPON HIM; and it makes no difference whether it is the encloser or the enclosed who does so.

It has been stated: R. Huna said, [The contribution to the cost of] the whole must be proportionate to the actual cost of erecting the fence;[13] Hiyya b. Rab said, It must be proportionate to the cost of a cheap fence of sticks.[14]

We have learnt: IF A MAN HAS FIELDS SURROUNDING THOSE OF ANOTHER ON THREE SIDES AND FENCES THE FIRST, SECOND, AND THIRD SIDES, THE OTHER IS NOT COMPELLED [TO CONTRIBUTE TO THE COST]; which would imply that if the other fences the fourth side also , he must contribute [to the cost of the whole]. Now see the next clause: R. JOSE SAYS, IF HE TAKES IT UPON HIMSELF TO FENCE THE FOURTH, THE COST OF THE WHOLE DEVOLVES UPON HIM. This accords very well with the opinion of R. Huna who said [that he contributes to the cost of] the whole in proportion to the outlay on the fence; there is a genuine difference of opinion between the first Tanna and R. Jose, the former holding that the contribution has to be proportionate to the cost of a cheap fence of sticks, but not to the actual outlay, and R. Jose that it has [in all cases] to be proportional to the actual outlay. But if we accept the view of Hiyya b. Rab who said that it need only be proportionate to the cost of a cheap fence of sticks, what difference is there between the first Tanna and R. Jose? If he is not to give him even the cost of a cheap fence, what else can he give?[15] — If you like I can say that they differ as regards the hire of a watchman,[16] the first Tanna holding that he must pay the cost of a watchman[17] but not of a cheap fence, and R. Jose holding that he must pay the cost of a cheap fence. If you like, again, I can say that they differ as to the first, second and third sides, the first Tanna holding that he has to contribute only to the cost of fencing the fourth side, but not the first, second and third,[18] and R. Jose holding that he has to contribute to the cost of the first, second and third sides also.[19] If you like, again, I can say that they differ as to whether the fence in question must be built by the owner of the surrounding fields or of the enclosed field, [if the latter is to contribute to the cost of the whole]. The first Tanna holds that the reason [why the owner of the enclosed field has to contribute] is because the took the initiative [in building the fourth fence] and that is why the cost of the whole devolves on him, but if the owner of the surrounding fields took the initiative, the other has only to pay him his contribution to the fourth fence.[20] R. Jose on the other hand holds that it makes no difference whether the owner of the enclosed or of the surrounding fields took the initiative In building the fourth fence, in either case the former has to pay the latter his share of the whole. According to another version [of this last clause], they differ as to [whether the fourth fence has to be built by] the owner of the enclosed or the surrounding fields [in order to make the former liable for contributing to its cost]. The first Tanna holds that even if the owner of the surrounding fields makes the fourth fence, the other has to contribute to the cost,[21] whereas R. Jose holds that if the owner of the enclosed field takes it upon

himself to build the fourth fence, then he has to contribute to the cost [of the whole] because he makes it clear that he approves of it, but if the owner of the surrounding fields builds it, the other does not pay him anything.[22]

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(1) V. n. 4.

(2) [Another rendering, 'The staves supporting the hedge' (R. Han).]

(3) V. p. 14, n, 4.

(4) That is to say, there is always the possibility of fraud unless there is evidence in writing duly witnessed as to how the partition was made.

(5) [Identified with Farausag. a district near Bagdad. V. Obermeyer, op. cit,, 269.

(6) That if one builds the fence on his own ground he should make a mark.

(7) That the one who wants to build should withdraw into his own ground.

(8) There is no law that a fence should be built in a stretch of cornfields.

(9) Whether because there is no custom that fields should be fenced or because the fencing is of little advantage so long as the fourth side is open.

(10) The question which of the two is meant is discussed in the Gemara.

(11) Lit., 'rose up and fenced'.

(12) I.e., his share in the cost of the whole.

(13) Which will vary according to the materials used by the encloser.

(14) Because the other can say that this is all that he requires.

(15) That is to say, can even the Rabbis fix his contribution at anything less than this?

(16) During the time that the corn is ripe.

(17) This would be less than the cost of a cheap fence, and the Rabbis might say that since this is all he requires, this is all that the fence is worth to him, and he need not contribute more than this.

(18) That is to lay, we infer only this from the language of the Mishnah, and not, as above, that he has to contribute to the cost of the whole.

(19) Proportionately to the actual cost, according to one authority, and to the cost of a cheap fence according to the other.

(20) It is not clear on what grounds this opinion is ascribed to the first Tanna, as there is no hint of it in the Mishnah. Rashi does not seem to have had the whole of this clause in his text; v. D. S. a.l.

(21) Apparently the cost of the whole is meant.

(22) Because he can say that he does not want any fencing.

Talmud - Mas. Baba Bathra 5a

[One] Ronya had a field which was enclosed on all four sides by fields of Rabina. The latter [fenced them and] said to him: pay me [towards] what I have spent for fencing.[1] He refused to do so. Then pay [towards] the cost of a cheap fence of sticks.[2] He again refused. Then pay me the hire of a watchman.[3] He still refused. One day Rabina saw Ronya gathering dates, and he said to his metayer: Go and snatch a cluster of dates from him. He went to take them, but Ronya shouted at him, whereupon Rabina said: You show by this[4] that you are glad of the fence. If it is only goats [you are afraid of], does not your field need guarding? He replied: A goat can be driven off with a shout.[5] But, he said, don't you require a man to shout at it? He appealed to Raba, who said to him: Go and accept his last offer,[6] and if not, I will give judgment against you according to R. Huna's interpretation of the ruling of R. Jose.[7]

Ronya bought a field adjoining a field of Rabina. The latter thought he was entitled to eject him in virtue of his right of preemption.[8] Said R. Safra the son of R. Yeba to Rabina: You know the saying, The hide costs four zuzim, and four are for the tanner.[9]

MISHNAH. IF THE PARTY WALL OF A COURTYARD FALLS IN, EACH OF THE NEIGHBOURS CAN BE COMPELLED BY THE OTHER TO [CONTRIBUTE TO THE COST OF] REBUILDING IT TO A HEIGHT OF FOUR CUBITS.[10] [EACH OF THEM] IS ALWAYS

PRESUMED TO HAVE GIVEN HIS SHARE[11] UNTIL THE OTHER BRINGS A PROOF THAT HE HAS NOT GIVEN.[12] FOR REBUILDING HIGHER THAN FOUR CUBITS NEITHER CAN BE COMPELLED [TO CONTRIBUTE]. IF, HOWEVER, [THE ONE WHO HAS NOT CONTRIBUTED][13] BUILDS ANOTHER WALL CLOSE TO IT,[14] EVEN THOUGH HE HAS NOT YET PUT A ROOFING OVER THE SPACE BETWEEN, THE [PRO RATA] COST OF THE WHOLE DEVOLVES UPON HIM,[15] AND HE IS PRESUMED NOT TO HAVE GIVEN UNTIL HE ADDUCES PROOF THAT HE HAS GIVEN.[16]

GEMARA. Resh Lakish has laid down: If a lender stipulates a date for the repayment of a loan, and the borrower pleads [when the date of payment arrives] that he paid the debt before it fell due, his word is not accepted . Let him only pay when it does fall due! Abaye and Raba, however, both concur in saying that it is not unusual for a man to pay a debt before it falls due; sometimes he happens to have money, and he says to himself, I will go and pay him,

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(1) According to the ruling of R. Jose as interpreted by R. Huna.

(2) According to the same ruling as interpreted by Hiyya b. Rab.

(3) According to one version of the opinion of the Rabbis.

(4) By the fact that you do not want people to enter your field.

(5) [Adopting the reading of the Bah, v. D.S.]

(6) Lit., 'appease him with what he is willing to be appeased with,' i.e., the hire of a watchman.

(7) Viz., to contribute half of his actual outlay, this being the halachah.

(8) As owner of the adjoining field.

(9) Apparently R. Safra meant that by having two fields instead of one, Ronya, who was a poor man, would save expense, and therefore Rabina ought to let him keep it. But the exact application of the saying here is obscure. v. Rashi and Tosaf.

(10) This being the minimum to prevent overlooking.

(11) In case he is sued by the other after the wall is built.

(12) Because, as most people know the rule about contributing, we presume that if the other had not paid as soon as the wall was finished, he would have sued him at once.

(13) To the rebuilding higher than four cubits.

(14) With the intention of roofing over the intervening space.

(15) Because he makes it clear retrospectively that he is well satisfied to have the wall at its present height.

(16) Because this rule is not so well known, and the builder of the first wall may have learnt only some time after that he was able to recover his outlay.

Talmud - Mas. Baba Bathra 5b

so as to be quit of him.[1]

We have learnt: EACH IS PRESUMED TO HAVE GIVEN HIS SHARE UNTIL THE OTHER BRINGS PROOF THAT HE HAS NOT GIVEN. How are we to understand this? Are we to suppose that he says to the claimant: I paid when the payment was due?[2] Then it is self-evident that he is presumed to have given.[3] We must suppose then that he pleads: I paid you before the payment was due. This would show, [would it not], that it is not unusual for a man to pay a debt before it is due? — Here the case is different, because with every layer [of the wall that is finished some] payment becomes due.[4]

Come and hear [this]: HE IS PRESUMED NOT TO HAVE GIVEN UNTIL HE ADDUCES PRO OF THAT HE HAS GIVEN. How are we to understand this? Are we to assume that he says to him: I paid you when payment became due?[5] If so, why should we not take his word? We must suppose therefore that he says, I paid you before payment became due; which would show, [would it not], that it is not unusual for a man to pay before the time? — The case here is different, since he may

say to himself, How do I know that the Rabbis will make me pay?[6]

R. Papa and R. Huna the son of R. Joshua followed in practice the ruling of Abaye and Raba, whereas Mar son of R. Ashi followed Resh Lakish — The law is as stated by Resh Lakish, and [the ruling applies] even to orphans,[7] in spite of what has been laid down by a Master, that one who seeks to recover a debt from the property of orphans need not be paid unless he first takes an oath, because the presumption is that a man does not pay a debt before it falls due. The question was raised: If the creditor claims payment some time after the debt falls due, and the debtor pleads, I paid it before it fell due, how do we decide? Do we say that even where there is a presumption [against him][8] we plead [on his behalf], 'what motive has he to tell a lie',[9]

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(1) Lit., 'so that he may not trouble me'.

(2) Viz., when the wall reached a height of four cubits.

(3) According to the rule that in money claims the word of the defendant is taken against that of the claimant.

(4) Because each is equally under obligation to build the wall.

(5) l.e., as soon as the wall was finished.

(6) As explained above, p. 19, n. 7. And therefore we do not believe him even if he says that he paid when payment fell due.

(7) That is to say, if the debtor dies, the payment may be recovered from his orphans in the same way as from himself, i.e., without taking an oath.

(8) E.g., the presumption that a man does not pay before the time.

(9) And we therefore accept his word.

or is the rule that where there is such a presumption we do not advance this plea? — Come and hear: EACH IS PRESUMED TO HAVE GIVEN HIS SHARE UNTIL THE OTHER BRINGS PROOF THAT HE HAS NOT GIVEN. How are we to understand this? Are we to suppose that the claim was made some time after the payment fell due, and the defendant pleads, I paid you when it fell due?[1] Then this is self-evident. We must suppose then that he pleads, I paid you before the time of payment; from which we would infer that even where there is a presumption against the defendant, we plead [on his behalf], What motive has he to tell a lie? The case here is different, because with every layer [that is finished some] payment becomes due.[2]

Come and hear: FOR REBUILDING HIGHER THAN FOUR CUBITS NEITHER CAN BE COMPELLED [TO CONTRIBUTE]. IF, HOWEVER, HE BUILDS ANOTHER WALL CLOSE TO IT . . . UNTIL HE ADDUCES PROOF THAT HE HAS GIVEN. How are we to understand this? Are we to suppose that the claim is made some time after and the defendant pleads, I paid you when the money fell due? If so, why [should we] not [believe him]? We must suppose therefore that he pleads, I paid you before the time of payment, [and yet he has to contribute]; which would show [would it not] that where there is a presumption [against him], we do not plead [on his behalf], What motive has he to tell a lie? — Here the case is different, because he can say to himself, How do I know that the Rabbis will compel me to pay?[3]

Said R. Aha the son of Raba to R. Ashi: Come and hear [this]: [If a man says to another], You owe me a maneh, and the other says, That is so, and if on the next day when the lender says, Give it to me, the borrower pleads, I have given it to you, he is quit, but if he says, I do not owe you anything,[4] he is liable to pay. Now the expression, 'I have given it to you' is equivalent, is it not, to 'I paid when it fell due', and the expression, 'I do not owe you anything'[4] to 'I paid you before it fell due'; and we are told that in the latter case he is liable; which would show that where there is a presumption [against him][5] we do not plead [on his behalf], what motive has he to tell a lie? — Not so: the expression 'I do not owe you anything' means 'I never borrowed from you,'[6] [and therefore

he is liable] because a Master has laid down that to say 'I have not borrowed' is equivalent to saying 'I have not paid'.

IF HE PUTS UP ANOTHER WALL CLOSE TO IT, THE COST OF THE WHOLE DEVOLVES ON HIM. R. Huna said: If the second wall matches half [the first wall],[7] it is the same as if it matched the whole.[8] R. Nahman, however, said that where it matches it matches, and where it does not it does not.[9] R. Huna, however, admits [that R. Nahman's ruling applies] to a projection joined on to a house;[10] and R. Nahman admits [that R. Huna's ruling applies] to a sustaining beam[11] or fittings for fixing planks.[12]

R. Huna said: [If in the part of the wall above four cubits] there are cavities,[13] this does not create a presumption that [the one who built it was assisted by the other], even if he made the wooden lining in the cavities; for he can plead [when claiming part payment for it from the other]: The reason why I put them In was to prevent my wall becoming damaged, should you persuade me [to let you put cross beams in].[14]

R. Nahman said: If a man has acquired a prescriptive right[15] to rest small beams [upon his neighbour's wall], that does not give him the right to [rest] large beams upon it, but if he has acquired the right to [rest] large beams, that does give him the right to [rest] small beams. R. Joseph, however, said that if he has acquired the right to [rest] small beams, he also has the right to [rest] large beams. According to another version, R. Nahman said that if he has acquired the right for small beams he has the right for large beams, and if he has acquired the right for large beams he has the right for small beams.

R. Nahman said: If a man has a prescriptive right[16] to let water drip [from his roof into his neighbour's courtyard], he also has the right to [carry it off there by means of] a gutter-pipe;[17] but if he has acquired the prescriptive right to [carry it off by means of] a gutter-pipe, he has not also the right to let it drip [from the roof]. R. Joseph, however, said that if he has acquired the right to [carry it off by means of] a gutter-pipe, he has also the right to let it drip [from the roof]. According to another version, R. Nahman said that if he has acquired the prescriptive right to carry it off by a gutter-pipe, he has the right to let it drip [from the roof], but he has not the right to [let it drip from] a cone-shaped roof of reeds;[18] whereas R. Joseph says that he has that right also. In a case which came before him, R. Joseph decided according to his own view.

R. Nahman said in the name of Rabbah b. Abbuha: If a man lets an apartment to another

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(1) When the wall was finished.

(2) And therefore he does not really plead that he paid before the time.

(3) V. p. 19 n. 7.

(4) Lit., 'Nothing of yours is in my hand'.

(5) The presumption that a debtor does not pay before the time.

(6) Lit., 'The thing never happened'.

(7) I.e., if it is built up to half the same length or height.

(8) And he has to contribute to the cost of the whole, the reason being that in all probability he will subsequently finish it and make a roofing.

(9) And he only pays proportionately to the amount he has built.

(10) Apparently what is referred to is a wall which the other neighbour (the one who did not raise the party wall) builds out from his own house parallel to the party wall. As it is evident that he has no intention of extending this, he contributes to the increased height of the party wall only in proportion to its height or length. Another e לופתא

(11) A thick beam laid on top of the wall to sustain further building.

(12) Cavities made of lathes alongside of the wall in which upright beams may afterwards be placed. In both these cases he shows his intention of building higher, and therefore must contribute to the cost of the whole.

(13) Which would be suitable for resting cross beams in, if another wall is built opposite.
(14) If Reuben raises the party wall higher than four cubits, at the same time putting cavities in it, and Simeon subsequently builds a wall parallel to it, Simeon cannot point to the cavities as proof that he has paid his share for the party wall, because Reuben can say that he put them in of his own accord as a precaution.
(15) That is to say, if the other has allowed him to do so without protesting, and he can also plead (but without adducing proof) that he acquired the right by gift or purchase.
(16) V. preceding note.
(17) Because if the water flows down in this way it is more useful to the owner of the courtyard.
(18) From which the water would drip so continuously as to become a nuisance.

Talmud - Mas. Baba Bathra 6b

in a large residence,[1] the latter is at liberty to use the projecting beams[2] and the cavities in the walls[3] up to a distance of four cubits [from his room], and also the thickness of the wall,[4] if this is the local custom, but not [the part of the wall facing] the front garden.[5] R. Nahman, however, speaking for himself said that he may use even the side facing the front garden, but not the yard at the back of the house. Raba, however, said that he may use the yard at the back also.

Rabina said: [If a man is allowed by his neighbour to support] the beam of his hut [on his wall] for thirty days, this does not constitute prescriptive right,[6] but after thirty days it does constitute prescriptive right. If the hut, however, is for religious purposes,[7] [should no objection be raised] within seven days, this does not constitute prescriptive right, but [if objection is raised only] after seven days, it does.[8] If, however, he attaches it with clay [and still the neighbour does not object], he acquires prescriptive right immediately.

Abaye said: If there are two houses on opposite sides of a public thoroughfare, the owner of the one should make a parapet for half his roof, and the other a parapet for half his roof, in such a way that the parapets do not face one another,[9] though each should extend [his parapet a little beyond the middle].[10] Why [does Abaye] state [this rule in connection with] a public thoroughfare, [seeing that] it could apply equally to private ground? It was more necessary to state it in connection with a public thoroughfare. For you might think that in this case one might [refuse to build], Saying to the other: When all is said and done you have to guard your privacy against the public;[11] therefore we are told here that this is not so, since the other can retort: The public can only see me by day but not by night, whereas you can see me both by day and night; or again, the public can see me when I am standing but not when I am sitting, but you can see me whether I am standing or sitting; the public can see me when they look directly at me, but not otherwise, but you see me even without looking.

The Master has just said: 'The one should make a parapet for half his roof and the other should make a parapet for half his roof, In such a way that the parapets do not face one another, though each should extend [his parapet a little beyond the middle].' Surely this rule is obvious? — We require it for the case where one of the owners builds a parapet first [without consulting the other]. You might think that in that case the other is' entitled to say to him: Complete the parapet and I will reimburse you.[12] We,are therefore told [that he cannot insist upon this], since the other can say to him: Why don't you want to build? Because it might weaken your wall. I too [don't want] my wall to be weakened.

R. Nahman said in the name of Samuel: If a man's roof adjoins another man's courtyard,[13] he must make a parapet four cubits high, but between one roof and another this is not necessary. To this R. Nahman added in his own name that a wall of four cubits is not required, but a partition of ten handbreadths is required. For what purpose [is such a partition required]? If to prevent 'overlooking' we require four cubits? If for the purpose of convicting his neighbour of felonious entry,[14] a mere fence of sticks would suffice? If to prevent kids and lambs from jumping over, a partition too high

for them to jump over at a headlong run would suffice? — The actual reason is that he may be able to convict his neighbour of felonious entry. If there is only a fence of sticks, the latter can find an excuse,[15] but if there is a partition of ten handbreadths he can find no excuse.

An objection was brought [against this ruling of R. Nahman] from the following: If the other's courtyard is higher than his roof, there is no need for it. Does not this mean that there is no need for a partition at all? — No; it means that there is no need for a wall of four cubits, but a partition of ten handbreadths is required.

It has been stated: If two courtyards adjoin and one is higher than the other, R. Huna says that the owner of the lower one has to build [the party wall] up from his level, and the owner of the higher one starts building from his level.[16] 'Ulla and R. Hisda, however, say that the owner of the higher one has to assist[17] the owner of the lower in building from his level. It has been taught in agreement with R. Hisda: If there are two adjoining courtyards of which one is higher than the other, the owner of the higher one must not say to the other, I will start building [the party wall] from my level, but he must assist the other to build from his level.[17] If, however, his courtyard is higher than his neighbour's roof, he has no liability. Two men were living [in the same house], one in the upper room and one in the lower. The lower, room began to sink into the ground, so the owner of the lower room said to the one above: 'Let us rebuild the house.' The other replied: 'l am quite comfortable.'

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(1) With a single long wall bordering a number of rooms which are let off separately.

(2) Used for resting articles on or hanging them out.

(3) Used for placing articles in,

(4) If the room is on the top storey.

(5) An ornamental garden at the main entrance of the residence.

(6) V. p. 22 n. 9.

(7) I.e., for the Feast of Tabernacles.

(8) Because he does not require it again for the same purpose till the next Feast of Tabernacles, and therefore if the owner of the house allows him to keep it there beyond the seven days, he in a way recognises his right to keep it there permanently.

(9) E.g.,if one builds on the north side, the other should build on the south.

(10) To avoid the possibility of 'overlooking'.

(11) And the steps which you take to protect yourself against them will suffice to protect you against me.

(12) Lit., 'take the expense.' [Heb. uzinka, a Persian word meaning 'cost', v. Krauss, TA. I, 20.]

(13) On the side of a hill.

(14) Lit., 'for his being caught there like a thief.'

(15) E.g., that something of his fell on to the other's roof and he stepped over to get it.

(16) And he has not to contribute to the cost of the wall until it reaches the level of his courtyard.

(17) I.e., by contributing to the cost.

Talmud - Mas. Baba Bathra 7a

'Then let me take it down and rebuild it,' said the first. He replied: 'Meanwhile I have nowhere to live.' Said the first: 'I will hire you a place.' 'I do not want the bother,' he replied. ['But,' said the first,] 'I cannot live in my place.' [To which he replied,] 'You can crawl on your belly[1] to get in, and crawl on your belly to get out. Said R. Hama: He had a full right to stop him [rebuilding]. This, however, is the case only if the beams [of the upper room] did not sink lower than ten handbreadths [from the ground], but if they came as low as this, the owner of the lower room can Say: Below ten handbreadths is my property and is not subject to you.[2] Further, [the one above was within his rights] only if they had not made an agreement with one another,[3] but if they had made an agreement with one another, then they must take down the house and rebuild it. And if they did make an agreement with one another, how low [must the upper chamber sink before the one below can demand

rebuilding]? — The Rabbis stated in the presence of Rabbah in the name of Mar Zutra the son of R. Nahman, who said it in the name of R. Nahman: Till [the lower room fails to answer the requirement laid down for] that of which we have learnt,[4] Its height must be equal to half its length and half its breadth [combined]. Said Rabbah to them: Have I not told you not to hang empty bottles[5] on R. Nahman? What R. Nahman said was, 'It must be fit for human habitation'. And how much is this? — R. Huna the son of R. Joshua said: Big enough for one to bring in a bundle [of reeds] of Mahuza[6] and turn round with them.

A certain man began to build a wall facing his neighbour's windows. The latter said to him, 'You are shutting out my light.' Said the first, 'Let me close up your windows here and I will make you others above the level of my wall.' He replied, 'You will damage my wall by so doing.' 'Let me then,' he said, 'take down your wall as far as the place of the windows and then rebuild it, fixing windows in the part above my wall.' He replied, 'A wall of which the lower part is old and the upper part new will not be firm.'[7] 'Then,' he said, 'let me take it all down and build it up from the ground and put windows in it.' He replied, 'A single new wall in a house, the rest of which is old, would not be firm.' He then said, 'Let me take down the whole house and put windows in the new building.' He replied, 'Meanwhile I have no place wherein to live.' 'I will rent a place for you,' said the other. 'I don't want to bother,' said the first. Said R. Hama [on hearing of the case]: He had a perfect right to stop him. Is not this case the same as the other? Why, then, this repetition? — To tell us [that the owner of the house may exercise his veto] even though he only Uses it for storing straw and wood.[8]

Two brothers divided [a house which they inherited], the one taking as part of his share a verandah open at one end[9] and the other the front garden. The one who obtained the garden went and built a wall in front of the opening of the verandah. Said the other, 'You are taking away my light.' 'I am building on my own ground,' he replied. Said R. Hama: He was quite within his rights in saying so. Rabina asked R. Ashi: How does this case differ from what was taught: 'If two brothers divide an inheritance, one taking a vineyard and the other a cornfield [adjacent], the owner of the vineyard can claim four cubits in the cornfield,[10] since it was understood that on that condition they divided'? — He replied: There [the reason is] that they struck a balance with one another.[11] What then [said Rabin] do we suppose here? That they did not compensate one another? Are we dealing with idiots, of whom one takes a verandah and the other a garden, and yet no question of compensation is raised? He replied: Granted that compensation was allowed for the bricks, beams, and planks, no allowance was made for the air space.[12] But cannot he say, 'At first you let me have a verandah as my share, now you are only letting me have a dark room'? — R. Shimi b. Ashi said: He let him have something which happened to be called so. Has it not been taught: 'If a man says, I sell you a beth kor of ground,[13] even if it subsequently prove to be only a lethek[14] the sale is valid, since he sold him only something designated a beth kor, provided always that the land in question is commonly called a beth kor. [If a man says], I sell you an orchard, even though there are no pomegranates in it, the sale is valid, since he only sold him something designated so, provided the place is commonly called an orchard. [If a man says], I sell you a vineyard, even if there are no vines in it the sale is valid, since he only sold him something designated so, provided always that the place is commonly called a vineyard'?[15] — Are the cases parallel? There the vendor can say to the purchaser, I sold you [something called by] a certain name; here the one who obtains the verandah can say, I only took this as my share on condition that I should be able to live in it as our father lived.[16]

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(1) According to another rendering, 'You can bend yourself double'.

(2) And therefore I can demand to have the house pulled down and rebuilt.

(3) To rebuild the house if it sank.

(4) If one undertakes to build a (one-roomed) house without specifying the size. Infra 98b.

(5) I.e., not to attribute absurd opinions to him.

(6) Which were exceptionally long.

(7) Because the new cement does not stick well to the old.

(8) And therefore he cannot say that he will have nowhere to live if it is pulled down.
(9) אספלידה Gr. ** a cave, a recess; hence, a sitting room in the shape of a hall; v. Tosaf. s.v. אספלידה.
(10) To allow room for his oxen to turn when working the vineyard.
(11) The one who received the more valuable portion giving compensation to the other.
(12) By the owner of the verandah, so that he should have the right of keeping it empty.
(13) I.e., a piece of ground large enough for the sowing of a kor of seed. A kor= 30 se'ah, and a beth kor (lit.. 'house of a kor')=75,000 sq. cubits.
(14) Half a kor.
(15) B.M. 104a.
(16) And therefore it must not be interfered with, even at the cost of restricting the other's building rights.

Talmud - Mas. Baba Bathra 7b

Mar Yanuka and Mar Kashisha the sons of R. Hisda said to R. Ashi: The Nehardeans[1] in this are applying their own principle; for R. Nahman said in the name of Samuel:[2] If brothers divide [property which they have inherited], neither has the right of way against the other,[3] nor the right of 'windows'[4] against the other, nor the right of 'ladders'[5] against the other, nor the right of a watercourse[6] against the other; and take good heed of these rulings, because they are firmly established. Raba, however, said that each has these rights against the other.

There was a bond [inherited] by orphans [from their father] against which a receipt was produced [by the borrower]. R. Hama said: We neither enforce payment on the strength of the bond, nor do we tear it up. 'We neither enforce payment', because a receipt is produced against it, 'nor do we tear it up', because it is possible that when the orphans grow up they will bring evidence invalidating the receipt. Said R. Aha the son of Raba to Rabina: What is the accepted ruling in such a case? — He replied: In all [the above-mentioned cases] the law follows R. Hama, save only in the matter of the receipt, the reason being that we do not presume the witnesses [who have signed the receipt] to have been guilty of a falsehood. Mar Zutra the son of R. Mari, however, said that in this also the law follows R. Hama, since if the receipt were genuine the defendant ought to have produced it in the lifetime of the father, and since he did not do so, the inference is that it was forged. MISHNAH. HE [A RESIDENT OF A COURTYARD] MAY BE COMPELLED [BY THE REST] TO [CONTRIBUTE TO] THE BUILDING OF A PORTER'S LODGE[7] AND A DOOR[8] FOR THE COURTYARD. RABBAN SIMEON B. GAMALIEL, HOWEVER, SAYS THAT NOT ALL COURTYARDS REQUIRE A PORTER'S LODGE.[9] HE [A RESIDENT OF A CITY] MAY BE COMPELLED TO CONTRIBUTE TO THE BUILDING OF A WALL, FOLDING DOORS AND A CROSS BAR. RABBAN SIMEON B. GAMALIEL SAYS THAT NOT ALL TOWNS REQUIRE A WALL. HOW LONG MUST A MAN RESIDE IN A TOWN TO BE COUNTED AS ONE OF THE TOWNSMEN?[10] TWELVE MONTHS. IF, HOWEVER, HE BUYS A HOUSE THERE, HE IS AT ONCE RECKONED AS ONE OF THE TOWNSMEN.

GEMARA. [TO THE BUILDING OF A PORTER'S LODGE.] This would seem to show that a porter's lodge is an improvement: yet how can this be, seeing that there was a certain pious man[11] with whom Elijah used to converse until he made a porter's lodge, after which he did not converse with him any more?[12] — There is no contradiction; in the one case we suppose the lodge to be inside [the courtyard], in the other outside.[13] Or if you like I can say that in both cases we suppose the lodge to be outside, and still there is no difficulty, because in the one case there is a door and in the other there is no door.[14] Or again we may suppose that in both cases there is a door, and still there is no difficulty, because in the one case there is a latch[15] and the other there is no latch. Or again I may say that in both cases there is a latch and still there is no difficulty, because in the one case the latch is inside and in the other outside.[16] HE MAY BE COMPELLED TO CONTRIBUTE TO THE COST OF A PORTER'S LODGE AND A DOOR. It has been taught: Rabban Simeon b. Gamaliel Says: Not all courtyards require a porter's lodge; a courtyard which abuts on the public thoroughfare

requires a lodge, but one which does not abut on the public thoroughfare[17] does not require such a lodge. The Rabbis, however, hold that [it does, because] sometimes in a crowd people force their way in.

HE MAY BE COMPELLED TO CONTRIBUTE TO THE BUILDING OF A WALL etc. It was taught:[18] Rabban Simeon b. Gamaliel says that not all cities require a wall; a town adjoining the frontier requires a wall, but a town which does not adjoin the frontier does not require a wall. And the Rabbis?[19] — [They hold that it does, because] it may happen to be attacked by a roving band. R. Eleazar inquired of R. Johanan: Is the impost [for the wall] levied as a poll tax or according to means? He replied: It is levied according to means; and do you, Eleazar my son, fix this ruling firmly in your mind.[20] According to another version, R. Eleazar asked R. Johanan whether the impost was levied in proportion to the proximity of the resident's house to the wall or to his means. He replied: In proportion to the proximity of his house to the wall:[21] and do you, Eleazar my son, fix this ruling firmly in your mind.

R. Judah the Prince[22] levied the impost for the wall on the Rabbis. Said Resh Lakish: The Rabbis do not require the protection [of a wall], as it is written, If I should count them, they are more In number than the sand.[23] Who are these that are counted? Shall I say the righteous,[24] and that they are more in number than the sand? Seeing that of the whole of Israel it is written that they shall be like the sand on the sea shore,[25] how can the righteous alone be more than the sand? — What the verse means, however, is I shall count the deeds of the righteous and they will be more in number than the sand. If then the sand which is the lesser quantity protects [the land] against the sea, how much more must the deeds of the righteous, which are a larger quantity, protect them? When Resh Lakish came before R. Johanan, the latter said to him: Why did you not derive the lesson from this verse, lam a wall and my breasts are like towers,[26] where ‘I am a wall’ refers to the Torah ‘ and ‘my breasts are like towers’

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(1) R. Hama was from Nehardea, v. Sanh. 17b.

(2) Who was also from Nehardea.

(3) I.e., across the other's field to his own field.

(4) The right to stop the other from taking away his light.

(5) The right to rest a ladder in the other's courtyard in order to climb to his own room, or even to place the ladder in his own courtyard and let it rest against the other's room (v. Tosaf.).

(6) The right to carry water from the river to his own field through the other's; all this notwithstanding the fact that the father was accustomed to do these things.

(7) Lit., ‘a gate house’.

(8) In the main gate.

(9) The Gemara discusses which are meant.

(10) And become liable to these imposts.

(11) [Wherever an incident is related of a ‘pious man’, either Judah b. Baba or Judah b. Ila'i is meant. (Tem. 16b).]

(12) Because the lodge prevented the cries of poor men from being heard within the courtyard.

(13) If the lodge is outside, the poor man can get behind it and it does not prevent his voice from being heard.

(14) If there is a door to the lodge, the poor man cannot go through it, and it prevents him from being heard.

(15) By means of which the poor man can open it and enter.

(16) If the latch is inside the poor man cannot open the door with it, and so cannot make his voice heard.

(17) Being somewhat drawn back into private ground.

(18) (V. Rashal a.l. and D.S.)

(19) The representatives of the anonymous opinion cited in the Mishnah. Why do they make no such distinction?

(20) Lit., ‘Fix nails in it’.

(21) According to Tosaf., this means that the poor man at a distance from the wall paid less than the poor man near the wall, and so with the rich, but the rich man at a distance from the wall still paid more than the poor man near.

(22) [Judah III, v. Halevy, Doroth, II, 336.]

(23) Ps. CXXXIX, 18.
(24) Referred to in the word רעיך in the previous verse, which Resh Lakish translates 'friends' (E.V. 'thoughts').
(25) Gen. XXII, 17.
(26) Cant. VIII, 10.

Talmud - Mas. Baba Bathra 8a

to the students of the Torah?[1] — Resh Lakish, however, adopts the exposition [of this verse] given [also] by Raba, viz. that 'I am a wall' refers to the community of Israel,[2] and 'my breasts are like towers', to synagogues and houses of study.

R. Nahman b. R. Hisda[3] levied a poll tax on the Rabbis. Said R. Nahman b. Isaac to him: You have transgressed against the Law, the prophets, and the Holy Writings. Against the Law, where it says, Although[4] he loveth the peoples, all his saints are in thy hand.[5] Said Moses to the Holy One, blessed be He: Sovereign of the Universe, even at the time when Thou fondlest [other] peoples,[6] let all [Israel's] saints be in Thy hand. [The verse proceeds,] And they are cut[7] at thy feet.[8] R. Joseph learned: These are the students of the Torah who cut their feet in going from town to town and country to country to learn the Torah. He shall receive of thy words:[9] alluding to their discussing the utterances of God.[10] You have transgressed against the Prophets, where it says, Yea, though they study[11] among the nations, now I shall gather them, and a few of them shall be free[12] from the burden of king and princes.[13] This verse, 'Ulla has told us, is written [partly] in Aramaic,[14] [and is to be expounded thus:] If they all study, I will gather them even now, and if only a few of them study, they [those few] shall be free from the burden of king and princes.[15] You have transgressed against the Holy Writings, as it is written, It shall not be lawful to impose upon them [the priests and Levites etc.] minda, belo, and halak[16] and Rab Judah has explained that minda means the king's tax, belo the poll tax, and halach denotes annona.[17]

R. Papa levied an impost for the digging of a new well on orphans [also]. Said R. Shesheth the son of R. Idi to R. Papa: perhaps no water will be found there?[18] — He replied: I will collect the money from them in any case. If water is found, well and good, and if not, I will refund them the money. Rab Judah said: All must contribute to the building of doors in the town gates, even orphans; not, however, the Rabbis, [since] they do not require protection. All must contribute to the digging of a well[19] [for a public fountain], including the Rabbis. This, however, is only when there is no corvee,[20] but when the digging is done by corvee, we do not expect the Rabbis to participate.

Rabbi once opened his storehouse [of victuals] in a year of scarcity, proclaiming: Let those enter who have studied the Scripture, or the Mishnah, or the Gemara, or the Halachah, or the Aggada; there is no admission, however, for the ignorant.[21] R. Jonathan b. Amram pushed his way in and said, 'Master, give me food.' He said to him, 'My son, have you learnt the Scripture?' He replied, 'No.' 'Have you learnt the Mishnah?' 'No.' 'If so,' he said, 'then how can I give you food?' He said to him, 'Feed me as the dog and the raven are fed.'[22] So he gave him some food. After he went away, Rabbi's conscience smote him and he said: Woe is me that I have given my bread to a man without learning! R. Simeon son of Rabbi ventured to say to him: Perhaps it is Jonathan b. Amram your pupil, who all his life has made it a principle not to derive material benefit from the honour paid to the Torah. Inquiries were made and it was found that it was so; whereupon Rabbi said: All may now enter. Rabbi [in first refusing admission to the unlearned] was acting in accordance with his own dictum. For Rabbi said: It is the unlearned who bring misfortune on the world. A typical instance was that of the crown[23] for which the inhabitants of Tiberias were called upon to find the money. They came to Rabbi and said to him, 'Let the Rabbis give their share with us.' He refused. 'Then we will run away,' they said. 'You may,' he replied. So half of them [the 'am ha-ares] ran away. Half of the sum demanded was then remitted. The other half then came to Rabbi and asked him that the Rabbis might share with them. He again refused. 'We will run away,' they said. 'You

may,' he replied. So they all ran away, leaving only a certain fuller. The money was then demanded of him, and he ran away, and the demand for the crown was then dropped. Thereupon Rabbi said: I see that trouble comes on the world only on account of the unlearned.[24]

HOW LONG MUST HE BE IN THE TOWN TO BE COUNTED AS ONE OF THE TOWNSMEN, etc. Does not this conflict with the following: 'If a caravan of asses or camels on its way from one place to another stays there[25] overnight and goes astray with the population, the members of the caravan are condemned to be stoned[26] but their property is left untouched; if, however, they have stayed there thirty days, they are condemned to death by the sword and their property is also destroyed'?[27] — Raba replied: There is no contradiction. The one period [twelve months is required], in order to make a man a full member[28] of the town, the other [makes him] only an inhabitant[29] of the town, as it was taught: If a man vows that he will derive no benefit from the men of a certain town, he must derive no benefit from anyone who has resided there twelve months, but he may derive benefit from one who has resided there less then twelve months. If he vows to derive no benefit from the inhabitants of the town, he may derive none from anyone who has resided there thirty days, but he may from one who has resided there less than thirty days.

But is twelve months' residence required for all imposts? Has it not been taught: '[A man must reside in a town] thirty days to become liable for contributing to the soup kitchen,[30] three months for the charity box,[31] six months for the clothing fund, nine months for the burial fund, and twelve months for contributing to the repair of the town walls'? — R. Assi replied in the name of R. Johanan: Our Mishnah also in specifying the period of twelve months was thinking of the repair of the town walls.

R. Assi further said in the name of R. Johanan: All are required to contribute to the repair of the town walls, including orphans, but not the Rabbis, because the Rabbis do not require protection. R. Papa said: For the repair of the walls, for the horse-guard[32] and for the keeper of the armoury[33] even orphans have to contribute, but the Rabbis [do not, since they] do not require protection. The general principle is that even orphans have to contribute for any public service from which they derive benefit. Rabbah levied a contribution for charity on the orphans of the house of Bar Merion; whereupon Abaye said to him: Has not R. Samuel b. Judah laid down that money for charity is not to be levied on orphans even for the redemption of captives? — He replied: I collect from them In order to give them a better standing.

Ifra Hormizd the mother of King Shapur[34] sent a chest of gold coins to R. Joseph, with the request that it should be used for carrying out some really important religious precept. R. Joseph was trying hard to think what such a precept could be, when Abaye said to him: Since R. Samuel b. Judah has laid down that money for charity is not to be levied from orphans even for the redemption of captives, we may conclude

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(1) Who therefore require no protection.

(2) Which as it were walls itself round against heathen influence.

(3) [As head of Daraukart where R. Nahman b. Isaac also lived. V. Hyman. Toledoth, II, 471.]

(4) Heb. אף E.V. 'Yea'.

(5) Deut. XXXIII, 3.

(6) Allowing them to have dominion over Israel.

(7) E.V. 'nestle'.

(8) Ibid.

(9) Ibid.

(10) I.e., the Torah.

(11) E.V.'hire.

(12) E.V. 'begin' or 'sorrow'. ויחלו is taken as from חלל, 'to break', 'to be exempt', hence 'to be free'.

(13) Hos. VIII, 10.
(14) That is to say, the word 'יתנו is to be understood as if it were an Aramaic and not a Hebrew word.
(15) Hence you transgress against the Prophets in levying a tax on the students of the Torah.
(16) E.V. 'tribute, custom, or toll'. Ezra VII, 24.
(17) 'Produce tax'. The rabbis are the upholders of the Law, like the priests and Levites; hence to levy imposts on them is to transgress against the Holy Writings.
(18) And though other persons may excuse the waste of their money, the trustees of orphans are not allowed to do so.
(19) [פתיא lit. 'a drinking vessel', hence by metonymy 'well'.]
(20) I.e., when the inhabitants are not called on to go out en masse to perform the work, but can make a money contribution.
(21) Heb. 'am ha-ares, lit., 'people of the land', generally denoting 'the ignorant', 'the boor'.
(22) Apparently he was referring to the verse, He giveth to the beast his food, to the young ravens which cry (Ps. CXLVII, 9), and what he meant was: 'As God can feed these, so you can feed me.'
(23) For the Emperor of Rome (Rashi). [Others: Aurum coronarium, a special tax which the Jews had to pay to the Roman Emperor. v. Kohut, .Aruch, s.v. כלילא On the nature of this tax, v. Juster, Les Juifs dans l'Empire Romain, I, 385.]
(24) I.e., that it was only through them that the crown was demanded in the first instance.
(25) In a city which is seduced into idolatry. V. Deut, XIV, 12 seq.
(26) Like any other individuals who are guilty of idolatry.
(27) Like the inhabitants of the doomed city (v. Sanh. 111b). This would show that thirty days' residence is sufficient to enroll a man among the inhabitants of a town.
(28) Lit., 'a son of the town'.
(29) And the verse in Deut. speaks of inhabitants.
(30) Tamhui, a kind of dish wherein food was collected.
(31) Kuppah, basket, bag.
(32) A horseman whose function it was to ride round the walls to see that they were in proper condition.
(33) The superintendent of the town armoury, which was kept near the gate (Rashi). [Krauss, TA. 1,525, renders 'the treasury'.]
(34) [Shapur II, king of Persia, son of King Hormizd; lived (and reigned) 310-379 C.E.]

Talmud - Mas. Baba Bathra 8b

that the redemption of captives is a religious duty of great importance.

Raba asked Rabbah b. Mari: Whence is derived the maxim of the Rabbis that the redemption of captives is a religious duty of great importance? — He replied: From the verse, And it shall come to pass when they say unto thee, Whither shall we go forth, then thou shalt tell them, Thus saith the Lord, Such as are for death, to death, and such as are for the sword, to the sword, and such as are for famine, to the famine, and such as are for captivity, to captivity:[1] and [commenting on this] R.Johanan said: Each punishment mentioned in this verse is more severe than the one before. The sword is worse than death; this I can demonstrate either from Scripture, or, if you prefer, from observation. The proof from observation is that the sword deforms but death does not deform; the proof from Scripture is in the verse, Precious in the eyes of the Lord is the death of his saints.[2] Famine again is harder than the sword; this again can be demonstrated either by observation, the proof being that the one causes [prolonged] suffering but the other not, or, if you prefer, from the Scripture, from the verse, They that be slain with the sword are better than they that be slain with hunger.[3] Captivity is harder than all, because it includes the sufferings of all.[4]

Our Rabbis taught: The charity fund is collected by two persons [jointly] and distributed by three. It is collected by two, because any office conferring authority over the community[5] must be filled by at least two persons. It must be distributed by three, on the analogy of money cases[6] [which are tried by a Beth din of three]. Food for the soup kitchen is collected by three and distributed by three, since

it is distributed as soon as it is collected.[7] Food is distributed every day, the charity fund every Friday. The soup kitchen is for all comers, the charity fund for the poor of the town only. The townspeople, however, are at liberty to use the soup kitchen like the charity fund and vice versa, and to apply them to whatever purposes they choose.[8] The townspeople are also at liberty to fix weights and measures, prices, and wages, and to inflict penalties for the infringement of their rules.[9]

The Master said above: 'Any office conferring authority over the community must be filled by at least two persons.' Whence is this rule derived? — R. Nahman said: Scripture says, And they shall take the gold[10] etc. This shows that they were not to exercise authority over the community, but that they were to be trusted.[11] This supports R. Hanina, for R. Hanina reported [with approval] the fact that Rabbi once appointed two brothers to supervise the charity fund.[12]

What authority is involved [in collecting for charity]?-As was stated by R. Nahman in the name of Rabbah b. Abbuha, because the collectors can take a pledge for a charity contribution even on the eve of Sabbath.[13] Is that so? Is it not written, I will punish all that oppress them,[14] even, said R. Isaac b. Samuel b. Martha in the name of Rab, the collectors for charity? — There is no contradiction. The one [Rab] speaks of a well-to-do man, the other of a man who is not well-to-do; as, for instance, Raba compelled R. Nathan b. Ammi to contribute four hundred zuz for charity.

[It is written], And they that be wise shall shine as the brightness of the firmament:[15] this applies to a judge who gives a true verdict on true evidence.[16] And they that turn many to righteousness [zedakah] as the stars for ever and ever:[17] these are the collectors for charity [zedakah]. In a Baraitha it was taught: They that are wise shall shine as the brightness of the firmament: this applies to a judge who gives a true verdict on true evidence and to the collectors for charity: and they that turn many to righteousness like the stars for ever and ever: this applies to the teachers of young children.[18] Such as who, for instance? — Said Rab: To such as R. Samuel b. Shilath. For Rab once found R. Samuel b. Shilath in a garden, whereupon he said to him, 'Have you deserted your post'?[19] He replied, 'I have not seen this garden for thirteen years, and even now my thoughts are with the children.' And what does Scripture say of the Rabbis? — Rabina answered: They that love him shall be as the sun when he goeth forth in his night.[20]

Our Rabbis taught: The collectors of charity [when collecting] are not permitted to separate from one another, though one may collect at the gate while the other collects at a shop [in the same courtyard].[21] If one of them finds money in the street, he should not put it into his purse but into the charity box,[22] and when he comes home he should take it out. In the same way, if one of them has lent a man a mina and he pays him in the street, he should not put the money into his own purse but into the charity box, and take it out again when he comes home.

Our Rabbis taught: If the collectors [still have money but] no poor to whom to distribute it, they should change the small coins into larger ones[23] with other persons, but not from their own money.[24] If the stewards of the soup kitchen [have food over and] no poor to whom to distribute it, they may sell it to others but not to themselves. In counting out money collected for charity, they should not count the coins two at a time,[25] but only one at a time.

Abaye said: At first the Master[26] would not sit on the mats in the synagogue;[27] but when he heard that it had been taught that 'the townspeople can apply it to any purpose they choose,'[28] he did sit on them. Abaye also said: At first the Master used to keep two purses, one for the poor from outside and one for the poor of the town. When, however, he heard of what Samuel had said to R. Tahalifa b. Abdimi, 'Keep one purse only

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(1) Jer. XV, 2.

(2) Ps. CXVI, is.

(3) Lam. IV, 9.
(4) Since the captors can inflict on the captives what suffering they wish.
(5) V. infra.
(6) The collectors having to adjudge the merits of various claimants.
(7) Hence if a third had to be found to assist in the distribution, delay might be caused.
(8) Tosaf. mentions that in virtue of this rule Rabbenu Tam diverted money collected for charity to the payment of the town guard, since it had been collected on this condition.
(9) Lit., 'to remove (those who infringe) their regulations.'
(10) Ex. XXVIII, 5. The emphasis is on 'they', denoting a minimum of two.
(11) The gold was brought as a free-will offering, but each of the 'wise men' took what he required without rendering account.
(12) As treasurers, although two brothers count only as one person.
(13) When the householder may plead that he is busy preparing for Sabbath.
(14) Jer. XXX, 20.
(15) Dan. XII, 3.
(16) Lit., 'true to its own truth', v. Tosaf. s.v. דין
(17) Ibid.
(18) Because they also turn their pupils to righteousness.
(19) Lit., 'your faith' or 'trustworthiness'.
(20) Judges V, 31.
(21) As they are still in sight of one another.
(22) So that people should not be able to say that he was appropriating charity funds.
(23) For fear the small coins should rust.
(24) Lest people should say that they do not give full value.
(25) Lest people should say that they take two and only count one.
(26) Rabbah.
(27) Because they were bought out of the charity funds.
(28) Supra p. 37

Talmud - Mas. Baba Bathra 9a

and stipulate [with the townspeople] that it may be used for both,' he also kept only one purse and made this stipulation. R. Ashi said: I do not even need to stipulate, since whoever comes [to give me money for charity] relies on my judgment, and leaves it to me to give to whom I will.

There were two butchers who made an agreement with one another that if either killed on the other's day, the skin of his beast should be torn up. One of them actually did kill on the other's day, and the other went and tore up the skin. Those who did so were summoned before Raba, and he condemned them to make restitution. R. Yemar b. Shelemiah thereupon called Raba's attention to [the Baraitha which says] that the towns-people may inflict penalties for breach of their regulations. Raba did not deign to answer him. Said R. Papa: Raba was quite right not to answer him; this regulation holds good only where there is no distinguished man in the town, but where there is a distinguished man, they certainly have not the power to make such stipulations.

Our Rabbis taught: The collectors for charity are not required to give an account of the moneys entrusted to them for charity, nor the treasurers of the Sanctuary of the moneys given for holy purposes. There is no actual proof of this [in the Scriptures], but there is a hint of it in the words, They reckoned not with the men into whose hand they delivered the money, to give to them that did the work, for they dealt faithfully.[1]

R. Eleazar said: Even if a man has in his house a steward on whom he can rely, he should tie up and count out [any money that he hands to him], as it says, They put in bags and told the money.[2] R.

Huna said: Applicants for food are examined[3] but not applicants for clothes. This rule can be based, if you like on Scripture, or if you prefer, on common sense. 'It can be based if you like on common sense', because the one [who has no clothing] is exposed to contempt, but not the other. 'Or if you prefer on Scripture' — on the verse, Is it not to examine [paros][4] the hungry before giving him thy bread [for so we may translate since] the word paros is written with a sin,[5] as much as to say, 'Examine and then give to him:' whereas later it is written, When thou seest the naked, that thou cover him,[6] that is to say, immediately. Rab Judah, however, said that applicants for clothes are to be examined but not applicants for food. This rule can be based if you like on common sense or if you prefer on Scripture. 'If you like on common sense' — because the one [without food] is actually suffering but not the other. 'Or if you prefer on Scripture' — because it says, Is it not to deal thy bread to the hungry, that is, at once[7] whereas later it is written, When thou seest the naked, that is to say, 'When you shall have seen [that he is deserving]'. It has been taught in agreement with Rab Judah: If a man says, 'Clothe me,' he is examined, but if he says, 'Feed me,' he is not examined.

We have learnt in another place: The minimum to be given to a poor man who is on his way from one place to another is a loaf which costs a pundion when four se'ahs of wheat are sold for a sela'.[8] If he stays overnight, he is given his requirements for the night. What is meant by 'requirements for the night'? — R. Papa said: A bed and a pillow. If he stays over Sabbath, he is given food for three meals.[9]

A Tanna taught: If he is a beggar who goes from door to door, we pay no attention to him.[10] A certain man who used to beg from door to door came to R. Papa [for money], but he refused him. Said R. Samma the son of R. Yeba to R. Papa: If you do not pay attention to him, no one else will pay attention to him; is he then to die of hunger? But, [replied R. Papa,] has it not been taught, If he is a beggar who goes from door to door, we pay no attention to him? — He replied: We do not listen to his request for a large gift, but we do listen to his request for a small gift.[11] R. Assi said: A man should never neglect to give the third of a shekel [for charity] in a year, as it says, Also we made ordinances for us, to charge ourselves yearly with the third part of a shekel for the service of the house of our Lord.[12] R. Assi further said: Charity is equivalent to all the other religious precepts combined; as it says, 'Also we made ordinances': it is not written, 'an ordinance', but 'ordinances'.

R. Eleazar said: He who causes others to do good is greater than the doer, as it says, And the work[13] of righteousness [zedakah] shall be peace,[14] and the effect of righteousness quiet and confidence for ever.[15] If a man is deserving, then shalt thou not deal thy bread to the hungry,[16] but if he is not deserving, then thou shalt bring the poor that are cast out to thy house.[17] Raba said to the townsfolk of Mahuza: I beg of you, hasten [to the assistance of] one another, so that you may be on good terms with the Government. R. Eleazar further said: When the Temple stood, a man used to bring his shekel and so make atonement. Now that the Temple no longer stands, if they give for charity, well and good, and if not, the heathens will come and take from them forcibly. And even so it will be reckoned to them as if they had given charity, as it is written, [I will make] thine exactors righteousness[18] [zedakah].

Raba said: The following was told me by the suckling

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(1) II Kings XII, 16. According to Tosaf., this is not a proof, because the men of that generatlon were exceptionally righteous.

(2) Ibid. Although they had perfect confidence in the workers, the priests before giving them the money first put it in bags and counted it.

(3) To see that they are not impostors.

(4) Isa. LVIII, 7. E.V. 'deal'.

(5) פרוש= 'make plain', 'examine'. In our texts the word is written פרום. V. Tosaf. Shab. 55b, s.v. מעבירים.

(6) Ibid.

(7) The word פרוש being interpreted as it is read.
(8) Such a loaf would contain half a kab of wheat.
(9) Three meals being obligatory on the Sabbath.
(10) To give him money from the charity fund, v. Tosef. Pe'ah, IV.
(11) I.e., something less than a complete meal.
(12) Neh. x, 33. If for the repair of the Temple, a fortiori for charity.
(13) מעשה: taken in the sense of 'causing others to do righteousness'.
(14) And not righteousness (i.e., charity, or those who give charity) itself.
(15) Isa. XXXII, 17.
(16) Isa. LVIII, 7.
(17) Ibid. The reference is to tax-collectors, מרודים (E.V. 'cast out') being connected with root רגה 'to rule', v. infra.
(18) Ibid. LX, 17.

Talmud - Mas. Baba Bathra 9b

who perverted the way of his mother,[1] in the name of R. Eleazar. What is the meaning of the verse, And he put on righteousness as a coat of mail?[2] It tells us that just as in a coat of mail every small scale joins With the others to form one piece of armour, so every little sum given to charity combines with the rest to form a large sum. R. Hanina said: The same lesson may be learnt from here: And all our righteousness is as a polluted garment.[3] Just as in a garment every thread unites with the rest to form a whole garment, so every farthing given to charity unites with the rest to form a large sum. Why was he [R. Shesheth] called 'the suckling who perverted the way of his mother'? The reason is this. R. Ahadboi b. Ammi asked R. Shesheth: Whence do we infer that a leper while he is counting his days [for purification][4] renders unclean a man [who touches him]? He replied: Since he renders garments unclean,[5] he renders a man unclean. But, he said, perhaps this only applies to clothes which he actually wears; for similarly we have the case of the lifting of a carcase which makes the garments unclean but not the man?[6] — He replied: And whence do we know that a creeping thing makes a man unclean? Is it not from the fact that it makes garments unclean?[7] — He replied: Of the creeping thing it is distinctly written, Or whosoever toucheth any creeping thing whereby he may be made unclean.[8] — How then, he [R. Shesheth] said, do we know that [human] semen makes a man unclean? Do we not say that because it makes garments unclean, therefore it makes a man unclean? — He replied: The rule of semen is also distinctly stated, since it is written in connection with it, Or a man [whose seed goeth from him],[9] where [the superfluous phrase 'or a man'] brings under the rule one who touches the seed.[10] He [R. Ahadboi] made his objections in a mocking manner which deeply wounded R. Shesheth, and soon after R. Ahadhoi b. Abba lost his speech and forgot his learning. His[11] mother came and wept before him,[12] but in spite of all her cries he paid no attention to her. At length she said: Behold these breasts from which you have sucked. Then at last he prayed for him and he was healed.

But what is the answer to the question that has been raised?[13] — As it has been taught: R. Simeon b. Yohai says: 'Washing of garments' is mentioned in connection with the period of the leper's counting,[14] and 'washing of garments' is also mentioned in connection with the period of his definite uncleanness.[15] Just as in the latter case he renders any man he touches unclean, so also in the former case.

R. Eleazar said: A man who gives charity in secret is greater than Moses our Teacher, for of Moses it is written, For I was afraid because of the anger aid the wrath,[16] and of one who gives charity [secretly] it is written, A gift in secret subdues anger.[17] In this he [R. Eleazar] differs from R. Isaac, for R. Isaac said that it subdues 'anger' but not 'wrath' , since the verse continues, And a present in the bosom fierce wrath, [which we can interpret to mean], 'Though a present is placed in the bosom , yet wrath is still fierce.' According to others, R. Isaac said: A judge who takes a bribe

brings fierce wrath upon the world; as it says, And a present etc. R. Isaac also said: He who gives a small coin to a poor man obtains six blessings, and he who addresses to him words of comfort obtains eleven blessings. 'He who gives a small coin to a poor man obtains six blessings' — as it is written, Is it not to deal thy bread to the hungry and bring the poor to thy house etc., when thou seest the naked etc.[18] 'He who addresses to him comforting words obtains eleven blessings', as it is written, If thou draw out thy soul to the hungry and satisfy the afflicted soul, they shall thy light rise in the darkness and thine obscurity be as the noonday,' and the Lord shall guide thee continually and satisfy thy soul in drought ... and they shall build from thee the old waste places and thou shalt raise up the foundations of many generations, etc.[19]

R. Isaac further said: What is the meaning of the verse, He that followeth after righteousness[20] and mercy findeth life, righteousness and honour?[21] Because a man has followed after righteousness, shall he find righteousness?[22] — The purpose of the verse, however, is to teach us that if a man is anxious to give charity, the Holy One, blessed be He, furnishes him money with which to give it. R. Nahman b. Isaac says: The Holy One, blessed be He, sends him men who are fitting recipients of charity, so that he may be rewarded for assisting them. Who then are unfit?[23] — Such as those mentioned in the exposition of Rabbah, when he said: What is the meaning of the verse, Let them be made to stumble before thee; in the time of thine anger deal thou with them?[24] Jeremiah said to the Holy One, blessed be He: Sovereign of the Universe, even at the time when they conquer their evil inclination and seek to do charity before Thee, cause them to stumble through men who are not fitting recipients, so that they should receive no reward for assisting them.

R. Joshua b. Levi said: He who does charity habitually will have sons wise, wealthy, and versed in the Aggadah.[25] 'Wise' as it is written,[26]

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(1) R. Shesheth. V. infra.

(2) Isa. LIX, 17.

(3) Ibid. LXIV, 5.

(4) In the seven days after he brings the birds, and before he brings his offering. V. Lev. XIV, 8.

(5) As we know because it is written, On the seventh day he shall wash his clothes. (Ibid. 9.)

(6) As it is written, Whosoever shall bear aught of the carcase of them shall wash his clothes (Lev. XI, 25). but it is not said that he renders other persons or garments unclean by his touch.

(7) Ibid. 31.38.

(8) Ibid. XXII, 5.

(9) Ibid. 4.

(10) As the text might have run, 'Whoso toucheth anything unclean, and whose seed goeth etc.' V. Malbim, a.l.

(11) This is usually taken to refer to R. Shesheth. R. Hana, however, refers it to R. Ahadboi, whose mother he presumes to have nursed R. Shesheth. V. Tosaf. s.v. אתיא.

(12) To induce him to pray that R. Ahadboi should be healed.

(13) In regard to the leper. Lit., 'now that the subject has been discussed, whence do we know it?'

(14) I.e., at the end of the seven days. Lev. XIV, 9.

(15) I.e., when he first emerges from this into the seven day period. Lev. XIV, 8. The analogy is based on a similarity of expression, Gezerah Shawah, v. Glos.

(16) Deut. IX, 19.

(17) Prov. XXI, 14.

(18) Isa. LVIII, 7. The six blessings are to be found in the next two verses, Then shall thy light break forth etc.

(19) Ib. 10-12.

(20) The Hebrew is zedakah, which is taken in the Rabbinical sense of 'charity'.

(21) Prov. XXI, 21.

(22) I.e., because he gives charity, shall his reward be that he shall obtain charity when he requires it?

(23) Lit., 'to exclude what?'

(24) Jer. XVIII, 23.

(25) Possibly ‘aggadah’ has here its original meaning of ‘telling’, i.e., ‘eloquence’.
(26) In the verse from Prov. XXI, quoted above.

Talmud - Mas. Baba Bathra 10a

He shall find life;[1] ‘wealthy’ as it is written, [He shall find] righteousness;[2] ‘versed in the Aggadah’ as it is written, And [he shall find] honour: and it is written elsewhere , The wise shall inherit honour.[3]

It has been taught: R. Meir used to say: The critic [of Judaism] may bring against you the argument, ‘If your God loves the poor, why does he not support them?’ If so, answer him, ‘So that through them we may be saved from the punishment of Gehinnom.’ This question was actually put by Turnus Rufus[4] to R. Akiba: ‘If your God loves the poor, why does He not support them?’ He replied, ‘So that we may be saved through them from the punishment of Gehinnom.’ ‘On the contrary,’ said the other, ‘it is this which condemns you to Gehinnom. I will illustrate by a parable. Suppose an earthly king was angry with his servant and put him in prison and ordered that he should be given no food or drink, and a man went and gave him food and drink. If the king heard, would he not be angry with him? And you are called "servants", as it is written, For unto me the children of Israel are servants.’[5] R. Akiba answered him: ‘I will illustrate by another parable. Suppose an earthly king was angry with his son, and put him in prison and ordered that no food or drink should be given to him, and someone went and gave him food and drink. If the king heard of it, would he not send him a present? And we are called "sons’, as it is written, Sons are ye to the Lord your God.’[6] He said to him: ‘You are called both sons and servants. When you carry out the desires of the Omnipresent you are called "sons", and when you do not carry out the desires of the Omnipresent, you are called "servants" . At the present time you are not carrying out the desires of the Omnipresent. R. Akiba replied: ‘The Scripture says, Is it not to deal thy bread to the hungry and bring the poor that are cast out to thy house. When "dost thou bring the poor who are cast out[7] to thy house"? Now; and it says [at the same time], Is it not to deal thy bread to the hungry?’

R. Judah son of R. Shalom preached as follows: In the same way as a man's earnings[8] are determined for him from New Year,[9] so his losses are determined for him from New Year. If he finds merit [in the sight of Heaven], then, ‘deal out thy bread to the poor’;[10] but if not, then, he will ‘bring the poor that are outcast to his house.’[11] A case in point is that of the nephews of Rabban Johanan b. Zakkai. He saw in a dream that they were to lose seven hundred dinars in that year. He accordingly forced them to give him money for charity until only seventeen dinars were left [of the seven hundred]. On the eve of the Day of Atonement the Government sent and seized them. R. Johanan b. Zakkai said to them, ‘Do not fear [that you will lose any more]; you had seventeen dinars and these they have taken.’ They said to him, ‘How did you know that this was going to happen?’ He replied, ‘I saw it in a dream.’ ‘Then why did you not tell us?’[12] they asked. ‘Because,’ he said, ‘I wanted you to perform the religious precept [of giving charity] quite disinterestedly.’

As R. Papa was climbing a ladder, his foot slipped and he narrowly escaped falling. Had that happened, he said, mine enemy[13] had been punished like Sabbath breakers and idolaters.[14] Hiyya b. Rab from Difti[15] said to him: Perhaps a beggar appealed to you and you did not assist him; for so it has been taught: R. Joshua b. Korhah says, Whoever turns away his eyes from [one who appeals for] charity is considered as if he were serving idols. It is written In one place, Beware that there be not a base thought in thine heart,[16] and in another place, Certain base fellows are gone out.[17] Just as in the second case the sin is that of idolatry, so in the first case the sin is equivalent to that of idolatry.

It has been taught: R. Eliezer son of R. Jose said: All the charity and deeds of kindness which Israel perform in this world [help to promote] peace and good understanding between them and their Father in heaven, as it says, Thus saith the Lord, Enter not into the house of mourning, neither go to

lament, neither bemoan them, for I have taken away my peace from this people . . . even lovingkindness and tender mercies, [where] 'lovingkindness' refers to acts of kindness, and 'tender mercies' to charity.[18]

It has been taught: R. Judah says: Great is charity, in that it brings the redemption nearer, as it says, Thus saith the Lord, Keep ye judgment and do righteousness [zedakah], for my salvation is near to come and my righteousness to be revealed.[19] He also used to say: Ten strong things have been created in the world. The rock is hard, but the iron cleaves it. The iron is hard, but the fire softens it. The fire is hard, but the water quenches it. The water is strong, but the clouds bear it. The clouds are strong, but the wind[20] scatters them. The wind is strong, but the body bears it. The body is strong, but fright crushes it. Fright is strong, but wine banishes it. Wine is strong, but sleep works it off. Death is stronger than all, and charity saves from death, as it is written, Righteousness [zedakah] delivereth from death.[21]

R. Dosthai son of R. Jannai preached [as follows]: Observe that the ways of God are not like the ways of flesh and blood. How does flesh and blood act? If a man brings a present to a king, it may be accepted or it may not be accepted; and even if it is accepted , it is still doubtful whether he will be admitted to the presence of the king or not. Not so God. If a man gives but a farthing to a beggar, he is deemed worthy to receive the Divine Presence, as It is written, I shall behold thy face in righteousness [zedakah], I shall be satisfied when I awake with thy likeness.[22] R. Eleazar used to give a coin to a poor man and straightway say a prayer, because, he said, it is written, I in righteousness shall behold thy face.[23] What is the meaning of the words, I shall be satisfied when I awake with thy likeness? R. Nahman b. Isaac said: This refers to the students of the Torah[24] who banish sleep from their eyes in this world,and whom the Holy One, blessed be He, feasts with the resplendence of the Divine presence in the future world.

R Johanan said: What is the meaning of the verse, He that hath pity on the poor lendeth unto the Lord.[25] Were it not written in the Scripture, one would not dare to say it: as it were, the borrower is a servant to the lender.[26]

R. Hiyya b. Abin said: R. Johanan pointed out that it is written, Riches profit not in the day of wrath, but righteousness [zedakah] delivereth from death,[27] and it is also written, Treasures of wickedness profit nothing, but righteousness [zedakah] delivereth from death.[28] Why this double mention of righteousness? — One that delivers him from an unnatural death and one that delivers him from the punishment of Gehinnom. Which is the one that delivers him from the punishment of Gehinnom? The one in connection with which the word 'wrath' is used, as it is written, A day of wrath is that day.[29] What kind of charity is that which delivers a man from an unnatural death?

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(1) Life also occurs in connection with wisdom, Prov. VIII, 35.

(2) I.e., money wherewith to do charity.

(3) Prov. III, 3 5. The wise are honoured for their eloquent discourses.

(4) Tineius Rufus, Roman Governor of Judea.

(5) Lev. XXV, 55.

(6) Deut. XIV, 1.

(7) Apparently this is a reference to the tax-collectors, v. supra, p. 41, n. 9.

(8) Lit., 'food'.

(9) As the day of Judgment, when the fate of all creatures is decided for the following year.

(10) I.e., his losses will take the form of charity.

(11) The expression 'poor that are outcast' seems here also to be applied to the tax-gatherers.

(12) So that we could have given the whole in charity.

(13) I.e., he himself.

(14) These were executed by stoning, to which death by a fall was akin; v. Sanh. 45a.

(15) [A town near Apamea on the Tigris; v. Obermeyer, op. cit. 197.]
(16) Deut. xv, 9' The 'base thought' is not to lend to the poor before the Sabbatical year of release.
(17) Ibid. XIII, 14. The lesson is based on the occurrence of the word 'base' (Heb. belial) in both contexts.
(18) Jer. XVI, 5. The 'peace' consists in the charity and lovingkindness which they used to do. [On the difference between charity 'zedakah' and lovingkindness, 'gemiluth hasadim,' v. Tosef. Pe'ah IV.]
(19) Isa. LVI, I.
(20) Heb. ruah, which also means 'breath'.
(21) Prov. X, 2.
(22) Ps. XVII, 15.
(23) I.e., 'When I am in righteousness through giving charity I shall behold thy face in prayer.'
(24) Lit., 'the disciples of the wise.'
(25) Prov. XIX, 17.
(26) Ibid. XXII, 7.
(27) Ibid. XI, 4.
(28) Ibid. X, 2.
(29) Zeph. I, is.

Talmud - Mas. Baba Bathra 10b

When a man gives without knowing to whom he gives. and the beggar receives without knowing from whom he receives. 'He gives without knowing to whom he gives': this excludes the practice of Mar 'Ukba.[1] 'The beggar receives without knowing from whom he receives': this excludes the practice of R. Abba.[2] How is a man then to do? — He should put his money into the charity box.

The following was adduced in objection to this: 'What is a man to do in order that he may have male offspring? R. Eliezer says that he should give generously to the poor; R. Joshua says that he should make his wife glad to perform the marital office. R. Eliezer b. Jacob says: A man should not put a farthing into the charity box unless it is under the supervision of a man like R. Hanina b. Teradion'?[3] — In saying [that a man should put his money into the charity box] we mean, when it is under the supervision of a man like R. Hanina b. Teradion.

R. Abbahu said: Moses addressed himself to the Holy One, blessed be He, saying: 'Sovereign of the Universe, wherewith shall the horn of Israel be exalted?' He replied, 'Through taking their ransom.'[4] R. Abbahu also said: Solomon the son of David was asked: How far does the power of charity extend? He replied: Go and see what my father David has stated on the matter: He hath dispersed, he hath given to the needy, his righteousness endureth for ever.[5] R. Abba said: [The answer might be given] from here: He shall dwell on high; his place of defence shall be the munitions of the rocks; his bread is given him, his waters are sure.[6] Why shall he dwell on high and his place be with the munitions of the rocks? Because his bread is given [to the poor], atid his waters are sure.

R. Abbahu also said: Solomon was asked: Who has a place in the future world? He answered: He to whom are applied the words, and before his elders shall be glory.[7] A similar remark was made by Joseph the son of R. Joshua. He had been ill and fell in a trance. [After he recovered], his father said to him: 'What vision did you have?' He replied, 'I saw a world upside down, the upper below and the lower above.'[8] He said to him: 'You saw a well regulated world.' [He asked further]: 'In what condition did you see us [students]?' He replied: 'As our esteem is here, so it is there. I also [he continued] heard them saying, Happy he who comes here in full possession of his learning. I also heard them saying, No creature can attain to the place [in heaven] assigned to the martyrs of the [Roman] Government.' Who are these? Shall I say R. Akiba and his comrades?[9] Had they no other merit but this? Obviously even without this [they would have attained this rank]. What is meant therefore must be the martyrs of Lud.[10]

Rabban Johanan b. Zakkai said to his disciples: My sons, what is the meaning of the verse, Righteousness exalteth a nation, but the kindness of the peoples is sin?[11] R. Eliezer answered and said: 'Righteousness exalteth a nation:' this refers to Israel of whom it is written, Who is like thy people Israel one nation in the earth?[12] But 'the kindness of the peoples is sin': all the charity and kindness done by the heathen is counted to them as sin, because they only do it to magnify themselves, as it says, That they may offer sacrifices of sweet savour unto the God of heaven, and pray for the life of the king and of his sons.[13] But is not an act of this kind charity in the full sense of the word, seeing that it has been taught: 'If a man says, — I give this sela for charity in order that my sons may live and that I may be found worthy of the future world, he may all the same be a righteous man in the full sense of the word'? — There is no contradiction; in the one case we speak of an Israelite, in the other of a heathen.[14]

R.Joshuah answered and said: 'Righteousness exalteth a nation,: this refers to Israel of whom it is written, Who is like thy people Israel, one nation on the earth? 'The kindness of peoples is sin': all the charity and kindness that the heathen do is counted sin to them, because they only do it in order that their dominion may be prolonged, as it says, Wherefore O king, let my counsel be acceptable to thee, and break off thy sins by righteousness, and thy iniquities by showing mercy to the poor, if there may be a lengthening of thy tranquility.[15] Rabban Gamaliel answered Saying: 'Righteousness exalteth a nation': this refers to Israel of whom it is written, Who is like thy people Israel etc. 'And the kindness of the peoples is sin:' all the charity and kindness that the heathen do is counted as sin to them, because they only do it to display haughtiness, and whoever displays haughtiness is cast into Gehinnom, as it says, The proud and haughty man, scorner is his name, he worketh in the wrath ['ebrah] of pride,[16] and 'wrath' connotes Gehinnom, as it is written, A day of wrath is that day.[17] Said Rabban Gamaliel: We have still to hear the opinion of the Modiite. R. Eliezer the Modiite[18] says: 'Righteousness exalteth a nation': this refers to Israel of whom it is written, Who is like thy people Israel, one nation in the earth. 'The kindness of the peoples is sin': all the charity and kindness of the heathen is counted to them as sin, since they do it only to reproach us, as it says, The Lord hath brought it and done according as he spake, because ye have sinned against the Lord and have not obeyed his voice, therefore this thing is come upon you.[19] R. Nehuniah b. ha-Kanah answered saying: 'Righteousness exalteth a nation, and there is kindness for Israel and a sin-offering for the peoples.' Said R. Johanan b. Zakkai to his disciples: 'The answer of R. Nehuniah b. ha-Kanah is superior to my answer and to yours, because he assigns charity and kindness to Israel and sin to the heathen.' This seems to show that he also gave an answer; what was it? — As it has been taught: R. Johanan b. Zakkai said to them: Just as the sin-offering makes atonement for Israel, so charity makes atonement for the heathen.[20]

Ifra Hormiz[21] the mother of King Shapur sent four hundred dinarim to R. Ammi,[22] a but he would not accept them. She[23] then sent them to Raba, and he accepted them, in order not to offend[24] the Government. When R. Ammi heard, he was indignant and said: Does he not hold with the verse, When the boughs thereof are withered they shall be broken off, the women shall come and set them on fire?[25] Raba [defended himself] on the ground that he wished not to offend the Government. Was not R. Ammi also anxious not to offend the Government? — [He was angry] because he ought to have distributed the money to the non-Jewish poor. But Raba did distribute it to the non-Jewish poor? — The reason R. Ammi was indignant was

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(1) Who used every day to put four zuzim in a box for the poor of his immediate neighbourhood, so that he knew to whom he gave though they did not know from whom they received.

(2) Who used to go into a poor neighbourhood and drop coins behind him, so that the poor knew who gave but he did not know who received. v. Keth. 6a.

(3) I.e., as reliable as R. Hanina, but not necessarily as pious. V. Tosaf. s.v. אלא.

(4) Lit., 'If thou wilt lift up'. (E.V. 'When thou takest up'.) The reference is to the ransom that was to be taken from the

Israelites whenever they were numbered, Ex. XXX, 12. This ransom was to be given for the service of the Tabernacle, but money given for charity according to the Rabbis serves the same purpose.

(5) Ps. CXII, 9.

(6) Isa. XXXIII, 16.

(7) Isa. XXIV, 23. I.e., everyone who is honoured in this world for his wisdom.

(8) I.e., the poor who are despised here are highly honoured there. But v. also Tosaf, s.v. עליונים

(9) Who were martyred after the suppression of the revolt of Bar Cochba.

(10) Lulianus and Pappus, who were executed in Lydda in the reign of Hadrian. [On these martyrs, v. J.E. IX, 512, s.v. Pappus.]

(11) Prov. XIV, 34.

(12) II Sam. VII, 23.

(13) Ezra VI, 10. Artaxerxes wrote thus to the Governor of Jerusalem when he ordered him to give Ezra all that he required.

(14) Because the Israelite, whatever he may say, really gives the charity for its own sake.

(15) Dan, IV, 27.

(16) Prov. XXI, 24.

(17) Zeph. I, is.

(18) From Modim, near Jerusalem, the ancient home of the Maccabean family.

(19) Jer. XL, 3. Spoken by Nebuzaradan to Jeremiah.

(20) And we translate the verse: Righteousness exalteth a nation (Israel), and the kindness of peoples is a sin — offering for them.

(21) V. Supra 8a.

(22) [R. Ammi at Caesarea (Hyman op cit. p. 222)].

(23) [V. D.S. a.l.]

(24) Lit., ‘to be at peace with’.

(25) Isa. XXVII, 11. When the heathen have received the reward of their pious deeds in this world, their power will be broken.

Talmud - Mas. Baba Bathra 11a

that he had not been fully informed.[1]

It has been taught: The following incident is related of Benjamin the Righteous who was a supervisor of the charity fund. One day a woman came to him in a year of scarcity, and said to him: ‘Sir, assist me.’ He replied, ‘I swear, there is not a penny in the charity fund.’ She said, ‘Sir, if you do not assist me, a woman and her seven children will perish.’ He accordingly assisted her out of his own pocket. Some time afterwards he became dangerously ill. The angels addressed the Holy One, blessed be He, saying: Sovereign of the Universe, Thou hast said that he who preserves one soul of Israel is considered as if he had preserved the whole world; shall then Benjamin the Righteous who has preserved a woman and her seven children die at so early an age? Straightway his sentence[2] was torn up. It has been taught that twenty-two years were added to his life.

Our Rabbis taught: It is related of King Monobaz[3] that he dissipated all his own hoards and the hoards of his fathers in years of scarcity. His brothers and his father's household came in a deputation to him and said to him, ‘Your father saved money and added to the treasures of his fathers, and you are squandering them.’ He replied: ‘My fathers stored up below and I am storing above, as it says, Truth springeth out of the earth and righteousness looketh down from heaven.[4] My fathers stored in a place which can be tampered with, but I have stored in a place which cannot be tampered with, as it says, Righteousness and judgment are the foundation of his throne.[5] My fathers stored something which produces no fruits, but I have stored something which does produce fruits, as it is written, Say ye of the righteous [zaddik] that it shall be well with them, for they shall eat of the fruit of their doings.[6] My fathers gathered treasures of money, but I have gathered treasures of

souls, as it is written, The fruit of the righteous [zaddik] is a tree of life, and he that is wise winneth souls.[7] My fathers gathered for others and I have gathered for myself, as it says, And for thee it shall be righteousness [zedakah].[8] My fathers gathered for this world, but I have gathered for the future world, as it says, Thy righteousness [zedakah] shall go before thee, and the glory of the Lord shall be thy rearward.'[9]

IF HE ACQUIRES A RESIDENCE IN IT, HE IS COUNTED AS ONE OF THE TOWNSMEN. The Mishnah is not in agreement with Rabban Simeon b. Gamaliel, since it has been taught: Rabban Simeon b. Gamaliel says: If he acquires a piece of property, however small,[10] in it, he is reckoned as a townsman. But has it not been taught: If he acquires in it a piece of ground on which a residence can be put up [but not smaller], he is reckoned as one of the townsmen? — Two Tannaim have reported the dictum of Rabban Simeon b. Gamaliel differently.

MISHNAH. A COURTYARD SHOULD NOT BE DIVIDED UNLESS THERE WILL BE [AFTER THE DIVISION] AT LEAST FOUR CUBITS FOR EACH OF THE PARTIES. A FIELD SHOULD NOT BE DIVIDED UNLESS THERE WILL BE NINE KABS' [SPACE][11] FOR EACH. R. JUDAH SAYS, UNLESS THERE WILL BE NINE HALF-KABS [SPACE] FOR EACH. A VEGETABLE GARDEN SHOULD NOT BE DIVIDED UNLESS THERE WILL BE HALF A KAB FOR EACH. R. AKIBA, HOWEVER, SAYS, A QUARTER KAB'S SPACE. A HALL, A DRAWING ROOM,[12] A DOVECOT, A GARMENT, A BATHHOUSE, AN OLIVE PRESS AND AN IRRIGATED PLOT OF LAND SHOULD NOT BE DIVIDED UNLESS SUFFICIENT WILL BE LEFT FOR EACH PARTY.[13] THE GENERAL PRINCIPLE IS THAT IF AFTER THE DIVISION EACH PART WILL RETAIN THE DESIGNATION APPLIED TO THE WHOLE, THE DIVISION MAY BE MADE, BUT IF NOT, IT SHOULD NOT BE MADE. WHEN IS THIS THE RULE? WHEN ONE OR OTHER OF THE OWNERS IS NOT WILLING TO DIVIDE. BUT IF BOTH AGREE, THEY CAN DIVIDE EVEN IF LESS THAN THESE QUANTITIES [WILL BE LEFT]. SACRED WRITINGS, HOWEVER, MAY NOT BE DIVIDED EVEN IF BOTH AGREE.[14]

GEMARA. R. Assi said in the name of R. Johanan: The four cubits [of the courtyard] mentioned [in the Mishnah] are exclusive of the space in front of the doors.[15] It has been also taught to the same effect: A courtyard should not be divided unless eight cubits will be left to each party. But have we not learnt, FOUR CUBITS TO EACH? — The fact [that the Baraitha says eight] shows [that we must interpret the Mishnah] as R. Assi indicates. Some put this argument in the form of a contradiction: We learn, A COURTYARD SHOULD NOT BE DIVIDED UNLESS THERE WILL BE FOUR CUBITS FOR EACH OF THE PARTIES. [But how can this be], seeing that it has been taught: 'Unless there are eight cubits for each'? — R. Assi answered in the name of R. Johanan: The four cubits mentioned [in the Mishnah] are exclusive of the space in front of the doors.

R. Huna said: Each party takes a share in the courtyard proportionate to the number of his doors;[16] R. Hisda, however, says that four cubits are allowed for each door and the remainder is divided equally. It has been taught in agreement with R. Hisda: Doors opening on to the courtyard carry with them a space of four cubits. If one of the joint owners has one door and the other two doors, [if they divide] the one who has one door takes four cubits and the one who has two doors takes eight cubits, and the remainder is divided equally. If one has a doorway eight cubits broad, he takes eight cubits facing his door and four cubits in the courtyard. What are these four cubits in the courtyard doing here? — Abaye answered: What it means is this: He takes eight cubits in the length of the courtyard and four in the width of the courtyard.

Amemar said: [A pit for holding] date stones[17] carries with it four cubits on every side. This is the case, however, only if he has no special door from which he goes to it,[18] but if he has a special door for reaching it,

(1) I.e., he had not been told that Raba had distributed the money to non-Jewish poor, as was not unusual. [The alms distributed by heathens were frequently derived from robbery, hence the Rabbis' attitude towards heathen charity; v. Buchler, Sepphoris, p. 44.]
(2) In the heavenly records.
(3) [King of Adiabene (first century C.E.) who embraced Judaism. v. Josephus Ant. XX, 2-4.]
(4) Ps. LXXXV, II. The righteousness (zedek) here is God's righteousness in rewarding good deeds.
(5) Ibid. XCVII, 2.
(6) Isa. III, 10.
(7) Prov. XI, 30.
(8) I.e., the zedakah shall be your own. Deut. XXIV, 13.
(9) Isa. LVIII, 8.
(10) Even too small to build a house on,
(11) I.e., an area for the sowing of nine kabs. 1 kab's space = 416 square cubits.
(12) [Or 'water-tower' (Aruk).]
(13) Not necessarily as much as nine kabs.
(14) I.e., scrolls of Scripture, since to cut them up shows disrespect.
(15) A space of four cubits was allowed in front of each door for loading and unloading animals. V. infra.
(16) Lit., 'A courtyard is divided according to its entrances'. If one has a house with two doors opening on to the courtyard and the other only one door, the former takes two-thirds and the latter one-third.
(17) For feeding animals.
(18) Because then he requires space to get behind it.

Talmud - Mas. Baba Bathra 11b

it carries with it only four cubits in front of his door.

R. Huna said: An exedra[1] does not carry with it four cubits. For why are the four cubits ordinarily allowed? To provide space for the owner to unload his animals. If there is an exedra he can go into it and unload there. R. Shesheth raised an objection [to this from the following]: 'Gates of exedras equally with gates of houses carry with them four cubits? — That was taught in reference to the exedra of a school-house. That the gate of the exedra of a schoolhouse carries with it four cubits is obvious, is it not, since it is a proper room?[2] — We should say, therefore, [that it was taught in reference to a] Roman exedra.[3]

Our Rabbis taught: A lodge,[4] an exedra, and a balcony[5] carry with them four cubits. If there are five rooms opening on to the balcony, they carry with them only four cubits between them.[6]

R. Johanan inquired of R. Jannai whether a hen-coop[7] carried with it four cubits or not. He replied: Why are the four cubits ordinarily allowed? — To provide room for a man to unload his animal. Here the fowls can clamber up the wall to get out and clamber down the wall to get in.

Raba inquired of R. Nahman: If a room is half roofed over and half unroofed, has it four cubits or not? He replied: It has not four cubits. If the roofing is over the inner part,[8] this goes without saying, since it is possible for him to go into the room and unload.[9] But even if the roofing is over the outer part, it is still possible for him to go right through and unload [under the open part].

R. Huna inquired of R. Ammi: If a man residing in one alleyway desires to open[10] a door on to another alley-way,[11] can the residents of this alley-way prevent him or not? He replied: They can prevent him. He then inquired: Are troops billeted per capita[12] or [on each one] according to the number of his doors? He replied: Per capita. It has been taught to the same effect: The dung in the courtyard is divided according to doors [belonging to each resident], billeted troops per capita.

R. Huna said: If one of the residents of an alley-way desires to fence in the space facing his door,[13] the others can prevent him, on the ground that he forces more people into their space.[14] An objection was brought [against this from the following]: 'If five [adjoining] courtyards open on an alley-way, all [the inner ones] share with the outside one[15] the use [of the part facing it], but the outside one can use that part only. The remainder [the inner three] share with the second, but the second has the use only of the part facing itself and the outside one. Thus the innermost one has sole use of the part facing itself and shares with all the others [the use of the part facing them]'?[16] — There is a difference on this point between Tannaim, as it has been taught: If one of the residents of an alley-way desires to open a door on to another alley-way, the residents of that alley-way can prevent him. If, however, he only desires to reopen there one which had been closed, they cannot prevent him. This is the opinion of Rabbi. R. Simeon b. Gamaliel says: If there are five adjoining courtyards opening on to an alleyway, they all share the use of it alike.[17] How does 'courtyards' come in here? — There is a lacuna in the text, and it should run as follows: [They cannot prevent him;] and similarly, if there are five courtyards opening on to an alley-way, all share with the outside one, but the outside one can use that part only etc. This is the opinion of Rabbi.[18] R. Simeon b. Gamaliel, however, says that if five courtyards open on to an alley-way, they all share the use of it.

The Master has stated: If he desires to reopen a door which has been closed, the residents of the other courtyard cannot prevent him. Raba said: This rule was meant to apply only if he had not taken down the posts of the closed door,[19] but if he had done so, then the residents of the courtyard can prevent him reopening it. Abaye said to Raba: It has been taught in support of your opinion:

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(1) A covered way, open at the sides.

(2) Having sides with lattice-windows, and not being suitable for unloading.

(3) Which had only sides a few feet high, not reaching to the roof, yet preventing unloading. [V. Krauss, TA. I, 367.] ,

(4) At the entrance of a large house.

(5) A verandah on an upper storey with rooms opening out on to it and reached by a ladder or stair from the courtyard.

(6) In the courtyard in front of the ladder by which the landing is reached.

(7) With a door opening into the courtyard.

(8) The part away from the courtyard.

(9) Because the unroofed part is not likely to be obstructed with furniture.

(10) Lit., 'to turn round'.

(11) Supposing his house abuts on two alley-ways.

(12) I.e., if a certain number are billeted on a courtyard, are they distributed equally among all the residents of the courtyard. (V. however Tosaf. or Maim. Yad Shekenim II, 8.]

(13) I.e., the door of a courtyard opening on to an alley-way which leads to the public thoroughfare.

(14) Lit., 'increases the way for them'. This would more naturally mean, 'makes them go roundabout way' (So Rashi). We do not, however, find anywhere that the residents of a courtyard had a right to a space in the alley-way facing their gate, as they had in the courtyard facing their door. Tosaf. therefore supposes that the reference here is to the resident of the courtyard at the extreme end of the alley-way, where it forms a cul-de-sac. Hence the rendering adopted.

(15) The one nearest the street.

(16) Why then should he not be allowed to fence in the space facing his door seeing that the others have no right to use that part?

(17) Which supports the opinion of R. Huna.

(18) And contrary to the opinion of R. Huna.

(19) Because he thus shows that it is his intention to reopen it one day.

Talmud - Mas. Baba Bathra 12a

A room that is shut up carries with it four cubits in the courtyard,[1] but if the posts [of the door] have been taken down, it does not carry with it four cubits. If a room is shut up it does not render unclean all the space around it,[2] but if the posts have been taken down it does render unclean all the space

around it [to a distance of four cubits].[3]

Rabbah b. Bar Hana said in the name of R. Johanan: If the people of a town desire to close alley-ways which afford a through way to another town, the inhabitants of the other town can prevent them. Not only is this the case if there is no other way, but even if there is another way they can prevent them, on the ground of the rule laid down by Rab Judah in the name of Rab, that a field path to which the public have established a right of way must not be damaged.

R. 'Anan said in the name of Samuel: If the residents of alleyways which open out on to the public thoroughfare desire to set up doors at the entrance, the public [who use the thoroughfares] can prevent them. It was thought that this right extended only to a distance of four cubits [from the public thoroughfare], in accordance with what R. Zera said in the name of R. Nahman, that the four cubits [in the alley.way] adjoining the public thoroughfare are on the same footing as the public thoroughfare. This, however, is not the case. For R. Nahman's rule applies only to the matter of uncleanness,[4] but here [in the case of the doors it does not apply because] sometimes people from the street are pushed in by the crowd a good distance.

A FIELD SHOULD NOT BE DIVIDED UNLESS THERE WILL BE NINE KABS' SPACE TO EACH. There is no difference [between this authority and R. Judah who said nine half-kabs]; each was speaking for his own district.[5] What is the rule in Babylon? — R. Joseph said: [There must be] a day's ploughing [for each]. What is meant by a day's ploughing? If a day's ploughing in seed time,[6] that is not a two full days' ploughing in plough time,[7] and if a day's ploughing in plough time, that is not a full day's ploughing in seed time?[8] — If you like I can say that a day's ploughing in plough time is meant, and in seed time [it takes a full day] where one ploughs twice,[9] or if you like I can say that a day's ploughing in seed time is meant and in plough time [two full days are needed] where the ground is difficult.

If a trench is divided, R. Nahman said [enough must be left for each party to provide] a day's work in watering the field. If a vineyard, the father[10] of Samuel said that three kabs' space must be left to each. It has been taught to the same effect: If a man says to another, I sell you a portion in a vineyard, Symmachus said, he must not sell him less than three kabs' space. R. Jose, however, said that this is sheer imagination.[11] What is the rule in Babylon? Raba b. Kisna said: Three rows each with twelve vines, enough for a man to hoe round in one day.

R. Abdimi from Haifa said: Since the day when the Temple was destroyed, prophecy has been taken from the prophets and given to the wise. Is then a wise man not also a prophet?[12] — What he meant was this: Although it has been taken from the prophets, it has not been taken from the wise. Amemar said: A wise man is even superior to a prophet, as it says, And a prophet has a heart of wisdom.[13] Who is compared with whom? Is not the smaller compared with the greater?[14] Abaye said: The proof [that prophecy has not been taken from the wise] is that a great man makes a statement, and the same is then reported in the name of another great man.[15] Said Raba: What is there strange in this? Perhaps both were born under one star.[16] No, said Raba; the proof is this, that a great man makes a statement and then the same is reported

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(1) If ever it comes to be divided.

(2) If there is a dead body lying there.

(3) Because then it is regarded no longer as a room but as a grave. V. Tosef. Oh. XVIII.

(4) If there is a suspicion of uncleanness in the four cubits up the alley-way it is treated as if it occurred in a public place and is deemed clean. Toh. IV, II.

(5) I.e., in the district of the first Tanna, less than nine kabs was not reckoned a field worth sowing. V. Tosaf. s.v וליא.

(6) When the ground is soft, having been already broken up by the first ploughing in the autumn.

(7) But something between one and two days, so that the ploughman will not be able to hire oxen to advantage.

(8) And therefore again the ploughman will not be able to hire oxen to advantage.
(9) Both before and after putting the seed in, and so takes a full day.
(10) Abba b. Abbu.
(11) Lit., 'words of prophesying'.
(12) I.e., were not wise men prophets also before the Temple was destroyed?
(13) Ps. XC, 12. The word נביא in the text (E.V. 'that we nay get us') is taken here in the sense of 'prophet'.
(14) And here the prophet is compared with the wise man.
(15) The first having hit upon the same idea quite independently.
(16) And this was why they hit on the same idea.

Talmud - Mas. Baba Bathra 12b

in the name of R. Akiba b. Joseph.[1] Said R. Ashi: What is there strange in this? perhaps in this matter he was born under the same star. No, said R. Ashi; the proof is that a great man makes a statement and then it is found that the same rule was a halachah communicated to Moses at Mount Sinai. But perhaps the wise man was no better than a blind man groping his way through a window?[2] — And does he not give reasons [for his opinions]?[3]

R. Johanan said: Since the Temple was destroyed, prophecy has been taken from prophets and given to fools and children. How given to fools? — The case of Mar son of R. Ashi will illustrate. He was one day standing in the manor of Mahuza[4] when he heard a certain lunatic exclaim: The man who is to be elected head of the Academy in Matha Mehasia[5] signs his name Tabiumi. He said to himself: Who among the Rabbis signs his name Tabiumi? I do. This seems to show that my lucky time has come. So he quickly went to Matha Mehasia. When he arrived, he found that the Rabbis had voted to appoint R. Aha of Difti as their head. When they heard of his arrival, they sent a couple of Rabbis to him to consult him.[6] He detained them with him, and they sent another couple of Rabbis. He detained these also, [and so it went on] until the number reached ten. When ten were assembled, he began to discourse and expound the Oral Law and the Scriptures, [having waited so long] because a public discourse[7] [on them] should not be commenced if the audience is less than ten. R. Aha[8] applied to himself the saying: If a man is in disfavour [with Heaven] he does not readily come into favour, and if a man is in favour he does not readily fall into disfavour.

How has prophecy been given to children? A case in point is that of the daughter of R. Hisda. She was sitting on her father's lap, and in front of him were sitting Raba and Rami b. Hama. He said to her: Which of them would you like? She replied: Both. Whereupon Raba said: And let me be the second.[9]

R. Abdimi from Haifa said: Before a man eats and drinks he has two hearts,[10] but after he eats and drinks he has only one heart, as it says, A hollow [nabub] man is two-hearted,[11] the word nabub occurring also in the text nebub luhoth,[12] which we translate 'hollow with planks'. R. Huna the son of R. Joshua said: If a man is a wine drinker, even though his heart[13] is closed like a virgin, the wine opens[14] it, as it is said: New wine shall make open out [yenobeb] the maids.[15]

R. Huna the son of R. Joshua said: That the portion [of a field assigned to a first-born][16] as a first-born and the portion assigned to him as an ordinary son should be contiguous goes without saying. What is the rule in the case of a brother-in-law?[17] — Abaye replied: It is just the same. Why so? Because the Divine Law calls him 'first-born'.[18] Raba, however, said: The text says: And he shall be the first-born: this means that he is regarded as a firstborn, but the assignment is not made to him as to a firstborn.[19]

A certain man bought a field adjacent to the estate of his father-in-law.[20] When they came to divide the latter's estate, he said: Give me my share next to my own field. Rabbah said: This is a case

where a man can be compelled not to act after the manner of Sodom.[21] R. Joseph strongly objected to this, on the ground that the brothers[22] can say to him: We reckon this field as specially valuable like the property of the family of Mar Marion.[23] The law follows R. Joseph.

If there are two fields[24] with two channels [running by them],[25] Rabbah said: This is a case where we can apply the rule that a man can be compelled not to act after the manner of Sodom. R. Joseph strongly objected to this on the ground that sometimes one channel may continue running while the other dries up.[26] The law follows R. Joseph. If, however, there are two fields adjoining one channel, R. Joseph says that in such a case we do compel a man not to act after the manner of Sodom.[27] Abaye objected to this strongly on the ground that the one [who has two fields in the middle] can say, I want you to have more metayers.[28] The law, however, follows R. Joseph; the increase in the number of metayers is not a matter of consequence. [

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(1) Who certainly was a much greater man, so that the explanation that they were born under one star will not hold.

(2) I.e., he hit on the idea by chance.

(3) Hence we must say that his agreement with Moses was due not to chance but to the spirit of prophecy. [This is another way of expressing the belief that revelation did not cease with the extinction of prophecy. V. Herford, Talmud and Apocrypha, 72ff.]

(4) [A town on the Tigris, South of Bagdad. On the manor of Mahuza, Rostaka di Mahuza, v. Obermeyer, op. cit., 172.]

(5) A position previously held by his father. For Matha Mehasia v. p. 10 n. 1.

(6) In connection with R. Aha's appointment (Rashi).

(7) Lit., ‘a discourse In the kallah’. [Name given to an assembly at which the Law was expounded to scholars, as well as to the half yearly assemblies of the Babylonian Academies. The word has been variously explained as ‘bride’, because of the declaration of love and loyalty to the Torah, or from ‘crown’, with reference to the round formation of the sitting accommodation or again Gr. **, = school. On further suggestions, v. Krauss, S,, in Poznanski's Memorial Volume, 142ff.]

(8) When he saw that he had lost his chance.

(9) [This was fulfilled, v. Yeb. 34b.]

(10) I.e., he finds it hard to make up his mind for one thing.

(11) Job XI, 12. E.V. ‘Vain man is void of understanding.’

(12) Ex. XXVII, 8.

(13) ‘Heart’ here seems to have the sense of ‘mind’ or ‘understanding’.

(14) Lit., ‘makes it open-eyed’.

(15) I.e., maiden-hearts, Zech. IX, 17.

(16) The first-born received a double portion in his father's inheritance, Deut. XXI, 16.

(17) A man who marries his brother's widow if he has died without offspring, and who is also entitled to a double portion. The question is, can he claim that the two portions should be contiguous without making compensation to the other brothers?

(18) Deut. XXV, 6: And it shall be that the first.born which she beareth. The Rabbis, however, translate for halachic purposes thus: ‘And he (the brother) shall be the first-born; she shall be one capable of bearing’.

(19) Lit., ‘His being is as a first-born, but his assignment is not as a firstborn’. I.e., he receives a double portion as a first-born, but cannot demand that the two portions shall be contiguous like a first-born.

(20) Whom we must suppose to have had only daughters. Rashi, however, translates ‘father’, though this is not the usual meaning of בי נשיא.

(21) I.e., not to adopt a dog-in-the-manger attitude, refusing to confer a benefit which costs him nothing.

(22) According to another reading, ‘sisters’. V. Tosaf. s.v. אמיצרא

(23) So Rashi. This, however, does some violence to the word מעלינן, and Tosaf. translates: The brothers can even say to him, We value this field like those of Mar Marion's (and demand compensation accordingly).

(24) Left by a father to two sons.

(25) And one brother demands the field adjoining land he already possesses.

(26) Hence the other brother has a right to insist on having the fields equally divided so that he should have a field by each channel; seeing that each field has a channel, the other brother stands to lose nothing by acceding to the request.

(27) And to allow the other to have two fields contiguous to one another.
(28) If his two fields are separated, he will want more men to work them, and therefore the fields of the other which are in between will be better guarded.

Talmud - Mas. Baba Bathra 13a

If there is a channel on one side and a river on the other, the field is to be divided diagonally.[1]

A HALL etc. If they are not large enough to leave sufficient space for both after division, what is the ruling? — Rab Judah says: [One partner] has the right to say [to the other], You name a price [for my share] or let me name a price [for your share].[2] R. Nahman says: He has not the right to say, You name a price or let me name a price Said Raba to R. Nahman: On your view that one has not the right to say to the other, You name a price or let me name a price, how are a first-born and another son[3] to manage to whom their father has left a slave and an unclean animal? — He replied: What I say is that they work for the one one day and the other two days.

An objection was brought [against the opinion of Rab Judah from the following]: 'If one is half a slave and half free, he works for his master one day and for himself one day alternately. This is the opinion of Beth Hillel. Beth Shammai say: You have made matters right for his master but not for him. To marry a bondwoman he is not permitted;[4] to marry a free woman he is not permitted.[5] Shall he then remain unmarried? And has not the world been created only for propagation, as it is written, He created it not a waste, he formed it to be inhabited?[6] No; what we do is to compel his master to consent to emancipate him, and we give him a bond for half his value. Beth Hillel hearing this retracted their opinion and adopted the ruling of Beth Shammai'?[7] — This is not quite a case in point, because while the slave can say, 'I will name a price,' he cannot [at any time] say to the master, 'You name a price'.[8] Come and hear: If there are two brothers, one rich and one poor, to whom their father leaves a bath and an olive press, if he made them for renting, then the brothers share the rental, but if he made them for his own use, then the rich brother can say to the poor one,

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(1) According to R. Han., we suppose the channel to be on two sides and the river on two sides, v. fig. 1. According to Rashi, however, we suppose the channel and the river to be only on each of two adjacent sides, and in order that each may have the same share both in the river and the channel, the field must be divided into eight strips, v. fig. 2.
(2) I.e., either can compel the other to sell his portion, or to buy from him, so that the whole will be in one ownership.
(3) The rule would apply equally if neither of the brothers was a first-born, (v. however Tosaf. I.v. בכור).
(4) Being an Israelite.
(5) Not being an Israelite.
(6) Isa. XLV, 18.
(7) Hag. 2a. Only because of Beth Shammai's argument, but not because they recognised any right to say, 'You name' etc.
(8) Because as an Israelite, he cannot be sold, like an ordinary slave, for more than six years.

Talmud - Mas. Baba Bathra 13b

'Take slaves and let them wash you down in the bath, take olives and make oil from them in the press'?[1] — There too, the poor brother can say to the other, 'You name a price,' but he cannot say, 'I will name a price.'[2]

Come and hear: ANYTHING WHICH IF DIVIDED WILL STILL RETAIN THE SAME NAME IS TO BE DIVIDED, AND IF NOT, A MONEY VALUE HAS TO BE ENTERED FOR IT?[3] — There is a difference on this point between Tannaim, as it has been taught: If a man says [to his partner], You take the prescribed minimum [in the courtyard][4] and I will take less,[5] his suggestion is adopted. Rabban Simeon b. Gamaliel says that his suggestion is not adopted. What are the

circumstances? If we take the statement as it stands, what is the reason of Rabban Simeon b. Gamaliel? Therefore we must suppose that there is a lacuna, and it should run thus: If one says, 'You take the standard space, and I will take less,' his suggestion is adopted. If he says, 'You name a price or I will name a price,' his suggestion is also adopted. And in regard to this Rabban Simeon remarks that his suggestion is not adopted. This, however, is not so. The statement is to be taken as it stands, and as to your question, what reason can Rabban Simeon b. Gamaliel have, it is because he can say to him [the one who offers to take less], 'If you want me to pay for the extra, I have no money, and if you want to make me a present,I prefer not,[6] since it is written, He that hateth gifts shall live.'[7] Abaye said to R. Joseph: This opinion of Rab Judah[8] really comes from Samuel, as we have learnt: SCROLLS OF THE SCRIPTURE MAY NOT BE DIVIDED EVEN IF BOTH AGREE, and on this Samuel remarked: This rule was only meant to apply if the whole is in one scroll, but if it is in two scrolls they may divide. Now if you maintain that a man has no right to say, 'You name a price or I will name a price,' why should the rule apply only to one scroll? Why not to two scrolls also?[9] — R. Shalman explained that Samuel referred to the case where both consent.[10]

Amemar said: The law is that a partner has the right to say, 'You name a price or let me name a price.' Said R. Ashi to Amemar: What do you make of the statement of R. Nahman?[11] — He replied: I don't know of it; meaning, I don't hold with it. How could he say this, seeing that Raba b. Hinnena and R. Dimi b. Hinnena were left by their father two bond-women, one of whom knew how to bake and cook and the other to spin and weave, and they came before Raba[12] and he said to them: A partner has no right to say, 'You name a price or let me name a price?' — The case is different there because each of them wanted both the women. So when one said, 'You take one and I will take one', this was not the same as, 'You name a price or let me name a price.'[13] But what of a copy of the Scriptures in two scrolls, where both are required[14] and yet Samuel said: The rule that they must not be divided applies only where there is one scroll, but if there are two, they may be divided? — This has been explained by R. Shalman to refer to the case where both consent.[15] Our Rabbis taught: It is permissible to fasten the Torah,[16] the prophets, and the Hagiographa together. This is the opinion of R. Meir. R. Judah, however, says that the Torah, the prophets, and the Hagiographa should each be in a separate scroll; while the Sages say that each book should be separate. Rab Judah said: it is related that Boethus b. Zonin had the eight prophets[17] fastened together at the suggestion of R. Eleazar b. Azariah. Others, however, report that he had them each one separate. Rabbi said: On one occasion a copy of the Torah, the prophets, and the Hagiographa all bound up together was brought before us, and we declared them fit and proper.

Between each book of the Torah there should be left a space of four lines, and so between one Prophet and the next. In the twelve Minor Prophets, however, the space should only be three lines.[18] If, however, the scribe finishes one book at the bottom [of a column], he should commence the next at the top [of the next].[19] Our Rabbis taught: If a man desires to fasten the Torah, the Prophets and the Hagiographa together, he may do so. At the beginning he should leave an empty space sufficient for winding round the cylinder, and at the end an empty space sufficient for winding round the whole circumference [of the scroll].[20] If he finishes a section at the bottom [of one column], he commences the next at the top [of the next],

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(1) Infra 172a.

(2) Because he himself has no money with which he might pay it. Hence this too is no proof that one partner has no right to say to the other, 'You name' etc.

(3) And an equivalent has to be allowed by the one who obtains it. Hence a partner has the right to say, 'You name' etc.

(4) I.e., four cub its.

(5) Supposing the courtyard is too small to allow four cubits to each.

(6) But R. Simeon may still agree that he can say. 'You name a price etc.'

(7) Prov. XV, 27.

(8) That one has a right to say, 'You name a price etc.'

(9) Presumably the two scrolls are not equal in value, and if so how can one force the other to divide unless he can say to him, 'You name a price (for the extra value) or let me name it.'
(10) I.e., the words of the Mishnah, 'even though both agree' refer to the case where there is only one scroll, not where there are two.
(11) Who said there is no such right.
(12) To decide whether one could force the other to divide them, the one who received the more valuable one giving compensation.
(13) Which properly means, 'You buy my portion from me or let me buy yours from you.'
(14) One being deficient without the other.
(15) Which shows that the principle, 'You name' etc., extends even to such cases.
(16) The Pentateuch.
(17) According to the Rabbinical classification, these are Joshua, Judges, Samuel, Kings, Isaiah, Jeremiah, Ezekiel and the twelve Minor Prophets.
(18) Since all these only form one book.
(19) And there is no need to leave a space of four lines.
(20) When it is rolled up.

Talmud - Mas. Baba Bathra 14a

and if he wants to divide he may do so. What is the meaning [of these last words]? — What it means is, Because if he wants to divide he may do so.[1]

A contradiction was pointed out [between this rule and the following]: At the beginning of the book and the end there must be sufficient empty space to roll round. To roll round what? If to roll round the cylinder, this contradicts what was said about the circumference![2] If to roll round the circumference, this contradicts what was said about the cylinder![3] — R. Nahman b. Isaac answered: The statement applies in both ways.[4] R. Ashi, however, replied that this statement refers only to a Scroll of the Law,[5] as it has been taught: Other books are rolled up from the beginning to the end,[6] but the Scroll of the Law closes at its middle, there being a cylinder at each end. R. Eliezer son of R. Zadok said: This is how the scribes in Jerusalem used to make their scrolls.

Our Rabbis taught: A scroll of the Law should be such that its length does not exceed its circumference nor Its circumference its length,[7] Rabbi was asked what should be the size of a scroll of the Law.[8] He replied: With thick parchment, six handbreadths, with thin parchment[9] I do not know. R. Huna wrote seventy scrolls of the Law and hit the exact measurement with only one. R. Aha b. Jacob wrote one on calf's skin, and hit it exactly. The Rabbis looked at him [enviously] and he died. The Rabbis said to R. Hamnuna: R. Ammi wrote four hundred scrolls of the Law. He said to them: Perhaps he copied out the verse, Moses commanded us a law.[10] Raba [similarly] said to R. Zera: R. Jannai planted four hundred vineyards, and he answered: Perhaps each consisted of two and two vines facing and one as a tail.[11]

An objection was brought [against the statement regarding the size of a scroll from the following]: The ark which Moses made was two cubits and a half in length, a cubit and a half in breadth, and a cubit and a half in height, the cubit being six handbreadths. The tablets were six handbreadths in length, six in breadth and three in thickness. They were placed lengthwise in the ark.[12] Now how much of the length of the ark was taken up by the tablets? Twelve handbreadths. Three therefore were left. Take away one handbreadth, a half for each side of the ark,[13] and there were left two handbreadths, and in these the scroll of the Law was deposited. [That a scroll was in the ark we know because] it says, There was nothing in the ark save the two tables of stone which Moses put there.[14] Now in the words 'nothing' and 'save' we have a limitation following a limitation, and the purpose of a limitation following a limitation is to intimate the presence of something which is not mentioned, in this case the scroll of the Law which was deposited in the ark. You have accounted for

the length of the ark, now account for its breadth. How much of the [breadth of the] ark do the tables take up? Six handbreadths. Three therefore are left. Take away one, half for [the thickness of] each side, and two are left, so as to allow the scroll to be put in and taken out without squeezing. This is the opinion of R. Meir. R. Judah says that the cubit of the ark had only five handbreadths . The tables were six handbreadths in length, six in breadth and three in thickness, and were deposited lengthwise in the ark. How much did they take up of the ark? Twelve handbreadths. There was thus left half a handbreadth, a finger's breadth[15] for each side. You have accounted for the length of the ark, now go and account for its breadth. How much of the [breadth of the] ark was taken up by the tablets? Six handbreadths. There were thus left a handbreadth and a half. Take away from them half a handbreadth, a finger's breadth for each side, and there will be left a handbreadth. Here were deposited the columns[16] mentioned in the verse, King Solomon made himself a palanquin of the wood of Lebanon, he made the pillars thereof of silver, the bottom there of of gold, the seat of purple, etc.[17] At the side of the ark was placed the coffer in which the Philistines sent a present to the God of Israel, as it says, And put the jewels of gold which ye return him for a guilt offering in a coffer by the side thereof, and send it away that it may go,[18] and on this was placed the scroll of the Law, as it says, Take this book of the law, and put it by the side of the ark of the covenant of the Lord;[19] It was placed by the side of the ark and not in it. What then do I make of the words, There was nought in the ark save?[20] This intimates that

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(1) He should therefore take care that in case he decides to divide, one of the scrolls does not commence with an empty space of four lines. Tosaf. points out that this seems to contradict the rule given above, that a scroll should not be divided, and explains that this applies only to a division between two owners.

(2) Which would require a much larger piece at the end.

(3) Which would require much less at the beginning.

(4) I.e., enough for the stick at the beginning and the circumference at the end.

(5) Which has two cylinders.

(6) Having only one cylinder.

(7) When rolled up.

(8) I.e., what should be its length so that when the text had been completed in script of ordinary size the length should be equal to the circumference.

(9) ‘Split parchment’.

(10) Deut. XXXIII, 4. Life would not be long enough for writing four hundred complete scrolls.

(11) V. Sotah 43a.

(12) I.e., one next to the other along the length of the ark.

(13) Viz., for the thickness.

(14) I Kings VIII, 9.

(15) One handbreadth = 4 finger-breadths.

(16) Two silver sticks like the sticks of a scroll placed on each side of the tables.

(17) Cant. III, 9,10.

(18) I Sam. VI, 8.

(19) Deut. XXXI, 26.

(20) I.e., the double limitation.

Talmud - Mas. Baba Bathra 14b

the fragments of the tables[1] were [also] deposited in the ark. Now if we assume that the circumference of the scroll was six handbreadths, — let us see: a circumference of three handbreadths means a width of one.[2] Since then the scroll closed in the middle, the space between the two cylinders must have been over and above the two handbreadths. How did this get in to the two handbreadths?[3] — The scroll read in the Temple Court[4] was rolled round one cylinder. Even so, how could two handbreadths get into exactly two? R. Ashi replied: The scroll was rolled together up to a certain point [and placed in the ark], and then the remainder was rolled up on top.

If we accept R. Judah's theory, where was the scroll placed before the coffer came? — A ledge projected from the ark, and on this the scroll was placed. What does R. Meir make of the words, At the side of the ark? — This is to indicate that the scroll is to be placed at the side of the tables and not between them; but even so, it was in the ark, only at the side.

According to R. Meir, where were the [silver] sticks placed?[5] — Outside. And whence does R. Meir learn that the fragments of the [first] tables were deposited in the ark?[6] — From the same source as R. Huna, who said: What is the meaning of the verse, Which is called by the Name, even the name of the Lord of Hosts that sitteth upon the Cherubim?[7] [The repetition of the word 'name'] teaches that the tables and the fragments of the tables were deposited in the ark. And, what does R. Judah make of these words? — He requires them for the lesson enunciated by R. Johanan, who 'said in the name of R. Simeon b. Yohai: This teaches us that the Name [of four letters] and all the subsidiary names [of God] were deposited in the ark. And does not R. Meir also require the verse for this lesson? — Certainly he does. Whence then does he learn that the fragments of the first tables were deposited in the ark? He learns it from the exposition reported [also] by R. Joseph. For R. Joseph learned: Which thou brakest and thou shalt put them:[8] [the juxtaposition of these words] teaches us that both the tablets and the fragments of the tablets were deposited in the ark. And what does R. Judah make of this verse? — He requires it for the lesson enunciated by Resh Lakish, who said: Which thou brakest: God said to Moses, Thou hast done well[9] to break.[10]

Our Rabbis taught: The order of the Prophets is, Joshua, Judges, Samuel, Kings, Jeremiah, Ezekiel, Isaiah, and the Twelve Minor Prophets. Let us examine this. Hosea came first, as it is written, God spake first to Hosea.[11] But did God speak first to Hosea? Were there not many prophets between Moses and Hosea? R. Johanan, however, has explained that [what It means is that] he was the first of the four prophets who prophesied at that period,[12] namely, Hosea, Isaiah, Amos and Micah. Should not then Hosea come first? — Since his prophecy is written along with[13] those of Haggai, Zechariah and Malachi, and Haggai, Zechariah and Malachi came at the end of the prophets, he is reckoned with them. But why should he not be written separately and placed first? — Since his book is so small, it might be lost [if copied separately]. Let us see again. Isaiah was prior to Jeremiah and Ezekiel. Then why should not Isaiah be placed first? — Because the Book of Kings ends with a record of destruction and Jeremiah speaks throughout of destruction and Ezekiel commences with destruction and ends with consolation and Isaiah is full of consolation;[14] therefore we put destruction next to destruction and consolation next to consolation. The order of the Hagiographa is Ruth, the Book of Psalms, Job, Prophets, Ecclesiastes, Song of Songs, Lamentations, Daniel and the Scroll of Esther, Ezra and Chronicles.[15] Now on the view that Job lived in the days of Moses, should not the book of Job come first? — We do not begin with a record of suffering. But Ruth also is a record of suffering?[16] — It is a suffering with a sequel [of happiness], as R. Johanan said: Why was her name called Ruth? — Because there issued from her David who replenished[17] the Holy One, blessed be He, with hymns and praises.

Who wrote the Scriptures? — Moses wrote his own book and the portion of Balaam[18] and Job. Joshua wrote the book which bears his name and [the last] eight verses of the Pentateuch.[19] Samuel wrote the book which bears his name and the Book of Judges and Ruth. David wrote the Book of Psalms, including in it the work of the elders, namely, Adam, Melchizedek, Abraham, Moses, Heman, Yeduthun, Asaph,

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(1) The first tables which Moses broke.

(2) And therefore the scroll must have been two handbreadths wide.

(3) If we assume with R. Meir that there was a scroll in the ark.

(4) On Tabernacles, in accordance with Deut. XXXI, 9-13.

(5) Since there was no room for them in the ark alongside the Scroll at the base of the tables.

(6) Seeing that the verse on which R. Judah bases this is needed by him for another lesson.
(7) II Sam. VI, 2.
(8) Deut. X, 2.
(9) ישר כחך a play on אשר שברת.
(10) Although I did not tell thee. The words 'which thou brakest' can be utilised for this lesson because they are strictly speaking superfluous.
(11) Hos. I; 2.
(12) In the reigns of Uzziah, Jotham, Ahaz, and Hezekiah.
(13) I.e., copied on the same scroll.
(14) Strictly speaking, this applies only to the latter half of Isaiah, ch. XL-LXVI, though strains of consolation are interspersed throughout the first part also.
(15) With the exception of Job, the order is meant to be chronological, Ruth being ascribed to Samuel, the Psalms to David, Proverbs, Ecclesiastes and the Song of Songs to Solomon, Lamentations to Jeremiah, and Esther to the period of the Captivity (v. Rashi).
(16) As it says, 'And there was a famine in the land(Ruth I,i)
(17) רוה which R. Johanan connects with רות
(18) The parables of Balaam in Num. XXIII, XXIV.
(19) Recording the death of Moses.

Talmud - Mas. Baba Bathra 15a

and the three sons of Korah.[1] Jeremiah wrote the book which bears his name, the Book of Kings, and Lamentations. Hezekiah and his colleagues wrote (Mnemonic YMSHK)[2] Isaiah,[3] Proverbs,[4] the Song of Songs and Ecclesiastes. The Men of the Great Assembly wrote (Mnemonic KNDG)[5] Ezekiel,[6] the Twelve Minor Prophets,[7] Daniel and the Scroll of Esther. Ezra wrote the book that bears his name[8] and the genealogies of the Book of Chronicles up to his own time. This confirms the opinion of Rab, since Rab Judah has said in the name of Rab: Ezra did not leave Babylon to go up to Eretz Yisrael until he had written his own genealogy. Who then finished it [the Book of Chronicles]? — Nehemiah the son of Hachaliah.

The Master has said: Joshua wrote the book which bears his name and the last eight verses of the Pentateuch. This statement is in agreement with the authority who says that eight verses in the Torah were written by Joshua, as it has been taught: [It is written], So Moses the servant of the Lord died there.[9] Now is it possible that Moses being dead could have written the words, 'Moses died there'? The truth is, however, that up to this point Moses wrote, from this point Joshua wrote. This is the opinion of R. Judah, or, according to others, of R. Nehemiah. Said R. Simeon to him: Can [we imagine the] scroll of the Law being short of one word, and is it not written, Take this book of the Law?[10] No; what we must say is that up to this point the Holy One, blessed be He, dictated and Moses repeated and wrote, and from this point God dictated and Moses wrote with tears, as it says of another occasion, Then Baruch answered them, He pronounced all these words to me with his mouth, and I wrote them with ink in the book.[11] Which of these two authorities is followed in the rule laid down by R. Joshua b. Abba which he said in the name of R. Giddal who said it in the name of Rab: The last eight verses of the Torah must be read [in the Synagogue service] by one person alone?[12] — It follows R. Judah and not R. Simeon. I may even say, however, that it follows R. Simeon, [who would say that] since they differ [from the rest of the Torah] in one way, they differ in another.

[You say that] Joshua wrote his book. But is it not written, And Joshua son of Nun the servant of the Lord died?[13] — It was completed by Eleazar. But it is also written in it, And Eleazar the son of Aaron died?[14] — Phineas finished it. [You say that] Samuel wrote the book that bears his name. But is it not written in it, Now Samuel was dead?[15] — It was completed by Gad the seer and Nathan the prophet. [You say that] David wrote the Psalms, including work of the ten elders. Why is not Ethan

the Ezrahite also reckoned with? — Ethan the Ezrahite is Abraham. [The proof is that] it is written in the Psalms, Ethan the Ezrahite,[16] and it is written elsewhere, Who hath raised up righteousness from the East.[17]

[The passage above] reckons both Moses and Heman. But has not Rab said that Moses is Heman, [the proof being] that the name Heman is found here [in the Psalms] and it is written elsewhere [of Moses], In all my house he is faithful?[18] — There were two Hemans. You say that Moses wrote his book and the section[19] of Balaam and Job. This supports the opinion of R. Joshua b. Levi b. Lahma who said that Job was contemporary with Moses — [The proof is that] it is written here [in connection with Job], O that my words were now [efo] written,[20] and it is written elsewhere [in connection with Moses], For wherein now [efo] shall it be known.[21] But on that ground I might say that he was contemporary with Isaac, in connection with whom it is written, Who now [efo] is he that took venison?[22] Or I might say that he was contemporary with Jacob, in connection with whom it is written, If so now [efo] do this?[23] or with Joseph, in connection with whom it is written, Where [efo] they are pasturing?[24] — This cannot be maintained; [The proof that Job was contemporary with Moses is that] it is written [in continuation of the above words of Job], Would that they were inscribed in a book, and it is Moses who is called 'inscriber', as it is written, And he chose the first part for himself, for there was the lawgiver's [mehokek, lit. 'inscriber's'] portion reserved.[25] Raba said that Job was in the time of the spies. [The proof is that] it is written here [in connection with Job], There was a man in the land of Uz, Job was his name,[26] and it is written elsewhere [in connection with the spies], Whether there be wood [ez] therein.[27] Where is the parallel? In one place it is Uz, in the other EZ? — What Moses said to Israel was this: [See] if that man is there whose years are as the years of a tree and who shelters his generation like a tree.

A certain Rabbi was sitting before R. Samuel b. Nahmani and in the course of his expositions remarked, Job never was and never existed, but is only a typical figure.[28] He replied: To confute such as you the text says, There was a man in the land of Uz, Job was his name. But, he retorted, if that is so, what of the verse, The poor man had nothing save one poor ewe lamb, which he had bought and nourished up etc.[29] Is that anything but a parable? So this too is a parable. If so, said the other, why are his name and the name of his town mentioned?

R. Johanan and R. Eleazar both stated that Job was among those who returned from the [Babylonian] Exile, and that his house of study was in Tiberias. An objection [to this view] was raised from the following: 'The span of Job's life was from the time that Israel entered Egypt till they left it.' —

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(1) To Adam are ascribed the verses, Thine eyes did see mine imperfect substance etc. (Ps. CXXXIX, 16); to Melchizedek Ps. CX; to Moses, Ps. XC. Abraham is identified with Ethan the Ezrahite (Ps. LXXXIX).

(2) י = Yeshaiah (Isaiah); מ = Mishle (Proverbs); ש = Shir ha-Shirim (Song of Songs); ק =Koheleth (Ecclesiastes). The word 'wrote' here seems to have the meaning of 'edited' or 'published'.

(3) According to Rashi, Isaiah was executed by Manasseh before he could reduce his own prophecies to writing.

(4) V. Prov. XXV, 1.

(5) ק = Ezekiel; ג = Shenem 'Asar (Twelve minor prophets); ד = Daniel;ג = Megillath Esther (The Scroll of Esther).

(6) Rashi supposes that the reason why Ezekiel did not write his own book was that he lived out of Eretz Yisrael. The same reason applies to Daniel.

(7) Who apparently did not publish their prophecies themselves because they were too small.

(8) This includes Nehemiah.

(9) Deut. XXXIV, 5.

(10) Deut. XXXI, 26. And this was said by Moses before he died.

(11) Jer. XXXVI, 18.

(12) Apparently this means that it is not requisite that another person should stand by him, as in the case of the rest of the Torah. Or it may mean that these eight verses must always be read to (or by) one person only.

(13) Josh. XXIV, 29.
(14) Ibid. 33.
(15) I Sam. XXVIII, 3.
(16) Ps. LXXXIX, I.
(17) Isa. XLI, 2. The word 'ezrahi' is also taken to mean 'eastern', while 'Ethan' (strong) is regarded as equivalent to 'righteous'.
(18) The word 'heman' is also taken to mean 'faithful'.
(19) [Var. lec., מפר 'the book'.]
(20) Job XIX, 23.
(21) Ex. XXXIII, 16.
(22) Gen. XXVII, 33.
(23) Gen. XLIII, II.
(24) Ibid. XXXVII, 16.
(25) Deut. XXXIII, 21.
(26) Job 1, 1.
(27) Num. XIII, 20.
(28) To teach men the virtue of resignation.
(29) II Sam. XII, 3. This was Nathan's parable to David.

Talmud - Mas. Baba Bathra 15b

Say, As long as from the time they entered Egypt till they left it.[1] An objection was further raised[2] [from the following]: Seven prophets prophesied to the heathen, namely, Balaam and his father, Job, Eliphaz the Temanite, Bildad the Shuhite, Zophar the Naamathite, and Elihu the son of Barachel the Buzite.[3] He replied:[4] Granted as you say [that Job was one of these], was not Elihu the son of Barachel from Israel, seeing that the Scripture mentions that he was from the family of Ram?[5] Evidently [the reason why he is included] is because he prophesied to the heathen. So too Job [is included because] he prophesied to the heathen.[6] But did not all the prophets prophesy to the heathen? — Their prophecies were addressed primarily to Israel, but these addressed themselves primarily to the heathen.

An objection was raised [from the following]: There was a certain pious man among the heathen named Job, but he [thought that he had] come into this world only to receive [here] his reward, and when the Holy One, blessed be He, brought chastisements upon him, he began to curse and blaspheme, so the Holy One, blessed be He, doubled his reward in this world so as to expel him from the world to come. There is a difference on this point between Tannaim, as it has been taught: R. Eliezer says that Job was in the days 'of the judging of the judges,'[7] as it says [in the book of Job], Behold all of you together have seen it; why then are ye become altogether vain?[8] What generation is it that is altogether vain? You must say, the generation where there is a 'judging of the judges'.[9] R. Joshua b. Korhah says: Job was in the time of Ahasuerus, for it says, And in all the land were no women found so fair as the daughters of Job.[10] What was the generation in which fair women were sought out? You must say that this was the generation of Ahasuerus. But perhaps he was in the time of David [in connection with whom] it is written, So they sought for a fair damsel?[11] — In the case of David [the search was only] in all the border of Israel, in the case of Ahasuerus, in all the land. R. Nathan says that Job was in the time of the kingdom of Sheba, since it says , The Sabaeans fell on them and took them away.[12] The Sages say that he was in the time of the Chaldeans, as it says, The Chaldeans made three bands.[13] Some say that Job lived in the time of Jacob and married Dinah the daughter of Jacob. [The proof is that] it is written here [in the book of Job], Thou speakest as one of the impious women [nebaloth] speaketh,[14] and it is written in another place [in connection with Dinah], Because he had wrought folly [nebelah] it, Israel.[15] All these Tannaim agree that Job was from Israel, except those who say [that he lived in the days of Jacob]. [This must be so,] for if you suppose that [they regarded him as] a heathen, [the question would arise,] after the death of Moses

how could the Divine Presence rest upon a heathen,[16] seeing that a Master has said, Moses prayed that the Divine Presence should not rest on heathens, and God granted his request as it says, That we be separated, I and thy people, from all the people that are upon the face of the earth.[17]

R.Johanan said: The generation of Job was given up to lewdness. [The proof is that] it says here [in the book of Job], Behold all of you have seen [hazitem] it; why then are ye become altogether vain? and it is written elsewhere, Return, return, O Shulamite, return, return that we may look upon [nehezeh,] thee.[18] But may not the reference be to prophecy, as in the words, The vision [hazon] of Isaiah son of Amoz?[19] — If so, why does it say: Why are ye become altogether vain?

R.Johanan further said: What is the import of the words, And it came to pass in the days of the judging of the judges? It was a generation which judged its judges. If the judge said to a man, 'Take the splinter from between your teeth,'[20] he would retort, 'Take the beam from between your eyes.' If the judge said, 'Your silver is dross,' he would retort, 'Your liquor is mixed with water.'[21]

R.Samuel b. Nahmani said in the name of R. Jonathan: Whoever says that the malkath [queen] of Sheba was a woman is in error; the word malkath here[22] means the kingdom of Sheba.

Now there was a day when the sons of God came to present themselves before the Lord, and Satan came also among them. And the Lord said unto Satan, whence comest thou? And Satan answered etc.[23] He addressed the Holy One, blessed be He, thus: Sovereign of the Universe, I have traversed the whole world and found none so faithful as thy servant Abraham. For Thou didst say to him, Arise, walk through the land to the length and the breadth of it, for to thee I will give it,[24] and even so, when he was unable to find any place in which to bury Sarah until he bought one for four hundred shekels of silver, he did not complain against thy ways. Then the Lord said to Satan, Hast thou considered my servant Job? for' there is none like him in the earth etc.

Said R. Johanan: Greater praise is accorded to Job than to Abraham. For of Abraham it is written, For now I know that thou fearest God,[25] whereas of Job it is written, That man was perfect and upright and one that feared God and eschewed evil.[26] What is the meaning of 'eschewed evil'? — R. Abba b. Samuel said: Job was liberal with his money. Ordinarily, if a man owes half a prutah [to a workman], he spends it in a shop,[27] but Job used to make a present of it [to the workman].

And then Satan answered the Lord and said, Doth Job fear God for nought? Hast thou not made at hedge about him and about his house etc.[28] What is the meaning of the words, Thou hast blessed the work of his hands?[29] — R. Samuel b. R. Isaac said: Whoever took a prutah from Job had luck with it. What is implied by the words, His cattle is increased in the land,[30] — R. Jose b. Hanina said: The cattle of Job broke through the general rule. Normally wolves kill goats, but in the cattle of Job the goats killed the wolves. But put forth thine hand now and touch all that he hath, and he will renounce thee to thy face... And the Lord said unto Satan, Behold all that he hath is in thy power, only upon himself put not forth thine hand etc. . . . And it fell on a day when his sons and daughters were eating and drinking wine in their eldest brother's house that there came a messenger unto Job and said, The oxen were plowing etc.[31] What is meant by the words, The oxen were plowing and the asses feeding beside them?[32] — R. Johanan said: This indicates that the Holy One, blessed be He, gave to Job a taste of the

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(1) Viz. 210 years. Job's years were doubled after his sufferings and he lived on for 140 years. He must therefore have been 70 at the time. This makes a total of 210.

(2) Against the idea that Job was an Israelite.

(3) This seems to show that Job was a heathen prophet.

(4) This is omitted in some texts.

(5) Job XXXII, 2. Had he not been from Israel, his genealogy would not have been given. Or possibly 'Ram' is a name

of Abraham (Rashi).
(6) Though he was himself an Israelite.
(7) This is a literal translation of the opening words of the Book of Ruth, rendered in the E.V., 'in the days when the Judges judged.'
(8) Job XXVII, 12.
(9) By the common people, in whom the judges inspire no respect.
(10) Job XLII, is.
(11) I Kings 1,3.
(12) Job 1, 15.
(13) Ibid. 17.
(14) Ibid. 11, 10.
(15) Gen. XXXIV, 7.
(16) And all agree that Job was a prophet.
(17) Ex. XXXIII, 16. This difficulty, however, would not arise if we suppose Job to have been in the days of Jacob.
(18) Cant. VI, 13.
(19) Isa. I, I.
(20) This is the reading in 'En Yakob. In the text of the Talmud the word is 'eyes', which does not seem to make such good sense.
(21) Cf. Isa. 1, 22.
(22) 1 Kings X, 1.
(23) Job 1, 6,7.
(24) Gen. XIII, 17.
(25) Ibid. XXII, 12.
(26) Job 1, 1.
(27) Since a prutah cannot be divided, if a man owes a workman half a prutah he buys something in a shop with a prutah and gives the workman half.
(28) Job 1,9,10.
(29) Ibid.
(30) Ibid.
(31) Ibid. 11-14.
(32) Ibid. 14.

Talmud - Mas. Baba Bathra 16a

future world.[1] While he was yet speaking there came also another and said, The fire of God. . . While he was yet speaking there came also another and said, The Chaldeans made three bands . . . and fell upon the camels and have taken them away . . . While he was yet speaking there came also another and said, Thy sons and thy daughters were eating and drinking wine in their eldest brother's house, and behold there came a great wind from the wilderness and smote the four corners of the house and it fell upon the young men . . . Then Job arose and rent his mantle and shaved his head. . . and he said, Naked came I out of my mother's womb and naked shall I return thither; the Lord gave and the Lord hath taken away; blessed be the name of the Lord. In all this Job sinned not nor charged God with foolishness. Again there was a day when the sons of God came to present themselves . . . and the Lord said unto Satan, From whence comest thou? And Satan answered the Lord and said, From going to and fro in the earth etc.[2] He said: Sovereign of the Universe, I have traversed the whole earth, and have not found one like thy servant Abraham. For thou didst say to him, Arise, walk through the land in the length of it and the breadth of it, for to thee I will give it, and when he wanted to bury Sarah he could not find a place in which to bury her, and yet he did not complain against thy ways. Then the Lord said unto Satan, Hast thou considered my servant Job, for there is none like him in the earth . . . and he still holdeth fast his integrity, although thou movedst me against him to destroy him without cause.[3] Said R. Johanan: Were it not expressly stated in the Scripture, we would not dare to say it. [God is made to appear] like a man who allows himself to be persuaded against his

better judgment. A Tanna taught: [Satan] comes down to earth and seduces, then ascends to heaven and awakens wrath; permission is granted to him and he takes away the soul.

And Satan answered the Lord and said, Skin for skin, yea, all that a man hath will he give for his life. But put forth thine hand now and touch his bone and his flesh, and he will renounce thee to thy face. And the Lord said unto Satan, Behold he is in thine hand: only spare his life. So Satan went forth from the presence of the Lord and smote Job etc.[4] R. Isaac said: Satan's torment was worse than that of Job; he was like a servant who is told by his master, 'Break the cask but do not let any of the wine spill.' Resh Lakish said: Satan, the evil prompter, and the Angel of Death are all one. He is called Satan, as it is written, And Satan went forth from the presence of the Lord.[5] He is called the evil prompter:[6] [we know this because] it is written in another place, [Every imagination of the thoughts of his heart] was only evil continually,[7] and it is written here [in connection with Satan] 'Only upon himself put not forth thine hand.[8] The same is also the Angel of Death, since it says, Only spare his life,[9] which shows that Job's life belonged to him.

R. Levi said: Both Satan and Peninah had a pious purpose [in acting as adversaries]. Satan, when he saw God inclined to favour Job said, Far be it that God should forget the love of Abraham. Of Peninah it is written, And her rival provoked her sore for to make her fret.[10] When R. Aha b. Jacob gave this exposition in Papunia,[11] Satan came and kissed his feet.[12]

In all this did not Job sin with his lips.[13] Raba said: With his lips he did not sin, but he did sin within his heart. What did he say?[14] The earth is given into the hand of the wicked, he covereth the faces of the judges thereof; if it be not so, where and who is he?[15] Raba said: Job sought to turn the dish upside down.[16] Abaye said: Job was referring only to the Satan. The same difference of opinion is found between Tannaim: The earth is given into the hand of the wicked. R. Eliezer said: Job sought to turn the dish upside down. R. Joshua said to him: Job was only referring to the Satan.

Although thou knowest that I am not wicked, and there is none that can deliver out of thine hand.[17] Raba said: Job sought to exculpate the whole world.[18] He said: Sovereign of the Universe, Thou hast created the ox with cloven hoofs and thou hast created the ass with whole hoofs; thou hast created Paradise and thou hast created Gehinnom: thou hast created righteous men and thou hast created wicked men, and who can prevent thee?[19] His companions answered him: Yea, thou doest away with fear' and restrainest devotion before God.[20] If God created the evil inclination, He also created the Torah as its antidote.[21]

Raba expounded: What is meant by the verse, The blessing of him that was ready to perish came upon me, and I caused the widow's heart to sing for joy.[22] 'The blessing of him that lost[23] came upon me:' this shows that Job used to rob orphans of a field and improve it and then restore it to them. 'And I caused the widow's heart to sing for joy:' if ever there was a widow who could not find a husband, he used to associate his name with her,[24] and then someone would soon come and marry her. Oh that my vexation were but weighed, and my calamity laid ill the balances together.[25] Rab said: Dust should be put in the mouth of Job, because he makes himself the colleague of heaven.[26] Would there were an umpire between us, that he might lay his hand upon us both.[27] Rab said: Dust should be placed in the mouth of Job: is there a servant who argues with his master? I made a covenant with thine eyes; how then should I look upon a maid?[28] Rab said: Dust should be placed in the mouth of Job; he refrained from looking at other men's wives. Abraham did not even look at his own, as it is written, Behold now I know that thou art a fair woman to look upon,[29] which shows that up to then he did not know.

As the cloud is consumed and vanisheth away, so he that goeth down to Sheol shall come up no more.[30] Raba said: This shows that Job denied the resurrection of the dead. For he breaketh me with a tempest and multiplieth my wounds without cause.[31] Rabbah said: Job blasphemed with [mention

of] a tempest, and with a tempest he was answered. He blasphemed with [mention of] a tempest, as it is written, For he breaketh me as with a tempest. Job said to God: Perhaps a tempest has passed before thee, and caused thee to confuse Iyob [Job] and Oyeb [enemy]. He was answered through a tempest, as it is written, Then the Lord answered Job out of the whirlwind[32] and said, ... Gird tip now thy loins like a man, for I will demand of thee and declare thou unto me.[33] 'I have created many hairs in man, and for every hair I have created a separate groove, so that two should not suck from the same groove, for if two were to suck from the same groove they would impair the sight of a man. I do not confuse one groove with another; and shall I then confuse Iyob with Oyeb? Who hath cleft a channel for the waterflood?[34] Many drops have I created in the clouds, and for every drop a separate mould, so that two drops should not issue from the same mould, since if two drops issued from the same mould they would wash away the soil, and it would not produce fruit. I do not confuse one drop with another, and shall I confuse Iyob and Oyeb?' (How do we know that the word te'alah [channel] here means a mould? Rabbah b. Shila replied: Because it is written, And he made a trench [te'alah] as great as would contain two measures of seed.)[35] Or a way for the lightning of the thunder.[36] Many thunderclaps have I created in the clouds, and for each clap a separate path, so that two claps should not travel by the same path, since if two claps travelled by the same path they would devastate the world. I do not confuse one thunderclap with another, and shall I confuse Iyob with Oyeb? Knowest thou the time when the wild goats of the rock bring forth, or canst thou mark when the hinds do calve?[37] This wild goat is heartless towards her young. When she crouches for

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(1) R. Johanan understands the text to imply that so soon as the oxen had ploughed and the seed had been cast, the produce sprang up and the asses ate it. Similarly in the future world conception and birth will be on the same day (v. Sanh. 30b).

(2) Ibid. I, 18 — II, 2.

(3) Ibid. 3.

(4) Ibid. 4-7.

(5) Ibid. 7.

(6) Heb. Yezer Hara'.

(7) Gen. VI, 5.

(8) Job I, 12.

(9) Ibid. II, 6.

(10) I Sam. I, 6. By making Hannah fret, Peninah caused her to pray.

(11) [A place between Bagdad and Pumbeditha, Obermeyer, op. cit., p. 242.]

(12) Out of gratitude.

(13) Job II, 10.

(14) Which shows that he harboured sinful thoughts?

(15) Ibid. IX, 24.

(16) I.e., to declare all God's works worthless.

(17) Ibid. X, 7.

(18) Raba translates על דעתך: Didst thou will, I should not be wicked.

(19) As much as to say, that the wall is not free.

(20) Ibid. XV, 4.

(21) Lit., 'spices'.

(22) Ibid. XXIX, 13 .

(23) So Raba translates the word אובד.

(24) By saying that she was a relative of his, or pretending to woo her.

(25) Ibid. VI, 2.

(26) By desiring to weigh his pleas in the balance with those of God.

(27) Ibid. IX, 33.

(28) Ibid.XXXI, I.

(29) Gen.XII, 11.

(30) Job VII, 9.

(31) Ibid. IX,17.
(32) The Hebrew word is se'arah, which can also be translated ‘hair’.
(33) Ibid. XXXVIII, 1, 3.
(34) Ibid. 25.
(35) I Kings XVIII, 32.
(36) Job XXXVIII, 25.
(37) Ibid. XXXIX, 1.

Talmud - Mas. Baba Bathra 16b

delivery, she goes up to the top of a mountain so that the young shall fall down and be killed, and I prepare an eagle to catch it in his wings and set it before her, and if he were one second too soon or too late it would be killed.[1] I do not confuse one moment with another, and shall I confuse Iyob with Oyeb? Or canst thou mark when the hinds do calve? This hind has a narrow womb. When she crouches for delivery, I prepare a serpent which bites her at the opening of the womb, and she is delivered of her offspring; and were it one second too soon or too late, she would die.[2] I do not confuse one moment with another, and shall I confuse Iyob with Oyeb? Job speaketh without knowledge, and his words are without wisdom.[3] Raba said: This teaches that a man is not held responsible for what he says when in distress.[4]

Now when Job's three friends heard of all this evil which was come upon him, they came every one from his own place, Eliphaz the Temanite, and Bildad the Shuhite, and Zophar the Naamathite; and they made an appointment together to come to bemoan him and to comfort him.[5] What is the meaning of, they made an appointment together? — Rab Judah said in the name of Rab: It teaches that they all entered [the town together] through one gate, although, as it has been taught, each one lived three hundred parasangs away from the other. How did they know [of Job's trouble]? — Some say that they had crowns,[6] and some say that they had had certain trees, the distortion or withering of which was a sign to them. Raba said: This bears out the popular saying: Either a friend like the friends of Job or death.

And it came to pass, when men began to multiply [larob] on the face of the ground and daughters were born to them.[7] R. Johanan says: [the word larob indicates that] increase [rebiah] came in to the world;[8] Resh Lakish says [it indicates that] strife [meribah] came into the world. Said Resh Lakish to R. Johanan: On your view that it means that increase came into the world, why was not the number of Job's daughters doubled?[9] He replied: Though they were not doubled in number,[10] they were doubled in beauty, as it says, He also had seven sons and three daughters. And he called the name of the first Jemimah, and the name of the second Keziah, and the name of the third Keren-Happuch[11] — Jemimah, because she was like the day [yom]; Keziah, because the emitted a fragrance like cassia [keziah]; Keren-Happuch[12] because — so it was explained in the academy of R. Shila[13] — she had a complexion like the horn of a keresh.[14] This explanation was laughed at in the West,[15] [where it was pointed out that a complexion like] the horn of a keresh would be a blemish.[16] [But what it should be], said R. Hisda, [is], like garden crocus of the best kind.[17] (The word puch means pigment, as it is said, Though thou enlargest thine eyes with paint [puch].)[18]

A daughter was born to R. Simeon the son of Rabbi, and he felt disappointed. His father said to him: Increase has come to the world. Bar Kappara said to him: Your father has given you an empty consolation. The world cannot do without either males or females. Yet happy is he whose children are males, and alas for him whose children are females. The world cannot do without either a spice-seller or a tanner. Yet happy is he whose occupation is that of a spice-seller, and alas for him whose occupation is that of a tanner. On this point[19] there is a difference between Tannaim. [It is written,] The Lord had blessed Abraham in all things[20] [ba-kol].What is meant by ‘in all things’? R. Meir said: In the fact that he had no daughter; R. Judah said: In the fact that he had a daughter.

Others say that Abraham had a daughter whose name was ba-kol. R. Eliezer the Modiite said that Abraham possessed a power of reading the stars[21] for which he was much sought after by the potentates of East and West.[22] R. Simeon b. Yohai said: Abraham had a precious stone hung round his neck which brought immediate healing to any sick person who looked on it, and when Abraham our father departed from this world, the Holy One, blessed be He, suspended it from the orb of the sun. Abaye said: This bears out the popular saying, As the day advances the illness lightens. Another explanation is that Esau did not break loose so long as he was alive. Another explanation is that Ishmael repented while he was still alive. How do we know that Esau did not break loose while he was alive? Because it says, And Esau came in from the field[23] and he was faint.[24] It has been taught [in connection with this] that that was the day on which Abraham our father died, and Jacob our father made a broth of lentils to comfort his father Isaac. Why was it of lentils? — In the West they say in the name of Rabbah b. Mari: Just as the lentil has no mouth,[25] so the mourner has no mouth [for speech]. Others say: Just as the lentil is round, so mourning comes round to all the denizens of this world. What difference does it make in practice which of the two explanations we adopt? — The difference arises on the question whether we should comfort with eggs.[26]

R. Johanan said: That wicked [Esau] committed five sins on that day. He dishonoured a betrothed maiden, he committed a murder, he denied God, he denied the resurrection of the dead, and he spurned the birthright. [We know that] he dishonoured a betrothed maiden, because it is written here, And Esau came in from the field,[27] and it is written in another place [in connection with the betrothed maiden], He found her in the field.[28] [We know that] he committed murder, because it is written here [that he was] faint, and it is written in another place, Woe is me now, for my soul fainteth before the murderers.[29] [We know that] he denied God, because it is written here, What benefit is this to me, and it is written in another place, This is my God and I will make him an habitation.[30] [We know that] he denied the resurrection of the dead because he said, Behold, I am on the way to die: also that he spurned the birthright because it is written, So Esau despised his birthright. And whence do we know that Ishmael repented while Abraham was still alive? — From the discussion which took place between Rabina and R. Hama b. Buzi when they were once sitting before Raba while he was dozing. Said Rabina to R. Hama b. Buzi: Do your people really maintain that wherever the term ‘giving up the ghost’ [gewi'ah] is used in connection with the death of any person, it implies that that person died righteous? That is so, he replied. But what then of the generation of the Flood?[31] [he asked.] We only make this inference, he replied, if both, ‘giving up the ghost’ and ‘gathering in’ are mentioned. But, he rejoined, what of Ishmael, who is said both to have ‘given up the ghost’ and ‘been gathered in’?[32] At this point Raba awoke and heard them. Children, he said, this is what R. Johanan has said: Ishmael repented in the lifetime of his father. [We know this] because it says, And Isaac and Ishmael his sons buried him.[33] But perhaps the text arranges them in the order of their wisdom? — If that were so, then why in the verse, And Esau and Jacob his sons buried him[34] are they not arranged in the order of their wisdom? What we have to say is that the fact of the text placing Isaac first shows that Ishmael made way[35] for him, and from the fact that he made way for him we infer that he repented in Abraham's lifetime.

Our Rabbis taught: There were three to whom the Holy One, blessed be He, gave a foretaste

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(1) [V. Lewysohn, Zoologie des Talmuds, p. 115.]

(2) V. Lewysohn, op. cit., p. 111 .

(3) Job XXXIV, 3 5.

(4) Since it simply says ‘without knowledge’ but not ‘with wickedness’.

(5) Ibid. II, II.

(6) On which a portrait of each was engraved, and if trouble came upon any one of them, the portrait changed.

(7) Gen. VI, 1.

(8) Because girls are married earlier than boys.

(9) Like his cattle. V. Job XLII, 22.

(10) Lit., ‘in names
(11) Job XL, 13, 24.
(12) Lit., ‘horn of pigment’.
(13) [In Nehardea.]
(14) A kind of antelope.
(15) Palestine. [By this expression R. Jose b. Haninah is meant. V. San. 17b.]
(16) Because it is blackish.
(17) This is according to the reading of Rashi, *ככורכמא דרישקא. Tosaf., however, reads ככוחלא דרישקא pigment made from saffron’, which had a specially beautifying effect on the skin. In this case the name Keren-Happuch will mean, ‘the gloss of pigment’.
(18) Jer. IV, 30.
(19) Whether a daughter is a blessing or not.
(20) Gen. XXIV, 1.
(21) [A variant rendering: ‘He possessed an astrological instrument’. Current texts have ‘in his heart’ — Tosef. Kid. V, reads ‘in his hand’. V. Bacher, Agada der Tanaiten, I, 200.]
(22) Lit., ‘the potentates . . . used to attend early at his gate’.
(23) This implies that he had broken loose, v. infra.
(24) Gen. XXV, 29.
(25) I.e., not cleft, like other kinds of pulse.
(26) Which have no cleft, but are not perfectly round.
(27) Gen. XXV, 29.
(28) Deut. XXII, 27.
(29) Jer. IV, 31.
(30) Ex. XV, 2.
(31) Of which it is written, And all flesh gave up the ghost (wa-yigwa’), Gen. VII, 21.
(32) Gen. XXV, 17.
(33) Ibid. 9.
(34) Ibid. XXXV, 29.
(35) Lit., ‘made him lead’.

of the future world while they were still in this world, to wit, Abraham, Isaac, and Jacob. Abraham [we know] because it is written of him, [The Lord blessed Abraham] in all,[1] Isaac, because it is written, [And I ate] of all;[2] Jacob, because it is written, [For I have] all.[3] Three there were over whom the evil inclination[4] had no dominion, to wit Abraham, Isaac and Jacob, [as we know] because it is written in connection with them, in all, of all, all.[5] Some include also David, of whom it is written, My heart is wounded within me.[6] And the other authority? — He understands him to be referring here to his distress.

Our Rabbis taught: Six there were over whom the Angel of Death had no dominion,[7] namely, Abraham, Isaac and Jacob, Moses, Aaron and Miriam. Abraham, Isaac and Jacob we know because it is written in connection with them, in all, of all, all;[8] Moses, Aaron and Miriam because it is written in connection with them [that they died] By the mouth of the Lord.[9] But the words 'by the month of the Lord' are not used in connection with [the death of] Miriam? — R. Eleazar said: Miriam also died by a kiss, as we learn from the use of the word 'there' [in connection both with her death] and with that of Moses.[10] And why is it not said of her that [she died] by the month of the Lord? — Because such an expression would be disrespectful.[11]

Our Rabbis taught: There were seven over whom the worms had no dominion, namely, Abraham, Isaac and Jacob, Moses, Aaron and Miriam, and Benjamin son of Jacob. Abraham, Isaac and Jacob [we know] because it is written of them, 'in all, of all, all': Moses, Aaron and Miriam because it is written in connection with them, By the mouth of the Lord. Benjamin son of Jacob, because it is written in connection with him, And to Benjamin he said, The beloved of the Lord, he shall dwell thereon[12] in safety.[13] Some say that David also [is included], since it is written of him, My flesh also shall dwell [in the grave] in safety.[14] The other, however, explains this to mean that he is praying for mercy.[15]

Our Rabbis taught: Four died through the counsel of the serpent,[16] namely, Benjamin son of Jacob, Amram the father of Moses, Jesse the father of David, and Kilab the son of David. We know this only from tradition in regard to all of them save Jesse the father of David, in regard to whom it is stated distinctly in the Scripture, as it is written, And Absalom set Amasa over the host instead of Joab. Now Amasa was the son of a man whose name was Isra the Israelite, that went in to Abigal the daughter of Nahash, sister to Zeruiah Joab's mother.[17] Now was she the daughter of Nahash? Was she not the daughter of Jesse, as It is written, And their [Jesse's sons'] sisters were Zeruiah and Abigail?[18] What it means therefore is, The daughter of him who died through the counsel of the serpent [nahash].

CHAPTER II

MISHNAH. A MAN SHOULD NOT DIG A PIT [IN HIS OWN FIELD] CLOSE TO THE PIT OF HIS NEIGHBOUR,[19] NOR A DITCH NOR A CAVE NOR A WATER-CHANNEL NOR A FULLER'S POOL,[20] UNLESS HE KEEPS THEM AT LEAST THREE HANDBREADTHS FROM HIS NEIGHBOUR'S WALL[21] AND PLASTERS [THE SIDES]. A MAN SHOULD KEEP OLIVE REFUSE,[22] DUNG, SALT, LIME, AND FLINT STONES AT LEAST THREE HANDBREADTHS FROM HIS NEIGHBOUR'S WALL[23] OR PLASTER IT OVER. SEEDS, PLOUGH FURROWS, AND URINE SHOULD BE KEPT THREE HANDBREADTHS FROM THE WALL. MILL — STONES SHOULD BE KEPT THREE HANDBREADTHS AWAY RECKONING FROM THE UPPER STONE, WHICH MEANS FOUR FROM THE LOWER STONE. AN OVEN SHOULD BE KEPT THREE HANDBREADTHS RECKONING FROM THE FOOT OF THE BASE,[24] WHICH MEANS FOUR FROM THE TOP OF THE BASE.

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(1) Ibid. XXIV, 1 .
(2) Ibid. XXVII, 33.
(3) Ibid. XXXIII, 11.
(4) [On the evil inclination, v. Porter, F.C. , The Yezer Hara', A Study in the Jewish doctrine of Sin.]
(5) Which shows that they were completely righteous.
(6) Ps. CIX, 22.
(7) But they died by a 'kiss'.
(8) And therefore they did not lack this final honour.
(9) Num. XXXIII, 38; Deut. XXXIV, 5.
(10) Num. XX, I, and Deut. XXXIV, 5.
(11) If used in connection with a female.
(12) I.e., rest in the grave in reliance on that love.
(13) Deut. XXXIII, 12. E.V. 'the beloved of the Lord shall dwell in safety by him'.
(14) Ps. XVI, 9.
(15) In which case we translate, 'may my flesh dwell etc.'
(16) The counsel given by the serpent to Eve, which brought death on all mankind, and not for any sin they themselves committed. [The reference is to physical death only and is thus not to be confused with the doctrine of 'original sin' involving the condemnation of the whole human race to a death that is eternal.]
(17) II Sam. XVII, 25.
(18) I Chron. II, 16.
(19) For fear of loosening the sides. On the terms בור (pit), שיח (ditch), מערה (cave), v.B.K.V.
(20) A shallow pool for soaking and washing soiled linen.
(21) I.e., the side of the pit, v. infra.
(22) The refuse from olives which have been pressed for oil.
(23) A mud wall which might be injured by the proximity of these articles, v. infra.
(24) Ovens were fixed not on the ground but on a sort of platform narrower at the top than the bottom. According to another interpretation we should translate, 'three from the belly of the oven, which means four from the rim,' the ovens being in shape like earthenware jars swelling in the middle; v. Tosaf.

Talmud - Mas. Baba Bathra 17b

GEMARA. The Mishnah [in the first sentence] begins by speaking of the neighbour's PIT and finishes by speaking of his WALL. [How is this]? — Said Abaye [or according to others Rab Judah]: The word WALL must here be understood to mean the wall [i.e. side] of his pit. But still why does not the Mishnah say, 'but he should keep them at least three handbreadths from his neighbour's pit'?[1] — The use of the word WALL teaches us that the wall of the pit must itself be three handbreadths thick.[2] This ruling has a practical bearing on cases of sale, as it was taught: If a man says to another, 'I will sell you a pit and its walls,' the wall must be not less than three handbreadths thick.

It has been stated: If a man desires to dig a pit close up to the boundary [between his field and his neighbour's]. Abaye says he may do so and Raba says he may not do so. Now in a field where pits would naturally be dug,[3] both agree that he may not dig close up. Where they differ is in the case of a field where pits would not naturally be dug; Abaye says he may dig, because it is not naturally a field for digging pits [and therefore his neighbour is not likely to want to dig one on the other side]. while Raba says he may not dig; because his neighbour can say to him, 'Just as you have altered your mind and want to dig, so I may alter my mind and want to dig.' Others report [this argument as follows]: In the case of a field where pits would not naturally be dug, both [Abaye and Raba] agree that he may dig close up to the boundary. Where they differ is in the case of a field where pits would naturally be dug. Abaye says that in such a field the owner may dig, and would be allowed to dig even by the Rabbis who lay down that a tree must not be planted within twenty-five cubits of a pit;[4] for they only rule this because at the time of planting the pit already exists, but here when the man comes to dig the pit there is no pit on the other side. Raba on the other hand says that he may not dig,

and would not be allowed to dig even by R. Jose. who laid down that [in all circumstances] the one owner can plant within his property and the other dig within his;[4] for he only rules thus because at the time when the former plants there are as yet no roots which could damage the pit, but in this case the owner of the other field can say to the man who wants to dig the pit, 'Every stroke with the spade which you make injures my ground.'

We learnt: A MAN SHOULD NOT DIG A PIT CLOSE TO THE PIT OF HIS NEIGHBOUR. [From this it appears that] the reason [why he must not dig] is because there is another pit in existence, but if there is not, then he may dig. Now this would be in order if we accept the version [of the argument reported above] according to which Abaye and Raba agree that in a field where pits would not naturally be dug the owner may dig close up to the boundary; we may then interpret the Mishnah to speak of a field where pits would not naturally be dug.[5] If, however, we accept the version according to which Abaye and Raba differ in regard to a field where pits would not naturally be dug, then, while the Mishnah is in order according to the ruling of Abaye,[6] it presents a difficulty [does it not], according to that of Raba? — Raba could reply to you: It has already been reported in this connection that Abaye [or it may be Rab Judah] said that the word WALL in the Mishnah means 'the wall of his pit'.[7]

Others report this discussion as follows. [The Mishnah says that a man should not dig a pit close to the pit of his neighbour,] and it has been reported in this connection that Abaye [or it may be Rab Judah] said that WALL here must be explained to mean the wall [side] of his neighbour's pit. Now all will be in order if we accept the version of Abaye and Raba's argument according to which in a field where pits would naturally be dug both agree that he should not dig close to the boundary; for in this case we explain the Mishnah [also] to refer to a field where pits would naturally be dug.[8] If, however, we take the version according to which Abaye and Raba differ in regard to a field where pits would naturally be dug, while the Mishnah is in order according to the ruling of Raba, it presents a difficulty [does it not], according to that of Abaye? — Abaye might reply that the Mishnah speaks of the case where both owners want to dig at the same time.[9]

Come and hear: If the soil at the boundary is of crumbling rock[10] and the one owner wants to dig a pit on his side and the other owner on his side, the one keeps three handbreadths away from the boundary and plasters the sides of his pit, and the other does likewise?'[11] Crumbling rock is different. But how could the questioner have raised the question at all?[12] The questioner thought that the same law would apply to ordinary soil, but that it was necessary to specify the rule about crumbling rock, as otherwise I might think that, since it is crumbling [i.e. soft] rock, an even greater space was required for it. Now the Baraitha tells us [that it is not so].

Come and hear: A MAN SHOULD KEEP OLIVE REFUSE, DUNG,

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(1) We suppose the neighbour's pit to commence three handbreadths from the boundary on his side. Hence if we were to understand the word 'pit' here to mean the hollow of the pit, the other would still be able to dig right up to the boundary. We should therefore have to understand 'pit' to mean 'the side of the pit', and so there is no need to substitute the word 'wall'.

(2) Because we understand the Mishnah to mean, 'he must keep the hollow of his pit three handbreadths from the side of the other's pit', i.e., three from the boundary, which are filled by the side of his own pit. This is the explanation of Rashi, and is apparently forced. Tosaf, greatly simplifies the passage by omitting the sentence, 'But still why . . . neighbour's pit' (or, alternatively, by inserting it after 'speaking of his wall'). The explanation would then be as follows: Abaye says that he must keep his pit three handbreadths from the side of his neighbour's pit (which presumably comes up to the boundary), and we infer from this that the neighbour also must not dig his pit close up to the boundary; whereas if the word 'pit' had been used, we should not have been able to infer this.

(3) E.g., a field requiring irrigation.

(4) Lest the roots spread and injure the pit, v. infra 25a.

(5) And there is no contradiction between the Mishnah and Abaye and Raba.
(6) Who said he may dig so long as there is no pit on the other side.
(7) Which implies that, even if there is no pit on the other side, the pit itself must be kept three handbreadths from the boundary to allow space for the wall (i.e. side).
(8) V. p. 3 n. 2.
(9) For then certainly each would have to keep three handbreadths away.
(10) Lit. 'a rock that comes (to pieces) in the hands.'
(11) Tosef. B.B.I. From this I infer that even if there is no pit on the other side, the first pit has to be kept three handbreadths away, which is contrary to the opinion of Abaye.
(12) I.e., the answer being so obvious, what was his idea in asking such a question?

Talmud - Mas. Baba Bathra 18a

SALT, LIME, AND FLINT STONES AT LEAST THREE HANDBREADTHS FROM HIS NEIGHBOUR'S WALL OR PLASTER THEM OVER. The reason is that there is a wall, but if there is no wall he may bring these things close up to the boundary?[1] — No; even if there is no wall, he still may not bring them close up. What then does the mention of the 'WALL' here tell us? — It tells us that these things are injurious to a Wall.

SEEDS, PLOUGH FURROWS AND URINE SHOULD BE KEPT THREE HANDBREADTHS FROM THE WALL. The reason is that there is a wall, but if there is no wall he may bring these things close up to the boundary? — No; even if there is no wall he may not bring them close up. What then does the mention of the 'WALL here tell us? — It tells us that moist things are bad for a wall.

Come and hear: MILL-STONES SHOULD BE KEPT AT A DISTANCE OF THREE HANDBREADTHS RECKONING FROM THE UPPER STONE, WHICH MEANS FOUR FROM THE LOWER STONE. The reason is that there is a wall, and if there is no wall he may bring them close up? — No; even if there is no wall, he may not bring them close up. What then does this tell us? — It tells us that the shaking [caused by turning the millstones] is bad for the wall.

Come and hear: AN OVEN SHOULD BE KEPT AWAY THREE HANDBREADTHS RECKONING FROM THE FOOT OF THE BASE, WHICH MEANS FOUR FROM THE TOP OF THE BASE. The reason is that there is a wall, but if there is no wall he may bring it close Up? — No; even if there is no wall he may not bring it close up. What then does this tell us? — That the heat [from the oven] is bad for the wall.

Come and hear: A man may not open a bakery or a dyer's workshop under another person's storehouse[2] nor make a cowshed there.[3] The reason is that there is a storehouse there, but if there is no storehouse, he may, [may he not]?[4] — A place where persons can live[5] is different. This is indicated by the Baraitha taught in connection with this Mishnah: 'If the cowshed was there before the granary, he is permitted to keep it.'[6]

Come and hear: A man should not plant a tree nearer than four cubits to his neighbour's field. Now it has been taught in reference to this that the four cubits here mentioned are to allow space for the work of the vineyard.[7] The reason then is that there should be space for the work of the vineyard. but were it not for this he would be allowed to plant close up, [would he not,] although the tree has roots which can injure the other's field?[8] — We are dealing here with the case where there is a piece of hard rock between.[9] This is further indicated by the fact that the passage goes on: 'If there is a fence between,[10] each one can plant close up to the fence on his own side.'[11] If that is so,[12] what do you make of the next clause: 'If the roots of his tree spread into his neighbour's field, he may cut them out to a depth of three handbreadths, so that they should not impede the plough'?[11] Now if there is

hard rock between, how can the roots get there? — What the passage means is this: If there is no hard rock between and the roots spread into his neighbour's field, then he may cut them out to a depth of three handbreadths, so as not to impede the plough. Come and hear: A tree [in one man's field] must be kept twenty five cubits from a pit [in another man's field]. The reason is that there is a pit; if there is no pit, he may plant close up? — No; even if there is no pit he may not plant close up, and this statement teaches us that up to twenty-five cubits the roots are liable to spread and injure the pit. If that is so, what do you make of the next clause: 'If the tree was there already, he is not required to cut it down'? Now if he may not plant close up, how can you apply this statement?[13] — As R. papa said in another connection, 'in the case of a purchase;'[14] so here, in the case of a purchase.[15]

Come and hear: Water in which flax is steeped must be kept at a distance from vegetables. and leeks from onions, and mustard from a beehive.[16] The reason is that there are vegetables there; otherwise he may bring them close up [to the boundary]?-No; even if there are no vegetables he may not bring them close up, and what this statement teaches us is that these things are bad for one another. If that is so, what of the next clause: R. Jose declares it permissible in the case of mustard; [and it has been taught in reference to this, that the reason is][17] because the sower can say to his neighbour. 'Just as you can tell me to remove my mustard from your bees, I can tell you to remove your bees from my mustard, because they come and eat the stalks of my mustard plants'?[18]

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(1) Tosaf, asks here, how can we argue from these things to a pit, seeing that they do not injure the soil, and Raba might well allow them to be brought close up while disallowing the pit? The answer given is (a) that they also make the soil on the other side less suitable for a pit; (b) that it may be inconvenient for the man who wants to dig the pit to wait till they have been removed. The same would apply to the next three difficulties raised by the Gemara, which are all addressed to Raba.

(2) An upper storey for storing corn, wine and oil. The reason is that the heat from the bakery or the smoke from the workshop is bad for them.

(3) Because the smell is bad for the things above, v. infra 25b.

(4) Tosef. B.B. I. Notwithstanding that the owner of the upper storey might subsequently decide to turn it into a storehouse. Similarly in the case of the pit, we should think that it may be dug close up to the boundary so long as there is not a pit on the other side.

(5) Because all these places can be used for human habitation; hence we do not forbid them on account of a problematical damage which may arise from them.

(6) Whereas in the case of the lime, etc., it does not say that it is permitted to keep them there. This is taken by Raba as an indication that a cowshed, as well as similar places that can be used for human habitation (v. Tosaf.), is on a different footing from the lime, etc.

(7) To plough round it or to stand the waggon at harvest time. This applies not only to a vine but to any tree, only the passage quoted happens to speak of vines.

(8) Similarly the pit should be allowed to be dug close up to the boundary, although it may injure the land on the other side. The argument is again against Raba.

(9) Which would prevent the roots from spreading. Hence there is no analogy between this case and that of the pit.

(10) Which makes it impossible for the one working in his vineyard to trespass on the field of the other. According to another reading (which seems preferable), we should translate: 'Come and hear: If there is a fence . . . on his side.' — Here too we assume that there is hard rock between.

(11) Infra 26a.

(12) I.e., that there is hard rock between.

(13) If, on the other hand, it was planted there illegally, why should it not be cut down?

(14) V. infra.

(15) I.e., if a man planted a tree in his field and then sold half of the field, not containing the tree, and the purchaser dug a pit within 25 cubits of the tree, the original owner is not required to cut it down.

(16) Infra 25a. Rashi explains that the bees taste the mustard and then eat their honey to take away the sharpness.

(17) The bracketed part is omitted in our printed texts.

(18) And you are as liable to damage me as I am you.

Talmud - Mas. Baba Bathra 18b

Now if a man is not allowed to bring these things close up to the boundary, in what conditions could such a remark be made?[1] R. Papa answered: In the case of a purchaser.[2] But if we are speaking of a purchaser, what reason have the Rabbis for prohibiting?[3] Also, why does R. Jose permit only in the case of the mustard? Why not the water and the leeks also? — Rabina replied: The Rabbis hold that it is incumbent on the one who inflicts the damage to remove himself.[4] We may infer from this that in the opinion of R. Jose it is incumbent on the one who suffers the damage to remove himself, and if that is so, then he should permit flax — water to be placed close to vegetables?[5] — The truth is that R. Jose also holds that it is incumbent on the one who inflicts the damage to remove himself, and he argued with the Rabbis as follows: I grant you are right in the case of the flax water and the vegetables, because the former harms the latter but not vice versa, but the case is different with bees and mustard, because both are harmful to one another. What have the Rabbis to say to this?-That bees do no harm to mustard; the grains they cannot find, and, if they eat the leaves, they grow again.

But does R. Jose in fact hold that it is incumbent on the one who inflicts the damage to remove himself? Have we not learnt: 'R. Jose says: Even if the pit was there before the tree, the tree need not be cut down, because the one owner digs in his property and the other plants in his'?[6] — The truth is that R. Jose holds it to be incumbent on the one who suffers the damage to remove himself, and here he was arguing with the Rabbis on their own premises. thus: 'In my view the one who suffers the damage has to remove himself, and therefore in this case it is not necessary to remove even the flax-water from the vegetables. But on your view that the one who inflicts the damage must remove himself, I grant you are right in the case of the flax-water and the vegetables, because the former injures the latter but not vice-versa. But this does not apply to bees and mustard, where both injure one another.' To which the Rabbis can reply that bees do not injure mustard; the grains

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(1) I.e., the man who says this virtually admits that the other had a perfect right to bring his bees close up to the boundary before he sowed his mustard.

(2) I.e., after he placed flax — water or sowed mustard in his field, he sold the other half, and the purchaser sowed vegetables or put a beehive close to the boundary. But otherwise, according to Raba, the mustard and the bees would have to be removed from the boundary.

(3) Why should the seller have to remove his bees or mustard, seeing that when he placed them there he was perfectly within his rights?

(4) I.e. the article causing the damage. Hence, since the seller's property is causing the damage he must remove it, although he had a right to place it there at first. Rabbenu Tam here adopts the reading of R. Han. אלא אמר רבינא "The truth is." said Rabina. . ., Rabina's answer would then not be in support of Raba, but would involve the abandonment of all the defences made on behalf of Raba above, and an admission that, according to the Rabbis, such articles as lime, tree roots, etc. can be brought close up to the boundary so long as there is at the time nothing to injure on the other side, the only exception being the pit, because the digging of it injures the soil on the other side.

(5) And the owner of the former can say to the owner of the latter, 'It is for you to remove them if they are being injured.'

(6) Infra 25b.

Talmud - Mas. Baba Bathra 19a

they cannot find, and the leaves grow again.

NOR A FULLER'S POOL. R. Nahman said in the name of Rabba b. Abbuha: The three handbreadths mentioned here apply only to the soaking pool,[1] but the washing pool must be kept

four cubits from the wall.[2] We find this also taught [in a Baraitha]: The fuller's pool must be kept four cubits away. But did we not learn, THREE HANDBREADTHS? — This shows [that the Mishnah must be understood] as R. Nahman has explained. Some put this statement in the form of a contradiction [which is afterwards reconciled,] thus: We learnt A FULLER'S POOL MUST BE KEPT THREE HANDBREADTHS AWAY. But does not a Baraitha say four cubits? — Said R. Nahman in the name of Rabbah b. Abbuha: There is no contradiction. The Mishnah speaks of the soaking pool and the Baraitha of the washing pool. R. Hiyya the son of R. Awia added a gloss to this effect to the Mishnah itself: 'Unless he removes the edge of the soaking pool three handbreadths from the wall.'

AND PLASTER THE SIDES. The question was raised: Is the proper reading of the Mishnah 'and plaster' or 'or plaster'?-Obviously 'and plaster' is the proper reading, for if the Mishnah meant to say 'or', then the first two clauses could have been run into one.[3] But possibly ['or' is after all the right reading, and the reason why the two clauses are not combined is because] they are not in the same category. the damage in one case arising from moisture[4] and in the other from steam?[5] — Come and hear: R. Judah says. If there is crumbling rock between the two properties, each owner can dig a pit on his own side and each must keep away from the boundary three handbreadths and plaster his pit.[6] The reason is [is it not,] that the soil between is crumbling, but otherwise there is no need to plaster?[7] — No. This is the rule even if the soil is not crumbling; he still has to plaster.[8] The case of crumbling soil, however, is specified, because otherwise I might have thought that with crumbling soil a greater distance still was required. Now he teaches us [that this is not so].

OLIVE REFUSE, DUNG, SALT, LIME AND FLINT STONES SHOULD BE KEPT, etc. We have learnt in another place:[9] In what materials may food be kept warm [for the Sabbath] and in what may it not be kept warm? It may not be kept warm in olive refuse or in dung or in salt or in lime or in sand,[10] whether moist or dry. Why is it that here flint stones are included in the list and not sand, and there sand is included and not flint stones? — R. Joseph answered: Because it is not usual to keep food warm in flint stones. Said Abaye to him: And is it usual to keep food warm in woollen fleeces and strips of purple wool? And yet [these are mentioned in] a Baraitha which says: 'Food may be kept warm in woollen fleeces and strips of purple wool and fluff, but these things must not be carried on Sabbath.' No, said Abaye. The truth is that, his neighbour telleth concerning him.[11] The Mishnah here mentions flint stones, and the same rule applies to sand, and there it mentions sand and the same rule applies to flint stones. Said Raba to him: If his neighbour telleth concerning him, should not the Mishnah mention the whole list in one place and only one item in the other, allowing us to understand that the same rule applies to the rest? No, said Raba. The reason why flint stones are not mentioned in connection with Sabbath is because they are liable to crack the pot .[12] and the reason why sand is not mentioned here is because while it makes hot things hotter, it makes cold things colder.[13] But R. Oshiah included sand in his Baraitha[14] [in the list of things that have to be kept away from the boundary]? — He was speaking of things which produce moisture. Then why should our Tanna also not include it on the ground of its producing moisture? — He has mentioned specifically A DITCH.[15] Yet in spite of mentioning a ditch he also mentions A FULLER'S POOL?[16] — Both of these required to be specified. For if he had mentioned only a ditch. I should have said that this was because it was a fixture, but I should not have included a fuller's pool which is not a fixture.[17] And if he had mentioned a fuller's pool. I should have said that this was because its waters are stagnant. but I should not have included a ditch [which has running water]. Hence both were necessary.

SEEDS AND PLOUGH FURROWS ARE KEPT AWAY etc. Cannot seeds be inferred from plough furrows? — Seeds can be dropped without ploughing. Cannot plough furrows be inferred from seeds?[18] Ploughing can be done for trees.[19] Cannot both be inferred from water?[20] — The Tanna is speaking of Eretz Yisrael, of which it is written, it drinketh water of the rain of heaven.[21] Our Mishnah would imply that seeds

(1) A pool in which the dirty linen was soaked two or three days before washing.

(2) Because of the splashing.

(3) Viz., the clause about the pit. etc., and the clause about the olive refuse, etc., where we have 'or cement', the damage there being too slight to require both plastering and removal to a distance, v. Tosaf. 17a. וסד

(4) From the water in the pit. etc.

(5) From the olive refuse, etc.

(6) Supra 17b.

(7) And we therefore read in the Mishnah, 'or plaster'.

(8) And we therefore read, 'and plaster'.

(9) Shab. 47b.

(10) All things which give of a steam.

(11) Job XXXVI 33; 'v': E. V. 'noise' is rendered here 'friend', companion'; i.e. one passage elucidates the other.

(12) Or 'make rusty'. They are therefore not used at all, whereas purple wool is used sometimes.

(13) And therefore does not injure a wall.

(14) The Tosefta of R. Oshiah.

(15) And this can include all things that give off moisture.

(16) And therefore he should specify (moist) sand as well.

(17) Since the fuller may abandon it after a time.

(18) Because ploughing is only for the sake of sowing.

(19) Ploughing the ground under trees was supposed to improve them.

(20) Trees and seeds require watering; hence their prohibition could have been inferred from that of moisture.

(21) Deut. XI, 21. And therefore seeds are sown and trees planted in fields where there is no irrigation; hence their prohibition had to be mentioned separately.

spread their roots; how is it then that we have learnt. 'If a man bends over the bough of a vine and plants it in the earth, if there are not three handbreadths of earth over it he must not sow seed on it'[1] and to this a gloss was added in a Baraitha 'but he may sow all round it'?[2] R. Hagga answered in the name of R. Jose: The reason here [in the case of the wall] is because the seeds break up the soil and bring up loose earth [and not because they spread].

AND URINE MUST BE REMOVED THREE HANDBREADTHS etc. Rabbah b. Bar Hana said: It is permissible for a man to make water on the side of another man's wall, as it is written, And I will cut off from Ahab one that pisseth against the wall and him that is shut up and him that is left at large in Israel.[3] But did we not learn, URINE MUST BE KEPT THREE HANDBREADTHS FROM THE WALL? — This refers to slop water. Come and hear: A man should not make water on the side of another man's wall, but should keep three handbreadths away. This is the rule for a wall of brick, but if the wall is of stone. he need keep away only so far as not to do any damage. How much is this? A handbreadth. If the wall is of hard stone, it is permitted.[4] Does not this confute the dictum of Rabbah b. Bar Hana? — It does. But Rabba b. Bar Hana based himself on the Scripture? — The meaning of the verse is this: 'Even a creature whose way is to piss against a wall I will not leave him. And what is this? A dog.'[5] R. Tobi b. Kisna said in the name of Samuel: A thin wafer does not narrow a window space.[6] Why a thin one? The same can be said even of a thick one? — The Rabbi gave an extreme instance. It goes without saying in the case of a thick cake that since it is fit for food the owner does not mentally ignore its existence, [and therefore it does not narrow the window space]; but with a thin one, since it soon becomes uneatable,[7] I might think that he does ignore its existence. Therefore R. Tobi tells us [that even a thin cake does not narrow the window space]. Cannot this be derived from the fact that a wafer is a thing which is capable of becoming [ritually] unclean, and the rule is that anything which is capable of becoming ritually unclean cannot form a partition to prevent the passage of uncleanness?[8] — We assume the wafer in this case to have been

kneaded with fruit juice.[9]

An objection [to the rule as stated above] was raised: If a basket full of straw or a jar full of dry figs is placed in a window space, then we decide as follows. If when the basket and the jar are taken away the straw and the figs can stand by themselves, then they form a partition, but if not, they do not.[10] Now straw is fit for the food of animals?[11] — We speak here of straw which has become mouldy. But it is fit for making clay? — We speak of straw which has thorns in it. But it is fit for fuel? — We speak of damp straw. Even so it can be used on a big fire? — A big fire is something uncommon. But figs are fit to eat?[12] — Samuel replied: We speak of figs which have bred worms. (So Rabbah b. Abbuha also explained: We speak of figs which have bred worms.) How are we to picture this jar? If its mouth faces outwards,[13]

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(1) Kil. VII, 1.

(2) Which shows that the roots do not spread, otherwise they would form kilayim (v. Deut. XXII, 9).

(3) I Kings XXI, 21.

(4) Tosef. B.B. 1.

(5) This section seems to be an interpolation, having no connection with the subject in hand.

(6) If a dead body is in a room between which and an adjoining room there is an opening of a handbreadth square or more, the uncleanness spreads to the adjoining room unless the opening is reduced to the dimension of less than a handbreadth square by means of something which is not useful for any other purpose.

(7) Because it soon becomes mouldy through contact with the wall.

(8) Hence there would appear to be no point in stating the rule.

(9) And such a wafer is not subject to uncleanness like one kneaded with water, wine, or oil.

(10) Oh. VI. 2.

(11) And yet it is allowed to form a partition.

(12) And yet they are allowed to form a partition.

(13) I.e., towards the second room, with no dead body in it.

Talmud - Mas. Baba Bathra 20a

it forms itself a partition, because an earthenware vessel does not communicate uncleanness from its outside? —[1] We suppose therefore that its mouth is turned inwards.[2] Or if you like I can say that its mouth is turned outwards, and here we are speaking of a jar of metal.[3] A [further] objection was raised [against the rule from the following]: Grass which has been plucked up and placed in the window or which has grown there of itself, rags less than three-by-three handbreadths,[4] a limb or flesh hanging from an animal, a bird nesting in the window, a non-Jew sitting in the window or a child born at the eighth month which has been placed there, salt, an earthenware vessel, or a scroll of the Law-all these narrow the window space.[5] On the other hand, snow, hail, ice, hoar frost and water do not narrow the window space.[6] Now 'grass' is food for cattle?[7] — We speak here of poisonous grass.[8] 'Or which has grown there' of itself — will it not be removed as injurious to the wall?[9] — Rabbah said: We speak here of the wall of a ruin. R. papa said: The rule applies even to the wall of an inhabited place. where the grass springs up from more than three handbreadths distance from the window.[10] 'Rags' are useful for mending clothes? — We speak of thick rags. These are useful for a blood-letter?[11] — We speak of sacking. If the Baraitha speaks of sacking, it should say 'less than four by four,'[12] not 'three by three'? — It means, rough like sacking. 'A limb or flesh hanging from an animal.' Will not the animal go away? — We suppose it to be tied. But it can be killed [for food]? — We suppose it to be an unclean animal. In that case it can be sold to a non-Jew? — We suppose it to be too scraggy. In that case he can cut off the limb and throw it to the dogs? — As this would cause pain to a living creature, he would not do so. 'A bird-nesting in the window' — will it not fly away? — We suppose it to be tied. Then he will kill it [for food]? — We suppose it to be unclean. Then he will sell it to a non — Jew? — We suppose it to be a kallanitha.[13] Then he will give it to a child? — It will scratch. A kallanitha does not scratch? — We mean, as scraggy as a kallanitha. 'A

non-Jew[14] sitting in the window' — will he not get up and go? — We suppose him to be tied there. Then some one will come and untie him? — We suppose him to be leprous. Another leper will come and loosen him? — We suppose he is a prisoner of the Government. Or 'a child born in the eighth month[15] placed in the window.' Will not its mother come and lift it up? — We assume it is on the Sabbath, [when she may not lift him], as it was taught: A child born at eight months is on a par with a stone and may not be carried on Sabbath, but his mother may bend over him and give him suck for the sake of her health.[16] 'Salt' is useful? — We speak of bitter salt. This is useful for preparing skins [for tanning]? — We suppose there are thorns in it. But since it is injurious to the wall it will be taken away? — We suppose it to be resting on a piece of earthenware. But this itself will form a partition? —

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(1) I.e., it does not communicate uncleanness from the room where the dead body is to the adjoining room, and therefore it should form a partition.

(2) Towards the room where the dead body is. and through its mouth it communicates uncleanness to the adjoining room.

(3) Which is liable to communicate uncleanness from its outside as well as inside.

(4) I.e., too small to be themselves capable of receiving uncleanness.

(5) And so can serve to prevent the uncleanness from penetrating into the next room.

(6) Tosef. Oh. XIV.

(7) Why then should it be reckoned as narrowing the window space?

(8) Heb. Afrazta. St. John's wort.

(9) And since it is liable to be removed at any moment, we should count it as non-existent.

(10) In which case it is not injurious to the wall and is not likely to be removed.

(11) For staunching the blood or wiping away stains.

(12) Because for the purposes of being subject to uncleanness, the minimum size of sacking is four handbreadths by four, not three by three as in the case of cloth.

(13) An unknown bird, which obviously must have been very scraggy.

(14) A non-Jew is not subject to uncleanness.

(15) A child born at eight months is not considered viable and thus is not subject to uncleanness.

(16) Lit. 'danger', arising from an undue pressure of milk in her breasts.

Talmud - Mas. Baba Bathra 20b

We speak of a piece which has no size to speak of, [and may even be carried on Sabbath]. as we have learnt: A piece of earthenware [which must not be carried on Sabbath] must be big enough to put between one window post and another.[1] 'An earthenware vessel' is it not useful? — We suppose it to be dirty. It is still useful for a blood-letter [to collect the blood]? — We suppose it has a hole in it. 'A scroll of the Law' can serve for reading the Law? — We suppose the scroll to be worn out.[2] Then it ought to be stored away?[3] — That is the place where it is stored away.

Rab said: A partition may be made with anything save salt[4] and grease.[5] Samuel said: Even with salt. R. papa said: There is no conflict between them [Rab and Samuel] — One speaks of salt of Sodom and the other of salt of Istria.[6] Seeing. however, that Rabbah has said that a man may set up two piles of salt and place a beam over them [to make an alley-way],[7] because the salt keeps the beam in place and the beam keeps the salt in place, even the salt of Istria may be used for this purpose, and still there is no conflict between Rab and Samuel, because one speaks of the case where there is a beam and the other of the case where there is not.

MILL-STONES SHOULD BE KEPT AT A DISTANCE OF THREE HANDBREADTHS RECKONING FROM THE UPPER STONE WHICH MEANS FOUR FROM THE LOWER STONE. What is the reason for this? Because of the shaking. But was it not taught: Millstones fixed on a base[8] must be kept three handbreadths from the casing which means four from the sieve. Now

what shaking is there there?[9] — We must say then that the reason is because of the noise.

AN OVEN MUST BE KEPT THREE HANDBREADTHS RECKONING FROM THE FOOT OF THE BASE ETC. Abaye said: We learn from this that the base of an oven projects [normally] one handbreadth This has a practical bearing on questions of sale.[10]

MISHNAH. AN OVEN SHOULD NOT BE FIXED IN A ROOM UNLESS THERE IS ABOVE IT AN EMPTY SPACE OF AT LEAST FOUR CUBITS.[11] IF IT IS FIXED IN AN UPPER CHAMBER. THERE MUST BE UNDER IT PAVED FLOORING[12] AT LEAST THREE HANDBREADTHS THICK.[13] FOR A SMALL STOVE[14] ONE HANDBREADTH IS ENOUGH. IF IN SPITE OF THESE PRECAUTIONS DAMAGE IS CAUSED, THE OWNER OF THE OVEN MUST PAY FOR THE DAMAGE. R. SIMEON, HOWEVER, SAID THAT ALL THESE LIMITATIONS WERE ONLY LAID DOWN WITH THE IDEA THAT IF AFTER OBSERVING THEM HE STILL CAUSES DAMAGE, HE IS NOT LIABLE TO PAY. A MAN SHOULD NOT OPEN A BAKERY OR A DYER'S WORKSHOP UNDER HIS NEIGHBOUR'S STOREHOUSE,[15] NOR A COWSHED. IN POINT OF FACT[16] THE RABBIS PERMITTED [A BAKERY OR DYER'S WORKSHOP TO BE OPENED] UNDER WINE,[17] BUT NOT A COWSHED.

GEMARA. [THERE MUST BE UNDER IT PAVED FLOORING AT LEAST THREE HANDBREADTHS etc.] But has it not been taught that there must be four handbreadths under an [ordinary] oven and three under a small oven? — Said Abaye: This refers to the ovens of bakers, for our large oven is like their small one.

A MAN SHOULD NOT OPEN A BAKERY etc. A Tanna taught: If the cowshed is there before the storehouse,[18] it may be opened.

Abaye raised the following questions: If [the owner of the upper room] has cleared out and swept[19] [the room] in preparation for a storehouse [but has not yet placed any produce there], what is the ruling?[20] If he has opened out a number of windows[21] there, what is the ruling? [If there is an exedra[22] under the storehouse. what is the ruling?][23] If he builds a room on the roof,[24] what is the ruling? — These questions must stand over. R. Huna the son of R. Joshua asked: If he stores there figs and pomegranates.[25] what is the ruling? — This question also must stand over. IN POINT OF FACT THE RABBIS PERMITTED IN THE CASE OF WINE etc. A Tanna taught: They declared it permissible in the case of wine because [the smoke][26] improves it, while they forbade a cowshed because [the smell] spoils it. R. Joseph said: Our wine is adversely affected even by the smoke of a lamp. R. Shesheth said: Cropped corn[27] is on the same footing as a cowshed.[28] MISHNAH. IF A MAN DESIRES TO OPEN A SHOP IN A COURTYARD, HIS NEIGHBOUR MAY PRESENT HIM ON THE GROUND THAT HE WILL NOT BE ABLE TO SLEEP THROUGH THE NOISE OF PEOPLE COMING AND GOING. A MAN, HOWEVER, MAY MAKE ARTICLES IN THE COURTYARD TO TAKE OUT AND SELL IN THE MARKET, AND HIS NEIGHBOUR CANNOT PREVENT HIM ON THE GROUND THAT HE CANNOT SLEEP FROM THE NOISE OF THE HAMMER OR OF THE MILL-STONES[29] OR OF THE CHILDREN.[30]

GEMARA. Why is the rule in the second case not the same as in the first?[31] — Abaye replied: The second clause must refer to [a man in] another courtyard. Said Raba to him: If that is so, the Mishnah should say. ‘In another courtyard it is permissible’? — No, said Raba:

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(1) Shab. 82a. It was usual to place potsherds between the posts of a window-space at the top and the bottom and to plaster them with mud so as to support the wall.

(2) And therefore it cannot be used for the synagogue reading.

(3) Because it was forbidden to destroy scrolls of the Law.

(4) Because it crumbles.

(5) Because it melts.
(6) A town in Pontus. The salt of Sodom was thick and hard. [v. Krauss op. cit. I. 499ff.]
(7) In which things may be carried on Sabbath.
(8) Lit., 'ass'.
(9) According to Rashi, such millstones are small and light, and would not cause any shaking.
(10) I.e., if an oven is sold without specification, it is understood that the base is to project a handbreadth.
(11) So that the flames should not catch the ceiling.
(12) Usually made of stone chippings. clay etc.
(13) So that it should not burn the woodwork underneath.
(14) Heb. Kirah, כירה, a portable stove with accommodation for two pots.
(15) V. supra 182.
(16) באמת On this term, v. B.M. 60a.
(17) Because smoke does not injure wine, v. infra.
(18) I.e., before the room above is actually used as a storehouse. v. p. 92 nn. 1,2.
(19) Lit., 'sprinkled' (the floor).
(20) I.e., do these preparations in themselves constitute the room a storehouse?
(21) Presumably for letting in air to keep the corn fresh.
(22) V. supra p. 55.
(23) This apparently means that a bakery is opened in the exedra under the storeroom, as it is difficult to imagine an exedra being actually built under an upper storey. The whole clause is suspect. and is omitted in some editions. V. Bah and R. Gershom; H.M. 255.
(24) Lit., an upperstorey on top of his house'. Such places were normally used for storerooms. [Maimonides (Yad. Shekenim, IX, 13) renders: 'If the owner of the bakery made an extra floor within his shop' so that the upper part could be used as a storeroom.]
(25) Does this count as a storeroom, or do we call a storeroom only one where corn, wine and oil are kept?
(26) So Rashi; but according to Tosaf. (18a, s. v. לא the heat is referred to, not the smoke.
(27) Corn cut before it has grown to any height and used for fodder.
(28) Because it emits an evil smell which injures the wine stored above.
(29) This is one among many instances of the preference shown by the Rabbis to industry over trade.
(30) This would naturally refer to the noise made by children coming to buy from the shop. and so would seem to contradict the first clause. Hence the question of the Gemara which immediately follows.
(31) V. preceding note.

Talmud - Mas. Baba Bathra 21a

the concluding words refer to school children, from the time of the regulation of Joshua b. Gamala,[1] of whom Rab Judah has told us in the name of Rab: Verily the name of that man is to be blessed, to wit Joshua ben Gamala, for but for him the Torah would have been forgotten from Israel. For at first if a child had a father, his father taught him, and if he had no father he did not learn at all. By what [verse of the Scripture] did they guide themselves? — By the verse, And ye shall teach them to your children.[2] laying the emphasis on the word 'ye'.[3] They then made an ordinance that teachers of children should be appointed in Jerusalem. By what verse did they guide themselves? — By the verse, For from Zion shall the Torah go forth.[4] Even so, however, if a child had a father, the father would take him up to Jerusalem and have him taught there, and if not, he would not go up to learn there. They therefore ordained that teachers should be appointed In each prefecture,[5] and that boys should enter school at the age of sixteen or seventeen. [They did so] and if the teacher punished them they used to rebel and leave the school. At length Joshua b. Gamala came and ordained that teachers of young children should be appointed in each district and each town. and that children should enter school at the age of six or seven.

Rab said to R. Samuel b. Shilath:[6] Before the age of six do not accept pupils; from that age you can accept them. and stuff them with Torah like an ox. Rab also said to R. Samuel b. Shilath: When

you punish a pupil, only hit him with a shoe latchet.[7] The attentive one will read [of himself]. and if one is inattentive. put him next to a diligent one.[8]

An objection was raised [from the following against the answer of Raba]: 'If a resident in a courtyard desires to become a Mohel. a blood-letter, a tanner, or a teacher of children, the other residents can prevent him?'[9] — The reference here is to a teacher of nonjewish children.[10]

Come and hear: If two persons live in a courtyard and one of them desires to become a Mohel, a blood-letter, a tanner, or a teacher of children, the other can prevent him! — Here too the reference is to a teacher of non-Jewish children.

Come and hear: If a man has a room in a courtyard which he shares with another, he must not let it either to a Mohel, or bloodletter, or a tanner, or a Jewish teacher[11] or a non-Jewish teacher! — The reference here is to the head teacher of the town [who superintends the others].[12]

Raba said: Under the ordinance of Joshua ben Gamala. children are not to be sent [every day to school] from one town to another,[13] but they can be compelled to go from one synagogue to another [in the same town]. If, however, there is a river in between, we cannot compel them. But if, again. there is a bridge, we can compel them — not, however, if it is merely a plank.

Raba further said: The number of pupils to be assigned to each teacher is twenty-five. If there are fifty, we appoint two teachers. If there are forty, we appoint an assistant, at the expense of the town.

Raba also said: If we have a teacher who gets on[14] with the children and there is another who can get on better, we do not replace the first by the second, for fear that the second when appointed will become indolent.[15] R. Dimi from Nehardea, however, held that he would exert himself still more if appointed: 'the jealousy of scribes increaseth wisdom.'[16]

Raba further said: If there are two teachers of whom one gets on fast but with mistakes and the other slowly but without mistakes, we appoint the one who gets on fast and makes mistakes, since the mistakes correct themselves in time. R. Dimi from Nehardea on the other hand said that we appoint the one who goes slowly but makes no mistakes, for once a mistake is implanted it cannot be eradicated. This can be shown from the Scripture. It is written, For Joab and all Israel remained there until he had cut off every male in Edom.[17] When Joab came before David, the latter said to him:

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(1) A High Priest in the decade before the destruction of the Temple.

(2) Deut. XI, 19.

(3) V. Tosaf.

(4) Isa. II, 3.

(5) The district under an 'Eparchas', which might be either a town or a province.

(6) V. supra p. 38.

(7) I.e., do not hurt him too much.

(8) So that he will listen and gradually become studious.

(9) Because all these have a great many visitors who cause a good deal of noise.

(10) Instruction by whom does not come within the enactment of Joshua b. Gamala.

(11) Heb. sofer סופר generally meaning 'scribe', is here taken to denote 'teacher' (Rashi). Tosaf., however, translates 'townscribe', to whom people come to have their documents written. R. Gershom renders 'hair-dresser', as though the original were ספר

(12) And who therefore has an exceptionally large number of visitors.

(13) For fear they may come to harm on the way, but any parent can compel the community of his town to appoint a teacher.

(14) Lit., 'reads', viz., the prayers or the Scripture.

(15) Having no competitor to fear.
(16) I.e., the jealousy of the one who has been replaced will be a stimulus to the other not to disgrace himself.
(17) 1 Kings XI, 16.

Talmud - Mas. Baba Bathra 21b

Why have you acted thus [i.e. killed only the males]? He replied: Because it is written, Thou shalt blot out the males [zekar] of Amalek.[1] Said David: But we read, the remembrance [zeker][2] of Amalek? He replied: I was taught to read zekar.[3] He [Joab] then went to his teacher and asked: How didst thou teach me to read? He replied: Zeker. Thereupon he drew his sword and threatened to kill him. Why do you do this? asked the other. He replied: Because it is written, Cursed be he that doeth the work of the Lord negligently.[4] He said to him: Be satisfied that I am cursed.[5] To which Joab rejoined: [It also says]. Cursed be he that keepeth back his sword from blood.[6] According to one report he killed him; according to another, he did not kill him.

Raba further said: A teacher of young children, a vine-dresser, a [ritual] slaughterer, a blood-letter, and a town scribe are all liable to be dismissed immediately[7] [if inefficient]. The general principle is that anyone whose mistakes cannot be rectified[8] is liable to be dismissed immediately [if he makes one].

R. Huna said: If a resident of an alley sets up a handmill and another resident of the alley wants to set up one next to him, the first has the right to stop him, because he can say to him, 'You are interfering with my livelihood.' May we say that this view is supported by the following: 'Fishing nets must be kept away from [the hiding-place of] a fish [which has been spotted by another fisherman] the full length of the fish's swim.' And how much is this? Rabbah son of R. Huna says: A parasang?' — Fishes are different, because they look about [for food].[9]

Said Rabina to Raba: May we say that R. Huna adopts the same principle[10] as R. Judah? For we have learnt: R. Judah says that a shopkeeper should not give presents of parched corn and nuts to children, because he thus entices then, to come back to him. The Sages, however, allow this! — You may even say that he is in agreement with the Rabbis[11] also. For the ground on which the Rabbis allowed the shopkeeper to do this was because he can say to his rival, Just as I make presents of nuts so you can make presents of almonds;[12] but in this case they would agree that the first man can say to the other. 'You are interfering with my livelihood.'[13]

An objection was raised [against Rab Huna's ruling from the following:] 'A man may open a shop next to another man's shop or a bath next to another man's bath, and the latter cannot object. because he can say to him, I do what I like in my property and you do what you like in yours?' — On this point there is a difference of opinion among Tannaim, as appears from the following Baraitha: 'The residents of an alley can prevent one another from bringing in[14] a tailor or a tanner or a teacher or any other craftsman,[15] but one cannot prevent another[16] [from setting up in opposition].' Rabban Simeon b. Gamaliel, however, says that one may prevent another.[17]

R. Huna the son of R. Joshua said: It is quite clear to me that the resident of one town can prevent the resident of another town [from setting up in opposition in his town] not, however, if he pays taxes to that town — and that the resident of an alley cannot prevent another resident of the same alley [from setting up in opposition in his alley].[18] R. Huna the son of R. Joshua then raised the question: Can the resident of one alley prevent the resident of another [from competing with him]?[19] — This must stand over.

R. Joseph said: R. Huna agrees that a teacher cannot prevent [another teacher from setting up in the same alley], for the reason mentioned,

(1) Deut. XXV, 19.
(2) זכר-voweled=zaycher
(3) זכר voweled=z'char
(4) Jer. XLVIII. 20, The 'negligence' consisted in the fact that his teacher had allowed him when a boy to read zekar without correcting him (v. Tosaf.).
(5) Lit., 'Leave this man that he may abide in the curse.'
(6) Ibid.
(7) Lit., 'Are constantly under warning.'
(8) E.g.. a slaughterer who made the animal trefa, or a bloodletter who caused the death of his patient, or a scribe who made a mistake in a scroll of the Law.
(9) Hence the fisherman who knows where the hole is places bait within the fish's swim, and if another does this he is poaching on the preserves of the first. But this cannot be said of one who sets up an opposition mill,
(10) Viz,, that one man must not interfere with another's livelihood.
(11) I.e., the Sages just quoted.
(12) And therefore I am not interfering with your chances,
(13) And therefore must not set up next to me.
(14) I.e., from letting an apartment to.
(15) If there is already one in the court.
(16) Lit., 'his neighbour'.
(17) R. Huna is thus in agreement with R. Simeon b. Gamaliel.
(18) According to the view of the Rabbis just given.
(19) Would the Rabbis put him on the same footing as a resident of the same alley or not?

that 'the jealousy of scribes increaseth wisdom'.

R. Nahman b. Isaac said: R. Huna the son of R. Joshuah also agrees that itinerant spice-sellers cannot prevent one another from going to any given town, because, as a Master has stated, Ezra made a rule for Israel that spice-sellers should go about from town to town so that the daughters of Israel should be able to obtain finery. This, however, only means that they are at liberty to go from house to house [in the strange town], but not to settle there. If, however, the seller is a student, he may settle also, a precedent having been set by Raba in allowing R. Josiah and R. Obadiah to settle, in despite of the rule. The reason he gave was that, as they were Rabbis, they would be disturbed in their studies [if they had to return to their own town].

Certain basket-sellers brought baskets to Babylon [to sell]. The townspeople came and stopped them, so they appealed to Rabina. He said, 'They have come from outside and they can sell to the people from outside.'[1] This restriction, however, applied only to the market day, but not to other days; and even on the market day only for selling in the market, but not for going round to the houses.

Certain wool-sellers brought wool to Pum Nahara. The townspeople tried to stop them from selling it. They appealed to Rab Kahana, who said, 'They have a perfect right to stop you.' They said, 'We have money owing to us here.' 'If so.' he replied. 'you can go and sell enough to keep you till you collect your debts, and then you must go.

R. Dimi from Nehardea brought a load of figs in a boat. The Exilarch said to Raba, 'Go and see if he is a scholar, and if so, reserve the market for him.'[2] So Raba said to R. Adda b. Abba, 'Go and smell his jar.'[3] The latter accordingly went out and put to him the following question: 'If an elephant swallows an osier basket and passes it out with its excrement,is it still subject to uncleanness?'[4] He

could not give an answer. 'Are you Raba?' he asked R. Adda. The latter tapped him on his shoes and said, 'Between me and Raba there is a great difference, but at any rate I can be your teacher, and so Raba is the teacher of your teacher.' They did not reserve the market for him, and so his figs were a dead loss. He appealed to R. Joseph. saying: 'See how they have treated me.' He said to him, 'He who did not delay to avenge the wrong done to the king of Edom will not delay to avenge the wrong done to you. as it is written, Thus saith the Lord, For three transgressions of Moab, yea for four I will not turn away the punishment thereof; because he burned the bones of the king of Edom into lime.'[5] Shortly afterwards R. Adda b. Abba died. R. Joseph said: It is through me that he has been punished.[6] because I cursed him. R. Dimi from Nehardea said: It is through me that he has been punished. because he made me lose my figs. Abaye said: It is through me[7] that he has been punished. because he used to say to the students, 'Instead of gnawing bones in the school of Abaye. why do you not eat fat meat in the school of Raba?'[8] Raba said: It is through me that he has been punished, because when he went to the butcher's to buy meat he used to say to the butchers, 'Serve me before the servant of Raba, because I am above him.' R. Nahman b. Isaac said: It is through me that he has been punished. How was this? R. Nahman b. Isaac was the regular preacher [on Sabbaths]. Every time before he went to give his discourse,[9] he used to run over it with R. Adda b. Abba; and only then would he attend the Kallah. One day R. Papa and R. Huna the son of R. Joshua got hold of R. Adda b. Abba because they had not been present at the concluding discourse [of Raba on the tractate Bekhoroth],[10] and said to him: Tell us how Raba discussed the law of the 'Tithing of cattle.'[11] He then gave them a full account of Raba's discourse.[12] Meanwhile dusk had set in and R. Nahman b. Isaac was still waiting for R. Adda b. Abba. The Rabbis said to him: Come, for it is late; why do you still sit, Sir? He said:I am waiting for the bier of R. Adda b. Abba. Soon after the report came that R. Adda b. Abba was dead. The most likely opinion is that R. Nahman b. Isaac was the cause of his punishment.[13] MISHNAH. IF A MAN HAS A WALL RUNNING ALONGSIDE HIS NEIGHBOUR'S WALL, HE SHOULD NOT BRING ANOTHER WALL ALONGSIDE UNLESS HE KEEPS IT [AT LEAST] FOUR CUBITS AWAY.[14] IF THERE ARE WINDOWS [IN THE NEIGHBOUR'S WALL]. HE MUST LEAVE A CLEAR SPACE OF FOUR CUBITS WHETHER ABOVE OR BELOW OR OPPOSITE.[15]

GEMARA. [HE SHOULD NOT BRING ANOTHER WALL etc.] How came the first wall to be close up?[16] — Rab Judah said: The Mishnah must be understood as follows:

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(1) People who had come into Babylon from other towns.

(2) So that no one else should sell till he has disposed of his stock.

(3) To see whether the wine is good; i.e. test his scholarship.

(4) I.e., is it regarded as being still a basket or as excrement. (5) As if to say that he would do better to go further.

(5) Amos II, 1.

(6) By an untimely death.

(7) For the insult offered to me.

(8) Where the teaching is so much superior.

(9) Heb. kallah, v. Glos.

(10) According to another interpretation given by Rashi: 'Because they had not been present at the meeting when R. Nahman was appointed the official preacher.'

(11) Name of the last chapter of Tractate Bekhoroth.

(12) Lit., 'He said to them: Thus said Raba and thus said Raba.'

(13) According to Tosaf., each of these Rabbis lamented the fact that through him punishment had befallen R. Adda b. Abba, because of the dictum (Shab. 249). 'Whoever is the cause of punishment befalling his fellow man is not permitted within the inner circle of the Holy One, blessed be He.'

(14) The meaning of this is discussed in the Gemara which follows.

(15) The reason is given in the Gemara, infra.

(16) The point of this question apparently is that the first wall also ought to have been four cubits away.

Talmud - Mas. Baba Bathra 22b

If a man wants to build a wall alongside of his neighbour's wall, he must not do so unless he keeps it [at least] four cubits away. Raba strongly objected to this, on the ground that it says. IF A MAN [ALREADY] HAS A WALL RUNNING ALONGSIDE OF HIS NEIGHBOUR'S WALL. No, said Raba: what it means is this: If a man had a wall running alongside of his neighbour's wall at a distance of four cubits and it falls down, he must not bring another wall alongside unless he keeps it four cubits away[1] . the reason being that the treading of the earth between [by foot passengers] is good for the walls [on both sides].[2] Rab said: This Mishnah applies only to the wall of a vegetable garden,[3] but [if] the wall [is that] of a courtyard, he may bring [his wall] as close to it as he likes. R. Oshiah, however, said: It makes no difference whether it is a vegetable garden or a courtyard. he must not bring his wall closer to it than four cubits. R. Jose b. Hanina says: There is no conflict between Rab and R. Oshiah; the former speaks of [a courtyard in] an old town[4] and the latter of [one in] a new one.[5] We learnt: IF THERE ARE WINDOWS [IN THE NEIGHBOUR'S WALL] HE MUST LEAVE A CLEAR SPACE OF FOUR CUBITS, WHETHER ABOVE OR BELOW OR OPPOSITE; and in a Baraitha commenting on this it is stated that a space must be left 'above' so that he should not be able to peep into the other one's room, and 'below' so that he should not stand on tiptoe and look in, and opposite' so that he should not take away his light. The reason then [why the second wall must be kept away from the first] is that he should not take away his light. and not, as you say, that the ground between should be trodden?[6] — Here [in the Baraitha] we are dealing with a wall which runs at right angles to the first wall.

How far [must such a wall be kept away so as not to take away the other's light]?[7] — R. Yeba the father-in-law of Ashian b. Nidbak said in the name of Rab: The breadth of a window. But cannot he still look through?[8] — R. Zebid says: We presume that he makes the top of the wall slope.[9] But does not our Mishnah say. [at least] four cubits? — There is no contradiction: in the one case the wall running at right angles is on one side [only of the window].[10] in the other [there are walls at right angles] on both sides [of the window].[11] Come and hear: The wall must be kept away from the [neighbour's] roof-gutter four cubits, so as to allow room for setting a ladder.[12] The reason, it appears, is that there may be room for a ladder, but not that there may be room for treading? — Here we are dealing with an overhanging gutter,[13] where there is no need to make allowance for treading, because there is room to walk under the gutter. MISHNAH. A LADDER MUST BE KEPT AWAY FROM A PIGEON COTE FOUR CUBITS SO THAT A WEASEL SHOULD NOT BE ABLE TO SPRING [FROM THE LADDER ON TO THE COTE]. THE WALL MUST BE KEPT FOUR CUBITS FROM THE [NEIGHBOUR'S] ROOF-GUTTER SO AS TO ALLOW ROOM FOR SETTING A LADDER.[14]

GEMARA. Shall I say that the Mishnah does not concur with R. Jose. who has laid down that 'the one may dig [a pit where he likes] in his property. and the other may plant [a tree where he likes] in his property'?[15] — You may say that even R. Jose would concur with the Mishnah here. For R. Ashi has told us that 'when we were with R. Kahana, he said to us that R. Jose admitted that a man was responsible for the damage of which he is the cause.'[16] Here too, it may happen that while the man is setting the ladder the weasel is sitting in a hole close by and jumps on to it. But here he is merely the indirect cause? Said R. Tobi bar Mattanah: This is equivalent to saying that it is prohibited to cause damage indirectly, [even where the damage, if caused, need not be paid for].

R. Joseph had some small date trees

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(1) Tosaf. points out that this would imply that according to Raba the second wall must be four cubits away only if the first was also, which is incorrect.

(2) By strengthening the foundations.

(3) Because there is no treading from the inside.'

(4) Where the ground has already been well trodden.

(5) Where the ground still requires treading; hence a space must be left between the walls.

(6) And therefore if there are no windows he need not leave a space.

(7) This question has reference to the Baraitha just mentioned, where no exact measurements are mentioned.

(8) If the second wall is not considerably higher than the first.

(9) So that he cannot stand or sit on it.

(10) And therefore a small space is sufficient to let in light.

(11) And therefore a space of full four cubits is required.

(12) In case he wants to climb up to the gutter to clean it. V. next Mishnah. [This interpretation follows Rashi; for other explanations, v. H.M. Tur and Beth Joseph 154.]

(13) Which projects from the roof over the neighbouring courtyard.

(14) V. p. 113. n. 7.

(15) Whereas here the man may not place the ladder where he likes in his own property. V. infra 25b, and supra 17b.

(16) Lit., 'for his arrows', i.e., for damage resulting from an action which is in itself legitimate.

Talmud - Mas. Baba Bathra 23a

under which cuppers used to sit [and let blood], and ravens used to collect to suck up the blood, and they used to fly on to the date trees and damage them. So R. Joseph said to the cuppers. 'Take away your croakers from here.' Said Abaye to him, 'But they are only the indirect cause?' — He replied: 'R. Tobi bar Mattanah has expressly said: This is equivalent to saying that it is prohibited to cause damage indirectly.' But [R. Joseph] had given them a right [to let blood under the trees]?[1] — R. Nahman has said in the name of Rabbah b. Abbuha; There is no legal title to things causing damage.[2] But are we not told in a gloss on this statement that R. Mari says it refers [for instance] to smoke, and R. Zebid to a privy?[3] — Said R. Joseph to him, 'I am very sensitive, and these ravens are as offensive to me as smoke or a privy.'

MISHNAH. A PIGEON COTE MUST BE KEPT FIFTY CUBITS FROM A TOWN.[4] A MAN SHOULD NOT PUT UP A PIGEON COTE ON HIS OWN ESTATE UNLESS THERE IS A CLEAR SPACE OF FIFTY CUBITS ALL ROUND. R. JUDAH SAYS, THE SPACE SHOULD BE SUFFICIENT FOR THE SOWING OF FOUR KOR,[5] WHICH IS AS MUCH AS A BIRD FLIES AT A TIME. IF, HOWEVER, HE BUYS IT [FROM ANOTHER] WITH ONLY THE SPACE FOR SOWING A QUARTER OF A KAB ROUND IT,[6] HE HAS A RIGHT TO KEEP IT.

GEMARA. No more than fifty cubits? — Does not this contradict the following: 'Snares may be spread for pigeons only at a distance of thirty ris[7] from a Yishub [town or village]'?[8] — Abaye replied: pigeons cover much ground. but they eat their fill within fifty cubits of their starting point. And do they fly no further than thirty ris?[9] Has it not been taught: 'Where there are towns and villages. nets should not be spread even within a hundred miles'? — R. Joseph said: This means, where there is a succession of vineyards;[10] Raba said: It means, where there is a succession of pigeon cotes.[10] Then should not the prohibition be laid down because of the pigeon cotes themselves?[11] — If you like I can answer that they [the intermediate cotes] belong to [the man who sets the snares] himself; and if you like that they belong to heathens[12] , and if you like that they are no-one's property.

R.JUDAH SAYS THE SPACE SHOULD BE SUFFICIENT FOR THE SOWING OF FOUR ..... HE HAS A RIGHT etc. R. papa [or, according to others, R. Zebid] said: This implies that the Beth Din may plead the cause[13] of an heir and may plead the cause of a purchaser. But we have already learnt the rule about the heir in the following statement: 'He who claims [a property] qua heir has no need to plead [that his father bought the property]'?[14] — The point of R. Zebid's statement lies in the reference to the purchaser. But in regard to the purchaser also we have learnt that 'if a man buys a courtyard in which are beams and balconies projecting over the main thoroughfare, he has a legal

right to retain them'?[15] — Both statements are necessary. For if I had only the statement regarding the main thoroughfare to go by, I should say that the reason there [for allowing the right to stand] is because the courtyard had been originally drawn back from the main thoroughfare [to allow room for the projection], or that the public had waived its right[16] [to have them removed] in his favour, but this reason would not apply here [to the pigeon cote]. And if I had only the statement here, I would say that the reason is because, having only an individual to deal with, the owner obtained his consent, or that the other waived his right in his favour, but in the case of the public, who is there to consent and who is there to allow? Hence both statements are required.

HE HAS A RIGHT TO KEEP IT. But has not R. Nahman said in the name of Rabbah b. Abbuha that there is no legal title to things which cause damage? — R. Mari replied that this applies to such a thing as smoke; R. Zebid, to such a thing as a privy.[17] MISHNAH.

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(1) Either (a) by allowing them to do so for three years without protest. or (b) by selling them the ground under the trees. V. Tosaf.

(2) Cf. infra p. 116

(3) Which are both irritating and offensive.

(4) So that the pigeons should not eat the seeds of the vegetable gardens, or those spread on the roofs (Tosaf.).

(5) I.e. one Beth-Kor on each side. A Beth.Kor (space for the sowing of a kor) = 7500 square cubits.

(6) About 105 square cubits.

(7) About four miles.

(8) For fear that he may snare pigeons belonging to others. V. B.K. 79b.

(9) This question has reference to the rule about snares, not to the rule about dovecotes.

(10) So that the birds can fly from one to another.

(11) And not because of the pigeons of a town.

(12) V. B.K. Mishnah 37b. (Sonc. ed.).

(13) I.e., if a man inherits a property from his father and another man claims it, if it is proved that the father occupied it for three years, the Beth-Din can plead on behalf of the heir that the father had originally bought it from the man, whereas they would not do so for the father, if he did not put forward the plea on his own account. Similarly with a man who has bought a field which is then claimed by a third party.

(14) Because, if the father has occupied it three years. the Beth-Din assume this without his pleading it. V. infra 410.

(15) Infra 60a. Which is exactly similar to the rule laid down here, that the purchaser has a right to retain the dovecotes. Why then should both statements be made?

(16) According to Tosaf., through the 'seven headmen of the town', the boni viri, at a public meeting.

(17) V. supra p. 115. n. 1. But a pigeon cote is in a different category.

Talmud - Mas. Baba Bathra 23b

A YOUNG PIGEON WHICH IS FOUND ON THE GROUND WITHIN FIFTY CUBITS FROM A COTE BELONGS TO THE OWNER OF THE COTE; IF FOUND BEYOND FIFTY CUBITS FROM THE COTE, IT BELONGS TO THE FINDER. IF IT IS FOUND BETWEEN TWO COTES IT BELONGS TO THE ONE TO WHOSE COTE IT IS NEARER. IF IT IS EXACTLY MIDWAY, THEY MUST SHARE IT.

GEMARA. R. Hanina says: If a case can be decided one way on the ground of 'majority' and another way on the ground of 'nearness',[1] we decide on the ground of 'majority'. And although the plea of 'nearness' equally with the plea of 'majority' derives its warrant from the Scripture,[2] yet the plea of 'majority' carries greater weight.

R. Zera questioned this. Scripture tells us, And it shall come to pass that the city nearest unto the slain man . . . [shall bring a heifer]. that is to say, even though there are other towns [in the vicinity] with a larger population? — We assume that there are none. But [if 'majority' is the decisive factor]

why not take the biggest town anywhere? — Scripture speaks of a town surrounded by mountains.[3]

We learnt: A YOUNG PIGEON WHICH IS FOUND ON THE GROUND WITHIN FIFTY CUBITS OF A COTE BELONGS TO THE OWNER OF THE COTE; and this even though there may be a bigger cote in the neighbourhood? We assume that there is not. If that is so, then what of the next clause: IF FOUND BEYOND FIFTY CUBITS FROM THE COTE, IT BELONGS TO THE FINDER? Now if there are no other cotes in the neighbourhood, there can be no question that the bird comes from this one?[4] — Our Mishnah speaks [in the first clause] of a bird which can only hop. since Mar 'Ukba has laid down that a bird which can only hop does not go further than fifty cubits.[5]

R. Jeremiah raised the question: If one foot is within fifty cubits and the other beyond. how do we decide? It was for this that they turned R. Jeremiah out of the Beth Hamidrash.[6] Come and hear: IF IT IS FOUND BETWEEN TWO COTES. IT BELONGS TO THE OWNER TO WHOSE COTE IT IS NEARER: and this though one may have more birds than the other? — We are dealing here with the case where both are equal. But [if it is more than fifty cubits from each] let us say that it comes from the biggest anywhere?[7] — We are dealing here

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(1) I.e., if a thing may conceivably belong to either of two categories, one of which is the more numerous, but the other in closer proximity; v. next note.

(2) The plea of 'majority' is derived from the words אחרי רבים להטות (Ex. XXIII, 2). which the Rabbis render (for purposes of halachah), 'Incline judgment after a majority.' i.e., according to the answer to the question. To what class do most things like this belong? The plea of 'nearness' is derived from the verse, And it shall come to pass that the city which is nearest etc. (Deut. XXI. 3)' i.e., we decide according to the answer to the question. Where are the nearest examples of things of this kind? (in this case, potential murderers).

(3) So that the murderer would not naturally come to the spot from another town.

(4) Hence we cannot assume that there is no larger cote in the neighbourhood. and therefore the answer to the previous objection will not stand.

(5) Hence if it is found beyond 50 cubits it must have flown and may have come from 'the biggest anywhere', and therefore belongs to the finder.

(6) According to Rashi, because his question was regarded as foolish, but according to Tosaf., because he ventured to call in question the statement of the Rabbis that a young bird can hop only fifty cubits.

(7) And therefore belongs to the finder.

Talmud - Mas. Baba Bathra 24a

with a path between vineyards; for though [there is ground for saying that] it came from a distance. [because it is more than fifty cubits from a cote],[1] yet here, since it can only hop, it cannot have come from a distant cote, because a bird will only hop away from the cote so long as it can still see the cote on turning round, but no further.

Abaye said: We too know R. Hanina's rule[2] from the Mishnah. which says: 'If blood[3] is found in the 'anteroom'[4] and there is any doubt about its character, it is reckoned unclean, because it is presumed to be from the 'source'[4] — notwithstanding the fact that there is an 'upper chamber'[4] which is nearer. Said Raba to him: You are speaking of a case where there is 'frequency' as well as 'majority';[5] where there are both 'frequency' and 'majority' no one questions that they carry more weight than 'nearness'.

R.Hiyya taught:[6] Blood found in the 'anteroom' renders [the woman] liable [for a sin-offering] if she enters the Sanctuary,[7] and terumah must be burnt on its account.[8] Raba remarked: From this statement of R. Hiyya three lessons may be derived. One is [that where we have to choose between] 'majority' and 'nearness', we decide on the ground of 'majority'.[9] The second is that the rule of 'majority' derives its warrant from the Scripture. The third is that R. Zera was right when he laid

down that [in the case of a piece of meat] we decide on the ground of 'majority' even though the town gates are closed,[10] because the case of the woman here is analogous to the case where the town gates are closed,[11] and even so we decide on the ground of 'majority'. But was it not Raba himself who said that where 'majority' and 'frequency' were combined no one questioned that they carried more weight than 'nearness' [whereas here he says that 'majority' itself carries more weight]? — Raba retracted the objection he then made to Abaye.

It has been stated: If a barrel of wine is found floating on the river [Euphrates]. Rab says, if it is opposite a town where the majority of the inhabitants are Jews, the wine is permitted, and if opposite a town where the majority of the inhabitants are nonjews. the wine is prohibited. Samuel, however, says that even if it is found opposite a town where the majority of the inhabitants are Jews, it is prohibited, because it may be supposed to have come from Hai di-Kira.[12] May we say that the ground on which they join issue is the dictum of R. Hanina [that we follow the 'majority' in preference to 'nearness']. Samuel accepting it[13] and Rab not accepting it?[14] — No: both accept the dictum of R. Hanina. and the ground on which they join issue is this, that in the opinion of Rab. if the barrel had come from Hai di-Kira it would have been sunk or stuck in the bays[15] or shallows[16] of the river, whereas Samuel thinks that it can have been carried along by the force of the stream.

A barrel of wine [which had been stolen] was found in a vineyard which was 'uncircumcised',[17] and Rabina permitted the wine to be drunk. Shall we say it was because he held with R. Hanina?[18] -There was a different reason in that case, viz., that if the wine had been stolen from that vineyard it would not have been hidden there. This, however, applies only to wine, but [stolen] grapes might be hidden [in the same vineyard].

A number of flasks of wine were found between trunks of vines[19] [of a Jew] and Raba permitted the wine to be drunk.[20] Shall we say that he did not hold with R. Hanina?[21] — There was a different reason in that case, viz, that most

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(1) The vines having enabled it to hop further than it would otherwise be able to do.

(2) That 'majority' is the decisive factor.

(3) The reference is to a woman who finds on her body blood which may be either the blood of childbirth, and therefore clean, or the blood of an issue and therefore unclean. V. Lev. XV. 25.

(4) For an explanation of these terms. v. Niddah, ad init.

(5) I.e., although the blood might have come from the 'upper chamber' which is nearer, we yet presume it to have come from the 'source' where there is more blood and whence blood more frequently flows.

(6) Reading תני ר חייא v. Tosaf.

(7) Before due purification, because it is certainly unclean.

(8) I.e., if the woman touched the terumah in this unclean state.

(9) Since if we decided that the blood belongs to that category to which it is nearest, it would not render the woman liable to a sin-offering nor necessitate the burning of terumah.

(10) If there are ten butchers' shops in a town of which nine sell 'kosher' meat and the tenth 'trefa', then if a piece of meat is found near the one which sells 'trefa' meat we still say, on the ground of 'majority', it is 'kosher', and this (R. Zera maintains) not only if the town gates are open so that there is a possibility of it having been brought in by Jews from outside, forming a 'majority', but even if they are closed, i.e., even if there is only one 'majority' and not two.

(11) In the fact that there is only one 'majority'. viz. that the 'majority' of blood emanates from the source; v. Keth. 15a.

(12) [Ihi di-Kira, the modern Hit (v. Obermeyer. Die Landschaft Babylonien. 59ff.). A town in the North of Babylonia which was outside the Jewish settlement.]

(13) And so this barrel is prohibited. because most barrels are from non-Jews.

(14) And this barrel is permitted because it is near a Jewish town.

(15) Formed by protruding rocks.

(16) Formed by melting snows. This is Rashi's explanation. Others render 'bends and inlets', v. Aruch.

(17) I.e., had been planted less than three years. V. Lev. XIX. 23.

(18) And most wine is from vineyards of more than four years' standing.
(19) [בי קופאי* or 'at Be Kufai', a village 4 parasangs west of Bagdad; v. Obermeyer; p. 267.]
(20) As being presumably Jewish and not Gentile wine.
(21) Deciding according to 'nearness' and not 'majority'.

Talmud - Mas. Baba Bathra 24b

wine-bottlers were Jews.[1] And we only say this if the flasks are big ones,[2] but if they are small ones, we may argue that passers-by [non-Jews] let them drop. If, however, there are some big ones with them. we can say that the small ones were [merely] used as ballast. MISHNAH. TREES MUST BE KEPT AT A DISTANCE OF TWENTY-FIVE CUBITS FROM A TOWN; CAROBS AND SYCAMORE TREES[3] FIFTY CUBITS. ABBA SAUL SAYS THAT ALL WILD FRUIT TREES[4] MUST BE KEPT AT A DISTANCE OF FIFTY CUBITS. IF THE TOWN WAS THERE FIRST, THE TREE IS CUT DOWN[5] AND NO COMPENSATION IS GIVEN. IF THE TREE WAS THERE FIRST, IT IS CUT DOWN BUT COMPENSATION MUST BE GIVEN. IF THERE IS A DOUBT WHICH WAS FIRST, IT IS CUT DOWN AND NO COMPENSATION IS GIVEN.

GEMARA. [TREES MUST BE KEPT AT A DISTANCE etc.] What is the reason for this regulation? — 'Ulla says. to preserve the amenities of the town.[6] But could we not derive this rule from the regulation[7] that suburb[8] must not be turned into cultivated field nor cultivated field into suburb? — The rule had to be stated here to meet the view of R. Eleazar, who said that cultivated field may be turned into suburb, and suburb may be turned into cultivated field; even on his view trees must not be planted [close to the town], so as not to spoil the amenities of the town. And the Rabbis too who said that a cultivated field may not be turned into suburb nor suburb into cultivated field, meant this to apply only to the sowing of vegetables but not to the planting of trees; yet here they too would prohibit on account of the amenities of the town. What ground have you for saying that there is a difference [in this respect] between vegetables and trees? — Because it has been taught: 'If an enclosure, big enough to sow more than two se'ahs in, is fenced round for dwelling purposes, then if the greater part of it is sown with vegetables, it is reckoned as a vegetable garden and it is forbidden [to carry in it on Sabbath], but if the greater part of it is planted with trees it is reckoned as a courtyard and it is permissible [to carry in it on Sabbath].[9] IF THE TOWN WAS THERE FIRST, THE TREE IS CUT DOWN AND NO COMPENSATION IS GIVEN etc. Why in the analogous case of a pit is it laid down[10] that the owner may cut down the tree but must give compensation, whereas here it is cut down without compensation being given? — R. Kahana said: A pot with two cooks[11] is neither hot nor cold.[12] But what contradiction is there? perhaps a difference is made between injury to the public and injury to an individual?[13] — [We must therefore say that] if R. Kahana really made this remark, he meant it to apply to the next clause in the Mishnah: IF THE TREE WAS THERE FIRST, IT IS CUT DOWN BUT COMPENSATION MUST BE GIVEN [Regarding this we may ask.] Why cannot the owner of the tree say: Give me the money first and I will then cut it down? And it was in regard to this that R. Kahana answered: A pot with two cooks is neither hot nor cold.

IF THERE IS A DOUBT WHICH WAS FIRST, IT IS CUT DOWN WITHOUT COMPENSATION BEING GIVEN. Why in the analogous case of a pit is it laid down that he should not cut down the tree?[14] — In the case of the pit where, if the tree was certainly [there first]. it is not to be cut down, then if there is a doubt we also do not say to him 'Cut it down.' But in this case where even if the tree was certainly there first it has to be cut down, then if there is a doubt we also order him to 'Cut it down.'[15] And if the question of compensation arises, we say to him: prove that it is yours[16] and you will be paid.

MISHNAH. A FIXED THRESHING-FLOOR MUST BE KEPT FIFTY CUBITS FROM A TOWN.[17] A MAN SHOULD NOT FIX A THRESHING-FLOOR ON HIS OWN ESTATE

UNLESS THERE IS A CLEAR SPACE ALL ROUND OF FIFTY CUBITS. HE MUST KEEP IT AWAY FROM THE PLANTATION OF HIS NEIGHBOUR AND HIS PLOUGHED FALLOW A SUFFICIENT DISTANCE TO PREVENT DAMAGE BEING CAUSED.[18]

GEMARA. Why this difference between the beginning and the end [of this Mishnah]?[19] — Abaye said: The last clause refers to a threshing-floor which is not fixed. What do you mean by a threshing-floor which is not fixed? — R. Jose said in the name of R. Hanina: One that does not require the use of a winnowing shovel.[20] R. Ashi [however], said: The last clause gives the reason for the first,[21] as much as to say: Why is a fixed threshing-floor kept fifty cubits away from a town? — To prevent it doing damage.

An objection [to Abaye's opinion] was raised from the following: 'A fixed threshing-floor must be kept fifty cubits away from a town, and as it must be kept fifty cubits from a town, so it must be kept fifty cubits from a neighbour's cucumber and pumpkin fields, from his plantations and his ploughed fallow, to prevent damage being caused.' This squares with the opinion of R. Ashi, but conflicts with that of Abaye[22] [does it not]? — [This indeed] is a difficulty. We can understand [why the threshing-floor must be kept away] from the cucumber and pumpkin fields, because the dust goes and penetrates into them and dries them up but [why should it be kept away] from the ploughed fallow? — R. Abba b. Zebid [or it may be R. Abba b. Zutra] replied:

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(1) And therefore the flasks were probably left there by Jews.

(2) And so evidently for sale. (13) To balance the panniers of the baggage asses.

(3) Which are very leafy.

(4) I.e., trees not usually planted in orchards.

(5) Lit., 'He cuts it'. to be taken impersonally, and denoting the townsmen who have to pay the compensation.

(6) So as to leave a clear space outside the wall.

(7) 'Ar. 33b.

(8) Or 'open space'. Cf. Num. XXXV, 4.

(9) 'Er. 23b. This shows that vegetables turn ground into a 'field', but trees do not.

(10) V. infra 25b.

(11) Lit., 'partners'.

(12) If therefore compensation is to be given. every resident in the town will wait for some other to make the first move, and the eyesore will remain. V. Tosaf. s.v. מאי שנא.

(13) The former kind being regarded more seriously.

(14) V. infra 25b.

(15) I.e., in each case the rule where there is a doubt is the same as the rule where there is no doubt whether the tree was there first.

(16) I.e., that your tree was there first.

(17) On account of the chaff which flies about.

(18) This distance being presumably less than fifty cubits. Hence this rule apparently contradicts the preceding clause.

(19) V. note I.

(20) I.e., where only a small heap is placed which is winnowed by the wind itself without being lifted by a shovel.

(21) And the distance required there also is fifty cubits.

(22) Because it shows that there is no reason to take the last clause of the Mishnah, despite the phrase to prevent damage being caused', as referring to a threshing-floor which is not fixed (v. Tosaf.).

Talmud - Mas. Baba Bathra 25a

Because it over-manures it.

MISHNAH. CARRION, GRAVES, AND TANYARDS MUST BE KEPT FIFTY CUBITS FROM A TOWN.[1] A TANYARD MUST ONLY BE PLACED ON THE EAST SIDE OF THE

TOWN. R. AKIBA, HOWEVER, SAYS IT MAY BE PLACED ON ANY SIDE EXCEPT THE WEST, PROVIDING IT IS KEPT FIFTY CUBITS AWAY. FLAXWATER[2] MUST BE KEPT AWAY FROM VEGETABLES AND LEEKS FROM ONIONS AND MUSTARD PLANTS FROM A BEEHIVE. R. JOSE. HOWEVER, DECLARES IT PERMISSIBLE [TO COME NEARER] IN THE CASE OF MUSTARD.

GEMARA. The question was asked: How are we to understand R. Akiba's ruling?[3] [Does he mean to say that] IT [a tanyard] MAY BE PLACED ON ANY SIDE, namely, be set close to the city, EXCEPT ON THE WEST, where also it may be set, but only at a distance of fifty cubits? Or IT MAY BE PLACED ON ANY SIDE . . . PROVIDING IT IS KEPT FIFTY CUBITS AWAY, EXCEPT ON THE WEST, where it must not be placed at all? — Come and hear: R. Akiba says: [A tanyard] may be set on any side at a distance of fifty cubits, save on the west side, where it must not be placed at all, because it is a constant abode.

Said Raba to R. Nahman: A constant abode of what? Shall I say of winds? How can this be, seeing that R. Hanan b. Abba has said in the name of Rab: Four winds blow every day and the north wind with all of them, for without this the world could not endure a moment. The south wind is the most violent, and were it not that the Son of the Hawk[4] stays it with his wings it would destroy the world, as it says, Doth the hawk soar by the wisdom, and stretch her wings towards the south?[5] — No; what it means is that it is the constant abode of the Shechinah.[6] For so said Joshua b. Levi: Let us be grateful to our ancestors[7] for showing us the place of prayer, as it is written, And the host of heaven worshippeth thee.[8] R. Aha bar Jacob strongly demurred to this [interpretation]. Perhaps, he said, [the sun and moon bow down to the east], like a servant who has received a gratuity from his master and retires backwards, bowing as he goes.[9] This [indeed] is a difficulty. R. Oshaia expressed the opinion that the Shechinah is in every place. For R. Oshaia said: What is the meaning of the verse, Thou art the Lord, even thou alone; thou hast made heaven, the heaven of heavens, etc.?[10] Thy messengers are not like the messengers of flesh and blood. Messengers of flesh and blood report themselves [after performing their office] to the place from which they have been sent, but thy messengers report themselves to the place to which they are sent, as it says. Canst thou send forth lightnings that they may go and say to thee, here we are.[11] It does not say, 'that they may come and say,' but 'that they may go and say,' which shows that the Shechinah is in all places. R. Ishmael also held that the Shechinah is in all places, since R. Ishmael taught: From where do we know that the Shechinah is in all places?[12] — Because it says. And behold, the angel that talked with me went forth, and another angel went out to meet him.[13] It does not say, 'went out after him,' but went out to meet him.' This shows that the Shechinah is in all places. R. Shesheth also held that the Shechinah is in all places, because [when desiring to pray] he used to say to his attendant:[14] Set me facing any way except the east. And this was not because the Shechinah is not there, but because the Minim[15] prescribe turning to the east. R. Abbahu, however, said that the Shechinah is in the west; for so said R. Abbahu: What is the meaning of 'Uryah'?[16] It is equivalent to avir Yah[17] [air of God].

R. Judah said: What is the meaning of the verse, My doctrine shall drop [ya'arof][18] as the rain?[19] This refers to the west wind which comes from the back ['oref][20] of the world. My speech shall distil [tizzal][21] as the dew:[22] this is the north wind which makes gold flow,[23] and so it says: Who lavish [ha-zalim] gold from the purse.[24] As the small rain [se'irim][25] upon the tender grass:[26] this is the east wind which rages through the world like a demon [sa'ir].[27] And as showers upon the herb:[28] this is the south wind which brings up showers and causes the grass to grow.

It has been taught: R. Eliezer says that the world

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(1) Because of the bad smell.

(2) V. supra 18a.

(3) Lit., 'how does R. Akiba say.'

(4) An angel so called.
(5) Job XXXIX. 26.
(6) Divine Presence, v. Glos.
(7) The 'Members of the Great Assembly', who handed down the Book of Nehemiah with this verse in it.
(8) Nehem. IX. 6. This would show that the sun and moon in the east bow down to the Shechinah which is in the west.
(9) I.e., the verse refers to the sun and moon at their setting and not at their rising, and hence the Shechinah is in the east.
(10) Nehem. IX, 6.
(11) Job XXXVIII. 35.
(12) [Cf. Ahelson, The Immanence of God in Rabbinic Literature, p. 208.]
(13) Zech. II,7.
(14) R. Shesheth was blind.
(15) Jewish sectaries, here probably a sect of Jewish fire-worshippers.
(16) אוריה from a Persian word meaning 'evening'. V. Levy, Worterbuck.
(17) אויר יה
(18) יערף
(19) Deut. XXXII, 2.
(20) ערף The West is called 'back' as opposed to the East, the Hebrew word for which (kedem) also means 'front'.
(21) תזל
(22) Deut. XXXII, 2.
(23) According to Rashi, because it dries up the produce and causes scarcity, so that corn has to be bought with money.
(24) Isa. XLVI, 6, tizzal, being taken from root zalal meaning both 'to flow' and 'to be cheap'.
(25) שעירים
(26) Deut. XXXII, 2.
(27) Lit., 'he-goat'. It was anciently believed that hegoats were possessed with demons. Cf. Zohar, on Lev. XVII.
(28) Deut. XXXII, 2.

Talmud - Mas. Baba Bathra 25b

is like an exedra,[1] and the north side is not enclosed, and so when the sun reaches the north-west corner, it bends back and returns [to the east] above the firmament. R. Joshua, however, says that the world is like a tent,[2] and the north side is enclosed, and when the sun reaches the north-west corner it goes round at the back of the tent [till it reaches the east], as it says. It goeth toward the south and turneth again toward the north, etc.:[3] 'it goes toward the south' — by day, and 'turneth again toward the north' — by night. It turneth about continually in its course and the wind returneth again to its circuits:[4] this refers to the eastern and western sides of the heaven, which the sun sometimes traverses and sometimes goes round.[5] He [R. Joshua] used to say: We have come round to the view of R. Eliezer,[6] [since we have learnt]: 'Out of the chamber cometh the storm:[7] this is the south wind; and from the scatterers cold:[8] this is the north wind.[9] By the breath of God ice is given:[10] this is the west wind: and the abundance of waters in the downpouring:[11] this is the east wind.' But it has just been stated by a Master that it is the south wind which brings showers and makes the grass grow? — There is no contradiction; when the rain falls gently [it is from the south], and when it falls heavily [it is from the east.] R. Hisda said: What is meant by the verse, Out of the north cometh gold?[12] This refers to the north wind which makes gold flow; and so it says: Who lavish [ha-zalim] gold from the purse.[13]

Rafram b. Papa said in the name of R. Hisda: Since the day when the Temple was destroyed the south wind has not brought rain, as it says. And he decreed on the right hand and there was hunger and he consumed on the left and they were not satisfied;[14] and it is written, North and right hand[15] thou hast created them.

Rafram b. Papa also said in the name of R. Hisda: Since the day when the Temple was destroyed, rain no longer comes down from the 'good storehouse', as it says. The Lord shall open up to thee his

good treasure:[16] When Israel act according to the will of God and are settled in their own land, then rain comes down from a 'good storehouse', but when Israel are not settled on their own land, then the rain does not come down from a 'good storehouse'.

R. Isaac said: He who desires to become wise should turn to the south [when praying], and he who desires to become rich should turn to the north. The symbol [by which to remember this] is that the table [in the Tabernacle] was to the north of the altar and the candlestick to the south.[17] R. Joshua b. Levi, however, said that he should always turn to the south, because through obtaining wisdom he will obtain wealth, as it says. length of days are in her [wisdom's] right hand, in her left hand are riches and honour.[18] But was it not R. Joshuah b. Levi who said that the Shechinah is in the west? — [He means that] one should turn partly to the south. Said R. Hanina to R. Ashi: Those like you who live to the north of Eretz Yisrael[19] should turn to the south. How do we know that Babylon is to the north of Eretz Yisrael? — From the scriptural verse, Out of the north evil shall break forth upon all the inhabitants of the land.[20]

FLAX-WATER MUST BE KEPT AWAY FROM VEGETABLES etc. A Tanna has taught: R. Jose holds it permissible in the case of mustard. because the owner can say to the other, 'As well as you can tell me to remove my mustard from your bees, I can tell you to remove your bees from my mustard, because they come and eat the twigs of my mustard plants.'[21]

MISHNAH. A TREE MUST BE KEPT AWAY FROM A PIT [IN A NEIGHBOUR' S FIELD] TWENTY-FIVE CUBITS — A SYCAMORE OR A CAROB FIFTY CUBITS;[22] IT MAKES NO DIFFERENCE WHETHER THE TREE IS ON HIGHER OR LOWER GROUND OR ON A LEVEL WITH THE PIT. IF THE PIT WAS THERE FIRST, THE OWNER CAN HAVE THE TREE CUT DOWN ON GIVING COMPENSATION. IF THE TREE WAS THERE FIRST, HE CAN NOT HAVE IT CUT DOWN. IF THERE IS A DOUBT WHICH WAS THERE FIRST, HE CANNOT HAVE IT CUT DOWN. R. JOSE, HOWEVER, SAYS THAT EVEN IF THE PIT WAS THERE BEFORE THE TREE THE OWNER CANNOT HAVE THE TREE CUT DOWN, BECAUSE THIS ONE DIGS IN HIS PROPERTY, THE OTHER PLANTS IN HIS.

GEMARA. A Tanna has taught: 'Whether the tree is on higher ground than the pit or the pit is on higher ground than the tree.' If the tree is on higher ground than the pit, we can understand the prohibition, because the roots spread and damage the pit. But if the pit is higher than the tree, what reason is there? — R. Haga said in the name of R. Jose: Because the roots undermine the soil and damage the floor of the pit.

R. JOSE SAYS THAT EVEN IF THE PIT WAS THERE BEFORE THE TREE THE OWNER CANNOT HAVE THE TREE CUT DOWN, BECAUSE THIS ONE DIGS IN HIS PROPERTY. THE OTHER PLANTS IN HIS. R. Judah says in the name of Samuel: The halachah is according to R. Jose. R. Ashi said: When we studied with R. Kahana we used to say that R. Jose admits that a man is responsible for damage of which lie is the cause.[23]

Papi Yona'ah[24] was a poor man who made some money and built a country house. There were in his neighbourhood some sesame-oil makers who, when they crushed the sesame seeds, used to make his villa shake. He appealed against them to R. Ashi,[25] who said to him: When we studied with R. Kahana, we used to say that R. Jose admits that a man is responsible for the damage of which he is the cause.[26] How much

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(1) I.e., closed on three sides and open on the fourth.

(2) I.e., completely enclosed (by the firmament).

(3) Eccl. I, 6. Although in the text this is said of the wind, it is taken to refer to the sun also.

(4) Ibid.

(5) I.e., it traverses them in summer when it is above the horizon, and goes round in winter when it is below the horizon.
(6) That the world resembles an exedro.
(7) Job XXXVII, 9'
(8) Ibid.
(9) The Hebrew word translated scatterers' is מזרים which is taken by R. Joshua to mean 'unenclosed'.
(10) Job XXXVII, 20.
(11) Ibid.
(12) Ibid. 22.
(13) Isa. XLVI. 6; v. supra p. 126, n. 2.
(14) Isa. IX. 19.
(15) Ps. LXXXIX, 13; this shows that the right hand is the south.
(16) Deut. XXVIII, 12.
(17) The table being the symbol of plenty, and the candlestick of knowledge.
(18) Prov. III,16.
(19) R. Ashi was in Babylonia.
(20) Jer. I,14.
(21) V. supra 18a.
(22) Because the roots spread to a great distance.
(23) Lit., 'for his own arrows.' V. supra p. 114, n. 3.
(24) Perhaps 'of Yawan', i.e. Greece.
(25) Lit., 'He came before R. Ashi.'
(26) And therefore you are entitled to stop them.

Talmud - Mas. Baba Bathra 26a

[must the house shake to constitute damage]? — Enough to make the lid of a pitcher rattle.[1]

When the people in the house of Bar Marion the son of Rabin used to beat flax, the dust used to fly about and annoy people. They appealed to Rabina. He said to them: When we say that R. Jose admits that a man is responsible for damage of which he is the cause, this applies only to the case where he himself sets the cause of the damage in motion. Here it is the wind which carries the dust about, [and therefore they are not liable]. Mar, son of R. Ashi, strongly objected to this, saying: How do these man differ from a man winnowing [on Sabbath] when the wind carries the chaff further?[2] — The case was stated before Meremar. and he said: This is in fact on all fours with that of the man winnowing on Sabbath when the wind comes and helps him.[3] And how does Rabina[4] differentiate this case from that of the spark flying from the smith's hammer and doing damage, for which the smith is responsible?[5] — [He could reply that] the smith is glad to see the spark fly out,[6] but here the people beating the flax do not want the dust to fly about.

MISHNAH. A MAN SHOULD NOT PLANT A TREE [IN HIS OWN FIELD] CLOSE TO HIS NEIGHBOUR'S FIELD[7] UNLESS HE KEEPS IT AT A DISTANCE OF FOUR CUBITS; THIS APPLIES BOTH TO A VINE AND TO ALL OTHER TREES. IF THERE IS A FENCE BETWEEN THE TWO FIELDS, EACH MAY PLANT CLOSE UP TO THE FENCE ON HIS OWN SIDE.[8] IF THE ROOTS [OF ONE MAN'S TREE] SPREAD INTO HIS NEIGHBOUR'S FIELD, [THE LATTER] CAN CUT THEM AWAY TO A DEPTH OF THREE HANDBREADTHS SO THAT THEY SHOULD NOT IMPEDE THE PLOUGH. IF HE DIGS A PIT, DITCH, OR CAVE, HE CAN CUT RIGHT DOWN [TO ANY DEPTH]. AND THE WOOD BELONGS TO HIM.[9]

GEMARA. A Tannahas taught: The four cubits here mentioned are to allow space for the work of the vineyard.[10] Samuel said: This rule was only laid down for Eretz Yisrael; in Babylonia two cubits are sufficient.[11] This is also stated in a Baraitha: 'A man should not plant a tree nearer than two cubits to his neighbour's field.' But does not our Mishnah say four? — It must be therefore as

Samuel has explained. This argument is also stated in the form of a contradiction [which is afterwards reconciled, thus]: Our Mishnah says: A MAN SHOULD NOT PLANT A TREE CLOSE TO HIS NEIGHBOUR'S FIELD UNLESS HE KEEPS IT AT A DISTANCE OF FOUR CUBITS. But does not a Baraitha say two cubits? — Said Samuel: There is no contradiction. The Mishnah refers to Eretz Yisrael, the Baraitha to Babylon.[12]

Raba, son of R. Hanan, had some date trees adjoining a vineyard of R. Joseph. and birds used to roost on the date trees and fly down and damage the vines. So Raba, son of R. Hanan, told R. Joseph to cut down his date trees. Said the latter: But I have kept them [four cubits] away? This, replied the other, applies only to other trees, but for vines we require more. But does not our Mishnah say that THIS APPLIES BOTH TO VINES AND TO ALL OTHER TREES? Said he:[13] This is so where there are other trees or vines on both sides,[14] but where there are other trees on one side and vines on the other a greater space is required.[15] Said R. Joseph: I will not cut them down, because Rab has said that it is forbidden to cut down a date tree which bears a kab of dates, and R. Hanina has said, 'My son Shikhath only died because he cut down a date tree before it was dead.'[16] You, Sir, can cut them down if you like.

R. Papa had some date trees close to the field of R. Huna the son of R. Joshua. [One day] he found him[17] digging and cutting out the roots. What [do you mean by] this? he said to him. He replied: We learnt: IF THE ROOTS SPREAD INTO HIS NEIGHBOUR'S FIELD, [THE LATTER] MAY CUT THEM AWAY TO A DEPTH OF THREE HANDBREADTHS SO THAT THEY SHOULD NOT IMPEDE THE PLOUGH. Said the other: [The Mishnah] only [says] three, but you. Sir, are going deeper. He replied: I am digging for pits. ditches, and caves, In regard to which we learnt: IF HE DIGS A PIT, DITCH, OR CAVE, HE CAN CUT RIGHT DOWN AND THE WOOD BELONGS TO HIM. Said R. Papa [subsequently]: I tried all kinds of argument with him, but I could not convince him

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(1) According to others, 'as much as the lid shakes when the jar is held in the hands.'

(2) If a man winnows on Sabbath and the wind carries the chaff more than four cubits, he breaks the law regarding throwing on Sabbath.

(3) And therefore the flax-beating could be stopped.

(4) Who may say that a principle applying to a Sabbath prohibition does not necessarily apply to a trespass against property.

(5) This being also a trespass against property rendering the smith liable although the spark is carried by the wind.

(6) So that it shall not damage his own smithy.

(7) Whether a corn field or an orchard.

(8) Lit., 'This one may plant it close to the fence on this side, and this one etc.' because then there is no danger of Kilayim. V. supra 18a.

(9) The Gemara discusses which one is meant.

(10) I.e., so that he can plough under his vine without encroaching on his neighbour's field.

(11) Because a shorter plough was used there.

(12) Lit., 'here in Eretz Yisrael, here in Babylon.'

(13) Raba.

(14) Lit., 'a tree for a tree, and vines for vines, but a tree for vines, etc.'

(15) Tosaf. points out that R. Joseph could be held responsible only if he had planted the date trees as saplings, but not if they had grown from date stones.

(16) Lit., not its time.'

(17) Lit., 'he went and found him.'

till I adduced the dictum of Rab Judah: 'A strip of land over which the public has established a right

of way must not be obstructed.'[1] After he [R. Papa] had left him, he [R. Huna] said: Why did I not answer him, '[The prescriptive right of a tree is only][2] within sixteen cubits [from the trunk].[3] [but I am cutting at a distance of][4] more than sixteen cubits'?

IF HE DIGS A PIT, DITCH OR CAVE HE CAN CUT RIGHT DOWN [TO ANY DEPTH] AND THE WOOD BELONGS TO HIM. Jacob of Hadayab[5] put the question to R. Hisda: To whom does the wood belong? — He replied: We [can] learn the answer [from the following Mishnah]: If the roots of a tree belonging to a layman spread into a field belonging to the Sanctuary, they may not be used [by a layman], but their use does not involve a trespass.[6] If now you say that the roots follow the tree, then there is a good reason why the use of them does not involve a trespass. But if you say that they take their character from the soil in which they are found, why is a trespass not involved? — What then [will you conclude] — that the tree is the decisive factor?[7] [If so], let us see what follows:[8] If the roots of a tree belonging to the Sanctuary spread into the field of a layman, they must not be used, but their use does not involve a trespass. Now if the tree is the decisive factor, why is no trespass involved? In fact, [this Mishnah, I should say,] tells us nothing about the question in hand, because it is concerned with 'a subsequent growth',[9] and it holds that the law of trespass does not apply to 'subsequent growth'.[10] Rabina replied that there is no contradiction [although in the first case the tree is the decisive factor and not in the second]. [In the first case we suppose][11] the roots to be within sixteen cubits of the tree, [and in the second case][11] beyond sixteen cubits from it.

'Ulla said: A tree which is nearer than sixteen cubits to the boundary of a neighbour's field is a robber, and the offering of first fruits should not be brought from it.[12] From whence does 'Ulla derive this idea? Shall we say from [the following Mishnah] which we learnt: 'If ten shoots are planted at [equal] intervals in a beth se'ah,[13] then the whole of the beth seah may be ploughed up to New Year [of the Sabbatical year]'?[14] [This cannot be.] For what is the total area occupied? — Two thousand five hundred cubits. How much is that for each tree? — Two hundred and fifty cubits. Now, this is less than the space mentioned by 'Ulla.[15] Can it be then from [the following Mishnah] which we learnt: 'If there are in a field three trees belonging to three different men, they can be combined [to place the field in the category of a plantation field],[16] and the whole

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(1) Because the public has acquired a prescriptive right of way over it. I also have a prescriptive right to let my tree stand where it is.

(2) Lit., 'here.'

(3) Because up to that distance the roots suck from the soil, though they actually spread 25 cubits. V. infra.

(4) Lit., 'here'.

(5) Adiabene.

(6) (Me'i. 13b). Heb. me'ilah, מְעִילָה the technical name for the improper use of holy things by laymen (as distinct from the Sanctuary). V. Lev. V. 15.

(7) And the wood in this case belongs to the owner of the tree.

(8) Lit., 'read the end (clause)' in the Mishnah just quoted.

(9) E.g.. the roots, which spread after the tree was consecrated.

(10) V. Pes. 66b.

(11) Lit. 'here'.

(12) Because it says. thou shalt take the first of all the fruit of the ground which thou bringest from thy land (Deut. XXVI, 2.)

(13) An area of fifty cubits by fifty.

(14) (Sheb. I, 6). Because the whole of the area is required for the nourishment of the trees and the ploughing is therefore purely for their benefit, and not for the purpose of sowing.

(15) Who says that the tree sucks from an area with a radius of 26 cubits, which would be much more than 250 cubits.

(16) A 'plantation field' was allowed to be ploughed up to the Feast of Weeks preceding the Sabbatical year, but a cornfield only up to the Passover. If the three trees are not combined, only the space required for each one can be ploughed up to the Feast of Weeks.

Talmud - Mas. Baba Bathra 27a

beth se'ah may be ploughed in virtue of them.' What is the total area of the field? — Two thousand five hundred cubits. How much is that for each tree? — Eight hundred and thirty-three and a third. 'Ulla still claims more for his tree![1] — [We must suppose that] 'Ulla did not give an exact figure. [Is that so?] We may presume that an authority does not give an exact figure where by so doing he makes the law more stringent. But can I say that he does so where he makes the law less stringent?[2] — You are assuming that 'Ulla was thinking of a square. In reality he was thinking of a circle. Let us see. The area of a square exceeds that of the [inscribed] circle by a quarter. Hence there remains for [the circle from which 'Ulla's tree sucks] seven hundred and sixty-eight cubits.[3] But the space allowed [by the Mishnah] is still half a cubit more [in length]?[4] — That is where 'Ulla was not exact, and he thereby made the law more stringent. Come and hear: 'If a man buys a tree and the soil around, he brings first-fruits from it and makes the declaration.[5] ['Soil' means any quantity,] does it not, however small?[6] — No: it must be sixteen cubits.

Come and hear: If a man buys two trees in another man's field, he brings first-fruits from them but does not make the declaration. [We infer] from this that if he buys three he does make the declaration. And any quantity of soil is sufficient, is it not?[7] — No; here too it must be sixteen cubits.

Come and hear: R. Akiba says: 'The smallest piece of landed property is subject to the rule of the corner[8] and first-fruits. and a prosbul[9]

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(1) 1024 cubits (reckoning 32 square).

(2) As 'Ulla does, by exempting from the obligation of first fruits a tree which is really liable to it.

(3) = three quarters of 1024.

(4) The area of the circle allowed by the Mishnah for each tree is 833 1/3 cubits. The square in which this is inscribed would (according to the reckoning of the Talmud) have an area of 1111 1/9 cubits. The side of such a square would he 33.3 cubits. Hence the radius of the area from which the tree sucks would be practically 16 2/3 cubits. (Rabbenu Tam proposed to read here 'two-thirds' instead of 'one-half'.)

(5) V. Deut. XXVI. 3ff.

(6) Which would show that a tree sucks only from a very narrow space.

(7) The rule is that if a man buys three trees in a field he acquires the soil under them unless the contrary is specified. V. infra 81a.

(8) פאה V. Lev. XIX, 9.

(9) V. Glos.

Talmud - Mas. Baba Bathra 27b

can be made out on the strength of it, and movables can be acquired by means of it'?[1] — Here we are speaking of [the first-fruits of] wheat. This is indicated also by the expression in the Mishnah 'the very smallest'.[2] Come and hear: If a tree is partly in Eretz Yisrael and partly outside of Eretz Yisrael,[3] fruit subject to tithe and fruit not subject to tithe are mixed up in it. This is the opinion of Rabbi. Rabban Simeon b. Gamaliel, however, says that that which grows where the obligation extends [i.e.,in Eretz Yisrael] is liable and that which grows where the obligation does not extend [i.e.. outside Eretz Yisrael] is not liable.' The difference of opinion between them only consists in this, does it not, that the latter holds that we can decide retrospectively [which fruit belongs to which root] and the former holds that we cannot, but both agree that anything which grows where the obligation does not extend is not liable?[4] — No. We here deal with the case where the roots are divided by a hard rock. If so, what is the reason of Rabbi [for declaring the two kinds to be mixed together]? Because they mix again higher up. Wherein then lies the ground of the difference between

Rabbi and Rabban Simeon? — The former holds that the air mixes the saps [though coming from separate roots], and the latter holds that each remains separate.[5]

And must the tree be kept sixteen cubits from the boundary and no more? Have we not learnt that 'a tree must be kept a distance of twenty-five cubits from a pit'?[6] — Abaye replied: Though the roots spread much further, they only exhaust the soil up to a distance of sixteen cubits, no more. When R. Dimi came,[7] he reported that Resh Lakish had asked R. Johanan what the ruling was regarding a tree situated within sixteen cubits of the boundary, and he had answered: It is a robber, and first-fruits should not be brought from it. When Rabin came he said in the name of R. Johanan: The rule both for a tree close to the boundary of a neighbour's field, and for one which overhangs [another's field], is that the owner brings first-fruits and makes the declaration, since it was on that condition that Joshua gave Israel possession of the land.[8]

MISHNAH. IF A MAN'S TREE OVERHANGS HIS NEIGHBOUR'S FIELD. THE LATTER MAY CUT AWAY THE BRANCHES TO A HEIGHT SUFFICIENT TO ALLOW HIM TO USE THE OXGOAD OVER THE PLOUGH.[9] IF THE TREE IS A CAROB OR SYCAMORE, HE CAN CUT DOWN [ALL THE BRANCHES] PLUMB [WITH THE BOUNDARY].[10] IF THE FIELD IS AN IRRIGATED ONE. [THE BRANCHES OF ALL] TREES MAY BE CUT DOWN PLUMB.[11] ABBA SAUL SAYS THAT THE BRANCHES OF ANY WILD FRUIT-BEARING TREE[12] CAN BE CUT DOWN PLUMB.

GEMARA. The question was raised: Does Abba Saul's statement refer to the first clause in the Mishnah or the second?[13] — Come and hear: Abba Saul says, If the field is an irrigated one, the branches of all trees may be cut down plumb, because the shade is injurious to an irrigated field. This shows that his statement refers to the first clause.[14] R. Ashi said: The language of [his statement as recorded in] our Mishnah also indicates this, since it states ANY WILD FRUIT-BEARING TREE.[15] If this refers to the first clause, the word ANY. . . [TREE] is in place, but if it refers to the second clause, it should say simply 'wild fruit-bearing trees'. This shows that it refers to the first clause.

MISHNAH. IF A TREE OVERHANGS A PUBLIC THOROUGHFARE THE BRANCHES SHOULD BE CUT AWAY TO A HEIGHT SUFFICIENT TO ALLOW A CAMEL TO PASS UNDERNEATH WITH ITS RIDER. R. JUDAH SAYS,. SUFFICIENT FOR A CAMEL LADEN WITH FLAX OR BUNDLES OF VINE-RODS. R. SIMEON SAYS THAT [THE BRANCHES OF] ALL TREES SHOULD BE CUT AWAY PLUMB [WITH THE STREET] TO GUARD AGAINST UNCLEANNESS.

GEMARA. Who is the Tanna [of the Mishnah] who rules that in [making regulations to prevent] damage we consider only conditions as they are at present [and not as they are likely to become in the future]?[16] — Resh Lakish replied: This ruling is not a unanimous one, and it follows the opinion of R. Eliezer. For we learnt: 'A cavity must not be made under a public thoroughfare, nor pits, ditches, or caves. R. Eliezer says it is permissible if the covering is sufficient to bear a moving cart laden with stones.'[17] R. Johanan said: You may even say that the Rabbis [of that Mishnah] also concur [with the ruling here]. For there they prohibit because the cover may give way unexpectedly, but here every branch can be cut down as it grows.[18]

R.JUDAH SAYS: A CAMEL LADEN WITH FLAX OR BUNDLES OF VINE-RODS. The question was asked: Which is the higher limit, that of R. Judah or that of the Rabbis?[19] — There can be no doubt that the limit of the Rabbis is higher, for if the limit of R. Judah is higher, how do the Rabbis manage with anything that [still] comes within the limit of R. Judah?[20] You say then that the limit of the Rabbis is higher. How then will R. Judah manage with something which [still] comes within the limit of the Rabbis?[21] — He [i.e. the rider] can bend down and pass underneath.

RABBAN SIMEON SAYS:[THE BRANCHES OF] ALL TREES SHOULD BE CUT AWAY PLUMB TO GUARD AGAINST UNCLEANNESS. A Tanna taught [in connection therewith]: 'Because [they can form] a tent over uncleanness.'[22] This is self-evident, since we learnt, TO GUARD AGAINST UNCLEANNESS? — If I only had our Mishnah to go by I might say that [what it means is that] a raven may bring uncleanness[23] and throw it on the branches, and therefore It is sufficient to thin out the branches.[24] Now I know [that this is not sufficient]. [

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(1) I.e., the same act which confers ownership of the land can confer ownership of the movables also (Pe'ah III, 6).

(2) Which could not be applied to land on which a tree was planted.

(3) I.e., right on the border.

(4) Even within 16 cubits of the boundary, and we do not say that it sucks from Eretz Yisrael.

(5) Lit., 'this one stands by itself and this one stands by itself.'

(6) Supra 25b.

(7) From Palestine.

(8) Viz., that they should not begrudge one another this liberty.

(9) I.e., to allow him to raise his hand to the full height over the plough while holding the whip; or, 'as far as the handle protrudes over the plough' (Jast.).

(10) Because they throw an excessive shade.

(11) Because the shade is injurious to such a field.

(12) V. supra p. 121, n. 2.

(13) I.e., does he mean that the branches of wild fruit-bearing trees can be cut down plumb in any fields, or that in an irrigated field only the branches of such trees may be cut down plumb, but not of other trees?

(14) And he means that the branches of wild fruit-bearing trees can be cut down plumb anywhere.

(15) I.e., besides the sycamore and carob.

(16) I.e., seeing that the branches will grow again, why not have the whole tree cut down?

(17) In spite of the fact that the covering will in course of time wear out (v. infra 60a).

(18) Lit., 'first, first.'

(19) The representatives of the anonymous opinion cited first in the Mishnah.

(20) Seeing that according to the Rabbis the boughs are to he cut away only enough to allow a camel with its rider to pass under, if a load of flax is higher. how will it go under?

(21) I.e., a camel with its rider.

(22) If any part of a dead body is under the tree, the branches form a tent over it, and all who pass under become unclean.

(23) I.e., any part of a dead body, which communicates defilement to all who pass beneath it.

(24) So that nothing can rest on them. According to another interpretation 'to put scarecrows on the branches' (Jast.).

Talmud - Mas. Baba Bathra 28a

CHAPTER III

MISHNAH. A PRESUMPTIVE TITLE[1] TO HOUSES, PITS, DITCHES AND CAVES, DOVECOTES, BATHS, OLIVE PRESSES, IRRIGATED FIELDS, SLAVES, AND ANYTHING WHICH IS CONTINUALLY PRODUCING[2] IS CONFERRED BY THREE YEARS [UNCHALLENGED POSSESSion][3] FROM DAY TO DAY.[4] A PRESUMPTIVE TITLE TO A NON-IRRIGATED FIELD IS CONFERRED BY THREE YEARS' POSSESSION NOT RECKONED FROM DAY TO DAY.[5] R. ISHMAEL SAYS: IT IS SUFFICIENT TO HAVE THREE MONTHS IN THE FIRST YEAR, THREE MONTHS IN THE LAST AND TWELVE IN THE MIDDLE,[6] MAKING EIGHTEEN MONTHS IN ALL. R. AKIBA SAYS: ALL THAT IS REQUIRED IS A MONTH IN THE FIRST, A MONTH IN THE LAST, AND TWELVE MONTHS IN THE MIDDLE, MAKING FOURTEEN MONTHS IN ALL.[7] R. ishmael SAYS: THIS REFERS ONLY TO A CORNFIELD,[8] BUT IN A FIELD PLANTED WITH TREES,[9] IF A MAN

HARVESTS HIS GRAPES, GATHERS IN HIS OLIVES, AND CULLS HIS FIGS, THIS COUNTS AS THREE YEARS.[10] GEMARA. R. Johanan said: I have heard those who attended at Usha[11] reasoning thus: Whence do we derive the rule that a presumptive title is acquired in three years?[12] — From the 'goring ox'.[13] Just as in the case of the' goring ox', after goring three times[14] it passes out of the denomination[15] of Tam[16] into that of Mu'ad,[17] so after a man has cropped[18] a field for three years it passes [entirely] out of the possession of the seller and is established in the possession of the buyer.[19] It may be objected to this that just as in the case of the goring ox its master does not become liable[20] till the fourth goring, so here the property should not become the fixed possession of the holder[21] till the end of the fourth year? — How can you compare the two cases.[22] There, as soon as the ox has gored three times, it is regarded as Mu'ad

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(1) Heb. hazakah, חזקה, which combines the meanings of 'holding' or 'occupation', and 'presumed ownership'. What is meant is a title not supported by documents or witnesses, but based on the mere fact of possession. The English legal term Is usucaption'.

(2) Lit., 'yielding fruits'.

(3) As will be seen later, such possession creates a presumption of ownership only if the possessor pleads at the same time that he came by the object in a lawful manner, e.g., by purchase or gift. If he does not advance this plea, the fact of his years' possession has no legal value.

(4) I.e., from any date in one year to a corresponding date three years later. The reason for this regulation is discussed in the Gemara.

(5) As explained in what follows.

(6) Because some crops are sown in the last three months of the year and some in the first three, and to crop the field at these times is equivalent to possessing it for a year.

(7) For R. Akiba's reason, v. infra 362.

(8) Lit., 'field of white', so called because the corn casts no shade. (Jast.)

(9) Which is also a kind of non.irrigated field.

(10) Even though all three processes are carried out in one year, the idea being that the rightful owner would not permit another to take three crops off his field without protesting.

(11) Usha was a town in Upper Galilee near Tiberias. Here, after the destruction of the Second Temple, the Sanhedrin was established when it left Jabneh, and here too after the war of Bar Cochba a synod was held composed mainly of the pupils of Judah b. Baba. On the question who is meant here by 'those who attended at Usha,' v. infra, p. 141, n. 4.

(12) I.e., Why three precisely?

(13) Lit., 'Mu'ad ox' (v. Glos.). V. Ex. XXI, 29.

(14) This is based on the words of the text, from yesterday and the day before,' which, with to-day, make three; v. B.K 23b.

(15) Here again. the Hebrew word is hazakah, which here has the meaning of 'presumed character'.

(16) Lit., 'innocent', involving the payment of half the damage only. V. Glos.

(17) Lit., 'testified against' and liable to pay for the damage in full.

(18) Lit., 'eaten'.

(19) I.e., so completely that he need no longer retain his title-deeds.

(20) To pay the full damage.

(21) If be can bring no proof of ownership.

(22) Lit., 'so now'

Talmud - Mas. Baba Bathra 28b

. but until it has gored the fourth time there is no reason why the owner should pay, whereas here, as soon as the use of it has been enjoyed for three years, the property becomes the fixed possession of the holder.

Now if this is correct[1] [that the law of hazakah is derived from the law of the ox], it would follow that three years' possession would confer a legal title even without a plea [of justification].[2] Why

then have we learnt[3] that possession without a plea of justification does not confer a legal title? — The reason why [we confirm the holder in possession when he pleads justification] is because it is possible that his plea is truthful.[4] But if he himself advances no plea, shall we put in a plea for him?[5]

R. 'Awira brought a strong objection against this analogy [between the field and the ox]. On this principle, he said, a protest made not in the presence of the holder should not be valid,[6] after the analogy of the Mu'ad ox; for just as in the case of the Mu'ad ox [the warning] must be given in the presence of the owner, so here the protest should be made in the presence of the holder? — There [in the case of the ox] Scripture says, And it hath been testified to his owner';[7] here [in the case of property] 'your friend has a friend, and the friend of your friend has a friend.'[8]

Now [suppose we accept the ruling] according to R. Meir, who said: 'If there was an interval between the gorings the owner is liable, all the more so then if they followed closely on one another.'[9] [On the analogy of this], if a man gathered three crops on one day,as for instance figs [in three stages of ripeness]. this should constitute presumptive right, [should it not]?[10] - No; the action must be strictly analogous to the case of the Mu'ad ox. Just as in the case of the Mu'ad ox at the time when the first goring took place there was as yet no second goring, so here at the time when the first fruit is plucked the second must not yet be in existence. But suppose he gathered[11] three crops in three days, as of a caperbush,[12] should not that confer presumptive right? — In this case also the [second] fruit exists already [when he gathers the first crop] and it merely goes on ripening. But suppose he gathered three crops in thirty days, as of clover[13] — should not this confer presumptive right? How exactly do you mean? That it is cropped as it grows? Then this is merely partial eating[14] [and not the full eating required to confer presumptive right]. But suppose then that he consumed three crops in three months, as of clover,[15] should not this confer presumptive right? — Who is meant by the 'Rabbis who attended Usha'? — R. Ishmael;[16] and this actually would be the view of R. Ishmael, as we have learnt: R. ISHMAEL SAYS: THIS REFERS ONLY TO A CORNFIELD, BUT IN A FIELD PLANTED WITH TREES, IF A MAN HARVESTS HIS GRAPES, GATHERS IN HIS OLIVES, AND HARVESTS HIS FIGS, THIS COUNTS AS THREE YEARS.

And whence do the Rabbis[17] derive the rule [that three years possession confers presumptive right]?-R. Joseph said: They derive it from the Scriptural verse, Men shall buy fields for money and subscribe the deeds and seal them.[18] For there the prophet is speaking in the tenth year [of Zedekiah][19] and he warns the people [that they will go into captivity] in the eleventh.[20] Said Abaye to him: perhaps he was merely giving a piece of good advice?

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(1) Here follows a further objection against the analogy from the goring ox.

(2) E.g., that the holder bought it from the claimant, but has lost the deed. V. infra 41a.

(3) Infra 49a.

(4) Lit., 'as he says now', E.g., if the claimant says, 'You stole it from me,' and the holder says, 'I bought it from you,' the fact that he has had the use of the land for three years creates a presumption that he is speaking the truth.

(5) Hence the fact that a plea of justification is required does not militate against deriving the law of hazakah from that of the ox,

(6) And the rule is that it is valid. V. infra 39a.

(7) Ex. XXI, 29, implying 'in the presence of the owner'.

(8) A popular saying. Someone is bound to tell the holder that the claimant has protested against his occupation of the land, and he will therefore take care not to lose his title-deed.

(9) R. Meir uses this a fortiori argument in support of his view against that of R. Judah who defines a Mu'ad, 'an ox who gored on three successive days but not who gored three times in one day,' v, B.K. 24a.

(10) And this is against all authority.

(11) Lit., 'ate'.

(12) One fruit of which is still very small when another is plucked.

(13) Which is cropped three times in a month.

(14) Lit., ‘he merely plucks and eats it.’
(15) Which is plucked up and sown afresh every month, so that all three crops have time to ripen fully.
(16) We do not hear of R. Ishmael after the war of Bether, so he probably attended the Sanhedrin at Usha in the early part of the 2nd century C.E. As R. Johanan was not born till the later part of the century, he could hardly have known R. Ishmael personally. Perhaps we should translate above: ‘I heard from those who attended (the Synod) at Usha that (those who attended the Sanhedrin there in the previous generation) used to say, etc.’
(17) Who do not accept it. Ishmael's view that the rule of hazakah is derived from that of the ox.
(18) Jer. XXXII, 44.
(19) V. Ibid. 1.
(20) V. Ibid. XXXIX, 2. As they will thus not have the use of the fields for more than two years, he warns them to be careful of their title-deeds.

Talmud - Mas. Baba Bathra 29a

For if you hold otherwise, what do you make of the verse, Build ye houses and dwell in them, and plant gardens and eat the fruit of them?[1] That obviously is a piece of good advice,[2] and so here too; the proof is that it says in the same connection, and put them in an earthen vessel that they may continue many days![3] — No, said Raba, [the reason according to the Rabbis is this]: For the first year a man will forgo [his rights to the produce], for two years a man will forgo [his rights], but for a third year no man will forgo his rights. Said Abaye to him: In that case, when the land is restored [to the original owner on claiming it after two years], it should be restored without the produce;[4] why then has R. Nahman laid down that both the property and the produce have to be restored?[5] — Raba therefore correcting himself said: For the first year a man is not particular about another man usurping his field,[6] nor is he particular for the second year, but the third year he is particular. Said Abaye to him: If that is so, what of the people of Bar Eliashib who object even to anyone crossing their field? In their case should not occupation confer presumptive right immediately [if they do not object]? And if you say that that if so, then you introduce a kind of sliding scale?[7] — Raba therefore [again corrected himself and] said: For one year a man takes care of his title-deed, and so for two, three years does he take care; beyond that he does not take care. Said Abaye to him: If that is so, then [it would follow that] a protest made not in the presence of the holder is no protest, since the latter can say, ‘If you had protested to me personally, I should have taken more care of my title-deed’? — The other can retort, ‘[You must have known of my protest because] your friend has a friend and your friend's friend has a friend.’[8]

R.Huna said: The three years mentioned in the Mishnah only count if the occupier took the crops in all three successively. What does this statement tell us? Does not the Mishnah say that PRESUMPTIVE TITLE IS CONFERRED BY THREE YEARS [POSSESSION] FROM DAY TO DAY? — You might think that the expression FROM DAY TO DAY was only meant to exclude short years,[9] and that interrupted years were permissible;[10] now I know that this is not so. R. Hama said: R. Huna admits [that interrupted years are also sufficient] in places where it is customary to leave fields fallow [in alternate years]. Is not this self-evident?[11] — It required to be stated in view of the case where some owners leave their fields fallow and some do not, this man being one of those who do. You might think that in this case the claimant can say to him, ‘If the field is yours, you ought to have sown it.’[12] Now I know that this is not so, because the other can answer, ‘I cannot keep watch over a single field in a whole valley’;[13] or he can also answer, ‘I prefer this way, because it makes the field more productive.’

We learnt: [PRESUMPTIVE TITLE TO HOUSES] IS CONFERRED BY THREE YEARS [POSSESSION]. [Why should this be, seeing that] in the case of houses we can know if a man lives there by day but not if he lives there by night?[14] Abaye answered: Who is it that testifies to [a man having lived in] a house? — The neighbours; and the neighbours know whether he has lived in it by night as well as by day. Raba answered: [The way it can be known] is if, for instance, two persons

come forward and say, We hired the house from him and lived in it day and night for three years. Said R. Yemar to R. Ashi: But these men are interested witnesses,[15] because if they do not make this assertion we shall tell them to go and pay the rent to the claimant?[16] -R. Ashi replied: Only incompetent judges would proceed thus.[17] [No.] The case Raba has in mind is where they come with the rent and inquire to whom they are to give it.

Mar Zutra said: If the claimant demands that two witnesses should be produced to testify that the occupier lived in the house three years day and night, his demand is valid.

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(1) Ibid. XXIX, 5.

(2) And not a rule of law.

(3) Ibid. XXXII, 24. This obviously is a piece of good advice merely, and thus the question remains, whence do the Rabbis derive the rule that three years' possession confers presumptive right?

(4) Because the original owner waived his right for the time being.

(5) v. infra p. 155.

(6) Though he does not waive his right to the produce.

(7) The period required to confer hazakah will vary with the degree to which the original owners are particular.

(8) V. supra p. 140.

(9) E.g. six months in the first year and six in the last.

(10) So long as three full years were made up altogether.

(11) That in such places there must be three full years of occupation in all, but not necessarily at one stretch.

(12) Even though the fields all round are left fallow.

(13) Because he would have to bear singly the whole expense of the watchman.

(14) And according to R. Huna, the occupation must be continuous.

(15) And therefore their evidence cannot be accepted.

(16) To whom but for their evidence we should assign the house.

(17) I.e., accept their evidence, if they have already paid rent to the defendant.

Talmud - Mas. Baba Bathra 29b

[And though in this case the court does not suggest the plea] Mar Zutra admits that where the claimant is an itinerant peddler,[1] even if he does not raise the plea, the court raises it for him.[2] R. Huna also admits that [though normally the three years must be continuous], in the case of the shops of Mahuza[3] [this is not necessary], because they are only used by day and not by night.

Rami b. Hama and R. 'Ukba b. Hama bought a maidservant in partnership, the arrangement being that one should have her services during the first, third and fifth years, and the other during the second, fourth and sixth. Their title to her was contested, and the case came before Raba. He said to the brothers: Why did you make this arrangement? So that neither of you should obtain a presumptive right against the other [was it not]?[4] Just as you have no presumptive right against each other, so you have no presumptive right against outsiders. This ruling, however, only holds good if there was no written agreement between them to share [the maidservant]:if there was such an agreement, it would become bruited abroad.[5]

Raba said: If the occupier has utilised[6] the whole field except the space of the sowing of a quarter of a kab, he acquires ownership [after three years] of the whole field with the exception of that space. Said R. Huna the son of R. Joshua: This only applies [if the space so left over] was suitable for sowing; but if it was not suitable for sowing, it is acquired along with the rest of the field. To this R. Bibi b. Abaye strongly objected, saying: If that is so, how does a man acquire a piece of rock [through occupation]? Is it not by stationing his animals there and laying out his crops there?[7] So here too, he should have stationed his animals there and laid out his crops there. A certain man said to another, 'What right have you[8] in this house?' He replied, 'I bought it from you, and I have had

the use of it for a period of hazakah.'[9] To which the other replied, 'But I have been living in an inner room [and therefore did not protest].'[10] The case was brought before R. Nahman, who said to the defendant: You must prove that you have had constant use of the house[11] [for three years without the claimant]. Said Raba to him: Is this a right decision? Is not the onus probandi in money cases always on the claimant?

A contradiction was pointed out between Raba's ruling here and his ruling in another place, and between R. Nahman's ruling here and his ruling in another place. For a certain man

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(1) V. supra p. 109.

(2) Because as such people are away for long periods, it is easy for other persons to occupy their houses without being noticed.

(3) An important commercial centre in Babylonia.

(4) By having three years' undisturbed possession.

(5) And therefore it was incumbent on the claimant to lodge a protest before three years had passed, and since he did not do so, a presumptive right has been established.

(6) Lit., 'eaten'.

(7) I.e., by making some use of the ground to show that it is his.

(8) Lit., 'What do you want?'

(9) I.e., three years. And therefore it is mine, although I cannot produce any record of the purchase.

(10) Because to a certain extent I had the use of your room, being able to pass in and out, and therefore it has not belonged to you for three years.

(11) Lit., 'prove your eating'.

said to another, 'I will sell you all the property of Bar Sisin's.'[1] There was a piece of land which was called Bar Sisin's, but the vendor said, 'This is not really the property of Bar Sisin though it is called Bar Sisin's.' The case was brought before R. Nahman, and he decided in favour of the purchaser. Said Raba to him: Is this a right decision? Does not the onus probandi always lie on the claimant? There is thus a contradiction between these two remarks of Raba, and also between the two rulings of R. Nahman.[2] Between the two remarks of Raba there is no contradiction. In the latter case the seller is in possession; in the former the purchaser is in possession.[3] Neither is there any contradiction between the two rulings of R. Nahman. [In the latter case,] since the seller professed to sell the property of Bar Sisin's and this land is called Bar Sisin's, it is for him to prove that it is not Bar Sisin's, but here let the occupier [in pleading presumptive right] be but treated as if he produced a document of sale,[4] in which case should we not say to him: 'Prove your document to be valid and you can remain in ownership of the property'?[5]

A certain man said to another, 'What right have you in this house?' He replied, 'I bought it from you and have had the use of it for the period of hazakah.' Said the other, 'I was abroad[6] all the time [and therefore did not know or protest].' 'But,' said the first, 'I have witnesses to prove that you used to come here for thirty days every year.' 'Those thirty days,' he replied, 'I was occupied with my business.' [On hearing of the case] Raba said: It is quite possible for a man to be fully occupied with his business for thirty days [and not to know that another has occupied his house].

A certain man said to another, 'What right have you on this land?' He replied, 'I bought it from so-and-so who told me that he had bought it from you.' Said the first, 'You admit then

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(1) I.e., which I acquired from Bar Sisin.

(2) Because in the former case Raba decides in favour of the purchaser and R. Nahman in favour of the seller, and in the latter case Raba decides in favour of the seller and R. Nahman in favour of the purchaser.

(3) And Raba decides in each case in favour of the party in possession.

(4) The three years' occupation taking the place of a title-deed.

(5) So here we can say to him, 'Prove that you have had unchallenged occupation'. Thus in both cases R. Nahman requires the party in possession to prove his right.

(6) Lit., 'in outside markets;' i.e., in places not on any caravan route.

Talmud - Mas. Baba Bathra 30b

that this land was once mine and that you did not buy it from me. Clear out; you have no case against me.'[1] [On hearing of this] Raba said: He was quite within his rights in what he said to him.[2]

A certain man said to another, 'What right have you on this land?' He replied, 'I bought it from so-and-so and have had the use of it for the period of hazakah.' Said the other, 'So-and-so is a robber.''But,' said the first, 'l have witnesses to prove that I came and consulted you and you advised me to buy the property.' 'The reason is,' said the other, 'that I preferred to go to law with you rather than with him.'[3] [On hearing of this] Raba said: He was quite within his rights in what he said to him. What authority does Raba follow? — The authority of Admon; for we have learnt: 'If a man claims a field after having witnessed[4] to the sale of it to another, Admon says that [his claim is still admissible] because he can say, I prefer to go to law with the second rather than the first; the Sages, however, say that [by so doing] he forfeits his right [to put forward a claim]. — You may even say that Raba is in agreement with the Rabbis[5] also. For in that case [they quash his right to make a claim] because he has actually done something [which conflicts with it],[6] but in this case [he has merely said something], and a man may easily let a word slip out of his mouth.

A certain man said to another, 'What right have you on this land?' He replied, 'I bought it from so-and-so and I have had the use of it for the period of hazakah.' Said the first, 'So-and-so is a robber.' 'But,' said the other, 'I have witnesses to prove that you came the evening [before] and said to me, "Sell it to me".' 'My idea was,' said the first, 'to buy what I was already legally entitled to. [On hearing of it] Raba said: It is not unusual for a man to buy what he is already legally entitled to.[7]

A certain man said to his neighbour, 'What right have you on this land?' He replied, 'I bought it from so-and-so and have had the use of it for the period of hazakah.'[8] Said the other, 'But I have a title deed to prove that I bought it from him four years ago.' Said the other; 'Do you think that when I say the period of hazakah l mean only three years? I mean a lot of years.'[9] Said Raba: It is not unusual to refer to a long period of years as 'the period of hazakah'. This [maxim] would apply [to the present case] only if the occupier has had the use of the land for seven years, so that his presumptive right came before the deed;[10]

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(1) Lit., 'you are not my litigant.'

(2) Because the occupier had no proof that the man from whom he bought the land bought it from the original owner. Hence his occupation is not supported by any genuine plea.

(3) Lit., 'The second suits me, the first is a harder customer.'

(4) I.e., signed his name as witness to the contract of sale.

(5) I.e., the Sages.

(6) Viz., signed a document.

(7) In order to avoid the trouble of going to law.

(8) Meaning thereby presumably 'three years'.

(9) And the reason why I said merely 'period of hazakah' was because I did not know you had a deed going back further than three years.

(10) Since he had already had the use of the land for three years after his alleged purchase of it, and his title was therefore unassailable.

Talmud - Mas. Baba Bathra 31a

Talmud - Mas. Baba Bathra 31a

but if only six years, then no protest could be more effective than this.[1]

[There was a case] where one said, '[This land belonged] to my father,'[2] and the other pleaded, 'It belonged to my father'. The one brought witnesses to prove that it belonged to his father, and the other brought witnesses to prove that he had had the use of it for the period of hazakah. Rabbah said [in giving judgment]: What motive had he[3] to tell a falsehood? If he liked, he could have pleaded [without fear of contradiction], 'I bought it from you and had the use of it for the period of hazakah.'[4] Said Abaye to him: But the consideration, 'why should he tell a falsehood,' is not taken into account where it conflicts with evidence?[5] So the occupier pleaded again, 'Yes, it did belong to your father, but I bought it from you, and what I meant by saying that it belonged to my father was that I felt as secure In it as if it had belonged to my father.' [The question here arises:] Is a litigant allowed to alter his pleas[6] [in the course of the case], or is he not allowed to alter his pleas? 'Ulla said: He is allowed to alter his pleas; the Nehardeans say, he is not allowed to alter his pleas. 'Ulla, however, admits that if this man had pleaded at first,' It belonged to my father and not to yours,' he could not later alter his plea [to say, 'It did belong to yours']. 'Ulla also admits that if a man does not amend his pleas in any way when in court, but after leaving the court comes In again and amends them, the rule that he may alter his original plea does not apply, because we assume that someone has suggested the amended plea to him. The Nehardeans [on their side] admit that if [after saying, 'It belonged to my father'] he pleads, 'my father who bought it from your father,' he is allowed to alter his plea [to this effect];[7] also that if a man makes certain statements outside [the court] and then wants to plead something quite different in court, he may do so, because a man often does not wish to state his case save in actual court. Amemar said: I am a Nehardean, and l hold that pleas may be altered. And such is the accepted ruling, that pleas may be altered.

[A case arose in which] one said, 'This [land belonged] to my father,' and the other said, 'To my father,' but the one brought witnesses to prove that it had belonged to his father and that he had had the use of it for the period of hazakah, and the other brought witnesses [only] to prove that he had had the use of it for a sufficient number of years to confer a legal title. Said R. Nahman: The evidence that the one has had the use of it cancels out the evidence that the other has had the use of it, and the land is therefore assigned to the one who brings evidence that it belonged to his father. Said Raba to him: But the evidence has been confuted?-He replied: Granted that it has been confuted in regard to the user,[8]

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(1) Namely, the action of the original owner in selling the land after the occupier had been on it only two years, so that in reality he never acquired hazakah.

(2) Lit., 'fathers'.

(3) The latter, who occupied the field.

(4) Which is a stronger plea and therefore we believe him when he says that he inherited it from his father.

(5) In this case, the evidence brought by the claimant that the land had belonged to his father.

(6) Lit., 'plead and again plead,' i.e., modify or expand the first plea, but not contradict it entirely. V. infra.

(7) Because he is simply making his former plea more emphatic, and not altering it.

(8) Lit., 'the eating of it.'

Talmud - Mas. Baba Bathra 31b

has it been confuted in regard to the father? May we say that [in principle] the difference between R. Nahman and Raba here is the same as that between R. Huna and R. Hisda in the following statement: If two sets[1] of witnesses contradict one another [so that one set must be giving false evidence], R. Huna says that each set may give evidence as a whole [in another case];[2] R. Hisda, however, says, What have we to do with false witnesses?' May we say then that R. Nahman here follows R. Huna[3]

and Raba, R. Hisda?-No. There is no difference between them in the application of R. Hisda's ruling.[4] Where they differ is in the application of R. Huna's ruling. R. Nahman would thus have acted on the ruling of R. Huna, whereas Raba [would maintain] that R. Huna only meant it to apply to evidence given in another case entirely, but not, as here, to another part of the same case.

He[5] then brought witnesses to prove that the land had belonged to his father. R. Nahman [thereupon] said: As we put him out, so we can put him in;[6] and we disregard any disrepute that this may bring on the Beth din.[7] Raba [or others say R. Ze'ira] objected [to this ruling on the strength of the following]: If two witnesses declare that a man is dead and two others declare that he is not dead, or if two declare that his wife had been divorced from him and two that she had not been divorced, she must not marry again, but if she has married she need not leave [her husband]. R. Menahem, son of R. Jose, says that she must leave [the second husband]. Said R. Menahem, son of R. Jose: When do I say that she must leave the husband? — If the witnesses [who say he is not dead] came first and she married afterwards;[8] but if she was married before these witnesses came she need not leave her husband.'[9] R. Nahman replied: I was going to act [according to the declaration I just made].[10] Now, however, that you have brought arguments against me and that R. Hamnuna in Sura has [likewise] refuted me, I shall not act so. [In spite of this statement, however,] he subsequently did act so Those who saw it thought he had made a mistake, but this was not the case, because he had the support of great authorities.[11] For we learnt: A man is not given the status of priest[12] On the evidence of one witness. Said R. Eliezer: This is only when his title is called into question; but if no one calls his title into questions one witness is sufficient. Rabban Simeon b. Gamaliel said in the name of R. Simeon the son of the Segan:[13] One witness is sufficient to prove a man's title to be a priest. Is not Rabban Simeon b. Gamaliel merely repeating R. Eliezer? And should you say that they differ in regard to the case where there is only one challenger, R. Eliezer holding that an objection is valid if raised by one challenger, and Rabban Simeon b. Gamaliel holding

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(1) In regard to all the discussion which follows it should be borne in mind that according to Jewish law, two witnesses are required to establish a case (v. Deut. XIX, 15).

(2) I.e., it is not disqualified by the suspicion of having given false evidence in this case. But one witness from one set may not combine with one from the other in another case, because one of them has certainly given false evidence in this case.

(3) In admitting the evidence of witnesses whose veracity is suspect.

(4) Both would agree that according to R. Hisda the evidence in regard to the father cannot be accepted.

(5) I.e., the occupier, having heard R. Nahman's decision.

(6) Lit., we put him down and we can raise him up.'

(7) Which will be criticised for altering its decisions.

(8) Because in that case if she bad consulted the Beth din, they would not have allowed her to marry.

(9) For fear that she might bring into disrepute the Beth din which gave her permission to marry again. This refutes R. Nahman.

(10) And reverse the first decision on the production of new evidence.

(11) Lit., 'trees'.

(12) So as to be entitled to receive the priestly dues and perform the priestly functions.

(13) The title given to the Deputy High Priest.

Talmud - Mas. Baba Bathra 32a

that there must be two, then what of the statement of R. Johanan who said that according to all authorities no objection is valid unless it is raised by two challengers? We suppose therefore that the objection has been raised by two; and here we are dealing with a case where the father of this man is known to have been a priest, but a report has been spread that his mother was a divorced woman[1] or a haluzah,[2] and we therefore deposed him, and then one witness came and testified that he was a genuine priest and we reinstated him, and then two came and testified that his mother was a divorced woman or a haluzah and we degraded him again, and then one more witness came and testified that he was a genuine priest. Now all authorities agree that the evidence [of the two witnesses who testify to his genuineness] is combined [although they did not testify in each other's presence], and the point at issue is whether or not we disregard any disrepute that may be brought upon the Beth din [for altering its decision]. R. Eliezer held that once we have deposed him we do not reinstate him, for fear of bringing disrepute on the Beth din, whereas Rabban Simeon b. Gamaliel says that just as we have deposed him so we can reinstate him, and we disregard any disrepute that may be brought thereby on the Beth din.[3]

R. Ashi strongly disputed this explanation [saying]: If this is the case, why [should R. Eliezer refuse to reinstate him] if only one witness appears at the end? Why not even if two come together?[4] No, said R. Ashi. All agree that we disregard any disrepute that may be brought on the Beth din,[5] and the point at issue here is whether the evidence [of different witnesses] can be combined, a point on which we find a difference between Tannaim. For it has been taught: 'The evidence of the two witnesses is not combined, and does not carry weight unless they both [testify to] have seen at the same time. R. Joshua b. Korhah, however, says that the evidence is combined even if one [testifies that he] saw at one time and the other at another.[6] Nor is their evidence accepted in the Beth Din unless they testify together. R. Nathan, however, says that the evidence of one may be taken on one day and the evidence of the other when he comes on the next day.'[7]

A certain man said to another, 'What are you doing on this land?' He replied, 'I bought it from you, and here is the deed of sale.'

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(1) And therefore he was disqualified, on the basis of Lev. XXI, 7.

(2) V. Glos. The Rabbis forbade a priest to marry a haluzah also.

(3) And R. Nahman in his dictum was thus following R. Simeon b. Gamaliel.

(4) Since R. Eliezer is anxious to safeguard the dignity of the Beth din.

(5) And therefore R. Nahman had great authorities on his side.

(6) E.g., one testifies that he saw the claimant lend the defendant a certain sum on one day, while the other maintains that it was on the next day. This first clause of the Baraitha here quoted has nothing to do with the argument, and is only inserted to make the quotation complete.

(7) Thus R. Gamaliel agrees with R. Nathan and R. Eliezer with the anonymous opinion.

Talmud - Mas. Baba Bathra 32b

'It is a forged document,' said the first. On this the other leaned over to Rabbah and whispered to him, 'It is true that this is a forged document;[1] I had a proper deed but I lost it, so I thought it best to come into court with some sort of document.' Said Rabbah: What motive has he for telling a falsehood? If he had liked he could have said [without fear of contradiction] that the document was genuine. Said R. Joseph to him: On what do you base your decision? On this document? But this document is only a piece of clay![2]

A certain man said to another, 'Pay me the hundred zuz that I am claiming from you; here is the bond.' Said the other: 'It is a forged bond.' The first thereupon leaned over and whispered to

Rabbah, 'It is true the bond is forged ' but I had a genuine bond and lost it, so I thought it best to come into court with some sort of document.' Rabbah thereupon said: What motive has he for telling a falsehood? If he had liked, he could have said that it is a genuine bond. Said R. Joseph to him: On what do you base your decision? On this document? But this document is only a piece of clay. R. Idi b. Abin said: The accepted ruling follows the view of Rabbah in the case of the land[3] and that of R. Joseph in the case of the money.[4] It follows the view of Rabbah in the case of the land, because [we say,] Let the land remain in its present owner ship;[5] and that of R. Joseph in the case of the money, because we again say, Let the money remain in its present ownership.[6]

A certain [man who had gone] surety for a borrower said to him, 'Give me the hundred zuz which I paid the lender on your behalf; here is your bond.' Said the other, 'Did I not pay you?' He rejoined, 'Did you not borrow the money from me again?' R. Idi b. Abin [before whom the case came] sent a message to Abaye [enquiring] as to the ruling for such a case.[7] Abaye sent him back answer: What do you want to know?[8] Did you not yourself say that the accepted ruling is that of Rabbah in the case of the land and of R. Joseph in the case of the money, namely, that the money should remain In Its present ownership?[9] This, however, holds good only if the surety said to the other, 'After repaying, you again borrowed the money from me.'[10] If, however, he says, 'I returned it to you because the coins were worn or rusty,' the obligation of the bond still remains.

It was rumoured of Raba b. Sharshom that he was using for himself land that belonged to orphans [for whom he was trustee]. So Abaye sent for him and said to him: Tell me now the main facts of the case. He said: I took over this land from the father of the orphans as a mortgage [for money that he owed me], and he owed me

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(1) Possibly one not actually forged but referring to a fictitious sale.

(2) And since he has admitted as much, how can you say that 'if he had liked he could have said it was genuine'?

(3) Where the defendant produces the forged document.

(4) Where the claimant produces the forged document.

(5) Lit., 'where it stands'.

(6) Since there is a doubt to whom it belongs.

(7) I.e., which he should believe.

(8) Following reading of Rashb.

(9) The bond after it has been honoured is regarded by Abaye as on the same footing as the 'forged' bond mentioned above.

(10) Because the previous transaction was now closed, and the bond no longer had any force.

Talmud - Mas. Baba Bathra 33a

other money besides.[1] When I had had the use of the land for the number of years covered by the mortgage, I said to myself: If I restore the land to the orphans and then tell them that I have still a claim on their father for more money, [I shall have to comply with] the rule of the Rabbis that 'anyone who claims to recover from orphans must support his claim with an oath.' I will therefore keep back the mortgage bond and continue to use the land to the extent of the money still owing to me; for since, if I were to say that I had bought the land, my plea would be accepted,[2] I shall certainly be believed when I say that they owe me money. Said Abaye to him: You could not plead that you have bought the land, because common report says that it belongs to the orphans.[3] Go therefore and restore it to them, and when they become of age[4] claim your debt from them in court.

A relative of R. Idi b. Abin died, leaving a date tree. [R. Idi and another man disputed its possession] R. Idi saying, 'I am the nearer relative,' whilst the other man said, 'I am the nearer relative;' [and the other man seized the tree]. Eventually, however, he admitted that R. Idi was a nearer relative, and R. Hisda assigned to him the tree. He [R. Idi] then claimed: 'Let him return me

the produce which he has consumed from the time he seized it.' Said R. Hisda: 'So this is the man[5] who is said to be a great authority! On what ground do you base[6] [your ownership]? On this man s admission. But he has been saying till now that he was the nearer relative.'[7] Abaye and Rab did not concur in R. Hisda's decision;

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(1) For which no land had been mortgaged to him.

(2) Because he had had unchallenged occupation for more than three years.

(3) And this is equivalent to a protest, in which case no right can be proved save through a deed of sale.

(4) I.e., thirteen years old.

(5) Referring to R. Idi.

(6) Lit., 'on whom'.

(7) And therefore he is in effect making you a gift of the tree, though you cannot claim it by law. Hence you cannot claim the produce, if he does not choose to give you that also.

they held that the man's admission covered the produce as well as the tree.[1]

[A case arose] in which one said, ['The land belonged] to my father,' and another said 'To my father,' but while the one brought witnesses to prove that it had belonged to his father [up to the time of his death], the other brought witnesses to prove that he had had the use of it for the period of hazakah.[2] [When the case came before] R. Hisda, he said: What motive has he [who occupies it] to tell a falsehood? If he likes he can say, 'I bought it from you and have had the use of it for the period of hazakah.'[3] Abaye and Raba, however, did not concur in this judgment of R. Hisda, on the ground that we do not advance the plea 'What motive had he to tell a falsehood' when it conflicts with direct evidence. A certain man said to another, 'What are you doing on this land?' He replied, 'I bought it from you and have had the use of It for the period of hazakah.' He then went and brought witnesses to prove that he had had the use of it for two years [but could not find witnesses for the third]. R. Nahman thereupon decided that he should restore both the land and the produce. R. Zebid said: If he had pleaded, 'I was working[4] the land for the produce only [as a metayer],' his plea would have been accepted.[5] For has not Rab Judah laid down that if a man takes a pruning knife and rope In his hand and says, 'I am going to gather the dates from the tree of so-and-so who has sold them to me,' his word is accepted, because a man would not take the liberty of gathering the dates from a tree which did not belong to him? So here, a man would not take the liberty to consume produce that did not belong to him. But might not the same be said of the land also?[6] -If he [the occupier] claims the land, we say to him: Show us your deed of sale. Cannot we then say the same in the case of the produce also? — Written agreements are not usually made in regard to produce.

A certain man said to another, 'What right have you on this land?' He replied, 'I bought it from you and I have had the use of it for the period of hazakah;' and he brought one witness to prove that he had had the use of it for three years. The Rabbis of the court of Abaye[7] propounded the opinion that this case was parallel to that of the bar of metal[8] [which was decided] by R. Abbah. [What happened was] that a certain man seized a bar of metal from another, and the latter brought the case before R. Ammi, before whom R. Abbah was sitting at the time. He brought one witness to prove that the man had snatched the article from him. 'Yes,' said the other, 'I did snatch, but it was my own property that I snatched.' R. Ammi thereupon said:

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(1) Lit., 'Since he admitted, he admitted.' The above is the interpretation of this passage given by Rashb., and though satisfactory in itself it does a certain amount of violence to the original. Tosaf. therefore reads, instead of 'he admitted that R. Idi was a nearer relative', simply 'he admitted', i.e., he gave way, allowing R. Idi to keep the tree, though he did not formally admit that he was the nearer relative. We then translate lower down: 'Through whose word (do you become owner of the tree)? Through this man's etc:' and in the last sentence, 'Since he gave way (in regard to the tree), he must

give way (in regard to the produce).' R. Han. reads, instead of 'he admitted etc.', 'R. Idi brought witnesses to prove that he was the relative' (or, alternatively, 'the nearer relative'). In that case we translate the last sentence, 'Abaye and Raba held . . . that since he admitted (that he consumed the produce), he must abide by the admission (and pay for it).'

(2) I.e., not less than three years.

(3) And therefore we believe him when he says that it belonged to his father.

(4) Lit., 'l went down to.'

(5) And he would not have had to restore the produce as well as the land.

(6) I.e., that if the occupier pleads, 'I bought it from the claimant', his word should be accepted, because he would not take the liberty of occupying it otherwise.

(7) Lit., 'the Rabbis sitting before Abaye.'

(8) Presumably silver or gold.

Talmud - Mas. Baba Bathra 34a

How are the judges to decide this case? Shall we make him pay? — There are not two witnesses against him. Shall we let him off scot free? — There is one witness.[1] Shall we administer an oath to him? — But he admits that he snatched the article, and since he admits that, he is, as far as this case goes, a robber.[2] Said R. Abba to him: He is [in the position of a man who is] legally under obligation to take an oath and is yet unable to take it; and the rule is that whoever is under obligation to take an oath which he cannot take must pay.[3] Abaye, however, said to the Rabbis: Are the two cases on all fours? [There in the case of the bar of metal] the witness comes to oppose [the defendant], and if there were another witness with him we should make him give up the article. Here [in the case of the land] the witness comes to support [the defendant], and if there were another witness we should confirm his title to the land.[4] If you do wish to draw a parallel with the case of R. Abbah, it would be in the case of one witness [who testifies that the occupier has had the use of the land] two years, and [where the claim is for] the produce.[5]

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(1) And therefore, since the claim is a pecuniary one, he could be called upon to deny the allegation on oath (V. Shebu. 40a).

(2) And therefore he is disqualified in this case from taking an oath in court.

(3) In the case of the land the occupier ought to take an oath to deny the allegation of the one witness, but he cannot take an oath since he admits that he made use of the produce. Hence he should not only give up the land but make restitution for the produce he has consumed.

(4) Since therefore the witness is in support of the occupier he cannot be made without more ado to pay for the produce, but might take an oath to confirm his claim in regard to the produce, though in the absence of two witnesses to prove his right he would have to return the land; v. Yad Ramah, a.l.

(5) Here the witness is against the occupier, since he testifies that he occupied it only two years and not three, and if another witness made the same statement he would have to pay. Hence he is under obligation to deny the statement of the one witness on oath. This, however, he cannot do, as he admits that he has consumed the produce for two years. Hence he must pay.

Talmud - Mas. Baba Bathra 34b

There was a certain river boat about which two men were disputing.[1] One said, 'It is mine', and the other said, 'It is mine. One of them went to the Beth din and appealed to them: 'Attach the boat[2] until I bring witnesses to prove that it belongs to me.' [In such a case] should we attach the boat or not?[3] R. Huna says we should attach it,[4] and Rab Judah says we should not.[5] [The Beth din having attached the boat],[6] the man went to look for his witnesses but did not find them, whereupon he requested the Beth din to release the boat, leaving it to the stronger to obtain possession.[7] In such a case should we release or not? Rab Judah says we should not release,[8] R. Papa says we should release.[9] The accepted ruling is that we should not attach in the first instance, but if we have attached we should not release.[10]

[If there are two claimants to a property[11] and] one says,' It belonged to my father,' while the other says, 'To my father' [without either of them bringing any evidence], R. Nahman says that whichever is stronger can take possession.[12] Why, [it may be asked,] should the ruling be different here from the case in which two deeds [of sale or gift relating to the same property and] bearing the same date

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(1) But apparently without having actually seized the boat, since in that case the law would be that they should divide it, according to B.M. ad init.

(2) So that the other should not sell it in the meanwhile.

(3) I.e., which course is more likely to assist the rightful owner to obtain possession?

(4) Because we presume that he will succeed in finding witnesses, and therefore we prevent the boat from being disposed of in the interval.

(5) Because we are afraid he will not find witnesses and we shall not know to whom to restore the boat, and therefore it is best to leave it alone.

(6) It is not clear from the text whether this is a hypothetical case, or whether the Beth din really did attach the boat, perhaps on the request of both parties.

(7) Lit., 'to prevail' — whether by argument or by force.

(8) Because once property has come into the hands of the Beth din, it is not right that they should release it except to restore it to the proper owner.

(9) Because they only attached it from the first on this condition.

(10) I.e., the halachah follows R. Judah.

(11) Whether landed property or other.

(12) v. supra n. 7.

Talmud - Mas. Baba Bathra 35a

are presented in court,[1] in which case Rab rules that the property should be divided between the claimants, and Samuel that the judges should assign it according to their own discretion?[2] — In that case there is no chance that further evidence should come to light,[3] here there is a chance that further evidence may come to light.[4] But why should the ruling here be different from what we have learnt: 'If a man exchanges a cow for an ass and it calves, and similarly if a man sells a female slave and she bears a child, if the seller says that the birth took place before the sale[5] and the purchaser that it took place after the sale,[6] they must share the offspring'?[7] In that case each

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(1) I.e., where a man has first assigned a property to Reuben and then on the same day made out another deed assigning it to Simeon. The hour of the day at which the deed was written or transferred was not usually specified, save in Jerusalem.

(2) According to Rashb. this means that they should estimate which of the two claimants the donor was more likely to favour; according to Tosaf. they should consult purely their own judgment.

(3) The deeds themselves being the whole of the evidence bearing on the case.

(4) In which case the man who has seized the property may still be dispossessed.

(5) Lit., 'before I sold it, I.e., before the purchaser had taken possession, and therefore the offspring was not included in the sale.

(6) Lit., 'since I bought it.'

(7) The transaction has to be one of exchange and not of sale in the case of the cow, for the reason that, in the case of all movables except human beings, a transaction of sale is not completed until the article bought is 'pulled' by the purchaser. Hence no dispute would have been possible about the calf. In the case of an exchange, however, the transaction is concluded as soon as the article given in exchange-here, the ass-is handed over. V. B.M. 100a.

Talmud - Mas. Baba Bathra 35b

had [at some time] a pecuniary interest [in the article in dispute].[1] but in this case of R. Nahman, if the property belonged to one, It never belonged to the other.

The Nehardeans laid down that if an outsider[2] comes and seizes the property, he is not forced to surrender it,[3] because R. Hiyya taught: He who robs the public[4] is not a robber in the legal sense.[5] R. Ashi said: He is indeed a robber in the legal sense,[6] and why [does R. Hiyya say that] he is not a robber in the legal sense? Because he is unable to make restitution like an ordinary robber.[7]

THEIR PERIOD OF HAZAKAH IS THREE YEARS FROM DAY TO DAY. R. Abba said: If [the claimant of a piece of land] helps [the man In possession] to lift a basket of produce on to his shoulders, this at once creates a presumption [that the land belongs to the latter].[8] R. Zebid said: If, however, he pleads, 'I have installed him [as a metayer] with a right to the produce [but not the ownership of the land],' his plea is accepted. This too is only the case if the plea is made within three years [of the alleged transfer], but not later. Said R. Ashi to R. Kahana: If he had made him a metayer [for more than three years], what was he to do?[9] He said: He should have lodged a protest within three years. For, were you not to say so, then what about the so-called 'mortgage of Sura'[10] containing the stipulation, 'On the termination of these [X] years this land shall be given up without payment.' Now suppose the mortgagee suppresses the mortgage bond and asserts that he has bought the land; are we indeed to say that his plea is to be accepted? Would the Rabbis make a regulation[11] which would expose the mortgager to unfair loss? But the fact is that he can protect himself by lodging a protest within three years; and so in this case also he can protect himself by lodging a protest within three years.

Rab Judah said in the name of Rab: A Jew who derives his title from a non-Jew is on the same footing as a non-Jew:[12] just as a non-Jew cannot prove his right save through producing a deed of sale,[13] so the Jew who derives his title from a non.Jew [to a field originally belonging to a Jew] cannot prove his right save through producing a deed of sale.[14] Said Raba: If, however, the Jew pleads,

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(1) I.e., each was at some time the owner of the cow or the slave.

(2) Lit., 'a man from the street'.

(3) Because possibly it belongs to neither of the claimants.

(4) The two claimants being regarded as the 'public' (lit., 'many').

(5) And cannot be forced to make restitution.

(6) And must be deprived of the property.

(7) Because he does not know to which of the two claimants he should restore the property, and therefore he cannot make atonement like an ordinary robber.

(8) This act being a kind of admission that the land belongs to him.

(9) So as to ensure that he will be able to recover the property at the end of the period of leasing.

(10) A form of deed by which a borrower transferred property to the lender for a fixed number of years.

(11) Viz., that three years' occupation gives a title to ownership.

(12) In the matter of hazakah.

(13) It is assumed that a Jew is afraid to protest against the occupation of his land by a non-Jew, and therefore three years' undisturbed occupation confers no hazakah on the latter.

(14) Given by the original Jewish owner to the non-Jew, even though both he himself and the non-Jew have enjoyed undisturbed occupation for three years.

'The non-Jew said to me that he had bought it from you,' his plea is accepted. [But] can it be possible that a plea which would not be accepted if put forward by a non-Jew[1] should be accepted if put forward by a Jew in the name of a non-Jew? Raba therefore corrected himself as follows: If the

Jew pleads, ‘The non-Jew bought it from you in my presence and sold it to me,’ his plea is accepted, because if he had liked he could have brought against him [without fear of contradiction the still stronger plea], ‘I myself bought it from you.’

Rab Judah further said:[2] If a man takes a knife and a rope and says, ‘I am going to gather the fruit from so-and-so's date tree which I have bought from him, ‘his statement is accepted, because a man would not ordinarily presume to gather the fruit from a tree which does not belong to him. Rab Judah further said: If a man occupies the strip of another man's field outside of the ‘wild animals’ fence,’[3] this does not constitute a hazakah, because the owner can say, [The reason why I did not protest was because] whatever he sows, the wild animals eat up. Rab Judah further said: If he ate thereof[4] [only] ‘uncircumcised’ produce,[5] this does not count towards the three years of hazakah. It has also been taught to the same effect: If he takes from it only ‘uncircumcised’ produce, the produce of ‘mingled seed’ ,[6] or the produce of the Sabbatical year,[7] this does not confer hazakah. R. Joseph said: If he takes from the field immature produce,[8] this does not confer hazakah.[9] If, however-added Raba-the field is in the ‘neck of Mahuza’,[10] this does confer hazakah. R. Nahman said: The occupation of land which is full of cracks does not confer hazakah.[11] If the land yields no more than is sown In it,[12] its occupation does not confer hazakah.[13] Members of the Exilarch's house do not obtain hazakah through occupation of our fields,[14] nor do we obtain hazakah through occupation of theirs.[15]

AND SLAVES etc. Is there then a presumptive title to slaves? Has not Resh Lakish laid down that ‘there is no presumptive title to living creatures?[16] — Said Raba: [What Resh Lakish meant is that] there is no presumptive title in regard to them immediately, but there is after three years’ possession.[17] Raba further said: If the slave is an infant in a cradle, presumptive right to it is conferred immediately.[18] Surely this is self-evident? — It required to be stated on account of the case where the child has a mother. You might think in that case that there is a chance that the mother brought it into the house where It now is [and left it there]. [Raba therefore] tells us that a mother does not forget her child.

Some goats [went into a field] in Nehardea [and] ate some peeled barley [which they found there]. The owner of the barley went and seized them, and made a heavy claim on the owner of the goats.[19] The father of Samuel said: He can claim up to the value of the goats, because if he likes he can plead that the goats themselves are his by purchase.[20] [But surely] Resh Lakish has said that there is no hazakah to living things? Goats are an exception, because they are entrusted to a goatherd.[21] But they are left to themselves morning and evening?[22] — In Nehardea thieves abound, and the goats are delivered from hand to hand.[23]

R. ISHMAEL SAYS, THREE MONTHS etc. May we say that the actual difference [between R. Ishmael[24] and R. Akiba[25]] is in regard to ploughing,[26] R. Ishmael holding that ploughing does not help to confer hazakah and R. Akiba that it does? — If this were the case, why should R. Akiba require a month

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(1) Because, as stated above, the non-Jew can only prove his right by producing the deed of sale.

(2) v. supra 33b.

(3) In fields adjoining woods it was customary to make a fence a little within the border of the field and to throw seeds on the strip outside, so that the animals from the wood should eat what grew from these and not seek to penetrate within the fence.

(4) The field he occupied.

(5) ‘Orlah; Lev. XIX, 23, 24. When ye come to the land and plant trees for food, ye shall count the food thereof as uncircumcised; three years it shall be as uncircumcised unto you; it shall not be eaten of.

(6) Kila'im; v. Lev. XIX, 29; Deut. XXII, 9.

(7) ‘Orlah and Kila'im are prohibited; the produce of the Sabbatical year was common property. Hence the owner would not trouble to protest in these

(8) To feed cattle with.
(9) Because by such a proceeding the occupier seemed to show that he was conscious that the field did not belong to him, and therefore the owner would not trouble to protest.
(10) A fertile valley in the district of Mahuza where it was customary to do this, because corn was so abundant that it paid to feed cattle with it.
(11) Such land being practically barren.
(12) Lit., 'if he takes out a kor (of seed) and brings in a kor (of produce).'
(13) Because it is not worth the owner's while to protest.
(14) Because the ordinary man is afraid to protest against the occupation.
(15) Because knowing that they are able to take forcible possession whenever they please, they do not trouble to protest.
(16) Lit., 'those kept in the folds', i.e., young animals, because they are liable to stray.
(17) And in this respect living things differ from inanimate, possession of which confers presumptive right immediately, on the presumption that 'whatever a man holds is his'.
(18) Because the child could not have got into the house by itself; hence the presumption is that it was bought from the previous owner.
(19) I.e., he asserted that the goats had eaten barley to a much greater value than their own.
(20) I.e., if he asserted that the goats belonged to him, his plea would be valid (in default of rebutting evidence). Hence, in default of further evidence on either side, he can claim compensation up to the value of the goats.
(21) And therefore if they are found in another man's property, it is presumed that he has bought them.
(22) In the morning when they go by themselves from their owners to the goatherd, and in the evening when they go back by themselves from the goatherd to the owners.
(23) I.e., from the owners to the goatherds and vice-versa, and therefore have no chance to stray.
(24) Who requires a minimum of eighteen months. V. supra 28a.
(25) Who requires a minimum of fourteen months.
(26) I.e., if one ploughed the field without sowing.

Talmud - Mas. Baba Bathra 36b

in the first and third years? Even one day would be enough.[1] — No! Both are agreed that ploughing does not help to confer)hazakah, and the difference between them is whether a full or partially grown crop is required.[2] Our Rabbis taught: Ploughing does not help to confer hazakah. Some authorities hold, however, that it does help. Who are 'some authorities'? — R. Hisda said: This is the opinion of R. Aha, as we see from the following: If a man ploughs a field fallow one year and sows it two,[3] or [even] ploughs it fallow two years and sows it one, this does not confer hazakah. R. Aha, however, says that it does give him a presumptive right.

R. Bibi inquired of R. Nahman: What is the reason of those authorities who lay down that ploughing does confer hazakah? — [He answered:] A man will not see someone else plough his field and keep quiet. And what is the reason of those who say that ploughed fallow does not confer hazakah?- Because the owner says to himself, 'The more he ploughs the better for me.'[4] The people of Pum Nahara sent to inquire of R. Nahman b. R. Hisda as follows: Will our master be so good as to instruct us whether ploughed fallow helps to confer hazakah or not? He replied: R. Aha and all the chief authorities of the age hold that ploughed fallow does help to confer hazakah. R. Nahman b. Isaac said: You gain nothing by citing authorities;[5] for Rab and Samuel in Babylon and R. Ishmael and R. Akiba in Eretz Yisrael held that ploughing does not help to confer presumptive right. The views of R. Ishmael and R. Akiba [on the subject] can be derived from the Mishnah.[6] Where do we find the view of Rab on the subject? — In the following statement: Rab Judah said in the name of Rab: This[7] is the view of R. Ishmael and R. Akiba, but the Sages say that the hazakah [of such a field] is conferred only by occupation for three full years.[8] Now the expression 'full years' is intended to exclude ploughed fallow, is it not?[9] Where is the view of Samuel on the subject expressed? — In the following statement: Rab Judah said in the name of Samuel: This is the view of R. Ishmael and R. Akiba, but the Sages say that hazakah is not obtained until the occupier- has

gathered in three crops of dates and culled three vintages and plucked three crops of olives. Where does the difference arise between Rab and Samuel? — The difference arises In the case of a young date tree.[10]

R. ISHMAEL SAID: THIS APPLIES ONLY TO A CORNFIELD etc.

Abaye said: On the strength of R. Ishmael's ruling,[11] we may attribute the following opinion to the Rabbis.[12] Suppose a man has thirty trees in a field planted ten to the beth se'ah,[13] then if he takes the produce of ten in one year, ten in the next, and ten in the third year, this constitutes hazakah.[14]

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(1) Since a field can be ploughed in one day.

(2) R. Ishmael requires a full crop, which takes at least three months to grow, and R. Akiba requires only a partially grown crop, for which one month is sufficient.

(3) I.e., the first and the third year.

(4) Lit., 'Let him only put every tooth of the plough into the ground,' i.e., so that he shall find it better prepared when he comes to it.

(5) Lit., 'Is it an advantage (to you) to reckon up authorities?'

(6) Where both lay down that a certain amount of cropping must be done in each of the three years.

(7) That the period of hazakah for a non-irrigated field is not three full years but either eighteen months or fourteen months, in either case three crops being necessary.

(8) Lit., 'from day to day'.

(9) Because if the mere ploughing confers hazakah, one day in the year is sufficient. As Tosaf. points out, this reasoning conflicts with the statement made above, that the reason why the Rabbis require three full years is because up to that time a man is careful of his title-deeds.

(10) Which produces three crops in less than three years. According to Rab, three croppings of such a tree would not confer hazakah, according to Samuel they would. R. Han., however, interprets the text to mean 'a date tree which casts its fruit,' and which therefore is not cropped three times even in three years. (V. Rashb.)

(11) Viz., that the gathering in of one kind of crop is equivalent to occupation for a year.

(12) The Rabbis differ from R. Ishmael only in requiring three years where he requires one, but they would agree with him as to what constitutes a crop. Hence we may attribute to them the ruling which follows.

(13) 50 cubits square. The reason why ten is taken is because if there are more than ten to the beth se'ah, this constitutes a 'wood', and to plant a field so thickly is not the ordinary way of occupying it. If again there are less, the field is not occupied properly. Cf supra 26b

(14) I.e., though the owner gathered grapes in each set only in one of the three years, he was reckoned as occupying the whole of the field, and so with the other two crops.

Talmud - Mas. Baba Bathra 37a

For did not R. Ishmael lay down that one kind of crop confers a presumptive title to the whole field? So here, one set of ten trees confers a presumptive title to the others, and vice versa.[1] This, however, is only the case if the other twenty did not produce [in the other two years]; for if they did produce and he did not take the produce, he obtains no hazakah. And in any case [it is necessary that the trees of which he does take the produce] should be spread about the field.[2]

[If a man sells a field to two persons, the ground to one and the trees to the other, and] if the one takes possession of the ground and the other takes possession of the trees,[3] R. Zebid says that the one becomes legal owner of the trees[4] and the other becomes the legal owner of the ground .[5] R. Papa strongly objected to this ruling. According to this, [he said,] the owner of the trees has no right whatever in the ground, and the owner of the ground can therefore tell him [when the tree withers], 'Cut down your tree and take it and be gone.' No, said R. Papa, [the law is that] the one becomes owner of the trees and half the ground, and the other of half the ground.

There is no question that if a man sells a piece of ground[6] and retains the trees on it for himself, he is entitled to a certain amount of ground [round the trees]. This ruling would be accepted even by R. Akiba, who said [in regard to a field with a well in it] that the seller interprets the terms of the sale liberally.[7] For this only applies to a well and a cistern, which do not impair the soil,[8] but in the case of trees which do impair the soil[9]

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(1) Lit., 'these... to these and these... to these.'

(2) Lit., 'be divided' (the fruits between the various sets of trees). Because if he takes the produce of ten in one beth se'ah, this is counted as a field by itself, and confers no right to the rest.

(3) By digging or some similar action.

(4) I.e., of the trees only, without any rights in the ground under or round them.

(5) I.e., the ground under the trees and as much round them as is required for tending them (Rashb.).

(6) To one purchaser. V. infra.

(7) Lit., 'he sells with a kindly eye,' i.e., if a man owns a courtyard or a field with a well in it, and sells the courtyard but not the well, he does not ipso facto retain a right of way through the courtyard or the field to the well, but has to pay for it, if required, to the purchaser. V. infra 64a.

(8) There is therefore no danger that he will at some future time be called upon by the purchaser of the field to remove the well; hence it does not occur to him to reserve the ground round it for himself.

(9) Through the spreading of the roots.

he would certainly reserve for himself [some of the soil], since otherwise the purchaser can say to him [when the tree withers], 'Pluck up your tree and be gone. If, however, a man sells the trees [in a field[1] and retains the ground for himself], in this there applies the dispute between R. Akiba and the Rabbis [viz., whether the purchaser is entitled to any ground round the trees]. According to R. Akiba, who holds that the vendor interprets the terms of the sale liberally, the purchaser is entitled [to such ground]; according to the Rabbis, he is not. That R. Akiba would allow the purchaser such ground would not be questioned even by R. Zebid, who said [in the case mentioned above] that he is not so entitled. For this was only where there were two purchasers, the reason being that one can say to the other, 'Just as I have no share in the trees, so you have no share in the ground.' Here, however, the seller interprets the terms of the sale liberally. That the Rabbis in this case do not allow the purchaser such ground would not be questioned even by R. Papa, who said above that he is so entitled. For this was only where there are two purchasers, the reason being that one [the purchaser of the ground] can say to the other, 'Just as the vendor interpreted the terms of sale generously for you,[2] so he did for me.'[3] Here, however, the seller interprets the terms of sale strictly.[4]

The Nehardeans say: [If the thirty trees mentioned above[5] are planted] close together,[6] the gathering in of their produce does not confer hazakah. Raba strongly questioned this ruling. On this view, he said, how is hazakah to be obtained in a row of clover?[7] No, said Raba; [what we should say is that] if a man sells saplings closely planted, the purchaser does not acquire any of the soil.[8] R. Zera said: A similar [difference of opinion is found] between Tannaim, [in the following Mishnah]: If a vineyard is planted on less than four cubits,[9] R. Simeon says that it is not a vineyard in the legal sense,[10] whereas the Rabbis say that it is a proper vineyard, the middle row being regarded as non-existent.[11] The Nehardeans say: If a man sells a date tree to another, the purchaser acquires the soil [under it] from its base to the furthest depth.[12]

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(1) The case here discussed is one in which only two trees are sold, since there is no question that the sale of three trees carries with it a certain amount of ground round the trees. V. infra 81a.

(2) By making over the tree and its produce to you in perpetuity.

(3) By allowing me ground under and round the tree.

(4) Lit., 'sells with a malignant eye.'

(5) The text here reverts to the discussion of the subject of the thirty trees.

(6) The 'trees' in question are apparently saplings which are meant to be transplanted.

(7) Which also is planted closely, and with a view to transplanting.

(8) Because they are meant to be uprooted.

(9) I.e., with less than four cubits between the rows of vines.

(10) And corn or other seed sown there does not form kilayim.

(11) Kil. V, 2; v. infra 83a. And similarly in regard to the trees, the Rabbis look upon the middle ones as non-existent, and therefore if the owner sells them the purchaser acquires the soil round them; whereas Raba follows R. Simeon.

(12) And can therefore plant a new one when this one withers.

Talmud - Mas. Baba Bathra 38a

Raba strongly questioned this ruling, on the ground that the seller can say, 'What l sell you is [sold in the same way as] garden crocus;[1] pluck up your garden crocus and be off'?- No, said Raba; this is only the case when he is able to plead so expressly.[2] Mar Kashisha the son of R. Hisda said to R. Ashi: If the seller did sell him [the tree in the same way as] a plot of garden crocus,[3] what was he to do?[4] — He should have lodged a protest within three years. For should you not say so,[5] then in the case of the 'mortgage of Sura'[6] which stipulates that 'on the termination of these [X] years this land shall be given up without payment,' if the mortgagee suppresses the bond and says that he has bought the land, would his plea indeed be valid? Have the Rabbis then made a regulation through which the mortgager is exposed to unfair loss?[7] The fact is that he should protect himself by lodging a protest. So here also it is incumbent on him to lodge a protest.

MISHNAH. THERE ARE [IN ERETZ YISRAEL] THREE DISTRICTS [WHICH ARE DISTINCT FROM EACH OTHER[8]] IN THE MATTER OF HAZAKAH — JUDEA, TRANSJORDAN, AND GALILEE. THUS, IF THE OWNER IS IN JUDEA AND THE OCCUPIER IN GALILEE, OR THE OWNER IN GALILEE AND THE OCCUPIER IN JUDEA, THE OCCUPATION DOES NOT CONFER HAZAKAH;[9] IT ONLY DOES SO IF THE OWNER IS IN THE SAME DISTRICT[10] WITH THE OCCUPIER. R. JUDAH SAYS: THE PERIOD IN WHICH OCCUPATION CONFERS HAZAKAH WAS FIXED AT THREE YEARS ONLY IN ORDER THAT IT MIGHT BE POSSIBLE WHEN A MAN IS IN SPAIN[11] FOR ANOTHER TO OCCUPY HIS FIELD ONE YEAR, AND FOR INFORMATION TO BE BROUGHT TO HIM [WHICH WILL ALSO TAKE] A YEAR, AND FOR HIM TO RETURN HIMSELF, [WHICH WILL TAKE] A THIRD YEAR.[12] GEMARA. What is the reason of the first Tanna [on which he bases his ruling]?[13] If he holds that a protest raised by the owner not in the presence of the occupier is a valid protest, then [it should be valid] even [if the owner is] in Judea and [the occupier in] Galilee.[14] If, however, he holds that a protest [raised by the owner] not in the presence of the occupier is not a valid protest, then [it should be equally] invalid even if both are in Judea?[15] -R. Abba b. Memel replied in the name of Rab: The first Tanna is indeed of the opinion that a protest raised [by the owner] not in the presence of the occupier is a valid protest, and our Mishnah was formulated at a time when there were hostilities between Judea and Galilee.[16] Why then are Judea and Galilee particularly specified?[17] — To show us

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(1) Which it was customary to uproot after it had ripened, the soil being left to the owner of the field.

(2) That is to say, if he advances this plea, it is accepted (in default of rebutting evidence), even though he has no document to prove it.

(3) I.e., without making any express stipulation.

(4) To prevent the purchaser after three years affirming that he bought the soil also and wants to plant another.

(5) I.e., that such a step is effective.

(6) V. supra p. 159, n. 4'

(7) I.e., the danger of losing his land.

(8) I.e., form self-contained units, as explained in what follows.

(9) I.e., the fact of the occupier having had unchallenged possession of the land for three years does not create a presumption that he is the owner. The reason is discussed in the Gemara.

(10) I.e., Judea, Transjordan and Galilee.

(11) Spain is taken as being the furthest point to which an owner of land in Eretz Yisrael was likely to go.

(12) R. Judah therefore does not hold that the period of three years was fixed because after that a man is not careful of his title-deed (V. supra 29a), nor does he regard Judea, Transjordan and Galilee as self-contained units in the matter of hazakah.

(13) That the three districts are independent.

(14) Because someone is sure to convey information of it to the occupier, and he will be careful of his title-deed if he has one.

(15) But in different towns.

(16) Hence caravans did not travel between them and it was difficult to know in one what was going on in the other.

(17) l.e., why should not the Tanna have formulated his ruling thus: 'All districts of Eretz Yisrael are independent units in regard to hazakah when they are not on peaceful terms.'

Talmud - Mas. Baba Bathra 38b

that Judea and Galilee are normally reckoned to be on hostile terms.[1]

Rab Judah said: Rab laid down that occupation of the property of a fugitive does not confer hazakah.[2] When I related this to Samuel,[3] he said to me: Must then the owner [in ordinary cases] make his protest in the presence of the occupier?[4] [According to Samuel then,] what did Rab mean to teach us in this ruling? That [as a rule] a protest raised not in the occupier's presence is invalid?[5] But [how can this be,] seeing that Rab has laid down[6] that a protest raised not in the occupier's presence is valid? — Rab [in making this latter statement] was giving the reason of the Tanna of our Mishnah, but he did not himself concur.

There is another version [of this passage, as follows:] Rab Judah said: Rab laid down that occupation of the property of a fugitive does confer hazakah. When I related this to Samuel, he said: Of course! Do you imagine the protest has to be made in the presence of the occupier? What then does Rab desire to indicate [by this ruling?] That a protest made not in the occupier's presence is valid? But surely this has been laid down by Rab already? — The truth is that this is what Rab wishes to indicate, that even if the owner made his protest in the presence of two men who are not able to report it to the occupier,[7] it is still a valid protest.[8] For so R. Anan reported: 'It has been expressly stated to me by Mar Samuel that if the protest is made in the presence of two men who are able to report it to the occupier, it is valid, but if of two men who are not able to report it to the occupier, it is not valid. And Rab?[9] — [He goes on the principle that] "your friend has a friend and your friend's friend has a friend".'[10]

Raba said: The law is that it is not permissible to take possession of the property of a fugitive,[11] and a protest made not in the presence of the occupier is valid. Are not these two rulings contradictory?-No; the latter relates to a fugitive on account of debt, the former to a fugitive on account of manslaughter.[12]

What constitutes a protest?-R. Zebid says: If the owner says, 'So-and-so is a robber,' this is no protest.[13] If, however, he says: 'So-and-so is a robber who has seized my land wrongfully

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(1) I.e., that communication between them is difficult.

(2) Even if the owner makes no protest.

(3) Rab Judah was first a pupil of Rab and when Rab died he studied under Samuel.

(4) Which the fugitive cannot do.

(5) This being the reason why, in the case of the fugitive, the unchallenged occupation does not confer a title of

ownership.

(6) V. supra.

(7) E.g., because they are about to go abroad.

(8) And Samuel did not think of this; hence his surprise at Rab's saying something which appeared self-evident.

(9) What is his view?

(10) And therefore if the two persons in whose presence the protest is made are not themselves able to report it, the protest is still valid, as in any case it will eventually reach the ears of the occupier.

(11) Presumably because a protest made not in the presence of the occupier is not valid.

(12) A fugitive on account of debt does not mind his whereabouts being known, so he will not refrain from making a protest, but a fugitive on account of manslaughter will not do this, for fear lest he may be discovered.

(13) Because this constitutes no warning to the occupier to take care of his deed of purchase.

Talmud - Mas. Baba Bathra 39a

and tomorrow I am going to sue him,' this is a protest.[1] Suppose the owner says to those to whom he makes the protest, 'Do not tell the occupier,' is this a valid protest?-R. Zebid says, [It is not, because] he has distinctly told them not to tell. R. Papa, however, says [that it is, because] what he meant was, 'Do not tell the occupier, but you can tell others,' and 'your friend has a friend and your friend's friend has a friend.' If the men to whom he made the protest say, 'We will not tell the occupier,' [is it a protest?]-R. Zebid says [that it is not, because] they distinctly say, 'We will not tell him' — R. Papa, however, says that it is, because what they meant was,'We will not tell the occupier himself but we will tell others,' and 'your friend has a friend and your friend's friend has a friend.' If he said to them, 'Don't say a word about this,' [is it a protest?] — R. Zebid says [it is not, because] he has told them not to say a word. If they say to him, 'We will not say a word about it,' [even] R. Papa says [it is not a protest, because] they tell him distinctly, 'We are not going to say a word.' R. Huna the son of R. Joshua, however, says that [it is a protest, because] if a man has no responsibility in regard to a certain statement, he will blurt it out without thinking.[2]

Raba said in the name of R. Nahman: A protest made not in the presence of the occupier is a valid protest — Raba questioned[3] R.Nahman's ruling [on the ground of the following]: R. JUDAH SAYS THAT THE PERIOD IN WHICH OCCUPATION CONFERS HAZAKAH WAS FIXED AT THREE YEARS IN ORDER THAT IT MIGHT BE POSSIBLE FOR A MAN TO BE IN SPAIN DURING THE FIRST YEAR IN WHICH HIS FIELD IS OCCUPIED AND FOR INFORMATION TO BE BROUGHT TO HIM IN THE SECOND YEAR AND FOR HIM TO RETURN HIMSELF IN THE THIRD YEAR. Now if we are to assume, [he said], that a protest made not in the presence of the occupier is a valid protest, why should the man have to come back? Let him stay where he is and make the protest! — There [R. Judah is merely suggesting] as a piece of good advice that he should return and take possession of his land and the produce.I From the fact that Raba questioned R. Nahman's ruling, it would seem that he was not of opinion that a protest made not in the occupier's presence is valid. [How can this be,] seeing that Raba has laid down that a protest made not in the presence of the occupier is valid?[4] — He adopted this view after he had learnt it from R. Nahman.

R. Jose b. Hanina once came across the disciples of R. Johanan, and inquired of them whether R. Johanan had ever laid down the number of persons in whose presence a protest must be made. R. Hiyya b. Abba [replied] that R. Johanan had laid down that a protest must be made in the presence of two persons; R. Abbahu, that it must be made in the presence of three persons. May we say that the difference in principle [between R. Hiyya b. Abba and R. Abbahu] is in regard to the dictum of Rabbah son of R. Huna, for Rabbah son of R. Huna said that disparaging remarks made in the presence of three persons

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(1) According to R. Han. the warning lies in the threat to go to law; according to Rashb. in the use of the term 'my land'.

(2) And therefore the chances are that they will after all tell.

(3) In spite of the fact that he reported it himself. (3) Because the longer he delays the more trouble he will have to recover the produce; the protest, however, is valid if made abroad.

(4) V. supra p. 168.

Talmud - Mas. Baba Bathra 39b

do not constitute slander?[1] The one who says that a protest can be made in the presence of two persons [R. Hiyya bar Abba], we would say, does not accept the dictum of Rabbah son of R. Huna,[2] while the one who says that three persons must be present [R. Abbahu] does accept it? — No; both accept the dictum of Rabbah son of R. Huna, and the essential difference between them here is this: the one who says that the protest may be made in the presence of two persons is of opinion that a protest made not in the presence of the occupier is no protest,[3] whereas the one who says that three persons must be present is of opinion that a protest made not in the presence of the occupier is valid.[4] Alternatively we may reply that both [R. Hiyya b. Abba and R. Abbahu] agree that a protest made not in the presence of the occupier is valid, and the point on which they join issue here is this, that the one who says the protest may be made in the presence of two persons considers that [what] we require [them for is] to provide evidence,[5] while the one who holds that three persons must be present considers that [what] we require [them for is to ensure] that the matter should be bruited abroad.

Giddal b. Minyumi had occasion to make a protest [against the occupation of some land of his]. He found R. Huna and Hiyya b. Rab and R. Hilkiah b. Tobi sitting together and made his protest in their presence. A year later he again came to make a protest. They said to him: This is not necessary. Rab has laid down distinctly that if the owner makes a protest in the first year he need not repeat it.[6] (According to another report, Hiyya b. Rab said to him: Since the owner made a protest in the first year he need not repeat it.) Resh Lakish said in the name of Bar Kappara: It is necessary to repeat the protest every three years. R. Johanan found this dictum very surprising. Can a robber, he said, obtain a title from continued occupation?[7] A robber, do you say? What you should rather say is 'Can one who is like a robber[8] obtain a title from continued occupation?' Raba said: The law is that the owner must make a protest at the end of every three years.

Bar Kappara taught: If an owner protests [against the occupation of his land] and [after an interval] repeats his protest a second and a third time,[9] if he [always] adheres to his first plea the occupation confers no title, but if he does not then it does confer a title.[10]

Raba said in the name of R. Nahman: A protest [against the occupation of property] must be made in the presence of two persons

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(1) Lit., 'evil tongue'. For the essence of the 'evil tongue' is that the remarks made should not come to the ears of the person disparaged, but if they are made in the presence of three persons they are pretty sure to come to his knowledge.

(2) I.e., he holds that even if made in the presence of only two persons a statement will come to the ears of the person concerned; hence it is sufficient for the owner to make his protest in the presence of two persons.

(3) Hence the question of publicity does not arise, and the two persons are needed only to act as witnesses that the protest has been made by the owner to the occupier.

(4) Hence three persons most be present at such a protest to ensure that sufficient publicity is given to it.

(5) That the protest has been duly made within the specified three years.

(6) Within the next three years, v. infra.

(7) If the rightful owner neglects to protest within a given time.

(8) Since he pleads that he had a deed of purchase and lost it, he can hardly be put on the same footing as a robber. On the other hand, since he cannot produce the deed and continues to occupy the land after the former owner's protest, he is like a robber.

(9) Lit., ‘repeats his protest and repeats his protest’.
(10) E.g., if he says on the first occasion ‘so-and-so is robbing me of my field,’ and on the second occasion ‘so-and-so has only taken this field from me on mortgage, not purchased it,’ this being a virtual admission that his first plea was false. Hence neither plea is accepted, and the occupier is entitled to the land.

Talmud - Mas. Baba Bathra 40a

, and they are at liberty to write it down without being definitely instructed by the protester to do so.[1] A moda'ah[2] must be made in the presence of two persons, and they are at liberty to write it down without being definitely instructed to do so.[3] An admission of a debt must be made in the presence of two persons, and they must not write it unless definitely instructed to do so.[4] A transfer [by means of a cloth][5] must be carried out in the presence of two persons, and they may record it in writing without being definitely instructed to do so.[6] For certifying [the signatures of witnesses to] documents[7] [a Beth din of] three persons is required. (The mnemonic [for these is] Mamhak.)[8] Said Raba: If I have any difficulty about any of these rulings, it is this: How are we to regard this legal transfer [by means of a cloth]? If it is on a par with a proceeding of the Beth din, then we should require three persons. If it is not on a par with the proceedings of the Beth din, why can it be recorded without the permission of the seller?[9] — After posing the question, he himself resolved it. ‘In fact a kinyan’, he said, ‘is not on the same footing as a proceeding of the Beth din, and the reason why the witnesses may record it in writing without definite instructions from the transferor is because a kinyan unless there are instructions to the contrary, is intended to be recorded in writing.’[10]

Both Rabbah and R. Joseph hold that a moda'ah[11] should not be issued save against a man who does not obey the decisions of the Beth din.[12] [This is not the opinion of] Abaye and Raba, who said [to one another]: It can be issued even against me and against you.[13]

The Nehardeans say that a moda'ah

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(1) Lit. , ‘he need not say, write’, because such a document is of advantage to him, and ‘an advantage may be conferred on a man without his permission.’
(2) Lit. ‘notification’: an affidavit made by a man that a sale or a gift which he is about to execute is being forced on him against his will, and that he intends when opportunity arises to take legal steps to annul it.
(3) Because this also is to the advantage of the notifier.
(4) Lit., ‘he must say write’, because it is a disadvantage to the debtor to have his debt recorded in writing, and ‘a disadvantage may not be inflicted on a man without his consent.’
(5) Heb. kinyan. V. p. 6, n. 2 and Glos.
(6) The reason is discussed lower down.
(7) If a document signed by witnesses is brought before a Beth din and the Beth din certifies that the signatures are genuine, no question can subsequently be raised about their genuineness. The Beth din's endorsement was called honpak.
(8) M for mehaah (protest); M for moda'ah (notification); H for hoda'ah (admission); K for kinyan (transfer).
(9) Seeing that it is a disadvantage to him, confirming as it does the title of the transferee. But the proceedings of the Beth Din are of course independent of this rule.
(10) Because by using the kinyan the transferor shows that he is really anxious to make the transfer, since the exchange of the cloth in itself closes the transaction.
(11) V. supra p. 173, n. 2.
(12) Because otherwise the man who issues the moda'ah ought rather to sue him for trying to exercise constraint on him.
(13) Because sometimes it is not easy to bring the matter at once before the Beth din.

Talmud - Mas. Baba Bathra 40b

that does not contain the words ‘we, [the undersigned] are cognisant that so-and-so is acting under

duress', is no moda'ah. Of what kind of moda'ah are we speaking? If of one relating to a get [bill of divorce] or a gift. [why should the witnesses have to make this declaration, seeing that] it [only states something which] is more or less self-evident?[1] If again It is one relating to a sale, has not Raba laid down that we do not issue a moda'ah relating to a sale?[2] — [We are] in fact [speaking here of one relating] to a sale, and Raba admits [that such a one may be issued] where the seller acts under [such] constraint as [is exemplified] in the following case. A man mortgaged an orchard to another man for three years. The latter, after he had had the use of the orchard for the three years necessary for hazakah, said to the owner: 'If you will sell it to me, well and good, and if not, I will suppress the mortgage deed and say that I purchased it outright.' In such a case a moda'ah may be issued [on the owner's behalf].[3]

Rab Judah said: A deed of gift drawn up in secret is not enforceable. What is meant by a deed of gift drawn up in secret? R. Joseph said: If the donor said to the witnesses, 'Go and write it in some hidden place.' Others report that what R. Joseph said was: If the donor did not say to the witnesses, 'Find a place in the street or in some public place and write it there.' What difference does it make which version we adopt? — It makes a difference where the donor simply told the witnesses to write, without saying where.[4] Said Raba: Such a deed can serve as a moda'ah in respect of another.[5] R. Papa said: This statement attributed to Raba was not actually made by him but is inferred [wrongly] from the following ruling of his. A certain man wanted to betroth a woman, and she said to him, If you assign to me all your property I will become engaged to you, but otherwise not. He accordingly assigned to her all his property. Meanwhile, however, his eldest son had come to him and said, What is to become of me? He accordingly took witnesses and said to them, Go and hide yourselves in Eber Yamina[6] and write out [an assignment of my property] to him.[7] The case came before Raba, and he decided that neither party had acquired a title to the property. Those who witnessed this proceeding thought that Raba's reason was because the one deed was a moda'ah in respect of the other.[8] This is not entirely correct. [The secret gift] in that case [did indeed annul the later assignment] because the circumstances showed that the assignment to the woman was made under constraint. Here,[9] however, it is [evidently] the giver's desire that the one [the latter assignee] should obtain possession and not that the other should obtain possession.[10]

The question was asked [in the Beth Hamidrash]:

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(1) In the case of a get or a gift, there is no motive for a man to say that he is acting under constraint unless this is actually the case; hence there is no reason why the witnesses should have independent knowledge of the fact. In the case of a sale, however, it may happen that a man sells something in order to raise money, but with the idea of buying it back as soon as possible, and he may therefore be tempted to issue a moda'ah falsely in order to facilitate this.

(2) Where the sale, though compulsory, would not inflict real loss. V. infra 46a.

(3) Because if he does not sell he will lose the whole. It may be asked here how in such a case can the witnesses obtain independent knowledge that the sale was made under constraint? R. Han. says it can happen in this way. Suppose the witnesses first hear the owner claim the field and the occupier assert that he has bought it. Then the owner tells the occupier that he is willing to sell the field to him, and the latter tells him to draw up a deed of sale, not in his presence. The owner then tells the witnesses, who are thus able to say in the moda'ah that they know that the owner is selling under constraint.

(4) According to the first version such a deed is valid, according to the second it is not valid.

(5) I.e., even though not enforceable itself, it can render a subsequent deed or gift of the same thing invalid.

(6) ['The south side', a suburb of Mahoza, Obermeyer. p. 181].

(7) Before he had made the assignment to the woman.

(8) The deed of assignment to the son, being drawn up in secret, was not itself enforceable, but was able to render invalid the subsequent assignment to the woman.

(9) Where the second assignment is not made under constraint.

(10) As is shown by the fact that the deed of gift is written in secret.

What is the rule where the donor does not specify [the place of writing]?[1] — Rabina said that we take no account of this;[2] R. Ashi said that we do take account of it.[3] The law is that we do take account of it.

MISHNAH. THE FACT OF POSSESSION[4] IF NOT REINFORCED BY SOME PLEA OF RIGHT DOES NOT OF ITSELF CONFER A TITLE OF OWNERSHIP. FOR INSTANCE, IF A MAN SAYS TO ANOTHER, WHAT ARE YOU DOING ON MY PROPERTY, AND HE REPLIES, NO-ONE HAS EVER SAID A WORD TO ME ABOUT IT, HIS OCCUPATION CONFERS NO TITLE. IF, HOWEVER, HE PLEADS, I AM HERE BECAUSE YOU SOLD THE LAND TO ME, BECAUSE YOU GAVE IT TO ME, BECAUSE YOUR FATHER SOLD IT TO ME, BECAUSE YOUR FATHER GAVE IT TO ME, THEN HIS OCCUPATION CONFERS A TITLE OF OWNERSHIP. AN OCCUPIER BY VIRTUE OF INHERITANCE[5] DOES NOT REQUIRE ANY SUCH PLEA.[6]

GEMARA. [THE FACT OF POSSESSION IF NOT REINFORCED BY SOME PLEA OF RIGHT DOES NOT OF ITSELF CONFER A TITLE OF OWNERSHIP.] Surely this is self-evident? — [The reason for stating it is this] We might say: The land really was sold to this man, and he had a deed and has lost it,and the reason why he pleads as he does is because he thinks that if he says he bought the land he will be asked to produce the deed of sale. Let the Beth din then suggest to him that perhaps he had a deed and lost it, on the principle of Open thy mouth for the dumb.[7] The Mishnah therefore tells us [that this is not so].[8]

(Mnemonic ‘ANab.[9])

R.’Anan's[10] field was flooded through the bursting of a dam.[11] He afterwards went and restored the fence, [which, however, he built] on land belonging to his neighbour. The latter [on discovering this] sued him before R. Nahman. He said to him: ‘You must restore the land.’ ‘But,’ he rejoined, ‘I have become the owner of it by occupation?’[12] — Said R. Nahman to him: ‘On whose authority [do you rely]? On that of R. Ishmael and R. Judah, who both lay down that [if the occupation takes place] in presence of the owner [without protest], it constitutes a title at once. The law however, is not in accordance with their ruling.’[13] R. ‘Anan thereupon said: ‘But this man has tacitly waived his right because he came and helped me to build the fence?’ R. Nahman replied: ‘This was a waiver given in error. You yourself, had you known that the land was his, would not have built the fence on it. Just as you did not know, so he also did not know.’

R. Kahana's land was flooded through the bursting of a dam. He afterwards went and built a new fence on land which did not belong to him.

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(1) I.e., whether the deed of gift was to be written in a secret or a public place. This question was left open above.

(2) I.e., we do not suppose that the donor meant it to be written secretly, and therefore it is enforceable.

(3) And therefore the deed is not enforceable. if however, the gift has been made it cannot be recovered.

(4) For three years in the case of land, etc., immediate in the case of movables.

(5) I.e., one who inherited the land from the previous occupier.

(6) Because he cannot be expected to know how his father came by the property.

(7) Prov. XXXI, 8.

(8) And though the plea is valid if put forward by him, we do not suggest it to him.

(9) [The meaning of this mnemonic is obscure. V. Brull, J. Die Mnemotechnik des Talmuds, 40, and D.S. a.l. for attempted interpretations.]

(10) Var. lec. ‘Hanan’.

(11) And the boundary marks were obliterated.

(12) Because the owner has allowed me to remain in possession of it a certain time without protest.

(13) But that of the Rabbis, who say that three years occupation is required to confer a title.

Talmud - Mas. Baba Bathra 41b

He came before Rab Judah, and the other went and brought two witnesses, one of whom asserted that R. Kahana had encroached to the extent of two rows[1] and the other to the extent of three rows. Rab Judah said to R. Kahana: Go and compensate the man for two out of the three rows. Said R. Kahana: Who is your authority [for this ruling]?[2] [He replied:] Rabbi Simeon b. Eleazar, as it has been taught: 'Rabbi Simeon b. Eleazar states that Beth Shammai and Beth Hillel agreed that if there are two sets of witnesses [to a loan], one of which says [that the loan was for] one maneh and the other [for] two manehs, [their evidence is accepted in respect of the one maneh] because one maneh is included in two. Where they differed was in the case where there is one pair [of witnesses of whom] one says that [the loan was for] a maneh and the other [that it was for] two manehs. In that case Beth Shammai held that their evidence is at variance, whereas Beth Hillel held that two manehs include one.' R. Kahana rejoined: But I can bring you a letter from the West [Eretz Yisrael] to show that the halachah does not follow R. Simeon. To which Rab Judah replied: [Meanwhile my decision can stand] till you bring it.

A certain man lived four years in an upper room in Kashta. One day the owner of the room came and found him there, and said to him: What are you doing in this house? He replied: I bought it from so-and-so who bought it from you. He summoned him before R. Hiyya, who said to the occupier: If you can bring evidence to show that the man from whom you bought the house lived in it even for a single day, I will declare you the owner, but otherwise not. Rab said afterwards [to his disciples]: I was sitting in front of my uncle[3] and I said to him, 'Will not a man sometimes buy and sell [a thing] on [the same] night?'[4] I noted, however, his agreement in the case where the occupier said, 'The man from whom I bought it bought it from you in my presence;' then his word is accepted, because had he wished he [could have put forward a still stronger plea] by saying, I myself bought it from you. Raba said: The ruling of R. Hiyya is more likely to be right, because the Mishnah says [here], AN OCCUPIER BY VIRTUE OF INHERITANCE DOES NOT REQUIRE ANY PLEA. It is a plea that he does not require, but he does require to bring a proof [that the person from whom he inherited the land occupied it]![5] — Possibly, however, the Mishnah means that he requires neither plea nor proof.[6] Or, if you like, I can say that a purchaser is [on a] different [footing from an heir], because he is not likely to have thrown away money for nothing.[7]

The question was asked [in the Beth Hamidrash:] If the previous owner was seen [on the property],[8] what [are we to infer]?[9] — Abaye replied: That is just what we mean.[10] Raba, [however], said: It is quite possible for a man to measure out his field and not sell it after all.

Three [successive] purchasers of the same field can count as one.[11] Rab said: [This is only] if all the purchases were effected by deed.[12] Does this indicate that in Rab's opinion a sale by deed becomes generally known but a sale in the presence of witnesses does not become generally known? Surely Rab [himself] has laid down that if a man sells a field [with a guarantee][13] in the presence of witnesses, the purchaser may recover even from property on which there is a lien?[14] — In that case the purchasers

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(1) Or 'beds'.

(2) That where two witnesses partly agree and partly differ you may accept what is common ground between them.

(3) R. Hiyya.

(4) And therefore why do you demand proof that the man from whom he bought it lived there.

(5) And the same rule should apply to one who occupies in virtue of purchase from a third party.

(6) And therefore Rab may be right.

(7) Viz., to the third party from whom he bought it, unless he had made sure that he had bought it from the original owner. Hence even if we say that an heir requires to bring proof that his father occupied the land, the purchaser from a third party is not required to bring similar proof.
(8) Taking its measurements.
(9) Does this constitute proof that he sold it or not?
(10) I.e., the kind of thing that constitutes 'proof'.
(11) If A occupies a field one year and then sells it to B, who occupies it a second year and then sells it to C, who occupies it a third year, C at the end of the third year can claim ownership in virtue of the three years' occupation.
(12) I.e., B's purchase from A and C's from B. The reason is that such purchases are likely to become known to the original owner, but otherwise they are not likely to become known to him and he may think that the successive occupiers have no intention of claiming the land as their own and therefore does not trouble to protest.
(13) That if the property is claimed by a third party and has to be surrendered to him, he will allow the purchaser to recover the purchase price from any part of his remaining property.
(14) I.e., even from property which the vendor has subsequently mortgaged or sold, the presumption being that the persons who have bought this property from him or taken it on mortgage were aware that there was a lien on his property. This would show that a sale in the presence of witnesses does become known.

Talmud - Mas. Baba Bathra 42a

have only themselves to blame.[1]

But did Rab indeed give this ruling? Have we not learnt [in a Mishnah]: If a man lends money to another on a bond, he may recover his debt even from property on which there is a lien[2] [supposing there are no free assets]; if, however, the loan was made only in the presence of witnesses, he may only recover from property on which there is no lien? And should you answer that Rab is himself [considered] a Tanna and may dispute [the ruling of a Mishnah], this can hardly be, since Rab and Samuel have both laid down that a loan [contracted] by word of mouth[3] cannot be recovered either from the heirs [of the debtor] or from those who have [subsequently] purchased [from him].[4] — Are you arguing from a loan to a sale? When a man borrows money, he does so as secretly as possible, in order that his property may not depreciate.[5] If he sells land, however, he does so as publicly as possible, in order that people may know about it.[6]

Our Rabbis taught: If the father[7] occupies[8] [the field] a year and the son two years, or the father two years and the son one year, or the father one year, the son one year and the purchaser[9] one year, such occupation confers a title of ownership. Now this would indicate, would it not, that when a man purchases [a piece of land] it becomes generally known?[10] But this would seem to conflict [with the following]: If a man occupies a field in the lifetime of the father[11] one year and two years in the lifetime of the son, or two years in the lifetime of the father and one year in the lifetime of the son, or one year in the lifetime of the father, one year in the lifetime of the son, and one year in the lifetime of the purchaser,[12] such occupation confers a title of ownership. Now if you assume that the purchase [of a piece of land] becomes generally known, surely there can be no protest stronger than this, [that the son has sold the land]?[13] — R. Papa said: The case of which this passage speaks is where the son sells all his fields without specifying [any one in particular].[14]

MISHNAH. CRAFTSMEN,[15] PARTNERS, METAYERS, AND TRUSTEES HAVE NO HAZAKAH.[16] A MAN HAS NO HAZAKAH IN THE PROPERTY OF HIS WIFE NOR HAS A WOMAN HAZAKAH IN THE PROPERTY OF HER HUSBAND. A FATHER HAS NO HAZAKAH IN THE PROPERTY OF HIS SON NOR HAS A SON HAZAKAH IN THE PROPERTY OF HIS FATHER. THESE STATEMENTS APPLY ONLY TO CASES [WHERE OWNERSHIP IS CLAIMED] ON THE GROUND OF POSSESSION. IN THE CASE, HOWEVER, WHERE LAND IS PRESENTED AS A GIFT, OR OF BROTHERS DIVIDING AN INHERITANCE, OR OF ONE WHO SEIZES THE PROPERTY OF A PROSELYTE,[17]

OWNERSHIP CAN BE CLAIMED AS SOON AS THE FIRST STEP HAS BEEN TAKEN TOWARDS MAKING A DOOR OR A FENCE OR AN OPENING.

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(1) Although the sale of the first property was not generally known, they should have enquired whether there was any lien on the property which they bought subsequently.

(2) Because anyone who lent the borrower money or bought from him subsequently ought to have known that there was already a prior claim on him.

(3) I.e., in the presence of witnesses but without a bond.

(4) Which is equivalent to saying that it cannot be recovered from property on which there is a lien.

(5) As it will if people know that he is pressed for money.

(6) And so he may have more offers. Hence there is no contradiction between the two rulings of Rab.

(7) The man who purchased the field.

(8) Lit., 'eats'.

(9) The man who purchases from the son.

(10) Because otherwise the original owner can say that he did not think that the last occupier intended to claim the land, and therefore did not trouble to make a protest.

(11) The original owner.

(12) The man who purchases from the son.

(13) And if it is not a protest, the reason must be that it does not become generally known.

(14) As in that case the occupier can plead that he understood that the sale did not include the field in question and therefore did not constitute a protest. But if he specifically sells that field, this constitutes a protest, because the sale is bound to come to the knowledge of the occupier, and the occupation therefore confers no title to ownership.

(15) To whom articles are taken for repair.

(16) I.e., the fact of their being in possession of any piece of (movable) property does not in itself constitute any title to ownership, since it is understood that they are left temporarily in possession of property by the rightful owners. V.I. delete 'craftsmen'.

(17) A proselyte who dies without (Jewish) issue has no heirs, and his property after death falls to the first occupier.

Talmud - Mas. Baba Bathra 42b

GEMARA. Samuel's father[1] and Levi learnt [from the Mishnah] that a partner has no hazakah, still less a craftsman.[2] Samuel, however, learnt that a craftsman has no hazakah, but a partner has.[3] Samuel in this is consistent. For Samuel has said that partners have hazakah as against each other and can give evidence in one another's favour[4] and can stand to one another in the relation of paid keepers [of their common property].[5] R. Abba pointed out the following contradiction to R. Judah in the [burial] cave of R. Zakkai's field: Did Samuel really say that a partner has hazakah? Has not Samuel said that a partner is regarded as having freedom of entry[6] [into the whole of the joint property], and is not this equivalent to saying that a partner has no hazakah [against the other partner]?[7] — [He replied:] There is no contradiction. In the one case [Samuel is speaking of a partner] who takes possession of the whole [of the joint field], in the other of one who takes possession of only half of it.[8] [To the question which is which,][9] some answer one way and some the other.[10] Rabina said: In both cases [Samuel is speaking] of a partner who takes possession of the whole [of the joint field], but still there is no contradiction, because in the one case he speaks of a field which has to be divided [if either partner demands][11] and in the other of a field which has not to be divided [if either partner objects].[12]

[To revert to] a previous text: 'Samuel said that a partner is regarded as having freedom to work the whole of the joint property.' What does this tell us? That a partner has no hazakah? Why does he not say distinctly that a partner has no hazakah? — R. Nahman said in the name of Rabbah b. Abbuha: [He chooses the other mode of expression] to show that the partner is entitled to a full half of the mature produce[13] in a field that is not meant for plantation in the same way as he would be in a field meant for plantation.[14]

Partners may give evidence in one another's favour.

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(1) Abba b. Abba.

(2) Because unlike the partner he never had any share in the property. Evidently therefore they omitted the word 'craftsmen' from the Mishnah (Rashb.).

(3) Because the fact that he has been left in undisturbed possession of the whole of the joint property constitutes a presumption that the other partner has made over to him his share.

(4) Not being regarded as interested parties even where the matter in dispute is a part of the joint property.

(5) If some of the joint property is stolen while in possession of A, B can claim from him restitution of his share in the same way as he could claim from someone in whose charge he had placed it for a fee, A's 'fee' being constituted by B's willingness to take charge of it with the same responsibility for a similar period.

(6) I.e., permission from the other partner to work the whole of the joint field for his own benefit.

(7) Because this permission naturally does not mean any waiving by the other partner of his title to his share of the property.

(8) Viz., the better half, and afterwards he maintains that a division has been actually effected and that this half belongs to him.

(9) I.e., which kind of partner, according to Samuel, has hazakah and which has not.

(10) Some say that by taking possession of the whole field the partner acquires hazakah, because it is not usual for the other partner to allow this, and that by taking possession of one half, even the better half, he does not acquire hazakah, because one partner will often allow the other to do this several years running. Others say that by taking possession of the whole a partner does not acquire hazakah because it is the custom of joint owners that each should occupy the whole property several years running, but by taking possession of one particular half he does acquire hazakah because the presumption is that had the field not been divided he would not have confined himself to this particular half.

(11) I.e., a field which allows of four cubits square being assigned to each. Possession of such a field confers hazakah since, as there is room for both, one partner is not likely to allow the other to occupy the whole for several years running.

(12) I.e., a plot too small to allow of four cubits being assigned to each partner. In this case it would be natural for each partner to work the whole plot several years running, and therefore possession of the whole does not constitute a title of ownership.

(13) Lit., 'improved value that reaches the shoulders,' or 'improved value that is dealt with by the carriers.' The exact meaning of the expression is obscure; it obviously refers to the improved value of trees as opposed to the improved value of land, but there is a difference of opinion as to whether all fruit trees are included, or only those that need careful tending, like vines. V. Tosaf. s.v. שבח המגיע לכתפים

(14) If a man plants another man's field without the latter's permission, he is entitled to the whole of the 'mature produce that reaches the shoulders,' but only on condition that the field was meant for plantation and not for sowing. Otherwise he can recover no more than his outlay. If, however, he has the consent of the owner, he takes the whole of the produce in any case. Samuel here tells us that the partner in this respect is on the same footing as the metayer who works the field with the owner's consent.

Talmud - Mas. Baba Bathra 43a

How so? Are they not interested parties?[1] — We are assuming here that the one [who gives evidence] makes a written declaration stating: I have[2] no claim on this field. And suppose he does make such a declaration, what does it matter, seeing that it has been taught: If a man says to another,[3] I have no claim on this field, I have no concern in it, I entirely dissociate myself from it,[4] his words are of no effect?[5] — We are assuming here that the other partner obtained from him a formal transfer.[6] And suppose he does obtain from him a formal transfer, what does it matter? The other can still keep it safe for his own creditor,[7] as we learn from the statement of Rabin b. Samuel, who said in the name of Samuel: If a man sells a field to another [even] without accepting responsibility,[8] he cannot give evidence as to the latter's title, because he may [want to] keep it safe for his own creditor?[9] — We are assuming that he has accepted responsibility [towards his partner]. Responsibility in respect of whom? If we say, responsibility in general,[10] then all the more would he

prefer it [to be in the hands of the partner, and he is therefore an interested party]! — We must therefore say, responsibility in respect of his own debt.[11]

And suppose the partner does renounce his interest in the property, does he do so sincerely?[12] Has it not been taught: If a scroll of the Law belonging to the inhabitants of a town has been stolen, the judges of that town must not try [the alleged culprit] nor can the inhabitants of the town give evidence [against him]?[13] Now if a partner can renounce his interest, why cannot two of the townspeople renounce their interest in, the scroll and try [him]?[14] — A scroll of the Law is different, because it is for public reading.[15] Come and hear: If a man says: Distribute a maneh to the inhabitants of my town [and it is stolen], the judges of that town must not try [the alleged culprit] nor may the inhabitants give evidence against him. Why [should this be]? Cannot two of them renounce their share in the gift and try him? — Here too [we are dealing with] a scroll of the Law.[16] Come and hear: If a man says: Distribute a maneh to the poor of my town [and it is stolen, the alleged culprit] is not to be tried by the judges of that town and the inhabitants of that town cannot give evidence in the case. What! Do you imagine then that, because the poor receive, the judges are to be disqualified?[17] What therefore you mean to say is this: the case must not be tried by the poor judges of that town, nor may the poor of the town give evidence. Why now should this be? Cannot two of them renounce their share and try the case? — Here too we [are dealing with] a scroll of the Law, and the reason why the donor designated the recipients as ‘poor’ is because all are poor in respect of a scroll of the Law. Or if you like again I can indeed say that the poor literally are meant ‘ and the particular poor referred to are those whose support devolves on the judges.[18] How are we to understand this? If there is a fixed levy,[19] let two of them give their contribution and then try the case.[20] We assume therefore that there is no fixed levy.[21] Or if you like I can say that there is indeed a fixed levy, yet still the rich are pleased [that the maneh should be given to the poor], because after all there is a surplus.[22]

[Samuel said above that partners] may stand to one another in the relation of paid keepers of their common property.

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(1) Lit., ‘in contact with their evidence’.

(2) I.e., I shall henceforth have.

(3) I.e., his partner.

(4) Lit., ‘My hands are removed from it.’

(5) Because all these expressions refer properly to something which has yet to accrue to a man, but he cannot divest himself of his ownership of something which he already possesses until he says expressly to the donee, ‘I make the field over to you,’ or words to that effect.

(6) Lit., ‘they acquired it from his hand’ (by a kinyan sudar).

(7) If A has borrowed money from C on the security of his share in a field and then makes over his share to his partner B, it is to his interest that the field should be recognised as belonging to B rather than to any other person, so that C may seize the mortgaged part of the field in consideration of the debt and A will thus be saved from becoming a defaulter. Hence if B's title to the field is contested, A is an interested party and cannot give evidence in B's favour, although he has himself formally renounced all share in the field.

(8) That if the field is seized on account of a debt which he has previously contracted, he will refund the purchaser his money.

(9) At the time when the creditor claims the repayment of the loan.

(10) E.g., in respect of one who claims the land as having previously belonged to himself or his father, and not merely of a creditor.

(11) As explained above in note 3 . In this case, if he does not wish to become a defaulter, he must either pay his creditor or compensate his partner. Hence it makes no difference to him whether the land remains in the hands of his partner or not, and therefore his evidence is admissible.

(12) Lit., ‘does he renounce it’. Even if he transfers the property to the partner in such a way as to make his renunciation apparently complete (as explained above), is there not still the possibility of collusion between him and the partner, so that his evidence would still be inadmissible.

(13) Because all the townspeople have a share in the scroll and are therefore interested parties.

(14) Which shows that renunciation cannot be made by the process described above.

(15) And therefore none of the townspeople can entirely divest himself of his interest in it, unless he leaves the town.

(16) I.e., the gift was made for purchasing a scroll, and therefore none of the townspeople can entirely divest himself of his interest in it, unless he leaves the town.

(17) This question relates to the form of the statement just made, which contains a manifest absurdity, and is therefore corrected in the next sentence.

(18) Who are presumably wealthy.

(19) On the rich for the support of the poor.

(20) For then they are no longer interested in the donation.

(21) But money is collected from the rich as occasion arises. Hence as long as the donation is in existence they have an interest in it.

(22) Lit., 'since there is something over, there is something over', and for the time being they are not called on to pay.

Talmud - Mas. Baba Bathra 43b

Why should this be, seeing that this is a case of keeping with the owner present?[1] — R. Papa replied: [Samuel's rule applies] where one said to the other, You keep [the whole property for me] today and I will keep it [for you] tomorrow.[2]

Our Rabbis taught: If a man sells to another a house or a field, he is not allowed to testify to the latter's title to it[3] because he is responsible to him for it.[4] If, however, he sells him a cow or a garment, he can testify to his title to it, because he is not responsible to him for it. Why should the rule in the second case be different from that in the first? — R. Shesheth said: The first rule [applies to a case where, for instance,] Reuben wrongfully takes a field from Simeon and sells it to Levi, and then Judah comes and contests Levi's title, Simeon then must not go and give evidence in favour of Levi, thinking that [if Levi retains it] it will be easier for him to recover it.[5] But if he has once testified that it belongs to Levi, how can he recover it from him?[6] — [We suppose] that what he will say [in evidence] is, I know that this field does not belong to Judah.[7] But cannot he recover it from Judah by means of the same proofs by which he recovers it from Levi?[8] — He says: It is easier for me to deal with the second [Levi] than with the first [Judah].[9] Or if you like I can reply that both [Simeon and Judah] have witnesses [to prove their title], and the Rabbis have laid down that in such cases the land shall remain in possession of its present owner.[10]

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(1) According to Tosaf, we must suppose that both commenced to keep watch over the property together. Hence at the beginning each was in the position of a man taking charge of an article while the owner is still with him, and in such a case the keeper, even if he receives a fee, is not responsible even if the owner subsequently departs (cf. Ex. XXII, 1 5, and B.M. 95a).

(2) I.e., they made a special stipulation that each should be responsible in turn.

(3) Supposing that a third party claims it from him.

(4) The meaning of this is discussed later.

(5) I.e., he may consider that he has a better chance of recovering it from Levi (from whom he may claim it as having been purchased from a robber) than from Judah, and therefore he has an interest in testifying on Levi's behalf.

(6) And so how can he think any such thing?

(7) Without committing himself to the statement that it belongs to Levi.

(8) E.g., if Judah has claimed the property on the ground that Reuben sold it to him. In that case we should think there can be no objection to Simeon's testifying that Reuben sold the field to Levi, because even if the field is ultimately assigned to Judah, Simeon can recover it from him on the ground that Reuben took it from him (v. Tosaf. s.v. כגון דאית ליה).

(9) Lit., 'the first is easy for me, the second difficult'.

(10) And therefore, if the land is once assigned to Judah, Simeon will not be able to recover it from him. Hence if Judah claims it from Levi (from whom Simeon can certainly recover), Simeon must not give evidence against him.

Talmud - Mas. Baba Bathra 44a

But [if the explanation of R. Shesheth is correct],[1] why should the rule not be stated in reference to the robber himself?[2] — Because It was necessary to state the second clause [viz.]: 'if he sells him a cow or a garment.' For in this case the selling is essential, in order that there may be both giving up [on the part of the original owner] and change of ownership,[3] but if the robber does not sell the article, since in this case the original owner may still recover it, he may not give evidence.[4] Hence in the first clause also the 'selling' is inserted. But [is this rule sound in regard] even to the second clause? Granted that the original owner abandons his claim to the article itself, he has not abandoned his claim to the money, has he?[5] — The rule requires to be stated to cover the case where the robber has died, as we have learnt: If a man robs [someone of food] and gives it to his children to eat or bequeaths it to them, they are not under obligation to repay it. But [if this explanation is correct], why should not the rule be stated in reference to the heir [of the thief]?[6] It is true, there is a reason [why it should not] if we accept the opinion that the ownership of an heir [of a thief] is not on the same footing as the ownership of a purchaser [from a thief],[7] but on the view that the ownership of the heir is on the same footing as the ownership of the purchaser, what are we to say? And Abaye finds yet another difficulty [in the explanation of R. Shesheth, viz. that the expressions] 'because he is responsible for it,' 'because he is not responsible for it' [are on this theory improperly used,[8] and] the Baraitha should say, 'because it may be recovered by him', 'because it cannot be recovered by him'? — We must therefore [understand the above rulings] in the light of the dictum enunciated by Rabin b. Samuel in the name of Samuel, viz. If a man sells a field to another [even] without [accepting] responsibility, he cannot give evidence as to the latter's title, because he can keep it safe for his own creditor.[9] This applies only to a house or a field, but in the case of a cow or a garment, not only is there no question

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(1) That we are dealing with a case where the land has been stolen.

(2) I.e., that Simeon must not testify to the title of Reuben himself if it is challenged by a third party. The rule in fact should be stated thus: If a man wrongfully seizes a house or a field, the original owner must not testify on his behalf because the thief is responsible to him for it.

(3) If a man is robbed of something (other than land), he does not lose his claim to it until (a) he has given up hope of recovering it, and (b) it has changed hands. Hence until the cow or the garment is sold, Simeon still has an interest in it and therefore is debarred from giving evidence. But in the case of land, a man never loses his claim, and therefore even if the land has been sold, Simeon may not give evidence.

(4) In favour of one who has obtained it from the robber, if his title is contested by a third party.

(5) He still has a claim on the thief for the value of the article, and is therefore still an interested party.

(6) Viz., in the following form: 'If a man robs another of a house and bequeaths it to his son, the original owner cannot testify etc. . . . if he robs him of a cow and bequeaths it. . . etc.'

(7) I.e. , that inheritance does not constitute 'change of ownership' and that an heir is liable so long as the article stolen is in his possession and the original owner has not given op hope of recovery, and therefore the owner would be an interested party even in the case of a cow, etc.

(8) According to the explanation of R. Shesheth, the expression here means that the purchaser (Levi) is responsible, but elsewhere it invariably means that the seller is responsible.

(9) V. supra p. 184, n. 3.

Talmud - Mas. Baba Bathra 44b

that [if he sells them without] having declared them security [to a creditor], the creditor has no lien on them[1] (the reason being that they are movables, and movables cannot be mortgaged to a creditor; and even if the debtor gives a written promise to pay 'from the coat on his back', that is only binding so long as they are actually there but not if they are not there) , but even if he did declare them to be security, the creditor still has no lien on them.[2] The reason is to be found in the dictum of Raba, for

Raba said: If a man declares his slave security for a debt, and then sells him, the creditor can seize him [in satisfaction of the debt], but if he declares his ox or his ass security for the debt and then sells it, the creditor cannot seize it [in payment of the debt],[3] the reason being that the former [the hypothecating of a slave] becomes generally known, but the latter [that of an ox or an ass] does not become generally known.[4] But is there not a possibility[5] that he [the seller] mortgaged to him [the creditor] movables along with landed property,[6] and Raba has laid down that if a man mortgages to another movables along with landed property, the latter acquires a lien over the land and acquires one over the movables also[7] (providing — R. Hisda adds — he inserts in the bond the words,'this bond is no mere asmakta[8] or draft form')? — We assume here that the seller sold [the cow or the garment] immediately after himself acquiring it.[9] But is there not still a possibility that this is a case where [the seller has given his creditor a bond on movables which] he will hereafter acquire,[10] and may we not learn from this fact[11] that if [a man gives his creditor a bond on movables which] he is hereafter to acquire, and then acquires them and sells them or acquires them and bequeaths them, the creditor has no lien on them?[12] — This,[13] however, was only meant to apply to the case where the witnesses say, We know that this man never owned any land.[14]

But has not R. Papa said: Although the Rabbis have laid down that if a man sells his field to another without a guarantee[15] and his creditor comes and seizes it, the purchaser cannot recover [the price of the field] from him, yet if it is found that the field did not belong to him, he can recover?[16] — In this case we suppose that the purchaser recognises the ass [he bought] as being the foal of an ass belonging to the seller.[17] R. Zebid, however, says that even if it is found that the field did not belong to the seller, the purchaser cannot recover from him, because he can say to him, That was precisely why I sold to you without a guarantee.

[To revert to] the above text, 'Rabin b. Samuel said in the name of Samuel: If a man sells a field to another without [accepting] responsibility, he cannot give evidence as to the latter's title, because he can keep it safe for his own creditor'.[18] How can this be?

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(1) And therefore the seller who is also the debtor has no special interest in confirming them in the possession of the purchaser and so can testify on his behalf.

(2) And therefore the seller can still testify on the purchaser's behalf.

(3) Therefore the seller, since he knows that his own creditor cannot seize the ox or ass in question, has no special interest in their retention by the man to whom he sold them, and therefore he may testify on his behalf if his title to them is challenged by a third party.

(4) And therefore it is not fair that the purchaser should be penalised.

(5) Lit., 'Let us apprehend perhaps'.

(6) I.e., he gave his creditor a lien on his landed property along with the movable property contained therein.

(7) Therefore if the borrower afterwards sells the movables, the creditor can distrain on them in the same way as on the land.

(8) אסמכתא Lit., 'assurance': a statement by a debtor on paying part of his debt that if he does not pay the rest by a certain time he will again become liable for the whole. Such a declaration has no legal force.

(9) And therefore we are quite certain that he did not mortgage it for a debt of his own. Hence he may testify to the purchaser's title, as he has no personal interest in the matter.

(10) I.e., when borrowing the money, he has given the lender the right to recover from his land and all the movables which it contains or shall hereafter contain.

(11) That we disregard this possibility.

(12) This question is discussed infra 157a and left undecided.

(13) That we disregard the possibility of the seller having mortgaged movables along with landed property.

(14) In this case the movables cannot be mortgaged, and there is no objection to the seller giving evidence on behalf of the purchaser.

(15) That he will make restitution if the field is attached by a third party.

(16) Hence if the cow or the ass is claimed from the purchaser by a third party who proves that it was stolen from him,

the purchaser can recover from the seller, and it is therefore to the latter's interest that it should remain in his possession and he cannot testify on his behalf.

(17) And similarly with a garment, that it was woven in his house. This is tantamount to an admission on his part that the animal or garment did belong to the seller, and after such an admission he cannot claim restitution from him.

(18) V. supra p. 184

Talmud - Mas. Baba Bathra 45a

If he has other land, the creditor can seize that.[1] If he has no other land, what advantage has he [from the land remaining in the hands of the purchaser]?[2] — The rule actually applies to the case where he has no other land, and the reason for it is that the seller is anxious if possible not to be a defaulter.[3] But when all is said and done, he does become a defaulter in respect of the purchaser? — [The rule is still sound] because he says: It was for this very reason that I sold it to you without a guarantee.[4]

Raba [or some say, R. Papa] issued a proclamation: [Know] all you that go up [to Eretz Yisrael] or go down [to Babylon] that if an Israelite sells an ass to a fellow-Israelite and a Gentile comes and forcibly takes it from him,[5] it is the duty of the first to help him to rescue It.[6] This, however, only applies if the purchaser cannot recognise the ass as the foal of the seller,[7] but if he can recognise it as the foal of the ass of the seller, [he need] not [help him].[8] Further, we only say [that he has this duty] if the non-Jew does not forcibly take the saddle along with the ass,[9] but if he takes the saddle along with the ass, [we do] not [say so]. Amemar said: Even without all these qualifications he need not help him, because generally speaking the heathen is a grabber,[10] and so Scripture says of them, Their mouth speaketh vanity and their right hand is a right hand of falsehood.[11]

A CRAFTSMAN HAS NO HAZAKAH. Rabbah said: This rule was meant to apply only to the case where the owner delivered the article to the craftsman in the presence of witnesses, but if he delivered it to him without any witnesses being present, since he [the craftsman] is able to plead [without fear of contradiction] that the transaction never took place at all,[12] if he puts forward [the more probable] plea that he has purchased it [from the claimant][13] , his plea is accepted.[14] Said Abaye to him: If that is so,[15] then even [if he has delivered it to him] in the presence of witnesses, since he is able to plead 'I have returned it to you',[16] if he only pleads 'I have bought it', his word should certainly be accepted! Rabbah replied: Is it your view

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(1) Lit., 'he (the creditor) will come back on his (the debtor's property.

(2) Because even if the purchaser has to give up the land, the seller has no assets from which he can obtain restitution.

(3) Lit., 'a wicked man who borrows and does not repay.' Ps. XXXVII, 21.

(4) I.e., so that if it is taken from you I shall not be called a defaulter, even if I do not make restitution.

(5) On the ground that it was stolen from him.

(6) By convincing the Gentile that it is not his. If, however, a Jew forcibly takes it, the seller need not help the purchaser, because the latter can summon the Jew for assault, even if the ass did rightly belong to him.

(7) And therefore should he go to law with the Gentile, he will not be able to prove that the animal is not his.

(8) Because he will be able to recover the ass from the Gentile by process of law.

(9) Because this is a sign that he only desires to assert his right, but if he takes the saddle as well, the presumption is that he is a robber, and can be proved so in a court of law.

(10) And he is likely therefore to have no case in a court of law.

(11) p. 5, CXLIV, 8.

(12) But that either he never had the garment or it was given him by someone else.

(13) Lit., 'It is purchased in my hand.'

(14) According to Rabbah, therefore, the essential point is whether the article was originally transferred in the presence of witnesses, and it makes no difference whether the owner has or has not seen it in the hands of the repairer.

(15) Viz., that the fact of his seeing it in his hands makes no difference.

(16) If it has not been seen in his possession.

Talmud - Mas. Baba Bathra 45b

that if a man entrusts an article to another in the presence of witnesses, the latter need not return it in the presence of witnesses?[1] This is quite wrong;[2] if a man entrusts an article to another in the presence of witnesses, he must return it in the presence of witnesses.[3]

Abaye raised an objection [to this from the following]: If a man sees his slave in the possession of a craftsman or his garment in the possession of a fuller, and says to him: 'How comes this with you?' [and the other replies:] 'You sold it to me,' or, 'You made a present of it to me,' his plea is of no effect. [If he says], 'In my presence you told him to sell it or to give it to me,' his plea is valid. Why is the ruling here different in the second case and in the first?[4] — Rabbah explains that the second ruling refers to the case where the slave or the garment is in the hands of a third party who says to the claimant: 'In my presence you told him [the craftsman] to sell it [to me] or to present it as a gift.' In such a case, since if he chose he could plead 'I bought it from you,' when he merely pleads 'In my presence you told him to sell it,' his plea is certainly accepted. Now[5] the first ruling refers to the case where the claimant 'sees' [the article in the craftsman's possession] . What are the circumstances? If there are witnesses [that he entrusted the article to the craftsman], let him bring the witnesses and obtain possession.[6] We must suppose therefore that there are no witnesses, and nevertheless if he sees the article he can seize it?[7] — [Rabbah replies]: No; the case is in fact one where [the article has been entrusted] in the presence of witnesses, but we must suppose also that the claimant sees it [in the possession of the craftsman].[8] But, [said Abaye,] you yourself said that if a man entrusts an article to another in the presence of witnesses he must return it in the presence of witnesses? — Rabbah replied: I retract [this opinion].

Raba sought to confute [Abaye and] to support Rabbah [from the following]: If a man gives his garment to a workman [to repair], if the workman says, You undertook to give me two [zuzim] and the owner says,I only undertook to give you one, then as long as the garment is in possession of the workman, it is for the owner to bring proof; if the workman has returned it, then if the prescribed time has not yet elapsed[9] he can take an oath and recover his claim,[10] but if the prescribed time has elapsed, then the rule applies that the onus probandi is on the claimant.[11] Now what are the circumstances? If [the owner gave the garment to the workman] in the presence of witnesses, then let us see what the witnesses say.[12]

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(1) Because only on this supposition would his plea that he has bought it be valid, this plea itself being only a modified form of the plea 'I returned it to you'.

(2) Lit., 'It cannot enter your mind.'

(3) Therefore he cannot plead, 'I returned it to you,' nor, consequently, 'I bought it'.

(4) This question refers to the meaning of the above dictum; its bearing on the argument comes later.

(5) Lit. , 'At all events'. Abaye's objection is now stated.

(6) Since according to you (Rabbah) the craftsman cannot plead that he returned it unless he had witnesses to that effect.

(7) Which shows that the 'seeing' is the essential point, and not the delivery in the presence of witnesses.

(8) Rabbah now lays down that two conditions must be fulfilled if the craftsman is not to have hazakah — the delivery in the presence of witnesses and the 'seeing'.

(9) I.e., if the sun has not yet set. V. Deut. XXIV, 15.

(10) In a dispute about wages between an employer and a workman, if there is no evidence on either side, the word of the workman if given on oath is accepted.

(11) I.e., the workman. V. B.M. 112b; Shebu. 46a.

(12) Presumably the witnesses also were aware of the payment stipulated.

Talmud - Mas. Baba Bathra 46a

We must suppose therefore that there were no witnesses, and the ruling stated is that the word of the workman is to be taken;[1] since he is able to plead that he has bought it,[2] his word is taken as to his payment. — [To which Abaye answers]: No. The case, in fact, is one in which there were no witnesses [to the original transfer] ‘ but we suppose that the owner has not seen it [in the hands of the workman].[3]

R. Nahman b. Isaac raised an objection [against Rabbah's opinion from the following]: A CRAFTSMAN HAS NO HAZAKAH, from which we infer that other persons have hazakah [in such a case]. In what circumstances? If there are witnesses [who saw the article transferred], why have other persons hazakah?[4] We must suppose therefore [that the rule applies to the case] where there are no witnesses,[5] and yet it is laid down that a craftsman has no hazakah! This refutation of Rabbah is decisive.

Our Rabbis have taught: If a man receives another person's articles [of clothing] instead of his own from the workshop [where they have been sent for repair etc.], he may use them until the other comes and claims them.[6] If they have become exchanged in the house of a mourner or at a party he must not use them, [but must keep them on one side] until the other comes and claims them. Why should the ruling in these two cases be different?[7] — Rab said: I was sitting before my uncle[8] and he said to me, It is no unusual thing for a man to say to the workman, Sell my garment for me.[9]

R. Hiyya the son of R. Nahman said: This rule holds good only where the workman himself [gave him the coat], but not if it was given him by his wife or his sons.[10] And even so he must not use it[11] unless the workman says, Here is a garment,’ but if he says, ‘Here is your garment,’ he must not use it, because this is not his garment.

Abaye said to Raba: Come and I will show you a trick of the sharpers of Pumbeditha. A man will say [to his tailor], ‘Give me back my cloak [that I gave you to repair].’ The other will deny all knowledge of the matter.[12] ‘But,’ the owner will say, ‘I can bring witnesses [to declare] that they saw it in your possession’. ‘That was a different one,’ he will reply. The owner will then say to him, ‘Bring it out and let us see.’ To which he will reply. ‘To be sure! I don't bring it out.’[13] Raba said to him: That is very clever of him,[14] seeing that

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(1) Where the garment has not yet been returned.

(2) Even though it has been seen in his possession, as Rabbah ruled in the case above.

(3) And therefore no inference can be drawn from this case to the one above.

(4) Seeing that they cannot plead that they bought it, supposing that it is seen in their possession, for if it is not so seen, then the workman also has hazakah.

(5) So that they can plead that they bought it.

(6) Because we assume that the workman gave them to him purposely. V. infra.

(7) Lit., ‘Why this difference between the first and latter (clauses)?’

(8) R. Hiyya.

(9) Hence it is possible to suppose that the tailor by mistake sold another man's coat and then gave that other man one to go on with until he should recover it, and since the tailor acted knowingly he may use it.

(10) Because the presumption is that they made a mistake.

(11) Lit., ‘we do not say’.

(12) Lit., ‘there were no such matters’.

(13) As if to say, ‘I refuse to show you someone else's property.’ Herein lay the deceit.

(14) Viz., to say that he knows nothing about the matter, and not to plead that he has bought it, since then the fact that it or one like it has been seen In his possession would militate against him. V. Tosaf. s. v. שפיר

the rule laid down[1] is that the owner must see it [in the hands of the craftsman].[2] Said R. Ashi: If he [the owner] is clever, he will procure a sight of it by saying to the tailor, The reason why you are keeping back the coat is because I owe you money, is it not? Why not then bring it out and have it valued so that you can take what is yours and I can take what is mine?[3] R. Aha b. R. Awia said to R. Ashi: The tailor can say to him, I do not require your valuation, it has already been valued by the people before you.[4]

A METAYER HAS NO HAZAKAH. Why so, seeing that at first he took only half [the produce][5] and now [for three years] he has taken the whole?[6] — R. Johanan said: We are speaking here of hereditary metayers.[7]

R. Nahman said: A metayer who instals other metayers[8] in his place has hazakah, because a man will not usually allow metayers to be installed in his field and say nothing.

R. Johanan said: A metayer who assigns parts of his field to other metayers[9] has no hazakah. Why so? Because we may presume that permission was given him to do so.[10]

R. Nahman b. R. Hisda sent [an inquiry] to R. Nahman b. Isaac [saying]. Would our teacher [be so good as to] instruct us, whether a metayer can testify [to the title of his employer][11] or not. R. Joseph was sitting before him, and said to him: Samuel has definitely laid down that a metayer may so testify. But it has been taught that he may not testify? — There is no conflict of opinion. In the one case [we suppose] that there is produce on the land,in the other that there is no produce on the land.[12]

(Mnemonic ‘AMalek)[13]

Our Rabbis taught: A surety may testify on behalf of the borrower,[14] provided that the borrower has other land [besides that which is being claimed from him.][15] A lender may testify on behalf of a borrower,[14] provided that the borrower has other land [besides that which is being claimed from him].[16] A first purchaser may testify on behalf of a second purchaser,[17] provided that the latter has other land[18] [besides that which is being claimed from him].[19] [

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(1) Supra 45b.

(2) And since he has not seen it (and the witnesses are not sure that the one they saw was the same) he cannot invalidate the other's plea that he knows nothing about it.

(3) I.e., take the coat in payment of the debt and give me the surplus.

(4) And I know it is not worth any more than the sum you owe me.

(5) This being the condition on which the field is transferred to him.

(6) And therefore there is a presumption that he purchased the field.

(7) Who take the whole produce for three or more years and then give the whole to the owners for the same number of years.

(8) And does not himself work with them.

(9) And himself works with them.

(10) And therefore the owner saw no need to raise a protest. This is the rendering of Rashb. The Aruch renders, ‘The owner regards him simply as an overseer,’ and therefore saw no need to protest.

(11) Supposing that it is contested by a third party.

(12) If there is produce on the land, then if the land is assigned to the claimant the metayer will lose his share in it; hence he is an interested party and must not give evidence on behalf of his employer. If, however, there is no produce on the land, it is a matter of indifference to him to whom the land is assigned, as he will always be able to find employment.

(13) A =’Areb (surety); M = Malveh (lender); L = Loveh (borrower); K = Kablan (go-between).

(14) In regard to land claimed from him by a third party.

(15) Because in that case, even if the land is assigned to the claimant, the borrower will still have land on which the creditor can distrain if he fails to pay his debt, and the surety will not feel himself jeopardised; hence he is not an

interested party.

(16) The same reason applies as to the surety.

(17) E.g., if A has sold land to B and then sold other land to C, and C's title is contested by a third party. then B may testify on behalf of C.

(18) I.e., which he has bought from A.

(19) The rule is that if a creditor has a lien upon land which his debtor has sold, he must seize first the land which the debtor has sold last. Hence in this case, if A's creditor is authorised to seize land which he has sold to others, he cannot seize the land sold to B until he has first seized the land sold to C. Hence if more land has been sold to C than that actually claimed from him, B is not an interested party and may give evidence on his behalf. Similarly B may give evidence on behalf of A himself if he possesses other land besides that which is being claimed from him, and the rule might have been stated in the form ‘the purchaser may testify on behalf of the seller’, etc.

Talmud - Mas. Baba Bathra 47a

In regard to a go-between,[1] some say that he may testify [on behalf of the borrower] and some say that he may not. Those who say that he may testify regard him as being on the same footing as a surety, whereas those who say that he may not [consider] that he prefers fields of both qualities[2] to be in the hands of the borrower, so that the creditor can have the choice of seizing from either.[3]

R. Johanan said: A craftsman has no hazakah, but the son of a craftsman has hazakah.[4] A metayer has no hazakah, but the son of a metayer has hazakah. Neither a robber nor the son of a robber has hazakah, but the grandson of a robber has hazakah. How are we to interpret this? If [we suppose that] they base their title [solely] on [the possession of] their father, then the son of a craftsman and the son of a metayer should also not have hazakah.[5] If again they do not base their title on [the possession of] their fathers [but on claims of their own].[6] then the son of a robber should also [have hazakah]? — [They do base their title on the possession of their fathers], and our rule applies to the case where witnesses declare: The claimant admitted to him [the father] in our presence [that he had sold the land to him].[7] In the case of the others [the son of the craftsman and the metayer and the grandson of the robber] the presumption is that they are telling the truth, but in the case of the son of the robber, even though he [the claimant] admits [he sold it to [the father] we do not believe him, on the ground put forward by R. Kahana, that if he did not admit this, the other would hand him and his ass over to the town prefect.[8]

Raba said: There are occasions when even the grandson of a robber also has no hazakah, as for instance when he bases his title on the possession of his grandfather. What sort of man is meant here by 'robber'? — R. Johanan said: One, for instance, who is generally presumed to have obtained the field under consideration by robbery.[9] R. Hisda said: Those like the people of a certain family we know who do not shrink from committing murder to extort money.[10]

Our Rabbis taught: A craftsman has no hazakah, but if he abandons his trade he has hazakah.[11] A metayer has no hazakah, but if he ceases to be a metayer he has hazakah. A son who leaves [his father's roof][12] and a woman when divorced are on the same footing as strangers [in relation to the father or husband].[13] [Why mention this?] It is true that for specifying the rule about the son who leaves his father's roof I can find a reason, since I might think that [we presume the father] to have tacitly consented [to his occupying the land],[14] but now I know that this is not so. But that the divorced woman [becomes a stranger to her former husband][15] is surely self-evident? — No. The rule is required

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(1) קבלן lit., 'receiver': a man who receives money from a lender to convey to a borrower on condition that the lender may recover from either at his option. The 'areb (surety), on the other hand becomes liable only if the borrower has failed to pay.

(2) I.e., both medium and inferior quality. The rule was that a creditor was entitled to recover from land of medium quality (v. B.K. 7b).

(3) If the borrower's medium-quality land is claimed and he loses his case, then the creditor will certainly come on to the go-between for his money, whereas if he keeps his land the creditor still has the choice of distraining either on him or on the go-between. Hence the go-between has an interest in the borrower keeping his land, and therefore must not testify on his behalf.

(4) If the father dies and he inherits him.

(5) Because their title is no better than their father's.

(6) E.g., if they plead. 'I bought it from the claimant.'

(7) Tosaf. points out that in such a case there is no need of hazakah, and therefore reads, 'where they (the various sons) declare: In our presence etc.

(8) The officer who imposed compulsory service or socage on the inhabitants.

(9) And therefore he can have no hazakah in this field, but he may have it in other fields.

(10) Hence people are afraid to protest against their occupation of their fields, and the occupation therefore confers no hazakah.

(11) I.e., in articles which were entrusted to him while he was still a craftsman, if he keeps them for an unusual length of time.

(12) E.g., to marry.

(13) V. Supra p. 281 where it is laid down that a father has no hazakah in the property of his son nor a husband in the property of his wife, and vice versa.

(14) And therefore he made no protest, but this does not constitute any hazakah for the son.

(15) Since they presumably are hostile to each other, and therefore are not likely to have allowed their land to be occupied by the other without protest.

Talmud - Mas. Baba Bathra 47b

to define the position of the woman who is both divorced and not divorced,[1] on account of the dictum of R. Zera, who said in the name of R. Jeremiah b. Abba, who had it from Samuel, that wherever a woman was described by the Sages as being divorced and yet not divorced, the husband is still responsible for her maintenance.[2]

R. Nahman said: Huna has informed me that if any one of the classes [mentioned above][3] brings a proof [that his title to the field is valid].[4] we accept the proof and confirm their title to the land.[5] If, however, a robber adduces proof.[6] we do not accept it and we do not confirm his title to the land. What has he [R. Huna] told us [in this latter clause]? We already know as much from the following Mishnah: 'If a man buys a field from the sicaricon[7] and then buys it again[8] from the original owner, the purchase is void.' — R. Huna meant to dispute the opinion of Rab, who said [in reference to this statement:] 'This rule was only meant to apply in such a case where the original owner merely said to the purchaser. Go and occupy the field and become the owner; but if he gave him a written deed, then the purchaser acquires ownership.'[9] He [R. Huna] therefore tells us that the right opinion is that of Samuel, who said that even [if the original owner gives the purchaser] a written deed, [the latter does not acquire ownership: he] only [does so] if the original owner gives him a lien on the rest of his property.[10]

R. Bibi quoted R. Nahman as adding to the statement [which he had made in the name of R. Huna]: Though the robber has no title to the land [which he has forcibly taken], he has a title to the money [which he may have given in consideration of it].[11] And this is only the case if witnesses testify: We saw him counting out the money [to the original owner]. but if they merely testify: We heard the original owner admit to him [that he had received money], the robber cannot recover it, for the reason given by R. Kahana, that if he had not made this admission to him the other would have handed him and his ass over to the town prefect.[12]

R. Huna said: if a man consents to sell something through fear of physical violence[13] the sale is valid. Why so? Because whenever a man sells, it is under compulsion.[14] and even so his sale is valid. But should we not differentiate internal from external compulsion? — [We must] therefore [give another reason], as it has been taught:

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(1) E.g., one to whom the husband has thrown a get, and it is not certain whether it landed nearer to her or to him. v. Git. 74a.

(2) We might think, therefore, but for the ruling above, that she can have no hazakah in her husband's property, as any land she may occupy was assigned to her for her maintenance.

(3) Viz., a craftsman, a metayer, and all the others who are specified as having no hazakah.

(4) A deed of sale or witnesses to the sale.

(5) This is an obvious statement, only made to lead up to what follows.

(6) E.g.. witnesses who testify that he bought the land or that the original owner admitted as much, but not that he

handed over the money.

(7) Commonly taken to be a corruption of sicarii, non-Jewish brigands who infested Palestine after the war of Bar Cochba; more probably. however (v. Jast., s.v. סיקריקון) a corruption of Gr. **, the Imperial fiscus established In Palestine at that time. The Rabbis ordained that purchases of land from that source were null and void. V. Git. 55.

(8) I.e., obtains from him a deed of transfer, without, however, paying him money. Git. 55b.

(9) Because this shows apparently that the original owner acquiesces in the transfer and is not acting merely out of fear of the sicarius. R. Huna, however, declares the sale void even if the robber produces a deed.

(10) Because only then can we be sure that he acquiesces in the transfer.

(11) I.e., if the robber has given the owner money in payment of the field, when the latter recovers the field he must refund the money.

(12) The admission therefore is presumably false.

(13) Lit., 'If they hang him and he sells.'

(14) By shortage of money.

Talmud - Mas. Baba Bathra 48a

[From the superfluous words], he shall offer it,[1] we learn that a man can be forced to bring an [offering which he has vowed]. Does this mean, even in his own despite? — [This cannot be] because it says. Of his own free will.[2] How then [are we to say]? Force is applied to him until he says, 'I consent.'[3] But perhaps there is a special reason in this case, viz. that he may be well satisfied [to do so retrospectively], so as to have atonement made for his sins?[4] — We must therefore [look for the reason in] the next passage [of the Baraitha quoted]: 'Similarly in the case of divorces, [where the Rabbis have said that the husband can be forced to give a divorce][5] we say [that what is meant is that] force is applied to him till he says, I consent.' But there too perhaps there is a special reason, viz. that it is a religious duty to listen to the word of the Sages?[6] — What we must say therefore is that it is reasonable to suppose that under the pressure he really made up his mind to sell.[7]

Rab Judah questioned this [on the ground of the following Mishnah]: 'A get [bill of divorce] extorted by pressure applied by an Israelite[8] is valid, but if the pressure is applied by a non-Jew[9] It is invalid. A non-Jew also, however, may be commissioned [by the Beth din] to flog the husband and say to him, Do what the Israelite[10] bids you.'[11] Now why [should the get be invalid if extorted by the non-Jew]? Cannot we say that in that case also the man makes up his mind under pressure to grant the divorce?[12] — This rule must be understood in the light of the statement made by R. Mesharsheya regarding it: According to the Torah itself, the get is valid even if extorted by a non-Jew, and the reason why the Rabbis [on their own authority] declared it invalid was so as not to give an opportunity to any Jewish woman to keep company with a non-Jew and so release herself from her husband.[13]

R. Hamnuna questioned [the rule on the ground of the following Mishnah]: 'If a man buys a field from a sicarius[14] and then buys it again from the original owner, the purchase is void.'[15] Why so? Cannot we say here too that under pressure the owner makes up his mind to sell [the field]? — We must understand this statement in the light of the gloss added by Rab: This rule was meant to apply only if the owner [merely] said to the purchaser, Go and take possession and acquire ownership, but if he gives him a written deed, he becomes the legal owner.[16] But if we take the view of Samuel, that even if he gives him a deed he does not become the owner, what are we to reply [to R. Hamnuna]? — Samuel admits [that the sale is valid] if the purchaser actually pays the owner. But if we take the view of R. Nahman as completed by the statement of R. Bibi, that though the robber has no title to the land he has a title to the payment he made,[17] what reply can be made [by R. Huna]? — R. Bibi adduced a mere statement,[18] and such an opinion R. Huna did not feel bound to accept.[19]

Raba said: The law is that if a man sells a thing under pressure of physical violence, the sale is valid. This is only the case, however,

(1) Lev. 1,3: If his oblation be a burnt offering . . . he shall offer it a male without blemish; he shall offer it at the door etc.

(2) A possible rendering of the word lirzono (E.V. that he nay be accepted).

(3) This shows that if a man says 'I consent' under duress, the consent is valid.

(4) By bringing the offering. Hence we cannot reason from the offering to the sale.

(5) E.g., if he suffers from a loathsome disease.

(6) Viz., to their injunction to him to grant a divorce. Hence we cannot reason from divorce to sale.

(7) I.e., make a complete transfer, since we may well assume that he is now content as after all he loses nothing.

(8) I.e., a Jewish court.

(9) I.e., a non.Jewish court.

(10) I.e., the Rabbis who commission the non-Jew to flog the husband.

(11) Git. 88b.

(12) Because when all is said and done he may be glad to get rid of a wife who hates him.

(13) By inducing the non-Jew to go and extort a get from him.

(14) V. supra p. 199, n. 6.

(15) Git. 55b.

(16) V. supra p. 199, n. 8.

(17) Which shows that a proof brought by a robber is valid.

(18) I.e., the individual opinion of an Amora.

(19) Whereas if R. Bibi had been able to quote a Mishnah or a Baraitha, R. Huna would have felt constrained to bow to it.

Talmud - Mas. Baba Bathra 48b

if he is forced to sell 'a' field,[1] but if he is forced to sell 'this'[2] field, it is not valid. And again even if he is forced to sell 'this' field, the sale is not valid only if he has not counted out the money [received in payment], but if he does count out the money, the sale is valid.[3] And again, [even in the case of 'this' field and even if he did not count out the money] the sale is not valid only if it was not possible for him to wriggle out of it,[4] but if he did have a chance to wriggle out of it [and did not do so], then it is valid. [In spite, however, of this statement of Raba,] the accepted ruling is that in all these cases the sale is valid, even in the case of 'this' field, for the betrothal of a woman is analogous to the buying of 'this' field,[5] and yet Amemar[6] has laid down that if a woman consents to betroth herself under pressure of physical violence, the betrothal is valid. Mar son of R. Ashi, however, said: In the case of the woman the betrothal is certainly not valid; he treated the woman cavalierly[7] and therefore the Rabbis treat him cavalierly and nullify his betrothal. Rabina said to R. Ashi: We can understand the Rabbis doing this if he betrothed her with money,[8] but if he betrothed her by means of intercourse, how can they nullify the act?[9] — He replied: The Rabbis declared his intercourse to be fornication.

One Taba[10] tied a certain Papi to a tree[11] [and kept him there] till he sold [his field to him]. Subsequently Rabbah b. Bar Hanah signed as a witness both to a moda'ah[12] [issued by Papi] and to a deed of sale [of the field]. R. Huna [on hearing of it] said: He who signed the moda'ah acted quite properly and he who signed the deed of sale acted quite properly. How can both be right?[13] If [it was right to sign] the moda'ah it was not [right to sign] the deed of sale, and if [it was right to sign] the deed of sale it was not [right to sign] the moda'ah? — What he [R. Huna] meant was this: Had it not been for the moda'ah, the one who signed the deed of sale would have acted rightly.[14] R. Huna is thus consistent with the opinion expressed by him [elsewhere]. For R. Huna said that a sale extorted by physical violence is valid. But this is not so,[15] seeing that R. Nahman has said: If the witnesses [to a bond[16]] say [subsequently], We only wrote [the bond under cover of] an amanah,[17] their word is not

(1) I.e., if he is called upon merely to sell one of his fields, and is allowed to choose which, because in that case we can say that the sale is not unwelcome to him.

(2) I.e., one which his torturers specify, and which perhaps he particularly wished to keep for himself.

(3) Because by the act of counting out the money he shows that he is satisfied with the transaction.

(4) E.g., by saying to the other 'wait till tomorrow' or 'wait till my wife comes' (Rashb.).

(5) Because the woman may be regarded as selling herself to the betrother, who is intent on her alone.

(6) V.l. 'A master said'.

(7) Lit., 'not as it beseems'.

(8) Betrothal could be effected in three ways — by a money gift, by written deed, and by actual intercourse (Kid. ad init.).

(9) If he gave her money, they can declare the money common property, so that the gift was no gift, but they cannot say that the intercourse was no intercourse.

(10) A notorious ruffian.

(11) According to another rendering, 'Tied Papi up on account of an artichoke (to make him sell it).' V. Levy, s.v. כינרא

(12) Lit., 'notification': a declaration by a person about to make a sale that the sale is made under duress and that he intends to claim the thing sold as soon as possible. V. supra 40a.

(13) Lit., 'What is your desire'?

(14) But Rabbah b. Bar Hana, having signed the moda'ah, had no right to sign the bill of sale, since he had already in advance declared it to be invalid.

(15) I.e., the moda'ah could not really invalidate the bill of sale.

(16) Given by a borrower to a lender.

(17) Lit., 'our words were only an amanah' (lit., 'assurance'). An amanah was an assurance given to a debtor who signed a bond without receiving money that the creditor would not enforce it unless he actually lent him the money.

Talmud - Mas. Baba Bathra 49a

accepted. Also if the witnesses to a deed [of sale] say, We only wrote [under reservation of] a moda'ah[1] their word is not accepted![2] — This is the case where they make a verbal statement to this effect, because a verbal statement cannot invalidate a written deed, but if they write a deed,[3] then one deed can invalidate another.

The preceding text states that R. Nahman said: If the witnesses [to a bond] say, We only wrote it [under cover of] an amanah, their word is not accepted, and if the witnesses [to a deed] say, We wrote [it under the reservation of] a moda'ah, their word is not accepted. Mar son of R. Ashi, however, says that if they say, We only wrote [it] under cover of an amanah, their word is not accepted, but if they say, We wrote [under the reservation of] a moda'ah, their word is accepted. The reason is that it is proper to commit to writing a moda'ah, but it is not proper to commit to writing an amanah.[4]

THE HUSBAND HAS NO HAZAKAH IN THE PROPERTY OF HIS WIFE. Surely this is self-evident? Since he has a right to the produce [of the wife's field,[5] therefore, however long he occupies it we say that] he is merely taking the produce?[6] — The rule required to be stated for the case in which he has made a written declaration that he has no right or claim to her property.[7] But suppose he has done so, what difference does it make, seeing that it has been taught, If a man says to another, I have no right or claim to this field, I have no concern in it,I totally dissociate myself from it, his words are of no effect?[8] — In the school of R. Jannai the answer was given that the Mishnah here [is referring to the case] where the husband made this declaration to the wife while she was still only betrothed to him; [and such a declaration would be valid] in virtue of the dictum of R. Kahana

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(1) I.e., before signing the deed, we ascertained that the seller was selling under duress and intended to annul the sale.

(2) And the bond or deed of sale is still valid.

(3) As here, where the moda'ah was recorded in writing before the sale took place.
(4) An amanah was looked upon by the Rabbis as contrary to equity, and they therefore denounced anyone who kept a bond of this kind in his house for twenty-four hours. Hence if the witnesses say they wrote a bond of amanah, their word is not accepted, since a man is not allowed to condemn himself. To write a moda'ah, however, is perfectly legitimate, and therefore if they say they signed the deed of sale under reservation of a moda'ah, their word is accepted.
(5) Even though the wife remains legal owner of the field itself.
(6) And he cannot plead that she sold it to him.
(7) And therefore if we see him in occupation of a field that was hers, the presumption is that he bought it.
(8) V. Supra 43a.

Talmud - Mas. Baba Bathra 49b

that a man is at liberty to renounce beforehand[1] an inheritance which is likely to accrue to him from another place;[2] and this rule again is based on the dictum of Raba, that if anyone says, I do not desire to avail myself of a regulation of the Rabbis of this kind, we comply with his desire.[3] To what was Raba referring[4] when he said 'of this kind'? — He was referring to the statement made by R. Huna in the name of Rab: A woman is at liberty to say to her husband, You need not keep me and I will not work for you.[5]

[Since the Mishnah says that a husband has no hazakah in the property of his wife, we infer that] if he has proof [that she sold it to him],[6] the sale is effective. [Yet why should this be?] Cannot she say [in this case also], I merely wished to oblige my husband?[7] Have we not learnt: If a man buys [a field] from the husband[8] and then buys it again from the wife, the purchase [from the wife] Is void?[9] This shows that she can say: I merely consented in order to oblige my husband, and cannot she say here also that she merely wished to oblige her husband? — The truth is that this [Mishnah] has been qualified by the gloss of Rabbah son of R. Huna: The rule really required to be stated in reference to those three fields [that are specially allotted to her][10] — one that the husband inserted In the kethubah,[11]

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(1) Lit., 'to stipulate'.
(2) I.e., from a distant relative, to whom he becomes next-of-kin according to the regulations of the Rabbis. But inheritance from a next-of-kin mentioned in the Torah cannot be so renounced.
(3) The regulation that a man should become heir to a distant relative in certain cases was made for his own benefit, and therefore he is at liberty to reject it. The statement of R. Kahana is adduced to show that the formula 'I have no right or claim to this property' is effective when applied to property which will hereafter accrue to a person but is not yet in his hands, e.g., the produce of the field of the betrothed woman, which will only accrue to the husband after marriage.
(4) I.e., what subject was being discussed in the Beth Hamidrash.
(5) It was a regulation of the Rabbis that a husband should maintain his wife in return for her labour. As this regulation was made on behalf of the wife, she was not bound to accept it.
(6) E.g., a document or witnesses.
(7) By consenting to the sale, but I did not really wish to part with the field.
(8) In order to release himself from the lien which the wife has on all her husband's property for the recovery of her kethubah.
(9) Git. 55b.
(10) If she refuses to sell these, the husband cannot reasonably take offence, and therefore but for the rule just stated we might think that if she does give her consent the sale is valid. — The argument runs on, and the reply to the question comes at the end.
(11) As a special security for her kethubah, apart from the general security effected on the whole of his property.

Talmud - Mas. Baba Bathra 50a

a second, the one assigned to her as special surety for her kethubah,[1] and a third which she had

brought him [as marriage] dowry, and for the money value of which he made himself responsible [to her].[2] Now what property does this exclude from the rule [that the purchase is void]? Shall we say it is to exclude the remainder of the husband's property?[3] [Hardly]; for in regard to this [she would] certainly [say that she did it to oblige her husband], since otherwise he might, fall out with her and say to her, 'You have your eye on a divorce or on my death.'[4] The property excluded[5] must therefore be that of which the husband has the usufruct. But [how can this be], seeing that Amemar has said: If husband and wife sell the property of which he has the usufruct,[6] their action is null and void?[7] — Amemar was speaking of the case where the husband sold it and then died, in which case she can recover it,[8] or where she sold it and died,in which case he can come and recover it,[9] (according to the regulation of the Sages recorded by R. Jose b. Haninah, who said: It was enacted In Usha[10] that if a woman sold the property of which the husband had the usufruct and then died, the husband could recover it from the purchaser).[11] Where, however, they both sold it [together] to a third party or if the wife sold it to the husband, the sale is valid.[12] Alternatively, I may say that Amemar based his ruling[13] on the view expressed by R. Eliezer.[14] For it has been taught: 'If a man sells his slave but stipulates [with the purchaser] that he shall continue to serve him for thirty days, R. Meir says that the rule of "one or two days"[15] applies to the first [the original owner] because the slave is still "under" him, and it does not apply to the second because the slave is not "under" him.'[16] He [R. Meir], holds that possession of the increment is on a par with possession of the principal.[17] 'R. Judah says that the rule of 'one or two days' applies to the second [the purchaser], because the slave is "his money", but not to the first, because he is not "his money".' His opinion is that the possession of the increment[17] is not on a par with possession of the principal. 'R. Jose says

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(1) After the wedding. On this also she places special reliance, as it has been assigned to her with full formalities in the presence of witnesses.

(2) Inserting a stipulation to that effect in the kethubah. This is the so-called 'property of the iron sheep' (Tzon barzel), which the wife makes over to the husband from her dowry, on condition that the husband is responsible to her for its full money value, whether he makes a profit or a loss on the transaction. [The term tzon barzel has a parallel in Roman law, pecus ferreum, and is not limited to a specific property arrangement between husband and wife but applies to every form of conveyance of property on a basis of tenancy and possession, v. Epstein, M., The Jewish Marriage Contract, p. 91, n. 12.]

(3) Which is pledged to her as security for her kethubah.

(4) If the husband sells any part of his property which is not so particularly mortgaged to her, and she refuses to confirm the sale, he may accuse her of desiring this part to remain in his possession because she is looking forward to his death or a divorce from him and is loth to part with a security for her kethubah. Thus she has a motive for consenting, so as not to estrange her husband. Hence this is obviously not the kind of property excluded from the rule stated.

(5) I.e., the purchase of which is valid if it is bought first from the husband and then from the wife.

(6) The so-called 'property of plucking' (mulug), which belonged to the wife but of which the husband had the usufruct without responsibility for loss or deterioration. [The term mulug is derived from Aram. מלג to pluck, Aruch, or from Lat. mulgere, 'to milk'. V. Epstein, M., op. cit, p. 92. n. 16.]

(7) The question then remains, in spite of Rabah R. son of Huna's gloss. what property is excluded from the rule?

(8) Because he had no right to sell it.

(9) We must therefore understand Amemar to mean, 'If the husband or the wife sells it'.

(10) V. p. 139, n. 1. [On the enactments of Usha, Takkanath Usha, v. Epstein, op. cit., 110ff.]

(11) The husband being in the position of a 'prior purchaser'. V. B.K. 88.

(12) Hence (to revert to the original question), if the wife sells to her husband the so-called 'property of plucking', the sale is valid, and she cannot plead, 'I did it to oblige my husband'.

(13) That if the wife or the husband sold the 'property of plucking' the sale becomes void on the death of the wife or husband respectively. So R. Gersh. Rashb. refers it to the ruling that if both husband and wife sell, their action is void, but, as will be seen, R. Eliezer's dictum by no means bears this out. V. infra p. 208, n. 2.

(14) And not on the regulation of the Sages.

(15) Ex. XXI, 20, 21: If a man smite his servant with a rod and he die under his hand, he shall surely be punished. Nevertheless, if he continue a day or two he shall not be punished, for he is his money.

(16) If the original owner smites him during this time and he survives a day or two, he is not guilty of murder, but if the purchaser smites him, even if he survives a day or two, he is guilty of murder. B.K. 50a.
(17) The 'increment' here is the labour of the slave and the 'principal' is the slave himself. R. Meir holds that for the purposes of this law the one who disposes of the labour of the slave is in the position of owner.

Talmud - Mas. Baba Bathra 50b

that the rule of one or two days applies to both of them, to the original owner because the slave is still "under" him, and to the purchaser because he is "his money".' R. Jose is uncertain whether possession of the increment is on a par with possession of the principal or not, and where there is a doubt whether capital punishment should be inflicted the more lenient view is always taken.[1] 'R. Eliezer says that the rule of a day or two days applies to neither; it does not apply to the purchaser because the slave is not 'under' him, nor to the original owner, because he is not 'his Money'.'[2] What, said Raba, is R. Eliezer's reason? Scripture says, He shall not be punished, for he is his money, which implies that he must be entirely his own.[3]

NOR HAS A HUSBAND HAZAKAH IN THE PROPERTY OF HIS WIFE. But has not Rab said: It is necessary for a married woman to protest?[4] Now, against whom [does he mean]? Shall I say against [occupation by] an outsider? Did not Rab lay down that one cannot obtain hazakah in the property of a married woman? It must therefore mean against [occupation by] the husband?[5] — Said Raba: It does indeed mean against [occupation by] the husband, but [Rab refers to the case where] for instance he dug in the field pits, ditches or caves.[6] But has not R. Nahman said in the name of Rabbah b. Abbuha: There is no hazakah where damage is inflicted? — This should be read The [ordinary] rule of hazakah does not apply[7] where damage is inflicted.[8] (Alternatively I may meet this objection by pointing out that R. Meri gave smoke as an instance of the damage referred to and R. Zebid a privy].[9] R. Joseph said: Rab in truth [meant his dictum[10] to apply] to [occupation by] outsiders,[11] and the case [he had in mind] was where a man had had the use of the property for a time in the lifetime of the husband and for three years after his death. [In that case,] seeing that he could put forward the plea, I bought it from you [the wife], if he merely pleads, You sold it to him and he sold it to me, his word is accepted.[12]

The text above states that Rab said that 'one cannot obtain hazakah in the property of a married woman.'

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(1) E.g., where the question is whether the man who smote the slave shall be condemned to death.
(2) This can be taken by Amemar as a proof that the wife cannot sell without the husband. It could hardly, however, be taken by him as a proof that where both agree to sell, their action is still void. V. supra p. 207, n. 6.
(3) Raba stresses the word 'his'.
(4) If she desires to prevent someone who has occupied her field from obtaining hazakah in it.
(5) This shows that Rab holds that a husband can claim has hazakah in the property of his wife.
(6) Thereby spoiling the field, which he was not entitled to do unless he was its legal owner. Hence if his wife does not protest against such action, it gives him hazakah.
(7) Lit., 'There is no rule of hazakah'.
(8) The ordinary rule is that to confer hazakah three years' possession is required, but if the occupier is allowed to damage the field without protest from the owner, this gives him hazakah at once.
(9) V. supra 23a. Other damage, however, such as digging pits, confers hazakah even in the case of a wife's property.
(10) That it is necessary for a married woman to protest.
(11) And therefore there is no contradiction between him and the Mishnah.
(12) Hence if she does not want him to obtain hazakah, she must protest in time.

Talmud - Mas. Baba Bathra 51a

The Judges of the Exile,[1] however, say that one can obtain hazakah. The halachah said Rab, is that of the Judges of the Exile.[2] Thereupon R. Kahana and R. Assi said to him: Does our Master retract his ruling? — He replied: You may suppose I refer to such a case[3] as that mentioned by R. Joseph.[4]

A WIFE HAS NO HAZAKAH IN THE PROPERTY OF HER HUSBAND. Surely this is self-evident; since the husband has to maintain her, [we suppose that when she occupies the field] she is merely deriving her maintenance from it? — The rule had to be stated [to cover the case] where he assigned her another field for her maintenance.[5]

[Since the Mishnah says only that the wife has no hazakah], we infer that if she brings proof[6] [that the field has been sold to her] the sale is valid. But cannot the husband plead against this that he merely desired to see if she had any money?[7] May we then not learn from this [Mishnah] that if a man sells a field to his wife, she becomes the legal owner and we do not say that he merely desired to see if she had any money? — No; we infer [rather] thus: but if she brings a proof it is effective in the case of a deed of gift [though not of a deed of sale].[8]

R. Nahman said to R. Huna: A pity your honour was not with us last night at the boundary,[9] when we drew up an exceptionally fine rule.[10] Said the other: What was this exceptionally fine rule which you drew up? He replied: If a man sells a field to his wife, she becomes the legal owner, and we do not say that he merely desired to see if she had money. Said R. Huna: This is obvious. Take away the money, and she still becomes legal owner by means of the deed.[11] For have we not learnt: [Ownership in] landed property is acquired by means of money payment, deed, or hazakah?[12] But, said R. Nahman, has not the following rider been attached to this [Mishnah]: Samuel said that this[13] was meant to apply only to a deed of gift, but if the deed is one of sale, legal ownership is not acquired until the money payment has been made? And, [rejoined R. Huna] did not R. Hamnuna refute this [by quoting the following]: 'How is property acquired by a deed? Suppose he [the seller] writes on a [piece of] parchment or on a potsherd,[14] which in themselves may be worth nothing, My field is hereby sold to you, my field hereby becomes your property, it is effectively sold or given![15] — But did not R. Hamnuna counter his own objection[16] by adding: This holds good only where a man sells his field because it is practically worthless?[17] R. Ashi said: He [the seller referred to above][18] really meant to transfer his field to the other as a gift, and the reason why he made the transfer in the form of a sale was in order to make the recipient's title more secure.[19]

An objection[20] was raised [from the following]: If a man borrows money from his slave and then emancipates him, or from his wife and then divorces her, they have no claim against him [for the money so lent].[21] What is the reason for this? Is it not because we say that his object [in borrowing] was only to see if they had any money? These cases are different,[22] because [we presume that] a man would not readily place himself in the position of 'a borrower who is a servant to the lender.'[23] R. Huna b. Abin sent [the following message:[24] 'If a man sells a field to his wife, she becomes the legal owner,

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(1) Samuel and Karna. Thus Rashb.; v. however, San. 17b and note a.l., and cf. infra p. 279 no. 6.

(2) [V.L. The view of the Judges of the Exile appears reasonable.]

(3) [Another rendering: 'I merely said that it appears reasonable (cf. n. 1) in such a case etc.']

(4) Rab did not actually mention R. Joseph, who was several generations after him, but described a similar case to that given by R. Joseph.

(5) In which case, but for the rule of the Mishnah, I might suppose that three years' occupation would give her hazakah.

(6) E.g., a deed of sale or witnesses.

(7) He suspected that she had money hidden away and wanted to entice her to produce it, but he had no genuine intention of selling her the field.

(8) I.e., if she produces a deed of gift, we say that he really has given her the field, for there is no question here of enticing her to produce money.

(9) A Beth Hamidrash placed two thousand cubits (the limit of a Sabbath walk) from the town, so as to be accessible to the country people (Rashb.).
(10) Lit., 'we said excellent things'.
(11) I.e., if he gives her a deed of sale (without taking money from her), it is obvious that he does not desire to see if she has any money, since she becomes legal owner even without handing over any money (although of course she becomes indebted to him).
(12) Kid. 26a; infra 86a. The word 'hazakah' here means occupation by means of some action which proclaims ownership, e.g. digging or fencing.
(13) That ownership is acquired by a transfer of the deed.
(14) [Blau, L. Ehescheidung, 63. renders 'on papyrus or on ostrakon'].
(15) Kid. 26a. This would show that the deed of sale itself confers ownership, even before the money payment is made.
(16) Lit., 'He raised the objection and he answered it.'
(17) And so the money is of minor consequence, but this is not the case with an ordinary field.
(18) In the Mishnah, 'Property . . . is acquired by money, deed, or hazakah.'
(19) R. Ashi gives an alternative answer to that given by R. Nahman to the objection raised from this Baraitha. The deed referred to, he says, may be in form one of sale, but even so the land is really given, and the donor by drawing up a deed of sale expresses his readiness to defend the title of the recipient if it should be challenged. In the case of a sale, however, the deed alone does not confer ownership; hence R. Nahman's rule that a man may sell a field to his wife was still necessary.
(20) Against the ruling that if a man sells a field to his wife she becomes the legal owner.
(21) Even if he gave them a bond on his property.
(22) I.e., in these cases it is legitimate to assume that he only wanted to see if they had any money, which he, as master or husband, was at liberty to appropriate.
(23) v. Prov. XXII, 7. Hence if we can find any other explanation of his action we adopt it.
(24) From Palestine to Babylonia.

Talmud - Mas. Baba Bathra 51b

but he still remains entitled to the produce. R. Abba, R. Abbahu, and all the chief authorities of that generation,[1] however, said that [in selling] his real intention was to make her a gift of it,[2] and he only made out a deed of sale to her in order to make her title more secure. An objection was raised [against this on the ground of the following]:[3] 'If a man borrows money from his slave and then emancipates him, or from his wife and then divorces her, they have no claim against him. What is the reason? Is it not because we say that he merely wished to see if they had any money?' — These cases are different, because we presume that a man would not readily place himself in the position of 'a borrower who is a servant to the lender.'

Rab said: If a man sells a field to his wife, She becomes the legal owner, but he is still entitled to the produce. If he makes her a gift of a field, she becomes the legal owner and he is no longer entitled to the produce.[4] R. Eleazar, however, said that in either case the wife becomes the legal owner and the husband is not entitled to the produce. In a case which actually occurred, R. Hisda followed the ruling of R. Eleazar. Rabban 'Ukba and Rabban Nehemiah,[5] the sons of the daughters of Rab, said to R. Hisda: Do you mean then, Sir, to abandon the greater authorities and follow the lesser?[6] He replied: I also am following a great authority, for when Rabin came[7] he said in the name of R. Johanan: In either case, the wife becomes the legal owner, and the husband is not entitled to the produce.

Raba said: The law is that if a man sells a field to his wife she does not become the legal owner and the husband is entitled to the produce, but if he gives it to her she becomes the legal owner and the husband is not entitled to the produce. [Do not the] two [halves of Raba's first statement contradict each other]?[8] — There is no contradiction. The one [half] refers to the case where the wife had money hidden away,[9] the other to the case where she had no money hidden away,[10] since Rab

Judah has laid down: [If the wife buys with] money hidden away, she does not acquire, if with money not hidden away, she does acquire.

Our Rabbis taught: Pledges should not be taken either from women or from slaves or from children.[11] If one has taken a pledge from a woman, he should return it to her;[12] if she dies, to her husband. If one has taken a pledge from a slave, he should return it to the slave, or, if he dies, to his master.

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(1) [The generation preceding that of R. Huna b. Abin.]

(2) And therefore he is not entitled to the produce.

(3) The question and answer just recorded are here repeated.

(4) Because it is assumed that a gift is given without reservation.

(5) (V. L. Mar 'Ukba and Rab Nehemiah. Rabban was a title borne by exilarchs, v. Hul. 92a.)

(6) R. Eleazar was a pupil of R. Johanan, who himself deferred to Rab.

(7) From Palestine to Babylonia.

(8) First he says, 'She does not acquire ownership,' i.e., either of the soil or of the produce, and then he says, 'and the husband is entitled to the produce,' which implies that the wife acquires ownership of the soil.

(9) In this case we say that he merely wished to find out if the wife had any money, and she does not acquire ownership.

(10) And this motive cannot be ascribed to the husband.

(11) Because there is a probability that they have stolen the articles pledged or deposited.

(12) Because we do not assume that she has stolen it.

Talmud - Mas. Baba Bathra 52a

If one has taken a deposit from a child, he should invest it for him,[1] or, if he dies, restore it to his heirs. If any of them at the time of his death says, The article belongs to so-and-so, he should act according to their intimation. Otherwise he should act according to his discretion.[2] When the wife of Rabbah b. Bar Hana was on her deathbed, she said: Those [precious] stones belong to Martha[3] and his daughter's family. He consulted Rab about it, and the latter said to him: If you think she was telling the truth,act according to her instruction, and if not, use your own discretion.[4] According to another version, Rab said to him: If you think her a wealthy enough person,[5] act according to her instruction, and if not, use your own discretion.

'If he has taken from a child, he should invest it for him.' How invest it? — R. Hisda said: He should buy with it a scroll of the Law;[6] Rabbah son of R. Huna said: He should buy with it a date tree, of which the child can eat the fruit.

A FATHER HAS NO HAZAKAH IN THE PROPERTY OF HIS SON NOR A SON IN THE PROPERTY OF HIS FATHER. R. Joseph said: This applies even if they have parted.[7] Raba,[8] however, said that if they have parted the rule no longer applies. R. Jeremiah of Difti said: In a case which occurred, R. Papi decided according to the ruling of Raba. R. Nahman b. Isaac said: I have been told by R. Hiyya from Hormiz Ardeshir,[9] who was told by R. Aha b. Jacob in the name of R. Nahman b. Jacob, that if they [the father and son] have parted, the rule [of the Mishnah does] not apply.[10] The law is that where they have parted they have no hazakah against one another. It has also been taught to the same effect: A son who has left his father's roof and a wife who has been divorced are on the same footing as strangers [in regard to the father or husband].

It has been stated: [If a number of brothers live together and] one of them has the management of the house,[11] and if there are deeds[12] and bonds[13] current in his name and he asserts, 'They are mine,[14] and I obtained them from the legacy of my maternal grandfather',[15] Rab says that the onus probandi lies upon him, and Samuel says that the onus probandi lies upon the brothers.[16] Said Samuel: Abba[17] must at least admit that if he dies [and leaves children], the onus probandi lies on the

brothers.[18] R. Papa strongly questioned this. Do we ever, he said, advance a plea on behalf of orphans which their father could not have advanced [on his own behalf]?[19] And further, did not Raba order some orphans to return a pair of shears for clipping wool[20] and a book of Aggadah which were claimed from them, though the claimants adduced no proof [that they had lent them],[21] these being articles which are commonly lent or hired,

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(1) Lit., 'make it a keepsake'. The expression is explained infra.

(2) Lit., 'he should make an explanation to their explanation.' Rashb. explains this to mean that if he thinks they say this merely to hide the fact that they have stolen the article, he should restore it to the husband or master.

(3) The brother of R. Hiyya.

(4) I.e., keep it for yourself.

(5) To have acquired these things.

(6) So that he may learn from it, and thus obtain a kind of interest on the investment while the principal is secure.

(7) Because we say that they are still not particular with one another, and therefore do not trouble to protest.

(8) [V.L. Rabbah.]

(9) Ardeshir was a town not far from Ctesiphon. 'Hormiz Ardeshir' may have been a village in the neighbourhood.

(10) I.e., they have hazakah against one another.

(11) I.e., the brothers leave all the affairs of the joint property in his hands after the father's death.

(12) Of sale, to the effect that he has bought property.

(13) To the effect that he has lent money.

(14) And the brothers have no share in them.

(15) I.e., he obtained the money for buying the property or for lending not from the estate of his father or his father's father, in which case the other brothers would be entitled to share with him, but from the estate of the father of his mother, he and his brothers having been born from different mothers.

(16) Rab lays stress upon the fact that he usually disposes of the joint property in his own name, Samuel on the fact that the documents are made out in his name.

(17) Rab's proper name was Abba Arika.

(18) Because his children cannot be expected to know so easily where to find proof.

(19) Viz., in this case, that his name on the documents gives him a presumptive right to them.

(20) Lit., 'Scissors of a woollen cloak'. [Var. lec. 'A pair of trousers'. V. Krauss, op. cit., I, 612.]

(21) The claimants asserted that the articles were lent, the orphans that they were bought, and Rab took the word of the former, as he would have done had the claim been made against the father. Hence a plea is not valid on behalf of an heir which is not valid on behalf of the testator.

Talmud - Mas. Baba Bathra 52b

[and Raba acting] according to the message sent by R. Huna b. Abin, 'If things that are usually lent or hired [are found in a man's possession] and he pleads that he has bought them, his word is not accepted?' — This is really a difficulty.[1]

R. Hisda said: The rule just laid down[2] applies only if the brothers share a common table,[3] but if they eat separately, the one [against whom the claim is brought] can say that he saved up [money] from his food allowance. What sort of proof is required [of the brother]? — Rabbah said: The testimony of witnesses; R. Shesheth said: The confirmation of the document.[4] Raba said to R. Nahman: Here we have the opinion of Rab and of Samuel, and again that of Rabbah and R. Shesheth: with whom do you agree? He replied: All I know is a Baraitha. For it has been taught: [If brothers live together and] one of them has the management of the house, and if deeds and bonds are current in his name and he asserts: I obtained them from the legacy of my maternal grandfather, the onus probandi lies upon him.[5] Similarly, if a woman has the management of a house, and deeds and bonds are current in her name, and she asserts: They are mine, as I obtained them from the legacy of my paternal or maternal grandfather, the onus probandi is upon her. Why 'similarly'?[6] — You might think that as it is a matter of pride for a woman for [people] to say that she has the charge of orphans

she would not rob them.[7] Hence we are told [that we must not assume this].

THIS RULE OF THREE YEARS APPLIES ONLY TO OCCUPIERS, BUT ONE WHO IS PRESENTED WITH A PIECE OF LAND OR BROTHERS WHO DIVIDE AN INHERITANCE OR ONE WHO SEIZES THE PROPERTY OF A PROSELYTE etc. Are then the others mentioned[8] not occupiers? — There is a lacuna [in the Mishnah], and it should read as follows: This rule [of three years] applies only to occupation which requires to be supported by a plea, as for Instance if the seller says, I did not sell it,in which case the other has to plead, I did buy it.[9] But where the occupation needs no plea to support it, as for instance in the case of the recipient of a gift or brothers dividing [an inheritance] or one who seizes the property of a proselyte where nothing more is required than to establish ownership[10] — IF HE DOES ANYTHING AT ALL IN THE WAY OF SETTING UP A DOOR OR MAKING A FENCE OR AN OPENING, THIS CONSTITUTES A TITLE OF OWNERSHIP.

R. Hoshaia learned in the [Tractate] Kiddushin edited in the school of Levi:[11] If he [the buyer] does anything at all in the way of setting up a door or making a fence or an opening in his [the seller's] presence, this constitutes a title of ownership. Are we to suppose that this is only [the case if the act is done] in the seller's presence, and not otherwise? — Raba replied: The meaning is this. [If the act is done] in his presence, he has no need to say [to the buyer], Go, occupy and acquire ownership;[12]

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(1) And Samuel has no answer to it.

(2) By Rab, who said that the onus probandi is on the brother.

(3) Lit., 'are not separated in their dough'.

(4) The so-called 'honpak' (lit., 'it was produced'): the endorsement of the Beth din that they had examined the signatures and found them genuine. This would create a presumption in favour of the brother, but would not be so convincing as the testimony of witnesses.

(5) As laid down by Rab. V. supra 52a. As to the nature of the proof required, R. Nahman offers no opinion.

(6) This term should by rights introduce a statement which adds something material to the preceding statement, which does not seem to be the case here.

(7) And therefore the onus probandi is on the other party.

(8) The recipient of a gift and brothers who divide an inheritance and one who seizes the property of a proselyte.

(9) And without this plea his three years' occupation is of no avail.

(10) I.e., there is no need to hand over money.

(11) Levi also drew up a Tosefta like R. Hiyya and R. Oshiah (Rashb.). [V. however, Halevy, Doroth II, 595.]

(12) I.e., the transaction is complete without this.

Talmud - Mas. Baba Bathra 53a

but [if the act is] not [done] in his presence, he must say, Go, occupy and acquire ownership. Rab inquired: What is the rule in the case of a gift? Said Samuel: What is Abba's[1] difficulty? Seeing that in the case of a sale where the purchaser gives money, if the seller says to him, 'Go, occupy and acquire ownership,' he does acquire ownership but otherwise not, how much more so in the case of a gift?[2] — Rab, however, was of opinion that a gift is usually made in a liberal spirit.[3]

How much is meant by 'anything at all''? — [The answer is given] in the dictum of Samuel: If a man raises a fence already existing to ten handbreadths[4] or widens an opening so that it allows of entry and exit, this constitutes effective occupation.[5] How are we to picture this fence? If we say that before [the man touched it] people could not climb it and now too they cannot climb it, what has he done?[6] If again we say that before people could climb it but now they cannot, he has done a great deal![7] — We must therefore say that before it could be climbed easily but now it can only be climbed with difficulty. How are we to picture the opening? If we say that before people could get

through it and now too they can get through it, what has he done?[6] If again we say that before people could not get through it but now they can, he has done a great deal![7] We must therefore say that before people got through with difficulty, but now they get through easily.

R. Assi said in the name of R. Johanan: If [in the estate of a deceased proselyte] a man by placing a pebble or removing a pebble confers some advantage, this action gives him a title to the land. How are we to understand this placing and removing? If we say that by placing the pebble [there] he stops water from overflowing the field[8] or by removing the pebble he allows water to run off from the field,[9] he is merely in the position of 'a man who chases a lion from his neighbour's field'![10] — We must say therefore that in placing the pebble he conserves the water[11] and in removing the pebble he makes a passage for the water.[12]

R. Assi further said in the name of R. Johanan: [If the estate of a deceased proselyte consists of] two [adjacent] fields with a boundary between them, then if a man takes possession[13] of one of them with the idea of becoming owner, he acquires ownership of that one;

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(1) Rab. v. supra p. 214, n. 9.

(2) I.e., a fortiori, if the recipient of the gift does not take possession in the donor's presence, the latter must use this formula to make the gift valid.

(3) V. infra 71a. And therefore he was doubtful whether the formula was necessary even in this case.

(4) This was reckoned the minimum height which would act as a barrier.

(5) Because something has been done to alter the character of the property and improve it.

(6) To improve the property.

(7) And we should not call it 'anything at all'.

(8) And so damaging it.

(9) Which was waterlogged.

(10) I.e., he merely performs a neighbourly action which is incumbent on any man.

(11) Where it was required.

(12) Allowing it to enter and water the field.

(13) By means of some appropriate action.

Talmud - Mas. Baba Bathra 53b

if with the idea of becoming owner of both, he becomes owner of that one but not of the other;[1] if with the idea of becoming owner of the other, he does not acquire ownership even of that one.[2] R. Zera put the following question: Suppose he takes possession of one of them with the idea of becoming owner of that one and of the boundary and of the other one, how do we decide? Do we say that the boundary goes with this field and with that[3] and so he acquires the whole, or do we say that the boundary and the fields are separate?[4] This question must stand over. R. Eleazar put the question: Suppose he takes possession of the boundary with the idea of becoming owner of both fields, how do we decide? Do we say that the boundary is as it were the bridle of the land[5] and so he acquires ownership, or are boundary and field separate? — This question [also] must stand over.

R. Nahman said in the name of Rabbah b. Abbuha: If there are [in a house] two rooms, one of which can only be reached through the other,[6] then if a man takes possession of the outer room with the idea of becoming its owner, he acquires ownership of it; if with the idea of becoming owner of both rooms, he acquires ownership of the outer room but not of the inner one; if with the idea of becoming owner of the inner room, he does not acquire ownership even of the outer one. If he takes possession of the inner one with the idea of becoming its owner, he acquires ownership of that one; if with the idea of becoming owner of both, he does acquire ownership of both;[7] if with the idea of becoming owner of the outer one [only], he does not acquire ownership even of the inner one.[8]

R. Nahman further said in the name of Rabbah b. Abbuha: If a man builds a large villa on the estate of a [deceased] proselyte and another man comes and fixes the doors, the latter becomes owner. Why is this? Because the first one merely deposited bricks there.[9]

R. Dimi b. Joseph said in the name of R. Eleazar: If a man finds a villa already erected on the estate of a [deceased] proselyte, and he adds one coat of whitewash or mural decoration, he acquires ownership.[10] How much must he whitewash or decorate? R. Joseph says: A cubit. To which R. Hisda added: And it must be by the door.[11]

R. Amram said: The following dictum was enunciated to us by R. Shesheth, and he showed us the proof of it from a Baraitha:[12] If a man spreads mattresses on the floor of a proselyte's estate [and sleeps on it], he thereby acquires ownership.[13] How did he 'show proof of this from a Baraitha'? — [By citing the following passage] which has been taught: How is ownership [of a slave] acquired by 'taking possession'?[14] If the slave fastens or undoes his master's shoe, or carries his clothes behind him to the bath, or undresses him, washes him, anoints him, scrapes him, dresses him, puts his shoes on[15] or lifts him up, he becomes his owner.[16] R. Simeon said: possession of this kind cannot be more effective than lifting up, seeing that it confers ownership in all cases. What does this mean? — We must understand the passage thus: If the slave lifts his master up, the latter acquires possession, but if his master lifts him up, he does not. R. Simeon said: possession cannot be more effective than lifting, seeing that it confers ownership in all cases.[17]

R. Jeremiah Bira'ah said in the name of Rab Judah: If a man

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(1) Because the boundary makes them two distinct fields.

(2) Because he cannot acquire ownership without the deliberate intention of doing so.

(3) Lit., 'the boundary of the land is one'. Rashb. reads: 'The boundary belongs to this field and to that.' The meaning is that if the boundary goes with the field, his intention to acquire the boundary secures him the boundary, and his acquisition of the boundary secures him the second field, with which it also goes.

(4) And he acquires only the first field, and not the boundary.

(5) If a man buys ten animals and takes hold of the bridle of one, he becomes the owner of all ten (Kid. 27b). If then we compare the boundary to a bridle, possession of it should confer ownership of both fields.

(6) Lit., 'one within the other'.

(7) Because the right of way from the inner room through the outer makes the latter subsidiary to the former.

(8) V. supra p. 218, n. 5.

(9) I.e., so long as the building is not completed, it is regarded merely as a heap of bricks.

(10) Because he has done something to improve the building.

(11) Where it will have its maximum effect; otherwise more than a cubit would be necessary.

(12) Lit., 'he enlightened our eyes from a Baraitha.'

(13) Because, although he does not improve the estate in any way, he derives some service from it.

(14) The rule is that ownership of a slave (as of land) is acquired by the handing over of money or of a deed, or by 'taking possession' (hazakah).

(15) This follows naturally on 'dresses him' though it has already been mentioned once.

(16) And R. Shesheth compares the ground to a slave in the matter of service.

(17) If a man buys an article and lifts it up, he immediately becomes owner, even if he is on ground belonging to the seller, whereas if he merely pulled it towards him (v. infra 76b), he would not in this case thereby become owner. Hence R. Simeon says that if the master lifts up the slave, this action also confers ownership.

throws vegetable seeds into the crevices of a proselyte's land, this act does not confer a title of ownership. The reason is that at the time of his throwing [the seeds] no improvement is effected, and the subsequent improvement[1] comes automatically.

Samuel said: If a man strips the branches from a date tree, if his purpose is [to improve] the tree.[2] he acquires ownership [by so doing],[3] but if his purpose is [to procure food] for his cattle, he does not acquire ownership. How can we tell [which is which]? If he takes the branches from all round, then [we know that] his purpose is [to improve] the tree, but if from one side only, then it is for the sake of his cattle.

Samuel further said: If a man clears a field [of sticks etc.], if his purpose is [to prepare] the soil [for ploughing], he thereby acquires ownership,[3] but if it is to obtain firewood, he does not. How can we tell [which is which]? — If he picks up [all the sticks,] both big and small, then [we know] his purpose is to prepare the soil, but if he takes the big ones and leaves the little ones, then [we know that] he merely wants firewood.

Samuel further said: If a man levels a field,[4] if his purpose is [to prepare] the soil [for ploughing] he thereby acquires ownership, but if he only wants to make threshing floors, he does not acquire ownership. How can we tell [which is which]? — If he has taken earth from the protuberances and thrown it into the depressions, then we know that his purpose is [to prepare] the soil,[5] but if he merely smoothes out the protuberances or levels up the hollows, we know that he intended to make threshing floors.[6]

Samuel further said: If a man turns water into a field [from a stream], if he does so to irrigate the ground, he thereby acquires ownership, but if only to bring fish in, he does not acquire ownership. How can we know which is which? — If he makes two sluices, one to let the water in and one to let it out, we [know that] he is after the fish, but if one sluice[7] then we know that his chief purpose is irrigate the field.

A certain woman had the usufruct of a date tree[8] to the extent of lopping its branches for thirteen years [to give food to her cattle]. A man then came and hoed under it a little [and claimed ownership]. He applied to Levi [or as some say to Mar ‘Ukba] who confirmed his title to the field. The woman came and complained bitterly to him, but he said: What can I do for you, seeing that you did not establish your title in the proper way?[9]

Rab said: If a man draws a figure [of an animal or bird][10] on the property of a [deceased] proselyte, he acquires ownership. [We ascribe this opinion to Rab] because Rab acquired the garden adjoining his Beth Hamidrash only by drawing a figure.[11]

It has been stated: If a field[12] has a boundary marked all round R. Huna says in the name of Rab that as soon as a man digs up one spadeful he becomes the legal owner. Samuel, however, said that he becomes the owner only of as much as he turns up.

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(1) When the vegetables grow.

(2) By removing superfluous branches.

(3) I.e., this is an act constituting hazakah.

(4) Lit., removes obstacles’.

(5) Because he levels the whole field.

(6) Because he still leaves different parts of the field at different levels.

(7) So that the water collects.

(8) Belonging to the estate of a deceased proselyte.

(9) I.e., you lopped off one side only, instead of all round.

(10) Not necessarily of the size of a cubit, as would be required in the case of any other ornamental figure. V. supra 53b.

(11) I.e., the garden adjoining his Beth Hamidrash belonged to a proselyte who died, and Rab acquired ownership by drawing the figure of an animal or bird on the wall of his house.

(12) The reference is to a field belonging to a deceased proselyte. In a case of sale, the digging of one spadeful is effective.

Talmud - Mas. Baba Bathra 54b

And if it is not bounded all round, how much does he acquire [by one stroke of the spade]?[1] R. Papa said: The length of a furrow made by a pair of oxen, there and back.[2]

Rab Judah said in the name of Samuel: The property of a heathen[3] is on the same footing as desert land; whoever first occupies it acquires ownership. The reason is that as soon as the heathen receives the money he ceases to be the owner, whereas the Jew does not become the owner till he obtains the deed of sale.[4] Hence [in the interval] the land is like desert land and the first occupier becomes the owner.[5] Said Abaye to R. Joseph: Did Samuel really say this? Has not Samuel laid down that the law of the Government is law,[6] and the king has ordained that land is not to be acquired save by means of a deed? R. Joseph replied: I know nothing of that.[7] [I only know that] a case arose in Dura di-ra'awatha[8] in which a Jew bought land from a heathen and another Jew came and dug up a little of it, and when the case came before Rab Judah he assigned the land to the latter. Abaye replied: You speak of Dura di-ra'awatha? There the fields belonged to people who hid themselves and did not pay the tax to the king, and the king had ordered that whoever paid the tax[9] should have the usufruct of the field.[10]

R. Huna bought a field from a heathen, and a Jew came and dug up some of it. He then presented himself before R. Nahman, who confirmed his title to it. R. Huna said to him: You decide thus [do you not], because Samuel said that the property of a heathen is on the same footing as desert land and the first occupier becomes owner?

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(1) This is the explanation of Tosaf. According to Rashb. the translation should be: 'If it is not bounded all round, how much must he dig up?' In either case we must supply the words 'according to Rab'.

(2) According to Tosaf. this was a fixed measure of length.

(3) The reference, as appears from what follows, is to property sold by a heathen to an Israelite who has paid the money but not yet received the deed of sale.

(4) The rule was that if a Jew bought land from a Jew, it remained in the ownership of the seller until the purchaser had received the title-deed, and either could retract until that time. But if a heathen sold land to a Jew, neither could retract so soon as the money had been paid, though in this case too the Jew did not become owner till he had received the title-deed.

(5) He must, however, reimburse the purchaser (v. Rashb. and R. Gersh.).

(6) [On the scope of this dictum, v. Abrahams, I., Pharisaism and the Gospels, I, 62ff.]

(7) As much as to say that he did not believe the king had ordained this.

(8) The name of a village. According to others, 'a village of shepherds'. [Obermeyer, op. cit., p. 142, identifies it with Dur on the Tigris, north of Bagdad.]

(9) In that case the Jew who came and did the digging.

(10) Hence we cannot infer from this that land bought from a heathen is not like desert land.

Talmud - Mas. Baba Bathra 55a

Then follow also the other ruling of Samuel, that the one who digs in it obtains only as much as he digs up. He replied: In that respect I follow our own teaching[1] as laid down by R. Huna in the name of Rab: As soon as he has dug up one spadeful he becomes legal owner of the whole.

R. Huna b. Abin sent[2] to say that if a Jew buys a field from a heathen and another Jew comes and occupies it [before he receives the deed], we do not dispossess him, and R. Abin and R. Elai and all our teachers were in agreement on this matter.

Rabbah said: These three rules were told me by 'Ukba b. Nehemiah the Exilarch: [one,] that the law of the Government [in civil cases] is law; [a second,] that Persians acquire ownership by forty years' occupation;[3] and [a third], that if property is bought from the rich landlords[4] who buy up land and pay the tax on it, the sale is valid. This applies, however, only to [land] which is transferred to the landlords on account of the land tax; if [it is sold to them] on account of the poll tax, then a purchase from them is not valid, because the poll tax is an impost on the person.[5] R. Huna the son of R. Joshua, however, said that even barley in the jar is liable to be seized for the poll tax.[6] R. Ashi said: Huna b. Nathan told me that Amemar found it difficult [to accept this view] because if this was so it would leave no room for the double portion to which a firstborn is entitled in an inheritance,[7] since all [bequeathed] property would in this way become 'prospective',[8] and a firstborn does not receive a double portion in 'prospective' as in 'actual' assets. He [R. Ashi] remarked: The same reasoning would apply to the land tax also.[9] But how then do you get over the difficulty [in the case of the land tax]? [By supposing that] the father pays the land tax of the year before he dies. Similarly with the poll tax; [we suppose that] the father pays it [for the year] before he dies.[10]

R. Ashi further said: I questioned the scribes of Raba [on this point], and they told me that the law is in accordance with the ruling of R. Huna the son of R. Joshua.[11] This, however, is not correct, and they only said so to put themselves in the right.[12]

R. Ashi further said: A man of leisure[13] must assist the community [to pay its levy].[14] This, however, is only if the community saved him from being taxed separately;[15] but if the tax collectors [exempted him],[16] then Providence Was kind to him.

R. Assi said in the name of R. Johanan: A boundary and a cistus[17] hedge serve as a partition in the estate of a proselyte;[18] not, however, for purposes of pe'ah[19] and uncleanness.[20] When Rabin came,[21] he said in the name of R. Johanan: For purposes of pe'ah and uncleanness also. How does a partition affect pe'ah? — As we have learnt: 'These are the things which cut a field into two with respect to pe'ah:[22] a river, a rivulet,

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(1) I.e., that of Rab.

(2) V. supra p. 211, no. 10

(3) If a Persian has been in occupation of a piece of land for forty years, and a Jew then buys it from him, his title is impregnable, although according to Jewish law it would not be impregnable (v. supra 35b). The meaning, however, may also be that in Persia 40 years' occupation is required to confer a title of ownership (even on an Israelite) and not three.

(4) Zaharuri (derivation uncertain) — men who paid to the Government the tax on land, the owners of which were in arrears, and so became owners of the land; or, according to others, the collectors of the land tax. As this transference of land was legal according to Persian law, Jews were allowed to buy the land from these people.

(5) I.e., it had to be collected from him personally and not from a distress on his property. Hence if the officials of the Government transferred his land to the zaharuri for payment of this tax they were exceeding their powers, and the Rabbis therefore refused to recognise the subsequent purchase of such land by a Jew. [On the terms כרגא (poll-tax) and טסקא (land tax), as well as on the Persian law recorded here, v. Obermeyer, op. cit. p. 221, n. 3.]

(6) Hence the Government officials would be justified in transferring the land, and the subsequent purchase by a Jew would be valid.

(7) Deut. XXI, 17.

(8) Since the whole of a man's property was liable to be seized by the Government on account of his poll tax, it was not actually his at the time of death, but was due to become his when he should have paid his tax. The Rabbinical rule was that the firstborn received a double portion only of the actual assets, not of those which were due to accrue later. V. infra 119a

(9) This also renders all assets 'prospective' instead of 'actual', and therefore there would seem to be no ground for the distinction between the land tax and the poll tax made above, which Amemar also accepts.

(10) And therefore the property he leaves is 'actual' and not 'prospective'.

(11) That fields transferred for non-payment of poll tax could be bought by Jews.
(12) Because they had themselves made out deeds of such sales.
(13) Who does not engage in any kind of work, trade or commerce.
(14) The tax imposed on it by the Government.
(15) By interceding on his behalf with the officials. As by so doing the community would increase its own burden, since it would have to make up the deficiency, it had the right to demand assistance from him.
(16) And did not demand any equivalent for his tax from the rest of the community.
(17) חצב, a hard kind of date tree.
(18) So that a separate act is required for acquiring the fields on each side of the hedge or boundary.
(19) Lit., 'corner', v. Lev. XXIIII, 22.
(20) As explained in what follows.
(21) From Palestine to Babylon.
(22) So that pe'ah has to be given from the fields on each side.

Talmud - Mas. Baba Bathra 55b

a public carriage road[1] or a private carriage road,[2] a public field-path or a private field-path which is used both in the dry and the rainy season.'[3] How does the partition affect uncleanness? — As we have learnt:[4] 'If a man goes into a plain[5] in the rainy season where there is known to be uncleanness[6] in a certain field, and he says, I went to that place [i.e. plain] but I do not know if I went to that spot or not, R. Eliezer declares him clean and the Sages declare him unclean,'for R. Eliezer used to say that 'if there is a doubt whether a man entered a place of uncleanness he is clean, but if there is a doubt whether he touched an unclean thing, he is unclean.'[7]

In respect of Sabbath, however, these things do not form a partition.[8] Raba, however, says that they form a partition even in respect of Sabbath, as it has been taught: If a man takes out half a dry fig into a public place,[9] and puts it down and then takes out another half a dry fig, in one spell of unawareness that it was Sabbath, he is penalised [for breaking the Sabbath],[10] but if under two spells of unawareness, he is not penalised.[11] R. Jose said: If he

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(1) Of 16 cubits width.
(2) Of 4 cubits.
(3) I.e., even in the ploughing season when many paths are closed (Pe'ah II, 1).
(4) Toh. VI, 5.
(5) A stretch of cultivable land divided into fields.
(6) I.e., a grave.
(7) Ibid. VI, 4. We suppose that there is a boundary or hedge in the plain, and since this divides it Into separate fields, he is doubtful even if he entered the field where the grave was, and therefore according to R. Eliezer he is clean.
(8) In the matter of carrying on Sabbath from a private to a public place or vice versa.
(9) If anyone takes out from a private to a public place an article not smaller than a fig and sets it down there, he is liable to punishment for breaking the Sabbath.
(10) Because he has taken out one whole fig.
(11) Because he has only taken out half a fig twice.

Talmud - Mas. Baba Bathra 56a

[takes the two half-figs] in one state of unawareness into the same public place, he is penalised, but if into two different public places, he is not penalised.[1] This too, said Rabbah, is only the case if there is between the two public places a place the carrying into which [from either of them would] render him liable to a sin offering,[2] but not if there is only a karmelith[3] in between.[4] Abaye said: Even if there is a karmelith between [he is not penalised], but not if there is. only a block [of wood].[5] Raba said: Even if there is a block of wood between [he is not penalised]. Raba's view here [that

such a block can form a partition] conforms with his other view that a 'place' in respect of Sabbath has the same meaning as a 'place' in respect of divorces.[6] If there is no boundary nor cistus hedge [in the plain], what is the ruling?[7] — R. Merinus explained in his [R. Eliezer's] name that 'all to which his name is applied [is reckoned as one field].' How are we to understand this? — R. Papa said: If for instance people call it, 'The field of so-and-so's well.'

As R. 'Aha b. Awia was once sitting in front of R. Assi, he laid down the following rule in the name of R. Assi b. Hanina: A cistus hedge forms a partition in the estate of a proselyte. What is a cistus hedge? — Rab Judah said in the name of Rab: The plant with which Joshua marked the boundaries of the land of Canaan for the Israelites.[8]

Rab Judah also said in the name of Rab: Joshua [in his book][9] enumerated only the towns on the borders.[10]

Rab Judah said in the name of Samuel: All the land which God showed Moses[11] is subject to [the obligation],of tithe. Which part of the land does this exclude?[12] — It excludes the Kenite, the Kenizite and the Kadmonite. It has been taught: R. Meir says that [these are] the Nabateans, the Arabians and the Salmoeans.[13] R. Eliezer says they are Mount Seir, Ammon and Moab. R. Simeon says they are Ardiskis, Asia and Aspamia.[14]

MISHNAH. IF TWO MEN TESTIFY THAT A CERTAIN MAN HAD THE USUFRUCT OF[15] A PIECE OF LAND FOR THREE YEARS AND THEY ARE FOUND TO BE ZOMEMIM,[16] THEY MUST PAY TO THE CLAIMANT ALL [THAT HE STOOD TO LOSE THROUGH THEIR FALSE EVIDENCE].[17] IF TWO [TESTIFY THAT THE OCCUPIER HAD THE USUFRUCT] FOR ONE YEAR, TWO FOR A SECOND YEAR, AND TWO FOR THE THIRD YEAR, [AND THEY ARE FOUND TO BE ZOMEMIM],[18]

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(1) Because here too the two actions are not combined.

(2) I.e., a private place, this being regarded as an effective division.

(3) As for instance, an unfenced plain, which is not an effective division. For the meaning of karmelith, v. Glos.

(4) Because the two public places are still regarded as one. Hence he is penalised.

(5) Less than 10 handbreadths high and 4 broad.

(6) If a man transfers his courtyard to his wife and then throws her a get into it and it lights on such a block, she is not divorced, because the block is not included in the courtyard transferred to the wife. Hence here he is not penalised.

(7) How far does the danger of uncleanness extend? [This is a quotation from Tosef., Toh. VII; v. Tosaf.]

(8) I.e., the boundaries between the tribes, families and individuals. According to tradition, this plant was chosen for the purpose because its roots go straight down and do not spread on either side; hence neither neighbour could complain that the other was encroaching.

(9) According to the Talmud, Joshua was the author of the book which bears his name. V. supra 8a.

(10) In Josh. XV-XIX.

(11) v. Deut. XXXIV, 1-3.

(12) I.e., which part of the land promised to Abram (Gen. XV, 18-21) was not shown to Moses on Mount Nebo?

(13) Tribes of North Arabia.

(14) Asia and Aspamia (Apamea) were names usually given to places in Asia Minor. But probably places nearer Palestine were meant. [V. Weinstein, Essaer, p. 18.]

(15) Lit., 'ate'.

(16) V. Glos.

(17) I.e., not only does he recover the land from the occupier, but the witnesses have to pay him the amount of money he stood to lose.

(18) That is to say, if all are found to be false.

Talmud - Mas. Baba Bathra 56b

EACH SET PAYS THE CLAIMANT A THIRD. IF THREE BROTHERS TESTIFY [ONE TO EACH YEAR] EACH ALONG WITH THE SAME SECOND WITNESS, THEN THREE TESTIMONIES [OF TWO WITNESSES EACH] ARE OFFERED[1] [ONE FOR EACH YEAR], BUT THE THREE ARE RECKONED AS ONE FOR THE PURPOSE OF DECLARING THE WITNESSES ZOMEMIM.[2] GEMARA. Our Mishnah does not agree with R. Akiba, for it has been taught: Rabbi Jose said: When my father Halafta went to R. Johanan ben Nuri to study Torah with him (according to another report, when R. Johanan ben Nuri went to Abba Halafta to study Torah with him), he said to him: Suppose a man had the usufruct of a piece of land for one year to the knowledge of two people, and for a second year to the knowledge of two other people, and for a third year to the knowledge of two others, how do we decide? He replied: This constitutes a title. Said the other: That is my opinion also, but R. Akiba differs in this respect, for he used to say: [Scripture states:] A 'matter' [shall be established by two witnesses],[3] and not half a matter.[4] And how do the Rabbis apply the principle of a 'matter' and not half a matter?[5] Shall I say that It is to invalidate the evidence where one witness says that there was one hair on her back and the other says that there was one hair in front?[6] This is not only half a matter but also half a testimony! —[7] No; they would in virtue of it invalidate the evidence where two witnesses testify that there was one hair on her back and two that there was one in front.[8] Rab Judah said: If one witness says that the occupier took crops of wheat off the land and the other that he took crops of barley, this constitutes hazakah.[9] R. Nahman strongly dissented from this. On this ground, he said, if one witness said that he took crops in the first, third, and fifth years, and the other that he took crops in the second , fourth, and sixth, this would also constitute hazakah?[10] — Said Rab Judah to him: Where is the parallel? There [in your case] the year referred to by the one [witness] is not referred to by the other, but here [in my case] both testify regarding the same year. And why do we ignore their discrepancy? Because people easily make a mistake between wheat and barley.[11]

IF THREE BROTHERS TESTIFY EACH ALONG WITH THE SAME SECOND WITNESS, THEN THREE TESTIMONIES ARE OFFERED, BUT THE THREE ARE RECKONED AS ONE FOR THE PURPOSE OF DECLARING THE WITNESSES ZOMEMIM.

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(1) If two or three brothers testify to the same thing they are only counted as one witness, but here, as they testify to separate years, they are reckoned as separate witnesses, and each one forms a pair with the other witness.

(2) I.e., they cannot be declared zomemim till the evidence of all four has been proved to be false, and in that case each pays one-sixth.

(3) Deut. XIX, 15.

(4) And here no two witnesses testify to more than one year of occupation, which is only a third of the matter in hand.

(5) Who say that each set may testify to a different year.

(6) The reference is to the two hairs which are the sign of puberty in a girl, v. Nid. 52a.

(7) There being one witness where two are required.

(8) But not where different witnesses testify to different years, each year being a 'whole matter'.

(9) In spite of the discrepancy between the witnesses.

(10) Here also there is a similar contradiction between the witnesses, since we suppose each of them to assert that in the intervening years the land was left fallow (Tosaf.).

(11) Lit., 'What is there to be said? Between wheat and barley, people are not particular'.

Talmud - Mas. Baba Bathra 57a

A certain document [was brought into court] bearing the signatures of two witnesses, one of whom had died. The brother of the one who was still alive came with another witness to testify to the signature of the other [the deceased]. Rabina was disposed to decide that this case was covered by the Mishnah of three brothers each associated with the same witness.[1] Said R. Ashi to him: Surely the cases are not on all fours. In that case [if the evidence of the brothers was accepted]

three-quarters of the money would not be assigned on the evidence of brothers, but in this case [if we allow this man to testify] three-quarters of the money will be assigned on the evidence of brothers.[2]

MISHNAH. CERTAIN USAGES CONSTITUTE HAZAKAH, WHILE CERTAIN OTHERS THOUGH SIMILAR DO NOT CONSTITUTE HAZAKAH.[3] IF A MAN WAS IN THE HABIT OF STATIONING HIS BEAST IN A COURTYARD OR OF FIXING THERE HIS OVEN, HANDMILL, PORTABLE STOVE OR HEN-COOP, OR OF THROWING HIS MANURE THERE, THIS DOES NOT CONSTITUTE HAZAKAH. BUT IF HE HAS BEEN ALLOWED TO PUT UP A PARTITION FOR HIS BEAST TEN HANDBREADTHS IN HEIGHT, OR FOR HIS OVEN OR HIS STOVE OR HIS HANDMILL, OR IF HE HAS BEEN ALLOWED TO BRING FOWLS INTO THE HOUSE OR TO MAKE A PIT FOR HIS MANURE THREE HANDBREADTHS DEEP OR A HEAP THREE HANDBREADTHS HIGH, THIS CONSTITUTES HAZAKAH.

GEMARA. Why is the rule in the second case different from that in the first?[4] — 'Ulla said: Any act which confers legal ownership of the property of a deceased proselyte[5] confers legal ownership of that of a fellow Jew,[6] and any act which does not confer legal ownership of the property of a deceased proselyte does not confer legal ownership of property of a fellow Jew.[7] R. Shesheth raised strong objections against this. Is this, [he asked] a general principle?[8] What of ploughed land which confers ownership of the property of a deceased proselyte but not of that of a fellow Jew?[9] And what of the gathering of crops , which confers ownership of property of a fellow Jew but not of the property of a deceased proselyte?[10] No, said R. Nahman in the name of Rabbah b. Abbuha;

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(1) Here too one brother joins with one man as witness to a bond and the other with another man in testifying to the genuineness of a signatures and so the testimony of the two brothers could be regarded as relating to separate things, and they could count as independent witnesses.

(2) Each of the two original witnesses is regarded as warranting the assignment of half the money to the holder of the bond. Consequently, each of the witnesses to the dead man's signature is regarded as warranting the assignment of a quarter of the money. Hence three-quarters of the money is assigned on the warrant of two brothers who by rights ought not to count as more than a single witness.

(3) If they are allowed to go on without protest for three years, and the claim is supported by a plea of purchase or gift.

(4) Why should the making of a partition confer a hazakah and not the mere stationing?

(5) On the person who seizes it first. V. p. 181, n. 5.

(6) If the latter has said, 'Go, occupy and acquire ownership,' or if he occupied it for three years.

(7) According to 'Ulla, therefore, the Mishnah is speaking of an outsider and defining the conditions under which he obtains hazakah in a courtyard.

(8) Even though it is correct in respect of this Mishnah.

(9) By means of three years' occupation. V. supra 37b.

(10) For acquiring the property of a proselyte the essential thing is to perform some action which improves the property; for acquiring hazakah in property formerly belonging to a fellow Jew, the essential thing is to have the usufruct of the property.

we are dealing here with a courtyard belonging to several joint owners, who do not object to [any one of their number] merely stationing things there, but who do object to [his making] a partition there.[1] But do they not object to things being merely stationed [there]? Have we not learnt that joint owners of a courtyard who have vowed to have no benefit from one another are forbidden to enter the courtyard?[2] — The truth is, said R. Nahman in the name of Rabbah b. Abbuha, that we are dealing here with the open space behind the houses, where the owners do not mind things being stationed, but where they do mind a partition being made. R. papa said: In both cases [of the vow and of the beast etc.] we are dealing with a courtyard of joint owners, [and the reason why the rule is

different is this:] Some owners are particular and some are not. Where the issue is a pecuniary one,[3] we take the more lenient view.[4] But where the issue is one of [breaking] a religious precept,[5] we take the more stringent view.[6] Rabina said: Indeed we assume in all cases that the joint owners are not particular,[7] and the rule [regarding vows] is based on the opinion of R. Eliezer, as it has been taught: R. Eliezer says, One who has vowed to receive no benefit from another is forbidden to take even a makeweight from him.[8]

R. Johanan said in the name of R. Bana'ah: Joint owners of a courtyard can stop one another from using the courtyard for any purpose save that of washing [clothes], since it is not fitting that the daughters of Israel should expose themselves to the public gaze while washing [clothes].[9] It is written: [The righteous one is] he that shutteth his eyes from looking upon evil,[10] and [commenting on this] R. Hiyya b. Abba said: This refers to a man who does not look at the women when they are washing [clothes]. How are we to understand this? If there is another road, then if [he does not take it] he is wicked.[11] If there is no other road, then how can he help himself? — We suppose that there is no other road, and even so it is incumbent on him to hide his eyes from them.[12]

R. Johanan asked R. Bana'ah[13] how [long] the under-garment[14] of a talmid hakam[15] [should be]. He replied: So long that his flesh should not be visible beneath[16] it. How [long should] the upper garment of a talmid hakam [be]? — So long that not more than a handbreadth of his under-garment should be visible underneath. How should the table of a talmid hakam be laid? — Two-thirds should be covered with a cloth and the other third should be uncovered for putting the dishes and vegetables on;[17] and the ring[18] should be outside.[19] But has it not been taught that the ring should be inside?[20] — There is no contradiction. In one case [we suppose] there is a child at the table,[21] and in the other that there is no child. Or if you like I can say [that in both cases [we suppose] there is no child, and still there is no contradiction: in one case [we suppose] there is a waiter at table[22] and in the other there is no waiter.[23] Or if you like I can say that in both cases [we suppose] there is a waiter, and still there is no contradiction; in the one case we refer to the day[24] and in the other to the night. The table of an ‘am ha'arez[25] is like

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(1) Hence if he makes a partition and they do not object, this constitutes hazakah, but so long as there is no partition his using the courtyard constitutes no hazakah, though it would in the case of an outsider.

(2) This shows that they are particular even about one another standing in the courtyard, for otherwise such standing could not be called a benefit derived from the other.

(3) I.e., in the case of using the courtyard.

(4) I.e., we assume that the other residents do not mind him putting his beasts etc. there, and since they do not mind, they do not formally object to his action, and therefore it does not constitute hazakah.

(5) In the case of a vow.

(6) We assume that the others do mind his standing in the courtyard. Hence if they allow him to do so, and he does, he would be deriving a benefit from them and so breaking his vow.

(7) And therefore by rights the vow would not be broken by the act of standing in the courtyard.

(8) If the man who has made the vow buys 100 nuts from the other, and he gives him one or two over, as to all customers, he may not accept them. Similarly, by standing in the courtyard the man who has made the vow receives a certain benefit from the other, even though the latter claims (as against him) no ownership in the courtyard.

(9) As they would if they have to go down to the river to do so.

(10) Isa. XXXIII, 15.

(11) Because it is a duty to keep away from temptation.

(12) Lit., ‘to constrain himself’.

(13) Having mentioned R. Bana'ah the text adduces a number of his sayings and doings.

(14) Or ‘shirt’.

(15) I.e., a scholar. v. Glos.

(16) I.e., it should come right down to his feet.

(17) So that they should not dirty the cloth. According to some, the bare space was to be in the middle.

(18) By which the table-top was hung up when not in use.
(19) I.e. , on the bare part.
(20) I.e., the part near the guests.
(21) And then it should be outside, because otherwise the child may play with it and upset the table.
(22) And it should be inside, because if it is outside, it may get in his way.
(23) And it should be outside, so as not to get in the way of the company.
(24) When the waiter can avoid it, and therefore the convenience of the company can be consulted by having it outside.
(25) V. Glos.

Talmud - Mas. Baba Bathra 58a

a hearth with pots all round.[1] What is the sign of the bed of a talmid hakam? — That nothing is kept under it save sandals in the summer season and shoes in the rainy season.[2] But the bed of an 'am ha' arez is like a packed storeroom.[3]

R. Bana'ah used to mark out caves [where there were dead bodies].[4] When he came to the cave of Abraham,[5] he found Eliezer the servant of Abraham standing at the entrance. He said to him: What is Abraham doing? He replied: He is sleeping in the arms of Sarah, and she is looking fondly at his head. He said: Go and tell him that Bana'ah is standing at the entrance. Said Abraham to him: Let him enter; it is well known that there is no passion in this world.[6] So he went in, surveyed the cave, and came out again. When he came to the cave of Adam,[7] a voice came forth from heaven[8] saying Thou hast beholden the likeness of my likeness,[9] . my likeness itself thou mayest not behold.[10] But, he said, I want to mark out the cave. The measurement of the inner one is the same as that of the outer one [came the answer]. (Those who hold that there was one chamber above another [say that the answer was], The measurement of the lower one is the same as that of the upper one.) R. Bana'ah said: I discerned his [Adam's] two heels, and they were like two orbs of the sun. Compared with Sarah, all other people are like a monkey to a human being, and compared with Eve Sarah was like a monkey to a human being, and compared with Adam Eve was like a monkey to a human being, and compared with the Shechinah Adam was like a monkey to a human being. The beauty of R. Kahana was a reflection of [the beauty of Rab; the beauty of Rab was a reflection of][11] the beauty of R. Abbahu; the beauty of R. Abbahu was a reflection of the beauty of our father Jacob, and the beauty of Jacob was a reflection of the beauty of Adam.

There was a certain magician who used to rummage among graves.[12] When he came to the grave of R.Tobi b. Mattenah (R.Tobi) took hold of his beard. Abaye[13] came and said to him: 'pray, leave him.' A year later he again came, and he [the dead man] took hold of his beard, and Abaye again came, but he [the dead man] did not leave him till he [Abaye] had to bring scissors and cut off his beard.

A certain man [when on his deathbed] said: I leave a barrel of dust to one of my sons, a barrel of bones to another, and a barrel of fluff to the third. They could not make out what he meant, so they consulted R. Bana'ah. He said to them: Have you any land? We have, they replied. Have you cattle? Yes. Have you cushions? Again the answer was in the affirmative. If so, said R. Bana'ah, that is what your father meant.

A certain man heard his wife say to her daughter, Why do you not observe more secrecy in your amours?[14] I have ten children, and only one is from your father. When [the man was] on his deathbed, he said, I leave all my property to one son. They had no idea which of them he meant, so they consulted R. Bana'ah. He said to them: Go and knock at the grave of your father, until he gets up and tells you which one of you [he has made his heir]. So they all went to do so. The one who was really his son, however, did not go. R. Bana'ah thereupon said: All the estate belongs to this one. They then went and slandered him before the king, saying: There is a man among the Jews who

extorts money from people without witnesses or anything else. So they took him and threw him in prison. His wife came [to the Court] and said: I had a slave, and some men have cut off his head, skinned him, eaten the flesh and filled the skin with water and given students to drink from it, and they have not paid me either its price or its hire. They did not know what to make of her tale, so they said: Let us fetch the wise man of the Jews and he will tell us. So they called R. Bana'ah, and he said to them: She means a goat-skin bottle. They said: Since he is so wise, let him sit in the gate and act as judge. He saw that there was an inscription over the gateway, 'Any judge who is sued in court is not worthy of the name of judge'. He said: If that is so, any man from the street can come and

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(1) Because he puts the cloth and the bread in the middle and the dishes all round.

(2) Sandals were worn in the winter and shoes in the summer, and each was put away under the bed when not in use.

(3) So many things are under it.

(4) He placed marks outside over the place of the graves, so that people should not walk over them and become unclean.

(5) Machpelah.

(6) And therefore there could be no objection to his seeing Abraham sleeping with Sarah.

(7) According to tradition, Adam and Eve were also buried in the cave of Machpelah, according to one version in an inner cave, and according to another in a lower one.

(8) Bath kol, lit., 'daughter of a voice'.

(9) Abraham who was the likeness of Adam.

(10) Adam who was made in the likeness of God.

(11) According to another reading, this clause is omitted.

(12) [Persian fire worshippers considered it sinful to defile Mother Earth with dead bodies. They would accordingly rummage among Jewish graves, exhume the bodies and expose them to the birds. 'Magician' stands here for a Gueber, as in many other places in the Talmud, v. Perles, J., Die Leichenfeierlichkeiten im nachbiblischen Judentum, p. 8.]

(13) Who was apparently a friend of the magician.

(14) Lit., 'forbidden acts'.

sue the judge and so disqualify him. What it should say is, 'Any judge who is sued in court and against whom judgment is given is no true judge'.[1] They therefore wrote: But the elders of the Jews say, 'Any judge who is sued in court and against whom judgment is given is no true judge'. He saw another inscription which ran, 'At the head of all death am I, Blood: At the head of all life am I, Wine'. [How can that be? he said.] If a man falls from a roof or a date-tree and kills himself, does he die from excess of blood? And again, if a man is on the point of death, do they give him wine to drink? No. What should be written is this: 'At the head of all sickness am I, Blood, At the head of all medicine am I, Wine'. They therefore wrote: 'But the elders of the Jews say, At the head of all sickness am I, Blood, At the head of all medicine am I, Wine; only where there is no wine are drugs required'.

Over the gateway of Kaputkia[2] there was an inscription, Anpak,, anbag, antal.[3] And what is an 'antal'?[4] It is the same as the 'fourth part in Jewish ritual measurements.[5]

MISHNAH. THERE IS NO HAZAKAH[6] FOR A GUTTERPIPE,[7] BUT THERE IS FOR ITS PLACE.[8] THERE IS HAZAKAH FOR A ROOFGUTTER.[9] THERE IS NO HAZAKAH FOR AN EGYPTIAN LADDER BUT THERE IS FOR A TYRIAN. THERE IS NO HAZAKAH FOR AN EGYPTIAN WINDOW BUT THERE IS FOR A TYRIAN. WHAT IS AN EGYPTIAN WINDOW? ONE THROUGH WHICH A MAN CANNOT PUT HIS HEAD. R. JUDAH SAYS THAT IF IT HAS A FRAME, EVEN THOUGH A MAN CANNOT PUT HIS HEAD THROUGH IT, THERE IS HAZAKAH FOR IT.

GEMARA. What [is meant by Saying that] THERE IS NO HAZAKAH FOR A GUTTER-PIPE

BUT THERE IS FOR ITS PLACE? — Rab Judah said in the name of Samuel: It means this. There is no hazakah for the gutter-pipe at one particular end of the gutter,[10] but there is a hazakah for it to be placed either at one end or the other.[11] R. Hanina said: There is no hazakah for the gutterpipe[12] [to the extent] that if he [the owner of the courtyard] finds it too long he can have it shortened, but there is hazakah for its place [to the extent] that if he wants to remove it altogether he is not at liberty to do so. R. Jeremiah b. Abba said: There is no hazakah for a gutter [in so far] that if he [the owner of the courtyard] desires to build under it he may do so,[13] but there is hazakah for its place [to the extent] that if he wants to remove it altogether, he is not at liberty to do so.

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(1) Because this shows that he is capable of taking bribes.

(2) Cappadocia.

(3) According to Rashb., there were three alternative names for a certain measure of capacity. According to Tosaf. anpak. and anbag were the names of a certain medicine of which the proper draught was an antal.

(4) A fourth part of a log = an egg and a half, the standard measurement for a cup of wine on Passover eve and other ritual observances. v. Nazir, 38a.

(5) Lit., 'of the Torah'.

(6) I.e., no title is conferred by uninterrupted use or possession.

(7) A movable pipe hanging down from a gutter on a roof.

(8) This is explained in the Gemara, infra.

(9) The whole of this Mishnah is explained in the Gemara.

(10) The fact that the owner of the courtyard has allowed the owner of the roof to keep his pipe overhanging the yard for three years without protest does not confer on him a permanent right to do so, because as it is not a fixture the owner of the courtyard is not particular about it, and therefore the fact of his not protesting is nothing to go by.

(11) Because a pipe at one end or the other is necessary for the roof and therefore it is to a certain extent a fixture.

(12) I.e., the owner of the roof has no title to it.

(13) Since ownership of the gutter confers no title to the space under it.

Talmud - Mas. Baba Bathra 59a

We learnt: THERE IS HAZAKAH FOR A ROOF-GUTTER.[1] This fits in with the first two of the views [just adduced][2] but on the view that [the Statement that 'there is no hazakah for a gutterpipe' means that] if the owner of the courtyard wants to build under it he may do so, what does it matter to him [the owner of the gutter]?[3] — We are dealing here with a gutter of stone, the owner of which can say, I do not want my stonework to be weakened [by building carried on underneath].[4]

Rab Judah said in the name of Samuel: If a man has a pipe [on his roof] from which water drips into his neighbour's courtyard and he wants to stop it up the owner of the courtyard can prevent him, saying, Just as you have property in the courtyard for pouring your water into It, so I have property in the water that comes from your roof.[5] It has been stated: R. Oshaia said that the owner of the courtyard may prevent him, but R. Hama[6] said he may not. They[7] went and asked R. Bisa,[8] who replied that he can prevent him. Rami b. Hama applied to him [R. Oshaia] the verse, A threefold cord is not easily broken.[9] This [he said], is exemplified in R. Oshaia the son of R. Hama who is the son of R. Bisa.[10]

THERE IS NO HAZAKAH FOR AN EGYPTIAN LADDER.[11] How is an Egyptian ladder to be defined? — The school of R Jannai defined it as one which has not four rungs.

THERE IS NO HAZAKAH FOR AN EGYPTIAN WINDOW.[12] Why should a definition be given [in the Mishnah] of an Egyptian window and not of an Egyptian ladder? — Because [in regard to the size of the window] the dissentient opinion of R. Judah was to be recorded in the next clause. R. Zera said: There is hazakah [for a Tyrian window] if it comes lower than four cubits [from the floor of the room],[13] and the owner of the courtyard can prevent [one from being made in the first

instance];[14] but if it is more than four cubits from the floor, there is no hazakah for it[15] and the owner of the courtyard cannot prevent [it from being made]. R. Elai, however, said that even if it is more than four cubits from the floor there is no hazakah for it, and [yet] the owner of the courtyard can prevent it from being made.[16] May we say that the point at issue between them [R. Zera and R. Elai] is whether or not we force a man to abandon a dog-in-the manger attitude,[17] one [R. Zera] holding that we do and the other that we do not? — No. Both are agreed that we do, and here [R. Elai] makes a difference because the [owner of the courtyard] can say to the other, You might at times place a stool under yourself and stand on it and see [into my courtyard].[18]

A certain man appealed to R. Ammi. The latter sent him to R. Abba b. Memel, telling him, Decide according to the opinion of R. Elai.[19] Samuel said: If [a window is necessary] to let in light, however small it is there is hazakah for it.[20]

MISHNAH. FOR A SPAR[21] [WHICH PROJECTS NOT LESS THAN] A HAND BREADTH THERE IS HAZAKAH[22]

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(1) This being a fixture, if the owner of the courtyard does not protest against its overhanging his yard during three years, the owner of the gutter may claim a prescriptive right to keep it there.

(2) The views of Samuel and R. Hanina regarding a gutter-pipe.

(3) For why should the owner of the gutter have hazakah to the extent that he should be able to object to the owner of the courtyard building under it, and why in any case should he raise such an objection?

(4) But as a gutter-pipe is usually made of wood, there is no ground for a similar complaint if building is carried on under it.

(5) For providing water for his cattle.

(6) Father of R. Oshaia.

(7) So in some texts.

(8) Father of R. Hama.

(9) Eccl. IV, 12.

(10) Tosaf. points out that examples were not rare of three generations of scholars in the same family, but the peculiarity of this case was that all three were alive at the same time.

(11) I.e., the fact that it has been allowed to remain in the neighbour's courtyard three years confers no right to keep it there permanently.

(12) Because, as it is too small to see much out of, the owner of the courtyard does not trouble to protest.

(13) Because then the owner of the room can look through it and see what is going on in his neighbour's courtyard. Hence if the latter does not protest, the former acquires hazakah.

(14) To save himself from the danger of being overlooked.

(15) Because, as it does not enable him to be overlooked, the owner of the courtyard does not trouble to protest.

(16) For the reason given below, that the other may stand on a stool and look through.

(17) Lit., ‘the characteristic of Sodom’: doing something which vexes his neighbour without benefiting himself. V. supra 12b.

(18) Hence we cannot say that the owner of the courtyard derives no benefit from preventing the other from making his window four cubits above the floor, and therefore he is at liberty to prevent him.

(19) Which shows that this is the law (Rashb.).

(20) And if the owner of the courtyard does not protest in time, it may be kept there permanently.

(21) A spar projecting from the roof of a house over a neighbour's courtyard.

(22) So that the owner of the courtyard cannot remove it after a certain time.

Talmud - Mas. Baba Bathra 59b

AND THE OWNER OF THE COURTYARD CAN PREVENT IT BEING MADE [IN THE FIRST INSTANCE]. IF IT IS LESS THAN A HANDBREADTH THERE IS NO HAZAKAH FOR IT AND HE CANNOT PREVENT IT [FROM BEING MADE].

GEMARA. R. Assi said in the name of R. Mani (or, according to others, R. Jacob said in the name of R. Mani): If he obtains a right to a handbreadth he obtains a right to four. What is the meaning of this?[1] — Abaye said: It means that if he has obtained a right to a width of a handbreadth with a length of four, he ipso facto obtains a right to a width of four.[2]

IF IT IS LESS THAN A HANDBREADTH THERE IS NO HAZAKAH FOR IT AND HE CANNOT PREVENT IT [FROM BEING MADE]. R. Huna said: This only means that the owner of the roof cannot prevent the owner of the courtyard [from using it],[3] but the owner of the courtyard can prevent the owner of the roof.[4] Rab Judah, however, said that the owner of the courtyard cannot prevent the owner of the roof either. May we say that the point at issue between them is whether overlooking [constitutes a genuine damage], one holding that it does, and the other that it does not?[5] — No. Both consider overlooking to constitute a genuine damage but here[6] the case [according to Rab Judah] is different because the owner of the roof can say to the other: I cannot actually do anything on this spar. All I can do with it is to hang things on it. When I do that, I will turn my face away. And the other [R. Huna]?- [He can rejoin that] the other may say to him: You may become afraid [of falling, and not turn your face away].[7] MISHNAH. A MAN SHOULD NOT LET HIS WINDOWS OPEN ON TO A COURTYARD WHICH HE SHARES WITH OTHERS. IF HE TAKES A ROOM IN ANOTHER [ADJOINING] COURTYARD, HE SHOULD NOT MAKE AN ENTRANCE TO IT IN A COURTYARD WHICH HE SHARES WITH OTHERS. IF HE BUILDS AN UPPER CHAMBER OVER HIS HOUSE, HE SHOULD NOT MAKE THE ENTRANCE TO IT IN A COURTYARD WHICH HE SHARES WITH OTHERS. BUT HE MAY IF HE PLEASES MAKE AN INNER CHAMBER IN HIS HOUSE AND THEN BUILD AN UPPER CHAMBER OVER HIS HOUSE AND MAKE THE ENTRANCE FROM HIS HOUSE.[8]

GEMARA. [A MAN SHOULD NOT LET HIS WINDOWS OPEN etc.] Why only in a courtyard which he shares with others? Surely the prohibition should apply also to the courtyard of his neighbour? — The Mishnah takes an extreme case. On the courtyard of his neighbour he may certainly not let his windows open out.[9] But in the case of a courtyard which he shares with others he can say [to the other owner]: In any case you have to take steps to preserve your privacy from me in the courtyard.[10] We now learn therefore that the other can reply: Up to now I had to take steps to preserve my privacy only in the courtyard, but now [if you make this window] I shall have to do so in my house also.[11]

Our Rabbis taught : A certain man made windows opening on to a courtyard which he shared with others.[12] He was [eventually] summoned before R. Ishmael son of R. Jose, who said to him: You have established your right , my son.[13] He was then brought before R. Hiyya, who said: As you have taken the trouble to open them, so you must take the trouble to close them.[14]

R. Nahman said:

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(1) On the face of it the statement is absurd, since if the owner of the courtyard would allow a spar of a handbreadth, it does not follow that he would allow one of four.

(2) A space of four handbreadths by four is reckoned something considerable', and therefore a length of four handbreadths carries a width of four with it, though a length of ten handbreadths would not carry with it any greater width.

(3) Although it is his property, because the owner of the courtyard can at any time tell him to remove it.

(4) Either from using it or from making it in the first instance.

(5) The owner of the courtyard can be 'overlooked' from the spar by the owner of the roof, but not vice versa.

(6) In the case of a spar less than one handbreadth.

(7) And so overlook my courtyard.

(8) The reasons for all these rules are explained in the Gemara.

(9) Because he interferes with his neighbour's privacy.
(10) Because I share the courtyard. and therefore the addition of a window will make no difference.
(11) Alternatively we may translate: Till now I had to preserve my privacy when you were in the courtyard, now I shall have to do so when you are in your house also.
(12) Who made no objection at first.
(13) Because the others did not protest immediately. This accords with R. Ishmael's dictum recorded supra 41a: 'an action done in the presence of the owner constitutes hazakah.'
(14) Because for establishing such a right three years are required.

Talmud - Mas. Baba Bathra 60a

For closing a window[1] a right is established immediately [if the action is unchallenged], because a man will not allow his light to be obstructed without protest.

IF A MAN TAKES A ROOM IN ANOTHER [ADJOINING] COURTYARD, HE SHOULD NOT MAKE AN ENTRANCE TO IT IN A COURTYARD WHICH HE SHARES WITH OTHERS. What is the reason? — Because he brings too many visitors [through the courtyard].[2] Look then at the following clause: HE MAY IF HE PLEASES BUILD AN INNER CHAMBER IN HIS HOUSE AND THEN BUILD AN UPPER CHAMBER OVER HIS HOUSE AND MAKE THE ENTRANCE FROM THE HOUSE. Will not this also bring more people through the courtyard? — R. Huna said: When it says here [that he builds] a room, It means that he divides one of his rooms into two, and when it says [that he builds] an upper chamber, it means that he makes a balcony.[3]

MISHNAH. IN A COURTYARD WHICH HE SHARES WITH OTHERS A MAN SHOULD NOT OPEN A DOOR FACING ANOTHER PERSON'S DOOR NOR A WINDOW FACING ANOTHER PERSON'S WINDOW. IF IT IS SMALL HE SHOULD NOT ENLARGE IT, AND HE SHOULD NOT TURN ONE INTO TWO. ON THE SIDE OF THE STREET, HOWEVER, HE MAY MAKE A DOOR FACING ANOTHER PERSON'S DOOR AND A WINDOW FACING ANOTHER PERSON'S WINDOW, AND IF IT IS SMALL HE MAY ENLARGE IT OR HE MAY MAKE TWO OUT OF ONE.

GEMARA. Whence are these rules derived? — R. Johanan said: From the verse of the Scripture, And Balaam lifted up his eyes and he saw Israel dwelling according to their tribes.[4] This indicates that he saw that the doors of their tents did not exactly face one another, whereupon he exclaimed: Worthy are these that the Divine presence should rest upon them!

IF IT IS SMALL HE SHOULD NOT ENLARGE IT. Rami b. Hama understood from this that if the door is of four cubits the owner should not make it eight because this would entitle him to eight cubits in the courtyard,[5] but if it is of two cubits he is quite in order in making it four.[6] Said Raba to him: [This is not so, because] the other can say to him, I can preserve my privacy if you have a small doorway but not if you have a large one.[7]

HE SHOULD NOT TURN ONE DOOR INTO TWO. Rami b. Hama understood from this that if the door is four cubits wide, he should not turn it into two doors of two cubits each, because this would entitle him to eight cubits in the courtyard,[8] hut he would be quite in order in turning a door of eight cubits into two of four cubits each.[9] Said Raba to him: [This is not so, because] the other can say to him, I can preserve my privacy from you if you have one door, but if you have two doors I cannot.[10]

ON THE SIDE OF THE STREET, HOWEVER, HE MAY MAKE A DOOR FACING ANOTHER PERSON'S DOOR. [The reason is] because he can say to him: In any case you have to preserve your privacy from the eyes of the passers-by[11] [and therefore you may as well do so from

me also].

MISHNAH. A CAVITY MUST NOT BE MADE UNDER A PUBLIC PLACE, [TO WIT,] PITS, DITCHES AND CAVES. R. ELIEZER PERMITS THIS PROVIDED [THAT THE SURFACE IS STRONG ENOUGH TO BEAR THE PASSAGE OF A WAGON LOADED WITH STONES. SPARS OR BEAMS MUST NOT BE ALLOWED TO PROJECT [FROM THE WALL OF A HOUSE] OVER THE PUBLIC WAY. THE OWNER MAY, HOWEVER, IF HE DESIRES DRAW BACK HIS WALL FROM THE STREET AND THEN ALLOW THEM TO PROJECT. IF A MAN BUYS A COURTYARD IN WHICH ARE SPARS AND BEAMS [PROJECTING], HE HAS A PRESCRIPTIVE RIGHT TO KEEP THEM THERE.

GEMARA. [R. ELIEZER SAYS etc.] Why do the Rabbis forbid this? — Because the surface may wear thin without being noticed.[12]

SPARS AND BEAMS MUST NOT BE ALLOWED TO PROJECT etc. R. Ammi had a spar projecting over an alley-way,[13] and another man had a spar projecting over a public way. [Some passers-by objected][14] and he was summoned before R. Ammi. He said to him, Go and cut it down . But, said the man, you, Sir, also have a projecting spar? Mine, he replied, projects over an alley-way the residents of which have given me their consent. Yours projects over a street; who is there to surrender the [public's] rights?

R. Jannai had a tree which overhung the public way, and another man also had a tree overhanging the street. Some passers-by objected and he was summoned before R. Jannai. He said to him:

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(1) By building an obstruction in front of it.

(2) Presumably he builds the additional rooms for letting purposes.

(3) And though he thus obtains additional rooms for letting. he is perfectly within his rights.

(4) Num. XXIV, 2.

(5) V. supra 55a.

(6) Because even a door of two cubits entitles him to four cubits in the courtyard.

(7) According to Raba, the right to privacy overrides the right to yardspace.

(8) Four for each door.

(9) Since he would still only have eight cubits yard space.

(10) Because if one door is shut the other may still be open.

(11) Who can look through the door and the windows.

(12) Cf. supra 27b.

(13) Which is private property.

(14) These words occur in our texts, but in brackets.

Go away now and come again tomorrow. During the night he sent and had his own tree cut down. On the next day the man came back and he told him to go and cut the tree down. He said: But you, Sir, also have one? He replied: Go and see. If mine is cut down, cut yours down, and if mine is not cut down you need not cut yours down. What was R. Jannai's idea at first [when he kept his tree] and afterwards [when he had it cut down]? — At first he thought that passers-by were glad of it because they could sit in its shade, but when he saw that they objected to it he had it cut down. Why did he not say to the man, Go and cut yours down and then I will cut down mine? — In conformity with the maxim of Resh Lakish, who said: [It is written] , Hithkosheshu wakoshu:[1] trim yourselves and then trim others.

HE MAY, HOWEVER, IF HE DESIRES DRAW BACK HIS WALL FROM THE STREET AND

ALLOW THEM TO PROJECT. The question was asked: If a man draws back [his wall] and does not at once let any beams project, may he do so subsequently?[2] — R. Johanan said that though he has drawn back [the wall] he may still make projecting beams, while Resh Lakish said that once he has drawn back he cannot later make projecting beams. R. Jacob said to R. Jeremiah b. Tahlifa: I will explain this to you. On the question of projecting beams there is no difference of opinion [between the authorities], and both hold that they are permitted. Where they differ is on the question whether he may restore the walls to their former position, and the above statement should be reversed, [i.e.,] R. Johanan said that he may not go back to the original position and Resh Lakish said that he may. R. Johanan ruled that he may not, In accordance with the dictum of Rab Judah,[3] who said: A path [between two fields] over which the public has established a right of way must not be damaged. Resh Lakish, however, says that he may; we rule thus [in the case of the path] because there is no other space available, but here [in the case of the street] there is still plenty of space available.[4]

IF A MAN BUYS A COURTYARD IN WHICH ARE SPARS AND BEAMS PROJECTING, HE HAS A PRESCRIPTIVE RIGHT TO KEEP THEM. R. Huna said: If the wall falls down he may build it [as it was before] . An objection was raised [against this from the following]: 'It is not proper to stucco or decorate or paint [our houses at the present time].[5] If a man buys a house which is stuccoed or decorated or painted, he is entitled to keep it so. If it falls down, he should not rebuild it [so]'?[6] — Where the prohibition is based on religious grounds , the case is different.[7]

Our Rabbis taught: A man should not stucco the front of his house with cement , but if he mixes sand or straw with it he may.[8] R. Judah Says: A mixture of sand makes the cement stony,[9] and therefore its use is forbidden, but straw is permitted.

Our Rabbis taught: When the Temple was destroyed for the second time,[10] large numbers in Israel became ascetics, binding themselves neither to eat meat nor to drink wine. R. Joshua got into conversation with them and said to them: My sons, why do you not eat meat nor drink wine? They replied: Shall we eat flesh which used to be brought as an offering on the altar, now that this altar is in abeyance? Shall we drink wine which used to be poured as a libation on the altar, but now no longer? He said to them: If that is so, we should not eat bread either, because the meal offerings have ceased. They said: [That is so, and] we can manage with fruit. We should not eat fruit either, [he said,] because there is no longer an offering of firstfruits. Then we can manage with other fruits [they said]. But, [he said,] we should not drink water, because there is no longer any ceremony of the pouring of water.[11] To this they could find no answer, so he said to them: My sons, come and listen to me. Not to mourn at all is impossible, because the blow has fallen. To mourn overmuch is also impossible, because we do not impose on the community a hardship which the majority cannot endure, as it is written, Ye are cursed with a curse,[12] yet ye rob me [of the tithe], even this whole nation.[13] The Sages therefore have ordained thus. A man may stucco his house, but he should leave a little bare. (How much should this be? R. Joseph says, A cubit square; to which R. Hisda adds that it must be by the door.)[14] A man can prepare a full-course banquet, but he should leave out an item or two. (What should this be? R. Papa says: The hors d'oeuvre of salted fish.) A woman can put on all her ornaments, but leave off one or two. (What should this be? Rab said: [Not to remove] the hair on the temple.)[15] For so it says, If I forget thee, O Jerusalem, let my right hand forget, let my tongue cleave to the roof of my mouth if I remember thee not, if I prefer not Jerusalem above my chief joy.[16] What is meant by 'my chief joy'?[17] R. Isaac said: This is symbolised by the burnt ashes[18] which we place on the head of a bridegroom. R. Papa asked Abaye: Where should they be placed? [He replied]: Just where the phylactery is worn ,as it says, To appoint unto them that mourn in Zion, to give then a garland [pe'er] for ashes [epher].[19] Whoever mourns for Zion will be privileged to behold her joy, as it says, Rejoice ye with Jerusalem etc.[20] It has been taught: R. Ishmael ben Elisha said: Since the day of the destruction of the Temple we should by rights bind ourselves not to eat meat nor drink wine, only we do not lay a hardship on the community unless the majority can endure it. And from the day that a Government has come into power which issues cruel decrees against us

and forbids to us the observance of the Torah and the precepts[21] and does not allow us to enter into the 'week of the son'[22] (according to another version, 'the salvation of the son'),[23] we ought by rights to bind ourselves not to marry and beget children, and the seed of Abraham our father would come to an end of itself. However, let Israel go their way: it is better that they should err in ignorance than presumptuously.[24] [

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(1) Zeph. II, 1. The English version translates, 'Gather yourselves together, yea, gather together.' Resh Lakish, however, derives it from the word kash, stubble, and translates, 'Remove the stubble from between your own eyes, and afterwards remove it from others.'

(2) I.e., has he not tacitly abandoned his right to the intervening space?

(3) Whom the law follows in this matter, so that, as usually in a dispute between R. Johanan and Resh Lakish, the law follows the former.

(4) In the original width of the street.

(5) Since the destruction of the Temple.

(6) Which seems to show that where a right has been acquired by prescription, if it once lapses it cannot he resumed.

(7) From where, as here, the question is only one of causing damage.

(8) Because this makes the hue less bright.

(9) טרכסיד , which is a valuable preservative for the wall. [For the various suggestions as to the derivation of the word. V. Krauss. op. cit. I, 299.]

(10) In 70 C.E.

(11) On the Feast of Tabernacles. v. Suk. IV.

(12) This is taken to mean: 'You have laid on yourselves an adjuration (to bring the tithe).'

(13) Malachi, III, 9. It is assumed that the adjuration would not have been effective unless the whole nation had taken part in it; which is taken to show that we do not impose a hardship unless we are sure that the majority can stand it.

(14) V. supra p. 219, no. 5.

(15) Which was usually removed as a mark of elegance.

(16) Ps. CXXXVII, 5.6.

(17) Lit., 'Head of my joy'.

(18) Lit., 'ashes from the hearth'.

(19) Isa. LXI, 3. The word pe'er is supposed to refer to the phylacteries on the basis of the verse, Bind thy headtire (pe'erka) upon thee. (Ezek. XXIV, 17.)

(20) Isa. LXI, 10.

(21) The reference is to the persecution instituted by the Emperor Hadrian after the revolt of Bar Kochba, 135 C.E.

(22) שבוע הבן I.e., the rite of circumcision. [So Rashb. and Rashi, Sanh. 32b. This term is said to have been adopted by the Jews as a disguise during the Hadrianic persecutions when the rite was prohibited in order to remove any suspicion that they were engaged in a religious observance. Others explain the term as denoting the seven days festivities that followed the birth of a child. V. Bergmann. J., M.G.W.J. 1932, 465ff;and cf. Krauss, op. cit. II, 438. The expression 'the week of the daughter', שבוע הבת also occurs in Nahmanides' Torath Ha'adam, 35b. This is to he taken as a proof against the usual identification of 'the week of the son' with 'the rite of circumcision', v. Mann J. H.U.C. 1924, p. 325,n.3.]

(23) [ישוע הבן 'The redemption of the son' (Rashi): or, 'The birth of a son' (R. Tam); Tosaf. B.K.80a, s.v. לבי]

(24) And therefore we do not tell them this, since in any case they would go on marrying and begetting children.

Talmud - Mas. Baba Bathra 61a

CHAPTER IV

MISHNAH. IF A MAN SELLS A HOUSE[1] [WITHOUT FURTHER SPECIFICATION], THE YAZIA'[2] IS NOT INCLUDED WITH IT,[3] EVEN THOUGH IT OPENS INTO THE HOUSE, NOR IS AN INSIDE ROOM[4] [WHICH IS ENTERED FROM IT]. NOR THE ROOF, SO LONG AS IT HAS A PARAPET TEN HAND BREADTHS HIGH.[5] R. JUDAH SAYS THAT IF IT HAS [ANYTHING OF] THE SHAPE OF A DOOR, EVEN THOUGH THE PARAPET IS NOT TEN

HANDBREADTHS HIGH IT IS NOT SOLO [WITH THE HOUSE].[6]

GEMARA. What is meant by the word yazia'? — Here[7] it was translated as apsa.[8] R. Joseph said: It means a verandah with a semiopen side.[9] For one who holds that a closed-in verandah is not sold [with the room]. there is no question that an open one is not. But the one who says [that the verandah excluded here is] the open one would nevertheless include the closed-in one.

R. Joseph learned: Three names are found for this structure in the Scriptures[10] — yazia', zela', ta. Yazia[1] , as it is written, The nethermost storey [yazia'] was five cubits broad;[11] zela', as it is written, And the side chambers [zela'oth] were in three stories, one over another and thirty in order;[12] ta, as it is written, And every lodge [ta] was one reed[13] long and one reed broad, and the space between the lodges was five cubits.[14] Or if you like I can derive it [the fact that a verandah is called ta] from here: 'The wall of the Sanctuary was six cubits and the ta[15] was six and the wall of the ta was six.'[16]

Mar Zutra said: [A verandah is not sold with a room] only if it has an area of four [square] cubits.[17] Said Rabina to Mar Zutra: On your view that it must be four [square] cubits, what about the cistern, of which we have learnt, that the cistern and the well are not included [in the sale of the house] even if he [the seller] inserts in the deed of sale the words 'to the height and to the depth'?[18] [Are we to say that] there likewise [the rule] applies only if they have an area of four cubits, but otherwise not? — [He replied]: How can you compare the two? The cistern and the well are used for quite different purposes from the house,[19] but here both [the verandah and the house] are used for the same purposes. Hence if it is four cubits [square], it is reckoned as a separate structure, but if less not.

NOR AN INSIDE ROOM WHICH IS ENTERED FROM IT. If a verandah is not sold [along with the living room], do we need to be told that an inside room is not?[20]

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(1) Heb. bayith, which may mean either an apartment or a whole house.

(2) Explained in the Gemara.

(3) In spite of the fact that it is for practical purposes little more than an appendage of the room.

(4) Attached to the back of the house.

(5) Since this makes it into a separate structure.

(6) Since this also makes it a separate structure.

(7) In Babylon.

(8) A closed-in verandah; a small, low structure at the side or back of a house.

(9) E.g., with lattices, like our verandahs. This has a more independent value than the closed-in one.

(10) Viz., in the Scriptural account of the Temple of Solomon in I Kings, and of the Temple of the future in Ezekiel.

(11) I Kings VI, 6.

(12) Ezek. XLI, 6.

(13) =6 cubits. The reference here is to the lodges of the middle storey. V. Ezek. XLI, 7.

(14) Ezek. XL, 7.

(15) Of the middle storey.

(16) Mid. IV, 4. This shows that the ta was something attached to the wall.

(17) Because otherwise it is not reckoned a separate structure.

(18) V. infra 64a.

(19) And therefore it is reasonable that they should not be included in the house.

(20) Seeing that it is used for quite distinct purposes from the living room, e.g.. as a box room.

Talmud - Mas. Baba Bathra 61b

— It was necessary to state the rule to show that [this is the case] even if the seller drew the boundaries [in the deed of sale] outside [the inner room]. This is based on the ruling laid down by R.

Nahman in the name of Rabbah b. Abbuha. For R. Nahman said in the name of Rabbah b. Abbuha that if a man sells another an apartment[1] in a large tenement-house, even if he draws the boundaries outside [the whole tenement-house] we say that he only drew the boundaries wide.[2] How are we to understand this rule? If the apartment is called an apartment and the tenement a tenement, then it is self-evident:[3] he is selling him an apartment, not a tenement? If again the tenement also is called an apartment, then he sells the whole to him [does he not]? — The rule is required for the case where most people call the apartment an apartment and the tenement a tenement, but some call the tenement also an apartment. I might think that in this case [if he draws the boundaries wide] he sells him the whole. We are therefore told that since he might have inserted [in the deed of sale the words], 'And I have not reserved for myself anything from this transfer,'[4] and did not insert them, we assume that he did reserve something.[5]

R. Nahman also said in the name of Rabbah b. Abbuha: If a man sells to another a field in a big stretch of fields, even though he draw the outer boundaries [right round the whole stretch, he only sells the field, because] we say that he draws the boundaries wide. How are we to understand this? If the field is called a field and the stretch a stretch, the proposition is self-evident; he is selling him a field, not a stretch. If again the stretch is also called field, then the whole is sold to him [is it not]? — The rule is necessary for the case where some call the stretch a stretch and some call it a field. You might think that in this case he sells him the whole. Therefore we are told that since he might have inserted [in the deed of sale the words]. 'I have not reserved for myself anything from this transfer,' and did not insert them, we are to assume that he did reserve something.[6] And both these rulings [about the house and the field] required to be stated. For if had only the one about the house, I might say that the reason [why the tenement is not sold with the apartment] is because they are used for different purposes,[7] but in the case of the stretch of fields and the field where the whole [stretch] is used for the same purpose I might say that the whole is sold. And if l had only the rule about the stretch of fields, I might think that the reason [why it is not all sold] is because it is difficult to mark off one field [in the middle of a stretch], but in the case of the apartment, where he could easily have marked it off and did not do so, I might think that he has sold him the whole. Hence both are necessary.

What authority does R. Mari the son of the daughter of Samuel b. Shilath[8] follow in the statement he made in the name of Abaye: If a man sells property to another, he should insert in the deed of sale the words, 'I have not reserved from this transfer for myself anything.' The authority is the dictum enunciated by R. Nahman in the name of Rabbah b. Abbuha.[9]

A certain man said to another: I will sell you the land of Hiyya's. There were two pieces of land which were called Hiyya's. R. Ashi said: He sold him one piece of land, not two.[10] If, however, a man says to another, 'I will sell you some lands,'[11] the minimum that can be called 'lands' is two. If he says 'all the lands', [this includes] all his landed property except gardens and orchards. If he says 'fields',[12] this includes gardens and orchards also, but not houses and slaves.

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(1) V. p. 247. n. 1.

(2) And his intention is to sell only the apartment.

(3) And the rule need not have been stated.

(4) This being the regular formula of a deed of sale. V. infra.

(5) Viz., the tenement.

(6) Viz., the rest of the stretch.

(7) The word birah (tenement house) was applied specifically to the large hall in it into which the separate apartments opened, and which was used for sitting and walking about in and not for residence.

(8) [Delete 'b. Shilath', v. D.S. a.l. and cf. infra p. 357, n. 15.]

(9) That boundaries may be drawn wide; and it is to prevent the seller from entering such a place that the insertion of this formula in the deed of sale was prescribed by R. Mari.

(10) And the purchaser must take whichever one the seller chooses.
(11) [So Ms. M; V. D.S. a.l.]
(12) Zihara, a name which probably included all cultivable ground.

Talmud - Mas. Baba Bathra 62a

If he says 'my property',[1] this would include houses and slaves also.

If the seller draws one of two parallel boundaries shorter than the other, Rab says that the purchaser obtains only the width of the shorter line.[2] R. Kahana and R. Assi said to Rab: Should he not obtain as much as is bounded by the oblique line?[3] — Rab made no reply.') Rab, however, had [previously] admitted that if [the field in question] is bounded by those of Reuben and Simeon on one side, and by those of Levi and Judah on the other, since [if he desired to transfer only half the field] he should have written either '[the boundaries are the field] of Reuben [on one side and] opposite [to it the field of] Levi', or else '[the field] of Simeon [on one side and] opposite [to it the field of] Judah', and he did not do so, he meant to transfer all within the oblique line [from the end of Simeon's field to the end of Levi's].[4]

If the field is bounded by fields of Reuben on the east and west and by fields of Simeon on the north and south, he must write, 'the field is bounded by fields of Reuben on two sides and by fields of Simeon on two sides.'[5]

The question was raised: If he merely marks the corners,[6] how do we decide? If he draws the boundaries like a gam,[7] how do we decide?[8]

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(1) Or, 'my belongings'.

(2) Rab assumes that the field sold is to be a parallelogram, v. fig. I.

(3) Lit., 'head of an ox': i.e., by a line drawn from the end of the shorter to the end of the longer boundary, v. fig. 2. (9) Signifying assent. v. Tosaf.

(4) The case dealt with here apparently is one in which the field is bounded on the north by those of Reuben (R) and Simeon (S), by each to half its length, and on the south by those of Levi (L) and Judah (J), by each to half its length, and the seller writes, 'the field that is bounded by those of Reuben and Simeon on the north and by that of Levi on the south', making no mention of Judah. (Fig. 3) The reading, however, is somewhat uncertain, and Tosaf. gives another explanation.

(5) And not simply, 'it lies between the fields of Reuben and Simeon', as in that case half the field would suffice, v. fig. 4:

(6) Suppose the field is bounded by a number of other owners' fields, some abutting on the corners, does he sell the whole or only two diagonal strips from corner to corner, v. fig. 5.

(7) Marking a little of each side, in the shape of a Greek Gamma, thus: I' [Gandz, S., Proceedings of the American Academy of Jewish Research, 1930-32, pp. 37ff., connects the Hebrew term Gam with the Gnomon with the carpenter's square.] v. fig. 6.

(8) Is this sufficient for the whole field, or does it convey only a diagonal strip?

Talmud - Mas. Baba Bathra 62b

If he mentions one and skips one,[1] how do we decide? — These questions must stand over.

If the seller defines the first, second and third boundaries, but not the fourth, Rab says that the purchaser acquires the whole of the field with the exception of the fourth boundary,[2] and Samuel said that he acquires the fourth boundary also. R. Assi, however, said that he acquires only one furrow alongside of the whole.[3] He [so far] agreed with Rab [as to hold] that he reserved something, but [he further held] that since he reserved the boundary he reserved the whole field,[4]

Raba said: The law is that he acquires the whole field with the exception of the fourth boundary.[5] And even this is the case only if the fourth boundary does not lie within the adjoining two,[6] but if it does so lie,[7] the purchaser acquires it. And even if it does not lie within the adjoining two, [he fails

to acquire it] only if there is on it a clump of date trees, or it has an area of nine kabs,[8] but if there is no clump of date trees on it and it does not contain an area of nine kabs, he does acquire it.[9] From this it can be inferred that if it lies between the adjoining boundaries, then even if there is a clump of date trees on it and it has an area of nine kabs, the purchaser acquires it.[10]

According to another version, Raba said that the law is that the purchaser acquires the whole, including the fourth boundary. This is the case, however, only if it lies between the two adjoining boundaries, If, however, it does not so lie, he does not acquire it. And even where it does so lie, he acquires it only if there is not on it a clump of date trees, or it has not an area of nine kabs,[11] but if there is on It a clump of date trees, or it has an area of nine kabs, he does not acquire it . From this we infer that when it does not lie between the two adjoining boundaries, even though there is no clump of date trees on it and it has not an area of nine kabs, he does not acquire it.[12]

From either version of Raba's statement we learn that the seller does not reserve any part in the field itself.[13] We also learn that where the fourth boundary lies between the two adjoining ones and there is no clump of date trees on it, or it has not an area of nine kabs, the purchaser acquires it [even though it is not specified], and that if it does not so lie and there is on it a clump of date trees or it has an area of nine kabs, he does not acquire it.[14] If it lies between the adjoining boundaries and there is a [clump of date trees] on it [etc.],[15] or if it does not so lie and there is [no clump] on it [etc.],[15] according to one version the rule is one way and according to the other version the rule is the other way, and so we leave the judges to use their own discretion.[16]

Rabbah said: [If a man who owns half a field[17] says to another], I sell you the half which I have in the land, [he sells him] half [of the whole]. [If he says, I sell you] half of the land that I have,[18] [he sells him] a quarter [of the whole]. Said Abaye to him: What difference does it make whether he says one thing or the other? Rabbah made no reply. Abaye [subsequently] said: I thought that, because he made no reply, he accepted my view, but this was not so, for I saw [later] some documents that were issued from the master's court; where it was written, ‘the half that I have in the land’, [the transaction was for] half, and where it was written, ‘the half of the land that I have’, [the transaction was for] a quarter. Rabbah further said: [If the seller writes in the deed,] [The boundary of the land is] the land from which half has been cut off,[19] [he sells] half. If he writes, [The boundary of the land is] that from which a piece is cut off, [he only sells an area of] nine kabs.[20] Said Abaye to him: What difference does it make whether he says one way or the other? Rabbah made no reply. The conclusion was drawn that in either case [the proper rule was that he sold him] half,

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(1) If there are two separate fields on each side, and he mentions one and skips one, does he sell the whole or only the sections opposite the fields he specifies? v. fig. 7.

(2) I.e., one furrow alongside of it.

(3) Right round the other three boundaries.

(4) With the exception of the furrow round,

(5) As laid down by Rab.

(6) Lit., ‘is not swallowed’, v, fig. 8.

(7) v. fig. 9.

(8) I.e., sufficient for the sowing of nine kabs of seed. In these cases it counts as a separate field.

(9) Because it goes with the field.

(10) In other words, there must be two weaknesses in his claim to disqualify it, (a) that the fourth boundary lies outside the adjoining two, (b) that there is a clump etc.

(11) Because here also there is only one weakness in his claim, not two.

(12) In other words, there must be two things in his favour to make his claim good.

(13) Where he defines all the boundaries except one, the difference between the two versions being only in regard to the fourth boundary.

(14) Being in this case practically a separate field.

(15) [So Yad Ramah.]

(16) According to what they consider to have been the intention of the seller. In most analogous cases, the property in dispute either remains with the possessor or is to be divided.

(17) Being joint owner with someone else.

(18) I.e., half of his share.

(19) I.e., part of a field is sold and the boundary is formed by the rest of it.

(20) The minimum which constitutes a field.

Talmud - Mas. Baba Bathra 63a

This, however, is not so, because R. Yemar b. Shelemiah has said: Abaye has himself explained to me that whether he writes, 'The boundary [of the field] is the field from which half has been cut off,' or 'The boundary [of the field] is the field from which a piece is cut off,' if he adds the words, 'these are its boundaries' , [then he sells him] half,[1] and if he does not add the words 'these are its boundaries', [then he sells him] nine kabs.[2]

We take it for granted that if a man says, Let so-and-so share[3] my property, [he is to receive] a half. If he says, Give so-and-so a share in my property, what is to be done?[4] — Rabina b. Kisi said, Come and hear: it has been taught: If a man says, Give so-and-so a share in a cistern, Symmachus[5] says that he is to receive not less than a quarter.[6] [If the man says], Give him a share [in the cistern] for his pail,[7] he is to receive not less than an eighth. [If he says, Give him a share] for his pot,[8] he is to receive not less than a twelfth. [If he says, Give him a share] for his drinking cup,[9] he is to receive not less than a sixteenth.

Our Rabbis taught: If a Levite sells a field to any [ordinary] Israelite[10] with the stipulation that the first tithe[11] therefrom is to be given to him,[12] the first tithe from it must be given to him. If he stipulated that it was to be given to him and to his sons and he then died, it is to be given to his sons. If the stipulation is, 'as long as this field is in your possession,' and he [the purchaser] sells it and then buys it again, the Levite has no claim on him. How can [all] this be, seeing that a man cannot transfer to another possession of something that does not yet exist?[13] — Since the Levite stipulated that the first tithe should be given to him, he in effect reserved to himself the area of the tithe.[14] Resh Lakish said: This shows that if a man sells an apartment to another with the stipulation that the top layer[15] is still to belong to him, the top layer belongs to him.

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(1) The superfluous words being meant to place the purchaser in the most favourable position possible.

(2) The deed being interpreted in favour of the seller,

(3) Heb, yahalok, lit., 'divide'.

(4) There being various possibilities, e.g., that he should receive half, or as much as the Beth din think fitting, or an equal portion with the sons of the donor.

(5) Who always went on the principle that 'money of which the ownership is in doubt should be divided (between the claimants)'.

(6) The share may mean either a half or a mere fraction. Being in doubt, therefore, we strike the balance.

(7) I.e,, for watering his cattle and not his field, for which at the utmost only half the cistern is required. Hence the gift is at the utmost only half of a half, and we strike the balance between this and a fraction.

(8) For purposes of cooking, for which only a third of the cistern is required.

(9) For which only a quarter of the cistern is required.

(10) I.e., one who is neither priest nor Levite,

(11) According to the Rabbinical interpretation of Deut. XIV, 22-29, three tithes had to be taken from agricultural produce, the 'first' which had to be given to the Levite, the 'second' which had to be eaten in Jerusalem, and the 'third' which had to be given (once in three years) to the poor.

(12) In preference to any other Levite.

(13) Lit., 'has not yet come into the world'. How then could the man who bought the field from the Levite make him the

possessor of the tithe before even the seed was sown?

(14) Because otherwise the stipulation would be an idle one, and we must suppose that the Levite meant something with it.

(15) דיוטא * Gr. **; apparently this refers to the top layer of the parapet surrounding the roof, and the expression is therefore equivalent to 'a roof with a parapet', or 'a roof chamber'. [So Rashb. R. Gersh. and Yad Ramah define it simply as a low-ceilinged upper storey. V. however Krauss, op. cit. I, 23, and Tosaf. 64a, s.v. ואי].

Talmud - Mas. Baba Bathra 63b

For what purpose is the new rule laid down by Resh Lakish?[1] — [In order to tell us] that if the vendor desires to let out projecting spars from the roof, he is at liberty to do so.[2] R. Papa says: [In order to tell us] that if he desires to build an upper chamber over the apartment, he is at liberty to do so.[3] Accepting R. Zebid's view, we understand why Resh Lakish used the expression 'this shows'.[4] But on the view of R. Papa, why should he have said, 'this shows'?[5] — This is really a difficulty.

R. Dimi of Nehardea said: If a man sells an apartment to another,[6] even though he inserts in the deed of sale the words, '[I sell you] the depth and the height',[7] he must further insert the words, 'Acquire for thyself possession from the depth of the earth to the height of heaven,' because the space below and above is not transferred automatically.[8] Hence the words 'depth and height' avail to transfer the space below and above, while the words 'from the depth of the earth to the height of heaven' avail to transfer a well, a cistern and cavities.

Shall we say [that the following Mishnah] supports R. Dimi: The vendor does not transfer the well and the cistern even though he inserts the words 'depth and height'?[9] Now if you should assume that the space below and above is transferred automatically, then the insertion of the words 'depth and height' should avail to transfer well, cistern and cavities [should they not]? — [We suppose the Mishnah to refer to the case] where these words were not inserted.[10] But the Mishnah distinctly says, 'although he inserts the words [depth and height']? — We must explain the Mishnah thus: Even if these words are not actually inserted they are regarded as being inserted for the purpose of transferring the space below and above; and as regards a well and a cistern, if the words 'depth and height' are inserted, these are transferred, but otherwise not.[11]

Come and hear:[12] NOR THE ROOF SO LONG AS IT HAS A PARAPET TEN HANDBREADTHS HIGH.

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(1) We already know this from the Mishnah which says that if a man sells a house, he does not sell with it the roof. V. supra 61a.

(2) I.e., even if he parts with the courtyard, he still retains the right to make the same use of the roof as when the courtyard below belonged to him. This right, however, is retained by him only in virtue of his stipulation which otherwise would have been an idle one.

(3) This is explained by the commentators to mean that if the parapet (or the upper storey) falls in, he is at liberty to rebuild it. [R. Gershom's explanation that he may build an upper chamber over the diaita, accords, however, better with our text. cf. n. 4.]

(4) Because the act of the vendor here in reserving to himself, in virtue of his stipulation, a part of the space over the courtyard is analogous to the act of the Levite in reserving to himself a part of the field.

(5) Because there is no special analogy between reserving part of the field which has been sold and reserving the right to rebuild the roof which has not been included in the sale, and if Resh Lakish had meant the latter, he should have stated it independently and not derived it from the former.

(6) With the intention of transferring to him at the same time the well or cistern in the courtyard.

(7) I.e., all the space below and above.

(8) I.e., along with the house itself without specific mention. For the exact significance of 'depth and height' v. infra.

(9) Infra 64a.

(10) And if they are, they avail to effect the transfer of well and cistern.

(11) And we do not require the words, 'from the depth of the earth to the height of heaven'.

(12) This is a further argument in support of R. Dimi's view,

Talmud - Mas. Baba Bathra 64a

Now if you assume that the space below and above is transferred automatically, what difference does it make if the parapet is ten handbreadths high?[1] — Since the parapet is ten handbreadths high the roof is reckoned as a separate structure.[2]

Rabina said to R. Ashi: Come and hear:[3] Resh Lakish said: This shows that if a man sells an apartment to another with the stipulation that the top layer still belongs to him, the top layer does still belong to him; and we asked what was the purpose of the new rule laid down by Resh Lakish, and R. Zebid said: [In order to tell us] that if the vendor desires to let out projecting spars from the roof he may do so, and R. Papa said: [In order to tell us] that if he desires to build an upper chamber over the apartment he may do so. Now if you assume that the top layer is not transferred automatically, what does he gain by his stipulation?[4] — What he gains by the stipulation is the right to rebuild it if it falls in.[5]

MISHNAH. [THE VENDOR OF A HOUSE DOES NOT SELL THEREWITH] A WELL OR A CISTERN,[6] EVEN THOUGH HE INSERTS [IN THE DEED THE WORDS] 'INCLUDING THE DEPTH AND THE HEIGHT'.[7] HE MUST, HOWEVER, BUY HIMSELF, [IF REQUIRED], THE RIGHT OF WAY [TO THE WELL OR CISTERN]. THIS IS THE RULING OF R. AKIBA, THE SAGES, HOWEVER, SAY THAT HE NEED NOT BUY THE RIGHT OF WAY. R. AKIBA [ON HIS SIDE] AGREES THAT IF THE VENDOR INSERTS [THE WORDS] EXCEPT THESE',[8] HE NEED NOT BUY HIMSELF A RIGHT OF WAY. IF THE OWNER OF THE HOUSE SELLS THESE TO ANOTHER R. AKIBA SAYS THAT THE PURCHASER NEED NOT BUY A RIGHT OF WAY TO THEM, BUT THE SAGES SAY THAT HE MUST BUY IT.

GEMARA. Rabinא[9] as he sat [and studied this section] asked: Is not WELL[10] identical with CISTERN?[11] Said Raba Tosfa'ah to Rabina: Come and hear: It has been taught: Both 'well' and 'cistern' are excavations in the soil, only a 'well' is merely dug out,[12] whereas a 'cistern' is faced with stone.[13] R. Ashi [also] as he sat [and studied this section] asked: Is not WELL identical with CISTERN? Said Mar Kashisha the son of R. Hisda to R. Ashi: Come and hear: It was been taught: Both 'well' and 'cistern' are excavations in the soil, only a 'well' is merely dug out, whereas a 'cistern' is faced with stone.

HE MUST BUY HIMSELF THE RIGHT OF WAY. THIS IS THE RULING OF R. AKIBA. THE SAGES, HOWEVER, SAY THAT HE NEED NOT. [We may assume,] may we not, that the point at issue between them is this,

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(1) That is to say, why should a roof with a parapet be different from a roof without a parapet (which is sold with the house), unless for the fact that the purchaser does not acquire the height automatically with the house. So Rashi. V, however Tosaf., s.v. **ואי**'.

(2) And therefore is not sold automatically with the house.

(3) An argument against R. Dimi, from the ruling of R. Papa.

(4) Since even without this the vendor would still retain possession of the roof.

(5) This right not being conveyed by the bare transfer, which relates to 'this' layer only. Hence if he desires to transfer the roof completely, he must insert the words 'depth and height'.

(6) The difference between these terms is explained in the Gemara.

(7) I.e., the space below and above.

(8) Which, strictly speaking, are superfluous, as the well and cistern are not automatically transferred with the house.

(9) [Rabina II b. Huna, nephew of Rabina I, v. Kaplan, J., Redaction of the Babylonian Talmud, 144.]
(10) בור.
(11) דות.
(12) Of hard soil which does not fall in.
(13) Because the soil is soft.

Talmud - Mas. Baba Bathra 64b

that in the view of R. Akiba the vendor interprets the terms of sale liberally[1] and in the view of the Rabbis[2] he interprets them strictly?[3] And further that, wherever we find it stated that 'R. Akiba decides according to his usual maxim that the vendor interprets the terms of sale liberally,'[4] it is in the strength of this passage [that we assign this maxim to him]? — Is this assumption justified? perhaps [the reason for their dispute is this]; R. Akiba holds that a man does not like others to walk over ground which he has paid for, and the Rabbis hold that a man does not care to receive money on condition that he has to fly through the air [to get to where he wants].[5] Can we then [base this assumption] on the next clause: IF HE SELLS THESE TO ANOTHER, R. AKIBA SAYS THAT THE PURCHASER NEED NOT BUY A RIGHT OF WAY TO THEM, BUT THE SAGES SAY THAT HE MUST BUY IT?[6] — No, for perhaps the reason of their difference is this, that according to R. Akiba's view we have to consult the wishes of the purchaser, and according to the view of the Rabbis we have to consult the wishes of the vendor.[7]

Can we [base it] on this: '[The vendor does not sell with the field] either a pit or a wine-press or a dovecote, whether they are In use or not in use,[8] and he must buy a right of way [to them]. This is the ruling of R. Akiba, but the Sages say that he need not buy a right of way [to them]' —[9] Now why[10] should it repeat here [the rulings of R. Akiba and the Sages]? Surely it must be to show us that [in general] R. Akiba holds that the vendor interprets the terms of sale liberally and the Rabbis that he interprets them strictly?[11] — No. Perhaps the Mishnah [desires to] tell us by this that [the difference between R. Akiba and the Sages is as stated above] both in regard to a house and a field, both being necessary. For if it had stated [the difference only] in the case of a house, [I might have thought that there R. Akiba says that the vendor has to buy a right of way] because the purchaser desires privacy,[12] but in the case of a field [where this reason does not apply] I might say he need not. And if the difference had been stated only in regard to a field, I might have thought that there [R. Akiba says that the vendor has to buy a right of way] because [the purchaser objects to his land being] trodden down,[13] but in the case of a house [where this reason does not apply I might say] he need not. May we then [base the assumption] on the succeeding clause: 'If he sells them [the pit etc. in a field] to another, R. Akiba says that the purchaser does not need to buy a right of way, while the Sages say that he must.' Now why is [their difference stated] again? It is exactly the same here as in the previous case.[14] We must therefore say that this shows that in the view of R. Akiba the vendor interprets the terms of sale liberally, and in the view of the Rabbis he interprets them strictly.[15]

It has been stated: R. Huna said in the name of Rab:

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(1) Lit., 'sells with a bounteous eye', and therefore reserves to himself nothing.
(2) I.e., the Sages.
(3) Lit., 'sells with an evil eye', and therefore reserves to himself a right of way.
(4) V. supra 37a; infra 71a.
(5) But in the case of trees and other things to which these reasons do not apply, we cannot assume that these are the reasons of R. Akiba and the Rabbis.
(6) Here the reasons given above do not apply.
(7) That is to say, we may suppose R. Akiba to hold that in this case the purchaser would not give his money if he had to fly through the air, and the Rabbis to hold that the seller would not take money if his ground is to be walked over; but we cannot infer anything about a 'liberal' or 'illiberal' spirit.

(8) Lit., ‘desolate or inhabited’.
(9)]infra 71a.
(10) If the reasons are as given above, because of the objections to treading or flying.
(11) As otherwise the repetition of the rule would be entirely superfluous.
(12) Hence his objection to treading.
(13) And so rendered less productive.
(14) Viz., where these things are bought and sold with a house.
(15) As otherwise the statement would be entirely superfluous.

Talmud - Mas. Baba Bathra 65a

The halachah follows the ruling of the Sages. R. Jeremiah b. Abba, however, said in the name of Samuel that the halachah follows the ruling of R. Akiba. Said R. Jeremiah b. Abba to R. Huna: Did I not frequently say in the presence of Rab that the halachah follows the ruling of R. Akiba, and he did not say a word to me? Said R. Huna to him: How did you report his ruling? — He said to him: I reported them [with the names] reversed.[1] It is for that reason [said R. Huna] that he did not say anything to you.

Rabina said to R. Ashi: May we say that they [Rab and Samuel here] are in accord with their respective views [as expressed in the following passage]: R. Nahman said in the name of Samuel, If brothers divide an inheritance, neither has a right of way against the other nor the right of ‘ladders’, nor the right of ‘windows’, nor the right of ‘watercourses’, and take good note of these rulings, since they are definite.[2] Rab, however, said that they have [these rights].[3] [R. Ashi answered:] Both statements are necessary.[4] For if I had only the latter, I would say that Rab's reason [for allowing the right of way] is because one brother can say to the other, I want to live on this land as my father lived: and in proof that this is a valid plea in the mouth of an heir, the Scripture says, In the place of thy fathers shall be thy sons.[5] In the other case, however, I might think that Rab agrees with Samuel. If again I had only the former statement, I might think that only in that case did Samuel say [that the vendor interprets the terms of sale liberally], but here he agrees with Rab. Hence both statements are necessary.

R. Nahman said to R. Huna: Does the law follow our[6] opinion or yours? — He replied: The law follows your view, since you have continual access to the gate of the Exilarch, where the judges are in session.[7]

It has been stated: If there are two apartments one within the other, and both are sold or given away [at the same time to two different persons], they have no right of way against one another.[8] Still less have they if the outer one is given and the inner one is sold.[9] If the outer one is sold and the inner one given, [the students] wanted to infer from this that there is no right of way from one to the other,[10] but this is not correct. For have we not learnt:[11] ‘This[12] applies only to a sale, but if the owner makes a gift, he includes all these things’? This shows that a donor is presumed to make a gift in a liberal spirit.[13] So here, the donor gives in a liberal spirit.

MISHNAH. IF A MAN SELLS A HOUSE, HE [IPSO FACTO] SELLS [WITH IT] THE DOOR, BUT NOT THE KEY;[14] HE SELLS [WITH IT] A MORTAR[15] FIXED [IN THE GROUND] BUT NOT A MOVABLE ONE; HE SELLS [WITH IT] THE CASING OF A HANDMILL BUT NOT THE SIEVE,[16] AND NOT A STOVE OR AN OVEN.[17] IF HE SAYS TO THE PURCHASER, [I SELL] THE HOUSE AND ALL ITS CONTENTS,

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(1) These, of course, were not the actual words of R. Jeremiah. Perhaps we should read, אמר ליה איפכא [so MS. M. v. D. S.], ‘he gave him the rulings in the reverse form’, making R. Akiba say that the vendor interprets the terms of sale strictly and the Sages that he interprets them liberally.

(2) V. supra 7a and notes.
(3) Here also we see that according to Rab the terms of the division are interpreted strictly by each party (i.e. to his own advantage), and according to Samuel liberally (i.e. to the other's advantage).
(4) Viz., the statements of the dispute between Rab and Samuel both in regard to the purchaser and vendor and in regard to the brothers, and we cannot say that in one case they are merely applying a principle underlying their decision in the other.
(5) Ps. XLV, 17.
(6) His own and that of Samuel, who was his teacher.
(7) R. Nahman was a son-in-law of the Exilarch.
(8) I.e., through the outer room to the inner, because both parties are on an exactly equal footing.
(9) Because we presume the gift to have been made in a more liberal spirit than the sale.
(10) Because presumably the owner does not favour one above the other to this extent.
(11) Infra 71a, in connection with the dispute between R. Akiba and the Sages about the right of way.
(12) That according to the Rabbis a right of way is not included.
(13) Even on the view of the Rabbis, and still more on that of R. Akiba. (10) Even at the expense of the purchaser, and therefore the recipient of the inner room has a right of way through the outer.
(14) Lit., 'opener': a bolt which would fit any door, but which usually was left in its socket.
(15) For pounding spices etc.
(16) Cf. supra p. 103.
(17) These too were movable, but the stove was somewhat larger and used for baking bread, V.l. 'he sells (with it) a stove and oven,' these being regarded as fixtures. The principle is therefore that the 'house' includes fixtures but not movable things.

Talmud - Mas. Baba Bathra 65b

ALL THESE THINGS ARE INCLUDED IN THE SALE.[1]

GEMARA. Are we to say that the Mishnah is not in agreement with R. Meir, for if it were according to R. Meir, surely he has laid down that 'if a man sells a vineyard, he [automatically] sells with it the implements of the vineyard'?[2] — You may in fact say that it concurs with R. Meir, for there he was speaking of things which are part and parcel of the vineyard,[3] but here [the Mishnah speaks of] things which are not part and parcel of the house. But does not the Mishnah mention a key side by side with a door, [as much as to say], Just as a door is part and parcel of a house, so a key is part and parcel of the house[4] [and yet it is not sold with the house]?[5] — The more tenable opinion therefore is that the Mishnah does not agree with R. Meir.

Our Rabbis taught: If a man sells a house, he ipso facto sells the door, the cross-bar, and the lock, but not the key; the mortar that has been hollowed [out of stone], but not one that has been fixed; the casing of the handmill but not the sieve; and not the oven, the stove, or the handmill. R. Eliezer, however, says that everything attached to the ground[6] is in the same category as the ground. If the vendor uses the formula, 'the house and all its contents', all these things are sold with. In either case, however, he does not sell the well, the cistern, or the verandah.

Our Rabbis taught: 'If a man hollows out a pipe and then fixes it, water from it makes a mikweh[7] unfit for use. If, however, he first fixes it and then hollows it, it does not render the mikweh unfit for use.'[8] To whom [are we to ascribe this dictum]? For it cannot be either R. Eliezer or the Rabbis! — Which [statement of] R. Eliezer [have you in mind]?[9] Shall I say, the one about the house?[10] possibly the reason [why he says there that fixtures are in the same category as the ground] is because he holds that the vendor interprets the terms of sale liberally, whereas the Rabbis hold that he interprets them strictly.[11] Is it then the statement about the beehive, as we have learnt: 'R. Eliezer says that a beehive[12] is on the same footing as the soil; it may serve as a surety for a prosbul,[13]

(1) Because although movable they more or less belong to the house and are not usually removed from it.
(2) E.g., the poles (infra 78b). Hence we should expect R. Meir to include in the house the movable mortar and the key.
(3) Lit,, 'fixed'. I.e., things which though in themselves movable, are in practice never taken from the vineyard.
(4) The key spoken of by the Mishnah must be one which is usually left in the door, as otherwise it would have said, 'The sale includes a key which is left in the door, but not one which is carried about', and we should have understood a fortiori that a door is sold with the house.
(5) This shows that according to the Mishnah even things which are part and parcel of the house are not sold with it unless the formula 'it and all its contents' is used.
(6) Including, that is, the fixed mortar.
(7) A ritual bath. V. Glos.
(8) The rule is that water in the mikweh must not be 'drawn' there by artificial means, i.e., through the instrumentality of a 'vessel', but must flow there naturally. According to this dictum, the fixing of the pipe in the soil does not make it part of the soil, and it still remains a 'vessel'. On the other hand, the hollowing of the wood or stone after it has been fixed does not make it a 'vessel', but it is regarded as being merely a trench in the ground.
(9) I.e., with which statement of his is the one just adduced in conflict?
(10) In the Baraitha quoted above: 'R. Eliezer says that everything attached to the ground is in the same category as the ground.'
(11) Hence no conclusion is to be drawn from that Baraitha as to the opinions of R. Eliezer and the Rabbis with regard to the mikweh.
(12) Attached to the ground by mud or clay.
(13) V. infra p. 324, n. 7. Glos.

Talmud - Mas. Baba Bathra 66a

it is not liable to uncleanness where it is;[1] and if one takes honey from it on Sabbath, he becomes liable for a sin-offering.[2] The Sages, however, say that it is not on the same footing as the soil, that it cannot serve as a surety for a prosbul, that it can become unclean where it is, and that one who takes honey from it on Sabbath has not to bring a sin-offering'?[3] — [It is not this statement either], for there [R. Eliezer's reason is] as reported by R. Eleazar, that we find written in the Scripture, And he dipped it in the honeycomb;[4] [from which he reasoned that,] just as one who plucks anything from a wood on Sabbath becomes liable for a sin-offering, so one who takes honey from a comb on Sabbath becomes liable for a sin offering.[5] It must be then the statement of R. Eliezer about the shelf, as we have learnt: 'If a baker's shelf[6] is fixed in the wall, R. Eliezer says that it is not capable of becoming unclean[7] and the Sages say that it is.'[8] [We now ask again], which authority [does the statement adduced above follow]? If it is R. Eliezer, then even if the pipe was first hollowed and then fixed [the water from it should not render the mikweh unfit]:[9] if it is the Rabbis,[10] then even if it was first fixed and then hollowed, [it should still spoil the mikweh]?[11] — It is in truth R. Eliezer, and he makes a difference in the case of flat wooden articles, because their uncleanness was decreed only by the Rabbis.[12] It would follow from this [would it not], that [the rule about] 'drawn' water derives from the Scripture?[13]

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(1) Not being a 'vessel'.
(2) For having 'detached' something from the soil.
(3) 'Uk. III, 10, v. infra 80b.
(4) I Sam. XIV, 27. The Hebrew word is יערת, lit. 'wood of honey'.
(5) Even though the comb is not fixed in the soil. Hence we cannot say that this statement of R. Eliezer is incompatible with the one about the pipe.
(6) A flat board either for kneading on or for resting loaves on.
(7) As not being a 'vessel'.
(8) Because the final provisions made after it is fixed in the wall to make it suitable for kneading or resting loaves, make it a vessel. Kel. XV, 2.
(9) Because it becomes part and parcel of the ground, as the shelf of the wall.

(10) I.e., the Sages.

(11) Because here too the hollowing out after it is fixed should make it a 'vessel'.

(12) It is deemed a 'vessel' for purposes of uncleanness only by the Rabbis. Hence when the board is affixed to the wall it loses the character of a 'vessel' ' but not so the pipe which is a real vessel, retaining the character of a vessel even after being attached to the ground.

(13) Otherwise why is R. Eliezer more particular about it than about the board? [That is, provided 'drawn water' constitutes the larger quantity in the mikweh (Rashb.), v. however Tosaf. s.v. מכלל.]

Talmud - Mas. Baba Bathra 66b

But are not all agreed that it was decreed by the Rabbis [on their own authority]? And further, R. Jose son of R. Hanina has said that the dispute [between R. Eliezer and the Rabbis] concerned a board of metal![1] We must therefore say that in truth the above statement follows the Rabbis, and that they make a difference in the case of 'drawn' water[2] because its uncleanness was decreed [only] by the Rabbis. If that is the case,[3] then even if he first hollowed it and then fixed it [it should not spoil the mikweh]?[4] — There where it was hollowed and then fixed the case is different, because it was in the category of a vessel while still unfixed.[5]

R. Joseph raised the following question: If a man, seeing the rain descend on the casing of his handmill, decided to regard this as a washing, what is its effect upon seeds?[6] If we accept the opinion of R. Eliezer, that anything attached to the ground is in the same category as the ground, no question will arise.[7] Where the question arises is if we accept the view of the Rabbis who said that it is not in the same category as the ground?[8] — This question must stand over.

R. Nehemiah the son of R. Joseph sent to Rabbah the son of R. Huna Zuti at Nehardea the following instruction: When this woman presents herself to you,

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(1) Flat metal articles are susceptible to uncleanness biblically. V. Kel. XI, 1.

(2) I.e., they are less stringent in regard to it than in regard to the shelf of metal.

(3) That the Rabbis draw no distinction between whether it was first hollowed and then fixed or otherwise, and that their reason in the case of the mikweh is because, as it is only Rabbinical, there is no need to be so particular in regard to 'drawn' water.

(4) Being reckoned as part and parcel of the ground.

(5) And therefore the Rabbis were not willing to relax the rule to such an extent.

(6) According to Lev. XI, 38, seed on which water is 'put' becomes susceptible to uncleanness. According to the Rabbis, water is considered 'put' on seed only if there is a conscious desire on the part of someone to that effect. Falling rain would therefore not ordinarily be regarded as being 'put' on seed and would not make it susceptible to uncleanness. In this case, however, the owner consciously desires it to fall on the handmill, and the question therefore arises whether this desire on his part affects the seeds also.

(7) The rule is that water is not regarded as being 'put' on anything unless that thing is detached from the soil. If therefore the handmill is regarded as being in the same category as the soil, the rain is not technically 'put' on it, however much the owner may desire its falling, and therefore it can have no effect on the seeds.

(8) In the Baraithas quoted above, the Rabbis laid down that a mortar fixed to the ground is not sold with a house and a board fixed in a wall is capable of receiving uncleanness, the reason in both cases being that, though now fixed, since they were originally separate they are not counted as part of the ground. The question therefore arises whether we apply the same rule to a handmill which, though originally detached, is more of a fixture than the mortar, since according to the Rabbis of the Baraitha referred to, it is sold along with the house (Tosaf.).

Talmud - Mas. Baba Bathra 67a

collect for her a tenth part of her father's estate[1] even from the casing of a handmill.[2] R. Ashi said: When we were in the court of R. Kahana, we used to collect such dues from the rent of houses also.[3]

MISHNAH. IF A MAN SELLS A COURTYARD HE [AUTOMATICALLY] SELLS THE HOUSES, PITS, DITCHES AND CAVES [ATTACHED TO IT,] BUT NOT MOVABLES. IF, HOWEVER, HE SAYS TO THE PURCHASER, [I SELL] IT AND ALL ITS CONTENTS, ALL ARE INCLUDED IN THE SALE.[4] IN EITHER CASE, HOWEVER, HE DOES NOT SELL A BATH OR AN OLIVE PRESS THAT MAY BE IN IT. R. ELIEZER SAYS: IF A MAN SELLS A COURTYARD, HE ONLY SELLS WITH IT THE SPACE OF THE COURTYARD.[5]

GEMARA. Our Rabbis taught: If a man sells a courtyard he sells [with it] the outer and the inner apartments,[6] and the sand-field[7] in it. As to the shops, those that open on to it[8] are sold with it, those that do not open on to it[9] are not. Those that open on to both sides are sold with it. R. Eliezer says: If a man sells a court he sells only the air of the court.

The Master says [here] that shops opening on to both sides are sold with the courtyard. [How can this be,] Seeing that R. Hiyya has learned that they are not sold with it? — There is no contradiction. The former speaks of shops of which the main entrance is in the courtyard,[10] the latter of those of which the main entrance is in the street.

R. ELIEZER SAYS: IF A MAN SELLS A COURTYARD, HE SELLS ONLY THE SPACE OF THE COURTYARD. Raba said: If the vendor says [in Babylonia], I sell you a diretha,[11] no one disputes that he means the apartments. Where the authorities differ is when he says darta,[12] one [R. Eliezer] holding that in that case he means the open space only, the other [the Rabbis] that he means the apartments as well. According to another version: Raba said: If he said darta, all are agreed that he meant the apartments as well. Where they differ is in the case where he said 'hazer',[13] one holding that this means only the space of the courtyard and the other that it is analogous to the courtyard of the Tabernacle.[14]

Raba further said: If a man sells another the shore[15] of a river and its bed,[16] if the purchaser takes possession of the shore he does not thereby acquire ownership of the bed, and if he takes possession of the bed he does not thereby acquire ownership of the shore.[17] Is that so? Has not Samuel laid down that if a man sells another ten fields in ten different provinces, as soon as the purchaser has taken formal possession of one[18] he becomes owner of all? — The reason there is that the earth is all one stretch[19] and all [the properties] are utilised in the same way. Here, however, one thing is for one purpose and the other for another.

According to another version,

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(1) If a man died intestate, his daughter was entitled to a tenth part of his landed estate, but not of his movable property, v. Keth. 52b.

(2) This shows that R. Nehemiah regarded a handmill as part of a house.

(3) The rent being in the same category as the house, which is also an immovable.

(4) That is to say, things used in the house, but not things stored in it like wheat or barley. V. infra 150a.

(5) Lit., 'the air of the courtyard'. And in the case of immovables we do not say that the price is an indication, as in the case of movables.

(6) I.e., those opening on the courtyard and those further back.

(7) A shaft from which sand is dug for making glass.

(8) And which are for the service of the residents of the courtyard.

(9) But on to the street.

(10) Lit., 'of which most of the use is within'.

(11) Aramaic for 'residence'.

(12) Aramaic for 'courtyard'.

(13) Hebrew for 'courtyard'.

(14) Of which it is written, The length of the court shall be an hundred cubits and the breadth fifty everywhere (Ex. XXVII, 18), which shows that the Tent of Assembly which was in the court was reckoned along with the court.

(15) For the sake of the sand. Lit., 'a sandy field'.

(16) For gold and silver washings, or, according to others, for the fish.

(17) Because they are used for different purposes and have different names.

(18) By digging a little or some similar action.

(19) Lit., 'the block of the land

Talmud - Mas. Baba Bathra 67b

Raba said in the name of R. Nahman: If the purchaser takes formal possession of the shore he becomes thereby owner of the bed. Surely this is self-evident, since Samuel has laid down that if a man sells the fields, etc.? — You might argue that in that case the reason is that all the earth is one stretch, but here one thing is used for one purpose and the other for another. Now I know [that we do not argue thus].

MISHNAH. IF A MAN SELLS AN OLIVE PRESS, HE [AUTOMATICALLY] SELLS THEREWITH THE SEA AND THE POUNDING STONE AND THE 'MAIDENS', BUT HE DOES NOT SELL THE THWARTS NOR THE WHEEL NOR THE BEAM.[1] IF, HOWEVER, HE SAYS TO THE PURCHASER, '[I SELL] IT AND ALL ITS CONTENTS', ALL THESE THINGS ARE INCLUDED IN THE SALE. R. ELIEZER SAYS THAT IF A MAN SELLS AN OLIVE PRESS HE INCLUDES THE BEAM.[2]

GEMARA. The SEA is [what is called in Aramaic] 'lentil'.[3] The POUNDING STONE, according to R. Abba bar Memel, is [what is called in Aramaic] 'crusher'.[4] The 'MAIDENS', according to R. Johanan, are cedar posts by which the beam is supported.[5] By THWARTS is meant planks.[6] The WHEEL is a winch.[7] The BEAM is actually a beam.

Our Rabbis taught: If a man sells an olive press, he sells therewith the planks[8] and the tanks and the crushers and the lower millstone but not the upper one.[9] If he uses the formula 'it and all its contents', all these are sold with it. In either case he does not sell the stirrers nor the sacks and leather bags.[10] R. Eliezer says that if a man sells an olive press he automatically includes the beam, since it is this which gives the olive press its name.

MISHNAH. IF A MAN SELLS A BATH HE DOES NOT [AUTOMATICALLY] INCLUDE EITHER THE PLANKS[11] OR THE BASINS[12] OR THE BATHING APPAREL.[13] IF HE SAYS TO THE PURCHASER, [I SELL YOU] 'IT AND ALL ITS CONTENTS', ALL THESE ARE INCLUDED. IN EITHER CASE HE DOES NOT SELL THE CISTERNS OF WATER NOR THE SHEDS FOR WOOD.[14]

GEMARA. Our Rabbis taught: If a man sells a bath, he [automatically] includes the cupboards for the boards and for the head towels[15] and for the basins and the curtains,[16] but not the boards nor the head towels nor the basins nor the curtains themselves. If he says to the purchaser, ['I sell you] it and all its contents', all these are included. In either case he does not include the pools which supply him with water whether

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(1) All these terms are explained in the Gemara. The first three things mentioned are apparently fixtures, the others, though part and parcel of the press, are not fixtures.

(2) Since this is the most essential part of an olive press.

(3) A trough for collecting the olive juice.

(4) Apparently a stone or piece of cement with a hollow for fixing the pounder in.

(5) Strictly speaking, the beam was attached to a cross-bar joining two posts. These were what were called in Old French

the ‘gemelles’ (twins), and in L. ‘sorores’ (sisters).
(6) Which were lowered on the pulp after treading to distribute the pressure equally. According to another, more probable opinion, we should render ‘stirrers’, for stirring up the pulp.
(7) For raising the beam. [On all these terms v. Krauss, op. cit. II, 222ff.]
(8) Apparently boards around the olives to keep them in their place during the pressing.
(9) Before being placed in the tank the olives were partly crushed in a handmill, the lower stone of which was fixed in the ground.
(10) For carrying the olives.
(11) For standing on after the bath.
(12) Var. lec. ‘benches’.
(13) Var. lec. ‘hangings’.
(14) Because these are not necessarily adjuncts of a bathhouse, and can be used for other purposes.
(15) For covering the head after the bath.
(16) Al. ‘towels’.

Talmud - Mas. Baba Bathra 68a

in the summer season[1] or in the rainy season, nor the place where the wood is stored. If, however, he says, ‘I sell you the bath and all its accessories’, they are all included.[2]

A certain man said to another, ‘I herewith sell you this olive press and all its accessories. There were certain shops abutting on it on [the roofs of] which they used to spread sesame seeds.[3] [The question if these were included in the sale] came before R. Joseph. He said: [We can decide from what we have learnt:] If he says, ‘I sell you a bath and all its accessories,’ all are included in the sale.[4] Said Abaye to him: But has not R. Hiyya learnt that they are not all included?[5] R. Ashi therefore said: We have to distinguish. If the vendor says, [‘I sell you] the olive press and all its accessories, and these are its boundaries,’ the purchaser acquires them,[6] but otherwise not.

MISHNAH. IF A MAN SELLS A TOWN, HE [AUTOMATICALLY INCLUDES THE HOUSES,[7] THE PITS, DITCHES AND CAVES, THE BATHS, THE PIGEON COTES, AND THE IRRIGATED FIELDS [ATTACHED TO IT], BUT NOT MOVABLES. IF, HOWEVER, HE USED THE WORDS ‘IT AND ALL ITS CONTENTS’, EVEN IF THERE WERE CATTLE AND SLAVES IN IT THEY ARE ALL SOLD. R. SIMEON B. GAMALIEL SAYS THAT IF ONE SELLS A TOWN HE SELLS ALSO THE SANTER.[8]

GEMARA. R. Aha b. R. ‘Awia said to R. Ashi: From this [Mishnah] we may conclude that a slave comes under the head of movables,[9] since if he came under the head of fixed property, he would be sold along with the town. [You say] then that a slave comes under the head of movables. If so, why does our Mishnah say EVEN [SLAVES]?[10] We must say therefore [must we not], that there is a difference between animate and inanimate movables?[11] You may [thus] also hold that a slave comes under the head of land, but that there is a difference between mobile and immobile land.[12]

RABBAN SIMEON B. GAMALIEL SAYS THAT IF ONE SELLS A TOWN HE DOES NOT SELL THE SANTER. What [is meant by] SANTER? — Here[13] it was translated bar mahawanitha.[14] Simeon b. Abtolmus says that it means tilling fields.[15] According to the one who says that it means a ‘recorder’, there is no question that fields are sold with the town;[16] but according to the one who says that it means ‘fields’, the recorder is not sold with the town.[17] We learned: OLIVE PRESSES AND BETH HASHELAHIN [IRRIGATED FIELDS], and it was assumed that beth hashelahin meant tilling fields, as indicated by the Scriptural verse, and [God] sendeth [sholeah] waters upon the fields.[18] Now all is well and good if we adopt the opinion of the one who said the word santer means a ‘recorder’; the first Tanna [of the Mishnah] lays down that fields are sold with the town but not the recorder, and Rabban Simeon b. Gamaliel comes and tells us that the recorder also is sold. But if we

take the word to mean ‘fields’, has not the first Tanna also said this?[19] — You think that shelahin means tilling fields? No; it means ‘orchards’, as indicated by the text, Thy shoots [shelahayik] are an orchard of pomegranates,[20] [and the first Tanna tells us that these are sold] but not tilling fields,[21] and R. Simeon comes and tells us that tilling fields also are sold.

According to another version, it was assumed that shelahin means orchards. Now it is all well and good if we take the word santer to mean ‘fields’; the first Tanna says that orchards are sold with the town but not fields, and Rabban Simeon b. Gamaliel comes and tells us that fields are also sold.

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(1) When the water supply is low, and therefore it might be thought that the pools go with the bath.

(2) Because they are to a certain extent adjuncts of the bath.

(3) To dry, in order that they might be crushed in the press and the oil sold afterwards in the shops.

(4) And these things are as closely connected with the olive press as the cisterns and wood-shed with the bath.

(5) Because they are not part and parcel of the olive press.

(6) Because by using this formula the vendor shows that he desires to include the shops.

(7) And a fortiori the courts, which form part of the town space.

(8) The meaning of this term is discussed in the Gemara.

(9) That is, in ordinary parlance when a man speaks of movables he includes slaves.

(10) Which implies that ordinarily slaves are not included with movables.

(11) Lit., ‘mobile and immobile movables’. In point of fact, slaves were acquired in the same way as land and not as movables.

(12) And therefore if the town is sold without further specifications it does not include the slaves.

(13) In Babylon.

(14) Lit., ‘one who shows’, a recorder; a slave appointed by the town to answer inquiries respecting the boundaries of fields. [Rashi, Sanh. 98b, reads bar mehuznaitha, ‘one of the district’, v. Krauss, op. cit. II, 570.]

(15) A stretch of fields adjoining the town.

(16) Being inanimate.

(17) Being animate.

(18) Job V, 10.

(19) And what does R. Simeon add to his ruling?

(20) Cant. IV, 13.

(21) Which are not actually part of a town like orchards.

Talmud - Mas. Baba Bathra 68b

But if we take the word to mean ‘recorder’, when the first Tanna says [that the man who sells the town sells also the] orchards, how can R. Simeon supplement him by saying that he sells the recorder?[1] — Do you think that shelahin means ‘orchards’? No; shelahin means ‘fields’, as indicated in the verse, and sendeth waters upon the fields. [The first Tanna says that these are sold] but not the recorder, and Rabban Simeon b. Gamaliel comes and says that the recorder also is sold.

[Which is right? —] Come and hear: ‘R. Judah says that the santer is not sold but the town clerk[2] is sold.’ Since the town clerk is a man, must not the santer also be a man? — This does not follow; the one can be one thing, the other another. But can you possibly maintain this[3] Seeing that the Baraitha in its next clause proceeds: ‘[But one who sells the town does not sell] its remnants nor its adjoining villages nor the woods that open on to it nor its preserves for animals, birds and fishes;’ and [in commenting on this] we said: What are remnants? Bizli. And what are bizli? R. Abba said: The fag-ends of fields;[4] which shows that [in R. Judah's opinion] only such fag-ends are not sold with the town but the fields themselves are? — We must reverse the statement quoted above to read: R. Judah says that the santer[5] is sold, but the town clerk is not sold. But how can you make R. Judah concur with Rabban Simeon b. Gamaliel[6] seeing that he concurs with the Rabbis, as the latter clause [in the passage quoted above] states: ‘Not its remnants nor its adjoining villages’, whereas Rabban

Simeon b. Gamaliel holds that if a man sells a town he does sell the adjoining villages, as it has been taught: 'If a man sells a town, he does not sell its adjoining villages; Rabban Simeon b. Gamaliel, however, says that he does sell the adjoining villages?' — R. Judah agreed with him in one thing[7] and differed from him in another.[8]

'Nor preserves of animals, birds and fishes.' A contradiction was pointed out [between this and the following]: 'If the town has adjoining villages, they are not sold with it. If one part of it is on an island[9] and one part on the mainland, or if it has preserves of animals, birds or fishes, these are sold with it.' — There is no contradiction. In the one case they open towards[10] the town, in the other away from the town. But did we not learn above that the woods adjoining it [are sold with it]? — We should read, 'that are separated from it'.[11]

MISHNAH. IF A MAN SELLS A FIELD HE [AUTOMATICALLY] INCLUDES THE STONES WHICH ARE USED IN IT AND THE VINEYARD CANES WHICH ARE USED IN IT[12] AND THE PRODUCE WHICH IS STILL ATTACHED TO THE SOIL AND A CLUMP OF REEDS OCCUPYING LESS THAN A BETH ROBA'[13] AND A WATCHMAN'S HUT WHICH IS NOT CEMENTED[14] AND A YOUNG CAROB TREE[15] AND A YOUNG SYCAMORE TREE,[16] BUT HE DOES NOT INCLUDE STONES WHICH ARE NOT FOR USE IN THE FIELD NOR CANES WHICH ARE NOT FOR USE IN THE VINEYARD NOR PRODUCE WHICH HAS BEEN DETACHED FROM THE SOIL. IF HE USES THE WORDS 'IT AND ALL ITS CONTENTS', ALL THESE ARE SOLD WITH IT. IN EITHER CASE, HOWEVER, HE DOES NOT SELL A CLUMP OF REEDS COVERING A BETH ROBA'[17] [OR MORE] NOR A WATCHMAN'S HUT WHICH IS CEMENTED NOR A FULLGROWN CAROB[18] NOR A CROPPED SYCAMORE.[19]

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(1) What has one to do with the other? R. Simeon should have said: He sells the fields and the recorder.

(2) An official who kept a record of fields, houses, and inhabitants for purposes of taxation.

(3) That the santer in the opinion of R. Judah means 'fields'.

(4) Strips at the far end of the stretch of fields separated from the rest by rocky ground or the like.

(5) In the sense of 'fields'.

(6) In saying that the fields are sold with the town.

(7) In regard to the santer.

(8) In regard to the adjoining villages.

(9) But is still reckoned as belonging to the town and goes under the same name.

(10) Lit., 'their aspect breaks through towards'.

(11) המוקצין הימנה instead of המוקצין לה Being separate they open away from it.

(12) This is explained in the Gemara.

(13) A quarter of a kab's space, about 200 square cubits. This is too small to be reckoned independently.

(14) I.e., put together of loose stones.

(15) Lit., 'a carob tree which is not grafted'

(16) Lit., 'the virgin of the sycamore', i.e., one not yet pruned.

(17) These having an individuality of their own.

(18) Lit., 'a carob which has been grafted'.

(19) Lit., 'the block of a sycamore'. Sycamore trees are cropped to improve their growth.

Talmud - Mas. Baba Bathra 69a

GEMARA. What is meant by STONES WHICH ARE FOR USE IN IT? They translated it here[1] as 'weight stones'.[2] 'Ulla said that they are stones laid in order for making a fence. But has not R. Hiyya learned that they are stones piled up[1] for making a fence? — Read [instead of piled up] 'laid in order'.

[You say,] 'Here they translate "weight stones"'. According to R. Meir,[3] [this means] if they are

ready for use even though they have not yet actually been used,[4] but according to the Rabbis only if they have been actually used.[5] If we take the view of 'Ulla that they are stones laid in order for making a fence, then according to R. Meir [it would be sufficient] if they are ready even though they have not been laid in order,[6] while according to the Rabbis they must have been laid in order.

CANES[7] WHICH ARE FOR USE IN THE VINEYARD. What are these canes for? — In the school of R. Jannai it was explained to mean canes which are placed under the vines [to support them]. According to R. Meir [they would be sold with the field] if they are peeled even though they have not yet been fixed, according to the Rabbis only if they have been fixed.

PRODUCE STILL ATTACHED TO THE SOIL. Even though it is ripe for cutting down.[8]

A CLUMP OF REEDS LESS THAN A BETH ROBA'. Even though they are thick.[9]

A HUT THAT IS NOT CEMENTED. Even though it is not fixed in the soil.

A YOUNG CAROB AND A YOUNG SYCAMORE. Even though they are of good size.[10]

BUT HE DOES NOT SELL THE STONES WHICH ARE NOT FOR USE IN IT. According to R. Meir [this is only] if they are not ready for use, but according to the Rabbis even if they simply have not yet been used. If we take the view of 'Ulla that they are stones laid in order for a fence, then according to R. Meir they are not sold only if they are not yet ready for use, but according to the Rabbis, even if they simply have not yet been laid in order.[11]

NOR THE CANES OF THE VINEYARD WHICH ARE NOT FOR USE IN IT. According to R. Meir this is if they are not peeled, but according to the Rabbis even if they simply are not yet fixed.

NOR PRODUCE DETACHED FROM THE SOIL. Although it still requires to be left in the field.[12]

NOR A CLUMP OF REEDS OCCUPYING A BETH ROBA'. Even though the reeds are small. R. Hiyya b. Abba said in the name of R. Johanan: This does not apply only to a clump of reeds; even a small perfume bed if it has a name of its own is not included in the sale of the field.[13] R. Papa said: What we mean by this is that it is known as 'so-and-so's roses'.

NOR A WATCHMAN'S HUT WHICH IS CEMENTED. Even though it is fixed in the ground.[14]

R. Eleazar asked: What is the rule regarding the frames of doors? Where they are fixed to the wall with cement there is no question [that they are sold with], since they are firmly attached.[15] The question arises only where they are connected with hooks. This question must stand over.

R. Zera asked what was the rule regarding the frames of windows.[16] Do we say that they are purely for ornament,[17] or do we say that after all they are attached? This question must [also] stand over.

R. Jeremiah asked: What is the rule regarding the castors of the legs of a bed?[18] Where they are moved with the bed of course the question does not arise, because they go along with it. Where there is room for question is where they are not moved with it. — This [also] must stand over.

NOR THE FULL GROWN CAROB NOR THE CROPPED SYCAMORE.

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(1) In Babylon.

(2) Stones placed on the sheaves to keep them from being blown about by the wind. (12) Even this making them part and parcel of the field.
(3) R. Meir lays down (infra 78b) that the sale of a vineyard automatically includes the accessories of the vineyard, from which we infer that in all analogous cases R. Meir would include something that the Rabbis would exclude. Some of these things are now specified in connection with the Mishnah under discussion.
(4) Lit., 'placed'.
(5) Since only then do they become part and parcel of the field.
(6) R. Meir therefore is not in agreement with our Mishnah as interpreted by 'Ulla.
(7) The Hebrew word is kanim, which usually means 'canes' or 'reeds' still growing in the ground. Hence the question of the Gemara.
(8) And though normally such corn is counted as already cut.
(9) Lit., 'strong'.
(10) Lit., 'strong'.
(11) V. p. 274, n. 1.
(12) For drying.
(13) And so too with anything that is commonly known as something distinct from the field.
(14) This does not make it part of the ground, because now it is practically a house.
(15) And therefore are reckoned as part of the house.
(16) If attached to the wall with hooks.
(17) And therefore not sold with the house.
(18) Pieces of wood placed under them to keep them from contact with the earth.

Talmud - Mas. Baba Bathra 69b

Whence is this rule[1] derived? — Rab Judah said in the name of Rab: From the Scriptural verse, So the field of Efron which was in Machpelah . . . and all the trees that were in the field that were in the border thereof etc.[2] [This indicates that Abraham in buying the field acquired all the trees] that require a boundary round about,[3] and [that the purchase] did not include those that do not require a boundary round about.[4] R. Mesharsheya said: This proves that the inclusion of the border[5] in the [purchase of a field] is prescribed in Scripture.[6]

Rab Judah said: When a man sells a field, he should write in the deed, 'Acquire hereby the date trees, other large trees, small trees, and small date trees.'[7] It is true that even if he does not insert these words the transfer is valid,[8] but the deed is made more effective in this way.[9] If he says to him, 'I sell you land and date trees',[10] we have to consider. If he has any date trees, he has to give him two,[11] and if not he has to buy two for him, and if his date trees are mortgaged he has to redeem two for him. If he says, 'I sell you the land with the date trees', we have to consider; if there are date trees in it he has to give them to him, and if there are none, it is a sale made under a misapprehension.[12] If he says, I sell you a date tree field, the purchaser cannot claim date trees,[13] because what he means is simply 'a field suitable for date trees'. If he says, I sell you the field except such-and-such a date tree, then we have again to consider. If it is a good date tree,[14] we presume that he reserved that one for himself; if it is a poor tree,[15] then in fortiori he means to reserve the better ones. If he says, [I sell you the field] without the trees,[16] if there are trees in it, [the purchaser acquires all] except the trees; if there are date trees in it [but no others, he acquires the whole] without the date trees;[17] if there are vines, [he acquires the whole] without the vines;[18] if there are trees and date trees, [he acquires the whole] with the exception of the trees; if there are trees and vines, [he acquires the whole] with the exception of the trees; if there are date trees and vines, [he acquires the whole] with the exception of the vines.[19]

Rab said: [When a vendor reserves trees], all those which have to be climbed by a rope ladder [to pluck the fruit] are reserved, while those which do not need this are not reserved.[20]

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(1) That these trees are not to be reckoned as part and parcel of the field.
(2) Gen. XXIII, 17.
(3) I.e., small trees which have as it were no individuality but are only known as being included within such boundaries.
(4) Viz., large trees which have an individuality apart from the field in which they are.
(5) I.e., the trees planted on the border.
(6) And is not merely a regulation of the Rabbis.
(7) So Aruch. According to Rashb, all four were species of date trees.
(8) And the purchaser acquires both the field and the trees. V. the Mishnah supra.
(9) That is to say, all possibility of error is eliminated.
(10) This formula, implies two transfers, one of land and one of trees.
(11) Over and above any date trees there may be in the field, which are acquired with the field (v. Mishnah). The number two is taken as the minimum indicated by the word 'trees'.
(12) And the transaction is null and void.
(13) Supposing there are none in the field.
(14) I.e., bearing a moderate amount of fruit.
(15) Bearing less than a kab of dates.
(16) 'Trees' was a generic term for all trees except date trees and vines.
(17) Because date trees can also be called trees where no others are under consideration.
(18) Because vines are similarly called trees.
(19) Because as between date trees and vines, the name 'trees' would be more readily applied to the latter.
(20) Being too small to count.

Talmud - Mas. Baba Bathra 70a

The judges of the Exile,[1] however, say that all which are bent back by the yoke[2] are not reserved, but all those which are not bent back by the yoke are reserved. There is really no conflict of opinion, because the former [speaks] of date trees[3] and the latter [speaks] of other trees.[4]

R. Aha b. Huna enquired of R. Huna: [If the vendor says, I sell you the whole field] with the exception of such-and-such a carob tree or such-and-such a sycamore, how do we decide? Is it that carob alone which the purchaser fails to acquire, while he acquires all the rest, or does he fail to acquire the rest also?[5] — He replied: He does not acquire them. R. Aha then raised an objection [from the following]: [If the vendor says], Except such-and-such a carob tree, except such-and-such a Sycamore, he does not obtain possession. Does this not mean that he fails to acquire possession of that carob, but he does acquire possession of the rest? — No, he replied; he fails to acquire possession of the other carobs also. The proof is this. Suppose [he was selling him a field and] said to him, 'My field is sold to you with the exception of such-and-such a field',[6] would this mean that the purchaser failed to acquire ownership of that field alone, but did acquire ownership of all the other fields [belonging to the vendor]? Of course he would not acquire ownership.[7] So here too he does not acquire ownership.

Some report this discussion as follows. R. Ahab. Huna inquired of R. Shesheth: [If the vendor said, 'I sell you the field] with the exception of half of such-and-such a carob tree', or 'half of such and-such a sycamore', how do we decide? Of course he does not acquire the other carobs.[8] The question is, does he acquire the half left over in the carob specified,[9] or does he fail to acquire even that? — He replied: He does not acquire it. R. Aha then raised an objection [from the following]: '[If the vendor says], "Except half of such-and-such a carob, half of such-and-such a sycamore", he does not acquire the remaining carobs'. Does not this mean that he only fails to acquire the remaining carobs, but he does acquire the remainder of that carob?-No, replied R. Shesheth; even the remainder of that carob he does not acquire. The proof is this. Suppose [he was selling him a field and] said to him, 'My field is sold to you with the exception of half of such-and-such a field', would he fail to acquire only that half and acquire the other half? Obviously he would not acquire it; so here too he

does not acquire.[10] R. Amram inquired of R. Hisda: If a man deposits something with another and receives a written acknowledgment for it, and the other subsequently asserts, 'I returned it to you', how do we decide? Do we argue that since we should accept his word if he cared to say that he had lost it through circumstances over which he had no control,[11] now too we accept his word,[12] or [do we accept the plea of] the other if he says, 'How comes your acknowledgment in my hand?'[13] — He replied: We accept the word [of the defendant]. But the claimant can plead, 'How comes your acknowledgment in my hand?' — Said he [R. Hisda]: On your own argument, if the defendant said, 'I lost it through circumstances over which I had no control,' could the claimant plead, 'How comes your acknowledgment in my hand?'[14] He [R. Amram,] replied: When all

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(1) Samuel and Karna (Rashb.); v. p. 209, n. 5.

(2) When the ground under the tree is ploughed by oxen and the yoke knocks against it.

(3) Which being slender can be bent back even when well grown.

(4) The fruit of which can be plucked without the use of a ladder.

(5) If the vendor had said nothing, the purchaser would not have acquired any of the carob trees, since these are not sold with the field (v. Mishnah). Since therefore he goes out of his way to except this carob tree, do we presume that he desires to include the rest in the sale?

(6) Bordering on the other.

(7) Because obviously the vendor only meant to sell him one field, in spite of his foolish manner of expressing himself.

(8) Since it would be impossible to press so much into the word 'except' in this case.

(9) Does the 'except' avail for this?

(10) This passage is introduced at this place because it contains a ruling of the 'judges of the Exile' mentioned above.

(11) According to the rule laid down in Ex., XXII, 10,11, If a man deliver unto his neighbour an ass etc. to keep,' and it die, or be hurt, or be driven away, the oath of the Lord shall be between them both . . . and the owner thereof shall accept it.

(12) Since he is putting forward a weaker plea.

(13) I.e., if, as you say, you returned it to me, why did you not take back the acknowledgment?

(14) This would not be any evidence, because the defendant could say that seeing he was pleading force majeure he thought it unnecessary to take back the acknowledgment.

is said and done, even if he pleads that it was taken from him by violence, is he not required to take an oath?[1] Here too, when I say that we accept his word, I mean that we accept it on his taking an oath.

May we say that the point at issue [between R. Hisda and R. Amram] is the same as that between the following Tannaim,[2] as it has been taught: 'If a claim is made against orphans on the ground of a "purse bond",[3] the judges of the Exile[4] say that the claimant is entitled on taking an oath[5] to recover the whole, but the judges of Eretz Yisrael[6] say that he is entitled on taking an oath to recover only half.'[7] Now all authorities accept the view of the Nehardeans who say that this transaction is half a loan and half a deposit.[8] May we not say then that the point in which they differ is this, that the one authority [the judges of the Exile] holds that the claimant may plead effectively, 'How comes your bond to be in my hand',[9] and the other holds that he cannot? — No; all concur in the view of R. Hisda [that he cannot], and here the point of difference is this, that the one [the judges of the Exile] holds that if the borrower had paid [before his death] he would have told [his children],[10] while the other holds that we may presume death[11] to have prevented him.

R. Huna b. Abin sent a message[12] that if a man places a deposit with another and receives an acknowledgment and the latter subsequently asserts that he has returned it, his word is accepted;[13] and if a claim is made against orphans on the ground of a 'purse bond', the claimant is entitled on taking an oath to recover the whole.[14] Have we not here two [contradictory rulings]? — In the

second case there is a special reason, that if he had paid he would have told his children. Raba said: The law is that the claimant is entitled to take an oath and recover half.[15] Mar Zutra said that the law follows the decision of the judges of the Exile.[16] Said Rabina to Mar Zutra: Has not Raba laid down that he is entitled to take an oath and recover [only] half?[17] — He replied: In our version the reverse opinion is ascribed to the judges of the Exile.[18]

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(1) According to the text quoted above.

(2) The authorities actually quoted in the passage which follows are usually regarded as Amoraim, not Tannaim, v. nn. 8 and 20. [Funk, S., Die Juden in Bobylonien, I, n. 2, iv, regards the authorities cited here as Babylonian and Palestinian Tannaim respectively, belonging to the pre-Amoraic age, v. infra 100a. On the other hand, the words 'that between Tannaim as it has been taught' do not occur in MSS. v. D.S.]

(3) A bond given by a borrower for money borrowed for business purposes, on condition that the profit shall be equally divided between him and the lender.

(4) Samuel and Karna. V. pag. 209, n. 5.

(5) That oath is the one that had to be taken by all persons recovering from orphans debts incurred by their father. V. supra 56b, 33a.

(6) R. Ammi and R. Assi, v. Sanh. 17a.

(7) The reason is given immediately.

(8) If money was borrowed in this way, the Rabbis regarded it as consisting of two parts, one half a loan, the profit of which went to the borrower (the lender being forbidden to take it, because it is counted as interest), and the other half a deposit, the profit of which went to the lender. Hence the law of loan applies to one half of it and the law of deposit to the other half. If therefore it was forcibly taken from the borrower, he has to pay back one half to the lender (since a borrower is responsible for a loan), but he can release himself from payment of the other half on taking an oath that it was forcibly taken from him, according to the law of deposit quoted above. In this case we suppose that the borrower died and the claim is made against his children under age. That half is to be paid back there is no question; the only doubt is whether the claimant can recover the half which is regarded as a deposit.

(9) And therefore we cannot plead on behalf of the orphans that the money had been returned, seeing that the father had he been alive could not have pleaded thus.

(10) Therefore we cannot plead on their behalf that the money had been returned, although if the father had been alive he could have effectively pleaded thus, as explained above.

(11) Lit., 'Angel of death'.

(12) V. supra p. 211, n. 10.

(13) According to the decision of R. Hisda recorded above.

(14) This shows that if the orphans plead that the father had returned the money, their word is not accepted.

(15) Viz., the half that is regarded as a loan.

(16) That the claimant from the orphans can recover the whole.

(17) And how can you contradict Raba who is an older authority than you?

(18) I.e., we make them say that he recovers half.

Talmud - Mas. Baba Bathra 71a

MISHNAH. [IF A MAN SELLS A FIELD] HE DOES NOT INCLUDE[1] THE WELL NOR THE WINE PRESS NOR THE DOVECOTE, WHETHER IN USE OR NOT IN USE,[2] AND [IF HE REQUIRES] A RIGHT OF WAY TO THEM HE MUST BUY IF [FROM THE PURCHASER]. THIS IS THE OPINION OF R. AKIBA.[3] THE SAGES HOWEVER SAY THAT HE IS NOT REQUIRED TO DO SO.[4] R. AKIBA ADMITS THAT IF THE VENDOR SAYS TO HIM, [I SELL YOU ALL] EXCEPT THESE, HE NEED NOT BUY A RIGHT OF WAY.[5] IF HE SELLS THESE THINGS [WITHOUT THE FIELD] R. AKIBA SAYS THAT HE [THE PURCHASER] HAS NO NEED TO BUY A RIGHT OF WAY TO THEM, BUT THE SAGES SAY THAT HE HAS. THE ABOVE RULE[6] APPLIES ONLY TO A VENDOR, BUT A DONOR IS HELD TO MAKE ALL THESE PART OF THE GIFT.[7] IF BROTHERS DIVIDE AN INHERITANCE, ONE WHO TAKES POSSESSION OF A FIELD TAXES POSSESSION OF ALL THESE THINGS.[8] ONE WHO

SEIZES THE PROPERTY OF A PROSELYTE[9] IN TAKING POSSESSION OF A FIELD TAKES POSSESSION OF ALL THESE THINGS. IF A MAN SANCTIFIES[10] HIS FIELD HE SANCTIFIES ALL THESE THINGS.[11] R. SIMEON, HOWEVER, SAYS THAT IF A MAN SANCTIFies HIS FIELD HE SANCTIFIES ONLY[12] THE FULL-GROWN[13] CAROB AND THE CROPPED[14] SYCAMORE TREE.[15]

GEMARA. Why should the rule of a sale be different from that of a gift? — Judah b. Nakusa explained [the reason] in the presence of Rabbi [saying], The one [the vendor] specifies,[16] the other [the donor] does not specify. What do you mean by saying that the one specifies and the other does not specify, when the fact is that just as the one does not specify so the other does not specify? — What we should say is: The latter ought to have specified,[17] the former has no need to specify.

A man gave instructions [saying], 'Give to so-and-so a room holding a hundred barrels.' It was found that the room [in question] would hold a hundred and twenty barrels. Mar Zutra [on hearing the case] said, He gave him [the space of] a hundred barrels and not of a hundred and twenty.[18] Said R. Ashi to him: Have we not learnt, THIS RULE APPLIES ONLY TO A VENDOR, BUT A DONOR IS PRESUMED TO MAKE ALL THESE PART OF THE GIFT, from which we infer that a donor is presumed to give in a liberal spirit?[19] So here [we say that] the donor gives in a liberal spirit.[20]

IF A MAN SANCTifies A FIELD HE SANCTIFIES etc. R. Huna said: Although the Rabbis have laid down that when a man buys two trees in another man's field he does not acquire any of the soil with them,[21] yet if a man sells a field and reserves to himself two trees, he retains some of the soil with them.[22] [This rule is valid] even according to R. Akiba who says that the vendor sells in a liberal spirit;[23] [for] this applies only to a well and a cistern which do not exhaust the soil, but in the case of trees which do exhaust the soil,

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(1) Even though he inserts the words, 'it and all its contents'.

(2) Lit., 'desolate or inhabited'.

(3) Who said supra 64b that the vendor sells in a liberal spirit.

(4) Because, according to them, he interprets the terms of sale strictly.

(5) As otherwise the exception would be quite superfluous.

(6) That the well etc. are not included in the field.

(7) Because a donor is supposed to give in a liberal spirit.

(8) Because their object in dividing is to get entirely clear of one another.

(9) Who dies without Jewish issue, and whose property can be seized by the first comer. V. supra p. 181, n. 5.

(10) I.e., dedicates to the Sanctuary. V. Lev. XXVII, 26.

(11) Because sanctifying is a kind of gift.

(12) Of all these things excluded in case of a sale.

(13) Lit., 'grafted'.

(14) Lit., 'block of'.

(15) The meaning of this is discussed in the Gemara.

(16) The objects reserved.

(17) If the donor wishes to reserve things for himself, he should specify them, because he is supposed to give in a liberal spirit.

(18) And therefore he acquires only that portion of the room which will hold a hundred barrels.

(19) Lit., 'with a bounteous eye'.

(20) And the whole room is given to the recipient.

(21) As he would if he bought three trees. V. infra 81a.

(22) I.e., the soil under the trunk.

(23) V. supra 64b.

Talmud - Mas. Baba Bathra 71b

if the vendor did not [tacitly] reserve some soil for himself, the purchaser could say to him [when the trees wither], pluck up your tree and be off with it.[1]

We have learnt:[2] R. SIMEON SAYS THAT IF A MAN SANCTIFIES HIS FIELD HE ONLY SANCTIFIES THE FULL-GROWN CAROB AND THE CROPPED SYCAMORE TREE; and in connection with this it was taught: R. Simeon said: What is the reason? Because they suck from a sanctified field.[3] Now if you assume that the sanctifier tacitly reserves something to himself, then when the trees suck they suck from his property [do they not]? [We must suppose therefore that] R. Simeon follows R. Akiba[4] and that R. Huna was following the Rabbis.[5] [But if R. Huna was stating his rule from the point of view of] the Rabbis, it is self-evident?[6] — Its practical bearing is that if the trees fall he can plant them again.[7]

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(1) Immediately (v. Tosaf.), and we assume that the vendor wished to keep a tree for himself in that place in perpetuity.

(2) Here comes an objection to the statement just made by the Gemara that R. Huna's rule holds good even on the view of R. Akiba.

(3) And the rule is that that which sucks from sanctified ground itself becomes sanctified.

(4) In holding that the vendor sells in a liberal spirit, and therefore when a man sanctifies a field he tacitly reserves nothing to himself.

(5) And that his ruling does not accord with the view of R. Akiba.

(6) I.e., it is obvious that the vendor reserves something.

(7) Though he could not tell him, 'Pluck up your tree and be off with it immediately,' it might be assumed that he could not plant them anew once they had fallen.

Talmud - Mas. Baba Bathra 72a

But [on the other hand] can you make R. Simeon concur with R. Akiba,[1] seeing that it has been taught, 'If a man sanctifies three trees in a field where ten are planted to a beth se'ah,[2] then he [automatically] sanctifies in addition the soil and the [young] trees between them.[3] Therefore if he wants to redeem them he has to do so at the rate of fifty shekels of silver for the sowing ground of a homer of barley.[4] If they are planted more thickly or less thickly than this,[5] or if he sanctifies them one after another, he does not thereby sanctify the soil and the trees between them.[6] Therefore if he wants to redeem them, he redeems the trees according to their value. What is more, even if he first sanctifies the trees [one after another] and then sanctifies the ground, when he comes to redeem them he must redeem the trees at their actual value and then redeem [the ground] at the rate of fifty shekels for the sowing ground of a homer of barley.'[7] Who is the authority for these rules? If R. Akiba, surely he says that the vendor sells in a liberal spirit; all the more so then the sanctifier.[8] If the Rabbis, surely according to them it is the vendor who sells in an illiberal spirit, but the sanctifier sanctifies in a liberal spirit.[9] Obviously then it must be R. Simeon. Whom then does R. Simeon follow?[10] It cannot be R. Akiba, because he says that the vendor sells in a liberal spirit, all the more so then the sanctifier. Obviously then he follows the Rabbis,[11] and R. Simeon further held[12] that just as the vendor sells in an illiberal spirit so the sanctifier sanctifies in an illiberal spirit, and he [therefore] reserves the ground to himself.[13]

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(1) In saying that the sanctifier sanctifies in a liberal spirit.

(2) The regulation spacing. V. supra 26b.

(3) Because three such trees constitute a field, and therefore he in effect sanctifies a field and its contents.

(4) The standard rate for the redemption of land, as laid down in Lev. XXVII, 16.

(5) Lit., 'less (openly) or more (openly)'; with more or less than ten to the beth se'ah. In the former case they constitute a wood, and in the latter they are not part and parcel of the field.

(6) That is to say, the trees do not carry with them the ground.

(7) Because the sanctification of the trees and the sanctifying of the ground are looked upon as two distinct actions.
(8) And therefore the trees even when sanctified one after another should carry at least some ground with them.
(9) Being compared not to a vendor but to a donor, as it says in the Mishnah, IF A MAN SANCTIFIES HIS FIELD, HE SANCTIFIES ALL THESE THINGS.
(10) R. Simeon was a disciple of R. Akiba.
(11) Those who in the discussion with R. Akiba said that the vendor sells in an illiberal spirit.
(12) In opposition to the Rabbis of the Mishnah who intimate that the sanctifier sanctifies in a liberal spirit.
(13) Which shows that R. Simeon could not concur with R. Akiba.

Talmud - Mas. Baba Bathra 72b

But then this would conflict [with what R. Simeon said above, that the carob and sycamore are sanctified] because they suck from the sanctified field?[1] — We must say therefore that R. Simeon was arguing from the premises of the Rabbis [of the Mishnah], thus: According to my view, just as the vendor sells in an illiberal spirit so the sanctifier sanctifies in an illiberal spirit, and he reserves some ground for himself.[2] But even from your own standpoint [that he sanctifies in a liberal spirit], grant me at least that he sanctifies no more than the carob and sycamore.[3] To which the Rabbis would answer that no distinction is to be made.[4]

To what authority then have you ascribed this clause [in the Baraitha quoted]? To R. Simeon. Look now at the next clause: 'What is more, even if he first sanctifies the trees [one after another] and then sanctifies the ground, if he wants to redeem them he has to redeem the trees at their actual value and the ground at the rate of fifty shekels for the sowing place of a homer of barley.' Now if [this Baraitha is following] R. Simeon, it should determine the valuation according to [the time of] the redemption,[5] so that the trees should be redeemed as part of the field.[6] For we know that R. Simeon decides according to the time of redemption from what has been taught: 'How do we know that if a man buys a field from his father and then sanctifies it and his father subsequently dies,[7] it is reckoned as a "field of possession"?[8] Because Scripture says, And if he sanctifies . . . a field which he hath bought which is not of the field of his possession [he shall give thine estimation].[9] [This signifies] a field which is not capable of becoming a "field of possession",[10] [and we therefore] except [from this rule] such a one as this which is capable of becoming "a field of his possession".[11] This is the opinion of R. Judah and R. Simeon. R. Meir says: From where do we know that if a man buys a field from his father and his father dies and he then subsequently sanctifies the field, it is reckoned as a field of his possession? Because it says, If he sanctifies a field which he hath bought which is not of the field of his possession. [This signifies] a field which is not "a field of possession", [and we therefore except] from this rule such a one as this which is a field of his possession.'[12] In contrast to this, R. Judah and R. Simeon compare a field which he sanctifies 'before his father dies to a field of his possession.[13] Whence do they derive this? If from the verse just quoted, I might rejoin that this justifies only the lesson drawn by R. Meir.[14] We must therefore say that [they rule thus] because they go according to the [time of] redemption?[15] — Said R. Nahman b. Isaac: As a general rule R. Judah and R. Simeon do not go according to the time of redemption, but in this case they do so because they found a verse which they interpreted [to this effect]. 'If so' [they said to R. Meir], 'it should say, "If he sanctifies a field which he has bought which is not his possession," or even "the field of his possession — What is the force of the words, Which is not of the field of his possession? [It signifies] one that is not capable of becoming the field of his possession, [and we] except from the rule one that is capable of becoming the field of his possession.'[16]

R. Huna said that the full-grown carob and the cropped sycamore partly come under the law of trees and partly under the law of land. They rank as trees [to the extent] that if a man sanctifies or buys two trees and one of these, the soil in between is reckoned with.[17] They rank as land to the extent that they are not included in the transfer of land sold.[18]

R. Huna further said that a sheaf of two se'ahs partly comes under the law of a sheaf and partly under that of a shock. It ranks as a sheaf [to the extent] that while two sheaves can be regarded as 'forgotten',[19] while two with this one are not regarded as 'forgotten'.[20] It ranks as a shock as we have learnt: [If a reaper forgets] a sheaf of two se'ahs, it is not regarded as forgotten.[21]

Rabbah b. Bar Hana said in the name of Resh Lakish: In regard to the full-grown carob and the cropped sycamore we find a difference of opinion between R. Menahem son of R. Jose and the Rabbis.[22]

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(1) Which shows that R. Simeon holds that the sanctifier sanctifies in a liberal spirit, whereas now it is maintained that he said in an illiberal spirit.

(2) And the carob is not sanctified because it neither sucks from the sanctified ground nor is it reckoned as part of the field.

(3) Which though not part of the field suck from sanctified ground, but not the well etc. which are neither part of the field nor do they stick from the ground.

(4) Between the carob and the well, etc., all being included in the sanctification.

(5) I.e., according to the character of the article to be redeemed at the time of the redemption and not at the time of the sanctifying.

(6) And not separately, at their own value, as they would be if we went by the time of sanctification.

(7) Before the Jubilee, 'when the field would automatically revert to him.

(8) And not of purchase, and it is therefore liable to be redeemed at the rate of 50 shekels for the sowing ground of a homer of barley.

(9) Lev. XXVII, 22, 23. This means that such a field is to be redeemed at its actual value, not at a fixed rate.

(10) E.g., one which he bought from any other man and which would have to be restored to him or his heirs at the Jubilee.

(11) By inheritance.

(12) But not one which is only capable of becoming such subsequently.

(13) This is the reading of Tosaf. The ordinary texts read: 'But in the case where he sanctifies the field before his father dies, R. Judah and R. Simeon do not require a verse; where they require a verse is for the case where he sanctifies it and his father dies subsequently.' As Tosaf. points out, a text certainly was required by R. Judah and R. Simeon for the first statement. The ordinary reading seems to have come in by a copyist's error from Git. 48a.

(14) Which is closer to the literal meaning of the verse.

(15) And this being the case, they interpret the verse accordingly. This proves that R. Simeon decides according to the time of redemption.

(16) The word 'of' is taken to imply 'which is not already a part of his possession, but will subsequently become such', e.g., one which will one day come to him by inheritance.

(17) According to the rule that three trees carry with them the ground between.

(18) Like other trees, if the vendor inserts the words, 'it and all its contents'.

(19) The reference is to the rule in Deut. XXIV, 19: When thou reapest thine harvest in thy field and has forgot a sheaf in the field, thou shalt not go again to fetch it. This rule, according to the Rabbis, applied to one or two sheaves, but not to three.

(20) That is to say, it is treated as a sheaf on a par with the other two sheaves, the three together forming one shock.

(21) Because it is considered as being no longer a sheaf but a shock.

(22) The former holding that they are not sanctified along with a field, the latter that they are.

Talmud - Mas. Baba Bathra 73a

Why does he not say: Between R. Simeon[1] and the Rabbis? — He intimates in this way that R. Menahem b. Jose was of the same opinion as R. Simeon.[2]

CHAPTER V

MISHNAH. HE WHO SELLS A SHIP SELLS [IMPLICITLY] ITS MAST, SAIL, ANCHOR AND ALL THE IMPLEMENTS NEEDED FOR DIRECTING IT, BUT HE DOES NOT SELL THE CREW,[3] NOR THE PACKING-BAGS,[4] NOR THE STORES. IF, HOWEVER, HE SAID TO HIM:[5] 'IT[6] AND ALL THAT IT CONTAINS', THEN ALL THESE ARE INCLUDED IN THE SALE.

GEMARA. TOREN[7] is the mast; for so it is written: They have taken cedars[8] from Lebanon to make masts[9] for thee.[10] NES[7] is the sail; for so it is written: Of fine linen with richly woven work from Egypt was thy sail, that it might be to thee for an ensign.[11] [As to] OGEN,[7] R. Hiyya taught: These are its anchors; for so it is written: Would ye tarry for them till they were grown? Would ye shut yourselves off[12] for them and have no husbands?[13]

AND ALL THE IMPLEMENTS NEEDED FOR DIRECTING IT — R. Abba said: This refers to the oars;[14] for so it is written: Of the oaks of Bashan have they made thine oars.[15] And if you desire, you may infer it[5] from the following text: And all that handle the oar shall come down from their ships.[16]

Our Rabbis taught: He who sells a ship sells [implicitly] its wooden implements[17] and its [sweet water] tank. R. Nathan says: He who sells a ship sells implicitly its buzith.[18] Symmachus says: He who sells a ship sells [implicitly] its dugith.[19] Raba said: Buzith and dugith are the same: R. Nathan, the Babylonian, called it Buzith, as they say [in Babylon]' the Buziatha[20] of Maisan';[21] while Symmachus. who was a Palestinian, called it Dugith, for so it is written: And your residue [shall be taken away] in fishing boats.[22]

Rabbah said: Seafarers told me:[23] The wave that sinks a ship appears with a white fringe of fire at its crest, and when stricken with clubs on which is engraven. 'I am that I am,[24] Yah, the Lord of Hosts, Amen, Amen, Selah', it subsides,

Rabbah said: Seafarers told me: There is a distance of three hundred parasangs[25] between one wave and the other, and the height of the wave is [also] three hundred parasangs. 'Once,' [they related], 'we were on a voyage, and the wave lifted us up so high that we saw the resting place of the smallest star, and there was a flash as if one shot forty arrows of iron;[26] and if it had lifted us up still higher. We would have been burned by its heat. And one wave called to the other: "My friend, have you left anything in the world that you did not wash away? I will go and destroy it." The other replied: "Go and see the power of the master [by whose command] I must not pass the sand'[of the shore even as much as] the breadth of a thread"; as it is written: Fear ye not me? saith the Lord; will ye not tremble at my presence? who have placed the sand for the bound of the sea, an everlasting ordinance, which it cannot pass.[27]

Rabbah[28] said: I saw how Hormin[29] the son of Lilith[30] was running on the parapet[31] of the wall of Mahuza, and a rider, galloping below on horseback[32] could not overtake him. Once they saddled for him two mules which stood

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(1) Who also, according to the final conclusion arrived at, holds that they are not sanctified.

(2) Resh Lakish had this on tradition from his teacher.

(3) Lit., 'the slaves'.

(4) מרצוף Cf. Gr. **.

(5) To the buyer.

(6) The ship.

(7) The Gemara now proceeds to explain תרן, נם and עוגין the Hebrew terms used in the Mishnah.

(8) Lit., 'cedar'.

(9) תרן 'mast'. The proof that toren means mast lies in the fact that masts are made from cedars or trees of similar height.

(10) Ezek. XXVII, 5.
(11) Ibid. v. 7. Ensign. Heb. נם The Gemara regards in Ezek. as parallel to מפרש hence sail.
(12) תעגנה from עגן same root as that of עוגין meaning in Niph. to be shut up, to be held fast. The anchor holds the ship fast in the water.
(13) Ruth I, 13.
(14) I.e., the oars are implicitly sold together with the ship.
(15) Ezek. XXVII, 6. The Scriptural text is describing a ship and gives details of its equipment. Since oars are included in the description they must be regarded as part of the ship's equipment and are, therefore, implicitly sold together with the ship.
(16) Ezek. XXVII, 29. This verse shows the close connection between the oars and the ship. Cf. previous note.
(17) Viz,, its oars, poles, ladders, etc. Heb. Iskela,איסכלא; Rashb. ladders (scalae).
(18) Heb. Buzith, בוצית from ביצה egg shaped, oval (or ביצע marsh), which is attached to the bigger ship, [and into which passengers disembark on nearing the (marshy) shallows (v. Obermeyer. op. cit. pag. 201)].
(19) Heb. Dugith,דוגית (from דוג to fish), which forms part of the equipment of the bigger ship.
(20) Pl. of Buzith
(21) [Maisan (Mesene) the marshland S.E, of Babylonia intersected with shallow streams (v. Obermeyer. ibid.)].
(22) Amos IV, 2. Fishing boats, סירותדוגה 'small boats like pots' (Rashb.).
(23) The following apparent hyperboles are probably allegories on the political and social conditions of the time.
(24) Cf. Ex. III, 14.
(25) V. Glos.
(26) Cf. Kohut, Aruch. s. v. ,בזק. Current editions read, 'And it was like one scattering forty measures of mustard seeds', or 'and it was of the size of a field needed for forty measures etc.
(27) Jer. V, 22.
(28) Munich MS and others read, Rabbah b. Bar Hana.
(29) Hamburg MS. and others read Hormiz (Ormuzd). Hormin is the name of a demon. Ormuzd, according to Zend Avesta, is the impersonation of the light or the good principle in nature. From the present context it appears that an evil demon is meant.
(30) Lilith, a female night demon.
(31) קופיא Rashb. reads אקופי, 'on the pinnacles'.
(32) Lit., horse, סוסיא Current editions read היותא, animal.

Talmud - Mas. Baba Bathra 73b

on two bridges of the Rognag;[1] and he jumped from one to the other, backward and forward,[2] holding in his hands two cups of wine, pouring alternately[2] from one to the other, and not a drop fell to the ground. [Furthermore]. it was [a stormy] day [such as that on which] they [that go down to the sea in ships] mounted up to the heaven; they went down to the deeps.[3] When the government heard [of this] they put him to death.

Rabbah[4] said: I saw an antelope. one day old, that was as big as Mount Tabor. (How big is Mount Tabor? — Four parasangs.)[5] The length of its neck[6] was three parasangs.and the resting place of its head[7] was one parasang and a half. It cast a ball of excrement and blocked up the Jordan.

Rabbah b. Bar Hana further stated: I saw a frog the size[8] of the Fort of Hagronia. (What is the size of the Fort of Hagronia? — Sixty houses.) There came a snake and swallowed the frog. Then came a raven and swallowed the snake, and perched[9] on a tree. Imagine[10] how strong was the tree. R. Papa b. Samuel said: Had I not been there I would not have believed it.

Rabbah b. Bar Hana further stated: Once we were travelling on board a ship and saw a fish in whose nostrils a parasite[11] had entered.[12] Thereupon, the water cast up the fish and threw it upon the shore. Sixty towns were destroyed thereby, sixty towns ate therefrom, and sixty towns salted [the remnants] thereof, and from one of its eyeballs three hundred kegs of oil were filled. On returning

after twelve calendar months[13] we saw that they were cutting rafters from its skeleton and proceeding to rebuild those towns.

Rabbah b. Bar Hana further stated: Once we were travelling on board a ship and saw a fish whose back was covered with sand out of which grew grass. Thinking it was dry land[14] we went up and baked, and cooked, upon its back. When, however, its back was heated it turned, and had not the ship been nearby we should have been drowned.

Rabbah b. Bar Hana further stated: We travelled once on board a ship. and the ship sailed between one fin of the fish and the other for three days and three nights; it [swimming] upwards[15] and we [floating] downwards.[16] And if you think the ship did not sail fast enough, R. Dimi, when he came, stated that it covered sixty parasangs in the time it takes to warm a kettle of water. When a horseman shot an arrow [the ship] outstripped it. And R. Ashi said: That was one of the small sea monsters[17] which have [only] two fins.

Rabbah b. Bar Hana further related: Once we travelled on board a ship and we saw a bird standing up to its ankles in the water while its head reached the sky. We thought the water was not deep[18] and wished to go down to cool ourselves, but a Bath Kol[19] called out: 'Do not go down here for a carpenter's axe was dropped [into this water] seven years ago and it has not [yet] reached the bottom. And this, not [only] because the water is deep but [also] because it is rapid. R. Ashi said: That [bird] was Ziz-Sadai[20] for it is written: And Ziz-Sadai is with me.[21]

Rabbah b. Bar Hana further related: We were once travelling in the desert and saw geese whose feathers fell out on account of their fatness, and streams of fat flowed under them. I said to them: 'Shall we have a share of your flesh[22] in the world to come?'[23] One lifted up [its] wing,[24] the other lifted up [its] leg.[25] When I came before R. Eleazar he said unto me: Israel will be called to account for [the sufferings[26] of] these [geese].

(Mnemonic: Like the sand of the purple blue scorpion stirred his basket.)[27]

Rabbah b. Bar Hana related: We were once travelling in a desert and there joined us an Arab merchant who, [by] taking up sand and smelling it [could] tell which was the way to one place and which was the way to another. We said unto him: 'How far are we from water?' He replied: 'Give me [some] sand.' We gave him, and he said unto us: 'Eight parasangs.' When we gave him again [later]. he told us that we were three parasangs off. I changed it;[28] but was unable [to nonplus] him.

He said unto me: 'Come and I will show you the Dead of the Wilderness.'[29] I went [with him] and saw them; and they looked as if in a state of exhilaration.

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(1) Name of a river.

(2) Lit., 'from this to that and from that to this'.

(3) Ps. CVII, 26.

(4) V. Glos.

(5) V. glos.

(6) Lit., 'stretching'; i.e., 'when stretched'.

(7) I.e., when resting on the ground.

(8) Lit., 'which was'. (14a) [Outside Nehardea, Obermeyer. p. 265]

(9) Lit., 'and went up (and) sat'.

(10) Lit., 'come and see'.

(11) Lit., 'mud-eater', 'a parasite living on fishes'.

(12) And killed the fish.

(13) Lit., 'months of the year'.

(14) One of the sea islands.
(15) I.e., against the wind.
(16) I.e., sailing with the wind.
(17) Heb. gildana גילדנא a small sea-monster.
(18) Lit., 'there was no water'.
(19) בת קול 'heavenly echo', 'divine voice'; a lower grade of prophecy, v. Glos.
(20) זיז שדי is rendered by the Targum (Ps. L, 11). 'the wild cock whose ankles rest on the ground and whose head reaches the sky'.
(21) Ps. L, 11. 'With me', i.e., 'with God in heaven' is assumed to be an allusion to the bird's head, which reaches the sky.
(22) Lit., 'in you'.
(23) When a feast is to be provided for the righteous.
(24) Indicating that that would be his portion in the world to come.
(25) Lit., 'flank', 'thigh'.
(26) The protracted suffering of the geese caused by their growing fatness is due to Israel's sins which delay the coming of the Messiah, or the era denoted by the expression, 'the world to come'.
(27) The mnemonic is an aid to the memorisation of the following stories told by Rabbah b. bar Hana. Sand refers to the first story where the smelling of sand by the Arab is mentioned. Purple blue occurs in the second story. Scorpion recalls the scorpions round Mount Sinai in the third story, stirred refers to the story of Korah and his sons in Gehenna in the fourth story, and basket is mentioned in the fifth and last story.
(28) Substituted the sand of one place for that of another, in order to put him to the test.
(29) מתי מדבר those Israelites who died during the forty years wanderings in the wilderness, on their way to the Promised Land. Cf. Num. XIV, 32ff.

Talmud - Mas. Baba Bathra 74a

They slept on their backs; and the knee of one of them was raised, and the Arab merchant passed under the knee, riding on a camel with spear erect, and did not touch it. I cut off one corner of the purple-blue shawl[1] of one of them; and we could not move away. He said unto me: '[If] you have, peradventure, taken something from them, return it; for we have a tradition that he who takes anything from them cannot move away.' I went and returned it; and then we were able to move away. When I came before the Rabbis they said unto me: Every Abba[2] is an ass and every Bar Bar Hana is a fool. For what purpose did you do that?[3] Was it in order to ascertain whether [the Law] is in accordance with the [decision of] Beth Shammai or Beth Hillel?[4] You should have counted the threads and counted the joints.[5]

He[6] said unto me: 'Come and I will show you Mount Sinai.' [When] I arrived I saw that scorpions[7] surrounded it and they stood like white asses. I heard a Bath Kol[8] saying: 'Woe is me that I have made an oath[9] and now that I have made the oath, who will release me?'[10] When I came before the Rabbis, they said unto me: 'Every Abba[11] is an ass and every Bar Bar Hana is a fool. You should have said, Mufar lak.'[12] He,[13] however, thought that perhaps it was the oath in connection with the Flood.[14] And the Rabbis?[15]

If so;[16] why, 'woe is me'?

He said unto me: 'Come, I will show you the men of Korah that were swallowed up.[17] I saw two cracks that emitted smoke. I took a piece of clipped wool, dipped it in water, attached it to the point of a spear and let it in there. And when I took it out it was singed. [Thereupon] he said unto me: 'Listen attentively [to] what you [are about to] hear.' And I heard them say: 'Moses and his Torah are truth and we[18] are liars.' He said unto me: 'Every thirty days Gehenna[19] causes them to turn back here as [one turns] flesh in a pot,[20] and they say thus: "Moses and his law are truth and we[18] are liars".'

He said unto me: 'Come, I will show you where heaven and earth touch one another.'[21] I took up my [bread] basket and placed it in a window of heaven. When I concluded my prayers I looked for it but did not find it. I said unto him: 'Are there thieves here?' He replied to me: 'It is the heavenly wheel revolving. Wait here until tomorrow and you will find it.'

R. Johanan related: Once we were travelling on board a ship and we saw a fish that raised its head out of the sea. Its eyes were like two moons, and water streamed from its two nostrils as [from] the two rivers of Sura.[22]

R. Safra related: Once we travelled on board a ship and we saw a fish that raised its head out of the sea. It had horns on which was engraven: 'I am a minor creature of the sea,I am three hundred parasangs [in length] and I am [now] going into the mouth of Leviathan.'[23] R. Ashi said: It was a sea-goat which searches [for its food] and [for that purpose] has horns.

R. Johanan related: Once we were travelling on board a ship and we saw a chest in which were set precious stones and pearls and it was surrounded by a species of fish called Karisa.[24] There went down

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(1) תכלתא, viz., the Tallith, טלית, which may signify any garment, cloak or covering, if the Tallith had four corners, a show fringe had to be made in every corner, each fringe containing a thread of purple-blue. Cf. Num. XV. 38; Deut. XXII, 12.

(2) Abba was the name of Rabbah b. Bar Hana; Rabbah equals Rab Abba.

(3) Cutting off the corner of the Tallith.

(4) For the dispute between the two schools on the question of the threads of the show fringes. v. Men. 41b.

(5) Each plaited fringe contains four joints or sections separated by double knots.

(6) I.e., the Arab merchant.

(7) The reading of the current editions, עקרבא וקיימא כי חמרי חיורתי, a mixture of singular and plural, is obviously erroneous. Read with Bomberg ed. עקרבי וקיימן etc.

(8) V. glos.

(9) To send Israel into exile.

(10) Lit., 'who will break [nullify] it for me'.

(11) V. supra n. 2.

(12) מופר לך thy oath, or vow. is void, a formula used by an authorised person for remitting vows and oaths.

(13) Rabbah b. Bar Hana.

(14) That oath was in favour of mankind. Cf. Isa. LIV, 9: For as I have sworn that the waters of Noah shall no more go over the earth etc. Cf. also Gen. IX, 11ff.

(15) Why did they deride Rabbah b. Bar Hana?

(16) If the reference were to the oath of the Flood.

(17) Cf. Num. XVI, 32ff.

(18) Lit., 'and they'.

(19) גיהנם place of punishment for the wicked after death. Originally the name of a glen near Jerusalem, גי הנם where children were burned in the worship of Moloch.

(20) They are stirred in Hell as meat is stirred round and round in a boiling pot.

(21) Lit., 'kiss'.

(22) So Rashb. [Another rendering: 'And water gushed forth from its nostrils at (a height) as (the length) of two Sura-canoes'. i.e., the ferry boats that sailed about in the canal of Sura, v. Obermeyer. op. cit. 292.]

(23) To supply his daily meal. Leviathan, cf. Ps. CIV, 26 and Job XL, 25. In the Talmud, a legendary monster fish reserved for the righteous in the world to come.

(24) Probably, shark.

a diver to bring [the chest], but [a fish] noticed [him] and was about to wrench his thigh. Thereupon he poured upon it a skin bottle of vinegar and it sank. A Bath Kol[1] came forth, saying unto us: 'What have you to do with the chest of the wife[2] of R. Hanina b. Dosa who is to store in it purple-blue[3] for the righteous in the world to come.

Rab Judah, the Indian, related: Once we were travelling on board a ship when we saw a precious stone that was surrounded by a snake. A diver descended to bring it up. [Thereupon] the snake approached with the purpose of swallowing the ship, [when] a raven came and bit off its head and the waters were turned into blood. A second snake came, took [the head of the decapitated snake][4] and attached[5] it [to the body], and it revived. Again [the snake] approached intent on swallowing the ship. Again a bird came and severed its head. [Thereupon the diver] seized the precious stone and threw it into the ship. We had with us salted birds. [As soon as] we put [the stone] upon them, they took it up and flew away with it.

Our Rabbis taught: It happened that R. Eliezer and R. Joshua were travelling on board a ship. R. Eliezer was sleeping and R. Joshua was awake. R. Joshua shuddered and R. Eliezer awoke. He said unto him: 'What is the matter, Joshua? What has caused you to tremble?' He said unto him: 'I have seen a great light in the sea.' He said unto him: 'You may have seen the eyes of Leviathan, for it is written: His eyes are like the eyelids of the morning.'[6]

R. Ashi said: R. Huna b. Nathan related to me [the following]: Once we were walking in the desert and we had with us a leg of meat.[7] We cut it open and picked out [the forbidden fat[8] and the nervus ischiadicus][9] and put it on the grass. While we were fetching wood, the leg regained its original form and we roasted it. When we returned after twelve calendar months[10] we saw those coals still glowing. When I came before Ammemar, he said unto me: 'That grass was samtre[11] . Those glowing coals were of broom.[12]

[It is written]: And God created the great sea-monsters.[13] Here[14] they explained: The sea-gazelles. R. Johanan said: This refers to Leviathan the slant serpent,[15] and to Leviathan the tortuous serpent,[16] for it is written: In that day the Lord with his sore [and great and strong] sword will punish [Leviathan the slant serpent, and Leviathan the tortuous serpent].[17]

(Mnemonic: All time Jordan.)[18]

Rab Judah said in the name of Rab: All that the Holy One, blessed be He, created in his world he created male and female. Likewise, Leviathan the slant serpent and Leviathan the tortuous serpent he created male and female; and had they mated with one another they would have destroyed the whole world.[19] What [then] did the Holy One, blessed be He, do? He castrated the male and killed the female preserving it in salt for the righteous in the world to come; for it is written: And he will slay the dragon that is in the sea.[20] And also Behemoth[21] on a thousand hills were created male and female, and had they mated with one another they would have destroyed the whole world.[19] What did the Holy One, blessed be He, do? He castrated the male and cooled[22] the female and preserved it for the righteous for the world to come; for it is written: Lo now his strength is in his loins[23] — this refers to the male; and his force is in the stays of his body,[23] — this refers to the female. There also, [in the case of Leviathan], he should have castrated the male and cooled the female [why then did he kill the female]? — Fishes are dissolute.[24] Why did he not reverse the process?[25] — If you wish, say: [It is because a] female [fish] preserved in salt is tastier. If you prefer, say: Because it is written: There is Leviathan whom Thou hast formed to sport with,[26] and with a female this is not proper.[27] Then here also [in the case of Behemoth] he should have preserved the female in salt? — Salted fish is palatable, salted flesh is not.

Rab Judah in the name of Rab further said: At the time when the Holy One, blessed be He, desired to create the world, he said to the angel of the sea: 'Open thy mouth and swallow all the waters of the world.'[28] He said unto him: 'Lord of the Universe, it is enough that I remain with my own'. Thereupon, He struck him with His foot and killed him; for it is written: He stirreth up the sea with his power and by his understanding he smiteth through Rahab.[29] R. Isaac said: From this it may be inferred that the name of the angel of the sea was Rahab. And had not the waters covered him no creature could have stood his [foul] odour;[30] for it is written: They shall not hurt nor destroy in all My Holy mountain etc. as the waters cover the sea.[31] Do not read: They cover the sea, but [in the sense]: 'They cover the angel of the sea.'[32]

Rab Judah further stated in the name of Rab: The Jordan issues from the cavern of Paneas.[33] It has been taught likewise:[34] The Jordan issues from the cavern of Paneas and passes through the Lake of Sibkay[35] and the Lake of Tiberias[36] and rolls down into the great sea from whence it rolls on until it rushes into the mouth of Leviathan; for it is said: He is confident because the Jordan rushes forth to his mouth.[37] Raba b. 'Ulla objected: This [verse] is written of Behemoth on a thousand hills! — But, said R. Abba b. 'Ulla: When is Behemoth on a thousand hills confident? — When the Jordan rushes into the mouth of Leviathan.[38]

(Mnemonic: Seas, Gabriel, Hungry.)[39]

When R. Dimi came[40] he stated in the name of R. Johanan: The verse, For he hath founded it upon the seas and established it upon the floods[41] speaks of the seven seas and four rivers which surround the land of Israel. And these are the seven seas: The sea of Tiberias,[42] the Sea of Sodom, the Sea of Helath,[43] the Sea of Hiltha,[44] the Sea of Sibkay,[45] the Sea of Aspamia and the Great Sea. The following are the four rivers: The Jordan, the Jarmuk, the Keramyon and Pigah.[46]

When R. Dimi came, he said in the name of R. Jonathan: Gabriel is to arrange in the future

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(1) V. Glos.

(2) A saintly woman who, though very poor, refused to benefit in any way from her portion in the world to come. V. Ta'an. 24b.

(3) V. p. 292, n. 9.

(4) This interpretation is in accordance with the reading of the Munich MS which reads, שקליה לרישיה דתנינא.

(5) Lit., 'and hung'.

(6) Job XLI, 10.

(7) Lit., 'flank' or 'thigh of flesh'.

(8) Cf. Lev. III, 17. VII. 25.

(9) The sinew of the thigh-vein is forbidden food. Cf. Gen. XXXII, 33.

(10) Cf. p. 291, n. 2.

(11) סמתרי a herb with the power of uniting severed parts.

(12) רתם or ריתמא A kind of shrub, growing in deserts. A fire of broom coal is supposed to continue to burn within, while on the surface it is extinguished. Gen. R. XCVIII.

(13) Gen. I, 22.

(14) In Babylonia.

(15) The male Leviathan.

(16) The female.

(17) Isa. XXVII, 2.

(18) The mnemonic aids in the recollection of the three stories told by Rab Judah in the name of Rab. All refers to the first story, beginning 'All that the Holy One'. Time occurs in the second story, 'At the time when'. Jordan begins the third story.

(19) With the multitudes of their progeny.

(20) Ibid. The Talmudic interpretation of the verse is as follows: 'In that day the Lord with his sore and great and strong sword will punish Leviathan the slant serpent, in the world to come, as he punished Leviathan the tortuous serpent; for he slew the dragon that was in the sea, during the first six days of the creation'.
(21) בהמות, Cf. Ps. L, 10. In the Aggada. Behemoth signifies legendary animals, male and female, which, like Leviathan, are to provide part of the feast of the righteous in the world to come. Behemoth eat up daily the grass of a thousand hills.
(22) Others render 'sterilised'.
(23) Job XL, 16. The previous verse speaks of Behemoth.
(24) Cooling would not be effective in preventing their fertility.
(25) Kill the male and preserve the female alive.
(26) Ps. CIV. 26.
(27) Lit., 'way of the earth', Heb. Derek Eretz. דרך ארץ proper manners'.
(28) That the dry land may be seen.
(29) Job XXVI, 12.
(30) That of his dead body.
(31) Isa. XI, 9.
(32) I.e., Sea is to be understood as the angel of the sea.
(33) Paneas written פמיים, פניים, and פניאם is the modern Banias, ancient Caesarea Philippi, in the north of Galilee.
(34) Bek. 55a.
(35) Sea of Samachonitis, North of Lake of Tiberias.
(36) Sea of Gennesareth.
(37) Job XL, 23.
(38) So long as Leviathan is alive, Behemoth also is safe.
(39) The mnemonic is an aid to the memorisation of the following three stories told by R. Dimi. Seas refers to the first story dealing with the seven seas. Gabriel is the subject of the second story. Hungry is a reference to the hungry Leviathan in the third story.
(40) From Palestine.
(41) Ps. XXIV. 2.
(42) V. p. 297, n. 14.
(43) Current editions read חילת Bomberg. שחלת, Munich, שחלית, [Probably the Elath Sea, the Gulf of Akaba. V. Press. J., MGWI., 1929. 53.]
(44) Hiltha, Current Editions, חילתא, Munich, חולתא; [Ulatha mentioned in Josephus. Ant. XV, 10, 13. North of the Samachonitis Sea. V. Pressf., ibid. 52].
(45) V. p. 297, n. 13.
(46) Prob, tributaries of the Jordan. [On the identification of these two streams v. Press J.' ibid.].

Talmud - Mas. Baba Bathra 75a

a chase[1] of Leviathan; for it is said: Canst thou draw out Leviathan with a fish hook? Or press down his tongue with a cord?[2] And if the Holy One, blessed be He, will not help him, he will be unable to prevail over him; for it is said: He only that made him can make His sword to approach unto him.[3]

When R. Dimi came he said in the name of R. Johanan: When Leviathan is hungry he emits [fiery] breath from his mouth and causes all the waters of the deep to boil; for it is said: He maketh the deep to boil like a pot.[4] And if he were not to put his head into the Garden of Eden, no creature could stand his [foul] odour;[5] for it is said: He maketh the sea like a spiced[6] broth.[7] When he is thirsty he makes numerous furrows in the sea; for it is said: He maketh a path to shine after him.[8] R. Aha b. Jacob said; The deep does not return to its strength until [after] seventy years; for it is said: One thinks the deep to be hoary,[9] and hoary age is not [attained at] less than seventy [years].[10]

Rabbah said in the name of R. Johanan: The Holy One, blessed be He, will in time to come make a

banquet for the righteous from the flesh of Leviathan; for it is said: Companions will make a banquet of it.[11] Kerah[12] must mean a banquet; for it is said: And he prepared for them a great banquet[13] and they ate and drank.[14] Companions must mean scholars[15] ; for it is said: Thou that dwellest in the gardens, the companions hearken for thy voice; cause me to hear it.[16] The rest [of Leviathan] will be distributed and sold out in the markets of Jerusalem; for it is said: They will part him among the Kena'anim,[17] and Kena'anim must mean merchants, for it is said: As for kena'an[18] the balances of deceit are in his hand, he loveth to oppress.[19] And if you wish you may infer it from the following: Whose merchants are princes, whose traffickers[20] are the honourable of the earth.[21]

Rabbah in the name of R. Johanan further stated: The Holy One, blessed be He, will in time to come make a tabernacle for the righteous from the skin of Leviathan; for it is said: Canst thou fill tabernacles with his skin.[12] If a man is worthy, a tabernacle is made for him; if he is not worthy [of this] a [mere] covering is made for him, for it is said: And his head with a fish covering.[22] If a man is [sufficiently] worthy a covering is made for him; if he is not worthy [even of this], a necklace is made for him, for it is said: And necklaces about thy neck.[23] If he is worthy [of it] a necklace is made for him; if he is not worthy [even of this] an amulet is made for him; as it is said: And thou wilt bind him for thy maidens.[24] The rest [of Leviathan] will be spread by the Holy One, blessed be He, upon the walls of Jerusalem, and its splendour will shine from one end of the world to the other; as it is said: And nations shall walk at thy light, and kings at the brightness of thy rising.[25]

[It is written]: And I will make thy pinnacles of kadkod[26] — R. Samuel b. Nahmani said: There is a dispute [as to the meaning of kadkod] between two angels in heaven, Gabriel and Michael. Others say: [The dispute is between] two Amoraim in the West.[27] And who are they? — Judah and Hezekiah the sons of R. Hiyya. One says: [Kadkod means] onyx; and the other says: Jasper. The Holy One, blessed be He, said unto them: Let it be as this one [says] and as that one.[28]

And thy gates of carbuncles[29] [is to be understood] as R. Johanan [explained] when he [once] sat and gave an exposition: The Holy One, blessed be He, will in time to come bring precious stones and pearls which are thirty [cubits] by thirty and will cut out from them [openings][30] ten [cubits] by twenty, and will set them up in the gates of Jerusalem. A certain student sneered at him: [Jewels] of the size of a dove's egg are not to be found; are [jewels] of such a size to be found? After a time, his ship sailed out to sea [where] he saw ministering angels engaged[31] in cutting precious stones and pearls which were thirty [cubits] by thirty and on which were engravings of ten [cubits] by twenty. He said unto them: 'For whom are these?' They replied that the Holy One, blessed be He, would in time to come set them up in the gates of Jerusalem. [When] he came [again] before R. Johanan he said unto him: 'Expound, O my master; it is becoming for you to expound; as you said, so have I seen.' He replied unto him: 'Raca, had you not seen, would not you have believed? You are [then] sneering at the words of the Sages!' He set his eyes on him and [the student] turned into a heap of bones.[32]

An objection was raised: And I will lead you komamiyuth,[33] R. Meir says: [it means] two hundred cubits; twice the height of Adam.[34] R. Judah says: A hundred cubits; corresponding to the [height of the] temple[35] and its walls. For it is said: We whose sons are as plants grown up in their youth; whose daughters are as corner-pillars carved after the fashion of the Temple.[36] R. Johanan speaks only of the ventilation windows.

Rabbah in the name of R. Johanan further stated: The Holy One, blessed be He, will make seven canopies for every righteous man; for it is said: And the Lord will create over the whole habitation of Mount Zion, and over her assemblies, a cloud of smoke by day, and the shining of a flaming fire by night; for over all the glory shall be a canopy.[37] This teaches that the Holy One, blessed be He, will make for everyone a canopy corresponding to his rank.[38] Why is smoke required in a canopy? — R. Hanina said: Because whosoever is niggardly towards the scholars in this world will have his eyes

filled with smoke in the world to come. Why is fire required in a canopy? — R. Hanina said: This teaches that each one will be burned by reason of [his envy of the superior] canopy of his friend. Alas, for such shame! Alas, for such reproach!

In a similar category is the following: And thou shalt put of thy honour upon him,[39] but not all thy honour. The elders of that generation said: The countenance of Moses was like that of the sun; the countenance of Joshua was like that of the moon.[40] Alas, for such shame! Alas for such reproach![41]

R. Hama b. Hanina said: The Holy One, blessed be He, made ten canopies for Adam in the garden of Eden; for it is said: Thou wast in Eden the garden of God; every precious stone [was thy covering, the cornelian, the topaz and the emerald, the beryl, the onyx and the jasper, the sapphire, the carbuncle and the emerald and gold][42] etc. Mar Zutra says: Eleven; for it is said: Every precious stone.[43] R. Johanan said: The least of all [these] was gold, since it is mentioned last. What is [implied] by the work of thy timbrels and holes?[44] — Rab Judah said in the name of Rab: The Holy One, blessed be He, said to Hiram, the King of Tyre. '[At the creation] I looked upon thee, [observing thy future arrogance][45] and created [therefore] the excretory organs of man'.[46] Others say: Thus said [the Holy One, blessed be He].' I looked upon thee

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(1) קניגיא, 'hunt', 'chase'.

(2) Job XL. 25.

(3) Ibid. v. 19. The text speaking of Behemoth is also applicable to Leviathan.

(4) Job XLI, 23.

(5) That of the foul breath.

(6) The sweet odours of the Garden of Eden perfume the sea.

(7) Ibid. 'Spiced broth', כמרקחה, Cf. Ex. XXX, 25,רקח מרקחת 'perfume compounded'.

(8) Job XLI, 24.

(9) Ibid.

(10) Cf. Aboth V. 24.

(11) Job XL, 30.

(12) כירה denominative of כרה root of יכרו the word used in the verse quoted.

(13) כרה.

(14) II Kings VI, 23.

(15) Heb. Talmide Hakamim, תלמידי חכמים lit.. 'disciples of the wise men', applied to scholars, distinguished students. Here taken to be synonymous with the righteous men mentioned previously.

(16) Cant. VIII, 13. The 'companions' are the Talmide Hakamim. The entire Song of Songs is regarded in Talmudic literature as an allegorical poem on God, Israel and the Torah. The gardens are the Colleges. the companions are the scholars. 'Haberim' חבריף companions in Cant. is taken to be equal יברים Habbarim in Job.

(17) Job XL. 30. Merchants כנענים

(18) So R.V. margin, reading Canaan. English versions render trafficker.

(19) Hos. XII. 8.

(20) כנעניה; absolute form, כנענים.

(21) Isa. XXIII, 8. (18) Job XL, 31.

(22) Ibid.

(23) Prov. I, 9.

(24) Job XL. 29. Bind, refers to a small object, such as an amulet, which one attaches (binds) to a string.

(25) Isa. LX, 3.

(26) Isa. LIV, 12. Kadkod, כדכד, E.V. 'Rubies.'

(27) Palestine, which is west of Babylon where the Babylonian Talmud was composed.

(28) כדין וכדין a play on the word כדכד.

(29) Ibid.

(30) To serve as entrances to the city.

(31) Lit., 'who sat and cut'.

(32) Cf. Ber. 58a, Shab. 34a, Sanh. 100a.
(33) Lev. XXVI, 13. Heb. קוממיות lit., upright. Here taken as the dual of קומה height.
(34) Heb. אדם הראשון 'Adam the first'. That is, the people will gain in stature to twice the height of Adam. His height, originally from earth to heaven or from one end of the earth to the other, was, after his sin, reduced to a hundred cubits. V. Hag. 22a.
(35) V. supra 3a. cf. Sanh. (Sonc. ed.) 100a.
(36) Ps. CXLIV, 22. How then, in view of their increase to a hundred cubits in height, necessitating correspondingly high gates, can R. Johanan say that the gates were only twenty in height?
(37) Isa. IV, 5.
(38) Lit., 'his honour, glory.'
(39) Num. XXVII, 20.
(40) Joshua's glory was inferior to that of Moses.
(41) That there should be so much deterioration in the course of one generation.
(42) Ezek, XXVIII, 13. The text speaks of Hiram, King of Tyre, who is tauntingly asked whether he could compare himself with Adam who had all these canopies. 'Every precious stone is not included in the number.
(43) Mar Zutra obtains the number eleven by including 'Every precious stone' in the list of materials used for making Adam's canopies.
(44) Ibid.
(45) Cf. Ezek. XXVIII, 2ff, Because thy heart is lifted up, and thou hast said: I am a God, etc.
(46) Lit., 'many holes' or 'orifices', created to curb human pride.

Talmud - Mas. Baba Bathra 75b

and decreed the penalty of death over Adam'.[1] What is implied by, and over her assemblies?[2] — Rabbah said in the name of R. Johanan: Jerusalem of the world to come will not be like Jerusalem of the present world. [To] Jerusalem of the present world, anyone who wishes goes up, but to that of the world to come only those invited[3] will go.

Rabbah in the name of R. Johanan further stated: The righteous will in time to come be called by the name of the Holy One, blessed be He; for it is said: Every one that is called by My name, and whom I have created for My glory. I have formed him, yea, I have made him.[4]

R. Samuel b. Nahmani said in the name of R. Johanan: Three were called by the name of the Holy One; blessed be He, and they are the following: The righteous, the Messiah and Jerusalem. [This may be inferred as regards] the righteous [from] what has just been said. [As regards] the Messiah — it is written: And this is the name whereby he shall be called, The Lord is our righteousness.[5] [As regards] Jerusalem — it is written: It[6] shall be eighteen thousand reeds round about; and the name of the city from that day shall be 'the Lord is there.'[7] Do not read, 'there' but 'its name'.[8]

R. Eleazar said: There will come a time when 'Holy' will be said before the righteous as it is said before the Holy One, blessed be He;[9] for it is said: And it shall come to pass, that he that is left in Zion, and he that remaineth in Jerusalem, 'shall be called Holy.[10]

Rabbah in the name of R. Johanan further stated: The Holy One, blessed be He, will in time to come lift up Jerusalem three parasangs high; for it is said: And she shall be lifted up, and be settled in her place.[11] 'In her place' means 'like her place'.[12] Whence is it proved that the space it occupied was three parasangs in extent? — Rabbah said: A certain old man told me, 'I saw ancient[13] Jerusalem and it occupied[14] [an area of] three parasangs'. And lest you should think the ascent will be painful, it is expressly stated: Who are these that fly as a cloud, and as the doves to their cotes.[15] R. Papa said: Hence it may be inferred that a cloud rises three parasangs. R. Hanina b. papa said: The Holy One, blessed be He, wished to give to Jerusalem a [definite] size; for it is said: Then said I 'Whither goest thou?' And he said unto me: 'To measure Jerusalem. to see what is the breadth

thereof and what is the length thereof'.[16] The ministering angels said before the Holy One, blessed be He, 'Lord of the Universe, many towns for the nations of the earth hast thou created in thy world, and thou didst not fix the measurement of their length or the measurement of their breadth, wilt thou fix a measurement for Jerusalem in the midst of which is Thy Name, Thy sanctuary and the righteous?' Thereupon, [an angel] said unto him: 'Run speak to this young man, saying: Jerusalem shall be inhabited without walls, for the multitude of men and cattle therein'.[17]

Resh Lakish said: The Holy One, blessed be He, will in time to come add to Jerusalem a thousand[18] gardens, a thousand[18] towers, a thousand[18] palaces and a thousand[18] mansions;[19] and each [of these] will be as big as Sepphoris in its prosperity. It has been taught: R. Jose said: I saw Sepphoris in its prosperity, and it contained a hundred and eighty thousand markets for pudding[20] dealers.

[It is written]: And the side chambers were one over another, three and thirty times.[21] What is meant by three and thirty times? — R. Levi in the name of R. Papi in the name of R. Joshua of Siknin[22] said: If [in time to come] there will be three Jerusalems,[23] each [building] will contain thirty dwellings one over the other; if there will be thirty Jerusalems, each [building] will contain three dwellings one over the other.

It has been stated: [In the case of a ship] — Rab said: [The buyer acquires legal ownership] as soon as he pulled [it],[24] however slightly; whereas Samuel said: He cannot become its legal owner until he has pulled its full length.[25]

Must it be said that [they[26] differ on the same principles] as the [following] Tannaim? [For we have learned:][27] How is [the acquisition] by mesirah?[28] If [the buyer][29] seizes [the animal] by its hoof, hair, the saddle or the saddle-bag upon it, the bit[30] in its mouth, or the bell on its neck, he acquires legal possession. How is [the acquisition] by meshikah?[31] If he calls it and it comes, or if he strikes it with a stick and it runs before him, he acquires legal ownership as soon as it has moved a foreleg and a hind leg.[32] R. Ahi, some say R. Aha, said: [Not] until it has moved the full length of its body.[33]

Must it be said that Rab follows[34] the first Tanna and Samuel follows R. Aha?[35] — Rab can tell you: What I have said [is valid] even according to R. Aha. For his statement ['until it moved etc.'] is applicable only to an animal,[36] which, though it has moved a foreleg and a hind leg, remains in the same place;[37] but [in the case of] a ship, when a small part of it moves the whole moves. And Samuel can say: What I have said [is valid] even according to the first Tanna. For his statement ['as soon as it has moved, etc.'] is applicable only to an animal;[36] for, since one foreleg and one hind leg have been moved, the other legs are on the point of being moved[38] but [in the case of a ship] if he pulls it all, he does [acquire possession]; otherwise, [he does] not.[39]

Must it be said that [they[40] differ on the same principles] as the following Tannaim? For it has been taught: A ship is legally acquired by meshikah. R. Nathan said: A ship and letters[41] are legally acquired by meshikah[42]

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(1) 'Timbrels and holes' are taken as an allusion to the grave.

(2) Isa. IV, 5.

(3) מקראיה (root קרא) may mean 'invited guests' as well as 'assemblies'.

(4) Ibid. XLIII, 7.

(5) Jer. XXIII, 6.

(6) Jerusalem.

(7) Ezek. XLVIII, 35.

(8) 'There', Heb. שמה (shemo) 'its name', Heb. שמה The consonants שמה are the same. The relevant text is

accordingly to be rendered: And as to the name of the city, from that day, 'The Lord' shall 'be its name.
(9) Cf. Isa. VI, 3. And one called unto another and said: Holy, holy, holy, is the Lord of Hosts,
(10) Isa. IV, 3.
(11) Zech. XIV, 10.
(12) Jerusalem will he lifted up to a height equal to the extent of the space it occupies.
(13) Lit., 'first'.
(14) Lit., 'it was'.
(15) Isa. LX, 8.
(16) Zech. II, 6.
(17) Ibid. 8.
(18) No satisfactory explanation of the peculiar words, טפף, קפל, ליצוי, שילה that occur in the text, seems to be available. Some regard them as numerical symbols: טפף= 169, קפל= 210, ליצוי = 146, שילה = 345. Others take them as corrupt Greek, or Persian terms, corresponding to those in Hebrew that follow them in the text.
(19) טוטפראות may be a corruption of טיטרפליות Gr. **, 'buildings with four gates', 'superior mansions.
(20) ציקי קדרה a dish made of various ingredients such as minced meats and spices mixed with wine.
(21) Ezek. XLI. 6.
(22) [Sogane, modern Suchnin in Galilee, N. of the Battoff plain. Klein, NB. p. 20 ff.]
(23) I.e., if Jerusalem of the time to come will be three times the size of the Present Jerusalem.
(24) Pulling, Heb. meshikah, משיכה is one of the modes of acquiring legal possession. It is performed by drawing the object towards oneself.
(25) The entire ship must be moved from its position. by the buyer, until its farther end touches the spot on which the nearer end had rested.
(26) Rab and Samuel.
(27) Cf. Kid., 22b.
(28) מסירה delivery or harnessing, is, like meshikah (p. 304, n .8), one of the modes of acquiring right of ownership. The buyer takes possession of the animal by performing some act which resembles harnessing or, in the case of other objects, by obtaining full delivery.
(29) At the request of the seller.
(30) פרומביא. Cf. Gr.**.
(31) V. p. 304. n. 8. Small cattle are usually taken possession of by meshikah, larger cattle by mesirah.
(32) Even if the animal has not completely shifted its position.
(33) The four legs must be moved from their position.
(34) In principle.
(35) if so, must Rab's and Samuel's views be regarded as opposed respectively to those of R. Aha and the other Tanna?
(36) Lit., 'living beings'.
(37) The body. resting on the other legs, does not move from its position.
(38) And, in law, are regarded as having already moved.
(39) Because the shifting of part of a ship does not lift the whole ship completely out of its place.
(40) Rab and Samuel.
(41) I.e., a bond, note of indebtedness.
(42) The buyer of the bond acquires legal right to the debt recorded thereon by the meshikah of the bond.

Talmud - Mas. Baba Bathra 76a

or by a bill of sale.[1] 'Letters'! Who mentioned them?[2] — Something is missing [in the statement of the first Tanna], and the following is the correct reading: A ship is acquired by meshikah, and letters by mesirah.[3] R. Nathan said: A ship and letters are acquired by meshikah and by a bill of sale. [But] why should a bill of sale be required in [the case of] a ship? [Surely] it is a movable object![4] But no,[5] the following is the correct reading: A ship is acquired by meshikah and letters by mesirah. R. Nathan said: A ship [is acquired] by meshikah, and letters by a bill of sale.[6] [Is not the statement of R. Nathan], 'a ship [is acquired] by meshikah', identical with that of the first Tanna?[7] [May we not then conclude that] they differ on the same principles as Rab and Samuel?[8] — No; [the views of]

both[9] are either like [those of] Rab or like [those of] Samuel; and in [the case of] a ship there is no dispute whatsoever between them. They differ only in [the case of] letters. And this is what R. Nathan said to the first Tanna: in [the case of] a ship I certainly agree with you;[10] but, as regards letters, if there is [also] a bill of sale he does [acquire the right to the debt]; otherwise, [he does] not.

And their dispute[11] is analogous to that of the following Tannaim.[12] For it has been taught: Letters may be acquired by mesirah,[13] these are the words of Rabbi. But the Sages say: Whether [the seller] has written [a bill of sale] but has not delivered [the bond],[14] or whether he has delivered [the bond] but has not written [a bill of sale], [the buyer] does not acquire possession until [the seller] has written [the bill of sale] and delivered [the bond].[15]

How has the matter been established? [That the first Tanna is] in agreement with Rabbi! Should not [then] a ship also be acquired by mesirah?[16] For it was taught: A ship is acquired by mesirah, these are the words of Rabbi. And the Sages say: It is not acquired

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(1) Mere delivery of the bond (mesirah) does not confer upon the buyer any right to the debt, but only to the scrap of paper (Tosef. Kid. I).

(2) The first Tanna only dealt with a ship; why then does R. Nathan introduce letters?

(3) Because meshikah is effective only in the case of an object of intrinsic value. The intrinsic value of a bond is only that of the paper which may be acquired by meshikah. The right to the debt, however, cannot be acquired except by 'mesirah.

(4) And movable objects, are acquired by meshikah alone.

(5) The reading just suggested cannot be the correct one.

(6) In addition to the delivery of the bond. V. 307, n. 2.

(7) Why then should R. Nathan make his statement at all?

(8) The first Tanna, like Samuel, requires full meshikah, viz., pulling the entire ship into a new position. R. Nathan, on the other hand, who obviously disputes this requirement, maintains, like Rab, that a slight pull is sufficient.

(9) R. Nathan and the first Tanna.

(10) That the right of ownership is acquired by meshikah either complete (according to Samuel) or slight (according to Rab).

(11) That of R. Nathan and the first Tanna.

(12) R. Nathan agrees with the Sages, and the first Tanna with Rabbi.

(13) V. Glos. The buyer acquires the right to the debt as soon as the bond is delivered to him.

(14) Even though the bill of sale had been delivered.

(15) The delivery also of the bill of sale is assumed (Kid. 47b).

(16) Why then does the first Tanna require meshikah?

until [the buyer] has pulled it,[1] or until he has hired the place it occupies![2] — This is no difficulty. [Rabbi] here [where mesirah is sufficient] refers to the case of a ship in public territory;[3] [the Tanna] there [where meshikah is required] deals with the case of a ship in an alley [adjoining a public place].[4]

How have you explained the last [mentioned Baraitha? That it speaks of a ship] in reshuth harabbim! Read [then] the last clause: 'And the sages say: It[5] is not acquired until [the buyer] has pulled it or until he has hired the place it occupies'. Now, if [the ship is] in reshuth harabbim, from whom could he hire [the place]? Furthermore, can legal ownership be acquired in reshuth harabbim by meshikah? Surely both Abaye and Raba stated:[6] Mesirah[7] confers legal ownership in reshuth harabbim[8] or in a court-yard which belongs to neither of them;[9] meshikah[10] confers ownership in an alley[11] or in a court-yard owned by both of them; and lifting[12] confers ownership everywhere![13] What is really the meaning of the expressions,[14] until [the buyer] has pulled it' and 'until he has

hired the place it occupies'? — [They mean] 'Until [the buyer] has pulled it]' out from the reshuth harabbim into an alley; and, if the place is the property of the owner,[15] he does not acquire ownership[16] 'until he has hired the place it occupies'.

Must it [then] be said that Abaye and Raba[17] follow Rabbi[18] [and not the Rabbis[19] who are the majority]? — R. Ashi said: If the [seller] told him,[20] 'Go, take possession and acquire', even [the Rabbis would say] so.[21] Here, however, we deal with a case when [the seller] said to him, 'Go, pull and acquire' — The Rabbis hold the opinion that [by this expression he] intimated his objection[22] [to any other mode of taking possession] and the other[23] holds the opinion that [by this][24] he was merely indicating to him a [suitable] place.[25]

R. Papa said: He who sells a bond to his friend must also give him in writing [the following statement]: 'Acquire it and all rights[26] contained therein'. R. Ashi said: When I quoted this law[27] in the presence of R. Kahana I said unto him: '[possession of the debt is acquired accordingly] only because he has written for him in this manner, but had he not so written, no possession would be acquired, — does one then require [a bond] to use as a stopple for his bottle?'[28] He said unto me: 'Yes, just[29] to use it as a stopple.'[30]

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(1) into his own grounds or domain.

(2) The place thus becomes his own territory and, thereby, acquires for him title to the ship.

(3) רשות הרבים, reshuth harabbim, where it is impossible to perform meshikah which is effective only when the object is drawn into the buyer's own domain. Possession, therefore, is acquired by mesirah.

(4) Since the alley is not a reshuth harabbim, in the full sense, the public using it only occasionally. It may be regarded as the private domain of anyone who happens to be there, and, therefore, meshikah only can there be effected (v. p. 3. n. 3).

(5) The ship.

(6) Infra 84b.

(7) V. Glos. It is applicable in the case of a ship or large cattle.

(8) Reshuth harabbim where meshikah cannot be performed.

(9) Neither to the buyer nor to the seller.

(10) V. Glos.

(11) An alley is regarded as the territory of anyone who happens to be in it. The buyer and the seller are, accordingly, its common owners. Mesirah is effective only in reshuth harabbim, but not in an alley which is the common territory of both parties. and where meshikah, the better legal mode of acquisition can be resorted to (v. H.M. 297.8).

(12) הגבהה hagbahah. Lifting up the object, like meshikah and mesirah, is one of the forms of acquiring legal possession.

(13) Cf. Kid. 23b. How then could the latter Baraitha speak of reshuth harabbim, and yet provide for the acquisition by meshikah.

(14) In the last mentioned Baraitha.

(15) I.e., the vendor.

(16) Either by meshikah or by mesirah.

(17) Who hold that ownership may be acquired in reshuth harabbim by mesirah.

(18) In the last mentioned Baraitha.

(19) Who hold that mesirah is not effective in reshuth harabbim since they require that the boat be pulled out from the public domain into an alley.

(20) The buyer.

(21) I.e., even the Rabbis would agree that possession is acquired in reshuth harabbim by mesirah.

(22) I.e., he indicated his desire to be able to withdraw from the sale so long as the buyer had not pulled and removed the object away from the reshuth harabbim into his own territory. Mesirah is, therefore, not effective.

(23) Rabbi.

(24) I.e., by saying. 'Pull'.

(25) The buyer, having acquired the ship by mesirah, is told by the other: 'You may remove (pull) it at once into your own grounds'.

(26) שעבודדא lit., ‘obligation’, ‘pledge’.
(27) שמעתא lit., ‘something heard’; usually a traditional law or decision.
(28) Lit., ‘to tie, or to wrap, round the mouth of his bottle or flask.’ Surely a bond is bought for the sake of the rights it contains; not for the purpose of being used as a mere scrap of paper.
(29) Lit., ‘to wrap and to wrap’.
(30) Consequently, if the price given is higher (by a sixth or more) then the actual value of the piece of paper, the buyer may recover his money by returning the bond to the seller.

Talmud - Mas. Baba Bathra 77a

Amemar said: The law is [according to Rabbi] that letters are acquired by mesirah.[1] R. Ashi said to Amemar: '[Is this] a tradition or a logical deduction?' He replied unto him: '[It is] a tradition.' R. Ashi said: This[2] may also be deduced logically, because letters[3] are words, and words cannot be acquired by means of [other] words.[4] And [can they] not? Surely Raba b. Isaac said in the name of Rab: There are two [kinds] of deeds. [If a person says],[5] 'take possession[6] of the field on behalf of X, and write for him the deed',[7] he may withdraw the deed[8] but not the field.[9] [If, however, he says, 'take possession of the field] on condition that you write for him the deed', he may withdraw[10] both the deed and the field. But R. Hiyya b. Abin says in the name of R. Huna: There are three kinds of deeds. Two have just been described. [And the] third[11] is one which the seller writes before [the sale],[12]

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(1) And there is no need to write, in addition, a bill of sale (v. Glos.).

(2) That a bond is acquired by mesirah only. and not by a bill of sale.

(3) I.e., a bond.

(4) I.e., a deed of sale.

(5) I.e., to witnesses.

(6) Possession of the field on behalf of a donee is obtained by the handing over of an object (e.g. a scarf) by the donor to witnesses. The transfer of the object symbolises the transfer of the gift.

(7) Confirming the donation.

(8) If the donor, after having given the instructions to the witnesses, desires to have no written confirmation of the gift. he may recall the deed at any time before it reaches the donee.

(9) Because the field had already passed into the legal ownership of the donee, from the moment the donor had handed over the 'symbolic' object to the witnesses.

(10) Because in this case he intimated his desire that the field shall become the property of the donee only after he had received the deed; and since the deed has not been delivered, both the field and the deed may be withdrawn at the discretion of the donor.

(11) Lit., 'another'.

(12) Being anxious to sell, and in order to expedite the transaction on obtaining the consent of the buyer, he requests a scribe to prepare the deed before he knows whether the person to whom he wishes to sell would consent to buy.

Talmud - Mas. Baba Bathra 77b

in accordance with the law we have learned [that] a deed may be written for the seller[1] though the buyer is not with him.[2] [In this case], as soon as [the buyer] takes possession of the ground he acquires [also] the deed, irrespective of the place in which it is kept.[3] And this accords with what we have learned, that movable property[4] may be acquired with landed property[5] by means of money,[6] deed[7] and possession![8] — [Acquiring a deed] on the basis [of land bought jointly with it] is different [from its independent acquisition]; for a coin which cannot be acquired by halifin[9] may [yet] be acquired by virtue of land [bought jointly with it]. As in the case of R. Papa.[10] He had a money claim of twelve thousand zuz at Be-Huzae.[11] He passed them over into the possession of R. Samuel b. Aha by virtue of his threshold.[12] When the latter came [back] he went out to meet him as far as Tauak.[13]

BUT HE DOES NOT SELL THE CREW, NOR THE PACKING BAGS, NOR THE STORES, ETC. What is the meaning of Enteke?[14] — R. Papa said: The merchandise which it contains.

MISHNAH. HE WHO SOLD A WAGGON HAS NOT SOLD THE MULES, HE WHO SOLD THE MULES HAS NOT SOLD THE WAGGON. HE WHO SOLD THE YOKE HAS NOT SOLD THE OXEN. HE WHO SOLD THE OXEN HAS NOT SOLD THE YOKE. R. JUDAH SAYS: THE PRICE INDICATES [WHAT IS TO BE INCLUDED IN THE SALE]. HOW? — [IF] HE SAID UNTO HIM: SELL ME YOUR YOKE FOR TWO HUNDRED ZUZ; IT IS OBVIOUS THAT A

YOKE [ALONE] IS NOT [SOLD] FOR TWO HUNDRED ZUZ. BUT THE SAGES SAY: THE PRICE IS NO PROOF.

GEMARA. R. Tahlifa the Palestinian[15] recited [a Baraitha] before R. Abbahu: He who sold the waggon has sold the mules. 'But surely', [the master said,] 'we learned: HE HAS NOT SOLD'! He said unto him: Shall I cancel it? He replied unto him: No; your teaching may be interpreted [as dealing with the case] when [the mules] were harnessed[16] to it.

HE WHO SOLD THE 'YOKE' HAS NOT SOLD THE OXEN, ETC. How is this to be understood? If it be said that [the Mishnah speaks of a place where] a yoke is called yoke and oxen [are called] oxen, [in this case] surely he sold him the yoke, but has not sold him the oxen[17] And if the oxen also are called 'yoke', all was [obviously] sold![18] — [The law in the Mishnah] is necessary [to be stated in order to provide] for a place where a yoke is called 'yoke' and oxen, oxen'; while there are also some who call the oxen [also] 'yoke'. [In such a case], R. Judah holds the opinion that the price indicates [what was the intention of the seller],[19] and the Rabbis [the Sages] hold the opinion [that] the price is no proof.[20]

But if the [excessive] price is no proof [that the oxen were included in the sale], the [return of the overcharge or the] cancellation of the [entire] purchase should follow![21]

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(1) Though the statement in the deed is seemingly untrue, since the buyer mentioned is only imaginary; yet, at the request of the seller, it may be written, because this involves no loss to anyone except possibly to the seller himself should he lose the deed and the person therein named should happen to find it.

(2) V. infra 167b.

(3) Since it was the intention of the seller to give the buyer possession of the deed the latter acquires it together with the land just as if he had performed meshikah with the deed itself.

(4) Lit., 'property which has no secure foundation', from which debtors cannot collect their debts.

(5) Lit., 'property which has a secure foundation, I.e., real estate which cannot be moved and is consequently always at the disposal of the creditor or anyone having a rightful claim to it.

(6) Paid for the land.

(7) Confirming the sale of the land.

(8) possession, by performing some kind of work on the estate, v. supra 42a. Now in view of the statement above that the deed is acquired irrespective of the place in which it is kept, how could Amemar and R. Ashi state that a deed can be acquired only by means of actual delivery?

(9) Lit., 'substitution'. One of the forms of possession consisting of a symbolical act: handing to the purchaser any object in substitution of the actual thing sold.

(10) [His home was at Naresh, S. of Sura.]

(11) [Modern Khuzistan, S. W. Persia, Obermeyer, p. 204 ff.]

(12) Thus the threshold and the debt were acquired by R. Samuel at the same time, empowering him (R. Samuel) to collect the debt as its legal owner, and freed the debtors of all responsibility from the moment they paid him over the money.

(13) [S. of Naresh, Obermeyer, p. 28.1 Showing his gratitude for the successful results of the mission. Cf. infra 150b.

(14) Gr.**, is the term used in the Mishnah, supra 731.

(15) Lit., 'son of the West'.

(16) To the waggon at the time the sale took place, while our Mishnah deals with the case when they were not attached to it.

(17) Why. then, does R. Judah say that the sale is dependent on the price?

(18) Why do the Sages say that the price is no proof?

(19) Since the seller has asked for a high price, he must be one of those who describe the oxen also as 'yoke'.

(20) There is doubt as to whether the seller intended to include the oxen in the sale of the yoke, and in such a case the possessor is entitled to the benefit of the doubt. The buyer, therefore, cannot lay claim to the oxen.

(21) I.e., if the difference between the actual cost and the price given is a sixth of the value, the overcharge should be

returned; if more than a sixth, the whole transaction should be cancelled.

Talmud - Mas. Baba Bathra 78a

And should you reply that the Rabbis do not accept [the law of the return of overcharge or that of] the cancellation of the purchase,[1] surely.[2] have we not learnt: R. Judah says: 'In the case of the sale of a scroll of the Law, a beast or a pearl, [the law of] overcharging does not apply.[3] But they[4] said unto him: Only [about] those [mentioned above][5] has [this][6] been said.'?[7] — What is the meaning of [the statement that] the price is no proof? That the [entire] sale is to be cancelled.[8] If you prefer, I would say: The Rabbis apply [the laws of] overcharging and cancellation of sale [only in cases] where one is likely[9] to be deceived,[10] but not when one is unlikely to be deceived,[11] [for in the latter case] it may be assumed that [the difference] was given as a gift. MISHNAH. HE WHO SELLS AN ASS HAS NOT SOLD ITS EQUIPMENT.[12] NAHUM THE MEDE SAYS: HE HAS SOLD ITS EQUIPMENT.[13] R. JUDAH SAYS: SOMETIMES IT IS SOLD, SOMETIMES IT IS NOT SOLD. HOW SO? IF THE ASS WITH ITS EQUIPMENT UPON IT STOOD BEFORE HIM AND HE [THE BUYER] SAID UNTO HIM: 'SELL ME THIS ASS[13] OF YOURS, THEN ITS EQUIPMENT IS SOLD. [IF, HOWEVER, HE SAID]: 'IS THE ASS YOURS? [SELL IT TO ME].'[14] ITS EQUIPMENT IS NOT SOLD.

GEMARA. 'Ulla said: The dispute [between the first Tanna and Nahum the Mede is only] about the sack, the saddle-bag,[15] and pallet.[16] For the first Tanna is of the opinion that an ass is, as a rule, used for riding,[17] and Nahum the Mede is of the opinion that an' ass is, as a rule, used for carrying burdens;[18] but [in the case of the] saddle, pack-saddle, cover[19] and saddle-belt both agree[20] that these are included in the sale.

An objection was raised: [It has been taught: If one says to another] 'I sell you the ass and its equipment', he has sold him the saddle, the pack.saddle. the cover and the saddle-belt, but he has not sold the sack, the saddle-bag and the pallet; if, however, he said unto him, '[I sell you] it [the ass] and all that is upon it', then all these are included in the sale. [From this follows that] the reason why [the buyer] acquires possession of the saddle and the pack. saddle is that [the seller] said '[I sell] it and its equipment', but if he had not said so, [the buyer would] not [have acquired these]?[21] No! The law that the saddle and the pack-saddle are included in the sale is applicable even though [the seller] did not say unto him '[I sell you the] ass and its equipment'; but [by the inclusion of the statement][22] he teaches us that although [the seller] said unto him: '[I sell you] the ass and its equipment's he [the buyer] does not acquire the sack, the saddle-bag and the pallet.[23]

What is kumni?[24] — R. Papa b. Samuel said: A [mattress] seat[25] for travelling women.

The students inquired: Is the dispute [between the first Tanna and Nahum the Mede] in the case when [the sack and saddle-bag] are upon it,[26] but when these are not upon it, Nahum the Mede agrees with the Rabbis,[27] or is the dispute in the case when these are not upon it, but when they are upon it, the Rabbis agree with Nahum?[28]

Come and hear: [It is stated in the above Baraitha:] But when he said unto him, '[I sell you] it and all that is upon it', then all these are sold. Now, this would be correct if it were assumed that the dispute [related to the case] when they[29] are upon it;[30] [since] this [Baraitha] could be assigned to the Rabbis.[31] If, however, it is assumed that the dispute [relates to the case] when they[32] are not upon it,[33] but that [in case] they are upon it both agree that they are [implicitly] included in the sale, to whom [could] this [Baraitha be assigned]?[34] — It may still be said that the dispute relates to the case when they are not upon it, and the Baraitha may be assigned to the Rabbis, but read: If, however, he said unto him, 'it and all that ought[35] to be on it'.

Come and hear: R. JUDAH SAYS: SOMETIMES IT IS SOLD, SOMETIMES IT IS NOT SOLD. Now, does not R. Judah presumably base his statement on what the first Tanna has said? [And since R. Judah specifically[36] deals with the case when the equipment is upon the ass, the first Tanna must also be speaking of a similar case!][37] — No; R. Judah

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(1) I.e., if it is assumed that the Rabbis do not require the return of the overcharge when it is a sixth of the value, and the cancellation of the entire transaction when the overcharge is more.

(2) Lit., 'and not? surely'.

(3) I.e., the buyer can claim no redress for being overcharged.

(4) The Rabbis.

(5) Those mentioned in the first part of the Mishnah in B.M. 56a.

(6) I.e:, the law of exemption from overcharging.

(7) B.M. 56b. But in all other cases, according to the Rabbis, either the overcharge must be returned or the entire transaction cancelled. Why then do the Rabbis say here that the price is no proof implying that the sale is valid and that no overcharge is to be returned?

(8) Where the overcharging was higher than a sixth of the price; where it was less, only the overcharge would have to be returned.

(9) When the overcharge is only small.

(10) Lit., 'when the mind might err'.

(11) As in our Mishnah, no one could be deceived into giving two hundred zuz for a yoke worth only a fraction of such a large sum.

(12) The Gemara explains the reason.

(13) As it is, i.e., with its equipment.

(14) In this case he offered to buy the ass only.

(15) דיסקיא, doubled pouched bag.

(16) כומני perhaps from Gr. pallet-bed. V. the Talmudic explanation, infra.

(17) I.e., by males; and since a sack, saddle-bag and pallet are not required by men-riders, these are not included in the sale of the ass.

(18) The sack, etc., which are required for an ass carrying burdens, are, therefore, also included in the sale.

(19) קילקלי, coarse cloth made of Cilician goats' hair, worn on the animal's back.

(20) Lit., 'the words of all', i.e., the first Tanna and Nahum the Mede.

(21) How, then, can 'Ulla say that both the first Tanna and Nahum the Mede agree that these parts of the equipment are always implicitly included in the sale of the ass?

(22) '(I sell you) it and its equipment'.

(23) In accordance with the opinion of the first Tanna in our Mishnah.

(24) V. p. 313. n. 5,

(25) מרכרתא usually chariot.

(26) I.e., upon the ass at the time of the sale.

(27) That these are not included in the sale.

(28) That these are included in the sale.

(29) I.e., the saddle and the saddle-bag.

(30) The ass.

(31) Who stated that unless 'it and all upon it' was expressly mentioned, the equipment is not included in the sale.

(32) V. n. 8.

(33) V. n. 9.

(34) Neither to the Rabbis nor to Nahum the Mede, since both have been assumed to agree that in the case when the saddle etc. were upon the ass they are implicitly included in the sale, while according to the Baraitha these are not included unless 'it and all upon it', had been explicitly stated at the time of the sale.

(35) The Baraitha accordingly relates to the case when the saddle etc. were not upon the ass.

(36) V. the last clause of the Mishnah.

(37) How then could it be said that the dispute in the Mishnah relates to the case when the equipment is not upon the ass?

speaks of a different case.[1]

Rabina said to R. Ashi: Come and hear! [We learnt:] He who sold a waggon has not sold the mules.[2] And R. Tahlifa the Palestinian recited in the presence of R. Abbahu: He who sold the waggon has sold the mules; and [the master] said unto him: Surely we have learned that he has not sold! And he replied. Shall I cancel it? And [the master] said to him: No; your teaching may be interpreted [as dealing with the case] where [the mules] were harnessed to it. From this it must be inferred that the Mishnah [speaks of the case] where [the mules] are not harnessed [to the waggon]; and since the first part[2] [is concerned with the case] when they are absent from it,[3] the latter part[4] also [must be dealing with the case] when they[5] are absent from it![6] — On the contrary, consider the [very] first part [which reads]: But he does not sell the crew nor the Enteke;[7] and it has been stated: What is the meaning of Enteke? R. Papa said: The merchandise which it contains.[8] Now, since the first part [deals with the case] when it [the merchandise] is in it [the ship], the latter part[9] also [must deal with a similar case, which is] when it [the equipment] is upon it [the ass]![10] But [the only way out of the difficulty is to conclude that] the Tanna dealt with different cases in the different parts of the Mishnah.[11]

(Mnemonic Zegem Nesen.)[12]

Abaye said: R. Eliezer and R. Simeon b. Gamaliel and R. Meir and R. Nathan and Symmachus and Nahum the Mede are all of the opinion that when a man sells an object he sells it and all its accessories. [As to] R. Eliezer, we learnt: R. Eliezer says: He who sells the building of an olive-press has also sold the beam. [As to] R. Simeon b. Gamaliel, we learnt:[13] R. Simeon b. Gamaliel says: He who sells a town has also sold the Santer.[14] [As to] R. Meir, it has been taught: R. Meir says: He who sells a vineyard has sold the vineyard tools. [As to] R. Nathan and Symmachus, [the case of] the small boat and the fishing boat.[15] Nahum the Mede, in the case just mentioned.[16]

R. JUDAH SAYS: SOMETIMES IT IS SOLD, etc. What is the difference between THIS ASS OF YOURS and IS THE ASS YOURS? — Raba said: [When the buyer used the expression,] THIS ASS OF YOURS, he was aware that the ass was his,[17] and the reason, therefore, why he said unto him, 'THIS',[18] [must have been] on account of its equipment. [But when he asked], 'IS THE ASS YOURS?' [he did so] because he was not aware that the ass was his, and this was [the implication of] his inquiry: 'is the ass yours? Sell it to me.'[19]

MISHNAH. HE WHO SOLD AN ASS HAS [ALSO] SOLD[20] [ITS] FOAL. HE WHO SOLD A COW HAS NOT SOLD ITS CALF [ALSO]. HE WHO SOLD A DUNGHILL HAS [ALSO] SOLD THE MANURE IN IT. HE WHO SOLD A CISTERN HAS [ALSO] SOLD ITS WATER. HE WHO SOLD A BEE-HIVE HAS [ALSO] SOLD THE BEES. HE WHO SOLD A DOVE-COTE HAS [ALSO] SOLD THE DOVES.

GEMARA. Of what case [does the first part of the Mishnah speak]? If [it is] that the [seller] said unto him, '[I sell you] it and its young', then even [in the case of the] cow and its young the same [law should apply].[21] If, [however], he did not specify, 'it and its young', [then] even [in the case of the] ass also [the foal should] not [be included in the sale]? — R. Papa answered: [The Mishnah speaks of a case] where [the seller] said unto him, 'I sell you a milch-ass or a milch-cow'. [Consequently in the case of the] cow, it may properly be assumed [that the seller[22] thought the buyer] would require the cow for the sake of its milk, but [in the case of an] ass, what could he have meant [by mentioning 'milch']?[23] It must [therefore] be concluded that he [meant] to say, '[I sell you] it [the cow] and its calf'. Why is [the foal] called Sayyah?[24] Because it follows gentle talk.[25]

R. Samuel b. Nahman said in the name of R. Johanan:[26] What is the meaning of the verse: Wherefore hamoshelim [they that speak in parables] say, etc.?[27] — Hamoshelim,[28] [means] those who rule their evil inclinations. Come Heshbon,[29] [means,] come, let us consider the account of the world; the loss incurred by the fulfilment of a precept against the reward secured by its observance, and the gain gotten by a transgression against the loss it involves.[30] Thou shalt be built and thou shalt be established[31] — if thou dost so, thou shalt be built in this world and thou shalt be established in the world to come. 'Ayyar Sihon:[32] if a man makes himself like a young ass that follows the gentle talk [of sin]; what comes next?[33] For a fire goes out Meheshbon[34] etc.: A fire will go out from those who calculate [the account of the world][35] and consume those who do not calculate.[36] And a flame from the city of Sihon[37] : From the city of the righteous who are called trees.[38] It has devoured 'Ar Mo'ab[39] : This refers to one who follows his evil inclination like a young ass[40] that follows gentle talk.[41] The high places of Arnon,[42] refers to the arrogant; for it has been said: Whosoever is arrogant falls into Gehenna.[43] Wanniram[44] — the wicked says: There is no High One;[45] Heshbon is perished[45] — the account of the world is perished.[46] Unto Dibon — the Holy One, blessed be He, said: 'Wait until judgment cometh';[47] and we have laid waste

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(1) While the dispute between the first Tanna and Nahum the Mede may still relate to the case when the ass does not wear its equipment and both of them may be in agreement in the case when the ass does wear it, R. Judah may yet differ from them and hold that the equipment. even if worn by the ass, is sometimes not included in the sale.

(2) V. Mishnah, supra 77b.

(3) I.e., the mules are not attached to the waggon.

(4) The Mishnah, supra 78a, dealing with the case of an ass and its equipment.

(5) The saddle and packsaddle.

(6) The ass; which solves the query of the students.

(7) The Mishnah, supra 731.

(8) Supra 77b.

(9) The Mishnah, supra 78a.

(10) But this assumption is in direct contradiction to the previous assumption; which is impossible!

(11) מלי מלי, 'words, words'.

(12) This mnemonic is an aid to the memorization of the names of the Rabbis mentioned in the following passage: Z =Eliezer, G = b. Gamaliel, M =Meir, N=Nathan, S =Symmachus, N = Nahum.

(13) Supra 67b.

(14) Supra p. 270.

(15) Supra 73a.

(16) In the Mishnah, supra 78a.

(17) The seller's.

(18) Heb. זו, implies the ass as it stands, viz., with all its equipment.

(19) Here, no emphasis was laid on 'this ass' (cf. previous note). The equipment therefore is excluded from the sale.

(20) Throughout this Mishnah 'also sold' means, 'sold implicitly at the same time'.

(21) I.e., that the calf should he sold implicitly together with the cow.

(22) Who mentioned 'milch'.

(23) Surely an ass is not required for milk.

(24) סיח, is the term used in the Mishnah for 'foal'.

(25) From the root סיח = שיח, talk; i.e., the gentle (lit.. the beautiful), the persuasive words of its driver. An older ass must be driven by force.

(26) [Some texts read, R. Samuel b. Nahmani in the name of R. Jonathan.]

(27) Num. XXI, 27.

(28) The Heb. root משך, means 'to speak in parables' and also 'to rule', 'to master'.

(29) Ibid. חשבון is rendered reckoning' from חשה.

(30) Cf. Aboth, II, 2.

(31) Ibid. תבנה ותכונן, may be taken as second person singular masc. (as interpreted here) as well as third pers.

sing. fem. (as E.V.).
(32) Ibid. סיחון punctuated as in M.T. gives the meaning 'city of Sihon'. But it may also be punctuated עיר סיחון (ayar sihon) in accordance with the interpretation here given. עיר 'young ass'; סיחון of the same root as סיחה 'talk'.
(33) Lit., 'what is written after it'.
(34) Ibid. v. 28. Heb. מחשבון may mean 'from the city of Heshbon' (as E.V.). and may also be taken as coming from the root חשב, 'to reckon', 'to consider', V. p. 317, n. 9.
(35) Viz., The righteous, v. supra.
(36) The wicked.
(37) Ibid.
(38) סיחון is taken to mean trees, שיחין The righteous are compared to trees. Cf. Ps. XCII, 13; Zech. I, 8, 10, 11. and Sanh. 93a.
(39) Ibid.
(40) ער, taken to have the same meaning as עיר 'young ass', 'foal'.
(41) Allows himself to be enticed by the attractions of sin.
(42) Ibid. Heb. בעלי במות, is rendered men of haughtiness.
(43) Supra 10b. A.Z. 18b.
(44) Ibid. v. 30. ונירם E.V. 'we shot at them'. Here taken as an abbreviation of אין רם no High One'.
(45) Ibid.
(46) There will be no day of judgment.
(47) Heb. דיבון. (E.V. Dibon) is taken as an abbreviation of יבא דין.

Talmud - Mas. Baba Bathra 79a

even unto Nophah,[1] — until there comes a fire which requires no fanning;[2] unto Medebah[3] — until it will melt their souls.[4] Others interpret: Until He had accomplished what he desired[5] [to do to the wicked].

Rab Judah said in the name of Rab: Whosoever departs from the words of the Torah is consumed by fire; for it is said: And I will set my face against them; out of the fire[6] are they come forth[7] and the fire shall devour them.[8] When R. Dimi came[9] he said in the name of R. Jonathan: Whosoever departs from the words of the Torah falls into Gehenna, for it is said: The man that strayeth out of the way of understanding shall rest in the congregation of the shades;[10] and the shades must be synonymous with Gehenna for it is said: But he knoweth not that the shades are there, that her guests are in the depths of Sheol.[11]

HE WHO SOLD A DUNGHILL HAS [ALSO] SOLD THE MANURE IN IT, etc. We learnt elsewhere:[12] [In the case of] all [objects which are] suitable for the altar and not for the Temple repair,[13] [or] for Temple repair and not for the altar[14] [and also in the case of those which are suitable] neither for the altar nor for Temple repair.[15] they and their contents are subject to the law of Me'ilah.[16] How so? [If] one dedicated a cistern full of water, dunghills full of manure, a dove-cote full of doves, a field full of herbs [or] a tree bearing fruit, the law of Me'ilah is applicable both to them and to their contents. [If,] however, one dedicated a cistern which was subsequently[17] filled with water, a dunghill which was subsequently filled with manure, a dove-cote, which was subsequently filled with doves, a tree which subsequently began to bear fruit [or] a field which was subsequently filled with herbs, [in all these cases] the law of Me'ilah is applicable to the objects but not to their contents. These are the words of R. Judah. R. Jose says: If fields or trees are dedicated,[18] they and their products are subject to the law of Me'ilah, because [the latter] are the growths of consecrated property.

It has been taught: Rabbi said: The opinion of R. Judah is acceptable in [the case of] a cistern and a dove-cote,[19] and the opinion of R. Jose in [the case of] a field and a tree. How [do you understand]

that?[20] It is quite correct [for Rabbi to say that] 'the opinion of R. Judah is acceptable in [the case of] a cistern and a dove-cote' and thus to imply that he disagrees with him in [the case of] a field and a tree;[21] but [as regards the expression], 'the opinion of R. Jose is acceptable in [the case of] a field and a tree', which implies that he[22] disagrees [with him in [the case of] a cistern and a dove-cote, surely R. Jose speaks [only] of a field and a tree![23] And if you would reply that [R. Jose] argues in accordance with the views of R. Judah[24] [and that he himself is in entire disagreement with them],[25] surely it has been taught: R. Jose said: I do not accept R. Judah's views on a field and a tree, because these[26] are the products of consecrated objects. [This clearly proves that] only in the case of field and tree he[27] does not accept,[28] but in [the case of] cistern and dove-cote he does accept![29] — This [is what Rabbi implied: The opinion of R. Judah is acceptable to R. Jose in [the case of] a cistern and a dove-cote, because even R. Jose disagreed with him only on field and tree, but on cistern and dovecote he agrees with him.

Our Rabbis taught: If one dedicated them[30] empty, and subsequently they were filled, the law of Me'ilah is applicable to them but not to their contents. R. Eleazar b. Simeon says: The law of Me'ilah is applicable to their contents also.

Said Rabbah: The dispute[31] has reference to field and tree, for the first Tanna holds the same opinion as R. Judah, and R. Eleazar b. Simeon is of the same opinion as R. Jose; but in [the case of] cistern and dove-cote, both[32] agree that the law of Me'ilah applies to them and not to their contents. Abaye said unto him: But surely it has been taught:[33] If one dedicated them when full, Me'ilah is applicable to them and to their contents, and R. Eleazar b. Simeon reverses [his previous view].[34]

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(1) Ibid.

(2) Nophah. root נפה, 'blowing'.

(3) Ibid.

(4) I. e., the souls of the wicked. מידבא, is here derived from the root דאב, 'to melt'.

(5) עד מידבא, is regarded as a contraction of א [י] מ [א] י דבע [עבד] ע ד 'until he had done what he wanted'. ['Aleph and 'Ayin are interchangeable].

(6) Fire is symbolic of the Torah. Cf. Jer. XXIII. 29 and Deut. XXXIII, 2.

(7) They have departed from the words of the Torah which is compared to fire.

(8) Ezek. XV, 7.

(9) From Palestine to Babylonia.

(10) Prov. XXI, 16.

(11) Ibid. IX, 18. She'ol = Gehenna, is a parallelism of Refaim = Shades.

(12) Me'il. 13a.

(13) E.g., unblemished cattle, flour or wine.

(14) E.g.. gold, silver or precious stones.

(15) E.g., milk, cheese or herbs which can only be sold and their proceeds used for the Temple or altar purposes.

(16) מעילה, (from root מעל 'to trespass' or 'to defraud'). The trespass offering prescribed for the inappropriate use of objects consecrated to the altar or Temple; v. Lev. v. 15ff,

(17) After the dedication.

(18) Lit., 'he who dedicates the field or the tree'.

(19) Viz., the opinion that if these were filled subsequent to the dedication, their contents are not subject to the laws of Me'ilah.

(20) Rabbi's statement.

(21) Since R. Judah speaks not only of a cistern and a dove-cote but also of a field and a tree.

(22) Rabbi.

(23) But in the case of a cistern and a dove-cote R. Jose agrees with R. Judah! Rabbi's statement, therefore, should have read, either 'the opinion of R. Jose is acceptable' or 'the law is according to R. Jose'.

(24) Demanding his agreement at least on field and tree.

(25) I.e., as far as R. Jose himself is concerned he not only disputes R. Judah's opinion in the case of field and tree hut

also in that of cistern and dove-cote. And, consequently, Rabbi's expression regarding R. Jose would also be correct.

(26) I.e., the herbs and the fruit that grew after the dedication.

(27) R. Jose.

(28) The views of R. Judah.

(29) The views of R. Judah. How then, as previously asked, could Rabbi use the expression, 'the opinion of R. Jose is acceptable etc?'.

(30) The Gemara will explain what objects the pronoun represents.

(31) In this last quoted Baraitha.

(32) Lit., 'The words of all'.

(33) What follows is a continuation of the Baraitha just quoted and discussed.

(34) Though, if dedicated when empty. he subjects the contents (that were added later) to the law of Me'ilah; if dedicated when full, he exempts the contents from this law.

Talmud - Mas. Baba Bathra 79b

Now, if [the dispute has reference] to field and tree,[1] why does he reverse [his view]?[2] Consequently[3] Rabbah said: The dispute[4] [has reference] to cistern and dove-cote, but [in the case of] field and tree both agree that they and their contents are subject to the law of Me'ilah. On what principle do they[5] differ when the cistern and dove-cote are empty, and on what principle do they differ when the cistern and dove-cote are full? — When [the cistern and dove-cote are] empty, the dispute is analogous to that of R. Meir and the Rabbis. For the first Tanna is of the same opinion as the Rabbis who said no one can hand over possession of a thing that does not exist,[6] while R. Eleazar b. Simeon is of the same opinion as R. Meir who said[7] that one can hand over possession of a thing that does not exist.[8] [But] say! where has R. Meir been heard [to express his view? Only in the case], for example, as that of fruits of a palm-tree, because they generally come up, but [as to] these,[9] who can assert that they will come?[10] — Raba said: It is possible[11] when water runs through his [own] courtyard into the cistern and when doves come through his dove-cote into the [dedicated] dove-cote. And in what case do they differ when [the cistern and dove-cote are] full? — Raba said: For example. when he dedicated a cistern without mentioning its contents; and R. Eleazar b. Simeon holds the same opinion as his father who said: We may infer the law concerning sacred property from the ordinary law.[12] As [in the case of] ordinary[13] law one can Say: 'I sold you a cistern, I did not sell you water so [in the case of] the law concerning sacred things [one can say]: 'I dedicated the cistern, I did not dedicate the water'.[14] But [can it be said that in] the ordinary law [the water is] not [implicitly sold]? Surely we learnt: He who sold a cistern has also sold its water![15] Raba replied: This Mishnah represents an individual opinion;[16] for it has been taught: He who sold a cistern has not sold its water. R. Nathan said: He who sold a cistern has sold its water.

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(1) Since the first part of the Baraitha speaks of field and tree, the second part obviously speaks of the same objects.

(2) If he subjects to Me'ilah contents that were added after the dedication, how much more should he subject to Me'ilah the contents that were already there at the time of the dedication!

(3) Lit., 'but'.

(4) Between R. Eleazar b. Simeon and the first Tanna.

(5) R. Eleazar and the first Tanna.

(6) Lit., 'that has not come to the world'. Consequently the doves and the water, being non-existent at the time of the dedication, are not regarded as the property of the sanctuary, and the appropriation of them involves no trespass offering.

(7) Cf. infra 127b, 131a, 157b; Yeb. 39a; Kid. 62b, 78b; Git. 23b, 42b; B.M., 16b, 33b.

(8) V. supra n. 9.

(9) Water and doves.

(10) Unless he is himself to bring water to the cistern and doves to the cote. In such a case R. Meir will agree that one cannot hand over possession of a thing that does not exist and affords thus no support to R. Eleazar.

(11) To make such an assertion.

(12) V. supra 72a.

(13) As opposed to sacred or divine.

(14) And therefore he holds that where there was water in the cistern the water is not included in the dedication.

(15) Supra 78b.

(16) The opinion of R. Nathan who is in opposition to the accepted opinion expressed in the first clause of the following Baraitha.

Talmud - Mas. Baba Bathra 80a

MISHNAH. ONE WHO BUYS OF ANOTHER THE [ANNUAL] ISSUE OF A DOVE-COTE MUST ALLOW THE FIRST BROOD[1] TO FLY [WITH THEIR DAM].[2] [IF HE BUYS THE ANNUAL] ISSUE OF A BEEHIVE, HE TAKES [THE FIRST] THREE SWARMS; AND [THE SELLER MAY THEN] EMASCULATE [THOSE REMAINING].[3] [IF HE BUYS] HONEY-COMBS, HE MUST LEAVE TWO COMBS.[4] [IF HE BUYS] OLIVE-TREES FOR FELLING, HE MUST LEAVE TWO SHOOTS.[5]

GEMARA. Has it not been taught [that the buyer must leave the] first, and the second brood?[6] — R. Kahana replied: One for itself [the first brood]. one for the dam.[7] But if [it is assumed that the] mother dove will be attached to the daughter dove and to the mate left with it, [let it equally be assumed that] the daughter dove also will be attached to its mother dove and to the mate left with it![8] — A mother is [always] attached to a daughter, but not so a daughter to a mother.

[IF HE BUYS] THE [ANNUAL] ISSUE OF A BEEHIVE, HE TAKES [THE FIRST] THREE SWARMS; AND [THE SELLER MAY THEN] EMASCULATE [THOSE REMAINING]. Wherewith does he emasculate them? — Rab Judah said in the name of Samuel: With mustard. In Palestine it has been stated, in the name of R. Jose b. Hanina: It is not the mustard that emasculates them but the excessive quantities of honey, which the bitterness in their mouths [caused by the mustard], makes them consume.[9] R. Johanan said: [The buyer] takes the three swarms alternately.[10] In a Baraitha it has been taught: [The buyer] takes three swarms consecutively and after that he takes them alternately.[11]

[IF HE BUYS] HONEY-COMBS, HE MUST LEAVE TWO COMBS etc. R. Kahana said: Honey in a beehive never loses the designation of 'food'.[12] This proves that he is of the opinion that no intention[13] is required. An objection was raised: [It has been taught]: Honey in a beehive is neither [regarded[14] as] 'food' nor [as] 'drink'! — Abaye replied: This[15] referred only to those two combs.[16] Raba said: This[15] is [in accordance with] R. Eliezer

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(1) The first pair of young doves born after the sale.

(2) I.e., to remain in the cote; because sellers do not include in sales the first brood which is required to serve as an attraction for their dam which, in the absence of its young, might altogether quit the cote.

(3) To prevent them from any further breeding, and thus to enable them to give themselves up entirely to the production of honey.

(4) To provide nourishment for the remaining bees during their hibernation.

(5) To provide for the future propagation of the olives.

(6) Why then is it stated in our Mishnah that the first brood only is to be left?

(7) The first brood is left as company for the dam. The second brood, viz. the first pair of young doves bred by the first brood, must be left as company for the first brood. R. Kahana explains that the Baraitha speaks of the two broods, the Mishnah of the first only.

(8) Why then is it required to leave a pair of the second issue as company for the first?

(9) The surfeit deprives them of the power of propagation and consequently their entire energies are centred on the production of honey.

(10) The first, third and fifth. The others belong to the seller. The yearly swarms deteriorate as the year advances and by this arrangement the respective shares of buyer and seller are equitably distributed.

(11) Lit., ‘he takes one and leaves one’.
(12) As regards its subjection to the laws of Levitical defilement (v. Lev. XI, 34). The quantities equal to the contents of one and a half and one egg are Prescribed as minimums for ‘food’ and ‘drink’ respectively to transfer levitical impurity [v. Maim. Yad. Tum'ath Oklin, IV, 1-3].
(13) I.e., whether the owner intended the honey to be used as food or has not thought about it at all, it is always regarded as ‘food’.
(14) V. supra n. 2.
(15) The Baraitha.
(16) Which are left in the beehive to nourish the bees during the winter. They therefore are not considered human ‘food’.

Talmud - Mas. Baba Bathra 80b

. For we learnt: As to beehive, R. Eliezer said: It is regarded as landed property,[1] a prosbul[2] may be written on the basis of it,[3] and it is not subject to the laws of Levitical defilement, while in situ,[4] and he who takes [honey] out of it on the Sabbath is under the obligation of [bringing] a sin-offering. But the Sages say: A prosbul may not be written on the basis of it, it is not regarded as landed property, it is subject to the laws of Levitical defilement in situ, and he who takes [honey] out of it on the Sabbath is absolved.[5] R. Eleazar said: What is the reason of R. Eliezer? For it is written: And he dipped it in the honeycomb [Ya'rath][6] ; what is therein common between a forest and honey? But [the verse] tells you that, as [in the case of a] forest he who plucks from it on the Sabbath incurs the obligation of a sin-offering so, [in the case of] honey, he who takes some of it [from the beehive] on the Sabbath incurs the obligation of a sin offering.

An objection was raised:[7] [It has been taught:] Honey that flows from one's beehive is [as regards Levitical defilement] neither food nor drink. This is quite correct according to Abaye;[8] but according to Raba there is a difficulty![9] — R. Zebid replied: [The Baraitha may speak of a case such as] for instance, when the [honey] flowed into an objectionable vessel.[10] R. Aha b. Jacob said: [It may deal with such a case] as when [the honey] flowed upon chips.[11]

An objection was raised:[12] [It has been taught]: Honey in one's beehive is neither food nor drink.[13] [If, however, the owner] intended [to use] it as food, it is subject to [the laws of the Levitical] defilement of food; [if] as drink, it is subject to [the laws of Levitical] defilement of drink. This is quite correct according to Abaye.[14] but according to Raba there is a difficulty![15] — Raba can tell you: Explain thus: [If] he intended [to use it] as food it does not become subject to [the laws of Levitical] defilement of food [and if] as drink, it does not become subject to [the laws of Levitical] defilement of drink.[16] The following Baraitha is in agreement with R. Kahana's opinion: Honey in a beehive is subject to [the laws of Levitical] defilement [even if] there was no intention [to use it for human consumption].[17]

[IF HE BUYS] OLIVE TREES FOR FELLING, HE MUST LEAVE TWO SHOOTS. Our Rabbis have taught: He who buys a tree from his friend for felling, shall leave the height of a handbreadth from the ground,[18] and cut it. [If] a virgin[19] sycamore [the cut must be made at no less a height than] three handbreadths. If a sycamore trunk[20] , two handbreadths. In [the case of] reeds and vines, [the cut is to be made] from the knot and above it. In [the case of] palm trees and cedars he may dig and take them out with the roots, because their stumps do not grow afresh.[21]

Does a virgin sycamore require [as high a stump as] three handbreadths? What about the contradiction [from the following]: A virgin sycamore must not be cut in the Sabbatical year, because [cutting] is work.[22] R. Judah says: [To cut] in the usual manner is prohibited, but one may [either] leave a height of ten handbreadths and cut[23] or raze [the tree] at ground level.[24] [From this it follows that] only at ground level is [the cut] injurious, but at any other [point][25] it is beneficial![26] — Abaye replied: [At a height of] three handbreadths [the cut] is beneficial; at ground level it is

certainly injurious; at any other point[27] it is neither [definitely] injurious nor [definitely] beneficial. [Consequently] in the case of the Sabbatical year. [the cut made] must be one that is unquestionably injurious;[28] in the case of commercial transactions [the cut made] must be one that is unquestionably beneficial.[29] [It has been said that] 'in the case of] palm trees and cedars he may dig and take them out with the roots, because their stumps do not grow afresh again.' Does not the stump of a cedar grow afresh? Surely R. Hiyya b. Lulyani gave the following exposition: It is written: The righteous shall flourish like a palm-tree; he shall grow like a cedar in Lebanon;[30] if palm-tree has been mentioned, why mention [also] the cedar, and if cedar has been mentioned, why mention [also] palm-tree? If cedar [only], had been mentioned and not palm-tree, it might have been implied that as the cedar produces no [edible] fruit, so will the righteous produce no fruit, therefore palm-tree has been mentioned. And if palm-tree had been mentioned but not cedar, it would have been implied that as the stump of the palm-tree does not grow afresh[31] so the shoot[32] of the righteous will not grow, therefore cedar is also mentioned![33] — The fact is that other kinds of cedar trees are spoken of; in accordance with [a statement made by] Rabah son of R. Huna who reported[34] that at the college of Rab it had been stated [as follows]: There are ten kinds of cedar trees; for it is said: I will plant in the wilderness the cedar, the acacia tree and the myrtle. and the oil tree,' I will set etc.[35] Erez[36] means cedar, Shittah[36] means pine, Hadas[36] means myrtle, 'Ez Shemen[36] means balsam tree, Berosh[36] means cypress, Tidhar[36] means teak, Uthe' ashur[36] means shurbina.[37] Are not these [only] seven [kinds of cedar]? — When R. Dimi came[38] he said: The following were added to them: Alonim, Almonim, Almogim. Alonim are pistachio trees, Almonim are oaks, Almogim

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(1) Since beehives were attached to the ground, they were regarded as the ground itself and were subject to the same laws. Hence the honey, being part of the beehive, is treated as real estate and cannot, therefore, be designated 'food' or 'drink'.

(2) Prosbul, פרוזבול or פרוסבול perhaps from Gr.** or Gr.** or an abbreviation of Gr. ** **. It is a form of declaration introduced by Hillel in connection with the Sabbatical year. A creditor making the declaration in writing before the judges in a court at the proper time and in the proper manner, becomes thereby exempt from the laws of release (cf. Deut. XV, 2) and retains his rights to the collection of his debts.

(3) A prosbul is granted by the court only when the borrower possesses some landed estate. Ownership of a beehive is regarded as ownership of landed, or immovable property.

(4) In accordance with the principle that whatever is attached to the ground מחובר (in opposition to תלוש detached') is not susceptible to the laws of levitical uncleanliness.

(5) V. supra 656.

(6) I Sam. XIV, 27, יערת is midrashically compared to יער 'forest'.

(7) To R. Kahana's statement.

(8) For the present Baraitha may also be said to speak of the two combs left for the bees in the winter. Cf. p. 324, n. 5.

(9) Even if honey in the beehive is, according to R. Eliezer, regarded as earth (neither food nor drink), honey that flowed out of the hive cannot surely be so regarded.

(10) Since the honey, through its contact with the loathsome vessel, becomes unsuitable for human consumption, it cannot, according to R. Eliezer, be designated food or drink, even though it flowed out of the hive.

(11) From which the honey cannot be easily gathered, and if gathered would not be suitable for human consumption. Cf. previous note.

(12) Cf. supra n. 2.

(13) Cf. p. 324. n. 2.

(14) Cf. supra n. 2.

(15) This Baraitha states that the owner's intention brings the honey into the category of food or drink; but according to R. Eliezer, how could the mere thought of the owner make food or drink 'attached' to the ground (cf. p. 295, n. 7) to be regarded as if it were 'detached'?

(16) By this explanation, Raba does not alter the text of the Baraitha, but interprets it thus: Honey in a beehive is regarded neither as food nor as drink (with reference to the question whether) if intended to be used as food, it (should) be subject to the defilement of food (and whether), if intended for drink, it (should) be subject to the defilement of drink. (Cf. Tosaf. s.v. תריין).

(17) Ta'an. 25b.
(18) So that there remains a stump from which a new tree can grow.
(19) I.e., uncut, untrimmed.
(20) I.e., if the sycamore has been cut before and grew up again.
(21) Bek. 7b.
(22) The cutting causes new growth which is forbidden. (Cf. Lev. XXV, 4.)
(23) Above a height of ten handbreadths the cut is injurious.
(24) Sheb. IV, 5.
(25) Between the ground and a height of three handbreadths from the ground.
(26) Why, then, must the buyer of a tree leave a stump of three handbreadths?
(27) Between the ground and a height of three handbreadths, and between the latter point and a height of ten handbreadths.
(28) Since the prohibitions of the Sabbatical year are Pentateuchal, the strictest restrictions must be adopted, so as to avoid doing any work tending to benefit the tree.
(29) The seller must have the benefit of the doubt so that the life of his tree may not in any way be endangered.
(30) Ps. XCII, 13.
(31) After the main portion of the tree had been cut.
(32) I.e., his seed, or if he falls he will not rise again (Rashb.).
(33) Does not this then prove that the stump of a cedar does grow afresh?
(34) Ta'an. 25b.
(35) Isa. XLI, 19.
(36) The Hebrew words in lsa. are translated here by the Gemara.
(37) Shurbina, one of the species of cedar.
(38) I.e., from Palestine.

Talmud - Mas. Baba Bathra 81a

are corals. Some say Aronim, ‘Armonim, Almogim. ‘Arinim are ore,[1] ‘Armonim are plane trees, Almogim are corals. MISHNAH. ONE WHO BUYS TWO TREES IN ANOTHER MAN'S FIELD DOES NOT ACQUIRE OWNERSHIP OF THE GROUND.[2] R. MEIR SAYS: HE DOES ACQUIRE OWNERSHIP OF THE GROUND. [IF THE TREES] GREW LARGE [THE LANDOWNER] MUST NOT CUT DOWN THEIR BRANCHES.[3] WHATEVER GROWS FROM THE STEM IS HIS [THE BUYER'S],[4] AND [WHATEVER GROWS] FROM THE ROOTS [BELONGS] TO THE LANDOWNER.[5] IF [THE TREES] DIED [THE BUYER] HAS NO [CLAIM TO THE] GROUND[6] . ONE WHO BOUGHT THREE [TREES] HAS [IMPLICITLY] ACQUIRED [OWNERSHIP OF THE] GROUND.[7] [IF] THEY GREW LARGE,[8] [THE LANDOWNER] MAY CUT DOWN THEIR BRANCHES.[9] WHATEVER GROWS FROM THE STEM AND FROM THE ROOTS [BELONGS] TO HIM [THE BUYER]. IF [THE TREES] DIED [THE BUYER] HAS [A RIGHT TO THE] POSSESSION OF THE GROUND.

GEMARA. We learnt elsewhere: He who buys two trees In another man's]field], has to bring [the bikkurim][10] but is not to recite [the declaration].[11] R. Meir Says: He has to bring and recite.[12]

Rab Judah said in the name of Samuel: R. Meir subjects to the obligation[13] even him who bought fruit in the market. Whence is this to be inferred? From [the fact that] a superfluous Mishnah[14] has been introduced. For, it should be observed that, [R. Meir] has already taught[15] that he [who bought two trees] has [also] acquired the ground. [Is it not, then,] obvious that he has to bring and to recite?![16] Hence it may be inferred from this [superfluous Mishnah] that R. Meir subjects to the obligation even him who buys fruit in the market.[17] But is it not written: Which thou shalt bring in from thy land?[18] — This is to exclude [the fruit grown] in Foreign Territory.[19] But is it not written: [The choicest first fruit of] thy land [thou shalt bring]?[20] — [This is] to exclude the land of a heathen.[21] But is it not written: The first fruits of [the land] which thou . . . hast given me? — [This

means: The fruits] for which thou hast given me money with which to buy [them].

Raba raised an objection: [It has been taught]: He who buys a tree in another man's [field] brings [the first ripe fruit] but does not recite [the declaration], because he has not acquired ownership of the ground,[22] [these are] the words of R. Meir.[23] — This is, indeed, a refutation.

R. Simeon b. Eliakim said to R. Eleazar

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(1) A species of cedar. Others, 'laurel trees'.

(2) Not even the ground under the trees. The purchase of a tree entitles the buyer only to its fruit, and to the tree itself for felling.

(3) Though their shadow may be injurious to the other plants in his field.

(4) Because they grow from his tree.

(5) Because the branches grew from under the ground which is his property.

(6) I.e., to plant another tree in place of the dead one.

(7) The Gemara explains to how much ground the buyer is entitled, and what, in this case, must be the disposition of the trees.

(8) And the branches protrude into the landowner's property.

(9) Having sold him the ground under and between the trees, he does not sell him any rights in the surrounding field. He has a right, therefore, to cut down any branches which may injuriously affect any of his other plants.

(10) V. Deut. XXVI, 2ff and glos.

(11) Given in Deut. XXVI, 5-10. The declaration contains the expression, the land which thou, O Lord, hast given me. Only those, therefore, who own land may recite it.

(12) Bik, I, 6; supra 27a; Git. 48a.

(13) To bring and recite.

(14) Of Bik. just quoted.

(15) In our Mishnah.

(16) For whosoever has land, can justly say in the declaration, the land which thou . . . hast given me.

(17) R. Meir thus said to the Rabbis: Even according to your opinion that the purchase of two trees does not give title to the ground, one must nevertheless bring and recite, for the possession of land is not indispensable for the bikkurim recital.

(18) Deut. XXVI, 2. Accordingly, if he has no land of his own, he is not subject to the law of bringing and reciting; how then can A. Meir subject such a case to this law?

(19) Heb. חוצה לארץ lit., 'outside the land', viz., all countries outside Palestine.

(20) Ex. XXIII, 19; XXXIV, 26.

(21) I.e., land in Palestine belonging to a non Jew farmed out to a Jew.

(22) V. p. 238, n. 10.

(23) This statement of R. Meir is in direct contradiction to that made in his name by Samuel as reported by Rab Judah.

Talmud - Mas. Baba Bathra 81b

: What reason is there for R. Meir's opinion in [the case of] one tree, and for that of the Rabbis in [the case of] two trees?[1] He replied: Do you interrogate me in the house of study on a matter about which the ancients gave no reason, in order to shame me? Rabbah said: What is the difficulty? It is possible that R. Meir was doubtful[2] about one tree, and the Rabbis about two trees![3] But was [R. Meir] in doubt? Surely it is stated [distinctly]: 'Because he has not acquired ownership of the ground. [these are] the words of R. Meir! — This should read: 'Perhaps he has not acquired ownership of the ground!' But ought we not to apprehend lest these are not bikkurim[4] and [consequently] one would bring into the Temple court unconsecrated [fruit]?[5] — He consecrates them.[6] But must not [the priest] eat them [the bikkurim]?[7] — He redeems them.[8] But perhaps they are not bikkurim and he thus excludes them from the heave-offering and tithe?[9] — He does separate [the heave-offering and the tithes from] them. [In the case of] the terumah gedolah[10] this is correct,

[for] he gives it to the priest. The second tithe,[11] also, he gives to a priest.[12] The poor man's tithe,[13] also, he gives to a poor priest,[14] but to whom does he give the first tithe which belongs to the Levite? — He gives it to a priest in accordance with [the decision of] R. Eleazar b. Azariah. For it has been taught: terumah gedolah[15] [belongs] to the priest; the first tithe [belongs] to the Levite; these are the words of R. Akiba. R. Eleazar b. Azariah says: The first tithe also [belongs] to the priest.[16] But perhaps they are bikkurim and [consequently] require recital [of the declaration]?[17] The recital is not indispensable. [Is it] not [indispensable]? Surely R. Zera said:[18] Wherever [proper] mingling[19] is possible the mingling is not indispensable;[20] but where [proper] mingling is not possible[21] the mingling is indispensable![22] — He acts on the lines of [the teaching of] R. Jose b. Hanina who said:[23] He who cut [the first ripe fruit] and sent them [to Jerusalem] with a messenger; or [if the] messenger [cut them] and died on the way- [the owner] brings [the fruit] and does not recite [the declaration], for it is written: And thou shalt take[24] . . . 'and thou shalt bring',[25]

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(1) If on account of the Biblical expression, which thou shalt bring in from thy land, a person possessing no land cannot make the declaration, he should also be exempt from bringing at all.

(2) Whether the ground also is acquired in the case of the purchase of one tree (A. Meir) or two trees (the Rabbis).

(3) Hence, in the case of a sale, the seller, who is the legal possessor of the land, is given the benefit of the doubt, while in the case of the first fruit, the buyer of the tree must give the benefit of the doubt to the Temple, though he cannot recite.

(4) בכורים, 'first ripe fruits', which are subject to the precept of bringing them to the Temple. If the ground is not acquired by the purchase of a tree or two trees, according to R. Meir and the Rabbis respectively, this fruit cannot be regarded as bikkurim in the ritual sense.

(5) Unconsecrated fruit must not be offered in the Temple court. (v. Kid. 57b.) How then can it be suggested that the bringing of the firstfruits is to give the Temple the benefit of the doubt?

(6) I.e., he stipulates that if they are not already bikkurim they shall be consecrated for the purpose of purchasing with their proceeds Temple sacrifices.

(7) Bikkurim must be eaten by the Priest, but consecrated objects, which are usually devoted to Temple repair, must not be eaten!

(8) After redemption anyone may eat them, the sanctity having passed from the fruit to the purchase money.

(9) Bikkurim are exempt from heave-offerings of produce. the Terumah given to the priest, and tithes, but other land and garden produce is subject to them.

(10) רומה גדולה lit., 'big or high heave offering'; the priestly portion of the produce.

(11) Given in the first, second, fourth, and fifth year of the septennial cycle.

(12) The owner must not eat the fruit lest they are bikkurim.

(13) Poor man's tithe is given in place of the second tithe (v. supra n. 8.) in the third, and sixth year of the septennial period.

(14) No other poor may eat them lest they are bikkurim. (Cf. supra n. 9).

(15) V. supra n. 7,

(16) Yeb. 86a; Keth. 26a; Hul. 131b.

(17) How then may anyone eat these fruit without such recital?

(18) Hul. 83b, Kid. 25a, Yeb. 104b, Nid. 66b. Men. 18b, Mak. 18b, Ned. 73a.

(19) I.e., of the flour with the oil of a meal-offering. One log of oil for sixty 'esronim ('issaron = tenth) is considered sufficient for proper mingling.

(20) And the offering is acceptable even before the mingling of the flour with oil.

(21) If, e.g.. the vessel for the meal offering contains more than sixty 'esronim for the log of oil.

(22) And the offering is, therefore, not acceptable. Now, in the case of bikkurim also, on this analogy, since the doubt as to whether they are bikkurim makes the declaration impossible, the recital should be indispensable.

(23) Git. 47b.

(24) Deut. XXVI, 2.

(25) This is implied in the text, which thou shalt bring (Ibid.). Cf. Ibid. v. 10.

the taking and the bringing must be performed by the same man; and in the present case, this has not been done. R. Aha son of Awia said to R. Ashi: Behold, are not these really scriptural verses?[1] Let him recite them![2] He replied unto him: [One must not recite the verses] because it would appear [as telling] a lie. R. Mesharsheya the son of R. Hiyya said: [Because the fruit] might [mistakenly] be excluded from the heave-offering and from the tithe.[3]

[IF THE TREES] GREW LARGE [THE LANDOWNER] MUST NOT CUT DOWN THEIR BRANCHES etc. What is considered [to be] from the stem and what is considered [to be] from the roots? — R. Johanan said: Whatever is exposed[4] to the sun is of the stem, and whatever is not exposed[5] to the sun is of the roots. [How can it be said that all that grows from the stem belongs to the buyer?] Is there not cause to apprehend that the ground might produce alluvium [covering up the knots of the lowest shoots] and that [the buyer] would say [to the landowner]: 'You have sold me three [trees] and I have, [therefore, a share of the] ground'?[6] — But R. Nahman replied: [The buyer] must cut [them] off.[7] R. Johanan also said: He must cut [them] off.

R. Nahman said: We have it by tradition [that] a palm-tree has no stem.[8] R. Zebid was of the opinion that this means [that] the owner of the palm-tree has no [rights to that which grows from the] stem, because since [the tree] is destined [when it dries up] to be dug and taken out with the roots,[9] [the buyer] discards [the shoots] from his mind.[10] R. Papa, [however], raised [the following] difficulty: Surely, [the case of him who] BUYS TWO TREES [includes also such trees] as are destined to be dug up and taken out with the roots[11] and [yet] the [Mishnah] teaches that [THE BUYER] HAS [A TITLE TO] THE STEM![12] — But, said R. Papa, [the reason why] the owner of the palm-tree has no [title to the] stem [is][13] because the stem does not [usually] produce [any shoots].[14]

According to R. Zebid,[15] however, [there remains] the difficulty of our Mishnah![16] — [Our Mishnah deals with the case] where [the trees] were sold for five years.[17]

ONE WHO BOUGHT THREE [TREES] HAS [IMPLICITLY] ACQUIRED [OWNERSHIP OF THE] GROUND. And how much [ground]? — R. Hiyya b. Abba said in the name of R. Johanan: He has acquired [the ownership of the ground] beneath [the trees] and between them, and round about[18] them

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(1) The bikkurim declaration consists of vv 5-10 of Deut. XXVI (Cf. p. 328, n. 10).

(2) One may at any time read Scriptural verses. Why then should one be restricted to R. Jose's decision of bringing the fruit without reciting the declaration?

(3) Seeing that the declaration had been recited over the fruit, it would be assumed that they are genuine bikkurim which are exempt from the priestly and Levitical gifts.

(4) I.e., all that part of the tree which is above the ground.

(5) I.e., the part covered by the soil.

(6) The shoots, having been covered by the alluvium at their knots, would appear as separated trees, growing from the ground independently; and the possession of three trees entitles one to a share of the field.

(7) Our Mishnah gives the buyer the right over the shoots for the purpose of cutting them off. They must not, however, remain attached to the tree.

(8) This is explained in the Gemara.

(9) Unlike other trees, which can be made to grow afresh when their branches and upper sections dry up, by cutting them down to their stems, the palm tree, like the cedar (supra 80b). cannot be made to grow afresh out of its cut stems. They are, therefore, ultimately useful as wood only.

(10) He does not expect to have any benefit from the shoots that may never grow from the tree,which is likely, at any moment, to dry up beyond all possibility of growing afresh.

(11) Since no special trees are specified, all kinds of trees are obviously included.

(12) How, then, could R. Zebid assume that the buyer of a palm-tree has no title to the stem?
(13) Not that given by P. Zebid, but 'because etc.'
(14) And if, sometimes, it happens that shoots do grow, they must be regarded as the property of the owner of the land. Our Mishnah, which gives the buyer title to the stem, speaks of trees the stems of which do usually produce shoots.
(15) Who stated that stems of palm.trees produce shoots.
(16) Which speaks of all kinds of trees, the stems of which produce shoots, and gives the buyer title to the shoots of the stems.
(17) In the case of a sale for a specified number of years, during which a dried up tree is to be replaced by a sound one, the buyer does expect the benefit from any shoots that may grow out of the stem. Where, however, the sale is for no definite period, the buyer is aware that the tree will not be replaced though at any moment it might dry op beyond hope of recovery. He does not, therefore, expect to benefit from any shoots that may possibly grow before the tree terminated its growing existence.
(18) Lit., 'outside'.

Talmud - Mas. Baba Bathra 82b

as much as is required for a gatherer and his basket.

R. Eleazar raised a difficulty: Since he has no [right of] passage,[1] would he have [a right to the ground required by a] gatherer and his basket? [If] he has no [right of] passage because [the trees grow in] another field,[2] should he, then, have [a right to the ground required for a] gatherer and his basket?[3]

R. Zera said: From the words of our Master[4] we may infer that only [when the buyer has purchased] three [trees] does he have no [right of] passage,[5] but [if he has purchased] two [trees] he does have [the right of passage]; for he can say [to the landowner]: They stand in your [own] field, [and since you have sold me trees therein, you must also allow me access to them]. R. Nahman b. Isaac said to Raba: Does this imply that R. Eleazar[6] is in disagreement with Samuel his master? For Samuel said:[7] The law is in accordance with R. Akiba's opinion[8] that he who sells does so with a kindly feeling[9] [and one selling with a kindly feeling would surely include in the sale a right of passage]! He replied to him: [R. Eleazar may agree with Samuel,[10] but] our Mishnah cannot be attributed to R. Akiba.[11] How is this proved? — Because it states: IF THEY GREW LARGE, [THE LANDOWNER] MAY CUT DOWN THEIR BRANCHES: Now, were you minded [to attribute the Mishnah to] R. Akiba. why may [the landowner] cut down their branches? Surely [R. Akiba] said that he who sells does so with kindly feelings! — He said unto him: It is possible that R. Akiba said [so] in the case [only] of a cistern and a cellar[12] because these do not cause deterioration of the ground, [but] did you hear him [say the same thing] in the case of a tree [which does cause deterioration to the field]?[13] Does not R. Akiba [in fact] agree that in [the case of] a tree [whose boughs] hang over the field of one's neighbour, [the latter] may cut off [the overhanging branches to such a height as will allow the] full [passage of the] handle that protrudes over the plough![14]

It has been taught in agreement with R. Hiyya b. Abba: He [the buyer of three trees] has acquired ownership [of the ground] beneath them, and between them and round about[15] them as much as is required for a gatherer and his basket.

Abaye said to R. Joseph: Who sows on that [land reserved for] the gatherer and his basket?[16] He replied: You have learned it:[17] The external [field owner[18]] sows the pathway.[19] He said unto him: Are these two cases alike? There,[20] the buyer is not involved in any loss; but here,[21] the owner of the tree[22] is involved in a loss; for he can point out [to the seller] that the fruit [that would drop on the scattered seed] would be soiled. This case[18] rather resembles the final clause [of the Mishnah,[23] in accordance with which] neither the one nor the other may sow [on the allotted space].

It has been taught in agreement with the opinion of Abaye: He has acquired [the ground] beneath them, and between them, and round about[24] them as much as is required for the gatherer and his basket, and neither of them is allowed to sow it.

[If the buyer of three trees is to acquire possession of the ground]. how much [space] must there be between [the trees]?[25] — R. Joseph said in the name of Rab Judah in the name of Samuel: [A distance] of four to eight cubits [between any two trees]. Raba said in the name of R. Nahman in the name of Samuel: From eight to sixteen [cubits]. Abaye said to R. Joseph: Do not dispute with R. Nahman, for we learnt a Mishnah that is in agreement with him. For we learnt:[26] He who plants his vineyard [and leaves distances of] sixteen cubits [between the rows] may insert seed there.[27] R. Judah said: It occurred in Zalmon[28] that one planted his vineyard, [leaving distances of] sixteen cubits [between the rows], and turned the branches of [every] two [adjacent] rows towards one side,[29] and sowed the clearing. In the following year he turned the branches towards the spot sown [in the previous year], and sowed the uncultivated [spaces].[30] When the matter was reported to the Sages they allowed it.[31] He [R. Joseph] said unto him: I am not aware [of this]: but there was a case

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(1) Through the seller's field; unless he has made with him specific arrangements for the purpose, v. supra 64a.

(2) The three trees, through which the buyer has acquired a share in the field, are regarded as growing in a field of their own, independent of the rest of the field which belongs to the landowner.

(3) A pathway is more necessary than a space for the gatherer and his basket. If he has no title to the former, how much less to the latter!

(4) R. Eleazar; who gave his reason because the trees are in ‘another field’.

(5) Because three trees are sold together with a certain portion of the ground (cf. supra), and this portion is regarded as a small field by itself, distinct from the larger field of which it forms a part.

(6) Who denies right of passage to one who has bought three trees.

(7) Supra 65a.

(8) Supra 37a.

(9) Lit., ‘beautiful eye’.

(10) That right of passage is included in the sale of the trees.

(11) But to the Rabbis, who exclude right of passage from the sale of trees. R. Eleazar's objection, supra, will accordingly not be based on the opinion he himself holds, but on that of the Rabbis, and follow their line of reasoning.

(12) Supra 71a.

(13) As in the case of our Mishnah, v. supra p. 282.

(14) Ibid. 27b.

(15) V. p. 333, n. 4.

(16) The landowner or the buyer of the trees?

(17) Cf. infra 99b.

(18) Who sold an interior field, and retained for himself the exterior one.

(19) Infra 99b. Here, too, the landowner sows the space allotted to the gatherer and his basket.

(20) In the case of the sowing of the pathway.

(21) In the case of sowing on the space allotted to the gatherer and his basket.

(22) Cf. Bah, a.l.

(23) Mishnah, infra 99b, dealing with a pathway allowed by the court, to the owner of the inner field, with the consent of the two partners.

(24) V. p. 333, n. 4.

(25) If they are too close to each other they would be regarded as a forest whose trees are for uprooting; if too scattered, they could not he regarded as a combination of trees.

(26) Kil. IV, 9.

(27) Between the rows. Because the wide spaces between the rows are not regarded as part of the vineyard where, in accordance with Deut. XXII, 9, seed must not be sown.

(28) A locality near Shechem.

(29) Away from the space between them; thus leaving, between every alternate pair of rows, a clearing of sixteen cubits

in width.

(30) Which in the previous year could not be sown on account of the branches which were encroaching on the required space of sixteen cubits.

(31) Because the branches were turned away from the sown spaces which were sixteen cubits in extent. A space of less than sixteen cubits would have been regarded as part of the vineyard. This proves the correctness of R. Nahman's report that a space of sixteen cubits is required for a piece of ground to be regarded as a separate unit.

Talmud - Mas. Baba Bathra 83a

in Dura di-ra'awatha[1] [where three trees, planted at distances of less than eight cubits between them, were sold], and, when [the disputants] came before Rab Judah, he said unto [the buyer]: Go [and] give him [his share in the ground, even though the spaces between the trees are just] enough for a pair of oxen and their [ploughing] outfit. I did not know [at the time] how large was the 'space of a pair of oxen and their outfit'. When, however, I heard the following [Mishnah in] which we learnt: A man must not plant a tree near his neighbour's field[2] unless he has kept at a distance of four cubits:[3] and in connection with this it has been taught: 'The four cubits mentioned are the dimensions of the space required for attending to the vineyard': I concluded that the 'space of a pair of oxen and their outfit' is four cubits. But is there not also a Mishnah which agrees with [the report of] R. Joseph? Surely[4] we learnt:[5] R. Meir and R. Simeon say: He who plants his vineyard [leaving distances of] eight cubits [between the rows] may insert seed there![6] — A practical decision[7] is, nevertheless, preferable.[8]

[The statement] of R. Joseph who follows R. Simeon may be regarded as satisfactory. [since] we have heard [a definition of] scattered [trees] and we have [also] heard [a definition of] closely [planted trees]. [With regard to trees] scattered, [we have the Mishnah] just mentioned.[9] [As regards trees planted] closely, it has been taught:[10] A vineyard planted on [an area of] less than four cubits is not [regarded as] a vineyard — these are the words of R. Simeon. And the sages say: [It is regarded as a] vineyard, the intervening vines being treated as if they were not [in existence].[11] [The statement], however, of R. Nahman who follows the Rabbis [cannot very well be considered satisfactory; for] we have heard [a definition of] scattered [trees, but] have we heard [a definition of] closely [planted trees]? — This [latter definition is arrived at] logically: Since according to R. Simeon [the distances between closely planted trees are] half [of those of scattered trees], according to the Rabbis also, [the proportion of the distances is a] half.

Raba said: The law is [that a buyer of three trees acquires implicitly the ground also when the distances between the respective trees are] from four[12] to sixteen cubits.[13] In agreement with Raba's opinion it has been taught: How near [to each other] may [the trees] be? — [No nearer than] four cubits. And how far removed may they be? — [No more than][14] sixteen cubits. [He who buys three trees of these] has [implicitly] acquired the [necessary] ground and the intervening [young] trees. Consequently, [if] a tree dries up or is cut down [the buyer of the trees] retains [his rights in] the ground. [If the distances between the trees are] less, or more than [the figures] given, or if [the trees] were purchased one after the other, [the buyer] does not acquire either the ground or the intervening [young] trees. Consequently, [if] a tree dries up or is cut down, [the buyer] retains no [title to the] ground.[15]

R. Jeremiah inquired: Does one measure [the required distances between the trees] from the thin[16] or thick[17] parts [of the trees]? — R. Gebiha of Be-Kathil said to R. Ashi: Come and hear! We learnt:[18] [In the case of] a layer[19] of the vine, one is to measure from the second root,[20] only.

R. Jeremiah inquired: What is the law when one sold three branches of [one] tree, [four cubits distant from one another, and covered with alluvium at their knots so that they appear as three separate trees]?[21] — R. Gebiha of Be-Kathil said to R. Ashi: Come and hear! We learnt:[22] Where

one bends three vines [covering the middle parts with earth so that the layers,[23] when detached from the original vines, may each form two vines] and their [new] roots are seen,[24] if there is a distance between them of four to eight cubits they combine, said R. Eleazar b. Zadok, to form a vineyard,[25] and if not, they do not combine.[26]

R. Papa inquired: What is the law when he sold two [trees] in his field and one on [its] border, [do they combine[27] or not]? [If it is replied that in this case they combine], what is the law [when he sold] two [trees] in his [own field] and one [tree which he owned together with its ground] in [the field] of his neighbour? — The matter stands undecided.[28]

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(1) V. p. 222, n. 8

(2) In order that, when ploughing round the tree, he should not have to draw the plough through his neighbour's field.

(3) Supra 18a; 26a.

(4) For this reading, cf. Bah, a.l.

(5) Kil. IV, 9.

(6) Between the rows, though the intervening spaces are only eight cubits in width. Why. then, did Abaye tell R. Joseph that he must not dispute the report of R. Nahman?

(7) Cf. Shab. 21a, and further references there.

(8) The Mishnah describing the occurrence in Zalmon, where the action of the planter received the definite approval of the Sages, is more to be relied upon than the other part of that Mishnah, which is a record of theoretical opinion only.

(9) Supra, quoted from Kil. IV, 9. This Mishnah defines 'scattered trees' as those planted at distances of no less than eight cubits from each other.

(10) Kil. V, 2; supra 37b; infra 102b.

(11) The Rabbis' opinion is based on the assumption that the intervening vines are not to remain in the vineyard, but to be transplanted. Trees that are destined to be removed are regarded as already removed.

(12) In accordance with Rab Judah's decision (which has not been disputed by the Rabbis) in the case of the shepherds' settlement.

(13) As the Sages ruled in the case of the Zalmon vineyard.

(14) Cf. Tosaf. s.v. כמה. According to Rashi. s.v. שש עשרה 'just under sixteen cubits'.

(15) Is not entitled to replace the dead, or felled tree by another.

(16) I.e., the stem.

(17) I.e., near the roots.

(18) Kil. VII. 1.

(19) הרכובה, an undetached shoot of the vine laid in the ground for propagation.

(20) Which proves that the measurement is made from the thick part of the tree (Tosaf. s.v. הרכובה a.l.). Rashb. (s.v. פקק a.l.), giving הרכובה, the interpretation of 'grafting'. concludes that the measurement is to be neither from the thick (first knot) nor from the thin (third knot) of the vine (or any other tree). R. Gersh. (a.l.) regards the second root as the thin part of the vine.

(21) Are they regarded as three separate trees, the buyer consequently acquiring possession of the necessary ground, or as one tree, since they grow from the same stem?

(22) Kil. VII, 2.

(23) Cf. n. 5.

(24) The layers have generated their own roots.

(25) A vineyard consists of no less than five vines. Since each of the three layers. now that their roots are generated. form two vines, the original three vines have become six.

(26) This Mishnah clearly proves that the junction of two vines at the same root does not prevent them from being regarded as separate vines. Likewise in the case of the purchase of three branches of one tree, so long as they are separated by the proper distances, they are regarded as three separate trees.

(27) To entitle the buyer to acquire ownership of the necessary ground.

(28) תיקו = תיקום 'let it stand'. An expression used when no definite answer could be given to any question or inquiry. Others regard ת י ק ו as formed from the initials of תשבי יתרץ קושיות ואבעיות (Elijah the Tishbite will solve all difficulties and enquiries).

Talmud - Mas. Baba Bathra 83b

R. Ashi inquired: [In the case of the sale of three trees] does a [water] cistern [situated between them] form a division?[1] [If not],[2] does a water canal[3] form a division? [If this also is not regarded a division], what [is the law if] a reshuth harabbim[4] [intercepts] or a nursery of young inoculated palm-trees? — The matter stands undecided.

Hillel inquired from Rabbi: What if a cedar sprang up between them?[5] [Is it regarded as a division between the trees]?[6] — [What a question! If it] sprang up [after the sale], it [obviously] grew in [the buyer's] own territory! But [no; this is the question: What if] there was a cedar between them [at the time of the sale]? — He replied unto him: He has certainly acquired[7] [its ownership].

What must be the disposition [of the three trees]?[8] — Rab said: As a straight line; and Samuel said: Like a tripod.[9] He who said, 'as a straight line' [agrees][10] so much the more [in the case when they are arranged] as a tripod.[11] But he who said, 'like a tripod' [holds the opinion that if the trees are arranged] as [in] a straight line [the ground is] not acquired, because one can sow between them.[12] R. Hamnuna raised a difficulty: Is not the reason given by him, who insists on a triangular disposition. that one cannot sow between them? If so, let the ground be acquired also by him to whom three Roman thorns[13] have been sold, since one cannot sow between them! — He replied to him: Those [thorns] are of no importance, [but] these [trees] are important.[14]

MISHNAH. HE WHO SELLS THE HEAD OF LARGE CATTLE HAS NOT SOLD THE FEET; HE WHO SOLD THE FEET HAS NOT SOLD THE HEAD. [IF] HE HAS SOLD THE LUNGS[15] HE HAS NOT SOLD THE LIVER, [IF] HE HAS SOLD THE LIVER HE HAS NOT SOLD THE LUNGS. BUT, IN [THE CASE OF] SMALL CATTLE, [IF] HE HAS SOLD THE HEAD HE HAS SOLD THE FEET, [IF] HE HAS SOLD THE FEET HE HAS NOT SOLD THE HEAD. [IF] HE HAS SOLD THE LUNGS HE HAS SOLD THE LIVER, [IF] HE HAS SOLD THE LIVER HE HAS NOT SOLD THE LUNGS.

FOUR[16] [DIFFERENT] LAWS [ARE APPLICABLE] TO SALES.[17] [IF] ONE HAS SOLD WHEAT AS GOOD, AND IT TURNS OUT TO BE BAD, THE BUYER MAY WITHDRAW [FROM THE SALE]. [IF SOLD AS] BAD, AND IT TURNS OUT TO BE GOOD, THE SELLER MAY WITHDRAW. [IF AS] BAD, AND IT WAS FOUND TO BE BAD; [OR AS] GOOD, AND IT WAS FOUND TO BE GOOD, NEITHER MAY WITHDRAW. [IF ONE HAS SOLD WHEAT AS] DARK[18] -COLOURED, AND IT TURNS OUT TO BE white, [OR AS] WHITE, AND IT TURNS OUT TO BE DARK;[18] [OR IF ONE HAS SOLD] WOOD [AS] OLIVE, AND IT TURNS OUT TO BE SYCAMORE, [OR AS] SYCAMORE, AND IT TURNS OUT TO BE OLIVE; [OR IF A LIQUID HAS BEEN SOLD AS] WINE, AND IT TURNS OUT TO BE VINEGAR, [OR AS] VINEGAR, AND IT TURNS OUT TO BE WINE, BOTH MAY WITHDRAW.

GEMARA. R. Hisda said: If one has sold to another what was worth five for six[19] and [subsequently][20] the price has risen to eight,[21] since the buyer has been imposed upon he may withdraw, but not so the seller,[22] because

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(1) To deprive the buyer from any title to the ground.

(2) Because the water is not exposed.

(3) Where the water is exposed.

(4) Reshuth harabbim (v. p. 307, n. 8), its normal width is sixteen cubits. Here, of course, (cf. Raba's statement, inter alia, supra 83a), it is assumed to be between four, and just under sixteen cubits in width.

(5) Between the three trees sold.

(6) V. n. 5.

(7) Lit. ‘he acquired and acquired’.
(8) About which it has been taught that, if the distances between them are from four to sixteen cubits, the necessary ground also is acquired.
(9) Planted in triangular shape.
(10) That the ground also is acquired.
(11) When the trees are arranged triangularly it is more difficult to plough the intervening ground. and the seller is, therefore, less likely to retain it for himself.
(12) The plough can easily pass between the trees.
(13) Prob. eryngo.
(14) Two conditions are required: 1. Importance of the trees, and 2. Inability to draw the plough, i.e., to sow between them.
(15) Lit., ‘windpipe’.
(16) 1. the buyer, 2. the seller, 3. neither, and 4. both may withdraw.
(17) Lit., ‘sellers’.
(18) Dark red.
(19) Thus overcharging the buyer a sixth of the selling price (fifth of the value of the object).
(20) After the sale, and before the period allowed to the buyer to consult a dealer or a friend, has elapsed; v. B.M. 49b.
(21) So that now the seller is losing much more than a sixth, and wishes, therefore, to withdraw.
(22) Although the period allowed for consulting a dealer or friend has not elapsed, and though, consequently, the buyer may still withdraw.

Talmud - Mas. Baba Bathra 84a

he [the buyer] can say unto him: If you had not imposed upon me, you would have had no right to withdraw; can you have the right to withdraw now that you have imposed upon me? And the Tanna [of our Mishnah, who taught that ‘if wheat was sold as] GOOD AND IT TURNED OUT TO BE BAD, THE BUYER MAY WITHDRAW,’ but not [inferentially] the seller,[1] confirms [what has just been said].

R. Hisda further stated: [If] one has sold to another what was worth six for five and the price fell[2] to three, the seller, since he has been imposed upon, may withdraw, but not [so] the buyer; because [the seller] can say unto him: If you had not imposed upon me you would have had no right to withdraw; can you have the right to withdraw now? And the Tanna [of our Mishnah, who taught that ‘if wheat was sold as] BAD AND IT TURNED OUT TO BE GOOD, THE SELLER MAY WITHDRAW,’ but not [inferentially] the buyer,[3] confirms [this statement].

What does he[4] come to teach us? [Surely] this [statement of his may be inferred from] our Mishnah! — If[5] [it had to be inferred] from our Mishnah, it could have been said that [in the cases dealt with in the statement] of R. Hisda, both[6] may perhaps withdraw; and [that the first clause of] our Mishnah comes to teach us that[7] the buyer may withdraw;[8] for [without this Mishnah] it might have been said that [he cannot], because it is written: ‘It is bad, it is bad’, saith the buyer.[9]

[IF ONE HAS SOLD WHEAT AS] DARK-COLOURED AND IT TURNED OUT TO BE WHITE, etc. R. Papa said: Since white is given [as the contrast of the other colour][10] it may be inferred that the sun is dark-red.[11] This can be proved [from the fact] that the sun is red at sunrise and at sunset. The reason why we do not see it [red] all day, is [because] our eyesight is not strong [enough].[12] An objection was raised: And the appearance thereof be deeper than the skin,[13] [that means], like the appearance of sunlight [which is] deeper than the shadow.[14] Surely there[15] [the appearance] was white,[16] [how, then, could the sun be said to be red]?[17] — Like the appearance of the sun [in one respect], and not like the appearance of the sun [in another respect]. Like the appearance of the sun, [in] that it is deeper than the shadow; and not like the appearance of the sun [in another respect], for there,[18] it is white and here[19] it is red. But according to our previous

assumption,[20] is not the sun red at sunrise and at sunset?[21] — [It is red] at sunrise, because it passes by the roses of the Garden of Eden;[22] at sunset, because it passes the gate of Gehenna.[23] Others reverse [the answer].[24]

[IF LIQUID HAS BEEN SOLD AS] WINE, AND IT TURNED OUT TO BE VINEGAR . . . BOTH MAY WITHDRAW. Must it be said that our Mishnah is [in agreement with] Rabbi and not [with] the Rabbis?[25] For it has been taught:

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(1) Though the price may have risen.

(2) A long time after the sale; cf. B.M. 51a.

(3) Though the price has fallen.

(4) R. Hisda.

(5) The following three lines in the original are rather difficult, and different, hardly satisfactory, interpretations have been offered. Cf. Rashb., Tosaf., and R. Gersh., a.l.

(6) The buyer and the seller; since there was overreaching of one party at the time of the sale, and, subsequently. of the other, when the prices respectively rose or fell.

(7) When there is no overreaching, but a sale at the proper price.

(8) Because he can say that he bargained for good, not bad wheat.

(9) Prov. XX, 14. Since the buyer always cries 'bad, bad', he should not be entitled to withdraw even when wheat sold as good be found to be bad. Hence the necessity for the first clause of the Mishnah. Similarly, the second clause is required for the case where the seller is entitled to withdraw though. on the analogy of the seller, he always cries 'good, good'.

(10) Wheat has only one of two colours, white or dark-red (cf. note on Mishnah).

(11) Its Heb. equivalent שחמתית is assumed to be derived from the same root as חמה sun', hence sun-colour. Since לבנה means 'white', and dark-red is the only other possible colour of the wheat, שחמתית must signify 'dark-red'. V. previous note.

(12) The powerful light of the sun dims our eyes during the day. At sunrise and at sunset, when the light of the sun diminishes, its redness becomes visible.

(13) Lev. XIII, 25, 30.

(14) Sheb. 6b; Bek. 41a; Hul. 63a.

(15) In the verse quoted.

(16) The verse speaks of a 'white spot'.

(17) Since the appearance of the spot which is white is compared to the sun, the sun also must be white.

(18) The white spot spoken of in the Biblical verse.

(19) I.e., the sun.

(20) Assumed (by the objection to R. Papa's statement). that the sun was white.

(21) How, then, can it be assumed to be white?

(22) Eden is in the East (cf. Gen. II, 8). where the sun is seen in the morning.

(23) Gehenna is, opposite Eden, in the West.

(24) At sunrise, when the sun is in the East, it is red because of the reflection of the fire of Gehenna on the opposite side (West). At sunset, when the sun is in the West, the redness is the result of the reflection of the roses of the Garden of Eden thrown from the East.

(25) The representatives of the anonymous opinion in the Baraitha that follows.

Talmud - Mas. Baba Bathra 84b

Wine and vinegar are the same[1] in kind. Rabbi says: [They are regarded as] two [different] kinds.[2] — It may be said [to be in agreement] even [with] the Rabbis. They dispute with Rabbi only in the case of tithe and heave-offering [for they are of the same opinion as] R. Elai. For R. Elai said: Whence [is it inferred] that, if one separates a heave-offering from an inferior quality for the [redemption of] a superior quality, his offering is valid, for it is said: And ye shall bear no sin by reason of it, seeing that ye have set apart from it the best thereof,[3] [but, it is to be inferred, if you do

not set apart from the best, but of the worst, you shall bear sin]; if, [however, the inferior quality] does not become consecrated, why [should there be any] bearing of sin?[4] Hence [it may be inferred] that if one separates a heave-offering from an inferior quality for [the redemption of] a superior quality, his offering is valid[5] . As regards commercial transactions, however, all [are of the opinion that wine and vinegar are not of the same kind] because some one may like wine and not vinegar while another may like vinegar and not wine.[6] MISHNAH. IF ONE HAS SOLD FRUIT TO ANOTHER[7] [AND THE BUYER] HAS PULLED[8] [THEM]. THOUGH THEY HAVE NOT [YET] BEEN MEASURED,[9] OWNERSHIP IS ACQUIRED. [IF HOWEVER] THEY HAVE BEEN MEASURED[10] BUT [THE BUYER] HAS NOT PULLED [THEM], OWNERSHIP IS NOT ACQUIRED. IF [THE BUYER] IS PRUDENT, HE HIRES THE PLACE WHERE THEY ARE KEPT.[11] IF ONE BUYS FLAX FROM ANOTHER, HE DOES NOT ACQUIRE OWNERSHIP UNTIL HE MOVES IT FROM PLACE TO PLACE. AND IF IT WAS ATTACHED TO THE GROUND AND HE PLUCKED [OF IT] ANY QUANTITY, HE ACQUIRES OWNERSHIP.

GEMARA. R. Assi said in the name of R. Johanan: [If the buyer] has measured [with the seller's instruments] and has put [them] in an alley, he acquires possession.[12] R. Zera said to R. Assi: Is it not possible that my master[13] has heard [this statement][14] only in [the case where the buyer] has measured into his [own] basket?[15] He replied unto him: This young Rabbi seems to think that people do not correctly memorise what they hear. [If the buyer had] measured it into his [own] basket, would there have been any need to tell [that ownership is acquired]?[16] Did he[17] accept it from him[18] or not? — Come and hear what R. Jannai said in the name of Rabbi: [In the case of] a courtyard in partnership, [the partners] may acquire possession [of objects they buy] from one another. Does not this [refer to the case where the objects bought lie] on the [bare] ground?[19] — No; [this refers to the case when they were put] into his basket. This can also be supported by argument. For R. Jacob said in the name of R. Johanan: [If the buyer] measures and puts [them] in an alley. he does not acquire possession. Are not these[20] contradictory? But surely it must be concluded [that] one[21] [case refers to one] who measures into his basket, the other[22] [case, to one] who measures upon the [bare] ground. This is conclusive.[23]

Come and hear: [IF HOWEVER] THEY HAVE BEEN MEASURED BUT [THE BUYER] HAS NOT PULLED [THEM]. OWNERSHIP IS NOT ACQUIRED. Does not this refer to an alley![24] — No; [this refers] to reshuth harabbim.[25] If so, explain the first clause, [IF HE] HAS PULLED [THEM] THOUGH THEY HAVE NOT [YET] BEEN MEASURED, OWNERSHIP IS ACQUIRED. Does 'pulling' acquire possession in a reshuth harabbim? — Surely both Abaye and Raba have stated:[26] Mesirah[27] confers legal ownership in reshuth harabbim[28] or in a yard which belongs to neither of them;[29] Meshikah[30] confers ownership in an alley[31] or in a yard owned by both of them; and 'lifting'[32] confers ownership everywhere.[33] 'Pulling' mentioned [in our Mishnah] also means from the reshuth harabbim to an alley. If so, explain the next clause of our Mishnah, IF [THE BUYER] IS PRUDENT, HE HIRES THE PLACE WHERE THEY ARE KEPT. [Now], if [the object is] in reshuth harabbim, from whom could he hire? — This is what [the Mishnah] means: And if [the object] is in the domain of the owner,[34] IF [THE BUYER] IS PRUDENT, HE HIRES THE PLACE WHERE THEY ARE KEPT.

Both Rab and Samuel have stated:

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(1) With reference to Terumah, which must not be separated from one species to redeem another.

(2) Our Mishnah, since it allows both buyer and seller to withdraw, must obviously regard wine and vinegar as two different kinds, as Rabbi.

(3) Num. XVIII, 32.

(4) Surely no wrong has been done, since his action is null and void, and he has to give another heave-offering.

(5) Infra 143a; B. M. 56a.

(6) Hence, though wine and vinegar may be regarded as belonging to the same kind, the sale of one in lieu of the other is

not valid, and both buyer and seller may, therefore, withdraw according to the opinion of all, including that of the Rabbis.
(7) And the price was agreed upon.
(8) V. p. 304, n. 8. By meshikah one acquires possession in an alley or in a courtyard which is the common property of both buyer and seller.
(9) Measuring is not an essential of the sale. It merely determines the quantity sold. The sale, therefore, becomes effective though no measuring has yet taken place.
(10) How and where, is explained in the Gemara.
(11) In the case when the fruit is kept in the domain of the seller, the buyer hires the place where they are kept, and thus acquires ownership of the fruit. A person's domain acquires possession for him.
(12) V. n. 1.
(13) R. Assi.
(14) That possession Is acquired in an alley.
(15) So that the basket, his property, acquired for him possession of the fruit; but if the fruit were put on the bare ground of the alley. no possession would have been acquired.
(16) The basket would have acquired possession for the buyer even if it had been in the seller's territory, how much more when it is in an alley.
(17) R. Zera.
(18) R. Assi.
(19) And since objects are acquired in a partner's courtyard, they are also acquired in an alley which is regarded as the property of those who happen to be there. This being the report of R. Jannai, the master of R. Johanan, and being also in agreement with that which R. Assi stated in the name of R. Johanan, it must have been accepted by R. Zera.
(20) The reports of R. Assi and R. Jannai, on the one hand, and that of R. Jacob on the other.
(21) That of R. Assi and R. Jannai.
(22) That of R. Jacob.
(23) That R. Jannai's report refers to a case where they were put into his (the buyer's) basket, but otherwise he could not have acquired ownership; so that R. Zera could not have accepted R. Assi's report.
(24) How, then, can R. Assi say that objects, if deposited in an alley, are acquired?
(25) V. Glos.
(26) Supra 76b.
(27) V. Glos.
(28) V. p. 307, n. 8.
(29) V. p. 308, n. 1.
(30) V. Glos.
(31) V. p. 308, n. 3.
(32) V. Glos.
(33) Cf. Kid. 23b. How then, in view of the joint statement of Abaye and Raba, can it be said that by pulling in the reshuth harabbim one acquires ownership?
(34) The seller.

Talmud - Mas. Baba Bathra 85a

A man's vessel acquires for him ownership[1] everywhere[2] except in reshuth harabbim. But both R. Johanan and R. Simeon b. Lakish have stated: Even in reshuth harabbim. R. Papa said: There is no dispute [at all] between them. The former[3] speak of reshuth harabbim; the latter,[4] of an alley. Then why do they call it public territory?[5] — Because it is not private territory.[6] This[7] may also be proved by logical deduction; for R. Abbahu said in the name of R. Johanan: A man's vessel acquires ownership for him wherever he is permitted to set it down. From this it is to be deduced that [only where] he is permitted [to set it down],[8] he does [acquire ownership]; [but where] he is not permitted,[9] [he does] not.

Come and hear: Four[10] [different] laws [are applicable] to sales.[11] Before the measure[12] is filled,

[the contents remain in the possession] of the seller.[13] When the measure is filled, [the contents pass over into the possession] of the buyer.[14] These laws apply to a measure which belonged to neither of them,[15] but if the measure was [the property] of one of them, he [whose measure it is] acquires successive possession of every single unit of the quantity as soon as it is put in.[16] These laws, [furthermore], apply to a reshuth harabbim and to a courtyard which belongs to neither of them,[17] but [if the purchase was] on the premises of the seller, [the buyer] does not acquire possession[18] until he has lifted[19] it or has removed it from the seller's premises.[20] [If the purchase was] on the premises of the buyer, he acquires possession as soon as the seller has consented [to the terms of the sale].[21] [If the purchase was] on the premises of one with whom it had been deposited [by the seller]. possession cannot be acquired [by the buyer] until [the owner of the premises] has consented[22] [to allow to the buyer a portion of his premises on which to effect acquisition of ownership], or until [the buyer] had hired the place it occupies. At any rate, it is taught here [that possession by means of one's vessel may be acquired] in reshuth harabbim and in a courtyard which belongs to neither of them.

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(1) Of an object bought, if the price had been previously agreed upon.

(2) Even if the vessel is on the premises of the seller; provided the latter explicitly said; 'let your vessel acquire possession for you'.

(3) Rab and Samuel.

(4) R. Johanan and Resh Lakish.

(5) Heb. reshuth harabbim. v. p. 307, n. 8.

(6) Heb. reshuth ha-yahid.

(7) R. Papa's reconciliation of the apparent differences.

(8) E.g., in an alley, a courtyard belonging to buyer and seller, or the premises of the seller if he granted permission. V. n. 3.

(9) E.g.. in reshuth harabbim.

(10) Four: (i) The case when the measure was borrowed; (ii) when it belonged to one of the parties to the sale. (Both these cases speak of reshuth harabbim, etc.) (iii) When the purchase was on the premises of the buyer and (iv) on the premises of the seller or, of him with whom it has been deposited.

(11) Lit., 'sellers'.

(12) Which has been borrowed.

(13) The measure is assumed to have been lent to him (by the middleman. v. p. 355f.) for the purpose of measuring out his merchandise. It remains, therefore, in his possession until he completes the measuring.

(14) Not only the contents, but also the measure remains in the buyer's possession until he has emptied the purchase into his own vessel or transferred it to his premises. A measure is assumed to be lent to the buyer for this purpose, and to the seller for measuring only. (Cf. previous note.)

(15) V. n. 13.

(16) Lit., 'he acquires first, first'.

(17) And no permission for the purpose was obtained from the owner of the yard.

(18) Even if the measure is his own.

(19) V. Glos. s.v. Hagbahah.

(20) Into his own, into an alley. or the like.

(21) Though no measuring of the commodity has yet taken place.

(22) At the request of the seller.

Talmud - Mas. Baba Bathra 85b

Does not this mean an actual reshuth harabbim?[1] — No; [it means] an alley. But has it not been treated as being in a similar category to that of a courtyard which belongs to neither of them?[2] — The [phrase], 'courtyard which belongs to neither of them', also signifies that [the court] is neither in the entire ownership of the one nor in the entire ownership of the other; but in the joint ownership of the two.

R. Shesheth inquired of R. Huna: [If] the buyer's vessel stands on the premises of the seller, does the buyer, [thereby] acquire possession [of a purchase placed in it] or not?[3] — He replied unto him: You have learned this [in the following]:[4] [If the husband] has thrown it [a get][5] into [his wife's] lap or into her work-basket,[6] she is divorced.[7] R. Nahman said unto him: Why do you bring an answer from this which has been refuted by a hundred arguments to one?[8] For Rab Judah said in the name of Samuel: This [law[9] applies only to the case] where the work-basket was hanging upon her.[10] And Resh Lakish said:[11] Fastened [to], though not hanging upon her.[12] R. Adda b. Ahaba said:[13] When the basket was standing between her thighs.[14] R. Mesharsheya, the son of R. Ammi, said:[15] When her husband was a seller of women's work-baskets.[16] R. Johanan said:[15] The place [occupied by] her lap, [as well as] the place [occupied by] her work-basket, is her property. Raba said:[15] R. Johanan's reason is because a man does not mind [conceding to his wife] either the place [occupied by] her lap[17] or the place [taken up by] her work-basket. But, [concluded R. Nahman], bring your answer from this: [It has been taught[18] that if the purchase was] on the premises of the seller, [the buyer] does not acquire possession until he has lifted it or has removed it from the seller's premises. Does not this [apply to the case when the purchase was] in the buyer's vessel?[17] — No; in the seller's vessel. But now, since the first clause [deals with a case where the purchase is] in the seller's vessel, the final clause also [must deal with a purchase] in the seller's vessel, [how then can you] explain [this] final clause? [It reads:] [If the purchase was] on the premises of the buyer, he acquires possession as soon as the seller has consented [to the terms of the sale].[19] Now, if [the purchase was, as you assert], in the seller's vessel, why does the buyer acquire possession? — The final clause deals with a case when the vessel belongs to the buyer. And how [do you arrive at such] a definite decision? — It is usual that at the seller's, the vessels of the seller are likely to be used; at the buyer's, the vessels of the buyer are likely to be used.

Raba said come and hear: [It has been taught:][20] [If] he has pulled his[21] ass drivers [who pulled with them their asses], or his[22] labourers and has [thus] brought them into his house [while the loads[23] remained on their backs], whether the price was fixed before the measuring, or the measuring took place before the price was fixed, both[24] may withdraw from the sale.[25]

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(1) How, then, could R. Samuel, and R. Abbahu in the name of R. Johanan, state that one's vessel cannot acquire ownership in reshuth harabbim?

(2) But to a third party; while an alley is regarded as the territory of any buyer and seller who happen to be there.

(3) Cf. B.M. 67b; A.Z. 71b.

(4) Git. 77a.

(5) 'Bill of divorce'.

(6) קלת or קדתה, women's work-basket.

(7) As if it had been given into her own hand, though the basket may stand, (so it is assumed now), on the premises of the husband. Similarly, in the case of commercial transactions, when the buyer's vessel is on the premises of the seller, it acquires possession for him.

(8) Lit., 'they beat it a hundred measures for one measure'. עוכלא 'ukla, is one of the smaller measures of capacity and standards of weight.

(9) That the basket is the means whereby the woman acquires possession of the get.

(10) Git. 78a.

(11) Git. loc. cit.

(12) Even though the basket stands on the ground.

(13) Git. loc. cit.

(14) On the ground. In this case, the spot on which the basket rests is regarded as her property, allotted to her by her husband up to the moment of the consummation of the divorce.

(15) Git. loc. cit..

(16) The husband, therefore, does not object to her possession of the ground on which her basket stands.

(17) When her robe trails on the ground.

(18) Supra 85a. (13) Which proves that the question. whether the buyer's vessel on the premises of the seller can serve as a means of acquiring possession, is to be answered in the negative.
(19) Supra loc. cit.
(20) A.Z. 72a.,
(21) I.e., the seller's. Others change the pronominal suffix of המריו and of יפועליו into final Nun, 'ass drivers and labourers'. (V. Tosaf. s.v. משך a.l.).
(22) V. n. 3.
(23) Loads of, e.g., produce.
(24) Buyer and seller.
(25) Two conditions are required: Fixing the price and measuring out into the buyer's vessels. Fixing the price alone while the produce is still on the men's or asses' backs is of no avail, because this cannot take the place of meshikah nor that of the 'buyer's territory'. The 'pulling' of the men who carry the produce does not take the place of the 'pulling' of the produce itself. Measuring out into the buyer's vessel or territory, or even actual meshikah, is of no avail before the price has been agreed upon, because, before that has been done, neither seller nor buyer agree definitely to the sale or purchase. V. n. 10.

Talmud - Mas. Baba Bathra 86a

If he has unloaded them[1] and brought them into his[2] house [and] fixed [the price] before measuring, neither of them may withdraw.[3] [If] measuring took place before the price has been fixed, both may withdraw.[4] Now, since the vessel of the seller, [if it is] on the premises of the buyer, does not serve as a means of retaining possession for him,[5] the vessel of the buyer also [if it is] on the premises of the seller does not serve as a means of acquiring possession for him![6] R. Nahman b. Isaac replied: [The law quoted[7] refers to the case] when [the goods] were emptied out [from the seller's sacks into the territory of the buyer]. Raba [remarked] indignantly: Does it state 'he emptied them'? The statement reads, 'he unloaded them'![8] But, said Mar son of R. Ashi: [The law here refers] to bundles of garlic.[9]

Huna the son of Mar Zutra said to Rabina: Observe that it has been said, 'he unloaded them';[10] what matters it, then, [whether the price had been] fixed or not? — He [Rabina] replied: [When the price] has been fixed, each [of the parties] acquiesces [in the sale, but when a price] has not been fixed, none [of them] acquiesces.[11]

Rabina said to R. Ashi: come and hear! [It has been stated:][12] Both Rab and Samuel hold that a man's vessel acquires for him ownership everywhere. Does not this ['everywhere'] include the premises of the seller? — [In the case spoken of] there,[13] [the other replied, the seller] said to him 'go and acquire ownership'.[14]

We have learnt elsewhere:[15] Ownership of landed property[16] is acquired by means of money. deed and possession;[17] and movable property[18] is acquired only by meshikah.[19] The following reported statement has been attributed in Sura to R. Hisda; at Pumbeditha, to R. Kahana or — according to others — to Raba: [The law of meshikah] has been taught,with reference only to [heavy] objects which are not usually lifted, but objects which are usually lifted can be acquired by hagbahahl[10] only; not by meshikah. Abaye sat lecturing on this law, [when] R. Adda b. Mattenah raised the following objection. [It has been taught]:[20] He who steals a purse on the Sabbath[21] is liable [to make restitution], because the obligation [to pay restitution], for the theft 'has preceded[22] the offence against the prohibition of the Sabbath.[23] If he was dragging [it][24] as he was moving out, he is exempt [from the payment of restitution][25] because here the offences relating to the desecration of the Sabbath and to theft have been committed simultaneously.[26] Now, surely. a purse is an object which is usually lifted, and yet it is acquired by meshikah![27] He replied unto him: When [the purse has] a cord. 'I also', said R. Adda, 'speak of one with a cord' [and yet it is small enough to be lifted]! — [Abaye] replied: [I say that the law refers to] a thing[28] [so heavy] that it requires a cord.[29]

Come and hear: [It has been taught:[30] If the purchase was] on the premises of the seller, [the buyer] does not acquire possession until he lifts it or removes it from the seller's premises. This proves clearly that an object which can be lifted may be acquired in accordance with one's desire, either by 'lifting' or by meshikah![31] R. Nahman b. Isaac replied: What has been taught is to be taken — disjunctively; that which can be lifted [is acquired] by lifting, and that which has to be pulled [is acquired] by meshikah.

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(1) The goods bought.

(2) The buyer's.

(3) Although the goods are presumably still in the seller's sacks; because the buyer's premises acquired possession for him.

(4) Before the price is agreed upon. the sale cannot be regarded as completed; because neither buyer nor seller makes up his mind to sell or to buy before knowing whether the other party will accept his price or offer. Cf. n. 7.

(5) For it has been said that, if the price had been fixed, none may withdraw, though the goods are presumably still in the buyer's sacks. This shows that the buyer's premises acquire possession for him despite the fact that the goods remain in the seller's vessels.

(6) If premises (the buyer's) can serve as a means of depriving the seller from ownership of his goods though still in his vessels, how much more, in the case of goods in the buyer's vessels, should premises (the seller's) be capable of serving as a means of retaining ownership.

(7) That goods unloaded on the premises of the buyer are acquired by him.

(8) I.e., As delivered in their sacks.

(9) These are not delivered in sacks. When unloaded they come in direct contact with the buyer's territory.

(10) Into the territory of the buyer, which legally acquires ownership for him.

(11) V. p. 349. n. II.

(12) Supra 84b f.

(13) In the statement of Rab and Samuel.

(14) The seller thereby implied that he lent the buyer the spot on which his vessel stood.

(15) Kid. 26a supra 51a, infra 150b.

(16) V. p. 310, n. 7.

(17) V. l.c., n. 10.

(18) V. l.c. n. 6.

(19) V. Glos. (15) V. Glos.

(20) Tosef. B.K. IX.

(21) And carried it out into reshuth harabbim. It is forbidden to carry from private domain into public domain and vice versa on the Sabbath.

(22) The thief becomes liable to pay restitution as soon as he lifted the object.

(23) His liability to the penalty for desecrating the Sabbath does not commence simultaneously with his liability to make restitution. While the latter follows immediately upon his lifting of the stolen object (cf. previous note), the former is effected subsequently. when he takes the object out into reshuth harabbim. Since the two offences have not been committed simultaneously, the law that the lighter penalty (that for theft) is superseded by the heavier (that for desecration of the Sabbath) does not apply.

(24) So that there was no 'lifting' whereby to acquire possession of the theft.

(25) The heavier penalty for the desecration of the Sabbath supersedes the lighter penalty for theft.

(26) Since the object has not been lifted while on the premises of the owner, the thief acquires possession by meshikah, only when the stolen object has been taken out, but at that moment he also commits the offence against the laws of Sabbath, which prohibit the removal of things from one domain into another. (V. n. 2.)

(27) For it has been said that the offence relating to theft had been committed simultaneously with that of the desecration of the Sabbath, though at the time of the dragging out there was only meshikah and no lifting at all.

(28) A big purse.

(29) Whereby to drag it out; and since it is a heavy object it can justly be acquired by meshikah.

(30) Supra 85a.

(31) 'Removing from the seller's premises', without lifting is obviously meshikah.

Talmud - Mas. Baba Bathra 86b

Come and hear: IF ONE HAS SOLD FRUIT TO ANOTHER [AND THE BUYER] HAS PULLED [THEM]. THOUGH THEY HAVE NOT [YET] BEEN MEASURED, OWNERSHIP IS ACQUIRED. Surely fruit can be lifted up, and yet it is taught that ownership [of it] is acquired by meshikah?[1] Here[2] we are dealing with [fruit packed in] large bags.[3] If so,[4] [how can you] explain the last clause [which reads]. IF ONE BUYS FLAX FROM ANOTHER. HE DOES NOT ACQUIRE OWNERSHIP UNTIL HE MOVES IT FROM ONE PLACE TO ANOTHER. Is not flax [also] packed in large bags?[5] — Flax is different — [It has to be packed in small bags] because, [otherwise]. it slips out.[6]

Rabina said to R. Ashi, Come and hear: Large cattle are acquired by mesirah,[7] and small by lifting these are the words of R. Meir and R. Simeon b. Eleazar. But the Sages say: Small cattle [are acquired] by meshikah.[8] Surely, [it may be asked], small cattle can be lifted and yet it is taught[9] that ownership of them may be acquired by meshikah! — Cattle are different because they clutch the ground.[10]

Both Rab and Samuel said: [If the seller said], 'I sell you a kor[11] for thirty', he may withdraw even at the last[12] se'ah.[11] [If, however, he said]: 'I sell you a kor for thirty, [each] se'ah for a sela', [the buyer] acquires possession of every se'ah[13] as it is measured out for him.[14]

Come and hear: If the measure was the property of one of them, he [whose measure it is] acquires successive possession of every single unit of the quantity as soon as it is put in.[15] [Surely this law applies] even to [the case] where the measure had not been filled![16] — [This law refers only to such a case] as when [the seller] said to [the buyer], '[I sell you] a hin[17] for twelve sela'im, [every] log[13] for a sela'. And, as R. Kahana said,[18] 'there were marks in the hin [of the Temple].[19] so, in this case also, there were marks on the measures.[20]

Come and hear! [It has been taught: In the case where a man] hired a labourer to work for him at the harvesting season for a denarius a day. [and paid him his wage in advance].

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(1) How then, can it be said that things that can be lifted cannot be acquired by meshikah?

(2) In the Mishnah quoted.

(3) Which cannot be lifted up.

(4) That the Mishnah deals with fruit in large bags.

(5) If the first clause, (fruit), deals with small bags, the final clause also (flax), would, consequently, deal with small bags. The reason for the difference between the modes of acquiring ownership, ('pulling' in the first, 'lifting' in the second case). could then be explained by the fact that flax is never dragged but always lifted. Thus, the purpose of our Mishnah would be the laying down of the following law: Things which are usually lifted may be acquired not only by 'lifting' but also by 'pulling' — (first clause); while things which are always lifted can be acquired by lifting only — (final clause). If, however, it be assumed that the reason why in the first clause 'pulling' is effective, is only that the fruit is packed in large bags it must consequently be assumed that the reason why the flax cannot be acquired thus, but only by 'lifting', is that it is packed in small bags. If so, it is asked, is not flax also packed in large bags? And if they are so packed, wherein lies the cause of the different modes of acquisition?

(6) Small bags are usually lifted, hence only 'lifting', and not 'pulling', is the mode of acquisition.

(7) V. Glos.

(8) Kid. 25b, B.K. 11b.

(9) By the Sages, who are in the majority in the dispute.

(10) And it is difficult to lift them. Therefore, 'pulling' has been made the mode of their legal acquisition.

(11) Kor and se'ah are measures of capacity, the former containing thirty of the latter.

(12) Because he implied in his offer that it was his desire to sell the entire kor. As long as the buyer has not legally acquired every fraction of it, the purchase is not consummated.
(13) The seller, by specifying the price per kor and se'ah, has intimated his desire to sell either the entire kor or any fraction of it.
(14) Lit., 'he acquires first first'. (Cf. p. 347. n. 1).
(15) Supra 85a.
(16) How, then, could it be said that the seller 'may withdraw even at the last se'ah'?
(17) Hin and log are liquid measures, the former containing twelve of the latter.
(18) Shab. 80b, Men. 87b.
(19) Marking off a quarter. a third, and a half of the hin, required respectively as a meal offering for the lamb, the ram, and the bullock.
(20) Every log was marked off, so that when the commodity measured reached any of the marks it might be regarded as having 'filled the measure', because each mark represented a complete unit.

Talmud - Mas. Baba Bathra 87a

but at that season [the labourer] was worth a sela'[1] [a day] he must not derive any benefit from it.[2] If, however, [a man] hires [a labourer to commence work] at once [and to continue through the harvesting season] for a denarius a day, [although] at the harvesting season he was worth a sela', [he] is permitted [to pay in advance and to have the benefit of the difference].[3] Now, if you are of the opinion that [if the seller said]. 'I sell you a kor for thirty, [each] se'ah for a sela', '[the buyer] acquires possession of every se'ah as it is measured out, here also, [since mention was made of a 'denarius a day'] every day that has passed[4] [should have been regarded as] cut off[5] [from the other days of the period that follow] and it should, [therefore], be forbidden to derive any benefit from it.[6] Why then [has it been said that if a man hires a labourer to commence work at once and to continue through the harvesting season] for a denarius a day, [although] at the harvesting season he was worth a sela' [he] is permitted [to have the benefit]? Is not this [difference] a reward[7] for advancing the money?[8] Raba replied: What a logical argument! Has it ever been forbidden to reduce one's hire to the lowest level?[9] Wherein [then, lies the reason for] the difference between the first, and the last clause?[10] — [In] the first clause, since work does not begin[11] at once,[12] [the difference between the two rates of wage] appears as a reward for advancing the money;[13] [in] the last clause, where work begins at once, [the difference] does not appear as a reward for advancing the money. AND IT IF WAS ATTACHED TO THE GROUND AND HE PLUCKED [OF IT] ANY QUANTITY, HE HAS ACQUIRED OWNERSHIP. Does he acquire ownership [of all the flax] because he has plucked some of it?[14] — R. Shesheth replied: The case dealt with here [refers to a seller] who said [to the buyer], 'Go improve[15] for yourself any piece of land, [acquire[16] possession of it, and thereby] acquire ownership of all that is upon it.'[17]

MISHNAH. [IF] ONE SELLS WINE OR OIL TO ANOTHER AND IT HAS BECOME DEARER[18] OR CHEAPER,[18] — IF THE MEASURE HAS NOT YET BEEN FILLED, [THE BENEFIT OR LOSS IS] THE SELLER'S. AFTER THE MEASURE HAS BEEN FILLED, [THE BENEFIT OR LOSS IS] THE BUYER'S. IF THERE WAS A MIDDLEMAN BETWEEN THEM [AND] THE CASK WAS BROKEN [BEFORE DELIVERY TO THE BUYER], THE LOSS[19] IS THE MIDDLEMAN'S. [A SELLER] MUST [IN FAVOUR OF THE BUYER] ALLOW THREE DROPS TO FALL [FROM THE SIDES OF HIS VESSEL INTO THAT OF THE BUYER AFTER THE LIQUID HAS BEEN POURED OUT]. IF HE INCLINED THE VESSEL [AFTER THE THREE DROPS HAVE BEEN ALLOWED TO FALL]. THE ACCUMULATION OF THE REMNANTS [FROM ITS SIDES] BELONGS TO THE SELLER.[20] A SHOPKEEPER[21] IS NOT OBLIGED TO ALLOW THE THREE DROPS TO FALL. R. JUDAH SAID: ON SABBATH EVE TOWARDS DUSK ONE IS EXEMPT.[22]

GEMARA. Whose measure was this?[23] If it is assumed to have been the measure of the buyer,

[why should the benefit or loss be that] of the seller before the measure has been filled? [Surely] it is the buyer's measure![24] If, however, [it is assumed that it was] the seller's measure, [why should the benefit or loss be that] of the buyer after the measure has been filled? [Surely] it is the seller's measure! — R. Elai replied: The measure was the middleman's.[25] But since it is taught in the latter clause, IF THERE WAS A MIDDLEMAN BETWEEN THEM AND THE CASK WAS BROKEN THE LOSS IS THE MIDDLEMAN'S, is it not to be inferred that the first clause does not deal with the case of a middleman? — The first clause [speaks of] a measure in the absence of the middleman; the latter clause, of the middleman himself.[26]

[IF THE VESSEL . . .] HAS BEEN INCLINED, THE ACCUMULATION OF THE REMNANTS [FROM ITS SIDES] BELONGS TO THE SELLER. When R. Eleazar went up[27] he met Ze'iri to whom he said: Is there here a tanna[28] whom Rab has taught the Mishnah of measures? He showed him R. Isaac b. Abdimi. The latter said unto him: What is your difficulty? — For [the other replied,] we learnt: [IF THE VESSEL . . .] HAS BEEN INCLINED, THE ACCUMULATION OF THE REMNANTS [FROM ITS SIDES] BELONGS TO THE SELLER;

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(1) Sela' = four denarii.

(2) Viz., the difference between the sum given and the price of labour at harvesting time; because this may be regarded as usury. since the labourer is paying a sela' (in labour) for every denarius he has received in advance.

(3) Because the whole period of the hiring is considered as one long day; and, since on the first days of the period the labour was only worth a denarius per day. no higher price need be paid for the other days.

(4) Lit. 'first first'.

(5) Mentioning the entire period and the denarius per day is similar to mentioning the entire kor and the individual units of the se'ah.

(6) Viz. the difference between the wages at the harvesting season and that at the earlier days.

(7) I.e., usury.

(8) Lit., 'reward for waiting for me'.

(9) A labourer may. so far as the Biblical prohibition of usury is concerned, agree to take any wage, however low, even if his work is not to begin until the harvesting season, and his wages may be paid in advance. Lowering one's wage is not the same as paying usury for advancing money as a loan or on a purchase.

(10) Since one may lower his wage, why does the first clause state that one must have no benefit from the difference between the denarius and the sea'?

(11) Lit. 'does not do with him'.

(12) As soon as the wage was agreed upon and paid.

(13) And prohibited as a mere Rabbinical restrictive measure. V. n. 6.

(14) How can the meshikah of a small part affect the entire purchase?

(15) Clearing any piece of land, by plucking the flax that grows upon it, prepares it for ploughing. and thus improves it.

(16) By improving the piece of land at the request of the owner, the buyer acquires possession of the entire field, though he did not buy it for the purpose of acquiring the flax.

(17) By acquiring possession of the land one acquires all that grows upon it.

(18) After the price had been agreed upon.

(19) Lit., 'it was broken.

(20) So Rashb. Jastrow, on the basis of a variant reading. renders, 'If he bent the vessel and drained it.'

(21) Who has to attend to his customers and is pressed for time.

(22) The Gemara explains this.

(23) The measure spoken of in our Mishnah.

(24) Whereby he should acquire ownership.

(25) And he lent it to the buyer and the seller.

(26) Since he buys from the seller to sell to the buyer, and the measure is his, and he himself is present, the purchase is his until delivery to the buyer.

(27) From Babylon to Palestine.

(28) I.e. one who memorizes Mishnayoth and Baraithoth for recital in the school; v. Glos.

but have we not [also] learnt: '[If the vessel][1] has been inclined, the accumulation from the remnants [on its sides] is terumah'?[2] — He replied unto him: Surely about this it has been said: R. Abbahu said [the accumulation belongs to the seller] because the law of the owner's resignation is applied to it.[3]

A SHOPKEEPER IS NOT OBLIGED TO ALLOW TO FALL etc. The question was raised: Does R. Judah refer to the [law in the] earlier clause[4] to relax it,[5] or perhaps [he refers] to the [law in the] latter clause[6] to restrict it?[7] Come and hear: It has been taught: R. Judah says. A shopkeeper, on Sabbath eve at dusk, is exempt, because a shopkeeper is [at that time] much occupied.[8]

MISHNAH. IF A PERSON SENDS HIS [LITTLE] SON TO A SHOPKEEPER [TO WHOM HE HAD PREVIOUSLY GIVEN A DUPONDIUM],[9] AND [THE SHOPKEEPER] MEASURED OUT FOR HIM OIL FOR ONE ISAR[5] AND GAVE HIM THE [OTHER] ISAR, [AND ON HIS WAY HOME THE CHILD] BROKE THE BOTTLE [WHICH HIS FATHER HAD SENT WITH HIM] AND LOST THE ISAR [GIVEN HIM AS CHANGE], THE SHOPKEEPER IS [LIABLE FOR ALL THE LOSSES.][10] R. JUDAH ABSOLVES [THE SHOPKEEPER], SINCE FOR THAT PURPOSE[11] [THE FATHER] HAD SENT HIM [THE CHILD]. BUT THE SAGES AGREE WITH R. JUDAH THAT IN THE CASE WHEN THE BOTTLE WAS IN THE HAND OF THE CHILD, AND THE SHOPKEEPER MEASURED OUT INTO IT, THE SHOPKEEPER IS ABSOLVED.

GEMARA. One can well understand that, in [the case of] the isar and the oil, the dispute [in our Mishnah between the Rabbis[12] and R. Judah] depends on the following [views]. The Rabbis maintain that [the father] has sent [the child merely] to inform [the shopkeeper of what he required],[13] and R. Judah[14] maintains that [the father] has sent [the child] in order that [the shopkeeper] should send him [back with the things]; but, [as regards the] breaking of the bottle, [why should the Rabbis lay the responsibility on the shopkeeper]? It is a loss, [surely], for which its owner[15] was well prepared![16] — R. Hoshaia replied: Here we deal with an owner [who is also] a seller of bottles, and in the case when the shopkeeper took [the bottle] for the purpose of examining it;[17] [in such a case the shopkeeper[18] assumes responsibility] in accordance with [a decision given by] Samuel. For Samuel said: He who takes a vessel from the artisan to examine it, and an accident happens [while it is] in his hand, is liable.[19] Does this mean that [the decision] of Samuel is [not generally accepted, but is a matter of dispute between] Tannaim?[20] [Surely this is not very likely]! — But, said both Rabbah and R. Joseph, [the Mishnah] here [deals] with [the case of] a shopkeeper who sells bottles.[21] And R. Judah follows his own reasoning,[22] and the Rabbis follow their own reasoning.[23] If so,[24] explain the last clause: THE SAGES AGREE WITH R. JUDAH THAT IN THE CASE WHEN THE BOTTLE WAS IN THE HAND OF THE CHILD, AND THE SHOPKEEPER MEASURED OUT INTO IT, THE SHOPKEEPER IS ABSOLVED. But surely you said [that the Rabbis maintained the view that the father] had sent [the child merely] to inform him?[25] — But, said both Abaye b. Abin and R. Hanina b. Abin, here we deal with a case

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(1) In which the Israelite measured out oil for the priestly portion.

(2) Ter. XI. 8. If in the former case the accumulation belongs to the seller not to the buyer, in this case it should belong to the owner, not to the priest.

(3) The buyer of the liquid, who becomes its owner, does not expect any more of it after the three drops from the sides had been drained. In the case of terumah, however, the principle of 'resignation' does not apply, as the remnants, however insignificant, are forbidden to a non-priest.

(4) Which requires the seller always to allow three drops to fall into the vessel of the buyer.

(5) That on Sabbath eve towards dusk, it is not to be applied.

(6) Which exempts a shopkeeper.

(7) That even a shopkeeper is not exempt, except on Sabbath eve towards dusk.
(8) R. Judah's is thus a restrictive measure.
(9) Dupondium and isar, Roman coins. The former is worth two of the latter.
(10) Of the bottle, the oil and the isar.
(11) I.e., of bringing home, from the shopkeeper, the oil and the isar as well as the bottle.
(12) I.e., the Sages who hold the shopkeeper responsible for the losses.
(13) It was the shopkeeper's duty to find a reliable person with whom to send the oil and the change. He had no authority to entrust these to the child.
(14) Who absolves the shopkeeper.
(15) I.e., the father of the child.
(16) By entrusting the bottle to the child, the father had shown that he was prepared to take the risk.
(17) Not merely for the purpose of putting the oil into it, but with the intention of buying it if found suitable.
(18) Who thus becomes a potential buyer.
(19) The Rabbis of our Mishnah also hold the same view. The shopkeeper, by taking the bottle, has undertaken a responsibility for its safety, of which he cannot be absolved until the bottle has been returned to its owner, not merely to the child.
(20) R. Judah, who absolves the shopkeeper, disagreeing with Samuel.
(21) And the child was given money by his father to pay for the bottle in which the oil was to be carried.
(22) He absolved the shopkeeper from responsibility for the oil and the isar, because he maintains that the child was sent to bring the things with him. For the same reason he absolves the shopkeeper from responsibility for the bottle.
(23) They maintain that the child was sent to give the order only, and not to bring either the oil and the isar or the bottle. The responsibility for these things, therefore, rests upon the shop. keeper.
(24) That the Rabbis lay the responsibility for the bottle upon the shopkeeper for the reason that the child was sent only to give the order for it.
(25) Not to bring the bottle. Why, then, do they in this case, absolve the shopkeeper?

Talmud - Mas. Baba Bathra 88a

such as where [the shopkeeper] took [the bottle][1] to measure with it, [and by this action,[2] he becomes responsible] In accordance with [a decision of] Rabbah.[3] For Rabbah said:[4] [If] he[5] struck [a lost animal], he assumed [thereby] the obligation of [returning] it [to its owner].[6] Might it not be suggested that Rabbah said [so, only] in [the case of] living beings, because he [who strikes them] assists[7] in their running away.[8] Would he, [however], have said [so in] such a case as this?[9] — But, said Raba, I and the lion of the college — who is R. Zera — have interpreted this [as follows]: We deal here with a case where [the shopkeeper] took [the bottle] to use it as a measure for others;[10] and the dispute [between the Rabbis and R. Judah] is [dependent] on [their respective opinions as to the legal status of] one who borrows without the knowledge [of the owner].[11] One[12] is of the opinion [that such a person] is [legally considered] a borrower,[13] and the others[14] are of the opinion [that] he is a robber.[15]

Reverting to the above text. Samuel said: 'He who takes a vessel from the artisan to examine it, and an accident happened [while it was] in his hand, is liable'. This law[16] [applies only to the case] where the price had been fixed.[17]

Once a person entered a butcher's shop [and] lifted up a thigh of the meat.[18] A rider came while he was holding it up [and] snatched it away from him. He[19] came before R. Yemar [who] ordered him to pay its price. But this law[20] is [applicable only to the case] where the price has been fixed.

A person once brought pumpkins to Pum Nahara,[21] [when] a crowd[22] assembled [and] everyone took[23] a pumpkin.[24] He called out to them,[25] 'Behold these are dedicated to God'.[26] [When] they [the buyers] came before R. Kahana he said unto them: No one may dedicate a thing which is not his. But this [applies only to the case] where the price is fixed, but [when] the price is not fixed, they

remain in the possession of their owner who may rightly dedicate them.

Our Rabbis taught: A person, [who comes] to buy herbs in the market, and picks out and puts down, even all day long, does not acquire possession [of the herb] nor does he become liable to give [its] tithe. [If] he has made up his mind to buy it, he acquires possession and becomes liable to give the tithe. [If he desires to withdraw,] he cannot return it [to the seller], for it has become liable to the tithe;[27] and he cannot tithe it [before returning] because he would thereby reduce their value.[28] How then [is he to proceed]? — He gives the tithe and [returning the remainder] pays [to the seller] the price of the tithe. Does one, then, acquire possession and become liable to give tithe because he has made up his mind to buy? — R. Hoshaia replied: We deal here with [the case of] a God-fearing man like R. Safra,[29] for instance, who applied to himself, And speaketh truth in his heart.[30]

MISHNAH. A WHOLESALE DEALER[31] MUST CLEAN[32] HIS MEASURES ONCE IN THIRTY DAYS, AND A PRODUCER[33] ONCE IN TWELVE MONTHS.[34] R. SIMEON B. GAMALIEL SAYS: THE STATEMENT IS TO BE REVERSED.[35] A SHOPKEEPER MUST CLEAN HIS MEASURES TWICE A WEEK,[36] WIPE HIS WEIGHTS[37] ONCE A WEEK AND CLEANSE THE SCALES AFTER EVERY WEIGHING.[38] R. SIMEON B. GAMALIEL SAID: THESE LAWS APPLY ONLY TO MOIST[39] [COMMODITIES], BUT IN [THE CASE OF] DRY [ONES][40] THERE IS NO NEED [FOR THE CLEANING].[41]

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(1) Brought by the child. According to their explanation, neither of the parties sells bottles.

(2) By taking the bottle from the child, he becomes responsible for its safety, until it has been returned to its owner. Cf. 358, n. 5.

(3) But in the case where the shopkeeper did not take hold of the bottle, (as in the first clause of our Mishnah), the Rabbis rightly agree with R. Judah.

(4) B.M. 30b.

(5) Though an old, or eminent man, who is not obliged to take the trouble of returning a lost thing.

(6) By striking the animal and thus causing it to move, responsibility for its safe return is assumed until it is delivered to its owner; so, in the case of the bottle, the act of grasping it throws responsibility for its safe return to its owner, on the shopkeeper.

(7) Lit. ‘makes them take the track of the fields’ or ‘the external step’. By striking the animal, he causes it to run away still farther.

(8) Therefore he incurs the obligation of ensuring their safe return to their owners.

(9) I.e., the grasping of the bottle, where no possible loss to its owner is involved.

(10) I.e., other customers.

(11) Cf. B.M. 41a, 43b.

(12) R. Judah.

(13) The shopkeeper, therefore, is absolved from all responsibility as soon as he returns the bottle to the child from whom he has borrowed it.

(14) The Rabbis.

(15) Who remains responsible until the object (in this case, the bottle), is returned to the owner himself (Cf. B.K. 118a).

(16) Lit., ‘these words’.

(17) Since the price was known, it is assumed that the buyer had picked up the vessel with the intention of acquiring possession, if no defect should be detected.

(18) To examine its quality.

(19) The man.

(20) V. n. 1.

(21) Lit., ‘rivermouth’. Name of a town on the Tigris.

(22) Lit., ‘all the world’.

(23) With the intention of buying.

(24) ‘Everyone . . . pumpkin’. lit., ‘pumpkin, pumpkin’.

(25) Fearing that some might get away without paying.

(26) Lit., ‘heaven’.
(27) And no one who observes the law must allow any produce to leave him before duly separating the priestly and Levitical gifts.
(28) The separation of the tithe would reduce the quantity and, consequently, also the value.
(29) Mak. 241.
(30) Ps. XV, 2. Once he made up his mind to do something he did not withdraw from it though that involved him in a loss.
(31) Heb. Siton, cf. Gr. ‘wheat’, ‘corn’; gen. ‘food’, ‘victuals’. Gr., ‘a buyer of corn’, corn merchant’. Gen. ‘provision dealer’. From the Gemara, it will be seen that a dealer in sticky, and oily liquids, such as wine and oil, which cling to the sides of the measures, is here the subject of the discussion.
(32) To remove any wine or oil that clings to the measures and reduces their capacity. The cleansing is in the interest of the customers to enable them to receive full measure.
(33) Lit., ‘owner of the house’. One who sells his own products.
(34) The number of his customers being smaller than those of the wholesale dealer, he uses his measures less frequently, and, consequently, there is less stickiness, and less cleansing is required.
(35) Thus: The producer must cleanse once in thirty days and the wholesale dealer only once in twelve months. The measures of the latter, being in frequent use, do not allow of the accumulation of so much stickiness as do those of the producer who uses his less frequently.
(36) The measures of a shopkeeper who is not obliged to allow three drops to fall from his measures after every sale (supra 87a), accumulate much more of the oily and sticky substances than do those of a wholesaler or a producer.
(37) Wherewith meat and similar moist foodstuffs are weighed.
(38) The cavity of the scales is better ground for the accumulation of moist substances than the flat surfaces of the weights. Hence more frequent cleaning is required.
(39) E.g., wine, meat.
(40) Such as fruit.
(41) Since these do not stick to the measures or weights.

Talmud - Mas. Baba Bathra 88b

AND [A SHOPKEEPER] MUST ALLOW [THE PROVISION SCALE] TO SINK A HANDBREADTH [LOWER THAN THE SCALE OF THE WEIGHTS].[1] [IF] HE GAVE HIM THE EXACT WEIGHT[2] HE MUST ALLOW HIM THE [FOLLOWING] ADDITIONS,[3] A TENTH[4] IN [THE CASE OF] LIQUIDS AND A TWENTIETH IN [THE CASE OF] DRY [PROVISIONS]. WHERE THE USAGE IS TO MEASURE WITH A SMALL [UNIT], ONE MUST NOT USE A BIG MEASURE; [IF THE USAGE IS TO MEASURE] WITH A BIG [UNIT], ONE MUST NOT USE A SMALL MEASURE. [IF THE USAGE IS] TO STRIKE [THE MEASURE],[5] [ONE MUST] NOT HEAP [IT UP]. [IF THE USAGE IS] TO HEAP [IT UP], ONE MUST NOT STRIKE IT.

GEMARA. Whence [is] this law[6] [to be inferred]? — Resh Lakish said: Scripture Says: A perfect and just measure [shalt thou have].[7] [This means], make [your weight] just[8] by giving of your own. If so,[9] explain the next clause. [It reads]: [IF] HE GAVE HIM THE EXACT WEIGHT, HE MUST ALLOW HIM THE [FOLLOWING] ADDITIONS. Now, if giving overweight is a Pentateuchal injunction, how is [he allowed] to give him the exact weight [only]? — But, [came the reply], the earlier clause[10] [is not based on a Pentateuchal injunction, but speaks] of a place where there was the practice [of giving overweight],[11] and the statement of Resh Lakish has been made with reference to [what has been said, not in the earlier, but in] the latter clause, which reads, [IF] HE GAVE HIM THE EXACT WEIGHT, HE MUST ALLOW HIM THE [FOLLOWING] ADDITIONS [and with reference to this it has been asked], ‘Whence [is] this law’? — [And] Resh Lakish said: Scripture says: and just,[12] [which means], make [your weight] just, by giving him of your own. And how much must be added to the weight? — R. Abba b. Memel said in the name of Rab: In [the case of] liquids, a tenth of a pound[13] for [every] ten pounds.[14]

A TENTH IN [THE CASE OF] LIQUIDS, AND A TWENTIETH IN [THE CASE OF] DRY, etc. The question was raised: Does this mean, a tenth of the [unit of the] liquids for [every] ten [units] of the liquid, and a twentieth of [the unit of] dry [provisions] for [every] twenty [units] of dry; or [does it], perhaps, [mean] a tenth [of the unit] for [every] ten [units] of liquid and [a tenth of the unit] for [every] twenty [units] of dry [provisions]? — The matter stands undecided.[15]

R. Levi said:[16] The punishment for [false] measures is more rigorous than that for [marrying] forbidden relatives;[17] for in the latter case[18] it has been said: El,[19] but in the former[18] Eleh.[20] Whence can it be shown that El [implies] rigor[ous punishment]? — For it is written: And the mighty [Elei] of the land he took away.[21] Is not Eleh written also in the case of forbidden relatives?[22] — That [Eleh has been written] to exclude[23] [the sin of false] measures from the punishment of kareth.[24] [In] what [respect], then are [the punishments for giving false measures] greater[25] [than those for marrying forbidden relatives]? — There,[26] repentance is possible, but here,[27] repentance is impossible.[28]

R. Levi further stated: Ordinary[29] robbery is worse than the robbery of holy things,[30] for [in] the former[31] [case] 'sin' is placed before 'trespass'[32] while in the latter, 'trespass' is mentioned before 'sin'.[33]

R. Levi further stated: Come and see [how] divine[34] disposition differs from that of mortals.[35] The Holy One, blessed be He, blessed Israel with twenty-two [letters][36] and cursed them [only] with eight.[37] He blessed them with twenty-two, from If [ye walk] in My statutes[38] to [made you go] upright;[39] and He cursed them with eight, from And if ye shall reject My statutes[40] to And their soul abhorred My statutes.[41] But Moses our teacher blessed them with eight and cursed them with twenty-two. He blessed them with eight,

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(1) I.e., overweight must be allowed to the customer.

(2) Where it is not the usage to allow overweight.

(3) גירומין (from גרם, 'to drag along'), surplus weight or measure which in certain localities shopkeepers allow to their customers.

(4) This is explained in the Gemara, infra.

(5) By removing what is above the level of its top.

(6) Lit., 'these words', the law that the scale must be allowed to sink a handbreadth.

(7) Deut. XXV, 15.

(8) There was no need for Scripture to say 'just', when 'perfect' had already been mentioned. But it teaches that 'perfection' alone is not enough. One must also be 'just' by adding to the 'perfect weight' and, similarly, to the measure.

(9) That the law of adding to weights is not merely Rabbinical, but pentateuchal.

(10) Requiring the giving of a certain amount of overweight by allowing the provision scale to sink a handbreadth etc.

(11) Wherever there exists such a practice, that clause teaches, the scale must be allowed to sink a handbreadth.

(12) Deut. ibid.

(13) Heb. litra, Gr., the Roman libra.

(14) V. infra.

(15) V. Glos. s. v. Teko.

(16) Cf. Yeb. 21a.

(17) Lev. XVIII, 6ff.

(18) Lit. 'this'.

(19) Lev. XVIII, 27. V. following note.

(20) Deut. XXV, 16. El and Eleh, אל [ה],אלה have the same meaning, viz. 'these', but the additional eh at the end of the word is taken to imply additional punishment.

(21) Ezek. XVII, 13.

(22) Lev. Ibid. 29.

(23) Since the expression of 'abomination' has been applied by the Pentateuchal text to both false measures and

forbidden relatives, it might have been thought that the sin of the former is subject to kareth as the latter. Hence the need for the excluding word.

(24) Kareth, כרת (root כרת, to cut off'); premature death, at fifty (kareth of years); or sudden death (kareth of days).

(25) Since it has been said that the punishment of kareth is inflicted only for the sin of marrying forbidden relatives and not for that of false measures.

(26) Forbidden relatives.

(27) False measures.

(28) One cannot remedy the sin of robbery, by mere repentance. The return of the things robbed must precede it. In the case of false measures, it is practically impossible to find out all the members of the public that have been defrauded.

(29) Lit., 'private' or 'individual'. One of the meanings of חדיוט, 'a person in private station', 'layman.' Opposite to one of rank or profession.

(30) Lit., '(Most) High'.

(31) Lit., 'this'.

(32) The Biblical text relating to ordinary robbery reads, If any one sin, and commit a trespass (Lev. V, 21), thus implying that the mere intention or commencement of the crime, even though the trespass had not yet been committed, is already called 'sin'.

(33) In speaking of the robbery of holy things the Bible reads, If any one commit a trespass and sin through error (Lev. V, 15). Thus implying that one is not guilty of 'sin' until after he has committed the 'trespass'.

(34) Lit., 'the Holy One, blessed be He'.

(35) Lit.. 'flesh and blood'.

(36) The passage of the blessings begins with the first, and finishes with the last letter of the alphabet. (Aleph (א) — Taw (ת).)

(37) The section of the curses begins with Waw (ו) and finishes with Mem (מ) (Sixth, to thirteenth letter of the alphabet =eight).

(38) Lev. XXVI, 3. It begins with אם בחקתי

(39) Ibid, v. 13, ends with קוממיות

(40) Ibid, v. 15. beginning with, ואם ובחקתי.

(41) Ibid. v. 43. ends with נפשם

Talmud - Mas. Baba Bathra 89a

from And it shall come to pass, if thou shalt hearken diligently,[1] to to serve them,'[2] and cursed them with twenty-two, from But it shall come to pass, if thou wilt not hearken,[3] to And no man shall buy you.[4]

WHERE THE USAGE IS TO MEASURE WITH A . . . BIG MEASURE, etc.

(Mnemonic: Neither exact weight nor heaped up with market officers and with a pound three and ten NEFESH, weights, a thick strike, you shall not do, he shall not do.)[5]

Our Rabbis taught: Whence [may it be inferred] that [the measure] must not be levelled[6] where the practice is to heap it up, and [that] it must not be heaped up[7] where the practice is to level it? — For it has been definitely stated, A perfect . . . measure.[8] And whence [may it be inferred] that we are not to listen to one who Says, 'I will level where the practice is to heap up, and reduce the price' or 'I will heap up where they level, and raise the price'? — For it has been definitely stated, A perfect and just measure thou shalt have.[8]

Our Rabbis taught: Whence [is it to be inferred] that the exact weight must not be given where the practice is to allow overweight, and that overweight must not be allowed where the practice is to give the exact weight? — For it has been definitely stated, A perfect weight.[9] And whence [may it be inferred] that we are not to listen to one who says, 'I will give the exact weight where the practice is to allow overweight, and reduce the price', or 'I will allow overweight where they give the exact

weight, and raise the price'? — For it has been definitely stated, A perfect and just weight. Rab Judah of Sura said:[10] Thou shalt not have [anything][11] in thy house;[12] why? — Because of [thy] diverse measures.[7] Thou shalt not have[13] [anything] in thy bag;[14] why? — Because of [thy] diverse weights.[13] But [if thou keep] a perfect and just weight. thou shalt have[15] [possessions]; [if] a perfect and just measure, thou shalt have [wealth].

Our Rabbis taught: Thou shalt have,[15] teaches that market officers[16] are appointed to [superintend] measures, but no such officers are appointed for [superintending] prices.[17] Those of the Nasi's[18] House appointed market officers to [superintend] both measures and prices. [Thereupon] said Samuel to Karna: Go forth and teach them [the law that] market officers are appointed to [superintend] measures, but no such officers are appointed to [superintend] prices. [But Karna] went forth [and] gave them the [following] exposition: Market officers are appointed to [superintend] both measures and prices. He said unto him: Is your name Karna? Let a horn[19] grow out of your eye. A horn,[20] [consequently] grew out of his eye. But whose opinion did he follow? — That voiced by Rami b. Hama in the name of R. Isaac that market officers are appointed to [superintend] both measures and prices, on account of the impostors.

Our Rabbis taught: If one asked him for a pound,[21] a pound must be weighed. [If] half a pound, half a pound must be weighed. A quarter of a pound, a quarter of a pound must be weighed. What does this teach us? — That weights must be provided in these [three] denominations.[22]

Our Rabbis taught: If he ordered from him three quarters of a pound, he shall not tell him, 'Weigh out for me the three quarters of the pound one by one'.[23] But a pound weight is laid [on the scale] against a quarter of a pound weight with the meat [on the other scale].

Our Rabbis taught: If he ordered from him ten pounds, he shall not say, 'Weigh out for me each [pound] separately and allow overweight [for each].' But all are weighed together and one overweight is allowed for all of them.

Our Rabbis taught: The nefesh[24] of a balance[25] must be suspended in the air three handbreadths [removed from the roof from which the balance hangs].[26] And [the scales must be] three handbreadths above the ground.[27] The beam[28] and the ropes[29] [must contain a total length of] twelve[30] handbreadths.[31] [The balances] of wool-dealers and glass-ware dealers [must] be suspended in the air two handbreadths [from the ceiling] and two handbreadths above the ground. Their beams and ropes [must contain a total of] nine handbreadths [in length]. [The balance] of a shopkeeper and of a producer[32] [must] be suspended in the air one handbreadth [from above], and one handbreadth above the ground. The beam and ropes [must be of a total length of] six handbreadths. A gold balance [must] be suspended in the air three fingers from above, and three fingers above the ground. [The length of] its beam and cords I do not know. But what [kind of balance is] that [which has been mentioned] first?[33] —

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(1) Deut. XXVIII, 1, begins with Waw, (ו) והיה .

(2) Ibid. v. 14, ends with Mem, (מ) לעהדם (Waw — Mem, eight letters).

(3) Ibid. v. 15, begins with Waw. והיה v. following note.

(4) Ibid. v. 68. ends with He, קנה The section beginning with the sixth letter of the alphabet (Waw ו) and ending with the fifth (He, ה , includes, therefore, all the alphabet.

(5) The mnemonic consists of key words and phrases in the teachings of the Rabbis that follow.

(6) Even with the consent of the buyer.

(7) Even with the desire of the seller.

(8) Deut. XXV, 25. By deviating from the usual practice the buyer, or the seller, may be the means of defrauding, or misleading others.

(9) Ibid.

(10) Expounded the following verse.
(11) Anything of value; i.e., thou wilt be poor.
(12) Ibid. v. 14.
(13) Ibid. v. 13.
(14) I.e., purse.
(15) Ibid. v. 15.
(16) Heb. אגרדמין cf. Gr., 'market commissioner.
(17) In order to allow for free and unfettered competition.
(18) נשיאה 'Prince'. Here R. Judah II.
(19) קרנא.
(20) I.e., a sty (Aruch).
(21) V. Glos.
(22) These denominations are essential. Any other weights have to be computed from these.
(23) As it is impossible to give the exact weight, the seller would be losing the overweight three times, once with each quarter.
(24) נפש, the hollow handle in which the tongue of the balance rests.
(25) Big scales, for the weighing of heavy things such as iron and copper, which are suspended from the roof of the house.
(26) So that the beam may have sufficient space in which to move without knocking against the ceiling and impeding the free movement of the scales.
(27) To allow for the free movement of the scales and to prevent their knocking against the ground and their consequent re-bounding, which would interfere with proper weighing.
(28) To each end of which the ropes are fastened.
(29) To which the scales are attached.
(30) The beam's length must be four handbreadths and that of the two ropes four handbreadths each; total twelve.
(31) If the length of these were less, the scales would not easily move, and small variations in weights could not be detected.
(32) V. p. 361. n. 5.
(33) Since the balances of wool and glass-ware dealers, shopkeepers, producers, and goldsmiths have been specifically mentioned, what kind of balance, then, is the one mentioned first?

Talmud - Mas. Baba Bathra 89b

R. Papa said: [A balance used] for heavy pieces of metal.[1]

R. Mani b. Patish said: The same [restrictions] that have been said [to apply to balances] with reference to their disqualification [for commercial uses] have also been said [to apply to them] with reference to their [liability to] Levitical defilement.[2] What does he come to teach us? [Surely] this has [already] been taught [in the following]:[3] The [length of the] cords[4] of a shopkeeper's, and of producers' balances [which may be subjected to the laws of Levitical defilement, must be] one handbreadth! [And, since this restriction[5] has specifically been applied to one kind of balance, are not the other kinds of balance to be implied?][6] — [The statement of R. Mani] is required [on account of the sizes of] the beam and the cords, which have not been mentioned [there].

Our Rabbis taught: Weights must not be made either of tin or of lead or of gasitron[7] or of any other kinds of metal,[8] but they must be made of stone or of glass.

Our Rabbis taught: The strike must not be made of a gourd because it is light,[9] nor of metal because it is heavy,[10] but it must be made of olive, nut, sycamore, or box wood.

Our Rabbis taught: The strike may not be made thick[11] on one side and thin on the other.[12] One may not strike with a single quick movement, for striking in this manner causes loss[13] to the seller

and benefits[14] the buyer. Nor may one strike very slowly because [this] is disadvantageous[13] to the buyer and beneficial[14] for the seller. Concerning all these [sharp practices of traders], R. Johanan b. Zakkai said:[15] Woe to me if I should speak [of them]; woe to me if I should not speak. Should I speak [of them], knaves might learn [them]; and should I not speak, the knaves might say, 'the scholars are unacquainted with our practices' [and will deceive us still more]. The question was raised: Did he [R. Johanan] speak [of these sharp practices] or not? R. Samuel son of R. Isaac said: He did speak [of them]; and in so doing[16] [he based his decision] on[17] the following Scriptural text: For the ways of the Lord are right, and the just do walk in them; but transgressors do stumble therein.[18]

Our Rabbis taught:[19] [It is written], You shall do no unrighteousness in judgments in meteyard, in weight. or in measure.[20] In meteyard relates to the measuring of ground; one should not measure out for one person in the hot[21] season and for another in the rainy[22] season. In weight, [means] that one shall not keep his weights in salt.[23] In measure, that one shall not cause [liquids] to froth.[24] And by inference from minor to major, [the following may be deduced]. If the Torah cared [for proper measure in] a mesurah[25] which is one thirty-sixth of a log. how much more [should one be careful to give proper measure in the case] of a hin.[26] half a hin, a third of a hin, a quarter of a hin, a log,[27] half a log, a quarter [of a log], a toman,[28] half a toman and an 'ukla![29]

Rab Judah said in the name of Rab: A person is forbidden to keep[30] in his house a measure [which is either] smaller or larger [than the nominal capacity] even if [it is used as a] urine tub. R. Papa said: This applies only in [the case of] a place where [measures] are not [officially] marked,[31] but where they are [officially] marked [they may be used; for] if [the buyer] sees no mark he does not accept [them] — And even where they are not marked, this has been said only in the case where they are not supervised,[32] but if they are supervised[32] it does not matter. But this is not [right]; for [the buyer] may sometimes happen [to call] at twilight[33] and accidentally accept [the faulty measure]. The same, indeed, has been taught [in the following]: A person must not keep in his house a measure [which is either] smaller or larger [than the nominal capacity], even if [it is used as a] urine tub. But a person may make a se'ah,[34] a tarkab,[35] half a tarkab, a kab,[36] half a kab, a quarter [of a kab], a toman,[37] half a toman

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(1) Broken pieces of iron, copper and the like, which sometimes weigh as much as a hundred pounds. The size of the beams, ropes etc. are determined by the weight of the articles for which they are used.

(2) I.e., scales which are prohibited for commercial use cannot be regarded as 'vessels' subject to the laws of Levitical defilement.

(3) Kel. XXIX, 5.

(4) The beam of a balance is suspended by a cord, corresponding to nefesh, supra.

(5) Requiring a distance of a handbreadth from above in the case of shopkeepers' and producers' balances.

(6) What, then, is the purpose of R. Mani's statement?

(7) A fusion of different metals. Others compare the word with Gr.**, tin; perhaps of a special kind.

(8) Because the friction caused by constant use reduces their weight.

(9) And does not strike well, causing loss to the seller.

(10) And penetrates too deeply, causing loss to the buyer.

(11) Because a thick one cannot penetrate so well as a thin one. Cf. the following note.

(12) Because one might use the thin side when selling, and the thick side when buying.

(13) Lit., 'bad'.

(14) Lit., 'good'.

(15) Kelim XVII, 16.

(16) Lit., 'he said it'.

(17) Lit., 'from'.

(18) Hos. XIV, 10.

(19) B.M. 61b.

(20) Lev. XIX, 35.
(21) When the measuring rope is dry and unyielding.
(22) When the rope is moist and capable of extension.
(23) Salt reduces the weight. According to others, salt increases weight and the warning is addressed to the buyer.
(24) By pouring rapidly from a certain height, foam is generated and, consequently, less liquid enters the measure.
(25) משורה the term used for 'measure' in the verse from Lev. XIX, 35 that is here discussed.
(26) Hin = twelve log.
(27) Log = volume of liquid that fills the space occupied by six eggs.
(28) Toman = half a log, or one eighth of a kab. V. Bah, a.l.
(29) Ukla is explained in the Gemara.
(30) Even if not intended to be used for measuring purposes; since others may use it as a measure, by mistake.
(31) By the seal of the recognised authority.
(32) By duly appointed officers, מהנדסי Others, 'marked by means of incisions'.
(33) When everyone is in a hurry.
(34) Se'ah = two Tarkab or six Kab.
(35) Tarkab = three kab.
(36) Kab = four log.
(37) Toman, v. p. 369, n. 10.

Talmud - Mas. Baba Bathra 90a

and an 'Ukla. — How much is an 'ukla? — A fifth of a quarter [of a kab]. In the case of liquid measures one may make a hin,[1] half a hin, a third of a hin, a quarter of a hin, a log,[2] half a log, a quarter [of a log], an eighth [of a log], and an eighth of an eighth [of a log] which is a kortob.[3] [Why should] one [not be allowed] also to make a two-kab [measure]?[4] — It might be mistaken[5] for a tarkab.[6] This proves that people may err by a third;[7] [but] if so, one kab [measure] also should not be made, since it might be mistaken[5] for half a tarkab?[8] — But this is the reason why a two-kab [measure] must not be made; it might be mistaken[5] for half a tarkab. This proves that one may err by a quarter;[9] [but] if so, half a toman and an ukla [measures, also,] should not be made?[10] — R. Papa replied: People are familiar with small measures [and are not likely to mistake them for one another]. Should not one be forbidden to make a third of a hin [and] a quarter of a hin?[11] — Since these [measures] were [used] in the Temple, the Rabbis have not enacted any precautionary prohibitions against their use. Let precautionary prohibitions be adopted in the case of the Temple [itself]? — Priests are careful.[12]

Samuel said:[13] Measures must not be increased [even when all the townspeople have agreed to alter the standards of the measures] by more than a sixth, nor [even by general consent] may [the value of] a coin [be increased by] more than a sixth. And any profits on sales must not exceed one sixth. What is the reason why measures must not be increased by more than a sixth? If it is said, because market prices will rise [above due proportions],[14] [then for the same reason one should] not [be allowed to increase] even [by] a sixth! But if [it be said], because of the overcharge,[15] so that the entire purchase should not have to be cancelled;[16] surely, Raba said: One may withdraw [from any transaction in which] anything [had been sold] by measure, weight or number, even [if the overcharge was] less than [the legal limit of] overcharge![17] But [if it be said that the reason why no more than a sixth may be added to weights is] that the dealer may not incur any loss;[18] [has this law, then, been made, it may be retorted, on the assumption that a dealer] must incur no loss [but also] requires no profit? 'Buy and sell [at no profit] and be called a merchant!' — But, said R. Hisda: Samuel found a Scriptural text and expounded it. [It is written], And the shekel shall be twenty gerahs; twenty shekels, five and twenty shekels, ten and five shekels, shall be your maneh.[19]

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(1) Hin, (v. loc. cit., n. 8,) = a tarkab.
(2) Log, v. loc. cit. n. 9.

(3) Kortob = Sixty-fourth of a log.
(4) A third of a se'ah, as one is allowed to make a third of a hin.
(5) Lit., 'changed'.
(6) Owing to the comparatively small difference between them. (3 — 2 = 1 kab.)
(7) The difference between a tarkab and a two kab, being one kab = a third of a tarkab.
(8) Half a tarkab, equals one and a half kab. The difference between one and a half, and one kab = half a kab = a third of half a tarkab.
(9) The difference between half a tarkab (= one and a half kab), and two kab, equals half a kab = a quarter of two kab.
(10) The difference between half a toman (=one sixteenth kab) and an 'ukla (=one twentieth kab) is only one eightieth of a kab which is a fifth of the half toman, less than a quarter, so that these two measures could, accordingly, certainly be mistaken for one another.
(11) Since the difference between these two (a third — a quarter) is a twelfth of a hin, which is a quarter of the larger measure (1/3 hin).
(12) No precautions, therefore, are necessary in their case.
(13) Men. 77a.
(14) Traders arriving from other places, finding that the standard of the weights has risen, will raise prices in a still higher proportion.
(15) An overcharge of less than a sixth does not entitle any of the parties to cancel the sale. Only the overcharge is to be returned.
(16) If the increase in the weights will be more than a sixth, the seller, who did not know of this, and accepted the old price, would be losing more than a sixth and would, therefore, be entitled to cancel the entire sale.
(17) Since, in such cases, one may withdraw even when the overcharge was less than a sixth, nothing is gained by limiting the permitted increase in weights to a sixth.
(18) A dealer may, in accordance with what has been said before, make a profit of one sixth. When weights are increased by a sixth and a dealer sells at the old price, he does not lose thereby any of his principal, since what he loses by taking the old price and giving the increased weight, he makes up by the profit he gains on selling at a price which is higher by a sixth than his cost price.
(19) Ezek. XLV, 12.

Talmud - Mas. Baba Bathra 90b

Was the maneh two hundred and forty [denarii].[1] But three things are to be inferred from this. It is to be inferred that the holy maneh was doubled;[2] it is to be inferred that the [standard of] measures[3] may be increased,[4] though that increase must not be more than a sixth;[5] and it is to be inferred that the sixth is to be exclusive.[6]

R. Papa b. Samuel introduced a measure of three kefiza.[7] They said unto him: Did not Samuel say that measures must not be increased by more than a sixth?[8] — He said unto them: I have introduced a new measure.[9] He sent it to Pumbeditha, but they did not adopt it. He sent it to Papunia and they adopted it and named it Roz-Papa.[10]

(Mnemonic Sign: Hoarders of fruit must not hoard, carry out, profit, twice in eggs. Prayers are offered and not caused to go out.)[11]

Our Rabbis taught: Concerning those who hoard fruit;[12] lend money on usury, reduce the measures and raise prices, Scripture says, Saying: 'When will the new moon be gone, that we may sell grain? And the Sabbath, that we may set forth corn? Making the ephah small, and the shekel great, and falsifying the balances of deceit.[13] And [concerning these] it is [further] written in Scripture, The Lord hath sworn by the pride of Jacob: Surely I will never forget any of their works.[14] Who, for instance, may be classed among fruit hoarders?[15] — R. Johanan said: [A person], for instance, like Shabbethai the fruit hoarder.[16] Samuel's father used to sell fruit during the [prevalence of the] early [market] price[s][17] at the early price.[18] Samuel his son retained the fruit and sold them,

when the late [market] prices [were current], at the early [market] price.[19] Word was sent from there:[20] 'The father's [action] is better than the son's.' What is the reason? — Prices that have been eased remain so.[21]

Rab said: A person may store his own kab [of produce].[22] The same has also been taught [elsewhere]:[23] Fruit [and] things which are life's necessities as, for instance, wines, oils and the various kinds of flour, must not be hoarded; but spices, cumin and pepper may. The prohibitions mentioned apply [only] to one buying from the market, but [in the case of him] who brings in [for storage] of his own, [this is] permitted. In Palestine[24] one may store fruit for [the following] three years: The eve of the Sabbatical year,[25] the Sabbatical year, and the conclusion of the Sabbatical year.[26] In years of famine one must not hoard even a kab of carobs,[27] because thereby one brings a curse on the market prices. R. Jose b. Hanina said to his attendant Puga: Go, store away for me fruit for [the following] three years: The eve of the Sabbatical year,[28] and the Sabbatical year, and the conclusion of the Sabbatical year.[29]

Our Rabbis taught:[30] One must not carry out of Palestine[31] fruit [and] things which are life's necessities such as, for instance, wines, oils and the various kinds of flour. R. Judah b. Bathyra permits [it] in [the case of] wine, because [thereby] one diminishes levity. And as it is not permitted to carry away out of the land [of Palestine] into a foreign country, so it is not permitted to carry away out of Palestine[29] to Syria.[32] And Rabbi permits this

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(1) The maneh, according to Ezekiel, was twenty + twenty-five + ten + five shekels= sixty shekels =two hundred and forty denarii (one shekel =four denarii). But elsewhere it is stated that the maneh contains only twenty-five shekels or sela'im = only a hundred. (Cf. Keth. 10a).

(2) The ordinary maneh contained twenty-five shekels. Having added a sixth milbar, מלבר (from outside the quantity) = a fifth milgaw מלגאו (from inside), the value of the maneh rose to thirty shekels. The holy shekel, being doubled, is, therefore, worth sixty shekels or two hundred and forty denarii.

(3) I.e. measures and coins.

(4) As the maneh had been increased from twenty-five to thirty shekels, (in the case of the ordinary shekel) and from fifty to sixty shekels (in the case of the holy shekel).

(5) As the increase of the maneh was by no more than a sixth.

(6) Lit. 'from the outside'. The quantity is divided into five parts and a sixth is added 'from the outside'. A sixth milbar = a fifth milgaw. Cf. n. 1.

(7) קפיזא, Persian Kamij, a measure containing three log. Measure of three kefiza nine log. Others hold that the kefiza contained one log only. and R. Papa's new measure contained, accordingly. three log.

(8) A nine-log measure is bigger than half a tarkab (6 log) by a third milbar (a half milgaw). According to the second statement in the previous note, the comparison is between the half-kab (two log) and the kefiza (three 10a), the difference between which is also a third milbar.

(9) Not an enlargement of an old one. No mistaken charges would consequently take place.

(10) [רוז פפא or ריז Riz (Obermeyer. op. cit. p. 242. n. 2), a Persian measure, accordingly, Papa's measure.]

(11) The mnemonic consists of key-words or phrases in the teachings of the Rabbis that follow.

(12) To sell it later when prices have risen. 'To corner'.

(13) Amos VIII, 5.

(14) Ibid, v. 7.

(15) Lit., 'fruit hoarders like whom?'

(16) Who accumulated fruit and sold them to the poor when prices rose.

(17) The prices prevailing immediately after the harvest.

(18) I.e., cheap, so that others also might be induced to sell, and thus keep prices down throughout the year.

(19) Thus enabling the poor to purchase fruit cheaply when prices were high and beyond their means.

(20) I.e., Palestine.

(21) If prices are kept down from the very beginning (as Samuel's father helped to do) they remain at a low level throughout the year. If, however, they have once been forced up, some cheaper selling later (as Samuel did) will not

easily bring them down.
(22) The prohibition is only against hoarding for trading purposes.
(23) Tosef. A.Z. V.
(24) Lit., 'the land of Israel'.
(25) The sixth year of the Septennial period, when produce has to be stored away for the following (Sabbatical) year when no cultivation of the land is allowed, and for the year following it when there will be no yield of produce till its conclusion.
(26) I.e., the year beginning with the conclusion of the Sabbatical year. viz. the first year of the next Septennial period. V. previous note.
(27) I.e., even the cheapest fruit.
(28) V. p. 373, n. 13.
(29) V. loc. cit., n. 14.
(30) Tosef. A.Z. ibid.
(31) V. p. 373. n. 12.
(32) Though it had been included in the land of Israel in the time of David.

Talmud - Mas. Baba Bathra 91a

from one province [on the border of Palestine and Syria] to [an adjacent] province [in Syria].[1]

Our Rabbis taught:[2] In Palestine it is not permitted to make a profit [as middleman][3] in things which are life's necessaries, such as, for instance, wines, oils and the various kinds of flour. It has been said about R. Eleazar b. Azariah that he used to make a profit in wine and oil. In [the case of] wine he held the same opinion as R. Judah;[4] in [the case of] oil? — In the place of R. Eleazar b. Azariah oil was plentiful.[5]

Our Rabbis taught: It is not permitted to make a profit in eggs twice. [As to the meaning of 'twice',] Mari b. Mari said: Rab and Samuel are in dispute. One says: Two for one.[6] And the other says: [Selling] by a dealer to a dealer.[7]

Our Rabbis taught: Public prayers[8] are offered for goods [which have become dangerously[9] cheap], even on the Sabbath. R. Johanan said: For instance linen garments in Babylon and wine and oil in Palestine. R. Joseph said: This [is only so] when [these have become so] cheap that ten are sold at [the price of] six.[10]

Our Rabbis taught:[11] It is not permitted to go forth from Palestine[12] to a foreign country unless two se'ahs[13] are sold for one sela'. R. Simeon said: [This is permitted only] when one cannot find [anything] to buy, but when one is able [to find something] to buy. even if a se'ah[13] cost a sela' one must not depart. And so said R. Simeon b. Yohai: Elimelech, Mahlon and Chilion were [of the] great men of their generation, and they were [also] leaders of their generation. Why, then, were they punished? Because they left Palestine for a foreign country; for it is written , And all the city was astir concerning them, and the women said: 'Is this Naomi?' What [is meant by] 'Is this Naomi?' — R. Isaac said: They said, 'Did you see what befell Naomi who left Palestine for a foreign country?'

R. Isaac further stated: On the very day, when Ruth the Moabitess came to Palestine, died the wife of Boaz. This is why people say, 'Before a person dies, the master of his house is appointed'.[14]

Rabbah, son of R. Huna, said in the name of Rab: Ibzan[15] is Boaz. What does he come to teach us [by this statement]? — The same[16] that Rabbah son of R. Huna [taught elsewhere]. For Rabbah, son of R. Huna, said in the name of Rab: Boaz made for his sons a hundred and twenty wedding feasts, for it is said, And he [Ibzan][17] had thirty sons, and thirty daughters he sent abroad, and thirty daughters he brought in from abroad for his sons; and he judged Israel seven years;[18] and in the case

of everyone [of these] he made two wedding feasts, one in the house of the father and one in the house of the father-inlaw. To none of them did he invite Manoah,[19] [for] he said, 'Whereby will the barren mule repay me?'[20] All these died in his lifetime. It is [in relation to such a case as] this that people say: 'Of what use to you are sixty; the sixty that you beget for your lifetime?[21] [Marry] again[22] and beget [one] brighter[23] than sixty.'[24]

(Mnemonic sign: King Abraham, the ten years when he passed away he was exalted alone.)[25]

R. Hanan b. Raba said in the name of Rab: Elimelech and Salmon[26] and such a one[27] and the father of Naomi all were the sons of Nahshon, the son of Amminadab.[28] What does he come to teach us [by this statement]? — That even the merit of one's ancestors is of no avail[29] when one leaves the land [of Palestine] for a foreign country.[30]

R. Hanan b. Raba further stated in the name of Rab: [The name of] the mother of Abraham [was] Amathlai the daughter of Karnebo;[31] [the name of] the mother of Haman was Amathlai, the daughter of 'Orabti;[32] and your mnemonic [may be], 'unclean [to] unclean, clean [to] clean'.[33] The mother of David was named Nizbeth the daughter of Adael. The mother of Samson [was named] Zlelponith, and his sister, Nashyan. In what [respect] do [these names] matter?[34] — In respect of a reply to the heretics.[35]

R. Hanan b. Raba further stated in the name of Rab: Abraham our father was imprisoned for ten years. 'Three in Kutha,[36] and seven in Kardu. But R. Dimi of Nehardea taught [in the reverse [order]. R. Hisda said: The small side of Kutha[37] is Ur of the Chaldees.[38]

R. Hanan b. Raba further said in the name of Rab: On the day when Abraham our father passed away from the world all the great ones of the nations of the world, stood in a line[39] and said: Woe to the world that has lost

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(1) הפרכיא , 'provincial government', 'province'.

(2) Tosef. A.Z. ibid.

(3) The producer must sell direct to the consumer.

(4) R. Judah b. Bathyra who allowed profiting in wine because by raising its price, consumption and consequent levity are diminished.

(5) And there was no fear that prices would rise in consequence.

(6) Selling for two shekels, for instance, that which was bought for one.

(7) 'Twice' means 'selling to two dealers'. This is forbidden because a double profit is thus made, and prices are raised.

(8) Lit., 'to sound the alarm', by the institution of intercessory prayers with or without the blowing of the shofar.

(9) The falling prices endanger the existence of the trading section of the community.

(10) I.e., a drop of 40%.

(11) Tosef. ibid.

(12) Certain precepts can be performed in Palestine only. One should not, therefore, depart from it unless there is no other alternative.

(13) Se'ah of produce.

(14) Ruth married Boaz. V. Ruth IV, 13.

(15) One of the judges of Israel. Cf. Judg. XII, 8.

(16) V. p. 376, n. 5.

(17) I.e., Boaz.

(18) Ibid. 9.

(19) Cf. Ibid. XIII, 2ff.

(20) Manoah, before the birth of Samson, had no children to whose wedding feasts he could extend invitations. Cf. Ibid.

(21) I.e., children that do not survive you.

(22) As Boaz (Ibzan) married Ruth in his later life. Cf. p. 375, n. 6.

(23) David, King of Israel, who descended from Boaz and Ruth. Cf. Ruth IV, 21-22.
(24) This statement in the name of Rab, which can only be intelligible if it is assumed that Boaz and Ibzan are one and the same person, must be read in conjunction with the previous one, also made in the name of Rab.
(25) The mnemonic consists of key words in the following paragraphs.
(26) Cf. Ruth IV, 20.
(27) פלוני אלמוני Peloni Almoni (Ruth IV, 1), the unnamed kinsman of Naomi.
(28) Cf. Ex. VI, 23; Num. X, 14.
(29) As evidenced by the tragic end of Elimelech and his sons.
(30) חוצה לארץ 'outside the land'. V. p. 375, n. 4.
(31) From Kar, כר 'lamb', נבו ('Mount of) Nebo'.
(32) From Oreb עורב 'raven'.
(33) Haman's grandmother was named after an unclean animal (raven, cf. Lev. XI, 15. Deut. XIV, 14); but Abraham's grandmother bore the name of a clean animal. (V. n. 12, supra.)
(34) Lit. 'is the outcome'.
(35) Minim (sing. מין), applied especially to Jew-Christians. Should the minim ask why the names of the mothers of these important figures are not given in the Bible narrative, they can be answered that these had been handed down by oral tradition. [V. Herford, Christianity, p. 326.]
(36) V. II Kings, XVII, 24.
(37) [There were two Kuthas situated on a Euphrates' Canal — The great and the little Kutha. V. Obermeyer op. cit. 279.]
(38) Abraham's birthplace. Gen. Xl, 31.
(39) It was the custom for those who came to offer comfort to mourners to stand in a line.

Talmud - Mas. Baba Bathra 91b

its leader and woe to the ship that has lost its pilot.[1]

And thou art exalted as head above all;[2] R. Hanan b. Raba said in the name of Rab: Even a superintendent of a well[3] is appointed in heaven.[4]

R. Hiyya b. Abin said in the name of R. Joshua b. Korhah: God forbid [that Elimelech and his family should be condemned for leaving Palestine]; for had they found even only bran they would not have left [the country]. Why then was punishment inflicted upon them? — Because they should have begged mercy[5] for their generation, and they did not do so; for it is said, When thou criest, let them that thou hast gathered deliver thee.[6]

Rabbah b. Bar Hana said in the name of R. Johanan: [This][7] has only been taught [in the case when] money is cheap and fruit is dear, but [when] money is dear, even if four se'ah cost [only] a sela, it is permitted to leave [the country].

(Mnemonic Sign: Sela, Workman, carob, the lads say.)[8]

For[9] R. Johanan said:[10] I remember [the time] when four se'ah cost a sela and there were numerous deaths from starvation[11] in Tiberias, for want of an isar[12] [wherewith to buy bread].

R. Johanan further stated: I remember [the time] when workmen would not accept work on the east side of the town where workmen died from the odour of the bread.[13]

R. Johanan further stated: I remember [the time] when a child would break a carob pod and a line of honey would run down over both his arms. And R. Eleazar said: I remember [a time] when a raven would take [a piece of] flesh, and a line of oil would rundown from the top of the wall to the ground.

R. Johanan further stated: I remember [the time] when lads and lasses of sixteen and seventeen years of age took walks [together] in the open air and did not sin.

R. Johanan further stated: I remember [the time] when it has been said in the house of study: 'He that agrees with them[14] falls into their hands; [as to him] who trusts in them, [whatever is] his [becomes] theirs'.[15]

[Why] has it been written, Mahlon and Chilion[16] [in one place], and Joash and Saraph[17] in another?[18] — Rab and Samuel [explained]. One said: Their names were Mahlon and Chilion, but they were called Joash and Saraph [for this reason]: Joash,[19] because they lost hope in the [messianic] redemption [of Israel;] [and] Saraph,[20] because they were condemned by the Omnipresent to be burned. And the other says: Their names were Joash and Saraph, but they were called Mahlon and Chilion [for this reason]: Mahlon,[21] because they profaned their bodies; and Chilion,[22] because they were condemned by the Omnipresent to destruction.

There is [a Baraitha] taught in agreement with him who said that their names were Mahlon and Chilion. For it has been taught: What is [the interpretation] of the Biblical text, And Jokim, and the men of Cozeba, and Joash and Saraph, who had dominion in Moab, and Jashubilehem; and the things are ancient?[23] — And Jokim, is Joshua who kept[24] his oath to the men of Gibeon.[25] And the men of Cozeba, these are the men of Gibeon who lied to Joshua.[26] And Joash and Seraph, these are Mahlon and Chilion. And why were they called Joash and Saraph? — Joash, because they lost hope[27] in the [Messianic] redemption [of Israel]; Saraph, because they were condemned by the Omnipresent to be burned.[28] Who had dominion in Moab, [means], they who married wives of the women of Moab. And Jashubilehem, refers to Ruth the Moabitess who returned[29] and kept fast by Bethlehem[30] of Judah. And the things are ancient, [means] these things were said by the Ancient of days.[31]

These were the potters and those that dwelt among plantations and hedges; there they dwelt occupied in the king's work.[32] These were the potters, refers to the sons of Jonadab the son of Rechab who kept[33] the oath of their father.[34] Those that dwelt among the plantations, has reference to Solomon who in his kingdom was like a [constantly flourishing] plant. And hedges, refers to the Sanhedrin[35] who fenced in the breaches in Israel. There they dwelt occupied in the king's work, refers to Ruth the Moabitess who saw the kingdom of Solomon, the grandson of her grandson; for it is said: And [Solomon] caused a throne to be set up for the king's mother,'[36] and R. Eleazar said, 'to the mother of the dynasty'.[37]

Our Rabbis taught: [It is written], And ye shall eat of the produce. the old store;[38] [that is] without [the necessity for] a preservative.[39] What [is the meaning of] 'without salminton'? — R. Nahman said: Without the grain worm. And R. Shesheth said: Without blast. A Baraitha has been taught in agreement with [the interpretation] of R. Shesheth, [and] a Baraitha has been taught in agreement with that of R. Nahman. In agreement with that of R. Nahman it has been taught: [It is written], and ye shall eat . . . the old store; one might [think that] Israel will be looking out for the new [produce] because the old[40] had been destroyed [by the grain worm], therefore it is expressly said, until her produce came in, that is, until the produce will come [naturally] of itself.[41] In agreement with that of R. Shesheth, it has been taught: [It is written], And ye shall eat of the produce of the old store; one might [think that] Israel will be looking out for the new [produce] because the old was spoilt[42] [by the blast], therefore it is expressly said, until her produce come in, [that is] until the produce will come in the natural course.

Our Rabbis taught: [It is written], And ye shall eat old store long kept;[43] [this] teaches that the older [the produce] the better [it would be].[44] [From this] one infers only [concerning] things which

are commonly stored away,[45] whence [may one also infer] concerning things which are not commonly stored away?[45] — It is explicitly stated: Old store long kept,[46] [which implies] 'in all cases — [It is written]: And ye shall bring forth the old from before the new;[47] [this] teaches that the storehouses would be full of old [produce]. and the threshing-floors of new, and Israel would say: 'How shall we take out one before the other!'[48] R. Papa said: All things are better [when] old, except dates, beer and small fishes.[49] [

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(1) Gr.**, 'steersman', pilot'.

(2) I Chron. XXIX, 11.

(3) I.e., a minor headship.

(4) This is inferred from the text which in Heb. reads, והמתנשא לכל לראש, and which may be rendered as in E.V., supra, as well as, 'through thee is appointed he who is raised as chief over anything'.

(5) That the famine (cf. Ruth I, 1) should cease.

(6) Isa. LVII, 13. By praying for the delivery of others, one is himself delivered.

(7) That one must not leave Palestine.

(8) The mnemonic is an aid to the recollection of the statements of R. Johanan that follow.

(9) Reason for statement in previous para.

(10) Ta'an. 19b.

(11) Lit., 'swollen from hunger'.

(12) Small coin, v. GIos.

(13) This probably means that people were so starved that the odour of the bread baked in the east, and presumably wealthier part of the town, had a fatal effect upon them.

(14) The heathens.

(15) At an unguarded moment they rob him of all he has.

(16) Ruth I, 2.

(17) I Chron. IV, 22.

(18) The assumption here is that they are the same two persons.

(19) יואש is taken to be derived from the root יאש, 'to give up hope'.

(20) שרף from שרף, 'to burn'.

(21) מחלון is derived from the root חלל 'profane'.

(22) כילון from כלה 'to destroy'; כליון 'destruction'.

(23) I Chron. IV, 22.

(24) הקים same root as that of ויוקים 'and Jokim'.

(25) Cf. Josh. IX. 15, 26.

(26) Cf. ibid. vv. 4ff. Lied, בכזבן from the same root as כזבא 'Cozeba'.

(27) V. p. 378, n. 9.

(28) V. p. 378, n. 10.

(29) שבה from the same root as וישבי'and Jashubi'.

(30) בית לחם, the second word being the same as the second word in וישבי לחם 'and Jashubilehem'.

(31) Cf. Dan. VII, 9, 22. The series of events and circumstances, which commenced with the departure of Naomi's family from Palestine and terminated with the birth of David, was pre-ordained by God.

(32) I Chron. IV, 23.

(33) נרצו taken to be from a root similar to that of היוצרים 'the potters'.

(34) Cf. Jer. XXXV, 6ff.

(35) Sanhedrion, the supreme council and highest court of justice in Jewry in Talmudic times.

(36) I Kings II, 19.

(37) I.e., Ruth the mother of the dynasty of David. Cf. Ruth, IV, 10, 21-22.

(38) Lev. XXV, 22.

(39) Heb. Salminton, cf. salsamintum.

(40) Which had been promised to Israel in the previous section of the verse to last until, but not into, the new harvesting season.

(41) There will be no need to have recourse to an early and forced harvesting.

(42) ‘spoilt’ not ‘destroyed’. The grain worm destroys, the blast only spoils the crops.
(43) Lev. XXVI, 10.
(44) Lit., ‘whatever is older than the other, is better’.
(45) Lit., ‘made old’.
(46) **ישן נושן** ‘old, very old’. The repetition indicates that any old things. even though not usually stored away, are included.
(47) Ibid.
(48) ‘Ye shall bring forth’ implies'under compulsion’ . There will be so much new that no space for the old will remain.
(49) Others, ‘fish-hash’.

Talmud - Mas. Baba Bathra 92a

CHAPTER VI

MISHNAH. [IF] ANYONE HAS SOLD FRUIT TO ANOTHER [NOT SPECIFYING WHETHER AS FOOD OR SEED], AND [THE BUYER] SOWED THEM AND THEY DID NOT GROW, EVEN [IF THEY WERE] LINSEED,[1] HE IS NOT RESPONSIBLE.[2] R. SIMEON B. GAMALIEL SAID: FOR GARDEN SEEDS WHICH ARE NOT EATEN, HE[3] IS RESPONSIBLE.[4]

GEMARA. It has been stated:[5] [If] one has sold an ox to another, and it was found to have been wont to gore.[6] Rab said, the [sale] is under false pretences.[7] But Samuel said: [The seller] can say to him, 'I have sold it to you for [the purpose of] slaughtering'.[8] But [cannot the object of the sale] be seen [from the following]? If [he is] a man that buys for slaughtering [then this sale also must have been] for [the purpose of] slaughtering; [and] if for ploughing, [it must have been] for [the purpose of] ploughing. [why then, should there be a dispute between Rab and Samuel]? — [This dispute relates to the case] of a man who buys for both.[9] But why not see what price[10] was paid?[11] — The dispute is applicable [to the case] when the price of meat has risen and stands at [the same level as] the price of [an animal for] ploughing. If so, what difference is there [whether the animal was bought for ploughing or slaughtering]?[12] — [There is] a difference [in respect] of the trouble.[13] How is this[14] to be understood?

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(1) Which are usually sold as seed.

(2) The seller may claim to have sold them as food, not as seed.

(3) The seller.

(4) The entire transaction is invalid, since the purchase had been for seed, and it has proved to be useless for that purpose.

(5) B.K. 46a.

(6) Before the sale took place.

(7) Lit., 'mistaken deal', 'a purchase based on error'. An ox is usually purchased to plough or to perform similar service. The sale, therefore, took place under false pretences, and is consequently invalid, and the seller must return the purchase money.

(8) Samuel is of the opinion that, in money matters, general practice is no determining factor in the validity of the sale. The seller, therefore, can claim that, despite the general practice, he has sold him the ox, not for ploughing, but for slaughter.

(9) Lit., 'for this and for that'; for ploughing or for slaughtering.

(10) The cost of an animal for work is much higher than one for food only.

(11) Lit., 'how the monies are.

(12) In either case the animal is worth the price paid for it; why, then, should Rab differ from Samuel by declaring such a deal to be invalid?

(13) Of killing the animal and selling it. For this reason, Rab declares the sale invalid and requires the seller to return the purchase price.

(14) That the seller is required to return the money he received.

Talmud - Mas. Baba Bathra 92b

If there is no [capital] from which [the buyer] may be reimbursed, let the ox be retained for the money;[1] as people say.[2] 'from your debtor accept [even] bran in payment'! — [The dispute between Rab and Samuel] is required only [in the case] where there is [capital] from which [the buyer] may be reimbursed. [In such a case] Rab said: The deal was made under false pretences [because] one must be guided by the general practice[3] and most people buy [oxen] for ploughing. But Samuel said [in reply]: One is guided by the general practice in ritual, but not in monetary matters.

(Mnemonic:[4] A woman and a slave, an ox, oxen and fruit.) An objection was raised: [If] a woman has become a widow or has been divorced, and she claims, 'I was married [as] a virgin',[5] and he[6] says [to her]. '[It was] not so, but I married you [as] a widow',[7] if there are witnesses that she left [her father's house for the wedding ceremony] in a curtained litter[8] , or with uncovered head,[9] she [is entitled to] a kethubah[10] of two hundred [zuz].[11] Now, the reason [why she receives two hundred zuz is] that there were witnesses but, [it may be inferred], had there been no witnesses, [she would] not [have been entitled to the higher settlement];[12] why should it not be said,[13] 'Be guided by [what] most women [do]', and most women marry [as] virgins? Rabina said: Because It may be assumed [on the one hand], that the majority of women marry [as] virgins and a minority [as] widows, and, [on the other hand, that] whenever [a woman] marries [as] a virgin [the fact] is known; [consequently] since in her case [the fact] is not known,[14] the majority principle, as applied to her, is impaired.[15] [But] if, [as you have said], all who marry [as] virgins are known [to have so married], what use are witnesses? [Surely], since [the fact that] she [married as a virgin] is not known, they [must] be [regarded as] false witnesses.[16] But, [this is the answer], the majority of those who marry [as] virgins are known [to have so married] and since this one is not known, the majority principle in her case is impaired. Come and hear! [It has been taught:][17] [If] one sold to another a slave who was found to have been a thief or a gambler,[18] the sale is valid.[19] [If the slave was found to have been] an armed robber or one prescribed by the government '[20] [the buyer may] say to him; 'This is yours; take him'.[21] Now in the case of] the first clause,

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(1) Why, then, should the ox, according to Rab who considers the sale invalid, be returned to the seller?

(2) Cf. B.K. 46b; B.M. 118a.

(3) Lit., 'majority'.

(4) The mnemonic aids in the recollection of the following quotations from which objections were raised to Rab's or Samuel's opinion.

(5) V. n. 23. infra.

(6) The husband.

(7) V. n. 13.

(8) Heb., henuma,Gr. **. Virgin brides were carried out of their father's home on the wedding day in a curtained litter.

(9) A virgin bride walked to her wedding canopy with 'uncovered head', ראשה פרוע which others render, 'loosened hair'.

(10) The endowment or settlement which a wife is entitled to receive on being divorced or on the death of her husband. A woman who married as a virgin is entitled to two hundred zuz; if as a widow, to one hundred zuz only.

(11) Keth. 15b.

(12) V. p. 382. n. 13.

(13) As Rab said in the case of the sale of the ox.

(14) As evidenced by the fact that no witnesses are forthcoming.

(15) And she is assumed to belong to the minority.

(16) For if she had married as a virgin the marriage would have been known.

(17) Tosef. Kid. IV, Kid., 11a.

(18) קוביוסטום cf. Gr.** 'gambler', Gr.** 'crafty person'.

(19) Lit., 'he reached him'.

(20) I.e., 'sentenced to death'.

(21) Lit., 'Here is yours before you, and the seller must return the purchase money.

Talmud - Mas. Baba Bathra 93a

is not [the sale valid] because most [slaves] are [of] such [a character]? [And does not this prove that even in monetary matters,[1] one is to be guided by the majority rule?][2] — No; all of them are such.[3]

Come and hear! [We learnt]:[4] [If] an ox gored a cow, and its embryo was found [dead] at its side, and it is not known whether it gave birth before it was gored[5] or after it was gored,[6] [the owner of

the ox] pays half [the cost of the] damage [in respect] of the cow,[7] and a quarter [in respect] of the young.[8] [Now. if, in monetary matters, one is guided, as Rab asserted, by the majority rule,] why [does the owner of the ox only pay a quarter of the loss]? Let it be said, 'Be guided [by what] most cows [do]', and most cows conceive and give birth [to live calves] and the miscarriage must, [consequently], have been due to the goring![9] — There, [the majority rule is inapplicable] because there is the uncertainty whether the [ox] approached from the front,[10] and the miscarriage was due to shock;[11] or from behind, and the miscarriage was due to goring;[12] [the indemnity] is, [therefore like] money of doubtful ownership, and all money the ownership of which is in doubt must be divided [between the parties concerned].

Must it be said [that they[13] differ on the same principles] as the [following] Tannaim? [It has been taught:] [If] an ox was grazing and a dead ox was found at its side, it must not be said, although the one is gored and the other is wont to gore, one bitten and the other wont to bite, 'It is obvious that the one gored or bit the other'. R. Aha said: [In the case of] a camel which 'covers'[14] among [other] camels, and a dead camel was found at its side, it is obvious that the one killed the other. Now, assuming that [the principles] of majority[15] and of confirmed legal status[16] have the same force, must it be said that Rab[17] is of the same opinion as R. Aha[18] and Samuel[19] is of the same opinion as the first Tanna?[20] — Rab can tell you: What I have said [is valid] even according to the first Tanna. For the first Tanna made his statement, there, [that the killing is not to be attributed to the butting ox], only because one is not to be guided by the principle of legal status, but one is to be guided by that of majority.[21] And Samuel can say: What I have said [is valid] even according to R. Aha. For R. Aha made his statement there, [that the 'covering' camel is assumed to be the killer], only because one must be guided by the principle of legal status, since it is the [camel] itself that has been confirmed in that status, [and is standing near by], but one Is not to be guided by the majority principle.[22]

Come and hear! [IF] ANYONE HAS SOLD FRUIT TO ANOTHER ...AND [THE BUYER] SOWED THEM AND THEY DID NOT GROW, EVEN [IF THEY WERE] LINSEED, HE IS NOT RESPONSIBLE. Does not 'EVEN' imply. 'even linseed most of which is bought for sowing purposes'? And [does not this show that] even in such a case one is not guided by the majority principle![23] This[24] is [a subject of dispute between] Tannaim. For it has been taught: [In the case when] one has sold fruit to another and [the buyer] sowed them and they did not grow, [if they are] garden seeds which are not eaten, he is responsible;[25] [if they are] linseed, he is not responsible.[26] R. Jose said:

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(1) Such e.g.. as the purchase of slaves.

(2) How, then, could Samuel say that the majority rule is applicable to ritual matters only?

(3) Therefore the sale is valid as if the seller had explicitly stated that the slave was a thief or a gambler.

(4) B.K.462.

(5) In which case the owner of the ox is free from all liability.

(6) And, consequently, death was caused by the goring, and the owner of the ox is responsible.

(7) The owner of a butting ox, before due warning has been given him (cf. Ex. XXI, 28-36). makes good only half the damage.

(8) In respect of half the cost of the damage to the embryo it is not certain that he is liable, since it is not known whether or not the goring was the cause of the death. Hence the loss is shared by the two parties, the owner of the ox refunding a half of the half, i.e., a quarter of the full loss.

(9) And the owner of the ox should, therefore, have had to refund half the loss. But since the law is not so, how can Rab assert that in monetary matters the majority rule is followed?

(10) Frightening the cow by its approach and causing miscarriage. For loss caused by fright no liability is incurred (cf. B.K. 56a).

(11) Not to the goring.

(12) And since one of these contingencies is as likely as the other, the majority rule, though applied to other monetary

cases, cannot be applied here.

(13) Rab and Samuel.

(14) A euphemism. Lit., 'to be behind'. At the time of mating it is ferocious, and is likely to attack other males with fatal results.

(15) Most animals do not gore. therefore every animal must be regarded as innocuous until the contrary has been proved.

(16) The ox referred to was wont to gore', therefore, legally, a confirmed butter.

(17) Who accepts the majority principle.

(18) Who attributes the killing to the 'covering' camel because of its legal status (legally regarded as ferocious and likely to kill).

(19) Who disregards the majority principle in monetary matters.

(20) Who does not attribute the killing to the animal though its legal status is that of a goring ox. Would Rab's and Samuel's views accordingly be regarded as opposed respectively to those of the first Tanna and R. Aha?

(21) And thus, in this case, it is to be assumed that the other oxen, who form the majority, have done the killing.

(22) A principle which seeks to attach to the animal a status that may not belong to it. Thus it seeks to assume that this ox has been bought for slaughtering, because the majority of other oxen are bought for that purpose.

(23) How, then, can Rab say that the majority principle is to be followed?

(24) Whether the majority principle is to be relied upon in monetary questions.

(25) Because everybody buys them as seed for sowing purposes only.

(26) Since some persons buy them for purposes other than sowing, the seller can claim to have sold them for any of these purposes.

Talmud - Mas. Baba Bathra 93b

he must refund to him the price of the seed.[1] They replied unto him: Many[2] buy it for other purposes.[3] Now who are the Tannaim [between whom the question of the majority principle, as has been said, is in dispute]? If it is assumed that they are R. Jose,[4] and 'those who replied to him';[5] [surely] both, [it may be retorted], follow the majority principle; one follows the majority of men,[6] the others, the majority of the seed,[7] [neither of these, then, can be said to agree with the opinion advanced by Samuel!] But [the dispute referred to is] either [that between] the first Tanna[8] and R. Jose, or [between] the first Tanna[8] and those 'who replied to him'.

Our Rabbis taught: What does he, [who has sold garden seeds which are not eaten], refund [the buyer who sowed them without success]? — The cost of the seeds, but not expenses.[9] And others say: Expenses also [must be refunded]. Who are these others?[10] — R. Hisda said: It is R. Simeon b. Gamaliel.

Which [of the teachings of] R. Simeon b. Gamaliel [reflects such a view]? If it is suggested [that the teaching is that of] R. Simeon b. Gamaliel of our Mishnah, where we learnt: [IF] ANYONE HAS SOLD FRUIT TO ANOTHER ... AND [THE BUYER] SOWED THEM AND THEY DID NOT GROW, EVEN [IF THEY WERE] LINSEED, HE IS NOT RESPONSIBLE; [now] consider in view of this, the last clause [of our Mishnah]: R. SIMEON B. GAMALIEL SAID: FOR GARDEN SEEDS WHICH ARE NOT EATEN. HE IS RESPONSIBLE: Does not the first Tanna say the same thing? [For he said]. 'for LINSEED only. HE IS NOT RESPONSIBLE', which [implies that] FOR GARDEN SEEDS WHICH ARE NOT EATEN, HE IS RESPONSIBLE,[11] [and this is the very law of R. Simeon]. Does not this [force the conclusion that] the difference between them is the [question of] expenses? One[12] holds the opinion [that only] the cost of the seeds [is to be refunded], and the other[13] is of the opinion [that the] expenses also [must be refunded]! — How [can this be proved]? Is it not possible [that the opinions of the two Tannaim are to be] reversed?[14] This is no difficulty. Any Tanna [who is mentioned] last, enters [the discussion for the purpose of] adding some [restriction];[15] [the objection, however, is that] all [the Mishnah] may be [the teaching of] R. Simeon b. Gamaliel, and [that only a few words are] missing, and [that] this [is what the Mishnah really] teaches: [IF] ANYONE HAS SOLD FRUIT TO ANOTHER. AND [THE BUYER] SOWED THEM AND THEY

DID NOT GROW. EVEN [IF THEY WERE] LINSEED, HE IS NOT RESPONSIBLE — these are the words of R. Simeon b. Gamaliel, for R. SIMEON B. GAMALIEL SAID: FOR GARDEN SEEDS WHICH ARE NOT EATEN, HE IS RESPONSIBLE![16]

But [it is] this [teaching of] R. Simeon b. Gamaliel, [reflecting the view of those 'others'] for it has been taught:[17] [If] one takes wheat to grind and [the miller] does not moisten it [prior to the grinding], and makes it into bran flour or coarse bran; [or, if one takes] flour to a baker who makes[18] of it bread which falls into pieces, [or, if one takes] a beast to a slaughterer who makes it unfit,[19] he[20] is liable [to pay compensation], since he is like one who takes payment [for his services].[21] R. Simeon b. Gamaliel says: He indemnifies him for the insult to him and to his guests.[22] [How much more, then, must he refund his expenses;] and so R. Simeon b. Gamaliel used to say:[23] There was a fine[24] custom in Jerusalem. If one entrusted [the preparations of] a banquet to another who spoilt it. [the latter] had to indemnify him for the insult to himself and to his guests. There was another fine custom in Jerusalem. [At the commencement of the meal] a cloth was spread over the door.[25] So long as the cloth was spread, guests entered. When the cloth was removed, no guests entered.

MISHNAH. [IF] ONE SELLS FRUIT TO ANOTHER, [THE LATTER] MUST ACCEPT A QUARTER [OF A KAB OF] REFUSE FOR EVERY SE' AH. [IF HE SOLD HIM] FIGS, [THE BUYER] MUST ACCEPT TEN WORMY ONES FOR EVERY HUNDRED. [IF] A CELLAR OF WINE, HE MUST ACCEPT TEN [CASKS OF] PUNGENT [WINE] FOR EVERY HUNDRED. [IF] JUGS IN SHARON,[26] HE MUST ACCEPT TEN BAD JUGS FOR EVERY HUNDRED.

GEMARA R. Kattina learned: A quarter [of a kab] of pulse for each se'ah.[27] And [need he] not [accept] sandy matter? Surely Rabbah b. Hiyya of Kteshifon[28] said[29] in the name of Rabbah: [If a man] picks out a pebble[30] from his neighbour's threshing-floor [

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(1) Because most of the linseed is sold for sowing purposes.

(2) For every man who buys a large quantity of linseed for sowing, there are ten times as many people who buy it in smaller quantities for food, medicinal, or other purposes.

(3) And, therefore, no refund is necessary, despite the fact that a minority of big buyers use the linseed for sowing only.

(4) Since he orders the refund of the price of the seed, he is presumably of the same opinion as that held by Rab, viz. that the majority principle must be followed even in monetary matters.

(5) Since they maintain that no refund is necessary, they must uphold the opinion advanced by Samuel that in monetary matters the majority principle is no guide.

(6) I.e., most people buy linseed for purposes other than sowing.

(7) I.e., most linseed is sold for sowing, though to a minority of buyers.

(8) Who does not accept the majority principle. (Cf. supra notes 1 and 2).

(9) Of ploughing and any other services incidental to sowing.

(10) Lit., 'who are the others who say?'.

(11) What, then, is the difference between these two Tannaim of our Mishnah?

(12) The first Tanna.

(13) R. Simeon b. Gamaliel_

(14) The first Tanna holding the seller responsible for the expenses whilst R. Simeon does not. Those 'others' will not therefore be R. Simeon but the first Tanna of our Mishnah.

(15) In this case, R. Simeon, who is last, must therefore be the one who adds the expenses to the seller's responsibility.

(16) Whence, then, is it proved that R. Simeon b. Gamaliel requires the refunding of the expenses? Our Mishnah, then, cannot be the teaching of R. Simeon b. Gamaliel referred to under the authority of those 'others'.

(17) Tosef. B.K. X; B.K. 99b.

(18) Lit., 'baked'.

(19) E.g.. by the unskilful use of the knife.

(20) He, the miller, baker, or slaughterer.

(21) V. B.K. 99b.

(22) If he invited guests and, in consequence of the neglect of the miller, baker, or slaughterer, he was unable to cater for them.

(23) Tosef. Ber. IV.

(24) Lit., ‘great’.

(25) The cloth was a signal that a meal was in progress within the house.

(26) A place name, or ‘in the plain’.

(27) R. Kattina is explaining the ‘quarter of refuse’ mentioned in our Mishnah.

(28) On the Eastern bank of Tigris.

(29) Bezah 38b.

(30) A pebble comes obviously under the category of sandy matter.

Talmud - Mas. Baba Bathra 94a

he must pay him [for it] the price[1] of wheat![2] — [Of] pulse. a quarter[3] [of a kab must be accepted; of] sandy matter less[4] than a quarter. And [need he] not [accept] a [full] quarter [of a kab of] sandy matter? Surely it has been taught: [If] one sells fruit to another, [the buyer] must accept, [in the case of] wheat, a quarter [of a Lab of] pulse[5] for [each] se'ah; [in the case of] barley, he must accept a quarter [of a kab of] chaff[6] for [each] se'ah; [in the case of] lentils, he must accept a quarter [of a kab of] sandy matter[7] for [each] se'ah. Now, may it not be assumed that the same law[8] [applies not only to lentils but also] to wheat and to barley?[9] Lentils are different [from wheat and barley], because they are usually plucked.[10] But [since] the reason why lentils [are allowed a full quarter of a kab of sandy matter is] because they are usually plucked while wheat and barley [are] not, infer [then] from this, [that in the case of] wheat and barley [the buyer need] not accept [a full quarter of a kab] of sandy matter![11] — [It may be retorted that a buyer], in fact, must accept [a full quarter of a kab of] sandy matter [in the case also of] wheat and barley[12] lentils, [however,] had to be [specifically mentioned].[13] Because it might have been thought that, since they are usually plucked, [the buyer] must accept even more than a quarter [of a kab], [the quantity], therefore, had to be [specifically] stated. R. Huna said: If [the buyer] wishes to sift[14] [and, on sifting, the quantity of the refuse is found to be more than what is permitted]. he may sift all of it [and the seller must compensate him for all the refuse, even for the permitted quantities]. Some say, [this is the] law; and others say, [this is a] penalty. Some say [this is the] law, [because] whoever pays money. pays it for good fruit,[15] but a person does not take the trouble [to sift,if the refuse only amounts to] a quarter [of a kab for every se'ah;[16] if] more than a quarter, a person does take the trouble; and, since he takes the trouble [to start sifting], he takes [a little more] trouble with all of it.[17] And others say, [this is a] penalty,[18] [because] it is usual [only for] a quarter [of a kab of refuse] to be found [in each se'ah];[19] more is not usual; he himself [therefore must have] mixed it. and since he has mixed [at least some of] it, the Rabbis have imposed upon him the penalty [of paying] for all.[20]

(Mnemonic: Every two bills of Rabin son of R. Nahman [are] overcharge and undertaking.)[21]

An objection was raised.[22] [It has been taught:][23] Every se'ah [of produce] which contains a quarter [of a kab] of another kind shall be reduced[24] [in order that it be permitted to be sown].[25] Now, it has been assumed that the quarter [in the case] of kilayim[26] is [in the same category] as [the quantity of] more than a quarter here,[27] and yet it has [only] been taught. ‘it shall be reduced’,[28] [while the rest may be sown. Why, then, in the case of a purchase,[29] must compensation be paid for all the refuse]? — No; a quarter [in the case] of kilayim is [in] the same [category] as a quarter here.[30] If so,[31] why should it be reduced? — On account of the restrictions of the law of kilayim.[32] If so,[33]

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(1) Because the seller is entitled to include a pebble in the weight of his wheat and to receive for it the price of the wheat; but is not permitted to put in a pebble.

(2) This shows that sandy matter, such as a pebble is, must also be accepted by the buyer. How, then, can it be said that

sandy matter need not be accepted?
(3) As R. Kattina said.
(4) But a full quarter need not be accepted.
(5) Pulse usually grows among the wheat.
(6) Chaff cannot be entirely separated from the barley.
(7) Sandy matter is usually mixed up with lentils.
(8) That a quarter of a kab of sandy matter must be accepted by the buyer.
(9) It is assumed that sandy matter was mentioned in the case of lentils because it is usual to find it there just as pulse. e.g.. was mentioned with wheat with which it is usually mixed up; but that in reality the buyer must accept a quarter of a kab of sandy matter, or any refuse, in whatever kind of produce it is found.
(10) And more sandy matter must, therefore, be expected.
(11) Which would confirm the answer given above, in justification of R. Kattina, that of sandy matter, 'less than a quarter'.
(12) The same quantity as that stated in the case of lentils.
(13) That only a quarter of a kab of sandy matter need be accepted.
(14) Suspecting that the refuse amounts to more than a quarter of a kab for each se'ah.
(15) He does not consent to take any refuse in the weight.
(16) Rather than have the trouble of sifting. he accepts the comparatively little refuse.
(17) Once the sifting commences, it is not much more trouble to complete the whole. Hence, the buyer exercises his right and demands compensation for all the refuse.
(18) The compensation is not based on the Biblical law, according to which a person is always assumed to consent to buy fruit together with a certain quantity of refuse.
(19) And the seller must not be penalised for this.
(20) Since he has mixed a portion he is suspected of having mixed the whole.
(21) The mnemonic aids in the recollection of the passages that follow in support of, or objection to R. Huna's law.
(22) To the statement that the buyer may sift the grain in accordance with the law which entitles him to compensation for all the refuse found.
(23) Kil.II. 1.
(24) To less than a quarter.
(25) Two different kinds must not be sown together, in accordance with the prohibition of 'mingled seeds'. (Cf. Lev. XIX. 29.)
(26) כלאים 'mingled seed'. V. n. 12.
(27) In the case of a purchase.
(28) The entire se'ah is not disqualified by reason of the excess, and as soon as the excess is reduced (from a 'quarter' to 'less than a quarter') the grain may be sown.
(29) In the case of a purchase also, it should suffice to reduce the 'more than a quarter' of the refuse to a 'quarter'. by the seller's paying of compensation for the excess.
(30) In both eases such a small quantity as a quarter of a kab in a se'ah is disregarded. But if this quantity is exceeded, it might, indeed, have to be removed in its entirety even in the case of kilayim.
(31) That a quarter is disregarded, even in the case of kilayim.
(32) It is a restriction imposed by the Rabbis to prevent people from transgressing the laws of kilayim.
(33) That the restriction is only Rabbinical, and that in accordance with the Biblical law there is no need to reduce.

Talmud - Mas. Baba Bathra 94b

explain the last clause [of the Mishnah quoted, which reads]. R. Jose says: He shall pick out [all]. This would be correct if you assumed [that a quarter of a kab in kilayim is] like [a quantity of] more than a quarter [of a kab] of refuse. For their[1] dispute could [then be said to] depend on [the following principles]. The first Tanna might hold the opinion that a penalty is not imposed on a permitted thing for the sake of a prohibited one, and R. Jose might hold the opinion that a penalty may thus be imposed.[2] But if it is said that [a quarter of a kab of kilayim is] like a quarter [of refuse], why should he pick?[3] This is the reason of R. Jose. there: Because[4] it seems as if he was retaining[5] kilayim.

Come and hear! [It has been taught]:[6] If two [persons] deposited [money] with one [man], one of them[7] a maneh[8] and the other[7] two hundred zuz, and the one[7] says. 'the two hundred zuz are mine', and the other[7] [also] says, 'the two hundred zuz are mine one maneh is given to the one,[7] and one maneh to the other,[7] and the remainder must lie until [the prophet] Elijah comes.[9] [Does not this show that one is not penalised by being made to lose the whole[10] for the sake of a part?][11] — What a comparison![12] In that case,[13] one maneh certainly belongs to the one, and one maneh to the other,[14] [but in] this [case],[15] who can say that he has not [himself] put it all in?[16] Come and hear [a confirmation][17] from the last [clause of the quoted Baraitha which reads]: R. Jose said, 'If so,[18] what has the knave lost?[19] But all[20] must be kept over until Elijah comes. What a comparison![21] In that case[22] there is certainly [one] knave [at least].[23] but in this case,[24] who can say that he has put it in at all?[25]

Come and hear! [It has been taught]: [If] a bill [of debt] contains [an undertaking to pay] usury, a penalty is imposed [on the lender], and he receives neither the principal nor the interest; these are the words of R. Meir.[26] [Does not this prove that a penalty may be imposed on the whole for the sake of its part?] — What a comparison![27] In that case,[28] [the lender] had committed the transgression[29] from the moment of the writing.[30] but in this case,[31] who can say that he has put it in at all?![32]

Come and hear! [an objection] from the last [clause of the quoted Baraitha]: And the Sages say. '[the lender] receives the principal but not the interest'. [Does not this show that a penalty on the whole is not imposed on account of its part]?[33] — What a comparison![34] In that case,[35] the principal [at least] is certainly a permitted sum; but here, who can say that all has not been put in by him[36]

Come and hear what Rabin son of R. Nahman learned:[37] [In case of the sale of a piece of ground, under certain conditions, though it was found to be bigger than arranged. by an area equal to that of a quarter of a kab per se'ah, the sale is valid; if, however, the difference is greater. then] not only must the surplus[38] be returned but all the quarters[39] also must be returned. This shows clearly that whenever [a part] has to be returned, all must be returned![40] — What a comparison!

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(1) That of R. Jose and the first Tanna.

(2) Since the prohibition is Biblical.

(3) And thus add one Rabbinical restriction to another: first restriction, reduction to less than a quarter; second restriction, picking out all foreign matter. Even the law requiring reduction is not Biblical, but Rabbinical. Is one Rabbinical restriction not enough that R. Jose must add to it another?

(4) Though Biblically allowed.

(5) Since he began to remove some, he must remove all; otherwise, the remainder might be regarded as if it had been intentionally put in.

(6) B.M. 37a.

(7) Lit., 'this'.

(8) Maneh == 100 zuz.

(9) Elijah the prophet, the herald of the Messianic era who is to make the truth known. The phrase is a technical term meaning 'indefinitely'.

(10) Since only one maneh is retained while the other is returned.

(11) Why. then, has it been said above that 'the Rabbis have imposed . . . the penalty of paying for all'?

(12) Lit., 'How now!'

(13) Lit., 'there', in the dispute about the maneh and the two hundred zuz.

(14) Hence, the certain maneh must be returned.

(15) The refuse in the produce.

(16) Since the refuse is in a bigger proportion than the usual quantity, the seller may be suspected of having put in at least some, and one suspected of some may be suspected of all.

(17) Of the statement that a penalty may be imposed on the whole for the sake of the part.

(18) I.e., if one maneh is returned.
(19) Since the knave (lit.. 'cheat') who deposited only one maneh gets that maneh back, he loses nothing and, consequently, would never admit the truth.
(20) So here, as a penalty for mixing, compensation must be paid for all the refuse.
(21) V. supra n. 6.
(22) V. supra n.7.
(23) One of them must be a knave, since only one had deposited the larger sum.
(24) V. supra n. 9.
(25) The existence of the refuse in the produce may be due entirely to natural causes.
(26) B.K. 30b; B.M. 72a.
(27) V. p. 392. n. 6.
(28) Lit., 'there', in the case when usury was mentioned in the bill of debt.
(29) Lit., 'the putting'. 'the laying'; Neither shall ye lay upon him usury. Ex. XXII. 24.
(30) Hence, let him lose the interest as well as the principal.
(31) V. p. 392. n. 9.
(32) V. p. 392. n. 19. Hence he should not be required to pay. as a penalty, for all the refuse.
(33) V. p. 392. n. 5.
(34) V. p. 392. n. 6.
(35) V. n. 2 above.
(36) V. p. 392. n. 10.
(37) Infra 104b.
(38) I.e., the portion of land by which the area is greater than a quarter of a kab per se'ah, viz., the difference between the actual area on the one hand, and the agreed area and a quarter of a kab per se'ah on the other.
(39) I.e., the quarters of a kab per se'ah which, if not exceeded, were not to be returned.
(40) This confirms R. Huna's statement, supra. according to the first explanation, that the return of all the refuse is law, because one does not forego more than a quarter of a kab.

Talmud - Mas. Baba Bathra 95a

In that case[1] [the seller explicitly] said to him, '[I sell you an area of a kor][2] more or less';[3] but a quarter [of a kab] is of no importance;[4] more than a quarter, is of importance, because, since [in the area of a kor, the quantity may be combined into nine kab,[5] they form an important independent field which must be returned. [But in the case of the refuse in produce,[6] even if it amounted to more than a quarter of a kab per se'ah, only the surplus might have to be returned but not the quarters[7]].

Come and hear! [We learned]: [If] the overcharge is less than a sixth, the purchase is valid;[8] [if it is] more than a sixth, the purchase is cancelled; [if it is] a sixth, the sale is valid but the overcharge must be refunded.[9] Now, should [not a part of the overcharge] be returned[10] [so as to reduce[11] it] to less than a sixth?[12] [But since the law is not so] it may be inferred [that] wherever [a part] is to be returned, all must be returned. [Is not this, then, a confirmation of R. Huna's statement?[13]] What a comparison! There,[14] one spoke to the other of equal values[15] from the very beginning; only. [since] less than a sixth is not noticeable, a person does not mind to forego it; a sixth, [however], [since it] is noticeable, one does not forego; [while] more than a sixth is a purchase based on error and is to be entirely cancelled.[16]

Come and hear! [It has been taught:] [If] one undertakes to plant another's field,[17] [the owner] must accept ten failures for every hundred trees.[18] [If the failures are] more than this [number],[19] [the re-planting of] all[20] is imposed upon him. [Is not this a confirmation of the statement of R. Huna?][21] — R. Huna, the son of R. Joshua. said: [The two cases cannot be compared. for] wherever [there are] more than this [number of trees][22] it is the same as if one began to plant [a new field].[23]

A CELLAR OF WINE, etc. How is this to be understood? If [it means that] the seller said to the

buyer. '[I sell you] a cellar of wine', without specifying which cellar, there is a difficulty;[24] [and] if [it means that] he said to him, 'this cellar of wine', there is [also] a difficulty;[25] [and] if he said to him, 'this cellar', there is [again] a difficulty.[26] For it has been taught: [If one says]. 'I sell you a cellar of wine', he must give him wine all of which is good.[27] [If one said]. 'I sell you this cellar of wine', he may give him such wine as is sold In the shop.[28] [If one said]. 'I sell you this cellar', the sale is valid even if all of it is vinegar.[29] [How. then, is the Baraitha to be reconciled with our Mishnah?] [Our Mishnah], in fact, deals with the case where [the seller] said to him ['I sell you] a cellar of wine', without specifying which cellar, but[30] read in the first clause of the Baraitha [as follows]: ['He must give him wine all of which is good']. but [the buyer] must accept ten [casks of] pungent wine for [every] hundred. Must one, however, accept [ten casks of pungent wine] when the cellar was not specified? Surely R. Hiyya has taught: [If] a person has sold a jug of wine to another, he must give him wine all of which is good![31] A jug is different, because it contains [only] one [kind of] wine.[32] Did not, however, R. Zebid of the school of R. Oshaia recite: [If the seller says]. 'I sell you a cellar of wine', he must give him a wine all of which is good; [if he says], 'I sell you this cellar of wine', he must give him wine all of which is good and [the buyer must] accept ten casks of pungent wine for [every] hundred.

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(1) The sale of the land.

(2) Kor == thirty se'ah.

(3) V. infra 103b. Had he not said so, even a fraction more than the area agreed upon would have had to be returned.

(4) The seller, by his statement, has intimated that he does not mind conceding such a small area.

(5) The thirty quarters of a kab for the thirty se'ah of the kor amount to seven and a half kab. But since the difference is more than a quarter per se'ah by, say, a twentieth of a kab per se'ah, the total amounts to thirty times one twentieth one and a half kab, which, added to the seven and a half, total nine kab.

(6) Since a quarter of a kab per se'ah must always be accepted whether the expression 'more or less' had been used or not.

(7) Because it is usual to find such quantities of refuse in all produce.

(8) Lit., 'possession is acquired'. and nothing of the overcharge need be returned. Any buyer is assumed to be indifferent to the loss of such a small amount as a sixth.

(9) B.M. 50b.

(10) In the case when the overcharge was a sixth or more than a sixth.

(11) Instead of returning the full overcharge, in once case, and cancelling the sale in the other.

(12) To the loss of which a buyer. as it has been said, is indifferent.

(13) That if the refuse is more than the allowed quantity, the seller must compensate not only for the surplus but for all the refuse.

(14) In the case of the overcharge.

(15) The price. according to the original arrangement, had to be equal to the value of the produce. The buyer. therefore, had a right to claim the return of an overcharge, even if it were less than a sixth.

(16) In the case of refuse in produce, however, the buyer is always ready to accept a certain quantity of it, (a quarter of a kab of refuse per se'ah of produce). He may, therefore, also be assumed to accept this quantity even when more refuse has been found, provided the surplus has been refunded.

(17) Lit., 'receives a field from another to plant'.

(18) The owner must pay the workman for every hundred trees the full value of sound trees, though ten of them may turn out to be unproductive and useless.

(19) More than ten per hundred.

(20) All the unproductive trees must be replaced by sound ones.

(21) V. p. 394. n. 8.

(22) More than ten unproductive trees per hundred trees planted.

(23) The area occupied by a number of trees bigger than ten, say eleven, is considered to form a smaller self-contained field. This smaller field is thus treated as a new field in which the workman undertakes to plant eleven trees, where evidently he could not claim to have discharged his task by planting only one productive and ten unproductive trees. He must therefore replace them all. In the case of the refuse, however, dealt with in R. Huna's statement, this argument

cannot, obviously, be applied, and the owner may be assumed to accept the loss of a quarter of a kab per se'ah, if the surplus is refunded to him.

(24) For according to our Mishnah, the buyer accepts ten casks of pungent wine for every hundred, while according to the following Baraitha (first case), all the wine must be good.

(25) According to the second case in the following Baraitha, contrary to the law in our Mishnah, the seller may give a wine all of which is pungent. (Cf. n. 12 infra).

(26) Since, according to the third case in the Baraitha, and contrary to our Mishnah, even if all the wine has become vinegar the sale is valid.

(27) The term 'wine' implies 'good wine'; and, therefore, no spoilt wine need be accepted by the buyer.

(28) Where all the wine is pungent.

(29) Because no wine was mentioned when the sale was proposed.

(30) In reply to your difficulty, why does our Mishnah allow ten casks of pungent wine while the Baraitha requires all the wine to be good?

(31) If in the case of the sale of a cellar, ten casks of pungent wine may be included in every hundred, why must all the wine be good in the case of the jug?

(32) No quantity of pungent wine can, therefore, be included in such a sale.

Talmud - Mas. Baba Bathra 95b

and this is the cellar [about] which the Sages have taught in our Mishnah![1] — Well, then, our Mishnah also [speaks of the case] where [the seller] said to him 'This'.[2] [But. if so] there is a contradiction between 'This'[3] and 'This'?[4] — There is no contradiction. The one [deals with the case] where [the buyer] said to him [that he required the wine] for a dish;[5] the other, where he did not say to him [that it was required] for a dish:[6] [The Baraitha] of R. Zebid [deals with the case] where [the buyer] said to him [that the wine was required] for a dish. The [other] Baraitha [deals with the case] where he did not say, 'for a dish'. Consequently, [if[7] the expression used by the seller was], 'a cellar of wine' and [the buyer] had said to him, 'for a dish', [the former] must give him a wine all of which is good.[8] [If[7] the seller said.] 'this cellar of wine', and the buyer had said, 'for a dish', he must give him a wine all of which is good. and [the buyer must] accept ten casks of pungent wine for [every] hundred. [If, however,[9] the seller said], 'this cellar of wine', but [the buyer] did not say, 'for a dish', he may give him such wine as is sold in the shop.[10]

The question was raised [as to] what [was the law when the seller said], 'a cellar of wine',[11] and [the buyer] did not say, 'for a dish'.[12] R. Aha and Rabina are in dispute [on the matter]. One says [the buyer must] accept [ten casks of pungent wine for every hundred], and the other says, he need not accept. He who said [that the buyer must] accept, deduces [the law] from the Baraitha of R. Zebid, which states, [that if the seller says], 'I sell you a cellar of wine', he must give him a wine all of which is good; and it has been settled [that this refers to the case] where [the buyer] said to him, 'for a dish'. The reason,[13] [then, is] because he said to him 'for a dish', but had he not said, 'for a dish' [he would have had to] accept. And he who says that [the buyer] need not accept, deduces [the law] from the [other] Baraitha which states [that if the seller says. 'I sell you a cellar of wine', he must give him a wine all of which is good; and it has been settled [that this refers to the case] where [the buyer] did not say, 'for a dish'. According to him who deduces [the law] from that [Baraitha] of R. Zebid, is there no contradiction from the other Baraitha? — [No]; something is missing. and this is the [additional] reading: This[14] only applies [to the case] when he said to him, 'for a dish', but if he did not say, 'for a dish', he [must] accept.[15] And [if he said], 'this cellar of wine' but did not say, 'for a dish', he may give him a wine which is sold in the shop. And according to him who deduces [the law] from the [other] Baraitha is there no contradiction from that of R. Zebid which has been explained [to refer to the case] where he said to him, 'for a dish', [from which it may be inferred that] if he did not say to him, 'for a dish', [he must] accept?[15] — [No;] the same law, [that he need] not accept, [applies] even [to a case] where he did not say to him, 'for a dish', and this [is the reason] why it[16] had to be explained [to refer to the case] where he said to him, 'for a dish', because there

was a contradiction between 'this', [in the last clause of the Baraitha of R. Zebid,] and 'this', [in the second clause of the other Baraitha];[17] [but in the case of the first clauses,[18] there was no such contradiction].[19]

Rab Judah said: Over wine which is sold in a shop,[20] the benediction[21] of 'the[22] creator of the fruit of the vine'[23] is to be said.[24] And R. Hisda said: Of what use[25] is wine that is turning sour?[26]

An objection was raised: Over bread that has become mouldy. and over wine that has become sour, and over a dish that has lost its colour. — the benediction of '. . . by whose word everything was made' must be said.[27] [How, then, can Rab Judah say that over sour wine the benediction for proper wine is to be said]? — R. Zebid replied: Rab Judah admits[28] in [the case of] wine made of kernels,[29] which is sold at [street] corners.

Abaye said to R. Joseph: Here [is the opinion of] Rab Judah; here [that of] R. Hisda; whose does [my] master adopt? — He replied unto him: I know a Baraitha:[30]

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(1) How, then, has it been said before that our Mishnah deals with the case where the seller said. 'I sell you a cellar of wine'?

(2) I.e., 'I sell you this cellar'.

(3) In the Baraitha, quoted above, according to which the seller may offer wine all of which is pungent. (Cf. p. 395. n. 22.)

(4) In the Baraitha recited by R. Zebid. which states that all the wine must be good with the exception of ten casks which may contain pungent wine.

(5) For which good wine is required. because only a little at a time is used, and the wine has to last for a long period. Hence the expression. 'wine', in the offer, implied 'good wine which may keep for a long time'; and the expression, 'this', entitled the seller to include ten casks of pungent wine.

(6) Hence the seller may give him even pungent wine, such as is sold in the shop.

(7) In the Baraitha of R. Zebid.

(8) Since 'wine' and 'for a dish' were mentioned.

(9) In the other Baraitha.

(10) V. p. 396. n. 22.

(11) Which is in favour of the buyer, because 'this' was not used.

(12) Which is in favour of the seller.

(13) Why all the wine must be good.

(14) That if he said, 'I sell you a cellar of wine', he must give him a wine all of which is good.

(15) The ten casks of pungent wine for every hundred.

(16) The last clause of R. Zebid's Baraitha, 'I sell you this cellar of wine'.

(17) V. p. 396. n. 7-8.

(18) Where the seller says. 'I sell you a cellar of wine'.

(19) And both may, therefore, refer to either case, whether the buyer said, or did not say, 'for a dish'.

(20) I.e., any sour, or bad wine.

(21) Before partaking of any food, a certain benediction must be said beginning with, 'Blessed art thou, O Lord, our God, King of the Universe' and concluding in different forms corresponding to the particular kind and nature of the food consumed.

(22) Beginning with the usual formula (v. previous note.)

(23) This is the benediction enacted for wine in a sound condition.

(24) Though the wine is bad it is still considered wine, and requires the wine benediction.

(25) Lit., 'why to me.

(26) Since the wine is spoilt, one must not say over it the benediction enacted for good wine, but that of 'Blessed . . . by whose word everything was made'.

(27) Ber. 40b.

(28) That the wine benediction is not to be said.

(29) Such a wine is very sour and cannot possibly be regarded as wine. The Baraitha quoted should be assumed to speak of such a wine.

(30) From which may be inferred at what stage wine loses its name and assumes that of vinegar, and, consequently, requires a change in the form of the benediction.

Talmud - Mas. Baba Bathra 96a

where it has been taught: If one tested[1] a [wine] jug for the purpose of taking from it, periodically, heave-offering [for wine kept in other jugs];[2] and, subsequently,[3] it was found [to contain] vinegar,[4] all[5] three days It is certain, [and] after that it is doubtful.[6] What does this mean? — R. Johanan said, It means this: During the first three days [after the test, it is regarded as] certain wine;[7] after that, [as] doubtful.[8] What is the reason? — [Because] wine [begins to] deteriorate from above,[9] and this [man] had tasted it [and ascertained that] it had not deteriorated; [and] if it be assumed that it had deteriorated [immediately] after it had been tasted, [even then during the first three days], it had the odour of vinegar and the taste of wine, and whenever the odour is of vinegar and the taste is of wine, it is regarded as wine. And R. Joshua b. Levi said: [The meaning of the Baraitha is that] during the last three days[10] [it is regarded as] certainly vinegar;[11] prior to that, [as] doubtful.[12] What is the reason? — Wine [begins to] deteriorate from below, and it is possible [that it had already] deteriorated [during the test] but he did not know.[13] [Moreover, even] if it is assumed that deterioration [begins] from the top, [and it will be argued that it must have been wine] since [this man] had tasted it and [ascertained that] it had not [then] deteriorated, [it may be retorted that] it is possible that it deteriorated [immediately] after he tasted it, [and it had] the odour of vinegar and the taste of wine, and [the law is that wherever] the odour is vinegar and the taste. wine, [it is regarded as] vinegar.

The scholars of the South [of Palestine] taught in the name of R. Joshua b. Levi: [During the] first [three days it is regarded as] certainly wine.[14] [During the] last [three days, as] certainly vinegar. [During the] intervening [days as] doubtful. Is not this self-contradictory? [Since] you said that [during the] first [three days it is regarded as] certainly wine, it is obvious that [if the] odour is vinegar and the taste wine, [it is regarded as] wine;[15] and then you say [that during the] last [three days it is regarded as] certainly vinegar, [which] proves clearly [that if the] odour is vinegar and the taste, wine, [it is regarded as] vinegar?[16] — [The second clause deals with the case] when it was found [to be] very strong vinegar [in which case it is known] that had it not lost its taste three days [previously], it could not have been found [to be such] very strong vinegar.[17]

According to whom[18] did [R. Joseph] answer him?[19] — R. Mari and R. Zebid [are in dispute on this]. One says: According to R. Johanan. and the other says: According to R. Joshua b. Levi.

It has been stated: [In the case] when one sold a jug of wine to another and it became sour,[20] Rab said: During the first three days [of the sale] it is [regarded as still] in the possession of the seller;[21] after that, [it is regarded as] in the possession of the buyer.[22]

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(1) Either by tasting some of its contents, the heave-offering and tithe having been duly taken from it (Rashb.), or by smelling (Tosaf.)

(2) In order that he might be allowed to use the wine in the other jugs he keeps this one jug for the purpose of taking from it daily, or whenever required, the appropriate quantity of wine as heave-offering. etc., for the wine in the other jugs.

(3) E.g.. after a month or two.

(4) Vinegar. may not be used as a heave-offering for wine.

(5) The explanation of this follows.

(6) Tosef. Tem. IV.

(7) For in less than three days, wine cannot turn into vinegar. Even if it be assumed that it began to turn sour

immediately after the test, it would not be called ‘vinegar’ until full three days had elapsed. The heave-offerings given during these three days must, therefore, inevitably have been wine and, consequently, have exempted the wine in the other jugs. (V. n. 7 above).

(8) Since it is possible that the wine began to deteriorate only three days before it was found to be vinegar, into which it may have turned just at that moment. Since the heave-offering is accordingly in doubt (V. n. 7 above). another must be given.

(9) Deteriorations of the wine on the surface takes place first, and then it gradually spreads downwards till all turns sour. During this process, though the contents have the odour of vinegar, the flavour is still that of wine.

(10) Prior to the discovery that it turned into vinegar.

(11) R. Joshua regards the contents as vinegar as soon as they begin to deteriorate in odour though the taste may still be that of wine. Since it is now proper vinegar, the deterioration must have commenced at least three days previously.

(12) Because it is possible that the deterioration, as regards odour, began immediately after the test, and this, according to R. Joshua who is guided by the odour, changes the character of the contents from wine into vinegar on the very first day.

(13) And, consequently, despite the test, the contents were already, at that very moment, vinegar.

(14) R. Joshua holds the same views as R. Johanan.

(15) Cf. R. Johanan's reason.

(16) For if it is regarded as wine, despite the odour of vinegar, the contents may still have been wine three days

(17) The deterioration must consequently have commenced six days previously. In the first three, of these six days, it was still regarded as wine; for his opinion, like that of R. Johanan, is that the odour alone does not deprive the wine of its name, During the last three, of these six days, both odour and taste were that of vinegar, hence his decision is, in such a case, that ‘during the last three days it is regarded as certainly vinegar.’

(18) I.e., R. Johanan or R. Joshua? This inquiry is, of course, on the assumption that the first version of R. Joshua's statement, and not that of the scholars of the South, is the correct one.

(19) Abaye, supra 95b.

(20) In the house of the buyer while the wine was still in the seller's jug.

(21) Since it takes three days from the time the wine changes its odour into that of vinegar until it changes its taste also, the deterioration must inevitably have commenced before the sale. The seller, therefore, must remain responsible.

(22) And the seller need not compensate for his loss.

Talmud - Mas. Baba Bathra 96b

and Samuel says: Wine leaps upon the shoulder of its owner.[1] R. Joseph decided a case In accordance [with the opinion] of Rab, in [respect of the sale of] beer;[2] and in accordance with that of Samuel in [respect of] wine. And the law is in agreement with [the opinion] of Samuel.

Our Rabbis taught: The benediction, ‘. . . by whose word everything was made’, is to be said over beer of dates, beer of barley and lees of wine. Others say [that] over lees which have the flavour of wine the benediction, ‘. . . the creator of the fruit of the wine’ is to be said. Both Rabbah and R. Joseph say: The law is not in accordance with [the view of] the others. Raba said: All agree [in the case where] three [jugs of water] had been poured [into the lees], and four came out, that [the liquid] is [regarded as] wine; [for] Raba [is guided] by his view that any wine which cannot stand [an admixture of] three [units of] water to one [of wine], is no wine.[3] [In the case also where] three [jugs of water] had been put [into the lees] and three came out, [all agree that it is] no wine. Their dispute[4] has reference only [to the case] where three were put in and three and a half came out. [For in such a case,] the Rabbis hold the opinion [that since for the] three [that] were put in three were taken out, [only] one half is over; and one half, in six halves of water is nothing. But the others hold the opinion [that for the] three put in, [only] two and a half[5] were taken out, [a complete] jug, [therefore] remains over, and one jug [of wine] in two and a half [of water] [is regarded as] good wine.

But how can it be said that there is a dispute [at all] in the case when more than the quantity put in [has been taken out]? Surely it has been taught:

(1) I.e., the purchaser bears the responsibility for the wine. It is his misfortune that the wine turned sour.
(2) שיכרא a drink made of dates or barley.
(3) Shab. 77a. ‘Er. 29b.
(4) I.e., that of the Rabbis and the ‘others’.
(5) A sixth of the water put in is usually lost in the lees.

Talmud - Mas. Baba Bathra 97a

He who, in making Tamad,[1] poured water into lees by measure and obtained the same quantity [of Tamad] is exempt [from the tithe]. And R. Judah makes him liable.[2] [Does not this imply that] they are in disagreement only so far as [the case] where only the quantity put in [is extracted], but not where more[3] than that quantity [is obtained]? — [No]; they are in disagreement even where more than the quantity put in [has been obtained], and [the reason] why they are in dispute in [the case where only] the quantity put in [has been obtained] is to show you how far-reaching is the view[4] of R. Judah.[5]

R. Nahman b. Isaac inquired of R. Hiyya b. Abin: What [is the law[6] in regard to] lees which have the flavour of wine? — He replied unto him: Do you think this is wine? It is a mere acidiferous[7] liquor. Our Rabbis taught: [In the case of] lees of Terumah,[8] the first and the second [infusion] are forbidden [to laymen],[9] but the third is permitted.[10] R. Meir says: Even the third [infusion is forbidden], when [there is in it enough of the wine] to impart a flavour [to the water]. And [in the case] of [second] tithe, the first [infusion] is forbidden,[11] [but] the second is permitted. R. Meir says: The second [infusion is] also [forbidden] when [it contains enough of the wine] to impart a flavour [to the water]. And [in the case] of consecrated [lees], the third [infusion] is forbidden, but the fourth is permitted. R. Meir says: The fourth [infusion is] also [forbidden] when [it contains enough of the wine] to impart a flavour [to it].

A contradiction was pointed out [from a Baraitha which states that infusions] of consecrated [things] are forever[12] forbidden and [those] of [the second] tithe are always[13] permitted. [Surely this shows] a contradiction between [the respective laws relating to] consecrated things and also between those relating to tithe! — There is no contradiction between [the respective laws relating to] consecrated things, [for] here [the law relates] to objects which were themselves[14] consecrated, but there [it relates] to objects whose value[15] only was consecrated. There is [also] no contradiction between [the respective laws relating to] tithes, [for] here, [the law relates] to that which is certainly tithe, [but] there [it relates] to tithe of Demai.[16] R. Johanan said in the name of R. Simeon b. Jehozadak: The same [laws] that have been said [to apply] in respect of their prohibitions[17] have similarly been said [to apply] in respect of their making objects fit [for Levitical uncleanness].[18] What [kind] of making fit [is meant]? If [the infusion is regarded as consisting] of water, it certainly makes [objects] fit [for the Levitical uncleanness]; [and] if [it is regarded as consisting] of wine it [equally] makes the objects fit. [For what purpose. then, is R. Simeon's statement required?] — It is required in the case where the Tamad[19] was made of rain water.[20] But since he took up [the rain water] and poured it into the vessel [containing the lees], he [surely] intended them [for use, and consequently there is again no difference between an infusion of wine and one of water. Why, then, R. Simeon's statement]? — It is required [in the case] where the Tamad was made without the aid of human effort.[21] But since he draws out [the infusions] one after the other,[22] [does he not, thereby,] reveal his intention [of using them]? — R. papa replied: In [the case[23] of] a cow which drank the [infusions] one after the others [and, consequently, the owner's intention is not known].[24]

R. Zutra b. Tobiah said in the name of Rab: The Kiddush[25] of the day must be proclaimed on such wine only as is fit to be brought as a drink offering upon the altar. What does this exclude? If it is suggested that it excludes wine [that comes] from his vat,[26] [it may be retorted]: Did not R. Hiyya

teach, ‘One must not bring wine from his vat [as a drink offering], but if already brought, it is permitted [to be used]’; and, since [in the case of offerings] it is permitted when brought, it [should be allowed for Kiddush] even at the start also.[27]

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(1) תמד an inferior wine, or a vinegar, made by steeping stalks and skins of pressed grapes in water or by pouring water into Iees.
(2) Ma'as. V. 6; Pes. 24b; Hul. 25b.
(3) In such a case. even the Rabbis (representing the first opinion quoted) would agree that the wine is liable to tithe and, for the same reason, subject to the benediction of proper wine.
(4) Lit., ‘the power’.
(5) I.e., In holding that even when only the quantity put in has been extracted. it is nevertheless subject to tithe.
(6) Regarding its benediction.
(7) Lit., ‘blunts the teeth’.
(8) V. Glos.
(9) Only priests are allowed to eat Terumah. The first and the second infusion are still regarded as Terumah because they contain a considerable admixture of the original wine.
(10) Even though it may still retain some flavour of wine.
(11) To be eaten outside Jerusalem.
(12) Even the fourth, etc.
(13) Even the first.
(14) E.g.. wine as a drink offering for the altar.
(15) If. e.g.. one has consecrated wine for the purpose that the proceeds from its sale might be used for Temple repairs, the wine must be sold and the proceeds only used. The sanctity of such an object is not as high as that which itself is to be offered on the altar.
(16) Heb.דמי(root דמי ‘suspect’). Wine or any produce about which there is doubt whether the tithe or any of the priestly, or Levitical gifts has been duly separated. (Produce, e.g.. purchased from an ignorant man, ‘am ha-arez.) The law relating to tithes that have been taken from such wine etc., is not as stringent as that relating to tithe taken from produce, wine, etc. about which it is definitely known that no tithe has ever before been taken.
(17) That in the case of terumah, e.g., the first and the second infusions but not the third, and in the case of the tithe, the first but not the second, are regarded as the original wine, and are subject to its restrictions.
(18) Certain objects such as grain, fruit, etc. are not subject to Levitical uncleanness unless they have been first brought in contact with certain liquids. V. Lev. XI.
(19) V. Glos.
(20) Which, like other waters, does not fit objects for uncleanness unless used with the owner's desire or consent. Wine, however, always effects fitness for uncleanness whether with, or without the intention or knowledge of the owner.
(21) The rainwater fell directly into the lees.
(22) Lit., ‘first, first’.
(23) And for this R. Simeon's statement is required.
(24) In such a case there is a difference whether the infusion is regarded as wine effecting fitness for uncleanness or as water and effecting no fitness. If the cow drank the first infusion only, the law will be applicable to the second infusion. If it drank the second, the law is required for the third.
(25) קדוש ‘sanctification’, applied here to the proclamation of the sanctity of the Sabbath or Festival, which is made on Sabbaths and Festivals over a cup of wine, to which other appropriate benedictions are added.
(26) I.e., too new.
(27) Kiddush is not as high in importance as Temple offerings.

Talmud - Mas. Baba Bathra 97b

[Moreover,] Raba said: A man may press out a cluster of grapes[1] and proclaim over it the Kiddush of the day![2] Or, again, [if it is suggested that the object of Rab's statement is] to exclude[3] [the wine] at the mouth[4] [of the jug] and at the bottom,[5] [it may be retorted]: Did not R. Hiyya teach, ‘One must not bring [wine as a drink offering] from [the jug's] mouth or bottom, but if already brought it is

permitted [to be used].! And [if it is suggested that the statement] excludes black, white,[6] sweet,[7] cellar,[8] and raisin wine; surely it has been taught[9] [that] all these must not be brought, but if brought already they are permitted! And [if it is suggested that the statement] excludes wine [which is] pungent, mixed,[10] exposed,[11] made of lees, or having an offensive smell as it has been taught [that] in [the case of] all these, one must not bring [them] and even if brought [they remain] unfit, [it may still be retorted], 'to exclude which [of these was this statement made]'? If to exclude pungent wine, [this is surely a matter of] dispute[12] between R. Johanan and R. Joshua b. Levi. If to exclude mixed wine, surely [when wine is mixed with water] it is improved, for R. Jose b. Hanina said:[13] The Sages agree with R. Eleazar that in [respect of] the cup of grace after meals no benediction may be said over it until water has been poured into it.[14] If to exclude exposed [wine], surely it is dangerous.[15] If to exclude [wine made] of Iees, [it may be asked], how is this to be understood? If three [jugs of water] were poured in and four [jugs of wine] came out, this [surely] is good wine. If three were poured in, and three and a half came out, this is a [matter of] dispute between the Rabbis and the others![16] But, [this is the object of the statement], viz., to exclude [wine] which has an offensive smell. If preferred, it may be said that [the statement] may even exclude exposed [wine] and, [as to the objection raised,[17] it may be replied that it excludes such wine] even though it was passed through a strainer[18] in accordance with [the teaching of] R. Nehemiah,[19] [it] nevertheless [may not be used for Kiddush, because] Present it[20] now unto thy governor; will he be pleased with thee? Or will he accept thy person?[21]

R.Kahana the father-in-law of R. Mesharshya inquired of Raba: May white[22] wine [be used as a drink-offering]? — He replied unto him: Look not thou upon the wine when it is red.[23]

JUGS IN SHARON etc.. It has been taught: [The bad jugs referred to in our Mishnah are those which are] thin[24] and lined with pitch.[25] MISHNAH. IF ONE SELLS WINE TO ANOTHER AND IT TURNS SOUR. HE IS NOT RESPONSIBLE.[26] BUT IF HIS WINE IS KNOWN TO TURN SOUR, THE PURCHASE IS ONE BASED ON ERROR.[27] IF HE SAID UNTO HIM. 'WINE

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(1) And this certainly is not better than wine from the vat.

(2) This clearly shows that wine from the vat may be used for Kiddush, even at the start.

(3) From eligibility for Kiddush.

(4) On account of the mould that usually gathers near the top.

(5) On account of the lees there, which gets mixed up with it.

(6) בורק 'shining'. effervescent. Others read בודק 'searching' (in the body), causing diarrhoea.

(7) Gr.** a very weak wine.

(8) Promiscuous wine, not tested.

(9) Men. 86a.

(10) With water.

(11) Wine that remained uncovered during the night must not be used, for fear lest a poisonous snake may have drunk from it.

(12) Whether it is considered wine or vinegar. V, supra 96a.

(13) Ber. 50b.

(14) Their wines were so strong that they could not be drunk without water; three parts of water to one of wine.

(15) And must not be used even for ordinary purposes.

(16) Supra 96b.

(17) Supra, that such wine is dangerous and must not be used even for ordinary drinking.

(18) Or 'filter', in which case there is no more danger in drinking it.

(19) Suk. 50b; B.K. 115b. The poison of the snake, he states, floats, and may be removed from the liquid with the aid of a strainer.

(20) I.e., the blind, the lame and the sick, mentioned by the prophet in the earlier part of the verse.

(21) Mal. I,8. As those objectionable offerings (v. previous note) were condemned by the prophet, so is the use of any objectionable thing in connection with divine service (such, e.g.. as Kiddush) also to be condemned.

(22) V. p.405, n.8.
(23) Prov. XXIII, 31. This implies that proper wine must be red. Hence, only red wine may be used for drink-offerings.
(24) נאות Ex. XII,9.)
(25) If, however, they were in a worse condition the buyer need not accept them at all.
(26) Since at the time of the sale the wine was in a good condition.
(27) Because the seller ought to have informed the buyer that his wine could not stand, V. p.408, n.2.

Talmud - Mas. Baba Bathra 98a

THAT IS SWEET[1] I AM SELLING YOU, HE IS RESPONSIBLE FOR ITS PRESERVATION UNTIL PENTECOST.[2] AND [IF HE SAID, 'I SELL YOU] OLD [WINE.' HE MUST SUPPLY WINE] OF THE PREVIOUS YEAR; [IF] VERY OLD [WINE.' HE MUST SUPPLY WINE] OF THREE YEARS STANDING[3]

GEMARA. R. Jose, son of R. Hanina, said: [The law[4] in] our Mishnah is applicable only [to the case where the wine is] in the jugs of the buyer,[5] but [where it is] in the jugs of the seller [the former] can say to him, 'Take your wine and take your jug'.[6] But what matters it [even] if the jugs are the seller's? Let him say to [the buyer]. 'You should not have kept it so long'![7] — The law [mentioned] is applicable [to the case] where [the buyer] said to him [that he required the wine] for [flavouring] dish[es].[8] But what compels R. Jose, son of R. Hanina, to explain our Mishnah as treating of the case where the jugs belong to the buyer and that he [specially] says [to the seller that he requires the wine] for [flavouring] dish[es]? Let him rather explain[9] that it treats [even] of [the case where the] jugs belong to the seller and where [the buyer] does not say to him [that he requires the wine] for [flavouring] dish[es]? — Raba replied: Our Mishnah presented to him a difficulty, for it teaches: IF HIS WINE IS KNOWN TO TURN SOUR, THE PURCHASE IS ONE BASED ON ERROR, why. [R. Jose asked,] should that be so? Let [the seller] tell him, 'You should not have kept it so long' — From this,[10] then, it must be inferred that [the buyer specifically] said to him [that he required the wine] for [flavouring] dish[es].[11] This view[12] is in disagreement with that of R. Hiyya b. Joseph, for R. Hiyya b. Joseph said: The condition of] wine depends on its owner's luck[13] for it is said. Yea, moreover, wine is treacherous[14] if the man is haughty,[15] etc.[16] R.Mari said: One who is proud is not acceptable even to his own household, for it is said. A haughty man abideth not,[17] this means. he abideth not[18] in his own abode.

Rab Judah said in the name of Rab: Any one who is not a scholar, and parades in the scholar's cloak, is not admitted within the circle of the Holy One, blessed be He; [for] here it is written. And he abideth not[19] and there it is written. To thy holy abode.[20]

Raba said: If a man sold a jug of wine to a shopkeeper with the intention to retail it[21] and when [there still remained] a half or a third, it turned sour, the law is that he[22] must take it back from him.[23] This,[24] however, applies only to the case where [the shopkeeper] has not changed the bung-hole, but not [to the case] where he has changed the bung-hole.[25] [Furthermore,] this[24] applies only to the case where the market day has not [yet] arrived,[26] but not [to the case where] the market day has [already] arrived.

Raba further stated: If a man accepted wine[27] for the purpose of taking it to the markets of Wal-Shafat,[28] and, by the time he arrived there, the price fell, the law is that the owner must accept it.[29]

The question was raised, what is the law if it turned into vinegar?[30] — R. Hillel said to R. Ashi: When we were at R. Kahana's he said unto us: [In the case when it has turned into] vinegar, [the owner is] not [to bear all the loss], for [the law] is not in accordance with [the opinion of] R. Jose, son of R. Hanina.[31] Others Say: Even [when it has turned into] vinegar. [the seller] must also bear

[all the loss] in accordance with [the opinion of] R. Jose, son of R. Hanina.

OLD [WINE, HE MUST SUPPLY WINE] OF THE PREVIOUS YEAR, ETC.

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(1) Implying that it will keep as long as other good wines,
(2) ha-'Azereth העצרת 'the gathering', 'the festive gathering'. 'The Feast of Weeks', 'Pentecost'.
(3) I.e., two years previous to the current year.
(4) That the seller is not responsible if the wine becomes sour.
(5) For, in this case, it may be assumed that the buyer's jugs have spoilt the wine.
(6) Since it was spoilt in the seller's jugs, the buyer has no responsibility whatsoever for its deterioration, and may cancel the purchase.
(7) Since most people buy wine for immediate consumption.
(8) Only small quantities at a time are used, and the wine has to be kept for a long time.
(9) And so there would be no need to restrict our Mishnah to the case where the jugs are the buyer's. Whether they belonged to the buyer or to the seller, the latter would be free from responsibility since the fact that it was to be used in small quantities for a long period was not mentioned at the time of the purchase.
(10) From the fact that the buyer is held responsible.
(11) And knowing that his wine turns sour, the seller had no right to sell him it for the purpose required. Now since the second clause of our Mishnah speaks of such a case, the first clause also must speak of such a case; and the reason for the seller's exemption from all responsibility must, therefore, be attributed to the fact that the wine was kept in the jugs of the buyer.
(12) That our Mishnah speaks of wine in the buyer's jugs and that, if it had remained in the seller's jugs. the latter would have been responsible.
(13) And not upon that of the jugs.
(14) I.e., turns sour.
(15) A haughty person, who boasts of that which he does not possess, is punished, 'measure for measure', by having that which looks like wine turned into that which in reality is vinegar.
(16) Hab. II, 5.
(17) Ibid.
(18) I.e., 'is not tolerated',
(19) Ibid.
(20) Ex. XV, 13 נוה 'Habitation', abode', in Ex, is of the same root as ינוה 'abideth', in Hab.
(21) The shopkeeper is to pay for the wine after it has been sold out, deducting a certain percentage for his trouble.
(22) The seller, since he has retained the ownership of the wine, the shopkeeper merely acting as his agent.
(23) Must bear the entire loss.
(24) That the loss must be borne by the seller.
(25) Because it is possible that the change has caused the wine to ferment and to turn sour.
(26) So that the shopkeeper cannot be blamed for slackness in selling out.
(27) On a commission, undertaking to pay the owner, after it had been sold out, deducting a percentage for his trouble.
(28) And not to sell it elsewhere, Walshafat or Belshafat, a town in Susiana famous for its wine market; v. B.M.73b.
(29) I.e., he must bear the loss in value as compared with the price prevailing at the time the wine was accepted; since all the time the wine remained in his ownership.
(30) Before it arrived at its destination.
(31) Who said, supra, that whenever it was understood at the time of the purchase that the wine had to last for a long period, the seller must bear the loss, if the wine remained in his jugs.

Talmud - Mas. Baba Bathra 98b

A Tanna taught: [If wine was sold as 'very old'], it must be capable of standing until the Feast of Tabernacles.[1]

MISHNAH. IF ONE SELLS A PLACE TO ANOTHER OR ACCEPTS ONE FROM ANOTHER

FOR THE PURPOSE OF BUILDING ON IT A WEDDING HOUSE FOR HIS SON,[2] OR A WIDOW HOUSE FOR HIS DAUGHTER,[3] IT IS TO BE BUILT [IN THE DIMENSIONS OF NO LESS THAN] FOUR CUBITS BY SIX;[4] THESE ARE THE WORDS OF R. AKIBA. R. ISHMAEL SAID: THIS IS AN OX STALL![5] HE WHO DESIRES TO ERECT AN OX STALL,[6] IS TO BUILD [IT IN THE DIMENSIONS OF NO LESS THAN] FOUR CUBITS BY SIX; A SMALL HOUSE, SIX BY EIGHT; A BIG [ONE]. EIGHT BY TEN; A HALL, TEN BY TEN. THE HEIGHT [OF ANY OF THESE, MUST BE] HALF ITS LENGTH AND HALF ITS WIDTH.[7] PROOF OF THIS? — RABBAN SIMEON B. GAMALIEL SAID: LIKE THE TEMPLE STRUCTURE.[8]

GEMARA. Why has it been stated, A WEDDING HOUSE FOR HIS SON OR A WIDOW HOUSE FOR HIS DAUGHTER, and not 'a wedding house for his son or daughter, or a widow house for his son or daughter'? — [By this the Mishnah] has taught us incidentally that it is not the [proper] way for a son-in-law to live at the house of his father-in-law; as it is written in Bensira, 'I have weighed all things in the scale of the balance and found nothing lighter than bran; lighter than bran is a son-in-law who lives in the house of his father-in-law; lighter than [such] a son-in-law is a guest [who] brings in [with him another] guest ; and lighter than such a guest [is he who] replies before he hears [the question],[9] for it is written, He that giveth answer before he heareth, it is folly and confusion unto him.'[10]

R.ISHMAEL SAID: THIS IS AN OX STALL. HE WHO DESIRES TO ERECT etc. Who is the author of [the statement on] the OX STALL? — Some say the author is R. Ishmael, and some say R. Akiba is the author. Those who say R. Akiba is the author explain it thus, 'Although [the size] is [that of] an ox stall, one sometimes makes his dwelling [as small] as an ox stall'. And those who say R. Ishmael is the author, explain it thus, 'Because he who desires to erect an ox stall makes [it] four cubits by six.'

A HALL, TEN BY TEN. What is the meaning of traklin?[11] — An arched hall adorned with roses. It was taught: A kinter [contains] twelve [cubits] by twelve. What is a kinter? — The fore-court[12] of mansions.

THE HEIGHT... HALF ITS LENGTH AND HALF ITS WIDTH. PROOF OF THIS? — RABBAN SIMEON B. GAMALIEL SAID: LIKE THE TEMPLE STRUCTURE. Who taught. 'PROOF OF THIS. . .'? — Some say. R. Simeon b. Gamaliel taught it; and this is the purport of what has been said: Whence the PROOF OF THIS? — R. SIMEON B. GAMALIEL SAID: All [dimensions must be in proportion] LIKE [those of] THE TEMPLE STRUCTURE. And some say, the first Tanna has taught this, and R. Simeon b. Gamaliel is astonished [at it] and says to him [to the first Tanna] thus: Whence the proof? [Is it] from the Temple structure? Does everybody make [houses] LIKE THE TEMPLE STRUCTURE?[13]

It was taught: Others say [that] its height [must be] equal to [the length of] its beams.[14] Let it [then] be said [simply]. 'The height [must be] equal to its width'![15] — If you wish, it can be said [that] a house is wider at the top;[16] and, if preferred, it can be said [the expression 'equal to the length of its beams' is necessary] because there are apertures [in the wall in which the beams are fixed].[17]

R.Hanina [once] went out to the country, [and] a contradiction between [the following] verses was pointed out to him. It is written, And the house which King Solomon built for the Lord, the length thereof was threescore cubits, and the breadth thereof twenty cubits, and the height thereof thirty cubits,[18] but it is [also] written, And before the Sanctuary which was twenty cubits in length, and twenty cubits in breadth, and twenty cubits in the height[19] thereof![20] He replied unto them: [The last mentioned verse] reckons from the edge of the Cherubim[21] upwards. What does [this kind of measurement][22] teach us?

(1) From the Tabernacles (the vintage season) of the second year prior to the sale, until the Tabernacles of the year of the sale, making a total period of three complete years. If it did not keep, the seller must bear the loss.
(2) In which to live after the wedding.
(3) Whose husband dies, and who returns to her father's house.
(4) These are to be the dimensions (if none were specified) which one party can enforce upon the other.
(5) Not a human dwelling which requires longer dimensions.
(6) The Gemara explains, infra, who is the author of this statement.
(7) If, e.g., the dimensions are four cubits by six, the height must be, (4-6), five cubits; if ten by ten: the height must be, (10 + 10 / 2), ten cubits.
(8) Which was forty cubits long, twenty cubits wide and thirty cubits high, i.e, its height equalled half its length and breadth.
(9) [Cf. Sirach, Ecclus. XI, 8.]
(10) Prov. XVIII, 13.
(11) The Hebrew. equivalent of 'hall' in our Mishnah. Cf. Gr.** triclinium, 'a dining room with three couches'.
(12) Or front garden.
(13) Other houses do not require heights in similar proportion.
(14) Laid across the width of the house.
(15) V. previous note.
(16) Since it was usual to make stone walls thinner on top than below, so as to give them a broader basis. The beams which span the house at the top would consequently be longer than the width of the house below.
(17) The ends of the beams, resting in the apertures, are included in the length of the beams. A beam, therefore, represents a greater length than the space between the inner side of the walls.
(18) I Kings VI, 2.
(19) This shows that the height was not thirty cubits, as stated in v.2, but twenty.
(20) Ibid. v.20.
(21) Whose height was ten cubits.
(22) Why is the height measured from the Cherubim and not, as might be expected, from the ground?

Talmud - Mas. Baba Bathra 99a

— It teaches us this: [The space] below[1] [was] as [that] above. As [the space] above[2] served no [material] purpose.[3] so [the space] below served no [material] purpose.[4] This supports R. Levi; for R. Levi — others say. R. Johanan — said:[5] We have this as a tradition from our fathers [that] the place of the Ark and the Cherubim is not included in the measured [space]. So, indeed, it has been taught:[6] The Ark which Moses made had a free space of ten cubits on every side.[7]

Rabina said in the name of Samuel: The Cherubim [made by Solomon] stood by a miracle; for it is said, And five cubits was the one wing of the Cherub,' and five cubits the other wing of the Cherub,' from the uttermost part of the one wing unto the uttermost part of the other were ten cubits,[8] where, [then] were their bodies standing?[9] Consequently it must be inferred that they stood by a miracle. Abaye demurred: They might have been standing [with their bodies] protruding [under the wings] like [those of] hens![10] Raba demurred: perhaps they did not stand opposite one another![11] R. Aha b. Jacob demurred: They might have been standing diagonally.[12] R. Huna the son of R. Joshua demurred: The house might have been wider from above![13] R. Papa demurred: Might not their wings have been bent?[14] R. Ashi demurred: Their wings might have been overlapping each other![15]

How did they[16] stand? — R. Johanan and R. Eleazar [are in dispute on the matter]. One Says: They faced each other; and the other says: Their faces were inward. But according to him who says that they faced each other, [it may be asked]: Is it not written, And their faces were inward?[17] — [This is] no difficulty: The former[18] [was] at a time when Israel obeyed the will of the Omnipresent; the latter[19] [was] at a time when Israel did not obey the will of the Omnipresent. According to him

who says that their faces were inward [it may be asked]: Is it not written, With their faces one to another?[20] They were slightly turned sideways.[21] For [so] it was taught: Onkelos the proselyte said, 'The Cherubim were of image[22] work[23] and their faces were turned sideways as a student who takes leave of his master.[24]

MISHNAH. HE WHO OWNS A CISTERN WITHIN ANOTHER MAN'S HOUSE, GOES IN WHEN IT IS USUAL FOR PEOPLE TO GO IN, AND GOES OUT WHEN IT IS USUAL FOR PEOPLE TO GO OUT. HE MUST NOT BRING IN HIS BEAST [THROUGH THE OTHER'S HOUSE] TO GIVE IT DRINK FROM HIS CISTERN. BUT MUST FILL [HIS VESSEL] AND GIVE [THE BEAST] TO DRINK OUTSIDE. ONE OF THEM MAY MAKE FOR HIMSELF A LOCK, AND THE OTHER MAY [ALSO] MAKE FOR HIMSELF A LOCK.

GEMARA. Where [is] the lock [to be attached]? — R. Johanan said: Both[25] to the cistern. This is right [in the case of] the owner of the cistern, [for] he has to protect the water of his cistern; but for what purpose does the owner of the house [require a lock]? — R. Eleazar said:

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(1) The ten cubits from the ground where the Cherubim and the Ark were standing.

(2) The space of twenty cubits from the Cherubim to the top.

(3) They were empty.

(4) The Ark and the Cherubim, as stated infra, miraculously occupied none of the space of the Sanctuary.

(5) Cf. Yoma 21a; Meg. 10b.

(6) Meg. l.c.

(7) Though the entire area of the Holy of Holies was only twenty cubits by twenty.

(8) I Kings VI,24.

(9) Since the two pairs of wings alone occupied twenty cubits, there was no room left for their bodies. (Cf. n. 12 supra.)

(10) Whose wings touch each other on their backs, the entire bodies being covered by the wings.

(11) Their wings overlapping sideways.

(12) The distance between the diagonally opposite corners of the Holy of Holies was, of course, greater than that between any two of its sides; consequently longer than twenty cubits. This would allow room both for the wings and the bodies of the Cherubim.

(13) And, therefore, there was a distance of more than twenty cubits between the walls, allowing room for the wings as well as for the bodies of the Cherubim.

(14) So that together with the bodies, no more than a length of twenty cubits was required.

(15) So that together with their bodies they did not occupy more than twenty cubits.

(16) The Cherubim in the Holy of Holies.

(17) II Chron. III, 13.

(18) Facing each other, a sign of affection. Symbolic of the relationship between God and His people.

(19) Turning inward, away from each other, symbolic of the unrequited love of God for Israel.

(20) Ex. XXV,20.

(21) Partly facing one another and partly turning inward.

(22) צעצעים Others render, 'image of children', comparing it with צאצאים 'children'. The latter leads on naturally to the simile, 'As a pupil who takes leave of his master'.

(23) II Chron. Ibid. v.10.

(24) A student, on taking leave of his master, turns sideways for some distance, before turning his back completely on him.

(25) The lock of the owner of the cistern and that of the owner of the house.

Talmud - Mas. Baba Bathra 99b

In order [to avert] suspicion from his wife.[1]

MISHNAH. HE WHO HAS A GARDEN WITHIN THE GARDEN OF AN OTHER MAN

ENTERS WHEN IT IS USUAL FOR PEOPLE TO ENTER AND GOES OUT WHEN IT IS USUAL FOR PEOPLE TO GO OUT. HE MUST NOT BRING [ANY] DEALERS INTO IT.[2] HE MUST NOT ENTER [IT FOR THE MERE PURPOSE OF PASSING] FROM IT INTO ANOTHER FIELD. THE EXTERNAL [FIELD OWNER MAY] SOW THE PATHWAY.[3] IF A SIDE PASSAGE WAS GIVEN[4] HIM[5] WITH THE CONSENT OF THE TWO, HE MAY ENTER WHENEVER HE DESIRES AND GO OUT WHENEVER HE DESIRES, AND MAY [ALSO] BRING DEALERS INTO IT.[6] HE MUST NOT, [HOWEVER,] ENTER [IT FOR THE MERE PURPOSE OF PASSING] FROM IT INTO ANOTHER FIELD. NEITHER THE ONE NOR THE OTHER MAY SOW IT[7]

GEMARA. Rab Judah said in the name of Samuel: [If one says to another]. 'I sell you [land for] an irrigation [canal of the width of one] cubit', he must, [in addition to the width of the canal]. allow him two cubits [of land] in [the field] itself,[8] one cubit on either side [of the canal] for its banks.[9] [If he said.] 'I sell you [ground] for a pond[10] [of the width of one] cubit', he must, [in addition to the pond], allow him one cubit [of ground] in [the courtyard] itself,[11] half a cubit on either side [of the pond] for its banks.[11] Who [has the right of] sowing these banks? — Rab Judah said in the name of Samuel: The owner of the field [is entitled] to sow them. R. Nahman said in the name of Samuel: The owner of the field [is entitled to] plant them. He who said, 'sow them', [agrees]. even more so, [that] he may plant them;[12] but he who said, 'plant them', [holds the opinion that] he must not, however, sow them, [because] they penetrate[13] [into the canal].[14]

Rab Judah further stated in the name of Samuel: A water canal[14] whose banks have been worn away, may be repaired [with the earth] of that field [through which it runs], for it is known that the banks could not have been washed away except into that very field.[15] R. Papa demurred: Let the field owner say, [to the owner of the canal]. 'Your water has lowered your ground'![16] — But, said R. Papa. [the reason why earth may be taken from the adjacent field is] because the owner of the field has consented[17] to this condition.[18]

MISHNAH. HE WHOSE FIELD IS TRAVERSED BY A PUBLIC PATH AND HE CLOSED IT, SUBSTITUTING [ANOTHER PATH] AT THE SIDE, FORFEITS THAT WHICH HE HAS GIVEN[19] AND [THAT WHICH HE APPROPRIATED AS] HIS DOES NOT PASS INTO HIS POSSESSION.[20] A PRIVATE PATH [HAS A WIDTH OF] FOUR CUBITS.[21] A PUBLIC ROAD [HAS A WIDTH OF] SIXTEEN CUBITS. THE KING'S HIGHWAY HAS NO LIMIT[S]. THE PATH OF A FUNERAL CORTEGE[22] HAS NO LIMIT[S].[23] THE HALTING [PLACE][24] HAD, SAID THE JUDGES OF SEPPHORIS, AN AREA OF FOUR KAB.[25]

GEMARA. Why should not [THAT PATH, WHICH HE APPROPRIATED AS] HIS, PASS INTO HIS POSSESSION?[26] Let him[27] take a whip and sit down [to guard his path]! Does this, then, imply that a man may not take the law in his own hands even where a loss is involved?[28] — R. Zebid replied in the name of Raba: It is a decree [that he is not allowed to substitute another path for the one already used by the public] lest he assign to them a crooked path.[29] R. Mesharsheya said in the name of Raba: [Our Mishnah deals only with the case where] he gives them a crooked path.[30]

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(1) By his affixing a lock to the cistern he prevents the other from using the water in his absence and, consequently, deprives him of the excuse of entering his house while his wife is alone.

(2) The produce of the garden must be carried out to the dealers so that they cause no damage to the outer garden by passing through it.

(3) Though he must allow the owner of the inner field the right of passage, the ground remains his own, and he may, therefore, use it for sowing.

(4) By a court of law.

(5) The owner of the inner field.

(6) Since the path is not in the middle, but at the side of the field, it may be confidently assumed that the owner, who had

consented to have the path there, has set it aside to be used solely as a path to the inner field. No restrictions, therefore, are imposed on any of its uses so long as their object is the gaining of admission to the inner field.

(7) V. last clause of preceding note.

(8) According to another reading, two cubits width of land must also be allowed for the canal itself, though its nominal capacity is one cubit.

(9) So that the earth from the two strips of land might be used for repairing the sides of the canal whenever necessary.

(10) In a courtyard, used for watering cattle and washing clothes and utensils. It is smaller than a canal which is used for irrigation purposes and requires a greater capacity.

(11) V, supra n. 3.

(12) Plants do not damage the sides of the canal, their roots going deep down into the ground.

(13) And the consequent falling of earth causes damage to the structure or spoils the water.

(14) Which belongs to one party while the field, through which it runs, belongs to another.

(15) Hence, the earth for reconstruction also may be taken from that field.

(16) The water may have carried away the earth of the banks else where. Why should the field owner be expected to supply earth for repair from his field?

(17) When he sold the canal.

(18) That earth for repair shall be supplied from his field.

(19) I.e., the new path becomes public property.

(20) And the public may henceforth claim two paths through the field.

(21) If a 'private path' has been sold in one's field, a width of four cubits must be allowed for the path.

(22) Lit., 'the grave'.

(23) Those following the bier may tread even upon cornfields if their number is so large that the public highway does not suffice. Cf, also n. 5.

(24) The place where, on returning from burial, the funeral escort halts to offer, with due ceremonial, consolation to the mourners. V, infra 100b.

(25) I.e., 50 cubits by 33 1/3, an area sufficient for sowing four kab of seed.

(26) Surely the path is in his own field and, since he has also substituted another for public use, the public loses nothing.

(27) If he cannot prosecute all trespassers.

(28) Surely it has been taught elsewhere that in such a case a man, in self protection, may take the law into his own hands.

(29) Hence the law was enacted that even if one substituted a straight path, no possession could be gained of the old path.

(30) If, however, he gives the public a straight path, he may take possession of the old one, and use force against any trespassers.

Talmud - Mas. Baba Bathra 100a

R. Ashi said: Any[1] path [that runs] along the side [of a field] is crooked, [for] it is near to one and far from another.[2] But let him say to them, 'Take yours and give me back mine'?[3] — This [law of our Mishnah] is in accordance with [the view of] R. Eliezer; for it has been taught: R. Judah said in the name of R. Eliezer, [if] the public chose a path[4] for themselves, that which they have chosen is theirs.[5] [May, then], the public, according to R. Eliezer, act as robbers? — R. Giddal replied in the name of Rab: [R. Eliezer speaks of] a case where their path had been lost in that field.[6] If so,[7] why did Rabbah, son of R. Huna, state in the name of Rab [that] the halachah is not according to R. Eliezer?[8] The reporter of the one statement is not the reporter of the other.[9] What, then,[10] is the reason [for the law of our Mishnah]?[11] — [The reason is derived] from that of Rab Judah; for Rab Judah said: A path of which the public has taken possession[12] must not be destroyed.[13] Whereby does the public acquire possession [of the path, according to] R. Eliezer?[14] By walking; for it has been taught: If he walked in it[15] through the length of it and through the breadth of it, he has acquired the place where he walked — these are the words of R. Eliezer. And the Sages say: Walking is of no avail unless he has taken possession.[16] R. Eleazar said: What is the reason of R. Eliezer? — For it is written, Arise walk through the land in the length of it and in the breadth of it,'

for I will give it unto thee.[17] And the Rabbis?[18] — There, He said to him thus[19] only because of [His] love for Abraham, that his children may easily conquer [the land].[20]

R.Jose, son of R. Hanina, said: The Sages agree with R. Eleazar in [the case of] a path of vineyards. Since it was made [only] for walking it is acquired by walking.

When they came before R. Isaac b. Ammi [with the case of one who sold to another a path in vineyards], he said unto them: Give him [a path so wide] that he may carry [through it] a load of twigs and [be able to] turn round.[21] This, [however], has been said only [in the case] where [the path] is marked out by walls, but when it is not marked out by walls [the width of the path need be only] so much as [to allow him] to lift up one foot and put down the other.[22]

A PRIVATE PATH . . . FOUR CUBITS. A Tanna taught: Others say [that the path must be of such a width] as an ass with its load may be able to pass. R. Huna said: The halachah is according to the Others. The Judges of the Exile[23] say: [The width is to be] two cubits[24] and a half; and R. Huna said [that] the halachah is according to the Judges of the Exile. Did not R. Huna say [that] the halachah is according to the Others? — Both measurements are identical.[25]

A PUBLIC ROAD. .. SIXTEEN CUBITS. Our Rabbis taught: A private path[26] [is of the width of] four cubits; a path from one town to another[27] [is to have a width of] eight cubits;[28]

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(1) Our Mishnah does not refer to a particular case where a crooked path had been substituted (as R. Mesharsheya suggested), nor is the provision in our Mishnah a case of preventive measures (as R. Zebid maintained), but any path, however good, cannot be placed along the side of a field as a substitute for one which runs through the midst of it.

(2) Any one living on the farther side of the field. And since a number of people, to whom the substituted path will cause hardship, will object to the change, the abolition of the old path would constitute a robbery of the public, and is therefore prohibited.

(3) Why, then, does the Mishnah state that both the old path and the new become public property?

(4) Even if it runs through private property, and even if the landowner's permission has not been obtained.

(5) Lit., ‘chosen’ (‘Er. 94a); and the owner of the land cannot raise any objection to their use of the path.

(6) While an individual could not in a similar case make the choice without the consent of the landowner or without the authority of the court, the public have a right to choose the path they like.

(7) That, according to Rab, the case dealt with by R. Eliezer is that of recovering a lost path.

(8) Surely, the public are entitled to reclaim what they have lost. How, then, are the two statements made in the name of Rab to be reconciled?

(9) R. Giddal, who taught in the name of Rab that R. Eliezer deals with the case where a public path had been lost in the field, has not accepted the statement made in the name of Rab by Rabbah that the law is not in accordance with R. Eliezer. In the opinion of the former the law is in agreement with the view of R. Eliezer. Rabbah, on the other hand, who stated in the name of Rab that the law is not in agreement with R. Eliezer's view, has not accepted R. Giddal's statement. In the opinion of Rabbah, R. Eliezer speaks of all cases, even of that where no path had been lost in the field and, for this reason, the law is against him.

(10) Since our Mishnah is not according to R. Eliezer.

(11) Why should not the owner of the field be entitled to say to the public, ‘Take yours and give me back mine’?

(12) By levelling, and making it fit for walking. (Rashb.)

(13) B.K.28a; supra 12a; 26b; 60b. If the owner of the land had raised no objection at the time possession was taken by the public. How much less may the path be abolished when, as in our Mishnah, the public had taken possession with the owner's full consent

(14) Since R. Eliezer does not speak of taking possession’, but of ‘choosing’.

(15) Lit., ‘the field which he bought.’

(16) Of the land, by performing some act such as levelling, breaking. etc, cf. supra 52b ff.

(17) Gen. XIII, 17.

(18) Why, in the face of the Biblical verse, do they maintain that by walking alone possession cannot be acquired?

(19) I.e., to acquire possession by walking.
(20) That they may enter it as heirs and not as robbers.
(21) Without touching the fences of the path.
(22) Since there are no walls, one can carry a load conveniently, however narrow the path may be.
(23) Samuel and Karna.
(24) Gomed; V, however p.279, n.6. Others consider the gomed to be shorter than the cubit by a hand's length and to represent the distance between the elbow and the fingers.
(25) Lit., 'this and this are the same size.'
(26) For one person into his own field.
(27) Reserved for the sole use of the inhabitants of the two towns.
(28) To allow two wagons to pass each other.

Talmud - Mas. Baba Bathra 100b

a public road,[1] sixteen cubits; the road to the cities of refuge,[2] thirty two cubits. R. Huna said: From what Scriptural text [may this be inferred]? — From the text, Thou shalt prepare thee the way;[3] [instead of], 'a way' [it is written], 'the way'.[4]

THE KING'S HIGHWAY HAS NO LIMIT[s], because a king may break a wall to make a way for himself and no one may prevent him. THE PATH OF A FUNERAL CORTEGE HAS NO LIMIT[s], in deference to the dead.[5]

THE HALTING PLACE HAD, SAID THE JUDGES OF SEPPHORIS, AN AREA OF FOUR KAB etc. Our Rabbis taught: If a person has sold his [family] grave, the path to [this] grave, his halting place[6] or his house of mourning, the members of [his] family may come and bury him perforce,[7] in order [to avert] a slight upon the family.[8]

Our Rabbis taught: No less than seven halts and sittings[9] are to be arranged for the dead, corresponding to[10] Vanity of vanities. saith Koheleth; vanity of vanities, all is vanity.[11] R. Aha the son of Raba said to R. Ashi: What was their procedure? He replied unto him: As it has been taught; R. Judah said, At first they provided in Judea no less than seven halts and sittings for the dead in the [following] manner: [The leader called out after the escort had sat down on the ground]. 'Stand, dear [friends], stand up'; [and after they had walked for some distance he again called out]. 'Sit down, dear [friends], sit down'.[12] They[13] said unto him: If so[14] , such [procedure] should be permitted on the Sabbath[15] also!

The sister of Rami b. Papa was married to R. Iwya. [When] she died he arranged [in] her [honour][16] a 'halting and sitting'. R. Joseph said: He erred on two [points]. He erred [in] that [the ceremony of halting and sitting] is to be held with near [relatives][17] only, and he held it even with distant [ones]; and he [further] erred [in] that they were instituted only for the first day [of the burial], and he arranged [them] for the second day. Abaye said: He also erred on the following [point]. These[6] l [were instituted] to take place in the grave-yard only, and he arranged [them] within the town. Raba said: He also erred on the following [point]. These[18] may be arranged only where they are the local practice. but there, these were not the practice.

An objection was raised: [It has been stated that] they said unto him, 'If so, such [procedure] should be permitted on the Sabbath also'. Now, if it is said [that the ceremonial is to take place] in the graveyard and on the first day [only], [for] what [purpose] is the graveyard required on the Sabbath?[19] — In [the case of] a town which is near a graveyard [and the dead] was brought [to burial] at twilight.[20]

MISHNAH. IF ONE SELLS A PLOT [OF GROUND] TO ANOTHER AS A [FAMILY] GRAVE

AND, LIKEWISE, IF ONE ACCEPTS [AN ORDER] FROM ANOTHER TO CONSTRUCT FOR HIM A [FAMILY] GRAVE, THE CENTRAL SPACE[21] OF THE GROTTO MUST HAVE [AN AREA OF] FOUR CUBITS BY SIX.[22] AND EIGHT SEPULCHRAL CHAMBERS ARE TO OPEN OUT INTO IT; THREE FROM [THE WALL ON] ONE SIDE.[23] THREE FROM [THE WALL ON] THE OTHER,[23] AND TWO [FROM THE WALL] IN FRONT.[24] THE CHAMBERS MUST BE FOUR CUBITS IN LENGTH, SEVEN [HANDBREADTHs] IN HEIGHT,

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(1) Used by people of more than two towns.

(2) V. Num. XXXV, 6ff,; Deut. XIX, 2ff.

(3) Deut. XIX,3.

(4) הדרך ha-derek. The definite article implies a 'special' way, double the usual which is of sixteen cubits.

(5) In order that as many as possible may join his funeral escort to pay him their last honours.

(6) V. supra p.416, n.8, and n. 4 infra.

(7) They may force the buyer to take back the purchase price and cancel the sale.

(8) Keth. 84a. Bek. 52b.

(9) The funeral escort, on returning from a burial, halted on the way at a certain station, where seven times they stood up and sat down on the ground to offer comfort and consolation to the mourners or to weep and lament for the departed.

(10) The seven times 'vanity' mentioned in the following verse: Three times 'vanity' in the singular, and twice in the plural which equal four in the singular.

(11) Eccl. I, 2.

(12) This is the conclusion of the answer to R. Aha's enquiry.

(13) The Sages.

(14) That the entire ceremonial consisted only of the leader's directions and of sitting down and standing up.

(15) I.e., the Sabbath eve, if the burial took place near dusk. In such a ceremonial no desecration of the Sabbath could be involved.

(16) Lit., 'for her'.

(17) Who are not so near as to be included among the mourners. (13) I.e., 'halting and sitting'.

(18) V. p.420, n. 13.

(19) Surely burial on the Sabbath is forbidden

(20) Of the Sabbath eve. In such a case the ceremonial would be performed on the Sabbath (V. p.420, n.10). Though the night forms, for general purposes, the beginning of the following day, in respect of the mourning on the first day of the death an exception is made, and the night is held to follow the previous day. Sabbath eve can accordingly be regarded for the purpose as Friday. viz., the first day of the burial.

(21) Family graves were constructed in the form of a central grotto from which sepulchral chambers opened into the surrounding walls.

(22) The height of the grotto is to be, according to the Tosefta, four cubits.

(23) Of the two longer walls.

(24) The shorter wall that faces the entrance.

Talmud - Mas. Baba Bathra 101a

AND SIX[1] HANDBREADTHS IN WIDTH.[2] R. SIMEON SAYS: THE CENTRAL SPACE OF THE GROTTO MUST CONTAIN [AN AREA OF] SIX CUBITS BY EIGHT. AND THIRTEEN CHAMBERS ARE TO OPEN OUT INTO IT; FOUR ON ONE SIDE, FOUR ON THE OTHER. THREE IN FRONT [OF THE ENTRANCE]. ONE ON THE RIGHT OF THE ENTRANCE AND ONE ON THE LEFT.[3] OUTSIDE THE ENTRANCE TO THE GROTTO IS TO BE MADE A COURT OF SIX [CUBITS] BY SIX, [WHICH IS] THE SPACE THE BIER AND THOSE WHO BURY IT OCCUPY. TWO GROTTOS[4] ARE TO BE OPENED OUT INTO IT; ONE ON THE ONE SIDE AND ONE ON THE OTHER.[5] R. SIMEON SAYS: FOUR; [ONE] FOR [EACH OF] ITS FOUR SIDES.[6] R. SIMEON B. GAMALIEL SAYS: ALL DEPENDS ON [THE QUALITY OF] THE ROCK.[7]

GEMARA. Where are these two [chambers][8] to project? If outwards,[9] they would, surely, be trodden upon![10] Furthermore, we have learnt:[11] 'He who stands[12] in the court of a [family] grave is [Levitically] clean'.[13] — R. Jose b. Hanina replied: They are made in the shape of a door-bolt.[14] But, Surely. R. Johanan said:

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(1) Or one cubit.

(2) A space of one cubit was allowed for each of the walls intervening between the sepulchral chambers, and half a cubit space was left at the end of each wall. The two longer walls of the grotto, being respectively six cubits in length, could, therefore, contain three chambers each: The chambers, each of one cubit in width, occupying three cubits; the two walls between them, two cubits; and the two half cubit spaces at the corners, another cubit. The shorter wall facing the entrance, being four cubits long, could contain two chambers only: the chambers occupying two cubits; the intervening wall, one cubit; and the two half cubit spaces at the corners, another cubit.

(3) According to R. Simeon, the longer walls, being eight cubits in length. provide space for four one-cubit chambers each, allowing three cubits for the intervening one-cubit walls, and one cubit space for the two half cubit spaces at the corners. The wall opposite the entrance, being six cubits in length, can contain three one-cubit chambers, the space for the two one-cubit intervening walls and the two half-cubit spaces at the corners. This gives a total of, (4 + 4 + 3), eleven sepulchral chambers. The location of the last two is dealt with in the Gemara infra.

(4) The one mentioned, and another facing it.

(5) The following diagram represents the plan and the area of the entire cave, court, grottos and sepulchral chambers, in accordance with the regulations laid down by the Rabbis, (the representatives of the anonymous opinion cited first in the Mishnah).

(6) According to R. Simeon the plan and dimensions of the grave are as follows:

(7) If the rock is hard, more sepulchral chambers may be cut, since less space is required for the intervening walls. If, on the other hand, the ground is soft, more space would be required for the walls and, consequently, the number of chambers would have to be reduced.

(8) Which, according to R. Simeon, are to be cut on the right and on the left of the entrance.

(9) Under the floor of the court.

(10) By those who have to pass the court into the grottos; and treading upon a grave is an insult to the dead, which is forbidden.

(11) Oh. XV, 8.

(12) I.e., if he was carried into the court, not having trodden upon the surrounding graves.

(13) But if the graves were projecting into the court, as assumed, he would have become Levitically unclean on account of his treading on these graves.

(14) The chambers are dug vertically and the bodies are placed in an upright Position.

Talmud - Mas. Baba Bathra 101b

'This[1] is the burial of asses'? — According to R. Johanan they are made in the corner[s].[2] But, surely, the chambers would touch[3] each other? — R. Ashi replied: One can make them deeper.[4] For if you would not say so,[5] how can four grottos be constructed according to R. Simeon? Surely [some of] the chambers [of adjacent grottos] would be touching[6] each other! But [this. you would say, can be avoided] by digging [the overlapping chambers] deeper [than the others];[7] in this case also, [the touching of chambers may be avoided] by digging [the corner chambers] into the wall deeper [than the adjacent ones]. R. Huna the son of R. Joshua stated: The [affected chambers in the] four grottos, according to R. Simeon, were made in the shape of palm-wigs.[8] But this [statement of R. Huna b. R. Joshua is [to be] rejected.[9] For, it is to be observed, every cubit square has a diagonal of a cubit and two fifths [approximately]. [The diagonal of the square formed by the adjacent walls of any two grottos] measures eleven cubits and a fifth,[10] [approximately]. Is not the number of the chambers eight?[11] How, [then], is it possible [to make eight [chambers][12] in [a width of] eleven [cubits] and a fifth? But that [statement] of R. Huna b. R. Joshua must be rejected. If you like, it may be said: As R. Shisha son of R. Idi [referred the case, infra,] to miscarriages, [so] here also [the chambers in question are for the burial] of miscarriages.[13] We have learnt elsewhere [in a Mishnah]:[14] If a corpse

is found[15] lying [in a grave] in the usual manner.[16] both the corpse and the earth surrounding it are to be removed.[17] [If] two [corpses, in similar conditions, are found], they and the earth surrounding them are to be removed.

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(1) I.e., burial in an upright position.

(2) The corners formed by the wall facing the entrance and the respective two walls adjacent to it, the chambers projecting into the corners in a slanting direction. .

(3) A width of one cubit is required for each chamber, while the entire space vacant in the corners is only half a cubit in either wall, thus leaving no intervening walls between the chambers in the corners and the adjacent chambers on either side.

(4) The deeper one digs into the corners in a slanting direction, the further becomes the distance between the corner chambers and those adjacent to them (Rash.) R. Gershom explains that he digs the corner ones deeper in the ground, that is lower than the adjacent ones, cf. Jerushalmi, a.l.

(5) That some of the chambers were dug deeper than the others.

(6) The chamber in the northwestern corner of the eastern grotto, for example. would coalesce with the south-eastern chamber of the northern grotto.

(7) Deeper in the ground and lower than the corresponding chambers in the other grotto.

(8) Fan shape; and this would avoid overlapping or coalescing and the necessity for deeper digging.

(9) ברותא var. lec. בדותא 'imaginary'. V. B.M. 9a. n. 00.

(10) Each of the two walls being eight cubits in length, a square is formed whose diagonal is 8 + (8X2 / 5) = 11 1/5 cubits approximately.

(11) Four in the wall of each grotto.

(12) Each one of which is to be a cubit in width. Add to this the widths of the seven intervening walls, each also of one cubit, making a total of fifteen cubits.

(13) Or, newly-born infants. The corner chambers as well as those which, according to R. Simeon's plan, would overlap, are to be used for burial of small bodies which occupy little space. Small burial chambers would not coalesce with, or touch the others.

(14) Oh. XVI, 3.

(15) In an area which is not known to be a graveyard and, therefore, Levitically clean.

(16) Showing that Israelites had buried it and that death was due to natural causes; and the question, therefore, arises whether that area was not once used as a regular graveyard. In the case of a mutilated corpse or non-Jewish mode of burial, that question does not arise, since it is obvious that the corpse was buried in that spot by mere accident.

(17) If the area is to remain Levitically clean. The discovery of one corpse does not establish the area as a graveyard, and the removal of the corpse in the manner prescribed, renders the area again Levitically clean.

Talmud - Mas. Baba Bathra 102a

If three [corpses] were [similarly] found, [then], if [the distance] between them[1] is from four, to eight [cubits], the area] is [to be considered] a grave-yard;[2] and a search[3] must [also] be made [over a distance of] twenty cubits,[4] from that spot onwards. [If] at the end of twenty cubits a corpse is found, a search of [another] twenty cubits from that spot onwards must be made; for there is reasonable ground[5] for the assumption[6] [that even the single grave is an indication of the existence there of other graves]; although if [the single corpse] had been found first[7] it should have been removed together with the earth surrounding it.[8] The Master stated, 'from four to eight cubits'.[9] According to whom [is this Mishnah]? If according to the Rabbis, surely they said [that the area of a grotto is to be] four cubits by six? If according to R. Simeon, surely he said [that the grotto must contain an area of] six [cubits] by eight? — [This Mishnah] is, in fact, [in agreement with] R. Simeon; but it is [in accordance with the version of R. Simeon's view as reported by] the following Tanna. For it has been taught: 'If they[10] were found close to one another, and there was not a distance of four to eight cubits between them, the earth surrounding their bodies belongs to them but they do not constitute the ground as a graveyard. R. Simeon b. Judah said in the name of R. Simeon: The intervening ones are regarded as if they did not exist and the rest are combined,[11] [if the distance is] from four to eight

cubits'.[12] Since this[13] has been assumed to be in accordance with R. Simeon, explain the final clause [which reads]: A search must [also] be made [over a distance of] twenty cubits from that spot onwards. According to whom [is this]? If according to R. Simeon, [the distance] should be twenty-two;[14] if according to the Rabbis,[15] it should be eighteen?[16] It may, in fact, be according to the Rabbis but there is a possibility that he made the search diagonally.[17] But since the one [grotto is assumed to be searched] diagonally, the other also [should be assumed to be searched] diagonally [and, consequently, the distance] should be twenty-two [cubits]?[18] — One diagonal [search] is expected; two diagonal [searches] are not.[19]

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(1) Between the first and the third.

(2) According to this Tanna, a grotto which forms part of a family grave contains an area of four by eight cubits. If the three corpses were found within four cubits, it is assumed that the wide side of such a grotto had been found. If within eight cubits, the long side of such a grotto is assumed to have been discovered. In either case, the discovery points to the existence of a family grave in that area which is, therefore, to be regarded as a grave. yard, the extent of which must be ascertained.

(3) To ascertain whether any other graves are to be found in the vicinity, and to determine the extent of the area that is henceforward to be regarded as Levitically unclean.

(4) I.e., the approximate length of the court (six cubits) and of the two grottos that open out from its opposite sides (eight cubits each, according to the Tanna.) The actual length is, of course, twenty two cubits and the discrepancy is discussed in the Gemara.

(5) Lit., 'feet' on which to stand.

(6) Since one group of graves had already been discovered within twenty cubits.

(7) Before the other three corpses, without any further search having had to be made.

(8) V, supra n.1.

(9) That a spot to be regarded as a graveyard must contain three corpses within four to eight cubits.

(10) I.e., the corpses.

(11) To constitute the ground as a graveyard.

(12) This author it is who is of the opinion that according to R. Simeon these are the dimensions.

(13) Tho Mishnah of Ohaloth mentioned.

(14) The length of the court is six cubits, and the length of each of the two grottos is eight cubits.

(15) Though the first clause will still be according to R. Simeon.

(16) The length of each grotto is six cubits and that of the court also six.

(17) Though the length of the grotto is only six cubits, the diagonal of the area of the graves (the sepulchral chambers) thus searched would be longer. The diagonal of four, (respective lengths of chambers), by six, (length of grotto wall), is more than seven cubits in length sq rt.42 + 62 = sq. rt 52, say roughly eight cubits. Add length of court (six cubits) and length of corresponding grotto (six cubits) and the total obtained is roughly twenty.

(18) Eight for the diagonal of each grotto and six for the court.

(19) Since no corpses were found in the first.

Talmud - Mas. Baba Bathra 102b

R.Shisha b. R. Idi said: It[1] may, in fact, be in accordance with the view of R. Simeon,[2] but here it dealt with the case of miscarriages.[3] But since the one [is] for miscarriages, the other also [should be] for miscarriages, [and the distance] should, [consequently], be eighteen [cubits]! — One [grotto] for miscarriages is assumed, two [grottos] for miscarriages are not.

Contradictions were pointed out between two statements of the Rabbis[4] and [also] between two statements of R. Simeon. For we learnt:[5] [If] a vineyard is planted on [an area of] less than four cubits, R. Simeon says it is not [regarded as] a vineyard, and the Sages say: [It is regarded as] a vineyard, the intervening vines being treated as if they were not in existence. [Is not the statement] of the Rabbis [there][6] contradictory to their statement [with reference to corpses];[7] and [the statement there] of R. Simeon[8] contradictory to his [statement here]?[9] — There is no contradiction between the

two statements of R. Simeon; [for] there, people do not plant [vines] with the object of pulling[10] [them] out, [but] here, [a burial] may sometimes take place at twilight and [the corpse] is put down temporarily.[11] There is also no contradiction between the two statements of the Rabbis; [for] here, since [the body] is disgraced, [the spot] cannot be designated a grave,[12] [but] there, [the owner, when planting the vines,] may think whichever tree will be sound will remain,[13] and whichever is a failure will be [used] for firewood.[14]

CHAPTER VII

MISHNAH. IF ONE SAYS TO ANOTHER: 'I SELL YOU A BETH KOR[15] OF ARABLE LAND',[16] [AND] IT CONTAINED CLEFTS TEN HANDBREADTHS DEEP, OR ROCKS TEN HANDBREADTHS HIGH, THESE ARE NOT TO BE MEASURED WITH IT. [IF THEY ARE] LESS THAN THIS,[17] THEY ARE TO BE MEASURED WITH IT. IF, HOWEVER, HE SAID TO HIM, 'ABOUT A BETH KOR OF ARABLE LAND, EVEN IF [THE LAND] CONTAINED CLEFTS DEEPER THAN TEN, OR ROCKS HIGHER THAN TEN HANDBREADTHS, THEY ARE TO MEASURED WITH IT.

GEMARA. We learnt elsewhere: He who consecrates his field[18] in the time [when the laws] of the jubilee year[19] [are in force], must pay for an area in which a homer[20] of barley may be sown, fifty shekels of silver.[20] If it contained clefts ten handbreadths deep, or rocks ten handbreadths high

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(1) The final clause of the Mishnah of Ohaloth requiring a search along a distance of twenty cubits.

(2) Who requires the area of a grotto for adults to be six by eight.

(3) Miscarriages occupy a grotto which is only six cubits in length. The total length, therefore, is six (grotto for miscarriages), plus eight (the grotto for adults, on the other side of the court), plus six(court), total twenty cubits.

(4) Lit., 'that of the Rabbis upon the Rabbis'.

(5) Kil. V, 2; supra 37b, 83a.

(6) Where the intervening vines are disregarded.

(7) All of which are counted.

(8) Counting in all the vines.

(9) Where the intervening corpses are regarded as if they did not exist.

(10) Hence the vines are permanent and cannot be disregarded.

(11) With the intention of removing it later. Hence, if by accident the corpse had not been removed, it may be disregarded, and does not prevent the remaining corpses from combining to form a graveyard.

(12) No regular burial, however late the hour, would take place in such a manner. The spot, consequently, could not have been a graveyard.

(13) Lit., 'sound'.

(14) And since a number of the vines have been planted temporarily and will at any moment be pulled out, they may rightly be treated as if they were not in existence.

(15) An area of 75,000 square cubits, in which a kor or homer (== 30 se'ah) of seed may be sown.

(16) Lit., 'earth'.

(17) I.e., lower than, or not as deep as ten handbreadths.

(18) An 'inherited' field as distinct from a 'purchased' field. Cf. n. 7.

(19) V. Lev. XXV, 8ff.

(20) I.e., a kor. Cf. ibid. XXVII, 16.

these are not measured with it.[1] [If they are] less than this, they are to be measured with it.[2] Now, why [should they[3] not be measured with it]? Let them[4] [at least], be [treated as if they had been] consecrated separately![5] And if you will suggest [that] since they do not contain a [full] beth kor they cannot become consecrated,[6] surely it has been taught: Why is it expressly said, [the] field![7] —

Because, since it was said, the sowing of a homer of barley shall be valued at fifty shekels of silver,[8] one might infer only a similar consecration;[9] whence [however, may it be inferred that] a lethek,[10] half a lethek, a se'ah,[11] a tarkab[12] and half a tarkab are also included [in this law]? [For this reason] it has been expressly stated, [the] field, [which implies consecration in any manner.[13] [Why, then, could not the clefts or the rocks be consecrated separately?] R. Ukba b. Hama replied: Here is a case of clefts full of water in which no sowing is possible. This may also be proved by deduction, for [the clefts] were mentioned in an analogous position to that of rocks.[14] This proves it. If so,[15] even [if they are] less than [ten handbreadths they should] also [not be measured with the field]! These[16] are called small clefts of the earth [and] the spines of the earth.[17]

What [is the law] here?[18] — R. Papa said: Even though they are not full of water. What is the reason? — A person does not wish to invest his money in one plot which has the appearance of two or three plots.[19]

Rabina raised an objection: Surely, [the clefts] were mentioned in an analogous position to that of the rocks; as the rocks [are excluded] because they are unsuitable for sowing so these also [should be excluded only] when unsuitable for sowing? — The similarity to rocks refers to [the case where they are] less[20] than [ten handbreadths].

R. Isaac said: The rocks[21] which have been spoken of[22] [must not together cover more than an] area [requiring] four kab [of seed].[23] R. 'Ukba b. Hama said: And this, only when they[24] are distributed over [an area which requires not less than] five kab [of seed].[25] R. Hiyya b. Abba said in the name of R. Johanan: This, only when they[24] are distributed over the greater part of the field.[26]

R. Hiyya b. Abba inquired: [What is the law if] the greater part of them[27] is [scattered] over its[28] smaller part, and the smaller part of them[27] over its[28] greater part? — The matter is undecided?[29]

R. Jeremiah inquired:

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(1) I.e., their redemption price is not the higher one given, according to Leviticus, for an 'inherited' field. Only their actual price has to be paid, as for a 'purchased' field. V. ibid. XXVII, 22.

(2) 'Ar. 25a.

(3) The clefts and rocks deeper and higher respectively than ten handbreadths.

(4) If they are not regarded as part of the field.

(5) And be redeemed at the higher rate of an 'inherited' field.

(6) I.e., they cannot be treated like an 'inherited' field, with reference to which a homer is expressly mentioned.

(7) Lev. XXVII, 19. Cf. however Rashi, 'Ar. 25a.

(8) Ibid. 26.

(9) I.e., a complete homer (beth kor).

(10) Half a kor.

(11) V. Glos.

(12) V. Glos.

(13) Even small areas.

(14) And sowing in rocks is impossible.

(15) That the reason why clefts and rocks are excluded is on account of their unsuitability for sowing.

(16) Those which are of less than ten handbreadths.

(17) Clefts and rocks which are respectively less than ten handbreadths in depth and height are treated as part of the field. A field cannot be expected to be absolutely level.

(18) In the case of a sale, dealt with in our Mishnah, are the clefts excluded only when they are full of water?

(19) The clefts and the rocks break up the unity of the field and this involves more labour in ploughing, sowing and harvesting.

(20) The Mishnah, in its second clause, teaches that in such a case they are included in the field even though they are full

of water and are unsuitable for sowing as the rocks. The first clause, however, as R. Papa said, excludes clefts of ten handbreadths deep even though they are not full of water.

(21) Or clefts, of less than ten handbreadths.

(22) In our Mishnah which authorizes their inclusion in the measuring of the field.

(23) And in proportion, if the area sold is smaller or bigger.

(24) The four kab of rocks or clefts.

(25) But if their distribution is over a smaller area, they are regarded as one big ravine or rock, and are excluded from the measurements of the field.

(26) Contrary to the opinion of R. 'Ukba, it is not enough for the clefts and rocks to be distributed over an area of five kab. If they are distributed over an area which does not represent the greater part of the field they are regarded as one big ravine or rock which is not to be included in the land sold.

(27) Of the four kab of clefts and rocks.

(28) The field's.

(29) v. Glos. s. v. Teko.

Talmud - Mas. Baba Bathra 103b

What is [the law if they[1] are arranged] like a ring,[2] like a straight line,[3] in the shape of a stadium[4] or in that of a crooked road?[5] The matter is undecided.

A Tanna taught: If a rock is isolated,[6] it is not measured[7] with the field, however small[8] [that rock might be]. And [even] if it was [in the field, but] near the boundary, it is not measured with the field, however small[8] [that rock might be].

R. Papa inquired: What [is the law if some] earth intervenes between [the rock and the boundary]? — The matter is undecided.

R. Ashi inquired: What [is the law if] there was earth beneath[9] and rock above, [or] earth[10] above and rock beneath?[11] — The matter is undecided.

MISHNAH. [IF A MAN SAYS TO ANOTHER.] 'I SELL YOU A BETH KOR OF ARABLE LAND, MEASURED WITH THE ROPE',[12] [AND] HE GAVE [HIM] LESS, [EVEN IF ONLY BY] A FRACTION, [AN EQUAL SUM] IS TO BE DEDUCTED [FROM THE PRICE]. [IF] HE GAVE MORE, [EVEN IF ONLY BY] A FRACTION, IT IS TO BE RETURNED [TO HIM]. IF, HOWEVER. HE SAID,[13] 'MORE OR LESS,'[14] THE SALE IS VALID EVEN IF HE GAVE [AT THE RATE OF] A QUARTER OF A KAB PER SE'AH[15] LESS OR MORE. [IF THE DIFFERENCE IS] GREATER THAN THIS, CALCULATION IS TO BE MADE.[16] WHAT IS [THE BUYER] TO RETURN TO HIM? — THE MONEY.[17] IF, HOWEVER. [THE SELLER] PREFERS, [THE OTHER] RETURNS TO HIM THE LAND. WHEREFORE [THEN] DID THEY[18] ENACT THAT [THE BUYER] IS TO RETURN TO HIM MONEY? — TO SAFEGUARD THE INTERESTS OF THE SELLER.[19] IF, THEREFORE. THERE WAS A SURPLUS IN THE FIELD OF AN AREA OF NINE KAB;[20] AND IN A GARDEN, AN AREA OF HALF A KAB[21] AND, ACCORDING TO R. AKIBA, A QUARTER OF A KAB;[21] THE LAND [ITSELF] IS TO BE RETURNED. NOT ONLY THE QUARTER[22] IS TO BE RETURNED BUT ALL THE SURPLUS.

GEMARA. The question was raised: What [if the seller] only [said, 'I sell you] a beth kor'?[23] — Come and hear! [IF A MAN SAYS TO ANOTHER.] 'I SELL YOU A BETH KOR OF ARABLE LAND, MEASURED BY THE ROPE',

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(1) V. n. 4.

(2) Into which the plough cannot very well enter.

(3) On both sides of which it is difficult to plough or to sow.

(4) Curved line, and it is difficult to plough and to sow there.
(5) In the bends of which the plough cannot easily enter.
(6) Outside the field and adjoining it.
(7) Only rocks within the field are included in the field if they are below the specified heights.
(8) Even if less than ten handbreadths in height.
(9) I.e., beneath the rock that lies near the border.
(10) Less than three handbreadths in depth, and insufficient for the depth required by the plough.
(11) Is the rock, in such cases as these, included in the measurements of the field or not?
(12) I.e., exact measurements.
(13) When the sale was being arranged.
(14) Instead of 'measured by the rope', thus implying the measurements of the beth kor are not exact.
(15) Or seven and a half kab in the kor, i.e. 1/24 th A kor == thirty se'ah; a se'ah == six kab.
(16) And the party that gained, pays for, or returns the difference.
(17) The value of the surplus.
(18) The Rabbis.
(19) So that he should not be left with a fraction of land of which no use could be made.
(20) Such an area is regarded as a field on its own.
(21) Which is regarded as a self-contained garden. v. supra 21a.
(22) Of a kab per se'ah.
(23) Without specifying, either 'measured by the rope' or 'more or less'.

Talmud - Mas. Baba Bathra 104a

AND HE GAVE [HIM] LESS, [EVEN IF ONLY BY] A FRACTION, [AN EQUAL SUM] IS TO BE DEDUCTED [FROM THE PRICE]. [IF] HE GAVE MORE, [EVEN IF ONLY BY] A FRACTION, IT IS TO BE RETURNED [TO HIM]. Thus [it is to be inferred that] had not [the expression 'measured by the rope'] been explicitly used [it would have been] just the same as if [the expression] 'more or less' [had been actually used]. Explain. [however], the concluding clause [which reads]: IF, HOWEVER, HE SAID, 'MORE OR LESS', THE SALE IS VALID EVEN IF HE GAVE [AT THE RATE OF] A QUARTER OF A KAB PER SE'AH LESS OR MORE. Thus [it is to be inferred that] had not [the expression, more or less'] been explicitly used [it would have been] just the same as if [the expression], 'measured by the rope' [had actually been used]! But, [one must conclude, that] nothing may be deduced from this [Mishnah].

Come and hear! [It has been taught: If a man says to another:] 'I sell you a beth kor of arable land', [or] 'I sell you about a beth kor of arable land' [or] 'I sell you [etc] more or less', the sale is valid even if he gave [at the rate of] a quarter [of a Rab] per se'ah less or more. This clearly proves that even when nothing[1] had been specified it is the same as [if the expression]. 'more or less' [had been used]! That [supplies no proof; for it] is an explanatory statement [implying] the following: In which case is [the expression] a beth kor' regarded as [the expression] 'about a beth kor'? When one said to the other, 'more or less'.

R. Ashi demurred to this: If so,[2] for what purpose is the expression. 'I sell you.' [thrice] repeated? Consequently, the deduction may be made that even when nothing[1] had been specified it is the same as [if the expression], 'more or less',[had been used]. This proves it.

WHAT IS [THE BUYER] TO RETURN TO HIM?-THE MONEY etc. Does this [Mishnah] imply that we are to look after the interests of the seller and not after those of the buyer? Surely it has been taught: [If the land purchased was by] seven kab and a half per kor[3] less, or by seven kab and a half per kor[3] more [than the area agreed upon], the sale is valid. [If the surplus is] greater than this, the seller is compelled to sell and the buyer to buy![4] — There[5] we deal with the case where land was first[6] dear and is now[7] cheap. [In such a case,] the seller is told, 'If you [wish to] give him the land,[8]

give [it] to him at the present cheaper[9] rate'. But has it not been taught: When he gives it[10] to him, it must be at the rate at which he had bought of him? — That refers to the case where it was first cheap and is now dear.[11]

IF, THEREFORE. THERE WAS A SURPLUS IN THE FIELD OF AN AREA OF NINE KAB, etc. R. Huna said: The [law of] nine kab spoken of[12] [applies] even in [the case of] a large valley.[13] But R. Nahman said: Seven kab and a half must be allowed for every Kor,[14]

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(1) I.e., neither 'measured by the rope' nor 'more or less'.

(2) That, in the statement quoted, one part is explanatory to the other.

(3) I.e., 1/24 , v. Mishnah, n. 4.

(4) This shows that the seller has no advantage over the buyer.

(5) Where the seller is compelled to sell.

(6) When the sale was arranged.

(7) When the argument about the surplus is taking place.

(8) The surplus.

(9) While the seller may re-claim, or compel the buyer to purchase the surplus land, the seller, once he had decided to sell, may be compelled by the buyer to take the lower price prevailing at the time.

(10) I.e., the deficiency of land.

(11) In which case the buyer cannot be charged for the deficiency of land a higher price than the one prevailing at the time of the purchase.

(12) In our Mishnah, according to which such an area must be returned to the seller.

(13) Provided there was a surplus of nine kab, the area of the sold field does not matter. However large it may be, the surplus of nine kab or more must be returned, since such a surplus may be regarded as an independent field.

(14) Whether the surplus is returnable or not depends on its proportion to the area of the field sold. If the surplus is no more than seven and a half hab per kor == == kab per se'ah ==1/24 of the area of the field, it need not be returned, however large that surplus may be. The larger the field the larger the surplus allowed.

Talmud - Mas. Baba Bathra 104b

and if there is a surplus[1] amounting to nine kab it is to be returned. Raba raised [the following] objection against R. Nahman: IF, THEREFORE, THERE WAS A SURPLUS IN THE FIELD OF AN AREA OF NINE KAB. [Does] not [this refer even to the case] where two kor were[2] sold?[3] No; [only] when one kor[4] was sold. [But the Mishnah further stated:] AND IN A GARDEN, AN AREA OF HALF A KAB; [does] not [this refer even to the case] where two se'ah[5] were sold? — No; [only] where one se'ah was sold. [But the Mishnah also states]: AND, ACCORDING TO R. AKIBA, A QUARTER OF A KAB; [does] not this [refer even to the case] where a se'ah[6] was sold? — No; [only] when half a se'ah was sold.

R. Ashi inquired: What [is the proportion allowed in the case of] a field which was converted[7] into a garden, or a garden which was converted into a field?[8] — The matter is undecided.

It has been taught: If [the field sold] adjoined [another] field of his,[9] even if [the surplus[10] was] ever so little,[11] the land must be returned.[12] R. Ashi inquired:[13] Does a [water] cistern form a division?[14] [If not,][15] does a water canal[16] form a division? [If not,] does a public road[17] form a division? Does a nursery of young inoculated palm-trees form a division? — The matter is undecided.

NOT ONLY THE QUARTER IS TO BE RETURNED BUT ALL THE SURPLUS. Is not[18] the order reversed?[19] Rabin, son of R. Nahman, has taught:[20] [The Mishnah implies this]: Not only is the surplus[21] to be returned but [also] all the quarters.[22]

MISHNAH. [IF THE SELLER SAYS]. 'I SELL YOU . . .[23] MEASURED BY THE ROPE MORE OR LESS', THE [CONDITION OF] 'MORE OR LESS' CANCELS[24] [THAT OF] 'MEASURED BY THE ROPE'. [IF HE SAYS]. 'MORE OR LESS, MEASURED BY THE ROPE',

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(1) Above a twenty-fourth of the area of the field.

(2) Since the extent of the area is not indicated.

(3) An area of nine kab in two kor is less than a twenty-fourth, and yet it is to be returned; how, then, can R. Nahman say that a twenty-fourth is allowed?

(4) There was no need to specify this area, since earlier in the Mishnah it was mentioned that an area of one kor was being dealt with.

(5) The proportion of a half a kab to two se'ah is a twenty-fourth, and yet it is to be returned, which is in contradiction to the law laid down by R. Nahman. Cf. supra note 2.

(6) A quarter of a kab is a twenty-fourth of a se'ah. V. previous note and supra note 2.

(7) By the buyer.

(8) Is it to be regarded a field or a garden in respect of the laws of surplus?

(9) I.e., the seller's.

(10) In excess of the surplus of a twenty-fourth of the area sold.

(11) I.e., although it does not amount to nine kab.

(12) To the seller, because he can make use of it by joining the surplus strip to his other field. The buyer, therefore, cannot be compelled to purchase that strip.

(13) Cf. supra 83b.

(14) Between the surplus of the field sold and the adjoining field of the seller.

(15) Because the water is not exposed.

(16) Where the water is exposed.

(17) Sixteen cubits in width.

(18) כלפי לייא or לייא The first word may be rendered 'towards' (כ and לאפי); the second, read לייא is rendered 'whither', Rashi.; or לייא layah 'tail' (cf. אליה), Jast. The literal meaning of the phrase is accordingly either 'towards where?' or 'towards the tail?'

(19) The expression used in the Mishnah, 'Not only the quarter etc.', implies that the law previously given was that the quarter had to be returned and not the surplus above it, while, in fact, the Mishnah had stated the law to be that the quarter was not to be returned.

(20) Supra 94b.

(21) Over and above the one twenty-fourth of the area, which is otherwise allowed.

(22) Of a kab per se'ah, or one twenty-fourth of the area sold. Once the twenty-fourth which is allowed has been exceeded, all (the 1/24 and the surplus over and above it) must be returned.

(23) V. Mishnah supra 203b.

(24) The second condition is always regarded as the valid one. It cancels, therefore, the first.

Talmud - Mas. Baba Bathra 105a

THE [CONDITION] 'MEASURED BY THE ROPE CANCELS [THAT OF] 'MORE OR LESS; THESE ARE THE WORDS OF BEN NANNUS.

GEMARA. R. Abba b. Memel said in the name of Rab: His colleagues are in disagreement[1] with Ben Nannus. What does this teach us? Surely we have learnt:[2] It happened at Sepphoris that a person hired a bath house from another for twelve gold [denarii] per annum, one denar per month,[3] and the matter[4] was brought before R. Simeon b. Gamaliel and before R. Jose who said that [the rent for] the intercalary month must be divided.[5] [What, then, does Rab come to teach us?] — If [the inference[6] had come] from there, it might have been said that there[7] only [do the Rabbis hold the opinion that the rent for the month is to be divided], because it might be assumed that [the owner] had changed[8] his mind, and it might [also] be assumed that [with the second expression] he was merely explaining[9] [the first];[10] but here,[11] where [the seller] has clearly changed his mind,[12] it might have been thought

[that the Rabbis do] not [disagree with Ben Nannus]; hence [it was necessary for Rab] to teach us.[13]

Rab Judah said in the name of Samuel: This[14] is the assertion of Ben Nannus, but the Sages say: The expression [which confers the] least[15] [advantage upon the buyer] is to be followed. 'This'[16] [would imply that] he [Samuel himself] is not of the same opinion. but, surely, both Rab and Samuel said:[17] [If a seller said.] 'I sell you a kor for thirty [selai'm]'. he may withdraw even at the last se'ah.[18] [If. however, he said]. 'I sell you a kor for thirty, [each] se'ah for a sela', [the buyer] acquires[19] possession of every se'ah as It is measured out for him.[20] [This, surely, shows that Samuel[21] is of the same opinion as Ben Nannus!][22] — But, [it may be replied that] 'this', [may denote that Samuel] is of the same opinion.[23] Does [Samuel, however,] hold the same opinion? Surely Samuel said: [The Mishnah which states that the rent of the bath house for the intercalary month is to be divided] speaks [only of the case] where [the owner] comes[24] in the middle[25] of the month, but where he comes at the beginning of the month all [the rent of the month] belongs to the owner,[26] [and if he comes] at the end of the month, all [the rent of the month] belongs to the tenant.[27] [Does not this prove that Samuel disagrees[28] with Ben Nannus?]

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(1) In their opinion it is doubtful which expression is to be regarded as valid, and the property or sum in dispute is, therefore, to be divided between the buyer and the seller.

(2) B.M. 102a.

(3) Both expressions were used at the time of hire, and the year was a leap-year, containing thirteen months.

(4) The dispute whether the intercalary month was to be included in the year, on account of the first expression, 'twelve gold [denarii] per annum', or whether it was not to be so included, on account of the second expression, 'one denar per month'.

(5) Between the tenant and the owner of the house, i.e., the former pays only for half a month, since it is doubtful to whom the rent of the month belongs. Now, this clearly shows that the Rabbis do not agree with Ben Nannus, according to whom the second expression would have had to be considered as binding and a full month's hire would have had to be paid.

(6) That the Rabbis are in disagreement with Ben Nannus.

(7) The case of the bath house.

(8) He first thought of letting the bath house for twelve denarii per annum, irrespective of whether the year was of twelve or thirteen months, and then changed his mind and demanded a denar for each month.

(9) He had no intention of expecting thirteen denarii for the leap year. By the expression, 'a denar per month', he only meant that he wished to be paid monthly instead of yearly, and also that he might cancel the arrangements at the end of every month without having to wait till the end of the year.

(10) And since the matter is in doubt, the Rabbis are of the opinion, and Ben Nannus himself might agree with them, that the sum disputed should be divided.

(11) In our Mishnah.

(12) Since the second expression is in direct contradiction to the first.

(13) That even in this case the Rabbis disagree with Ben Nannus.

(14) The law in our Mishnah.

(15) If the land sold is more than the stipulated area, the expression, 'measured by the rope', is adopted and the buyer must return the surplus. If the sold land, however, is less than the stipulated area, the expression, 'more or less', is adopted and the seller need not make good the difference. The seller, being the original possessor of the land, has always the advantage.

(16) Viz., 'this is the assertion of Ben Nannus'.

(17) B.M. 102b, supra 86b; infra 106b.

(18) Because the terms of the offer implied that his desire was to sell the entire kor. So long, therefore, as the buyer has not acquired every fraction of the kor, the purchase cannot be regarded as having been legally completed.

(19) By specifying the price per kor and per se'ah, the seller has intimated his consent to sell either the entire kor or any smaller quantity.

(20) Lit. 'he acquires first first'.

(21) Who stated, in the second case, that the buyer acquired possession of every se'ah as it was measured out, on account

of the expression, ‘each se'ah for a sela’, which the seller used after he said, ‘I sell you a kor for thirty’.

(22) Who stated that the second expression cancels the first.

(23) As Ben Nannus. ‘This etc’, only indicates that the Rabbis disagree.

(24) To the court.

(25) Since it is doubtful which expression cancels which, the money and the bath house are to remain in the possession of their respective owners. For the first half of the month, therefore, which has already passed, no rent can be claimed from the tenant who is in possession of his money. For the second half, however, the owner may claim the rent, since the property is his, and he has the power to prevent the other from using it.

(26) Because the property is in his possession.

(27) Because his money is to remain with him, who holds it in possession.

(28) Since he is doubtful as to whether the first, or second expression is to be regarded as binding. Cf. supra n. 6.

Talmud - Mas. Baba Bathra 105b

— But, [it may be replied.] ‘this’, in fact, [implies that Samuel] is not of the same opinion;[1] [as, however, his] reason there [for dividing[2] the monthly rent of the bath house is] because [each one of the parties] is in possession[3] [of a part of that concerning which they are in dispute], so here[4] also [the reason why the buyer acquires every se'ah as it is measured out to him is] because it is [then] in his possession.[5]

R. Huna said in the name of the school of Rab: [If one says that he would sell an object for] an istira,[6] a hundred ma'ah, [he is entitled to] a hundred ma'ah. [If he says], ‘a hundred ma'ah, an istira’.[he is entitled to] an istira. What does this teach us? That the second expression is to be preferred?[7] Surely Rab has said it once! For Rab said: Had I been there[8] I would have given all to the owner.[9] [Why, then, need Rab say it again?][10] — [Since] it might have been said that [the reason Rab would have assigned all to the owner of the bath house] was because [he held that the second expression][11] was merely explaining [the first],[12] therefore,[13] [it was necessary for Rab] to teach us [the case of the istira].[14]

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(1) That the second expression cancels the first.

(2) If the dispute is brought before the court in the middle of the month.

(3) The owner is in the possession of the wash house; the tenant, of his money.

(4) The sale of the kor.

(5) And not, as has been suggested before, because the second expression cancels the first.

(6) A silver coin equal in value to ninety-six copper ma'ah,

(7) Lit., ‘hold the last expression’. I.e., that the law is in agreement with the view of Ben Nannus.

(8) When the dispute about the bath house was brought before R. Simeon b. Gamaliel and R. Jose.

(9) Apparently because Rab is of the opinion that the second expression cancels the first.

(10) In the case of the istira.

(11) I.e., ‘one denar per month’.

(12) I.e., ‘twelve gold denarii per annum; indicating that per annum’ in the first expression referred to an ordinary year only, and not to a leap year of thirteen months, and not because Rab held that the second cancelled the first.

(13) In order that it should not be assumed that, whenever the second expression cannot be regarded as an explanation of the first, Rab holds the view of the Rabbis against that of Ben Nannus.

(14) In this case, the two expressions cannot be regarded as explanatory of one another, because the expression ‘ninety-six ma'ah’ can never be made to mean a hundred ma'ah, and vice versa. And since the two expressions must be contradictory, and Rab had said that the latter is to be followed, one may definitely conclude that Rab is of the same opinion as Ben Nannus who stated that the second expression cancels the first.

Talmud - Mas. Baba Bathra 106a

MISHNAH. [IF ONE SAYS, I SELL YOU THIS[1] BETH KOR] WITHIN ITS MARKS AND

BOUNDARIES', THE SALE IS VALID [IF THE DIFFERENCE[2] IS] LESS THAN A SIXTH;[3] [IF IT AMOUNTS] TO A SIXTH, DEDUCTION[4] MUST BE MADE.

GEMARA. It was stated: R. Huna said: [The law of] a sixth[5] is[6] like [that of] less than a sixth. Rab Judah said: [The law of] a sixth[5] is[6] like [that of] more than a sixth. According to R. Huna, [who] said [that the law of] a sixth is like [that of] less than a sixth, [the Tanna of our Mishnah] means to say thus: The sale is valid [in the case where the difference is] less than a sixth as well as [when it is exactly] a sixth.[7] [If it is] more than a sixth deduction is to be made. According to Rab Judah, [who] said [that the law of] a sixth is like [that of] more than a sixth, the Tanna means to say thus: The sale is valid [when the difference is] less than a sixth. [If it is] more than a sixth as well as [when it is exactly] a sixth,[4] deduction is to be made.[8]

An objection[9] was raised: [It has been taught:] [If one states, 'I sell you a field] within its marks and boundaries', [and it was found to contain] a sixth less, or more, [the case] is like [that of] judicial appraisement [and] the sale is valid. Now, surely, [in the case of] judicial appraisement[10] [the law of] a sixth [is the same] as [that of] more[11] than a sixth![12] — R. Huna can reply to you.[13] 'And according to your argument [is there here no difficulty]? Surely it is stated, [the sale is valid]!'[14] Hence, [this must be the explanation, the case is] like judicial appraisement [in one respect], and unlike judicial appraisement [in another]. [It is] like judicial appraisement [with respect] to the sixth,[15] and [it is] unlike judicial appraisement, for there[16] the purchase is cancelled, while here[17] it is valid.

R. Papa bought a field from a certain person

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(1) Pointing to a particular field.

(2) Between the actual area and that mentioned by the seller.

(3) Though the mention of beth kor is the same as the mention of 'more or less' (cf. supra 104a), in which case the sale is valid only when the difference is less than one twenty-fourth, or a quarter kab per se'ah, the pointing out of the field and the addition of the stipulation, 'within its marks and boundaries', modify the implication of beth kor, and a greater difference is, consequently, allowed before any deduction can be claimed. While the expression, 'within its marks and boundaries', implies the offer of a specified field whatever be its area, the expression beth kor, used with it, implies an area not too much different in size from that of a beth kor. Hence the law of our Mishnah which limits the allowed difference to a sixth.

(4) If less land was given, the difference in price is to be deducted. If more land was given, the surplus of land is to be returned.

(5) If the difference between the actual, and the specified area was exactly a sixth.

(6) The point of difference between R. Huna and Rab Judah lies in the interpretation of עד in the phrase, שתות . One considers עד as exclusive, the other as inclusive.

(7) Lit., 'a sixth being inclusive'.

(8) פחות משתות , in our Mishnah, is taken by R. Huna to mean that 'the sale is valid (if the actual area is) less than (a beth kor by) a sixth', and from this it follows that the sale is certainly valid if the difference is less than a sixth; whereas Rab Judah interpreted our Mishnah as follows: 'The sale is valid (if the difference between the actual area and that of a beth kor is) less than a sixth'. Hence it follows that if the difference is a sixth, and certainly if it is more, deduction is to be made.

(9) To the view of R. Huna.

(10) When the court appraised orphans' property and an error of a sixth was made.

(11) Since the entire transaction is cancelled even if the error was exactly one sixth.

(12) Now . . . sixth, how, then, can R. Huna maintain that the law of a sixth is the same as that of less than a sixth?

(13) Rab Judah.

(14) And if it is to be compared in all respects, as you suggest, to the case of judicial appraisement, the transaction should be invalidated.

(15) Viz., that the standard of error is the sixth, and not the twenty-fourth (quarters of a kab per se'ah).

(16) Where an error has been made by the court.

(17) In the case of a sale of a field within marks and boundaries that have been pointed out.

Talmud - Mas. Baba Bathra 106b

who stated[1] that it contained an area of twenty griva,[2] but it contained only fifteen. He[3] came before Abaye who said unto him, '[Surely] you realized [its size] and accepted.' But did we not learn: THE SALE IS VALID [IF THE DIFFERENCE IS] LESS THAN A SIXTH; [IF IT AMOUNTS] TO A SIXTH, DEDUCTION[4] MUST BE MADE? — This applies only where [the buyer] is not acquainted with the field, but where he is acquainted with it [it is assumed that] he understood [the conditions] and accepted. 'But,' [argued R. Papa.] 'he said to me, twenty!'[5] — He replied: '[The seller might say that he meant] that the field was as good[6] as [one of] twenty.

It was taught: R. Jose said: When brothers divide [an estate][7] all of them acquire[8] possession [of their respective shares] as soon as the lot for one of them is drawn.[9] On what ground [is possession acquired]? — R. Eleazar said: [Possession is acquired in the same way] as [at] the beginning of [the settlement of] the land of Israel. As [at that] beginning, [the acquisition was] by lot, so here [also it is] by lot. Since there, however, [the division was made] through the ballot box[10] and the Urim and Tummim,[11] [should not the division] here also [be made] through[12] the ballot box and the Urim and Tummim? — R. Ashi replied: [The lot alone suffices here] because [in return for] the benefit of mutual agreement[13] they determine to allow each other to acquire possession [by the lot[14] alone].

It has been stated: [In the case when] two brothers divided [an estate between them] and a [third] brother arrived from a country beyond the sea, Rab said the division is cancelled,[15] and Samuel said they relinquish[16] [thirds from their respective shares for the third brother].

Raba said to R. Nahman: According to Rab, who said that the division is cancelled, it is clear that [we act on the principle that even a definite] decision may be revised; but if so, the division should be cancelled[17] also in the case where [a partnership] of three was in existence and two of these divided[18] the property![19] — What a comparison! There,[20] they went [into the matter], from the very beginning, with the intention of [dividing the property between] three;[21] but here,[22] they did not enter '[into the matter], at first, with the intention of [dividing the estate between] three.[23]

R. Papa said to Abaye: According to Samuel, who said that they relinquish [thirds from their respective shares for the third brother], it appears that [where] a decision [has been arrived at, it] must be adhered to; but, surely, both Rab and Samuel have said:[24] [If the seller said.] 'I sell you a kor for thirty', he may withdraw even at the last se'ah;[25] [if, however, he said,] 'I sell you a kor for thirty. [each] se'ah for a sela' [the buyer] acquires[26] possession of every se'ah as it is measured out for him.[27] [This shows that even a decision arrived at,[28] may be upset!][29]

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(1) And also pointed out the marks and boundaries of the field.

(2) A griva equals one se'ah.

(3) R. Papa.

(4) And here, the difference was more than a sixth, 5/20 =1/4; why, then, was not R. Papa allowed to deduct the difference?

(5) Implying that if found to contain less, the difference would be made good from another field, or a deduction from the price would he allowed.

(6) I.e., the fifteen se'ah of that field will produce as much as twenty in an ordinary field.

(7) Into equal shares.

(8) And none may withdraw.

(9) If there are only two brothers, one acquires possession of one share as soon as the other brother has acquired by lot his share. If more than two brothers, they acquire possession collectively of the remaining shares when the lot has

determined to whom the first share was to be allotted. The first brother then, stands out, and lots are cast between the others.

(10) V. infra 222a.

(11) Cf. Ex. XXVIII, 30, Lev. VIII, 8, Num. XXVII, 21. Cf. also I Sam. XXVIII, 6, Ezr. II, 63, Neh. VII, 65.

(12) How, then, are the shares acquired here, in the absence of the Urim and Tummim, by mere lot?

(13) Lit., 'because they listen to one another,' viz., to dissolve a partnership (Rashb.) [or to divide by lot (R. Gershom)].

(14) They are all so anxious to dissolve their partnership at the earliest possible moment, that they readily agree that through the lot alone every one of them shall acquire possession of his share.

(15) And a new division in three parts is to be made, lots being drawn again.

(16) I.e., the division is valid, but each of the two brothers 'gives up a third of his share in favour of the new arrival. Thus, each of the three brothers retains or receives two thirds of half the estate, which form a third of the whole.

(17) If the third party raises an objection.

(18) In three parts, in the presence of a lay court of three, without consulting the third partner. (Cf. B.M. 32b.)

(19) But, as a matter of fact, such a division cannot be cancelled, however much the third partner or brother may object. (Cf. B.M. 31b.)

(20) The case just cited.

(21) Hence there was a proper and equitable division which the third party cannot upset.

(22) In the case of the arrival of an absent brother from beyond the sea.

(23) They divided the estate into two parts only, ignoring altogether the just claims of the absent brother. Such a division, therefore, may be justifiably cancelled.

(24) V. supra 105a.

(25) V. supra p. 437. n. 23.

(26) loc. cit. n. 14.

(27) V. p.438. n. 1.

(28) As in the first case of Rab's and Samuel's statement, where twenty-nine se'ah of the thirty in the kor had already been handed over to the buyer.

(29) Since all must be returned to the seller. If decisions are to be adhered to, why should the buyer be obliged to return that portion of the purchase which by mutual agreement had passed over into his possession?

— There,[1] the Rabbis have made a provision which is convenient for the seller[2] and [also] for the buyer.[3]

It was stated:[4] [In the case where two] brothers divided [an inherited estate between them], and a creditor [of their father] came and distrained the share of one of them, Rab said: The division is cancelled;[5] Samuel said: He[6] has forfeited his claim;[7] and

R. Assi said: He[8] takes a quarter[9] either in land or in money. Rab said that the division was to be cancelled, because he holds the opinion that brothers, even after having divided [their father's estate between them, remain] co-heirs.[10] Samuel said that he [whose share was seized] forfeited his claim, because he holds the opinion that brothers, after having divided [their father's estate between them], stand to each other in the relationship of vendees, each being in the position of a purchaser without a warranty [of indemnity].[11] R. Assi is in doubt whether they still remain co-heirs or stand in the relationship of vendees; he [whose share was seized] takes, therefore, a quarter[12] either in land or in money.[13]

R. Papa said: The law in all [the cases dealt with in] these traditions is that [a portion, or portions must be] relinquished.[14] Amemar said: The [original] division is cancelled. And the law [is that the original] division is cancelled.[15]

Our Rabbis taught: [In the case where] three [experts] went[16] down [to the estate of male orphans] to assess it,[17] [and] one values [the estate] at a maneh[11] and the two value [it] at two hundred zuz, [or if] one values it at two hundred zuz and the two value it at a maneh,[18] the one, being in the minority,is overruled.[19] [If] one values [the estate] at a maneh, one at twenty [sela'],[20] and one at thirty [sela'], it is to be adjudged at a maneh. R. Eliezer b. R. Zadok, said: It is to be adjudged at ninety [zuz]. Others said: [The difference][21] between them is calculated and divided by three.[22] He who said, 'It is to be adjudged at a maneh', [adopts the] middle course.[23] R. Eliezer b. R. Zadok, [who] said, 'It is to be adjudged at ninety', is of the opinion [that] the land

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(1) The case spoken of by Rab and Samuel.

(2) He prefers the transaction to be regarded as incomplete until the last se'ah is measured out, in order that he might withdraw from the sale at the last minute in case prices rise.

(3) He also prefers to be in a position to withdraw at the last se'ah, in the expectation that prices may fall. Consequently there was no decision nor any mutual agreement. Hence either party may withdraw even at the last se'ah.

(4) B.K. 9a.

(5) And a new division of the remainder of the estate is to be made.

(6) Whose share was seized.

(7) And the division, therefore, is valid, the other brother retaining his full original share.

(8) V. p. 443. n. 16.

(9) Of his brother's share, i.e., an eighth of the original estate.

(10) Hence they remain collectively responsible for the payment of their father's debts.

(11) None of them having undertaken to make good the loss of any of the others.

(12) Of his brother's share. Half the share certainly belongs to his brother, and the doubt is only in respect of the other half; hence it is divided between the two, each one receiving, or retaining a quarter of it.

(13) His brother cannot be compelled to give up a portion of his land. Since creditors must accept money, he has only himself to blame for having parted with his land, and can only expect to receive from his brother the kind of payment the latter would have made to the creditor.

(14) The one in possession must give up a portion to him who has been deprived of his share, so that all their respective shares in the estate be equalized. The original division, however, is not entirely upset no new lot taking place and every one retaining a portion of what was originally allotted to him.

(15) An entirely new division must be made, and lots cast again.
(16) Under instructions from a judicial court.
(17) With the object of selling it for the maintenance of the dead owner's widow or his orphan daughters.
(18) Maneh hundred zuz or twenty-five sela'. A sela' four zuz.
(19) The opinion of the two who are in the majority is to be followed. (Cf. Ex, XXIII, 2.)
(20) I,e., five sela less than a maneh. (V. p. 444, n. 11).
(21) Between the lowest valuation and the highest, i.e., between the thirty. and the twenty, sela', amounting to ten sela'.
(22) Ten sela' equal 40 zuz. 40/3 == 13 1/3]. This quotient is added to the lowest valuation which is 20 sela' or 80 zuz. Thus, 80 + 13 1/3 == 933 zuz.
(23) The average of 80 zuz (or twenty sela' which is the lowest valuation) and 120 zuz (or 30 sela', the highest valuation). 80+120/2 == 100 zuz or a maneh.

Talmud - Mas. Baba Bathra 107b

is worth ninety [zuz], and the reason why one valued it at twenty [sela][1] is because he had underestimated[2] it by ten [zuz], and he who valued it at a maneh overestimated[3] it by ten [zuz]. On the contrary! [Let it be assumed that] the land is worth a hundred and ten [zuz] and that he who valued it at a maneh underestimated[4] it, by ten [zuz], and he who said thirty[5] overestimated[6] it by ten [zuz]?[7] At all events one should adopt the first two, since both do not exceed the sum of one maneh.[8] The others [who] said: [The difference] between them is calculated and divided by three, hold the opinion [that] the land is worth ninety-three [zuz] and a third; [and] that he who valued it at twenty [sela'] underestimated[4] it by thirteen [zuz] and a third; he who valued it at a maneh overestimated[6] by thirteen [zuz] and a third. Logically [the latter] should have given a higher[9] estimate[10] but the reason why he did not do it[11] is because he thought. 'It is enough that I have exceeded my colleague's [estimate] by so much' — On the contrary! [Let it be said]: The land is worth a hundred and thirteen [zuz] and a third; he who valued it at a maneh underestimated[12] it by thirteen [zuz] and a third, and he who valued it at thirty [sela'] overestimated[13] it by thirteen [zuz] and a third; and logically he should have submitted a higher estimate[14] [but] he thinks, 'It is enough that I have exceeded my colleague's by so much'? — At all events one should adopt the first two, since both do not exceed the sum of a maneh.[15]

R. Huna said: The halachah is in accordance with [the opinion of the] others. R. Ashi said: We do not know the reason[16] [for the opinion] of the others; shall we administer the law in accordance with their view?

The judges of the Exile[17] taught: [The difference] between them is calculated and divided by three. R. Huna said: The law is in accordance with [the teaching of] the Judges of the Exile. R. Ashi said: We do not know the reason[18] [for the opinion] of the judges of the Exile, shall we administer the law in accordance with their view?

MISHNAH. IF ONE SAYS TO ANOTHER, 'I SELL YOU HALF[19] A FIELD', A COMPROMISE IS MADE BETWEEN THEM AND HE TAKES THE HALF OF HIS FIELD.[20] [IF ONE SAYS.] 'I SELL YOU HALF OF IT[21] ON THE SOUTHERN SIDE', A COMPROMISE IS MADE BETWEEN THEM AND HE TAKES ITS SOUTHERN HALF.[20] HE[22] MUST UNDERTAKE [TO SUPPLY][23] SPACE FOR THE WALL[24] [AND] FOR THE BIGGER AND SMALLER TRENCH.[25] AND WHAT IS [THE WIDTH OF] THE BIGGER TRENCH? SIX HANDBREADTHS[26] ; AND [THAT OF] THE SMALLER ONE, THREE.[26]

GEMARA. R. Hiyya b. Abba said in the name of R. Johanan: The buyer takes the poorer [side] of it.[27] Said R. Hiyya b. Abba to R. Johanan: Surely we have learned that a compromise[28] was to be made between them? — He replied unto him: While you were [engaged in] eating date-berries in Babylon[29] , I expounded [this] with the aid of the concluding clause. For in the concluding clause it

is taught: [IF ONE SAYS]. 'I SELL YOU HALF OF IT ON THE SOUTHERN SIDE', A COMPROMISE IS MADE BETWEEN THEM AND HE TAKES ITS SOUTHERN HALF. But why, [according to your reasoning,] should a compromise be made between them? Surely he [explicitly] said to him, 'Half of it on the southern side'![30] But [you must say that the expression there refers] to the price.[31] here also [it must be assumed that the expression used refers] to the price.[32]

HE MUST UNDERTAKE [TO SUPPLY] THE SPACE FOR THE WALL etc. It was taught: The bigger trench is without and the smaller one is within,[33] and both [are made] behind the wall [on its outer side]

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(1) 'I.e., eighty zuz,

(2) Lit., 'erred (by) ten backwards'.

(3) Lit., 'erred (by) ten forwards'.

(4) V. note 6.

(5) I.e., 120 zuz.

(6) V. note 7.

(7) Why. then, should the two lower valuations be taken into account and not the two higher ones?

(8) It is preferable to adopt the two valuations which have in common the point of not exceeding the sum of a maneh, and to ignore the third, rather than to adopt valuations which have nothing in common.

(9) I.e., 93 1/3 + 13 1/3 = 106 2/3, zuz.

(10) Lit., 'should have said more'.

(11) Lit., 'why he did not say'.

(12) V. p.445, n. 6.

(13) V. p. 445, n. 7.

(14) V. loc. cit. n. 14.

(15) V.loc.cit.n. 12.

(16) I.e., 'their reason does not appeal to us', 'we do not accept it'.

(17) Samuel and Karna, v. p. 279. n. 6.

(18) v. note 5.

(19) Not specifying which half.

(20) This is explained in the Gemara, infra, to refer to the value of, and not to the actual field.

(21) The field.

(22) The seller.

(23) Out of his portion of the field.

(24) Round half the field.

(25) Which is dug round the wall. A smaller trench is made between the wall and the bigger trench.

(26) Along the entire length of the field.

(27) Of the field. The seller, being the previous possessor, is entitled to choose the fertile, and better side.

(28) Which implies that the buyer is not to be at a disadvantage and is to have a share which is as good as that of the seller How, then, could R. Johanan state that the buyer must take the worst part?

(29) I.e., engaged in worldly pleasures and neglecting the study of the Torah. [Hiyya b. Abba was born at Kafri in Babylonia, whence he came to Palestine at a somewhat advanced age.]

(30) How, then, does a compromise come in? Since the seller specified the southern side, that side should go to the buyer!

(31) By saying, 'the southern side', not the actual spot was meant but the value of that spot in any part of the field.

(32) The compromise consists in this, that the buyer gets land equal to the full value of half the field, while the seller has the choice of giving of the land on any side, even on the worst, provided the value of it is not less than half the price of the entire field.

(33) Between the wall and the outer trench.

in order that an animal may not jump [over the wall]. Let, then, the big trench be made[1] and not [also] the small one? — Since it is wide, [the animal] might stand in it and jump. Then let the smaller trench be made and not the bigger one? Since it is small, [the animal] might stand on the [outer] edge and jump. How much [space must there be] between the bigger, and the smaller trench? — One handbreadth.

C H A P T E R V I I I

MISHNAH. SOME [RELATIVES] INHERIT [FROM], AND TRANSMIT [TO EACH OTHER];[2] SOME INHERIT[3] BUT DO NOT TRANSMIT;[4] [SOME] TRANSMIT RUT DO NOT INHERIT, [AND SOME] NEITHER INHERIT NOR TRANSMIT. THE FOLLOWING INHERIT [FROM], AND TRANSMIT [TO EACH OTHER]: A FATHER [INHERITS FROM,[5] AND TRANSMITS TO HIS] SONS, AND SONS [INHERIT FROM, AND TRANSMIT TO THEIR] FATHER; AND BROTHERS FROM THE [SAME] FATHER[6] INHERIT [FROM], AND TRANSMIT [TO EACH OTHER].[7] A MAN [INHERITS FROM] HIS MOTHER AND [FROM] HIS WIFE [BUT DOES NOT TRANSMIT HIS ESTATE TO THEM[8] IF HE DIES FIRST]; AND SISTERS' SONS INHERIT [FROM THEIR UNCLES] BUT DO NOT TRANSMIT [THEIR ESTATES TO THEM].[9] A WOMAN [TRANSMITS HER ESTATE TO] HER SONS AND A WIFE [TO] HER HUSBAND [BUT THEY DO NOT INHERIT FROM THEM]; AND MOTHER'S BROTHERS TRANSMIT [THEIR ESTATES TO THEIR NEPHEWS] BUT DO NOT INHERIT [FROM] THEM. AND BROTHERS FROM THE [SAME] MOTHER NEITHER INHERIT [FROM], NOR TRANSMIT [TO EACH OTHER].[10]

GEMARA. Why does the Mishnah teach first, THE FATHER [INHERITS FROM, AND TRANSMITS TO HIS] SONS, let it first teach, THE SONS [INHERIT FROM, AND TRANSMIT TO THEIR] FATHER, for, in the first place,[11] one should not commence with [something suggestive of] misfortune[12]

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(1) The big trench alone should suffice to prevent the animal from jumping over the wall.

(2) Whoever of these dies first transmits his estate to the other, and whoever survives inherits it.

(3) From certain relatives who predecease them.

(4) Their estates to these relatives if they die first.

(5) From his sons, if they die without leaving any issue.

(6) Though not from the same mother.

(7) If they die without issue.

(8) Because the relatives on his father's side are entitled to the inheritance of his estate.

(9) V. Previous note.

(10) Their relatives on their respective fathers' sides inherit from them.

(11) Lit, 'one'.

(12) The death of a son in his father's lifetime.

and, secondly,[1] [one should follow the order of the Torah,] as it is written, If a man die and have no son?[2] — The Tanna prefers[3] [to begin with the case of a father who is heir to his son] because this [law] has been arrived at through an exposition. What is the exposition? — It has been taught: His kinsman,[4] refers to the [dead man's] father. This teaches that a father takes precedence[5] over brothers. One might [assume] that he also takes precedence over a son, [therefore] it was expressly stated, that is next [to him],[6] [which implies] he who is nearest[7] takes precedence. What reason is there[8] for including the son[9] and excluding the brother? — The son is included because, as is known,[10] he is [entitled] to take his father's place in designating [the Hebrew handmaid of his father

to be his wife],[11] and [also in the redeeming] of a field of [his father's] possession.[12] On the contrary! [Rather say:] 'The brother is included because he also takes the place of his brother in the case of a levirate marriage.'[13] Surely levirate marriage only takes place where there is no son, but where there is a son there is no levirate marriage.[14]

[From what has been said it appears] that the [only] reason [for the precedence of a son is] that there is this reply,[15] but had it not [been] so, it would have been held [that] a brother takes precedence, [but cannot] this [law][16] be deduced

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(1) Lit., 'and furthermore'.

(2) Num. XXVII, 8. This implies that if a father leaves a son, the latter inherits from him. Now, since the Scripture begins with the case of a son inheriting from his father the Tanna of our Mishnah should have done likewise!

(3) Lit., 'beloved to him'.

(4) Num. XXVII, 11. Ye shall give his inheritance unto his kinsman.

(5) If the dead man is survived by a father and brothers, his estate is inherited by the former.

(6) Ibid.

(7) A son is a nearer relative than a father.

(8) Lit., 'what have you seen?'

(9) I.e., regarding him as the nearest relative, taking precedence over father and brothers.

(10) Lit 'for so'.

(11) The master of a Hebrew handmaid may designate her to be his wife, and there is no need for him to betroth her in the usual manner. His son also, 'if she please not her user', may designate her to be his wife, in the same way as his father. No brother or any other person has the same privileges. Cf. Ex. XXI, 7ff.

(12) If a man sanctifies onto the Lord a field of his possession, he or his son may redeem it. If a brother, however, or any other person has redeemed the field, it returns to the priests in the jubilee year. Cf. Lev. XXVII, 16ff.

(13) The law requiring a person to marry the widow of a brother who dies without issue. Cf. Deut. XXV, 5ff. A son, of course, cannot have this right or privilege.

(14) Consequently, even as regards levirate marriages, a son stands nearer, and is in a more privileged position than a brother.

(15) 'Surely levirate etc.'

(16) That a son takes precedence over a brother.

Talmud - Mas. Baba Bathra 109a

[from the fact] that in one case[1] [there are] two [advantages][2] and in the other[3] [only] one?[4] — The very [law of a son's precedence in the case of the redemption of a] field of [his father's] possession was deduced by the Tanna from this very argument, viz., 'Surely levirate marriages only take place where there is no son, but where there is a son there is no levirate marriage'![5]

[But why not] say [thus]: 'His kinsman,[6] refers to the father. This teaches that a father takes precedence over a daughter.[7] One might [assume] that he [also] takes precedence over [a] son, it was therefore expressly stated that is next [to him],[6] [which implies,] he who is nearest takes the precedence'? — Since in respect of levirate marriages a son and a daughter have the same[8] standing, a son and a daughter must have the same standing in the case also of inheritance.[9] [Why again not] say [thus]: 'His kinsman,[6] refers to the father. This teaches that a father takes precedence over the [dead man's] father's brothers. One might [assume] that he also takes precedence over brothers, it was therefore expressly stated, that is next,[10] [which implies], he who is nearest takes the precedence'? — The father's brothers do not require any Scriptural text;[11] [for] from whom[12] do the father's brothers derive their right? From the father; should [then] the brothers of the father inherit when the father [himself] is alive! But, surely, the Scriptural verses are not written in this [order], for it is written, And if his father have no brethren etc.![13] — The verses are not written in [the proper] order[14] [of succession].

The following Tanna derives it[15] from the following: For it was taught: R. Ishmael, son of R. Jose, gave the following exposition: [It is written,] If a man die, and have no son, [then ye shall cause his inheritance to pass unto his daughter].[16] [This implies that] where there is a daughter the inheritance is passed from the father,[17] but no inheritance is passed from the father, where there are [only] brothers.[18]

But [why not] say [thus]? Where there is a daughter the inheritance is passed from the brothers,[19]

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(1) Lit., 'here', i.e., the case of a son.

(2) The designation of a handmaid, and the redemption of a field of his (father's) possession.

(3) Lit. 'here', i.e., the case of a brother.

(4) That of the levirate marriage.

(5) It was this argument that had confirmed the Tanna in his opinion that a son takes his father's place in the redemption of a field of his father's possession (v. 'Ar, 25b). Without this argument it could not have been proved that a son has any greater claim to the redemption of the field than a brother or any other person. Since this law, then, depends entirely on the argument mentioned, there remains only one independent point in favour of a son's precedence. Hence it was necessary to have recourse to the reply mentioned.

(6) Num. XXVII, 22.

(7) Since she never takes the place of her father either as a son (for designation and redemption), or as brother (for Ievirate marriage).

(8) Whether the dead man has left a son or a daughter, his widow is in either case exempt from levirate marriage; but his being survived by a father does not make any difference.

(9) A daughter, therefore, takes precedence over a father,

(10) Num. XXVII, 11.

(11) To prove that a father takes precedence over them.

(12) Lit., 'on whose strength'.

(13) Ibid. According to this verse, since his kinsman refers to the father, the father's brothers should take precedence over him, for the verse reads, And if his father have no brethren, then ye shall give his inheritance unto his kinsman, which implies (cf. the preceding verse), that if he has brothers it is they who inherit, and not he.

(14) Though kinsman, i.e., 'a father', is mentioned after 'a father's brothers', he nevertheless takes precedence over them, by reason of the given argument.

(15) The law that a father takes precedence over the dead man's brothers.

(16) Num. XXVII, 8.

(17) Of the dead man. The phrase והעברתם' (we-ha'abartem) is taken to mean, 'ye shall cause (the inheritance) to pass (from his father) unto his daughter' that is, the father of the deceased is passed over in favour of the daughter.

(18) Of the dead man.

(19) Of the dead, unto his daughter; and accordingly. Num XXVII, 8 should be read and interpreted as follows: If a man die, and have no son, then ye shall cause his inheritance to pass (from his brothers) unto his daughter; and if he has no daughter, his brothers inherit from him.

Talmud - Mas. Baba Bathra 109b

but no inheritance is passed from the father even where there is a daughter'?[1] — If so[2] the Torah should not have written[3] [at all]. Then ye shall cause [his inheritance] to pass [unto his daughter].[4]

According to him who infers it[5] from, then ye shall cause [his inheritance] to pass,[6] what is [the phrase], his kinsman, to be applied to? — He applies[7] it, to [the following], as it was taught: His kinsman,[8] refers to his wife: [and this] teaches that the husband is heir to his wife.[9] And according to him who infers its from his kinsman, to what does he apply [the expression], then ye shall cause [his inheritance] to pass?[10] — He applies it to [the following]; as it was taught: Rabbi said: In [the case of] all [the relatives],[11] [the expression of] 'giving' is used, but here,[12] [the expression] used is that

of 'causing to pass',[13] [in order to teach] you that no other but a daughter causes an inheritance to pass from one tribe to [another] tribe, since [in her case] her son or her husband are her heirs.[14]

What [reason] is there for deducing that she'ero[15] refers to the father? — Because it is written, She is thy father's near kinsman:[16] Why not [rather] say [that] she'ero refers to the mother since it is written, She is thy mother's near kinswoman?[17] — Raba replied: The Scriptural text says. that is next to him of his family, and he shall possess it;[18] the family of the father is regarded[19] [as the proper] family [but] the family of the mother is not regarded[19] [as the proper] family; for it is written, by their families, by their father's houses.[20] [But] is not the mother's family regarded[19] [as the proper] family? Surely it is written, And there was a young man out of Bethlehem in Judah — of the family of Judah — who was a Levite, and he sojourned there;[21] [now], this is self-contradictory, [for] it is said, 'who was a Levite', which clearly indicates that he descended from Levi, [and it is also said], 'of the family of Judah,' which clearly shows that he descended from Judah; must it not then be concluded that his father [was of the tribe] of Levi and his mother [of that] of Judah, and [yet the text] speaks [of him as] 'of the family of Judah'! — Raba, son of R. Hanan, replied: No;[22] [he may have been] a man whose name was Levi.[23] If so, [is] this [the reason] why Micah said , 'Now know I that the Lord will do me good, seeing I have a Levite as my priest'?[24] — Yes; [he was glad] that he happened to obtain a man whose name was Levi. But was Levi his name? Surely his name was Jonathan, for it is said, And Jonathan the son of Gershom, the son of Manasseh, he and his sons were priests to the tribe of the Danites?[25] — He said unto him: But [even] according to your argument, [it may be objected], 'Was he the son of Manasseh? Surely he was the son of Moses, for it is written, the son of Moses: Gershom, and Eliezer';[26] but [you must say that] because he acted [wickedly] as Manasseh,[27] the Scriptural text ascribed his[28] descent to Manasseh, [so] also here[29] [it may be said that], because he acted [wickedly] as Manasseh who descended from Judah, the Scriptural text ascribed his[28] descent to Judah.[30] R. Johanan said in the name of R. Simeon b. Yohai: From here [one may infer] that corruption is ascribed[28] to the corrupt.[31] R. Jose b. Hanina said: [This[32] may be inferred] from the following: [It is written,] And he[33] was also a very goodly man, and he was born after Absalom;[34] was not Adonijah the son of Haggith, and Absalom the son of Maacah? But because he[33] acted in the same manner as Absalom who rebelled against the king, the Scriptural text associated[35] him with Absalom.

R. Eleazar said: One should always associate[36] with good [people]; for behold, from Moses who married the daughter of Jethro,[37] there descended Jonathan[38] [while] from Aaron, who married the daughter of Amminadab, there descended Phinehas.[39] But did not Phinehas descend from Jethro? Surely it is written, And Eleazar[40] Aaron's son took him one of the daughters of Putiel to wife;[41] does not this mean that he descended from Jethro who crammed[42] calves for idol worship? — No; [it means] that he descended from Joseph who conquered[43] his passions.[44] Did not, however, the tribes sneer at him and say.[45] 'Have you seen this Puti-son?[46] A youth whose mother's father crammed calves for idol-worship should kill the head[47] of a tribe in Israel!'

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(1) Since the text speaks only of brothers and not of a father, why should it not be assumed that a father takes precedence over a daughter, though not over brothers?

(2) That Num. XXVII, 8 is to be interpreted in the sense that only where there is a daughter does she takes precedence over the brother but where there is no daughter the inheritance is to go to the brothers.

(3) In Num. XXVII, 8.

(4) Since this law is specifically stated in the following verse (ibid 9).

(5) V. p. 451, n. 5.

(6) Ibid.

(7) Lit., 'requires'.

(8) Num. XXVII, 11.

(9) Infra 111b.

(10) Ibid. 8.

(11) Enumerated in Num. XXVII, 9-11.
(12) In the case of a daughter.
(13) Ibid. 8.
(14) V. Infra 147a.
(15) שארו 'Kinsman' or 'kinswoman'.
(16) שאר אביך Lev. XVIII, 12.
(17) שאר אמך Ibid. 13; and, consequently, let it be inferred from this text that a mother, like a father, is entitled to inherit from a daughter
(18) Num. XXVII, 11.
(19) Lit., 'called'.
(20) Ibid. I, 22.
(21) Judg. XVII, 7.
(22) His father was not of the tribe of Levi, but of that of Judah.
(23) לוי may be rendered as both 'Levite' and 'Levi'.
(24) If the young man were not of the tribe of Levi, would Micah have been so glad in having secured a mere layman as his priest?
(25) Judg. XVIII, 30. The Danites appropriated Micah's graven and molten images, his ephod and teraphim, and took also with them the young man who was his priest.
(26) I Chron. XXIII, 15.
(27) Manasseh the son of Hezekiah was one of the most wicked kings of Judah. Cf. II kings XXI, 1-17. [In the M.T the נ of מנשה is a litera suspensa: .]
(28) Lit., 'hanged him on'.
(29) To harmonise Judg. XVII, 7, with the statement that the family of the mother is not regarded as the proper family.
(30) But, in reality, he may have belonged to the tribe of Levi. Hence, in either ease, Judg. XVII, 7, cannot be adduced as proof that the mother's family is regarded as the proper family.
(31) Micah's priest who ministered to idolatry is described as a descendant of the corrupt king Manasseh.
(32) That corruption is ascribed to the corrupt.
(33) Adonijah.
(34) I Kings I, 6.
(35) V. p. 453. n. 7.
(36) Lit., 'cling to'.
(37) The priest of Midian, an idolater.
(38) An idolatrous priest.
(39) Cf. Num. XXV, 11ff.
(40) The father of Phinehas.
(41) Ex. VI, 25.
(42) פטם regarded as of the same root as Putiel.
(43) פטפט 'conquer in argument'.
(44) Cf. Gen. XXXIX, 7ff.
(45) Cf. Sanh. 82b, Sotah, 43a.
(46) Abbreviation of Putiel.
(47) Zimri. v. Num. XXV, 6ff

Talmud - Mas. Baba Bathra 110a

But [this is really the explanation], if his mother's father [descended] from Joseph, his mother's mother[1] [descended] from Jethro; if his mother's father [descended] from Jethro, his mother's mother [descended] from Joseph.[2] [This may] also [be confirmed by] deduction, for it is written, of the daughters of Putiel, from which two[3] [lines of ancestry][4] are to be inferred.

Raba said: He who [wishes] to take a wife should inquire about [the character of] her brothers. For it is said, And Aaron took Elisheba, the daughter of Amminadab, the sister of Nahshon;[5] since it is

stated the daughter of Amminadab, would it not he obvious that she is the sister of Nahshon? Then why should it be expressly stated, the sister of Nahshon? From here, [then], it is to be inferred that he who takes a wife should inquire about [the character of] her brothers. It was taught:[6] Most children resemble the brothers of the mother.

And they turned aside thither, and said unto him: 'Who brought thee hither?[7] and what doest thou in this [place]?[8] and what hast thou here?[9] They[10] said unto him:[11] 'Are you not a descendant of Moses of whom it is written, Draw not nigh hither?[12] Are you not a descendant of Moses of whom it is written, What is this[13] in thy hand?[14] Are you not a descendant of Moses of whom it is written, But as for thee, stand thou here[15] by me?[16] Would you be made a priest for idol-worship?' — He said unto them: I have the following tradition from my grandfather's family: At all times shall one [rather] hire himself out to idol-worship than be in need [of the help] of [his fellow] creatures. He thought that 'Abodah Zarah[17] [meant] actual [idol worship], but it is not so, [the meaning being,] 'work which is strange to him';[18] as Rab said[19] to R. Kahana: Flay[20] a carcass in the street and earn[21] a wage, and say not, 'I am a great man and the work is degrading to me'. When David saw that he had an exceptional liking for money, he put him in charge over the treasuries, for it is said, Shebuel the son of Gershom, the son of Manasseh[22] was ruler over the treasuries.[23] But was his name Shebuel? Surely his name was Jonathan! — R. Johanan said: [He was called Shebuel][24] because he returned to God[24] with all his heart.

AND SONS [INHERIT FROM, AND TRANSMIT TO THEIR] FATHER. Whence is this[25] derived? — It is written, If a man die, [and have no son, then ye shall cause his inheritance to pass unto his daughter].[26] [From this it is to he inferred that] the reason[27] is because he have no son but if he have a son the son takes precedence.[28]

R. Papa said to Abaye: Might it not be inferred[29] that if there be a son, the son is to be the heir; [if] there be a daughter, the daughter is to be the heir; [and if] there be [both] a son and a daughter, neither the one is to he heir nor the other? — But

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(1) But not his own mother.

(2) In either ease, Phinehas was several generations removed from Jethro, while Jonathan, being the son of Gershom, was only two generations removed.

(3) The Yod in Putiel is regarded as a sign of the plural.

(4) Joseph and Jethro.

(5) Ex. VI, 23.

(6) Soph. XV, 20.

(7) חלום

(8) בזה

(9) פה Judg. XVIII, 3.

(10) The Danites.

(11) Micah's priest.

(12) Ex. III, 5.

(13) זה

(14) Ex. IV, 2.

(15) פה

(16) Deut. V, 28.

(17) עבודה זרה may mean both 'idolatry' and 'strange work'.

(18) Uncongenial, below his dignity.

(19) Cf. Pes. 113a.

(20) Or 'dress'.

(21) Lit., 'take'.

(22) M.T. reads, Moses.

(23) I Chron. XXVI, 24.
(24) שבואל is composed of שב (returned), and אל (God).
(25) That sons take precedence over daughters.
(26) Num. XXVII, 8.
(27) For causing the inheritance to pass to a daughter.
(28) Over the daughter, who, however, according to a Rabbinical provision, is entitled, if unmarried to a tenth of the estate. Cf. Keth, 68a.
(29) From Num. XXVII, 8.

Talmud - Mas. Baba Bathra 110b

who then should he the heir? Should the town collector[1] he the heir! — It is this that I suggest: [If] there be a son and a daughter. neither the one nor the other should inherit all [the estate], but both together should inherit [it].[2] Abaye said to him: Is, then,[3] a Scriptural verse required to tell us that where there is a one and only son he inherits all the property?[4] — Is it not possible, however, that [Scripture] meant to teach this: That a daughter also has a right of inheritance?[5] — This[6] is deduced from, And every daughter, that possesseth an inheritance.[7] R. Aha b. Jacob said: [The law of a son's precedence over a daughter may he inferred] from here: Why should the name of our father be done away from among his family, because he had no son?[8] The reason,[9] then, is because he had no son, but had he had a son, the son would have taken precedence. But it is not possible that the daughters of Zelophehad [only] said so,[10] [and that] when the Torah was given[1] the law received a new interpretation?[11] — But the best [proof][12] is that given at first.[13]

Rabina said: [The law of a son's precedence may he inferred] from here: That is next to him,[14] i.e., he who is nearest in relationship takes precedence. And [in] what [respect is] the relationship of a son [nearer] than [that of] a daughter? [Is it] in that he is [entitled] to take his father's place in designating [the Hebrew handmaid of his father to be his wife][15] and [in the redeeming] of a field of [his father's] possession?[16] [Surely, as regards] designation, a daughter is not one to designate;[17] [and as regards] the redemption of a 'field of possession', [a daughter] also [may he entitled to the same privilege as a son, by logical deduction] from the selfsame objection, from which the Tanna had deduced [the law that a son is entitled to this privilege]: 'Is there any levirate marriage except where there is no son?'[18] — But the best proof is that given at first.[19]

If you like, I can say, [the law of the son's precedence] may be inferred from here: And ye may make them an inheritance for your sons[20] after you,[21] meaning, your sons but not your daughters. But in that case[22] does, That your days may be multiplied, and the days of your sons,[23] also mean 'your sons' and not 'your daughters'? — It is different [in the case of] a blessing.[24]

AND BROTHERS FROM THE [SAME] FATHER INHERIT [FROM]. AND TRANSMIT etc. Whence is this derived? — Rabbah said:[25] It may be deduced [from a comparison of this] 'brotherhood'[26] with the 'brotherhood' of the sons of Jacob;[27] as there [the brotherhood was derived] from the father and not from the mother, so here [the brotherhood spoken of is that] from the father and not from the mother. What need is there[28] [for this inference]? Surely it is written, Of his family. and he shall possess it,[29] [and it has been deduced[30] that] the family of the father is regarded [as the] family [but] the family of the mother is not regarded [as the] family! — This is so indeed, but the statement of Rabbah was made with reference to [the law of] levirate marriage.[31]

A MAN [INHERITS FROM] HIS MOTHER etc. Whence are these laws[32] derived? — For our Rabbis taught:

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(1) Or 'the elder of the town', 'town governor'.
(2) Both taking equal shares.

(3) Since a daughter, according to your opinion, is entitled to the same rights of inheritance as a son.
(4) The Scriptural text, then, which reads, If....(he) have no son, then shall ye cause his inheritance to pass unto his daughter, which is obvious (v. previous note), should have read, instead, If a man die and have no issue then ye shall give his inheritance unto his brethren etc. (v. Num. XXVII, 8.9). The rest of the text, then shall ye cause. . . have no daughter (ibid), would thus become superfluous.
(5) Without specific mention, the daughter might have been excluded from the term 'issue' which would have been taken to apply to males only, for, without such specific mention, the entire context dealing with the laws of inheritance (Num. XXVII, 8-11) would have been speaking of males only. Hence it was necessary to mention 'daughter' in vv. 8-9. Once however a daughter's right to succession is established, there is need of evidence to prove that a son call claim precedence over her.
(6) That a daughter may be heir.
(7) Num. XXXVI, 8.
(8) Ibid. XXVII, 4.
(9) For the request on the part of Zelophehad's daughters for a share in the land.
(10) Believing that to be the law. (12) The laws of inheritance were given subsequent to the representations of Zelophehad's daughters. V. Num. XXVII, 5-7ff.
(11) Giving sons and daughters equal rights of inheritance.
(12) That a son takes precedence.
(13) Supra 110a. 'It is written, if a man lie etc.'
(14) Num. XXVII, 11.
(15) V. supra p. 449. n. 52.
(16) V. loc. 11. n. 13.
(17) And the law could not possibly have been applied to her.
(18) An argument that can likewise be applied in regard to a daughter. viz., 'Is there any levirate marriage except where there is no daughter?' In what respect, then, does a son stand nearer than a daughter in relationship to the father?
(19) V. n. 3.
(20) בניכם is rendered here 'sons'. though it may also bear the meaning of 'children'.
(21) Lev. XXV, 46.
(22) Lit., 'from now'.
(23) Deut. XI. 21. Cf. n. 10 supra.
(24) A blessing would include both sexes, though elsewhere the term sons applies to males only.
(25) Cf. Yeb. 17b, 22a.
(26) The expression 'brethren', used in Num. XXVII. 9.
(27) Ice thy servants are twelve brethren (Gen. XLII, 13).
(28) In the case of the laws of inheritance.
(29) Num. XXVII, 11.
(30) Supra 109b.
(31) Where also the expression, 'brethren', is used: If brethren dwell together etc. (Deut. XXV, 5f). Only brothers of the same father are, accordingly, subject to the levirate law.
(32) Lit., 'words'; the laws that a son is heir to his mother as he is to his father, and, moreover, that he takes precedence over a daughter in such an inheritance. The laws in Num. XXVII, 8-9. do not deal with an inheritance from a mother.

Talmud - Mas. Baba Bathra 111a

[It is written.] And every daughter that possesseth an inheritance in the tribes[1] of the children of Israel;[2] how can a daughter inherit [from] two tribes?[1] — [Obviously] only when her father is from one tribe and her mother from another tribe, and both died, and she inherited [from] them. [From this] one may only [derive the law in respect of] a daughter. whence [may the law respecting] a son [he derived]?[3] — One may derive it by an inference from minor to major: If a daughter, whose claims upon her father's property are impaired,[4] has strong legal claims upon the property of her mother, should a son, whose claims upon the property of his father are strong, not justly have strong legal claims[5] upon the property of his mother? And by the same argument:[6] As there,[7] a son takes

precedence over a daughter, so here,[8] a son takes precedence over a daughter. R. Jose son of R. Judah and R. Eleazar son of R. Jose said in the name of R. Zechariah h. Hakkazzab:[9] Both a son and a daughter [have] equal [rights] in [the inheritance of] a mother's estate.[10] What is the reason? — It is sufficient for [a law that is] derived by argument to he like [the law] from which it is derived.[11] And does not the first Tanna[12] expound. 'It is sufficient [etc.]'? Surely, [the exposition of] Dayyo[13] is Pentateuchal! For it was taught:[14] 'An example[15] of an inference from minor to major [is]. And the Lord said to Moses: 'If her father had but spit in her face, should she not hide in shame seven days?'[16] [Would not one expect, by] inference from minor to major, [that in the case] of the divine presence, [she should hide in shame for] fourteen days?[17] — But [it is held that] it is sufficient for [a law that is] derived by argument. to he like [the law] from which it is derived'![18] — Elsewhere he does expound Dayyo,[19] hut here it is different, because Scripture says, in the tribes,[19] thus comparing the mother's tribe to the father's tribe: as [in the case of] the father's tribe a son takes precedence over a daughter, so [in the case of] the mother's tribe a son takes precedence over a daughter.

R. Nittai intended to decide a case in accordance with [the view of] R. Zechariah b. Hakkazzab, [but] Samuel said to him: 'In accordance with whom? In accordance with Zechariah? Zechariah faileth!'[20]

R. Tabla decided a case in accordance with [the view of] R. Zechariah h. Hakkazzab. R. Nahman said to him: 'What is this?' — He replied unto him: '[I rely upon] that which R. Hinena b. Shelemia said in the name of Rab [that] the halachah is in accordance with [the view of] R. Zechariah h. Hakkazzab.' He said to him: 'Withdraw, or I shall pull R. Hinena b. Shelemia from your ears!'[21]

R. Huna b. Hiyya intended to decide a case in accordance with [the view of] R. Zechariah h. Hakkazzab. R. Nahman said to him: 'What is this?' He replied: '[I rely upon] that which R. Huna said in the name of Rab [that] the halachah is in accordance with [the view of] Zechariah h. Hakkazzab. He said to him: 'I will send to him!'[22] He grew embarrassed.[23] He said to him: 'Now, had R. Huna been dead, you would have continued to oppose me.'[24] And whose opinion did he[25] adopt? — That of Rab and Samuel both of whom said: The halachah is not in agreement with [the view of] R. Zechariah h. Hakkazzab.

R. Jannai was [once] walking, leaning[26] upon the shoulder of R. Simlai his attendant,[27] and R. Judah the Prince[28] came to meet them. He[29] said to him: The man who comes towards us is distinguished[30] and his cloak is distinguished.[30] When he[31] came nigh him [R. Jannai] touched it [and] said to him: This [cloak] — its [legal minimum] size [as regards Levitical uncleanness is but] that of[32] sackcloth![33] He[31] inquired of him: Whence [is it derived] that a son takes precedence over a daughter in [the inheritance of] a mother's estate? — He replied to him: From[34] tribes;[35] [where the plural indicates that] the mother's tribe is to be compared to the father's tribe: as [in the case of] the father's tribe,[36] a son takes precedence over a daughter so [in the case of] the mother's tribe,[37] a son takes precedence over a daughter. He[38] said to him: If [so, let it be said that] as [in the case of] the father's tribe a firstborn takes a double portion, so [in the case of] the mother's tribe a firstborn shall take a double portion'!

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(1) E.V.: in any tribe. The plural 'in tribes', ממטות implies no less than two.

(2) Num. XXXVI, 8.

(3) That a son also inherits from his mother.

(4) Since a son takes precedence over her.

(5) To be heir.

(6) Lit., 'and from whence you came'.

(7) In the case of a father's inheritance.

(8) In the case of the inheritance of a mother.

(9) A proper noun, or ha-Kazzab 'the butcher'.
(10) They take equal shares.
(11) Since the law that a son may be heir to his mother is derived from the law of a daughter's right to such an inheritance, it cannot be held to confer upon him, in such a case, any right of precedence over a daughter.
(12) Who maintains that a son takes precedence over a daughter even in the case of a mother's inheritance.
(13) דיו 'it is sufficient'.
(14) B.K. 25a, Zeb. 69b.
(15) Lit., 'how'.
(16) Num. XII, 14.
(17) If seven days is the period for a father (who is only a mortal), fourteen days, at least, (double), should be the period in the case of the divine presence.
(18) Hence the rule of Dayyo is proved to he Pentateuchal; how then, can the first Tanna uphold a law which is contrary to this rule of Dayyo?
(19) Num. XXXVI, 8.
(20) אפם (cf. Gen. XLVII, 16, 17). 'The law is contrary to the view of R. Zechariah.'
(21) He would be placed under the ban so that he would think no more of R. Hinena; cf. Sanh. 8a.
(22) To R. Huna, to ascertain whether he really held such an opinion.
(23) Not being sure whether R. Huna still adhered to the same opinion.
(24) Now, however, that R. Huna is alive, this resistance must cease. R. Nahman, apparently, suspected R. Huna b. Hiyya of quoting R. Huna without due authorisation.
(25) R. Nahman
(26) R. Jannai suffered from defective eyesight due to old age.
(27) שמעיה The שמעא of many of the Rabbis was a disciple of the master and himself a scholar.
(28) Judah II.
(29) The attendant.
(30) Lit., 'beautiful'.
(31) R. Judah.
(32) Lit., 'like'.
(33) And therefore cannot be as distinguished as the attendant claimed it to be. Cheap, coarse material is not subject to the laws of Levitical uncleanness, unless its size is no less than four handbreadths by four, instead of three by three which is the legal minimum required in the case of finer materials.
(34) Lit., 'for it is written'.
(35) Num. XXXVI, 8.
(36) I.e., inheritance from a father.
(37) I.e., the inheritance of a mother's estate.
(38) V. p. 460, n. 12.

Talmud - Mas. Baba Bathra 111b

— He[1] called to his attendant: Lead on! This [man] does not desire to learn.[2] What, then, is the reason?[3] — Abaye replied: Scripture says: Of all that he hath,[4] implying he[5] and not she.[6] Might it not be suggested that these words[7] [apply to the case where] a bachelor married a widow;[8] but [where] a bachelor married a virgin[9] he[10] takes [a double portion] also [in the estate of his mother]? — R. Nahman h. Isaac replied: Scripture said: For he[11] is the first-fruits of his strength.[12] [from which it is to be inferred that the law applies to the first fruits of] his[13] strength and not of her strength. [Surely] that [word][14] is required for [the law that though one was] born after a miscarriage[15] he is, [nevertheless, regarded as the] firstborn son [in respect] of inheritance, [the text implying that only] he for whom [a father's] heart grieves[16] [is included in the law, but that a miscarriage], for which it does not, is excluded![17] — If so,[18] the text should have read, 'For he is the first-fruits of strength';[19] why his strength?[20] Two [laws, therefore,] are to be deduced from it. But still, might it not be suggested that these words[21] [apply only to the case of] a widower[22] who married a virgin,[23] but [where] a bachelor married a virgin[24] the firstborn son takes [a double

portion] also [in the estate of his mother]! — But, Raba said, [this is the proper reply]: Scripture states, The right of the firstborn is his[25] , [and this indicates that] the right of the firstborn [is applicable] to [the estate of] a man and not to [that of] a woman.

AND A MAN [INHERITS FROM] HIS WIFE etc. Whence is this derived?[26] — Our Rabbis taught:[27] His kinsman,[28] refers to his wife; [and this] teaches that the husband is heir to his wife. One might [say that] she also is heir to him, it is therefore expressly stated, And he shall inherit her,[29] meaning he is heir to her[30] but she is not heir to him. But, surely, the Scriptural verses are not written like that![31] — Abaye said: interpret thus, 'Ye shall give his inheritance unto one that is next to him; [as to] his kinswoman, he shall inherit her'. Raba said: A sharp knife is dissecting the Biblical verses![32] But, said Raba, this is what the text implies: 'Ye shall give the inheritance of his kinswoman into him';[33] [Raba] holding the view [that prefixes and suffixes] may he detached from [words] and added to [others], and [a new] interpretation may [then] he given [to the Biblical text].[34]

The following[35] Tanna derives it[36] from the following[37] [text]: For it was taught: And he shall inherit her,[38] teaches that the husband is heir to his wife; these are the words of R. Akiba. R. Ishmael, [however], said: This is not necessary,[39] for it is said, And every daughter that possesseth an inheritance in any tribe of the children of Israel, [shall be wife] unto one of the family etc.[40] This text speaks of a transfer [from one tribe to another that may be occasioned] through the husband.[41] Furthermore, it is said. So shall no inheritance of the children of Israel remove from tribe to tribe.[42] Furthermore, it is said. So shall no inheritance remove from one tribe to another tribe.[43] Furthermore it is said, And Eleazar the son of Aaron died; and they buried him it, the Hill of Phinehas his son.[44] Whence could Phinehas possess [a hill] which did not belong to Eleazar?[45] But this[46] teaches that Phinehas took a wife who died, and he was her heir. Furthermore it is said, And Segub begat Jair, who had three and twenty cities in the land of Gilead.[47]

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(1) R. Jannai.

(2) He only wishes to argue.

(3) Why, indeed, does a firstborn son take a double share in his father's, and not in his mother's estate?

(4) Deut. XXI, 27. viz., the firstborn takes a double portion of all that he, (his father) hath.

(5) The father.

(6) The mother.

(7) That a firstborn son takes a double portion only in the estate of his father.

(8) Who had children from her first marriage. In such a case, the father's firstborn son is not that of the mother.

(9) In which case the firstborn son of the father is also the firstborn son of the mother.

(10) The firstborn son.

(11) The firstborn son.

(12) Deut. XXI. 17.

(13) The father's.

(14) אונו his strength.

(15) Though he did not 'open the womb', and is not regarded as a firstborn son in respect of 'sanctification to the Lord' and 'redemption from the priest' (v. Ex. XIII, 2).

(16) און may be rendered 'grief' as well as 'strength'.

(17) How, then, could this deduction as well as the one previously mentioned, he made from the same text?

(18) That only the latter deduction is to be made.

(19) און without the suffix' would have been sufficient.

(20) אונו

(21) 'His strength, and not her strength', excluding a firstborn from the right to a double portion in the mother's estate.

(22) Who had children from his first wife.

(23) Since the first son from the second marriage is only the wife's firstborn, not his.

(24) And the son is firstborn on both sides.

(25) Deut. XXI, 17. The whole clause being superfluous. לו 'his' is interpreted as referring to the father.

(26) Lit., ‘whence these words?’
(27) Supra 109b.
(28) Num. XXVII, 11.
(29) Lit. rendering of the clause translated in the versions, ‘and he shall possess it’ (ibid.). V. following note.
(30) The pronoun אותה is taken here to refer to ‘his kinsman’, denoting ‘wife’.
(31) The Pentateuchal text does not read, ‘ye shall give her inheritance to her husband’, but, ye shall ‘sire his inheritance unto his kinsman, and ‘kinsman’ has been interpreted as ‘wife’. This, therefore, implies that the wife is heir to her husband
(32) According to Abaye's exposition the text is broken up words are transposed. and a wholly, unnatural and arbitrary interpretation is the result.
(33) Reading, ונתתם את נחלתו לשארן instead of ונתתם את נחלת שארו לו
(34) A ו is detached from נחלתו and a ל from לשארו to form a new word, לו, thus obtaining the required reading and interpretation. V. previous note.
(35) Lit., ‘this’.
(36) The law that a husband is heir to his wife.
(37) Lit., ‘from here’.
(38) Num. XXVII, 11.
(39) There is no need to infer the law from Num. XXVII, 11, and thus to subject the Biblical text to forced interpretation.
(40) Num. XXXVI, 8.
(41) Scripture is warning a daughter, who has inherited an estate, that she must marry one of her own tribe, for, if she marry into another tribe, her estate, on her death, will be inherited by her husband and thus pass over from the estates of her own tribe to those of another. This clearly proves that a husband is heir to his wife; for, otherwise, a daughter inheriting an estate would be free to marry into any other tribe.
(42) Ibid. 7.
(43) Ibid. 9.
(44) Josh. XXIV, 33.
(45) Phinehas was the son of Eleazar from whom he would presumably inherit after his death. How, then, did Phinehas possess a hill at the very moment his father died?
(46) The mention of a hill that belonged to Phinehas.
(47) I Chron. II, 22.

Talmud - Mas. Baba Bathra 112a

Whence could Jair possess [cities] which did not belong to Segub?[1] [But] this[2] teaches that Jair took a wife who died, and he was her heir.

[For] what [purpose is] ‘furthermore it is said’ [required]?[3] — In case it be said[4] that Scripture is only concerned for a transfer [through] the son,[5] but that a husband was not heir [to his wife]. proof was brought from,[6] So shall no inheritance of the children of Israel remove front tribe to tribe.[7] And in case it be said,[8] its[9] purpose is [to teach that] one would transgress thereby [both] a negative[10] and a positive[11] [precept],[12] proof was brought from,[13] So shall no inheritance remove from one tribe to another tribe.[14] And in case it is said[15] that the purpose of this is [to teach that] one would transgress two negative [precepts] and [one] positive, proof was brought from,[13] And Eleazar the son of Aaron died etc.[16] And in case it be said[15] that it was Eleazar who took a wife who died, and [that it was] Phinehas [who] was her heir,[17] proof was brought from,[8] and Segub begat fair etc.[18] And in case it be said,[15] ‘There, also, the same thing may have happened’[19] [it may be replied]: If so, why two Scriptural verses?[20] R. Papa said to Abaye: Wherefrom?[21] Is it not indeed possible to maintain [that] a husband is not heir [to his wife]? As to the Scriptural verses, these may speak of a transfer through the son, as interpreted [above]; and that Jair may have bought [the cities]; and Phinehas, [also], may have bought [the hill]?[22] — He replied unto him: It cannot be said that Phinehas had bought [the land], for, if so, it would follow that the field must return in the jubilee year,[23] and the righteous man[24] would thus be buried in a grave which was not his own.[25] — But say that it may have fallen to

him as a field devoted?[26] — Abaye replied: After all,[27] the inheritance[28] would be removed[29] from the tribe of the mother to the tribe of the father![30] But how![31] Is it not possible that that case[32] is different[33] because [the estate] had already been transferred?[34] — He said to him: [The argument]. 'because it had already been transferred' is rather weak.[35]

R. Yemar said to R. Ashi: If [the argument], 'because it had already been transferred' is to be used,[36] one can very well understand the verse[37] [as having reference] either to transfer through the son or to transfer through the husband;[38] if, however, it is said that [the argument] 'because it had already been transferred', is not to he used, [of] what benefit is [it] when she is married to a man of the family of her father's tribe? Surely the inheritance is removed from the tribe of her mother to that of her father! — She may he given in marriage to a person whose father is of the tribe of her father, and his mother of the tribe of her mother.

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(1) Cf. supra n. 11.

(2) The statement that fair had cities which were his own property independent of that of his father.

(3) Supra 111b. Why five Biblical quotations in addition to the first one from Num. XXXVI, 8?

(4) Lit., 'and if you will say'.

(5) I.e that the prohibition against marrying into another tribe was solely due to the fact that the son who is heir to his mother would cause the transfer of the estate from his mother's tribe to that of his.

(6) Lit., 'come and hear'.

(7) Num. XXXVI. 7. Since this verse is superfluous, being practically a repetition of the verse following it, it must be taken to refer to another case of transfer. If XXXVI. 8 has reference to the son, XXXVI. 7 must have reference to the husband.

(8) V. p. 463, n. 17.

(9) Of Num. XXXVI. 7.

(10) so shall no inheritance remove etc.

(11) Shall be wife etc (Num. XXXVI, 8).

(12) But a husband cannot be heir to his wife.

(13) V. n. 1.

(14) Num. XXXVI, 9.

(15) V. p. 463, n. 7.

(16) Josh. XXIV, 33.

(17) Heir to his mother in the lifetime of his father, Eleazar, who, though her husband, was not entitled to be her heir.

(18) I Chron. II, 22.

(19) I.e., fair may have been heir to his mother; not Segub to his wife.

(20) One verse is quite sufficient to teach that a son is heir to his mother. The other, then, must serve the purpose of teaching that a husband also is heir to his wife.

(21) I.e., what proof is there from the verses quoted that a husband is heir to his wife?'

(22) And it was his not by inheritance from a wife but by right of purchase. [The question, 'Why two Scriptural verses?' does not apply here as it is usual for the Bible to record and register acquisitions by individuals. (Rashb.)]

(23) To its original owner. V. Lev. XXV, 13. In this year of the jubilee ye shall return every man unto his possession.

(24) Eleazar.

(25) Hence it cannot be assumed that the field in which Phinehas had buried his father was a purchased one.

(26) שדה החרם a field devoted, always remains in the possession of the priest (Lev. XXVII, 21, and Num. XVIII, 14). Consequently, the land which Phinehas possessed in the lifetime of his father need not be assumed to have been an inheritance at all; what proof, then, is there for the assertion that a husband is heir to his wife?.

(27) If it he assumed that a husband is not heir to his wife.

(28) Of a daughter to whom it was bequeathed by her mother.

(29) On the marriage of the daughter unto one of the tribe of her father.

(30) What safeguard, then, against the transfer of property from one tribe to another would have been provided by Num. XXXVI, 8 (cf. supra 111b). which requires every daughter that possesseth an inheritance to be married to one of the family of the tribe of her father? While this provision prevents the transfer from the tribe of a father to that of another, it

does not prevent the transfer from a mother's tribe! Consequently, if it he assumed that the transfer is effected through the husband, i.e., that the husband is heir to his wife, provision against the transfer may be made on the lines mentioned below; if, however, it be assumed that the husband is not heir, and that the transfer is effected through the son, what provision against this can be made? This, therefore, urges Abaye, is proof that Num. XXXVI, 8, teaches the law that a husband is heir to his wife.

(31) Lit. , 'from what' i.e., the proof is not conclusive.

(32) The transfer of a mother's inheritance to another tribe.

(33) From that of the transfer to another tribe of a father's inheritance.

(34) A mother's estate, as soon as the daughter inherits it, is removed from the mother's tribe to that of the daughter who belongs to her father's tribe. Consequently it does not matter whether the daughter subsequently marries one from her mother's tribe or not. What proof, then, is there from Num. XXXVI, 8, that a husband is heir to his wife?

(35) Lit., 'we do not say'. Though a partial transfer takes place when a daughter inherits an estate from her mother, it does not follow that this must have the way for a complete transfer to another tribe. The daughter belongs, at least partly, to the tribe of her mother but her son is an entire stranger to that tribe. Consequently there remains the question. What safeguard was provided against the transfer from the mother's tribe?

(36) With the result that we are not concerned with the transfer from the mother's tribe.

(37) Num, XXXVI, 8, And every daughter that possesseth etc.

(38) I.e., owing to one or other of these possibilities of transfer from the father's inheritance to another tribe, a daughter inheriting an estate must marry one of her father's tribe.

Talmud - Mas. Baba Bathra 112b

If so,[1] that [verse][2] should have [read], 'To one of the family of the tribe of her father and her mother'! — If it had been written thus, even the reverse[3] might have been assumed, hence[4] the need for the present reading.[5]

It was taught [that a daughter inheriting an estate must marry one of her father's tribe in order to prevent] transfer [from tribe to tribe] through the son; and it was [also] taught [that the object is to prevent] transfer through the husband. 'It was taught [that the object is to prevent] transfer through the son': [For it is written]. So shall no inheritance of the children of Israel remove from tribe to tribe.[6] Scripture speaks [here] of transfer through the son. Thou sayest [that it speaks] of a transfer through the son, perhaps [it speaks] only[7] of a transfer through the husband? — Since it was said, so shall no inheritance remove front one tribe to another tribe,[8] behold transfer through the husband has been spoken of, to what, then, shall one apply, so shall no inheritance of the children of Israel remove from tribe to tribe?[9] [It must be assumed, therefore, that] Scripture speaks [here] of transfer through the son.

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(1) That the man she marries must belong both to her mother's, as well as to her father's tribe.

(2) Num. XXXVI, 8.

(3) When his father belongs to the tribe of her mother, and his mother to the tribe of her father, involving the complete transference from her father's tribe to that of her mother's, the tribe of her husband's father,

(4) To teach that his father must be of the same tribe as her father.

(5) Lit., 'he teaches us'.

(6) Num. XXXVI, 7.

(7) Lit., 'or it is not, but'.

(8) Ibid. 9.

(9) Ibid, 7.

Talmud - Mas. Baba Bathra 113a

It was taught in another Baraitha: So shall no inheritance remove from tribe to tribe.[1] Scripture speaks [here] of a transfer through the husband. Thou sayest [that it speaks] of a transfer through the

husband, perhaps [it speaks] only[2] of a transfer through the son? — Since it was said, so shall no inheritance of the children of Israel remove from tribe to tribe,[3] behold, transfer through the son has been spoken of, to what, then, shall one apply, so shall no inheritance remove from one tribe to another tribe?[1] [It must be assumed, therefore, that] Scripture speaks [here] of transfer through the husband.

Both,[4] at all events, [agree that] in, from one tribe to another tribe,[1] Scripture speaks of transfer through the husband; how [is this] to be inferred?[5] — Rabbah son of R. Shila said: Scripture states, Ish.[6] Is not Ish written in both?[7] — But, said R. Nahman b. Isaac, Scripture states, shall cleave.[8] Is not [the phrase], shall cleave, written in both?[9] But, said Raba; Scripture states. The tribes shall cleave.[10] R. Ashi said: Scripture states. from One tribe to another tribe,[11] but a son is not [of] another.[12]

R. Abbahu said in the name of R. Johanan. in the name of R. Jannai, in the name of Rabbi (and some trace it to[13] R. Joshua b. Korha): Whence [is it proved] that a husband does not receive [as heir] the prospective [estate of his wife][14] as [he does] that which was [already] in [her] possession? It is said, And Segub begat Jair, who had three and twenty cities in the land of Gilead;[15] whence could Jair possess [cities] which did not belong to Segub?[16] But this teaches that Segub took a wife and she died in the lifetime of those whose heiress she would have been;[17] and when these died, Jair inherited her [estate].[18] Furthermore it is said, And Eleazar the son of Aaron died; and they buried him etc.[19] Whence could Phinehas possess [a hill] which did not belong to Eleazar?[20] But this teaches that Eleazar took a wife, who died in the life-time of those whose heiress she would have been,[21] and when these died, Phinehas inherited her [estate].[22] [For] what [purpose is]'furthermore it is said' [required]?[23] — In case it be said that it was Jair who took a wife who died,[24] and that he inherited from her, it is, therefore, expressly stated, and Eleazar the son of Aaron died.[19] And in case it he said that it may have fallen to him[25] as a field devoted.[26] Scripture states, his son[20] [which implies that] the inheritance was due to him[27] but his son inherited it.[28]

AND THE SONS OF A SISTER. A Tanna taught:[29] The sons of a sister[30] but not the daughters of a sister.

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(1) Ibid. 9.

(2) V. p. 446, n. 10.

(3) Ibid. 7.

(4) Lit., 'all the world': the Tannaim in the two Baraithoth quoted.

(5) A mnemonic sign seems to have been omitted here from the text, the word Siman, 'sign', only remaining (v. Emden's note a.l.).

(6) **איש** may he rendered 'husband' as well as man'.

(7) Ibid. 7 and 9.

(8) The same expression, 'shall cleave', is used of a husband elsewhere, and shall cleave unto his wife (Gen. II, 24).

(9) V. note 8.

(10) Heb. **ידבקו מטות** (Num. XXXVI. 9), while in v. 7. these words are separated. The members of the tribe are united through their fathers, hence the verse mist be speaking of fathers, i.e., husbands.

(11) Ibid. 9.

(12) Hence, Num. XXXVI, 9, must have reference to the case where the husband is heir.

(13) Lit., 'and they arrived in it (so far as to quote it) in the name of'.

(14) An estate, e.g.. bequeathed by her father whom she predeceased. Had her father died first, she would have inherited from him, and her husband would have inherited from her.

(15) I Chron. II, 22.

(16) Cf. p. 463, n. 11.

(17) Lit., 'those who cause her to inherit'.

(18) Which she would have inherited had she been alive. This proves that prospective estates are not inherited by the

husband but by the son.

(19) Josh. XXIV, 33.

(20) v. p. 463. n. 11.

(21) V. supra n. 3.

(22) V. supra n. 4.

(23) Why is not the evidence from Segub and fair sufficient?

(24) V. supra 112a.

(25) Phinehas.

(26) V. p. 465. n. 4.

(27) To Eleazar; his wife had survived the relative from whom the hill was inherited.

(28) Because Eleazar's wife pre-deceased the relative to whom the hill belonged. This proves that a prospective estate is not inherited by the husband, but by the son.

(29) Infra 115a.

(30) Inherit from the brother of their mother.

Talmud - Mas. Baba Bathra 113b

. [In respect] to what Law?[1] — R. Shesheth said: In respect of precedence,[2] [as] R. Samuel b. R. Isaac recited before R. Huna: [Since it is said], and he shall possess it,[3] the inheritance [mentioned] second[4] is to be compared to the one [mentioned] first[5] ; as [in the case of] the inheritance [mentioned] first, a son takes precedence over a daughter so, [in the case of] inheritance [mentioned] second,[6] a son takes precedence over a daughter.[7]

Rabbah b. Hanina recited [a Baraitha] before R. Nahman:[8] [Since it is written], Then it shall be, in the day that he causeth his sons to inherit,[9] an inheritance[10] may be divided[11] in the daytime but not at night.

Abaye said unto him: 'If that is the case,[12] would children be heirs only to him who died in the daytime, but not to him who died at night?[13] [You mean], perhaps, [the administration of] the law[s] of inheritance;[14] as it was taught: [With the Biblical announcement] And it shall be unto the children of Israel a statute of judgment,[15] the whole section[16] has been proclaimed to be [of a] judicial [character].[17] And [this, in fact is] in accordance with Rab Judah who said: Three [persons] who came to visit[18] a sick man may, if they wish, [either] write down [his instructions. with reference to the disposal of his estate[19] or], if they prefer it, give judgment.[20] Two [persons] may write down [the testator's instructions] but may not give judgment.[21] And R. Hisda commented: This applies only[22] to daytime;

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(1) Surely daughters inherit from their mother where there are no sons; and since their mother is heiress to her brothers (where there are no living brothers), they also, who are her heiresses, should, in such a case, be entitled to the inheritance of their uncles!

(2) Lit., 'to precede'. i.e., where there are brothers and sisters, the former are to be the heirs of their uncles, not the latter.

(3) Num. XXVII, 11. אותה referring to 'inheritance' mentioned in verse 8.

(4) I.e., the second or any of those following in order of succession.

(5) The inheritance from a father.

(6) Or any of the cases of inheritance mentioned.

(7) The order of precedence is consequently as follows: Son, daughter, brother, sister, brother's son, brother's daughter. If, however, one brother of the deceased has a son and another brother has a daughter, the nephew and niece inherit equally the respective shares of their fathers, the brothers of the deceased.

(8) V Sanh. 34b.

(9) Deut. XXI, 16.

(10) Lit.. 'inheritances

(11) Lit., 'thou causest to fall'.

(12) Lit., 'but from now', Abaye assumed Rabbah to interpret the Baraitha in the sense that a distribution of shares of an inheritance takes place only when death occurred in the daytime.
(13) Surely, this is impossible.
(14) That lawsuits relating to matters of inheritance must be dealt with by the court in the daytime only; as is the case with other civil lawsuits. Cf. Jer. XXI, 12, Execute justice in the morning.
(15) Num. XXVII, 11.
(16) Num. XXVII, 1-11 dealing with the laws of inheritance.
(17) And not of a private nature which is the concern of individuals, judicial proceedings, therefore, with respect to an inheritance must conform to the procedure relating to other civil law cases.
(18) I.e., they did not come at the express bidding of the testator to act as witnesses. for in that case they would become unqualified to act as judges (Rashb.); p. 470 n. 4.
(19) And thus act as his witnesses.
(20) Lit., 'execute judgment'. A quorum of three is the minimum required for a laycourt of law. By forming themselves into a court, they legally confirm the instructions of the testator, and by issuing their verdict prevent the heirs from any further litigation.
(21) Two, being less than the quorum required for the constitution of a court of law, can only act as witnesses.
(22) Lit., 'they have not taught but'.

Talmud - Mas. Baba Bathra 114a

at night, however, even three [persons] may [only] write down [instructions] but are not [permitted] to constitute themselves into a court.[1] What is the reason? Because they have become witnesses,[2] and a witness may not act as a judge'.[3] — He said unto him: 'Yes, I indeed mean the same'.[4]

It was stated: [With regard to symbolical] acquisition,[5] how long[6] may one withdraw?[7] — Rabbah said: So long as the session[8] is in progress. R. Joseph said: So long [only] as they are dealing with that subject.

R. Joseph said: Logical reasoning supports my view. For Rab Judah said:[9] Three [persons] who came to visit a sick man may, if they wish, [either] write down [his instructions with reference to the disposal of his estate, or], if they prefer it, give judgment.[10] Now, if it is assumed[11] [that the testator may withdraw] during the whole time the session is in progress, [how can they give judgment?[12] Surely it may he apprehended that he might withdraw![13] — R. Ashi said: Discussing this tradition in the presence of R. Kahana, [I argued:] Is this[14] right, then, according to R. Joseph? Surely [according to his view also], it may be apprehended that he[15] might withdraw![16] But what have you to say [in reply]?[17] That they[18] would he passing

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(1) Even on the following day.
(2) At night, when listening to the testator's instructions, they were unqualified to act as judges and have thus inevitably become witnesses. cf. 469, n. 14.
(3) Thus it has been proved that matters of inheritance, like other civil law cases, require a law court of three and may be heard in the day-time only.
(4) Lit., 'I say so also'.
(5) Symbolical acquisition is one of the forms of binding a party or parties to an agreement or an arrangement it is effected by handing over a scarf or some similar object is the person whose word thus becomes legally confirmed. V. Halifin, v. glos. s. v.
(6) Lit., 'until when'.
(7) And cancel or change the agreement.
(8) Of the court that dealt with the matter.
(9) Supra 113b.
(10) V. p. 469, n. 16 supra.
(11) Lit., 'if it enters your mind'.

(12) Which has the power to make the testator's instructions legally and irrevocably binding at once.
(13) Before the session was over, the testator might change his mind, and thus annul all the work of the court.
(14) The statement of Rab Judah which R. Joseph quoted in support of his view.
(15) The testator.
(16) While the court was still dealing with the matter.
(17) According to R. Joseph.
(18) The members of the court.

Talmud - Mas. Baba Bathra 114b

from one subject to another![1] Here also[2] [it may he replied that they] stand up[3] and then sit down again.[4]

The law is in accordance with [the view] of R. Joseph in the case of Field,[5] Subject[6] and Half.[7]

A WOMAN [TRANSMITS HER ESTATE TO] HER SONS etc. For what [purpose is] this [statement] also required? Surely it has been taught [already] in an earlier clause [that] A MAN [INHERITS FROM] HIS MOTHER AND [FROM] HIS WIFE![8] — It teaches us[9] this: That [the transmission of the estate of] a woman [to] her son is [to be] in the same manner as [the transmission of the estate] of a woman [to] her husband. As [in the case of the transmission of the estate of a] wife [to] her husband, the husband is not heir to his wife in the grave,[10] so [in the case of the transmission of the estate of] a woman [to] her son, the son in the grave does not inherit from his mother to transmit [the inheritance] to [his] brothers on his father's side.[11]

R. Johanan said in the name of R. Judah son of R. Simeon: [It is] the word of the Torah [that] a father is heir to his son and [that] a woman is heir to her son, for it is said, tribes,[12] [which implies that] the tribe of the mother is compared to the tribe of the father; as [in the case of] the father's tribe a father is heir to his son, so [in the case of] the mother's tribe, a woman is heir to her son.

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(1) And thus prevent the testator from withdrawing his instructions, and thus nullifying their work.
(2) In adopting the view of Rabbah.
(3) After receiving instructions from the testator, thus breaking up the session, before proceeding to give judgment.
(4) To issue the verdict. The testator is thus prevented from withdrawing, since the session which had dealt with his case has terminated.
(5) When one of the heirs has a field adjoining the field that is to be divided (cf. supra 12b).
(6) 'So long as they are dealing with the same subject' (the case under discussion).
(7) The case where a testator expressed the wish that his estate be divided between his wife and his son. The widow, according to R. Joseph, is entitled to half the estate (cf. infra 143a).
(8) Since the earlier clause enunciated the laws that a son inherits from, and does not transmit to his mother, and that a husband also inherits from, and does not transmit to his wife, what need is there for the clause stating that 'a woman transmits her estate to her son and to her husband, but does not inherit from them', which, though in different words, is a mere repetition of the laws in the earlier clause?
(9) By the addition of the superfluous clause.
(10) A wife in the grave does not inherit from her father (whom she predeceased), to transmit the inheritance to her husband. Cf. supra 113a, 'a husband does not receive as heir the prospective estate of his wife as he does that which was already in her possession.
(11) Brothers born not from the same mother, but from the same father only. As to the 'mother's brothers' in the same clause, this is repeated incidentally to the preceding two.
(12) Num. XXXVI, 9. Cf. ibid 8.

Talmud - Mas. Baba Bathra 115a

R. Johanan pointed out to R. Judah son of R. Simeon [the following objection: Have we not learnt]. A WOMAN [TRANSMITS HER ESTATE TO] HER SONS AND [TO] HER HUSBAND [BUT DOES NOT INHERIT FROM THEM]; AND MOTHER'S BROTHERS TRANSMIT [THEIR ESTATES TO THEIR NEPHEWS] BUT DO NOT INHERIT [FROM] THEM?[1] — He replied to him: As to our Mishnah, I do not know who is its author![2] But why did he not say[3] to him [that] it[4] [may represent the views of] R. Zechariah b. Hakkazzab who does not expound, tribes?[5] — Our Mishnah cannot be upheld as [representing the views of] R. Zechariah h. Hakkazzab, for it teaches, AND SISTERS'[6] SONS. And a Tanna taught[7] [that this implies] sisters'[6] sons [only], but not sisters'[6] daughters; and the question was asked,[8] 'In respect to what law?' And R. Shesheth answered, 'In respect of precedence'.[9] Now, if it were assumed that our Mishnah was [a representation of the views of] R. Zechariah b. Hakkazzab. [it could rightly have been objected]: Surely, he said, 'Both a son and a daughter [have] equal [rights] in [the inheritance of] a mother's estate'![10]

[As to] the Tanna of our [Mishnah], how are his views to be reconciled?[11] If he expounds, tribes, a woman also should he heir to her son;[12] if he does not, whence does he [deduce the law] that a son takes precedence over a daughter in [inheriting] his mother's property?[13] — He does, in fact,[14] expound, tribes,[15] but here,[16] [the case] is different, for Scripture says, And every daughter, that possesseth an inheritance[17] [from which it is to he inferred that] she may inherit from,[18] but not transmit[19] to [her mother].[20]

MISHNAH. THE ORDER OF SUCCESSION[21] IS AS FOLLOWS: IF A MAN DIE, AND HAVE NO SON, THEN YE SHALL CAUSE HIS INHERITANCE TO PASS UNTO HIS DAUGHTER.[22] A SON TAKES PRECEDENCE OVER A DAUGHTER. ALL LINEAL DESCENDANTS[23] OF A SON[24] TAKE PRECEDENCE OVER A DAUGHTER.[25] A DAUGHTER TAKES PRECEDENCE OVER THE BROTHERS.[26] LINEAL DESCENDANTS[27] OF A DAUGHTER [ALSO] TAKE PRECEDENCE OVER THE BROTHERS. BROTHERS TAKE PRECEDENCE OVER THE BROTHERS OF THE FATHER.[25] LINEAL DESCENDANTS[28] OF BROTHERS [ALSO] TAKE PRECEDENCE OVER THE BROTHERS OF THE FATHER.[27] THIS IS THE GENERAL RULE: THE LINEAL DESCENDANTS OF ANY ONE WITH A PRIORITY TO SUCCESSION[29] TAKE PRECEDENCE. A FATHER TAKES PRECEDENCE OVER ALL HIS DESCENDANTS.[30]

GEMARA. Our Rabbis taught: [It is written,] son,[31] [from which] one only learns that[32] a son [has a prior claim to heirship]; whence [may it he deduced that] a son of the son, or a daughter[33] of the son, or a son of the daughter of the son [has the same rights]? — It is expressly stated, En lo[34] [which is taken to imply], 'hold an enquiry[35] concerning him'.[36] [It is written] daughter,[37] [from which] one only learns that[32] a daughter [is next in succession to a son]; whence [may it he deduced that] a daughter of the daughter. and the son of a daughter and a daughter of the son of the daughter [have also the same rights]? — It is expressly stated, En lo[34] [which is taken to imply], 'hold an enquiry[35] concerning him'[36]

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(1) Which clearly shows that a woman cannot be heir to her son.

(2) It is unreliable.

(3) Lit., 'and let him say'.

(4) Our Mishnah,

(5) Supra 111a.

(6) Some read, 'a sister's'.

(7) Supra 113a.

(8) Supra 113b.

(9) If there are nephews and nieces, the former, not the latter, are the heirs of their uncles.

(10) Since the children of a sister become heirs to their uncles, through their mother's right of inheritance, nephews and nieces (i.e., the sons and daughters of the uncles' sister) should have equal rights in their uncles' estates just as they have

them in the case of their mother's estate. Our Mishnah which gives nephews precedence over nieces cannot, therefore, represent the views of R. Zechariah.

(11) Lit., 'from whatever (be) your opinion'. i.e., whatever view be adopted there is a difficulty.

(12) As has been deduced from tribes, supra 114b, end.

(13) This law also has been deduced, (supra 111a, end), from the expression tribes,

(14) Lit., 'always'.

(15) Hence his view that a son takes precedence (V. n. 3, supra).

(16) The proposed deduction from the expression, tribes, that a mother is heir to her son,

(17) Num. XXXVI, 8, and this verse deals with a daughter who is heir to her mother, as explained, supra 111a.

(18) יורשת yoresheth, is the expression used in the Biblical verse.

(19) מורשת Moresheth,

(20) And as a daughter does not transmit her estate to her mother, so also a son; hence the law in our Mishnah that a mother is not heir to her son.

(21) Lit., 'inheritances'.

(22) Num. XXVII, 8.

(23) Lit., 'those who came out of his loins'.

(24) His sons, grandsons, or any male descendants of these, no matter how many generations removed from the deceased.

(25) Of the deceased.

(26) (V. previous note) and also over his father,

(27) Lit., 'those who came out of her loins'.

(28) Cf. previous note and n. 13.

(29) If he predeceased them.

(30) I.e., the brothers and sisters of his deceased son, and their descendants. He has, however, no claim at all if his deceased son is survived by his own sons or daughters or any of their lineal descendants.

(31) Num. XXVII. 8.

(32) Lit., 'I only have'.

(33) Where there is no son, a son of the son, or a son of the daughter of the son,'

(34) Ibid. אין לו.

(35) Ayayn examine', 'search', 'investigate'. 'Aleph (א) and 'Ayin (ע) are interchangeable.

(36) The deceased; i.e., inquire whether he has been survived by descendants or any descendants of his descendants who might claim to succeed to his estate.

(37) Ibid.

Talmud - Mas. Baba Bathra 115b

. In what manner [is] this [enquiry carried out]? — [In a manner that] the estate may ultimately find its way[1] to Reuben.[2] Let him say. 'to Jacob'![3] — Abaye replied: We have it by tradition that no tribe would become extinct.

R. Huna said in the name of Rab: Anyone, even a prince in Israel, who says that a daughter is to inherit with the daughter of the son, must not he obeyed; for such [a ruling] is only the practice of the Sadducees. As it was taught: On the twenty-fourth of Tebeth we returned to our [own] law;[4] for the Sadducees having maintained [that] a daughter inherited with the daughter of the son, R. Johanan h. Zakkai joined issue with them. He said to them: 'Fools, whence do you derive this?' And there was no one who could reply a word, except one old man who prated at him and said: 'If the daughter of his son, who succeeds[5] [to an inheritance] by virtue of his son's right, is heir to him, how much more so his daughter who derives her right from himself!' He[6] read for him this verse, These are the sons of Seir the Horite, the inhabitants of the land: Lotan and Shobal and Zibeon and Anah,[7] and [lower down] it is written, And these are the children of Zibeon: Aiah and Anah![8] — [But this] teaches that Zibeon had intercourse with his mother and begat Anah.[9] Is it not possible that there were two [called] Anah? — Rabbah said: I would say something which King Shapur[10] [could] not have said;

— and who is he? — Samuel; others say [that it was] R. Papa [who] said: I would say something which King Shapur [could] not have said — and who is he? — Raba;[11] 'Scripture says: This is Anah, [implying]: The same Anah that was [mentioned] before' — He said unto him: O, master, do you dismiss me with such [a feeble reply]?[12] — He said to him: Fool,

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(1) Lit., 'goes on groping'.

(2) The first ancestor of the tribe. As inquiries have to be made for descendants so, if no surviving descendants can be traced, similar inquiries have to be instituted for paternal ancestors and their rightful heirs. If, for example, the deceased has neither issue, nor a surviving father, brother, nephew (brother's son), niece, sister, nephew (sister's son); and none of the descendants of these is alive. And if inquiry has also established that there exists no surviving father's father, nor father's brother, father's nephew (father's brother's son), father's sister, nor nephew (father's sister's son), further inquiries must be carried on in descending order. Once it has been definitely established that none of the line survives, enquiries are instituted in an ascending order, on the paternal side, and are carried on from father (including their heirs, as in the case of the descending line), until the first ancestor of the tribe is reached. There is no need to go any higher since if any single member of the tribe survived his relationship to the deceased could be established.

(3) Why only as far as Reuben?

(4) The Sadducees recognised that the Rabbis were right, and the latter, therefore, were again to administer the law in accordance with their views.

(5) Lit., 'comes'.

(6) R. Johanan.

(7) Gen. XXXVI, 20.

(8) Ibid. v. 24. How could Anah be a son and a brother to Zibeon?

(9) Anah was consequently his son and, being a son of his mother, also his brother. Anah, though a grandchild of Seir, is described as of the inhabitants of the land (Gen. XXXVI, 20) which proves that grandchildren have the same right of inheritance as children.

(10) Shapur I, a king of Persia, was known for his friendship with Samuel, and the title was sometimes used as a surname of the latter. Raba also was sometimes so surnamed on account of his friendship with Shapur II.

(11) [So Ms. M.; cur. edd., Rabbah!]

(12) My point is that a son'S daughter has no more rights than a daughter, and you bring an instance from the law of a son's son which the Sadducees do not dispute.

Talmud - Mas. Baba Bathra 116a

shall not our perfect Torah be as [convincing] as your idle talk![1] [Your deduction is fallacious for] the reason[2] why a son's daughter [has a right of inheritance is] because her claim is valid where there are brothers,[3] but can the same he said of the [deceased's] daughter whose right [of inheritance] is impaired where there are brothers?[4] Thus they were defeated. And that day was declared a festive day.[5]

And they said: 'They that are escaped must be as an inheritance for Benjamin[2] , that a tribe be not blotted out from Israel',[6] R. Isaac of the school of R. Ammi said: [This] teaches that a stipulation was made concerning the tribe of Benjamin that a son's daughter is not to be heir [together] with [his] brothers.[7] R. Johanan said in the name of R. Simeon b. Yohai: The Holy One, blessed be He, is filled with anger against any one who does not leave a son to he his heir. [For] here it is written, And you shall cause his inheritance to pass,[8] and there it is written, That day is a day of wrath.[9]

Such as have no changes, and fear not God;[10] R. Johanan and R. Joshua b. Levi [are in dispute as to the exposition of this text]. One says: Whosoever does not leave behind a son.[11] And the other says: Whosoever does not leave a disciple.[11] It may he proved [that it was] R. Johanan who said 'a disciple'; for R. Johanan said:[12] This is the bone of my tenth son.[13] Thus it is proved that it was R. Johanan who said 'a disciple'. But since R. Johanan said, 'a disciple', R. Joshua b. Levi [must have] said 'a son'! [Is it not a fact,] however, that R. Joshua b. Levi did not go to a house of mourning

unless it was the house of him who died without leaving any sons, for it is written, But weep sore for him that goeth away,[14] and Rab Judah said in the name of Rab [that this means], 'he who goes [from the world] without [leaving] male children'?[15] — But [it must be] R. Joshua b. Levi who said, 'a disciple'. Since, however, it is R. Joshua b. Levi who said 'a disciple', R. Johanan must have said, 'a son', a contradiction [then arises again[16] between one statement] of R. Johanan and another statement of his?[17] — There is no contradiction; one [statement] is his own;[18] the other, his teacher's.

(Mnemonic[19] Hadad, Poverty, Sage.)

R. Phinehas b. Hama gave the following exposition: With reference to the Scriptural text, And when Hadad heard in Egypt that David slept with his fathers, and that Joab the captain of the host was dead,[20] why was [the expression of] 'sleeping' used in the case of David, and [that of] 'death' in the case of Joab? 'Sleeping' was used in the case of David because he left a son; 'Death' was used in the case of Joab because he left no son. Did not Joab leave a son? Surely, it is written, Of the sons of Joab, Obadiah the son of Jehiel![21] — But, [this is the reply,] with David who left a son like himself [the expression of] 'sleeping' was used; with Joab who did not leave a son like himself, 'death' was used.

R. Phinehas b. Hama gave the following exposition: Poverty in one's home is worse than fifty plagues, for it is said, Have Pity upon me, have pity upon me, O ye my friends; for the hand[22] of God hath touched me,[23] and his friends answered him, Take heed, regard not inquiry; for this hast thou chosen rather than poverty.[24]

R. Phinehas h. Hama gave the following exposition: Whosoever has a sick person in his house should go to a Sage[25] who will invoke [heavenly] mercy for him; as it is said: The wrath of a king[26] is as messengers of death,' but a wise man will pacify it.[27]

THIS IS THE GENERAL RULE: THE LINEAL DESCENDANTS OF ANY ONE WITH A PRIORITY TO SUCCESSION TAKE PRECEDENCE. A FATHER TAKES PRECEDENCE OVER ALL HIS DESCENDANTS. Rami b. Hama inquired: [With regard to the claims of] a father of the father[28] and a brother of the father,[28] as, for example, [the claims of] Abraham and Ishmael upon the possessions of Esau[29] , who takes precedence? — Raba said: Come and hear: A FATHER TAKES PRECEDENCE OVER ALL HIS DESCENDANTS.[30] And Rami b. Hama?[31] —

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(1) It was not intended, nor is there any need to dismiss you with what you call 'a feeble reply'. The purpose of the argument was that Anah was not the name of a male but that of a female (cf. Gen, XXXVI, 14), who was a daughter of Zibeon and a grand-daughter of Seir (cf. ibid, vv. 24 and 20). Since she was reckoned among the inhabitants of the land, i,e., one of those who inherited from Seir, sons' daughters must, consequently, have equal rights of succession in the estate of their grandfather. with his sons. Hence, 'your deduction is fallacious for the reason etc' (v. Tosaf. s.v. מלצד and Bah's glosses).

(2) Though the law is not Specifically enunciated in the Torah it may be inferred by logical deduction,

(3) Of her father.

(4) As she is not entitled to the inheritance where her brothers are alive, so she is not entitled to it when a brother is survived by a daughter.

(5) [In Megillath Ta'anith the date assigned for the celebration of this event is 24th Ab. For a full discussion of this discrepancy. v. Zeitlin, S., JQR 1919, 278ff. The attitude of the Sadducees in this controversy was prompted according to Geiger, אוצר נחמד III, I ff by their anxiety to defend against the attacks of the Pharisees the validity of Herodian succession to the Hashmonean throne through Mariamne, the daughter of Alexander and granddaughter of Hyrcanus; v. HUCA VII-VIII. 278ff.]

(6) Judges XXI, 17.

(7) In the estate of their father; but the surviving brothers are to inherit all the estate, including the share of their dead brother, though he is survived by a daughter. This provision had to be made at a time when only six hundred men of the

tribe of Benjamin survived (Judges XX. 47) all of whom had married wives from other tribes (Ibid. vv. 14, 23). The entire possessions of the tribe having been divided and distributed between six hundred men only, the share of each individual was considerable, being a six hundredth part of all the property of the tribe. Should any daughter have inherited such a share, and then have married a member of another tribe, a large portion of the lands of the tribe would have passed over to those of another tribe. Hence the provision that a son's daughter is to have no share in the inheritance. The law enjoining a daughter to marry within the tribe of her father is held to have been only a temporary measure and not binding upon subsequent generations; v. infra 120a.

(8) Num. XXVII, 8, והעברתם we-ha'abartem.

(9) Zeph. I, 15. עברה ‘ebrah. The root of this word, עבר is identical with that of והעברתם

(10) Ps. LV, 20.

(11) Changes, חליפות is rendered ‘a son (or a pupil) who takes his father's (or teacher's) place’.

(12) Ber, 5b.

(13) He carried with him a ‘bone’, which commentators understand to be a tooth, of his tenth dead son when going to comfort those who mourned the loss of a child. Now, if R. Johanan were of the opinion that Ps. LV, 20, has reference to a son, he would not have carried about that which stigmatised him as one who is not God-fearing.

(14) Jer. XXII, 10.

(15) If, then, R. Joshua said that such a person was not God-fearing, would he have gone to visit his house of mourning?

(16) V. n. 6.

(17) Lit., ‘on that of R. Johanan’.

(18) His own opinion is in agreement with that of R. Joshua b. Levi.

(19) The mnemonic is an aid to the recollection of the three sayings of R. phinehas b. Hama that follow.

(20) I Kings XI, 21.

(21) Ezra VIII, 9.

(22) This implies fifty plagues Ten plagues were inflicted on the Egyptians with one finger (V., Ex. VIII, 15). Job who was touched with five fingers (hand) must have been inflicted with fifty plagues

(23) Job XIX, 21.

(24) Ibid. XXXVI, 21. This, in the text, is taken to refer to Job's infliction, implying that poverty is even worse than all his fifty plagues.

(25) Lit., ‘wise (man),’ a scholar and saint.

(26) God's visitation.

(27) Prov. XVI, 14.

(28) Of the deceased.

(29) Abraham was the father, and Ishmael the brother of Isaac the father of Esau.

(30) He takes, therefore, precedence over a brother of the father of the deceased who is his descendant.

(31) Did he not know the law of our Mishnah?

Talmud - Mas. Baba Bathra 116b

In[1] his ingenuity he did not consider it[2] carefully.[3]

Rami b. Hama inquired: [Regarding the claims of] the father of his[4] father and his[4] brother as, for example. [the claims of] Abraham and Jacob upon the possessions of Esau, who takes precedence? — Raba said: Come and hear! A FATHER TAKES PRECEDENCE OVER ALL HIS DESCENDANTS.[5] And Rami h. Hama?[6] — [A father might take precedence over] HIS DESCENDANTS but not [necessarily over] the descendants of his son.[7] Logical reasoning [leads to] the same [conclusion]; for it is stated, THIS IS THE GENERAL RULE: THE LINEAL DESCENDANTS OF ANY ONE WITH A PRIORITY TO SUCCESSION TAKE PRECEDENCE. If, [then,] Isaac[8] had been [alive], Isaac would have taken precedence.[9] now, also, that Isaac [himself] is not [alive], Jacob[10] [should] take precedence.

MISHNAH. THE DAUGHTERS OF ZELOPHEHAD[11] TOOK THREE SHARES IN THE INHERITANCE [OF CANAAN]:[12] THE SHARE OF THEIR FATHER WHO WAS OF THOSE

WHO CAME OUT OF EGYPT,[13] AND HIS SHARE AMONG HIS BROTHERS IN THE POSSESSIONS OF HEPHER,[14] [WHICH CONSISTED OF TWO], SINCE HE[15] WAS A Flrstborn SON [WHO] TAKES TWO SHARES.[16] [

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(1) Lit., 'on account of', 'by way of'.

(2) His enquiry.

(3) He was thinking at the time of the next question.

(4) Of the deceased.

(5) Hence the deceased father's father takes precedence over the deceased brother who is also a descendant of his.

(6) V. supra n. 3.

(7) Hence Rami's inquiry.

(8) The father of the deceased.

(9) Being the nearest heir.

(10) The brother of the departed, being a lineal descendant of Isaac.

(11) V. Num. XXVII, 1\7.

(12) After Joshua's conquest.

(13) Canaan having been divided according to the number of those who came out of Egypt. V. infra.

(14) Zelophehad's father who also was among those who came out of Egypt.

(15) Zelophehad.

(16) Cf. Deut. XXI, 17.

Talmud - Mas. Baba Bathra 117a

GEMARA. Our Mishnah thus agrees[1] with [the opinion of] him who said [that] the land [of Canaan] was divided according 'to those who came out of Egypt.[2] For it was taught: R. Josiah said: The land [of Canaan] was divided according to those who came out' of Egypt,[2] for it is said, according to the names of the tribes of their fathers[3] they shall inherit.[4] To what, however, may [the verse], Unto these[5] the land shall be divided for an inheritance,[6] he applied? — Unto these, [means] 'like these',[7] excluding the minors.[8] R. Jonathan said: The land was divided according to those who entered the land,[9] for it is said. Unto these[5] the land shall be divided for an inheritance.[6] To what, however, may, according to the tales of the tribes of their fathers[3] they shall inherit, he applied? — [To the following:] This [manner of] inheritance is different from all [other modes of] inheritance[10] in the world; for, in [the case of] all [other] successions in the world, the living are heirs to the dead but, in this case, the dead were heirs to the living.[11] Rabbi said: I will give you an example to which this thing may be compared. To two brothers, priests, who were in one town. One had one son and the other had two sons, and these went to the threshing-floor.[12] He who has one son receives one portion, and the one who has two sons receives two portions. They[13] [then] return [with the three portions] to their father,[14] and re-divide [the total] in equal shares. R. Simeon b. Eleazar said:

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(1) Lit., 'we learnt (in our Mishnah)'.

(2) According to the number of men that left Egypt and not according to the number that entered Canaan. If. e . g . . one of those who came out of Egypt had five sons, while another had only one son, and these six sons entered Canaan, each of the five received only a fifth of his father's share while the one received his father's full share.

(3) Those who came out of Egypt.

(4) Num, XXVI. 55.

(5) Implying, those who entered the land.

(6) Ibid. 53.

(7) Referring to those that were numbered (ibid. 51), who were twenty years of age and upward.

(8) Under twenty. Only those who were at least twenty years of age at the Exodus were included in the number of those to whom the land was divided. Any one under twenty, when leaving Egypt, could only take the share of his father in part or in full according to whether he had brothers or not.

(9) Not according to the number of those who came out of Egypt. If, e . g . . two men came out of Egypt, and five sons of

the one and one son of the other entered Canaan, the former received five shares the latter only one.

(10) Lit 'inheritances'.

(11) Those who entered Canaan received shares according to their number, but the total of the shares was again divided in accordance with the number of their fathers who came out of Egypt. If two brothers, for example. came out of Egypt and died, and five sons of the one, and one son of the other entered Canaan, every son received a share, Six shares being allotted to the six sons. All these shares were then transferred to their fathers whose number was two (the dead being heirs to the living), and divided into two shares, each, of course, representing three of the original shares. The five sons thus received between them three of the original shares only, while the one son received for himself alone also three such shares.

(12) To collect their priestly dues.

(13) The two brothers.

(14) Whose estate has not yet been divided between them, in which case all acquisitions are pooled in the estate (cf. infra 137b). And since the three shares thus revert to their father, they inherit from him in equal shares.

Talmud - Mas. Baba Bathra 117b

The land was divided according to these[1] and according to those,[2] in order to carry out [the injunctions in] those two verses.[3] How [was] this effected? — He [who] was of those who came out of Egypt[4] received his share among those who came out of Egypt.[4] He [who] was of those who entered the land,[5] received his share among those who entered the land.[2] He who belonged to both categories,[6] received his share among both categories.[6]

The share of the spies[7] was taken by Joshua and Caleb. The murmurers[8] and the company of Korah[9] had no share in the land. Their sons,[10] [however.] received [shares] by virtue of the rights of the fathers of their fathers and the rights of the fathers[11] of their mothers.[12]

What proof is there that, according to the names of the tribes of their fathers[13] was written with [reference to] those who came out of Egypt. perhaps it[14] was said [with reference] to the tribes?[15] — Because it is written, And I will give it you for a heritage; I am the Lord,[16] [which means]: 'It is your inheritance from your fathers'; and this was addressed to those who [subsequently] came out of Egypt.

(Mnemonic:[17] To the more, Zelophehad, and Joseph, multiplied, Manasseh, shall be enumerated.)

R. Papa said to Abaye: According to him who said that the land was divided in accordance with [the number of] those who came Out of Egypt, it is correct for Scripture to say, To the more thou shalt give the more inheritance, and to the fewer thou shalt give the less inheritance,[18]

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(1) Those who came out of Egypt.

(2) Who entered Canaan.

(3) Num. XXVI, 53 and 55.

(4) But not among those who entered Canaan. If, e.g., he was twenty years of age when the Exodus took place, and he died before Canaan was reached, while his sons born on the way, in the wilderness, were still minors when Canaan was entered. In such a case the sons, as his heirs, divide between themselves the share to which he is entitled as one of those who were of age when the departure from Egypt took place.

(5) And not of those who came out of Egypt. In the case, e.g., when a father died in Egypt, and his sons, who were minors at the Exodus, were (twenty years) of age when Canaan was entered; or in the case when one left Egypt as a minor and died on the way, while his sons who were born in the wilderness were of age when Canaan was entered; in either of these cases every one of the sons, since he entered Canaan when of age, received a share in the inheritance of the land among all the others who received their shares by virtue of their entry into the promised land.

(6) Lit., 'from here and from here'. A case belonging to those who came out of Egypt as well as to those who entered Canaan. The case, e.g., of a father who was of age when the Exodus took place, dying in the wilderness, and his sons,

who were born in the wilderness, entering Canaan when of age. In such a case, the sons take portions in the land by virtue of their own rights. since they were among those who entered Canaan, and also the portion to which their father is entitled as one who was among those who came out of Egypt.

(7) V. Num. XIII.

(8) V. ibid. XIV.

(9) V. ibid. XVI.

(10) I.e., of the spies, the murmurers and the company of Korah,

(11) Who had no sons hut daughters.

(12) Provided the grandfathers were twenty at the Exodus.

(13) Ibid. XXVI, 55.

(14) The expression, tribes of their fathers.

(15) That the land was to he divided into twelve portions corresponding to the number of tribes,

(16) Ex. VI, 8.

(17) An aid to the recollection of the questions or inquiries of R. Papa that follow; in which each of these constitutes a key-word.

(18) Num. XXVI, 54. Since the land was not to be divided in accordance with the number of those that entered, it was necessary to state that the tribe that had a larger number at the Exodus was to receive a larger portion, though at the time of the division its numbers were reduced; and, similarly, in the case of a smaller tribe whose numbers had increased.

Talmud - Mas. Baba Bathra 118a

but according to him who said [that the division was made] in accordance with [the number of] those that entered the land, what [purpose does the instruction] 'To the more you shall give the more inheritance' [serve]?[1] — This is a difficulty.

R. Papa further said to Abaye: According to him who said [that the land was divided] in accordance with [the number of] those who came out of Egypt, one can well understand why the daughters of Zelophehad' complained,[2] but according to him who said [that the division was made] in accordance with [the number of] those that entered the land, why did they complain? Surely he was not there[3] that he should [he entitled to] receive [a share]![4] — But [their complaint was with reference] to the reversion[5] to, and [their right] of taking [a share] in the possessions of Hepher.[6]

According to him who said that [the land was divided] in accordance with [the number of] those that come out of Egypt, one can well understand why the sons of Joseph complained; as it is written, And the children of Joseph spoke;[7] but according to him who said [that the division was made] in accordance with [the number of] those that entered the land, why did they complain? Surely all of them had received [their respective shares]! — [They complained] on account of the many minors[8] they had [in their tribe].[9]

Abaye said: From this it is to be inferred [that there was not [even] one who did not receive [a share in the land]. For, should it enter your mind [to say that] there was one who did not receive [a share], would he not have complained?[10] And if it be said that Scripture recorded [the case of him only] who complained and benefited, but did not record [the case of anyone] who complained and did not benefit, [it may be retorted]: The children of Joseph, surely, complained and did not benefit, and [yet] Scripture recorded their case. There,[11] [it may be replied, Scripture desired] to impart to us good advice, [namely,] that a person should he on his guard against an evil eye. And this indeed is [the purpose] of what Joshua said unto them; as it is written, And Joshua said unto them: 'If thou be a great people, get thee up to the forest'.[12] [It is this that] he said to them: 'Go and hide yourselves in the forests so that an evil eye may have no power over you'.

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(1) If a share was to be given to each individual who entered the land, it clearly follows that the more the numbers the larger the inheritance of a tribe and vice versa!

(2) Zelophehad was among those who took part in the Exodus and they, therefore, claimed his share,
(3) Zelophehad was dead when Canaan was entered.
(4) Even if he had a son he would not necessarily have been entitled to his share as he might have been a minor at the time of the entry.
(5) Of the inheritance of Zelophehad's brothers to that of their father Hepher. (V. supra p. 480. n. II.)
(6) The inheritance having reverted to Hepher, all his sons, or (if dead) his grandsons would be entitled to have equal shares in it. If Zelophehad had a son he would have received an equal share with his father's brothers, plus the additional share of the firstborn. Since Zelophehad had no son, his daughters rightly claimed those shares.
(7) Josh. XVII, 14. They were at that time numerous and required large tracts of land, but what they actually received was too small for them, since it corresponded to the small number of their ancestors who lived at the time of the Exodus.
(8) Minors under twenty at the time of the entry into Canaan were not included in the number of those who received shares in the land.
(9) [Cf. Gen. XLIX, 22: Joseph is a fruitful vine (R. Gersh.)]
(10) And since Scripture does not record any such complaints, other than those of the daughters of Zelophehad and the children of Joseph, it must be concluded that, with these exceptions, all received their shares and had, therefore, no cause for complaint.
(11) The case of the children of Joseph.
(12) Josh.XVII, 15.

Talmud - Mas. Baba Bathra 118b

They said unto him, 'We are of the seed of Joseph over whom the evil eye has no power'. as it is written, Joseph is a fruitful vine, a fruitful vine by a fountain,[1] and R. Abbahu said: Do not render,[2] 'by the fountain,'[3] but 'those who transcend the eye'.[3] R. Jose son of R. Hanina said, [this[4] is inferred] from the following [verse]: And let them grow like fishes into a multitude in the midst of the earth.[5] [This means that] as the fishes in the sea are covered by the waters and no eye has any power over them, so, in the case of the seed of Joseph. no [evil] eye has [any] power over them.

'The share of the spies was taken by Joshua and Caleb'.[6] Whence is this[7] [derived]? — 'Ulla replied: [From] the Scriptural verse which states, But Joshua the son of Nun and Caleb the son of Jephunneh remained alive of those men[8] . What, [it may be asked, is meant by the expression.] 'remained alive'? If it means [that] they actually remained alive, surely another verse is already on record, [stating.] And there was not left a man of them, save Caleb the son of Jephunneh, and Joshua the son of Nun.[9] What, then [is meant by] 'remained alive'? They[10] lived[11] on[12] their[13] portion.

'The murmurers and the company of Korah had no share in the land'.[14] But has it not been taught [elsewhere]. 'Joshua and Caleb took the shares of the spies, of the murmurers and of the company of Korah'? — [This is] no difficulty: [one] Master compares the murmurers to the spies[15] [while] the other] Master does not compare the murmurers to the spies. For it was taught: Our father died in the wilderness.[16] refers to Zelophehad; and he was not among the company of them,[16] refers to the company of the spies; that gathered themselves together against the Lord,[16] refers to the murmurers; in the company of Korah,[16] bears the obvious meaning. [Thus, one] Master compares the murmurers to the spies[17] and [the other] Master does not.[18]

R. Papa further said to Abaye: But according to him who compares the murmurers to the spies, have Joshua and Caleb had [their shares] multiplied so [many times] that they inherited all the land of Israel?[19] — He said to him: We mean the murmurers in the company of Korah.[20]

R. Papa further said to Abaye: According to him who said that the land was divided in accordance with [the number of] those who came out of Egypt, it is correct for Scripture to state, And there fell tell parts to Manasseh.[21] [because] the six [parts] for [the] six houses of their fathers[22] and the four [parts] of these[23] are ten; but according to him who said that [the land was divided] in accordance

with [the number of] those who entered the land. [the number of the Parts] would only have been eight. [since] six [parts] for the six fathers' houses and two[24] [parts] of theirs are [only] eight! — And according to your reasoning were there [not] nine[25] [parts only] even according to him who said [that the division was] in accordance with [the number of] those who came out of Egypt? All, however, you can say in reply[26] is [that] they had [also a share of] one brother of [their] father, here[27] [then] also, [it may be said that] they had [the shares of] two brothers of [their] father. For it was taught: Thou shalt surely give them a [possession of an inheritance],[28] refers to[29] the inheritance of their father; among their father's brethren,[28] refers to[29] the inheritance of their father's father; and thou shalt cause the inheritance of their father to pass unto them,[28] refers to[29] the portion of the birthright.[30] R. Eliezer b. Jacob said: They also took the share of their father's brother.[31] for it is said, Thou shalt surely give.[32] But according to him who said [that] they had two father's brothers?[33] — That[34] is deduced from, a possession of an inheritance.[35]

R. Papa further said to Abaye: Whom[36] does Scripture enumerate?[37] If children are enumerated, there were [surely] more [than ten];[38] if fathers' houses are enumerated. [these] were [only] six![39]

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(1) Gen.XLIX, 22.

(2) Lit., 'read'.

(3) עין signifies both 'eye' and 'fountain', and עלי עין may, therefore, be rendered, 'by the fountain' (as E.V.) or, 'above the eye'. independent, or Immune from the power of the evil eye.

(4) That the descendants of Joseph are not to fear the evil eye.

(5) Gen. XLVIII, 16.

(6) Supra 117b.

(7) Lit., 'these words'.

(8) Num. XIV, 38.

(9) lbid. XXVI, 25. Two verses should not be required for the recording of one and the same fact.

(10) Joshua and Caleb.

(11) חיו מן האנשים ההם may be rendered. 'remained alive of those men' as well as, 'lived from among these men'.

(12) Lit., 'with'.

(13) The spies'.

(14) Supra 117b.

(15) As the spies had a share in the land so had the murmurers.

(16) Num. XXVII, 3.

(17) Since they were both referred to in the same verse.

(18) Maintaining that the adjectival clause, that gathered themselves together against the Lord, qualifies the previous word and has no reference to the murmurers.

(19) The shares of the murmurers must have extended over all the land. Cf. Num. XIV, 2, And all the children of Israel murmured etc.

(20) Cf. Num. XVII, 6. By a comparison of assembled בהקהל, (ibid. v. 7) with assembled ויקהל in Num. XVI, 19, 'And Korah assembled'. [The murmurers are also taken to belong to the company of Korah apart from the two hundred and fifty princes of the assembly (v. Strashun, S. Glosses. a.l.).]

(21) Josh. XVII, 5.

(22) Mentioned earlier in the text; v. Jos. XVII. 2.

(23) The daughters of Zelophehad who received four shares: two shares in the lands of Hepher, because their father Zelophehad (Hepher's son) was his firstborn; another share on behalf of Zelophehad himself who was one of those who left Egypt, and consequently among those to whom a share was allotted; and a fourth share which is to be explained in the Gemara, infra.

(24) The two portions to which their father Zelophehad was entitled as the firstborn son of Hepher. Not being one of those who entered the land of Canaan he could not be entitled to a share in the land on his own account.

(25) V. p. 485. n. 14.

(26) Lit., 'what have you to say?'

(27) In the case of him who said that the division was in accordance with those who entered.'
(28) Num. XXVII, 7.
(29) Lit., 'this is'.
(30) Zelophehad having been a firstborn son. The expression, and thou shalt cause to pass, והעברת that occurs here is also used in Ex. XIII, 12, with reference to firstlings.
(31) Who died without issue.
(32) Ibid. נתן תתן lit., 'to give thou shalt give', implying the giving of two shares: Their father's and their father's brother's.
(33) Whence does he infer two brother's shares?
(34) That they received the shares of two father's brothers.
(35) Ibid. Scripture could have omitted a possession of, by writing only, Thou shalt surely give then an inheritance etc.
(36) Lit., 'what'.
(37) In stating that the tribe of Manasseh had ten parts.
(38) Not only had Zelophehad daughters but his brothers also must have had descendants.
(39) The daughters of Zelophehad should have been included in the father's house of Hepher as the sons or daughters of the brothers of Zelophehad were included in their fathers' houses.

Talmud - Mas. Baba Bathra 119a

Fathers' houses are, in fact, enumerated. but[1] [Scripture] had taught us that the daughters of Zelophehad had [also] taken the portion of the birthright. Consequently,[2] the land of Israel was [regarded even before the conquest, as if it had already been] in the possession of Israel.[3]

The Master stated: 'Their sons received [shares] by virtue of the rights of the fathers of their fathers and the rights of the fathers of their mothers'.[4] Was it not taught [elsewhere], 'by virtue of their own rights'? — [This is] no difficulty. That[5] is in agreement with him who said [that the division was] in accordance with [the number of] those who came out of Egypt; this[6] is in agreement with him who said [that the division was] in accordance with [the number of] those who entered the land. If you like you may say: Both statements[7] [are in agreement with the view that the division was] in accordance with [the number of] those who entered the land and [yet] there is no difficulty. The one[6] [deals with the case of him] who was twenty years of age;[8] the other,[5] with the case of him who was not [yet] twenty years of age.

SINCE HE WAS A FIRSTBORN SON [WHO] TAKES TWO SHARES. But why?[9] [Surely the estates of Hepher] were [only] prospective, and a firstborn son is not [entitled] to take [a double share] in the prospective [property of his father] as in that which is in [his father's] possession [at the time of death]! — Rab Judah said in the name of Samuel: [The double share was] in tent pins.[10]

Rabbah raised an objection: [It has been taught that] R. Judah said, 'the daughters of Zelophehad took four portions, for it is said, and there fell ten parts to Manasseh!'[11] — But, said Rabbah, the land of Israel [was regarded even before the conquest as] in [actual] possession [of those who came out of Egypt].[12]

An objection was raised: R. Hidka said: 'Simeon of Shikmona was my companion among the disciples of R. Akiba. And thus did R. Simeon of Shikmona say: Moses our Master knew that the daughters of Zelophehad were to he heiresses, but he did not know whether or not they were to take the portion of the birthright — And it was fitting that the [Scriptural] section of the laws of succession should have been written through Moses, but the daughters of Zelophehad merited it. and it was written through them.[13] Moses, furthermore, knew that the man who gathered sticks [on the Sabbath day][14] was to he put to death, for it is said, Everyone that profaneth it shall surely be put to death,[15] but he did not know by which [kind of] death he was to die. And it was fitting that the section of the man who gathered sticks should have been written through Moses, only the gatherer

had brought guilt upon himself and it was written through him. This teaches you

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(1) By enumerating also the daughters of Zelophehad.

(2) Since they were given the double portion of the first-born.

(3) A firstborn son takes a double portion of that only which is in his father's actual possession at the time of his death, not from that to which he may become entitled after his death.

(4) Supra 117b.

(5) The Baraitha stating, 'by virtue of their grandparents'.

(6) The other Baraitha stating 'by virtue of their own rights.'

(7) Lit., 'this and that'.

(8) When Israel entered Canaan.

(9) Why should he he entitled to two shares? (12) When he died the estates were only due to become his, but could not pass into his possession before Canaan was actually entered.

(10) I.e., in their grandfather's movable property, which, like the tent pins, was in his possession before he entered Canaan and while still in the wilderness. Of his landed property, how-ever, the daughters of Zelophehad did not take a double share, Our Mishnah which mentions three shares refers to the landed as well as the movable property.

(11) Josh. XVII, 5. V. supra 118b. These portions, according to the Scriptural context, were not in movable, but in landed property! How, then, could it be said that the double share was in movables only?

(12) Hence the right of the firstborn to take a double share.

(13) I.e., at their instance,

(14) Num. XV, 32ff.

(15) Ex. XXXI, 14.

Talmud - Mas. Baba Bathra 119b

that merit[1] is brought about by means of the meritorious[1] and punishment for guilt[2] by means of the guilty.[2] Now, if it be assumed [that] the land of Israel was [regarded as being even before the conquest] in the possession [of those who came out of Egypt]. why was he[3] in doubt?[4] — He was in doubt on this very [question]:[5] It is written, and I will give it you for a heritage,[6] I am the Lord,[7] [does this mean]. 'it is for you an inheritance from your fathers'[8] or perhaps [it means] that they[9] would transmit [it] but would not [themselves] he heirs?[10] And it was made clear to him [that the text implies] both: 'It is an inheritance for you from your fathers; yet you would [only] transmit, and not [yourselves] inherit [it].' And this accounts for the Scriptural text, Thou bringest them in, and plantest them in the mountain of thine inheritance.[11] It is not written, 'Thou bringest us in', but 'Thou bringest them in'; this teaches that they prophesied[12] and knew not what they prophesied.

And they stood before Moses and before Eleazar the priest and before the princes and all the congregation.[13] Is it possible that they stood before Moses etc. and they did not say anything to them [so that] they [had] to stand before the princes and all the congregation? But, the verse is to be turned about and expounded;[14] Is these are the words of R. Josiah. Abba Hanan said in the name of R. Eliezer: They[15] were sitting in the house of study and these came and stood before all of them.[16]

Wherein[17] lies their dispute?[18] — [One] master[19] is of the opinion [that] honour may he shown to a disciple in the presence of the master,[20] and the other[21] is of the opinion that it is not to he shown.[22] And the law is [that honour is] to be shown. And the law is [that honour is] not he shown. Surely this is a contradiction between one law and the other![23] — There is no contradiction: The one[24] [refers to the case] where his master shows him[25] respect; the other,[24] where his master does not.

It was taught: The daughters of Zelophehad were wise women, they were exegetes, they were virtuous.

They [must] have been wise, since they spoke at an opportune moment; for R. Samuel son of R. Isaac said: [Scripture] teaches that Moses our master was sitting and holding forth an exposition on the section of levirate marriages, as it is said, If brethren dwell together.[26] They said unto him:[27] 'If we are [to he as good] as son[s],[28] give us an inheritance as [to] a son; if not,[29] let our mother be subject to the law of levirate marriage!' And Moses, immediately. brought their cause before the Lord.[30]

They [must] have been exegetes, for they said: 'If he had a son we would not have spoken'.[31] But was it not taught: 'a daughter'?[32] — R. Jeremiah said: Delete, 'daughter', from here.[33] Abaye said: [The explanation is that they said]: 'Even if a son [of his] had a daughter. we would not have spoken'.[34]

They were virtuous, since they were married to such men only as were worthy of them.[35]

R. Eliezer b. Jacob taught: Even the youngest among them was not married under forty years of age.[36] But can this he so? Surely, R. Hisda said: [One who] marries under twenty years of age beget till sixty; [at] twenty, begins till forty. [at] forty, does not beget any more![37] — Since, however, they were virtuous, a miracle happened in their case[38] as [in that of] Jochebed.[39] As It is written, And there went a man of the house of Levi, and took to wife a daughter of Levi;[40]

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(1) Or privilege. The daughters of Zelophehad were righteous women and deserved, therefore, that a section of the Torah conferring rights and privileges on certain heirs should be written at their instance,

(2) The announcement of the severe penalty of stoning for gathering sticks on the Sabbath was brought about by means of the guilty man who was the first to commit such an offence; v. Sanh. 8a.

(3) Moses.

(4) Surely, Hepher, having been one of those who came out of Egypt, was by virtue of that fact in possession of his share even before the entry into Canaan, Zelophehad's daughters, therefore, through their father, were entitled to the double share due to the firstborn.

(5) Whether the land of Israel was to be regarded as being in possession of those who came out of Egypt. even before the entry into Canaan.

(6) מורשה morashah.

(7) Ibid. VI, 8.

(8) The fathers of those who left Egypt. מורשה like ירושה yerushah, signifying 'heritage' and implying that the fathers who came out of Egypt were to be regarded as the actual possessors of the land, having inherited it from their fathers, and hence, their firstborn sons would be entitled to double portions.

(9) Those that left Egypt.

(10) מורשה Hiph., having a causative signification, denoting that they would cause their descendants to inherit the land, without any hearing on the question of their own possession thereof, Firstborn sons would, consequently, have no claim to a double portion.

(11) Ibid. XV, 17.

(12) That their descendants, and not they themselves, would enter the land.

(13) Num. XXVII, 2.

(14) They first came to the congregation, then to the princes and Eleazar, and finally to Moses,

(15) Moses, Eleazar and all the rest.

(16) The daughters of Zelophehad submitted their claim when Moses and the others were sitting together.

(17) On what principle?

(18) That of R. Josiah and R. Eliezer.

(19) R. Josiah.

(20) Hence he maintains that they went first to the others (Moses' disciples) and then to the master himself.

(21) Abba Hanan.

(22) The case had, therefore to be submitted to Moses himself when presiding.

(23) Lit., 'law upon law'.

(24) Lit., ‘this’.
(25) The disciple.
(26) Deut. XXV, 5.
(27) While he was engaged in the exposition of this law.
(28) Since the existence of a daughter, like that of a son, obviates levirate marriage
(29) I.e., if, with reference to an inheritance, daughters are not to be given the same rights as sons.
(30) Cf. Num. XXVII, 5.
(31) This plea shows that they knew the exposition of Num. XXVII, 8, according to which a daughter has no claim where there is a son. Cf. supra 110a.
(32) Viz some versions read that they said, ‘If he had a daughter’.
(33) The word, ‘daughter’, in that Baraitha is an error.
(34) ‘Knowing that a son's daughter has preference over the daughter of the decreased’, v. supra 115b.
(35) V. infra p. 493, n. 2.
(36) Waiving for a worthy husband.
(37) Is it, then, possible that virtuous women like the daughters of Zelophehad would marry so late in life as to he unable to have any issue?
(38) Lit., ‘to them’.
(39) The mother of Moses.
(40) Ex II, I.

Talmud - Mas. Baba Bathra 120a

how could she be called ‘daughter’[1] when she was a hundred and thirty years old; for R. Hama b. Hanina said:[2] It was Jochebed who was conceived on the way[3] and born between the walls [of Egypt] for so it is written, Who was born[4] to Levi in Egypt,[5] [which implies that] her birth was in Egypt but her conception was not in Egypt.[6] Why, then, was she called, ‘daughter’? — R. Judah b. Zebida said: This teaches that marks of youth reappeared on her. The flesh [of her body] was again smooth, the wrinkles [of old age] were straightened out and [her] beauty returned.[7]

[Instead of]. and he took,[8] it should have read, ‘and he took again’![9] — R. Judah b. Zebida said: [This] teaches that he arranged for her a ceremonial of [a first] marriage; placing her in a [bridal] litter while Aaron and Miriam sang in her honour, and ministering angels recited: The joyful mother of the children.[10]

Further on,[11] Scripture enumerates them[12] according to their age[13] and here[14] according to their wisdom, — this [is evidence] in support of R. Ammi. For R. Ammi said: At a session,[15] priority is to be given to[16] wisdom; at a festive gathering.[17] age takes precedence.[18] R. Ashi said: This,[19] [only] when one is distinguished in wisdom; and that,[20] [only] when one is distinguished in old age.

The school of R. Ishmael taught: The daughters of Zelophehad were [all] alike,[21] for it is said, and they were[22] [implying], ‘all of them possessed the same status’.[23]

Rab Judah said in the name of R. Samuel: The daughters of Zelophehad were given permission to he married to any of the tribes,[24] for it is said, Let them be married to whom they think best.[25] How, then, may one explain [the text]. Only into the family of the tribe of their father shall they be married?[26] — Scripture gave them good advice,[27] [namely], that they should he married only to such as are worthy of them.[28]

Rabbah raised an objection: ‘Say unto them,[29] [means] to those who stood on Mount Sinai; throughout your generations,[29] [refers] to the coming generations. If fathers were mentioned, why were sons [also] mentioned; and if sons were mentioned, why should fathers be mentioned? — Because some [precepts] which apply to the fathers[30] are inapplicable to the sons,[31] and some which

apply to the sons are inapplicable to the fathers. In [the case of] the fathers it is said: And every daughter that possesseth an inheritance;[32] while many precepts were given[33] to the sons[34] and not to the fathers.[35] Since, [therefore.] certain precepts apply to the fathers and not to the sons while others apply to the sons and not to the fathers, it was necessary to specify the fathers and it was [also] necessary to specify the sons.' At all events, it was taught, 'In the case of the fathers it is said: And every daughter that possesseth an inheritance'?[36] — He raised the objection and he [also] replied to it: 'With the exception' [he said] 'of the daughters of Zelophehad'.[37]

The Master said: 'In the case of the fathers it is said: And every daughter that possesseth an inheritance,[38] [etc.]' What evidence is there that this applied 'to the fathers and not to the sons'? — Raba said: Scripture states: This is the thing.[39] [which implies], 'this thing shall he applicable only to this generation'. Rabbah Zuti said to R. Ashi: If this is the case,[40] does This is the thing.[41] [said in connection] with [animals] slaughtered outside [the Temple], also [imply] that [that Jaw] was to apply to that generation only?[42] — There, [the case is] different, for it is written, throughout their generations.[43]

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(1) And not 'woman'.

(2) V. infra 123b.

(3) Which Jacob and his family made from Canaan to Egypt. Gen. XLVI, Iff.

(4) This is superfluous since the fact that Jochebed was Levi's daughter is already stated before in the same verse.

(5) Num. XXVI, 59.

(6) Since Jochebed was, accordingly, born just when Jacob entered Egypt she must have been a hundred and thirty years old when Moses was born. The whole period the Israelites spent in Egypt was two hundred and ten years. Moses was eighty years old at the Exodus. Deduct eighty from two hundred and ten and there is a remainder of one hundred and thirty.

(7) A similar rejuvenation has taken place in the case of Zelophehad's daughters

(8) Ex. II, I.

(9) Since this was Amram's second marriage, having married Jochebed once before and begat Aaron Miriam; when Pharaoh had issued his decree against the male children (Ex. I, 22) Amram had left his wife whom he did not remarry until he received a prophetic message through Miriam (cf. Sotah 12b).

(10) Ps. CXIII. 9.

(11) Where their marriages are reported.

(12) Zelophehad's daughters.

(13) V. Num. XXXVI, II.

(14) Ibid. XXVII, I, dealing with their right of inheritance.

(15) In connection with matters of law or study.

(16) Lit., 'go after'.

(17) Heb. mesibah מסיבה a banqueting party reclining on couches round the room or round the tables.

(18) Num. XXXVI, II, speaking of marriages, enumerates Zelophehad's daughters according to age, the elder ones being given priority of place as is done at festive assemblies. In Num. XXVII, I, however, where a question of law is discussed, the enumeration is according to their wisdom, those possessing more wisdom being given priority of place as is done at law, or similar sessions.

(19) That wisdom is the determining factor at sittings of law or study.

(20) That age takes precedence at festive gatherings.

(21) And, for this reason, some are enumerated before the others in Num. XXXVI, II, while in Num. XXVII, I the others are enumerated first. No support may consequently be found in these verses for R. Ammi's opinion.

(22) Num. XXXVI. II. Heb. ותהיינה

(23) הויה 'existence', 'status'. יה, is taken as the root of ותהיינה and of הויה.

(24) Lit., to all the tribes'. Other heiresses could marry only members of their own tribe.

(25) Num. XXXVI, 6.

(26) Ibid. Are not the two sections of the verse contradictory?

(27) Not an instruction.

(28) This advice they carried out in marrying their uncles' sons. Ibid. II.
(29) Lev. XXII, 3.
(30) Lit., 'which is in the fathers'.
(31) Lit., 'which is not in the sons'.
(32) Num. XXXVI, 8. This law applied only to the fathers, i.e., the men who came out of Egypt, and not to their sons, i.e., the coming generations.
(33) Lit 'commanded'.
(34) Such as are, e.g., applicable to Palestine only.
(35) Lit., 'which the fathers were not commanded', being, as they were, in the wilderness.
(36) V. n. 6, supra. This shows that the prohibition for all heiress to marry one of another tribe was given to the generation of the fathers, i.e., to that of the daughters of Zelophehad. how, then, could it be said that they were allowed to marry any one from any tribe.
(37) They were exempt from the prohibition, because in their Case, Scripture (Num. XXXVI, 6) distinctly stated, Let them be married to whom they think best.
(38) Num. XXXVI, 8.
(39) Ibid. 6.
(40) Lit., 'but from now'.
(41) Lev. XVII, 2.
(42) Surely this is impossible; for it is known that the law of prohibition of the slaughtering of consecrated animals outside the temple was in force so long as the Temple was in existence.
(43) Lev. XVII, 7: This shall be a statute for ever unto them throughout their generations. This text, consequently, modifies the implication of This, in v. 2 earlier; and this is the reason why the law remained in force for later generations.

Talmud - Mas. Baba Bathra 120b

Does This is the thing.[1] [said in connection] with the heads of the tribes[2] also [imply] that [that Jaw][3] was to apply to that generation only? — He said unto him: [In] that [case], this[4] is inferred from this [that is mentioned] there.[5] Let this, [in] the present [case].[6] also, be inferred from this [mentioned] there![7] — What a comparison![8] There[9] [one may] rightly [compare one this to the other this because these expressions are in any case] required for [another] comparison;[10] here,[11] [however], for what [other purpose] is it[12] needed? The text could [simply] have omitted it altogether[13] and one would have known that [the law applied][14] to [all] generations![15]

What is the [other] comparison[16] [just referred to]? — It was taught: This is the thing, has been said here,[17] and This is the thing, has [also] been said elsewhere:[18] just as there [it was spoken to] Aaron and his sons and all Israel,[19] so here[20] [it was spoken to] Aaron and his sons and all Israel; and just as here[20] [it was spoken to] the heads of the tribes.[21] so there[22] [it was spoken to] the heads of the tribes.

The Master has said: 'Just as there, [it was spoken to] Aaron and his sons and all Israel, so here, [it was spoken to] Aaron and his sons and all Israel'. In [respect of] what law [has this comparison been made]? — R. Aba b. Jacob said: To infer that the annulment of vows [may be effected] by three laymen.[23] But surely, 'the heads of the tribes' is written [in connection] with it?![24] — As R. Hisda said in the name of R. Johanan, 'By a qualified individual',[25] [so] here also [it may be said], 'By a qualified individual'.[26]

[It has been said: 'Just as here [it was spoken to] the heads of the tribes, so there [it was spoken to] the heads of the tribes'. In [respect of] what law [has this comparison been made]?[27] — R. Shesheth said: To infer [that] the law of absolution[28] [is applicable] to consecrated objects.[29] According to Beth Shammai, however, who maintains [that] the law of absolution[28] is not [applicable] to consecrated objects; as we learnt,[30] 'Beth Shammai maintains [that] mistaken consecration is

[regarded as proper] consecration, and Beth Hillel maintains [that] it is not [regarded as proper] consecration,' — to what [other] purpose do they apply,[31] this and this?[32] [The expression], This is the thing, [used in connection] with [animals] slaughtered outside the Temple is required [for the inference that] one is guilty [only] for slaughtering[33] but not for 'pinching'.[34] [The express sion] This is the thing, [mentioned in connection] with the 'heads of the tribes', is required [for the inference that only] a Sage can dissolve [a vow], but a husband cannot dissolve[35] [a vow], [only] a husband can declare [a vow] void, but a Sage cannot declare [it] void.[36]

Whence does Beth Shammai, who does not use the inference from the similarity of expression,[37] derive the law [that] the annulment of vows [may be performed] by three laymen?[38] They derive it from what was taught [in the following Baraitha]: And Moses declared unto the children of Israel the appointed seasons of the Lord.[39] R. Jose the Galilean said:

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(1) Nuns. XXX, 2.

(2) Ibid.

(3) The law of the disallowance of vows. (ibid. 3-17).

(4) Mentioned at the law of the disallowance of vows.

(5) Used in connection with the law of animals slaughtered outside the Temple. As in the other Case the law is applicable to all generations (v. supra note 2), so also is the law in the former Case.

(6) The prohibition of the marriage of an heiress to a member of another tribe.

(7) V. n. 7.

(8) Lit., 'this, what'?

(9) The law of animals slaughtered outside the Temple and that of the disallowance of vows.

(10) A gezerah shawah, an inference by similarity of expressions (v. Glos). V. infra.

(11) The marriage of an heiress to one of another tribe.

(12) The expression, this.

(13) Lit., 'let the verse keep silence about (from) it'.

(14) As do most other laws.

(15) Since, therefore, the expression was used, it must have been meant to limit the law to that generation only.

(16) V. note. 12.

(17) At the laws of vows (Num. XXX, 2).

(18) Lev. XVII, 2, at the law of animals slaughtered outside the Temple.

(19) As stated specifically in Lev. XVII, 2.

(20) In connection with the laws relating to vows.

(21) As stated in Num. XXX, 2.

(22) V. p. 494, n. 20.

(23) From the Biblical association of Aaron and his sons and all Israel with the laws of vows it is to be inferred that a properly constituted Court is not required for the annulment of vows. Any member of the congregation of Israel is as good as Aaron and his sons for the purpose of acting as a member of such a lay court of three.

(24) With the laws of vows (Num. XXX, 2). Would not 'Heads of tribes' imply, 'qualified men', 'members of a proper court'?

(25) V. infra.

(26) I.e., vows may be annulled not only by a lay Court of three but also by one individual if he is qualified by his attainments (a Mumhe, v. Glos.) The expression, heads of tribes', is equivalent to 'qualified individuals', though acting singly.

(27) What connection could there be between the law of animals slaughtered outside the Temple and the heads of tribes.

(28) Heb. שאלה lit., 'question'.

(29) As a qualified scholar may annul a vow, so he may render absolution from the consecration of an object, if the person who consecrated it can produce sufficient grounds to justify the absolution.

(30) Naz. 30b.

(31) Lit., 'what do they do to it'.

(32) This, mentioned with the law of animals slaughtered outside the Temple and this of the laws of vows. Maintaining

that ‘mistaken consecration is regarded as proper consecration’, Beth Shammai is obviously of the opinion that the low of absolution is never applicable to consecrated objects. Hence, the comparison made above between the similar expressions of ‘this’ (from which the law of absolution has been derived) is not required. What, then, is the purpose of the employment of this expression in the Biblical text.

(33) Outside the Temple.

(34) Heb. Melikah, מליקה ‘pinching off the head of a bird with the finger nails’ (cf. Lev. I, 15). The expression, this, implies that only what was mentioned in the text, viz., slaughtering, is prohibited.

(35) By using the formula, מותר לך The Sage has the right of disallowing, or dissolving a vow (התרה’unbinding’, ‘dissolving’), if a good reason for his action can be found. If, e.g., the man who vowed can show that his vow was made under a misapprehension.

(36) By using the formula, מופר לך a husband is entitled to declare as void,הפרה ‘breaking’ destroying’), any vow made by his wife, without the necessity for her finding any reason for its annulment. Unlike the sage who must first inquire whether grounds exist for dissolving it (v. previous note), the husband may, as soon as he hears of the vow, ‘destroy’ it at once retrospectively. This, implies that only the expressions of the Biblical text as interpreted in Ned. 77b may be used and that only the procedure they imply must be followed.

(37) Requiring the two expressions of this for other purposes, as just explained.

(38) Or by a Sage, who is regarded as of equal status to that if a lay court of three.

(39) Lev. XXIII, 44

Talmud - Mas. Baba Bathra 121a

The appointed seasons of the Lord, were said [but] the weekly Sabbath[1] was not said [unto them].[2] Ben Azzai said: The appointed Seasons of the Lord were said, [but] the annulment of vows was not said [unto them].[2]

R. Jose b. Nathan[3] studied this Baraitha and did not know [how] to explain it. Going after R. Shesheth to Nehardea and not finding him, he followed him to Mahuza [where] he found him. He said unto him: What [is meant by] ‘the appointed seasons of the Lord were said [but] the weekly Sabbath,[4] was not said [unto them]’? [The other] replied unto him: [This is the meaning:] The appointed seasons of the Lord[5] require a proclamation by a court[6] [but] the weekly Sabbath does not require proclamation by a court;[7] for, it might have been assumed, since it[8] was written[9] near the appointed seasons,[10] that it required a proclamation by the court as [do] the appointed seasons, [this,][11] therefore, had to be taught.

What [is meant by] ‘the appointed seasons of the Lord were said [but] the annulment of vows was not said [unto them]’? — The [proclamation of the] appointed seasons of the Lord requires [a court of three] qualified mem[12] [but] the annulment of vows does not require [three] qualified men.[13] But, surely, it is written the heads of the tribes![14] — R. Hisda replied in the name of R. Johanan: [The text implies that annulment of vows may be performed] by one qualified man.[15]

We learnt elsewhere:[16] R. Simeon b. Gamaliel said: Israel had no [other] festive days like the fifteenth of Ab and the Day of Atonement on which the daughters of Jerusalem went out in white garments, borrowed [for the occasion], so as not to shame those who possessed none [of their own].

One well understands why the Day of Atonement [should be such a festive occasion for it is] a day of pardon and forgiveness,[17] [and it is also] a day on which the second Tabies[18] were given, but what is [the importance of] the fifteenth of Ab? — Rab Judah said in the name of Samuel: [It was] the day on which the tribes were allowed to intermarry with one another.[19] What was their exposition?[20] — This is the thing[21] [implies] this thing shall only apply to this generation.[22] Rabbah b. Bar Hana said in the name of R. Johanan: [It was] the day on which the tribe of Benjamin was allowed to enter the congregation. [This was for a time prohibited], for it is written, Now the men of Israel had sworn in Mizpah saying: ‘There shall not any of us give his daughter unto Benjamin to wife.’[23] What was

their exposition?[24] — 'Of us,'[25] but not of our children.[26] R. Dimi b. Joseph said in the name of R. Nahman: [It was] the day on which the dying in[27] the wilderness had ceased;[28] for a Master said: Before the dying in the wilderness had ceased

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(1) Lit., 'Sabbath of the beginning', Heb. Shabbath Bereshith, שבת בראשית Saturday, the seventh day of the week, the weekly day of rest, is so called on account of its commemoration of the creation. Cf. Gen. II, 1-3.

(2) The explanation follows in the Gemara infra. V. also note 12.

(3) In Neda. 78a. The reading is R. Assi.

(4) V. p. 496, n. 8.

(5) I.e., the New Moons and Festivals.

(6) קדטש בית דין. Lit., 'the sanctification of the house of law'. The calendar not having been fixed, the dates of the New Moons and Festivals were determined by the court in Jerusalem on the evidence of witnesses who saw the 'birth', מולד of the new moon. If the court was satisfied, after due investigation and cross-examining of witnesses, that the evidence was reliable, the New Moon, ראש חדש was proclaimed, thus determining also the date of the festival which happened to fall in that month, since the Festivals always occurred, in accordance with the Biblical injunction, on the same day of the respective month.

(7) Sabbath has been divinely ordained and sanctified at the Creation (Gen. II, 3), and is not subject to the proclamation of a human court.

(8) The Sabbath.

(9) Lev. XXIII, 3.

(10) Ibid. vv. 4ff.

(11) That Sabbath 'was not said' unto them, i.e., that it required no human proclamation or sanctification.

(12) A lay Court of three, or one qualified expert (Mumhe, v. Glos.), has not the right to proclaim the New Moon.

(13) But a lay Court of three may annul vows. Beth Shammai, also, derives this law in the same way.

(14) Implying qualified men. How, then, can it be said that a lay Court of three may also annul vows?

(15) One qualified man of the 'heads of the tribes' has the same right as a court of three laymen. 'Heads of the tribes' does not mean a court of qualified men but qualified men acting individually.

(16) Ta'an. 26b.

(17) Cf. Lev. XVI, 29ff.

(18) Cf. Deut. X, 1ff. [According to a tradition preserved in the Seder 'Olam 6, Moses spent three periods of forty days and forty nights on the mount, beginning with the seventh Sivan, and ending on the tenth of Tishri when he came down on earth with the second Tables.]

(19) The prohibition on an heiress to marry into another tribe, in accordance with Num. XXXVI, 8, which requires an heiress to be 'wife unto one of the family of the tribe of her father', was removed. The prohibition was held to apply only to the generation of those who entered the land, and to lapse when the last of these had died.

(20) From what Scriptural text, and how, was it deduced that the prohibition was to lapse with the death of the first generation of those who entered the land?

(21) Num. XXXVI, 6.

(22) V. supra 120a.

(23) Judges XXI, 1.

(24) Whence was it derived that the tribe of Benjamin could again be permitted to enter the congregation?

(25) I.e., the prohibition, they maintained, applied to those only who had themselves taken the oath, since they specifically used the expression, 'of us'.

(26) The children, therefore, i.e., the daughters of those who took the oath, could be married to the men of Benjamin.

(27) Lit., 'the dead of'.

(28) Cf. Num. XIV, 35. The last of that generation had died prior to that day, and all the survivors were thus assured of entering the promised land.

Talmud - Mas. Baba Bathra 121b

there was no [divine] communication with Moses;[1] for it is said, So it came to pass, when all the mem of war were consumed and dead from among the people, that the Lord spoke unto me saying,[2]

'[only then', said Moses] 'was there speaking[3] to me'.[4] 'Ulla said: [It was] the day on which Hosea,[5] son of Elah, removed the guards whom Jeroboam[6] had placed on the roads to prevent Israel from making the pilgrimages to Jerusalem.[7] R. Mattena said: [It was] the day on which the slain of Bether[8] obtained [suitable] burial; for R. Mattena said [elsewhere]:[9] On the day when the slain of Bether obtained burial [the benediction] 'who art kind and dealest kindly'[10] was instituted at Jabneh[11] 'Who art kind' [was instituted] because they[12] did not decompose;[13] 'and dealest kindly' [was instituted] because they obtained burial.

Both Rabbah and R. Joseph said: [It was] the day on which they ceased cutting wood for the altar.[14]

It was taught: R. Eliezer the Great said: As soon as the fifteenth of Ab arrived, the power of the sun weakened and they chopped no [more] wood for the altar.[15] R. Manasseh said: They called it,[16] 'the day of the breaking of the axe.'[17]

From that [day][16] onwards, he who adds [from the night to the day][18] will [also] add [length of days and years for himself],[19] [and he] who does not add [from the night to the day], decreases [his years].[20] What [is meant by] 'decreases'? R. Joseph learnt: His mother will bury him.[21]

Our Rabbis taught: Seven [men] spanned[22] [the life of] the whole world.[23] [For] Methuselah saw Adam; Shem saw Methuselah, Jacob saw Shem; Amram saw Jacob; Ahijah the Shilonite saw Amram; Elijah saw Ahijah the Shilonite, and he[24] is still alive.

And [did] Ahijah the Shilonite see Amram? Surely it is written, And there was not left a man of them, save Caleb the son of Jephunneh, and Joshua the son of Nun![25] — R. Hamnuna replied: The decree[26] was not directed[27] against the tribe of Levi;[28] for it is written, Your carcasses shall fall in this wilderness, and all that were numbered of you according to your whole number, from twenty years old and upward;[29] [this implies that a tribe] that was numbered from twenty years old and upward [came under the decree]; the tribe of Levi, [however], having been numbered[30] from thirty years old, was excluded.

Did none of the [members of the] other tribes[31] enter [the promised land]? Surely it was taught: Jair the son of Manasseh and Machir the son of Manasseh were 'born in the days of Jacob and did not die before Israel entered the [promised] land; for it is said, And the men of the Ai smote of them about thirty and six men,[32] and it was taught[33] 'actually thirty six men' [these are] the words of R. Judah; R. Nehemiah, [however], said unto him: Was it said, 'thirty and six'? Surely it was said, about[34] thirty and six! But this[35] [must refer to] Jair the son of Manasseh who was equal to the greater part of the Sanhedrin![36] — But, said R. Aha b. Jacob, the decree[37] was directed[38] neither against one [who was] under twenty years of age, nor against [one who was] over sixty years of age. [It was directed] neither against [one] under twenty years of age' — for it is written, from twenty years old and upward;[31] 'nor against [one] over sixty years of age' — for 'and upward'[39] is deduced from 'and upward'[40] [in the section] of valuations,[41] as there, [one] over sixty years of age is like [one] under twenty years of age,[42] so here, one over sixty years of age is like one [who is] under twenty years of age.[43]

The question was raised: Was the land of Israel divided according to the [number of the] tribes,[44] or was it, perhaps divided according to the [number of the] head[s] of the men?[45]

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(1) In the direct manner as described in Num. XII, 8: 'With him do I speak mouth to mouth, even manifestly, etc.' (Rashb.).

(2) Deut. II, 16f.

(3) V. supra n. 3.

(4) An annual festive day was, therefore, declared, to commemorate the divine reconciliation with Israel's leader.
(5) The last of the kings of Israel.
(6) Son of Nebat, the first of the kings of the divided kingdom of Israel. Cf. II Kings XVII, 2, on which this tradition is based.
(7) Pilgrimages were made on the occasion of the three great annual festivals, Passover, Pentecost and Tabernacles.
(8) [The town where in the rebellion of Bar Cochba, the Jews made their last stand against the Romans in 135 C.E.]
(9) Ber. 48b, Ta'an. 31a.
(10) The fourth of the benedictions of Grace after Meals.
(11) The religious centre and seat of the Sanhedrin after the destruction of Jerusalem.
(12) The corpses.
(13) [During the long period in which the slain were left lying in the open field, owing to Hadrian's decree forbidding their interment.]
(14) מערכה lit., 'arrangement', i.e., the pile of wood arranged on the Temple altar.
(15) All wood for the altar had to be chopped during the period when the sun shone in full strength, i.e., from the month of Nisan to the fifteenth of Ab. Any wood chopped later than that period was considered unsuitable for the altar on account of the dampness in it which produced smoke and generated worms (v. Mid. 11, 5).
(16) The fifteenth of Ab.
(17) As there was no longer any immediate use for the tool.
(18) For the purpose of study. The days shorten and the hours of study would consequently diminish unless part of the night were also to be devoted to the same purpose.
(19) Cf. Prov. III, 2.
(20) The original contains a play upon the words 'add' and 'decrease' דומסיף יוסיף שאניו מוסיף יסיף
(21) I.e., he will die in the prime of life.
(22) Lit., 'folded'.
(23) The total length of their respective lives covered the entire period of the life of the human species.
(24) Elijah.
(25) Num. XXVII, 65. since Ahijah saw Amram, whether in Egypt or in the wilderness, he must have been, according to this verse, among those who died in the wilderness. How then could he have been living (cf. I K. XI, 29) in the days of Jeroboam?
(26) That all must die in the wilderness.
(27) Lit., 'decreed'.
(28) Ahijah was a Levite (cf. I Chron. XXVI, 20), hence he could enter the promised land.
(29) Num. XIV, 29.
(30) For the purpose of the Temple service. Cf. Num. IV, 23, 29, 35.
(31) Who came out of Egypt.
(32) Jos. VII, 5.
(33) San. 44a.
(34) Heb. Kisheloshim, כשלשים the כ may signify, 'about' and also 'like', 'equal'.
(35) The expression 'about thirty and six'. V. previous note.
(36) The Sanhedrin having consisted of seventy-one men, thirty-six formed a majority. Now, since Ahijah was among those who came out of Egypt and also among those who entered Canaan, how could it be said that, besides the tribe of Levi, none of the members of the other tribes had entered the land?
(37) V. p. 500, n. 12.
(38) V. loc. cit. n. 13.
(39) Num. XIV, 29.
(40) Lev. XXVII, 7.
(41) Ibid. vv. 2ff.
(42) In both cases (under twenty and over sixty) the valuation is lower than that for the ages of twenty to sixty.
(43) As those under twenty were not subject to the penalty of the decree so were not those over sixty. Ahijah, even though he did not belong to the tribe of Levi, having been over sixty at the Exodus, was not subjected to the decree, and could, therefore, enter the land.
(44) Each tribe taking a twelfth of the land and, then, subdividing it in accordance with the number of its men.

(45) The entire land being divided into as many shares as there were men.

— Come and hear: [According to the lot shall their inheritance be divided] whether many[1] or few.[2] Furthermore it was taught: The land of Israel will in time to come be divided between thirteen tribes; for at first[3] it was only divided among twelve tribes and was divided only according to monetary [values],[4] as is said, whether many or few.[5] R. Judah said: A se'ah in Judaea is worth five se'ah in Galilee.[6] And it was only divided by lot, for it is said, Not with standing [the land shall be divided] by lot.[7] And it was only divided by [the direction] of] the Urim and Tumim.[8] for it is said, According to the speaking[9] of the lot;[10] how [could] this [be done]?[11] — Eleazar was wearing the Urim and Tumim, while Joshua and all Israel stood before him. An urn [containing the names] of the [twelve] tribes, and an urn containing descriptions] of the boundaries were placed before him. Animated by the Holy Spirit, he gave directions, exclaiming: 'Zebulun' is coming up and the boundary lines of Acco are coming up with it. [Thereupon], he shook well the urn[12] of the tribes and Zebulun came up in his hand. [Likewise] he shook well the urn of the boundaries and the boundary lines of Acco came up in his hand. Animated again by the Holy Spirit, he gave directions, exclaiming: 'Naphtali' is coming up and the boundary lines of Gennesar[13] are coming up with it. [Thereupon] he shook well the urn of the tribes and Naphtali came up in his hand. He, [likewise], shook well the box of the boundaries, and the boundary lines of Gennesar came up in his hand. And [so was the procedure with] every [other] tribe. And the division in the world to come will not be like the division in this world. [In] this world, [should] a man possess a cornfield[14] he does not possess an orchard; [should he possess] an orchard he does not possess a cornfield, [but] in the world to come[15] there will he no single individual who will not possess [land] in mountain, lowland and valley; for it is said, The gate of Reuben one; the gate of Judah one; the gate of Levi one.[16] The Holy One, blessed be He, Himself, [will] divide it among them; for it is said, And these are their portions saith the Lord God'.[17] At all events, it was taught [here] that, at first, [the land] was only divided among twelve tribes, [from which it] may be inferred that the division was in accordance with [the number of] the tribes. This proves it.

The Master has said, 'The land of Israel will in time to come be divided among thirteen tribes'. For whom is that [extra portion]? — R. Hisda said: For the prince;[18] for it is written, And he that serves the city.[19] they out of all the tribes of Israel, shall serve him.[20] R. Papa said to Abaye: Might it[21] not be said [to refer] merely [to] public service?[22] — This cannot be assumed at all,[23] for it is written, And the residue shall be for the prince. On the one side and on the other, of the holy offering and of the possession of the city.[24]

'And it was divided only according to monetary [values], as it is said, Whether many or few'. In what [respect]?[25] If it be suggested [that compensation was to be given in respect of lands] of superior and inferior quality,[26] [it could he retorted,] 'Are we discussing fools'?[27] — But, [this is the explanation, in respect] of [an estate that was] near and [one that was distant.[28] [This[29] is] in accordance with [the opinion of one of the following] Tannaim: R. Eliezer said: Compensation[30] was given in money. R. Joshua said: Compensation was given in land.

And it was only divided by lot, for it is said, Notwithstanding [the land shall be divided] by lot'. A Tanna taught; 'Notwithstanding . . . by lot'; Joshua and Caleb being excluded. In what [respect]?[31] If it be suggested that they did not take [any portion] at all, [it might be retorted], 'if[32] they took [that] which was not theirs[33] could there be any question [as to whether they should take] what was theirs? — But [this means], that they did not receive [their shares] by lot but by the command of the Lord. 'Joshua'.[34] — for it is written, According to the commandment of the Lord they gave him the city which he asked, even Timnath-serah in the hill country of Ephraim.[35]

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(1) I.e., whether the tribe consists of many individuals.

(2) Num. XXVI, 56. Few, is taken to refer to a small tribe. Since scripture directs the distribution of equal shares to all

tribes, the land must have been divided 'according to the number of tribes', and not 'according to the number of individuals'. It will be noted that the rendering of בין רב למעט adopted in the Gemara, slightly differs from that in E.V.

(3) When the promised land was entered.

(4) This is at present assumed to mean that the one who received a share in which the land was worth more than the land of equal size in another share, had to pay the difference so as to equalise their respective monetary values.

(5) Ibid. This implies that the shares must in all cases be equal in value.

(6) R. Judah illustrates by example the meaning of 'according to monetary values.' [Cf. Josephus, Antiquities, V, 1-21: . . . Joshua thought the land for the tribes should be divided by estimation of its goodness . . . it often happening that one acre of some sort of land was equivalent to a thousand other acres.]

(7) Ibid. v. 55.

(8) V. Glos.

(9) פי lit., 'mouth', i.e., 'by the word of God'.

(10) Ibid. 56.

(11) If by lot, why the Urim and Tumim? If by the latter what was the use of the former?

(12) So Rashb. Rashi renders, 'he hastily took up a (ballot).'

(13) Gennesareth, from the Heb. Kinnereth, כנרת a district in Galilee named after the lake of the same name.

(14) Lit., 'a field of white.' V. supra 28a.

(15) I.e., the Messianic era.

(16) Ezek. XLVIII, 31, implying that all will have shares equal in all respects, even in the city of Jerusalem itself.

(17) Ezek. XLVIII, 29. God himself will, thus, allot to each one his share.

(18) The King.

(19) I.e., the prince whose duty it is to serve the interests, and to provide for the wellbeing of his subjects.

(20) Ezek. XLVIII, 19. Serve him, is interpreted to mean 'providing him with a share in the land'.

(21) The verse from Ezekiel quoted.

(22) Which subjects render to their chief. [Or, 'as day-labourer'. Levy, s.v. רונגר, v. Fleischer's note, a.l.]. What proof, then, is there for the statement that the prince was given a special share in the land?

(23) Lit., 'it does not enter your mind.

(24) Ezek. XLVIII, 21.

(25) Was it necessary to state that compensation was given.

(26) That the possessor of the better quality had to pay compensation to him who received the inferior quality.

(27) What man in his senses would consent to take a portion in an inferior soil without getting compensation from him who obtained a portion in a soil of better quality. What need, then is there to state such and obvious thing?

(28) Though equality in the distribution was obtained by giving larger portions of inferior soil against smaller portions of superior soil, further compensation was paid, by those who obtained land nearer to Jerusalem, to those whose lands were further away. The nearer an estate was to Jerusalem the higher was its value.

(29) The view that compensation for distance was paid with money.

(30) V. previous note. Lit., they brought it up'.

(31) Were they excluded.

(32) Lit., 'now/.

(33) The portion of the spies etc. V. supra 118b.

(34) What evidence is there that Joshua received his share by the command of the Lord and not by lot?

(35) Josh. XIX, 50.

Talmud - Mas. Baba Bathra 122b

It is written, serah[1] and it is [also] written, heres![2] — R. Eleazar said: At first,[3] its fruits [were as dry] as a potsherd[4] and afterwards[5] its fruits emitted all offensive odour.[6] Others say: at first[3] they emitted an offensive odour[7] and afterwards[8] [they were as dry] as a potsherd.[9] 'Caleb?[10] — for it is written. And they gave Hebron unto Caleb, as Moses had spoken; and he drove out thence the three sons of Anak.[11] Was [not] Hebron a city of refuge?[12] Abaye replied: Its suburbs [were given to Caleb], for it is written, But the fields of the city, and the villages thereof, gave they to Caleb the son

of Jephunneh for his possession.[13]

MISHNAH. BOTH A SON AND A DAUGHTER HAVE EQUAL RIGHTS OF SUCCESSION. EXCEPT THAT A SON [WHEN FIRSTBORN] TAKES A DOUBLE PORTION IN THE ESTATE OF HIS FATHER BUT DOES NOT TAKE IT IN THE ESTATE OF HIS MOTHER. DAUGHTERS MUST BE MAINTAINED OUT OF THE ESTATE OF THEIR [DECEASED] FATHER[14] BUT NOT OUT OF THE ESTATE OF THEIR [DECEASED] MOTHER.[15]

GEMARA. What [is meant by] BOTH A SON AND A DAUGHTER HAVE EQUAL RIGHTS OF SUCCESSION? If it is suggested that [the meaning is that] they have equal status in heirship. Surely, [it may be retorted], we have learnt, 'a son takes precedence over a daughter [and] all lineal descendants of a son take precedence over a daughter![16] — R. Nahman b. Isaac replied: It is this that was meant : Both a son and a daughter[17] [are equally entitled to] take [their shares] in a prospective [estate of the deceased] as in that which is in [his] possession [at the time of his death]. Surely, we have learnt[18] this also; 'The daughters of Zelophehad took three shares in the inheritance [of Canaan]: The share of their father who was of those who came out of Egypt, and his share among his brothers in the possessions of Hepher'![19] Furthermore, what [is the force of] EXCEPT?[20] — BUt, said R. Papa, it is this that was meant: Both a son and a daughter[21] [are entitled to] take the [prospective] portion of the birthright [of their father]. Surely, we have learnt[22] this also: 'Since he was a firstborn son [who] takes two shares'![23] Furthermore, what [is the force of] EXCEPT?[20] — But, said R. Ashi, it is this that was meant: [As regards] both, a son [of the deceased] among [his other] sons and a daughter[24] among [his other] daughters, if [the deceased] had said, 'he [or she][25] shall inherit all my property', his instruction is legally valid.[26] Whose view is here represented?[27] [Is it not that] of[28] R. Johanan b. Beroka? Surely that is [specifically] taught further on:[29] R.Johanan b. Beroka said: If [a person] said [it][30] concerning one who is entitled to be his heir. his instruction is legally valid; [if, however, he said it] concerning one who is not entitled to be his heir, his instruction is not valid![31] And if it is suggested [that] it was [desired] to state [the law] anonymously, [to show] agreement with [the view of] R. Johanan b. Beroka,[32] [surely, it may be pointed out, this is a case of] an anonymous statement followed by[33] a dispute,[34] and [wherever] an anonymous statement [is] followed by a dispute the law is not [decided] in accordance with the anonymous statement![35] Furthermore, what [is the force of] EXCEPT?[36] But, said Mar son of R. Ashi, it is this that was meant: Both a son and, [in the absence of a son], a daughter [have] equal [rights of succession] in the estate of a mother and in the estate of a father, except[37] that a son takes a double portion in the estate of his father[38] and he does not take a double portion in the estate of his mother.

Our Rabbis taught: Giving him[39] a double portion,[40] [implies] twice as much as [any] one [of the others receive].[41] You said 'Twice as much as [any] one [of the others]'; is it not possible[42] [that our Mishnah] does not [mean this] but 'a double portion in all the estate'?[43] — But this[44] may be deduced by logical reasoning:

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(1) Ibid.

(2) Judges I, 35. Why is the place called both serah and heres?

(3) Before it came into the possession of Joshua.

(4) Heb. חרם

(5) When the place passed over to Joshua.

(6) מסריחין (from root, רסח Hiph., 'to produce an offensive odour'). The fruits were so juicy that decay set in early.

(7) And could not, therefore, be preserved. V. previous note.

(8) V. p. 504, n. 15.

(9) V. p. 504, n. 14. As they were not so juicy they could be preserved for a long time.

(10) Whence is it proved that Caleb did not receive his share by lot but at the command of the Lord?

(11) Judges I, 20.

(12) Which belonged to the priests (v. Josh. XXI, 13). How, then, could it be given to Caleb who was of the tribe of Judah?
(13) Josh. XXI, 12.
(14) V. infra 119b, under what conditions.
(15) It is not the duty of a mother to provide for her daughters.
(16) Supra 115a.
(17) In the absence of a son and any of his lineal descendants.
(18) Supra 116b.
(19) Since Hepher was not in possession of his share in the land at the time of his death and yet it was given to his son, Zelophehad, and through him to his daughters, it is obvious that both sons and daughters are entitled as much to the prospective property of their parents as to that which is already in their possession. Why, then, was it necessary to repeat this law in our Mishnah?
(20) What is the antithesis? The first part of the Mishnah speaks of the equality of a son and a daughter, and the second part speaks of the difference (not between a son and a daughter but) between the the estates of a mother and a father!
(21) In the absence of a son and any of his heirs.
(22) V. supra 116b.
(23) And not having left a son, this prospective double portion was given to his daughters. Why, then, should this law have to be stated again?
(24) V. supra n. 3.
(25) pointing out one of his heirs.
(26) Because a person has a right to transmit all his property to any one individual of his legal heirs. He cannot, however, transmit his estate to a daughter when a son or his heirs are alive. Since the latter have the first legal claim as heirs to his estate, and one has no right to dispose of his bequests (unless in the manner of a gift) except accordance with the laws of succession.
(27) Lit., 'like whom'.
(28) Lit., 'like'.
(29) Infra 130a.
(30) That all his estate shall be inherited by one person only.
(31) Why, then, should our Mishnah teach by implication what was specifically taught elsewhere?
(32) Since the law is always in agreement with the anonymous Mishnah, the Editor may have desired in this way, to indicate that the law is in agreement with the views of R. Johanan.
(33) Lit., 'and after that'.
(34) Between R. Johanan and the Rabbis.
(35) What, then, is the object of our Mishnah?
(36) V. p. 506, n. 2.
(37) The force of 'except' is that while in the previous case there is equality in the loss' between the estate of a father and that of a mother, in the following case there is a difference between these two kinds of estate.
(38) While a daughter is not entitled to a double portion even in the absence of a son.
(39) The firstborn.
(40) Deut. XXI, 17.
(41) The estate is divided according to the number of brothers plus one, and the firstborn takes two such shares.
(42) Lit. 'or'.
(43) Two thirds of the estate for the firstborn, and one third for all the others.
(44) That the firstborn takes only twice as much as any one of the others.

Talmud - Mas. Baba Bathra 123a

his share, [when he is co-heir] with one [is to be compared with] his share [when he is co-heir] with five; as [in the case of inheriting] his share with one [brother, he receives] twice as much as the one[1] so [in the case when he inherits] his share with five [brothers he should also receive only] twice as much as one. Or perhaps argue this way:[2] [let] his share [when he is co-heir] with one [brother] be compared with his share [when co-heir] with five [brothers]; as his share [when co-heir] with one is

a double portion in all the estate[3] so [is the case when he inherits] his share with five [he should also receive] a double portion in all the estate?[4] — It was expressly taught, Then it shall be in the day that he causeth his sons to inherit,[5] the Torah [thus] assigned the greater portion to the brothers.[6] Consequently, the deduction is not to be made according to the second proposition[7] but according to the first.[8] Furthermore it is said, And the sons of Reuben the firstborn of Israel; for he was the firstborn; but forasmuch as he defiled his father's couch, his birthright was given unto the sons of Joseph the son of Israel, yet not so that he was to be reckoned in the genealogy of firstborn.[9] Furthermore it is said, For Judah prevailed above his brethren and of him came he that is the prince; but the birthright was Joseph's.[10] 'Birthright' was said [in relation] to Joseph[10] and 'birthright' was said [in relation] to [coming] generations,[11] just as the birthright that was said [in relation] to Joseph [consisted in his receiving a portion] twice as much [as any] one [of the others][12] so the birthright that was said [in relation] to the [coming] generations[13] [is to consist in the receiving of a portion] twice as much as [any] one [of the others]. Furthermore it is said, Moreover I have given thee one portion above thy brethren, which I took out of the hand of the Amorite with my sword and with my bow.[13] Did he take [it] with his sword and with his bow'? Surely it has already been said, For I trust not in my bow, neither can my sword save me![14] But, my sword, means 'prayer' [and] my bow, means supplication'.[15]

What need was there for quoting the several Scriptural verses?[16] — In case you should suggest [that] that [verse[17] was required] for [the indication that the law is] in accordance with [the view of] R. Johanan b. Beroka,[18] — Come and hear [the verse], And the sons of Reuben, the firstborn of Israel. And in case you should suggest [that] birthright[19] from his birthright[20] may not be deduced, Come and hear [the verse], But the birthright was Joseph's.[21] And in case you should say whence [is it proved] that Joseph himself [received] twice as much as [any] one [of the others], — Come and hear [the verse], Moreover I have given thee one portion above thy brethren.

R. Papa said to Abaye: Might [it not] be suggested [that Joseph received] merely a palm tree?[22] — He replied unto him: For your sake[23] Scripture said, Ephraim and Manasseh, even as Reuben and Simeon shall be mine.[24]

R. Helbo enquired of R. Samuel b. Nahmani: What [reason] did Jacob see for taking away the birthright from Reuben and giving it to Joseph? — What did he see? [Surely] it is written, Forasmuch as he defiled his father's couch! But, [this is the question]: What [reason] did he see for giving it to Joseph? — Let me give you a parable. This thing may be compared[25] to a host[26] who brought up an orphan[27] at his house. After a time that orphan became rich[28] and declared: 'I would let the host have [some] benefit from my wealth',[29] He said unto him: But had not Reuben sinned, [Jacob] would not have bestowed upon Joseph any benefit at all?[30] But R. Jonathan your master did not say so.[31] The birthright, [he said], should have emanated from Rachel, as it is written, These are the generations of Jacob, Joseph,[32] but Leah anticipated [her with her prayers for] mercy. On account, [however], of the modesty, which was characteristic of Rachel, the Holy One, blessed he He, restored it to her. What [was it that caused] Leah to anticipate her with [her supplications for] mercy? — It is written And the eyes of Leah were weak.[33] What [is meant by] weak?[34] If it is suggested [that the meaning is that her eyes were] actually weak, [is this, it may be asked,] conceivable? [If] Scripture did not speak disparagingly of an unclean animal, for it is written, of the clean beasts, and of the beasts that are not clean,[35] [would] Scripture speak disparagingly of the righteous?[36] — But, said R. Eleazar, [the meaning of rakkoth[37] is] that her bounties were extensive.[38] Rab said: [Her eyes were] indeed actually weak, but that was no disgrace to her but a credit; for at the crossroads[39] she heard people saying: Rebecca has two sons, [and] Laban has two daughters; the elder [daughter should be married] to the elder [son] and the younger [daughter should be married] to the younger [son]. And she sat at the crossroads and inquired: 'How does the elder one conduct himself?'[40] [And the answer came that he was] a wicked man, a highway robber.[41] 'How does the younger man conduct himself?' — 'A quiet man dwelling in tents'.[42] And she wept

until her eyelashes dropped.[43] And this accounts for the Scriptural text, And the Lord saw that Leah was hated.[44] What [could be the meaning of] 'hated'? If it is suggested [that it means that she was] actually hated, [surely] it may be retorted, is this] conceivable? [If] Scripture did not speak disparagingly of an unclean animal, [would] it speak disparagingly of the righteous? But the [meaning is this]: The Holy One, blessed be He, saw that Esau's conduct was hateful to her, so he opened her womb.[45]

Wherein did Rachel's modesty lie? — It is written, And Jacob told Rachel that he was her father's brother and that he was Rebecca's son.[46] Was he not the son of her father's sister? But he said to her, '[Will] you marry me?'[47] [And] she replied to him, 'Yes, but father is a sharper, and you will not he able [to hold your own against] him'. ''Wherein,' he asked her, 'does his sharp dealing lie?' — 'I have,' she said, 'a sister who is older than I, and he will not allow me to be married before her' — 'I am his brother', he said to her, 'in sharp dealing'. — 'But,' she said to him, 'may the righteous indulge in sharp dealing?' — 'Yes,' [he replied]. 'With the pure, [Scripture says], Thou dost show thyself pure, and with the crooked Thou dost show thyself subtle.'[48] [Thereupon] he entrusted her [with certain identification] marks.[49] While Leah was being led into [the bridal chamber] she[50] thought, 'my sister will now be disgraced', [and so] she entrusted her [with] these very [marks]. And this accounts for the Scriptural text, And it came to pass in the morning that, behold, it was Leah,[51] which seems to imply that until then she was not Leah! But, [this is the explanation]: On account of the [identification] marks which Jacob had entrusted to Rachel who had entrusted them to Leah, he knew not [who] she [was] until that moment.

Abba Halifa of Keruya enquired of R. Hiyya b. Abba: [With regard to those who entered Egypt with Jacob], Why do you find [the number] seventy in their total[52] and [only] seventy minus one in their detailed enumeration?[53] — He said unto him: A twin [sister] was [born] with Dinah; for it is written, With [eth] his daughter Dinah.[54] But if so,[55] was there [also] a twin [sister] with Benjamin, for it is written

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(1) For in whatever way the double portion is arrived at, it would, in this case, inevitably consist of a shore which is double the size of that of the other brother.

(2) Lit., 'or turn (finish and go) to this way'.

(3) I.e., two thirds of the estate. In whatever way the division is arrived at, the double portion will, in this case, always consist of two thirds of the entire estate.

(4) The firstborn should receive two thirds of the estate, and all the others together one third.

(5) Deut. XXI, 16.

(6) Since this verse is altogether superfluous, the law of the right of the firstborn being specifically mentioned in v. 17, it is assumed to imply that where there are three brothers or more they must get the larger share of the estate. Hence, the firstborn cannot receive two thirds of the estate.

(7) Cf. p. 507 n. 12.

(8) Cf. p. 507, n. 13.

(9) I Chron. V, 1. He was not to hove the designation of the 'first-born', which was the prerogative of Reuben, nad his birthright was only to entitle him to receive a double portion.

(10) Ibid. v. 2.

(11) The low of the birthright, Deut. XXI, 17.

(12) As will be shown infra.

(13) Gen. XLVIII, 22.

(14) Ps. XLlv, 7.

(15) ['Sword' or 'bow' are taken to denote spiritual weapons.]

(16) Lit., 'why and he says'.

(17) Deut. XXI, 16, quoted first.

(18) V. 130a.

(19) בכורה ibid. V, 17.

(20) בכורתו I Chron. V, 1.
(21) In this verse, as in Deut. XXI, 17, the noun Bekorah, without a suffix, is used.
(22) I.e., some small gift. 'A portion above thy brethren', does not prove that he received a double portion.
(23) Lit., 'upon', or 'for thee'.
(24) Gen. XLVIII, 5. Reuben and Simeon were two separate tribes, and Joseph was promised two shares as if he represented two distinct tribes.
(25) Lit., 'to what is the thing like'.
(26) Joseph, who maintained his father. V., Gen. XLVII, 12.
(27) Jacob, whose livelihood during the famine, was entirely dependent on Joseph.
(28) The disposal of the birthright came into the hands of Jacob, through Reuben's offence.
(29) Jacob gave Joseph the birthright in recognition for the hospitality he afforded him and his family.
(30) Surely, his recognition of Joseph's services should not have depended on the remote chance of a birthright becoming available for disposal.
(31) Jacob gave to Joseph, in recognition of his benefaction, other gifts and blessings, while the change of the birthright was due to other causes.
(32) Gen. XXXVII, 2, implying that Joseph, the first-born son of Rachel, should also have been the firstborn of Jacob.
(33) Ibid. XXIX, 17.
(34) רכות
(35) Ibid. VII, 8. Instead of the brief, but disparaging expression טמאה (unclean), the longer, and more euphemistic expression to לא טהורה (not clean) is used.
(36) Lit., 'of the disgrace of the righteous'.
(37) V. note 4.
(38) Rakkoth is taken to be an abbreviation of ארכות 'long', i.e., she had many privileges. Priests and Levites through Levi, and kings through Judah, descended from her.
(39) Where people of all classes and localities meet.
(40) Lit., 'what are his deeds'.
(41) Lit., 'robbing people'.
(42) Gen. XXV, 27.
(43) From their lids.
(44) Ibid. XXIX, 31.
(45) Ibid. v. 31.
(46) Ibid. v. 12.
(47) Lit., 'be married to me'.
(48) II Sam. XXII, 27.
(49) By which he might know her in the dark.
(50) Rachel.
(51) Gen. XXIX, 25.
(52) Ibid. XLVI, 27.
(53) V. ibid. 8ff.
(54) Ibid. 15. The superfluous 'with', Heb. eth, את implies the birth of a twin sister.
(55) Lit., 'from now'. If eth implies the birth of a twin.

Talmud - Mas. Baba Bathra 123b

With [eth] Benjamin, his brother, his mother's son?[1] — He said: I possessed a precious pearl[2] and you seek to deprive me of it.[3] Thus said[4] R. Hama b. Hanina, 'It[5] was Jochebed who was conceived on the way[6] and born between the walls [of Egypt], for it is said, Who was born to Levi in Egypt,[7] [which implies that] her birth was in Egypt but her conception was not in Egypt'.

R. Helbo enquired of R. Samuel b. Nahmani: It is written, And it came to pass, when Rachel had born Joseph etc.;[8] why[9] just when Joseph was horn? He replied to him: Jacob our father saw that Esau's seed would be delivered only into the hands of Joseph's seed for it is said, And the house of

Jacob shall be a fire and the house of Joseph a flame, and the house of Esau for stubble etc.[10]

He pointed out to him the following objection: And David smote them from the twilight even unto the evening of the next day![11] — He replied to him: He who taught you the Prophets did not teach you the Writings,[12] for it is written, As he went to Zicklag, there fell to him of Manasseh, Adnah and Jozabad and Jediael and Michael and Jozabad and Elihu, and Zillethai, captains of thousands that were of Manasseh.[13]

R. Joseph raised an objection; And some of them, even of the sons of Simeon, five hundred men, went to Mount Seir, having for their captains Palatiah and Neariah, and Raphaiah and Uzziel, the sons of Ishi. And they smote the remnant of the Amalekites that escaped, and dwelt there unto this day![14] — Rabbah b. Shila replied; Ishi descended from the sons of Manasseh, for it is written, And the sons of Manasseh were Hepher and Ishi.[15]

Our Rabbis taught: The firstborn son [of a priest] takes a double portion in the shoulder, and the [two] cheeks, and the maw,[16] in consecrated objects and in the [natural] appreciation of an estate that accrued after the death of the father.[17] How [is this to be understood]? — [If] their father had bequeathed to them a cow [that was] rented out to others [for half profit], or given on hire [at a fixed rate], or feeding in the meadow, and it gave birth to a firstling, he[18] takes [in it] a double portion;[19] but if they[20] built houses or planted vineyards, the firstborn does not take [in them] a double portion.[21]

How is one to understand [the statement about] the shoulder, and the [two] cheeks, and the maw? If these were already in the possession[22] of their father, [it is] obvious [that the firstborn is to take a double portion]; and if they were not already in the possession of their father, [at the time of his death], this [is a case of] prospective [property][23] and, [surely], a firstborn does not take [a double portion] in prospective [property] as [he does] in that which [was] in the [actual] possession [of his father at the time of his death]! — [The law], here, relates to the case where [the givers[24] were] acquaintances of the priest,[25] and [the beast] was [ritually] killed in the lifetime of the father;[26] and [the Tanna] holds that the [priestly] gifts are regarded as [already] given,[27] [even though] they have not [actually] been given.[28]

'Consecrated things' [surely], are not his![29] — [The law here relates to] consecrated objects of a minor degree and [it is] in accordance with [the view of] R. Jose the Galilean who holds that they[30] are the property of the owner.[31] For it was taught: And commit a trespass against the Lord [and deal falsely with his neighbour etc.][32] includes consecrated things of a minor degree which are the property of the owner[33] — these are the words of R. Jose the Galilean. 'If their father had bequeathed to them a cow that was rented out to others [for half profit], or given on hire [at a fixed rate], or feeding in the meadow, and it gave birth to a firstling, he takes [in it] a double portion.' Since it was said that he takes [a double portion in the case of a cow that was] rented out or given on hire, though, [in both cases,] it is not standing in the domain of its owner, is there any need [to mention the case when] it feeds in the meadow?[34] It is this that was [intended to be] taught: That one rented out or given on hire [is subject to] the same [law as] one that feeds in the meadow. As [in the case of the] one that feeds in the meadow, the appreciation [is such] as comes naturally, and they[35] do not lose [the cost of its] food[36]

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(1) Ibid. XLIII, 29.

(2) R. Hama's exposition.

(3) I.e., to make it public. R. Hiyya's remarks were intended to raise the interest of the students in what he was going to tell them.

(4) Supra 120a, Sotah, 12a.

(5) The person whose name was omitted from the detailed enumeration.

(6) From Canaan to Egypt.
(7) Num. XXVI, 59.
(8) Gen. XXX, 25.
(9) Why did Jacob say to Laban, 'send me away to my country' (ibid).
(10) Obad. I, 18.
(11) I Sam. XXX, 17. This shows that a descendant of Judah (David) defeated the descendants of Esau (Amalek, cf. Gen. XXXVI, 12). How, then, could it be said that Esau's seed would fall into the hands of Joseph's seed only?
(12) The Hagiographa.
(13) I Chron. XII, 20. The victory of David was accordingly due to the help he received from the men of Manasseh who descended from Joseph.
(14) Ibid. IV, 42f. This proves that Esau's seed fell also into the hands of the descendants of Simeon. How, then, could it be said that only Joseph's descendants could overcome Esau's seed?
(15) This quotation does not occur in our Bible text. The nearest approach is I Chron. V, 24, 'And these were the heads of their father's houses, Epher and Ishi'.
(16) The priests' due from people who offer sacrifices. V., Deut. XVIII, 3.
(17) Of the heirs.
(18) The firstborn.
(19) Since the appreciation was natural, it is regarded as having formed part in the original estate in their father's lifetime.
(20) The heirs.
(21) Since the appreciation of the estate was due to human effort, it cannot be regarded as having formed part of the original estate. V. Tosef. Bek. VI.
(22) Lit., 'they came into the hand'.
(23) The case of these priestly gifts is altogether different from that of the natural appreciation of an estate. In the latter case, the estate itself was in the possession of the deceased, and its natural appreciation may consequently be regarded as an integral part of the original estate. The priestly gifts , on the other hand, were never, directly or indirectly, in the possession of the deceased.
(24) Of the priestly gifts mentioned.
(25) מכירי כהונה, Makkire Kehunah. Lit., 'acquaintances of priesthood'. Friends of the deceased who were in the habit of giving him all their priestly gifts, which, consequently, become his as soon as the beast had been killed. [Klein S., regards the phrase as terminus technicus for the 'watches' (משמרות) of priests in attendance at the Temple service for one week at a time. He connects it with ממכריו in Deut. XVIII, 8, which is thus understood by the Talmud, Suk. 46a. V., MGWJ. 77, 185ff.]
(26) Of the heirs.
(27) Lit., 'lifted' 'separated'.
(28) Hence, the gifts are regarded as having been in the actual possession of the deceased, and the firstborn is, therefore, entitled to a double portion.
(29) Consecrated objects such, e.g., as sin, or guilt offerings, are devoted to the Lord, not to the priest; why' then, should the firstborn be entitled to a double portion in that which did not belong personally to his father?
(30) Objects, such as live beasts consecrated as peace offerings.
(31) Having been, accordingly, the property of the father, the firstborn son is entitled to the double portion.
(32) Lev. V, 21.
(33) Since Scripture speaks of a trespass against the Lord and of dealing falsely with one's neighbour, it must refer to consecrated objects of a minor degree, such as live peace offerings, a share of which (the flesh and skin) belongs to the owner, and a share is either given to the priest or burnt on the altar.
(34) Where it is entirely in the possession of the heirs.
(35) The heirs.
(36) Feeding in the meadow is free.

Talmud - Mas. Baba Bathra 124a

so [in the case of] one rented out or given on hire, the appreciation [must be] such as comes naturally

and they do not lose thereby [the cost of its] food.[1]

In accordance with [whose view is the law[2] quoted]? — It is [in accordance with that of] Rabbi. For it was taught: a firstborn son is not [entitled] to take a double portion in the appreciation of the estate, which accrued after the death of their father. Rabbi said: I say, A firstborn son does take a double portion in the [natural] appreciation of an estate which accrued after the death of their father,[3] but not in the appreciation which the orphans produced after the death of their father. If they inherited a bond of indebtedness the firstborn takes a double portion [in the collected debt].[4] If a bond of indebtedness [for a debt incurred by the father] was produced against them, the firstborn must pay a double portion [of the debt]. If, however, he said, 'I neither give, nor take [the double portion]',[5] he is allowed [to do so].[6] What is the reason [for the opinion] of the Rabbis?[7] Scripture says, Giving him a double portion,[8] the [All] merciful has, thus, called it a gift;[9] as a gift [does not become his][10] until it comes into his possession,[11] so the portion of the birthright [does not become his] until it comes into his [father's] possession.[12] But Rabbi maintains, [since] Scripture says, a double portion,[13] the portion of the birthright [is to be] compared to the ordinary portion; as the ordinary portion [is his] although it has not yet come into his [father's] possession,[14] so [is] the portion of the birthright although it has not yet come into his possession. But [as to] the Rabbis also, surely it is written, a double portion? — That [expression indicates that the two portions] to be given to him are to adjoin one another.[15] But [as to] Rabbi also, surely it is written, Giving him? — That [expression is to indicate] that if he said, 'I neither take, nor give [the double portions],'[16] he is permitted to do so.

R. Papa said: [In the case where] a [young] palm-tree [was bequeathed] and it became stronger, [or a plot of] and and it produced alluvial soil, all[17] agree that [the firstborn] takes [a double portion].[18] The dispute only relates to [the case] where hafurah[19] turned into [well developed] ears of corn, [or where] undeveloped dates turned into [fully developed] dates. [One] Master[20] is of the opinion that this is regarded as natural appreciation,[21] and the [other] Master[s][22] hold the opinion [that this is a case of complete] transformation.[23]

Rabbah b. Hana said in the name of R. Hiyya, 'He who acts[24] in accordance with the opinion of Rabbi is acting correctly,[25] [and] he who acts[24] in accordance with the opinion of the Sages[26] is acting correctly.'[25] —

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(1) I.e., when the renter or hirer provides the fodder, otherwise the firstborn would not take in the appreciation a double portion.

(2) That a firstborn son takes a double portion in the natural appreciation of a bequeathed estate.

(3) The law quoted is in agreement with this statement of Rabbi.

(4) Possession of the bond is regarded as possession of the debt itself; and the payment of the debt is natural appreciation.

(5) In any part of the estate, i.e., if he renounces his birthright.

(6) The lender cannot force him to pay a double share in the debt. V., Tosef. Bek. VI.

(7) Why do they deny the firstborn a double portion even in the case of natural appreciation?

(8) Deut. XXI, 17.

(9) Given by the father to the firstborn.

(10) The recipient's with the power to give it away.

(11) Lit., 'to his hand'.

(12) I.e., the father cannot claim it as his, entitling him to transmit it to the firstborn, until it actually comes into his possession.

(13) Ibid. The portion of the birthright and the ordinary portion were included in one expression.

(14) I.e., prospective property. v. supra.

(15) Lit., 'on one boundary' — both portions being treated as one.

(16) V. supra 124a.

(17) Rabbi and the Rabbis.
(18) Since no radical change had taken place in the tree.
(19) Corn in its earliest stage, used as fodder for cattle.
(20) Rabbi.
(21) Hence, the firstborn receives a double portion.
(22) The Rabbis.
(23) In nature and name, the original bequest having practically ceased to exist. Hence, the firstborn is not entitled to a double portion.
(24) Decides a law case.
(25) His decision is legally valid.
(26) The Rabbis.

Talmud - Mas. Baba Bathra 124b

[For] he[1] was in doubt as to whether the halachah is in accordance [with the decision of] Rabbi [when it is in opposition to that] of his colleague,[2] but not [when it is opposed to that] of his colleagues,[3] or is the halachah in accordance [with] Rabbi [when in opposition to] his colleague and even [when he is opposed to] his colleagues.[4]

R. Nahman said in the name of Rab, 'It is forbidden to act in accordance with the decision of Rabbi,[5] for he holds the opinion [that] the halachah is in accordance [with] Rabbi, [when in opposition to] his colleague, but not [when he is opposed to] his colleagues.' R. Nahman in his own name,[6] however, said, 'It is permitted to act in accordance with the decision of Rabbi'; for he holds the opinion [that] the halachah is in accordance [with] Rabbi [when in opposition to] his colleague and even [when opposed to] his colleagues.

Raba said, 'It is forbidden to act in accordance with the decision of Rabbi, but if one did act [accordingly], his action is legally valid;'[7] for he is of the opinion [that at the college] it was said [that they were only] inclined[8] [in favour of the opinion of the Rabbis].

R. Nahman learned[9] in the 'other books of the School of Rab':[10] Of all that he hath,[11] excludes the appreciation [of an estate] which the heirs have produced after the death of their father; but [in] the [natural] appreciation of the estate [that accrued] after the death of their father he [does] take [a double portion]. And who is [the author of this statement]? — It is Rabbi.

Rami b. Hama learned in the 'other books of the School of Rab':[10] Of all that he hath,[11] excludes[12] the [natural] appreciation of an estate [that accrued] after the death of their father, and much less is he [entitled] to take [a double portion in] the appreciation which the heirs produced after the death of their father. And who is [the author of this statement]? — The Rabbis.

Rab Judah said in the name of Samuel: A firstborn son does not take a double portion in a loan.[13] [According] to whom [was this statement required]?[14] If it is suggested, [according] to the Rabbis, [it may be retorted] if the Rabbis maintain that an appreciation which accrues to his possession[15] [the firstborn] takes no [double portion], is there any need [to state that he takes no double portion in] a loan?[16] — But [the statement was required according] to Rabbi. Who, then, was the author of] what has been taught. 'If they inherited a bond of indebtedness, the firstborn takes a double portion both in the loan and in the interest'? Neither Rabbi nor the Rabbis![17] This statement[18] may, indeed, be required [according] to [the view of] the Rabbis,[19] [for] it might have been assumed [that, in the matter of] a loan, since he is in possession[20] of the bond, [the debt] is regarded as collected, hence [the law] had to be stated.[21]

[A message] was sent from Palestine:[22] a firstborn takes a double portion in a loan, but not in [its]

interest.[23] [According] to whom [is this law]?[24] If it is suggested [that it is according] to the Rabbis, [it may be retorted:] If the Rabbis maintain that [in] an appreciation which accrues to his possession [the firstborn is] not to take [a double portion], is there any question as to [whether he takes a double portion in] a loan?[25] — But [the statement is according] to Rabbi. [Does] not [the firstborn, however, according] to Rabbi [take a double portion] in the interest [also]? Surely it was taught: Rabbi said: A firstborn takes a double portion both in a loan and in [its] interest! — This is really [in accordance with] the Rabbis, but a loan [is regarded] as collected.[26] R. Aha b. Rab said to Rabina: Amemar [once] happened to come to our place, and gave the following exposition: A firstborn takes a double portion in a loan but not in [its] interest. He said to him: The [scholars] of Nehardea follow their [own] view;[27] for R. Nahman said:[28] [If] land was collected [for the debt, the firstborn] has no [double portion],[29] [if] money was collected he has [it],[30] but Rabbah said: [If] money was collected he has no [double portion],[31] [if] land was collected, he has.[32]

Abaye said to Rabbah: Following[33] you there is a difficulty; following[33] R. Nahman there is a difficulty. Following you there is [this] difficulty:

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(1) R. Hiyya.

(2) Cf. ‘Er. 46b; Pes. 27a; Keth. 21a and 51a.

(3) I.e., where the majority is against him. The law, here, since Rabbi is opposed by the Sages, must, consequently, be decided against him.

(4) Hence, the law must be decided according to Rabbi. As this point could not be determined, every judge is allowed to act either in accordance with the view of Rabbi or with that of the Sages.

(5) And here he is opposed by his colleagues, a majority.

(6) Lit., ‘If his’.

(7) Lit., ‘is done’.

(8) No definite decision on the view of the Rabbis has been arrived at at the college; only arguments in its favour were advanced.

(9) Or ‘taught’, v. next note.

(10) ספרי דבי רב Halachic expositions and comments on Numbers and Deuteronomy. Sifra debe Rab is another name for Torah Kohanim, תורת כהנים which is a similar work on Leviticus. [Friedmann, M., disputes there identifications as well as the authorship of Rab assigned to these Halachic Midrashim by Maimonides and others. Kaplan, J., The Redaction of the Talmud, 279, holds that Sifre debe Rab designates ‘the Standard Book of Records of Rab's Academy’ nad the ‘other books of the School of Rab,’ the smaller and more specialized collections containing among others contributions by R. Nahman and Rami b. Hama.]

(11) Deut. XXI, 17.

(12) The firstborn is not entitled to a double portion.

(13) Due to the father; even though the heirs hold a bond of indebtedness against the borrower.

(14) I.e., whose view has Samuel adopted?

(15) Such, e.g., as undeveloped dates, supra 124a, where the dates are in his possession. Rashb. preserves a better reading: ‘If the Rabbis maintain that a natural appreciation,’ likewise with reference to undeveloped dates.

(16) Where the money is not in his possession. Or, where the increase is not natural.

(17) Because, as has been assumed, even Rabbi agrees that the firstborns does not take a double portion in a loan.

(18) Of Samuel.

(19) While the statement about the inheritance of a bond of indebtedness agrees with the view of Rabbi.

(20) Lit., ‘holds’.

(21) Lit., ‘made us hear’.

(22) Lit., ‘from there’.

(23) Though the interest is mentioned in the note.

(24) I.e., in accordance with whose view was it possible to enunciate such a law?

(25) Surely, he does not. How, then, could it be said that he does take a double portion?

(26) Hence the right of the firstborn to take a double portion.

(27) Amemar, who was of Nehardea, holds the same view as R. Nahman, who was also of Nehardea, that a debt is

regarded as being in the possession of the creditor.

(28) This is the order adopted by Rashb.

(29) Because the bequest was money and not land.

(30) V. u. 1, supra.

(31) Since a loan is made to be spent, the money that is collected for the debt is not the original that was lent, but other money which was never in the creditor's possession.

(32) Lands are regarded as pledged to the creditor and, consequently, as being in his possession.

(33) Lit., 'according to'.

Talmud - Mas. Baba Bathra 125a

What is the reason[1] [why he] does not [take a double portion if] money [was collected]? [Is it not] because their father did not bequeath that particular money? [In the case of] land also, their father, [surely], did not bequeath that land! Furthermore, you, O Master, have said, [that] the reason of the Palestinians is logical, for if the grandmother had sold [her estate] before [her death], her sale would have been valid.[2] Following R. Nahman there is [this] difficulty: What is the reason[1] why he does not [take a double portion when] land [was collected]? [Is it not] because their father did not bequeath that land? [In the case of] money also, their father did not bequeath that money! Furthermore, surely, R. Nahman said in the name of Rabbah b. Abbuha: [If] orphans collected [a plot of] land for their father's debt[3] the creditor[4] may re-collect it from them![5] — He replied to him: There is no difficulty according to me, nor is there any difficulty according to R. Nahman. We were stating the reason of the Palestinians,[6] but we ourselves[7] do not hold [this] opinion.[8]

What [was the story of the] grandmother? [Once] a certain [person] said to them:[9]

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(1) Lit., 'what is the difference?'

(2) V. infra 125b. This shows that land, though regarded as pledged, is not considered to be in possession of the creditor since the debtor can dispose of it and meet his liability in another manner; how, then, could Rabbah state that the firstborn if land was collected, receives a double portion?

(3) That was owing to him.

(4) To whom their father owed money.

(5) Although they received that land after the death of their father, it is regarded as having itself been 'in the father's possession, since it had been obtained through the money (debt) bequeathed to them by their father. In the case of the birthright also, since the land was obtained through the debt that was bequeathed by their father, it should be regarded as having been in his possession, and the first-born should take a double portion; how, then, could R. Nahman say that if land was collected for a debt, the firstborn does not receive a double portion?

(6) Who hold that a firstborn takes a double portion in a loan, and this gave rise to the differences of opinion between Rabbah and R. Nahman.

(7) Lit., 'and to us'.

(8) But share the opinion of Rab and Samuel that the right of primogeniture does not apply to a loan and the whole question, whether the payment was made in money or land, does not arise.

(9) His executors.

Talmud - Mas. Baba Bathra 125b

'My estate [is bequeathed] to [my] grandmother, and after [her demise] to my heirs.'[1] He had a married daughter [who] died during the lifetime of her husband and the lifetime of her grandmother. After the grandmother died, the husband came to claim [the estate].[2] R. Huna said: 'To my heirs',[3] implies, 'even to the heirs of my heirs';[4] and R. Anan said: 'To my heirs', implies, 'but not to the heirs of my heirs'.

[A message] was sent from Palestine:[5] The law is in accordance with [the statement] of R. Anan;

but not because of his reason. 'The law is in accordance with [the statement] of R. Anan' [in] that the husband is not to be the heir. 'But not because of his reason', for, whereas R. Anan holds the opinion [that] even though his daughter had a son he would not be heir,[6] [the law] is not [so]; for had his daughter had a son he would certainly have been heir.[7] The reason why the husband is not heir is this: Because [the estate] was[8] prospective [property],[9] and the husband is not [entitled] to receive of prospective [property] as of [property which is already] in the possession [of his wife at the time of her death].

Does this[10] imply that R. Huna[11] holds the opinion that a husband [is entitled] to receive of the prospective [property of his wife] as of that which is [already] in [her] possession [at the time of her death] — R. Eleazar said: This subject[12] began with the great and ended with the small.[13] [R. Huna's reason is this:] Whosoever says, '[Another person shall be my heir] after you,'[14] is [regarded] as one who said, '[That person shall be my heir] from now'.[15]

Rabbah said: The reason [given] by the Palestinians[16] is logical. For had the grandmother sold [the estate] prior [to her demise] the sale would have been legally valid.[17]

R. Papa said: The law is that a husband does not receive of the 'prospective'[18] [estate] of his wife as of that which is in her possession';[18] and the firstborn son does not receive of a prospective [estate of his father] as of that which is in [his father's] 'possession'. The firstborn son, [furthermore,] does not receive a double portion in a loan [owing to his father], whether [the heirs] had collected [in payment] land or whether they had collected money;

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(1) I.e., on the denise of the grandmother, the estate shall revert back to his own heirs (his own sons, daughters, etc.) and shall not be inherited by the woman's heirs (her sons etc.).

(2) Since his wife, if she had been alive, would have inherited that estate, he, as her husband and heir, claimed his right to that estate.

(3) The expression used by the testator.

(4) Hence the husband is entitled to the inheritance of the estate.

(5) Lit., 'from there'.

(6) Since he excludes the heirs of the heirs.

(7) The son of a daughter (in the absence of sons and their lineal descendants), is entitled to be heir to his grandfather and is, therefore, included in the expression 'my heirs'.

(8) When his wife died.

(9) At that time it was still in the possession of the grandmother.

(10) The statement that the reason why the husband was not granted the right of heirship in the estate of his wife's grandmother is because he is not entitled to inherit any 'prospective property' or his wife.

(11) Who granted the husband's claim.

(12) R. Huna's decision.

(13) R. Eleazar classes R. Huna (who gave the verdict) among the great, and himself (who explained it) among the small.

(14) As here, where the granddaughter has nominated heir after the grandmother.

(15) The granddaughter, in the case cited, consequently came into the possession of the estate during her lifetime, the grandmother only enjoying the right of usufruct. Hence, it was not 'prospective' property' that R. Huna had granted the husband.

(16) Who treated the estate as prospective property.

(17) This proves that the grandmother was nor only entitled to usufruct but also to the full possession of the estate. Had she sold it, the granddaughter would has e received nothing. Hence, as regards the granddaughter, the estate was only prospective, and her husband, therefore, was not entitled to claim it.

(18) The terms have been fully explained in the Gemara and notes supra.

and [in the case of] a loan that is with him[1] [the portion of the birthright] is to be divided [between him and the other heirs].[2]

R. Huna said in the name of R. Assi: [If] the firstborn son had protested [against the proposed improvements in the bequeathed estate][3] his protest is valid.[4]

Rabbah said: [The law] of R. Assi stands to reason in [the case] where grapes were cut[5] [or] where olives were plucked;[6] but where these were pressed[7] [the firstborn does] not [receive a double portion].[8] But R. Joseph said: Even if they were pressed. 'If,' [you said], 'they were pressed',[surely] at first [they were] grapes; now [they turned into] wine![9] — As R. 'Ukba b. Hama said [elsewhere]. 'Compensation is to be paid to him for any damaged grapes',[10] [so] here, also, compensation is paid to him for any damaged grapes.

In what connection[11] was [the statement] of R. 'Ukba b. Mama made?[12] [In connection] with what Rab Judah said in the name of Samuel: Where a father bequeathed to a firstborn, and to an ordinary son grapes which they cut[13] [or] olives which they plucked, the firstborn receives a double portion even if they pressed [the grapes]. '[If] they pressed [the grapes]', it was asked, '[were these not] first grapes [and] now [they are turned into] wine?'[14] [To this] R. 'Ukba b. Mama replied. 'Compensation is paid to him for any damaged grapes.'[15]

R. Assi said: If a firstborn son accepted a share [of a field][16] equal [to that of] any other [brother], he has renounced [the claims of his birthright]. What [is meant by] 'renounced'? — R. Papa said in the name of Raba: He renounced his claim upon that field only.[17] R. Papi in the name of Raba said: He renounced [thereby] his claims upon the entire estate. R. Papa had said in the name of Raba [that] he renounced his claim upon that field only, [for] he is of the opinion [that] the firstborn is not regarded as legal possessor of [his share] before the division [between the heirs takes place];[18] and R. Papi had said in the name of Raba that he renounced. [thereby]. his claim upon the entire estate, [because] he is of the opinion [that] the firstborn is considered [legal] possessor of [his share] before the division takes place, and [it is assumed that], since he has renounced his claim over that [one field] he has [also] renounced his claim upon all the others.

And the [statements reported by] R. Papi and R. Papa [in the name of Raba] were not made[19] explicitly [by him], but inferred [by them]. For there was a certain firstborn son who went [and] sold his own property[20] and [that] of his other [brother].[21] [When] the orphans, the sons of the other [brother], went to eat [of] the dates of the buyers, the latter beat then,. 'Is it not enough', said the [orphans'] relatives to them, 'that you bought up their property. but you must also beat them?' They came before Raba, [and] he said to them: 'The sale is invalid'[22] .

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(1) With the firstborn. I.e., when he himself owes money to his father.

(2) He takes one half, and the others take the other half. The portion of the birthright is, in this case, of 'doubtful ownership'. If the loan in question were to be regarded as an ordinary debt, the firstborn would have had no claim at all to the double portion of the birthright. Since, however, the loan is in his own possession, it might he argued that he is entitled to the full share of his birthright. Hence the compromise.

(3) Demanding the distribution of the property prior to the introduction of the improvements; and the other heirs effected them against his wish.

(4) Lit., 'he protested'. He is entitled to a double portion even in the appreciation that was produced by their efforts.

(5) By the heirs.

(6) Since the appreciation in these cases has not produced any radical change in the fruit.

(7) Into wine or oil.

(8) Even though he protested; because, in this case, there was complete transformation of the original bequest. The wine or oil was never in the possession of the deceased.

(9) The wine has never been in the possession of the deceased, why then should the firstborn be entitled to a double

portion in the wine?
(10) Lit., ‘to give him the value (money) of the damage of his grapes’. (12) The firstborn receives a double portion. not in the wine, but in value of the grapes that were lost or damaged in the process of the manufacturing of the wine. The heirs, who made the change in disregard of his protest, must hear the loss.
(11) Lit.,’where’.
(12) Lit., ‘said’.
(13) Despite the protest of the firstborn.
(14) Since this is a case of complete transformation. why should he receive a double portion? v. p. 522. n. 9. and n. 10.
(15) v. p. 522. n. 12.
(16) Bequeathed by his father.
(17) He may, however, still claim his rights in any of the other parts of the estate.
(18) Hence, he can only renounce his share in that field which has been divided, but not in those parts of the estate which have not yet been divided, since no man can renounce or confer possession of a thing which is not his. (Rashb.)
(19) Lit., ‘said’.
(20) His double portion in the bequeathed stare of his father.
(21) I.e he sold the entire estate, before It had been divided between him and his brother, without the consent of the latter.
(22) Lit., ‘he (the firstborn) has not done anything’.

Talmud - Mas. Baba Bathra 126b

[One] master[1] holds the opinion [that Raba's meaning was that the sale] of a part[2] [only of the estate was] invalid, and the [other] Master[3] holds the opinion [that Raba's meaning was that] the entire [sale was invalid].[4]

[A message] was sent from Palestine:[5] [If] a firstborn son had sold [his share] before the division [of the estate took place, that sale] is invalid.[6] This shows that the firstborn is not regarded as the [legal] possessor of his share[7] before distribution [had taken place]. And the law is that the firstborn is the possessor of his share[8] [even] before distribution [of the estate had taken place].

Mar Zutra of Darishba divided a basket[9] of pepper with [his] brothers in equal [shares].[10] [When] he came before R. Ashi, [the latter] said to him: ‘Since you have renounced [your rights in] a part [of the estate][11] you have [implicitly] renounced [them] in all of it’.[12]

M I S H N A H. [IF] ANY ONE SAID,[13] ‘MY FIRSTBORN SON, SHALL NOT RECEIVE A DOUBLE PORTION,’ [OR] ‘X, MY SON, SHALL NOT BE HEIR WITH HIS BROTHERS’, HIS INSTRUCTIONS ARE DISREGARDED,[14] BECAUSE HE MADE A STIPULATION [WHICH IS] CONTRARY TO WHAT IS WRITTEN IN THE TORAH.[15] IF ONE[16] DISTRIBUTED HIS PROPERTY VERBALLY, [AND] GAVE TO ONE [SON] MORE, AND TO [ANOTHER] ONE LESS, OR [IF] HE ASSIGNED TO THE FIRST BORN A SHARE EQUAL TO THAT OF HIS BROTHERS,[17] HIS ARRANGEMENTS ARE VALID.[18] IF, [However]. HE SAID, AS AN INHERITANCE’,[19] HIS INSTRUCTIONS ARE DISREGARDED.[20] [IF] HE WROTE,[21] EITHER AT THE BEGINNING OR THE MIDDLE OR THE END, ‘AS A GIFT’,[22] HIS INSTRUCTIONS ARE VALID.[23]

G E M A R A. [Must] it be said [that] our Mishnah[24] is not in accordance with R. Judah? For, if [it be suggested that it is in accordance with] R. Judah. surely he said, [it may be asked]. [that] in money matters one's stipulation is valid’.[25] For it was taught: If a man said to a woman, ‘Behold thou art consecrated unto me[26] on condition that thou shalt have no [claim] upon me [for] food, raiment and conjugal rights’ she is consecrated[27] but the stipulation is null[28] ; these are the words of R. Meir. R. Judah said: In respect of the money matters his stipulation is valid![29] [Our Mishnah] may be said [to be in agreement] even [with the view of] R. Judah; [only] there,[30] she knew [his conditions] and

renounced her privilege[31] [but] here,[32] [the son] did not renounce [his privileges].[33]

R. Joseph said: [If] one said, 'X is my firstborn son', [the latter] is to receive a double portion.[34] [But if he said]. 'X is a firstborn' [the latter] is not to receive a double portion, for he may have meant,' the firstborn son of his mother'.[35]

A certain [person once] came before Rabbah b. Bar Hana [and] said to him, 'I am certain that this [man] is a firstborn'. He said to him: 'Whence do you know [this]?' 'Because his father called him foolish[36] firstborn' 'He might have been the firstborn of his mother [only], because the firstborn of a mother is also called foolish firstborn.'[37]

A certain [Person once] came before R. Hanina [and] said to him, 'I am certain that this [man] is firstborn'. He said to him, 'Whence do you know [this]?' — [The other] replied to him,: 'Because when [people] came to his father,[38] he used to say to then,: Go to my son Shikhath, Who is firstborn and his spittle heals'. — Might he not have been the firstborn of his mother [only]? — There is a tradition that the spittle of the firstborn of a father is healing, but that of the firstborn of a mother is not healing.

R. Ammi said: A tumtum[39] [firstborn] who, having been operated upon, was found to be a male, does not receive a double portion [as heir], for Scripture says. And if the firstborn son be hers that was hated,[40] [which implies that he cannot be regarded as firstborn] unless[41] he was a son at the beginning[42] of [his] being.[43] R. Nahman b. Isaac said: Neither is he tried as a 'stubborn and rebellious son';[44] for Scripture says. If a man have a stubborn and rebellious son,[45] [which implies that] he must have been[46] a son at the beginning[47] of[his] being.[48]

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(1) R. Papi.

(2) Lit., 'half'. That part which belonged to his brother. The sale of his own share, however, is valid since, according to R. Papi. the firstborn comes into the possession of his own share even before the distribution had taken place.

(3) R. Papa

(4) Because, according to R. Papa, the firstborn does not come into the possession of his share heir the distribution had taken place.

(5) Lit , 'from there'.

(6) V. note 3.

(7) Lit 'he has not'

(8) Lit 'he has'.

(9) Lit., 'in a basket'.

(10) Though he was the firstborn, he renounced his claim upon the double portion.

(11) The pepper.

(12) Lit., 'in all the property'.

(13) Prior to his death.

(14) Lit., 'he said nothing'.

(15) One has no right to give instructions which are contrary to the law of the Torah which has entitled every son to a portion, and the firstborn to a double portion, in the father's estate.

(16) A man on his death-bed.

(17) Lit , 'he made the firstborn equal to them'.

(18) Because a person is entitled to dispose of his property, as a gift, in any manner that appeals to him.

(19) I.e., if he distributed the shares as portions of an inheritance and not as gifts.

(20) V. supra n. 2 and 1.

(21) Disposing of his property in a written will.

(22) Though he used the expression of 'inheritance' also.

(23) Lit, 'his words stand'. So long as the expression. 'as a gift', was used, the other expression. 'as an inheritance'. that may have been used with it, does not affect the validity of the testator's instructions.

(24) Which forbids any stipulation that is contrary to a law of the Torah.
(25) Even if it is contrary to a law of the Torah Since our Mishnah deals with money matters and yet it is stated that one's stipulation that is contrary to the Torah, is invalid, it obviously cannot agree with R. Judah's view.
(26) The formula of marriage used by the bridegroom is, 'Behold, thou art consecrated onto me by this ring according to the law of Moses and Israel'.
(27) Becomes his legal wife.
(28) Because it is contrary to the law of the Torah. Cf. Ex. XXI, 10.
(29) I.e., her 'food and raiment'. Now since the law is always decided in accordance with the view of R. Judah, in opposition to the rival view' of R. Meir, is it likely that our Mishnah is contrary to the accepted law?
(30) In the stipulation about the food and clothing of one's wife.
(31) By the acceptance of his proposal. Hence the validity of the stipulation.
(32) The case in our Mishnah.
(33) Which the Torah had conferred upon him. Hence the law that the stipulation is null.
(34) His father's word is sufficient in this case to establish his right.
(35) Such a firstborn has to be redeemed from the priest in the same way as the firstborn of a father, but is not entitled to a double portion.
(36) The witness assumed that 'foolish firstborn' implied that he was 'firstborn to his father' and 'weak in intellect'.
(37) 'Foolish', implying that he has the title 'firstborn' without the rights and privileges attached to it.
(38) Complaining of certain pains or eruptions on their bodies.
(39) טומטום one whose sexual organs are undeveloped or concealed. (11) Lit., 'who was torn'.
(40) Deut. XXI, 15.
(41) Lit., 'until'.
(42) Lit., 'from the moment'.
(43) הויה being', 'existence', comes from the same root as והיה 'and if . . . be', in the text cited.
(44) V\ Deut. XXI, 28-21.
(45) Ibid. v. 28.
(46) Lit., 'until he shall be'.
(47) V. supra n. 3.
(48) Cf. I.e. n. 4. The Heb. for hare in the text cited, is יהיה of the same root as הויה

Talmud - Mas. Baba Bathra 127a

Amemar said: Nor does he reduce the portion of the birthright;[1] for it is said, And they have born him sons[2] [which implies that] he must have been[3] a son[4] at the time of [his] birth.[4] R. Shezbi said: Nor is he circumcised on the eighth [day[5] of his birth];[6] for Scripture said, If in woman be delivered, and bear a man-child. . . and in the eighth day [the flesh of his foreskin] shall be circumcised,[7] [which implies that] he must be[8] a male at[9] the time of [his] birth.[10] R. Sherabya said: Nor is his mother [levitically] unclean [on account] of [his] birth;[11] for Scripture said, If in woman be delivered, and bear a man-child, then she shall be unclean seven days [which implies that she is not unclean][12] unless he[13] was a male at[9] the time of [his] birth.[14]

An objection was raised: [It was taught]. 'If a woman miscarried a tumtum[15] or an androginos,[16] she must continue [in her levitical uncleanness and cleanness, as] for both a male and a female'.[17] [Is not this] an objection [to the statement] of R. Sherabya?[18] — This is an objection.

May it be suggested [that] this is [also] all objection [against the statement] of R. Shezbi?[19] The Tanna[20] may have been in doubt[21] and, [consequently. he imposed a double] restriction.[22] If so,[23] it should have been [stated that] she should continue [in her uncleanness] for a male, and for a female, and for her menstruation![24] — This is a difficulty.

Raba said: It was taught in agreement with [the view] of R. Ammi:[25] [The expression.] a Son,[26] [Implies], but not a tumtum;[27] [the expression] a firstborn,[28] [implies] but not a doubtful case.[29] [The

statement]. ‘in son, but not a tumtum’ [can well be explained] in accordance with [the view] of R. Ammi; but what does [the statement]. ‘a firstborn, but not a doubtful case’, exclude?[30] — It excludes[31] [the opinion arrived at] through Raba's exposition. For Raba gave the following exposition: [if] two women[32] gave birth [respectively] to two male children in a hiding place.[33] [these[34] may] write out an authorisation for one another.[35]

R. Papa said to Raba: Surely Rabin had sent [a message stating]: This question I have asked of all my teachers, but they told me nothing; the following, however, was reported in the name R. Jannai: [If] they[36] were identified,[37] and afterwards they were exchanged, they may give written authorisation to one another; [if] they were not identified,[37] they may not give written authorisation to one another.[38]

Subsequently Raba appointed an Amora[39] by his side, and made the following exposition: what have told you was in error; but this, indeed, has been reported in the name of R. Jannai. ‘If they[36] were identified[34] and afterwards they were exchanged, they may give written authorisation to one another, [if] they were not identified[37] they may not give written authorisation to one another.

The men of Akra di Agama[40] addressed[41] [the following enquiry] to Samuel: Will our master instruct us [as to] what [is the law in the case] where one was generally held-to be a firstborn son, but his father declared that another [son] was the firstborn?[42] — He sent to them [the following reply]: ‘They may write on an authorisation

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(1) If the tumtum had, e.g., two brothers, one of whom was firstborn, the inherited estate is to be divided into three portions only, (as if the tumtum did not exist). Of these, the firstborn who is entitled to a double Portion (one ordinary and one as his birthright) receives one portion (that for the birthright), while the remaining two are subdivided into three Portions, each of the three brothers receiving one. The firstborn's portion of the birthright is thus in no way diminished through the existence of the tumtum.

(2) Deut., XXI. 15.

(3) V. note 7.

(4) Emphasis is laid on born and sons, in the text cited.

(5) V. Gen. XVII, 12.

(6) If that day fell on a Sabbath.

(7) Lev. XII, 2-3, from which is derived the suspension of the Sabbath laws in favour of circumcision on the eighth day (v. Shab. 131b).

(8) V. note 7.

(9) Lit., ‘from’.

(10) Since Scripture states, man-child . . .’ shall be circumcised’.

(11) V. Lev. XII, 2 and 5.

(12) The period of seven days. V. ibid. v. 2.

(13) V. note 7, supra.

(14) The emphasis is on man-child, then she shall be unclean’.

(15) V. p. 526, n. 20.

(16) אנדרוגינום Gr.** Hermaphrodite.

(17) She must observe fourteen unclean clays as for a female (Lev. XII. 5), and not seven only as for a male (ibid. v. 2); while her period of cleanness is not sixty-six days. as for a female (ibid. v. 5)’ but only thirty-three as for a male (ibid. v. 4) Prom these thirty-three days, however, the additional seven days (the difference between the unclean periods if male and female respectively) are to be deducted, so that her period if cleanness consists of twenty-six days only.

(18) Who said that the mother was not unclean at all.

(19) He does not regard a tumtum as male at all, while the cited Baraitha regards him as partly male.

(20) Of the cited Baraitha.

(21) As to whether a tumtum and an androginos are to be regarded as males or females.

(22) That if a female as regards the unclean period, and that of a male regarding the clean period. In the case of

circumcision, the restrictions of Sabbath observance also have been imposed.
(23) That, on account of the doubt, additional restrictions were imposed.
(24) Since it is also possible that the law of 'uncleanness of birth' is not applicable in such a doubtful case, the woman should be subject must only to the restrictions connected with the birth of a male and a female, but also to those of menstruation. The unclean period due to birth (fourteen for a female which include the seven for a male should not, accordingly, be followed by the clean period of twenty-six days (v. note 1, supra) during which she is regarded as clean even if blood had appeared, but by that of menstruation, I.e., let her be treated as if nn birth at all had taken place and, consequently, if any blood appeared she should become menstrually unclean.
(25) That a tumtum, though found after an operation to be male, is not entitled to the birthright.
(26) Deut. XXI. is.
(27) I.e., a birth, though found later to be made.
(28) Ibid.
(29) That of one about whom it is uncertain whether he is firstborn.
(30) It being obvious that the doubtful first-boris has no claim to the double portion.
(31) Lit., 'to exclude'.
(32) Wives of the same husband.
(33) So that it is not known is who was born first.
(34) When they came to claim a share in their father's bequeathed estate.
(35) Since one of the to is is certainly firstborn, he who receives the authorisation can claim from his brothers the double portion of the birthright, either on his own behalf or on behalf of his brother. The second clause of the cited Baraitha proves that Scripture did not permit of such a Procedure, and that in any doubtful case the double portion of the birthright cannot he claimed.
(36) The two sons of whom it is not known which is the firstborn.
(37) At their birth.
(38) How, then, could Raba state that is written authorisation may be given in all cases, presumably even when they were never identified.
(39) An interpreter. v. Glos.
(40) ['The fort of Agama' near Pumbeditha (v. Obermeyer. op. cit , P. 237. n. 3).]
(41) Lit., 'Sent'.
(42) Which of the two is entitled to the birthrights

Talmud - Mas. Baba Bathra 127b

for one another.' What [is really] your opinion [on the matter]? If [Samuel] holds the same view as the Rabbis,[1] he should have sent [word] to them, according to the Rabbis; if he holds the same view as R. Judah.[1] he should have sent [word] to them according to R. Judah! — He was in doubt as to whether [the law is] according to R. Judah or according to the Rabbis.[2]

What is that [dispute]?[3] — It was taught: He shall acknowledge[4] [implies]. 'he shall [be entitled to] acknowledge him before others'.[5] From this R. Judah deduced that a person is believed when he declares, 'This son of mine is firstborn'.[6] And as a person is believed when he declares 'this son of mine is firstborn', so one is believed when one declares, 'this is the son of a divorced woman', or 'this is the son of a haluzah.'[7] But the Sages say he is not believed.[8]

R. Nahman b. Isaac said to Raba: According to R. Judah it is correct for Scripture to say, he shall acknowledge,'[9] according to the Rabbis, however, what need is there for[10] [the expression] he shall acknowledge? — When acknowledgment is required.[11] In what legal respect?[12] As regards giving him a double portion? Should he [even] be [regarded as] but a stranger, could he[13] not give [it][14] to him if he desired to make a gift of it? — This[15] is required only [in the case] where property has come into his possession[16] afterwards.[17] But according to R. Meir Who said, 'a man may give possession of a thing that has not come into existence',[18] what need is there for, he shall acknowledge?[19] — [It is needed for the case] where property came into his possession[20] while he

was dying.[21]

Our Rabbis taught: [Where a son] was held to be a firstborn, and his father declared another [son] to be the firstborn, [the father] is believed. [Where, however, a son] was held not to be a first-born, and his father declared him to be a firstborn, [the father] is not believed. The first [clause harmonises with the view of] R. Judah,[22] and the last [clause harmonises with that of] the Rabbis.[23]

R. Johanan said: [If] a person declared, 'this is my son', and then retracted and declared, 'He is my slave', he is not believed. [If, however, he said], 'He is my slave', and then he retracted and declared, 'He is my son', he is believed, for he [may] mean,[24] 'who attends upon me as a slave'. [This law,] however, is reversed [when the statements were made] at a custom house. If, when passing the custom house, he declared, 'This is my son', and then he retracted, and said, 'He is my slave', he is to be believed.[25] [If, however,] he declared, 'He is my slave', and then he retracted, and said,'He is my son', he is not believed.[26]

An objection was raised: [It was taught:] If a man attended upon another as a son[27] and the latter came [before the court] and declared, 'He is my son' and, then, he retracted and stated, 'He is my slave', he is not believed. [If, however], he attended upon him as a slave, and [the latter] came [to the court] and declared, 'he is my slave', and then he retracted, and stated, 'He is my son', he is not believed![28] — R. Nahman b. Isaac replied: [The case] there[29] [refers to one] whom he called, 'a slave of a rope of a hundred'.[30] What [is meant By] 'a rope of a hundred'? — A rope of a slave [who is worth] a hundred zuz.[31]

R. Abba sent to R. Joseph b. Hama: If one says to another, 'You stole my slave', and the other says, 'I did not steal [him]'. [And when the first inquires, 'In] what capacity [is he] with you?' [the latter replies]. 'You sold him to me,

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(1) The dispute between the Rabbis (the Sages) and R. Judah follows, infra.

(2) Hence his original message.

(3) Between R. Judah and the Rabbis.

(4) 'The firstborn'. Deut. XXI, 27.

(5) יכיר may be rendered, 'he shall acknowledge' and also, being a Hiphil. 'he shall make known', viz., 'to others'.

(6) Though another son was hitherto reputed to be the first-born.

(7) חלוצה The term is applied to the wife of a deceased brother (who left no issue) after she had been released from levirate marriage. The ceremony of release, in the course of which the widow takes off the shoe of her dead husband's brother, is called halizah, חליתה from root חלץ 'to take off'. Cf. Deut. XXV. 9f.

(8) If another son was reputed to be the firstborn.

(9) Since from this expression it has been inferred that the father's word is the determining factor in deciding the birthright, though another son was generally recognised as firstborn.

(10) Lit, 'wherefore to me'.

(11) Where it is not known stall who is the firstborn.

(12) Lit., 'to what law'; under what legal circumstances is it necessary, according to the Rabbis, for a father to declare which of his sons is his firstborn?

(13) 'The father.

(14) The double portion.

(15) The law on the reliability of a father's declaration.

(16) Lit., 'fell to him'.

(17) After he made the declaration on the birthright. A person can make a gift of that only which he already has in his possession, but not of that which he may acquire in the future. Consequently the necessity in such a case, for the father's declaration.

(18) Lit., 'to the world'.

(19) Surely he could, according to R. Meir, make a gift to the firstborn, of the double portion. in any property that he

might acquire in the future.
(20) Lit., ‘fell to him’.
(21) When he is physically unfit to make any gifts. The law of R. Meir which allows a person to give possession of what he might get in the future, applies only to one who is in a condition to make the gift when it reaches him. A dying man, though legally entitled to obtain possession, is not in a condition to make gifts and to give possession. Hence the necessity for a father's declaration on the birthright.
(22) Who places implicit confidence on the testimony of the father.
(23) Who rely upon repute more than on a father's word.
(24) When cising the term, ‘Slave’.
(25) By his first statement he may have desired to avoid the slave tax.
(26) For, if his latter statement were correct, he would not have declared his son upon whom there is no tax) to be his slave for whom a tax is payable.
(27) Performing for him light services.
(28) How, then, could R. Johanan say that a person is believed when he declares one to be his son though he first declared him to be his slave?
(29) In the Baraitha cited.
(30) Heb. mezar, מתר, ‘a rope’. A term of contempt for confirmed slaves (Jast.) [Kohut, Aruch, connects it with an Arabic word, denoting ‘bag’, and renders, ‘a slave if a bag of a hundred.’]
(31) [According to Kohut, ibid, a bag, or price of a slave is a hundred in.]

Talmud - Mas. Baba Bathra 128a

you gave him to me as a gift, [but] if you wish, take an oath[1] and you will get him back’;[2] and [the first] took the oath; [the latter] is not allowed to retract.[3] What does he teach us?[4] [The obvious principle underlying the law] has [surely] been taught [elsewhere]:[5] [If one of the litigants] said to the other,[6] ‘I have full confidence[7] in my father,[8] I have full confidence in your father, I have full confidence in three oxherds’,[9] R. Meir says, he may retract,[10] and the Sages say he may not![11] He[12] teaches us this: That the dispute[13] [relates also to the case] where [a litigant declared], ‘I will give it to you’[14] and [that] the halachah is in accordance with the words of the Sages.

R. Abba sent to R. Joseph b. Hama: the halachah is that slaves may be seized [from orphans, in payment of a debt incurred by the father].[15] R. Nahman. however, said they may not be seized.[16]

R. Abba sent to R. Joseph b. Hama: The halachah is that [a relative in the] third [degree] is qualified [to act as witness for or against a relative] in the second [degree].[17] Raba said: Also [for, or against a relative] in the first [degree][18] also. Mar, son of R. Ashi permitted [a grandson to act as witness] for his father's father. The law, [however], is not in accordance with [the view of] Mar, son of R. Ashi.

R. Abba sent to R. Joseph b. Hama: If a person possessed evidence[19] in one's favour [in the matter of a plot of] land, before he became blind, and [then] became blind, he is disqualified.[20] Samuel, however, said: He is permitted [to give evidence], [since] it is possible for him to gauge [the extent of] its boundaries; but [in the case of] a cloak [he is] not [to be admitted as witness].[21] R. Shesheth said: Even [in the case of] a cloak [his evidence is admissible, for] it is possible for him gauge the measurements of its length and of its breadth; but not [in the case of] a bar of metal. R. Papa said: Even [in the case of] a bar of metal, [for] it is possible for him to gauge its weight.

An objection was raised: ‘If a person possessed evidence[22] affecting another before he became his son-in-law, and, [subsequently,] he became his son-in-law, [or if that witness] had the faculty of hearing and became deaf, the faculty of seeing and became blind, sane and became insane, he is disqualified [from giving evidence]. If, however, he possessed evidence affecting him before he became his son-in-law, and when he became his son-in-law, his daughter died; [or if he] had the

faculty of hearing, became deaf, and regained his hearing; [or if he] had the faculty of Seeing, became blind, and regained his eyesight; [or if] he was sane, became insane, and regained his sanity, [in all these cases] he is qualified [to act as witness]. This is the general rule: Whenever his beginning[23] or his end[24] was under a disqualification, he is disqualified, [but whenever] his beginning and his end [find him] in a suitable condition, he is permitted [to give evidence].[25]

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(1) That he was neither sold nor presented.

(2) Though, legally, the possessor cannot be compelled to accept the oath of the claimant.

(3) Since he once consented to return the slave if the other took an oath he cannot subsequently withdraw that consent, and re-assert his former rights.

(4) I.e., what new point or principle.

(5) Sanh. 24a.

(6) Lit., 'to him'.

(7) I.e., he accepts as judge or witness.

(8) A father, like any other relative, is disqualified from acting either as judge or as witness.

(9) I.e., ignorant men, unsuitable to act as judges.

(10) Since these are legally disqualified, and their authority for acting as judges or witnesses is derived solely from his verbal consent, he may retract and allow the matter to be settled in accordance with the accepted legal procedure.

(11) Which shows, like the message of R. Abba, that once a man has renounced his legal rights, he cannot retract. Why, then, the need for R. Abba's statement, seeing that the underlying principle has already been enunciated in a Mishnah?

(12) R. Abba.

(13) Between R. Meir and the Sages

(14) Against the view that the dispute has reference only to the case where a litigant declared, 'You may keep it.' R. Abba, by his statement that the defendant cannot retract but has to surrender the slave to the claimant, has taught us that the dispute between R. Meir and the Sages is not limited to the case where a claimant agrees to forfeit his claim in favour of the defendant on the ruling of relatives (or other disqualified persons), as in the view of one authority in Sanhedrin 24a, but applies also to that of a defendant who agrees to abide by the ruling of such disqualified persons and pay up; and that even in such a case the Sages hold the opinion that the defendant cannot retract.

(15) Slaves are compared to real estate which may be seized from orphans by their father's creditors.

(16) Like movable property which cannot be seized from orphans (v. B. K 11b).

(17) To his father's first cousin. Brothers are relatives in the first degree, their sons in the second, and their grandsons in the third degree.

(18) His grandfather's brother.

(19) Lit., 'he knew'.

(20) From acting as witness, A blind man cannot possibly indicate the exact position of the boundaries of a field, though he may have known them well before he lost his eyesight.

(21) Because many cloaks are equal in size.

(22) V. p. 533, n. 8.

(23) The time of his observation.

(24) When he appears for the purpose of giving evidence.

(25) 'Ar. 17b.

Talmud - Mas. Baba Bathra 128b

[This, surely, presents an] objection against all of them![1] — This is [indeed] an objection.

R. Abba sent to R. Joseph b. Hama: If one said [something] concerning a child among [his] sons, he is to be trusted.[2] And R. Johanan said: He is not to be trusted.[2] What does this mean? — Abaye replied: It is this that was meant: If one said concerning a child among [his] sons [that] he shall be heir to all his estate, he is to be trusted in accordance with [the view of] R. Johanan b. Beroka;[3] and R. Johanan said [that] he is not to be trusted, in accordance with [the view of] the Rabbis.[4]

Raba pointed out a difficulty. [If] that [is the meaning, why the expressions], 'trusted' and 'not trusted'? 'He shall be heir' and 'he shall not be heir' should have been [the expressions used]! But, said Raba, it is this that was meant: If one said concerning a child among [his] sons [that] he was the firstborn, he is to be trusted,[5] in accordance [with the view of] R. Judah;[6] and R. Johanan said that he was not to be trusted, in accordance with [the view of] the Rabbis.[6]

R. Abba sent to R. Joseph b. Hama: If one said, 'Let my wife receive [a share in my estate] as [any] one of [my] sons,'[7] she is to receive [a share] like [any] one of the sons. Raba said: But [only] in the property [which he had in his possession] at that time,[8] and among the sons who may appear subsequently.[9]

R. Abba sent to R. Joseph b. Hama: [In the case when] one produces a bond of indebtedness against another, and the lender states, 'I received no payment at all', and the borrower pleads, 'I have paid a half', while witnesses testify that all [the debt] was paid, that [borrower] must take an oath,[10] and the [lender] collects the [other] half from [the borrower's] free property but not from [that] which has been disposed of,[11] for [the buyers or the creditors] can say, 'We rely upon the witness.'[12] And even [according] to R. Akiba, who said [that he[13] is to be treated in the same way as] one who returns a lost object,[14] these words [apply only to the case] where there are no witnesses, but where there are witnesses [his admission may be due to the fact that] he is simply afraid.[15] Mar son of R, Ashi pointed out a difficulty: On the contrary, even [according] to R. Simeon b. Eleazar who said,[16] [in the case mentioned, that] he[17] is [to he treated as] one who admits part of the claim, these words, [it may be argued, are applicable only to the case] where there are no witnesses who support him, but where there are witnesses who support him, he [should] certainly [be treated as] one who returns a lost object![18]

Mar Zutra taught in the name of R. Shimi b. Ashi: The law in [the case of] all these reported statements [is] in accordance with [the messages] which R. Abba sent to R. Joseph b. Hama. Rabina said to R. Ashi: What [about the law] of R. Nahman?[19] He replied to him: We learnt that [message of R. Abba as], 'they may not be seized', and so said R. Nahman.[20] What, then, does [the declaration of] the law exclude?[21]

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(1) Samuel, R. Shesheth and R. Papa, all of whom admitted the evidence of a witness who lost his eyesight.

(2) This is explained infra.

(3) Who stated that a father has a right to assign all his property to one only among all his legal heirs.

(4) The first Tanna, with whom R. Johanan b. Beroka is in dispute.

(5) Though another son was the reputed firstborn.

(6) Supra 127b.

(7) In addition to her kethubah or marriage settlement; or (with her consent) in lieu of it.

(8) Lit., 'of now', i.e., at the time he gave his instructions. She receives no share in any property that he acquires afterwards.

(9) I.e., if the number of sons had increased, she is to receive a smaller share, the estate being divided in accordance with the number of heirs (all the sons and the widow) that are alive at the time of the distribution, not according to the number at the time the will was made.

(10) That he repaid half the debt, in accordance with the law that the admission of part of a money claim, carries an oath on the remaining sum; v. B.M. 4a.

(11) I.e., either sold or mortgaged.

(12) Who testified that all the debt was paid. The admission of the borrower, they may claim, is due to collusion with the creditor to deprive them of their land.

(13) Who admits part of the claim but more than can be proved against him.

(14) And need not, therefore, take an oath.

(15) That they might testify against him. Hence, in such a case, even R. Akiba agrees that the borrower must take an oath.

(16) In his dispute with R. Akiba.

(17) V. p. 535, n. 9.

(18) How, then, could R. Abba subject the borrower in our case to an oath.

(19) Regarding the seizure of slaves, supra. In civil matters the law is always in accordance with R. Nahman's views, while here it has been stated that the law is in accordance with R. Abba's message. How, then, is one to reconcile the laws of R. Nahman and R. Abba, which are mutually contradictory?

(20) The two views are not contradictory, but identical.

(21) The declaration cannot have for its object the mere statement of the law regarding the seizure of slaves. Since that is obvious from the fact that R. Nahman and R. Abba hold the same opinion, there was no need to state it.

Talmud - Mas. Baba Bathra 129a

If [its purpose is] to exclude Raba's [law[1] , surely] he [merely] adds [to that of R. Abba]![2] If [to exclude the law] of Mar son of R. Ashi, [surely, it has already been stated that] the law is not according to Mar son of R. Ashi![3] If to exclude [the laws] of Samuel and R. Shesheth and R. Papa, to these, surely, objections have already been raised![4] — But, [this is the object of the declaration:] To exclude [the law] of R. Johanan,[5] and [that which was to be implied by] the difficulty of Mar son of R. Ashi.[6]

IF ONE DISTRIBUTED HIS PROPERTY VERBALLY [AND] GAVE TO ONE [SON] MORE, AND TO [ANOTHER] ONE LESS, etc. How is one to understand [the giving of] A GIFT AT THE BEGINNING, IN THE MIDDLE, or AT THE END? — When R. Dimi came[7] he stated in the name of R. Johanan: [If one wrote,] 'Let a certain field be given to X and he shall inherit it,' this is [called] A GIFT AT THE BEGINNING. [If he wrote], 'let him inherit it and it shall be given to him', this is [called] A GIFT AT THE END. 'Let him inherit it and let it be given to him so that he may inherit it', this is A GIFT IN THE MIDDLE. [This law is] only [applicable to the case] of one person and one field,[8] but not to [the case of] one person and two fields,[9] [or] one field and two persons.[10] R. Eleazar said: ['The same law applies] even [to the case of] one person and two fields [or] one field and two persons'. [The law,][11] however, [is] not [applicable] in [the case of] two fields and two persons.

When Rabin came[7] he said: [In the case where one wrote], 'Let this field be given to X, and let Y inherit that [other] field', R. Johanan said: He[12] acquires possession, [and] R. Eleazar said: He[13] does not acquire possession. Said Abaye to Rabin: You have given us satisfaction [in one [respect] and cause for demurring in another.[14] [For, as regards the apparent contradiction between the statement] of R. Eliezar[15] and the other statement of His[16] one can well explain [that there is] no [real] difficulty [since] one statement[17] [may be said to refer to the case] of one person and two fields;[18] and the other,[19] to two persons and two fields. [The contradiction], however, [between the first statement] of R. Johanan,[20] and his second one[21] [presents] a difficulty![22] — [We[23] are] Amoraim [in dispute] as to [which were the views] of R. Johanan.

Resh Lakish, however, said: No possession is [ever] acquired[24] unless [the testator] had said, 'Let X and Y inherit this and that particular field, which I had assigned to them as a gift, so that they may inherit them'.[25]

[The following Amoraim are] in [the same] dispute [as that of those mentioned]. R. Hamnuna said: [The law that possession[26] is acquired], was only taught [in the case of] one person and one field, but not [in the case of] one person and two fields [or] one field and two persons.[27] And R. Nahman said: [The same law applies] even [to the case of] one person and two fields [or] one field and two persons, but not [to that of] two fields and two persons.[28] And R. Shesheth said: [Possession is acquired] even [in the case of] two fields and two persons.[29]

R. Shesheth said: I derive my decision from the following Baraitha.[30] If one[31] said, 'Give my children[32] a shekel a week',[33] and they require a sela',[34] a sela' is to be given to them.[35] If, however, he said,'Give them no more than a shekel', only a shekel is to be given to them. But if he gave instructions [that] if these died

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(1) Regarding the evidence of certain relatives, supra 128a.

(2) Without disagreeing with R. Abba's law.

(3) Why, then, state the same thing again?

(4) And the law could not, in any case, be decided in accordance with their views.

(5) Regarding the assignment of one's entire estate to one child among all the heirs (supra 128b), which is contrary to that of R. Abba.

(6) Who, contrary to the law of R. Abba (supra 128b), sought to prove that the borrower need not take an oath.

(7) From Palestine.

(8) IN such a case, the expression of 'inheritance' is counteracted by that of 'gift'.

(9) If, in connection with one field, the expression of 'inheritance' and with the other that of 'gift' was used, the latter field is acquired by the donee but not the former.

(10) If the testator said, e.g., that the half of the field shall be inherited by one person and the other half shall be taken as a gift by another, the latter acquires possession of his share, but the former does not,

(11) This is a Talmudic comment, nad does not belong to R. Eleazar's statement (Rashb.).

(12) The latter and certainly the former.

(13) The latter.

(14) Lit., 'one'.

(15) In R. Dimi's report, supra, where it is stated that possession is acquired.

(16) In Rabin's report, according to which possession is not acquired.

(17) Lit., 'here'; viz., the first statement.

(18) Both fields were given to him at the same time; and since he acquires possession of the one field, (given as a gift), he also acquires possession of the other.

(19) Lit., 'here', the second statement; that of Rabin,

(20) In R. Dimi's report.

(21) In the report of Rabin.

(22) According to the first statement no possession is acquired even in the case where the two fields were assigned as an inheritance to one person, much less where they were so assigned to two persons, while according to the second statement, possession is acquired even in the case of two fields and two persons.

(23) R. Dimi and I (Rabin).

(24) Where the expression of 'inheritance' was used together with that of 'gift', in the case of two persons and two fields.

(25) Both acquire possession of the respective fields, because the testator had used the expression, 'I had assigned to them as a gift', implying that the gift was made before it was assigned as 'inheritance' (R. Gersh.).

(26) Where the expression of 'gift' was used with that of 'inheritance'.

(27) This is in agreement with the statement of R. Dimi in the name of R. Johanan, supra.

(28) Agreeing with the view of R. Eleazar, supra.

(29) As Rabin stated in the name of R. Johanan.

(30) Lit., 'whence do I say it? For it was taught'.

(31) A dying person, or one setting out on a long journey.

(32) Out of the estate he leaves behind.

(33) For their maintenance.

(34) Sela' = two shekels.

(35) By mentioning shekel, the father did not imply the exclusion of the bigger sum. He only meant to convey his wish that his sons were no to be given more than their weekly requirements.

others[1] shall be his heirs in their stead, only a shekel [a week] is to be given to them, whether he used the expression 'give' or 'give no [more]'.[2] Now here, surely, it is [a case] similar to that of two fields[3] and two persons,[4] and yet it is taught that possession is acquired.[5] He raised this[6] as an objection [to the opinions of his colleagues][7] and he [himself] gave the reply: [The Baraitha[8] deals with such persons] as are entitled to be his heirs,[9] and this [law is in agreement with the law of] R. Johanan b. Beroka.[10]

R. Ashi said: Come and hear! [If a person said], '[I give[11]] my estate to you; and after you, X shall be [my] heir; and after X,[12] Y shall be heir', [when the] first dies, the second acquires the ownership; when the second dies, the third acquires the ownership. And if the second died in the lifetime of the first, the estate reverts to the heirs of the first.[13] Now here, surely, [the case] resembles that of two fields and two persons[14] and yet it was taught that possession is acquired![15] And if it be suggested [that] here also [one deals with the case of one] who is entitled to be his heir and [that] it[16] is [in accordance with the view of] R. Johanan b. Beroka;[17] if so,[18] [the question arises, how can it be said that if] the second died, the third acquired possession? Surely, R. Aha the son of R. Iwya sent [the following message]: According to the view of R. Johanan b. Beroka,[19] [if one said],[20] 'My estate [shall be] yours, and after you [it shall be given] to X', and the first is [one who is] entitled to be his heir, the second has no [claim] whatsoever in face of the first,[21] for this[22] is not a [specific] expression of 'gift' but [rather] of 'inheritance'[23] and an inheritance cannot be terminated.[24] [Is not this[25] then,] a refutation of [the views of] all of them?[26] — This is a refutation.

May this be regarded also as a refutation of [the view of] Resh Lakish?[27] — [How can] you think so! Did not Raba say,[28] 'The law is in accordance with [the views] of Resh Lakish in these three [cases]'?[29] — [This is] no difficulty, [for] here,[30] [the expressions of 'gift' and 'inheritance' may have been uttered] one immediately after the other;[31] there,[32] [the two expressions] may not have been uttered one immediately after the other.[33]

And the law is that [expressions uttered] immediately after one another[31] [are] always [regarded] as having been uttered simultaneously, except, [in the case of] idolatry[34]

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(1) Whom he nominated.

(2) Since it is obvious that he desired to economise in the weekly maintenance of his children in order that as much as possible may remain for his appointed heirs.

(3) (a) The total sum of the shekels to be given to the children and (b) the sum to be given subsequently to his appointed beneficiaries.

(4) (a) The children, (b) the other heirs. In the case of the former he used the expression of 'giving'; in that of the latter, 'inheritance'.

(5) By the appointed heirs. Since it has been said that the children were not to be given more than a shekel a week in order to leave as much as possible for the appointed heirs, it is obvious that the latter acquire possession. Thus, the law of R. Shesheth is proved.

(6) The Baraitha cited.

(7) R. Hamnuna and R. Nahman, who stated that in such a case one cannot dispose of an 'inheritance' to strangers.

(8) Which allows one to bequeath his estate by the use of the term 'inheritance' .

(9) He did not bequeath the estate to strangers, but to one or more of his legal heirs. Hence the question of the use of the term 'inheritance' does not arise.

(10) Who allows the appointment to an estate of one of the heirs to the exclusion of all others, infra 130a.

(11) Using the expression of gift.

(12) Lit., 'after after you'.

(13) The third can gain possession from the second only, and since the latter died before he himself gained possession, the entire estate must revert to the first.

(14) (a) The 'gift' of usufruct to the first, and (b) the transmission thereof as 'inheritance' to the second or the entire estate to the third.

(15) which shows that, even in such a case, the term ‘gift’, used with reference to one, makes effective the term ‘inheritance’ applied to the other.
(16) The statement declaring the term ‘inheritance’ effective.
(17) V. p. 539, n. 12.
(18) that the second was not a stranger, but an heir.
(19) Who holds that provided the beneficiaries are heirs, the testator can distribute his property among them in any manner he thinks fit.
(20) Without specifying whether as a ‘gift’ or an ‘inheritance’.
(21) Or his heirs.
(22) The vague expression, ‘shall be yours’.
(23) Since the person is a legal heir.
(24) An estate, once bequeathed by a father to one of his heirs, becomes the absolute property of that heir, from whom it is transmitted to his own heirs. The father has no right to interrupt his succession by appointing any other person as second heir.
(25) The Baraitha cited by R. Ashi.
(26) All the Amoraim who maintained, supra, that if one gave instructions for field to be given as an ‘inheritance’ to one person and as a ‘gift’ to another, his instructions are invalid. As has been proved, the Baraitha cited by R. Ashi does not, as has been suggested, deal with the case of one who is entitled to be heir, but with that of any stranger appointed by the testator; and, though the estate was given as a ‘gift’ to one, and as an ‘inheritance’ to another, possession is acquired, the instructions of the testator being obviously regarded as legally valid. How then, could the Amoraim mentioned maintain that the testator's instructions in such a case are invalid, and that the person appointed as heir does not acquire possession of the estate?
(27) Who holds the opinion that the expression of ‘gift’ used in connection with the one, does not make effective the term ‘inheritance’ applied to the other.
(28) Yeb. 36a, Hul. 76a.
(29) Of which the view he advanced here is one. Surely, it would not have been regarded as law if it were refuted by the Baraitha.
(30) In the Baraitha; according to which possession is acquired when the expression ‘gift’ was used in the case of one and that of ‘inheritance’ in the case of the other.
(31) תוך כדי דבור, lit., ‘within as much (time) as is required for an utterance’, i.e., the time needed to utter a short greeting such as, ‘Peace be upon thee my master’, represented by the three words, שלום עליך רבי
(32) In the statement of Resh Lakish.
(33) Lit., ‘after the time required for an utterance.
(34) I.e., if one set aside an object for idol worship, though he withdrew immediately, the object remains prohibited. [Or, according to Tosaf. if a man proclaims an idol as his god, his immediate retraction does not save him from the death penalty. (V. Ned. 87a.)]

Talmud - Mas. Baba Bathra 130a

and betrothal.[1]

MISHNAH. IF A PERSON SAID, ‘X[2] SHALL BE MY HEIR’, WHERE THERE IS A DAUGHTER, [OR] IF HE SAID, ‘MY DAUGHTER SHALL BE MY HEIR’, WHERE THERE IS A SON, HIS INSTRUCTIONS ARE TO BE DISREGARDED,[3] FOR HE MADE A STIPULATION AGAINST A [LAW] WHICH IS WRITTEN IN THE TORAH. R. JOHANAN B. BEROKAH SAID: IF [A PERSON] SAID [IT][4] CONCERNING ONE WHO IS ENTITLED TO BE HIS HEIR, HIS INSTRUCTIONS ARE VALID; [IF], HOWEVER, [HE SAID IT] CONCERNING ONE WHO IS NOT ENTITLED TO BE HIS HEIR, HIS INSTRUCTIONS ARE NOT VALID.

GEMARA. The reason [why the testator's instructions are invalid, is,] because [he appointed, as has been said], another [legal heir] where there was a daughter, or a daughter where there was a son,[5] [had he appointed,] however, a son among the [other] sons or a daughter among the [other]

daughters, his instructions would, [accordingly], have been valid; tell [me, then, what you understand by] the latter clause [which reads], R. JOHANAN B. BEROKAH SAID: IF [A PERSON] SAID [IT] CONCERNING ONE WHO IS ENTITLED TO BE HIS HEIR, HIS INSTRUCTIONS ARE VALID, surely this [represents] the same [view as that of] the first Tanna![6] And if it be suggested [that] R. Johanan b. Beroka maintains [that] even another [legal heir may be appointed] where there is a daughter, and [that] a daughter [may be appointed as heir] where there is a son;[7] [it may be retorted], surely, it has been taught: R. Ishmael the son of R. Johanan b. Beroka said, 'There was no dispute between father and the Sages concerning [the law] that one's instructions are invalid[8] when another [legal heir was appointed] where there was a daughter, or [where] a daughter [was appointed heir] where there was a son; their dispute related only[9] [to the case of an appointment as sole heir] of a son among the [other] sons or [of] a daughter among the [other] daughters, [in] which [case] father said, [the one appointed] inherits, and the Sages say [that] he does no inherit'![10] — If you wish, it may be replied: Since he[11] said that they[12] did not dispute, it may be inferred that the first Tanna[13] is of the opinion that they did dispute.[14] [And] if you prefer,[15] it may be replied that all [the Mishnah][16] represents[17] [the views of] R. Johanan b. Beroka, only some [words are] missing [from the text] which should read as follows:[18] IF A PERSON SAID, 'X SHALL BE MY HEIR', WHERE THERE IS A DAUGHTER, [OR IF HE SAID], 'MY DAUGHTER SHALL BE MY HEIR', WHERE THERE IS A SON, HIS INSTRUCTIONS ARE TO BE DISREGARDED, but [in the case of the appointment as heir of] a daughter among the [other] daughters or [of] a son among the [other] sons, if [the father] said, [that one of them][19] should inherit all his estate, his instruction is legally valid, for R. Johanan said: IF [A PERSON] SAID [IT][20] CONCERNING ONE WHO IS ENTITLED TO BE HIS [IMMEDIATE] HEIR, HIS INSTRUCTIONS ARE LEGALLY VALID.

R. Judah said in the name of Samuel: The halachah is in agreement with [the view of] R. Johanan b. Beroka. And so said Raba: The halachah is in agreement with [the view of] R. Johanan b. Beroka.

Raba said: What is the reason [for the opinion] of R. Johanan b. Beroka? — Scripture said: Then it shall be, in the day that he causeth his sons to inherit[21] [from which it is to be inferred that] the Torah gave authority to a father to cause anyone[22] whom he desires to inherit [his estate].

Abaye said to him: This [law,[23] surely, could be] deduced from, He may not make [the son of the beloved] the firstborn![24] — That [text] is required for [the purpose of another inference], as it was taught: Abba Hanan said in the name of R. Eliezer:

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(1) If a man betrothed a woman, though he changed his mind immediately, the betrothal remains valid. [In Ned. 87a the reading is fuller: 'except (in the case) of blasphemy, idolatry, betrothal and divorce.]

(2) I.e., any relative other than a son.

(3) Lit., 'he said nothing'.

(4) That one person shall he his sole heir.

(5) In both of which cases his instructions are contrary to the Torah.

(6) Wherein, then, lies the difference between them?

(7) And that it is on this point that he differs from the first Tanna.

(8) V, p. 541, n. 11.

(9) Lit., 'what do they dispute on?', or 'on what are they divided?'

(10) From this statement it is obvious that R. Johanan b. Beroka cannot be assumed to maintain, as has been suggested, that another legal heir may he appointed where there is a daughter, or that a daughter may be made heir where there is son

(11) R. Ishmael.

(12) R. Johanan b. Beroka and the Sages.

(13) I.e., some other Tanna.

(14) Our Mishnah, then, may be explained to represent the view of the first Tanna. Hence it is possible to suggest that R. Johanan maintains, as has been suggested above, that another legal heir may be appointed even where there is a son etc.

(15) I.e., if there is an objection to the assumption that R. Ishmael was in dispute with another Tanna as to whether his own father was or was not in disagreement with the Sages.
(16) Lit., 'all of it'.
(17) Lit., 'is of',
(18) Lit., 'and thus it teaches'.
(19) Whom he named.
(20) Gave instructions as to whom he desired to be his heir.
(21) Deut. XXI, 16.
(22) Of his sons; or, according to the first interpretation (supra note 1), any one of his legal heirs.
(23) That a father may transmit all his estate to any one of his sons (or heirs).
(24) Ibid. Which shows that it is only the birthright that a father may not transfer to another son. The other shares of his estate, however, he may, consequently, assign to whomsoever he pleases.

Talmud - Mas. Baba Bathra 130b

What [need was there for Scripture] to say, He may not make [the son of the beloved] the firstborn?[1] — Since it was said, Then it should be, in the day that he causeth his sons to inherit,[2] one might argue that it is a matter of logical deduction, [thus:][3] If [in the case of'] an ordinary [son], who is privileged to receive [a share] in any prospective [property of his father] as in that which is actually in his possession, the Torah [nevertheless] gave authority to the father to transmit [his estate] to whomsoever he pleases, how much more [should he have this right in the case of] a firstborn, whose rights are impaired in that he does not receive [the portion of the birthright] in prospective property as in that which is actually in the possession [of his father]; hence it was expressly stated, He may not make [the son of the beloved] the firstborn. Then let Scripture say, He may not make [the son of the beloved] the firstborn,[4] why should it [also] state Then it shall be, in the day that he causeth his sons to inherit? — Because one might [argue], is not this a matter of logical deduction?[5] If [in the case of] a firstborn, whose rights are impaired in that he does not receive [the portion of his birthright] in prospective [property] as in that which is actually in [his father's] possession, the Torah, [nevertheless,] said, He[6] may not make [the son of the beloved] the firstborn, how much less [should he have this right in the case of] an ordinary [son] who is privileged to receive in prospective [property] as in that which is actually in [his father's] possession; hence it was expressly stated, Then it shall be, in the day that he causeth his son to inherit, [in order to make it clear that] the Torah gave a father authority to transmit his estate to whomsoever he pleases.

R. Zerika said in the name of R. Ammi in the name of R. Hanina in the name of R. Jannai[7] in the name of Rabbi: The halachah is in agreement with [the views of] R. Johanan b. Beroka. R. Abba said to him: The statement was that he [only] gave [such] a decision![8] Wherein lies the difference?[9] — [One] Master holds [that] an halachah is preferable[10] and the [other] Master holds that a practical decision is [of] greater [importance].[11]

Our Rabbis taught: The halachah[12] may not be derived either from theoretical [conclusion] or from a practical [decision] unless one has been told [that] the halachah [is to be taken as a rule] for practical decisions. [Once a person has] asked and was informed [that] an halachah [was to be taken as a guide] for practical decisions, he may continue to give practical decisions [accordingly],[13] provided he draws no comparisons.[14] What [could be meant by], 'provided he draws no comparisons'? Surely, in the entire [domain of] the Torah comparisons are made! — R. Ashi said: It is this that was meant: Provided one draws no comparisons in [ritual questions relating to] trefoth.[15] For it was taught: In [the laws of] trefoth it must not be said this [one] is equal to that.[16] And do not be astonished [at this], for [an animal] may be cut on one side[17] and die, [yet when] it is cut on another side[17] it remains alive.[18]

R. Assi said to R. Johanan: 'May we, when the Master tells us:[19] "The halachah is so and so," give

a practical decision accordingly?' He said: 'Do not use it as a practical guide[20] unless I declare [it to be] an halachah in [connection with] a practical decision.'[21]

Raba said to R. Papa and to R. Huna the son of R. Joshua: 'When a legal decision of mine comes before you [in a written form], and you see any objection to it, do not tear it up before you have seen me.[22] If I have a [valid] reason [for my decision] I will tell [it to] you; and if not, I will withdraw. After my death, you shall neither tear it up nor infer [any law] from it. "You shall neither tear it up" since, had I been there, it is possible that I might have told you the reason;

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(1) This law, surely, is specifically stated in Deut. XXI, 17, 'but he shall acknowledge he firstborn etc.'!

(2) V. p. 543, n. 8.

(3) Lit., 'for one might [say], is it not an argument.'

(4) And this will amply prove that the birthright cannot be transferred.

(5) V. note 3.

(6) The father.

(7) V. Bah., a.l.

(8) I.e., that he decided a particular case in agreement with R. Johanan's views; not that he laid it down as a general rule, or halachah.

(9) Between R. Zerika and R. Abba as regards practical considerations.

(10) Since a halachah may be regarded as a general rule; while one practical decision which happens to agree with R. Johanan's views would not show that the law is always to be administered in accordance with these views. Other factors and circumstances may have led to the decision in that particular case.

(11) Or, 'is a teacher', (Jast.) Since a practical case has been decided in agreement with R. Johanan, one may decide similar cases accordingly. A statement that the halachah is in agreement with R. Johanan would not enable one to act accordingly, unless, as stated infra, it was specifically added that it was to be taken as a guide for practical decisions.

(12) I.e., laws for practical guidance.

(13) He need not ask for a new ruling every time an exactly similar case is brought before him.

(14) Whereby to decide other cases which do not resemble it in all respects.

(15) טרפות diseased animals which, though ritually slaughtered, are forbidden to be eaten.

(16) And thus derive one law from another; the law relating, e.g., to a diseased liver from that of a diseased lung.

(17) Lit., 'from here'.

(18) Which shows that the injury to one limb must in no way be compared, for ritual purposes, to the injury of another.

(19) In the course of our studies and discussions.

(20) Lit., 'do not do'.

(21) In which case one is careful with one's statements. In the course of theoretical discussions, however, one may sometimes give an unconsidered decision which may be contrary to the accepted law,

(22) Lit., 'until you come before me'.

Talmud - Mas. Baba Bathra 131a

"nor infer [any law] from it" — because a judge must be guided only by that[1] which his eyes see.

Raba inquired: What[2] [is the law in the case of] a person in good health?[3] Does R. Johanan b. Beroka[4] speak [only] of [the case of] a dying man, who has the right to appoint an heir [on the spot],[5] but not [of] one [who is] in good health; or [does he] perhaps [speak] also even of one in good health? — R. Mesharsheya said to Raba: Come and hear: R. Nathan said to Rabbi,[6] 'You[7] have taught your Mishnah[8] in accordance with [the views of] R. Johanan b. Beroka; for we learnt:[8] [A husband who] did not give [his wife] in writing[9] [the following statement, viz.], "The male children that will be born from our marriage[10] shall inherit[11] the money of thy marriage settlement in addition to their shares with their brothers",[12] is [nevertheless] liable, because it is a condition[13] laid down by the court'.[14] And Rabbi replied [to him]:[15] "We learnt: they shall take".[16] [Later], however, Rabbi stated: "It was childishness on my part to be presumptuous in the presence of Nathan the Babylonian.

The fact is[17] that the law is well established [that] male children may not seize[18] any sold property [of their father in payment for their mother's kethubah]".[19] [Now], if it is assumed [that] we learnt, "they shall take", why may they not seize sold property?[20] Consequently it must be inferred that we learnt: "they shall inherit"'.[21] [Now], who has been heard to hold this view?[22] [Surely] R. Johanan b. Beroka! Thus it may be inferred [that the law[23] applies] even to [the case of] one who is in good health.[24]

R. Papa said to Abaye: Whether according to him who said, [that the reading[25] was] 'they shall take', or according to him who said [that the reading was], 'they shall inherit', [the question may be asked], surely one [has] not [the right] to give possession of something which is not yet in existence! And even R. Meir,[26] who maintains [that] one may give possession of that which is not yet in existence, applies this law[27] [only to the case where the possession was given] to one who is [already] in existence,[28] but not [to the case where possession is given] to one who does not exist.[29] [The reason], however,[30] [must be that] a condition [imposed] by a court is different [from an ordinary assignment],[31] here, likewise,[32] [it could have been explained[33] that] a condition [imposed] by a court is different![34] — He replied to him: Because he [first] used the expression, 'they shall inherit'.[35]

Subsequently, Abaye said: What I said is nothing,[36] For we learnt:[37] [A husband who] did not give his wife in writing[38] [the following] undertaking, viz., 'The female children that will be born from our marriage[39] shall live in my house and be maintained out of my estate until they shall be taken [in marriage] by men ,is [nevertheless] liable, because that [fatherly duty] is a condition [imposed] by the court. Consequently, this[40] is a case of giving to one as a 'gift'[41] and to another as an 'inheritance',[42] and wherever [something is given] to one person as an inheritance and to another as a gift[43] even the Rabbis agree [that the assignments are valid].[44]

R. Nihumai (one said, it was R. Hananya b. Minyumai) asked Abaye:

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(1) Lit., 'a judge has nothing but'.

(2) Lit., 'how'.

(3) Who appointed one of his legal heirs to inherit all his estate.

(4) In our Mishnah, supra 130a.

(5) Without the necessity for a formal written document. The instructions of a dying man, though only verbal, are legally binding.

(6) R. Judah I, Editor of the Mishnah.

(7) I.e., Palestinians. R. Nathan (v. infra) was a Babylonian.

(8) Keth. 52b.

(9) As part of her kethubah, or marriage contract,

(10) Lit., 'that you will have from me'.

(11) ירתין

(12) This provision is necessary, in the interests of the children, in case their mother predeceases their father who subsequently marries another wife who gives birth to new male children.

(13) That the marriage settlement of a wife who predeceased her husband is to be inherited by her sons on the death of the husband. [The reason of this enactment is given by R. Simeon b. Yohai (Keth. 52b) 'in order that a man may be encouraged to give as liberal a dowry to his daughter as he would give to his son — for the fear lest the daughter's property should eventually go to another woman's children would make a father hesitate before dowering her as liberally as he would like on marriage.]

(14) This shows that the Mishnah is in accordance with the views of R. Johanan. Why, then, Rabbi was asked, did he adopt the view of an individual against the Rabbis who were in the majority?

(15) Keth. 55a.

(16) Not 'inherit', i.e., as a gift and not as an inheritance. That a father has the right to give his estate as a gift, to whomsoever he desires, is disputed by no one.

(17) Lit., ‘but’.
(18) Lit., ‘it (the kethubah) may not’ etc.
(19) Keth. 55a.
(20) Which was really mortgaged to them prior to the sale. The right to the gift was acquired at once, i.e., on the date of the marriage contract.
(21) Since an inheritance takes effect after the testator's death, the buyers of the property, purchase of which took place in the owner's lifetime, have the prior claim. R. Nathan's objection was, therefore, well founded.
(22) Enunciated in the cited Mishnah.
(23) Of R. Johanan in our Mishnah.
(24) Since here the appointment to heirship was made at the time of the marriage.
(25) In the Mishnah cited by R. Nathan.
(26) Lit, ‘according to R. Meir’.
(27) Lit., ‘these words’.
(28) At the time when possession was conferred.
(29) How, then, can the children, who were not in existence when the marriage contract between their father and mother was written, acquire possession of their mother's kethubah?
(30) Why the children do acquire possession.
(31) Though a private assignment is not valid unless the assignee was alive at the time when it was made, an assignment based on the decision of a court takes effect in all cases.
(32) In respect to the objection raised by R. Nathan.
(33) by Rabbi.
(34) And all (even the Rabbis who elsewhere maintain that the expression of ‘inherit’ does not confer possession), agree that, in such a case, the assignment is valid. What need, then, was there for Rabbi to suggest a change if reading from ‘inherit’ to ‘receive’?
(35) Instead of the generally more effective term ‘take’, denoting ‘gift’. This seemed to imply agreement with the view of R. Johanan b. Beroka, as against that of the Rabbis. Hence, Rabbi preferred to change the reading.
(36) There was really no need for Rabbi to suggest a change of reading, for in either case, whatever the reading, the Mishnah may be considered to be in agreement with both R. Johanan and the Rabbis.
(37) Keth. 52b.
(38) Together with her kethubah.
(39) Lit., ‘which you will have from me’.
(40) The husband's undertaking with reference to the male children on the one hand, and to that of the female children on the other.
(41) The maintenance of the daughters. There is legal obligation on a father to provide for the maintenance of his daughters.
(42) The sons are given their mother's kethubah as her legal heirs.
(43) And the expressions of ‘gift’ and ‘inheritance’ were used one immediately after the other.
(44) According to the Mishnah, supra 126b, which represents the opinion of the Rabbis, an assignment made by using the expression of inheritance is legally valid whenever the expression of ‘gift’ was used with it. This was explained in the Gemara, supra 129a, to apply even to the case of two separate fields given as an inheritance and a gift respectively to two different persons. Similarly, here, the kethubah for the sons and the maintenance for the daughters may be regarded as the assignment of an inheritance and a gift respecting two persons; and, since the two provisions were made by the same court and are to be entered in the same contract, the two clauses, one containing the term, ‘inherit’, and the other, ‘give’, may be assumed to follow in close proximity to one another; in which case the Rabbis also agree that both the inheritance and the gift are acquired. The question, therefore, remains why was Rabbi compelled to have recourse to a change of reading?

Talmud - Mas. Baba Bathra 131b

Whence [it is to be inferred] that [both provisions] were made by one court? Is it not possible [that] they were made by two [different] courts?[1] — This possibility[2] cannot be entertained,[3] for in the earlier part [of the Mishnah cited] it was stated: R. Eleazar b. Azariah gave the following exposition

in the presence of the Sages in the Vineyard of Jabneh:[4] '[Since it was provided that] the sons shall be heirs [to their mother's kethubah], and the daughters shall be maintained [out of their father's estate, the two cases are to be compared]: As the sons cannot be heirs except after the death of their father, so the daughters cannot claim maintenance except after the death of their father'[5] . [Now], if it is granted [that both provisions][6] were enacted by one court, one can well understand why an analogy was drawn between one provision and the other. If, however, it is argued [that they] were enacted at two [different] courts, how could an analogy be drawn between one provision and the other?[7] — What proof![8] It is quite possible still to maintain [that the provisions][9] were enacted by two [different] courts;[10] but[11] the latter court had to frame its provisions on the lines analogous to those of the former court in order that there might be no discrepancy between the one provision and the other.

Rab Judah said in the name of Samuel: If a [dying] man gave all his property[12] to his wife, in writing, he [thereby] only appointed her administratrix.[13]

It is obvious [that if he assigned all his property to] his grown up son, he [thereby], merely appointed him administrator.[14] What [is the law, however, if he assigned it to] his young son? — It was stated [that] R. Hanilai b. Idi said in the name of Samuel: Even [If to] his youngest son who [still] lies in [his] cradle.[15]

It is obvious [that if a father assigned all his property to] his son or [to] a stranger, the stranger [is to receive it] as a gift,[16] while the son [is merely appointed] administrator.[17] [If he assigned it to] his betrothed or [to] his divorced wife, [either of them is to receive it] as a gift.[18] The question was [however], asked, What [is the law if the assignment was made to] a daughter where there are sons, [to] a wife where there are brothers,[19] or to a wife where there are sons of the husband?[20] — Rabina said in the name of Raba: None of these[21] acquires possession, except his betrothed, or divorced wife. R. 'Awira in the name of Raba said: All these acquire possession except a wife where there are brothers,[22] and a wife where there are sons of the husband.[23]

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(1) And, consequently, the two expressions, ('inheritance' for the sons, and 'gift' for the daughters), cannot be regarded as made one immediately after the other. And since in this case the Rabbis would regard the assignments as invalid, Rabbi had to revert to a change of reading, in order that the Mishnah may conform with the view of the Rabbis.

(2) That the provisions were made at two courts.

(3) Lit., 'it cannot enter your mind'.

(4) [The name of the School established in that town (Jamnia) by R. Johanan b. Zakkai, and so called because the members sat in rows like vines in a vineyard (J. Ber. IV, 1). Krauss Lewy's Festschrift, 22, maintains that they originally met in a vineyard.]

(5) He thus holds that there is no legal, as distinct from moral, obligation on the father to support his daughter after a certain age, v. Keth. 49a.

(6) Kethubah for the sons, and maintenance for the daughters.

(7) One court may have given the sons the right of heirship after the father's death, while the other court may have granted the daughters' maintenance even during the lifetime of their father. Hence it must be assumed that both provisions were made by the same court.

(8) Lit., 'whence your proof'?

(9) V. p. 549, n. 6.

(10) Hence the expressions of 'inheritance' and 'gift' cannot be regarded as having been made one immediately after the other. Rabbi was consequently compelled, in order that the Mishnah may conform with the view of the Rabbis, to change the reading from 'they shall inherit' to 'they shall take'.

(11) As to the argument, how could R. Eleazar draw an analogy between provisions made by different courts.

(12) As a gift.

(13) And his sons are entitled to receive their due shares in the estate. Since no father would give all his estate to his wife and leave his children penniless it is taken for granted that the testator's wish was not that all his property shall be given

to his wife for her sole use, but that she shall only administer it in the interests of all the heirs. His use of the expression 'gift' is assumed to have been intended as a means of making his children dependent on her, so that she might enjoy the respect due to her.

(14) So that his brothers may pay him due respect.

(15) The estate is not to be given to him alone but to all the heirs. The father's wish is interpreted as a desire that all the other heirs shall pay respect to his youngest son.

(16) For, had the testator merely meant him to be administrator, he would have stated the fact explicitly.

(17) V. n. 8 and 9 supra.

(18) As he can hardly be so much concerned about safeguarding their respect as to make provision to that extent.

(19) Of the testator; and no other heirs.

(20) Born from another wife, in each of these cases the consideration of respect is likely to arise.

(21) Lit., 'in all of them not'.

(22) V. note 2.

(23) V. note 3.

Talmud - Mas. Baba Bathra 132a

Raba inquired: What[1] [is the law] in [the case of] a person in good health?[2] [Should we say] that this[3] applies only to a dying person because [we assume] he is desirous [to make provision] for due respect to be paid to her,[4] but [not] to a person in good health, since he himself is alive;[5] or, is it the same with a man in good health, since there too he may desire [to make provision] that respect may be paid to her[4] already in his lifetime?[6] — Come and hear: [It was taught:] If a person gives the usufruct of his estate to his wife, in writing,[7] she may [nevertheless] collect her kethubah from [his] landed property.[8] [If he gave her] a half,[9] a third or a quarter, she may collect her kethubah from the rest.[10] If he gave all his property to his wife in writing, and a bond of indebtedness[11] was produced against him, R. Eliezer said: She may tear up [the deed of] her gift and claim the rights of[12] her kethubah.[13] But the Sages said: She tears up her kethubah,[14] remains with the claim of her gift,[15] and forfeits both.[16] And R. Judah the baker related: [Such] a case once happened with the daughter of my sister [who was] a bride,[17] and [when] the matter was brought before the Sages they decided [that] she must tear up her kethubah, remain with the claims of her gift and forfeit both. [Front this Baraitha it follows that] the reason [why the widow forfeits her claims is] that a bond of indebtedness bad been produced against [her husband] but had no such bond been produced she would have acquired possession [of the entire estate]. Now, with what [kind of testator is the Baraitha concerned]? If it be suggested [that it deals] with a dying man, surely, [it may be pointed out,] it has been said that [a person in such a condition] merely appointed her administratrix! [Must it] not, then, [be concluded that the Baraitha deals] with a person in good health?[18] — [No; the Baraitha cited may] really [be concerned] with a dying man but[19] R. 'Awira establishes it as dealing with all cases[20] [while] Rabina establishes it as dealing with one's betrothed, or divorced wife.[21]

R. Joseph b. Manyumi said in the name of R. Nahman: The halachah is that she is to tear up her kethubah,[22] remain with the claim of her gift[23] and forfeit both.[24] Does this[25] imply that R. Nahman is not guided by an assumption?[26] Surely, it has been taught: in the case of [a person] whose son went to a distant country,[27] and having heard that the latter[28] had died, assigned all his property, in writing, to strangers; though his son subsequently appeared, his gift is [nevertheless, legally] valid.[29] R. Simeon b. Menasya said: His gift is not [legally] a gift, for had he known that his son was alive, he would not have given it away.[30] And R. Nahman said: The halachah is in accordance with R. Simeon b. Menasya![31] — There[32] it is different, for she is content [to renounce her claim to her kethubah] for the pleasure of having it known[33] that [her husband] had presented[34] her with that property.[35]

We learned elsewhere:[36] If [a person] assigns his property to his sons, in writing, and he [also] assigns to his wife [a piece of] land of any size whatsoever[37] she loses [the claims of] her

kethubah.[38] [Does] she lose her kethubah because he assigned to her any [small] piece of land?[39] — Rab replied: [This applies to the case] where he[40] confers the ownership upon them[41] through her[42] agency.[43] Samuel replied: [This applies also to the case] where he[43] made the distribution in her presence and she remained silent.[44] R. Jose b. Hanina replied: [This may also apply to the case] where he said to her,[45] 'Take this [piece of] land in place of your kethubah'.[46]

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(1) Lit., 'how'.

(2) Who has assigned all his property as a gift to his wife.

(3) The ruling that the husband thereby appointed her only as administratix.

(4) His widow. Lit., 'that her word may be listened to.'

(5) And well able to safeguard her honour.

(6) Lit., 'from now.'

(7) Assigning it to her as a gift.

(8) Since all real estate of a husband is mortgaged for his wife's kethubah. The gift of usufruct is not regarded as an inducement for the wife to renounce her established rights.

(9) Of his estate.

(10) From the portion which was not assigned to her.

(11) Bearing a date later than that of the kethubah and earlier than that of the gift.

(12) Lit., 'and stand upon'.

(13) Since the gift was made later than the date of the bond of indebtedness, the creditor has the prior claim. The widow, therefore, renounces the gift, and claims her kethubah the date of which is earlier than that of the debt. She is entitled to do so according to R. Eliezer since he holds the view that she originally accepted the gift with the object of gaining any amount over and above her kethubah, but not to lose any of the rights to which that document entitled her.

(14) by accepting her husband's gift she is assumed, according to the Sages, to have renounced the rights of her kethubah as far as that property (which formed part of the gift) is concerned.

(15) Which, owing to the debt which antedated it, is invalid.

(16) Lit., 'and she becomes bald on both sides (from here and from here)'.

(17) The bridegroom gave her a kethubah on their betrothal, and, prior to his death, having incurred a debt, presented her with all his estate.

(18) Thus it has been proved that in the case of a person in good health the presentation by him of his entire estate to his wife confers upon her the full rights of possession and not merely those of an administratrix. Consequently (in answer to Raba's enquiry), Samuel's law must refer to the case of a dying man only.

(19) As to the objection that in such a case it has been said that the widow is merely appointed administratrix.

(20) Mentioned by him supra 131b, in all these, according to his report in the name of Raba, possession is acquired.

(21) In which two cases, according to Rabina's report also (supra 131b), possession is acquired. Hence, neither according to R. 'Awira nor according to Rabina can the law applying to the case of a person in good health be inferred.

(22) V. p. 552, n. 1 supra.

(23) V., l.c. n. 2.

(24) V., l.c., n. 3.

(25) R. Nahman's decision that the widow forfeits her claim to the kethubah.

(26) Since the assumption must he that no woman would renounce the rights to which her kethubah entitles her for the sake of such a gift made to her by her husband.

(27) Lit., 'country of (i.e., beyond) the sea'.

(28) Lit., 'his son'.

(29) Lit., 'a gift'. Since it was made unconditionally.

(30) Lit., 'written them'.

(31) As R. Nahman upholds it. Simeon's decision, according to which it is assumed that 'had the father known that his son was alive he would not have made the gift', he most also agree with the view that an assumption is to be taken into consideration. How, then, (v. supra note 5), could R. Nahman say that the widow forfeited the rights of her kethubah?

(32) In the case of a widow who forfeits her kethubah on account if a gift she received from her husband.

(33) Lit., 'that a voice may issue about her'.

(34) Lit., 'written'.

(35) The assumption, therefore, is that she willingly renounced her claims to the kethubah. R. Nahman, in his decision, consequently takes assumption into consideration here also.
(36) Pe'ah III, 7.
(37) Not specifying whether as a gift or in payment for her kethubah.
(38) I.e., the right to seize the land assigned to the sons; since, as will be explained, infra, she accepted the arrangement in return for the gift made to her.
(39) Surely, no woman would give up her kethubah in return for any small piece of land
(40) The husband.
(41) The sons.
(42) The wife's.
(43) Lit., 'through her hand.' I.e., she acquired it on their behalf by means of a 'scarf', Kinyan Sudar (v. Glos. and cf. p. 310, n. 11, supra). Since she assisted in the transfer of the estate, received also a small share for herself and raised no protest whatsoever, it is taken for granted that she agreed to lose the amount of her kethubah, should her husband possess no other lands at the time of his death.
(44) Even though she did not assist in the transfer. Her presence alone, since she raised no protest and received also some share, is sufficient proof that she agreed to give up her claims as far as the lands distributed are concerned. If she, however, receives no share whatsoever, her silence is interpreted not as acquiescence but as designed to gratify her husband.
(45) When he gave her in writing that piece of land.
(46) According to R. Jose, even if she was absent from the distribution, her silence, when the gift was made to her, is sufficient evidence that she renounced her claims, upon the lands distributed.

Talmud - Mas. Baba Bathra 132b

And [the laws] taught here [are among those in which the claims relating to] a kethubah [are] weaker [than those of creditors].[1]

We learned: R. Jose said: If she accepted, [explicitly][2] although the husband did not put her [gift] in writing, she loses her kethubah.[3] [Does not] this is[4] imply that the first Tanna holds the opinion that both writing and her [explicit] acceptance are required?[5] And if it be suggested that the whole [Mishnah] represents [the view of] R. Jose,[6] surely, [it may be retorted,] it was taught: 'R. Judah said:[7] When [is it said that she lost her kethubah]? [Only] when she was there[8] and accepted [explicitly][9] but if she was there and did not accept,[10] or accepted and was not there, she did not lose her kethubah.' [This, surely, is] a refutation[11] of [the views of] all [the previous explanations]![12] It is a refutation.

Raba said to R. Nahman: Here is [the explanation] of Rab, here [that of] Samuel, [and] here [that of] R. Jose the son of R. Hanina; what is the opinion of the Master? — He replied to him: It is my opinion that since he made her partner with the sons,[13] she lost her kethubah.[14] [The same] was also said [elsewhere]: R. Jose b. Manyumi said in the name of R. Nahman: Since he made her a partner with the sons she loses her kethubah.

Raba enquired: What[15] [is the law] in [the case of] a person in good health?[16] Shall we say that this[17] is only in [the case of] a dying man since she knows that he has no more property[18] and [therefore by her acceptance] renounces her claims, but in [the case of] a person in good health[16] [we do not assume that she renounces her claim since] she might expect that he would again acquire [property];[19] or, perhaps, [in the latter case also she is assumed to renounce her claims since] now, at least, he has none?[20] — Let it stand.[21]

[Once] a certain [dying] man said to [his executors]; — 'A half[22] [shall be given] to [one] daughter [of mine], a half to [the other] daughter, and a third of the fruit to [my] wife'. R. Nahman, [who] happened to be [at that time] at Sura was visited by R. Hisda [who] inquired of him [as to]

what [was the legal position] in such a case.[23] — He replied to him: Thus said Samuel, 'Even if he allotted to her one palm-tree for its usufruct[24] her kethubah is lost,'[25] [R. Hisda] asked him [again], 'is it not possible[26] that Samuel held this view[27] [only] there, where he allotted to her [a share] in the land itself[28] [but not] here, [where] only fruit[29] [was allotted]? — [R. Nahman] replied to him: ' [Do] you speak of movable objects?[30] I certainly do not suggest [that the law quoted is to be applied to] moveables'.

[Once] a certain [dying] man said to [his executors], 'a third [of my estate shall be given] to [one] daughter [of mine], a third to [the other] daughter, and a third to [my] wife'.[31] [Then] one of his daughters died.[32] R. Papi intended to give his decision [that the wife] receives only a third;[33]

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(1) A creditor cannot be deprived of his right to seize the debtor's lands even though he received from him a gift.

(2) The arrangement as to the distribution of her husband's property. This Mishnah is a continuation of that just cited and discussed.

(3) Pe'ah III, 7.

(4) R. Jose's expression, 'if she accepted although . . . did not put . . . in writing'.

(5) For, had writing alone sufficed to deprive her of her claim according to the first Tanna, R. Jose should have said as follows: 'Although he put it in writing, she does not lose her kethubah unless she explicitly accepted.' Hence it must be concluded that the first Tanna holds that both, writing and her explicit acceptance, are required. How then could Rab, Samuel and R. Jose the son of Hanina explain the Mishnah as dealing with the case where the woman merely remained silent?

(6) And, accordingly, the first part would teach that writing alone, and the second part that acceptance alone is sufficient.

(7) In explanation of the Mishnah of Pe'ah cited supra 132a.

(8) When the distribution took place.

(9) For had she not acquiesced in the arrangements she would surely have protested at being deprived of her due share.

(10) But remained silent.

(11) Since from R. Judah's interpretation it follows that the first Tanna is not R. Jose, and that he requires both writing and explicit acceptance.

(12) Lit., 'of all of them'. Those of Rab, Samuel and R. Jose the son of R. Hanina, according to whom the silence of the wife although there was no explicit acceptance on her part, is sufficient to deprive her of her kethubah.

(13) By giving her a piece of land, however small.

(14) If she accepted explicitly (R. Gersh.). Either writing or explicit acceptance is enough (Rashb.).

(15) Lit., 'how'.

(16) Who assigned his property, in writing, to his sons and allotted some fraction of land to his wife.

(17) The law that she forfeits her kethubah.

(18) And a dying man is certainly not likely to acquire any new possessions. Hence, her silence may be interpreted as consent.

(19) Her silence in such a case might be due to her consideration for the feelings of her husband whom she did not wish to annoy unnecessarily at the moment, thinking that there would be time to protest later if he does not acquire any new property. Hence, her claim upon the lands assigned to the sons cannot be regarded as renounced, and her kethubah, therefore, is not lost.

(20) And, had she not been reconciled to the idea of losing her claims upon the lands allotted to the sons, she would have protested immediately.

(21) V. Glos. s.v. Teko.

(22) Of his landed property.

(23) Where the husband had assigned no land at all to his wife. The question is whether it is assumed that a woman renounces her claims only when she is given a share in the land itself but not when she only obtains a portion of fruit (as here), or whether there is no difference between land and fruit as regards the renouncement of her claims.

(24) I.e., only while it continues to be fruit-bearing.

(25) Her share of the fruit of the tree is regarded as a share in the land itself, since the tree draws its nourishment from the ground and is consequently regarded as real estate. The same law should apply to the case under consideration.

(26) Lit., 'Say'.

(27) Lit., ‘said’.

(28) The tree was planted in the ground and is regarded as real estate.

(29) I.e., detached from the ground.

(30) R. Nahman first understood the question to refer to fruit that was still growing on the trees.

(31) In consequence of this gift his wife forfeited her right to seize the other two thirds in payment of her kethubah.

(32) And her third reverted to her father who (in the absence of sons of her own) is heir to his daughter.

(33) Viz., that third which her husband had allotted to her. She cannot claim her kethubah, according to R. Papi, from the third that reverted to her husband from his dead daughter, because once she renounced her claim upon it (when one of the thirds was allotted to her) she cannot any more regain it.

Talmud - Mas. Baba Bathra 133a

R. Kahana, [however], said to him: If [her husband] had [subsequently] bought other property would she not [have been entitled to] seize [it]?[1] Now, since if he had bought other property she would [have been entitled to] seize [it],[1] in this case too she [is] also [entitled to] seize [the dead daughter's third].[2]

[Once] a certain [dying] man divided his estate between his wife and his son, [and] left over one palm-tree.[3] Rabina intended to give his decision [that] she[4] can only have[5] [that] one palm-tree.[6] R. Yemar, [however], said to Rabina: If she had no [claim upon the son's share], she [should] have no [claim] even [upon] the one palmtree.[7] But since she may seize[8] the palm-tree she may also seize[8] all the estate.[9]

R. Huna said, [if] a dying man assigned all his estate, in writing, to another [person][10] the matter is to be investigated.[11] If he[12] is entitled to be his heir, he receives it as an inheritance; and if not, he receives it as a gift. R. Nahman said to him: Why should you indulge in circumlocution![13] If you hold [the same view] as R. Johanan b. Beroka,[14] say, ‘The halachah is according to R. Johanan b. Beroka’, for, indeed, your statement runs on [the same lines] as [those of] R. Johanan b. Beroka? [But], perhaps, you meant [your statement to apply to a case] like the following.[15] Once, while a person was in a dying condition he was asked to whom his estate shall be given. ‘[Shall it] perhaps [be given] to X?’ he was asked. And he replied to them, ‘To whom [else] then?’ And [is it] on [such a case as] this [that] you told us, ‘[If that person] is entitled to be his heir he receives it as an inheritance, and if not, he receives it as a gift?’ — He replied to him: ‘Yes, this [is exactly] what I meant’.

In respect of what legal practice?[16] — R. Adda b. Ahabah wished to explain[17] before Raba [that] if he[18] is entitled to be his heir his[19] widow is maintained out of his estate,[20] and if not, his[19] widow is not maintained out of his estate.[20] Raba, however, said to him: Should she be worse off [in the case of a gift]? If[21] in [the case of] an inheritance which is Biblical,[22] it has been said [that] his[19] widow is to be maintained out of his estate,[23] how much more [should that be so] in [the case of] a gift[24] which is only Rabbinical?[25] But, said Raba, [the difference[26] lies in a case] like [the following] which [was] sent [by] R. Aha son of R. ‘Awya: According to the view of R. Johanan b. Beroka, [if a dying man said], ‘My estate [shall be] yours, and after you [it shall be given] to X’, if the first was [one] entitled to be his heir, the second has no [claim] whatsoever beside the first, for this is not a [specific] expression of ‘gift’ but [rather] of ‘inheritance’, and an inheritance cannot be terminated.[27] Raba said to R. Nahman: Surely, he[28] has [already] intercepted it![29] — He thought [erroneously] that it could be intercepted but the All-Merciful said, ‘It cannot be terminated’.[30]

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(1) In payment of her kethubah. She only renounced her claim upon that property which her husband gave to his daughters at the time her share was assigned to her.

(2) Lit., ‘now’. The third that her husband inherited from his dead daughter is regarded as new property acquired by him after the assignments were made. (V. previous note).

(3) Which he assigned to no one.
(4) The widow.
(5) In payment of the balance of her kethubah.
(6) She has no claim, however, on the share which the son received. Since a wife is assumed to renounce her claims in the case where her husband assigned to others all his estate with the exception of any small fraction allotted to her, she must also be assumed to have renounced her claims in this case, where only one palm-tree was not disposed of, in consideration of the share allotted to her.
(7) Just as she renounced her claim upon the share of the son in consideration of the share allotted to her, so she must have renounced her claim upon the palm-tree. She well knew that besides her share, her husband had no property other than that palm-tree and the share assigned to the son. As she forfeits her rights in the case of the one, so she should forfeit them in the case of the other.
(8) Lit., 'go down'.
(9) Even the share that was given to the son. A wife is assumed to renounce the claims to which her kethubah entitles her only when her husband had disposed of all his estate, in which case she must have known that nothing was left for her kethubah and, since she did not protest, she must have acquiesced in its forfeiture. When, however, one palm-tree remains, she is assumed to rely on the proceeds of that tree for the payment of the kethubah. Consequently, she does not renounce her rights; and her silence is assumed to be due to a desire for postponing her protest until the value of the tree had been ascertained. When, therefore, it becomes known that the palm-tree does not cover the amount of her kethubah, she is entitled to seize any other part of the estate also.
(10) Not specifying whether as an 'inheritance' or as a 'gift'.
(11) Lit., 'we see'.
(12) The assignee.
(13) 'O thou cunning man, what is the use of thy going round about?' (Jast.).
(14) That one has a right to assign all his estate to one of his legal heirs, V. supra 130a.
(15) I.e., to a case when the testator had no sons or daughters, contrary to the opinion of R. Johanan b. Beroka who allows it even when there is a son or a daughter (R. Gersh.). According to Rashb., the suggestion of R. Nahman is that R. Huna wishes to state the case where the testator was vague in his instructions and did not declare whether the bequest was to be in the terms of a gift or those of an inheritance.
(16) Does it matter whether the estate was given as a gift or ass 'inheritance'?
(17) This difference.
(18) The person named.
(19) The testator's.
(20) Which he inherited from her husband.
(21) Lit., 'now'.
(22) The laws of inheritance are enumerated in Numbers and Deuteronomy.
(23) V. p. 558, n. 11.
(24) Made by a dying man without a properly binding agreement.
(25) According to Biblical law a gift made in such a manner is not legally binding and remains part of the estate.
(26) Between 'gift' and 'inheritance'.
(27) V. p. 540, n. 10 and 11, supra. Similarly, in the case under discussion, if the dying man said, in reply to the question whether his estate shall be given to a certain person, 'To whom else? But after him it shall be given to a certain other person,' the second is entitled to receive it only if the first was not a legal heir and received it as a gift.
(28) The testator.
(29) By making the assignment of the estate to the first conditional upon its being transferred later to the second.
(30) Since the divine word prohibits interception of the succession no one has the right to make arrangements which disagree with it.

Talmud - Mas. Baba Bathra 133b

Once a certain man said to his friend, 'My estate [shall be] yours and after you [it shall pass over] to X'. The first [was one] entitled to be his heir.[1] [When] the first died, the second came to claim [the estate]. R. 'Ilish proposed in the presence of Raba to give his decision[2] that the second also is

entitled to receive the bequest.[3] [Raba, however], said to him, 'Such decisions are given by arbitration judges,[4] [is] not [the case exactly] the same as [that] which [was] sent [by] R. Aha son of 'Awya?'[5] As he[6] became embarrassed, [Raba] applied to him the Scriptural text. I, the Lord, will hasten it in its time.[7]

MISHNAH. IF A PERSON GIVES HIS ESTATE, IN WRITING, TO STRANGERS, AND LEAVES OUT HIS CHILDREN, HIS ARRANGEMENTS ARE LEGALLY VALID,[8] BUT THE SPIRIT OF THE SAGES FINDS NO DELIGHT IN HIM.[9] R. SIMEON B. GAMALIEL SAID: IF HIS CHILDREN DID NOT CONDUCT THEMSELVES IN A PROPER MANNER HE WILL BE REMEMBERED FOR GOOD.[10]

GEMARA. The question was raised whether the Rabbis[11] were in disagreement with [the view of] R. Simeon b. Gamaliel[12] or not. — Come and hear, Joseph b. Joezer,[13] had a son who did not conduct himself in a proper manner. He had a loft [full] of denarii[14] and he consecrated it [for the Temple]. He, [the son], went away and married the daughter of King Jannai's[15] wreath-maker. [On the occasion when] his wife gave birth to a son he bought for her a fish. Opening it he found therein a pearl. 'Do not take it to the king', she said to him, 'for they will take it away from you for a small sum of money.[16] Go take it rather[17] to the Treasurers [of the Temple], but do not you suggest its price, since the making of an offer to the Most High[18] is [as binding] as [actual] delivery in ordinary transactions.[19] But let them fix the price'. On being brought [to the Temple][20] it was valued at thirteen lofts of denarii.[21] 'Seven [of them]', they said to him, 'are available, [but the remaining] six are not available'.[22] He said to them, 'Give me the seven; and the six[23] are, [hereby]. consecrated to the Temple'.[24] Thereupon it was recorded,[25] 'Joseph b. Joezer brought in one, but his son brought to six others say, [the record read as follows]: 'Joseph b. Joezer brought in one, but his son took away seven'. Now, since the expression used [in the record[26] was], 'he[27] brought in', it may be inferred that [in their opinion] he[28] acted rightly.[29] On the contrary! Since the expression used[30] was, 'he took out', it may be inferred that he did not act rightly.[31] But [the fact is that] from this [record] nothing may be inferred.

What, then, is the answer to the enquiry?[32] — Come and hear: Samuel said to Rab Judah. 'Shinena'.[33] Keep away from[34] transfers[35] of inheritance even [if they be] from a bad son to a good son, much more [when they are] from a son to a daughter'.[36]

Our Rabbis taught: Once it happened with a certain person whose sons did not conduct themselves in a proper manner [that] he took the definite step of assigning his estate, in writing,[37] to Jonathan b. Uzziel. What did Jonathan b. Uzziel do? — He sold a third,[38] consecrated a third, and returned a third to his[39] sons. [Thereupon], Shammai came upon him with his staff and bag.[40] He[41] said to him, 'Shammai! If you can take back what I have sold and what I have consecrated, you can [also] take back what I have returned;[42]

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(1) The testator's.

(2) Lit., 'to say'.

(3) Since the rights over the estate were given to the first during his lifetime only, they cease with his death.

(4) I.e., judges whose knowledge of the law is not extensive enough to enable them to give legal decisions, and they consequently have recourse to arbitration (Rashi. and R. Gersh.). 'Graveyard judges' (R. Han.).

(5) Since the first was entitled to be legal heir, the succession cannot be terminated.

(6) R. 'Ilish.

(7) Isa. LX, 22, i.e., he need not worry too much about the slip he had made, since he was saved in time from giving effect to a wrong decision.

(8) Lit., 'what he has done is done'.

(9) Though his action is strictly legal, it is not human.

(10) His action will serve as a warning to wicked children.

(11) The authors of the first part of our Mishnah.
(12) I.e., do they object to the disinheritance of bad children?
(13) [Identified by Weiss, Dor, I, 107, with Jose, the first of the Pairs (v. Aboth I, 5) who had been put to death by the renegade High-Priest Alcimus. Buchler, The Hebrew University, Jerusalem Inauguration, Hebrew part, 79, shows the untenability of this view, and suggests Jose b. Joezer, the Priest (v. Hag. II, 7) who lived in the days of Agrippa II.]
(14) I.e., a large sum of money.
(15) [Identified variously either with Jonathan, son of Mattathias, or Agrippa who appears elsewhere in the Talmud under this name. (V. Buchler, ibid.)]
(16) Lit., 'for light money'.
(17) Lit., 'go bring it.'
(18) I.e., Temple of God.
(19) Lit., 'to an ordinary person.' Once the seller made an offer in a Temple transaction, the price can no more be raised, however much the object may have been undervalued.
(20) Lit., 'he brought it'.
(21) Cf. p. 560, n. 8.
(22) I.e., the Treasury had no funds wherewith to pay the full amount of its value.
(23) The balance of the price.
(24) Lit., 'heaven'.
(25) Lit., 'they stood and wrote'.
(26) According to the first version.
(27) The son.
(28) The father.
(29) 'Brought in', is all expression of approval, and it implies that the father's act was meritorious and resulted in the moral improvement of the son. Since, also, the wording if the record met with general approval, as evidenced by the statement 'they (1.e. all) stood and wrote', the Rabbis are obviously of the same opinion as R. Simeon b. Gamaliel.
(30) According to the second version of the record.
(31) 'Took out', is an expression of disapproval of the act of the son which reflects also on the action of the father. The fatherly act was, accordingly, regarded by the Rabbis with disfavour. (Cf. n. 10). Hence they must be in disagreement with R. Simeon b. Gamaliel.
(32) Lit., 'what is about it'.
(33) שיננא (root שנן, 'sharp'); (i) 'keen witted', [(ii) 'long-toothed', denoting some facial characteristic; (iii) 'man of iron endurance' (Bacher).]
(34) Lit., 'be not among.'
(35) I.e., from one who is legally entitled to be heir.
(36) Since Samuel's opinion (being that of an Amora) must be in agreement with one at least of the Tannaim, and since his opinion is clearly in direct contradiction to that of R. Simeon h. Gamaliel, it is obvious that Samuel must have had as his authority the view of the Rabbis (the authors of the first part of our Mishnah). Thus it follows that the Rabbis are in disagreement with R. Simeon b. Gamaliel in maintaining, like Samuel, that even a bad son must not he disinherited.
(37) Lit., 'he stood and wrote his estate'.
(38) The proceeds of which he retained for himself.
(39) The testator's.
(40) I.e., he objected vehemently to his return of the one third to the sons, maintaining that, though he did not say it explicitly, the deceased gave his estate to Jonathan for the express purpose of depriving his sons from any share in it; and since it was the duty of Jonathan to carry out the dead man's wishes, his gift of one third to the sons is invalid, and must be taken from them.
(41) Jonathan.
(42) To the sons.

Talmud - Mas. Baba Bathra 134a

if not, neither can you take back what I have returned'.[1] He exclaimed: 'The son of Uzziel has confounded[2] me, the son of Uzziel has confounded me!'[3]

Why did he first hold [a different opinion]? — On account of the incident at Beth Horon.[4] For we learnt: Once it happened at Beth Horon with a person whose father was forbidden, by a vow, to derive any benefit from him. Celebrating the marriage of his [own] son, he said to his friend, 'The court and the banquet are presented to you as a gift, but they are at your disposal only with the object that [my] father comes and dines with us at the banquet'. [The other] said to him, 'If they are mine, behold, they are consecrated to the Temple'.[5] The first said to him, 'I did not give you my possessions that you shall consecrate them to the Temple!' 'You gave me yours', said the other, 'only [with the object] that you and your father might eat and drink and be reconciled to one an other while the sin[6] will fall upon my head![7] [Thereupon][8] , the Sages said: Any gift which is not [of such a character] as would [allow it to] become sacred when [the recipient] consecrated it, is not a [proper] gift.[9]

Our Rabbis taught:[10] Hillel the Elder had eighty disciples. Thirty of them deserved that the divine presence shall rest upon them as [upon] Moses our teacher. Thirty of them deserved that the sun shall stand [still] for them as [for] Joshua the son of Nun.[11] Twenty were of an average character. The greatest of them[12] was Jonathan b. Uzziel; the least of them was R. Johanan b. Zakkai.

It was said of R. Johanan b. Zakkai that his studies included[13] the Scriptures, the Mishnah, the Gemara,[14] the Halachoth[15] , the Aggadoth;[16] the subtle points of the Torah and the minutiae of the Scribes; the inferences from minor to major and the [verbal] analogies; astronomy and geometry;[17] washer's proverbs[18] and fox fables; the language of the demons, the whisper of the palms, the language of the ministering angels and the great matter and the small matter. The 'great matter' is the manifestation of the [divine] chariot[19] and the small matter is the arguments of Abaye and Raba.[20] Thereby is fulfilled the Scriptural text, That I may cause those that love me to inherit substance and that I may fill their treasuries.[21] Now, if the least among them [was] so, how great must have been the greatest among them! It was related of Jonathan b. Uzziel [that] when he sat and studied the Torah, every bird that flew over him was burned.

MISHNAH. IF A PERSON STATES, 'THIS IS MY SON', HE IS BELIEVED. [IF, HOWEVER, HE STATES], 'THIS IS MY BROTHER', HE IS NOT BELIEVED,[22] BUT HE[23] RECEIVES [A SHARE] WITH HIM IN HIS PORTION.[24] [IF] HE[23] DIES, THE PROPERTY[25] REVERTS TO ITS OWNER.[26] [IF, HOWEVER,] HE ACQUIRED PROPERTY FROM OTHER SOURCES,[27] HIS BROTHERS SHARE THE INHERITANCE WITH HIM.[28]

GEMARA. 'THIS IS MY SON', HE IS BELIEVED; in [respect of] what legal practice? — Rab Judah said in the name of Samuel: As regards the right of heirship[29] , and the exemption of his wife from levirate marriage[30] .

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(1) If the sale and the consecration are valid it follows that the estate has passed into the absolute ownership of Jonathan. Consequently he is entitled to dispose of it in any way he pleases. Hence his gift to the sons of the deceased is also legally valid.

(2) Lit., 'cast mud'.

(3) Tacitly admitting defeat.

(4) Ned. 48a.

(5) Lit., 'heaven'.

(6) For the breach of the vow; since the presentation of the court and banquet was mere sham.

(7) As one guilty of aiding and abetting.

(8) V. Bah., Ned. 48. a.l.

(9) From this it follows that a gift which is dependent on certain conditions is not legally valid. Shammai, drawing an analogy between this case and that of Jonathan, where the father was manifestly determined that his sons shall have no benefit from his estate, disputed the legality of the return of the third to the sons. Though the father's condition was not

explicit it was sufficiently implicit, in the opinion of Shammai, to render the gift to Jonathan entirely dependent on its fulfilment. Jonathan by his reply pointed out to Shammai that the gift to him could not possibly he regarded as conditional, since it was generally conceded that he was fully entitled to sell it and to consecrate it and to dispose of it in any way he liked. [For a different version of the story, v. J. Nedarim, v. 6].

(10) Suk. 28a.

(11) V., Josh. X, 12-13.

(12) The average disciples (R. Gersh.).

(13) Lit., 'he did not leave'.

(14) The interpretation and elucidation of the Mishnah.

(15) הלכות plur. of Halachah, הלכה

(16) אגדות plur. of Aggada, אגדה

(17) V. Aboth III, 23 and notes, a.l.

(18) [The washer is a well known figure in Roman comedy, v. Krauss, TA, I, 520, note 325.]

(19) מעשה מרכבה the esoteric lore concerning the divine chariot described in Ezek. I.

(20) Whose keen discussions and arguments occupy a considerable portion of the present Gemara. [For a discussion of the various branches of study mentioned in this passage, v. Blau, Sauberwesen, 46f.]

(21) Prov. VIII, 21.

(22) If the other brothers dispute his statement.

(23) The doubtful brother.

(24) In the case of two brothers, A and B, for example, one of whom (A) does not, and the other (B) does acknowledge a third person (C) as a brother, the estate is divided into three portions, and each one of the two brothers (A and B) receives one and a half of these portions (half the estate). The second (B), however, retains only one portion (a third of the estate) to which he is in any case entitled, giving to the doubtful brother (C) the half of the third portion. Should C ever be able to establish his brotherhood, he would also be entitled to receive from A the other half of the third portion.

(25) The half of the third portion which B (v. previous note) has given him.

(26) Lit., 'their place'. I.e., to B from whom he received it. The other brother (A), who previously disowned, and denied C the second half of the third portion, is not entitled to claim any portion at all of that which was allowed him by B. Even if C were his real brother from whom he is entitled to inherit, A has no claim now, since he already received his share of C's estate by his retaining the half of the third portion.

(27) Lit., 'property fell to him from another place', either as an inheritance or as a gift or purchase.

(28) With B, since he had acknowledged them as brothers of C.

(29) Lit., 'to inherit him'.

(30) V. Deut. XXV, 5.

Talmud - Mas. Baba Bathra 134b

As regards the right of heirship! Is it not obvious [that a father is believed]?[1] — [The statement] was required in respect of the exemption of his wife from levirate marriage. Surely, this also has been taught [elsewhere]:[2] 'A person who declared at the time of his death, 'I have sons', is believed.[3] [If he declared], 'I have a brother', he is not believed'![4] — There, [the law refers to the case] where it was not known [that he had] a brother,[5] [but] here [it refers] even [to a case] where it is known[6] that he had a brother.[7]

R. Joseph said in the name of Rab Judah in the name of Samuel: Why has it been stated [that if a person said], 'This is my son', he is believed?[8] — Because a husband who said, 'I divorced my wife', is believed.[9] 'God of Abraham', exclaimed R. Joseph.[10] 'could he[11] have proved[12] that which we have learnt from that which we have not learnt?[13] If, however, that statement was made, it must have been in the following terms;[14] Rab Judah said in the name of Samuel: Why has it been stated [that if a person said]. 'This is my son', he is believed? — Because it is in his power to divorce her'.[15] 'Now that you have accepted the principle of[16] Because',[17] continued[18] R. Joseph, 'a husband is believed if he stated "I divorced my wife", because it is in his power to divorce her'.

When R. Isaac b. Joseph came,[19] he stated in the name of R. Johanan: A husband who said, 'I divorced my wife', is not believed. R. Shesheth blew upon his hand[20] [exclaiming]. 'R. Joseph's "because'[21] has gone'.[22] [But] it is not [so]![23] For, surely, R. Hiyya b. Abin said in the name of R. Johanan: A husband who stated, 'I divorced my wife', is believed![24] There is no difficulty: One[25] [speaks] retrospectively;[26] the other,[27] of the future.[28]

The question was raised: [Is a husband who] testified retrospectively[29] believed as regards the future?[30] Do we divide [his] statement[31] or do we not divide it?[32] — R. Mari and R. Zebid [are in dispute on the matter]. One said, 'we do divide', and the other said, 'we do not divide [it]'. Wherein [is this] different from [the law] of Raba? For Raba said: [If a husband testifies,] 'X had intimate intercourse with my wife', he and [one] other [witness] may combine to procure his death;[33] his death, but not her death![34] — In [the case of] two individuals[35] we [may] divide [a statement]; in [the case of] one individual[36] [it is possible that we may] not divide.

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(1) For, were he not his real son there was no need for the father falsely to declare him as an heir. He could have assigned the estate to him as a gift.

(2) Kid. 64a.

(3) And his wife is exempt from levirate marriage.

(4) V. infra n. 6. Why, then, should the same law be repeated in our Mishnah?

(5) Or sons; and the question of halizah (V., Glos.) could only arise through his own statement. Hence, he is believed only in so far as he does not impair the freedom of the widow.

(6) There is a general belief, but not reliable evidence.

(7) Our Mishnah teaches that, even in such a case, where owing to general belief the widow might be assumed to be subject to the laws of levirate marriage, the husband's statement that he has sons exempts her from the levirate marriage (V. infra). The second clause, according to which the statement, 'This is my brother' is not accepted, does not deal with the question of levirate, but with that of inheritance; v. Mishnah and notes a.l.

(8) And his widow is, accordingly, exempt from the Ievirate marriage.

(9) If his statement, then, were not true, and motivated only by a desire to liberate his wife from the levirate marriage, or halizah, he could have stated that he divorced her, and would thus have achieved the Same object.

(10) R. Joseph, as a result of serious illness, forgot his studies and many of his own statements (v. Ned. 41a). He was here wondering how he could possibly have made such a statement in the name of his masters.

(11) Rab Judah.

(12) Lit., 'suspended'.

(13) The law of the reliability of a father's statement in respect of a son has been taught in the Mishnah, while that in respect of the divorce of a wife does not occur either in a Mishnah or a Baraitha.

(14) Lit., 'but if it were said, it was said thus'.

(15) Since he could divorce her there and then and then liberate her from the levirate marriage, and halizah, he is also believed when he states, 'this is my son'. (Cf. p. 565, n. 10).

(16) Lit., 'that you said, we say'.

(17) 'Because it is in his power etc., i.e., the principle that a person is believed regarding what he said, because it is in any case in his power to achieve his object.

(18) Lit., 'said'.

(19) From Palestine to Babylon.

(20) As though blowing away some imaginary fluff.

(21) Cf. supra note 1.

(22) Since R. Johanan's view is definitely opposed to it'

(23) I.e., R. Johanan's view is not in disagreement with the principle adopted by R. Joseph.

(24) This confirms the view of R. Joseph. It reveals, however, a contradiction between the two statements if R. Johanan

(25) Lit., 'here', R. Isaac's report that the husband is not believed.

(26) I.e., if the husband states that his wife was divorced prior to the date of his statement, he is not believed since he cannot now divorce her retrospectively, and she is regarded as a married woman at least up to that date, v. infra.

(27) Lit., 'here', the report of R. Hiyya.

(28) If the husband states 'I divorced my wife', whether he specifies, 'now', or not, he is believed, since he can divorce her there and then; and the woman is regarded as divorced from that day onwards.

(29) Declaring that the divorce took place prior to the date of his statement.

(30) Is the woman regarded as divorced from that day onwards.

(31) I.e., though he is not believed as regards the time that had passed, is his word nevertheless relied upon as regards the future? (V. previous note).

(32) Since part of the statement (that relating to the past), is not relied upon, is the entire statement disregarded?

(33) Lit., 'to kill him'.

(34) Because a husband is not qualified to act as witness against his wife. Thus it follows that the evidence is divided; the part relating to the wife being disqualified, that relating to her seducer being accepted as valid.

(35) Raba's case dealing with (1) the wife and (2) her seducer.

(36) Retrospectively and prospectively in the case of one woman.

Talmud - Mas. Baba Bathra 135a

[Once] a certain [man] was dying.[1] Being asked to whom his wife [was permitted to be married[2] and] he replied to them, 'She is suitable for the High Priest',[3] [in considering this case], Raba said: What is there to apprehend?[4] Surely R. Hiyya b. Abba said in the name of R. Johanan [that] a husband who said, 'I divorced my wife' is believed.[5] Abaye said to him: But, surely, when R. Isaac b. Joseph came, he said in the name of R. Johanan [that] a husband, who said, 'I divorced my wife', is not believed! — He said to him: Is he not? Surely it has been explained that one[6] [report speaks] retrospectively and the other[6] as to the future! Shall we then,[7] [came the reply], rely upon an explanation?![8] [Thereupon] said Raba to R. Nathan b. Ammi: Take this into consideration.[9]

A certain [person] was known[10] to have no brothers,[11] and at the time of his death he declared that he had no brothers, [in considering the case.] R. Joseph said: What is there here[12] to apprehend? In the first place[13] it is known that he has no brothers, and secondly[14] he [himself] has declared at the time of his death that he had none. Abaye said to him: But [people] say that in the countries beyond the sea[15] there are witnesses who know that he has brothers! — 'Now, at any rate [replied the other, 'they are not before us'.[16] [Is] not [this case] the same as that of R. Hanina? For R. Hanina said: Shall she[17] be forbidden [because there are] witnesses at the North Pole!'[18] Abaye said to him: Shall we relax [the law] in [the case of] a married woman[19] because[20] we relaxed [it] in [the case of] a captive woman?[21] [Thereupon] said Raba to R. Nathan b. Animi: Take this into consideration.[22]

THIS IS MY BROTHER', HE IS NOT BELIEVED. And what do the other [brothers] say? If they say. 'He is our brother', why should he [only] take [a share] with him[23] in his portion and no more?[24] [If], however, they say, 'He is not our brother', [how will you] explain the latter [clause]: [IF, HOWEVER,] HE ACQUIRED PROPERTY FROM ANOTHER SOURCE, HIS BROTHERS SHARE THE INHERITANCE WITH HIM. [Why should they inherit?] Surely they had declared of him, 'He is not our brother'! — [This law is] required [in the case] only where they say, 'We do not know'.[25]

Raba said: This implies [that if a person claims from another], 'You owe me a maneh' and the other replies. 'I do not know, he[26] is exempt.[27] Said Abaye:

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(1) Who had brothers but no sons.

(2) I.e., whether she was subject to the laws of levirate marriage.

(3) I.e., 'she may marry anyone' having been divorced by him. 'High Priest' is thus not to be taken literally, since even a priest is forbidden by law to marry a divorced woman (v. Rashb. and Tosaf.) [Yad Ramah, a.l., explains that the marriage had not been consummated and the husband claimed the annulment thereof because it had been contracted on a certain condition which was not fulfilled, in these circumstances the woman might be allowed to marry even a High Priest.]

(4) If she is exempted from the levirate marriage.
(5) For the reason stated supra. Similarly, here, since he said that she may marry anyone, i.e., that he had divorced her (or, owing to the non-fulfilment of the condition on which the marriage was contracted), he is believed.
(6) Lit., 'here'.
(7) Lit., 'shall we rise'.
(8) It is still possible, despite the explanation, that the matter is in dispute between Amoraim, and that according to one opinion the husband's evidence in such a case is not accepted at all.
(9) I.e., the widow must not marry without obtaining halizah (v. Glos.)
(10) But there was no legal evidence.
(11) It was certain, however, that he had no children.
(12) In allowing the widow to marry.
(13) Lit., 'one'.
(14) Lit., 'and again, surely'.
(15) Lit., 'country of the sea'.
(16) And one need not go to the ends of the earth to discover witnesses in order to restrict the widows freedom.
(17) The incident related to the daughters of Samuel, who were in captivity; and when brought to Palestine, declared that their honour was not violated. R. Hanina allowed them to be married to priests, who are forbidden to marry a woman whose chastity had been violated.
(18) Goldschmidt. Heb., istan, אסתן 'the north wind'. Cf. Assyr. is-ta-na-ni (= north), C. J. Gadd, Tablets from Kirkuk in Revue d'Assyriologie, vol. XXIII, no. 34, line 12, and il-ta-an (= north) op. cit., no. 2, line 6, and passim.
(19) Lit., 'wife of a man', where the assumption is that she is subject to the laws of the levirate marriage.
(20) Lit., 'if'.
(21) In this case the captive is entitled to the benefit of the doubt, since there is the assumption that she as a woman protected her chastity and honour.
(22) I.e., do not allow her to marry before complying with the laws of halizah.
(23) With the brother who acknowledged him.
(24) He should receive all equal share with all the brothers.
(25) He cannot claim a share in their portions since he has no legal proof of the brotherhood. They, however, are entitled to be his heirs since both he and the brother who acknowledged him admitted that they were brothers.
(26) The defendant.
(27) He need not pay the claim. It is incumbent upon the claimant to produce the proof; v, B.K. 118a; B.M. 97b.

Talmud - Mas. Baba Bathra 135b

It may still be maintained [that he is] liable,[1] but here [the case is] different[2] , for it resembles [the case where one states]. 'You owe a maneh to another [person]'.[3]

IF HE DIES THE PROPERTY REVERTS TO ITS OWNER [etc.][4] Raba inquired: What [is the law in respect of] the natural appreciation of the estate? As regards appreciation which reaches the carriers[5] there is no question at all,[6] since this resembles PROPERTY ACQUIRED FROM OTHER SOURCES.[7] The question, however, arises [as to] what [is the law] in [the case of] appreciation which does not reach the carriers as, for example, [where he[8] gave him] a palm-tree and it grew stronger [or a plot of] land and it yielded alluvial soil.[9] This remains undecided.

MISHNAH. IF A PERSON DIED AND A WILL[10] WAS FOUND TIED TO HIS THIGH,[11] IT IS OF NO LEGAL VALUE.[12] IF THEREBY[13] HE[14] MADE AN ASSIGNMENT[15] TO SOMEONE,[16] WHETHER [THIS PERSON IS ONE] OF THE HEIRS OR NOT, HIS[17] INSTRUCTIONS ARE LEGALLY VALID.[18]

GEMARA. Our Rabbis taught: What is a deyathiki?[19] — Any [deed] in which is written, 'This is to stand and to be'.[20] And which is a [legal] gift?[21] — Any [deed] in which is written, '[Acquire the gift][22] from this day, and[23] after my death'. But, [accordingly], a gift would be [legal only when it is

written] ‘from this day, and after my death’,[24] [if. however, it were written].’from now[25] the gift would not be [legal]?[26] — Abaye replied: [It is] this that was meant: ‘Which is the gift of a person in good health that is [regarded] as the gift of a dying man in that no possession [of its fruit] is acquired until[27] after death? — Any [deed] in which it is written, "from this day and after my death".’

Rabbah, son of R. Huna sat in the hall,[28] of the school-house,[29] and reported [the following statement] in the name of R. Johanan: [If] a dying man said, ‘Write [the deed] and deliver a maneh to X’, and he died,[30] they [must] neither write not deliver, since it is possible[31] that he has determined to give him the right of ownership by means of the deed only, and no deed [may be the means of acquiring possession] after [the testator's] death. R. Eleazar said to them, ‘Be careful about this’.[32] R. Shezbi said [that] R. Eleazar had reported it, and [that] R. Johanan said to them, ‘Be careful about this’. R. Nahman b. Isaac said: Logical reasoning favours the opinion of R. Shezbi. [For] if it be said that R. Eleazar had reported it, it was quite right [for] R. Johanan to corroborate his statement;[33] if, however, it be said [that] R. Johanan had said it, [was] it necessary [for] R. Eleazar to corroborate the view of R. Johanan his master? And, furthermore, come and hear [the following which proves] that R. Eleazar had recited it. For Rabin sent in the name of R. Abbahu: Be [it] known to you that R. Eleazar has sent [word] to [those in] the diaspora[34] in the name of our Master[35] [that] if a dying man said, ‘Write and deliver a maneh to X’, and he died, they must neither write nor deliver, since it is possible that he has determined to give him the right of ownership by means of the deed only, and no deed [may serve as a means of acquiring possession] after [the testator's] death. And R. Johanan said,[36] ‘[The matter][37] shall be investigated’. What is meant by, ‘it shall be investigated’? — When R. Dimi came he[38] said: [i]. [One] will annuls [another] will.[39] [ii], [If] a dying man said, ‘Write [a deed] and give a maneh to X’ and he died, [his motive] is inquired into.[40] If [it was] to strengthen his claim,[41] [the deed] is written; but if not,[42] it is not written.[43]

R. Abba b. Memel raised an objection: [It was taught,] ‘If a person in good health said, "Write [a deed] and deliver a maneh to X", and he died, they must neither write nor deliver.’ But, [it follows,[44] in the case of] a dying man, they may both write and deliver![45] — He raised the objection and he himself explained it: [This refers to the case] where [the testator desired] to strengthen his[46] claim. How is one to understand [whether a testator desired] to strengthen [the beneficiary's] claim?

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(1) Since the one party is certain of its claim while the other is doubtful.

(2) The doubtful brother does not himself advance a certain claim, but one of his brothers does that for him, so that as far as he is concerned his claim is as doubtful as that of the other brothers.

(3) One of the brothers claims that the others owe a share to the brother whose claim is disputed.

(4) Cf. Bah. a.l.

(5) I.e., fruit, which is carried in baskets. If the land given to him by the brother who acknowledged him was fallow and he improved it so that it produced quantities of fruit. Heb., כתפים ‘carriers’, with the Lamed of the dative. R. Tam reads ktayfayim ‘shoulders’, with the Lamed of the instrument; i.e., appreciation due to hard and strenuous work (v., supra 42b, Tosaf. s.v., שבח.) Cf. ‘putting the shoulder to the wheel’, a barren track was turned into a fruit-producing field.

(6) That all the brothers are entitled to have shares in it.

(7) Which, according to our Mishnah, is shared by all the brothers.

(8) The brother who acknowledged him.

(9) And similar cases where there is no appreciation that can be carried away, or that had been brought about by human effort, in such cases there might apply the law that ‘the property reverts to its owner,’ that is, the brother who had given it to him.

(10) Heb. deyathiki, דייתיקי ,Gr. ** .

(11) I,e., even on his thigh, in which case it is obvious that the deceased himself had written it,

(12) Lit., ‘this is nothing’. The person to whom a bequest was made in this will is not entitled to receive it; since possession is to be acquired by means of the receipt of the will, and since, at the time it reaches him, the owner, being dead, is not there to transfer to him the right of ownership.

(13) I,e., by the handing over of the will,
(14) The testator.
(15) While he was still alive.
(16) Lit., ‘to another’. I,e., if when handing over the will to the assignee he said that thereby he desired to confer upon him the ownership of the bequest mentioned in it.
(17) The testator's.
(18) Even if the assignee is not the testator's legal heir, and even though his name is not mentioned in the will, he receives all that is enumerated in it. The verbal instructions of a dying person are legally binding.
(19) V. note I. The question is, which kind of will entitles one to acquire ownership of an estate after the death of the testator, in the case where ‘immediate’ acquisition is not provided for?
(20) I.e., after death. Aram.’ Do T'hey lmaykam wlhiyot’ a play upon the word דייתיקי .
(21) Of a person in good health.
(22) I.e., the property itself,
(23) Its produce.
(24) I.e., where ‘after my death’ was explicitly added to ‘from this day’.
(25) Without the addition of ‘after my death’.
(26) How is this possible? Surely, the expression, ‘from now, without any additions, rather implies that both land and produce are given to the recipient at once.
(27) Lit., ‘but’.
(28) Gr. ** .
(29) Taking רב as meaning, ‘teacher’, v. supra 11b.
(30) Before his instructions were carried out.
(31) Lit., ‘perhaps’.
(32) I.e., this is the accepted law,
(33) It would be quite natural and necessary for the master (R. Johanan) to corroborate the view of his disciple (R. Eleazar).
(34) [Heb. גולה denoting generally Nehardea, the earliest and most important centre of Babylonian Judaism; after its destruction in 259 by Odenathus its place was taken by Pumbeditha, which then became also known as Golah (v. R.H. 23a and Lewin, Methiboth I).]
(35) Rab, or Abba Arika,
(36) in amplification of the previous statement.
(37) Whether the testator wished the beneficiary to acquire possession by means of the receipt of the deed only.
(38) From Palestine. (12) He made two statements, the second of which explains the method of the investigation.
(39) A dying man who bequeathed his estate in his will to one person can cancel this by making a second will in favour of another person.
(40) Lit., ‘(they) see’.
(41) That the beneficiary shall have documentary proof of the gift.
(42) If the object of the deed was to make acquisition of the gift dependent upon the receipt of the deed by the beneficiary.
(43) For it is possible that the testator had since changed his mind.
(44) Since a person ‘in good health’ had been mentioned.
(45) Because a dying man's instructions must be scrupulously adhered to. How, then, could it be said above that his motive must be inquired into first?
(46) The beneficiary's.

Talmud - Mas. Baba Bathra 136a

— As R. Hisda said:[1] [This is a case where the witnesses record,] ‘And we have acquired [legal possession] of him,[2] in addition to [the presentation of] this gift.[3] [so] here also [the testator's motive may be known] when he declared, ‘Also write, and sign, and deliver to him.’[4]

It was stated: Rab Judah said in the name of Samuel: The halachah is that [the deed of a gift] is

written and delivered.[5] And Raba in the name of R. Nahman said likewise: The halachah is that [the deed] is written and delivered.[5]

MISHNAH. IF A PERSON [DESIRES] TO GIVE HIS ESTATE IN WRITING TO HIS SONS,[6] HE MUST WRITE, '[THIS ESTATE IS ASSIGNED][7] FROM THIS DAY AND[8] AFTER [MY] DEATH';[9] THESE ARE THE WORDS OF R. JUDAH. R. JOSE SAID: THIS[10] IS NOT NECESSARY.[11] IF A PERSON ASSIGNED HIS ESTATE, IN WRITING, TO HIS SON[12] [TO BE HIS][13] AFTER HIS[14] DEATH, THE FATHER MAY NOT SELL [IT][15] BECAUSE IT IS ASSIGNED IN WRITING TO THE SON, AND THE SON MAY NOT SELL [IT] BECAUSE IT IS IN THE POSSESSION OF THE FATHER. IF THE FATHER SOLD [THE ESTATE]. THE SALE IS VALID UNTIL HIS DEATH.[16] IF THE SON SOLD [IT], THE BUYER HAS NO CLAIM WHATSOEVER UPON IT UNTIL THE FATHER'S DEATH.

GEMARA. [Of] what [avail] is it that he wrote, 'FROM THIS DAY, AND AFTER [MY] DEATH'? Surely we learnt, [if one inserts in a divorce]. 'from this day, and after [my] death', the divorce is valid and invalid;[17] and if he dies she is subject to the law of halizah[18] but not to that of the levirate marriage![19] — There[20] it is doubtful whether it[21] is a condition[22] or a retraction.[23] Here, however, [it is obvious that] he meant to say this to him.[24] 'Acquire the land itself[25] today; the fruit after [my] death'.[26]

R. JOSE SAID: THIS IS NOT NECESSARY. Rabbah b. Abbuha was indisposed [and] R. Huna and R. Nahman came in [to see him]. 'Ask him', said R. Huna to R. Nahman,[27] '[is] the halachah in accordance with [the view of] R. Jose or [is] the halachah not in accordance with [the view of] R. Jose?' — 'I do not [even] know R. Jose's reason, replied the other, '[shall] I ask him[28] [about] the halachah?' 'You inquire of him,' said [R. Huna] 'whether the halachah [is according to R. Jose] or not; and as to his reason I will tell you [it later].' [Thereupon, R. Nahman] inquired of [Rabbah], who replied to him, 'Thus said Rab: The halachah [is] in accordance with [the view of] R. Jose'. When[29] they came out, [R. Huna] said to him.[30] 'This is R. Jose's reason: He is of the opinion that the date of the deed proves its import,'[31] Thus it was also taught [elsewhere]: R. Jose said, 'This is not necessary, because the date of the deed proves its import.'

Raba inquired of R. Nahman: What [is the law] in [the case of a deed of transfer?[31] — He said to him: in [the case of] a deed of transfer this[32] is not required. R. Papi said: There are deeds of transfer where [this[32] is] required, and there are deeds of transfer where [this is] not required. [If the deed reads]. 'He conferred upon him[33] possession', [concluding with], 'and we[34] acquired it from him',[35] there is no need [for this].[36] [If, however, it reads], 'We acquired it from him' [concluding with], 'he gave him possession', this[37] is required.[38] R. Hanina of Sura demurred: Is there anything we do not know and the scribes would know?[39] The scribes of Abaye were asked and they knew;[40] the scribes of Raba, and they knew.[40]

R. Huna the son of R. Joshua said, whether [the order was]. 'He conferred upon him possession . . . and we acquired it of him', or, 'We acquired it of him . . . and he conferred upon him possession the insertion of 'from this day] is not required;[41] and their dispute[42] [has reference only to the case] where [the deed reads], 'a memorandum of the transaction that took place in our presence'.[43]

R. Kahana said: I mentioned the reported statements in the presence of R. Zebid of Nehardea, and he told me: You read thus,[44] [but] we have the following version: Raba said[45] in the name of R. Nahman, 'In [the case of] a deed of transfer this[46] is not required whether [the formula was], 'He conferred upon him possession . . . and we acquired it of him' or, 'We acquired it of him . . . and he gave him possession'; their dispute [has reference only to the case] where [the formula is], 'a memorandum of the transaction that took place in our presence'.

IF A PERSON ASSIGNED HIS ESTATE, IN WRITING TO HIS [TO BE HIS] AFTER HIS DEATH. It was stated: If the son sold [the estate][47] during the lifetime of his father, and died while his father was still alive,

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(1) Infra 152b.

(2) I.e., they had executed the legal formality of conveyance by means of a kinyan (v. Glos.) between the testator and the recipient.

(3) V. infra 152b.

(4) in which case the testator clearly indicated that the gift was independent of the written deed, the purpose of which was only to strengthen the beneficiary's claims.

(5) After the testator's death; if it was ascertained (as R. Johanan stated, supra) that the purpose of the deed was to strengthen the beneficiary's claim.

(6) I.e., a person in good health who desires, for example, to marry a second time, and wishes to protect the sons that were born from his first marriage from the possible seizure of his estate by his second wife, in payment of her kethubah.

(7) I.e., the land itself.

(8) The produce thereof also.

(9) If, 'from this day', is not specified, the gift is invalid, since a person cannot give possession after his death.

(10) The addition, 'from this day'.

(11) The reason is given infra.

(12) Inserting the formula, 'from this day and after my death'. The law that follows applies to a gift made to any other person.

(13) The son's.

(14) The testator's.

(15) The land and its produce.

(16) Lit., 'sold until he dies', Until then only, may the buyer have its usufruct.

(17) Lit., 'a divorce and it is not a divorce'. It is not certain whether by the first part of the expression he meant the divorce to be effective at once, in which case it is valid; or whether by the second part of the expression he withdrew the first, and desired the divorce to become effective after his death, in which case (since one cannot divorce after death) it is invalid.

(18) V. Glos. Since it is possible that the divorce was invalid and she is therefore the widow of a husband who died without issue.

(19) Since it is also possible that the divorce was valid, and a divorced woman may not be married by the brother of her former husband. Similarly, in the case of the will, the same doubt exists, why, then was it said that possession was definitely acquired?

(20) In the case of the divorce.

(21) The addition, 'and after death'.

(22) I.e., that when he dies the divorce shall be considered as having taken effect from now; and since the condition has been fulfilled, the divorce is valid.

(23) Asserting that the divorce was not to take effect from that day onwards, as the first part of the expression implied, but only after his death; and since one cannot give a divorce after death, the document is invalid.

(24) To the son.

(25) Lit., 'the body', i.e., the principal. capital, actual estate.

(26) In the case of a divorce, such a division in the meaning of the two parts of the expression is, of course, impossible.

(27) [R. Nahman was Rabbah b. Abbuha's son-in-law.]

(28) Rabbah.

(29) Lit., 'after'.

(30) R. Nahman.

(31) That the presentation of the gift is to begin on that day (though the expression 'from that day' was not inserted). Had it been intended to postpone the presentation till after death, there would have been no point in recording the date of the deed. (12) הקנאה 'giving', or 'transferring possession' of the gift, i.e., when it is recorded in the deed that the legal formality of conveyance, the kinyan, had been executed as between the testator and the recipient, which virtually places the gift in the possession of the recipient. Does R. Judah in such a case also require the specific insertion, 'from

this day'?
(32) The insertion, 'from this day'?
(33) The donee.
(34) The witnesses.
(35) From the testator, by symbolic acquisition.
(36) For the insertion of 'from this day'. Since two distinct kinds of transfer of possession have been mentioned, (1) he conferred possession and (2) we acquired etc., the claim of the donee is thereby strengthened and he acquires ownership of the gift even though, 'from this day' has not been recorded.
(37) The addition of 'from this day'.
(38) Since the second part of the expression may be taken as an interpretation of the first. Thus: 'We acquired possession etc.' because 'he gave him possession'. Consequently, the two parts imply only one transfer of possession which, unless 'from this day' is inserted, cannot be effective or valid. (Rashb.)
(39) If most scholars do not know the difference between the one and the other formula, would the scribes be able to tell what this one or the other implied?
(40) The difference in the meaning and purport of the two formulae.
(41) In agreement with R. Nahman.
(42) Of R. Judah and R. Jose as to whether the insertion, 'from this day', is required.
(43) I.e., when the deed is not one recording a transfer of possession through the witnesses; but a memorandum of the transactions at which the witnesses were present. R. Jose holding that even in such a case the date of the memorandum proves its import.
(44) in the form of an enquiry: 'Raba inquired of R. Nahman' etc., supra.
(45) I.e., a statement of fact, not an inquiry.
(46) V. p. 575, n. 6.
(47) Assigned to him by his father for possession after his death.

Talmud - Mas. Baba Bathra 136b

R. Johanan said: The buyer does not acquire ownership;[1] and Resh Lakish said: The buyer does acquire ownership.[2] R. Johanan said [that] the buyer did not acquire ownership, [because] possession of usufruct is like the possession of the capital;[3] and Resh Lakish said [that] the buyer did acquire ownership [because] possession of usufruct is not like the possession of the capital.[4]

But, surely, on this [principle][5] they have once disputed![6] For it was stated: If a person sells the usufruct of his field,[7] R. Johanan said, [the buyer] must bring [the bikkurim][8] and recite [the declaration];[9] and Resh Lakish said, he must bring but does not recite. R. Johanan said [that] he must bring and recite because he holds the opinion that possession of usufruct is like the possession of the capital.[10] and Resh Lakish said [that] he must bring but not recite [because in his opinion] the possession of usufruct is not like the possession of the capital![6] — R. Johanan [can] answer you: Although possession of usufruct is, generally, like the possession of the capital [itself], it was necessary [to re-state the principle] here; since it might have been supposed [that] a father would renounce his claims in favour of his son;[11] so he taught us [that this is not so]. And R. Simeon b. Lakish [can] answer you: Although possession of usufruct is, generally, not like the possession of the capital [itself], it was necessary [to re-state the principle] here; since it might have been supposed [that] whenever [it is a matter] of self-interest a man considers himself first even where there is a son;[12] so he taught us [that this is not so].

R. Johanan raised an objection against Resh Lakish: [If a person said]. 'I give my estate to you; and after you, X shall be [my] heir; and after X, Y shall be my heir', [when the] first dies, the second acquires the ownership; when the second dies the third acquires ownership. [If] the second dies in the lifetime of the first the estate reverts to the heirs of the first.[13] Now, if it were [so],[14] it should [revert] to the heirs of the [original] owner?[15] — He replied to him: Rab. Hoshaia in Babylon[16] has already explained this: It is different [when the expression], 'after you', [was used].[17] Rabbah son of

R. Huna pointed out the same incongruity in the presence of Rab, who [likewise] replied: It is different [when one used the expression] ‘after you’.

But, surely, it was taught.[18] [The estate] reverts to the heirs of the [original] owner![19]

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(1) Even after the father's death, since the estate has never come into the possession of the son.

(2) After the death of the father, as the representative of the son who, if alive, would have been entitled to the inheritance.

(3) Since the usufruct was in the ownership of the father, the capital, i.e., the soil also is regarded as being in his possession, and the son, therefore, is not entitled to transfer it to a buyer.

(4) The soil, therefore, was the undisputed property of the son who, consequently, was fully entitled to transfer it to a buyer.

(5) Whether possession of usufruct is like the possession of the capital.

(6) Why then dispute it again?

(7) Lit., ‘his field for fruit’.

(8) First ripe fruit. V. Deut. XXVI, 2.

(9) Ibid. 3-10.

(10) Hence he may recite the declaration which contains the sentence, ‘the land which thou hast given me’.

(11) And that, consequently, the soil is the son's despite the usufruct of the father.

(12) As the father retained for himself the usufruct so he also retained his rights in the soil.

(13) V. supra 129b.

(14) That possession of the usufruct is not like the possession of the capital itself.

(15) Lit., ‘giver’. Since the first recipient enjoyed only the usufruct, the capital must have remained in the possession of the original owner; and, consequently when the second dies, the estate should revert to the heirs of him to whom the soil belonged.

(16) [A pupil of R. Johanan who hailed from Babylon, in contradistinction to R. Hoshaiah, the teacher of R. Johanan. Some MSS delete ‘in Babylon’ and may thus refer to the latter.]

(17) By the use of ‘after you’, the owner has clearly intimated that the first, while alive, was to have possession of both capital and usufruct. Elsewhere, however, acquisition of usufruct alone is not the same as the acquisition of the capital itself.

(18) Even in the case where ‘after you’ was used.

(19) Which shows that even in such a case the possession of usufruct is not at all like the possession of the capital, how then can R. Johanan maintain the view, contradictory to the Baraitha, that possession of usufruct is always like the possession of the soil itself?

Talmud - Mas. Baba Bathra 137a

This [law is a matter of dispute between] Tannaim.[1] For it was taught: [If a person said.] My estate [shall be] yours, and after you [it shall be given] to X', and the first [recipient] went down [into the estate] and sold [it] and spent [the money],[2] the second may reclaim [the estate] from those who bought it;[3] [these are] the words of Rabbi. Rabban Simeon b. Gamaliel said: The second [may] receive only what the first had left.[4]

An incongruity was pointed out: [If a person said]. 'My estate [shall be] yours and after you [it shall be given] to X', the first [may] go down [into the estate], and sell [it] and spend [the money; these are] the words of Rabbi. Rabban Simeon b. Gamaliel said: The first has only [the right of] usufruct. [This, surely, presents] a contradiction [between one statement] of Rabbi and the other statement of his,[5] and [between one statement] of Rabban Simeon b. Gamaliel and the other statement of his![6] — There is no contradiction between the two statements of Rabbi,[7] [since] one[8] [may refer] to the capital;[9] and the other,[10] to the usufruct.[11] There is [also] no contradiction between the two statements of Rabban Simeon b. Gamaliel[12] [since] one[13] may speak of what is the proper thing;[14] the other, of the law ex post facto.[15]

Abaye said: Who is a cunning rogue? — He who counsels[16] to sell an estate,[17] in accordance with Rabban Simeon b. Gamaliel.[18]

R. Johanan said: The halachah is according to Rabban Simeon b. Gamaliel, who [however], admits that if [the estate] was assigned[19] as the gift of a dying person, the transaction is invalid.[20] What is the reason? — Abaye said, [because] the gift of a dying person is acquired only after death, and [by that time] 'after you'[21] had preceded him.[22] But did Abaye say so? Surely it was stated: When is possession of the gift of a dying man acquired? Abaye said, 'at death', and Raba said, 'after death'![23] Abaye withdrew from that opinion.[24] Whence [is it proved] that he withdrew from this view,[24] perhaps he withdrew from that?[25] — This cannot be entertained,[26] for we have learnt: [If a dying man[27] said to his wife] 'Here is thy divorce should I die'[28] [or] 'Here is thy divorce [after] my present illness'[29] [or] 'Here is thy divorce after [my] death', [the divorce in all these cases] is invalid.[30]

R. Zeira said in the name of R. Johanan: The halachah is according to Rabban Simeon b. Gamaliel and even if the estate contained slaves whom he liberated.[31] [Is this not] obvious? — It might have been presumed [that] he could be told that it was not given to him for the purpose of doing what was prohibited,[32] hence he taught us [that we do not say so].

R. Joseph said in the name of R. Johanan: The halachah is according to Rabban Simeon b. Gamaliel and even in the case where a dead man's shrouds were made of it.[33] [This is surely] obvious! It might have been presumed that it was not given to him[34] to turn[35] into [something of which it is] forbidden to have any benefit[36] so he taught us [that this is not so].

R. Nahman b. R. Hisda gave the following exposition. [If one said to another]. 'This ethrog[37] is given to you as a gift, and after you[38] [it shall be given] to X', [and] the first [recipient] took it and performed with it his duty,[39] — this will be a point of dispute[40] between Rabbi and Rabban Simeon b. Gamaliel.[41] R. Nahman b. Isaac demurred: The dispute between Rabbi and Rabban Simeon b. Gamaliel can only extend as far as [the case] there[42] because [one] Master is of the opinion [that] acquisition of usufruct is like the acquisition of the capital, and the other] Master is of the opinion [that] acquisition of the usufruct is not like the acquisition of the capital, but here,[43]

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(1) The view of one of whom is advanced by R. Johanan.

(2) Lit., 'ate'.

(3) After the death of the first, who was entitled to usufruct only and had no right to sell the estate itself.
(4) According to this view, the first, being in possession of the usufruct, is regarded as being also in the possession of the capital itself, R. Johanan follows Rabban Simeon b. Gamaliel.
(5) Lit., 'on that of Rabbi'.
(6) Lit., 'on that of Rabban Simeon b. Gamaliel'.
(7) Lit., 'of Rabbi on that of Rabbi'.
(8) Allowing the second to reclaim what the first had sold.
(9) Which is not the possession of the first, and which he has, consequently, no right to sell. Hence it may rightly be reclaimed from the buyer.
(10) Which confers upon the first the right to sell.
(11) I.e., the fruit only, which certainly belongs to him and which he may certainly sell.
(12) Lit., 'of Rabban Simeon b. Gamaliel on that of R. Simeon etc.!
(13) According to which the first has only the right of usufruct.
(14) לכתחלה 'as at the commencement', 'for a start'. The proper thing is that the first shall respect the wishes of the testator (who obviously desired the second to have at least some of the estate), and dispose of the usufruct only, leaving the capital itself intact for the benefit of the second.
(15) דיעבד 'having been done', i.e., if the first had not come to inquire whether he is entitled to sell the land, but, acting on his own, has sold all, or part of it, the second can only receive what the first had left.
(16) [Rashb.; R. Gersh, renders, 'who takes counsel with himself.']
(17) Which was given to a person with the stipulation that after his death it shall be transferred to another person.
(18) Though the sale is morally wrong, since the original owner meant the second beneficiary to have the estate after the death of the first, it is legal in accordance with the view of Rabban Simeon b. Gamaliel. [According to the explanation of Rashb., it is only he who counsels, that is dubbed 'cunning rogue', since he derives no benefit therefrom.]
(19) By the first recipient.
(20) And the second beneficiary may reclaim it from the donee.
(21) I.e., the second beneficiary, with reference to whom the original owner and testator had said to the first beneficiary, 'after you it shall be given' etc.
(22) The second beneficiary acquires ownership of the estate, on the strength of the instructions of the original owner, at the very moment the first died. The owner, by his instruction, 'after you to X', has clearly intimated that the first was to have the estate only while alive. As soon, therefore, as he dies, X acquires possession. The person, however, to whom the first assignee has presented the estate, 'as the gift of a dying man', does not acquire possession until after the death of the donor. Hence, 'after you' had anticipated him,
(23) Since Abaye, here, holds the view that the gift of a dying man is acquired at death, how could it be said that according to him such a gift is acquired after death?
(24) That the gift is acquired at death.
(25) According to which ownership is acquired after death,
(26) Lit., 'It (should) not enter your mind',
(27) Desirous that his wife shall have the status of a divorced woman (to exempt her, e.g., from the levirate marriage), and not that of a widow.
(28) I.e., when he dies, the divorce shall become effective.
(29) I.e., after death will have brought it to an end.
(30) Lit., 'he said nothing'. because he meant that the divorce shall not become effective except when he died, but after death one cannot give a divorce similarly, in the case of the gift of a dying man, possession was meant to be acquired after and not in death.
(31) The liberation is valid.
(32) It is prohibited to liberate a heathen slave. Cf. Lev. XXV, 46.
(33) Lit., , 'he made them into a shroud for the dead', i.e., the gift or any part of its proceeds was used for the purpose.
(34) Lit., 'they (or we) did not give you'.
(35) Lit., 'to make them'.
(36) Lit., 'prohibitions of use'. A dead man's shroud may not be used for any other purpose, nor may any benefit be derived from it. (v. Sanh,. 47b).
(37) אתרוג a fruit of the citrus family used with the palm leaves, myrtle and willows on the Festival of Tabernacles.

Cf. Lev. XXIII, 40.

(38) I.e., after his death.

(39) Lit., 'and he went out (from his obligation) by it', i.e., he used it in the prescribed manner and recited the proper benediction.

(40) Lit., we have arrived at the dispute'.

(41) According to Rabbi he has not properly performed his duty; since the commandment relating to ethrog requires the the fruit itself to be the property of him who makes liturgical use of it, while the ethrog, in this case, does not itself belong to him, he having received it for use only. According to Rabban Simeon R. Gamaliel, however, who allows the first recipient to sell the estate as his own property, the ethrog also is regarded as his own property, and may therefore be used for the performance of the commandment.

(42) Where the gift consisted of an estate which produced fruit.

(43) The case of the ethrog.

Talmud - Mas. Baba Bathra 137b

if [the first recipient] is not able[1] properly to perform the precept[2] therewith, for what [other purpose] was the thing given to him![3] But [it is obvious] that no one [can][4] dispute [the view] that [the first recipient] may properly perform the commandment with it;[5] [as regards, however, the case where] he sold, or consumed it, this will be a point of[6] dispute between Rabbi and Rabban Simeon b. Gamaliel.[7]

Rabbah son of R. Huna said: When brothers acquired an ethrog[8] out of an [inherited] estate,[9] [and] one of them used for its ritual purpose,[10] if he is able to eat it,[11] he has [also] properly acquitted himself of his ritual duty;[12] but if not, he has not acquitted himself of his ritual duty.[13] This, however, only in the case where an ethrog is available for everyone [of the brothers].[14]

Raba said: [If one said to another,] 'This ethrog is given to you as a gift on the condition that you return it to me', [and the recipient] used it for its ritual purpose,[15] then if he [subsequently] returned it, he is exempt;[16] [if] he did not return it, be is not exempt. [Hereby] we are taught that a gift [presented] on the condition that it be returned is regarded as a [proper] gift.[17]

A certain woman owned a palm-tree on ground belonging to R. Bibi b. Abaye. Whenever she went to cut it he showed resentment, [so] she made it over to him for life.[18] He thereupon went and made it over to his little son.[19] R. Huna the son of R. Joshua said: 'Because you are [yourselves] frail [beings] you speak frail words.[20] Even Rabban Simeon b. Gamaliel gave his decision only [in the case where the original owner had assigned the estate] to another [person], but not when [it is to return] to [the owner] himself'.[21]

Raba said in the name of R. Nahman: [If one said to another], 'This ox is given to you as a gift on the condition that you return it to me', [and the recipient] consecrated, and returned it, both the consecration and the restitution are legally valid.[22] '[But] what', asked Raba of R. Nahman, 'has he returned to him?'[23] 'And what', replied the other, 'has he taken away from him?'[24] But, said R. Ashi, the matter is looked into: If he said to him, 'on condition that you return it' [he has no claim upon the donee, for] he had surely returned it, if, [however], he said to him, 'on condition that you return it to me', [he can claim compensation], since he implied [that the return must be of] a thing which he may use. Rab Judah said in the name of Samuel: [If a person] assigned his estate, in writing, to another, and the latter[25] said, 'I do not want it', he acquires possession [of it] even if he stands and protests.[26] R. Johanan, however, said: He does not acquire possession. R. Abba b. Memel said: There is [really] no difference of opinion between them;

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(1) According to Rabbi.

(2) Lit., 'if to go out, he cannot go out'.

(3) Not being allowed to consume the fruit, the only other purpose for which one can use an ethrog is for the performance of the commandment.
(4) Lit., 'all the world do not'.
(5) Cf. n. 4, supra.
(6) V. p. 580, n. 12.
(7) according to Rabbi he does, nad according to Rabban Simeon he does not pay compensation to the second, the ethrog itself, through not productive of any usufruct, being treated as capital in relation to the ritual performed with it.
(8) Either as part of the estate or by purchase from its proceeds,
(9) Lit., 'that which belongs to the house'; i.e., before the division of the property had taken place.
(10) Lit., 'he took it and went out (from obligation) thereby'.
(11) I.e., if the brothers do not object to his consumption of the fruit.
(12) Lit., he went out'. Cf. n. 12, supra.
(13) Since an ethrog cannot be used for its ritual purpose unless it is in the exclusive possession of him who uses it, the ethrog of the inherited estate cannot be regarded as being in the undisputed possession of one of the brother unless it is known that the others do not object to his complete consumption of it.
(14) Some edd., 'but not a quince or a pomegranate'.
(15) V. p. 581, n. 12.
(16) I.e., he has properly performed his ritual obligation.
(17) I.e., it is considered for the time being the property of the recipient.
(18) On the understanding that after R. Bebai's death it would revert to her or her heirs
(19) So that, according to the view of Rabban Simeon b. Gamaliel, the woman could not claim it after his death.
(20) ממולאי ממוליאתא 'frail things', applied to both people and words. דאתו = because you. Others, משום דאתיתו ממולאי 'because you are descendants of short-lived people'. Abaye was a descendant of the house if Eli who were condemned to die young. V. I, Sam. II, 32. [Levias. HUC 1904, 155, connects the phrase with the Arabic 'to be foolish'.]
(21) Here, the woman stipulated that the tree shall revert to her. Hence, R. Bibi's transfer to his son is legally invalid.
(22) Lit., it is consecrated and returned'.
(23) The consecrated animal can no longer be used by him.
(24) The ox he presented has been returned bodily intact.
(25) Lit., 'that one'.
(26) Lit., 'cries'.

Talmud - Mas. Baba Bathra 138a

one refers to the case[1] where he protested[2] and the outset;[3] the other,[1] where he kept silent at first and then[4] protested.[5]

R. Nahman b. Isaac said: [If a donor] transferred ownership to one through the medium of another and [the former] kept silent;[6] and ultimately[7] protested, we have arrived at a dispute[8] between Rabban Simeon b. Gamaliel and the Rabbis. For it was taught: [If a person] had assigned to another, in writing, an estate of his, part of which consisted of slaves; and the latter[9] said, 'I do not want them',[10] they[11] may, [nevertheless], if their second master[12] was a priest, eat of the heave-offering.[13] Rabban Simeon b. Gamaliel said: As soon as the donee[14] had said , 'I do not want them', the heirs [of the testator] become their legal owners.[15] And [when] we were discussing the subject [the question was raised, would] the first Tanna [consider the assignee legal owner] even if he stands and protests? — Raba, and some say R. Johanan, said: [in the case] where he protested from the outset, all agree[16] that he does not acquire ownership. [If he first] kept silent and finally he protested. all agree[16] that he does acquire ownership.'They are in disagreement only [in the case] where the [testator] transferred ownership to the donee through a third party,[17] and [he at first] kept silent and finally he protested. [In such a case], the first Tanna holds the opinion [that] since he kept silent [at first] he acquired ownership, and that [the reason] why he protests [now is because] he has simply changed his mind. Rabban Simeon b. Gamaliel, however, holds the opinion [that] his final [act]

proves what [he had in his mind] at the beginning, and that [the reason] why he did not then[18] protest [is] because he thought. 'Why should I cry before they come into my possession!

Our Rabbis taught:[19] If a dying man[20] said, 'Give two hundred zuz to X, three hundred to Y, and four hundred to Z', it must not be assumed[21] [that] whoever is [mentioned] in the deed first gains possession [first]. Hence, [if] a note of indebtedness was produced against him,[22] [the debt] is to be collected from all of them.[23] [If], however, he[22] said, 'Give two hundred zuz to X, and after him [three hundred zuz] to Y, and after him [four hundred zuz] to Z', the law is[24] [that] whoever is [mentioned] first in the deed acquires possession [first].[25] Hence, [if] a note of indebtedness was produced against him,[22] [the debt] is collected from the last [mentioned]. [If] he has not [enough], collection [of the balance] is made from the one [mentioned] before him. If the share of this one also does not suffice,[26] collection [of the remaining balance] is made from the one mentioned first.[27]

Our Rabbis taught: If a dying man said,[28] 'Give two hundred zuz to X [who is] my firstborn son, in accordance with his due', he receives these as well as[29] [the portion of] his birthright.[30] If, [however], he said, 'As his birthright'.[31] he[32] is given the choice.[33] He may, if he wishes, receive these;[34] he may, if he prefers, receive the portion of his birthright. [If] a dying man said, 'Give two hundred zuz to X [who is] my wife, in accordance with her due', she receives these as well as[35] her kethubah. If, [however], he said 'as her kethubah'[36]

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(1) Lit., 'here'.

(2) Cf. n. 2, supra.

(3) When the deed of assignment was offered to him. Hence the opinion of R. Johanan that ownership is not acquired.

(4) Lit., 'at the end'.

(5) His first silence is interpreted as consent to his acquisition of the ownership. Hence the opinion of Rab Judah that, though he protested later, ownership is acquired by him.

(6) When the transfer took place.

(7) When the deed of assignment was offered him.

(8) As to whether ownership had been acquired by him who protested.

(9) Lit., 'that one'.

(10) He did not wish to have the responsibility of managing and maintaining slaves.

(11) The slaves.

(12) The donee who objects to have them.

(13) Terumah (v. Glos.) The slaves, having become his property, are allowed to eat of the heave-offering as any other member of a priest's household; v. Lev. XXII, 11.

(14) V, n. 1, supra.

(15) Ker. 24b; Hul. 39b.

(16) Lit., 'all the world do not dispute'.

(17) Lit., 'through another'.

(18) Lit., 'until now'.

(19) Git. 50b.

(20) Lit., 'a dying man who'.

(21) Lit. , 'we do not say'.

(22) The testator.

(23) All the three, being regarded as heirs who have acquired simultaneous right of possessions by his mere verbal instructions (supra 135b), must pay the debt in proportions equal to the shares they received.

(24) Lit.,m 'we say'.

(25) By definitely stating, after him he indicated the order of acquisition he desired.

(26) Lit., 'he has not'.

(27) Lit., 'from him who was before him'.

(28) V. n. 4, supra.

(29) Lit., 'and he receives'.

(30) It is assumed that this was the wish of the deceased. Had he wanted him to receive the specified two hundred zuz only, he would not have added, 'in accordance with his due'.

(31) I.e., that the two hundred zuz shall be given to his firstborn son as the portion of his birthright.

(32) The firstborn.

(33) Lit., 'his hand is upon the upper (part)', i.e., he has the advantage.

(34) If the portion of his birthright is less than two hundred zuz.

(35) Lit., 'and she receives'.

(36) I.e., that the two hundred zuz shall be given to her in payment of her kethubah.

Talmud - Mas. Baba Bathra 138b

she is to have the choice.[1] She may, if she wishes, receive these, she may, if she prefers, receive her kethubah. [If] a dying man said, 'Give two hundred zuz to X [who is] my creditor, in accordance with his due', he[2] receives these as well as his debt.'[3] If, [however], he said, 'as his debt',[4] he receives these in [payment of] his debt. Should he[5] then, because he[6] said, in accordance with his due', receive these and receive [also] his debt, when it is possible that he meant, 'in accordance with what is his due on account of the debt'? — R. Nahman replied: Huna has told me that this law represents the view of[7] R. Akiba who draws inferences [from] superfluous expression[s]. For we learnt:[8] [He[9] sold] neither the cistern nor the cellar, even though he has included in the contract[10] depth and height.[11] He[12] must, however, buy for himself a passage [to these];[13] these are the words of R. Akiba. But the Sages say: He[12] need not buy for himself a passage. R. Akiba, however, admits that where he[12] said to him, 'except these',[14] he need not buy a passage for himself.[15] From this it clearly follows [that] where [a person] mentioned [that] which was not necessary, his object was[16] to add something; [so] here also, since he mentioned [that][17] which was not necessary, his object was to add something.[18]

Our Rabbis taught: If a dying man said, 'X owes me a maneh', the witnesses may write [it down].[19] although they do not know [whether there is any truth in the statement].[20] Consequently, when [the debt] is collected, proof[21] has to be brought;[22] these are the words of R. Meir. But the Sages say: [The witnesses must] not write unless they know [the statement to be true].[23] Consequently, when [the debt] is collected, there is no need for proof to be produced.[24] R. Nahman said: Huna told me [that] a tanna reported [the following]: R. Meir said, '[The witnesses] must not write', and the Sages say, 'They may write'; and even R. Meir said this[25] only on account of[26] a court [that might] err.[27]

R. Dimi of Nehardea said: The law is[that] there is no need to provide against[28] all erring court.[29] And why [is this case] different from [that] of Raba? For Raba said[30] : Halizah must not be arranged unless [the court] know [the widow and her brother-in-law], nor may a declaration of refusal[31] be accepted unless [the court] know [the parties]. Consequently[32] [it is permissible for witnesses][33] to write out a certificate of halizah[34] as well as a certificate of refusal[34] even though they do not know [the parties].[35] [Has not this precaution[36] been taken] in order to provide against an erring court![37] No;[38] a court does not minutely examine [the decision of] another[39] court;[40] [that of][39] witnesses, [however], it does minutely examine.[41]

MISHNAH. A FATHER[42] MAY PLUCK [THE FRIT] AND GIVE IT TO ANY ONE HE WISHES FOR CONSUMPTION; AND ANY PLUCKED [FRUIT] WHICH HE LEAVES [AFTER HIS DEATH] BELONGS TO [ALL] THE HEIRS.[43]

GEMARA. PLUCKED [FRUIT] only belongs to all the heirs,[44] [but] not [fruit] that is still attached to the ground?[45]

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(1) Cf. n. 3, supra.

(2) The creditor.
(3) V. p. 584, n. 13.
(4) I.e., the two hundred zuz shall be given to the creditor in payment of his debt.
(5) The creditor.
(6) The testator.
(7) Lit., 'who is this? It is , etc.'.
(8) Supra 63b, and 64a.
(9) Who sold a house.
(10) Lit., 'he wrote for him'.
(11) Of the house. A cistern and a cellar are not regarded as its indispensable parts.
(12) The seller.
(13) The sale of the house includes the area surrounding it. Hence, the seller, though retaining the ownership of the cistern and the cellar, has no claim upon the path that leads to them.
(14) Cistern and cellar.
(15) It was not necessary for the seller to specify, 'except these', if he wished to retain the cistern and the cellar only, since these are implicitly excluded from the sale. The addition of, 'except these', is, therefore, taken to imply the exclusion from the sale of the path that leads to them.
(16) Lit., 'he comes'.
(17) 'In accordance with his due'.
(18) I.e., that the sum shall be in addition to his debt.
(19) As a memorandum of what they heard.
(20) V., R. Gersh. a.l. and cf. Rashb.
(21) Of the defendant's liability.
(22) By the heirs.
(23) Because a memorandum signed by witnesses may sometimes lead a court to a wrong decision through the assumption that the witnesses had verified the statement.
(24) The existence of a written document is sufficient evidence that the witnesses had satisfied themselves of the veracity of the statements it contains.
(25) That the witnesses may not put the statements on record.
(26) Not because that was the law.
(27) V. n. 8, supra.
(28) Lit., 'to fear', 'apprehend'.
(29) Hence, witnesses may put on record the statements of a dying person (as R. Nahman above quoted in the name of the Rabbis), even though they had not satisfied themselves as to the veracity of the statements.
(30) Jeb. 106a.
(31) Heb. Mi'un, A minor who has been betrothed by her father may have the engagement annulled on declaring before a court that she refuses to live with the man.
(32) Since no court would allow halizah, or a declaration of refusal, unless the parties were known to it.
(33) Who were present during one or other of such ceremonies.
(34) Which would enable the woman to re-marry.
(35) Though they do not know, the court well knew.
(36) That a court must not arrange a halizah or accept a declaration of refusal unless the parties concerned are known to it.
(37) I.e., a second court that might be called upon to deal with the question of the remarriage of the parties, and that might wrongly assume that the previous court had satisfied itself as to their identity. Now, if here provision was made against an erring court, why is not such provision necessary in the case spoken of by R. Dimi?
(38) The case of a court is not to be compared with that of witnesses.
(39) Lit., 'after'.
(40) Hence, no court must arrange halizah or annul a minor's betrothal unless the parties are known to it.
(41) Hence, every document that would be brought before them, though attested by witnesses, would always be carefully scrutinised. Witnesses, therefore, nay put on record the statements of a dying man (as R. Dimi stated supra) even though they had not satisfied themselves as to whether the debt he mentioned was really due to him.

(42) Who directed that after his death his estate shall be given to his son, so that the land itself is acquired by the son at once while the right of usufruct remains with the father.
(43) And not only to that son to whom the estate had been assigned.
(44) Lit., 'yes'.
(45) Lit., 'joined'. Since our Mishnah stated that detached fruit belongs to all the heirs it seems to imply that fruit attached to the ground is regarded as the ground itself and belongs to the son to whom the estate was assigned.

Talmud - Mas. Baba Bathra 139a

Surely it was taught:[1] the fruit attached [to the ground].[2] is valued[3] for the buyer![4] — 'Ulla replied: There is no difficulty Here[5] [the law deals] with one's [own] son;[6] there[7] [it deals] with a stranger.[8] [In the former case, attached fruit belongs to the son] because a person is favourably disposed towards his son.[9]

MISHNAH. [IF] ONE LEFT SONS[10] [WHO WERE] OF AGE, AS WELL AS MINORS, THOSE WHO ARE OF AGE ARE NOT TO BE SUPPORTED[11] AT THE EXPENSE OF[12] THE MINORS,[13] NOR ARE THE MINORS TO BE FED AT THE EXPENSE OF[14] THOSE WHO ARE OF AGE,[15] BUT ALL RECEIVE EQUAL SHARES] IN THE ENTIRE ESTATE].[16] [IF] THOSE WHO WERE OF AGE MARRIED[17] , THE MINORS [ALSO] MAY TAKE [A SIMILAR SUM TOWARDS THEIR MARRIAGE EXPENSES].[18] IF THE MINORS, HOWEVER, CLAIMED,[19] 'WE DESIRE TO TAKE AS MUCH AS YOU HAVE TAKEN',[20] THEIR REQUEST IS DISREGARDED[21] BUT WHAT THEIR FATHER HAD GIVEN THEM[22] IS REGARDED AS A GIFT.[23] [IF] ONE LEFT DAUGHTERS [WHO WERE] OF AGE, AS WELL AS MINORS THOSE WHO ARE OF AGE ARE NOT TO BE SUPPORTED[24] AT THE EXPENSE[25] OF THE MINORS,[26] NOR ARE THE MINORS TO BE FED AT THE EXPENSE[27] OF THOSE WHO ARE OF AGE.[28] BUT ALL RECEIVE EQUAL SHARES [IN THE DISTRIBUTION OF THE ESTATE]. [IF] THOSE [WHO WERE] OF AGE MARRIED,[29] THE MINORS [ALSO] MAY TAKE [A SIMILAR SUM TOWARDS THEIR MARRIAGE EXPENSES].[30] IF THE MINORS, HOWEVER, CLAIMED,[31] 'WE DESIRE TO TAKE AS MUCH AS YOU HAVE TAKEN',[32] THEIR REQUEST IS DISREGARDED.[33] IN THE FOLLOWING RESPECT[34] DAUGHTERS[35] ARE OF GRATER IMPORTANCE THAN SONS.[36] FOR DAUGHTERS ARE FED AT THE EXPENSE OF THE SONS[37] BUT NOT AT THE EXPENSE OF [OTHER] DAUGHTERS.[38]

GEMARA. Raba said: If[39] the eldest of the brothers[40] drew upon the general funds of the estate for his dress and outfit,[41] his action cannot be disputed.[42] But surely, we learnt, THOSE WHO ARE OF AGE ARE NOT TO BE SUPPORTED AT THE EXPENSE OF THE MINORS! — Our Mishnah [refers] to [those who are] without a calling.[43] [In the case of] one without a calling, [is this not] obvious![44] — [Since] it might have been assumed that [the brothers] desire that he should not be disgraced[45] it was necessary to teach us [that this is not so].

IF THOSE WHO WERE OF AGE MARRIED, THE MINORS ALSO MAY TAKE. What does this mean?[46] — Rab Judah replied, it is this that was meant: IF THOSE WHO WERE OF AGE HAD MARRIED after the death of their father, THE MINORS [ALSO] MAY TAKE[47] after the death of their father; if, however, those who were of age had married during the lifetime of their father, and the MINORS after the death of their father, CLAIMED, 'WE DESIRE TO TAKE AS MUCH AS YOU HAVE TAKEN', THEIR REQUEST IS DISREGARDED BUT WHAT THEIR FATHER HAD GIVEN THEM IS REGARDED AS A LEGAL GIFT.

[IF] ONE LEFT DAUGHTERS [WHO WERE] OF AGE, AS WELL AS MINORS. Abbuha b. Geniba sent to Raba: Will our Master teach us, [in the case of a woman who] took a loan and spent it, and thereupon[48] married,[49] [whether] the husband has [the legal] status of a buyer[50] or that of an heir? Is he [regarded as] a buyer [and consequently he need not repay her debt] since a verbal loan

cannot be collected from a buyer; or is he, perhaps, regarded as an heir, [who must pay her debt], since a verbal loan may be collected from heirs? — He replied to him: We have learned this in our Mishnah, [IF] THOSE [WHO WERE] OF AGE MARRIED, THE MINORS [ALSO] MAY TAKE; does not [this mean that] IF THOSE WHO WERE OF AGE [WERE] MARRIED to husbands, THE MINORS MAY TAKE [towards their marriage expenses] from the husbands?[51] — No; [this may mean that] IF THOSE [WHO WERE] OF AGE [WERE] MARRIED to husbands, THE MINORS [ALSO] MAY TAKE[52] [a similar sum towards the expenses of their marriage] to husbands. [But] this is not [so];[53] for, surely, R. Hiyya taught: [If] those who were of age had married husbands,[54] the minors may take [their due] from [those] husbands![55] — It is possible that maintenance[56] is different,[57] since such [an obligation] is generally known.[58]

R. Papa said to Raba:[59] Is not this[60] the very [case] which Rabin had sent in his letter?[61] If a person died, [he wrote], and left a widow and a daughter, his widow is to receive her maintenance out of his estate.[62] [If] the daughter married,[63] his widow is [still] to receive her maintenance out of his estate. [If] the daughter died?[64] Rab Judah, the son of the sister of R. Jose b. Hanina, said: I had [such] a case, and it was decided[65] [that] his widow is to receive her maintenance out of his estate. [Now,] if it be granted[66] that he[67] is [regarded as] an heir,[68] it is quite correct that his widow should be maintained out of his[69] estate[70] ; if, however, it is held[66] that he[67] is [regarded as] a buyer, why should she be maintained out of his estate![71]

Abaye said: Would we not have known [this],[72] if Rabin had not sent [his letter]? Surely we learnt:[73] The following do not return in the Jubilee year:[74] The [portion of] the birthright,

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(1) Tosef. Keth. VIII.

(2) In a field that was sold by a son to whom his father had assigned it during his lifetime.

(3) After the death of the father.

(4) I.e., the buyer must pay the price, at which the fruit was valued, to the heirs. This proves that even attached fruit does not belong to him to whom the soil belongs but to the heirs. In the case, then, of our Mishnah also, attached fruit should belong to all the heirs.

(5) In our Mishnah.

(6) Where the estate was assigned by a father to a son, and the latter did not sell it to another person.

(7) Lit., ‘here’, i.e., the cited Tosefta of Kethuboth.

(8) When the son had sold the estate to a stranger, or the father had assigned it to a stranger as a gift, reserving the usufruct for himself during his lifetime.

(9) Hence he allows him not only the ground itself but also the fruit attached to it.

(10) And did not provide in a will for the disposal of his estate.

(11) I.e., provided with clothing and the like.

(12) Lit., ‘through the hands of’.

(13) I.e., out of the general proceeds of the estate before it had been divided between the heirs. Sons who are of age require a greater allowance for their clothing than minors; and this they must provide out of their own shares.

(14) Lit., ‘by’.

(15) Cf. n. 10, supra. Minors require less for clothing but more for food.

(16) I.e., before the estate has been divided, neither the minors, who require a greater allowance for food, nor those of age, who require more for their clothing, though less for their actual food, may draw for their extra requirements upon the common funds, which must be equally divided between all of them.

(17) After their father's death, defraying the marriage expenses out of the undivided estate.

(18) Out of the common funds of the estate.

(19) After their father's death.

(20) I.e., if the minors wish to spend on their marriages, out of the general funds of the estate, as much as the older brothers had spent on their marriages during their father's lifetime.

(21) Lit., ‘they do not listen to them’.

(22) To the older brothers during his lifetime.

(23) Lit., ‘given’.
(24) V. p. 588, n. 8.
(25) Loc. cit, n, 9.
(26) Loc. cit. n. 10.
(27) Loc. cit. n. 11.
(28) Loc. cit. n. 12.
(29) Loc. cit. n. 14.
(30) Loc. cit. n. 15.
(31) Loc. cit. n. 16.
(32) Loc. cit. n. 17.
(33) Loc. cit. n. 1.
(34) Lit., ‘this’.
(35) Who inherited their father's estate in the absence of sons.
(36) Where there are born sons and daughters.
(37) in the case where the sons inherited a large estate, v. infra 139b.
(38) I.e., if older and younger daughters, in the absence of sons, inherited the estate, the latter are not to be fed from the general funds of the estate.
(39) Lit., ‘This’.
(40) Who manages the estate.
(41) Lit., ‘dressed and covered himself out of the house’.
(42) Lit., what he has done is done’. Though it is not proper for him to make personal expenses out of the common funds, the brothers cannot, after the amount had been spent, claim its return; since it is important for him, as the manager of the estate, to dress well.
(43) שדכא (edd. שרכא), ‘a man at ease’; one who is not in any way engaged in the improvement of the estate or in the increase of its value.
(44) If he is of no use to the management or maintenance of the estate, what possible claim can he have upon the general funds in respect of his personal dress?
(45) Through the wearing of unbecoming clothes, and would thus agree to beat the expense.
(46) This, surely, seems to be in contradiction to the following clause, ‘If the minors, however, claimed "we desire to take as much as you have taken", their request is disregarded’.
(47) A similar sum towards their marriage expenses.
(48) Lit., ‘and ate it and stood up’.
(49) And thus transferred all her possessions to her husband.
(50) Of the property brought to him by his wife.
(51) Of the married sisters; which proves that the husbands are regarded as heirs, not as buyers. The claim of the minors is now assumed to have the same force as that of a verbal loan which cannot be collected from a buyer.
(52) Out of the residue of the estate; not from their sisters’ husbands who are regarded as buyers, not as heirs.
(53) I.e., the husbands cannot be regarded as buyers.
(54) V. p. 590. n. 5.
(55) Had these been regarded as buyers, the minors who have the status of a creditor of a verbal loan, could not have taken anything from them.
(56) The right of the minors to be maintained out of their father's estate.
(57) From a verbal loan.
(58) Lit., ‘it has a voice’, i.e., people well know the fact that the deceased had left minors who are entirely dependent on his estate for their maintenance. Hence the husbands of the elder daughters are assumed to have known the fact. Consequently, the claim of the minors is not to be compared to that of a verbal loan but to one given under a written note of indebtedness, in which case it may be collected even from a buyer of the estate, v. infra 175a.
(59) Who had attempted to prove above, from R. Hiyya's statement, that a husband is regarded as an heir.
(60) That a husband has the status of an heir.
(61) From Palestine to Babylon
(62) in accordance with his undertaking in the kethubah which is given to one's wife.
(63) And thus transferred the estate into her husband's possession.

(64) And her husband inherited her possessions.
(65) Lit., ‘they said’.
(66) Lit., ‘you said’.
(67) The husband of the daughter, and so every husband.
(68) Of the property that his wife had brought to him; even during her lifetime.
(69) Her dead husband's, even if it passed into the possession of her daughter's husband.
(70) Since the amount required for the maintenance of a widow, may be collected from her husband's heirs.
(71) Surely a widow's maintenance cannot be collected from the buyers of her husband's property (Cf. Git. 48b)
(72) That a husband is regarded as an heir.
(73) Bek. 52b.
(74) When all landed property that has been sold returns to its original owner. V., Lev. XXV, 28, 31.

Talmud - Mas. Baba Bathra 139b

and that [which a husband] inherits [from] his wife![1] Raba said to him: And now that he did send [his letter] do we know [this]?[2] Surely R. Jose b. Hanina stated:[3] At Usha[4] it was ordained [that if] a woman had sold during the lifetime of her husband, usufruct property,[5] and died, the husband may seize them from the buyers?[6] — But, said R. Ashi, the Rabbis have given a husband the status[7] of an heir and [also the status of] a buyer; and whichever was better for him they gave him.[8] In respect of the Jubilee year, the Rabbis gave him the status of an heir, in order [to prevent] loss to him.[9] In the case of [the statement of] R. Jose b. Hanina, the Rabbis gave him the status of a buyer [also] in order [to avert] loss to him.[10] In respect of [the statement of] Rabin, [however], in order [to avert] a loss to the widow, the Rabbis gave him the status of an heir.[11] But, surely, in the case of R. Jose b. Hanina, where the buyers suffer[12] loss, the Rabbis had yet given him the status of a buyer![13] — There,[14] they[15] caused the loss to themselves; for since [it was known that] a husband was involved,[16] they should not have bought from a woman who is subject to a husband's jurisdiction.[17]

CHAPTER IX

MISHNAH. [IN THE CASE OF] ONE WHO DIES AND LEAVES SONS AND DAUGHTERS, IF THE ESTATE IS LARGE,[18] THE SONS INHERIT [IT], AND THE DAUGHTERS ARE MAINTAINED [FROM IT].[19] [IF] THE ESTATE IS SMALL, THE DAUGHTERS ARE MAINTAINED [FROM IT], AND THE SONS SHALL GO BEGGING.[20] ADMON SAID, ‘AM I TO BE THE LOSER BECAUSE I AM A MALE!’ R. GAMALIEL SAID: ADMON'S VIEW HAS MY APPROVAL.[21]

GEMARA. What is considered a large estate?[22] — Rab Judah said in the name of Rab: Out of which both[23] may be maintained for twelve months. When I recited this before Samuel,[24] he said, ‘This is the view of R. Gamaliel b. Rabbi, but the Sages say that [the estate must be large enough] to provide for the maintenance of both[23] until they reach their majority’. [So] it was also stated [else. where]: When Rabin came,[25] he said in the name of R. Johanan, (others say [that it was] Rabbah b. Bar Hanah [who] said it in the name of R. Johanan): When [the estate is large enough] to provide for the maintenance of both until they have reached their majority, It is [considered] large; if less, it is regarded as small. And if [the estate] does not suffice for both until they have reached their majority,

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(1) This clearly proves that a husband is regarded as heir. For had he been regarded as a buyer of the property that was brought to him by his wife, he would have retained that status even after her death; and all her landed possessions, as all landed property bought, would have had to be returned in the Jubilee year to their original owner.
(2) V. note 2.
(3) Keth. 50a, 78b; B.K. 88b; B.M. 35a; 96b; supra 50a.
(4) V. p. 207, n. 3.
(5) Property which belongs to her, while the right of usufruct is enjoyed by the husband, v. p. 206, n. 7.

(6) Which proves that a husband has the status of a buyer. An heir could not seize property sold.
(7) Lit., 'they made him'.
(8) Lit., 'and they did as it was better for him'.
(9) That he shall not be compelled to return what he inherited from his wife to her family.
(10) So that he shall be entitled to seize the property from anyone who bought it.
(11) The husband's undertaking to provide for his wife's maintenance preceded the marriage. Hence her claim must receive priority.
(12) Lit., 'there is'.
(13) Why were not the interests of the buyers taken into consideration as much as those of the widow?
(14) In the case of R. Jose.
(15) The buyers.
(16) Lit., 'there is'.
(17) Lit., 'who dwells under a man', i.e., whose property is subject to the claims of a husband to whom it will finally pass over after her death. These buyers contrived to deprive him of his right by purchasing the property during her lifetime, hence they must stand the loss.
(18) Lit., 'possessions are many'.
(19) Until they marry or become of age.
(20) Lit., 'begging at the doors'.
(21) Lit., 'I see the words of Admon'.
(22) Lit., 'and how much (are) many'.
(23) Lit., 'these and these', the sons and the daughters.
(24) When, after the death of Rab, he joined for some time Samuel's academy.
(25) From Palestine to Babylon.

Talmud - Mas. Baba Bathra 140a

would the daughters receive all of it![1] — But, said Raba, [the amount, required for] the maintenance of the daughters until they reach their majority is drawn [from the estate] and the balance is given to the sons.

[It is] obvious [that, if the estate was] large[2] and it depreciated,[3] the heirs have already acquired ownership thereof.[4] What [is the law, however, if the estate was] small[5] and it appreciated;[6] does it remain in the possession of the heirs[7] and, consequently, has appreciated in their possession[8] or are the heirs,[7] perhaps, entirely disregarded here?[9] — Come and hear: R. Assi said in the name of R. Johanan [that] if orphans anticipated [the daughters] and sold the estate where it was small,[10] their sale is valid.[11]

R. Jeremiah sat before R. Abbahu, when he addressed to him [the following question].. Does one's widow[12] , reduce [the value of] an estate?[13] Do we assume [that] since she receives[14] maintenance she [thereby] reduces [its value]; or perhaps, since she would receive none[15] if she married [she is regarded as if] she has none even now?[16] If you would find [some reason] for saying [that] since she would receive none if she married [she is regarded as if] she has none even now, [the question arises] whether his wife's daughter[17] reduces [the value of] the estate?[18] Do we say [that] since she would receive [her maintenance] even if she married, she does reduce [the value of the estate]; or, perhaps, since she would receive none if she died,[19] she does not reduce [its value]? And if you would find [some ground] for saying that since she would receive nothing if she died, she does not reduce [its value], [the question arises] whether a creditor[20] reduces the [value of the] estate.[21] Do we say that he reduces [its value] since he[22] would receive [his debt] even If he died,[23] or perhaps, he does not reduce [it] since the debt still requires collecting?[24] (Others[25] [report that he] put the questions in the reverse order:[26] Does a creditor reduce [the value of] the estate?

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(1) Since such an estate is considered 'small', the sons, according to our Mishnah, would receive nothing. Should, then,

the daughters get the surplus over and above the amount required for their maintenance
(2) At the time the father died.
(3) Lit. 'became less', i.e the estate had been damaged, or the cost of living had risen, so that the income does not suffice for the maintenance of the daughters.
(4) As soon as the death of their father took place, the estate passed over into their possession. Hence, the daughters acquired their share for maintenance and the sons the residue. Any loss, therefore is to be shared by both the sons and the daughters, in equal proportions.
(5) And was, consequently, reserved entirely for the maintenance of the daughters
(6) Lit., 'became large', i.e., the estate was bringing in a higher income, or the cost of maintenance fell.
(7) The sons.
(8) Hence the sons should receive any surplus above the amount required for the daughter's maintenance.
(9) Lit., 'removed from here.' And all the benefits of the appreciation goes to the daughters.
(10) Lit., 'in possessions that were few.' Before the court heard the claim of the daughters.
(11) And the sold property cannot be seized for the daughters maintenance. This proves that the estate remains in the possession of the sons. Hence, in case of appreciation, the surplus belongs to them.
(12) Who is entitled to receive maintenance from the estate during her widowhood.
(13) I.e., is the amount due to the widow for her maintenance deducted from the value of the estate which is thus reduced from a 'larger', to a 'smaller' estate, from which, if it just suffices for the maintenance of the daughters, the sons will receive nothing.
(14) Lit., 'she has'.
(15) Lit,.'she has not'. As soon as a widow re-marries she loses the right of receiving her maintenance from her dead husband's estate.
(16) And the estate is to be given to the sons who would provide for the maintenance of the daughters and the widow until she re-marries.
(17) A step-daughter of the deceased who, at the time of his marriage to her mother, had undertaken to maintain her for a period of years. Now that he died before that period elapsed it is the duty of his sons to provide for her maintenance out of the estate of their father.
(18) Cf. p. 595. n. 3.
(19) I.e., neither she nor her heirs.
(20) of the deceased.
(21) If it suffices only for the payment of the debt and the maintenance of the daughters.
(22) I.e., his heirs.
(23) And consequently the sons of the deceased debtor would receive nothing, (v. note).
(24) And before collection the estate not only suffices for the maintenance the daughters but leaves also a surplus for the sons.
(25) Lit., 'and there are'.
(26) Lit., 'towards the other side'.

Talmud - Mas. Baba Bathra 140b

Does[1] his wife's daughter[2] reduce [its value]? Does[3] his widow[4] reduce [its value]?) [In the case of claims of] his widow and [her] daughter,[5] who is to have the preference? — He said to him: Go away to-day and come to-morrow. When he came, he said to him: Solve at least one [problem]. For R. Abba said in the name of R. Assi [that] the relationship between[6] a widow and [her] daughter, in the case of a small estate, has been put [on the same basis] as that of the relationship between[7] a daughter and brothers. As [in the case of] the relationship between a daughter and brothers, the daughter is maintained [out of the estate] while the brothers have to go begging at [people's] doors, so [in the case of] the relationship of a widow and [her] daughter, the widow is maintained, and the daughter may go begging at [people's] doors.[8]

ADMON SAID, 'AM I TO BE THE LOSER BECAUSE I AM A MALE' etc. What does he mean?[9] — Abaye replied: He means this: 'AM I TO BE THE LOSER BECAUSE I AM A MALE

and am capable of engaging in the study of the Torah?' Raba said to him: Now, then, would he who is engaged in the study of the Torah be entitled to heirship, [and he who is not engaged in the study of the Torah not be entitled to be heir?[10] — But, said Raba, he means this: 'AM I, BECAUSE I AM A MALE and am entitled to be heir in [the case of] a large, estate, TO BE THE LOSER [of my rights] in [the case of] a small estate?'

MISHNAH. [IF A MAN] LEFT SONS AND DAUGHTERS, AND ONE WHOSE SEX IS UNCERTAIN,[11] THE MALES MAY, WHERE THE ESTATE IS LARGE,[12] REFER[13] HIM TO THE FEMALES.[14] [IF] THE ESTATE, [HOWEVER], IS SMALL,[15] THE FEMALES MAY REFER HIM TO THE MALES.[16] IF A MAN SAID: SHOULD MY WIFE BEAR A MALE CHILD, HE SHALL RECEIVE A MANEH, [AND HIS WIFE] DID BEAR A MALE CHILD, HE RECEIVES A MANEH. [IF HE SAID: SHOULD MY WIFE BEAR] A FEMALE [SHE SHALL RECEIVE] TWO HUNDRED [ZUZ, AND] SHE BORE A FEMALE, SHE TAKES TWO HUNDRED [ZUZ]. [IF HE SAID]: SHOULD [SHE BARE] A MALE CHILD [HE SHALL RECEIVE] A MANEH [AND] IF A FEMALE SHE SHALL RECEIVE TWO HUNDRED [ZUZ], AND SHE GAVE BIRTH TO A MALE AND A FEMALE, THE MALE RECEIVES A MANEH [AND] THE FEMALE RECEIVES TWO HUNDRED ZUZ. [IF] SHE BORE A TUMTUM, HE[17] RECEIVES NOTHING. IF, [HOWEVER], HE SAID: WHATEVER MY WIFE SHALL BEAR, SHALL RECEIVE [A CERTAIN PORTION]. HE[17] RECEIVES [IT]. AND IF THERE IS NO [OTHER] HEIR BUT THIS ONE,[17] HE INHERITS ALL. [THE ESTATE].

GEMARA [How can it be said that the males] REFER HIM [to the females] and he [presumably] receives [maintenance] as a daughter. Seeing that in the latter clause it states: IF SHE BORE A TUMTUM, HE RECEIVES NOTHING! — Abaye replied: THEY REFER HIM [to the females] and he receives nothing. Raba, however, said: THEY REFER HIM and he does receive [maintenance]; and the latter clause [of our Mishnah][18] represents the view[19] of Rabban Simeon b. Gamaliel. For we learnt:[20] [If an animal][21] gave birth to a tumtum or an androginos,[22] Rabban Simeon b. Gamaliel said that the sanctity does not extend to [either of] them.[23]

An objection was raised: A tumtum inherits like a son and receives maintenance like a daughter. According to Raba[24] this statement may well be explained [as follows]: He inherits like a son in [the case of] a small estate,[25] and receives maintenance like a daughter [in the case of] a large estate;[26]

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(1) If the answer to the first question is that a creditor does reduce the value of the estate, it may he argued that only he does it, since his debt may be collected even after his death.

(2) Whose right to maintenance she cannot transmit to her heirs since it ceases with her death.

(3) If it is answered that his wife's daughter reduces the value of the estate. It may he argued that this is so only in her case since she retains her rights to maintenance even after her marriage.

(4) Who loses her right to maintenance as soon as she re-marries

(5) both of whom claim maintenance, while the estate suffices only for one.

(6) Lit., 'at', 'at the side of'.

(7) Lit., 'at', 'at the side of'.

(8) Keth. 43a.

(9) What reason is there to assume that, as regards maintenance, a male should have any preference at all over a female?

(10) Surely no son could be deprived of a share in his father's inheritance for the sole reason that he was not able to engage in the study of the Torah!

(11) Heb., tumtum v. Glos.

(12) In which case the sons are entitled to inherit it, while the daughters receive only their maintenance until they marry or become of age.

(13) Lit., 'push'.

(14) I.e., to receive maintenance only as a daughter.

(15) And is, consequently, allotted entirely to the maintenance of the daughters.

(16) And he would thus receive nothing.
(17) The tumtum
(18) According to which the tumtum receives nothing.
(19) Lit., 'we arrive'.
(20) Ter. 24b; cf. Tosaf. Yeb. 83b. s.v., לא לכל
(21) Of which the male or female firstling was consecrated as a sacrifice before it was born.
(22) Gr. **, a hermaphrodite. having characteristics of both male and female.
(23) Thus it has been proved that in the opinion of Rabban Simeon b. Gamaliel a tumtum is regarded as a distinct species which is neither male nor female. This view is voiced by the author of the latter clause of our Mishnah, according to whom a tumtum receives neither a share like a son nor maintenance like a daughter.
(24) Who regards a tumtum not as a distinct species but as one of uncertain sex and that, accordingly, he is either male or female.
(25) I.e., nothing: since the daughters may refuse him maintenance on the ground that he has no proof that he is a female.
(26) He cannot claim the greater privilege of receiving a share like a son, because he has no proof that he is a male. He is entitled, however, to the lesser privilege of maintenance, since if he is not a male he is inevitably a female. Cf. p. 598. n. 8.

Talmud - Mas. Baba Bathra 141a

according to Abaye. however,[1] what [is meant by], 'he receives maintenance like a daughter'? — Granted your argument is right [how will you explain], according to Raba, what [is the meaning of] 'he inherits like a son'?[2] But, [you must explain it as meaning that] 'he is entitled to inherit but [actually] receives nothing', so here[3] [it may be explained as] 'entitled to maintenance but [in fact] receives nothing'.

IF A MAN SAID: SHOULD MY WIFE BEAR A MALE CHILD etc. Does this imply that a daughter is dearer to him, than a son?[4] Surely R. Johanan said in the name of R. Simeon b. Yohai: The Holy One, blessed be He, is filled with wrath against anyone who does not leave a son to be his heir, for it is said, And you shall cause his inheritance to pass unto his daughter,[5] and by the expression of 'causing to pass'[6] 'wrath'[7] is implied, for it is said, That day is a day of wrath![8] — As regards succession, a son has preference;[9] as regards maintenance, a daughter is given preference.[10]

And Samuel said: We deal here[11] with [the case of a mother] who gave birth for the first time, and [this[12] is to be understand] in accordance with [a saying] of R. Hisda. For R. Hisda said: [If a] daughter [is born] first, it is a good sign for the children. Some say, because she rears her brothers; and others say. because the evil eye[13] has no influence over them.[14] R. Hisda said: To me, however, daughters are dearer than sons.[15]

If preferred it may be said that [the Tanna of our Mishnah] is in agreement[16] [with the view of] R. Judah. Which [view of] R. Judah? If it is suggested, [that relating to the exposition] of 'in all';[17] for it was taught.[18] And the Lord blessed Abraham with all.[17] R. Meir said, [the meaning is] that he had no daughter; [and] R. Judah said, [the meaning is] that he had a daughter whose name was 'Inall',[19] it may be objected[20] that [from this] one may only infer[21] that, according to R. Judah, the All Merciful did not deprive Abraham even of daughter; this is no proof, however,[22] that [a daughter] is better than a son! But [it is] this [saying of] R. Judah: It was taught:[23] 'It is a meritorious act to feed one's daughters; and how much more so one's sons' — since [the latter] are engaged in the study of the Torah, these are the words of R. Meir R. Judah said, 'It is a meritorious act[24] to feed one's sons and how much more so one's daughters' — in order that they be not degraded.[25]

But how is one to understand that Baraitha which teaches,[26] '[if] she gave birth to a male and a female, the male receives six [gold] denarii[27] and the female receives two [gold] denarii'?[28] — R. Ashi replied: I interpreted[29] this reported tradition,[30] before R. Kahana, [as dealing] with [the case

of] one who inverted the order [of his first instruction] by making a statement like the following:[31] '[If] a male [be born] first, [he shall receive] two hundred zuz[32] , and the] female [born] after him [shall receive] nothing: [if a] female [be born] first, [she shall receive] a maneh, [and the] male [born] after her [shall receive] a maneh' ;and she gave birth to [both] a male and a female, and it is not known which of them was born[33] first. The male does, [consequently]. receive a maneh [which is] in any case [due to him].][34] The other maneh [however] is money of doubtful ownership[35] and is to be divided.[36]

And how is one to understand the Baraitha which teaches[37] [that 'if] she gave birth to a male and a female, he only receives one maneh[38] -Rabina replied: [This is possible] where [the promise of the sum of money was made by the father]. 'to him who will bring me tidings';[39]

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(1) Who asserted that a tumtum receives nothing.

(2) Since the estate is small, 'inheriting like a son' really signifies 'receiving nothing'. How then, could the expression of inheriting8 be used?

(3) I.e according to Abaye.

(4) Since the bequest to her was two hundred zuz, while to a son it was a maneh only (i.e., one hundred zuz).

(5) Num. XXVII, 8.

(6) העברה

(7) עברה of the same root (עבר) as ha'abara, denominative of weha'abartem.

(8) Zeph. I, 15. Wrath, עברה

(9) Lit., 'better to him', since he perpetuates the name of the tribe.

(10) It is more difficult for a woman to earn her living, and a father would naturally desire to make provision for her maintenance rather than for that of a son.

(11) In our Mishnah, where preference is given to a daughter.

(12) The preference of the father for her first daughter.

(13) V. Glos.

(14) The birth of a male child first may cause the envy of other mothers

(15) His daughters married husbands who were among the greatest of their generation. viz., Raba, Rami b. Hama: and Mar 'Ukba b. Hama (Tosaf.)

(16) Lit., 'this according to whom'?

(17) Gen. XXIV, 1.

(18) Tosef. Kid. V.

(19) בכל 'in all'; v. supra 16b.

(20) Lit., 'say'.

(21) Lit., 'you have heard him'.

(22) Lit., 'did you hear him?'

(23) Tosef. Keth. IV.

(24) Though there is no legal obligation after a certain age.

(25) In their search for a livelihood. From this it follows that, according to R. Judah, a father would provide for a daughter more than for a son. Hence it may be concluded that our Mishnah represents this view.

(26) Lit., 'but that which is taught . . . in what'.

(27) A gold denar = 25 zuz.

(28) Making a total of two hundred zuz. In an ordinary case, in view of the principle enunciated in our Mishnah, a daughter should receive the greater share [According to R. Gershom this Baraitha is not quoted as an argument, but for the purpose of obtaining information on its interpretation.]

(29) Lit., 'I said'.

(30) The Baraitha cited.

(31) Lit., 'when he said'.

(32) l.e., eight gold denarii.

(33) Lit., 'came out'.

(34) If he was born first, the maneh is certainly due to him, since in such a case, his father had really allotted him two

hundred zuz. But even if he was born second he is still entitled by virtue of of the definite instructions of his father, to the one maneh

(35) Because it is not known to whom that second maneh belongs. Had it been certain that the son was born first he would have been entitled to that maneh also. Had it been certain, on the other hand , that the daughter was born first she would have been entitled to that maneh ; hence it is of doubtful ownership.

(36) Between the son and the daughter. The first maneh being due to the son in any case, is given to him in full(four gold denarii), with the addition of a half(two gold denarii) of the second maneh. Hence he receives a total of one maneh and a half(six gold denarii). The daughter, being entitled to half a maneh, receives, therefore, two gold denarii.

(37) Lit., 'but that which was taught...how do you find it'.

(38) The expression 'he only receives one maneh', implies that though it might have been assumed that he receives more than that sum, he receives only one maneh. Under what circumstances is this possible?

(39) Whether the child born was male or female.

Talmud - Mas. Baba Bathra 141b

as it was taught: '[If a person said]:"He who will bring me tidings whereby the womb of my wife was opened, shall receive, if the child be a male, a maneh", [then]. if she gave birth to a male he receives a maneh. [If. however.] he said: "[He will receive] a maneh if [he brings 'me tidings that she gave birth to] a female", [then] if she gave birth to a female, he receives a maneh, [and if] she gave birth to a male and a female, he only receives a maneh'. But surely'. he did not speak of a 'male and a female'![1] — [This refers to the case] where he also said, 'He shall also receive a maneh if [he brings tidings that] a male and a female [were born]'. What. then. [did he mean] to exclude?[2] To exclude a miscarriage.[3]

[Once] a certain [man] said to his wife: 'My estate shall be his with whom you are pregnant — R. Huna said, 'This is [a case of] making an assignment to an embryo through the agency of a third party. and whenever such an assignment is made, [the embryo does] not acquire possession. R. Nahman raised an objection against R. Huna's ruling: IF A MAN SAID: SHOULD MY WIFE BEAR A MALE CHILD, HE SHALL RECEIVE A MANEH, [AND HIS WIFE] DID BEAR A MALE CHILD, HE RECEIVES A MANEH![4] -He replied to him: [As to] our Mishnah. I do not know' who is its author.[5] But should he not have replied to him [that] it[6] [represents the view' of] R. Meir who stated [that] a man may convey possession of a thing that has not [yet] come into the world![7] -[It is possible to] say that R. Meir holds this view[8] [only when possession is conveyed] to that which is [already'] in the world;[9] [but] has he been heard [to hold the same view when possession is conveyed] to that which is not [yet] in the world![10] But let him reply to him that it[11] [represents the view of] R. Jose who said [that] an embryo acquires [possession]! For we learnt:[12] 'An embryo disqualifies [his deceased father's slaves from eating the heave.offering[[13] but does not confer the right of eating it [on his mother];[14] these are the words of R. Jose'?[15] — An inheritance which came to one under the ordinary laws of succession,[16] is different .[17] But let him reply to him [that] it[18] [represents the view of] R. Johanan b. Beroka who said, that there was no difference between an inheritance and a gift! For we learnt:[19] R. Johanan b. Beroka said: If [a person] said [it][20] concerning one who is entitled to be his heir,[21] his instruction is legally valid[22] -[It is possible to] say that R. Johanan b. Beroka has been heard [to hold the view only where possession is given] to that which is [already] in the world;[23] [but] did he say [that the same law applies also] to that which is not in the world![24] And let him reply to him [that] it[25] [represents the view of] R. Johanan b. Beroka and [that] he holds the [same] opinion as R. Jose![26] Who can say that he[27] holds such an opinion![28] Let him then reply to him [that our Mishnah speaks of the case] where [the money was offered by a husband] 'to him who would bring me tidings'![29] - If so.[30] [explain] the last clause wherein it is stated. AND IF THERE IS NO [OTHER] HEIR BUT THIS ONE, HE INHERITS ALL [THE ESTATE]. If [the Mishnah speaks] of a reporter[31] what has he to do with heirship![32]

Then let him reply to him [that our Mishnah speaks of the case] where she has [already] given

birth [to the child]![33] -If so,[34] the last clause is wherein it is stated. IF [HOWEVER] HE SAID: whatever MY WIFE SHALL BEAR, SHALL RECEIVE [A CERTAIN PORTION]. HE RECEIVES [IT] [instead of]. WHATEVER SHE SHALL BEAR, should have [read]. 'whatever she has born'!

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(1) He only spoke of the birth of a male or a female; why then should he give the maneh when twins were born?

(2) If the maneh was promised to the reporter in the case of the birth of a male. a female or twins. i.e.. apparently in all possible cases. what need was there for the father to specify them, at all? It would have been sufficient for him, to say. that he would pay the maneh to him who would report'whereby the womb of my wife was opened'. Since the three apparently possible cases were specified the intention must have been to exclude' some other possible case.

(3) By specifying male, female and twins,he implied that the maneh would be paid only when he received a report of a living child.

(4) This shows that though the assignment was made while the child was still in embryo. possession is acquired by him.

(5) Lit., 'who taught it.' i.e.,its authorship is obscure and consequently unreliable.

(6) Our Mishnah.

(7) Why. then. did he say that he did not know who the author of our Mishnah was?

(8) Lit., 'that you heard.'

(9) I.e., though the object is not, the recipient is. in existence.

(10) The embryo, therefore, could not acquire possession even according to R. Meir. Hence, the authorship of our Mishnah remains unknown

(11) Our Mishnah.

(12) Yeb. 67a.

(13) The heave-offering. (terumah. v. Glos.). is forbidden to laymen (Israelites and Levites). but the wife and the non-Jewish slaves of a priest are allowed to eat of it. When the priest dies. his slaves, becoming the property of his sons who are themselves priests,are still allowed to eat terumah. If however the wife of the priest, who is the daughter of an Israelite, was pregnant when her husband died, the slaves are forbidden to eat of the terumah on account of the embryo who is not regarded as a priest and who is their partial owner. (The slaves of a layman are forbidden to eat terumah.

(14) If she is the daughter of an Israelite. Only a son that was born confers this right upon his mother: but not an embryo

(15) From this it clearly follows that the embryo is regarded as the owner of the slaves, which proves that according to R. Jose an embryo does acquire possession; why. then, could not our Mishnah be attributed to R. Jose's authorship?

(16) Lit., 'of itself'.

(17) From a gift.Consequently. while R. Jose may hold the view that an embryo acquires the ownership of an inheritance, it does not follow that be would grant the embryo the right of acquiring possession of a gift,which forms the subject of our Mishnah

(18) Our Mishnah.

(19) Supra 130a.

(20) That a certain individual shall inherit all his estate.

(21) Presumably even an embryo.

(22) Which proves that, according to R. Johanan b. Beroka, an embryo acquires possession even of that to which he would not have been entitled under the ordinary laws of succession.

(23) I.e., one of the sons already born.

(24) E.g., an embryo. Hence the authorship of our Mishnah remains unknown.

(25) Our Mishnah.

(26) Supra; that an embryo may acquire possession.

(27) R. Johanan b. Beroka.

(28) That of R. Jose.

(29) i.e. that the sum of money spoken if in our Mishnah was not assigned to an embryo but promised by a husband to anyone who would report to him, on the confinement of his wife as to the sex of child (cf. supra). The question of an embryo's right of acquisition would consequently be outside the scope of our Mishnah: and R. Huna would accordingly be able to maintain, against R. Nahman's assumption, that an embryo does not acquire possession.

(30) That our Mishnah deals with a promise to a stranger, and not with an assignment to an heir.

(31) Lit 'he who will report to me'.

(32) Lit., 'an heir, what is his work'. A reporter on the birth of one's child could not possibly he described as heir

(33) At the time the father had assigned to him the sum of money. An embryo, however, as R. Huna stated, would not acquire possession.

(34) That the Mishnah speaks of a child already born.

Talmud - Mas. Baba Bathra 142a

But let him reply to him [that our Mishnah speaks of the case] where he said, 'After she will have born [the child']![1] — R. Huna follows his own view. For R. Huna said: [A child] does not acquire ownership[2] even [where the father had said].[3] 'after she[4] , will have born [him][5] 'For. [it was stated.] R. Nahman said: If a person conveys possession. through the agency of a third party. to an embryo.[the latter] does not acquire ownership. [If however, he said].][3] 'After she will have born'.[5] [the child] does acquire ownership. But R. Huna said: Even [where he said]. 'After she will have born'. [the child] does not acquire ownership. R. Shesheth however said: Whether he used the one, or the other expression.[6] [the child] acquires ownership. Said R. Sheshet: Whence do I derive this? — From the following:[7] If a proselyte died[8] and Israelites plundered his estate; and [subsequently] they heard that he had a son or that his wife was pregnant. they must return [whatever they have appropriated].[9] [If]. having returned everything they subsequently heard that his son died or that his wife miscarried,he who took possession the second [time][10] has acquired ownership;[11] but [he who took possession] the first [time] has not acquired ownership. Now, if it could be assumed [that] an embryo does not acquire ownership why should they[12] need to take possession a second time? They have, surely. already taken possession once![13] Abaye [however] said: An inheritance which comes [to one] under the ordinary laws of succession[14] is different[15] Raba said: There[16] it is different,[17] because at first[18] they[19] were really uncertain of the legality of their acquisition.[20] What [practical difference is there] between them?[21] There is [a difference] between them [in the case] where a report was brought[22] that he[23] died, while [in fact] he was not dead. and after that he died.[24] Come and hear: 'A babe [who is] one day old inherits and transmits[25] [From this it follows that only] one [who is] one day old [may inherit][26] but not an embryo![27] -Surely R. Shesheth had explained[28] [this as meaning]: He[29] inherits the estate of his mother to transmit [it][30] to his paternal brothers;[31] hence, only [then when he is] one day old but not [when] an embryo.What is the reason?

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(1) So that a born child, not an embryo, would acquire possession. Hence, no objection could be raised from our Mishnah against R. Huna's statement.

(2) Of a sum of money that his father had assigned to him before his birth, while still an embryo.

(3) That the child shall acquire possession.

(4) The mother.

(5) The child to whom the assignment was made.

(6) Lit., 'whether this or this'.

(7) Lit., 'for it was taught'.

(8) And, having left no children, his possessions become public property, and whosoever takes possession of them acquires ownership.

(9) Since the son or the embryo. as legal heir. acquired the ownership of the estate as soon as the proselyte died.

(10) After the death of the son or the miscarriage.

(11) Since at that time there were no legal heirs

(12) In the case where there was no born son, but an embryo.

(13) The existence of the embryo if it could not acquire possession, should not have made any difference to their right of ownership. Consequently it follows, as R. Shesheth had stated, that an embryo does acquire possession.

(14) Lit., 'of itself'.

(15) Though an embryo may acquire ownership of an estate which is due to him as the legal heir, it does not follow that it can also acquire the ownership of a gift or any other assignment.

(16) n the case of the estate of a proselyte.

(17) From other cases of acquisition.

(18) Before it was known whether there were any legal heirs.

(19) Who seized the estate.
(20) Lit., 'it was really loose in their hands at first'. While seizing the property, they were well aware that they might loose it at any moment should a legal heir appear. Hence, ownership cannot be acquired unless possession was taken after it had been ascertained that there were no legal heirs.
(21) In either case, whether the reason is that given by Abaye or that of Raba,the first acquisition is invalid.
(22) Lit., 'they heard'.
(23) The legal heir.
(24) In such a case, the plunderers, since they thought that the heir was dead, have from the very beginning taken definite and certain possession of the estate which, according to Raba, would consequently become their legal property. even if they did not take possession of it a second time. According to Abaye. however. their first acquisition is of no avail since the embryo was at that time the legal owner of the estate.
(25) Nid. 44a. 'Ar. 7a.
(26) Lit.. 'yes'.
(27) Had an embryo been able to inherit, there would be no need to specify the limitation,'one day old'. Now, if an embryo cannot acquire possession of a legal inheritance how much less could it acquire possession of a gift! How, then, could R. Shesheth maintain that an embryo can acquire possession of a gift?
(28) v.. Nid. loc. cit.
(29) An infant who Is one day old.
(30) When he dies.
(31) Born from the same father and not the same mother.

Talmud - Mas. Baba Bathra 142b

— Because [the embryo] dies first[1] and no son in the grave[2] may inherit from his mother to transmit [the inheritance] to his paternal brothers 'Do you mean to say that it[3] dies first, surely there was a case when it made three convulsive movements?[4] — Mar. son of R. Ashi, replied: Those were only [reflex movements] like those of the tail of the lizard which moves convulsively [even after it has been cut of].[5]

Mar the son of R. Joseph said in the name of Raba: This[6] teaches[7] that he[8] causes a diminution in the portion of the birthright.[9] [This] however [applies] only [to a child who is] one day old, but not to an embryo.[10] What is the reason?-The All Merciful said, And they have born to him.[11] For [so] said Mar, the Son of R. Joseph. in the name of Raba: 'A son who was born after the death of his father does not cause a diminution In the portion of the birthright. What is the reason? The All Merciful said, And they shall have born to him[11] , which is not [the case here].[12] Thus[13] it was taught at Sura. At Pumbeditha. [however]. it was taught as follows:[14] Mar. the son of R. Joseph, said in the name of Raba: A firstborn son who was born after the death of his father[15] does not receive a double portion. What is the reason? The All Merciful said, He shall acknowledge,[16] and, surely. he is not [alive] to acknowledge [him]. And the law is in accordance with all those versions which Mar the son of R. Joseph quoted in the name of Raba. R. Isaac said in the name of R. Johanan: If possession was given to an embryo [through the agency of a third party]. it does not acquire ownership. And if objection should be raised from[17] our Mishnah,[18] [it may be replied that there it is different] because a person is favourably disposed towards his son.[19]

Samuel said to R. Hana of Bagdad: 'Go. bring me a group of ten [people] and I will tell you in their presence[20] [that] if possession Is given to an embryo [through the agency of a third party]. it does acquire ownership'. But the law is that if possession is given to an embryo [through the agency of a third party]. it does not acquire ownership. Once a certain man said to his wife, 'My estate [shall belong] to the children that I shall have from you'. His eldest son[21] came [and] said to him, 'What shall become of me?'[22] He replied to him, 'Go acquire possession as one of the [other] sons' .[23] Those[24] [can] certainly acquire no ownership.[25] since they are not yet in existence; has [however]. this lad[26] an [additional] share beside[27] the [other] sons,[28] or has the lad no [additional] share

beside[27] the [other] sons? — R. Abin and R. Measha and R. Jeremiah say: The lad receives an [additional] share beside the [other] sons. R. Abbahu and R. Hanina b. Papi and R, Isaac Nappaha say: The lad receives no [additional] share beside the [other] sons.

R. Abbahu said to R. Jeremiah. 'Is the law in accordance with our view[29] or in accordance with yours?' He replied to him, 'It is obvious that the law' is in accordance with our view because we are older than you. and [that] the law' [can] not be according to your view because you are [only] juniors.' The other retorted, 'Does the matter then depend on age? [Surely] the matter depends on reason!' 'And what is the reason?' [R. Jeremiah asked.] 'Go to R. Abin,' [replied R. Abbahu.] 'to whom I have explained the matter

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(1) Before the mother.

(2) I.e. after his death.

(3) An embryo.

(4) After the mother was dead.

(5) Such movements are no signs of life.

(6) The Mishnah of Niddah cited, wherein a child one day old is mentioned,implying the exclusion of an embryo.

(7) Lit.. 'to say'.

(8) A child who is one day old.

(9) I.e.,if there are, e.g.. two brothers exclusive of the child, the estate is divided not into three portions (two for the two ordinary portions of the two brothers and one for the birthright, but into four portions. Each brother, including the child, receives one such portion and the firstborn receives the additional fourth portion as his birthright. The firstborn thus receives, as the portion of his birthright, a quarter of the estate, and not, (as would have been the case if the child were excluded). a third.

(10) An embryo. though receiving a portion of the estate, does not reduce the portion of the birthright. In the case mentioned, e.g., in the previous note. the estate would first be divided into three portions (as if the embryo did not exist) and the firstborn would receive as his birthright, one of these, i.e., a third of the estate. The remaining two thirds would then he divided into three equal shares, each of the three brothers receiving one, i.e., two ninths of the estate. The full portion of the firstborn would accordingly amount to 1/3+2/9=3/5) five ninths of the estate, while where the child was one day old, the firstborn's full portion would amount to half the estate only. i.e.,(5/9-1/2=1/18),one eighteenth less.

(11) Deut.,XXI,15 This implies that, as regards the birthright, the children must have been actually born. An embryo cannot come under this category and is, therefore, regarded as non-existent in this respect.

(12) The son having been born after his father's death. Thus, according to Mar the son of R. Joseph, it is possible to concede that an embryo may die after its mother and that consequently. as R. Shesheth maintained, it inherits her estate which it then transmits to its paternal brothers.

(13) The version just given.

(14) Lit., 'thus'.

(15) I,e,, where his widow bore twins or where he left two widows and both bore sons one of whom was the firstborn,

(16) Deut. XXI, 17.

(17) Lit., 'and if you will say'.

(18) From which it might be inferred, as R. Nahman suggested supra that an embryo does acquire ownership.

(19) Hence he wholeheartedly transfers ownership to the embryo. In the case of a stranger however, this principle is inapplicable.

(20) To give the matter due publicity.

(21) From his first wife.

(22) Lit.,of that man ,i.e., himself.

(23) That were to be born from the second wife

(24) The future children who at the time of the assignment were not even in embryo. (

(25) Of the estate,merely by virtue of the father's assignment.

(26) The eldest son.

(27) Lit., 'in place'.

(28) When, in due course they inherit the estate by the right of succession would he, in addition to what is due to him as

one of the sons, receive also a share by virtue of the special assignment made to him by his father?
(29) Lit., ‘ ‘us’.

Talmud - Mas. Baba Bathra 143a

at the College,and he expressed his approval’.[1] He went to him [when the other] explained[2] Would anyone acquire possession if he were told, ‘Acquire ownership as an ass’?[3] For it was stated: [If one was told]. ‘Acquire possession like an ass’. he does not acquire ownership. [If. however. one was told]. ‘You and an ass [shall acquire possession].’ R. Nahman said: He acquires the ownership of a half.[4] And R. Hamnuna said: The statement is invalid ‘[5] And R. Shesheth said: He acquires the ownership of all.

R. Shesheth said: Whence do I derive this?[6] -For it was taught: R. Jose said: In cucumbers, the inner portion only’ is bitter.[7] Consequently. when a person is giving [a cucumber] as a heave-offering[8] he [must]add[9] to the external part of it,[10] and [thus] gives the heave-offering. [But] why? [This is surely the same as the case of] ‘You and the ass’![11] — There it is different; for Biblically it[12] is perfect terumah,’ for R. Elai said, ‘Whence [is it inferred] that if one separates a heave-offering from an inferior quality for the [redemption of] a superior quality that his offering is valid? For it is said. And ye shall bear no sin by reason of it, seeing that ye have set apart from it the best thereof.[13] [From this it is to be inferred that if you do not set apart from the best,but of the worst, you shall bear sin]; if, [however, the inferior quality] does not become consecrated, why should there be any bearing of sin![14] Hence [it follows] that if one separates a heave-offering from an inferior quality for [the redemption of] a superior quality, his offering is valid.’[15] R. Mordecai said to R. Ashi: R. Iwya raised an objection [from the following Mishnah]: It once happened with five women, among whom there were two sisters. that a person gathered a basket of figs which were[16] theirs and[which] were’ [also of the fruit] of the Sabbatical year[17] and said, ‘Behold you are all betrothed[18] unto me by this basket’ ,[19] and one of them accepted on behalf of all. The Sages said: The sisters are not betrothed.[20] [From this it follows that] only the sisters were not consecrated. but the strangers were consecrated;[21] but why? This [is surely the same case as] ‘You and the ass’![22] — He said unto him: This is indeed [the reason] why I saw R. Huna b. Iwya in [my] dream: Because R. Iwya raised the objection. Have we not [however]. explained [the Mishnah[23] as referring only to the case] where he said, ‘She who is [legally] suitable among you for cohabitation shall be betrothed unto me’?[24]

A certain [person] said to his wife, ‘My estate shall belong to you and to your children’ — R. Joseph said: She acquires the ownership of half [of it]. R. Joseph. furthermore, said: Whence do I derive this?- For it was taught:[25] Rabbi said: And it shall be for Aaron and his sons,[26] half for Aaron [and] half for his sons.[27] Abaye said to him: This[28] is quite correct there;[29] [since] Aaron was [in any case] entitled to receive a share, the All Merciful [must have] mentioned him explicitly in order [to indicate] that he is to receive a [full] half, [in the case of] a woman, [however], [who] is not entitled to be heir [at all]. it should be sufficient for her to receive like one of the children,[30] [But] this is not [so] — For surely there was [such] a case at Nehardea where Samuel allowed her to receive a half; at Tiberias, and R. Johanan allowed her to receive a half. Furthermore, when R. Isaac b. Joseph came, he related [that] the Government[31] once imposed crown money[32] upon Bule[33] and Startege[33] [and] Rabbi said: Bule shall give a half and Startege a half![34] — What a comparison![35] There, when an order was issued[36] on previous occasions it was directed to[37] Bule, [yet] Startege contributed together with them, and the Government[38] knew that they were assisting. Why. then, did they now direct the order to both Bule and Startege? [Obviously] to indicate that these [as well as] those [shall each contribute] a half.

R. Zera raised an objection: If a person said; I undertake to bring a meal.offering [of] a hundred ‘isaron[39] in two vessels, he [must] bring sixty[40] in one vessel, and forty in the other vessel,

(1) Lit., 'and he bowed his head concerning it,' i e.,'nodded assent'.

(2) Lit., said to him.'

(3) Surely not! the man would in such a case acquire as little possession as the ass: so in this case, just as the unborn brothers cannot acquire ownership of their shares, neither can the lad acquire the ownership of his share.

(4) The owner having implied by his statement that he wished the man and the ass to acquire equal shares.

(5) Lit., 'he said nothing'. Since the animal and the man were given simultaneous possession. the owner has thereby intimated his desire that one shall not acquire ownership without the other; and since the animal cannot acquire ownership. the man also cannot.

(6) That though the ass and the man were given possession simultaneously. the man acquires ownership of the whole.

(7) Lit., 'you have not bitter in a cucumber but the inner (portion) which is in it'.

(8) For another forty-nine cucumbers. The heave-offering (terumah, v. Glos.) must contain a fiftieth of the produce.

(9) The outer and sweet portion of another cucumber.

(10) Bitter produce cannot he consecrated as Terumah. Consequently without such an addition, the cucumber which he set aside as heave-offering might represent less than a fiftieth of the produce. should it happen to have a rather large bitter core.

(11) As here, though the sweet and the bitter portion of the cucumber are simultaneously included in the terumah, and though the latter is unfit for it,the former is, nevertheless, regarded as proper terumah, so in the case of possession given simultaneously to a man and an ass, though the latter cannot acquire possession. the former should well acquire it.

(12) The bitter portion of the cucumber.

(13) Num. XVIII, 32.

(14) Surely no wrong has been done, since his action is null and void, and he has to give another heave-offering.

(15) Supra 84b, B.M. 56a. Since, as has been proved, an inferior quality may be used as a heave-offering for the redemption of a superior quality,a bitter cucumber might well be used as a heave-offering. Hence this case cannot be compared to that of possession that was given to a man and an ass where the ass cannot possibly be regarded as qualified to acquire ownership.

(16) Lit 'was'. treating the figs as one unit, 'basket of figs'.

(17) Which are free to all.

(18) Lit,, 'consecrated', 'Consecration' in this formula implies 'marriage bonds',

(19) Betrothal is effected by the man's handing over to the woman a coin or an object of value,

(20) I.e., the betrothal is null and void.

(21) Kid. 50b.

(22) As here the betrothal of the strangers is valid though that of the sisters is not, so in the case of possession given to a man and an ass, the man should acquire ownership though the ass does not. The two cases are parallel, since in the one case the betrothal was simultaneous and in the other possession was given simultaneously. How, then, in view of the decision of the Sages in the case of the women. could it he held that in the case of the man and the ass the man does not acquire ownership?

(23) Declaring valid the betrothal in the case of the strangers.

(24) Since the sisters were accordingly excluded, the betrothal of the others could rightly he regarded as valid. In the case of the man and the ass both were included; as that of the ass must be invalid so may be that of the man.

(25) A.Z. 10b, San, 21a,Yomah 17b.

(26) Lev, XXIV, 9

(27) As the mention of Aaron at the side of his sons implies that his share shall be equal to the total of their shares, so the mention by the husband of his wife at the side of his sons implies that her share shall be equal to the total of theirs, i.e., half the estate for her and the other half for the sons,

(28) That an individual mentioned at the side of many receives a half of the whole.

(29) In the case of Aaron and his sons'

(30) Had not her husband specifically named her she would have received nothing, the mention of her can entitle her to one share only like any one of the other heirs.

(31) Lit.. 'the royal house'.

(32) Aurum coronarium;v. supra 34,n.I,

(33) 'Place names' (Goldschmidt). 'Men and governors' (Rashi.). 'Townsmen and villagers' (R. Gershom). 'City

council', 'senate', (Gr.**). and 'city magistrate' (Gr.**') (Jast.). [The Bule and Startege were the two sections of the wealthy citizens who were held responsible to the Roman government for the full amount of different public burdens. Buchler, A. , The 'Political and Social Leaders of Sepphoris etc., 39ff.; see also Krauss, Synagogale Altertumer, p. 183.]
(34) Though one of these may have been wealthier or more numerous than the other. This proves that the mention of two names implies that the bearers of these names, whether consisting of many or few, give. or receive, collectively, equal shares. Hence, in the case of the estate given to one's wife and sons, the former should receive a share equal to the total received by the sons, i. e. a half!
(35) Lit., 'thus, now".
(36) Lit., 'they were writing'.
(37) Lit., 'they were writing on'.
(38) Lit., 'king'.
(39) A tenth part of an ephah.
(40) The largest quantity allowed.

Talmud - Mas. Baba Bathra 143b

and if he brought fifty in one vessel and fifty in the other, he has [also] fulfilled his duty. [From this it follows that only] if he had [already] brought, has he fulfilled his duty;[1] but that this is not the proper thing to do.[2] Now, if it could be assumed that in any such case 'half and half' [is meant]. this[3] [should have been allowed] even at the outset! — What a comparison! There, we are in a position to testify[4] that this person first intended [to bring as] big [an] offering [as possible],and that [the reason] why' he said, 'In two vessels' [was] because he knew that it was impossible to bring [all] in one vessel.[5] [Hence] we order him to bring as much as it is possible.

And the law is in accordance with [the view] of R. Joseph[6] in the case of 'Field',[7] 'Subject'[8] and 'Half'.[9] A certain [man] once sent home pieces of silk. R. Ammi said: Those which are suitable for the sons [belong] to the sons; [those] suitable for the daughters. [belong] to the daughters. [This,] however, has only been said [in the case] where he has no daughter-in-law, but if he has a daughter-in-law. [it is assumed that] he sent it for his daughter.in.law. If,however, his daughters were not married, [the gift belongs to them because] one would not neglect one's daughters[10] and send to his daughter-in-law.

Once a certain [person] said. 'My estate [shall be given] to my sons' — He had a son and a daughter. [Do] people call a son. 'sons';[11] or perhaps,they do not call a son. 'sons', and his intention was[12] to include[13] his daughter in the gift?-Abaye said, Come and hear: And the sons of Dan: Hushim,[14] Raba said to him: Perhaps [this is to be explained]. in accordance with the Tanna of the School of Hezekiah, that they were as numerous as the leaves[15] of a reed! But, said Raba. And the sons of Paliu: Eliab.[16] R. Joseph said, And the sons of Ethan: Azariah.[17]

A certain [person] once said, 'My estate [shall be given] to my sons'. He had a son and a grandson. [Do] people call a grandson. son';[18] or not? — R. Habiba said: People call a grandson 'son'.[18] Mar son of R. Ashi said: People do not call a grandson. 'son'[19] [A Baraitha] was taught in agreement with the view of Mar son of R. Ashi: He who is forbidden by a vow [to have any benefit] from [his] sons is allowed [to derive benefits] from [his grandsons].[20]

MISHNAH. HAD ONE LEFT SONS [WHO WERE] OF AGE AND MINORS, [AND] THOSE [WHO WERE] OF AGE IMPROVED THE ESTATE,[21] THEY IMPROVED [IT] FOR THE COMMON GOOD.[22] IF, [HOWEVER]. THEY[23] SAID,[24] SEE WHAT [OUR] FATHER HAS LEFT; WE DESIRE TO CULTIVATE [OUR OWN SHARES] AND TO ENJOY THE PROFITS.[25] THE PROCEEDS[26] BELONG TO THEM.[27] LIKEWISE. [IN THE CASE WHERE] THE WIFE[28] HAD EFFECTED IMPROVEMENTS IN THE ESTATE,[29] SHE IMPROVED [IT] FOR THE COMMON GOOD.[30] IF, [HOWEVER].SHE SAID, 'SEE WHAT MY HUSBAND HAS LEFT ME;

I DESIRE TO CULTIVATE [MY SHARE] AND TO ENJOY[31] THE BENEFITS', THE PROCEEDS BELONG TO HER.[32]

GEMARA. R. Habiba son of R. Joseph son of Raba said in the name of Raba: [The law of our Mishnah][33] is 'applicable[34] only [to the case] where the improvement of the estate was effected out [of the funds] of the estate, but if it was improved at the expense of the elder brothers,[35] the profits belong to themselves.[36] [But] this is not [so]! For, surely. R. Hanina said,' Even if their father had left them[37] nothing but

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(1) Lit 'yes '.
(2) Lit.,'for the outset, not',
(3) The division of the meal-offering into two equal parts of fifty 'isaron each.
(4) Lit., 'witnesses'.
(5) The largest quantity that may be brought in one vessel as a meal.offering is sixty 'isaron., V. Men. 103b.
(6) Though throughout the Talmud the law is in agreement with the view of Rabbah whenever he disagrees with R. Joseph.
(7) When one of the heirs has a field near the field that is to be divided (supra 12b).
(8) V. supra 114a, 'so long as they are dealing with the same subject'.
(9) The case of a testator who expressed the wish that his estate be divided between his wife and his sons, supra 143a.
(10) Whom it is his duty to maintain.
(11) Hence all his estate was meant to be given to his son.
(12) Lit., 'he came'.
(13) Lit., 'to draw in'.
(14) Gen.XLVI. 23. The plural sons, is used. although the name of one son only is given.
(15) Or 'knots'. Hushim,חושים may also he rendered 'leaves' or 'knots'.
(16) Num. XXVI, 8. Cf. n. 5, supra.
(17) I Chron. II, 8.
(18) Hence the estate would he divided between the son and the grandson.
(19) And the whole estate would consequently be given to the son who, as mentioned above, might be called 'sons'.
(20) Which proves that grandsons are not regarded as sons.
(21) Before it was divided between the heirs.
(22) Lit., 'for the middle'. I.e, the profits are equally divided between all the heirs, adults and minors.
(23) The adults.
(24) To the minors, in the presence of a court or witnesses, or in public.
(25) Lit., 'eat'.
(26) If despite their wish the estate was not divided
(27) Lit., 'they have improved for themselves'.
(28) I.e., the widow.
(29) That was left by her husband.
(30) All the heirs receive equal shares in the profits.
(31) V.. supra note 5.
(32) Cf supra note 7.
(33) That the profits are to be equally divided between all the heirs.
(34) Lit., 'they taught'.
(35) Lit., 'through themselves'.
(36) V. supra note 7
(37) His children, adults and minors.

Talmud - Mas. Baba Bathra 144a

a covered cistern[1] the proceeds[2] are to be equally divided'; but [the proceeds of] a covered cistern [are surely] due to [the elder brothers] themselves![3] — A covered cistern is different, since It [only]

requires watching[4] and even minors can keep a watch over it. THEY SAID, 'SEE WHAT [OUR] FATHER HAS LEFT; WE DESIRE TO CULTIVATE [OUR OWN SHARES] AND TO ENJOY THE PROFITS'. THE PROCEEDS BELONG TO THEM. R. Safra's father left [some] money. He took it [and] carried on with it a business. [Then] came his brothers and sued him before Raba.[5] He said to them. 'R. Safra is a great man; he [is] not [expected to] leave his studies in order to toil for others'.[6] [WHERE] THE WIFE HAD EFFECTED IMPROVEMENTS IN THE ESTATE. SHE IMPROVED IT FOR THE COMMON GOOD- What has a wife to do with the property of orphans?[7] -R. Jeremiah replied: [The Mishnah speaks] of a wife [who is] an heiress.[8] [Is this not] obvious?[9] , — It might have been assumed [that] since it is not usual for her to look after an orphan's estate[10] [she is entitled to all the profits],even where she did not [first] make a specific declaration.[11] . as if she had [actually] made [it], hence it [was necessary to] teach us [that this is not so].

IF [HOWEVER] SHE SAID,' SEE WHAT MY HUSBAND HAS LEFT ME; I DESIRE TO CULTIVATE [MY SHARE] AND TO ENJOY THE BENEFITS.' THE PROCEEDS BELONG TO HER. [Is not this] obvious? It might have been assumed [that] since it is creditable to her when people say that she works for the orphans. she might [consequently] forego her claims,[12] hence it [was necessary to] teach us [that this is not so]. R. Hanina said: If a person marries his adult son in a house [of his], he[13] acquires its ownership. But this only [in the case of] one [who is] of age, and only [where he married] a virgin, and only [when she is] his first wife, and only- where he is the first [son] whom he married.[14] It is obvious [that] where his father had set aside for him[15] a house and [there is] an upper story [thereon], [the latter] acquired the ownership of the house [but] not [of] the upper story. What [is, however, the law in the case of] a house and an exedra?[16] [Or in the case of] two houses one within the other?-This is undecided. An objection was raised: [If] his father had set aside for him a house and [it contains] furniture, he acquires possession of the furniture [but] not of the house! — R. Jeremiah replied: [This refers to a case] where, for instance, his father's store[s] were kept there.[17] The Nehardeans say': Even [if only) a dove-cote.[18] R. Judah and R. Papi say: Even [if only] a pot of fish-hash.[19]

Mar Zutra married his son and hung up[20] for himself[21] a sandal.[22] R. Ashi married his son and hung up[20] for himself[21] a jug of oil.[23]

Mar Zutra said: The following three things have [been] enacted [by] the Rabbis as fixed law without [adducing any] reason. One [is] this.[24] The other [is that] which Rab Judah said in the name of Samuel, [namely that]. a [dying] man [who] gave all his property to his wife, in writing. [thereby] only appointed her adminstratrix.[25] [.And the] third[26] [is that] which Rab had stated: [If one said] 'You owe me a maneh; give it to X' ,in the presence of the three parties,[27] [X] acquires possession.[28] MISHNAH

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(1) Heb. **אודייני**, 'a cistern and its cover' (Rashb. and R. Gersh.): a sprinkling business' (Jast.): 'a watchman's post' (R. Tam in Tosaf.. [For a full discussion of the term, v. Krauss, T,A. l, 273f. and III, 361]

(2) Out of the sale of its water.

(3) Since no expenses for its upkeep and protection are drawn out of the funds of the estate. And yet it is stated that the proceeds are to be equally divided. How then, could Raba say that if the improvement was at the expense of the elder brothers all the profits belong to them only?

(4) Lit., 'was made for watching', i.e., no expenses are involved. and all the elder brothers have to do is to watch that no water is stolen from it.

(5) Demanding a share in the profits.

(6) When an elder brother is an important person, he is entitled to all the profits which are due to his efforts. even though he did not first make the proper declaration that he desired the estate to be divided and that he intended keeping to himself any profits he would make.

(7) She either receives the amount of her kethubah(v. Glos.) after which she has no more claim upon the estate: or she looks after the property of the orphans in return for her maintenance. How, then, could she claim any profits resulting

from improvements in the estate.
(8) In the case, e.g.. where the deceased gave instructions that the widow shall be co-heir with his sons (Rashb.).
(9) Why was it necessary for our Mishnah to restate it in the case of a widow, seeing that the law had already been stated in regard to brothers.
(10) Lit., 'to take the trouble'.
(11) Lit., 'specified'; that she desired the estate to be divided and that she intended to make the improvements in her interests alone.
(12) Even though she first declared that she would work in her interests alone.
(13) The son.
(14) In such cases the father's joy is so great that he willingly and wholeheartedly gives away the house to his son.
(15) His son: on the occasion of his marriage.
(16) V.Glos.
(17) Since he requires it for his own purposes he would not transfer its ownership to his son.
(18) Of the father is kept in the house, the son does not acquire ownership of the house.
(19) Cf. n 6.
(20) In the house where the marriage took place.
(21) To indicate to his son that the house was not to become his property.
(22) The sandal, like any of the other objects mentioned above is regarded for this purpose as a store.
(23) Cf. n. 10
(24) The ruling just mentioned, that a son acquires the ownership of a house of his father in which his marriage took place, even if the father did not explicitly present it to him.
(25) V. .supra 131b.
(26) Lit.. 'other'.
(27) I..e., the debtor, the creditor, and X, the assignee.
(28) Though there were no proper witnesses and no legal form of acquisition, the transfer of the claim is valid. This rabbinic law, which is declared to be arbitrary and based on tradition alone, recognises the transfer of claims to a third party, though this is not provided for by Biblical Law.

Talmud - Mas. Baba Bathra 144b

IF ONE OF THE BROTHERS WHO ARE PARTNERS [IN THE INHERITED ESTATE][1] WAS APPOINTED[2] TO A GOVERNMENT POST[3] THE INCOME FROM THE APPOINTMENT IS TO BE EQUALLY DIVIDED BETWEEN ALL THE BROTHERS.[4] [IF ONE OF THEM] CONTRACTED A DISEASE AND HAD HIMSELF CURED, THE [EXPENSES OF THE] CURE [MUST BE DEFRAYED] OUT OF HIS OWN.

GEMARA. A Tanna taught: The appointment[5] [in our Mishnah means] a government appointment.[6]

Our Rabbis taught: [In the case where] one of the brothers was appointed [tax] collector or overseer,[7] if [the appointment was] due to the brothers[8] [the income[9] belongs] to the brothers; if [the appointment was] due to himself[10] [the income belongs] to himself. 'If [the appointment was] due to the brothers', [it was said). [the income belongs] to the brothers'; [is not this] obvious! — This is required only [in the case] where he is exceptionally' smart [since] it might have been said [that] his smartness had caused him [to receive the appointment].it was necessary to teach us [that this is not so]. Our Rabbis taught: [If] one of the brothers took [from an inherited estate][11] two hundred zuz to study Torah or to learn a trade. the brothers can tell him:[12] 'If you are with us you [can] have [your] maintenance; if you are not with us. you [can] have no maintenance'. But let them give [it] to him wherever he is? — This [is proof] in support of R. Huna. For R. Huna said, 'The blessing of a house [is proportionate] to its size'[13] Then let them give him according to the blessing of the house![14] -That is so[15] . [IF ONE OF THEM] CONTRACTED A DISEASE AND HAD HIMSELF CURED, THE [EXPENSES OF THE] CURE [MUST BE DEFRAYED] OUT OF HIS OWN. Rabin sent in the

name of R. El'a: This applies only[16] [to the case] where he contracted the disease through [his own] negligence. but [if] by accident the [cost of the] cure is [defrayed] from the common funds. What is meant by negligence?-As R. Hanina [taught]. For R. Hanina said:[17] Every' thing is in the power of heaven except [illness through] cold [or] heat; for it is said, Cold [and] heat[18] are in the way of the froward. he that keepeth his soul holdeth himself far from them.[19]

MISHNAH. IF SOME OF THE BROTHERS HAVE BESTOWED GIFTS AS GROOMSMEN[20] IN THE LIFETIME OF [THEIR] FATHER[21] [WHEN] THE WEDDING GIFTS ARE RECIPROCATED[22] THEY REVERT TO THE COMMON FUNDS OF THE ESTATE; FOR [THE RECIPROCATION OF] WEDDING GIFTS MAY BE CLAIMED THROUGH A COURT OF LAW[23] . IF, HOWEVER, ONE HAS SENT TO HIS FRIEND JARS OF WINE OR JARS OF OIL[24] ,HE CANNOT CLAIM THEM[25] THROUGH A COURT OF LAW, BECAUSE [THE PRESENTATIONS OF] SUCH [GIFTS] ARE [MERE ACTS OF] LOVINGKINDNESS.[26]

GEMARA A contradiction was raised: [If] his father had sent [through] him[27] a wedding gift. the reciprocated gift returns to him.[27] [If] a wedding gift was sent[28] to his father, the reciprocated gift[29] is to be returned[30] from the common funds![31] - R. Assi replied in the name of R — Johanan: Our Mishnah also speaks[32] [of the case where the gift] was sent to his father. But, surely it was stated, IF SOME OF THE BROTHERS ACTED AS GROOMSMEN!-Read, 'TO SOME'.[33] But. Surely. it was taught. [WHEN] THE WEDDING GIFTS ARE RECIPROCATED! — It means this: [When] it has to be reciprocated, it is returned from the common funds. R. Assi said: There is no difficulty:[34] Here[35] [it is a case] where [the father] did not specify[36] ; here[37] [it refers to the case] where he did specify; as It was taught: If his father sent wedding gifts [through] him,[38] the reciprocated gift belongs to him.[39] If his father. [however.] sent wedding gifts without specifying [which son was to take them],the reciprocated gift reverts to the common estate.[40] And Samuel explained: Here[41] it is a case of a levir[42] who is not [entitled] to receive the prospective possessions[43] of his dead brother' as those which he already possessed[44] . Does this then imply that the other[45] must repay;[46] [why could] he [not] say. 'Give me my. shoshbin and I will rejoice with him'?[47] Has it not been taught. 'Where it is the custom to return[48] the [token of] betrothal[49] it [must] be returned, [and] where the custom is not to return. it [need] not [be] returned'; and R. Joseph b. Abba said in the name of Mar 'Ukba in the name of .Samuel,'This applies only to the case[50] where she died but [where] he died it [need] not [be] returned. What is the reason? Because she can say:

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(1) I.e., before the estate has been divided between them.

(2) Lit., 'fell'.

(3) אומנות Lit., 'handicraft', 'trade' . 'workmanship' : a form of compulsory service exacted by the Roman government from different households in turn. Barth, J., Etym.Studies 60,connects the word with Assyrian umanate, 'troop'. 'army'.

(4) Lit., 'he fell for the middle or common funds .Since his appointment is due to his membership of the family all its members are entitled to its benefits, (v. however n. 7 and 9 infra).

(5) V. note 3.

(6) In the case. however, of a private appointment,the earnings belong to himself.

(7) פולמוסטוס. Polemostus Thus Rashb. and R. Gersh. 'soldier'(R. Han.). 'Manager' or 'commissioner (Jast.) reading epimletes. אפימליטים Gr.**[The word is also explained as Politeuomenos=Decurio, and we have here a reference to the heavy expenses which were attached to the office of Boule under the Roman government,the question under consideration being in the case when a brother is called upon to represent his brothers, living with him on the common estate of their father, on the Boule, whether the expenses involved are to he borne by all or by the brother thus nominated alone. V. Buchler, op.cit., 40.]

(8) I.e., if such government appointments are made from every family in turn.

(9) Or expenses involved

(10) To his own merits or attainments.

(11) Before it had been divided.

(12) If he expects maintenance from them while he is away from home in pursuit of his studies or trade.
(13) Keth. 101a. The more the members of a household the cheaper the cost of living. The absent brother has consequently saved little by his departure while the amount he requires for his maintenance is incomparably higher than what would have been the case had he remained with the family.
(14) l.e.,if the full cost of his maintenance has not been saved by his departure. let that portion of it which is being saved be given to him.
(15) He does get that portion.
(16) Lit., 'they did not teach but'.
(17) B.M. 107b; A.Z. 3b: Keth. 30a.
(18) Heb., Pahim. פחים (Cf. פחם,coal). Others render zinim pahim. צנים פחים, 'blowing cold winds'. (Cf. צנן and פוה
(19) Prov. XXII,5 E.V., Thorns and snares are in the way etc.
(20) Groomsmen (shoshbinin). in addition to acting as best men or companions of the groom, also brought him presents (shoshbinuth). Their services and gifts were reciprocated on the occasion of their marriages. [On shoshebin, V. Krauss, TA. II, 458. He connects it with שבשא 'twig' and 'branch', alluding to the myrtles which formed a feature of marriage ceremonies. and which were entrusted to the shoshebin. Cf. Gr. **.]
(21) Who defrayed the cost of the presents.
(22) On the occasion of the marriage of one of the sons after their father's death.
(23) The gifts are consequently regarded as a loan and as part of the common estate.
(24) As an ordinary gift: not as that of a shoshbin.
(25) Lit.. 'they cannot he collected'.
(26) The recipient does not incur any liability'.
(27) His son who was a shoshebin.
(28) By a shoshbin.
(29) That is sent after the father's death on the occasion of that groomsman's marriage.
(30) A reciprocated wedding gift being regarded as a loan. (V supra note 3), it is the duty of the orphans to repay it as any other of the debts of their father.
(31) From the first part of this Baraitha it follows that a reciprocated wedding gift belongs to the son through whom the father had sent the original gift; how, then, could it be stated in our Mishnah that a reciprocated gift reverts not to the son but to the common estate?
(32) Lit., 'when we learnt'.
(33) I.e., when a gift sent in return for the one made by their father reached them.
(34) Even if the meaning of the Mishnah is taken as it is read.
(35) In our Mishnah.
(36) Which son was to act as shoshbin (R. Gersh.) Hence. the reciprocated gift reverts to the common estate.
(37) In the cited Baraitha.
(38) One of his sons.
(39) The son who acted as shoshbin.
(40) Though one of the sons had acted as the shoshbin and carried the presents.
(41) Our Mishnah according to which the reciprocated gift reverts to the common estate.
(42) The husband's brother, who, in accordance with Deut. XXV, 5, married the widow of his brother who died childless and who, had he been alive, would have been entitled as shoshbin to the reciprocated gift.
(43) The reciprocated gift is the prospective property of the dead brother, which the brother who married his widow cannot inherit, though he inherits all property that was in his brother's possession prior to his death.
(44) Hence the gift reverts to the common estate.
(45) The original recipient of the gifts from the dead brother.
(46) To the heirs of him who presented him with the gifts.
(47) He should only be expected to reciprocate, i.e., to act as best man for his friend as the latter had acted for him, but not to send presents to heirs who have no claims on him.
(48) In the case where the bride died before the marriage took place (as explained infra).
(49) The token of betrothal, consisting of money or any object of value, which the man gives to the woman at betrothal, whereby the union was legalised.

(50) Lit., ‘they did not teach but’.

Talmud - Mas. Baba Bathra 145a

‘Give me my husband I will rejoice with him’;[1] here also he[2] could say. ‘Give me my shoshbin and I will rejoice with him’![3] R. Joseph replied: We deal here with a case where[4] he[5] rejoiced with him[6] the seven days of the [wedding] feast[7] but had no opportunity of repaying him[6] before he died.[8] May it be suggested [that the question whether a betrothed woman may advance the plea] . ‘Give me my husband and I will rejoice with him’ [is a matter of dispute between] Tannaim? For it was taught: ‘[In the case where] a person betrothes a woman,[9] [if] a virgin she is entitled to two hundred [zuz] and [to] a maneh[10] [if] a widow, Where it is the custom to return the [token of] betrothal[11] it [must] be returned; where it is the custom not to return the [token of] betrothal [it is] not [to be] returned; [these are] the words of R. Nathan. R. Judah the Prince said, in truth [the Sages] said: Where it is the custom to return, it [must] be returned; where it is the custom not to return, it [need] not [be] returned’. [Does not] R. Judah the Prince [say exactly the same thing] as the first Tanna: [Must it] not then [be explained][12] that [the difference] between them lies in [the admissibility of the plea]. ‘Give me my husband and I will rejoice with him,’ and that there is a lacuna [in the text] which should read[13] thus: ‘[In the case where] a person betrothes a woman, [if] a virgin she is entitled to two hundred [zuz, and [to] a maneh [if] a widow. This applies only to the case where he has retracted but [if] she died, [the token of betrothal] is to be returned where it is the custom to return; where it is the custom not to return, it [need] not be returned — This, [furthermore.] applies only [to the case] where she died, but [where] he died.it [need] not [be] returned.’ What is the reason? Because she can plead. ‘Give me my husband and I will rejoice with him’ And [with reference to this statement] R. Judah the Prince said[14] ‘In truth [the Sages] stated [that] whether he died. or she died. it Is to be returned where it is the custom to return; where it is the custom not to return.it [need] not [be] returned’;[15] and she cannot say, ‘Give me my husband and l will rejoice with him’![16] -No; all[17] [may agree that] she may advance the plea. ‘Give me my husband and I will rejoice with him’; and [in the case] where he died no one [in fact] disputes [this].[18] Their dispute has reference only[19] [to the case] where she died; their [point of) disagreement [centering] here on [the question whether a token of] betrothal is unreturnable.[20] R. Nathan holds the opinion that [a token of] betrothal is not unreturnable,[20] and R. Judah the Prince holds the opinion that [a token of] betrothal is unreturnable. But surely it was taught. ‘Where it is the custom to return. it [must] be returned’![21] -He means this: And [as regards the] gifts.[22] they [must] certainly be returned where it is the custom to return [them]. These Tannaim [differ on the same principle][23] as the following Tannaim — For it was taught: If one betrothes a woman[24] with a talent,[25] [if] a virgin she is entitled to two hundred [zuz][26] and [to a] maneh [if] a widow; these are the words.of R. Meir. R. Judah said: A virgin is entitled to two hundred [zuz] and a widow [to] a maneh. and the remainder[27] she returns to him. R. Jose said: [If] he betrothed her with twenty [shekels].[28] he gives her, [in addition,] thirty halves; [if] he betrothed her with thirty [shekels]. he gives her, [in addition]. twenty halves. Now, of what case is it spoken here?[29] If it is suggested [of that] where she died; does she, [in such a case, it may be asked]. receive her kethubah.[30] But [in the case] where he died? Why, [it may be argued again.] does she[31] return to him the remainder? Let her advance the plea.’Give me my husband and I will rejoice with him’! If. however, [it be suggested that we deal] with [the case of] the wife of an Israelite who committed adultery,[32] ‘then, it may be queried.in what [circumstances. did this happen]? If with [her] consent, does she [in such a case] receive [her]kethubah?[33] And if under duress, she is surely permitted to [continue to live with] him![34] Hence [the Baraitha] must [deal] with [the case of] the wife of a priest who [committed adultery] under duress[35] and the [point of] disagreement between them[36] is [the question of] whether [a token of] betrothal is unreturnable. R. Meir holds the opinion [that a token of] betrothal is unreturnable;[37] and R. Judah holds the opinion [that a token of betrothal is] not unreturnable,[38] while R. Jose is doubtful [as to] whether it is returnable or not, and, consequently. [if] he betrothed her with twenty [shekels][39] he gives her,[40] [in addition].thirty halves,[41] [and if] he betrothed her with thirty [shekels][42] he gives her twenty halves.[43] R. Joseph b. Manyumi said in the

name of R. Nahman: Wherever It Is the custom to return.[44] it [must] be returned. And the explanation is Nehardea[45] What [is the practice in] the rest of Babylon? — Both Rabbah and R. Joseph stated: Presents[46] are returned;[47] [tokens of] betrothal are not returned. R. Papa said: The law [is that] whether he died or she died or he retracted., presents[46] are to be returned, [tokens of] betrothal are not to be returned . If she retracted, even [tokens of) betrothal [must] also be returned. Amemar said: [A token of] betrothal [must] not be returned. [This is] a preventive measure against the possibility' of assumption that betrothal would take effect in the case of her sister.[48] R. Ashi said: Her bill of divorce [would] prove her [status][49] But [the statement] of R. Ashi is to be rejected '[50] for there [may] be some who heard of the one[51] and did not hear of the other.[52] FOR [THE RECIPROCATION OF] WEDDING GIFTS MAY BE CLAIMED THROUGH A COURT OF LAw'. Our Rabbis taught: Five things were said in respect of [reciprocation of a] wedding gift: It may be claimed through a court of law; it is to be reciprocated at its proper time;[53] and it is not subject to [the restrictions of] usury;[54]

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(1) I.e., since it is not her fault that the marriage was not consummated she is entitled to retain, the money or the object that was given to her at the betrothal.

(2) The original recipient of the gifts.

(3) It is not his fault that his friend died and that he cannot, consequently. reciprocate his services and gifts. How, then, can it he assumed above that the heirs are entitled to the reciprocation of the gifts?

(4) Lit., 'here, in what case are we engaged?- As for instance'.

(5) The original recipient.

(6) His shoshebin, on the occasion of the latter's own marriage.

(7) And has thus become liable to present the gifts in reciprocation of those he had received.

(8) Hence he must return the gifts to the dead bridegroom's heirs.

(9) And he died or divorced her before the wedding took place.

(10) One hundred zuz.

(11) V. p. 620 n. 14, supra

(12) Lit., 'but not'.

(13) Lit., 'it teaches'.

(14) Lit., 'came to say'.

(15) V. B.M. 601.

(16) May it. consequently. be assumed that only the first Tanna does, but that R. Judah does not allow the plea 'Give me husband etc.'?

(17) Lit.. 'all the world', i.e.. even R. Judah.

(18) Cf. n. 4; even R. Judah agrees that the plea is eligible.

(19) Lit., 'when do they dispute'.

(20) Lit, 'given for sinking'. i.e., 'that it be not returned under any conditions whatsoever.

(21) And, as was stated above, even R. Judah agrees on this point

(22) The Sablonoth, dona sponsalitia (v. infra p. 628, n. 6). which the groom gives to the bride after betrothal, not forming part of the legal token of betrothal.

(23) Viz. the irrevocability of the token of betrothal.

(24) Lit., 'her'.

(25) Sixty maneh (cf. R. Gersh. a.I.).

(26) As her kethubah, in addition to the talent (the token of betrothal) which she received. This shows that R. Meir holds that a token of betrothal is unreturnable under any circumstances. (R.Gersh.).

(27) Of the talent, after the amount of the kethubah had been deducted. This shows that according to R. Judah a token of betrothal is returnable under certain conditions.

(28) Jose's statement is explained infra.

(29) Lit., 'in what are we engaged', in the Baraitha cited.

(30) Surely she does not.

(31) According to R. Judah.

(32) In consequence of which she has been divorced by her husband from whom she now claims her kethubah.

(33) A woman who played the harlot is certainly not entitled to it.
(34) So that the question of a kethubah could not arise. And if he were to insist on divorcing her, despite her misfortune, she would undoubtedly be entitled to her kethubah.
(35) And a priest. being forbidden to live with such a wife, must divorce her,
(36) The Tannaim of the Baraitha.
(37) Hence he stated that the amount of the kethubah must he given to her in addition to the talent which she received as the token of her betrothal.
(38) Consequently she must in such circumstances return the difference between the talent (given to her as token of betrothal) and the amount of her kethubah.
(39) Or eighty zuz (a shekel==four zuz).
(40) If she is a widow.
(41) Of a shekel, viz. , sixty zuz. The twenty shekels with which he betrothed her, being of a doubtful ownership (R. Jose not being certain whether a token of betrothal is unreturnable) is divided, and she accordingly retains ten shekels, viz., forty zuz. Since a widow is entitled to a kethubah of a maneh, or a hundred zuz he must give her in addition sixty zuz (thirty halves of a shekel).
(42) In which case she retains fifteen shekels or sixty zuz.
(43) Of a shekel viz., forty zuz, thus completing the total amount of the kethubah of a hundred zuz.
(44) The token of betrothal, and gifts.
(45) Nehardea was a place where it was customary to return both the token of betrothal and gifts.
(46) Such as jewels which the bridegroom sends the bride after betrothal.
(47) If she died or was divorced.
(48) Since it might be assumed that the return of the token of betrothal implied that the betrothal was invalid, the man might In consequence be allowed to marry his first wife's sister.
(49) That her betrothal was valid. Had It been invalid there would have been no need for a divorce. Hence a token of betrothal may be returned.
(50) ברותא ,outside', or בדתא. 'invention', 'fiction;,v. B.M. 9a..
(51) Lit., 'this', i.e., of the return of the token.
(52) I.e, of he divorce.
(53) I.e., at the marriage of the shoshbin ,and not earlier.
(54) The reciprocated gift may be of a higher value than the original one.

Talmud - Mas. Baba Bathra 145b

and the Sabbatical year[1] does not cause Its cancellation;[2] and the firstborn does not receive of it a double portion.[3] 'It may be claimed through a court of law'; what is the reason? — It is like a loan. 'And it is not subject to [the restrictions of] usury' — because he[4] did not give it to him with this intention[5] 'And the Sabbatical year does not cause Its cancellation' — because the Scriptural [injunction] . he shall not exact,[6] cannot be applied to it.[7] 'And the firstborn does not receive a double portion' — because it is prospective.[8] and a firstborn does not receive [a double portion] in prospective [property] as in that which was in [his father's] possession [at the time of his death]. R. Kahana said, [This is] the rule of groomsmanship: [If] he[9] was In town,[10] he should have come.[11] [If] he[12] [could] hear the sound of the [wedding] bells,[13] he should have come.[11] [If] he [could] not hear the sound of the bells,[14] the [other][15] should have informed him. He has , therefore, a grievance [against him] ,[16] but [must] nevertheless repay him. And up to how much?[17] -Abaye said: Wedding guests[18] are in the habit of putting in their stomachs up to the value of a zuz brought in their hands;[19] up to four [zuz].a half [of the value of the gifts] is paid;[20] in case of any higher values,[21] every man according to his importance.[22] Our Rabbis taught: If a person rendered service [to a bridegroom][23] at a public[24] [wedding] and he[25] [now] desires [the latter] to reciprocate his services[26] at [a] private [wedding] he[27] may tell him, 'At a public [wedding] l will act for you as you have acted for me.[28] If he rendered service to one[29] [who married] a virgin. and he [now] desires [the latter] to reciprocate'' [on the occasion of his marriage] with a widow he" can say to him, '[At your marriage] with a virgin I will act for you as you acted for me'[28] If he rendered service to one[29] on [the occasion of his]

second [marriage] and he [now] desires [the latter] to reciprocate[30] on [the occasion of his own] first [marriage]. he[31] can say to him, 'When you will marry a second wife l will reciprocate'[28] If he rendered service to one[29] [on the occasion of his marriage] with one [woman] and he [now] desires [the latter] to reciprocate'' [on the occasion of his marriage] with two, [the latter] can say to him, '[On the occasion of your marriage] with one I will act for you as you acted for me.'[28] Our Rabbis taught: Rich in possessions[32] [and] rich in pomp[33] — that is a master of aggadoth.[34] Rich in money[35] [and] rich in oil[36] — that is a master in dialectics.[37] Rich in products[38] [and] rich in stores[39] — that is a master of traditions.[40] All. [however]. are dependent on[32] the master of wheat. [i.e.] Gemara.[41] R. Zera said in the name of Rab: What [character is meant] by the Scriptural text, All the days of the poor are evil?'[42] — A master of Gemara;[43] but he that is of a merry heart hath a continual feast'' refers to[44] a master of the Mishnah[45] Raba reversed the order; and this is what R. Mesharsheya stated in the name of Raba: What [characters are referred to] in the Scriptural text, Whoso quarrieth stones shall be hurt therewith; and he that cleaveth wood is warmed up thereby?[46] is He that quarrieth stones shall be hurt therewith, has reference to[47] the masters of the Mishnah;[48] and he that cleaveth wood is warmed up thereby, has reference to[47] the masters of Gemara[49] R. Hanina said: All the days of the poor are evil.[42] refers [to him][44] who has a wicked wife; but he that is of a merry heart hath a continual feast,[42] refers'[44] [to him] who has a good wife. R. Jannai said: All the days of the poor are evil[42] refers to[44] one who is fastidious; but he that is of a merry heart hath a continual feast[50] refers to one of a robust constitution. R. Johanan said: All the days of the poor are evil,[50] refers to one who is compassionate; but he that is of a merry heart hath a continual feast,[50] refers to one who is cruel. And R. Joshua b. Levi said: All the days of the poor are evil,[50] refers to an impatient[51] man; but he that is of a merry heart hath a continual feast,[50] refers to a contented man.

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(1) If it occurred before the gift had been reciprocated.

(2) Though it causes the cancellation of debts (cf. Deut. XV,.2ff).

(3) Where the gift reverted to the common estate of the heirs.

(4) The shoshbin.

(5) That the reciprocated gift shall be of a higher value than the original one. It might just as well have been worth less.

(6) Deut. XV, 2.

(7) Since it cannot be exacted at the .Sabbatical year, reciprocation not being due until the groomsman celebrates his marriage. (Cf. Mak. 3b).

(8) The reciprocated gift was never in the possession of the first-born's father; and all he inherited was only a claim for the future.

(9) The man who has to reciprocate the wedding gift.

(10) When his shoshbin celebrated his own marriage.

(11) With the gift. And since he did not, it may be claimed through a court of law.

(12) Being out of town.

(13) Heb. tabla, טבלא , Gr, **, an instrument from which bells were suspended, used at bridal and other processions. [Others, 'drum', 'tambourine'; v. Krauss, op cit 92ff.]

(14) (Either he was not within hearing distance (R. Gersh.): or, the custom had fallen into desuetude in the locality (Krauss. op. cit. II, 41).]

(15) The bridegroom.

(16) For failing to inform him.

(17) I.e., when the reciprocated gift is claimed through a court or when it is repaid in any other way, in the case where the giver of it did not participate in the wedding festivities, how much may he deduct from the value of the gift in lieu of the food and refreshments he would have consumed had he attended the festivities?

(18) Lit., 'the children of the bridechamber'.

(19) l.e.,if they bring gifts not exceeding one zuz in value they consume refreshments and food, at the wedding festivities, to the full value of their gift. Consequently, if the present bridegroom (the former shoshbin) had brought a gift not exceeding one zuz in value, the first bridegroom (to whom it was brought and from whom the reciprocated gift is now claimed) need not now return anything; since be saved the claimant (the present bridegroom) the value of a zuz by absenting himself from his wedding.

(20) Guests who bring gifts worth more than a zuz but not exceeding four zuz receive greater attention, and their entertainment is worth half the value of their gifts. Hence, half the value of the reciprocated gifts may be deducted in lieu of the food and refreshments saved.
(21) Lit., 'from here onwards'.
(22) The more important the man and the more costly his gifts, the more the expense of his entertainment. Such a person. if he could not attend the festivities, may' consequently deduct a proportionate sum from the value of his reciprocated gift.
(23) Lit., 'he did with him', i.e., acted as shoshbin and brought the customary gifts.
(24) Gr. **,' (Lat. pompa), 'attended with pomp and a public procession'.
(25) The first mentioned.
(26) Lit., 'to do with him'.
(27) The latter.
(28) I.e., a person need only reciprocate under conditions similar to those under which service was rendered to him. If, therefore, he is asked to act under different conditions he may refuse, and there is no obligation on his part either to reciprocate the gifts or to come to the wedding.
(29) V.supra n. 4,
(30) V. supra n. 7'
(31) V.. supra n.8,
(32) Such as fields and vineyards.
(33) E.g., cattle that wander about, and are exposed to public view.
(34) Who preaches to large audiences and is thus able to give public display to his knowledge.
(35) Lit., sela'im.
(36) Heb.. Tekoa', תקוע, a Palestine town famous for its oils. Others, 'rich in the ownership of houses.'
(37) [Who by his creative powers is continually able to establish new points and evolve new principles. thus making his knowledge as continually productive as the possession of money and choicest oils.]
(38) Lit., '(things that are) measured',
(39) Lit., 'cellar', 'store-room'.
(40) (Who keeps his store of traditional teachings in readiness for guidance whenever the occasion arises.]
(41) The discussions and interpretations of the Mishnah and Baraithoth, and the decisions arrived at, which are indispensable for right practice and conduct.
(42) Prov. XV.15.
(43) [Who is often in difficulty in finding his way through the maze of the involved and intricate argumentation.]
(44) Lit., 'this',
(45) Where the teachings are given clearly and precisely.
(46) Eccl. X,9, . Heb. yissaken, 'is warmed up'. (E.V. 'endangered').
(47) Lit., 'these'.
(48) [The study of the Mishnah alone, in the absence of the principles underlying the teaching thereof', affords no competence for the giving of decisions, V. Sotah 22a.]
(49) The study of the Gemara affords a sensible appreciation of the principles of the teaching of the Mishnah and thus enables the student to make practical application of his learning.]
(50) Prov. XV. 15
(51) Others, 'greedy.

Talmud - Mas. Baba Bathra 146a

R. Joshua b. Levi further stated: 'All the days of the poor are evil? Surely there are Sabbaths and Festivals![1] — [The explanation, however, is] according to Samuel. For Samuel said: A change of diet is the beginning of sickness'[2] It is written in the Book of Ben Sira: All the days of the poor are evil; Ben Sira says : The nights also. Lower than [all] roofs is his roof, [and] the rain of other roofs [pours down] upon his roof; on the height of mountains is his vineyard. [and] the earth of his vineyard [is washed down] into the vineyards [of others] .[3]

MISHNAH. IF A PERSON HAD SENT WEDDING PRESENTS TO THE HOUSE OF HIS FATHER-IN-LAW,[4] EVEN IF HE SENT A HUNDRED MANEH AND ATE THERE A BRIDEGROOM'S MEAL, [EVEN IF IT WERE ONLY OF THE VALUE] OF ONE DENAR, THEY[5] [CANNOT [ANY MORE] BE RECLAIMED.[6] [IF. HOWEVER]. HE DID NOT EAT THERE A BRIDEGROOM'S MEAL THEY[5] MAY BE RECLAIMED. [IF] HE SENT MANY PRESENTS WHICH WERE TO RETURN WITH HER TO THE HOUSE OF HER HUSBAND.[7] THESE MAY BE RECLAIMED.[8] [IF. HOWEVER, HE SENT A] FEW PRESENTS WHICH SHE WAS TO USE AT THE HOUSE OF HER FATHER, [THESE MAY] NOT BE RECLAIMED.

GEMARA. Raba said: Only [when the meal[9] was worth] a denar,[10] but not [when it was worth] less than a denar. [Is not this] obvious? We have, [surely], learnt, ONE DENAR! — It might have been assumed that the same law [applies] even [to the case where it was worth] less than a denar, and that [the reason] why a denar was mentioned[11] [was because that] was the usual cost,[12] hence [it was necessary to] teach us [that we do not say so]. We learnt, HE ATE; what [is the law if] he drank? We learnt, HE; what [is the law in the case of] his representative?[13] We learnt, THERE; what [if] it[14] was sent to him?[15] -Come and hear what Rab Judah said in the name of Samuel: It once happened with a' certain man who had sent to the house of his father-in-law a hundred wagons of jars of wine and jars of oil, and vessels of silver and of gold and silk garments while he [himself]. in his joy. came riding. and stopped at the door of the house of his father-in-law. They brought out a cup of something warm and he drank and died. This practical question[16] was brought up by R. Aha. the 'Governor of the Castle' ,[17] before the Sages at Usha , and they decided, 'Gifts which were intended[18] to be used up[19] cannot be reclaimed; and such as are not intended to be used up[19] may be reclaimed. ' From this it may be inferred [that] even if he [only] drank; from this it may [also] be inferred [that] even [if the meal was worth less than a denar.[20] R. Ashi asked: 'Who can tell us that they did not crush a pearl[21] for him which was worth a thousand zuz and gave him to drink! [May] it be inferred, [however that] even if [it] was sent to him?[22] — [No;] it is possible [that] anywhere [near] the door of the house of one's father-in-law is [the same] as the house [itself]. The question was raised: Has he[23] to pay[24] in proportion?[25] [Further:] Is he entitled to[26] the appreciation of the gifts?[27] [Do we say that] since if they[28] are available they are returned to him, the appreciation took place in his possession; or, perhaps. since if they were lost or stolen she[29] has to make compensation. the appreciation took place in her possession?-This is undecided. Raba inquired: What [is the law in the case of] gifts intended to be used up that were not used up?[30] -Come and hear: 'And this practical question was brought up by R. Aha, the governor of the castle, before the Sages at Usha and they decided [that] gifts intended to be used up [can] not be reclaimed, and such as are not intended to be used up may be reclaimed' — Does[31] not [this refer] even [to the case] where they were not used up! — No; where they were used up. Come and hear: [IF, HOWEVER, HE SENT A] FEW PRESENTS WHICH SHE WAS TO USE AT THE HOUSE OF HER FATHER, [THESE MAY] NOT BE RECLAIMED![32] — Raba interpreted [the Mishnah as referring to] a veil or a hair-net.[33] Rab Judah said in the name of Rab: It once happened that a certain person sent to the house of his father-in-law new wine and new oil and garments of new linen[34] at [the] Pentecost season. What does [this][35] teach us? — If you wish I would say: The praise of the land of Israel.[36] And if you prefer [it] I would say: That if he advances [such] a plea it is accepted.[37] Rab Judah said in the name of Rab: It once happened that a certain person was told [that] his wife was defective in the sense of smell[38] He followed her into a ruin to test her[39] He said unto her, 'I sense the smell of radish[40] in Galilee.'[41]

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(1) During which days, at least, the poor were provided with wholesome and substantial meals.

(2) For a poor man, who is in the habit of consuming all the week nothing but dry bread, the meat and the other expensive foodstuffs, with which he is supplied on Sabbaths and Festivals, cause indigestion.

(3) [Not in our texts].

(4) On the morning after the betrothal it was customary for the bridegroom to send to the house of his father-in-law, in honour of the bride, jewels and various kinds of wine or oil. [These gifts were known as Sablonoth, סבלונות, dona sponsalitia, derived according to Kohut from Gr, ** and according to Maimonides from סבך 'to carry', as

משאת 'gift' from נשא.]
(5) The presents.
(6) Even in the case where he or she died, or where he desired to divorce her. It is assumed that the bridegroom, thanks to his joy and satisfaction with the company and the meal, however small the latter might have been. has definitely determined to present the gifts wholeheartedly and permanently.
(7) As the wife's property.
(8) Cf. p. 628, n. 8.
(9) Which the bridegroom had in the house of his father-in-law.
(10) Only then may the gifts be reclaimed.
(11) Lit., 'taught'.
(12) Lit., 'thing'.
(13) Who had a meal of the value of a denar at the house of his father-in-law.
(14) The meal.
(15) To his own house.
(16) Halachah.
(17) [Cf Neh. VII, 2. Here probably an hereditary title].
(18) Lit., 'made',
(19) Before the wedding.
(20) The drink he had could not have been worth a denar.
(21) For medicinal purposes (Rashb.). A pearl was regarded as a life.giving substance. Cf. M. A. Canney. JMEOS. XV, 43ff.
(22) Since the drink was brought to the door.
(23) A bridegroom who consumed a meal of less value than a denar.
(24) In a case where the gifts are reclaimed,
(25) According to Raba who stated that if the value of the meal was less than a denar the gifts may he reclaimed, has the bridegroom to pay at least for what he has consumed? (Cf. Tosaf. a.I., s,v., איבעיא).
(26) Lit., 'what',
(27) That took place during the time they were at the bride's house.
(28) The gifts themselves.
(29) The bride.
(30) Are they to be returned or not?
(31) Lit., 'what'.
(32) Since here, unlike the wording of the previous citation, the expression. 'intended to be used up'. does not occur, it is assumed to refer to all cases, even to those where they were not used up.
(33) I.e., articles of little value, the return of which one does not expect. Hence, even if they were not used up they need not be returned.
(34) Of flax that grew in that year.
(35) The mention of Pentecost.
(36) That its harvests are earlier than those of other countries.
(37) Lit. , 'his plea is a plea'. i.e., if he reclaims such gifts. asserting that he had sent them at the Pentecost season, he is believed. Though that season is too early for the harvest in other countries it is not so in Palestine.
(38) תותרנית. 'in the habit of sniffing'.
(39) A husband who finds his wife to be affected with a hidden defect is entitled, under certain conditions, to divorce her without a kethubah.
(40) He had with him a radish. According to others, a date.
(41) The incident occurred near that district; and the object of his test was to ascertain whether she could sense the smell of the radish. According to the other interpretation. he expected her to reply that she sensed the smell of a date and not that of a radish,

Talmud - Mas. Baba Bathra 146b

She said to him, 'Would that one gave me of the dates of Jericho and l would eat with it.'[1]

[Thereupon] the ruin fell upon her and she died. The Sages decided:[2] Since he only followed her in order to test her,[3] he is not [entitled to be] her heir [if] she died [during the test][4] FEW PRESENTS WHICH SHE WAS TO USE AT THE HOUSE OF HER FATHER, ETC. Rabin the elder sat before R. Papa and stated [the following]: Whether she died, or he died, [or] he retracted,[5] the wedding gifts are to be returned, foodstuff[s] and drink[s][6] are not to be returned. If [however] she retracted, even a bundle of vegetables [must be returned]. R. Huna the son of R. Joshua said: And it is valued for them[7] at the cheap[er] price of meat,[8] Up to how much is [considered] cheap?-Up to a third.[9] MISHNAH. IF A DYING MAN GAVE ALL HIS PROPERTY IN WRITING, TO OTHERS, AND LEFT [FOR HIMSELF] SOME [PIECE OF] LAND[10] HIS GIFT[11] IS VALID[12] . [IF, HOWEVER,] HE DID NOT LEAVE [FOR HIMSELF] SOME [PIECE OF] LAND, HIS GIFT IS INVALID[13]

GEMARA. Who is the Tanna [that holds the view] that the assumed motive[14] is a determining factor?[15] -R. Nahman replied: It [is the view of] R. Simeon b. Menasya. For it was taught: In the case of [a person] whose son went to a distant country[16] and having heard that the latter had died. assigned all his property, in writing. to a stranger. though his son subsequently appeared. his gift is. [nevertheless]. legally] valid.[17] R. Simeon b. Menasya said: His gift is not [legally] valid; for had he known that his son was alive, he would not have given it away.[18] R. Shesheth said: It [is the view of] R. Simeon Shezuri.[19] For It was taught : At first it was held [that] when one who was led out in chains[20] ,said, 'Write a bill of divorce for my wife', It is to be written and delivered [to her];[21] later, however, It was held[22] [that the same law applies] also [to] one who goes out [to sea] or on a caravan [journey]. R. Simeon Shezuri said: [The same law] also [applies to one] who is dangerously [ill][23] For what reason, however, does not R. Nahman establish it[24] in accordance with [the view of] R. Simeon Shezuri?-There [the case is] different, since he said, 'write'.[25] And why does not R. Shesheth establish it[24] in accordance with [the view of] R. Simeon b. Menasya?-A well grounded assumption[26] is different.[27] Who is the author of the following ruling[28] which was taught by our Rabbis? 'If a person was lying ill in bed, and was asked, "To whom [shall] your estate [be given]? and he replied

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(1) Jericho was famous for its dates which were so sweet that radishes had to he eaten with them to mitigate their excessive sweetness.

(2) Where the husband claimed her possessions as her heir.

(3) And had he found her to he defective, as he suspected, he would have insisted on divorcing her, he forfeited thereby his rights to be her heir. As soon as one determines to divorce his wife, if she were found to be suffering from some defect, he loses the privileges of an heir unless a reconciliation between them subsequently took place.

(4) Since in that case there was no time for their reconciliation before death took place.

(5) And divorced her.

(6) Sent by the bridegroom to the bride.

(7) Where foodstuffs are returned,

(8) Or any other foodstuff.

(9) Below the current market price.

(10) The size is given in the Gemara infra.

(11) Even if he recovers from that illness.

(12) Since he left for himself some land it is assumed that he did not intend the gift to be conditional upon his death, and it is. therefore, regarded as having been given by a man in good health. It is, consequently. valid even if he recovered from his illness.

(13) If he recovered. Since he left nothing for himself it is obvious that at the time he made the gift he did not expect to live any longer. Had he hoped to recover from his illness he would not have given away all his landed property. leaving himself destitute.

(14) **אומדנא**, lit., assumption'. 'estimation'.

(15) Lit., 'that we go after assumption', i.e., that the assumed motives and intentions of a testator are to be taken into consideration when deciding the legality of his 'statements In our Mishnah, the assumed motive and intention are obviously the determining factors (V., notes 3 ,4) ;who is its author?

(16) Lit., ‘country of (i.e., beyond) the sea’.
(17) Since it was not specifically made conditional upon his son's death.
(18) Lit., ‘write them’. Thus it has been shown that R. Simeon b. Menasya takes the assumed motive and intention into consideration,
(19) Others, ‘of Shezar’, [Sedschut between Akko and Kefar ‘Anan, in Gallilee. v. Klein, NB. p’ 7.]
(20) קוֹלָר ‘collar’. the chain, or iron band round a prisoner's neck.
(21) Though he only authorized the writing of the divorce, and not its delivery, it is assumed that he had forgotten to mention the latter owing to the perturbed state of his mind
(22) Lit., ‘they returned to say’.
(23) Because it is assumed that his motive and intentions were to have his wife divorced so that she might be exempt from the levirate marriage and from halizah.. Since the same principles of motive and intention underlie the law of our Mishnah,, it may be taken to represent the view of R. Simeon Shezuri.
(24) Our Mishnah.
(25) By this instruction It was made clear that he wished his wife to be legally divorced; and since this cannot be done without the delivery of the bill of divorcement, his instruction must he taken to, extend to, the delivery also. For the case of our Mishnah, however,this argument cannot be applied.
(26) In the case of the father who gave all his property to a stranger. since he did not give it away so long as he believed his son to he alive, it is clear that the sole reason why he gave it away subsequently was the reported death of his son.
(27) From the case of our Mishnah Since most ailing persons recover, there is not necessarily any reason for the assumption that the gift was due to the testator's belief that he would not recover.
(28) Lit., ‘who taught that’.

Talmud - Mas. Baba Bathra 147a

‘l thought I had a son; now, [however] that I have no son, [let] my estate [be given] to X’; [or] if a person was lying ill in bed, and on being asked to whom his estate [shall be given]. he replied, ‘I thought my wife was with child; now’ [however] ‘that my wife is not with child, [let] my estate [be given] to X’; and it [subsequently] transpired that he had a son or that his wife was pregnant, his gift is invalid,’[1] Is it to be assumed that this [statement represents the view of] R Simeon b. Menasya and not [that of] the Rabbis?[2] — It may even be said [to represent the view of] the Rabbis, [but] ‘I thought’ is different.[3] And what did he that raised the question imagine?[4] — It might be suggested that he[5] was merely mentioning his grief,[6] hence [it was necessary] to teach us [that this is not so]. R. Zera said in the name of Rab: Whence [is it proved] that the gift of a dying man[7] [is considered valid] by the Torah?-For it is said, Then ye shall cause his inheritance to pass to his daughter[8] [which[9] implies that] there exists another transfer which is [the same] as this [one]. And which is it? It is the gift of a dying man.[10] R. Nahman in the name of Rabbah b. Abbuha said: [It may be derived] from the following.[11] Then shall ye give his inheritance unto his brethren,[12] [which[13] implies that] there exists another giving which is like this [one]. And which is it? It is the gift of a dying man.[14] Why does not R. Nahman derive it from , Then ye shall cause to pass?[14] — He requires that [expression] for [the following] ‘ according to Rabbi. For it was taught: Rabbi said, In [the case of] all [the relatives[15] the expression of] ‘giving’ is used but here[16] [the expression] used is that of ‘causing to pass’,[17] [in order to teach] you that no other but a daughter causes an inheritance to pass from one tribe to [another] tribe, since [in her case] her son and her husband are her heirs.[18] And why does not R. Zera derive it from, Then shall ye give?[19] — This is the usual [expression] of Scripture.[20] R. Menashya b. Jeremiah said: [It[21] may be derived] from the following:[22] In those days was Hezekiah sick unto death ; and Isaiah the prophet the son of Amoz came to him, and said unto him, ‘ Thus saith the Lord; Set thy house in order for thou shalt die, and not live’,[23] by mere verbal instruction.[24] Rami b. Ezekiel said: [It[21] may be derived] from the following: And when Ahitophel saw that his counsel was not followed. he saddled his ass and arose, and got him home into his city and set his house in order, and strangled himself.[25] by mere verbal instruction.[26]

Our Rabbis taught: Ahitophel advised his sons three things: Take no part[27] in strife, and do not

rebel against the government of the House of David, and [if] the weather on the Festival of Pentecost is fine sow wheat[28] Mar Zutra stated: It was said, 'cloudy'[29] The Nehardeans said in the name of R. Jacob: 'Fine' [does] not [mean] absolutely fine, nor does 'cloudy' mean completely overcast, but even [when it is] 'cloudy' and the north wind blows [the clouds], it is regarded as 'fine'.[30] R. Abba said to R. Ashi: We rely upon [the weather information] of R. Isaac b. Abdimi. For R. Isaac b. Abdimi said: [At] the termination of[31] the last day of Tabernacles , all watched the smoke of the wood pile.[32] [If] it[33] inclined towards the north, the poor rejoiced and landowners[34] were distressed because [that[35] was an indication] that the yearly rains would be heavy[36] and the crops would decay.[37] [If] it inclined towards the south, the poor were distressed and landowners rejoiced because [that[38] was an indication] that the yearly rains would be scanty and the crops could be preserved[39] ' [If] it inclined towards the east,all were glad;[40] towards the west ,. all were distressed.[41] A contradiction was raised: The east [wind] is always beneficial; the west [wind] is always harmful; the north wind is beneficial for wheat that reached[42] [the stage of] a third [of its maturity].[43] and harmful for olives in blossom; and the south wind is injurious' for wheat that reached[42] [the stage of] a third [of maturity] . and beneficial for olives in blossom. And R. Joseph. (others say Mar Zutra and others say. R. Nahman b. Isaac), said: Your mnemonic is , 'Table in the north and candelabra in the south ;[44] the one[45] Increases Its own[46] and the other[47] increases Its own.[48] -There is no difficulty: This[49] for us,[50] and that[51] for them[52] It was taught: Abba Saul said: Fine [weather at] the Festival of Pentecost is a good sign[53] for all the year. R. Zebid said: If the first day of the New Year is warm, all's the year will be warm; if cold, all[54] the year will be cold. Of what [religious] significance is this[55] [weather information]?

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(1) Because it is assumed that if he had known the facts he would not have given his estate to X but to his son or his wife.

(2) Since the Rabbis, as has been shown above, do not admit the principle of assumed motive.

(3) In such a case as this, where the testator specifically said that he thought he had no son and that only because he was told that he had no son his estate was to be given to a stranger. even the Rabbis admit that motive which need no longer be merely assumed is the determining factor.

(4) Lit., 'and he that threw (i.e.. argued) what did he throw?' How could he even for one moment assume that the' Rabbis would not in such a case hold the same view as R. Simeon h. Menasya, when the difference between the two cases is so self evident?

(5) The testator,

(6) The mention of the death of his son might not have been due at all to his desire to indicate the cause of his giving away his estate to strangers. It might have been a mere expression of sorrow at having no son to survive him, a fact which the disposal of his estate had brought to his mind.

(7) Even if made verbally, is as binding as if attended by a legal symbolic acquisition.

(8) Num. XXVIII, 8.

(9) The superfluity of the expression of את or, according to others, of והעברתם

(10) As the transfer of a father's estate to a daughter takes place without symbolic acquisition so does the transfer of the gift of a dying man.

(11) Lit, 'from here'.

(12) Ibid, v.9.

(13) The superfluous, ונתתם or את

(14) Cf. supra, n. 8.

(15) That were enumerated in Num XXVII,9-11

(16) In the case of a daughter.

(17) Ibid. v. 8.

(18) V. supra 109b.

(19) Num.XXVII, 9

(20) The expression is not in any way superfluous.

(21) The validity of a verbal gift made' by a dying man.

(22) Lit.,'from here'.

(23) II Kings,XX 1
(24) I.e., Hezekiah was to set his house in order (Heb..Zaw צו , lit., command) by nothing more than his verbal instruction,
(25) II Sam. XVII, 23 .
(26) Ahitophel set his house in order, (Heb., wa-yezav,ויצו., 'and he commanded') by his verbal instructions only.
(27) Lit., 'be not '
(28) Fine weather at that season is an indication of a good wheat harvest for that year.
(29) I.e. , cloudy weather at Pentecost is an indication of a good harvest for that year. Cloudy, Heb. balul, בלול,, is easily interchangeable with barrur, ברור, clear.
(30) And the wheat harvest of that year will be successful.
(31) Lit,'exit'.
(32) On the Temple altar.
(33) The column of smoke.
(34) Lit., masters of houses'.
(35) The prevalence of the South wind which caused the column of smoke to incline towards the North.
(36) Lit., 'many'.
(37) And as they could not be stored away for long. prices would fall.
(38) The north wind. Cf. p' 635 ,n.18 i
(39) Consequently prices would rise.
(40) The west wind by which it was driven would cause a moderate rainfall and plentiful crops.
(41) The east wind by which it was driven towards the north would cause a scanty rainfall and meagre crops; and prices would consequently rise.
(42) Lit.. 'when they brought'.
(43) When it requires no more rain.
(44) In the Temple.
(45) The north where stood the table on which was placed the shewbread.
(46) Crops of wheat which are required for the shewbread.
(47) The south where stood the candelabra, for the lighting of which olive oil was used. is beneficial to olives.
(48) At any rate, it has been stated in this Baraitha that 'the east wind is always beneficial and the west wind is always harmful', how, then, was the reverse stated in the previous Baraitha, reported by R. Isaac b. Abdimi? (V., notes 5 and 6).
(49) The latter Baraitha which states that the east wind is beneficial and the west wind harmful.
(50) Refers to Babylon which is situated in a valley and has an abundance of water. A heavy yearly rainfall, there, is harmful; a light one beneficial.
(51) The first Baraitha.
(52) Palestine, which is a dry highland country. There the west wind with its heavy rains is beneficial while the dry east wind is harmful.
(53) V. supra p. 635. n. 11
(54) I.e., 'most of it' (Rashb.).
(55) Lit., 'as to what comes out of it'.

Talmud - Mas. Baba Bathra 147b

— In respect of the prayer of the High Priest [on the Day of Atonement][1] Raba,[2] however, said in the name of R. Nahman: The [validity of a verbal] gift of a dying man is a mere [provision] of the Rabbis[3] lest his mind become affected.[4] ; But did R. Nahman say so?[5] Surely R. Nahman said: Although Samuel had stated that if a person sold a bond of indebtedness to another and subsequently[6] remitted [the debt] it is remitted,[7] and that even an heir may remit,[8] Samuel, [nevertheless]. admits that if he presented it to him as the gift of a dying man, he cannot [subsequently] remit it.[9] [Now]. if it is agreed'[10] that [this[11] is] Biblical, one can well understand the reason why one cannot remit [the debt]; if, however, It is maintained[10] that [this is merely] Rabbinical, why should he not be able to remit [it]? — It is not Biblical; but was given[12] [the same force] as [a law] of the Torah.[13] Raba said in the name of R. Nahman: If a dying man said, 'Let X

live[14] in this house' , or,'Let X eat the fruit of this date-tree', his Instructions are to be disregarded[15] unless he used the following expression:[16] 'Give this house to X that he may live in it', or 'Give this date-tree to X that he may eat of its fruit'[17] Does this mean to imply[18] that R. Nahman holds the opinion that [only] the rights[19] that a man in good health may confer,[20] may also be conferred by[21] a dying man, [while those] which a man in good health cannot confer,[21] can neither be conferred by a dying man?[21] Surely Raba said in the name of R Nahman:

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(1) When he offered up a special prayer for rain. If the signs indicated heavy rains. his prayer had to be modified.

(2) At this point is resumed the discussion of the theme introduced by R. Zera (p. 634).

(3) Biblically the gift would not be valid unless attended by actual or symbolic acquisition.

(4) As a result of any resistance which might be offered to his instructions. Hence, legal force was given to his verbal and informal instructions as if legal acquisition had taken place.

(5) That the validity of the verbal gift of a dying man n only Rabbinical.

(6) Lit., 'and he returned'.

(7) And the buyer cannot claim the debt from the borrower. He only bought the rights of the creditor which now exist no more. He can, however, reclaim from the creditor (the seller) the sum he paid him for the bond.

(8) A debt he inherited.

(9) B.K. 92a; B.M. 201; Kid. ,38a.

(10) Lit., 'you said'.

(11) The validity of the verbal gift of a dying man.

(12) Lit., 'and they made it'.

(13) For the reason given supra, viz., lest his mind become affected.

(14) Lit., 'shall dwell'.

(15) Lit., 'he said nothing'. X cannot acquire the right of living in the house or that of eating the dates. since the former is abstract, while the dates are nol yet in existence. As such rights cannot be given away by one in good health, even by means of symbolic and legal transfer, the acquisition of the object itself (the house or the tree) being required, a dying man also cannot by his mere verbal instructions (though valid in the acquisition of concrete and existing objects), confer such rights.

(16) Lit., 'until he would say'.

(17) By transferring the possession of the concrete object. the abstract or the yet non-existing. may also simultaneously he transferred.

(18) Lit., 'to say'.

(19) Lit., 'thing'.

(20) Lit., 'there is'.

(21) Lit.. 'there is not', i.e.,that the only difference between the rights of a healthy, and those of a dying man consists in the privilege of the latter to transfer possession by a mere verbal instruction, while in the case of the former, actual or symbolic acquisition must take place.

Talmud - Mas. Baba Bathra 148a

If a dying man said, 'Give my loan to X' ,[1] his loan is [immediately] acquired by X;[2] although a man in good health has no[3] [such power]![4] -R. Papa replied: Since an heir inherits it.[5] R. Aha the son of R. Ika replied: A loan is also transferable[6] in [the case of] a man in good health; and [this is) in accordance with [the statement] of R Huna in the name of[7] Rab. For R. Huna said in the name of Rab: [If one said] . 'You owe me a maneh, give it to X', in the presence of the three persons.[8] ,X acquires possession. The question was raised: [If dying man gave instructions for his] date-tree [to be given] to one [person] and the fruit thereof to another, what [is the law.]? Has he [in such a case]. left [for himself] the place of the fruit[9] or did he not leave?[10] If [some reason] be found for the decision[11] [that if the fruit were given] to another [person, the dying man does] not reserve [their place, the question may be asked]: What [is the law if] he said,[12] except its fruit'?[13] ; Raba said in the name of R. Nahman: [Even] if [some reason] be found for the decision[14] [that in the case where the] date-tree [was given] to one [person] and the fruit thereof to another, the place of the fruit is not

[regarded as] reserved, [if he specifically added,] 'Except its fruit', he [thereby] reserved the place of the fruit; and [this is] in accordance with [the view of] R, Zebid[15] who stated that if he wished to attach mouldings to it he may do [so]. From this it clearly follows that because he reserved the upper storey he also reserved the place of the mouldings. [so] here also, since he said, 'Except its fruit'. he reserved the place of the fruit. R. Abba said to R. Ashi: We learnt it[16] in connection with [the following statement] of R. Simeon b. Lakish. For R. Simeon b. Lakish stated: When someone, in selling a house to another, told him, 'On condition that the upper storey [remains] mine', the upper storey [remains] his.[17]

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(1) I.e. — the verbal loan which someone owes him shall he paid by that person to X.

(2) Through the mere verbal instruction of the testator. Had he been in good health. he could not transfer in this way a verbal loan, which, since a person usually spends the money he borrows, is not In existence.

(3) Lit., 'it is not'.

(4) He cannot transfer an abstract thing (cf. p. 637 n. 16). How', then, could it be said that. apart from only one difference (v. note 6), there was no distinction between the power of a healthy, and those of a dying man?

(5) I.e.. the verbal loan; it is considered to be in the possession of the dying man who accordingly has the power to transfer it as gift to another person. since the gift of a dying man is treated as an inheritance, v. infra 149a. This, however, does not apply to a man in good health, since his gift is not regarded as an inheritance.

(6) Lit., 'it is'.

(7) Lit., 'said',

(8) The creditor, borrower and X; v. 147b-148a .

(9) On the branches; and since the branches are attached to the tree they are regarded as ground. Consequently it is a case of one who left for himself some ground, and who, in accordance with our Mishnah, cannot withdraw his gift. even if he recovers.

(10) And when he gave the tree to the first, he gave him the branches also. Hence he left for himself no ground at all, and can withdraw the gift if he recovers.

(11) Lit., 'to say'.

(12) The text and interpretation here adopted (cf. Rashb. second version; R. Gersh. first versionl; and Bah, a.I.) differ from the version in the current editions and from its rather difficult interpretation to which commentators had recourse. A translation of that version would run somewhat as follows: (If he left the fruit) for himself (giving away the tree) except its fruit, what (is the law)? (Is it assumed that for oneself one makes liberal reservation and, consequently. he left for himself the place of the fruit also, and the gift is. accordingly, valid; or is there no difference between reserving for oneself and for another)? Raba said in the name of R. Nahman: If (some reason) could be found for the decision (that where a person gave) a date-tree to one (man) and its fruit to another, the place of the fruit is not reserved; (if he gave) a date-tree to one and reserved the fruit for himself, he did reserve the place of the fruit. What is the reason?-Wherever it is a case of personal interests one makes liberal reservation.

(13) In addition to, 'Give him the date tree'. Does the superfluous addition, 'except etc.', imply that he wished to reserve for himself the place of the fruit and, consequently, he cannot anymore withdraw? (V. note l).

(14) V. note 3'

(15) V. notes on R. Zebid's statement, infra 148b.

(16) The enquiry above, and R, Nahman's statement.

(17) Supra 63a, 64,a.

Talmud - Mas. Baba Bathra 148b

The question was [accordingly] raised: [If one sold] a house to one and [its] upper storey to another, what [is the law']? Is it [assumed that he] reserved [some air space in the courtyard][1] or not? If [some reason] could be found [for the decision that if] a house [was sold] to one and [its] upper storey' to another [the seller] reserved nothing [of the air space of the courtyard], what [is the law when he specifically added]. 'Except its upper storey'? Raba said in the name of R, Nahman: If you can find [a reason] for the decision [that he who sold] a house to one and [its] upper storey to another has not reserved [anything from the air space of the courtyard, if he specifically added]. 'Except [its]

upper storey', he did reserve [a portion of the air space of the courtyard]. And [this is] in accordance with [the view] of R. Zebid who stated that if he[2] wished to attach[3] mouldings to it,[4] he may do so.[5] From this it clearly follows [that] because he [specifically] reserved [for himself] the upper storey. he has also reserved the place of the mouldings. R, Joseph b. Manyumi said in the name of R. Nahman: If a dying man gave all his property in writing. to strangers ,[6] [the following] should be noted: If he did it by way of distribution,[7] [then if] he died all of them acquire possession;[8] [if] he recovered he may withdraw in [the case of] all of them.[9] If, [however,] he did it after consideration,[10] [then if] he died, all of them acquire possession;[8] [if] he recovered, he may only withdraw in [the case of] the last,[11] But is it not possible that he merely considered the [matter][12] and then gave [the further gifts]? — It is usual for a dying man carefully' to consider [the whole matter] first and subsequently to distribute [the gifts].[13] R. Aba b. Manyumi said in the name of R. Nahman: If a dying man gave all his property. in writing, to strangers and [then] recovered, he may not withdraw [the gifts], since it may be suspected that he has possessions in another country[14] Under what circumstances, however, is [the case of] our Mishnah, where it is stated [that if] he did not leave some ground his gift was invalid,possible? — R. — Hama replied: [In the case] where he said, 'All my possessions'.[15] Mar son of R. Ashi replied: [In the case] where it is known to us that he has none.[16] The question was raised: Is partial withdrawal[17] [considered] complete withdrawal[18] or not?[19] — Come and hear: [If a dying man gave] all his possessions[20] to the first, and a part of them[21] to the second, the second acquires ownership [and] the first does not. Does not [this refer to the case] where [the testator] died?[22] - No; where he recovered.[23] Logical reasoning also supports this [view];[24] , since the final clause reads: [If he gave] a part of his possessions[25] to the first and all of them[26] to the second, the first acquires ownership [and] the second does not.[27] [Now,] if [the Baraitha] is said [to refer to the case] where he[28] recovered, one can well understand why the second does not acquire possession;[29] if, however, it is said [to refer to the case] where he[28] died, both should have acquired ownership![30] R. Yemar said to R. Ashi: Even if it[31] be explained[32] [as referring to the case] where he[33] recovered [the following objection may be raised].[34] If it is said [that] partial withdrawal is [considered] complete withdrawal, one can at least understand why the second acquires possession;[35] if, however, It is said [that] partial withdrawal is not [considered] complete withdrawal, [the testator] should be [regarded] as one who distributes [his possessions][36] and none of them should acquire ownership![37] And the law [is that] partial withdrawal is [considered] complete withdrawal. [Hence.] the first clause [of the Baraitha] may be applicable either [to the case] where he died or [to that] where he recovered:[38] the final clause can only be applicable [to the case] where he recovered.[39] The question was raised: [If a dying man] consecrated all his possessions and [subsequently] recovered, what [is the law]?[40] ; Is it assumed that whenever it is a case of consecrated objects the transfer of possession made is unqualified[41] or, perhaps. when it is a matter of personal interests one does not transfer unqualified possession? [If the answer is in the affirmative, the question arises] what [is the law in the case where] he renounced the ownership of all his property'?[42] Is it assumed that since [ownerless property may be seized] by the poor[43] as well as by the rich, he transfers [therefore] unqualified possession[41] or, perhaps, whenever it is a matter of personal interests one does not transfer unqualified possession? [If the answer is in the negative.][44] what, [it may be asked. is the law where] he distributed all his possessions among the poor? Is it assumed [that in a matter of] charity he has undoubtedly transferred unqualified possession or, perhaps, wherever it is a matter of personal interests one does not transfer unqualified possession? — This is undecided. R. Shesheth stated: 'He shall take', 'acquire', 'occupy' and own'[45] [used by a dying man][46] are all [legal] expressions denoting gift. In a Baraitha it was taught: [The expressions of] 'he,shall receive the bequest'[47] and 'he shall be heir' [are] also [legal] in [the case of] one who is entitled to be his heir; and this is [in accordance with the view of] R. Johanan b. Beroka.[48] The question was raised

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(1) For the projection of mouldings from the upper storey.

(2) The seller of the house.

(3) Lit., 'to bring out',

(4) The upper storey which he retained for himself by specifying when selling the house, 'except its upper storey'.

(5) L.it., ‘brings out’.
(6) In succession. one after the other.
(7) l.e., if his intention from the very beginning was to distribute all his estate among these.
(8) Even if no legal acquisition took place. since the verbal gift of a dying man is legally valid.
(9) Because he left nothing for himself, in which case, as stated in our Mishnah, he may withdraw the gifts he made in the expectation of death.
(10) I.e., if his intention at first was not to give away all his estate, and only after giving a portion to one he reconsidered the matter and made the gifts to the others.
(11) Because with the last gift, the dying man left nothing for himself. In the case of all the previous gifts there was always something over.
(12) When pausing to think, he may not have been considering whether to give or not but only what to give. In which case his mind was made up from the beginning to distribute all his estate and, consequently. he should he able to withdraw all the gifts he made.
(13) And since the man was pausing for reflection, after every gift he made. it is obvious that it was not his first intention to distribute all his estate.
(14) And consequently he was not left destitute.
(15) He did not present specified portions but all his possessions wherever they may be situated.
(16) No other possessions than those of which he had disposed.
(17) If a dying man presented all his estate to one person and then, in accordance with his rights (v. supra 135b). withdrew a part of the gift, and presented that part to another person.
(18) Of the entire gift made to the first. The question is whether it is assumed that by his withdrawal of that part, presenting it to the second person. he also indicated the complete withdrawal of the entire gift he made to the first and that, therefore, when he made the gift to the second he was in possession of the rest of his estate; and, consequently, if he recovered he cannot withdraw the gift from the second; while if he died. his heirs may claim from the first the return of bis gift.
(19) And the second acquires possession of whatever was given to him, while the first retains the ownership of the rest. If the testator subsequently recovers he may consequently withdraw both gifts (since when disposing of the estate he had left himself nothing), whereas if he dies the heirs would have no claim at all upon either of the donees.
(20) Lit., ‘all of them’,
(21) Which he withdrew from the first,
(22) And if so, it may be proved from here that the withdrawal of a part is the same as the withdrawal of the whole,
(23) And desires to withdraw the gifts. The first cannot retain possession because when the gift was made to him the testator was left with nothing. The right of ownership on the part of the second is discussed in the Gemara infra.
(24) That the Baraitha cited refers to a case of recovery.
(25) Lit., ‘of them’.
(26) [I.e., the remaining part of the estate (Alfasi).]
(27) Ned. 43b.
(28) The testator.
(29) Because when he received the gift the testator had left for himself nothing.
(30) Since in such a case possession is acquired by the recipients whether the testator had left anything for himself or not. Consequently it must he concluded that the final clause refers to the case where the testator recovered; and since the final clause refers to a case of recovery the first clause also must refer to such a case.
(31) The first clause of the Baraitha cited.
(32) Lit., ‘and let it be also’,
(33) V note 9
(34) To the argument that the Baraitha supplies no proof to the statement that the partial withdrawal is considered complete withdrawal,
(35) Because when the part was given to him, the rest of the estate having been withdrawn from the first, the testator was in possession of some property.
(36) Since the first is retaining the remainder of the estate while the second acquires possession of its part.
(37) Owing to the fact that the testator in distributing his estate had left nothing for himself.
(38) The second donee acquires ownership because when the gift was given to him the testator (having withdrawn the

gift from the first) was in possession of property. The first does not acquire ownership because the gift has been withdrawn from him in favour of the testator (if he recovers) or his heirs (if he dies).

(39) The first acquires ownership because when he was given the gift the testator was still in possession of some of his estate. The second does not acquire ownership because when the gift was given to him the testator had left for himself nothing. Had the testator died both would have acquired ownership.

(40) May he withdraw his donation?

(41) Without any reservation in case of recovery.

(42) Placing them at the disposal of anyone who would take possession of them.

(43) So that it is possible for the property to fall into the hands of some poor man.

(44) Because the property may happen to fall into the hands of a rich man.

(45) These expressions, some of which are synonymous, cannot be exactly rendered into English.

(46) In making a gift to anyone.

(47) V. p. 643, n. 8.

(48) Who maintained supra 130) that a person may appoint one of his heirs to be the sole inheritor of all his estate.

Talmud - Mas. Baba Bathra 149a

What [if he[1] said]. 'Let him[2] have the benefit of them'?[3] Does he, [thereby] imply that they all shall be [treated as] a gift[4] or, perhaps, he [only] meant that he[5] shall have some benefit from them? What [is the law where he[6] said]. 'He[5] shall see them', 'Stand in them', 'Recline upon them' ?[7] — This is undecided, The question was raised: What [is the law' in a case where a dying man] has sold all his possessions?[8] - Rab Judah said in the name of Rab: If he recovered he may not withdraw; sometimes, however, Rab Judah said in the name of Rab [that] if he recovered he may withdraw. But there is no contradiction [between the two statements]. The one[9] [refers to the case] where the money is [still] available;[10] the other[9] [to the case] where he paid away for his debt.[11] The question was raised: What if a dying man [spontaneously] admitted [a debt]?[12] -Come and hear: The proselyte Issur[13] had twelve thousand zuz: [deposited] with Raba. The conception of his son R. Mari was not in holiness,[14] though his birth [was] in holiness, and he was [then] at school. Raba said: How could Mari gain possession of this money? If as an inheritance; [surely] he is not entitled to [it as] an heir.[15] If as a gift; the gift [surely] of a dying man has been given[16] by the Rabbis [the same legal force] as [that of] an inheritance, [and consequently]. whosoever is entitled[17] to an inheritance is [also] entitled to a gift [and] whosoever is not entitled to an inheritance is not entitled to a gift [either]. If by pulling;[18] they are [surely] not with him. If by exchange;[19] a coin [can] not be acquired by 'exchange'.[20] If on the basis of land;[21] he has no land. If In the presence of the three of us;[22] if he [were to] send for me I would not go.[23]

R. Ika son of R. Ammi demurred: Why?[24] Let Issur acknowledge that that money belongs to R. Mari and [the latter] would acquire it by [virtue of this] admission! Meanwhile,[25] there issued [such] an acknowledgement from the house of Issur.[26] [Whereupon] Raba was annoyed [and] said,'They teach people what to say[27] and cause loss to me'.[28]

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(1) The testator.

(2) The person named.

(3) Of the possessions bequeathed.

(4) For the donee.

(5) The donee.

(6) V. note 3

(7) Do these expressions legally ratify a gift?

(8) May he, if he recovers, cancel the sale as he may withdraw a gift?

(9) Lit., 'that'.

(10) In such a case it is obvious that he kept the purchase money in readiness for the purpose of returning it should he recover and decide to cancel the sale.

(11) In such a case he cannot, on recovery, cancel the sale.
(12) Or that the property he possessed belonged to another person. Is this spontaneous admission sufficient to entitle the person named to the ownership of the sum or objects mentioned?
(13) Issur, while still a heathen, had married Rachel, one of Mar Samuel's captive daughters. (Cf. Keth. 23a). While she was in her pregnancy and before she gave birth to the child (the future R. Mari). Issur embraced Judaism; and Mari was accordingly born from parents both of whom professed the Jewish faith, while his conception took place when one of them was still a heathen.
(14) l.e., while his father was still a heathen.V. n. 15. Hence he was not entitled to the heirship of his father's estate (v. Kid. 18a).
(15) V. p. 644, n. 16,
(16) Lit., 'made'.
(17) Lit., 'where he is'.
(18) Meshikah, v. Glos., supra.
(19) Heb., halifin (V. Glos.). whereby possession may be gained though the object to be acquired is kept elsewhere.
(20) Cf. B.M. 46a.
(21) That might be presented to him at the same time. (V. Kid. 26a). One may acquire a movable object (including money) by the acquisition of land that was sold or presented simultaneously with it though the former may not actually be delivered at that time.
(22) Issur, Mari and Raba. Lit., 'three of them', v. supra 144a. A person may instruct another from whom he claims anything to give it to a third party; and, if all the three are present at the time the instruction was given, the transfer is immediately binding even though the object itself was not with them.
(23) And thus the money would remain in Raba's possession. who held the view that he was entitled, as anyone else, to retain the sum of money which, on the death of Issur who was a proselyte, would become ownerless and free to anyone who would first gain possession of it.
(24) Surely there is a way by which R. Mari could obtain the twelve thousand zuz!
(25) The discussion at the academy having been reported to Issur.
(26) And R. Mari thus acquired ownership of the twelve thousand sins.
(27) Lit., 'plea', 'argument'.
(28) It is possible that Raba had no intention whatsoever to appropriate Issur's money and that the whole discussion of the possible legal means whereby R. Mari could acquire possession of his father's money was only the master's method of impressing these subtle laws upon his students' minds. No one at the academy suspected for one moment that the master would in all earnestness desire to retain the money he held as a deposit from one who obviously confided in him. Had Raba been in earnest he would not have spoken publicly about such a matter when he well knew that Issur was still alive and could easily find legal means whereby to transfer possession to his son, if not to reclaim the deposit himself. Raba's pretended annoyance and ironical exclamation, 'They teach people what to say and cause me loss', must have been just a mild chiding to the students or their friends who deprived him of the satisfaction of passing on the money to R. Mari as a generous gift rather than as something legally due to him. The mention of the fact that R. Mari was בי רב 'at the master's house', i e 'school', which according to the ordinary interpretations has not much point (cf. Strashun a.l.) receives a new significance. It was discussed by Raba publicly despite the fact that R. Mari was himself at the school (perhaps Raba's very own school) and would well be aware of the whole discussion and could, if he chose, report it himself to his father and give him the necessary legal advice. The mention of R. Mari's presence at the school is probably the key to the indication of Raba's integrity and honour.

Talmud - Mas. Baba Bathra 149b

AND LEFT FOR HIMSELF SOME [PIECE OF] LAND, HIS GIFT IS VALID. And how much is SOME?- Rab Judah said in the name of Rab: Land sufficient for his maintenance, while R. Jeremiah b. Abba said [even if only] movables [that are] sufficient for his maintenance.

R. Zera exclaimed: 'How accurate are the reported traditions of the elders![1] What is the reason [in the case of the reservation of] land?[2] [Because] he depended on it [for his maintenance] if he should recover; [in the case of] movables also [it may be assumed that] he depended on them if he were to

recover'. R. Joseph demurred: Where is the accuracy? [Against him] who said, 'movables',[3] [it may be objected that] we learned, land; [while against him] who said, 'sufficient for his maintenance', [it may be objected that] we learnt, 'whatsoever'![4] — Abaye replied to him: [Do you suggest that] wherever 'land' is stated, land only [is meant]? Surely we learnt: If one gave all his property to his slave, in writing. [the latter] goes forth [as] a free man. [If] he left [for himself] any land whatsoever,[5] [the slave] does not go forth [as] a free man.[6] R. Simeon said: [The slave] is always[7] free[8] unless [the master] said, 'All my possessions are given to my slave X, except a ten thousandth part of them'.[9]

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(1) Rab Judah and R. Jeremiah b. Abba.

(2) I.e , why is the gift of a dying man valid in such a case, even if he recovered?

(3) That even the reservation of some movables renders the gift valid.

(4) כל שהוא kol shehu, lit., 'any so ever'. (5) Since the slave himself is part of the property the master gave him.

(5) Not specifying which.

(6) A slave is regarded as 'land', (real estate), and it is possible that by the reservation of 'some land' his master may have meant to exclude him. Hence, (since the property or a slave belongs to his master), the slave acquires nothing.

(7) Even if the master had reserved some land.

(8) Since people do not describe a slave as 'land'.

(9) By which expression he may rightly have meant the exclusion of the slave. Git. 8b; Pe'ah III, 8.

Talmud - Mas. Baba Bathra 150a

And R. Dimi b. Joseph said in the name of R. Eleazar: Movables[1] in the case of a slave were regarded[2] as a reservation; but movables in the case of a kethubah[3] were not regarded as a reservation![4] — There,[5] [R. Joseph retorted,] it would have been proper that [the term] 'land', should not have been used [at all]; only because in the first part [of the Mishnah] it was stated, 'R. Akiba said: Land of any size is liable to [have the ears at its] corner[s left for the poor], and to [the bringing of its] first ripe fruit [to Jerusalem]; a prosbul[6] may be written in connection with it;[7] and movable property[8] may be acquired in conjunction with it by means of money, deed[9] and possession',[10] [the term] 'land' was in consequence used [in the second part of this Mishnah also].[11]

And [do you suggest. Abaye again asked R. Joseph,[12] that] wherever 'whatsoever'[13] was taught no [minimum] size is required?[14] Surely we learnt: R. Dosa b. Horkinas said: Five ewes which supply[15] [fleeces of the weight of] a maneh and a half each,[16] are subject to [the law of] 'the fist of the fleece'.[17] But the Sages said, '[Even] five ewes [which] supply any [quantity] whatsoever [of wool]'[18] . And to the question,[19] how much [was meant by] any [quantity] 'whatsoever',[13] Rab replied: A [total of a] ,maneh and a half, provided each supplies [no less than] a fifth [of the total quantity]![20] — There, [R. Joseph retorted], it would have been proper that [the expression] 'any [quantity] whatsoever' should not have been used [at all]; only because the first Tanna speaks[21] of a large quantity.[22] [the Sages] also speak[21] of a small quantity,[23] which is described [as] 'any quantity whatsoever'.[24]

[It is] obvious [if a person] said, 'My movables [shall be given] to X', [the latter] acquires possession of all the things he used except wheat and barley. [If he said], 'All my movables [shall be given] to X'.[the latter] acquires possession even of wheat and barley and even of the upper millstone,[25] except the lower millstone.[26] [If he said], 'All that can be moved',[the latter] acquires possession even of the lower millstone.[27] The question. [however]. was raised: Is a slave regarded as real estate or as movables![28] — R Aha son of R. Awia said to R. Ashi, Come and hear: He who sold a town has [also] sold [its] houses, ditches and caves, [its] bath houses, olive presses and irrigation works, but not the movables [that it contains]. In the case, however,[29] where he said, 'It and all that it contains', all its contents,[30] even if it consisted of[31] cattle or slaves, are sold.[32] [Now.] if it is granted [that slaves are] like movables, one can well understand why they are not included in the sale in the

first [case];[33] if, however, it is assumed [that] they are like real estate, why are they not included in the sale? — What, then, [is it suggested, that] they are like movables? Why 'even'?[34] All, however, that can be said in reply[35] [is that] movables which [can] move [of themselves][36] are different from movables that [can] not move;[37] so also it may be said[38] [that slaves] are like real estate [but that] real estate that moves is different from real estate that does not move.[39]

Rabina said to R. Ashi, Come and hear:[40] If one gave all his property to his slave, in writing, [the latter] goes forth [as] a free man. [If] he left [for himself] any land whatsoever [the slave] does not go forth [as] a free man. R. Simeon said: [The slave] is always free unless [the master] said, 'All my possessions are given to my slave X, except a ten thousandth part of them'. And R. Dimi b. Joseph said in the name of R. Eleazar: Movables in the case of a slave are regarded as a reservation,[41] but movables in the case of a kethubah are not regarded as a reservation.[42] And Raba asked R. Nahman, 'What is the reason?' [To which the latter replied.] 'A slave is [regarded as] movables, and [in the case of] movables,[43] movables[44] are regarded as a reservation; the kethubah of a woman, however, is [payable from] real estate,[45] and [in the case] of real estate, movables[44] [are] not [regarded as] a reservation.[46]

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(1) Though this Mishnah speaks only of 'land', 'movables' are included.

(2) Lit., 'they made'.

(3) If a person allotted to his wife a share in his lands when he distributed them to his sons, she loses thereby the claims of her kethubah (v. supra 132a). If, however, he gave her a share in movables only. her rights are not impaired.

(4) From the fact that, in the case of a slave, 'movables' are regarded as 'land', though the latter term only is used, it follows that the expression 'land' may include movables; how, then, could R. Joseph urge that since our Mishnah spoke of 'land', movables could not have been included?!

(5) In the case of a slave.

(6) V. Glos.

(7) V. p. 324. n. 8.

(8) Lit., property which has no security , i.e., from which creditors cannot collect their debts.

(9) Confirming the sale of the land.

(10) By performing some kind of work on the estate. V. Supra 42a; 77b.

(11) In this case only, for the reason given, R. Joseph maintains, could the term 'land' include movables. Elsewhere, however, 'land' implies real estate only.

(12) Who objected (supra, 149b) to the interpretation that 'some' in our Mishnah meant, 'sufficient for one's maintenance'. V. Rashb.

(13) כל שהוא

(14) Lit., 'it has not'.

(15) Lit., 'shear'.

(16) Lit., 'maneh and a half' (bis).

(17) Which has to be given to the priest. Deut. XVIII, 4.

(18) Hul. 137b.

(19) Lit., 'and we said'.

(20) Which shows, contrary to R. Joseph's argument, that even where the expression, 'any (quantity) whatsoever' is used, a minimum is required

(21) Lit., 'said'.

(22) A maneh and a half per ewe.

(23) A fifth of the first Tanna's quantity.

(24) Elsewhere, however, where 'any quantity whatsoever' (kol shehu), is mentioned no minimum is required. Hence R. Joseph's objection (supra 149b), against the interpretations of the elders is well founded.

(25) Since It is sometimes removed from its place, it is included in the movables.

(26) Which is always kept in its place on the ground.

(27) It can be removed from its place since it is not actually fixed to the ground.

(28) Though, as regards Biblical laws, slaves are regarded as 'land' or 'real estate' as, e.g., in the case of oaths and

acquisition by means of money, deed and possession, the question here is whether in the course of ordinary conversation people describe a slave as ‘real estate’ or as ‘movables’.

(29) Lit., ‘and at the time’.

(30) Lit., ‘all of them’.

(31) Lit., ‘they were in it’

(32) Supra 88a.

(33) Where the town only was sold, and all movables were, consequently, excluded.

(34) ‘Even’, suggests that they are not in fact like ‘movables’.

(35) Lit., ‘but what have you to say’.

(36) I.c., ‘slaves’.

(37) And this is the reason why ‘even’ was used.

(38) Lit., ‘you may even say’. in relation to the first case.

(39) Hence slaves who can move about could not have been in the mind of the person who sold ‘a town’ that cannot move. In other cases, however. where no particular kind of real estate was mentioned, slaves also may have been included, while in the ease where only ‘movables’ were specified, slaves may have been excluded.

(40) V. supra 149b, for notes on the following citation.

(41) As the slave does not gain his freedom where his master has reserved some real estate so he does not gain his freedom when his master reserved some movables.

(42) v. p. 647. n. 8.

(43) I.e., when the master reserved for himself ‘any movables’ whatsoever.

(44) Slaves.

(45) A woman can collect her kethubah from real estate only (v. infra 150b) and not from movable objects.

(46) It has thus been proved from R. Nahman's statement that a slave is regarded as movables; and not as real estate.

Talmud - Mas. Baba Bathra 150b

He[1] replied to him:[2] We explain this[3] as being due to [the fact[4] that the freedom] certificate is not complete.[5]

Raba said in the name of R. Nahman: [In] five [cases] it is necessary[6] that all one's possessions shall be given away in writing;[7] and they are the following:[8] [The case of a] dying man; one's slave; one s wife, one's sons; [and] a woman who keeps her husband away from her estate.[9] ‘A dying man’ — for we learnt: IF A DYING MAN GAVE ALL HIS PROPERTY, IN WRITING, TO OTHERS, AND LEFT [FOR HIMSELF] SOME [PIECE OF] LAND, HIS GIFT IS VALID. [IF, HOWEVER], HE DID NOT LEAVE [FOR HIMSELF] SOME [PIECE OF] LAND, HIS GIFT IS INVALID.[10] ‘One's slave’ — for we learnt: If one gave all his property to his slave, in writing. [the latter] goes forth [as] a free man. [If] he left [for himself] some lands [the slave] does not go forth [as] a free man.[11] ‘One's wife’ — for Rab Judah said in the name of Samuel: If [a dying man] gave all his property to his wife, in writing. he [thereby] only appointed her administratrix.[12] ‘One's sons’ — for we learnt: If [a person] assigns all his property to his sons in writing, and he has assigned [also] to his wife [a piece of] land of any size whatsoever, she loses [the claims of] her kethubah.[13] ‘A woman who keeps her husband away from her estate’ — for a Master said: A woman who [desires to] keep [her husband] away [from her estate],[14] must give away all her estate, in writing.[15] In all these [cases][16] movables are [also regarded as] a reservation,[17] except [in that] of a kethubah since [in respect to it] the Rabbis have enacted [that a woman has a claim] upon lands, [but] have not provided [her with the right of collecting it][18] from movables.[19]

Amemar said: Movables that are entered in the kethubah and are [also] available, are [regarded as] a reservation.[20]

[If a person][21] said, ‘My property [shall be given] to X’, slave[s] are included,[22] for we learnt: If one gave all his property to his slave in writing, [the latter] goes forth [as] a free man.[23] Land is

described [as] property; for we learnt: Property which has a security[24] may be acquired by means of money, deed and possession.[25] A cloak is called property, for we learnt:[26] And that which has no security[27] can only be acquired by means of pulling.[28] Money is called property; for we learnt: And that which has no security may be acquired in conjunction with property which has a security. [bought jointly with it,] by means of money, deed and possession;[29] as in the case of[30] R. Papa [who] had a [money claim of] twelve thousand zuz at Be-Huzae, [and] he passed them over into the possession of R. Samuel b. Aha by virtue of the threshold of his house, [and] when the latter came [back] he went out to meet him as far as Tauak.[31] A deed is called property; for Raba b. Isaac said: There are two [kinds] of deeds. [If a person says.] 'Take possession of the field on behalf of X, and write for him the deed', he may withdraw the deed but not the field. [If. however, he says. 'Take possession of the field] on condition that you write for him the deed', he may withdraw both the deed and the field. But R. Hiyya b. Abin said in the name of R. Huna: There are three [kinds of] deeds. Two have just been described. [And the] third is one which the seller writes before [the sale] in accordance with the law we have learnt that

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(1) R. Ashi.

(2) Rabina.

(3) The reason why the reservation of some movables deprives the slave of his freedom.

(4) And not to use reason given by R. Nahman.

(5) Lit., 'cut'. In order that the slave may procure his freedom it is essential that the master should present him, with a writ 'of emancipation which definitely severs (cuts off) all connections and all relationships between master and slave. Where, however, the master reserves for himself in the writ something, whether in land or in movables, the separation between them effected by it is not complete. Furthermore, it may also be assumed that by that reservation the slave himself may have been intended. In other cases, however, R. Ashi maintains, it is possible, contrary to R. Nahman (Rashb.), or even R. Nahman would agree (R. Tam), that a slave is spoken of as 'land' or 'real estate'.

(6) Lit., 'until'.

(7) Otherwise, the laws stated are inapplicable.

(8) Lit., 'these'.

(9) Lit., 'causes to flee'.

(10) Supra 146b; Pe'ah III,7.

(11) V. supra 149b.

(12) Supra 131b (q.v. for notes). 144a, Git. 14a.

(13) Supra 132a, q.v. for notes, Pe'ah, ibid.

(14) I. e., that it shall not pass over into his possession by virtue of his becoming her husband.

(15) To a stranger, if she did so she may, on the death of her husband, or if divorced, reclaim her estate. Since no sane person would give away all his possessions and leave for himself nothing, it is obvious that the sole purpose of her presentation of the whole of her estate must have been the prevention of her husband from acquiring ownership thereof. IF, however, she left some portion of the estate for herself, this law does not apply, the gift is valid and she is not entitled ever to reclaim it.

(16) Lit., 'and in all of them', i.e. the four out of the five cases.

(17) Though in every case the term, 'land' was used.

(18) The kethubah.

(19) That is in accordance with Talmudic Law. In virtue, however, of a Gaonic enactment ascribed to R. Hunai (8th century), a Kethubah is payable also out of movables; v. Eben ha-'Ezer, 100. 1.]

(20) Because from such movables a kethubah may be collected as from real estate, v. Keth. 55a. If the husband, therefore, reserved these for her, she loses her rights to the kethubah as if he had reserved for her real estate.

(21) Either a dying man, or one in good health where symbolic acquisition took place.

(22) Lit., 'is called property'.

(23) Supra 149b.

(24) I.e., land.

(25) Kid. 26a.

(26) The conclusion of the previous citation, loc. cit.

(27) Movables, such as garments.
(28) V. Glos., Meshikah.
(29) Kid., l.c.
(30) Lit., 'that'.
(31) Supra 77b, q.v. for notes. The case of R. Papa quoted as an example of 'property which has no security', clearly proves that money is also called 'property'.

Talmud - Mas. Baba Bathra 151a

a deed may be written for the seller though the buyer is not with him. [In this case,] as soon as [the buyer] takes possession of the ground he acquires [also] the deed, irrespective of the place in which it is kept. And this accords with what we have learnt [that] movable property may be acquired with landed property by means of money. deed and possession.[1] Cattle are called property; for we learnt: If a person consecrated his property[2] which contained cattle suitable [as sacrifices] for the altar; males are to be sold[3] for[4] burnt offerings, and females are to be sold for[5] peace offerings.[6] Birds are called property; for we learnt: If a person consecrated his property which contained things suitable [for sacrifices] for the altar, [such as] wines, oils and birds [etc.].[7] Phylacteries are called property; for we learnt: If a person consecrated his property, [his] phylacteries [also] are taken away[8] from him.[9]

The question was raised: What [is the law in the case of] a scroll of the Law; is [it] not [regarded as] property, since It is unsalable because it is prohibited to sell it, or, perhaps. since it may be sold in order to study Torah or to take a wife,[10] it is [regarded as] property? — This is undecided.

(Mnemonic:[11] Zutra, the mother of Amram of two sisters, R. Tobi and R. Dimi and R. Joseph.)

The mother of R. Zutra b. Tobia gave her property in writing. to R. Zutra b. Tobiah, because she intended to marry R. Zebid.[12] She [duly] married, but was [subsequently] divorced. She [thereupon] appeared before R. Bibi b. Abaye.[13] He said: [She made a gift of her property] because she desired to marry[14] and, behold she married.[15] R. Huna the son of R. Joshua said unto him, 'Because you are [yourselves] frail [beings] you speak frail words'.[16] Even according to him who said [that a gift given by] a woman who wished to keep it away from her future husband is acquired [by the recipient], this law is only applicable[17] [to a case] where [the woman] did not declare her reason. Here, however, she has [specifically] declared that [she made the gift] because she [wished] to marry. and, surely. [though] she married, she was [now] divorced.[18]

The mother[19] of Rami b. Hama gave her property in writing to Rami b. Hama, in the evening; [but] in the morning she gave them in writing to R. 'Ukba b. Hama. Rami b. Hama came before R. Shesheth who confirmed him in the possession of the property. R. 'Ukba b. Hama, [however]. went to R. Nahman who [similarly] confirmed him in the possession of the property. R. Shesheth [thereupon] appeared before R. Nahman [and] said unto him, 'what is the reason [that] the Master has confirmed R. 'Ukba b. Hama in possession? Is it because she retracted? Surely she died'![20] He[21] replied unto him: Thus said Samuel, 'Wherever a person may retract if he recovered,[22] he may [also] withdraw his gift'.[23] May it be suggested[24] that Samuel said [this[25] in the case only where the withdrawal was] for himself; did he, [however], say [this[25] in the case where the withdrawal was in favour] of another person?[26] He[27] replied unto him,: Samuel distinctly stated, 'whether for himself or for another'.

The mother of R. Amram the pious had a case[28] of notes [of indebtedness]. While she was dying she said, 'Let it be [given] to my son Amram'. His brothers appeared before R. Nahman [and] said to him, 'Surely he[29] did not pull[30] [the case of documents]'! He replied unto them: The instructions of a dying person [are regarded legally] as written and delivered.[31]

The sister of R. Tobi b. R. Mattenah gave her possessions, in writing. to R. Tobi b. R. Mattenah in the morning. In the evening, Ahadboi son of R. Mattenah came [and] wept before her, saying: Now [people will] say [that] one[32] is a scholar[33] and the other is no scholar. [So] she gave them in writing to him. He [subsequently] appeared before R. Nahman, [who] said unto him: Thus said Samuel, 'Wherever a person may retract if he recovers, he may [also] withdraw his gift'.[34]

The sister of R. Dimi b. Joseph had a piece of an orchard. Whenever she fell ill she transferred the ownership of it to him,

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(1) Supra 77a, q.v., for notes.
(2) For the purposes of Temple repair.
(3) V. Shek. IV, 7: and cf. Bah a Rashb.
(4) Lit., 'For the requirements'. i.e., to persons who require burnt-offerings.
(5) Cf. previous note.
(6) Shek. IV, 7, Zeb. 150a, Tem. 20a, 31b.
(7) Shek. IV, 8.
(8) So R. Gersh. According to Rashb., 'they estimate for him', put them up to auction so that he might redeem them.
(9) 'Ar. 23b, B.K., 102b.
(10) Meg. 27a.
(11) The Following are key-words used as an aid in the recollection of the ensuing incidents.
(12) Who would, otherwise, have acquired the ownership of her property through their marriage. Cf. supra 150b.
(13) To claim the return of her property.
(14) When she presented the gift she specifically mentioned that it was made on account of her intended marriage.
(15) Since she carried out the intention upon which the gift depended, she can no longer reclaim the gift.
(16) Cf. supra 137b, q.v..for notes.
(17) Lit., 'these words'.
(18) As the reason for the making of her gift has now disappeared, she is entitled to the return of her property.
(19) Who was on her death-bed.
(20) A dying person who gave away all his property to another may withdraw it only if he recovers. Since this woman, however, died, her gift to Rami should remain valid as the gift of a dying person which cannot be withdrawn.
(21) R. Nahman.
(22) I,e., in the case where he gave away all his possessions.
(23) Even if he did not recover. Hence, in this case, the dying mother was within her rights when she, withdrawing the gift from Rami, gave it to R 'Ukba. The estate, therefore, rightly belonged to the latter.
(24) Lit 'say'.
(25) That a dying person may withdraw a gift he made.
(26) As in this case where the mother did not withdraw the estate for herself but for R.'Ukba.
(27) R. Nahman.
(28) מלוגא , (root, מלג , pluck), 'a bag made of hairless skins', From which the hair was plucked.
(29) R. Amram.
(30) And since there was no 'pulling', (meshikah v. Glos.), there was no legal acquisition of the bequest.
(31) Hence, R. Amram acquired possession of the bequest even though it had not been actually delivered to him.
(32) Lit 'master'.
(33) Since the estate was given to him.
(34) V., supra notes 3 and 4.

but as [soon as] she recovered she withdrew. On one occasion she fell ill and sent [word] to him, 'Come [and] take possession'. He replied,[1] 'I have no desire'. [Thereupon] she [again] sent [word] to him, 'Come [and] take possession in whatever manner you desire'.[2] [Then] he went,left for her

[some portion of the intended gift][3] and [symbolic] acquisition from her was [also] arranged.[4] As she [again] recovered she retracted [and] came before R. Nahman.[5] He sent for him.[6] He, [however,] did not come, saying, 'Why should I come? Surely, [some portion of the estate] was left to her and [symbolic] acquisition from her [also] took place.'[7] [Thereupon] he sent to him, [the following message]: 'If you do not come I will chastise you with a thorn that causes no blood to flow'.[8] He[9] asked the witnesses how the incident had occurred, [and] they told him [that when she sent for her brother] she exclaimed thus: 'Alas that I am dying'.[10] He said unto them: If so, the disposal[11] [of her estate was] due to [her expectation of] death, and he that gives instructions owing to [his expectation of] death, may retract.

It was stated: [In the case where] a dying man presented a part[12] [of his estate], Raba[13] said in the name of R. Nahman: It is like the gift of a man in good health and requires [symbolic] acquisition. The Rabbis reported the following,[14] in the presence of Raba, in the name of Mar Zutra,son of R. Nahman, who reported in the name of R. Nahman: It is like the gift of a man in good health; and it is like the gift of a man who is dying. 'It is like the gift of a man in good health', in that if he recovered he [can] not retract; and 'it is like the gift of a man who is dying', in that no [symbolic] acquisition is required.[15] Raba said unto them: Did I not tell you [that] you shall not hang empty jars on R. Nahman?[16] Thus said R. Nahman: It is like the gift of a man in good health and requires [symbolic] acquisition.

Raba raised an objection against R. Nahman: [IF] HE LEFT [FOR HIMSELF] ANY LAND WHATSOEVER, HIS GIFT IS VALID.[17] Does not [this refer to the case] where no [symbolic] acquisition from him took place?[18] — No; where symbolic acquisition did take place. If so.explain the second clause: [IF. HOWEVER] HE DID NOT LEAVE [FOR HIMSELF] ANY LAND WHATSOEVER, HIS GIFT IS INVALID![17] Now if, [as you assert, our Mishnah refers to the case] where symbolic acquisition took place.[18] why is his gift invalid? — He replied unto him: Thus said Samuel, 'If a dying man gave all his property, in writing, to strangers, although [symbolic] acquisition took place,[19] he may retract if he recovered, because it is known that he disposed[20] [of his estate] only on account of [his expectation of] death.

R. Mesharsheya raised an objection against Raba: The mother of the sons of Rokel once fell ill and she said, 'Let my brooch[21] be given to my daughter', and it was worth twelve maneh,' and when she died they fulfilled her words?[22] — There [it was a case] of an Instruction [clearly] given owing to [the expectation of] death.[23]

Rabina raised an objection against Raba: If a person said, 'Give this bill of divorce to my wife', or, '[Give] this writ of emancipation to my slave', and he died, it must not be delivered after [his] death.[24] [If. however, he said.] 'Give a maneh to X, and he died, it is to be given [to X] after [the testator's] death![25] — And what reason is there to assume that no symbolic acquisition took place?[26] — [Because it[27] is obviously] similar to a bill of divorce;[28] as a bill of divorce is not an object for [symbolic] acquisition.[29] so this[27] also [was not attended by] a symbolic acquisition![30] — There[31] also [it is a case] of one giving instructions [clearly] on account [of his expectation] of death. R. Huna the son of R. Joshua replied: Elsewhere, an Instruction [given] owing to [the expectation of] death requires [symbolic] acquisition. but the Mishnayoth mentioned refer [to the case][32] of one who distributed all his estate,[33] for in such a case it was given the same legal force as[34] the gift of a dying man.[35]

And the law is [that where] a dying man presented a part [of his estate].[36] [symbolic] acquisition is required although he [subsequently] died. [If. however] his instructions [concerning the gift] were due to [his expectation of] death, no [symbolic] acquisition is required. This, however, [only] when he died; [if] he recovered he [may] retract even though [symbolic] acquisition from him took place.[37]

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(1) Lit., ‘sent’.
(2) So that she shall not be able again to retract.
(3) In such a case the donor cannot withdraw, (Cf. our Mishnah, supra 146b.)
(4) Lit., ‘and they (i.e., witnesses) acquired from her’, by means of symbolic acquisition, on behalf of R. Dimi. Legal acquisition under such conditions prevents the testator from withdrawing the gift on recovery unless a specific declaration was made at the time making it evident that the presentation was due to the expectation of death.
(5) To reclaim her piece of orchard.
(6) Lit., ‘to him, come’.
(7) Cf. supra note 4.
(8) He would place him under the ban.
(9) R. Nahman.
(10) Lit., ‘that this woman is dying’.
(11) Lit., ‘she was instructing’.
(12) Lit., ‘a gift of. . .in part’.
(13) Cf.. Bah. a.l. Current texts read: ‘The Rabbis said it before Raba in the name of Mar Zutra the son of R. Nahman who said it in the name of R. Nahman: It is like the gift of a man in good health and it is like the gift of a dying man. It is like the gift etc.
(14) Lit., ‘they said it.’
(15) And if he died the recipient acquired its ownership .
(16) I.e. ‘do not attribute to him such absurd views’, v. supra p. 27. n. 2.
(17) Supra 146b.
(18) Lit., ‘where they (i.e.. a court of law or witnesses) did not acquire From him’, on behalf of the donee, by means of symbolic acquisition.
(19) Lit., ‘they took possession from his hand’. Cf. previous note but one.
(20) Lit., ‘instructed’, or (cf. Bah) ‘symbolic acquisition took place’, v. infra p. 660.
(21) כבינה , ‘brooch, ‘buckle’, or ‘a wrap that is pinned on’ (Jast.); [or ‘veil’, v. Krauss, op. cit. I, 188.]
(22) V. infra 156b. The brooch or wrap was certainly a gift of a portion only of the estate, and there was no symbolic acquisition! Had there been some legal form of acquisition, an expression other than ‘her words’ would have been used.
(23) I.e., she stated distinctly the reason of the gift she was making. An instruction given in such circumstances, if followed by the death of the testator, requires no symbolic acquisition whether a portion of, or all the estate was presented.
(24) Since a divorce or the liberation of a slave does not take effect until actual delivery of the respective documents has taken place, and by that time the husband or master is dead and be can neither divorce nor liberate.
(25) Git. 13a. Even though, apparently, there was no symbolic acquisition. How, then, can Raba maintain that such acquisition is required?
(26) Lit., ‘and from that that they did not acquire of him’. Cf. supra p. 656, n. 4.
(27) The disposal of the maneh.
(28) With which it was mentioned in the same context.
(29) Actual delivery of it being required.
(30) Cf. supra p. 656, n. 4.
(31) The case of the maneh.
(32) Lit., ‘and when those Mishnayoth were taught’.
(33) In which case no symbolic acquisition is required. [The words that follow do not occur in some MSS. and are best left out.]
(34) Lit., ‘they made it’.
(35) Which requires no symbolic acquisition.
(36) Lit., ‘a gift. . .in part’.
(37) Cf. supra p. 656, n. 4 and 5.

Talmud - Mas. Baba Bathra 152a

It was stated: [As to] the gift[1] of a dying man [in the deed of] which was recorded [symbolic] acquisition. the school of Rab in the name of Rab reported [that the testator] has [thereby] made him[2] ride on two harnessed horses;[3] but Samuel said: I do not know what decision to give on the matter. The school of Rab reported in the name of Rab, that he made him ride on two harnessed horses, for it is like the gift of a man in good health[4] [and] 'it is [also] like the gift of a dying man. 'It is like the gift of a man in good health', in that, if he recovered, he [can] not retract, [and] 'it is like the gift of a dying man' in that, if he said [that] his loan[5] [shall be given] to X, his loan [is to be given] to X.[6] Samuel, however, had said, 'I do not know what decision to give on the matter' since it is possible that[7] he decided not to transfer possession to him[8] except through the deed,[9] and no [possession by means of a] deed [may be acquired] after [the testator's] death.[10]

A contradiction was pointed out [between one statement] of Rab and another statement of his,[11] and [between one statement] of Samuel and another statement of his.[12] For Rabin sent in the name of R. Abbahu: Be [it] known to you that R. Eleazar had sent to the Diaspora in the name of our Master[13] [that] where a dying man said, 'Write[14] and deliver a maneh to X', and he died,[15] they must neither write [the deed] nor deliver [the maneh], because it is possible that [the testator][16] had decided not to transfer possession to him[17] except through the deed,[18] and no [possession by means of a] deed [may be acquired] after [the testator's] death.[19] And Rab Judah said in the name of Samuel [that] the law is that one may both write and deliver.[20] [Does not this present] a contradiction [between one statement] of Rab and another statement of his [and between one statement] of Samuel and another statement of his?[21] — There is no contradiction between the two statements of Rab.[22] One[23] [deals with the case] where symbolic acquisition took place;[24] the other[23] where no symbolic acquisition took place.[25] There is [also] no contradiction between the two statements of Samuel,[26] [because in the latter case the reference is to one] who [specifically] strengthened his[27] claims.[28]

R. Nahman b. Isaac sat behind Raba while Raba was sitting before R. Nahman when he addressed to him the [following] enquiry: Did Samuel say. 'since it is possible that he decided not to transfer possession to him except through the deed, and no [possession by means of a] deed [may be acquired] after [the testator's] death'? Surely Rab Judah said in the name of Samuel, 'If a dying man gave all his property, in writing, to strangers. although [symbolic] acquisition took place. he may retract if he recovered

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(1) That is where be distributed all his estate (Rashb.).

(2) The recipient.

(3) I.e., his claim has a double force. That of the gift of a dying man and that of legal acquisition.

(4) Owing to the symbolic acquisition that took place.

(5) Which someone owes him.

(6) Although the money was not, at the time, in his possession and the gift was not made in the presence of the three parties concerned (v. 144a).

(7) By the unnecessary mention of symbolic acquisition.

(8) The donee.

(9) And not merely by virtue of his instructions, being a dying man.

(10) Hence it was difficult for Samuel to give a decision on the matter. It may be added that the same difficulty would also arise even where no deed was written and symbolic possession was accompanied by verbal instructions only, or where a deed alone was written unattended by any symbolic acquisition. The mere Fact that the testator had recourse to the unnecessary symbolic form of acquisition raises the question whether his intention thereby was not to annul his first transfer (that of a dying man) and postpone until after his death the donee's acquisition of the gift. Had he wished him to acquire immediate possession there would have been no need For the additional symbolic acquisition. His mere word as a dying man would have done that. Once the possibility of postponement until after death is granted, the donee can no more acquire possession, because as soon as death had taken place the entire estate of the dead man had passed over into

the ownership of his legal heirs. (So Rashb.; v. however Tosaf. s.v. מתנת .)

(11) Lit., ‘on that of Rab’.

(12) CF. previous note.

(13) Rab.

(14) I.e., the deed.

(15) Before the deed was written or the maneh delivered to X.

(16) By his demand that a deed also be written which, since his mere verbal instruction as a dying man would have been sufficient, was unnecessary.

(17) The donee.

(18) CF. supra p. 658, n.10.

(19) Supra 135b, q.v. notes a.l. The legal force given to the word of a dying man extends only to monetary gifts but not to the delivery of a deed.

(20) It is assumed that the testator's request for a written document was for the purpose of strengthening the donee's claim; not to weaken it.

(21) In the report above it was stated that any unnecessary addition of a deed to the verbal instructions of a dying man was according to Rab assumed to be in favor of the donee and according to Samuel against him, while here the reverse is reported!

(22) Lit , ‘that of Rab upon Rab, there is no difficulty’.

(23) Lit., ‘that’.

(24) Lit , ‘where they acquired of him’. In such a case the testator obviously wished to improve the donee's claims.

(25) CF. previous note. It is possible, therefore, that the testator desired acquisition of the gift effected by means of a deed and since he died the deed is no longer of any avail.

(26) Cf. supra n. 12.

(27) The donee's.

(28) Lit., ‘power’; by the inclusion of the formula given below.

Talmud - Mas. Baba Bathra 152b

because it is known that the [symbolic] acquisition took place[1] only on account of [his expectation of] death’![2] He answered him[3] by [a wave of] his hand and remained silent.[4] When he rose, R. Nahman b. Isaac asked Raba, ‘What did he indicate to you?’ [Raba] replied to him,’ That Rab Judah's report refers to the case] where [the testator] strengthened the donee's claims.’[5] In what manner [is it indicated that one wished to] strengthen the donee's claims? — R. Hisda replied: [By including in the deed the formula]. ‘And we[6] acquired from him[7] in addition to this [presentation of the] gift.’[8]

[It is] obvious [that where a dying man] gave [all his estate] in writing to one man[9] and [subsequently] to another[10] the [law is the] very same as [that which] R. Dimi enunciated when he came, [vis., one] will annuls [another] will.[11] [If. however.] he wrote [a deed of the gift] and handed[1] it[12] to one[13] and [subsequently] wrote [a deed of the gift] and handed[1] it[2] to another,[13] Rab said: The first acquires [its] ownership; while Samuel said: The second acquires [its] ownership. Rab said, ‘the first acquires [its] ownership’ for[14] it is like the gift of a person in good health;[15] while Samuel said, the second acquires [Its] ownership’, for it is like the gift of a dying man.[16]

But surely their[17] difference of opinion on the [principle] has [already] once been expressed in [the case of] the [deed of a] gift of a dying man, in which symbolic acquisition was entered![18] [Both are] required. For if [their dispute] had been stated [in connection] with the first case,[19] [it might have been assumed that] in that [case only] Rab adheres[20] to [his opinion], because symbolic acquisition took place;[21] but in this case,[19] where no symbolic acquisition took place, it might have been suggested [that] he agrees with Samuel.[22] And if [their dispute] had been stated [in connection] with the second case,[19] [it might have been assumed that] in that [case only] Samuel adheres[20] to [his opinion];[23] but in that [case]’[24] it might have been suggested [that] he agrees with Rab. [Hence both

were] required.

At Sura they taught as above.[25] At Pumbeditha they taught as follows.[25] R. Jeremiah b. Abba said: [The following enquiry] was sent from the academy[26] to Samuel. 'Will our Master instruct us [as to] what [is the law in the case where] a dying man gave all his estate to strangers, in writing; and symbolic acquisition [also] took place,[27] [but was not entered in the deed]?'[28] He replied[29] to them: 'After [symbolic] acquisition no withdrawal is of any avail'.[30]

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(1) Cf. p. 656. n. 6.

(2) From this it follows that if the testator did die the donee acquires possession after the death of the testator though a deed was written. How, then, could it be said in the name of Samuel that where a deed was written there can be no acquisition after death?

(3) LIt., 'showed.' 'told'.

(4) [Or 'he (Raba) remained silent', having understood what R. Nahman meant to signify by the wave of his hand.]

(5) Lit., 'his power'. In such a case the donee acquires possession after death even where the testator ordered the writing of a deed.

(6) I.e., 'witnesses'.

(7) I.e.,From the testator on behalf of the donee, by means of symbolic acquisition.

(8) Supra 136a.

(9) Lit., 'this'.

(10) Lit., 'and he wrote to this'.

(11) Supra 135b. Hence the second donee acquires the ownership of the gift.

(12) Lit., 'caused him to merit', i.e., to acquire the right of 'ownership', by means of delivering to him the deed.

(13) Lit., 'this', presenting to him all his estate.

(14) Owing to the delivering of the deed to the donee, which Rab holds has the same effect as symbolic acquisition.

(15) Which cannot be withdrawn.

(16) And since it can be withdrawn if the testator recovered, it may also be withdrawn while he is still on his deathbed. Hence it was within the rights of the testator to present it to the second who, consequently, acquires its ownership.

(17) Rab and Samuel.

(18) Supra 152a top. Why, then, should they express the same principles again?

(19) Lit., 'in that',

(20) Lit., 'said'.

(21) Lit., 'they acquired for him'. And since the donee's claim has a double force, that of the gift of a dying man and that of symbolic acquisition, the gift cannot be withdrawn.

(22) Hence the second case was necessary.

(23) Since there was no symbolic acquisition.

(24) Where symbolic acquisition did take place.

(25) Lit,, 'thus',

(26) [Or, 'from the school of Rab', after Rab's death in 247.]

(27) Cf. supra p.656,n.4 and 5.

(28) And subsequently the estate was presented to a second person. (Cf. R. Gersh.) The question is whether, under such circumstances, the first or the second acquires the ownership of the estate.

(29) Lit., 'sent'.

(30) Lit., 'there is nothing'; and the first donee acquires the legal ownership of the gift. Samuel's view, supra, that the existence of a deed in addition, to symbolic acquisition may imply a desire, on the part of the testator to postpone until after his death the donee's acquisition of the gift does not apply to this case, since here symbolic acquisition had not been entered in the deed itself. (CF. R. Gersh.). [V. however' Rashb., who refers the question back to the case of זיבה where the deed was delivered to the first donee.]

Talmud - Mas. Baba Bathra 153a

They understood him to mean [that] this decision[1] [applied only to the case of withdrawal in favour]

of a stranger but not for himself. R. Hisda, [however]. said unto them: When R. Huna came from Kafri[2] he explained it [to mean]. 'whether for himself or for others'.

There was a certain [man][3] from whom [symbolic] acquisition was taken, who came before R. Huna.[4] [The latter] said, 'What can I do for you [in such a case] where you did not transfer possession as [other] people do?'[5]

There was a certain [deed of] a gift[6] in which there was entered,[7] 'in life and in death'.[8] Rab said: Behold it is [to be treated] like the [usual] gift of a dying man;[9] and Samuel said: Behold it is [to be treated] like the gift of a man in good health.[10] Rab said, 'Behold, it is like the gift of a dying man — since it contains the entry. 'in death', [the testator] meant [thereby] the donee [to acquire possession] after death, while the insertion,[11] 'in life', was just for good luck;[12] and Samuel said, 'Behold, it is like the gift of a man in good health' — since it contained the entry, 'in life', [the testator thereby] meant [to transfer possession] while he was alive, while his entry[13] of, 'and in death', [is only] like one saying. 'from now and for evermore'.

The scholars of Nehardea stated: The law is in accordance with [the decision] of Rab.

Raba said: If, however, the deed contains the entry.[14] 'from life', [the donee] acquires [immediate] possession.[15] Amemar said: The law is not according [to the view] of Raba. Said R. Ashi to Amemar: [Is not this] obvious, seeing that the scholars of Nehardea distinctly said [that] the law was in accordance with [the decision] of Rab! — It might have been assumed [that where the entry was]. 'from life', Rab agrees,[16] hence it was necessary to teach us [otherwise].

There was a certain [person] who once came [with an enquiry][17] to Nehardea before R. Nahman, [but] he sent him to Shumtamya before R. Jeremiah b. Abba,[18] declaring.[19] 'This is Samuel's province;[20] how could we act in accordance with [a decision] of Rab!'[21]

There was a certain [woman] who once came before Raba [to ask for his ruling].[22] [As] Raba gave his decision[23] in accordance with his traditional [teaching][24] she worried him.[25] He [consequently][26] said to R. Papa. the son of R. Hanan, his scribe: Go, write for her [a statement [but add to it,'He may hire at their expense[27] or deceive them'.[28] She[29] called out, 'May your[30] ship sink! Are you trying to fool me?' Raba's clothes were soaked in water;[31] and yet he did not escape the drowning.

MISHNAH. IF HE HAS NOT ENTERED IN IT[32] [THAT] HE WAS LYING SICK, [AND] HE [NOW] PLEADS, 'I WAS LYING SICK',[33] AND THEY PLEAD, 'YOU WERE IN GOOD HEALTH,[34] HE MUST PRODUCE EVIDENCE THAT HE WAS A DYING MAN;[35] [THESE ARE] THE WORDS OF R. MEIR. THE SAGES, HOWEVER, SAY: HE WHO CLAIMS FROM THE OTHER[36] MUST PRODUCE THE PROOF.

GEMARA. Once a [deed of a] gift contained the entry, 'As he was lying sick in his bed', but not,[37] 'And as a result of his illness he departed from the world'.[38]

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(1) Lit 'these words'.

(2) [A place in Babylonia, south of Sura. R. Hisda held a school there before his appointment as Head of the Academy at Sura.] Current texts read, 'Kufri', perhaps 'Cyprus'.

(3) Who, while on his death-bed, had presented his estate to a stranger.

(4) Desiring, on recovery, the return of his estate.

(5) Lit., cause to acquire'. Had he presented his estate without allowing symbolic acquisition to take place be could retract on recovery. After symbolic acquisition one has no right to withdraw.

(6) Of a dying man who presented all, or part of his estate, and 'symbolic acquisition' was entered on the deed.

(7) Lit., 'written',

(8) ‘The gift is to belong to the donee’,
(9) Possession of which by the donee is not acquired until after the death of the testator who, if he recovers, may withdraw the gift.
(10) Possession of which is acquired immediately, and no withdrawal is possible even if the gift consisted of the testator's entire estate.
(11) Lit., ‘and that that he wrote’.
(12) Lit., ‘a mere omen of life’ (v. Rashb.)
(13) V. p. 662, n, 12.
(14) Lit., ‘it is written therein’.
(15) ‘From life’ (unlike, ‘in life’) is regarded as a definite indication that the testator desired to transfer possession while he was still alive, i.e., at once.
(16) That, unlike ‘in life’, possession is acquired at once as if the gift had been made by a man in good health.
(17) To ask For R. Nahman's ruling on the legality of withdrawing a gift in the deed of which was enacted ‘in life and in death’,
(18) A disciple of Rab.
(19) Lit., ‘he said’,
(20) Samuel was the head of the College at Nehardea and a native of that town,
(21) Though the Nehardean scholars themselves decided the law to be in accordance with Rab's view, R. Nahman did not consider it proper to give a ruling contrary to Samuel's view in the place where Samuel had enjoyed supremacy and preferred to send the case to a place under Rab's jurisdiction.
(22) On a deed of a gift in which she wrote ‘from life’, and now wished to withdraw the gift.
(23) Lit., ‘did’.
(24) Telling the woman that she was not entitled to withdraw the gift.
(25) She demanded a written statement that (in accordance with the view of Rab) she was entitled to withdraw the gift.
(26) To put an end to the disturbance she created.
(27) Lit., ‘upon them’.
(28) This is an extract from a Mishnah (B.M. 75b), dealing with workmen who broke the arrangements entered into with their employers. ‘Deceive them’, was expressly to be inserted in order to indicate that the statement dictated by Raba was to be of no value whatsoever to the woman, its only object being to make her believe that it contained a decision in her favour and that, consequently, the disturbance she created might come to an end.
(29) Perceiving the subterfuge.
(30) Lit., ‘his’.
(31) To ward off thereby the imprecation. IF the curse was to be fulfilled the soaking of the clothes might form a substitute For the drowning of their wearer or of any of his possessions.
(32) In the deed of a gift be made of his entire estate.
(33) At the time the gift was made and, consequently, be claims his right to retract.
(34) And that, consequently, he cannot retract.
(35) When he made the gift. If no such proof is forthcoming, the donee is entitled to the gift.
(36) The donee. The gift is regarded as being in the possession of its original owner until proof to the contrary is produced.
(37) As was customary to enter in a deed of a gift that was written after the death of the testator, to indicate that the gift was made by a dying man and that, having died from that same illness, he did not retract.
(38) Lit., ‘to the house of his world’, i,e., eternity.

Talmud - Mas. Baba Bathra 153b

Rabbah said: Behold, he is dead and his grave indeed proves this.[1] Abaye [however] said to him: [How] now! If [in the case of] a ship [that sank], where most of the passengers[2] are doomed to perish, [we] apply to the victims[3] the restrictions of living[4] men and the restrictions of dead[5] men, how much more [ought we to do] so[6] [in the case of] sick men, of whom most do recover.

R. Huna, the son of R. Joshua. said: In accordance with whose [view] may that reported statement

of Rabbah be justified?[7] In accordance with [the view of] R. Nathan. For it was taught:[8] Who takes away from whom?[9] He[10] takes away of their[11] possession without proof, but they [can] not take away of his possession except by [the production of] proof; these are the words of R. Jacob. R Nathan, [however]. said: If he[10] was in good health,[12] he must produce proof that [at the time the gift was made] he was lying sick;[13] if he was lying sick,[12] they[11] must produce proof that [at the time the gift was made], he was in good health.

R. Eleazar said: As regards [Levitical] uncleanness also [they[14] differ in their views on the same principles][15] as in [this] dispute. For we learnt: A [walled] valley in the summer [is subject to the laws of] a private domain in respect of the Sabbath[16] and [to those of] a public domain[17] in respect of [Levitical] uncleanness.[18] In the rainy season[19] it is regarded as a private domain[20] in both respects.[21]

Raba said: This[22] has reference only[23] [to the case] where a winter has not passed over it,[24] but [where] a winter has passed over it, [it is regarded as] a private domain in all respects.[25]

THE SAGES, HOWEVER, SAY: HE WHO CLAIMS FROM THE OTHER HAS TO PRODUCE THE PROOF.

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(1) Lit., 'upon him'. Since there is no evidence that the testator recovered from the illness during which be made the gift, the fact that be is dead is sufficient ground for the assumption that be died from that illness.

(2) Lit., 'most of whom'.

(3) Lit., 'upon them'.

(4) If among the victims there was, for example, an Israelite who had married the daughter of a priest, it is assumed that he remained alive, and his wife is, consequently. forbidden to eat of the heave-offering. Had it been assumed that her husband was dead she, as the daughter of a priest, would have regained her right to eat of the heave-offering (cf. Git. 28b).

(5) If a priest who had married the daughter of an Israelite (and who had, thereby. conferred upon her the right of eating of the heave-offering) was among the passengers, it is assumed that he is dead, and his wife is henceforth deprived of the privilege he had conferred upon her (cf. Git. ibid.).

(6) To assume that the testator recovered from the illness during which be made the gift.

(7) Lit , 'goes'.

(8) In the case of a deed wherein the gift is recorded but in which there is no entry as to whether the donor was sick or in good health at the time the gift was made.

(9) The donor From the donee or vice versa,

(10) The donor.

(11) The donees.

(12) At the time the case is heard in court,

(13) So that the gift was made by a dying man.

(14) R. Jacob and R. Nathan.

(15) Whether a decision is to be formed on the basis of the conditions in which a person or an object is found at the time the decision had to be given or on the basis of the condition in which be or it was presumed to be.

(16) And nothing may be removed from the valley into a public domain and vice versa.

(17) Since in the summer the crops have been removed from it, and the public use it as a thoroughfare.

(18) Any doubtful case of uncleanness in a public domain, is treated as 'clean'.

(19) When the valley is sown.

(20) Because the public abstain from using it on account of its growing crops.

(21) Lit 'to here and to here'; as regards the Sabbath (v. supra p. 665, n.15), and as regards 'doubtful Levitical uncleanness' which in a private domain is regarded as unclean. Consequently. if a person entered the valley and is not certain whether he entered it in summer or in winter he should, according to R. Nathan, be regarded as clean if his case was dealt with by the court in the summer, and as unclean if dealt with in the winter. According to R. Jacob, who does not take into consideration the time the decision is given, the person would always be regarded as clean whatever the

season in which his case is dealt with (since a person is presumed to be usually clean), unless witnesses testified that they saw him enter the valley in winter.

(22) That a walled valley in the summer season is subject to the laws of a public domain in respect of Levitical uncleanness.

(23) Lit., 'they did not teach but',

(24) Since the time when a wall was put round it.

(25) Even in the summer season. Once it has acquired the status of a private domain it retains that status permanently.

Talmud - Mas. Baba Bathra 154a

In what [manner is] proof [produced]?[1] — R, Huna said: Proof [is produced] by witnesses.[2] R. Hisda and Rabbah, son of R. Huna, said: Proof[3] [is produced] by the attestation of the deed.[4] R. Huna said, 'Proof [is produced] by witnesses' [for he holds that] they[5] differ on [the same] principles[6] [as those] of R. Jacob and R. Nathan;[7] (Mnemonic: Meniah)[8] R. Meir [is of the same opinion] as R. Nathan[9] and the Rabbis[10] [are of the same opinion] as R. Jacob.[11] R. Hisda and Rabbah, son of R. Huna, said, 'Proof [is produced] by the attestation of the deed,' [because] they differ [on the question whether, in the case] where a person admitted that he wrote a deed, [independent] attestation[12] is required;[13] for R. Meir is of the opinion [that] where one admitted that he wrote a deed,[14] no [independent] attestation is required[15] and the Rabbis[16] are of the opinion [that], where one admitted that he wrote a deed, [independent] attestation [also] is required.[17]

But [did] they[18] [not], however, once dispute on this [question]?[19] For it was taught [in a Baraitha]: They[20] are not believed [so far as] to invalidate it;[21] these are the words of R. Meir.[22] But the Sages say: They are believed![23] — [Both are] required. Because if [their] dispute] had been stated [in connection with] that [alone],[24] [it might have been assumed that] in that [case only] did the Rabbis say [that attestation of the witnesses was necessary] because the witnesses are all-powerful and they themselves impair [the validity of] the document,[25] but here,[26] where all [the force of the document] does not depend on him,[27] it might have been assumed [that he is] not [believed].[28] And if [their dispute] had been stated in [connection with] this [alone], [it might have been assumed that] in this [case only] did R. Meir say [that the donor is not believed], but in that [case] it might have been assumed [that] he agrees with the Rabbis. [Hence both were] required.

Rabbah likewise stated [that the] proof[29] is by witnesses. Abaye said unto him: What is the reason?[30] If it be said[31] 'Because in all [deeds][32] it is entered,[33] "As he was [able] to walk about[34] in the street", and in this [deed] no such entry is made,[35] [therefore] it is to be concluded [that when the gift was made] he was a dying man', [it may be retorted], 'On the contrary! Since in all [deeds][36] it is entered,[33] "As he was lying sick in his bed,", and [in] this [deed] no such entry is made,[35] [therefore] it is to be concluded [that when he made the gift] he was in good health!' — As one inference is just as reasonable as the other,[37] [replied Rabbah,] the money[38] is to remain in the possession of its [original] owner.[39]

And [the following are] in the [same] dispute.[40] For R. Johanan said: Proof [must be produced] by witnesses; and R. Simeon b. Lakish said: Proof [consists] in the attestation of the deed. R. Johanan pointed out [the following] objection against R. Simeon b. Lakish: It once happened at Bene-Berak that a person sold his father's estate, and died. The members of the family, thereupon,[41] protested [that] he was a minor at the time of [his] death.[42] They[43] came [to] R. Akiba and asked whether the body might be examined.[44] He replied to them: You are not permitted to dishonour him; and, furthermore, [the] signs [of maturity] usually undergo a change after death.[45]

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(1) This question may apply to the statements of both R. Meir and the Sages.

(2) Who testify as to the state of the health of the donor at the time the gift was made.

(3) Required by the Sages. (For the proof required by R. Meir, v, infra.)

(4) The signatures of the witnesses on the deed must be verified before a court, and only when the validity of the deed had been established, independently of the donor's admission, have the donees established their right to the ownership of the gift.
(5) R. Meir and the Sages in our Mishnah.
(6) Lit., 'in dispute'.
(7) Supra 153b. V. p. 665, n. 14.
(8) As an aid to memory in pairing the Tannaitic authorities. M = Meir, N = Nathan, I (Y) = Jacob, H = Hakamim, the Sages, the Rabbis.
(9) That the condition of the person at the time the lawsuit is before the court is the determining factor. And since the donor is then in good health it is assumed that he was in a similar condition when the gift was made. Hence it is for him to bring witnesses who could testify that at that time he was lying sick.
(10) The Sages of our Mishnah.
(11) Who maintains that the gift cannot be taken out of the confirmed possession of its original owner (the donor), unless witnesses can be brought by the donee to testify that at the time the gift was made he was in good health.
(12) Before a court.
(13) So that the validity of the deed shall not in any way be dependent on the donor's own word.
(14) And he only disputes its present force, by pleading, for instance, in the case of a deed of a gift, that he was lying sick when he made the gift, or, in the case of a note indebtedness, that he repaid the debt.
(15) Hence, the deed spoken, of in our Mishnah is valid, and the donor must bring witnesses as proof that he was a sick man at the time the gift was made.
(16) V. n. 3, supra
(17) Hence it is incumbent upon the donee to procure the necessary attestation.
(18) R. Meir and the Sages.
(19) Whether a deed acknowledged by its writer as genuine, also requires attestation before a court.
(20) Witnesses who identified their signatures on a deed.
(21) By asserting that they signed under compulsion or when they were minors.
(22) Who requires no attestation of a document on the part of the witnesses in a case where the debtor himself admitted that he wrote it. The validity of the deed, which has been acknowledged by the debtor, cannot, therefore, be impaired by the statements of the witnesses.
(23) A document, though admitted by the debtor to be genuine, requires the attestation of the witnesses before a court; and since the witnesses are, accordingly, the sole authorities for its validity, they are also to be believed when they declare it to be disqualified. Now, since the dispute between R. Meir and the Sages in the Baraitha depends on the same principles as those underlying their dispute in our Mishnah, why should a repetition be necessary?
(24) The Baraitha.
(25) Hence the debtor's admission is disregarded.
(26) Our Mishnah.
(27) The donor.
(28) When, after admitting that he wrote the deed, he states that he was a sick man when he made the gift.
(29) Referred to in our Mishnah.
(30) Why do the Sages require the donee, and not the donor, to produce the proof?
(31) Lit., 'we shall say'.
(32) Given by a man in good health.
(33) Lit., 'in all of them it is written'.
(34) Lit., 'walking on his feet'.
(35) Lit., 'it is not written in it',
(36) That are given by dying men.
(37) Lit., 'it may be said thus and it may be said thus'.
(38) Or property.
(39) Hence the gift cannot be taken away from the donor unless reliable proof is produced by the donee.
(40) I.e.,they differ on the same points as R. Huna on the one hand, and R. Hisda and Rabbah, son of R. Huna, on the other, supra.
(41) Lit., 'and stood up' Cf Rashb.

(42) A minor, under twenty years of age, is not eligible to sell any of his father's estate. Hence, the property he sold should belong to the surviving members of the family. [The words 'of his death' do not occur in some MSS.; v.D.S].
(43) I.e., 'the buyers'. This is the present assumption of R. Johanan. V. answer of R. Lakish, infra.
(44) Lit., 'what is he to examine him'; to exhume him, so as to ascertain his age by a post-mortem.
(45) Cf. Semahoth IV, 12; infra 155a. Hence the examination could not produce any reliable evidence of his age.

Talmud - Mas. Baba Bathra 154b

[Now]. according to my interpretation[1] [of our Mishnah that] evidence [is produced] by [the testimony of] witnesses, one can well understand why, when he[2] asked the buyers [to] bring witnesses and they [could] not obtain [them]. they came to ask him whether the body might [not] be examined. But according to your interpretation[3] that evidence [consists] in the attestation of the deed, why should they [wish] to examine [the body]? Let them procure the attestation of their deeds and [thus] gain possession of the property![4] — Do you think, [replied R. Lakish], that the property was in the possession of the members of the family and that the buyers came to protest? [This was not the case.] The property was in the possession of the buyers, and the members of the family came and protested.[5] Logical reasoning also [supports] this [view]. Since when he[6] said to them, 'You are not permitted to dishonour him', they remained silent. If it is granted [that] the members of the family protested, one can well understand why they remained silent;[7] if, however, it be assumed [that] the buyers protested, why [it may be asked] did they remain silent? They should have replied to him, 'We paid him money; let him be dishonoured!'[8] — If [only] because of this[9] [there would be] no argument. [for R. Akiba may] have said to them[10] thus: In the first place,[11] [a post mortem must not be held] because you are not permitted to dishonour him; and, furthermore, in case you might say. 'He took [our] money. let him be dishonoured', the signs [of maturity] usually undergo a change after death.

R. Simeon b. Lakish enquired of R. Johanan: With reference[12] to what has been taught in the Mishnah of Bar Kappara[13] [that], 'If a person was enjoying[14] [the usufruct of] a field on the strength[15] of the current belief that it [was] his, and someone lodged[16] a protest against him claiming.[17] "It is mine"; and the first[18] produced his deed, stating,[17] "You sold it to me" or "You gave it to me as a gift",if [the latter] said, "I never saw this deed",[19] the deed is to be attested by those who signed it;[20] if, [however], he said, "It was a deed of trust[21] or a deed [given on] trust[22] [for something] which I sold you but [for which] you did not pay me the price", then if witnesses[23] are available, one must be guided by[24] witnesses, but if [they are] not [available] one is to be guided by[23] the deed.'[25] Are we to assume [asked Resh Lakish, that] this[26] is [in accordance with the opinion of] R. Meir, who stated that where one admits that he wrote the deed, attestation is not required, but not [in accordance with the view of] the Rabbis?[27] — He [R. Johanan] replied to him: No; because I maintain [that] all[28] agree[29] [that where] one admitted that he wrote a deed no attestation is required. But, surely, [Resh Lakish rejoined,] they[30] are actually in dispute [on this question]; as it was taught, 'They are not believed [so far as] to invalidate it; these are the words of R. Meir. But the Sages say: They are believed'![31] — He replied to him: [Should] he, because[32] witnesses are all-powerful and [may] impair [the validity of] a deed,[33] [have the same power as if] all depended on him![34] But, Resh Lakish asked him again, in your [own] name it was reported that, 'the members of the family have justly protested'![35] — He replied to him, 'This [was] said [by] Eleazar;[36] I have never said such a thing.'

R. Zeira said: If R. Johanan could contradict his disciple R. Eleazar,[37] would he contradict his master R. Jannai? For R. Jannai said in the name of Rabbi: [Though] one admits that he wrote a deed, attestation is [nevertheless] required. And R. Johanan said to him: 'Is not this, Master, [the law enunciated in] our Mishnah [where it is stated] AND THE SAGES SAY: HE WHO CLAIMS FROM THE OTHER HAS TO PRODUCE THE PROOF, [and] proof [can be produced] only through the attestation of the deed?'[38] Acceptable, however, are the words of our master Joseph. For our Master

Joseph, in the name of Rab Judah in the name of Samuel, said: 'This[39] is the view of the Sages. but R. Meir said: [Though] one admits the writing of a deed, attestation is [nevertheless] required;[40] and [as to the expression] 'all agree',[41] [the words] of the Rabbis in relation to [those of] R. Meir [may be described as] the words of all. But, surely, we learnt the reverse: AND THE SAGES SAY: HE WHO CLAIMS FROM THE OTHER HAS TO PRODUCE THE PROOF?[42] — Reverse [the order].[43] But, surely. it was taught. 'They are not believed [so far as] to invalidate it; these are the words of R. Meir. And the Sages say: They are believed'?[44] — Reverse [the order]. But, surely, R. Johanan said: Proof [must be produced] by witnesses?[45] — Reverse [the order].[46] Is it [then] to be assumed [that] the objection also is to be reversed?[47] — No;

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(1) Lit., 'to me, that I said'.

(2) [Var. lec., 'they', i.e., the members of the family.]

(3) Lit., 'to you, that you said'.

(4) Witnesses would not sign a deed of sale unless they were satisfied that the seller has attained the legal age. Their attested signatures would, consequently, supply sufficient evidence that the sale was legally valid.

(5) Since the members of the family did not, of course, possess the deed, the question of their procuring attestation of the deed cannot possibly arise,

(6) R. Akiba.

(7) They had consideration for the honour of their relative.

(8) Lit., 'let him be . . .' (bis). Would strangers consent to lose their purchase money out of consideration for the corpse of the men who appropriated their money?

(9) If this argument had been the only proof that it was the relatives who protested.

(10) The buyers.

(11) Lit., 'one'.

(12) Lit., 'this'.

(13) [Bar Kappara was known as the author of a Mishnah which has not been preserved. On its character, see Weiss, Dor ii, 219.Cf. however Halevy, Doroth ii, 123-125.]

(14) Lit., 'eating'.

(15) Lit., 'and he came'.

(16) Lit., 'called'.

(17) Lit., 'to say'.

(18) Lit., 'this (one)'.

(19) I.e., it is a forged document.

(20) The witnesses.

(21) Heb., שטר פסים (cf., pistis, פיסטים Gr. **, trust), a deed of a feigned sale that the other had arranged with him for the purpose of making people believe that he is a landowner or a wealthier man than he actually is.

(22) He entrusted the buyer with the deed before he received payment.

(23) To testify that his statement, which invalidates the deed, is in accordance with the facts,

(24) Lit., 'go after'.

(25) I.e., since the seller once admitted that the deed was written by him, his attempt to disqualify it is disregarded.

(26) The statement that one is to be guided by the deed (v. previous note).

(27) Is it likely that Bar Kappara's Mishnah represents the view of an individual only?

(28) Even the Sages. (This statement is modified infra.)

(29) Lit., 'the words of all'.

(30) R. Meir and the Sages.

(31) Keth. 18b. Cf. supra 154a, q.v. for notes.

(32) Lit., 'if'.

(33) Witnesses, according to the Sages. are justly entitled to invalidate a deed, despite the debtor's admission that he wrote it.

(34) Once he himself admitted that he wrote the deed, it is assumed that no witnesses would have signed it if it represented a purely fictitious transaction, and, consequently, even the Sages agree that he has no further power subsequently to invalidate it. Hence, no attestation is needed.

(35) Although they admitted the authenticity of the deed, (i.e.. that the seller had written it), and only disputed its validity (by asserting that he was a minor). How, then, could R. Johanan say that once a person admitted the authenticity of a deed, (i.e., that he wrote it,) he cannot any more dispute its validity?
(36) A disciple of R. Johanan.
(37) Who reported in his name.
(38) Which clearly proves that, according to R. Johanan, the Sages require attestation even when the authenticity of a deed had been admitted.
(39) That no attestation is needed when the giver of the deed had admitted writing it,
(40) Thus it is the Sages, and not R. Meir, who require no attestation, when the writing of a deed had been admitted.
(41) Lit,, 'and what (is meant by) "the words of all"? Surely, according to what has been said, R. Meir disagrees'.
(42) I.e., the donee; which shows that, according to the Sages. the admission by the donor that he wrote the deed does not remove from the donee the need of attestation, while according to R. Meir it does
(43) The view in the last clause of our Mishnah, which is attributed to the Sages. is really the view of R. Meir, while the view attributed to R. Meir is in reality that of the Sages.
(44) Supra, quoted from Keth, 18b. V. 154a for notes.
(45) Supra 154a. How, then, could he say here, 'proof (can be produced) only through attestation of the deed'?
(46) The view attributed, supra, to R. Johanan is really that of R. Lakish, and vice versa,
(47) Is the objection which R. Johanan raised against R. Lakish (supra 154a) to be reversed and read as if R. Lakish had raised it against R. Johanan?

Talmud - Mas. Baba Bathra 155a

thus said R. Johanan to R. Simeon b. Lakish: According to my interpretation that[1] proof [is produced] through the attestation of the deed, one can well understand how it was possible for the buyers to seize[2] the property.[3] according to you, however, since you maintain [that] proof [is to be produced] through [the evidence of] witnesses, how was it possible for the buyers to seize[4] the property?[5] — He replied to him: In the case of a protest on the part of members of the family I agree with you that it is no [legal] protest; [for] what do they plead? [That] he was a minor! [But] it is an established fact [that[witnesses do not sign a deed unless [they know that] he was of age.[6]

It was stated: At what age[7] [may] a minor sell his [deceased] father's estate? — Raba said in the name of R. Nahman: [When he is] eighteen years of age. And R. Huna b. Hinena said in the name of R. Nahman: [When] twenty years of age.

R. Zera raised an objection: It once happened at Bene-Berak that a person sold his father's estate, and died. The members of his family. thereupon.[8] protested. asserting [that] he was a minor at the time of [his] death. They came [to] R. Akiba and asked whether the body might be examined. He replied to them: You are not permitted to dishonour him; and, furthermore, [the] signs [of maturity] usually undergo a change after death.[9] [Now], according to him who said, 'Eighteen years of age'.

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(1) Lit., 'to me, that I said'.
(2) Lit., 'to go down into'.
(3) And why the relatives were driven to protest. The buyers may have been able to secure the attestation of their deeds.
(4) V. p. 672, n. 12.
(5) Surely there were no witnesses to testify that the seller was of age at the time of the sale!
(6) This is the reason why the property was allowed to be seized by the buyers. Elsewhere, however, witnesses must be procured.
(7) Lit., 'From when'.
(8) V. supra p. 669. n. 1.
(9) Supra 154a, q.v. for notes.

Talmud - Mas. Baba Bathra 155b

one can well understand the reason why they came and asked whether the corpse might be examined.[1] If, however, it is said, 'At twenty', what useful purpose could the examination serve?[2] Surely we learnt:[3] [If at the] age of twenty he[4] did not produce two hairs,[5] they[6] shall bring evidence that he is twenty years old and he [becomes] a saris;[7] he may neither perform halizah[8] nor the levirate marriage![9] — Has it not been stated in connection with this [Mishnah], 'R. Samuel, son of R. Isaac, said in the name of Rab: That[10] only [applies to the case] where [other] symptoms of a saris[11] [also] appeared on his body!'[12] Raba said: [This; may] also [be arrived at by] deduction. For it was taught, 'And he [becomes] a saris', from which [this][13] may [well] be deduced.

And. [in the case] where no symptoms of a saris developed, how long [is one regarded a minor]?[14] — R. Hiyya taught: Until he has passed middle age.[15]

Whenever [such a case][16] came before R. Hiyya[17] he used to tell them, if [the youth was] emaciated, 'Let him [first] be fattened'; and if he was stout, he used to tell them, 'Let him [first] be made to lose weight'; for these symptoms appear sometimes as a result of emaciation [and] sometimes they develop as a result of stoutness.

The question was raised: [Is] the intervening period[18] [regarded] as that of under, or over age?[19] — Raba said in the name of R. Nahman: The Intervening period is [regarded] as that of under age.[20] Raba son of R. Shila said in the name of R. Nahman: The intervening period is [regarded] as that of over age.[20] That [view] of Raba, however, was not stated[21] explicitly but was arrived at[21] inferentially. For there was a certain [youth], who during [his] 'intervening period' went and sold the estate [of his deceased father]. He came before Raba[22] [who] decided[23] that the action was illegal.[24] [The student] who saw [what had happened] thought [that Raba's reason was] because during the intervening period [one is regarded] as being under age;[25] but this is not [so]. In this [particular] case[26] [Raba] observed excessive foolishness, for [the youth] was [also] liberating his slaves [without any apparent cause].[27]

Giddal b. Menashya sent [the following enquiry] to Raba:[28] Will our Master Instruct us [as to] what [is the ruling in the case of] a girl [who is] fourteen years and one day old [and] understands how to carry on business.[29] He sent [word] to him [in reply]: If she understands how to carry on a business, her purchase is [legal] purchase and her sale is [legal] sale.[30] Why did he not enquire of him[31] [about the case of] a boy? — The incident happened to be such.[32] Why did he not address his enquiry[31] [with reference to] a girl [who is] twelve years and one day old?[33] — That case happened to be of such a nature.[32]

A certain [youth who was] under twenty [years of age] sold the estate [he inherited] from his father in accordance with [the decision sent to] Giddal b. Menashya. [When] he appeared before Raba[34] his relatives told him,[35] 'Go [and] eat dates, and throw the stones at Raba'.[36] He did so; [and Raba] said to them, 'His sale is not a [legal] sale'. When the verdict[37] had been written out for him, the buyers said to him, 'Go tell Raba: The scroll of Esther[38] [may be obtained] at a zuz [and] the master's written verdict[39] [cannot be obtained] at [less than] a zuz!' He went and told him [so]. [Thereupon. Raba] said to them, 'His sale is a [legal] sale'.[40] [When] the relatives told him[41] [that] the buyers had taught him,[42] he[41] replied to them, '[But] he understands [that which] is explained; [and] since he understands when explained, he possesses intelligence,[43] and his [previous] action[44] was due to[45] his excessive impudence.

R. Huna son of R. Joshua said: As regards [the giving of] evidence, his[46] testimony [is legal] evidence. Mar Zutra said: This applies only[47] to [the case of] movables[48] but not to [that of] real estate. Said R. Ashi to Mar Zutra: Why only movables? [Is it] because his sale [of these] is a [legal] sale?[49] If so,[50] [would] the evidence of little children,[51] of whom[52] we learnt [that] their purchase [is

a valid] purchase and their sale [is a legal] sale in [the case of] movables,[53] also [be regarded as legal] evidence?[54] — He replied to him: There[55] it is required [that] both the men shall stand[56] which is not [the case].[57]

Amemar said: His[58] gift [is a valid] gift. Said R. Ashi to Amemar: [How] now! If in the case of a sale, where he receives money, it has been said that it is not [valid] because it is possible [that] he might sell too cheaply, how much more so [in the case of] a gift where he receives nothing! He replied to him:

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(1) Because if the signs of maturity could not be found on the body of the youth he would rightly be regarded as a minor.
(2) Lit., 'when they examined him, what is it?'
(3) Nid. 47b; Yeb, 80a, 97a.
(4) Whose brother died childless and whose duty it is to marry his widow (V Deut. XXV, 5ff) or to perform halizah (V. Glos).
(5) The legal signs of maturity.
(6) The relatives of the widow, who desire to procure her freedom from the marriage or halizah.
(7) סריס wanting in procreative power.
(8) V. Glos.
(9) Cf. p, 673. n. 10. From this it follows that once the age of twenty had been reached, a person is considered to have attained legal majority though his body did not develop any signs of maturity. What, then, would be the use of the exhumation?
(10) The law that he is regarded as a saris. Described in Yeb. 80b.
(11) V. p. 673. n, 13.
(12) If these additional symptoms of a saris, however, did not appear. he is regarded as a minor provided the 'two hairs' have also not appeared. Hence an examination of the corpse could well reveal whether he was still a minor or not.
(13) That the additional symptoms of a saris apart from the absence of two hairs are required.
(14) If two hairs did not appear.
(15) Lit., 'most of his years', i.e., until he is thirty-six years of age. Man's span of life is assumed to be seventy years. (Cf. Ps. XC, 10).
(16) Of one who developed symptoms of a saris.
(17) For his decision as to whether it was a case of an established saris.
(18) The eighteenth year of a person's age. according to Raba, or his twentieth year, according to R. Huna b. Hinena, where he has grown the two hairs.
(19) Lit., 'as before time or as after time'.
(20) Cf. previous note.
(21) Lit., 'it was said'.
(22) To obtain a ruling on the legality of his action.
(23) Lit., 'told them'.
(24) Lit., 'be did not do anything'.
(25) Cf. p. 6740. 11.
(26) Lit., 'there'.
(27) And it was for this reason only that he treated him as one under age.
(28) Others, Rab.
(29) Lit., 'knows the nature of carrying and giving'.
(30) Though she is under twenty, her intelligence entitles her to the rights of one who is of age.
(31) Lit., 'and he should send to him'.
(32) Lit., 'the incident that was, was so'.
(33) At which age she becomes subject to the obligation of performing the commandments.
(34) Desiring to withdraw the sale on the plea that he did not understand the nature of buying and selling.
(35) The youth.
(36) That be might in consequence be regarded as irresponsible for his actions.
(37) שטרא , 'written document'.

(38) Which is a lengthy document.
(39) Which is a very short document. (CF. n. 16, supra.)
(40) By the argument he advanced the youth revealed that he was not lacking in intelligence. His sale must consequently be regarded as valid.
(41) Raba.
(42) That argument; but that the youth himself was incapable of any such reasoning.
(43) Lit., 'to know he knows'.
(44) His throwing of the date stones.
(45) Lit., 'and that is why he did so'.
(46) The evidence of a youth under twenty years of age but over thirteen, who produced the signs of maturity. though he is incapable of carrying on business transactions
(47) Lit., 'he did not say them but'.
(48) Only when the evidence is given in connection with a dispute concerning movable objects is his evidence valid.
(49) The Mishnah which regards his sale as invalid speaks of real estate and not of movables.
(50) Lit., 'but from now'.
(51) Of the ages of six or seven.
(52) Lit., 'that'.
(53) Keth. 70a, Git. 59a, 65a.
(54) Surely a child can hardly be relied upon as a witness!
(55) In the case of the evidence of witnesses.
(56) Deut., XIX, 17, referring to witnesses. (Cf. Shebu. 30a).
(57) Where children of six or seven give evidence.
(58) That of a boy who is thirteen years and one day old, who is unable to carry on transactions and whose sale of real estate is invalid.

Talmud - Mas. Baba Bathra 156a

And according to your reasoning,[1] [if] he sold [something] worth five for six[2] would his sale indeed be [legally] valid?[3] But [this is the reason]: The Rabbis were well aware that a child is susceptible to the temptations of money; and if it would have been laid down[4] [that] a sale of his is legally valid, [people] might sometimes rattle money before him [and] he would be tempted[5] to sell all the possessions of his [dead father]. In the case of a gift, however, [it is known that] had he not had [some] benefit from him[6] he would not have presented him with a gift; the Rabbis, [therefore.] said [that] his gift shall be a [legal] gift in order that people might render him service.[7]

R. Nahman said in the name of Samuel: [A youth] must be examined [to ascertain whether he has the signs of maturity][8] in respect of betrothal,[9] divorce, halizah,[10] [declarations of] refusal.[11] But in regard to the sale of the estate of his father, he cannot do so until he becomes twenty years of age.[12] But since [the youth][13] was examined in respect of his betrothal what need is there[14] [for an examination] in respect of [his] divorce?[15] — This [law] is required only [in the case] of a youth who married his dead brother's widow.[16] For we learnt: [If] a boy of the age of nine years and a day had connexion with his sister-in-law,[17] he has acquired her [as wife] and may not divorce her until he had attained [legal] age.[18] '[In respect] of halizah'[19] — to exclude [the ruling] of R. Jose who said, 'In the [Biblical] section [of halizah] it is written, Man;[20] but [in the case of] a woman there is no difference between a major and a minor';[21] hence it was necessary to teach us that 'woman' is compared to 'man', contrary to [the view of] R. Jose.

'And [in respect of declarations of] refusal', [this had to be mentioned] in order to exclude [the ruling] of R. Judah who said: [A girl can exercise the right of refusal] until the black[22] predominates;[23] hence it was necessary to teach us that [the law is] not in accordance with [the view of] R. Judah.[24] 'And [in respect of] the sale of the estate of his father, until he becomes twenty years of age' [had to be taught] in order to exclude [the view] of him who said [the youth need only be]

eighteen years of age.

The law [is that during the] 'intervening period'[25] [one is regarded] as being under age.[26] The law [is] in accordance with Giddal b. Menashya.[27] The law [is] in accordance with Mar Zutra.[28] The law is according to Amemar.[29] And the law is in accordance with [what] R. Nahman said in the name of Samuel, in all [cases].[30] MISHNAH. IF [A PERSON] DISTRIBUTED HIS POSSESSIONS VERBALLY, R. ELEAZAR[31] SAID, WHETHER HE WAS IN GOOD HEALTH OR DANGEROUSLY ILL, [ALL] REAL ESTATE[32] IS ACQUIRED BY MEANS OF MONEY,[33] DEED[34] AND POSSESSION,[35] WHILE MOVABLE OBJECTS[36] ARE ONLY ACQUIRED BY MEANS OF PULLING.[37]

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(1) That a child is not entitled to sell on account of a possible loss he may incur through his inexperience.

(2) In which case he made a profit.

(3) The Mishnah, surely, draws no distinction between sales at a profit or at a loss!

(4) Lit., 'You said'.

(5) Lit., 'go'.

(6) The donee.

(7) Lit., 'things'.

(8) Though he is thirteen years and one day old; or, in the case of a girl, twelve years and a day.

(9) Betrothal is not legal unless the examination had revealed signs of maturity.

(10) V. Glos.

(11) A woman's refusal to live with a person to whom she was married during her minority. She can do so only before the signs of maturity have appeared.

(12) Even if he has grown two hairs,

(13) The same applies, mutatis mutandis, to a young woman.

(14) Lit., 'why to me'.

(15) Since he was allowed to betroth he must have been examined and found to have produced the necessary signs of maturity.

(16) In such a case no formal betrothal is necessary. A boy who is over nine years of age becomes the legal husband of his dead brother's wife by the mere act of coition. If he desires, subsequently, to divorce her he must undergo an examination for signs of maturity.

(17) Whose husband had died childless.

(18) Nid. 45a; Sanh. 55b.

(19) I.e., it was necessary to teach that an examination for signs of maturity is required before halizah could be allowed to be performed.

(20) Deut. XXV, 7. The specific mention of man implies that the male only must be of age.

(21) Nid. 52b; Yeb, 105b. And a girl under age may consequently participate in the ceremony of halizah.

(22) I.e., the hair.

(23) And not merely until one has grown two hairs. V. Nid. 52a.

(24) But in accordance with the first Tanna (Nid. 52a) that her right ceases with the growth of the two hairs.

(25) The twentieth year of age according to one authority; the eighteenth, according to another.

(26) Supra 155b, q.v. for notes.

(27) That a youth of the age of thirteen and one day, who is able to carry on business transactions, may sell the estate he inherited from his father, whether it consists of movables or of real estate.

(28) That the evidence of a youth who is unable to transact business and is of the age of thirteen and one day, is legal only in the case of a dispute on movable objects, but not in that of real estate.

(29) That the gift made by such a youth (of the age and character described in the previous note) is legal, though a sale be contracted is invalid.

(30) Mentioned above. In the case of betrothal, divorce, halizah and declarations of refusal, age alone is no guide unless signs of maturity also appeared. As regards the legality of the sale of an estate inherited from his Father, a youth, if be is not intelligent enough to carry on business transactions, must be twenty years of age, and must also produce signs of maturity. If at the age of twenty no signs of maturity had appeared. the youth remains legally a minor until he had

obtained the age of thirty-six, unless marks of a saris had meanwhile made their appearance.

(31) Others, R. Eliezer.

(32) Lit., ‘possessions which have a secure foundation.

(33) Which the buyer pays for the land.

(34) Setting out and confirming the sale.

(35) The buyer performs some kind of work on the land purchased.

(36) Lit., ‘possessions which have no secure foundation’.

(37) Heb., meshikah, v. Glos, R. Eleazar is of the opinion that a dying man's verbal instruction has no more legal force than that of a person in good health. Hence, unless legal acquisition took place, the donee acquires no possession even if the donor died; and in case of recovery, the donor may retract even where only a part of his estate had been given away.

Talmud - Mas. Baba Bathra 156b

THEY[1] SAID UNTO HIM: THE MOTHER OF THE SONS OF ROKEL ONCE FELL ILL; AND SHE SAID, ‘LET MY BROOCH WHICH IS WORTH TWELVE MANEH BE GIVEN TO MY DAUGHTER’, AND WHEN SHE DIED, HER INSTRUCTIONS WERE CARRIED OUT![2] HE REPLIED TO THEM: [AS TO] THE SONS OF ROKEL, MAY THEIR MOTHER BURY THEM![3]

GEMARA. It was taught: R. Eliezer[4] said to the Sages, ‘Once there lived[5] a man of Meron[6] in Jerusalem and he possessed much movable property which he desired to give away as gift[s]. He was told, [however. that] there was no means [of carrying out his wish] unless he transferred possession [to the donees][7] by virtue of land [transferred to them at the same time]. He consequently[8] purchased a rocky[9] piece of land near Jerusalem and gave the following instructions:[10] "Its northern side [shall be given] to X, and [together] with it a hundred sheep and a hundred casks; and its southern side [shall be given] to Y, and together with it a hundred sheep and a hundred casks". And when he died the Sages carried out his instructions’.[11] They[12] replied to him, ‘[Is there any] proof from there? The Meronite was in good health’![13]

HE REPLIED TO THEM: [AS TO] THE SONS OF ROKEL, MAY THEIR MOTHER BURY THEM! Why did he curse them,? — Rab Judah said in the name of Samuel: They allowed thistles to grow in [their] vineyard; and R. Eliezer [is thereby consistent] with his view. For we learnt: If [a person] allows thistles to grow in a vineyard he [thereby], R. Eliezer says, causes [the fruit] to be forbidden;[14] and the Sages say: one does not cause [the fruit of a vineyard] to be forbidden unless [he grows] a plant the like of which [people] usually allow to grow.[15] Said[16] R. Hanina: What is R. Eliezer's reason? Because in Arabia they allow thistles to grow in their fields [as fodder] for their camels.[17]

R. Levi said: [Symbolic] acquisition may be acquired from a dying man[18] even on the Sabbath;[19] but [this is] not due to a consideration of the view of R. Eliezer,[20] but to the possibility that his[21] [peace of] mind might be disturbed.[22]

MISHNAH. R. ELIEZER[23] SAID: ON THE SABBATH, HIS [VERBAL] INSTRUCTIONS[24] ARE LEGALLY VALID, BECAUSE HE IS UNABLE TO WRITE,[25] BUT NOT ON A WEEK-DAY.[26] R. JOSHUA SAID: [IF] THEY SAID [THIS][27] IN [RESPECT OF] THE SABBATH[28] HOW MUCH MORE SO IN [THE CASE OF] A WEEK-DAY?[29] SIMILARLY: ONE MAY ACQUIRE OWNERSHIP ON BEHALF OF A MINOR[30] BUT NOT ON BEHALF OF [A PERSON WHO IS] OF AGE,[31] THESE ARE THE WORDS OF R. ELIEZER. R. JOSHUA SAID: [IF THEY ALLOWED POSSESSION[32] TO BE ACQUIRED] ON BEHALF OF A MINOR,[33] HOW MUCH MORE SO ON BEHALF OF [A PERSON WHO IS] OF AGE.[34]

GEMARA. Whose [version is represented in] our Mishnah? — It [is that of] R. Judah. For it was taught: R. Meir stated, ‘R. Eliezer said: On a week-day his [verbal] instructions[35] are legally valid

because he is able to write,[36] but not on the Sabbath.[37] R. Joshua

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(1) The Sages.

(2) Cf. Supra, 151b, q.v. for notes. Since the verbal instructions of the mother were in this case carried out, how could R. Eleazar maintain that the word of a dying man has no more force than that of one in good health?

(3) They were wicked men and the instructions of their mother, who deprived them of a portion of her estate in favour of her daughter, were carried out, (though there was no legal acquisition on behalf of the daughter), as some sort of punishment for their wickedness. No inference, therefore, as regards the case of other testators, may be derived from this special one.

(4) Cf. supra, note 1,

(5) Lit., 'was'.

(6) [In Galilee near Gush Halab, v. Neubauer, Geographie, 228ff.]

(7) Who were not themselves present to acquire possession.

(8) Lit., 'he went

(9) Unsuitable for cultivation and, therefore, obtainable at a very low price.

(10) Lit., 'and said',

(11) R. Eliezer assumed that the Meronite was a dying man, when he disposed of his property. and since he was compelled to transfer possession by means of land, it is to be inferred that the mere verbal instructions of a dying man have no legal force. How, then, R. Eliezer argued, could the Sages maintain that the verbal disposition of his estate by a dying man is legally valid?

(12) The Sages.

(13) Had he been in a dying condition his verbal Instruction alone would have been sufficient.

(14) It is forbidden to grow in the same vineyard heterogeneous plants even though one is used for human, and the other only for animal consumption.

(15) I.e., plants for human consumption or use. Thistles are mere weeds and as a rule are not allowed to grow among the vines, V. Kil. v, 8.

(16) Current editions insert the following, 'Saffron is well suitable, but of what use are thistles'. It is wanting in most MSS, and is unintelligible in this context.

(17) R. Eliezer, therefore, regards thistles as a proper plant that comes under the prohibition of the growing of heterogeneous kinds, The Sages, however, do not class them as a plant since in most parts of the world they are not grown.

(18) Whether he left some of his estate for himself or not.

(19) When it is forbidden to arrange legal transactions.

(20) Who requires legal acquisition even in the case of the gift of a dying man.

(21) The dying man's.

(22) Seeing that no legal acquisition is being arranged he will feel that he is already being regarded as a dying man. As this mental anguish might accelerate his death, the Sages have allowed legal acquisition to be performed even on the Sabbath in order to ensure the patient's peace of mind. Legally, however, the mere word of a dying man transfers possession to the donees.

(23) Others, 'The Sages'. cf. supra p. 679. n. 1.

(24) Those of a dying man distributing his property.

(25) Writing is one of the manual labors that are forbidden on the Sabbath.

(26) Since a written document may be prepared, and symbolic acquisition may be arranged.

(27) That no written deed or symbolic acquisition is necessary.

(28) When these are forbidden, and the rule, 'whenever something is suitable for fusion, actual fusion is not essential', cannot be applied.

(29) When writing and acquisition are permissible and possible, and the rule, 'Whenever something is suitable etc.' (V. previous note) may be applied.

(30) Because he himself is not legally entitled to acquire possessions.

(31) Since he is himself able to acquire possession.

(32) In his absence.

(33) Who cannot himself acquire.

(34) Since he himself is entitled to acquire and be may also appoint an agent to act on his behalf, others also, much more than in the case of a minor, are entitled to acquire possession for him in his absence.
(35) V. supra p. 681, n. 7.
(36) And the rule, 'Whenever fusion is possible. actual fusion is not essential', can be applied. Since writing and acquisition are possible on a week-day, actual writing and acquisition are not indispensable.
(37) V. supra p. 681, n. 11.

Talmud - Mas. Baba Bathra 157a

said: They said [this][1] in [respect of] a week-day.[2] and how much more so in the case of the Sabbath.[3] Similarly: One may acquire ownership on behalf of [a person who is] of age,[4] but not on behalf of a minor;[5] these are the words of R. Eliezer. R. Joshua said: [If they allowed possession to be acquired] on [behalf of] one who is of age, how much more so on behalf of a minor'. R. Judah stated,[6] 'R. Eliezer said: On the Sabbath his [verbal] instructions are legally valid , because he is unable to write, but not on a week-day. R. Joshua said: [If] they said [this] in [respect of] the Sabbath, how much more so in [the case of] a week-day. Similarly: One may acquire ownership on behalf of a minor but not on behalf of [a person who is] of age; these are the words of R. Eliezer. R. Joshua said: [If they allowed possession to be acquired] on behalf of a minor, how much more so on behalf of[a person who is] of age.[7]

MISHNAH. [IN THE CASE WHERE] A HOUSE[8] COLLAPSED UPON A MAN[9] AND HIS FATHER OR UPON A MAN[9] AND THOSE WHOSE HEIR HE IS,[10] AND [THAT PERSON] HAD AGAINST HIM [THE CLAIM OF] A WOMAN'S KETHUBAH[11] OR [THAT OF] A CREDITOR;[12] [AND, IN THE FIRST CASE]. THE HEIRS OF THE FATHER PLEAD [THAT] THE SON DIED FIRST AND THE FATHER AFTERWARDS,[13] WHILE THE CREDITORS PLEAD [THAT] THE FATHER DIED FIRST AND THE SON AFTERWARDS,[14] BETH SHAMMAI HOLD[15] [THAT THE AMOUNT IN DISPUTE IS] TO BE DIVIDED,[16] AND BETH HILLEL HOLD[17] [THAT] THE ESTATE [IS TO REMAIN] IN ITS FORMER STATUS.[18]

GEMARA. We learnt elsewhere: He who lends [money] to another on a bond[19] [is entitled to] collect [his debt] from [the borrower's] lands [even though they were subsequently] mortgaged.[20] [If, however, the loan was made] in the presence[21] of witnesses[22] it may be collected from free[23] property [only].[24] Samuel inquired: What [is the law in the case where the borrower entered in the bond]. 'that I may acquire'.[25] and he acquired?[26] According to R. Meir who holds [the view that] a person may transfer possession of something that has not [yet] come into existence, there can be no question; for [the lender] has undoubtedly acquired possession.[27] The question arises according to [the view of] the Rabbis who maintain [that] a person may not transfer possession of something that has not [yet] come into existence.[28]

R. Joseph said, Come and hear: And the Sages Say: This [creditor] who sold him[29] the land[30] was prudent, because thereby[31] he was in a position to take from him a pledge.[32] Raba said to him: You mean,[33] 'from him'![34] From him[35] [surely], even the cloak that is upon his shoulders [may be seized]![36] Our question, however, is what [is the law in the case] where [the borrower entered in the bond]. 'That I may acquire'. [and] he [subsequently] bought and sold, [or where he entered] 'That I may acquire' [and] he [subsequently] bought or transmitted [his purchase] as an inheritance?[37]

R. Hana replied, Come and hear: [IN THE CASE WHERE] A HOUSE COLLAPSED UPON A MAN AND HIS FATHER [OR] UPON A MAN AND THOSE WHOSE HEIR HE IS, AND [THAT PERSON] HAD AGAINST HIM [THE CLAIM OF] A WOMAN'S KETHUBAH OR [THAT OF] A CREDITOR; [AND. IN THE FIRST CASE]. THE HEIRS OF THE FATHER PLEAD [THAT] THE SON DIED FIRST AND THE FATHER AFTERWARDS, WHILE THE CREDITORS PLEAD [THAT] THE FATHER DIED FIRST etc. Now, if it were to be assumed [that where a

borrower entered in the bond]. 'that I may acquire'. [and] he [subsequently] bought and sold, [or where he entered]. 'that I may acquire'. and he [subsequently] bought or transferred [his purchase] as an inheritance, [the land] does not become mortgaged [to the creditor, what claim could the creditors advance?] Even if it were granted that the father had died first [and that the son, had consequently. inherited his estate]. this [is merely another form of the case where a bond contains the entry] 'that I may acquire'![38] R. Nahman said to them: Our colleague Zera has explained this [as follows]: It is the moral duty of the orphans to repay the debt of their father.[39]

R. Ashi demurred: This [surely] is a verbal loan,[40] and both Rab and Samuel stated [that] a verbal loan cannot be collected either from the heirs or from the buyers![41]

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(1) V. loc. cit. n. 10.

(2) When writing and acquisition are permissible.

(3) When these are not permissible and some provision has to be made for giving legal force to the dying man's wishes.

(4) Cf. p. 681, n. 17.

(5) Cf. loc. cit. n. 16.

(6) For notes on R. Judah's version, v. our Mishnah supra 156b.

(7) R. Judah's version of the respective views of R. Eliezer and R. Joshua follows that recorded in the Mishnah.

(8) Lit., 'the'.

(9) Lit., 'upon him'.

(10) E.g., brothers or other relatives who had no other heirs but him.

(11) The marriage contract of his widow.

(12) But he left neither money nor possessions wherewith to meet his obligations.

(13) The son did not consequently inherit from his father whose estate would, therefore, be inherited by his living heirs.

(14) Hence, the son inherited his father's estate, and they, as the son's creditors, are entitled to seize it for their debts.

(15) Lit., 'say'.

(16) The claim of the creditors is considered to be of equal force with that of the heirs.

(17) V. note 3.

(18) The claim of the heirs is regarded as certain, since they are entitled to the estate as the heirs either of the Father or of the son, while the claim of the creditors is doubtful, and no 'doubt' may supplant a 'certainty'.

(19) Even though no security on the lender's real estate had been entered in it.

(20) Or sold. No one, it is assumed, would lend money without proper security, and the omission of the guarantee from the bond is regarded as a mere scribal oversight. Furthermore, any future buyer (or subsequent lender on the security) of the lands is assumed to have known of the existence of the loan (since the issue of a written note ensures for the matter due publicity), and must have consented to take the risk of having to surrender them to the creditor should the latter find no other property from which to collect his debt. (Cf. B.M. 14a).

(21) Lit., 'by the hands'.

(22) Without a written note.

(23) Such as has not been sold or mortgaged.

(24) Infra 175a, supra 42a.

(25) I.e., not only what be already possesses but also that which he may purchase in the future shall be mortgaged for the debt.

(26) After the note had been issued. Is the creditor entitled to seize this property if it was sold?

(27) I.e.,the lender is entitled to seize any real estate bought and sold after the date of the note.

(28) Has a mortgage, according to the Rabbis, more force than a sale, and may the lender, therefore, seize the sold land or not?

(29) The borrower.

(30) After the date of the loan, and the latter points to this fact as evidence that the loan had already been repaid. Had he not repaid his debt, one authority (Admon) maintains (Keth. 110a), the lender would not have sold him the field but would have retained its purchase money as payment of the loan. The fact that he did sell it confirms, in Admon's opinion, the borrower's claim; and the lender consequently forfeits his right to seize it.

(31) By the sale of the land.

(32) Keth. 110a. The sale, then, according to the Sages, is no evidence that the loan had been repaid; and the creditor is, therefore, entitled to seize the land though it was bought after the date of the note of indebtedness. Thus it has been proved, in answer to Samuel's enquiry, that property purchased after the loan was made may be seized by the creditor.
(33) [Lit., 'say'. Following the reading of R. Gersh. and MSS.]
(34) The borrower.
(35) I.e., when the property is still in the borrower's own possession.
(36) And no question would arise in such a case.
(37) I.e., where the land is no more in the possession of the borrower.
(38) Since at the time the debt was incurred the son was not yet in possession of his inheritance; and after it came into his possession it was, as soon as he was killed, automatically transmitted to his heirs. As our Mishnah, however, regards the creditors' plea as tenable, it must be inferred that even an estate that was acquired and transmitted to others, after the date of a loan, is also mortgaged to the creditors.
(39) The claim of the creditors, in our Mishnah, is not based on the law of mortgage but on moral considerations. Hence no inference may be drawn from it on the law of the mortgage of property bought and sold after the date of a loan.
(40) Since, as has just been asserted, the creditors have no legal claim upon the dead man's estate, the bond of indebtedness is of no value, and the loan, as far as this estate is concerned, becomes merely a verbal one.
(41) Only in the case of a loan for which a bond of indebtedness had been given is it the moral duty of orphans to repay their father's debt. The creditors, in our Mishnah, could not, consequently, advance even a moral claim. What, then, is their plea?

Talmud - Mas. Baba Bathra 157b

— But [the fact is that] this [Mishnah] represents the view of[1] R. Meir who holds [that] a person may transfer possession of something that is not [yet] in existence.[2]

R. Jacob of Nehar Pekod[3] said in the name of Rabina, Come and hear: Ante-dated bonds of indebtedness are invalid[4] and post-dated [ones] are valid.[5] Now, if it could be assumed [that where the bond contained the entry]. 'That I may acquire'. [and] he [subsequently] bought and sold [or where it contained the entry] 'That I may acquire' [and] he [subsequently] bought and transmitted [the purchase] as an inheritance, [the land] is not mortgaged, [to the creditor], why [are] post-dated [bonds] valid?[6] This [is surely similar to the case of an entry] 'That I may acquire'! — [But] this [may] represent the view of[7] R. Meir who holds [that] a person may transfer possession of something that is not [yet] in existence.[8]

R. Mesharsheya in the name of Raba said, Come and hear! How [is one to understand the statement that] for improvement of lands [one may not seize any sold property]? If [a person] has sold a field to another who improved it,[9] and a creditor [of the seller] came and seized it,[10] when [the buyer] collects [from the seller].[11] he collects [the value of] the principal [even] from mortgaged property, but [that of the] improvement from free[12] property [only].[13] Now, if it is assumed, that where [a bond of indebtedness contained the entry]. 'That I may acquire'. [and] the debtor bought [land] and sold [it, or where the bond contained the entry]. 'That I may acquire'. [and] he bought [land] and transmitted [it] as an inheritance, [that land is] not mortgaged [to the creditor], why does the creditor seize the improvement[s]?[14] — This [may] represent the view of[15] R. Meir who holds [that] a person may transfer possession of something that is not [yet] in the world.

If [a good reason] could be found for the statement[16] [that where there was an entry in a bond of indebtedness], 'That I may acquire'.[17] [and the debtor subsequently] bought [land] and sold [it, or where the bond contained the entry]. 'That I may acquire',[17] [and the debtor subsequently] bought [land] and transmitted it as an inheritance, [that land is] not mortgaged [to the creditor, the question that follows does not arise], since [the land was] not [in any way] mortgaged. If, [however. a reason] could be found for the statement[16] [that such land][18] is mortgaged [to the creditor, the question arises as to] what [is the ruling in the case where the debtor] borrowed [from one person].[19] and [then]

borrowed [from another],[20] and then purchased [some real estate which he subsequently sold].[21] [Is this land] mortgaged to the first [lender],[22] or is it mortgaged to the second?[23] — R. Nahman replied: We [also] have raised the same[24] question,[25] and [a reply] was sent from Palestine[26] [that] the first acquired [the right of seizing that land]. R. Huna said: They[27] divide [the land among themselves].[28] And Rabbah b. Abbuha also learned [that the land] is to be divided [between them].[27]

Rabina said: In the first version,[29] R. Ashi told us[30] [that] the first [creditor] acquired [the right over the land];[31] the second[32] version of R. Ashi [however], told us [that the land was] to be divided.[33] And the law is [that the land] is to be divided.[33]

An objection was raised: How [is one to understand the statement that] for improvement of lands [one may not seize any sold property]? If [a person] has sold a field to another who improved it, and a creditor [of the seller] came and seized it,[34] when [the buyer] collects [from the seller][35] he collects [the value of] the principal [even] from sold property but [that of the] improvement from free[36] property [only]. Now, if that were so,[37] he[38] should [only be able to claim] half [the cost of his] improvement![39] — [The expression]. 'he collects', which was used,[40] also implies half [the value of his] improvement.

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(1) Lit., 'this according to whom? It is'.

(2) While Samuel's enquiry had reference to (v. supra 157a) the view of the Rabbis.

(3) [A town east of Nehardea, v. Obermeyer, op. cit., 270ff.]

(4) Since the creditor might unjustly seize the lands which the borrower sold between the date entered in the bond and the actual date of the loan. Only those sold after the actual date are legally mortgaged to the creditor.

(5) Sheb. X, 5, B.M. 17a, 72a, Sanh, 32a. The creditor, by allowing the entry of a later date, has thereby surrendered his right to seize those lands which the borrower sold between the actual date of the loan and the later date that was entered in the bond.

(6) Lands that the borrower bought (say in February) between the real date of the loan (say January) and the later one (say March) that was entered on the bond, though acquired after the date of the loan, and consequently not mortgaged to the creditor, could nevertheless be seized by him from purchasers who bought these (say in April) on the plea that they were bought by the borrower before the date and sold by him after the date of the loan entered on the bond. And since a post-dated bond is valid, despite this possibility, one must conclude that lands bought and sold after the date of a loan are also mortgaged to the creditor,

(7) V. supra. p. 685, n. 5.

(8) Hence no answer may be derived from it to Samuel's question which had reference to the view of the Rabbis.

(9) By manuring, ploughing and sowing.

(10) In its improved condition.

(11) Compensation for his loss.

(12) V. supra p. 683, n. 11.

(13) B.M. 14b.

(14) The improvements, surely, took place after the loan was made.

(15) V. supra p. 685. n. 5.

(16) Lit., 'to say'.

(17) I.e., the debtor pledged for his loan not only the lands that he already possessed but also those that he may acquire in the future.

(18) Bought and sold under the conditions just described, (Cf. previous note).

(19) And pledged his present and future possessions. V. supra, n. 3.

(20) To whom he gave the same security as to the first.

(21) Or transmitted it as an inheritance.

(22) Since his security was obtained before the second loan was incurred, he is also entitled to the priority of his claim.

(23) Lit., 'last'. As it might be maintained that the hold of the first creditor on the property which was non-existent at the time of the loan is not sufficiently strong to prevent the debtor from withdrawing it from him and assigning it as security to a second creditor.

(24) Lit., ‘that’.
(25) Lit., ‘thing’.
(26) Lit., ‘From there’. The statement was made in Babylonia where Palestine was often referred to as ‘there’.
(27) The two creditors.
(28) The land having been purchased after the second loan, when both creditors had equal security on the debtor's possessions, it must be equally divided between them in proportion to their respective claims.
(29) [Thus, Yad Ramah.]
(30) He is said to have lived sixty years, and to have concluded at the age of thirty the first version of his lectures, and at the age of sixty (i.e., during the second thirty years of his life), his second version. [V. Letter of Sherira Gaon, ed. Lewin, 93-94. The tradition connecting R. Ashi with the Editorship of the Talmud is based on this statement, v. Brill, N., Jahrbucher, II, 10. Halevy, Doroth, II, 263ff., however, disputes this.]
(31) V. supra p. 687, n. 4.
(32) Lit., ‘last’. Cf. p. 687, n. 14.
(33) V. supra p. 687, n. 14.
(34) V. supra p. 686, n. 5.
(35) V. ibid. n. 6.
(36) V. supra p. 683, n. 11.
(37) Lit., ‘and if there is’, i.e., if the law is that the second creditor has equal rights with the first, owing to the fact that the land in question was purchased after the second loan.
(38) The buyer.
(39) The buyer, who received no less security for his purchase than the creditor for his loan, should have the same rights as the creditor, just as, in the previous case, the second creditor has the same rights as the first. The improvement of the land, which obviously took place after the sale, may be regarded as land purchased by the debtor after the second loan and sold (since the improvement is claimed from him by both, first by the creditor and ultimately by the buyer. and, in either case, it was no more in his possession than the land sold). Accordingly, the creditor and the buyer (like the two creditors supra) are entitled to equal shares. The creditor could thus seize only half the value of the improvement, the other half remaining with the buyer. Why then should be collect from the seller its full value?
(40) Lit., ‘taught’.

Talmud - Mas. Baba Bathra 158a

MISHNAH. IF THE HOUSE COLLAPSED UPON A MAN[1] AND HIS WIFE[2] [AND] THE HEIRS OF THE HUSBAND[3] PLEAD [THAT] THE WIFE DIED FIRST[4] AND [THAT] THE HUSBAND DIED AFTERWARDS,[5] [WHILE] THE HEIRS OF THE WIFE[6] PLEAD [THAT] THE HUSBAND DIED FIRST [AND THAT] THE WIFE DIED AFTERWARDS, BETH SHAMMAI HOLD [THAT THE ESTATE] IS TO BE DIVIDED,[7] AND BETH HILLEL HOLD [THAT] POSSESSIONS[8] [ARE TO REMAIN WITH THOSE WHO ARE] IN THEIR ESTABLISHED RIGHT OF OWNERSHIP;[9] THE KETHUBAH[10] IN THE POSSESSION OF THE HEIRS OF THE HUSBAND; [AND] THE PROPERTY THAT COMES IN AND GOES OUT WITH HER[11] IN THE POSSESSION OF THE HEIRS OF THE FATHER.[12]

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(1) Lit., ‘upon him’.
(2) From whom he had no children.
(3) His sons, e.g., that were born from another wife or his father and brothers.
(4) And her estate was consequently inherited by her husband before he died.
(5) And, consequently, his heirs are entitled to his estate including all that he inherited From his wife.
(6) Her relatives who are not related to her husband.
(7) Since it is impossible to ascertain who in fact died first, the ownership of the estate is a matter of doubt, and any property the ownership of which is in doubt must be divided between the claiming parties.
(8) I.e., property which the wife brought to her husband on marriage, and the value of which was included in her marriage contract, the husband assuming full responsibility for loss or profit.
(9) The Gemara, infra, explains who these are,

(10) I.e.,the sum of a hundred, (in the case of the marriage of a widow), or of two hundred zuz (in the case of the marriage of a virgin), and the 'additional sum' which a husband undertakes to pay to his wife upon divorce or upon his death, and which forms the principal element in a marriage contract.

(11) Property, the principal of which is retained in the wife's possession while its usufruct is enjoyed by the husband. V. supra, p. 206, n. 7.

(12) Of the wife. Since she obtained the property from her father's house and since the property itself remained all the time in her possession, the heirs of her father's house are entitled to inherit it. (CF. Rashb. and R. Gersh. a.l.)

Talmud - Mas. Baba Bathra 158b

GEMARA. In whose established right of ownership?[1] — R. Johanan said: In the right of the ownership of the heirs of the husband.[2] R. Eleazar said: In the right of ownership of the heirs of the wife;[3] and R. Simeon b. Lakish in the name of Bar Kappara said: [The estate in dispute] is to be divided.[4] And so did Bar Kappara teach: Since these appear as heirs and those appear as heirs, [the estate] is to be divided [between them].

MISHNAH. IF THE HOUSE COLLAPSED UPON A MAN[5] AND HIS MOTHER,[6] BOTH[7] AGREE THAT [THE ESTATE IN DISPUTE] IS TO BE DIVIDED.[8] R. AKIBA SAID: I AGREE IN THIS [CASE] THAT THE ESTATE [IS TO REMAIN WITH THOSE WHO ARE] IN ITS ESTABLISHED RIGHT OF OWNERSHIP.[9] BEN AZZAI SAID TO HIM: [IS IT NOT ENOUGH THAT] WE ARE SUFFERING FROM THE EXISTING DIVISIONS OF OPINION[10] THAT YOU [MUST] COME TO CREATE DIFFERENCES FOR US WHERE UNANIMITY WAS DECLARED?[11]

GEMARA. In whose established right of ownership?[12] — R. Elai said: In the established right of the ownership of the heirs of the mother. R. Zera said: In the established right of the ownership of the heirs of the son. When R. Zera went up [to Palestine] he adopted[13] the principle of R. Elai.[14] R. Zera said: From this[15] one may deduce that the climate of the land of Israel makes one wise. And what is the reason?[16] — Abaye replied: Because the inheritance[17] has become the established possession of that tribe.[18]

BEN AZZAI SAID TO HIM: [IS IT NOT ENOUGH THAT] WE ARE SUFFERING FROM EXISTING DIVISIONS OF OPINIONS etc. R. Simlai said: This implies [that] Ben Azzai was disciple [and] colleague of R. Akiba [seeing] that he said to him, 'That you come'.[19]

[The following statement] was sent from Palestine:[20] '[If] a son borrowed on [the security of] the estate of his father, during the lifetime of his father, and he died, his son may take away from the buyers; and this it is that presents a difficulty in civil law.'[21] [If] he borrowed, [it may be asked.] what [is he to] take away? And, furthermore, what has he to do with buyers?[22] — But, if that statement was made, thus

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(1) Do the possessions to which Beth Hillel referred in our Mishnah, remain?

(2) Since the husband is entirely responsible for loss or profit and is also entitled to sell it, it is regarded as his possession and, consequently, on his death, it passes over into that of his heirs,

(3) Since it was she who brought it to him from her father's house.

(4) Between the heirs of the husband and those of the wife.

(5) Lit., 'upon him'.

(6) In her widowhood. Her heirs (e.g.. her brothers) plead that the son died first and that, consequently, his mother inherited his estate before she died, and they now inherit it from her, while his heirs (e.g., his paternal brothers) plead that the reverse had happened and that they, therefore, are entitled to the inheritance.

(7) Lit., 'these and these', Beth Shammai and Beth Hillel who are in disagreement on the cases in the Mishnah, supra 157a and 158a.

(8) Unlike the case of a father and son (Mishnah supra 157a), where one party claims possession as heirs and the other as creditors, or the case of a husband and wife (Mishnah. supra 158a), where certain kinds of property are in the legal ownership of the husband while others are in that of the wife, the case in our Mishnah deals with claims both of which are of equal strength, both being based on the right of inheritance, the widow being acknowledged as the undisputed possessor of the estate, the only point in doubt being whether the one party or the other is to be heir. As the equality of the claims leaves the question of ownership in equal doubt on either side, both schools are of the unanimous opinion that the estate in dispute must be divided.
(9) I.e., even in this case, the School of Hillel maintain the view they had advanced in the previous cases. 'I agree' may be paraphrased 'I agree to differ' (cf. Rashb.)
(10) Which are an obstacle to the formulation of the authoritative law.
(11) Since It was generally agreed that in the case spoken of in our Mishnah Beth Shammai and Beth Hillel are in agreement, why should R. Akiba introduce a note of discord by asserting that even here they are in dispute?
(12) Does the estate remain according to R. Akiba?
(13) Lit., 'stood'.
(14) 'Rabbah adopted the principle of R. Zera', which follows in current editions is to be deleted. (V. Bah, R. Gersh. and R. Han, a.l.) — [It is, however, well to remember that R. Elai was a Palestinian and that R. Zera must have become aware of R. Elai's view only after he came to Palestine when he was led to abandon his own opinion, whereas Rabbah, who still remained behind in Babylon, retained the view of his colleague, R. Zera. Considered in this light, the reading in our current editions is quite in order.]
(15) That in Palestine he was able to see the wisdom of R. Elai's decision.
(16) for R. Elai's decision that the heirs of the mother are entitled to the estate.
(17) The possessions of the widow from the moment her husband died.
(18) To which the mother belongs. Hence it must not be taken away from her heirs, who naturally belong to the same tribe, in favour of the son's heirs who may belong to another tribe and who would, consequently. alienate the property from the tribe the ownership of which had been established.
(19) And not, 'that our Master comes'.
(20) Lit., 'there'. v. supra p. 687, n. 12. The statement is unintelligible and is explained in the Gemara infra.
(21) Lit., 'laws of monies or money matters'.
(22) In the statement no sale but a loan was mentioned!

Talmud - Mas. Baba Bathra 159a

it [must] have been made: [If] a son sold the estate[1] of his father, during the lifetime of the father,[2] and he died, his son[3] may take [it] away from the buyers;[4] and this it is that presents a difficulty in civil law;[5] for they[6] could say to him, 'Your father has sold and you are taking away'![7]

What objection is this! Could he[8] not[9] reply. 'I succeed to the rights of the father of [my] father'?[10] You may know [that such a plea is justified] for it is written, Instead of thy fathers shall be thy sons, whom thou shalt make princes in all the land.[11] If, however, [a message was sent to which] objection [is to be raised, it may be] the following:[12] 'A firstborn son who sold the share of [his] birthright during the lifetime of his father, and he died during the lifetime of his father, his son may take [it] away from the buyers; and this it is that presents a difficulty in civil law',[for] his father sold [it] and he takes [it] away! And if it be suggested [that] in this case[13] also [he might plead]. 'I come as successor to the rights[14] of my father's father', [it may be retorted.] 'If he comes as successor to the rights of his father's father what claim has he upon the portion of the birthright?'[15]

But what difficulty [is this]? Could he not[16] reply, 'I succeed to the rights of [my] father's father[17] but take [also] the place of [my] father'?[18] If, however, [a message was sent to which] objection [is to be raised it might be] the following.[19] 'If a person was in a position to tender[20] evidence for one[21] [in respect of a transaction that was recorded] in a deed,[22] before he turned robber, and [then] he turned robber,[23] he is not [permitted] to attest his handwriting,[24] but others may attest it.'[25] Now, if he [himself] is not trusted[26] [shall] others be trusted![27] This, then, [it is] which [presents] a difficulty

in civil law.

What difficulty [is this]? [It is] possible [that the Palestine message refers to] a case where his[28] handwriting was endorsed at a court of law![29] If, however, [a message was sent to which] objection [is to be raised, it might be] the following.[30] 'If a person was in a position to tender[31] evidence for one[32] [in respect of a transaction that was recorded] in a deed,[33] before it[34] had fallen as an inheritance to him, he is not eligible to identify his handwriting[35] but others may identify his handwriting.'[36]

What difficulty, however, [is this]? [Is it not] possible [that] here also [the reference is to] a case where his handwriting was endorsed at a court of law?[37] If, however [a message was sent to which] objection [is to be raised, it might be] the following.[38] 'If a person was in a position to tender evidence for one, before he became his son-in-law and he [subsequently] became his son-inlaw, he is not [permitted] to attest his handwriting,[39] but others may attest it. [Now. if] he is not trusted [shall] others be trusted![40] And if it be suggested [that] here also [the reference is to] a case where his handwriting was endorsed at a court of law, surely, [it may be retorted], R. Joseph b. Manyumi said in the name of R. Nahman, 'Even though his handwriting was not endorsed at a court of law'![41]

What difficulty. however, [is this]? [It is] possible [that] it is a decree of the king[42] that he[43] shall not be trusted [as a witness] while others[44] shall be trusted; and [the reason is] not because he might lie![45] for should not [this explanation] be accepted,[46] [could it be imagined that] Moses and Aaron [are not permitted to act as witnesses] for their fathers-in-law because they are untrustworthy! [The] only [possible explanation] then [is that] it is a decree of the king that they[47] shall not act as witnesses for them,[48] [so] here also [the explanation may be that] it is the decree of the king that he[49] shall not attest his handwriting in favour of his father-in-law.[50]

Hence [the message sent from Palestine was in fact just the one that was mentioned at first;[51] and as to your objection [from the verse]. Instead of thy fathers shall be thy sons,[52] [it may be pointed out that] this was written in [connection with] a blessing.[53] But can it be said [that this verse] was written [only] in [connection with] a blessing

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(1) His share of the inheritance.

(2) I.e., while it was still in his father's possession.

(3) The son of the dead man who sold his share in his father's estate.

(4) That which his father had sold them. That sale was invalid because his father's father having been alive at the time, his father was not yet in possession of the land he sold; and, since he died before his father, the land has never come into his possession. Hence the son (the grandson of the owner) inherits that land from his grandfather and is entitled therefore, to take it away from the buyers, on his grandfather's death.

(5) V. p. 691, n. 9.

(6) The buyers.

(7) The son's title to the estate is solely due to the rights of his father, how then, could he lay any claim to that which his father himself had sold

(8) The son, the grandson of the original owner.

(9) Lit., 'perhaps'.

(10) And not to those of his father. As the Torah conferred upon a son the right to inherit from his father so it has also conferred upon the son's son the right to inherit from his grandfather. Hence, the inheritance has passed directly from the grandfather to the grandson who should, therefore, be entitled to seize the estate which has never come into the possession of his father who, consequently, had no right to sell it.

(11) Ps. XLV, 17. This proves that a person's son takes the place of his father, i,e., the grandson succeeds his grandfather.

(12) Lit., 'that (is) a difficulty'. But the message in the form given supra, as explained, presents no difficulty at all.

(13) Lit., 'here'.

(14) Lit., 'from the power'.
(15) Were it not for the rights of his father who was a firstborn son, he should not have been entitled to the double portion!
(16) Lit., 'perhaps'.
(17) As regards the right to be heir,
(18) I.e., he inherits from his grandfather as if he himself had been the firstborn (Rashb.). V. Mishnah supra 116a.
(19) V. p. 692 n. 10.
(20) Lit., 'knew'.
(21) Lit., 'for him'.
(22) Which be signed as a witness.
(23) Who is ineligible to act as a witness. Cf. Ex, XXIII, 1.
(24) Cf. previous note.
(25) And the deed is valid.
(26) Presumably because the deed may have been forged.
(27) Granted that the signature is his, there is no proof that the deed itself is not a forgery!
(28) The robber's.
(29) Before he embarked on his lawless career. At that time his word could be relied upon; and the deed is, therefore, valid if the witnesses now testify that they signed the endorsement when he was still an upright man.
(30) V. supra, p. 692, n. 10.
(31) Lit., 'knew'.
(32) Lit., 'him'.
(33) E.g., a loan for which a bond of indebtedness has been given.
(34) The bond, i.e., the debt.
(35) He is now an interested party and is, consequently. disqualified from acting as witness.
(36) Since it has been said that he himself is not trusted, it is apparently assumed that he might have forged the document, why then should it be valid if others confirm his handwriting? Could not that very handwriting represent a record of an imaginary transaction? This then may have been the message sent from Palestine which presents a difficulty in civil law.
(37) CF. mutatis mutandis, supra, n. 13.
(38) V. supra p. 692, n. 10.
(39) I.e., his signature on any document in favour of his father-in-law.
(40) CF. supra p. 693, n. 20.
(41) This, then, may have been the Palestine message and the difficulty in civil law that it presented.
(42) A divine precept, a statute without a reason.
(43) A relative such as a son-in-law.
(44) Strangers, attesting his signature.
(45) Hence, the correctness of the statements in the deed never having been doubted, the deed is valid if strangers attest the signature.
(46) Lit,, 'for if you will not say so'.
(47) Moses and Aaron as any other relatives.
(48) Their fathers-in-law (or other relatives).
(49) A son-in-law.
(50) What, then, could have been meant by the 'difficulty' mentioned?
(51) The case of a son who sold his share in his father's estate during the latter's lifetime (supra).
(52) V. supra.
(53) From an expression used in reference to a blessing no law may be derived.

Talmud - Mas. Baba Bathra 159b

and that with respect to [a matter of] law,[it is] not [applicable]? Surely it was taught: [In the case where] a house collapsed upon a man and his father [or] upon a man and those whose heir he is, and [that man] had against him [the claim of] a woman's kethubah or [that of] a creditor, [and. in the first

case]. the heirs of the father plead [that] the son died first and the father afterwards, while the creditor[s] plead [that] the father died first and the son afterwards;[1] [now,] 'sons'[2] [denote] 'the heirs of the father',[3] do they not? and 'brothers'[4] 'those whose heir he is'? If then it could be assumed [that] one cannot plead. 'I come by virtue of the rights of the father of [my] father', because the verse,[5] Instead of thy fathers shall be thy sons, [was] written in [connection with] a blessing. what avails[6] it [for the heirs] that the son died [first] and the father died afterwards, the creditor [surely] could say to them,[7] 'I collect [my debt from] the inheritance of their father'![8] — No; [by] 'the heirs of the father','his brothers'[9] [are meant; and by] 'those whose heir he is' the 'brothers of his father'[10] [are meant].

R. Shesheth was asked: May a son in the grave[11] be heir to his mother[12] to transmit [her estate] to his paternal brothers?[13] — R. Shesheth said to them, You have learnt it: If a father was taken captive [and died] and his son died in the [home] country, or if a son was carried into captivity [where he died] and his father died in the [home] country. [the estate] is to be divided between the heirs of the father and the heirs of the son. How is this to be understood? If it be suggested [that it is to be understood] as was taught,[14] who then are the heirs of the father and who are the heirs of the son?[15] [Must it] not then [be concluded that it is] this that was meant: If a father was taken into captivity [where he died] and the son of his daughter died in the [home] country, or if the son of one's daughter was taken into captivity [where he died], and the father of his mother died in the [home] country; and it is not known which of them died first, [the estate] is to be divided between the heirs of the father and the heirs of the son. Now, if it were so,[16] granted even that the son died first, he should in his grave inherit [the estate] of the father of his mother and transmit it to his paternal brothers! [Must it] not consequently be inferred that a son in the grave does not inherit [the estate of] his mother to transmit [it] to his paternal brothers?

R. Aha b. Manyumi said to Abaye. 'We also were taught [to the same effect] : IF THE HOUSE COLLAPSED UPON ON A MAN AND HIS MOTHER, BOTH AGREE THAT [THE ESTATE IN DISPUTE] IS TO BE DIVIDED.[17] Now, if it were so,[16] granted even that the son had died first, he should in his grave inherit [the estate] of his mother and transmit it to his paternal brothers! [Must it] not then be concluded that a son in the grave does not inherit [the estate of] his mother to transmit [it] to his paternal brothers?' This proves it.

And what is the reason? — Abaye replied: 'Remove' is mentioned in [the case of the inheritance of] a son,[18] and 'remove' is [also] mentioned in [the case of the inheritance of] a husband,[19] as [in the case of] removal [of an estate] mentioned in [respect of] the husband, a husband in the grave does not inherit [the estate of] his wife, so [also in the case of the] removal [of an estate] mentioned in [respect of] the son, a son in the grave does not inherit [the estate of] his mother to transmit [it] to his paternal brothers.

A man once said to his friend, 'I am selling you the estate of Bar Sisin.' [In it] there was [a plot of] land that bore the name of Bar Sisin, [but the seller] told him, 'This does not belong to Bar Sisin, though it bears the name of Bar Sisin.'[20] [When the matter] was brought before R. Nahman he decided in favour of the buyer.[21] Said Raba to R. Nahman: 'Is this the law? [Surely], he who claims from the other has to produce the proof!'

A contradiction was pointed out between two statements of Raba[22] and between two statements of R. Nahman.[23] For, once a person said to another, 'What claim have you upon this house?' [The other] replied to him, 'I bought it from you and enjoyed [undisturbed] usufruct [during the three] years [required to establish the legal right] of possession.' [The first] said to him, 'I occupied [however], the inner rooms.'[24] [When the matter] was brought before R. Nahman he said [to the buyer]. 'Go [and] bring proof of your [undisturbed] enjoyment of the usufruct.' Said Raba to R. Nahman, 'Is this the law? [Surely], he who claims from the other has to produce the proof!' [Does

not this present] a contradiction between the two statements of Raba and between the two statements of R. Nahman ![25] — There is no contradiction between Raba's statements, [because] here,[26] the seller is in possession of his property;[27] and there,[28] the buyer is in the possession of his property.[27] There is [also] no contradiction between the statements of R. Nahman,[because] since here[26] he spoke to him, of the estate of Bar Sisin and [that plot] bore the name of Bar Sisin, It is incumbent upon him[29] to prove that it does not belong to Bar Sisin; here,[28] [however.] [granted] that he has no [less a claim] than [one] who holds a deed, do we not [even in such a case] say [to the holder], 'Attest your deed and you will retain possession of the estate'?[30] [

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(1) Supra 157a, q.v. for notes.

(2) Of the son who was killed.

(3) 'The father of their father', i.e., their grandfather. They claim that their inheritance does not come to them from their father, who was in debt, but from their grandfather; and that for this reason they (and not the creditors) are entitled to the estate.

(4) V. supra n. 2.

(5) Lit., 'when it is written'.

(6) Lit., 'what is'.

(7) The court.

(8) Since their inheritance, as has been assumed, cannot come direct from their grandfather but from their father. As, however. they are allowed to advance such a plea, it follows that even in legal matters (not only in a blessing) grandchildren succeed directly to the estate of their grandfather

(9) The brothers of the son that was killed, who are, of course, the sons of the father that was killed whose entire estate they inherit, in the case where their brother died first and afterwards their father.

(10) The uncles of the son that was killed. The Mishnah, in the second case, refers to an uncle and a nephew upon whom a house collapsed. If the nephew died first, the brothers of the uncle (the 'heirs of the father' who is one of the brothers of the uncle) are entitled to the entire estate. If, however, the uncle died first, the nephew is entitled as the heir of his father (one of the brothers) to share the estate with them.

(11) I.e., who predeceased his mother.

(12) And thus keep away her estate from, her other living heirs (e.g., her brothers).

(13) Who are complete strangers to his mother.

(14) That it is a case of a father and his own son,

(15) Both, surely. are represented by the very same heir or heirs. If the son has no issue the heirs of the father would also inherit the sons' estate, and if he has issue, his sons would inherit the estate of their grandfather as well as that of their father.

(16) That a son in the grave inherits the estate of his mother.

(17) Supra 158b.

(18) V. Num. XXXVI, 7. So shall no inheritance . . . remove, which refers to the inheritance of a son from his mother. Cf. supra 112b.

(19) So shall no inheritance remove. Num. XXXVI, 9, which refers to a husband's inheritance from his wife. Cf. supra l.c.

(20) It is his in name only, not in fact.

(21) Lit., 'he placed it firmly in the hand of the buyer'.

(22) Lit., 'Raba on Raba'.

(23) Lit., 'R. Nahman on R. Nahman'.

(24) Since the occupier of the inner rooms is making use of the outer ones, the enjoyment of the usufruct for three years in the latter does not establish the right of ownership.

(25) Cf. supra notes 5 and 6.

(26) The case of the land of Bar Sisin.

(27) Hence it belongs to him.

(28) In the dispute about the outer rooms.

(29) The seller.

(30) Hence, it is the buyer who has to produce the proof. On the whole passage, v. supra 29b, 30a.

Talmud - Mas. Baba Bathra 160a

CHAPTER X

MISHNAH. A PLAIN DEED[1] [MUST BEAR THE SIGNATURES OF] THE WITNESSES ON ITS INSIDE; A FOLDED ONE[2] [MUST BEAR THE SIGNATURES OF] THE WITNESSES ON THE REVERSE.[3] A PLAIN [ONE] THAT BEARS THE SIGNATURES OF THE WITNESSES ON THE REVERSE[4] [AND] A FOLDED [ONE] THAT BEARS THE SIGNATURES OF ITS WITNESSES ON THE INSIDE ARE BOTH INVALID.[5] R. HANINA B. GAMALIEL SAID: A FOLDED [DEED] THAT BEARS THE SIGNATURES OF THE WITNESSES ON ITS INSIDE IS VALID, BECAUSE IT CAN BE TURNED INTO A PLAIN [ONE].[6] R. SIMEON B. GAMALIEL SAID: ALL DEPENDS ON[7] THE USAGE OF THE COUNTRY. A PLAIN DEED REQUIRES TWO WITNESSES[8] AND A FOLDED [ONE] THREE.[9] A PLAIN [DEED] THAT BEARS THE SIGNATURE OF ONE WITNESS [ONLY]. AND A FOLDED [ONE] THAT BEARS THE SIGNATURES OF TWO WITNESSES [ONLY] ARE BOTH INVALID.

GEMARA. Whence these words?[10] — R. Hanina said: For Scripture says, Men shall buy fields for money and subscribe the deeds, and seal them, and procure the evidence of witnesses.[11] Men shall buy fields for money and subscribe the deeds,

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(1) גט פשוט, an ordinary deed or note, relating, e.g., to a debt or divorce, all the writing of which appears on one side of the document.

(2) מקשר or מקושר, lit., 'knotted', i.e., stitched. This was a special form of deed, written on alternate lines, blank lines and written lines alternating. Each written line was folded over the blank line adjacent to it, each successive two being stitched together.

(3) Each fold must bear on its external upper side the signature of a different witness, the number of folds not to exceed the number of witnesses.

(4) Lit., 'whose witnesses wrote on its back'.

(5) If it is a bill of divorce, the woman cannot be divorced by it; and if it is a bond of indebtedness, the creditor is not entitled to seize any of the debtor's sold lands.

(6) By removing the stitches.

(7) Lit., 'like'.

(8) Lit., 'its witnesses by two'. [Meir Abulafia, in his Yad Ramah, explains 'a folded deed' differently. 'We take,' he writes, 'a long scroll, and draw from it three to seven thongs below which there comes the written text of the deed. The deed is then folded, special care being taken that the bottom of the reverse of the deed should remain exposed for the signatures of the witnesses. The scroll being rolled together and fastened by the thongs which are knotted together, the witnesses sign between the knots.' This, as Fischer, L. (ZAW. XXX, 139ff.) points out, is in accord with the 'folded deeds' discovered among the Greek papyri. V. also his article in Jahrb. de Jud. Lit., Gesel. IX. 51ff.]

(9) The folded deed contained two elements. The specific (date and amount), and the Formula which is common to all deeds. The first element usually occupied three lines which were folded on the intervening blank lines and stitched together. Hence no less than three witnesses were required. Cf. infra n. 14.

(10) That there are two kinds of deeds differing from each other in the number of witnesses and the mode of folding.

(11) Jer. XXXII, 44.

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refers to[1] the plain [deed]; and seal[2] them, refers to[1] the folded [one]; and procure the evidence, [implies] two [witnesses][3] witnesses, [implies] three.[4] How [is] this[5] [possible]? Two for a folded [deed]; three for a plain [one]. Might not this be reversed?[6] — Since it has more folds,[7] it [must also] have more witnesses.

Rafram said: [It[8] may be derived] from the following.[9] So I took the deed of the purchase, both that which was sealed, containing the terms and conditions, and that which was open.[10] So I took the deed of the purchase, refers to[11] the plain [deed]; that which was sealed, refers to the folded [one]; and that which was open. refers to the plain [portion] in the folded [deed];[12] the terms and conditions, refers to[13] the laws which distinguish[14] the plain [deed] from[15] the folded [one]. viz.,[16] the one[17] [requires] two witnesses[18] and the other,[17] three witnesses;[18] the witnesses of the one [sign] on the obverse, while the witnesses of the other [sign] on the reverse side. Might not this be reversed?[19] Since it has more folds[20] it [must also] have more witnesses.

Rami b. Ezekiel said: [It[21] may be derived] from, the following text.[22] At the mouth of two witnesses, or at the month of three witnesses, shall a matter be established.[23] If their evidence may be established by two, why should three be specified? To tell you [that] two [are required] for a plain [deed]; three for a folded [one]. Might not this be reversed? — Since it has more folds,[20] it [must also] have more witnesses.

[Is it] for this [purpose][24] that the verses[25] [mentioned] were intended?[26] [Surely] each one is required[27] for a separate purpose;[28] as it was taught: [By the statement], men shall buy fields for money, and subscribe the deeds, and seal them,[29] good advice was tendered;[30] so I took the deed of the purchase,[31] [is] just [a record of] what had happened; at the mouth of two witnesses, or at the mouth of three witnesses,[32] [has been specified], in order to compare three [witnesses] to two,[33] concerning which[34] R. Akiba and the Rabbis are in dispute![35] [The fact], however, [is that the law of] a folded [deed] is [only] Rabbinical, and the Scriptural verses [quoted] are a mere asmakta.[26]

What is the reason why the Rabbis instituted a folded [deed]? — They were [in] a place [inhabited] by priests, who were very hot-tempered and they divorced their wives.[36] Consequently the Rabbis made [this] provision,[37] so that in the meantime[38] they might cool down.[39] This satisfactorily explains bills of divorce; what [explanation, however], may be given[40] [in the case of other] documents? — In order that there may be no distinction between bills of divorce and [other] deeds.

Where, [in the case of a folded deed], do the witnesses sign? — R. Huna said: Between [one] fold and the other;[41] and R. Jeremiah b. Abba said: [On] the back of the writing and corresponding to [all] the written part, on the external [side of the deed]. Rami b. Hama said to R. Hisda: According to R. Huna who said [that the witnesses sign] 'between [one] fold and the other', assuming [that he meant], 'between [one] fold and the other on the external side'[42] [the following objection may be raised]: Surely, a folded [deed] was once brought before Rabbi who remarked, 'There is no date on this [deed]'. [Thereupon] R. Simeon son of Rabbi said to Rabbi, 'It might be hidden between the folds'. [On] ripping [the seams] open he saw it.[43] Now, if it were [so],[44] he should have [remarked].' There is neither date nor are there witnesses on this deed!' — He replied to him: Do you think [that according to R. Huna the witnesses sign] between the folds on the inside? No; [they sign] between the folds on the outside.[45] But [is there no reason] to apprehend that he might forge [the lower section of the folded deed][46] and enter whatever he wished [after] the witnesses had signed?[47] — 'Firm and established',is entered on it.[48] Is [there, however, no reason] to apprehend that he might enter whatever he wished and then write a second time, 'firm and established'? — [The formula], 'firm and established', is entered [only] once,[49] not twice.[50] Is [there no] apprehension that he might erase the [original] 'firm and established', and add[51] whatever he wished, and then write, 'firm and established'? — Surely, R. Johanan said: A suspended [word[52] that has been] confirmed[53] is admissible;[54]

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(1) Lit., 'this'.

(2) חתם, seal, close, tie up.

(3) The minimum number of witnesses. All evidence must be given by no less than two witnesses unless the contrary has

been specifically indicated. (V. Sot. 2b).
(4) The minimum number above two that has already been mentioned.
(5) That two, as well as three witnesses are required.
(6) Two witnesses for a folded deed and three for a plain one.
(7) I.e., since Scripture surrounded the folded deed with more restrictions.
(8) V. supra n. 1.
(9) Lit., 'from here'.
(10) Jer. XXXII. 11.
(11) Lit., 'this'.
(12) The folded deed, beside the date and amount which were entered in the first lines which were folded and stitched, also contained the formula, common to all deeds, which was entered in the same manner as on a plain deed. This second element is, 'the plain in the folded'. Cf. Supra p. 699, n. 9.
(13) Lit., 'these'.
(14) Lit., 'which between'.
(15) Lit., 'to'.
(16) Lit., 'how this'.
(17) Lit., 'this'.
(18) Lit., 'its witnesses'.
(19) V. p. 700, n. 8.
(20) V. l.c n. 9.
(21) V. l.c., n. 1.
(22) Lit., 'from here'.
(23) Deut. XIX, 15.
(24) To indicate the differences between the two kinds of deeds.
(25) Lit., 'and these'.
(26) Lit., that they came'.
(27) Lit., 'that it came'.
(28) Lit., 'For its thing'.
(29) Jer. XXXII, 44.
(30) Lit., 'he taught us'. The text is a guide to purchasers how to proceed with such transactions. Cf. supra 28b.
(31) Jer. XXXII, 21.
(32) Deut. XIX, 15.
(33) That three witnesses have no more powers or privileges than two.
(34) Cf. Mak. 5b.
(35) How, then, could these same verses be said to refer to the laws of folded and plain deeds? (20) אסמכתא, 'support', i.e., the Scriptural text was used by the Rabbis as some slight support, or mnemotechnical aid to the laws of the plain and folded deeds which they themselves have enacted.
(36) For the slightest or imaginary provocation. A plain bill of divorce was easily obtainable, and once the divorce had taken place none could re-marry his wife, since a divorced woman is forbidden to a priest. Cf. Lev. XXI, 7.
(37) The folded bill of divorce.
(38) While the elaborate document was being prepared, written, folded, stitched and signed.
(39) And reconsider their hasty decisions.
(40) Lit., 'is there to be said'.
(41) The assumption at present is that they sign on the blank spaces between the written lines on the obverse of the deed.
(42) Of the document.
(43) The date.
(44) That the witnesses sign between the written lines on the inside and that their signatures are consequently folded and stitched in the same way as the date.
(45) Hence the signatures may be seen without ripping open the stitched folds. [According to the description of the folded deed given by the Yad Ramah, the signatures would appear as in fig. 2, p. 704.]
(46) Which is left unfolded. (Cf. supra p. 700. n. 14.)
(47) On the external sides of the folds of the upper section. Since the signatures do not appear at the foot of the deed,

there is no guarantee that the holder would not add anything he pleased.

(48) This formula appears at the foot of every deed, and anything added after it would be detected at once as a forgery.

(49) Lit., 'one firm etc. we write.

(50) Lit., 'two'. Cf. previous note. Hence the forgery would be detected by the double entry of the formula.

(51) Lit., 'write'.

(52) Or words, inserted between the lines of a deed.

(53) At the foot of the deed.

(54) And the deed is valid.

Talmud - Mas. Baba Bathra 161a

an erasure [however] is inadmissible[1] although it had been confirmed.[2] [The law,] however, [that] an erasure invalid only applies[3] [to the case where it occurs] in the position [of the formula] 'firm and established'[4] and [occupies the] same space as 'firm and established'.[5]

According to R. Jeremiah b. Abba, however, who stated, '[On] the back of the writing and corresponding to [all] the written part, on the external [side of the deed]',[6] is [there no cause] to apprehend that he might write on the inside[7] whatever he wished and induce additional witnesses to sign on the outside;[8] and might say, 'I did it[9] in order to increase the number of witnesses'?[10] — He[11] replied to him:[12] Do you think [that] witnesses[13] sign in the [same] order [as the lines of the deed],[14] they sign [vertically] from bottom to top?[15] But is [there no reason] to apprehend [that some] unfavourable condition might occur in the last line [of the deed] and he would cut off that last line, and [though] with it he would [also] cut off [the name of the witness] 'Reuben',[16] [the deed] would [yet] remain valid through [the remaining part of the signature], 'son of Jacob witness';[17] as we learnt: [The signature]. 'son of X, witness', is valid?[18] — [The witness] writes, 'Reuben son of', across one line,[19] and, 'Jacob. witness', above it.[20] Is [there no reason, however,] to apprehend that [though] he might cut off, 'Reuben son of', [the deed] would [yet] remain valid through [the remaining portion of the signatures]. 'Jacob, witness';[21] as we learnt: [a signature], 'X, witness' is valid?[22] — [The word], 'witness' is not written.[23] And if you wish it may be said [that a witness], in fact, does write [after his signature], 'witness', [but this is a case] where it is known that the signature

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(1) Any writing on the spot erased is invalid.

(2) Because it is possible that the formula, 'firm and established', had been erased from its original position and re-written after the spurious matter that had been inserted in its place. Since an erasure of the formula would, thus, invalidate the added matter, there is no cause to apprehend any forgery, though the witnesses sign on the external side of the deed.

(3) Lit., 'they only said'.

(4) At the end of the original text of the deed.

(5) Or more.

(6) And, since the signatures cover the entire extent of the writing, the end of the deed is clearly indicated; and the formula, 'firm and established', is not required at the foot of the deed.

(7) On the lower part of the deed which is left unfolded.

(8) On the back of the additional written matter.

(9) Added extra witnesses over and above the prescribed number of three.

(10) To give the matter greater publicity.

(11) R. Hisda.

(12) Rami b. Hama.

(13) According to R. Jeremiah.

(14) I.e., in horizontal lines on the reverse of the deed, corresponding to the lines on the obverse, the first signature corresponding to the first line of the deed, the second to the second, and so on. If that were the case, spurious matter could certainly be added.

(15) They begin their signatures at the bottom of the reverse, on the back of the last line of the obverse, and proceed vertically upwards, witness after witness, towards the top line. Since the first signature commences at the foot of the deed, any matter below it (not having a signature on the reverse) would be easily detected as spurious.
(16) Written on its back.
(17) The proper form of a signature was, 'X son of Y, witness'. The algebraic symbols are represented in the Talmud by the Biblical characters, Jacob and his son Reuben.
(18) Git. 87b.
(19) So that by cutting off the last horizontal line of in the deed, 'Reuben son of' which is written vertically on the other side is cut off with it.
(20) Above the last line and across the back of the second line (from the bottom) of the text; and this, i.e., the name only of the father of the witness, would remain on the deed were the last line to be cut off. [(V. fig. 1, cf. Fischer loc. cit.)]. According to the description of the Yad Ramah, the signatures appear thus (v. fig. 2).
(21) The court mistaking the name of the father for the name of a witness, regarding 'Jacob' as the name of the witness.
(22) Git. l.c.
(23) In such a case, the name of a witness without the name of his father is invalid. Hence, should one line of the deed be cut off leaving the name of the witness's father only on the remaining portion of the deed,the signature would be invalid.

Talmud - Mas. Baba Bathra 161b

is not that of Jacob.[1] Is it not possible [that] be signed on behalf of his father?[2] — No one gives up his own name and uses as his signature the name of his father. Might he not have used it[3] as a mere mark?[4] For, surely, Rab drew a fish;[5] R. Hanina drew a palm-branch;[5] R. Hisda a Samek.[6] R. Hoshaia, an Ayin,[6] Rabbah[7] son of R. Huna, a mast![8] — No one would be so impertinent [as] to make of the name of his father a [mere] symbol. Mar Zutra said: What is the need for all this![9] Any folded [deed the signature of] whose witnesses[10] do not terminate[11] with the same line [on the deed],[12] is an invalid [document].[13] R. Isaac b. Joseph said in the name of R. Johanan: All erasures[14] require confirmation;[15] and the last line[16] must contain a repetition of the subject matter of the deed.[17] What is the reason?

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(1) Hence no court would assume Jacob himself to be the witness.
(2) Using the name of his father rather than his own, as a mark of respect.
(3) The name of his father.
(4) As an arbitrary combination of letters in lieu of his full name. Such a symbol or mark is as legitimate in deeds as one's proper signature.
(5) Instead of his and his father's full name. This symbol has this become his recognised and legally valid signature.
(6) One letter of his name.
(7) Current editions, 'Raba'.
(8) Others, 'ship'. Now, since these scholars used symbols in lieu of their proper signatures, is it not possible that a witness might use the letters forming the name of his father as a symbol for his signature?
(9) All this series of difficult and forced explanations.
(10) Written vertically across the back of the deed, whether from top to bottom or from bottom to top.
(11) On the upper and lower edge of the document.
(12) I.e., the first letters and last letters of all the signatures must begin and end respectively with the same top and bottom lines of the deed.
(13) Hence there is nothing to apprehend. Should one add any spurious matter, it would be detected by the fact that the back of it would protrude below the signatures. Should one cut off a line, the initial or final sections of all the signatures also would thereby be lopped off.
(14) In legal documents; other than the formula, 'firm and established', which must not be erased, cf. supra 161a.
(15) At the conclusion of the text of the deed before the formula, 'firm etc.', all erasures must be enumerated. Current edd.: He is required to write, 'and this is their confirmation'. 'And this', is to be deleted. (Cf. Rashb.). V. however Tosaf, s.v. אמר for a justification of the text.
(16) Of the deed.

(17) I.e., no fact, condition or qualification that has not already appeared in the text of the deed may be contained in the last line. The approved formula for the last line is, 'And we took symbolic possession from X son of Y in accordance with all that is written and specified above etc.'

Talmud - Mas. Baba Bathra 162a

— R. Amram said: Because the last line cannot be taken as a determining factor.[1] Said R. Nahman to R. Amram: Whence do[2] you [derive] this? [The other] replied to him: Because it was taught, If the [signatures of the] witnesses were removed two lines from the text, [the deed] is invalid; [if only] one line, [it is] valid. Why are two lines different [from one line]? Because one might commit forgery and add[3] [some unauthorised matter]! [In the case of] one line also [might not one] commit forgery and add[3] [some spurious matter]? Must we not then conclude [that] the last line cannot be taken as a determining factor'? This proves it.

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(1) Lit., '(people) do not learn from the last line'. Witnesses do not as a rule take care to write their signatures immediately below the text of the deed, and usually leave some space between their signatures and the text. As this space might be used by the unscrupulous for the insertion, in his own interests, of an unauthorised line, it has been provided that nothing essential that has not already appeared in the text of the deed may appear in its last line. Consequently, should this line ever contain a vital point not recorded in the text, it would immediately be detected as spurious.

(2) Lit., 'to'.

(3) Lit., 'write'.

Talmud - Mas. Baba Bathra 162b

The question was raised: What [is the ruling in the case of] a line and a half?[1] — Come and hear: 'If the [signatures of the] witnesses were removed two lines from the text,[2] [the deed] is invalid',[3] [from which it may be inferred that if they were removed] a line and a half only [the deed] is valid. Explain, [however], the first clause: '[If only] one line, [it is] valid'[3] [from which it follows] that only [if the interval was] one line is [the deed] valid but [if it was] a line and a half [the deed] is invalid! From this, then, no deduction can be made.[4] What about an answer to the question?[5] — Come and hear what has been taught: [If] the [signatures of the] witnesses were removed two lines from the text, [the deed] is invalid; [if] less than this[6] [it is] valid.[7]

[If] four or five witnesses have signed on a deed, and the first two were found to be relatives or [such as are in any other way] disqualified,[8] the evidence may be confirmed by the remaining witnesses.[9] [This] affords support to [the view of] Hezekiah; for Hezekiah said, '[If] it[10] was filled with [the signatures of] relatives, [the deed] is valid',[11] And there is nothing strange[12] [in this law],[13] for [while] air [space][14] renders the festive tabernacle ritually unfit when [that space measures only] three [handbreadths],[15] unfit roofing[16] renders [it] ritually unfit [only] when [that roofing measures] four [handbreadths].[17]

The question was raised: [Do] the 'two lines' which were mentioned[18]

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(1) If a space sufficient for the writing of a line and a half was left between the text and the witnesses' signatures.

(2) Cf. Bah, a.l.

(3) Supra 162a.

(4) Since the deduction from the first part is in contradiction to that of the second, the Baraitha can be used as a guide only for that which it actually teaches.

(5) Lit., 'what becomes about it'.

(6) I.e., a line and a half.

(7) Tosef. Git. VII.

(8) Cf. Rashb. a.l. Current edd., 'four and (or) five witnesses. . . and one of them was found to be a relative etc.'

(9) Though the signatures of the disqualified witnesses are entirely ignored, the space, nevertheless, on which their signatures are written, even if it extends to two lines between the text and the signatures of the qualified witnesses, is not regarded as a blank to disqualify the deed.
(10) The blank space of two lines between the text of a deed and the signatures of the witnesses.
(11) Git. 87b.
(12) Lit., 'be not astonished'.
(13) That a blank of two lines renders the deed invalid, while disqualified signatures. though ignored, and though covering the space of two lines, do not.
(14) Corresponding to a blank in a deed.
(15) If the tabernacle has only three walls, and the air space of three handbreadths in the roof runs across the entire length or breadth of the tabernacle intercepting one or two of the walls, so that the tabernacle is, as it were, short of the prescribed minimum number of walls. (Cf. Tosaf. s.v. שהרי a.I.).
(16) The roof of the festive tabernacle must consist of twigs or any other suitable materials which grow from the ground and are not subject to Levitical defilement.
(17) Suk. 17a.
(18) In respect of the law that a blank space of two lines between the text of a deed and the signatures of the witnesses renders the deed invalid.

Talmud - Mas. Baba Bathra 163a

[include] themselves[1] and the space between them or, perhaps, themselves [only] and not the space between them? — R. Nahman b. Isaac replied: It stands to reason that they and the space between them [were meant];[2] for if it could be assumed [that only] they[3] [were meant] and not the space between them, of what use[4] [is such a narrow space]?![5] Consequently it follows [that] they and the space between them [were meant]. This proves it.

R. Sabbathai said in the name of Hezekiah: The 'two lines' that were mentioned[6] [are such as are] in the handwriting of the witnesses, not [in] the handwriting of the scribe.[7] What is the reason? Because whoever [desires to] commit forgery does not go to a scribe to get it done[8] . And how much [space]?[9] — R. Isaac b. Eleazar said: As [much] for instance [as is required for the writing of] Lak Lak[10] above one another. This shows that he is of the opinion [that the limit is] two [written] lines and four [intervening] spaces.[11] R. Hiyya b. Ammi in the name of 'Ulla said: As [much] for instance [as is required for the writing of] a Lamed[12] in the upper.[13] and a [final] Kaph[14] in the lower [line].[15] [from this][16] it clearly follows that he is of the opinion [that the limit is] two [written] lines and three [intervening] spaces.[17] R. Abbahu said: As [much] for instance [as is necessary for the writing of] Baruk b. Levi[18] in one line; [for] he holds the opinion [that the limit is] one [written] line and two [intervening] spaces.

Rab said: What has been taught[19] is only applicable [to the space] between the [signatures of the] witnesses and the text; but between the [signatures of the] witnesses and the legal attestation,[20] even if [the blank space is] wider, [the deed] is valid. Why [is the limit] between the [signatures of the] witnesses and the text different [from the other]?[21] Because, the witnesses having signed, [the holder of the deed] might commit forgery by entering [on it] whatever he desires! [In the case of the blank space] between the [signatures of the] witnesses and the attestation too, [could not] forgery be committed by entering whatever one desired and attaching the signature of witnesses?[22] — [In the case][23] where [the blank space] is dotted with ink marks.[24] If so, one [could] also dot with ink marks [any blank space] between the [signatures of the] witnesses and the [text of the] deed![25] — It might be assumed [that] the witnesses had confirmed[26] the dotted [portion].[27] [In the case of dotted ink marks] between the [signatures of the] witnesses and the attestation, [would it not] also be assumed [that] the court had confirmed[28] the dotted portion? — A court does not confirm an ink dotted [space].[29] Is [there no reason] to apprehend[30] that the upper [portion of the deed], might be [entirely] cut off, the ink dots erased, any [terms] desired entered,[31] and the signatures of witnesses [also]

might be attached[32] [and yet the deed would be regarded as valid], since Rab stated that a deed the text[33] and the [signatures of the] witnesses of which appear on an erasure[34] is legally valid?[35]

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(1) I.e., the space occupied by the written lines.

(2) And that if space enough for the written lines only was left, the deed is valid.

(3) V. p. 707. n. 26.

(4) Current edd., 'one line without its space', is to be deleted. (CF. Rashb. and Bah, a.I.).

(5) No forgery could in such a case be committed with impunity. Whether the two lines would be inserted without the proper space between them or whether intervening space would be obtained by the use of a smaller hand, the forgery would be easily detected. Why, then, should a deed containing such a narrow blank space be invalid?

(6) CF. p. 707, n. 15.

(7) The characters in the handwriting of ordinary witnesses ate larger than those of a skilled scribe, and naturally occupy more space.

(8) Lit., 'and forge'. A forgery would be carried out in the secrecy of one's house and the unskilled writer would naturally draw big characters.

(9) Is implied by the limit of 'two lines'.

(10) lach lach to thee, to thee, (or perhaps lech lecha get thee out, a clause from Gen. XII, 1). There must be sufficient space for allowing of the writing, in each of the two lines, of letters which extend upwards (ל) and downwards (ך) without their touching each other. These letters, furthermore, are to be in the larger kind of character as reported above in the name of Hezekiah. Cf. supra note 6.

(11) Two between the lines (for the ך of the upper, and the ל of the lower line), one above the upper line for the ל, and one space below the lower line for the ך.

(12) ל.

(13) Lit, 'from above'.

(14) ך.

(15) Lit., from below'.

(16) Since mention is only made of a ל in the upper, and a ך in the lower line.

(17) One above the upper line for the letters which, like a ל, extend upwards; another below the second line for the letters which like ך, extend downwards; and a third between the two written lines for the letters that run both downwards and upwards. Should a ל happen to come below a ך, one could easily move the letter forward or backward to avoid coalescence.

(18) ברוך בן לוי contains two letters which extend downwards and one which runs upwards.

(19) Regarding the limit to two lines of the blank space allowed below the text of a deed.

(20) Confirmation by a court at the foot of a document.

(21) That between the signatures and the attestation of the court.

(22) And the attestation at the foot would be regarded as a confirmation of the entire deed inclusive of the spurious additions and signatures.

(23) I.e., more blank space than the 'two lines' maximum is allowed not in all cases but only in that particular case.

(24) So that nothing could be entered on that space. Aruk reads דמדיית (דיית to dot with ink); cur. edit.דמטייט(טייט to blot, smear).

(25) Why, then, was the blank space in this case restricted to the minimum of two lines?

(26) Lit., 'signed'.

(27) Not the text; and this would invalidate the deed (cf. Git. 87a). Hence, no dotted ink marks are permissible between the text of a deed and the signatures of the witnesses.

(28) V. p. 709. n. 10.

(29) And it would, therefore, be obvious that the attestation referred to the text of the deed. In the case of witnesses, however, such an assumption is not warranted, since not every witness knows the law and it is possible to assume that the holder of the deed had found some witnesses who consented to confirm with their signatures that a blank space was dotted with ink marks.

(30) If an unlimited blank space be allowed between the signatures of the witnesses and the attestation of the court.

(31) On the spot erased.

(32) Without their knowledge.

(33) Lit., 'it'.

(34) V. infra 163b seq.

(35) If the signatures are known. In the case, therefore, where an attestation of a court appears at the foot of the deed, the authenticity of the signatures of the witnesses would be taken for granted; and since, according to Rab, the fact that the deed is written on an erasure is no disqualification of its legality, the forgery would never be detected. How, then, could Rab state that the two lines limit does not apply to the space between the signatures of the witnesses and the attestation of the court?

Talmud - Mas. Baba Bathra 163b

According to R. Kahana who reported it[1] in the name of Samuel, this is quite right;[2] according to R. Tabyumi. however, who reported it[1] in the name of Rab, what is there to be said?[3] — He[4] is of the opinion that in any such case[5] [a deed] is not confirmed by the attestation of the court that [may appear] on it but by the witnesses on it.[6]

R. Johanan, however, said: What has been taught[7] is only applicable [to the space] between the [signatures of the] witnesses and the text; but between the [signatures of the] witnesses and the legal attestation[8] even [if the blank space is limited to] one line[9] [the deed is] invalid. Why [is the limit] between the witnesses and the attestation different [from the other]?[10] Because the upper [portion of the deed] might be cut off and the text[11] [of a new deed] and its witnesses might be written on the one line, and he[12] is of the opinion that a deed the text and the witnesses of which appear on one line is valid! If so, [in the case of a space] between the witnesses and the text also, might not the upper [portion of the deed] be cut off and, the witnesses having signed, anything one desires might be entered? — He holds the opinion [that] a deed the text[11] of which appears on one line and its witnesses on another is invalid.[13] But is [there no reason] to apprehend that the text and the witnesses might be written in one line[14] and [the holder of the deed might] plead, 'I did this[15] in order to increase the number of witnesses'?[16] — He[12] holds the opinion [that] in any such case[17] a deed is not confirmed by[18] the witnesses that [appear] below but by[18] the witnesses who [appear] above.[19]

[Reverting to the above] text. 'Rab stated [that] a deed the text and [the signatures of the] witnesses of which appear on an erasure is valid.'[20]

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(1) The legality of a deed, the text and signatures on which are written on an erasure.

(2) No difficulty arises, since it may be claimed that, in the opinion of Rab, a deed on an erasure is invalid.

(3) In reply to the difficulty raised. Cf. supra note 8.

(4) Rab.

(5) Where the text of the deed and its witnesses are written on an erasure though an attestation of a court also appears on it.

(6) As the personal evidence of the witnesses, or that of those who knew their signatures, is thus required, a forgery on the lines suggested would, of course, be detected.

(7) V. supra p. 709. n. 3.

(8) V. l.c., n. 4.

(9) And even though that space is dotted with ink marks (Rashb.).

(10) That between the text and the witnesses.

(11) Lit., 'it'.

(12) R. Johanan.

(13) Because, as stated supra 162a, the last line cannot be taken as the determining factor.

(14) I.e., all the Original text of the deed would be cut away, leaving only the two lines' blank space above the signatures and, on one of these, a forged text and signatures would be written.

(15) Arranged for signatures of witnesses in more than one line.

(16) The genuine witnesses, though appearing in the second line, would not invalidate the deed, since the first line

contains the text and witnesses, while for confirmation of the deed, the holder would not make use of the signatures of the fictitious witnesses in the first line but of those of the genuine witnesses in the second line.

(17) Where the text of a deed and the signatures of its witnesses appear in one and the same line, and these are followed by other witnesses in the next line.

(18) Lit., 'from'.

(19) Since the signatures of the witnesses in the first line, being fictitious, could not be attested, the forgery would be exposed.

(20) Supra 163a.

Talmud - Mas. Baba Bathra 164a

If, however, it is objected[1] [that, since the writing on the document had been] erased [once, it might] be erased again,[2] [it may be replied that anything which] has been erased once is not like [that which] has been erased twice.[3] But [is there no cause] to apprehend that ink might first be poured on the place of the witnesses,[4] and this[5] would be erased,[6] so that when the text[7] is subsequently erased[8] the lower and the upper sections would represent[9] a repeated erasure?[10] — Abaye replied: Rab is of the opinion [that] Witnesses [must] not sign on an erasure unless the erasure was made[11] in their presence.[12]

An objection was raised: [A deed] the text[13] [of which is written] on [clean] paper[14] and its witnesses on an erasure is valid. Is [there no cause] to apprehend that [the text] might be erased, and any [terms] one desires substituted,[15] and [thus] there would result [a deed] the text[13] and witnesses of which [appear] on an erasure?[16] — They[17] write as follows:[18] 'We witnesses signed on an erasure and the text is written on paper'. Where, [however], do they write [this]? If below,[19] [surely] one [can] cut it off! If above,[19] one [can] erase it![20] They write [it][21] between the signatures.[22] If so, explain the second clause: [A deed] the text[23] [of which appears] on an erasure and its witnesses on [clean] paper is invalid.[24] Why, [it may be asked,] should it be invalid? Let them in this case[25] also write thus: 'We witnesses signed on paper and the text [is written] on an erasure'. Would you now also reply [that as the writing] was [once] erased,[26] one might again erase it?[27] Surely, you said [that] what was erased once is not like that which was erased twice! — This[28] [has been said in the case only] where the witnesses are signed on an erasure.[29] Where, [however], the witnesses are not signed on an erasure but on [clean] paper [the difference[30] can] not be detected.[31] But let any[32] scroll be brought, [on which some writing could] be erased, and compared![33] — The erasure on one scroll is not [always] like the erasure on another scroll.[34] Let, then, the signatures of the witnesses be accepted by the court,[35] and be erased and compared![36] — R. Hoshaia replied: An erasure of one day's [standing] is not like an erasure of two days [standing]. Let it stand [for some time]![37] — R. Jeremiah replied: Precaution had to be taken [to provide] against an erring court.[38]

R. HANINA B. GAMALiel SAID: A FOLDED [DEED] ETC. Rabbi raised an objection against the statement[39] of R. Hanina b. Gamaliel:

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(1) Lit., 'thou wilt say'.

(2) And, consequently, while leaving the signatures on the first erasure, the text above them could be erased again. and on this second erasure a forged text might be substituted for the original!

(3) The forgery would be discovered by comparing the signatures which appear on a first erasure with the text appearing on a repeated erasure.

(4) I.e., on the lower section (corresponding to the place of the witnesses) of a paper which has been once erased from top to bottom.

(5) The ink poured.

(6) And thus the witnesses, not suspecting that the section where they append their signatures had been erased twice, whereas the upper section only once, would be signing on a double erasure.

(7) Lit., 'to that'.

(8) from the upper section, and a forged text substituted.
(9) Lit., 'this and this is'.
(10) Lit., 'erased twice'; and since both text and signatures would thus appear on the same kind of erasure, the court would not be able to detect the forgery.
(11) Lit., 'it was erased'.
(12) They would, consequently, be able to satisfy themselves that the upper and lower sections of the erasure were exactly alike.
(13) Lit., 'it'.
(14) I.e., on which nothing has ever before been written.
(15) Lit., 'write'.
(16) Which, as has been said, is valid! Since this would facilitate forgery, why were witnesses allowed to sign on an erasure?
(17) The witnesses.
(18) Lit., 'thus'.
(19) Their signatures.
(20) And the erasure would raise no suspicion since the witnesses also are signed on an erasure.
(21) The formula, 'We witnesses etc.'
(22) Lit., between witness and witness'. Consequently it cannot be cut off without cutting away with it one of the signatures; and should it be erased, it would leave a doubly erased spot which could be easily distinguished from that of the signatures which appear on what was erased only once.
(23) Lit., 'it'.
(24) Because it is possible that the original had been erased and a forged text had been substituted for it.
(25) Lit 'here'.
(26) The text being written on an erasure.
(27) And substitute a forged text for the original.
(28) Lit., 'these words', that it is possible to distinguish between the two kinds of erasure.
(29) Since the two kinds of erasure appear side by side, on the same document, the contrast between them would be noticed.
(30) Between a first, and second erasure.
(31) The contrast on the document being not that between two kinds of erasure but between an erasure and clean paper.
(32) Lit., 'another'.
(33) With the erasure on the deed. The comparison would determine whether the writing on the deed was erased once or twice.
(34) One of them may be thicker than the other and would not show up the erasure as well as the other.
(35) Provisionally, until it had been ascertained whether the text was, or was not a forgery.
(36) With the erasure on which the text of the deed is written. CF. supra note 11.
(37) When the difference between the old, and the new erasure would disappear and comparison could be made between the erasures on the two sections of the deed.
(38) Which might not think of comparing erasures and, relying on the clear signatures of the witnesses, could accept the validity of the deed. (R. Gersh.) Which might not be aware of the fact that an old erasure differs in appearance from a new one and would, consequently, accept a forged document as genuine (Rashb., cf. Bah, a.l.). Hence it was ordained that any deed the text of which appears on an erasure and the signatures of its witnesses on a clean section of the paper is invalid.
(39) That a folded deed may be turned into a plain one.

Talmud - Mas. Baba Bathra 164b

Surely. the date of the one[1] [deed] is not like that of the other;[1] [for in the case of] a Plain [deed,. the first completed year of a king's reign[2] is counted as his first,[3] [and] the second completed year[4] as his second;[4] [while in the case of] a folded [one], the first year of a king's reign[2] is counted as his second,[4] the second as his third;[5] and sometimes [it may happen] that [a person] might borrow money from another[6] on a folded [deed] and, in the meantime,[7] he might obtain funds and repay him,

but [when] requesting the return of his deed,[8] [the creditor] might reply to him, 'I lost it', and would write out for him [instead], a receipt; and when the time of its payment[9] arrived, he[10] might convert it [into] a plain [deed] and say to him, 'You borrowed from me now'![11] — He holds the view that a receipt is not written.[12]

Was Rabbi, however, familiar with [the dating of] a folded [deed]? Surely, once a certain folded [deed] was brought[13] before Rabbi who remarked, 'This is post-dated',[14] and Zonin said to him, 'Such is the practice of this nation: [If a king] reigned a [full] year they count it as his second year;[15] [if] two [years], they count them as his third[16] [year]'![17] — After he heard it from Zonin he knew it.[18]

In a certain [plain] deed there occurred the [following] date:[19] 'In the year[20] of the archon[21] X'. Said R. Hanina: Let enquiry be made when [that] archon assumed office.[22] Might he [not on that date] have been in office for some years?[23] — R. Hoshaia replied, 'Such is the practice of this nation: [In the] first year they call him, "archon", [in the] second they call him, digon.'[24] Is it not possible that he was deposed and re-appointed?[25] — R. Jeremiah replied: [In] such [a case] he is designated, 'archon-digon'.

Our Rabbis taught: [In the case where a person said.] 'I am to be a nazarite',[26] Symmachus said, [if he added], hena[27] [he must observe] one [term];[28] [if he added], digon [he must observe] two terms;[29] trigon,[30] three [terms];[29] tetragon,[31] four [terms]; pentagon,[32] five [terms].[33]

Our Rabbis taught: A circular, two cornered, three cornered, and five cornered[34] house is not subject to uncleanness from [house] plagues;[35] a four-cornered house is subject to uncleanness from [such] plagues. Whence is this inferred?[36] — for our Rabbis taught: Above it is said, [instead of] 'wall', walls,[37] [signifying] two;[38] below[39] [also]. [instead of] 'wall', it is said, walls,[39] [which similarly signifies] two, thus making a total of[40] four [walls].[41]

A folded [deed] was once brought before Rabbi who remarked, 'There is no date on this [deed]'. [Thereupon], R. Simeon son of Rabbi said to Rabbi, 'It might be hidden between its folds'. [On] ripping [the seams] open he saw it.[42] Rabbi turned round [and] looked at him with displeasure.[43] 'I did not write it', [said the other]. 'R. Judah Hayyata[44] wrote it'. Keep away from talebearing',[45] [Rabbi] called to him.

Once he[46] was sitting in his[47] presence when he finished a section of the Book of Psalms.[48] 'How correct is this writing'? said Rabbi. 'I did not write it', replied the other, 'Judah Hayyata wrote it'. 'Keep away from tale-bearing'. [Rabbi] called to him. In the first case[49] one can well understand [Rabbi's exhortation, since] there was slander; what tale-bearing, however, was there here?[50] — Owing to [the teaching] of R. Dimi; for R. Dimi, brother of R. Safra, taught: A man should never speak in praise[51] of his friend, because by praise of him he brings about[52] his blame.[53]

R. Amram said in the name of Rab: [There are] three transgressions which no man escapes for a single[54] day: Sinful thought,[55] calculation on [the results of] prayer,[56] and slander.[57] 'Slander'? [How] could one imagine [such a thing]![58]

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(1) Lit., 'this'.

(2) Lit., 'he reigned a year'.

(3) Lit., 'a year'.

(4) Lit., 'two'.

(5) Deeds were dated according to the year of the reigning sovereign, folded deeds were post-dated by adding one year to the reign of the ruling king. Hence the same date (e.g. 'the fourth year of King X') on a plain and a folded deed would represent a difference of a full year. [The extra year was probably obtained by reckoning the period elapsing between the

day of the king's accession to the throne and the end of the civil year as a full year. Cf. R.H. 2b: 'If a king ascends the throne on the 29th Adar, as soon as1st Nisan comes, it is counted for him as one year.' This practice in vogue among Persians and Babylonians was adopted by the Romans after the days of Trajan, when the years of emperors were counted from10th December. V. Fischer, L., Jahrb. d. Jud. Lit. Gesel. IX, 67ff; and Bornstein, Sokolow's Sefer hayovel 184 ff.]

(6) Lit., 'from him'.

(7) Between the date on the folded deed and the corresponding date on a plain deed, i.e., during the one year's interval.

(8) Lit., 'and say to him: give me my deed'.

(9) Lit., 'its time'.

(10) The creditor.

(11) I.e., after the date of the receipt. By converting the folded, into a plain deed, its date is moved a full year forward, and the receipt is thus made to appear as having been given prior to the loan. The creditor is, consequently, in a position to assert that the receipt was given for a previous loan, and to claim payment for the loan recorded on the deed. How, then, in view of such possible fraud, could R. Hanina allow the conversion of a folded, into a plain deed?

(12) If the creditor cannot produce and return the deed he is not entitled to the re-payment of his debt.

(13) Lit., 'that came'.

(14) A year later than the current year.

(15) Lit., 'two'.

(16) Lit., 'three'.

(17) This shows that Rabbi did not know that folded deeds were dated a year later than ordinary ones. How, then, could he raise the objection against R. Hanina, supra, which shows that he knew that the dating of one kind of deed was different from that of the other?

(18) And it was then that he, raised the objection.

(19) Lit., 'written'.

(20) Not specifying which year.

(21) Cf. Gr.**.

(22) Lit., 'when archon stood in his archonship'; and that year is to be regarded as the date of the document. If such a deed relates to a loan, the creditor is entitled to seize any of the creditor's lands that were sold or mortgaged after that date.

(23) Lit., 'that his reign was long'.

(24) Gr. ** (born a second time), 'second term in office', iterum consul; the deed, since the title of 'archon' was used in it, must have been written in his first year of office.

(25) And thus assumed the title of 'archon', a second time. Since there may have been a difference of some years between the first and second archonship, and since the deed may have been written in the second, how could R. Hanina decide that the year of the first archonship was to be regarded as the date of the deed?

(26) If no period has been specified the term is thirty days.

(27) Gr. ** acc. of Gr.**, 'one'.

(28) Of thirty days. Cf. previous note but one.

(29) Each of thirty days.

(30) Cf. Gr. **. 'for the third time'.

(31) Cf.Gr. ** 'for the fourth time .

(32) Cf. Gr.**. 'for the fifth time'.

(33) Tosef. Nazir, I, Nazir 8b.

(34) Cf. p. 715. n. 12, and the previous three notes but one.

(35) Cf. Lev. XIV, 34ff.

(36) Lit., 'whence these words', that a four-cornered house only is subject to the laws mentioned.

(37) Lev. XIV, 37. The plur. is used where the sing. would have been more appropriate.

(38) The plural, walls, signifies a minimum of two.

(39) Ibid. v. 39.

(40) Lit., 'behold here'.

(41) I.e., four cornered. Cf. supra, II. 11.

(42) Cf. supra 160b.

(43) Rabbi probably believed R. Simeon to have written the deed, well knowing that he opposed the issue of folded

deeds which were a constant source of errors.
(44) The tailor or a surname.
(45) He should not have given the name of the writer but should have been content with disclaiming his own responsibility for the writing.
(46) R. Simeon.
(47) Rabbi's.
(48) [Thus R. Gersh. The expression פסיק סידרא is, however, taken to denote (a) an exposition of a Biblical section (Rappaport, Erek millin s.v. אפטרתא,) or, (b) a reading of Biblical verses with due regard to the divisions between then, (Friedmann. Hakedem, I, 120)]
(49) Lit., 'there', in the case of the deed which incurred Rabbi's displeasure.
(50) In connection with the Book of Psalms which elicited Rabbi's praise.
(51) Lit., 'good'.
(52) Lit., 'he comes'.
(53) Lit., 'evil'. By pointing to a person's good actions or qualities attention is inevitably directed to his bad actions and qualities also.
(54) Lit., 'every'.
(55) Usually applied to unchaste or immoral thoughts.
(56) עיון תפלה 'contemplation. Or speculation in prayer'. Hence either (a: as elsewhere). 'devotion in prayer' (cf. Pe'ah, I); Or (b: as here). 'speculation on the result of prayer', 'expectation of the immediate grant of one's request'. The offence lies in the presumption of the claim that God must answer prayer of any kind whatsoever; v. Abrahams, I. , Pharisaism and Gospels. II, 78ff.
(57) לושן הרע, Lit., 'evil speech'.
(58) Surely it is quite possible to avoid slandering one's fellows!

Talmud - Mas. Baba Bathra 165a

— But the fine shades[1] of slander [were meant].

Rab Judah said in the name of Rab: Most [people are guilty] of robbery,[2] a minority of lewdness, and all of slander. 'Of slander'? [How] could one imagine [such a thing]! — But the fine shades of slander[1] [were meant].

RABBAN SIMEON B. GAMALIEL SAID: ALL DEPENDS ON THE USAGE OF THE COUNTRY. And does not the first Tanna hold [the principle of the] 'usage of the country'?[3] — R. Ashi[4] replied: Where[5] it is the custom [to use] plain [deeds] and one said to [the scribe]. 'Prepare for me a plain deed', and [the latter] prepared for him a folded [one], the objection [is valid].[6] [Where it] is the custom [to use] folded [deeds] and one said to [the scribe]. 'Prepare for me a folded deed', and [the latter] prepared for him a plain [one, legal] objection [may be raised.[6] Their dispute relates to a place where [both] plain and folded [deeds] are in use, and he said to [the scribe], 'Prepare for me a plain [deed],' and [the latter] prepared for him a folded [one]. [In such a case],[7] [one] master[8] is of the opinion [that legal] objection [may be raised][9] and [the other] master[10] is of the opinion [that] it was merely an intimation.[11]

Abaye said: Rabban Simeon b. Gamaliel and R. Simeon and R. Eleazar are of the opinion [that, in such a case,[12] the instruction] is [regarded as] a mere intimation.[13] [As to] Rabban Simeon b. Gamaliel, [proof may be brought from] what has [just] been said. [As to] R. Simeon? — Because we learnt: R. Simeon said, If his mistake was in her favour, she is betrothed.[14] [As to] R. Eleazar? — Because we learnt: If a woman said [to an agent] 'Receive a bill of divorce on my behalf at[15] such and such a place', and he received it on her behalf at a different place [the divorce is] invalid; but R. Eleazar considers it valid.[16] [for one] master is of the opinion [that by her instruction[17] she expressed her] objection.[18] while [the other] master holds the opinion [that] it was merely an intimation to him of the place.[19]

A PLAIN [DEED] THAT BEARS THE SIGNATURE OF ONE WITNESS etc.[20] One can well understand why it was necessary [to state]. A FOLDED [ONE] THAT BEARS THE SIGNATURES OF TWO WITNESSES is invalid; [since] it might have been imagined [that] because elsewhere [such evidence is] valid, it is valid here also, it [was necessary] to teach us that it is invalid. [In the case] however, [of] A PLAIN [DEED] THAT BEARS THE SIGNATURE OF ONE WITNESS, [is not this] obvious?[21] Abaye replied: This was required[22] [for the following]. That even [where, in addition to] the signature of one witness,[23] there is also the oral evidence of another[24] [the deed is invalid].

Amemar [once] declared [a deed] valid on the signature of one witness[25] and the oral evidence of another.[24] Said R. Ashi to Amemar: And what [about] the [view] of Abaye?[26] [The other] replied to him: I did not hear [of it], that is to say[27] I do not share his view. But, [if so],[28] the difficulty

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(1) Lit., 'dust', i.e., not actual, but hinted, Or implied slander. (Cf. 'Ar. 15b).

(2) In trade or industry one commits robbery directly or indirectly by withholding due profits. Full price of labour or full value for money.

(3) Surely he does. Wherein then, does R. Simeon b. Gamaliel differ from him?

(4) Or, 'Abaye' (Rashal).

(5) Lit., 'in the place'.

(6) Since the instruction was for the preparation of a deed in accordance with the usage of the country, the scribe's deviation tenders the deed legally invalid.

(7) When the scribe did not carry out instructions but did not at the same time also deviate from the established local practice.

(8) The first Tanna.

(9) Since the scribe did not carry out instructions, the deed is invalid.

(10) Rabban Simeon b. Gamaliel.

(11) Lit., 'he shows him a place', i.e., the instruction was not meant to imply a request for a plain deed only. It was a mere intimation that a plain deed also would be acceptable; but no objection to a folded deed was ever intended. Hence, since it is the usage of the place to write either plain, or folded deeds, the document is legally valid.

(12) Where a person was instructed to perform a mission in a certain manner and he carried it out in a more acceptable manner.

(13) Cf. previous note but one.

(14) Kid. 48b. The case of a man who (through an agent) said to a woman, 'Be thou betrothed to me by a silver denar' and tendered instead a gold denar.

(15) Lit , 'from'.

(16) Git. 65a.

(17) That the document be received at a certain place.

(18) To any other place. She objects to having her divorce discussed in any other place but the one she mentioned.

(19) Whither she would trouble him to go. Beyond that place he would not be expected to go, but she would, nevertheless, be grateful if he did.

(20) V. Rashal, a.l.

(21) Surely, the evidence of one witnesses is never sufficient to tender a document valid.

(22) Lit., 'it was not required (but)'.

(23) Lit., 'one witness in writing'.

(24) Lit., 'and one witness by (word of) mouth'.

(25) Cf. n. 5.

(26) Who maintains that in such a case the deed is invalid.

(27) Lit., 'as if to say'.

(28) That Abaye's view is not accepted.

in our Mishnah[1] [remains]! — It[2] teaches us this: That two [witnesses] on a folded [deed are] like one witness on a plain [one]; as in the latter[3] the defect is Biblical,[4] so also in the former[5] the defect is Biblical.[6] [This][7] can be proved.[8] for the members of the College[9] sent[10] [the following enquiry] to R. Jeremiah:[11] [In the case of witnesses] one of whom had signed[12] [the deed] and the other [confirmed the contents] orally,[13] are they combined?[14] According to the first Tanna of R. Joshua b. Korha,[15] the question does not arise because, [according to him, independent evidence[16] of two can] not be combined even [in the case where] the two [witnesses] signed the deed,[17] or the two [gave] oral [evidence]. The question, however, arises according to R. Joshua b. Korha.[18] Is the [independent evidence] combined only [in the case where] the two [witnesses] signed the deed[17] or where the two [gave] oral [evidence], but [in the case where] one witness signed[17] and one [testified] orally, [their evidence] is not combined, or [is there], perhaps, no difference? He sent to them [the following reply]: I am not worthy of having [this enquiry] addressed to me; but your disciple is inclined to the opinion[19] that [the witnesses] may be [regarded as] combined.

He[20] said unto him:[21] We learned it[22] thus:[23] for the members of the College sent [the following enquiry] to R. Jeremiah: [In the case of] two [witnesses] who gave evidence, one at one court[24] and the other[25] at another court,[24] may [one] court come to the other and [thus cause the evidence to be] combined? According to the first Tanna of R. Nathan[26] the question does not arise, since, [according to him, such evidence[27] can] not be combined even where [it was given before] one court. The question, however, arises according to R. Nathan.[28] Is [the evidence] combined only [where it was given] at one court, but [if] at two courts [it is] not combined, or [is there], perhaps, no difference? And he sent to them [his reply]; I am not worthy of having [this enquiry] addressed to me, but your disciple is inclined to the opinion[29] that [the witnesses may] be [regarded as] combined.

Mar b. Hiyya said: This was [the enquiry] addressed to him: [In the case where] two gave evidence at one[28] court, and then they gave evidence at another[30] court,[31] may one [member] of either court come [to the other court] and combine?[32] According to [the view] of R. Nathan,[33] the question does not arise, [for] since witnesses may be combined, is there [any] need [to say that] judges [may be combined]? The question, however, arises according to the first Tanna of R. Nathan.[34] [Is it] witnesses only that are not combined but judges are, or is there, perhaps, no difference? He sent to them [in reply]: I am not worthy of having [this enquiry] addressed to me; but your disciple is inclined to the view[35] that they may be combined. Rabina said; Such was [the enquiry] sent to him: [Where] three [judges] sat down to confirm a deed, and one of them died,[36] [is it] necessary to write; 'We were in a session[37] of three[38] and one is [now] no more,[39] or not?[40] He sent to them [in reply]: I am not worthy of having [this enquiry] addressed to me; but your disciple is inclined to the view[41] that it is necessary to write, 'We were in a session of three[38] and one is [now] no more'. And on account of this[42] R. Jeremiah was re-admitted to the College.[43] MISHNAH. [WHEN] IN [A BOND OF INDEBTEDNESS] IT IS WRITTEN. 'A HUNDRED ZUZ WHICH ARE TWENTY[44] SELA' [THE CREDITOR] RECEIVES ONLY[45] TWENTY [SELA'].[46] [IF THE ENTRY WAS]. 'A HUNDRED [ZUZ] WHICH ARE THIRTY [SELA']' HE[47] RECEIVES ONLY[45] A MANEH.[48] [IF THE ENTRY READS], SILVER ZUZ IN WHICH ARE . . . AND [THE AMOUNT IS] BLOTTED OUT, [IT REPRESENTS] NO LESS THAN TWO. [IF THE ENTRY READS]. 'SILVER SELA'S WHICH ARE. . . , AND [THE AMOUNT IS] BLOTTED OUT, [IT REPRESENTS] NO LESS THAN TWO. [IF], 'DARICS[49] WHICH ARE. . . AND [THE AMOUNT IS] BLOTTED OUT, [IT IS] NO LESS THAN TWO. [IF] ABOVE[50] A MANEH[51] IS WRITTEN AND BELOW[52] TWO HUNDRED,[53] [OR IF] TWO HUNDRED[53] [ARE WRITTEN] ABOVE AND A MANEH[51] BELOW, ONE IS ALWAYS TO BE GUIDED BY THE LOWER ENTRY.[54] IF SO,[55] WHY SHOULD THE UPPER [PORTION AT ALL] BE WRITTEN? — IN CASE A LETTER IN THE LOWER [SECTION] BE RUBBED OFF IT MAY BE INFERRED[56] FROM THE UPPER [PORTION].

GEMARA. Our Rabbis taught:[57] 'Silver'[58] [signifies]no less than a silver denar. 'Silver denarii' or 'denarii silver' [signifies] no less than two silver denarii. 'Silver for denarii', [signifies] silver for no less than two gold denarii.[59]

The Master said: '"Silver" [signifies] no less than a silver denar.' Might it not signify[60] a bar [of silver]? — R. Eleazar replied: [This is a case] where coin was mentioned.[61] Might it not signify[60] small change? — R. Papa replied: In [the case of] a place where small silver coins are not current.[62]

Our Rabbis taught: 'Gold'[63] [signifies] no less than a golden denar. 'Gold denarii' or 'denarii gold' [signifies] no less than two gold denarii. 'Gold for denarii' [signifies] gold of the value of no less than two silver denarii.[64]

The Master said: "gold" [signifies] no less than a gold denar'. Might it not mean[60] a bar [of gold]? — R. Eleazar replied: [In the case] where coin was mentioned.[65]

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(1) Why should it be necessary to teach that a deed is invalid if it bears the signature of one witness only? Cf. supra note 3.

(2) Our Mishnah.

(3) Lit., 'there'.

(4) Cf. Deut. XIX, 15.

(5) Lit., 'here'.

(6) The Rabbis, that is to say, have imposed Biblical restrictions on the folded deed. Consequently, it is invalid if it contains the signatures of two witnesses only. Should such a document be a bond, the creditor would not be entitled to collect his debt from sold or mortgaged lands. Should it be a bill of divorce, the divorce would be illegal.

(7) That the written, and oral evidence respectively of two witnesses is combined.

(8) Lit., 'thou shalt know'.

(9) Lit., 'friends', 'colleagues'.

(10) Cut. edd. add. מתם, 'from there', i.e., Palestine. This is to be deleted with some MSS. as the entire incident occurred in Babylon. Cf. Weiss, Dot, III, 108.

(11) After he had been excluded from the College. V. supra 23b.

(12) Lit.. 'one witness in writing'.

(13) Lit., 'and one witness by (word of) mouth'.

(14) To form complete legal evidence as if they had both signed the deed.

(15) I.e., his opponent. v. supra 32a.

(16) As defined ibid.

(17) Lit., 'in writing'.

(18) Who, in opposition to the view of the first Tanna, regards such evidence as valid.

(19) Lit., 'thus the opinion of your disciple inclines'.

(20) R. Ashi.

(21) Amemar.

(22) The version of the enquiry sent to R. Jeremiah.

(23) And, consequently. no objection from It. Jeremiah's reply could be raised against Abaye's view that the written and oral evidence of two witnesses cannot be combined.

(24) Lit., this'.

(25) Lit., 'one'.

(26) I.e., his opponent. V. supra 32a, Sanh. 30a.

(27) Given by each of the two witnesses at a different time.

(28) Who allows the evidence even if each of the witnesses appeared before the court on a different day.

(29) Cf. supra, p. 720. n. 11.

(30) V. p. 720. n. 16.

(31) [MSS. 'And again they gave evidence at another court', v. R. Gersh.]

(32) To form a court where, owing to death or some other cause, neither of the two or three courts could obtain a

quorum.
(33) Cf. supra note 1.
(34) Cf., p. 720. n. 18.
(35) Cf., loc. cit. n. 11.
(36) After the witnesses had attested their signatures. A court before whom signatures arc attested must consist of three judges.
(37) Lit., 'sitting'.
(38) Judges.
(39) In order that the signatures of two judges only shall not appear as a contradiction of the first sentence of the attestation, we were . . . three'.
(40) And, consequently, 'and one is now no more' may be omitted.
(41) Cf. supra. 720, n. 11.
(42) His modesty, and clear thinking and decision.
(43) Cf. loc. cit. n. 3.
(44) A sela' containing four zuz, the amount of the sela's should have been not twenty but five and twenty.
(45) Lit., 'he has not but'.
(46) I.e., eighty zuz. The holder of the deed being the claimant and the other being in the possession of the sum claimed, the former cannot obtain payment unless he produces satisfactory proof that the higher figure in the bond is the correct one. If he cannot do so, it is assumed that the zuzim borrowed were of an inferior quality five of which (instead of the usual four) amount to a sela.
(47) The creditor.
(48) A hundred zuz. Though, usually, thirty sela are a hundred and twenty zuz, it is assumed (cf. n. 3), that the sela's were of an inferior quality, each of which was worth only three and a third zuz.
(49) Cf.Gr. **, a Persian gold, or silver coin.
(50) In the upper section of the bond.
(51) Hundred zuz.
(52) Near the conclusion of the bond where the principal items are briefly repeated.
(53) Zuz.
(54) Lit., 'all goes after the lowest'.
(55) That the entry in the lower section is always regarded as more reliable.
(56) Lit., 'learned'.
(57) Cur. edd. 'he said', is to be deleted. V. Bah, a.l.
(58) I.e., if a bond contains an entry that 'silver' was lent and no amount is specified.
(59) 'Silver for denarii', implies that the loan consisted of silver which was worth two gold denarii. V. Gemara, infra.
(60) Lit., 'say'.
(61) Lit., 'written'.
(62) Lit., 'men do not make'.
(63) Cf., p. 722. n. 25.
(64) Cf. supra. note 1.
(65) Lit., 'do not pass'.

Talmud - Mas. Baba Bathra 166a

Might it not signify small change? — Small change is not made of gold.[1]

'"Gold for denarii" [signifies] gold of the value of no less than two silver denarii.' Might he[2] not have meant, broken gold [ware] of [the value of] two gold denarii.? — Abaye replied: The holder of the bond [must always be] at a disadvantage.[3] If[4] so,[5] [the same principles should be followed in] the former [cases] also![6] — R. Ashi replied: [In the] first [cases] denarii was written; [in the] last, dinrin was written.[7] And whence may it be deduced[8] that there is a difference between denarii and dinrin? — for we learnt[9] : A woman who had[10] five doubtful confinements[11] [or] five doubtful issues,[12] brings one offering[13] and may[14] [subsequently] eat of sacrificial meat. She is not obliged, [however,

to bring] the rest.[15] [If] she had[16] five certain confinements [or] five issues, she brings one sacrifice and [may subsequently] eat of sacrificial meat but is [also] obliged to [bring] the rest.[15] It once happened that [the price of a pair of] birds[17] in Jerusalem had risen[18] to gold denarii.[19] [Thereupon] R. Simeon b. Gamaliel exclaimed, '[By] this Temple![20] I shall not go to rest this night before these [can] be [obtained] for silver denarii'.[21] He entered the Beth din and issued the following instruction:[22] 'A woman who had[23] five certain [child] confinements, [or] five certain issues, brings one sacrifice and may [subsequently] eat of sacrificial meat, and there is no obligation upon her to bring the rest'.[24]

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(1) Lit., 'small change of gold people do not make'.

(2) The writer of the bond.

(3) Lit., 'the hand of the owner of the bond on the lowest'. And the borrower, being in possession of the sum claimed, has the right of interpreting the bond in terms advantageous to himself.

(4) for this reading. v. Rashal, a.l. The printed texts contain the following in round brackets: The first (part) where it was taught 'silver for denarii' (signifies) silver for no less that, two gold denarii, why? I might say (that) he meant a bar of silver for two silver denarii.

(5) That the bond is to be interpreted in terms advantageous to the borrower and disadvantageous to the creditor.

(6) In the case of (a) the entry. 'silver denarii'; why should this be interpreted to mean 'silver for no less than two gold denarii' (which is in favour of the holder of the bond), and not, 'small silver coins for two silver denarii' (which would be in favour of the borrower)? And, again (b) in the entry. 'gold denarii' or 'denarii gold'; why should that be given the interpretation, 'no less than two gold denarii' (which also is in favour of the creditor) rather than, 'gold of the value of no less than two silver denarii' (which would be in favour of the borrower)?

(7) The latter, being the usual plural form of denar, signifies silver denarii; the former, being the unusual plural of the noun, implies gold denarii. Cf. Rashb., R. Gersh. and Goldschmidt. For a further discussion of the denar v. Zuckermann's Tal. Munz., 19ff; and Smith's Dict. Gk. Rom. Ant., s.v. Denarius.

(8) Lit., 'thou sayest'.

(9) Cut. edd.: 'it was taught'.

(10) Lit., 'there were upon her'.

(11) Lit., 'births', i.e., if she miscarried five times and, in each case, it was unknown whether the miscarriage was a human embryo or some other object. In the former case the woman would be liable to bring an offering after the termination of a period of Levitically unclean, and clean days (cf. supra p. 528, n. 1); in the latter case she would not.

(12) When it is uncertain whether the discharge occurred during the ordinary course of menstruation (cf. supra p. 528. n. 8). or during the 'eleven days' that intervene between the menstrual periods. In the latter case she is liable to bring an offering (cf. Lev. XV, 25ff); In the former she is exempt.

(13) At the conclusion of the 'days of her purifying'.

(14) Having, thereby, completed the ceremonial of purification.

(15) The other four sacrifices.

(16) V. note 4.

(17) Lit., 'nests'. Sacrifices after recovery from an issue, (cf. Lev. XV. 29). and, in cases of poverty, also after confinements, (ibid. XII, 8). consisted of birds (two turtles or two young pigeons).

(18) Lit., 'stood'.

(19) The price had risen owing to the large demand on the part of women who brought separate sacrifices for each confinement.

(20) An oath.

(21) Dinrin, implying silver denarii, while gold denarii were previously described (v. supra n. 13), as denari. Thus it has been shewn that a distinction was made between the two names, denari and dinrin.

(22) Lit., 'he taught'.

(23) Lit , 'there were upon her'.

(24) The other four sacrifices.

On that day [the price of a pair of] birds fell[1] to a quarter [of a denar'].[2]

IF ABOVE IS WRITTEN etc. Our Rabbis taught: The lower [section] may be corrected[3] from the upper [one] where one letter [is missing], but not in [the case of] two letters; for example, Hanan from Hananis[4] or 'ANan from 'ANani.[4] What is the reason[5] why two letters [must] not [be replaced]? [Because] a name of four letters might occur and these[6] would represent half of the name! If so, [in the case of] one letter also, might [not] a name of two letters occur and this[7] would represent half of the name? — But this is the reason [for] two letters: A name of three letters might occur, and these would represent the greater part of the name.[8]

R. Papa said: It is obvious to me [that if] Sefel[9] [appears] in the upper [section].[10] and Kefel[11] in the lower [section], the latter is always to be taken as a guide.[12] R. Papa, [however], inquired what [is the ruling if] Kefel [appears] above and Sefel below? May this be attributed[13] to a fly,[14] or not? — This remains undecided.[15]

In a certain [deed] there was written, 'six hundred and a zuz'. R. Sherabya sent this [enquiry] to[16] Abaye: [Is the entry to be interpreted as], 'six hundred istira[17] and a zuz', or perhaps, [as] 'six hundred perutoth[18] and a zuz?' — He replied to him: 'Dismiss [the question of] perutoth which [could] not [have been] written in the deed, since they are counted up

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(1) Lit., 'stood'.

(2) Ker. I, 7.

(3) Lit., 'be learned', 'inferred'.

(4) Where only the letter Yod is wanting. Should two letters, however, be missing. e.g.. N and I, leaving in the lower section Han or AN, only, they must not be replaced from the upper section.

(5) Lit 'why different'.

(6) The two letters.

(7) The single letter.

(8) A scribe might omit half a name if that consisted of a single letter. He is not likely, however, to omit two letters which in some names represent the greater part of the name. If two letters or more are missing, the person whose name is represented by the remaining letters, not the bearer of the name in the upper section, is entitled to the repayment of the loan. [V. however Tosaf. s.v. אבל

(9) Heb., Sefel, 'bowl' or 'cup' Some read ם פל , i.e. ם פלגי 'sixty halves'.

(10) Of a deed.

(11) Heb., קפל(root. 'to fold'), an article of dress, which can be folded. Others, ק פל i.e., ק פלגי 'hundred halves'. Both sefel and kefel, however, may be arbitrary word combinations taken by R. Papa as an illustration of a slight variation by which one word may differ from another.

(12) Lit., 'all goes after the lowest.

(13) Lit., 'do we fear'.

(14) Which might have blotted out the lower stroke of the kof, and thus changed it into a samek. [In the third and fourth centuries the stem of the kof hung from the roof of the letter and the curve was drawn to it, thus: P.]

(15) Hence, if such a case should be brought before a court, the decision must be in favour of the person who is in possession of the money or article; in accordance with the rule, 'he who claims must produce the proof'.

(16) Lit., 'before'.

(17) The istira was a silver coin equal to a provincial sela or half a zuz.

(18) A perutah was a very small coin of the value of a hundred and ninety-second part of a zuz. Cf. Zuckermann, op. cit., 22f.

and converted into zuzim.[1] What, [then could the entry] mean?[2] [Either] "six hundred istira and a zuz" [or] "six hundred zuz and a zuz";[3] [but] the holder of the bond [must always be] at a disadvantage.'[4]

Abaye said: One who is required to present his signature at a court of law[5] shall not present it at the foot of the scroll [because] a stranger might find it and write [above the signature] that he [has a] claim [of] money upon him; and we learnt [that a person], who produced against another[6] [a bond in] the latter's[7] handwriting [showing] that he owes him [a debt], may collect [it] from his free[8] property.[9]

A collector of bridge tolls[10] once came before Abaye [and] said to him, 'Will the Master give[11] me his signature so that when the Rabbis come [and] present to me [an authorisation][12] I will allow them to pass without [payment of] the toll'.[13] He was writing it down[14] for him at the top of a scroll. As [the other] was pulling it,[15] he[16] said to him,'The Rabbis have long ago anticipated you'.[17]

Abaye said: [Numbers] from three to ten [should] not be written at the end of a line, [because] forgery might be committed by adding letters to them;[18] and if this occurred, the sentence should be repeated two [or] three times, [since] it [would then] be impossible that [the numbers] should not [once] occur in the middle of a line.[19]

In a certain [deed][20] it was entered,[21] 'a third of an orchard'.[22] [The buyer] subsequently[23] erased the top, and the base of the Beth[24] and converted[25] [the second word] into, 'and an orchard'.[26] [When] he appeared before Abaye [the latter] said to him, 'Why has the Waw so much space round about it?'[27] Having been placed under arrest[28] he confessed.

In a certain [deed] there was entered, 'the portion of Reuben and Simeon, brothers'.[29] They had a brother whose name was 'Brothers';[30] and [the buyer] added to[31] it[32] a Waw and converted [the word into], 'and Brothers'.[33] [When] he came before Abaye[34] [the latter] said to him. 'Why is there so little space round the Waw!.[35] He was placed under arrest[36] and he confessed.

A certain deed bore the signatures of Raba and R. Aha b. Adda. He[37] came before Raba [who] said to him, '[This] signature is mine; never, however, have I signed before R. Aha b. Adda!' He was placed under arrest[36] and he confessed.[38] Said [Raba] to him, 'I can well understand how you forged my [signature], but how [could] you manage [that] of R. Aba b. Adda whose hand trembles?' 'I put my hand',[39] the other replied, 'on a rope-bridge'.[40] Others say [that] he stood on a hose and wrote.[41]

MISHNAH. A LETTER OF DIVORCE [MAY] BE WRITTEN FOR A HUSBAND THOUGH HIS WIFE IS NOT PRESENT,[42] AND A RECEIPT[43] [MAY BE WRITTEN] FOR A WIFE THOUGH HER HUSBAND IS NOT PRESENT,[44] PROVIDED THEY ARE KNOWN.[45] THE FEE[46] IS PAID BY THE HUSBAND.

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(1) Any sum of a hundred and ninety-two perutoth, or any multiple of it, is entered respectively as a zuz or zuzim. Had the loan amounted to six hundred perutoth and a zuz, this would have been entered as 'four zuzim and twenty-four Perutoth.'

(2) Lit., 'thou saidst'.

(3) R. Han. deletes, 'six . . . zuz'.

(4) Cf. supra p. 723. n. 10. Hence, he may claim the smaller sum only.

(5) In certain circumstances it is necessary for one of the witnesses of a deed that he does not attest his signature in person but enables the court to see a signature of his on a separate scroll for the purpose of comparison with, and confirmation of his signature on the deed. Cf., Keth. 21a.

(6) Lit., ‘him’.
(7) Lit., ‘his’.
(8) Real estate which the borrower has neither sold nor mortgaged.
(9) Infra, 175b.
(10) Heb. Bazbina or Bazbana, Pers. bazwan, bazban.
(11) Lit., ‘show’.
(12) From Abaye.
(13) His possession of Abaye's signature, he contended, would enable him to check the signature on any authorisation that might be presented to him.
(14) Lit., ‘he showed’.
(15) The scroll; so that the signature might appear lower and a margin be left above it.
(16) Abaye.
(17) V. previous paragraph.
(18) Lit., and write’. The Hebrew units from three to ten can easily be increased by the addition of יִן, three would thus become תְּלָתִין , thirty; אַרְבַּע, four. אַרְבְּעִין, forty, and so on.
(19) Should forgery be committed on the number at the end of the line, this would be detected by the number that appeared in the middle of the lowest of these lines, which is always taken as the determining factor. V, our Mishnah, 165b.
(20) Of a sale.
(21) Lit., ‘written’.
(22) The deed read: ‘I sold to N.N. in my garden a third of (lit., ‘in’) my orchard,’ בְּפַרְדֵּיסָא.
(23) Lit., ‘he went’.
(24) In the word בְּפַרְדֵּיסָא, thus changing the בְּ into a וְ.
(25) Lit., ‘made’.
(26) Heb., ufardisa, וּפַרְדֵּיסָא ‘and an orchard’. The text was thus made to read, ‘in my garden a third and an (viz.. all the) orchard’; and on the strength of this altered text the buyer claimed not only a portion of the field but also the entire orchard.
(27) Lit., ‘What is the reason (why) the world was widened for this waw’.
(28) Lit. ‘he bound him’.
(29) אַחֵי, brothers’. The deed stated that the buyer had acquired the portion of the two brothers only. that belonging to any other brother not being included in the sale.
(30) Ahi, אַחִי.
(31) Lit., ‘he went (and) wrote’.
(32) The word, ‘brothers’, אַחֵי in the deed.
(33) וְאַחִי, signifying, ‘and Ahi’. On the basis of this text the buyer claimed to have acquired the portion of the third brother Ahi also.
(34) To claim Ahi's share.
(35) Lit., ‘what is the reason (why) the world is so much compressed for this Waw’.
(36) V. p. 727. n. 25.
(37) The holder of the deed.
(38) That the signatures were forged.
(39) When forging his signature.
(40) Which vibrates at the least touch and causes the hand to shake.
(41) Standing on a hose causes all one's limbs to shake.
(42) Lit., with him’. Since the grant or refusal of a divorce is entirely dependent on the desire of the husband, he may be entrusted with the keeping of the document until such time as he may decide to hand it over to his wife.
(43) For the amount of a woman's kethubah.
(44) The receipt is of advantage to the husband and, since a privilege may be obtained on behalf of a person in his absence, may be written, at the request of the wife, though the husband is absent. The wife takes charge of the receipt and delivers it to him when she had received the payments due to her.
(45) The Gemara explains this, infra.
(46) For the writing of the letter of divorce and the receipt.

Talmud - Mas. Baba Bathra 167b

A BOND MAY BE WRITTEN FOR A BORROWER THOUGH THE LENDER IS NOT PRESENT.[1] IT [MUST] NOT, HOWEVER, BE WRITTEN FOR THE LENDER UNLESS THE BORROWER IS WITH HIM. THE FEE[2] IS PAID BY THE BORROWER. A DEED [OF SALE] MAY BE WRITTEN FOR THE SELLER IN THE ABSENCE OF THE BUYER.[3] IT [MUST] NOT BE WRITTEN, HOWEVER, FOR THE BUYER UNLESS THE SELLER IS PRESENT.[4] THE FEE[5] IS TO BE PAID BY THE BUYER. DEEDS OF BETROTHAL[6] AND MARRIAGE[7] ARE NOT TO BE WRITTEN EXCEPT WITH THE CONSENT OF BOTH PARTIES, AND THE FEE IS PAID BY THE BRIDE GROOM. A CONTRACT OF TENANCY ON SHARES[8] OR ON A FIXED RENTAL[9] IS NOT WRITTEN EXCEPT WITH THE APPROVAL OF BOTH PARTIES, AND THE FEE IS PAID BY THE TENANT.[10] DEEDS OF ARBITRATION[11] AND ALL [OTHER] JUDICIAL DOCUMENTS ARE NOT WRITTEN EXCEPT WITH THE APPROVAL OF BOTH PARTIES, AND BOTH PAY THE FEE.[12] RABBAN SIMEON B. GAMALIEL SAID; TWO [DEEDS] MAY BE WRITTEN[13] FOR THE TWO PARTIES, ONE FOR EACH.[14]

GEMARA. What [is meant by] PROVIDED THEY ARE KNOWN? — Rab Judah said in the name of Rab: Provided the name of the man is known[15] [in the case of] a letter of divorce,[16] and the name of the woman in [the case of] a receipt.[17]

R. Safra and R. Aha b. Huna and R. Huna b. Hinena sat [together] and Abaye [also] was sitting with then, and, while they were in session,[18] they raised [the following] question: [Why is] the name of the man required[19] [to be known] in [the case of] a letter of divorce, [and] not the name of the woman; [and] the name of the woman [and] not that of the man in [the case of] a receipt? [Surely] there is reason to fear that one might write[20] a letter of divorce and give[21] it to the wife of another person;[22] and sometimes a woman might procure the writing[23] of a receipt and give it to a strange[24] man![25] — Abaye said to them: Thus said Rab, 'The name of the man[26] in [the case of] a letter of divorce, and the same law [applies] to the name of the woman; the name of the woman[26] in [the case of] a receipt and the same law [applies] to the name of the man'.

But is [there no reason] to apprehend[27] [that there might be a case] of two [persons of the name of] Joseph b. Simeon[28] living in the same town [and that one of them] might write[29] a letter of divorce and deliver[30] it to the other's wife? — R. Aha b. Huna said to them: Thus said Rab: Two [persons of the name of] Joseph son of Simeon who live in one town, must not divorce their wives except in the presence of each other.[31]

Is [there no reason], however, to apprehend[32] that [a person] might go to another town and make his name [there] known as Joseph b. Simeon and [then] would write[29] a letter of divorce[33] and carry it to the wife of that person?[34] — R. Huna b. Hinena said to them,: Thus said Rab; Provided one's name was known in a town [for] thirty days, he need not be suspected.[35]

What [is the law where one's name] is not known?[36] Abaye said, Where they[37] call him[38] and he answers.[39] R. Zebid said, 'A deceiver is vigilant in his deceit'.[40]

A certain receipt [was produced] on which the signature of R. Jeremiah b. Abba appeared. The woman,[41] [however], came before him [and] said to him, 'It was not I',[42] 'I also said to them'.[43] [R. Jeremiah] replied, '[that] it was not she';[44] but they[43] told me, 'She has grown old and her voice has become rough'.[45] Said Abaye: Although the Rabbis said,

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(1) Lit., 'with him'.

(2) For the writing of the document.

(3) Lit , ‘though the buyer is not with him’.
(4) V. p. 728. n. 13.
(5) V. loc. cit. n. 14.
(6) Agreements between the parties on the amounts promised. Cf. Keth. 102b.
(7) Kethubah contracts.
(8) The tenant giving the landowner an agreed portion of the crops.
(9) A certain fixed amount irrespective of the yield of the land.
(10) Lit., ‘the receiver’, i.e ‘he who undertook the work’.
(11) Heb. Shetare berurin, שטרי בירורין. V. Gemara, infra.
(12) For the preparation of the shetare berurin.
(13) By the witnesses.
(14) Lit., ‘to this for himself and to . . . himself’.
(15) To the scribe and witnesses.
(16) So that a false name might not be given, and the document presented to the wife of the man bearing that name. The woman would then on producing the letter of divorce be able to collect the kethubah from her husband, even though she did not produce a written kethubah. Cf. Keth. 89b.
(17) She might give the name of a woman who has been divorced and has not received what was due to her as her kethubah, and present the document to the man who would use it as proof that he discharged his obligation to his divorced wife.
(18) Lit., ‘sat’ , i.e delivering, or listening to lectures and discussing them.
(19) Lit ‘yes’.
(20) I.e., obtain a scribe and witnesses to write it for him.
(21) Lit., ‘go and bring’.
(22) Whose name might be identical with his own.
(23) Lit., ‘go (and) write’.
(24) Lit., ‘who is not hers’.
(25) Whose wife might bear the same name as hers.
(26) Must be known.
(27) Even where the names of the parties are known.
(28) I.e., husbands and wives bearing respectively the same names.
(29) I.e., instruct a scribe and witnesses to write it for him.
(30) Lit., ‘and go (and) bring’.
(31) If one of them divorces his wife the other must be present.
(32) According to the Tanna of our Mishnah who requires the names of the parties to be known in order to guard against the possibility of the use of the document by the wrong party.
(33) In his adopted name.
(34) Whose real name is Joseph b. Simeon: and the woman would thus be able to prove that she had been divorced.
(35) That the name by which he is known is not his real name. No one, it is assumed, would venture to go under a false name for so long a period, for fear of being discovered.
(36) How are the scribe and witnesses to decide whether the name submitted to them is the genuine one?
(37) The persons preparing the letter of divorce.
(38) Suddenly, unexpectedly.
(39) One would not respond, it is assumed, to a name which is not really his.
(40) And would, therefore, respond when called by his false name. The genuineness of a name cannot consequently be determined unless a person was known by that name for a sufficiently long period.
(41) Lit., ‘that woman, on whose behalf the receipt was written.
(42) Who authorised the writing of the receipt.
(43) The other witnesses who signed the document with him.
(44) Judging by her voice which was different from that which he heard at the time he signed the receipt.
(45) With which opinion R. Jeremiah, after consideration, concurred.

Talmud - Mas. Baba Bathra 168a

'Once a statement has been made it cannot be withdrawn',[1] it is not the nature of a scholar to take particular note [of a woman's face].[2]

A certain receipt[3] on which the signature of R. Jeremiah b. Abba appeared [was produced, but the woman] said to him, 'It was not I'.[4] 'I am sure',[5] he insisted,[6] 'it was you'. Said Abaye: Although a scholar is not in the habit of taking note [of a woman's appearance], when [however] he does take notice he is relied upon.[7]

Abaye said: A scholar who desires[8] to betroth a woman should take with him a layman[9] [so that another woman] might [not] be substituted for her [who would be taken away] from him.[10] AND THE HUSBAND PAYS THE FEE etc. What is the reason? — Because Scripture says: And he shall write . . . and give.[11] And why is this not done[12] at the present time? — The Rabbis have imposed it[13] upon the woman to order that he might not cause her [undue] delay.[14]

A BOND MAY BE WRITTEN FOR A BORROWER THOUGH THE LENDER IS NOT PRESENT etc. [Is not this] obvious?[15] — [This[15] would] not [have been] required [except] in [the case of a loan for] merchandise on shares.[16]

A DEED [OF SALE] MAYBE WRITTEN FOR THE SELLER IN THE ABSENCE OF THE BUYER etc. [Is not this] obvious?[17] — [This would] not [have been] required [except in the case] where one sells his field on account of its inferiority.[18]

DEEDS OF BETROTHAL AND MARRIAGE ARE NOT WRITTEN etc. [Is this not] obvious?[19] — [This would] not [have been] required [except for the fact] that even a scholar [has to pay the fee] though it is a satisfaction to his father-in-law to bring him into his family.[20]

A CONTRACT OF TENANCY ON SHARES OR ON A FIXED RENTAL IS NOT WRITTEN etc. [Is not this] obvious? — [It would] not [have been] required [except for the case] where [the land is to lie] fallow.[21]

DEEDS OF ARBITRATION . . . . ARE NOT WRITTEN EXCEPT WITH THE APPROVAL OF BOTH PARTIES etc. What [is meant by] shetare berurin?[22] — Here[23] it was explained [as] 'records of the pleas'.[24] R. Jeremiah b. Abba explained: One[25] [of the litigants] chooses one and the other chooses another.[26]

RABBAN SIMEON B. GAMALIEL SAID: TWO [DEEDS] MAY BE WRITTEN FOR THE TWO PARTIES, ONE FOR EACH. May it be suggested [that] they are in dispute on [the principle of] exercising force against a Sodomite character;[27] for [one] Master[28] is of the opinion [that] force is exercised[29] and the [other] Master[30] is of the opinion that force is not exercised![31] — No; both[32] [agree that] force is exercised, but the reason of Rabban Simeon b. Gamaliel here[33] is this: Because [one can] say to the other,[34] 'I do not like your rights to be at the side of my rights, for you appear to me as a lurking lion'.[35]

MISHNAH. [IN THE CASE] WHERE [A PERSON] PAID A PART OF HIS DEBT AND THE BOND WAS DEPOSITED WITH A THIRD PARTY TO WHOM [THE BORROWER SAID]. 'IF I WILL NOT PAY YOU [THE BALANCE] BETWEEN NOW AND[36] A CERTAIN DATE, GIVE HIM[37] HIS BOND', [AND] THE DATE ARRIVED AND HE DID NOT PAY, R. JOSE SAID: HE[38] SHALL GIVE [IT];[39] R. JUDAH SAID, HE SHALL NOT GIVE [IT].

GEMARA. Wherein[40] [lies] the difference between them? — R. Jose holds [that] asmakta[41] conveys possession.[42] and R. Judah holds [that] an asmakta does not convey possession.[43] R.

Nahman in the name of Rabbah b. Abbuha in the name of Rab said: The halachah is according to R. Jose. When [such cases][44] came before R Ammi, he said: 'Since R. Johanan has taught us again and again[45] [that] the halachah is according to R. Jose, what can I do?' The halachah, however, is not according to R. Jose.

MISHNAH IF A MAN'S BOND OF INDEBTEDNESS WAS EFFACED, HE MUST SECURE[46] WITNESSES,[47] AND APPEAR BEFORE A COURT OF LAW WHERE HE IS SUPPLIED WITH [THE FOLLOWING] ATTESTATION: 'THE BOND OF X SON OF Y WAS FADED ON SUCH AND SUCH A DATE,

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(1) Lit., 'since he said, he cannot say again'. Ket. 18b, Sanh. 44b, Mak. 3a.

(2) Hence R. Jeremiah's first statement may be assumed to have been made under a misapprehension, while his second statement, made after due consideration, is accepted.

(3) For a kethubah.

(4) But another woman whose name happened to be the same as hers.

(5) Lit., 'indeed'.

(6) Lit., 'said to her'.

(7) Lit., 'he took note'. Hence R. Jeremiah's statement is to be accepted.

(8) Lit., 'goes'.

(9) Heb. Am-ha-arez, v. Glos.

(10) Since he does not observe and recognise women.

(11) Deut. XXIV, 3.

(12) Lit., 'that we do not do so', that the husband is made to pay the fee

(13) The payment of the fee.

(14) By refusing, or delaying the payment of the scribe's fee, as the scribe would hardly part with the deed before his fee had been paid, the husband is able to postpone also the paying of the kethubah which does not become due until after the divorce had taken place. (Cf. R. Gersh., a.l.). Furthermore, the husband, in order to avoid payment, might desert her altogether and she would thus remain separated from him and prevented from ever marrying again. (Rashb.).

(15) That the borrower, in whose interest the loan is made, must pay the fee of the scribe.

(16) עיסקא, a loan for trading purposes the profits of which are shared by the borrower and lender, (v. supra 70b). Though the latter also benefits from the profits, the fee, as in the case of any ordinary loan, must be paid by the borrower.

(17) That the buyer is to pay the scribe's fee.

(18) Though the seller may be more anxious to sell than the other to buy, the latter, as is the case with an ordinary buyer, must pay for the preparation of the deed.

(19) That the bridegroom is to pay the fee.

(20) It is a source of deep satisfaction for one to be able to secure a scholar for a son-in-law. This, however, is no reason why the bridegroom, though a scholar, should not pay the fees that are paid by other bridegrooms.

(21) Though the tenant would for a year or two, while the land is to lie fallow, derive no benefit from the purchase, he has nevertheless, like an ordinary buyer, to pay the fee

(22) V., supra p. 729. n. 8.

(23) In Babylon.

(24) Of the litigants. Those were recorded by the court scribes, and the decision of the judges was based on the pleas thus recorded.

(25) Lit., 'this'.

(26) Lit., 'One'. An agreement was then signed in which the names of the litigants and the respective arbitrators they have chosen were duly entered.

(27) V. supra p. 62, n. 3.

(28) The first Tanna.

(29) Hence if one of the litigants demands a separate copy of the document for himself for which he offers to pay, and expects the other to pay for another copy, he, acting in the 'character of Sodom', is forced by the court to content himself with one common document towards the cost of which both parties contribute in equal shares.

(30) R. Simeon b. Gamaliel.
(31) Consequently he maintains that a separate copy of the document may be prepared for each of the litigants if one of them so desires it. Now, since the principle of exercising force against a 'Sodomite character' has been disputed elsewhere, why should it be re-argued here again?
(32) Lit 'that all the world'.
(33) Against the use of force in this case.
(34) Lit., 'to him'.
(35) Since a common document might lead to new arguments and quarrels. R. Simeon b. Gamaliel's view is that, in such a case, it is better to allow separate copies for each of the litigants if one of them had expressed a desire to have a copy of his own.
(36) Lit., 'from here and until'.
(37) The creditor.
(38) The trustee.
(39) To the creditor, who can consequently claim the payment of the full debt.
(40) On what principle.
(41) אסמכתא, (lit.. 'reliance'), an undertaking to pay or to forfeit something without receiving for it sufficient consideration, which is dependent on the non-fulfilment of a certain condition given by a person in the hope (reliance) that he would be able to fulfil the condition and would not in consequence have to carry out the undertaking.
(42) Though the undertaking to pay the full debt was given in the hope and expectation that it would never have to be carried out, it is nevertheless legally binding, since the condition on which it was dependent was not in fact fulfilled.
(43) It is obvious that the borrower never intended to pay the full debt after he had already paid an instalment. His undertaking to pay the full debt if the balance were not paid by a certain date must have been in the nature of an expression of good faith, in his desire to show that it was his earnest hope and intention to pay the balance before that date arrived.
(44) Relating to the laws of asmakta.
(45) Lit., 'a first, and second time'.
(46) Lit., 'causes to stand concerning it'.
(47) Who remember the contents of the bond.

Talmud - Mas. Baba Bathra 168b

AND A AND B [WERE SIGNED ON IT AS] ITS WITNESSES GEMARA. Our Rabbis taught: What is the form of its[1] attestation? — 'We, X, Y and Z, being in a session of three, A son of B produced before us a faded bond on such and such a date, and C and D [were signed as] Its witnesses'. And if the attestation contains [the following]. 'We have dealt with the evidence of the witnesses and their evidence was found to agree', [the creditor] collects [his debt][2] and is not required to produce [any additional] proof; but if not,[3] he is required to produce proof.[4] [A bond] intentionally torn is invalid; if torn accidentally, it is valid. [In case] it was effaced or obliterated, if the tracing[5] [of the letters] is distinguishable it is valid. How is one to understand 'intentionally torn' and how, 'torn accidentally'? Rab Judah said: 'Intentionally torn' [means] a tear made by a court of law; 'torn accidentally', a tear which [was] not made by a court of law. How is 'a tear made by a court of law' to be understood? — Rab Judah said:[If it was made at] the place of the witnesses, the place of the date and the place of the amount.[6] Abaye said: [If it runs] lengthwise and crosswise.

Certain Arabs who came to Pumbeditha were seizing by force the lands of the inhabitants.[7] The owners[8] came to Abaye [and] said to him: 'Will the Master examine our deeds and write for us duplicates[9] so that, in case one is forcibly taken away. we shall [still] hold one in our possession'?[10] He said to them: 'What can I do for you. when R. Safra said: Two deeds [may] not be written in respect of the same field [since a person] might [thereby] seize and seize again'.[11] [As] they were troubling him,[12] be said to his scribe, 'Go [and] write for them the text[13] [of the deeds] on an erasure and [let] the[14] witnesses [sign] on [clean] paper, [and thus produce duplicate deeds], which [are] invalid.[15] Said R. Aha b. Manyumi to Abaye;[16] Might it not happen that the [original] tracing[17]

would be distinguishable, and [concerning such a case, surely,] it was taught: [A deed that] was effaced or obliterated, if its tracing is distinguishable. [is] valid![18] — He replied to him: Did I say a proper deed [shall be written]?[19] What I said was mere [letters of the] alphabet.[20] Our Rabbis taught: Should [a creditor] come and say, 'I lost my bond of indebtedness'[21] , the bond [may not] be rewritten for him although witnesses stated, 'We wrote, signed and delivered [such a deed] to him'.[22] This, [however], applies only to the case[23] of bonds of indebtedness[24] but [in the case of] deeds of purchase and sale [a deed], with the omission[25] of [the clause] pledging [property may] be [re]written.

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(1) A Faded bond. Cf. our Mishnah.

(2) from the property which the borrower may possess or from that which he sold after the date of the original deed.

(3) If the formula, 'we have dealt with the evidence of the witness etc.. Is not entered.

(4) As to the contents of the bond such as date, sum, etc.

(5) Lit., 'its tracing'.

(6) תורף, The 'specific element' of a deed (opp. טופס 'formal element'). viz., date and amount. (Cf. supra p. 699. n. 9.) So called because by virtue of it the creditor may seize (טורף) even the sold lands of the creditor (R. Gersh.). [Krauss, op. cit. III, 352. Connects it with תורפה, 'exposed', 'blank', hence the blank part of the deed which has to be filled in.]

(7) [During the long drawn out Roman-Persian war (338-363). Shapur II invited certain warring Arab tribes to help him in this struggle against the Romans. V. Funk, S., Die Juden in Babylonian, II. 41.]

(8) Lit., 'their owners', of the seized lands, who were compelled by the Arabs to hand over also their deeds.

(9) Lit., another deed on it'.

(10) And use it as proof of ownership if they should succeed in recovering their lands from the Arabs. [V. Obermeyer. op. cit. 235.]

(11) Infra 169a. A buyer who purchased a field the sale of which has been secured by the seller's landed property might, if a creditor of the seller should ever seize that field for his debt, secure double compensation from the lands of subsequent buyers by the production in turn of one of the two deeds.

(12) Persisting in their demand.

(13) Lit., 'it'.

(14) Lit., 'its'.

(15) They. not knowing that the duplicates were of no legal value, would cease troubling the Master, while no loss to subsequent buyers. (v. supra n. 1,) could possibly be involved (v. supra 164a).

(16) R. Aha understood Abaye to have instructed his scribe (a) to copy the deeds on clean paper; (b) to erase the text, and (c), to copy the deeds again on these erasures.

(17) The first copy. v. previous note (a).

(18) Of what avail, then, was Abaye's device seeing that they could erase the second text whilst preserving the tracing of the first text?

(19) A copy of the original. v. n. 6 (a).

(20) These were (a) to be written; (b) erased; and on the erasure thus produced, a duplicate of the deed was to be written. Should, in such a case, the original letters re-appear they would signify nothing and the deed would remain invalid.

(21) And there are no witnesses to testify that the deed was really lost.

(22) Because this evidence merely proves that the creditor is entitled to the rights of one such bond. It does not prove, however, that he lost his bond. Hence no second one in lieu of the first may be written for him, since he might make use of the two and thus reimburse himself twice.

(23) Lit., 'in what (case) are the words said'.

(24) Because the creditor might thereby collect his debt twice. Even if no security on the borrower's lands were to be entered, it could still be collected from his 'free' property.

(25) As will be explained, infra 169b.

Talmud - Mas. Baba Bathra 169a

Rabban Simeon b. Gamaliel said: Deeds of purchase and sale also [must] not be re-written.[1] for thus

said Rabban Simeon b. Gamaliel: Where a person made a gift to his friend and [the latter] returned the deed to him, his gift [also is, thereby] returned.[2] But the Sages say: His gift is valid. The Master had said, 'with the exception of its land security'; what is the reason?[3] — R. Safra replied: Because two deeds may not be written In respect of the same field in case a creditor[4] might go and seize [the field] of this [person][5] and [the latter][6] would go and produce one [deed][7] and seize [thereby the lands of subsequent] buyers.[8] He[9] would [then] say to the creditor.[10] 'Wait[11] until I am firmly established in the possession of this field[12] and then come and seize it[13] from me. He would [then][14] produce the other [deed][15] and [thereby] rob other buyers [also].[16]

Since, however, the creditor's bond was torn,[17] whereby would he again seize [any] land?[18] And if it be said [that this might refer to a case] where it was not torn; surely, [it may be pointed out,] R. Nahman stated: Any tirpa[19] which does not contain[20] [the declaration], 'we have torn up the creditor's bond of indebtedness', Is not a [legal] tirpa;[21] and any adrakta[22] which does contain [the entry][20] 'we have torn up the tirpa is not a [legal] adrakta;[21] I and any shuma[23] in which [the statement]. 'We have torn up the adrakta' is not entered[20] is not a [legal] shuma![24] — [The precaution was] necessary [in the case] only[25] where one asserts a claim by virtue of his paternal rights.[26] R. Aha of Difti said to Rabina: Why [should it be necessary][27] for him[28] to say to the creditor, 'Wait until I am firmly established in the possession of this land'?[29] This[30] [surely], could be derived [from the fact] that since he[31] holds two deeds he [can] seize [once] and [immediately] seize again![32] — If [he were to do] so [he would have had too] many litigants against him .[33]

And [why] should [not] a proper deed[34] be written for that [man],[35] while, for the seller,[36] [the following quittance might] be written out: 'All deeds that [may] be produced against this land are invalid except the one bearing[37] this date'?[38] The Rabbis recited this before R. Papa — and others say, before R. Ashi — [and suggested that] this proves [that] no quittance is [ever] to be written.[39]

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(1) Because it is possible that the original deed was returned by the buyer to the seller who has thereby (in accordance with the view of Rabban Simeon b. Gamaliel which follows) again acquired the land he sold.

(2) Similarly, in the case of a sale, it is possible that the deed of sale was returned, and the land was, thereby, re-transferred from the buyer to the seller. Cf. previous note.

(3) Why must the security be excluded from the duplicate.

(4) Of the seller of that field.

(5) The buyer for whom a duplicate deed was written.

(6) Lit., 'that', the buyer from whom the field has been taken by the creditor and for whom a duplicate deed was written. V. previous note.

(7) The duplicate.

(8) Who bought from the same seller after the date of the sale in question and whose purchased lands are consequently included in the security of the first sale.

(9) The buyer. Cf. supra note 7.

(10) With whom he would form a conspiracy to defraud subsequent buyers.

(11) Or 'allow me a period of peace'.

(12) Lit., 'in it', i.e., till the whole affair of the seizure be forgotten.

(13) For the debt for which the creditor was already reimbursed by his first seizure.

(14) After the creditor had staged a second seizure.

(15) I.e., the original one which was alleged to have been lost.

(16) He and the creditor sharing the spoils of the fraud between them. Hence the provision that no duplicates are to be written even in the case of deeds of sale and purchase.

(17) When he seized the property from the buyer the first time.

(18) Lit., 'it'.

(19) **טירפא** (rt. **טרף**, 'to seize'), a document issued by a court of law to a creditor (to whom the debtor is unable or unwilling to pay his debt), authorising him to trace the debtor's property (including any land sold after the date of his loan), for the purpose of eventually seizing it in payment of his debt.

(20) Lit., 'in which it is not written'.
(21) Had it been made legal, one could have used both documents, each at a different court in a different town.
(22) אדרכתא, (rt. דרך 'to tread'), an authorisation (following that of the tirpa) which a court issues to a creditor, after he had traced the debtor's property (cf. n. 1). to seize it (to 'tread' on) for the purpose of having it offered for public sale and his receiving the proceeds or the land itself at the price valued.
(23) שומא. (rt. שום to appraise', 'value'), a record of the valuation of the seized property, which is delivered by the court to the creditor as evidence of the value at which it was assessed for him. Since a debtor may at any time repay the amount at which the land had been assessed, such a record is necessary to enable the creditor to receive the sum due to him.
(24) Cf. n. 3. How then could it happen that a bond of indebtedness should not be torn up by the time the creditor had already taken possession of the property?
(25) Lit., 'not necessary (but)'.
(26) Lit., 'when he comes from the power of his fathers', i.e., the reason why a duplicate of a deed of purchase and sale is not issued, is not, as has been assumed, because a creditor might conspire to obtain double payment; but to provide against an heir who might prove by witnesses that a buyer had purchased a field from a seller who had robbed it from his father and in consequence of this proof it would be returned to him, while the buyer would be given a certificate authorising him to seize the property which anyone may have purchased from the same seller after the date of his purchase. Such a buyer, were he allowed a duplicate of his deed of purchase, could form a conspiracy with the heir by asking him to wait for a certain period, until he had been firmly established in the ownership of the field which he seized by virtue of one of the two copies of the deed and, after the whole affair had been forgotten, to claim again that field so that the buyer could, with the aid of the second of his two copies of the deed, seize the lands of other subsequent buyers. Hence R. Safra's ruling that no two deeds may be written in respect of one field.
(27) In giving a reason why R. Safra forbids the issue of two deeds of purchase in respect of the same field.
(28) The buyer who, as has been stated above, might form a conspiracy with a creditor to defraud subsequent buyers by means of the duplicate of his deed of purchase.
(29) Lit., 'in this land and I will be established in it'.
(30) R. Safra's law.
(31) The buyer.
(32) Why, then, the necessity for postponing the seizure of the second field to a later date.
(33) And his conspiracy might thereby be more likely to be discovered.
(34) One containing the clause pledging the seller's lands.
(35) Spoken of in the Baraitha (supra 168b, end), who pleads that he lost his deed and requests that a duplicate be given to him in its stead.
(36) In order to protect him against being called upon by the production of two deeds, to pay the buyer twice.
(37) Lit., 'that will go out with'.
(38) That in the duplicate. Should the buyer ever present the first deed, the seller could prove its invalidity by the production of his quittance.
(39) I.e., a debtor cannot be compelled to repay a loan unless his bond is returned to him. He is not obliged to become the keeper of a quittance. Cf. Mishnah 170b, infra.

Talmud - Mas. Baba Bathra 169b

He, [however,] said to them: Elsewhere[1] a quittance is to be written,[2] and [the reason why it is not written] in this case[3] is because the creditor[4] might call upon, and take [the field] away from the buyer[5] and he[6] would call upon, and seize [the fields of subsequent] buyers, while [these] buyers [would] have no quittance [to show].[7] After all, however, [would] not the buyers [ultimately] return to the owner of the land?[8] — In the meantime he[9] [would be] plucking and eating the fruit, or else,[10] [he[9] might seize the land] from one who has purchased [it] without security.[11] If so,[12] [the same should apply to] bonds of indebtedness also![13] — In that case[14] where the claim is money they[15] assume [that] the debtor might have satisfied the claim[16] with money.[17] In this case[18] [however] where the claim is for land, they well know that one who claims land would not be satisfied with money.[19]

The Master had said, 'With the omission of [the clause] pledging [property]'. How [is such a deed][20] to be written? — R. Nahman said: It is written as follows: 'This deed is not for the purpose of collecting thereby either from sold, or from free property but for that of establishing the land in the possession of the buyer'.[21] Rafram said: This[22] proves [that the omission[23] of the clause] pledging property [is regarded as the] scribe's error,[24] [since] the reason [given[25] was] because such an entry[26] was actually included[27] but, [it follows], had it not been included[28] he[29] [could have] claimed [his compensation from the seller's lands].[30]

R. Ashi said: [The omission of the clause] pledging property [is] not [regarded as] the scribe's error; and the meaning of[30] 'with the omission [of the clause] pledging property' is that no such clause is entered in the deed.[31]

A certain woman once gave to a man money [wherewith] to buy for her [a plot of] land. He went [and] bought for her [the land] without [providing for the] security[32] of its tenure. She came before R. Nahman[33] [who] said to the agent.[34] '[The woman has the right to declare]. "I sent you to improve [my position]; not to make [it] worse".[35] Go [then], buy it [yourself] from him[36] without security and then sell it [to the woman] with due security of tenure'.[37]

'Rabban Simeon b. Gamaliel said; Where a person made a gift to his friend and [the latter] returned the deed to him, his gift [also is, thereby] returned. But the Sages said: His gift is valid.' What is Rabban Simeon b. Gamaliel's reason? — R. Assi said: [Because] it[38] is just as if [the donor] had said to the donee.[39] 'This field is given to you for so long [a period] as the deed [remains] in your possession'.[40]

Rabbah demurred; If so,[41] [the same law should apply] also [to the case where] it[42] was stolen or lost! — But, said Rabbah, they differ on [the question whether] 'letters'[42] [may] be acquired by delivery.[43] R. Simeon b. Gamaliel holds the opinion [that] 'letters' are acquired by delivery while the Rabbis[44] hold the opinion [that] 'letters' may not be acquired by delivery.

Our Rabbis taught: Where a person appears in court[45] with a deed[46] and with [evidence of] undisturbed possession[47] judgment is given [on the basis of] the deed; [these are] the words of Rabbi. R. Simeon b. Gamaliel said: [Judgment is given] on [the basis of his] undisturbed possession. On what [principle] do they differ? — When R. Dimi came[48] he said: They differ on [the question whether] 'letters' may be acquired by delivery.

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(1) In the case where a bond of indebtedness was lost by a creditor.

(2) for the debtor on paying his debt.

(3) And on the strength of it provide the buyer with a duplicate.

(4) Of the seller.

(5) Who bought his land from the debtor subsequent to the date of the loan.

(6) That buyer.

(7) The first buyer, wore he able to secure a duplicate deed on a plea of having lost the original, would, thereby, be placed in a position to form a conspiracy with the creditor to defraud subsequent buyers.

(8) I.e., the seller, to claim compensation for the lands seized; and he would, naturally, tell them about the quittance wherewith they could to — claim the lands of which they were robbed by the first buyer.

(9) The first buyer.

(10) Lit., 'also'.

(11) Such a buyer could not advance any claim for compensation against the seller. Hence he would never learn of the existence of the quittance.

(12) That provision is made against the possibility of seizing lands from buyers who are unaware of the existence of a quittance.

(13) I.e why then is a quittance permitted, where a bond of indebtedness was lost? Surely it is possible that the buyers might not be aware of the existence of such a quittance.
(14) The case of a loan.
(15) The subsequent buyers whose lands the first buyer comes to seize.
(16) Lit., 'him'.
(17) Hence they would not part with their fields before ascertaining the position from the seller, (i.e. the debtor) and so would learn of the existence of the quittance.
(18) That of a deed of sale and purchase.
(19) And would, therefore, allow the first buyer to take possession of their lands in the hope that, in due course, the seller might compensate him and arrange for the return to them of their property. They are not, therefore, in a hurry to go to the seller. When they ultimately learn of the existence of a quittance a considerable time has already elapsed and they lose the fruits which the first buyer had consumed in the meantime.
(20) Which enables the holder to establish his claim upon his land and yet prevents him from seizing that of others.
(21) That the previous owner (the seller) shall not be able to deprive him, of it by the assertion that he had never sold it to him.
(22) R. Nahman's requirement specifically to enter in the deed that it does not provide any security.
(23) from any deed.
(24) And is regarded as entered though the scribe had omitted it. V. B.M. 14a.
(25) Why the deed does not entitle the holder to claim compensation from the seller's lands.
(26) 'This deed is not etc.'.
(27) Lit., 'because he wrote for him thus'.
(28) Lit., 'not written for him, thus'.
(29) The holder of the deed.
(30) Lit., and what'.
(31) Lit., 'that pledging is not written in it'.
(32) He failed to arrange for the seller to pledge his landed property for the field he bought.
(33) To complain against the unsatisfactory terms of the purchase.
(34) Lit., to him', the man who acted on behalf of the woman.
(35) By spending her money on unsecured property.
(36) The seller.
(37) So that in case the land is ever taken away from her by a creditor of the seller or by previous buyers she will he entitled to compensation from the agent.
(38) Since the gift is conveyed to the donee by means of a deed.
(39) Lit., 'to him'.
(40) Hence it returns to the donor as soon as the deed is returned to him.
(41) That the donee can retain ownership of the gifts so long only as the deed remains with him.
(42) A deed.
(43) Heb., mesirah, v. supra 76a (q.v. for notes), and Glos.
(44) The Sages.
(45) Lit., 'who comes to be judged', i.e., to respond to a claim that a plot of land which he Occupies is not his.
(46) Of purchase, which X, the person who sold the land to him, received from Y, from whom he in turn bought it; pleading that, though his own name does not appear in it, he acquired ownership of the land by the act of delivery which X had performed when he handed the deed to him. [So Rashb. R. Gersh. and Rashi (Sanh. 23b) take it simply to refer to the deed of purchase which the buyer claims to have received from the seller.]
(47) Hazakah (v. Glos.). Witnesses testify that he occupied the land during the statutory period of three years required for establishing his title to it.
(48) From Palestine to Babylon.

Talmud - Mas. Baba Bathra 170a

R. Simeon b. Gamaliel holds [that] 'letters' are not acquired by delivery[1] and Rabbi holds [that] 'letters' are acquired by delivery.

Said Abaye to him: If so,[2] [this would present] a disagreement with the Master![3] [The other] replied to him, 'Then let there be disagreement!'[4] 'I mean to say to you this', said [Abaye] to him, '[that] the Baraitha cannot be [well] explained except on the lines which the Master had laid down; and since [that is] so.,[there would emerge] a contradiction between one statement of R. Simeon b. Gamaliel and the other statement of his!'[5] But, said Abaye, here it is a case[6] where one of them[7] was found to be a relative[8] or [otherwise] disqualified; and they differ on the [same principle that underlies the] dispute of R. Meir and R. Eleazar. Rabbi holds the [same] View as R. Eleazar who maintains [that] the witnesses to the delivery[9] effect the legal separation;[10] while R. Simeon b. Gamaliel is of the [same] opinion as R. Meir who maintains [that] the witnesses who signed[11] [the letter of divorce] are the main factor in the legal separation.[12]

But, surely. R. Abba had said: R. Eleazar agrees that [a deed] is invalid if the irregularity is internal![13] — But, said Rabina, all agree[14] that [the deed] is invalid if it[15] contains the entry.[16] 'we have dealt with the evidence of the witnesses and their evidence was found to be irregular'.[17] in accordance with [the law laid down by] R. Abba; they only differ in [the case of] a deed which bears no [signatures of] witnesses at all [in] which [case] Rabbi holds the [same] view as R. Eleazar who maintains [that] the witnesses to the delivery effect the legal separation;[18] while R. Simeon b. Gamaliel holds the [same] view as R. Meir who maintains [that] the witnesses who signed the deed[19] effect the final separation.[20] If you prefer, however, I might say, [that] they differ on [the question whether in the case] where a person[21] admitted that he wrote a deed,[22] [independent legal] attestation is required. For Rabbi holds [that where a person] admitted that he wrote a deed, no [independent] attestation is required;[23] while R. Simeon b. Gamaliel holds [that independent] attestation is required.[24]

[Did] we [not], however, hear [that] they hold contrary [views]? for it was taught:[25] Where two men[26] cling to a deed, the creditor pleading. 'It is mine, I dropped it, and you found it', and the borrower pleading. 'It is[27] [indeed] yours but I have paid you'. the [validity of the] deed is established by those who signed it.[28] So[29] Rabbi. Rabban Simeon b. Gamaliel said: Let them[30] divide it.[31] And when this was discussed [the following] question was raised: Does not Rabbi accept[32] what we have learnt: Where two [men] hold a cloth, one pleading, 'I found it' and the other [also] pleading, 'I found it', the one must take an oath that he possesses in it no less than a half and the other must take an oath that he possesses in it no less than a half and they divide [it]?[33] And Raba in the name of R. Nahman replied: In [the case of] an attested[34] [deed] no one disputes [the law] that they[35] must divide;[36] they differ only in [the case of a deed] which has not been attested, [since] Rabbi holds the opinion [that where one] admitted that he wrote a deed [independent] attestation is required, and [consequently] if [the creditor is able to] secure its attestation he collects a half, and if not [the deed is regarded as] a mere potsherd; while Rabban Simeon b. Gamaliel holds the opinion [that where one] admits that he wrote [a deed] no [independent] attestation is required and they divide![37] — Reverse.[38]

If you prefer, however, it may be said [that] there is really no [need] to reverse [the reported opinions],[39] but the dispute here[40] is on [the question of] proving [all one's pleas];[41] such as [the case] of R. Isaac b. Joseph [who] claimed [a sum of] money from R. Abba. [When] he came before R. Isaac Nappaha. [R. Abba] pleaded. 'I repaid to you in the presence of X and Y'. 'Let X and Y come', said R. Isaac to him, 'and let them give [their] evidence'. 'If they will not come', said [R. Abba] to him, 'am I not to be believed? Surely we have it as an established law [that] a loan made in the presence[42] of witnesses need not be repaid[43] in the presence of witnesses!' 'In this [case', R. Isaac] replied to him, 'I am of the same opinion as [that in] the reported statement of the Master.[44] for R. Abba in the name of R. Adda b. Ahabah in the name of Rab said: Where one said to another, 'I paid you [your debt] in the presence of X and Y', it is necessary that X and Y should come and give evidence. 'But surely', said [R. Abba] to him,[45] 'R. Giddal said in the name of Rab: The

halachah is in accordance with the statement of R. Simeon b. Gamaliel;[46] and even Rabbi

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(1) The production of the deed is, therefore, useless and the title to the land must rest entirely on the evidence of 'undisturbed possession'.

(2) That according to R. Simeon b. Gamaliel 'letters' are not acquired by delivery.

(3) Rabbah, who said supra that according to R. Simeon b. Gamaliel 'letters' are acquired by delivery.

(4) I.e 'I do not mind differing from Rabbah'.

(5) Lit., 'R. Simeon etc' on R. Simeon etc.' V. supra notes 9 and 10.

(6) Lit., 'in what are we engaged'.

(7) The witnesses who signed an ordinary deed.

(8) Of one of the litigants.

(9) Of the letter of divorce to the woman.

(10) Lit., 'cut', the matrimonial relationship between husband and wife (v. Git. 9b). The signatures of the witnesses on the document, which are required 'for the sake of the social order' (cf. ibid. 86a). do not in any way affect the legal and final separation between husband and wife, which is entirely dependent on the presence of suitable witnesses at the time of the delivery of the document. Similarly in the case of a deed of purchase and sale, Rabbi regards the document as valid irrespective of the signatures or the qualification of the witnesses. Hence he maintains that the tight of ownership may be established even where one of the witnesses is a relative or is in any other way disqualified.

(11) Lit., 'witnesses of the signature'.

(12) Git. 21b. Cf. note 5. As in the case of a letter of divorce the validity of the document is entirely dependent on the witnesses whose signatures are appended to it so in the case of a deed of purchase or sale, unless the witnesses who signed it are eligible, the document is invalid. Hence R. Simeon b. Gamaliel maintains that, where one of the witnesses was found to be disqualified for any reason whatsoever, the entire deed is invalid, and right of ownership must be determined by the result of the evidence of witnesses on the statutory period of undisturbed possession of the land, on the part of the present holder.

(13) Git. 10b. Though a letter of divorce on which no signatures at all appear is valid (the witnesses to the delivery effecting the legal and final separations), where disqualified witnesses are signed on it, thereby causing an irregularity in the document itself, the deed is invalid. Similarly, in the case of the deed of purchase under discussion, how could R. Simeon b. Gamaliel regard it as valid when, owing to the disqualification of one of the witnesses, an internal irregularity arises in the deed itself!

(14) Rabbi and R. Simeon b. Gamaliel.

(15) The deed produced as evidence of the holder's tight of ownership. supra 169b, end.

(16) Lit., 'written in it'. [Read with Ms. M., 'IF they dealt with the evidence, etc.']

(17) I.e., one of the witnesses was found to be disqualified.

(18) Cf. p. 743. n. 5.

(19) Cf. loc. cit. n. 6.

(20) V. loc. cit. n. 5.

(21) E.g. a seller.

(22) And he only disputes its validity. In the case under discussion, e.g., he might plead that he did not deliver the deed to the other party, as the sale never took place, but he lost the document and the other found it.

(23) Consequently, in the present case since the seller admits the writing of the deed and only disputes the buyer's claim, the latter's word is accepted and there is no need to hear witnesses on the question of undisturbed possession.

(24) Judgement, therefore, cannot be given in favour of the buyer on the strength of the deed alone; and his claim must be based on the evidence of undisturbed possession which is given by qualified witnesses. Cf. 154a; B.M. 7b; 72b.

(25) B.M. 7a.

(26) Creditor anti debtor.

(27) [Some texts: 'It sits yours'; v D.S.B M. 7a.]

(28) Since the original validity of the deed is thus established, the creditor is entitled to judgment in his favour.

(29) Lit., 'the words of'.

(30) Creditor and debtor.

(31) The amount of the debt, the debtor repaying only a half of the claim.

(32) Lit , 'is there not'.

(33) B.M. 2a. As the cloth in that case is divided so here the amount of the debt should be divided. Why, then, did Rabbi say that the entire amount of the debt was to be repaid to the creditor?
(34) Legally endorsed by a court of law.
(35) Creditor and debtor.
(36) The amount of the debt; as the cloth is divided between the two who claim to have found it. The creditor is entitled to his half by virtue of the endorsed deed; the debtor also is entitled to his half by virtue of his holding on to the deed jointly with the creditor.
(37) Cf. previous note. Thus it follows that Rabbi does not, and Rabban Simeon b. Gamaliel does require independent attestation. How, then, could it have been assumed supra that their respective opinions were directly the opposite?
(38) One or other of the two reported statements, so that Rabbi and Rabban Simeon b. Gamaliel should hold respectively the same opinions in both cases.
(39) OF Rabbi and Rabban Simeon b. Gamaliel.
(40) The Baraitha. supra 169b.
(41) In the case where one of two pleas is essential, and the other superfluous. According to Rabbi both pleas must be proved since they were both advanced together. Hence it is necessary for the buyer (supra 169b) to prove the validity of the deed though, had he based his claim on the tight of undisturbed possession only, there would have been no need for him to produce any deed at all, no one being expected to preserve a deed after three years which is the statutory period of undisturbed possession. Rabban Simeon b. Gamaliel, however, holds that the superfluous plea is altogether disregarded. Hence it is sufficient for the buyer to prove undisturbed possession to secure judgement in his favour.
(42) Lit., 'who lends to his friend with'.
(43) Lit., 'to pay him'. V. Shebu.41b, Ket. 18a.
(44) Rab.
(45) Cf. Rashal, a.l.
(46) Who maintains that where a superfluous plea was advanced together with one which is essential, the former is altogether disregarded. Here, then, since it is not necessary to repay a loan in the presence of witnesses, why should it be necessary to bring the witnesses that were needlessly mentioned?

Talmud - Mas. Baba Bathra 170b

disagreed[1] only in respect of proving [one's statement]!'[2] 'I also', replied [R. Isaac] to him, 'require[3] [the evidence of your witnesses] in order to prove [your plea]'.[4]

MISHNAH. IF A PERSON[5] REPAID PART (OF HIS DEBT, R. JUDAH SAID, HE SHALL EXCHANGE [HIS BOND FOR ANOTHER].[6] R. JOSE SAID: HE[7] SHALL WRITE A QUITTANCE.[8] R. JUDAH SAID: THUS, THIS [DEBTOR] WOULD HAVE TO GUARD HIS QUITTANCE FROM MICE![9] SAID R. JOSE TO HIM: SUCH [A COURSE][10] IS BETTER FOR THE CREDITOR[11] AND HIS[12] RIGHTS MUST NOT BE IMPAIRED.

GEMARA. R. Huna said in the name of Rab: The halachah is neither in accordance with R. Judah nor in accordance with R. Jose; but [only] a court of law [has the authority to] tear up the deed and to write for the creditor[13] another deed[14] entering the original date.[15]

Said R. Nahman to R. Huna, and others say [that] R. Jeremiah b. Abba said to R. Huna: Had Rab heard that Baraitha[16] wherein it was taught, 'Witnesses may tear up a deed and write 'for [the creditor]; another deed entering the original date', he would have withdrawn.[17] He said unto him: He heard it and he did not withdraw.

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(1) Lit., 'said'.
(2) Legally however, Rabbi admits, this is not necessary (R. Gersh.)
(3) Lit. , 'say'.
(4) I.e., R. Isaac holds the same opinion as Rabbi. Had not R. Abba mentioned witnesses his word alone would have been accepted. Since, however, he did mention witnesses, he must prove his statement or lose his case. [R. Gersh. 'I also

require it merely to prove your plea, without however affecting the issue should you fail to bring the witnesses.']

(5) Lit 'who'.

(6) For one in which the balance if the debt is entered, while the original deed is to be destroyed.

(7) The creditor.

(8) For the sum received; and delivered to the debtor.

(9) Lit., 'keep his receipt from the mice'. It is more equitable for the creditor to exchange the bond than for the debtor to be encumbered with the necessity of taking care of a receipt the loss of which might involve him in a claim for the repayment of the full loan.

(10) The writing of a receipt instead of changing the original deed.

(11) Lit 'for him'.

(12) Lit., 'of this'.

(13) Lit., 'for him'.

(14) for the balance of the debt.

(15) Lit. , 'from the first time'.

(16) Cited infra 171a.

(17) His ruling; and would have admitted the halachah to be in accordance with the ruling of R. Judah in our Mishnah. Since the original date is entered in the new bond, the creditor is involved in no loss or disadvantage whatsoever, and there should, therefore, be no difference whether the court or witnesses change the deed.

Talmud - Mas. Baba Bathra 171a

[In the case of] a court of law, one can well understand,[1] because it has the power and authority to confiscate[2] money;[3] but [as regards] witnesses, who had once performed their mission,[4] [how could they] perform their mission again?[5] — But [can they] not? Surely Rab Judah said in the name of Rab: Witnesses may write even tell [successive][6] deeds in respect of one field! — R. Joseph replied: [This[7] is permitted only] in [the case of] a deed of gift.[8] And Rabbah replied: [Even] in [the case of] a deed [of sale] which does not contain [the clause] pledging [property].[8]

What [was that] Baraitha?[9] — It was taught: If [a creditor] was claiming from [a debtor] a thousand zuz and he repaid five hundred zuz of these, the witnesses [may] tear up the bond and write for him another deed bearing the original date;[10] so[11] R. Judah. R. Jose said: This deed must remain where it is. and a quittance is to be written.[12] And for two reasons has it been said [that] a receipt was to be written. Firstly[13] in order that he be compelled [thereby][14] to repay [the debt] and secondly[15] in order that [the debt] may be collected from [property sold] since the original date.

But R. Judah also said, 'bearing the original date'![16] — This[17] is what R. Jose said to R. Judah: If you mean, 'bearing the first date', I disagree with you for one [reason];[18] if you mean 'bearing the second date' 'I disagree with you for two [reasons].

Our Rabbis taught: A deed the date of which[19] is a Sabbath or the Tenth of Tishri[20] is [regarded as] a postdated deed[21] and is valid.[22] So R. Judah. R. Jose [declares it to be] invalid.[23] Said R. Judah to him: Was not [such[24] a deed] actually brought before you at Sepphoris and you declared [it] to be valid? [R. Jose] replied to him: When l declared [it] to be valid, I declared [it] in that [case only].[25] But, surely. R. Judah also speaks of such [a deed]![26] — R. Pedath replied: All[27] agree that if the date of the deed was calculated and it[28] was found to coincide exactly with a Sabbath day or the Tenth of Tishri, it is a postdated deed and is valid.[29]

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(1) Why it may tear up a deed and insert its date in the one given in exchange.

(2) Lit., 'to take Out'.

(3) A deed entitled its holder to seize any real estate which the debtor had sold to mortgaged after, but not before the date of the deed. Consequently. when a now deed is written for the balance of a debt in exchange for the original deed, the creditor should not be entitled to seize any property that was sold between the date of the original and that of the new

deed. A court of law, however, having the right to confiscate any property. Is also empowered to enter in the second deed the date of the original and thus to subject to the creditor's seizure property to which he would not otherwise have been entitled.

(4) OF writing and signing the first deed.

(5) What authority have they for inserting the date of the original deed and to confer thereby upon the creditor privileges to which his new deed would not otherwise have entitled him?

(6) If the holder has lost the previous ones.

(7) The issue by witnesses of a second, or subsequent deed bearing the date of the original one.

(8) Such a deed does not entitle its holder to the seizure of any property, and the date is therefore, of no consequence.

(9) Referred to supra 170b.

(10) Lit 'from the first time'.

(11) Lit. , 'the words of'.

(12) for the five hundred zuz paid.

(13) Lit. , 'one' '

(14) Owing to the trouble he has to take in preserving the quittance.

(15) Lit., 'one'.

(16) What point, then, is there in R. Jose's second reason?

(17) Lit., 'thus'.

(18) The first reason, that the debtor may be compelled to repay the loan.

(19) Lit 'the time of which is written', i.e.. a certain date is given which, on calculation is Fund to be one of the following.

(20) Writing is forbidden on the Day of Atonement, as on the Sabbath.

(21) Since it is obvious that it was not written on the Day of Rest or the Day of Atonement, it is assumed15 have been written on a previous day. and post dated so as not to invalidate without any proof the deed (Rashb.)

(22) According to R. Judah, any postdated deed is valid even though the contents do not show that it was postdated; much more so in this case where it is obvious (of. p.748. n.16) that it was postdated.

(23) Cf. explanation in the Gemara, infra.

(24) I.e., postdated.

(25) When the date of the deed is a day on which writing is forbidden, from which it would be obvious to all (cf. loc. cit. n.16) that It was postdated. No one, therefore, could possibly be misled by the date, and no confusion or loss would arise. Any other postdated deed, however, the contents of which do not clearly show that it is postdated, (i.e.. where the date is an ordinary working day). and which might consequently be mistaken for one written on that very date, and thus cause confusion or loss, is regarded by R. Jose as invalid.

(26) Why. then, was it stated that It. Jose declares it to be invalid?

(27) It. Judah and R. Jose.

(28) Lit 'its date'.

(29) V. p.748. n. 16, 4.

Talmud - Mas. Baba Bathra 171b

They are in disagreement only in [the case of] an ordinary Postdated deed,[1] [in] which [case] R. Judah follows his own view, according to which[2] no quittance is written,[3] and consequently no loss[4] would ensue,[5] while R. Jose follows his view according to which a quittance may be written and loss might consequently ensue.[6] R. Huna son of R. Joshua said: Even according to him who said [that] a quittance may be written, this may be done only[7] for a half,[8] but not for the whole [of the debt].[9]

And [the law is] not so, but[10] even for the full amount of a debt[11] [a quittance] may be written; as in the case of R. Isaac b. Joseph. He claimed [a sum of] money from R. Abba whom he sued[12] before R. Hanina b. Papi. [When] he[13] said to him,[14] 'Give me my money', [the other] replied to him, 'Return to me my deed and you will receive your money'. 'I lost your deed', said [R. Isaac] to him, '[but] I will write for you a quittance'. 'Surely', the other replied to him, 'It was both Rab and Samuel who said [that] no quittance was to be written'.'[Were] one [to] give us of the dust of Rab

and Samuel', he[13] exclaimed, 'we should put it into our eyes;[15] but it was both R. Johanan and Resh Lakish who stated [that] a quittance is to be written'.[16]

Similarly, when Rabin came[17] he stated in the name of R. Elai [that] a quittance may be written. And it stands to reason that a quittance may be written; for should it be assumed [that] a quittance must not be written, [is it conceivable that where] the bond of this one[18] was lost, the other should eat[19] and enjoy himself!

Abaye demurred: What then; is a quittance to be written? Should this one,[20] [if] the quittance of the other was lost, eat and enjoy himself? 'Yes', replied Raba to him, 'the debtor[21] is the slave of the creditor'.[22]

Elsewhere We learnt: Antedated bonds of indebtedness are invalic[23] and postdated [ones] are valid.[24] Said R. Hamnuna: This law applies only to[25] bonds of indebtedness but [in the case of] deeds of purchase and sale even [those which are] postdated are invalid. What is the reason? [A person] might sometimes sell [a plot of] land to another in Nisan and write [the deed] for him in Tishri; and in the meantime he might obtain some money and repurchase it from him.[26] But when Tishri arrived he[27] would produce it[28] and say, 'I have [subsequently] bought it from you again'.[29] If so, [in the case of] bonds of indebtedness also, one might sometimes borrow [money] in Nisan and write the bond for the creditor[30] in Tishri, and in the meantime he would obtain some money and repay him. When [however the debtor] requested the return of his[31] bond, he would reply to him, 'I lost it', and would [instead] write out for him a quittance. When [later] the date of payment[32] arrived he would produce it[33] and plead 'You have borrowed from me just now!' — He[34] holds the opinion that no receipt is to be written.[35]

Said R. Yemar to R. Kahana, and others say [that] R. Jeremiah of Difti said to R. Kahana: But [what of] the present time, when postdated deeds are written though quittances also are written?[36] He replied to him[37] : [This is permissible] since the time when R. Abba said to his scribes: 'When you write a postdated deed, write as follows: This deed was not written on the date indicated[38] but was postdated.'[39]

Said R. Ashi to R. Kahana: And [what of] the present time when this is not done![40] — [This[41] is not necessary] since R. Safra instructed his scribes: When you write out quittances, enter the date of the deed[42] if you know it; if not, leave the quittance undated so that whenever [the deed] is produced [the receipt] will render it invalid.[43]

Said Rabina to R. Ashi, and others say [that] R. Ashi [said] to R. Kahana:

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(1) The date of which is that of a working day and dies not, consequently, prove that the deed was postdated.

(2) Lit., 'who said'.

(3) Where the debtor repaid a part of the loan or the whole of It and the creditor lost the deed.

(4) To the debtor.

(5) Since the deed would be returned to him on his repayment of the debt, or would be exchanged for a second deed should he pay a portion only of the debt.

(6) The creditor, after giving the debtor a quittance for his repayment of the loan, might produce the postdated deed (the date of which is later than the date of the quittance) and thereby claim his loan again. pleading that the quittance was given for an earlier loan. As the Fact that the deed is postdated could not be proved, the debtor would be the loser having to repay rise same loan twice. In the case, however, where the date coincides with a sacred day, on which no writing is permitted, the creditor's fraud would be detected. (Cf. p. 748. n. 16 and supra n. 4).

(7) Lit., 'these words'.

(8) I.e where the debtor repaid a part of the debt only and desires to have evidence of payment.

(9) It is the creditor's own fault if he lost the bond. He must either produce the bond or forfeit the loan.

(10) Cf. Bail, a.l.
(11) Lit., ‘on all of it’.
(12) Lit. , ‘he came’.
(13) R. Isaac.
(14) R. Abba.
(15) Out of respect and reverence for their memory.
(16) Despite the greatness of the departed Masters, the law is in accordance with the ruling of R. Johanan and R. Lakish.
(17) From Palestine to Babylon.
(18) The creditor.
(19) Consume other people's money.
(20) The creditor.
(21) Since he has the benefit of the transaction.
(22) Hence he must beat the burden of preserving the receipt.
(23) Since a creditor, who is justly entitled to seize any real estate sold by the debtor after the date of the loan, might fraudulently lay claim to lands which the borrower had sold between the date entered in the bond and the actual date of the loan, by pleading that the earlier date in the deed was the actual date of the loan.
(24) Though the creditor is thereby prevented from seizing any of the debtor's property that was sold between the actual date of the loan and the date in the deed. By allowing the entry of the later date he is assumed to have voluntarily surrendered his right upon such lands as were sold during the period intervening between the two dates, Sheb. X. 5.
(25) Lit., ‘they did not teach but’.
(26) Without having the deed of sale returned to him, the buyer having asserted that he lost it.
(27) The buyer.
(28) The postdated deed.
(29) Even the document which the buyer might have given to the seller as confirmation of his to.purchase would be of no avail, since its date is earlier than the one which appears on the postdated bill of sale, and the former could, therefore, plausibly claim that after the to purchase by the seller the land was sold to him again.
(30) Lit., ‘for him’.
(31) Lit., ‘and said to him, give me my’.
(32) Lit., ‘its time’.
(33) The postdated deed.
(34) R. Hamnuna.
(35) The creditor must return the bond itself before he can receive repayment of the debt.
(36) How, in view of what has been said above, could a postdated deed be permitted where a receipt also is allowed?
(37) for this reading. v. Rashb., R. Gersh. and Bah, a.l.
(38) Lit., ‘in its time’.
(39) Lit., ‘we delayed (or postponed) it and wrote it.’
(40) No formula such as that introduced by R. Abba is entered in a postdated deed, though the writing of a quittance is permitted!
(41) R. Abba's formula.
(42) I.e., the quittance must not only contain the names of the creditor and debtor as well as the amount of the loan, but also the date of the bond in lieu of which the quittance is given. Consequently should the creditor ever attempt to make use of the cancelled bond because it was postdated the debtor would be in a position to expose him by means of the quittance in which the date of that bond is entered.
(43) Since the receipt is undated and contains all the particulars (such as names of parties and amount) of the bond, it can be used by the borrower against the creditor whenever the latter should attempt to advance a claim by means of that bond. Whether the date of the bond is earlier, or later than that on which the quittance was written matters little, since the quittance, being undated, can always be presented as a document written after the date of the bond. The issue of such an undated quittance, however, would naturally preclude the creditor from ever lending the debtor a sum equal to that in the bond in question.

Talmud - Mas. Baba Bathra 172a

But this[1] is not done at the present time?[2] — He replied to him: The Rabbis have made the necessary provision. Whosoever acts [accordingly] reaps the benefit;[3] he who does not act [accordingly] has himself to blame, for any loss suffered.[4] Raba son of R. Shila said to those who were writing deeds of transfer:[5] When you write deeds of transfer enter[6] the date of transfer[7] if you know it; and if not, enter the date on which the deed is prepared,[8] so that it[9] might not have the appearance of a falsehood.

Rab said to his scribes, and R. Huna, similarly, said to his scribes: When you are at Shili write [in any deed] 'at Shili', although the information was given to you at Hini;[10] when you are at Hini, write, 'at Hini'[10] , although the information was given to you at Shili.[10]

Raba said: If a man [who] is in possession of a bond of a hundred zuz, said, 'Convert it into two bonds each of fifty zuz',[11] his request must not be granted.[12] What is the reason? — The Rabbis instituted a law[13] which is acceptable to the creditor and is [also] acceptable to the borrower. It is acceptable to the creditor in that [the debtor is thereby] compelled to repay him [the entire loan];[14] and it is [also] acceptable to the borrower in that [the legal force of] the bond is [thereby][15] impaired.[16]

Raba further stated: If a man, holding two bonds each of fifty [zuz:], requests that they be converted into one [bond] of a hundred [zuz], his request must not be granted,[17] [because] the Rabbis have ordained a law[18] which is agreeable to the creditor and is also agreeable to the borrower. It is agreeable to the creditor in that [the force of] his bond is not [thereby] impaired;[19] and it is [also] agreeable to the borrower in that he is not [thereby][15] under pressure to repay the debt.[20]

R. Ashi said: If a man holds a bond for a hundred zuz and requests that it be converted into[21] one of fifty [zuz],[22] his request must not be granted. What is the reason? — We assume [the debtor] had already repaid him that [loan] and [that when] he asked him for the return of his bond[23] he was told [that] he[24] had lost it and [so] he wrote out for him a quittance[25] but [that later] he would produce that [new bond] and claim,[26] 'This is [for] another [loan]'.[27]

MISHNAH. [IN THE CASE OF] TWO BROTHERS, THE ONE POOR AND THE OTHER[28] RICH, WHOM THEIR FATHER HAD LEFT A BATH-HOUSE OR AN OLIVE-PRESS, [IF] HE BUILT THESE [TO BE LET OUT] ON HIRE, THE RENT BELONGS TO THE COMMON ESTATE.[29] [IF,] HOWEVER, HE BUILT THEM FOR HIS OWN [USE][29] THE RICH [BROTHER] MAY[30] SAY TO THE POOR [BROTHER], BUY FOR YOURSELF SLAVES THAT THEY MAY BATHE IN THE BATH-HOUSE', [OR] 'BUY FOR YOURSELF OLIVES AND COME AND PREPARE [THEM] IN THE OLIVE-PRESS'.[31]

IF THERE WERE TWO [MEN] IN THE SAME TOWN [AND THE] NAME OF THE ONE [WAS] JOSEPH SON OF SIMEON AND THE NAME OF [THE] OTHER [WAS] JOSEPH SON OF SIMEON, NEITHER MAY PRODUCE A BOND OF INDEBTEDNESS AGAINST THE OTHER, NOR MAY ANOTHER [PERSON] PRODUCE A BOND OF INDEBTEDNESS AGAINST THEM.[32] [IF] A MAN FOUND AMONG HIS DEEDS [A QUITTANCE SHOWING THAT] THE BOND OF JOSEPH SON OF SIMEON [WAS] DISCHARGED, THE BONDS OF BOTH [ARE CONSIDERED TO BE] DISCHARGED. HOW SHOULD THEY PROCEED?[33] THEY SHOULD INDICATE THE THIRD [GENERATION].[34] AND IF [THEIR NAMES] ARE [ALIKE] TO THE THIRD [GENERATION], THEY ADD[35] [SOME PERSONAL] DESCRIPTION;[36] AND IF THEIR [PERSONAL] DESCRIPTIONS ARE ALIKE THEY WRITE, 'PRIEST'.[37]

GEMARA. In a certain bond that was presented at the court of R. Huna there was [the following] entry:[38] 'I.X, son of Y, borrowed from you[39] a maneh'.

(1) The omission of the date it, a receipt.
(2) When deeds are written without R. Abba's formula, and dated quittances are issued.
(3) Lit., 'he who does, does'.
(4) The provision was made by the Rabbis for the benefit of debtors who may wish to benefit by it. No man, however, is compelled to carry out a provision which was enacted solely in his own interests.
(5) אקניאתא , deeds of gifts, or deeds of sale in which land security is entered. (Cf. Rashb.). Jastrow's definition is. 'An agreement by which one's landed estate is mortgaged in the form of a sale from date, independent of the loan to be consummated afterwards.' [Since agreement was accompanied by a kinyan from which the deed subsequently drawn up obtains its name. V. Rappaport. J., Das Darlehen, p. 70 ff.]
(6) Lit., 'write'.
(7) V. previous note. [In order to preclude the donor from presenting the gift to some one else.] In the case of a deed of sale, the buyer must be enabled, in addition, to seize such lands as wore sold during the period subsequent to the date of transfer. (Rashb.)
(8) Lit., 'on which you stand'.
(9) The entry of a date of which they were not certain.
(10) The locale of a deed is the place where the deed is written, not where the transaction (gift, sale, or loan) which it records took place. The former, therefore, must be entered in the deed. According to Rashb. both places arc entered, thus: 'We wrote at . . . what we saw at . . . ' [Hini and Shili were two places South of Sura and close to each other. The point in R. Huna's instructions to the scribes according to Obermeyer, op. cit. 320, is that they were not to regard the two localities as one and write 'Hini-Shili'.]
(11) So that in case the debtor repays him half the debt he can return one of the two bonds.
(12) Lit., 'we do not make them'.
(13) Lit., 'thing'.
(14) Having repaid half of the debt and received in return a quittance, the debtor is anxious to repay the other half at the earliest possible moment, so that he might secure the destruction of the bond and thus be liberated from the necessity of guarding his receipt 'from the mice'.
(15) By the repayment of half of the amount mentioned in the bond.
(16) The creditor will not be able to recover with it the balance, except on oath (cf. Keth. 87a. Shebu. 41a).
(17) V. p. 753, n.8.
(18) V. p. 753. n. 9.
(19) Instead of giving a receipt for half the amount repaid and thus impairing the force of the deed (cf. n. 1), one bond is destroyed while the other retains its full force.
(20) Since he secures the return and destruction of one of the deeds and need not take care of any quittance.
(21) Lit., 'make the thing'.
(22) Even though he consents to enter on the new bond the date of the original bond.
(23) Lit., 'and he said to him: Give me my bond'.
(24) Lit., 'I', the creditor.
(25) For the hundred zuz.
(26) Lit., 'and say to him'.
(27) The bond being made out for a sum of fifty zuz, the creditor could plausibly claim that the receipt for the hundred zuz was given for a totally different loan which had no connection whatsoever with the fifty zuz bond produced. Hence no bond must be exchanged at the request of a creditor even though he request the issue of a bond for a smaller amount in lieu of one containing a larger amount.
(28) Lit., 'one'.
(29) Lit., 'to the middle', i.e., it is divided between the two brothers in equal proportions.
(30) Lit., 'behold'.
(31) None of the brothers has the right to use the bequeathed joint estate (except, of course, by mutual consent) for any purpose other than that for which their father had originally intended it (v. supra 13a).
(32) Since each can say that it was not he but the other who signed the bond.
(33) If they desire to borrow, or buy from one another or from a third party.
(34) They give their own names and the names of their fathers and grandfathers.

(35) Lit., 'they shall write'.

(36) Such as Joseph etc. the tall, the short, black, brown.

(37) If one of these was a priest, or some similar patronymic. e.g.. Levite.

(38) Lit., 'written'.

(39) The name of the creditor not being entered, and the holder of the bond claiming that the pronoun referred to him.

Talmud - Mas. Baba Bathra 172b

R. Huna decided [that], 'from you' [might] even [signify] 'from the exilarch', and even 'from King Shapur'.[1] Said R. Hisda to Rabbah: Go and consider this matter,[2] for in the evening R. Huna will question you on the subject. He went out, carefully considered [the matter], and found [the following Baraitha] wherein it was taught: [In the case of] a letter of divorce which bears [the signatures of] witnesses but no date,[3] Abba Saul said: If there was written in it. 'I divorced you[4] this day,' it is valid. This[5] clearly proves that that day[6] [is taken] to mean that day on which it was produced,[7] [so] here also,[8] 'from you' must mean from that person who produced [the bond].[9]

Said Abaye to him: Is it not possible that Abba Saul holds the same view as R. Eleazar[10] who maintains that the witnesses to the delivery[11] affect the legal separation,[12] but here [surely, there is reason] to apprehend that it was lost![13] He replied unto him: [That a deed] was lost is not to be apprehended.[14] And whence is it deduced that the losing [of a deed] is not to be apprehended? — For we learned: IF THERE WERE TWO [MEN] IN THE SAME TOWN [AND THE] NAME OF THE ONE [WAS] JOSEPH SON OF SIMEON AND THE NAME OF [THE] OTHER [WAS] JOSEPH SON OF SIMEON, NEITHER MAY PRODUCE A BOND OF INDEBTEDNESS AGAINST THE OTHER, NOR MAY ANOTHER [PERSON] PRODUCE A BOND OF INDEBTEDNESS AGAINST THEM. Either of them,[15] however [it follows] may [produce a bond of indebtedness] against others. But why? Why not apprehend the loss [of the deed]?[16] from this[17] then[18] it may be deduced that we do not apprehend the loss. And Abaye?[19] We do not apprehend the loss [of a deed] by one [particular individual];[20] but we do apprehend loss [of deeds] generally by many.[21]

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(1) Since the pronoun might refer to anybody, the creditor is not in a position to establish his claim.

(2) Lit., 'in it'.

(3) The omission of the date renders a divorce invalid.

(4) [So Ms. M. Cur. edd. 'hot'.]

(5) The fact that it is valid if only the witnesses saw it in the hand of the husband on a certain date, that date being regarded as the legal date of the divorce.

(6) On which witnesses saw it in the husband's hand though it, the document that date is not entered.

(7) So long as the witnesses saw it on that day in his hand.

(8) The case of tho deed wherein the name of the creditor does not appear.

(9) Lit , 'from under whose hand it goes out'. Since the bond is produced by a certain person in the presence of the court that person should be assumed to be the creditor.

(10) Cur. edd., 'Eliezer'.

(11) Of a letter of divorce to the woman.

(12) But the signatures of the witnesses, or the date, do not affect the legality of the divorce, hence he stated that the divorce was valid, v. supra 170a.

(13) Lit., 'to falling'. i.e.. the bond may have been lost by the real creditor and the present claimant may have found it.

(14) The person who presents a bond must be assumed to be the real creditor.

(15) Lit 'they'.

(16) One Joseph, the creditor, might have lost the bond and the other Joseph who presents it might have found it.

(17) From the fact that either of them is entitled to establish a claim against a third patty by the production of his bond.

(18) Lit., 'but not'.

(19) How, in view of the inference from our Mishnah, could he suggest that loss of the deed should be apprehended?

(20) It is most unlikely that a particular person of the very same name as the one who presents the bond should have lost

it.

(21) It is not unusual for people to lose their bonds and for others to find them. Hence, as regards the bond presented at R. Huna's court, Abaye was well justified in suggesting that loss of the deed should be suspected.

Talmud - Mas. Baba Bathra 173a

Since it was taught, however, 'As they cannot produce a bond of indebtedness against one another so they cannot produce [a bond] against others'[1] [the question arises][2] wherein [lies the principle of] their disagreement?[3] — They differ on [the question whether] 'letters'[4] [may] be acquired by means of delivery.[5] Our Tanna holds [that] 'letters' are acquired by means of delivery[6] and the external[7] Tanna holds [that] 'letters' are not acquired by means of delivery.[8]

And if you prefer I would say that all[9] [agree that] 'letters' may be acquired by delivery., but they differ here on [the question whether] it is necessary[10] to produce proof.[11] Our Tanna[12] 'holds that proof need not be produced[13] while the external Tanna[14] holds that proof must be produced,[15] for it was stated: 'Letters' are acquired by delivery; Abaye said: He[16] must, however, produce proof;[17] and Raba said: He need not produce proof.[18]

Said Abaye: Whence do I derive this?[19] — For it was taught: 'The brother[20] who presents[21] the bond of indebtedness[22] must[23] produce proof'.[24] Obviously, this applies also to the case[25] of others.[26] Raba, however, said: Brothers are different because they pilfer from one another.[27]

Others say, Raba said: Whence do I derive this?[28] — For it was taught: 'The brother who presents the bond of indebtedness must produce proof'.[29] [from which it is obvious that this applies to] brothers [only] since they pilfer from one another but not [to] others.[30] And Abaye[31] [explains that] it was necessary [to specify] brothers[32] [because] it might have been assumed [that], as they pilfer from one another, they are [all] particularly alert[33] and should not [therefore] require to produce proof;[34] hence [it was necessary] to teach us [that it is not so].[35]

As regards, however, the following wherein it was taught. 'As they[36] may present a bond of indebtedness against others so may they present [bonds] against each other', [the question arises] wherein lies [the principle of] their[37] disagreement?[38] They differ on [the question whether] a bond [may] be written for a borrower though the creditor be not with him. Our Tanna[39] holds [that] a bond may be written for a borrower although the creditor be not with him. [Consequently it may] sometimes [happen] that one[40] would go to a scribe and witnesses and tell them, 'Write for me a bond because I intend borrowing [money] from my friend Joseph son of Simeon'; and, after they had written and signed [it] for him, he would take hold of it and demand from him,[41] 'Give me the hundred [zuz] which you borrowed from me'.[42] The external Tanna,[43] holds that no bond may be written for a borrower unless the creditor be with him.[44] [IF] A MAN FOUND AMONG HIS DEEDS [A RECORD TO THE EFFECT THAT] THE BOND OF JOSEPH SON OF SIMEON [WAS] DISCHARGED, THE BONDS OF BOTH [ARE CONSIDERED TO BE] DISCHARGED etc. The reason[45] is thus because [a record] was found, but had there been found none, [a bond] could be presented [against one of them]? Surely we have learnt, NOR MAY ANOTHER [PERSON] PRODUCE A BOND OF INDEBTEDNESS AGAINST THEM! — R. Jeremiah replied: In [the case where the bonds record the names of] the third [generation].[46] Then let us see in whose name the discharge was made out![47] — R. Hoshaia replied: Where the third [generation] is indicated in the bond but not in the discharge.[48] Abaye said: This is the meaning[49] [of our Mishnah]; [IF[50] a borrower][51] FOUND AMONG HIS DEEDS [A QUITTANCE SHOWING] THAT THE BOND OF JOSEPH SON OF SIMEON [against him[52] WAS] DISCHARGED, THE BONDS OF BOTH [ARE CONSIDERED TO BE] DISCHARGED.[53]

HOW SHOULD THEY PROCEED? THEY SHOULD INDICATE THE THIRD

[GENERATION] etc. A Tanna taught: If both were priests[54] they enter [the names of previous] generations.[55]

MISHNAH. IF [A FATHER][56] SAID TO HIS SON,' ONE[57] AMONG MY BONDS IS DISCHARGED BUT I DO NOT KNOW WHICH', THE BONDS OF ALL HIS DEBTORS[58] ARE [CONSIDERED] DISCHARGED.[59] IF AMONG THEM[60] WERE FOUND TWO [BONDS, PERTAINING] TO ONE [DEBTOR], THE LARGER[61] [ONE IS DEEMED] DISCHARGED AND THE SMALLER UNDISCHARGED.[62]

GEMARA. Raba said: [If a person declared], 'The bond against you, [which l have] in my possession is discharged', the larger [one is deemed] discharged and the smaller undischarged. [If, however, he declared], 'The debt you owe me is paid', all[63] his bonds [are deemed] discharged.[63] Said Rabina to Raba: Consequently[64] [should one say to another],' My field is sold to you', his larger field [would be deemed to have been] sold to him, [but if he said,] 'The field that l have is sold to you', all his fields[65] [would then be deemed] sold! — There,[66] the holder of the deed is at a disadvantage.[67]

MISHNAH. IF A MAN LENDS MONEY TO ANOTHER ON A GUARANTOR's SECURITY,[68] HE MUST NOT EXACT PAYMENT FROM THE GUARANTOR.[69]

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(1) Because it is possible that one of them lost the bond and the other, who presents it at court, accidentally found it.

(2) Since, as has been said, loss of the bond is not suspected.

(3) That between the Baraitha and Our Mishnah, from the latter of which it was deduced, supra, that either of the Josephs may produce a bond against others, a deduction with which, since it referred to the case of a particular individual, even Abaye agreed.

(4) A bond.

(5) Mesirah, v. Glos.

(6) Since loss of the bond is not suspected, it can only be assumed that Joseph the creditor delivered the bond to the other Joseph. As 'letters' are acquired by delivery, the holder of the bond is legally entitled to the loan.

(7) The Tanna of the Baraitha.

(8) The debtor can consequently refuse payment of the bond, pleading that he does not owe the money to the holder of the bond but to the other Joseph; while to the other he can refuse payment on the ground that he has no bond to prove his claim.

(9) The authors of the Baraitha under discussion and of our Mishnah. (16) Mesirah, v. Glos. And no deed of sale is necessary (v. supra 77a).

(10) For the holder of the bond.

(11) That he received the bond as a gift or purchase and that he did not merely find it or receive it as a deposit.

(12) The author of our Mishnah.

(13) The possession of the bond is sufficient evidence that the debt is owing to its holder. Hence the inference from our Mishnah, that one of the Josephs may present a bond of indebtedness against a third person who cannot consequently refuse payment by demanding additional proof of the holder's title to ownership.

(14) The author of the Baraitha.

(15) Otherwise the debtor can plead that the holder has found the bond in the street or that it was only deposited with him. Hence the statement in the Baraitha that none of the Josephs may present a bond against a third person who could plead that the bond belongs to the other Joseph and that the one who presented it received it only as a deposit or found it.

(16) The holder of the deed.

(17) Cf. supra note 2.

(18) Cf. supra note 4.

(19) That proof is required apart from the production of the deed.

(20) Lit., 'one of the brothers'.

(21) Lit., 'that goes out from under his hand'.

(22) Which bears the name of his father as creditor or which has been acquired by the father from another creditor.
(23) If the other brothers claim that the bond was bequeathed to all of them, and that the holder has unlawfully appropriated it for himself.
(24) That the bond lawfully belongs to him only.
(25) Lit., 'what not? The same law'.
(26) Strangers. who dispute his claim to the bond he holds.
(27) In the case of a bequeathed estate. All the brothers being heirs to it, every one considers himself entitled to appropriate as much of it as he possibly can. It is for this reason only that it was ordained that the brother who claims, against the statement of the other brothers, to be the sole owner of an inherited bond, must produce proof. As this unlawful appropriation could not apply to the case of a stranger, proof in that case is not required.
(28) That apart from the production of the bond no other proof is required.
(29) V. supra notes, 11, 15.
(30) Who could have no plausible excuse or justification for such an appropriation. Hence no proof is required in the case of a stranger.
(31) Who requires proof in the case of a stranger also.
(32) Though the law applies to strangers also.
(33) In watching one another.
(34) Apart from the presentation of the bond. The fact that one of them is actually holding it should be sufficient proof that it belongs to him.
(35) But that brothers as well as strangers must produce proof of lawful acquisition.
(36) Two Josephs living in the same town. Cf. our Mishnah.
(37) This Baraitha on the one hand and the Baraitha previously cited and our Mishnah on the other.
(38) According to this Baraitha the two Josephs may present bonds against one another while according to the previously cited Baraitha and our Mishnah, they may not.
(39) Of our Mishnah; and so the Tanna of the previously cited Baraitha.
(40) Of the two Josephs.
(41) His namesake whose name would appear in the bond as the debtor.
(42) In order to avoid such a fraud it had been instituted that, in the case of two Josephs, bonds may not be presented by one against the other.
(43) The author of the last-mentioned Baraitha.
(44) Consequently, the one Joseph would not be able to obtain a bond unless the other Joseph should be present. Hence there would be no possibility to practise the fraud described. The Josephs, therefore, may present bonds against one another.
(45) Why the bonds of both are considered as discharged and no claim may be advanced against either of them.
(46) Cf. our Mishnah. In such a case bonds may be presented against them.
(47) Lit., 'written'. Why, then, should the bonds of both be considered discharged.
(48) Each Joseph is consequently in a position to claim that the name of his grandfather was omitted from the discharge though it was mentioned in the bond.
(49) Lit.,' thus he said'.
(50) Bah inserts, 'they may present (bonds) against others'.
(51) Not, as has been previously assumed, a creditor.
(52) Lit., 'against me'.
(53) Since the debtor can produce the same quittance whenever either of the two Josephs should present his bond. On the question of mutual authorisation or the simultaneous presentation of the bonds of the two, v. Rashb. a l.
(54) And their names also were alike up to the third generation.
(55) Until the names of ancestors are reached whose names differ.
(56) Lying on his death-bed.
(57) Lit., 'bond'.
(58) Lit., 'all of them'.
(59) It is left to the conscience of those debtors who did not yet repay their loans to admit their liabilities.
(60) Lit., 'there'.
(61) The one containing the bigger amount.

(62) The debtor is given the benefit of the doubt. He must, however, repay the smaller amount since the creditor declared that one bond only was discharged.
(63) 'Debt' implies all that the debtor owes irrespective of the number of the written bonds.
(64) Lit., 'but from now'.
(65) 'Field', like 'debt', in Raba's statement, being regarded as a collective noun, implying all one's fields.
(66) The case of sale and purchase.
(67) Lit., 'the hand of the owner of the deed is upon the lowest'. He seeks to deprive the owner of property in the possession of which he is confirmed. Hence he must produce convincing proof. In the case of a debt, however, the claimant is the creditor, while the debtor is the confirmed possessor of the sum claimed. Hence the advantage is on the side of the latter.
(68) Lit., 'by the hands of a guarantor'.
(69) Before the debtor was sued and, the court having ordered him to pay, was found unable to meet his obligation.

Talmud - Mas. Baba Bathra 173b

IF, HOWEVER, HE SAID TO HIM,[1] 'ON CONDITION THAT I MAY EXACT PAYMENT FROM WHOM I WILL', PAYMENT MAY BE EXACTED FROM THE GUARANTOR. RABBAN SIMEON B. GAMALIEL SAID: IF THE BORROWER HAS PROPERTY, PAYMENT FROM THE GUARANTOR MAY IN NEITHER CASE[2] BE EXACTED.[3] AND SO SAID RABBAN SIMEON B. GAMALIEL: WHERE [A MAN] WAS GUARANTOR FOR A WOMAN IN [RESPECT OF] HER KETHUBAH, AND HER HUSBAND DIVORCED HER, [THE HUSBAND] MUST VOW TO DERIVE NO [FURTHER] BENEFIT FROM HER. [SINCE IT IS] POSSIBLE THAT THEY MIGHT FORM A CONSPIRACY AGAINST THE PROPERTY OF THE GUARANTOR[4] AND THEN [THE HUSBAND] WOULD TAKE HIS WIFE BACK AGAIN.[5]

GEMARA. What is the reason?[6] — Both Rabbah and R. Joseph explain: [Because the guarantor can say,] 'You have entrusted me with a man;[7] and a man have I handed over to you'.[8] R. Nahman demurred: [Is not] this[9] the law of the Persians? — On the contrary; they [invariably] go after the guarantor![10] — [This,] however, [is the objection]: [Is not this ruling[9] like that of] a Persian court of law [the judges of] which do not give [any] reason for their decisions?[11] — But, said R. Nahman, the meaning of[12] HE [MUST] NOT EXACT PAYMENT FROM THE GUARANTOR [is that] he [may] not demand [payment from] the guarantor first.[13] Thus it was also taught [elsewhere]: If [a man] lends [money] to another on a guarantor's security, [payment] shall not be demanded [from the] guarantor [in the] first instance. If, however, [the creditor] said, 'On condition that I may exact payment from whom I will' the guarantor may be called upon first.[14]

Said R. Huna: Whence [may it be deduced] that a guarantor becomes responsible [for a debt he has guaranteed]?[15] — For it is written, I will be surety for him; of my hand shalt thou require him.[16] R. Hisda demurred: [This], surely was [an unconditional] assumption [of obligation],[17] for it is written, Deliver him into my hand,[18] and I will bring him back to thee![19] — But, said R. Isaac: [It[20] may be deduced] from the following: Take his garment that is surety,[21] for a stranger; and hold him in pledge that is surety for an alien woman.[22] Furthermore, it is said, My son, if thou art become surety for thy neighbour,[23] if thou hast struck thy hands for a stranger,[24] [if] thou art snared by the words of thy mouth,[24] thou art caught by the words of thy mouth, do this now, my son, and deliver thyself, seeing that thou art come into the hand of thy neighbour; go, humble thyself, and urge thy neighbour.[25] If he has [a claim of] money upon you,[26] open out[27] for him the palm of [your] hand;[28] and if not,[29] get at him through many friends.[30]

Amemar said: [The question] whether a guarantor is responsible[31] [for the payment of the debt he guaranteed, is a matter of] dispute [between] R. Judah and R. Jose. According to R. Jose. who said, 'asmakta[32] conveys title,'[33] a guarantor is responsible. According to R. Judah, [however], who said 'asmakta gives no title', the guarantor Is not responsible.[34] Said R. Ashi to Amemar: Surely, it is the

regular practice[35] [of the courts to rule] that asmakta gives no title,[36] and [yet that] a guarantor is held responsible! — But, said R. Ashi having regard to the pleasure of being trusted [by the creditor] he determines to undertake the responsibility.[37]

IF, HOWEVER, HE SAID, 'ON THE CONDITION THAT[34] MAY EXACT PAYMENT FROM WHOM[34] WILL' etc. Rabbah b. Bar Hana said in the name of R. Johanan: This applies only in the case[38] where the debtor has no property,[39] but where the debtor has property no payment may be exacted from the guarantor. Since, however, it is stated in the final clause: RABBAN SIMEON B. GAMALIEL SAID: IF THE BORROWER HAS PROPERTY, PAYMENT FROM THE GUARANTOR MAY IN NEITHER CASE BE EXACTED,[40] one might infer that in the opinion of the first Tanna there is no difference whether he had or had not[41] [any property]![42] — There is a lacuna [in our Mishnah].and the proper reading is as follows:[43] IF [A MAN] LENDS [MONEY] TO ANOTHER ON A GUARANTOR'S SECURITY HE [MUST] NOT EXACT PAYMENT FROM THE GUARANTOR. IF, HOWEVER, HE SAID 'ON THE CONDITION THAT I MAY EXACT PAYMENT FROM WHOM I WILL', PAYMENT MAY BE EXACTED FROM THE GUARANTOR. This law applies only to the case[44] where the debtor has no property, but where the debtor has property, payment from the guarantor may not be exacted. And [in the case of] a kabbelan,[45] even though the debtor has property, payment may be exacted from the kabbelan.

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(1) 'To him' is omitted in the Gemara; v. infra, where it is also shown that the Mishnah contains a lacuna.

(2) Lit., 'whether so or so'.

(3) In the first instance.

(4) By staging a divorce, and the husband having no money, the woman would be enabled to exact the amount of her kethubah from the guarantor.

(5) And divide the spoil with her.

(6) Why payment may not be exacted from the guarantor. At present it is assumed that so long as the borrower is alive and did not abscond the guarantor cannot be called upon to pay.

(7) The debtor; i.e., the creditor has, so to speak, put the debtor in charge of the guarantor who has undertaken to present him when payment falls due.

(8) Since the debtor neither died nor absconded, the guarantor has carried out his obligation. As the debtor is present in person the claim is to be addressed to him and not to the guarantor.

(9) The exemption of the guarantor from payment where the debtor himself is available.

(10) Even where the debtor is in possession of property.

(11) Lit., 'words'. As the decisions of a Persian court of law are arbitrary, so is the ruling which exempts a guarantor from payment where the debtor is available though destitute. Of what use is the guarantee if the guarantor cannot be called upon to pay where the debtor himself is unable to meet his obligation!

(12) Lit., 'what'.

(13) In the first instance the debtor must be called upon to pay. If the obligation, however, has not been met owing to the debtor's poverty, refusal to appear in court, or death, the guarantor must discharge the debt.

(14) V. infra.

(15) By his mere verbal undertaking, though it was not attended by a kinyan.

(16) Gen. XLIII. 9. Thus spake Judah to Jacob in urging him to entrust Benjamin to him.

(17) קבלנות, 'unconditional assumption of obligation', acceptance'. V. p. 765. n. 10.

(18) 'Into my hand' implies unconditional responsibility.

(19) Ibid. XLII, 37. [Although this was said by Reuben, it is unlikely that Judah's guarantee involved less responsibility than that of Reuben's which Jacob had rejected (Maharsha).]

(20) V. supra, n. 3.

(21) By mere verbal undertaking, since no legal agreement15 mentioned.

(22) Prov. XX, 16.

(23) In money matters.

(24) By insulting or calumniating.

(25) Ibid. VI.1-3.

(26) Lit., ‘in thy hand’.
(27) Lit., ‘loosen’.
(28) I.e., pay him. התר ל פיסת יד, a play upon הת פם. (E.V. ‘go humble thyself’).
(29) When the claim or grievance15 not due to monetary matters.
(30) Who may plead with him and obtain his pardon. הרבה עליו רעים, a play upon רהב עיך, (E.V. ‘urge thy neighbour’).
(31) Lit., ‘subjects himself’.
(32) V. Glos.
(33) Supra 168a.
(34) His guarantee to repay the debt is regarded as a mere asmakta, it being assumed that what he meant to convey by it amounted to no more than an expression of his conviction that the debtor would meet his obligation. Had he known that the debtor would default, he would not have given his guarantee.
(35) Lit., ‘actions every day’.
(36) In accordance with the ruling of R. Judah.
(37) Though a similar undertaking would elsewhere be regarded as an asmakta which is not legally binding, the pleasure of being trusted transforms such an asmakta into a legal undertaking.
(38) Lit., ‘they did not teach but’.
(39) [I.e., it is not known whether the debtor has any property from which the creditor could recover his claim, in which case, having regard to the stipulation, the guarantor can immediately be called upon to pay the debt, whereas in the absence of such a stipulation, the creditor would still have first to sue the debtor (Yad Ramah).]
(40) V. Bah, a l.
(41) Lit., ‘no difference thus’.
(42) But in either case the guarantor may be called upon to pay. How, then, could Rabba b. Bar Hana assert that the first Tanna speaks only of the case where the debtor had no property?
(43) Lit., ‘and thus it teaches’.
(44) Lit., ‘in what (are the) words said’.
(45) ,קבלן, a guarantor who accepts unconditional responsibility. an ‘acceptor’.

Talmud - Mas. Baba Bathra 174a

RABBAN SIMEON B. GAMALIEL SAID: IF THE BORROWER HAS PROPERTY, PAYMENT MAY BE EXACTED neither from the one nor from the other.[1]

Rabbah b. Bar Hana said in the name of R. Johanan: Wherever Rabban Simeon b. Gamaliel taught in our Mishnah, the halachah is in agreement with his ruling[2] except [in the cases of] ‘guarantor’,[3] ‘zidon’[4] and the ‘latter proof’.[5]

R. Huna said: [Should one say], ‘Lend him [a sum of money] and I [shall be] guarantor’. ‘Lend him and I [shall] repay [you]’, ‘Lend him and I [shall be] liable [for the loan]’, [or] ‘Lend him and I [shall] give [it back to you]’ — all these are expressions of guarantee.[6] [If, however, one said], ‘Give him [a sum of money] and I [shall be] kabbelan’.[7] ‘Give him and I shall repay [you]’, ‘Give him and I [shall be] liable [for the loan]’, [or] ‘Give him and I [shall] give [it back to you]’ — all these are expressions of kabbelanuth.[8] The question was raised: What [is the law if one said], ‘Lend him[9] and I [shall be] kabbelan’[7] [or], ‘Give him and I [shall be] guarantor’?[10] — R. Isaac replied: The expression of guarantee [has the force of a] guarantee; the expression of kabbelanuth[11] I [has the force of] acceptance.[12] R. Hisda said: All of these are expressions of kabbelanuth, except [that] of ‘Lend him [a sum of money] and I [shall be] guarantor’.[13] Raba said: All of these are expressions of ‘guarantee’, except that of ‘Give him and I [shall] give [it back to you]’.[14]

Mar b. Amemar said to R. Ashi: Father said thus: [If one said,] ‘Give him [a sum of money] and I [shall] give [it back to you]’, the creditor has no claim whatsoever against the borrower. The law,[15] however, is not [so]; [for] a debtor cannot escape from the creditor unless [the guarantor] had taken

[the money] with [his own] hand [from the creditor] and delivered [it to the borrower].

A certain judge once allowed a creditor to take possession[16] of the property of the debtor before [that] debtor had been sued. [The matter having been brought to his notice,] R. Hanin the son of R. Yeba removed him.[17] Said Raba: Who [would have been so] wise [as] to do such a thing if not R. Hanin the son of R. Yeba! He holds the opinion that a man's possessions are his surety, and we have learnt, IF [A MAN] LENDS [MONEY] TO ANOTHER ON A GUARANTOR'S SECURITY, HE MUST NOT EXACT PAYMENT FROM THE GUARANTOR, and this[18] has been established [to mean that] the guarantor may not be called upon first.[19]

A certain guarantor of orphans[20] once paid the creditor before the orphans were sued.[21] Said R. Papa: The repayment [of a verbal loan to] a creditor is a commandment, and orphans[22] are not subject to the performance of commandments.[23] But R. Huna son of R. Joshua said:[24] It may be assumed [that] he[25] deposited with him[26] [some] bundles [of valuables].[27]

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(1) Lit., 'whether this or this, payment from them shall not be exacted', neither from the guarantor not from the kabbelan.

(2) Lit., 'like him'.

(3) The law just quoted from our Mishnah. Payment, contrary to the ruling of Rabban Simeon b. Gamaliel, may be exacted from a kabbelan, though the debtor has property.

(4) V. Git. 74a.

(5) V. Sanh. 31a

(6) ערבות, security. Since the expression of lending was used the guarantor has thereby intimated that the other shall be the borrower. He has consequently to pay only in the case where the debtor has no property of his own.

(7) V. supra note 2.

(8) קבלנות, 'acceptance'. By using the expression give and not lend he thereby gave the order and thus he makes himself in form the principal debtor. Consequently, whether the debtor possesses property or not, payment may be exacted from the kabbelan.

(9) A sum of money.

(10) I.e., the expression of lending was used together with that of kabbelanuth and the expression of give with that of guarantee.

(11) V. note 10.

(12) The expressions of 'lending' and 'giving', are of no consequence where the term denoting 'guarantee' or 'acceptance' was specifically mentioned.

(13) Cf. p.765. notes 8 and 10 supra. Since both expressions wore used, lending and guarantee.

(14) Cf. loc. cit. note 10. Since the expression of 'giving' was used twice; much more so if the expressions of giving and kabbelanuth were used.

(15) Lit., 'it'.

(16) Lit., 'caused him to go down'.

(17) He re-transferred the property to the borrower.

(18) Lit., 'for us'.

(19) Similarly, in the case of seizure of property (a person's surety), the debtor must be sued first before his possessions may be approached.

(20) I.e., guarantor to a loan incurred by their father.

(21) And after paying he desired compensation by the orphans. [So Rashb. Cur. edd. read 'before he informed them'. Had he, that is to say, informed them first and paid on their instructions, he would have been able to recoup himself. V. Yad Ramah.]

(22) Minors under thirteen years of age.

(23) The guarantor who discharged their father's debt and has thus become, so to speak, the creditor, cannot exact payment from them.

(24) The reason why the orphans need not refund the guarantor is not that given by R. Papa, since orphans also are subject to the performance of such a commandment as that of paying their Father's debts (cf. 'Ar. 22a).

(25) The father of the orphans.

(26) The creditor.

(27) As a security for his loan. The guarantor, consequently, should not have repaid the debt before obtaining the return of the valuables. Since he overlooked this, he has himself to blame, and there is no obligation on the part of the orphans to indemnify him. He may, however, sue them when they obtain their majority.

Talmud - Mas. Baba Bathra 174b

What [is the practical difference] between them?[1] — [The difference] between them is [the case] where the debtor admitted [liability],[2] or[3] where he was placed under the ban[4] and died [while still] under the ban.[5] [A message] was sent from Palestine:[6] [Where one] was placed under a ban[5] and died under the ban, the law is in accordance with [the view of] R. Huna the son of R. Joshua.[7]

An objection was raised: A guarantor who produced[8] a bond of indebtedness[9] cannot exact payment.[10] If, however, it contains the entry,[11] 'I[12] received[13] from you' he[14] may exact payment.[15] [Now], according to R. Huna the son of R. Joshua one can well understand [this law][16] to be applicable in the case where the debtor had admitted [liability].[17] According to R. Papa.[18] however, there is a difficulty![19] — There it is different; since[20] he[21] took the trouble to write[22] for him, 'I received,'[23] for this [very object].[24]

A certain guarantor to a gentile once paid the gentile before he sued the orphans.[25] Said R. Mordecai to R. Ashi:[26] Thus said Abimi of Hagronia[27] in the name of Raba: Even according to him who said [that the possibility that] bundles [of valuables were deposited with the creditor was] to be taken into consideration,[28] this is only applicable to[29] an Israelite,[30] but [in the case of] a Gentile, since he [invariably] goes [for payment] to the guarantor[31] [the possibility that] bundles [of valuables were deposited with the creditor] need not be taken into consideration.[32] [The other][33] said unto him: On the contrary; even according to him who said that [the possibility that] bundles [of valuables were deposited with the creditor] need not be taken into consideration, this is only applicable to[34] an Israelite, but [in the case of] gentiles, since their judges [invariably] go to the guarantor, [it may be taken for granted] that had not [the debtor] deposited with him[35] [some] bundles [of valuables] at the outset, he would not have accepted [any responsibility whatsoever].[36]

AND SO SAID R. SIMEON B. GAMALIEL: WHERE [A MAN] IS GUARANTOR FOR A WOMAN IN [RESPECT OF] HER KETHUBAH ETC. Moses b. Azri was guarantor for the kethubah of his daughter-in-law. Now his son, R. Huna, was a scholar but in poor circumstances.[37] Said Abaye: Is there no one who would go and advise R. Huna to divorce his wife, so that she might go and collect her kethubah from his father, and then re-marry her?[38] 'But,' said Raba to him, 'have we [not] learned that [the husband] MUST VOW TO DERIVE NO [FURTHER] BENEFIT FROM HER?' 'Does everyone who divorces [his wife]', said Abaye to him, 'do it[39] at a court of law?'[40] Finally, [however], it was discovered that he[41] was a priest.[42] 'This is just what people say', exclaimed Abaye, 'poverty follows the poor'.[43]

Could Abaye have said such a thing?[44] Surely Abaye had said, 'Who is a cunning rogue? He who counsels to sell an estate, in accordance with R. Simeon b. Gamaliel'![45] — [The case of] one's son is different, and [the case of] a scholar is [also] different. But, surely, he[46] [was only] a guarantor, and a guarantor for a kethubah, it has been definitely established,[47] is not responsible for payment? — He was a kabbelan.[48] This [reply] would be quite correct according to him who said that, though the husband had no property, a kabbelan for a kethubah is responsible for payment; what, however, can be replied according to him who said [that] he is responsible for payment [only] where the [husband][49] has [property], but is not responsible for payment where the husband has not?[50] — If you wish, I might say: [R. Huna] did have property[51] but it was struck with blast. And if you prefer, I might Say: A father in the case of his son always undertakes responsibility,[52] for it was stated: A

guarantor for a kethubah is, in the opinion[53] of all, not responsible for payment;[54] a kabbelan for a creditor is, in the opinion of all, responsible for payment; [in the case, however, of] a kabbelan for a kethubah or a guarantor for a creditor, there is a dispute. [One] Master holds that he[55] is responsible only where the debtor has property, but if he has none, he is not responsible;[56] and the [other] Master holds that he[55] is responsible whether [the debtor] has, or has not any property. And the law [is that a guarantor] is responsible for payment in all[57] [cases],[58] with the exception of a guarantor for a kethubah who is not responsible for payment even though the husband possessed property. What is the reason? — He[59] was [merely] performing a religious act[60] and [the woman][61] had lost nothing.[62] R. Huna said: If a dying man consecrated all his property and then stated 'I owe[63] a maneh to X',he is believed, because it is known that no one would form a conspiracy against sacred property.[64] R. Nahman demurred: Would a person form a conspiracy against his children[65] and yet both Rab and Samuel stated that if a dying man said, 'I owe a maneh to X', if he [specifically] added, 'Give [it to him]', it is to be given, but if he did not [specifically] say, 'Give', it is not to be given,[66] from this it clearly follows [that] a person is wont to disclaim wealth for[67] his children;

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(1) R. Papa and R. Huna. Whatever the reason, the guarantor is not entitled to exact payment from the orphans!

(2) While dying he stated that he had not deposited any valuables with the creditor.

(3) Lit., 'or also'.

(4) for refusing to obey an order of the court for the payment of the debt.

(5) In both these cases it is obvious that the debtor had not entrusted the creditor with any valuables as a security for the loan. Hence, according to R. Huna, the orphans, whose duty it is to discharge their father's debts, must indemnify the guarantor. According to R. Papa. however, they are not obliged to pay even in such cases.

(6) Lit., 'from there'.

(7) That the guarantor who discharged the debt of such a debtor is entitled to exact payment from the orphans; since, in such a case, it is certain that no valuables were deposited by the debtor with the creditor.

(8) Lit., 'from under whose hand goes out'.

(9) Which ho received from the creditor on payment of the debt incurred by the father of the orphans.

(10) from the orphans, while they are still minors; since it is possible that he never repaid the loan, but accidentally found the bond which the creditor may have lost. When, however, the orphans obtain their majority they may be sued by the guarantor who, on taking the required oath, must be duly compensated.

(11) Lit., 'written in it'.

(12) The creditor.

(13) The amount of the debt.

(14) The guarantor.

(15) In this case it is certain that the bond was not found by him but that it was delivered to him by the creditor.

(16) That the guarantor may exact payment from the orphans where the receipt for the debt is entered on the bond.

(17) V. supra p. 767. n. 7.

(18) Who holds that orphans are not obliged to discharge the debts of their father.

(19) Why should the orphans be made to indemnify the guarantor?

(20) Cf. Bah, a.l.

(21) The creditor.

(22) Lit., 'and wrote'.

(23) I.e., he has given him a receipt for the amount received.

(24) In order that the guarantor may become the legal possessor of the bond. The amount now due to him can no longer be regarded as a verbal loan but as one secured by a written bond. R. Papa exempts orphans from the payment of a verbal loan only, but not from that which is secured by a bond. The payment of such a bond on the part of the orphans is obligatory.

(25) Whose father was the debtor.

(26) When the claim of the guarantor for compensation from the orphans was submitted to him for decision.

(27) [A suburb of Nehardea, v. Obermeyer, op. cit. 265 ff.]

(28) V. supra 174a (end), and notes.

(29) Lit., 'these words',

(30) Who knows the law that before calling upon the guarantor to pay, the creditor must first approach the debtor. Hence it is possible that valuables might have been deposited with him by the debtor.
(31) V. supra 173b.
(32) As the debtor well knows that the gentile would, in any case, exact payment from the guarantor, who would not entrust him with any valuables which would only enable the gentile to collect the debt twice.
(33) R. Ashi.
(34) V. p. 768, n. 15.
(35) The guarantor.
(36) Knowing full well that the creditor would exact payment from him. Hence, he cannot recoup himself from the orphans while they are still minors. Cf. p. 767. n. 15 end.
(37) Lit., 'and the thing was pressing him'.
(38) And thus come into the possession of some money.
(39) Lit., 'divorce'.
(40) The divorce could be arranged in the presence of witnesses out of court where no one would compel the husband to vow that he would derive no further benefit from his wife.
(41) R. Huna.
(42) Who is forbidden to marry a divorced woman.
(43) B.K. 92a, Hul. 105b.
(44) That R. Huna should be so advised.
(45) V. supra 137a. How then could he have contemplated giving such advice to R. Huna.
(46) R. Huna's father.
(47) Rashal. Lit., 'established for us', v. infra.
(48) V. Glos.
(49) Lit., 'to him'.
(50) Since R. Huna was poor, he could not have been the possessor of any property. His father, consequently, though a kabbelan, could not have become liable for the payment of the kethubah.
(51) At the time his father undertook to be kabbelan.
(52) Even where the son is destitute.
(53) Lit., 'words'.
(54) The reason is given infra.
(55) The guarantor.
(56) Since no one would guarantee a loan where it is known that the debtor has no means wherewith to meet his obligations. A guarantee in such a case must not, therefore, be taken seriously.
(57) V. Bah and Rashal, a.l.
(58) Whether the debtor, has or has no property.
(59) The guarantor.
(60) By his guarantee he was helping to bring about the marriage of the parties. A guarantee in a matrimonial affair is not to be taken seriously as pledging actual payment, but as a mere expression of confidence in the honesty and integrity of the party concerned.
(61) Who, it is assumed, always prefers married life to spinsterhood.
(62) It is certain that even if she had known that her kethubah would not be paid, she would still have consented to the marriage. In the case of a loan, however, it is clear that had it not been for the guarantee, given by the guarantor, the creditor would not have risked his money. In the latter case, therefore, the guarantor is liable.
(63) Lit., 'in my hand'.
(64) Hence, his statement15 accepted, and the maneh he mentioned is to be paid to the creditor named.
(65) To deprive them of their due in favour of a stranger.
(66) Though ho clearly admitted liability.
(67) Lit., not to satisfy'. i.e., a person is in the habit of concealing the wealth of his children in order to ward off envy.

Talmud - Mas. Baba Bathra 175a

[could it not then be said] here[1] also [that] a person is wont to disclaim wealth for himself![2] — R.

Huna gave his ruling there[1] only when [the creditor] was in possession of a bond of indebtedness.[3] [Does this] imply that Rab and Samuel [deal with a case] where the [creditor] is not in possession of a bond?[4] [Why, then,] is [the maneh] to be given [where the dying man] said 'Give'? [This, surely,] is [only] a verbal loan, and both Rab and Samuel stated [that] a verbal loan may be recovered neither from the heirs nor from the buyers![5] — But, said R. Nahman, both[6] [are cases] where [the creditor] is in possession of a bond, but[7] there is no contradiction. The one [is a case of a bond] that was authenticated;[8] the other where it was not authenticated. [Consequently,[9] if] he said, 'Give,' he [thereby] confirmed[10] the bond. [If, however], he did not say, 'Give,' he did not confirm[11] the bond.

Rabbah stated: If a dying man said, 'I owe a maneh to X', and the orphans stated, 'We have paid it'< they are believed. [If, however, he said,] 'Give a maneh to X', and the orphans stated, 'We have paid it', they are not believed. Topsy-turvy![12] [Does not] the reverse stand to reason? If he[13] said, 'Give a maneh', since their father had given a definite order,[14] it might be [justly] assumed that they discharged [the debt]; [if, however, he said.] 'I owe a maneh to X', since their father did not give a definite order, it ought to be assumed that they did not discharge it![15] — If, however, [such a statement] was made, it was made[16] in the following terms: If a dying man said, 'I owe a maneh to X', and the orphans declared, 'Our father subsequently told us that he paid',[17] they are believed. What is the reason? He might have [subsequently] recalled it[18] to his mind. [If, however, he said,] 'Give a maneh to X', and his orphans declared, 'Our father subsequently told us that he paid',[17] they are not believed; for had it been the case that he paid it, he would not have used [the word], 'Give'.[19]

Raba inquired: What [is the law where] a dying man admitted [a debt]? Is it necessary [for him] to say [also] 'Be you my witnesses,[20] or is it not necessary to say, 'Be you my witnesses'? [Is it assumed that] a man[21] might jest in the hour of his death or that a man does not jest in the hour of his death? Is it necessary [for him] to say. 'Write',[22] or is it not necessary to say, 'Write'? — After having raised these questions, he answered them himself:[23] No one jests in the hour of [his] death, and the words of a dying man are regarded [legally] as written and delivered.[24]

MISHNAH. IF A MAN LENT [MONEY] TO AN OTHER ON [THE SECURITY OF] A BOND OF INDEBTEDNESS,[25] HE MAY COLLECT [THE DEBT] FROM MORTGAGED PROPERTY.[26] [IF, HOWEVER, THE LOAN WAS MADE] BEFORE[27] WITNESSES,[28] HE[29] MAY RECOVER [HIS DEBT] FROM FREE PROPERTY [ONLY].

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(1) In the case of consecrated property.

(2) Consequently, it might be rightly assumed that his admission of indebtedness to a creditor amounted to no more than a desire to conceal his wealth. How then could R. Huna state that the sum specified must be paid to the creditor?

(3) And the dying man only confirmed it. Had there been no bond, but a verbal admission only, R. Huna would not have authorised payment to the alleged creditor.

(4) And this is the reason why the creditor must not be paid if the dying man did not add, 'Give'?

(5) Of the debtor.

(6) Lit., 'these and those'. The statement of R. Huna, on the one hand, and that of Rab and Samuel on the other.

(7) As to the question why in the case dealt with by Rab and Samuel it was necessary for the instruction, 'Give', to be added.

(8) By the Court.

(9) In the latter case.

(10) And the sum is to be paid to the creditor though his bond had no authentication.

(11) Hence the possibility of his desire to conceal his children's wealth must be taken into consideration, and the sum must not be paid in the absence Of an authentication in court.

(12) V. supra p. 435. n. 27.

(13) The dying man.

(14) Lit., 'cut off the thing'.

(15) Why, then, did Rabbah give a decision which is directly opposed to such logical reasoning5

(16) Lit , ‘it was said’.
(17) Lit., ‘I paid’.
(18) The fact that ho had already repaid that debt.
(19) His use of the definite order, ‘Give’, implies that he was absolutely certain that the debt had not been discharged.
(20) As is the case with a man in good health (cf. Sanh. 29a), otherwise he can subsequently deny all liability, pleading that his admission was a mere jest.
(21) For his order of the text, of. Bah and Rashal, a.l.
(22) I.e., a bond. In the case of a pots in in good health such an order is essential to the validity of the creditor's claim (cf. supra 40a).
(23) Lit., ‘after he enquired he returned and solved it’.
(24) Hence there is no need to add, ‘Be my witnesses’, or, ‘Write out a bond’.
(25) Even though the clause pledging security had not been entered (v. B.M. 15b, and cf. supra 157a).
(26) Which was mortgaged subsequent to the date of the loan, and certainly from property in possession of the debtor.
(27) Lit., ‘by the hands of’.
(28) And no bond was written.
(29) Cf. Bah, a.l.

Talmud - Mas. Baba Bathra 175b

[IF A PERSON] PRODUCED AGAINST ANOTHER HIS[1] NOTE-OF-HAND[2] [SHOWING] THAT [THE LATTER] OWES HIM [A SUM OF MONEY], HE MAY RECOVER [IT] FROst HIS FREE PROPERTY.[3] [IF THE GUARANTEE AND SIGNATURE OF] A GUARANTOR APPEAR[4] BELOW THE SIGNATURES TO BONDS OF INDEBTEDNESS, [THE CREDITOR] MAY RECOVER [HIS DEBT] FROM [THE GUARANTOR'S] FREE PROPERTY.[5] SUCH A CASE ONCE CAME BEFORE R. ISHMAEL, WHO DECIDED THAT [THE DEBT MAY] BE RECOVERED FROM [THE GUARANTOR'S] FREE PROPERTY. BEN NANNUS [HOWEVER] SAID TO HIM, ‘[THE DEBT MAY] BE REPLIED NEITHER FROM SOLD PROPERTY NOR FROM FREE PROPERTY.’ ‘WHY?’ THE OTHER ASKED HIM. BEHOLD’, HE REPLIED TO HIM, ‘THIS IS JUST AS IF A CREDITOR] WERE [IN THE ACT (IF] THROTTLING A DEBTOR[6] IN THE STREET,[7] AND HIS FRIEND FOUND HIM AND SAID, "LEAVE HIM ALONE AND[8] WILL PAY YOU", HE WOULD [CERTAINLY] BE EXEMPT [FROM LIABILITY], SINCE THE LOAN WAS NOT MADE THROUGH TRUST IN HIM.[8] BUT WHAT MANNER OF GUARANTOR, HOWEVER, IS LIABLE [TO REFUND A DEBT]? [IF THE GUARANTOR SAID], LEND HIM [A SUM OF MONEY] AND I WILL REPAY [IT] TO YOU", HE IS LIABLE, SINCE THE LOAN WAS MADE THROUGH TRUST IN HIM.

R. ISHMAEL FURTHER STATED: HE WHO WOULD BE WISE SHOULD ENGAGE IN THE STUDY OF CIVIL LAWS,[9] FOR THERE IS NO BRANCH IN THE TORAH MORE COMPREHENSIVE[10] THAN THEY, AND THEY ARE LIKE A WELLING FOUNTAIN. AND HE THAT WOULD ENGAGE IN THE STUDY OF CIVIL LAWS LET HIM WAIT[11] UPON SIMEON BEN NANNUS.

GEMARA. ‘Ullah said: [According to] the word of the Torah, either a loan [secured] by a bond or a verbal loan may be recovered from mortgaged property. What is the reason? — The hypothecary obligation [involved] is Biblical.[12] Why then has it been said [that] a verbal loan may be collected from free property only? — On account of [possible] loss to the buyers.[13] If so,[14] [the same law should apply] also [to] a loan [that is secured] by a bond![15] [In this case][16] they have brought the loss upon themselves.[17]

Rabbah, however, said: [According to] the word of the Torah either a loan [secured] by a bond or a verbal loan may be recovered from free property only. What is the reason? — The hypothecary obligation [involved] is not Biblical.[18] Why then has it been said that a loan [secured] by a bond may

be recovered from sold property? — In order that doors may not be locked in the face of borrowers.[19] If so, [the same law should apply] also [to] a verbal loan! — In that case the loan is not [sufficiently] known.[20]

Did Rabbah, however, give such [a ruling]?[21] Surely, Rabbah said: If land was collected[22] he[23] receives [a double portion,[24] but] if money was collected, he does not, and R. Nahman said: If money was collected he has [a double portion]![25] And if it be suggested that [the statement] of Rabbah should be transposed to ‘Ulla and that of ‘Ulla to Rabbah,[26] surely [it may be pointed out] ‘Ulla said: [According to] the word of the Torah a creditor is to receive[27] of the worst![28] — Rabbah [only] stated the reason of the Palestinians,[29] but he himself does not share [their view].[30]

Both Rab and Samuel stated: A verbal loan may be recovered neither from the heirs[31] nor from the buyer.[32] What is the reason? — The hypothecary obligation [involved] is not Biblical. Both R. Johanan and R. Simeon b. Lakish stated: A verbal loan may be recovered either from the heirs[33] or from the buyers.[34] What is the reason? — The hypothecary obligation [involved] is Biblical. An objection was raised: If [a man] was digging a pit in a public domain and an ox falls upon him and kills him, [the owner of the ox] is exempt.[35] Moreover, if the ox dies,[36] [compensation for] its value must be paid to its owner by the heirs of the owner of the pit![37] — R. Elai replied in the name of Rab: [This law[38] is applicable to the case only] where he[39] appeared before [a court of] law.[40] But, surely, it was stated that it killed him![41] — R. Adda b. Ahabah replied: [This is a case] where he was fatally injured.[42] But R. Nahman, surely. said that a tanna[43] recited [the statement as follows]: It killed and buried him![44] — That [is a case] where judges sat at the mouth of the Pit and convicted him.[45]

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(1) The debtor's.

(2) And no other evidence.

(3) Mortgaged property may be seized only where the creditor can produce a bond duly signed by qualified witnesses. Y. Gemara, infra.

(4) Lit., ‘which goes out’.

(5) But not from property he sold. Since the signatures of the witnesses do not appear below the guarantee, the guarantor's undertaking can have no more force than a verbal promise, or a loan that has not been secured by a bond, in which case no mortgaged property is pledged to the creditor.

(6) Lit., ‘one’.

(7) I.e., using violence against him.

(8) Such a guarantee was offered for the sole purpose of rescuing the debtor from the creditor's violence. It cannot be regarded as a serious guarantee to discharge the debt, since the debt was incurred prior to the guarantee.

(9) Lit., ‘laws of monies’ or ‘property’.

(10) Cf. Bah, a.l.

(11) Lit., ‘serve’, as a disciple to his master.

(12) Cf. Deut. XXIV, 11. Every debt carries with it a pledge of the debtor's property in favour of the creditor.

(13) Who might not be aware of the existence of the loan and would thus purchase property which might at any time be taken away from them.

(14) That the interests of the buyers are to be safeguarded.

(15) Cf. n. 6.

(16) Lit., ‘there’, a loan secured by a bond.

(17) A loan that has been secured by a bond and made or acknowledged in the presence of witnesses receives due publicity, and intending buyers are well aware of its existence.

(18) V. B.M. 114b.

(19) No man would consent to lend any money if no land security were available.

(20) Lit., ‘it has no voice’.

(21) Lit., ‘say so’, that the hypothecary obligation involved by debts is not Biblical.

(22) By sons, in payment of a debt that was due to their deceased father.

(23) The firstborn son.
(24) Because Biblically land is deemed to have been in their father's virtual possession, and a firstborn son is entitled to a double share in all that his father possessed. Cf. Deut. XXI, 17.
(25) V. supra 124b; B.K. 43a. At any rate, in view of this statement of Rabbah's, the debtor's land is Biblically deemed to be in the creditor's virtual possession; how then could ho say here that the hypothecary obligation is not Biblical?
(26) And thus Rabbah's view here would be that the pledging of property is Biblical, in agreement with his statement, supra 124b, that a firstborn receive a double portion where land was collected, and 'Ulla's view would be that the hypothecary obligation is not Biblical.
(27) Lit., 'his right'.
(28) Of the lands of the debtor. And this is deduced from a Biblical text (v. B.K. 8a). which proves that, according to 'Ulla, the debtor's landed property is pledged to the creditor Biblically.
(29) Who, as reported supra 124b, stated that a firstborn son takes a double portion in a loan.
(30) But maintains that, consistent with his view here that the hypothecary obligation is not Biblical, a firstborn son does not receive a double portion in a loan that was due to his deceased father, whether money or land was collected.
(31) Of the debtor.
(32) Though the dates of their purchases were later than the date of the loan.
(33) V. p. 775, n. 24.
(34) Cf. p. 775, n. 15.
(35) Since it is the fault of the digger of the pit that the ox had fallen upon him.
(36) Through the fall.
(37) The liability to compensation is, surely, of no greater legal force than that of a verbal loan (since no bond can be produced in support of it), and yet it has been said that it may be recovered from heirs; how, then, could Rab and Samuel state that heirs are not liable to repay a verbal loan incurred by their father?
(38) That heirs are to pay compensation for their father's liability.
(39) Who was digging the pit.
(40) And was ordered to pay compensation. An order made by a court has the same legal force as that of a loan that is secured by a written bond.
(41) A dead man could not appear before a court!
(42) The infliction of injuries from which one dies may be described as 'killing'. A man injured, though fatally, may be able to appear before a court.
(43) 'Ar. 7a.
(44) In the pit. How could it be said that he appeared before a court.
(45) Just before he died.

Talmud - Mas. Baba Bathra 176a

R. Papa said: The law is [that] a verbal loan may be recovered from the heirs[1] but may not be recovered from the buyers.[2] It 'may be recovered from the heirs' in order that doors might not be locked in the face of borrowers;[3] 'but may not be recovered from the buyers', because it is not [sufficiently] known.[4] [IF A PERSON] PRODUCED AGAINST ANOTHER HIS NOTE-OF-HAND [SHOWING] THAT [THE LATTER] OWED HIM [A SUM OF MONEY]. HE MAY RECOVER [IT] FROM FREE PROPERTY ETC. Rabbah b. Nathan inquired of R. Johanan: What [is the law in the case where] his handwriting[5] was legally endorsed at a court of law?[6] [The other] replied to him: Although one's handwriting had been legally endorsed at a court of law [the debt] may be recovered from free property only.[7]

Rami b. Hama raised an objection: [There are] three [kinds of] letters of divorce [which are] invalid;[8] but, if [the woman did] remarry, her child is [deemed] legitimate.[9] And they are the following: [A letter of divorce] written in the husband's handwriting, which bears no [signatures of] witnesses; [one] bearing [the signatures of] witnesses but no date; [and one] bearing a date and [the signature of] one witness only. These are the three [kinds of] letters of divorce [which are] invalid; did [the woman] however, re-marry, the child is [deemed] legitimate. R. Eleazar said: [A letter of

divorce,] although it bears no [signatures of] witnesses but was given[10] to the woman[11] in the presence of witnesses, is valid;[12] and [such a document entitles one to] collect from mortgaged property![13] — There[14] it is different, because he[15] pledged himself at the very time of writing.[16]

[IF THE GUARANTEE AND SIGNATURE OF] A GUARANTOR APPEAR BELOW THE SIGNATURES TO BONDS OF INDEBTEDNESS, etc. Rab said: [If the guarantee appears] before the signatures on the bond, [the debt] may be recovered from mortgaged property; if after the signatures on the bond, [it] may be recovered from free property [only]. At times, Rab said: Even [if the guarantee appears] before the signatures on the bond [the debt] may be recovered from free property only. [This, surely, presents] a contradiction [between one ruling] of Rab and the other ruling of his![17] — There is no contradiction. The one[18] [refers to the case] where it was entered,[19] 'X is guarantor'; the other [speaks of a case] where it was entered, 'and X is guarantor'.[20]

R. Johanan. however, said: Either with the one or with the other[21] [the debt] may be recovered from [the guarantor's] free property only; even though it was entered 'and X is guarantor', Raba raised an objection: A bill of divorce containing greetings, under which the witnesses have signed, is invalid,[22] [because we apprehend that they might have signed the greetings [only];[23] and R. Abbahu said: I had the [following] explanation of this law[24] from R. Johanan: [The entry.] 'give greetings' [renders the bill] invalid, [but with the entry,] 'and give greetings'[25] it is valid'![26] — Here also[27] [it is a case] where the entry was,[28] 'X is guarantor'.[29] If so, [this statement] is exactly the same [as that] of Rab![30] — Read,[31] 'and so said R. Johanan'.[32]

SUCH A CASE ONCE CAME BEFORE R. ISHMAEL etc. Said Rabbah b. Bar Hana in the name of R. Johanan: Although R. Ishmael praised Ben Nannus,[33] the halachah is in accordance with his[34] [own view].

A question was raised: What is R. Ishmael's view[35] in [the case of] 'throttling'?[36] — Come and hear that which R. Jacob said in the name of R. Johanan: R. Ishmael differed in [the case of] 'throttling' also. [Is the] halachah in accordance with his view or is the halachah [in this case] not in accordance with his view? — Come and hear: When Rabin came[37] he stated in the name of R. Johanan: R. Ishmael differed in [the case of] 'throttling' also; and the halachah is in accordance with his view in [the case of] 'throttling' also.

Rab Judah said in the name of Samuel; [A guarantor, even in a case of] 'throttling', who was made to enter into a legal obligation,[38] assumes responsibility [for the payment of the debt], [from this] it is to be inferred[39] that a guarantor generally[40] does not require a kinyan.[41] And [this is] in disagreement with [the statement] of R. Nahman. for R. Nahman said:

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(1) Of the debtor.

(2) V. p. 775, n. 15.

(3) No one would be able to obtain a loan if creditors could not be assured of recovering it from the debtor's heirs.

(4) V. p. 775, n. 3. Unlike a loan secured by a bond, it is neither made, nor acknowledged in the presence of witnesses nor in the presence of a scribe. Hence no one besides the lender and debtor may ever be aware of its existence. The buyers of the debtor's property must, therefore, be protected against loss not due to any Fault of theirs.

(5) I.e., the note-of-hand mentioned in our Mishnah.

(6) Does the endorsement confer upon the creditor the same rights as those of a bond signed by witnesses, and thus entitle him to seize the debtor's mortgaged lands as if the clause pledging security had actually been entered (omission of the clause being regarded as the scribe's error); or does it merely establish the authenticity of the debtor's signature, while the creditor's rights remain unaltered?

(7) As a note-of-hand that has not been endorsed. The endorsement of a document by a court serves only the purpose of safeguarding its current force so that debtor or witnesses should not subsequently be able to deny their signatures.

(8) They do not entitle the woman to re-marry.

(9) The invalidity of the divorce not being so definite as to affect the legitimacy of the child.
(10) Lit., 'he (the husband) gave it'.
(11) Lit., 'to her'.
(12) Because, in R. Eleazar's opinion, the legality of a document depends on the witnesses to its delivery, not on those who signed it.
(13) Git. 86a. Whether the document be a kethubah or (as has been explained in Git. 22b) a bond of indebtedness, from this it follows that, though no witnesses had signed the bond, the creditor is entitled to seize the debtor's mortgaged property if there were only witnesses testifying to the delivery to him of the bond; much more so when the bond had been endorsed in a court of law which has certainly more power than ordinary witnesses. How, then, could R. Johanan maintain that an endorsement by a court of a note-of hand does not entitle the creditor to the seizure of sold property?
(14) The Mishnah of Gittin.
(15) The husband (in case of a divorce), or a creditor (in the case of a bond).
(16) Of the document, i.e., it was originally written with the intention of delivering it in the presence of witnesses instead of having their signatures on the document. Since witnesses to the delivery confer upon a document the same force as witnesses who sign it, the document is valid. R. Johanan, however, speaks of a note-of-hand given to the creditor sometime after the loan was made as a token of indebtedness. Such a note, not being written in the form of a bond and bearing no signatures of witnesses, cannot transform a verbal loan into one secured by a bond.
(17) Lit., 'on Rab'.
(18) Where the guarantor's mortgaged property may not be seized.
(19) Lit., 'that he wrote in it'.
(20) In the latter case, 'and' indicates continuation, so that the guarantee forms a part of the bond the whole of which is attested by the witnesses whose signatures appear below. In the former case, the guarantee appears as a detached statement; and the witnesses may, consequently, be regarded as having attested the text of the bond only, exclusive of the guarantee.
(21) Lit., 'one this and one this', 'whether one or the other', i.e., whether the guarantee is entered above, or below the signatures of the witnesses.
(22) Lit., 'witnesses who are signed on an enquiry of peace in a letter of divorce'.
(23) Not the text of the divorce. Tosef., Git. VII.
(24) Lit., 'to me it was explained'.
(25) The conjunction, 'and', combining the greetings and the text into one unit.
(26) The signatures clearly bearing testimony to the entire bill (text of divorce and greetings). Now, since R. Johanan draws here a distinction between the insertion and the omission of the conjunction, how could he be said to hold that there is no such distinction in the case of a guarantee to a bond, and that whether 'and' was, or was not inserted, the debt may be recovered from Free property only?
(27) A guarantee on a bond, which does not entitle to the seizure of sold property.
(28) Lit., 'when he wrote'.
(29) Had the conjunction 'and' been inserted, the guarantee would have assumed full force and the guarantor's sold property also could be seized.
(30) Rab also draws the same distinction between the insertion, and the omission of the conjunction.
(31) Lit., 'say'.
(32) R. Johanan does not differ from, but agrees with Rab.
(33) Later in the Mishnah.
(34) R. Ishmael's; that free property may be seized.
(35) Lit., 'what to me said etc.'.
(36) The case cited by Ben Nannus in our Mishnah where the guarantee was made after the loan was granted for the purpose of saving the debtor from the creditor's power.
(37) from Palestine to Babylon.
(38) Lit., 'and they (witnesses) acquired from him', by means of a kinyan (v. Glos.).
(39) Since a kinyan is specifically postulated in this case.
(40) Lit., 'in the world'.
(41) He assumes responsibility though no kinyan had been effected.

Talmud - Mas. Baba Bathra 176b

only [in the case of] a guarantor appointed by a court of law is no kinyan required;[1] in all other cases, however, kinyan is required.

And the law is: [If one] guarantees [a loan] at the time the money is delivered,[2] no kinyan is required;[3] if, after the money is delivered, kinyan is required;[4] [and in the case of] a guarantor appointed by a court of law[5] no kinyan is required, for, having regard to the pleasure he has in the confidence reposed in him,[6] he [wholeheartedly] determines to shoulder the full responsibility.[7]

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(1) The reason is given infra.

(2) I.e., when the loan was made.

(3) Since the loan was obviously made through trust in the guarantor, he assumes full responsibility.

(4) To enable the creditor to recoup himself.

(5) Though after the loan has been made.

(6) Lit., 'that he is trusted' by the court.

(7) Lit., 'and subjects himself to him', i.e., to the creditor.

Talmud - Mas. Sanhedrin 2a

CHAPTER I

MISHNAH. MONETARY CASES [MUST BE ADJUDICATED] BY THREE JUDGES; CASES OF LARCENY AND MAYHEM,[1] BY THREE; CLAIMS FOR FULL OR HALF DAMAGES,[2] THE REPAYMENT OF THE DOUBLE[3] OR FOUR- OR FIVE-FOLD RESTITUTION [OF STOLEN GOODS],[4] BY THREE, AS MUST CASES OF RAPE[5] SEDUCTION[6] AND LIBEL[7] ; SO SAYS R. MEIR. BUT THE SAGES[8] HOLD THAT A CASE OF LIBEL REQUIRES A COURT OF TWENTY-THREE SINCE IT MAY INVOLVE A CAPITAL CHARGE.[9]

CASES INVOLVING FLOGGING,[10] BY THREE; IN THE NAME OF R. ISHMAEL IT IS SAID, BY TWENTY-THREE.

THE INTERCALATION OF THE MONTH IS EFFECTED BY A COURT OF THREE;[11] THE INTERCALATION OF THE YEAR,[12] BY THREE: SO R. MEIR. BUT R. SIMEON B. GAMALIEL SAYS THE MATTER IS INITIATED BY THREE, DISCUSSED BY FIVE AND DETERMINED BY SEVEN. IF HOWEVER, IT BE DETERMINED ONLY BY THREE, THE INTERCALATION HOLDS GOOD. THE LAYING OF THE ELDERS' HANDS [ON THE HEAD OF A COMMUNAL SACRIFICE][13] AND THE BREAKING OF THE HEIFER'S NECK[14] REQUIRE THE PRESENCE OF THREE: SO SAYS R. SIMEON. ACCORDING TO R. JUDAH, FIVE. THE PERFORMANCE OF HALIZAH,[15] AND THE DECISION AS TO MI'UN[16] IS MADE BY THREE. THE FOURTH YEAR FRUIT[17] AND THE SECOND TITHE[18] OF UNKNOWN VALUE ARE ASSESSED BY THREE. THE ASSESSMENT OF CONSECRATED OBJECTS FOR REDEMPTION PURPOSES IS MADE BY THREE; VALUATIONS OF MOVABLE PROPERTY[19] BY THREE. ACCORDING TO R. JUDAH ONE OF THEM MUST BE A KOHEN;[20] IN THE CASE OF REAL ESTATE, BY TEN INCLUDING A KOHEN, IN THE CASE OF A PERSON, BY THE SAME NUMBER. CAPITAL CASES ARE ADJUDICATED BY TWENTY-THREE. THE PERSON OR BEAST CHARGED WITH UNNATURAL INTERCOURSE, BY TWENTY-THREE, AS IT is WRITTEN, THOU SHALT KILL THE WOMAN AND THE BEAST,[21] AND ALSO, AND YE SHALL SLAY THE BEAST.[22]

THE OX TO BE STONED[23] IS TRIED BY TWENTY-THREE, AS IT IS WRITTEN, THE OX SHALL BE STONED AND ITS OWNER SHALL BE PUT TO DEATH[24] — AS THE DEATH OF THE OWNER, SO THAT OF THE OX, CAN BE DECIDED ONLY BY TWENTY-THREE.

THE DEATH SENTENCE ON THE WOLF OR THE LION OR THE BEAR OR THE LEOPARD OR THE HYENA OR THE SERPENT[25] is TO BE PASSED BY TWENTY-THREE. R. ELIEZER SAYS: WHOEVER IS FIRST TO KILL THEM [WITHOUT TRIAL], ACQUIRES MERIT, R. AKIBA, HOWEVER, HOLDS THAT THEIR DEATH IS TO BE DECIDED BY TWENTY-THREE.

A TRIBE,[26] A FALSE PROPHET[27] AND A HIGH PRIEST CAN ONLY BE TRIED BY A COURT OF SEVENTY-ONE. WAR OF FREE CHOICE[27] CAN BE WAGED ONLY BY THE AUTHORITY OF A COURT OF SEVENTY-ONE. NO ADDITION TO THE CITY OF JERUSALEM OR THE TEMPLE COURT-YARDS CAN BE SANCTIONED SAVE BY A COURT OF SEVENTY-ONE.

SMALL SANHEDRINS FOR THE TRIBES CAN BE INSTITUTED ONLY BY A COURT OF SEVENTY-ONE.

NO CITY CAN BE DECLARED CONDEMNED[28] SAVE BY A DECREE OF A COURT OF

SEVENTY-ONE. A FRONTIER TOWN CANNOT BE CONDEMNED NOR THREE CITIES AT A TIME,[29] BUT ONLY ONE OR TWO.

THE GREAT SANHEDRIN CONSISTED OF SEVENTY-ONE MEMBERS; THE SMALL SANHEDRIN OF TWENTY-THREE. WHENCE DO WE DEDUCE THAT THE GREAT SANHEDRIN IS OF SEVENTY-ONE? — IT IS SAID, GATHER UNTO ME SEVENTY MEN;[30] WITH MOSES AT THEIR HEAD WE HAVE SEVENTY-ONE. R. JUDAH SAID IT CONSISTED ONLY OF SEVENTY. WHENCE DO WE KNOW THAT THE SMALL SANHEDRIN IS OF ONLY TWENTY-THREE? — IT IS SAID, AND THE 'EDAH[31] SHALL JUDGE... AND THE 'EDAH SHALL DELIVER.[32] ONE 'EDAH JUDGES, [I.E. CONDEMNS] AND THE OTHER MAY DELIVER [I.E. ACQUIT], HENCE WE HAVE TWENTY. BUT HOW DO WE KNOW THAT A CONGREGATION CONSISTS OF NOT LESS THAN TEN? — IT IS WRITTEN, HOW LONG SHALL I BEAR WITH THIS EVIL 'EDAH?[33] EXCLUDING JOSHUA AND CALEB, WE HAVE TEN. AND WHENCE DO WE DERIVE THE ADDITIONAL THREE? — BY THE IMPLICATIONS OF THE TEXT, THOU SHALT NOT FOLLOW A MAJORITY FOR EVIL,[34] I INFER THAT I MAY FOLLOW THEM FOR GOOD;[35] IF SO, WHY IS IT SAID, TO INCLINE AFTER THE MAJORITY[36] ? TO TEACH THAT THE MAJORITY TO 'INCLINE AFTER' FOR GOOD [I.E. FOR A FAVOURABLE DECISION] IS NOT THE ONE TO 'INCLINE AFTER' FOR EVIL [I.E. FOR AN ADVERSE DECISION] SINCE FOR GOOD, A MAJORITY OF ONE SUFFICES; WHEREAS FOR EVIL, A MAJORITY OF TWO IS REQUIRED. [

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(1) An assault on a person involving bodily injury, Lev. XXIV, 19.

(2) Done by a goring ox, Ex. XXI, 35.

(3) Ex. XXII, 3.

(4) Ex. XXI, 37.

(5) Deut. XXII, 28-29.

(6) Ex. XXII, 15-16.

(7) Deut. XXII, 14ff.

(8) Representing the opinion of teachers in general.

(9) For if the woman is proved guilty she is stoned.

(10) Deut.XXV, 2-3.

(11) V. p. 42.

(12) Making it 13 instead of 12 months.

(13) Lev. IV, 15. According to Maimonides, 'The Ordination of Elders'.

(14) Deut. XXI,1- 9.

(15) Deut. XXV, 5-10. V. p. 91, lit., the 'drawing off' of the shoe.

(16) The annulment of a woman's marriage following her refusal to agree to the union contracted by her as a fatherless girl during her minority.

(17) V. Lev. XIX, 23-25. It could be exchanged into money and its equivalent consumed in Jerusalem.

(18) The tithe taken by the landowner to Jerusalem there to be consumed, as distinct from the 'first tithe' assigned to the Levites, according to Rabbinic interpretation of Deut. XIV, 22-26.

(19) The value of which had been vowed to the Sanctuary.

(20) Priest, v. Glos.

(21) Lev. XX, 16.

(22) Lev. XX, 15. The procedure at the trial of the beast and the person is thus made alike.

(23) If he gored a person. Ex. XXI, 28.

(24) Ex. XXI, 29.

(25) Which has killed a human being.

(26) That has gone astray after idolworship, v. p. 76.

(27) Deut. XVIII, 20. (12) I.e., all wars apart from the conquest of the seven nations inhabiting Canaan.

(28) Deut. XIII, 13.

(29) V. p. 82.

(30) Num. XI, 16.
(31) עדה Congregation.
(32) Ibid. XXXV, 24.
(33) Ibid. XIV, 27. Referring to the twelve spies. Ibid. XXXV, 24.
(34) I.e., for condemnation. Ex. XXIII, 2.
(35) For acquittal.
(36) Ibid.

Talmud - Mas. Sanhedrin 2b

AND AS A COURT CANNOT CONSIST OF AN EVEN NUMBER[1] ANOTHER ONE IS ADDED, MAKING A TOTAL OF TWENTY THREE.

WHAT MUST BE THE POPULATION OF A TOWN TO MAKE IT ELIGIBLE FOR A [SMALL] SANHEDRIN? — ONE HUNDRED AND TWENTY. R. NEHEMIA SAYS: TWO HUNDRED AND THIRTY, SO THAT EACH MEMBER SHOULD BE A RULER OF [AT LEAST] TEN.[2]

GEMARA. Do not LARCENY AND MAYHEM come under the category of MONETARY CASES? [Why then this specification?] R. Abbahu says: The Tanna adds here an explanatory clause, teaching that the MONETARY CASES of the Mishnah refer only to LARCENY AND MAYHEM, but not to admission and transaction of loans[3] [i. e. cases of indebtedness]. And both clauses are necessary. For had the Tanna mentioned only MONETARY CASES I might have said that they included also cases of indebtedness. Hence the necessity of the explanatory LARCENY AND MAYHEM; or again had the Tanna mentioned only LARCENY AND MAYHEM, I might have said that these included cases of indebtedness, and that the reason for specifying particularly LARCENY AND MAYHEM is that the regulation requiring three judges is laid down in Scripture In connection with larceny and mayhem (the verse, the master of the house shall come near unto the judges,[4] though primarily dealing with cases of larceny,[5] includes also those of mayhem, there being actually no difference in regard to an injury whether it is inflicted on one's person or on one's property). The Tanna had accordingly to supplement the MONETARY clause by that of LARCENY AND MAYHEM, to exclude thereby cases of indebtedness.

And what is the point in excluding cases of indebtedness? Shall l say it is to show that three judges are not required for them? But did not R. Abbahu [himself] say that all agree that no judgment given by two in monetary cases is valid? — It is to teach that cases of indebtedness require no Mumhin[6] of their adjudication. [This being the case, let us consider] what is the determining principle of the Tanna. Does he hold that we have here an instance of transposition of sections, [in which case all the provisions in this section[7] apply to cases of indebtedness]?[8] He should then demand Mumhin here also [since the term Elohim denoting Mumhin is mentioned in this place]. If on the other hand, he does not hold this view [and in this case the provisions in this section are limited to the cases of larceny as set forth], where is the authority for the necessity of three judges? — Indeed the Tanna accepts the principle of 'transposition of sections' — and consequently, in accordance with the strict application of the Law, in cases of indebtedness he would require [three] Mumhin — nevertheless they have become exempted from this regulation for the reason advanced by R. Hanina. For R. Hanina said:[9] In accordance with the Biblical law, the juridical procedure in regard to the investigation[10] and examination[11] of witnesses applies to monetary as well as to capital cases , for it is written,

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(1) For if their opinion were halved no verdict could be established.
(2) V. Ex. XVIII, 25.
(3) Claims supported by witnesses attesting the defendant's former admission of his liability, or who were actually

present at the time of the transaction.

(4) The term 'Elohim' denoting 'Judges' occurs three times in this section, Ex. XXII, 7.

(5) Arising from the denial of the bailment.

(6) Plural of Mumheh, specially ordained judges; v. Glos.

(7) Ex. XXII, 6-8

(8) Ex. XXII, 24. [On the principle 'transposition of sections' עירוב פרשיות V. Responsa Solomon Duran, 541, and B.K. (Sonc. ed.) 107a, n. a.l.]

(9) Infra 32a; Yeb. 122b.

(10) As to the day and hour.

(11) As to attendant circumstances.

Talmud - Mas. Sanhedrin 3a

One manner of judgment shall you have.[1] Why then did they [the Sages] declare that monetary cases are not subject to this exacting procedure? In order not to 'bolt the door' against borrowers.[2] But if non-Mumhin are competent to adjudicate in monetary cases, ought they not to be protected against any claim of compensation in case of their having given an erroneous decision? — All the more then would you be 'bolting the door' against borrowers.

If it be so, [that cases of indebtedness require three, why does R. Abbahu say that the Tanna adds an explanatory clause, and not simply that] the Mishnah teaches two separate laws; viz. MONETARY cases are tried by three laymen[3] whilst cases of LARCENY AND MAYHEM are tried by three Mumhin[3] . Moreover, if the two clauses merely explain each other, why mention 'three' in each? — indeed, said Raba,[4] the Tanna teaches two separate laws; and cases of indebtedness need no Mumhin for the reason given above by R. Hanina.

R. Aha the son of R. Ika says: According to Scriptural law, even a single person is competent to try cases of indebtedness as it is said: In righteousness shalt thou judge thy neighbor.[5] Three, however, are needed in case traffickers[6] presume to act as judges. But even with the provision of three might they not all be traffickers? — It is, however unlikely that none of them should have any knowledge of the law. If this be so, they should be exempt from liability in case they erred? — But how much more would traffickers presume in such circumstances to act as judges![7] Wherein then lies the difference between Raba and R. Aha the son of R. Ika [since both agree that mere laymen are competent]? Their difference centres round the opinion of Samuel who said: 'if two [laymen] have tried a monetary case, their decision holds good. but they are called a presumptuous Beth din.' Whereas Raba[8] does not agree with Samuel, R. Aha does agree with him.

CLAIMS FOR FULL OR HALF DAMAGES etc.

Do not FULL DAMAGES come under the category of MAYHEM[9] [why then this specification]? — Since the Tanna had to state HALF DAMAGES he mentions, also FULL DAMAGES. But is not HALF DAMAGES also included in the same category? — The Tanna speaks of two classes of payment — kenas[10] [fine] and indemnity . This opinion would be in accord with the Amora who considers HALF DAMAGES kenas, but how meet the difficulty according to the one who regards it as indemnity?[11] — Since the Tanna had to state DOUBLE AND FOUR- OR FIVE-FOLD RESTITUTION, which is an indemnity

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(1) Lev. XXIV, 22.

(2) Creditors would refuse to advance loans should difficulties confront them in collecting their debts; and the same consideration has led to the suspension of the law regarding the need of Mumhin.

(3) *******, an ordinary person.

(4) Differing from R. Abbahu.

(5) Lev. XIX, 15.

(6) Unversed in the law. [Heb. יושבי קרנות , lit., rendered sit (a) at street corners, (b) in waggons, (c) in markets, (d) a company (of musicians), connecting the word with the Latin corona, (e) a corruption of the abbreviations קרו״ת קרקסיות ותרטיות 'circuses and theatres', a reading supported by the J.T.]

(7) Since they would be protected against all claims of compensation.

(8) Since according to him three are biblically required.

(9) The term Nezek (damage), being the terminus technicus for all kinds of damages including those rising out of mayhem.

(10) I.e. a fine imposed upon the owner for not guarding his animal from causing damage, as distinct from damages in cases of mayhem, which are considered indemnity.

(11) V. B.K. 15a.

Talmud - Mas. Sanhedrin 3b

not corresponding with the exact amount of damage done, he mentions HALF DAMAGES which is likewise an indemnity that does not correspond with the exact amount of damage done. And as he has to state HALF DAMAGES, WHOLE DAMAGES is incidentally also stated.

Whence do we deduce that three are needed [for the composition of a court]? — From what our Rabbis taught: 'It is written: The master of the house shall come near unto the judge. here you have one; and again: the cause of both parties shall come before the judge, here you have two; and again: whom the judge shall condemn,[1] so you have three.' So says R. Josiah. R. Jonathan holds the initial reference to judges occurs In the first passage above, and cannot as such, be employed for exegetical purposes.[2] But [the deduction is as follows:] The cause of both . . . judge, here you have one; again whom the judge shall condemn, here you have two; and since a court must not be of an even number, another is added, making the total of three. Shall we say that R. Josiah and R. Jonathan have as point of dispute the question whether or not first citations can be used for exegetical purposes. R. Josiah being of the opinion that they can be used, and R. Jonathan that they cannot? — No! Both agree that first citations cannot be used. R. Josiah nevertheless employs one such in this case because were its purpose merely to indicate the need of a judge, the text should have stated The master. . . unto the Shofet [judge]. Why does it say 'Elohim'? — To enable us to infer that the first citation is to be used to derive from it the number of three judges. R. Jonathan, however, argues that the verse employed the popular term ['Elohim' for a recognised judge]. even as the current saying goes; 'Whoever has a trial let him go to the Dayyan.'[3] And is not R. Josiah of the opinion that a court must consist of an uneven number of judges?[4] Has it not been taught; R. Eliezer the son of R. Jose the Galilean says: 'What is the signification of the phrase to incline after many to arrest judgement?'[5] The Torah implies: Set up for thyself a court of an uneven number, the members of which may be able to incline to one side or the other? — R. Josiah is of the opinion of R. Judah that the Great Sanhedrin consisted of seventy. For we learnt: THE GREAT SANHEDRIN CONSISTED OF SEVENTY-ONE . . . R. JUDAH SAYS OF SEVENTY. It might, however, be objected that R. Judah has been known to express this view only regarding the Great Sanhedrin [and that on Biblical authority]; but have you heard him express it with regard to other courts? Should you presume to say that [R. Judah] makes no such distinction, how then explain what we learnt: THE LAYING OF HANDS BY THE ELDERS AND THE CEREMONY OF BREAKING THE HEIFER'S NECK [REQUIRE THE PRESENCE OF] THREE. SO HOLDS R. SIMEON. R. JUDAH SAYS FIVE. And it has been stated. 'What is R. Judah's reason? He finds it in the text, the elders shall lay.[6] the plural in each word indicating at least two, and so four in all, and since there cannot be a court of an even number, a fifth is added.'[7] R. Josiah's opinion goes further than that of R. Judah. Whilst the latter is of the opinion that only the Great Sanhedrin needs an uneven number, but not other courts, R. Josiah extends that requirement to all courts. But [on R. Josiah's opinion] how is 'to incline' explained?[8] — He applies it to capital but not to monetary cases. If so, what of the ruling which we learnt that in [monetary] cases: if two of the judges acquit the defendant and the third condemns him, he is

acquitted; if two condemn him and one acquits, he is condemned.[9] Can it be said it does not accord with R. Josiah's view?[10] — No! you can correlate that Mishnah's ruling even with that of R. Josiah [for he will agree that the decision of the majority is valid even in civil cases] by virtue of a kal wahomer[11] from capital cases. If in capital cases that are so grave, the Divine Law[12] vested the authority in the majority, all the more so in monetary cases.

Our Rabbis taught: Monetary cases are tried by three. Rabbi says, by five, so that in case of a division there will be a majority verdict, i.e., of three. But surely even in the case of three there is possible a majority verdict [namely, of two]? — What Rabbi means is that an unanimous decision of three is required for the verdict. Hence he holds that the stage at which three judges are prescribed is the final decision. This opinion was ridiculed by R. Abbahu, for the Great Sanhedrin would accordingly have to consist of one hundred and forty one, in order that the final verdict might be given [in case of a division] by a majority of at least seventy-one; and the small Sanhedrin would have to consist of forty-five, in order that the final verdict might be given by twenty-three? This however cannot be maintained, since the text, Gather unto me seventy men of the elders of Israel[13] prescribes seventy at the time of gathering; and likewise, the verse, The congregation shall judge, and the congregation shall deliver[14] refers to the time when the congregation proceeds to judge. Similarly it may be concluded that the verse, The master of the house shall come near unto the judges[15] [from which the need of three judges in monetary cases is derived], is to be explained as referring to the time when the plaintiff appears before the Court, at which point three judges are required. [Whence then does Rabbi deduce that three are needed?] — Rabbi derives this from the plural form of the predicate 'yarshi'un' [they shall condemn], arguing that the subject 'Elohim' [judges] is here a plural, indicating at least two; and similarly the earlier 'Elohim'[16] in the same context denotes two. So we have four. Adding another, since a court cannot consist of an even number, there are five;

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(1) Ex. XXII, 7-8. [The plural Elohim is treated as plural of 'majesty', cf. G. K. 124, g-i.]

(2) As it is required simply to indicate the need of a judge.

(3) An authoritative judge.

(4) Otherwise he would not have resorted to the first citation for deducing the number three.

(5) Ex. XXIII, 2.

(6) Lev. IV, 5. It might have sufficed to state, 'The elders, having their hands on the head of the Sacrifice etc.' v. infra 13b.

(7) All of which proves that R. Josiah cannot find in R. Judah any support for an even court.

(8) Which shows that the court must be uneven.

(9) V. infra 29a.

(10) Who requires the unanimous verdict of three since that number is specially prescribed for deciding a case.

(11) A conclusion a minori ad majus.

(12) Lit. 'The All Merciful One', i.e. God, whose word the Law (Scripture) reveals.

(13) Num. XI. 16.

(14) Num. XXXV, 24 from which the membership of a small Sanhedrin is derived, v. p. 3.

(15) Ex. XXII, 7.

(16) The cause of both parties shall come before the Judges, ibid, 8.

Talmud - Mas. Sanhedrin 4a

but the Rabbis [who hold that only three are needed] adopt the written form yarshi'un.[1]

R. Isaac b. Joseph[2] said in the name of R. Johanan: Rabbi and R. Judah b. Ro'ez, the Shammaites. R. Simeon and R. Akiba, all hold that Mikra[3] is determinant in Biblical exposition.

Rabbi's opinion is reflected in what has been said; that he reads yarshi'un.

The opinion of R. Judah b. Ro'ez is given in the following: For it has been taught: The disciples of R. Judah b. Ro'ez asked him: Why not read shibe'im [seventy] instead of shebu'ayim [two weeks][4] [extending the period of uncleanliness to seventy days]? He answered: The law has fixed the period of purity and impurity in the case of a male child and it has fixed the period of purity and impurity in case of a female child. Just as the period of purification after the birth of a female child is double that after the birth of a male child, so must the period of uncleanness after the birth of a female child be no more than double that after the birth of a male child [which is only seven days]. After they left him he sought them out again and said 'You have no need of that explanation since Mikra is determinant, and we read shebu'ayim [two weeks].

The opinion of the Shammaites is advanced in the following [Mishnah]: For we learned:[5] Beth Shammai said: If the blood of sacrifices that is to be sprinkled on the outer altar was applied only once,[6] the offering is valid, as it is said, the blood of thy sacrifice shall be poured out[7] [denoting one application]. In the case of a sin offering, however, they hold that two applications are required; but the Hillelites hold that in the case of a sin offering also a single sprinkling effects atonement. And R. Huna said: What is the Shammaites' reason for their opinion? — It is that the plural 'karnoth' [horns of the altar] occurs three times in this context[8] denoting six, and so implying that four sprinklings are prescribed in the first instance, but that two are indispensable. But the Hillelites argue that since 'karnoth'[9] is twice written defectively, and can be read 'karnath'[10] [singular], only four sprinklings are implied, three being prescribed in the first instance, and that only one is indispensable. But why not argue that all the four are merely prescribed without a single one being indispensable? — We do not find an act of expiation effected without an accompanying rite.

R. Simeon's opinion is expressed in the following [Baraitha]: It has been taught:[11] A Sukkah[12] needs at least two walls of the prescribed dimensions and a third of the width of at least a hand-breadth. R. Simeon says; Three complete walls and the fourth the width of a hand-breadth. What is really their point of dispute? — The Rabbis[13] hold that Masorah[14] is determinant in Biblical exegesis, while R. Simeon holds that Mikra is determinant. The Rabbis, taking the former view, argue that as the word 'bassukoth' which occurs three times[15] is written once plene [in the plural] and twice defectively[16] making in all four references. So, subtracting one as required for the command itself, there are three left. Next comes the Sinaitic Halachah[17] and diminishes the third and fixes it at a hand-breadth. But R. Simeon is of the opinion that Mikra is determinant and thus all the three bassukkoth are to be read in the plural, making a total of six. One of these is required for the command itself, leaving four, and the fourth is diminished in virtue of the Sinaitic Halachah, to a handbreadth.

As to R. Akiba's opinion — it has been taught:[18] R. Akiba said: Whence is it deduced that a fourth of a log[19] of blood which issues front two corpses carries uncleanness according to the law relating to the pollution of tents.[20] It is said: He shall not go in unto any dead body.[21] [The plural nafshoth translated 'body' indicates that] even from two bodies a single [vital] quantity suffices to carry uncleanness; but the Rabbis argue that it is written nafshath [singular], [denoting that a vital quantity can defile only if it issues from one corpse].

R. Aha b. Jacob questioned this statement of R. Isaac b. Joseph — Is there no one [apart from those above mentioned] who does not accept the Mikra as determinant? Has it not been taught: Thou shalt not seethe a kid in the milk of [bahaleb][22] its mother[23] in which verse you might read beheleb[24] [in the fat of]?

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(1) [The singular form, cf. the Arabic ending in an, and the subject Elohim is taken throughout as singular.]

(2) Var. lec.: R. Jose.

(3) [Lit. 'Mikra has a mother,' or' these is preference to Mikra (Halper. B., ZAW. XXX, p. 100), i.e. the reading of the

sacred text according to the Kere קרי the established vocalization has an authentic origin, hence well-founded, as distinct from the 'Masorah the Kethib, כתיב the traditional text of consonants without vowels.]

(4) In the verse: If she bear a female child, she shall be unclean etc. Lev. XII, 5.

(5) Zeb. 36b.

(6) Instead of two sprinklings constituting four at the two opposite angles of the altar.

(7) Deut. XII, 27.

(8) Lev. IV, 25, 30, 34.

(9) Following the Mikra.

(10) קרנת instead of קרנות, cf. the feminine ending at.

(11) Suk. 6b.

(12) A booth, erected for the Festival of Booths. v. Glos.

(13) The representatives of the anonymous opinion quoted first.

(14) V. p. 10, n. 4.

(15) In connection with the command of Festival of Booths.

(16) בסכות , and בסכת, Lev. XXIII, 42-43.

(17) The traditional interpretation of the Law traceable to Sinai, see Hoffmann, Die Erste Mischna, p. 3.

(18) Hul. 72a.

(19) A liquid measure, about two-thirds of a pint.

(20) Num. XIX, 14.

(21) Lev. XXI, 11; Lit., 'souls of the dead', the soul denoting blood, as the life-force, cf. Deut. XII, 23., and the loss of a quarter of a log is regarded as the loss of vital blood.

(22) בחלב

(23) Ex. XXIII, 19.

(24) בחלב

Talmud - Mas. Sanhedrin 4b

Say: this is unacceptable, as Mikra is determinant?[1] — Hence all agree that Mikra is determinant, but Rabbi and the Rabbis[2] differ in the following: Rabbi holds that the plural yarshi'un[3] refers to two judges [elohim] other than those prescribed in the previous verse;[4] while the Rabbis maintain that it refers to elohim here [its own subject] and to that in the previous clause.[5]

As to R. Judah b. Ro'ez, the Rabbis do not oppose him.[6]

As for the Hillelites, they derive their ruling[7] from the following: For it has been taught: wekipper[8] has to be repeated three times [in connection with the sin offering][9] to indicate that even one application is adequate, contrary to an analogy which might otherwise be advanced in favour of the need of four applications. But could we not have deduced this by [the following] analogy? The use of blood is mentioned [for application] above the line;[10] and the use of blood is mentioned [for application] below the line.[11] Just as in the case of the blood to be applied below the line, one application effects atonement,[12] so should it be with the blood to be applied above the line.

But you may argue this way: Sprinkling is prescribed for sacrifices offered on the outer altar[13] and also for those offered on the inner altar.[14] As in the case of those offered on the inner altar, expiation is not effected if one application has been omitted, so should it be with sacrifices offered on the outer altar!

Let us, however, see to which it is to be compared. Comparisons may be made between sacrifices offered on [the same] the outer altar, but not between sacrifices offered on the outer and inner altars.[15]

But may you not, on the other hand, argue in this way? We can compare sin offerings, the blood of

which is applied on the four horns of the altar,[16] to other sin offerings, the blood of which is applied on the four horns,[17] but no proof can be deduced from such a sacrifice as is neither a sin offering nor has the blood sprinkled on the four horns of the altar![18] Hence on account of this latter analogy, Wekipper has to be repeated three times, to indicate that atonement is effected by means of three sprinklings, or even by means of two, or indeed even by means of one alone.

Now as to R. Simeon and the Rabbis, their real point of difference is the following: R. Simeon holds that a cover for a Sukkah needs no textual basis,[19] while the Rabbis maintain that a special textual basis is necessary for a cover.[20]

R. Akiba and the Rabbis again disagree on the following point: According to the former, nafshoth denotes two bodies,[21] while the Rabbis say that nafshoth is a general term for bodies.[22]

But do all, indeed, regard the Mikra as determinant? Has it not been taught: 'letotafoth [frontlets] occurs thrice in the Torah, twice defective and once plene,[23] four in all, to indicate [that four sections are to be inserted in the phylacteries]. Such is the opinion of R. Ishmael. But R. Akiba maintains that there is no need of that interpretation, for the word totafoth itself implies four, [it being composed of] tot which means two in Katpi[24] and foth which means two in Afriki?[25] — Hence, in reality, it is disputable whether Mikra is always determinant in Biblical exegesis, but this is true only of cases where Mikra and Masorah differ in the spelling of a word.[26] But where-as for example, in the case of the milk — the reading behaleb involves no change in the spelling,[27] Mikra is determinant. But does not the text, Three times in the year all thy males shall appear [shall be seen] before the Lord[28] , occasion a dispute whether we shall follow the Mikra [yera'eh][29] or read yir'eh[30] according to Masorah?[31] For it has been taught: R. Johanan b. Dahabai said on behalf of R. Judah b. Tema: One who is blind in one eye is exempted from visiting the Temple, for we read YR'H[32] which according to Mikra means he shall be seen and according to Masorah, he shall see. That is to say, as He comes to see the worshipper, so should man come to be seen by Him; as He [the Lord] comes to see [so to speak] with both eyes.[33] so should he, who comes to be seen by Him, come with both eyes![34] Hence, says R. Aha, the son of R. Ika: The scriptural text says. Thou shalt not seethe a kid in its mother's milk. It is seething, as a method of cooking, that the law forbids.[35]

Our Rabbis taught: Monetary cases are decided by three;

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(1) And this is disputed by no one, as otherwise there would be no foundation for the prohibition.

(2) V. p. 9.

(3) Whom the judges shall condemn. Ex XXII, 8.

(4) Ex. XXII, 7, and that accounts for his view that five judges are required.

(5) Elohim in each case being taken as plural of majesty and so no additional judges are implied.

(6) V. p. 10.

(7) That one application of blood suffices in a sin offering.

(8) וכפר he shall make an atonement.

(9) Lev. IV, 26, 31, 35.

(10) I.e., the red line which marked the middle of the altar's height. The blood of sin offerings was applied above the line.

(11) I.e., the blood of burnt, trespass, and peace offerings, v. Zeb. 53a, Mid. III, 1.

(12) Deduced from Deut. XII, 27. The blood of thy sacrifices shall be poured out, v. Zeb. 37a.

(13) All sacrifices, except those of the Day of Atonement, the offering prescribed for the anointed Priest and the community's sacrifice on having erred (Lev. IV, 13) were offered on this, the brazen altar.

(14) V. n. 4.

(15) As for example between the sin offering of the anointed Priest and these sin offerings in connection with which wekipper is mentioned.

(16) The offerings in regard to which wekipper occurs.

(17) Such as that of the anointed Priest.
(18) Such as the burnt (v. Lev. III, 1-11), the trespass and peace offerings. V. p. II.
(19) The term sukkah (סכך 'to cover') itself denotes a cover, and all the references are thus employed for the walls of the sukkah to indicate that three complete walls and one diminished are needed.
(20) V. p. 11.
(21) So that one quantity of blood pollutes even if it issues from two corpses.
(22) And does not indicate any definite number.
(23) לטטפת (defective) (a) Deut. VI, 8. (b) ib. XI, 18; לטוטפת (plene) Ex. XIII, 16. (Rashi) v. Tosaf. Zeb. 25a; Men. 34b. In our versions, the defective form occurs only once: Deut. VI, 8.
(24) Coptic language? [V. Neubauer, p. 418]
(25) The language of N. Africa or Phrygia in Asia Minor.
(26) As, for example, in the following words: 'totafoth', 'bassukkoth', 'karnoth', in each case of which the Mikra implies an extra letter.
(27) חלב might be read חלב (fat) or חלב from חלב (milk).
(28) Ex. XXIII, 17.
(29) יראה 'shall be seen.'
(30) יראה 'he shall see.'
(31) Although the spelling in both readings is the same.
(32) יראה .
(33) Cf. Deut. XI, 12.
(34) Hence we see that the authority of Mikra is a moot point in every case, and if so, what is the definite basis for the prohibition relating to meat and milk?
(35) Seething is a term applicable only to a liquid, such as milk, and not to fat which would require such a word as roasting. Therefore we must read behaleb, (in the milk of) according to Mikra.

Talmud - Mas. Sanhedrin 5a

but one who is a recognised Mumheh[1] may judge alone.

R. Nahman said: One like myself may adjudicate monetary cases alone. And so said R. Hiyya.

The following problem was [consequently] propounded: Does the statement 'one like myself' mean that as I have learned traditions and am able to reason them out, and have also obtained authorisation[2] [so must he who wishes to render a legal decision alone]; but that if he has not obtained authorisation, his judgment is invalid; or is his judgment valid without such authorisation? Come and hear! Mar Zutra, the son of R. Nahman, judged a case alone and gave an erroneous decision. On appearing before R. Joseph, he was told: If both parties accepted you as their judge, you are not liable to make restitution. Otherwise, go and indemnify the injured party. Hence it can be inferred that the judgment of one, though not authorised, is valid.

Said Rab: Whosoever wishes to decide monetary cases by himself and be free from liability in case of an erroneous decision, should obtain sanction from the Resh Galutha,[3] And so said Samuel.

It is clear that an authorisation held from the Resh Galutha 'here' [in Babylonia] holds good 'here' — And one from the Palestinian authority 'there' [in Palestine] is valid 'there' — Likewise, the authorisation received 'here' is valid 'there', because the authority in Babylon is designated 'sceptre' — but that of Palestine, 'lawgiver' [denoting a lower rank] — as it has been taught: The sceptre shall not depart from Judah,[4] this refers to the Exilarchs of Babylon who rule over Israel with sceptres;[5] and a lawgiver . . . , this refers to the descendants of Hillel [in Palestine] who teach the Torah in public. Is, however, a permission given 'there' valid 'here'? Come and hear! Rabbah b. Hana gave an erroneous judgment [in Babylonia]. He then came before R. Hiyya, who said to him: If both parties accepted you as their judge, you are not liable to make restitution; otherwise you must

indemnify them. Now — Rabbah b. Hana did hold permission [but from the Palestinian authority]. Hence we infer that the Palestinian authorisation does not hold good for Babylon.[6]

But is it really not valid in Babylon? Did not Rabbah, son of R. Huna, when quarrelling with the members of the household of the Resh Galutha, maintain:, I do not hold my authorisation from you. I hold it from my father who had it from Rab, and he from R. Hiyya, who received it from Rabbi [in Palestine]'? — He was only trying to put them in their place with mere words.

Well, then, if such authorisation is invalid in Babylon, what good was it to Rabbah, son of R. Huna? — It held good for cities that were situated on the Babylonian border [which were under the jurisdiction of Palestine].[7]

Now, what is the content of an authorisation? — When Rabbah b. Hana was about to go to Babylon, R. Hiyya said to Rabbi: 'My brother's son is going[8] to Babylon. May he, decide in matters of ritual law?' Rabbi answered: 'He may. May he decide monetary cases?' — He may.' 'May he declare firstborn animals permissible [for slaughter]?'[9] — 'He may.' When Rab went there, R. Hiyya said to Rabbi: 'My sister's son is going to Babylon. May he decide on matters of ritual law?' — He may. 'May he decide [monetary] cases?' — 'He may.' 'May' he declare firstborn animals permissible for slaughter?' — 'He may not.' Why did R. Hiyya call the former 'brother's son' and the latter 'sister's son'? You cannot say that it was actually so, since a Master said that Aibu [Rab's father] and Hana [Rabbah's father], Shila and Martha and R. Hiyya were the sons of Abba b. Aha Karsela of Kafri?[10] — Rab was also R. Hiyya's sister's son [on his mother's side], while Rabbah was only his brother's son. Or, if you prefer, I might say he chose to call him sister's son'

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(1) V. Glos.

(2) V. n. 6.

(3) Lit. — 'head of the Golah', Exilarch. Title given to the chief of the Babylonian Jews who from the time of the exile were designated by the term Golah, v. Jer. XXVIII, 6.

(4) Gen. XLIX. 10.

(5) Sceptre, symbol of the authority of a ruler appointed by the Government, as was the Resh Galutha, 'Lawgiver' designates the heads of Palestinian schools who have no political authority.

(6) Otherwise he should not have been liable to indemnification.

(7) [V. Zuri, Toledoth Hamishpat Haziburi I, pp. 384 ff.]

(8) Lit., 'descending'.

(9) On finding, after careful examination, that they had permanent blemishes. After the destruction of the Temple, firstborn animals could be slaughtered only on having permanent defects.

(10) In Babylonia. Hence Rab was also the son of R. Hiyya's brother's.

on account of his eminent wisdom, as it is written: Say unto wisdom, thou art my sister.[1]

What was the reason that Rab was not authorised to permit the slaughter of firstborn animals? Was it that he was not learned[2] enough? But have we not just said that he was very learned? Was it because he was not an expert in judging defects? But did not Rab himself say: I spent eighteen months with a shepherd in order to learn which was a permanent and which a passing blemish ? — Rabbi withheld that authorisation from Rab, as a special mark of respect to Rabbah b. Hana.[3] Or, if you prefer, I might say that for the very reason that Rab was a special expert in judging blemishes, he might in consequence declare permissible, with a view to slaughter, [permanent] defects which to others might not be known as such. These latter might thus be led to maintain that Rab had passed cases of such a kind and so to declare permissible transitory blemishes.

We were told above that Rabbi authorised him, Rabbah, and Rab respectively, to] decide in matters of ritual law. Since he was learned in the law, what need had he to obtain permission? — Because of the following incident, for it has been taught: Once Rabbi went to a certain place and saw its inhabitants kneading the dough without the necessary precaution against levitical uncleanness.[4] Upon inquiry, they told him that a certain scholar on a visit taught them: Water of bize'im [ponds] does not render food liable to become unclean. In reality, he referred to bezim [eggs], but they thought he said bize'im [ponds].[5] They further erred in the application of the following Mishnah:[6] The waters of Keramyon and Pigah,[7] because they are ponds, are unfit for purification purposes.[8] They thought that since this water was unfit for purification, it likewise could not render food liable to become unclean. But this conclusion is unwarranted, for whereas there, that is in connection with the purification offering, running water is required, waters, from any source, can render food liable to uncleanness. There and then[9] it was decreed that a disciple must not give decisions unless he was granted permission by his teacher.

Tanhum son of R. Ammi happened to be at Hatar, and in expounding the law to its inhabitants, taught them that they might soak the grain before grinding for Passover.[10] But they said to him: Does not R. Mani of Tyre live here, and has it not been taught that a disciple should not give an halachic decision in the place where his teacher resides, unless there is a distance of three parasangs — the space occupied by the camp of Israel — between them? He answered: The point did not occur to me.

R. Hiyya saw a man standing in a cemetery and asked him: 'Are you not the son of so and so who was a Priest?'[11] 'Yes,' he answered, 'but my father being wilful, set his eyes upon a divorced woman, and by marrying her, profaned his priesthood.'[12]

It is obvious that a partial authorisation is valid,[13] as has already been said. But how is it with a conditional authorisation?[14] Come and hear! R. Johanan said to R. Shaman:[15] You have our authorisation until you return to us.

The text [above states]: 'Samuel said, If two [commoners] try a case [instead of three] their decision holds good, but they are called a presumptuous Beth din.'

R. Nahman sat and reported this teaching, but Rabbah objected to it on the ground of the following [Mishnah]:[16] Even if two acquit or condemn, but the third is undecided[17] the number of the judges must be increased. Now if it were so, as Samuel maintains, why add; why not let the decision of these two be as valid as that of two who have tried a case? — There [in the Mishnah] the case is different, since from the outset they sat with the intention of constituting a court of three; whereas here they did not sit with that intention.

He raised a further objection:[18] 'R. Simeon b. Gamaliel says: Legal judgment is by three; arbitration is valid if made by two. And the force of arbitration is greater than that of legal judgment, for if two judges decide a case, the litigants can repudiate their decision, whilst if two judges arbitrate, the parties cannot repudiate their decision.'[19]

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(1) Prov. VII, 4.

(2) Lit, 'wise'.

(3) So as to establish him firmly in the respect of Babylonians, whilst Rab's standing was in any case high.

(4) V. Lev. XI, 38.

(5) That disciple must have been defective of speech, and the listener could easily fall into error owing to the similarity of pronunciation of בצעים 'ponds' — (cf. Job VIII, 11) — and ביצים 'eggs'.

(6) Parah VIII. 10.

(7) In Palestine. V. B. B. (Sonc. ed.), p. 298, n. 10

(8) Num. XIX, 17.

(9) Lit., ‘in that hour’.
(10) Leavenness, the result of dampness, does not occur in this, as the grain is ground immediately after washing.
(11) According to Levitical law, the Priest is forbidden to have direct contact with a dead body or come within a roofed enclosure where such lies buried.
(12) The offspring of the marriage between a priest and a woman disqualified for him (v. Lev. XXI, 14) are profane and the laws pertaining to priestly status do not apply to them. [In J. Sheb. the incident is ascribed to Rabbi, which explains the mention of it in this connection, v. Hazofeh XIII, 346.]
(13) As in the case of Rab.
(14) For a definite time.
(15) [R. Shaman b. Abbe, on the occasion of his visit to Babylon. v. D. S. a. l.]
(16) Infra 29a.
(17) Lit., ‘he says. ‘I do not know’ (how to decide).’
(18) Tosef. Sanh. 1.
(19) Because the arbitrators were of their own choice. Hence we see clearly that the decision of two in a legal judgment is not valid.

Talmud - Mas. Sanhedrin 6a

And should you maintain that the Rabbis differ from R. Simeon b. Gamaliel,[1] it may be asked: Did not R. Abbahu say that all agree that a judgment given by two in monetary cases is not valid? — But why should you seek to show a disagreement between two persons?[2]

The text [above states]: ‘R. Abbahu says all agree that a judgment given by two in monetary cases is not valid.’ R. Abba objected and asked R. Abbahu [from the following]: If one has judged a case by himself and pronounced the guilty ‘guiltless’ and the guiltless ‘guilty’, or the clean ‘unclean’ and the unclean ‘clean’, his act cannot be undone, but he has to pay indemnity from his own pocket?[3] — Here we are dealing with a case where the parties accepted the judge. If so, why make him pay indemnity? — Because they had said to him: We agree to abide by your award on condition that you give a decision in accordance with the Torah.

R. Safra asked R. Abba: What did the judge overlook in giving this erroneous decision? Was it a law cited in the Mishnah? But did not R. Shesheth say in the name of R. Ashi: ‘If one overlooks a law cited in the Mishnah, he may revoke his decision’? — Hence it must be he erred in deciding against common practice. How can we conceive that? R. Papa said: If, for example, two Tannaim or Amoraim opposed each other's views in a certain matter and it was not clear with whom the true decision lay, but the general trend of practice followed the opinion of one of them, and yet he decided according to the opinion of the other, that is termed ‘an error of judgment against common practice’.

Is it true to say that the point of difference [between Samuel and R. Abbahu] had been anticipated by Tannaim in the following controversy? Arbitration is by three, so says R. Meir. The Sages say that one is sufficient. Now the Schoolmen presumed that all agree that the force of arbitration is equal to that of legal decision; their point of difference would accordingly resolve itself into one holding that three are required for legal decision and the other holding that two are enough.[4] — No, all [both R. Meir and the Sages] agree that legal decision is by three, and the point in which they differ is this: One [R. Meir] holds that the force of arbitration should be regarded as equal to that of legal decision, while the other disputes it.

May it be assumed then that there are three views held by the Tannaim with regard to arbitration, viz., one [R. Meir] holds that three are needed; another [R. Simeon b. Gamaliel] holds that two are sufficient[5] , while the Sages hold that one is enough? — R. Aha the son of R. Ika, or according to others R. Yemar b. Salomi, said: The Tanna who says two are necessary is really of the opinion that

a single one is sufficient. And the reason he requires two is that they might act as witnesses in the case, if required.

R. Ashi said: We may infer from this that no Kinyan[6] is needed for arbitration, for if it be thought necessary, why does the Tanna in question require three? Surely two should suffice, the two parties being bound by Kinyan![7] The adopted law however, is that arbitration requires Kinyan [even when made by three].[8]

Our Rabbis taught: Just as for legal judgment three are required, so are three required for settlement by arbitration. After a case has been decided by legal judgment, thou must not attempt a settlement.

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(1) I.e. the majority opinion is that the decision of two is valid.

(2) Why should Samuel, unlike R. Abbahu, hold that the Rabbis differ from R. Simeon b. Gamaliel?

(3) B. K. 100a. It is thus seen that the decision of even one is valid.

(4) I.e. their point of difference is thus the same as that between R. Abbahu and Samuel.

(5) Supra 5b.

(6) A formal act of acquisition effected when two enter into mutual obligation.

(7) Pledging themselves to adhere to the award.

(8) Because, strictly speaking, the decision is not one of law, and unless the parties have bound themselves by Kinyan, they can retract.

Talmud - Mas. Sanhedrin 6b

(Mnemonic: Sarmash Bankash.)[1]

R. Eliezer the son of R. Jose the Galilean says: It is forbidden to arbitrate in a settlement, and he who arbitrates thus offends, and whoever praises such an arbitrator [bozea'] contemneth the Lord, for it is written, He that blesseth an arbiter [bozea'], contemneth the Lord.[2] But let the law cut through the mountain,[3] for it is written, For the judgment is God's.[4] And so Moses's motto was: Let the law cut through the mountain. Aaron, however, loved peace and pursued peace and made peace between man and man, as it is written, The law of truth was in his mouth, unrighteousness was not found in his lips, he walked with Me in peace and uprightness and did turn many away from iniquity.[5]

R. Eliezer says: If one stole a se'ah [a measure] of wheat, ground and baked it and set apart the Hallah,[6] what benediction can he pronounce? This man would not be blessing, but contemning, and of him it is written, The robber [bozea'] who blesseth, contemneth the Lord.[7]

R. Meir says: This text refers to none but Judah, for it is written, And Judah said to his brethren, What profit [beza'] is it if we slay our brother?[8] And whosoever praises Judah, blasphemes, as it is written, He who praiseth the man who is greedy of gain [bozea'] contemneth the Lord.[9] R. Judah b. Korha says: Settlement by arbitration is a meritorious act, for it is written, Execute the judgment of truth and peace in your gates.[10] Surely where there is strict justice there is no peace, and where there is peace, there is no strict justice! But what is that kind of justice with which peace abides? — We must say: Arbitration.[11] So it was in the case of David, as we read, And David executed justice and righteousness [charity] towards all his people.[12] Surely where there is strict justice there is no charity, and where there is charity, there is no justice! But what is the kind of justice with which abides charity? — We must say: Arbitration.

But the following interpretation of this verse will accord with the First Tanna [who holds arbitration to be prohibited]: In rendering legal judgment, David used to acquit the guiltless and

condemn the guilty; but when he saw that the condemned man was poor, he helped him out of his own purse [to pay the required sum], thus executing judgment and charity, justice to the one by awarding him his dues, and charity to the other by assisting him out of his own pocket. And therefore Scripture says, David practised justice and charity towards all his people.[13]

Rabbi, however, objected to this interpretation, for in that case [he said], the text ought to have read 'towards the poor' instead towards all his people? Indeed, [he maintained,] even if he had not given assistance out of his own pocket, he would nevertheless have executed justice and charity; justice to the one by awarding him his dues, and charity to the other by freeing him from an ill-gotten thing in his possession.

R. Simeon b. Manasya says: When two come before you for judgment, before you have heard their case, or even afterwards, if you have not made up your mind whither[14] judgment is inclining,[15] you may suggest to them that they should go and settle the dispute amongst themselves. But if you have already heard their case and have made up your mind in whose favour the verdict inclines, you are not at liberty to suggest a settlement, for it is written: The beginning of strife is as one that letteth out water. Therefore, leave off contention before the quarrel break out.[16] Before the case has been laid bare, you may leave off [give up] the contention;[17] after the case has been laid bare, you cannot leave it off.

The view of Resh Lakish[18] is as follows: When two men bring a case before you, one weak [i.e. of small influence], the other strong [of great influence], before you have heard their case, or even after, so long as you are in doubt in whose favour judgment is inclining, you may tell them: 'I am not bound to decide in your case', lest the man of great influence should be found guilty, and use his influence to harass the judge. But, if you have heard their case and know in whose favour the judgment inclines, you cannot withdraw and say, I am not bound to decide in your case', because it is written: Ye shall not be afraid of the face of any man.[19]

R. Joshua b. Korha says: Whence do we know that a disciple, who is present when his master judges a case and sees a point which would tell in favour of a poor man or against a rich man, should not keep silence?. From the words of the text: Ye shall not be afraid [lo taguru] of the face of any man.[20] R. Hanin explains this word to mean, 'Ye shall not hold back your words because of anyone.[21] Further, witnesses should know against whom they are giving evidence, before whom they are giving evidence and who will call them to account [in the event of false evidence]. For it is written: Then both the men, between whom the controversy is, shall stand before the Lord.[22] Judges should also know whom it is they are judging, before whom they are judging, and who will call them to account [if they pervert justice], as it is written: God standeth in the Congregation of God [in the midst of judges doth He judge].[23] And thus it is said, concerning Jehoshaphat, He said to the judges, Consider what ye do, for ye judge not for man, but for the Lord.[24] And lest the judge should say: Why have all this trouble and responsibility? It is further said: He is with you in giving judgment.[24] The judge is to be concerned only with what he actually sees with his own eyes.

When is judgment to be regarded as rendered [i.e. at which point is arbitration forbidden]? — Rab Judah, in the name of Rab. says: On the pronouncement of the words: So and so, thou art guilty; or, so and so, thou art not guilty.

Rab says: the halachah is in agreement with R. Joshua b. Korha [who holds arbitration to be a meritorious act]. How can this be? Was not R. Huna a disciple of Rab, and yet, when a case was brought to him, he would ask the litigants whether they desired to resort to law or to a settlement?[25] As to the expression, 'meritorious act which R. Joshua b. Korha uses, he means

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(1) Mnemonic device to recollect names of authorities that follow: Jose, Eliezer, Meir, Joshua, Rabbi, Simeon b.

Manasya, Judah b. Lakish. Joshua b. Karha. These letters have been chosen because they afford in addition aids to their respective statements, v. Hyman. Toledoth, I, p. 23]

(2) Ps. X. 3. The root-meaning of בוצע is 'to cut'; hence the word translated, 'covetous', is taken in the sense of an arbiter in a compromise, when the difference between two claims is split.

(3) Take its course.

(4) Deut I, 17. And no court has the right to tamper with it.

(5) Mal. II, 6.

(6) Priest's share of the dough. Num XV, 20-21.

(7) Ps. X, 3. Lit. 'he who is greedy of gain etc.' Cf. Prov. I, 19.

(8) בצע , Gen. XXXVII, 26.

(9) Taking בוצע as object of the verb 'who praiseth'.

(10) Zech. VIII, 16.

(11) Because the strict application of the law does not always set both parties at peace.

(12) II Sam. VIII, 15. It is noteworthy that 'charity to the poor', in the usage of Rabbinic speech, is described by Zedakah — a word denoting 'righteousness', 'just doing'.

(13) Ibid.

(14) I.e., In whose favour.

(15) I.e., before the court becomes cognisant of the respective merits of the litigants.

(16) Prov. XVII, 14.

(17) I.e.. suggest a settlement.

(18) Other readings: (a) R. Judah b. Lakish. (b) R. Joshua b. Lakish. V. מסורת הש"ם a.l.

(19) Deut. I, 17.

(20) Ibid.

(21) תגורו from אגר 'gather in'. According to the Tosef., and other versions, R. Joshua b. Korha is the author of this interpretation.

(22) Deut. XIX, 17. This refers to the witnesses (cf. Shebu. 30a).

(23) Ps. LXXXII, 1.

(24) II Chron. XIX, 6.

(25) Hence we see that Rab does not favour R. Joshua b. Korha's opinion, as it is unlikely that R. Huna the disciple would deviate from the ruling of his master.

Talmud - Mas. Sanhedrin 7a

that it is a meritorious act to ask the litigants whether they wish to resort to law or to a settlement. If so, this agrees with the opinion of the first Tanna?[1] There is this difference, however: R. Joshua b. Korha regards this as a moral obligation; the first Tanna merely as a permissible act. But this would make the first Tanna express the same opinion as R. Simeon b. Manasya? — The difference centres round the latter part of R. Simeon's statement: 'If you have already heard the case and know in whose favour the verdict inclines, you are not at liberty to suggest a settlement', [a distinction which the first Tanna does not admit].

A difference of opinion is expressed by R. Tanhum b. Hanilai, who says that the verse quoted[2] refers only to the story of the golden calf, as it is written: And when Aaron saw it, he built an altar before it.[3] What did he actually see? — R. Benjamin b. Japhet says, reporting R. Eleazar: He saw Hur lying slain before him and said [to himself]: If I do not obey them, they will now do unto me as they did unto Hur, and so will be fulfilled [the fear of] the prophet, Shall the Priest and the Prophet be slain in the Sanctuary of God?[4] and they will never find forgiveness. Better let them worship the golden calf, for which offence they may yet find forgiveness through repentance.[5]

And how do those other Tannaim, who allow a settlement even when a case has been heard, interpret the verse: The beginning of strife is as one that letteth out water?[6] They interpret it as does R. Hamnuna. For R. Hamnuna says: The first matter for which a man is called to give account in the

Hereafter is regarding the study of the Torah, as it is said: The beginning of judgment[7] concerns the letting out of water.[8]

R. Huna says [with reference to this verse]: Strife is compared to an opening made by a rush of water that widens as the water presses through it.

Abaye the Elder[9] says: Strife is like the planks of a wooden bridge; the longer they lie, the firmer they grow.

('Mnemonic: Hear, And Two, Seven, Songs, Another.)[10]

There was a man who used to say: Happy is he who hears abuse of himself and ignores it; for a hundred evils pass him by. Samuel said to Rab Judah: This is alluded to in the verse: He who letteth out water [of strife] causeth the beginning of madon[11] [the numerical value of which is a hundred].[12] that is, the beginning of a hundred strifes.

Again, there was a man who used to say: Do not be surprised if a thief goes unhanged for two or three thefts; he will be caught in the end. Samuel said to Rab Judah: This is alluded to in the verse: Thus saith the Lord: for three transgressions of Judah, but for four I will not reverse it[13] [i.e. My judgment].

Another used to say: Seven pits lie open for the good man [but he escapes]; for the evil-doer there is only one, into which he falls. This, said Samuel to Rab Judah, is alluded to in the verse: The righteous man falleth seven times and riseth up again.[14]

Yet another used to say: Let him who comes from a court that has taken from him his cloak sing his song and go his way.[15] Said Samuel to Rab Judah: This is alluded to in the verse, And all this people also [i.e. including the losers] shall come to their place in peace.[16]

There was yet another who used to say: When a woman slumbers the [working] basket drops off her head.[17] Said Samuel to Rab Judah: This is alluded to in the verse, By slothfulness the rafters sink in.[18]

Another man used to say: The man on whom I relied shook his fist at me.[19] Samuel said to Rab Judah: This is alluded to in the verse: Yea, mine own familiar friend, in whom I trusted and who did eat of my bread, hath lifted up his heel against me.[20]

Another used to say: When love[21] was strong, we could have made our bed on a sword-blade; now that our love has grown weak, a bed of sixty [cubits] is not large enough for us. Said R. Huna: This is alluded to in the verses: Of the former age [when Israel was loyal to God] it is said: And I will meet with thee and speak with three from above the ark-cover;[22] and further it is taught: The Ark measured nine hand-breadths high and the cover one hand-breadth, i.e. ten in all. Again it is written: As for the House which King Solomon built for the Lord, the length thereof was three score cubits, the breadth thereof twenty cubits, and the height thereof thirty cubits.[23] But of the latter age [when they had forsaken God] it is written: Thus saith the Lord, The Heaven is my throne and the earth my footstool. Where is the house that ye may build unto me?[24]

What evidence is there that the verb taguru [translated 'be afraid'] can also be rendered 'gather in'?[25] R. Nahman answered by quoting the verse: Thou shalt neither drink of the wine nor gather [te'egor] the grapes.[26] R. Aha b. Jacob says that it can be proved from the following verse: Provideth her bread in the summer and gathereth [agerah] her food in the harvest.[27] R. Aha the son of R. Ika says it can be derived from the following verse: A wise son gathereth [oger] in summer.[28]

(Mnemonic: Truth, Money, Shall See.)

R. Nahman said, reporting R. Jonathan: A judge who delivers a judgment in perfect truth[29] causes the Shechinah to dwell in Israel, for it is written: God standeth in the Congregation of God; in the midst of the judges He judgeth.[30] And he who does not deliver judgments in perfect truth causes the Shechinah to depart from the midst of Israel, for it is written: Because of the oppression of the poor, because of the sighing of the needy, now will I arise, saith the Lord.

Again. R. Samuel b. Nahmani, reporting R. Jonathan. said: A judge who unjustly takes the possessions[31] of one and gives then to another, the Holy One, blessed be He, takes from him his life, for it is written: Rob not the poor because he is poor; neither oppress the afflicted in the gate', for the Lord will plead their cause, and will despoil of life those that despoil them.[32]

R. Samuel b. Nahmani further said, reporting R. Jonathan: A judge should always think of[33] himself as if he had a sword hanging over his head[34] and Gehenna[35] gaping under him,

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(1) Who holds that arbitration may be suggested before the verdict is given.

(2) Ps. X, 3.

(3) Ex. XXXII, 5.

(4) Lam. II, 20.

(5) He thus made a compromise, and this compromise is denounced by the Psalmist.

(6) Prov. XVII, 14.

(7) מדון 'Strife' or 'judgment'.

(8) I.e. the Torah, which is compared by the Rabbis to water. V. Ex. Rab. II, 9.

(9) Abaye Kashisha, as distinct from the more famous Abaye. In fact, the latter quotes him in Keth. 94a.

(10) Or, 'Hear, Vashti, Seven, Songs, Another'; Vashti and 'And Two' being spelled alike in Hebrew, ושתי V. p. 21, n. 5.

(11) Prov. XVII, 14.

(12) מדון = 40,4,6,50 respectively — 100 in all.

(13) Amos II, 6. Taken as an elliptical verse, with the meaning: 'Though I may reverse or keep back My judgment for the first three offences, punishment shall not be withheld for the fourth.'

(14) Prov. XXIV, 16.

(15) He should be happy that he was relieved of an ill-gotten thing.

(16) Ex. XVIII, 23.

(17) Carelessness is the immediate cause of ruin.

(18) I.e. the house falleth to decay. Ecc. X, 18.

(19) Or, 'raised his club against me.'

(20) Ps. XLI, 10.

(21) Between my wife and myself.

(22) Ex. XXV, 22.

(23) I Kings VI, 2.

(24) Isa. LXVI, 1. Thus at first the Shechinah rested on an Ark of small dimensions, but when Israel sinned, even Solomon's Temple was too small.

(25) Referring back to p. 24.

(26) Deut. XXVIII, 39. תאגר.

(27) Prov VI, 8. אגרה

(28) Ibid. X, 5. אוגר

(29) Lit. 'true to its own truth', i.e. an absolutely true verdict which can be arrived at by the judge if he endeavours to find out the truth himself and does not rely on the evidence alone. V. Tosaf B.B. 8b; Meg. 15b.

(30) Ps.LXXXII, 1. (10) Ibid. XII, 6.

(31) Lit., 'money'.

(32) Prov. XXII, 22-23.
(33) Lit.,'see'.
(34) Lit. 'resting between his flanks'.
(35) V. Glos.

Talmud - Mas. Sanhedrin 7b

for it is written, Behold, it is the litter of Solomon [symbolically the Shechinah], and round about it three score of the mighty men of Israel [symbolising the scholars]; they all handle the sword and are expert in war [in debates] and every man has his sword upon his flank because of the dread in the night.[1] [the dread of Gehenna, which is likened unto night].

R. Josiah, or, according to others, R. Nahman b. Isaac, gave the following exposition: What is the meaning of the verse, O house of David, thus saith the Lord: Execute justice in the morning and deliver the spoiled out of the hand of the oppressor![2] Is it only in the morning that one acts as judge and not during the whole day? — No, it means: If the judgment you are about to give is clear to you as the morning [light], give it; but if not, do not give it.

R. Hiyya b. Abba says: R. Johanan derived this from the following verse: Say unto wisdom, Thou art my sister.[3] If the matter is as clear to you as is the prohibition of your sister [in marriage], give your decision, but not otherwise.

R. Joshua b. Levi says: If ten judge a case, the chain hangs on the neck of all;[4] Is not this self-evident? — This need not be stated except in reference to the case of a disciple who sits in the presence of his master, and allows to pass unchallenged an erroneous decision of his master.

When a case was submitted to R. Huna he used to summon and gather ten schoolmen, in order, as he put it, that each of them might carry a chip from the beam.[5]

R. Ashi, when a terefah[6] was submitted to him for inspection, sent and gathered all the slaughterers of Matha Mehasia, in order, as he put it, that each of them should carry a chip from the beam.

When R. Dimi came [from Palestine] he related that R. Nahman b. Kohen had given the following exposition of the verse, The King by justice establisheth the land, but he that loveth gifts overthroweth it.[7] If the judge is like a king, in that he needs no one's help, he establishes the land, but if he is like a priest who goes about threshing floors to collect his dues, he overthrows it.

The members of the Nasi's[8] household once appointed an incompetent teacher,[9] and the Rabbis said to Judah b. Nahmani, the interpreter[10] of Resh Lakish: Go and stand at his side as interpreter. Standing by him, he [Judah] bent down to hear what he wished to teach, but the teacher made no attempt to say anything. Thereupon R. Judah took as his opening text: Woe unto him who saith unto wood: Awake! — to the dumb stone: Arise! Can this teach? Behold, it is overlaid with gold and silver, and there is no breath at all in the midst of it;[11] but the Holy One, blessed be He, [he proceeded], will call to account those who set them up, as it is written: But the Lord is in His holy Temple; let all the earth, keep silence before Him.[12]

Resh Lakish said: He who appoints an incompetent judge over the Community is as though he had planted an Asherah[13] in Israel, for it is written: Judges and officers shalt thou appoint unto thee, and soon after it is said: Thou shalt not plant thee Asherah of any kind of tree.[14] R. Ashi said: And if such an appointment be made in a place where scholars are to be found, it is as though the Asherah were planted beside the Altar, for the verse concludes with the words: beside the altar of the Lord thy

God.[15]

Again, it is written: Ye shall not make with Me gods of silver or gods of gold.[16] Is it only gods of silver and gold that may not be made, while those of wood are permitted? — The verse, says R. Ashi, refers to judges appointed through the power of silver or gold.

Rab, whenever he was to sit in court used to say: Of his own free will he [the judge] goes to meet death. He makes no provision for the needs of his household, and empty does he return home. Would only that he returned [as clean of hand] as he came![17] When [at the entrance] he saw a crowd escorting him, he said: Though his excellency mount up to the heavens, and his head reach unto the clouds, yet he shall perish for ever like his own dung.[18]

Mar Zutra the Pious, as he was carried shoulder-high[19] on the Sabbaths preceding the Pilgrimage Festivals [when he preached on the Festival Laws], used to quote the verse: For riches are not for ever, and doth the crown endure unto all generations?[20]

Bar Kappara said in a lecture: Whence can we derive the dictum of our Rabbis: Be deliberate in judgment? From the words: Neither shalt thou go up by steps upon My altar.[21] For this is followed by: And these are the judgments . . .[22]

R.Eleazar said: Whence is it to be derived that a judge should not trample over the heads of the people?[23] It is written: Neither shalt thou go up by steps [i.e. force thy way] upon My altar; and this is followed by: And these are the judgments.

The same verse continues: which thou shalt set before them. It should have stated: which thou shalt teach them. R. Jeremiah, or according to some, R. Hiyya b. Aha, said: This refers to the insignia of the judges [which they have to set before the public].[24]

R. Huna, before entering the Court, used to say: Bring forth the implements of my office: the rod;[25] the lash;[26] the horn;[27] and the sandal.[28]

Again. it is written: And I charged your judges at that time.[29] R. Johanan said: This is a warning to them to use the rod and lash with caution.

Again: Hear [the causes] between your brethren and judge righteously.[30] This, said R. Hanina, is a warning to the court not to listen to the claims of a litigant in the absence of his opponent; and to the litigant not to explain his case to the judge before his adversary appears. Shamoa'[31] [hear], in the verse, can also be read, shammea'.[32]

R. Kahana, however, says: We can derive this rule from the verse: Thou shalt not take up [tissa] a false report[33] [referring to the judge], which may be read, tashshi.[34]

As for the text quoted above, You shall judge righteously.[35] Resh Lakish says that it means: Consider rightly all the aspects of the case before giving the decision.

As for the words, Between a man and his brother . . . R. Judah says that this refers to disputes between brothers about trifles such as, for instance, who should occupy the lower and who the upper part of a house. And the stranger that is with him . . . This, says R. Judah, refers even to so insignificant a dispute as one concerning a stove and an oven.[36]

You shall not respect persons [lo takkiru] in judgment.[37] R. Judah says this means: You shall not favour [lit. recognise] any one [even if he is your friend]; and R. Eleazar takes it to mean; You shall

not estrange anyone [even if he is your enemy].[38]

A former host of Rab came before him with a law-suit, and said: 'Were you not once my guest?' 'Yes,' he answered, [and what is your wish?]'[39] 'I have a case to be tried,' he replied. 'Then,' said Rab,

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(1) Cant. III, 7-8.
(2) Jer. XXI, 12.
(3) Prov. VII, 4.
(4) I.e., all share the responsibility.
(5) I.e. share the responsibility with him.
(6) An animal afflicted with an organic disease.
(7) Prov. XXIX, 4.
(8) Judah II.
(9) Lit., 'judge'.
(10) Whose function it was to expound aloud to the audience what the teacher had spoken concisely and in a low voice.
(11) Hab. II, 19.
(12) Ibid.
(13) A sacred tree or pole associated with the ancient Semitic cults.
(14) Deut. XVI. 18-19.
(15) The scholars are compared to the Altar, because they impress upon sinners that they should mend their ways. Cf. Rashi a.l.
(16) Ex. XX, 23.
(17) He gave expression to the thankless nature of the judge's task, full of responsibility and fraught with danger.
(18) Job XX, 6-7.
(19) Being advanced in age and unable to walk quickly, he was carried, so that the audience should not have to wait long for his arrival.
(20) Prov. XXVII, 24.
(21) Ex. XX, 26.
(22) The juxtaposition shows that for judgments, one should proceed slowly and avoid large paces, as one does on ascending the altar.
(23) Listeners usually sat on the floor, and by forcing his way through the crowd, it would appear as if he were trampling over their heads.
(24) V. passage below and Notes 1-4.
(25) For beating, according to the court's discretion.
(26) For the thirty-nine stripes. Deut. XXV, 3.
(27) Blown for excommunication.
(28) For Halizah, v. Glos.
(29) Deut. I, 16.
(30) Ibid.
(31) שמע
(32) שמע In the Pi'el, which has a causative sense, (make hear).
(33) Ex. XXIII, 1. תשא
(34) תיא , in the hiph'il from נשא 'entice', 'induce', 'mislead', with reference to the litigant that he should not attempt to win over the judge to his side by stating his case in the absence of his adversary.
(35) Deut. I, 16.
(36) גרו interpreted here as sojourner', who sojourns in the same house. The nature of the disputes between them will be mostly over articles associated with the household — stoves and ovens.
(37) Deut. I, 16.
(38) R. Eleazar interprets takkiru as if it were tenakkru תנכרו .
(39) [So Rashi According to Rashal, Rab asked, on seeing the man: Are you not my former host?' The man replied. Yes! Thereupon Rab asked him, 'What is your wish', the words in brackets being embodied in the text.]

Talmud - Mas. Sanhedrin 8a

'I am disqualified from being your judge,' and turning to R. Kahana, said: 'Go you and judge the case'. R. Kahana noticed that the man presumed too much on his acquaintance with Rab, so he remarked: 'If you will submit to my judgment, well and good; If not, I shall put Rab out of your mind [by showing you my authority].'[1]

Ye shall hear the small and the great alike.[2] Resh Lakish says: This verse indicates that a law-suit involving a mere perutah[3] must be regarded as of the same importance as one involving a hundred mina.[4] For what practical purpose is this laid down? If it is to urge the need of equal consideration and investigation, is it not self-evident! Rather, it is to give the case due priority, if it should be first in order.

For the judgment is God's.[5] R. Hamma, son of R. Hanina, comments: The Holy One, blessed be He, hath said: It is not enough for the wicked [judges] that they take away money from one and give it to another unjustly, but they put Me to the trouble of returning it to its owner.

And the cause that is too hard for you, bring unto me.[6] R. Hanina, [according to some, R. Josiah,] says: For this utterance Moses was punished,[7] as we can infer from this later passage: And Moses brought their cause before the Lord.[8]

R. Nahman objects to this comment, and asks: Did Moses say: 'Bring it unto me and I will let you hear it'? No, he said: 'I will hear it; if I am instructed, it is well! If not, I will get me instruction [how to deal with it]'. And the case of the daughters of Zelophehad is to be explained as was taught:[9] The section relating to the laws of inheritance was intended to have been written at the instance of Moses our Teacher. The daughters of Zelophehad, however, were found worthy to have the section recorded on their account. Similarly, the law concerning the gathering of sticks on the Sabbath[10] was to have been written at the instance of Moses our Teacher. The gatherer, however, was found culpable, and so it was recorded on his account. This is to teach us that evil is brought about through the agency of sinful men, and good through that of worthy men.

And I charged your judges at that time;[11] and again, I charged you at that time.[12] R. Eleazar, on the authority of R. Simlai, says: These passages are a warning to the Congregation to revere their judges, and to the judges to bear patiently with the Congregation. To what extent! — R. Hanan, [some say R. Shabatai,] says: As the nursing father carrieth the sucking child.[13]

One text reads: For thou [Joshua] must go with this people, etc.[14] And another text says: For thou shalt bring the Children of Israel.[15] R. Johanan said: Thou shalt be like the elders of the generation that are among them.[16] But the Holy One, blessed be He, said to Joshua: Take a stick and strike them upon their head;[17] there is only one leader to a generation not two.

A Tanna taught: A summons [Zimmun][18] requires three. What is meant by a summons? Shall I say it means a summons to say Grace after a common meal?[19] But has it not been already taught that a summons and a summons to Grace need three?[20] Again, you cannot maintain that they both mean the same thing, the latter phrase merely explaining the earlier [and both referring to a summons to Grace], since it has been taught: A summons needs three, and a summons to Grace needs three [i. e., Zimmun is here particularly specified afresh as requiring three persons] — 'Summons' here, consequently, must mean a summons to appear before Court. As Raba said: When three judges sit in judgment, and the Court messenger, on summoning to Court, conveys the summons in the name of one only, the summons is of no account until he has brought it in the names of all three. This procedure, however, is necessary only on an ordinary day; on a Court-day[21] it is not necessary.

R. Nahman, son of R. Hisda, sent to ask R. Nahman b. Jacob: Would our teacher inform us how many judges are required for the adjudication of cases of Kenas? But what did his question imply? Surely we learnt, THE REPAYMENT OF THE DOUBLE[22] . . . . . BY THREE. What he meant to ask was whether or not cases of fine may be adjudicated by one Mumheh. R. Nahman b. Jacob said to him: We have learnt, THE REPAYMENT OF DOUBLE OR OF FOUR OR FIVE-FOLD RESTITUTION, BY THREE. Now what kind of persons are these three to be? Shall I say they are commoners? But did not your father's father say, in the name of Rab, that even ten commoners are incompetent to adjudicate cases of fine? Hence it must refer to Mumhin, and even of these, three are required.

BUT THE SAGES HOLD THAT A CASE OF LIBEL[23] REQUIRES A COURT OF TWENTY-THREE, etc. But, even though it may lead to capital punishment, what does it matter? [Since there are no witnesses yet known to be available, to corroborate the husband's suspicion, is it not merely a monetary case, involving only the Kethubah]?[24]

'Ulla says that the point of dispute [in the Mishnah between R. Meir and the Sages] is whether we consider seriously the effect of the husband's allegation.[25] R. Meir does not consider seriously the effect of the allegation — while the Rabbis do.

Raba says that all agree that the effect of the allegation need not be seriously considered.[26] They differ, however, as to whether [in cases where the judges have been reduced in number][27] the honour of those who retired has to be considered or not. The actual case treated here is where the husband — [having had expectations of supporting his allegation with evidence,] appeared before a court of twenty-three[28] assembled to judge a capital case. Afterwards, [when he could not produce the required witnesses,] the Court began to disperse, and he then appealed to it that three should remain to decide his monetary claim.[29] [The Sages, in order to protect the dignity of those judges who would have left, require them to reassemble, while R. Meir does not hold this view.]

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(1) Lit., 'I shall get Rab out of your ears'; i.e., by applying the sanctions of excommunication

(2) Deut. I, 17

(3) The smallest of coins.

(4) A weight in gold or silver, equal to one hundred shekels.

(5) Deut. I, 17.

(6) Ibid.

(7) Because he attached too much authority to himself.

(8) Num. XXVII, 5 i.e., the case of the daughters of Zelophehad which he knows not how to decide.

(9) B.B. 119a.

(10) Num. XV, 32.

(11) Deut. I, 16.

(12) Ibid. I, 18.

(13) Num. XI, 12.

(14) Deut. XXXI, 7. Where Moses thus places Joshua on an equality with the people.

(15) Ibid. 23. Where Joshua is declared their leader.

(16) [So Yad Ramah a.l.

(17) I.e., show your authority.

(18) זימון Invitation or summons.

(19) By inviting the guests to join in saying Grace.

(20) Which shows that Zimmun is not identical with Grace said by invitation.

(21) Usually Mondays and Thursdays.

(22) Which is also Kenas.

(23) An accusation made by a husband against his wife, that she was not a virgin at marriage. If adultery is not proved,

the accused as a non-virgin, suffers the loss of half the amount payable to her under the Kethubah (see note 4). If the woman is found guilty of adultery during her betrothed state, she is stoned. Hence the dispute in the Mishnah between R. Meir and the Sages. In Talmudic days Betrothal bound the couple as husband and wife, save for cohabitation and minor details.

(24) The marriage contract containing, among other things, the settlement on the wife of a minimum of two hundred zuz if she was a virgin, and a hundred zuz if she was not a virgin at marriage. This amount, payable on her husband's death, or on her being divorced, the woman forfeits on a charge of infidelity committed during her betrothed state. (See Keth. 10b, and Rashi and Tosaf. a.l.).

(25) Lit., 'gossip'. As soon as the charge is made before the Court, the report might be bruited, and witnesses, of whom the husband may be at the moment unaware, may come to support it, the charge thus becoming capital.

(26) And in the absence of witnesses three judges alone are sufficient.

(27) V. infra.

(28) As is required for a capital case.

(29) The husband's allegation of non-virginity is accepted by the rabbis even without evidence, in respect of the Kethubah. v. Keth. 10a.

Talmud - Mas. Sanhedrin 8b

The scholars, however, raised an objection from the following: The Sages say: If there is only a monetary claim, three are sufficient; if it involves capital punishment, twenty-three are needed.[1] This may be correct according to Raba,[2] [in which case the Baraitha should be understood thus:] If [the husband did not offer support of his allegation] his claim, being then only monetary, is decided by three. If however he proposed to bring evidence [on which basis a court of twenty-three was set up], as for a capital charge, but in the end, [owing to the failure to produce witnesses,] only makes a monetary claim, nevertheless the twentythree remain. But how would 'Ulla[3] explain the Baraitha? Raba said: [In answer] I and the lion[4] of the group, namely R. Hiyya b. Abin, have elucidated it. The case in question is one in which the husband attested his wife's guilt by witnesses. Her father, however, brought witnesses refuting their evidence.[5] In that case the father's monetary claim from the husband[6] is decided by three.[7] But in a case [where witnesses have not yet been produced and consequently not refuted, and] which may yet turn out a capital charge, twenty-three are required.

Abaye says that all [even R. Meir] agree that the eventual effect of the allegation is to be taken into consideration, as well as the honour of the judges who had retired. And the reason that three are sufficient, according to R. Meir, is that the case treated here is that of a woman who, before committing adultery, was cautioned in general terms [as to the penalty of death to which she would make herself liable, but without the kind of death being defined]. And his opinion concurs with that of the following Tanna: For it has been taught:[8] All those under sentence of death according to the Torah are to be executed only by the decree of a court of twenty-three, after proper evidence and warning, and provided the warners have let them know that they are liable to a death sentence at the hand of the Court. According to R. Judah, the warners must also inform them of the kind of death they would suffer [and failing that, they are not to be executed].[9]

R. Papa[10] said: The case discussed here is that of a scholarly woman who received no warning at all; and they differ according to the difference of opinion between R. Jose b. Judah and the [other] Rabbis. For it has been taught: R. Jose b. Judah, [with whom the Rabbis who oppose R. Meir agree.] holds that a scholar[11] is held responsible for his crimes even without being formally warned, as warning is only a means of deciding whether one has committed the crime wilfully or not.[12]

R. Ashi says,

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(1) Tos. cf. Sanh. I.

(2) According to whom even the Rabbis agree that the husband's allegation alone can involve only a monetary claim.

(3) In whose opinion the rabbis consider the husband's suspicions alone as involving a capital charge.
(4) The distinguished one.
(5) By proving them to be Zomemim, 'plotters', 'schemers', as having been absent at the time of the alleged offence and so subject to the penalties under the law of retaliation. V. Deut. XIX, 18-19, and Mak. I, 2-4. V. Glos.
(6) The hundred pieces of silver, compensation for libel. V. Deut. XXII, 19.
(7) Even according to 'Ulla, the rabbis no longer apprehend the appearance of witnesses, because the husband's evidence was in the beginning false; neither is his allegation of non-virginity considered in this case, even in connection with the Kethubah, since he has become discredited.
(8) Tosef. Sanh. X.
(9) Consequently, in this case the woman is not liable to death, nor can any capital punishment follow.
(10) Who is in agreement with Abaye.
(11) Haber, v. Glos.
(12) In this case, even without warning, capital punishment is involved, and hence twenty-three are required.

Talmud - Mas. Sanhedrin 9a

R. Meir and the Rabbis treat of a case where the woman was cautioned in regard to her liability to lashes[1] only and not to capital punishment; and they differ in accordance with the difference of opinion between R. Ishmael and the [other] Rabbis. For we learnt: CASES INVOLVING LASHES BY THREE JUDGES; IN THE NAME OF R. ISHMAEL IT IS SAID BY TWENTY-THREE.

Rabina said that [R. Meir and the Rabbis are dealing with a case] where one of the witnesses, [who testified to the woman's guilt,] was found afterwards to be a relative or otherwise disqualified. Their point of difference is the same as that in which R. Jose and Rabbi differ in applying the opinion of R. Akiba. For we learnt: R. Akiba says that the third witness[2] is mentioned in the Torah, [not for the purpose of making him less responsible], but, on the contrary, to increase his responsibility, by making his status equal to that of the other two, indicating, incidentally, that if Scripture punishes as sinners those who associate with sinners, much more will it reward those who associate with men who fulfil the commandments, as though they themselves had actually fulfilled them.[3] And just as in the case of two witnesses, if one is found to be a near kinsman or otherwise disqualified[4] person, the whole testimony is rendered void, so in the case of three witnesses, the disqualification of one invalidates the whole evidence. And whence do we infer that this law would apply even if the number of witnesses reached a hundred? — We infer it from the repetition of the word witnesses.[5] R. Jose says: These aforementioned limitations apply only to witnesses in capital charges, whereas, in monetary cases, the evidence offered can be established by those remaining. Rabbi says it is one and the same rule; whether in monetary or capital cases the evidence becomes equally void, that is, provided the disqualified witnesses took part in the prerequisite warning. But if they were not among those who gave the warning, why should the evidence be affected by disqualified witnesses?

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(1) Deut. XXV, 3.
(2) Deut. XIX, 15. Since the testimony of two suffices, the mention of the third seems superfluous. V. Mak. 5b.
(3) Lit., 'as those who fulfil the commandments'.
(4) By reason of status, crime, evil repute and infamous bearing. V. infra, fol. 24b.
(5) Deut. XIX, 15. V. Mak. 5b.

Talmud - Mas. Sanhedrin 9b

And what would be the situation of three acting as witnesses in a murder case, of whom two were brothers?[1] Or if you wish, you may say that the case [of the Mishnah] is one where the woman was warned by others and not by the witnesses. The point of difference, again, is the same as that between R. Jose and the Rabbis, as we learnt.[2] R. Jose says: A criminal cannot be executed unless he

was cautioned by two who witnessed the crime, for it says: At the mouth of two witnesses or three shall he be put to death.[3]

Or, if you prefer, you may say that [R. Meir and the Rabbis differ in a case] where the witnesses contradicted themselves during the Court cross-examination regarding accompanying circumstances[4] but corroborated each other during cross-examination [on such matters as date, time and place]. And their point of dispute is that of the principle on which the Rabbis and Ben Zakkai differ; for we learnt:[5] Ben Zakkai once examined the witnesses minutely, enquiring as to the size of the prickles on the fig-[tree under which a certain crime had been committed].[6]

R. Joseph said: If a husband has produced witnesses testifying to his wife's guilt, and her father has brought witnesses refuting their evidence,[7] the former are liable to death[8] but are exempted from paying [the value of the Kethubah].[9] If, however, the husband has again brought witnesses to refute the father's witnesses, the latter are then liable to death[10] and also to pay the fines[11] — the money fine for intended injury to one person, and the death penalty for intended death to another.

R. Joseph again said:If a man says that so and so committed sodomy with him against his will, he himself with another witness can combine to testify to the crime. If, however, he admits that he acceded to the act, he is a wicked man [and therefore disqualified from acting as witness] since the Torah says: Put not thy hand with the wicked to be an unrighteous witness.[12] Raba said: Every man is considered a relative to himself, and no one can incriminate himself.[13] Again Raba said:

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(1) In this case the disqualified brother must not have participated in the warning, or the whole evidence is void. If he did not participate in the warning, the evidence of the remaining two holds good. Hence, in such a case the Rabbis, holding with Rabbi that the evidence is not invalidated by the presence of one disqualified witness, consider this a capital charge requiring twenty-three.

(2) Mak. 6b.

(3) Deut. XVII, 6.

(4) V. p. 225.

(5) Infra 40a.

(6) Hence, according to R. Meir, who agrees with Ben Zakkai, the testimony is invalidated as a result of contradictions in the evidence regarding accompanying circumstances.

(7) I.e., they proved them Zomemim, v. Glos.

(8) For intending to bring about the death of the woman according to the law of retaliation. Deut. XIX, 16 ff. cf. Mak. I.

(9) Of which she would also have been deprived in the case of her condemnation, for he who has committed two offences simultaneously is held liable in law for the graver only. V. Keth. 36b.

(10) For intending to bring about the death of the husband's witnesses.

(11) A hundred pieces of silver, which the husband would have been fined in case his allegation was disproved.

(12) Ex. XXIII, 1.

(13) Consequently his evidence is valid only with regard to the criminal but not to himself, on the principle that we consider only half of his testimony as evidence.

Talmud - Mas. Sanhedrin 10a

[If one gives evidence, saying,] So and so has committed adultery with my wife, he and another witness can convict him [the adulterer] but not her [the wife]. What does he intend to teach us thereby? Does he mean to say that only half of a man's evidence is to be considered? Was this not understood from his previous teaching? — No, for you might have thought that whereas the principle was admitted that one is considered a relative of himself, we did not admit the principle that a man is considered a relative of his wife. Hence this rule.

Again Raba said: [If witnesses testify] that so and so committed adultery with a betrothed woman[1]

and their evidence is refuted, they are liable to capital punishment, but not to the indemnification of the Kethubah.[2] If, however, they say, 'with the [betrothed] daughter of so and so,'[3] they are liable to both capital punishment and the indemnification of the Kethubah. The money fine for intended injury to one person, and the death penalty for intended death to another.

Raba said further: [If witnesses testify] that so and so committed an unnatural crime with an ox, and the evidence is afterwards refuted, they are liable to capital punishment, but not to be mulcted in respect of the ox.[4] If, however, they say, 'with the ox of so-and-so,' they must pay the fine and are put to death; the fine because of the loss they intended to inflict on one person, and death because they sought to bring about the death of another person. Why is it necessary to state this latter law? Is not the underlying principle the same as in the previous case? — It had to be stressed because Raba propounded in connection with it a question as follows: If witnesses declare that 'so-and-so has committed an unnatural crime with my ox,' what would in this case be the law?[5] While adopting the principle, 'one is considered a relative to himself', do we admit the principle, 'one is considered related to his property', or do we not? After propounding the problem, he later solved it. We accept the principle as affecting his own person, but not as affecting his property.[6]

CASES OF FLOGGING BY THREE, etc. Whence do we infer this? — R. Huna said: Scripture says: They [the judges] judge them,[7] indicating [at least] two, and since no Beth din can consist of an even number, another judge is added, giving a total of three.

But now, according to our exegesis, the verb 'vehizdiku' — [and they shall justify] — should also denote two, and so likewise the verb 'vehirshi'u' [and they shall condemn][8] an additional two, [so making, together with, the above three], a total of seven in all? — These verbs are to be explained according to 'Ulla. For 'Ulla said: Where in the Torah do we find an allusion to the treatment of witnesses attested as Zomemim? Where is there found any allusion to Zomemim [witnesses]! Do we not read, Then shall ye do unto him as he had purposed to do to his brother?[9] What is required is some allusion supporting infliction of stripes upon Zomemim.[10] This we find where it is written: And they shall justify the righteous, and shall condemn the wicked.[11] Now [assuming that this refers to the judges], how, since the judges justify the righteous and condemn the wicked, does it follow that the wicked man deserves to be beaten?[12] — [The text cannot therefore refer to judges;] rather it must refer to witnesses who have incriminated a righteous man, after whom other witnesses came and justified the righteous, and rehabilitated his [the injured man's] character, and thus condemned the wicked, that is, established the wickedness of the witnesses, in which case, if the wicked man [the false witness] deserve to be beaten, the judge shall cause him to lie down and be beaten. But why, could not this be deduced from the commandment: Thou shalt not bear false witness against thy neighbour?[13] — No! Because that is a prohibition involving no material action, and the transgression of a prohibition involving no material action is not punishable by flogging.

IN THE NAME OF R. ISHMAEL IT IS SAID, BY TWENTY-THREE. Whence is this deduced? — Said Abaye: It is derived from the word rasha', which occurs alike in connection with flogging and with capital punishment. In the one case it is written: If the wicked [guilty] man [ha-rasha'] deserve to be beaten,[14] and in the other, it is written, that is guilty, [rasha] of death.[15] Just as in the case of the extreme penalty twenty-three are needed, so in the case of flogging. Raba says: Flogging is considered a substitute for death.[16] R. Aha son of Raba said to R. Ashi: If so, why then the need of medical opinion as to the amount of lashes the condemned can stand? Let him be beaten, and, should he die, well, let him die![17] — R. Ashi answered: Scripture says: Then thy brother should be dishonoured before thine eyes,[18] to indicate that when the lashes are applied, they must be applied to the back of a living person. But in this case [how explain what] has been taught: If in their [the medical] opinion he can stand no more than, say, twenty lashes, he is to be given a number of lashes divisible by three; namely, eighteen?[19]

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(1) V. Deut. XXII, 25; v. p. 34, n. 3.
(2) Of which they intended to deprive her, because the woman was not named.
(3) To whom the amount of the Kethubah belongs before marriage.
(4) If they have not named the owner.
(5) Is the evidence of the owner valid with regard to the ox?
(6) The evidence is thus valid with regard to the ox.
(7) In the plural Deut. XXV, 1.
(8) Ibid.
(9) Deut. XIX, 19.
(10) In cases where the law of retaliation cannot be applied, v. Mak. 2b.
(11) Deut. XXV, 1.
(12) I.e., if so, why this reference to the justification of the righteous? Surely the application of the punishment does not depend on it! V. Rashi on same passage in Mak. 2b.
(13) Ex. XX, 16.
(14) Deut. XXV, 2. הרשע)
(15) Num. XXXV, 31. רשע
(16) The sinner in reality deserves the death penalty for trespassing the command of his Creator (Rashi), and a death penalty must be administered by twenty-three.
(17) Since death is his real desert, v. Mak. 22a.
(18) Deut. XXV, 3.
(19) Tosef. Mak. IV, 12.

Talmud - Mas. Sanhedrin 10b

Rather let him receive twenty-one. For even if he should die by reason of the twenty-first lash, he would still be alive when it [the twenty-first] begins to be applied? — R. Ashi replied: Scripture says, Then thy brother should be dishonoured before thine eyes.[1] that is to say, after the last lash has been administered, he must still be 'thy [living] brother.'

THE INTERCALATION[2] OF THE MONTH BY THREE. [The Tanna of the Mishnah] mentions neither the 'calculation'[3] nor the 'sanctification'[4] , but the INTERCALATION of the month. [Why then the need of three for this?] Suppose it is not sanctified [on the thirtieth day] it will then be automatically intercalated! — Abaye therefore said: Read then, THE SANCTIFICATION OF THE MONTH. It is also taught to the same effect: The sanctification of the month and the intercalation of the year is to be determined by three. So R. Meir holds. But, asked Raba, does not the Mishnah say, the INTERCALATION? — Hence, said Raba, the Mishnah means that the sanctification made on INTERCALATION, that is on the intercalary day,[5] is determined by three; but on the day after it there is to be no sanctification. And this represents the opinion of R. Eliezer b. Zadok, as it has been taught: R. Eliezer b. Zadok says: If the new moon has not been visible in time, there is no need for the Sanctification next day, as it has already been sanctified in Heaven.[6]

R. Nahman said: [The Mishnah means] that Sanctification is held on the day after INTERCALATION [that is after the intercalary day] by three; but on the day itself, there is to be no Sanctification. And whose view is this? — Polemo's, as it was taught: Polemo says, [If the new moon has appeared] at its due time,[7] there is not to be Sanctification; but if it has not appeared at its due time, Sanctification is to be proclaimed.

R, Ashi said: In reality, the Mishnah refers to the 'calculation', and as for THE INTERCALATION, it means the calculation relating to THE INTERCALATION. But having to state [explicitly] THE INTERCALATION OF THE YEAR,[8] the Tanna also employs the phrase THE INTERCALATION OF THE MONTH.

The Mishnah thus holds that only ‘calculation’ is required in fixing the length of the month, but no formal ‘sanctification’. Whose view is this? — R. Eliezer's; as it has been taught: R. Eliezer says: Whether the moon appears at its due time or not, no sanctification is needed, for it is written, Ye shall sanctify the fiftieth year[9] [from which it is to be inferred that] thou art to sanctify years[10] but not months.

R. SIMEON B. GAMALIEL SAYS, BY THREE etc. It has been taught: How [are we to understand] R. Simeon b. Gamaliel when he says, THE MATTER IS INITIATED BY THREE, DISCUSSED BY FIVE AND DETERMINED BY SEVEN? — If, for example, one holds a meeting [for the purpose of considering the question of intercalation] to be necessary, but two hold that it is unwarranted, the opinion of the single one, being in the minority, is overruled. If, however, two are in favour of the meeting and one is not, two more are co-opted, and the matter is then discussed. Should then two [of the five] find intercalation necessary, and three not, the opinion of the two, being in the minority, is overruled. If, however, three favour intercalation and two not, an additional two are co-opted, as not less than seven form a quorum to determine an intercalation [where there is a division of opinion].

To what do these numbers, three, five and seven, correspond? — R. Isaac b. Nahmani, and an associate of his, namely, R. Simeon b. Pazi; or according to others [who invert the order], it was R. Simeon b. Pazi and an associate of his, namely. R. Isaac b. Nahmani, differ in the matter. One said [that the numbers, three, five and seven] correspond to [the respective number of Hebrew words] in [the three verses of] the Priestly Benediction;[11] the other said, they correspond to the three keepers of the threshold,[12] the five of them that saw the king's face,[13] and the seven . . . who saw the king's face.[14]

R. Joseph learned: [The numbers] three, five and seven, correspond [as follows]: Three, to the keepers of the threshold, five, to those of them that saw the king's face, and seven, to those who saw the king's face. Whereupon Abaye asked him: ‘Why has the Master not explained it to us hitherto?’ He answered: ‘l knew not that you needed it. Did you ever ask me to interpret anything and I refused to do it?’

(Mnemonic: Appointment, Nasi, Necessary, Kid.)

Our Rabbis taught: The year can be intercalated only by a Court

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(1) Ibid.

(2) The commencement of the month was dated from the time when the earliest visible appearance of the new moon was reported to the Sanhedrin. If this happened on the 30th day of the current month, that month was considered to have ended on the preceding 29th day, and was called deficient. But if no announcement was made on the 30th day, that day was reckoned to the current month, which was then called full, and the ensuing day was considered the first of the next month.

(3) The ‘calculation’ as to which and how many months were to be intercalated. It was an established rule that no year should consist of less than four nor more than eight full months.

(4) The proclamation by formal ‘sanctification’ of the new moon on the thirtieth day.

(5) The thirtieth day.

(6) I.e., it is patent to all that the next day is the new moon, as no month exceeds 30 days.

(7) I.e., on the thirtieth day.

(8) Where a special proclamation is necessary, failing which the year is not intercalated.

(9) Lev. XXV, 10.

(10) The court is to sanctify the Jubilee Year by a formal proclamation: ‘The year is hallowed’.

(11) Num. VI, 24-26.

(12) II Kings XXV, 18.

(13) II Kings XXV, 19.
(14) Est. I, 14.

Talmud - Mas. Sanhedrin 11a

whose members have been appointed for that purpose.[1]

It once happened that Rabban Gamaliel[2] said: 'Send me up seven [scholars] early in the morning to the upper chamber[3] [for this purpose].' When he came in the morning and found eight, he asked: 'Who is he who has come up without permission? Let him go down.' Thereupon, Samuel the Little arose and said: 'It was I who came up without permission; my object was not to join in the intercalation, but because I felt the necessity of learning the practical application of the law.' Rabban Gamaliel then answered: 'Sit down, my son, sit down; you are worthy of intercalating all years [in need of such], but it is a decision of the Rabbis that it should be done only by those who have been specially appointed for the purpose.' — But in reality it was not Samuel the Little [who was the uninvited member] but another;[4] he only wished to save the intruder from humiliation.

Similarly it once happened that while Rabbi was delivering a lecture, he noticed a smell of garlic. Thereupon he said: 'Let him who has eaten garlic go out.' R. Hiyya arose and left; then all the other disciples rose in turn and went out. In the morning R. Simeon, Rabbi's son, met and asked him: 'Was it you who caused annoyance to my father yesterday?' 'Heaven forfend[5] that such a thing should happen in Israel,' he answered.[6]

And from whom did R. Hiyya learn such conduct? — From R. Meir, for it is taught: A story is related of a woman who appeared at the Beth Hammidrash[7] of R. Meir and said to him, 'Rabbi, one of you has taken me to wife by cohabitation.' Thereupon he rose up and gave her a bill of divorce,[8] after which every one of his disciples stood up in turn and did likewise. And from whom did R. Meir learn this? — From Samuel the Little. And Samuel the Little? — From Shecaniah son of Jehiel, for it is written, And Shecaniah son of Jehiel, one of the sons of Elam answered and said unto Ezra: We[9] have broken faith with our God and have married foreign women of the peoples of the land: yet now there is hope in Israel concerning this thing.[10] And Shecaniah learnt it from [the story told of] Joshua. As it is written, The Lord said unto Joshua, Get thee up, wherefore, now, art thou fallen upon they face? Israel hath sinned . . .[4] 'Master of the Universe,' asked Joshua, 'who are the sinners?' 'Am I an informer?' replied God. 'Go and cast lots [to find out].'[11] Or, if you like, I might say that he learnt it from [the incident with] Moses, as we read, And the Lord said unto Moses, How long refuse ye to keep My commandments and My laws?[12]

Our Rabbis taught: Since the death of the last prophets, Haggai, Zechariah and Malachai, the Holy Spirit [of prophetic inspiration] departed from Israel; yet they were still able to avail themselves of the Bath-kol.[13] Once when the Rabbis were met in the upper chamber of Gurya's[14] house at Jericho, a Bath-kol was heard from Heaven, saying: 'There is one amongst you who is worthy that the Shechinah[15] should rest on him as it did on Moses, but his generation does not merit it.' The Sages present set their eyes on Hillel the Elder. And when he died, they lamented and said: 'Alas, the pious man, the humble man, the disciple of Ezra [is no more].'

Once again they were met in the upper chamber at Jabneh, and a Bath-kol was heard to say: 'There is one amongst you who is worthy that the Shechinah should rest on him, but his generation does not merit it.' The Sages present directed their gaze on Samuel the Little. And when he died, they lamented and said: 'Alas! the pious man, alas! the humble man, the disciple of Hillel [is no more].' Samuel the Little also said shortly before he passed away: 'Simeon[16] and Ishmael[17] will meet their death by the sword, and his friends[18] will be executed; the rest of the people will be plundered, and many troubles will come upon the world.' The Rabbis wished to use the same words

of lamentation for R. Judah b. Baba;[19] the troublous conditions of the time, however, did not permit it, for no funeral orations were delivered over those who were martyred by the [Roman] Government.[20]

Our Rabbis taught: A year cannot be intercalated unless the Nasi sanctions it. It once happened that Rabban Gamaliel was away obtaining permission from the Governor in Syria[21] , and, as his return was delayed, the year was intercalated subject to Rabban Gamaliel's later approval. When Rabban Gamaliel returned he gave his approval with the result that the intercalation held good.

Our Rabbis taught: A year may not be intercalated except where it is necessary either for [the improvement of] roads[22] or for [the repair of] bridges, or for the [drying of the] ovens[23] [required for the roasting] of the paschal lambs, or for the sake of pilgrims[24] from distant lands who have left their homes and could not otherwise reach [Jerusalem] in time.[25] But no intercalation may take place because of [heavy] snows or cold weather[26] or for the sake of Jewish exiles [from a distance] who have not yet set out.

Our Rabbis taught: The year may not be intercalated on the ground that the kids[27] or the lambs or the doves are too young.[28] But we consider each of these circumstances as an auxiliary reason for intercalation.[29] How so? — R. Jannai [gave the following example of the law in operation], quoting from R. Simeon b. Gamaliel's [letter to the Communities]: 'We beg to inform you that the doves are still tender and the lambs still young, and the grain has not yet ripened. I have considered the matter and thought it advisable to add thirty days to the year.

An objection was raised: How long a period was intercalated in the year? Thirty days. R. Simeon b. Gamaliel said: A month?[30] — R. Papa Said: [The matter is left to the judgment of the intercalary court:] if they wish, they may add a month; or if they wish thirty days.

Come now and see the difference between

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(1) By the Nasi on the previous evening (Rashi).

(2) The Second.

(3) The meeting place of the Rabbis. v. Keth. 50b; Shab. Ch. I, M. 4. [V. Krauss, Lewy-Festschrift, pp. 27, ff.].

(4) [Probably R. Eliezer b. Hyrcanus, v. Bacher; Agada der Tanaiten, vol. I, p. 84.]

(5) This is the reading in Rashi.

(6) I.e., he acted with the intention of saving the real offender from humiliation.

(7) 'House of Learning,' the school, or college. V. Glos.

(8) Attaching the blame to himself.

(9) Including himself, though no guilt was attached to him.

(10) Ezra X, 2. (1) Josh. VII, 10-11.

(11) So saving the real sinners from humiliation.

(12) Ex. XVI, 28. Though no blame was attached to Moses, he is included to spare the offenders from humiliation.

(13) Divine voice, of secondary rank to prophecy. v. Glos.

(14) [J. Sotah IX, reads 'Gadia'.]

(15) Divine presence. v. Glos.

(16) R. Simeon b. Gamaliel the First, the father of Gamaliel of Jabneh. So Rashi. Cp. also Semahoth 8. But this statement lacks historical support, as Samuel the Little died nearly half a century after the destruction of the Temple, whereas Simeon died before that event. Halevy (Doroth, Ie, pp. 201 seq.) rightly assumes that Simeon here is the son of R. Hanina (the Segan of the Priests) known as Simeon b. ha-Segan (cf. Men. 100b) who witnessed the Destruction.

(17) R. Ishmael b. Elisha, the High Priest.

(18) R. Akiba and R. Hinina b. Teradyon.

(19) Who was martyred at the age of seventy under the Hadrianic persecution, v. infra 14a.

(20) Any words of praise spoken in public over the martyred would have been regarded by the Romans as an act of

provocation.

(21) [I.e., in order to secure confirmation of his appointment as Nasi (Derenbourg, Essai p. 311); or to obtain permission for intercalating the year (Yad Ramah).]

(22) Which are impassable by those coming from afar to celebrate the Passover at Jerusalem.

(23) These were erected in the open and, being exposed to the winter weather, became slimy and unfit for use, except after being allowed some time to dry.

(24) Lit. 'Exiles of Israel', Jews from distant parts of the Diaspora.

(25) For the Passover Feast.

(26) As this need not prevent pilgrims from proceeding to Jerusalem.

(27) Kids set aside for the Paschal Sacrifice.

(28) Doves were prescribed as offerings for women after confinement and for persons cured from gonorrhoea. These, as a rule, postponed their offerings until the Passover Pilgrimage. But the reason that doves were too young was inadequate for intercalation, since the law provided the alternative of young pigeons for such offerings. Cf. Lev. XII, 8.

(29) Two reasons were required to justify intercalation, v. infra.

(30) Twenty nine days; whereas R. Simeon b. Gamaliel fixed it at thirty days.

Talmud - Mas. Sanhedrin 11b

the proud leaders of former days and their modest successors of later times. For it has been taught: It once happened that Rabban Gamaliel[1] was sitting on a step on the Temple-hill and the well known[2] Scribe Johanan was standing before him while three cut sheets were lying before him. 'Take one sheet', he said, 'and write an epistle to our brethren in Upper Galilee and to those in Lower Galilee, saying: "May your peace be great! We beg to inform you that the time of 'removal' has arrived for setting aside [the tithe][3] from the olive heaps." Take another sheet, and write to our brethren of the South, "May your peace be great! We beg to inform you that the time of 'removal' has arrived for setting aside the tithe from the corn sheaves."[4] And take the third and write to our brethren the Exiles in Babylon and to those in Media, and to all the other exiled [sons] of Israel, saying: "May your peace be great for ever! We beg to inform you that the doves are still tender and the lambs still too young and that the crops are not yet ripe. It seems advisable to me and to my colleagues[5] to add thirty days to this year."' [Yet] it is possible [that the modesty shown by Rabban Gamaliel in this case belongs to the period] after he had been deposed [from the office of Nasi].[6]

Our Rabbis taught: A year may be intercalated on three grounds: on account of the premature state of the corn-crops;[7] or that of the fruit-trees;[8] or on account of the lateness of the Tekufah[9] Any two of these reasons can justify intercalation, but not one alone. All, however, are glad when the state of the spring-crop is one of them.[10] Rabban Simeon b. Gamaliel says: On account of [the lateness of] the Tekufah. The Schoolmen inquired: Did he mean to say that 'on account of the [lateness of the] Tekufah' [being one of the two reasons], they rejoiced,[11] or that the lateness of the Tekufah alone was adequate reason for intercalating the year? — The question remains undecided.

Our Rabbis taught: [The grain and fruit of the following] three regions [are taken as the standard] for deciding upon the declaration of a leap-year: Judea,[12] Trans-Jordania,[13] and Galilee.[14] The requirements of two of these regions might determine the intercalation, but not those of a single one. All, however, were glad when one of the two was Judea, because the barley for the Omer[15] was obtained [by preference] in Judea.[16]

Our Rabbis taught: The intercalation of a year can be effected [by the Beth din] only in Judea; but if for some reason [it had been decided upon by the Beth din] in Galilee, the decision holds good. Hanania of Oni, however, testified: 'If the intercalation was decided upon in Galilee, it is not valid.' R. Judah the son of R. Simeon b. Pazi asked: What is the reason for the view of Hanania of Oni? — Scripture states, Unto His habitation shall ye seek and thither thou shalt come:[17] whatever search[18] you have to make shall be only in the habitation of the Lord.[19]

Our Rabbis taught: A leap-year is to be declared only by day, and if it has been declared by night, the declaration is invalid. The sanctification of a month is to be performed by day, and if it has been performed by night it is not valid. R. Abba says: What passage [proves this]? — Blow the horn at the new moon, at the covering[20] of the moon our feast-day.[21] Now on which feast is the moon covered? — We must say on the New Year.[22] And it is thereupon written, For this is a statute for Israel, a judgment[23] of the God of Jacob: Just as judgment is executed by day,[24] so also must the sanctification of the month take place by day.

Our Rabbis taught: A year is not to be intercalated

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(1) The Second, called also 'Gamaliel of Jabneh', who was noted for his firmness, and the enforcement of his authority. Cf. R.H. 25a; Ber. 27b; Bek. 36a.

(2) Lit., 'that.'

(3) Tithes were of four classes: (a) the Levitical or First tithe; (b) the Priestly tithe given by the Levites from their own tithe; (c) the Second tithe, and (d) the triennial or Poor tithe. The Second tithe was to be eaten in Jerusalem every year of the septennial cycle, except the third and sixth, when it was replaced by the Poor tithe. The whole series of tithes reached its completion close upon Passover in the fourth and seventh year, and all the tithes which ought to have been paid in the course of the three years, but which, whether through negligence or other circumstances, were not given, had to be removed (ביעור) on the eve of Passover, and a prayer of confession (וידוי) offered, in accordance with Deut. XXVI, 13. Cf. M. Sh. V, 6.

(4) The chief product of Galilee was olives, and that of the south, wheat.

(5) He thus associated his colleagues with the epistle, whereas his son did not refer to his colleagues, though he was noted for his modesty. Cf. B.M. 85a. 'Rabbi says: There were three humble men, my father (R.S.b.G.) the children of Bathyra and Jonathan the son of Saul.'

(6) He was deprived of his position owing to the great displeasure he aroused in the Assembly by his harsh attack on R. Joshua b. Hanina, a famous pupil of R. Johanan b. Zakkai, but subsequently reinstated as joint-president with R. Eliezer b. Azaria. Cf. Ber. 27.

(7) This species must be ripe in the mouth of Nisan which is known in the Bible as the Abib (Ex. XIII,44) the month of ears (of corn), in reference to the ripeness of the corn in that month.

(8) Which should, as a rule, ripen close before 'Azereth (Pentecost), the time when the Pilgrims bring the first fruits to Jerusalem (Num. XXVIII, 26). If it happens that the fruit is unripe, the year may be intercalated so as to prevent a special journey.

(9) Lit. 'cycle', 'season'. The Jewish Calendar, while being lunar, takes cognisance of the solar system to which it is adjusted at the end of every cycle of nineteen years. For ritual purposes the four Tekufoth seasons, are calculated according to the solar system, each being equal to one fourth of 365 days, viz. 91 days, 71/2 hours. Tekufah of Nisan (Vernal equinox) begins March 21; Tekufah of Tammuz (Summer Solstice), June 21; Tekufah of Tishri (Autumnal equinox), September 23; Tekufah of Tebeth (Winter Solstice), December 22. Should the Tekufah of Tammuz extend till after the Succoth Festival, or the Tekufah of Tebeth till the sixteenth of Nisan, the year would be intercalated, so that the festivals might fall in their due seasons, viz., Passover in Spring, Succoth in Autumn.

(10) Because if the corn-crop is already ripe and the intercalation prompted by other reasons, the prohibition of new produce till after the Omer Offering (v. p. 50, n. 4) according to Lev. XXIII, 14, would be unduly prolonged for another month.

(11) Because if the Tekufah was in order, and the intercalation had been effected for other reasons, the pilgrims would be subject to wintry weather when returning from Jerusalem after the Succoth Festival.

(12) South of Palestine.

(13) East of Palestine.

(14) Northern Palestine.

(15) A measure of barley (1/10th of an ephah) taken from tender ears, was brought on the 16th day of Nisan to the Temple as a heave-offering. v. Lev. XXIII, 10-11.

(16) For two reasons, firstly, because the grain taken for the Omer offering had to be tender, and this could only be so if it was cut from a field in the proximity of Jerusalem, for if it were brought from a far-off distance, the stalks would

become hardened in transit, by the wind. Secondly, according to the Talmudic rule, that one must not forego the occasion of performing a commandment (cf. Yoma 33a), the ripe corn in the vicinity of Jerusalem offered the earliest opportunity of fulfilling the precept (v. Men. 64b). If the grain in Judea, however, gave no cause for intercalation, it would be overripe at the time of the Omer, and so unfit for the purpose.

(17) Deut. XII, 5.

(18) I.e., religious enquiry, or investigation.

(19) I.e., Jerusalem the Capital of Judea, which the Lord (Heb. Makom, lit., 'the Place', v. Glos.) has selected as habitation unto Himself.

(20) כסה (E.V. 'full moon') is taken from כסא 'to cover'.

(21) Ps. LXXXI, 4.

(22) Which alone of all festivals is fixed for the 1st of the month.

(23) E.V. 'ordinance'.

(24) V. infra 32a: 'Money cases are to be tried by day'.

Talmud - Mas. Sanhedrin 12a

in years of famine.[1] It has been taught: Rabbi says: A man came from Baal Shalisha and brought to the man of God bread of the first fruits; twenty loaves of barley, [bread of the newly ripened crop].[2] Now, there was no other place in Palestine where the fruit ripened earlier than in Baal Shalisha; yet, according to this account, only one species had ripened there [by that date]. If you suggest that it was wheat,[3] the text reads 'barley'. If again you suggest that it was ripened before the bringing of the Omer, the text reads further: Give unto the people that they may eat, which must have been after the bringing of the Omer.[4] We may conclude therefore that the year should have been intercalated.[5] But why did Elisha not do so? — For the reason that it was a year of famine[6] and all hastened to the threshing floor [to procure food].

Our Rabbis taught: The year may not be intercalated before the New Year,[7] and if it be intercalated, the intercalation is invalid. In case of necessity,[8] however, a year may be intercalated immediately after the New Year; yet even so, only a [second] Adar is added.[9] But is this really so? Was not a message once sent to Raba:[10] 'A couple [of scholars] have arrived from Rakkath[11] who had been captured by an eagle[12] whilst in possession of articles manufactured at Luz, such as purple,[13] yet through Divine mercy and their own merits they escaped safely. Further, the offspring of Nahshon[14] wished to establish a Nezib,[15] but yon Edomite[16] would not permit it.[17] The Members of the Assembly,[18] however, met and established a Nezib in the month in which Aaron the Priest died'?[19] Yes, the calculations were indeed made, but not published [until after the New Year].

How was it implied that the term Nezib [mentioned in the message] connoted 'month'? — Because is is written, Now Solomon had twelve Officers [Nezibim] over all Israel who provided victuals for the king and his household; each man his month in the year.[20] (But is it not written, And one officer [Nezib] that was in the land?[21] — Rab Judah and R. Nahman — one holds that one single officer was appointed over all [the other officers]: the other is of the opinion that this refers to the [special officer in charge of the provisions during] the intercalated month.)

Our Rabbis taught: We may not, in the current year, intercalate the following year,[22] nor intercalate three years in succession. R. Simeon said: It once happened that R. Akiba, when kept in prison,[23] intercalated three years in succession. The Rabbis, however, retorted: 'Is that your proof? The court sat and intercalated each year at its proper time.'[24]

Our Rabbis taught: We may not intercalate a Sabbatical year[25] nor the year following a Sabbatical year.[26]

But which year was it usual to intercalate? — That preceding the Sabbatical year.[27] Those of the

House of Rabban Gamaliel, however, used to intercalate the year following the Sabbatical year.[28] And this enters into the dispute of the following Tannaim. For it has been taught: Herbs may not be imported from outside the land [of Israel]. But our Rabbis permitted it.[29]

Wherein do they differ? — R. Jeremiah said: They differ as to whether we apprehend lest the earth attached to them [should also be imported].[30]

Our Rabbis taught: We may not intercalate a year because of uncleanness.[31] R. Judah said: We may intercalate. R. Judah observed: It once happened that Hezekiah king of Judah declared a leap year because of uncleanness, and then prayed for mercy, for it is written, For the multitude of the people, even many of Ephraim and Manasseh, Issachar and Zebulun had not cleansed themselves,

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(1) So as not to prolong the prohibition of using the new produce for another month, v. supra p. 49, n. 6.

(2) II Kings IV, 42.

(3) Which is late in ripening.

(4) When alone the new produce is permitted.

(5) Owing to the delay of most of the crops in ripening.

(6) Cf. II Kings IV, 38: And there was a dearth in the land.

(7) I.e., Beth din may not declare before Tishri that a second Adar shall be added six months later, because in the meantime it may be forgotten and so the prohibition of leaven on the Passover be infringed through misdating.

(8) When possibly no intercalatory Board will be available later on, or it is feared that the Roman authorities may forbid intercalation, v. p. 52 n. 9.

(9) But not, e. g., a second Tishri.

(10) From Palestine.

(11) Tiberias, v. Meg. 6a.

(12) נשר aquila, the eagle as the principal standard of the Roman legions; hence, Roman.

(13) I.e., the fringes for four-cornered garments, v. Num. XV, 38.

(14) The Nasi of Palestine, descendant of Nahshon, the first of the Princes of Judah. Cf. Ex. VI, 23.

(15) Nezib means month as well as officer; v. infra. Hence, they wished to intercalate one month.

(16) Primarily name given to Esau (Cf. Gen. XXV, 30; XXXVI, 1). אדום (Edom) is used by the Talmudists for the Roman Empire, as they applied to Rome every passage of the Bible referring to Edom or Esau. In the middle ages it came to be used symbolically of Christianity, and that accounts for the substitution of ארמי 'Aramean' in censored editions.

(17) The above messages were sent in this obscure form to prevent them from being stopped by the Government under the reign of Constantius II (337-361 C.E.) when the persecutions of the Jews reached such a height that, as in the days of Hadrian, all religious exercises, including the computation of the Calendar, were forbidden under pain of severe punishment. Cf. Graetz, Geschichte, IV, 332 seq. pp. 402 seq.

(18) The Sanhedrin.

(19) The month of Ab. It is thus seen that the decision to intercalate may, in case of emergency, be made before the New Year, i.e. before Tishri.

(20) I Kings IV, 7. Nezib (sing. of Nezibim) can thus be employed as metonymy of 'month'.

(21) Ibid. IV, 19.

(22) I.e., make the necessary calculations and arrive at the decision to intercalate. So Tosaf. Rashi: One may not intercalate one year instead of the following. Maim. (Yad, Kid. Hahodesh IV, 13) agrees with the former.

(23) Akiba was kept in prison several years before being finally martyred for practising and teaching the Jewish religion. V. Ber. 61b.

(24) R. Akiba only made the calculation of the next three leap years, since he was the accepted authority on the computation of the calendar and the Rabbis always employed his aid in this matter, but the leap years were not in three successive years.

(25) Cf. Lev. XXV, 1-7. So as not to prolong the prohibition against tilling the soil.

(26) For the reason that the prohibition of the use of the new produce would be prolonged.

(27) To give an additional month for working the soil.

(28) They did not apprehend a shortage of provisions during the Sabbatical year, since importation from outside Palestine, which they held permissible (cf. Ned. 53b, and below), would prevent it.

(29) V. n. 7.

(30) Foreign soil was declared unclean. V. Shab. 14b.

(31) Even if it should involve the risk of offering the Paschal lamb in uncleanness. E.g. if the Nasi were dangerously ill, and it was judged that he would die less than a week before Passover, in which case the community, by attending the obsequies in his honour, would become unclean. (Rashi). Cf. Pes. 66b.

Talmud - Mas. Sanhedrin 12b

yet did they eat the Passover otherwise than it is written,[1] for Hezekiah had prayed for them, saying: May the Lord in His goodness pardon everyone.[2] R. Simeon said: If the intercalation was actually on the ground of uncleanness, it holds good. Why then did Hezekiah implore Divine mercy? — Because only an Adar can be intercalated and he intercalated a Nisan in Nisan.[3] R. Simeon b. Judah said on behalf of R. Simeon, that it was because he had persuaded Israel to celebrate a Second Passover [unduly].[4]

The Master has said: 'R. Judah said: We may intercalate [on the ground of uncleanness].' Hence R. Judah holds that [the law of] uncleanness, in the case of an entire Community, is only suspended [and not abrogated].[5] But has it not been taught: The ziz,[6] whether it is on his [the Priest's] forehead or not, propitiates. So said R. Simeon. R. Judah said: Only when it is on his forehead does it propitiate, but not otherwise. R. Simeon thereupon said to him: The case of the High Priest on the Day of Atonement affords proof, seeing that it propitiates even when it is not worn on his forehead.[7] And R. Judah answered him: Leave the Day of Atonement aside[8] , for the [laws concerning] impurity are entirely abrogated in the case of a whole Community?[9] — But even according to this reasoning,[10] is there not a contradiction within the passage itself? [Thus:] R. Judah said: We may intercalate [on account of uncleanness]; and then he himself relates what happened in the case of Hezekiah, king of Judah, who intercalated a year because of uncleanness, but implored Divine mercy on himself [for his action]?[11] But the text is evidently defective, and should read as follows: 'We may not intercalate a year on account of uncleanness, but if it has been intercalated, the decision holds good. R. Judah maintained that the intercalation is not valid,[12] and R. Judah observed: It once happened with Hezekiah etc.

But if so, [when] R. Simeon says: If the year is intercalated for the sake of [avoiding] uncleanness, the decision holds good, is [he not merely repeating] the opinion of the first Tanna? — Said Raba: They differ as to whether [it may be intercalated] at the outset.[13] It has been taught likewise: A year may not be intercalated at the outset because of uncleanness. R. Simeon said: It may be intercalated. Why then did he [Hezekiah] pray for mercy? — Because only an Adar can be intercalated, whereas he intercalated a Nisan in Nisan.

The Master has said: 'Because only an Adar can be intercalated, whereas he intercalated a Nisan in Nisan.' But did not Hezekiah agree [that the verse], This month shall be unto you the beginning of months,[14] [implies], only this month can be Nisan [once proclaimed], and no other?[15] — He erred on a ruling of Samuel, for Samuel said: The year is not to be intercalated on the thirtieth day of Adar, since it is eligible to be appointed [the first day of] Nisan.[16] He [Hezekiah] however thought that we do not consider its eligibility [to belong to Nisan].[17] It has been taught likewise: The year may not be intercalated on the thirtieth day of Adar, since it is eligible to be appointed [the first day] of Nisan.

[It was stated above:] 'R. Simeon b. R. Judah said on behalf of R. Simeon that it was because he had [wrongfully] persuaded the people to celebrate a Second Passover [that Hezekiah prayed to be forgiven].' How did it happen?[18] — R. Ashi said: E.g., half of Israel[19] were clean and half unclean, but the women[20] made up the number of the clean and turned it into a majority. Now, at first he held

that women too are bound [to offer the lamb] on the first [Passover],[21] so that only a minority[22] was unclean; and a minority is relegated to the Second Passover.[23] But later he adopted the view [that the participation of] women in the First [Passover celebration] is only voluntary,[24] so that the unclean were in a majority, and a majority is not relegated to the Second Passover.[25]

The text [states]: 'Samuel said, The year is not to be intercalated on the thirtieth day of Adar, since it is eligible to be appointed [the first day of] Nisan.' But what if it were intercalated? — 'Ulla said: The month must not be sanctified.[26] But what if it were sanctified? — Raba said: Then the intercalation is invalid. R Nahman said: Both the intercalation and the sanctification are valid.

Raba said to R. Nahman: Let us consider! Between Purim[27] and the Passover there are thirty days, and from Purim we begin to lecture on the laws of Passover, as has been taught: People must begin to inquire into the Passover laws thirty days before the Festival. R. Simeon b. Gamaliel said: A fortnight before. If, then, it [sc. Passover] is postponed at the beginning of the month [of Nisan],[28] people[29] will be liable to disregard[30] the law regarding leaven [on Passover].[31] — He [R. Nahman] answered him: It is well-known that the intercalation of a year depends on [minute] calculations, hence they would say that [the declaration was not made until the thirtieth day] because the Rabbis had not completed their calculation until then.

Rab Judah said in Samuel's name: A year is not to be intercalated[32] unless the [summer] Tekufah[33] is short of completion by the greater part of the month.[34] And how much is that? — Sixteen days: so holds R. Judah.

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(1) I.e., not at the prescribed time, the 14th day of Nisan. Cf. Ex. XII, 9.

(2) II Chron. XXX, 18.

(3) I.e., after it had already been sanctified as Nisan, he reconsidered it and sanctified the month as the second Adar.

(4) Instead of intercalating, to render this unnecessary.

(5) There is a dispute whether uncleanness, in the case of a community, is entirely permitted, as though there were no prohibition at all against it, or whether it is merely suspended on account of the communal need. On the latter view, it is disregarded only when unavoidable, but not here, where it may be avoided by intercalation.

(6) **ציץ**, The golden front-plate. V. Ex. XXVIII, 36-38. It atoned for sacrifices offered in a state of uncleanness, and rendered them acceptable.

(7) The High Priest did not officiate in the interior, i.e., the Holy of Holies, on the Day of Atonement, robed in garments that had gold interwoven, as that would recall the sin of the golden calf. Cf. Lev. XVI, 3-4; R.H. 26a.

(8) It is no proof in this case.

(9) As on the Day of Atonement, when offerings for the whole Community are made. Hence the above inference of R. Simeon is contradicted.

(10) That even in a case involving a whole Community, as that of the Passover Offering, the year should be intercalated so as to avoid the state of uncleanness.

(11) Surely, according to the said argument, his action was lawful!

(12) Since there was no need at all for intercalation, the laws of impurity being withdrawn for the sake of a whole Community. Hezekiah, in intercalating the year, therefore prayed for forgiveness.

(13) According to R. Simeon it may be intercalated even at the outset, but he speaks of the case as if the act were already performed, merely in contradistinction to R. Judah.

(14) Ex. XII, 2.

(15) I.e., once Nisan has been proclaimed, it cannot be re-proclaimed Adar, making the ensuing month Nisan.

(16) When Adar is deficient.

(17) Hence he intercalated the year on that day. But afterwards, coming to agree with the standpoint represented by Samuel, and so realising his mistake, he prayed for forgiveness.

(18) That in the first place he thought it right to intercalate the year, but subsequently repented of his earlier decision?

(19) I.e., the male population. From the context, it is seen that the clean were not actually half, but a minority.

(20) Who were clean.

(21) As is the opinion advanced by R. Judah and R. Jose. Cf. Pes. 91b.
(22) Sc., of males, for whom the offering is compulsory.
(23) Therefore he intercalated the year, to obviate the necessity of this.
(24) As R. Simeon holds (ibid.).
(25) Hence the intercalation was unnecessary.
(26) As the second Adar. The succeeding month, however, will he sanctified as Nisan, the current month remaining unnamed.
(27) Feast celebrated on the fourteenth of Adar in commemoration of the deliverance of the Jews from the plot of Haman, as recorded in the Book of Esther.
(28) Through the institution of a second Adar, the lecturing on Passover laws having already begun.
(29) Not believing the report of the messengers that an intercalation had been made. — Raba's assumption that the messengers might be disbelieved, would seem to show that there were enemies of the Jews who might seek to upset the Calendar. Cf. p. 52, n. 9 on the attitude of the Roman authorities to intercalation.
(30) Lit., 'treat lightly'.
(31) Because they will not treat the Passover fixed by the Rabbis as such, having already celebrated it a month before.
(32) On account of the Tekufah. V. supra 11b.
(33) The solar year which consists of three hundred and sixty-five and a quarter days is divided into four equal parts, each period consisting of ninety-one days and seven and a half hours. These are called respectively the Nisan (vernal), Tammuz (summer), Tishri (autumnal), Tebeth (winter) Tekufoth. The lunar year which forms the basis of our calendar comprises altogether three hundred and fifty-four days. Though according to Biblical tradition our months are to be lunar (cf. Ex. XII, 2), yet our Festivals are to be observed at certain agricultural seasons; Passover and Pentecost in the Spring; Tabernacles, or Feast of Ingathering, in the autumn. In order to harmonise the lunar and solar years, a second Adar is intercalated once in two or three years. Our text lays down certain principles by which the Intercalators are to be guided.
(34) Tishri. I.e., the greater part of Tishri must be taken in to complete the Tekufah of Tammuz.

Talmud - Mas. Sanhedrin 13a

R. Jose said: Twenty-one days.[1] Now, both deduce it from the same verse, And the Feast of Ingathering at the Tekufah [season] of the year.[2] One Master[3] holds that the whole Feast [of ingathering][4] is required to be included [in the new Tishri Tekufah];[5] the other,[6] that only a part of the Festival [of ingathering] must [be included].[7]

Now, which view do they adopt?[8] If they hold that the Tekufah day[9] is the completion [of the previous season]: then, even if it were not so,[10] it will meet with the requirement neither of him who holds that the whole Festival [must be included,] nor of him who holds that only part of it [is necessary]! —[11] One must say therefore that they both hold that the Tekufah day begins [the new Tekufah].

An objection is raised: The Tekufah day concludes [the previous season]: this is R. Judah's view. R. Jose maintains that it commences [the new].[12] Further has it been taught: A year is not intercalated unless the [summer] Tekufah is short of completion by the greater part of the month [Tishri]. And how much is that? Sixteen days. R. Judah said: Two thirds[13] of the month. And how much is that? Twenty days.[14] R. Jose ruled: It is to be calculated thus: [If there are] sixteen [days short of completing the Tekufah] which precedes Passover,[15] the year is to be intercalated.[16] [If, however, there are] sixteen [short of completing the Tekufah] which precedes the Feast [of Tabernacles],[17] the year is not to be intercalated.[18] R. Simeon maintained: Even where there are sixteen [days short of completing the Tekufah] which precedes the Feast [of Tabernacles], the year is intercalated.[19] Others say [that the year is intercalated even if the Tekufah is short of completion] by the lesser part of the month. And how much is that? Fourteen days?[20] — The difficulty remained unsolved.

The Master has said: 'R. Judah said: Two thirds of the month. And how much is that? Twenty

days. R. Jose ruled: It is to be calculated [thus: if there are] sixteen [days short of completing the Tekufah] which precedes Passover, the year is to be intercalated.'[21] But is not this view identical with R. Judah's?[22] — They differ as to whether the Tekufah day completes [the previous] or begins [the new cycle].[23]

The Master has said: '[R. Jose holds that] if there are sixteen [days short of completing the Tekufah] which precedes the Feast [of Tabernacles], the year is not intercalated.' According to R. Jose, then, only if there are sixteen [days short of completing the Tekufah] preceding the Feast [of Tabernacles is intercalation] not [permitted]; but if there are seventeen or eighteen [days short], the year is intercalated. But has he not himself said: If there are sixteen [days short of completing the Tekufah] which precedes Passover, we may intercalate, but not if less?[24] — But no; in neither case[25] may we intercalate. But seeing that he spoke of the number sixteen [with regard to the Tekufah] preceding Passover,[26] he gives it also [in connection with the Tekufah] preceding the Feast [of Tabernacles].

[It was stated above]: 'R. Simeon maintained:[27] Even where there are sixteen [days short of completing the Tekufah] which precedes the Feast [of Tabernacles], the year is intercalated.' But is not this view the same as that of the first Tanna?

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(1) As seen from the context, the entire statement, including that of the views of R. Judah and R. Jose, is Samuel's.

(2) Ex. XXXIV, 22. I.e., it must fall within the Tishri Tekufah.

(3) R. Judah.

(4) I.e., beginning with the day when the work of ingathering is permitted — the 16th day of the month, the day after the Festival.

(5) Hence if the summer Tekufah is short of completion by sixteen days, the new autumnal Tekufah begins on the seventeenth, and will thus not include all the days when the work of ingathering is permitted.

(6) R. Jose.

(7) Hence its possible delay until the 21st of the month, but not later, because the 22nd of Tishri is a full Festival again, on which no gathering is permitted. Neither consider the possibility of including Ellul, a full month of thirty days, and so giving one day more, because if Ellul were extended, it would interfere with the calculations whereby the first day of New Year must not fall on Sunday, Wednesday or Friday, v. R.H. 19b; Suk. 43b.

(8) Viz., with reference to the day on which the sun enters into the new Tekufah.

(9) I.e., the day on which the new Tekufah begins.

(10) I.e., even if it were not much short of completion, as sixteen days according to R. Judah, and twenty-one days according to R. Jose, but fifteen or twenty days, respectively.

(11) For even if the Tekufah day begins on the sixteenth or twenty-first day, the new season will commence only on the following day.

(12) Thus, according to R. Judah, none of the Festival of Ingathering is included in the new season.

(13) Lit., 'two hands' interpreted as 'two portions'. Cf. Tosef. Men. IX,10.

(14) V. infra. This refutes Samuel on both points: (a) R. Judah holds here that part of the Feast is sufficient; and (b) in his view the Tekufah day commences the new season, and does not end the last.

(15) I.e., the winter Tekufah.

(16) For if not, the summer Tekufah would not end until the 21st of Tishri, the new Tekufah beginning on the 22nd. The two Tekufoth, the spring and summer, consist of hundred and eighty-two days, and the five lunar months between Nisan and Tishri consist of hundred and forty seven days which, when added to the fourteen days of Nisan and the twenty-one days of Tishri make a total of hundred and eighty-two days. The Tishri Tekufah beginning on the 22nd of the month will thus not include any part of the Festival of Ingathering.

(17) I.e., the summer Tekufah.

(18) Because at least part of the Feast of Ingathering will then fall in the new Tekufah.

(19) V. infra.

(20) Hence the contradiction of the two statements of R. Judah.

(21) In that the end of the cycle is delayed until the 21st of Tishri. V. n. 2.

(22) As it appears that both require the inclusion of only part of the Festival of Ingathering.
(23) According to R. Judah, that day completes the previous Tekufah, consequently, if twenty days have passed and the sun has reached its new cycle on the 21st, the new Tekufah begins on the 22nd, in which case not even part of the Feast of Ingathering is included; whilst according to R. Jose's calculation, even if the solstice occurs on the 21st day, that day is added to the new cycle.
(24) According to the above, in the case of fewer days, if these carry the Tekufah seventeen or eighteen days into Tishri, intercalation is permissible.
(25) I.e., in the case of a shortage neither of seventeen nor eighteen days. The number 'sixteen' therefore is not to be taken in its exact sense, for even if there is a shortage of more than that, intercalation is not justified.
(26) In which case, it is only a shortage of sixteen days which justifies intercalation.
(27) In contradistinction to R. Jose.

Talmud - Mas. Sanhedrin 13b

— They differ as to whether the Tekufah day completes [the previous] or begins [the new season].[1] But their views were not defined.[2]

[Again it was stated:] 'Others say: [That the year is intercalated even where there is a shortage] by the lesser part of the month. And how much is that? Fourteen days.' Now, which view do they adopt? Do they hold that the Tekufah day completes [the previous season], and that we require the whole Feast [of Ingathering to be included in the new Tekufah?] But surely in our case, it is so.[3] [Why then intercalate?] — The 'Others', says R. Samuel son of R. Isaac, speak of the Nisan Tekufah, for it is written, Observe the month of Abib [spring];[4] i.e., take heed that the beginning[5] of the vernal Tekufah shall occur on a day in Nisan [when the moon is still in the process of renewal].[6]

But why not intercalate a day in Adar?[7] — R. Aha b. Jacob said: The Tanna reckons from higher numbers downward, and says as follows: [If there is a deficiency] as far as [i.e., by more than] the lesser part of the month,[8] the year is intercalated.[9] And how much is that? Fourteen days.'

Rabina said: In reality, the 'Others' refer to the Tishri Tekufah, but they hold that the whole Feast [of Ingathering][10] must fall [in the new Tekufah] including also the first [day of the Feast].[11] '[Including] the first day'?[12] But is it not written, The Feast of Ingathering [shall be] at the Tekufah of the year; [meaning the day on which ingathering is permitted]? — [They interpret it as] 'The Feast which occurs in the season of ingathering.'

THE LAYING ON [OF HANDS] BY THE ELDERS. Our Rabbis taught: [And the elders . . . shall lay, etc.:][13] it might be assumed that it means ordinary people advanced in age;[14] Scripture therefore adds, of the congregation.[15] Now, if [you emphasised] congregation, I might think, [it referred to] the minor members of the congregation:[16] therefore it is stated, 'the congregation',[17] [meaning] the distinguished of the congregation.[18] And how many are required? — The plural of 'wesameku'[19] ['and they shall lay'] implies two; similarly, 'zikne' ['the elders'] implies two, and as there can be no court with an even number, another is added; hence five in all are required: this is R. Judah's view. R. Simeon said: 'Zikne' ['elders'] indicates two, and as a court cannot consist of an even number, another is added, making three in all. But according to R. Simeon, is it not written 'wesameku' ['and they shall lay']? — That is needed for the text itself.][20] And R. Judah?[21] — That is not needed for the text itself, since if the word wesameku has no significance for deduction, the text could have read [without it]: The Elders, their hands [being] on the head of the bullock.[22] And R. Simeon?[23] — Had it been so written,[24] I might have translated 'al[on], 'in proximity'.[25] And R. Judah?[26] — He deduces this [actual contact] from the use of the word rosh [head] in this case and in connection with the burnt offering.[27] And R. Simeon? — He does not admit the deduction of head written here and in the case of the burnt offering.[28]

It is taught: The laying on [of hands], and the laying on [of hands] of the Elders is performed by three. What is meant by, 'Laying on [of hands]', and 'Laying on [of hands] of the Elders'? — R. Johanan said: [The latter] refers to the ordination of Elders. Abaye asked R. Joseph: Whence do we deduce that three are required for the ordination of Elders? Shall we say, from the verse, And he [Moses] laid his hand upon him [Joshua][29] If so, one should be sufficient! And should you say, Moses stood in place of seventy-one,[30] then seventy-one should be the right number! — The difficulty remained unanswered.

R. Aha the son of Raba, asked R. Ashi: Is ordination effected by the literal laying on of hands? — [No,] he answered; it is by the conferring of the degree: He is designated by the title of Rabbi and granted the authority to adjudicate cases of kenas.[31]

Cannot one man alone ordain? Did not Rab Judah say in Rab's name: 'May this man indeed be remembered for blessing — his name is R. Judah b. Baba; were it not for him, the laws of kenas would have been forgotten in Israel.' Forgotten? Then they could have been learned. But

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(1) Though they both state the number sixteen, the one who holds that the day completes the previous Tekufah must count the new season as beginning on the seventeenth.

(2) I.e., it is not clear who is of the one and who of the other opinion.

(3) For the Tishri Tekufah then commences on the fifteenth, whereas the Feast of Ingathering, as defined in p. 58, n. 1, commences on the sixteenth.

(4) Deut. XVI, 1.

(5) Lit., 'ripening'.

(6) That accounts for the limit of fourteen days, after which it is on the wane. This is implied in the word חודש which, derived from חדש 'new', means the 'new month'.

(7) Which would bring in the new Tekufah on the thirteenth day, when the moon is still waxing, rather than cause the derangement of a whole month; and though the first day of Passover must not fall on Monday, Wednesday or Friday, and the addition of a day might cause that, it would not matter, because the limitation of the days on which Passover may commence is due to the desire to avoid New Year falling on Sunday, Wednesday or Friday, and that could be avoided by adding a day to one of the normally defective months between Nisan and Tishri.

(8) I.e., down to, but not including, the fourteenth day.

(9) But if there is actually a shortage of fourteen days, only the month Adar is intercalated.

(10) Even the first day.

(11) And being of the view that the Tekufah day completes, the season, if there is a shortage of fourteen days, in which case the new autumnal Tekufah will begin on the fifteenth day, the first day of the Feast will not be included in it, so that intercalation is justified.

(12) On which work is prohibited.

(13) וסמכו זקני, And the elders (of the Congregation) shall lay etc. Lev. IV, 15.

(14) Lit., 'elders of the market'.

(15) עדה, lit., 'Group', or 'Congregation.' 'Edah' is frequently interpreted by the Rabbis as 'Sanhedrin'. V. Num. Rab. 15, Ch. 16, and Rashi on Lev. IV, 13. The latter derives his statement from Sifra, which again derives it by analogy between 'Edah in Num. XXXV, 24-25, cf. supra 2a.

(16) I.e., the minor Sanhedrin of twenty-three.

(17) With the definite article.

(18) I.e., the major Sanhedrin.

(19) It could have been written וסמך 'we-samak', denoting that any one of the elders should lay his hands. Cf. Malbim on Lev. IV, 15.

(20) Viz., that there must be laying on of hands,

(21) Does he not admit this?

(22) A kind of absolute clause.

(23) Does he not admit the superfluity of 'and they shall lay'?

(24) As R. Judah suggests.

(25) I.e., that the hands need not actually be laid on the head but only brought near. The word wesameku makes it clear.
(26) Who employs wesameku for another interpretation.
(27) Lev. I, 4: And he shall lay his hand upon the head of the burnt offering, which obviously means actual contact.
(28) This type of exegesis, deducing identity of fact from identity of language, is called gezerah shawah, and it is a well-established principle that such deduction could not be made by a scholar without a direct tradition from his teacher that that particular identity of phraseology was intended to intimate identity of law. R. Simeon had no such tradition in respect of these two words.
(29) Num. XXVII, 23.
(30) I.e., having the same authority.
(31) V. Glos.

Talmud - Mas. Sanhedrin 14a

these laws might have been abolished; because once the wicked Government,[1] [as an act of religious persecution],[2] decreed that whoever performed an ordination should be put to death, and whoever received ordination should he put to death, the city in which the ordination took place demolished, and the boundaries[3] wherein it had been performed, uprooted. What did R. Judah b. Baba do? He went and sat between two great mountains, [that lay] between two large cities; between the Sabbath boundaries of the cities of Usha and Shefaram[4] and there ordained five elders:[5] viz., R. Meir, R. Judah, R. Simeon, R. Jose and R. Eliezer b. Shamua'. R. Awia adds also R. Nehemia in the list. As soon as their enemies discovered them he [R.J.b.B.] urged them: 'My children, flee.' They said to him, 'What will become of thee, Rabbi?' 'I lie before them like a stone which none [is concerned to] overturn,'[6] he replied. It was said that the enemy did not stir from the spot until they had driven three hundred iron spear-heads into his body, making it like a sieve.[7] — With R. Judah b. Baba were in fact some others, but in honour to him, they were not mentioned.

Was R. Meir indeed ordained by R. Judah b. Baba? Did not Rabbah b. Bar Hannah say in R. Johanan's name: He who asserts that R. Meir was not ordained by R. Akiba is certainly in error? — R. Akiba had indeed ordained him, but the ordination was not acceptable;[8] while R. Judah b. Baba's later ordination, on the other hand, was accepted.

R. Joshua b. Levi said: There is no ordination outside Palestine. What is to be understood by, 'There is no ordination'? Shall we assert that they[9] have no authority at all to adjudicate cases of Kenas[10] outside Palestine?[11] But have we not learnt: The Sanhedrin has competence both within and without Palestine! — This must therefore mean that ordination cannot be conferred outside Palestine.

It is obvious, that if the ordainers are outside Palestine and those to be ordained in Palestine, [then] surely as has been said, they cannot be ordained. But what if the ordainers are in Palestine, and those to be ordained outside? — Come and hear: [It is related] of R. Johanan that he was grieved when R. Shaman b. Abba was not with them [in Palestine] to receive his ordination. [Again it is related of] R. Simeon b. Zirud and another who was with him, viz., R. Jonathan b. Akmai, or according to others [who invert the order,] R. Jonathan b. Akmai and another who was with him, viz., R. Simeon, b. Zirud,[12] that the one who was with them was ordained, and the other, who was not, was not ordained.[13]

R. Johanan was very anxious to ordain R. Hanina and R. Oshaia, but his hope could not be realised,[14] and it grieved him very much. They said to him: Master, you need not grieve, for we are descendants of the house of Eli.[15] For R. Samuel b. Nahman, quoting R. Jonathan, said: Whence do we learn that none of the house of Eli are destined to be ordained? — From the verse, And there shall be no zaken[16] [old man] in thy house for ever.[17] What does the word 'zaken' mean [here]? Shall we say, literally, 'an old man', but it is written [immediately after], and all the increase of thy

house shall die [young] men! — It must therefore refer to ordination.[18]

R. Zira used to hide himself to avoid ordination, because R. Eleazar had said: Remain always obscure,[19] and [so] live.[20] But later, having heard yet another saying of R. Eleazar, viz., One does not attain greatness unless all his sins are forgiven,[21] he himself strove [to obtain it]. When they ordained him, they[22] sang before him, 'Neither paint nor rouge nor [hair-]dye, yet radiating charm.'[23]

When the Rabbis ordained R. Ammi and R. Assi, they sang thus of them: Only such men, only such men ordain ye for us, but ordain not for us any of the 'sarmitin' and 'sarmisin', or as some say, 'hamisin' or 'termisin'.[24]

When R. Abbahu arrived at the Emperor's Court[25] from College, the ladies of the court went out to receive him and sang to him: Great man of thy people, leader of thy nation, lantern of light, thy coming be blessed with peace.

BREAKING THE HEIFER'S NECK IS BY THREE. Our Rabbis taught: And thy Elders and thy judges shall come forth.[26] 'Elders' [indicates] two; [similarly,] 'judges', two. And as a court must not be evenly-balanced, another is added; hence there are five: this is R. Judah's view. R. Simeon says: 'Elders' indicates two, and as a court cannot consist of an even member, another is added, making three in all. Now, according to R. Simeon, what purpose is served by the words 'thy judges'? — It is needed, in his view, to indicate the necessity of choosing the most distinguished of 'thy judges'.[27] And R. Judah?[28] — [He deduces it] from the pronominal suffix [appended] to Zaken.[29] And R. Simeon? — [He maintains:] Had 'elders' [alone] been written,[30] I might have said that it refers to [any] old men of the street.[31] Hence the Torah says: 'thy elders'.[32] Yet had 'thy elders' [alone] been written, I might have said that it refers to [the members of] the minor Sanhedrin. Therefore Scripture wrote, 'thy judges', to indicate that the reference is to the most distinguished of 'thy judges'.[33] And R. Judah?[34] — He derives this[35] from a comparison of the word elders [as used here][36] and in the verse, And the elders of the congregation shall lay their hands [on the head of the bullock].[37] Just as there, the most distinguished of the congregation[38] [are necessary],[39] so here, too, the most distinguished of thy elders [are required]. But if this deduction be made, let us infer everything from that passage![40] and what need then is there for 'thy elders' and 'and thy judges'? — But [we should say: In R. Judah's opinion,] the [superfluous] waw [and] of, and thy judges, intimates the number.[41] And R. Simeon[42] — He does not employ the conjunction 'waw' for interpretative purposes.

But according to this line of argument, we might further deduce from the clauses, and they shall come forth, and, and they shall measure — each indicating two — that nine should be required, in R. Judah's opinion, and seven in R. Simeon's? — But these clauses are necessary, even as it has been taught: And they shall come forth, [meaning,] they, and not their deputies. And they shall measure; in all circumstances, even when the corpse is found

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(1) That of Hadrian, in the second century.

(2) [שמד given in some versions, v. D.S.]

(3) Heb. תחומין denotes the boundaries without the town, as far as which one may go on the Sabbath. That such was meant here is evident from the following passage, which states that Judah b. Baba chose a spot between two Sabbath boundary lines.

(4) Two Galilean cities prominent in the second century as places of refuge for the Sanhedrin. His purpose was that no city or region should suffer.

(5) Persons ordained bore the title of 'zaken'.

(6) I.e., as something worthless: let them do their worst.

(7) Hence it is evident that even one person was authorised to bestow the degree of Rabbi.

(8) Lit., ‘they did not accept (him)’, because of R. Meir's youth at the time (Rashi). [Herford, R.T., Pirke Aboth, 108, suggests a probable explanation, viz. that R. Akiba had ordained him while on one of his journeys on which R. Meir accompanied him (v. Yeb. 121a). Such an ordination, having been performed outside the land, would not be recognised as valid. V. infra.]
(9) Who have been ordained in Palestine.
(10) V. Glos.
(11) That is, ordination, even if conferred in Palestine, is of no avail outside Palestine for such cases.
(12) The order is intended to show who was the principal ordainer and who was his assistant.
(13) Hence, a scholar outside Palestine cannot be ordained.
(14) Because when they were with him, he could not procure another two to assist him, ordination requiring a board of three.
(15) And therefore cannot receive that dignity. V. infra.
(16) זקן.
(17) I Sam, II, 32.
(18) I.e., there shall be no ordained person, etc. זקן, accordingly, is understood in its Rabbinical connotation, ‘one who has acquired wisdom’, viz., an ordained Rabbi,
(19) I.e., without office.
(20) V. infra 92a.
(21) I.e., office brings with it moral improvement.
(22) The schoolmen.
(23) A snatch of a song sung at weddings in honour of the bride (Rashi).
(24) Interpretations of these words are varied. Jastrow says that it was a jest at Talmudic scholars using foreign words, and translates: Do not ordain for us any of those using words like ‘sermis’ (semis), ‘sermit’, (prob. distortion of ‘tremis’) ‘hemis’ and ‘tremis’. Krupnik-Silberman translate, ‘superficial scholars’ (halbwisser). Dalman suggests, ‘half-wits’ and ‘third-wits’ (idiots and madmen?).
(25) At Caesarea where his academy was.
(26) Deut. XXI, 2.
(27) I.e., members of the Great Sanhedrin.
(28) Whence does he deduce this?
(29) ך [זקניך], thy.
(30) Alone, without the suffix.
(31) I.e., any people advanced in age.
(32) ‘Thy’ intimates that the reference is to distinguished elders.
(33) I.e., members of the Great Sanhedrin.
(34) How does he know that neither old men in general nor the members of the minor Sanhedrin are meant?
(35) The law that they must be members of the Great Sanhedrin.
(36) Deut. XXI, 2.
(37) Lev. IV, 15.
(38) I.e., the Great Sanhedrin.
(39) Cf. supra 13b.
(40) I.e., the number of Elders also.
(41) In truth, he does not employ the analogy, but derives the necessity of the presence of the Great Sanhedrin from the pronominal suffix to shofet (‘thy judges’) and their number, again from the conjunction ‘waw’, for it could have been written, And they shall go forth, thy elders, thy judges.
(42) Who requires only three.

Talmud - Mas. Sanhedrin 14b

at the entrance of a town, measurement must be made.

Our Mishnah[1] is not in accord with the following Tanna. For it has been taught: R. Eliezer b. Jacob says, Thy elders and thy judges shall come forth.[2] ‘Thy elders’, refers to the Sanhedrin; ‘and

thy judges', to the King and High Priest. [That it 'refers to] the King' is deduced from the verse, The King by justice establisheth the land.[3] 'The High Priest', as it is written, And thou shalt come unto the Priests, the Levites and unto the Judges.[4]

The schoolmen asked: Does R. Eliezer b. Jacob differ from the Mishnah in one thing, or in two? Does he differ only with respect to the King and High Priest,[5] but as to the [number of the members of the] Sanhedrin, [he agrees with] either R. Judah or R. Simeon; or does he differ on that point too, requiring the whole Sanhedrin to come forth? — Said R. Joseph: Come and hear! If he [sc. the rebellious elder][6] found them[7] at Beth Pagi,[8] and there rebelled against their decision, one might assume that his rebellion was punishable.[9] Scripture therefore declares, And then shalt thou arise and get thee up unto the place,[10] [thus teaching] that it is the place that conditions [the act].[11] Now, how many had gone out? If only part of the Sanhedrin [how could the elder be condemned?] Perhaps those remaining inside would have agreed with him? It is clear therefore that the whole of the Sanhedrin must have gone out, But if so, for what? Shall we say, for a secular purpose! Are they then permitted to go out? Is it not written, Thy navel is like a round goblet wherein no mingled wine is wanting?[12] Hence it was obviously for a religious purpose, and for what else, if not for measuring in connection with the heifer, the author of the passage being R. Eliezer b. Jacob, who holds that the attendance of the whole Sanhedrin is required?[13] Abaye retorted: No; they might have gone out for the purpose of enlarging the city[14] or the Temple court-yards, as we learnt: The city or the Temple court-yards may be enlarged only by [the sanction of] a court of seventy-one.[15]

The following Baraitha agrees with R. Joseph:[16] If he[17] met them[18] at Beth Pagi and rebelled against their decision, when, for example, they had gone out for the purpose of measuring in connection with the heifer, or for the enlargement of the city or the Temple Courtyards, you might assume that his rebellion is culpable;[19] but it is written, — And thou shalt arise and get thee up to the place,[20] to teach that it is the place that conditions [the act].

THE VALUATION OF THE FOURTH YEAR'S FRUIT, AND THE SECOND TITHE THE VALUE OF WHICH IS NOT KNOWN, IS BY THREE. Our Rabbis taught: What kind of second tithe has no established price? Decayed fruit, wine that has grown a skin,[21] and rusty coins.[22]

Our Rabbis taught: The second tithe that has no fixed price is to be redeemed [at the valuation of] three [experienced] dealers, but not by three who are inexperienced.[23] Even a Gentile or the owner may be amongst the assessors. R. Jeremiah propounded: What of three who are business partners,[24] [can they be appointed valuers]? — Come and hear! 'A man and his two wives may redeem the second tithe of unknown value.'[25] Perhaps in a case such as that of R. Papa and [his wife], the daughter of Abba from Sura.[26]

DEDICATION IS BY THREE. Our Mishnah is not in accordance with the following Tanna: For it has been taught: R. Eliezer b. Jacob said: Even a hook of the sanctuary requires ten persons [to assess it] for its redemption.[27]

R. Papa said to Abaye: As to R. Eliezer b. Jacob's opinion, it is well, its grounds being Samuel's dictum. For Samuel said: There are ten Biblical references to Priest in the Chapter.[28] But whence do the Rabbis learn that only three [are required]? And should you answer: Because it [sc. the word Priest] appears three times in relation thereto;[29] then since with reference to land [redemption] the word appears four times, let four be sufficient? And should you say that this is indeed so, have we not learnt: THE VALUATION OF LAND REQUIRES NINE PERSONS AND A PRIEST? But what [will you say]? — That this is because with these verses the ten references are completed? Then should not other consecrated objects,[30] with the section on which six such references are completed, require six assessors? The difficulty was not solved.

THE ASSESSMENT OF MOVABLE OBJECTS etc. What is meant by THE ASSESSMENT OF MOVABLE OBJECTS?[31] R. Giddal, reporting Rab, says: For example, one who says, 'I undertake to give the value of this vessel';[32] for, R. Giddal said, reporting Rab:

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(1) Which requires only members of the Sanhedrin to come forth.

(2) Ibid.

(3) Prov. XXIX, 4. The deduction is based on the cognate words 'judges' and 'justice', whence it follows that the same person is meant in both.

(4) Deut. XVII, 9.

(5) Viz., that they must come forth,

(6) Deut. XVII, 8.

(7) The Sanhedrin.

(8) 'The house of figs', a place within the walls of Jerusalem, which is treated as Jerusalem in all matters. The place cannot be exactly identified. V. Neubauer, Geographie, 147ff.

(9) Lit., 'is a rebellion', which is punishable by strangulation.

(10) Deut. XVII, 8.

(11) I.e., on the Temple Mount alone can a rebellious elder be judged. (V. infra 87a).

(12) Cant. VII, 3. I.e., if one wished to leave, it must be seen that twenty-three remain. Cf. infra 37b.

(13) Thus proving that he differs in both matters.

(14) Of Jerusalem.

(15) Shebu. 14a.

(16) Who assumes that their purpose was for measuring in connection with the heifer.

(17) The rebellious elder.

(18) The Sanhedrin.

(19) V. p. 67, n. 10.

(20) Deut. XVII, 8.

(21) Gone sour.

(22) I.e., if the second tithe was redeemed, and the redemption money became rusty, and lost its face value, the coins must be assessed and redeemed (i.e., exchanged) for others of current acceptance.

(23) Lit., 'who are not dealers'.

(24) Lit., 'Three who throw into one purse'.

(25) And those have a common purse.

(26) Who traded on her own, and he had therefore no share in her profits (cf. Keth. 39a).

(27) V. infra 88a.

(28) Relating to the laws of Redemption; thrice in reference to human beings, Lev. XXVII, 8; thrice in reference to beasts; ibid. 11-13, and four times in reference to land, ibid. 14, 18, 23, — from which he deduces the need of ten persons for valuation.

(29) I.e., in the section dealing with the redemption of animals, and presumably the same applies to the redemption of all forms of hekdesh.

(30) Such as unclean beasts.

(31) For the laws of assessment in Lev. XXVII comprise only men, beasts and land.

(32) To the Sanctuary.

Talmud - Mas. Sanhedrin 15a

If one declares, 'I dedicate the value of this vessel [to the Sanctuary]', its value must be handed over. Why so? Because it is well known[1] that there is no fixed assessment [in the Torah] for such objects:[2] he must therefore have spoken with reference to value;[3] consequently, he must pay its value. But if so, [the words in the Mishnah] VALUATIONS OF MOVABLE OBJECTS should have read VALUATION CAUSED BY MOVABLE OBJECTS?[4] — Read: VALUATIONS CAUSED BY MOVABLE OBJECTS.

R. Hisda, quoting Abimi [said]: It refers to one who pledges movable objects in payment of his own dedicated value.[5] But in that case the words VALUATIONS OF MOVABLE OBJECTS should have been written MOVABLE OBJECTS OF ASSESSMENT![6] Read: MOVABLE OBJECTS OF ASSESSMENT.

R. Abbahu said: This refers to one who declares, 'I dedicate my value;' when the Priest comes to collect it, [on his failure to pay],[7] movable property is assessed by three; immovable property by ten.[8]

R. Aha of Difti said to Rabina: The requirement of three assessors is correct in the case of one having to redeem anything out of the possession of the Sanctuary;[9] but why need three to bring them into its possession?[10] — It is common sense, he answered. What is the difference between appropriating a thing to, and expropriating a thing from [the possession of the Sanctuary]? In the case of expropriation, the reason [for three assessors] is the eventuality of error; but the same eventuality exists in the case of appropriation.[11]

R. JUDAH SAYS etc. R. Papa said to Abaye: On R. Judah's opinion this is right: for that reason 'Priest' is written. But according to the Rabbis,[12] [who hold that no priest is required] — what is the purpose of that reference? — The question remained unanswered.

LAND VALUATION NEEDS NINE AND A PRIEST. Said Samuel: Whence is this inferred? — [From the] ten Biblical references to 'Priest' in the chapter [relating to valuation],[13] One is needed for the actual law;[14] the others are merely exclusions [of non-priests], one following the other. And [according to Talmudic rule,][15] exclusion, following exclusion, implies, not limitation, but extension,[16] and so includes [as valid, a valuation made] even by nine non-priests,[17] and [only] one priest.

R. Huna, the son of R. Nathan, demurred: Why not say that the ten assessors must consist of five priests and five non-priests?[18] The difficulty remained unsolved.

THE VALUATION OF A MAN IS SIMILAR. But is a man an object that can be dedicated?[19] — The words refer, said R. Abbahu, to the case of one who says; 'I dedicate my value'; as it has been taught 'If one says, I dedicate my value [to the Sanctuary-]', he is assessed exactly as a slave sold in the market; — and a slave is equated to immovable property.[20]

R. Abin asked: How many assessors are needed for the valuation of hair that is ready to be shorn? Is it regarded as already shorn, and thus assessed by three,[21] or as attached to the body, hence by ten?[22] — Come and hear! If one dedicates his slave, no liability to a trespass-offering is incurred in respect of him.[23] But R. Simeon b. Gamaliel says: Liability is incurred in respect of his hair. And we know that the point on which they differ is regarding the hair which is ready to be shorn. Infer, therefore, from this [that R. Abin's question is a point of difference among the Rabbis].

Shall we take it that these Tannaim[24] differ in the same respect as the Tannaim of the following Mishnah? For we learnt: R. Meir says: There are things that notwithstanding their attachment to the soil are considered as movable property.[25] But the Sages disagree with him. In what case? [If A says to B.] 'I handed over to thee ten vines laden with fruit,' and the latter replies, 'They were only five,' R. Meir imposes [an oath on the defendant],[26] while the Sages say that an object which is still attached to the soil is subject to the laws of immovable property.[27] And R. Jose b. Hanina said: The case in question is one of grapes ready to be gathered: according to the one master,[28] they are considered as gathered; according to the other.[29] they are not! — No, you might say it is so[30] even according to R. Meir. Only there, in the case of grapes, which after ripening deteriorate by remaining ungathered, does R. Meir hold that they are considered as gathered: whereas hair, the longer it is left,

the better it is.

CAPITAL CASES, CASES OF CARNAL CONNEXION WITH BEASTS etc. The law is stated categorically, without any distinction whether the connection is between a beast and a man or a beast and a woman. It is right as regards the [requirement of twenty-three] in the case of a woman, as this follows from the verse, Thou shalt slay the woman and the beast.[31] But whence is it to be deduced in the case of a man? — It is written, Whosoever lieth with a beast shall surely be put to death.[32] If this has no bearing on a case where a man is the active participant,[33] we must refer it to one in which he is the passive offender. And it is expressed in the Divine Law as if the man were the active sinner, for the purpose of equating the passive sinner to him. Just as in the case where the man approaches the beast, both he and the beast are judged by [a court of] twenty-three; so also, where the man is approached by the beast, both he and the beast are judged by twenty-three.

THE CASE OF AN OX TO BE STONED IS BY TWENTY-THREE, AS IT IS WRITTEN: THE OX SHALL BE STONED AND ITS OWNER ALSO SHALL BE PUT TO DEATH.[34] AS THE DEATH OF THE OWNER [IS BY TWENTY-THREE], SO THE DEATH OF THE OX. Abaye said to Raba: Whence do we know that the verse, and its owner also shall be put to death, means to [teach that] the judgment of the ox is to be similar to that of the owner?

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(1) Lit., 'a man knows'.

(2) In the Bible, the word ערך ('erek) is used only in reference to men, and indicates a dedication of fixed sums varying according to the age and sex of the person who is the subject of such a dedication. Hence, strictly speaking, the word is meaningless when used in reference to utensils, and therefore a different meaning has to be given to it here.

(3) For, according to the Talmudic dictum, 'No man makes a purposeless declaration.' Cf. 'Ar. 5a.

(4) The difficulty is a grammatical one. ערכין is the absolute form, and therefore ערכין המטלטלין really means, 'valuations which are movable' the article ה being here a relative pronoun. The Talmud answers that the genitive particle של is to be understood.

(5) Which, until their value is redeemed, are subject to the laws of sacred property, the assessment of which requires three. This interpretation is to justify the grammatical form used in the Mishnah, the meaning of the phrase being VALUATIONS (of human beings) which have been tendered in the form of MOVABLE OBJECTS.

(6) I.e., movable objects offered as the redemption price of human dedications.

(7) In case of non-payment his property is seized. V. 'Ar. 21a.

(8) The Mishnah therefore is to be interpreted thus: As for הערכין (human dedications), if movable property be rendered in redemption thereof, it is assessed by three; if real estate, by ten.

(9) As in the cases quoted by R. Giddal and R. Hisda.

(10) As in the case advanced by R. Abbahu.

(11) Hence the need of assessors in either case.

(12) The representatives of the first opinion cited anonymously.

(13) Lev. XXVII v. p. 69, n. 6.

(14) I.e., to state that a priest must be the assessor.

(15) Which is based on the following inference: For excluding purposes, one reference to 'priest' would have been sufficient; hence its repetition is not intended to exclude non-priests, but to extend. V. R. Han. a.l.

(16) In this case the extension to non-priests of the authority to make assessments.

(17) Lit., 'Israelites'. There were three classes in Israel, viz., 'Priests', 'Levites' and 'Israelites'.

(18) Since the rule that 'exclusion following exclusion implies extension' is based on redundancy, where there are a whole series of such exclusions, they are not all redundant. Thus, the first 'priest' teaching the exclusion of an Israelite, the second is redundant, and therefore teaches his inclusion. Hence, when the word has been written twice, we know that one priest and one Israelite are necessary. But for that very reason, the third 'priest' is not redundant, but to intimate that a priest is again required; after which the fourth is redundant, and so on; thus the first, third, fifth, seventh and ninth are needed for the actual law of priests and the others are superfluous, which gives five priests and five Israelites.

(19) So that he may be classed with sacred property.

(20) V. Meg. 23b. This is derived from the verse, And ye may make them an inheritance to your children after you, to

hold for a possession. Lev. XXV, 46. Hence the need of ten assessors.

(21) Like movable property.

(22) Like immovable property.

(23) So, if one puts him to service, as is the case when one makes use of any other consecrated object; for the laws concerning the unlawful use of sacred property are not applicable to lands or things of similar status, as slaves. v. Me'i. 18b.

(24) R. Simeon b. Gamaliel and the first Tanna of the Baraitha.

(25) Lit., 'there are things which are as real estate (being attached to the soil) yet are not as real estate (in a legal sense).'

(26) As in a case where there is partial admission of the claim (cf. B.K. 107a) and though an oath is not administered in cases of immovable property (v. Shebu, VI, 5). Here, however, since the vines no longer depend on the soil for ripening, they are considered as gathered.

(27) Hence no oath can be administered.

(28) R. Meir.

(29) The Rabbis.

(30) I.e., that hair, even though ready for cutting, is to be considered as immovable property, because the cases are not alike.

(31) Lev. XX,16, which indicates that the judgment on the ox is similar to that on the woman, and therefore the verdict must be pronounced by a similar body.

(32) Ex. XXII, 18.

(33) Since the reference in Lev. XX, 15, And if a man lie with a beast, he shall surely be put to death, suffices.

(34) Ex. XXI, 29.

Talmud - Mas. Sanhedrin 15b

Perhaps it is meant to [indicate] capital punishment [for the owner]? — In that case it should have been written, and the owner also, and no more. But [perhaps] had the Divine Law written so,[1] it could be argued that [the text implies death] by stoning?[2] — Could this view possibly be entertained! If a man himself is the murderer, his death is by the sword:[3] when his property [sc. an ox] slays, shall he [the owner] be stoned![4]

But might it not be argued[5] that the reason the Divine Law wrote 'yumath'[6] is to [indicate] an easier death, i.e., to commute death by the sword to death by strangulation?[7] Now, on the view that strangulation is a severer death,[8] it is correct;[9] but according to the view that strangulation is an easier death [than decapitation],[10] what is there to be said [against it]?[11] — This cannot be entertained, because it is written, If there be laid on him a ransom;[12] and, should you maintain that he is liable to death, is it not written, You shall take no ransom for the life of a murderer?[13] On the contrary, that fact [proves that the text is literal, Thus:] in case of a man's own crime, money is no adequate punishment, only death; whereas, when his beast kills, he can ransom himself with money?[14] — But, said Hezekiah, and thus said a Tanna of the school of Hezekiah: Scripture state, He that smote him [a human being] shall surely be put to death, he is a murderer.[15] For a murder committed by himself, you may put him to death, but you may not put him to death for a murder committed by his ox.[16]

The schoolmen asked: How many were needed [to judge] the ox [that sinned in approaching] Mount Sinai?[17] [The question is] whether we can derive a temporary enactment from permanent practice or not? — Come and hear! Rammi b. Ezekiel taught, Whether it be beast or man, it shall not live;[18] just as a man is judged by twenty-three, so is a beast judged by twenty-three.

THE LION AND THE WOLF etc. . . . Resh Lakish said: Provided, however, that they killed [a human being], but not otherwise.[19] Thus he holds that they can be tamed and have owners.[20] R. Johanan says [that it is R. Eliezer's view] even when they have killed no one. Hence he holds that they cannot be tamed or have owners.[21]

We learnt: R. ELIEZER SAYS, WHOEVER IS FIRST TO KILL THEM [WITHOUT TRIAL], ACQUIRES. This is correct according to R. Johanan:[22] What does he acquire? — He acquires [the possession of] their skin. But according to Resh Lakish, what does he acquire? As soon as they killed someone, the Rabbis regarded them as sentenced [to death], in which case every benefit from them is prohibited![23] What then does he acquire? — He acquires [merit] in the sight of Heaven.

There is [a Baraitha] taught which is in agreement with Resh Lakish: It is all one whether it be an ox, or any other beast or animal that killed a man, [it is judged] by twenty-three. R. Eliezer says: Only an ox that killed [is tried] by twenty-three, but any other animal or beast who killed, whoever is first to kill them acquires merit in the sight of Heaven.[24]

R. AKIBA SAID etc. Is not R. Akiba's opinion identical with that of the first Tanna [of the Mishnah]?[25] — [No;] they differ in the case of a serpent.[26]

A WHOLE TRIBE MUST NOT BE JUDGED etc. What sin was committed by the tribe? Shall I say, that it is a case of a tribe that desecrated the Sabbath? But[27] if the Divine Law made a distinction between individual sinners and a multitude, it was only in cases of idolatry; did it then differentiate in cases [of the transgression] of other commandments? — It must therefore refer to a tribe that was beguiled [into idolatry]. Is it to imply that it must be tried like a multitude? [If so,] this coincides with the opinion of neither R. Josiah nor R. Jonathan. For it has been taught: How many inhabitants must a town have that it may be proclaimed condemned? Not less than ten and not more than a hundred:[28] this is the view of R. Josiah. R. Jonathan says: From a hundred to the majority of the tribe in question. And even R. Jonathan admits only the majority of a tribe, but not the whole of it.[29] The case in question, says R. Mathna, is one

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(1) Without the word yumath, יומת (‘he shall be put to death’).

(2) I.e., that the same death should be meted out to both man and ox.

(3) V. infra 52a.

(4) A severer death. Surely not!

(5) In support of the literal interpretation.

(6) Which is apparently superfluous.

(7) For by an unspecified death, strangulation is meant (infra 52b).

(8) As held by R. Simeon, cf. infra 49b.

(9) For it would appear illogical to punish the owner more severely than in the case of his own act.

(10) As held by the Rabbis, ibid.

(11) Sc. the argument in support of the literal interpretation of ‘yumath’.

(12) Ex. XXI, 30.

(13) Num. XXXV, 31; and surely, if he is to be executed, he is considered as such.

(14) And where there is no offer of a ransom he is to be put to death. And the question — ‘perhaps the verse means to indicate capital punishment for the owner’ — remains.

(15) Ibid.

(16) Deduced from the words, ‘he is a murderer’, which appear superfluous.

(17) Cf. Ex. XIX, 13. Approach was forbidden to man and beast on pain of death.

(18) Ibid.

(19) Only then does R. Eliezer maintain that the sooner they are killed the better.

(20) I.e., their owners acquire legal title to them. For otherwise, it would be natural to assume that R. Eliezer meant that they should always be slain as potential mankillers.

(21) And even if a person does breed them, he acquires no legal title thereto, and anyone is at liberty to kill them.

(22) In whose opinion there is no ownership. Moreover, since they are slain even before they have killed a human being, they are not treated as animals sentenced to death, all benefit from which is prohibited.

(23) V. B.K. 41b.

(24) Tosef. Sanh. III.
(25) Why then state his view as though he differed with the first Tanna?
(26) Which, according to R. Akiba, can be killed even without trial.
(27) Lit., 'Say'.
(28) Only a town, referred to as 'ir (v. Deut. XIII, 14) can be condemned. R. Josiah holds that a community of less than ten is a village (kefar) and one of more than a hundred is an entire community, of which the 'city' is only a part.
(29) For in the case of a whole tribe, the members are to be tried individually as when an entire community, as distinct from a town, practises idolatry (v. preceding note).

Talmud - Mas. Sanhedrin 16a

where the head of the tribe has sinned;[1] did not R. Adda b. Ahabah say: Every great matter they shall bring unto thee[2] means the delinquencies of the great man;[3] so this one [sc. the head of a tribe] too, is a great man.[4]

'Ulla, quoting R. Eleazar says: [This refers to the case of] a dispute over the division of land [where the procedure must be the same] as at the first [division] in Eretz Yisrael. As in the commencement,[5] [such a dispute was decided by a Court of] seventy-one, so does it stand for all time.[6] But if so, just as originally the division was made by means of the urn, the Urim and Tummim,[7] and in the presence of all Israel, so at all times there must be an urn, the Urim and Tummim, and the presence of all Israel! But clearly, the answer given by R. Mathna is the better one.

Rabina says: I still maintain that the case in question is that of a tribe led astray into idolatry, and if you object that such should be judged after the manner of a multitude [I say,] True! though they are executed as individuals;[8] yet their trial must indeed be by a court competent to try a multitude.[9] For did not R. Hama son of R. Jose say in the name of R. Oshaia [in reference to the Scriptural passage]: Then shalt thou bring forth that man and that woman,[10] that an individual man or woman may be brought unto [the court at] thy gates,[11] but not a whole town?[12] Similarly in this case, only an individual man or woman canst thou bring forth to thy gates, but thou canst not bring forth a whole tribe.

NOR THE FALSE PROPHET. Whence is this inferred? — R. Jose son of R. Hanina says: It is derived from [the analogy set up] by the word hazadah,[13] used both here,[14] and in reference to the rebellious elder.[15] Just as there, [the rebellious elder is to be put to death only if he has rebelled against a Sanhedrin of] seventy-one, so here too, [the false prophet is to be tried by a court of] seventy-one. But is not the expression 'hazadah' mentioned in reference to his execution,[16] which is determined by a court of twenty-three? —[17] Resh Lakish therefore said: It is derived from the use of dabar [word] employed here,[18] and in reference to his [the elder's] rebelliousness. But let us, in turn, deduce [that the execution of] the rebellious elder [is by seventy-one] by employing the analogy of hazadah written therein and in the case of the false prophet.[19] — He [the Tanna] had a tradition authorising the analogy of dabar, but not that of hazadah.[20]

NOR THE HIGH PRIEST.

Whence is this derived? — R. Adda b. Ahabah said: Scripture states, Every great matter they shall bring unto thee.[21] [This means:] The matters [viz., delinquencies] of the great [man].[22]

An objection is raised: A great matter [means] 'a difficult[23] case'. You say, 'a difficult case'; but perhaps it is not so, the meaning being 'the matters of the great man'? Since Scripture states further on, Hard causes [difficult cases] they brought unto Moses,[24] it is clear that difficult cases are meant. [Hence great matter means 'difficult case']? — His[25] view is that of the following Tanna. For it has been taught: Every great matter, means 'the matters of a great [man]'. You say so, but may it not

mean, ‘every difficult case’? When Scripture further refers to ‘hard causes’ [difficult cases], these have already been mentioned.[26] How then, do I interpret, ‘great matter’? — ‘The matters of the great [man].’[27]

But according to that Tanna,[28] why the need of both verses? — The one states the law itself; the other, its practice.[29] But the other [Tanna]?[30] — If so,[31] either ‘great’ should be employed in both passages, or ‘difficult’ in both. Why ‘great’ in one passage and ‘difficult’ in the other? We may infer therefrom the two meanings.[32]

R. Eleazar asked: How many judges are needed to judge the [goring] ox of the High Priest? Is it assimilated to the execution of his owner,[33] or is it assimilated to that of owners in general?[34] — Abaye said: Since he raised the question with regard to his ox, it seems that in regard to his other monetary cases, he is certain.[35] But is not this obvious? — No, for you might have supposed from the verse, Every great matter . . . that every matter of the great man[36] [is to be brought before the great Sanhedrin]. He [Abaye] therefore informs us [otherwise].

WAR OF FREE CHOICE etc.

Whence do we deduce this? — Said R. Abbahu: Scripture states, And he shall stand before Eleazar the Priest [who shall inquire for him by the judgment of the Urim before the Lord. At his word shall they go out and at his word they shall come in, both he and all the children of Israel with him even all the Congregation].[37] ‘He’, refers to the King;[38] ‘And all the children of Israel with him,’ to the Priest anointed for the conduct of war;[39] and, ‘all the Congregation,’ means the Sanhedrin.[40] But perhaps it is the Sanhedrin whom the Divine Law instructs to inquire of the Urim and Tummim?[41] — But [it may be deduced] from the story related by R. Aha b. Bizna in the name of R. Simeon the Pious: A harp hung over David's bed, and as soon as midnight arrived, a northerly wind blew upon its strings and caused it to play of its own accord. Immediately David arose and studied the Torah until the break of dawn. At the coming of dawn, the Sages of Israel entered into his presence and said unto him: ‘Our Sovereign King, thy people Israel need sustenance.’ ‘Go and support yourselves by mutual trading,’[42] David replied, ‘But,’ said they, ‘a handful does not satisfy the lion, nor can a pit be filled with its own clods.’[43] Whereupon David said to them: ‘Go and stretch forth your hands with a troop [of soldiers].’[44] Immediately they held counsel with Ahitophel and took advice from the Sanhedrin[45] and inquired of the Urim and Tummim. R. Joseph said: What passage [states this]?

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(1) Irrespective of the manner of transgression, provided it carries with it the penalty of death.

(2) Ex. XVIII, 22.

(3) I.e., the High Priest (כהן גדול lit., ‘great priest’), v. infra, and 18b.

(4) Who, accordingly, is tried by seventy-one (v. preceding note).

(5) When Palestine was divided for the first time amongst the tribes.

(6) Lit., ‘here’.

(7) Objects used as a kind of Divine oracle which the High Priest wore on his breast, v. B.B. 122a.

(8) By stoning.

(9) Viz., of seventy-one.

(10) Deut. XVII, 5.

(11) The local court of twenty-three.

(12) But before a court of seventy-one.

(13) הזדה presumption.

(14) In reference to the false prophet, Deut. XVIII, 20.

(15) Ibid. XVII, 12. And the man that does presumptuously (bezadon).

(16) Ibid: that man shall die.

(17) The reference to the Sanhedrin in Deut. XVII, 12, is only with respect to his disregard of their decision.

(18) The false prophet: ibid. XVIII, 20, The prophet that shall speak a word. The elder: ibid. XVII, 10, And thou shalt do according the word. The need of seventy-one for the false prophet, therefore, is derived from the passage relating to the rebelliousness of the elder, which must be directed against the major Sanhedrin.
(19) I.e., just as the rule, that the judgment of the false prophet must be by seventy-one, is derived from an analogy of the two dabars, so, on the other hand, we may deduce that the execution of the elder must be by seventy-one, from an analogy of the two hazadahs.
(20) That analogy was not handed down to him by his teachers, and no man may set up an analogy of his own. Cf. Pes. 66a and other places.
(21) Moses. Ex. XVIII, 22.
(22) E.g., the High Priest. v. p. 76, n. 8.
(23) Lit., 'hard'.
(24) Ibid. XVIII, 26.
(25) R. Adda b. Ahabah.
(26) And therefore the previous verse is unnecessary on this assumption.
(27) I.e., the High Priest.
(28) The first Tanna, who interprets 'great matter' as 'difficult case'.
(29) Ex. XVIII, 22, states the law; ibid. 26 merely relates that this was carried out, but gives no new law.
(30) I.e., why interpret both verses (v. n. 11) as stating laws, when the second is obviously mere narrative?
(31) That the same thing is referred to in both verses.
(32) a) Matters of a great man, b) difficult case. For though the second verse is a narrative, it refers to a difficult case, and is not identical with the first verse.
(33) Which is by seventy-one.
(34) Which is by twenty-three, v. Mishnah, supra 2a.
(35) That they must be tried before a court of three.
(36) Even monetary cases.
(37) Num. XXVII, 21-22.
(38) Joshua, who had regal authority.
(39) And whose call to war must be heeded by all Israelites.
(40) V. p. 3, no. 4.
(41) I.e., that none but the Sanhedrin (also the King and the Priest anointed for war) may enquire of the Urim and Tummim: but not because of any need to obtain their permission for the proclamation of war.
(42) Lit., 'one from another'.
(43) A community cannot live on its own resources.
(44) Invade foreign territory.
(45) Hence the ruling in the Mishnah, that the permission of the Sanhedrin was required for the proclamation of war.

Talmud - Mas. Sanhedrin 16b

— And after Ahitophel was Benaiah the son of Jehoiada[1] and Abiathar; and the Captain of the king's host was Joab.[2] 'Ahitophel' is the adviser, even as it is written, And the counsel of Ahitophel which he counselled in those days, was as if a man inquired from the word of God.[3] 'Benaiah the son of Jehoiada', refers to the Sanhedrin, and 'Abiathar' to the Urim and Tummim. And so it is written, And Benaiah the son of Jehoiada was over[4] the Kerethites and Pelethites.[5] And why were they[6] termed Kerethites?[7] — Because they gave definite instructions,[8] And Pelethites?[9] — Because their acts were wonderful. Only after this [is it written]. And the captain of the king's host was Joab.[10] R. Isaac the son of R. Adda, — others state, R. Isaac b. Abudimi — said: What verse [tells us of the harp hanging over David's bed]? — Awake my glory, awake psaltery and harp; I will wake the dawn.[11]

THE ENLARGEMENT OF THE CITY, etc. Whence is this derived? R. Shimi b. Hiyya said: Scripture states, According to all that I show thee, the pattern of the Tabernacle [and the pattern of all the furniture thereof] even so shall ye make it[12] — [meaning,] in future generations[13] Raba

objected: All vessels made by Moses were hallowed by their anointing: those made subsequently were consecrated by [their] service.[14] But why? Let us suppose [that] 'even so shall you make' applies to future generations [in this respect too]![15] — There it is different, for Scripture states, And he had anointed them and sanctified 'otham' [them];[16] [hence] only they [were sanctified] by anointing, but not those of later generations. But why not deduce this: those[17] [could be consecrated only] by anointing, whereas the vessels made afterwards might be consecrated either by service or by anointing? — R. Papa said: Scripture reads, . . . wherewith they shall minister in the Sanctuary.[18] . Thus, Scripture made them [i.e., their consecration] dependent on service.[19] Why then do we need 'otham'?[20] — But for 'otham', I might have thought that the consecration of the vessels of the future required both anointing and service, since it is written, so shall you make it;[21] the Divine Law therefore emphasised, 'otham',[22] i.e., only they need anointing, but not those of future generations.

THE APPOINTMENT OF THE SANHEDRIN IS BY SEVENTY-ONE. Whence do we derive this law? — Since we find that Moses set up Sanhedrins,[23] and Moses had an authority equal to that of seventy-one.[24]

Our Rabbis taught: Whence do we know that judges are to be set up for Israel? — From the verse, Judges thou shalt made thee.[25] Whence do we deduce the appointment of officers[26] for Israel? — From the same verse, Officers shalt thou make thee. Whence the appointment of judges for each tribe? — From the words, Judges . . . for thy tribes.[27] And the appointment of officers for each tribe? — From the words, Officers . . . for thy tribes. Whence the appointment of judges for each town? From the words, Judges . . . in all thy gates. And the appointment of officers for each town? — From the words, Officers . . . in all thy gates.[28] R. Judah says: One [judicial body][29] is set over all the others, as it is written, . . . shalt thou make thee.[30] Rabban Simeon b. Gamaliel said: [The immediate connection] of 'they shall judge' and 'for thy tribes'[31] indicates that the tribal court must judge only those of its own tribe.

THE CONDEMNATION OF A TOWN [etc.]. Whence is this derived? — R. Hiyya b. Joseph said in R. Oshaia's name: Scripture states, Then shalt thou bring forth that man or that woman,[32] [teaching,] an individual man or woman thou mayest bring to thy gates,[33] but not a whole town.[34]

A CITY ON THE BORDER MAY NOT BE CONDEMNED. Why? — Because the Torah says: From the midst of thee,[35] but not [a city] on the border.[36]

NOR CAN THREE CITIES BE CONDEMNED. For it is written, Concerning one of the cities.[37] Yet one or two may be condemned, as it is written, of thy cities.[38]

Our Rabbis taught: [Concerning] one [of the cities]: 'one', excludes three. You say that it excludes three; but why not assume that it excludes even two? — When it states, 'thy cities', two then are indicated;[39] hence, how do I explain 'one'? — That one [or two] cities may be condemned, but not three. At times Rab said that a single court cannot condemn three cities, but that [that number] may be condemned by two or three courts; at others he maintained that [three cities] can never be condemned, even by two or three courts. What is Rab's reason? — Because of 'baldness'.[40] Resh Lakish said: They [sc. the Rabbis] taught this [only if the cities are] in a single province,[41] but if they lie in two or three different provinces, they may be condemned. R. Johanan holds that they may not be condemned [even in that case], for fear of 'baldness'. [A Baraitha] was taught which is in agreement with R. Johanan: We cannot condemn three cities in Eretz Yisrael; but we may condemn two [if situated in two provinces] e.g one in Judea and one in Galilee; but two in Judea or two in Galilee may not be condemned; and near the border, even a single city cannot be condemned. Why? Lest the Gentiles become aware of it and destroy the whole of Eretz Yisrael.[42] But may not this[43] be deduced from the fact that the Divine law wrote, From the midst of thee, [implying], but not from the border? — He [the author of the Baraitha] is R. Simeon, who always interprets the Biblical law on

the basis of its meaning.[44]

THE GREAT SANHEDRIN etc. What is the reason for the Rabbis maintaining that MOSES WAS OVER THEM?[45] — Scripture says, That they may stand there

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(1) The Biblical version of the verse is Jehoiada the son of Benaiah. Tosaf. Hananel and Aruk (art. אחר a.) base their versions on this reading and comment accordingly. Rashi and this translation follow the text of the printed editions of the Talmud which agree with II Sam. XX, 23, and I Chron. XVIII, 17.
(2) I Chron. XXVII, 34.
(3) II Sam. XVI, 23.
(4) Of higher rank (Rashi).
(5) I Chron, XVIII, 17, and II Sam. XX, 23. Since Abiathar is mentioned in the previous verse after Benaiah, it follows that it is he who is referred to by Kerethites and Pelethites. [According to the text adopted by R. Tam (v. Tosaf.), the verse 'Benaiah the son of Jehoiada etc.' follows the word 'Sanhedrin'. The explanation of Kerethites and Pelethites refers accordingly to the Sanhedrin.]
(6) The Urim and Tummim.
(7) כרתי fr. כרת 'to cut'.
(8) Lit., 'they cut their words.'
(9) פלתי fr. פלא 'wonder'.
(10) I.e., only after the Sanhedrin had authorised a war was there any need for Joab, the chief general.
(11) Ps. LVII, 9. 'I will wake the dawn' implies that 'I am up and stirring before the dawn'.
(12) Ex. XXV, 9.
(13) Just as the position and bounds of the Tabernacle were regulated by Moses, representing the Great Sanhedrin, so must the boundaries of the city and Temple Courts be decided upon by the Great Sanhedrin.
(14) I.e., by their very use itself. Shebu. 15a.
(15) I.e., in regard to the consecration of the vessels by the anointing.
(16) Num. VII, 1.
(17) Of the time of Moses.
(18) Num. IV, 12.
(19) And the use of the imperfect ישרתו (they shall minister) implies that the reference is to vessels of generations subsequent to Moses.
(20) אותם 'them', in Num. VII, 1, which appears to serve as an exclusion — which in face of the said verse is unnecessary.
(21) Interpreted to mean, 'for later generations', v. supra.
(22) 'Them, to indicate a limitation.
(23) Ex. XVIII, where it is related how Moses followed the advice of Jethro, his father-in-law.
(24) V. supra 13b.
(25) Deut. XVI, 18.
(26) To execute the sentence of the court.
(27) Ibid.
(28) Ibid.
(29) I.e., the major Sanhedrin.
(30) Which indicates that the whole of Israel was to be treated as a corporate unit.
(31) The verse reads, Judges . . . shalt thou make thee . . . for (E.V. throughout) thy tribes, and they shall judge . . . thus; 'for thy tribes' is coupled with 'and they shall judge'.
(32) Deut. XVII, 5.
(33) I.e., to the court at thy gates which consists of twenty-three.
(34) The latter before a court of seventy-one.
(35) Ibid. XIII, 14.
(36) V. p. 83, n. 4.
(37) Ibid. XIII, 13.
(38) 'Undefined plurals mean at least two,' is a Talmudic rule.

(39) V. n. 12.
(40) I.e., depopulation.
(41) Lit., ‘place’; e.g., Judea and Galilee.
(42) Tosef. Sanh. XIV.
(43) That a border city may not be condemned.
(44) V. 111.
(45) I.e., that the court consisted of seventy besides Moses.

with thee:[1] 'With thee' implies, 'and thou with [i.e., in addition to] them.' And R. Judah?[2] — 'With thee' was stated on account of the Shechinah.[3] And the Rabbis?[4] — Scripture saith, And they shall bear the burden of the people with thee:[5] 'With thee' implies, 'and thou with them'. And R. Judah? — With thee' intimates that [the elders must] be like thee,[6] [Moses]. And the Rabbis?[7] — Scripture saith, So shall they make it easier for thee and bear the burden with thee;[8] and the major Sanhedrin is deduced from the minor.

Our Rabbis taught: But there remained two men in the camp.[9] Some say: They [i.e., their names][10] remained in the urn.[11] For when the Holy One, blessed be He, said to Moses, Gather unto me seventy of the elders of Israel,[12] Moses said [to himself]: 'How shall I do it? If I choose six out of each tribe, there will be two more [than the required number]; if I select five, ten will then be wanting. If, on the other hand, I choose six out of one and five out of another, I shall cause jealousy among the tribes.' What did he do? — He selected six men [out of each tribe], and brought seventy-two slips, on seventy of which he wrote the word 'Elder', leaving the other two blank. He then mixed them all up, deposited them in an urn, and said to them, 'Come and draw your slips.' To each who drew a slip bearing the word 'Elder', he said, 'Heaven has already consecrated thee.' To him who drew a blank, he said: 'Heaven has rejected thee, what can I do?' Similarly, thou readest, Thou shalt take five shekels apiece by the poll.[13] Moses reasoned: How shall I act toward Israel? If I say to a man, 'Give me [the shekels for] thy redemption,' he may answer, 'A Levite has already redeemed me.' What did he do? He brought twenty-two thousand slips and wrote on each, 'Levite', and on another two hundred and seventy-three he wrote, 'five shekels'. Then he mixed them up, put them into an urn and said to the people, 'Draw your slips.' To each who drew a slip bearing the word 'Levite', he said, 'The Levite has redeemed thee.' To each who drew a ticket with 'five shekels' on it, he said, 'Pay thy redemption and go.'

R. Simeon said: They[14] remained in the Camp. For when the Holy One, blessed be He, ordered Moses: Gather unto me seventy of the elders of Israel, Eldad and Medad observed, 'We are not worthy of that dignity.' Thereupon the Holy One, blessed be He, said, 'Because you have humbled yourselves, I will add to your greatness yet more greatness.' And how did He add to their dignity? — In that all [the other prophets] prophesied and ceased, but their prophesying did not cease. And what did they prophesy? — They said, 'Moses shall die and Joshua shall bring Israel into the land.'

Abba Hanin said on the authority of R. Eliezer: They prophesied concerning the matter of the quails,[15] [saying], 'Arise, quail; arise, quail.'

R. Nahman said: They prophesied concerning Gog and Magog.[16] as it is said, Thus saith the Lord God: Art thou he of whom I spoke in old time by My servants the prophets of Israel, that prophesied in those days for many years[17] that I would bring thee against them? etc.[18] Read not 'shanim' [years] but 'shenayim' [two].[19] And which two prophets prophesied the same thing at the same time? — Say, they are Eldad and Medad.

The Master said: 'All the other prophets prophesied and ceased, but they prophesied and did not cease.' Whence do we infer that the others ceased? Shall we say, from the verse, They prophesied 'velo yasafu' [but they did so no more]?[20] If so, what of the passage. With a great voice, velo yasaf?[21] Does that too mean, it went on no more?[22] But that must be interpreted, It did not cease![23] — But here[24] it is written, And they prophesied,[25] whereas there[26] it is stated, [they] were prophesying[27] , i.e., they were still continuing to prophesy.

Now, according to the statement [that they prophesied] that Moses would die, [Joshua's request,] My Lord Moses, forbid them, is understandable; but on these two other views,[28] why [did he say],

My Lord Moses, forbid them[29] — Because their behaviour was not seemly, for they were like a disciple who decides questions in the very presence of his teacher. Now, according to these two other opinions [the wish expressed by Moses,] Would that all the Lord's people were prophets[29] is reasonable; but on the view [that they prophesied] that Moses would die, was he then pleased therewith? — They did not complete their prophecy in his presence. How was Moses to 'forbid them' [as Joshua requested]? He [Joshua] said to him: Lay upon them public cares, and they will cease [prophesying] of themselves.[30]

WHENCE DO WE LEARN THAT WE MUST FIND ANOTHER THREE? But after all, a majority of two for an adverse verdict is impossible:[31] if eleven find the man not guilty and twelve find him guilty, there is still a majority of only one;[32] and if there are ten for not guilty and thirteen for guilty, there is a majority of three? — R. Abbahu said: [The majority of two] is possible only where [two] judges are added,[33] and then the Mishnah agrees with the opinion of all, whilst in the major Sanhedrin, it is possible in accordance with the view of R. Judah, who holds their number to be seventy.[34]

R. Abbahu also said: Where judges are added, an evenly-balanced court may be appointed from the very outset. But is this not obvious?[35] — You might have assumed that the one who says, 'I do not know' is regarded as an existing member, and that anything he says is to be taken into consideration. We are therefore informed that he who says, 'I do not know,' is regarded as nonexistent, and if he gives a reason [for a particular verdict] we do not listen to him.

R. Kahana said: If the Sanhedrin unanimously find [the accused] guilty, he is acquitted. Why? — Because we have learned by tradition that sentence must be postponed till the morrow in hope of finding new points in favour of the defence.[36] But this cannot be anticipated in this case.[37]

R. Johanan said: None are to be appointed members of the Sanhedrin, but men of stature, wisdom, good appearance, mature age, with a knowledge of sorcery,[38] and who are conversant with all the seventy languages of mankind,[39] in order that the court should have no need of an interpreter. Rab Judah said in Rab's name: None is to be given a seat on the Sanhedrin unless he is able to prove the cleanness of a reptile from Biblical texts.[40] Rab said: 'I shall put forward an argument to prove its cleanness.

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(1) Num. XI, 16.

(2) How does he interpret 'with thee'?

(3) I.e., in order to deserve that the Shechinah should rest upon them, as it is written, And I will take of the spirit which is upon thee etc. (Num. XI, 17). But it does not teach that Moses was to be counted in addition to them.

(4) How do they know that Moses was over them, seeing that 'with thee' has a different meaning?

(5) Num. XI, 17.

(6) E.g., in purity of family descent and bodily perfection.

(7) Whence do they deduce this?

(8) Ex. XVIII, 22, referring to the minor Sanhedrin.

(9) Num. XI, 26.

(10) Eldad and Medad.

(11) V. infra.

(12) Num. XI, 16.

(13) Num. III, 47. After the completion of the Tabernacle, the Levites were called to replace the firstborns of all Israelites in the service of the Sanctuary, (cf. Ex. XXIV, 5; XIX, 24.) In order to effect this transfer of office, both the firstborn and the Levites were numbered. And when it was found that of the former there were twenty-two thousand two hundred and seventy-three; and of the latter, twenty-two thousand, the two hundred and seventy-three firstborns who were in excess of the Levites were redeemed at the rate of five shekels per head. (Five shekels is the legal sum for the redemption of a firstborn. v. Num. XVIII, 16). To solve the difficulty of deciding who was to be redeemed and who

exchanged, the above scheme was adopted.
(14) Eldad and Medad.
(15) The birds by which the Israelites were miraculously fed in the wilderness. Ex XVI, 11-13; Num. XI, 31.
(16) According to a widespread tradition, Gog and Magog represented the heathen nations or aggregate powers of evil, as opposed to Israel and the Kingdom of God, v. 'Eduy. II, 5. Ezekiel (XXXVIII, 2; XXXIX, 6) pictured the final destruction of the heathen world before the city of Jerusalem, as the defeat of Gog and Magog.
(17) שנים which may be read either 'shanim' years or 'shenayim' 'two'.
(18) Ezek. XXXVIII, 17.
(19) I.e., the two prophets who prophesied, etc.
(20) ולא יספו
(21) ולא יסף Deut. V, 19.
(22) But surely this cannot be said of the Shechinah.
(23) So in the first verse, יספו must bear the same connotation.
(24) Speaking of the elders, Num. XI, 25.
(25) ויתנבאו (imperfect with waw conversive = perfect).
(26) In the case of Eldad and Medad, Num. XI, 27.
(27) מתנבאים (participle).
(28) That they prophesied concerning the quails, or about Gog and Magog.
(29) Ibid. XI, 29.
(30) There is here a play on words, 'forbid them' being connected with 'ceasing'. Communal activities bring sorrow, and prophecy is possible only to the joyous spirit (Tosaf.).
(31) In a Sanhedrin of twenty-three.
(32) And for conviction, a majority of two is necessary; v. p. 3.
(33) As in the following case: If eleven found him guilty and eleven not guilty, while the twenty-third is dubious, the law provides for an addition of two members. In case these agree with the accusers, the majority for condemnation is then two, v. Mishnah infra 40a.
(34) It might happen that thirty-six condemn and thirty-four acquit.
(35) Surely this has already been stated in the Mishnah cited. For if two are added when the twenty-third is dubious, the court consists of an even number.
(36) V. infra 34a; 35a.
(37) Lit., 'But these will no more see for him (any merit).'
(38) So as to be able to detect those who seduce and pervert by means of witchcraft, cf. Rashi.
(39) This number is given frequently in Talmud and Midrash as the number of languages existing in the world. V. Pirke de R. Eliezer, ch. 24; Targum Jonathan on Gen. XI, 8, and Rashi on Deut. I, 5. As it is impossible for one man to know all these languages, he must have meant that amongst them all, all the languages were to be known. But cf. Rab's dictum below.
(40) I.e., he must be of subtle mind, so as to be able to prove the cleanness of reptiles that are definitely declared unclean in Scripture. V. Lev. XI, 29-39.

Talmud - Mas. Sanhedrin 17b

If a snake which causes so much uncleanness through killing is clean,[1] should not a reptile, which does not kill and spread uncleanness, be clean?' But it is not so, [as is proved] by comparison with an ordinary thorn.[2]

Rab Judah said in Rab's name: A Sanhedrin must not be established in a city which does not contain [at least] two who can speak [the seventy languages] and one who understands them. In the city of Bethar there were three and in Jabneh four [who knew how to speak them]: [viz.,] R. Eliezer, R. Joshua. R. Akiba, and Simeon the Temanite, who used to discuss before them sitting on the ground.[3]

An objection is raised: A Sanhedrin that has three[4] [able to speak the seventy languages] is wise

[capable]; if four,[5] it is of the highest standard possible.[6] — He[7] holds the same view as the Tanna [of the following Baraitha]: It has been taught: With two, [the Sanhedrin is] wise [capable]; with three, it reaches the highest standard possible.

[The following rules apply throughout the Talmud: The statement,] 'It was argued before the Sages,' refers to Levi who argued before Rabbi. 'It was discussed before the Sages,' refers to Simeon b. Azzai, Simeon b. Zoma, Hanan the Egyptian, and Hanania b. Hakinai[8] . R. Nahman b. Isaac taught that there were five: the three Simeons,[9] Hanan [the Egyptian] and Hanania [b. Hakinai].

'Our Rabbis in Babylon' refers to Rab and Samuel.

'Our Rabbis in Eretz Yisrael', to R. Abba.

'The judges of the Exile', to Karna.[10]

'The judges of Eretz Yisrael', to R. Ammi and R. Assi.

'The judges of Pumbeditha', to R. Papa b. Samuel,

'The judges of Nehardea', to R. Adda bar Minyomi.

'The elders of Sura', to R. Huna and R. Hisda.

'The elders of Pumbeditha', to Rab Judah and R. 'Aina.

'The keen intellects of Pumbeditha', to 'Efa and Abimi, sons of Rehabah.

'The Amoraim of Pumbeditha', to Rabbah and R. Joseph.

'The Amoraim of Nehardea', to R. Hama. [Where we read,] 'Those of Neharbelai[11] taught,' it refers to Rammi b. Berabi.[12]

'They said in the School of Rab', refers to R. Huna. But did not R. Huna himself say, 'They said in the School of Rab'? — R. Hamnuna is therefore the one referred to.

'They said in the West',[13] refers to R. Jeremiah.

'A message was sent from Palestine,'[14] to R. Jose b. Hanina. 'They laughed at it in the West', to R. Eleazar. But do we not read: 'A message was sent from Palestine: according to R. Jose b. Hanina . . .'?[15] — Therefore reverse it: 'A message was sent from Palestine' refers to R. Eleazar; 'They laughed at it in the West', to R. Jose b. Hanina.

WHAT MUST THE POPULATION OF A CITY BE IN ORDER THAT IT MAY QUALIFY FOR A SANHEDRIN? A HUNDRED AND TWENTY, etc. What is the reason for that NUMBER?[16] — Twenty-three, corresponding to the number of the minor Sanhedrin, and three rows of twenty-three,[17] make ninety-two. Adding the ten 'batlanim'[18] of the Synagogue, we have a hundred and two. Then, a further two clerks,[19] two sheriffs,[20] two litigants, two witnesses, two zomemim,[21] and two to refute the zomemim,[22] gives a hundred and fourteen in all. Moreover, it has been taught: A scholar should not reside in a city where the following ten things are not found: A court of justice that imposes flagellation and decrees penalties; a charity fund[23] collected by two and distributed by three;[24] a Synagogue; public baths; a convenience; a circumciser; a surgeon, a

notary;[25] a slaughterer[26] and a school-master.[27] R. Akiba is quoted [as including] also several kinds of fruit [in the list], because these are beneficial[28] to the eyesight.

R. NEHEMIA SAYS, [TWO HUNDRED AND THIRTY etc.]. It has been taught: Rabbi said:

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(1) As it is not included in the list of unclean creatures in Scripture; ibid.: and its dead carcase does not defile.

(2) For a thorn-prick also causes death, and so spreads uncleanness, yet it cannot be regarded by anyone as otherwise than clean.

(3) Because he was as yet unqualified owing to his immaturity, yet he was allowed to take part in the discussion.

(4) [Lit. 'of three', v. Yad. Ramah.]

(5) Cf. preceding note.

(6) Hence it appears that at least three such men are needed by a city, in order that it may qualify for a Sanhedrin.

(7) I.e., Rab, who says that only two are required.

(8) Though not ordained they were permitted to join the discussion in the presence of the ordained Rabbis; v. Bacher, AT. I, 409, 3.

(9) I.e., the two Simeons referred to above, and Simeon the Temanite.

(10) [Var. lec. Samuel and Karna, v. Rashbam, B.B. (Sonc. ed.) p. 279. n. 8; p. 419, n. 3.

(11) [Neharbel identified with Nehar Bil, east of Bagdad, Obermeyer, p. 269.]

(12) Beribi (v. Rashi, Bezah 8b); or 'Beroki' according to the Aruch.

(13) The Babylonians, when alluding to Palestine, called it the West, as Palestine was to the W. of Babylon. V. Ber. 2b.

(14) Lit., 'from there', which refers usually to Palestine, v. p. 15.

(15) How then could the sender himself be R. Jose b. Hanina?

(16) Lit., 'what has (the number) to do (with that)?'

(17) Usually seated behind the Sanhedrin for the purpose of completing courts. For full explanation, v. Mishnah, infra 37a.

(18) בטלנים fr. בטל 'to rest from labour', 'to be at ease or idle', hence men with leisure. Ten such men were appointed in every Community to attend religious services, in order to ensure the requisite quorum for public worship — the minyan. v. Meg. 3b.

(19) To take down notes for the prosecution and defence, v. infra 37a.

(20) The court beadles, who summoned the litigants and carried out the court sentences, such as flagellation.

(21) V. Glos. No testimony is valid if there is no possibility of its being refuted. Hence two are necessary for that.

(22) As a further precaution, lest false witnesses be hired to refute the first two.

(23) קופה, kupah, the communal fund from which distributions in money were made to the poor every Friday. B.B. 8b.

(24) V. B.B. 8b.

(25) For writing scrolls, etc.

(26) Rashal deletes this; in that case, the charity fund ranks as two institutions, viz., the collection and distribution.

(27) Rashi suggests the following persons as the six necessary to complete the hundred and twenty: viz., the two collectors and three distributors of charity, and one man capable of practising all the other professions.

(28) Lit., 'enlighten'.

Talmud - Mas. Sanhedrin 18a

[The population must be] two hundred and seventy-seven.[1] But has it not been taught: Rabbi said, [The population must be] two hundred and seventy-eight? — There is no difficulty: The one statement is according to R. Judah;[2] the other according to the Rabbis.[3]

Our Rabbis taught: And place such over them to be rulers of thousands, rulers of hundreds, rulers of fifties and rulers of tens:[4] The rulers of thousands amounted to six hundred;[5] those of hundreds, six thousand; those of fifties, twelve thousand; and those of tens, sixty thousand. Hence the total number of judges in Israel was seventy-eight thousand and six hundred.

CHAPTER II

MISHNAH. THE HIGH PRIEST MAY JUDGE AND BE JUDGED, TESTIFY AND BE TESTIFIED AGAINST. HE MAY PERFORM HALIZAH,[6] AND THE SAME MAY BE DONE TO HIS WIFE. THE DUTY OF YIBBUM[7] MAY BE PERFORMED TO HIS WIFE; HE HOWEVER, MAY NOT, PERFORM THAT DUTY, SINCE HE IS FORBIDDEN TO MARRY A WIDOW.[8]

IF A DEATH HAPPENS IN HIS FAMILY, HE MUST NOT WALK IMMEDIATELY BEHIND THE BIER,[9] BUT WHEN THEY[10] DISAPPEAR,[11] HE MAY SHOW HIMSELF;[12] WHEN THEY APPEAR [IN ONE STREET], HE MUST BE HIDDEN.[13] [IN THIS MANNER] HE MAY GO WITH THEM AS FAR AS THE ENTRANCE OF THE GATE OF THE CITY. SO HOLDS R. MEIR. R. JUDAH SAID: HE MUST NOT LEAVE THE SANCTUARY, BECAUSE IT IS WRITTEN, NEITHER SHALL HE GO OUT OF THE SANCTUARY'.[14] WHEN HE CONSOLES OTHERS, IT IS CUSTOMARY FOR THE PEOPLE TO PASS ALONG, ONE AFTER THE OTHER,[15] AND FOR THE 'MEMUNNEH'[16] TO PLACE HIM BETWEEN HIMSELF AND THE PEOPLE.[17] IF HE IS CONSOLED BY OTHERS, ALL THE PEOPLE SAY TO HIM, 'MAY WE BE THY ATONEMENT, AND HE ANSWERS THEM,' BE YE BLESSED OF HEAVEN. AND WHEN THE MOURNERS' MEAL[18] IS GIVEN TO HIM, ALL THE PEOPLE ARE SEATED ON THE FLOOR AND HE ON A STOOL.

THE KING MAY NEITHER JUDGE NOR BE JUDGED, TESTIFY NOR BE TESTIFIED AGAINST. HE MAY NOT PERFORM HALIZAH NOR MAY IT BE PERFORMED TO HIS WIFE. HE MAY NOT PERFORM YIBBUM, NOR MAY IT BE PERFORMED TO HIS WIFE. R. JUDAH SAID: IF HE WISHES TO PERFORM HALIZAH OR YIBBUM, HE SHALL BE REMEMBERED FOR GOOD. BUT THEY [THE RABBIS] SAID: [EVEN IF HE WISHES] HE IS NOT LISTENED TO; NOR MAY ANY ONE MARRY HIS WIDOW. R. JUDAH SAID: A KING MAY MARRY A KING'S WIDOW, FOR SO WE FIND IN THE CASE OF DAVID WHO MARRIED THE WIDOW OF SAUL, AS IT IS WRITTEN, AND I GAVE THEE THY MASTER'S HOUSE AND THY MASTER'S WIVES INTO THY BOSOM.[19]

GEMARA. THE HIGH PRIEST [MAY JUDGE]. But is this not obvious? — It is necessary to state, HE MAY BE JUDGED.[20] But that too is obvious, for if he cannot be judged, how can he judge? It is not written, hithkosheshu wa-koshshu,[21] which Resh Lakish interpreted: Adorn yourselves first, and then adorn others?[22] — But since he [the Tanna] wishes to state: A KING MAY NEITHER JUDGE NOR BE JUDGED, he also, teaches' THE HIGH PRIEST MAY JUDGE AND BE JUDGED. Alternatively, he [the Tanna] informs us of the following: Viz., of what has been taught: If a High priest killed anyone; if intentionally, he is executed, if unintentionally, he is exiled.[23] He transgresses positive and negative commandments, and ranks as a hedyot[24] in all respects.[25]

'If intentionally, he is executed.' Is this not obvious? — It is necessary to state, 'If unintentionally, he is exiled.'[26] But is not that, too, evident? It is necessary; for you might have thought that I could argue from the verse, And he shall dwell therein until the death of the High Priest[27] that only he whose return is provided for,[28] is exiled, but one whose return is not provided for, is not exiled. For we learnt:

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(1) Tosef. III. Two hundred and thirty in accordance with R. Nehemia, and forty-seven held in reserve for increasing the number of the court of twenty-three, where one is uncertain and the rest equally divided, adding two at a time, up to a maximum of seventy or seventy-one, v. infra 40a.

(2) Requiring only seventy to constitute the Sanhedrin.

(3) Requiring seventy-one.

(4) Ex. XVIII, 21.

(5) Since the population consisted of 600,000. Likewise for the other officials. (Ex. XII, 35.). [This is to teach that the

judges were included in the number of each respective group (Tanh. Mishpatim].
(6) V. n. p. 1 and p. 31.
(7) יבום, The duty of a levirate marriage, i.e., the obligation of marrying one's brother's widow if she be childless. (V. Deut. XXV, 5.) Although marriage with a brother's widow was forbidden as a general rule (Lev. XVIII, 16; XX, 21), in the case of childlessness it was obligatory. This obligation could, however, be avoided by the ceremony of Halizah, which was recommended later in Talmudic times in preference to yibbum (v. Yeb. 39b; 109a).
(8) Lev. XXI, 14. A widow, or one divorced, or a profaned woman, or a harlot, these shall he not take.
(9) Though by following the bier, he would not come in actual contact with the dead: (v. p. 18, n. 7), precautions had to be taken so as to prevent any possibility of his becoming levitically impure.
(10) The other mourners.
(11) From one street, having entered a second.
(12) In the first.
(13) I.e., he most always be one street behind the concourse following the bier.
(14) Lev. XXI, 12.
(15) In ordinary cases, after the burial, friends of the mourner passed by in a line and offered him comfort. In later times this was reversed, the friends standing in two rows, and the mourner passing between them.
(16) Lit., 'the appointed one'. An officer of high rank in the Temple, generally the superintendent of the Temple service. Here identical with the Segan; v. R. Papa's statement, p. 97 and n. 5. loc. cit.
(17) I.e., The High Priest was attended on the right by the Memunneh and on the left by the people.
(18) 'se'udath habra'ah', the first meal after the funeral which is prepared and given to the mourners by a neighbour. (v. II Sam. III. 35; M.K. 27b). This meal consists of bread and eggs. V.B.B. 16b.
(19) II Sam. XII, 8.
(20) And so the first is mentioned too, for completeness.
(21) התקוששו קושו Zeph. II, 1. E.V. Gather yourselves together, yea, gather together.
(22) By a play on the similarity of' gather yourselves together', fr. קושש and 'adorn yourselves', Heb. קשט
(23) V. Num. XXXV, 11.
(24) V. Glos.
(25) V. Sanh. Tosef. IV.
(26) V. p. 92, n. 4.
(27) Num. XXXV, 25.
(28) I.e., by the death of the High Priest.

Talmud - Mas. Sanhedrin 18b

One who killed the High Priest [unintentionally] or the High Priest who [so] killed a person, may never come forth from his place of exile.[1] Hence I would say that he should not be exiled. He therefore informs us [that he is]. But perhaps it is indeed so?[2] — Scripture states, Every man slayer may flee thither,[3] implying even the High Priest.

'He transgresses positive and negative commandments.' But is he bound[4] to transgress?[5] — What it means is: If he transgressed a positive or a negative commandment, he is in every respect [equal to] a hedyot.[6] But is this not obvious? — [No,] I might think, since we learnt: 'A whole tribe, a false prophet or a high priest are not to be judged except by a court of seventy one';[7] and R. Adda b. Ahabah said: [This is deduced from the verse,] Every great matter they shall bring unto thee,[8] meaning, 'the matters of a great man':[9] — therefore (I might think) all matters of a great man [involve trial by the Great Sanhedrin]; the Tanna therefore teaches us [otherwise].[10]

But perhaps it is so?[11] — Is it actually written, 'matters of a great [man]'? What it states is: 'The great matter', i.e., the really important matter.[12]

HE MAY TESTIFY AND BE TESTIFIED AGAINST. He may testify? But has it not been taught: And hide thyself from them;[13] there are times when thou mayest hide thyself[14] and there are times

when thou mayest not. How so?[15] — [E.g., when the finder is] a Kohen and it [sc. the object found] is in a grave-yard;[16] or an old man, and it is undignified for him;[17] or when his work is of greater value than his neighbour's [loss]: in such cases Scripture says, And hide thyself[18] . — said R. Joseph: He may be a witness for the king.[19] But have we not learnt: HE [THE KING] MAY NEITHER JUDGE NOR BE JUDGED; TESTIFY NOR BE TESTIFIED AGAINST? — But, said R. Zera: He may be a witness for the king's son. But the king's son is a commoner![20] — Rather [say thus]: He may testify in the presence of the king.[21] But surely the king may not be given a seat on the Sanhedrin! — For the sake of the High Priest's dignity, he comes and sits down until his evidence is received, after which he leaves and then we deliberate on his[22] case.

The text [states]: 'The king may not be given a seat on the Sanhedrin;' nor may the king or the High Priest be members of the board for the intercalation of the year.

'The king [may not be given a seat] in the Sanhedrin,' — because it is written, Thou shalt not speak 'al rib [in a case].[23] [meaning], thou shalt not speak against the rab [chief of the judges].[24] Again. 'nor may the king or the High Priest be members of the board for the intercalation of the year.' The king, on account of 'Afsanya' [the upkeep of the army];[25] the High Priest, because of the [autumnal] cold.[26]

R.Papa said: This[27] proves that the seasons of the year fall in with the normal lunar months.[28] But is it so? Were there not three cowherds who were standing conversing, and who were overheard by some Rabbis. One of them said: If the early and late sowing[29] sprout together, the month is Adar; if not, it is not Adar.[30] The second said: If in the morning frost is severe enough to injure[31] an ox, and at mid-day the ox lies in the shade of the fig-tree and scratches its hide,[32] then it is Adar, if not, it is not Adar. And the third said: When a strong east wind is blowing and your breath can prevail against it, the month is Adar; if not, it is not Adar. Thereupon the Rabbis intercalated the year?[33] — Is it then logical for you to assume that the Rabbis intercalated the year by a simple reliance upon cowherds? But they relied on their own calculations, and the cowherds [merely] corroborated their proposed action.[34]

HE MAY PERFORM HALIZAH. The Tanna teaches this[35] categorically. irrespective of whether [his sister-in-law was widowed] after nesu'in or only after erusin.[36] Now, as for a widow after nesu'in, it is correct, since he is interdicted by a positive and a negative command;[37]

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(1) That is, if there was no High Priest at the time when he was exiled. V. Mak. 11b.

(2) That he should actually be exempt from exile.

(3) Deut. XIX,3.

(4) Lit., 'Is there no way', 'is it impossible that he should not transgress'?

(5) 'He transgresses etc.' implies that he must transgress.

(6) V. Tosef. Sanh. IV.

(7) V. supra 2a.

(8) Ex. XVIII, 22.

(9) I.e., the High Priest, v supra 16b.

(10) That through transgression he becomes a mere hedyot and is tried by three.

(11) May not the interpretation of the matters of a great man apply to this also?

(12) I.e., one involving capital punishment.

(13) Deut. XXII, 4, in reference to the return of lost objects.

(14) I.e. refrain from carrying out the duty of returning the find.

(15) When is one permitted to retreat?

(16) V. p. 18, n.7.

(17) To pick up the object.

(18) Thus a man's dignity abrogates the injunction, Thou mayest not hide thyself'; in the same way, the duty of bearing

testimony (v. Lev. V,1) should be abrogated in favor of a High Priest, since it is not in keeping with his exalted office.
(19) I.e. in a case where the king is one of the litigants.
(20) Hence even so it is still undignified for the High Priest to testify.
(21) I.e., when the king is a member of the Sanhedrin.
(22) The king's son's (Rashi).
(23) Ex. XXIII, 2. רב rib is here written defectively, i.e., without a yod, hence can be read rab, 'master' or 'chief'.
(24) I.e. if the king were a member of the Sanhedrin, other members would be inclined to suppress their opinions in deference to him.
(25) Gr.** from ** wages. As it would be to his interest sometimes to intercalate and sometimes not to intercalate the year. according as the payment of the army is by the year or by the month.
(26) Since he might be biassed against intercalation which, by placing the Day of Atonement later in the autumn, would make the several ritual baths which he has to take on that day (five immersions in all) rather cold. V. Yoma 31b.
(27) The objection to the High Priest's taking part in the intercalation of the year.
(28) I.e., when the year is intercalated, the weather in Tishri is the equivalent of that of Marcheshvan in an ordinary year.
(29) I.e., the wheat sown earlier and the barley that was sown later (Rashi).
(30) But Shewat.
(31) Lit., 'kill'.
(32) Through the heat.
(33) Thus we see that the purpose of intercalation is to readjust the seasons, and the second Adar then has the climate of the first Adar in normal years, therefore Tishri will have its usual degree of heat in an intercalated year.
(34) In case, therefore, intercalation has been prompted by a reason other than the readjusting of the seasons, the weather will vary according to the months.
(35) That the High Priest may not perform Yibbum.
(36) V. Glos. A widow after erusin is still a virgin.
(37) a) A virgin of his people he shall take to wife, Lev.XXI, 14; b) A widow he shall not take. ibid.

Talmud - Mas. Sanhedrin 19a

and a positive command[1] cannot abrogate a positive and a negative command. But in the case of a widow after erusin, why [is he not permitted to marry her]?[2] The positive command[3] should set aside the negative? — The first act of connubial intercourse was forbidden as a preventive measure against further acts.[4] It has been taught likewise: [Where the widow is forbidden in marriage to the brother-in-law by a negative or positive command] and he has connubial relations at all with her, he acquires [her in marriage] but may not retain her for further cohabitation.[5]

IF A DEATH HAPPENS IN HIS FAMILY. Our Rabbis taught: Neither shall he go out of the Sanctuary:[6] [this means,] he shall not go out with them, but he may go after them. How so? — When they [the other mourners] disappear, he may reveal himself [to the public]; and when they appear [in a street], he must be hidden [in another].[7]

AND HE MAY GO WITH THEM AS FAR AS THE ENTRANCE GATE OF THE CITY. [R. JUDAH SAID. . .BECAUSE IT IS WRITTEN . . .]. Surely R. Judah's argument is correct? — R. Meir will tell you: in that case,[8] he must not [leave the Temple] even for his house![9] Hence this must be the meaning of, Neither shall he go out of the Sanctuary: He must not depart from [i.e., profane] his holy status, and in this case, since he has something to remind him [of his status][10] he will not come into contact [with the dead]. And R. Judah? — Owing to his bitter grief, he might be tempted to overlook that, and thus come into contact [therewith].

WHEN HE GOES TO CONSOLE OTHERS. Our Rabbis taught: When he passes along the row to comfort others, the Segan[11] and the former High Priest[12] stand on his right; whilst the Rosh-Beth-Ab,[13] the mourners and all the people are on his left. And when he stands in the row to be comforted by others, the Segan is stationed on his right and the Rosh Beth Ab and all the public on

his left. But the former High Priest is not present on this latter occasion. Why? — He [the High Priest] might feel depressed by the thought, 'He rejoices at my misfortune.'[14]

From this Baraitha. says R. Papa, we can infer three things: [i] that the Segan [here] and the Memunneh [in the Mishnah] are identical;[15] [ii] that the mourners stand, while the people pass by; [iii] that the mourners are placed to the left of the comforters.

Other Rabbis taught: Formerly the mourners used to stand still while the people passed by. But there were two families in Jerusalem who contended with one another, each maintaining, 'We shall pass first'. So the Rabbis established the rule that the public should remain standing and the mourners pass by.

Rammi bar Abba said: R. Jose restored the earlier custom in Sepphoris,[16] that the mourners should stand still and the public pass by. He also said: R. Jose enacted in the same town that a woman should not walk in the street followed by her child,[17] owing to an incident that once happened.[18] Further, Rammi B. Abba said: R. Jose also enacted in that town that women while in the closet should talk to one another for the sake of privacy. [from the intrusion of men].

R.Manashia b. 'Awath said: I inquired of R. Josiah the Great, in the grave-yard of Huzal,[19] and he told me that a row [for condolence] must consist of not less than ten people, excluding the mourners, and that it was immaterial whether the mourners stood still and the public passed by, or the mourners passed by and the public remained standing.

WHEN HE IS COMFORTED BY OTHERS etc. The schoolmen asked: When he consoled others, what did he say to them? — Come and hear! 'And he said [to them], Be comforted'. On what occasion [did he actually say this]? Shall we say, when others comforted him? But how could he say, 'Be comforted'? He would suggest ill-omen to them! — it must therefore be taken that when he comforted others, he said: 'Be comforted'. Draw your own conclusion!

THE KING MAY NEITHER JUDGE etc. R. Joseph said: This refers only to the Kings of Israel, but the Kings of the House of David may judge and be judged, as it is written, O House of David, thus saith the Lord, execute justice in the morning;[20] and if they may not be judged, how could they judge: is it not written, Hithkosheshu wakoshshu,[21] which Resh Lakish interpreted. 'adorn yourself first and then adorn others'?[22] But why this prohibition of the kings of Israel? Because of an incident which happened with a slave of King Jannai.[23] who killed a man. Simeon b. Shetah[21] said to the Sages: 'Set your eyes boldly upon him and let us judge him.' So they sent the King word, saying: 'Your slave has killed a man.' Thereupon he sent him to them [to be tried]. But they again sent him a message 'Thou too must come here, for the Torah says, If warning has been given to its owners,[24] [teaching], that the owner of the ox must come and stand by his ox.'[25] The king accordingly came and sat down. Then Simeon b. Shetah said: 'Stand on thy feet, King Jannai, and let the witnesses testify against thee; yet it is not before us that thou standest, but before Him who spoke and the world came into being, as it is written, Then both the men between whom the controversy is, shall stand etc.'[26] 'I shall not act in accordance with what thou sayest, but in accordance with what thy colleagues say,' he answered.

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(1) Sc. Her husband's brother shall go in into her and take her to him to wife. Deut. XXV, 5.

(2) Since he is interdicted only by a negative command, viz., a widow he shall not take, Lev. XXI, 14.

(3) Of yibbum. — This is a general rule, where two precepts come into opposition.

(4) Which would be a transgression, the precept having been fulfilled by the first.

(5) V. Yeb. 20b. This proves that a second act of connubial relationship is forbidden.

(6) Lev. XXI, 12.

(7) V. notes on Mishnah.

(8) If the verse is meant literally.
(9) Which is absurd. He must go home sometimes.
(10) Viz., the unusual procedure.
(11) V. p. 91, n. 11. [The Segan generally rendered 'deputy high priest' Schurer, II, 421, identifies him with the ** mentioned in Josephus, the superintendent of the Temple service. V., however, Schwarz, A., in MGWJ., LXIV, 30ff.
(12) משוח שעבר lit., 'the anointed who has passed (from his office)'. Provisional High Priest — a Priest who is appointed to act as a substitute for the High Priest when temporarily disqualified by uncleanness. When the first returns to office, this one is known as the ex-anointed.
(13) ראש בית אב . Priests were divided into eight divisions, each called Mishmar; and each Mishmar was again divided into six subdivisions, called Beth-Ab, for the service of each week-day. The chief of these sub-divisions was called Rosh-beth-ab. Cf. Maim, Yad, Kele Hamikdash, IV, 3-11.
(14) Probably because the Mashuah she-'abar would be reluctant to hand over the office, and so bear ill-feelings against the rightful occupant.
(15) This is deduced from the fact that the High Priest here also is placed between the mourners and the public.
(16) צפורי (lit. 'bird'). Important city in Galilee, at one time its capital. Frequently identified in the Talmud (Meg. 6a) with Kitron (Judges I, 30). R. Jose was born in Sepphoris and knew it well. [V. Klein, S. מאמרים שונים להקירת ארץ ישראל ,54ff.]
(17) But that she should follow the child.
(18) Rashi says: Once immoral men kidnapped a child which was following its mother, and she was searching for it, lured her into a house and there assaulted her.
(19) [A place between Nehardea and Sura. Obermeyer op. cit. p. 299].
(20) Jer. XXI, 12.
(21) Zeph. II, 1.
(22) V. p. 92. n. 6.
(23) Alexander Jannaeus (Jonathan) lived 103-76 B.C.E. third son of John Hyrcanus, King of Judea but not of the House of David. (8) He was a brother of the queen (v. Ber. 48a), yet the relationship of the ruler with the Pharisees, of whom Simeon b. Shetah was the head, was one of bitter antagonism. History relates most cruel acts which Jannai committed against them (v. Graetz, Geschichte III, 146ff.) At times during his reign, the Sanhedrin consisted almost entirely of Sadducees, Simeon being the only Pharisee among them (v. Meg. Ta'anith 10). This fact might be traced also from this incident [V. Hyman, A., Toledoth, III, 124. A similar story is related by Josephus. (Ant. XIV, 9, 4) of Herod who, as 'servant' of Hyrcanus was charged with murder. The identification of the incident related here with that reported by Josephus, involving a confusion of names on the part of the Talmud, as suggested by Krauss, Sanhedrin-Makkot, 103, is quite unwarranted.]
(24) Ex. XXI, 29.
(25) So too in the case of a slave, who is regarded as one of the chattels of his master.
(26) Deut. XIX, 17.

Talmud - Mas. Sanhedrin 19b

[Simeon] then turned first to the right and then to the left, but they all, [for fear of the King], looked down at the ground.[1] Then said Simeon b. Shetah unto them: 'Are ye wrapped in thoughts?[2] Let the Master of thoughts [God] come and call you to account!' Instantly, Gabriel[3] came and smote them to the ground, and they died. It was there and then enacted: A King [not of the House of David] may neither judge nor be judged; testify, nor be testified against.

HE MAY NOT PERFORM HALIZAH NOR MAY IT BE PERFORMED etc. [R. JUDAH SAID etc.]

But is this really so?[4] Did not R. Ashi say, that even according to the view that if a Nasi foregoes his honour his renunciation is accepted, yet if a King foregoes his honour, it is not accepted; for it is written, Thou shalt not in any wise set him over thee[5] intimating, that his authority[6] should remain over you?[7] — A precept is a different matter.

NOR MAY ANYONE MARRY [HIS WIDOW. R. JUDAH SAID . . .] It has been taught: They [the Rabbis] said to R. Judah: He [David] married women of the house of the King who were permissible to him, namely, Merab and Michal.[8]

R.Jose was asked by his disciples: How could David marry two sisters while they were both living?[9] He answered: He married Michal after the death of Merab. R. Joshua b. Korha said: His marriage to Merab was contracted in error,[10] as it is said, Deliver me my wife Michal whom I betrothed unto me for a hundred foreskins of the Philistines.[11] How does this prove it? — R. Papa answered: Because he said, My wife Michal but not 'my wife Merab'. Now, what was the error in his marriage [with Merab]? [It was this:] It is written, And it shall be that the man who killeth him, the king will enrich him with great riches and will give him his daughter.[12] Now he [David] went and slew him, whereupon Saul said to him: I owe thee a debt, and if one betroths a woman by a debt,[13] she is not betrothed.[14] Accordingly he gave her to Adriel, as it is written, But it came to pass at the time when Merab, Saul's daughter should have been given to David, that she was given to Adriel the Meholathite to wife.[15] Then Saul said to David, 'If you still wish me to give you Michal to wife, go and bring me [another] hundred foreskins of the Philistines.' He went and brought them to him. Then he said: 'You have now two claims on me, [the repayment of] a loan[16] and a perutah.[17] Now, Saul held that when a loan and a perutah are offered [as kiddushin], he [the would-be husband] thinks mainly of the loan;[18] but in David's view, when there is a loan and a perutah, the mind is set on the perutah.[19] Or if you like, I will say, all agree that where a loan and a perutah [are offered], the mind is set on the perutah. Saul, however, thought that [the hundred foreskins] had no value, while David held that they had value at least as food for dogs and cats. How does R. Jose[20] interpret the verse, Deliver me my wife Michal? —[21] He explains it by another view of his. For it has been taught: R. Jose used to interpret the following confused passage thus: It is written, But the king took the two sons of Rizpah the daughter of Ayah whom she bore unto Saul, Armoni and Mephibosheth, and the five sons of Michal, the daughter of Saul, whom she bore to Adriel the son of Barzillai, the Meholathite etc.[22] But was Michal really given to Adriel; was she not given to Palti the son of Layish, as it is written, Now Saul had given Michal, David's wife, to Palti the son of Layish . . .?[23] But Scripture compares the marriage of Merab to Adriel to that of Michal to Palti, to teach that just as the marriage of Michal to Palti was unlawful.[24] so was that of Merab to Adriel.[25]

Now as to R. Joshua b. Korha,[26] surely it is written, And the five sons of Michal the daughter of Saul whom she bore to Adriel. — R. Joshua [b. Korha] answers thee: Was it then Michal who bore them? Surely it was rather Merab who bore them! But Merab bore and Michal brought them up; therefore they were called by her name. This teaches thee that whoever brings up an orphan in his home, Scripture ascribes it to him as though he had begotten him.

(Mnemonic: Hanina — he called,' Johanan — and his wife,' Eleazar — and Redemption; and Samuel among his Disciples.)[27]

R.Hanina says this is derived from the following: And the women her neighbours, gave it a name, saying, There is a son born to Naomi.[28] Was it then Naomi who bore him? Surely it was Ruth who bore him! But Ruth bore and Naomi brought him up; hence he was called after her [Naomi's] name.

R.Johanan says it is derived from the following: And his wife Ha-Jehudiah[29] bore Yered the father of Gedor [and Heber the father of Soco, and Jekuthiel the father of Zanoah][30] and these are the sons of Bithia the daughter of Pharaoh, whom Mered took.[31] Now, 'Mered' was Caleb; and why was he called Mered?[32] . — Because he opposed the counsel of the other spies.[33] But was he [Moses][34] indeed born of Bithia and not rather of Jochebed? — But Jochebed bore and Bithia reared him;[35] therefore he was called after her.

R.Eleazar says: It is inferred from the following: Thou hast with thine arm redeemed thy people, the sons of Jacob and Joseph, Selah.[36] Did then Joseph beget them; surely it was rather Jacob? — But Jacob begot and Joseph sustained them; therefore they are called by his name.

R.Samuel b. Nahmani said in R. Jonathan's name: He who teaches the son of his neighbour the Torah, Scripture ascribes it to him as if he had begotten him, as it says, Now, these are the generations of Aaron and Moses;[37] whilst further on it is written, These are the names of the sons of Aaron: thus teaching thee that Aaron begot and Moses taught them; hence they are called by his name.[38]

Therefore thus saith the Lord unto the house of Jacob, who redeemed Abraham.[39] But where do we find that Jacob redeemed Abraham? — Rab Judah answered; It means that he redeemed him from the pains of rearing children;[40] hence the passage, Jacob shall not now be ashamed, neither shall his face now wax pale.[41] He shall not now be ashamed — of his father, neither shall his face now become pale — because of his grandfather.

[The second husband of David's undivorced wife] is variously called Palti[42] and Paltiel![43] — R. Johanan said: His name was really Palti, but why was he called Paltiel? Because God saved him from transgression.[44] What did he do [to be delivered from sin]? He planted a sword between her [Michal] and himself, and said, Whoever [first] attempts this thing,[45] shall be pierced with this sword. But is it not stated: And her husband [Palti] went with her?[46] — This means that he was to her like a husband.[47] But is it not written, He went weeping? — This was for losing the good deed [of self-restraint]. Hence [he followed her] to Bahurim, implying that they both had remained like unmarried youths[48] and not tasted the pleasure of marital relations.

R.Johanan said: Joseph's strong [temptation][49] was but a petty trial to Boaz;[50] and that of Boaz was small in comparison with that of Palti son of Layish. ‘Joseph's strong temptation was but a petty trial to Boaz,’ as it is written, And it came to pass at mid-night and the man was startled, ‘wa — yillafeth’.[51] What is the meaning of wa — yillafeth? — Rab said: His flesh became [as hard] as turnip heads.[52]

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(1) Lit ‘they pressed their faces into the ground,’ fearing to express an opinion.

(2) Lit., ‘You are masters of (hesitating) thoughts.’ I.e., ‘Are you in doubt on the point as to whether the law applies to the king or not?’ Said sarcastically, of course.

(3) גבריאל (lit., ‘man of God’). Angel mentioned in Dan. VIII, 16 and IX, 21. Frequently cited in Talmud as God's messenger on various missions, particularly punishment.

(4) Referring to R. Judah's view.

(5) Deut. XVII, 15.

(6) Lit., ‘his fear’.

(7) I.e., fear of him should always be before your eyes. This follows from the emphasis of ‘set’, expressed in the Heb. as usual, by the double form of the word. — The ceremony of Halizah is an undignified one.

(8) The daughters of Saul, but not his widows whom he was not permitted by law to marry.

(9) V. Lev. XVIII, 18, Thou shalt not take a woman to her sister.

(10) And so was invalid.

(11) II Sam. III, 14.

(12) I Sam. XVII, 25, referring to the slaying of Goliath.

(13) I.e., by remitting the amount to her or, if she is a minor, to her father.

(14) For in returning a money loan, unlike a trust, the debtor is not obliged to return the actual coin lent, but its equivalent. Hence the woman receives actually nothing at the time of betrothal, by which it should be effected. V. Kidd. 6b; 47a.

(15) I Sam, XVIII, 19.

(16) The promise to enrich him which stands as a loan.

(17) A small coin representing the estimated value of the hundred foreskins. A perutah is sufficient to serve as token of betrothal (kiddushin).
(18) And consequently, as stated above, she would not be betrothed.
(19) Hence the betrothal is valid.
(20) Who holds that before his marriage to Michal, David was legally married to Merab.
(21) Which seems to exclude Merab as his wife.
(22) II Sam, XXI, 8.
(23) I Sam. XXV, 44.
(24) And so invalid, as she was already betrothed to David.
(25) Hence R. Jose interprets the words, 'Michal my wife', not as excluding Merab as wife, but rather as showing that just as Michal was legally his wife, so was Merab. Hence the marriages of Michal and Merab to Palti b. Layish and Adriel respectively, were transgressions.
(26) Who holds that Merab's marriage to Adriel was not lawful.
(27) V. p. 21, n. 5.
(28) Ruth IV, 17.
(29) Bithia, the daughter of Pharaoh, who is referred to at the conclusion of the verse.
(30) All these names are designations of Moses (v. Meg. 13a).
(31) I Chron. IV, 18.
(32) מרד, 'to disobey', 'oppose' or 'rebel'.
(33) Num. XIII, 30.
(34) V. n. 4.
(35) Ex. II, 10.
(36) Ps. LXXVII, 16.
(37) Num. III, 1.
(38) Under the earliest system of education, children were taught at home by their fathers, until Joshua b. Gamala reorganised the system by setting up schools in every town (B.B. 21a). Although that system was completely in vogue in the days of R. Samuel b. Nahmani, his dictum here might indicate that some virtue was still ascribed to private teaching by the parent or his proxy. It is doubtful whether it would simply refer to an ordinary elementary school teacher.
(39) Isa. XXIX, 22. The E.V. translates differently.
(40) Abraham, who was actually promised multiplication, should have borne the burden of rearing the children, but it fell upon Jacob.
(41) Ibid.
(42) I Sam. XXV, 44.
(43) II Sam. III, 15.
(44) The word is composed of פלט — 'to escape' and אל — 'God'. Bible onomatology has a large number of compound names which express distinct ideas. Many are compound with the name of God (El) preceding it, as El-Nathan, or succeeding it, as Amiel, or as in the instance in question. The chief reason for the later addition of 'El' to 'Palti' is taken to express, as it were, the ineffably holy name to which he dedicated himself.
(45) I.e forbidden indulgence.
(46) II Sam. III, 16.
(47) I.e., maintaining and loving her, but no more.
(48) בחוים pl. of בחור, a youth.
(49) V. Gen. XXXIX, 7-13.
(50) V. Ruth III, 8-15. I.e., the strong temptation to which Joseph was exposed, and which called forth his greatest powers of resistance, was but as a small thing, for which the mere exercise of a little self-restraint would suffice, in comparison to the temptation withstood by Boaz.
(51) וילפת, (E.V. 'and turned himself'), Ruth III, 8.
(52) ראשי לפתות (ראש = head; לפת = turnip).

Talmud - Mas. Sanhedrin 20a

'And that of Boaz was small in comparison with that of Palti son of Layish.' as has been stated

above.[1]

R.Johanan said: What is meant by the verse, Many daughters have done valiantly, but thou excellest them all?[2] — 'Many daughters', refers to Joseph and Boaz; 'and thou excellest them all', to Palti son of Layish.[3]

R.Samuel b. Nahmani said in R. Jonathan's name: What is meant by the verse, Grace is deceitful, and beauty is vain, but a woman that feareth the Lord, she shall be praised?[4] — 'Grace is deceitful' refers to [the trial of] Joseph; 'and beauty is vain', to Boaz; while 'and a woman that feareth the Lord, she shall be praised', to the case of Palti son of Layish. Another interpretation is: 'Grace is deceitful', refers to the generation of Moses;[5] 'and beauty is vain' to that of Joshua; 'and she that feareth the Lord shall be praised', to that of Hezekiah.[6] Others Say: 'Grace is deceitful', refers to the generations of Moses and Joshua; 'and beauty is vain', to the generation of Hezekiah; while 'she that feareth the Lord shall be praised'. refers to the generation of R. Judah son of R. Ila'i, of whose time it was said that [though the poverty was so great that] six of his disciples had to cover themselves with one garment between them, yet they studied the Torah.[7] MISHNAH. IF A DEATH OCCURS IN HIS [THE KING'S] FAMILY, HE MUST NOT GO OUT OF THE DOOR OF HIS PALACE. R. JUDAH SAID: IF HE WISHES TO FOLLOW THE BIER, HE MAY, EVEN AS WE FIND IN THE CASE OF DAVID, WHO FOLLOWED THE BIER OF ABNER, AS IT IS WRITTEN, AND KING DAVID FOLLOWED THE BIER.[8] BUT THEY [THE RABBIS] ANSWERED: [THIS IS NO PROOF, FOR] THAT WAS BUT TO PACIFY THE PEOPLE.[9] AND WHEN THE MOURNERS' MEAL[10] [AFTER THE FUNERAL] IS GIVEN TO HIM, ALL THE PEOPLE RECLINE ON THE GROUND, AND HE SITS ON THE DARGESH.[11]

GEMARA. Our Rabbis taught: Wherever it is customary for women to follow the bier, they may do so; to precede it, they may do so [likewise]. R. Judah said: Women must always precede the bier, for we find that David followed the coffin of Abner, as it is written, And King David followed the bier.[12] They [sc. the Rabbis] said to him: That was only to appease the people, and they were indeed appeased, for David went to and fro, from the men to the women and back from the women to the men, as it is written, So all the people and all Israel understood that day that it was not of the king to slay Abner.[13]

Raba expounded [in a lecture]: What is meant by the verse, And all the people came 'lehabroth' [to cause] David [to eat bread]?[14] The original text was, 'lehakroth'[15] but we read, 'lehabroth'. At first they intended to destroy him;[16] but afterwards, [being appeased,] they gave him to eat [the comforters' meal].

Rab Judah said in Rab's name: Why was Abner punished? — Because he should have protested to Saul[17] but did not. R. Isaac, however, said: He did indeed do so, but was not heeded. Both derive their views from the same verse, viz., And the king lamented for Abner and said: Should Abner die as a churl dieth, thy hands were not bound nor thy feet put into fetters.[18] The one who says that he did not protest, interprets it thus: Thy hands were not bound nor thy feet put into fetters, why then didst thou not protest? [Therefore,] As a man falleth before the children of iniquity so didst thou fall. The other who maintains that Abner did protest but was not listened to, [holds that] he [David] expressed his astonishment: Should he have died as a churl dieth? Seeing that thou didst indeed protest to Saul, Why, then, didst thou fall as a man falleth before the children of iniquity? But on the view that he did protest, why was he punished? — R. Nahman b. Isaac says: Because he delayed the accession of David's dynasty by two and a half years.[19]

AND WHEN THE MOURNERS MEAL IS GIVEN TO HIM etc. What is a dargesh? — 'Ulla said: The bed of the domestic genius.[20] The Rabbis asked 'Ulla: How can it be that he should be made to sit on it now [as a mourner], when he had never sat on it before? Raba refuted their

objection: What is the difficulty? Is this not similar to the eating and drinking, for hitherto we had not given him food and drink, while now, [after the funeral] we do![21] But if there is any objection, it is this: [It was taught] The dargesh need not be lowered[22] but must be stood up.[23] Thus, should you maintain that the daresh is the bed of the domestic genius, why is there no need to lower it? Surely it has been taught: The mourner in lowering the beds shall lower not only his own couch but all the others he has in the house! — But what is the difficulty? Perhaps it [the dargesh] is in the same category as a bed [sideboard] designed for holding utensils of which, the Tanna taught, that if it is designed for holding utensils, it need not be lowered. If indeed, there is any objection, it is this: [It has been taught:] Rabban Simeon b. Gamaliel said: As for the dargesh, its loops are undone, and it collapses of itself. Now if it be the bed of the domestic genius, has it any loops? — But when Rabin came [from Palestine][24] he said: One of the Rabbis named R. Tahlifa. who frequented the leatherworkers' market, told me that dargesh was the name of a bed of skins.[25] R. Jeremiah said in R. Johanan's name: A dargesh

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(1) For the former withstood temptation but once, while the latter, night after night, for many years.

(2) Prov. XXXI, 29.

(3) I.e., to the moral victories gained by these men on account of the seductiveness of women.

(4) Ibid. 30

(5) I.e., they eschewed the pleasures of women in their eagerness to study the Torah, and so the other two mentioned immediately after.

(6) In whose days the Law was studied even more assiduously than in the days of Moses and Joshua. V. infra 94b.

(7) [On the poverty of scholars in the days of R. Judah b. Ila'i as a result of the Hadrianic persecutions, v. Buchler, A., The Jewish Community of Sepphoris, 67ff.]

(8) II Sam. III, 31.

(9) I.e., to dispel the suspicion that Abner had been killed by him

(10) V. p. 92, n. 2.

(11) Explained in the Gemara.

(12) Ibid. From which it is inferred that the women preceeded it, for it is improbable that the King would have walked in their midst.

(13) II Sam. III, 37.

(14) להברות ibid. 35.

(15) להכרות 'to dig or pierce'. Though not found so in our Bibles, it must have been in theirs. In fact, such a version was known to Saruk and R. Joseph. Kimhi (father of David) and such a form is sighted from a number of MSS, v. Kennicott; cf. marginal note of Berlin I. infra 103a.

(16) Suspecting that he had a hand in Abner's death.

(17) For putting the Priests of Nob to death. V. I Sam. XXII, 18.

(18) II Sam. III, 33.

(19) By his act of appointing Ish-Bosheth (Saul's only surviving son) as king of Israel. Ish-Bosheth, being feeble, owed his crown entirely to Abner. He reigned two years. (II Sam II.) Six months having elapsed after be was slain, David was generally recognised as king of Israel. There is a controversy with regard to the chronology of his reign. Rashi and Tosaf. both agree that the throne of Israel remained vacant for five years, but they differ as to the time the vacancy occurred. The former maintains it took place before the reign of Ish-Bosheth.

(20) I.e., a small couch not used for rest, but placed in the home merely as an omen of good fortune.

(21) I.e., it was not necessary for him to eat and drink the food of others, whilst now it is.

(22) As is the rule with all other stools and beds in a house of mourning.

(23) V. M.K. 27a.

(24) V. p. 390, n. 1.

(25) Its strapping consisted of leather instead of ropes. Not being supported by long legs, it stood very low, and therefore, on practical grounds, the first Tanna maintains that it must not be undone and lowered, as the leather will be spoiled through the damp earth; whilst Rabban Simeon b. Gamaliel holds that there is no fear of this.

has the strapwork inside,[1] while an ordinary bed has the strapwork fixed over the frame.

An objection is raised: At what time do wooden utensils become susceptible to uncleanness?[2] A bed and a cradle when they are rubbed over with fish-skin.[3] Now if the ordinary bed has the strapwork over the frame, what need is there to rub over with fish-skin, [seeing that it is covered with the straps]? — Hence, both [a bed and a dargesh have the strappings] inside. But while the straps of a bed go in and out through slits, those of a dargesh go in and out through loops.

R.Jacob said in R. Joshua b. Levi's name: The halachah follows Rabban Simeon b. Gamaliel.

R.Jacob b. Ammi said: In the case of a bed whose poles[4] protrude [downward],[5] it is sufficient to set it up [on one side only].[6] MISHNAH. HE [THE KING] MAY LEAD FORTH [THE HOST] TO A VOLUNTARY WAR[7] ON THE DECISION OF A COURT OF SEVENTY-ONE. HE MAY FORCE A WAY THROUGH PRIVATE PROPERTY[8] AND NONE MAY OPPOSE HIM. THERE IS NO LIMITATION TO THE KING'S WAY.[9] THE PLUNDER TAKEN BY THE PEOPLE [IN WAR] MUST BE GIVEN TO HIM, AND HE RECEIVES THE FIRST CHOICE [WHEN IT IS DIVIDED].

GEMARA. But we have already once learnt it:[10] A voluntary war may be declared only by the permission of a court of seventy-one? — As the Tanna deals with all matters pertaining to the king, he also states [the law] concerning the declaration of a voluntary war.

Rab Judah said in Samuel's name: All that is set out in the chapter [dealing with the actions] of a king,[11] he is permitted to do. Rab said: That chapter was intended only to inspire them with awe,[12] for it is written, Thou shalt in anywise set him king over thee;[13] [i.e.,] his awe should be over thee.

[The same point of difference is found among the following] Tannaim; R. Jose said: All that is set out in the Chapter [relating to the king],[14] the king is permitted to do. R. Judah said: That section was stated only to inspire them with awe,[12] for it is written, Thou shalt in anywise set him king over thee,[13] [meaning], that his awe should be over thee. And thus R. Judah said: Three commandments were given to Israel when they entered the land: [i] to appoint a king,[15] [ii] to cut off the seed of Amalek,[16] and [iii] to build themselves the chosen house.[17] While R. Nehorai[18] said: This section[19] was spoken only in anticipation of their future murmurings,[20] as it is written, And shalt say, I will set a king over me etc.[21]

It has been taught: R. Eliezer[22] said: The elders of the generation made a fit request, as it is written, Give us a king to judge us.[23] But the am ha-arez[24] acted unworthily, at it is written, That we also may be like all the nations and that our king may judge us and go before us.[25]

It has been taught: R. Jose[26] said: Three commandments were given to Israel when they entered the land; [i] to appoint a king; [ii] to cut off the seed of Amalek; [iii] and to build themselves the chosen house [i.e. the Temple] and I do not know which of them has priority. But, when it is said: The hand upon the throne of the Lord, the Lord will have war with Amalek from generation to generation,[27] we must infer that they had first to set up a king, for ‘throne’ implies a king, as it is written, Then Solomon sat on the throne of the Lord as king.[28] Yet I still do not know which [of the other two] comes first, the building of the chosen Temple or the cutting off of the seed of Amalek. Hence, when it is written, And when He giveth you rest from all your enemies round about etc., and then [Scripture proceeds], Then it shall come to pass that the place which the Lord your God shall choose,[29] it is to be inferred that the extermination of Amalek is first. And so it is written of David, And it came to pass when the king dwelt in his house, and the Lord had given him rest from his enemies round about, and the passage continues; that the king said unto Nathan the Prophet: See

now, I dwell in a house of cedars etc.[30]

Resh Lakish said: At first, Solomon reigned over the higher beings;[31] as it is written, Then Solomon sat on the throne of the Lord as king;[32] afterwards, [having sinned,] he reigned [only] over the lower,[33] as it is written, For he had dominion over all the region on this side the river, from Tifsah even to Gaza.[34]

Rab and Samuel [explain this verse in different ways]: One says, Tifsah was situated at one end of the world[35] and Gaza at the other. The other says: Tifsah and Gaza were beside each other,[36] and just as he reigned over these, so did he reign over the whole world. But eventually his reign was restricted to Israel, as it is written, I Koheleth have been king over Israel etc.[37] Later, his reign was confined to Jerusalem alone, even as it is written, The words of Koheleth, son of David, king in Jerusalem.[38] And still later he reigned only over his couch,[39] as it is written, Behold it is the litter of Solomon, three-score mighty men are about it etc.[40] And finally, he reigned only over his staff as it is written, This was my portion from all my labour.[41]

Rab and Samuel [explain this differently]: One says: His staff [was all that was left him]; the other: His Gunda.[42]

Did he regain his first power, or not? Rab and Samuel [differ]: One maintains that he did; the other, that he did not. The one who says that he did not, agrees with the view that Solomon was first a king and then a commoner;[43] the other, who says that he did, agrees with the view that he was first king, then commoner and finally king again.

HE MAY FORCE A WAY THROUGH PRIVATE PROPERTY etc.

Our Rabbis taught: Royal treasures[44] [must be given] to the king; but of all other spoil, half to the king and half to the people. Abaye said to R. Dimi or, according to others, to Rab Aha: We quite understand it is the natural thing to give royal treasures [wholly] to the king; but where do we learn that of all other spoil he is to receive half? — From the verse,

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(1) I.e., the straps are attached on the inside through slits in the frame.

(2) An article cannot become unclean until it is completely finished for use.

(3) To polish the surface. Kel. XVI, 1.

(4) The נקליטין were two poles, fixed at the head and foot of the bedstead, in the centre probably of the width. To these a cross piece was attached, the whole forming a frame over which a curtain was slung.

(5) I.e., below the level of the bedding, to the space underneath.

(6) Because if actually lowered, it may appear to be standing in its usual position, since then the poles protrude upwards.

(7) In contradistinction to the obligatory war, which was directed against the seven nations that inhabited Canaan. Obligatory war includes also the campaign against Amalek or against an enemy attacking Israel. Voluntary war is waged merely with the object of extending territory. It might therefore be defined as a war of aggression, as opposed to a defensive war. V. Sot. 44b; Maim. Yad, Melakim 5, 1.

(8) For strategical purposes. V. ibid. 5, 3. Rashi, however, explains: To make a path to his field and vineyards.

(9) From B.B. 99b and 100b it appears that this is connected with the preceding: HE MAY FORCE etc. because THERE IS NO etc. Further, whereas a public thoroughfare was to be 16 cubits in breadth, his road might be unlimited.

(10) Supra 2a.

(11) I Sam. VIII.

(12) By indicating the extent of his authority, but not implying that he is permitted to abuse his power.

(13) Deut. XVII, 15.

(14) I Sam. VIII.

(15) Ibid.

(16) Ibid. XXV, 19.

(17) Ibid. XII, 10. The three were to be in that order.
(18) [Ms. M. 'R. Nehemiah.']
(19) Ibid. XVII, 14.
(20) It was not a command to appoint a king, but a prophecy that Israel would demand one; then, a king having been appointed, he would be subject to the laws stated in the section.
(21) Ibid.
(22) [This is a continuation of the preceding passage in Tosef. Sanh. IV, where the reading is 'R. Eliezer b. Jose'. The words, 'It has been taught' are omitted by Rashal.]
(23) I Sam. VIII, 6.
(24) Lit., 'people of the land', 'rustics', Talmudic term for illiterate or vulgar people.
(25) I Sam. VIII, 20. Thus the main purpose of the elders was to ensure law and order, whereas the 'am ha-aretz thought chiefly of warlike expeditions.
(26) V.l. 'R. Judah.'
(27) Ex. XVII, 16.
(28) I Chron. XXIX, 23.
(29) Deut. XII, 10.
(30) II Sam. VII, 1-2.
(31) I.e., his influence reached the highest spheres, the angels and the spirits.
(32) l Chron. XXIX, 23.
(33) I.e., his influence was on the wane.
(34) I Kings V, 4.
(35) [Tifsah would thus be identified (probably by Samuel, who was a Babylonian) with Thapsacus, the most important crossing-place of the middle Euphrates, above the mouth of the Belek.]
(36) [Tifsah would thus be identified (probably by Rab the Palestinian) with the town mentioned in II Kings XV, 16 near Mount Ephraim.]
(37) Eccl. I, 12.
(38) Ibid.
(39) Household.
(40) Cant. III, 7.
(41) Eccl. II, 10.
(42) a) A pitcher; b) an over-all, to protect clothes, c) a duster. V. Shab. 14b and 'Er. 21b, where it is related that Solomon instituted 'Erub (providing for the transportation of objects from one domain to another on the Sabbath day), and the washing of hands before touching holy food. Probably the 'staff' (measurestick) and 'pitcher' allude to these.
(43) Rashi in Git. 68b explains that his dominion was curtailed only as far as the higher beings (v. supra) were concerned.]
(44) Taken in war.

Talmud - Mas. Sanhedrin 21a

And anointed him [Solomon] unto the Lord to be prince, and Zadok to be priest.[1] Thus, the prince is compared with Zadok: just as in the case of Zadok [High Priest], half belonged to him, and half to his brethren, so also in the case of the ruler. And whence do we know it of Zadok himself? — As it has been taught, for Rabbi said: And it [the shewbread] shall be for Aaron and his sons;[2] this means, half belonged to Aaron and half to his sons.

MISHNAH. NEITHER SHALL HE MULTIPLY WIVES TO HIMSELF[3]. — ONLY EIGHTEEN. R. JUDAH SAID: HE MAY HAVE MORE, PROVIDED THEY DO NOT TURN AWAY HIS HEART. R. SIMEON SAID: HE MUST NOT MARRY EVEN ONE WHO MAY TURN AWAY HIS HEART. WHY THEN IS IT WRITTEN, NEITHER SHALL HE MULTIPLY WIVES TO HIMSELF?[4] — EVEN THOUGH THEY BE WOMEN LIKE ABIGAIL.[5]

GEMARA. Are we to assume that R. Judah interprets Biblical law on the basis of its reason,[6] and

R. Simeon does not?[7] But we find the reverse; for it has been taught: A pledge must not be taken from a widow, whether poor or rich, as it is written, Thou shalt not take the widow's raiment to pledge:[8] this is R. Judah's view. R. Simeon ruled: We may take a pledge of a rich widow but not of a poor one, for [in the latter case] thou art bound to return [the pledge] to her daily, and [thereby] cause her an evil name among her neighbours. Whereon we asked: What does he mean? [And the answer was:] Since thou hast taken a pledge of her, thou must return it to her [each evening][9] and so [by her frequent visits to thee] thou wouldst get her an evil name among her neighbours. Hence we see that R. Judah does not interpret the Biblical law according to its reason, while R. Simeon does![10] — Generally, indeed, R. Judah does not interpret Biblical law on the basis of its reason; here, however, it is different, for here he merely expounds the reason stated in the text. Thus: Why the command, he shall not multiply wives to himself? It is that his heart be not turned aside.[11]

And R. Simeon? — He could answer you: Let us see: Generally we interpret the law according to the reason implied;[12] then Scripture should have read, He shall not multiply wives to himself, and nothing further, and I would then have known that the reason was that his heart turn not away. Why then state: That his heart turn not away? — To imply that he must not marry even a single one who may turn away his heart. Then how am I to explain, he shall not multiply?[13] — [As meaning that he may not marry many] even though they be [women like Abigail.

Whence do we deduce the number eighteen? — From the verse, And unto David were sons born in Hebron; and his first-born was Ammon of Ahinoam the Jezreelitess; the second, Chileab of Abigail the wife of Nabal the Carmelite; the third Absalom the son of Maacah; and the fourth, Adonijah the son of Haggith; and the fifth, Shefatiah the son of Abital; and the sixth, Ithream of Eglah, David's wife. These were born to David in Hebron.[14] And of them the Prophet said: And if that were too little, then would I add unto thee the like of these, [Ka-hennah] and the like of these, [we-kahennah],[15] each ‘kahennah’ implying six, which, with the original six, makes eighteen in all. Rabina objected: Why not assume that ‘kahennah’ implies twelve,[16] and ‘we-kahennah’, twenty-four?[17] It has indeed been taught likewise: ‘He shall not multiply wives to himself beyond twenty-four.’ And according to him who interprets the redundant ‘waw’,[18] it ought to be forty-eight. And it has been taught even so: ‘He shall not multiply wives to himself, more than forty-eight.’ Then what is the reason of the Tanna of our Mishnah? — R. Kahana said: He parallels the second ‘kahennah’ with the first; thus, just as the first ‘kahennah’ indicates [an increase of] six, so does the second. But there was Michal too![19] — Rab said: Eglah is Michal. And why was she called Eglah? Because she was beloved by him, as an Eglah [calf] by its mother. And thus it is said, If ye had not ploughed with my heifer etc.[20] But did Michal have children? Is it not written, And Michal the daughter of Saul had no child unto the day of her death.?[21] — R. Hisda said: She had no child until the day of her death, but on the day of her death she did.[22]

Let us see then: His children are enumerated [as born] in Hebron, whereas the incident with Michal[23] occurred in Jerusalem,[24] as it is written, Michal the daughter of Saul looked out at the window, and saw king David leaping and dancing before the Lord, and she despised him in her heart.[25] And Rab Judah, or according to others, R. Joseph, said: Michal received her due punishment?[26] — But we might argue thus: Prior to that incident she did have [children], but after it she did not.

[Now as to the number eighteen:] Is it not stated, And David took him concubines and wives out of Jerusalem?[27] — To make up the eighteen. What are ‘wives’, and what are ‘concubines’? — Rab Judah said in Rab's name: Wives have ‘kethubah’[28] and ‘kiddushin’;[29] concubines have neither.

Rab Judah also said in Rab's name: David had four hundred children, and all born of yefoth to'ar;[30] they had long locks[31] and all drove[32] in golden carriages. They used to march at the head of the troops and were men of power in the household of David.

Rab Judah further said in Rab's name: Tamar was a daughter of a yefath to'ar, as it is written, Now therefore I pray thee,[33] speak unto the King, for he will not withhold me from thee.[34] Now, should you imagine that she was the offspring of a legitimate marriage, how could his sister have been granted him [in marriage]? We must infer therefore, that she was the daughter of a yefath-to'ar.

And Amnon had a friend, whose name was Jonadab the son of Shimeah, David's brother, and Jonadab was a very subtle man etc.[35] Rab Judah said in Rab's name: 'Subtle' to do evil. And he said unto him, Why, O son of the king, art thou thus becoming leaner . . . . And Jonadab said unto him, Lay thee down on thy bed and feign thyself sick . . . and she dress the food in my sight . . . And she took the pan and poured them [the cakes] out before him.[36] Rab Judah in the name of Rab said: She made for him some kind of pancakes.[37]

Then Amnon hated her with exceeding great hatred etc.[38] For what reason? — R. Isaac answered: A hair becoming entangled, mutilated him privily. If this happened of itself, what was her part in it? — But we might rather say that she entangled it and caused, mutilation. But is this so? Did not Raba expound: What is meant by the verse: And thy renown went forth among the nations for thy beauty.[39] It is that the daughters of Israel had neither under-arm nor pubic hair?[40] — It was otherwise with Tamar, for she was the daughter of a yefath to'ar.

And Tamar put ashes on her head and rent her garment of many colours.[41] It was taught in the name of R. Joshua b. Korha. In that hour Tamar set up a great fence [about chastity]. They[42] said: if this could happen to kings' daughters, how much more to the daughters of ordinary men; if this could happen to the chaste, how much more to the wanton?

Rab Judah said in Rab's name: On that occasion, they made a decree

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(1) I Chron. XXIX, 22.

(2) Lev. XXIV, 9.

(3) Deut. XVII, 17.

(4) Ibid. From which it might be inferred that he may marry a lesser number even if they should corrupt him.

(5) I.e., even of the most virtuous, only eighteen are permitted, and not a single one who misleads is permitted. Abigail was the wife of Nabal the Carmelite. (I Sam. XXV, 3.) She is regarded in the Aggadah as one of the most remarkable women in Jewish history. V. Meg 15a.

(6) Lit., 'he searches out the reason of the verse'.

(7) Therefore, notwithstanding the explicit statement that the king must not multiply wives, R. Judah permits it, where the feared consequences will not follow; whilst R. Simeon keeps to the letter of the law.

(8) Deut. XXIV, 17.

(9) Ibid. 13.

(10) By differentiating between poor and rich widows.

(11) Therefore in his opinion, Scripture itself restricts the law to these conditions.

(12) [Ms M. omits, 'Generally . . . implied.']

(13) From which it is inferred that a small number is permissible.

(14) II Sam. III, 2-5.

(15) Ibid. XII, 8.

(16) I.e., as many again, six and six.

(17) He increases the number in geometrical progression, i.e., 6: 12: 24.

(18) In 'we-kahennah'. The prefix 'waw' between two words or sentences at the beginning of a chapter, which does not necessarily express their relations to one another, is used for interpretation by some Sages. v. infra 51b.

(19) Additional to the six wives enumerated.

(20) Of Delilah, Judges XIV, 18.

(21) II Sam. VI, 23.

(22) I.e., she died in child-birth.
(23) As a consequence of which she was punished with childlessness.
(24) That is, later.
(25) II Sam. VI, 16.
(26) Childlessness. מיטרפסא, lit., 'debt matured for collection by seizure' (Jast.).
(27) II Sam. V, 13. Hence it appears that he had many.
(28) V. p. 34, n. 4.
(29) Legal and legitimate marriage. V. Glos.
(30) Captive woman taken as concubines by the king because of their beauty. V. Deut. XXI, 10-13 .
(31) [Lit., 'they grew a belorith' (etym. obscure), a heathen fashion of growing locks from the crown of the head, hanging down in plaits at the back; v. Krauss, TA. I, 645].
(32) Lit., 'sat'.
(33) Amnon.
(34) II Sam. XIII, 13.
(35) Ibid. 3.
(36) Ibid. 4 et seq.
(37) ** frying-pan.
(38) II Sam. XIII, 15.
(39) Ezek. XVI, 14.
(40) Before they sinned. (Rashi.)
(41) II Sam. XIII, 19.
(42) All the other women.

Talmud - Mas. Sanhedrin 21b

against yihud[1] with [a married] or unmarried woman. But surely the prohibition of yihud with a married woman is a Biblical law! For R. Johanan said on the authority of R. Simeon b. Jehozadak: Where is [the prohibition of] yihud alluded to in the Biblical text? It is written: if thy brother, the son of thy mother entice thee.[2] Is it then only the son of a mother that can entice, and not the son of a father? But it is to teach that only a son may be alone with his mother; but no other man may be alone with women Biblically interdicted on account of incest![3] — Say rather that they enacted a decree against yihud with unmarried women.

And Adonijah the son of Haggith exalted himself, saying:' I will be king.[4] Said Rab Judah in the name of Rab: This teaches us that he attempted to fit [the crown on his head] but it would not fit him.[5]

And he prepared him chariots and horses and fifty men to run before him.[6] What is there remarkable in this?[7] — Rab Judah said in Rab's name: They all had their spleen[8] and also the flesh of the soles of their feet cut off.[9] MISHNAH. HE SHALL NOT MULTIPLY HORSES UNTO HIMSELF[10] — ONLY AS MANY AS SUFFICE FOR HIS CHARIOT. AND SILVER AND GOLD HE SHALL NOT GREATLY MULTIPLY UNTO HIMSELF[11] — ONLY AS MUCH AS IS REQUIRED FOR 'ASPANYA'.[12] AND HE SHALL WRITE IN HIS OWN NAME A SEFER TORAH.[13] WHEN HE GOES FORTH TO WAR HE MUST TAKE IT WITH HIM; ON RETURNING, HE BRINGS IT BACK WITH HIM; WHEN HE SITS IN JUDGMENT IT SHALL BE WITH HIM, AND WHEN HE SITS DOWN TO EAT, BEFORE HIM, AS IT IS WRITTEN: AND IT SHALL BE WITH HIM AND HE SHALL READ THEREIN ALL THE DAYS OF HIS LIFE.[14]

GEMARA. Our Rabbis taught: He shall not multiply horses to himself [lo]:[15] I might think, [this meant] not even such as are required for his horsemen and chariots. Scripture therefore states: 'lo' [to himself]: for himself[16] he may not multiply, but he may multiply as many as are required for his

chariots and horsemen. How then am I to interpret the word horses?[17] — As [referring to] horses that stand idle.[18] And whence do we know that even a single idle horse comes under such a prohibition? — Scripture states: that he should multiply sus [a horse].[19] But if even a single idle horse involves [the prohibition,] He shall not multiply, why state horses [plural]? — To show us that with each single idle horse he transgresses anew the prohibitory command.

[Reverting to chariot horses:] Thus, it is only because Scripture wrote 'lo' [to him]: but otherwise, might we have thought that even those necessary for his chariots and horsemen are forbidden?[20] — It is necessary here to permit a large number.[21]

AND SILVER AND GOLD HE SHALL NOT MULTIPLY UNTO HIMSELF etc.

Our Rabbis taught: And silver and gold he shall not multiply 'lo' [unto himself]:[22] I might think [this meant] even for 'aspanya'. Therefore Scripture writes, 'lo'; only for himself [i.e., his own use] may he not multiply silver and gold, but he may do so for 'aspanya'. Thus, it is only because Scripture wrote 'lo': but otherwise, might we have thought that the prohibition extended even to money for 'aspanya'?[23] — [the word] is necessary here only to permit him a more generous provision.

Now that you say that 'lo' [to him] is for purpose of exegesis, how will you interpret, He shall not multiply wives 'lo' [to himself]?[24] — As excluding commoners.[25]

Rab Judah raised a point of contradiction [in the following passages:] It is written, And Solomon had forty thousand stalls of horses for his chariots.[26] But elsewhere we read, And Solomon had four thousand stalls for horses and chariots.[27] How are these [to be reconciled]? Thus: If he had forty thousand stables, each of them must have contained four thousand horsestalls; and if he had four thousand stables, each of them must have contained forty thousand stalls.

R. Isaac raised the following point of contradiction: It is written, Silver was nothing accounted for in the days of Solomon,[28] and further, And the king made silver to be in Jerusalem [as plentiful] as stones.[29] [Hence it had some value?] But these verses present no difficulty; the former refers to the period before he married Pharaoh's daughter; the latter, to the period after he married her.[30]

R. Isaac said: When Solomon married Pharaoh's daughter, Gabriel[31] descended and stuck a reed in the sea, which gathered a sand-bank around it, on which was built the great city of Rome.[32]

R. Isaac also said: Why were the reasons of [some] Biblical laws not revealed? — Because in two verses reasons were revealed, and they caused the greatest in the world [Solomon] to stumble. Thus it is written: He shall not multiply wives to himself,[33] whereon Solomon said, 'I will multiply wives yet not let my heart be perverted.' Yet we read, When Solomon was old, his wives turned away his heart.[34] Again it is written: He shall not multiply to himself horses;[35] concerning which Solomon said, 'I will multiply them, but will not cause [Israel] to return [to Egypt].' Yet we read: And a chariot came up and went out of Egypt for six [hundred shekels of silver].[36]

AND HE SHALL WRITE IN HIS OWN NAME A SEFER TORAH. A Tanna taught: And he must not take credit[37] for one belonging to his ancestors.

Rabbah said: Even if one's parents have left him a Sefer Torah, yet it is proper that he should write one of his own, as it is written: Now therefore write ye this song[38] for you.[39]

Abaye raised an objection: 'He [the king] shall write a Sefer Torah for himself, for he should not seek credit[40] for one [written] by others:' [Surely, this implies] only a king [is thus enjoined], but

not a commoner? — No, it is necessary here to teach the need for two Scrolls of the Law [for the King], even as it has been taught: And he shall write him the repetition[41] of this law,[42] [i.e.,] he shall write for himself two copies, one which goes in and out with him and the other to be placed in his treasure-house. The former which is to go in and out with him, [he shall write in the form of an amulet[43] and fasten it to his arm, as it is written, I have set God always before me, surely He is at my right hand, I shall not be moved.][44] He may not, while wearing it, enter the bath house, or the closet, as it is written: And it shall be with him and he shall read therein[45] — in places appropriate for reading it.

Mar Zutra or, as some say, Mar 'Ukba said: Originally the Torah was given to Israel in Hebrew characters and in the sacred [Hebrew] language; later, in the times of Ezra,[46] the Torah was given in Ashshurith script[47] and Aramaic language. [Finally], they selected for Israel[48] the Ashshurith script and Hebrew language, leaving the Hebrew characters and Aramaic language for the hedyototh. Who are meant by the 'hedyototh'? — R. Hisda answers: The Cutheans.[49] And what is meant by Hebrew characters? — R. Hisda said: The libuna'ah script.[50]

It has been taught: R. Jose said: Had Moses not preceded him, Ezra would have been worthy of receiving the Torah for Israel. Of Moses it is written, And Moses went up unto God,[51] and of Ezra it is written, He, Ezra, went up from Babylon.[52] As the going up of the former refers to the [receiving of the] Law, so does the going up of the latter. Concerning Moses, it is stated: And the Lord commanded me at that time to teach you statutes and judgments;[53] and concerning Ezra, it is stated: For Ezra had prepared his heart to expound the law of the Lord [his God] to do it and to teach Israel statutes and judgments.[54] And even though the Torah was not given through him, its writing was changed through him, as it is written:

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(1) Private meetings of the sexes.

(2) Deut. XIII, 7.

(3) Incest includes adultery. Hence the prohibition of yihud with married women originates in the Bible.

(4) I Kings I, 5.

(5) An Aggadah quoted by Rashi runs as follows: A golden rod passed through the hollow of the crown, from one end to the other, which fitted into a cleft or indenture in the skull — a mark peculiar to some in the house of David. Only he whom the crown fitted was deemed worthy to be king.

(6) Ibid.

(7) Surely, fifty men for a prince is no exception.

(8) The spleen causes a feeling of heaviness (Rashi). [The old belief that the removal of the spleen facilitates fast running is also recorded by Plinius, v. Preuss, Biblischtalmudische Medizin, p. 249.]

(9) So that they might be fleet of foot and impervious to briars and thorns.

(10) Deut. XVII, 16.

(11) Ibid. 17.

(12) The Aruch and the TJ render it 'Afsanya' from **, soldiers' pay, v. p. 95, n. 1.

(13) Book of the law.

(14) Deut. XVII, 19.

(15) לוֹ Ibid, 16.

(16) I.e., for his own private use.

(17) Ibid. Which are generally harnessed to chariots, so implying a restriction of them even for that purpose, otherwise it should have read his horses.

(18) And which bring only personal grandeur.

(19) Deut. XVII, 16.

(20) Surely not — a king without these would be a nonentity.

(21) I.e., he may have many for that purpose.

(22) Deut. XVII, 17.

(23) Which latter surely is essential

(24) Ibid.
(25) Who are not so restricted in wives.
(26) I Kings V, 6.
(27) II Chron. IX, 25.
(28) I Kings X, 21.
(29) Ibid. XXVII, 3.
(30) In punishment for which the prosperity of the country waned; hence silver assumed some value.
(31) V. p. 99, n. 6.
(32) By this, his moral weakness, he laid the foundations of a hostile world symbolised by the Talmud as Rome, which overthrew Israel.
(33) 'That his heart turn not away', Deut. XVII, 17.
(34) I Kings XI, 4.
(35) So as not to cause the people to return to Egypt, the great horse market. Deut. XVII, 17.
(36) I Kings X, 29. Israelites went to and fro, trading with Egypt.
(37) Lit., 'adorn himself with'.
(38) The Book of the Law which includes the Song (Deut. XXXII): Maim. Yad, Sefer Torah VII, 2. In Aggadah we meet frequent references to 'Song' as the symbol of the Torah. Cf. Hul. 133a.
(39) Deut. XXXI, 19.
(40) Lit., 'adorn himself with'.
(41) משנה (E.V. 'copy').
(42) Deut. XVII, 18.
(43) In minuscule (Rashi).
(44) Ps. XVI, 8. Rashal deletes the whole of the bracketed passage.
(45) Deut. XVII, 19.
(46) Neh. VIII, 1ff.
(47) Assyrian; modern Hebrew square writing.
(48) [R. Han. reads, 'Israel chose for themselves'.]
(49) 'The Samaritans', so called because they were brought by Sargon, king of Assyria, from Cuthea, to take the place of the exiled Israelites. (V. II Kings XVII, 24 ff.). The reason for the change from Hebrew to Assyrian characters, was to build a greater barrier between the Samaritans and the Jews. V. Weiss, Dor, v. I, 59.
(50) Rashi: Large characters as employed in amulets. R. Tam, in Tosaf. s. v. כתב recognises in 'libuna'ah' an adjective from the name of some locality. (Lebanon, or Libya?) Another opinion is that libuna'ah is derived from 'lebenah', brick; hence writing found on clay-tablets. V. J.E. I, p. 445.
(51) Ex. XIX, 3.
(52) Ezra VII, 6.
(53) Deut. IV, 14.
(54) Ezra VII, 10.

Talmud - Mas. Sanhedrin 22a

And the writing of the letter was written in the Aramaic character and interpreted into the Aramaic [tongue].[1] And again it is written, And they could not read the writing nor make known to the king the interpretation thereof.[2] Further, it is written: And he shall write the copy [mishneh] of this law,[3] — in writing which was destined to be changed.[4] Why is it called Ashshurith? — Because it came with them from Assyria.[5]

It has been taught: Rabbi said: The Torah was originally given to Israel in this [Ashshurith] writing. When they sinned, it was changed into Ro'az.[6] But when they repented,[7] the [Assyrian characters] were re-introduced, as it is written: Turn ye to the stronghold, ye prisoners of hope; even to-day do I declare that I will bring back the Mishneh unto thee.[8] Why [then] was it named Ashshurith?[9] — Because its script was upright [me'ushshar].

R. Simeon b. Eliezer said on the authority of R. Eliezer b. Parta, who spoke on the authority of R. Eleazar of Modin: This writing [of the law] was never changed, for it is written: The 'waws' [hooks] of the pillars.[10] As the word 'pillars' had not changed, neither had the word 'wawim' [hooks].[11] Again it is written, And unto the Jews, according to their writing and language[12] ; as their language had not changed, neither had their writing. Then how shall I interpret the words, and he shall write for himself Mishneh [a copy] of this law?[13] — As indicating the need of two written Torahs; the one to go in and out with him; the other to be deposited by him in his treasure-house. The one that is to go in and out with him, he is to write in the form of an amulet and attach to his arm, as it is written, I have set God always before me.[14] But how does the other [who maintains that the writing was changed][15] interpret, I have set [etc.]? — He employs it as R. Hanah b. Bizna, who said in the name of R. Simeon the Pious: He who prays should regard himself [i.e., behave] as if the Shechinah were before him, as it is written, I have set God always before me.[16]

But what can the phrase, they could not read the writing, mean [on the view of R. Simeon, who asserts that this writing was not changed]? — Rab said: The passage was written in Gematria:[17] Y-T-T. Y-T-T. 'A-D-K. P-U-G-H-M-T.[18] How did he interpret it to them? — As M-N-A. M-N-A. T-K-L. U-F-R-S-Y-N.[19] — 'Mene', God has numbered thy kingdom and brought it to an end. 'Tekel', thou art weighed in the balances and art found wanting. 'Peres', thy kingdom is divided and given to the Medes and Persians.

Samuel said: [It was written thus:] M-M-T-U-S. N-N-K-F-Y. 'A-'A-L-R-N.[20] R. Johanan said: [It was written:] A-N-M. A-N-M. L-K-T-N-Y-S-R-F-U;[21] while R. Ashi says: It was written: N-M-A. N-M-A.K-T-L. F-U-R-S-Y-N.[22]

MISHNAH. NO ONE MAY RIDE ON HIS [THE KING'S] HORSE, OR SIT ON HIS THRONE, OR MAKE USE OF HIS SCEPTRE, NO ONE MAY SEE HIM WHEN HIS HAIR IS BEING CUT, OR WHEN HE IS NAKED, OR WHEN IN HIS BATH, FOR IT IS WRITTEN: THOU SHALT SURELY SET OVER THEE A KING[23] — THAT HIS AWE MAY BE OVER THEE.

GEMARA. R. Jacob said in R. Johanan's name: Abishag was permitted to Solomon [in marriage][24] but not to Adonijah.[25] She was permitted to Solomon, for he was a king, and a king may make use of the king's sceptre;[26] but she was forbidden to Adonijah, for he was a commoner.

What are the facts regarding Abishag? — It is written: King David was old, stricken in years etc. His servants said unto him, Let there be sought etc. Further it is written, They sought for him a fair damsel etc.; and it is written, And the damsel [Abishag] was very fair, and she became a companion to the king and ministered unto him.[27] She said to him, 'Let us marry,' but he [David] said: 'Thou art forbidden to me.'[28] 'When courage fails the thief, he becomes virtuous,'[29] she gibed. Then he said to them [his servants], 'Call me Bath-Sheba'. And we read: And Bath-Sheba went to the king into the chamber.[30] Rab Judah said in Rab's name: On that occasion Bath-Sheba dried herself thirteen times.[31]

R. Shaman b. Abba said: Come and see with what great reluctance is divorce granted; King David was permitted yihud [with Abishag], yet not divorce [of one of his wives].[32]

R. Eliezer[33] said: For him who divorces the first wife, the very altar sheds tears, as it is written: And this further ye do, ye cover the altar of the Lord with tears, with weeping and with sighing, in so much that he regardeth not the offering any more, neither receiveth it with good will at your hand.[34] Further it is written: Yet ye say, Wherefore? Because the Lord hath been witness between thee and the wife of thy youth, against whom thou hast dealt treacherously, though she is thy companion and the wife of thy covenant.[35]

R. Johanan or, as some say, R. Eleazar said: The death of a man's wife may only be ascribed to his failure to pay his debts,[36] as it is said: If thou hast not wherewith to pay, why should he take away the bed from under thee?[37] R. Johanan also said: He whose first wife has died, [is grieved as much] as if the destruction of the Temple had taken place in his days, as it is written: Son of man, behold I take away from thee the desire of thine eyes with a stroke; yet thou shalt not make lamentation nor weep; neither shall thy tears run down.[38] Again it is written, And I spoke unto the people in the morning, and at even my wife died. And further it is written, Behold I will profane my Sanctuary, the pride of your power, the desire of your eyes.[39]

R. Alexandri said: The world is darkened for him whose wife has died in his days [i.e., predeceased him], as it is written, The light shall be dark because of his tent[40] and his lamp over him shall be put out.[41] R. Jose b. Hanina said: His steps grow short,[42] as it is said: The steps of his strength shall be straightened.[43] R. Abbahu said: His wits collapse, as it is written, And his own counsel shall cast him down.[44]

Rabbah b. Bar Hannah said in R. Johanan's name: To effect a union between man and woman is as difficult as the dividing of the Red Sea,[45] as it is written: God maketh the solitary dwell in houses; He bringeth out the prisoners unto prosperity.[46] But is it really so? Did not Rab Judah say in Rab's name: Forty days before the embryo is formed, a heavenly voice goes forth and says: The daughter of so and so for so and so?[47] — There is no difficulty: this applies to the first marriage; the earlier statement, to the second.

R. Samuel b. Nahman said: All things can be replaced, except the wife of one's youth, as it is written, And a wife of [one's] youth, can she be rejected?[48]

Rab Judah taught his son R. Isaac: Only with one's first wife does one find pleasure,[49] as it is said: Let thy fountain be blessed and have joy of the wife of

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(1) Ezra IV, 7.

(2) Dan. V, 8; i.e., none except Daniel could read it, which shows that the Assyrian characters were not popularised until the days of Ezra.

(3) Deut. XVII, 18.

(4) The root שנה of the word משנה means ‘to repeat’ and also ‘to change’, indicating that the writing was destined to be changed. V. also Zeb. 62b.

(5) [Assyria stands here for Babylon, cf. Jer. II, 18: Ezra VI, 22]

(6) רועץ, akin to רצץ ‘to break, or dash into pieces’ (cf. Isa. XLII, 3), hence, ‘broken’, ‘rugged’ _ the form of the Samaritan script. [The variant דועץ receives support from the word deession given by Epiphanius in a passage reporting the tradition about the change of the script and which he translates insculptum, applicable to the ancient chiselled type, as distinguished from the flowing cursive of the Hebrew characters (Montgomery, The Samaritans, p. 281 ff.); v. Krauss, op. cit. III, 138 ff.]

(7) In the days of Ezra.

(8) Zech. IX, 12. Again, a play on ‘shanah’ ‘to change’, ‘to restore’, ‘to double or bring back’, the Mishneh, the earlier writing which was due to suffer change as above.

(9) Since on the view of Rabbi, they did not bring it from Assyria.

(10) Ex. XXVII, 10.

(11) Waw in Heb. means ‘hook’, and is also the sixth letter of the alphabet which resembles a hook, and according to the argument here, the very fact that the letter waw meant a hook in the days of Moses, shews that it must have borne that shape then as now, and is therefore unchanged.

(12) Esth. VIII, 9.

(13) Mishneh here =, ‘a double.’ V. n. 3.

(14) Ps. XVI, 8. V. supra p. 118, n. 12.

(15) By deduction from the word Mishneh, according to which the king had only one Sefer Torah, since there is now

nothing to indicate two, and this was probably placed in his treasure house. V 'Anaf-Yosef' on En Jacob a.l.

(16) [The problem of the origin of the Hebrew Alphabet, as well as the question how and when the change of the script was effected, remains unsolved, despite the many attempts by distinguished scholars, mediaeval and modern. For the literature on the subject, v. Bergstrasser. G., Hebraische Grammatik, p. 29 ff., to which may be added Grunberg, S., Die ursprungliche Schrift des Pentateuchs (cf. Munk, M., Ezra Ha Sofer, p. 69 ff.); and Goldschimdt, V., Unser Alphabet, both of which are in support of the view of Rabbi.]

(17) Either (a) a cryptograph which gives, instead of the intended word, its numerical value, or (b) a cipher produced by the permutation of letters, as in this case (Levias, c., J. E., v. 589.) The etymology of Gematria is obscure. Generally derived from **, 'notarius', v. loc. cit.

(18) יות יטת אדך פוגחמט

(19) By interchanging the letters of the alphabet on the at bash את בש principle, the first with the last; the second with the one before the last etc. The Hebrew then reads: מנא מנא תקל ופרסין Mene, Mene, Tekel, Upharsin.

(20) [The original words here ** were written vertically, ** not horizontally, thus:] **

(21) אנם אנם לתק ניסרפן , the left-right direction being used instead of the right-left. [These systems of permutation were not artificial creations, but were well known methods of writing in secret code. V. Gandz, S., Proceedings of the American Academy for Jewish Research, IV, 89.]

(22) נמא נמא קתל פורסין i.e., Daniel shifted the second letter of each word to the beginning.

(23) Deut. XVII, 15.

(24) Had he so wished.

(25) Solomon's elder brother who wished to secure Abishag for his wife, as an inheritance from his father, as a public confirmation of his claim to the throne, in accordance with the archaic law of succession, [cf. II Sam. XII, 8 and Herodotus III, 68].

(26) I.e., all that belonged to the King, including his harem.

(27) I Kings I, 1-5 ff.

(28) Since he had already the allotted number of eighteen wives.

(29) So taunting him with impotence.

(30) I Kings I, 15.

(31) I.e., they had intercourse.

(32) Which would have rendered Abishag permissible to him for marriage.

(33) [Ms. M.: R. Eleazar (b. Pedath), v. Git. 90b.]

(34) Mal. II, 13.

(35) Mal. II, 14.

(36) The principle of 'measure for measure' (cf. Sotah 8b) is taken to be applicable here; as the man has deprived another of his possession, he is punished by the loss of his dearest possession.

(37) Prov. XXII, 27.

(38) Ezek. XXIV, 16-18.

(39) Likening the death of one's wife, whom the Rabbis regarded as the principal factor in guarding the sanctity of the home, to the destruction of the Sanctuary.

(40) באהלו (E.V. 'in his tent'), used metaphorically for wife. Hence, The light shall be dark because of the loss of his wife.' V. Deut. V, 30. M. K. 7b.

(41) Job XVIII, 6.

(42) His bodily strength diminishes.

(43) Ibid. 7.

(44) Ibid.

(45) For the passage of the Israelites.

(46) Ps. LXVIII, 7. This is derived from the juxtaposition of the two parts of the verse, thus comparing the difficulty of making the solitary unite and dwell in houses as man and wife to that of delivering the Israelites from Egypt, i.e., of bringing out the prisoners from bondage unto prosperity. Current texts continue: 'Read not מוציא but כמוציא (as when He bringeth out). Again, read not בכושרות but בכי שירות (with wailing and song).' I.e., just as the deliverance of Israel brought forth wailing from Egypt and rejoicing from the Israelites, so is it when there is no mutual satisfaction in married life (cf. Midrash Tanhuma 'Thisa 5). This passage is, however, missing in most editions and Ms. M; v. D.S. a.l.

(47) I.e., since marriage is predestined, what is the difficulty in mating man and woman?
(48) Isa. LIV, 6.
(49) Lit., 'quickening of spirit'.

Talmud - Mas. Sanhedrin 22b

thy youth.[1] 'Of what kind of woman do you speak?' he asked him. — 'Of such as your mother', was the reply. But is this true? Had not Rab Judah taught his son R. Isaac, the verse: And I find more bitter than death the woman whose heart is snares and nets,[2] and he [the son] asked him: 'What kind of woman?' He answered. 'Such as your mother'? — True, she was a quick-tempered woman but nevertheless easily appeased with a word.

R. Samuel b. Unya said in the name of Rab: A woman [before marriage] is a shapeless lump,[3] and concludes a covenant only with him who transforms her [into] a [useful] vessel, as it is written: For thy maker is thy husband; the Lord of Hosts is his name.[4]

A Tanna taught: The death of a man is felt by none but his wife; and that of a woman, but her husband. Regarding the former, it is said: And Elimelech, Naomi's[5] husband, died.[6] And regarding the latter it is written: And as for me, when I came from Padan, Rachel died unto me.[7]

NOR MAY ONE SEE HIM etc. Our Rabbis taught: The king has his hair trimmed every day; the High Priest, every eve of the Sabbath, and a common Priest, once in thirty days.

'The king has his hair trimmed every day.' as it is written, Thine eyes shall see the king in his beauty.[8] 'The High Priest, every eve of the Sabbath.' R. Samuel b. Nahman said in R. Johanan's name: This is because of the [weekly] renewal of the priestly watches.[9]

'The Common Priest, once in thirty days,' because it is written: Neither shall they shave their heads nor suffer their locks [pera'] to grow: they shall only poll their heads.[10] Identity of law is deduced from [the use of] pera' here and in the section on the Nazirite; here it is written, They shall not let their locks [pera'] grow; while there it is stated, He shall let the locks [pera'] of the hair of his head grow long;[11] Just as there, [a] thirty days' [growth is meant], so here too.[12] And we also learnt:[13] The period for unspecified neziruth[14] is thirty days. Whence do we deduce this in the other passage?? — R. Mathna said: Scripture states, He shall be [yihyeh] holy;[15] the gematria[16] of yihyeh being thirty.[17]

R. Papa said to Abaye: But perhaps [it means] that they shall not [let their hair] grow so long — [i.e. for a full month]?[18] — He answered: Were it written, 'They shall not let [their hair] grow to become 'pera''; it would have meant what you suggest. But since the text reads, And their locks [pera'] they shall not let grow, it implies that they may let it become 'pera'' but thereafter must not let it grow longer. If so [that the prohibition is based on that verse], it should [hold good] even nowadays, [when there is no Temple]! — This [restriction] is analogous to [that of] wine: just as wine was forbidden [them] only when they entered [the Temple],[19] but permitted at any other time, so is the growing of hair forbidden only when there is entry [into the Temple] and permitted at all other times. But is wine permitted them when there is no entering into the Temple? Has it not been taught: Rabbi said: In my opinion, Priests should by right be at all times forbidden to drink wine,[20] but what can I do, seeing that 'their calamity [the destruction of the Temple] has been to their advantage in the matter?[21] Whereon Abaye said: In agreement with whom do priests drink wine nowadays? In agreement with Rabbi. It may therefore be inferred that the Rabbis forbid it![22] — In that case, the reason is this: the Temple might speedily be rebuilt and when a priest suitable for its service is required, he might not be found. Then here too [i.e., regarding the restriction of hair-growth] may not the same thing happen? — In the latter case, it is possible to trim the hair and

[immediately] enter. But there too [sc. wine drinking], one can slumber a while [i.e., sleep it off] and then enter? For R. Aha said: A mil's walk or a little sleep counteracts [the effects of] wine. But surely it was stated of this: R. Nahman said in R. Abbahu's name: This applies only to one who has drunk not more than a rebi'ith;[23] but if he has drunk more, the walk will only cause more fatigue, and the sleep more drunkenness!

R. Ashi said: Since those drunk with wine defile the service [if they officiate], the Rabbis enacted that precautionary measure;[24] but seeing that those with long hair do not defile the service, they made no decree against them.

An objection is raised: The following [priests] are liable to death: those who let their hair grow and those who are drunk with wine.[25] Now, as for those drunk with wine, it is correct, because it is written, Drink no wine nor strong drink, thou nor thy sons with thee, that ye die not.[26] But whence do we know it of those with long hair? — Because the former is assimilated to the latter, for it is written, Neither shall they shave their heads nor suffer their locks to grow long, which is followed by, Neither shall they drink wine etc. Hence, just as drunkenness [during the service] is punishable by death, so is the growth of long hair. And it also follows, just as drunkenness defiles the Temple service, so does the growing of long hair![27] This is a difficulty.[28]

Rabina said to R. Ashi: Before Ezekiel came, and told us this [that those who let their hair grow and officiate thus are punishable by death], who stated it?[29] — But according to your view,[30] what of R. Hisda's statement, [viz.,] This law[31] was not learnt from the teaching of Moses our teacher, until Ezekiel came and taught, No alien, uncircumcised in heart and uncircumcised in flesh shall enter into my Sanctuary to serve me.[32] But before Ezekiel came, who stated it? Consequently, it must have been a tradition, and then Ezekiel came and found a support for it in Scripture [i.e., the Pentateuch]. Similarly, here too, [in the question of hair-growth] it was a traditional teaching, and Ezekiel merely upheld it in the passage quoted [further, the Halachah, as handed down, states only that they are liable to death, but not that they defile the Temple-service].[33]

What is the meaning of, They shall only poll their heads? — A Tanna taught: Hair cut in the Julian style.[34] What was that? — Rab Judah said in Samuel's name: A unique manner of hairdressing. Yet what was it like? R. Ashi said: The ends of one row [of hair] lay alongside the roots of the next.

Rabbi was asked: In what fashion was the hair of the High Priest cut? — He answered: Go and observe the haircut of Ben Eleasa.[35] It has been taught: Not for nothing did Ben Eleasa expend money so lavishly upon his hairdressing, but to display the High-Priestly fashion. [

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(1) Prov. V, 18.

(2) Eccl. VII, 26.

(3) I.e., of undetermined character.

(4) Isa. LIV, 5. As God formed the character of Israel so does a husband that of the wife.

(5) Showing that the loss was chiefly hers.

(6) Ruth I, 3.

(7) Gen. XLVIII, 7.

(8) Isa. XXXIII, 17.

(9) In charge of the Temple Service.

(10) Ezek. XLIV, 20.

(11) Num. VI, 5.

(12) I.e., they were not to let their hair grow untrimmed for thirty days.

(13) In support of the statement cited. Cf. Nazir 5a.

(14) V. Glos.

(15) Ibid.
(16) V. supra p. 121, n. 4.
(17) The numerical value of יהיה is 10+5+10+5=30.
(18) Thus Tosaf. s. v. ואימא. The text has כלל, according to which R. Papa asks: Perhaps it means that they should not let their hair grow long at all? Rashal, following the interpretation of Tosaf. deletes כלל. Epstein, B. (Torah Temimah on Num. VI, 5) makes the ingenious suggestion that the word כלל comprises the two words כל ל (the full thirty days).
(19) Ezek. XLIV, 21: Neither shall any priest drink wine when they enter into the inner court.
(20) As a precautionary measure against drunkenness lest the Temple be suddenly rebuilt and the Priests called upon to enter upon its service, [cf. Yad Ramah].
(21) The fact that the Temple is destroyed makes their speedy re-instatement remote.
(22) Even in the post-Temple age. Should not pera' then also be forbidden, for no priest can know when he should be on duty and when not?
(23) A liquid measure, a quarter of a log (the contents of six eggs).
(24) That even at this day Priests may not drink lest the Temple be suddenly rebuilt and their services needed.
(25) Tosef. Ker. I.
(26) Lev. X, 9.
(27) Hence, on this premise, it should be forbidden even to-day?
(28) Cf. Ta'an. 17b and v. p. 128, n. 1.
(29) For, if there was no source, the offence could not be punishable thus.
(30) That a previous source was required.
(31) That an uncircumcised priest is incompetent to serve in the Temple.
(32) Ezek. XLIV, 9.
(33) S. Luria deletes the bracketed passage. [This is indeed the reply given in Ta'an 17b to the question which is here left unanswered supra 127, v. n. 5.]
(34) [The reference is not clear, v. Krauss, op. cit. I, 644]
(35) Rabbi's son-in-law.

Talmud - Mas. Sanhedrin 23a

C H A P T E R I I I

MISHNAH. CIVIL ACTIONS [ARE TO BE TRIED] BY THREE. EACH [LITIGANT] CHOOSES ONE, AND THE TWO JOINTLY CHOOSE A THIRD: SO HOLDS R. MEIR. BUT THE SAGES RULE: THE TWO JUDGES NOMINATE THE THIRD. EACH PARTY MAY OBJECT TO THE JUDGE CHOSEN BY THE OTHER, SO HOLDS R. MEIR. BUT THE SAGES SAY: WHEN IS THIS SO? ONLY IF THE OBJECTOR ADDUCES PROOF THAT THEY ARE EITHER KINSMEN OR [OTHERWISE] INELIGIBLE; BUT IF FIT OR RECOGNISED BY THE BETH DIN AS MUMHIN,[1] THEY CANNOT BE DISQUALIFIED.

EACH PARTY MAY REJECT THE WITNESSES PRODUCED BY THE OTHER:[2] SO HOLDS R. MEIR. BUT THE SAGES SAY, WHEN IS THIS SO? ONLY WHEN PROOF IS BROUGHT THAT THEY ARE EITHER KINSMEN OR [OTHERWISE] INELIGIBLE; BUT IF THEY ARE [LEGALLY] ELIGIBLE, NO ONE CAN DISQUALIFY THEM.

GEMARA. Why should each of the parties choose one [Beth din]:[3] do not three [judges] suffice? — The Mishnah is meant thus: If each party chose a different Beth din, [so that one is not mutually accepted], they must jointly choose a third.[4] Can then the debtor too reject [the Beth din chosen by the creditor]? Did not R. Eleazar say:[5] This refers only to the creditor; but the debtor can be compelled to appear for trial in his [the creditor's] town? — It is as R. Johanan said [below]: we learnt this only in reference to Syrian lawcourts;[6] and so here too; but not Mumhin.[7] R. Papa said: It may even refer to Mumhin, e.g., the courts of R. Huna and R. Hisda,[8] for he [the debtor] can say:

Am I giving you any trouble?[9]

We learnt: THE SAGES RULE: THE TWO JUDGES NOMINATE THE THIRD. Now, should you think it means as we have said, viz., Beth din;[10] can a Beth din, after being rejected, go and choose them another?[11] Again, how interpret, EACH PARTY CHOOSES ONE?[12] — But it means thus: Each [litigant] having chosen a judge, these two [litigants] jointly select a third. Why should they do so? — They said in 'the West'[13] in the name of R. Zera: Since each selects a judge, and together they [the litigants] select the third, a true judgment will be rendered.[14]

BUT THE SAGES RULE etc. Shall we say that they[15] differ in regard to the law cited by Rab Judah in the name of Rab? For Rab Judah said in the name of Rab: Witnesses may not sign a deed unless they are aware who is to sign with them:[16] R. Meir thus disagreeing with the dictum of Rab Judah given in the name of Rab,[17] while the Rabbis accept it?[18] — No, all agree with Rab Judah's statement in Rab's name and none dispute that the [third judge] must have the consent of his colleagues; they only differ as to whether the consent of the litigants is necessary. R. Meir maintains that the consent of the litigants is also required, while the Rabbis hold, only that of the judges is required, but not that of the litigants.

The [above] text [states]: Rab Judah said in Rab's name: Witnesses may not sign a deed etc. It has been taught likewise: The fair minded[19] of the people in Jerusalem used to act thus: They would not sign a deed without knowing who would sign with them; they would not sit in judgment unless they knew who was to sit with them; and they would not sit at table without knowing their fellow diners.

EACH PARTY MAY OBJECT TO THE JUDGE CHOSEN BY THE OTHER.

Has then anyone the right to reject judges? — R. Johanan said: This refers to the Syrian courts.[20] But [you say that] Mumhin cannot be rejected? Surely since the last clause states, BUT THE SAGES SAY: WHEN IS THIS SO? ONLY IF THE OBJECTOR ADDUCES PROOF THAT THEY ARE EITHER KINSMEN OR [OTHERWISE] INELIGIBLE; BUT IF FIT OR RECOGNISED BY THE BETH DIN AS MUMHIN, THEY CANNOT BE DISQUALIFIED: does it not follow that R. Meir refers even to Mumhin! — It is meant thus: But if they are fit, they rank as Mumhin appointed by the Beth din, and so cannot be disqualified.

Come and hear: 'The Rabbis said to R. Meir: It does not rest with him to reject a judge who is a Mumheh for the public'?[21] — Say [thus]: It does not rest with him to reject a judge whom the public has accepted as a Mumheh. It has been taught likewise: One may[22] go on rejecting judges until he undertakes [that the action shall be tried] before a Beth din of Mumhin:[23] this is the view of R. Meir.[24]

But witnesses [when not disqualified] are as Mumhin;[25] yet R. Meir said: EACH PARTY MAY REJECT THE WITNESSES PRODUCED BY THE OTHER! — Surely it has been stated regarding this: Resh Lakish said: Imagine a holy mouth [sc. R. Meir] uttering such a thing![26] Read [therefore] 'THE WITNESS', [singular].[27] But for what purpose is a single witness [competent]? Shall we say, for the actual payment of money?[28] then his testimony is Biblically invalid! If for [the administration of] an oath, then his evidence is [legally] as trustworthy as that of two![29] — In fact, he refers to the payment of money, but it [sc. R. Meir's ruling] arises only where both parties have voluntarily accepted his testimony as equivalent to that of two witnesses. Then what does he thereby teach: that he may retract? But we have already learnt this once:[30] If one says, I accept my father or thy father as trustworthy,[31] or I have confidence in three herdsmen,[32] R. Meir says, He may [subsequently] retract; but the Sages rule, He cannot.

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(1) V. Glos.

(2) The Gemara discusses the conditions of such disqualification.
(3) Which consists of three judges. By 'ONE' in the Mishnah, the text understands a court, according to which interpretation nine judges are necessary. So Rashi. This, however, is a very strained interpretation, particularly in view of the opening statement of the Mishnah: CIVIL ACTIONS ARE TO BE TRIED BY THREE. Tosaf. therefore states that the question is based on the assumption that the meaning of the Mishnah is this: Each litigant chooses a complete Beth din; and then the two courts jointly nominate a third court, and it is the third court that tries the case. Hence the question: Why such a clumsy proceeding: cannot the two litigants jointly select one court which shall try the action?
(4) But it is not meant that the procedure must be so from the very outset.
(5) Infra 31b in regard to a dispute as to place of trial.
(6) [Tribunals set up by the Romans and in charge of Jewish judges whose decisions were based on precedent and common sense rather than Biblical or Rabbinic Law, cf. Buchler, Sepphoris, 21 ff.]
(7) These cannot be disqualified by the debtor.
(8) [R. Huna's court was at Sura, and R. Hisda had his school, according to Sherira, at Matha Mehasia on the outskirts of Sura.]
(9) For, while it is just that the debtor shall not have the power of putting the creditor to great trouble in choice of locale, seeing that the debtor is under an obligation to the creditor, this objection does not hold good when the two courts are so close to each other.
(10) I.e., each litigant chooses a Beth din.
(11) Surely not!
(12) Which implies that the actual procedure must be so from the beginning.
(13) R. Jeremiah, supra 17b.
(14) For both parties have confidence in the court.
(15) R. Meir and the Sages.
(16) I.e., who is the other witness. The reason is that the other witness may prove to be unfit, in which case both signatures are null, and the eligible signatory is thus put to shame.
(17) I.e., he does not require the witnesses to know beforehand who will join them; and in the same way, it is unnecessary for the two judges to know beforehand whether the third will be a fit and proper person; therefore the third is selected by the litigants.
(18) V. previous note; the reasoning is reversed.
(19) נקיי הדעת, [(a) 'the cautious' (Buchler); (b) 'the pious' (Muller); (c) 'the nobility' (Klein, S. מדעי היהדות I, 72 ff.)]
(20) v. supra p. 130, n. 2.
(21) From this it may be inferred that in R. Meir's opinion even Mumhin may be rejected.
(22) But not a competent body, in which case R. Meir may agree with the Rabbis.
(23) This translation follows an emended text. V. marginal gloss in curr. edd.
(24) Hence it is evident that even R. Meir agrees that Mumhin cannot be rejected.
(25) All are expert to attest what they have witnessed.
(26) Surely it is absurd to suggest that a litigant having produced witnesses in his favour, his opponent can simply reject them.
(27) I.e., each can reject only a single witness produced by the other: a single witness, of course, is not on a par with an expert Beth din.
(28) I.e., the debtor is to be ordered to pay on his evidence.
(29) If the plaintiff has one witness in his support, his testimony is so far admissible as to subject the defendant to an oath; and the defendant cannot reject his testimony, just as he could not reject the testimony of two witnesses.
(30) Viz., in the next Mishnah.
(31) To act as judges in a dispute, though normally relations of the litigants were ineligible. That the reference is to judges follows from the fact that three herdsmen are mentioned.
(32) In those days holding the lowest rank in society.

Talmud - Mas. Sanhedrin 23b

And thereon R. Dimi the son of R. Nahman the son of R. Joseph observed: This means, e.g., that he

accepted him as one [of the three judges]![1] — Both are necessary. Had he stated only the law regarding the 'fathers' it might have been assumed that only there do the Rabbis[2] rule that he cannot retract, because 'my father' and 'thy father' are fit [to act as judges] in other cases; but where one witness is accepted as two, one might have thought that the Rabbis agreed with R. Meir, since he is unfit in general.[3] Whilst had the law been stated in this instance, I might have thought that only here does R. Meir rule thus; but in the other case, he agrees with the Rabbis.[4] Hence both are necessary. But since the first clause mentions, 'JUDGE' [singular], whilst the second reads, 'WITNESSES' [plural], it follows that it is to be taught literally?[5] — Said R. Eleazar: This is a case where he [the litigant] together with another come forward to disqualify them.[6] But is he empowered to do this, seeing that he is an interested party?[7] — R. Aha the son of R. Ika said: [Yes;] e.g., where he makes public the ground of his objection. What objection is meant? Shall we say, an objection based on a charge of robbery? But does that rest with him, seeing that he is an interested party? Hence it must be an objection on the grounds of family unfitness.[8] Now, R. Meir contends that they [sc. the litigant and his supporter] testify against the man's family,[9] whilst he is automatically disqualified; and the Rabbis hold that after all said and done, he is an interested party.

When R. Dimi came [from Palestine][10] he said in R. Johanan's name: The controversy arises only where [the plaintiff said that he could produce] two pairs of witnesses. Now, R. Meir holds that the litigant is obliged to verify [his statements regarding his second set of witnesses];[11] while the Rabbis say that he is not so obliged.[12] But if only one pair of witnesses [are offered], all agree that they cannot be disqualified.

R. Ammi and R. Assi said in R. Dimi's presence: What if there is only one pair [of witnesses]? [You ask, what if] there is only one set? Have you not just said, 'but if only one pair of witnesses [are offered] all agree that they cannot be disqualified'? But the question is, what if the second pair is found to consist of kinsfolk or to be [otherwise] ineligible?[13] — He answered them: The first witnesses have already testified.[14]

Others say that R. Ashi gave the above answer.

Shall we say that their [sc. R. Meir and the Rabbis'] dispute is the same as that of Rabbi and R. Simeon b. Gamaliel? For it has been taught: If one comes to be judged on the strength of a deed and hazakah;[15] Rabbi said: The case must be determined by a deed.[16] Rabban Simeon b. Gamaliel ruled: It is determined by hazakah [alone]. But we raised this question thereon: By hazakah [only], and not by deed?[17] But rather say thus: Even by hazakah [alone]. And it is an established fact that their dispute is whether the defendant is obliged to verify [his statement]![18] — No, according to the view of Rabban Simeon b. Gamaliel, none [i.e. neither R. Meir nor the Rabbis] differ here;[19] they only differ on the basis of Rabbi's opinion. Thus, R. Meir agrees with Rabbi. But the Rabbis can tell thee: Rabbi gives this ruling there only in the case of hazakah, which is valid proof[20] only in virtue of there having been a deed.[21] But here, since the legal standing of one pair is independent of the other, even Rabbi agrees that the claimant need not verify [his statements in full].

When Rabin came [from Palestine],[22] he said in R. Johanan's name: The first clause [of the Mishnah]

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(1) And since one of the three judges is ineligible by Biblical law, he may retract; so here, since one witness cannot impose payment by Biblical law, although he was accepted as trustworthy, he may retract. Consequently we were already informed of this. It may be asked, Why is R. Dimi's observation mentioned at all: does not the difficulty arise in any case? But without this dictum, it might be said that the litigant can retract in this case because there are two irregularities: (a) one only was permitted to try the suit; (b) even he was Biblically ineligible. But if there is only one irregularity, as in the case under discussion, where a single witness was accepted as the equivalent of two, it might be thought that the litigants cannot retract. Therefore R. Dimi's interpretation is adduced, to show that here too there was

only one fault, that one of the judges was a relative (Tosaf.).
(2) The Sages.
(3) To count as two.
(4) By the preceding argument inverted.
(5) Which overthrows Resh Lakish's interpretation, hence the original difficulty remains.
(6) And two have authority to reject; but actually the reference is to two witnesses.
(7) Hence, only one witness is left, and one has no power to overthrow the evidence of two.
(8) E.g., that he was the descendant of an unliberated slave whose testimony is inadmissible.
(9) And in this matter, the litigant is not an interested party.
(10) V. p. 393, n. 1.
(11) Therefore, the defendant is not regarded as an interested party when he testifies to the family unfitness of one of the first pair, since the plaintiff is bound to adduce the second set in any case, who are themselves sufficient. Should the plaintiff be unable to adduce a second set, he is the cause of his own loss.
(12) Consequently, notwithstanding his first assertion, he can insist on basing his claims on the first pair of witnesses only, and so the defendant becomes an interested party in seeking to disqualify one of these witnesses. — Tosaf. and one interpretation of Rashi. Rashi, however, reverses the reading and gives another explanation.
(13) Can we say, since the second pair has thus been rendered ineligible, the defendant is retrospectively discovered to have been an interested party in his testimony disqualifying the first pair, since the second is no longer available, and therefore his evidence in respect to the first is now inadmissible? Or, on the other hand, it may be argued that when the defendant gave his evidence he was a disinterested party, and consequently it still holds good.
(14) I.e., the testimony of the defendant in respect to the first, having been accepted, stands good.
(15) A claim based on undisturbed possession during a legally fixed period — three years. This means, if one's ownership of land is challenged, and he asserts that he can prove it both by a deed of sale, which he has in his possession, and also by hazakah.
(16) And if he failed to produce it, hazakah would not determine ownership. Though hazakah is usually accepted as proof, it is not accepted here, since the defendant asserted that he had the deed of conveyance in his possession.
(17) Surely it cannot be maintained that if a deed of sale is produced, three years of undisturbed possession must also be proved!
(18) Thus: Rabbi maintains that the whole statement must be verified, and therefore the deed is necessary; whilst R. S. b. G. holds that it need not be verified, just as though he had never made it, and therefore hazakah alone is sufficient (v. B.B. 169b-170a). Rabbi will accordingly agree with R. Meir, and R. S. b. G. with the Rabbis.
(19) For it is obviously impossible to reconcile R. Meir with R. S. b. G.
(20) Lit., ‘which comes’.
(21) Three years undisturbed possession proves ownership only when the defendant pleads that he bought the land, was given a deed, but lost it. Therefore, since the defendant asserted in the first place that he could produce the deed, evidence of undisturbed possession is not enough.
(22) V. p. 390, n. 1 .

Talmud - Mas. Sanhedrin 24a

refers to invalid witnesses, but competent judges: hence, since[1] the witnesses are invalidated, the judges too are disqualified.[2] While the latter clause deals with invalid judges and competent witnesses; therefore, since the judges are disqualified, the witnesses too are rejected. Raba objected: As for arguing[2] that since the witnesses are [undisputably] disqualified, so are the judges too: that is correct, seeing that another bench of judges is available [to try the case]. But [can one argue], since the judges are disqualified, so are the witnesses too, seeing that no other witnesses may be available? — This holds good only when another set of witnesses is available. Then what if no other set of witnesses is available; [will you say that] here too [viz., according to Rabin] the witnesses cannot be disqualified? But his view is then identical with that of R. Dimi![3] — They differ in respect to Miggo;[4] one master [Rabin] accepts the reasoning of Miggo; while the other [R. Dimi] rejects it.[5]

The above text reads: ‘Resh Lakish said: "Imagine a holy mouth [sc. R. Meir] uttering such a

thing!" Read therefore [in the Mishnah], "The witness" [singular].' Surely this is not so! For 'Ulla said: One who saw Resh Lakish in the Beth-Hamidrash [engaged in debate] would think that he was uprooting mountains and grinding them against each other![6] — Rabina said: But did not he who saw R. Meir in the Beth-Hamidrash feel that he was uprooting yet greater mountains and grinding them against each other?[7] — He means this:[8] Come and see how they [the Palestinians] esteem one another![9] Another instance; Rabbi sat and said: It is forbidden to store away the cold [water].[10] But R. Ishmael son of R. Jose remarked in his presence; My father permitted it. Then the Zaken[11] has already decided the matter,[12] replied Rabbi. [Thereupon] R. Papa said: Come and see how much they respected each other, for were R. Jose alive, he would have sat submissively before Rabbi, for as we have seen, R. Ishmael son of R. Jose, who was a worthy successor of his forefathers,[13] sat submissively before him,[14] yet he [Rabbi] said of him, 'The Zaken has already decided.'

R. Oshaia said: What is the meaning of the verse, And I took unto me the two staves; the one I called No'am [graciousness] and the other I called 'hoblim'[15] [binders]?[16] — 'No'am' refers to the scholars of Palestine, who treat each other graciously [man'imim] when engaged in halachic debates; 'hoblim', to the scholars of Babylon, who injure each other's feelings [mehablim] when discussing halachah.[17]

[It is written]: Then said he, These are the two anointed ones etc.[18] [This is preceded by:] And two olive trees by it.[19] R. Isaac said: 'yizhar' designates the scholars of Palestine, who are affable to each other when engaged in halachic debates, like olive oil [which is soothing]; [whilst] and two olive trees stand by it, symbolise the scholars of Babylon, who are as bitter to each other in halachic discussions as olive trees.[20]

Then lifted I up mine eyes and saw, and behold there came forth two women and the wind was in their wings; for they had wings like the wings of a stork. And they lifted up the measure between the earth and the heaven. Then said I to the angel that spoke with me, 'Whither do these bear the measure?' And he said unto me, 'To build her a house in the land of Shinar.'[21] R. Johanan said on the authority of R. Simeon b. Johai: These [the 'two women'] symbolise hypocrisy and arrogance, which made their home[22] in Babylon. But was Babylon really the home of haughtiness; did not the master say, Ten kabs[23] of arrogance came down into the world, of which EIam[24] took nine and the rest of the world one? — Yes, originally it descended to Babylon, but it travelled to Elam. This can also be inferred from the phrase, to build her[25] a house in the land of Shinar. This proves it.

But a Master said that the symptom of pride is poverty, and did not poverty descend upon Babylon? — By 'poverty',[26] the dearth of learning[27] is meant, for it is written, We have a little sister and she has no breasts;[28] whereon R. Johanan observed: This is a symbol of Elam, which was privileged to study, but not to teach.[29]

What does [the name] Babel connote?[30] — R. Johanan answered: [That the study of] Scripture, Mishnah and Talmud was intermingled [therein].[31]

He hath made me to dwell in dark places like those that have been long dead.[32] This, said R. Jeremiah, refers to the Babylonian Talmud.[33]

MISHNAH. IF ONE [OF THE CONTENDING PARTIES] SAYS TO THE OTHER: I ACCEPT MY FATHER OR THY FATHER AS TRUSTWORTHY,[34] OR, I HAVE CONFIDENCE IN THREE COWHERDS,[35] R. MEIR SAYS, HE MAY [SUBSEQUENTLY] RETRACT; BUT THE SAGES RULE, HE CANNOT. IF A MAN WAS UNDER THE OBLIGATION OF AN OATH TO HIS NEIGHBOUR, AND THE LATTER SAID TO HIM 'VOW TO ME BY THE LIFE OF THY HEAD,'[36] R. MEIR HOLDS, HE MAY RETRACT; BUT THE SAGES MAINTAIN, HE CANNOT.[37]

GEMARA. R. Dimi the son of R. Nahman the son of R. Joseph said: [The Mishnah refers to a case] e.g., where he [the litigant] accepted him [sc. one of those mentioned] as one [of the three judges required].[38]

Rab Judah said in Samuel's name: The controversy [of R. Meir and the Rabbis[39] over a case] is only [where the plaintiff says]: 'My claim against thee be remitted' [if the judges so decide]; but [if the defendant says], 'I will pay thy claim' [should it be so decided], all [even the Rabbis] agree that he may retract.[40] R. Johanan said: They differ over the latter case.

The scholars propounded [the following problem]: [Does R. Johanan mean that] they differ only over the latter case, but that in the former, all [even R. Meir] agree that he cannot retract; or does he hold that they differ with respect to both cases? — Come and hear! For Raba said: They differ [only] in respect of, 'I will pay thee;' but in the case of, 'It be remitted to thee,' all [even R. Meir] agree that he cannot retract. Now, if you say [that R. Johanan maintains], Their difference is only in the case of, 'I will pay thee'; but in the case of, 'It be remitted to thee,' all agree that he cannot retract, it is correct: then Raba's opinion coincides with that of R. Johanan. But should you say, their dispute applies to both, with whom does Raba agree?[41] — Raba [on the latter hypotheses] states an independent view.[42]

R. Aha b. Tahlifa objected to Raba's view: IF ONE WAS UNDER THE OBLIGATION OF AN OATH TO HIS NEIGHBOUR, AND THE LATTER SAID TO HIM, 'VOW TO ME BY THE LIFE OF THY HEAD;' R. MEIR HOLDS HE MAY RETRACT; BUT THE SAGES MAINTAIN, HE CANNOT.

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(1) מגו, Miggo. A Talmudical rule by which an action is declared valid because part of it is indisputably legitimate. In this case, the rule is accepted by R. Meir but not by the Rabbis.

(2) I.e., the litigant proved his opponent's witnesses invalid, but was unable to do so likewise in the case of the proposed judges. Yet in virtue of the first, he can object to his opponent's choice of judges too.

(3) Who said above that where there is only one set of witnesses available, all agree that they cannot be rejected.

(4) V. p. 135, n. 7.

(5) The dispute is whether this reasoning is acceptable in general, though in the actual case under discussion there may possibly be no difference. Thus, Rabin holds that miggo is generally accepted, and here too, whilst R. Dimi rejects this reasoning here and elsewhere; therefore, it is only because R. Meir maintains that a litigant must substantiate his whole statement that his opponent is able to disqualify his witnesses, as explained above, and this is irrespective of whether the judges have been proved incompetent or not.

(6) So ingenious a mind did he have. How then could he be so modest as to refer to R. Meir as 'a holy mouth', thus implying that the latter's learning and skill was far above his own? — 'Mountain' is used figuratively for the problems overcome by dialectical ingenuity.

(7) Hence, notwithstanding Resh Lakish's dialectic skill, R. Meir was his superior.

(8) This is an answer to Rabina's observation. In fact, the previous remark was not an objection, but a comment.

(9) Able as he was, Resh Lakish did appreciate R. Meir, as the above quotation shows.

(10) In cool sand, to preserve its coolness for the Sabbath, though the measure in general is directed against the storing of food in such a way that it grows warmer. Cf. Shab. 51a.

(11) R. Jose; Zaken, lit., 'elder' = scholar, sage.

(12) I.e., the law must remain as he has ruled.

(13) I.e., he took his father's place.

(14) As a disciple.

(15) Also 'injuries'.

(16) Zech. XI, 7

(17) Discussions were carried on far more energetically in the Babylonian academies than in the Palestinian, and in fact, there is considerably more controversy in the Babylonian than in the Jerusalem Talmud.

(18) Lit., ‘The sons of ‘yizhar’ (clear oil).’ Ibid. IV, 14.
(19) Ibid. 3.
(20) The wood of which is bitter to the taste.
(21) Zech. V, 9-11.
(22) Lit., ‘descended into’.
(23) A measure.
(24) The country named after the eldest son of Shem. (Gen. X, 22.) It lay along Shushan and the river Ulai. Cf. Dan. VIII, 2, and had Babylonia on the West.
(25) Only one of the vices, thus proving that the other did not settle there permanently.
(26) As a symptom of pride.
(27) Lit., ‘the Torah’.
(28) Cant. VIII, 8.
(29) I.e., its learning had remained stagnant. [On the all-pervading ignorance of the Law among the Jews of Elam (Hozea, Khuzistan), v. Pes. 50b-51a.]
(30) בבל; Babylonia. Based on the popular etymology of the word from בלל ‘to mix’, ‘confound’, cf. Gen. XI, 9.
(31) This may either mean that all three were studied; or preferably, as explained by R. Tam a.l., that the Babylonian Talmud itself is a compound of all three.
(32) Lam. III, 6.
(33) Which is profound and dark to the unversed. Cf. Hag. 10a. The word ‘Talmud’ refers to both the mode of study and the actual content of that study, and either or both may be referred to here.
(34) A father is disqualified to act as judge: v. infra 27b.
(35) Considered to be the lowest class in society.
(36) Such is not the formula of a judicial oath, which is sworn in the name of God. Here both the swearing, i.e., ‘I swear’, and the Divine name are absent.
(37) And demand a proper oath.
(38) Though there are two others eligible, R. Meir still holds that he may retract (Rashi). Tosaf. explains more plausibly: Only then do the Sages rule that he cannot retract. If, however, he had accepted one of these as the equivalent of a complete court, even the Sages admit that he can subsequently retract. V. supra p. 132, n. 11.
(39) The Sages.
(40) Less authority is required to rule that one retains what is already in his possession, since possession itself affords a presumption of ownership, than to transfer money from one to another. Hence, only in the former case do the Rabbis rule that an undertaking to abide by the decision of an unqualified judge is binding, but not in the latter.
(41) For it coincides neither with that of Samuel nor with that of R. Johanan.
(42) I.e., he is not bound to agree either with Samuel or R. Johanan. Hence the question remains unanswered.

Talmud - Mas. Sanhedrin 24b

Now surely, this refers to those who swear and do not pay,[1] and hence is analogous to, ‘It be remitted thee’?[2] — No; this refers to those who swear and receive their claim,[3] so that it is analogous to ‘I will pay thee’.

But if so, has this not already been taught in the first clause [of the Mishnah]?[4] — It [the Mishnah] teaches the case where he [sc. the defendant] makes the irregular procedure depend on the judgment of others,[5] and also where he makes it depend on his [sc. the plaintiff's] action. And both are necessary. For had it taught only the case where he [the defendant] makes it depend on the judgment of others, [we might have assumed that] in this case alone does R. Meir hold that he can retract since he might not definitely have decided to abide by their decision, but [inwardly] argued, ‘Who can say that they will give judgment in the other's favour?’ Whereas, if he makes it depend on his [sc. the plaintiff's] action, I might think that he [R. Meir] agrees with the Rabbis [that he cannot retract].[6] Again, had he [the Tanna] stated the latter case alone, we might have assumed, only there do the Rabbis rule thus; but in the former case, we might think[7] that they agree with R. Meir. Hence both are necessary.

Resh Lakish said: The dispute [between R. Meir and the Rabbis] is [over a case where the litigant retracts] before the rendering of the legal decision:[8] but once the decision has been given, all [even R. Meir] agree that he cannot retract. While R. Johanan said: They differ [where one retracts] after the decision is rendered.

The scholars propounded [the following problem:] [Does this mean that] the dispute is [only where the litigant retracts] after the promulgation of the decision; but before, all [even the Rabbis] agree that he can retract; or do they differ in both instances? — Come and hear! For Raba said: If one accepted a kinsman or a man [otherwise] ineligible [as judge or witness], he may retract before the promulgation of the decision; but not after. Now, if you understand [R. Johanan to mean] that the dispute refers only to the time after the decision; but that prior thereto, all agree that he may retract, it is correct: then Raba's statement agrees with R. Johanan's, and is based on the view of the Rabbis. But should you say, The controversy holds good in both cases, who is Raba's authority?[9] Hence it surely follows that the dispute arises only after the decision has been given. This proves it.

R. Nahman son of R. Hisda[10] sent a question to R. Nahman b. Jacob: Will our Master please inform us, Is the dispute before or after the verdict, and with whom does the halachah rest? — He sent back word: The dispute arises after the promulgation of the decision, and the halachah agrees with the Sages. R. Ashi said: This was the question he sent: — Do they differ in the case of 'I will pay thee,' or in respect to 'It be remitted to thee', and with whom does the halachah rest? To which he replied: The dispute refers to, 'I will pay thee;' and the halachah rests with the Sages. Thus they taught in Sura. But in Pumbeditha they taught as follows: R. Hanina b. Shelamiah said: A message was sent from the school of Rab[11] to Samuel, saying: Will our Master please inform us, [If one of the parties pledged himself] by Kinyan[12] [not to retract], what [if he seeks to retract] before the promulgation of the decision? — He returned word, saying: After Kinyan, nothing [can be done to repudiate the transaction].

MISHNAH. AND THESE ARE INELIGIBLE [TO BE WITNESSES OR JUDGES]: A GAMBLER WITH DICE,[13] A USURER, A PIGEON-TRAINER,[14] AND TRADERS [IN THE PRODUCE] OF THE SABBATICAL YEAR.[15] R. SIMEON SAID: AT FIRST THEY CALLED THEM 'GATHERERS OF [THE PRODUCE OF] THE SABBATICAL YEAR.' BUT WHEN THE OPPRESSORS[16] GREW IN NUMBER, THEY CHANGED THEIR NAME TO TRADERS IN THE SABBATICAL PRODUCE.'[17] R. JUDAH SAID: WHEN IS THIS SO? — IF THEY HAVE NO OTHER OCCUPATION BUT THIS. BUT IF THEY HAVE OTHER MEANS OF LIVELIHOOD, THEY ARE ELIGIBLE.

GEMARA. What [wrong] does the dice player do? — Rammi b. Hama said: [He is disqualified] because it [sc. gambling] is an Asmakta,[18] and Asmakta is not legally binding.[19]

R. Shesheth said: Such cases do not come under the category of Asmakta;[20] but the reason is that they [sc. dice players] are not concerned with the general welfare.[21] Wherein do they differ? — If he [the gambler] acquired another trade.[22] We learnt:[23] R. JUDAH SAID: WHEN IS THIS SO? — IF THEY HAVE NO OTHER OCCUPATION BUT THIS. BUT IF THEY HAVE OTHER MEANS OF LIVELIHOOD, THEY ARE ELIGIBLE. This proves that the ruling of the Mishnah is for the sake of the welfare, of humanity, which refutes Rami b. Hama.[24] And should you answer, The Rabbis dispute R. Judah's opinion:[25] did not R. Joshua b. Levi say, Wherever R. Judah observes,

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(1) I.e., who meet the claim against them simply by an oath, since Biblical oaths were imposed on the defendant. Cf Shebu. 44b.

(2) I.e., the plaintiff agrees to abandon his claim as the result of an irregular procedure, whether in the choice of judges or in the form of the oath. This shows that they differ also in respect of 'It be remitted to thee'.

(3) E.g., where a labourer claims his wages when due, or where the defendant is legally incapable of taking an oath, e.g., if he is known to have committed perjury on a previous occasion. Cf. ibid.
(4) According to the explanation thereof by Raba.
(5) By accepting the judgment of people ineligible as judges.
(6) For he must have felt certain that the plaintiff would take up his challenge.
(7) By inverting the preceding argument.
(8) V. p. 24.
(9) In this case, it would only be R. Meir, in the opinion of Resh Lakish, who rules thus. But Raba could not abandon the majority ruling of the Rabbis and follow R. Meir. Nor can it be answered that Raba had an independent view of the circumstances in which they differ, as above, since his statement is not made regarding the Mishnah.
(10) Or R. Isaac, according to another version.
(11) Be Rab. For another possible meaning, v. p. 89.
(12) Kinyan, lit., 'acquisition', is a formal act whereby one definitely pledges himself. V. Glos.
(13) Heb. קוביא, Gr. K ** dice-playing, a popular game of antiquity. The term was applied by the Rabbis indiscriminately to any form of gambling. Cf. Shab. 149b.
(14) Lit., 'pigeon flyers'. The exact meaning of 'pigeon-flyer' is discussed in the Gemara. The disqualification of these is based upon Ex. XXIII, 1: Put not thine hand with the wicked to be an unrighteous witness. In this case, though they cannot be considered actual robbers, since they do not appropriate their gain by violence, the Rabbis nevertheless held such gain a form of robbery.
(15) The Sages interpret Lev. XXV, 6: The Sabbath of the land shall be for food to you, to mean, 'for food' and not for 'commerce'. Cf. Bek. 12b. The transgressors of this enactment, because they showed so passionate a greed for gain, were not regarded as trustworthy to judge or testify.
(16) Government officials who spared no means of extorting heavy taxation from the people. As a result, even the Sabbatical year produce had to be given in payment.
(17) The meaning of this is discussed in the Gemara.
(18) אסמכתא 'speculation', from סמך, 'to rely,' 'to support', is a term in civil law denoting a contract wherein each party promises to pay, on fulfilment of a certain condition which he expects will not be fulfilled. It is not binding according to some teachers, because the obligation has not been assumed with serious intent, since each hopes that his promise will be nullified by the non-realization of the condition. Gambling, as in this case, is an excellent example, for in it, A promises B to forfeit a certain object or amount on the realization of a condition which he hopes and expects will not occur.
(19) I.e., does not create an actual obligation. Hence, the receiver is regarded as having taken illegal possession, and so is akin to a robber.
(20) His definition of Asmakta is illustrated in B.B. 168a: If, for instance, A paid a fraction of his debt on a note to B, and told him to deposit the note with C, adding that if he did not pay the note by a certain date, C should return the note to B who would then collect the amount in full; and if on the due date A did not pay, R. Judah says that B may collect only the amount which was not paid, and not its full value, because A's promise is not valid, seeing that at the time he made it, he assumed that failure to pay would not occur. But in the case under consideration, where it is a game of chance, the odds in either case are equal, and A's intent to pay must be taken seriously. Consequently, the gain cannot be considered as a form of robbery.
(21) I.e., they do not contribute to the stability of civilised society.
(22) When, according to R. Shesheth, he should not be disqualified.
(23) [So Ms., M. introducing a refutation of Rami b. Hama. Cur. edd. read, 'and we learnt'.]
(24) Since he holds that the reason for their disqualification is Asmakta, irrespective of whether they have another trade or not.
(25) In which case his argument agrees with that of the Rabbis, representing the anonymous opinion cited first in the Mishnah.

Talmud - Mas. Sanhedrin 25a

'When is this so,'[1] or 'In what case,'[2] he merely aims at explaining the words of the Sages? [Whilst] R. Johanan said: 'When etc.' is explanatory, but 'In what case' indicates disagreement. Thus all

agree that 'When etc. indicates explanation.[3] — Do you oppose one amora[4] to another?[5] One Master [Rami b. Hama] holds that they [the Rabbis and R. Judah] differ; the other [R. Joshua b. Levi] holds that they do not.[6] But do they really not differ? Has it not been taught:[7] Whether he has another occupation or not, he is disqualified?[8] — That is the view of R. Judah, stated on the authority of R. Tarfon. For it has been taught: R. Judah said on the authority of R. Tarfon: In truth, neither of them is a nazir, because a vow of neziruth[9] must be free from doubt.[10]

A LENDER ON INTEREST . . . Raba said: A borrower on interest is unfit to act as witness. But have we not learnt: A LENDER [malweh] ON INTEREST [is disqualified]? — [It means] a loan [milweh][11] on interest [disqualifies the parties to the transaction].

Two witnesses testified against Bar Binithus. One said, 'He lent money on interest in my presence. ' The other said, 'He lent me money on interest.' [In consequence,] Raba disqualified Bar Binithus [from acting as witness etc.]. But did not Raba himself rule: A borrower on interest is unfit to act as witness? Consequently he[12] is a transgressor, and the Torah said: Do not accept the wicked as witness?[13] — Raba[14] here acted in accordance with another principle of his. For Raba said: Every man is a relative in respect to himself, and no man can incriminate himself.[15]

A certain slaughterer was found to have passed a terefah[16] [as fit for food], so R. Nahman disqualified[17] and dismissed him. Thereupon he went and let his hair and nails grow.[18] Then R. Nahman thought of reinstating him, but Raba said to him: Perhaps he is only pretending [repentance]. What then is his remedy? — The course suggested by R. Iddi b. Abin, who said: He who is suspected of passing terefoth cannot be rehabilitated unless he leaves for a place where he is unknown and finds an opportunity of returning a lost article of considerable value, or of condemning as terefah meat of considerable value, belonging to himself.[19]

AND PIGEON TRAINERS: What are PIGEON TRAINERS? — Here[20] it has been interpreted, [of one who says to another], 'If your pigeon passes mine [you win].'[21] R. Hama b. Oshaia said: It means an Ara.[22] On what ground does he who interprets [the phrase to mean] 'pigeon-racer' disagree with him who interprets it as Ara? — His answer is that the conduct of an Ara [is regarded as robbery] merely from the standpoint of neighbourliness.[23] And he who interprets it as 'Ara', why does he not accept this view [sc. 'if thy pigeon etc.]? — His answer is, in that case it is identical with a dice player. And the former?[24] — He [the Tanna of the Mishnah] deals with a case where he relies on his own capabilities. [i.e., dice-playing] and a case where he relies on the capabilities of his pigeon. And both are necessary. For had he dealt only with the case where a man relies upon himself, [I might have supposed that] only there was his promise without serious intent, since he thinks,

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(1) אימתי
(2) במה דברים אמורים

(3) So that R. Judah does not differ from the Rabbis. Hence they too hold that the reason for disqualification is not 'Asmakta', but for 'the sake of the welfare of humanity'.

(4) Lit., ' man' .

(5) R. Joshua b. Levi and Rami b. Hama, who have equal authority.

(6) And that R. Judah's statement is merely explanatory.

(7) 'Er. 82a.

(8) And presumably this is the view of the Rabbis, thus proving that they do differ from R. Judah.

(9) For nazir and neziruth, v. Glos.

(10) Lit., 'applies only to distinct utterance.' This refers to the following: A and B were sitting by the road-side, and a man passed them. Whereupon A said to B: If the man who has passed is a Nazir, as I maintain he is, then I too will take the vow of neziruth; and B said that he for his part would take the vow if he were not. R. Tarfon ruled that the vow is not binding even upon him whose view was subsequently found to be correct, for the vow was based on a doubtful matter,

whereas neziruth requires a distinct and explicit pledge. (V. Nazir 34a). R. Judah himself may thus, notwithstanding his statement in the Mishnah, which is only explanatory of the view of the Rabbis, concur in R. Tarfon's view. With respect to the actual reasoning of the Talmud, Rashi states: This proves that in R. Tarfon's opinion, an undertaking dependent on an unknown circumstance is not binding, and therefore the same applies to gambling, each gambler undertaking to pay his opponents without knowing the latter's strength, and therefore the gambler is akin to a robber, as explained on p. 143, n. 2, whether gambling, is his sole occupation or not.

(11) מלוה may be read either מלוה (lender) or מלוה (loan).

(12) The witness who testified that he had borrowed money from Bar Binithus on interest.

(13) Ex. XXIII 1: this is not an exact quotation, but the general implication of the text. How, then, could the evidence of the latter be accepted?

(14) Its accepting the witness's evidence against Bar Binithus.

(15) Cf. supra 9b. Consequently, his evidence is valid only with regard to the accused but not with regard to himself.

(16) V. Glos.

(17) From acting as slaughterer. According to another version he excommunicated him. Cf. Alfasi a.l.; Kesef Mishneh on Maim. Yad, Talmud Torah, VI, 14.

(18) As a sign of penitence.

(19) So exhibiting his staunch observance of the law, even in the face of loss.

(20) In Babylon.

(21) A pigeon-racer.

(22) Or Ada, a fowler, one who puts up decoy-birds to attract other birds from another's dove-cote. [Ara is connected by Ginzberg, L., with the Assyrian aru, denoting by ‘gin’, ‘snare’; v. Krauss, S., Sanhedrin-Makkot, p. 124.]

(23) Lit., ‘ways of peace’, but not its law, since birds may, and often do change their homes of their own will. According to strict law, these birds are considered as semi-wild, and therefore ownerless. Yet it is robbery on account of ‘the ways of peace’.

(24) How does he answer this objection?

Talmud - Mas. Sanhedrin 25b

‘I feel certain that I know more [than my opponent], [and so I am sure to win]; but where he relies on his pigeon's ability, I should say [that the gain is] not [illegal].[1] Again, had the Mishnah dealt only with a case where he relies on his pigeon's ability. [I might have assumed that only then was the gain illegal], as he might have thought: ‘Surely winning the race depends on the use of the rattle,[2] and I am the more skilled in its use;’ but where he depends on his own abilities, I might have said that [the gain is] not [illegal].[3] Hence both are necessary.

An objection is raised: Dice-players include the following: Those who play with checkers,[4] and not only with checkers, but even with nut-shells and pomegranate peel.[5] And when are they considered to have repented?[6] When they break up their checkers and undergo a complete reformation, so much so, that they will not play even as a pastime.[7] A usurer: this includes both lender and borrower.[8] And when are they judged to have repented? When they tear up their bills and undergo a complete reformation, that they will not lend [on interest] even to a Gentile. Pigeon trainers: that is those who race pigeons,[9] and not only pigeons, but even cattle, beasts, or other birds. When may they be reinstated? When they break up their pegmas[10] and undergo a complete reformation, so that they will not practise their vice even in the wilderness.[11] Sabbatical traders are those who trade in the produce of the Sabbatical year. They cannot be rehabilitated until another Sabbatical year comes round and they desist from trading.[12] Whereon R. Nehemia said: They [the Rabbis] did not mean a mere verbal repentance, but a reformation that involves monetary reparation. How so? He must declare, ‘I, so and so, have amassed two hundred zuz by trading in Sabbatical produce, and behold, here they are made over to the poor as a gift.[13] At any rate, cattle too are mentioned.[14] Now, on the view that it means pigeon racing, it is correct, for racing of beasts, is also possible. But if it means ‘an Ara’, are cattle suited to this [viz. to decoy other beasts]? — Yes, in the case of the wild ox,[15] on the view that this is a species of cattle. For we have learnt:[16] A wild ox is a

species of cattle; R. Jose said: It is a wild animal.[17]

A Tanna taught: [To those enumerated in the Mishnah] were added robbers and those who compel a sale.[18] But are not robbers [disqualified] by Biblical law?[19] — [Yes, but] it [the addition] was necessary in respect of one who appropriates the finds of a deaf-mute, an imbecile, or a minor.[20] At first it was thought that this was of infrequent occurrence,[21] or [that such appropriation was robbery only] judged by neighbourliness in general:[22] but when it was seen that after all it was someone else's property[23] that they seized,[24] the Rabbis disqualified them.

'Those who compel a sale:' At first they thought, They do, in fact, pay money, and their pressure is incidental.[25] But when they observed that they deliberately seized the goods,[26] they made this decree against them.

A Tanna taught: They further added to the list, herdsmen,[27] tax collectors and publicans.[28]

'Herdsmen': At first they thought that it was a question of mere chance;[29] but when it was observed that they drove them there intentionally, they made the decree against them.

'Tax collectors and publicans:' At first they thought that they collected no more than the legally imposed tax. But when it was seen that they overcharged, they were disqualified.

Raba said: The 'herdsmen' whom they [the Rabbis] refer to, include the herdsmen of both large and small cattle, [i.e both cowherds and shepherds]. But did Raba actually say so? Did he not say: Shepherds are disqualified only in Palestine, but elsewhere they are eligible; while cowherds are qualified even in Palestine?[30] — That applies to breeders.[31] Logic too supports this. For we learnt: [If one says,] I HAVE CONFIDENCE IN THREE COWHERDS etc. [they are acceptable].[32] Surely [that implies that they are normally ineligible] for witnesses? — No: for judges.[33] This is also evident from the expression: THREE COWHERDS; for if it means, qualified as witnesses, why three? What then: it refers to judges? Then why particularly cowherds; the same applies to any court of three men unversed in law?[34] — He [the Tanna] means this: Even such as these, who are rarely to be found in populous areas.[35]

Rab Judah said: A herdsman in general[36] is ineligible, while a tax collector in general is eligible.[37]

R. Zera's father acted as tax collector for thirteen years. When the Resh Nahara[38] used to come to a town, if he [R. Zera's father] saw the scholars [of the city] he would advise them, Come my people, enter thou into thy chambers.[39] And when he saw the other inhabitants of the town he would say to them: The Resh Nahara is coming to the city, and now he will slaughter the father in the presence of the son, and the son in the presence of the father;[40]

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(1) Since he made the promise notwithstanding the doubtfulness of the issue.

(2) By which the race is started and the pigeon spurred on.

(3) As the promise might have been made with serious intent.

(4) פסספים (** = pebble), polished blocks or stones.

(5) These latter were probably employed as a temporary means for gambling when proper dice were not obtainable.

(6) And thus become qualified again to be witnesses and judges.

(7) Lit., 'for nothing'.

(8) V. p. 144, n. 9.

(9) So the Aruch. Rashi, however, translates: Those who train pigeons to fight with each other — probably a form of cock-fighting.

(10) A fixture made of boards; a wooden contrivance that opened and shut itself, [a trap (R. Han.), or a rattle to spur on the pigeons (Rashi).]

(11) Where there is no one to see or pay. According to the view that 'pigeon trainer' means an ara, the meaning would be: 'Even in the place far from civilisation, they would not put up their pegmas' (Rashi).
(12) E.g., leave their fields free to the poor.
(13) V. Tosef. Sanh. V.
(14) Parallel with pigeons, as being trained for racing.
(15) It would appear that these were caught, domesticated, and then used to decoy beasts, also semi-domesticated and possessing owners, on perhaps similar lines to elephant hunting and taming.
(16) Kil. VIII, 6.
(17) Cattle and wild animals must not be mated with one another.
(18) Against the desire of the owner, even though they pay fairly.
(19) On the basis of Ex. XXIII, 1.
(20) Under the age of thirteen for males, and twelve for females.
(21) Which did not call for a specific legal provision.
(22) But not by Biblical law, because these have no legal powers of acquisition or possession, and therefore, Biblically speaking, their finds do not belong to them. Nevertheless, it is obvious that to enforce this in practice would lead to strife and a feeling of grievance, and hence the Rabbis conferred upon them the power of effecting possession. Thus, since such appropriation was not robbery in the Biblical sense, it was thought unnecessary to impose disqualification on its account.
(23) Though only by Rabbinical law, still, the ruling of the Rabbis was fully binding.
(24) And that it was greed for money that tempted them to transgress the laws.
(25) Yet perhaps the owners were willing to sell all the same.
(26) Without the owners' agreement to the sale.
(27) Because they allowed cattle to graze on other people's lands. This law applies only to graziers of their own cattle, but not to hired herdsmen, for it is taken for granted that a man does not trespass unless material benefit accrues to him. Cf. B.M. 5b.
(28) Government lessees who collected customs duties, market tolls and similar special imposts, thus helping the Romans to exact the heavy taxes imposed upon the Jews. Hence these men were classed with robbers.
(29) That their cattle grazed upon other people's land.
(30) V. B.K. 79b and discussion in Gemara.
(31) Who stable their cattle. Thus only shepherds are disqualified, since sheep cannot be kept tethered.
(32) Supra 24a. From which it follows that they are usually disqualified.
(33) Who must be persons learned in the law.
(34) Who are normally ineligible to act as judges.
(35) And so have little experience of ordinary human affairs; yet they are eligible by mutual agreement.
(36) I.e., of whom it is not known whether he trespasses or not. V. p. 148, n. 5.
(37) Unless it is definitely known that he is making exorbitant demands in taxation.
(38) רישׁ נהרא lit., 'head of the river' — chief of the district bordered by a river or canal.
(39) Isa. XXVI, 20; i.e., hide, so as to avoid giving the impression that the town was largely populated, lest it be heavily taxed.
(40) I.e., will collect heavy taxes.

Talmud - Mas. Sanhedrin 26a

whereupon they all hid themselves. When the officer arrived [and rebuked him for failing in his duty,] he would say: Of whom shall I make the demand?[1]

Before he died, he said: Take the thirteen ma'ahs[2] that are tied in my sheets and return them to so and so, for I took them from him [by way of tax] and have had no need for them.

R. SIMEON SAID, AT FIRST . . . GATHERERS OF THE PRODUCE OF THE SABBATICAL YEAR. What does he mean? — Rab Judah said: This; at first they [the Rabbis] ruled that gatherers of the Sabbatical produce[3] are eligible, but traders in it are not. But when they saw that large

numbers offered money to the poor,[4] who then went, gathered the produce and brought it to them, they revised the law and enacted that both [gatherers and traders] are ineligible. The sons of Rehabah[5] objected to this: Does this mean, WHEN THE OPPRESSORS GREW IN NUMBER? It should then have been worded: When the traders grew in number! But we may explain it thus: At first they ruled that both [even gatherers] were ineligible. But when THE OPPRESSORS GREW IN NUMBER, viz., the [collectors of] Arnona[6] (judging by R. Jannai's proclamation, 'Go and sow your seed [even] in the Sabbatical year, because of the [collectors of] Arnona,')[7] they revised the law and enacted that only traders were disqualified but not gatherers.[8] R. Hiyya b. Zarnuki and R. Simeon b. Jehozadak once went to Assia[9] to intercalate the year.[10] They were met by Resh Lakish, who joined them, saying, 'I will come and see their procedure.'[11] On the way, he saw a man ploughing, and remarked to them, 'That man who is ploughing is a priest.'[12] But they replied, 'Can he not say: I am an imperial servant[13] on the estate?' Further on he saw a man pruning his vineyard, and again observed, 'That pruner is a priest.' 'But', they demurred, 'he might say: I need [the twigs] to make a bale[14] ['akkel] for the wine-press, [a legitimate purpose].' 'The heart knows whether it is for 'akkel' or 'akalkaloth [perverseness]', he retorted.[15] — Now, which remark did he make first? Shall we say, his first remark was the one first recorded: then for the other too they could have suggested [the same excuse], 'I am an imperial servant on the estate.' Hence the latter remark must have come first: and only subsequently did he make the other observation. Why was each assumed to be a priest? — Because they [the priests] are suspected of breaking the Sabbatical laws, as it has been taught; If a se'ah of Terumah[16] [accidentally] fall into a hundred se'ahs of Sabbatical produce, it [the Terumah] is neutralised.[17] In case of a lesser quantity [of Sabbatical produce], the whole must be left to rot.[18] Now, we raised the question, Why must it be left to rot? Why not let it be sold to a priest at a price of Terumah[19] less the value of the one se'ah![20] To which R. Hiyya replied on the authority of 'Ulla: This fact[21] proves that the priests were suspected of violating the laws of the Sabbatical year.[22]

[To resume the narrative.] They said:[23] He is a troublesome person, and so, on reaching their destination, they ascended to the upper chamber,[24] and removed the ladder.[25] Thereupon he [Resh Lakish] went before R. Johanan and asked: Are people suspected of trespassing Sabbatical laws[26] qualified to intercalate the year? But on second thoughts he said: This presents no difficulty, for there is a similar case of three cowherds,[27] upon whose calculations the Rabbis relied. Subsequently, however, he said: There is no comparison between the two cases; there it was the Rabbis who eventually decided[28] and declared the year intercalated,[29] whereas here, it is a confederacy of wicked men,[30] such as may not be counted [on the intercalary board]. R. Johanan replied: That is a misfortune.[31]

When they[32] came before R. Johanan, they complained: He described us as cowherds, and you made no objection whatever.[33] R. Johanan answered: Even had he called you shepherds,[34] what could I have said?

What is [the reference to] 'a confederacy of wicked men'? — [It is as follows:] Shebna[35] expounded [the law] before thirteen myriads,[36] whereas Hezekiah expounded it only before eleven. When Sennacherib[37] came and besieged Jerusalem, Shebna wrote a note, which he shot on an arrow [into the enemy's camp, declaring]: Shebna and his followers are willing to conclude peace; Hezekiah and his followers are not. Thus it is written, For lo, the wicked bend the bow, they make ready their arrow upon the string.[38] So Hezekiah was afraid, and said: Perhaps, Heaven forfend, the mind of the Holy One, blessed be He, is with the majority; and since they wish to surrender, we must do likewise! Thereupon the Prophet came and reassured him: Say ye not a confederacy, concerning all of whom this people do say, A confederacy;[39] it is a confederacy of the wicked, and as such cannot be counted [for the purpose of a decision].

[Later, when] Shebna went to hew out for himself a sepulchre among the sepulchres of the house of David, the Prophet came and said to him: What hast thou here and whom hast thou here that thou

hast hewn here a sepulchre? Behold, the Lord will hurl thee down as a man is hurled.[40] Rab observed: Exile is a greater hardship for men than for women.[41]

Yea, He will surely cover thee[42] R. Jose son of R. Hanina said: This teaches that he was stricken with leprosy: here it is written, surely cover; and elsewhere [in reference to a leper] it is said, And he shall cover his upper lip.[43]

He will violently roll and toss thee like a ball into a large country.[44] It has been taught : He [Shebna] sought the shame of his master's house: therefore his own glory was turned to shame.[45] [For] when he went out [on his way to surrender to Sennacherib], Gabriel came and shut the city gate in the face of his servants

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(1) [The demand here was not for the regular poll-tax, but in respect of a special imposition, v. Obermeyer, op. cit. 237.]

(2) Small coins, one ma'ah = 1/2 a silver dinar.

(3) It was permissible to gather Sabbatical produce and keep it as long as the same kind was available for the beasts of the field too. But when that was consumed, private possession was forbidden, and the produce had to be removed from the house and deposited in the fields, where it would be free to all. Now, in the case under discussion, it might have been possible for the gatherers to consume all they had gathered before the 'time of removal', in which case they committed no transgression; therefore they were not disqualified. [Yad Ramah adds 'even if they happened to sell any of the hoard'.]

(4) The poor could gather from all fields irrespective of the 'time of removal' (cf. Sheb. IX, 8; Nahmanides on Lev. XXV, 7), but only for their personal use. Thus, these wealthy men were disqualified because they virtually bribed the poor to trade therein. According to this, the Mishnah must be explained thus: At first, these were only regarded as gatherers (from the poor), and therefore eligible. But subsequently, when owing to the increase of oppressors (q.v. Mishnah), the practice of making gifts to the poor grew apace, the donors were classed as traders, not merely gatherers, and therefore disqualified (Rashi). [According to Yad Ramah it was the poor who were declared disqualified, as traffickers in Sabbatical produce.]

(5) [Efo and Abimi, v. supra 17b.]

(6) An adaptation of annona, the annual income of natural products. Hence taxes paid in kind.

(7) The observance of the Sabbatical year in post-Temple times was merely Rabbinical and therefore R. Jannai felt justified in abrogating it in the face of dire necessity (Rashi). [The privilege which the Jews enjoyed since the days of Caesar exempting them from taxes in the Sabbatical year (v. Josephus, Ant. XIV, 10, 5-6) was abrogated in the year 261 C.E. V. Graetz IV, 213, and Auerbach, M., Jahrb. d. jud. liter. Gesel. V, 155-188].

(8) Accordingly, the Mishnah is thus to be interpreted: AT FIRST . . . GATHERERS etc. i.e., even gatherers were classed amongst the ineligibles; BUT . . . . TRADERS, i.e., only the latter were so designated, but not the former.

(9) Tosaf. regards it as a district outside Palestine and, since it was thus not qualified as a place for the intercalation of a year (cf. supra 11b), suggests that they must have gone there only for the purpose of calculating. (V. Yeb. 164). It is, however, probably Essa, east of the lake Tiberias, Neub. p. 38. 'Weinstein maintains that it is identical with Callirhoe and its surroundings on the east of the Jordan, near the Dead Sea (Jast.). [Halevy, Doroth, Ie, 787, suggests that Assia was specially chosen for the Intercalation as it was considered a safe place owing to its hot springs which attracted many visitors from far and wide, and the arrival of the Rabbis would not rouse the suspicion of the Romans.]

(10) From the context it appears that the incident must have happened in a Sabbatical year. But no intercalation could take place in such a year, (v. supra 12a) hence, as has been said, Tosaf. suggests that they must have gone there only for the purpose of making the necessary calculations. But even a Sabbatical year may be intercalated in an emergency. Cf. Yad, Kid. Hahodesh, 4, 16.

(11) V. supra 11a with reference to Samuel the Small.

(12) The reason for this statement is given below.

(13) Heb. אגיסטון or אגוסטאן (Augustanus, Augustanius), a servant in a colonia Augustana (Jast.); an imperial servant, and therefore engaged in permissible labour. [Krauss, Lehnworter, derives it from **, 'a farmer-tenant.']

(14) 'A bale of loose texture containing the olive pulp to be pressed' (Jast.).

(15) The root of both words being 'bend' or 'twist' — i.e. either woven, or crooked.

(16) V. Glos.

(17) So that the whole may be eaten by a non-priest. In the case of other forbidden objects, a quantity of permitted food in a ratio of 60-1, is necessary for neutralisation (v. Hul. 98a); but in the case of Terumah, a hundred fold is necessary. Cf. Ter. IV, 7.
(18) I.e., no one may make use of it. Tosef. Ter. VI.
(19) Which is lower than that of ordinary produce, owing to the small demand for it, as only priests may consume it.
(20) Which in any case belonged to the priest. Sabbatical produce may be sold on condition that both the produce itself, and the money paid for it, be consumed before the 'time of removal'.
(21) That it may not be sold to a priest.
(22) By benefiting from the produce after the 'time of removal'. This suspicion arose because they claimed that just as Terumah and other consecrated objects were permitted to them, though not to other Israelites, so should Sabbatical produce.
(23) R. Hiyya b. Zarnuki and R. Simeon b. Jehozadak, on observing that he was ready to find fault.
(24) Lit., 'roof'. Cf. supra 11a, where it is stated that intercalators met in an upper chamber.
(25) So as to prevent him from following them.
(26) Basing this allegation on the ground of their having tried to justify the actions of those mentioned by him as trespassers.
(27) Who offered information to the Rabbis. V. supra 18b.
(28) Lit., 'took a majority vote'.
(29) Notwithstanding the fact that they were aided by the observations of the cowherds, the decision was taken by the Rabbis themselves.
(30) I.e., the actual Board consists of such.
(31) I.e., your attack on them is distressing. He thus reproached him for his intolerance.
(32) R. Hiyya b. Zarnuki and R. Simeon b. Jehozadak.
(33) Probably they were not aware of his more serious slander.
(34) Which is a still lower rank: v supra 25b.
(35) Chamberlain of the Palace of King Hezekiah (Isa. XXII, 15).
(36) 'Great men', according to others.
(37) King of Assyria, 705-681 B.C.E. Invaded Judah in the fourteenth year of Hezekiah's reign).
(38) That they may shoot in darkness against the upright heart i.e., Hezekiah. Ps. XI, 2.
(39) Isa. VIII, 12.
(40) Isa. XXII, 16: i.e., will carry thee away with the captivity of a mighty man.
(41) Deducing this from the verse quoted, 'hurl' referring to exile. Through exile a man loses the sphere of his livelihood, but a woman can assure hers by marriage.
(42) E. V. 'wind thee round and round' Ibid.
(43) Lev. XIII, 45.
(44) Isa. XXII, 18.
(45) Cf. end of verse 18, Thou shame of thy Lord's house.

Talmud - Mas. Sanhedrin 26b

[who were following him].' On being asked, 'Where are your followers' he answered, 'They have deserted me.' 'Then you were merely ridiculing us' they (the Assyrians) exclaimed. So they bored holes through his heels, tied him to the tails of their horses, and dragged him over thorns and thistles.

R. Eliezer said: Shebna was a Sybarite. Here it is written, Get thee unto ha-soken [the steward];[1] and elsewhere it is written, And she [the Shunamite] became a sokeneth [companion] unto him.[2]

When the foundations [ha-shathoth] are destroyed, what hath the righteous wrought?[3] Rab Judah and R. 'Ena [both explained the verse]. One interpreted it thus: If Hezekiah and his followers had been destroyed [by the plot of Shebna], what would the Righteous [sc. God] have achieved?[4] The other: If the Temple had been destroyed, what would the Righteous have achieved?[5] 'Ulla interpreted it: Had the designs of that wicked man [Shebna] not been frustrated, how would the

righteous [Hezekiah] have been rewarded?[6]

Now, according to the [last] explanation, viz., Had the designs of the wicked man [etc.], it is well: hence it is written, When ha-shathoth are destroyed.[7] The explanation which refers it to the Temple is likewise [acceptable]. For we learnt:[8] A stone lay there [beneath the Ark] ever since the time of the Early Prophets and it was called 'shethiyah'.[9] But as for its interpretation as referring to Hezekiah and his party: where do we find the righteous designated as 'foundations'? — In the verse, For the pillars of the earth are the Lord's and He hath set [wa-yasheth] the world upon them.[10] Alternatively [it may be deduced] from the following, Wonderful is His counsel and great his Tushiyah [wisdom].[11]

R. Hanin said: Why is the Torah called Tushiyah? — Because it weakens the strength of man [through constant study].[12] Another interpretation: Tushiyah because it was given to Moses in secret, on account of Satan.[13] Or again, because it is composed of words, which are immaterial, upon which the world is [nevertheless] founded.[14]

'Ulla said: Anxiety[15] [adversely] affects [one's] learning,[16] for it is written, He abolisheth the thoughts of the skilled [i.e., scholars], lest their hands perform nothing substantial.[17] Rabbah said: [But] if they study it [the Torah] for its own sake, it [anxiety] has no [adverse] effect, as it is written, There are many thoughts in man's heart, but the counsel of the Lord, that shall stand:[18] counsel in which there is the word of God [i.e., study of the Torah] will stand for ever [under all circumstances].

R. JUDAH SAID: WHEN etc. R. Abbahu said in R. Eleazar's name: The halachah rests with R. Judah. R. Abbahu also said in R. Eleazar's name: All [those] enumerated in the Mishnah as ineligible must be proclaimed at the Beth din [as such]. As for a shepherd, R. Aha and Rabina differ therein: one maintains that proclamation must be made; the other holds that it is unnecessary.[19]

Now, on the view that it is not required, it is correct: hence the dictum of Rab Judah in Rab's name, viz., a shepherd in general is incompetent.[20] But according to the view that a proclamation is necessary, what is meant by 'a shepherd in general is incompetent'?[21] — That in general[22] he is proclaimed so.

A certain deed of gift was witnessed by two robbers. Now, R. Papa b. Samuel wished to declare it valid, since their [the robbers'] ineligibility as witnesses had not been publicly announced. But Raba said to him: Granted that proclamation is required in the case of persons declared only by the Rabbis as robbers;[23] must those defined as such by Biblical law also be proclaimed?[24]

(Mnemonic: Dabar, wa-Arayoth, Ganab).[25]

R. Nahman said: Those who accept charity from Gentiles[26] are incompetent as witnesses;[27] provided, however, that they accept it publicly, but not if they accept it in private. And even if publicly [accepted], the law is applicable only if, when it was possible for them to obtain it privately they yet degraded themselves by open acceptance. But where [private receipt] is impossible, it [public acceptance] is vitally necessary.[28]

R. Nahman said: One who is suspected of adultery is [nevertheless] eligible as a witness. Said R. Shesheth: Answer me,[29] Master; forty stripes on his shoulders,[30] and yet [you say] he is eligible![31] Raba observed: Even R. Nahman admits that he is incompetent to testify in matrimonial matters. Rabina — others state R. Papa — said: That is only where his evidence is to free her;[32] but if it is to bind her,[33] there is no objection [to him]. But is this not obvious?[34] — I might think that he would prefer this,[35] even as it is written, Stolen waters are sweet;[36] therefore he teaches us that as long as

she is in her present [unmarried] state, she is even more within his reach.[37]

R. Nahman said further: One who steals [produce from the fields] in Nisan, and [fruit from the orchards] in Tishri[38] is not regarded as a thief[39] . But this is only in case of a metayer,[40] where the quantity is small and the produce is ripe[41] [and no longer needs tending].

One of R. Zebid's farm-labourers' stole a kab of barley, and another a cluster of unripe dates. So he disqualified them [from acting as witnesses].

Certain grave diggers buried a corpse on the first day festival 'Azereth,[42] so R. Papa excommunicated them, and disqualified them as witnesses.[43] R. Huna the son of R. Joshua, however, removed their disqualification; whereupon R. Papa protested: 'But surely, they are wicked men!' — 'They might have thought that they were doing a good deed!' 'But did I not excommunicate them?'[44] — They might have thought that the Rabbis thereby effected expiation for them.[45]

It has been stated:

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(1) Isa. XXII, 15.

(2) I Kings I, 4. A play on the different meanings of the verb סכן, to serve, to administer, to associate, or to be a companion of one (of the opposite sex).

(3) Ps. XI, 3.

(4) Where is the fulfilment of the promise to him?

(5) Where is God's miraculous power? people would ask.

(6) He translates: For the designs (of the wicked) shall be overthrown; (otherwise) what would the Righteous have achieved?

(7) From the verb שית 'to set' — set one's thoughts. Cf. Ex. VII, 23. In some editions there follows, 'as it is written, And David laid (wa-yasheth) those words on his heart.' This verse, however, appears nowhere in Scripture, and Rashi here quotes Ex. VII, 23, but not this phrase. Hence Maharsha a.l. deletes it as an erroneous interpolation.

(8) Yoma 53b.

(9) שתיה, i.e., foundation stone. 'Ha-shathoth' therefore, may refer to the foundations of the Temple.

(10) I Sam. II, 8. And the righteous are considered the foundations of the world. Cf. Prov. X, 25: But the righteous are the foundation of the universe. (This verse could not be quoted, as a different word is used there.)

(11) Isa. XXVIII, 29. Referring to the Torah, upon the teachings of which the world was established. תושיה is here connected with שתת.

(12) Connecting תושיה with מתשת, to weaken.

(13) Satan was purposely kept in ignorance of the giving of the law, since he had opposed its being delivered into Moses's hands, on the ground that forty days later the Israelites would violate it by worshipping the golden calf. Cf. Tosaf. Shab. 89a quoting Midrash.

(14) Tohu-shuthath, indicated by the syllables composing Tushiyah תו — תוהו void, שיה — שית foundation.

(15) Lit., 'thought' — about one's livelihood etc.

(16) Lit., 'words of the Torah'.

(17) Job V, 12; i.e., he frees them from thoughtful anxiety (by providing them with food), for otherwise they could not progress in their studies. Both Rashi and Tosaf. offer additional interpretations.

(18) Prov. XIX, 21.

(19) For if he had trespassed in other persons' fields, it would be known.

(20) Cf. B.M. 5b.

(21) Once a proclamation is made, he ceases to be 'a shepherd in general' and becomes an individualized person.

(22) Even if there are no witnesses that he has led his flocks into other people's fields.

(23) Such as those enumerated in the Mishnah.

(24) Surely not! hence the deed is invalid. A robber, according to Biblical law, is one who, without judicial sanction, has seized the movable property of another by force or intimidation. Cf. B.K. 79b.

(25) On mnemonics v. p. 21, n. 5. The phrase reads: A Thing, and Incest, Theft.

(26) Lit., 'Those who eat of a thing unnamed (other).' דבר אחר is the colloquial term for pork; the whole expression is metaphorical, and is meant as translated in the text. (V. Rashi and Tosaf.).
(27) For such an action is regarded as a profanation of 'The Name', and he who performs it is regarded as wicked.
(28) Lit., 'it is a matter of life'. Cf. Yoma 82a, 'Nothing stands in the way of saving life'.
(29) So Rashi. Jast.: 'Be slow', 'beg pardon'.
(30) I.e., even though he is liable to flagellation.
(31) Surely not! Though by Biblical law punishment could not be imposed without evidence and warning, it was nevertheless meted out on the ground of strong suspicion. Cf. Kid. 81a where Rab said: We impose the punishment of lashes even on the ground of an evil report alone, as it is written, For it is no good report which I hear (I Sam. II, 24).
(32) E.g., when he testifies to the death of her husband or that she was divorced from him. His purpose is then quite obvious, and therefore his evidence is suspect.
(33) Lit., 'to bring her into' (the married state).
(34) Since no selfish interests can animate him.
(35) I.e., to keep her in a forbidden state to him, for then her occasional company would be more pleasurable.
(36) Prov. IX, 17.
(37) And that this factor is bound to outweigh the other; therefore his evidence is admissible.
(38) Its these months cereals and fruits ripen respectively.
(39) In respect of bearing witness.
(40) Who works for a certain share in the produce.
(41) Lit., 'its work is completed.'
(42) עצרת solemn assembly. The Talmudic name for the Feast of Weeks. (Cf. Lev. XXIII, 9 ff). Burial is forbidden on the first day of a Festival. Cf. Bez. 6a top.
(43) Since they violated the law for the sake of gain. It should be observed that this is the main test of eligibility.
(44) That should have indicated to them that their action was not right; yet they repeated their action.
(45) For the desecration of the day, though their act in itself was meritorious.

Talmud - Mas. Sanhedrin 27a

A witness who was proved a Zomem:[1] Abaye ruled, His disqualification is retrospective;[2] Raba maintained, He is disqualified only for the future.[3] Abaye makes the disqualification retrospective: he was a wicked man from the time of testifying [falsely], and the Torah says: Do not accept the wicked as witness.[4] Raba holds that he is disqualified prospectively [only]: now, the entire law of a falsified witness is anomalous; for [it is two against two, then] why accept the evidence of one pair rather than that of the other? Therefore it can take effect only from the time that this anomalous procedure is employed. Some say that Raba really agrees with Abaye; yet why does he rule [that the incompetence is] prospective? — Because of the purchaser's loss.[5] Wherein do they [the two views on Raba's ruling] differ? — A difference arises where two have testified against one,[6] or where he was disqualified on the grounds of robbery.[7] And R. Jeremiah of Difti related that R. Papi ruled in a certain case in accordance with Raba's view; while Mar son of R. Ashi said: The law rests with Abaye. And, [concludes the Talmud], the law rests with Abaye in Y'AL KGM.[8]

As for a Muma'[9] who eats nebelah[10] merely to satisfy his greed,[11] all agree that he is disqualified.[12] If his purpose is provocative;[13] Abaye said, He is ineligible; Raba ruled, He is eligible. Abaye said: He is ineligible, because he is classed with the wicked, and the Torah said: Do not accept the wicked as witness.[14] Raba ruled: He is eligible, because he must have been wicked for the sake of gain [hamas].[15]

An objection is raised: Do not accept the wicked as witness; [this means,] Do not accept a despoiler[16] as witness; e.g., robbers, and those who have trespassed by [false] oaths.[17] Surely this refers to both a vain oath[18] and an oath concerning money matters?[19] — No; in both cases,[20] oaths concerning money matters are alluded to; then why state 'oaths' [plural]? — [To indicate] oaths in general.[21]

An objection is raised: Do not accept the wicked as witness; [this means,] Do not accept a despoiler as witness, e.g., robbers and usurers.[22] This refutation of Abaye's view is unanswerable.

Shall we say that their difference is identical with that of Tannaim? [For it has been taught:][23] A witness proved a Zomem is unfit [to testify] in all Biblical matters: this is R. Meir's view. R. Jose said: That is only if he has been proved a Zomem in capital cases;[24] but if in monetary cases, his evidence is valid in capital charges. Shall we affirm, Abaye agrees with R. Meir, and Raba with R. Jose? 'Abaye agrees with R. Meir,' who maintains that we impose [disqualification] in respect of major cases as a result of a minor transgression.[25] 'And Raba[26] with R. Jose,' who says, We impose [disqualification] in respect of minor matters[27] as a result of a major transgression;[28] but not the reverse! — No! On R. Jose's opinion, there is no dispute at all.[29] They differ only on the basis of R. Meir's opinion. Abaye certainly agrees with R. Meir. But Raba [may argue]: So far R. Meir gives his ruling only in the case of a Zomem in a monetary case, who is evil in the sight of God and man. But in this case, since he is evil in the sight of God alone,[30] even R. Meir does not disqualify him. And the law rests with Abaye. But has he not been refuted? — That [Baraitha which refuted him] represents the opinion of R. Jose.[31] Granted; yet even so, [wherever] R. Meir and R. Jose [are in dispute], the halachah rests with R. Jose![32] — In the other case it is different, for the Tanna has taught R. Meir's view anonymously.[33] And where does this occur? — [As we find] in the case of Bar Hama, who committed murder. The Resh Galutha[34] said to R. Abba b. Jacob:[35] Go and investigate the matter, if he is definitely the murderer, dim his eyes.[36] Two witnesses thereafter appeared and testified to his definite guilt; but he [Bar Hama] produced two other witnesses, who gave evidence against one of the accusing witnesses. One deposed: In my presence this witness stole a kab of barley; the other testified: In my presence he stole

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(1) V. Glos. This refers to a case where a period elapsed between his giving of evidence and being proved a Zomem.

(2) I.e., from the time he began to give his evidence in court, and all the evidence he has given in the intervening period becomes invalidated.

(3) I.e., from the time when he is proved a Zomem.

(4) An interpretation of Ex. XXIII, 1.

(5) If purchasers have transacted business through documents signed by the Zomemim, having been unaware of their disqualification, they would become involved in considerable loss, should their evidence be declared invalid.

(6) Rashi: two pairs against one pair, each of the former refuting the testimony of a single member of the latter; in this case there is no anomaly, hence disqualification is retrospective. Tosaf.: there are two witnesses refuting one, leaving the other unaffected. The reason based on the injury to purchasers, on both interpretations, however, is still valid.

(7) Here again the argument that it is an anomalous procedure no longer holds good. It should be observed that, strictly speaking, the term Zomem is inapplicable in that case, but it is here used rather loosely in the sense of a witness proved to have been ineligible. Tosaf. however, gives this explanation: A and B attested a certain act, claiming that they had witnessed it together, whereupon C and D declared A a Zomem, but leaving the testimony of B unaffected. Now, in point of fact, since A and B jointly testified, they both (including B), deny the allegation of C and D, and therefore it is an anomaly that credence is given to the latter pair. Here, however, B too was proved to be incompetent, though on other grounds, viz., robbery; therefore it is no anomaly that the testimony of C and D against A should be accepted.

(8) יע"ל קג"ם. Six decisions scattered throughout the Babylonian Talmud in which Abaye differs from Raba, and where the law rests with the former. Y'AL KGM is composed of six initial letters of words which indicate various legal terms, YOD (י) יאוש, 'abandonment of lost article,' B.M. 21b. 'AYIN (ע) עד זומם, referred to here. LAMED (ל) לחי העומד מאליו, 'A pole put up accidentally,' 'Er. 15a. KOF (ק) קידושין שלא נמסרו לביאה, 'Betrothal which cannot result in actual cohabitation,' Kid. 51a. GIMEL (ג) גילוי דעת בגיטין 'The act of revealing one's attitude indirectly in regard to a Get,' Git. 34a. MEM (מ) מומר, A Pervert, in the following discussion.

(9) מומר (from מור convert, exchange), hence a pervert; an apostate; an open opponent of the Jewish law; a non-conformist. The word Mumar is also employed by the Talmud to designate one who transgresses a Biblical command in general.

(10) נבילה carrion, an animal that died a natural death or which was not slaughtered according to ritual law.
(11) I.e., his greed for money, because it is cheaper.
(12) Because he is classed with the wicked, who commit their misdeeds for gain.
(13) I.e., to defy, and show his contempt for, the law.
(14) Cf. Ex. XXIII, 1.
(15) חמס, 'violence', 'plunder'. Cf. Ex. XXIII, 1, 'to be a witness of violence' (E.V. 'unrighteous witness'). I.e., such as a robber; whereas in this case his action is prompted by other motives.
(16) One who violates another's rights to satisfy his own greed.
(17) I.e., perjurers.
(18) E.g., an oath that a pillar of stone is made of stone, which is a needless oath.
(19) As follows from the plural, oaths. Hence the motive for his evil act need not be lust for money, in contradistinction to Raba's opinion.
(20) Actually, only one case is mentioned, viz., oaths. But the phrase is used on the questioner's hypothesis (v. n. 6), and the answer proceeds to demolish that assumption.
(21) I.e., such as are made in litigation.
(22) Hence his wickedness must, to disqualify him, have been prompted by gain for money only, in contradistinction to the opinion of Abaye.
(23) Tosef. Mak. I.
(24) For, having been found dishonest in grave matters, his evidence is all the more suspect in matters less grave.
(25) And the case under discussion is similar: that of a provocative Mumar only; nevertheless, he is declared incompetent to testify in a civil suit, though false evidence in such a case is evil both in the sight of God and man, and hence constitutes a greater transgression.
(26) Who maintains that the evidence of a man who transgressed a ritual law (an evil in the sight of God alone) need not be doubted in a civil case.
(27) E.g., is the case of a Zomem in monetary cases.
(28) E.g., in the case of a Zomem in capital cases.
(29) Abaye can certainly not agree with R. Jose, for he can in no wise hold that a Zomem in civil cases is eligible in capital cases.
(30) Such as is involved in the open defiance of the ritual law by eating Nebelah.
(31) In accordance with the preceding argument (cf. n. 3). Abaye, however, rules as does R. Meir.
(32) Cf. 'Er. 46b. This is a general rule.
(33) It is a general principle that if an individual view is stated anonymously, as though it were a general opinion, the halachah rests with it.
(34) Exilarch.
(35) [Read with Ms. M., R. Aha b. Jacob, v. D.S. a.l.]
(36) Perhaps, 'blind him,' 'put out his eyes.' Capital punishment was abolished four decades before the fall of Jerusalem (cf. infra 41a). Others, however, interpret it of Kenas, i.e., confiscation of property.

Talmud - Mas. Sanhedrin 27b

the handle of a burtya.[1] Then [R. Abba] said to the [defendant]: What is thy intention: [to disqualify this man] in accordance with the opinion of R. Meir?[2] But wherever R. Jose is at variance with R. Meir, the halachah rests with R. Jose; and R. Jose ruled: One [a witness] who was proved a Zomem in a civil suit is competent [to testify] in capital charges. Said R. Papi: That [the rule] is only where the Tanna has not stated R. Meir's view anonymously. Here, however, he has. Whence do we infer this?[3] Shall we say, from what we learnt? 'Whoever is competent to try capital cases, is also competent to try civil suits'?[4] Now, whose opinion is this? Shall we say, R. Jose's? But what of a witness proved a Zomem in monetary cases, who, even though incompetent in civil suits, is nevertheless eligible in capital charges? Hence it must surely express the opinion of R. Meir.[5] But why so? Perhaps it [the Mishnah] refers to those who are disqualified on account of [defective] family descent?[6] For should you not agree, what of the latter clause of the Mishnah, viz., One may be competent to try monetary cases, but incompetent for capital cases? Now, why is he incompetent:

because he was proved a Zomem in a capital charge? Is he then competent to adjudicate a monetary case? But all agree that he is ineligible! Hence it must refer to disqualification through [some defect of] family descent.[7] Similarly, here too [the first clause of the Mishnah] it must refer to this type of disqualification![8] — But this is where the Tanna stated it anonymously, for we learnt:[9] These are ineligible [to be witnesses or judges]: a gambler with dice, usurers, pigeon trainers, traders in Sabbatical produce, and slaves. This is the general rule: For all testimony for which a woman is ineligible, they too are ineligible.[10] Now, whose opinion is this? Shall we assume, R. Jose's? But there is the case of testimony in capital charges, for which a woman is not eligible, whilst they are![11] Hence it must surely express the opinion of R. Meir.[12] Thereupon Bar Hama arose and kissed his [R. Papi's] feet, and undertook to pay his poll-tax for him for the rest of his life.[13]

MISHNAH. NOW, THE FOLLOWING ARE REGARDED AS RELATIONS;[14] A BROTHER,[15] FATHER'S BROTHER, MOTHER'S BROTHER, SISTER'S HUSBAND, THE HUSBAND OF ONE'S PATERNAL OR MATERNAL AUNT, A STEP-FATHER, FATHER-IN-LAW, AND BROTHER-IN-LAW [ON THE SIDE OF ONE'S WIFE]; ALL THESE WITH THEIR SONS AND SONS-IN-LAW; AND ONE'S STEPSON HIMSELF.[16]

R. JOSE SAID: THIS IS [THE TEXT OF] R. AKIBA'S MISHNAH;[17] BUT THE FIRST MISHNAH[18] [READS]: AN UNCLE AND HIS SON[19] , AND WHOEVER IS ELIGIBLE TO BE ONE'S HEIR.[20] AND ALL WHO WERE RELATED AT THAT MOMENT.[21] IF ONE HAD BEEN RELATED, BUT SUBSEQUENTLY CEASED TO BE SO,[22] HE IS ELIGIBLE. R. JUDAH HOLDS; EVEN IF ONE'S DAUGHTER HAS DIED, BUT HE [THE SON-IN-LAW] HAS HAD CHILDREN BY HER, HE STILL RANKS AS A KINSMAN.

FURTHER, A FRIEND OR AN ENEMY [IS INELIGIBLE]. BY 'FRIEND' ONE'S GROOMSMAN[23] IS MEANT; BY 'ENEMY', ANY MAN WHO, BY REASON OF ENMITY, HAS NOT SPOKEN TO ONE FOR THREE DAYS, IS UNDERSTOOD.TO THIS THE RABBIS REPLIED: ISRAELITES, AS A RULE, ARE NOT TO BE SUSPECTED ON SUCH GROUNDS.[24]

GEMARA. Whence is this law derived? — From what our Rabbis taught: The fathers shall not be put to death for [on account of] the children.[25] What does this teach? Is it that fathers shall not be executed for sins committed by their children and vice versa? But is it not already explicitly stated, Every man shall be put to death for his own sin?[26] Hence, Fathers shall not be put to death on account of children, must mean, fathers shall not be put to death on the testimony of their sons and similarly, and sons shall not be put to death on account of fathers, means, nor sons on the testimony of their fathers.

[To revert to the text.] Are not children then to be put to death for the sins committed by their parents? Is it not written, Visiting the iniquities of the fathers upon the children?[27] — There the reference is to children who follow their parents' footsteps.[28] As it has been taught: And also in the iniquities of their parents shall they pine away with them,[29] [i.e.,] if they hold fast to the evil doings of their fathers. Thou sayest thus: Yet perhaps it is not so, but true even if they do not hold fast to their [evil] doings?[30] When Scripture states, Every man shall be put to death for his own sin,[31] [it must refer to those who do not hold fast to their fathers' ways. Then how shall we interpret, And also in the iniquities of their fathers shall they pine away with them?][32] — As referring to those who continue in the ways of their fathers.[33] But do they [really] not [suffer for the sins committed by others]? Is it not written, And they shall stumble one upon another,[34] meaning, One [will stumble] through the sin of the other, which teaches that all are held responsible for one another?[35] — There the reference is to such as had the power to restrain [their fellowmen from evil] but did not.

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(1) בורטיא; a corruption of verutum — a spit; spear; javelin.

(2) That the evidence of a Zomem in monetary cases is also doubted in capital cases.

(3) For it is nowhere explicitly taught.
(4) Nid. 49b.
(5) According to whom the evidence of one proved a Zomem is monetary cases is also unacceptable in capital charges.
(6) The family tree of judges in capital cases must be without defect. V. infra 36b.
(7) In which instance they may be competent in monetary, through incompetent in capital, cases.
(8) And so, in reality, it may express the opinion of R. Jose.
(9) Supra 24b; R. H. 22a.
(10) 'Ed. II, 7.
(11) In accordance with his ruling that one whose wickedness has been prompted by monetary gain is not disqualified from testifying in capital cases.
(12) This then is the anonymous Mishnah taught in accordance with R. Meir. Hence the evidence of evil-doers by reason of their monetary greed is invalid in capital charges; hence one of the witnesses against Bar Hama was disqualified.
(13) In recognition of his successful defence of his case.
(14) Of any of the parties, and so incompetent to act as judge or witness, according to an earlier Mishnah.
(15) The editio princeps of the Mishnah adds (and begins with) ONE'S FATHER.
(16) I.e., he alone, and not his children etc.
(17) V. n. 7.
(18) A collection of Halachoth the compilation of which began, according to Gaonic accounts, as early as Hillel and Shammai. When owing to political disorders many Halachoth of the Mishnah had been forgotten and their words had become a subject of controversy, the one Mishnah developed into many. This multiplication of Mishnahs occurred during the period of the later Beth Hillel and Beth Shammai. In order to avert the danger which threatened its uniformity a synod was convened in Jabneh to examine differences and to consider revision. But as the mass of material grew and with it the need for a methodical arrangement, R. Akiba undertook the task of sifting the material and editing it systematically in various sections (Sedarim) and treatises (Massekoth). J.E. vol. VIII, p. 610.
(19) דוד is the brother of one's father.
(20) Cf. B.B. 108a. These words belong, according to Rashi, to the First Mishnah; according to Maimonides and Bertinoro, to the Mishnah of R. Akiba.
(21) When the incident which they wished to attest occurred, though they are no longer so at the time they wish to testify in court.
(22) Lit., 'became estranged', e.g., a son-in-law whose wife, the litigant's daughter, had died, or had been divorced before the incident occurred.
(23) 'Best man' at marriage. Generally an intimate friend of one's youth, v. B.B. (Sonc. ed.) p. 618, n. 10.
(24) I.e., they are not suspected of giving false evidence through friendship or enmity; hence they are competent to testify. Nevertheless, they cannot act as judges, because it is difficult for them to be unbiassed and impartial.
(25) Deut. XXIV, 16. Fathers and sons are unnecessarily in the plural. The Rabbis deduce from this that the text refers to fathers who are brothers, whose relationship is next to that of father and son, so that not only the kinship between one another but also that between one and the son of the other debars from giving evidence. The following kinsmen are thus derived from the text: Father, son, brother and nephew. V. infra.
(26) Deut. XXIV, 16, cf. Lev. XXVI, 39.
(27) Ex. XXXIV, 7.
(28) Lit., 'who hold in their hands the deeds of their parents'.
(29) Lev. XXVI, 39.
(30) I.e., that they are still held accountable for their fathers' iniquities.
(31) Deut. XXIV, 16.
(32) Lev. XXVI, 39. The passage in brackets is a marginal addition to the text.
(33) Cf. Ber. 7a.
(34) Lev. XXVI, 37, lit., 'upon his brother'. The prefix ב in באחיו is here taken in the sense of 'because of'.
(35) Shewing that the iniquities of one may be borne by the other.

Talmud - Mas. Sanhedrin 28a

We have thus found that 'fathers'[1] [cannot testify] for the sons [of each other], and vice versa; and

all the more, 'fathers' [cannot testify] in respect of each other.[2] But whence is derived [the inadmissibility of] 'sons' [to give evidence] in respect of 'sons'?[3] — If so [sc. that such evidence is admissible], the text should have read, The fathers shall not be put to death on account of [the evidence of] a son.[4] Why 'sons'?[5] [To teach] that they too [are ineligible] in respect of each other. Thus we have found that 'sons' [are inadmissible] for each other. Whence do we know their inadmissibility [as joint witnesses] concerning others?[6] — Said Rami b. Hama: It is deduced by logic. For it has been taught: Witnesses cannot be declared Zomemim[7] until both are proved Zomemim.[8] Now, should you think that kinsmen[9] are eligible [to testify in cases] concerning strangers, a witness declared a Zomem[10] might suffer death because of his brother's evidence [which supported his own].[11] Raba demurred: But according to your argument, what of that which we learnt: If three brothers are [separately] supported by another witness,[12] they count as three separate sets of witnesses. But they count as one set in respect of being proved Zomemim.[13] It thus results that the perjured witness must pay money on account of the evidence given by his brother?[14] Hence [it must be assumed that the penalty for] false testimony is brought about through outsiders;[15] so here too, [the penalty for] false testimony comes about through strangers![16] — But if so,[17] the text should have read: and a son on account of fathers, or, and they on account of the fathers. Why and sons? — To show that 'sons'[18] [are not eligible] in respect of strangers.

We have thus deduced [the exclusion of] paternal relations. Whence do we know [the same] of maternal relations? — Scripture says, 'fathers' twice.[19] Since [the repetition] is unnecessary in respect to paternal relations, we may refer it to maternal relations.[20] Now, we have thus learnt [the exclusion of relatives' evidence] for condemnation.[21] Whence do we know [the same] of acquittal? — Scripture states, they shall be put to death, twice. Since that [the repetition] is unnecessary in respect of condemnation, refer it to acquittal. Again, we have learnt [the exclusion of relatives] in capital cases. Whence is the same known of civil suits? — Scripture says, Ye shall have one manner of law,[22] meaning that the law must be administered similarly in all cases.

Rab said:[23] My paternal uncle, his son and his son-in-law may not bear testimony for me;[24] nor may I, my son nor my son-in-law testify for him. But why so? Does not this involve relationships of the third and the first degrees?[25] whereas we learnt that a relative of the second degree[26] [may not testify] for a relative of the second degree; and also that one of the second degree cannot testify for one of the first;[27] but not that a relative of the third degree may not bear testimony for one of the first? — What is meant by HIS SON-IN-LAW, stated in the Mishnah, is the son-in-law of his [the uncle's] son.[28] But should he not include [instead] his [the uncle's] grandson?[29] — He [the Tanna] teaches us incidentally that the husband bears the same relationships as his wife.[30] But what of that which R. Hiyya taught: [The Mishnah enumerates] eight chief relations[31] who make up the number of twenty-four.[32] But these [on the assumption that a son-in-law of the uncle's son ranks as a relative of the third degree] amount to thirty-two![33] — But in fact, SON-IN-LAW is literally meant.[34] Why then does he [Rab] designate him the son-in-law of his [the uncle's] son?[35] — Because since his relationship comes from without,[36] he is regarded as one degree further removed.[37] If so, it is a case of the third degree vis a vis the second[38] [which is forbidden], whereas Rab allowed [the testimony of] the second degree to the third![39] — But Rab agrees with R. Eleazar.[40] For it has been taught: R. Eleazar said: Just as my paternal uncle, his son and son-in-law may not testify for me so the son of my paternal uncle, his son and son-in-law may not testify for me. But still, that includes relatives of the third and the second degrees,[41] whereas Rab permitted the testimony of such relatives![42] — Rab agrees with R. Eleazar in one point,[43] but differs from him in another.[44]

What is Rab's reason? — Scripture states, Fathers shall not be put to death for sons ['al banim]; and sons . . . :[45] this [the 'and'] teaches the inclusion of another generation [as ineligible to testify]. And R. Eleazar?[46] — Scripture states, 'al banim,[47] implying that the fathers' disqualification is carried over to the sons.[48]

R. Nahman said: My mother-in-law's brother, his son, and my mother-in-law's sister's son, may not testify for me. The Tanna [of the Mishnah] supports this: A SISTER'S HUSBAND; THE HUSBAND OF ONE'S PATERNAL OR MATERNAL AUNT, . . . ALL THESE WITH THEIR SONS AND SONS-IN-LAW [ARE INELIGIBLE AS WITNESSES].[49]

R. Ashi said: While we were with 'Ulla,[50] the question was raised by us: What of one's father-in-law's brother, the father-in-law's brother's son, and the father-in-law's sister's son? — He answered us: We learnt this: A BROTHER, FATHER'S BROTHER, AND MOTHER'S BROTHER . . . ALL THESE WITH THEIR SONS AND SONS-IN-LAW [ARE INELIGIBLE].[51]

It once happened that Rab went to buy

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(1) I.e., who are brothers.

(2) As the exclusion of 'sons' is due only to the kinship of their fathers.

(3) I.e., first cousins. Cf. Mishnah, PATERNAL UNCLE'S SON.

(4) I.e., on the evidence of any brother's son.

(5) In the plural.

(6) I.e., that witnesses who are related to each other may not join in giving evidence in a case concerning strangers.

(7) In the sense that they are punished with the penalty they sought to impose, v. Deut. XIX, 19.

(8) Mak. 5b, cf. Tosef. VI. But otherwise, though their evidence may be dismissed, no penalty is imposed upon the false witness.

(9) Lit., 'sons'.

(10) In a murder case.

(11) For had no one else supported him, he could not, according to the above ruling, have been declared a Zomem. Consequently he would incur the death penalty through his kinsman's testimony.

(12) E.g., in support of a claim to the title of land; v. next note.

(13) V. B.B. 56b. Proof of three years' undisturbed possession of land is sufficient to establish a claim to it (cf. B.B. 28a). The case under consideration is one where each of three brothers testified to one year only, while the other witness who joined them attested possession for the three consecutive years. Thus the evidence of the three sets taken together was adequate proof for establishing the possessor's claim. When, however, collusion is discovered, the three pairs of witnesses are considered as one set, since the evidence of all was necessary before the claim could be established. Therefore no penalty is imposed unless they are all proved Zomemim.

(14) Who would have helped to establish the claim had it not been refuted.

(15) So that it is not the brothers who cause the infliction of punishment.

(16) Hence the difficulty remains; — whence do we know that two kinsmen are inadmissible as witnesses in cases of other persons?

(17) That such evidence is admissible.

(18) I.e., relatives.

(19) The verse might have been written, Fathers shall not be put to death for sons nor they for them.

(20) V. p. 368, n. 7, on this mode of exegesis.

(21) Of which the text explicitly speaks.

(22) Lev. XXIV, 22.

(23) To understand Rab's statement and the others that follow it is necessary to give some explanation of affinity and consanguinity in Talmudic law. Relationships between persons are divided into two categories: (a) relationships between persons governed by the ties of consanguinity, i.e., persons of the same blood either lineally or collaterally; (b) relationships through marriage, i.e., affinity. And on the principle that man and wife are considered as one, the relatives of the one are related to those of the other by affinity. Again, the rules by which kinsfolk are excluded from bearing testimony for or against each other affect only certain degrees of relationship, e.g., relatives in the first degree, such as father and son, or brothers may not testify for or against each other; relatives in the second degree may not testify for or against those of the first degree. e.g., a nephew for his uncle; relatives in the second degree may not testify for or against each other, e.g., first cousins. On the other hand, relatives in the third degree may testify for or against relatives in the first, e.g., a grand-nephew in respect of an uncle (according to Raba in B.B. 128a, in opposition to Rab's opinion here);

and relatives in the third degree may testify for or against relatives in the second degree, e.g., first cousins for second cousins (Rab agrees with this opinion, but not R. Eleazar.) It should be noted that the ineligibility is mutual.

(24) Cf Mishnah. In all these passages, 'for someone' means in a case where that person is a litigant, whether the evidence be in his favour or not.

(25) Rab's son is a grand-nephew' of Rab's uncle; hence, Rab's son is a relative of the third degree to Rab's uncle, who is of the first degree in relation to Rab's father. (N.B. 'First,' 'Second', and 'Third' almost correspond to generations, but not quite, since a father vis a vis his son ranks as first to first.)

(26) I.e., a first cousin.

(27) E. g., his uncle.

(28) The Mishnah is therefore to be explained thus: ALL THESE (which includes an uncle) WITH THEIR SONS AND THEIR (sc. THE SONS') SONS-IN-LAW. Hence this teaches the inadmissibility of relatives of the third degree.

(29) 'Which is a more direct way of stating a third degree of relationship.

(30) Just as the daughter of his uncle's son is a relation of the third degree, so is her husband.

(31) There are actually nine chiefs enumerated, apart from the step-son who is counted by himself. This point will be raised later on; v. infra 28b.

(32) Since each is counted together with his son and son-in-law.

(33) Eight fathers, eight sons, eight grandsons, and eight sons-in-law of the sons.

(34) The uncle's, not the uncle's son's.

(35) [Thus Rashi, in accordance with the reading in our texts which seems to assume that the answer given above, 'What is meant by HIS SON-IN-LAW is the son-in-law of his son still stands as representing the view of Rab. This assumption is however hardly justified. Yad Ramah's text did not seem to contain the words, 'Why then . . . of his son', which certainly makes the reading smoother.]

(36) I.e., through marriage.

(37) Hence, he ranks as a third degree relation, and thus justifies Rab's ruling.

(38) A man and his uncle's son-in-law are in the relationship of the second to the third degree. Thus: If A and B are brothers, then C, A's son, and B are second and first degrees; C and D, B's sons, are two seconds; therefore C and E, B's sons-in-law, rank as second and third (since a son-in-law, according to the last answer, is one degree further removed than a son).

(39) In that he said: I, my son and my son-in-law (a relative of the third degree) may not bear testimony against my uncle; from which it may be inferred that Rab's son (third degree) may bear testimony against the uncle's son (second degree).

(40) In truth, he does not regard the son-in-law as a relative of the third degree, and so the Mishnah does, in fact, contradict him, as explained above. His view, however, is based on R. Eleazar.

(41) C and F (B's grandson) are second and third degrees.

(42) As stated above, v. n. 1.

(43) In that he disqualifies the evidence of a relative of the third degree for a relative of the first.

(44) That of disqualifying a relative of the third degree for one of the second degree.

(45) ו-בנים Deut. XXIV, 16.

(46) Why does he rule that even second and third degrees are inadmissible?

(47) על בנים, 'upon', or 'for sons'. על means upon or for

(48) I.e., all who are disqualified in respect of the fathers, are likewise disqualified is respect of the sons. Therefore, just as the first and third are ineligible (for R. Eleazar accepts Rab's exegesis of 'and'), so are the second (i.e., the son of the first) and the third disqualified.

(49) To his sister's son-in-law he is his mother-in-law's brother, to his paternal aunt's son-in-law he is his mother-in-law's brother's son, and to his maternal aunt's son-in-law he is his mother-in-law's sister's son.

(50) [Read with Ms. M. Rab 'Ulla.]

(51) To his brother's son-in-law he is his father-in-law's brother; to his father's brother's son-in-law he is his father-in-law's brother's son; and to his maternal uncle's son-in-law he is his father-in-law's sister's son.

Talmud - Mas. Sanhedrin 28b

parchment,[1] and they[2] asked him[3] whether a man may testify for his step-son's wife.[4] [Rab

answered:] In Sura they say that a husband is as his wife;[5] in Pumbeditha, that the wife is as her husband,[6] For R. Huna said in Rab [Nahman]'s[7] name: Whence do we know that a woman is as her husband? — From the verse: The nakedness of thy father's brother thou shalt not uncover; thou shalt not approach to his wife, she is thine aunt.[8] But is she not actually thy uncle's wife?[9] Hence we infer that a woman is as her husband.[10]

AND A STEP-FATHER, HE, HIS SON AND SON-IN-LAW. HIS SON! But that is his brother![11] — R. Jeremiah said: This is only added to indicate [the exclusion of] a brother's brother.[12] R. Hisda declared a brother's brother eligible. Said the Rabbis to him: Are you unaware of R. Jeremiah's dictum? — 'I have not heard it,' he answered, that is to say, 'I do not accept it.'[13] If so, [the difficulty remains,] he [i.e., his step-father's son] is HIS BROTHER! — He [the Tanna] enumerates both a paternal and a maternal brother.

R. Hisda said: The fathers of the bride and bridegroom may testify for each other; their inter-relationship is no more than that of a lid to a barrel.[14]

Rabbah b. Bar Hana said: One may testify for his betrothed wife.[15] Rabina remarked: That is only where his evidence is to her disadvantage;[16] but if it is to her advantage, he is not to be believed.[17] But [in reality] that is not so: it makes no difference whether his evidence is to her advantage or disadvantage; in neither case is he to be believed. [For] on what [do you base] your opinion [that you do not regard him as a relative]? On R. Hiyya b. Ammi's dictum stated on the authority of 'Ulla, viz.: When the betrothed wife [of a Priest dies], he is not obliged to mourn as an Onen[18] nor may he defile himself.[19] Similarly, she is not bound to mourn as an Oneneth[20] [if he dies] nor to defile herself.[21] If she dies, he does not inherit from her;[22] but if he dies, she receives her Kethubah![23] But there, the Divine law has made it all[24] depend on the fact that she is 'she'ero' [his wife],[25] a designation which cannot be applied to a betrothed wife.[26] Whereas here [the evidence of a relative is inadmissible] because of mental affinity; and such mental affinity does exist here [in the case of a betrothed woman and her groom].[27]

ONE'S STEP-SON HIMSELF. Our Rabbis taught: A step-son himself. R. Jose said: A brother-in-law.[28] Another [Baraitha] has been taught: A brother-in-law himself. R. Judah said: A step-son. What does this mean? Shall we assume it to mean as follows: A step-son himself, and the same applies to a brother-in-law; whereas R. Jose reversed this: A brother-in-law himself, and the same applies to a step-son?[29] If so, when our Mishnah states: A BROTHER-IN-LAW, HIS SON AND SON-IN-LAW, whose view is this? It is neither R. Judah's nor R. Jose's![30] But [again] if this is its meaning: A step-son himself; while as for a brother-in-law, [the exclusion extends to] his son and son-in-law; whereas R. Jose reversed this: A brother-in-law himself; while as for a step-son, [the exclusion extends to] his son and son-in-law too: in that case, what R. Hiyya taught, viz., that the Mishnah enumerates eight chief relations which [together with the sons and sons-in-law] involve twenty-four in all,[31] is neither the opinion of R. Judah nor that of R. Jose! —[32] Hence this must be the meaning: A step-son himself; but as for a brother-in-law, his son and son-in-law too [are included]; whereas R. Jose ruled: A brother-in-law himself, and a fortiori his step-son. The Mishnah[33] therefore agrees with R. Judah; while [the view expressed in] the Baraitha[34] is R. Jose's.[35]

Rab Judah said in the name of Samuel; The halachah rests with R. Jose.[36]

A certain deed of gift had been attested by two brothers-in-law. Now, R. Joseph thought to declare it valid, since Rab Judah said in Samuel's name: The halachah rests with R. Jose. But Abaye said to him: How do we know that [he referred to] the ruling of R. Jose as stated in the Mishnah which permits the evidence of a brother-in-law: perhaps he meant the ruling of R. Jose in the Baraitha, which disqualifies a brother-in-law? — One cannot think so, for Samuel said:[37] 'E.g., I and Phinehas, who are brothers and brothers-in-law (are inadmissible);'[38] hence others who are only

brothers-in-law are admissible.[39] But [Abaye retorted] may it not be that Samuel, in saying, 'e.g., I and Phinehas,' meant only to illustrate the term 'brothers-in-law'?[40] Thereupon [R. Joseph] said to him:[41] Go and establish your title through those who witnessed the delivery,[42] in accordance with R. Eleazar.[43] But did not R. Abba say: Even R. Eleazar agrees that a deed bearing its own disqualification[44] is invalid? — Thereupon R. Joseph said to him: Go your way; they do not permit me to give you possession.

R. JUDAH SAID etc. R. Tanhum said in the name of R. Tabla in the name of R. Beruna in Rab's name: The halachah rests with R. Judah. Raba said in R. Nahman's name: The halachah is not in agreement with R. Judah. Rabbah b. Bar Hana said likewise in R. Johanan's name: The halachah does not rest with R. Judah. Some refer this dictum of Rabbah b. Bar Hana to the following: R. Jose the Galilean gave the following exposition: And thou shalt come unto the Priests, the Levites, and unto the judge that shall be in those days.[45] Is it then conceivable that, one could go to a judge who does not exist in his lifetime? But the text refers to a judge who was formerly a relative but who subsequently ceased to be one.[46] [Whereon] Rabba b. Bar Hana said: The halachah rests with R. Jose the Galilean.

The sons of Mar 'Ukba's father-in-law who

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(1) Cf. J. Sanh. 17a, where it is related that Rab went to buy skins for R. Hiyya the Great, his uncle (cf. supra 5a) who needed them for parchment on which to write scrolls of the Torah. V. also Keth. 103b, how far R. Hiyya distinguished himself in the promotion of learning.

(2) Some scholars.

(3) In J. loc. cit. Rab heard R. Johanan raise the question.

(4) In a case where her personal estate is involved.

(5) This answer is here irrelevant; probably it was given in answer to the question whether one may testify for or against his step-daughter's husband. Cf. J. Sanh. ibid.

(6) Hence the evidence is inadmissible.

(7) Some versions rightly omit the word in brackets.

(8) Lev. XVIII, 14.

(9) The term aunt is usually applied to a father's sister.

(10) Which justifies her being referred to as an avuncular relative, dodah (the word translated 'aunt') being the feminine of dod (uncle).

(11) Who has already been mentioned.

(12) I.e., the son of his step-father by another wife; though he is not related to him at all, but only through his brother.

(13) I.e., he holds that one who is related neither by blood nor by marriage, but merely through an intermediary brother, is not excluded.

(14) Which is not fastened thereto, but merely lies upon it. I.e., they have a neighbourly but not an intimate relationship.

(15) V. p. 34 n. 3.

(16) Lit., 'to draw away from her.'

(17) Though he is not a relation yet, nevertheless, he is not believed, since what is to her advantage will be to his too, when the marriage is completed.

(18) אונן. One deeply grieved. Designation given to a mourner during the time between death and burial, when he is not permitted to eat consecrated things. Cf. Deut. XXVI, 14.

(19) According to the exegesis of Lev. XXI, 2, a Priest is obliged to defile himself for his wife. Yeb. 22b. Here, however, there is no obligation, and hence he is forbidden too.

(20) אוננת fem. of אונן.

(21) This latter law is only incidentally stated since even a wife by marriage, or even the daughter of a Priest, has no restriction imposed upon her as regards contact with the dead. Cf. Sot. 23b.

(22) Whilst a husband inherits from the wife. Cf. B.B. 111b.

(23) Provided he has written her one. Hence, since he may not defile himself for her, it proves that there is no real relationship between them.

(24) The compulsory defilement and inheritance.
(25) שארו. E.V., 'his kin that is near unto him,' Lev. XXI, 2.
(26) The root meaning of שאר is 'flesh relationship,' and hence excludes a betrothed wife. Cf. Mek. on Ex. XXI, 10: שארה means marital duty
(27) Therefore his evidence might be biassed. '
(28) The husband of the wife's sister.
(29) Thus differing, not in the application of the law, but in expression. On this hypothesis, the difference lies in which is to be regarded as fundamental and which as derivative.
(30) Both agreeing that only a brother-in-law himself is excluded.
(31) V. supra 28a.
(32) For according to both of them there will be nine chief relations. According to R. Judah, the brother-in-law is included in the list; according to R. Jose there is to be added, the step-son.
(33) That the exclusion of one's brother-in-law is extended to his son and son-in-law.
(34) That there are eight chief relations, involving twenty-four in all.
(35) Who does not extend the exclusion of a brother-in-law to his son and son-in-law too. However, it must not be taken that R. Jose differs from the Mishnah to the extent of admitting a brother-in-law's son, since he has already been excluded by the ruling: 'The husband of his mother's sister,' which, in other words, means that one may not give evidence for or against his sister-in-law's son, with which ruling he is in agreement, since he supports the view in the Baraitha, that there are twenty-four relations in all, and the above-named is included in that number. He differs however from the Mishnah in that he admits the evidence of one's brother or sister-in-law's son-in-law, since the ruling in the Mishnah, 'one's mother's sister's husband', is not irreconcilable with this opinion. The Mishnah excludes only a mother's sister's husband, not a mother-in-law's sister's husband. V. Rashi and Tosaf. a.l.
(36) Here the reference is assumed to be to R. Jose, in the Mishnah, who excludes only such relations as are eligible to be heirs, which brothers-in-law are not.
(37) In illustration of a brother-in-law who is disqualified.
(38) They must have married two sisters.
(39) In accordance with R. Jose in the Mishnah.
(40) And so the fact that they were also brothers was immaterial. Hence brothers-in-law are ineligible as witnesses, so that the deed was invalid.
(41) The man who had produced the contract.
(42) Of the deed of gift to you,
(43) That it is the witnesses who saw the delivery of the document who establish its validity. In fact, according to R. Eleazar, a document unsigned by witnesses is also valid. Cf. Git. 3b.
(44) I.e., which is signed by incompetent witnesses.
(45) Deut. XVII, 9.
(46) I.e., at the time the litigation is brought before him. Such a judge is eligible.

Talmud - Mas. Sanhedrin 29a

had ceased to be relatives of his,[1] came before him [Mar 'Ukba] for trial. But the latter said to them: I am ineligible to try your suit. They answered: What is your opinion; is it as R. Judah's [in the Mishnah]? We can produce a letter from 'the West'[2] that the halachah does not rest with R. Judah! He retorted: Am I then stuck to you by a kab of wax?[3] I told you that I was disqualified from acting as your judge only because [I knew] that you do not accept court decisions.[4]

BY 'FRIEND' ONE'S GROOMSMAN IS MEANT. How long [is he regarded as such]? — R. Abba said in R. Jeremiah's name in Rab's name: The whole seven days of the [marriage] feast.[5] The Rabbis said on Raba's authority: After the very first day [he is no longer regarded as such].

BY 'ENEMY', ANY MAN etc. Our Rabbis taught; And he was not an enemy;[6] then he may give evidence. Again, neither sought his harm;[7] then he may be his judge.[8] Here we find [the exclusion of] an enemy. Whence is deduced [the exclusion of] a friend? — Read [these texts] thus: And he was

not his enemy, nor his friend, — then he may give evidence, neither sought his harm, nor his good, — then he may be his judge. Is then 'his friend' actually stated?[9] — But it is a matter of logic. Why is an enemy [excluded]? Because of his disaffection.[10] Then a friend too [is ineligible] because of his friendly inclination.[11] Now, how do the Rabbis[12] interpret this text, And he was not his enemy, neither sought his harm?[13] — One [expression] intimates [his unfitness to be] a judge;[14] the other they interpret as has been taught: R. Jose son of R. Judah said, And he was not his enemy, neither sought his harm; from this we deduce that two scholars who hate each other may not sit together as judges.

MISHNAH. HOW ARE THE WITNESSES EXAMINED? — THEY ARE BROUGHT INTO A ROOM,[15] AND AWE IS INSTILLED INTO THEM.[16] THEN THEY ARE SENT OUT,[17] SAVE FOR THE OLDEST [WITNESS] TO WHOM THEY [THE JUDGES] SAY, TELL US, HOW DOST THOU KNOW THAT SO AND SO OWES [MONEY] TO SO AND SO? IF HE ANSWERS: HE PERSONALLY TOLD ME: 'I OWE HIM [THE MONEY],' OR, 'SO AND SO TOLD ME THAT HE OWES HIM,' HIS STATEMENT IS WORTHLESS,[18] UNLESS HE DECLARES, 'IN OUR PRESENCE,[19] HE ADMITTED TO HIM THAT HE OWES HIM TWO HUNDRED ZUZ.'[20] AFTER THAT THE SECOND WITNESS IS ADMITTED AND SIMILARLY EXAMINED. IF THEIR STATEMENTS TALLY, THEY [THE JUDGES] PROCEED TO DISCUSS THE CASE. SHOULD TWO FIND HIM NOT LIABLE AND ONE LIABLE, HE IS DECLARED NOT LIABLE; TWO LIABLE, AND ONE NOT LIABLE, HE IS DECLARED LIABLE; ONE LIABLE, AND ONE NOT LIABLE, OR TWO EITHER NOT LIABLE OR LIABLE, WHILE THE THIRD IS UNDECIDED,[21] THE NUMBER OF JUDGES IS INCREASED.

WHEN THE VERDICT IS ARRIVED AT,[22] THEY[23] ARE READMITTED, AND THE SENIOR JUDGE SAYS: SO AND SO, THOU ART NOT LIABLE; OR, SO AND SO, THOU ART LIABLE.

AND WHENCE DO WE KNOW THAT HE [ONE OF THE JUDGES] WHEN LEAVING, MUST NOT SAY, 'I WAS FOR ACQUITTAL WHILST MY COLLEAGUES WERE FOR CONVICTION, BUT WHAT COULD I DO, SEEING THAT THEY WERE IN THE MAJORITY?' — OF SUCH A ONE IS IT WRITTEN: THOU SHALT NOT GO ABOUT AS A TALEBEARER AMONG THY PEOPLE,[24] AND AGAIN, HE THAT GOETH ABOUT AS A TALEBEARER REVEALETH SECRETS.[25]

GEMARA. How are they[26] cautioned? Rab Judah said: We admonish them thus: As vapours and wind without rain, so is he that boasteth himself of a false gift.[27] Raba remarked: They might say [inwardly]: Though a famine last seven years it does not pass the artisan's gate.[28] But, said Raba, this is what is said to them: As a maul and a sword and a sharp arrow, so is a man that beareth false witness against his neighbour.[29] R. Ashi demurred: They might say: Though a plague last seven years, no one dies before his time! But, said R. Ashi, Nathan b. Mar Zutra told me, We warn them thus: False witnesses are despised [even] by their own employers, as it is written, And set two men, base fellows, before him, and let them bear witness against him, saying, Thou didst curse God and the King.[30]

IF HE ANSWERS, HE [PERSONALLY] TOLD ME: I OWE HIM [THE MONEY];' OR, 'SO AND SO TOLD ME THAT HE OWES HIM,' HIS STATEMENT IS WORTHLESS, UNLESS HE DECLARES, 'IN OUR PRESENCE HE ADMITTED THAT HE OWES HIM TWO HUNDRED ZUZ. This[31] supports Rab Judah. For Rab Judah said in Rab's name: One must definitely instruct them [those who witness a transaction]: Ye are my witnesses.[32] It has been stated, likewise: R. Hiyya b. Abba said in R. Johanan's name. [If A says to B,] 'You owe me a maneh',[33] and B admits it; and if he demands it from him the following day, and B answers, 'I was only jesting with you,'[34] he is not liable.[35] So also it has been taught: [If A says to B,] 'You owe me a maneh'; and B answers, 'Yes, it is so;' but on the following day, when the former demands it, the latter replies. 'I was but jesting

with you,' he is not liable. Moreover, if he hid witnesses behind a fence and said to him: 'You owe me a maneh', and B answered, 'Yes;' and A added, 'Are you willing to make this admission in the presence of so and so?' And he replied: 'I am afraid to do so, lest you compel me to go to court;' and if on the following day, on his [A's] demanding it from him, B retorts; 'I was only jesting with you', he is not liable. But we do not plead [thus] on behalf of a Mesith.[36] ' Mesith? Who mentioned him?[37] — The text is defective, and should read thus: If he himself did not plead [this],[38] we do not plead it for him. But in capital charges, even if he himself does not plead,[39] we plead on his behalf. Yet no such plea is made on behalf of a Mesith. Wherein does a Mesith differ? — R. Hama b. Hanina said: I heard it said in a lecture[40] by R. Hiyya b. Abba: A Mesith is different, because the Divine Law states, Neither shall thine eyes pity him; neither shalt thou conceal him.[41]

R. Samuel b. Nahman said in R. Jonathan's name: Whence do we know that we do not plead on behalf of a Mesith? — From the [story of] the ancient serpent.[42] For R. Simlai said: The serpent had many pleas to put forward but did not do so. Then why did not the Holy One, blessed be He, plead on its behalf? — Because it offered none itself. What could it have said [to justify itself?] — 'When the words of the teacher and those of the pupil [are contradictory], whose words should be hearkened to; surely the teacher's!'[43]

Hezekiah said: Whence do we know that he who adds [to the word of God] subtracts [from it]? — From the verse, God hath said, Ye shall not eat of it neither shall ye touch it.[44]

R. Mesharshia said: [We derive it] from the following verse: Ammathayim [two cubits] and a half shall be his length.[45] R. Ashi said: From this: 'Ashte-'esreh [eleven] curtains.[46]

Abaye said: The above ruling[47] holds good only if he says: 'I was only joking with you'; but if he pleads:

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(1) Owing to the death of their sister, the wife of Mar 'Ukba.

(2) Palestine.

(3) [Do you mean that my ties with you are indissoluble, and that this accounts for my refusal to act as your judge? (Yad Ramah.)]

(4) [Presuming too much on my relationship with you (Yad Ramah).] And not for the reason that I was unaware that the halachah does not rest with R. Judah.

(5) Cf. Rashi on Gen. XXIX, 27, Yalkut, LXX, on Judges XIV.

(6) Num. XXXV, 23. This verse is understood to refer to the witnesses in a case of murder, not to the accused. As regards the murderer it is written, That the man slayer that slayeth his neighbour and hated him not in the past may flee thither. Deut. IV, 42.

(7) Num. XXXV, 23.

(8) Because immediately after this it is written, And the Congregation shall judge.

(9) Surely it is inadmissible to deduce a law by adding to the text!

(10) Lit., 'alienation of his mind.'

(11) Lit., 'the proximity of his mind.'

(12) In the Mishnah who do not disqualify a man on such grounds.

(13) Ibid.

(14) In which case they agree with R. Judah

(15) Most edd. omit 'a room'.

(16) Lit., 'Frightened,' — to tell the truth.

(17) That is the reading of Alfasi and Asheri. (also J.). and seems to be supported by the discussion in the Gemara (v. infra, p. 185., n 5). But our text reads: THEN ALL THE PEOPLE ARE . . .

(18) Lit., 'He has said nothing.'

(19) I.e., in the presence of himself and another person.

(20) I.e., intending, by so doing, to recognise us officially as witnesses.

(21) Lit., 'Says, I do not know.'
(22) Lit., 'when the matter is finished.'
(23) The Talmud discusses to whom 'THEY' refers.
(24) Lev. XIX, 16. In other versions this verse is omitted. Cf. J. and Maim. Yad, Sanh. XXII.
(25) Prov. XI, 13.
(26) The witnesses.
(27) Prov. XXV, 14. I.e., just as abundant and seasonable rain is promised as a reward for faithfully keeping the commandments, so the iniquity of the people is the cause of the withholding of the rain, cf. Ta'an. 7b Thus the witnesses are warned that, by their false evidence, they may cause drought.
(28) I.e., the warning may prove ineffective, for hunger need not be feared by those who have learned a trade.
(29) Prov. XXV, 18, i.e., their misdemeanor might cause a plague to come upon the world.
(30) I Kings XXI, 10. regarding Naboth. The contention is proved from the fact that the witnesses are called base fellows by Jezebel, their own employer.
(31) The fact that they must declare, IN OUR PRESENCE, which implies that he explicitly appointed them for the purpose.
(32) Otherwise their testimony cannot be accepted.
(33) A hundred zuz.
(34) Because I knew you asked a thing which never happened.
(35) Alfasi and Asheri omit the bracketed passage, and substitute: And he must instruct (them), 'Ye are my witnesses.'
(36) מסית, an inciter to idolatry; v. Glos.
(37) I.e., it has no bearing on the discussion.
(38) That he was only jesting with him.
(39) Circumstances that would help to prove his innocence.
(40) פרקא, the lecture held on the Sabbath before Festivals, Rashi, B.B. 22a. V. Zunz, GV 349, n.g.]
(41) Deut. XIII, 9; this refers to a Mesith.
(42) In the Garden of Eden. Cf. Gen. III.
(43) So Eve, evens though seduced by me, should have obeyed the command of God.
(44) Gen. III, 3. Eve added to God's words by telling the serpent that she was not even permitted to touch the tree. The serpent then pushed her into contact with the tree and told her: See, just as death did not ensue from the touch, so it will not follow from eating of it. V. Rashi a.l.
(45) Ex. XXV, 17. If אמתים be decapitated it will read מתים (מאתים) two hundred. Thus by adding the א the number will be reduced to two.
(46) Ex. XXVI, 7. By taking away the ע from עשתי עשרה (11), it reads שתי עשרה (12).
(47) That where witnesses were not present by special appointment he might plead that he was joking.

Talmud - Mas. Sanhedrin 29b

'The whole thing never happened,'[1] he is adjudged a confirmed liar.[2] R. Papa the son of R. Aha b. Adda said to him: Thus we say on the authority of Rab; People do not remember aimless words.[3]

A man once hid witnesses against his neighbour behind the curtains of his bed, and said to him: 'You owe me a maneh'. 'Yes', he replied. 'May all present, whether awake or asleep be witnesses against you? he asked[4] 'No', was the reply. R. Kahanah [before whom the trial was brought] observed; Surely he answered, No![5]

A man hid witnesses against his neighbour in a grave, and then said to him: 'you owe me a maneh. 'Yes' he answered. 'Shall the living and the dead be witnesses against you?' 'No', he retorted. Said R. Simeon [b. Lakish]: Surely he answered, No![6]

Rabina, or some say R. Papa, said: We may infer from the above, that the dictum of Rab Judah in Rab's name, viz., One must definitely instruct them: 'You are my witnesses,' holds good no matter whether the debtor says it, or the creditor says it while the debtor remains silent. For it[7] is only

because the debtor said, 'no'.[8] but had he kept silent, it would indeed have been so.[9]

A certain man was nicknamed, 'A kab-ful of indebtedness.' [On hearing the name,] he exclaimed: 'To whom do I owe anything but to so and so and so and so?' Thereupon they summoned him before R. Nahman. Said he: A man is wont to disclaim abundance [of wealth].[10]

A certain man was nicknamed, 'The mouse lying on the denarii.'[11] Before he died, he declared: 'I owe money to so and so and to so and so.' After his death they summoned his heirs before R. Ishmael son of R. Jose. Said he to them:[12] The dictum, 'A man is wont to disclaim abundance [of wealth],' holds good only in life, but not in death.[13] They paid half, and were summoned for the other half, before R. Hiyya. Said he to them: Just as one is wont to disclaim his own abundance [of wealth], so he is likely to disclaim it for his children.[14] Thereupon they [the plaintiffs] asked: 'Shall we return [the half we have already received]?' R. Hiyya replied: The Zaken[15] has already given his ruling.[16]

If a man admitted [a claim] in the presence of two witnesses, and they confirmed this by Kinyan,[17] they may indite [a note],[18] if not, they may not do so.[19] [If he admitted] it in the presence of three, and they made no Kinyan: Rab [Ammi][20] said, They may write a note;[21] R. Assi ruled, They may not. There was a case once where Rab took into consideration R. Assi's ruling.

R. Adda b. Ahabah said: Sometimes a deed of acknowledgment[22] may be drawn up; sometimes it may not. If they [the witnesses] merely happened to be assembled [when he made the admission,] it may not be drawn up; but if he [the debtor] called them together, it is to be drawn up. Raba said: Even then it may not be indited, unless he definitely told them, 'Be you my judges.'[23] Mar son of R. Ashi said: Even then, it may not be drawn up, unless the [necessary] meeting place is fixed and he [the debtor] is summoned to appear before the court.[24]

If a man admitted a claim of movable property, and they [the witnesses] secured a formal title from him, they may record it; but not otherwise. But what if it concerned real estate, and they secured no formal title? — Amemar said: They may not record it. Mar Zutra said: They may. The law is that a deed is to be drawn up.[25]

Rabina once happened to be at Damharia,[26] and R. Dimi son of R. Huna of that town asked him: What of movable property which is still intact [i.e., in the possession of the debtor]? — He answered: It ranks as real estate.[27] R. Ashi, however, ruled: Since it still needs collection, it is not so.

A certain deed of [debt] acknowledgment did not contain the phrase: 'He said unto us, Write it, attest it and give it to him [the creditor].'[28] Abaye and Raba both said: This case comes under the ruling of Resh Lakish, who said: We may take it for granted that witnesses will not sign a document unless he [the vendor] has attained his majority.[29] R. Papi — others say, R. Huna the son of R. Joshua — objected: Can there be anything which we [the judges] do not know, and yet the clerks of the court know?[30] But in fact when the clerks of Abaye's court were questioned, they were found to know this law, and similarly the clerks of Raba's court.[31]

A certain deed of acknowledgment contained the phrase; 'A memorial of judicial proceedings,'[32]

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(1) That he never admitted liability, notwithstanding that there are witnesses who testify to the contrary.

(2) So that not even an oath can free him.

(3) I.e., what one says in jest is not remembered. His total denial therefore does not weaken his case.

(4) Probably the plaintiff knew that the defendant would refuse to admit the debt in the presence of witnesses, but he thought that he might assent if he believed that all were asleep. (Rashi.)

(5) And so refused to admit his debt in the presence of witnesses. Hence he is not liable.

(6) Therefore he acquitted him.
(7) The ruling in the above-mentioned cases, where the debtor is acquitted.
(8) When requested to authorise those present to be witnesses.
(9) I.e., his admission in liability in the first place would be valid
(10) Therefore he probably spoke of non-existent debts so as to disclaim wealth. Consequently he is not liable.
(11) I.e., a miser. [Mice often drag away into their holes glittering object such as coins, rings, etc. V. Lewysohn, Zoologie, p. 106.]
(12) The heirs.
(13) Hence the claim against the heirs is established.
(14) So that his declaration before death might have been fictitious.
(15) The elder R. Ishmael, son of R. Jose. v. supra p. 137, n. 1.
(16) So that I cannot reverse the decision with regard to the amount already paid.
(17) V. p. 142, n. 2.
(18) Of the debt, even if not explicitly instructed by the debtor.
(19) Unless directly requested, for though the debtor expressly appointed them as witnesses, he may prefer an oral debt to a written bond, since the former can be collected only out of property in his possession, but not out of real estate sold subsequent to the incurring of the debt, whereas the latter can be so collected.
(20) Some versions correctly omit the name in brackets.
(21) Since in this case they are given the authority of a Beth din to convert an oral debt into a written one.
(22) **אודיתא**, Of debt, made before three witnesses and without Kinyan.
(23) I.e., he conferred upon them the powers of a court.
(24) I.e., this improvised court must observe the usual formalities of a court, sitting in a place previously determined, and summoning the debtor.
(25) In the case of immovable property, as soon as the admission is made, the debt is considered as collected; consequently there is no reason why the debtor should prefer an oral debt to a written one; which latter, however, might well be preferred in the case of movable property.
(26) [A town in the neighbourhood of Sura, v. Obermeyer, op. cit. p. 298.]
(27) The law of which is stated above.
(28) The question is whether the omission is proof that the contract was written without the debtor's request or not.
(29) I.e., the age of twenty, v. B.B. 156a; the sale of a legacy before that is invalid, and it is taken for granted that witnesses are aware of this law. So also in this case, where the admission was made before two witnesses, and without Kinyan, the latter would know that they could not write a deed without the debtor's instructions; hence they must have been so instructed.
(30) This law, that two witnesses must not record the admission without explicit instructions, is not even known to all judges. How then can it be assumed that they must have known it?
(31) It was therefore shewn that this rule was known to clerks of the court, charged with the drafting of legal documents, and before whom they were generally attested.
(32) Lit., 'A memorial of the words of so and so,' instead of, 'A memorial of testimony by witnesses.'

Talmud - Mas. Sanhedrin 30a

and was entirely worded like a Court document,[1] but did not include [the usual phrase], 'We were in a session of three judges one of whom [subsequently] absented himself.'[2] Rabina thought to rule: This is covered by Resh Lakish's dictum;[3] but R. Nathan b. Ammi observed: It has been said on the authority of Raba: In all such cases a mistaken Beth din is to be suspected.[4] R. Nahman b. Isaac said: If 'Beth din' is mentioned anywhere in the document, no such [fear] is necessary.[5] But suppose it was a presumptuous Beth din: for Samuel said: If two tried a case, their decision stands, but they are called, 'A presumptuous Beth din!'[6] — No, for the document referred to[7] stated: 'The Beth din of Rabbana Ashi.'[8] But perhaps the Rabbis of Rabbana Ashi's academy agreed with Samuel?[9] — There was written therein, 'Rabbana Ashi told us [to write the document].[10] '

Our Rabbis taught: If a man says to them:[11] 'I saw your father hiding money, [say,] in a strong

box, a chest, or a store-room, and he told me that it belonged to so and so, or that it was [for the redemption] of the second tithe:'[12] if it [the hiding place] is in the house, his statement is valueless,[13] if in a field, his words stand. This is the general rule of the matter: Wherever he has access [to the hiding place] his statement stands;[14] but otherwise, it is of no value. If they [the heirs] saw their father hide money in a strong box, chest or store-room, saying, 'It belongs to so and so,' or 'It is for the payment of the second tithe': if it [his statement] was by way of giving directions, his words stand; but if it was in the nature of an evasion,[15] his statement is of no value. If one felt distressed over some money which his father had left him,[16] and the dispenser of dreams[17] appeared to him and named the sum, indicated the place, and specified its purpose, saying that it was [for the redemption] of the second tithe — such an incident once occurred, and they [the Rabbis on that occasion] said: Dreams have no importance for good or ill.[18]

IF TWO DECLARE HIM NOT LIABLE etc. How is it [the judgment] worded?[19] — R. Johanan said: [Thus; 'The defendant is] not liable.' Resh Lakish said: 'So and so [of the judges] acquit; so and so holds him liable.' R. Eleazar said: 'As a result of their [the judges'] discussion, [it is decided that] he is not liable.' Wherein do they [practically] differ? — As to whether he is to share in the payment of compensation, [in case of error,] together with the others.[20] On the view [that the verdict is to be worded]: 'He [the defendant] is not liable,'[21] he [the dissenting judge] must pay his share;[22] while on the view [that the wording should be]: 'So and so acquit, and so and so holds him liable,' he makes no restitution.[23] But even on the view [that the wording should be]: 'He is not liable,' he [the dissentient] might argue, 'Had you accepted my opinion, you too would not have to pay![24] — But the difference arises concerning their liability to pay his share in addition to their own. According to the view [that the verdict is framed thus]: 'He is not liable,' they bear [the whole] liability;[25] but on the view [that it is worded]: 'So and so [of the judges] acquit, and so and so holds him liable,' they do not pay [the dissentient's share].[26] But even according to the opinion [that the wording should be]: 'He [the defendant] is not liable,' why should they pay [the whole amount]? They might surely argue:[27] Hadst thou not been with us, the trial would have had no result at all! — The difference must arise therefore with reference to, Thou shalt not go up and down as a talebearer among thy people.[28] R. Johanan says: [The verdict is to be framed thus:] He is not liable,' because of this injunction against talebearing.[29] Resh Lakish holds [that the wording must be]: 'So and so acquit; so and so holds him liable,' since [otherwise] it [the verdict] would appear a falsehood,[30] while R. Eleazar agrees with both; therefore it [the verdict] must be framed thus: 'After a decision by the judges, he was found not liable.'

WHEN THE VERDICT IS ARRIVED AT, etc. Whom [do they admit]? Shall we say, the litigants: but they are there already?[31] But [if it refers to] the witnesses: whose view is this? Assuredly it does not agree with R. Nathan, for it has been taught: The evidence of witnesses cannot be combined,[32] unless they simultaneously saw what they state in evidence. R. Joshua b. Korha said: Evidence is valid even if they witnessed it consecutively. Again, their evidence is not admissible by the court unless they both testify together. R. Nathan said; The court may hear the evidence of one witness one day, and when the other appears the next day, they may hear his evidence![33] No. In reality, the litigants are meant, and this represents the view of R. Nehemiah. For it has been taught: R. Nehemiah said: This was the custom of the fair-minded[34] in Jerusalem; first the litigants were admitted and their statements heard; then the witnesses were admitted and their statements heard. Then they[35] were ordered out, and the matter was discussed. [And when the verdict was arrived at etc.][36] But has it not been explicitly taught: When the deliberations come to an end, the witnesses are readmitted?[37] That certainly does not agree with R. Nathan.

The above text [reads]: 'The evidence of witnesses cannot be combined unless they simultaneously saw what they state in evidence. R. Joshua b. Korha said: It is valid even if they saw it consecutively.' Wherein do they differ? — If you wish, I might say, in the interpretation of a Biblical verse; alternatively, in a matter of logic. On the latter assumption, [the first Tanna argues,]

the [loan of the] maneh to which the one testifies, is not attested by the other, and vice versa.[38] Whereas the other [Tanna][39] [argues that, after all,] both testify to a mina in general.[40] Alternatively, they differ in respect to a Biblical verse. For it is written, And he is a witness whether he has seen or known of it.[41] Now, it has been taught:[42] From the implications of the verse, A witness shall not rise up etc.,[43] do I not know that one is meant? Why then state 'one'.? — That it may establish the principle that wherever it says A witness, it implies two, unless one is specified by the verse.[44] And the Divine Law expressed it in the singular to teach that they must witness [the act in question] both together as one man.[45] And the other?[46] — He is a witness whether he hath seen or known of it,[47] teaches that in all circumstances [the evidence is admissible].[48]

'Again, their evidence is not admissible by the court unless they both testify together. R. Nathan said: The court may hear the evidence of one witness one day, and when the other witness appears the next day, they may hear his evidence.' Wherein do they differ? — Either in a matter of logic or in [the interpretation of] a Biblical text.

'Either in a matter of logic.' One Master argues: A single witness comes to impose an oath, but not to prove liability.[49] The other[50] argues: Even if they appear simultaneously, do they testify with one mouth?[51] But [nevertheless], their evidence is combined. So here too [where they come separately] their evidence may be combined.

'Or [in interpretation of] a Biblical text.' [And he is a witness whether he has seen or known of it;] If he do not utter it, then he shall bear his iniquity.[52]

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(1) Though it was signed only by two.

(2) Cf. Keth. 22a: If one of the three judges necessary for the authentication of a document died before signing it, the document should be so worded.

(3) V. supra, where Resh Lakish said that it may be taken for granted that an attested document has been legally drawn up. Hence the presence of three originally may be assumed.

(4) In this case where the phrase 'In a session of three judges' was omitted they might have thought that two judges sufficed for purposes of authentication.

(5) That two thought that they constitute a Beth din, for all know that the term 'Beth din' applies to three.

(6) V. supra 3a.

(7) By R. Nahman b. Isaac.

(8) The signatories belonged to his school, and they, no doubt, were aware that two cannot compose a Beth din. R. Ashi, the Babylonian Amora, is given here merely as an illustration because his was the principal court at the time when this passage was incorporated in the Gemara (cf. Rashi). 'Rabbana is a higher title than Rabbi, and is the Aramaic equivalent of Rabban', Chief Teacher (cf. Graetz, Geschichte, IV, 350ff). [According to Funk, Die Juden in Babylonien II, 103, however, the title Rabbana (the Great One) in Persia was reserved for Exilarchs, yet it was bestowed on R. Ashi owing to his unique position and the power he wielded, v. also I, 33.]

(9) That two could form a Beth din, though they did not care about Samuel's uncomplimentary designation.

(10) The court must therefore have been legally constituted, since he would not have asked two to form a Beth din.

(11) To heirs.

(12) V. p. 48, n. 4.

(13) Unless there is another witness to support his statement.

(14) Since he is then not under suspicion of having been prompted in his statement by some ulterior motive, e.g., the desire to serve someone's interests; for had he wished, he himself could have handed over the amount to whomever he wished.

(15) I.e., as though he purposely told them this, so that they might not use it, or that they might not realise his wealth and indulge in extravagance.

(16) And which he suspected to be tithe-money, but was unable to trace the amount.

(17) Or, 'The Master of Dreams', which merely represents the personification of the dream.

(18) Lit., 'neither raise nor lower'. Hence the money might be used for secular purposes. Cf. Tosef., M. Sh. V.

(19) I.e., in a case of disagreement.
(20) C. supra 6a; and infra 33a with reference to the liability of judges to compensate in cases of misjudgment.
(21) Irrespective of whether there has been disagreement or not.
(22) For without him, the remaining two could not have issued such a decree.
(23) Since his opinion is explicitly stated in the verdict.
(24) So that he himself should certainly bear no liability.
(25) Since their view is finally adopted.
(26) The opinion of the two judges was specified to show that the final decision was given by only two (Rashi).
(27) With the third judge.
(28) Lev. XIX, 16.
(29) And stating the names of the dissenting judges is tantamount to talebearing
(30) I.e., the protection of truth is more urgent than the avoidance of talebearing.
(31) Nowhere in the Mishnah is it mentioned that they had to withdraw.
(32) As is necessary for it to be valid.
(33) Cf. Tosef. Sanh. V; B.B. 32a. Hence if it is the witnesses who are admitted after a decision has been arrived at, which implies the necessity of their joint appearance this interpretation of the law is not in accord with the view of R. Nathan as given.
(34) [נקיי הדעת v. supra p. 131, n. 3. Ms. M. אנשי ירושלים 'men of Jerusalem' whom Klein, S., loc. cit., regards as synonymous with נקיי הדעת]
(35) This is understood to refer to the witnesses.
(36) [This seems to be quoted from the Mishnah and hence rightly omitted by Rashal. Ms. M. however, reads. 'when the verdict is arrived at they readmit the litigants' etc.]
(37) Hence the necessity of their conjoint appearance.
(38) E.g., if A claims a mina from B, and C testifies that he saw B receive a maneh from A on the first day of the month, while D testifies that he saw B receive a maneh on the second of the month, notwithstanding that both testify that A gave B a maneh, it is evident that they do not refer to the same transaction, and therefore there is only one witness for each alleged loan, and therefore the evidence is invalid.
(39) I.e., R. Joshua b. Korha.
(40) Hence the fact of the loan is proved, though one witness must have mistaken the date.
(41) Lev. V, 1, referring to witnesses who were adjured by parties in a case to testify before the court in their favour.
(42) Sot. 2b; 31b.
(43) Deut. XIX, 15.
(44) Therefore in the text above, And he is a witness, two are implied. Also, because the guilt-offering for the transgression of the oath imposed on the witnesses (שבועת העדות), referred to in the Biblical text, applies only to two witnesses and not to one. V. J. Sanh. III, 9; and Shebu. 31b.
(45) Otherwise their testimony is invalid.
(46) R. Joshua b. Korha: how does he interpret the verse?
(47) Which appears superfluous, for a witness is supposed to see and know of things.
(48) Whether the act was witnessed or the evidence given at the same time or not.
(49) If the claimant produces one witness in his favour, an oath is imposed on the defendant, but he is not ordered to repay. (V. Shebu. 40a.) Hence, when witnesses testify separately, the evidence of neither proves liability, and therefore the two testimonies cannot be combined.
(50) R. Nathan.
(51) Surely not!
(52) Lev. V, 1.

Talmud - Mas. Sanhedrin 30b

Now, both agree with the Rabbis who disagree with R. Joshua b. Korha:[1] they differ as to whether the 'uttering' [of the testimony] is assimilated to the 'seeing' [of the fact attested]. One Master[2] maintains that 'uttering' is assimilated to 'seeing';[3] the other[4] holds that they are not assimilated.

R. Simeon b. Eliakim was anxious for R. Jose son of R. Hanina to be ordained, but an opportunity did not present itself.[5] One day, as he was sitting before R. Johanan, the latter asked them [the students]: 'Does anyone know whether the halachah rests with R. Joshua b. Korha or not?'[6] R. Simeon b. Eliakim replied, 'This man here [R. Jose son of R. Hanina] knows.' 'Let him then answer,' said R. Johanan. Thereupon P. Simeon b. Eliakim said: 'Let the Master first ordain him.'[7] So he ordained him and then asked: 'My son, what tradition in the matter have you heard?' — 'I heard,' replied R. Jose son of R. Hanina, 'that R. Joshua b. Korha agreed with R. Nathan [that the evidence need not be given simultaneously].'[8] R. Johanan exclaimed: 'Is that what I wanted? If R. Joshua b. Korha maintained that the essential witnessing [of the act need not have been simultaneous, is it necessary [to state this] in reference to the giving of evidence [in court]! However, he concluded, since you have ascended,[9] you need not descend.'[10] R. Zera said: We may infer from this that once a great man is ordained, he remains so.[11]

R. Hiyya b. Abin said in Rab's name: The halachah rests with R. Joshua b. Korha in respect to both immovable and movable property.[12] 'Ulla said: The halachah rests with R. Joshua b. Korha only in respect to immovable,[13] but not movable property[14] . Said Abaye to him: [Your statement as to the] halachah, implies that they [the Rabbis] dispute [thereon]: but did not Raba say in R. Huna's name in Rab's name: The Sages agree with R. Joshua b. Korha in respect to testimony concerning real estate? Moreover, R. Idi b. Abin learned in Karna's compilation [of Halachoth] on Nezikin:[15] 'The Sages agree with R. Joshua b. Korha in respect to [evidence regarding] firstborns,[16] real estate, Hazakah,[17] and [the symptoms of puberty] in males and females likewise'?[18] — Would you oppose man to man![19] One Master ['Ulla] holds that they differ: the other [R. Abba or R. Idi] holds that they do not.

What is meant by, 'And [the symptoms of puberty] in males and females likewise'? Does it mean that one [witness] testified to [the appearance of] one hair on the part below [the genitals] and another to one hair on the part above? But that is both half of the necessary fact, and also half of the requisite testimony![20] — But it means that one testified to two hairs on the part below, and the other to two hairs on the part above.

R. Joseph said: I state on the authority of 'Ulla that the halachah is as R. Joshua b. Korha says, in respect to both movable and immovable property. Whilst the Rabbis who came from Mehuza state that R. Zera said in Rab's name: [This ruling holds good only] in the case of movable, but not immovable property. Rab[21] follows his own views. For he said: An admission after an admission,[22] or an admission after a loan,[23] may be combined.[24] But a loan after a loan,[25] or a loan after an admission cannot be combined.

R. Nahman b. Isaac, on meeting R. Huna the son of R. Joshua, asked him:Wherein does a loan after a loan differ, so that it [the testimony] is not [combined]: because the [loan of a] maneh witnessed by one is not the same as that witnessed by the other? Then the same applies to an admission after an admission: the [debt of a] maneh which he admitted in the presence of one witness may not be the same as that which he admitted before the other witness! — It means that he declared to the latter (witness): 'Regarding the maneh which I have admitted in your presence, I have also made an admission in the presence of so and so.' Yet even then, only the latter would know [this], but not the former? — He [subsequently] went again and said to the first witness: 'The maneh which I admitted receiving in your presence, I also admitted receiving in the presence of so and so.' Thereupon [R. Nahman] said to him [R. Huna the son of R. Joshua]: 'May your mind be at ease as you have made mine.' Said he, 'Why at ease?' Did not Raba — others say, R. Shesheth — hurl a hatchet at this [answer];[26] viz., surely it is then identical with the case of an admission after a loan.[27] Thereupon he [R. Nahman b. Isaac] said to him: 'This proves what I heard about you folk, that you tear down palm trees and set them up again.'[28]

The Nehardeans said: [In all cases,] whether of admission after admission, admission after loan, loan after loan, or loan after admission, the testimonies are combined. With whom does this agree? — With R. Joshua b. Korha.

Rab Judah said: Testimony that is contradicted[29] under examination,[30] is valid in civil suits. Raba said: Logically, Rab Judah's ruling refers to such a case as where one witness says: '[I saw it paid] out of a black bag,' and the other says, 'Out of a white bag.' But if one declares, 'The money was old,'[31] and the other says, 'The money was new,'[32] their testimonies cannot be combined. But in criminal cases, are not testimonies combined where there are differences such as over the colour of a bag? Did not R. Hisda say: 'If one testifies that it [sc. the murder] was with a sword, and the other maintains, it was with a dagger, it is not valid[33] evidence; whereas if one affirms that the colour of his garments was black, and the other that it was white, their evidence is valid'?

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(1) I.e., they hold that the act must be witnessed by both witnesses simultaneously.

(2) The first Tanna.

(3) I.e., just as the act must be seen by both simultaneously, so also must it be attested simultaneously. He deduces this from the juxtaposition of the witnessing of the act and the giving evidence of it.

(4) R. Nathan.

(5) V. p. 65, n. 3.

(6) V. supra. R. Joshua b. Korha holds that the two witnesses need not observe the deed attested simultaneously.

(7) For only traditions reported by ordained scholars can be relied upon. Cf. Rashal a.l.

(8) From this answer, which has no bearing on the question, one might be led to conclude that R. Simeon b. Eliakim, though aware that R. Jose b. R. Hanina was incapable of providing the information desired by R. Johanan, nevertheless stated that he could give the information, in order to have him ordained. This cannot but appear as an unworthy ruse. A similar incident, however, is recorded in the Jerushalmi, though the names of the Sages figuring in the story are slightly different in order. There, the question is asked whether the halachah rests with R. Nathan, and the answer given there is more pertinent. This would seem to indicate that our text is in some confusion. [Cf. Weiss, Dor III, 90, n. 15]

(9) I.e., seeing that the degree of Rabbi has been conferred upon you.

(10) It will not be withdrawn. 'Ascended' and 'descended' are probably meant quite literally, the ordained scholars sitting on a higher bench than the unordained.

(11) So the text as emended in the marginal note. Our reading is: once a great man confers ordination, it stands.

(12) I.e., whether the alleged transaction referred to, e.g., the sale of land, or the granting of a monetary loan.

(13) Be-cause they must both be referring to the same transaction.

(14) Where each may be testifying with respect to a different object.

(15) A collection of Baraithoth compiled by Karna and his Beth din, of which only quotations are found here and there in Talmud. V. Weiss, Dor, vol iii, p. 164.

(16) Even after the destruction of the Temple a firstborn animal might not be employed for secular purposes unless it suffered from some physical blemish. To inflict such blemishes was strictly forbidden. In the case of animals belonging to Priests, two witnesses had to testify that their injuries were not man-inflicted, since Priests were under suspicion of exposing their firstborn animals to such defects in order that they might put them to domestic use. The testimony of one witness to one defect and of another to another defect on the same animal could be combined to declare the animal permissible for work. According to Tosaf., their difference concerns the testimony that one is a firstborn and so entitled to a double share of the patrimony.

(17) To prove a three years' undisturbed possession of an estate, where one witness testifies to the possession of the land for the first three years of the Sabbatical cycle, and another for the latter three years, their evidence is combined for the establishment of the possessor's claim, since each separately testifies in reference to the same estate.

(18) Where it is necessary to establish the majority of a person, from which point he or she is to be regarded as an adult and responsible for his actions to the laws of the Community. His or her majority begins from the time when two hairs appear in the region of the pubes. V. Nid. 52a. Hence from the reference given above it may be seen that the Rabbis agree with the view of R. Joshua b. Korha regarding the case of immovable property.

(19) R. Abba and R. Idi on the one hand, and 'Ulla on the other. They enjoyed equal status, so that the teaching of one cannot authoritatively refute that of the other. Nor does the fact that there are two against one make any difference.

(20) I.e., each witness does not individually testify to the complete fact necessary to establish puberty, but to half a fact. Moreover, that half fact (i.e., a single hair in a particular place) is attested by only half the necessary testimony — one witness instead of two. Whereas in the other cases under discussion each witness testifies to a whole fact, e.g., that A lent money to B.
(21) Who holds that successive evidence cannot be combined in the case of movable property.
(22) I.e., where one witness testifies that A admitted indebtedness to B on the first day of the month, and another testifies likewise, but refers it to the second day of the month.
(23) I.e., where one witness testifies to the transaction of a loan between A and B on the first day of the week, and another to A's admission of indebtedness to B on the second day.
(24) Since it is quite possible that both refer to the same loan
(25) I.e., where one witness testifies to the transaction of a loan between A and B on one day, and another testifies to the same on another day.
(26) I.e., disproved the opinion.
(27) For since it is necessary, according to this answer, that each witness shall know what the other has seen, it follows that an admission after a loan must be explained likewise, viz., he must have said to the latter witness: The maneh I have admitted receiving in your presence, I borrowed in the presence of so and so; and then he must have gone and said to the former witness: The maneh which I borrowed in your presence, I have admitted receiving before so and so. Why then did Rab need to state both laws?
(28) I.e., you remove difficulties merely to resurrect them!
(29) I.e., if the testimony of one witness contradicts that of the other.
(30) As to attendant circumstances, e.g., regarding the colour of the clothes worn etc., in which cases the agreement or disagreement is immaterial in reference to the law of declaring them Zomemim. V infra 40a.
(31) Lit., 'black' (with use).
(32) Lit., 'white'.
(33) Lit., 'certain', cf. Deut. XIII, 15.

Talmud - Mas. Sanhedrin 31a

— Would you oppose man to man![1]

The Nehardeans said: Even if one testified that it was an old maneh, and the other declares that it was new, we combine [their testimony]. With whom does this agree: with R. Joshua b. Korha?[2] But tell me! when did you learn that R. Joshua b. Korha ruled thus? Only where they are not contradictory:[3] Yet did he rule so even where they contradict each other? — But they [i.e.,the Nehardeans] agree with the following Tanna: For it has been taught:[4] R. Simeon b. Eleazar said: Beth Shammai and Beth Hillel[5] do not differ with respect to two sets of witnesses, [of which] one attests a debt of two hundred [zuz] and the other of one hundred [a maneh]: since one hundred is included in two hundred.[6] They differ only where there is but one set.[7] Beth Shammai say, Their testimony is sundered,[8] but Beth Hillel maintain, Two hundred include one hundred.[9]

If one witness attests [the loan of] a barrel of wine, and the other, of a barrel of oil: — such a case happened, and it was brought before R. Ammi, who ordered him [the defendant] to repay a barrel of wine out of [the value of] the barrel of oil.[10] In accordance with whom? With R. Simeon b. Eleazar [as above]! But might it not be said that R. Simeon b. Eleazar ruled so only [of a case such as the former,] where a hundred zuz is certainly included in two hundred.[11] Did he however rule thus in such a case as this?[12] — This holds good only in respect to the value thereof.[13]

If one deposes, It [e.g., the loan] was given in the upper storey, and the other declares, In the lower storey, — R. Hanina said: It happened that such a case was brought before Rabbi and he combined their evidence.

AND WHENCE DO WE KNOW etc. Our Rabbis taught: Whence do we know that when he goes

out he must not say: I was for acquittal, whilst my colleagues were for condemnation; but what could I do, seeing that they were in the majority? — Scripture states: Thou shalt not go up and down as a talebearer among thy people,[14] and further, He that goeth about talebearing revealeth secrets.[15]

It was rumoured of a certain disciple that he revealed a matter stated [as a secret] in the Beth ha-Midrash twenty-two years before. So R. Ammi expelled him from the Beth ha-Midrash saying: This man revealeth secrets. MISHNAH. WHENEVER HE[16] BRINGS PROOF, IT[17] CAN UPSET THE VERDICT. BUT IF THEY[18] HAVE TOLD HIM: 'ALL THE PROOFS WHICH YOU MAY HAVE YOU MUST PRODUCE WITHIN THIRTY DAYS:' IF HE DIES SO WITHIN THIRTY DAYS, IT UPSETS [THE DECISION]. AFTER THIRTY DAYS, IT DOES NOT. BUT RABBAN SIMEON B. GAMALIEL SAID: WHAT IS HE TO DO WHO DID NOT FIND [FAVOURABLE EVIDENCE] WITHIN THE THIRTY DAYS, BUT ONLY THEREAFTER?[19]

IF THEY[18] HAVE SAID TO HIM, 'BRING WITNESSES,' AND HE ANSWERED, 'I HAVE NONE,' OR, 'BRING PROOF,'[20] AND HE REPLIED, 'I HAVE NONE:' YET SUBSEQUENTLY HE PRODUCED PROOF, OR FOUND WITNESSES, IT IS OF NO VALUE.[21] SAID RABBAN SIMEON B. GAMALIEL: WHAT IS HE TO DO WHO DID NOT KNOW THAT WITNESSES WERE AVAILABLE, BUT FOUND THEM AFTERWARDS; OR THAT THERE WAS PROOF,YET DISCOVERED IT LATER?[22]

IF ON SEEING THAT HE WAS ABOUT TO BE CONDEMNED HE SAID: 'ADMIT SO AND SO TO TESTIFY IN MY FAVOUR,' OR PRODUCED [DOCUMENTARY] PROOF FROM HIS FUNDA,[23] IT IS VALUELESS.[24]

GEMARA. Rabbah son of R. Huna said: The halachah rests with Rabban Simeon b. Gamaliel.[25] Rabbah son of R. Huna also said: The halachah does not rest with the Sages. But is this not obvious; since he says that the halachah rests with Rabban Simeon b. Gamaliel it automatically follows that the halachah is not as the Sages? — I might have thought that his ruling[26] holds good only at the outset;[27] but once it [i.e., the reverse] has been done,[28] it is correct: therefore he informs us[29] that even then, it [the decision] is reversed.

IF THEY SAID TO HIM: 'BRING WITNESSES,' ETC. . . . SAID RABBAN SIMEON B. GAMALIEL etc. — Rabbah son of R. Huna said in R. Johanan's name: The halachah rests with the Sages. Rabbah son of R. Huna also said in R. Johanan's name: The halachah does not rest with Rabban Simeon b. Gamaliel. But is this not obvious; since he said that the halachah rests with the Sages it follows automatically that the halachah does not rest with Rabban Simeon b. Gamaliel? What he teaches us is this: Only in this case is the halachah not as Rabban Simeon b. Gamaliel holds; whereas in all other cases,[30] the halachah rests with him. Thus he opposes the dictum of Rabbah b. Bar Hana in the name of R. Johanan, viz., Wherever Rabban Simeon b. Gamaliel's view is taught in our Mishnah, the halachah rests with him, except in [the following three cases]: 'Areb,[31] Zidon[32] and 'the latter proof'.[33]

A lad[34] was once summoned for a [civil] suit before R. Nahman. The latter asked him: 'Have you any witnesses?' He answered: 'No.' 'Have you any [documentary] proof?' 'No,' was the reply. Consequently, R. Nahman ruled him to be liable. As he went along weeping, some people heard him and said to him, 'We know your father's affairs.'[35] Said R. Nahman: In such a case even the Rabbis[36] agree that the youth is not expected to know his father's affairs.[37] A certain woman[38] produced a note of a debt,[39] but said to him:[40] 'I know that this bill was discharged.' R. Nahman[41] believed her.[42] Said Raba to him: According to whose view [did you act]? According to Rabbi who said: [Ownership of] 'letters' is acquired through delivery?[43] This case is different, he replied, since she could have burnt it, had she desired.[44] Others say, R. Nahman did not believe her. Thereupon Raba objected: But had she desired,

(1) V. p. 189, n. 2.
(2) V. p. 185. For here too, after all, both testify to the same fact, viz., the debt of a maneh.
(3) Differing only in the matter of date.
(4) B.B. 41b, Nazir 20a.
(5) Who are at variance in the following case, viz., where of two sets of witnesses one testifies that A took upon himself the vow of neziruth for two years, and the other, for five years. The Shammaites maintain that since they differ, their evidence is invalid; the Hillelites say that, as both sets of witnesses testify for a period of not less than two years, the lesser period is considered proved.
(6) So that the debt of a hundred zuz is witnessed to by both.
(7) One witness testifying to a hundred, and the other to two hundred.
(8) I.e., since one is obviously false, he is cut off from the other; hence there is no valid testimony at all.
(9) So that there are two witnesses for a debt of a hundred. Hence the Nehardeans are supported by this view.
(10) I.e., since the value of the latter is greater, he regarded the smaller debt as proved.
(11) I.e., a hundred is actually part of two hundred.
(12) Where they differ as to the substance.
(13) I.e., the witnesses did not attest the indebtedness of the defendant in actual wine or oil, but his indebtedness for their value. Accordingly they differed in respect to the amount.
(14) Lev. XIX, 16.
(15) Prov. XI, 13.
(16) The defendant (Rashi). According to the Codifiers, Tur and Caro, any of the litigants, v. H.M. XVI, 1.
(17) The court (Rashi).
(18) The judges. So Alfasi, Me'iri and others. The text reads אמר לו (He, the other litigant, said unto him). The version rendered seems the more acceptable.
(19) I.e., even if he produces it after the stipulated period, the decision may be reversed.
(20) Viz., documentary evidence.
(21) Since he might forge a document or engage false witnesses.
(22) I.e., both documentary proof and witnesses are valid.
(23) Gr. **. A moneybag or hollow belt for keeping money or documents.
(24) Even according to Rabban Simeon b. Gamaliel; since he knew of it, and yet did not produce it, we fear that it is false.
(25) In the first clause, where the litigant was asked to produce evidence within thirty days and did not say that he had none.
(26) That the halachah rests with Rabban Simeon b. Gamaliel.
(27) I.e., even if proof is brought after the prescribed time, it is to be accepted.
(28) I.e., the court had rejected this evidence and given a verdict accordingly.
(29) By his second statement that the halachah does not rest with the Sages.
(30) Where Rabban Simeon b. Gamaliel is at variance with other Sages.
(31) Surety. V. B.B. 173a.
(32) Git. 74a.
(33) I.e., the case, dealt with in our Mishnah, of evidence offered late, the case under discussion; thus Rabbah b. R. Huna maintains that the halachah does rest with Rabban Simeon b. Gamaliel in respect to ‘Areb and Zidon.
(34) I.e., minor.
(35) And can testify in your favour.
(36) Who oppose Rabban Simeon B. Gamaliel in the Mishnah.
(37) Hence the decision can be reversed.
(38) Who was a trustee, appointed by the creditor and debtor, of a bill of indebtedness.
(39) Lit., ‘A Shetar came forth from under her hand.’
(40) The creditor.
(41) Before whom the dispute was brought.
(42) Notwithstanding the creditor's denial; for as long as they kept her their trustee, they vouched thereby for her truthfulness.

(43) I.e., if a creditor wishes to make over a debt, he can do so merely by handing the note — referred to here as a compilation of (alphabetical) letters — to the assignee. Hence in our case, the woman could have claimed ownership of the note, on the plea that it had been handed to her not as a trustee, but in transference of the debt. Consequently her statement that the bill was paid may be regarded as true by reason of a Miggo, v. Glos. Raba was not in favour of the opinion of Rabbi, as it opposes the view of the majority of the Sages that a Shetar cannot be legally assigned by mere delivery. V. B.B. 76a.
(44) Hence, without accepting Rabbi's ruling, there are still grounds for believing her.

Talmud - Mas. Sanhedrin 31b

she could have burnt it! — Since it had been proved at Court,[1] we cannot say that she could have destroyed it had she desired.

Raba refuted R. Nahman: A witnessed receipt[2] must be authenticated by the signatories. If unwitnessed, but produced by a trustee, or if written on the note of indebtedness, under the signatures of the witnesses, it is also valid.[3] Hence we see that the trustee is believed! This refutation of R. Nahman remains unanswered.

When R. Dimi came [from Palestine] he said in R. Johanan's name: One may always adduce proof to upset [the decision unless he declares his arguments closed, and [immediately thereafter] says: Admit so and so to testify on my behalf.[4] But is not this selfcontradictory? First you say, 'Unless he declares his arguments closed,' — which agrees with the Rabbis[5] ; then you say, 'and [immediately thereafter] says, Admit so and so to testify on my behalf' — which agrees with Rabban Simeon b. Gamaliel![6] And should you answer, The whole agrees with Rabban Simeon b. Gamaliel, and that [the latter clause is] merely elucidatory [of the first] viz., What is meant by, 'Unless he declares his arguments closed'? That means he says, Admit so and so that he may give evidence for me:'[7] but did not Rabbah b. Bar Hana say in R. Johanan's name: Wherever Rabban Simeon b. Gamaliel's view is taught in our Mishnah, the halachah rests with him, save in the cases of 'Areb, Zidon, and the 'latter proof'?[8] — But when R. Samuel b. Judah came [from Palestine], he said in R. Johanan's name: One may always produce evidence to upset [a decision], unless he declares his case closed and they say unto him, 'Bring witnesses,' and he answers, 'I have no witnesses;' 'Bring proof,' and he replies, 'I have no proof.'[9] If, however, witnesses arrive from overseas, or if his father's despatch case[10] had been deposited with a stranger, he can produce the evidence and upset [the decision].

When R. Dimi came [from Palestine], he said in R. Johanan's name: If a man, known as a difficult adversary in court, [has a trial,][11] and one of them[12] says: Let us be tried here; while the other says: Let us go to the place of Assembly,[13] he is compelled to go to the place of Assembly. R. Eleazar, however, said in his presence: Rabbi, if a man claims a maneh from his fellow, must he spend another maneh[14] on top of the first? Nay, he is compelled to attend the local court.[15] It has been stated likewise: R. Safra said [in R. Johanan's name]:[16] If two litigants are in obstinate disagreement with respect to [the venue of] a lawsuit, and one says: Let us be tried here; and the other says: Let us go to the place of Assembly;[17] he [the defendant] must attend the court in his[18] home town. And if it is necessary to consult [the Assembly], the matter is written down and forwarded to them. And if the litigant[19] says ' Write down the grounds on which you made your decision and give them to me,[20] they must write them down and give him the document.

The Yebamah[21] is bound to follow the Yabam [to his own town] that he may release her.[22] How far? — R. Ammi answered: Even from Tiberias to Sepphoris.[23] R. Kahana said: What verse proves it? — Then the elders of his city shall call him;[24] but not the elders of her city.

Amemar said: The law is that he is compelled to go to the place of the Assembly.[25] R. Ashi said to him: Did not R. Eleazar say, He is compelled to attend court in his [opponent's] town? — That is

only where the debtor demands it[26] of the creditor; but if the creditor [demands, it, the debtor must submit, for] The borrower is servant to the lender.[27]

A message was once sent[28] to Mar 'Ukba:[29] 'To him whose lustre is like that of the son of Bithia,[30] Peace be with thee. 'Ukban the Babylonian has complained to us, saying: "My brother Jeremiah has obstructed my way."[31] Speak therefore to him, and see that he meets us in Tiberias.' But is this not self-contradictory? First you say, 'Speak to him,'i.e., judge him;[32] and then you add, 'See that he meets us in Tiberias,' shewing [that they told him], Send him hither! — What they meant was: Speak to him and judge him;[33] if he accepts your decision, well and good; if not, see to it that he appears before us in Tiberias.[34]

R. Ashi says: This was a case of Kenas, and in Babylonia they could not try cases of Kenas.[35] But as for their sending him a message in such terms,[36] that was only to shew respect to Mar 'Ukba. [

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(1) Rashi: Its genuineness had been proved in Court. Tosaf. however points out that even then, it was still in her power to burn it. Therefore Tosaf. explains: It had been proved at court that she had it in her possession.

(2) סימפון; Gr. **, a kind of codicil, the precise significance of which is unknown.

(3) For the note is in the creditor's possession, and he would certainly not have permitted a false receipt to be written thereon.

(4) This implies, that, having stated that he has no more evidence in his favour, he then asks, (presumably because he sees the case going against him, as in the Mishnah,) that certain witnesses shall be heard on his behalf.

(5) Who hold that once he states that he has no more evidence, his case is closed, and new evidence cannot be offered even at a later date.

(6) For this implies that the evidence is not admissible only because he offered witnesses of whose existence he had known and who were available at the time. But if he subsequently produced new evidence, unknown to him when he made his declaration, it would be valid.

(7) I.e., only if he immediately thereafter offers fresh evidence is it not accepted, the court abiding by his previous statement that his case was closed.

(8) Thus proving that R. Johanan holds that once he has declared, 'I have no further proof,' he cannot produce any, much later.

(9) At which point his defence is regarded as closed.

(10) דיסקיא Gr. **; bisaccium, a bag with two pouches.

(11) [Thus Rashi. According to Yad Ramah render, 'He who constrains his neighbour to stand with him for trial.']

(12) The more influential man.

(13) The meeting place of scholars; the supreme Beth din in Jerusalem, according to Maim. Yad, San. XI, 6. For a full discussion of this and the following passage, v. Finkelstein, Jewish Self-Government in the Middle Ages, pp. 379 et seqq. (note C.). This was said with the hope that his opponent might be humbler out of respect for the Scholars (Rashi).

(14) In travelling expenses.

(15) The creditor's.

(16) Rashal deletes the bracketed passage. See, however, Finkelstein, loc. cit.

(17) Maintaining that he lacked confidence in the local court and feared an erroneous decision,

(18) The plaintiff's.

(19) Who declined to appear before the local court, v. Tosaf.

(20) So that he might ascertain the legality of their decision.

(21) יבמה fem. of יבם v. Glos.

(22) From the obligations of levirate marriage.

(23) Although the court in the former city was more eminent (Rashi). Actually, these two towns were near to each other.

(24) Deut. XXV, 8.

(25) Referring to a dispute between litigants regarding the place of trial.

(26) To go to the Assembly.

(27) Prov. XXII, 7.

(28) By the judicial court in Palestine.

(29) He held the office of Ab-Beth-din in Kafri near by Nehardea, and was a contemporary of Samuel Yarhinai. v. Sabb. 55a; Rashi, Kidd. 44b.
(30) Moses (Rashi). V. p. 102. [Or, 'like the Son of the House', an honorific title among the Persian nobility, Funk, op. cit., I, 33, n. 1.]
(31) I.e., he treated me injuriously.
(32) Hence, in Babylonia.
(33) I.e., Judge you the case first.
(34) Hence we see that even where the plaintiff desired the defendant to appear in another court, yet at the outset preference was given to the local court.
(35) V. B.K. 84a.
(36) Implying that they asked him to judge the case himself.

Talmud - Mas. Sanhedrin 32a

C H A P T E R I V

MISHNAH. BOTH CIVIL AND CAPITAL CASES DEMAND INQUIRY AND EXAMINATION.[1] AS IT IS WRITTEN: YE SHALL HAVE ONE MANNER OF LAW.[2] WHAT IS THE DIFFERENCE BETWEEN CIVIL AND CAPITAL CASES? — CIVIL SUITS [ARE TRIED] BY THREE; CAPITAL CASES BY TWENTY-THREE[3] CIVIL SUITS MAY BE OPENED EITHER FOR ACQUITTAL OR CONDEMNATION; CAPITAL CHARGES MUST BE OPENED FOR ACQUITTAL, BUT NOT FOR CONDEMNATION.[4] CIVIL SUITS MAY BE DECIDED BY A MAJORITY OF ONE, EITHER FOR ACQUITTAL OR CONDEMNATION; WHEREAS CAPITAL CHARGES ARE DECIDED BY A MAJORITY OF ONE FOR ACQUITTAL, BUT [AT LEAST] TWO FOR CONDEMNATION.[5] IN MONETARY CASES THE DECISION MAY BE REVERSED[6] BOTH FOR A ACQUITTAL AND FOR CONDEMNATION; WHILST IN CAPITAL CHARGES THE VERDICT MAY BE REVERSED FOR ACQUITTAL ONLY, BUT NOT FOR CONDEMNATION; WHILST IN CAPITAL CHARGES THE VERDICT MAY BE REVERSED FOR ACQUITTAL ONLY, BUT NOT FOR CONDEMNATION. IN MONETARY CASES, ALL[7] MAY ARGUE FOR OR AGAINST THE DEFENDANT; WHILST IN CAPITAL CHARGES, ANYONE MAY ARGUE IN HIS FAVOUR, BUT NOT AGAINST HIM. IN CIVIL SUITS, HE WHO HAS ARGUED FOR CONDEMNATION, MAY[8] THEN ARGUE FOR ACQUITTAL, AND VICE VERSA; WHEREAS IN CAPITAL CHARGES, ONE WHO HAS ARGUED FOR CONDEMNATION MAY SUBSEQUENTLY ARGUE FOR ACQUITTAL, BUT NOT VICE VERSA.[9]

CIVIL SUITS ARE TRIED BY DAY, AND CONCLUDED AT NIGHT.[10] BUT CAPITAL CHARGES MUST BE TRIED BY DAY AND CONCLUDED BY DAY. CIVIL SUITS CAN BE CONCLUDED ON THE SAME DAY, WHETHER FOR ACQUITTAL OR CONDEMNATION; CAPITAL CHARGES MAY BE CONCLUDED ON THE SAME DAY WITH A FAVOURABLE VERDICT, BUT ONLY ON THE MORROW WITH AN UNFAVOURABLE VERDICT.[11] THEREFORE TRIALS ARE NOT HELD ON THE EVE OF A SABBATH OR FESTIVAL.[12] IN CIVIL SUITS.[13] AND IN CASES OF CLEANNESS AND UNCLEANNESS, WE BEGIN WITH [THE OPINION OF] THE MOST EMINENT [OF THE JUDGES]; WHEREAS IN CAPITAL CHARGES, WE COMMENCE WITH [THE OPINION OF] THOSE ON THE SIDE [BENCHES].

ALL ARE ELIGIBLE TO TRY CIVIL SUITS, BUT NOT ALL ARE ELIGIBLE TO TRY CAPITAL CHARGES, ONLY PRIESTS, LEVITES, AND ISRAELITES [LAYMEN] WITH WHOM PRIESTS CAN ENTER INTO MARRIAGE RELATIONSHIP.[14]

GEMARA. Do civil suits really need inquiry and examination? The following opposes it: If a bond is dated the first of Nisan in the Shemittah,[15] and witnesses came and said: 'How can ye testify to this bond: were ye not with us on that day in such and such a place?' the bond is valid, and its signatories remain competent [witnesses], for we presume that they might merely have postponed writing it.[16] Now if you should think that inquiry and examination are necessary, how 'presume that they might merely have postponed writing it?[17] — But on your reasoning, one should object rather to the [following] Mishnah:[18] Ante-dated bonds[19] of indebtedness are invalid;[20] if post-dated, they are valid.[21] Now, if you should think that examination and inquiry are necessary, why are post-dated notes valid?[22] — This[23] is no difficulty, for a more powerful objection is raised,[24] viz., that even in the case of a bond dated the first of Nisan in the Sabbatical year, when people, as a rule, do not transact loans, and when, consequently, we cannot [plausibly] say that the writing [of the bond] might have been postponed, since no one would intentionally weaken the validity of his document:[25] yet since the annulment of debts is effectuated only at the expiration of the Sabbatical year,we declare the bond valid.[26] At all events, however, the difficulty[27] remains.

(Mnemonic: Harpash.[28])

R. Hanina said: By Biblical law, both monetary and capital cases require inquiry and investigation, as it is written: One manner of judgment ye shall have.[29] Why then were civil suits exempted from this procedure? In order not to lock the door against borrowers.[30] But if so,

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(1) Heb. דרישה והקירה, i.e, examination of witnesses on the main points, e.g., amount (loaned), date and place.

(2) Lev. XXIV, 22. I.e., both capital and monetary cases shall be alike. With regard to capital cases it is written; Then shalt thou inquire and make search (Deut. XIII, 15).

(3) V. supra 2a; 23a.

(4) The reference is to the judicial debate on the matter. In civil suits, the points in favour of condemnation may be put first; but in capital charges, the arguments for acquittal must be first marshalled, but v. Krauss, a.l. for another interpretation. But of course, it cannot refer to the actual opening of the case; the indictment and case for the prosecution must obviously be stated before there is a charge to answer.

(5) V. supra 2a and infra 36b.

(6) On errors being revealed.

(7) Even the pupils, those seated behind the judges for the purpose of filling up vacancies. Cf. infra 37a.

(8) On finding his arguments erroneous.

(9) According to Rashi, this is deduced from Num. XXXV, 25, The Congregation shall deliver the manslayer, meaning that all the endeavours of the court should be directed towards deliverance. According to Maim., Yad, Sanh., X, 2, it is deduced from Ex. XXIII, 2, Neither shalt thou speak in a quarrel to incline etc. Probably he based his deduction on the Mekilta comment on the verse, where reference is made to the judges' duty to lean towards acquittal.

(10) Where the deliberations have been protracted.

(11) In case points in the accused's favour are discovered during the night.

(12) Since should he be found guilty, the case cannot be concluded on the morrow, execution being forbidden on Sabbaths and Festivals. (From this it is seen that by 'concluding' the actual carrying out of the sentence is meant, not merely the promulgation of the verdict.) Moreover, it is against the law — except in the case of a rebellious Elder, v. infra 89a — to leave judgement in suspense. V. Maim., Yad, Sanh. XII, 4.

(13) CIVIL SUITS is omitted in most Mishnaic versions.

(14) I.e., of pure descent.

(15) שמיטה; Sabbatical year. Though the regulations of the Sabbatical year include also the annulment of all monetary obligations, 'when the creditor is legally debarred from collecting his debt (v. Deut. XV, 2), yet in various exceptional cases the law of Shemittah did not operate, e.g., if a Prosbul (פרוזבול) had been written. This was a legal instrument executed and attested in Court whereby the lender retained the right to collect the debt at any time he thought fit (cf. Sheb. X, 4). Further shemittah does not affect a loan advanced on a pledge, or where the claim for collection had been made before the expiration of the Sabbatical year, in which cases loans are not annulled. V. 'Ar. 28b.

(16) I.e., they might have witnessed the loan on an earlier date, but have postponed writing the bond until the first day of Nisan (Rashi). [According to Yad Ramah, render, 'they might have post-dated it.' We do not assume that it has been ante-dated (v. infra) as there is a presumption in favour of all duly attested documents, v. B.B. (Sonc. ed.) p. 748, n. 16.]

(17) If such an assumption is permissible, examination as to date and placed is purposeless.

(18) Rather than the Baraitha, since scholars are more conversant with the Mishnah than with Baraithoth.

(19) I.e., bearing on the evidence of witnesses, of an earlier date than the actual loan.

(20) As a rule the debtor's property is given as security for the loan, and in the case of default, the creditor may seize it if sold after the loan was incurred, but not before. Hence, if the note was ante-dated, sold property might be seized unlawfully. In order to prevent this, an ante-dated bond was declared altogether invalid, even from the date of transaction. Cf. B.M. 72a.

(21) It appears that the creditor must have renounced his security for the period between the date of the loan and that appearing on the note.

(22) Seeing that they might be mere forgeries? Hence, even if the loan itself is attested as having taken place, it should rank as only a verbal loan, which cannot be collected from property sold even after it was incurred.

(23) I.e., the fact that the objection is raised on the ground of a Baraitha rather than of a Mishnah.

(24) In the Baraitha quoted.
(25) By dating it some time in the Sabbatical year, when the debt is threatened with annulment, and so inevitably arousing the suspicion of forgery.
(26) By assuming its writing has been postponed to the Sabbatical year. Thus, this assumption, since it is possible, is made in spite of its improbability, a loan in the Sabbatical year still being rare. How much more so is the assumption to be made in normal cases. Why then should the witnesses be examined on the date, since even if it is disproved, their testimony holds good?
(27) I.e., the fact that the Baraitha is contradictory to our Mishnah; v. preceding note.
(28) V. p. 21, n. 5. Here it stands for R. Hanina, Raba, R. Papa, and R. ASHi. the four Rabbis whose views are given here.
(29) Lev. XXIV, 22.
(30) V. supra 2b. The view expressed in our Mishnah was taught before this enactment; and the Baraitha and Mishnah in Sheb., after this enactment.

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when they [the judges] erred [in their verdict], they should not be liable! — Then thou wouldst most certainly lock the door against borrowers.[1]

Raba[2] said: Our Mishnah refers to a case of Kenas,[3] the other teachings[4] to the admission and transaction of loans.[5]

R. Papa said:[6] Both this and the other teachings deal with the admission and transaction of loans. In our Mishnah, however, the suit is [suspected of being] dishonest,[7] while in the other,[8] the claim is [i.e., appears] genuine. This agrees with Resh Lakish, for Resh Lakish opposed [two verses to each other]: It is written, In justice[9] shalt thou judge thy neighbour;[10] but elsewhere, Justice, justice shalt thou follow.[11] How so? — The latter refers to a suit suspected to be dishonest; the former, to an [apparently] genuine claim.

R. Ashi said: The [contradictory] teachings are reconciled as above;[12] but as for the [Scriptural] verses, one[13] refers to a decision based on strict law, the other to a compromise. As it has been taught: Justice, justice shalt thou follow; the first [mention of justice] refers to a decision based on strict law; the second, to a compromise. How so? — E.g., where two boats sailing on a river meet; If both attempt to pass simultaneously, both will sink,[14] whereas, if one makes way for the other, both can pass [without mishap]. Likewise, if two camels met each other while on the ascent to Beth-Horon;[15] if they both ascend [at the same time] both may tumble down [into the valley]; but if [they ascend] after each other, both can go up [safely]. How then should they act? If one is laden and the other unladen, the latter should give way to the former. If one is nearer [to its destination] than the other, the former should give way to the latter. If both are [equally] near or far [from their destination,] make a compromise between them, the one [which is to go forward] compensating the other [which has to give way].

Our Rabbis taught: Justice, justice shalt thou follow, means, Thou shalt follow an eminent Beth din, as for example, [follow] R. Eliezer [b. Hyrkanus] to Lydda.[16] or R. Johanan b. Zakkai to Beror Hail.[17] It has been taught: The noise of grindstones at Burni[18] [announced] a circumcision[19] [was being performed]; and the light of a candle [by day, and many candles by night] at Beror Hail, showed that a feast [was being celebrated] there.[20]

Our Rabbis taught: justice, justice shalt thou follow,' this means, Follow the scholars to their academies. e.g.. R. Eliezer to Lydda, R. Johanan b. Zakkai to Beror Hail,[21] R. Joshua to Peki'in,[22] Rabban Gamaliel [II] to Jabneh,[23] R. Akiba to Benai Berak,[24] R. Mathia to Rome,[25] R. Hanania b. Teradion to Sikni,[26] R. Jose [b. Halafta] to Sepphoris. R. Judah b. Bathyra to Nisibis,[27] R. Joshua[28]

to the Exile,[29] Rabbi to Beth She'arim,[30] or the Sages[31] to the chamber of hewn stones.[32]

CIVIL SUITS MAY BE OPENED EITHER FOR ACQUITTAL etc. What is said?[33] Rab Judah said: We speak thus to them:[34] Who can tell that it is as ye say?[35] 'Ulla objected: But do we not thereby shut their lip?[36] — Then let them be shut! Has it not been taught: R. Simeon b. Eliezer said: The witnesses are moved from place to place,[37] that they[38] may become confused, and withdraw [their evidence].[39] What comparison is there! In that case, they are automatically repelled, whereas here, we repel them by our own act!

But, said 'Ulla: We say thus: Have you [sc. the defendant] any witnesses to refute them?[40] Rabbah demurred: Can we then open the defence of one in a manner which involves the condemnation of another?[41] — But does this really involve his condemnation? Have we not learnt: Witnesses declared Zomemim are not executed unless the verdict has [already] been given![42] — I mean this: Should the defendant remain silent until the verdict is given, and then produce witnesses and refute the others, it involves their condemnation?[43] — Therefore Rabbah said: We say to him: Have you any witnesses to contradict them?[44]

R. Kahana said: [We open the defence by saying,] From your words it appears that so and so is not guilty.[45] Abaye and Raba both say: We say to him: If you did not commit the murder, have no fear. R. Ashi says: [We begin thus:] Whoever knows anything in his [sc. the accused's] favour, let him come forward and state it. It has been taught in agreement with Abaye and Raba: Rabbi said, If no man have lain with thee and if thou hast not gone aside to uncleanness, etc.[46] ;

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(1) For notes v. supra 3a.

(2) Who holds that there is no difference between the teachings, and that they were all taught after the enactment referred to.

(3) E.g., the payment of the double restitution (v. Glos.), where the fear locking the door against borrowers has no ground.

(4) The Baraitha and Mishnah in Sheb.

(5) And where refusal to lend might be a consequence of this enacting procedure.

(6) In reconciliation of the views of the two teachings.

(7) The judges find suspicious circumstances attending the claim; therefore full investigation is essential for the establishment of the truth.

(8) V. p. 202. n. 11.

(9) E.V. 'righteousness'.

(10) Lev. XIX, 15.

(11) Deut. XVI, 20. The repetition of 'justice' indicates the necessity' of stricter investigation than is implied by the single use of the word.

(12) As explained by R. Hanina, Raba and R. Papa.

(13) The Biblical emphasis on justice.

(14) Through collision.

(15) בית חורון (lit., 'the house of the hollow'). There were two towns of this name, distinguished on account of their situation, as Beth Horon the Upper, and Beth Horon the Lower. They both lay on the southern border of Ephraim and close to the territory of Benjamin (cf. Josh. XVI, 3, 5; XVIII, 13, 14) Beth Horon the Upper stands on the summit of a conical hill, while a short distance west of this point, on a rocky eminence, stands Beth Horon the Lower. The deep valley between the two places may account for the name, "The house of the hollow.' The road winds up the mountain in zig-zag line, and is in many places cut in the rock. It is rugged and difficult. (10) Lit., 'if one is near and the other is not near.'

(16) A city in Palestine, twelve miles from Jaffa on the road to Jerusalem. Was famous as a seat of Jewish scholarship after the destruction of the Temple.

(17) Seat of R. Johanan b. Zakkai's College. near Jabneh (Jastr.) [Klein, S.. ידיעות המכון למדעי היהדות I, 46, identifies it with the village Burer, west of Beth Gubrin (Eleutheropolis.)]

(18) A place near Lydda. 'The noise of grinding' was an indication that some ingredients were being ground for the purpose of treating the circumcision wound.
(19) שבוע הבן lit., 'the week of the son' (bis), v. B.B. (Sonc. ed.) p. 246. n. 8.
(20) Bis: This was (a) during the time of Hadrian, the Emperor, who forbade the observance of the law and the rite of circumcision. Such were the signs by which Jews were invited to celebrate the solemn occasions [V. Graetz, Geschichte, IV, p. 158, who however regards these announcements as words of denunciation by the spies of the Roman Government on noticing these signs. Or (b) during the persecutions under Antiochus, Klein, op. cit., 40ff.]
(21) [Where he spent the last years of his life, v. Derenbourg, MGWJ. 1893, 304.]
(22) Or Beki'in, a small town in Palestine, between Jabneh and Lydda. A seat of a Talmudic School during the patriarchate of Gamaliel II.
(23) A small town on the N.W. borders of Judea, identified with Jabneel of Naftali (Josh. XIX, 33). Seat of the celebrated school after the destruction of Jerusalem, which locality is replaced as the seat of the Sanhedrin. Scholars (Weiss, Graetz, Halevy) disagree as to the exact authority it possessed.
(24) One of the cities of the tribe of Dan (Josh. XIX, 45) identified with the modern Benai Berak, a flourishing Jewish Colony.
(25) [He left Palestine at the same time as Judah b. Bathyra and R. Hananiah, the nephew of R. Joshua b. Hananiah (v. infra) shortly before the Bar Kochba war, and making his way to Rome he there established a school, v. Bacher, AT., I, 380.]
(26) סכנין or Sogana (v. Josephus, Vita 51). North of Jotapata in Galilee.
(27) Nisibis, city in North-eastern Mesopotamia, in the ancient province of Migdona.
(28) Read: Haninah (nephew of R. Joshua) about whose journey to Babylon. v. Ber. 63a. V. marginal note.
(29) [He established a school in Nehar Pekod, west of Nehardea, v. Bacher, op. cit. 389.]
(30) A city identified with El Shajerah, south of Sepphoris. (Neubauer, Geographie, p. 200.) One of the stations the Sanhedrin were destined to pass in its ten exiles during the period 30-170 C.E. V. R.H. 31b; Keth. 103b.
(31) The Great Sanhedrin (Rashi).
(32) לשכת הגזית, the chamber of hewn stones in the inner court of the Temple which was the home of the Great Sanhedrin. [On the refutation of Schurer's view that it was the chamber 'close to the Xystus' on the western border of the Temple Mount, v. Krauss, J.E., XII, 576.]
(33) In opening the case for the defence.
(34) Sc. the witnesses for prosecution.
(35) I.e., perhaps your evidence is false
(36) I.e., discourage them from giving further evidence.
(37) Rashi: When they came to give evidence, the Court would decline to hear it in that place, but appoint another and at the second place, they found some reason for moving to a third and so on.
(38) Lit., 'their minds'.
(39) Tosef. Sanh. IX.
(40) The accusing witnesses, and prove them Zomemim..
(41) For in a capital charge, witnesses proved Zomemim are liable to death.
(42) And unless before it was carried out, they had been proved Zomemim. Consequently, if the accused is invited to produce witnesses to refute the other at this early stage of the proceedings, no question of condemnation arises.
(43) Hence at the very outset, he must not be invited to prove the accusing witnesses Zomemim.
(44) I.e., to prove the former evidence false, but not by means of shewing that the witnesses are Zomemim. (V. Glos. and p. 36, n. 3.)
(45) The judges start by pointing out the weak features of the prosecution, e.g., even if certain statements of the prosecution are proved true, they do not shew the guilt of the accused.
(46) Num. V, 19.

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We infer from this that capital charges are opened for acquittal.[1]

IN MONETARY CASES THE DECISION MAY BE REVERSED etc. But the following

contradicts this: ‘If a man judged a case [by himself] and pronounced him who was liable, "not liable", or vice versa; the clean, "unclean," or the reverse: his decision stands, but he must pay an indemnity[2] out of his own pocket’?[3] — R. Joseph answered: This presents no difficulty: here it [our Mishnah] refers to a Mumheh;[4] there, to one who is no Mumheh.[5] But in the case of a Mumheh, do we reverse [the decision]? Have we not learned: If he was recognised by the Beth din as a Mumheh, he is exempted from paying [compensation]! —[6] R. Nahman answered: Here [in our Mishnah] the circumstances are that there is a court superior to this one in learning and numbers;[7] whereas in the other Mishnah there is no court available superior to this in learning and numbers.[8] R. Shesheth said: Here it treats of a case where he [the judge] erred regarding a law cited in a Mishnah;[9] there, of a case where he erred in the weighing of [conflicting] opinions. For R. Shesheth said in R. Assi's name: If he erred in a law cited in the Mishnah, the decision is reversed; if he erred in the weighing of [conflicting] opinions, the decision may not be reversed.

Rabina asked R Ashi: Is this also the case if he erred regarding a teaching of R. Hiyya or R. Oshaia?[10] — Yes, said he, And even in a dictum of Rab and Samuel?[11] Yes, he answered. Even in a law stated by you and me? Are we then reed cutters in the bog?[12] he retorted.

How are we to understand the phrase: ‘The weighing of [conflicting] opinions’? — R. Papa answered: If, for example, two Tannaim or Amoraim are in opposition, and it has not been explicitly settled with whom the law rests, but he [the judge] happened to rule according to the opinion of one of them, whilst the general practice[13] ; follows the other, — this is a case of [an error] in the weighing of [conflicting] opinions.

R. Hamnunah refuted R. Shesheth: It once happened that R. Tarfon ordered a cow [belonging to Menahem],[14] whose womb had been removed, to be given to dogs.[15] When the matter was brought before the Sages in Jabneh, they permitted [her as human food], for Theodos[16] the Physician stated that no cow or sow was allowed to leave Alexandria in Egypt unless her womb had first been cut out, so as to prevent her from having issue.[17] Thereupon R. Tarfon exclaimed: Thy ass is gone, Tarfon![18] But R. Akiba said to him: You are not bound to make compensation, since he who is publicly recognised as a Mumheh is free from liability to pay.[19] Now if it [your dictum] is correct,[20] she should have said to him: You erred regarding a law cited in a Mishnah,[21] and he who errs in a law cited in the Mishnah, may revoke his decision! — He[22] meant two things:[23] Firstly, you have erred in a law cited in the Mishnah, and he who errs in a law cited in the Mishnah may reverse his decision. Secondly: even if you had erred in the weighing of [conflicting] opinions, you are a publicly recognised Mumheh, and such are free from liability to pay [compensation].

R. Nahman b. Isaac said to Raba: What objection did R. Hamnunah raise against R. Shesheth from the case of the cow? Surely, the cow had already been given as food to dogs, and was no longer available for return to its owner![24] — He meant this: Should you say, that he who errs regarding a law cited in the Mishnah may not reverse the decision, it is correct: seeing that his decision stands, R. Tarfon was apprehensive, whereupon [R. Akiba] said to him: You are recognised by the Court as a Mumheh, and free from liability to refund. But if you say that he who errs in a law stated in the Mishnah may revoke his decision, then [R. Akiba] should have said to him: Since if the cow were still in existence, your decision would have been invalid and you would have done nothing, so too now, [that the cow has been consumed] you have done nothing.[25]

R. Hisda said:[26] The one [Mishnah][27] treats of a case where he [the judge] took [from one] and gave [to the other] with his own hand;[28] the other [Mishnah],[29] where he did not take and give with his own hand.[30] Now, that is correct in regard to pronouncing him who is not liable, ‘liable’; when he might have taken [from the defendant] and given [to the plaintiff] with his own hand; but how is it conceivable in the reverse case [except] where he said to him: ‘Thou art not liable’? Then he did not take [from one] and give [to the other] with his own hand! — Since he declared, ‘Thou art not

liable,' it is really as though he had taken [from one] and given [to the other] with his own hand.[31] Then what of our Mishnah, which teaches: IN MONETARY CASES THE DECISION MAY BE REVERSED BOTH FOR ACQUITTAL, AND FOR CONDEMNATION? As for acquittal, it is correct: this is conceivable where he [the judge] originally said to him, 'Thou art liable,' but did not actually take [from him] and give [to the other] with his own hand.[32] But how is it possible [to make any reversal] for condemnation, [except in the case] where the judge has first said to him: 'Thou art not liable'?[33] But you maintain that when he said to him: 'Thou art not liable,' it is as though he had taken and given with, his own hand![34] — The Mishnah really states [only] one ruling. Viz., IN MONETARY CASES A DECISION MAY BE REVERSED IN FAVOUR [OF THE ONE],[35] WHICH IS [TO THE OTHER'S (i.e.. THE PLAINTIFF'S)] DISADVANTAGE. Then by analogy, in regard to capital charges, [the statement,] THE VERDICT MAY BE REVERSED FOR ACQUITTAL ONLY

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(1) Since Scripture begins with the negative. Thus, Rabbi too understands by this that the 'opening for acquittal' is an assurance to the accused that he has nothing to fear if he is innocent.

(2) For any loss caused by his erroneous decision.

(3) Mishnah, Bek. 28b. Thus it is evident that in monetary cases the decision cannot be reversed.

(4) V. Glos. To such authority was given to retract his first decision.

(5) Who, though his decision stands, must pay compensation in case of error.

(6) For an erroneous judgment, whilst his decision holds good. Thus, even if the judge is a Mumheh, his decision is not reversed.

(7) Which can act, in a sense, as a court of appeal to reverse the lower court's decision.

(8) And hence the desire to reverse the decision may be opposed by one of the parties. But in reality, both instances, viz., that of the Mishnah here, and that of the latter part of the Mishnah there, treat of a case where the decision is given by a Mumheh.

(9) In which case his decision may be revoked.

(10) I.e., does the above ruling regarding an error in a law cited in Mishnah apply also to an error in a law cited in the Tosefta: a collection of Halachoth the redaction of which is attributed to R. Hiyya and R. Oshaia? The authority of the Tosefta is not equal to that of the Mishnah.

(11) Whose ruling is not so authoritative as the traditional law in the Tosefta.

(12) I.e., insignificant, of no importance.

(13) Adopted by a majority of judges. So the text as given in Rashi and elsewhere. Our reading is: and the general trend of the (Talmudic) discussion thereon, v. supra 6a.

(14) The bracketed phrase is absent in Bek. 28b, whence this Mishnah is quoted.

(15) I.e., he declared her unfit for human consumption

(16) Or, Theodoros.

(17) The Egyptian breed was unique in its quality, and so they took this measure in order to limit its breeding to that country. Such a mutilation did not, however, affect them.

(18) I.e., shall now have to sell my ass to compensate the owner of the cow for my erroneous decision!

(19) Bek. 28b and infra 93a.

(20) That an error in a law cited in Mishnah justifies rescinding.

(21) Cf. Hul. 54a. An animal whose womb has been removed may be used for food.

(22) R. Akiba

(23) Lit., He meant, 'One thing and yet another.'

(24) What purpose, then, could the reversal of the decision serve?

(25) I.e., you personally did not throw it to the dogs: it was the owner's misfortune to follow your ruling. (V. B.K. 100a.) Seeing therefore that R. Akiba did not argue in the manner, it can be inferred that if one errs regarding a law cited in the Mishnah, the decision may not be reversed.

(26) In answering the contradiction.

(27) The Mishnah in Bek.

(28) Then the decision cannot be reversed.

(29) Our Mishnah.

(30) In that case, an erroneous judgment was reversed.

(31) For he is confirming the defendant in the possession of the money claimed from him by the plaintiff.

(32) Then he can subsequently revise his verdict.

(33) And now declares that he is.

(34) In which case judgment cannot be reversed according to R. Hisda, and yet it is taught that the verdict may be upset.

(35) Sc., the defendant, who had previously been pronounced liable.

Talmud - Mas. Sanhedrin 33b

BUT NOT FOR CONDEMNATION, must mean, it can be reversed for acquittal, provided this involves only acquittal.[1] BUT NOT FOR CONDEMNATION. i.e., [there must be no reversal] in favour [of one] which is detrimental [to the other]. But to whose detriment can it possibly be? — That is no difficulty: It means to the detriment of the avenger of blood.[2] Because it is detrimental to him, are we to execute a man![3] Moreover, how explain, BOTH . . . AND?[4] This remains a difficulty.

Rabina explained it[5] thus: E.g he [the plaintiff] had a pledge [from the defendant] and he [the judge] had taken it from him:[6] He declared the clean, 'unclean', means that he brought it into contact with a reptile;[7] he declared the unclean,'clean', by mixing it with his [the questioner's] own fruit.[8]

IN CAPITAL CHARGES etc. Our Rabbis taught: Whence [do we infer] that if the accused leaves the Beth din guilty, and someone says: 'I have a statement to make in his favour,' he is to be brought back?[9] — Scripture reads: The guiltless[10] slay thou not.[11] And whence [do we infer] that if he leaves the Beth din not guilty, and someone says: 'I have something to state against him,'he may not be brought back? — From the verse, And the righteous,[12] slay thou not.[13]

R. Shimi b. Ashi said: It is the reverse in the case of a Mesith, for it is written: Neither shalt thou spare, neither shalt thou conceal him.[14] R. Kahana derived it[15] from the words: But thou shalt surely kill him.[16]

R. Zera asked of R. Shesheth: What of those condemned to exile?[17] — Identical law is inferred from the use of rozeah in both cases.[18] What of those liable to flagellation? Identical law is derived from the use of rasha' [guilty] in both cases,[19] it has been taught likewise: Whence [do we infer the same procedure] for those liable to exile? — Identify of law is derived from the use of 'murderer' in both places. And in the case of those liable to flogging? — From the fact that 'guilty' is used in both places.[20]

BUT NOT FOR CONDEMNATION. R. Hiyya b. Abba said in R. Johanan's name: Proving that he erred in a matter which the Sadducees[21] do not admit.[22] But if he erred in a matter which even they admit,[23] let him go back to school and learn it.[24]

R. Hiyya b. Abba asked R. Johanan: What if he erred in a law regarding an adulterer or an adulteress?[25] — He answered: While thy fire is burning, go, cut thy pumpkin and roast it.[26] It has been stated likewise: R. Ammi said in R. Johanan's name: If he erred in the case of an adulterer, the decision must be reversed. Then in what cases are decisions not reversed?[27] — R. Abbahu said in R. Johanan's name: E.g., If he erred in respect to unnatural intercourse.[28]

IN MONETARY CASES, ALL etc. 'ALL' [implies] even the witnesses. Shall we say that our Mishnah represents the view of R. Jose son of R. Judah, and not that of our Rabbis? For it has been taught: 'But one witness shall not testify against any person[29] — both for acquittal and condemnation.[30] R. Jose son of R. Judah said: He may testify for acquittal, but not for condemnation'? — Said R. Papa: ['ALL'] refers to [even] a single one of the disciples, and thus it agrees with all.[31]

(1) I.e., it does not cause damage to anyone else, e.g in the ease of the intentional desecration of the Sabbath, or of adultery.

(2) V. Num. XXXV, 19. It is a duty of the avenger of blood, the victim's nearest relative, to call the murderer to account (v. Mak. 12a; infra 45b; Mains. Yad, Rozeah I, 2), therefore in case the verdict were reversed for acquittal he would lose the opportunity of avenging his relative's blood.

(3) Surely it will not be argued that in order to soothe the kinsman's wrath we are to abide by the decision to execute the accused, even where there are reasons for reversing it.

(4) In the words of the Mishnah; BOTH FOR CONDEMNATION AND FOR ACQUITTAL; this proves that two statements are made, not one.

(5) R. Hisda's statement above, that where he found the guilty innocent, the decision cannot be reversed for condemnation, for that would mean actually a taking from the one and giving to the other.

(6) And had given it to the defendant on finding him not liable.

(7) In a case where there was a doubt as to the cleanness of a certain object, and the judge established his decision by actually making it unclean.

(8) As a demonstration of its cleanness. These are illustrations of the possibility of the judge himself causing loss through his verdict.

(9) For re-trial.

(10) **נקי**, not guilty of the crime so long as there are still arguments in his favour unheard.

(11) Ex. XXIII, 7.

(12) **צדיק**, found righteous in court, though not necessarily innocent, seeing that there is still evidence against him to be heard.

(13) Ex. XXIII, 7.

(14) Deut. XIII, 9.

(15) I.e., that it is the reserve in the case of a Mesith.

(16) Ibid. 10.

(17) For unintentional homicide. Cf. Num XXXV, 11ff. Is his trial similar in procedure to trials in capital, or monetary cases?

(18) **רוצח**; 'murderer', as used in connection with murder (Num. XXXV, 16), where he is punished by death, and as used in connection with unintentional homicide (ibid. 11) which shows that the procedure with regard to reversing decisions is the same in both cases.

(19) **רשע**. Flagellation: If the guilty is worthy to be beaten, Deut. XXV, 2; capital punishment: Who is guilty of death. Num. XXXV, 31.

(20) Tosef. Sanh. VII.

(21) **צדוקים**. A party holding views directly opposite to those of the Pharisees. They regarded only those observances obligatory which are contained in the written Word, and did not recognise those derived from Rabbinical interpretations; but v. p. 239, n. 9.

(22) E.g., the prohibition in marriage of a father-in-law's mother (Cf. infra 75a) which is transmitted by oral law.

(23) Such as a law found in the Biblical text.

(24) I.e., Since he erred in a Biblical law, his decision must be reversed.

(25) Whereas other criminal cases lend themselves to mistakes in judgment, owing to the investigation of the manifold details accompanying the act, in cases of illicit intercourse, once the act is done, there is no room for error (Rashi). According to R. Hananel, the question is, what if the judge erred by deciding that liability falls only on the male transgressor against whom alone Scripture provides, (cf. Lev. XVIII, 20), and not on the woman?

(26) I.e when engaged in your lesson pursue it further, it will save you from asking questions, for the law provides against an adulteress in Lev. XX, 10.

(27) Cf. Mishnah. Decisions in capital cases (including adultery) may not be reversed for condemnation.

(28) Which is derived from an interpretation of Lev. XVIII, 22, which the Saducees do not agree. V. infra 54a.

(29) Num. XXXV, 30.

(30) I.e., A witness who has testified in a case may not come again to bear other testimony in favour of, or against the accused, in the same case.

(31) I.e., with the Rabbis too.

Talmud - Mas. Sanhedrin 34a

What is R. Jose b. R. Judah's reason?[1] — Scripture says: But one witness shall not testify against any person [that he die]:[2] hence, only 'so that he die' may he not testify, but he may testify for acquittal. And the Rabbis?[3] — Resh Lakish answered: Their reason is that the witness seems personally concerned in his testimony.[4] But how do our Rabbis interpret, so that he die?[5] — They apply it to one of the disciples,[6] as it has been taught: Whence do we learn that if one of the witnesses says, I have a statement to make in his favour, that he is not listened to? — From the verse, But one witness shall not testify.[7] And whence do we know that if one of the disciples says, I can argue a point to his disadvantage, that he is not listened to? From the verse, One[8] shall not testify against any person that he die.[9]

IN CAPITAL CHARGES, ONE WHO ARGUED etc. Rab said: They taught this only of the period of the deliberations,[10] but at the time of pronouncement of the verdict,[11] one who has argued for acquittal may turn and argue for condemnation. An objection is raised:[12] On the following day, they rise early and assemble. He who was for acquittal declares, I was in favour of acquittal and I stand by my opinion. He who was for condemnation says, I was in favour of condemnation and I stand by my opinion. He who was in favour of condemnation may argue in favour of acquittal. But he who was in favour of acquittal may not retract and argue in favour of conviction. Now surely, on the 'the following day' the decision is to be promulgated![13] — But on thy view, are there no deliberations on the 'the following day'? Therefore the reference of the Mishnah is merely to the period of the deliberations.

Come and hear! They debate the case amongst themselves, until one of those who are for conviction agrees with those who are for acquittal.[14] Now if that is so,[15] then he [the Tanna] should have taught the reverse too! — But the Tanna fosters the possibilities of acquittal, not those of condemnation.[16]

Come and hear! R. Jose b. Hanina said: If one of the disciples pronounced for acquittal and then died, he is regarded [when the vote is taken] as if he were alive and [standing] in his place.[17] But why not assume, had he been alive, he might have retracted?[18] — Because in fact he did not retract! But did they not send [a message] from 'there' [Palestine], that the words of R. Jose b. Hanina preclude the words of our Master?[19] The true version was, 'Do not preclude [the words of our Master]'.

Come and hear! Two judges' clerks stand before them [the judges], one on the right and one on the left, and indite the arguments of those who would acquit, and those who would convict.[20] Now, as for the arguments for conviction. It is well [that they be recorded], for on the following day another argument[21] may be discovered, which necessitates postponement of judgment over night.[22] But why [record] the grounds of the defenders; surely so that should they discover different arguments for conviction, they may not be heeded?[23] — No, it is lest two judges draw a single argument from two Scriptural verses, as R. Assi asked R. Johanan: What if two [judges] derive the same argument from two verses? — He answered: They are only counted as one.[24] Whence do we know this? — Abaye answered: For Scripture saith, God hath spoken once, twice have I heard this, that strength belongeth unto God.[25] One Biblical verse may convey several teachings, but a single teaching cannot be deduced from different Scriptural verses. In R. Ishmael's School it was taught: And like in hammer that breaketh the rock in pieces:[26] i.e., just as [the rock] is split into many splinters,[27] so also may one Biblical verse convey many teachings.

What is an example of: 'One argument drawn from two Biblical verses'? — R. Zebid answered: As we learnt: The Altar sanctifies[28] all that is 'fit' for it.[29] R. Joshua said: [That means,] Anything

'fit' for the fire of the Altar',[30] once it ascended [thereon], may not descend,[31] for it is written: The burnt offering, it is that which goeth up upon its fire-wood, upon the altar:[32] Just as the burnt offering which is 'fit' for the altar-fire, once it ascended, may not descend,[33] so everything which is 'fit' for the altar-fire, once it ascends, may not descend. R. Gamaliel said: Anything 'fit' for the altar,[34] once it has ascended, may not descend, for it is written: The burnt offering, it is that which goeth up upon its fire-wood upon the altar: Just as the burnt offering which is 'fit' for the altar, once it has ascended, may not descend, so everything else which is 'fit' for the altar, once it has ascended, may not descend. What do both include?[35] — Invalidated objects.[36] One Master [sc. R. Joshua] deduces the law from the word 'fire-wood', and the other from 'altar'.[37] But there, they do actually differ! For the second clause [of that Mishnah] states: R. Gamaliel and R. Joshua differ only with reference to the Sacrificial blood and libations: according to R. Gamaliel. these may not descend; whereas in R. Joshua's view, they do descend.[38] But, said R. Papa, it [the required example] is illustrated in the following Baraitha: R. Jose the Galilean said: From the verse,

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(1) For the view that the witnesses may change their evidence only in favour of the accused.

(2) Num. XXXV, 30.

(3) Why do they forbid a change of his evidence in favour of the accused?

(4) Since he might have been induced to change his evidence in favour of the accused, lest he be proved a Zomem and so become subject to punishment by the law of retaliation.

(5)) Which seem to indicate that the testimony may not be changed only when it leads to death.

(6) That he may not put forward arguments in favour of condemnation.

(7) Num. XXXV, 30. I.e., change his testimony even in his favour.

(8) Who is not a witness, but a disciple.

(9) Ibid. But he may do so for acquittal.

(10) When all endeavours must be used to strengthen the case for acquittal.

(11) When all arguments in favour of acquittal have been exhausted.

(12) Cf. infra 40a.

(13) Then why not retract in favour of conviction.

(14) Infra 40a.

(15) Viz., that when the decision is about to be pronounced, an opinion can be reversed even for condemnation.

(16) Theoretically, however, the trend of the debate might be in the reverse direction.

(17) Infra 43a.

(18) In favour of conviction, when judgment is pronounced.

(19) Sc. Rab. Therefore his ruling not to consider an eventual change of opinion is due to the fact that he holds that at the promulgation of the decision one cannot retract.

(20) Infra 36b.

(21) For condemnation.

(22) Cf. supra 17a; i.e., so as to give the judges a chance to alter their opinion. Hence the necessity of recording their statements in order to shew that they have changed their grounds for conviction, so necessitating a further postponement.

(23) Unless they erred in a law accepted even by the Sadducees. Hence the necessity of recording their grounds for acquittal in order to be able to discover the nature of the error. This proves that an opinion for conviction may not be reversed even at the time of the promulgation of the decision.

(24) Since no two verses are intended to teach one and the same thing, one of the judges must have erred.

(25) Ps. LXII, 12.

(26) Jer. XXIII, 29.

(27) The test contains a grammatical difficulty. Literally translated, it is, Just as the hammer is split etc.; whereas for the present translation, the text must read מחלק instead of מתחלק, and some commentators emend the text accordingly. R. Tam, however, on the basis of Ekah R. IV, 7, retains the present text and its literal translation, as above, and explains, Just as the hammer, when it smites an extraordinary hard object, may itself be split, — so may the Biblical verse, when subjected to the scrutiny of a very keen intellect, split up into different meanings.

(28) I.e., that nothing that was laid upon it may be taken back.

(29) I.e., anything which has come into contact or relationship with the altar, after having been appointed for it. Even if it

became subsequently invalid for its original purpose, for any reason, e.g., in the case of a sacrifice, if the officiating priest slaughtered it with a forbidden intention, it nevertheless retained its sanctity. Now, this statement lays down the general principle with which all are in agreement, the further definition and application of which form the subject of dispute amongst various teachers whose views the Mishnah proceeds to state.

(30) I.e., only that which could have served that purpose. e.g., the flesh of a burnt offering. If, however, the blood of a sacrifice became invalid, since that is not intended to feed the fires of the altar, it does not retain its sanctity.

(31) I.e., may not be taken back, for the altar has given it a sacred character.

(32) Lev. VI, 2.

(33) Derived from . . . upon the altar all night unto the morning. (ibid).

(34) I.e., not only fit for the fires of the altar, but used in any service of the altar. Hence, in his opinion, the law applied to blood and libations too, since these were respectively sprinkled and poured upon the altar.

(35) Among the things which may not be taken back when once laid upon the altar.

(36) As explained in note 2.

(37) Now, at this stage it is assumed that since both deduce the same general principle from two different verses, there is no real disagreement between them. Thus this affords an illustration of 'one law drawn from two different verses.

(38) I.e.. they lose their sanctity. For the explanation of this, v. p. 215. n. 3. Hence, this is not a true example of one law devised from two texts. (Note: A single word is also referred to as a 'verse' or 'text'.)

Talmud - Mas. Sanhedrin 34b

Whatsoever toucheth the altar shall be holy,[1] I might infer [that this holds good] whether it be fit for the altar or not.[2] Scripture therefore says,[3] [Now this is that which thou shalt offer upon the altar; two lambs . . .; just as lambs are fit [for the altar], so are all things that are fit [included in the previous statement].[4] R. Akiba said: [Scripture states,] burnt offering:[5] Just as the burnt offering is fit [for the altar], so with all things that are so. And what do both exclude? Invalid objects.[6] One Master deduces this from the word 'lambs'; the other, from 'burnt offering'.[7] But did not R. Adda b. Ahabah say: They differed with respect to a fowl burnt offering which had been disqualified: he who deduced it [the scope of the law] from 'lambs', holds that only lambs are included,[8] but not the burnt offering of a fowl; whereas he who deduced it from 'burnt offering' includes even a burnt offering of a fowl? — But, said R. Ashi, it is illustrated by the following Baraitha:[9] Blood shall be imputed unto that man, he hath shed blood;[10] this[11] is to include [him] who sprinkles:[12] that is R. Ishmael's view. R. Akiba said: [Scripture adds] Or a sacrifice:[13] this is to include him who sprinkles. Thus, What do both include? — Sprinkling; one Master deducing it from the words: Blood shall be imputed, the other from the words: Or a sacrifice.[14] But did not R. Abbahu say: They differ where a man both slaughtered and sprinkled [the blood of a sacrifice]:[15] for according to R. Ishmael,[16] he is liable only to one [sin offering]; whereas on R. Akiba's view,[17] he is liable to two? — But surely it was stated regarding this: Abaye said: Even according to R. Akiba he is liable only to one [sin offering], for Scripture writes, There thou shalt offer thy burnt offerings and there thou shalt do [all that I commanded thee]:[18] the Divine Law thus grouped all acts [of sacrifice in the same category]![19]

CIVIL SUITS ARE TRIED BY DAY etc. (Mnemonic: Judgment, Answering, Inclining.)

Whence is this derived? — R. Hiyya b. Papa said: From the verse, And let them judge the people at all times.[20] If so, even the beginning of the trial may [take place at night]! — It is as Raba explained. For Raba opposed [two verses]: It is written, And let them judge the people at all times;[21] but elsewhere it is said, And in the day that he causeth his sons to inherit.[22] How [can these be reconciled]? — The day is for the beginning of the trial, the night is for the conclusion of the trial.[23]

Our Mishnah[24] does not agree with R. Meir. For it has been taught. R. Meir used to say: What is meant by the verse, According to their word shall every controversy and every leprosy be?[25] Now, what connection have controversies with leprosies? — But controversies are assimilated to leprosies: just as leprosies [must be examined] by day, since it is written, And in the day when [raw flesh]

appeareth in him,[26] so controversies [must be tried] by day; and just as leprosies cannot [be examined] by the blind,[27] for it is written, Wherever the priest looketh,[28] so controversies too may not be tried by the blind.[29] And leprosies are further compared to controversies: Just as the latter may not be tried by relatives, so the former may not be examined by relatives. Now, if so,[30] [one might argue,] that just as controversies must be tried by three, so must leprosies too [be examined] by three; moreover, it follows a minori,' [if questions affecting] one's wealth are [to be tried] by three, how much more so [when they concern] one's body! Therefore Scripture teaches, When he shall be brought unto Aaron the priest or unto one of his sons the priests,'[31] thus thou learnest that a single priest may examine leprosies.

A blind man in the neighbourhood of R. Johanan used to try suits, and R. Johanan raised no objection. But how could he do so?[32] Did not R. Johanan himself say, The halachah is as [every] anonymous Mishnah.[33] and we learnt: He who is qualified to judge is qualified to testify; some, however, are qualified to testify but not to judge. Whereon R. Johanan said: This is to admit [as witness] one who is blind of one eye?[34] — R. Johanan found another anonymous Mishnah,[35] viz., CIVIL SUITS ARE TRIED BY DAY AND CONCLUDED BY NIGHT.[36] But why is this anonymous Mishnah more authoritative[37] than the other? — Either because an anonymous Mishnah which expresses the opinion of the majority is preferable;[38] or alternatively, because this Mishnah is taught in the tractate relating to legal procedure.[39] But how does R. Meir[40] interpret the verse, And let them judge the people at all times? — Raba answered: As including even a cloudy day.[41] For we learnt:[42] Leprosies may not be examined in the morning, in twilight, in the house, or on a cloudy day, for [then] a dull [spot] might appear bright,[43] at mid-day,[44] for a bright [spot] might then appear dull.[45] Now [again], according to R. Meir, what is the purpose of, And in the day that he causeth his sons to inherit?[46] — He utilises it, even as Rabbah b. Hanina recited before R. Nahman: And in the day he causeth his sons to inherit: only by day mayest thou assign estates, but not by night. Whereupon the other retorted:[47] If so, if one dies by day, his sons inherit, but should he die at night, they do not inherit! Perhaps you refer to the legal procedure in bequests.[48] For it has been taught: And it shall be unto the children of Israel a statue of judgment:[49] that invests the whole chapter with the force of judicial proceedings.[50] Thus [your dictum] will agree with that which Rab Judah said in Rab's name, viz.: If three [persons] come to visit a sick man,[51] they may, according to their desire, either record [his bequest],[52] or render a judicial ruling.[53] In case of two, however, they may write it down,[54] but not render a judicial ruling.[55] Whereon R. Hisda said: This[56] holds good by day; at night, however, they may indite the bequest, but not render a judicial ruling, since they are witnesses, and a witness cannot act as judge.[57] — He [Rabbah b. Hanina] answered: Yes, I meant it so.

BUT CAPITAL CHARGES MUST BE TRIED BY DAY [AND CONCLUDED BY DAY]. Whence is this deduced? — R. Shimi b. Hiyya said: Scripture states, And hang [we — hoka'] them up unto the Lord in face of the sun.[58] Whence do we know that hoka'ah means hanging? — From the verse, And we will hang them up [we — hoka'anum] into the Lord in Gibeah of Saul, the chosen of the Lord.[59]

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(1) Ex. XXIX, 37. I.e., once it touches the altar, it retains its sanctity, as above.

(2) E.g., leaven and honey, (cf. Lev. II, 11) which are never permissible for the altar, or unconsecrated animals (i.e., hullin), which are not yet fit for the altar. — Animals had to be formally consecrated before they might be sanctified upon the altar.

(3) In the following verse. Ex. XXIX, 38.

(4) Even if now disqualified. Yet they must be things that are essentially fit for the altar, as explained in p. 215. n. 7; otherwise, the law does not apply to them.

(5) עולה Ibid. verse 42; This shall be a continued burnt offering (R. Hananel). According to Rashi, it occurs in the same verse 38 as above. Though the word does not appear in the Masoretic text, it occurs in the Samaritan Text. On such variants, v. Heller, Samaritan Pentateuch, an adaptation of the Masoretic Text.

(6) I.e., things that were never permissible upon the altar, e.g., leaven and honey; v. Lev. II, 11.

(7) Thus, this Baraitha illustrates one law drawn from two Biblical verses.'
(8) Amongst the objects which, though disqualified, may not be taken back when once laid upon the altar.
(9) Zeb. 107a.
(10) Lev. XVII, 4.
(11) Apparent redundance of the expression.
(12) The blood of a sacrifice outside the Temple courts, as being liable to excision (kareth).
(13) Ibid. verse 8.
(14) Thus it illustrates 'one law drawn derived from two Scriptural verses.'
(15) Without the Temple precincts, i.e. Unwittingly, in a spell of forgetfulness, without being reminded between the two acts that they were of a forbidden character. Now, it is a principle that every forbidden act, which, if done wittingly, involves kareth, requires a sin offering if done wittingly. There is a further principle that all things whose forbidden nature is deduced from the same word, rank as a small transgression, and therefore involve only one sacrifice.
(16) Who deduces the penalty of kareth for sprinkling outside the court from the same verse which prohibits slaughter.
(17) That kareth for sprinkling without the Temple precincts is deduced from a different verse.
(18) Deut. XII, 14.
(19) Hence there is only this one verse which commands that all acts of sacrifice, which includes slaughtering and sprinkling, shall be done in the prescribed fashion. Therefore, transgression of both involves only one sacrifice
(20) Ex. XVIII, 22; i.e., even at night.
(21) Ibid.
(22) Deut. XXI, 16. From the fact that day is stressed, the Talmud deduces that all matters in connection therewith, which principle includes disputes over the inheritance, are to be settled by day. But such disputes are part of civil suits in general, and thus this verse contradicts the preceding.
(23) For, 'and they shall judge . . . at all times' implies the giving of the verdict, which is the essence of judgment.
(24) Which rules that the decision may be issued at night.
(25) Deut. XXI, 5.
(26) Lev. XIII, 14.
(27) [Even of one eye only. v. Neg. II, 3.]
(28) Ibid. verse 12.
(29) [Even by one who is blind of one eye only, since it is deduced from 'leprosies', Yad Ramah.]
(30) If they are similar in so many respects.
(31) Ibid. verse 2.
(32) I.e., permit him to judge.
(33) A Mishnah that is taught without mention of its author, or of any conflict of opinions that exists regarding it.
(34) But not as judge, so coinciding with R. Meir's opinion stated above, (v. p. 218 nn.5 and7).
(35) Which implied that a blind man is permitted to judge.
(36) For there are many whose eye-sight is as dim by night as that of a blind man by day.
(37) Lit., 'stronger'.
(38) The Mishnah which, according to R. Johanan, treats of a blind man, expresses the view of R. Meir as expressed in the preceding Baraitha, but our Mishnah, that of the majority.
(39) Whereas the other anonymous Mishnah is cited only incidentally in a tractate relating to a different subject entirely, and it stands to reason that greater care would be taken in the former to teach what is actually the halachah.
(40) Who holds that disputes may only be tried by day.
(41) On which, unlike the cases of leprosies, civil suits may be tried.
(42) Neg. II, 2.
(43) So that it might wrongfully be declared unclean. Cf. Lev. XIII, 2ff.
(44) When the sun is brightest.
(45) So that it might wrongfully be declared clean, Neg. II, 2.
(46) Since R. Meir deduces the law that civil suits must be tried by day from the case of the examination of leprosies, the reference to 'day' here appears superfluous.
(47) In B.B. 113b, this question is attributed to Abaye.
(48) If made by day, a bequest has judicial authority, and does not need court authentication; by night, those who witnessed it are required to legalise it before court. (Rashi.) The Rashbam in B.B. 113b translates: 'Perhaps you refer to

lawsuits concerning legacies,' i.e that these, like any other civil suits, must take place by day.

(49) Num. XXVII, 11, at the conclusion of the section dealing with laws of inheritance.

(50) I.e., when a bequest is made, those who are present become ipso facto a Beth din, even against the wish of the testator's natural heirs. This is the explanation given by Tosaf. in B.B. 113b, which adds that the reference is not particularly to a bequest made on one's deathbed, but even to one made in full health, save that it must be accompanied by a formal kinyan (q.v.). Rashi's interpretation here is on the same lines, but he appears to refer it to a sickbed bequest.

(51) And hear him assign his estate to his heirs.

(52) Merely as witnesses. That document is afterwards produced by the heirs in court and there given its necessary authority.

(53) Since they are three they can constitute themselves into a court and have legal authority to execute the Will.

(54) In the form of a witnessed document.

(55) Since two do not make a properly constituted Court.

(56) Ruling with reference to three.

(57) I.e., when they hear a bequest at night, they can obviously do so only as witnesses, since a court cannot function at night, consequently, they cannot subsequently constitute themselves a court, for they already have the status of witnesses.

(58) והוקע, Num. XXV, 4; i.e., in the day time.

(59) והוקענום II Sam. XXI, 6.

Talmud - Mas. Sanhedrin 35a

And it is written, And Rizpah the daughter of Aiah took sack-cloth, and spread it for her upon the rock, from the beginning of harvest.[1]

It is written, And the Lord said unto Moses, Take all the chiefs of the people.[2] If the people had sinned, wherein had the chiefs sinned?[3] — Rab Judah said in Rab's name: The Holy One, blessed be He, said unto Moses: Divide them into [many] courts.[4] Why? Shall we say, because two [men] may not be tried [and sentenced] on the same day?[5] But R. Hisda said: This was taught only with reference to [charges involving] two different modes of execution;[6] whereas [cases that involve only] one mode of execution[7] may be tried? — But it was so, that the fierce anger of the Lord may turn away from Israel.[8]

CIVIL SUITS MAY BE CONCLUDED ON THE SAME DAY etc. . . . Whence is this derived? — R. Hanina said: Scripture saith, She that was full of justice, righteousness lodged [yalin] in her,[9] but now, murderers.[10] Raba derived it from the following: Ashsheru hamoz[11] — i.e., bless[12] the judge who reserves[13] his verdict. And the other?[14] — [He interprets it thus:] Relieve the oppressed,[15] not the oppressor.[16] And the latter [Raba]: how does he utilize the verse: And she that was full of justice? — Even as R. Eleazar said in the name of R. Isaac. Viz.: If on a fast day, the distribution of alms[17] is postponed overnight, it is just as though blood were shed,[18] as it is written, She that was full of justice, charity[19] etc. This, however, applies only to bread and dates;[20] but in the case of money, wheat or barley, [postponement] does not matter.

THEREFORE TRIALS ARE NOT HELD [ON THE EVE OF A SABBATH OR FESTIVAL] etc. Why so? — Because it is impossible, for how could it be done? Should they try him [the accused] on the eve of the Sabbath and pronounce judgment on the same day; perhaps they may find cause for condemnation, and judgment will then have to be postponed overnight.[21] Or again, if they try him on the eve of the Sabbath, and pronounce judgment on the Sabbath, and execute him on that day,[22] but execution cannot supersede the Sabbath.[23] Again, should he be executed in the evening; execution must be carried out 'in the face of the sun.'[24] One the other hand, if judgment is pronounced on the Sabbath whist he is executed on the first day of the week [Sunday], they might delay the course of justice.[25] If he be tried on the eve of the Sabbath, and the matter concluded on the first day of the week, they might have forgotten their reasons by then, for although two judges' clerks stand before

them and write down the arguments of those who would acquit and those who would convict, they can but record according to the mouth,[26] yet once the heart forgets, it remains forgotten.[27] Hence this is impossible.

Resh Rakish said to R. Johanan: Why should not the burial of a Meth-Mizwah[28] supersede [the laws of] the Sabbath, reasoning a minori: if the Temple service, which sets aside the Sabbath,[29] is itself suspended for the burial of a Meth-Mizwah (as is deduced from, And to his sister, even as it has been taught: To his father and to his mother and to his brother and to his sister:[30] What does this teach us?[31] [Even] if he [the Nazir] were on his way to sacrifice the Paschal lamb or to circumcise his son,[32]

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(1) Ibid. verse 10, as a protection from the birds of prey. They must have been hanged on trees.

(2) Num. XXV, 4.

(3) Only the people are mentioned as sinning (vv. 2,3), but not particularly the chiefs.

(4) To try the sinners. The verse is accordingly translated: Take the chiefs of the people (and appoint them as judges,) and hang up them (whom they shall condemn) etc.

(5) By one court; therefore many courts had to be set up, since the culprits were many'.

(6) Since the members of the court would find it difficult to find a plea in favour of the accused in each case.

(7) When the crime committed is the same, as in this case.

(8) When it was seen that all the chiefs were concerned in punishing the sinners.

(9) Isa. I, 21. I.e., judgment was held over lest points for acquittal might be found. ילין means, 'to stay over night'.

(10) I.e., but now they do not postpone the verdict until the next day, and thus are (judicial) murderers.

(11) Ibid, 17. אשרו חמוץ (E.V. 'relieve the oppressed').

(12) אשרו is rendered, 'declare happy'.

(13) Lit., 'makes sour,' (חמוץ from מחץ, 'sour') in the sense of preserving (e.g., pickle vegetables), and hence metaphorically 'to postpone', 'to keep in reserve.'

(14) R. Hanina, who derives it from the other verse. How does he interpret the verse?

(15) I.e., attend to the plaintiff.

(16) The defendant. He is hinting at the general rule in legal procedure that the plaintiff must be heard first. Cf. B K. 46b. The application of this law is particularly noticeable in the case of a counter claim, designed to nullify the original, when priority must be given to the first claim.

(17) It was customary to distribute the value of the food saved during the fast to the poor. Cf. Ber. 6b the merit of a fast consists in dispensing charity.

(18) For the needy who relied on it might have died of starvation.

(19) צדק means also 'charity', as in fact, in Hebrew there is only one word for 'righteousness' and 'charity': charity is righteousness. The verse is accordingly translated: She was full of justice; but now that charity is made to lodge therein, i.e., postponed overnight, they ate as murderers.

(20) I.e., only when these articles of food were distributed, on which the poor depend for breaking their fast.

(21) And pronounced on the Sabbath, which is not permissible, v. nn 6 and 7.

(22) Execution must be carried out on the same day as the pronouncement of the verdict.

(23) Killing is one of the labours forbidden on the Sabbath, even when it takes the form of judicial execution.

(24) I.e., in the day time. Num XXV, 4.

(25) Since execution must be carried out on the same day as the verdict. ענה 'to afflict', when used in connection with a court verdict, means to afflict the condemned man by postponing his execution, the wait being an additional mental torment. (10) Supra 34a.

(26) I.e., the actual words.

(27) I.e., the spirit of the argument may not be recalled through the written word.

(28) מת מצוה Lit., 'A corpse which it is a religious obligation (to bury). 'The burial of a dead person has no relatives to attend to him devolves upon anyone, even a High Priest. THis query is raised here only because of a subsequent question whether execution on a Sabbath day is permissible.

(29) E.g., by the offering of the Tamid or daily burnt offering. Cf. Num. XXVIII, 2; Pes 77a.

(30) Num. VI, 7. For these the Nazarite may not render himself unclean. A similar restriction is imposed on the High

Priest.

(31) I.e., why is it necessary to detail all these relations, seeing that it has already been stated in the previous verse: He shall not come near to a dead body, which includes all relations? The Sifre on the verse comments on the reason for each: He may not defile himself for his father, but he must for a Meth-Mizwah; nor for his mother, but he must for a Meth-Mizwah, even if he be a priest as well as a Nazarite, nor for his brother, but he must for a Meth-Mizwah even if he be a High Priest as well as a Nazarite; nor for his sister, but he must defile himself for a Meth-Mizwah, even if he be a High Priest as well as a Nazarite and engaged in such duties as are stated in the Gemara.

(32) Both of which acts must he performed at a prescribed time.

Talmud - Mas. Sanhedrin 35b

and he heard that one of his relatives had died, it might be thought that he should defile himself, but in fact the law[1] provides that he should not. Now, it might be thought that just as he may not defile himself for his sister, so may he not defile himself for a Meth-Mizwah: therefore Scripture states, And to his sister, i.e., [only] for his sister may he not defile himself, but he must do so for a Meth-Mizwah). Then the Sabbath, which is abrogated in favour of the Temple service, should surely be set aside for the burial of a Meth-Mizwah! — He answered: Execution[2] can prove it [sc. the contrary]: it supersedes the Temple service,[3] and yet does not set aside the Sabbath.[4] But let execution itself supersede the Sabbath, arguing [likewise] a minori: If the Temple service, which supersedes the Sabbath, is itself set aside for execution, as it is written, Thou shalt take him[5] from mine altar that he may die:[6] then the Sabbath, which the Temple service sets aside, should surely be set aside by execution! — Said Raba: A Tanna of R. Ishmael's School has already decided this, for a Tanna of the school of R. Ishmael taught: Ye shall not kindle a fire:[7] What does this teach?[8] 'What does this teach?' [askest thou]! According to R. Jose, [it is particularized] in order to constitute it merely a prohibitory command;[9] according to R. Nathan in order to teach separation,[10] as has been taught: The [singling out of] kindling is to shew that it is subject merely to a negative command: this is the view of R. Jose. R. Nathan said: It is to teach separation. But, said Raba, the Tanna's difficulty is [the word] 'habitations'.[11] Why is the word 'habitations'[12] stated? For consider: [the observance of the] Sabbath is a personal duty,[13] and a personal duty is obligatory both within and without the Land [sc. Palestine]; what then is the purpose of 'habitations', which the Divine Law wrote? — A disciple said on R. Ishmael's authority: Since it is written, And if a man have committed a sin worthy of death and he be put o death,[14] I [might] understand it to mean both on week-days and on the Sabbath.[15] How then should I interpret, He that profaneth it shall surely be put to death?[16] — As referring to other forms of work, but not judicial execution. Or perhaps that is not so, and it does indeed include execution by the Beth din; and how an I to interpret, And he be put to death? — as applying only to week-days, but not to the Sabbath![17] Or perhaps, on the contrary, even the Sabbath is meant?[18] — Therefore[19] Scripture states: Ye shall not kindle a fire throughout your habitations,[20] and elsewhere it says And these things shall be for a statute of judgment for you throughout your generations in all your habitations:[21] Just as the word 'habitations' found there,[22] refers to [matters concerning] a Beth din, so the word 'habitations' found here refers to [work entailed by a] Beth din.[23] And regarding it the Divine Law states: Ye shall not kindle a fire in all your habitations.[24]

Abaye said: Now that you have concluded that execution does not supersede the Sabbath, it [necessarily] follows that execution does not suspend the Temple service, a minori: If the Sabbath, which is abrogated in favour of the Temple service, is not set aside for execution; then the Temple service, which supersedes the Sabbath, is surely not suspended by execution! And as to the Scriptural verse, Thou shalt take him from mine altar that he may die?[25] — this refers only to a private sacrifice,[26] which does not suspend the Sabbath.[27] Raba said:[28] But execution should not suspend [attendance even upon] a private sacrifice, a minori:

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(1) In the verse under discussion; v. n. 6.

(2) Lit., 'Murder'.

(3) If a priest is convicted of murder; he must be executed, even if he wishes to perform the Temple service.
(4) As was stated above.
(5) The murderer.
(6) Ex. XXI, 14.
(7) Ex. XXXV, 3.
(8) I.e., why was the kindling of fire specially mentioned; surely it was already included in: Ye shall not do any work! (Ex. XX, 10.)
(9) I.e., its infringement is punishable only by lashes and not by stoning, as is the performance of other work on the Sabbath.
(10) I.e., to teach that each transgression of the Sabbath laws is to be atoned for separately. This interpretation is based on the eighth of the thirteen exegetical principles expounded by R. Ishmael, namely: If anything is included in a general proposition and is then made the subject of a special statement, that which is predicated of it is not to be understood as limited to itself alone, but applies to the whole of the general proposition.
(11) Ex. XXXV, 3.
(12) Which word, as a rule, indicates that the law is confined to Palestine alone.
(13) As opposed to laws dependent on the soil, such as those of the Sabbatical year, or the fruits of the soil, such as tithes etc.
(14) Deut. XXI, 22.
(15) Since, by reason of the a minori argument propounded above, execution might supersede the Sabbath.
(16) Ex. XXXI, 14.
(17) Since the argument a minori can be refuted by the fact that the burial of a Meth-Mizwah does not suspend the Sabbath laws even thought it sets aside the Temple service.
(18) I.e., execution might nevertheless supersede the Sabbath, a minori, as above. Nor is the refutation stated in the last note a valid one, since the same reasoning may be used to show that the burial of a Meth-Mizwah too should be permissible on the Sabbath.
(19) I.e., in order to clarify the position.
(20) Ex. XXXV, 3.
(21) Num. XXXV, 29.
(22) With reference to the manslayer and court executions.
(23) I.e., execution.
(24) Even such fire as is involved in execution by burning, ordered by a Beth din. This execution cannot suspend the Sabbath laws, in spite of the argument a minori. This fact too refutes the argument by which it was sought to prove that the burial of a Meth-Mizwah should abrogate the Sabbath.
(25) Ex. XXI, 14, which conflicts with this conclusion.
(26) I.e., when a priest accused of murder officiates at an offering brought by an individual.
(27) Execution therefore supersedes it. But if he is engaged in offering a public sacrifice, execution may not set it aside, by the preceding argument.
(28) Raba disagrees with Abaye, and proceeds to demonstrate the incorrectness of Abaye's view by an argument somewhat similar to a reductio ad absurdum.

Talmud - Mas. Sanhedrin 36a

If a festival, which is superseded by a private offering,[1] is not abrogated for an execution;[2] then a private offering, which supersedes the festival, is surely not to be suspended by an execution? Now, on the view that vows and free-will offerings [i.e., private offerings] may not be sacrificed on festival days, it is correct;[3] but on the view that vows and free will offerings may be sacrificed on Festivals, what can you say?[4] Therefore Raba said: [Abaye's reasoning is unacceptable] not only on the view that vows and free-will offerings can be sacrificed on a festival, — since in that case, [the verse] From mine altar etc. has no applicability at all,[5] — but even if it be held that vows and free-will offerings cannot be sacrificed on festivals.[6] For, is it not written: From mine altar, [implying,] my altar, viz., that which is peculiarly mine;[7] and which altar is that? the Tamid.[8] And thereon the Divine Law writes, Thou shalt take him from mine altar that he may die.[9]

IN CIVIL SUITS, AND IN CASES OF CLEANNESS AND UNCLEANNESS etc. Rab said: I was once one of the voters in the school of Rabbi, and it was with me that the voting began.[10] But did we not learn, WE COMMENCE WITH THE ELDEST? — Rabbah the son of Raba — others state, R. Hillel the son of R. Wallas — said: The voting in the school of Rabbi was different [from the usual form], because in all their voting they began with the side [benches].[11]

Rabbah the son of Raba — others state, R. Hillel the son of R. Wallas — also said: From Moses until Rabbi we do not find sacred learning and [secular] greatness combined in the one [person]. But do we not? Was it not so in the case of Joshua? — [No, for] there was Eleazar.[12] But what of Phinehas? — There were the Elders.[13] But was not Saul such? — No, [with him] was Samuel. But did not Samuel die [before him]? — We are referring to his whole life-time. But did not David [combine these possessions]? — There was Ira the Jairite.[14] But he died [before David]! — We are referring to his whole life-time. Was not Solomon [such a man]? — [No, for] there was Shimei son of Gera.[15] But he [Solomon] slew him! — We are referring to his whole life-time. Was there not Hezekiah? — [with him] was Shebnah.[16] But he was slain [during Hezekiah's life-time]! — We are referring to his entire life-time. But was this not true of Ezra? — No, for [with him] was Nehemia the son of Hachalia.

R.Adda b. Ahabah said: I similarly affirm that since the days of Rabbi until R. Ashi we do not find learning, and high office combined in the same person. But do we not: was there not Huna b. Nathan?[17] — Huna b. Nathan was certainly subordinate to R. Ashi.[18]

WHEREAS IN CAPITAL CHARGES, WE COMMENCE WITH [THE OPINION OF] THOSE ON THE SIDE BENCHES. Whence is this derived? R. Aha b. Papa said: Scripture states, Thou shalt not speak[19] ‘al rib [in a case][20] — [i.e.,] thou shalt not speak ‘al rab, against the chief [of the judges]. Rabbah b. Bar Hana deduced it in R. Johanan's name from the following verse, And David said unto his men, gird ye on every man his sword; and they girded on every man his sword, and David also girded on his sword.[21]

Rab said: In capital charges one may instruct his disciple,[22] and pronounce judgment with him.[23] An objection was raised: ‘In cases of cleanness and uncleanness, a father and his son, or a master and his disciple count as two;[24] but in monetary cases, capital cases of flagellation, the sanctification of the month and the intercalation of the year, a father and his son, or a master and his disciple count only as one’?[25]

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(1) I.e., a private offering may be brought on a Festival, though it entail labour unconnected with the preparation of food for human consumption, v. Ex. XII, 16.

(2) Since in regard to work there is no difference between Sabbaths and Festivals save as regards the preparation of food.

(3) Since the preceding argument is fallacious, being based on a false premise (v. Bezah, 19a). — This is still part of Raba's reasoning.

(4) The premise being correct, the deduction is likewise correct, viz., that an execution cannot supersede a private offering. How then can the verse, Thou shalt take him from mine altar, be reconciled with this conclusion?

(5) For, as shown above, if Abaye's reasoning be accepted, execution does not suspend even private offerings: to what then can from mine altar etc.’ refer?

(6) According to which view the Scriptural verse might refer to private offerings; yet even so, Abaye's deduction is unacceptable.

(7) I.e., public offerings in which the individual, as an individual, has no part.

(8) I.e., the altar on which the daily offering was made.

(9) Thus the Bible expressly negatives the deduction a minori proposed by Abaye.

(10) In connection with the Sikarikon (robber) law, a title to a piece of property held by such for twelve months. Cf. Git. 59a.

(11) Owing to Rabbi's humility.
(12) His colleague, equal to him in wisdom.
(13) Who shared his authority with him.
(14) Chief Minister to David. II Sam. XX, 26. Cf. M.K. 16b which speaks of his great learning.
(15) V. II Sam. XIX, 18, where his great influence is indicated.
(16) Whose college was larger than Hezekiah's. V. supra 26a.
(17) Cf. Zeb. 19a. which refers to his intimate friendship with the Persian King, Yezdegerd. [According to Sherira's Epistle, he was exilarch in the time of R. Ashi.]
(18) [He surrendered one by one his prerogatives to R. Ashi, v. Blank, REJ. XXX, 51.]
(19) Lit., 'Answer'.
(20) Ex. XXIII, 2. V. p. 94. n. 2. He takes רב in the sense of רב. Therefore the opinion of the lessor judges is first ascertained.
(21) I Sam. XXV, 13. I.e., the question whether Nabal the Carmelite's act was to be treated as rebelliousness against the king was here discussed and a vote taken in the form of girding on the sword. David was the last to express his opinion.
(22) In the laws relating to such cases, and the pros and cons for conviction.
(23) The master and the disciple have each a separate vote.
(24) Since such cases could at the outset be decided by a single person, the need for voting arises only in the event of a controversy.
(25) Since these cases require at the very outset a fixed number of judges. Tosef. Sanh. IV.

Talmud - Mas. Sanhedrin 36b

— Rab referred to [disciples] such as R. Kahana and R. Assi who needed Rab's traditional teaching,[1] but not his reasoning.[2]

R. Abbahu said: In ten respects do civil suits differ from capital charges,[3] and none of those is practised in [the trial of] the ox that is stoned,[4] save that twenty-three [judges are necessary] — Whence is this derived? — R. Aha b. Papa said: Scripture states, Thou shalt not wrest[5] the judgment of thy poor in his cause;[6] — the judgment of thy poor thou mayest not wrest,[7] but thou mayest do so in the case of the ox that is stoned.[8]

Ten? But there are only nine! ([You say that there are only nine,] but indeed, ten are taught! — The laws that not all [persons] are eligible,[9] and that twenty-three judges are necessary, are but one.)[10] — There is yet another [difference]:[11] for it has been taught: 'We do not appoint as members of the Sanhedrin, an aged man, a eunuch or one who is childless.[12] R. Judah includes also a cruel man. It is the reverse in the case of a Mesith,' for the Divine Law states , Neither shalt thou spare, neither shalt thou conceal him.[13]

ALL ARE ELIGIBLE TO TRY CIVIL SUITS. What does 'ALL' include? — It includes a bastard. But have we not already learnt this once, viz.: Whoever is competent to try capital charges is also competent to try civil suits. But some are competent to try civil suits, yet not capital charges.[14] Now, when we discussed this question: What does that[15] include? Did not Rab Judah answer, It includes a bastard? — One includes a proselyte, the other, a bastard. And both are necessary. For had the rule been given concerning a proselyte only, [one might have assumed that the reason is] because he is eligible to come into the Congregation;[16] but a bastard,[17] we would say, is not [competent]. Again, had this been stated of a bastard only, [we should think that the reason was that] he issues from a proper origin,[18] but a proselyte, who does not issue from a proper origin, is not [competent]. Hence the statements are [both] necessary.

BUT NOT ALL ARE ELIGIBLE TO TRY CAPITAL CHARGES. Why?[19] — As R. Joseph learned: Just as the Beth din must be pure in righteousness, so they must be free[20] from every blemish.[21] Amemar said: What verse [proves this]? — Thou art all fair, my love, and there is no

blemish in thee.[22] But perhaps a literal defect [blemish] is meant?[23] — R. Aha b. Jacob answered: Scripture states, That they may stand there with thee:[24] 'with thee' implies, like to thee.[25] But perhaps it was so stated there on account of the Shechinah?[26] — But, said R. Nahman b. Jacob: Scripture states, And they shall bear with thee:[27] 'with thee' implies that they must be like to thee.

MISHNAH. THE SANHEDRIN SAT IN THE FORM OF A SEMICIRCULAR THRESHING FLOOR,[28] SO THAT THEY MIGHT SEE ONE ANOTHER, AND TWO JUDGES CLERKS STOOD BEFORE THEM, ONE TO THE RIGHT, THE OTHER TO THE LEFT, AND WROTE DOWN THE ARGUMENTS OF THOSE WHO WOULD ACQUIT AND THOSE WHO WOULD CONDEMN.[29] R. JUDAH SAID: [THERE WERE] THREE: ONE TO RECORD THE ARGUMENTS FOR ACQUITTAL, A SECOND, THOSE FOR CONVICTION, AND A THIRD, TO RECORD THE ARGUMENTS FOR ACQUITTAL AND CONVICTION.

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(1) I.e., laws transmitted down from Master to pupil.

(2) In the application of these traditions. Therefore they rank as independent opinions, for with respect to the actual traditions, even the Masters had to receive them from their masters.

(3) As detailed in the Mishnah.

(4) Though its trial must be similar to that of its owner. Cf. supra 2a.

(5) Lit., 'incline', or 'bend'.

(6) Ex. XXIII, 6. This is interpreted, judgment must not be inclined in favour of conviction by a majority of only one.

(7) By a majority of one, for condemnation.

(8) From this it may be inferred that the procedure in the trial of an ox to be stoned is other than that of capital cases, except in the number of judges; and that difference is extended to all the other peculiarities of capital procedure, since the object of particularly applying that procedure in capital cases was to achieve the acquittal of the accused. Not so with an ox.

(9) E.g., bastards may not try capital cases.

(10) So making the total of nine given in the Mishnah. People of illegitimate birth are ineligible as judges in capital cases because a court of twenty-three holds the status of a minor Sanhedrin, with whom pure descent is essential; hence they are counted as one.

(11) Which completes the number of ten.

(12) Because such are more or less devoid of paternal tenderness Cf. Tosef Sanh. VII and X.

(13) Deut. XIII, 9.

(14) V. supra 27b.

(15) The law that one may be competent to act as judge in one and not in another case.

(16) I.e., to intermarry with Israelites.

(17) Who may not come into the Assembly. Cf. Deut. XXIII, 3

(18) I.e., is of pure Israelitish blood.

(19) Since the Talmud does not ask, 'whence is this derived,' as before, but 'why', it may be assumed that this limitation is a Rabbinical one, and therefore the Talmud asks why it was imposed.

(20) Lit., 'pure'.

(21) Of family descent.

(22) Cant. IV, 7. [This verse must refer to the Sanhedrin, as such a praise can hardly be sung of the whole people (Yad Ramah).]

(23) I.e., a bodily defect.

(24) Num. IV, 16.

(25) The Elders were required to be like Moses with regard to family descent.

(26) That passage explicitly states that the Shechinah was to rest upon them. Cf. Num. XI, 17. And I will take of the spirit which is upon thee and put it upon them; therefore, purity of descent was indispensable, but elsewhere, this may be unnecessary.

(27) Ex. XVIII, 22, with reference to the judges set up on the advice of Jethro, to bear with Moses the burden of the people. In that passage there is no indication of the bestowal of the divine spirit upon them.

(28) In Krauss, Sanhedrin-Makkot (1933) a.l. this is discussed at great length. In fact, most threshing floors were round,

but their essential feature was that they were shaped like a trough. i.e., forming a depression in the soil. It is to this aspect of the threshing floor that they are compared. Hence the meaning of the passage is: They sat in semi-circular rising tiers, as in an amphitheatre.

(29) They were two, as a precautionary measure against error. Cf. supra 34a.

Talmud - Mas. Sanhedrin 37a

AND THREE ROWS OF SCHOLARS SAT[1] IN FRONT OF THEM; EACH KNOWING HIS OWN PLACE.[2] IN CASE IT WAS NECESSARY TO ORDAIN [ANOTHER JUDGE],[3] HE WAS APPOINTED FROM THE FIRST [ROW] IN WHICH CASE ONE OF THE SECOND [ROW] MOVED UP TO THE FIRST, ONE OF THE THIRD TO THE SECOND, AND A MEMBER OF THE ASSEMBLED [AUDIENCE][4] WAS SELECTED AND SEATED IN THE THIRD [ROW]. HE[5] DID NOT SIT IN THE PLACE VACATED BY THE FIRST[6] BUT IN THE PLACE SUITABLE FOR HIM.[7]

GEMARA. Whence is this derived? — R. Aha Haninah said: Scripture states, Thy navel is like a round goblet [‘aggan ha-Sahar] wherein no mingled wine is wanting.[8] ‘Thy navel’ — that is the Sanhedrin. Why was it called ‘navel’? — Because it sat at the navel-point[9] of the world. [Why] ‘aggan?[10] — Because it protects [meggin] the whole world. [Why] ha-Sahar? — Because it was moon-shaped.[11] [Why] in which no mingled wine is wanting? — I.e., if one of them had to leave, it had to be ascertained if twenty-three, corresponding to the number of the minor Sanhedrin, were left,[12] in which case he might go out; if not, he might not depart.

Thy belly is like a heap of wheat:[13] Just as all benefit from a heap of wheat, so do all benefit from the deliberations of the Sanhedrin.

Set about with lilies:[14] Even through a hedge of lilies they would make no breach.[15] In this connexion there is the story of a Min[16] who said to R. Kahana: Ye maintain that a menstruant woman is permitted yihud [privacy] with her husband: can fire be near tow without singeing it? He retorted: The Torah testifies this of us: Set about with lilies — even through a hedge of lilies they make no breach. Resh Lakish deduced [the same answer] from the following verse, Thy temples [rakkathek] are like a pomegranate split open![17] Even the emptiest [rekanin][18] among you are as full of meritorious deeds as a pomegranate [of seeds].[19] R. Zera deduced it from the following verse, And he smelt the smell of his raiment;[20] read not begadaw [his raiment] but bogedaw [his traitors].[21]

In the neighbourhood of R. Zera there lived some lawless men. He nevertheless showed them friendship in order to lead them to repent; but the Rabbis were annoyed [at his action]. When R. Zera's soul went to rest,[22] they said: Until now we had the burnt man with the dwarfed legs[23] to implore Divine mercy for us; who will do so now? Thereupon they felt remorse in their hearts and repented.

THREE ROWS Abaye said: We may infer from this[24] that when one moves they all move.[25] But can he[26] not object to them: Until now I used to sit at the head,[27] whilst now ye place me at the tail![28] Said Abaye: They can answer him thus: Better a tail to lions than a head to foxes.[29]

MISHNAH. HOW WERE THE WITNESSES INSPIRED WITH AWE? WITNESSES IN CAPITAL CHARGES[30] WERE BROUGHT IN AND INTIMIDATED [THUS]: PERHAPS WHAT YE SAY IS BASED ONLY ON CONJECTURE,[31] OR HEARSAY,[32] OR IS EVIDENCE FROM THE MOUTH OF ANOTHER WITNESS,[33] OR EVEN FROM THE MOUTH OF A TRUSTWORTHY PERSON:[34] PERHAPS YE ARE UNAWARE THAT ULTIMATELY WE SHALL SCRUTINIZE YOUR EVIDENCE BY CROSS EXAMINATION AND INQUIRY? KNOW THEN THAT CAPITAL CASES ARE NOT LIKE MONETARY CASES. IN CIVIL

SUITS, ONE CAN MAKE MONETARY RESTITUTION[35] AND THEREBY EFFECT HIS ATONEMENT; BUT IN CAPITAL CASES HE IS HELD RESPONSIBLE FOR HIS BLOOD [sc. THE ACCUSED'S] AND THE BLOOD OF HIS [POTENTIAL] DESCENDANTS UNTIL THE END OF TIME,[36] FOR THUS WE FIND IN THE CASE OF CAIN, WHO KILLED HIS BROTHER, THAT IT IS WRITTEN: THE BLOODS OF THY BROTHER CRY UNTO ME:[37] NOT THE BLOOD OF THY BROTHER, BUT THE BLOODS OF THY BROTHER, IS SAID — i.e., HIS BLOOD AND THE BLOOD OF HIS [POTENTIAL] DESCENDANTS. (ALTERNATIVELY, THE BLOODS OF THY BROTHER, TEACHES THAT HIS BLOOD WAS SPLASHED OVER TREES AND STONES.)[38] FOR THIS REASON WAS MAN CREATED ALONE, TO TEACH THEE THAT WHOSOEVER DESTROYS A SINGLE SOUL OF ISRAEL,[39] SCRIPTURE IMPUTES [GUILT] TO HIM AS THOUGH HE HAD DESTROYED A COMPLETE WORLD; AND WHOSOEVER PRESERVES A SINGLE SOUL OF ISRAEL, SCRIPTURE ASCRIBES [MERIT] TO HIM AS THOUGH HE HAD PRESERVED A COMPLETE WORLD.[40] FURTHERMORE, [HE WAS CREATED ALONE] FOR THE SAKE OF PEACE AMONG MEN, THAT ONE MIGHT NOT SAY TO HIS FELLOW, 'MY FATHER WAS GREATER THAN THINE, AND THAT THE MINIM[41] MIGHT NOT SAY, THERE ARE MANY RULING POWERS IN HEAVEN; AGAIN, TO PROCLAIM THE GREATNESS OF THE HOLY ONE, BLESSED BE HE: FOR IF A MAN STRIKES MANY COINS FROM ONE MOULD, THEY ALL RESEMBLE ONE ANOTHER, BUT THE SUPREME KING OF KINGS,[42] THE HOLY ONE, BLESSED BE HE, FASHIONED EVERY MAN IN THE STAMP OP THE FIRST MAN, AND YET NOT ONE OF THEM RESEMBLES HIS FELLOW. THEREFORE EVERY SINGLE PERSON IS OBLIGED TO SAY: THE WORLD WAS CREATED FOR MY SAKE.[43]

PERHAPS YE WILL SAY:

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(1) Also in semi-circular form, but on the floor. Each row numbered twenty-three, making a total of sixty-nine. They were there for completion purposes in case there might be a majority of only one for condemnation. Although forty-eight would have sufficed for that purpose, since the completion goes on till the number of seventy-one is reached, some difficulty would have been experienced in arranging that number into rows. It would not have been proper to make two rows of twenty-four, since these would have been larger than that of the Sanhedrin, nor three rows of sixteen, which would have seemed too small, nor two rows of twenty-three and a third one only of two. Hence the sixty-nine (Rashi).

(2) The disciples were seated according to rank.

(3) If a member died, or for completion purposes.

(4) [Behind the rows of the members of the Courts there stood a large audience of scholars, v. Krauss op. cit.]

(5) Who was chosen from the assembly.

(6) Of the row.

(7) When the one at the head of the row was promoted, all moved one place up, leaving the last seat for the new member.

(8) Cant. VII, 3.

(9) I.e., the centre. According to Midrashic legend the Temple was situated in the centre of the world. Cf. Tanhuma, Wayikra. XVIII,23.

(10) אגן akin to מגן — 'to enclose'. Hence,shield, protect.

(11) סהר=moon.I.e., they were seated in circular form like a moon.

(12) The actual number required for capital cases is twenty-three, roughly a third of seventy-one, the remaining two-thirds being for completion purposes. The Aggadists therefore compare the court to mingled wine, a mixture of one-third of wine and two-thirds of water. Cf. B M. 60a; Tanhuma. Bamidbar IV.

(13) Cant. VII ,3.

(14) Ibid.

(15) Metaphorically: the lightest barrier sufficed to keep them from sin.

(16) מין, a sectarian. v. Glos.

(17) Cant. VI, 7.

(18) ריקנין from ריק (empty, void: a play on רקתך). Even those who by comparison are emptiest of good deeds.

(19) So there is no fear of their infringing the prohibition.

(20) Gen. XXVII, 27.
(21) The consonants of both words are the same — בגדיו I.e., even those who are traitors to the teachings of Judaism diffuse the fragrance of good deeds. Maharsha: Isaac was able to trace in Jacob his original character even though he appeared before him in disguise, so even in his apparently unworthy descendants their good qualities are discernible.
(22) I.e., when he died.
(23) V. B M. 85a for the reason for this nick-name.
(24) The statement in the Mishnah that the member chosen from the assembled audience does not occupy the seat just vacated.
(25) V. p. 231, n. 7.
(26) The promoted member of the rows of scholars.
(27) E.g., of the second row.
(28) Of the first row.
(29) Aboth IV, 15.
(30) [Ms. M: How are witnesses in capital charges intimidated? They were brought in, etc.]
(31) I e.. from circumstantial evidence.
(32) [A general rumour (Yad Ramah).]
(33) [Each one of you has heard it from a separate witness (Yad Ramah).]
(34) [You both heard it from the same trustworthy person.]
(35) If he causes financial loss through giving false testimony.
(36) Lit., 'the world', i.e., not only for the death of the accused himself, but of his potential descendants for all time.
(37) Gen.IV,10; דמי is plural.
(38) This is obviously not part of the caution, but interpolated. V. Krauss, Sanhedrin-Makkot a.l.
(39) 'OF ISRAEL' is absent in some texts.
(40) Since all mankind originated from one man.
(41) V. p. 211, n. 8, and p. 239, n. 9; here, however, it is more probable that the allusion is to the Gnostics and their doctrine of the Demiurgus; v. Krauss, op. cit. a.l.
(42) Lit., 'the King of the Kings of the Kings.'
(43) How grave the responsibility therefore of corrupting myself by giving false evidence, and thus bringing the moral guilt of murder upon a whole world.

Talmud - Mas. Sanhedrin 37b

WHY SHOULD WE INCUR THIS ANXIETY?[1] [KNOW THEN:] IS IT NOT ALREADY WRITTEN, AND HE BEING A WITNESS, WHETHER HE HATH SEEN OR KNOWN, IF HE DO NOT UTTER IT?[2] AND SHOULD YE SAY: WHY SHOULD WE BEAR GUILT FOR THE BLOOD OF THIS [MAN]:[3] — SURELY, HOWEVER, IT IS SAID, WHEN THE WICKED PERISH, THERE IS JOY![4]

GEMARA. Our Rabbis taught: What is meant by BASED ON CONJECTURE? — He [the judge] says to them: Perhaps ye saw him running after his fellow into a ruin, ye pursued him, and found him sword in hand with blood dripping from it, whilst the murdered man was writhing [in agony]: If this is what ye saw, ye saw nothing.[5]

It has been taught: R. Simeon b. Shatah said: May I never see comfort[6] if I did not see a man pursuing his fellow into a ruin, and when I ran after him and saw him, sword in hand with blood dripping from it, and the murdered man writhing, I exclaimed to him: Wicked man, who slew this man? It is either you or I![7] But what can I do, since thy blood [i.e., life] does not rest in my hands, for it is written in the Torah, At the mouth of two witnesses etc., shall he that is to die be put to death?[8] May he who knows one's thoughts exact vengeance from him who slew his fellow! It is related that before they moved from the place a serpent came and bit him [the murderer] so that he died.

But should this man [have died] through a serpent? Did not R. Joseph say, and so too it was taught in the school of Hezekiah: From the day the Temple was destroyed, although the Sanhedrin was abolished, the four modes of execution were not abolished? They were not abolished, [you say,] but surely they were! — But the law of the four modes of execution was not abolished:[9] He who is worthy of stoning either falls from the roof,[10] or is trampled to death by a wild beast; he who merits burning either falls into the fire or is bitten by a serpent;[11] he who is worthy of decapitation is either delivered to the [gentile] Government[12] or brigands attack him; he who is worthy of strangulation is either drowned in a river or dies of suffocation?[13] — I will tell you: that man was guilty of another crime,[14] for a Master said: One who incurs two death penalties imposed by Beth din is executed by the severer.[15]

BASED ON CONJECTURE. Thus, only in capital charges do we disallow conjecture, but permit it in civil suits.[16] Who [is the authority for this]? — R. Aha. For it has been taught: R. Aha said: If among camels there is a lustful one, and a camel is found killed by its side, it is certain that this one killed it.[17] Now, on your reasoning,[18] when he [the Tanna] regards EVIDENCE FROM THE MOUTH OF ANOTHER WITNESS [as invalid]: it is only in capital charges that we do not admit it; whilst we do in monetary cases? But did we not learn: If he [the witness] says: He [the defendant] said to me, 'I owe him [the money],' or, 'So and so told me that he owes him,' his statement is worthless,[19] unless he states, 'In our presence[20] he admitted to him that he owed him two hundred zuz!'[21] This proves that although [such evidence] is inadmissible in monetary cases too, we caution them[22] only in capital cases. So in the present instance,[23] though it [sc. conjecture] is inadmissible in civil suits too, we nevertheless admonish them only in capital cases.

KNOW THAT etc. Rab Judah the son of R. Hiyya said: This teaches that Cain inflicted upon his brother many blows and wounds, because he knew not whence the soul departs,[24] until he reached his neck.[25] Rab Judah the son of R. Hiyya also said: Since the day the earth opened her mouth to receive the blood of Abel, she has never opened it again, for it is written, From the edge of the earth have we heard songs, glory to the righteous:[26] implying, from the 'edge' of the earth, but not from the mouth of the earth. Hezekiah his brother objected thereto: And the earth opened her mouth![27] — He answered: She opened if for evil,[28] but not for good.

Rab Judah the son of R. Hiyya also said: Exile atones for the half of men's sins. Earlier [in the Cain narrative] it is written, And I shall be a fugitive and a wanderer;[29] but later, And he dwelt in the land of Nod [wandering].[30]

Rab Judah said: Exile makes remission for three things, for it is written, Thus saith the Lord etc. He that abideth in this city shall die by the sword and by the famine and by the pestilence; but he that goeth out and falleth away to the Chaldeans who beseige you he shall live and his life shall be unto him for a prey.[31] R. Johanan said: Exile atones for everything, for it is written, Thus saith the Lord, write ye this man childless, a man that shall not prosper in his days, for no man of his seed shall prosper sitting upon the throne of David and ruling any more in Judah.[32] Whereas after he [the king] was exiled, it is written, And the sons of Jechoniah, — the same is Assir — Shealtiel his son etc.[33] [He was called] Assir,[34] because his mother conceived him in prison. Shealtiel,[35] because God did not plant him[36] in the way that others are planted. We know by tradition that a woman cannot conceive in a standing position. [

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(1) If the moral responsibility is so great, why should we give evidence at all? Quite unintentionally we may cause a perversion of justice.

(2) Then he shall bear his iniquity. Lev. V, 1.

(3) I.e., we prefer to transgress that law, rather than be responsible for the accused's death.

(4) Prov. XI, 10.

(5) For it is not an actual witnessing of the murder. But v. Mishnah on 81b, and Talmudic discussion thereon.

(6) A customary oath. This may either mean, May I (personally) always be afflicted; or, May l never see the comfort of Zion and of Jerusalem. If the latter be correct, the troublous times of the period, owing to the clash of the Pharisees and the Sadducees, might have given rise to such an oath.
(7) I.e., it must be you.
(8) Deut. XVII, 6.
(9) I.e. , the death which the Jewish courts could no longer decree was now brought about by Heavenly agencies.
(10) Before stoning one was thrown from a certain height. Cf. infra 45a.
(11) The action of the poison was likened to the inner fire of burning; v. p. 349.
(12) Whose mode of execution was then as a rule by the sword: 'handed over' does not mean, by the Jews, but rather, falls into their hands, through some misdeed which attracts their attention.
(13) Now, returning to the subject, the said murderer ought to have met his death by the sword: why then did he die of a bite?
(14) Punishable by burning, which is severer. Cf. infra 49b.
(15) Infra 81a.
(16) This follows from the fact that the Mishnah states this only in connection with the former.
(17) V. B.B. 93a. Hence in monetary cases circumstantial evidence is acceptable. The Mishnah thus follows the view of a single authority.
(18) That, because in monetary cases the attention of the witnesses is not actually called to the inadmissibility of circumstantial evidence, such is permissible.
(19) Lit., 'He hath said nothing.'
(20) I.e., 'In the presence of another witness and myself.'
(21) Supra 29a.
(22) Sc. the witnesses.
(23) With reference to circumstantial evidence.
(24) I.e., he did not know which blow would prove fatal.
(25) And severed the arteries.
(26) Isa. XXIV, 16.
(27) Num. XVI, 32.
(28) To swallow Korah and his associates; the opening to receive Abel's blood is however accounted for good. i.e., to hide Cain's guilt.
(29) נע ונד Gen. IV, 14.
(30) נוד, The other half of the curse, 'to be a fugitive' was remitted because of his wandering, i.e., exile,
(31) Jer. XXI, 8-9. He that remained at home was subject to these three evils; but wandering and its consequent hardships outweighed them all.
(32) Jer. XXII, 30.
(33) I Ch. III, 17. Notwithstanding the curse that he should be childless and not prosper, after being exiled he was forgiven.
(34) אסיר, imprisoned.
(35) According to this Haggadah they were one and the same person.
(36) אל שתלו, a play on שאלתיאל.

Talmud - Mas. Sanhedrin 38a

yet she[1] did conceive standing.[2] Another interpretation: Shealtiel, because God obtained[3] [of the Heavenly court] absolution from His oath.[4] Zerubbabel [was so called] because he was sown in Babylon.[5] But [his real name was] Nehemiah the son of Hachaliah.

Judah and Hezekiah, the sons[6] of R. Hiyya, once sat at table with Rabbi and uttered not a word. Whereupon he said: Give the young men plenty of strong wine,[7] so that they may say something. When the wine took effect, they began by saying: The son of David[8] cannot appear ere the two ruling houses in Israel shall have come to an end, viz., the Exilarchate, in Babylon and the Patriarchate in Palestine, for it is written, And he shall be for a Sanctuary, for a stone of stumbling

and for a rock of offence to both houses of Israel.[9] Thereupon he [Rabbi] exclaimed: You throw thorns in my eyes, my children![10] At this, R. Hiyya [his disciple] remarked: Master, be not angered, for the numerical value of the letters of yayin[11] is seventy, and likewise the letters of sod:[12] When yayin [wine] goes in, sod [secrets] comes out.

R. Hisda said in Mar 'Ukba's name — others state, R. Hisda quoted from a lecture of Mari b. Mar: What is meant by the verse, And so the Lord hath hastened[13] the evil and brought it upon us, for the Lord our God is righteous?[14] Because God is righteous He hastened with the evil and brought it upon us! — Even so: the Holy One, blessed be He, did a righteous [i.e., charitable] thing unto Israel in that he anticipated the exile of Zedekiah while the exile of Jechoniah was yet in being,[15] for it is written with reference to the latter, And the craftsmen [he-harash] and the smiths [masger], a thousand.[16] Harash,[17] implies, as soon as they opened a [learned] discussion, all [the others] became as though deaf.[18] Masger:[19] i.e., when they closed [the discussion of] a halachah, it was not reopened.[20] And how many were they? — A thousand.

'Ulla said: He advanced [the exile by] two years as compared with the period indicated by we-noshantem.[21] R. Aha b. Jacob said: We infer from this that the 'speediness' of the Lord of the universe meant eight hundred and fifty-two years.[22]

THEREFORE etc.

Our Rabbis taught: Man was created alone.[23] And why so? — That the Sadducees[24] might not say: There are many ruling powers in Heaven. Another answer is: For the sake of the righteous and the wicked; that the righteous might not say: 'Ours is a righteous heredity.'[25] and that the wicked might not say: 'Ours is an evil heredity.'[26] Another answer is: For the sake of [the different] families, that they might not quarrel with each other.[27] Now, if at present, though but one was [originally] created,[28] they quarrel. how much more if two had been created![29] Another answer is: Because of robbers and plunderers: I.e., If at present, though but one was originally created, people rob and plunder, how much more had two been created.[30]

AND AGAIN, TO PROCLAIM THE GREATNESS OF etc. Our Rabbis taught: [The creation of the first man alone] was to show forth the greatness of the Supreme King of kings, the Holy One, blessed be He. For if a man mints many coins from one mould, they are all alike, but the Holy One, blessed be He, fashioned all men in the mould of the first man, and not one resembles the other, for it is written, It is changed as clay under the seal and they stand as a garment.[31] And why are men's faces not like one another? — Lest a man see a beautiful dwelling or a beautiful woman and say, 'She is mine for it is written, But from the wicked their light is withholden and the high arm is broken.[32]

It has been taught: R. Meir used to say: In three things man differs from his fellow: In voice, appearance and mind [i.e., thoughts]. In voice and appearance', to prevent unchastity;[33] 'In mind', because of thieves and robbers.[34]

Our Rabbis taught: Adam was created [last of all beings] on the eve of Sabbath. And why? — Lest the Sadducees say: The Holy One, blessed be He, had a partner [viz., Adam] in His work of creation. Another answer is: In order that, if a man's mind becomes [too] proud, he may be reminded that the gnats preceded him in the order of creation. Another answer is: That he might immediately enter upon the fulfilment of a precept.[35] Another answer is: That he might straightway go in to the banquet.[36] The matter may be compared to a king of flesh and blood who built palaces and furnished them, prepared a banquet, and thereafter brought in the the guests. For it is written: Wisdom hath builded her house, she hath hewn out her seven pillars. She hath prepared her meat, she hath mingled her wine, she hath also furnished her table. She hath sent forth her maidens, she calleth upon the

highest places of the city.[37] Wisdom hath builded her house, — this is the attribute of the Holy One, blessed be He, who created the world by wisdom. She hath hewn out her seven pillars, — these are the seven days of creation. She hath prepared her meat, she hath mingled her wine, she hath also furnished her table, — these are the seas and the rivers and all the other requirements of the world. She hath sent forth her maidens, she calleth, — this refers to Adam and Eve. Upon the highest places of the city; Rabbah b. Bar Hana opposed [two verses]. It is written, Upon the top of the highest places.[38] But elsewhere it is written, On a seat on the high places.[39] — At first[40] he was seated upon the 'top' of the highest places, but subsequently upon a 'seat'.

Whoso is thoughtless, let him turn in hither; as for him that lacketh understanding, she saith to him.[41] The Holy One, blessed be He, said: Who was it that enticed him? — A woman[42] hath spoken to him, for it is written, He that committeth adultery with a woman, lacketh understanding.[43]

It has been taught: R. Meir used to say: The dust of the first man was gathered from all parts of the earth, for it is written, Thine eyes did see mine unformed substance,[44] and further it is written, The eyes of the Lord run to and fro through the whole earth.[45] R. Oshaiah said in Rab's name: Adam's trunk came from Babylon,

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(1) His mother.

(2) For lack of room in prison, v. Lev. Rab. XIX.

(3) שאל אל 'God asked'.

(4) Which He had made, to punish Jechoniah with childlessness.

(5) זרע לבב.

(6) They were twins. Cf. Yeb. 65b.

(7) Lit., 'Make the wine strong for the young men.'

(8) I.e., the Messiah.

(9) Isa. VIII, 14.

(10) They were foretelling the abolition of the Nasi's office which he, Rabbi, occupied.

(11) יין 10 + 10 + 50 = 70. [Ms. M. omits אותיות letters. If retained it must be taken as a direct translation of the Gr. grammata derived from gramma 'letter', hence the equivalent of גימטריא, cf. Rashi. V. Gandz, S., op. cit. 90 and J.E. V, 589.]

(12) סוד 60 + 6 + 4 =70.

(13) For this meaning of ויישקוד (E.V. 'watched over'), cf. Jer. I, 12: שקד hasten.

(14) Dan. IX, 14.

(15) So that the great scholars who were exiled with Jechoniah were still alive to transmit their traditional teachings to their posterity (Rashi.)

(16) II Kings XXIV, 16.

(17) חרש, 'craftsman' or 'deaf' (with different pointing in each case).

(18) I.e., they overwhelmed them with the depth of their wisdom

(19) מסגר. (E.V. 'smith') from סגר 'to close'.

(20) None would presume to cast the least doubt on their ruling.

(21) And ye shall have been long (lit., 'grown old'). Deut. IV, 25. The numerical value of ונושנתם (6 + 50 + 6 + 300 + 50 + 400 + 40) is eight hundred and fifty-two. Subtracting two years according to this Haggadah, there are eight hundred and fifty years left, which is the length of time between Israel's entry into Palestine and the destruction of the Temple. The Temple was erected in the four hundred and eightieth year from the Exodus out of Egypt, and it stood for four hundred and ten years. Subtracting forty years for the period of their wanderings in the desert, we reach a total of eight hundred and fifty years that acceleration by two years is here regarded as a 'righteous' (i.e., charitable) act, since it averted the complete destruction threatened in Deut. IV, 26.

(22) For the following verse states, Ye shall speedily perish completely from off the land. Thus by 'speedily' God meant 852 years, alluded to by we-noshantem.

(23) I.e., only one man was created.

(24) Many early versions have Minim in this place and in several other instances further on. צדוקים must have been

inserted by the censors, v. p. 234. n. 4.
(25) And therefore we have no need to avoid temptation.
(26) And therefore we have no power to resist temptation.
(27) On the superiority of their respective ancestry.
(28) I.e., when they all descend from one father.
(29) I.e., if they came from different stocks.
(30) In which case some might claim that the land originally belonged to their first ancestor.
(31) Job XXXVIII, 14.
(32) Ibid. 15, their light = 'their visage', i.e it is not like their neighbour's; the high arm = 'the excuse for high-handed action'.
(33) In order that the sexes might not be confused either in the darkness or the light.
(34) Who cannot be trusted to know the secrets of others
(35) The hallowing of the Sabbath.
(36) I.e., that all nature should be ready for his use.
(37) Prov. IX, 1-3.
(38) Prov. IX, 3.
(39) Prov. IX 14, which denotes a lower station (Rashi). Tosaf. reverses their significance.
(40) Before his sin. Tosaf. At first, before Eve was created, he merely sat on the top etc., but afterwards, Eve's creation raised him to a higher pinnacle, so that he had a throne set for him.
(41) Ibid. 4.
(42) Who is referred to as enticing.
(43) Ibid. VI, 32.
(44) Ps. CXXXIX, 16.
(45) Zech. IV, 10. Adam's substance was seen by the look of the Lord which sweeps through the whole world. [This is perhaps another way of teaching the 'equality of man', all men having been formed from one and the same common clay, v. Bacher, AT, II, 65.]

Talmud - Mas. Sanhedrin 38b

his head from Erez Yisrael,[1] his limbs from other lands, and his private parts, according to R. Aha, from Akra di Agma.[2]

R. Johanan[3] b. Hanina said: The day consisted of twelve hours. In the first hour, his [Adam's] dust was gathered; in the second, it was kneaded into a shapeless mass. In the third, his limbs were shaped;[4] in the fourth, a soul was infused into him; in the fifth, he arose and stood on his feet; in the sixth, he gave [the animals] their names; in the seventh, Eve became his mate; in the eighth, they ascended to bed as two and descended as four;[5] in the ninth, he was commanded not to eat of the tree, in the tenth, he sinned; in the eleventh, he was tried, and in the twelfth he was expelled [from Eden] and departed, for it is written, Man abideth[6] not in honour.[7]

Rami b. Hama said: A wild beast has no dominion over man unless he appears to it as a brute,[8] for it is written. Men are overruled[9] when they appear as beasts.[10]

(Mnemonic: When;[11] The End; Aramaic.)

Rab Judah said in Rab's name: When the Holy One, blessed be He, wished to create man, He [first] created a company of ministering angels and said to them: Is it your desire that we make a man in our image? They answered: Sovereign of the Universe, what will be his deeds? Such and such will be his deeds, He replied. Thereupon they exclaimed: Sovereign of the Universe, What is man that thou art mindful of him, and the son of man that thou thinkest of him?[12] Thereupon He stretched out His little finger among them and consumed them with fire. The same thing happened with a second company. The third company said to Him: Sovereign of the Universe, what did it avail

the former [angels] that they spoke to Thee [as they did]? the whole world is Thine, and whatsoever that Thou wishest to do therein, do it. When He came to the men of the Age of the flood and of the division [of tongues] whose deeds were corrupt, they said to Him: Lord of the Universe, did not the first [company of angels] speak aright? Even to old age I am the same, and even to hoar hairs will I carry,[13] He retorted.

Rab Judah said in Rab's name: The first man reached from one end of the world to the other, as it is written, Since the day that God created man upon the eath, even from the one end of Heaven unto the other.[14] But when he sinned, the Holy One, blessed be He, laid His hand upon him and diminished him, as it is written, Thou hast hemmed me in behind and before, and laid Thy hands upon me.[15] R. Eleazar said: The first man reached from earth to heaven, as it is written, Since the day that God created man upon the earth, and from one end of the Heaven [to the other].[16] But when he sinned, the Holy One, blessed be He, laid His hand upon him and diminished him, for it is written, Thou hast hemmed me in behind and before etc.[15] But these verses contradict each other! — Both measurements are identical.[17]

Rab Judah also said in Rab's name: The first man spoke Aramaic,[18] for it is written, How weighty are thy thoughts unto me, God.[19] And that is what Resh Lakish meant when he said: What is the meaning of the verse, 'This is the book of the generations of Adam?[20] It is to intimate that the Holy One, blessed be He, showed him [Adam] every generation and its thinkers,[21] every generation and its sages. When he came to the generation of Rabbi Akiba, he [Adam] rejoiced at his learning but was grieved at his death,[22] and said: How weighty[23] are Thy friends[24] to me, O God.[19]

Rab Judah also said in Rab's name: Adam was a Min,[25] for it is written, And the Lord God called unto Adam and said unto him, Where art thou?[26] i.e., whither has thine heart turned? R. Isaac said: He practised episplasm:[27] For here it is written, But like man, [Adam] they have transgressed the covenant;[28] whilst elsewhere it is said, He hath broken my covenant,[29] R. Nahman said: He denied God.[30] Here it is written, THey have transgressed the covenant;[28] whilst elsewhere it is stated, [He hath broken my covenant,[31] and again,] Because they forsook the covenant of the Lord their God.[32]

We learnt elsewhere:[33] R. Eliezer said: Be diligent to learn the Torah and know how to answer an Epikoros.[34] R. Johanan commented: They taught this only with respect to a Gentile Epikoros; with a Jewish Epikoros, it would only make his heresy more pronounced.[35]

R. Johanan sad: In all the passages which the Minim have taken [as grounds] for their heresy,[36] their refutation is found near at hand. Thus: Let us make man in our image,[37] — And God created [sing.] man in His own image;[38] Come, let us go down and there confound their language,[39] — And the Lord came down [sing.] to see the city and the tower;[40] Because there were revealed [plur.] to him God,[41] — Unto God who answereth [sing.] me in the day of my distress;[42] For what great nation is there that hath God so nigh [plur.] unto it, as the Lord our God is [unto us] whensoever we call upon Him [sing.];[43] And what one nation in the earth is like thy people, [like] Israel, whom God went [plur.] to redeem for a people unto himself [sing.],[44] Till thrones were placed and one that was ancient did sit.[45]

Why were these[46] necessary? To teach R. Johanan's dictum; viz.: The Holy One, blessed be He, does nothing without consulting His Heavenly Court,[47] for it is written, The matter is by the decree of the watchers, and the sentence by the word of the Holy Ones.[48] Now, that is satisfactory for all [the other verses], but how explain Till thrones were placed? — One [throne] was for Himself and one for David.[49] Even as it has been taught: One was for Himself and one for David: this is R. Akiba's view. R. Jose protested to him: Akiba, how long will thou profane the Shechinah?[50] Rather, one [throne] for justice, and the other for mercy. Did he accept [this answer] from him or not? Come and hear! For it has been taught: One is for justice and the other for charity; this is R. Akiba's view.

Said R. Eleazar b. Azariah to him: Akiba, what hast thou to do with Aggada? Confine thyself to [the study of] Nega'im and Ohaloth.[51] But one was a throne, the other a footstool: a throne for a seat and a footstool in support of His feet.

R. Nahman said: He who is as skilled in refuting the Minim as is R. Idith,[52] let him do so; but not otherwise. Once a Min said to R. Idith: It is written, And unto Moses He said, Come up to the Lord.[53] But surely it should have stated, Come up unto me! — It was Metatron[54] [who said that], he replied, whose name is similar to that of his Master,[55] for it is written, For my name is in him.[56] But if so, [he retorted,] we should worship him! The same passage, however, — replied R. Idith says: Be not rebellious[57] against him, i.e., exchange Me not for him. But if so,[58] why is it stated: He will not pardon your transgression?[59] He answered: By our troth[60] we would not accept him even as a messenger,[61] for it is written, And he said unto him, If Thy [personal] presence go not etc.[62]

A Min once said to R. Ishmael b. Jose: It is written, Then the Lord caused to rain upon Sodom and Gomorrah brimstone and fire from the Lord:[63] but from him should have been written! A certain fuller[64] said, Leave him to me, I will answer him. [He then proceeded,' It is written, And Lamech said to his wives, Ada and Zillah, Hear my voice, ye wives of Lamech;[65] but he should have said, my wives! But such is the Scriptural idiom — so here too, it is the Scriptural idiom.

Whence do you know that? asked he [R. Ishmael]. — I heard it in a public discourse[66] of R. Meir, [he answered]. Even as R. Johanan said: When R. Meir used to deliver his public discourses, a third was Halacha, a third Haggadah, and a third consisted of parables. R Johanan also said: R. Meir had three hundred parables of foxes, and we have only three left,[67]

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(1) His head, the most exalted part of his body, comes from Eretz Yisrael the most exalted of all lands.

(2) [A town near Pumbeditha (Obermeyer, op. cit. 237, n. 3), notorious on account of the loose morals of its inhabitants, v. Ginzberg, Legends V, 15.]

(3) V. l.: R. Ahai.

(4) Lit., 'Extended'.

(5) I.e., Cain and his twin sister were born. V. Yeb. 62a. Abel and his other twin sister were born after they sinned. V. Tosaf. a.l.

(6) ילין, lit., 'tarrieth not over night'.

(7) Ps. XLIX, 13.

(8) Man's majesty keeps the wild beasts in check only as long as he does not descent to their level.

(9) נמשל, He is like the beasts that perish.

(10) Ps. XLIX, 13.

(11) Lit., 'hour'.

(12) Ps. VIII, 5.

(13) Isa. XLVI, 4. I.e., I shall suffer mankind under all conditions.

(14) Deut. IV, 32.

(15) Ps. CXXXIX, 5.

(16) Rashal rightly deletes the bracketed passage, because on this dictum the verse must be read: He created man upon the earth and reaching up to the end of Heaven, i.e., he reached from earth to Heaven.

(17) [The gigantic stature of Adam plays an important part in the system of many Gnostic sects, v. Ginzberg, op. cit. V, 79.]

(18) [This may have been said in justification of the abandonment by the Babylonian Jews of the Hebrew language in favour of Aramaic.]

(19) Ps. CXXXIX, 17. This Psalm deals with the creation of man. יקר 'weighty', and רעיך 'thoughts' are Aramaisms.

(20) Gen. V, 1.

(21) Lit., 'exponents'.

(22) R. Akiba was executed by Tineius Rufus after being most cruelly tortured. Cf. Ber. 61b.

(23) Perhaps to be understood here with a twofold meaning: weighty = honoured; and weighty = a source of heaviness and grief.
(24) רעיך is probably here taken in its usual Hebrew meaning, "Thy friends',
(25) V. Glos. V. p. 234, n. 4; it is to be observed that Min is contrasted (in the next passage) with unbeliever.
(26) Gen. III, 9.
(27) I.e., he removed the mark of circumcision.
(28) Hos. VI, 7.
(29) Gen. XVII, 14. with reference to circumcision.
(30) Lit. 'the fundamental (principle)'.
(31) Gen. XVII, 14. Ms. M. omits the bracketed passage; rightly so, for it is irrelevant.
(32) Jer. XXII, 9, referring to belief in God.
(33) Aboth II, 14.
(34) Who endeavours to draw support from the Torah for his beliefs. [אפיקורוס is derived from the personal name, Epicurus, and is adopted by the Talmud for the sake of the play upon the word פקר 'to be free from restraint'. To denote one who denies God and his commandments, v. Herford, Christianity in Talmud p. 120.]
(35) Lit., 'He is more lawless.' With him, therefore, discussion is not advised since he is deliberate in his negation and not therefore easily dissuaded (Rashi).
(36) E.g., where God is spoken of in the plural.
(37) Gen. I, 26.
(38) Ibid. 27.
(39) Gen. XI, 7.
(40) Ibid. 5.
(41) Ibid. XXXV, 7.
(42) Ibid. 3.
(43) Deut. IV, 7.
(44) II Sam. VII, 23.
(45) Dan. VII, 9.
(46) Plural forms.
(47) פמליא, 'family'v. p. 675.
(48) Dan. IV, 14.
(49) The Messiah.
(50) By asserting that a human being sit beside Him.
(51) Names of Treatises in the Seder Tohoroth, the most difficult in the whole of the Talmud. V. infra 67b. R. Akiba was a great authority on these laws, whereas his Haggadic interpretations were not always acceptable. [This interpretation involved the same danger as that of R. Akiba's first interpretation in that it tended to obscure the true monotheistic concept of God.]
(52) [Ms. M.: R. Idi.]
(53) Ex. XXIV, 1.
(54) Name of an Angel, probably derived from metator, guide. In Talmud and Midrash he is regarded notably as the defender of the rights of Israel (cf. Hag. 16a).
(55) Cf. Rashi on Ex. XXIII, 21. The numerical value of Metatron (מטטרון) is equal to that of שדי (the Almighty) viz. 314.
(56) Ex. XXIII, 21.
(57) תמר is here taken, in the sense of 'exchange', from מור.
(58) That he is not to be worshipped, but God alone.
(59) Ibid. Surely, he has no authority to do so.
(60) Lit., 'we hold the belief.'
(61) Lit., 'Postman' — of forgiveness.
(62) Ex. XXXIII, 15. [The Min was a believer in the doctrine of two rulers and he sought support for this belief from Ex. XXIV, 1. R. Idith met his argument by showing that even Metatron was accepted by Jews only as guide, and in no sense a second god. For a full discussion of the passage, v. Herford, op. cit. p. 285ff.]
(63) Gen. XIX, 24

(64) A figure frequently mentioned in the Talmud as of a specific type. V. e.g., Ber. 28a, Ned. 41a. [In Roman literature, he is an object of ridicule; in rabbinic lore, he plays a more dignified role.]
(65) Gen. IV, 23.
(66) פירקא v. supra p. 178 n. 3.
(67) Probably of those collected by R. Meir, since many other fox fables are found scattered throughout the Talmud and Midrash. Cf. Ber. 61b; Eccl. Rab. V. 14.

Talmud - Mas. Sanhedrin 39a

[as illustrations to the verses]. [a] The fathers have eaten sour grapes and the children's teeth are set on edge;[1] [b] Just balances, just weights,[2] [c] The righteous is delivered out of trouble and the wicked comes in in his stead.[3]

The Emperor[4] once said to Rabban Gamaliel:[5] Your God is a thief, for it is written, And the Lord God caused a deep sleep to fall upon the man [Adam] and he slept [and He took one of his ribs etc.][6] Thereupon his [the Emperor's][7] daughter said to him: Leave him to me and I will answer him, and [turning to the Emperor] said: 'Give me a commander.'[8] 'Why do you need him?' asked he. — 'Thieves visited us last night and robbed us of a silver pitcher, leaving a golden one in its place.' 'Would that such visited us every day!' he exclaimed. 'Ah!' she retorted, 'was it not to Adam's gain that he was deprived of a rib and a wife[9] presented to him in its stead to serve him?' He replied: 'This is what I mean: he should have taken it from him openly.'[10] Said she to him: 'Let me have a piece of raw meat.' It was given to her. She placed it under her armpit,[11] then took it out and offered it to him to eat. 'I find it loathsome,' he exclaimed. 'Even so would she [Eve] have been to Adam had she been taken from him openly,' she retorted.[12]

The Emperor also said to Rabban Gamaliel: I know what your God is doing, and where He is seated. Rabban Gamaliel became, [as it were] overcome and sighed, and on being asked the reason, answered. 'I have a son in one of the cities of the sea, and I yearn for him. Pray tell me about him.'[13] 'Do I then know where he is,' he replied. 'You do not know what is on earth, and yet [claim to] know what is in heaven!' he retorted.

Again the Emperor said to Rabban Gamaliel: 'It is written, He counteth the number of the stars etc.[14] In what way is that remarkable; I too can count them!' Rabban Gamaliel brought some quinces, put them into a sieve, whirled them around, and said: 'Count them.' 'Keep them still,' he requested. Thereupon Rabban Gamaliel observed, 'But the Heavens revolve so.' Some say that the Emperor spoke thus to him: 'The number of the stars is known to me.' Thereupon Rabban Gamaliel asked him, 'How many molars and [other] teeth have you' Putting his hand to his mouth, he began to count them. Said he to him, 'You know not what is in your mouth and yet wouldst know what is in Heaven!'

Again the Emperor said to Rabban Gamaliel, 'He who created the mountains did not create the wind, for it is written, For lo, there is a former of mountains and creator of wind.'[15] — According to this reasoning, when we find it written of Adam, And He created...[16] and, And he formed:[17] would you also say that He who created this [one limb] did not create that [another limb]? Further there is a part of the human body just a handbreadth square, which contains two holes,[18] and because it is written, He that planteth ear, shall he not hear; he that formeth the eye, shall he not see?[19] would you maintain there too that He who created the one did not create the other? 'Even so,' he answered. 'Yet,' he [Rabban Gamaliel] rejoined, 'at death both[20] are brought to agree!

A mag.[21] once said to Amemar: From the middle of thy [body] upwards thou belongest to Ormuzd;[22] from the middle downwards, to Ahriman.[23] The latter asked: Why then does Ahriman permit Ormuzd to send water[24] through his territory?

The Emperor proposed to R. Tanhum, 'Come, let us all be one people.' 'Very Well,' he answered, 'but we who are circumcised cannot possibly become like you;[25] do ye become circumcised and like us.' The Emperor replied: 'You have spoken well; nevertheless, anyone who gets the better of the king [in debate] must be thrown into the vivarium,[26] So they threw him in, but he was not eaten. Thereupon a heretic remarked: 'The reason they did not eat him is that they are not hungry.' They threw him [the heretic] in, and he was eaten.[27]

The Emperor said to Rabban Gamaliel: 'Ye maintain that upon every gathering of ten [Jews] the Shechinah rests:[28] how many Shechinahs are there then?' Rabban Gamaliel called [Caesar's] servant, and tapped him on the neck, saying, 'Why does the sun enter into Caesar's house?'[29] 'But,' he[30] exclaimed, 'the sun shines[31] upon the whole world!' 'Then if the sun, which is but one of the countless myriads of the servants of the Holy One, blessed be He, shines on the whole world, how much more the Shechinah of the Holy One, blessed be He, Himself!'

A certain Min said to R. Abbahu: 'Your God is a jester,[32] for He said to Ezekiel. Lie down on thy left side,[33] and it is also written, Lie on thy right side.'[34] [Just then] a disciple came and asked him: 'What is the reason for the Sabbatical year?' 'Now,' said R. Abbahu, 'I shall give you an answer which will suit you both equally. The Holy One, blessed be He, said to Israel, Sow your seed six years but omit the seventh, that ye may know that the earth is mine[35] They, however, did not do so, but sinned and were exiled. Now, it is the universal practice that a king of flesh and blood against whom his subjects[36] have rebelled, if he be cruel, kills them all; if merciful, he slays half of them; but if he is exceptionally merciful,[37] he only chastises the great ones.[38] So also, the Holy One, blessed be He, afflicted Ezekiel in order to cleanse Israel from their iniquities.'

A certain Min said to R. Abbahu: Your God is a priest, since it is written, That they take for me Terumah [wave offering].[39] Now, when He had buried Moses,[40] wherein did He bathe [after contact with the corpse]?[41] Should you reply, 'In water: is it not written, Who hath measured the waters in the hollow of His hand?[42] — 'He bathed in fire,' he answered, 'for it is written, Behold the Lord will come in fire.'[43] 'Is then purification by fire effective?' 'On the contrary,' he replied, 'bathing [for purposes of purification] should essentially be in fire, for it is written, And all that abideth not the fire ye shall make to go through the water.'[44]

A Min once said to R. Abina: It is written, And what one nation in the earth is like Thy people, [like] Israel.[45] Wherein lies their superiority: ye too are combined with us, for it is written, All the nations are as nothing before Him?[46] He answered: One of yourselves [Balaam] has already testified for us, as it is written,

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(1) Ezek. XVIII, 2.

(2) Lev. XIX, 36.

(3) Prov. XI, 8 Rashi gives the parables in question, as follows, combined in a single story. [Cf. however, Ms. M.: 'We have only one'.] A fox once craftily induced a wolf to go and join the Jews in their Sabbath preparations and share in their festivities. On his appearing in their midst the Jews fell upon him with sticks and beat him. He therefore came back determined to kill the fox. But the latter pleaded: 'It is no fault of mine that you were beaten, but they have a grudge against your father who once helped them in preparing their banquet and then consumed all the choice bits.' 'And was I beaten for the wrong done by my father?' cried the indignant wolf. 'Yes,' replied the fox, 'the fathers have eaten sour grapes and the children's teeth are set on edge. However,' he continued, 'come with me and I will supply you with abundant food. He led him to a well which had a beam across it from either end of which hung a rope with a bucket attached. The fox entered the upper bucket and descended into the well whilst the lower one was drawn up. 'Where are you going?' asked the wolf. The fox, pointing to the cheese-like reflection of the moon, replied: 'Here is plenty of meat and cheese; get into the other bucket and come down at once.' The wolf did so, and as he descended, the fox was drawn up. 'And how am I to get out?' demanded the wolf. 'Ah' said the fox 'the righteous is delivered out of trouble and the

wicked cometh in in his stead. Is it not written, Just balances, just weights'?
(4) קיסר So. Ms. M. Cur. edd. כופר 'an infidel'.
(5) Gamaliel II, also known as Gamaliel of Jabneh [He visited Rome twice — once during the reign of Domitian and again during that of Nerva, his successor, and the disputations that follow may have taken place on one of these occasions, probably the latter, v. Graetz, MGWJ I, 192ff]
(6) Gen. II, 21.
(7) [So Midrash ha-Gadol, p. 84].
(8) דוכום, guard in charge of a military company.
(9) Lit., 'a handmaid'.
(10) I.e., when he was awake.
(11) Rashi translates: She placed it under the hot ashes, and after roasting it, etc.
(12) One often takes an instinctive dislike to food or other objects if they are first seen in their raw state (Rashi). According to the rending adopted, the flesh was repulsive because it had come into contact with her body. Likewise, had Adam known that Eve was part of his body, he might have been repelled.
(13) Lit., 'show him to me.'
(14) Ps. CXLVII, 4.
(15) Amos IV, 13. That is how the Emperor must have translated the verse, drawing an inference from the two different words used to denote creation (E.V. = he that formeth the mountains and createth the wind.
(16) Gen I, 27.
(17) Ibid. II, 7.
(18) The part containing both eye and ear.
(19) Ps. XCIV, 9. Two different expressions are used for the creation of the eye and ear respectively.
(20) The one who planted and the one who created. I.e., assuming that there were two creators of man, he could not completely die unless both agreed; otherwise, the creator of the eye might insist that the eye goes on living, whilst the creator of the ear might wish it to die.
(21) A priest of the Zoroastrian Religion.
(22) Ormuzd, the principle of light, life and good, in the Zoroastrian system, constantly at war with Ahriman (q.v.).
(23) Angra Mainyus Lit., 'the Destroyer', the head of the forces of darkness, death and evil. Warfare must be waged between the two, Ormuzd and Ahriman, for twelve thousand years, at the end of which Abriman will be defeated by Ormuzd V. J.E. I, 294. s. v. Ahriman. Hence the upper part of the body, which contains the head and heart, and consequently what is good in man, belongs to the former; the lower half of the body, the seat of the sexual and excretory organs, to the latter.
(24) I.e., the excreta.
(25) Circumcision cannot be effaced entirely.
(26) An enclosure in which wild beast or fish are kept. Perhaps the arena.
(27) [Herford, op. cit. 253, suggests this Emperor to have been Julian the Apostate (361-363).
(28) Cf. Aboth III, 6. (11) So Rashi. Others translate: Struck him with his ladle.
(29) I.e., why doest thou permit it to enter?
(30) Rashi: the infidel.
(31) Lit., 'rests'.
(32) I.e., He makes His prophets ridiculous.
(33) Ezek. IV, 4.
(34) Ibid. verse 6.
(35) Cf. Lev. XXV, 3; 21.
(36) Lit., 'His country.'
(37) Lit., 'A merciful one full of mercy.'
(38) I.e the leaders.
(39) Ex. XXV. 2. Wave offering, as a rule, were given to Priests.
(40) Deut. XXXIV, 6.
(41) V. Lev. XXII, 4-6.
(42) Isa. XL, 12. I.e., He could not bathe in water, relatively so scanty compared with Himself.
(43) Ibid. LXVI, 15.

(44) Num. XXXI, 23. Essentially therefore, purification is by fire.
(45) II Sam. VII, 23.
(46) Isa. XL, 17.

Talmud - Mas. Sanhedrin 39b

And he [Israel] shall not be reckoned amongst the nations.[1]

R. Eleazar opposed [two verses]: It is written, The Lord is good to all,[2] but it is also written, The Lord is good unto them that wait for Him![3] — This may be compared to a man who has an orchard. When he irrigates it, he irrigates the whole; but when he prunes, he prunes only the best [trees].[4]

THEREFORE EVERY SINGLE PERSON etc. And there went out the song[5] throughout the host:[6] R. Aha b. Hanina said: [It is the song referred to in the verse.] When the wicked perish, there is song;[7] [thus] when Ahab b. Omri perished there was 'song'. But does the Holy One, blessed be He, rejoice over the downfall of the wicked? Is it not written, [That they should praise] as they went out before the army, and say, Give thanks unto the Lord for His mercy endureth for ever;[8] concerning which R. Jonathan asked: Why are the words, He is good[9] omitted from this expression of thanks? Because the Holy One, blessed be He, does not rejoice in the downfall of the wicked.[10] For R. Samuel b. Nahman said in R. Jonathan's name: What is meant by, And one approached not the other all night?[11] In that hour the ministering angels wished to utter the song [of praise][12] before the Holy One, blessed be He, but He rebuked them, saying: My handiwork [the Egyptians] is drowning in the sea; would ye utter song before me![13] — Said R. Jose b. Hanina: He Himself does not rejoice, yet He causes others to rejoice. Scripture supports this too, for it is written, [And it shall come to pass, that as the Lord rejoiced over you to do good . . . so yasis will the Lord] cause rejoicing [over you by destroying you],[14] and not yasus [so will the Lord rejoice etc.][15] This prove it.

[And dogs licked his blood] and the harlots washed themselves:[16] R. Eleazar said: This was in clear fulfilment of two visions, one of Micaiah, the other of Elijah. In the case of Micaiah it is written, If thou returned at all in peace the Lord hath not spoken by me.[17] In the case of Elijah it is written, In the place where dogs licked the blood of Naboth.[18]

With reference to the harlots:] Raba said, they were real [pictures of] harlots. Ahab was frigid by nature [passionless], so Jezebel painted pictures of two harlots on his chariot, that he might look upon them and become heated.[19]

And a certain man drew his bow at a venture[20] and smote the king of Israel.[21] R. Eleazar said: The word means 'without intention'. Raba said: In order to fulfil[22] the two visions, that of Micaiah and that of Elijah.

(Mnemonic: He called, merited, to Edom.)

It is written, And Ahab called Obadiah who was over the household — Now Obadiah feared the Lord exceedingly.[23] What did he[24] say to him? — R. Isaac answered: He spoke thus to him: Of Jacob it is written, I have observed the signs and the Lord hath blessed me [Laban] for thy sake;[25] and of Joseph it is written, The Lord blessed the Egyptian's house for Joseph's sake,[26] whilst my house[27] has not been blessed! Perhaps [it is because] you are not a God-fearing man? Thereupon a Heavenly voice issued and proclaimed, And Obadiah feared the Lord greatly, but the house of Ahab is not fit for a blessing.

R. Abba said: Greater [praise] was expressed of Obadiah than Abraham, since of Abraham the word 'greatly' is not used,[28] while of Obadiah it is.

R. Isaac said: Why did Obadiah attain[29] the gift of prophecy? — Because he hid a hundred prophets in caves, as it is written, For it was so when Jezebel cut off the prophets of the Lord that Obadiah took a hundred prophets and hid them, fifty in a cave.[30] Why just fifty? — R. Eleazar said: He learnt this lesson from Jacob,[31] as it is written, 'Then the camp which is left shall escape.[32] R. Abbahu said: It was because the one cave could not hold more than fifty.

'The vision of Obadiah. Thus said the Lord God concerning Edom.[33] Why particularly Obadiah against Edom? — R. Isaac said: The Holy One, blessed be He, said: Let Obadiah, Who has lived with two wicked persons[34] and yet has not taken example by their deeds, come and prophesy against the wicked Esau,[35] who lived with two righteous persons[36] and yet did not learn from their good deeds.

Ephraim Maksha'ah,[37] the disciple of R. Meir, said on the authority of R. Meir: Obadiah was an Edomite proselyte: and thus people say, From the very forest itself comes the [handle of the] axe [that fells it].[38]

And he [David] smote Moab, and measured them with a line, casting them down to the ground.[39] R. Johanan said on the authority of R. Simeon b. Yohai: Thus the proverb runs, From the very forest itself comes the [handle of the] axe [that fells it].[40] When R. Dimi came [from Palestine] he said [similarly]: The joint putrefies from within.

Then he took his eldest son that should have resigned in his stead and offered him for a burnt offering upon the wall.[41] Rab and Samuel [differ therein:] One said: [He offered him] to God; the other, To a heathen deity. Now, on the view that it was to God, it is correct: hence it is written, And there came great wrath upon Israel.[42] But if it be maintained that he was offered to a heathen deity, why, And there was great wrath etc.? — Even as R. Joshua b. Levi [taught]: For R. Joshua b. Levi opposed [two verses]: It is written, Neither have ye done according to the ordinances of the nations that were round about you;[43] yet it is [elsewhere] written, But ye have done according to the ordinances of the nations that were round about you?[44] [That means:] Ye did not act as the right minded,[45] but as the corrupt amongst them.[46]

And they departed from him and returned to the earth.[47] R. Hanina b. Papa said: In that hour the wicked of Israel descended to the lowest depths [of depravity].[48]

And the damsel was fair, until [she was] exceedingly [so].[49] R. Hanina b. Papa said: Yet she never attained to half of Sarah's beauty, for it is written, 'until . . . exceedingly', 'exceedingly' itself not being included.[50]

CHAPTER V

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(1) Num. XXIII, 9.

(2) Ps. CXLV, 9.

(3) Lam. III, 25.

(4) The world and all in it was given to all, but only the good are fully cared for.

(5) רנה, E.V. 'cry'.

(6) I Kings XXII, 36, with reference to Ahab's death at Ramoth in Gilead.

(7) רנה Prov. XI, 10.

(8) II. Chron. XX, 21, with reference to Jehoshaphat king of Judah, when he went to engage in war with the Ammonites and Moabites.

(9) כי טוב, as in Ps. CVII, 1.

(10) כי טוב, can also be rendered 'it is good'.

(11) Ex. XIV, 20.
(12) Cf. Isa. VI, 3. And one (angel) called unto another, and said, Holy, holy, holy, etc.
(13) The verse is thus taken to mean that one (angel) did not approach the other, calling upon him to join in the Song (Maharsha).
(14) Deut. XXVIII, 63. **וישיש**, in the Hiphil (causative).
(15) **וישוש**, in the Kal.
(16) I Kings XXII, 38. The verse ends, according to the word of the Lord which he spake and R. Eleazar's comment is based on that (Maharsha).
(17) I Kings XXII, 28.
(18) Ibid. XXI, 19.
(19) The harlots washed means, therefore, that their pictures were smeared with blood.
(20) Lit., 'in his innocence.'
(21) Ibid. verse 34.
(22) Lit., 'to make perfect.'
(23) I Kings XVIII, 3.
(24) So Ms. M. Cur. edd.: 'What does the verse say?' which Rashi explains: What connection have the two facts related in the verse?
(25) Gen. XXX, 27.
(26) Ibid. XXXIX, 5.
(27) Lit., 'the house of that man'.
(28) Cf. Gen. XXII, 12.
(29) The Heb. **זכה** denotes to merit something, and to attain through merit.
(30) Kings XVIII, 4. If the one cave was discovered the others might escape.
(31) Who divided his followers into camps.
(32) Gen. XXXII, 9.
(33) Obad. I, 1.
(34) Ahab and Jezebel.
(35) I.e., Edom; Esau is the 'father' of Edom.
(36) I.e., Isaac and Rebecca.
(37) 'The disputant', or 'seller of cucumbers.'
(38) I.e., the descendant of Edom was found to be the most suitable person to reprimand them. From this narrative it appears that the Rabbis of the Talmud identified Obadiah, the governor of Ahab's household with the Obadiah of the minor Prophets. [This view is shared also among moderns by Hoffmann and Keil.]
(39) II Sam. VIII, 2.
(40) David was descended from Ruth the Moabitess.
(41) II Kings III, 27.
(42) Ibid. Because of their failure to show loyalty to God in comparison with the devotion shown by the Moabite King.
(43) Ezek. V, 7.
(44) Ibid. XI, 12.
(45) As, for example, is related of Eglon, king of Moab who, when Ehud said to him: I have a message from God unto thee, (Judges III, 20) arose out of his seat as a sign of respect.
(46) E.g., in allowing human beings as sacrifices, as did the king of Moab.
(47) Lit., translation of II Kings III, 27; E.V. 'to their land'.
(48) Interpreting 'to the earth' in the sense of (moral) degradation.
(49) Lit., rendering of I Kings I, 4, with reference to Abishag.
(50) 'Until' (**דע**) is taken in the sense of 'up to' but not including. I.e., she reached only the point of medium beauty. This Haggadic interpretation is quoted here in order to group together the two sayings of the one teacher.

Talmud - Mas. Sanhedrin 40a

MISHNAH. THEY [THE JUDGES] USED TO EXAMINE THEM[1] WITH SEVEN [HAKIROTH] SEARCHING QUERIES: IN WHAT SEPTENNATE?[2] IN WHAT YEAR? IN WHAT MONTH?

ON WHICH DAY OF THE MONTH? ON WHAT DAY?[3] AT WHAT HOUR [OF THE DAY]? AND, AT WHAT PLACE? R. JOSE SAID: [THEY WERE ONLY ASKED:] ON WHICH DAY [OF THE WEEK]? AT WHAT HOUR? AND, AT WHAT PLACE? [THEY WERE FURTHER ASKED:] DID YE KNOW HIM?[4] AND, DID YE WARN HIM?[5]

WHERE ONE COMMITS IDOLATRY, [THE WITNESSES ARE ALSO ASKED] WHAT[6] DID HE WORSHIP? AND, HOW[7] DID HE WORSHIP? THE MORE EXHAUSTIVE THE CROSS-EXAMINATION [BEDIKOTH] THE MORE PRAISEWORTHY THE JUDGE. IT ONCE HAPPENED THAT BEN ZAKKAI[8] CROSS-EXAMINED [THE WITNESSES] EVEN AS TO THE STALKS OF THE FIGS.[9]

WHAT IS THE DIFFERENCE BETWEEN HAKIROTH AND BEDIKOTH?[10] — IN HAKIROTH, IF ONE [OF THE WITNESSES] ANSWERS: 'I DO NOT KNOW,' THEIR[11] EVIDENCE IS VOID. WITH RESPECT TO BEDIKOTH, HOWEVER, IF ONE ANSWERS: I DO NOT KNOW,' OR EVEN IF BOTH SAY: 'WE DO NOT KNOW, THEIR EVIDENCE IS VALID. BUT IF THEY [THE WITNESSES] CONTRADICT EACH OTHER, WHETHER IN THE HAKIROTH OR THE BEDIKOTH, THEIR EVIDENCE IS VALID.

IF ONE [WITNESS] TESTIFIES, '[IT HAPPENED] ON THE SECOND OF THE MONTH,' AND THE OTHER, 'ON THE THIRD OF THE MONTH:' THEIR EVIDENCE IS VALID, FOR ONE MAY HAVE BEEN AWARE OF THE INTERCALATION OF THE MONTH AND THE OTHER MAY NOT HAVE BEEN AWARE OF IT.[12] IF, HOWEVER, ONE SAYS, 'ON THE THIRD,' AND THE OTHER, 'ON THE FIFTH, THEIR EVIDENCE IS INVALID. SIMILARLY, IF ONE TESTIFIES, 'DURING THE SECOND HOUR [OF THE DAY]'[13] AND THE OTHER 'DURING THE THIRD HOUR:' THEIR EVIDENCE IS VALID.[14] BUT IF ONE SAYS, AT THREE,' AND ANOTHER, 'AT FIVE,' THEIR EVIDENCE IS INVALID.[15] R. JUDAH SAID: [EVEN THEN, THEIR EVIDENCE IS] VALID. BUT IF ONE SAYS, 'AT FIVE,' AND THE OTHER, 'AT SEVEN,' THEIR EVIDENCE IS INVALID, FOR AT FIVE THE SUN IS TO THE EAST, WHILE AT SEVEN, THE SUN IS TO THE WEST.

AFTER THIS, THE SECOND [WITNESS] IS ADMITTED[16] AND [LIKEWISE] EXAMINED. IF THEIR EVIDENCE TALLIES, THEY [THE JUDGES] COMMENCE [THE PROCEEDINGS] IN FAVOUR [OF THE ACCUSED].[17]

SHOULD ONE OF THE WITNESSES DECLARE, 'I HAVE SOMETHING TO SAY IN HIS FAVOUR'; OR ONE OF THE DISCIPLES, 'I HAVE AN ARGUMENT IN HIS DISFAVOUR', HE IS SILENCED.[18] BUT IF A DISCIPLE SAYS, 'I HAVE SOMETHING TO PLEAD IN HIS FAVOUR', HE IS BROUGHT UP AND SEATED WITH THEM,[19] AND DOES NOT DESCEND FROM THERE ALL THAT DAY. IF THERE IS SUBSTANCE IN HIS STATEMENT HE IS HEARD. AND EVEN IF HE [THE ACCUSED] HIMSELF SAYS,' I AM IN A POSITION TO PLEAD IN MY OWN DEFENCE, HE IS HEARD, PROVIDED THERE IS SUBSTANCE IN HIS STATEMENT.

IF THEY FIND HIM NOT GUILTY, HE IS DISCHARGED, IF NOT, IT [THE TRIAL] IS ADJOURNED TILL THE FOLLOWING DAY,[20] WHILST THEY [THE JUDGES] GO ABOUT IN PAIRS,[21] PRACTISE MODERATION IN FOOD, DRINK NO WINE THE WHOLE DAY,[22] AND DISCUSS[23] THE CASE THROUGHOUT THE NIGHT. EARLY NEXT MORNING THEY REASSEMBLE IN COURT. HE WHO IS IN FAVOUR OF ACQUITTAL STATES, 'I DECLARED HIM INNOCENT AND STAND BY MY OPINION.' WHILE HE WHO IS IN FAVOUR OF CONDEMNATION SHALL SAY: 'I DECLARE HIM GUILTY AND STAND BY MY OPINION.' ONE WHO [PREVIOUSLY] ARGUED FOR CONVICTION MAY NOW ARGUE FOR ACQUITTAL, BUT NOT VICE VERSA. IF THEY HAVE MADE ANY MISTAKE, THE

TWO JUDGES' CLERKS[24] ARE TO REMIND THEM THEREOF.

IF THEY FIND HIM NOT GUILTY, THEY DISCHARGE HIM. IF NOT, THEY TAKE A VOTE.[25] IF TWELVE ACQUIT AND ELEVEN CONDEMN, HE IS ACQUITTED. IF TWELVE CONDEMN AND ELEVEN ACQUIT, OR IF ELEVEN CONDEMN AND ELEVEN ACQUIT AND ONE SAYS, 'I DO NOT KNOW,'[26] OR EVEN IF TWENTY-TWO ACQUIT OR CONDEMN AND A SINGLE ONE SAYS, 'I DO NOT KNOW,'[27] THEY ADD TO THE JUDGES. UP TO WHAT NUMBER IS THE COURT INCREASED? — BY TWOS UP TO THE LIMIT OF SEVENTY-ONE.[28]

IF THIRTY-SIX ACQUIT AND THIRTY-FIVE CONDEMN,[29] HE IS ACQUITTED. BUT IF THIRTY-SIX CONDEMN AND THIRTY-FIVE ACQUIT, THE TWO SIDES DEBATE THE CASE TOGETHER UNTIL ONE OF THOSE WHO CONDEMN AGREES WITH THE VIEW OF THOSE WHO ARE FOR ACQUITTAL.

GEMARA. 'Whence is this[30] inferred? — Rab Judah said: Scripture states, Then shalt thou inquire and make search and ask diligently;[31] and it says, And [if] it be told thee and thou hear it, then shalt thou inquire diligently;[32] again it says, And the judges shall inquire diligently.[33]

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(1) The witnesses, in a capital charge, after admonition. Other versions read 'him', i.e., the witness, since the witnesses were separately examined.

(2) Of the Jubilee, was the murder committed?

(3) Of the week. This latter inquiry is necessary because witnesses who might come to refute their evidence, might not remember the date while knowing on what day of the week it took place. (Rashi).

(4) Rashi, the murderer; Maim. and others: the accused: R. Hananel: the murderer and the accused.

(5) That murder is forbidden on pain of death? These two questions, according to Maimonides (Yad 'Eduth, I, 4-5) belong to the specific category of דרישות (inquiry) which is on the one hand treated like בדיקות (investigation) in that the evidence is invalid if one of the witnesses cannot answer them; and on the other like בדיקות, (cross-examination) in this respect that the witnesses are not amenable to the law of retaliation in case of refutation.

(6) I.e , which idol?

(7) Lit., 'with what?'

(8) Cf. infra 41a.

(9) Of the tree under which a murder was alleged to have been committed.

(10) HAKIROTH refers to the questions on date, hour and place: BEDIKOTH to cross examination on the accompanying circumstances.

(11) I.e., that of both witnesses.

(12) I.e., one knew that the previous month had consisted of thirty days whilst the other thought that it had consisted only of twenty-nine days provided they agree as to the day of the week. Cf. Kesef Mishneh, on Yad'Eduth II, 4, and Tosaf. 41b s.v. אחד.

(13) The length of the day was counted from sunrise to sunset, and having regard to the variation of that period, an hour lasted anywhere between 49 and 71 minutes.

(14) For people are liable to error in matters of the exact time in the hour.

(15) An error in two hours is improbable.

(16) Mishnah supra pp. 175-6.

(17) V. supra 32b.

(18) Cf. supra 34a. Witnesses after having given their testimony, are not allowed to make any further statements, even for acquittal, as they might do so with a view to avoiding any possible charge of collusion arising out of their first evidence.

(19) The judges. It follows that the judges sat on raised seats faced by the disciples. V. supra p. 230, n. 10.

(20) Cf. supra 32a, and note.

(21) During the adjournment, to discuss the matter.

(22) Another precautionary measure in capital cases

(23) [V. Yad Ramah.]
(24) Cf. supra 36b.
(25) Lit., 'they stand to vote.'
(26) So that there is no majority of two for conviction. cf. supra 2a.
(27) The member who is doubtful is regarded as non-existent (cf. supra 17a), whilst capital cases may not be tried by less than twenty-three.
(28) If there is a division of opinion amongst the newly co-opted members.
(29) When the court has been increased to the extreme limit.
(30) The seven questions of time and place.
(31) Deut. XIII, 15. In reference to a condemned city. The three expressions for investigation indicate three questions. It should be observed, however, that the Talmud does not regard the word 'ask' by itself as teaching that a formal question must be put to the witnesses but that here it is coupled with 'diligently'.
(32) Ibid. XVII, 4, in connection with the trial of an idolater. The words thou shalt inquire denote one question, and the emphasis, diligently, a second.
(33) Ibid. XIX, 18, with reference to witnesses proved Zomemim (v. Glos). Here also two questions are implied. Hence seven questions in all are necessary.

Talmud - Mas. Sanhedrin 40b

But perhaps we should say that each case is as written,[1] for if it be so,[2] the Divine Law should have stated them in a single case?[3] — Since all [seven] are severally prescribed,[4] [the requirements of] each is inferred from the other,[5] and that being so, it is as though all [seven] were written with reference to each. But surely they [the cases in question] are not similar to each other![6] (Mnemonic: Spared, Sword, Warning.) Thus: The condemned city is unlike the other two,[7] for their possessions [the condemned's, in the latter two charges,] are spared.[8] Again, idolatry differs from the other two cases, for in them [execution is] by the sword.[9] Again, witnesses proved Zomemim are unlike the other two cases, since they require a formal warning?[10] — We infer it[11] from the identical use of 'diligently'[12] and the gezerah-shawah[13] is free,[14] for otherwise, it [the deduction] could be refuted.[15] And it is truly free: since Scripture could have read,[16] And they shall inquire and they shall search,[17] and yet changes its expression [by employing the word] 'diligently',[18] it follows that the purpose thereof was to leave it free.[19] But it [the analogy] is free only on one side![20] [For] granted that it is free in these two cases,[21] since [another expression] could have been used:[22] in the case of the condemned city,[23] what else could have been written:[24] for are not all [three][25] employed?[26] — There too it [sc. 'diligently'] is truly free, for Scripture could have read, Inquiring thou shalt inquire,[27] or searching thou shalt search;[28] and varies the idiom by the use of 'diligently'; it may therefore be inferred that this was in order to leave it free.[29]

Now,[30] we infer [the same requirement for charges punishable by] strangulation a minori from cases punishable by stoning or decapitation.[31] Again, the same is deduced for cases of burning a minori from those of stoning.[32] This [however] is right on the view of the Rabbis that stoning is severer [than burning]. But what is to be said on the view of R. Simeon that burning is the severer?[33] — Rab Judah therefore said: [Scripture states,] Behold if it be truth and the thing certain,[34] [and again] Behold if it be truth and the thing certain:[35] this gives eleven [expressions implying inquiry].[36] Seven [are employed] to indicate the seven queries: then subtracting the three needed for the gezerah shawah,[37] one still remains, whose purpose according to R. Simeon, is to include the cases of burning,[38] whereas according to the Rabbis,[39] [the necessary explanation is that] Scripture [sometimes] takes the trouble of stating a fact which can be deduced a minori. R. Abbahu ridiculed this [explanation]: Perhaps it [the eleventh expression] indicates an eighth query![40] But are eight queries [hakiroth] conceivable?[41] Why not? Surely, What part of the hour, may be added [as the eighth question]! And indeed, it has been taught even so: 'They examined him with eight queries.' Now, that is correct[42] according to Abaye on R. Meir's ruling, viz., A man is [to be treated as] not liable to make even the slightest error.[43] And even according to the version which states, A man is

liable to make a slight error: it is also right.[44] But according to Abaye on R. Judah's ruling, viz., A man is liable to err to the extent of half an hour, and according to Raba, who said, People are liable to err to even a greater extent, what can you say? — Well then, [the eleventh expression] may be intended to add, 'Which year of the Jubilee' as a query. But that is identical with: 'In what septennate?'! — Rather this is the additional question: 'In what Jubilee? And the other Tanna? —[45] Since he [the witness] tells us in which septennate, it is necessary to ask: 'In which Jubilee?'[46] R. JOSE SAID etc. it has been taught: R. Jose said to the Sages: According to your view, one who comes and testifies, 'He killed him last night,' must be asked: 'In which septennate? In what year? In what month? On what day of the month?' They retorted: And according to your view, one who comes and declares, 'He killed him just now,' is to be asked: 'On what day? At what hour? And where?' But [you too must answer that] even though the questions may be unnecessary, they are put to them [the witnesses], in accordance with the view of R. Simeon b. Eleazar;[47] so here too,[48] even if they are unnecessary, they are put to them [the witnesses], in accordance with R. Simeon b. Eleazar's view. And R. Jose?[49] — 'He killed him last night,' is a frequent testimony; whereas, 'He has killed him just now,' is rare.[50]

DID YE KNOW HIM? Our Rabbis taught: [The following questions are asked]: Do ye know him? Did he kill a heathen? Did he kill an Israelite? Did ye warn him? Did he accept your warning?[51] Did he admit his liability to death?[52] Did he commit the murder within the time needed for an utterance?[53] Where he committed idolatry, [the witness is asked:] Which [idol] did he worship? Did he worship Peor?[54] Did he worship Merkolis?[55] How did he worship? By sacrifice, offering incense, libations, or prostration? 'Ulla said: Where is the need of warning intimated in the Torah? — In the verse, And if a man shall take his sister, his father's daughter, or his mother's daughter, and see her nakedness.[56] Does guilt then depend upon [mere] seeing? Hence it must mean [that he is liable to punishment] only if he 'sees' the reasonableness thereof.[57] And since this is inapplicable to Kareth,[58]

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(1) I.e., three questions are to be put to the case of the condemned city; two in a charge of idolatry, and two for Zomemim.

(2) That seven are necessary in each individual charge.

(3) Whence the procedure for all other capital charges would follow.

(4) I.e., in the three charges taken together. [Our text is difficult. Yad Ramah reads וכולהו לחקירה קאתו 'Since all have been prescribed for the purpose of enquiry'].

(5) I.e., since close examination is stated in the case of each, the three charges are assimilated to each other, and therefore the questions that are to be put in one case are to be put in the others too (Rashi)

(6) How then assimilate the three charges to each other?

(7) That of the idolater and the Zomemim.

(8) This act of leniency may indicate a greater degree of leniency in general, therefore a more rigid inquiry might be necessary, this too being in favour of the accused; but in the case of the condemned city, where the possessions of the condemned are destroyed, the inquiries might be less exacting, since the general tendency there is to greater severity. Hence only the number explicitly stated, as above, may be necessary.

(9) Deut. XIII, 16, with regard to the condemned city. V. also Deut. XIX, 21, where a false charge of murder seems to be referred to, which is punished by decapitation, which is therefore also the punishment of the Zomemim. This is a milder form of death than stoning, the penalty for idolatry. Cf. infra 49b.

(10) I.e., before conviction is possible but in the case of Zomemim, no previous warning is required. V. Keth. 33a and Rashi's interpretation a.l., which is based on the verse. Ye shall do unto him as he had purposed to do unto his brother. Since then the cases are dissimilar, how could the procedure in all capital cases be learnt from one?

(11) That the requirements of each case are transferred to the others

(12) Which is common to all the three verses cited.

(13) V. Glos.

(14) I.e., the words of the text which form the basis of the analogy are pleonastic and not legally essential.

(15) As shown above. It is a principle of exegesis that if the two terms of the analogy are not altogether similar the deduction of the gezerah shawah is not valid. V. also p. 363, n. 3.

(16) With reference to the Zomemim.
(17) Which is the expression used in respect of a condemned city.
(18) I.e., instead of 'they shall search', the second question was expressed by 'diligently'.
(19) I.e., though the main purpose of the verse is to indicate the number of questions to be put, this alteration of expression serves the subsidiary purpose too of intimating that the verse is free, so as to permit an analogy to be drawn.
(20) I.e., the word 'diligently' which forms the basis of the analogy is pleonastic only in one of the two terms that are compared, regarding idolatry and Zomemim as one term, and a condemned city as the other. Hence the analogy can be rejected. (This is a matter of dispute on the part of various teachers; v. p. 363, n. 3.)
(21) Sc. idolatry and Zomemim.
(22) E.g., make a search. The modification of the expression therefore denotes a basis for the analogy.
(23) Where there is the expression search.
(24) Instead of 'diligently'.
(25) I. e., (i) thou shalt inquire; (ii) and make search, (iii) and ask diligently, 'ask' by itself being disregarded, as stated on p. 258. n. 4.
(26) Hence 'diligently' cannot be regarded as pleonastic and consequently the analogy can be refuted.
(27) דרוש תדרוש.
(28) חקור תחקור The connection of the infinitive with the verb to convey emphasis is a common feature in the Bible. Cf. Ex. XXII, 3: Deut. XV, 10, 14.
(29) Hence it is free on both sides, and so cannot be rejected.
(30) Since the need of the seven questions has been established in cases punishable by stoning or decapitation, viz., idolatry and witnesses proved Zomemim.
(31) Strangulation is regarded as a milder form of death than the former two, hence the seven questions are certainly necessary there. (V. p. 259, n. 2).
(32) Stoning is severer than burning, and decapitation milder.
(33) I.e., how then can we deduce a seven-fold inquiry from cases involving a milder to those involving a severer punishment?
(34) Deut XIII, 15, with reference to the condemned city.
(35) Ibid. XVII, 4, with reference to the idolater.
(36) For 'if it be truth' implies that a question is put to ascertain it;likewise,'and (if) the thing (be) certain' implies another question; hence the two sentences imply another four questions, in addition to the seven.
(37) Sc. concerning the word 'diligently' in the cases of idolatry, Zomemim, and the condemned city.
(38) That there too the witnesses must be examined with the seven queries of time and place.
(39) For, as stated above, they declared the need of seven queries in the cases of charges punishable by burning a minori from stoning. What need then of the eleventh expression, which likewise indicates the case of burning? Hence this assumption must be made.
(40) How can it be taken for certain that its purpose is to extend the law of seven queries to charges of burning?
(41) I.e., can one ask a further question through which false witnesses may be declared Zomemim?
(42) I.e., that eight queries are conceivable, each of which may serve the purpose of refuting the witnesses.
(43) In regard to the exact time (Pes. 11b). So that, should the witnesses be refuted over a matter of half an hour, e.g., if they stated that they witnessed a murder at 4:30, and other witnesses testify that they were elsewhere, we do not assume that they might have witnessed the murder at 4 or 5, and erred in half an hour, but declare them Zomemim. Hence a purpose is served by questioning them on the precise part of the hour.
(44) To add another query as regards the precise part of the hour.
(45) Who does not favour an eight-fold inquiry, — what view does he hold?
(46) Since it is highly improbable that evidence would be postponed from one Jubilee to another (Rashi) (Or. one includes the other, v. Yad Ramah]. — It may be observed that owing to the discussion on the possibility or need of eight questions, R. Abbahu's objection remains unanswered, unless it be assumed that R. Simeon who maintains that burning is severer than stoning also agrees with the Tanna of the Mishnah that only seven questions are put.
(47) Cf. supra. 32b. 'They shall take the witnesses from one place to another in order to confuse them.'
(48) I.e., to defend our view.
(49) How does he maintain his objection, seeing that it may rightly be raised against his own view too?
(50) Therefore R. Jose maintains that the latter possibility may be disregarded.

(51) By saying, e.g., 'I know that I am warned not to do so.'
(52) By answering you, e.g., 'Even though I shall be punished by such and such a death, yet I will commit this crime.'
(53) Such as a greeting from a disciple to teacher, e.g., 'Peace be unto thee, my Master and Teacher'. V. B.K. 73b; Mak. 6a. If the murder was delayed longer, the plea that he forgot the warning might be accepted. (Rashi)
(54) Num. XXV, 1-9. Worshipped by obscene rites. V. infra 60a, and Rashi, on Num. loc. cit., also p. 410, n. 1.
(55) מרקולים, Roman, Mercurius, Greek, Hermes, the patron deity of wayfarers. V. p. 410, n. 2.
(56) Lev. XX, 17.
(57) I.e., if the witnesses previously warn him that his proposed action is forbidden on pain of kareth.
(58) כרת; excision — punishment by Heaven, where no warning is needed, since God knows whether the culprit was aware of the forbidden nature of his action or not.

Talmud - Mas. Sanhedrin 41a

we must refer it to flogging.[1]

The school of Hezekiah taught: And if a man come presumptuously upon his neighbour to slay him with guile;[2] — this implies that they warned him, yet he remained with wilful intent.[3] The school of R. Ishmael taught: And they that found him gathering sticks:[4] that implies that they warned him, yet he continued gathering. The school of Rabbi taught: Because [lit., 'for the word that'] he hath humbled [his neighbour's wife']5 , teaching, [it is] by reason of 'the word' [that he is stoned].[6] And [these verses] are all necessary: for had the DIvine Law stated [this provision] only in reference to a man's sister, one might have said that it applied only to those liable to flogging, but not to those liable to death,[7] therefore the Divine Law wrote, If a man come presumptuously etc.[8] Again, had this verse only been written, I might have thought that it [sc. a warning) is necessary only for decapitation, which is a milder form of death; but for stoning, which is severer, one might hold that it is not [required]: thus all are necessary. But why need two [intimations][9] in respect of stoning? — According to R. Simeon,[10] to extend [the law of warning] to cases of burning;[11] whilst the Rabbis[12] [answer]: (Scripture [sometimes] takes the trouble of stating a law[13] which can be deduced a minori. But Scripture should have intimated it for stoning [only], and then these other cases[14] could have been inferred from it! — Here too [the same answer must be given]: Scripture [sometimes] takes the trouble of stating a law which can be deduced a miniori.

'Did he admit his liability to death?' Whence do we infer this? Raba — others state, Hezekiah — said: Scripture states, Shall he that is to die[15] be put to death;[16] [He is not put to death] unless he [previously] admitted his liability to death.[17]

R. Hanan said: Witnesses against a betrothed damsel[18] who were proved Zomemim, are not executed,[19] since they may plead, We came forward [to testify] only to render her ineligible for her [intended] husband.[20] But they must surely have warned her![21] — This treats of a case where they did not warn her. But if so, how could she be put to death at all?[22] This refers to an educated woman, and is based on the view of R. Jose son of R. Judah. For it has been taught: R. Jose son of R. Judah said: A scholar needs no warning, for warning was instituted only in order to distinguish between wilfulness and unwilfulness.[23] But since they are not executed, how could she be? For this becomes evidence to which the law of Zomem cannot be applied,[24] and such is not admissible![25] — He [R. Hanan] actually meant it thus: Since they are not executed, for they can plead, 'We came only to make her ineligible for her [intended] husband,' she too cannot be executed, because it is evidence to which the law of Zomem cannot be applied. Then in the case of an educated woman, who, as we know, is to be executed on the view of R. Jose son of R. Judah, how, is that possible?[26] — If she misconducted herself twice.[27] But they [the witnesses] can still plead, We came only to render her forbidden to her second paramour![28] — [The case in question is one] where the misconduct was repeated with the first adulterer,[29] or one of misconduct with one of her relations.[30]

But why state this only of a 'betrothed damsel': surely the same applies to a married woman too! — True: but [the purpose here is to teach that] even in such a case, though she has not yet lived with her husband, they can plead, We came forward only to make her ineligible for her [intended] husband.

R. Hisda said: If one testified that he [the accused] slew him with a sword, and another, that he slew him with a dagger, it [the evidence] is inadmissible.[31] If one says, His clothes were black, and the other, His clothes were white; the evidence is admissible.[32]

An objection is raised: 'Certain'[33] implies that the evidence must be certain; if one witness says, He slew him with a sword, and the other says, With a dagger; or if one says, His clothes were black, and the other, They were white, the evidence is not 'certain'?[34] — R. Hisda interpreted this as referring to the [colour of] the cloth with which he strangled him, which comes under the same category as sword or dagger.

Come and hear! If the one says that his sandals were black, and the other, that they were white, the evidence is not certain'![35] — There too the meaning is, that he kicked him with his sandal and killed him.[36]

Come and hear! IT ONCE HAPPENED THAT BEN ZAKKAI CROSS-EXAMINED [THE WITNESSES] AS TO THE STALKS OF THE FIGS. — Rami b. Hama replied: The meaning is, that a man cut off a fig on the Sabbath, for which he was to be put to death.[37] But has it not been taught: They said to him, 'He killed him beneath a fig-tree'? — But, said Rami b. Hama: It was a case where he [the accused] pierced his victim with the sharp end of a fig branch.

Come and hear! He questioned [the witnesses]: Were the stalks of this fig tree thin or thick? And were the figs [themselves] black or white?[38] But, answered R. Joseph: Would one raise an objection from Ben Zakkai! Ben Zakkai had a different view, since he assimilated bedikoth to hakiroth.[39] Now, who was this Ben Zakkai? Shall we say, R. Johanan b. Zakkai? Was he then [a member] of the Sanhedrin?[40] Has it not been taught:[41] The whole lifetime of R. Johanan b. Zakkai was a hundred and twenty years. Forty years he engaged in business; forty years he studied, and forty years he taught. And it has also been taught: Forty years before the destruction of the Temple, the Sanhedrin were exiled[42] and took up residence in Hanuth.[43] Whereon R. Isaac b. Abudimi said: This is to teach that they did not try cases of Kenas.[44] 'Cases of Kenas!' Can you really think so![45] Say rather, They did not try capitol charges.[46] Again we learnt:[47] When the Temple was destroyed, R. Johanan enacted [so and so].[48] But the reference is to some other Ben Zakkai. Reason too supports this: for were R. Johanan b. Zakkai meant, would Rabbi[49] have called him merely Ben Zakkai![50] Yet has it not been taught: It once happened that R. Johanan b. Zakkai examined [witnesses] as to the stalks on the figs?[51] — He must therefore have been a disciple sitting before his Master,[52] when he made this statement the reasoning of which was so acceptable to them [the Rabbis]

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(1) I.e., a warning must be given that he is liable to flagellation.

(2) Ex. XXI, 14.

(3) From the use of the imperfect יזיד, which connotes a continuous present. Murder is punishable by decapitation.

(4) Num. XV, 33; here too, the deduction follows from the use of the present part. (מקושש), i.e 'he went on gathering sticks after he was found (and warned). This shows the need for warning in the case of stoning

(5) Deut. XXII, 24.

(6) על דבר 'By reason of the word' — sc. of warning.

(7) For one might think that owing to the severity of the crime people would themselves realise the consequences and so not need warning.

(8) So indicating the need of warning in a case punishable by death.

(9) One in connection with the 'gatherer of sticks', and the other regarding the 'betrothed damsel'.

(10) Who holds that burning is a severer death; consequently, the warning here cannot be deduced from the reference to stoning, since it might be thought that in the case of a severer punishment, warning is not required.
(11) R. Simeon bases this on the hermeneutical אם אינו ענין i.e if it has no hearing on cases of stoning, it must refer to cases of burning.
(12) Who hold that stoning is a severer death, so that warning for burning follows therefrom a fortiori.
(13) Here, not explicitly, but by the same principle of אם אינו ענין.
(14) Sc. lashes and decapitation.
(15) Lit., 'the dead.'
(16) Deut. XVII, 6.
(17) This is deduced from the expression, המת, the dead, instead of 'murderer'. In accepting the warning then, he is regarded as dead de jure, even before appearing in court, since the warning involves the consequences of the evil deed.
(18) Who have testified to her infidelity. Had the charge been proved, she would have been executed.
(19) Despite the fact that collusive witnesses are punished according to the law of retaliation.
(20) For if the charge were proved,even if for some reason she were not executed, she would be forbidden to her husband!
(21) That the consequence of her act was death. How then could this argument for the defence be raised
(22) And in that case the witnesses too are not liable, since it is written, And ye shall do unto him as he thought (plotted) to do unto his brother (Deut. XIX, 19), i.e., they are punished only as the accused would have been punished.
(23) If the murderer was not warned he could plead ignorance of the death penalty. A scholar could not raise such a point in his defence. Hence this woman would have been liable to death, and in consequence, the false witnesses too, but for the plea stated above.
(24) I.e., even if their evidence is proved to be false, the law of retaliation cannot operate, because of their possible defence that they intended only to make her ineligible for her intended husband, and not to bring the death penalty upon her.
(25) Lit., 'is not called testimony.' For unless there is this deterrent to false testimony, it is suspect ab initio.
(26) Since the witnesses themselves, if proved Zomemim, are not executed.
(27) And so the witnesses in the second charge can no longer plead that their intention was only to prohibit her to her husband, since she is already forbidden.
(28) An unfaithful woman is forbidden not only to her husband, but also to the adulterer, if he afterwards wishes to marry her. V. Sotah 26b.
(29) To whom she is already prohibited in consequence of their earlier relations.
(30) Whom she is absolutely forbidden to marry at all.
(31) Lit., 'not certain', quoted from: Behold if it be truth and the thing certain (Deut. XIII, 15. XVII, 4.), v. supra 30b.
(32) Contradictory statements made during cross examination are of sufficient importance to be invalidated only when they refer to the act itself.
(33) Deut. XIII, 15: XVII, 4. V p. 265, n. 9.
(34) Hence inadmissible. I.e the evidence must tally, even in respect of matters which have no direct bearing on the act.
(35) Although there is here no actual contradiction in matters directly involving the act.
(36) The sandals being the actual weapons, the question of colour is on a par with the question of sword or dagger.
(37) Hence the species of fig is of direct importance for the veracity of the witnesses.
(38) I.e., ripe or unripe. Now surely, he could not have killed anyone with the figs. This proves that the meaning is that the witnesses deposed that the accused had killed his victim under or near a fig-tree, and thus this again refutes R. Hisda.
(39) And maintained that just as contradictions on the latter invalidated the evidence, so on the former. The general view, however, disagrees with this, and R. Hisda's dictum was likewise in accordance with the general view.
(40) At the time when they still had power to try capital cases.
(41) Cf. R. H. 31b.
(42) From the Hall of Hewn Stones. V. infra p. 205, n. 5.
(43) חנות A place on the Temple Mount outside the hewn chamber where they had temporary residence. (Derenbourg, Essai, p. 467, and Krauss, REJ, LXIII, 66f., identify it with the 'Chamber of the sons of Hanan' (a powerful priestly family, cf. Jer. XXXV, 4) mentioned in J. Pe'ah I, 5.]
(44) V. Glos.
(45) That these, like capital charges, could be tried only in the chief seat of the Sanhedrin — the Hall of Hewn Stones!

These cases could, in fact, be tried anywhere in Palestine.

(46) V. A.Z. 8b on Deut. XVII, 10: And thou shalt do according to the tenor of the sentence which they shall declare unto thee, from that place; this implies that it is the place that conditions the authority of the Sanhedrin in respect of the death sentence. [J. Sanh. I, 1 has, 'the right to try capital cases was taken away from them, i.e., by the Romans. For a full discussion of the subject v. Juster. op. cit, II, 138ff.]

(47) R. H. 29b.

(48) Hence the last period of R. Johanan's career was after the destruction of the Temple, when the Sanhedrin no longer tried capital cases.

(49) In the Mishnah.

(50) Depriving him of the title given at ordination.

(51) I.e., it must be the same person.

(52) At a time when capital cases were yet tried.

Talmud - Mas. Sanhedrin 41b

that they established it in his name. Thus while he was yet a student he was called Ben Zakkai, as is customary for a disciple sitting before his master, and when later he was a teacher,[1] he was called Rabban Johanan b. Zakkai. Hence, when he is referred to as Ben Zakkai,[2] it is in accordance with his earlier status;[3] while when he is called R. Johanan b. Zakkai, it is in accordance with his status at the time [that the Baraitha was taught].

IT ONCE HAPPENED THAT ETC. . . WHAT IS THE DIFFERENCE BETWEEN HAKIROTH AND BEDIKOTH.? etc. What does 'EVEN[4] IF BOTH SAY etc. mean? It is surely obvious that if when one of the two witnesses says, 'I do not know,' their evidence is valid, if two say so, their testimony is likewise valid?[5] — R. Shesheth said: This refers to the first clause [of the Mishnah][6] and its meaning is as follows: In hakiroth, even if two say, 'We know,' and one is in doubt, their evidence is invalid. With whom does this agree? — With R. Akiba, who treated three [witnesses] as equal to two.[7] Raba demurred: Surely the Mishnah states: THEIR EVIDENCE IS VALID![8] — But, said Raba, it means this: Even in hakiroth, if two say, 'We know,' and the third says, 'I do not know,' their evidence is valid. With whom does this agree? — Not with R. Akiba.

R. Kahana and R. Safra were studying [the Tractate] Sanhedrin in the school of Rabbah. When Rami b. Hama met them, he asked them: What have ye to say on the Tractate Sanhedrin as taught in the school of Rabbah?[9] They retorted: And what in particular are we to say of the Tractate itself?[10] What is your special difficulty? — He answered: [The difficulty arises] from what is stated: WHAT IS THE DIFFERENCE BETWEEN HAKIROTH AND BEDIKOTH? IN HAKIROTH, IF ONE [OF THE WITNESSES] ANSWERS, 'I DO NOT KNOW,' THEIR EVIDENCE IS VOID. WITH RESPECT TO BEDIKOTH, HOWEVER, IF ONE ANSWERS, I DO NOT KNOW,' OR EVEN IF BOTH SAY, 'WE DO NOT KNOW THEIR EVIDENCE IS VALID. Now consider: both are Biblically [required]:[11] why then should hakiroth differ from bedikoth? — They said to him: How compare them?[12] As for hakiroth, if one of the witnesses says, , 'I do not know', the evidence is invalid because it cannot be refuted;[13] but with respect to bedikoth, if one of them answers, 'I do not know', the evidence remains valid, since it is still subject to refutation. Thereupon he said to them: If that is what you have to say, you have much to say thereon. But they replied: only because of your great forbearance have we said so much; had you criticized us, we should not have said anything.[14]

IF ONE TESTIFIES . . . [FOR ONE MAY HAVE BEEN AWARE OF THE INTERCALATION OF THE MONTH etc.] Till what date?[15] — R. Aha b.Hanina said in the name of R. Assi in the name of R. Johanan: Until the greater part of the month [has passed].[16] Raba said: We too learnt likewise' IF HOWEVER, ONE SAID, 'ON THE THIRD , AND THE OTHER, 'ON THE FIFTH, THEIR EVIDENCE IS INVALID. But why so? Why not assume that the one may have known of two intercalations,[17] whilst the other was ignorant of both! Hence it must surely be so because, when the

greater part of the month has passed, one knows thereof [sc. intercalation]! — [No.] In truth I might argue that even after the passing of the greater part of the month, one does not necessarily know [of the intercalation],[18] yet he must have known of the Shofar-signal:[19] , we may then say that he may have erred regarding one signal,[20] but not regarding two.[21]

R. Hanina also said in the name of R. Assi in R. Johanan's name: Until what day of the month may the benediction over the new moon be recited?[22] — Until its concavity is filled up. And how long is that? — R. Jacob b. Idi said In Rab Judah's name: Seven days. The Nehardeans said: Sixteen [days].

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(1) I.e., after ordination.

(2) In the Mishnah.

(3) Which is chronologically correct.

(4) The word 'even' gives the impression that when both witnesses are dubious, the evidence is less likely to be valid than when only one is in doubt.

(5) For if one is ignorant on a certain point, the other's knowledge thereof is valueless. Hence whatever evidence is valid when one is ignorant, is also valid when both are ignorant.

(6) Which deals with HAKIROTH.

(7) Just as when there are only two witnesses, if one of them is disqualified, the whole evidence falls to the ground, so when there are three. V. Tosaf. and cf. Mak. 5b.

(8) How then interpret it of a case where the evidence is invalid?

(9) Seeing that you have studied under such a great man, you must surely have discovered many new points.

(10) I.e., even if we had not studied with Rabbah, was there really any difficulty to be found there? (Rashi). [Yad Ramah adds: 'as generally taught' (lit., 'as all the world teaches')?

(11) V. supra 40b, 41a.

(12) Lit., 'How so, now!'

(13) Be proving that the witnesses were elsewhere at the said time. Hence, if one is in doubt regarding the place or time, such refutation is impossible. — It should be observed that only refutation of time and place is meant in the whole discussion, since that is the only form of refutation which renders the witnesses liable to the law of retaliation.

(14) I.e., had you criticized our arguments we should not have been able to resist yours!

(15) I.e., until what day of the month may ignorance of the defectiveness or fullness of the last month be assumed in explanation of the discrepancy between two witnesses?

(16) After that, contradiction as to date invalidates the evidence. The greater part of the month means one day beyond half way.

(17) Either consecutively or alternately.

(18) And so the question from the Mishnah is not corroborative.

(19) Blown at the proclamation of the new moon, be the month full or defective.

(20) I.e., though knowing that the Shofar had been sounded, he may have erred once as to the day on which it was sounded.

(21) Hence the invalidity of the evidence where there is a difference of two days.

(22) A benediction is recited at each re-appearance of the new moon just as on the re-appearance of everything that is beneficial to mankind. V. J. Ber. IX, 2. 'He who sees the moon in her stage of renovation, utters: Blessed etc.'

Talmud - Mas. Sanhedrin 42a

Now, both agree with R. Johanan,[1] but the one [explains it as meaning]: Until it is like a strung bow;[2] the other: Until it is like a sieve.[3]

R. Aha of Difti[4] said to Rabina:[5] Yet should not one utter the benediction,[6] 'Blessed . . . who art good and dispensest good'![7] — He replied: But when it is waning, do we say, 'Blessed be the true judge.' '[8] that we should say: 'Blessed . . . who art good and dispensest good?'[9] But why should not both be recited?[10] Since it is a regular phenomenon, no benediction at all is required.[11]

R. Aha b. Hanina also said in the name of R. Assi in R. Johanan's name: Whoever pronounces the benediction over the new moon in its due time welcomes, as it were, the presence of the Shechinah: for one passage states, This month;[12] whilst elsewhere it is said, This is my God, and I will giorify Him.[13]

In the school of Rabbi Ishmael it was taught: Had Israel inherited no other privilege[14] than to greet the presence of their Heavenly Father once a month,[15] it were sufficient. Abaye said: Therefore[16] we must recite it standing. But Meremar and Mar Zutra allowed themselves to be carried on the shoulders[17] when they pronounced the blessing.

R. Aha said to R. Ashi: In 'the West,' they pronounce the following benediction: 'Blessed be He who reneweth the moons.' Whereupon he retorted: Such a blessing even our women folk pronounce![18] But [one should rather use the following], in accordance with Rab Judah, who gives it thus: Praised etc.[19] who created the Heavens with His word, and all their hosts with the breath of His mouth. He appointed unto them fixed laws and times, that they should not change their ordinance. They rejoice and are glad to do the will of their Creator. They work[20] truthfully, for their action is truth. The moon He ordered that she should renew herself as a crown of beauty for those whom He sustains from the womb,[21] and who will, like it, be renewed in the future, and magnify their Maker in the name of the glory of His kingdom. Blessed art Thou, O Lord, who renewest the moons.

For with wise advice[22] thou shalt make thy war.[23] R. Aha b. Hanina [further] said in the name of R. Assi in R. Johanan's name: In whom do you find [skill to conquer in] the battle of the Torah?[24] — Only in him who possesses bundles of Mishnah [teaching].[25]

R. Joseph applied to himself [the verse]: Much increase [of grain] is by the strength of the ox.[26]

SIMILARLY, IF ONE TESTIFIED, 'DURING THE SECOND HOUR' etc. R. Shimi b. Ash said: They taught this only of hours.[27] But if one testifies, 'It was before sunrise,' and the other says, 'After sunrise, their evidence is invalid.[28] This is obvious[29] — But [put it thus:] if one testifies, 'Before sunrise,' and the other, 'During sunrise.'[30] But this too is obvious! I might, however, think that he [the witness] was standing in the glow [before sunrise] and what he saw was but a gleam:[31] He therefore informs us otherwise.

AFTER THIS, THE SECOND WITNESS IS ADMITTED etc. [AND HE DOES NOT DESCEND FROM THERE ALL THAT DAY.] Only THAT DAY,[32] and no longer? But has it not been taught: 'If there is substance in his statement, he does not go down from there at all;[33] but if there is no substance therein, he does not descend thence all that day, that his rise be not his fall'?[34] — Abaye said: Interpret it [sc. the Mishnah] as applying [to a case] where no substance was found in his statement.

IF THEY FIND HIM NOT GUILTY etc. [AND DRINK NO WINE]. Why drink no wine? — R. Aha b. Hanina said: Scripture states, It is not for princes[35] to say, Where is strong drink?[36] [i.e.,] those who are engaged in [unravelling] the secrets of the world[37] must not become drunk.

THE TWO SIDES DEBATE THE CASE TOGETHER UNTIL ONE OF THOSE WHO CONDEMN AGREES WITH etc. But what if they do not agree? R. Aha ruled: He is discharged. R. Johanan said likewise: He is discharged. R. Papa said to Abaye: Then he should be set free in the first place![38] He answered: Thus did R. Johanan say: It is in order that they may not leave the Court in confusion.[39] Some say that R. Papa said to Abaye: Why add, Let him be discharged by the first court?[40] To which he replied: R. Jose is in agreement with you. For it has been taught: R. Jose said: Just as a court of seventy-one is not increased, so may a court of twenty-three not be increased.

Our Rabbis taught: In civil suits, a declaration is made, The judgement nizdakan;[41] but not in capital charges.[42] What does nizdakan mean? Shall we say, The case is difficult:[43] surely, the reverse should have been taught![44] R. Huna b. Manoah said in the name of R. Aha the son of R. Ika: We should reverse (the instances). R. Ashi said: In truth, you need not reverse it: what is meant by 'The judgment nizdakan'? — The case is wisely [established].[45]

An objection is raised: The presiding judge declares, 'The judgment nizdakan.' Now, should you agree that it means, 'The case is wisely established,' it is correct, hence the presiding judge makes the declaration. But if you maintain that it means, The case is difficult;' is it not better that the presiding judge should not say it? Surely in doing so he actually disgraces himself! — There is no comparison between declaring one's own disgrace and having another declare it.[46] Others state: Should you agree that it means, The case is difficult,' it is correct, for there is no comparison between declaring ones own disgrace and having another declare it. But if you maintain that it means, 'The case is wisely established:' does not the president [of the court] thereby praise himself? Whereas it is written, Let another praise thee and not thine own mouth?[47] — It is different in judicial matters, since the president is charged with the duty,[48] as we learnt: When a decision has been arrived at, they are admitted, and the presiding judge declares, 'So and so, thou art not liable,' or, 'So and so, thou art liable.'[49] [

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(1) That the recital of the benediction is conditioned by the filling up of the moon's concavity.

(2) I.e., semicircular, which shape it assumes after seven days.

(3) I.e., round, at full moon.

(4) [Dibtha on the Tigris. (Obermeyer op. cit. p. 197)].

(5) With reference to Rab Judah's view.

(6) After seven days and until full moon.

(7) This benediction is made on the attainment of a thing over which its due blessing has already been pronounced, but which has now either been improved or been replaced by a thing of the same kind but of a better quality (v. Ber. 59b). And so R. Aba maintained that even if in Rab Judah's opinion the usual benediction for the new moon is not to be uttered after seven days because it is then no longer new, yet since it is still in its growing stage, becoming more luminous as the days pass until full moon is reached, this latter blessing should be uttered.

(8) A benediction recited on hearing bad tidings. Cf. Ber. 54a.

(9) When it is waxing. I.e., since its waning is not regarded as a loss, entailing this benediction, its waxing is not a gain, necessitating the other.

(10) On the respective occasions.

(11) For its waxing is no particular boon from God, nor its waning an infliction, which are the fundamental reasons of these benedictions.

(12) Ex. XII, 2, concerning the New Moon.

(13) Ex. XV, 2, in the Song of Moses. 'This' is taken as connoting something that could, as it were, be pointed at with the finger (v. Mekilta. Ex. XV, 2), and the use of this word in the two verses suggests that he, who praises God at the periodical renewal of the moon, gives witness to the revelation of Divine Glory as manifested in natural phenomena.

(14) זכות; v. p. 153. n. 2.

(15) I.e., if they practised no other observance but this — the benediction over the new moon.

(16) Because it is a greeting of God's Presence.

(17) Probably because of their infirmity through age. Cf. supra 7b, and Rashi's comment

(18) As if to say, 'There is nothing in that.' Such a short benediction is fit only for the uneducated. e.g., women (Maharsha).

(19) The 'etc.' (curr. edd. in brackets) stands for 'art thou, O Lord our God. . .'

(20) Tosaf.'s reading:' 'He works', referring to God.

(21) I.e., from childhood, viz., Israel, cf. Isa. XLVI, 3.

(22) תחבולות.

(23) Prov. XXIV, 6.

(24) I.e., who is qualified to meet the difficulties of the Torah, and give a true interpretation?

(25) I.e., he who is fully conversant with the law; according to Rashi, the point is that mere dialectic skill and ingenuity are no substitutes for a sound knowledge of the sources. חבילה, bundle, is a word play on חבולות.
(26) Prov. XIV, 4. V. Deut. XXXIII, 17, where Joseph is symbolically compared to a bullock; also Hor. 14a: R. Joseph was renowned for his erudition, being known as Sinai. Hence his application of the above verse to himself.
(27) I.e., if the witnesses state a definite time, e.g., three hours, four hours. etc. Only then is there a dispute in the Mishnah as to the margin of possible error.
(28) Even according to R. Judah.
(29) As there could be no error in such a matter.
(30) Their evidence is null.
(31) Mistaking it for the rays of sunrise; thus their statements tally.
(32) Does the disciple remain seated with the Judges.
(33) I.e., he becomes a member of the Court. V. Yad, Sanh. X, 8, although according to Tosafoth Yom Tob on Sanh. V, 4, he is not given a (for note 9 see p. 274) vote. Me'iri, however, maintains that he is seated with them only as long as the trial lasts.
(34) If he had to resume his seat in the presence of the Assembly, he would be disgraced.
(35) רוזנים, here connected with רז, secret. V. Dan. II, 18, 29.
(36) Prov. XXXI, 4.
(37) I.e., seeking to bring to light the secrets hidden in men's hearts, and so endeavouring to establish the truth — in a capital charge.
(38) I.e., after the court was increased to seventy-one and there was yet no clear majority. Why then delay by debating, surely the court as a whole must not seek to convict?
(39) I.e., without a definite decision. It reflects discredit on a court that it should rise in a state of controversy, having been unable to bring the matter to a definite conclusion (Rashi).
(40) Of twenty-three. If there was then no clear majority, both sides should have endeavoured to win one more vote over to their opinion, and in the case of failure, he should have been set free there and then.
(41) נזדקן, from the root זקן, may have a twofold meaning; a) old, in that the case has become old in discussion and could not be solved; or b) wise, in that the case has become clear, or wisely established, and is no longer in need of discussion. The following discussion is based on these two alternative meanings.
(42) Cf. Tosef. Sanh. VII.
(43) Lit., 'old', I.e., the case is become old and stale through prolonged discussion, and cannot be solved.
(44) I.e., in capital cases one should all the more say, 'The judgment nizdakan,' so as to acquit the accused.
(45) זקן according to the Rabbis, denotes 'wise' Cf. Kid. 32b.
(46) Which would be the position if the words were pronounced by another member of the court.
(47) Prov. XXVII, 2.
(48) Of declaring the verdict.
(49) Supra 29a.

Talmud - Mas. Sanhedrin 42b

C H A P T E R V I

MISHNAH. WHEN THE TRIAL IS ENDED,[1] HE [THE CONDEMNED] IS LED FORTH TO BE STONED.[2] THE PLACE OF STONING WAS WITHOUT THE COURT, EVEN AS IT IS WRITTEN, BRING FORTH HIM THAT HATH CURSED.[3]

A MAN WAS STATIONED AT THE DOOR OF THE COURT WITH THE SIGNALLING FLAG[4] IN HIS HAND, AND A HORSE-MAN WAS STATIONED AT THE DISTANCE YET WITHIN SIGHT OF HIM,[5] AND THEN IF ONE[6] SAYS, 'I HAVE SOMETHING [FURTHER] TO STATE IN HIS FAVOUR', HE [THE SIGNALLER] WAVES THE FLAG, AND THE HORSE-MAN RUNS AND STOPS THEM.[7] AND EVEN IF HE HIMSELF SAYS, 'I HAVE SOMETHING TO PLEAD IN MY OWN FAVOUR', HE IS BROUGHT BACK, EVEN FOUR OR FIVE TIMES, PROVIDING, HOWEVER, THAT THERE IS SUBSTANCE IN HIS ASSERTION.

GEMARA. And was the place of stoning only just outside the court and no further? Has it not been taught: The place of stoning was outside the three encampments?[8] — True, it is even as you say, yet he teaches it thus, so that one may infer from it that if the Beth din went forth[9] and stationed itself outside the three encampments,[10] even so the place of stoning had to be without the court, in order that it [the court] should not appear murderously inclined, or that there might be a possibility of deliverance.[11]

Whence is this inferred?[12] From what our Rabbis taught: Bring forth him that hath cursed without the camp:[13] i.e., without the three camps. You say, 'without the three camps:' but may it not mean simply outside one camp? — It is here stated, Without the camp; and in reference to the bulls that were [wholly] burned,[14] it is also said, without the camp:[15] Just as there, [it means] without the three camps, so here too. And whence is that derived there? — From what our Rabbis taught: The whole bullock shall he carry away without the camp[16] — i.e., without the three camps. You say, 'without the three camps;' but perhaps it simply means 'without one camp'?[17] — But when Scripture states further, with reference to the bull offered for the Community,[18] without the camp, which is unnecessary, for it has already been stated, And he shall burn it as he hath burned the first bullock,[19] its purpose is to add a second camp.[20] And when Scripture states further, with reference to the ashes,[21] without the camp,[22] which is also superfluous, since it has already been said, Where the ashes are poured out shall it be burned,[23] its purpose must be to add a third camp.[24]

But why not derive it[25] from the sacrifices slaughtered without [the legitimate precincts]?[26] Just as there, [the meaning is] without one camp,[27] so here too, without one camp is meant! — It is logical to make the deduction from the bullocks that were [wholly] burned, since they have the following points in common: [i] Bring forth... without the camp; [ii] [the bringing forth] is a necessary preliminary [to the act]; [iii] atonement.[28] On the contrary, it should rather be deduced from the sacrifices slaughtered without, since they have the following in common; [i] human being; [ii] sinners; [iii] life is taken; and [iv] piggul?[29] — It is preferable to deduce one necessary preliminary from another. R. Papa said:[30] Where did Moses reside? In the camp of the Levites.[31] And God said to him: Bring forth him that hath cursed without the camp[32] — which therefore means, without the camp of the Levites. Hence, when it states, And they brought forth him that had cursed outside the camp, the camp of the Israelites [must be meant].[33] But surely, that is necessary to intimate the fulfilment [of the command]? — This fulfilment is expressly stated:

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(1) And the accused is found guilty.

(2) If he be so sentenced. Stoning is given here as an example, it being enumerated first in the list of the four modes of execution in Jewish law. Cf. infra 49b.

(3) 'Bring forth' implies 'without,' as is also shewn by the end of the sentence: without the camp. Lev. XXIV, 14.

(4) Sudarium, a cloth or kerchief.

(5) The signal man.

(6) Of the judges (Rashi).

(7) From carrying out the sentence until the court has gone into the details to see whether there is any substance in the new statement offered.

(8) That of the Divine Presence and the Priests, that of the Levites, and that of the rest of the Israelites. In Jerusalem they were situated as follows: The first was confined to the space of the Temple court, the second to the Temple Mount and the third occupied the rest of the city.

(9) From its usual locale, as stated in the previous note.

(10) I.e., one of the minor Sanhedrins.

(11) Between sentence and execution. The further the place of execution was from the court, therefore, the better for the condemned.

(12) That the execution must take place outside the three camps.

(13) Lev. XXIV, 14, with reference to the blasphemer.

(14) I.e., the sin offering of the anointed priest (Lev. IV, 3, seq.), and of the whole community (ibid. 13 seq.).
(15) Ibid. 12, 21.
(16) Ibid. 12.
(17) I.e., only outside the precincts of the Temple.
(18) In case the whole community committed an unwitting transgression.
(19) Ibid. i.e., the sin offering of the anointed priest, ibid. 3 seq.
(20) Beyond, which the burning is to take place.
(21) Which were heaped up and had to be removed.
(22) Lev. VI, 4.
(23) Lev. IV, 12; this explicitly states that the place for burning the ashes was without the camp. Hence the same statement in the verse first quoted is redundant.
(24) V. n. 12.
(25) Sc. the meaning of 'without the camp', Lev. XXIV, 14.
(26) Cf. Lev. XVII, 3ff. What ever man etc. . . . that offereth a burnt offering or sacrifice and bringeth it not unto the entrance of the appointed tent . . . that man shall be cut off from among his people.
(27) As is deduced from the words, bringeth it not unto the entrance of the appointed tent, i.e., the priestly camp, but outside it.
(28) In both these cases there is a positive command, Bring forth, etc. Whereas with references to sacrifices slaughtered outside the forecourt it is only stated, He that slaugthtered it outside the camp. Again, the bringing forth without the camp is a prerequisite for the fitting performance of the act; whereas in the case of sacrifices slaughtered outside the Temple court it is a transgression. Moreover, the burning of the bullock is an atonement for the High Priest and the whole Congregation (cf. Lev. IV, 20), and stoning likewise is an atonement for the malefactor; but that feature is absent in the case of sacrifices slaughtered without.
(29) 'Without the camp' in both these places refers to a human being; the blasphemer was to be taken 'without the camp', whilst it was a human being who slaughtered 'without the camp'; whereas, in connection with the burnt bullocks, this phrase relates to animals; they were to be taken 'without the camp'. Again, the blasphemer and the slaughterer without the camp are both sinners, whereas the bullock, in direct relation to which the phrase is stated, is not a sinner. Further, in both these cases, the leading 'without the camp' was in order to take life — that of the blasphemer and the sacrifice yet to be slaughtered; but the burnt bullocks were already slaughtered; and 'without the camp' is mentioned in connection with burning their carcases. And finally, the law of piggul is inapplicable to these two. פיגול, unfitness caused by an intention in the mind of the officiating priest to dispose of a sacrifice outside the legal limits of space or time. In both these cases the performance of the act outside does not involve this sin. In stoning it is, of course, not applicable, and sacrificing outside the prescribed area is not piggul, which implies instead a sacrificing outside the precincts but unlawful intentions about the sacrifice's subsequent disposal. Nor is piggul possible in the case of sacrifices slaughtered without. In the case of the bullocks to be wholly burned, an intention to burn them beyond their proper place makes the sacrifice in a sense piggul (v. Rashi). (5) V. n. 3.
(30) In proof that the third camp is meant.
(31) Since he was a Levite.
(32) Lev. XXIV, 14.
(33) It was not necessary to repeat the words, out of the camp; therefore the words here mean something different from their use earlier.

Talmud - Mas. Sanhedrin 43a

And the children of Israel did as the Eternal had commanded Moses.[1] If so,[2] what is the purpose of the sentence, And they stoned him with a stone?[3] — This is needed for what was taught: And they stoned him with a stone,[4] — him,[5] but not his garments. With a stone,[6] — [to teach] that if he was killed by a single stone the commandment is fulfilled.[7] And it was necessary to write [in this instance], 'stone', and [in another], 'stones'.[8] For had the Divine Law written [only] 'a stone', I might have said: In case he does not die through one stone, no more are to be brought to kill him. The Divine Law therefore states, 'stones'. Again, had the Divine Law written 'stones' [only], I might have said that at the outset two must be fetched. The Divine Law therefore states, 'a stone'.[9]

But this Tanna states, 'Here it is written [etc.],'[10] — He meant, If it were not written, i.e., even if this verse[11] were not found,[12] I could have adduced a gezerah shawah; seeing, however, that this verse is written, a gezerah shawah is not necessary. R. Ashi said; Where did Moses reside? In the camp of the Levites And God said to him: Bring forth him that hath cursed, — i.e., without the camp of the Levites; without the camp, — i.e., outside the camp of the Israelites.[13] And they brought forth him that had cursed,[14] — this stands for the actual fulfilment [of the command]. But the fulfilment is expressly stated: And the children of Israel did as the Eternal had commanded Moses! — That is necessary to indicate that hands were laid [on the culprit][15] and that he was hurled down.[16] Whereupon the Rabbis asked R. Ashi: How, according to you, do you interpret all the expressions; 'briny forth', in connection with the bullocks that are [wholly] burned?[17] This is a difficulty.

A MAN WAS STATIONED. R. Huna said: It is obvious to me that the stone with which one is stoned, the gallows on which one is hanged, the sword with which one is decapitated, and the cloth with which one is strangled, are all provided by the Community. And why so? Because we could not tell a man to go and fetch his own property to kill himself. But, asked R. Huna, who provides the flag for signalling and the horse on which one rides to stop them?[18] Seeing that they are for his protection, must they be provided by him, or rather, since the court is bound to endeavour to save him, by them? Again, what of R. Hiyya b. Ashi's dictum in R. Hisda's name; When one is led out to execution, he is given a goblet of wine containing a grain of frankincense, in order to benumb his senses, for it is written, Give strong drink unto him that is ready to perish, and wine unto the bitter in soul.[19] And it has also been taught; The noble women in Jerusalem used to donate and bring it. If these did not donate it, who provided it? As for that, it is certainly logical that it should be provided out of the public [funds]: Since it is written. 'Give', [the implication is] of what is theirs.

R. Aha son of R. Huna inquired of R. Shesheth: What if one of the disciples said, 'I have a statement to make in his favour,' and there and then becomes speechless?[20] R. Shesheth blew into his hand,[21] and said; [You ask, what] if one becomes speechless! Why there may also be some one in the farthest part of the earth [who could make such a statement]![22] — In the latter case, however, no one has actually said so, but in the former case, such a declaration has been made! [Hence the problem,] What then? — Come and hear! For R. Jose b. Hanina said: If one of the disciples who argued for acquittal died, he is regarded as though alive and in his place.[23] Thus, it is so only if he had actually spoken in favour of acquittal,[24] but not otherwise.[25] [That does not solve it:] where one has actually argued for acquittal, I have no doubts; but the problem arises if he only declared [that he could do so].[26]

AND EVEN IF HE HIMSELF etc. Even the first and second time?[27] But it has been taught: 'The first and second time, whether his statement has substance or not, he is brought back; thereafter, if there is substance in his statement, he is brought back, but not otherwise'? — Said R. Papa: Interpret it, from the second time[28] onwards. How do they [the judges] know?[29] — Abaye said: Two Rabbis are sent with him; if his statement has substance, he is [brought back]; if not, he is not [brought back]. But why not do so in the first place?[30] — Because being terrified, he cannot say all he wishes.[31]

MISHNAH. IF THEN THEY FIND HIM INNOCENT, THEY DISCHARGE HIM; BUT IF NOT, HE GOES FORTH TO BE STONED, AND A HERALD PRECEDES HIM [CRYING]: SO AND SO, THE SON OF SO AND SO, IS GOING FORTH TO BE STONED BECAUSE HE COMMITTED SUCH AND SUCH AN OFFENCE, AND SO AND SO ARE HIS WITNESSES. WHOEVER KNOWS ANYTHING IN HIS FAVOUR, LET HIM COME AND STATE IT.

GEMARA. Abaye said; It must also be announced: On such and such a day, at such and such and hour, and in such and such a place [the crime was committed], in case there are some who know [to

the contrary], so that they can come forward and prove the witnesses Zomemim.[32]

AND A HERALD PRECEDES HIM etc. This implies, only immediately before [the execution], but not previous thereto.[33] [In contradiction to this] it was taught: On the eve of the Passover Yeshu[34] was hanged. For forty days before the execution took place, a herald went forth and cried, 'He is going forth to be stoned because he has practised sorcery and enticed Israel to apostacy. Any one who can say anything in his favour, let him come forward and plead on his behalf.' But since nothing was brought forward in his favour he was hanged on the eve of the Passover![35] — 'Ulla retorted: Do you suppose that he was one for whom a defence could be made? Was he not a Mesith [enticer], concerning whom Scripture says, Neither shalt thou spare, neither shalt thou conceal him?[36] With Yeshu however it was different, for he was connected with the government [or royalty, i.e., influential].

Our Rabbis taught: Yeshu had five disciples, Matthai, Nakai, Nezer, Buni and Todah. When Matthai was brought [before the court] he said to them [the judges], Shall Matthai be executed? Is it not written, Matthai [when] shall I come and appear before God?[37] Thereupon they retorted; Yes, Matthai shall be executed, since it is written, When Matthai [when] shall [he] die and his name perish.[38] When Nakai was brought in he said to them; Shall Nakai be executed? It is not written, Naki [the innocent] and the righteous slay thou not?[39] Yes, was the answer, Nakai shall be executed, since it is written, in secret places does Naki,[40] [the innocent] slay.[41] When Nezer was brought in, he said; Shall Nezer be executed? Is it not written, And Nezer [a twig] shall grow forth out of his roots.[42] Yes, they said, Nezer shall be executed, since it is written, But thou art cast forth away from thy grave like Nezer [an abhorred offshoot].[43] When Buni was brought in, he said: Shall Buni be executed? Is it not written, Beni [my son], my first born?[44] Yes, they said, Buni shall be executed, since it is written, Behold I will slay Bine-ka [thy son] thy first born.[45] And when Todah was brought in, he said to them; Shall Todah be executed? Is it not written, A psalm for Todah [thanksgiving]?[46] Yes, they answered, Todah shall be executed, since it is written, Whoso offereth the sacrifice of Todah [thanksgiving] honoured me.[47]

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(1) Ibid. 23.

(2) That the words, And they brought forth him etc., must be separately interpreted.

(3) Ibid. It is not needed to show how the execution was carried out, as that was already stated in the words quoted above; hence, by analogy, this too needs a distinctive interpretation.

(4) That is the literal translation, the sing. (stone) being used here.

(5) I.e., his bare body.

(6) Sing., as here.

(7) And more stones are not to be thrown at his corpse, to add to his disgrace.

(8) In the case of the gatherer of sticks, it is written, with stones (plural), Num. XV, 36.

(9) To teach that if he died by a single stone, it was satisfactory.

(10) I.e., he deduces the fact that the third camp is meant from a gezerah shawah. How then could R. Papa, an Amora, make the deduction from the verse itself?

(11) Quoted by R. Papa.

(12) Which itself indicates that the third camp is meant.

(13) For 'bring forth' itself implies beyond the camp (v. p. 578, n. 4), therefore the additional phrase denotes another camp.

(14) Lev. XXIV, 23.

(15) Cf. Lev. XXIV, 14. Let all that heard him lay their hands upon him.

(16) From a height, before stoning. V. infra 45a. The phrase quoted above cannot be taken as giving information regarding the carrying out of the stoning, as that has already been stated in the first portion of the verse. It indicates therefore the observance of all other regulations in connection with that penalty. e.g., the laying on of hands etc.

(17) Since he maintained that 'bring forth' has a meaning apart from 'without the camp. What separate meaning does he then give to these expressions when found in connection with the burnt bullocks?

(18) From carrying out the sentence, in case one of the judges raises a new point for the defence.
(19) Prov. XXXI, 6.
(20) I.e., should it be assumed that his arguments would have been weighty, and so now that he is unable to give them, the case should be retried by other judges?
(21) As a sign of ridicule at the question. [The figure of speech is probably taken from the method of blowing at the chaff when sifting ears of corn from one hand to the other, v. Ma'as. IV, 5.]
(22) Justice is impossible if such assumptions are permitted.
(23) I.e., when the vote is taken (supra 34a).
(24) I.e., gave his grounds for doing so.
(25) Hence if one said he could speak for the defence and there and then became dumb, his declaration is disregarded.
(26) I.e., when R. Jose states, 'argued for acquittal,' did he mean that he must have given reasons for his statement, or that he merely said he could do so, even if he was subsequently prevented from giving his reasons.
(27) I.e., must there be substance in his statement even the first and second time?
(28) Exclusive, not inclusive, i.e., from the end of the second time, viz., from the third time.
(29) Whether his statement has substance.
(30) I.e., as soon as he starts out for the place of execution, so as to avoid an unnecessary return even the first time.
(31) Therefore the first two times he receives the benefit of the doubt.
(32) V. Glos.
(33) E.g., not forty days before. The two passages that follow have been expunged in all censored editions. [As to the historical value to be attached to them, v. Klausner, Jesus. p. 27ff.]
(34) [Ms. M. adds the Nasarean'.]
(35) [A Florentine Ms. adds: and the eve of Sabbath.]
(36) Deut. XIII, 9.
(37) Ps. XLII, 3.
(38) Ibid. XLI, 6.
(39) Ex. XXIII, 7.
(40) Naki is employed here as subject.
(41) Ps. X, 8.
(42) Isa. XI, 1.
(43) Ibid. XIV, 19.
(44) Ex. IV, 22.
(45) Ibid. IV, 23.
(46) Ps. C, 1.
(47) Ibid. L, 23. ['We can only regard this fencing with texts as a jeu d'esprit occasioned no doubt by some 'actual event', Herford, op. cit. p. 93. Cf. also Klausner, op. cit. p. 28ff]

Talmud - Mas. Sanhedrin 43b

R. Joshua b. Levi said; He who sacrifices[1] his [evil] inclination and[2] confesses [his sin] over it,[3] Scripture imputes it to him as though he had honoured the Holy One, blessed be He, in both worlds, this world and the next; for it is written, Whoso offereth the sacrifice of confession honoureth me.[4]

R. Joshua b. Levi also said: When the Temple was in existence, if a man brought a burnt offering, he received credit for a burnt offering; if a meal offering, he received credit for a meal offering; but he who was humble in spirit, Scripture regarded him as though he had brought all the offerings, for it is said, The sacrifices of God are a broken spirit.[5] And furthermore, his prayers are not despised, for it is written, A broken and contrite heart, O God, Thou wilt not despise.[6]

MISHNAH. WHEN HE IS ABOUT TEN CUBITS AWAY FROM THE PLACE OF STONING, THEY SAY TO HIM, 'CONFESS',[7] FOR SUCH IS THE PRACTICE OF ALL WHO ARE EXECUTED, THAT THEY [FIRST] CONFESS, FOR HE WHO CONFESSES HAS A PORTION IN THE WORLD TO COME. EVEN SO WE FIND IN THE CASE OF ACHAN, THAT JOSHUA

SAID UNTO HIM, MY SON, GIVE, I PRAY THEE, GLORY TO THE LORD, THE GOD OF ISRAEL, AND MAKE CONFESSION UNTO HIM.[8] AND ACHAN ANSWERED JOSHUA AND SAID, OF A TRUTH, I HAVE SINNED AGAINST THE LORD THE GOD OF ISRAEL, AND THUS AND THUS HAVE I DONE.[9] AND WHENCE DO WE KNOW THAT HIS CONFESSIONS MADE ATONEMENT FOR HIM? — FROM THE WORDS, AND JOSHUA SAID: WHY HAST THOU TROUBLED US? THE LORD SHALL TROUBLE THEE THIS DAY,[10] I.E., THIS DAY ART THOU TO BE TROUBLED, BUT THOU SHALT NOT BE TROUBLED IN THE NEXT WORLD.

AND IF HE KNOWS NOT WHAT TO CONFESS,[11] THEY INSTRUCT HIM, 'SAY, MAY MY DEATH BE AN EXPIATION FOR ALL MY SINS.' R. JUDAH SAID: IF HE KNOWS THAT HE IS A VICTIM OF FALSE EVIDENCE, HE CAN SAY: MAY MY DEATH BE AN EXPIATION FOR ALL MY SINS BUT THIS. THEY [THE SAGES] SAID TO HIM: IF SO, EVERYONE WILL SPEAK LIKEWISE IN ORDER TO CLEAR HIMSELF.[12]

GEMARA. Our Rabbis taught: The word na[13] is none other than a form of supplication. When the Holy One, blessed be He, said to Joshua, Israel hath sinned,[14] he asked Him, 'Sovereign of the Universe, who hath sinned?' 'Am I an informer?' He answered, 'Go and cast lots.' Thereupon he went and cast lots, and the lot fell upon Achan. Said he to him; 'Joshua, dost thou convict me by a mere lot?[15] Thou and Eleazar the Priest are the two greatest men of the generation, yet were I to cast lots upon you, the lot might fall on one of you.[16] I beg thee,'[17] he replied, 'cast no aspersions on [the efficacy of] lots, for Eretz Yisrael is yet to be divided by means of lots, as it is written, The land shall be divided by lot.[18] [Therefore,] make confession.' Rabina said: He bribed him with words, saying, Do we seek aught from thee but a confession? confess unto Him and be free. Straightway, Achan answered Joshua and said: Of a truth, I have sinned against the Lord, the God of Israel, and thus have I done.[19] R. Assi said in R. Hanina's name: This teaches that Achan had thrice violated the ban, twice in the days of Moses,[20] and once in the days of Joshua, for it is written, I have sinned,[21] and thus and thus have I done.[22]

R. Johanan said on the authority of R. Eleazar b. Simeon: He did so five times, four times in the days of Moses,[23] and once in the days of Joshua, for it is written, I have sinned and thus and thus have I done.[24] And why were they [the Israelites] not punished until this occasion? R. Johanan answered on the authority of R. Eleazar b. Simeon: Because [God] did not punish for secret transgressions until the Israelites had crossed the Jordan.

This point is disputed by Tannaim: The secret things belong unto the Lord our God, but the things that are revealed belong unto us and to our children for ever.[25] Why are the words: Lanu u-lebanenu, [unto us and to our children] and the 'ayin of the word 'ad, [for ever] dotted?[26] — To teach that God did not punish for transgression committed in secret, until the Israelites had crossed the Jordan:[27] this is the view of R. Judah. Said R. Nehemia to him; Did God ever[28] punish [all Israel] for crimes committed in secret; does not Scripture say for ever?[29] But just as God did not punish [all Israel] for secret transgressions [at any time], so too did He not punish them [corporately] for open transgressions until they had crossed the Jordan.[30] Then

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(1) I.e., resists, or conquers.

(2) After having been induced to sin.

(3) Cf. e.g. Lev. XVI, 21. Ms. M. omits 'over it'.]

(4) יכבדנני Ps. L, 23. This is probably deduced from the nun energicum inserted between the suffix and the verbal stem for the sake of emphasis.

(5) Ps. LI, 19.

(6) Ibid.

(7) This and any other sins you may have committed.

(8) Josh. VII, 19.
(9) Ibid. 20.
(10) Ibid. 25.
(11) I.e., he cannot remember his other sins.
(12) Everyone would say this in order to clear himself in the eyes of men, and the court would acquire a bad reputation.
(13) נא (I pray thee) in Josh. VII, 19. quoted in the Mishnah.
(14) Josh. VII, 11.
(15) Without the testimony of witnesses.
(16) Surely, a lot is a thing of chance and can in no way be taken as decisive evidence; it might fall on the least likely people.
(17) Expressed in the word נא (I pray thee) in the verse. Hence its meaning of 'supplication'.
(18) Num. XXVI, 55.
(19) Josh. VII, 20.
(20) Once in the war with the king of Arad, where it is written, And Israel vowed a vow unto the Lord and said . . . then I will utterly destroy their cities (Num. XXI, 2); and a second time in the war between Israel and Sihon, though a ban in that connection is not specifically mentioned, v. J. Sanh. VI, 3.
(21) I.e., this time.
(22) I.e., earlier, 'thus' and 'thus' implying twice apart from this instance.
(23) In the wars with Arad, Sihon, Og and Midian, (Maharsha and Me'iri).
(24) This view is based on the number of words in the Hebrew text, five in all.
(25) Deut. XXIX, 28.
(26) לנו ולבנינו דע Fifteen passages in the Bible contain dotted words. Many meanings have been attached to such dots, but the most probable is that they were a device to indicate homiletical explanations which the Rabbis had connected with the words. Cf. C. D. Ginsburg, Introduction to the Massoretic Critical Edition of the Hebrew Bible, p. 331.
(27) The dots on the words, To us and to our children, denote that corporate responsibility holds good only for revealed or open transgressions, whilst secret offenders have responsibility individually to God alone. But as one might then have inferred that it was so for all time , the ע of the word עד (until) is therefore dotted, indicating that it was so only until, i.e., up to the crossing of the Jordan, but not after it, when corporate responsibility was involved also in secret transgressions.
(28) I.e., even after they crossed the Jordan.
(29) Translating, To us and our children belong only the revealed or open things; but the secret offender will 'for ever' be alone responsible to God, and will not implicate the whole people.
(30) According to R. Nehemia the absence of corporate responsibility for secret sins, irrespective of peril, is expressly stated in the words for ever. The dot on the ע in עד however, indicates a change of responsibility for revealed transgressions in the time they crossed the Jordan.

Talmud - Mas. Sanhedrin 44a

in the case of Achan, why were they punished? — Because his wife and children knew thereof.[1]

Israel hath sinned. R. Abba b. Zabda said: Even though [the people] have sinned, they are still [called] 'Israel'.[2] R. Abba said: Thus people say, A myrtle, though it stands among reeds, is still a myrtle, and it is so called.

Yea, they have even transgressed my covenant which I have commanded them, yea, they have even taken of the devoted thing and have also stolen [it], and dissembled also, and they have even put it amongst their own stuff.[3] R. Ile'a said on behalf of R. Judah b. Masparta: This teaches that Achan transgressed the five books of the Torah, [for the word 'gam'[4] is written there five times].

R. Ile'a also said on behalf of R. Judah b. Masparta; Achan was an epispastic:[5] Here it is written, They have even transgressed my covenant;[6] and elsewhere[7] it is said, He hath broken my covenant.[8]

But is this not obvious?[9] — I might have thought that he would not practise a licence in respect of a precept which concerned his own body; therefore he (R. Ile'a) informs us otherwise.

And because he hath wrought a wanton deed in Israel.[10] R. Abba b. Zabda said; This teaches that Achan committed adultery with a betrothed damsel: Here it is written, And because he hath wrought a wanton deed in Israel, and elsewhere, it is said, For she hath wrought a wanton deed in Israel.[11] But is this not obvious?[12] — I might have thought that Achan was not so extremely licentious;[13] therefore he gives us this information.[14] Rabina said: He was punished as is a betrothed damsel [who commits adultery], viz., by stoning.[15]

The Resh Galutha once said to R. Huna; It is written, And Joshua took Achan the son of Zerah and the silver and the mantle and the wedge of gold and his sons and his daughters, and his oxen and his asses, and sheep, and his tent and all that he had.[16] If he sinned, wherein did his sons and daughters sin? — He retorted: On your view, [one might ask:] If he sinned, how did all Israel sin, that it is written, And all Israel with him?[17] But it was to overawe[18] them. So here too, it was to overawe them.[19]

And they burned them with fire and they stoned them with stones.[20] By both [forms of death]?[21] — Rabina answered: Those suitable for burning[22] were burned, and those suitable for stoning[23] were stoned.

And I saw among the spoil a goodly mantle of Shinar,[24] and two hundred shekels of silver.[25] Rab said: It was a silk mantle;[26] Samuel maintained: It was a cloak dyed with alum.

And they laid them down[27] before the Lord.[28] R. Nahman said: He [Joshua] came and cast them down before God, exclaiming, 'Sovereign of the Universe! for these shall a [number equal to a] majority of the Sanhedrin he killed?'[29] For it is written, And the men of Ai smote of them about thirty-six men;[30] regarding which it was taught, i.e., literally thirty-six: this is R. Judah's view. R. Nehemia said to him; Were there actually thirty-six? Surely, only about thirty-six men is written. But this refers to Jair the son of Manasseh[31] who was equal [in importance] to the majority of the Sanhedrin.[32] R. Nahman said in Rab's name: What is meant by, The poor useth entreaties, but the rich answereth insolently.?[33] — The poor useth entreaties — that refers to Moses;[34] the rich answereth insolently, — to Joshua. Why so? Shall we say, because it is written. And they laid them down before the Lord,[35] which R. Nahman interpreted, He came and cast them down before God;[36] But did not Phinehas do the same? For it is written, Then stood up Phinehas and wrought judgment [wa-yefallel] and so the plague was stayed:[37] whereon R. Eleazar said: Not wayithpallel,[38] but wa-yefallel is written;[39] thus teaching that he had contentions with his Creator: he came and cast them[40] before God and cried out, 'Sovereign of the Universe! because of these, shall twenty-four thousand of Israel fall?' As it is written, And those that died by the plague, were twenty and four thousand?[41] — Nay it is inferred[42] from the following: [And Joshua said, Alas! O Lord,] wherefore hast Thou brought this people over the Jordan.[43] Yet Moses too spake thus: Wherefore hast thou dealt ill with this people.?[44] — Nay but it is derived from the following: Would that we had been content and dwelt beyond the Jordan.[45]

And the Lord said unto Joshua, Get thee up.[46] R. Shila expounded this: The Holy One blessed be He, said to him: Thy [transgression] is greater[47] than theirs,[48] for I commanded, And it shall be when ye are passed over the Jordan that ye shall set up [these stones];[49] ye advanced sixty mils however, [into the country before setting them up].[50] But when he [R. Shila] had gone out, Rab[51] set up his interpreter to speak for him, who expounded; As the Lord commanded Moses His servant, so did Moses command Joshua, and so did Joshua; he left nothing undone of all that the Lord commanded Moses.[52] What then do the words, Get thee up,[53] teach us? — The Lord said to him, Thou hast brought [guilt] upon them:[54] and for that reason He said to him with reference to Ai: And thou shalt

do to Ai and her king as thou didst to Jericho and her king, [only the spoil thereof and the cattle thereof shall ye take for a prey.][55]

And it came to pass when Joshua was by Jericho that he lifted up his eyes and looked . . . And he said, Nay, but I am captain of the host of the Lord, I am now come. And Joshua fell on his face to the earth and bowed down.[56] But how could he do so?[57] Did not R. Johanan say: One may not greet his fellow at night for fear that he may be a demon?[58] There it was different, for he said; I am captain of the host of the Lord, I am now come, etc. But perhaps he lied? — We have a tradition that such do not utter the name of God in vain.

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(1) It was therefore no longer secret.

(2) Israel is the name of honour for the people when faithful to God. Cf. Isa. XLIX, 3.

(3) Josh. VII, 11.

(4) Also, or even. [Ms. M. omits bracketed words. The inference that he transgressed the five books will then be deduced from the verse itself: my covenant, referring in Genesis (XVIII); taken of the devoted thing, to Leviticus (XXVIII, 28); stolen, to Exodus (XX, 15); dissembled, to Numbers (V, 5-10); put it amongst their own stuff, to Deuteronomy (XXIII, 25), v. Yad Ramah.]

(5) I.e., he effaced the sign of the Abrahamic covenant in circumcision.

(6) Josh. VII, 11.

(7) With reference to circumcision.

(8) Gen. XVII, 14. Hence covenant' is assumed to have the same meaning in both verses.

(9) Seeing that R. Ile'a himself said earlier that he had transgressed the five books of the Torah; that includes epispasm.

(10) Josh. VII, 19.

(11) Deut. XXII, 21; this refers to a betrothed maiden who committed adultery.

(12) V. n. 8.

(13) As to make himself despised by men also, for having brought shame (in her family, and having made her ineligible to marry her intended husband.

(14) This was probably intended to teach that there is no limit to licentiousness once a man breaks loose from restraint.

(15) He should legally have been burned for taking of the things under the ban. cf. Josh. VII, 15: He that is taken with the devoted things shall be burned with fire.

(16) Ibid. 24.

(17) Ibid.

(18) Lit., 'chastise'. I.e., all Israel were taken to the place of execution to be overawed by his punishment.

(19) Thus, his family was brought there merely to witness the execution.

(20) Ibid. 25.

(21) Surely they were not executed twice!

(22) The inanimate property.

(23) The livestock.

(24) Babylon. Cf. Gen X, 10; XI, 2.

(25) Josh. VII, 21.

(26) Rashi: Woollen.

(27) Lit., 'poured out'.

(28) Ibid. 23.

(29) I.e., of the great Sanhedrin of seventy one.

(30) Ibid. verse 5.

(31) A contemporary of Moses and a descendant of Manasseh by his grandmother and of Judah by his grandfather. His grandmother was probably an heiress and therefore he is reckoned by the tribe of Manasseh (I Ch. II, 5, 22, 23)

(32) The Heb. is כשלשים, and the כ is translated as a kaf similitatis, 'like,' i.e., one man who was like thirty-six

(33) Prov. XVIII, 23.

(34) Who, when imploring God's mercy for the people, spake humbly. The term 'poor' which is used of Moses in this instance is attributed to the fact that in comparison with Joshua, he was poor in the conquest of the land (Maharsha).

(35) Josh. VII, 23.

(36) Meaning that Joshua threw them down in a challenging or insolent way.
(37) Ps. CVI, 30.
(38) ויתפלל, 'he interceded', 'prayed'.
(39) ויפלל, 'he judged'.
(40) Zimri and Cozbi. Cf. Num. XXV, 7ff.
(41) Num. XXV, 9.
(42) That Joshua spoke insolently.
(43) Josh. VII, 7.
(44) Ex. V, 22.
(45) Josh. VII, 7.
(46) Ibid. 10.
(47) Lit., 'harder'.
(48) Deduced from the redundant לך 'thee', i.e., it is on thy account too that this disaster has happened. 'Theirs' probably refers to Achan's sin.
(49) Deut. XXVII, 4.
(50) The distance between the Jordan and the mountains of Gerizim and Ebal, where the stones were set up, is sixty mils. V. Sotah. 36a.
(51) [Rab was then still in Nehardea, the place of R. Shila.]
(52) Josh. XI, 15. I.e., Joshua did not sin as suggested above.
(53) V. p. 288, n. 16.
(54) By forbidding them the spoil of Jericho.
(55) Josh. VIII, 2, thus expressly ordering him not to proclaim a ban.
(56) Josh. V, 13-14. The fact that, as his question implies, he could not distinguish who the other was, shows that it was night time.
(57) I.e., bow to an unknown man.
(58) The customary greeting of Shalom (peace) is held in equal esteem with the name of God (v. Shab. 10b), and therefore may not be extended to a demon; whilst bowing to a demon is most certainly forbidden.

Talmud - Mas. Sanhedrin 44b

He [this stranger] said to him: 'Yesterday evening, ye omitted the evening Tamid,[1] and to-day[2] ye have neglected the study of the Torah.'[3] 'For which of these [offences] hast thou come?' 'I have now come,'[4] he replied. Straightway [we read], And Joshua lodged that night in the midst of the vale'.[5] Whereon R. Johanan observed: It teaches that he spent the night in the profundities[6] of the law.

R. Samuel b. Unia said in the name of Rab: The study of the Torah is more important than the offering of the Tamid, since it is written, I have now come.[7]

Abaye asked R. Dimi:[8] To what do ye in 'the West' relate the following verse: Go not forth hastily to strife, for what wilt thou do in the end thereof when thy neighbour hath put thee to shame. Debate thy cause with thy neighbour, but reveal not the secrets of another?[9] — [He answered]: When the Holy One, blessed be He, said to Ezekiel, Go and say unto Israel, An Amorite was thy father, and thy mother was a Hittite,[10] the intercessory[11] spirit said before the Holy One, blessed be He, 'Sovereign of the Universe! if Abraham and Sarah came and stood before Thee, wouldst Thou say [this] to them and put them to shame?' Debate thy cause with thy neighbour,[12] but reveal not the secret of another![13] But has he so much license?[14] — Yes, For R. Jose son of R. Hanina said: He has three names: Pisakon, Itamon, and Sigaron.[15] Pisakon, because he argues against the Most High;[16] Itamon, because he hides the sins of Israel, Sigaron, because when he concludes[17] a matter, none can reopen it.[18] Hadst thou prepared thy prayer before thy trouble came?[19] R. Eleazar said: One should always offer up prayer before misfortune comes; for had not Abraham anticipated trouble by prayer between Beth-el and Ai,[20] there would not have remained of Israel's sinners a remnant or a survivor.[21] Resh Lakish said: He who devotes his strength to prayer[22] below,[23] has no enemies [to

overcome] above.[24] R. Johanan said: One should ever implore mercy that all [sc. Heavenly beings] may support his effort [in prayer] so that he may have no enemies on high.[25]

AND WHENCE DO WE KNOW THAT HIS CONFESSIONS MADE ATONEMENT FOR HIM etc. Our Rabbis taught: Whence do we know that his confessions made atonement for him? — From the verse, And Joshua said unto him, Why hast thou troubled us, the Lord shall trouble thee this day: [implying] this day art thou troubled, but thou shalt not be troubled in the next world. And again it is written, And the sons of Zerah: Zimri,[26] and Ethan and Heman and Calcol and Darda,[27] five of them in all.[28] Why the phrase: five of them in all?[29] — Because all five were equally destined for the world to come. Here he is called Zimri, but elsewhere, Achan.[30] Rab and Samuel [differ thereon]: One maintains his real name was Achan; and why was he called Zimri? — Because he acted like Zimri.[31] The other maintains, His real name was Zimri; and why was he called Achan? — Because he wound the sins of Israel about them like a serpent.[32]

AND IF HE KNOWS NOT WHAT TO CONFESS . . . R. JUDAH SAID . . . TO CLEAR HIMSELF. Why not let them clear themselves? — In order that they may not bring discredit upon the Court and the witnesses.

Our Rabbis taught: It happened once that a man who was being taken to be executed said: 'If I am guilty of this sin, may my death not atone for any of my sins; but if I am innocent thereof, may my death expiate all my sins. The court and all Israel are guiltless, but may the witnesses never be forgiven.' Now, when the Sages heard of the matter they said: It is impossible to reverse the decision, since the sentence has been promulgated. He must therefore be executed, and may the chain [of responsibility] ever hang on the neck of the witnesses. But is he to be relied on?[33] — This holds good only where the witnesses have retracted.[34] But even so, of what consequence is it? Once a witness testified — he cannot testify again![35] It is necessary [to state this] even where they [the witnesses] give a reason for their action,[36] as happened in the case of Ba'ya[37] the tax-collector. MISHNAH. WHEN HE IS ABOUT FOUR CUBITS DISTANT FROM THE PLACE OF STONING, HE IS STRIPPED OF HIS GARMENTS.[38] A MAN IS COVERED IN FRONT AND A WOMAN BOTH IN FRONT AND BEHIND: THIS IS R. JUDAH'S VIEW. BUT THE SAGES SAY: A MAN IS TO BE STONED NAKED BUT A WOMAN IS NOT TO BE STONED NAKED.

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(1) The daily burnt offerings, one of which was sacrificed every morning, and one towards evening. Cf. Num. XXVIII, 3.

(2) Lit., 'now'.

(3) The conversation took place during the night when fighting was at a standstill and they should have been studying the land.

(4) I.e., I have come to you for the present offence.

(5) The ordinary text reads: among the people instead of: in the midst of the vale. Again, verse 13 of the same chapter in which we do find, in the midst of the vale, begins with, And Joshua went, instead of, And Joshua lodged. It is probable that the Rabbis combined the two verses for the purpose of their exegesis, which is not unusual with them. Cf. Tosaf. Meg. 3a. s.v. וילן; Shabb. 128a s.v. ונתן. In a parallel passage in 'Er. 63b, the verse quoted conforms to the Biblical text: And Joshua went, and the text further reads: He went into the depths of the study of the law. Bah mentions another version which reads as follows: And Joshua lodged that night amongst the people; further it is written, into the midst of the vale, — this teaches that he went and spent that night in the depths of the study of the law. V.D.S. a.l.

(6) עמק means 'valley', as well as 'deep' or 'depth'.

(7) I.e., to reprimand you, not on account of the Tamid, but for the present offence, neglecting the study of the law.

(8) R. Dimi often carried Palestine exegesis to the Babylonian schools.

(9) Prov. XXV, 8-9.

(10) Ezek. XVI, 3.

(11) פסקונית lit., 'an arguing spirit, — an additional name of the Angel Gabriel, who always interceded on behalf of Israel. V. however p. 99, n. 6.

(12) I.e, reproach him alone.
(13) Do not take up anothers' shame.
(14) To reproach God so freely!
(15) פיסקון from פסק 'to split;' איטמון from אטם 'to lock'; and סיגרון from סגר 'to close'. So at least according to the Talmudic interpretation which follows.
(16) Lit., 'he splits words upwards.
(17) I.e., when his words are of no effect.
(18) No others can successfully intercede. Kohut suggests that they are of Arabic origin. Pisakon denoting shame; Itamon, sin, and Sigaron, pain, an angel being in charge of each of these three things. Hence in his opinion, פסקנית does not denote Gabriel but the Spirit of Shame. V. 'Aruch Completum, vol. I, p. 63.
(19) היערוך שועך לא בצר Job XXXVI, 19 (E.V.: Will thy riches avail that are without stint.) ערך means 'to prepare', as well as 'to estimate;' שוע means 'prayer,' or 'wealth'.
(20) Cf. Gen. XII, 8: He pitched his tent, having Beth-el on his west, and Ai on the east, and he builded an altar to the Lord and called upon the name of the Lord.
(21) At the Battle of Ai in the days of Joshua.
(22) Lit., 'who strengthens himself in prayer.'
(23) I.e., on earth.
(24) Translating: 'Hadst thou put forth thy prayer (with strength), thou wouldst have had no adversary (above)'.
(25) Translating somewhat similarly: 'When thou canst prepare thy prayer, see that thou hast no enemies (on high, to urge its rejection)'.
(26) According to the Rabbis, he is identical with Achan. Although the latter was a great grandson of Zerah, he is called the son of Zerah in Josh. VII, 24. The four other sons are referred to in I Kings (V, 11) as great men, and the fact that Achan (Zimri) is associated with them is taken as an indication that his confession helped him to enter the world to come in common with the others.
(27) Dara, in I Chron II, 6.
(28) I Chron. II, 6.
(29) Surely the number is obvious and needs no special mention! Therefore it has some other meaning.
(30) Cf. Josh. VII, 24.
(31) I.e., he was licentious. Cf. Num. XXV, 14, and supra 44a.
(32) Cf. Gr. **.
(33) I.e., is his statement so trustworthy that responsibility may be thrust upon the witnesses? — Such would seem to have been the text before Rashi, v. D.S. a.l. Our reading is: But that is obvious, (for) is he then the sole authority! I.e., why state that the Rabbis did not reverse the sentence! Is he then to have his own way entirely so that we should disbelieve the witnesses.
(34) After the sentence had been promulgated.
(35) Witnesses are not permitted to retract their first statement and make another, since they may have been prompted thereto out of pity for the accused.
(36) In withdrawing their previous statement. E.g., when they say that they have previously testified against him out of hatred. In this case, though the execution is carried out, the witnesses bear responsibility.
(37) According to Kohut 'Aruch Completum, vol II, p. 140, Ba'ya is derived from the Arabic, meaning an informer. In the case in question he had denounced the tax defaulters in the Government, an act which, of course, aroused the enmity of the people. According in Rashi, the subject matter of the text is connected with this name as follows: The funeral of the said collector coincided with that of a very pious man, but accidentally the coffins were exchanged, so that the honour intended for the Rabbi was paid to the other, and vice versa. An explanation of the happening was given by the Rabbi in a dream to one of his pupils who was disturbed at the occurrence, and he also informed him that severe punishment was in store for Simeon b. Shetah in the world to come for the neglect of his duty in tolerating eighty women in Ashkelon guilty of sorcery. Simeon, on being informed about it, took a serious view of the matter and had them executed. The relatives of these women, however, inflamed with a passion for revenge, plotted against his son, charging him with a capital crime, as a result of which he was sentenced to death. On his way to the place of execution the condemned man protested his innocence so vehemently that even the witnesses were moved to admit the falsity of their evidence, giving as ground for their former act their feelings of enmity against Simeon b. Shetah. Yet their latter statement was not accepted, according to the law expounded in the text, that a witness is not to be believed when be